

CAPITAL MARKETS AND SERVICES ACT 2007 (Act 671)

An Act to consolidate the Securities Industry Act 1983 [Act 280] and Futures Industry Act 1993 [Act 499], to regulate and to provide for matters relating to the activities, markets and intermediaries in the capital markets, and for matters consequential and incidental thereto.

PART V (174 – 198)

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Application of this Part

174. This Part shall apply to—

(a) in respect of securities —

(i) acts and omissions occurring within Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within or outside Malaysia; and

(ii) acts and omissions occurring outside Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within Malaysia; and

(b) in respect of derivatives—

(i) acts occurring within Malaysia in relation to derivatives, whether traded within or outside Malaysia; and

(ii) acts occurring outside Malaysia in relation to derivatives traded within Malaysia.

Prohibited conduct – Securities

Subdivision 1 – Offences relating to false trading and market rigging, stock market manipulation, etc.

False trading and market rigging transaction

175. (1) Subject to section 180, no person shall create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market within Malaysia or a false or misleading appearance with respect to the market for, or the price of, any such securities.

(2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without affecting the generality of subsection (1), a person who—

(a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;

(b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or

(c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in securities on a stock market.

(4) In a prosecution of a person for an act referred to in subsection (3) it is a defence if the defendant establishes that—

(a) the purpose for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance; and

(b) he did not act recklessly, whether or not he created a false or misleading appearance, of active trading in securities on a stock market.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In a prosecution for an offence against subsection

(2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in paragraph (3)(a) to a transaction of sale or purchase of securities includes—

(a) a reference to the making of an offer to sell or purchase securities; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

Stock market manipulations

176. (1) Subject to section 180, no person shall effect, take part in, engage in, be concerned in, or carry out, either directly or indirectly, any number of transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of—

(a) raising;

(b) lowering; or

(c) pegging, fixing, maintaining or stabilising, the price of securities of the corporation on a stock market in Malaysia, for the purpose which may include the purpose of inducing other persons, whether or not another person is induced, to acquire or dispose of the securities of the corporation or of a related corporation.

(2) A reference in this section to a transaction, in relation to securities of a corporation, includes— (a) a reference to the making of an offer to sell or purchase such securities of the corporation; and (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase such securities of the corporation.

False or misleading statements, etc.

177. A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities if, when he makes the statement or disseminates the information—

- (a) he does not care whether the statement or information is true or false; or
- (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular. Fraudulently inducing persons to deal in securities

178. (1) A person shall not—

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular, induce or attempt to induce another person to deal in securities.

(2) In a prosecution for an offence under paragraph (1)(d), in relation to the recording or storing of information, it shall be a defence if the defendant establishes that when the information was recorded or stored, he had no reasonable grounds for expecting that the information would be available to any person.

Use of manipulative and deceptive devices

179. It shall be unlawful for any person, directly or indirectly in connection with the subscription, purchase or sale of any securities—

- (a) to use any device, scheme or artifice to defraud;
- (b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

Person or transaction to whom or which section 175 or 176 does not apply

180. The Minister may make regulations in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which section 175 or 176 does not apply.

Dissemination of information about illegal transactions

181. A person shall not circulate or disseminate, or authorize or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a corporation that is related to that corporation, in contravention of section 175, 176, 177, 178 or 179 if—

- (a) the person, or a person associated with the person, has entered into any such transaction or done any such act or thing; or

(b) the person has received, or expects to receive directly or indirectly, any consideration or benefit for circulating or disseminating, or authorizing or being concerned in the circulation or dissemination, the statement or information. Penalty for offence under Subdivision 1

182. A person who contravenes section 175, 176, 177, 178, 179 or 181 commits an offence and shall be punished on conviction to imprisonment for a term not exceeding ten years and to a fine of not less than one million ringgit.

Subdivision 2 – Insider trading

Information

183. For the purposes of this Subdivision, “information” includes—

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;
- (b) matters relating to the intentions, or likely intentions, of a person;
- (c) matters relating to negotiations or proposals with respect to—
 - (i) commercial dealings; or
 - (ii) dealing in securities;
- (d) information relating to the financial performance of a corporation;
- (e) information that a person proposes to enter into, or has previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and
- (f) matters relating to the future. Information generally available

184. (1) For the purposes of this Subdivision, information is generally available if the information has been made known in a manner that would, or would tend to, bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information, and since it was so made known, a reasonable period for it to be disseminated among, and assimilated by, such persons has elapsed.

(2) The information referred to in subsection (1) includes information that consists of deductions or conclusions made or drawn from such information.

Material effect on price or value of securities

185. For the purposes of this Subdivision, an information that on becoming generally available would or would tend to have a material effect on the price or value of securities, refers to such information which would or would tend to, on becoming generally available, influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities.

Trading in securities

186. For the purposes of this Subdivision, trading in securities that is ordinarily permitted on the stock market of a stock exchange is to be taken to be permitted on that stock market even though trading in any such securities on that stock market is suspended. Reference to “procure”

187. For the purposes of this Subdivision and section 201 but without limiting the meaning of the term “procure” as provided in this section, if a person incites, induces, encourages or directs an act or omission by another person, the first-mentioned person is deemed to procure the act or omission by the other person. Prohibited conduct of person in possession of inside information

188. (1) A person is an “insider” if that person—

- (a) possesses information that is not generally available which on becoming generally available a reasonable person would expect it to have a material effect on the price or the value of securities; and
- (b) knows or ought reasonably to know that the information is not generally available.

(2) An insider shall not, whether as principal or agent, in respect of any securities to which information in subsection (1) relates—

- (a) acquire or dispose of, or enter into an agreement for or with a view to the acquisition or disposal of such securities; or
- (b) procure, directly or indirectly, an acquisition or disposal of, or the entering into an agreement for or with a view to the acquisition or disposal of such securities.

(3) Where trading in the securities to which the information in subsection (1) relates is permitted on a stock market of a stock exchange, the insider shall not, directly or indirectly, communicate the information referred to in subsection (1), or cause such information to be communicated, to another person, if the insider knows, or ought reasonably to know, that the other person would or would tend to—

- (a) acquire, dispose of, or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in subsection (1) relates; or
- (b) procure a third person to acquire, dispose of or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in subsection (1) relates.

(4) A person who contravenes subsection (2) or (3) commits an offence and shall be punished on conviction to imprisonment for a term not exceeding ten years and to a fine of not less than one million ringgit. (5) The Minister may make regulations in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which this section does not apply.

Proof of contravention of section 188 189. In a prosecution of an offence under subsection 188(2) or (3), it is not necessary for the prosecution to prove the non-existence of facts or circumstances which if they existed would, by virtue of section 190, 191, 192, 193, 194, 195, 196, 197 or 198, or any regulations made under subsection 188(5), preclude the act from constituting a contravention of subsection 188(2) or (3).

Secrecy arrangements by corporation

190. (1) For the purposes of this Subdivision, a corporation is deemed to possess any information— (a) which an officer of the corporation—

(i) possesses and which came into his possession in the course of his duties as an officer of the corporation; or

(ii) knows or ought reasonably to have known because he is an officer of the corporation; or

(b) which an officer of the corporation possesses and which came into his possession in the course of his duties as an officer of a related corporation of the first-mentioned corporation where—

(i) the officer is an insider by reason of being in possession of the information;

(ii) the officer is involved in, the decision, transaction or agreement of the first-mentioned corporation in acquiring or disposing of securities in relation to which the officer is an insider or entering into an agreement to acquire or dispose of such securities, procuring another person to acquire or dispose of

such securities or enter into an agreement to do so, or communicating the information in circumstances referred to in subsection 188(3); or

(iii) it is reasonable to expect that the officer would communicate the information to another officer of the first-mentioned corporation acting in his capacity as such, unless it is proved that the information was not in fact so communicated.

(2) In this section, “information” refers to information which a corporation is deemed to possess and where a person in possession of the information is an insider.

(3) A corporation does not contravene subsection 188(2) by entering into the transaction or agreement at any time merely because of information in the possession of the corporation if—

(a) the decision to enter into the transaction or agreement was taken on behalf of the corporation by a person or persons other than an officer of the corporation in possession of the information;

(b) the corporation had in operation at that time arrangements that could reasonably be expected to ensure that—

(i) the information was not communicated to a person or one of the persons who was involved in, or made the decision to enter into, or be involved in, the transaction or agreement;

(ii) no advice with respect to the decision to enter into, or be involved in, the transaction or agreement was given to that person by the person in possession of the information; or

(iii) the person in possession of the information would not be involved in the decision to enter into or be involved in, the 284 transaction or agreement, or involved in the transaction or agreement; and

(c) the information was not so communicated, no such advice was given and the person in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement or was not involved in the transaction or agreement. Secrecy agreements by partnerships 191.

(1) For the purposes of this Subdivision, a partner of a partnership is deemed to possess any information—

(a) which another partner possesses and which came into the other partner’s possession in his capacity as a partner of the partnership;

(b) which an employee of the partnership possesses and which came into the employee’s possession in the course of his duties; or

(c) if a partner or an employee of a partnership knows or ought reasonably to know any matter or thing because the partner or employee is a partner or an employee as such, it is presumed that every partner and employee of the partnership know or ought reasonably to know that matter or thing.

(2) In this section, “information” refers to information which a partnership is deemed to possess and where a partner or an employee of the partnership in possession of that information is an insider.

(3) A partner of a partnership does not contravene subsection 188(2) by entering into the transaction or agreement referred to in that subsection at any time merely because one or more (but not all) partners, or an employee or employees of the partnership, were in actual possession of information at the time if—

(a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:

(i) a partner who is taken to possess the information merely because another partner, or an employee of the partnership, was in possession of the information; or

(ii) an employee of the partnership who was not in possession of the information;

(b) the partnership had in operation at that time agreements that could reasonably be expected to ensure that—

(i) the information was not communicated to a partner or an employee or one of the partners or employees who was or were involved in, or made the decision with respect to the entering into the transaction or agreement in question;

(ii) no advice with respect to the decision to enter into the transaction or agreement was given to that partner or employee by a partner or an employee in possession of the information; and

(iii) the partner or employee in possession of the information would not be involved in the decision to enter into, or be involved in, the transaction or agreement; and

(c) the information was not communicated, no advice was given and the partner or employee in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement.

(4) A partner of a partnership does not contravene subsection 188(2) by entering into the transaction or agreement referred to in that subsection otherwise than on behalf of the partnership merely because the partner is deemed to possess information that is in the possession of another partner or employee of the partnership.

Underwriting and sub-underwriting

192. (1) Subsection 188(2) shall not apply in respect of—

(a) the entering into of an underwriting agreement or a subunderwriting agreement; or

(b) the acquisition of securities under an obligation to do so in an agreement referred to in paragraph (a).

(2) Subsection 188(3) shall not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person—

(a) to enter into an underwriting agreement or a sub-underwriting agreement in relation to any such securities; or (b) to acquire any such securities under an obligation to do so in an agreement referred to in paragraph (a).

Non application of section 188 to transactions carried out under schemes of arrangement, etc. under any written law

193. (1) Section 188 shall not apply to an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstructions and take-overs relating to corporations.

(2) Subsection 188(2) shall not apply to an approved clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is effected in accordance with the rules of an approved clearing house.

(3) Subsection 188(2) shall not apply to a stock exchange in relation to a sale or purchase of securities where the stock exchange acts on an instruction from an approved clearing house pursuant to section 54.

Exception for corporation with knowledge of its intention

194. (1) A corporation does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities other than those of the corporation merely because the corporation is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

(2) Subject to subsection (3), a corporation does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities other than those of the corporation because an officer of the corporation is aware that it proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(3) Subsection (2) shall not apply unless the officer of the corporation became aware of the matter referred to in that subsection in the course of his duties.

(4) Subject to subsection (5), a person does not contravene subsection 188(2) by entering into a transaction or an agreement on behalf of a corporation in relation to securities other than those of the corporation merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4) shall not apply unless the person became aware of the matters referred to in the course of his duties as an officer of the first-mentioned corporation or in the course of acting as an agent of the first-mentioned corporation.

Exception of knowledge of individual's own intentions or activities

195. An individual does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

Unsolicited transaction

196. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative does not contravene subsection 188(2) by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the stock market of a stock exchange in securities which are quoted for trading on the stock market of that stock exchange if—

(a) the transaction or agreement is entered into under a specific instruction by the other person which was not solicited by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative;

(b) the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative has not given any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person's instructions to enter into the transaction or agreement; and

(c) the other person is not associated with the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative.

(2) Nothing in this section shall affect the application of subsection (1) in relation to the principal.

Exception for redemption of units of a unit trust scheme under buy-back covenant

197. Subsection 188(2) shall not apply in respect of the redemption by a trustee under a trust deed relating to a unit trust scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets, less any liabilities of the unit trust scheme to which the units of the unit trust scheme relates, and less any reasonable charge for purchasing the units of the unit trust scheme or interest .

Parity of information defence

198. (1) A person does not contravene subsection 188(2) if—

(a) the securities that are the subject of the transaction or agreement or the action of procuring a transaction or an agreement are not securities which are permitted on the stock market of a stock exchange;

(b) the court is satisfied that the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement; and (c) that person acquires or disposes of such securities on such terms and in such circumstances that— (i) he does not obtain any gain or avoid any loss, including an unrealised gain or unrealised avoidance of loss in price or value, of the securities, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available; and

(ii) the purpose of the acquisition or disposal of the securities does not include any purpose of securing a gain or avoiding a loss, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available.

(2) In a prosecution for an offence under subsection 188(3) where the person communicated information or caused information to be communicated to another person, it shall be a defence—

(a) if the court is satisfied that the information came into the possession of the person so communicating the information solely as a result of it being made known in a manner likely to make it generally available pursuant to section 184; or

(b) if the court is satisfied that the other party knew of, or ought reasonably to have known, the information before the information was communicated.