

The

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Executive Summary

Strengthening Corporate Governance through Proactive Measures

Strong corporate governance (CG) among market participants, including public-listed companies (PLCs) is fundamental to market integrity and investor confidence.

Strong corporate governance for market integrity and investor confidence

In the SC's commitment to foster strong CG in the capital market, in 2000, the SC issued the *Malaysian Code on Corporate Governance*. The Code was revised in 2007 to further strengthen the CG practices in Malaysia to be in line with global developments.

In 2011, the SC launched the *Corporate Governance Blueprint 2011* (CG Blueprint) which provides the action plan to raise the standards of CG in Malaysia by strengthening self and market discipline respectively and promoting greater internalisation of the culture of CG.

CG Blueprint – action plan to raised CG standards in Malaysia

The first deliverable of the Blueprint was the *Malaysian Code on Corporate Governance 2012*. This 2012 Code sets out the broad principles and specific recommendations on structures and processes which companies should adopt in making good corporate governance an integral part of their business dealings and culture. The 2012 Code supersedes the *Malaysian Code on Corporate Governance 2007*.

These initiatives were followed by the launching of the *Malaysia Code for Institutional Investors* which provides for the broad principles of effective stewardship by institutional investors such as their disclosures of stewardship policies, monitoring of and engagement with investee companies and managing conflict of interests.

Code for institutional investors to provide principles of effective stewardship

As a result of these initiatives, the biennial *Corporate Governance Watch Report 2014* reported Malaysia as achieving an overall score of 58% in 2014 compared to 49% in 2007, whilst maintaining its rank of fourth in the region. This is a significant milestone within the Malaysian capital market history.

This issue of *The Reporter* highlights the SC's effort in embarking on a series of direct engagements with PLCs and directors pursuant to its proactive pre-emptive surveillance activities. This initiative is undertaken by the SC to strengthen corporate governance practices by PLCs in support of the other initiatives mentioned above.

Direct engagement with PLCs directors as proactive pre-emptive surveillance activities

In respect of enforcement action, this issue features charges against the Chief Executive Officer, Group Executive Director of APL Industries Bhd and two others for breaches of securities laws mainly in relation to insider trading of APL Industries Bhd shares. There is a clear need for all market participants to subscribe to the highest standard of professional integrity.

Directors charged for insider trading

Two regulatory settlements were entered into between the SC and Wong Thean Soo, Managing Director of MyEG Services Bhd and Siva Kumar a/l M. Jeyapalan and Dato' Azmil Khalili Dato' Khalid of Metacorp Bhd respectively, involving market manipulation and insider trading of shares.

*A fund management
company directed to
disclose chargeable
performance fees to
its clients*

During the last quarter of 2014, the SC directed a fund management company to disclose to its clients by 31 December 2014, the chargeable performance fees as prescribed under Paragraphs 7.01 and 7.03 of the *Guidelines on Compliance Function for Fund Management Companies*. The direction was issued when the SC's examination found that it had failed to disclose the deferred performance fees chargeable annually in its statements issued to its clients.

Corporate surveillance

Following its pre-emptive surveillance activities over PLCs, the SC has conducted 13 engagement sessions with directors of eight PLCs from the period of 1 September to 31 December 2014.

The key message conveyed during the above engagement sessions is the need for PLC directors to be constantly mindful of their fiduciary duties so as to ensure that all transactions undertaken by the PLCs are above board and in the best interest of its shareholders.

Administrative action

Directives imposed on Capital Dynamics Asset Management Sdn Bhd, 29 September 2014

On 29 September 2014, Capital Dynamics Asset Management Sdn Bhd (CDAM), a Capital Markets Services Licence holder carrying out fund management activity was found to be in breach of section 356 of the *Capital Markets and Services Act 2007* (CMSA) for failure to comply with the SC's *Guidelines on Compliance Function For Fund Management Companies*, for non-disclosure of the deferred performance fees chargeable annually in the statements issued to its clients. The SC thus directed CDAM to disclose to its clients by 31 December 2014 the chargeable performance fees in accordance with Paragraphs 7.01 and 7.03 of the *Guidelines on Compliance Function for Fund Management Companies*.

Enforcement Action

SC charges four individuals for insider trading

In December 2014, the SC charged Stanley Thai Kim Sim, Tiong Kiong Choon, Tan Bee Geok and Tan Bee Hong for insider trading offences under section 188 of the CMSA.

Thai, who was the Chief Executive Officer of APL Industries Bhd (APLI) at the material time, was charged with one count of communicating non-public information to Tiong. The non-public information was in relation to the audit adjustments proposed by APLI's auditors for the financial year ended 30 June 2007 and the classification of APLI as a PN17 company. Tiong was charged for disposing 6,208,500 APLI shares whilst in possession of this non-public information. He disposed the APLI shares via accounts belonging to his mother-in-law, and his mother on 26 and 29 October 2007.

Tan Bee Geok, who was at the material time the Group Executive Director of APLI, was also charged with one count of communicating the same inside information to her sister, Tan Bee Hong, between 23 October 2007 and 31 October 2007. One charge was also preferred by the SC against Tan Bee Hong for disposing, on 31 October 2007, 350,000 units of APLI shares held in her account while in possession of the inside information.

All four accused persons claimed trial to the respective charges preferred.

Regulatory Settlements

MyEG Services Bhd

On 26 September 2014, Wong Thean Soon entered into a settlement with the SC in the sum of RM7,000,000 when he agreed without admission or denial of liability, to settle a claim that the SC was proposing to institute against him and 13 other individuals for the manipulation of MyEG Services Bhd shares between 16 January 2007 and 24 April 2007, contrary to section 84(1) of the *Securities Industry Act 1983* (SIA). The settlement was reached following a letter of demand sent by the SC pursuant to its civil enforcement powers.

Metacorp Bhd

On 3 October 2014, both Siva Kumar a/l M.Jeyapalan and Dato' Azmil Khalili Dato' Khalid entered into a settlement with the SC in the sum of RM782,839.17 and RM249,750.00 respectively when they agreed without admission or denial of liability, to settle claims that the SC was proposing to institute against them for insider trading in the shares of Metacorp Bhd (Metacorp) between 14 and 22 February 2008, contrary to section 188(2) of the CMSA. The settlement was reached following letters of demand sent by the SC pursuant to its civil enforcement powers under the securities laws. In accordance with the provisions of section 201(7) of the CMSA, the amount recovered from them will be used first to reimburse the SC for all costs of investigations and proceedings. Any remaining amount if available will be used to compensate the sellers who sold their Metacorp shares before the information became generally available.

Enforcement Highlights

Ongoing trials from September – December 2014 Sessions Court:

- September 2014 – *PP v Low Thiam Hock*. Low was charged in 1999 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 prices of the said shares offered by the sellers on the then Kuala Lumpur Stock Exchange. This case was reverted 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 the testimony of the accused and concluded on 17 September 2014. The case has been fixed for decision on 26 February 2015.
- September 2014 – *PP v Tan Han Kook and Ching Siew Cheong*. Tan Han Kook, 59, and Ching Siew Cheong, 51, were each charged on 11 September 2013 with seven and eight counts respectively, of furnishing false statements relating to the revenue of Silver Bird Group Bhd in 2010 and 2011, to Bursa Malaysia. The charges, under section 369(b)(B) of the CMSA, were in relation to false statements contained in Silver Bird Group Bhd's eight unaudited quarterly financial accounts for the financial years ended 31 October 2010 and 2011. Trial against both accused persons is scheduled to begin on 23 January 2015.
- October 2014 – *PP v Alice Poh Gaik Lye and Goh Bak Ming*. Alice Poh, a former business co-ordinator of Liqua Health Corporation Bhd (Liqua), was charged in 2010 under section 87A(a) of the SIA for allegedly committing a scheme to defraud Liqua in connection with the purchase of Liqua shares. Besides Alice Poh, Goh Bak Ming, a former director of Liqua was also charged for abetting Alice Poh in committing the offence. The trial proceeded in October 2014 and is scheduled to continue on 4 February 2015.
- October 2014 – *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, a director of Pancaran Ikrab Bhd (PIB) during the material time, was alleged to have misappropriated RM37 million of PIB's funds between 8 October and 21 October 1997. On 20 August 2013, the Sessions Court ordered for Ngu to enter his defence after the SC had successfully proven a prima facie case for the alternative charge of criminal breach of trust of RM37 million under section 409 of the *Penal Code*. The trial against the accused continued in October 2014. The case has been fixed for continued trial in March 2015.
- November 2014 – *PP v Norhamzah Nordin, Mohd Azham Mohd Noor and Lim Hai Loon*. On 7 June 2011, Norhamzah, the then Managing Director of Kosmo Technology Industrial Bhd (Kosmo Tech), was charged with furnishing false statements in eight of Kosmo Tech's quarterly reports for financial years 2006 and 2007 to Bursa Malaysia. Earlier, on 26 May 2011, Mohd Azham Mohd Noor, a director of Kosmo Tech was also charged with furnishing false statements in eight of Kosmo Tech's quarterly reports to Bursa Malaysia Bhd while Lim Hai Loon, the company's accounts manager was charged with abetting the company to furnish the false statements. The trial against the accused persons continued in September and November 2014. The case is scheduled to continue on 26 January 2015.

- December 2014 – *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 same Act for abetting U-Li in making a misleading statement to Bursa Malaysia. On 9 January 2014, the Court held that the Prosecution had made out a prima facie case against the accused on the offence charged and called upon the accused to enter his defence. The trial against the accused continued in the months of September and December 2014. The case has been fixed for continued trial in February 2015.
- December 2014 – *PP v Goh Hock Choy & Siow Chung Peng*. On 4 September 2012, the SC charged former remisier Goh Hock Choy, for manipulating Lii Hen Industries Bhd (Lii Hen) shares between March 2004 and October 2004. Another individual, Siow Chung Peng, was charged in the same court with abetting Goh in the commission of the offence. Trial against Goh and Siow commenced in September 2014, and continued in the months of October, November and December 2014. Trial is scheduled to continue on 10 March 2015.
- December 2014 – *PP v Tiong Kiong Choon, Thai Kim Sim, Tan Bee Geok and Tan Bee Hong*. The SC charged four individuals with insider trading offences under section 188 of the CMSA. (Please see Article on page 3)

Appeals and applications

High Court

- November 2014 – *PP v Shukri Sheikh Abdul Tawab and Chin Khim Feung*. Both Shukri and Chin were charged in 2007 for furnishing misleading statements to Bursa Malaysia. The misleading statements were in relation to Transmile's revenue in its quarterly report of unaudited consolidated results for the financial year ended 31 December 2006. They were convicted and sentenced by the Sessions Court to one year imprisonment and a fine of RM300,000 each in October 2011. Both Shukri and Chin appealed against the conviction and sentence to the High Court. The appeal is fixed for hearing in May 2015.

Court of Appeal

- October 2014 – *PP v Tan Hooi Chong*. Tan Hooi Chong, a director of Kiara Emas Asia Industries Bhd (KEAIB), was convicted for three counts of abetting KEAIB in misappropriating its rights issue proceeds amounting to RM16.9 million. He was sentenced to a fine of RM200,000 (in default, six months imprisonment) for each charge. The SC filed an appeal against the sentence to the High Court while the accused also filed a cross appeal against the sentence. On 23 March 2012, the High Court remitted the matter to the Sessions Court for retrial. Tan filed an appeal to the Court of Appeal against the High Court's order for the retrial. The hearing of the appeal commenced on 3 September 2014 and concluded on 7 January 2015. Parties will be informed of a decision date by the Court of Appeal.

Infringement notices

During the period of September – December 2014, a total of three Supervisory Letters, 11 Warning Letters and 26 Non-Compliance Letters were issued against intermediaries for, amongst others, non-compliances with securities laws.

In this regard, 2014 has shown that the SC issued 26 Non-Compliance Letters and 9 Warning Letters to PLCs that have failed to submit their audited annual accounts to the SC within two weeks from the date of its annual general meeting.

The SC views such a breach seriously given that audited annual accounts provide vital information about the financial health of a PLC. Non-compliance of this provision may consequentially impede regulatory conducts over PLCs by the SC.

FOR MORE INFORMATION

www.sc.com.my

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