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Enforcement Highlights

Executive Summary

The investment management industry is currently one of the fastest growing segments of the Malaysian capital market. It follows therefore that the role of fund managers in adhering to high standards of regulatory compliance is critical. In circumstances where clients' assets are compromised, the SC will not hesitate to take appropriate enforcement action to ensure that breaches of licence conditions and unacceptable conduct by fund managers are swiftly addressed.

On 23 July 2010, the SC revoked the licence of a fund manager, SJ Asset Management Sdn Bhd, after it had breached requirements in relation to the safeguarding of clients' assets. The company had also furnished false and misleading information to the SC, and had engaged in deceitful and improper business practices. Additionally, to protect the interests of all clients and stakeholders of SJ Asset Management, the SC petitioned the High Court for provisional liquidators to be appointed.

The custodial sentence imposed against Muhammad Khalid Ismail, the former director of licensed fund manager, Oasis Asset Management Sdn Bhd illustrates the courts' support of the SC's efforts in maintaining professional standards among all market intermediaries.

In another major enforcement success for the SC, the court sentenced Phazaluddin Abu to four years in jail after he was convicted of holding himself out as a fund manager without a valid licence through a website called www.danafutures.com. In this case too, the custodial sentence imposed by the court is a stern warning to perpetrators of unauthorised fund management activities against taking advantage of unsuspecting investors.

As part of its supervisory efforts to enhance best practices and regulatory compliance, the SC recently shared its supervisory findings with all fund management companies. These findings showed that the compliance framework and culture amongst a number of fund management companies needs further strengthening. In this regard, the SC will continue to work closely with fund managers, and other intermediaries to ensure high standards of compliance and conduct are maintained in the capital market.

High standards of regulatory compliance amongst fund managers is critical

Fund manager's licence revoked

4-years jail for unauthorised fund management activities

SC shares its supervisory findings with fund management companies

Safeguarding Client Assets and Strengthening Oversight

SC shares supervisory findings with fund managers

As a part of its continuing supervisory efforts to enhance client asset protection, on 20 July 2010, the SC sent letters to the boards of directors and the chief executive officers of fund management companies, to share its supervisory findings and to reiterate its regulatory compliance expectations. The SC had concluded that the compliance framework and culture within a number of fund managers required further strengthening. Areas of focus included adequacy of policies and procedures, trading practices and maintenance of records.

The SC also emphasised the board's ultimate responsibility in ensuring that the company complies with all regulatory requirements. The board of directors is required to submit an undertaking to the SC that the company's policies, processes and practices are in compliance with regulatory requirements and expectations.

As a further measure, the SC has revised its submission requirements where all fund managers are now required to authorise their respective custodians, both domestic and foreign, to submit reports directly to the SC to provide confirmation on custodised clients' assets and compliance with regulatory expectations.

SJ Asset Management – SC revokes licence, appoints provisional liquidators

An examination of SJ Asset Management Sdn Bhd (SJAM) revealed that the company was in breach of requirements of the *Capital Markets and Services Act 2007* (CMSA) and the *Guidelines on Compliance Function for Fund Managers* in relation to the safeguarding of clients' assets. The SC also found that SJAM had furnished false and misleading information to the SC, and had engaged in deceitful and improper business practices.

Even before revoking the fund manager's license of SJAM, the SC had imposed conditions and restrictions on the activities that SJAM could carry out. SJAM was prohibited from soliciting new mandates and was directed to maintain and preserve all records in relation to clients' trades and payments. The conditions and restrictions were imposed soon after the SC found that SJAM's books, accounts and records had raised serious concerns with respect to SJAM's internal controls and compliance with client asset protection rules.

Consequently, on 23 July 2010, the SC revoked SJAM's fund management licence. As a further step to protect the clients and creditors of SJAM, on 27 July 2010, the SC also petitioned to the High Court for the winding up of SJAM pursuant to section 361 of the CMSA. The winding up order will enable liquidators to effectively deal with the rights and entitlements of all creditors including the clients of SJAM.

Pending the granting of the winding up order, the SC also applied to the High Court for the appointment of provisional liquidators which was granted by the High Court on 28 July 2010.

The SC is also working closely with the police and regulatory counterparts in other countries as part of its investigations into the affairs of SJAM.

Oasis Asset Management – Former director jailed

On 20 May 2010, Muhammad Khalid Ismail, former director of Oasis Asset Management Sdn Bhd (Oasis) was sentenced to imprisonment after he pleaded guilty to the offence of criminal breach of trust (CBT) and eight other offences under the *Securities Industries Act 1983* (SIA).

Muhammad Khalid was found guilty of CBT for misappropriating RM45 million funds received from Oasis' client. The court also found him guilty under the SIA for concealing records required to be maintained by Oasis in relation to the investment made by the client. He was also found guilty for submitting false statements to the SC in relation to the funds managed by Oasis as well as failing to maintain a trust account for the investment received from the client.

The Kuala Lumpur Sessions Court sentenced him to two years imprisonment for the CBT charge. Muhammad Khalid, who pleaded guilty to all the eight charges under the SIA, was sentenced to imprisonment of one year for each charge.

Investment scam – Operator jailed four years

The Kuala Lumpur Sessions Court sentenced Phazaluddin Abu to four years in jail after he was convicted of holding himself out as a fund manager through a website, www.danafutures.com, without a fund manager's licence.

The website operated by Phazaluddin claimed to be an asset management and investment group focusing on business and fund management. Phazaluddin falsely represented in the website that investments from the public would be invested in seven securities portfolios which generated profits. In total, he collected approximately RM65 million from 52,000 investors via the website.

Phazaluddin was also convicted of three charges under the *Anti Money Laundering and Terrorism Financing Act 2001* (AMLATFA) for taking part in money laundering activities involving a receipt of RM1.3 million from the illegal activities of the online investment scam. He was sentenced to two years imprisonment for each of the charges under AMLATFA. The court ordered the imprisonment term for all offences to run concurrently. A total of 29 witnesses appeared for the prosecution. The SC urged the court to impose a deterrent sentence taking into account the large amount of the investors' funds which was obtained illegally.

The court, in sentencing Phazaluddin said that “it would not be in the public interest if white collar offenders who perpetrated financial scams of this magnitude are not punished with substantial sentences to protect the investing community”. It also said that “only a substantial custodial sentence will act as a deterrent sentence to potential offenders who might otherwise be willing to risk a monetary slap on the wrist if and when apprehended and charged.”

The custodial sentence meted out by the court serves as a warning to offenders that financial scams will not be treated lightly by the regulators and the courts. The investing public are reminded to be extremely cautious of such of investment schemes.

FA Securities – Stockbroker reprimanded for failure to meet minimum financial requirements

On 28 June 2010, the Board of Directors of FA Securities was reprimanded for breach of section 67 of the CMSA for carrying out regulated activities without the SC's consent despite not meeting the prescribed minimum financial requirements.

FA Securities was initially directed to cease carrying out regulated activities in March 2009. The cessation order was uplifted on 28 June 2010 following its operational and financial improvements as well as commitment by the board to ensure future compliance and enhance its business activities.

Enforcement Highlights

Convictions

Between May and August 2010, the SC secured convictions against two persons. In the *Danafutures* case, the accused is the first individual to be convicted in Malaysia for operating an illegal online investment scam.

- May 2010 – Muhammad Khalid Ismail was convicted of CBT and securities offences for misappropriating client's funds. Muhammad Khalid was sentenced to a jail term of one year for each of the securities offences and a two year jail term for the CBT charge. (see full article on page 3 – titled *Oasis Asset Management – former director jailed*).
- July 2010 – Phazaluddin Abu was convicted of operating an online investment scam without a fund manager's licence under section 15A(1) of the SIA and sentenced to four years imprisonment. In addition, Phazaluddin was also convicted of three offences under section 4(1) of the AMLATFA for taking part in money laundering activities involving a sum of RM1.3 million. He was sentenced to a term of two years imprisonment in respect of each money-laundering charge (to run concurrently). (see full article on page 4 – titled *Investment scam – operator jailed four years*).

Charges

The SC charged four individuals for committing securities fraud against two public-listed companies.

- June 2010 – *PP v Alice Poh Gaik Lye and Goh Bak Ming*. Alice Poh, the former business co-ordinator of Liqua Health Corporation Bhd (Liqua), was charged under section 87A(a) of the SIA for allegedly committing a scheme to defraud Liqua. The SC's investigations revealed that Liqua paid RM12 million to an entity called Wynsum Sdn Bhd which she controlled. Out of this sum, a total of RM9.75 million was 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.
- June 2010 – *PP v Alan Rajendram and Eswaremoorthy Pillay*. The SC charged Alan, a former director of LFE Corporation Bhd (LFE) for committing securities fraud under section 87A(b) SIA. Alan has been charged for defrauding LFE by using RM9 million of LFE's monies to finance his purchase of LFE shares. At the same time, Alan was also charged with eight other charges under the SIA, CMSA and the *Penal Code* for cheating and committing CBT. Pillay, Alan's former business partner was charged under section 87A(b) read together with section 122C(c) of the SIA for allegedly abetting Alan in the offence, as well as for four other offences under the *Penal Code* for cheating and CBT.

Ongoing Trials

The SC closed the Prosecution's case in three trials pending before the Sessions Court. Trials commenced in four cases; three involving offences of false reporting and one involving securities fraud and unlicensed trading.

- May 2010 – *PP v Yip Yee Foo and Chung Wai Meng*. Yip and Chung were charged in 2004 under section 87A(a) of the SIA for allegedly defrauding Cold Storage (Malaysia) Bhd (CSM) of RM185 million which they used to finance the purchase of CSM shares. They were also charged for CBT under

section 409 of the *Penal Code* in the alternative. The Sessions Court fixed 1 to 3 September 2010, 6 and 7 September 2010, and 14 and 15 October 2010 for trial.

- May 2010 – *PP v Ravandran and Kenneth Tan Kam Sang*. Trial commenced against Ravandran and Kenneth Tan, who were both charged in 2004 under section 32B(1) of the *Securities Commission Act 1993* (SCA) for their alleged false reports to the SC concerning the utilisation of Kiara Emas Asia Industries Bhd's rights issue proceeds. The trial had taken place from June through to August and further trial dates have been fixed for 19 to 21 October, 1 to 3 November and, 8 and 9 December 2010.
- May 2010 – *PP v Gordon Toh Chun Toh and Abul Hassan Mohamed Rashid*. The SC continued with the trial against both directors of Multi-Code Electronics Industries (M) Bhd (Multi-Code). They were charged in 2009 for allegedly using RM17.55 million of Multi-Code's funds to purchase the company's shares. The Prosecution closed its case in August. The hearing of submissions by all parties has been fixed for 17 September 2010.
- May 2010 – *PP v Jamaluddin Hassan, Hakim Sukiman and Gan Chin Sam*. The accused persons, the former directors of Satang Holdings Bhd (Satang) were charged under section 122B(b)(bb) of the SIA and section 369(b)(B) of the CMSA. The SC alleged that they falsely reported the financial performance of Satang to Bursa Malaysia by inflating Satang's revenue figures. The Sessions Court held that the prosecution had not proven a prima facie case at the close of its case.
- May 2010 – *PP v Anuar Abdul Aziz*. Anuar was charged under section 15B(b) of the SIA for acting as a fund manager's representative of Oasis Asset Management Sdn Bhd without a licence. He was acquitted at the end of the Prosecution's case by the Sessions Court. The SC has appealed against the decision and is awaiting a hearing date.
- July 2010 – *PP v Mohd Adam Che Harun*. In 2007, Mohd Adam, the director of Megan Media Holdings Bhd (MMHB) was charged under section 122B(a)(bb) of the SIA read together with section 122(1) SIA for allegedly submitting a false statement to Bursa Malaysia on the inflated revenue in MMHB's quarterly financial statements for the financial periods ended July 2006, 31 October 2006 and 31 January 2007 respectively. The Prosecution closed its case in July. The court heard submissions of both parties on 23 August 2010 and the SC is currently awaiting the decision of the court.
- July 2010 – *PP v Tan Siok Wan and three others*. On 16 August 2010 trial commenced in this case against four directors of GP Ocean Food Berhad (GP Ocean), namely Tan Siok Wan, Lee Sin Teck, Lim Kim Ming and Lim Kim Hai, who were charged with submitting misleading reports which contained inflated revenue figures to the SC. These submissions were made in connection with GP Ocean's proposal for listing on the Main Board of Bursa Malaysia. In July 2010, alternative charges were preferred against three of the four directors for causing the submission to the SC of misleading information in relation to GP Ocean's proposal for listing. The SC also withdrew the charge against GP Ocean with respect to the offence under section 32B of the SCA.
- July 2010 – *PP v Gan Boon Aun and Khiudin Mohd*. Trial commenced against Gan, the chief executive officer of Transmile Group Bhd (Transmile), and Khiudin, Transmile's director. The SC alleged that both Gan and Khiudin abetted Transmile in falsely reporting its revenue figures in its quarterly report, an offence under section 86(b) of the SIA read together with section 122C(c) of the SIA. Gan and Khiudin were also charged under section 122B of the SIA in the alternative.

- July 2010 – *PP v Ang Sun Beng, Ang Soon An and Tan Chin Han*. In this case, the SC charged Sun Beng and Soon An on 15 April 2008 and Chin Han on 11 March 2009. All are former directors of Welli Multi Corporation Bhd (Welli). The SC alleged that they had furnished false reports to the SC and Bursa Malaysia in the 2005 and 2006 annual and quarterly reports of Welli. Trial dates from 5 to 7 July 2010 and from 9 to 11 August 2010 were vacated at the request of the defence counsel for the first and second accused. Trial is scheduled to begin on 27 September 2010.
- August 2010 – *PP v William Yue Chi Kun*. On 28 April 2009, William Yue Chi Kun, the engaging and signing partner of the audit firm which audited United U-Li Corporation (U-Li) was charged under section 122B(b)(bb) of the SIA for abetting U-Li in submitting a false report to Bursa Malaysia. Trial was scheduled to begin on 16 August but the trial dates were vacated by the court. Trial has been fixed from 21 to 25 March 2011.
- August 2010 – *PP v Raja Noor Asma Raja Harun*. The SC has commenced the trial against the accused, the director of FX Capital Sdn Bhd and FX Consultant. The SC alleged that the accused defrauded investors of both companies and traded in futures without a licence. Trial will resume on 27 September 2010.
- August 2010 – *PP v Bun Lit Chun and Wong Chee Keong*. Both accused persons were charged in 2005 for allegedly manipulating the price of Suremax Group Bhd (Suremax) shares. The prosecution closed its case in August. The Sessions Court has fixed 3 September 2010 to deliver its decision at the end of the prosecution's case.

Appeals

The SC was successful in two appeals; one at the High Court and another at the Court of Appeal. In the PTV case, the High Court dismissed the accused persons' appeals against their convictions and affirmed the Sessions Court's conviction. In the Yip Yee Foo case, the Court of Appeal decided in favour of the SC and quashed the High Court's decision which ordered the SC to supply the defence with witnesses' statements and materials not tendered during the prosecution's case.

High Court

- May 2010 – *PP v Ariffin Abd Majid and Mohd Raffique Ibrahim Sabib*. The respondents, Ariffin and Raffique, were alleged to have committed acts which were calculated to create a misleading appearance with respect to the price of Actacorp Holdings Bhd warrants. At the end of the defence case, the Kuala Lumpur Sessions Court acquitted both respondents and the prosecution appealed against the acquittals. The appeal was heard at the High Court and the matter is now pending decision.
- June 2010 and July 2010 – *PP v Siti Mariam Berahim and Barjoyai Bardai*. In 2002, Siti Mariam was charged in the Sessions Court under section 15B of the SIA, for acting as a fund manager's representative of Perdana Technology Ventures Sdn Bhd (PTV), without a licence. At the same time, Barjoyai Bardai, the Managing Director of PTV was charged under section 18(2) of the SIA read together with section 122(1) of the SIA for allowing Siti Mariam and another to act as fund manager's representatives. Siti Mariam and Barjoyai Bardai were convicted and sentenced to a fine of RM50,000 (in default, six months imprisonment) and RM 100,000 (in default eight, months imprisonment) respectively by the Sessions Court. Siti Mariam and Barjoyai Bardai appealed against their convictions, while the prosecution filed a cross appeal against the sentence. The appeals were heard together in June and July 2010. On 13 August 2010, the High Court dismissed the appeals against convictions and fixed 7 September 2010 for hearing of the cross appeal.

- August 2010 – *PP v Low Thiam Hock*. On 18 September 1999, Low Thiam Hock was charged for allegedly manipulating the price of Repco Holdings Bhd (Repco) shares on 3 December 1997. The alleged manipulation had caused Repco's share prices to rise from RM103.00 to finally close at RM113.00. On 14 November 2006 the Sessions Court acquitted and discharged Low. The SC appealed against the decision of the Sessions Court and the appeal was heard on 19 August 2010. The High Court fixed 13 October 2010 for clarification, is any and decision.

Court of Appeal

- May 2010 – *PP v Yip Yee Foo*. On 10 May 2010, the Court of Appeal decided in favour of the SC that witnesses' statements and materials not tendered during the Prosecution's case need not be supplied to the defence prior to trial under section 51A of the *Criminal Procedure Code*.
- May 2010 – *PP v Wira Tjakrawinata*. Wira, the promoter of the Omega Holdings Bhd's (Omega) restructuring proposal, was charged under section 55(1)(a) of the SCA for failing to inform the SC before Omega's proposal was fully implemented, that the concession agreement was false. He was also charged under section 55(1)(b) of the SCA for issuing Energro Bhd's (Energro) prospectus without information on the concession agreement, and for inflating the revenue and numbers of cars sold in Energro's prospectus. On 22 August 2005, Wira pleaded guilty to the charge under section 55(1)(a) of the SCA and was sentenced to one year imprisonment and RM500,000 fine (in default, one year imprisonment) by the Sessions Court. He appealed to the High Court and the High Court reduced the imprisonment sentence from one year to one day and increased the fine to RM2 million (in default, two years imprisonment). The SC appealed against the decision but Wira failed to appear before the Court of Appeal. A warrant of arrest was issued against him but it could not be executed because the authorities could not locate him. Eventually, the Court of Appeal struck out the SC's appeal against his sentence.
- July 2010 – *PP v Wan Muhammad Hasni*. In 1999, Wan Muhammad Hasni, the then Executive Chairman of Abrar Global International Sdn Bhd (AGI) was charged for engaging in an act that operated as a fraud on clients of Abrar Global Asset Management Sdn Bhd (AGAM). The alleged fraud was caused by the misutilisation of clients' funds totaling RM5.0 million that was meant for investment purposes. Wan Muhammad Hasni was also charged in the alternative for CBT. On 16 April 2003, the Court found him guilty of the offence under section 87A(b) of the SIA 1983. Upon conviction, Wan Muhammad Hasni was sentenced to a fine of RM2.5 million, in default 12 months imprisonment. The SC appealed against the sentence while Wan Muhammad Hasni appealed against his conviction. At the High Court, the conviction was reversed and Wan Muhammad Hasni was acquitted and discharged, following which the SC appealed to the Court of Appeal. The matter was heard before the Court of Appeal in July 2010 and is now pending the decision of the Court of Appeal.
- July 2010 – *Lua Yik Hor v PP*. In November 2000, the Sessions Court convicted Lua Yik Hor of 30 charges of short selling North Borneo Timbers Bhd shares in 1995. He was sentenced to two years imprisonment for each charge. Lua Yik Hor appealed to the High Court. In February 2009, the High Court dismissed Lua Yik Hor's appeal and maintained the imprisonment sentence. Following the High Court's decision, Lua Yik Hor filed a further appeal to the Court of Appeal. Hearing of this appeal has been fixed for 18 October 2010.

Civil Enforcement

In its civil enforcement actions, the SC was successful in obtaining orders against several parties for breaches of the CMSA, including an injunction restraining the defendent from dealing with proceeds of sale of shares.

- June 2010 – On 16 June 2010, the SC obtained an injunction against Dato' Ishak Ismail, restraining him from dealing with RM10.2 million, being proceeds from his disposal of 58.7 million shares of Kenmark Industrial Co. (M) Bhd (Kenmark). These monies will be quarantined pending the outcome of a civil suit the SC has filed against Dato' Ishak, alleging that he committed the offence of insider trading and market manipulation when he purchased Kenmark shares on 9 June 2010.
- July 2010 – The SC filed a winding up petition against SJ Asset Management Sdn Bhd (SJAM). The High Court fixed 14 October 2010 for the hearing of the winding up petition. Pending the hearing of the petition the courts appointed provisional liquidators to SJAM in order to protect the interests of all clients and stakeholders of SJAM. (see full article on page 2 – titled *SJ Asset Management– SC revokes licence, appoints provisional liquidators*).
- July 2010 – On 12 July 2010, the SC obtained an order under section 360 of the CMSA restraining Rantau Simfoni Sdn Bhd and its director, Zamani Hamdan from trading and investing in futures contracts. Neither the company nor Zamani held any valid licence to trade in futures contracts. The High Court also ordered the defendants to transfer RM198,040 to the SC for the purpose of compensating the investors from whom monies were raised. The order was made following the SC's earlier ex-parte application to the High Court based on findings that the defendants had been carrying on a business of trading in futures contracts without a licence.

FOR MORE INFORMATION

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