

To : All Dealer's Representatives
From : The Management
Date : 12 August 2020
Subject : Illegal Private Arrangements Detrimental to Investors' Interest

The Management wishes to draw your attention to the recent notice made by the Securities Commission Malaysia (SC) which highlighted the occurrence of numerous illegal private arrangements which may be detrimental to investors' interests.

The SC noted that majority of these private arrangements were offered to clients by the intermediaries' respective Dealer's Representative ("DR") without proper authorisation from their intermediaries.

An example of an illegal private arrangement is illustrated below:

A DR offers an illegal share buyback scheme which requires the client to enter into a transaction to purchase a particular share. At the same time, the DR coordinates the transaction with a third party ("Mr A") and promises the client the sale of the particular share via the following:

- 1. a guaranteed buyback by Mr A via a Direct Business Transaction ("DBT") on/by a certain date at a higher price than the client's original purchase price; or*
- 2. a put option for the client to sell the shares at an agreed sale price via DBT if the market price of the shares falls below the agreed sale price; or*
- 3. sale of the shares on the market if the market price of the shares is higher than the guaranteed buyback/agreed sale price*

However, these arrangements are not honoured by the DR or Mr A. The client may be left holding the shares at an unrealised loss or may have to liquidate the shares in the market at a loss due to the decline in share price.

These types of illegal share buyback schemes may constitute a breach under Section 178 and/or Section 179 of Capital Markets and Services Act 2007 ("CMSA"). The provisions of the CMSA are reproduced below for your attention :

"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."

In light of the illegal private arrangements as illustrated above, DR's must always be mindful to be in compliance with the fit and proper requirements in dealing with your clients and to avoid any form of unusual activities that might result in such illegal private arrangements. SC will not hesitate to take action should there be any form of breach of its securities laws and guidelines.

Please be guided accordingly.

Thank you

