

## CONTENTS

### ARTICLES

#### 3 Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Focus

- TA Securities Holdings Bhd fined RM150,000
- Okachi (Malaysia) Sdn Bhd fined RM200,000

### OTHER ARTICLES

#### 4 Conviction against a Managing Director and Chief Executive Officer of a company for unlicensed trading in futures contract

#### 4 The SC reprimands a bond trustee for failure to perform its duties as a trustee

### ENFORCEMENT HIGHLIGHTS

- 5 Ongoing trials
- 6 Appeals

## Executive Summary

Money laundering and terrorism financing poses a threat to the effective functioning of the capital market and financial system as a whole. As a supervisory authority recognised under the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001* (AMLATFA), the Securities Commission Malaysia (SC) plays an important role in enforcing compliance and ensuring the Malaysian capital market is not used as a conduit for money laundering and terrorism financing activities.

The SC first issued the *Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries* (ML/TF Guidelines) in 2004 and the guidelines were recently revised to incorporate international best practices issued by the Financial Action Task Force (FATF).

In SC's continuous effort to ensure compliance with the Anti Money Laundering/Countering the Financing of Terrorism (AML/CFT) requirements, administrative actions were taken against two intermediaries during this quarter. In the first case, SC imposed a fine of RM200,000 against Okachi (Malaysia) Sdn Bhd, a futures broking house, for failure to conduct proper customer due-diligence (CDD) as required under the ML/TF Guidelines. A fine was also imposed against a stockbroking company, TA Securities Holdings Bhd, for failure to conduct adequate CDD and have in place an effective system to detect and report suspicious transactions.

In protecting the interest of investors, the SC conducts investigation and take enforcement action against persons who conduct regulated activities without a license. To this extent, SC had charged Zamani Hamdan, a Managing Director and Chief Executive Officer of Rantau Simfoni Sdn Bhd for trading in futures contract without a license under the *Capital Markets & Services Act 2007* (CMSA). In this quarter, the court convicted Zamani Hamdan and imposed a fine of RM1 million (in default of one year imprisonment). Investors are advised to be vigilant when investing in capital market products and ensure that they deal only with persons licensed by the SC. A List of Licensed Holders is provided in the SC's website for ease of reference.

*SC plays an important role in enforcing compliance under the AMLATFA*

*SC continues to enforce international standards against money laundering and terrorism financing*

*Breaches of AML/CFT Guidelines by a stockbroking company*

*SC constantly takes action against unlicensed trading to protect investors*

Malaysia remains the third largest local currency bond market in Asia based on Gross Domestic Product, after Japan and South Korea. Improvements in the legal, regulatory and institutional framework has enabled the continued deepening and broadening of the Malaysian bond market. The increasing pool of fixed income professionals provided the necessary expertise to originate debt and sukuk structures to meet the financing requirements and investment needs of both the private and public sector.

*Trustee's failure to meet obligations under CMSA*

Given the size of the bond market, bond trustees' role in protecting the interest of the bondholders is further amplified. In this regard, section 273 CMSA places certain statutory duties and obligations on trustees in the performance of their functions such as to ensure that the borrower or guarantor complies with the terms, provisions or covenants of the debentures or the trust deed and that such borrower provides remedies for such breaches. In July 2013, the SC reprimanded Universal Trustee (Malaysia) Bhd for:

- not informing the SC of the issuer's failure to remedy the breaches of a trust deed; and
- not calling a meeting of bondholders and placing before such meeting proposals for the protection of bondholders.

## ARTICLES

### Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Focus

- **TA Securities Holdings Bhd fined RM150,000 for breaching AML and Market Conduct Guidelines**

On 25 April 2013, SC imposed a RM150,000 fine against TA Securities Holdings Bhd (TASH) for failure to comply with SC's *Guidelines on Prevention of Money Laundering and Terrorism Financing For Capital Market Intermediaries* (ML/TF Guidelines) and the *Guidelines on Market Conduct and Business Practices for Stockbrokers and Licensed Representatives* (Market Conduct Guidelines).

The breaches committed by TASH were as follows:

- failure to have and implement an effective system to detect and report suspicious transactions;
- failure to provide adequate employee training and to conduct independent audit on compliance programmes; and
- failure to have in place adequate customer due diligence processes.

SC further directed TASH to take immediate remedial action to address the inadequacies in its supervisory policies and internal control procedures. The management of TASH is also required to intensify their awareness of regulatory responsibilities and ensure that these responsibilities are discharged effectively and efficiently.

- **Okachi (Malaysia) Sdn Bhd fined RM200,000 for breaching AML Guidelines**

On 10 May 2013, the SC imposed a RM200,000 fine against Okachi (Malaysia) Sdn Bhd (Okachi) for its failure to comply with SC's ML/TF Guidelines, the *Licensing Handbook*, the *Compliance Guidelines for Futures Brokers* and the *Rules of the Bursa Malaysia Derivatives Bhd*.

The breaches were in relation to:

- inadequate CDD processes;
- failure to develop an effective system to detect suspicious transactions;
- failure to conduct adequate staff training; and
- failure to perform independent audit on AML/CFT compliance programmes.

SC further directed Okachi's Board of Directors (Board) and Compliance Officer to attend at least two AML/CFT training programmes within the next 12 months.

SC views the compliance framework for AMLA in Okachi as inadequate given SC's earlier examination finding in 2010

Okachi was also found to have breached the *Rules of the Bursa Malaysia Derivatives Bhd* when it failed to establish and maintain a proper system to supervise and achieve compliance with the said Rules.

## OTHER ARTICLES

- **Conviction against a Managing Director and Chief Executive Officer of a company for unlicensed trading in futures contract**

On 30 April 2013, the Sessions Court convicted Zamani Hamdan for carrying on the business of trading in futures contracts through his company, Rantau Simfoni Sdn Bhd without a Capital Markets Services License. He was sentenced to pay a fine of RM1 million (in default of one year imprisonment) under section 58(1) read together with section 367(1) of the CMSA.

Zamani who was the Managing Director and Chief Executive Officer of the company committed the offence between March and April 2010 where he collected RM215,000 from 11 investors throughout this period. Zamani has since filed an appeal to the High Court against the conviction and sentence and the Prosecution has filed a cross appeal against the sentence.

- **The SC reprimands a bond trustee for failure to perform its duties as a trustee**

On 15 July 2013, Universal Trustee (Malaysia) Bhd (UTMB), was reprimanded for not informing SC of the issuer's failure to remedy breaches of the trust deed and for not calling a meeting of bondholders and placing before such meeting, proposals for the protection of the bondholders and obtain their directions in relation to the same. In this regard, UTMB breached section 273(1)(d) and (e) of the CMSA.

## ENFORCEMENT HIGHLIGHTS

### Ongoing trials

#### Sessions Court:

- April 2013 – *PP v Zamani Hamdan*. On 30 April 2013, the Sessions Court convicted Zamani Hamdan and imposed a sentence of a fine of RM1 million (in default of one year imprisonment) under section 58(1) read together with section 367(1) of the CMSA. (see full article on page 3 – Conviction against a Managing Director and Chief Executive Officer of a company for unlicensed trading in futures contract)
- May 2013 – *PP v Alice Poh Gaik Lye and Goh Bak Ming*. Poh, a former business co-ordinator of Liqua Health Corporation Bhd (Liqua), was charged in 2010 under section 87A(a) of the Securities Industry Act 1983 (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 Poh to finance the purchase of 45 million Liqua shares. Besides 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. The trial proceeded on 7 and 8 May 2013 where the prosecution called, inter alia, the former personal assistant to Goh Bak Ming, a former administrative clerk at Liqua's subsidiary, Liqua Health Marketing (M) Sdn Bhd and a former Executive Director of Liqua. The trial has been scheduled to continue on 21 to 23 October and 20 to 21 November 2013.
- May – July 2013 – *PP v Chee Kok Wing, Shamsul Khalid Ismail and Mah Soon Chai*. 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 December 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 2004. 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 continued on 14 and 15 May, 12 and 14 June, and 1 to 5 and 19 July 2013. The Prosecution had closed its case and filed full submissions. On 13 September 2013, the Sessions Court acquitted and discharged Chee, Shamsul and Mah. The Prosecution had since filed an appeal to the High Court.
- May–August 2013 – *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 under section 122B(b)(bb) of the SIA read together with section 122C(c) of the same Act for abetting U-Li in submitting a false report to Bursa Malaysia. The trial against William Yue continued on 15–16 May, 5–6 June, 16–17 July and 29 August 2013. On 29 August 2013, the Prosecution closed its case. The Court fixed 6 December 2013 to hear submissions from the parties.
- July 2013 – *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) of the SIA and one count of criminal breach of trust under section 409 of the Penal Code. After considering full submissions from the parties, on 20 August 2013, the Court found that the Prosecution had successfully proven a prima facie case for the alternative charge under section 409 of the Penal Code and ordered Ngu to enter his defence. Case is fixed for hearing of the defence case on 31 October, 1 and 18-19 November 2013.

- July–August 2013 – *PP v Norhamzah Nordin, Mohd Azham Mohd Noor and Lim Hai Loon*. Continued trial proceeded on 31 July and 1–2 August 2013. On 7 June 2011, Norhamzah, the then Managing Director of Kosmo Technology Industrial Bhd (Kosmo Tech), a company once listed on the Second Board of Bursa Malaysia, was charged with furnishing false statements in eight of Kosmo Tech’s quarterly reports to Bursa Malaysia. Earlier, on 26 May 2011, Mohd Azam 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 case has been fixed for continued hearings on 17–18 October, 24–25 October and 14–15 November 2013.
- August 2013 – *PP v Koh Tee Jin, Lee Han Boon, Saipuddin Lim Abdullah and Lee Koon Huat*. Koh, Lee and Saipuddin were charged on 21 March 2013 with five counts of furnishing false statements relating to the revenue of Axis Incorporation Bhd (Axis) to Bursa Malaysia for four quarterly reports for financial year 2007 and the quarter ending 31 March 2008. Lee was charged on 26 March 2013 with four counts of abetting Axis in furnishing false statements relating to the revenue of Axis to Bursa Malaysia for four quarterly reports for the financial year 2007. The Court fixed 8 October 2013 for hearing of the defence’s application for an order that the prosecution disclose certain documents to the defence.

## Appeals

### High Court

- May – July 2013 – *PP v Mok Chin Fan, Cheong Kok Yai, Normah Sapar and Jimmy Tok Soon Guan*. All defendants pleaded guilty and were fined by the Sessions Court on 26 September 2011. The SC filed an appeal to the High Court on the basis of inadequate sentence imposed against the four accused. On 9 July 2013, the High Court dismissed the SC’s appeal and upheld the sentence imposed by the Sessions Court (the decision of the High Court) after hearing full submissions from the parties. On 19 July 2013, the SC filed an appeal to the Court of Appeal against the decision of the High Court. To date, the parties are still awaiting the grounds of judgment and record of appeal to be issued by the Court.

### Court of Appeal

- August 2013 – *Anuar Abdul Aziz v PP*. On 15 August 2013, the Court of Appeal dismissed the Prosecution’s appeal against the High Court’s decision to uphold the decision of the Sessions Court Judge who acquitted and discharged Anuar at the end of the defence case. Anuar has been charged for acting as a fund manager’s representative for Corporate Eight Asset Management Sdn Bhd without a licence.
- August 2013 – *PP v Mohamed bin Abdul Wahab*. On 19 February 2013, the SC filed an appeal to the Court of Appeal against the decision of the High Court Judge who dismissed the SC’s appeal and upheld the decision of the Sessions Court to acquit and discharge the accused after full trial. On 25 July 2013, the Court of Appeal heard submissions from the parties and the Court will notify the parties when it is ready to deliver its decision. Abdul Wahab was charged under section 122B(b) (bb) of the SIA for submitting false information to the SC.

FOR MORE INFORMATION

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

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