MINORITY SHAREHOLDER WATCHDOG GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
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Regulatory enforcement – a regional comparison

COMMENT
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A STATEMENT from the Securities Commission (SC) this week that it secured a hefty deterrent sentence against a Ponzi schemer was significant on two counts.

First, it indicates that our courts are warming to the gravity of white-collar crime. Second, Malaysia isn't doing too badly – from a regional standpoint – where enforcement is concerned.

In terms of the sentence, Raja Noor Asma Raja Harun, the former director of FX Capital Consultant and FX Consultant, was put away for five years and fined RM5mil, punishment for duping 4,000 investors of more than RM100mil.

She lied to people, saying she was licensed to trade shares and CPO futures on their behalf, when in fact no such licences existed. And she did so for a 15-month period between February 2007 and May 2008. She was also convicted of money laundering and sentenced to a further two years' jail, to run consecutive to the five-year imprisonment imposed for the fraud charges. The punishment meted out by the Kuala Lumpur Sessions Court can only be described as one of the heaviest punishments against a capital market offender.

Malaysia's courts, clearly, have set the bar that much higher. This, importantly, sets a precedent for all future cases.

Coincidentally, this was announced at about the same time that NUS Business School Associate Professor Mak Yuen Teen lamented in the *Singapore Business Times* that the Singapore Exchange (SGX) can and should do more on enforcement.

In his article, Prof Mak recanted how, at a public conference last year, a senior SGX officer confided that if the Singapore market is too public in its enforcement actions, it may give the "wrong impression" about its capital market. Not surprisingly Prof Mak wasn't too keen on this stance. He described it as an argument in favour of "managing" statistics, or that companies should engage in creative accounting in order to make the company look more attractive to investors.

Obviously, we believe this is not exactly the right approach to take, but (as Prof Mak correctly points out) it has come about because of the inherent conflict of interest in the SGX having dual regulatory and commercial roles. This has been extensively debated, and Bursa Malaysia also labours under this conundrum.

Which is preferable?

Our stance has always been for openness and transparency.

Accordingly, Prof Mak points out that both Bursa Malaysia and the Hong Kong Exchange publish annual statistics and information on their enforcement actions – including the number of private reprimands. Pressure for the SGX to do likewise is apparently mounting, since the trend in Malaysia and in Hong Kong indicates a clear move towards greater transparency.

For example: statistics from here and Hong Kong show that public sanctions are more common than private sanctions. Bursa Malaysia, for instance, reprimanded about 80 directors and 35 PLCs in 2009; of these, only 5% were private reprimands. Even where private sanctions are imposed, the number of such sanctions is disclosed and such sanctions are imposed on all directors, not just executive directors.

Also worth mentioning is that the *Singapore Business Times*, in its article entitled "A 2011 wish list for the Singapore stock market", spoke of a desire to see regulators go after all manipulators – including the large and not just the small. It described how one of the biggest complaints from brokers is that SGX disciplinary action is almost exclusively directed at small retail brokers and almost hardly ever at the big institutions.

"It cannot be that the large houses are completely innocent of price manipulation, especially of the Straits Times Index which often displays odd movements at significant times of the year," the columnist pointed out.

Down Under, the Australian Securities and Investments Commission (ASIC) regularly pursues legal action against errant brokers, companies and directors for governance failures, insider trading and price manipulation.

In Malaysia, the SC has taken on this role, and has enjoyed a fair amount of success.

Its results in 2009 and 2010 were encouraging insofar as custodial sentences and fines were concerned. In the first such ruling against a company director following civil enforcement by SC, the court ordered Kenneth Vun, the former MD and shareholder of FTEC Resources Bhd, to repay RM2.4mil of IPO proceeds he had acquired for his own benefit.

The trend continues onto 2011, as the SC on Wednesday secured jail sentences and fines against Datuk Philip Wong Chee Kheong and Francis Bun Lit Chun. The two were found guilty of stock manipulation in the case of creating a misleading appearance of active trading in the shares of Suremax Group Bhd. Kheong was jailed 24 months and fined RM3mil by the Kuala Lumpur Sessions Court, while Francis Bun Lit Chun was jailed three months and fined RM2mil.

In line with global trends, the SC has also begun to successfully shift its enforcement stance from criminal to civil suits to bring parties to book quickly.

As the SC said at the end of its short press release on Raja Noor Asma, the Ponzi schemer and money launderer: "The custodial sentence meted out by the court serves as a stern warning to future offenders that violation of the public trust will not be treated lightly by the courts."

And that "the SC remains committed to protecting investors and upholding public confidence in the capital market, and will continue to take all measures to fight illegal investment activities that threaten investors and the Malaysian capital market."

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