

FUND MANAGEMENT REGULATIONS SECURITIES OFFENCES

MARKET MANIPULATION BY INFORMATION

The prohibitions in s.175 and s.176 do not deal with the peddling of false or misleading information on the securities market. Hence, there are two other sections, s.177 and s.178 of the CMSA, which are designed to prevent market manipulation through the circulation of false or misleading information.

False or Misleading Statements in Relation to Securities

A person must not make a statement or disseminate information that:

- (a) is false or misleading in a material particular**
- (b) is likely to induce the subscription, sale or purchase of securities by other persons, or is likely to have the effect of raising or lowering, maintaining or stabilising the market price of securities**
- (c) when he or she makes or disseminates it, the person:**
 - (i) does not care whether the statement or information is true or false**
 - (ii) knows or ought reasonably to know that it is false or misleading.**

In relation to derivatives, market manipulation by means of information is stated under s.204, 206 and 207 of the CMSA.

Section 204 relates to dissemination of information about false trading. This relates to the circulation, dissemination or authorisation or anything concerning these which would likely effect the price of trading derivative or a class of derivatives.

Fraudulently Inducing Persons to Deal in Securities

It is an offence to induce or to attempt to induce another person to deal in securities by:

- (a) making or publishing any statement, promise or forecast that the maker knows to be misleading, false or deceptive
- (b) dishonestly concealing material facts
- (c) recklessly making or publishing (dishonestly or otherwise) any statement, promise or forecast that is misleading, false or deceptive
- (d) recording or storing in, or by means of any mechanical, electronic or other device, information that they know to be false or misleading in a material particular.

Persons who could be subject to this prohibition are officers of a company in relation to a company prospectus, a stockbroking company advising clients about an issue or sale of securities, or a fund management company recommending a client to purchase or sell shares in a particular company.

False means that the statement was incorrect. 'Misleading requires one to look at the potential effect of the statement on a hearer. If it is capable of leading an ordinary member of the public into a false belief then it is misleading.

The section extends to promises and forecasts which the maker knows to be misleading, false or deceptive, e.g. a forecast of dividends payable in the future.

Finally, the section extends liability to a situation where a person is not necessarily acting dishonestly. The requirement that the statement be 'reckless is not met by mere negligence, being the failure to take 'reasonable care'.

The effect of s.178 is, therefore, to impose on directors and other persons making statements by way of inducement, a duty to enquire whether the information they have been given is correct and reliable.

With regard to derivatives, false or misleading statements is stated under s.207.

Under this section, no person shall directly or indirectly, for the purpose of inducing the entering into a derivatives, make any statement which at the time and in the light of the circumstances in which it is made, is false, misleading or deceptive with respect to any material fact.

Dissemination of Information About Illegal Transactions

If a transaction is entered into in contravention of s.175 – 178, it is an offence for a person to circulate or disseminate a statement or information that indicates that the transaction will affect the price of the securities if that person has entered into the transaction.

Use of Manipulative and Deceptive Devices

By virtue of s.179, it is an offence if, in connection with the subscription, purchase or sale of any securities, a person:

- (a) uses any device, scheme or artifice to defraud**
- (b) engages in an act, practice or course of business which does, or would, operate as a fraud or deceit**

(c) makes any statement which is untrue of a material fact or omits to state a material fact necessary to make a statement not misleading in the context in which it was made.

This section extends the circumstances in which the act applied in respect of materially untrue statements and omissions and incorporates the common law actions of fraud and deceit. In addressing derivatives, s.207 of the CMSA provides for the prohibition of making false statements of a material fact, or omit to state a material fact necessary in order to make the statement made in the light of the circumstances under which they are made, not misleading.

Case Examples

In 1995 Haron Jambari a remisier from Arab Malaysian Securities Sdn. Bhd.) and Nik Abdul Aziz (an accountant with Majlis Ugama Islam) were charged under s. 87A of the SIA 1983 (now s.179 of the CMSA) for making a false statement in connection with RM2 million entrusted to them by MAI in relation to the first accused person, and for abetting Haron Jambari (secs. 40 and s.109 of the Penal Code) in relation to the second accused. They pleaded not guilty and the trial continued in May 1997.

Penalties for Contravention

The penalty for a contravention of the sections of the CMSA discussed above is a fine of at least RM1 million and imprisonment for up to ten years (see s.182 and s.209)

In addition, under s.374 a person who suffers loss or damage as a result of the contravention may recover the amount of loss or damage from a person convicted of an offence under those sections.

Note also that where an offence is committed by a corporation, such as a funds management company, liability extends to directors, chief executive officer, officer or a representative under s.367, unless:

- (a) he or she proves that the offence was committed without consent or connivance; and
- (b) he or she exercised all such diligence to prevent the commission of the offence as ought to have been exercised.

In addition, a holder of a CMSL is liable for a contravention of any of those sections by one of its representatives. See s.367(3).

It is also an offence for a person to attempt to commit such an offence, abet an offence or be engaged in a criminal conspiracy to commit any offence. See s.370.

The penalties for a contravention of the sections discussed earlier are also found in:

- (a) S.374 in addition, provides that the convicted person shall be liable to pay compensation to any other person who has suffered a loss or damage as a result of the offence committed by the convicted person**
- (b) S.367(1) provides that when a corporation is guilty an offence, the director, chief executive, officer or a representative shall also be guilty of that offence.**
- (c) S.367(2) provides that when an employee is guilty of an offence, the principal shall also be deemed to be guilty of that offence.**