

### F. Other Significant Cases

#### **Case F1: Failure to close off the position as required under the Fixed Delivery and Settlement System (FDSS)**

2 POs were imposed a fine of RM25,000 each for delay in instituting a selling-out and failing to close off the purchase positions of clients who did not pay for their purchases by the due date under the FDSS requirements. In the case of 1 PO, the PO instituted a selling-out of the outstanding purchases contracts on T+6 (17 instances) and T+7 (2 instances). Another PO instituted a selling-out of the outstanding purchases contracts on T+5 (29 instances).

There were lack of proper credit control procedures and processes, ineffective and improper risk management practices by the POs which led to their non-compliance and failure to strictly enforce their compliance with the FDSS requirements. It was the practice of the POs concerned in not strictly enforcing the FDSS requirements in regard to the clients' failure to pay for their purchases by the due dates of the FDSS.

One of the PO who had been fined RM25,000 in 2009 was imposed another fine of RM25,000 for similar breach of the FDSS requirements in 2011 involving 20 instances.

#### **Case F2: Irregular and/or unhealthy practice in daily professional conduct - CO involved in operational activity of authorising payment as bank signatory**

A PO was fined RM5,000 for allowing an irregular and/or unhealthy practice to exist or prevail in its daily professional conduct as it had appointed its registered CO to be one of its authorised bank signatories for its banking accounts. This indicated that the CO had carried out functions unrelated to his compliance functions/was involved in operational activities and may compromise his function and position which is not in compliance with the KLSE/MESDAQ Joint Guidelines for Compliance Officers (Compliance Guidelines) and Rule 309.3(1)(c) of the Rules of Bursa Securities.

It was noted that:-

- (a) based on the review of the sample transactions for a month, the CO had approved numerous payments, some of which involved significant sums; and
- (b) the Rules of Bursa Securities and Compliance Guidelines were very clear with regard to the functions/role of a CO i.e. that a CO should not be involved in operational functions and being a signatory for banking accounts is an operational function.

#### **Case F3: Breach relating to client's trust account**

##### **In 2006:-**

- ❖ A PO was imposed a fine of RM5,000 for it had failed to ensure that monies held on behalf of clients are paid into the clients' trust accounts. In this regard, the PO did not deposit payments of the difference between the settlement amount and contract value by one of its clients into the client's trust account. Instead, the PO allowed such payments to reside and accumulate in the PO's non-trust bank account.

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The requirement to deposit all clients' monies into a trust account must be strictly complied with to ensure segregation of clients' monies and avoid any form of co-mingling of the monies. As such, the PO should not have allowed its client's request for the settlement differences to be accumulated, reconciled and reimbursed (if any) on a monthly basis without depositing into the trust account as required under the Rules.

### **In 2014:-**

- ❖ A PO was imposed a private reprimand and a fine of RM30,000 for it had failed to ensure that:-
  - (a) the monies in its clients' trust accounts were strictly for clients and that there was no co-mingling with monies for other purposes; and
  - (b) the withdrawal of monies from the said trust accounts were within the circumstances permitted under the Capital Markets & Services Act 2007,

for there were various payments (including large cash deposit withdrawals) to remisiers made from the said clients' trust accounts at a few of its branch offices.

It was noted that this was a repeat breach by the PO whereby the PO was imposed a private reprimand and a directive in 2013 for a similar breach where the clients' trust account in another branch office was used for clearance of remisiers' security deposit cheques.

By allowing/continuing with the practice of utilizing the clients' trust account for a non-permissible purpose, resulting in co-mingling of its clients' monies with its remisiers' monies which could potentially lead to/result in the utilisation of clients' trust monies, the PO had blatantly disregarded this fundamental requirement for protection of clients' monies.

### **Case F4: Other breaches e.g. breaches relating to employees' transactions and proprietary trading, failure to carry out internal audit etc**

Fines ranging from RM1,000 – RM5,000 had been imposed on POs/TPs for:

- (a) allowing DR designated to undertake proprietary trading to also trade for its clients;
- (b) failure to ensure that employees' transactions are undertaken through designated DR and with prior approval;
- (c) failure to carry out internal audit;
- (d) allowing external party (who is not an employee of the TP) to access its back office system;
- (e) failure to develop and implement the relevant terms of reference, policies and procedures to govern the conduct and activities of PO's Risk Management Committee (RMC) and ensure that its RMC reported to its Board of Directors periodically on matters relating to risk management;

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- (f) failure to ensure Compliance Officer (CO) was not involved in operational functions e.g. CO was appointed as signatory for bank accounts; and
- (g) failing to ensure trading clerks did not represent themselves or carry out functions of a DR including receiving and/or accepting orders from clients.

### **Case F5: Inaccurate Capital Adequacy Requirement (CAR) ratio reporting/computation of Position Risk Requirement (PRR)**

#### **In 2013:-**

- ❖ A PO was imposed a fine of RM5,000 for it had failed to:-
  - (a) accurately compute its Position Risk Requirement (PRR) in respect of all securities held by it as principal, including those held pursuant to its intra-day activities for there were T-day transactions in the clearing accounts which were not captured in the PRR report resulting in understatement of the Total Risk Requirement and overstatement of the CAR ratio; and
  - (b) submit true and accurate information and records pertaining to the daily reporting through electronic transmission of its CAR ratio to the Exchange on several dates.

The PO had admitted the breach and took remedial actions to re-submit the CAR reporting to the Exchange.

It was noted that although the impact of the breach was relatively less serious for the PO's CAR ratio during the relevant dates was maintained at a significantly healthy level and above the prescribed CAR ratio, this was a repeat breach by the PO for enforcement actions had previously been taken against the PO for similar breach.

A fine was imposed as the requirement to transmit the relevant and accurate information to Bursa Securities for the purpose of calculating the CAR ratio must be strictly complied with to ensure that the PO's CAR ratio is calculated accurately so as to reflect the accurate ratio which must be maintained at or above the minimum prescribed level at all times.

### **F6: Serious Breaches of the Information Technology Securities Code (ITSC)**

#### **In 2014:-**

- ❖ A PO was imposed a private reprimand and fined RM5,000 for various breaches of the ITSC in relation to:-
  - (a) the adequacy of unit test, system integration test and load test carried out on the enhancement to its online trading system; and
  - (b) documentation of the said testing,

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which resulted in 2 system glitches where numerous duplicate orders were sent to Bursa Malaysia Securities.

The same PO was imposed a private reprimand and fined of RM5,000 for various breaches of the ITSC which led to a security breach/intrusion into its online trading system and unauthorised transactions undertaken in clients' accounts. The PO had absorbed the losses for unwinding the unauthorised transactions.

The sanctions were imposed having considered, amongst others, that:-

- (a) the PO had investigated and admitted to/self-reported the non-compliances with the ITSC and had undertaken rectification actions; and
- (b) the losses arising from the duplicate orders caused by the 2 system glitches and the unauthorised transactions were absorbed by the PO.