

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

BRAHM SCHAPIRO, Individually and On Behalf of All Others Similarly Situated,	)	
	)	
Plaintiff,	)	<b>CIVIL ACTION NO.</b>
	)	
vs.	)	<b>CLASS ACTION COMPLAINT</b>
	)	
NOAH EDUCATION HOLDINGS LTD., DEUTSCHE BANK SECURITIES INC., CIBC WORLD MARKETS CORP. and THOMAS WEISEL PARTNERS LLC,	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	
Defendants.	)	
	)	

Plaintiff, Brahm Schapiro ("Plaintiff"), alleges the following based upon the investigation by Plaintiff's counsel, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Noah Education Holdings Ltd. ("Noah Education" or the "Company"), securities analysts' reports and advisories about the Company, and information readily available on the Internet, and Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION AND OVERVIEW**

1. This is a federal class action on behalf of purchasers of the American Depository Shares ("ADSs" or "shares") of Noah Education, who purchased or otherwise acquired Noah Education ADSs pursuant or traceable to the Company's October 19, 2007 Initial Public Offering

(the "IPO" or the "Offering") through November 19, 2007, seeking to pursue remedies under the Securities Act of 1933 (the "Securities Act").

2. Noah Education is a provider of supplementary education content to China's elementary and middle school students. The Company develops and markets interactive educational content, software and delivery platforms that combine traditional education content with digital and multi-media technologies.

3. On or about October 19, 2007, the Company conducted its IPO. In connection with its IPO, the Company filed a Registration Statement and Prospectus (collectively referred to as the "Registration Statement") with the SEC. The IPO was a financial success for the Company, as it raised over \$137 million by selling 9.85 million of the Company's ADSs to investors at a price of \$14.00 per share.

4. Then, on November 19, 2007, the Company disclosed that its profit margin had declined to 50.2% (as compared to 59.4% in the same period the prior year), due largely to "an increase in the purchasing cost of certain raw material components . . . during July and August."

5. In response to this news, the price of the Company's shares declined \$4.15 per share, or 38.18 percent, to close on November 20, 2007 at \$6.72 per share, on unusually heavy trading volume. This closing price on November 20, 2007 represented a cumulative loss of \$7.28 per share, or over 50 percent, of the value of the Company's shares at the time of its IPO just one month prior.

6. The Complaint alleges that, in connection with the Company's IPO, defendants failed to disclose or indicate the following: (1) that the Company was, and had been, experiencing a significant increase in the cost of raw materials; (2) that as a result, the Company's earnings would be significantly impacted immediately following its IPO; (3) that the

Company knew or should have known of the foregoing at the time of the IPO; (4) that the Company lacked adequate internal and financial controls; and (5) that, as a result of the foregoing, the Company's Registration Statement was false and misleading at all relevant times.

7. As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class Members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

8. The claims asserted herein arise under and pursuant to Sections 11 and 12(a)(2) of the Securities Act (15 U.S.C. §§ 77k and 77o).

9. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act (15 U.S.C. § 77v).

10. Venue is proper in this Judicial District pursuant to Section 22 of the Securities Act. Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this Judicial District. Additionally, many of the defendants maintain offices in this Judicial District.

11. In connection with the acts, conduct and other wrongs alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

### **PARTIES**

12. Plaintiff, Brahm Schapiro, as set forth in the accompanying certification, incorporated by reference herein, purchased Noah Education ADSs at artificially inflated prices during the Class Period and has been damaged thereby.

13. Defendant Noah Education is a Chinese corporation with its principal executive offices located at Bldg. B, 10th Fl., Futian Tianjian Hi-Tech Venture Park Shenzhen, Guangdong, China.

14. Defendant Deutsche Bank Securities Inc. ("Deutsche Bank") was an underwriter of the Company's IPO, and served as a financial advisor and assisted in the preparation and dissemination of the Company's IPO materials. Defendant Deutsche Bank's United States headquarters are located at 60 Wall Street, New York, New York.

15. Defendant CIBC World Markets Corp. ("CIBC") was an underwriter of the Company's IPO, and served as a financial advisor and assisted in the preparation and dissemination of the Company's IPO materials. Defendant CIBC's executive offices are located at 300 Madison Avenue, New York, New York.

16. Defendant Thomas Weisel Partners LLC ("Thomas Weisel") was an underwriter of the Company's IPO, and served as a financial advisor and assisted in the preparation and dissemination of the Company's IPO materials. Defendant Thomas Weisel maintains a place of business at Lever House, 390 Park Avenue, Second Floors, New York, New York.

17. Defendants Deutsche Bank, CIBC and Thomas Weisel are collectively referred to hereinafter as the "Underwriter Defendants."

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

18. Noah Education is a provider of supplementary education content to China's elementary and middle school students. The Company develops and markets interactive educational content, software and delivery platforms that combine traditional education content with digital and multi-media technologies.

19. On or about October 19, 2007, the Company conducted its IPO. In connection with the IPO, the Company filed a Registration Statement with the SEC. The IPO was a financial success for the Company, as it was able to raise over \$137 million by selling 9.85 million ADSs to investors at a price of \$14.00 per ADS.

**Materially False and Misleading  
Statements Made in the Registration Statement**

20. Regarding the Company's business model, the Registration Statement, in relevant part, stated:

We are a leading provider of interactive education content in China. We develop and market interactive, multimedia learning materials mainly to complement prescribed textbooks used in China's primary and secondary school curriculum, covering subjects such as English, Chinese, mathematics, physics, chemistry, biology, geography, political science and history. We deliver our content primarily through handheld digital learning devices, or DLDs, into which our content is embedded or subsequently downloaded at over 8,500 points of sale, approximately 2,000 download centers, or through our website, *www.noahedu.com*. In addition, we sell electronic dictionaries, or E-dictionaries. In July 2007, we began offering after-school tutoring programs as we build upon our experience and brand to capture more market opportunities in the supplemental education market. According to CCID Consulting, an independent market research company, in 2006 and the first half of 2007, we were ranked No. 1 by revenue and by the combined number of DLDs and E-dictionaries sold, and No. 2 in 2006 and No. 1 in the first half of 2007 by revenue and by the number of DLDs sold, among interactive education content providers that distribute content through DLDs and E-dictionaries in China.

21. Additionally, with respect to the Company's raw materials supplies, the Registration Statement, in relevant part, stated:

We outsource the manufacturing of our DLDs and E-dictionaries to original equipment manufacturers, or OEMs. We have developed collaborative relations with various OEMs, including Shenzhen Shifaxin Electronic Co., Ltd. and Shenzhen Jianwei Electronic Co., Ltd. We believe we do not depend on any one

OEM since we have maintained relations with a few OEM manufacturing sources.

We provide our OEMs with the main raw materials required in the manufacturing process of our products, including IC chips, LCD screens, printed circuit boards and plastics materials. In order not to disrupt our operations, we consciously adhere to a raw material procurement policy that requires us to use only vendors who are reliable and who have quality materials and maintain multiple supply sources for each of our key raw materials. We evaluate the quality and delivery record of each vendor on a periodic basis and adjust the quantity purchased from the vendor accordingly.

The principal suppliers for our key raw materials in 2006 were Shenzhen Jinghua Displays Co., Ltd., Nanjing Hwuary Liquid Crystal Display Technical Co., Ltd. and Jiangsu Shenlian Circuit Electronic Co., Ltd. We believe we do not depend on any one vendor since we have maintained multiple supply sources for each of our key raw materials.

\* \* \*

Cost increases of our components or manufacturing services, whether resulting from shortages of materials, labor or otherwise, including, but not limited to rising cost of materials, transportation, services, labor and commodity price increases, could negatively impact our gross margins. In addition, the supply and market prices of raw materials used in the manufacture of our components and finished products may be adversely affected by various factors, such as weather conditions and the occurrence of natural disasters or sudden increases in demand, that would impact our costs of production. Because of market conditions and other factors, we may not be able to offset any such increased costs by adjusting the price of our products.

22. The statements contained in ¶¶ 20-21 were materially false and misleading when made because defendants failed to disclose or indicate the following: (1) that the Company was, and had been, experiencing a significant increase in the cost of raw materials; (2) that as a result, the Company's earnings would be significantly impacted immediately following its IPO; (3) that the Company knew or should have known of the foregoing at the time of the IPO; (4) that the Company lacked adequate internal and financial controls; and (5) that, as a result of the

foregoing, the Company's Registration Statement was false and misleading at all relevant times.

### **The Truth Begins to Emerge**

23. On November 19, 2007, Noah Education shocked investors when it issued a press release entitled "Noah Education Announces Results for the First Fiscal Quarter Ended September 30, 2007." Therein, the Company, in relevant part, stated:

For the first fiscal quarter of 2008, Noah reported net revenues of RMB247.5 million (US\$33.0 million), a 40.0% increase year-over-year. The increase was primarily attributable to a substantial increase in sales of DLDs. Total sales volume of DLDs for the quarter increased by 20.5% year-over-year to approximately 229,000 from approximately 190,000 in the first quarter of fiscal year 2007.

*Gross profit margin was 50.2%, compared to 59.4% in the corresponding period last year. The decrease was primarily attributable to an increase in the purchasing cost of certain raw material components of DLDs such as flash chips and memory boards, during July and August. [Emphasis added.]*

24. Upon the release of this news, the Company's shares declined \$4.15 per share, or 38.18 percent, to close on November 20, 2007 at \$6.72 per share, on unusually heavy trading volume. This closing price on November 20, 2007 represented a cumulative loss of \$7.28, or over 50 percent, of the value of the Company's shares at the time of its IPO just one month prior.

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

25. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Noah Education's ADSs pursuant or traceable to the Company's October 19, 2007 IPO through November 19, 2007, and who were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

26. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Noah Education's ADSs were actively traded on the New York Stock Exchange ("NYSE"). While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Noah Education or its transfer agent, and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

27. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

28. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

29. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by defendants' acts as alleged herein;
- (b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Noah Education; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

30. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

### **UNDISCLOSED ADVERSE FACTS**

31. The market for Noah Education's ADSs was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Noah Education's ADSs traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Noah Education's ADSs relying upon the integrity of the market price of Noah Education's ADSs and market information relating to Noah Education, and have been damaged thereby.

32. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Noah Education's ADSs, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

33. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading

statements about Noah Education's financial well-being and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Noah Education and its financial well-being and operations, thus causing the Company's ADSs to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's ADSs at artificially inflated prices, thus causing the damages complained of herein.

### **LOSS CAUSATION**

34. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

35. During the Class Period, Plaintiff and the Class purchased ADSs of Noah Education at artificially inflated prices and were damaged thereby. The price of Noah Education's ADSs significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **Applicability of Presumption of Reliance: Fraud On The Market Doctrine**

36. At all relevant times, the market for Noah Education's ADSs was an efficient market for the following reasons, among others:

- (a) Noah Education ADSs met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;
- (b) As a regulated issuer, Noah Education filed periodic public reports with the SEC and the NYSE;
- (c) Noah Education regularly communicated with public investors via

established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

- (d) Noah Education was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

37. As a result of the foregoing, the market for Noah Education's ADSs promptly digested current information regarding Noah Education from all publicly-available sources and reflected such information in Noah Education's ADS price. Under these circumstances, all purchasers of Noah Education's ADSs during the Class Period suffered similar injury through their purchase of the Company's ADSs at artificially inflated prices and a presumption of reliance applies.

#### **NO SAFE HARBOR**

38. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the

extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements, because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Noah Education who knew that those statements were false when made.

**FIRST CLAIM**  
**Violation of Section 11 of**  
**The Securities Act Against All Defendants**

39. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein only to the extent, however, that such allegations do not allege fraud, scienter or the intent of the defendants to defraud Plaintiff or members of the Class. This count is predicated upon defendants' strict liability for making false and materially misleading statements in the Registration Statement.

40. This claim is asserted by Plaintiff against all defendants by, and on behalf of, persons who acquired the Company's ADSs pursuant to or traceable to the false Registration Statement issued in connection with the October 19, 2007 IPO.

41. The Underwriter Defendants owed to the holders of the ADSs obtained through the Registration Statement the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement at the time they became effective to ensure that such statements were true and correct and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading. The Underwriter Defendants knew, or in the exercise of reasonable care should have known, of the material misstatements and omissions contained in or omitted from the Registration Statement as

set forth herein. As such, defendants are liable to the Class.

42. None of the defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true or that there was no omission of material facts necessary to make the statements made therein not misleading.

43. The Defendants issued and disseminated, caused to be issued and disseminated, and participated in the issuance and dissemination of, material misstatements to the investing public which were contained in the Registration Statement, which misrepresented or failed to disclose, *inter alia*, the facts set forth above. By reason of the conduct herein alleged, each defendant violated and/or controlled a person who violated Section 11 of the Securities Act.

44. As a direct and proximate result of defendants' acts and omissions in violation of the Securities Act, the market price of Noah Education's ADSs sold in the IPO was artificially inflated, and Plaintiff and the Class suffered substantial damage in connection with their ownership of Noah Education's ADSs pursuant to the Registration Statement.

45. Noah Education is the issuer of the ADSs sold via the Registration Statement. As issuer of the ADSs, the Company is strictly liable to Plaintiff and the Class for the material misstatements and omissions therein.

46. At the times they obtained their ADSs of Noah Education, Plaintiff and members of the Class did so without knowledge of the facts concerning the misstatements or omissions alleged herein.

47. This action is brought within one year after discovery of the untrue statements and omissions in and from the Registration Statement which should have been made through the exercise of reasonable diligence, and within three years of the effective date of the Prospectus.

48. By virtue of the foregoing, Plaintiff and the other members of the Class are entitled to damages under Section 11 as measured by the provisions of Section 11(e), from the defendants and each of them, jointly and severally.

**SECOND CLAIM**  
**Violation of Section 12(a)(2) of**  
**The Securities Act Against All Defendants**

49. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

50. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf of the Class, against all defendants.

51. The Defendants were sellers, offerors, and/or solicitors of purchasers of the ADSs offered pursuant to the Noah Education Offering Registration Statement.

52. The Noah Education IPO Registration Statement contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. The Individual Defendants' actions of solicitation included participating in the preparation of the false the misleading Registration Statement.

53. The Defendants owed to the purchasers of Noah Education's ADSs, including Plaintiff and other members of the Class, the duty to make a reasonable and diligent investigation of the statements contained in the IPO materials, including the Registration Statement, to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants knew of, or in the exercise of reasonable care should have known of, the misstatements and omissions contained in the IPO materials as set forth above.

54. Plaintiff and other members of the Class purchased or otherwise acquired Noah Education's ADSs pursuant to and/or traceable to the defective Registration Statement. Plaintiff did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Registration Statement.

55. Plaintiff, individually and representatively, hereby offer to tender to defendants that ADSs which Plaintiff and other Class members continue to own, on behalf of all members of the Class who continue to own such ADSs, in return for the consideration paid for that ADSs together with interest thereon. Class members who have sold their Noah Education ADSs are entitled to rescissory damages.

56. By reason of the conduct alleged herein, these defendants violated, and/or controlled a person who violated Section 12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of the Class who hold Noah Education ADSs purchased in the IPO have the right to rescind and recover the consideration paid for their Noah Education ADSs, and hereby elect to rescind and tender their Noah Education ADSs to the defendants sued herein. Plaintiff and Class members who have sold their Noah Education ADSs are entitled to rescissory damages.

57. This action is brought within three years from the time that the ADSs upon which this Count is brought was sold to the public, and within one year from the time when Plaintiff discovered or reasonably could have discovered the facts upon which this Count is based.

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages

sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: November 3, 2008

Respectfully submitted,

By: \_\_\_\_\_

**SCHIFFRIN BARROWAY  
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