

PARTICIPATING ORGANISATIONS' CIRCULAR

Date: 7 December 2022

No.: G 43 of 2022

Enforcement Action Pursuant to the Rules of Bursa Malaysia Securities Berhad

7 December 2022

BURSA MALAYSIA SECURITIES PUBLICLY REPRIMANDS, FINES AND ORDERS TO STRIKE OFF TYE LIM HUAT FOR PROHIBITED/UNLAWFUL TRADING ACTIVITIES AND OTHER MISCONDUCTS

Bursa Malaysia Securities Berhad [Registration No.: 200301033577 (635998-W)] (**Bursa Malaysia Securities**) has publicly reprimanded, imposed a fine of RM667,500 and ordered to strike off Tye Lim Huat (**TYE**) from the Register (notwithstanding that he had ceased to be a Registered Person of Bursa Malaysia Securities) for misconducts/breaches including short selling activities, personal/unauthorised trades in a client's (**Client A**) accounts and misapplication/misuse of monies in Client A's trust accounts and Client A's trading limits/sales proceeds to fund TYE's personal trades.

TYE, who was at the material time of the breaches, a Commissioned Dealer's Representative of Malacca Securities Sdn Bhd (**MSSB**) at its Principal Office, had contravened and/or triggered the provisions of Rules 3.14(b), (c) & (d), 5.01(a), 5.16(1)(a), (b) & (c), 8.34(3) & 15.09(a), (b), (g), (i)(iii) & (i)(vi) of the Rules of Bursa Malaysia Securities and Paragraphs 1.1(1)(e) & 11.2(a) of Directives No. 5-001 of the Participating Organisations' (**PO**) Directives and Guidance (**Directives No. 5-001**) read together with Section 98(1) of the Capital Markets and Services Act 2007 (**CMSA 2007**) and POs' Circulars Nos. R/R 5 of 2020 dated 23 March 2020, R/R 7 of 2020 dated 28 April 2020 and R/R 10 of 2020 dated 26 June 2020 (collectively referred to as **Short Selling Suspension Circulars**).

Bursa Malaysia Securities views misconducts that compromise the integrity of the market and client's protection and impinge on the integrity and professional conduct/etiquette of Registered Persons, including Dealer's Representatives, seriously and will not tolerate any unlawful trading practices. Dealer's Representatives must undertake trading activities in strict compliance with the Rules of Bursa Malaysia Securities and relevant laws including acting with integrity in maintaining market confidence. Bursa Malaysia Securities will not hesitate to take appropriate actions against anyone who engages/participates in such misconducts or fails to carry out their duties with utmost integrity, including striking off a Dealer's Representative from the Register and imposing a fine that commensurate with the severity of the breach.

BACKGROUND

The finding of the breaches and imposition of the sanctions on TYE were made pursuant to Rule 15.02 of the Rules of Bursa Malaysia Securities after according due process to TYE, taking into consideration all facts and circumstances including the following:

- (1) TYE had, during the relevant period of about two (2) months (**Relevant Period**):-
- (a) executed prohibited short selling trades involving substantial volume and/or value (**Prohibited Short Sales**) as follows:
- (i) intraday short selling trades on several days in Client A's account in the following five (5) counters (**5 Counters**):-
- Comfort Gloves Berhad;
 - Anzo Holdings Berhad;
 - Notion VTec Berhad;
 - SMTrack Berhad; and
 - Careplus Group Berhad,

which were not Approved Securities pursuant to Rule 8.22(5) of the Rules of Bursa Malaysia Securities. Hence, short selling, including Intraday Short Selling pursuant to Part D of Chapter 8 of the Rules of Bursa Malaysia Securities (**IDSS**) was prohibited in these counters;

- (ii) intraday short selling trades in Supermax Corporation Berhad (**SUPERMX**) and Duopharma Biotech Berhad (**DPHARMA**) on several days in Client A's collateral account (**Collateral Account**). The Collateral Account was not eligible for IDSS and hence, IDSS was not allowed to be executed in this account.

These trades were executed by TYE despite him knowing, at the material time, that the 5 Counters were not Approved Securities, IDSS could not be executed in Client A's Collateral Account and Client A did not have an exercisable and unconditional right to vest the securities in these counters in a purchaser of the securities and hence constituted short selling in contravention of Rules 8.34(3) & 3.14(b) of the Rules of Bursa Malaysia Securities and Section 98(1) of the CMSA 2007;

- (b) executed IDSS trades in DPHARMA, which was an Approved Security, when IDSS was suspended by the Exchange at the material time pursuant to the Short Selling Suspension Circulars (**IDSS Suspension**) in breach of Rule 3.14(c) of the Rules of Bursa Malaysia Securities read together with the Short Selling Suspension Circulars (**Unpermitted IDSS Trades**);
- (c) executed his personal trades and unlawfully transacted in Client A's accounts (**TYE's/his Personal Trades**) with the execution of:
- (i) the Prohibited Short Sales and Unpermitted IDSS Trades (collectively **Prohibited/Unpermitted Short Selling**) which were TYE's personal trades; and
- (ii) TYE's other personal trades on several trading days in 12 counters involving substantial volume and value.

TYE's Personal Trades had resulted in substantial profits/contra profits made in Client A's accounts;

- (d) engaged in discretionary trading activities on several trading days in 15 counters for Client A which were not permitted by/without the prior approval of MSSB (**Prohibited Discretionary Trading**) as required by Paragraph 7.0(a) of the Securities Commission Guidelines on Market Conduct and Business Practices for Stockbroking Companies and Licensed Representatives;
 - (e) applied/used monies/trading limits/sales proceeds/contra gains in Client A's accounts to fund/carry out his Personal Trades; and
 - (f) engaged in unlawful or irregular or unhealthy practices as set out in subparagraphs (a) to (e) above and below:
 - (i) used Client A's accounts to execute his Personal Trades instead of using his own account in MSSB which displayed the deliberate concealment of his Personal Trades from MSSB in circumvention of Rule 7.26(1) of the Rules of Bursa Malaysia Securities;
 - (ii) used Client A's User ID, password and trading pin to access and use Client A's online trading facility to execute his Personal Trades and the Prohibited Discretionary Trading for Client A;
 - (iii) shared common correspondence address where confidential documents vis-à-vis Client A's accounts were sent, in order to help TYE manage Client A's accounts and maintained a joint bank account with Client A (**Joint Bank Account**) where either TYE or Client A had the authority to operate/withdraw the monies in the Joint Bank Account; and
 - (iv) co-mingled sales proceeds/profits/gains from his Personal Trades with the monies/deposits in Client A's trust accounts and the Joint Bank Account.
- (2) As an experienced Registered Person, TYE knew or ought to know that he should not use any client's account for his personal trades, co-mingle his monies with client's monies and use/have access to a client's confidential information e.g. user ID, password and trading pin for online trading facility regardless of his close relationship with Client A. Hence, even if Client A had allowed TYE to use/manage/operate his accounts, had knowledge/condoned TYE's misconducts and/or did not dispute the trades, it did not absolve/mitigate TYE's liability/culpability for the breaches for he had blatantly and knowingly acted in breach of the Rules and Securities Laws.
- (3) The sanctions, in particular the fine and striking off (notwithstanding that TYE had ceased to be a Registered Person), were reflective of the severity and extent of the breaches and were imposed having considered, amongst others, the following:-
- (a) The materiality/extent/severity of the breaches which involved multiple serious misconducts and extensive trades carried out in Client A's accounts as well as the significant profits/gains and commission made by TYE from these trades.
 - (b) TYE had reaped significant profits/contra gains from the trades and placed himself in a situation of conflict of interest and failed to act in the best interest of his client.

- (c) TYE's multiple serious misconducts coupled with his blatant disregard of the Rules and laws, concealment of his unlawful trading activities from MSSB and circumvention of the Rules by undertaking the trades in Client A's account had compromised/impinged on his integrity and professional conduct expected of a Dealer's Representative/Registered Person and brought into question as to whether he was a fit and proper person to be in the industry.
- (4) The public reprimand was imposed on TYE as a deterrent consideration so as to create market awareness and highlight the serious view taken by Bursa Malaysia Securities for cases involving Dealer's Representatives who knowingly and blatantly disregarded the relevant rules and laws including the prohibition against short selling, using client's account for the DR's personal trades and to underline the need for Dealer's Representatives to ensure protection of clients' accounts/interest/monies at all times.
- (5) As a Registered Person acting in the capacity of a Dealer's Representative, TYE must, at all times:
- (a) observe professional conduct, standards of integrity and fair dealing;
 - (b) exercise proper skill, care and diligence;
 - (c) act honestly and in the best interest of the client;
 - (d) perform his duties efficiently, honestly and fairly;
 - (e) refrain from engaging in any unlawful or irregular or unhealthy practices;
 - (f) not abuse/misuse client's account and monies; and
 - (g) comply with and give effect to the relevant Rules, Directives and Securities Laws.

-End-

Head, Enforcement

ADDENDUM

Rules 3.14(b), (c) & (d), 5.01(a), 5.16(1)(a), (b) & (c), 8.34(3), 15.09(a), (b) & (g), (i)(iii)* & (i)(vi)* of the Rules of Bursa Malaysia Securities and Paragraphs 1.1(1)(e) & 11.2(a) of Directives No. 5-001 provide, amongst others, that:

- Throughout the term of a Registered Person's (**RP**) registration, a RP must:
 - comply with and give effect to the Securities Laws^[1] and the Commission's requirements;
 - comply with and give effect to these Rules and the Directives^[2] and to any undertaking given to the Exchange whether before or after registration as a RP; and
 - observe professional conduct, standards of integrity and fair dealing.

[Note:

[1] **Section 98(1) of the CMSA 2007** states that 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] The Exchange had, vide the Short Selling Suspension Circulars i.e. POs' Circular Nos. R/R 5 of 2020 dated 23 March 2020, R/R 7 of 2020 dated 28 April 2020 and R/R 10 of 2020 dated 26 June 2020, pursuant to Rule 2.01(2)(r) of the Rules of Bursa Malaysia Securities, directed, amongst others, that Intraday Short Selling pursuant to Part D of Chapter 8 of the Rules of Bursa Malaysia Securities and the Directives on Intraday Short Selling No. 8-003 of the POs' Directives and Guidance be temporarily suspended from 24 March 2020 until 31 December 2020.]

- A PO and RP must, in the conduct of the PO's business, adhere to just and equitable principles and act with due skill, care and diligence and with due regard for the integrity of the market.
- A PO and RP must not engage in any unlawful or irregular or unhealthy practice.
- A PO and RP must act with due skill, care and diligence, honestly and fairly and in the best interests of the PO's Clients.
- A PO, Head of Dealing (**HOD**) and Dealer's Representative (**DR**) must not execute the personal trades of the PO's HOD or DR (as applicable) in the client's account.
- Intraday Short Selling can only be carried out for Approved Securities by way of On-Market Transaction.
- Any Defaulting Participant who, in any circumstances, directly or indirectly:
 - commits a breach of or violates any of the Rules;
 - has failed to comply with any of the Exchange's decisions, directives, rulings or guidelines (other than those guidelines which are expressed to be non-binding) made under the Rules and/or by the Exchange;
 - fails to perform his duties efficiently, honestly or fairly;
 - being a DR unlawfully transacts on another person's account; or
 - applies any amount paid or securities deposited by a Client to any person not entitled thereto or for payment other than the said Client's trading account
 will be liable and be dealt with in accordance with the provisions of the Rules relating to the same.

***Note:** Rules 15.09(i)(iii) & (i)(vi) of the Rules of Bursa Malaysia Securities cited above were the provisions applicable during the Relevant Period. Rules 15.09(i)(iii) & (i)(vi) have been re-numbered to Rules 15.09(i)(iv) & (i)(vii) respectively with effect from 21 August 2020 via POs' Circular No. R/R 11 of 2020.