

Steady strengthening of the insider trading regime in Singapore

A series of recent developments have highlighted the Courts' and regulators' continued commitment to creating a more robust securities market in Singapore. The efforts to strengthen the insider trading regime in Singapore are multifaceted and include not only legislative changes but strengthened powers of investigation and stiffer penalties imposed, as reflected in: (i) the joint MAS' and CAD's investigation of market misconduct offences; (ii) the MAS' Consultation Paper dated 24 August 2015 in relation to proposed amendments to the Securities and Futures Act (Cap. 289); (iii) a recent judgment of the Singapore District Court in the prosecution of the former director of Jade Technologies Holdings Ltd, where the highest custodial sentence to date (eight years nine months) was imposed for insider dealing offences; and (iv) recent civil penalty enforcement cases.

This briefing summarises these recent developments and provides some key observations on the insider trading regime in Singapore.

The joint MAS' and CAD's investigation of market misconduct offences

In March 2015, the Monetary Authority of Singapore (MAS) and the Commercial Affairs Department (CAD) announced that they will be jointly investigating market misconduct offences under Part XII of the Securities and Futures Act (Cap. 289) (the SFA) with effect from 17 March 2015.¹

The new arrangement is intended to enhance the enforcement process and improve the overall effectiveness of market misconduct offences as both agencies will collaborate from the outset, in order to achieve greater efficiency.

Before the new arrangement, the MAS and the CAD had been investigating market misconduct offences independently, based on an initial assessment of whether the offence was likely to warrant a civil penalty or a criminal prosecution. Under the new joint investigations regime, the decision on whether a case warrants a civil penalty action or criminal prosecution will be made when investigations are concluded.

Under this new arrangement, MAS officers have been gazetted as CAD officers, giving them more power to investigate potential criminal activities. The use of more

robust criminal investigative powers enhances the MAS' investigation capabilities, paving the way for more rigorous investigations into market abuse. Such powers include the ability to search premises and seize items, and to order financial institutions to monitor customer accounts.

MAS' Consultation Paper dated 24 August 2015 on proposed amendments to the SFA

The MAS published its responses to the feedback it received to its February 2015 Consultation Paper on proposed amendments to the SFA in relation to market misconduct provisions (see our client briefing [MAS Consults on proposed changes to financial regulatory framework](#) dated February 2015 for further details on the Consultation Paper) in August 2015.

The MAS has also launched a further consultation on 24 August 2015², proposing draft legislative amendments necessary to effect the relevant proposals to this part of the SFA, comprising:

¹ The joint MAS' and CAD's media release is available at: <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2015/MAS-and-CAD-to-Jointly-Investigate-Market-Misconduct-Offences.aspx>

² The MAS' Consultation Paper is available at: <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2015/Consultation-Paper-on-Proposed-Amendments-to-the-Securities-and-Futures-Act-Part-XII-Section-324.aspx>. Comments on the Consultation Paper are due by 23 September 2015. We will be submitting comments to the MAS. If you have any comments to include in our submission, please contact us.

- the revision of section 199 of the SFA to clarify that there is no requirement of material price impact to establish a case of false or misleading disclosure;
- the introduction of a statutory definition in section 214 of the SFA of the phrase "*persons who commonly invest*", which is found in sections 215 and 216 of the SFA;
- amendments to section 232 of the SFA, in order that the civil penalty imposed may be commensurate with the gravity of misconduct, even in cases where the profit gained or loss avoided happens to be low; and
- priority for MAS' civil penalty claims over debts by other unsecured creditors that accrue after contravention.

In addition, in connection with the new arrangement where market misconduct offences will be jointly investigated by the MAS and the CAD, the MAS proposes to amend section 324 of the SFA to make clear that MAS' officers, who may exercise investigative powers under the Criminal Procedure Code (Cap. 68) (CPC) in the course of their investigation, can apply for an order under section 324 of the SFA regardless of whether the investigations were being carried out under the SFA or the CPC.

District Court decision in Public Prosecutor v Soh Guan Cheow Anthony [2015] SGDC 190

In August 2015, the District Court convicted former Jade Technologies Holdings Ltd (Jade) director Anthony Soh Guan Cheow of various offences under the SFA including insider trading, in connection with a failed takeover bid for Jade. Soh was sentenced to eight years and nine months in jail and fined SGD 50,000 – the highest custodial sentence imposed in Singapore for insider trading offences to date.

Summary of facts of the case

Soh was a director and majority shareholder of Jade, whose shares were traded on the Singapore Exchange Securities Trading Limited (the SGX).

In September 2007, Soh entered into a loan facility, pledging Jade shares as security. Under the terms of the loan facility, the value of Jade shares was capped at a certain threshold value. If the market value of the shares fell below the threshold, Soh would be required to top up the difference.

When the market value of the Jade shares fell below the threshold, Soh proposed to make a voluntary general offer (VGO) for the remaining shares in Jade not controlled by him. The VGO was announced on the SGX, but later withdrawn abruptly.

Soh was charged with offences under the SFA relating to insider trading, false trading and market-rigging, and the making of take-over offers which he had no intention to fulfil.

The Court's findings in relation to insider trading

The Court found that Soh had no genuine intent to carry out the VGO, as he knew that he did not have sufficient financial resources to execute an offer for the shares.

Rather, the intent of the VGO was to raise and maintain Jade's share price so as to stave off the possibility of further margin calls against Soh, and to provide Soh with an avenue to liquidate a substantial number of his Jade shares at an inflated price to raise funds to meet his financial obligations. The Court found that the primary intention of the VGO was clearly to artificially distort the forces of supply and demand in respect of the shares, in order to raise their price and maintain that price at a certain level.

The Court convicted Soh of insider trading on the basis that Soh had caused or procured others to trade in Jade shares while in possession of information that was not generally available but, if it were generally available, a reasonable person would expect it to have a material effect on the price of the shares – the information being that Soh did not have sufficient financial resources to implement the VGO.

The Court found that the enormous gains by and avoidances of loss to Soh were significant aggravating factors to be considered in sentencing. In summary, Soh obtained a reprieve from further margin calls and avoided default under his personal financial obligations, and wrongfully gained SGD 7.8 million from the sale of his shareholdings in Jade.

In its consideration of the penalties, the Court imposed a custodial sentence and made the following observations:

- Parliament and the Courts recognised that there is a strong public interest in the protection of the securities market and the "investing public" as its participants. Considerable pressure has been put upon the Government from time to time to intervene in the public interest in order to protect investors from unscrupulous manipulation and rigging on the securities exchange.
- Protecting the integrity of and confidence in the market requires the rigorous enforcement of securities laws.

This in turn requires a robust approach not only in the investigation and prosecution of securities offences, but equally in the sentencing of those found guilty of such offences.

- The public interest vested in a secure and reliable financial system that facilitates convenient commercial transactions is extraordinary, especially in the light of Singapore's reputation as an internationally respected financial, commercial and investment hub. Accordingly, the Court concluded that it must take an uncompromising stance in meting out severe sentences for market misconduct offences, with general deterrence as a sentencing aim, in particular where the offence affects the delivery of financial services and/or the integrity of the economic infrastructure.

Recent civil penalty enforcement cases

There has been a steady increase in the quantum of civil penalties imposed by the MAS. From 2010 to 2014, the MAS achieved 22 successful civil penalty outcomes and imposed a total of SGD 4.9 million in civil penalties for securities violations.

In 2015, there have been two significant enforcement actions, indicating that the regulators are intent on pursuing effective enforcement outcomes in order to achieve credible deterrence.³

In February 2015, the former CEO of an SGX-listed company, Huang Zhong Xuan, paid a civil penalty of SGD 2.5 million for making misleading public disclosures and failing to make required disclosures to the market. As part of the settlement, he offered to surrender 10% of his shareholding in the listed company and undertook not to assume the role of a company director or to be involved in the management of any entity listed on the SGX for three years.

The offer by Huang to surrender 10% of his shareholdings in the listed company is the first negotiated settlement of its

kind, directly benefiting existing shareholders. The investigation into the case was initially conducted by the CAD, which subsequently agreed to discontinue criminal investigations in order that a civil penalty settlement could be achieved.

In the enforcement action announced on the MAS' website, the CAD commented that the case was successfully resolved through close collaboration between the MAS, CAD and SGX, as well as assistance rendered by the authorities and regulators in the People's Republic of China. The CAD also "*assure[d] market participants that [it] will explore all viable avenues with the relevant agencies, including [its] overseas counterparts, to make wrongdoers account for what they have done*".

In April 2015, the MAS took civil penalty action against two individuals, Lim Oon Cheng and Lim Huey Yih, for insider trading and false trading in shares of Singapore Petroleum Company Limited and Keppel Corporation Limited based on price-sensitive and non-public information relating to an impending share acquisition and mandatory general offer. The individuals were found to have made an aggregate profit of SGD 4,715,193.

The defendants agreed to pay civil penalties totalling SGD 11.8 million, the highest amount under the civil penalty regime to date.

Conclusion

This series of recent developments has shown that regulators and authorities in Singapore are committed to operating a strengthened enforcement regime that delivers robust outcomes to deter market misconduct and preserve investor confidence. It is likely that increased sentences and penalties imposed on the offences will be seen in the future, in conjunction with the MAS' current proposals to amend the quantum of civil penalty which may be imposed under the SFA so as to be commensurate with the gravity of the misconduct.

³ Further details of the civil penalty enforcement actions and relevant statistics are available at:

- <http://www.mas.gov.sg/News-and-Publications/Enforcement-Actions/2015/China-Sky.aspx>
- <http://www.mas.gov.sg/news-and-publications/media-releases/2015/mas-takes-civil-penalty-action-against-lim-oon-cheng-and-lim-huey-yih-for-insider-trading.aspx>
- <http://www.mas.gov.sg/News-and-Publications/Speeches-and-Monetary-Policy-Statements/Speeches/2015/Strengthening-Investors-Confidence-In-Our-Capital-Markets.aspx>

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