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## Executive Summary

The existence of a fair and orderly market is crucial to instill trust and confidence of investors in the market place. Market misconduct such as market manipulation and insider trading are activities that threaten the orderly functioning of a market and the Securities Commission Malaysia (the SC) has been uncompromising in its effort to rid the market of such abuses. Shortly after bringing a criminal charge against a prominent corporate lawyer in July last year for insider trading<sup>1</sup>, in September the same year the SC charged a former remisier for manipulating Lii Hen Industries Bhd shares.

The SC actively monitors the submission of financial statements prepared by auditors of Public Interest Entities (PIEs) as auditors have a duty to ensure that PIEs maintain accurate and fair financial records and statements. To this end, the Audit Oversight Board (AOB) was established in 2010 to register and oversee auditors. In October last year, AOB has reprimanded and imposed a monetary penalty of RM5,000 against an engagement partner of an auditing firm for failure to comply with relevant requirements of the by-laws of Malaysian Institute of Accountants (MIA) and the International Standards on Auditing (ISA).

The SC also successfully secured a conviction and a custodial sentence against a former director of LFE Corporation Bhd for permitting the submission of false information in the financial statement of the company.

This issue of *The Reporter* also covers the SC's supervisory efforts. The SC's on-going supervisory efforts over licenced intermediaries had resulted in the SC issuing five supervisory letters to fund management companies, stockbroking companies and an individual licensed representative for non-compliance of the relevant requirements of securities laws, rules and the SC's guidelines

<sup>1</sup> For more detail, please refer to August 2012 Issue of *The Reporter*

## Illegal futures trading: SC recovers RM2.3 million from seven individuals

On 9 August 2012, the SC successfully obtained a judgment in the High Court against seven individuals for being involved in futures trading activities without licence. The seven individuals are Ahmad Nazmi Mohamed, Mohd Shahrul Firdaus Zakaria, Mohd Khalid bin Sujud, Fakhru Arif Ahmad Husni, Fakhru Mukmin Ahmad Husni, Fakhru Razi Ahmad Husni and Ahmad Fauzi Ambran (the Defendants). The Defendants agreed to settle a sum of more than RM2.3 million, being the amount solicited from members of the public.

High Court judge, Justice Dato' Mary Lim Thiam Suan ordered that all amounts recovered by the SC are to be applied at its discretion to restate investors. The Defendants were also ordered to pay costs to the SC. The consent judgment was recorded after the case had proceeded to trial where nine witnesses including seven members of the public had testified.

## SC charges former remisier for market manipulation

On 4 September 2012, the SC charged a former remisier of SJ Securities, Dato' David Goh Hock Choy (Goh) under section 84(1) of the *Securities Industry Act 1983* (SIA) for market manipulation. He was charged for creating a misleading appearance of active trading of Lii Hen Industries Bhd (Lii Hen) shares by being involved in the sale and purchase transactions which did not result in any change of beneficial ownership. The trades were executed through 42 accounts at 9 stockbroking companies between March and October 2004.

Another individual, Siow Chung Peng (Siow), was charged with abetting Goh in the commission of the offence. Both Goh and Siow claimed trial to the charges. The trial date has yet to be fixed.

Market manipulation is prohibited in Malaysia and is punishable under Section 88B of the SIA (now Section 182 of the *Capital Markets Services Act 2007* (CMSA)) that provides for a fine of not less than RM1 million and an imprisonment not exceeding 10 years upon conviction.

## Former director of LFE Corporation Bhd convicted and fined for furnishing false statements

On 10 October 2012, the Sessions Court found a former director of LFE Corporation Bhd (LFE), Alan Rajendram a/l Jeya Rajendram guilty on all four charges brought against him by the SC in June 2010. Two charges were made under section 122B of the *Securities Industry Act 1983* while another two charges were under section 369 of the *Capital Markets and Services Act 2007* for knowingly permitting the furnishing of false statements by LFE to Bursa Malaysia Securities Bhd. The false statements concerned LFE's unaudited financial results for financial year ended 31 December 2007.

The Court sentenced Alan Rajendram to one year imprisonment and a fine of RM300,000 for each offence and ordered the imprisonment term for all charges to run concurrently after hearing testimonies from 35 witnesses. In delivering her decision, Judge Puan SM Komathy Suppiah noted that the accused had failed to offer any credible explanation and held that the defence put forward by him only served to confirm and strengthen SC's case.

Alan Rajendram has appealed against the decision.

## Engagement partner penalised for failure to comply with Malaysian Institute of Accountants by-laws and relevant International Standards of Auditing recognised in Malaysia

On 29 October 2012, the Audit Oversight Board (AOB) reprimanded and imposed a monetary penalty of RM5,000 against a partner of T.C. Liew & Co. for failure to comply with relevant requirements of the Malaysian Institute of Accountants by-laws (MIA) and the International Standards on Auditing (ISA). He was the engagement partner overseeing audits of PIEs.

PIEs include a public listed company, a financial institution licensed under the *Banking and Financial Institutions Act 1989*, an insurance company licensed under the *Insurance Act 1996*, a takaful operator registered under the *Takaful Act 1984*, an Islamic bank licensed under the *Islamic Banking Act 1983*, a development financial institution prescribed under the *Development Financial Institutions Act 2002*, a holder of the Capital Markets Services Licence for the carrying on of the regulated activities of dealing in securities and dealing in derivatives and fund management companies licensed by the SC.

## Examination, inspection and supervisory actions

From August–December 2012, the SC issued four supervisory letters against licensed persons for breaching relevant requirements of the securities laws, rules and guidelines.

Out of the four supervisory letters, one was issued against an employee of an investment bank for giving advice on corporate finance before he was licensed to do so. Two supervisory letters were issued to two fund management companies separately for weaknesses in supervisory framework relating to operational risk and adequacy of internal control of the company.

Another supervisory letter was issued against an investment bank as a principal adviser of a corporate submission. The investment bank has failed to carry out adequate due diligence to ensure that conflict of interest issues were properly assessed, disclosed and addressed in the submission, as required under the *Equity Guidelines*.

## Enforcement Highlights

### Ongoing Trials

#### Sessions Court:

- August 2012 – *PP v William Yue Chi Kun*. The trial against William Yue continued in the months of October, November and December 2012. 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 under Section 122B(b)(bb) of the *Securities Industry 1983 Act 1983* (SIA) for abetting U-Li in submitting a false report to Bursa Malaysia. Trial is scheduled to continue on 22–23 January 2013.
- September 2012 – *PP v Dato' David Goh Hock Choy*. On 4 September 2012, the SC charged former remisier Dato' David Goh Hock Choy, aged 50, for manipulating Lii Hen Industries Berhad (Lii Hen) shares between March 2004 and October 2004. Another individual, Siow Chung Peng, aged 42, was charged in the same court with abetting Goh in the commission of the offence. See Article on page 2.
- October 2012 – *PP v Alan Rajendram all Jeya Rajendram*. On 10 October 2010, the Sessions Court sentenced a former director of LFE, Alan Rajendram a/l Jeya Rajendram, to one year imprisonment and a total fine of RM1.2 million for knowingly permitting the furnishing of false statements by LFE to Bursa Malaysia Securities Berhad. See Article on page 2.
- October 2012 – *PP v Alice Poh Gaik Lye and Goh Bak Ming*. The trial against Poh and Goh continued in September and October 2012. 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. The fraud related to a sum of RM12 million which Liqua was said to have paid to an entity called Wynsum Sdn Bhd. Out of this sum, a total of RM9.75 million was alleged to have been used by Alice Poh to finance the purchase of 45 million Liqua shares. Besides Alice Poh, Goh Bak Ming, a former director of Liqua was charged under Section 87A(a) read together with Section 122C(c) SIA for abetting her. Trial is scheduled to continue on 15 March 2013.
- November 2012 – *PP v Ngu Tieng Ung*. The Prosecution closed its case against Ngu Tieng Ung on 28 November 2012 after having called 33 witnesses. Ngu was charged in 2005 with two counts of securities fraud under Section 87A(b) SIA and one count of criminal breach of trust under Section 409 of the *Penal Code*. The court ordered both parties to file in written submissions and fixed 17 January 2013 for clarifications.
- November 2012 – *PP v Zamani Hamdan*. The Prosecution closed its case against Zamani on November 2012 after having called 16 witnesses. Zamani, a director of Rantau Simfoni Sdn Bhd, was charged on 28 October 2011 under Section 59(1) and Section 58(1) of the *Capital Markets Services Act 2007* (CMSA) for holding himself out as a representative of an investment bank to trade in futures contracts. Zamani was also charged in the alternative for carrying on the business of trading futures contracts without a license through his company, Rantau Simfoni. The court will deliver its decision on 23 January 2013.
- December 2012 – *PP v Ravandran and Kenneth Tan Kam Sang*. The Sessions Court acquitted and discharged both accused persons at the end of the prosecution case on 13 December 2012. Ravandran and Kenneth were both charged in 2004 under Section 32B(1) of the *Securities Commission Act 1993* (SCA) for their alleged false reports in the Follow-up Questionnaire to the SC concerning the utilisation of Kiara Emas Asia Industries Bhd's rights issue proceeds. The Prosecution has filed an appeal to the High Court against this decision.

- December 2012 – *PP v Chee Kok Wing, Shamsul Khalid Ismail and Mah Soon Chai*. The trial against Chee, Shamsul and Mah continued in October, November and December 2012. Chee and Shamsul were charged in 2007 for causing the issuance of NasionCom Holdings Bhd's (NHB)'s Annual Report 2005 which contained false information, namely the revenue of NHB for the financial period ended 31 July 2005. Chee was also charged with causing the issuance of NHB's prospectus which was alleged to contain misleading information namely the top 10 customers of NHB for the period ended 31 July 2005. He was also charged with an offence under the *Companies Act 1965* for authorising the making of false statements in documents which were used in the preparation of financial statements contained in NHB's 2005 Annual Report. Mah was charged for abetting NHB in submitting false information contained NHB's 2005 Annual Report to the SC. The trial is scheduled to continue in January 2013.

## Appeals

### High Court

- October 2012 – *Anuar Abdul Aziz v PP*. On 12 October 2012, the High Court dismissed the Prosecution's appeal against the Sessions Court's decision to acquit and discharge Anuar at the end of the defence case. Anuar was charged for acting as a fund manager's representative for Corporate Eight Asset Management Sdn Bhd without a licence. The Sessions Court acquitted and discharged Anuar at the end of defence case, upon which the SC appealed against the acquittal to the High Court. The Prosecution has since filed an appeal to the Court of Appeal.

FOR MORE INFORMATION

[www.sc.com.my](http://www.sc.com.my)

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