Suruhanjaya Sekuriti
Securities Commission
Malaysia

The Reporter

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Executive Summary

This issue features the new ECF framework as part of our continuous effort in diversifying channels for market-based financing and broadening capital market access

In the last issue of *The Reporter,* we highlighted the Lodge and Launch (LOLA) Framework and the progress made in operationalising this. We also shared the outcomes of assessment by the Asia/Pacific Group on Money Laundering and the Financial Action Task Force on Money Laundering (FATF). Since then, Malaysia was conferred full membership of the FATF on 19 February 2016.

For this issue of *The Reporter*, we will be highlighting the following:

- New Equity Crowdfunding (ECF) framework;
- Concerns and views on financial reporting by public listed companies (PLCs); and
- Market practices that are not aligned with the principle of client's assets protection.

All market participants have a role in maintaining investor confidence in the capital market. We will continue to encourage good market conduct and drive changes to culture by sharing our concerns and views through *The Reporter.*

We welcome all feedback on *The Reporter* including ideas for future editions. You may reach the Editorial Team at reporter@seccom.com.my.

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Equity crowdfunding – A new and innovative mechanism for market-based financing

Crowdfunding has disrupted capital markets by enabling ordinary investors to participate in a wealth creation dimension that was previously within the domain of the affluent – venture capitalists (VCs) and angel investors. Easier access to capital has also benefitted entrepreneurs and small businesses.

The World Bank estimated[1] that the global market opportunity for crowdfunding could be up to US$96 billion by 2025, with the East Asia and Pacific region[2] contributing US$7 billion to the total estimated value. In 2014 alone, crowdfunding platforms raised US$16.2 billion, up 167 per cent from US$6.1billion in 2013[3].

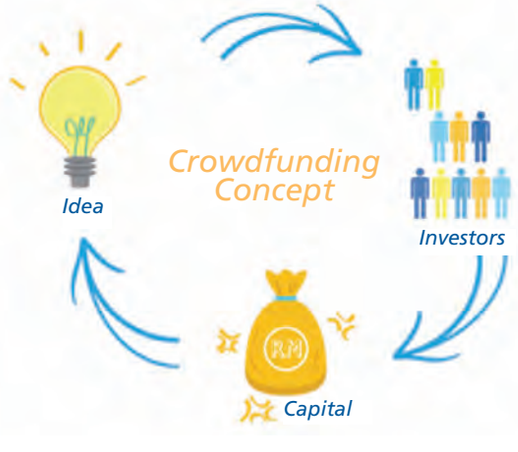
As Malaysia becomes the first country in the Asia–Pacific region to set up the legal framework for ECF, access to start-ups and high-growth small and medium enterprises (SMEs) in exciting and innovative sectors are now open to all Malaysians.

The introduction of ECF marks an important milestone in our effort to democratise finance and promote inclusivity in the Malaysian capital market. Under this initiative, regulatory reforms were undertaken to allow private companies to offer their shares to the public. This has enabled start-ups and SMEs to access alternative funding sources to grow their businesses.

What is ECF and why does it matter?

Crowdfunding is a form of fundraising where multiple individuals pool together money, usually on an online platform, to fund a business venture, project or a cause. The concept is really an extension of borrowing or raising money from family and friends in support of an idea or business venture that resonates with their own values and interests. However, the internet has enabled crowdfunding to be extended to the global community at large.

In Malaysia, our ECF framework will enable start-ups and SMEs to access market-based financing through a platform registered with the SC.



1 *Crowdfunding's Potential for the Developing World*, a 2013 report published by the World Bank. URL: http://documents.worldbank.org/curated/en/2013/01/18806928/crowdfundings-potential-developing-world

2 World Bank categorisation of East Asia and Pacific region comprises more than 20 countries including Malaysia, Japan, Korea, Singapore, Thailand and Indonesia.

3 *2015CF Crowdfunding Industry Report* published by Massolution, a research firm specialising in crowdsourcing and crowdfunding industries.

The ECF framework will provide start-ups and SMEs with:

- **An alternative source of funding**
  ECF provides start-ups and SMEs quicker access to capital at a lower cost compared to traditional banks.

- **Opportunities to gain market traction**
  By harnessing the power of the crowd on the internet, start-ups can gauge market reception of their product from response received on the ECF platform as well as gain better understanding of the target demographics. Start-ups (and even SMEs) hosted on the ECF platform can gain market traction and have the opportunity to pitch their business to VCs and angel investors.

The ECF framework will provide investors with opportunities to:

- **Diversify their investments** beyond traditional asset classes. For example, CrowdPlus.Asia currently hosts 'Curren$eek' – a developer for a currency exchange application.

- **Invest in young start-ups** with business ventures that may have the potential to scale up and eventually list on the exchange. If the start-up has a novel technology or business model, it may even attract the attention of VCs, which could provide further funding to grow its business. This may lead to an eventual exit opportunity for early investors at a premium.

We launched the ECF framework in February 2015[4] and subsequently announced six registered ECF platforms at the Synergy and Crowdfunding Forum (SCxSC) in June. The six registered platforms are Alix Global, Ata Plus, Crowdonomic, Eureeca, pitchIN and Propellar Crowd+. These platforms are expected to start operations by the first half of 2016.

Who can operate an ECF platform?

A person who wishes to operate an ECF platform must be registered with the SC as a Recognised Market Operator. In assessing the operators, we take into account, among others, the fit and properness of the operator's directors and its ability to operate an orderly, fair and transparent market. The operator must ensure that companies[5] hosted on its platform comply with the platform rules which are approved by the SC.

One of the most important roles of an operator is to determine the suitability of companies to be hosted on the platform. This entails conducting due diligence on the prospective companies and the projects for which funding is sought. The operator is also required to safeguard investors' funds in a trust account until the funding goal is met.

Six registered platforms are Alix Global, Ata Plus, Crowdonomic, Eureeca, pitchIN and Propellar Crowd+. These platforms are expected to start operations by the first half of 2016.

[4] The legal framework for ECF can be found in the *Guidelines on Recognized Markets* at http://www.sc.com.my/legislation-guidelines/recognisedmarkets/

[5] In the *Guidelines on Recognized Markets*, only locally incorporated private companies (excluding exempt private companies) may be hosted on the ECF platform. In the Guidelines, these companies are referred to as 'issuers'.

Who can seek funding on the platform?

Private companies are generally prohibited from offering their shares to the general public[6]. However, the *Capital Markets and Services Act 2007* (CMSA) was amended to create a safe harbour[7] for locally incorporated private companies[8] to offer their shares to the public through an ECF platform that is registered with the SC.

A company may only be hosted on one ECF platform at any one time, and is subject to the following limits:

1. A company is only permitted to raise up to RM3 million within a 12-month period, regardless of the number of projects.

2. A company can only utilise the ECF platform to raise a maximum of RM5 million in capital[9], after which it can no longer seek further funding on any ECF platform.

Who can invest on an ECF platform?

While investment opportunities are open to all investors, certain safeguards have been put in place given the high-risk nature of start-ups. The following investment limits have been imposed:

6 Section 15(1)(c) of the *Companies Act 1965*.
7 Section 40H of the CMSA
8 Companies incorporated under the *Companies Act 1965*.
9 This does not include the company's own capital contribution or any funding obtained via private placement.
10 Persons referred to in Part I of Schedules 6 and 7 of the CMSA.
11 For the purpose of SC's ECF framework defined in the *Guidelines on Recognized Markets* as 'an investor that is accredited by the Malaysian Business Angels Network as an angel investor'.
12 Persons who are not sophisticated investors.

Message to investors

Know the risks of your investments

1. Given that you are investing in shares of a private limited company, you may not be able to sell your shares easily on the secondary market. As such, you may not be able to recoup your investment within a short period of time.

2. Given that your investments are made in start-up companies, there is a risk that the project for which the funding is sought may not succeed. As such, you may not see any returns on your investment, or worse, lose all the monies you have invested.

3. There is also the risk of fraud. No amount of legislation can completely eliminate the risk of fraud. As such, you must stay vigilant.

Know the company you are investing in

1. One of the ways to minimise the risk of being defrauded is to know the company you are investing in and obtain as much information about its business.

2. Although platform operators are required to conduct due diligence on prospective companies, you should always read the disclosure documents of the company before investing and conduct your own due diligence, such as–

   - whether the operator is registered with the SC;
   - whether the company exists and what is the nature of its business; and
   - how the company plans to use the money raised.

Know your rights

1. The money you have invested will be placed in a trust account and should be returned to you in the following circumstances:

   - The company fails to raise the targeted amount. This means that if the company seeks to raise an amount of RM100,000 within 30 days but only managed to raise RM50,000, the company would be deemed to have failed to reach the target amount. In this situation, the entire RM50,000 must be returned to investors;

   - There is a material adverse change affecting the company or the project for which funding is sought. Examples are:
     - Changes in the company's key management;
     - Material change in the company's business plan; and
     - Discovery of a false or misleading statement submitted by the company.

2. After you have made your investment, you have at least six business days within which you can pull out from the investment (cooling off period).

3. You are entitled to obtain all relevant information pertaining to the company or the project such as key characteristics of the company, purpose of the fund raising, business plan of the company and its financial information.

4. Fees, charges and other expenses relating to your investment must be disclosed to you by the operator.

5. If you have any complaints regarding your investment, you may refer the matter to the operator or the SC.

Enhancing Quality of Financial Reporting by PLCs

Overview

High quality financial reporting by PLCs is crucial for Malaysia to establish itself as a strong and vibrant market. Financial reporting failure can have widespread ramifications as seen by the highly publicised corporate collapses around the world. More than ever, local and global investors are asking for reliable and timely financial statements in order to obtain a more accurate picture of the business in making investment decisions, whether in terms of generating value or understanding the risks involved.

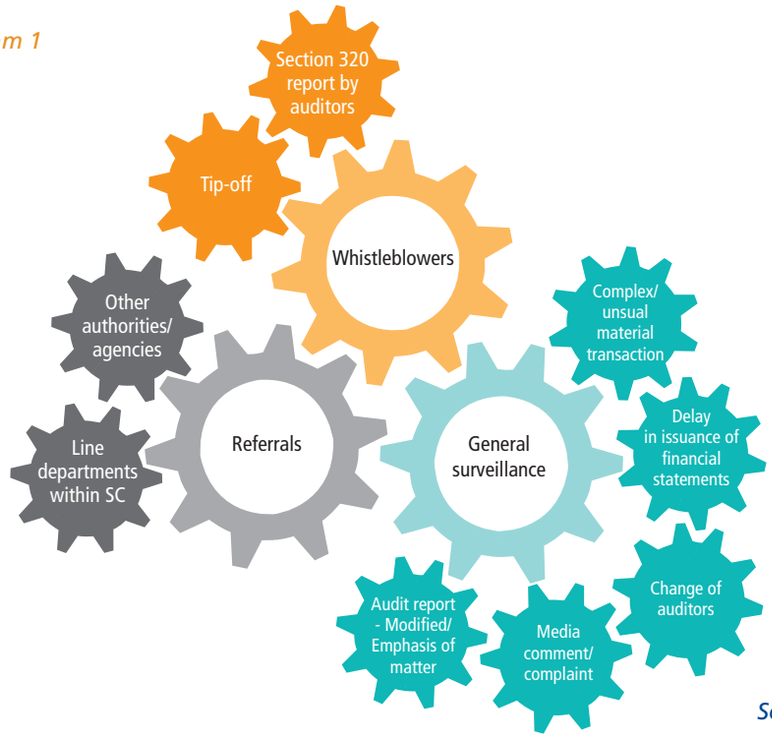
One of our key focusses is to continue to monitor PLCs' compliance with approved accounting standards as mandated under the *Securities Industry (Compliance with Approved Accounting Standards) Regulations 1999* (SIR 1999).

Surveillance of financial reporting

We work closely with the Audit Oversight Board to ensure financial statements continue to serve its wide audience in particular the investing community and build confidence in our market. We maintain continuous surveillance on PLCs through our Corporate Surveillance Department, which includes reviewing financial statements as a means of detecting financial irregularities and non-compliances with approved accounting standards.

General sources of information relating to non-compliances with accounting standards are as follows: (Diagram 1)

Diagram 1



Source: SC

Where potential accounting issues are detected, we have taken the following steps:

1. Engage with the PLC's management, directors and/or auditors to further understand the rationale and justification of accounting policies adopted and accounting treatments applied in relation to the potential non-compliance issues detected;

2. Request for written explanation and documentary evidence in relation to the issues under review; and

3. Determine the breach and take appropriate enforcement action.

Observations and findings

Malaysia's accounting standards has converged with the International Financial Reporting Standards (IFRS) since 1 January 2012, with the exception of certain entities falling within the definition of Transitioning Entities (TEs)[13]. It is our observation that PLCs have generally coped well with this transition. Nevertheless, we continue to detect instances of non-compliance in our surveillance function.

Some areas of non-compliance include:

- Classification of loans between long-term liabilities and current liabilities
- Measurement of liabilities arising from financial guarantees
- Recognition of contingent assets
- Consolidation – determination of control
- Accounting for change in accounting policies
- Presentation and disclosures
- Impairment of assets

We are particularly concerned with issues relating to impairment of assets as breaches of the relevant approved accounting standards governing impairment of assets are concentrated in the following areas:

- Low level of understanding in the definition and in determining what constitutes a cash generating unit (CGU)[14];
- Using assumptions which are overly aggressive and unsupported in determining value in use based on cash flow projections;
- Using inappropriate discount rate in computing net present value of projected cash flows; and
- Inadequate assessment of cash flow projections.

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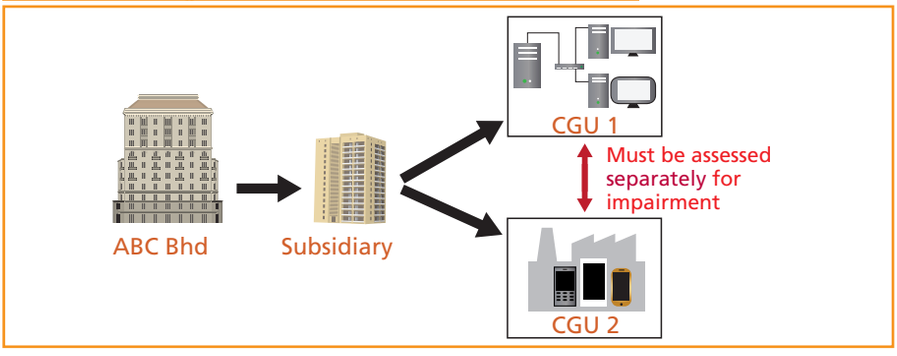
[13] TEs comprise entities that are within the scope of MFRS 141 Agriculture and/or IC Interpretation 15 *Agreements for the Construction of Real Estate*, including the parent, significant investor(s) and joint venturer(s).

[14] *Paragraph 6 MFRS 136 Impairment of Assets*: A cash-generating unit is the smallest identifiable group of assets that generates cash inflows that are largely independent of the cash inflows from other assets or groups of assets.

The following illustrate some of our findings in this area:

Scenario 1

Understanding the definition and determining what constitutes a CGU



ABC Bhd has acquired a subsidiary with two CGUs and proceeded to recognise goodwill on consolidation in the amount of RM8 million. The goodwill was then allocated to the two CGUs which generate cash flows that are largely independent of each other.

In performing impairment assessment on the goodwill, ABC Bhd aggregated the two CGUs in computing the recoverable amount instead of assessing them separately. Accordingly, no impairment was recognised by ABC Bhd on the basis that the overall carrying amount of RM38 million (for both CGUs) did not exceed the aggregated recoverable amount of RM39 million, as shown in Table 1.

Table 1

ABC Bhd's impairment assessment – with the two CGUs aggregated

Cash generating unit (RM million)	Carrying amount			Recoverable amount	Impairment loss
	Allocated goodwill	Identifiable assets	Total		
Subsidiary (Aggregation of CGU 1 and CGU2)	8	30	38	39	–

Had the two CGUs been assessed separately, as shown in Table 2, an impairment loss of RM5 million would have been recognised for CGU 2 because the carrying amount of CGU 2 has exceeded its recoverable amount by RM5 million.

Table 2

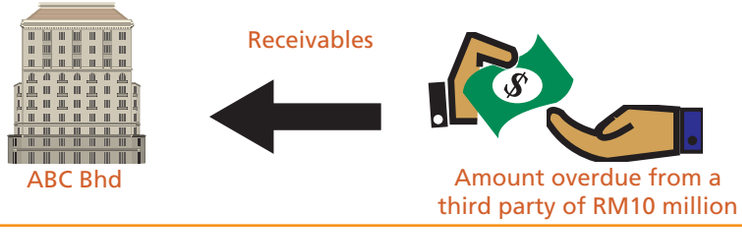
Correct impairment assessment – with the two CGUs assessed separately

Cash generating unit (RM million)	Carrying amount			Recoverable amount	Impairment loss
	Allocated goodwill	Identifiable assets	Total		
CGU 1	3	10	13	19	–
CGU 2	5	20	25	20	5

In this scenario, ABC Bhd has failed to comply with *MFRS 136 Impairment of Assets*.

Scenario 2

Asesssment of assumptions and estimates used in cash flow projections



ABC Bhd has an amount receivable from a third party of RM10 million which is overdue. The directors held the opinion that the amount was recoverable despite the lack of evidence to support the opinion, and on that basis chose not to recognise any impairment loss. The opinion was formed by relying on cash flow projections provided by the third party in computing the net present value of the amount receivable which was higher than the said RM10 million.

Our surveillance revealed the following:

1. The assumptions used were overly aggressive and unrealistic in that revenue growth was projected to be 40 per cent per annum year-on-year, which was significantly higher compared to historical trend and there was no evidence to support such projection;

2. The projected costs did not increase in tandem with the projected revenue growth, resulting in a gross profit margin that was significantly higher compared to industry norm; and

3. The expected repayments by the third party in earlier years were never materialised.

In this case, ABC Bhd accepted the cash flow projections at face value without challenging the assumptions used in the computation of projections. Had the cash flow projections been properly assessed, an impairment loss would have been recognised.

Therefore, ABC Bhd has failed to comply with *MFRS 139 Financial Instruments: Recognition and Measurement.*

Consequences of non-compliance

The failure to comply with approved accounting standards is deemed serious as it impacts the reliability and quality of financial statements of the PLC. While the subsequent restatement of the financial statements may be made by the PLC (on a voluntary basis or as directed by the SC) in most occasion, investors, lenders, creditors and other stakeholders may have been affected as investment decisions had been made based on the earlier defective financial statements. Hence, PLCs are expected to exercise greater discipline when preparing financial statements. This is important to ensure that financial statements are reliable in a principle-based environment.

It is therefore imperative that all PLCs, especially the board and senior management, exercise diligence and professional judgement in preparing financial statements and ensure full compliance with approved accounting standards, in both form and substance.

Enforcement actions

A PLC that fails to comply with approved accounting standards is in breach of Regulation 4(1) of the SIR 1999. We will continue to apply the various enforcement tools to address cases of non-compliance.

A. Administrative actions taken

The range of administrative sanctions that we may impose ranges from reprimand, issuance of directive and fines against the PLCs and their board of directors. In 2015, a PLC and its board of directors were sanctioned for non-compliance with approved accounting standards.

Please refer to pages 17 and 18 for more details of the actions taken.

B. Infringement notices issued

In 2015, we issued four infringement notices for minor breaches as follows:

MFRS 101: Presentation of Financial Statements

- Failure to classify defaulted loans or loans due within 12 months as current liabilities.
- Failure to disclose a material item of income as a separate line item on the face of the Statement of Profit and Loss.
- The use of the term 'Other Expenses' repeatedly in the financial statements when in essence they did not represent the same items.
- Failure to properly cross reference Notes to Financial Statements to items in the Statement of Profit and Loss.

MFRS 108: Accounting Policies, Changes in Accounting Estimates and Errors

- Failure to apply retrospective application following a change in accounting policy for its investment property.

MFRS 116: Property, Plant and Equipment

- Failure to disclose accurate accounting policies in relation to its 'Long–Term Leasehold Land'.

Message to PLCs and directors

PLCs and its directors are accountable for the accuracy and reliability of financial statements. They must exercise due care in the preparation of the company's financial statements:

PLCs

- PLCs are expected to take an active role in ensuring full compliance with approved accounting standards.
- PLCs should exercise due care to ensure that there is no error in the presentation of financial information or the use of incorrect accounting treatments.
- PLCs should place additional attention on areas that require significant judgement and estimates.
- PLCs should invest in human capital and ensure that they have in place a competent financial reporting team who are up to date with accounting knowledge.
- PLCs may consider enlisting the help of specialists to provide technical accounting advice in areas that are complex to ensure proper accounting treatments.

Directors

- Directors should always remember that under the law, directors are accountable for the preparation of financial statements.
- The audit committee's (AC) role is to safeguard the integrity of financial reporting. Hence, members of the AC are expected to be financially literate. This, however, does not absolve other directors (who are not members of the AC) from their responsibilities.
- Directors should review financial statements carefully and with rigour based on sound understanding of the business.
- Directors of PLCs should equip themselves with the ability to ask management the right questions.
- Directors should take notice of issues raised by auditors as good feedback on areas of concern and not rely on auditors to prepare financial statements.

Message to auditors

Investors, regulators and other stakeholders rely on auditors to ensure high quality financial reporting practices by PLCs as they are the only party outside the PLC who has full access to a PLC's documents and records. Therefore, auditors have a duty to conduct their audit in an independent and professional manner. They must exercise appropriate diligence and professional scepticism in arriving at their audit opinion.

In meeting the above expectations, auditors should:

- Evaluate the audit fee regularly to ensure auditors are appropriately remunerated for the work done.
- Ensure the engagement team is staffed with sufficient resources of the right experience and skills.
- Avoid unwarranted reliance on management representations and exercise professional scepticism and judgement in performing the audit.
- Maintain objectivity and independence at all times during the audit even if there is a possibility of losing a client.
- Report in writing under section 320 CMSA upon detecting any breaches and non-performance of any requirement or provision of the securities laws, including non-compliance with the SIR 1999 arising from non-compliances with the approved accounting standards.

Message to investors

Financial statements is a critical tool for investors in making informed investment decisions. Therefore, investors must be vigilant in extracting relevant information from a company's financial statements. The following are some approaches which an investor can take when perusing financial statements:

- Investors must have some knowledge about the components of a set of financial statements, what a qualified audit opinion entails and the rationale of special audits in order to be able to ask the right questions.
- Investors should exercise their rights by asking questions on a PLC's financials or corporate activities during a PLC's general meetings. At other times, queries to the PLC may be sent to its investor relations unit, corporate communications unit or company secretary.
- If investors feel that they need assistance in understanding the financial statements, they should seek professional advice.
- Investors must scrutinise auditors' report to obtain relevant information, especially when there is a modified audit opinion, emphasis of matter or any matter of concern highlighted as key audit matters[15] in the auditors' report.
- Investors should be aware and keep tabs on key developments in the companies in which they have invested.
- Investors may visit investor education events organised by SC under its InvestSmart™ initiative, as well as obtain articles and other information resources online at www.investsmartsc.com.my and www.facebook.com/investsmartsc.my
- Should investors believe that the financial statements are inaccurate or misleading, they should bring the matter to the company's attention, if the company fails to address the matter, investors may raise it to SC's Investor Affairs and Complaints Department at +603-6204 8999 or aduan@seccom.com.my.

Disclaimer:
The scenarios as illustrated in this article should not be read in isolation without reference to the applicable approved accounting standards. The reader should bear in mind that the accounting outcome may vary from case to case based on different facts and circumstances.

[15] *ISA 701, Communicating Key Audit Matters in the Independent Auditor's Report* will be effective for audits of financial statements for periods ending on or after 15 December 2016.

Client's Assets Protection

The provision for client's assets protection is provided under Part III Division 4 of the CMSA[16].

In the course of carrying out our supervisory function, we have come across certain practices by intermediaries which may not be aligned with the principles behind Part III Division 4 of the CMSA. Some of our findings are:

1. Poor designation of the client's trust account

- Client's assets held in a trust account[17] were not appropriately identified and labelled as 'client's trust account'. The failure to correctly label 'client's trust account' may pose a risk to the safety of client's monies in the event of resolution or insolvency of an intermediary.

2. Treatment of interest income earned from client's assets

- Interest income earned from monies in a trust account was recognised as income in the intermediary's financial statement.
- There have been instances where interest incomes earned from monies in the trust account were withdrawn without obtaining client's consent.

SC's expectations

1. Proper designation of the client's trust account

Accounts maintained for client's assets must be appropriately designated as 'client's trust account'. For example, in our findings, an intermediary had maintained a client's trust account with XYZ Bank and had designated it as XYZ's trust account when it should have been named as 'client's trust account'. Proper designation of the account as client's trust account is necessary to ensure that client's monies are segregated, and in the event of resolution or insolvency of an intermediary, the client's assets will be safeguarded from any third party claims.

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16 The treatment of client's assets is categorised based on the regulated activity of dealing in securities, dealing in derivatives and fund management.

17 For the purpose of this article, trust account refers to both trust account and segregated account.

2. Treatment of interest income

- The definition of 'client's assets' under the CMSA also extends to interest income earned from a trust account. An intermediary therefore cannot recognise interest income arising from monies in such trust accounts as the intermediary's income.

- Any withdrawal from the trust account, other than for defraying brokerage and other proper charges, must be preceded by either the client's express instruction, direction or as authorised by law. Where a client has instructed or directed withdrawal of their monies from the trust accounts, an intermediary must ensure that such instruction or direction is obtained in writing and is duly verified. This would enable the intermediary to have recorded documentation on the proper utilisation of the client's monies pursuant to the client's mandate.

3. Proper procedures to safeguard client's assets

Intermediaries are required to put in place proper procedures and controls to safeguard and protect client's assets. This includes maintaining accurate and timely reconciliation of the client's assets and transactions, keeping up-to-date records of the client's details and assets, issuing relevant statement of account to the client and ensuring that only authorised personnel handles the client's assets.

All intermediaries are required to comply with Part III Division 4 of the CMSA and we will continue to monitor compliance and enforce these requirements in order to maintain investor's confidence. A breach of these requirements attracts a maximum fine of RM5 million or imprisonment term not exceeding 10 years or both.

Administrative Actions, Infringement Notices and Supervisory Engagements

ADMINISTRATIVE ACTIONS

For the period of 1 September 2015 to 31 March 2016, we had imposed a total of 35 administrative sanctions against:

- 1 PLC;
- 9 directors of PLCs;
- 9 licensed entities; and
- 4 licensed individuals.

The sanctions were imposed for breaches relating to our guidelines and licensing conditions, as well as non-compliance with approved accounting standards.

Table 3

Administrative actions from 1 September 2015 to 31 March 2016 by types of sanction and parties in breach

Parties in breach	Type of sanction			
	Directive	Reprimand	*Penalty	Suspension / Revocation of licence
Licensed persons	4	4	4	5
PLC	1	1	-	-
Directors of PLC	-	9	7	-
TOTAL	**5**	**14**	**11**	**5**

** A total of RM291,000 penalty was imposed against directors of PLC and licensed persons.*

Ensuring compliance with approved accounting standards

As mentioned in our earlier article on *Enhancing Quality of Financial Reporting by PLCs*, non-compliance with approved accounting standards by PLCs is viewed seriously.

On 2 September 2015, Niche Capital Emas Holdings Bhd (Niche) and its directors[18] were found to be in breach of SIR 1999 for non-compliance with FRS 139[19] in

[18] Directors of Niche for financial periods ended 30 June 2011 and 31 December 2012
[19] FRS 139 – *Financial Instruments: Recognition and Measurement*

the preparation and presentation of its Audited Financial Statement (AFS) for the financial periods ended 30 June 2011 and 31 December 2012. This arose from their failure to measure Niche's obligations under several corporate guarantees on bank borrowings by its former wholly owned subsidiary. In addition, Niche and its directors[20] had also failed to comply with MFRS 137[21] when it recognised the sum of RM11,513,000 as an asset under the item 'other receivables' in its AFS for financial year ended 31 December 2013 (AFS 2013).

We reprimanded Niche and directed the PLC to rectify and reissue its AFS 2013 and all quarterly results issued subsequent to the issuance of AFS 2013. SC also reprimanded and imposed a penalty on each of the directors of Niche for the respective financial periods totalling to RM280,000. A higher penalty was imposed on directors who were also members of the Audit Committee as they bear greater responsibility in safeguarding the integrity of financial statements.

Table 4

Penalties imposed on the directors of Niche

Director	Amount (RM)
Ng Chin Nam	75,000
Dato' Tan Sek Yin	30,000
Dato' Tiong Chau Siong	50,000
Patrick Cheng Ther Wee	50,000
Mah Weng Kee	25,000
Md Shahar Md Noor	30,000
Yap Chee Keong	20,000
TOTAL	**280,000**

Addressing lapses in compliance with due diligence requirements

Principal advisers and directors play a crucial role in ensuring that information in disclosure documents are prepared and finalised with due care and objectivity as investors rely on such documents to make informed investment decisions.

Where a profit forecast is included in the disclosure document, such profit forecast must be realistic and achievable to provide investors with information on the corporation's prospects. Directors must ensure that there is a reasonable basis for the profit forecast. Most importantly, the profit forecast must be prepared with care, skill and objectivity, including taking into account the concurrent realisation of multiple risk factors.

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[20] Directors of Niche for financial year ended 31 December 2013

[21] MFRS 137 – *Provisions, Contingent Liabilities and Contingent Assets*

On 4 February 2016, we reprimanded Ng Kok Heng and Wong Yip Kee, executive directors of XOX Bhd (XOX) as at 24 May 2011, in relation to the significant variance between the profit forecast in the prospectus of XOX dated 24 May 2011 and XOX's unaudited results for the financial year ended 31 December 2011.

We also took administrative action against AmInvestment Bank Bhd (AmInvestment), the principal adviser and sponsor for the listing of XOX, for failing to conduct sufficient due diligence to ensure that the listing application by XOX met the relevant requirements of SC. In this regard, AmInvestment had failed to take into account the concurrent realisation of multiple risk factors in the preparation of the profit forecast. We reprimanded and directed AmInvestment to conduct a comprehensive review and assessment for adequacy of all policies and processes relating to its role as principal adviser and/or sponsor for corporate proposals and report its findings to SC.

Addressing conduct risks of licensed persons

We continue to focus on addressing conduct risk of licensed persons, which is vital in maintaining market integrity. On 19 November 2015, we took administrative action against Mercury Asset Management Sdn Bhd (MAM), a licensed fund management company for its failure to comply with its licensing conditions to have at least one licensed director, two Capital Markets Services Representative's Licence holders and a compliance officer. Notwithstanding numerous engagements with SC, MAM was not able to rectify the said non-compliances. MAM's licence was consequently revoked.

Administrative sanction was also imposed on three other licensed entities respectively i.e. Phillip Capital Management Sdn Bhd, Phillip Mutual Bhd and Phillip Futures Sdn Bhd for lapses in their risk, compliance and internal audit functions. These lapses resulted in the entities breaching their licensing conditions which require them to supervise and monitor their businesses to ensure compliance with our guidelines. We reprimanded and directed these entities to implement all remedial measures presented to us in their response to the show cause. They were also directed to appoint an external auditor to assess the sufficiency and effectiveness of the remedial measures.

A licence to conduct regulated activities is granted on the basis that the licensee is competent to carry out such activities. In conducting his business, the licensee is expected to act with integrity and honesty. As such, licensed representatives who are found to have engaged in serious market misconduct such as market manipulation and insider trading are considered no longer fit and proper to continue to be licensed. During this period, we had revoked the licences of four representatives for engaging in manipulative trading activities:

- Hon Sook Yin for the trading of shares in Notion VTec Bhd;
- Ng Soo Ging for the trading of shares in GPRO Technologies Bhd, Industronics Bhd and MNC Wireless Bhd;
- Low Lay Ai for the trading of shares in ETI Tech Corporation Bhd; and

- Tan Kai Kiat for the trading of shares and structured warrants on 11 counters[22].

Enforcing requirements under the LOLA Framework

The *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* (LOLA Guidelines) requires a fund management company to submit the monthly statistical returns of wholesale funds within the prescribed period.

Arising from our post-lodgement monitoring, four fund management companies had breached paragraphs 4.17 and 4.18(c), section B, part I of the LOLA Guidelines by failing to submit the monthly statistical returns of their wholesale funds within the prescribed period. We imposed penalties amounting to RM11,000 on the respective fund management companies:

Table 5

Administrative sanctions from 1 September 2015 to 31 March 2016 for breach of the LOLA Guidelines

Fund management company	No. of wholesale fund(s)	Number of business days delayed	Amount of penalties imposed (RM)
Affin Hwang Asset Management Bhd	1	1	1,000
CIMB-Principal Asset Management Bhd	1	2	2,000
RHB Asset Management Sdn Bhd	1	1	1,000
Libra Invest Bhd	7	1	7,000

INFRINGEMENT NOTICES

During this period, SC issued 29 Infringement notices[23] in relation to, among others:

- non-compliances with approved accounting standards;
- non-compliances with licensing conditions;
- weaknesses in compliance, risk and audit functions; and
- weaknesses in the process and procedures for the prevention of anti-money laundering and countering financing of terrorism.

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[22] Oriental Holdings Bhd, Genting Plantations Bhd, PPB Group Bhd, IJM Plantations Bhd, Land & General Bhd, Integrated Rubber Corporation Bhd, Narra Industries Bhd, CIMB Group Holdings Bhd and CIMB-CZ, DRB-Hicom Bhd (DRBHCOM) and DRBHCOM-C2, Malaysian Bulk Carriers Bhd (MAYBULK) and MAYBULK-CN; and UEM Sunrise Bhd and UEMS-C6.

[23] Non-statutory enforcement tools issued where the breaches of securities law detected do not warrant the initiation of a formal enforcement action or imposition of administrative sanctions.

Table 6

Infringement notices issued from 1 September 2015 to 31 March 2016

Type of infringement notices	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total
Supervisory letter	1	–	2	4	3	2	–	12
Warning letter	2	–	2	–	1	6	2	13
Non-compliance letter	1	–	–	–	1	1	1	4
TOTAL	4	–	4	4	5	9	3	29

SUPERVISORY EXAMINATIONS AND ENGAGEMENTS

In carrying out our oversight and supervisory functions of intermediaries and market institutions, we rely on a variety of supervisory tools for detection of risks and market irregularities. Besides carrying out on-site examinations, we rely on engagements with market participants to address concerns, supervisory findings and communicate regulatory expectations.

Table 7

Number of supervisory examinations and engagements[24] conducted from 1 September 2015 to 31 March 2016

Entity	Number of examinations conducted	Number of engagements conducted
Firms (securities, derivatives and fund management)	11	25
Bond market service providers[25]	2	21
Market institutions[26]	1	33
PLCs	–	13
Auditors	–	8
Other stakeholders	–	3

[24] These statistics are exclusive of engagements conducted by the Authorisation and Licensing and Market Surveillance departments.

[25] Rating agencies, bond pricing agency and trustees.

[26] Bursa Malaysia Bhd, Federation of Investment Managers Malaysia and Private Pension Administrator Malaysia.

Criminal Prosecutions, Civil Actions and Regulatory Settlements

From 1 September 2015 to 31 March 2016, we preferred criminal charges against six individuals for insider trading (Table 8).

During this period, SC continued to seek deterrent sentences against those who committed serious breaches of securities laws. Prison terms ranging between one to six years, in addition to fines, were imposed by the courts on a number of individuals including an Executive Chairman and a Managing Director of PLCs. The court also imposed a prison sentence on an audit partner who had abetted a PLC in furnishing a misleading statement to the stock exchange. A testament of our enforcement efforts was also demonstrated in appeal rulings in our favour, whereby the High Court affirmed the prison sentences and fines imposed against two individuals for knowingly authorising the furnishing of a misleading statement to Bursa Malaysia and two individuals for market manipulation (Table 10).

We had obtained a unanimous ruling by the Federal Court that statements recorded by an Investigating Officer of SC in the course of its investigation are protected from disclosure. The Federal Court, in overruling the decision of the Court of Appeal, held that such statements are protected from disclosure in both civil and criminal proceedings as a matter of public interest (Table 9).

We also successfully disgorged RM2,237,940.78 of illegal profits through regulatory settlements with three individuals in relation to insider trading breaches (Table 11).

Table 8

Details of criminal prosecution from 1 September 2015 to 31 March 2016

No.	Nature of offence	Offender(s)	Description of charge(s)	Date charged
1.	Insider trading	Datuk Lim Kim Chuan Tay Hup Choon Theng Boon Cheng	Datuk Lim Kim Chuan (Datuk Lim) was charged at the Kuala Lumpur Sessions Court for acquiring 398,000 units of M3nergy Bhd (M3nergy) shares between 6 August 2008 and 11 September 2008 while in possession of material non-public information. He was a former Chief Executive Officer (CEO) of Melewar Industrial Group Bhd (MIGB). The accused, also a former director of M3nergy, faces a total of 11 charges under the CMSA. SC alleged that the material non-public information referred to in the charges related to the Conditional Voluntary Take-Over Offer by Melewar Equities (BVI) Limited, a substantial shareholder of MIGB, to acquire M3nergy shares. The share acquisition was announced to Bursa Malaysia on 12 September 2008. Datuk Lim is alleged to have acquired the shares through the accounts of Tay Hup Choon (Tay) and Theng Boon Neoh. Tay, 47, Singapore national and Theng Boon Cheng @ Tan Boon Cheng (Theng), 57, were charged for abetting Datuk Lim in the commission of the offences. Datuk Lim was granted bail of RM250,000 with 1 surety while Tay and Theng were each granted bail of RM150,000 and RM120,000 respectively with 1 surety each. All claimed trial to the charges preferred against them.	29 November 2015

Table 8 (Con't)

Details of criminal prosecution from 1 September 2015 to 31 March 2016

No.	Nature of offence	Offender(s)	Description of charge(s)	Date charged
2.	Insider trading	Tan Swee Hock Chan Sze Yeng Cheng Seng Chow	Tan Swee Hock (Tan) was charged at the Kuala Lumpur Sessions Court for acquiring 632,700 units of Transocean Holdings Bhd (THB) shares between 20 August 2009 and 6 November 2009 while in possession of material non-public information. Tan was a director of THB at the material time. SC alleged that the material non-public information referred to in the charges related to the proposed take-over offer by Kumpulan Kenderaan Malaysia Bhd (KKMB) of THB shares. The take-over offer was announced to Bursa Malaysia on 6 November 2009. Tan, who faces a total of 28 charges, is alleged to have acquired the THB shares through the accounts of Chan Sze Yeng (Chan) and Yap Lee Lee. Chan and Cheng Seng Chow (Cheng) were both charged for abetting Tan in the commission of the offences. Tan, Chan and Cheng were each granted bail of RM200,000 with 1 surety. They were also ordered to surrender their passports. All claimed trial to the charges preferred against them.	8 December2015

Table 9

Details of civil actions from 1 September 2015 to 31 March 2016

Nature of offence	Offender(s)	Description
Insider trading Misleading statement	Datuk Ishak Ismail	On 19 January 2016, the Federal Court in a unanimous decision held that statements recorded by an Investigating Officer of SC in the course of its investigation are protected from disclosure in both civil and criminal proceedings as a matter of public interest. The apex court, in overruling the decision of the Court of Appeal, held that section 134(4) of the *Securities Commission Act 1993* (SCA) must be read subject to the rules of privilege and public policy. In delivering the decision of the Federal Court, Justice Tan Sri Ahmad Haji Maarop stated that disclosure of documents in civil proceedings may be withheld on the ground that such disclosure would be injurious to the public interest. The Federal Court further held that any communication which is treated as confidential and made to a public officer under an honest and bona fide belief that the officer would keep confidential the contents of the information contained in such communication without disclosing the same to others would fall within the provisions of section 124 of the *Evidence Act 1950* and would be privileged. The Federal Court held that confidentiality applied where the information is given to an authority charged with the enforcement and administration of the law by the initiation of Court proceedings. The full decision of the Federal Court can be found at http://www.sc.com.my/wp-content/uploads/eng/html/resources/press/pr_20160127_fedcourtJudgement.pdf The decision was made following civil proceedings that we commenced at the Kuala Lumpur High Court in 2010 against Datuk Ishak Ismail (Datuk Ishak) for alleged breaches of securities laws. After the suit was filed, Datuk Ishak made an application to the High Court for an order that the SC disclose documents and witness statements pertaining to our investigation against him. The Court of Appeal, in affirming the earlier decision of the High Court, ruled that statements made by persons to the SC under section 134 of the SCA must be disclosed in civil proceedings. We then appealed to the Federal Court against the decision.

Table 10

Outcome of criminal court cases and appeals from 1 September 2015 to 31 March 2016

Nature of offence	Offender(s)	Description	Sentence
Engaging in an act which operates as a fraud in connection with the purchase of securities Criminal breach of trust	Lybrand Ngu Tieng Ung	On 11 September 2015, the Kuala Lumpur Sessions Court convicted Lybrand Ngu Tieng Ung (Ngu), former Managing Director of Pancaran Ikrab Bhd (PIB), a company previously listed on the stock exchange, for committing criminal breach of trust (CBT) in respect of PIB's funds amounting to RM37 million. Ngu was charged by SC in May 2005 with 2 charges of securities fraud under section 87A(b) of the SIA and 1 charge of CBT under section 409 of the *Penal Code*. Ngu was also charged with 1 alternative charge of CBT involving a sum of RM37 million. In October 2010, Ngu pleaded guilty to the 2 principal charges under the SIA and was sentenced to 1 day imprisonment and a RM 1 million fine with respect to each charge. However, in August 2011 upon appeal by SC, the High Court set aside the conviction and sentence, and remitted the matter to the Sessions Court for a retrial. In August 2013, the Sessions Court ordered Ngu to enter his defence on the alternative charge of committing CBT in respect of RM37 million of PIB's funds.	Imprisonment for a term of 6 years and a fine of RM1 million.
Knowingly authorising the furnishing of a misleading statement to Bursa Malaysia	Shukri Sheikh Abdul Tawar Jimmy Chin Keem Feung	On 17 September 2015, the Kuala Lumpur High Court dismissed the appeal by 2 former independent directors of Transmile Group Bhd (TGB) against their conviction and affirmed the sentences of the Sessions Court for knowingly authorising the furnishing of a misleading statement to Bursa Malaysia in 2007. Shukri Sheikh Abdul Tawar (Shukri), 51, and Jimmy Chin Keem Feung (Chin), 50 were found guilty by the Sessions Court in 2011 and sentenced to imprisonment for a term of 1 year and a fine of RM300,000 respectively for knowingly authorising the furnishing of a misleading statement to Bursa Malaysia in TGB's Quarterly Report on Unaudited Consolidated Results for the Financial Year Ended 31 December 2006, an offence under section 122B(b)(bb) of the SIA. The misleading statement was in respect of the unaudited revenue figures of TGB which were reported to the stock exchange for both the 4th quarter of 2006 as well as the cumulative period of 4 quarters of 2006. Shukri and Chin were members of the Audit Committee and independent directors of TGB at the material time. They were charged in November 2007 at the Kuala Lumpur Sessions Court for the offence.	Imprisonment for a term of 1 year and a fine of RM300,000 on Shukri and Chin respectively.

Table 10 (Con't)

Outcome of criminal court cases and appeals from 1 September 2015 to 31 March 2016

Nature of offence	Offender(s)	Description	Sentence
Abetting in making a misleading statement to Bursa Malaysia	Yue Chi Kin	On 21 October 2015, the Kuala Lumpur Sessions Court found Yue Chi Kin (Yue) guilty of abetting United U-Li Corporation Bhd (U-Li) in making a misleading statement to Bursa Malaysia in its Annual Report and Financial Statements for the financial year ended 31 December 2004, an offence under section 122B(b)(bb) read together with section 122C(c) of the SIA. Yue was at the material time the audit partner of Messrs Roger Yue, Tan & Associates which audited U-Li's financial results for its financial year ended 31 December 2004. Yue was charged at the Kuala Lumpur Sessions Court on 28 April 2009.	Imprisonment for a term of 1 year and a fine of RM400,000.
Market manipulation	Low Thiam Hock	On 11 January 2016, the Kuala Lumpur Sessions Court found Low Thiam Hock (Low) guilty of market manipulation under section 84(1) of the SIA. Low was convicted for acts calculated to create a misleading appearance with respect to the price of Repco Holdings Bhd (Repco) shares on the Kuala Lumpur Stock Exchange on 3 December 1997. Low was the former Executive Chairman of Repco. On 29 February 2016, the Kuala Lumpur Sessions Court sentenced Low to imprisonment for a term of 5 years and a fine of RM5 million. Low was charged by SC in the Sessions Court in 1999. In 2006, the Sessions Court acquitted Low on the basis that the charge was not proven at the end of the Prosecution case. SC then appealed to the High Court which affirmed the Sessions Court's decision. The Court of Appeal however, on 28 February 2013 overturned the decision of the High Court and ordered Low to defend the charge against him, remitting the case back to the Sessions Court.	Imprisonment for a term of 5 years and a fine of RM5 million.

Table 10 (Con't)

Outcome of criminal court cases and appeals from 1 September 2015 to 31 March 2016

Nature of offence	Offender(s)	Description	Punishment
Market manipulation	Dato' Wong Chee Keong Francis Bun Lit Chun	On 9 March 2016, the Court of Appeal unanimously upheld convictions against Dato' Wong Chee Kheong (Dato' Wong), 54, and Francis Bun Lit Chun (Francis Bun), 46, former directors of the Impetus Group of Companies for manipulating Suremax Group Bhd shares over a period of 4 months. The Court of Appeal also affirmed the sentences imposed by the Sessions Court against both Dato' Wong and Francis Bun. Dato' Wong and Francis Bun were charged in October 2005 for the manipulation which was committed between November 2004 and March 2005. In 2011, the Sessions Court convicted Dato' Wong and Francis Bun. Dato' Wong was sentenced to 2 years imprisonment and a fine of RM3 million while Francis Bun was sentenced to 3 months imprisonment and a fine of RM2 million.	Imprisonment for a term of 2 years and a fine of RM 3 million on Dato' Wong and imprisonment of 3 months and a fine of RM2 million on Francis Bun.

For the period between 1 September 2015 and 31 March 2016, three individuals entered into regulatory settlements with the SC amounting to RM2,237,940.78 over insider trading breaches. The settlements reached are set out in Table 11.

Table 11

Details of regulatory settlements from 1 September 2015 to 31 March 2016

Date	Parties	Amount (RM)
15 December 2015	Chan Chee Beng	1,944,438.78
15 March 2016	Teng Choon Kwang and Tan Boon Hwa	293,502.00

Enforcement Highlights

Ongoing trials at the Sessions Court:

November 2015

PP v Lim Kim Chuan, Tay Hup Choon and Theng Boon Cheng

On 24 November 2015, SC charged Datuk Lim Kim Chuan (Datuk Lim) for insider trading. ay Hup Choon and Theng Boon Cheng were charged for abetting Datuk Lim in committing the said offences.

December 2015

PP v Tan Swee Hock, Cheng Seng Chow and Chan Sze Yeng

On 8 December 2015, SC charged Tan Swee Hock (Tan) for insider trading. Chan Sze Yeng and Cheng Seng Chow were charged for abetting Tan in committing the said offences.

PP v Goh Hock Choy and Siow Chung Peng

Dato' David Goh Hock Choy (Dato' Goh) was charged on 4 September 2012 for an offence under section 84(1) of the SIA for manipulating Lii Hen Industries Bhd (Lii Hen) shares between March and October 2004. He was alleged to be indirectly concerned in the sale and purchase of Lii Hen shares that did not involve any change in the beneficial ownership. Siow Chung Peng (Siow) was charged under section 84(1) of the SIA read together with section 122C(c) of the SIA for abetting Dato' Goh. Trial against Dato' Goh and Siow continued in the months of September, November and December 2015. Trial is scheduled to continue in April 2016.

March 2016

PP v Alice Poh Gaik Lye and Goh Bak Ming

Alice Poh Gaik Lye (Poh), a former business coordinator of Liqua Health Corporation Bhd (Liqua), was charged on 14 June 2010 under section 87A(a) of the SIA for allegedly committing a scheme to defraud Liqua in connection with the purchase of Liqua shares between 23 February and 31 July 2007. Goh Bak Ming (Goh), a former director of Liqua was charged on 8 June 2010 for abetting Poh in committing the offence. The trial against Poh and Goh continued in the months of September and November 2015, and is scheduled to continue in April 2016.

PP v Stanley Thai Kim Sim and Tiong Kiong Choon

In December 2014, SC charged Dato' Seri Stanley Thai Kim Sim (Dato' Seri Thai) with 1 count of communicating material non-public information, an offence under section 188(3) of the CMSA. Dato Seri Thai was said to have communicated the information to Tiong Kiong Choon (Tiong) who was at the material time, a remisier with Inter-Pacific Securities Sdn Bhd. Dato' Seri Thai was at the material time, the CEO of APL Industries Bhd (APLI). SC also charged Tiong for disposing APLI shares while in possession of the material non-public information. Trial against both of them continued in the months of October and November 2015, and March 2016 and is scheduled to continue in April 2016.

PP v Koh Tee Jin, Lee Han Boon, Saipuddin Lim and Lee Koon Huat

Koh Tee Jin, Lee Han Boon and Saipuddin Lim were charged on 21 March 2013 respectively with 5 counts of furnishing false statements relating to the revenue of Axis Incorporation Bhd (Axis) to Bursa Malaysia in 4 quarterly reports in the financial year 2007 and the quarter ending 31 March 2008. Lee Koon Huat was charged on 26 March 2013 for abetting Axis in furnishing false statements relating to the revenue of Axis in the 4 quarterly reports for the financial year 2007. Trial against all 4 of them continued in the months of September, October and November 2015, and is scheduled to resume in August 2016.

PP v Tan Bee Hong and Tan Bee Geok

On 15 December 2014, SC charged Tan Bee Geok, under section 188(3) of the CMSA, with 1 count of communicating material non-public information to Tan Bee Hong, between 23 October 2007 and 31 October 2007. Tan Bee Geok was at the material time, the Group Executive Director of APLI. Tan Bee Hong was charged with disposing, on 31 October 2007, 350,000 units of APLI shares held in her account while in possession of the same material non-public information. Trial continued in the months of September and November 2015, February 2016 and is scheduled to continue in May 2016.

PP v Norhamzah Nordin, Mohd Azham Mohd Noor and Helen Lim Hai Loon

Dato' Norhamzah Nordin (Dato' Norhamzah), Mohd Azham Mohd Noor (Azham) and Helen Lim Hai Loon (Lim) were charged for offences under section 122B(a)(bb) of the SIA and section 369(a)(B) of the CMSA involving the furnishing of false information to the stock exchange. Dato' Norhamzah and Azham were charged with furnishing false statements to Bursa Malaysia in eight of Kosmo Technology Industrial Bhd's (Kosmo Tech) quarterly reports for financial years 2006 and 2007, while Lim was charged with abetting the company in furnishing the said false statements. Dato' Norhamzah was the Managing Director, Azham, a director and Lim, an accounts manager of Kosmo Tech at the material time. Trial against all 3 is continued in October 2015, March and April 2016.

Appeals and Applications

High Court

January 2016

PP v Alan Rajendram and Eswaramoorthy Pillay

On 21 January 2016, the Kuala Lumpur High Court dismissed the Public Prosecutor's appeal against the acquittal of Alan Rajendram Jeya Rajendram (Alan) and Eswaramoorthy Pillay Amuther (Eswaramoorthy) on 2 counts of CBT and abetment of CBT respectively. Alan was charged with 2 counts of CBT on 24 June 2010 involving RM18.9 million, being monies belonging to LFE International Limited, a subsidiary of LFE Corporation Bhd. Eswaramoorthy was charged for abetting Alan in the commission of the CBT. At the time the offence was allegedly committed, Alan was a director of both LFE International Limited and LFE Corporation Bhd. Both respondents were acquitted by the Sessions Court on the CBT charges at the end of the Prosecution case on 14 May 2012. The Public Prosecutor has since filed an appeal to the Court of Appeal.

Note: On 27 April 2016, the Kuala Lumpur High Court will be hearing Alan's appeal against his conviction and sentence on four charges of permitting the furnishing of false information to the stock exchange in relation to LFE Corporation Bhd's unaudited quarterly reports in 2007. The Sessions Court had on 10 October 2012 convicted and sentenced Alan to 1 year imprisonment and RM300,000 fine for each charge respectively.

February 2016

Amran Awaluddin and Nooralina Mohd Shah v PP

In July 2015, Amran Awaluddin (Amran) was charged at the Kuala Lumpur Sessions Court with 7 counts of insider trading for acquiring 309,100 units of Ranhill Power Bhd (Ranhill) shares between 27 July 2007 and 11 September 2007 while in possession of material non-public information. He was alleged to have acquired the shares through the account of Nooralina Mohd Shah (Nooralina) who was, in turn charged with 7 counts of abetting Amran in the commission of the offences. SC alleged that the material non-public information related to the proposed privatisation and delisting of Ranhill which was announced on 11 September 2007.

On 14 September 2015, both Amran and Nooralina filed a motion at the Sessions Court to refer a constitutional question to the High Court under section 30 of the Courts of Judicature Act 1964 (CJA). The constitutional question, which was referred by the Sessions Court to the High Court, was whether section 89E(4) of the SIA is inconsistent with Article 8(1) of the Federal Constitution and whether the definition of information under section 89 of the SIA infringes Article 5 of the Federal Constitution as the said definition was argued to be ambiguous and unclear. On 22 February 2016, the High Court ruled that sections 89 and 89E(4) were consistent with the Federal Constitution. Both Amran and Nooralina have filed an appeal against the decision of the High Court to the Court of Appeal.

Lei Lin Thai v PP

In January 2015, Lei Lin Thai (Lei) was charged at the Sessions Court with 53 counts of insider trading under section 188 of the CMSA for allegedly acquiring 2,766,600 units of TH Group Bhd (TH Group) shares between 5 June 2008 and 22 September 2008 while in possession of material non-public information. In the charges preferred, SC alleged that the non-public information referred to in all the charges related to the proposed privatisation of TH Group via a Selective Capital Repayment exercise announced on 29 September 2008.

On 26 August 2015, Lei filed an application at the High Court to strike out all 53 charges preferred against him. Among the issues that the High Court had to determine were whether the charges against him were defective, oppressive, and vexatious, and an abuse of the Court process. The matter was heard by the High Court on 25 February 2016. On 30 March 2016, Lei's application was dismissed by the High Court.

Court of Appeal

Tiong Kiong Choon v PP

In December 2014, SC charged Tiong Kiong Choon (Tiong) for disposing APLI shares while in possession of the material non-public information. In the charges preferred, SC alleged that the material non-public information was in relation to the audit adjustments proposed by APLI's auditors which would result in APLI reporting a higher loss for the financial year ended 30 June 2007, as compared to the previously reported unaudited fourth quarter results for the same financial year and that APLI would be classified as an affected issuer pursuant to the *Listing Requirements of Bursa Malaysia Securities Bhd* and *Practice Note 17/2005*.

In March 2015, Tiong filed an application at the High Court to strike out the charges preferred against him on the basis that the charges were defective and illegal. The application was dismissed by the High Court in May 2015 and Tiong then filed an appeal to the Court of Appeal. On 24 February 2016, the matter was heard by the Court of Appeal. At the hearing, the Court raised the question of whether the Court of Appeal had jurisdiction to hear such an application. Parties were ordered to file submissions to the Court of Appeal on 25 March 2016. The matter is now pending the Court of Appeal's decision.

Ang Pok Hong and Wendy Wong Soon Soon v PP

In February 2015, SC charged Ang Pok Hong (Ang), with four counts of insider trading for having purchased 204,000 units of TH Group shares while in possession of material non-public information. Wendy Wong Soon Soon (Wong) was also charged with 3 counts of abetting Ang by allowing Ang to use her trading account for the purpose of acquiring the said shares. In the charges preferred, SC alleged that the non-public information referred to in all the charges related to the proposed privatisation of TH Group via a Selective Capital Repayment exercise announced on 29 September 2008.

On 10 March 2015, both Ang and Wong filed an application at the High Court under section 35 of the CJA and the inherent jurisdiction of the High Court to strike out all the charges preferred against them on the ground that they were defective. On 27 May 2015, the High Court dismissed Ang and Wong's application. Ang and Wong then filed an appeal to the Court of Appeal. The appeal was heard at the Court of Appeal on 24 February 2016. At the hearing, the Court raised the question of whether the Court of Appeal had jurisdiction to hear such an application. Parties were ordered to file submissions to the High Court on 25 March 2016. The matter is now pending the Court of Appeal's decision.

Civil trials

SC v Chan Soon Huat

In May 2015, SC filed a civil suit against Chan Soon Huat (Chan) at the Kuala Lumpur High Court for insider trading in the shares of WCT Bhd (WCT). SC alleged that Chan had breached the insider trading provisions under the CMSA by disposing a total of 2,414,600 shares and 1,236,700 warrants in WCT between 30 December 2008 and 5 January 2009 while in possession of material non-public information. The trades were said to have been made in his own account and the accounts of 2 other individuals, namely, Chan Choon Chew and Leong Weng Wah.

In its suit, SC alleged that the material non-public information related to the cancellation of a contract for the proposed construction of the `Nad Al Sheba Dubai Racecourse' in Dubai, United Arab Emirates which was awarded to a joint-venture company set up by WCT and one Arabtec Construction L.L.C. The announcement relating to the material information was only made public on 6 January 2009. SC is seeking disgorgement of 3 times the losses avoided by the defendants from the insider trading. SC is also claiming a civil penalty of RM1 million from each of them and that the defendants be barred from being a director of any PLC. Trial against Chan commenced in February 2016 and is scheduled to continue in June 2016.

Criminal prosecutions and civil actions – ongoing trial calendar

Trial date	Accused/ Defendants	Offence
APRIL 2016		
5-7 and 11-15	David Goh Hock Choy	• s.84(1) SIA
	Siow Chung Peng	• s.84(1) SIA read together with s.122C(c) SIA for abetment
5-7	Tiong Kiong Choon	• s.188(2)(a) CMSA
	Thai Kim Sin	• s.188(3) CMSA
11-13	Goh Bak Ming	• s.87A(a) SIA
	Poh Gaik Lye	• s.87A(a) SIA
	Norhamzah Nordin	• s.122B(a)(bb) SIA • s. 369(a)(B) CMSA
	Mohd Azham Mohd Noor	• s. 122B(a)(bb) SIA • s. 369(a)(B) CMSA
	Helem Lim Hai Loon	• s. 122B(a)(bb) SIA • s. 369(a)(B) CMSA
27	Alan Rajendram Jeya Rajendram	• s.122B(b)(bb) SIA • s.369(b)(B) CMSA
27-29	Amran Awaluddin	• s.89E(2)(a) SIA
	Nooralina Mohd Salleh	• s.89E(2)(a) SIA
MAY 2016		
3-5 and 11	Goh Bak Ming	• s.87A(a) SIA
	Poh Gaik Lye	• s.87A(a) SIA
5-6	Lei Lin Thai	• s.188(2) CMSA
	Chung Yin Mui	• s.370(c) CMSA (abetment)
	Ng Lai Sim	• s.370(c) CMSA (abetment)
	Wong Joon Moi	• s.370(c) CMSA (abetment)
	Lau Sin Ling	• s.370(c) CMSA (abetment)
9-11 and 25	Tan Bee Hong Tan Bee Geok	• s.188(2) CMSA • s.188(3) CMSA
16-18	Goh Hock Choy	• s.84(1) SIA
	Siow Chung Peng	• s.84(1) SIA
16-18	Tan Han Kook	• s.369(b)(B) CMSA
	Ching Siew Chong	• s.369(b)(B) CMSA
30-31	Alan Rajendram Jaya Rajendram	• s.369(b)(B) CMSA

JUNE 2016		
1-3	David Goh Hock Choy	• s.84(1) SIA
	Siow Chung Peng	• s.84(1) read together with s.122C(c) SIA for abetment
6-8 14-16	Goh Bak Ming	• s.87A(a) SIA
	Poh Gaik Lye	• s.87A(a) SIA
14-16	Ishak Ismail (Civil)	• s.177 and 188 CMSA
17	• Chan Soon Huat (Civil) • Goh Chin Liong • Leong Ah Chai	• s.188(2) CMSA
17 and 20-31	Alan Rajendram Jaya Rajendram	• s.369(b)(B) CMSA
JULY 2016		
18-19	Ramesh Rajaratnam	• s.188(2) CMSA
18-19	Goh Bak Ming	• s.87A(a) SIA
	Poh Gaik Lye	• s.87A(a) SIA
26-27	Lei Lin Thai	• s.188(2) CMSA
	Chung Yin Mui	• s.370(c) CMSA (abetment)
	Ng Lai Sim	• s.370(c) CMSA (abetment)
	Wong Joon Moi	• s.370(c) CMSA (abetment)
	Lau Sin Ling	• s.370(c) CMSA (abetment)
AUGUST 2016		
2-4	• Chan Soon Huat (Civil) • Goh Chin Liong • Leong Ah Chai	• s.188(2) CMSA
10-11	Lee Lin Thai	• s.188(2) CMSA
	Chung Yin Mui	• s.370(c) CMSA (abetment)
	Ng Lai Sim	• s.370(c) CMSA (abetment)
	Wong Joon Moi	• s.370(c) CMSA (abetment)
	Lau Sin Ling	• s.370(c) CMSA (abetment)
15-16 and 22-23	Goh Bak Ming	• s.87A(a) SIA
	Poh Gaik Lye	• s.87A(a) SIA

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www.sc.com.my

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If you have queries or comments, please contact:

Corporate Affairs Department
Securities Commission Malaysia
3, Persiaran Bukit Kiara, Bukit Kiara
50490 Kuala Lumpur
Malaysia

Tel: 603-6204 8777
Fax: 603-6201 5078
Email: cau@seccom.com.my