

FSCA Press Release

8 September 2021

The FSCA fines Viceroy Research and its partners for publishing false and misleading statements about Capitec Bank Holdings Ltd

The Financial Sector Conduct Authority (FSCA) has imposed an administrative penalty of fifty million Rand (R50 million) on the partnership known as Viceroy Research and its partners, Mr Aiden Lau, Mr Fraser John Perring and Mr Gabriel Bernarde (the Respondents), in terms of section 167(1)(a) of the Financial Sector Regulation Act 9 of 2017. The penalty imposed is jointly and severally payable by the Respondents within 30 days from the date of the order.

The FSCA found that the Respondents had contravened Section 81(1) of the Financial Markets Act 19 of 2012 (FMA) in that during January 2018 they published false, misleading or deceptive statements, promises or forecasts regarding material facts about Capitec, which they ought reasonably to have known were not true. Further, notwithstanding being made aware that what they had published was false, they failed to publish full and frank corrections thereof, as required by Section 81(2) of the FMA. The statements are summarised in **Annexure A** attached.

In determining an appropriate administrative penalty for the above contraventions, the FSCA took into account, amongst others, the following factors:

- **The need to deter such conduct** - A contravention of section 81 of the FMA is a serious offense that can cause significant harm to investors, listed entities and the broader market, hence the need to impose a penalty that would serve as a deterrent.
- **The degree of co-operation in relation to the contravention** - The FSCA had to enlist the assistance of the Securities and Exchange Commission (SEC) of the USA to compel a representative of the Viceroy Research partnership to be questioned under oath. We thank the SEC for the assistance they provided.

- **The nature, duration, seriousness and extent of the contravention** - The Respondents made a concerted effort to publish these statements as widely as possible, knowing that Capitec is a systemically important financial institution in South Africa, and that these statements had the potential to trigger a run on the bank.
- **Loss or damage suffered by any person as a result of the conduct** - The publication of the statements immediately caused the Capitec share price to decline by 23.12%.
- **The extent of any financial or commercial benefit arising from the conduct** - The Respondents gained financially from the decline in the Capitec share price.
- **Whether the person has previously contravened a financial sector law** - there is no record of the Respondents previously contravening a financial sector law.
- **The effect of the conduct on the financial system and financial stability** - Capitec is a systemically important financial institution in South Africa, therefore the Respondent's false statements, and their failure to subsequently publish corrections of these statements, posed a clear and present threat to the stability of the South African financial system.

FSCA Commissioner, Mr Unathi Kamlana, explained: "This penalty is particularly significant because it shows just how far the FMA reaches. Although the Viceroy Research Partnership, and its partners, are not financial institutions, and are domiciled in a different jurisdiction, their comments about South African listed securities make them subject to the stipulations of the Act. The penalty also makes it clear that breaching our financial sector laws has serious consequences".

The FSCA also investigated possible Insider Trading (Section 78 of the FMA) and Prohibited Trading Practices (Section 80 of the FMA) in Capitec securities during the period of the publications but has not found any evidence of such contraventions. Those two investigations have therefore been closed without any enforcement proceedings being instituted.

ENDS

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