

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2025] SGHC 216

Magistrate's Appeal No 9126/01 of 2024

Between

Sun Weiyeh

... Appellant

And

Public Prosecutor

... Respondent

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Securities and Futures Act — Act likely to operate as a fraud]

[Criminal Procedure and Sentencing — Sentencing — Appeals]

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Sun Weiyeh
v
Public Prosecutor

[2025] SGHC 216

General Division of the High Court — Magistrate's Appeal No 9126/01 of 2024

Tay Yong Kwang JCA
25 July 2025

31 October 2025

Tay Yong Kwang JCA:

Introduction

1 The appellant, Mr Sun Weiyeh, faced two charges under s 201(b) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) (the "SFA") for engaging in acts in connection with the sale of securities which were likely to operate as a fraud. The charges essentially alleged that the appellant, who was a portfolio manager of several funds, sold securities at an undervalue from one fund to another fund in which he held a majority shareholding, despite knowing of higher bids for these securities from third parties. A district judge ("DJ") convicted him on both charges and sentenced him to six months' imprisonment on each charge. The DJ ordered both imprisonment terms to run concurrently.

2 The two charges were amended at the end of the Prosecution’s case pursuant to the Prosecution’s application and before the appellant was called upon to present his defence. The two amended charges read:

Re-amended 1st CHARGE

You ... are charged that you, on 19 January 2016, in Singapore, directly in connection with the sale of securities, namely MIEHOL 180206 Mie Holdings Corp 2013/2018 (“**MIE18**”), did engage in an act which was likely to operate as a fraud upon the investors of the Arion Asia Credit Fund SPC – AACF High Yield Basis Fund SP managed by One Asia Investment Partners Pte Ltd (“**OAIP**”), to wit, by selling 2.5 million notional value of MIE18 at US\$25.375 when you knew that there was an earlier bid for the said block of MIE18 bonds at or around US\$33, and thereafter buying the said block of MIE18 bonds into the Arion Asia Credit Fund SPC – AACF Investment Grade Bond Fund II SP managed by OAIP at a price of US\$25.5, through Pareto Securities Pte Ltd, and you have thereby committed an offence under Section 201(b) of the Securities and Futures Act (Chapter 289, 2006 Revised Edition) punishable under Section 204(1) of the said Act.

Re-amended 2nd CHARGE

You ... are charged that you, on 19 January 2016, in Singapore, directly in connection with the sale of securities, namely MIEHOL 190425 Mie Holdings Corp 2014/2019 (“**MIE19**”), did engage in an act which was likely to operate as a fraud upon the investors of the Arion Asia Credit Fund SPC – AACF High Yield Basis Fund SP managed by One Asia Investment Partners Pte Ltd (“**OAIP**”), to wit, by selling 1.5 million notional value of MIE19 at US\$21.875 when you knew that there was an earlier bid for the said block of MIE19 bonds at or around US\$32, and thereafter buying the said block of MIE19 bonds into the Arion Asia Credit Fund SPC – AACF Investment Grade Bond Fund II SP managed by OAIP at a price of US\$22, through Pareto Securities Pte Ltd, and you have thereby committed an offence under Section 201(b) of the Securities and Futures Act (Chapter 289, 2006 Revised Edition) punishable under Section 204(1) of the said Act.

3 The essence of the appeal concerned the definition of fraud and the requisite *mens rea* to prove an offence under s 201(b) of the SFA. Both parties eventually agreed that the hallmark of fraud is dishonesty and that if I decided

that the appellant had acted dishonestly, it would follow that the offences were proved by the Prosecution.

4 After hearing the parties, I dismissed the appellant’s appeal against his conviction and sentence. I now set out the reasons for my decision.

Background facts

5 The appellant was a portfolio manager at One Asia Investment Partners Pte Ltd (“OAIP”). He was also a director, the Chief Investment Officer and majority shareholder (holding 83.6% of the shares) of OAIP. The other shareholders of OAIP were Mr Kelvin Goh (“Mr Goh”), who was also a director and the Chief Executive Officer of OAIP and Mr Brayan Lai (“Mr Lai”), who was a portfolio manager at OAIP.

6 OAIP was the manager of the Arion Asia Credit Fund (“AACF”). AACF had ten sub-funds, two of which were material to the appeal, namely the AACF High Yield Basis Fund SP (“SP1”) and the AACF Investment Grade Bond Fund II SP (“SP5”).

7 At the material time, the majority share (86.85%) of SP1 was owned by Stafford Capital Ltd (“Stafford”), which invested US\$10m in SP1 on 14 October 2014. OAIP held a minority stake (2.49%) in SP1.

8 Prior to January 2016, SP1 held various bonds, two of which were the subject of the charges. The two bonds were 2.5m units of MIEHOL 180206 Mie Holdings Corp 2013/2018 (“MIE18”) and 1.5m units of MIEHOL 190425 Mie Holdings Corp 2014/2019 (“MIE19”) (collectively, the “MIE bonds”). These bonds were traded over the counter (“OTC”) and not on a centralised exchange.

9 SP1 also held various bonds issued by an Indonesian coal company (“Indika”), including 3m units paying a coupon of 6.375% and maturing on 24 January 2023. I refer to these Indika bonds as “INDIKA23”, although some of the documents adduced in court also referred to these bonds as “INDYIJ”.

10 Sometime in December 2015, Stafford’s representative, Ms Tan Choo Hui (“Ms Tan”), emailed the appellant and Mr Goh to state Stafford’s intention to redeem its investment in SP1 because the fund was not performing well. A formal redemption notice was issued shortly thereafter. Pursuant to this redemption notice and the terms of a private placement memorandum which governed AACF, Stafford’s shares were to be redeemed on 1 February 2016 based on the net asset value of the fund on 29 January 2016.

11 Owing to the size of Stafford’s investment in SP1, it became clear to the shareholders of OAIP that the majority of SP1’s assets (including the MIE bonds) would have to be sold to meet Stafford’s redemption request. SP1 would not be viable and would have to be liquidated. Accordingly, some of SP1’s positions were sold on 4 and 15 January 2016, including 1m units of INDIKA23.

Key events

12 On 18 January 2016, the appellant reached out to his contacts at Goldman Sachs to ask for indicative bid prices for 1m units each of MIE18 and of MIE19. Goldman Sachs responded with an offer of US\$34 for MIE18 and US\$31 for MIE19. The appellant did not accept this offer.

13 Later that day, the appellant invested US\$3m in SP5, thereby owning a majority share (94.1%) of the fund. The remaining share (5.9%) of SP5 was held by OAIP in which he held a majority share of 83.6%. According to the

appellant, he invested this sum to provide a back-up vehicle to facilitate the liquidation of SP1's assets in the event that its assets could not be sold on the open market. Mr Lai then took steps to ensure that trading lines with various traders, including one Mr Reshad Sabed ("Mr Reshad") of Pareto Securities Pte Ltd ("Pareto"), were established for SP5 to trade with.

14 On the same day, the appellant also spoke with Mr Reshad over the phone. Mr Reshad confirmed that the accounts were set up and ready to trade. The entire conversation lasted less than a minute. The material portion of the conversation was as follows:

Mr Sun: Okay, so you call me regarding? Is it regarding a trade?

Mr Reshad: Yeah, [*Indiscernible*], I just want to let you know the accounts are all set up. If you want me to do the transfer, you just let me know the price, the amount, and if you want to give me a spread, great.

Mr Sun: Okay, I'll definitely give you a spread. I'll let you know. Okay?

Mr Reshad: No problem. I am just going to disappear for thirty minutes, go to the doctor's, but from four-thirty onwards I can do it anytime.

Mr Sun: Understood, thank you. Okay, see you.

Mr Reshad: No problem, cheers, bye.

15 At around 10am the next day, on 19 January 2016, the appellant sent a mass message to at least 11 counterparties, using the Bloomberg chat terminal, seeking bids for the entire block of MIE18, MIE19 and INDIKA23 bonds held by SP1. The full message read as follows:

hi, miehol 18s 2.5mm, miehol 19s 1.5mm, indyij 23s 2mm, any offers for block?

16 Within an hour of the mass message, the appellant received bids from four separate counterparties:

(a) At 10.01am, Ms Megha Goyal (“Ms Goyal”) of Morgan Stanley Asia (“Morgan Stanley”) sent an initial bid of US\$33 for MIE18 and US\$32 for MIE19. She was the first in time to show a bid in response to the appellant’s message. At 10.02am, Ms Goyal created a “side chat” with the appellant in an attempt to gain his attention. The relevant messages are set out below, with messages sent in the side chat denoted with an asterisk next to the sender’s name.

S/N	Time	Sender	Message
1	10:01:24	Ms Goyal	Miehol 18 - 33/ miehol 19 - 32/
2	10:01:27	Ms Goyal	Pass on INDYIJ
3	10:02:11	Ms Goyal*	hey Wei..
4	10:02:18	Ms Goyal*	probably easier here given the noise on the main chat
5	10:02:45	Mr Sun*	Ok
6	10:08:07	Ms Goyal*	assume nothing ?
7	10:08:53	Mr Sun*	need a bid for blkock [<i>sic</i>]
8	10:08:56	Mr Sun*	your best bid
9	10:09:02	Mr Sun*	pls use the main chjat [<i>sic</i>]
10	10:09:11	Ms Goyal*	ive put the bids there already
11	10:09:34	Ms Goyal	reposting - Miehol 18 - 33/ miehol 19 - 32/ INDYIJ - PASS
12	10:15:21	Mr Sun	for whole block?

13	10:15:29	Mr Sun	michol 18s 2.5mm, michol 19s 1.5mm ?
14	10:15:42	Ms Goyal	yes
15	10:23:42	Ms Goyal	Wei please refresh before trading
16	10:45:02	Ms Goyal*	Wei.. presume nothing ont he MIEHOLs ?
17	10:47:53	Mr Sun*	nope. tks
18	10:48:01	Mr Sun*	all or nothing
19	10:48:11	Ms Goyal*	ahh i see, so INDYIJ

(b) At 10.06am, Mr Ray Xie (“Mr Xie”) of Haitong International Securities (Singapore) Pte Ltd (“Haitong”) sent a bid of US\$32 for 1m units of MIE18 and US\$29 for 1m units of MIE19. However, when asked to provide a bid for the entire block, he revised his bid to US\$25 for MIE18 and US\$20 for MIE19. The relevant messages are set out below.

S/N	Time	Sender	Message
1	10:06:26	Mr Xie	32 bid on MIEHOL 18 1MM 29 bid on MIEHOL 19 1MM
2	10:06:52	Mr Sun	can you quote me a bid for the block?
3	10:07:00	Mr Sun	not in pieces
4	10:08:50	Mr Xie	sorry will be 25/MIE 18 and 20/MIE 19 for the block for now
5	10:27:17	Mr Sun	any bid for indika 23s 2mm?

6	10:27:27	Mr Xie	don't trade that here bro sorry
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(c) At 10.22am, Ms Pamela Tsang (“Ms Tsang”) of BNP Paribas (“BNP”) bid US\$34 for MIE18, US\$31.50 for MIE19 and US\$36 for INDIKA23. Prior to this, at around 10.12am, the appellant also created a “side chat” with Ms Tsang. The relevant messages are set out below, with messages sent in the side chat denoted with an asterisk next to the sender’s name.

S/N	Time	Sender	Message
1	10:11:48	Ms Tsang	Weiyeh- bear with us- coming right back. just got a few things coming in
2	10:12:22	Mr Sun*	pam
3	10:12:26	Ms Tsang*	hey
4	10:12:32	Mr Sun*	can you give me a bid for the whole block?
5	10:12:38	Ms Tsang*	which one do u hv a block
6	10:12:49	Mr Sun*	need to clear
7	10:12:58	Ms Tsang*	which name do u own the blocok ? mie 18, 19 or indika
8	10:13:03	Mr Sun*	miehol 18s 2.5mm, miehol 19s 1.5mm, indyij 23s 2mm
9	10:13:11	Ms Tsang*	ah u mean thts the entire position already
10	10:13:15	Mr Sun*	all three. need a bid yes
11	10:13:19	Ms Tsang*	k. seccy

12	10:22:17	Ms Tsang*	Mie 18s @ 34/, 19s @ 31.50/, indyij 23s @ 36/ >> this works for entire block otherwise, we can bid better for say 500k each and we need an order to work the balance.
13	10:33:02	Ms Tsang*	see this?
14	10:40:31	Ms Tsang*	*** PAMELA TSANG rang the bell
15	10:46:47	Mr Sun*	hey
16	10:46:49	Mr Sun*	yup.
17	10:46:52	Ms Tsang*	hey
18	10:46:53	Ms Tsang*	u'r back
19	10:47:00	Ms Tsang*	by the way-u'r based in beijing now right?
20	10:47:02	Mr Sun*	give me ten minbs
21	10:47:08	Mr Sun*	just nback

(d) At 10.16am, Ms Lauri Purhonen (“Ms Purhonen”) of SC Lowy Financial (“SC Lowy”) bid US\$28.50 for MIE19. Shortly thereafter, the appellant created a “side chat” with Mr Jamie Tadelis (“Mr Tadelis”) of SC Lowy. The relevant messages are set out below, with messages sent in the side chat denoted with an asterisk next to the sender’s name.

S/N	Time	Sender	Message
1	10:01:27	Mr Tadelis	Hi Wei Yeh - will come back in a sec

2	10:16:18	Ms Purhonen	Mie19 28.5/ for 1.5mm
3	10:16:46	Mr Sun*	Jamie
4	10:16:55	Mr Sun*	i need a firm bid for the whole block
5	10:17:11	Mr Sun*	can you help me with something, not piecemeal
6	10:17:35	Ms Purhonen	Indyij23 no bid atm
7	10:24:33	Mr Tadelis*	ah...I see. Unfortunately, we don't have a bid for the block. The only bid we have had in these particular names of late has been in the MIE 19s. Seeing little to no interest in the others at the moment.
8	10:28:39	Mr Sun*	indika 23s?
9	10:28:50	Mr Sun*	any bid for 2mm?
10	10:28:54	Mr Sun*	need a firm one
11	10:29:38	Mr Tadelis*	We don't have a bid for INDYIJ 23s....you were our last trade in that when we lifted you in 1m last week. No buyers at the moment.

17 The appellant did not accept any of these bids. Instead, from around 10.30am, he began communicating with Mr Reshad to carry out what the parties referred to as a “pass through trade”. This involved the sale of the MIE bonds from SP1 to SP5 through Pareto as intermediary. The appellant utilised two separate chatrooms to communicate with Mr Reshad, one in his capacity as the buyer of the bonds on behalf of SP5 (“Chat A”) and another in his capacity as the seller of the bonds on behalf of SP1 (“Chat B”).

S/N	Time	Sender	Message	Chat
1	10:18:58	Mr Reshad	Ready when you guys are	Chat B
2	10:19:14	Mr Sun	hi	Chat A
3	10:19:20	Mr Reshad	hi	Chat A
4	10:19:21	Mr Sun	wait	Chat A
5	10:30:47	Mr Sun	hi, I can pay for miehol 18s 2.5mm @ 25, miehol 19s 1.5mm @ 22, any offers?	Chat A
6	10:31:17	Mr Sun	hi miehol 18s 2.5mm, miehol 19s 1.5mm. any bids for the block?	Chat B
7	10:31:27	Mr Reshad	Hi, where can you offer these bonds?	Chat B
8	10:31:38	Mr Sun	this is for IGBF2 [SP5]	Chat A
9	10:31:51	Mr Reshad	understood	Chat A
10	10:35:04	Mr Sun	any bids?	Chat B
11	10:35:39	Mr Reshad	hi, where you bid for these bonds?	Chat A
12	10:36:13	Mr Sun	i can pay 25 for the 18s and 22 for the 19s	Chat A
13	10:37:27	Mr Reshad	i can buy them from you @ 24.875 for the 18s and 21.875 for the 19s- FIRM	Chat B
14	10:39:55	Mr Sun	can improve to 25.5 for the 18s	Chat A

15	10:40:09	Mr Sun	can you improve your 18s pls?	Chat B
16	10:40:53	Mr Reshad	I can improve to 25.375 for the 18s- firm	Chat B
17	10:41:14	Mr Sun	done.	Chat B
18	10:42:15	Mr Sun	AACF HYBF [SP1] sells 2.5mm miehol 18s at 25.375 and 1.5MM miehol 19s at 21.875	Chat B
19	10:43:50	Mr Reshad	okie, I sell you 2.5 MN miehol 18s at 25.5 and 1.5 MN miehol 19s at 22. Done?	Chat A
20	10:44:14	Mr Sun	done. AACF IGBF 2 [SP5] will buy the above	Chat A

18 The following trades took place as a result of the pass through trade:

(a) SP1 sold to Pareto: (i) 2.5m units of MIE18 bonds at the price of US\$25.375; and (ii) 1.5m units of MIE19 bonds at the price of US\$21.875.

(b) Pareto sold to SP5: (i) 2.5m units of MIE18 bonds at the price of US\$25.50; and (ii) 1.5m units of MIE19 bonds at the price of US\$22.

19 For easy reference, a timeline of the events that transpired on 19 January 2016 is set out in an appendix at the end of these written grounds of decision.

20 The remainder of SP1's assets were sold between 20 and 25 January 2016 in order to fulfil Stafford's redemption and to effect the liquidation of SP1.

This included another pass through trade involving the sale of the remaining 2m units of INDIKA23 to Pareto on 22 January 2016 at the price of US\$25.835, which Pareto later sold to SP5 at a trade price of US\$26.

21 Stafford’s redemption was confirmed on 5 February 2016. The redemption amount of around US\$6.5m was processed on the dealing day of 1 February 2016.

The DJ’s decision

22 The two charges against the appellant pursuant to s 201(b) of the SFA were brought on the basis that he had engaged in an act which was “likely to operate as a fraud” upon the investors of SP1, namely, by carrying out the pass through trade of the MIE bonds when he knew that there was an earlier bid for the MIE18 and MIE19 bonds at a price of US\$33 and US\$32 respectively. This was a reference to the bids the appellant received from Morgan Stanley. The DJ convicted the appellant on both charges and sentenced him to an aggregate of six months’ imprisonment.

23 In the DJ’s detailed and lengthy grounds of decision (*Public Prosecutor v Sun Weiyeh* [2024] SGDC 242) (“GD”), the DJ stated that there were two limbs in the offences as framed by the Prosecution:

- (a) The first limb concerned the *actus reus* of the offence which would be satisfied where the offender engaged in an act that was directly in connection with the sale of securities. This included acts in the lead up to a fraudulent trade.

(b) The second limb would be satisfied upon proof that the act of the offender was likely to operate as a fraud upon others. This limb contained several component parts:

(i) First, the requisite *mens rea* would be satisfied upon proof that the offender intended to do the particular act with the knowledge that he would cause loss to investors or financial gain to himself and that the act was objectively likely to operate as a fraud. There was no further requirement to prove that the act was done by the offender with a specific intention to operate a fraud on any person.

(ii) Second, “fraud” under s 201(b) was given an expansive meaning to capture a situation involving a breach of one’s duty, done with the knowledge that this would cause loss to investors or financial gain to oneself. There was no additional requirement to prove deceptive conduct, although proof of deceptive conduct would lend itself to a finding that the acts in question were likely to operate as a fraud.

24 On the facts, the DJ found that the pass through trade amounted to an act that was directly in connection with the sale of securities. He found that the pass through trade was likely to operate as a fraud on the investors of SP1. His key findings are summarised as follows (see GD at [459]):

(a) As the portfolio manager of SP1, the appellant owed a fiduciary duty to the investors of SP1 and a duty to sell the assets of SP1 at the highest available prices.

(b) At the latest by 10.15am on 19 January 2016, the appellant saw Morgan Stanley’s bids for the MIE bonds and knew that the bids were executable. He asked Ms Goyal a question seeking confirmation that her bids were for the whole block of the MIE bonds. However, his subsequent actions showed that he did not intend to sell the bonds to Morgan Stanley.

(c) The appellant knew that Morgan Stanley’s bid prices for the MIE bonds were higher than Haitong’s and that they were executable. Because of his duty to SP1’s investors, he ought to have sold the MIE bonds to Morgan Stanley by 10.15am or shortly thereafter. Alternatively, he ought to have used Morgan Stanley’s bid prices as market context for any pass through trade that he conducted with Pareto.

(d) Before selling the MIE bonds by the pass through trade to SP5, the appellant did not do any genuine price discovery either on his own or through Pareto’s Mr Reshad. He had no basis to expect Mr Reshad to conduct any price discovery for the bonds which were not bonds issued by Pareto and he never told Mr Reshad to carry out price discovery in any event. The evidence further showed that the appellant knew that Mr Reshad relied solely on him to provide the prices for the pass through trade.

(e) The appellant either did not see the “please refresh before trading” message from Ms Goyal that she posted at 10.23am (the “refresh message”) or even if he did, he ought to have checked back with her on the Morgan Stanley bid prices available to him thereafter.

(f) Despite knowledge of Morgan Stanley’s higher bid prices, the appellant used the lower bid prices by Haitong as market context for the

pass through trade. In doing so, he breached his duty to sell the MIE bonds at the highest available prices.

(g) The appellant also knew of a higher executable bid by SC Lowy for the MIE19 bonds and had no good reason for not selling them to SC Lowy or for not using that bid price as market context for the pass through trade for the MIE19 bonds. The accused would also have been alerted to the higher prices offered by BNP for the MIE bonds before he actually carried out the pass through trade.

(h) Despite having several executable bids for the MIE bonds before carrying out the pass through trade, the appellant ignored these higher bids and sold the MIE bonds to SP5 at lower prices. He did so because he liked the MIE bonds and wanted SP5 to purchase them by means of the pass through trade based on the lower bid prices made by Haitong.

(i) At the time the appellant carried out the pass through trade for the MIE bonds, he knew that he would cause detriment and loss to the SP1 shareholders as he sold them at prices lower than he otherwise would have obtained had he sold the MIE bonds based on the higher executable bids. Correspondingly, he also knew that he would make a gain for SP5 (and therefore himself as he was the majority shareholder of SP5) through the same pass through trade. Subsequently, the appellant sold the MIE bonds for profit to the market, thus crystallising his gains.

25 On sentence, the DJ held that the present case crossed the custodial threshold. The DJ considered the following aggravating factors in his assessment: (a) the appellant caused huge losses to the investors of SP1, totalling US\$324,500 (being the difference between the prices they received

from the pass through trade and the prices they could have received had the MIE18 and MIE19 bonds been sold to Morgan Stanley); (b) the appellant was motivated by profit and did in fact make substantial profits amounting to US\$1,163,023.12 when SP5 later sold the MIE bonds to the market; (c) the offences were premeditated and required elaborate planning; (d) the offences involved an element of abuse of trust; and (e) the offences were difficult to detect.

26 The DJ imposed a sentence of six months' imprisonment for each of the two charges, with the sentences running concurrently. The aggregate sentence was therefore six months' imprisonment.

Parties' cases on appeal

27 The appellant appealed against his conviction and sentence. He contended that the DJ erred in law with regard to the requisite elements of the charges. In his written submissions, he contended that "fraud" under s 201(b) of the SFA required proof of "deception ... done with an intent to obtain an advantage for himself or herself, or to impose a disadvantage on someone else, by such means of deception". The requisite *mens rea* on the part of the offender must be an "intention to operate a fraud". He submitted that the DJ erred in holding that a breach of a duty owed to investors, done with the knowledge that this would result in loss to investors or financial gain to oneself, could be regarded as an act likely to operate as a "fraud" within the context of s 201(b) of the SFA.

28 The appellant next contended that the DJ was wrong in holding that the appellant owed a duty (fiduciary or otherwise) to the investors of SP1 to obtain the highest available price for the MIE bonds. He argued that his duty was one

of best execution, which required a consideration of other factors besides price, such as the relevant trading strategy as determined in accordance with the trader's judgment. At the hearing of the appeal, counsel for the appellant, Mr Jason Chan SC ("Mr Chan"), also agreed that the appellant had a duty to act honestly.

29 The appellant also argued that the DJ's findings of fact were wrong. Broadly speaking, the factual narrative advanced by the appellant was as follows:

(a) The appellant had set aside 10am to 10.30am on 19 January 2016 to conduct price discovery. He believed that Pareto would also conduct price discovery independently before carrying out any pass through trade.

(b) The appellant overlooked Morgan Stanley's bids until around 10.15am. He then asked Ms Goyal to confirm if the bids were for the entire block of MIE bonds. He immediately proceeded to check other chatrooms and did not see Ms Goyal's affirmative response. He only returned to Ms Goyal's messages after she had sent the refresh message at 10.23am which rendered her earlier bids no longer valid or executable.

(c) The appellant did not see BNP's bids at the time he carried out the pass through trade. As for SC Lowy's bids for the MIE19 bonds, he chose not to sell to SC Lowy because it did not align with his trading strategy which was to sell the MIE bonds as a block.

30 Based on this factual narrative, the appellant submitted that he was entitled to use Haitong's bid as market context for carrying out the pass through trades because it was the only valid and executable bid that he was aware of at

the material time. Morgan Stanley's bids were no longer valid due to Ms Goyal's refresh message and he was under no obligation to refresh the bid prices before carrying out the pass through trade.

31 As for sentence, the appellant submitted that the DJ erred in imposing a custodial sentence. In any event, the sentence imposed was manifestly excessive. He contended that a fine would be appropriate or, in the alternative, an imprisonment term of no more than three weeks per charge.

32 In response, the Prosecution argued that the conviction and sentence should be upheld. The Prosecution's position on the constituent elements of the offence, as explained by deputy public prosecutor ("DPP") Mr Peter Koy ("DPP Koy") at the hearing of the appeal, was that "fraud" simply meant "dishonesty" and did not necessarily require "deception". Correspondingly, the requisite *mens rea* for an offence under s 201(b) of the SFA would be satisfied where the offender had a dishonest or blameworthy state of mind.

33 On the facts, the Prosecution contended that the DJ was correct to have found that the appellant's conduct was likely to operate as a fraud on the investors of SP1. DPP Koy highlighted that the appellant had seen Morgan Stanley's bids for the MIE bonds at 10.15am. If the appellant was conducting genuine price discovery at the material time, he would have gone back to check Morgan Stanley's bids, even after Ms Goyal sent the refresh message. Further, there was a clear conflict of interest for the appellant to sell the MIE bonds to SP5, a fund in which he held a large majority share. In the circumstances, the appellant failed to act honestly.

34 On the issue of sentence, the Prosecution submitted that the sentence imposed by the Judge was not manifestly excessive and should be upheld.

Issues to be determined

35 Based on the arguments raised at the appeal, the following issues arose for the court’s determination:

- (a) First, what were the constituent elements of a charge brought under the “likely to operate as a fraud” limb of s 201(b) of the SFA?
- (b) Second, was the DJ wrong to conclude that the accused committed the offences under s 201(b) of the SFA?
- (c) Third, if the convictions are upheld, was the DJ wrong to impose an aggregate sentence of six months’ imprisonment?

The elements of s 201(b) of the SFA

The meaning of “fraud” under s 201(b) of the SFA

36 Section 201(b) of the SFA provides as follows:

Employment of manipulative and deceptive devices

201. A person must not, directly or indirectly, in connection with the subscription, purchase or sale of any capital markets products —

...

- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;

...

Section 201(b) of the SFA criminalises two types of conduct in connection with the subscription, purchase or sale of any capital markets products: (a) conduct which operates, or is likely to operate, as a *fraud*; (b) conduct which operates, or is likely to operate, as a *deception*. The words “fraud” and “deception” are

not defined in the SFA and there was no clear authority which explained what amounted to a “fraud” or “deception” in order to establish culpability under s 201(b).

37 The appellant contended that an act which operates as a fraud required proof of deception done with an intent to obtain an advantage for himself or to impose a disadvantage on someone else by such means of deception. The appellant’s position was aligned to the recently amended definition of the word “fraudulently” in s 25 of the Penal Code 1871 (2020 Rev Ed) (the “Penal Code”), which reads:

“Fraudulently”

25. A person (*A*) is said to do an act fraudulently if *A* does that act with intent to deceive another person (*B*) and by means of such deception, that an advantage should accrue to *A* or another person or detriment should befall *B* or another person (other than *A*), regardless of whether such advantage or detriment is temporary or permanent.

38 The Prosecution’s position, on the other hand, was that “fraud” has to be given a meaning which was distinct from “deception”. Specifically, “fraud” was a broader concept which could include dishonest conduct that did not arise from deception. Without being prescriptive, this would include a director’s breach of duty done with the knowledge that it would result in wrongful gain to himself or wrongful loss to others.

39 It was not disputed that s 201(b) had to be interpreted purposively as mandated by s 9A of the Interpretation Act 1965 (2020 Rev Ed). The parties were also broadly aligned on the legislative purpose s 201(b) of the SFA. In brief, the Legislature’s overarching objective in criminalising market misconduct under the SFA stems from its desire to protect public investors: see *Ng Geok Eng v Public Prosecutor* [2007] 1 SLR(R) 913 (“*Ng Geok Eng*”) at

[47]–[48]. Besides protecting investors, the SFA is also intended to protect public confidence in the market and to ensure that the operation of the market is not distorted: see *Public Prosecutor v Ng Sae Kiat and other appeals* [2015] 5 SLR 167 (“*Ng Sae Kiat*”) at [58].

40 As for s 201(b) specifically, it was also not disputed that this was a catch-all provision intended to cover all forms of securities fraud not otherwise dealt with in other sections of the SFA: see *Public Prosecutor v Cheong Hock Lai and another* [2004] 3 SLR(R) 203 (“*Cheong Hock Lai*”) at [41]; see also *Ng Sae Kiat* at [58]. The court observed in *Ng Geok Eng* at [34] that the offences created under s 201(b) were amorphous and capable of incorporating a myriad of illegitimate trading practices.

41 The appellant submitted that the scope of fraud should be confined exclusively to cases also involving deception. The appellant’s formulation would effectively relegate “fraud” to a mere subset of “deception” under s 201(b). Practically, this would mean that all conduct which amounts to “fraud” must also amount to “deception”.

42 I accept that there would inevitably be overlap between cases brought under the “fraud” limb and those brought under the “deception” limb of s 201(b). The *Oxford English Dictionary Online* (Oxford University Press, 2025) (the “*OED*”) defines “deception” as “the fact or condition of being deceived”, while the word “deceive” simply means “to cause to believe what is false” or “to mislead as to a matter of fact”. This would include both the positive act of misrepresentation as well as omissions of material facts. “Fraud” is defined in the *OED* to mean “an act or instance of deception, an artifice by which the right or interest of another is injured, a dishonest trick or stratagem”. Another definition of “fraud” which the *OED* provides is “the using of false

representations to obtain an unjust advantage or to injure the rights or interests of another”. Clearly, from these definitions, there would appear to be substantial overlap between the two categories of cases.

43 The definition of “fraudulently” in s 25 of the Penal Code could not apply to “fraud” in s 201(b) of the SFA. Section 6A of the Penal Code made it clear that the definition of “fraudulently” was not intended to apply to offences outside the Penal Code (see *Poh Yuan Nie v Public Prosecutor and another matter* [2023] 1 SLR 903 at [44]):

Definitions to apply to this Code and other written law

6A. Every definition of a word or expression which is explained in sections 22A to 26H (except the definitions of ‘dishonestly’ and ‘fraudulently’ in sections 24 and 25, respectively) applies to any offence in this Code or in any other written law unless that written law expressly provides for a definition or explanation of that same word or expression.

44 The Report of the Penal Code Review Committee (August 2018) at p 61 stated that it was hesitant to extend the definitions of “dishonestly” and “fraudulently” beyond the Penal Code. This was because those terms contained composite fault elements that could have different meanings in different contexts.

45 It has also been observed in previous cases, in different contexts, that it is futile to attempt to cast a legal definition for something as amorphous as “fraud”. Two examples can be found in the Court of Appeal’s decisions in *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 (“*Bebe*”) at [29] and in *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263 (“*Niklex Supply Co*”) at [7].

46 Since Parliament intended for s 201(b) to be broad in scope, it would not be helpful to set out a precise definition of “fraud”. The legislative intention underlying s 201(b) was the need to ensure that investors would be adequately protected from fraud and fraud can take many forms.

47 Where a person (A) is expected to safeguard or, at least, not to act against the financial interests of another person (B) and A does certain acts which will cause detriment to B unnecessarily, the situation would fall clearly within the scope of acts which s 201(b) of the SFA is intended to protect against. It would be even clearer where B’s detriment occurs concomitantly with A gaining a financial benefit as a result of A’s acts.

48 There were at least two reported cases where the offenders were prosecuted under the “fraud” limb of s 201(b) for an abuse of position which did not involve a finding of deception. The first was the district court’s decision in *Public Prosecutor v Loo Kiah Heng and another* [2010] SGDC 434 (“*Loo Kiah Heng*”). The second accused in that case (“Soh”) was a senior manager of an institutional fund owned by the Singapore Anti-Tuberculosis Association (“SATA”). Soh had full discretion over all investment decisions of the fund. He pleaded guilty to operating a fraud on SATA by selling certain shares (on behalf of SATA) to the first accused (“Loo”) at a price lower than the prevailing market price and by buying certain shares (on behalf of SATA) from Loo at a price higher than the prevailing market price.

49 The second case was the decision of the three-judge High Court in *Ng Sae Kiat*. In that case, the offenders were employed as Contracts for Differences (“CFD”) Hedgers by Phillip Securities Pte Ltd (“PSPL”). They had the power to act on behalf of PSPL to accept or to reject CFD trades. They pleaded guilty to defrauding PSPL by accepting “out of market” CFD trades on behalf of PSPL

using nominee CFD accounts belonging to their friends and relatives. “Out of market” trades in this context meant generally the purchase of overpriced CFDs or the sale of discounted CFDs.

50 Both cases involved pleas of guilt and therefore did not require the court to engage in a detailed discussion of the meaning of fraud. Nevertheless, I considered them relevant in showing that “fraud” in s 201(b) encompassed situations in which accused persons abused their positions to enrich themselves or entities or persons connected to them at the expense of their principals.

51 The Prosecution pointed out that this interpretation of “fraud” would bring the SFA’s definition of fraud in harmony with the offence of “fraud by false representation, non-disclosure or abuse of position” as set out in ss 424A of the Penal Code. Sections 424A(1) of the Penal Code states as follows:

Fraud by false representation, non-disclosure or abuse of position not connected with contracts for goods or services

424A.—(1) A person shall be guilty of an offence if he, fraudulently or dishonestly —

- (a) makes a false representation;
- (b) fails to disclose to another person information which he is under a legal duty to disclose; or
- (c) abuses, whether by act or omission, a position which he occupies in which he is expected to safeguard, or not to act against, the financial interests of another person.

However, the above provision of the Penal Code was enacted in 2019 and came into operation on 1 January 2020, after the appellant here had executed the pass through trades in issue on 19 January 2016. Therefore, I did not rely on this Penal Code provision in coming to my decision.

The requisite mens rea for offences under s 201(b) of the SFA

52 It was not disputed that the plain wording of s 201(b) did not expressly provide for any *mens rea* requirement. However, *mens rea* is presumed to be a necessary ingredient of an offence in the absence of clear words to the contrary: see *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] 4 SLR 1068 at [46]. This presumption may be displaced expressly or by necessary implication.

53 The parties did not dispute that the presumption of *mens rea* was not displaced for offences under s 201(b) of the SFA. However, they disagreed on the specific *mens rea* needed for an offence under s 201(b) of the SFA to be made out. The following three possible standards of *mens rea* were discussed:

(a) First, an offence would be made out if the offender intended to do the particular act and did so with the knowledge that he would cause loss to the investor or financial gain to himself. This was the *mens rea* which the DJ adopted in his decision and which the Prosecution submitted on appeal was the correct position.

(b) Second, an offence would be made out if the offender intended to do the particular act and did so with the knowledge that the act engaged in would likely operate as a fraud. Practically, this meant that the act was done dishonestly. The Prosecution advanced this argument in the alternative to its primary position that the DJ's decision should be upheld.

(c) Third, an offence would be made out if the offender intended to do the particular act and did so with a specific intention to deceive, manipulate or defraud. The appellant advanced this view.

54 I deal first with the appellant’s submissions. During the submissions, the appellant referred to §10(b) of the United States Securities Exchange Act 1934 (“US SEA”) read with its subsidiary rule, the Securities and Exchange Commission Rule 10b-5(c). Pursuant to §10(b) of the US SEA, it is unlawful for any person to:

... use, employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange Commission] may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5(c) is set out in terms similar to s 201(b) of the SFA:

Employment of manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, ...

- (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase and sale of any security ...

55 Pointing to the linguistic similarities between the provisions, the appellant argued that s 201(b) of the SFA was inspired by Rule 10b-5, and thus the cases of *Ernst & Ernst v Hochfelder* 425 US 185 (1976) (“*Hochfelder*”) and *Aaron v SEC* 446 US 680 (1980) (“*Aaron*”), which were US Supreme Court decisions that expounded on the *mens rea* requirements of Rule 10b-5(c), would be highly persuasive authorities which supported his case that the requisite *mens rea* must be a specific intent to defraud, *ie*, that he intended the specific consequences that followed from his act, as opposed to having mere knowledge of the consequences of his act.

56 I did not think the cases of *Hochfelder* or *Aaron* supported the appellant’s proposition. In *Hochfelder*, the US Supreme Court held that §10(b) of the US SEA and Rule 10b-5 were intended to proscribe knowing or intentional misconduct. This was discussed in contradistinction to negligent nonfeasance which would not be caught under these provisions. Similarly, in *Aaron*, the US Supreme Court applied *Hochfelder* and held that the terms “manipulative” and “device” in §10(b) and Rule 10b-5(c) clearly referred to “knowing or intentional misconduct”. The American courts merely made the point that negligent conduct would not be sufficient to prove an offence under §10(b) of the US SEA or Rule 10b-5(c). The appellant’s contention that the requisite *mens rea* must be a specific intent to defraud, as opposed to knowledge of the consequences of his act, was therefore not supported by the American cases which he had referred to.

57 I consider the first and second interpretations set out earlier. If a person (A) is placed in a position where he is expected not to act against the financial interests of another person (B), it must be dishonest if A were to do an act intentionally with the knowledge that his act would be detrimental to the financial interests of B. In such circumstances, it could also be said that he knew that his act would likely operate as a fraud. In this sense, the first and second interpretations are consistent with each other in essence.

58 In respect of the second interpretation, there was no dispute between the parties that fraud invariably and inherently involved dishonesty. This is clear from the case law which discussed the meaning of “fraud” in other contexts: see *Bebe* at [34]; *Niklex Supply Co* at [7]. The term “fraud” generally connotes an intention to go beyond the bounds of what ordinary decent people engaged in business would regard as honest: see *Phang Wah and others v Public*

Prosecutor [2012] 1 SLR 646 at [24]; *How Soo Feng v Public Prosecutor and another appeal* [2023] SGHC 252 at [49].

59 The DJ pointed out that “fraud” and “dishonesty” were referred to disjunctively in various sections of the SFA. He concluded therefore that s 201 should not subsume offences already dealt with under the “dishonesty” provisions in the SFA and that “fraud” and “dishonesty” in s 201 should not overlap (see GD at [189]). He accepted, however, that “fraud” must be given an expansive meaning in the context of s 201(b) and that “likely to operate as a fraud” should be construed broadly enough to capture a situation involving a breach of one’s duty with the knowledge that this would cause loss to investors or cause financial gain to oneself (GD at [191]).

60 As discussed earlier, the reality is that a person who commits fraud is invariably also dishonest. The touchstone of fraud is dishonesty and the key question in any given case is whether the accused person acted with an objectively dishonest state of mind. What amounts to dishonesty must be decided on the particular facts of each case. For the purpose of this appeal, as pointed out above, if a person (A) is placed in a position where he is expected not to act against the financial interests of another person (B), it must be dishonest if A were to do an act intentionally with the knowledge that his act would be detrimental to the financial interests of B. In such circumstances, it could be said that A knew that his act would likely operate as a fraud. This is even more so if B’s financial loss results in financial gain to A or to entities or persons associated with A.

Summary of the elements of s 201(b) of the SFA

61 I summarise below the key principles that I considered were sufficient for the determination of the present appeal:

(a) Section 201(b) of the SFA is a catch-all provision intended to cover a wide range of securities fraud. One of the key legislative objectives is the protection of investors.

(b) While there would inevitably be overlap between the “fraud” and “deception” limbs of s 201(b), the scope of “fraud” was not confined exclusively to cases also involving “deception”.

(c) Where a person (A) is placed in a position where A is expected to safeguard, or not to act against, the financial interests of another person (B), the abuse of such a position which results in detriment to the financial interests of B would fall within the types of acts envisaged in s 201(b) of the SFA.

(d) There is no requirement that the offender must have a specific intent to deceive, manipulate or defraud for an offence under s 201(b) of the SFA to be made out. The touchstone of fraud is dishonesty and an offence would be made out upon proof that the offender acted with an objectively dishonest state of mind.

The convictions were upheld

The appellant’s duty to act honestly

62 The appellant accepted, through his counsel, that he had a duty to act honestly. It would be futile to argue that such duty did not exist. As the portfolio manager of OAIP (which managed SP1), the appellant was working in a

position in which he was dealing with assets which belonged to the investors. He had therefore assumed a position where he was expected to deal with those assets honestly. He was also expected not to act against the financial interests of the investors of SP1 and certainly not to cause them to suffer a detriment so that he could benefit himself or entities or persons associated with him.

The appellant knew of Morgan Stanley's bids

63 The charges were premised on the appellant's knowledge of Morgan Stanley's bids at the time he executed the pass through trade. Ms Goyal was the first person to express interest in the MIE bonds. She was also the first person to make a bid for the MIE bonds at 10.01am, less than a minute after the appellant posted his request for bids. Her bids, at this juncture, were unqualified and they made no changes to the quantity of the bonds that the appellant had stated. Thereafter, she created a separate chatroom to gain the appellant's attention because there was "noise on the main chat". In response to the appellant's request at 10.09am to place her "best bid" in the "main chat", Ms Goyal complied and reposted her original bids there.

64 The appellant claimed that he did not see Ms Goyal's bids until 10.15am when he sent a message to clarify whether the bids were for the "whole block". This meant that he was asking Ms Goyal if her bids were for 2.5m units of MIE18 and 1.5m units of MIE19.

65 Within 13 seconds, Ms Goyal responded affirmatively to the appellant's query. The appellant claimed that he did not see her response. His evidence was that, after sending a message, he would immediately move on to other chatrooms to check if there were any responses.

66 With no response forthcoming from the appellant, Ms Goyal informed the appellant to “please refresh before trading” at 10.23am. This message meant that Ms Goyal’s prior bids were no longer executable. It was undisputed that the appellant saw this message sometime before he executed the pass through trade. However, he did not respond to this message.

67 At 10.45am, Ms Goyal followed up with the appellant on the MIE bonds. By this time, the appellant had executed the pass through trade. The appellant’s response, in essence, was to inform Ms Goyal that there would be no sale of the MIE bonds. His response, “all or nothing”, was met with Ms Goyal’s reply, “ahh i see, so INDYIJ”.

68 It was clear that the appellant was aware of Ms Goyal’s interest in the MIE bonds at the latest by 10.15am. That was when he sought clarification on whether the bids were for the entire block of MIE bonds which he was selling. The appellant admitted in his testimony that he knew, by 10.15am, that Morgan Stanley’s bids were in response to his earlier messages seeking bids for the “full sizes” of the MIE bonds. It is hard to believe his claim that he did not see Ms Goyal’s affirmative response which was sent a mere 13 seconds after he sought this clarification. This message was posted on the main chat, the chatroom where the appellant had asked Ms Goyal to repost her bids. He would surely have been monitoring this chatroom with keen interest and would not have waited eight minutes before checking.

The evidence showed that the appellant acted dishonestly

69 The appellant denied that he had acted dishonestly. He relied on the fact that Ms Goyal’s message at 10:23:42am, “please refresh before trading”, meant that Morgan Stanley’s bids were no longer executable. He further submitted that

he was under no duty to refresh the bids. Therefore, he had acted reasonably in the circumstances.

70 However, the evidence showed otherwise. Three facts pointed to the reality that the appellant had acted dishonestly.

71 The first fact was the appellant’s awareness that Morgan Stanley had expressed a keen interest in the MIE bonds. He was aware by 10.15am that Morgan Stanley had made a firm offer for the full block of MIE bonds. This offer was significantly higher than the bids that he received from Haitong and the price at which he carried out the subsequent pass through trade. Morgan Stanley’s interest had in fact been made apparent to the appellant much earlier at 10.01am. There was no indication at any point in time that this interest had wavered. It was common ground that the “please refresh before trading” message was merely an indication to the appellant that it would be necessary to check with Ms Goyal should he wish to trade with Morgan Stanley, given that some eight minutes had elapsed, a significant period in trading terms, without any response from the appellant and with no indication of when the appellant would be responding. It did not mean that Morgan Stanley had withdrawn its interest in the MIE bonds.

72 The second fact was that the appellant eventually sold the MIE bonds to himself effectively using the pass through trade (using the Haitong bid prices as market context) and that he did so because he “liked” the MIE bonds. The appellant pointed out that the Prosecution’s experts agreed that there was nothing inherently wrong with carrying out a pass through trade in this manner. However, the point here was that the appellant had chosen deliberately to sell the MIE bonds to himself effectively because he was clearly aware of their high potential value.

73 The third fact pointing to the appellant's dishonest conduct was that he gave a false reason to Ms Goyal to explain why he did not sell the MIE bonds to her. His "all or nothing" message, followed by his silence upon receiving Ms Goyal's reply, suggested that the reason he did not sell the MIE bonds to Morgan Stanley was because he did not also receive a bid for the INDIKA23 bonds. However, Ms Goyal had indicated from the outset of the chat at 10:01:27am that she would "pass" on the INDIKA23 bonds. This was confirmed at 10:09:34am when she reposted her bids on the main chat at the appellant's request. It was clear by then that the rest of the chat between them was about the MIE bonds only. The reason given to Ms Goyal was clearly false since the appellant did not sell the MIE bonds and INDIKA23 bonds as a block anyway.

74 Having considered the evidence in totality, the only inference was that the appellant had acted dishonestly in the trades. The appellant did not even engage with Ms Goyal on the bids she had put in, despite her clear interest expressed from the outset and the fact that her bid prices far exceeded those that the appellant received from Haitong. An honest trader in the appellant's position, aware of Morgan Stanley's keen and repeated interest and prior higher bid prices, would certainly have followed up with Morgan Stanley and refreshed the bids.

75 It was plainly disingenuous for the appellant to claim that the only technically executable bid at the material time was Haitong's. Further, he did not sell the MIE bonds to Haitong, claiming that the bids he received were "too low". Nevertheless, he chose to sell the MIE bonds to himself effectively at prices that were not much higher than what Haitong had offered and certainly way below the bid prices stated by Ms Goyal. The appellant's conduct in the trades with the eventual sales of the bonds to an entity in which he held an

overwhelming majority shareholding could only lead to the irresistible inference that his conduct was calculated to enrich himself at the expense of the investors of SP1.

76 The parties agreed that the price discovery process was important before conducting a pass through trade. This was because it would ensure that the pass through trade was conducted in accordance with the principles of fair dealing and best execution. However, it was obvious from the facts that the appellant was conducting price discovery not for the honest purpose of obtaining the best price for SP1 but for the dishonest purpose of obtaining the lowest possible price at which he could sell the MIE bonds to himself effectively without attracting allegations of undervalue sales.

77 This was made even clearer from the fact that the appellant received bids from two other counterparties at the material time, SC Lowy and BNP Paribas. The appellant claimed not to have seen the bid from BNP Paribas. However, the DJ disbelieved him. I saw no reason to disagree with the DJ's finding of fact.

78 In the morning of 19 January 2016, the appellant received bids from only four counterparties. He claimed to have been conducting price discovery at that time for the purpose of selling SP1's MIE bonds and INDIKA23 bonds. At 10.22am, BNP's Ms Tsang provided a bid for the entire block of bonds which he was selling. She sent him a chaser at 10.33am and further sought to gain his attention at 10.40am. I agreed with the learned DJ that it was inconceivable that someone who claimed to have been conducting price discovery would have missed out all these messages.

79 As for SC Lowy, it provided a bid for the MIE19 bonds. The appellant's case was that this bid did not meet his specification of providing a bid for the

whole block of MIE bonds. However, the appellant's awareness of SC Lowy's bid meant that he was alerted to the fact that the MIE19 bonds were valued at a higher price than what Haitong had offered.

80 The appellant also submitted that he thought that Pareto would conduct its independent price discovery on the MIE bonds before facilitating the pass through trade. This contention was not supported by the objective evidence. The phone conversation which the appellant had with Mr Reshad on 18 January 2016 as well as the chatlogs recording the execution of the pass through trades on 19 January 2016 pointed clearly to the appellant as the directing mind of the pass through trades. The appellant had the power to dictate the prices at which the MIE bonds would be traded. Pareto's Mr Reshad was playing a facilitative role only.

81 On the totality of the evidence, it was clear that the appellant had engaged in acts which were likely to operate as a fraud by executing the pass through trades of the MIE18 and MIE19 bonds at undervalued prices. He had therefore contravened s 201(b) of the SFA. Accordingly, I agreed with the DJ's decision and upheld the convictions.

The sentences were upheld

82 Pursuant to s 204(1) of the SFA, the offences under s 201(b) are punishable with a fine not exceeding \$250,000 or imprisonment not exceeding 7 years or both. The DJ considered that a custodial sentence was warranted because (a) the appellant caused huge losses totalling US\$324,500 to the investors of SP1; (b) the appellant was motivated by profit and did in fact make substantial profits totalling US\$1,163,023.12; (c) the offences were premeditated and required elaborate planning; (d) the present case involved an

element of an abuse of trust; and (e) the offences were difficult to detect. The DJ therefore imposed a sentence of six months' imprisonment for each charge, with both imprisonment terms to run concurrently.

83 The appellant contended that the custodial threshold was not crossed and a high fine would be sufficient. Alternatively, he submitted that the sentence of six months' imprisonment was manifestly excessive and should be reduced to three weeks' imprisonment.

The custodial threshold was crossed

84 It was not disputed that a determination of whether the custodial threshold was crossed would require a consideration of all the facts of the case: *Ng Sae Kiat* at [58]. I agree with the DJ that the present case involved the following aggravating factors:

(a) The investors of SP1 suffered losses totalling US\$324,500. This could be calculated by taking the difference between the prices quoted by Morgan Stanley for the MIE bonds and the prices which Pareto paid for those bonds. The appellant made a corresponding benefit in that he was able to purchase the MIE bonds at lower prices than the prevailing market prices. The commission of an offence for personal gain is generally considered an aggravating sentencing consideration: *Lee Chee Keet v Public Prosecutor* [2016] 4 SLR 1316 ("*Lee Chee Keet*") at [47].

(b) The investors of SP1 were at the appellant's mercy. He wielded absolute discretion to decide when and how the liquidation of SP1's portfolio would take place. He was therefore expected to exercise his discretion honestly. However, he exploited and abused his position for a quick profit. This clearly engaged the principle of general deterrence

as there was a pressing need to warn like-minded individuals placed in similar or greater positions of trust against committing similar acts in the future.

(c) The present offences were hard to detect. As the Prosecution pointed out, the offences here would not have seen the light of day but for a whistleblower who wrote a letter to the Monetary Authority of Singapore. The appellant exploited his knowledge of financial instruments and was in a unique position to make illicit gains at the expense of the investors. This again engaged the principle of general deterrence. Such offences, when brought to light, should be dealt with sternly so as to deter other similarly situated persons from committing similar crimes: see *Ng Sae Kiat* at [64].

(d) There was a degree of premeditation involved, as evidenced by the fact that he had injected US\$3m into SP5 the day before the pass through trades were carried out. He also took steps to ensure that Mr Reshad would be on hand to facilitate the pass through trades.

85 A review of the relevant precedent cases also showed that cases involving an abuse of position, coupled with other aggravating factors, would generally warrant the imposition of a custodial sentence.

(a) In *Teo Kian Leong v Public Prosecutor* [2001] 3 SLR(R) 767, the offender was convicted on eight charges under s 102(b) of the Securities Industry Act (Cap 289, 1985 Rev Ed) (“SIA”), the predecessor provision to s 201(b) of the SFA. The offender was a dealer’s representative at an investment bank whose job was to make securities transactions on behalf of laymen investors who had trading accounts with his employer. He traded on various client accounts

without authorisation, racking up losses of around \$500,000 in the process. He was sentenced to six months' imprisonment.

(b) In *Cheong Hock Lai*, three accused persons backdated their applications to purchase units in feeder funds so as to determine the movement of the feeder funds with considerable accuracy. They each pleaded guilty to a charge under s 102(b) of the SIA. It was observed that the cases which warranted the imposition of a custodial sentence generally involved “a clear abuse of position by professional securities dealers vis-à-vis laymen investors who came to them for assistance and advice on trading” (at [38]). However, these factors were absent in *Cheong Hock Lai* as the accused persons there traded in their own names and for themselves at all material times. As a result, fines were imposed.

(c) The case of *Ng Sae Kiat*, already discussed earlier, was of relevance to the present case. *Ng Sae Kiat* concerned a fraud perpetrated by the employees of PSPL on their employer and thus it could not be said that laymen investors were involved. However, the court pointed out that the identity of the defrauded party was not the “sole consideration” (albeit it was an “important consideration”) in determining whether a custodial sentence was warranted (at [60]). There was significant premeditation involved and the offences were committed over a period of time for personal gains. That showed a high degree of moral culpability. The offenders opened multiple nominee accounts, shared account details with one other and collaborated to initiate and accept hundreds of “out of market” CFD trades over a protracted period of time. The court considered that it would ordinarily be appropriate to impose custodial sentences on the offenders (at [64]). However, the court was ultimately constrained by the application of the parity

principle arising from the earlier sentencing of a co-accused person. Accordingly, fines were imposed instead.

86 In his written submissions, the appellant relied on the District Court’s decision in *Public Prosecutor v Siow It Loong and another* [2008] SGDC 306 (“*Siow It Loong*”) to argue that a graduated approach in sentencing should be adopted so as not to discourage the taking of calculated risks. The case of *Siow It Loong* was concerned with entirely different facts and charges. In particular, *Siow It Loong* did not concern any abuse of position as the charges there were framed under s 197(1) of the SFA. The offences were for committing an act which was “likely to create a false or misleading appearance” with respect to the market for capital markets products.

87 I agreed with the DJ that the custodial threshold was crossed in the present case. Accordingly, the punishment should be one of imprisonment and not a fine.

The sentence was not manifestly excessive

88 While previous sentencing precedents involving similar facts or offences would be relevant, such precedents serve only as guides as each case turns ultimately on its own facts: *Public Prosecutor v Mohammad Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [85]; *Teo Kian Leong* at [45]. Further, having regard to the variety of offences and factual matrices that could be brought under s 201(b), one should not assume readily that a sentence imposed in a previous s 201(b) case would invariably serve as a useful reference point for another s 201(b) case: *Lee Chee Keet* at [28].

89 The appellant submitted that a sentence of not more than three weeks’ imprisonment was commensurate with the degree of criminality involved and

would be in line with the precedent cases. I did not agree with this submission. The precedent cases were of limited assistance given that each case turned on its own facts. For those cases which involved an abuse of a position of fidelity, the imprisonment terms tended to range from four to six months for each charge. However, there is no reason why a higher sentence should not be imposed in an appropriate case as the maximum imprisonment term under s 204(1) of the SFA is 7 years.

90 In addition to the factors canvassed above, the appellant also failed to demonstrate any remorse for his actions. He continued to maintain his innocence at the trial and on appeal despite being unable to provide any reason to justify his actions. He also made no offer of restitution to the investors of SP1 despite having made profits exceeding US\$1m when he eventually sold the MIE bonds to the market. The circumstances of this case clearly justified the aggregate sentence of six months' imprisonment imposed by the DJ.

Conclusion

91 For these reasons, the appellant's appeal against his conviction and sentence was dismissed. At the conclusion of the appeal, the appellant sought a two-week deferment of the commencement of his imprisonment term in order to attend to his personal matters. He was granted the deferment.

Tay Yong Kwang
Justice of the Court of Appeal

Jason Chan SC, Aaron Lee, Wong Pei Ting and Low Zhe Ning
(Allen & Gledhill LLP) for the appellant;
Peter Koy, Jordon Li, Eric Hu, Darren Sim and Joel Fun (Attorney-
General's Chambers) for the respondent.

Annex 1: Timeline of key events on 19 January 2016

S/N	Time	Event
1	10:00:23	The appellant sends out a message <i>en masse</i> via Bloomberg to 11 market participants, seeking bids for MIE18, MIE19 and INDIKA23.
2	10:01:24	Ms Goyal (Morgan Stanley) bids in the main chat, US\$33/MIE18, US\$32/MIE19, pass on INDIKA23.
3	10:02:18	Ms Goyal creates side chat to gain the attention of the appellant.
4	10:06:26	Mr Xie (Haitong) bids US\$32/MIE18 and US\$29/MIE19, for 1m units each. The appellant asks for a bid for the whole block.
5	10:08:07	Ms Goyal follows up on her bids in the side chat. The appellant asks her to use the main chat.
6	10:08:50	Mr Xie provides a renewed bid for the full block of MIE bonds, US\$25/MIE18, US\$20/MIE19.
7	10:09:34	Ms Goyal reposts her bids in the main chat, US\$33/MIE18, US\$32/MIE19, pass on INDIKA23.
8	10:15:21	The appellant replies to Ms Goyal in the main chat, asking “for whole block?”.
9	10:15:29	The appellant clarifies that by “whole block”, he means “miehol 18s 2.5mm, miehol 19s 1.5mm”.
10	10:15:42	Ms Goyal replies, “yes”.

11	10:16:18	Ms Purhonen (SC Lowy) bids for US\$28.50/MIE19. No bid for MIE18 or INDIKA23. The appellant proceeds to message Mr Tadelis in a side chat asking for a bid for the full block.
12	10:18:58	Mr Reshad (Pareto) messages the appellant in a group chat, "Ready when you guys are".
13	10:22:17	Ms Tsang (BNP Paribas) bids for all three bonds, US\$34/MIE18, US\$31.50/MIE19, US\$36/INDIKA23.
14	10:23:42	Ms Goyal tells the appellant to "please refresh before trading".
15	10:30:47	The appellant commences his discussion with Mr Reshad on the pass through trade.
16	10:41:14	The appellant sells (on behalf of SP1) 2.5m MIE18 at US\$25.375 and 1.5m MIE19 at US\$21.875.
17	10:44:57	The appellant buys (on behalf of SP5) 2.5m MIE18 at US\$25.50 and 1.5m MIE19 at US\$22.
18	10:45:02	Ms Goyal follows up on her bids. The appellant gives her a false reason for not selling the MIE bonds to her.