



The Reporter

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Executive Summary

In staying true to the Transparency pillar in the SC's Regulatory Philosophy¹, *The Reporter* will now function as one of SC's communication channels to share among others, observations from its thematic reviews, new regulatory initiatives and developments, emerging risks, including other issues that have direct implication on market participants and investors. This publication will also highlight good practices and common areas of deficiencies in the industry to promote and reinforce good conduct.

This issue of *The Reporter* features:

- ▶ the Lodge and Launch Framework for wholesale products;
- ▶ the outcome of Malaysia's recent assessment by the Asia-Pacific Group on Money Laundering and the Financial Action Task Force on Money Laundering;
- ▶ highlights of emerging risks involving third party receipts; and
- ▶ administrative actions taken by the SC and other enforcement matters.

The SC is confident that moving forward, *The Reporter* will serve as a useful source of information to the public and market participants in understanding and managing regulatory expectations. It is hoped that this will encourage market participants to collaborate with the SC to achieve the regulatory outcomes outlined in its *Regulatory Philosophy*.

First launched in January 2008, *The Reporter* has for eight years provided highlights and updates of enforcement actions taken by the SC.

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¹ The SC's *Regulatory Philosophy* was published in March 2015. A copy is available on www.sc.com.my/about-us/sc-regulatory-philosophy/

Recent regulatory initiatives

LODGE AND LAUNCH FRAMEWORK

In line with regulatory proportionality, the Lodge and Launch Framework (LOLA Framework) for wholesale products² was brought into effect on 15 June 2015. The removal of approval requirement for the wholesale market marks a major reform in the SC's product approval regime. This approach seeks to balance business efficiency and investor protection.

The LOLA Framework enhances business efficiency by enabling wholesale products to be launched once the required information is lodged with the SC. Product issuers no longer need to seek the SC's prior approval before making available products to investors – a process that would previously have taken 14 to 21 days under the previous regime.

Table 1

Comparison between previous and new regime

	Approval Regime	LOLA Framework
Approval Process ▶	Approval Required	No approval
Time Charter ▶	14 – 21 days	0 days

ENABLERS

To implement the LOLA Framework, a new exemption from section 212 of the *Capital Markets and Services Act 2007* (CMSA) for wholesale products was introduced in Schedule 5³ of the CMSA.

In line with the introduction of the LOLA Framework, SC embarked on a major legislative review process involving five existing guidelines. The review exercise consolidated these guidelines where similar requirements for wholesale market are found to simplify the process for issuers, distributors and investors seeking to identify and understand the regulatory requirements for the wholesale market.

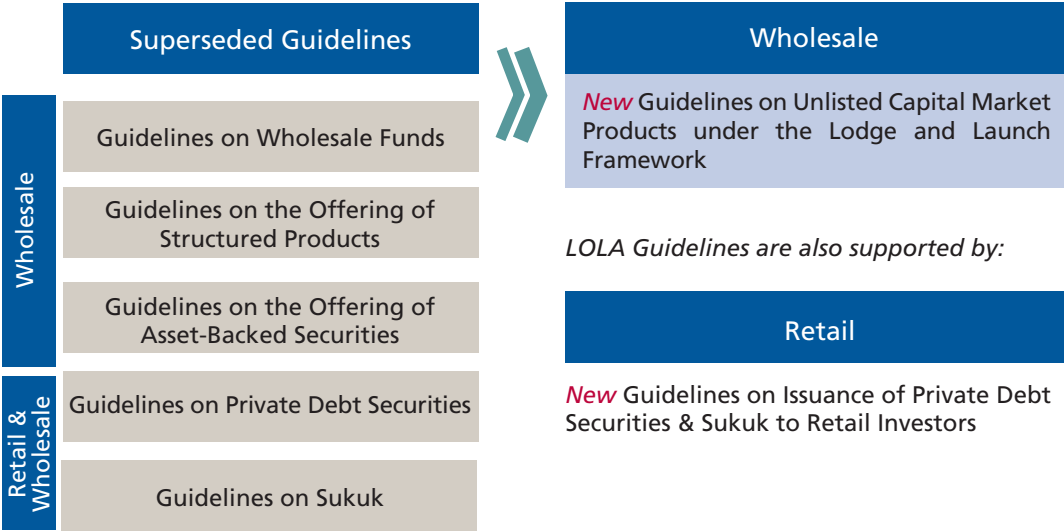
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² 'Wholesale products' under the LOLA Framework refers to unlisted capital market products comprising wholesale funds, structured products, bonds, sukuk and asset-backed securities, which are offered to sophisticated investors only.

³ Schedule 5 of the CMSA provides a list of corporate proposals exempted from SC's approval requirement. Amendments were made to Schedule 5 via the *Capital Markets and Services (Amendment of Schedules 5, 6, 7 and 8) Order 2015*. Fees in relation to the LOLA framework were introduced via the *Capital Markets and Services (Fees) (Amendment) Regulations 2015*.

The new *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* (LOLA Guidelines) which came into effect on 15 June 2015 superseded the five guidelines as illustrated in Diagram 1.

Diagram 1



Note: Guidelines for the Offering, Marketing and Distribution of Foreign Funds are not affected by the new LOLA Framework

In removing the approval requirement for unlisted wholesale products, the SC is mindful of the need to enhance its ability to conduct post-lodgement monitoring of these products based on the analysis of information submitted to the SC by product issuers. As such, timelines stipulated in the LOLA Guidelines for submission of the required documents and information will be strictly enforced by the SC. A daily penalty of RM1,000 will be imposed for any delay.

INVESTOR PROTECTION

A key component of investor protection in the LOLA Framework is the reliability, completeness and accuracy of information provided to investors in the disclosure documents. To ensure that the dispensation of product approval under the LOLA Framework does not in any way erode investor protection, the SC will continue to monitor and take action against any person who is responsible for preparing a disclosure documents containing false or misleading information. As such, issuers and advisers are expected to conduct the required due diligence to ensure the accuracy and completeness of information lodged. They should immediately alert the SC if they become aware of any material changes to these information or documents.

A key component of investor protection in the LOLA Framework is the reliability and accuracy of information provided to investors in the disclosure documents.

Table 1

Relevant statistics relating to the Lodge and Launch Framework from 15 June to 30 November 2015

Companies and Users Registered on the LOLA Submission System					
<p>502 Registered Users (administrators, key contact persons, lodgement users and finance users of registered companies)</p>			<p>89 Registered Companies (fund management companies, qualified banks, qualified dealers and principal advisers)</p>		
Lodgement					
New PDS / Sukuk	Post Issuance Notice for PDS / Sukuk	New Wholesale Fund	New Structured Products Programme	Existing Structured Products Programme	Post Issuance Notice for Structured Products
16	13	28	4	110	245

AML/CFT: REALIGNMENT OF SUPERVISORY FOCUS TO RISK

Background: Outcome of Malaysia's Mutual Evaluation Exercise

Malaysia underwent a Mutual Evaluation Exercise in November 2014, during which the Asia/Pacific Group on Money Laundering⁴ (APG) and the Financial Action Task Force on Money Laundering⁵ (FATF) jointly assessed the country's Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) framework. The assessment involved the following:

- ▶ a comprehensive evaluation of Malaysia's AML/CFT legal framework for technical compliance with the FATF 40 Recommendations⁶, and
- ▶ an evaluation of the effectiveness of Malaysia's competent authorities, law enforcement agencies and reporting institutions in combating money laundering/terrorism financing (ML/TF) activities.

Central to the assessment is the compliance of the updated FATF 40 Recommendations and the FATF Methodology, which emphasise the concept of risk. The new focus on risk is intended to ensure that Malaysia as a country including its sector regulator such as the SC and other institutions, are able to identify, assess and understand the ML/TF risks to which they are exposed and take the necessary AML/CFT measures commensurate to those risks to mitigate them.

Key Findings of the Assessment in Relation to Reporting Institutions in the Financial Industry

The assessors found that Malaysia has a strong legal and regulatory framework for preventive measures. However, reporting institutions which include investment banks, stockbroking and derivative broking firms and fund management firms demonstrate only a moderate level of effectiveness in applying AML/CFT preventive measures and require major improvements in AML/CFT compliance.

⁴ The Asia/Pacific Group on Money Laundering is an international organisation which is committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism, in particular the 40 FATF Recommendations.

⁵ FATF is an inter-governmental body which sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

⁶ The FATF 40 Recommendations are a set of standards introduced in 2012 to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorism financing and the financing of proliferation of weapons of mass destruction.

(i) Risk-based approach and understanding of ML/TF risks and AML/CFT obligations

The assessment found that some reporting institutions were still in the process of shifting from a rules-based to a risk-based approach.

While the risk-based approach requires reporting institutions to assess the ML/TF risks associated with their businesses, conduct customer due diligence (CDD), profile the client's risk and apply the necessary countermeasures, reporting institutions that apply the rules-based approach tend to classify clients based on their status alone without assessing other ML/TF risk factors associated with these clients. For example, reporting institutions tend to automatically classify foreign clients as 'high-risk' clients and consequently subject them to enhanced CDD measures. As a result, preventive measures are not applied on a risk-sensitive basis.

(ii) Obligations in relation to beneficial owners and politically-exposed persons

The assessors concluded that the identification of beneficial owners as well as close associates and family members of both foreign and domestic politically-exposed persons (PEPs) remains a challenge, though it was acknowledged that larger players in the securities sector did utilise a combination of commercial databases and customers' self-declaration for PEP screening.

(iii) Reporting of suspicious transactions

Generally, reporting institutions appear to meet their obligations in reporting suspicious transactions. However, it was noted that the number of suspicious transaction reports (STRs) filed within the securities sector is relatively low when compared to the risk profile of the sector. It was also highlighted that terrorism financing-related STRs are low.

Mutual Evaluation Report and Moving Forward

Following the assessment, the National Co-ordination Committee to Counter Money Laundering (NCC) developed a strategic plan to strengthen Malaysia's AML/CFT and counter proliferation financing regime. The SC is committed in raising the compliance standard of reporting institutions by providing guidance and organising awareness programmes; focusing on areas highlighted in the assessment, namely, the application of the risk-based approach, PEPs and targeted financial sanctions in relation to terrorism and proliferation financing. To achieve this, the boards of directors of reporting institutions are expected to play a bigger role in ensuring effective AML/CFT compliance is consistent with the requirements of the SC's *Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Firms*.

Full results of the assessment are published in *Malaysia's Mutual Evaluation Report*, which was tabled and adopted at the FATF Plenary meeting in June 2015 and APG Plenary meeting in July 2015. The report is available at <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-malaysia-2015.html>

Client's Assets Protection – emerging risks involving third party receipts

Overview

On 26 January 2015, the SC issued a reminder to intermediaries to strengthen procedures and controls regarding third party receipts⁷ as follows:

- ▶ Verifying the identity of the cheque issuer by requiring the submission of a photocopy or image of the client's cheque together with the direct bank-in form;
- ▶ Matching the transferor's name with the trading account for interbank fund transfer. Where the transferor's name does not match, intermediaries are required to conduct further verification;
- ▶ Tagging of client's bank account(s) to the intermediaries' settlement system for all receipts and payment transactions;
- ▶ Prohibiting the practice of crediting payment from one client into the accounts of several other clients;
- ▶ Prohibiting representatives from receiving payments from their clients either in cash, cheque or any other form of payment into their personal bank accounts; and
- ▶ Prohibiting representatives from making payments on behalf of their clients.

As a long-term measure, intermediaries are required to make an arrangement with their banks to allow clients to key in their name or identity card number for payments made into the intermediaries' designated bank accounts.

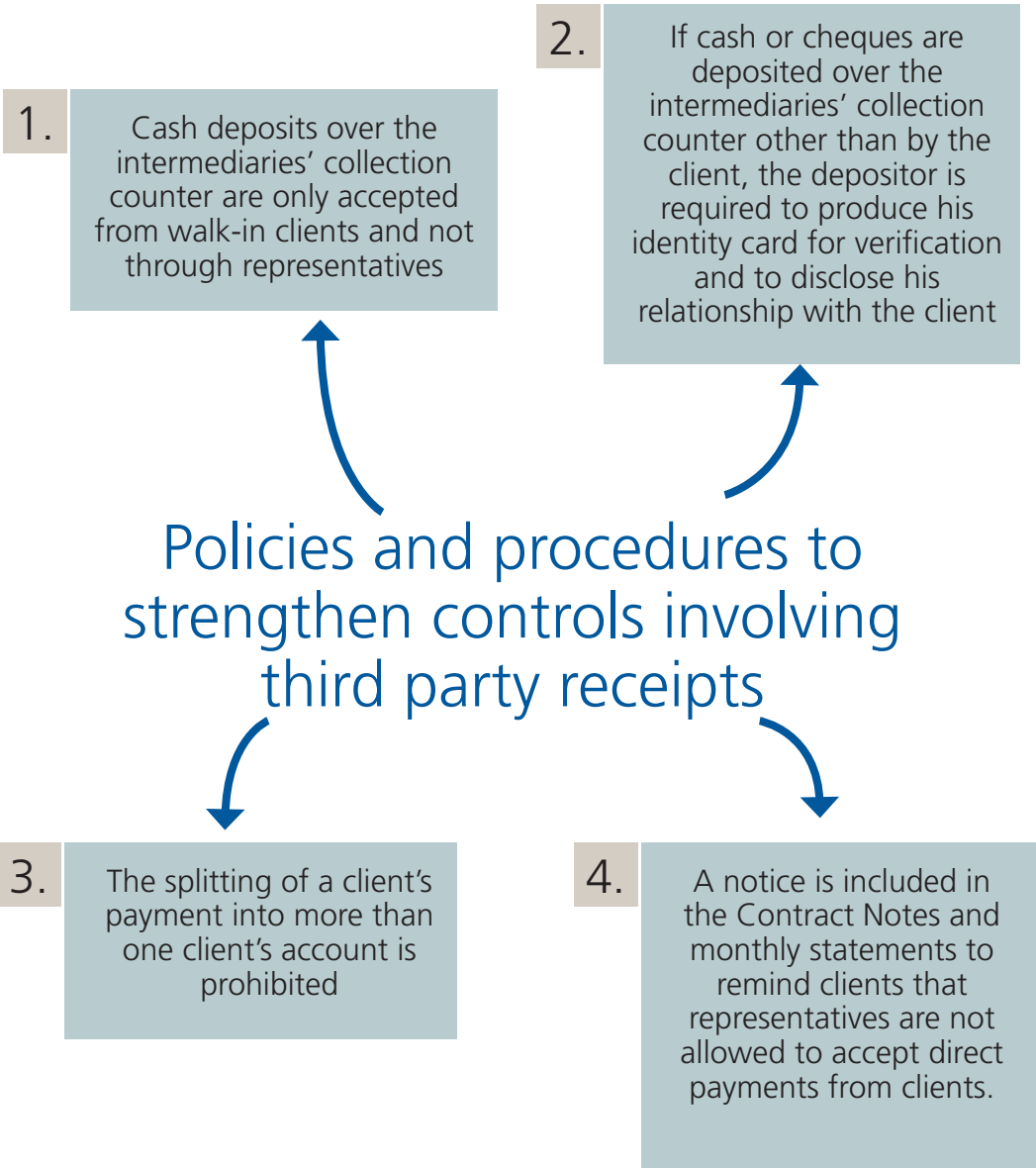
Follow-up Review

Following the issuance of the reminder to strengthen procedures and controls, the SC engaged with seven intermediaries to determine the progress of their implementation measures.

⁷ Refers to payments made by one party to designated bank accounts of intermediaries which are subsequently allocated to the trading account of another party.

We wish to commend an intermediary for its swift implementation of tagging clients' bank accounts to its settlement systems. We believe this arrangement will reduce the risk of mismanagement or misappropriation of clients' funds.

These seven intermediaries have put in place policies and procedures to strengthen controls involving third party receipts as follows:



Message to Intermediaries

Vigilance

Intermediaries should always ensure that requests or instructions by representatives to allocate monies into a client's account are verified before they are carried out, especially the source of funds and the trading account for which the funds are intended.

Intermediaries should conduct ongoing monitoring of its customers throughout the course of their business relationship. Some *red flags* that intermediaries must immediately address are as follows:

1. Amount of deposits and volume of transactions that do not commensurate with the profile of the client.
2. Monies deposited and withdrawn from an account which has minimal or no trading transaction.
3. Sudden increase in the number of transactions of an inactive trading account.
4. Large or frequent wire transfers or deposits into a trading account where monies are immediately withdrawn.

Supervision of Representatives

Intermediaries are also reminded to adequately supervise their representatives in the performance of their duties to ensure adherence to internal processes and controls. Intermediaries often overlook the fact that these representatives are carrying out regulated activities on their behalf.

Some intermediaries have even contracted out their responsibility for the actions of their representatives in the Standard Remisier Agreements. Intermediaries have sought to rely on such agreements to avoid liability when sued by clients who suffer losses as a result of misappropriation by the representatives. In many of these cases, investors have been left in a lurch.

In order to provide clarity on the relationship between an intermediary and its representative, the CMSA has been amended to include a new section 59A⁸. The new section 59A provides that a representative is deemed to be an agent of the intermediary when he engages in any conduct or makes any representation within his authority as a representative of the intermediary. With this new provision, any agreement entered into by the intermediary to remove, exclude or restrict its obligation or liability as the principal of its representative shall be void.

⁸ Section 59A was inserted by amendment of the CMSA vide the *Capital Markets and Services (Amendment) Act 2015* which came into force on 15 September 2015

Examples of scenarios on how third party receipts can be abused

Scenario 1 Unlicensed Person Posing as a Representative

An individual, Mr Fraud, posing as a representative of an intermediary, persuades a victim, Ms Loss to place monies (cash or cheque) with the intermediary for share trading or other capital market investments [1 in Illustration 1]. Attracted by the guarantee of high returns, Ms Loss either deposits monies, directly or through Mr Fraud, into the intermediary's designated bank account. Mr Fraud then issues forged receipts or certificates to convince Ms Loss that the monies have been received by the intermediary and that the investment is genuine.

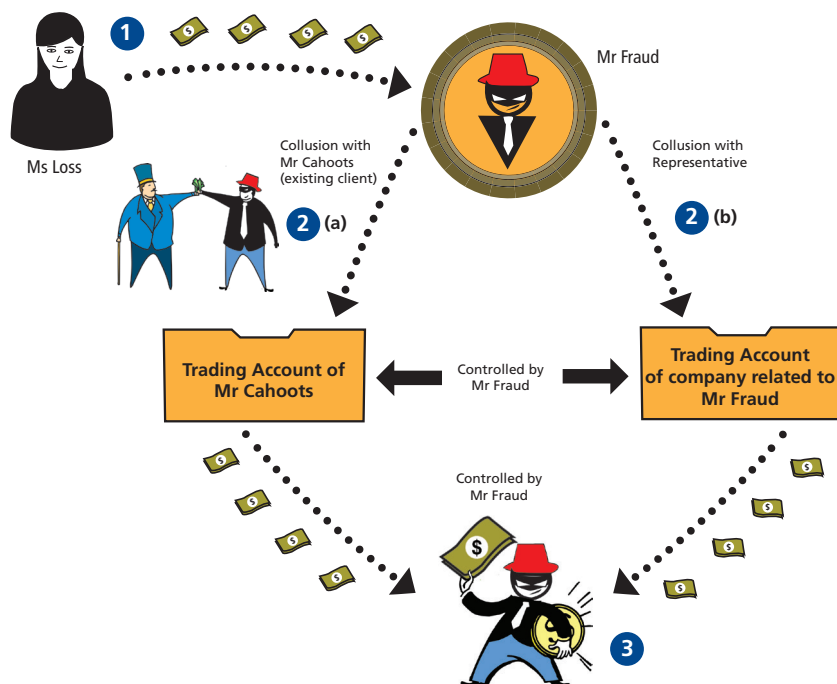
The monies deposited will then be allocated into either the trading accounts of existing clients or representatives of the intermediary:

► Where Mr Fraud colludes with an existing client, Mr Cahoots. Mr Fraud instructs Ms Loss to provide him with the deposit details. Mr Fraud hands over the details to Mr Cahoots, who then instructs the intermediary to allocate Ms Loss' deposits into his account [2(a) in Illustration 1]

► Where Mr Fraud colludes with a representative of the intermediary, Mr Fraud instructs the representative to allocate the monies deposited into the trading account of a company related to Mr Fraud [2(b) in Illustration 1].

The monies in accounts controlled by Mr Fraud will then be withdrawn or used by Mr Fraud for his own purpose such as settling his own losses or that of his nominees [3 in Illustration 1]. Ms Loss will only realise her losses when there is no return on her "investment" or when Mr Fraud cannot account for the "missing investment".

Illustration 1



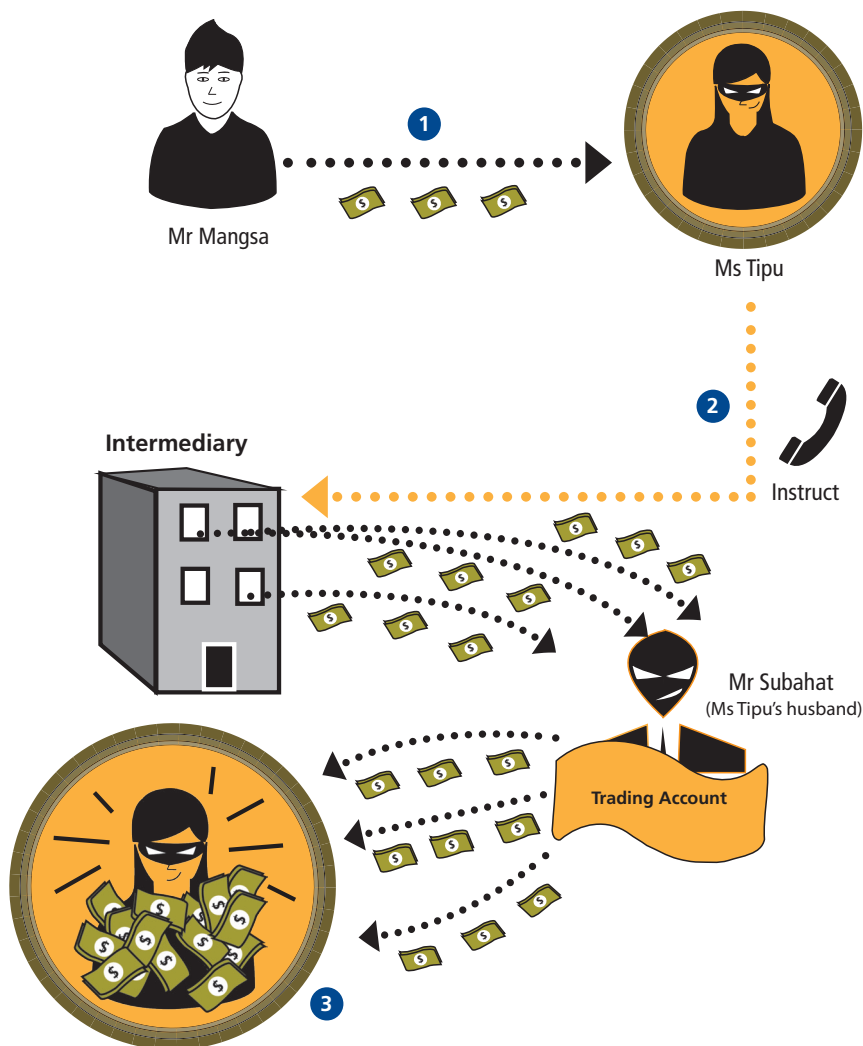
Scenario 2 Rogue Representative

A representative of an intermediary, Ms Tipu, persuades a victim, Mr Mangsa to deposit monies with the intermediary for share trading or other capital market investments [1 in Illustration 2].

Instructions are then given by Ms Tipu to the intermediary to allocate the monies deposited by Mr Mangsa into the account of another client, Mr Subahat, who is Ms Tipu's husband [2 in Illustration 2]. The monies in Mr Subahat's account will be withdrawn later by Ms Tipu for her own use [3 in Illustration 2].

While Scenario 2 illustrates a situation where the representative has defrauded her client, mismanagement or misappropriation of investors' monies can also occur when a representative fails to supervise the activities of his assistant. This may create an opportunity for the assistant to instruct the intermediary to allocate clients' monies into accounts related to the said assistant.

Illustration 2



Message to Investors

Investors should be vigilant and monitor their investments closely. There are steps that investors can take to protect their interests when making an investment:

1. If you are approached by any person offering services in relation to trading in securities, check whether the person is licensed by the SC to carry out the said activity. Refer to the 'Public Register of Licence Holders' on the SC's website – www.sc.com.my.
2. Do not issue cheques in the representative's name to settle trading transactions.
3. Do not pay cash or bank in monies directly into the representative's personal bank account.
4. Instruct the intermediary to send transaction documents (contract notes, receipts and monthly statements) directly to your personal address. If you do not receive these, immediately contact the intermediary.
5. When in doubt, immediately verify the information in the transaction documents with the intermediary, especially where there are handwritten amendments or discrepancies in the documents.
6. Do not allow a representative or any other person to use your trading account other than for your own transaction.
7. If you have any complaint against an intermediary or your representative, contact the SC's Investor Affairs and Complaints Department at +603-6204 8999 or e-mail aduan@seccom.com.my.
8. If you have made any monetary claim which cannot be settled by the intermediary, refer the matter to the Securities Industry Dispute Resolution Center at +603-2282 2280 or via <https://sidrec.com.my/lodge-a-claim/>

Administrative Actions and Supervisory Engagements

ADMINISTRATIVE ACTIONS

From 1 January to 31 August 2015, a total of 11 administrative sanctions were taken against nine persons for breaches relating to the furnishing of false or misleading statements, licensing conditions and non-compliance of the SC's *Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries* (AML/CFT Guidelines).

Promoting good governance

As Boards play a critical role in making good governance an integral part of business culture, engagement with various boards of directors were intensified to understand the culture of the company and the tone at the top. One aspect of governance which reflects how companies behave and treat their customers and investors is in the way disclosures are made. Fair and accurate disclosure of information is central to the principle of fair treatment of investors, while confidence in the capital market is only sustainable when participants can trust the integrity of disclosures made by companies, especially in relation to the financial position.

For furnishing false or misleading statements to Bursa Malaysia, YFG Bhd and its Board of Directors were found to be in breach of section 369(b)(B) of the CMSA on 13 May 2015. The false or misleading statement was in relation to the impairment loss provision in the company's amended audited financial statements (AFS) for year ended 30 June 2014, where the impairment loss was disclosed as RM5.067 million instead of RM8.442 million.

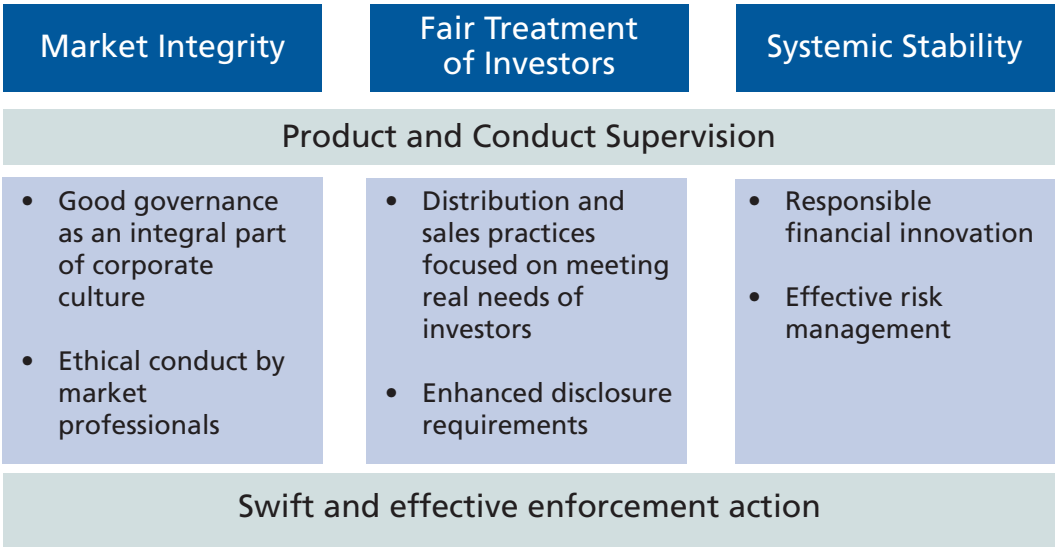
YFG Bhd was directed by the SC to rectify and reissue a fresh AFS by reinstating the impairment loss of RM8.442 million and make the necessary consequential amendments to its financial statements. The SC further reprimanded and imposed a penalty of RM200,000 on YFG's Board of Directors for the said breach. The appeals by YFG Bhd and its Board of Directors against the sanctions were rejected by the SC on 31 July 2015.

Addressing Conduct Risk

After the global financial crisis, the Financial Stability Board identified business conduct as a new risk category in its *Peer Review Report on Risk Governance* published in February 2013. Although not defined, conduct risk generally refers to risks in which a firm and its staff conduct themselves – how customers are treated, remuneration of staff and how firms deal with conflicts of interest.

... confidence in the capital market is only sustainable when participants can trust the integrity of disclosures made by companies...

Conduct risk comprises a wide variety of activities and types of behaviour which fall outside the other main categories of risk, such as market, credit, liquidity and operational risks. Conduct regulation is a key success factor in implementing the SC's new proportionality approach and is applied across the entire spectrum of the SC's regulatory process to maintain market integrity, fair treatment of investors and systemic stability. The SC's conduct regulation continuum covers assessment of, among others, investor protection measures, corporate governance, fit and properness, behaviour and conduct including incentive structures and product governance.



During this period, a fund management company was imposed an administrative penalty and four representatives had their licences revoked by the SC for various misconducts which affected their fit and properness.

On 28 April 2015, the SC imposed a penalty of RM100,000 against PCB Asset Management Sdn Bhd (PCB) for breaching its licensing conditions. One of the SC's licensing conditions prohibits PCB from engaging unlicensed persons to carry out regulated activity. PCB entered into a Client Referral Agreement with six unlicensed persons to refer and service potential clients to PCB.

The four representatives whose licences were revoked are:

- ▶ Robyn Lau Zheng-Yin and Shahmir Pavin Joshi for submitting false result slips to the SC when applying for the Capital Market Services Representative Licence (CMSRL);
- ▶ Lim Chin Wat for engaging in manipulative activities when dealing in Magna Prima Bhd shares; and
- ▶ Khoo Chee Leong for engaging in improper business practices when he pre-signed remittance request forms and withdrawal forms, which led to the misutilisation of his client's monies.

In order to underscore the importance of honesty and integrity in determining the fit and properness of a licensed person, the SC's finding of misconduct will, moving forward, affect all licences held by the person in breach although the conduct or the activities in question relates to only one of the licences held by the said person. For example, a CMSRL holder who holds both a CMSRL for dealing in securities and derivatives is found to have engaged in manipulative activities when dealing in securities. If the SC finds that he is no longer fit and proper to continue holding a CMSRL for dealing in securities because of the misconduct, the SC's findings will also affect his CMSRL for dealing in derivatives.

Enforcing AML/CFT requirements

In the past decade, ML/TF risks continue to be a major global concern. The International Monetary Fund estimates that US\$2 trillion of illegal proceeds are laundered yearly, while terrorist organisations are utilising unique funding streams including social media, to fund its activities. In response, regulators around the world are escalating AML/CFT compliance requirements to combat the threats of ML/TF.

As a member of the NCC, the SC has implemented the FATF 40 Recommendations via the AML/CFT Guidelines. Besides enforcing the AML/CFT Guidelines, the SC is also a law enforcement agency and supervisory authority under the *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* (AMLATFPUAA 2001).

A strong and robust AML/CFT compliance framework in a reporting institution is a fundamental line of defence to prevent the said institutions from being used as conduit for money laundering by criminals. The SC regards this as vital to the preservation of the integrity of the capital market. To this end, the SC views breaches involving failure of reporting institutions to implement Customer Due Diligence (CDD) including ongoing due diligence and Enhanced Due Diligence measures, risk-based approach, reporting of suspicious transactions and TF obligations to be serious, which may warrant an enforcement action under the CMSA or the AMLATFPUAA 2001.

On 29 April 2015, the SC imposed a penalty of RM250,000 against AmFutures Sdn Bhd (AmFutures) for failure to conduct proper ongoing due diligence on two clients and failure to classify three clients' accounts as high risk. It also failed to detect suspicious transactions in the accounts of these five clients. The failures arose from AmFutures' inadequate and ineffective AML/CFT review system.

On 28 August 2015, the SC also imposed a penalty of RM200,000 against Kenanga Investment Bank Bhd (KIBB) for failure to conduct ongoing due diligence and to file suspicious transaction reports on three clients' accounts. In addition, KIBB's key management personnel including the Head of Compliance were also directed to attend two AML/CFT training programmes.

A strong and robust AML/CFT compliance framework in a reporting institution is a fundamental line of defence to prevent the said institutions from being used as conduit for money laundering by criminals.

Table 2

Administrative actions from 1 January to 31 August 2015 by types of sanction and parties in breach

Parties in breach	Types of sanction			
	Directive	Reprimand	*Penalty	Suspension/ revocation of licence
Licensed persons	1	–	3	4
Public-listed company (PLC)	1	–	–	–
Directors of PLC	–	1	1	–
TOTAL	2	1	4	4

* A total of RM750,000 penalty were also imposed against directors of PLC, licensed persons carrying out the regulated activity of dealing in derivatives and securities and fund management company.

Infringement Notices

Apart from administration action, the SC also utilises other forms of non-statutory enforcement tools in its monitoring, gatekeeping and supervisory functions.

Infringement notices are issued where breaches of securities law detected do not warrant the initiation of a formal enforcement action or imposition of administrative action. These include breach of requirements in relation to the *Licensing Handbook* and late submission of annual audited accounts by PLCs. Infringement Notices issued by the SC include supervisory letters, warning letters, non-compliance letters and cease-and-desist letters.

Table 3

Infringement notices issued from 1 January to 31 August 2015

Type of infringement notices	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
Supervisory Letter	1	1	4	1	1	5	7	–	20
Warning Letter	–	2	2	10	2	1	2	2	21
Non-compliance Letter	9	–	–	2	4	1	1	–	17
Cease and Desist Letter	–	–	–	–	–	–	–	–	–
TOTAL	10	3	6	13	7	7	10	2	58

Supervisory Examinations and Engagements

In carrying out the 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, the SC also relies on engagements with market participants to address concerns, supervisory findings and communicate regulatory expectations.

Table 4

Number of supervisory examinations and engagements¹ conducted by the SC from 1 January to 31 August 2015

Entity	Number of examinations conducted	Number of engagements conducted
Firms (securities, derivatives and fund management)	17	26
Bond market service providers ²	1	22
Market institutions ³	2	11
PLCs	–	22
Auditors	–	11
Other stakeholders	–	7

Note:

¹ These statistics do not include engagements conducted by the Authorisation and Licensing and Market Surveillance departments

² Rating agencies, bond pricing agency and trustees

³ Bursa Malaysia Bhd, Federation of Investment Managers Malaysia and Private Pension Administrator Malaysia

Enforcement Actions

During this period, the SC's enforcement efforts were focused on achieving effective outcomes through the use of its diverse range of enforcement tools and powers. The SC sought to achieve credible deterrence for the commission of serious capital market offences such as insider trading and false disclosure.

From 1 January to 31 August 2015, the SC preferred criminal charges against 10 individuals for insider trading and an individual for false or misleading disclosure (*Table 5*). The SC also filed two civil enforcement actions against three individuals for insider trading (*Table 6*).

The SC continues to seek deterrent sentences against those who commit serious capital market offences. Testimony of our efforts can be seen in our success at the Court of Appeal where the Court ruled in favour of the SC by imposing imprisonment sentences in addition to fines imposed by the lower courts against four individuals for providing false disclosures (*Table 7*).

The SC has also successfully disgorged over RM1 million of illegal profits through regulatory settlements with five individuals in relation to insider trading offences (*Table 8*).

Table 5

Details of criminal prosecution as at 31 August 2015

No.	Nature of offence	Offender(s)	Description of charge(s)	Date charged
1.	Insider trading	Lei Lin Thai	<p>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 while in possession of material non-public information between 5 June 2008 and 22 September 2008. At the material time, Lei was the Group Managing Director of TH Group.</p> <p>The SC alleged that Lei acquired the TH Group shares via accounts belonging to four other individuals namely Chung Yin Mui (Chung), Ng Lai Sim (Ng), Wong Jun Mooi (Wong) and Lau Sin Ling (Lau).</p>	29 January 2015
		Chung Yin Mui Ng Lai Sim Wong Jun Mooi Lau Sin Ling	Chung, Ng, Wong and Lau were charged for abetting Lei by allowing their trading accounts to be used by Lei for the purpose of acquiring the said shares.	29 January 2015
		Ang Pok Hong	The SC charged Ang Pok Hong (Ang), former General Manager of Finance at TH Group, on four counts of insider trading for having purchased 204,000 units of TH Group shares while in possession of material non-public information. The trades were said to have been executed through her own account as well as the account of Wendy Wong Soon Soon (Wendy Wong) between 22 and 25 September 2008.	5 February 2015
		Wendy Wong Soon Soon	<p>Wendy Wong was also charged with three counts of abetting Ang by allowing him to use her trading account for the purpose of acquiring the said shares.</p> <p>The 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.</p> <p>All seven accused claimed trial to the charges preferred against them. The Court fixed bail at RM300,000 each for Lei and Ang, while bail for Chung, Ng, Wong, Lau and Wendy Wong were fixed at RM100,000 each respectively.</p>	5 February 2015

Table 5 (Con't)

No.	Nature of offence	Offender(s)	Description of charge(s)	Date charged
2.	Insider trading	Dato' Ramesh a/l Rajaratnam	<p>The SC charged Dato' Ramesh a/l Rajaratnam (Ramesh), former Executive Deputy Chairman of Malaysian Merchant Marine Bhd (MMM) with three counts of insider trading under section 188(2) of the CMSA. Ramesh was charged at the Kuala Lumpur Sessions Court for disposing a total of 10,200,800 MMM shares while in possession of material non-public information on 11 January 2010, 19 February 2010 and 22 February 2010.</p> <p>The SC alleged that the non-public information related to the proposed downgrade by Malaysian Rating Corporation Bhd of its credit rating on MMM's RM120 million <i>Al-Bai' Bithaman Ajil</i> Islamic Debt Securities from the category of investment grade to non-investment grade and the classification of MMM as a PN17 status company.</p> <p>Ramesh claimed trial to all three charges and the court granted bail at RM200,000. Ramesh was also ordered to surrender his passport to the court.</p>	29 April 2015
3.	Insider trading	Amran Awaluddin Nooralina Mohd Shah	<p>The SC charged Amran Awaluddin (Amran) and Nooralina Mohd Shah (Nooralina) for committing insider trading offences pursuant to section 89E(2)(a) of the <i>Securities Industry Act 1983</i> (SIA). Amran was a former director of Ranhill Bhd and Ranhill Power Bhd which were listed on Bursa Malaysia at the material time.</p> <p>Amran was charged at the Kuala Lumpur Sessions Court for seven counts of insider trading for acquiring 309,100 units of Ranhill Power Bhd shares through the account of Nooralina between 27 July 2007 and 11 September 2007 while in possession of material non-public information. Nooralina was charged with seven counts of abetting Amran in the commission of the offences.</p> <p>The SC alleged that the material non-public information related to the proposed privatisation and de-listing of Ranhill Power Bhd which was announced on 11 September 2007.</p> <p>Amran and Nooralina claimed trial to the charges and the court granted bail at RM150,000 each.</p>	31 July 2015

Table 5 (Con't)

No.	Nature of offence	Offender(s)	Description of charge(s)	Date charged
4.	False or misleading disclosure	Alan Rajendram a/l Jeya Rajendram	<p>The SC charged Alan Rajendram a/l Jeya Rajendram (Alan), a former director of Linear Corporation Bhd (Linear) under section 369(b)(B) of the CMSA for authorising the furnishing of a false statement to Bursa Malaysia on 29 December 2009.</p> <p>The false statement was in relation to Linear's wholly owned subsidiary, LCI Global Sdn Bhd which was said to have accepted a RM1.6 billion construction project awarded by Global Investment Group (GIG) a Seychelles incorporated company, to design and construct a district cooling plant of 350,000 RT (refrigeration tonnes) in the district of Manjung, Perak, for what was termed the 'King Dome Project'.</p> <p>Alan claimed trial to the charge against him and the court fixed bail at RM150,000 and he was also ordered to surrender his passport and report to the Pulau Tikus police station in Penang on a monthly basis.</p> <p>The offence carries a fine not exceeding RM3 million or imprisonment for a term not exceeding 10 years or both.</p>	9 July 2015

Table 7

Outcome of criminal court cases and appeals as at 31 August 2015

Nature of offence	Offender(s)	Description	Punishment
False or misleading disclosure	<p>Jimmy Tok Soon Guan</p> <p>Mok Chin Fan Cheong Kok Yai</p> <p>Normah Sapar</p>	<p>Jimmy Tok Soon Guan (Jimmy), the former CEO of Inix Technologies Holdings Bhd (Inix) as well as Mok Chin Fan (Mok) and Cheong Kok Yai (Cheong) who were directors of the company at the material time, were charged in 2011 with one count each of providing false information in the company's prospectus and four counts each of submitting false statements to Bursa Malaysia in the company's quarterly financial statements from October 2005 to July 2006.</p> <p>Normah Sapar (Normah), a former accounts executive of Inix was also charged at the Sessions Court in 2011 with abetting Jimmy in committing the offences that he was charged with.</p> <p>All individuals pleaded guilty to the charges in 2011.</p>	<p>At Sessions Court, Jimmy was fined a total of RM1.1 million while Mok and Cheong were fined RM325,000 each and Normah was fined RM350,000. The High Court later affirmed the decision of the Sessions Court.</p> <p>Upon the SC's appeal to the Court of Appeal, Jimmy was sentenced to nine months imprisonment for each of the four charges of furnishing a false statement in the quarterly financial statements, an offence under section 122B of the SIA and nine months imprisonment for the charge under section 55 of the <i>Securities Commission Act 1993</i> (SCA) of causing the issuance of Inix's prospectus which contained false information.</p> <p>Mok, Cheong and Normah were sentenced to six months imprisonment for each of the four charges under section 122B of the SIA and six months imprisonment for the charge under section 55 of the SCA. The imprisonment sentences were in addition to the fines imposed earlier by the Sessions Court.</p> <p>The Court of Appeal held that the imprisonment sentences imposed on all four individuals for the four charges under section 122B of the SIA were to run concurrently.</p> <p>In total, Jimmy is to serve a sentence of imprisonment of 18 months while Mok, Cheong and Normah are to serve a total sentence of 12 months imprisonment each.</p>

For the period between January to August 2015, the SC entered into regulatory settlements with five individuals amounting to RM1,139,227.92 over insider trading breaches. The settlements reached are reflected in Table 8:

Table 8

Details of regulatory settlements as at 31 August 2015

Date	Parties	Amount	Entity involved
16 February	Puan Chan Cheong	RM475,531.92	Inti Universal Holdings Bhd
16 February	Loo Poh Keng	RM302,727	
16 February	Puan Kam Fook	RM218,520	
23 March	Sip Way Keong	RM71,224.50	Putrajaya Perdana Bhd
23 March	Pang Soo Ling	RM71,224.50	

Enforcement Highlights

Ongoing trials at the Sessions Court:

January and February 2015

PP v Lei Lin Thai, Chung Yin Mui, Ng Lai Sim, Wong Jun Mooi and Lau Sin Ling, Ang Pok Hong and Wendy Wong Soon Soon

The SC charged seven individuals with insider trading offences under section 188 of the CMSA.

April 2015

PP v Ramesh a/l Rajaratnam

On 29 April 2015, the SC charged Dato' Ramesh a/l Rajaratnam with three counts of insider trading under section 188 of the CMSA.

June 2015

PP v Alice Poh Gaik Lye and Goh Bak Ming

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

July 2015

PP v Goh Hock Choy and Siow Chung Peng

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

July 2015

PP v Alan Rajendram a/l Jeya Rajendram

On 9 July 2015, the SC charged Alan Rajendram, a former director of Linear Corporation Bhd (Linear) under section 369(b)(B) of the CMSA for authorising the furnishing of a false statement to Bursa Malaysia on 29 December 2009.

July 2015

PP v Tiong Kiong Choon and Stanley Thai Kim Sim

In December 2014, the SC charged Dato' Seri Stanley Thai Kim Sim with one count of communicating material non-public information to Tiong Kiong Choon, who was at the material time, a remisier with Inter-Pacific Securities Sdn Bhd, under section 188(3) of the CMSA. 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 commenced on 28 July 2015 and continued in October and November 2015.

August 2015

PP v Low Thiam Hock

In 1999, Low was charged for creating a misleading appearance with respect to the price of Repco Holdings Bhd (Repco) shares on 3 December 1997. He was alleged to have committed the offence by instructing a dealer's representative of Sime Securities Sdn Bhd to purchase 227 lots of Repco shares by taking up any offer price of the said shares offered by the sellers on the then Kuala Lumpur Stock Exchange. This case was remitted to the Sessions Court on 28 February 2013 for Low to enter his defence after the Court of Appeal allowed the SC's appeal against his acquittal at the end of the Prosecution's case in 2006. The defence case began on 18 October 2013 with Low's testimony and concluded on 17 September 2014. Parties have made submissions at the end of defence case on 10 August and 24 November 2015. The Court fixed for decision on 11 January 2016.

August 2015

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

Koh, Lee Han Boon and Saipuddin were charged on 21 March 2013 respectively with five counts of furnishing false statements relating to the revenue of Axis Incorporation Bhd (Axis) to Bursa Malaysia in four 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 four quarterly reports for the financial

year 2007. Trial against all four of them commenced in June 2015 and continued in July, August, October and November 2015. Trial is scheduled to resume in October and November 2015.

August 2015

PP v Tan Bee Hong and Tan Bee Geok

On 15 December 2014, the SC charged Tan Bee Geok, under section 188(3) of the CMSA, with one 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 also 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 commenced in April 2015 and continued in May, June, August, September and November 2015.

August 2015

PP v Ngu Tieng Ung

Ngu was charged in 2005 with two counts of securities fraud under section 87A(b) of the SIA and one count of criminal breach of trust under section 409 of the *Penal Code*. Ngu was alleged to have misappropriated RM37 million of Pancaran Ikrab Bhd's funds between 8 October and 21 October 1997. At the material time, Ngu was a director of Pancaran Ikrab Bhd. On 20 August 2013, the Sessions Court ordered Ngu to enter his defence after the SC had successfully proven a *prima facie* case for the alternative charge of criminal breach of trust under section 409 of the *Penal Code*. The trial against Ngu continued in October 2014 and March 2015 and on 1 July 2015, the defence closed its case after calling three witnesses. The court fixed 11 September 2015 for decision after hearing submissions by both parties. On 11 September 2015, the Sessions Court convicted Ngu for criminal breach of trust. He was sentenced to six years imprisonment and was also ordered to pay a fine of RM1 million, in default two years imprisonment.

May and August 2015

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

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

August 2015

PP v William Yue Chi Kin

William Yue, the engaging and signing partner of the audit firm which audited United U-Li Corporation Bhd (U-Li)'s financial statements for the financial year ended 31 December 2004, was charged in 2009 under section 122B(b)(bb) of the SIA read together with section 122C(c) of the SIA for abetting U-Li in making a misleading statement to Bursa Malaysia. He was charged after having failed to pay the compound offered by the Prosecution. On 9 January 2014, the Court held that the Prosecution had made out a *prima facie* case against Yue and called upon him to enter his defence. The defence closed its case in February 2015 after calling seven witnesses. Submission was made to the court in June 2015 and the Court thereafter fixed 21 October 2015 for decision. On 21 October 2015, the Sessions Court convicted William Yue for abetting U-Li in making a misleading statement to Bursa Malaysia. He was sentenced to one year imprisonment and was also ordered to pay a fine of RM400,000, in default six months of imprisonment.

Appeals and Applications

High Court

March 2015

PP v Tiong Kiong Choon and Stanley Thai Kim Sim.

On 12 February 2015, the Sessions Court directed the Prosecution to supply a list of prosecution's witnesses to the defence one week before commencement of the trial. Following this, the Prosecution filed an application to the High Court for a revision of the Sessions Court decision. The High Court on 16 March 2015 allowed the Prosecution's application and set aside the direction made by the Sessions Court on the supply of the witness list.

May 2015

PP v Tiong Kiong Choon and Stanley Thai Kim Sim

On 6 March 2015, Tiong applied to the High Court to strike out the two charges against him on the basis that there were multiplicity of charges, abuse of court process and lack of particulars in the charges. On 27 May 2015, the High Court dismissed his application. Tiong has appealed to the Court of Appeal against the High Court's decision.

May 2015

PP v Ang Pok Hong and Wendy Wong Soon Soon

In February 2015, the SC charged Ang Pok Hong with four counts of insider trading of TH Group Bhd's shares under section 188(2) of the CMSA. The SC also charged Ang's niece, Wendy Wong Soon Soon, for abetting Ang by allowing her CDS account to be used by Ang to acquire the TH Group Bhd's shares. On 10 March 2015, Ang and Wendy applied to the High Court to strike out the charges against them on the basis that there were multiplicity of

charges, abuse of court process and lack of particulars in the charges. On 27 May 2015, the High Court dismissed their application. They have appealed to the Court of Appeal against the High Court's decision.

June 2015

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

On 1 June 2015, the Sessions Court directed the Prosecution to provide the defence with a list of prosecution's witnesses. Following this, the Prosecution filed an application at the High Court for revision of the Sessions Court decision. The High Court on 1 July 2015 allowed the Prosecution's application and set aside the direction made by the Sessions Court on the supply of the witness list.

August 2015

PP v Lei Lin Thai and 4 Ors

In January 2015, the SC charged Lei Lin Thai with 53 counts of insider trading of TH Group Bhd's shares under section 188(2) of the CMSA. The SC also charged four other individuals, namely Ng Lai Sim, Wong Joon Moi, Lau Sing Ling & Chung Yin Mui, for abetting Lei by allowing their CDS accounts to be used by Lei to acquire the TH Group Bhd's shares. Lei, was at the material time, the Managing Director of TH Group Bhd. On 26 August 2015, Lei applied to the High Court to strike out the charges against him on the basis that the charges were unconstitutional, that there was a multiplicity of charges and abuse of court process. The application is fixed for case management on 18 December 2015.

Court of Appeal

April 2015

PP v Mok Chin Fan, Cheong Kok Yai, Normah Sapar and Jimmy Tok Soon Guan.

On 22 April 2015, the Court of Appeal allowed the SC's appeal against the sentence against Mok, Cheong, Normah and Jimmy Tok.

April 2015

Tan Hooi Chong v PP

On 10 November 2009, Tan Hooi Chong pleaded guilty to three alternative charges under section 32(6) of the SCA and was fined RM600,000 by the Sessions Court. Dissatisfied with the sentence, the SC thereafter filed an appeal against the said sentence at the High Court on 19 November 2009. On 17 January 2012, Tan Hooi Chong filed a motion to the High Court to strike out the SC's appeal against sentence *in limine* on the basis of an abuse of court process. The High Court however dismissed the motion and ordered the case to be remitted back to the Sessions Court for a retrial. Dissatisfied with the decision, Tan Hooi Chong further appealed to the Court of Appeal and the matter was heard on 2 September 2014 and 7 January 2015. On 21 April 2015, the Court of Appeal unanimously dismissed the appeal and upheld the decision made by the High Court for the matter to be retried at the Sessions Court.

May 2015

Wahid Ali Kassim Ali v PP

Wahid Ali, a former director and licensed fund manager of Aiwanna Manage Assets Sdn Bhd was convicted by the Kuala Lumpur Sessions Court in October 2005 of three charges under section 87A(c) of the SIA for omitting to provide material facts in its statements of account to its client, Eastern Pacific Industrial Corporation Bhd (EPIC). At the Sessions Court, he was sentenced to one-year imprisonment and a fine of RM1 million (in default of three years imprisonment) with respect to each charge. On 14 January 2013, the High Court dismissed Wahid's appeal against his conviction and sentence. He then appealed to the Court of Appeal against his conviction and sentence. On 14 May 2015, after hearing submissions of both parties on a preliminary objection raised by the Appellant, the Court of Appeal decided that the appeal be reheard at the High Court.

August 2015

Gan Boon Aun v PP

In July 2007, Gan Boon Aun, former Chief Executive Officer of Transmile Group Bhd (TGB), and Khiudin Mohd, former TGB's Executive Director, were charged before the Sessions Court under section 86(b) read together with section 122C(c) of the SIA. An alternative charge was preferred under section 122B (a)(bb) read together with section 122 (1) of the SIA. In March 2011, the Sessions Court ordered Gan Boon Aun and Khiudin Mohd to enter their defence on the alternative charge. In June 2011, both the accused filed an application in the High Court to challenge the constitutionality of section 122(1) of the SIA. In November 2011, the High Court upheld the challenge and ruled that the provision was unconstitutional. The Prosecution filed an appeal to the Court of Appeal against the decision of the High Court. The Court of Appeal heard the matter on 5 August 2015 and fixed for the decision on 28 September 2015. The Court of Appeal on 28 September 2015 overturned the decision of the High Court and held the provision to be valid and constitutional, but granted a stay of its decision pending the defence's appeal to the Federal Court.

Prosecution and Civil Enforcement – Ongoing Trial Calendar

Trial date	Accused/ Defendants	Offence
JANUARY		
13 & 15 January 2016	David Goh Hock Choy	<ul style="list-style-type: none"> • s.84(1) SIA
	Siow Chung Peng	<ul style="list-style-type: none"> • s.84(1) SIA read together with s.122C(c) SIA for abetment
26 & 28–29 January 2016	<ul style="list-style-type: none"> • Norhamzah Nordin • Mohd Azham Mohd Noor 	<ul style="list-style-type: none"> • s.122B(a)(bb) read together with s.122(1) SIA • s.369(a)(B) CMSA
	Helen Lim Hai Loon	<ul style="list-style-type: none"> • s.122B(a) (bb) read together with s.122C(c) SIA for abetment • s.369(a)(B) read together with s.370(c) CMSA for abetment
FEBRUARY		
2–4 February 2016	Ramesh a/l Rajaratnam	<ul style="list-style-type: none"> • s.188(2) CMSA
	<ul style="list-style-type: none"> • Koh Tee Jin • Lee Han Boon • Saipuddin Lim Abdullah 	<ul style="list-style-type: none"> • s.122B(b)(bb) SIA • s.369(b)(B) CMSA
	Lee Koon Huat	<ul style="list-style-type: none"> • s.122B(a) (bb) read together with s.122C(c) SIA for abetment
11–12 & 19 February 2016	<ul style="list-style-type: none"> • Norhamzah Nordin • Mohd Azham Mohd Noor 	<ul style="list-style-type: none"> • s.122B(a)(bb) read together with s.122(1) SIA • s.369(a)(B) CMSA
	Helen Lim Hai Loon	<ul style="list-style-type: none"> • s.122B(a) (bb) read together with s.122C(c) SIA for abetment • s.369(a)(B) read together with s.370(c) CMSA for abetment
29 February–2 March 2015	Tan Bee Hong	<ul style="list-style-type: none"> • s.188(2)(a) CMSA
	Tan Bee Geok	<ul style="list-style-type: none"> • s.188(3)(a) CMSA
MARCH		
1–4 & 7–10 March 2016	Amran Awaluddin	<ul style="list-style-type: none"> • s.89E(2)(a) SIA
	Nooralina Mohd Shah	<ul style="list-style-type: none"> • s.89E(2)(a) read together with 122(C)(c) SIA for abetment
1–3 March 2016	Alice Poh Gaik Lye	<ul style="list-style-type: none"> • s.87A(a) SIA
	Goh Bak Ming	<ul style="list-style-type: none"> • s.87A(a) read together with s.122C(c) SIA for abetment
8–10 March 2016	David Goh Hock Choy	<ul style="list-style-type: none"> • s.84(1) SIA
	Siow Chung Peng	<ul style="list-style-type: none"> • s.84(1) SIA read together with s.122C(c) SIA for abetment
14–16 March 2016	<ul style="list-style-type: none"> • Jackson Tan Han Kook • Derec Ching Siew Chong 	<ul style="list-style-type: none"> • s.369(b)(B) CMSA
22–25 March 2016	<ul style="list-style-type: none"> • Koh Tee Jin • Lee Han Boon • Saipuddin Lim Abdullah 	<ul style="list-style-type: none"> • s.122B(b)(bb) SIA • s.369(b)(B) CMSA
	Lee Koon Huat	<ul style="list-style-type: none"> • s.122B(a)(bb) read together with s.122C(c) SIA for abetment

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