



## **Investors Perception on Civil Remedies and Civil Action under the Capital Markets and Services Act 2007**

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### **ABSTRACT**

The Capital Markets and Services Act 2007 provides civil action and remedies for the victim of securities crimes. Whether these remedies are sufficient to protect investors' interest when dealing in securities transaction is an issue to be discussed in the paper? This paper aims to analyze investors' perception on civil remedies and action. This paper based on the legal research findings where a systematic method of exploring, investigating, analyzing and conceptualizing legal issues pertaining to the enforcement mechanisms and implication of the legal rules and principles. It involves systematic, inquiry or investigation of the factual data and theoretical concepts of the rules and principles of investors' compensation scheme of capital markets and services in Malaysia. The findings of the research shows that legal provisions of capital markets compensation fund is fairly sufficient and presumably can protect investors in the securities market. However, the corporation should exercise more care and diligence in exercising their duties and responsibilities in managing the fund. The power given by the law to the corporation is so wide. The researchers are of opinion the corporation had an extensive power to invest but it is paramount important to balance ratios/portions of fund monies according to priority of the fund purposes.

**Keywords:** Capital Markets Law, Civil Action, Civil Remedies, Investors Protection

**JEL Classifications:** C33, F11, N50

### **1. INTRODUCTION**

Investor protection is essential in the development of the capital markets as it restore the investor's confidence by giving assurance that their investment are being protected against market malpractices and in the event of any such malpractice, they would be able to resort to such recourse. The economic and financial crisis faced by many countries globally, particularly in Eurozone, has drawn the investors' attention to the Asian markets. Malaysia's capital market in 2012 raised a record level of funds at RM145.9 billion (The Star January 03, 2013), which represented an increase of 89% from RM77.2 billion which was recorded in 2011. This marked the significant contribution of the Capital Markets towards Malaysian's economy.

The objective of the Capital Markets and Services Act 2007 (CMSA, 2007) is to ensure investors' right is protected, as well as to maintain the integrity of the capital market confidence (Securities

Commission [SC], 2016). In Malaysia, there are several categories of securities crimes namely insider trading or market manipulation, disclosure offences such as submission of false or misleading accounts or report, market fraud, fraudulently inducing persons to deal in securities, and licensing-oriented offences which includes breach of condition of license or carrying out activities without a license when one is required (CMSA, 2007; Companies Act, 1965).

Hence, the Malaysian Securities Commission (SC) (1998) proposed the regulatory institutions and bodies to be continuously reviewed more widely and complex factors of improper conduct of the domestic securities market, which includes the issue of effectiveness of controlling and monitoring mechanism, and cooperative adjustment of monetary activities throughout the country.

Underpinning all these functions is the SC's ultimate responsibility which is highlighted in its mission statement of obligating statute

to encourage and promote the development of the securities and futures markets in Malaysia by maintaining fair, efficient, secure and transparent securities and future markets as well as to facilitate an orderly development of an innovative and competitive capital market.

## 2. LITERATURE REVIEW

The Far Eastern Economic Review (2001) reported that on average, Asia's best-governed companies (i.e., those with good transparency, respect for shareholder rights, etc.) all outperformed their country indexes in 2001, except in Thailand, where they underperformed by 15%. The market is simply not rewarding good governance. While good governance does not necessarily equal good management, and hence, good profits, "it usually reflects management quality and acts as a vital check against abuses to deter mismanagement" (Holland, 2003). Therefore, this research is important because one of the purposes is to detect to what extent the rules, procedures and process of the management of capital markets compensation fund (CMCF) scheme is favorable to investors in capital markets and services.

Even though, the CMSA 2007 provides investor protection plan but the question is to what extent these plans succeeded in achieving its objective? The investor protection scheme in the CMSA 2007 among others are civil sanctions initiated by SC on behalf of victims of securities crimes and the compensation fund scheme which has been managed by the Bursa Malaysia before 2013 (starting from January 2013 onwards, this fund is under the supervision of SC) that is to protect victims who suffers monetary loss at any particular time because of:

- A defalcation, or because of fraudulent misuse of monies or other property, by a director, officer, employee or representative of a holder of a capital markets services license who carries on the business of dealing in securities that is at that time a participating organization; or
- Insolvency of a participating organization.

Poor governance has played a significant role in most financial crises. Steps to reduce systemic risk, improve investor protection and enhance market fairness and efficiency therefore have to be coupled with efforts to raise the quality of governance in the capital market. Market participants must internalize those governance principles and reflect them in the way they conduct business. Only then, all will be truly assured of sustaining confidence and trust in capital market in the years to come. Therefore, the need to establish a fund where investors can get benefits from it and the good governance practice by the manager of the fund is a crucial issue and need to be studied.

Further, the SC sought to promote confidence in the integrity of Malaysian market. Investors must be assured that they are protected from misleading, manipulative or fraudulent practices. They want to have recourse to justice and know that wrongdoers will be held accountable. The landmark settlement of RM30 million in relations to the Swiss cash investment scam was a major achievement in this regard. To date, this is the largest settlement in the history of Malaysia's capital market and the

money will be used to compensate the victims of the scam. Other enforcement results in 2009 were also highly encouraging. The SC also secured custodial sentences and fines, in three cases in 2009 relating to fraud, deceit and falsifying accounts. The first civil enforcement by the SC is against a company director whereby the High Court ordered Kenneth Vun, the former managing director and shareholder of FTEC Resources Bhd., to repay the company RM2.4 million of initial public offering proceeds that he used for his personal benefit. However, these are only few cases which were settled but what about other long list of cases that are still pending and victims are waiting for remedies to recover back their monetary loss because of the criminal actions by offenders. Therefore, the research aims to seek an overview of investors in relation to these issues.

## 3. RESEARCH METHODOLOGY

This study is a socio-legal study. Socio-legal study is a research method that brings together two major fields of research in the social sciences and the field of law. Both of these areas are equally important because it examines the relationship between law and society. According to Zahraa (1998), legal research is a systematic method of exploring, investigating, analyzing and conceptualizing legal issues pertaining to the enforcement mechanisms and implication of the legal rules and principles. Therefore, this research is a fresh, diligent, systematic, inquiry or investigation of the factual data and theoretical concepts of the rules and principles of Investors Compensation Scheme (ICS) and civil remedies in capital market and services in Malaysia. Legal research method also been used when it involves study on cases which are related to civil remedies and its enforcement in the capital markets and services in Malaysia. Socio-legal research also involves participation from the society. For the context of this study, it also involves participation from the investors. This study had also adopted two approaches i.e., quantitative and qualitative approaches. For quantitative approach, an exploratory (socio-legal) survey has been conducted among investors in Malaysia to investigate their perception towards the effectiveness of the compensation fund and the civil sanctions strategy by SC as provided under the CMSA 2007. For the qualitative approach, the researchers had used different types of sources for example statute, decided cases and interviews with the self-regulator organization i.e., the Bursa Malaysia. The scope of the study is focusing on one main act that is the CMSA 2007. The scope of cases which has been analyzed by the researchers involved cases relating to civil remedies. The scope of the survey involves all 237 investors (license holder) according to the list provided by Bursa Malaysia and 84 respondents responded to the questionnaires (35.5% of the whole population).

## 4. FINDINGS

### 4.1. Respondents' Profile

The results in Table 1 shows that, majority of the company (89.3%) did not state the name of their company in the questionnaires. However, the results also shows that some of the companies are from AFFIN Investment Bank, Employee Provident Fund,

Kenanga Investment Bank Berhad Johor, OSK Investment Bank Berhad Melaka, OSK Investment Bank Berhad Perak, Public Investment Bank Berhad, RHB Investment Bank Berhad and TA Securities Holding Berhad.

Table 2 shows that, out of 84 companies, 16.7% of companies were located in Wilayah Persekutuan, 14.3% were located in Johor, 11.9% were located in Selangor and the remaining 57.1% were located in Melaka (6.0%), Pahang (4.8%), Pulau Pinang (9.5%), Sarawak (7.1%), Kelantan (1.2%), Kedah (3.6%), Sabah (8.3%), Negeri Sembilan (8.3%), Perak (6.0%), Terengganu (1.2%) and Perlis (1.2%).

#### 4.2. Civil Remedies and Civil Action by the SC

Table 3 presents the mean score and standard deviation for civil remedies and civil action by commission. The means score for all items were in the range of 3.90 to 4.76. Meanwhile the standard deviation of all items ranged from 0.428 to 0.974. The respondents gave highest response on the item “fraudulently inducing persons to deal in securities” with mean values of 4.76 and standard deviation of 0.428. Whereby, the items of “to reimburse the commission for all costs of the investigation and proceedings in respect of the contravention” received the lowest mean of 3.90 with standard deviation of 0.939. It shows that respondents agreed as to the provisions of law in relation to civil remedies and action is sufficient and adequate in protecting investors’ interest.

**Table 1: Company’s profile**

Company’s name	Frequency (%)
AFFIN Investment Bank	1 (1.2)
Employees Provident Fund	1 (1.2)
Kenanga Investment Bank Berhad Taman Pelangi, Johor	1 (1.2)
Kenanga Investment Bank Berhad Tangkak Johor	1 (1.2)
OSK Investment Bank Berhad Melaka	1 (1.2)
OSK Investment Bank Berhad Perak	1 (1.2)
Public Investment Bank Berhad	1 (1.2)
RHB Investment Bank Berhad	1 (1.2)
TA Securities Holding Berhad	1 (1.2)
No information	75 (89.3)
Total	84 (100.0)

**Table 2: Location of business**

Location (state)	Frequency (%)
Wilayah Persekutuan	14 (16.7)
Melaka	5 (6.0)
Pahang	4 (4.8)
Pulau Pinang	8 (9.5)
Sarawak	6 (7.1)
Selangor	10 (11.9)
Johor	12 (14.3)
Kelantan	1 (1.2)
Kedah	3 (3.6)
Sabah	7 (8.3)
Negeri Sembilan	7 (8.3)
Perak	5 (6.0)
Terengganu	1 (1.2)
Perlis	1 (1.2)
Total	84 (100.0)

#### 4.3. Recovery of Loss or Damages which is Established under the CMSA 2007

Table 4 presents the mean score and standard deviation for recovery of loss or damages established under the CMSA 2007. Response to each item was obtained on a five-point Likert scale ranging from strongly disagree (1) to strongly agree (5). The means score for all items were in the range of 4.11-4.26. Meanwhile the standard deviation of all items ranged from 0.713 to 1.018. Items of “a person who suffers loss or damages by reason of, or by relying on, the conduct of another person who contravened the act may recover the amount of loss by instituting civil proceedings against the other person” and “recover an amount equal to three times the amount being securities were acquired, or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time acquisition or agreement as the case may be, information had been generally available” received a high mean score of 4.26 with standard deviation of 0.852 and 0.713 respectively. Whereby, the item of “the legal framework in the Malaysian Securities Industry is very comprehensive and innovative” received the lowest mean score of 4.11, with standard deviation of 1.018.

### 5. SELECTED CASES INVOLVING CIVIL SANCTION BY SC

In Malaysia, the year 2010 saw the most largest settlements of civil actions amongst victims of the scandal Swisscash Internet Investment Scam. Swisscash is an internet based investment scam which claimed to have invested in a range of investments such as equities, commodities and foreign exchange. Swisscash and Swiss Mutual Fund had been soliciting investments from investors around the world, including the Malaysian public, through the internet, offering returns of up to 300% within 15 months of investment. However, based on the SC enquiries and investigations, this scheme is an illegal operation which has been unable to provide these returns to investors. The reason why the scheme is illegal is that the operators of this scheme have engaged in fund management and investment advice without any license from the SC.

The SC had blocked four websites related to Swisscash namely [www.swisscash.net](http://www.swisscash.net), [www.swisscash.biz](http://www.swisscash.biz), [www.swissmutualfund.biz](http://www.swissmutualfund.biz) and [www.swisscashguide.com](http://www.swisscashguide.com). The SC had on June 21, 2007 obtained a worldwide Mareva injunction against the operators of the Swisscash internet investment scheme, preventing them from disposing their assets in and outside of Malaysia. The Mareva order restrains and prohibits the defendants from carrying on the business of Swisscash, targeting, soliciting and collecting funds from the public for investments in Swisscash or any other internet investment scheme, hosting or operating the Swisscash websites or operating any other such websites which solicit investments for Swisscash or any other internet investment scheme and removing from Malaysia any of their assets which are in Malaysia. The Mareva injunction also requires the defendants to disclose information pertaining to all their assets in and outside Malaysia, the companies they have incorporated and the bank accounts they operate. The SC has taken action against three individuals, namely Albert Lee Kee Sien (Albert), Kelvin Choo Mun Hoe

**Table 3: Civil remedies and civil action by the commission**

No	Items	Mean±standard deviation
	Civil remedies	
1	To what extent do you agree whether the following activities constitute securities crime?	
(a)	False trading	4.56±0.869
(b)	Market ringing transaction	4.63±0.741
(c)	Stock market manipulations	4.63±0.741
(d)	False or misleading statement	4.67±0.717
(e)	Fraudulently inducing persons to deal in securities	4.76±0.428
(f)	Use of manipulative and deceptive devices	4.68±0.541
(g)	Dissemination of information about illegal transactions	4.65±0.526
(h)	Insider trading	4.68±0.495
2	Do you agree that a person who suffers loss or damage by reason of, relying on, the conduct of another person who has contravened one of the offences above may recover the amount of loss or damage by instituting civil proceedings against the other person	4.40±0.746
	Civil Action by Commission	
3	Do agree the commission may constitute civil proceedings in the court against any person who has contravened one of the offences above	4.37±0.673
4	For a civil action instituted by the commission against any person who has contravened one of the above offences, the commission may, it considers that it is in the public interest to do so in the following manner: Recover an amount which shall not exceed 3 times the gross amount of pecuniary gain made or loss avoided by such person	4.29±0.815
(a)	Claim civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention, being an amount not exceeding one million ringgit	4.18±0.809
5	An amount recovered by the commission in an action shall be applied	
(a)	To reimburse the commission for all costs of the investigation and proceedings in respect of the contravention	3.90±0.939
(b)	To compensate persons who have suffered loss or damage as a result of contravention	3.93±0.929
6	If the commission considers that it is not practicable to compensate the persons in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the commission may decide not to distribute	3.94±0.974
7	Civil proceedings may be commenced at any time within 12 years from: (a) The date on which the cause of action accrued or (b) the date on which the commission or the person who instituted the proceedings, as the case may be, discovered the contravention whichever is later	4.14±0.866
8	Any right of action that is conferred under this section shall not affect the right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in subsection 119 (1) or under any other law	4.38±0.775

**Table 4: Recovery of loss or damages**

No	Items	Mean±Standard deviation
	Recovery of loss or damages	
1	A person who suffers loss or damages by reason of, or by relying on, the conduct of another person who contravened the Act may recover the amount of loss by instituting civil proceedings against the other person	4.26±0.852
2	Do you agree that "loss or damages" includes an unrealized loss or gain, as the case may be, in the price or value of securities of a corporation being the difference between- (a) the price or value of securities in a transaction in connection with which the person first-mentioned in subsection (1) claims to have suffered loss or damages and (b) the price which would have been the likely price of the securities in the transaction, if the contravention had not occurred	4.20±0.847
3	Do you agree that the commission may, if it considers that it is in the public interest to do so, by civil action against the insider (Insider trading offence) or any other person involved in the contravention	4.21±0.893
4	In the case of insider trading, the commission can:	
(a)	Recover an amount equal to 3 times the amount being securities were acquired, or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time acquisition or agreement as the case may be, information had been generally available	4.26±0.713
(b)	Claim civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention, being an amount not exceeding one million ringgit	4.25±0.758
5	Civil proceedings under this section may be commenced at any time within 12 years from (a) The date on which the commission of the person who instituted the proceedings, as the case may be, discovered the contravention, whichever is later	4.17±0.929
6	The legal framework in the Malaysian Securities Industry is very comprehensive and innovative	4.11±1.018

(Kelvin) and Amir Bin Hassan (Amir) as well as three companies namely Dynamic Revolution Sdn Bhd, Swiss Mutual Fund (1948) S.A., SMF International Limited and SMF (1948) International Limited. The SC believe that these individuals mentioned are the operators of the scheme in Malaysia. On 25 September 2008, SC obtained judgment against Albert, Kelvin and their companies in the amount of USD83 million and such further amounts as may be traced for payment. The SC, with the help of other regulators and enforcement agencies has frozen the bank accounts of the defendants in various other jurisdictions. The SC is now working with overseas regulators and enforcement agencies to repatriate these funds back to Malaysia.

### 5.1. Swisscash Case 1

On April 08, 2010, the High Court of Kuala Lumpur approved and sanctioned the eligibility criteria recommended by the Administrator and SC. The High Court approved the eligibility criteria, payment criteria and payment ratio to be used in compensating the investors. PricewaterhouseCoopers Advisory Services (PwCAS), the administrator appointed by SC for the restitution process, will commence making payouts from April 15, 2010 to the eligible investors. Eligible investors will receive payment by cheque which will be sent via post. (No appeals will be entertained).

### 5.2. Swisscash Case 2

On June 28, 2010, the High Court of Kuala Lumpur approved and sanctioned a further eligibility criteria recommended by the Administrator and SC. The High Court approved that the cut-off date for investors residing outside Malaysia of the Swisscash scheme to be varied from June 21<sup>st</sup>, 2007 to July 7<sup>th</sup>, 2007. The eligibility criteria, payment criteria and payment ratio to be used in compensating the investors remains the same. PwCAS, the administrator appointed by SC for the restitution process, will commence making payouts to eligible investors. Eligible investors will receive payment by cheque which will be send via post.

### 5.3. Swisscash Case 3

On December 21, 2011, the SC had provided a final status update to the Kuala Lumpur High Court on the Swisscash restitution scheme. The update was accompanied by the final report prepared by PwCAS Sdn Bhd which was appointed by the SC to administer the restitution scheme in 2010. The report sets out the restitution process and the payment criteria to eligible investors. In summary, the Administrator received 29,885 claims, totaling approximately RM188 million from Malaysian and foreign investors. Payouts totaling RM30.532 million were made to 19,625 eligible claimants. The SC now confirms that PwCAS has completed its functions as the Administrator for the distribution of the Swisscash settlement sum to eligible investors. As distribution of the funds available from the settlement sum has been completed in accordance with the eligibility criteria as reported to the court, no further payments will be made to Swisscash investors.

As a comparative discussion, in the United Kingdom, the ICS was set up pursuant to section 54 of the Financial Services Act 1986 to provide a compensation fund for people who have unsatisfied claims against persons authorized under the act to

carry on investment business. The rules under which the scheme is administered provide that, on paying compensation, the company managing the scheme is to take over the applicant's rights against the authorized person and also, if the management company so determines, any rights he may have against other persons relating to the subject-matter of his claim. In 1992 the management company, called ICS Ltd., began to receive a large number of claims from home owners, mainly elderly retired people, who had been advised by authorized persons, independent financial advisers belonging to the Financial Intermediaries, Managers and Brokers Regulatory Association, to enter into schemes called "Home Income Plans." These schemes had been marketed by the financial advisers in conjunction with certain building societies during the late 1980's and involved the owners mortgaging their homes to secure advances at enhanced rates of interest which they mainly invested in equity-linked bonds. The subsequent fall in equities and house prices and the rise in interest rates had caused the owners severe losses. They had claims against the financial advisers for negligence and breach of their statutory duties under the Act of 1986 as well as possible claims against the building societies and the solicitors who had acted in connection with the mortgages.

ICS Limited (Appellants) V. West Bromwich Building Society (WBBS) and Others (Respondents) on 19 June 1997, House of Lords.

The background to the present appeals is proceedings brought by two groups of investors against WBBS for damages for negligence at common law and under section 2(1) of the Misrepresentation Act 1967. They also claim rescission of their mortgages on the ground of misrepresentation and undue influence, equitable compensation, damages in lieu of rescission under section 2(2) of the act of 1967, and a variety of other remedies. Some of these remedies overlap. The ICS Ltd. have also commenced proceedings against WBBS in which they claim as assignees of the investors' rights against WBBS. They assert that all the investors' claims against WBBS have been validly assigned to ICS, with the exception of the investors' claim for rescission. It follows that there are competing claims against WBBS for the same damages, by the investors on the one hand and ICS on the other.

The resolution of the issue which thus arises indirectly between ICS and the investors depends on the true construction of the claim form, and in particular on the scope of the provisions relating to the assignment of the investors' rights against third parties. As between ICS and WBBS there is a further issue. For WBBS allege in the alternative that if the question of construction is resolved in favor of ICS, and the investors have purported to assign their claims for damages against WBBS, then the assignment is void or unenforceable on grounds of public policy. In addition to their claim against WBBS, ICS have brought proceedings against numerous firms of solicitors, in which they claim damages for negligence in advising their clients in relation to the Home Income Plans. These proceedings are also brought as assignees under the Claim Form. But there are two important differences. In the first place, there is no issue as to the meaning or scope of the assignment in the case of claims against the solicitors. Secondly (and no doubt for the same reason) none of the investors have brought their

own proceedings against the solicitors. So there is no underlying conflict between ICS and the investors in relation to the ICS claim against the solicitors. The solicitors' defense is the same as the alternative argument advanced by WBBS, namely, that the assignment is void or unenforceable on grounds of public policy.

There are issues to be decided by the House of Lords: Question 1: (a) Whether, upon the true construction of the express and (if any) implied terms of the ICS Claim Form, any (and if so which and to what extent) of the claims which the Alford and Armitage investors advance in the actions numbered Ch. 1995--A--2266 and 3129 have been assigned to the ICS and (b) if so, whether such assignment is valid and effective and what consequences (if any) does it have as to the ability of those investors to maintain the actions. Answer: Upon the true construction of the ICS Claim Form, all claims for damages and compensation have been validly assigned to ICS and such claims cannot be maintained by the investors in their actions. The investors retain the right to claim rescission of their mortgages upon such terms as the court may consider just.

Question 2: (a) Whether, upon the true construction of the express and (if any) implied terms of the ICS Claim Form and in the light of the answer to issue 1, any (and if so which and which parts thereof) of the claims which the ICS advances in the actions numbered CH 1995--I--7087 and 8106 have been assigned to the ICS and (b) if so, is such assignment valid and effective and does it enable ICS to maintain the actions. Answer: (a) All (b) Yes. The decision of the House of Lords, it is concluded that it has reached as to the construction to be placed upon section 3(b) of the ICS Claim Form and the appeal is allowed.

#### 5.4. Tan Yeong Kim and She Tu Shwu Fen Case

On August 01, 2013, the SC entered into a settlement with Tan Yeong Kim and She Tu Shwu Fen in the sum of RM106,550.31 when they agreed without admission or denial of liability, to settle a claim that the SC was proposing to institute against them for insider trading in the shares of Orisoft Technology Berhad (Orisoft) between May 17, 2007 and October 29, 2008, contrary to section 89E of the Securities Industry Act (SIA) 1983 and section 188 of the CMSA 2007. The settlement was reached following letters of demand sent by the SC pursuant to its civil enforcement powers under the securities laws, where the sums both of them were required to disgorge was equivalent to three times the difference between the price at which the shares were acquired and the price at which they would have been likely to have been acquired at the time of the acquisition, if the information had been generally available. In accordance with the provisions of section 90A(7) of the SIA and section 201(7) of the CMSA, the amount recovered from them will be used first to reimburse the SC for all costs of investigations and proceedings. Any remaining amount if available will be used to compensate the sellers who sold their shares to them before the information became generally available.

#### 5.5. Lim Chin Chin Case

In relation to civil actions and regulatory settlements the SC entered into a settlement with Lim Chin Chin (SC, 2012) in the sum of RM232,320.00 when she agreed without admission or denial

of liability to settle a claim that the SC was proposing to institute against her for insider trading in the shares of Sin Chew Media Corporation Berhad ("Sin Chew") between January 29, 2007 and January 30, 2007, contrary to Section 89E(3)(a) of the SIA 1983. The settlement was reached following a letter of demand sent by the SC pursuant to its civil enforcement powers under the securities laws, where the sum Lim Chin Chin was required to disgorge was equivalent to 3 times the gains made by Ong Sew Teng and Chong Hiong Lim in connection with their trades in Sin Chew shares.

#### 5.6. Rameli Bin Musa Case

On November 16, 2011, the SC entered into a settlement with Rameli bin Musa in the sum of RM36,050.00 when he agreed without admission or denial of liability, to settle a claim that the SC was proposing to institute against him for insider trading in the shares of Crest Petroleum Berhad (Crest) between January 15, 2003 and January 17, 2003, contrary to section 89E of the SIA 1983. The settlement was reached following letters of demand sent by the SC pursuant to its civil enforcement powers under the securities laws, where the sum Rameli bin Musa was required to disgorge was equivalent to three times the gains he made from his trades in Crest shares. In accordance with the provisions of section 90A(7) of the SIA, the amount recovered from Rameli bin Musa will be used first to reimburse the SC for all costs of investigations and proceedings. The remaining amount will be used to compensate the sellers who sold their shares to him before the information became generally available.

#### 5.7. Chong Mei Ngor Case

On October 13, 2011, the SC entered into a settlement with Chong Mei Ngor in the sum of RM88,110.00 when she agreed without admission or denial of liability, to settle a claim that the SC was proposing to institute against her for insider trading in the shares of Sin Chew Media Corporation Berhad (Sin Chew) between January 25, 2007 and January 30, 2007, contrary to section 89E of the SIA 1983. The settlement was reached following letters of demand sent by the SC pursuant to its civil enforcement powers under the securities laws, where the sum she was required to disgorge was equivalent to three times the gains she made from her trades in Sin Chew shares. In accordance with the provisions of section 90A(7) of the SIA, the amount recovered from Chong Mei Ngor will be used first to reimburse the SC for all costs of investigations and proceedings. The remaining amount will be used to compensate the sellers who sold their shares to her before the information became generally available.

#### 5.8. Foong Choong Heng Case

On October 03, 2011, the SC entered into a settlement with Foong Choong Heng in the sum of RM281,361.00 when he agreed without admission or denial of liability, to settle a claim that the SC was proposing to institute against him for insider trading in the shares of Crest Petroleum Berhad (Crest) between January 14, 2003 and January 21, 2003, contrary to section 89E of the SIA 1983. The settlement was reached following letters of demand sent by the SC pursuant to its civil enforcement powers under the securities laws, where the sum he was required to disgorge was equivalent to three times the gains he made from his trades in Crest shares. In accordance with the provisions of section 90A (7) of

the SIA, the amount recovered from Foong Choong Heng will be used first to reimburse the SC for all costs of investigations and proceedings. The remaining amount will be used to compensate the sellers who sold their shares to him before the information became generally available.

## 6. CONCLUSION

From the above findings, it can be concluded that the SC used several ways in order to protect investors of the capital markets in Malaysia. The establishment of the CMCF had shown the seriousness of the Government of Malaysia and the SC to safeguard the interest of investors in Malaysia. Furthermore, to promote confidence in the integrity of Malaysian market it is also revealed that solemn efforts of the enforcement authority in Malaysia to compensate the victims and combating the capital markets crimes by enforcing the legal strategy of civil sanction and remedies as well as using the conventional way by criminal sanction.

From the findings it shows that respondents agreed the provisions of law in relation to civil remedies and action is sufficient and adequate in protecting investors' interest. The enforcement of law may control the possibility of the worst to occur as well as provide safeguards for the victims of such market crashes against undue manipulation or exploitation. Further, it also ensures the investors' right are being duly protected and their losses will be duly compensated. This will obviously help to create a well-trusted market, which is capable, and enhance the economic well-being of the country.

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