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REGULATION OF THE SECURITIES INDUSTRY IN SINGAPORE

Walter Woon†

Abstract: This Article focuses on the various legal regimes governing securities regulation in Singapore, with an emphasis on the various mechanisms for enforcing anti-insider trading laws and the disclosure requirements connected with those laws. The new regulations promulgated in the wake of the Pan-Electric scandal of 1986, which sent shock waves through the Singapore stock exchange, are much more stringent than the previous ones. The authorities of the Monetary Authority of Singapore, the Securities Industry Council, and the Stock Exchange of Singapore are discussed as they pertain to insider trading, false trading and market rigging, stock market manipulation, dissemination of false information, fraudulently inducing investment, and employment of manipulative or deceptive devices. The specific criminal and civil penalties which may apply are discussed, and the Article concludes with a look at the problems of regulation of activities involving securities trading between Singapore and Malaysia.

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I. INTRODUCTION

This paper will cover the regulation of the stock market with particular emphasis on disclosure and enforcement regimes. The bulk of the securities issued by public companies (the only ones that can be listed on the Stock Exchange) are shares of various kinds, so the discussion will concentrate mainly on shares rather than on other types of securities.

The statutes that apply in this area are the Companies Act (Cap 50) and the Securities Industry Act 1973 (Cap 289). These will be abbreviated “CA” and “SIA” respectively.

II. THE REGULATORY AGENCIES

The securities industry and the stock market are regulated quite tightly by various agencies. Crooks are drawn to large accumulations of money like sharks to a blood trail. The stock market therefore attracts its share of unscrupulous characters out to make a fast buck at the expense of the naive and inexperienced. The concern of the regulators is to ensure (if you will pardon the mixed metaphor) that the sharks do not take the pigeons to the cleaners. Indeed, the President of the Stock Exchange of Singapore (SES) has said that the driving principle of the SES is “to accord the best protection possible to the investor.”

A. The Monetary Authority of Singapore

The highest tier of regulation consists of the Monetary Authority of Singapore (“MAS”), which is Singapore’s de facto central bank. Before 1986, the Stock Exchange of Singapore (“SES”) was more or less self-
regulated. In that year, the present Securities Industry Act came into force. The old self-regulation has now been overlaid with a further layer of regulation by MAS. The impetus for this tightening up was the stock market crash brought about by the collapse of the Pan-Electric group of companies. Briefly, certain persons were using the funds of the Pan-Electric group to manipulate the market by means of forward contracts in shares. The collapse of Pan-Electric prompted an unprecedented closure of the stock markets in Singapore and Kuala Lumpur.\(^2\) In Singapore five brokerage companies went into insolvency as a direct or indirect result of the crash. The aftermath of that debacle revealed serious deficiencies in the way the market was regulated. The current regulatory regime is a legacy of the Pan-Electric crisis.

Specifically, MAS has powers of intervention and inspection to ensure that the market is well-run. MAS has the power to require production of books and information from the Stock Exchange, a dealer, an investment adviser, or their representatives, and indeed any person who is or has been a party to any dealing in securities.\(^3\) MAS may require a dealer or an exempt dealer to disclose the name of a person from whom or to whom securities were traded.\(^4\) MAS may also require the dealer to disclose the nature of the instructions given regarding the acquisition or disposal of securities.\(^5\) This means that there is no confidentiality between a dealer and his client regarding instructions, if MAS requires information.

In addition to its powers to obtain information from the stock market and dealers, MAS may also require a person who has acquired, held or disposed of securities to disclose whether he did so as a trustee or agent of another person, and if so, who that person was and what instructions were given.\(^6\) It has power to order disclosure of information by officers of listed companies where it is necessary to prohibit trading in securities or where there has been a possible breach of the requirements of Part IX of the Securities Industry Act or Division 4 of Part IV of the Companies Act.\(^7\) If

\(^2\) The definitive history of the Pan-El Crisis (as it is locally known) has yet to be written. An outline of what went on may be found in Public Prosecutor v. Tan Koon Swan, 1 M.L.J. 18 (H.C., Sing. 1987).

\(^3\) Securities Industries Act, Republic of Singapore (SIA) § 5(1) (1985); see id. § 10(1).

\(^4\) Id. § 36(a).

\(^5\) Id. § 10(1).

\(^6\) Id. § 10(2).

\(^7\) Id. § 10(4).
necessary, MAS can order investigations and inspections to determine if there has been a contravention of the law.\footnote{Id. §§ 11-12.}

MAS must approve amendments to the rules of a securities exchange or the listing rules.\footnote{Id. § 18.} When a securities exchange reprimands, fines, suspends, expels, or otherwise takes disciplinary proceedings against a member, MAS may review such disciplinary action.\footnote{Id. § 19(3).} It also is responsible for the licensing of dealers, investment advisers, and their representatives.\footnote{See generally SIA §§ 23-39 (1985).}

MAS may issue directions to the stock exchange regarding trading, the manner in which the exchange carries on business, and any other matters which are considered necessary for the effective administration of the SIA.\footnote{SIA § 21(1) (1985).} It has power to prohibit trading in particular securities in order to protect persons buying or selling the securities or in the public interest.\footnote{Id. § 22.} It may also make regulations specifying what devices are considered to be deceptive or manipulative under section 102 of the SIA. Despite these wide-ranging powers, MAS has been content to let the SES regulate the market. It has not intervened directly thus far.

\subsection*{B. The Securities Industry Council}

The next regulatory agency is the Securities Industry Council (SIC). The SIC was established under SIA section 3 in 1973 and continues to function under the present SIA. Its function is to advise the Minister of Finance on matters pertaining to the securities industry. It also oversees the administration of the Singapore Code on Take-overs and Mergers (the Take-over Code). The SIC consists of such representatives of business, government, and the MAS as the Minister may appoint.\footnote{Id. § 14(3).} It supervises the application of the Take-over Code where a take-over or merger occurs.\footnote{Id. § 213(18), CA § 213(18) (1985).} The SIC administers and enforces the Code. It may issue rulings on the interpretation of the Code and lay down the practice to be followed by the concerned parties in a take-over or merger.
C. The Stock Exchange

Last, but by no means least, is the Stock Exchange of Singapore ("SES") itself. The SES is a public company limited by shares incorporated under the Companies Act. Contrary to popular misconception, it is not a governmental agency. The SES is licensed to run a securities exchange under the Securities Industry Act. Its members are the stock brokerage firms. Control of the SES is vested in the Committee of the Stock Exchange. The SES supervises the activities of listed companies by virtue of its continuing listing requirements and corporate disclosure policy. SES does not tell a company how to run its business. Rather it ensures that listed companies comply with the listing rules and the corporate disclosure policy. This obligation arises by virtue of the listing agreement signed by all listed companies when the SES agrees to quote their securities. Under SIA section 20, the SES may also apply to courts to enforce those rules.

The listing rules are not statutory in nature. They are made by the SES itself, subject to the approval of the MAS as required under the SIA. Nevertheless, since they can be enforced by court order, they have acquired a quasi-statutory status. A contravention of the SES's rules, however, does not lead to a fine or jail sentence. SES may reprimand and de-list a company. Of course, once a court order is obtained to enforce a rule against a company, the company would be in contempt of court if it did not comply.

For practical purposes, SES is the most significant of the market regulators from the point of view of the listed companies. MAS seldom intervenes, and unless there is a take-over in the offing, the SIC hardly has any impact on the day-to-day business of companies. For most company secretaries and legal officers, the SES Listing Manual is the corporate equivalent of the Bible.

III. DISCLOSURE OF INFORMATION IN PUBLIC OFFERINGS OF SECURITIES

When a company issues securities to the public, a prospectus must be issued. A prospectus is a document designed to inform the investing public of the business, assets, and nature of the company, in order to enable them

to make an informed decision regarding whether to part with their money or not. The aim of a prospectus is to inform a potential investor of all material facts. A prospectus does not have to be issued if the securities are not issued to the public.

In deciding whether there is a public issue of securities requiring a prospectus, the following factors are taken into consideration: (1) how indiscriminate the offer is, i.e., can anyone subscribe for the securities or is the offer confined to a select group?; (2) if the offer is confined to a select group, the size of that group; (3) the connection between the persons who have been offered the securities and the issuer; and (4) whether the persons who have been offered securities require the protection of a prospectus.

There is no hard and fast formula for determining whether or not an issue of securities is a public one. The more indiscriminate the offer and the bigger the class of potential acceptors, the more likely that there is a public offer. It is important to determine whether or not an offering of securities is a public one, since private companies are prohibited from raising money from the public.\(^{17}\)

A prospectus must contain the documents and information prescribed in the Fifth Schedule of the CA. Since non-disclosure of material facts is an offense,\(^{18}\) the statutory information only forms part of a prospectus. The rest of the prospectus will be devoted to disclosure of other information that is material to investors. If the company seeks a listing on the stock exchange,\(^{19}\) the prospectus must also comply with the SES Listing Manual.

If there is any untrue statement or willful non-disclosure of a material fact in a prospectus, any person who either authorized or caused the issue of the prospectus will be criminally liable.\(^{20}\) Such a person may escape liability only if: (1) the misstatement or non-disclosure was immaterial; (2) he reasonably believed the misstatement was true; or (3) he reasonably believed that the fact not disclosed was immaterial.

The willful making of a false or misleading statement with the knowledge that it is false or misleading is punishable under CA section 401.

\(^{17}\) CA § 18(1) (1985). Criminal penalties for contravention are set out in CA § 32.

\(^{18}\) Id. § 56.

\(^{19}\) Contrary to popular misconception, not all public companies are listed on the stock exchange. A company may have to issue a prospectus in connection with a public issue of securities without necessarily seeking a listing. For example, Raffles Marina Ltd., which operates a marina and club, issued a prospectus in connection with its offer of debentures; to join the club, one has to buy a debenture.

\(^{20}\) CA § 56.
Fraudulently inducing persons to invest in companies is punishable under CA section 404 or SIA section 100.

In addition to criminal liability, CA section 55 provides for civil liability with respect to material misstatement and non-disclosures found in prospectuses. If there is an untrue statement or a willful non-disclosure of a material fact in any prospectus, then the following persons are liable to pay compensation to all persons who subscribe for or purchase shares in the corporation on the faith of that prospectus with respect to any loss or damage sustained by reason of the misstatement or non-disclosure: (1) directors (including those who are named as future directors); (2) promoters who authorized the issue of the prospectus; and (3) any other person who authorized or caused the issuance of the prospectus.

A person can avoid liability under this section if he reasonably believed the untrue statement to be true, and, in the case of a statement made by an expert or official, that the statement contained in the prospectus was a fair representation of what was said by the official or expert. Alternatively, it is a defense to show that the prospectus was issued without his knowledge and he publicly gave notice of this fact as soon as he discovered that it was issued, or that he withdrew his consent to becoming a director before the issue of the prospectus and it was issued without his authority or consent. It is also a defense that he withdrew his consent on discovering the untrue statement and gave public notice of the fact.\(^{21}\) However, this defense is not available once the shares have been allotted.

As an alternative to the statutory remedy, an investor who has been injured by a deliberately misleading prospectus may recover damages for deceit. A prospectus is misleading if it contains a statement that is materially untrue or if there is non-disclosure of a material fact. If the misrepresentation is made negligently, there can be recovery of damages in negligence. The persons liable will usually be the directors of the company who authorized the issuance of the prospectus. Experts who made inaccurate statements in the prospectus may also be liable.

Although there have been a couple of cases in which the SES has queried the accuracy of profit forecasts in company prospectuses, there have been no prosecutions thus far. The obligation of disclosure is enforced

\(^{21}\) See id. § 55(3)(c).
primarily through civil suits brought by injured parties. However, proving damage from a misleading prospectus is a process fraught with difficulty. It is not sufficient merely to point out that the share price is less than what the investor expected. He has to show that the shares are not worth what he paid on account of the misrepresentation. A more realistic remedy for misrepresentation in a prospectus is rescission. The court will order rescission of the contract of allotment, if there is fraudulent misrepresentation. In that case, the shares will be returned to the company and the investor will get his money back. In the case of negligent or innocent misrepresentation, the court has discretion to order rescission or, in the alternative, award damages.

IV. THE CORPORATE DISCLOSURE POLICY

Once a company is listed, it becomes subject to the jurisdiction of the SES. Timely disclosure of price-sensitive information is the cornerstone of SES’s regulatory policy. To ensure that such information is released to the market, listed companies are obliged to comply with the SES’s Corporate Disclosure Policy, which constitutes Chapter 12 of the SES Listing Manual. Compliance with the Corporate Disclosure Policy is a condition for continued listing of a company’s securities on the SES.

The key paragraph is paragraph 1202, which requires a listed company to keep its shareholders and the SES informed of any material information relating to the group’s activities that might be price-sensitive. Sub-paragraph 1202(5) provides a non-exclusive list of matters which are considered to require public announcement:

- a joint venture, merger or acquisition;
- the declaration or omission of dividends or the determination of earnings;
- firm evidence of significant improvement or deterioration in near-term earnings prospects;
- a stock split or stock dividends;
- the acquisition or loss of a significant contract;
- the purchase or sale of a significant asset;

22 Thus far, no case involving such liability has been fought to a finish. This author advised in one such case, which was settled before trial. Settlement before trial appears to be the preferred course, in view of the uncertainties of litigation.
a significant new product or discovery;
the public or private sale of a significant amount of additional securities;
a change in effective control or a significant change in management;
a call of securities for redemption;
the borrowing of a significant amount of funds;
events of default under financing or sale agreements;
a significant litigation;
a significant change in capital investment plans;
a significant dispute or disputes with sub-contractors, customers or suppliers, or with any parties;
a tender offer for another company's securities.

Apart from the general duty of disclosure, a listed company must comply with six basic rules.\textsuperscript{23}

(1) Immediate disclosure of material information. Where any information is likely to have a significant effect on the price of the company's securities, or when such information would be considered important by a reasonable investor in deciding his course of action, there must be immediate public disclosure. The company may refrain from disclosing such information only where immediate disclosure would prejudice the ability of the company to pursue its corporate objectives, or when matters are in a state of flux and a firm announcement cannot be made until a more appropriate time. However if rumors develop, there should be public disclosure.\textsuperscript{24}

(2) Thorough dissemination of information. Announcements should be made simultaneously to the business, financial press, and to the Exchange. This should normally be done during trading hours. Companies may not discriminate against certain persons when disclosing information.\textsuperscript{25}

(3) Clarification or confirmation of rumors and reports. If there is a rumor or report that is likely to have an effect on the price of the company's securities, the company must confirm or deny the accuracy of the rumor or report.\textsuperscript{26}

\textsuperscript{23} These rules are set out in the SES Corporate Disclosure Policy, 12 SES Listing Manual.
\textsuperscript{24} See SES Corporate Disclosure Policy, ¶ 1202.
\textsuperscript{25} See id. ¶ 1205.
\textsuperscript{26} See id. ¶ 1203.
(4) Unusual market action. If there is unusual price movement or trading activity, the company must determine whether there has been a leak of sensitive information that might account for such unusual market action. The company will then have to disclose any material information not yet disclosed, or clarify any rumors.  

(5) Unwarranted promotional disclosure. Companies should not make disclosures or announcements designed to gain publicity beyond those necessary to inform investors.  

(6) Insider trading. Companies must take proper action to curb insider trading, e.g., by restricting the ability of officers, agents, etc., to trade in the company’s securities until after public disclosure is made of price-sensitive information. Insiders should wait for at least twenty-four hours after dissemination of such information before they begin trading.  

Failure to comply with the Corporate Disclosure Policy is not a criminal offense, nor does it result in civil liability. Enforcement of the obligation to disclose price-sensitive information is the prerogative of the SES, which is extremely conscientious in policing the market. A failure to comply with the Corporate Disclosure Policy attracts queries from the SES, and, in appropriate cases, a reprimand for the parties concerned.  

The main problem with enforcement of the Corporate Disclosure Policy is that the SES lacks real teeth. Apart from public censure, the SES may suspend a company’s securities from trading or de-list the company altogether. Suspension and de-listing punish the company’s shareholders, not the managers. The SES has no power to fine or discipline company managers for failing to make adequate and timely disclosure of information. If there is any punishment for inadequate disclosure, that is left to the invisible hand of the market.  

V. REGISTERS OF INTERESTS IN SECURITIES  

Dealers, investment advisers, and their respective representatives are required to maintain a register of interests in securities under the SIA. A financial journalist is also required to maintain such a register.  

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27 See id. ¶ 1204.  
28 See id. ¶ 1206.  
29 See id. ¶ 1207.  
30 See SIA § 41(2). A “financial journalist” means a person who contributes advice concerning securities or prepares analyses or reports concerning securities for publication in a newspaper or periodical.
Notice of acquisition or disposal of listed securities must be entered in the register within seven days. MAS may require the production of the register for inspection. Failure to keep a register when required is an offense under the SIA.

The CA requires directors of all companies (not just listed companies) to notify the company of their interests in its shares, debentures, and participatory interests. All companies must maintain a register of directors’ shareholdings. The register is open to inspection by the public and must be produced at each annual general meeting. Changes in a director’s interests have to be reported to the company within two days. Failure to give notice as required by the Act is a criminal offense, although prosecutions are very rare indeed.

In addition, listed companies are obliged to adopt the SES model code on Securities Transactions by Directors. The code requires a director to inform his company within twenty-four hours of any acquisition or disposal of the company’s shares. Breach of the provisions of the code does not attract civil or criminal penalties. SES may, however, reprimand the director concerned.

A company to which Division 4 of Part IV of the CA applies must maintain a register of substantial shareholders. This includes all companies with any shares listed on a stock exchange in Singapore, as well as foreign companies or corporate bodies which the Minister of Finance has declared to be companies for purposes of the Division.

The register of substantial shareholders will contain the names of the company’s substantial shareholders together with details of these

31 See id. § 42(2), § (3)(b).
32 Id. § 45(1).
33 See id. § 116.
34 CA § 165.
35 Id. § 164.
36 Id.
37 Id. § 165(2).
38 To my knowledge, there has been only one such prosecution in recent years. The person concerned had made multiple applications for shares in an initial public offering, contrary to SES guidelines. He used the names of nominees and was prosecuted for not disclosing the fact that shares were held by him through such nominees.
41 SIA § 88 (1985).
shareholders' interest in the shares of the company. A substantial shareholder is a person who has an interest in five percent or more of the voting shares of a company to which Division 4 of Part IV applies. This includes both natural persons (whether citizens or non-citizens) and artificial persons, even if they are not resident or carrying on business in Singapore.

If there is any change in the interests of a substantial shareholder or if a person ceases to be a substantial shareholder, notice in writing must be given to the company. The substantial shareholder is required to state the circumstances by reason of which the change in interests has occurred or by reason of which he has ceased to be a substantial shareholder. Notice must be given to the company within two days of a person becoming a substantial shareholder, changing the nature of his interest, or ceasing to be a substantial shareholder.

Failure to give notice to the company as required is an offense under the CA. In addition, a Court may on the application of the Minister of Finance make orders restraining the defaulting shareholder from dealing in the shares in which he has an interest, restricting his voting rights or entitlement to dividends, or selling the shares in question.

The register of substantial shareholders will be kept at the registered office of the company or (if the company does not have a registered office) at its principal place of business in Singapore. The register may be inspected by any member free of charge and by any other person on payment of a small fee.

The financial press in Singapore publishes a list of share dealings by directors and substantial shareholders once a week as a service to other investors.

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42 See id. §§ 82-84.
43 A voting share is defined as any share other than one to which no right to vote is attached, or to which the right to vote is attached only in the specified contingencies. See CA § 4 (1985). Generally, equity shares would be voting shares and preference shares would be non-voting shares.
44 Id. § 80.
45 See id. §§ 82-84.
46 Id.
47 Id.
48 See id. § 91(1).
49 Id. § 88(2).
50 Id. § 88 (3).
VI. Offenses in Relation to Trading in Securities

Under the SIA and CA, the following activities are offenses:

- insider trading;
- false trading and market rigging;
- market manipulation;
- affecting the price of securities by the dissemination of misleading information;
- fraudulently inducing persons to deal in securities; and
- employing manipulative or deceptive devices.

Each offense will be discussed separately in sections A through F below.

A. Insider Trading

Insider trading is a process whereby a person (natural or artificial) who is connected with a corporation uses information that is not generally available to the public when dealing in securities. The "insider" is in a position to amass huge gains by selling or buying securities before information that might affect the price of the corporation's securities ("price-sensitive information") is made public. Some people regard access to inside information as one of the perks of a corporate position. However, judging by the severity of the potential punishment, insider trading in Singapore is a cardinal sin as far as corporate law is concerned.

The most important of the provisions regulating insider trading is SIA section 103, which is an almost word-for-word copy of section 128 of the Australian Securities Industry Act of 1980. SIA section 103 prohibits three things. First, it prohibits corporate insiders from trading in the securities of their own corporation ("direct" insider trading, for ease of reference). Second, a person with access to price-sensitive information regarding dealings between his corporation and another corporation may not deal in the securities of that other corporation ("indirect" insider trading, for ease of reference). Third, the section prohibits dealings in securities by a person who receives price-sensitive inside information from an insider (a "tippee").
1. "Direct" Insider Trading

An insider may not deal in any securities of the corporation of which he is an insider, if he is in possession of price-sensitive information which is not generally available by virtue of his being an insider.\footnote{SIA § 103(1) (1985).} There are five elements to the offense: (1) the person in question was an insider at the material time; (2) he was in possession of price-sensitive information; (3) he obtained the information by virtue of his position as an insider; (4) the information was not generally available; and (5) he dealt in the securities of the corporation.

The term "insider" is not used in SIA section 103, save in the marginal note. However, it is a convenient shorthand for several classes of persons. An insider is a person who is or has been in the preceding six months "connected" with a corporation.\footnote{Id. § 103(1), (2).} This can include both natural as well as artificial persons. SIA section 103(9) defines when a natural person is deemed to be connected with a corporation. The natural persons who may be potential corporate insiders are the following:

- a director of the corporation or of a related corporation;\footnote{"Director" means the same thing as defined in the CA. CA section 4 defines the word "director" to include alternate and substitute directors as well as "shadow directors," i.e., persons in accordance with whose instructions the directors of the corporation are accustomed to act.}
- a secretary of the corporation or of a related corporation;
- an executive officer of the corporation or of a related corporation;\footnote{For example, an executive officer is any person by whatever name called who is concerned in or who takes part in the management of the corporation. See id. § 2(1).}
- an employee of the corporation or of a related corporation;
- a receiver, or receiver and manager, of the property of the corporation or of a related corporation;
- a judicial manager of the corporation or a related corporation;
- the liquidator of the corporation or of a related corporation;
- a trustee or any person administering a compromise or arrangement made by the corporation or its related corporations;
- a substantial shareholder of the corporation or of a related corporation;\footnote{SIA § 103(1)(1985).}
an officer of a substantial shareholder of the corporation or of a related corporation, if he occupies a position that may reasonably be expected to give him access to price-sensitive information;

- any person who occupies a position that may reasonably be expected to give him access to price-sensitive information by reason of any professional or business relationship between himself (or his employer or a corporate body of which he is an officer) and the corporation or a related corporation.

It is a defense to any prosecution under SIA section 103 to show that the other party to the transaction knew or ought reasonably to have known of the information before entering into the transaction. In other words, using price-sensitive information when dealing in securities is an offense only when the other party does not have that information. An insider who wishes to deal in securities must disclose the information known to him to the party with whom he deals. If he does not, he runs the risk of being called to account for insider trading. There may be problems regarding disclosure of price-sensitive information obtained by an insider in his capacity as an insider, since a person who is precluded from dealing in securities may also not communicate the price-sensitive information which he possesses to another person, if trading in those securities is permitted on a securities exchange, whether inside or outside Singapore, and he knows (or ought reasonably to know) that that person will make use of the information by dealing in securities.

The Stock Exchange of Singapore’s Corporate Disclosure Policy formerly recommended that insiders should wait at least twenty-four hours after general public publication of a press release and forty-eight hours if publication is not so widespread. The current listing manual (which superseded the former one in 1994) merely states that “insiders may resume dealings in the listed issuer’s securities after the material information has been disclosed and fully disseminated to the public.” An insider who tries to jump the gun may find himself on the wrong side of the law.

55 A “substantial shareholder” is a person (natural or artificial) who has an interest in five percent or more of the voting shares of a corporation. See id. § 81. The term “interest in shares” encompasses more than just legal or beneficial ownership. For the full definition, see id. § 7(3).
56 Id. § 103(11).
57 This recommendation was found on page 127 of the former Listing Manual.
58 See ¶ 1207(1) of the current Listing Manual.
2. "Indirect" Insider Trading

An insider may not deal in the securities of any other corporate body if by virtue of his being an insider he is in possession of price-sensitive information regarding transactions (actual or expected) involving the corporation of which he is an insider and the other corporate body, or regarding dealings by his corporation in the securities of that other corporate body.\(^{59}\)

The elements of this offense are almost the same as for direct insider trading, viz.:

- the person in question was an insider at the material time;
- he was in possession of price-sensitive information;
- he obtained the information by virtue of his position as an insider;
- the information related to transactions (actual or proposed) between his corporation and another corporation, or to dealings by his corporation in another corporation's securities;
- the information was not generally available; and
- he dealt in the securities of the other corporation.

3. Dealing in Securities by Tippees

A person who acquires price-sensitive information from an insider is colloquially referred to as a "tippee." In order for a tippee to be guilty of an offense, four things must be shown:\(^{60}\)

1. he obtained price-sensitive information directly or indirectly from another person;
2. he was aware, or ought reasonably to have been aware, of facts or circumstances by virtue of which that other person was precluded from dealing in the securities in question;
3. he was associated with that person at the time or had an arrangement with him for the communication of price sensitive information with a view to dealing in securities by himself or that other person or either of them; and
4. he dealt in the securities of the other corporation.

Before the Companies (Amendment) Act 1984 it was not an offense for a tippee to trade on inside information. The 1984 Amendment Act

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\(^{59}\) SIA § 103(2) (1985).
\(^{60}\) Id. § 103(3).
introduced section 158(10), which imposed criminal (but not civil) liability for tippees. SIA section 103(3) now enacts the prohibition on tippees trading on inside information, with several important changes. The elements of the offense have been set out above.

SIA section 103(3) requires that the tippee be aware of “facts or circumstances by virtue of which [his informant] is then himself precluded by subsection (1) or (2) from dealing in those securities.” In other words, it must be shown that the tippee knew, or reasonably ought to have known, that his informant was an insider. The fact that the tippee did not appreciate that the insider was precluded from dealing in the securities is irrelevant, for ignorance of the law is no excuse. A person who receives price-sensitive information from a tippee is not guilty, however, as the prohibition on the tippee is imposed by subsection (3) and not subsections (1) or (2). It seems that sub-tippees are therefore outside the scope of SIA section 103(3).

SIA section 103(3) differs from the old CA section 158(10) in that there is now a requirement for some sort of nexus between the tippee and the insider. Under CA section 158(10), it was enough that the tippee obtained price-sensitive information from an insider knowing him to be such; under SIA section 103(3), it must be shown either that the insider and the tippee were “associated” or that they had some sort of arrangement for the communication of price-sensitive information.

B. False Trading and Market Rigging

False trading and market rigging are covered generally by SIA section 97, which prohibits the following activities: (1) the creation of a false or misleading appearance of active trading in any securities on a securities exchange in Singapore (“churning”); (2) the creation of a false or misleading appearance with respect to the market for or price of any securities on a securities exchange in Singapore; (3) affecting the price of securities by way of purchases or sales which do not involve a change in the beneficial ownership of those securities (“wash sales”); and (4) affecting the price of securities by means of any fictitious transactions or devices (“sham transactions”).
1. **Churning**

Churning involves a series of fictitious transactions designed to create a false impression of activity in a particular counter. The aim of all such activities would be to lure gullible punters into the market and tempt them to jump onto the illusory band-wagon by buying the security. Once enough buying pressure has been created to push the price up, the manipulator will sell and take his profit.

Churning often involves the placing of matching orders. This device works in the following manner: Alpha places a sell order for X number of shares at $Y per share. Simultaneously or soon after, Beta places a buy order for substantially the same number of shares at the same price. If Alpha and Beta are associated and know of each other's proposed transactions, there is a matched order situation. This is specifically prohibited by SIA sections 97(3)(b) and 97(3)(c). It will be realized that Alpha and Beta could go on exchanging shares indefinitely in this way and thereby create a misleading impression of active trading.

2. **Creating an Illusory Market or Market Price**

The prices quoted on the Stock Exchange are theoretically a reflection of supply and demand for securities. The statutory prohibition is directed against activity which is designed to give a false or misleading appearance with respect to the market for or price of securities. The object of the prohibition is to ensure that the market reflects the forces of genuine supply and demand. Thus, artificial price support for a security would be illegal. It does not matter what purpose the price support is supposed to serve. If the aim is to create a price that is not a true reflection of supply and demand, there will have been a contravention of the section. The creation of an artificial market or price would also be illegal under common law.

3. **Wash Sales**

A wash sale occurs when there is a series of transactions at the end of which the beneficial ownership of securities does not change. Again, as in
churning, the aim is to create the impression of activity in order to seduce the gullible.

For the purposes of SIA section 97, there has been no change in the beneficial ownership of securities, if the person who was buying or selling the securities or a person associated with him has an interest in those securities after the completion of the transaction. For instance, buying and selling the same block of shares through nominees would amount to a wash sale.

It is a defense to a prosecution on this ground to show that the transactions were not entered into to create a false and misleading appearance of active trading or with respect to the market for or price of the securities. However, it is always open to the Court to infer from the circumstances of the transactions that the purpose of the transactions was to create a false and misleading appearance of trading, etc.

4. Sham Transactions

A sham transaction is an act done which is intended to give to third parties the appearance of creating rights and obligations different from the actual rights or obligations actually intended to be created. Thus, if a company transfers securities to brokers who then resell to a subsidiary of the original seller there might be a sham transaction. This is a question of fact in all cases.

The defense to a prosecution for attempting to affect the market for or price of securities through sham transactions is to show that the transactions were not intended for that purpose.

C. Stock Market Manipulation

Section 98 of the SIA prohibits stock market manipulation. Specifically, the following are prohibited: (1) Carrying out two or more transactions which are likely to raise the price of securities of a corporation on a securities exchange with the intention of inducing persons to purchase or subscribe for securities of the corporation or a related corporation; (2) carrying out two or more transactions which are likely to lower the price of

61 Id. § 97(4), (5).
62 Id. § 97(6).
securities of a corporation on a securities exchange with the intention of
inducing persons to sell securities of the corporation or a related corpora-
tion; and (3) carrying out two or more transactions which are likely to
maintain or stabilize the price of securities of a corporation on a securities
exchange with the intention of inducing persons to sell, purchase, or
subscribe for securities of the corporation or a related corporation.

This section is closely related to SIA section 97. It may catch “pool
operations” where SIA section 97 would not. A pool operation occurs when
a group of investors pool their resources to purchase securities, hoping
thereby to raise the price and allow the members of the pool to sell out at a
profit. If the aim of the pool operation was to raise the price of securities it
would probably be caught by SIA section 98. However, there may be situ-
atations where investors genuinely wish to acquire securities and merely take
the opportunity of a rise in price to take their profit. It must be a question of
fact in each case whether a particular series of transactions falls within the
mischief of SIA section 98.

Section 98 of the SIA could also cover short selling. This occurs
where punters sell securities that they do not have in the expectation that the
price will fall. There is no specific prohibition against short selling in the
Securities Industry Act nor is it illegal per se. However, if a person or
group sells short in a deliberate attempt to drive down prices, it is likely that
there will have been a contravention of SIA section 98.

D. Dissemination of False Information

The prices of securities are largely influenced by investor confidence,
making it possible to affect those prices by disseminating favorable or
unfavorable information. If investor confidence is shaken, the likely result
is a fall in market price; contrariwise if investors are optimistic. The oppor-
tunities for price manipulation are legion for a person in a position to
disseminate information to the market, or for one who has influence over
investors. To prevent manipulation by the dissemination of information the
Securities Industry Act provides two prohibitions in SIA sections 99 and
101.

Section 99 of the SIA prohibits a person from making or disseminat-
ing false or misleading information and statements which are likely to
induce the sale or purchase of securities, or which are likely to affect the
market price of securities. The reference to a "market price" for securities indicates that this section applies only to quoted securities. The elements of the offense are as follows: (1) the accused made a statement or disseminated information; (2) the statement or information was false or misleading in a material way; (3) the statement or information was likely to induce the sale or purchase of securities by other persons or have the effect of raising, lowering, maintaining or stabilizing the market price of securities; and (4) at the time the accused made the statement or disseminated the information he knew or ought to have known that the statement or information was false or misleading in a material way or he did not care whether the statement or information was true or false.

This section is basically aimed at people who try to "talk up" or "talk down" the market by spreading false rumors. Thus, a short-seller who spreads rumors to depress the market would be caught. So too would a person who made statements that are likely to raise the market price of securities.

This section is not confined to the case of deliberate falsehood; it also covers the reckless or negligent making of misleading statements. It was also an offense at common law to spread false reports and rumors with the purpose of raising the price of securities.

Section 101 of the SIA prohibits circulation or dissemination of any statement or information to the effect that the price of any securities of a corporation will rise, fall, or be maintained by reason of transactions entered into in contravention of any of the provisions of Part IX of the SIA. This prohibition only applies where the person who is circulating or disseminating the information or statements is the person who entered into the illegal transaction or is associated with the person who entered into the illegal transaction, or if he has received or expects to receive (whether directly or indirectly) any consideration or benefit for circulating or disseminating the information or statements.

E. *Fraudulently Inducing Investment*

SIA section 100 and CA section 404(1) (which are almost identical) deal with fraudulently inducing persons to deal in securities. The accused must have made or published a statement, promise, or forecast that was
misleading either recklessly or with knowledge that it was misleading. \(^63\) Dishonest concealment of material facts is also prohibited. \(^64\) So is the recording or storing of information in any mechanical, electronic or other device that he knew to be false or misleading in a material way. \(^65\) There is an offense, if the accused induced or attempted to induce another person to deal in securities. \(^66\)

F. Employment of Manipulative or Deceptive Devices

The modes of human error are legion. No amount of ingenuity on the part of drafters of statutes will suffice to anticipate every form of securities fraud. SIA section 102 is a catch-all section that is designed to prohibit any other form of securities fraud that has not been specifically dealt with in any other section.

SIA section 102 prohibits three things:

(a) The employment of any device, scheme or artifice to defraud in connection with the purchase and sale of any securities;

(b) Engaging in any act, practice or course of business in connection with the purchase or sale of any securities which operates as a fraud or deceit on any person;

(c) Making an untrue statement of a material fact or omitting to state a material fact necessary to make statements made not misleading, in connection with the purchase or sale of any securities.

The Monetary Authority of Singapore may make regulations specifying what conduct is prohibited under this section. \(^67\)

VII. CRIMINAL AND CIVIL PENALTIES

Criminal penalties with respect to a breach of any of the foregoing provisions of the SIA are provided for in SIA section 104. \(^68\) SIA section

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\(^{63}\) Id. § 100(1); see also CA § 404(1) (1985).
\(^{64}\) SIA § 100(1) (1985).
\(^{65}\) Id. § 100 (1)(d).
\(^{66}\) Id. § 100(b); see also CA § 404(1) (1985).
\(^{67}\) SIA § 118(1)(d) (1985).
\(^{68}\) A contravention of CA § 404 would attract the criminal penalty set out in that section.
104 differentiates between natural persons and corporations in prescribing penalties. A natural person may be fined up to $50,000 or sent to jail for up to seven years. In addition, where a corporation is guilty of an offense under the SIA, any director, executive officer, secretary, or employee of the corporation who was knowingly concerned in or party to the commission of the offense shall also be guilty of that offense.69

If there has been a breach of any of the provisions of Part IX of the SIA, civil liability is imposed upon the offender if he is convicted of an offense.70 An offender will be liable to pay compensation to any person who suffers loss by reason of the offender’s activities. The amount of compensation to be paid is the difference between the price which the victim paid or received (as the case may be) with respect to the securities and the price which would have been likely had the offense not been committed.71 The limitation period for recovery of compensation under this section is two years after the completion of the transaction in which the loss occurred.72

VIII. THE PROBLEM OF CROSS-BORDER REGULATION

One of the major problems facing securities regulators in Singapore is the fact that there is effectively a joint market for securities in Singapore and Malaysia. In fact, the Stock Exchange of Malaysia and Singapore was a single exchange until the 1970s. It was only in 1991 that the practice of cross-listing Singapore stocks on the Kuala Lumpur Stock Exchange and Malaysian stocks on the Stock Exchange of Singapore was stopped. Even after that, a considerable volume of Malaysian stocks is traded through the Stock Exchange of Singapore via CLOB International, which is the Stock Exchange of Singapore’s over-the-counter market for foreign stocks. Similarly, Singapore shares are easily available to Malaysian investors through Malaysian brokers, who will invariably have links with Singapore brokers which enable them to acquire and dispose of Singapore securities.

From a legal point of view, the mismatch between the securities laws of Singapore and Malaysia means that some offenders may slip through the

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69 SIA § 111 (1985).
70 Id. § 105(1).
71 Id.
72 Id. § 105(3).
holes in the net. Both countries have a Securities Industry Act\textsuperscript{73} based on the Australian model. However, neither country copied the model exactly. This results in unfortunate situations where something that is not a crime in one country is a crime in the other.

For instance, short selling is an offense in Malaysia\textsuperscript{74} but not in Singapore. In 1993, the Malaysian authorities prosecuted several persons (including at least one Singaporean) for short selling Malaysian securities. Since short selling is not a crime in Singapore, it is understandable that Singapore investors may not realize that to do it in Malaysia invites severe legal repercussions.

The converse problem is that a canny crook can slip through the loopholes by skillful exploitation of the mismatch between Singapore and Malaysian law. Suppose that a Singaporean sells Malaysian stocks short in Singapore through CLOB International. No crime is committed in Singapore because it is not an offense under Singapore’s Securities Industry Act. No crime is committed in Malaysia either, because the Malaysian Securities Industry Act is not clearly expressed to create an extra-territorial offense. In any case, Malaysian courts would lack the jurisdiction to try the case, since the offense would \textit{ex hypothesi} have been committed outside Malaysia.\textsuperscript{75}

Another example relates to insider trading. In Singapore, insider trading is made an offense by SIA section 103. This section is an almost word for word copy of section 128 of the Securities Industry Code 1980 (New South Wales). In Malaysia, the offense of insider trading is constituted by two identical sections, section 132A of the Companies Act 1965 (Act 125) and section 89 of the Securities Industry Act 1983 (Act 280).\textsuperscript{76} These sections are very closely modeled on section 124A of the Companies Act 1961 of Victoria.

\textsuperscript{73} Singaporean Securities Industry Act (Cap 289) and Malaysian Securities Industry Act (Act 280) (1983) (Malay.).
\textsuperscript{74} Malaysian Securities Industry Act (Act 280), § 41.
\textsuperscript{75} See Public Prosecutor v. Rajappan, I M.L.J. 152 (S.C., Malay. 1986). This was a case of bigamy committed outside Malaysia. The Supreme Court held that the section of the Penal Code making bigamy an offense did not apply outside Malaysia. It also held that Malaysian courts had no jurisdiction to try offenses committed outside Malaysia in the absence of specific legislation. The same reasoning would apply in the case of offenses under the Securities Industry Act.
\textsuperscript{76} The only significant difference between the sections is that if a person is convicted under the Securities Industry Act, the fine is unlimited; whereas under the Companies Act a fine of RM 30,000 is prescribed. The jail term under the Securities Industry Act is only three years, compared with five years under the Companies Act.
The Malaysian provisions and the Singapore provisions do not quite cover the same thing. One glaring example is trading by tippees. In Malaysia, trading by tippees is not explicitly prohibited; whereas in Singapore, there are specific provisions dealing with tippees.77 Suppose that a Malaysian speculator obtains a tip from an insider in Singapore about a Singapore company under circumstances that would render him liable in Singapore. Suppose further that he instructs his broker in Kuala Lumpur to acquire shares in the Singapore company. No offense would have been committed in Malaysia since trading by tippees is not an offense. Meanwhile, no offense would have been committed in Singapore, since the actus reus is done in Malaysia. Moreover, a Singapore court has no jurisdiction to try an offense that is committed outside Singapore unless the offense-creating section has an extra-territorial effect.78

One of the challenges to the regulators on both sides of the Causeway is to contain such cross-border offenses. The obvious solution is to ensure that the corporate and securities laws of both countries are uniform, but this is not likely to be achieved in the near future.

IX. CONCLUSION

The Singapore market is not perfect; it was less than a decade ago that the market crashed because of a scandal involving the Pan-Electric group of companies. The result was a general tightening up of regulation. There is now fairly widespread agreement that the Singapore market is "clean." Shady dealings are not tolerated; on the contrary, any suspicion of wrongdoing is met with the whole machinery of the law. The prevailing philosophy in Singapore is that the invisible hand of the market has to be reinforced by the visible hand of the market regulators. One often-heard criticism about the Singapore securities market is that it is over-regulated by comparison with other jurisdictions like Hong Kong. In Singapore, this is taken as a compliment.

78 An analogy to Public Prosecutor v. Rajappan, 1 M.L.J. 152 (1986), see supra note 38. The jurisdictional statutes in Singapore are almost identical to those in Malaysia, deriving as they do from a common source, viz., the Courts of Judicature Act 1964 (Malay.). The Rajappan case was followed in Singapore in Public Prosecutor v. Pong Tek Yin, 3 M.L.J. 219 (H.C., Sing. 1990).