

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.

Section 98 of the CMSA

Division 3

Conduct of business

Subdivision 1 – General

Short selling

98.

(1) Subject to this section and any regulations that may be made, a person shall not sell securities unless, at the time when he sells them—

- (a) he has or, where he is selling as agent, his principal has; or
- (b) he believes on reasonable grounds that he has, or where he is selling as agent, his principal has, a presently exercisable and unconditional right to vest the securities in a purchaser of the securities.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) For the purposes of subsection (1)—

- (a) a person who, at any particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person; and
- (b) a right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of monies.

(4) Subsection (1) shall not apply in relation to any of the following circumstances:

- (a) a sale of securities by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities who specializes in transactions relating to odd lots of securities, being a sale made by him as principal solely for the purpose of—
 - (i) accepting an offer to purchase an odd lot of securities; or
 - (ii) disposing of securities that are less than one marketable parcel of securities by means of the sales of one marketable parcel of those securities;
- (b) a sale of securities by a person who before the time of sale has entered into a contract to purchase those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following:
 - (i) payment of the consideration in respect of the purchase;
 - (ii) the receipt by him of a proper instrument of transfer in respect of the securities; or
 - (iii) the receipt by him of the documents that are, or are documents of title to, the securities;
- (c) a sale of securities where—
 - (i) the securities are included in a class of securities in relation to which there is a provision in the rules of the stock exchange to the effect that the class is a class of securities to which this paragraph applies;
 - (ii) the sale is made as may be provided by the rules of the stock exchange; and
 - (iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities, was an associate, in relation to the sale, of the body corporate that issued or made available the securities;

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- (d) a sale of securities which are permitted by Bank Negara to be transacted in the short term money market;
- (e) a sale of securities—
 - (i) of such class or category; or
 - (ii) which is transacted in such manner or under such circumstances, as may be prescribed by the Minister; and
- (f) the making or trading of a derivative, or anything done in relation thereto, on the derivatives market of a derivatives exchange or on an exempt derivatives market.

(5) For the purposes of this section, a “marketable parcel” in relation to securities that are listed for quotation on the stock market of a stock exchange, means a marketable parcel of those securities within the meaning of the rules of that stock exchange.

(6) A person who instructs a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to effect a sale of securities to which subsection (1) would apply but for paragraph (4)(c) shall, at the time of giving the instruction, inform the holder that the sale is a short sale.

(7) A person who, on a stock market of a stock exchange, effects, whether as principal or agent, a sale of securities to which subsection (1) would apply but for paragraph (4)(c) shall cause to be endorsed on any document evidencing the sale that is given to the person who, whether as principal or agent, purchases the securities a statement that the sale was a short sale. (8) For the purposes of this section, where a person—

- (a) purports to sell securities;
- (b) offers to sell securities;
- (c) holds himself out as entitled to sell securities; or
- (d) instructs a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to sell securities, he shall be deemed to sell the securities.