

MEDIA RELEASE

Date: August 2022

COMPLIANCE NOTICE ISSUED TO NOVA PROPGROW GROUP HOLDINGS LTD

Inter-Regulator Investigation Following Failure to Satisfy the Commission from a Notice to Show Cause Regarding Reckless Trading or Trading Under Insolvent Circumstances

Nova Propgrow Group Holdings Ltd, Reg. No. 2011/003964/06 (herein after referred to as NOVA) has been a subject of an investigation for identified and possible contraventions of the Companies Act 71, of 2008 (as amended) (herein after referred to as 'the Companies Act').

On 21 February 2021, NOVA was issued with a Notice to Show Cause Regarding Reckless Trading or Trading Under Insolvent Circumstances through Form CoR. 19.1, requiring it to show cause why it should be permitted to carry on business or to trade.

Subsequent to that, after the non-satisfactory response received from its Board, the company was issued with a Compliance Notice on 25 October 2021 to afford it a final opportunity to prove beyond reasonable doubt that it would not be in a financially distressed position by the end of its financial year, i.e. 28 February 2022.

The requirement was informed by the Commission's assessment of the company's annual financial statements (AFSs), taking into account the financial obligations to which the company is understood to be tied, as informed by the Commission's understanding and interpretation of the Scheme of Arrangements (SoA) alluded to in the Notes of the company's annual financial statements over the past ten (10) years.

Following the assessment of the company's response, received on 15 December 2021, the Commission could not arrive at a satisfactory conclusion that the company is not engaging in conduct prohibited by section 22 of the Companies Act. Reasonable grounds still exist that the company is in contravention of Section 22 (1) and Section 29 of the Companies Act.

In keeping with the requirement prescribed in Section 22(3) of the Companies Act, a compliance notice was issued to the company on 26 July 2022, requiring it to temporarily cease carrying on its business, with the condition that it may continue meeting its contractual operational obligations, but may not dispose of any immovable property.

The above enforcement actions were informed by the facts contained in and readily available in the AFSs published by NOVA, the SoA alluded to in the AFSs, read in conjunction with the Debenture Trust Deed.

From the Commission's assessment, that which NOVA's AFSs purport to represent and the import of the arguments submitted by the board cast reasonable doubt on the company's ability to fulfil the

repayment plan articulated in the SoA, as encapsulated in the Inspector's Report delivered to the NOVA board. The primary and most pertinent merits of the report are that NOVA has not come close to full implementation of the SoA and incidentally, the Directives issued and later withdrawn by the South African Reserve Bank (under the Prudential Authority [formerly the Banking Supervision Department]), the objective of which was to repay investors.

Moreover, while the investigation stemmed primarily from the Corporate Compliance and Disclosure Regulation Unit due to financial reporting contentions, NOVA's insistent arguments about its obligations to debenture holders prompted an administrative and regulatory retrospective triangulation of NOVA's footprint in its capacity as a legal juristic person and regulated entity within the broader regulatory ecosystem within which it exists.

The Commission found certain historical salient matters, part of which included the fallout of the property syndication industry. This necessitated the requirement to diagnose the causes of that fallout and identify areas that may need further attention for better prospective inter-regulator co-ordination, inter alia. The legal implications of the retrospective findings that surfaced from the triangulation have a grossly material impact on the actions taken by the parties which caused the cessation of various property syndication companies, including, but not limited to; Sharemax property syndication companies, the restructuring thereof and the consequent establishment of the entities known as Nova Property Group Investments (Pty) Ltd (formerly Nova Property Investments (Pty) Ltd) and Nova PropGrow Group Holdings Ltd (formerly Nova Property Group Holdings Ltd).

Faced with the decision to potentially cause NOVA to cease trading or carrying on its business, the Commission has considered the various implications of such a decision. These implications led to a need to seek further clarity contained in documentation not readily available to the Commission. To this end, the provisions of Section 188 (3) of the Companies Act were invoked, with an expectation to expedite the realisation of a legally accurate and equitable outcome and arrive at a satisfactory conclusion of the case.

In terms of Section 188 (3)(a), the Commission may liaise with any regulatory authority on matters of common interest, exchange information with and receive information from any such regulatory authority pertaining to matters of common interest or a specific complaint or investigation. Pursuant to the above and in line with the functions and responsibilities of the Commission, deliberations with other regulators explicit to this case are urgently required, the objectives of which are aimed at:

- gathering and collating the actual facts and legal framework(s) that were relied upon and applied to cause a cessation of operations of the then Sharemax property syndication companies, which culminated in the formation of Nova Property Group Investments (Pty) Ltd and Nova Propgrow Group Holdings Ltd
- assessing the requisite enforcement action to be taken by the rightful regulator (s), in the context of the regulatory parameters within which NOVA exists
- reaching a common understanding of the outputs and outcomes of specific actions that were set in motion by the decisions made by certain regulatory stakeholders, the content of which will inform the most accurate remedial action required to be taken in order to address the contraventions identified in NOVA's annual financial statements
- accurately and satisfactorily concluding on this case without causing any undue damage to those charged with governance in Nova PropGrow Group Holdings Ltd, debenture holders and other affected stakeholders

- identifying the most relevant regulator to which the case should be escalated for matters beyond the ambit of the Commission's jurisdiction

In keeping with the purposes of the Companies Act, per Section 7 (1), it is incumbent on the Commission to weigh all matters within its jurisdictional ambit against such purposes. Some of these purposes, in the context of the matter at hand, are to:

- promote the development of the South African economy by encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation
- foster an environment that encourages capital injection
- create optimum conditions for the aggregation of capital for productive purposes
- provide for the creation and use of companies in a manner that enhances the economic welfare of South Africa as a partner within the global economy
- provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders and
- provide for a predictable and effective environment for the efficient regulation of companies

In light of the above, having considered the events, outputs and outcomes surrounding and explicit to NOVA's case; the Commission is of the view that the conditions under which NOVA has been operating are diametrically opposed to the purposes of the Act and should not be permitted to continue without intervention.

It is for this reason, therefore, that the Commission has had to take further enforcement steps against NOVA by escalating the case to an inter-regulator level; in order to, inter alia, maintain significant levels of investor confidence and mitigate the systemic risk of the economic phenomena that has led hitherto and incidental to the NOVA case.

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END:

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