Other Disclosure Breaches

Promotional Disclosure Activities

- ***Paragraph/Rule 9.12(1) of the LR states that a listed issuer/corporation must refrain from promotional disclosure activity in any form whatsoever or howsoever which may mislead investors or cause unwarranted price movement and activity in a listed issuer's/corporation's securities.***

- ***Paragraph/Rule 9.12(2) of the LR states that such activity includes news releases, public announcements, predictions, reports or advertisements which are –***
  - ***(a) not justified by actual developments concerning a listed issuer/corporation;***
  - ***(b) exaggerated;***
  - ***(c) flamboyant;***
  - ***(d) overstated or***
  - ***(e) over-zealous.***

- ***Paragraph/Rule 9.13 of the LR states that although the distinction between legitimate public relations activities and such promotional disclosure activity is one that must necessarily be drawn from the facts of a particular case, the following are frequent hallmarks of promotional activity:***
  - ***(a) a series of public announcements unrelated in volume or frequency to the materiality of actual developments concerning a listed issuer/corporation;***
  - ***(b) announcement of products still in the development stage with unproven commercial prospects;***
  - ***(c) promotions and expense-paid trips, or the seeking out of meetings or interviews with analysts and financial writers, which could have the effect of unduly influencing the market activity in the listed issuer's/corporation's securities and are not justified in frequency or scope by the need to disseminate information about actual developments concerning the listed issuer/corporation;***
  - ***(d) press releases or other public announcements of a one-sided or unbalanced nature; and***
  - ***(e) listed issuer's/corporation's or product advertisements which in effect promote the listed issuer's/corporation's securities.***

CASE 1 – SERIES OF PROMOTIONAL DISCLOSURE ACTIVITY VIDE PRESS RELEASES AND ADVERTORIAL

Relevant Facts

Company I had on 15 August 2012 issued/posted a press release entitled "*Company I leaps forward with XYZ's appointment as sole local vendor for mobile devices*" on its corporate website and made the following representations:-

> "***This joint venture is competitively poised for growth by gearing up to sell 30,000 units amounting to RM15 million by end of this year, and 120,000 units amounting to RM60 million in sales by end of 2013.***"
>
> *"Company I believes that it is more than ready for another quantum leap in the ICT distribution business while expecting significant profit turnaround for the financial year Q1 June 2012/2013 which is to be announced tomorrow…and the turnaround is expected to be material and not merely a case of breaking even."*
>
> *"…The strategic plan developed by the management, along with on-going transformation, improvements in its products line as well as continued acquisition of strategic partners,* ***is expected to boost sales turnover to RM800 million with the Group's profit to RM12.5 million for the new financial year March 2013. The management team has set internal targets that they believe are achievable and is planning to see a 20% improvement following the next financial year.***"

Glossary
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The above press release had included the statements (in bold) that were requested to be removed by Bursa Securities earlier from the company's announcement made on 15 August 2012 to Bursa Securities and the market.

The statements and in particular the representation on the expected/targeted sales of RM800 million and profit of RM12.5 million for the FYE 31 March 2013 ("**the Sales/Profit Representation**") were again disseminated by Company I on 16 August 2012 when it posted on its corporate website another press release entitled *"Company I shows sign of turnaround with remarkable breakthrough of RM3.2 million quarterly profit"* where it had made the following representations:-

> *"With the turnaround underway, the Group believes and foresees that with its new strategic plan and on-going improvement in its products line as well as continuation to acquire strategic partners in place,* ***the Group is potentially of achieving its internal target for sales turnover of RM800 million and Group's profit to RM12.5 million for the upcoming financial year. The Group's first quarter results have reaffirmed the management's belief that these internal targets are reasonably achievable barring any unforeseen circumstances, thus aiming for a 20% improvement in the next following financial year.***
>
> *Ultimately, the management's goal is to apply for transfer of its current listing status to the Main Market of Bursa Securities soonest possible, hopefully within the next 3 years."*

Company I also published an advertorial entitled *"Eyes firmly set on the Main Board in 3 years time"* in The StarBizWeek on 18 August 2012 and again reiterated the Sales/Profit Representation as follows:-

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> *" Together with on-going improvements in its product line as well as continued acquisition of strategic partners, the strategy* ***is expected to boost sales turnover to RM800 million and Group's profit to RM12.5 million*** *for the* ***new financial year. The management team firmly believes that these internal targets can be achieved and is planning to see a 20% improvement the following financial year.*** *"*

Upon Bursa Securities' request for Company I to clarify the statements (in bold) (including the Sales/Profit Representation) in the advertorial, the company had on 23 August 2012 announced that:-

- the representation in the advertorial was merely an internal target set out to be achieved for the FYE 31 March 2013 and 31 March 2014 and should not be construed as a revenue and profit forecast;
- the internal target has not been and will not be reviewed by the external auditors; and
- there was no certainty that the internal revenue and profit targets for FYE 31 March 2013 and 31 March 2014 will be achieved.

The Sales/Profit Representation in the press releases dated 15 & 16 August 2012 and advertorial dated 18 August 2012 were presented as certain and/or as more probable and were one-sided, not balanced and not fair as it did not provide any proper/adequate/reasonable justification, basis and/or assumptions and did not contain sufficient information to enable investors to make informed investment decisions with regard to such representations. This fulfilled the hallmarks of promotional activity under Rule 9.13(d) of the ACE LR read together with Rule 9.16(1)(c) of the ACE LR. Further, the Sales/Profit Representation which was made repeatedly through the press releases on 15 & 16 August 2012 and the advertorial on 18 August 2012 was overstated, over-zealous and unbalanced particularly in light of Company I's bare assumption of the profit based on unclear, uncertain and unreasonable assumptions.

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There was unusual market activity in the trading of Company I's securities during the material period from 10 August 2012 to 14 August 2012 and particularly after issuance of each of the press releases on 15 & 16 August 2012 and the advertorial on 18 August 2012 where in aggregate, the company's share price had increased significantly by 244% within a period of two weeks from RM0.135 on 9 August 2012 to a high of RM0.465 on 23 August 2012. However, upon Company I's clarification on 23 August 2012, the share price had decreased approximately 24.7% within three market days.

Company I's series of promotional disclosure activities particularly via the press releases dated 15 & 16 August 2012 and advertorial dated 18 August 2012 which -

- contained the repeated Sales/Profit Representation and the company's prospects of transfer to the Main Market; and
- were made and publicised during the period where the company's shares had significant and unusual market activity;

had or might have misled investors and/or caused/further caused unwarranted price movement and activity in the company's shares and in effect promoted its securities.

Enforcement Decision

i. Company I – **public reprimand.**

ii. Directors of Company I - **public reprimand**. In addition **a fine of RM100,000 each was imposed on two of its Executive Directors**, taking into consideration all facts and circumstances of the matter including the conduct of the Executive Directors in approving the press releases dated 15 & 16 August 2012 and/or advertorial dated 18 August 2012 (which included the Sales/Profit Representation) notwithstanding their knowledge/awareness of the unusual market activity in the company's securities and Bursa Securities' concerns/request for removal of such representation in the company's announcement.

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No enforcement action was taken against the Non-Executive Directors in view that only the Executive Directors had reviewed/approved the press releases dated 15 & 16 August 2012 and/or advertorial dated 18 August 2012 prior to the same being posted and the Non-Executive Directors were unaware of Bursa Securities' request for removal of the Sales/Profit Representation in the company's announcement.

More information on this case can be found in the Media Release dated 11 June 2014.

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Other Disclosure Breaches

Selective Disclosure/ Failure to Ensure Equal Access of Material Information to the Market

Paragraph/Rule 9.08 of the LR states that:-

(1) A listed issuer/corporation must release material information to the public in a manner designed to obtain its fullest possible public dissemination.

(2) A listed issuer/corporation must ensure that no disclosure of material information is made on an individual or selective basis to analysts, shareholders, journalists or other persons unless such information has previously been fully disclosed and disseminated to the public. In the event that material information is inadvertently disclosed on the occasion of any meetings with analysts, shareholders, journalists or others, it must be publicly disseminated as promptly as possible.

(3) There may be limited circumstances where selective disclosure of material information is necessary, for example where the listed issuer/corporation is undertaking a corporate exercise or to facilitate a due diligence exercise. In such circumstances, the listed issuer/corporation must ensure that the disclosure is restricted to only relevant persons and the strictest confidentiality is maintained.

(4) Disclosures of material information can often be made after the market closes. If the disclosure is made immediately before or during trading hours, the Exchange may impose a temporary halt or suspension in trading of the listed issuer's/corporation's securities. Such a temporary halt or suspension provides an opportunity for the dissemination and evaluation of the information released.

(5) Any public disclosure of material information must be made by an announcement first to the Exchange or simultaneously to the Exchange, the press and newswire services. For the avoidance of doubt, a listed issuer/corporation must not release any material information to the media even on an embargoed basis until it has given the information to the Exchange.

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Bursa Securities is of the view that:-

"Selective disclosure such as where listed issuer/corporation disclosed material non-public information to certain individual/group first before making full disclosure of the same information to the market via Bursa Securities will result in those being privy to the information beforehand being able to make a profit or avoid a loss at the expense of those kept in the dark. Bursa Securities believes that such selective disclosure may lead to a loss of investor confidence in the integrity of its capital market including question as to whether there is level playing field with market insiders and hence, fairness of the market. In dealing with journalists, analysts and fund managers, it is important to keep in mind the principle that a listed issuer/corporation must not provide information relating to its business, operations or financial performance that constitutes non-public material information.

Bursa Securities in ensuring that there is fair market (i.e. level playing field where there is equal access to material information pertaining to its listed issuers/corporations), requires its listed issuers/corporations to announce any material information first to Bursa Securities or simultaneously to Bursa Securities, the press and other modes of communication that the listed issuer/corporation wishes to use. Material information received by Bursa Securities from listed issuers/corporations are immediately posted on its website and as such, the market can access all material announcements of listed issuers/corporations in the company announcement section of Bursa Securities' website."

CASES 1 & 2 – SELECTIVE DISCLOSURE OF MATERIAL CONTRACTS

Relevant Facts

In 2016, two enforcement actions were taken against the following companies who had made selective disclosures of material contracts to fund managers and/or analysts without disclosing the same first to Bursa Securities.

CASE 1 - Company S

On 3 May 2015, Company S had secured a new material contract with the value of about/up to RM400 million per year (which represented 97% and 65% of the company's revenue for the FYE 31 March 2014 and 31 March 2015 respectively) for a tenure of five years from its existing customer ("**Contract**"). On 7

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May 2015, an Executive Director had verbally disclosed the Contract including the contract value to two research houses without announcing the same first/simultaneously to Bursa Securities. The announcement on the Contract was only made to Bursa Securities on 18 and 20 May 2015. There was a significant increase of approximately 20% in the company's share price from 8 May 2015 following the disclosure to the research houses and issuance of the research reports until after the company's announcements of the Contract on 18 and 20 May 2015.

CASE 2 - Company M

Company M had obtained an expanded scope of service from the government which was material to the company's business and prospects as it would increase the company's market share on the service from 8% to 100%. The Managing Director of Company M had made a presentation to a group of fund managers on the expanded scope of service as well as impact of the service on 6 January 2015. However, Company M only announced the expanded service to Bursa Securities on 9 and 12 January 2015 but without disclosing the details of its impact/implication on the company (which were disclosed to the fund managers on 6 January 2015). Prior to the announcement to Bursa Securities, there was a significant increase of up to 26% in Company M's share price following the presentation and issuance of a research report based on, amongst others, the details of the presentation.

Enforcement Decision

(i) Company S & Company M – **public reprimand.**

(ii) Directors of Company S – **public reprimand and a fine of RM50,000 were imposed on each of the Executive Director** who had made the selective disclosure to the research houses ("**First ED**") **and two other Executive Directors** who were aware of the proposed meeting between the First ED and the research houses and the proposed disclosure of the Contract to the research houses

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by the First ED in the meeting even though no prior announcement of the same was made to Bursa Securities.

(iii) Directors of Company M – **public reprimand and a fine of RM50,000 were imposed on the Managing Director** who had made the selective disclosure to the fund managers.

More information on the cases can be found in the Media Releases dated 29 November 2016 and 30 November 2016 respectively.

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Other Disclosure Breaches

Delay in Announcing PN1/ GN5 Default In Payment

Paragraphs/Rules 9.03 and 9.04(l) of the LR read together PN1 or GN5 require a listed issuer/corporation to make immediate announcement upon an event of default of interest or principal payments for loans by the listed issuer/corporation, its subsidiaries or associated companies irrespective of whether a demand has been made.

CASES 1 & 2 - FAILURE TO ANNOUNCE DESPITE EVENT OF DEFAULT

Relevant Facts

CASE 1

Company M failed to make an immediate announcement of the default in payment of credit facilities to a lender by its major subsidiary since 31 October 2006. The total amount outstanding of the defaulted credit facilities to the lender as at 31 December 2006 represented more than 400% of the company's net assets at the material time. The company only made an announcement of the default on 3 March 2009 notwithstanding that:-

(a) the lender had in fact issued a notice dated 31 January 2007 on the default of the principal and interest repayment;

(b) the lender had issued quarterly advices on the default to the major subsidiary; and

(c) the lender had issued a notice of demand dated 3 February 2009 to the company as guarantor of the major subsidiary on the default.

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The company was unable to provide a solvency declaration to Bursa Securities upon announcement of the default and as a consequence, made the First Announcement that it was a PN17 company on 3 March 2009.

The explanation provided for the company's failure to make an immediate announcement of the default in payment i.e. the lender had refrained from calling a formal default on the major subsidiary and such an announcement would prejudice the ability of the company to pursue its corporate objective with regard to the preservation of a contract, was unacceptable as the fact remained that the company/its major subsidiary had clearly defaulted in payment of the credit facilities due to the lender since 31 October 2006.

CASE 2

Company SDH failed to make an immediate announcement of the default on a bond coupon payment on 9 December 2021 where the outstanding credit facility of USD222 million represented 24.4% of the company's net assets at the material time. Despite: -

- the news articles on 11 November 2021 and 10 December 2021 on the default;
- the advice by the company secretary that Company SDH was required to make an immediate announcement once an event of default was triggered during the special board meeting on 30 November 2021; and
- Bursa Securities' engagement on 10 December 2021 to clarify the article on 10 December 2021 and to take note of the requirements under paragraph 9.19A of the Main LR (which requires an immediate announcement of default in payment irrespective of whether a demand has been made) and Part H of Appendix 9A of the Main LR on default in payment,

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Company SDH had merely announced that the Group has yet to receive any notice of default on 13 December 2021. Company SDH only made the announcement of the default on 15 December 2021 ("**Default Announcement**") upon Bursa Securities' further engagement. In addition, Company SDH had only announced the subsequent material defaults in payment upon initiation of legal actions by the lenders. Company SDH was unable to provide Bursa Securities a solvency declaration upon the Default and had triggered the prescribed criteria under paragraph 2.1(f) of PN17.

Enforcement Decision

CASE 1

Taking into consideration that the company did make some disclosure on the non-repayment of the credit facilities in the company's annual audited accounts for the FYE 31 December 2007 which were announced on 30 April 2008, the following penalties were imposed:-

(i) Company M – **public reprimand.**

(ii) Directors of Company M – **public reprimand on all the directors**. In addition:-

(a) **fine of RM50,000 and RM25,000 were imposed on the Executive Chairman and the Managing Director cum Chief Executive Officer** of the major subsidiary respectively as they were the directors primarily in charge of/involved in the financial and legal affairs of the company; and

(b) **fine of RM10,000 was imposed on each of the other directors** who were or should also be aware of the defaults and the obligation to make timely disclosure of the same as they were notified of the defaults through the receipt of numerous documents issued by the lender and/or the defaults being highlighted at the board meeting on 29 August 2007.

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CASE 2

(i) Company SDH – **public reprimand.**

(ii) Directors of Company SDH –

(a) **public reprimand and fine of RM150,000 each were imposed on the Group Managing Director/Chief Executive and the Executive Director** who were primarily responsible for the finance function and to liaise with the lenders on the credit facilities. They had also failed to escalate the subsequent defaults in payment to the Board on a timely basis to enable/ensure proper deliberation, assessment and compliance with the Main LR; and

(b) **public reprimands were imposed on each of the six Non-Executive Directors**. In addition, **a fine of RM75,000 each was imposed on two Non-Executive Chairman** at the material time whilst **a fine of RM50,000 each was imposed on four other Non-Executive Directors** in view of their knowledge of the company secretary's advice and the default might trigger PN17 during the special board meeting on 30 November 2021 and their failure to supervise and to take reasonable steps to ensure Company SDH made timely announcement of the subsequent material defaults in payment.

No enforcement action was taken against two Non-Executive Directors who were only appointed on 25 February 2022 as Company SDH had on 15 December 2021 announced the triggering of the prescribed criteria under paragraph 2.1(f) of PN17 and they would have reasonably relied on the management to announce the default in payment which occurred prior to their appointment.

More information on the cases can be found in the Media Releases dated 28 October 2010 and 21 December 2023.

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CASES 3, 4 & 5 – FAILURE TO ANNOUNCE PREMISED ON ONGOING NEGOTIATIONS TO RESOLVE DEFAULT

Relevant Facts

CASE 3

Company K failed to make an immediate announcement of the default in payment of credit facilities on 31 December 2009 which represented approximately 19% of the company's net assets at the material time. The primary reason for the failure was premised on the fact that there were ongoing negotiations between Company K and the banks to resolve the defaults. The announcement was only made on 31 May 2010. The company was unable to provide a solvency declaration following the announcement of the defaults in payment and made the First Announcement that it was a PN17 company on the same date.

CASE 4

Company L had:-

(i) failed to make an immediate announcement of the defaults in payment of various credit facilities since 10 May 2019 which represented 1.14% - 25.36% of the company's net assets at the material time; and

(ii) delayed in making an immediate announcement of the further developments arising from and subsequent to the defaults i.e. the commencement of the litigations by four lenders which were material to shareholders and investors to make informed investment decision.

The various ongoing negotiations and discussions with the lenders to resolve the outstanding debts were merely steps taken to address the defaults in payment and did not unwind the occurrence of a default which must be announced immediately under paragraph 9.19A(1) of the Main LR. Company L

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was unable to provide the solvency declaration upon the announcement of the defaults in payment on 3 July 2019 and made the First Announcement that it was a PN17 company on 8 July 2019.

CASE 5

Company J had failed to:-

(i) make an immediate announcement of the defaults in payment of various credit facilities by its wholly owned subsidiaries since 25 October 2020 where the total amount outstanding, either singly or collectively, was 5%, or more of Company J's net assets ("**Disclosure Breach – Defaults in Payment**");

(ii) make an immediate announcement of the further developments arising from the defaults in payment, i.e. the commencement of litigations and winding-up petition ("**Disclosure Breach – Material Litigations & Winding-Up Petition**"); and

(iii) ensure that the announcements dated 23 August 2021 and 26 November 2021 on the dates of the defaults in payment to various lenders were accurate ("**Misstatement Breach**").

Company J's representation that the delay in announcing the defaults in payment, litigations and winding-up petition was due to the negotiations with the lenders to obtain indulgence to formulate repayment plans and the company was appealing to stay any (legal) proceedings, was not acceptable for the reasons set out in Case 4 above where the negotiations/appeal did not unwind the occurrence of a default which must be announced immediately under paragraph 9.19A(1) of the Main LR. Further, Company J's reliance on paragraph 9.05 of the Main LR to withhold disclosure as it would prejudice the company's ability to pursue its corporate proposal was also not acceptable as paragraph 9.07A of the Questions and Answers to the Main LR had clarified that a listed issuer cannot rely on the exceptional circumstance of 'prejudicing the ability of a listed issuer to pursue its corporate objectives' to delay disclosure of material information where there is a material default in a loan by a listed issuer.

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Company J had also triggered the prescribed criteria under paragraph 2.1(f) of PN17 as the company was unable to provide the solvency declaration to Bursa Securities after announcements of the defaults in payment on 23 August 2021.

Enforcement Decision

CASE 3

(i) Company K – **public reprimand.**

(ii) Directors of Company K –

(a) **public reprimand and fine of RM100,000 were imposed on the Managing Director** who was aware of the default in payment of credit facilities being the person who was involved in the negotiation to restructure the credit facilities; and

(b) **public reprimands were imposed on each of the other directors** who were informed of the letter of demand by the lender only on 2 April 2010. However, the announcement was only made on 31 May 2010 and the delay was premised on the ongoing negotiations with the lender and their reliance on assurance of the management that the matter was being resolved was unreasonable and hence, did not absolve these other directors' obligation to ensure compliance with the requirement of an immediate announcement under paragraph 2.1(d) of PN1 with regard to the default in payment.

CASE 4

(i) Company L – **public reprimand for each breach**.

(ii) Directors of Company L –

(a) **public reprimand and fine of RM150,000 were imposed collectively for both breaches on the Chief Executive Officer and sole Executive Director** who was aware of the defaults in

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payment and was involved in liaising and negotiation with the lenders on the credit facilities or extension of the loan repayment. An aggravating fine was imposed on him as he had misled and withheld information of the defaults in payment from the Board even when expressly queried as to whether the company had not repaid any loans and borrowings during the Board meeting on 29 May 2019; and

(b) no enforcement action was taken against the other directors as they were not involved in the day-to-day operation and/or financial management of the company or liaising/negotiating with the lenders, and there was no evidence that they were aware of or in a position to ascertain the defaults in payment at the material time.

CASE 5

(i) Company J – **public reprimand for each breach**.

(ii) Directors of Company J –

(a) **public reprimand and fine of RM150,000 were imposed collectively for the Disclosure Breach – Defaults in Payment, Disclosure Breach – Material Litigation & Winding-Up Petition and Misstatement Breach on the Group Managing Director** as he was involved in negotiating with the lenders for an extension of time/to withdraw the notices of demands. An aggravated fine was imposed on him as he had failed to escalate the defaults in payment and the developments arising therefrom to the Board despite his knowledge of the defaults in payment since 4 November 2020 and had misled the Board that there was no need to make any/an immediate announcement;

(b) **public reprimand and fine of RM100,000 were imposed collectively for the Disclosure Breach – Defaults in Payment and Disclosure Breach – Material Litigations & Winding-Up Petition on the Executive Deputy Chairman and Executive Director** as they had merely relied on the management's/Group Managing Director's representations not to make an

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immediate announcement despite their executive roles and knowledge of the letters of demand since 4 November 2020; and

(c) **public reprimand and fine of RM50,000 were imposed collectively for the Disclosure Breach – Defaults in Payment and Disclosure Breach – Winding-Up Petition on the Non-Executive Directors** as they did not take effective and expeditious steps to ensure that the announcements on the defaults in payment and winding-up petition were made immediately despite their knowledge of the same on 29 July 2021 and 6 August 2021 respectively and the specific advice by the company secretary to make an immediate announcement on 3 & 6 August 2021. Hence, they had allowed the prolonged delay of approximately 1 month where the announcement on the defaults in payment and winding-up petition was only made on 23 August 2021.

More information on the cases can be found in the Media Releases dated 3 March 2011, 21 October 2021 and 14 February 2023 respectively.

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Other Disclosure Breaches

Delay in Making First Announcement Despite Triggering PN17/GN3

Paragraph/Rule 8.04(3)(b) of the LR read together with paragraph/rule 4.1(a) of PN17/GN3 states that a PN17/GN3 company must announce to the Exchange on an immediate basis ("First Announcement") upon triggering one or more of the prescribed criteria under PN17/GN3

CASES 1 & 2: TRIGGERING PARAGRAPH 2.1(e) OF PN17

Relevant Facts

CASE 1

Company A had on 31 October 2013 announced its audited accounts for the FYE 30 June 2013 where the external auditors had expressed an emphasis of matter on Company A and its subsidiaries' ability to continue as a going concern. Company A's shareholders equity on a consolidated basis of RM15.758 million was less than 50% (i.e. 35.8%) of Company A's issued and paid up capital of RM44 million as at 30 June 2013. Hence, Company A had triggered the prescribed criteria under paragraph 2.1(e) of PN17. However, Company A failed to make the First Announcement pursuant to PN17 on an immediate basis. The First Announcement was only made on 15 November 2013, after a delay of 15 market days.

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CASE 2

Company T had triggered the prescribed criteria under paragraph 2.1(e) of PN17 where the external auditors had expressed an emphasis of matter on Company T's ability to continue as a going concern in the audited financial statements for the FPE 31 July 2016 ("**AFS 31/7/2016**") and based on the subsequent quarterly report for the FPE 30 September 2017 ("**QR 30/9/2017**"), Company T's shareholders' equity on a consolidated basis of RM19.261 million was less than 50% (i.e. 34.6%) of Company T's issued and paid up capital of RM55.638 million as at 30 September 2017. However, Company T failed to make the First Announcement pursuant to PN17 on an immediate basis upon the announcement of the QR 30/9/2017 on 30 November 2017. Company T had only made the First Announcement based on the QR 30/9/2017 on 19 January 2018.

Enforcement Decision

CASE 1

Company A and seven of its directors were publicly reprimanded for breach of paragraph 8.04(3)(b) of the Main LR read together with paragraph 4.1(a) of PN17 after taking into consideration all facts and circumstances including the following:

(a) The company/directors failed to be more vigilant in the assessment as to whether the company triggered any of the prescribed criteria under PN17. In this regard, the company/directors merely focused on one of the prescribed criteria of PN17 and merely sought advice and relied on the external auditors' alleged advice/confirmation that the company had not triggered PN17. The directors, having or expected to have basic knowledge and understanding of the LR, particularly fundamental requirements such as the financial condition requirement set out under paragraph 8.04(3) of the Main LR and PN17 and in light of their knowledge of:-

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- the emphasis of matter which was highlighted by the external auditors in the Audit Committee and/or Board of Directors meeting; and
- the shareholders' equity on a consolidated basis of RM15.758 million was less than 50% (i.e. 35.8%) of Company A's issued and paid-up capital of RM44 million as at 30 June 2013 in approving the audited accounts, should have been alerted to undertake due inquiry and ensure compliance of the LR.

(b) Despite Bursa Securities informing Company A that it had triggered PN17 and requiring/reminding the company to make the necessary announcement from 12 – 15 November 2013, the issuance of the First Announcement was further delayed.

(c) There was material share price movement of Company A's securities upon the First Announcement on 15 November 2013 at 1.51 p.m. where the share price had decreased by RM0.03/16.7% from RM0.18 i.e. the closing price after the morning session on 15 November 2013 to RM0.15 i.e. the closing price of the day after the First Announcement and further decreased to RM0.14 on 18 November 2013 (i.e. the next market day). In aggregate, Company A's share price had decreased by RM0.09/50% for the next five market days after the First Announcement.

In addition to the public reprimand, **a fine of RM100,000 was imposed on the Group Managing Director** in view of his responsibility for the day-to-day operations and management of the company including financial and preparation and/or finalization of Company A's First Announcement. Hence, he was in a better position to advise the board and there was reliance by the board on him to ensure the proper discharge of Company A's obligation vis-a-vis making the First Announcement under the Main LR. **A fine of RM10,000 was also imposed on the other directors** for their failure to properly discharge due care and diligence and their mere reliance on the advice of PN17 by the management/external auditors which was unreasonable.

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CASE 2

Company T and four of its directors were **publicly reprimanded** for breach of paragraph 8.04(3)(b) of the Main LR read together with paragraph 4.1(a) of PN17. In addition, **a fine of RM50,000 was imposed on an Executive Director and two Audit Committee members while a fine of RM25,000 was imposed on an Independent Non-Executive Director (who was newly-appointed on 8 November 2017)** after taking into consideration all facts and circumstances including the following:

(a) Notwithstanding that the directors (except one Audit Committee member) were newly appointed on 2 August 2017 and 8 November 2017, the Board was clearly aware of the emphasis of matter in the AFS 31/7/2016 and that the company's shareholders' equity had decreased to 34.6% of the company's issued and paid-up capital in approving the QR 30/9/2017 during the Audit Committee and Board of Directors meeting on 30 November 2018. The Board was also informed that the company had triggered PN17. However, the Board had unreasonably concluded that the company did not trigger PN17 as the emphasis of matter in the AFS 31/7/2016 was outdated/redundant as the auditors had resigned and management had embarked on a restructuring exercise.

(b) Even though Company T had triggered PN17 at the juncture of the announcement of the quarterly report for the FPE 30 April 2017 ("**QR 30/4/2017**") on 15 June 2017, the quarterly report was superseded/amended on 16 June 2017 and the company did not trigger PN17 based on the amended quarterly report. The directors must make the First Announcement pursuant to PN17 on an immediate basis when the company had subsequently triggered the prescribed criteria under paragraph 2.1(e) of PN17 based on the QR 30/9/2017 announced on 30 November 2017.

More information on the cases can be found in the Media Releases dated 30 June 2014 and 1 September 2020 respectively.

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CASES 3 & 4: TRIGGERING PARAGRAPH 2.1(c) OF PN17

Relevant Facts

CASE 3

Company H had on 30 July 2012 announced that a winding-up order was made on 24 May 2012 against its wholly owned as well as major subsidiary i.e. Company HT ("**Winding-Up Order**"). In addition, in view that the total assets of Company H and its subsidiaries was RM310,796,938 as at 31 March 2012 based on the consolidated balance sheets of Company H's Group which exceeded 50% (i.e. 87.9%) of Company H's Group's total assets of RM353,633,000 as at 31 March 2012, Company H triggered the prescribed criteria under paragraph 2.1(c) of PN17. However, Company H had failed to make the First Announcement on an immediate basis and only made the First Announcement on 28 February 2013 upon triggering another criteria under PN17 (i.e. paragraph 2.1(a) of PN17) based on the company's quarterly report for the FPE 31 December 2012 which had reported a negative shareholders' equity of RM19.25 million.

There was material share price movement upon Company H making the First Announcement where the share price had decreased by RM0.035/46.7% from RM0.075 on 28 February 2013 to RM0.04 on 1 March 2013 i.e. the next market day of the First Announcement.

CASE 4

Company B had triggered paragraph 2.1(c) of PN17 when a winding-up order was made against its major subsidiary on 30 November 2017 ("**Winding-Up Order**") where the total assets of the subsidiary of RM230,252,047 exceeded 50% (i.e. 82%) of Company B's Group total assets of RM280,936,000 as at 30 September 2017.

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However, Company B had failed to make an immediate announcement of the Winding-Up Order and the First Announcement on an immediate basis and had instead represented that the subsidiary was solvent, the winding-up was an abuse of court's process and the subsidiary had a good and arguable defence to oppose the Winding-Up Order. Company B had clearly triggered paragraph 2.1(c) of PN17 regardless of the purported solvency of the subsidiary and/or any dispute/pending appeal against the Winding-Up Order. In addition, Bursa Securities had clearly clarified in the Consolidated Questions and Answers in relation to the Main LR that if the winding-up order is pending appeal, the listed issuer will nonetheless be classified as a PN17 Issuer, pending the outcome of the appeal. The First Announcement was only made on 4 April 2018.

There was significant share price movement upon Company B making the First Announcement where the share price had decreased by RM0.14/33% from RM.042 on 4 April 2018 to RM0.28 on 5 April 2018, i.e. the next market day after the First Announcement. The share price had further decreased after 5 April 2018 to RM0.23 and RM0.195 on 6 April 2018 and 9 April 2018 respectively.

Enforcement Decision

CASE 3

Company H had breached paragraphs 9.19(19) and 8.04(3)(b) of the Main LR read together with paragraph 4.1(a) of PN17 for the delay in the announcement of the Winding-Up Order ("**Winding-Up Order Breach**") as well as the First Announcement ("**First Announcement Breach**") while its four directors had breached paragraph 16.13(b) of the Main LR for permitting the Winding-Up Order Breach and First Announcement Breach. The penalties imposed were as follows:

(1) Company H – **public reprimand for the Winding-Up Order Breach and First Announcement Breach respectively.**

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(2) Directors of Company H – penalties were imposed on the four directors collectively for permitting the Winding-Up Order Breach and First Announcement Breach as follows:

(a) **public reprimand and fine of RM100,000 each on the Executive Chairman/Group Chief Executive Officer ("Group CEO")** who was responsible for the day-to-day operations of Company H and preparation and/or finalization of the announcement on the Winding-Up Order and the **Group Executive Director** who was also the Chief Executive Officer of Company HT and assisted the Group CEO in the operations of Company H. Both directors had prior knowledge of the Winding-Up Order/petition including the development thereto. Further, by virtue of their roles and responsibilities, they were also in a better position to advise the other Non-Executive Directors and/or to ensure Company H's compliance with the obligations under the Main LR in respect of the Winding-Up Order and the implication of the same on Company H; and

(b) **public reprimand was also imposed on two Non-Executive Directors** (who were not involved in the day-to-day management/operations) in view of their knowledge of the Winding-Up Order (albeit approximately one month after it was made against Company HT) but had nevertheless failed to undertake reasonable efforts to discharge their duties to ascertain, undertake reasonable assessment/due enquiry to ensure timely announcement of the Winding-Up Order and First Announcement.

No enforcement action was taken against one Non-Executive Director in view that he was newly appointed and was only informed of the Winding-Up Order (which was announced on 30 July 2012) on 29 August 2012 and had reasonably relied that the said announcement (on 30 July 2012) was made in accordance with the Main LR (including impact on Company H).

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CASE 4

Company B had breached paragraphs 9.19(19)(a)(ii) ("**Disclosure Breach**") and 8.04(3)(b) of the Main LR read together with paragraph 4.1(a) of PN17 ("**FA Breach**") for the delay in the announcement of the Winding-Up Order and the First Announcement while all its directors had breached paragraph 16.13(b) of the Main LR for permitting the Disclosure Breach and/or FA Breach. The penalties imposed were as follows:

(1) Company B – **public reprimand for the Disclosure Breach and FA Breach respectively.**

(2) Directors of Company B – penalties were imposed on all directors of Company B as follows:-

(a) **public reprimand and fines of RM100,000 and RM50,000 were imposed on the Managing Director and Executive Director** respectively for permitting both the Disclosure Breach and FA Breach collectively. In respect of the Disclosure Breach, they had failed to monitor and follow-up on the outcome of the winding-up petition and make an immediate announcement of the Winding-Up Order upon being informed of the same. In respect of the FA Breach, the Managing Director had decided not to release the First Announcement upon being informed of the Winding-Up Order and despite being clearly informed in early February 2018 that Company B had triggered PN17 and was required to make the First Announcement whilst the Executive Director had merely relied on the Managing Director's explanation and decision not to make the First Announcement; and

(b) **public reprimand and fine of RM25,000 were imposed on each of the Non-Executive Directors** for permitting the FA Breach in view of their knowledge that Company B had triggered PN17 and was required to make the First Announcement but they had merely relied on the Managing Director and Executive Director to assess the impact of the Winding-Up Order and ensure compliance with the Main LR and accepted the Managing Director's explanation and decision not to make the First Announcement.

More information on the cases can be found in the Media Releases dated 5 June 2014 and 4 March 2021 respectively.

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CASE 5: TRIGGERING PARAGRAPH 2.1(d) OF PN17

Relevant Facts

Company I had failed to make an immediate announcement of the disclaimer opinion ("**Disclaimer Opinion**") in the auditors' report of the audited financial statements for the 18-month FPE 30 June 2019 ("**AFS" 2019**") which was submitted to Bursa Securities on 31 October 2019 ("**Disclosure Breach**").

Company I had also failed to make the First Announcement on an immediate basis upon announcement of the annual report that included the AFS 2019 together with the Disclaimer Opinion on 31 October 2019, where the company had triggered paragraph 2.1(d) of PN17 ("**FA Breach**"). This had led to the issuance of a directive by Bursa Securities on 5 November 2019 for the company to make the First Announcement on an immediate basis ("**Directive**") after numerous engagements by Bursa Securities and the company secretary. However, Company I failed to comply with the Directive ("**Directive Breach**") and Bursa Securities had subsequently issued a listing circular on 6 November 2019 to classify Company I as a PN17 Issuer.

Company I had represented that there was lack of advice from the external auditors and company secretary on whether the prescribed criteria under PN17 had been triggered by virtue of the Disclaimer Opinion, but there was no evidence or record of any enquiries made by the Board to ascertain whether the Disclaimer Opinion had triggered the prescribed criteria under PN17. In fact, the Board had proceeded to approve the AFS 2019 and AR 2019 together with the Disclaimer Opinion.

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Enforcement Decision

(1) Company I – **Public reprimand** for the Disclosure Breach, FA Breach and Directive Breach respectively.

(2) Directors –

(a) **Disclosure Breach - Public reprimand on the Executive Director and two Non-Executive Directors** as they had failed to approve and release the draft announcement on the Disclaimer Opinion despite the engagements by Bursa Malaysia Securities. No enforcement action was taken against one Independent Non-Executive Director as he had reverted to the company secretary to make an immediate announcement of the Disclaimer Opinion.

(b) **FA Breach and Directive Breach –**

- **Public reprimand and fine of RM150,000 were imposed on the Executive Director and one Independent Non-Executive Directo**r who was also the Audit Committee Chairman, as they were in a position to ensure immediate announcement of the First Announcement and comply with the Directive but failed to do so despite being specifically engaged by Bursa Securities.
- **Public reprimand and fine of RM75,000 were imposed on two Non-Executive Directors** as they had approved, allowed and/or acquiesced to the release of a draft announcement which had been rejected by Bursa Securities for non-compliance with the prescribed contents of a First Announcement under paragraph 4.1(a) of PN17 and had placed certain reliance on the other directors on whether Company I had triggered the prescribed criteria under PN17 and to make the First Announcement.

More information on the cases can be found in the Media Release dated 28 February 2022.

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Other Disclosure Breaches

Delay in Making Announcement of Material Information

- ***Paragraph/Rule 9.03(1) of the LR states that a listed issuer/corporation must make immediate public disclosure of any material information.***

- ***Paragraph/Rule 9.03(2) of the LR states that information is considered material, if it is reasonably expected to have a material effect on –***
  (a) the price, value, or market activity of any of the listed issuer's/corporation's securities; or
  (b) the decision of a holder of securities of the listed issuer/corporation or an investor in determining his choice of action.

CASE 1

Relevant Facts

On 16 June 2020, the Board of Directors ("**BOD**") of Company AZ had approved and authorised Company AZ to enter into a supply agreement with Company C for the supply of copper scraps which had an estimated contract value of RM1.3 billion ("**ISA**"), representing 908.2% of Company AZ's net assets as at 31 July 2019. However, Company A had only announced the ISA on 25 June 2020 despite the following:

(a) the ISA was material to investors to make an informed investment decision;

(b) there was an overall increase of 288.9% in Company AZ's share price from 15 June 2020 to 26 June 2020; and

(c) there were rumours and speculation of Company AZ venturing into a new business as reported in articles published online, following which the company was queried by Bursa Securities.

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Enforcement Decision

Company AZ and three of its directors were publicly reprimanded for breach of paragraph 9.03(1) of the Main LR. In addition, **the Managing Director and the two Non-Executive Directors were each fined RM50,000 and RM25,000 respectively**.

The Managing Director, who was responsible for the day-to-day business of Company AZ and finalisation of the ISA including the release and approval of announcements to Bursa Securities, had failed to ensure that the ISA was announced immediately and particularly where there was significant price movement and trading activity in Company AZ's securities between 16 June 2020 to 24 June 2020.

The other two directors had merely relied on the Managing Director to make an announcement of the ISA after the BOD meeting on 16 June 2020 and had failed in the discharge of their duties, particularly to undertake reasonable enquiries on the necessity of disclosing the ISA in approving the Company's announcement on 23 June 2020 in response to Bursa Securities' query on an online article.

No action was taken against one other Non-Executive Director as:

- he had placed certain reliance on the Managing Director and management to monitor the market activity of Company AZ's shares during the period where disclosure of the ISA was withheld and make an immediate announcement of the ISA upon the unusual market activity; and
- he was not aware of the rumours and speculation in the online article which led to Bursa Securities' query on 23 June 2020 and did not approve the Company's response/announcement dated 23 June 2020 which was made after his resignation on 22 June 2020.

More information on the case can be found in the Media Release dated 1 September 2022.

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CASE 2

Relevant Facts

On 4 May 2021, Company SR received a letter of award for a total contract sum of RM20.6 million ("**LOA**" or "**Contract**"), representing more than 200% of Company SR's consolidated revenue for the FYE 30 June 2020. Company SR had represented that the LOA was in the ordinary course of business and conditional/subjected to various stringent conditions which may result in the contract not being awarded. Hence, Company SR had only announced the LOA on 4 October 2021. However, this was in contravention of its disclosure obligations under the ACE LR and the clarification provided in the Issuers Clarification No. 3/2017 Guidance on Disclosure relating to Material Contracts and Prevention of Selective Disclosure of Material Information (ICN 3/2017), Part A which stated that a listed issuer should announce an award of a material contract (i.e. a contract, including a contract in the ordinary course of business, if the value of the contract is 10% or more of the listed issuer's latest annual published consolidated revenue) immediately upon receipt of the award of the material contract.

Enforcement Decision

Company SR and four of its Executive Directors were publicly reprimanded for breach of Rule 9.03(1) read together with Rule 9.04(b) of the ACE LR. In addition, **the Executive Directors were each imposed a fine of RM25,000.**

The Executive Directors had knowledge of/were aware of the LOA/Contract in May 2021. Further, one of the Executive Director had signed the Contract in May 2021.

No action was taken against the alternate director to the Deputy Managing Director and other Non-Executive Chairman/Directors. In this respect, the Non-Executive Chairman/Directors were not involved in the day to day operations of the company and only informed of the LOA/Contract during

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the BOD meeting on 28 September 2021 where they had then concurred and authorised the management to make an announcement of the LOA/Contract. However, reminder letters were issued to remind them of their duties and responsibilities to ensure compliance with the ACE LR including the requirement to make an immediate announcement of any material information/contract.

More information on the case can be found in the Media Release dated 25 April 2023.

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