Suruhanjaya Sekuriti
Securities Commission
Malaysia

The Reporter

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Executive Summary

Anti-bribery & corruption measures for entities in the capital market and warnings on unlicensed investment advice activities

The Securities Commission Malaysia (SC) continuously promotes good governance and conduct of entities in the capital market. In addition, the SC also strives to ensure that investors are protected at all times against unlicensed activities in the capital market.

With the introduction of the corporate liability provision under section 17A of the *Malaysian Anti-Corruption Commission Act 2009* (MACC Act), entities in the capital market and their senior management personnel are at risk of being held liable for acts of corruption conducted by the entity or its employees or agents. The first article provides insights into section 17A of the MACC Act, the requirements contained in the *Licensing Handbook* and other guidelines on anti-bribery and corruption as well as whistleblowing policies and procedures. The SC's findings of the assessment on the state of compliance by capital market intermediaries and best practices are also discussed in the first article.

Further, the SC has seen a surge in the number of complaints and enquiries received in relation to unlicensed investment advisers compared to preceding years and rising interest from the public on investment opportunities. This issue of *The Reporter*, through its second article, delves into the circumstances under which a person will need to be licensed by the SC to carry on a business of giving investment advice in Malaysia and the adverse impact of such unlicensed activity on the recipients of the advice.

The second article also seeks to provide a glimpse into how these unlicensed investment advisers carry on their businesses and the steps taken by the SC thus far in addressing these concerns.

Please share with us your comments, feedback or ideas for future editions via email to the Editorial Team at reporter@seccom.com.my.

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Upholding Corporate Anti-Bribery and Corruption Measures in the Capital Market

The inclusion of corporate liability provisions into the anti-bribery and corruption laws marks a major milestone in the fight against corruption in Malaysia. The new section 17A of the MACC Act (section 17A) came into force on 1 June 2020 and the first prosecution of a company for bribery under the new provision took place on 18 March 2021.[1] This article explores section 17A and provides guidance to the management of entities in the capital market on the anti-bribery and corruption measures that can be adopted.

Background to Section 17A

The introduction of section 17A fulfils Malaysia's obligations under the *United Nations Convention Against Corruption* (UNCAC)[2] to which Malaysia is a signatory.[3] The UNCAC is an international treaty adopted by the UN General Assembly in October 2003 to fight corruption globally in both the public and private sectors. The convention rests on four pillars: prevention of corruption, criminalising corruption, international cooperation and asset recovery.

In introducing the corporate liability provisions, Malaysia followed the lead of the United Kingdom, who is also a signatory to the UNCAC, which introduced its corporate liability provisions under the *UK Bribery Act 2010*.[4] On 5 April 2018, the Malaysian parliament amended the MACC Act to, among others, introduce a corporate liability provision for bribery and corruption under section 17A[5] to encourage business activities to be conducted with integrity and to promote good governance practices in organisations. It is noted that such amendments are not solely for the purpose of punishing commercial organisations for bribery and corruption.[6]

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1 The Edge Markets, "Offshore Vessel company first to be charged with MACC Act's new corporate liability provision", 18 March 2021 at https://www.theedgemarkets.com/article/offshore-company-first-be-charged-under-maccs-new-law.

2 Article 26 of the UNCAC relates to the liability of legal persons.

3 Malaysia became a signatory to the UNCAC on 9 December 2003 and ratified the UNCAC on 24 September 2008.

4 See section 7 of the *UK Bribery Act 2010*.

5 Section 4 of the *Malaysian Anti-Corruption Commission (Amendment) Act 2018*.

6 Press statement by the Malaysian Anti-Corruption Commission on 1 June 2020.

Section 17A and What It Does

The new section 17A essentially provides for two concepts of liability that are applicable to both a commercial organisation and its senior management personnel.

Corporate Liability of a Commercial Organisation

Section 17A(1) empowers the Malaysian Anti-Corruption Commission (MACC) to directly impose corporate liability on a "commercial organisation" (including intermediaries and entities in the capital market) if a person associated with it corruptly gives, agrees to give, offers, or promises any gratification to any person with an intent to obtain or retain business or a business advantage for the commercial organisation.

A person is considered to be "associated" with a commercial organisation if he is a director, partner or an employee of the commercial organisation, or if he is a person who performs services for or on behalf of the commercial organisation.[7] The question of whether or not a person performs services for or on behalf of the commercial organisation is determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between the person and the commercial organisation.[8]

Commercial organisation =

- A company or partnership / limited liability partnership incorporated / formed under Malaysian law which carries on a business in Malaysia or elsewhere
- A foreign-incorporated / formed company or partnership which carries on a business or part of a business in Malaysia

"Commercial organisations and their senior management may be at risk of liability under section 17A for acts of corruption committed by persons associated with the commercial organisation."

Adequate Procedures to Prevent Corrupt Practices

A commercial organisation may successfully defend itself from a charge under section 17A(1) if it is able to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such corrupt conduct.[9] In this respect, the *Guidelines on Adequate Procedures* (GAP)[10] issued under the MACC Act provides a non-prescriptive list of measures and safeguards based on 5 core principles to assist commercial organisations to understand the type of adequate procedures that should be implemented to prevent the occurrence

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7 Section 17A(6) of the MACC Act.
8 Section 17A(7) of the MACC Act.
9 Section 17A(4) of the MACC Act.
10 GAP was issued by the Governance, Integrity and Anti-Corruption Centre (GIACC) of the Prime Minister's Office on 10 December 2018 pursuant to section 17A(5) of the MACC Act and is available for download on https://giacc.jpm.gov.my/garis-panduan-tatacara/.

of corrupt practices in relation to their business activities. Accordingly, a commercial organisation may use GAP as a reference point in ascertaining the anti-bribery and corruption policies, procedures and controls it may wish to implement for protection against the corporate liability provision.

The 5 core principles on which GAP and the ensuing list of procedures and controls that a commercial organisation is encouraged to adopt are as follows:

Commercial organisations should give serious attention to ensure that adequate anti-bribery and corruption procedures and controls are put in place in light of the stiff penalties that could be imposed. If convicted, a commercial organisation shall be liable to pay a hefty fine of not less than 10 times the sum or value of the gratification which is the subject matter of the offence (where such gratification can be valued or is of pecuniary nature) or RM1 million, whichever is the higher, or to imprisonment for a term not exceeding 20 years, or to both.[11]

Deemed Parallel Criminal Liability of Senior Management

In addition to the imposition of corporate liability – a director, controller, officer, partner or any person who is concerned with the management of the commercial organisation's affairs at the time of the offence, will also be deemed to be liable for the same offence where the commercial organisation is convicted under section 17A(1).[12] The said presumption may be rebutted if the person is able to prove that the offence was committed without consent or connivance and that the person has exercised reasonable due diligence to prevent the commission of the offence, having regard to the nature of the function, capacity and circumstances.[13]

What This Means for the Capital Market

Following the enactment of section 17A, the SC amended the *Licensing Handbook* and other relevant guidelines to require the capital market intermediaries and entities listed below to put in place anti-bribery and corruption as well as whistleblowing policies and procedures (as guided by GAP) that are appropriate to the nature, scale and complexity of their respective businesses.

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11 Section 17A(2) of the MACC Act.
12 Section 17A(3) of the MACC Act.
13 Section 17A(3) of the MACC Act.

a. Capital Markets Services License holders carrying on regulated activities in Malaysia.[14]

b. Trustee companies[15] and issuing houses[16] registered with the SC to provide capital market services for the purposes of section 76A of the CMSA.

c. Bond pricing agencies.[17]

d. Credit rating agencies.[18]

e. Recognised market operators (RMOs) registered with the SC under section 34 of the CMSA.[19]

f. Electronic platform operators (EPOs) hosting the offering of digital tokens which are registered with the SC.[20]

The revisions to the relevant guidelines are to highlight the need and importance for them to have in place anti-bribery and corruption policies and procedures. In this respect, entities in the capital market that are not governed by any of the relevant guidelines would still be liable under section 17A.

The significance of section 17A is that unless there are adequate anti-bribery and corruption policies and procedures in place to prevent against corrupt conduct, intermediaries and entities in the capital market as well as their senior management personnel may be at risk of being held liable for acts of corruption conducted by any employee (regardless of level or function). This would include acts of corruption conducted by the intermediaries or entities' agents, distributors and other service providers who act on their behalf. Such liability will arise regardless of whether or not any of the senior management level personnel had actual knowledge of the corrupt conduct.

The question then arises as to what would constitute "adequate procedures" in this matter. While GAP provides a list of policies and procedures pursuant to each of the 5 core principles that may be summarised as "TRUST" based on the initials of each of the principles (TRUST principles), GAP is not intended to serve as a checklist for a successful defence under section 17A. On the contrary, the policies and procedures adopted should commensurate with the scale, nature, industry, risk and complexity of the business of an intermediary or entity, and be able to meaningfully and effectively prevent corrupt conduct within its business activities.

> "All intermediaries and entities in the capital market should take steps to implement adequate anti-corruption and bribery procedures as guided by the GAP."

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14 Paragraph 4.02(3) of SC's *Licensing Handbook*.
15 Paragraph 4.05(b)(iia) of the SC's *Guidelines on the Registration and Conduct of Capital Market Services Providers.*
16 Paragraph 9.02(b)(ii) of the SC's *Guidelines on the Registration and Conduct of Capital Market Services Providers.*
17 Paragraph 4.3A of the SC's *Guidelines on the Registration of Bond Pricing Agencies.*
18 Paragraph 2.40 of the SC's *Guidelines on the Registration of Credit Rating Agencies.*
19 Paragraph 6.02(d)(ii) of SC's *Guidelines on Recognised Markets*.
20 Paragraphs 17.04(n)(ii), 27.02(d)(ii) and 27.03(g)(iii) of the *Guidelines on Digital Assets*.

State of Compliance by Capital Market Intermediaries

In an effort to assess the extent to which adequate procedures have been implemented, the SC had, in June 2020, issued questionnaires to 255 intermediaries (excluding RMOs and EPOs). The review was focused on the implementation by such intermediaries of adequate anti-bribery and corruption policies and procedures as well as a framework based on the TRUST principles. Based on the responses to the questionnaires, the review revealed that a large majority of the intermediaries have:

a. established anti-bribery and corruption policies and procedures which encapsulate the TRUST principles;

b. adopted adequate procedures to fulfil the first TRUST principles, namely "Top Level Commitment", in spearheading the organisation's efforts to manage and improve the effectiveness of its overall anti-bribery and corruption framework; and

c. in place appropriate arrangements to govern training, including monitoring staff to ensure that such training is completed and incentivising staff to adhere to training requirements through performance management protocols.

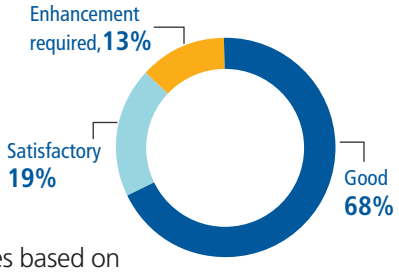
In particular, the outcome of the review showed that:[21]

a. 68% of intermediaries had displayed a good overall level of compliance, having an adequate anti-bribery and corruption framework;

b. 19% of intermediaries had a satisfactory level of compliance; and

c. 13% of the intermediaries require enhancements to their anti-bribery and corruption framework.

Level of Overall Compliance by Intermediaries to section 17A



The SC has through this review also identified a number of best practices based on the TRUST principles that the board and senior management personnel of intermediaries should consider adopting which are as follows:

[21] SC Annual Report 2020 (Part 3 – Maintaining Market Integrity and Good Governance) (Thematic Review on Compliance with Anti-Corruption Policies and Procedures) at page 57.

1. TOP LEVEL COMMITMENT

- ☑ Clearly define the roles and responsibilities of senior management personnel in relation to anti-bribery and corruption policies and procedures.
- ☑ Conduct periodic committee meetings to discuss all relevant risks, including money laundering, bribery and corruption risks.
- ☑ Periodically review the intermediary's anti-bribery and corruption framework to ensure its continued effectiveness.
- ☑ Conduct regular assessments and evaluation of emerging regulatory and industry developments and the impact that these developments may have on the intermediaries.
- ☑ Reflect employees' compliance with anti-bribery and corruption framework in the intermediary's remuneration and employee incentive structure.
- ☑ Establish appropriate consequence management procedures to provide oversight on the intermediary's compliance of the anti-bribery and corruption framework and ensure that breaches are duly reported to the designated officer(s) or department.
- ☑ Set relevant anti-bribery and corruption standards which also take into account international anti-bribery and corruption laws and regulations.
- ☑ Implement policies and procedures to ensure that the results of any audit, review of risk assessment and the impact of any control measures adopted in relation to anti-bribery and corruption are duly reported to top-level management including the board of directors of the intermediary.

2. RISK ASSESSMENT

- ☑ Undertake periodic risk assessments for potential internal and external corruption risks.
- ☑ Set risk ratings for specific business activities of local and global functions.
- ☑ Undertake review of geographical, third party, business/function and transaction risks to evaluate inherent risks.
- ☑ Utilise relevant surveys and other data sources to identify relevant business risks.
- ☑ Consider the changing external economic factors or significant events in conducting risk assessments.
- ☑ Conduct risk assessment on specific departments or business lines within the intermediary on a stand-alone basis to ensure specific departmental risks are taken into account in the assessment.
- ☑ Engage with relevant risk-specific experts to discuss results of the risk assessment.
- ☑ Table the risk assessment results to internal governance committees and the Board.

3. UNDERTAKE CONTROL MEASURES

- ☑ Document and update the organisation's anti-bribery and corruption policies and procedures.
- ☑ Define the criteria, process and procedures involved from the stage of identification of a breach to reporting the breach to be adopted by employees.
- ☑ Set clear delineation of roles and responsibilities to facilitate compliance by employees.
- ☑ Document the results of any due diligence conducted on third parties and agents, and monitor compliance by such persons with the intermediary's anti-bribery and corruption framework.
- ☑ Implement robust operational controls to monitor, review and approve third party payments.
- ☑ Establish clear whistleblowing and escalation policies.
- ☑ Clearly disclose the organisation's whistleblowing framework on the intermediary's intranet web application and corporate website for the benefit of the employees and third parties.
- ☑ Establish a confidential reporting channel (whistleblowing) that is managed by an independent party.
- ☑ Adopt policies and procedures to ensure a due diligence review on non-panel vendors is conducted by an independent committee prior to any appointment.
- ☑ Screen against external lists of sanctioned persons and entities (e.g. Dow Jones Watchlist) for relevant third parties and their personnel prior to entering into any formalised arrangements.
- ☑ Where applicable, establish policies to require periodic independent investigations on anti-bribery and corruption issues by the intermediary's internal audit and reporting of the findings to the audit committee.

4. SYSTEMATIC REVIEW, MONITORING AND ENFORCEMENT

- ☑ Utilise independent third party/expert to conduct objective assessment on the effectiveness of the intermediary's anti-bribery and corruption framework.
- ☑ Ensure that the outcome of audit assessments are reported to the board and relevant management committees on a timely basis for deliberation/decisions.
- ☑ Appoint a designated person (PIC) responsible to report directly on corruption issues to senior management e.g. Chief Regulatory Officer or Chief Compliance Officer.
- ☑ Define the roles of the PIC in relation to communication with regulatory and enforcement bodies on ethics and integrity matters.
- ☑ Implement clear and comprehensive consequence management policies with a matrix established to ensure appropriate actions are taken in accordance with the severity of the breaches.

5. TRAINING AND COMMUNICATION

- ☑ Ensure that anti-bribery and corruption training is provided to all employees of the intermediary, including senior management and the board.
- ☑ Provide tailored or focused training to specific senior management personnel and employees in key positions or roles where corruption risks are identified.
- ☑ Ensure that the contents of the anti-bribery and corruption training materials are reviewed by the legal team and any internal anti-corruption committee.
- ☑ Undertake evaluation to assess employees' understanding of the training provided and the quality of the training.
- ☑ Ensure that the scope of training covers the escalation and reporting of potential suspicious bribery and corruption activities.
- ☑ Where required, ensure that multiple training platforms are provided (e.g. in-house classroom, workshop, lecture and online training) to cater for varying working conditions i.e. employees working from home.
- ☑ Establish a clear training roadmap based on calendar quarters whereby specific modules are rolled out by subject matter to ensure that all related subject matters are covered, for example:

    i. Module on gifts, hospitality, entertainment and donations (Quarter 1);

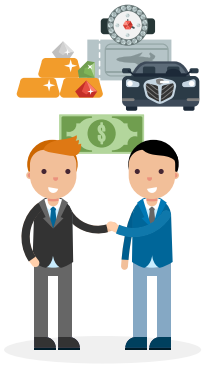
    ii. Module on conflicts of interest, dealings with public officials & whistleblowing (Quarter 2);

    iii. Module on misconduct and other matters raised in the organisation's Employee Handbook (Quarter 3);

    iv. Module on Anti-Bribery and Corruption Policy and Code of Conduct and Business Ethics (Quarter 4) .

- ☑ Ensure that any annual training schedule consists of anti-bribery and corruption programmes for employees to address their training needs for the year.
- ☑ Ensure emails issued as part of any anti-bribery and corruption training and control measures (e.g. emails containing any link to the intermediary's anti-bribery and corruption policies and procedures, board's stand on bribery and corruption and FAQs) are disseminated to all employees with tracking mechanisms on the recipients of these emails.
- ☑ Ensure that the organisation's anti-bribery and corruption policies and procedures, including whistle-blowing policies and related FAQs are made available on the organisation's website as well as intranet.
- ☑ Require all employees to read and acknowledge the documents containing the intermediary's anti-bribery and corruption policies and procedures, including whistle-blowing policies.

The following is a case study of how a potential corruption risk may arise and the type of anti-bribery and corruption procedures that should be put in place to mitigate this risk.



A fund manager of a fund management company (FMC) has been receiving gift vouchers, all-in paid travel expenses as well as luxury pens and watches from Listed Co A, a company listed on Bursa Malaysia Securities Bhd. The fund manager of FMC has invested in the shares of Listed Co A for the wholesale funds and unit trust funds managed by the FMC.

FMC does not have in place any policy on gifts and hospitality.

In the absence of appropriate internal controls, acceptance of the gifts by the fund manager of FMC may pose a risk as it may be seen to be influencing his decision in favoring the shares of Listed Co A over other investments for its unit trust and wholesale funds.

In order to manage this risk, the board and senior management of the FMC should consider the following measures based on the TRUST principles:

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- Ensure policies and procedures on gifts and hospitality are established and implemented
- Ensure effective oversight by the top-level management on compliance of the FMC's policy and procedures on gifts and hospitality by all levels of employees

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Conduct risk assessments to identify and define when gifts and hospitality received may be construed as a potential corruption risk taking into consideration, among others:

- the regularity and manner in respect of which the gift or hospitality is provided and accepted
- whether or not business decisions or judgement may be influenced to favour the provider of the gift or hospitality
- the form the gift takes i.e. whether the gift may be easily converted to cash

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- Maintain a register of offers and acceptances of gifts and hospitality benefits received by any employee / agent with a record of the details of the gift, including the time of receipt, details of the giver and the value of the gift
- Establish and maintain a confidential reporting channel (whistleblowing) with clear whistleblowing and escalation policies on how to report suspicions and instances of corruption

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- Appoint a designated and competent person to ensure that all internal policies are adhered to
- Procure the carrying out of periodic independent assessments of the FMC's policy and procedures on gifts and hospitality to ensure the identified controls continue to be valid and effective
- Ensure the outcome of audit assessments are reported to the board and relevant management committees on a timely basis for deliberation/decision

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- Provide training to create awareness and to enhance the understanding among employees at all levels / agents on how gifts and hospitality can expose them and the FMC to the risk of corruption
- Ensure the communication of the FMC's policies and procedures on gifts and hospitality to all stakeholders and employees / agents

Conclusion

While corruption essentially results directly from the behaviour or conduct of certain individuals, there is certainly no question that the government has, by virtue of section 17A, firmly placed the onus to prevent such corrupt behaviour on commercial organisations and their senior management personnel. Intermediaries and entities in the Malaysian capital market are at risk of having their reputation tarnished if they engage in corrupt behaviour within their businesses and must take pre-emptive measures to address this risk.

On the positive side, the SC observed that capital market intermediaries have largely taken initiatives to adopt the necessary anti-bribery and corruption policies and procedures in order to prevent a violation of section 17A. It is crucial and of utmost priority that the board and senior management of entities within the Malaysian capital market continue to commit sufficient time and resources towards the development of such policies and procedures as well as other anti-bribery and corruption initiatives. These policies and procedures should not only be implemented with a view to effectively identify and manage corruption risks, the framework should also be designed to remain relevant and effective in identifying and addressing new corruption risks.

Key Message to Intermediaries and Entities in the Capital Market

1. Establish and implement a sound anti-bribery and corruption framework based on the TRUST principles and apply the same practically in proportion to its scale, nature, industry, risk and complexity.

2. Periodically review the effectiveness of the anti-bribery and corruption framework to ensure it continually and adequately identifies, assesses and mitigates / controls existing and new corruption risks.

3. Ensure effective communication of anti-bribery and corruption policies and procedures that are founded on the established anti-bribery and corruption framework to all persons dealing with the intermediary or entity, including employees, agents, distributors and third party service providers.

4. Ensure that relevant anti-bribery and corruption training programmes / modules are provided to all employees at all levels. It is essential that employees identified as being exposed to corruption risks are provided with tailored / specific training in order to ensure that these risks are managed and mitigated accordingly.

5. Ensure that a confidential reporting channel or whistle-blowing facility is established and maintained in order to ensure that individuals are able to report any suspicions or instances of bribery and corruption confidentially.

6. Monitor internal anti-bribery and corruption processes, including maintaining records / documentation in relation to any investigation of alleged corruption as well as the outcomes, decisions and / or resolutions of such investigation to ensure that a clear audit trail is established for reference.

Key Message to Clients and the Investing Public

1. Encourage and support the implementation of strict and clear anti-bribery and corruption policies and measures to mitigate the risk of bribery and corruption.

2. Understand the anti-bribery and corruption policies of the intermediary or entity they are dealing with (in whichever capacity e.g. an employee, customer, service provider, supplier, etc.). Where necessary, engage with relevant personnel in an appropriate manner to obtain further understanding of the anti-bribery and corruption initiatives or specific policies established (e.g. reporting of suspicions or instances of corrupt acts, preventive and enforcement measures to deal with corrupt activities, etc.)

3. *See something, say something!*

   Immediately report any suspicion or instances of bribery / corruption by any employee, personnel, representative or agent of intermediaries and entities in the capital market (regardless of capacity / seniority) by utilising the appropriate whistle-blowing facilities / channels.

   Where there are no such established whistle-blowing channels or where whistle-blower protection / anonymity is a concern – report directly to MACC using any one of the following methods:

   - MACC's complaints management system which may be accessed via https://portaladuan.sprm.gov.my;
   - Email to info@sprm.gov.my; or
   - Call MACC's hotline at 1-800-88-6000.

   Details of alternative methods of reporting to MACC may be found at MACC's website.

Be Warned on Unlicensed Investment Advice Activities

In recent years, the SC has seen a sharp increase of complaints and enquiries received against individuals carrying on the business of investment advice without a license.

In 2020, the SC received complaints and enquiries against 19 possible unlicensed investment advisers compared to 10 in 2019, which represents a 90% increase. This increasing trend continued in 2021 where as at June alone, complaints were received against 65 possible unlicensed investment advisers, which is a 242% increase compared to the previous year.

On the other hand, it was observed in 2020 that there was a 236% increase in retail participation on Bursa Malaysia Securities Bhd (Bursa Malaysia) compared to 2019 with a 167% increase in the number of new CDS accounts opened.[1] Based on samplings conducted by the SC in August 2020, from the 19,329 most active CDS accounts that were sampled, 14,118 were retail investors.[2] The increased interest could be contributed by factors relating to the COVID-19 pandemic where investors were actively seeking opportunities that would give them good returns on their investments, given the low interest rate environment.

The increase in cases of unlicensed investment advice beginning 2020 coincides with the surge in interest from retail investors to participate in the stock market in that year. The sharp increase of complaints and enquiries received in 2021 may have been attributed by the continued interest by retail investors and as a response to the issuance of the *Guidance Note on the Provision of Investment Advice* (Guidance Note) and the subsequent regulatory actions taken and published by the SC against unlicensed investment advisers.

“The increase in cases of unlicensed investment advice beginning 2020 coincides with the surge in interest from retail investors to participate in the stock market in that year.”

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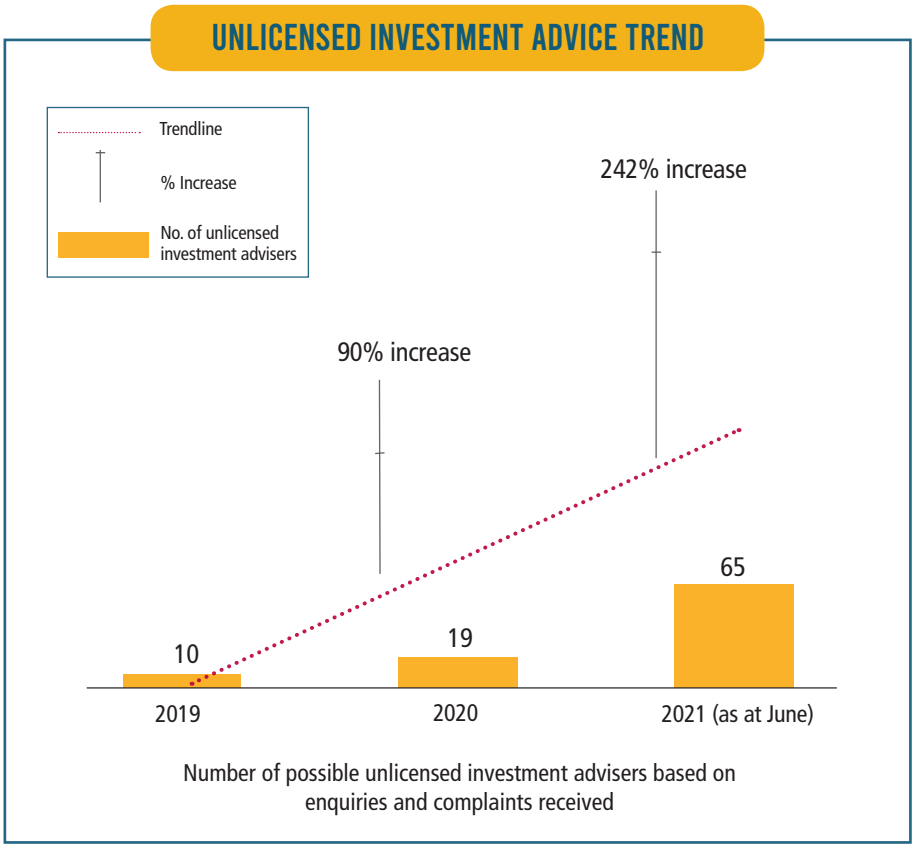
1 ICMR: Background Paper Retail Investor Behaviour in 2020: Data Insights- https://www.icmr.my/wp-content/uploads/2021/04/Data-Insights-Retail-Investor-Behaviour-Final.pdf.

2 SC Annual Report 2020 https://www.sc.com.my/resources/publications-and-research/sc-annual-report-2020.



The growing interest by retail investors as well as the prevailing economic and investment environment related to the pandemic created a fertile ground for these unlicensed investment advisers to mushroom and thrive.

The issue of unlicensed investment advisers also gained media attention in 2020[3] where concerns were raised on the proliferation of such unlicensed "investment gurus".

[3] https://www.thestar.com.my/business/business-news/2020/07/25/short-position---unlicensed-investment-advice & https://www.theedgemarkets.com/article/even-if-youre-investment-guru-you-can-be-jailed-10-years-without-licence.

What Constitutes Investment Advice?

Under the CMSA,[4] a person is required to hold a license to carry on any regulated activity, failing which such person could, on conviction, be liable to a fine not exceeding RM10 million or imprisonment for a term not exceeding 10 years or both.

Providing investment advice is a regulated activity for the purposes of the CMSA if it fulfils the description of "carrying on a business of advising others concerning securities or derivatives or as part of a business, issues or promulgates analyses or reports concerning securities or derivatives".

As mentioned above, the SC had issued the Guidance Note to clarify when an activity of giving investment advice is likely to be considered as a regulated activity. In general, the Guidance Note provides that any communication which involves providing recommendations or opinions which is likely to induce a person to take any action or position regarding a particular class, sector or instrument in relation to securities or derivatives, is likely to be considered an investment advice.

This may be considered alongside the element of "carrying on a business" for the purposes of assessing whether it constitutes a regulated activity. The Guidance Note clarified this by stating that the SC is more likely to consider a person to be "carrying on a business" if the activity is undertaken in a structured manner with regularity, or where any of the following is in place:

a. Pay-for-advice arrangements;

b. Offering a fee-based subscription to a channel or group, including on social media, which offers investment advice; or

c. Expectation of benefits or gratification, direct or indirectly, from the provision of investment advice.

> "A person is required to hold a license to carry on any regulated activity, failing which such person could, on conviction, be liable to a fine or imprisonment."

Modus Operandi

The typical modus operandi employed by the unlicensed investment advisers begin with them advertising their services through websites and / or public social media platforms like Facebook, Twitter and Telegram. On these public platforms, which are accessible to all, they will promote their "private channels" e.g. private Facebook, private Telegram, private WhatsApp group, etc. that requires a fee to join. Investment advice will then be provided in these private subscription-based groups. Typically, these paid groups are often titled as VIP Group, Exclusive Membership, Gold Club, Platinum Club or Premium Group.

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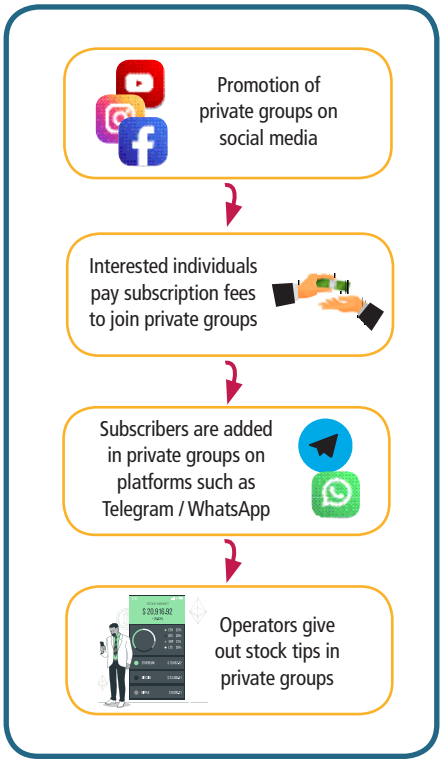
4 *Capital Markets and Services Act 2007* (Act 671) https://www.sc.com.my/regulation/acts/capital-markets-and-services-act-2007.

The type of investment advice ordinarily given in these paid groups would be buy and sell calls with target price or cut loss price of specific counters. The content of the private group would be by way of regular postings or even "live" sessions. As these private channels require a fee to join, such activities would likely fulfill the element of "carrying on a business".

Sometimes the invitation to these private groups are preceded by a free seminar or training on stock trading where participants will later be urged to subscribe to the private groups. The fee payable will be inclusive of the seminar as well as access to the private groups.

It was also observed that some of these operators would post "testimonials" of their existing subscribers who have purportedly made a profit by subscribing to their private groups, on their public website and social media platforms.



Regulatory Concerns

The proliferation of unlicensed investment advisers raises a number of concerns. The obvious one would be that the investing public would be receiving investment advice from unqualified individuals. Any investment advice rendered needs to be underpinned by cogent and sound reasoning based on research carried out by experts in the field. The SC imposes strict requirements on those who wish to obtain an investment advice license. They will be required to possess certain qualification, pass stringent examinations, and must be assessed to be fit and proper before they can be considered to be issued with a license. In the hands of an unlicensed investment adviser, these objectives would not be met, and this would consequently be detrimental to the investing public.

Further, investors who deal with these unlicensed investment advisers would have limited access to legal recourse in the event of a dispute.

In addition to the above, certain unlicensed investment advisers may use their influence to carry out a "pump and dump" scheme. They would urge their followers to trade in a particular counter in order to create an illusion of an interest in the said counter so as to manipulate the market for their benefit. This way, unsuspecting investors may unwittingly be made victims to a market manipulation scheme or securities fraud.

Regulatory Response

In an effort to address these concerns, the SC has taken various actions, as follows:

i. Issuance of *Guidance Note on the Provision of Investment Advice* on 30 December 2020 – The Guidance Note was issued following an increasing number of queries from the public seeking clarification regarding investment advice activities.

ii. Issuance of Press Release – From time to time, press releases were issued to the public in order to highlight the regulatory steps taken by the SC to address the issue as well as to remind the public on this issue.

iii. Placement on the Investor Alert List – From January to June 2021, a total of 28 individuals / entities were placed on the SC's Investor Alert List for providing investment advice without a license. This will serve as a warning to the public against subscribing to the services of these unlicensed parties.

iv. Issuance of Cease and Desist Directive – During the first six months of 2021, the SC has also issued Notices of Cease and Desist to 19 individuals and entities, collectively directing them to cease their unlicensed investment advice operations.

v. Blocking of Website – In addition to the inclusion onto the SC's Investor Alert List and the issuance of the Notices of Cease and Desist, the SC also concurrently sought the assistance of the Malaysian Communication and Multimedia Commission to block the websites of where such unlicensed investment advice operations were taking place.

vi. Continuous Investor Education Initiatives – The SC through its InvestSmart® platform continues to educate the public on the risk of engaging with an unlicensed person.

vii. Enforcement Action – The SC is in the midst of reviewing a few cases with a view of potentially taking enforcement action.

Conclusion

The SC wishes to warn those who are still carrying on such business of giving unlicensed investment advice to immediately cease their activities. Those who are unsure of whether their activities would be regarded as regulated activities are urged to refer to the CMSA and the Guidance Note, and if necessary, to seek legal advice.

The SC is continuously reviewing all information received and will take swift and decisive action against those found to be in breach.

The SC wishes to advise the investing public to only deal with individuals or entities that are licensed by the SC in order to avoid receiving advice from unqualified individuals and being exposed to potential pump and dump schemes or possible securities fraud.

Key Message to Unlicensed Intermediaries

1. Entities / individuals carrying on unlicensed investment advice have to immediately cease their activities.

2. If you are unsure whether your activity constitute as providing investment advice, you should refer to the CMSA and the Guidance Note, and if necessary, to seek legal advice.

3. The act of providing investment advice without a licence is an offence under securities laws. Upon conviction, it carries the punishment of a fine not exceeding RM10 million or imprisonment not exceeding 10 years or both.

Key Message to Investors

1. Deal only with individuals or entities that are licensed by the SC. Refer to the SC website or utilise the InvestSmart®'s mobile application to verify if an individual / entity is licensed by the SC to carry out regulated activities.

   https://www.sc.com.my/regulation/licensing/licensed-and-registered-persons.

2. Be forewarned that dealing with unlicensed investment advisors may result in investors being exposed to potential pump and dump schemes or possible securities fraud.

3. Always conduct your own assessment before buying / selling any stocks.

4. Always check the SC's Investor Alert List before investing in order to avoid dealing with unauthorised websites, investment products, companies and individuals.

   https://www.sc.com.my/regulation/enforcement/investor-alerts/sc-investor-alerts/investor-alert-list.

5. Reach out to the SC by calling us at 03-62048999 or send us an email at aduan@seccom.com.my.

Summary of
Enforcement Activities and Outcomes

Reporting period: 1 July 2020 – 30 June 2021

Summary of
Administrative and Supervisory Actions

Criminal Prosecutions and Outcomes, Civil Enforcement and Regulatory Settlements

INTRODUCTION

The SC has taken extraordinary efforts to identify wrongdoing and take meaningful action to protect Malaysian investors from misconduct, while facing many challenges imposed by the COVID-19 pandemic. Amidst this unprecedented landscape, the SC took swift action in maintaining continued orderly function of its enforcement capabilities in dealing with market misconduct. Even with the change in working conditions, the SC has addressed the multitude of existing and new enforcement issues and confronted these challenges promptly while remaining steadfast in its mission to protect investors.

From 1 July 2020 to 30 June 2021, the SC initiated criminal and civil enforcement actions against 8 individuals and 1 company involved in a wide range of alleged securities law breaches, including insider trading, money laundering, and securities fraud under the *Securities Industry Act 1983* (SIA), *Capital Markets and Services Act 2007* (CMSA) and *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* (AMLATFPUAA).

Despite the challenges brought upon by the pandemic, in particular, in relation to having to quickly adapt to the implementation of alternative processes in the conduct of court matters in addition to the remote-working policy, the SC had prosecuted an individual for holding himself out as a fund manager without the appropriate license, and assisted the Public Prosecutor in the criminal applications for forfeiture against another individual and another company for alleged money laundering offences.

In addition, in an effort to target various market misconduct, the SC's enforcement actions during the period under review also include securing criminal convictions against 2 individuals for insider trading, an individual for furnishing a misleading statement to Bursa Malaysia Securities Bhd (Bursa Malaysia), as well as an individual for failing to appear before an Investigating Officer of the SC in connection with an investigation. The SC was also successful in its case before the Court of Appeal which affirmed the conviction against an individual for furnishing a misleading statement to Bursa Malaysia.

Underscoring other enforcement priorities, the SC's civil enforcement action efforts during the period under review include entering into 6 consent judgments for insider trading offence. The SC also entered into a consent judgment and obtained a judgment in default for participation in false trading and market

rigging transactions. At the High Court, the SC was successfully awarded claims it had applied for against an individual for insider trading as well as against 3 companies and 3 individuals for various breaches under the securities laws.

The SC further compounded 4 individuals for furnishing misleading information to the SC and reached 2 regulatory settlements.

CRIMINAL PROSECUTION AND FORFEITURE APPLICATION

The SC has successfully achieved considerable outcomes as illustrated below:

No.	Nature of Offence	Offender / Respondent(s)	Details
1.	Money laundering. [Sections 56, 63 and 64 AMLATFPUAA]	• Havana Bayview Sdn Bhd (the Company) • Wong Shee Kai (Wong)	• In May 2021, the Public Prosecutor, with the assistance of the SC commenced a criminal application to forfeit a property in the possession of the Company. • In addition, the application is also to forfeit a sum of RM445,039.28 in the accounts of Wong in HSBC Bank Bhd Damansara Heights branch. • An order is also sought under sections 63 and 64 of the AMLATFPUAA that Wong is an absconded person.
2.	Holding out as a fund manager without a license. [Sections 58(1) and 362(3) CMSA]	Uzir Bin Abdul Samad (Uzir)	• In March 2021, the former director of UAS Management Bistari Sdn Bhd was charged for carrying out the regulated activity of fund management without a license. • Uzir was also charged for committing two offences under section 362(3) of the CMSA for using the titles of "Fund Manager" and "Securities Commission Capital Market Services Representative's Licence (CMSRL) holder" respectively, tending to create the belief that he was licensed to carry on the business of fund management.

The detailed excerpts of the above can be found at:

https://www.sc.com.my/regulation/enforcement/actions/criminal-prosecution/updates-on-criminal-prosecution-in-2021

Outcomes of Criminal Prosecutions and Appeals

While the COVID-19 pandemic has disrupted many of the SC's traditional methods of conducting prosecutions and appeals with a view to promote the safety and well-being of its staff, innovative ways were found to ensure that such enforcement actions continue to be conducted efficiently and expeditiously.

The Table below illustrates the SC's success in delivering key enforcement outcomes in relation to criminal prosecutions and appeals:

No.	Nature of Offence	Offender(s)	Outcome
1.	• Insider trading in the shares of Three-A Resources Bhd. [Section 188(2)(a) CMSA] • Communicating inside information. [Section 188(3)(a) CMSA]	Fang Siew Yee (Fang)	In March 2021, Fang pleaded guilty to 1 charge for the offence under section 188(3)(a) CMSA and 8 charges for the offence under section 188(2)(a) CMSA, and was sentenced by the Sessions Court to 1-day imprisonment and a fine of RM2.5 million for the 2 convictions.
2.	Failing to appear before an Investigating Officer of the Public Prosecutor in connection with an investigation. [Section 32(8)(a) AMLATFPUAA].	Ong Kar Kian (Ong)	• In December 2020, Ong was convicted by the Sessions Court on 3 charges of the offence and sentenced to 1 day imprisonment for each charge. Ong was also fined a total of RM1,084,500. Ong's imprisonment terms are to run concurrently. • In January 2021, the High Court rejected Ong's stay application for the payment of his fine pending the results of his appeal and directed him to pay the fine within 14 days of the decision.
3.	Insider trading in the shares of DIS Technology Holdings Bhd. [Section 188(2)(a) CMSA]	Cheah Yew Keat (Cheah)	In December 2020, Cheah pleaded guilty to 5 charges of the offence and was convicted by the Sessions Court and sentenced to 1-day imprisonment and a fine of RM1 million.
4.	Furnishing false information to Bursa Malaysia. [Section 122B(a)(bb) read together with section 122(1) SIA]	Dato' Dr. Haji Mohd. Adam Bin Che Harun (Dato' Adam)	In September 2020, the Court of Appeal affirmed the conviction against Dato' Adam and reinstated the imprisonment term of 18 months imposed by the Sessions Court together with a fine of RM300,000.

No.	Nature of Offence	Offender(s)	Outcome
5.	• Abetting Transmile Group Bhd in making a misleading statement to Bursa Malaysia. [Section 86(b) read together with section 122C(c) SIA] (Principal Charge) • Furnishing false information to Bursa Malaysia. [Section 122B(a)(bb) read together with section 122(1) SIA] (Alternative Charge)	Gan Boon Aun (Gan)	• In August 2020, Gan was convicted by the Sessions Court on the Alternative Charge and was sentenced to a fine of RM2.5 million and 1-day imprisonment. • The SC has filed an appeal to the High Court against the sentence imposed by the Sessions Court, whilst Gan is appealing against the conviction and sentence.
6.	• Insider trading in the shares of M3nergy Bhd. [Section 188(2)(a) CMSA] • Abetment in the commission of the offence. [Section 370(c) read together with section 188(2)(a) CMSA]	• Dato' Lim Kim Chuan (Dato' Lim) • Tay Hup Choon (Tay HC) • Theng Boon Cheng (Theng BC)	• In July 2020, the High Court allowed the SC's appeal against the acquittal of Dato' Lim, Tay HC, and Theng BC and called for defence against all of the 3 accused persons. The case for the 3 accused persons will be heard before the same Sessions Court judge. • Dato' Lim was charged with 11 counts of insider trading, while both Tay HC and Theng BC were charged with 9 counts and 11 counts of abetting Dato' Lim respectively.

A detailed excerpt of the above cases can be found at:

https://www.sc.com.my/regulation/enforcement/actions/criminal-prosecution/updates-on-criminal-prosecution-in-2021
https://www.sc.com.my/regulation/enforcement/actions/criminal-prosecution/updates-on-criminal-prosecution-in-2020

REGULATORY SETTLEMENTS AND OUTCOMES OF CIVIL ENFORCEMENT ACTIONS

Regulatory Settlements

The SC has secured meaningful remedies to protect investors and markets against wrongdoing.

SC's agreement to the terms of a settlement implies that the SC has given careful consideration to its statutory objectives and the importance of sending clear, consistent messages through enforcement action. The SC will only settle in appropriate cases where the agreed terms result in acceptable outcomes.

No.	Offence	Offender(s)	Settlement
1.	Insider trading in the shares of Globetronics Technology Bhd.	Ng Kok Choon (Ng)	Ng entered into a settlement in the sum of RM164,460.
2.	Insider trading in the shares of Globetronics Technology Bhd.	Choong Lai Kwan (Choong)	Choong entered into a settlement in the sum of RM43,800.

Civil Actions Initiated by the SC

The SC has commenced civil actions against individuals for breaches of the insider trading provisions as highlighted below:

No.	Breach	Defendant (s)	Date civil action initiated
1.	Insider trading in the shares of PacificMas Bhd. [Section 188(2)(b) CMSA]	Ewe Lay Peng	9 April 2021
2.	Insider trading in the shares of M3Nergy Bhd. [Sections 188 and 188(2)(a) CMSA]	• Dato' Lim Kim Chuan • Tay Hup Choon • Theng Boon Cheng	26 March 2021
3.	Insider trading in the shares of APL Industries. [Sections 188(3)(a) and 188(2)(a) CMSA]	• Tan Bee Geok • Tan Bee Hong	7 September 2020

Outcomes of Civil Enforcement Actions

A cornerstone of our enforcement action is ensuring that entities are held accountable for their misconduct. The following subset of cases are illustrative:

No.	Breach	Defendant(s)	Outcome
1.	Insider trading in the shares of PacificMas Bhd.	Ewe Lay Peng (Ewe)	In May 2021, the Sessions Court recorded a consent judgment between the SC and Ewe, and ordered, among others, that Ewe: • pay the SC RM33,147; and • pay RM350,000 in civil penalty.
2.	Insider trading in the shares of HPI Resources Bhd.	Chang Kee Soon (Chang)	In May 2021, the High Court recorded a consent judgment between the SC and Chang, and ordered, among others, that Chang: • pay the SC RM1,198,702.83 in 12 monthly instalments with 5% interest rate per annum; • pay RM150,000 in civil penalty; and • be restrained from trading in any counter on Bursa Malaysia for a period of 3 years from the date so ordered by the court.
3.	Insider trading in the shares of M3Nergy Bhd.	• Dato' Lim Kim Chuan (Dato' Lim) • Tay Hup Choon (Tay HC) • Theng Boon Cheng (Theng BC)	In April 2021, the High Court recorded a consent judgment between the SC and Dato' Lim, Tay HC and Theng BC, and ordered, among others that: • Dato' Lim, Tay HC and Theng BC jointly and severally pay the SC RM383,173.59; • Dato' Lim pays RM1 million in civil penalty; • Tay HC and Theng BC pay RM300,000 in civil penalty, respectively; • Dato' Lim, Tay HC and Theng BC be barred from becoming a chief executive officer or director in any public listed company (PLC) and/or subsidiary of any PLC for a period of 8 years; • Dato' Lim, Tay HC and Theng BC be barred from being involved in the management of any PLC and/or subsidiary of any PLC for a period of 8 years; and • Dato' Lim, Tay HC and Theng BC or their agents be restrained from trading in any counter on Bursa Malaysia for a period of 8 years.

No.	Breach	Defendent(s)	Outcome
4.	• Breach of the *Guidelines on Compliance Function for Fund Managers* (FMC Guidelines). • Fraudulently inducing persons to deal in securities. • Carrying out a regulated activity without a licence.	• RBTR Asset Management Bhd (RBTR) • Locke Guaranty Trust Limited (LGT) • Locke Capital Investments (BVI) Ltd (LCI) • Isaac Paul Ratnam (Isaac) • Nicholas Chan Weng Sung (Nicholas) • Joseph Lee Chee Hock (Joseph)	In March 2021, the High Court declared in favour of the SC and made the following orders against the 6 defendants: • RBTR makes restitution to satisfy losses of all of the investors of the Euro Deposit Investment (EDI) scheme who have not been repaid pursuant to sections 354(9) and / or 360(1)(M) of the CMSA; • RBTR acted in breach of its obligations as the holder of a fund management licence and / or under the FMC Guidelines; • all assets and properties of RBTR, Isaac, Joseph and Nicholas will belong to the EDI scheme investors; and • that all assets and properties of each of the defendants (i.e. RBTR, LGT, LCI, Isaac, Joseph and Nicholas) be traced and thereafter paid to the SC for the purpose of compensating the investors of the EDI scheme by way of restitution or other suitable means.
5.	Insider trading in the shares of Worldwide Holdings Bhd.	Dato' Sreesanthan a/l Eliathamby (Dato' Sreesanthan)	In November 2020, the High Court ordered, among others, that Dato' Sreesanthan: • pay the sum of RM1,989,402; • pay a civil penalty of RM1 million; and • be barred from being a director of any PLC for a period of 10 years (with effect from 18 November 2020).
6.	Insider trading in the shares of APL Industries.	• Tan Bee Geok (Tan BG) • Tan Bee Hong (Tan BH)	In September 2020, the High Court recorded a consent judgment between the SC and Tan BG and Tan BH, and ordered, among others, that: • each defendant pay a sum of RM105,000 respectively; • each defendant pay a civil penalty of RM500,000 respectively; • both defendants be barred from being a director of any PLC or a subsidiary company of a PLC for a period of 5 years from the date so ordered by the court; and • both defendants be restrained from trading in any counter on Bursa Malaysia for a period of 5 years from the date so ordered by the court.

No.	Breach	Defendent(s)	Outcome
7.	Participation in false trading and market rigging transactions.	• Yap Wai Fong (Yap)	In September 2020, following a civil suit for participating in false trading and market rigging transactions, a judgment in default (bankruptcy) by the High Court was recorded against Yap, among others: • payment of RM137,892.05; and • prohibition from being a director of PLCs and from being involved in the capital market for a period of 5 years.
		• Toh Lean Seng (Toh)	In November 2020, the High Court recorded a consent judgment between the SC and Toh, and ordered, among others, that Toh: • pays RM300,000; and • be prohibited from being a director of PLCs and from being involved in the capital market for a period of 5 years.

A detailed excerpt of the above cases can be found at:

https://www.sc.com.my/regulation/enforcement/actions/civil-actions-and-regulatory-settlements/civil-action-in-2020
https://www.sc.com.my/regulation/enforcement/actions/civil-actions-and-regulatory-settlements/civil-action-in-2021

The details of the regulatory settlement can be found at:

https://www.sc.com.my/regulation/enforcement/actions/civil-actions-and-regulatory-settlements/regulatory-settlements-in-2021

CASES COMPOUNDED

The SC remains focused on ensuring market integrity, in particular addressing the issue of the submission of misleading information. In this respect, a total of RM1.2 million was collected by the SC through payment of compounds for the said offences, as illustrated in the table below:

No.	Offence	Offender(s)	Settlement
1.	Submission of misleading information to the SC in connection with a proposal.	Lim Kim Ming (Lim KM)	In December 2020, with the consent of the Public Prosecutor, Lim KM paid a criminal compound of RM300,000.
2.	Submission of misleading information to the SC in connection with a proposal.	Lim Kim Hai (Lim KH)	In August 2020, with the consent of the Public Prosecutor, Lim KH paid a criminal compound of RM300,000.
3.	Submission of misleading information to the SC in connection with a proposal.	Lee Sin Teck (Lee)	In August 2020, with the consent of the Public Prosecutor, Lee paid a criminal compound of RM300,000.
4.	Submission of misleading information to the SC in connection with a proposal.	Tan Siok Wan (Tan)	In August 2020, with the consent of the Public Prosecutor, Tan paid a criminal compound of RM300,000.

The details of the compounded cases can be found at:

https://www.sc.com.my/regulation/enforcement/actions/cases-compounded/cases-compounded-in-2020

Administrative Actions and Supervisory Engagements

ADMINISTRATIVE ACTIONS

From 1 July 2020 to 30 June 2021, the SC imposed a total of 74 administrative sanctions as illustrated in the table below.

Administrative actions from 1 July 2020 to 30 June 2021 by types of sanction and parties in breach

Parties in Breach	Types of Sanction				
Licensed persons	**Directive**	**Reprimand**	**Penalty***	**Restitution**	**Refusal to accept submission**
Licensed entities	3	9	4	-	-
Licensed individuals	-	1	1	1	-
Directors of PLC	-	9	5	-	-
PLC	-	2	-	-	-
Entities / individuals relating to take-overs and mergers	1	10	5	-	-
Other entities	5	6	3	-	1
Other individuals	-	4	3	1	-
TOTAL	**9**	**41**	**21**	**2**	**1**

* A total of RM2,027,500 in penalties were imposed.

Penalties imposed from 1 July 2020 to 30 June 2021

Parties in Breach	Amount (RM)
Dato' Zuber Bin Hj. Shamsuri	94,500
Dato' Indera Haji Abdul Rahim bin Mohd Ali	84,000
Dato' Sri DiRaja Haji Adnan bin Haji Yaakob	84,000
Dato' Sri Kamaruddin bin Mohammed	84,000
Dato' Sri Tew Kim Thin	84,000
RHB Investment Bank Bhd	400,000
Nur Syafiq bin Mat Sari	17,500
Philip Capital Management Sdn Bhd	2,000
Azimas binti Daud	400,000
Tan Tian Sin, Song Hock Koon and Chew Fei Meng (as persons acting in concert)	28,000
Sim Cheng Young	35,000
Othman Bin Bakri	84,000
J.P. Morgan Chase Bank Bhd	3,000
Kumpulan Sentiasa Cemerlang Sdn Bhd	1,000
MIDF Amanah Asset Management Bhd	1,000
Datuk Wira Lye Ek Seang	38,500
Datuk Seri Syed Ali bin Syed Abbas Al-Habshee	38,500
Arsam bin Damis	38,500
Rohaini Binti Mohd Satari	100,000
AmBank (M) Bhd	10,000
Eastspring Investments Bhd	400,000
TOTAL	**2,027,500**

POLICIES AND PROCEDURES ARE KEY IN EFFECTIVE REGULATION

The SC's regulatees, including registered persons as defined under the CMSA, must ensure that they have policies and procedures in place to ensure proper investor protection, and must ensure that they comply with the same at all times during their operations. In particular, these policies and procedures must be effective in preventing, detecting and addressing any misconduct by the regulatees' representatives.

In view of the SC's stance on the crucial need for such policies and procedures, the SC has taken administrative action against Bank Kerjasama Rakyat Bhd (Bank Rakyat) for 4 breaches of securities laws relating to the inadequate policies and procedures on Bank Rakyat's unit trust activities, as follows:

Breach	Person Sanctioned	Outcome
• Failing to ensure that its unit trust consultants (UTCs) remained fit and proper as they had committed various misconduct against their clients. • There was no proper segregation of duties between the front office and back office. Bank Rakyat's UTCs were able to perform both the front office and back office functions. • There was no oversight by Bank Rakyat's branches and Head Office over the UTCs. • There were no systems and procedures in place for Bank Rakyat to monitor or review the transactions executed by its UTCs which include churning activities.	Bank Rakyat	The SC issued a reprimand for each of the 4 breaches as well as several other directives, among others, for Bank Rakyat to: 1. Allocate and utilise the sum of not less than RM1,260,000 within a period of 3 years from the sanctions towards: (i) continuous enhancement of Bank Rakyat's monitoring systems and internal control measures with respect to its unit trust activities; and (ii) ensuring effective implementation of its controls and processes including upskilling of staff through training or capacity building; 2. Appoint an independent consultant to review and enhance Bank Rakyat's internal controls in relation to its unit trust activities which shall be completed within 6 months from the date of the sanctions, which would include the following: (i) to review that sufficient controls are in place in marketing and distributing unit trust funds, and to ensure all lapses in controls are effectively rectified; and

		(ii) to review the effectiveness of Bank Rakyat's current and planned initiatives particularly in relation to system enhancements, implementation of Suitability Assessment Exercise, on-going monitoring of clients' transactions and monitoring of marketing and distribution activities (including the competency of bank personnel involved); 3. Resume its unit trust activities which would include the marketing and distribution of unit trust funds (investment via cash) / upon satisfactorily completing paragraph 2(ii) above; 4. Report to the SC on the implementation of paragraph 2(i) above every 6 months from the date of the sanctions until the end of the 3 year period; and 5. Report to the SC on the implementation of paragraph 2(ii) above within 6 months from the date of the sanctions; and 6. Table these sanctions to Bank Rakyat's Board of Directors and forward the Board minutes to the SC within 1 month from the date of the sanctions.

Intermediaries' Obligation in Monitoring Marketing Representatives' Conduct and Actions

Intermediaries who engage individuals to introduce or refer to them, prospective clients or market their services must ensure compliance with the *Guidelines for Marketing Representative* (MR Guidelines) at all times.

The intermediaries' obligation under the MR Guidelines include, among others–

- establishing proper policies and controls on the referral and marketing activities;[1]
- carrying out proper screening to ensure that the individuals are fit and proper before registering them as marketing representative (MRs);[2]
- supervising and monitoring the actions of the MRs to ensure that they do not undertake any regulated activity or hold themselves out as licensed representative;[3] and
- ensuring that the MRs satisfy the training requirements stipulated in the MR Guidelines.[4]

The SC wishes to remind intermediaries that MRs may only carry out referral and marketing activities as permitted under the MR Guidelines.[5] In this respect, all intermediaries are expected to strictly observe the requirements of the MR Guidelines to ensure that investors are protected from harm such as potential fraud or misrepresentation of MRs conducting such activities beyond the scope of that permitted of a MR.

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1 Paragraph 7.04 of the *Guidelines for Marketing Representative.*
2 Paragraph 7.01(a) of the *Guidelines for Marketing Representative.*
3 Paragraphs 7.05 and 7.06 of the *Guidelines for Marketing Representative.*
4 Paragraph 7.05 of the *Guidelines for Marketing Representative.*
5 Paragraph 4.03 of the *Guidelines for Marketing Representative.*

Breach	Person sanctioned	Outcome
1. Failure to supervise and ensure compliance with relevant guidelines and failure to exercise reasonable care and diligence. 2. Failure to supervise and ensure compliance with relevant guidelines and ensuring actions by referrers / MRs are within permitted referral and marketing activities. 3. Failure to have proper policies and procedures to monitor its referrer / MRs. 4. Failure to ensure proper training of its MRs. 5. Inadequate compliance monitoring on its MRs. 6. Failure to conduct suitability assessments. 7. Failure to conduct proper screening of its MRs.	BIMB Investment Management Bhd (BIMB)	The SC issued reprimands, and imposed the following directives in respect of breaches 1, 2, 3, 5 and 6 against BIMB to utilise not less than RM500,000 for enhancement of policies, procedures, controls and system(s) by appointing independent consultant(s) to review and enhance its policies, procedures and internal control, for example, but not limited to: • review and enhance the controls in place in relation to opening of an account (for example to ensure there is appropriate checker maker and proper record keeping of suitability assessment performed); and • review and enhance the effectiveness of compliance functions especially in relation to opening of an account, on-going monitoring of clients' transactions and monitoring of marketing/ distribution activities (including individuals involved in the activities).

Addressing Misconduct by Unit Trust Consultants

The *Federation of Investment Managers Malaysia's Code of Ethics and Rules of Professional Conduct* (FIMM Code) sets out the ethical standards and professional conduct expected of unit trust consultants (UTCs) in Malaysia. UTCs are required to uphold and adhere to these standards together with the core principles under the FIMM Code when marketing and distributing their respective unit trust schemes to investors.

The SC wishes to highlight to UTCs that the SC takes the breach of any obligation under the FIMM Code very seriously and will not hesitate to take action against any UTC for his/her breach of these requirements.

Breach	Person sanctioned	Outcome
• Accepted cash and had monies credited into her personal bank account from investors for purposes of investment in unit trusts; and • Directly or indirectly giving a guarantee to an investor that a specific result will be achieved arising from her advice or services rendered.	Azimas binti Daud	The SC reprimanded and imposed a penalty of RM400,000 on the person sanctioned. The person sanctioned was also required to make restitution to one of the investors amounting to RM107,000.

Ensuring Disclosure Documents Contain Accurate and Complete Information

The CMSA requires that all disclosure documents of a corporate exercise contain information that is true, complete and accurate. In order to secure full compliance with this requirement, it is vital that all parties involved in the preparation of these documents play a proactive role in undertaking their duty to carry out their due diligence to ensure the accuracy and completeness of the information disclosed.

In 2018, Pasdec Holdings Bhd (Pasdec) had issued an abridged prospectus (AP) for a renounceable rights issue of ordinary shares in Pasdec. The AP contained information from which there was a material omission in respect of a pending approval from the Ministry of Finance (MOF) for Perbadanan Kemajuan Negeri Pahang (PKNP), the largest shareholder of Pasdec, to subscribe for PKNP's entitlement of the rights shares under the rights issue (PKNP Entitlement) for which PKNP had given an undertaking to subscribe.

Following the above and as illustrated in the table below, the SC had on July 2020, imposed various sanctions against all parties involved in the issuance of the AP, and not just Pasdec, its directors and CEO.

Observance of these disclosure duties would directly affect an investor's decision-making process, and if breached, could lead to such investor incurring losses. For this reason, the SC wishes to remind all relevant parties involved in the preparation of disclosure documents with respect to a corporate exercise (including advisers) to exercise due care and diligence in ensuring that information in the disclosure documents are true, accurate, complete and does not contain any material omission.

Breach	Person sanctioned	Outcome
• Issuance by Pasdec (through the authorisation of its Board of Directors) of the AP which contained information from which there was a material omission in respect of the pending approval from the MOF for PKNP to subscribe for the PKNP Entitlement, and • Failure to ensure that the AP contained information that the MOF approval for PKNP to subscribe for the PKNP Entitlement was still pending, hence rendering the AP incomplete and inaccurate.	Pasdec	The SC issued a reprimand.
• Pasdec's Board of Directors authorised the issuance of the AP which contained information from which there was a material omission in respect of the pending approval from the MOF for PKNP to subscribe for the PKNP Entitlement; and • As a director of Pasdec at the material time, pursuant to section 367(1) of the CMSA, each of the NINEDs was deemed to have committed the breach with each of their consent or connivance and had failed to prove that they had exercised all such diligence to prevent the commission of the breach.	• Dato' Sri DiRaja Haji Adnan bin Haji Yaakob • Dato' Indera Haji Abdul Rahim bin Mohd Ali • Dato' Sri Kamaruddin bin Mohammed • Dato' Sri Tew Kim Tin (Non-Independent Non-Executive Directors of Pasdec at the material time of the breach, collectively known as "NINED")	• Reprimand, and • Penalty of RM84,000.

Breach	Person sanctioned	Outcome
• Pasdec's Board of Directors authorised the issuance of the AP which contained information from which there was a material omission in respect of the pending approval from the MOF for PKNP to subscribe for the PKNP Entitlement; and • As a director of Pasdec at the material time, pursuant to section 367(1) of the CMSA, each of the INEDs was deemed to have committed the breach with each of their consent or connivance and had failed to prove that they had exercised all such diligence to prevent the commission of the breach.	• Dato' Ir. Noor Azmi bin Jaafar • Dato' Majid bin Mohamad • Sharina Bahrin • Teh Sew Hong (Independent Non-Executive Directors of Pasdec at the material time of the breach, collectively known as "INED")	Reprimand.
• Pasdec had caused the issuance of the AP which contained information from which there was a material omission in respect of the pending approval from the MOF for PKNP to subscribe for the PKNP Entitlement, and • As the CEO of Pasdec at the material time, pursuant to section 367(1) of the CMSA, the CEO was deemed to have committed the breach with his consent or connivance and had failed to prove that he had exercised all such diligence to prevent the commission of the breach.	Dato' Zuber bin Hj. Shamsuri (CEO at the material time of the breach and Chairman of Pasdec's Due Diligence Working Group for the rights issue)	• Reprimand, and • Penalty of RM94,500.
• As the principal adviser, RHB IB had caused the issuance of the AP which contained information from which there was a material omission in respect of the pending approval from the MOF for PKNP to subscribe for the PKNP Entitlement, and • Despite being informed of the pending approval from MOF for PKNP to subscribe for the PKNP Entitlement, RHB IB had failed to ensure that Pasdec's AP did not contain material omission with respect to this matter.	RHB Investment Bank Bhd (as the principal adviser) (RHB IB)	• Reprimand; • Penalty of RM400,000; and • Directive to conduct a comprehensive review and assessment on the adequacy of all policies and processes relating to its role as principal adviser for corporate proposals and compliance with paragraph 3.14 of the Principal Adviser Guidelines, and report to the SC, the results of such review and assessment together with recommendations, within 3 months from the date of the action.

Guarantee in Support of Obtaining Financing for the Acquisition of Shares as Persons Acting in Concert under the Take-over Provisions

Tan Tian Sin, Song Hock Koon and Chew Fei Meng were ruled by the SC as persons acting in concert (PAC) within the meaning of section 216(2)(a) of the CMSA. The ruling was made pursuant to guarantees provided by Tan Tian Sin to Song Hock Koon and Chew Fei Meng relating to facilities to finance the acquisition of shares in Hong Seng Consolidated Bhd, formerly known as Panpages Bhd (Panpages). As a result, their aggregate holding exceeded 33%.

With effect from 15 September 2015, section 216(3)(i) of the CMSA provides that a person providing finance or financial assistance (whether directly or indirectly) in connection with the purchase of voting shares shall be presumed to be acting in concert with the person receiving such finance or financial assistance, unless the contrary is established. However, this provision excludes the presumption of any concert relationship in respect of the provision of financing or financial assistance from licensed banks or prescribed institutions.

In this respect, the SC would like to remind shareholders that where any situation or set of circumstances gives rise to a presumption of a PAC relationship, including where it relates to the provision and receipt of financial assistance, it is the onus of the shareholder to make an application to the SC to rebut such presumption and provide strong justification in support thereof, prior to the triggering of a mandatory offer (MO) obligation.

Breach	Person sanctioned	Outcome
Failing to make a take-over offer for the remaining voting shares in Panpages or seek an exemption to undertake the same.	• Tan Tian Sin • Song Hock Koon • Chew Fei Meng	The SC issued a reprimand to each of the persons sanctioned, and a penalty of RM28,000 against them as a group collectively.

Seeking Early Advice on Matters Relating to the Take-over Requirements

Sim Cheng Young acquired shares in Grand Hoover Bhd (GHB) which, when aggregated with the shareholding of Dynamic Merchant Limited, his wholly-owned company, increased his shareholding to above 33% in GHB, thus triggering the MO obligation. Some years later, Sim Cheng Young's collective interest increased by more than 2% in a period of six months, triggering the creeping threshold and the MO obligation following the transfer of his late mother's GHB shares to him pursuant to a Grant of Probate upon the demise of his mother.

Apart from assessing individual and collective holding for the purposes of determining whether the control and creeping thresholds have been triggered to give rise to a MO obligation, it is pertinent to note that the SC also aggregates entities in which a person has statutory control under the "single entity" concept in its assessment of whether the MO obligation has been triggered.

In this regard, the SC would like to remind shareholders to seek the advice of a qualified adviser and consult the SC prior to entering into any transaction that may possibly trigger a MO obligation.

Breach	Person sanctioned	Outcome
• Failure to undertake a MO or to seek exemption for the same (in relation to his acquisition of shares in GHB), which when aggregated with the shareholding of Dynamic Merchant Ltd, his wholly-owned company, increased his shareholding in GHB to above 33%, and • Failure to undertake a MO or to seek an exemption for the same in relation to GHB shares transferred to him pursuant to a Grant of Probate with respect to his late mother's GHB shares, which increased his shareholding in GHB by more than 2% in a period of six months.	Sim Cheng Young	The SC imposed a penalty of RM35,000 for the breaches.

Observing Restrictions During Take-over Offer Period

An offeror, and persons acting in concert with the offeror, are allowed to acquire offeree shares. However, prior approval from the SC is required if they wish to dispose their offeree shares during the offer period. In any event, all dealings are required to be disclosed within the relevant timeline prescribed under the Rules.

SC takes non-compliance of requirements and restrictions applicable during a take-over offer period very seriously given that dealings of the relevant parties during this period may have an impact on the outcome of the offer and shareholders of the offeree in making a well-informed decision on the offer.

Breach	Person sanctioned	Outcome
• Non-compliance of paragraph 19.01 of the Rules - Being persons acting in concert with the offeror and the ultimate offeror, the persons sanctioned had disposed shares held by them in Caring Pharmacy Bhd (Caring) via off-market transactions during the offer period in relation to the take-over offer of Caring without the SC's consent, and • Non-compliance of paragraph 19.04 of the Rules - Late disclosure by the persons sanctioned of their dealings in relation to some of the Caring shares disposed.	• Datuk Wira Lye Ek Seang • Datuk Seri Syed Ali bin Syed Abbas Al-Habshee • Arsam bin Damis	The SC issued the following to each of the persons sanctioned: • Reprimand; and • Penalty of RM38,500 for the breaches.

Identification of Presumed Concert Party Relationships at the Onset

It is vital for advisers to undertake a comprehensive review at the outset of any proposed take-over offer to identify presumed concert party relationships in relation to any such proposal, especially in view of the wide-ranging implications this may have, including in respect of the offer price, conditionality of the offer, and compliance with obligations and restrictions during the offer period. As highlighted herein, any severance or rebuttal of the presumption of a concert party relationship will be decided by the SC upon an application by the relevant parties supported by strong justifications.

In this regard, the SC expects advisers to uphold the general principles applicable to take-over offers in guiding their clients to comply with the relevant take-over provisions and requirements. Establishing a comprehensive process and documentation for the same may serve as evidence that the expected role and duties have been discharged. In case of doubt, advisers are encouraged to seek early guidance from the SC.

Breach	Person sanctioned	Outcome
• UOB Kay Hian Securities (M) Sdn Bhd (UOBKH), being the principal adviser to the take-over offer in GETS Global Bhd, failed to consult the SC in advance for guidance on the application of presumed concert party relationship; • Such failure resulted in failing to advise its clients, namely Teong Lian Aik of ADA Capital Investments Limited (who were the joint offerors), and Low Bok Tek (being the ultimate offeror) on compliance with the Rules and CMSA and the submission of false or misleading information to the SC and investors; • UOBKH did not take cue from the SC's earlier enquiries and should have applied the same diligence pertaining to the possible concert party relationships with regard to the joint offeror's siblings; and • In addition, UOBKH failed to document material issues satisfactorily.	UOBKH	The SC issued a reprimand and a directive for UOBKH to: • conduct a comprehensive review and assessment for compliance with the identification of concert parties pursuant to the Rules and CMSA, and report to the SC, results of such review and assessment together with recommendations (if any), within 3 months from date of sanction; and • table the SC's decision at a meeting of the Board of Directors of UOBKH and forward to the SC, a copy of the minutes of meeting together with the relevant Board papers discussing the issues, within 1 month from the date of sanction.
• The persons sanctioned, among others, jointly and severally accepted full responsibility for the accuracy of the information contained in the submission to the SC ("Submission"). However, the Submission was found to contain false or misleading statements. • Notwithstanding, the persons sanctioned, when informing their concert parties of their obligations or restrictions in relation to the offer, did not specify the applicable timing of such obligations or restrictions, knowing that the letter of obligations was not circulated to them; and • The persons sanctioned did not take cue from the SC's earlier enquiries and should have applied the same diligence pertaining to the possible concert party relationships with regard to the siblings of the persons sanctioned.	• Teong Lian Aik • ADA Capital Investments Limited • Low Bok Tek	The SC issued a reprimand for the non-compliance to each of the persons sanctioned.

The details of the administrative actions can be found at:

https://www.sc.com.my/regulation/enforcement/actions/administrative-actions/administrative-actions-in-2020
https://www.sc.com.my/regulation/enforcement/actions/administrative-actions/administrative-actions-in-2021

INFRINGEMENT NOTICES

During this period, the SC issued 129 infringement notices in relation to, among others:

(a) non-compliance with licensing conditions;

(b) weaknesses in compliance, risk and audit functions; and

(c) weaknesses in the process and procedures for the prevention of anti-money laundering and countering financing of terrorism.

Infringement Notices Issued from 1 July 2020 to 30 June 2021

Types of Infringement Notices	July 2020	Aug 2020	Sept 2020	Oct 2020	Nov 2020	Dec 2020	Jan 2021	Feb 2021	Mar 2021	Apr 2021	May 2021	June 2021
Supervisory Letter	2	2	-	1	1	4	2	2	11	4	1	2
Warning Letter	1	-	1	-	1	4	-	2	1	1	-	1
Non-Compliance Letter	-	1	1	32	-	2	-	1	6	18	2	1
Cease and Desist Letter	-	2	-	-	-	-	1	5	2	1	5	5
TOTAL	**3**	**5**	**2**	**33**	**2**	**10**	**3**	**10**	**20**	**24**	**8**	**9**

SUPERVISORY EXAMINATIONS AND ENGAGEMENTS

The SC leverages on supervisory engagements to ensure that policies and rules on governing markets, governance and risk management practices; and regulatory duties of market institutions and self-regulatory organisations are aligned to its regulatory objectives and expectations. The COVID-19 pandemic and the government's imposition of MCO continues to present challenges to the regulatees, and the SC continues to engage intermediaries and market institutions via digital platforms.

The SC's supervisory focus during the period under review was directed at ensuring that the regulated entities were able to function effectively under the work-from-home or split-operations working environment. Significant focus was placed on:

(a) whether trading and other market infrastructure systems were able to cope with market activities and volumes;

(b) the adequacy of financial resources and safeguards of financial market infrastructures;

(c) the monitoring of trends of defaults in relation to investment notes hosted on P2P platforms to facilitate rescheduling and restructuring of such investment notes; and

(d) ensuring that FIMM as an SRO continues to monitor the conduct and practice of unit trust consultants and sales agents amid a lower yield environment, and potential risk of increased illegal investment activities.

In carrying out the SC's gatekeeping function, active engagements and consultations with CMSL holders were held to communicate the SC's regulatory expectations to new entrants and existing players in the market, and to keep pace with market changes.

Number of Supervisory Examinations and Engagements conducted by the SC from 1 July 2020 to 30 June 2021

Entity	Number of examinations conducted	Number of engagements conducted
Bursa	2	29
FIMM	-	5
PPA	-	9
RMO	3	4
Investment Banks	-	59
FMCs / UTMCs / REIT	-	75
SBC / DBC	-	62
CMSLs	-	202
PLCs	-	21
Auditors	-	8
Trustee / FP / IA	-	7

FOR MORE INFORMATION

www.sc.com.my

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