

FSCA Press Release

28 March 2024

FSCA imposes sanctions on Veracity Markets (Pty) Ltd, Ms. Shelly Ann du Plessis, Mr Dane Mesane, Nirvesh Financial Services (Pty) Ltd, Ms. Madhubala Lila Patel and Mr Bhavesh Patel

The FSCA has imposed sanctions on Veracity Markets (Pty) Ltd (Veracity Markets), Ms. Shelly Ann du Plessis (Du Plessis), Mr Dane Mesane (Mesane), Nirvesh Financial Services (Pty) Ltd (Nirvesh Financial Services), Ms. Madhubala Lila Patel (Ms Patel) and Mr Bhavesh Patel (Mr Patel).

The sanctions follow an investigation conducted by the FSCA after having received an anonymous complaint. Veracity Markets and its directors, Ms Du Plessis and Mr Mesane, were representatives of Nirvesh Financial Services from 29 May 2020 to 30 April 2022.

The contraventions

During the period referred to above Veracity Markets conducted unauthorised over-the-counter (OTC) derivative business, more specifically it offered Contracts for Difference (CFDs) to clients.

Nirvesh Financial Services is authorised as a Category 1 FSP to render advisory and intermediary services in respect of, amongst others, derivative instruments. However, it is not authorised in terms of the Financial Markets Act, 2012 (the FMA) to provide, originate, issue or sell any OTC derivatives in the Republic of South Africa. Therefore, its juristic representative (Veracity Markets) could at best only provide intermediary services in CFDs.

By conducting unauthorised OTC business Veracity Markets contravened Regulation 2 of the Regulations issued in terms of the FMA.

From 7 February 2020 to 18 September 2020, Veracity Markets placed a statement on its website to the effect that SCM DMA (Pty) Ltd was providing clearing services to Veracity Markets. It is the view of the FSCA that these statements were incorrect.

By doing so, Veracity Markets contravened section 8(9)(c)(i) and (ii) of the FAIS Act.

Veracity Markets concluded agreements and rendered financial services in its own name in respect of its clients. In terms of section 13(1)(c) of the Financial Advisory and Intermediary Services Act No. 37 of 2002 (FAIS Act), any financial services must be conducted in the name of the FSP and not the juristic representative.

By doing so, Veracity Markets contravened section 13(1)(c) of the FAIS Act and section 2 the General Code.

During the investigation the directors and key individuals of Nirvesh Financial Services (Ms Patel and Mr Patel) and the directors of Veracity Markets (Ms Du Plessis and Mr Mesane)

provided incorrect information to the FSCA investigation team regarding the existence of a licenced ODP provider.

In doing so they contravened section 139 of the Financial Sector Regulation Act No. 9 of 2017.

It was the responsibility of Nirvesh Financial Services (as FSP), in terms of section 13(2)(a) and (b) of the FAIS Act, to ensure that its representatives, i.e., Veracity Markets and its directors (Ms Du Plessis and Mr Mesane), complied with any applicable laws and codes of conduct. Nirvesh Financial Services failed to exercise oversight to ensure all applicable laws were complied with.

Therefore, during the period 29 May 2020 to 30 April 2022, Nirvesh Financial Services contravened section 13(2)(a) and (b) of the FAIS Act and section 11 of the General Code of Conduct.

The sanctions on Veracity Markets

The FSCA imposed an administrative penalty on Veracity Markets of R10 million, and administrative penalties on both its key individuals (Mesane and Du Plessis) of R1 million each.

Veracity Markets agreed to sign an enforceable undertaking to the effect that both key individuals will not be involved in the financial services industry for the next four years, and Veracity Markets undertook to withdraw its application to the FSCA for an FSP licence.

The sanctions on Nirvesh Financial Services

The FSCA imposed an administrative penalty of R1 million on Nirvesh Financial Services and R100 000 each on both the key individuals of Nirvesh Financial Services (Mr Patel and Ms Patel).

Nirvesh Financial Services agreed to signing an enforceable undertaking to the effect that it will continue operations as a FSP as per its current licencing and contracts with various financial institutions, subject to the requirements that follow.

- Nirvesh Financial Services will have a systems and compliance audit conducted by an independent expert on all aspects of the business of Nirvesh Financial Services and provide the FSCA with the report of the expert.
- For a period of three years from the date of the enforceable undertaking, Nirvesh Financial Services will appoint to its FSP licence an additional key individual who has the appropriate qualifications, skills and experience and who will have the same area of responsibility as the current key individuals.
- Nirvesh Financial Services will ensure that it will not have any juristic representatives registered under its FSP licence.
- Nirvesh Financial Services will also appoint an external compliance officer to assist Nirvesh Financial Services for a period of three years from the date of the enforceable undertaking.

In addition, the key individuals of Nirvesh Financial Services agreed to not apply to be a key individual of any other FSP for a period of three years and will not apply for an extension of the

FSP licence of Nirvesh Financial Services in any manner for a period of three years from the date of the enforceable undertaking.

The FSCA Directive

The FSCA previously reported that it was investigating the abovementioned parties and that it issued a Directive to Veracity Markets and Nirvesh Financial Services *inter alia* to:

- cease acting as OTC derivative providers and/or advertising and/or holding themselves out as OTC derivative providers, pending the finalisation of the investigation;
- refrain from conducting any new OTC Derivative business;
- close all open trading positions of its clients without delay; and
- pay out to all clients all funds owing to such clients irrespective of the basis for the liability, upon request from such clients within seven working days from the date of the request from the client.

In imposing the sanctions, the FSCA took into account that the parties complied with the FSCA Directive without delay, and fully cooperated during the investigation.

As it relates to Nirvesh Financial Services, in imposing the sanctions, the FSCA also took into account that:

- In complying with the FSCA Directive, Nirvesh Financial Services cooperated in a manner that demonstrated a patent willingness to act in client's interests.
- Nirvesh Financial Services has a lengthy history in the financial services industry with no previous investigations or findings of non-compliance.

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Enquiries: Financial Sector Conduct Authority
Email address: Communications@fsca.co.za
Telephone: 0800 203 722