Crédit Industriel et Commercial *v* Teo Wai Cheong
[2012] SGHC 94

Case Number	: Suit No 626 of 2008
Decision Date	: 03 May 2012
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: Manoj Sandrasegara, Smitha Menon, Mohamed Nawaz Kamil, Daniel Chan and Jonathan Tang (Wong Partnership LLP) for the plaintiff; Chelva Rajah SC (instructed), Sean Lim and Gong Chin Nam (Hin Tat Augustine & Partners) for the defendant.
Parties	: Crédit Industriel et Commercial — Teo Wai Cheong

Banking

Contract

Evidence

[LawNet Editorial Note: The defendant's appeals to this decision in Civil Appeals Nos 94 and 59 of 2012 were allowed by the Court of Appeal on 17 May 2013. See [2013] SGCA 33.]

3 May 2012 Judgment reserved.

Chan Seng Onn J:

Introduction

1 This case highlights the problems that arise when phone conversations between a bank's relationship manager and a client, during which the client may instruct the relationship manager to make investments on his behalf, are not recorded. The main issue is whether an investor instructed his relationship manager to purchase financial products known as accumulators on his behalf, thereby making him liable to make payments associated with these accumulators.

Background

Parties

2 The plaintiff, Crédit Industriel et Commercial ("CIC"), is a French bank registered as a foreign company in Singapore, and it carries on a private banking business in Singapore. [note: 1]

3 The defendant, Mr Teo Wai Cheong ("Teo"), is a former private banking client of CIC. Teo's relationship manager at CIC was one Ms Ng Su Ming ("Ng"). Ng had also been Teo's relationship manager at Citibank from 2004 to 2006. When Ng left Citibank for CIC in 2006, she persuaded Teo to open a private banking account with CIC. [note: 2]

Facts

Overarching contracts between CIC and Teo

4 In the course of opening a private banking account with CIC, Teo signed three standard form contracts with CIC. These formed the overarching contractual documents governing the relationship between CIC and Teo.

(1) Account Opening and Custodian Agreement

5 On 11 August 2006, Teo opened a private banking account with CIC by signing CIC's Account Opening and Custodian Agreement (Natural Persons) ("Account Opening and Custodian Agreement") [note: 3], which consists of the following:

(a) The Terms and Conditions of the Account Opening and Custodian Agreement;

(b) The Risk Disclosure Statement; and

(c) The Terms and Conditions for Treasury Services.

6 The clauses in the Terms and Conditions of the Account Opening and Custodian Agreement which are relevant to this suit are as follows:

(a) Clause 6.03:

In respect of the purchase or sale of an Investment the Bank may act as agent of the Client or as a principal to the transaction.

(b) Clause 23.02:

The Client shall indemnify the Bank, its officers and employees against all liabilities, claims, costs and damages of any kind which may be incurred by any of them and all actions or proceedings which may be brought by or against them in connection with any Investment made by the Bank on behalf of the Client or other assets and the exercise of its powers and rights of the Bank under this Charge, unless due to the gross negligence or wilful default of the Bank, its officers or employees.

(c) Clause 24:

The Bank shall have a lien over all the Investments deposited pursuant hereto (or transferred into the Bank's name or the name of its nominee) for all obligations, costs, payments and expenses incurred or payable by the Client whether directly or indirectly in connection with these Terms and Conditions and the fee payable by the Client to the Bank pursuant to sub-Clause 19.01 hereof. The Bank shall be entitled to realize and sell so much thereof in such a manner as the Bank shall deem fit if any of such costs, payments or expenses, or the fee payable pursuant to sub-Clause 19.01 hereof remain owing after demand and the proceeds thereof (after deducting the expenses of realization and sale) shall be applied in or towards settlement.

The Client shall have no right or claim against the bank in respect of any loss arising out of any realization or sale, howsoever caused and whether or not a better price could have been obtained by either deferring or advancing the date of such realization or sale or otherwise howsoever.

(d) Clause 25.04:

The Bank is authorized to act on the basis of an oral instruction ("Oral Instruction") given directly or by telephone provided that the Bank is satisfied as to the identity of the caller pursuant to the verification process selected by the Bank.

Any transaction entered into by the Bank pursuant to an Oral Instruction given in accordance with this procedure shall be binding upon the Client whether or not the Client shall have given any subsequent written confirmation in respect of such Instructions. The Bank shall not be liable to the Client for any loss or damage which the Bank may incur or suffer as a consequence of the Bank acting upon such Instructions.

The Client further undertakes to fully indemnify the bank and its officers, employees and agents against all actions proceedings, claims, demands, losses, liabilities and expenses of whatever nature which may be sustained or incurred in consequence of the Bank entering into any transactions pursuant to an Oral Instruction.

...

7 The portions in the Risk Disclosure Statement which are relevant to this suit are as follows:

(a) Introduction:

To all clients intending to undertake financial transactions ... with [the Bank].

The intention of this statement is to draw your attention to the fact that there is some degree of financial risk associated with the financial transactions mentioned above. You should be prepared to carry the burden of these and all other risks and the Bank will not be responsible for any losses arising from your transactions unless the same is caused by the Bank's wilful misconduct. Accordingly, before deciding whether to transact you must understand the nature, terms and conditions and risks associated with the transactions and consider whether such trading is suitable for you in light of your financial condition and investment objectives.

In particular, you should make such enquiries, take such care and consult such professional advisers, as would be the case had you traded and/or entered into the transactions without the assistance of the Bank. You should make your own appraisal of or investigation of the advantages, disadvantages and risks of a particular transaction and should not rely solely on the Bank to advise you of the same, and the Bank shall not be obliged at any time to provide such advice. If you are in doubt or do not fully understand a transaction, you should refrain from entering into it.

(b) Paragraph 8 titled "Margin Trading":

You should be aware that you may sustain a total loss of the initial margin and any additional funds that you deposit with the Bank to maintain a position. If the market moves against you, you may be called upon to pay substantial additional margin at short notice to maintain the position. If you fail to do so, your position may be liquidated at a loss and you will be liable for any resulting deficit.

The high degree of leverage due to the small margin requirement that is often obtained in currency, options and futures trading can work against you as well as for you. The use of

leverage can lead to large losses as well as large gains. Losses may exceed the amount of margin deposited by you with the Bank and you will be liable to the Bank for any shortfall between the margin deposited and the loss occurred.

...

(c) Paragraph 16 titled "Further Risks":

...

The Bank highly recommends that you consult your lawyers, accountants, tax advisors, brokers and other professional advisers before making such investment. Accordingly, if you enter into transactions with the Bank, the Bank will assume that you understand and accept the characteristics and risks associated with such transactions.

In accepting any services of facilities made available to you, you agree that (a) you have made your own assessment in relation to investment or trading transactions; (b) the Bank is not under any responsibility to make or give advice or make recommendations; (c) if any suggestions are made by the Bank, it assumes no responsibility for your portfolio or for any investment or transaction made; (d) you are responsible for monitoring the performance and continuing appropriateness of outstanding transactions; ... (f) any risk associated with and any loss suffered as a result of the Bank entering into any transactions or investments on your behalf is your responsibility; and (g) you will indemnify the Bank against any loss or liability which it may suffer in relation to the foregoing matters.

(d) Acknowledgment of receipt of the Risk Disclosure Statement, which was separately signed by Teo:

This acknowledges that I/we have received a copy of the RISK DISCLOSURE STATMENT and that I/we have carefully read and understood its contents.

I/We also acknowledge that the Risk Disclosure Statement is not and cannot be comprehensive, and further confirm that I/we have made such enquiries on my/our own and have taken or will take such care as would be in the case had I/we traded and/or entered into the transactions without the assistance of the Bank. The Bank shall not be liable for any loss, damage or liabilities which may be incurred by us in connection with the transactions.

8 The clauses in the Terms and Conditions for Treasury Services which are relevant to this suit are as follows:

(a) Clause 6.1:

In addition to the Bank's rights of set-off, combination and consolidation in respect of the Client's Account(s) or any other right which it may at any time be entitled whether by operation of law, contract or otherwise, the Bank may apply (without prior notice to the Client) any credit balance (whether or not then due) on any account to which the Client is beneficially entitled (whether singly or jointly) or any Collateral towards the satisfaction of any or all of the Client's liabilities (whether present or future, actual or contingent or several or joint) under these Terms and Conditions or under any Treasury Contracts.

(b) Clause 6.2(a):

For the purpose of closing-out and liquidating the Treasury Contract under Clause 9, the Bank may, without liability to the Client, realise or sell so much of the Collateral or take all such action as the Bank deems fit (including but not limited to liquidation of the Collateral prior to its maturity or conversion of the same into other currencies), and in this regard the Client hereby irrevocably authorises the Bank to act on the Client's behalf.

(c) Clause 1.2:

...

"Event of Default" refers to any of the events described in Clause 8.1 and 8.2;

...

(d) Clause 8.2:

Any one of the following circumstances shall be a Special Circumstance:-

(a) If the Client fails duly to pay any amount hereunder when due or to make delivery of any underlying asset as required under any Treasury Contract;

(b) ...

(c) If the Client fails to perform or observe any term or condition contained in the Agreement or disaffirms or repudiates any Treasury Contract;

...

and at any time while any Special Circumstance is continuing, the Bank may, at its sole and absolute discretion, by notice to the Client specify the relevant Special Circumstance(s) and declare that all Treasury Contracts and the obligations of the parties in connection therewith be terminated as of the date specified in such notice. The Treasury Contracts and such obligations shall so terminate as of such date (whether or not such Special Circumstance(s) are continuing on such date).

(e) Clause 9.1:

If an Event of Default has occurred, whether or not continuing, the Bank shall have the right to close-out and liquidate in the manner described below all (if Clauses 8.1 or 8.2 apply), or the affected (if Clause 9.5 applies) outstanding Treasury Contracts (except where any such Treasury Contracts may not under applicable law or in the Bank's opinion be closed out and liquidated), by notice to the Client (provided, however, that in the case of Clause 8.1, such close-out and liquidation shall be automatic as to all outstanding Treasury Contracts without notice). Where such close-out and liquidation is to be effected, it shall be effected by closing-out each outstanding Treasury Contract (including, but not limited to any Treasury Contract which has not been performed and in respect of which the Settlement Date is on or precedes the Close-Out Date) so that each such Treasury Contract is cancelled ...

(f) Clause 11.1.4:

If the margin specified by the Bank falls below its specified levels, the Bank shall not be obliged to

effect any Treasury Contract with or for the Client and the Client shall not hold the Bank responsible for losses sustained by the Client as a result of any action or omission of the Bank pursuant to this Clause 11.1.4 or pursuant to any closing-out and liquidation under these Terms and Conditions.

(g) Clause 11.1.5:

If at any time the Bank determines that such margin fall below the level(s) specified by the Bank then the Bank, at its discretion, may:

(a) require Client to deposit such additional margin to restore the Margin to the level specified by the bank within the time period specified by the Bank; and/or

(b) close-out any one or more outstanding Treasury Contracts without any notice to the Client in the manner set out in Clause 9.1.

(2) Banking Facility Letter and Charge Agreement

9 Teo also signed CIC's Banking Facility Letter and CIC's Charge Agreement (Natural Persons) ("Charge Agreement"), both dated 29 September 2006. [note: 4] In the Banking Facility Letter, CIC confirmed granting to Teo pursuant to his request a loan facility of up to US$5 million, an amount of up to US$5 million to facilitate his entering into Treasury Contracts and an amount of up to US$5 million to facilitate his entering into Margin Trading Transactions. The clause in the Banking Facility Letter which is relevant to this action is clause 1 titled "Loan Facility". This clause states, *inter alia*, the following:

For the avoidance of doubt, any certificate issued to you by the Bank and signed by an officer of the Bank certifying the amount(s) which are overdue hereunder shall, in the absence of manifest error, be conclusive evidence for all purposes as to the amount due and owing to the Bank by you and shall be binding on you.

10 In the Charge Agreement, Teo provided CIC with a fixed charge and lien against his deposits and investment portfolio as a continuing security for due and punctual payment of all moneys owed to CIC. The clauses in the Charge Agreement which are relevant to this suit are as follows:

(a) Clause 6 titled "Enforcement of Security":

If the Chargor has failed to pay any of the Secured Moneys when due, or is in default under any of the terms of the Banking Facilities, is unable or admits to being unable to pay the debts of the Chargor as they become due, is subject to any proceedings in, or analogous to insolvency, bankruptcy or liquidation or if legal process is applied for, levied or enforced against all or any part of the Deposits or the Investment Portfolio or any other assets of the Chargor held with the Bank, the Bank may, without demand, legal process or any other action with respect to the Chargor appropriate, transfer, and sell and set off the proceeds of the whole or any part of the Deposits, the Investment Portfolio or any other assets of the Chargor held with the Bank, at any time and in any way it deems expedient, free from any restrictions and claims, in or towards payment of all or any part of the Secured Moneys. ...

(b) Clause 9 titled "Lien":

The Chargor agrees that the Bank has a lien over all property of the Chargor coming into the

possession or control of the Bank, for custody or any other reason and whether or not in the ordinary course of banking business and the Bank shall have the power to sell such property to repay the Secured Moneys.

Accumulators purchased under Teo's account

11 In July 2007, Ng introduced to Teo a new investment product called the equity accumulator. [note: 5] It is convenient at this point to refer to the description of an equity accumulator found in CIC's Statement of Claim (Amendment No. 3), [note: 6] while keeping in mind that the precise features of any given accumulator will vary according to the terms of the contract by which it is established:

> Briefly, the Accumulator is a structured financial product where:
>
> a. A client (i.e., the Defendant) agrees to purchase a certain pre-determined quantity of shares of a particular listed company at a pre-determined price (usually called the "**Forward Price**" or the "**Strike Price**") which is below the market price on the day the Accumulator is contracted (the "**Initial Price**"). The client thus has the opportunity to purchase shares of a particular listed company at a discounted price.
>
> b. The Accumulator has an early termination feature which is called the "knock-out". This occurs when the market price of the share counter reaches or exceeds the "knock-out" price at any time ("**knocked-out**"). A knock-out price is set at a level above the Initial Price.
>
> c. Where the Accumulator provides for a guarantee purchase, a client is obliged to purchase a pre-determined quantity of shares at the Forward Price irrespective of the market price of the shares (the "**Guaranteed Purchase**").
>
> d. At the end of each pre-determined observation period (which could be daily, weekly or monthly), if the market price of the share counter closes at or above the Forward Price, the client is obliged under the Accumulator to accumulate a pre-determined quantity of shares at the Forward Price.
>
> e. However, in the event that the market price of the share falls below the Forward Price, the purchaser is then obliged to accumulate double of the pre-determined quantity of shares at the Forward Price.
>
> f. The Accumulator would continue for a pre-determined number of scheduled observation periods (usually one year) unless the Accumulator is terminated or knocked-out prior to its maturity.
>
> g. In the event that the Accumulator is not knocked-out and continues for its full term (usually one year), the maximum amount that the purchaser is liable under the Accumulator is the cost of purchasing double of the pre-determined quantity of shares for each scheduled observation period at the Forward Price and any Guaranteed Purchase (the "**Maximum Obligation**").
>
> h. The client also has the option under the Accumulator to terminate the Accumulator prior to its maturity or before it is knocked-out. This would enable the client to manage any loss incurred under the Accumulator.
>
> [emphasis in original]

12 According to CIC, the typical process by which Teo would purchase accumulators through Ng is as follows: [note: 7]

(a) First, Ng would call CIC's Private Banking Advisory department ("PBA") to obtain the current market price of a particular share counter and the indicative forward and knock-out prices of the related accumulator;

(b) Second, Ng would (i) convey to Teo the recommendations of research analysts on the share counter and the indicative forward and knock-out prices of the related accumulator; and (ii) obtain Teo's instructions on the range of the indicative initial, forward and knock-out prices and the approximate range of the maximum obligation within which Teo was willing to purchase the accumulator (it is noted that Teo disputes (b) [note: 8]);

(c) Third, Ng would repeat (b) in relation to her other clients;

(d) Fourth, Ng would contact PBA to place either (i) a consolidated order for an accumulator on the share counter at certain initial, strike and knock-out prices; or (ii) several orders for several accumulators on the same share counter at different initial, strike and knock-out prices;

(e) Fifth, PBA would place Ng's order(s) with CIC's counterparties, such as DBS Bank and Goldman Sachs, and then inform Ng if and when the order(s) has been filled;

(f) Sixth, Ng would allocate to each client his proportion of the accumulator(s) in accordance with his instructions, and Ng's Client Support Officer would record the allocation in CIC's system; and

(g) Seventh, CIC would send confirmation notes and term sheets detailing the terms of the accumulators purchased by its clients to their residential addresses.

This process results in two sets of contracts. The first set is formed when CIC enters into accumulator transactions with other banks and the second set is formed when CIC subsequently enters into accumulator transactions with its clients. Under the first set of contracts, CIC's counterparties are obliged to deliver shares to CIC in return for payment. Under the second set of contracts, CIC is obliged to deliver shares to its clients, who are obliged to pay for them.

13 Between 20 July 2007 and 3 October 2007, twenty equity accumulators were purchased under Teo's CIC account. These transactions are listed in the table below: [note: 9]

Table of Accumulators

No.	**Trade date**	**Share counter**	**Initial price (S$)**	**Strike price (S$)**	**Knock-out price (S$)**	**Maximum obligation (S$)**	**Knock-out date**
1	20.07.07	Noble Group Ltd ("Noble")	1.85	1.6558	1.8870	1,496,181	23.07.07
2	25.07.07	Noble	1.93	1.7688	1.9686	1,069,770	24.09.07

3	01.08.07	Keppel Corp Ltd ("Keppel")	13.10	11.9734	13.3620	663,805	03.08.07
4	13.08.07	Keppel	12.40	11.3832	12.6480	691,188	27.08.07
5	15.08.07	Keppel	12.10	11.0352	12.3420	670,057	23.08.07
6	10.09.07	Keppel	13.00	11.7650	13.2600	1,071,556	12.09.07
7	13.09.07	DBS Group Holdings Ltd ("DBS")	19.60	17.7380	19.9920	1,795,086	19.09.07
8	13.09.07	DBS	19.90	18.0095	20.2980	1,822,561	20.09.07
9	18.09.07	DBS	19.10	17.4383	19.6730	2,179,788	19.09.07
10	25.09.07	Neptune Orient Ltd ("NOL")	5.15	4.5320	5.3045	917,277	01.10.07
11	25.09.07	Cosco Corp Ltd ("Cosco") (1^{st})	5.35	4.6920	5.5105	2,374,152	26.09.07
12	27.09.07	China Energy ("CE") (1^{st})	1.41	1.2803	1.4523	971,748	28.09.07
13	01.10.07	Cosco (2^{nd})	6.90	6.0720	7.1070	1,530,144	02.10.07
14	01.10.07	CE (2^{nd})	1.6701	1.5198	1.7202	1,148,969	02.10.07
15	02.10.07	CE (3^{rd}) (established at 9:36 am)	1.7950	1.6335	1.8489	823,284	N.A.
16	02.10.07	CE (4^{th}) (established at 9:22 am)	1.7946	1.6017	1.8305	1,614,514	N.A.
17	02.10.07	CE (5^{th}) (established at 9:14 am)	1.8109	1.6162	1.8471	1,629,130	N.A.
18	02.10.07	CE (6^{th}) (established in two tranches at 11:39 am and 11:56 am)	1.74	1.5834	1.7922	1,979,250	N.A.
19	03.10.07	CE (7^{th})	1.68	1.5238	1.7304	4,571,400	N.A.
20	03.10.07	Sembcorp Marine	5.30	4.7753	5.459	3,128,7777	18.10.07

14 The subject matter of this suit is the last five CE accumulators, *i.e.* entry numbers 15 to 19 in the Table of Accumulators. These will be referred to individually as the Third, Fourth, Fifth, Sixth and Seventh CE Accumulators respectively (given that the First and Second CE Accumulators, being the non-disputed accumulators at entry numbers 12 and 14 respectively in the Table of Accumulators, were established earlier) or collectively as the "Disputed Accumulators". In this case, CIC claimed that Teo instructed Ng to purchase the Disputed Accumulators on his behalf, whereas Teo denied this. Apart from this central dispute, CIC and Teo also presented two very different versions of events. I will first set out their respective cases before I make findings on what, on a balance of probabilities, had transpired between the parties.

Plaintiff's case

15 I now set out CIC's version of the events. On 2 October 2007, CIC established the Third to Sixth CE Accumulators pursuant to Teo's instructions, that is, within the range of the indicative initial, forward and knock-out prices and with the maximum obligation which Teo agreed to. [note: 10] This was after:

(a) Ng provided Teo with information on CE shares, including recommendations of research analysts from various brokers and/or financial institutions; and

(b) Teo instructed Ng to purchase CE accumulators where:

(i) the indicative initial price would be approximately between S$1.75 and S$1.82;

(ii) the indicative forward price would be between 89.25% and 91% of the initial price;

(iii) the indicative knock-out price would be between 102% and 103% of the initial price; and

(iv) the maximum obligation would be approximately S$6 million.

CIC then sent Teo term sheets, confirmation notes and statements of accounts detailing the terms of the Third to Sixth CE Accumulators.

16 On 3 October 2007, CIC established the Seventh CE Accumulator pursuant to Teo's instructions, that is, within the range of the indicative initial, forward, and knock-out prices and within the range of the maximum obligation which Teo agreed to. [note: 11] This was after:

(a) Ng provided Teo with information on CE shares, including recommendations of research analysts from various brokers and/or financial institutions; and

(b) Teo instructed Ng to purchase a CE accumulator where: [note: 12]

(i) the indicative initial price would be approximately between S$1.64 and S$1.70;

(ii) the indicative forward price would be approximately 90.7% of the initial price;

(iii) the indicative knock-out price would be approximately 103% of the initial price; and

(iv) the maximum obligation would be approximately between S$4 and S$5 million.

CIC then sent Teo term sheets, confirmation notes and statements of accounts detailing the terms of the Seventh CE Accumulator.

17 Also on 3 October 2007, CIC established the Sembcorp Marine accumulator ("Sembcorp Accumulator") pursuant to Teo's instructions, that is, within the range of the indicative initial, forward, and knock-out prices and with the approximate range of the maximum obligation which Teo agreed to. [note: 13] This was after:

(a) Ng provided Teo with information on Sembcorp shares, including recommendations of research analysts from various brokers and/or financial institutions; and

(b) Teo instructed Ng to purchase a Sembcorp Accumulator where:

(i) the indicative initial price would be approximately between S$5.20 and S$5.40;

(ii) the indicative forward price would be approximately 90.1% of the initial price;

(iii) the indicative knock-out price would be approximately 103% of the initial price; and

(iv) the maximum obligation would be approximately S$3.1 million.

CIC then sent Teo term sheets, confirmation notes and statements of accounts detailing the terms of the Sembcorp Accumulator.

18 Thereafter, CIC's case was that it repeatedly asked Teo to remit additional funds to his account for the Disputed Accumulators [note: 14] and Teo responded by reassuring CIC on several occasions between 18 October 2007 and 13 November 2008 that he would comply with his obligations under the Disputed Accumulators and would pay for the CE shares delivered to him under those accumulators. [note: 15] On 5 November 2007, Teo agreed to provide CIC with a cheque of S$160,000 to acquire some of the CE shares delivered under the Disputed Accumulators, and on 7 November 2007, CIC received this cheque. [note: 16] On 16 November 2007, Teo instructed CIC to sell 180,000 CE shares which he had acquired under the First to Seventh CE Accumulators [note: 17] and to use the sale proceeds to pay for some of the CE shares which had been delivered to him under the Disputed Accumulators. [note: 18] However, there were still sums due from Teo to CIC for shares delivered under the Disputed Accumulators which remained outstanding. [note: 19]

19 According to CIC, Teo did not raise any issue about the Disputed Accumulators until 20 November 2007 at a meeting with Ng and the head of CIC's private banking department, Mr Paul Kwek ("Kwek"). Even at the meeting, Teo did not deny that CIC had entered into the Disputed Accumulators pursuant to his instructions. [note: 20]

20 By way of a letter dated 14 March 2008, CIC's solicitors demanded that Teo pay what he owed to CIC for shares delivered under the Disputed Accumulators. [note: 21] As Teo did not make payment, CIC proceeded to exercise what they claimed to be their rights under, *inter alia*, the Account Opening and Custodian Agreement to close-out and terminate the Disputed Accumulators, and in so doing, CIC was obliged to pay the following costs imposed by their counterparties: [note: 22]

No.	Date of closing-out	CE Accumulator	Counterparty	Closing-Out cost (S$)
1	10.04.2008	Seventh	Goldman Sachs	1,575,000
2	11.04.2008	Fourth	DBS	542,315.12
3	11.04.2008	Fifth	DBS	547,631.92
4	15.04.2008	Third	DBS	288,149.40
5	15.04.2008	Sixth	Goldman Sachs	672,296.67
			Total:	3,625,393.11

21 CIC claimed that the outstanding amounts due from Teo to CIC for CE shares accumulated pursuant to the Disputed Accumulators as of the various closing-out dates were as follows: [note: 23]

No.	CE Accumulator	No. of CE shares accumulated until closing-out date	Outstanding amounts due for CE shares accumulated (S$)
1	Third	246,000	339,768.00
2	Fourth	488,000	666,307.20
3	Fifth	490,000	672,339.20
4	Sixth	625,000	791,700.00
5	Seventh	1,500,000	2,098,265.82
		Total:	4,568,380.22

22 Subsequently, CIC exercised what they claimed to be their rights pursuant to clause 24 of the Account Opening and Custodian Agreement and clauses 6 and 9 of the Charge Agreement to:

(a) realise the following assets held in Teo's account [note: 24]; and

No.	Asset	Quantity	Date of sale	Share price at the time of sale (S$)	Amount received (S$)
1	CE shares	1,963,000	17.04.08	0.5175	1,013,135.10

2	CE shares	1,266,000	18.04.08	0.5061	639,008.66
3	Neptune shares	8,000	21.04.08	3.2675	25,991.73
4	Sembcorp shares	26,000	21.04.08	4.15	107,441.07
				Total:	1,785,576.56

(b) apply the sale proceeds towards settlement of the total outstanding amount due from Teo to CIC under the Disputed Accumulators, *i.e.* S$8,193,773.33 being the sum of the closing-out costs (see table at [20]) and the outstanding amounts for the CE shares accumulated under the Disputed Accumulators (see table at [21]). [note: 25]

After the set-off, the total outstanding amount due from Teo to CIC was S$6,408,196.77 (S$8,193,773.33 minus S$1,785,576.56).

23 As Teo had insufficient funds in his account and failed to pay the total outstanding amount of S$6,408,196.77, CIC extended various loans to Teo to cover this sum, which CIC had paid to its counterparties. On 27 May 2009, CIC issued a conclusive certificate of indebtedness pursuant to clause 1 of the Banking Facility Letter certifying that the total amount due from Teo to CIC as of 29 August 2008 was S$6,459,519.83, being the sum of the principal (S$6,408,196.77) and the total interest accrued (S$51,323.06). Thereafter, CIC instituted the present suit to claim this amount from Teo. [note: 26]

24 Apart from arguing that Teo had in fact authorised the purchase of the Disputed Accumulators, CIC raised an alternative argument that Teo was estopped from denying that he authorised the purchase because he did not raise any issue about these accumulators until around 20 November 2007, despite having received the term sheets, confirmation notes and statements of account detailing the terms of the accumulators at around 16 October 2007. Even at the 20 November 2007 meeting, Teo did not deny that CIC had entered into the Disputed Accumulators pursuant to his instructions. Teo's silence and inaction, CIC argued, induced CIC to believe that the Disputed Accumulators were authorised by him and led CIC to continue paying for the CE shares delivered under the terms of the Disputed Accumulators. Further, at CIC's request, Teo remitted additional funds for the purchase of CE shares under the Disputed Accumulators thereby affirming his obligations under the Disputed Accumulators. [note: 27]

Defendant's case

25 Teo's case was that Ng had purchased the Disputed Accumulators and the Sembcorp Accumulator without his knowledge or authorisation. [note: 28] Teo claimed that Ng had not obtained instructions from him on the range of indicative initial, forward or knock-out prices or the approximate maximum obligation in respect of the Disputed Accumulators and the Sembcorp Accumulator. [note: 29]

26 Teo's version of the events is as follows:

(a) On 11 October 2007, Ng telephoned Teo to request for funds to enlarge his account but did not mention the Disputed Accumulators and the Sembcorp Accumulator. [note: 30]

(b) On 16 October 2007, Ng contacted Teo and requested Teo to place more funds with CIC for accumulator transactions. When queried, Ng revealed that she had entered into the Disputed Accumulators and the Sembcorp Accumulator for Teo, and that the maximum exposure under these transactions was about S$9 million. Teo was shocked and told Ng that she had no authority to enter into these transactions. He informed Ng that he was not going to accept these transactions and instructed her not to enter into further accumulator transactions on his behalf. [note: 31]

(c) On 18 October 2007, Ng contacted Teo and informed him that the Sembcorp Accumulator had been knocked out. At Ng's request, Teo agreed to accept the Sembcorp Accumulator transaction. Ng then informed Teo that the maximum exposure for the Disputed Accumulators was 13,500 shares per day and requested that Teo accept the transactions but Teo refused to do so. Teo then requested Ng to furnish him with a breakdown on all previous accumulators done under his account. At Ng's request, Teo agreed to give her a month to resolve the issue of the Disputed Accumulators with her superiors. Thereafter, Teo waited for Ng's reply. [note: 32]

(d) On 5 November 2007, Ng requested for a sum of S$160,000 to pay for the First CE Accumulator, the Second CE Accumulator and the Sembcorp Accumulator. Teo complied and issued a cheque for the said sum to CIC. [note: 33]

(e) On 13 November 2007, Ng informed Teo that her superiors had lectured her and wanted her to persuade Teo to reassign the accumulators to his other investment account, mortgage his house or transfer more funds from his Citibank account. Teo refused to accept the Disputed Accumulators transactions and maintained that they were unauthorised (*i.e.* he never gave Ng any instructions to enter into the Disputed Accumulator transactions and Ng basically went on a frolic of her own to purchase those Disputed Accumulators without his knowledge.) On the same day, Ng sent an e-mail to Teo, attempting to persuade Teo to accept the Disputed Accumulators by attaching a Merrill Lynch Report on CE. [note: 34]

(f) On 15 November 2007, Ng telephoned Teo and made a further attempt to persuade him to accept the Disputed Accumulator transactions. Teo refused and reminded Ng to produce a detailed breakdown on all previous accumulators done under his account. In view of the declining stock market and with a view to terminating his dealings with CIC, Teo also instructed Ng to sell the CE shares accumulated under the First and Second CE Accumulators as well as his Neptune Orient Line shares. Ng also sent an e-mail to Teo, attaching further information on CE and Teo replied via e-mail that the attachment was old news. Teo also stated that the investment was risky and "banging so hard on a company like CE was something I will never do." [note: 35]

(g) On 19 November 2007, Ng contacted Teo and revealed for the first time that the number of shares to be accumulated would double if the market price of the share were to fall below the discounted price, and hence Teo had to accumulate 27,000 shares per day under the Disputed Accumulators. Ng informed Teo that CIC had insisted that Teo accept the Disputed Accumulators, reassign the accumulators to his other investment account, mortgage his house or transfer more funds from his Citibank account. Teo refused. [note: 36]

(h) On 20 November 2007, Teo met with Kwek to complain about the Disputed Accumulators. Teo informed Kwek that although he had instructed Ng to limit his exposure in accumulators to about $1 million, Ng had entered into CE accumulators way in excess of the limit and the authority given to her. Kwek did not want to commit on the matter and arranged for Teo to meet

with CIC's general manager. [note: 37]

27 As Teo's position was that he had not authorised the purchase of the Disputed Accumulators, he denied that he owed CIC any monies, whether it be the sums required to purchase the accumulated shares or the closing-out costs for the Disputed Accumulators. [note: 38] He also claimed that he did not, at any time, represent to CIC that he would pay for the Disputed Accumulators or remit monies to his account for such a purpose. [note: 39] Teo also argued that, in any case, CIC should have closed-out the Disputed Accumulators upon discovering that they were disputed in October 2007 in order to mitigate the closing-out costs and the amount due in respect of the CE shares accumulated under the Disputed Accumulators, instead of five months later. [note: 40] Further, Teo argued that he had not requested for loans or agreed to obtain loans from CIC, and that CIC was not entitled to impose loans on him. Therefore, he argued, CIC is not entitled to the interest that they are claiming. [note: 41]

28 Finally, Teo counterclaimed against CIC. Teo argued that CIC had wrongfully realised his assets and/or set off his monies maintained with CIC, and that CIC was obliged to repay all such sums and monies due and owing to him. [note: 42] Teo also claimed damages in respect of what he claimed to be the wrongful liquidation of his assets with CIC. [note: 43]

History of the case

29 This suit was first tried before a Judicial Commissioner, who found that Teo had instructed Ng to purchase the Disputed Accumulators and gave judgment for CIC on its claims (see *Crédit Industriel et Commercial v Teo Wai Cheong* [2010] 3 SLR 1149). Teo then lodged an appeal against the Judicial Commissioner's decision.

30 On appeal, the Court of Appeal was of the view that CIC should disclose certain information and documents, which related to orders for the Disputed Accumulators made by CIC's other clients – identified as "Client A", "Client B" and "Client C" – and which were previously withheld on the ground of banking secrecy, because such evidence was relevant in the light of Ng's practice of consolidating orders and because such disclosure would not breach banking secrecy. [note: 44] Accordingly, the Court of Appeal exercised its powers under s 37(4) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and directed CIC to produce copies of the following transcripts/documents (with only the names of CIC's clients or former clients and/or account numbers redacted where necessary to prevent their identification) ("Newly Disclosed Materials") (see *Teo Wai Cheong v Crédit Industriel et Commercial* [2011] SGCA 13 at [24]):

(a) Transcripts of all instructions and discussions that Ng had with CIC's clients (or former clients) who were identified as "Client A and "Client B", as well as any other clients (or former clients), in relation to CE accumulators discussed, quoted or purchased on 2 and 3 October 2007.

(b) Transcripts of all instructions (if oral) given and discussions that Ng had with PBA and/or any other present (or former) employee of CIC in relation to CE accumulators discussed, quoted or purchased on 2 and 3 October 2007. All written communications, e-mails, in connection with these matters should also be produced.

(c) Transcripts of telephone conversations and any e-mails or written communications between PBA and/or any other present (or former) employees of [CIC] with any of CIC's counterparties relating to CE accumulators discussed, quoted or purchased on 2 and 3 October 2007.

(d) Transcripts, any internal memoranda, e-mails and/or written communications between employees of CIC as well as any internal reports made in relation to any matter, transaction or issue involving CE accumulators established on 2 and 3 October 2007 with any client or former clients.

(e) Any internal memoranda, e-mails and/or written communications between any present or former employee of the respondent in relation to the handwritten note found at Record of Appeal Vol IV, Part A at p 6511.

31 CIC duly disclosed these materials and parties made submissions on the relevance of the Newly Disclosed Materials. As the Court of Appeal was unable to conclude that the findings of fact of the Judicial Commissioner would have been the same if he had seen the Newly Disclosed Materials, or if they had been subjected to cross-examination by counsel for Teo, it set aside the judgment of the Judicial Commissioner and ordered that a new trial be fixed. [note: 45] Accordingly, a re-trial was fixed before me.

The re-trial

Ng's evidence

32 On the first day of the re-trial, CIC informed the court that Ng would not be appearing in court as a witness for CIC during the re-trial. CIC applied for Ng's affidavits of evidence-in-chief and her oral evidence from the first trial to be admitted as evidence for the re-trial pursuant to section 33 of the Evidence Act (Cap. 97) ("EA") on the basis that she could not be found. I allowed the application and I now give my reasons.

33 Section 33 of the EA states the following:

Relevancy of certain evidence for proving in subsequent proceeding the truth of facts therein stated

33. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the court considers unreasonable subject to the following provisions:

(a) the proceeding was between the same parties or their representatives in interest;

(b) the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) the questions in issue were substantially the same in the first as in the second proceeding.

34 For the first trial, Ng filed an affidavit of evidence-in-chief and a supplementary affidavit of evidence-in-chief and both were admitted into evidence. Ng also took the stand and was cross-examined under oath by Teo's counsel on all aspects of the affidavits. It is clear that all of this evidence is "evidence given by a witness in a judicial proceeding" and is "relevant for the purpose of

proving" in this re-trial, which is "a subsequent judicial proceeding", "the truth of the facts which it states". Teo did not dispute that the first trial and the re-trial are proceedings between the same parties, and that the questions in issue are substantially the same, given that neither party has amended its pleadings. The real fight occurred over the issues of whether Ng "cannot be found" and whether Teo could be said to have "had the right and opportunity to cross-examine" Ng on all relevant matters during the earlier judicial proceedings in view of the fact that the Newly Disclosed Materials were not made available then.

35 CIC argued that Ng, who to its knowledge was resident in Dubai, could not be found because after a re-trial of this suit was ordered on 11 April 2011, CIC made the following attempts to locate her to no avail: [note: 46]

(a) On 16 May 2011, CIC tried to contact Ng on her Dubai mobile phone number and her Singapore mobile phone number but failed. CIC also sent an e-mail to Ng's last known e-mail address but did not get any response.

(b) On 16 June 2011, CIC's representative, Kwek, visited Ng's parents' residence in Singapore, where Ng used to reside when she was based in Singapore, but Ng's father said that he did not know how to contact Ng. Kwek told Ng's father to ask Ng to contact CIC if he managed to speak to her. However, Ng did not contact CIC.

(c) On 26 July 2011, CIC issued a subpoena to testify against Ng and on 29 July 2011, attempted but failed to serve the subpoena on Ng at her parents' residence in Singapore. Further attempts to serve the subpoena on Ng on 7 August 2011 and 13 August 2011 were also unsuccessful.

(d) In the period of 15 August 2011 to 22 August 2011, CIC's representative visited Café Paparotti, a restaurant in Dubai where Ng was last known to be working at, but was told that Ng no longer worked at the restaurant.

(e) On 7 September 2011, CIC sent a letter by courier to Ng's last known address in Dubai but was informed that the letter could not be delivered to Ng. On the same day, CIC sent a letter addressed to Ng to her parents' residence in Singapore but did not receive an acknowledgment of receipt of the letter.

(f) On 9 September 2011, CIC sent a letter to Ng's parents requesting their assistance in contacting Ng but did not receive an acknowledgment of receipt of the letter.

(g) On 24 September 2011, CIC's representative visited Ng's parents' residence but was unable to contact Ng or her parents.

(h) On 28 September 2011, CIC placed an advertisement in The Straits Times requesting for Ng to contact CIC. CIC also arranged for a similar advertisement to be published in an English newspaper in Dubai.

(i) CIC received advice from Dubai counsel that without knowledge of Ng's present address, there is no procedure under Dubai law to compel Ng to give evidence in the court of a foreign jurisdiction, or for evidence given in a Dubai court to be used in foreign proceedings.

36 Teo's counsel, in turn, argued that the "cannot be found" limb of s 33 of the EA required CIC to use its best efforts to locate Ng and that CIC had not done so. He argued that CIC, being a big

international bank, should have hired a private investigator in Singapore and/or Dubai to find out where Ng was. Teo's counsel ventured to suggest that CIC was not keen on Ng returning to court and facing further cross-examination, and that CIC would rather have Ng's evidence be accepted without having been tested against the Newly Disclosed Materials. In particular, he highlighted one of these documents, a draft e-mail dated 19 November 2007 which Ng meant to send to Teo but never did (the "Draft E-Mail"), and the comments which the Court of Appeal made on it. I set out this e-mail in full:

> Hi Mr Teo,
>
> Just wanted to write you a short update on both China Energy as well as your current position in the bank.
>
> Firstly, with regards [*sic*] to our conversation last week on Tues [*sic*] evening, I would like to thank you for *acknowledging that due to our almost 3 years partnership you would be seeing through the accumulators on the China Energy shares as per our discussion*. I have sold off 150,000 worth of China Energy Shares on 16th November at a share price of 1.1628 per share as per our conversation on 15th of November. Going forward, I will still be updating you consistently and discussing with you how we will move forward as the market unfolds in the coming months.
>
> You may not be aware that one of China Energy's biggest shareholders is the *ASEAN China Investment Fund Limited which is actually a SINO-SWISS partnership between a [*sic*] Swiss Government and UOB Venture Management Limited. They have 95,000,000 shares. The biggest shareholder of the ASEAN China Investment Fund Limited is China Development Bank. This is a good indication of the positive direction of China's alternative energy sector as the world and China continues its search for alternative fuel sources as oil prices continue to rise. And China Energy Limited's position as one of the biggest Dimethanol producers would mean that it is poised to capitalize on this.
>
> Currently, you have already picked up 404,000 shares of China Energy. We are accumulating 13500 shares per day for 360 days at a strike price of an average of S$1.60. As I have mentioned to you previously, the collateral shortfall is currently at USD 4,500,000 and it is the Bank's view that you could mitigate this shortfall with the greatest urgency.
>
> ...
>
> [emphasis added]

Teo pointed out that one of the reasons which the Court of Appeal gave for ordering a re-trial was that the italicised words in the Draft E-Mail "may or may not support Ng's evidence. They are ambiguous and Ng should testify and be cross-examined on what she meant by those words" [note: 47] .

37 There is no local case authority on the meaning which ought to be given to the phrase "cannot be found" in s 33 of the EA. For guidance on this matter, it is useful to refer to the commentary on a substantially similar provision, s 33 of the Indian Evidence Act 1872, in Sarkar's Law of Evidence (Sixteenth Edition) (2007) (Volume 1) at page 853:

> If a party cannot find a witness, then he is, as it were dead to him; and his depositions in a cause between the same parties may be read, provided that he endeavoured to find him, but could neither see him, nor hear of him... The court must be satisfied that there has been no

collusion and that the search has been *bona fide*... **It is not sufficient for him to show simply that he is ignorant as to where the witness is. He must go further and prove affirmatively to the court that he has used due diligence.**

[emphasis added]

I agreed that "due diligence", instead of "best efforts" as Teo's counsel proposed, is a more appropriate threshold for the "cannot be found" limb of s 33 of the EA, as it could not have been Parliament's intention to require a party to show that it has spared no time and expense in its search, in order to qualify under s 33 of the EA. On the facts of this case, I found that the requirements of s 33 of the EA for admitting the evidence of Ng at the first trial were met. I found that CIC had used due diligence by exploring many avenues and expending much time and effort in its search for Ng from the time that the Court of Appeal ordered a re-trial to the time of the commencement of the re-trial. I did not think that s 33 of the EA went so far as to require a private investigator to be hired in this case and Teo's counsel was not able to produce any authority to the contrary. Further, there was nothing in the evidence to show that CIC's search was not *bona fide*, and I did not accept the suggestion that CIC might have been quite happy for Ng not to testify at the re-trial. In fact, Ng's absence could equally be seen as CIC's lost opportunity to ask Ng to explain the ambiguities which the Court of Appeal found in the Newly Disclosed Materials.

38 On the issue of whether Teo had in the first trial the right and opportunity to cross-examine Ng on the evidence which is sought to be admitted, CIC submitted that Teo had this right and opportunity and in fact did cross-examine Ng comprehensively on the contents of her affidavits. On the other hand, Teo submitted that this limb of s 33 of the EA was not fulfilled because Teo's counsel only had the opportunity to cross-examine Ng against the documents that were before the court at that time; he did not have the opportunity to cross-examine Ng against the Newly Disclosed Materials. Again, Teo's counsel emphasised the Draft E-mail and the comments which the Court of Appeal made on it.

39 Certainly, it would be ideal if Ng was present as a witness before me to give evidence afresh. She could then, in her affidavits of evidence-in-chief for the re-trial, deal with the Newly Disclosed Materials and be asked to explain any ambiguities and discrepancies. Teo's counsel would then have the full opportunity to cross-examine Ng against the backdrop of all the documents before this court for the re-trial, including the Newly Disclosed Materials. More importantly, I would have been able to observe her demeanour as a witness whilst testifying under oath before me. However, given that Ng cannot be found, in my opinion through no fault of either CIC or Teo, the question is where we should go from here. It cannot seriously be argued that the Court of Appeal meant to say that if Ng could not be cross-examined on the Draft E-Mail and on the other Newly Disclosed Materials, then all of the evidence that she had previously given, and on which she had been cross-examined at length by Teo's counsel during the earlier trial, should be excluded entirely. Surely the more sensible approach would be to admit the evidence that she had given at the first trial and, when deciding what weight to give it, to consider that there are also the Newly Disclosed Materials which may or may not support her evidence, together with whatever submissions which the parties may make on these materials. In any event, I am of the view that provision (b) in s 33 of the EA has been sufficiently satisfied on the facts to allow Ng's evidence to be admitted in the re-trial before me.

40 For the above reasons, I allowed CIC's application and ordered for the costs of the application to be in the cause.

Issues

41 The issues in this case are as follows:

(a) First, whether Teo instructed Ng to purchase the Disputed Accumulators on his behalf.

(b) Second, if (a) is answered in the negative, whether Teo is estopped from denying that he had authorised Ng to purchase the Disputed Accumulators on his behalf.

(c) Third, if (a) or (b) is answered in the positive, what CIC is entitled to claim from Teo.

(d) Fourth, if (a) and (b) are answered in the negative, what Teo is entitled to claim from CIC.

My decision

Whether Teo instructed Ng to purchase the Disputed Accumulators on his behalf

42 I will now consider the evidence before this court and determine if it is, on the whole, more consistent with CIC's case (see [15] to [24] above) or Teo's case (see [25] to [28] above), and whether CIC has proved on a balance of probabilities that Teo had instructed Ng to purchase the Disputed Accumulators on his behalf.

Events of 2 October 2007

43 On 2 October 2007, there were various recorded telephone conversations between Ng and one "Lillian" from CIC's PBA, and transcripts of these conversations have been provided. According to Ng's and Teo's telephone records, there were also telephone conversations between Ng on the one hand and Teo, Client A, Client B and Client C on the other. These calls were not recorded. Ng and Teo have given evidence on what was said during the calls between them but there is no evidence on what was said during the calls between Ng and her other clients. From the evidence, the chronology of events on 2 October 2007 which are material to this dispute is as follows: [note: 48]

Table of Events of 2 October 2007

No.	Time	Event	Content
1	07:47	Teo sends SMS to Ng	Teo and Ng cannot remember the content.
2	07:49	Ng sends SMS to Teo	"Ok, last night us very good. Rally shld continue. Can I do somemore? Looking at china energy, cosco, ferrochina." (The parties agreed that "us" referred to the US market.)
3	08:29:44 – 08:31:21	Ng calls Client A	No evidence given.
4	08:33:56 – 08:34:42	Ng calls Client B	No evidence given.
5	From 09:01 to 09:08	Ng makes 3 calls to Lillian	Ng places orders which eventually establish the Fifth CE Accumulator.
6	09:14:47 – 09:15:46	Lillian calls Ng	Lillian informs Ng that the Fifth CE Accumulator is established.

7	From 09:18 to 09:25	2 calls between Ng and Lillian	Ng places orders which eventually establish the Fourth CE Accumulator.
8	09:22:22 – 09:25:26	Lillian calls Ng	(a) Lillian informs Ng that the Fourth CE Accumulator is established. (b) Ng places an order which eventually establishes the Third CE Accumulator.
9	09:32:57 – 09:34:01	Ng calls Client A	No evidence given.
10	09:34	Teo receives Ng's SMS	"Ok, last night us very good. Rally shld continue. Can I do somemore? Looking at china energy, cosco, ferrochina."
11	09:34:06 – 09:36:28	Teo calls Ng	Ng says that Teo instructed her to buy CE accumulators and to sell his Cosco shares. Teo says that he instructed Ng to sell his Cosco shares.
12	09:36:29 – 09:37:46	Lillian calls Ng	Lillian informs Ng that the Third CE Accumulator has been established.
13	09:42:08 – 09:43:35	Ng calls Client B	No evidence given.
14	09:54:17 – 09:59:10	Ng calls Client C	No evidence given.
15	10:32:33 – 10:40:35	Lillian calls Ng	Ng places an order which (combined with the order at entry no. 17 of this table) eventually establishes the Sixth CE Accumulator.
16	11:39:52 – 11:42:03	Ng calls Lillian	Lillian informs Ng that Ng's order at entry no. 15 of this table has been filled.
17	11:44:12 – 11:44:49	Ng calls Lillian	Ng places an order which (combined with the order at entry no. 15 of this table) eventually establishes the Sixth CE Accumulator.
18	11:56:04 – 11:56:55	Lillian calls Ng	Lillian informs Ng that Ng's order at entry no. 17 of this table has been filled.
19	14:56:11 – 14:57:28	Lillian calls Ng	Ng agrees to combine the order at entry no. 15 and the order at entry no. 17 of this table to form the Sixth CE Accumulator.
20	17:35:05 – 17:38:39	Teo calls Ng	Ng says that she informed Teo that she had established the Third to Sixth CE Accumulators. Teo denies this.
21	17:46:32 – 17:51:13	Ng calls Client C	No evidence given.
22	17:51:59 – 18:02:45	Ng calls Client B	No evidence given.

23	18:55:49 – 19:00:47	Client A calls Ng	No evidence given.
24	19:09:16 – 19:10:37	Client A calls Ng	No evidence given.
25	19:49:33 – 19:54:08	Client A calls Ng	No evidence given.

44 The allocation of the Third to Sixth CE Accumulators among Ng's four clients, according to CIC, is set out in the following table: [note: 49]

Table of Allocation

Client	**Third CE Accumulator (2,500 shares per day)**	**Fourth CE Accumulator (5,000 shares per day)**	**Fifth CE Accumulator (5,000 shares per day)**	**Sixth CE Accumulator (11,000 shares per day)**	**Total no. of CE shares per day**
Client A	1,000	1,500	1,500	2,500	6,500
Client B	500	1,500	1,500	2,500	6,000
Teo	1,000	2,000	2,000	2,500	7,500
Client C	-	-	-	3,500	3,500

45 The "average" and "weighted average" prices of the 7,500 CE accumulator shares per day allocated to Teo are as follows:

	Initial Price	**Strike Price**	**Knock-out Price**
Average Price	S$1.7851	S$1.6087	S$1.8296
Weighted Average Price	S$1.7808	S$1.6037	S$1.8246

The average initial price and the more accurate weighted average initial price (if that is preferred) are both within the range of indicative initial price that CIC said Teo agreed to, *i.e.* S$1.75 to S$1.82.

46 The first hurdle which CIC has to cross to prove its case is to show that there was an opportunity for Teo to give Ng instructions to purchase CE accumulators before she placed her last order for the day. If there had been no conversations between Ng and Teo at all on 2 October 2007 or if the conversations between Ng and Teo on 2 October 2007 had occurred only after Ng had placed orders for the Third, Fourth, Fifth ***and*** Sixth CE Accumulators, then CIC's submission that Ng had bought CE accumulators pursuant to Teo's instructions given to her on 2 October 2007 must immediately fail. For this purpose, the Table of Events of 2 October 2007 may be simplified in the following manner:

Simplified Table of Events of 2 October 2007

CE Accumulator (shares per day)	Time of order(s)	Time establish-ed	Time of Ng's calls with client (Shares per day allocated to client)			
			Client A (6,500)	**Client B (6,000)**	**Teo (7,500)**	**Client C (3,500)**
			08:29	08:33		
Fifth (5,000)	09:01 to 09:08	09:14				
Fourth (5,000)	09:18 to 09:25	09:22				
Third (2,500)	09:22	09:36	09:32		09:34	
				09:42		09:54
Sixth (11,000)	10:32 to 10:40 and 11:44 to 11:44	11.39 11:56				

From the above, it can readily be seen that there was an opportunity for Client A (if he had ordered the purchase of 6,500 CE accumulator shares per day at 8:29 am) and Client B (if he had ordered the purchase of 6,000 CE accumulator shares per day at 8:33 am) to give Ng instructions to purchase a total of 12,500 CE accumulator shares per day ***before*** Ng placed the combined order of 12,500 CE accumulator shares per day with PBA in ***three*** tranches, which resulted in the Fifth CE Accumulator (5,000 CE shares per day ordered at 9:01 am and established at 9:14 am), the Fourth CE Accumulator (5,000 CE shares per day ordered at 9:18 am and established at 9:22 am) and the Third CE Accumulator (2,500 CE shares per day ordered at 9:22 am and established at 9:36 am). Additionally, there was an opportunity for Teo (if he had ordered the purchase of 7,500 CE accumulator shares per day at 9:34 am) and Client C (if he had ordered the purchase of 3,500 CE accumulator shares per day at 9:54 am) to give their instructions to Ng ***before*** Ng placed the combined order of 11,000 CE accumulator shares per day in two tranches with PBA, which resulted in the Sixth CE Accumulator

(ordered at 10:32 am and established at 11:39 am for the first tranche, and ordered at 11:44 am and established at 11:56 am for the second tranche making a total of 11,000 CE shares per day). The evidence supports CIC's position that Ng after taking all the clients' orders does not necessarily place out the orders with PBA in one tranche. Depending on the circumstances and the price movements, she might choose to combine her clients' orders and then place them out with PBA in two or more tranches at different times of the day.

47 I have to stress at this juncture that it is not inconceivable for Client A, Client B and Client C to place orders with Ng by giving her an indicative range of the approximate size of their orders or the maximum size of their orders, rather than by stating that their orders have to be exactly a certain quantity of accumulator shares per day because there is no certainty that orders placed by CIC with its counterparties will always be fulfilled to the full extent. In other words, a client may place an order for between 10,000 and 13,000 CE accumulator shares per day, but the actual order fulfilled may be 11,000 CE accumulator shares per day, or it may even be less, say, 9,000 CE accumulator shares per day. Basically, there is no guarantee that all the orders initially requested by Ng's clients would be fulfilled. It follows therefore that the exact size of the orders fulfilled and subsequently attributed to a particular client cannot be used as a conclusive indication that the orders originally placed with Ng by that client must necessarily be of that size. For instance, if the actual order fulfilled for Client C was 3,500 CE accumulator shares per day, it does not necessarily mean that Client C had in fact originally ordered exactly 3,500 CE accumulator shares per day (in the absence of other evidence), as Client C could well have ordered a maximum of 5,000 CE accumulator shares per day or ordered between 3,000 and 5,000 CE accumulator shares per day, but the order was only fulfilled to the extent of 3,500 CE accumulator shares per day, leaving the balance unfulfilled. This however does not detract from the usefulness of the above Simplified Table of Events of 2 October 2007, which is principally to determine if there was indeed an opportunity in terms of "timing sequence" for instructions to be first given by the various clients, and thereafter for orders to be placed with PBA, leading either to a complete or partial fulfilment of the orders as the case may be. If it could be shown that there was no phone call or SMS at all between Ng and Teo, prior to the placing of orders by Ng with PBS, whether on the day itself *i.e*. 2 October 2007 (or even perhaps late in the day before *i.e.* 1 October 2007, after the close of the Singapore Exchange), then clearly Ng would not have received any instructions from Teo to purchase the CE accumulators on 2 October 2007. The Simplified Table of Events of 2 October 2007 helps to ascertain that position. In this case, it is clear to me that there was an opportunity for Teo to give the instructions that eventually led to 7,500 CE accumulator shares per day being purchased for him.

48 The peripheral issue, which Teo's counsel kept highlighting at the trial, is whether it would have been right for Ng to redistribute to Client A, Client B, Client C and Teo the total of 23,500 CE accumulator shares per day purchased at different times on 2 October 2007 at marginally different initial prices between S$1.74 and S$1.8109, and with correspondingly marginally different strike prices between S$1.5834 and S$1.6335, and with marginally different knock-out prices from S$1.7922 and S$1.8489 according to the Table of Allocation, whilst keeping the actual total orders from each of the clients the same. For instance, should Ng have distributed only the Fifth, Fourth and Third CE Accumulators (totalling 12,500 CE shares per day) to Client A (getting 6,500 CE shares per day) and Client B (getting 6,000 CE shares per day), and only the Sixth CE Accumulator (totalling 11,000 CE shares per day) to Teo (getting 7,500 CE shares per day) and Client C (getting 3,500 CE shares per day); as opposed to distributing such that Client A, Client B and Teo were given a combination of the Fifth, Fourth, Third and Sixth CE Accumulators but still receiving the total number of accumulators within the parameters of the orders they had originally placed with her on 2 October 2007.

49 Since the defence of Teo was that he never gave any instructions at all to purchase even a single CE accumulator share on the 2 October 2007, I do not think that the method of allocation used

by Ng (see Table of Allocation), which may be thought to be less fair than if the "time sequence" factor had been taken into account, is going to help Teo to show that he could never have placed any order for CE accumulator shares and that he never did place any order that resulted in 7,500 CE accumulator shares per day purchased for him on 2 October 2007 -- whether or not it should have been 7,500 CE accumulator shares per day all coming from the Sixth Accumulator, or the same total of 7,500 CE accumulator shares per day coming from a combination of the Fifth, Fourth, Third and Sixth Accumulators, which have only marginally different strike and knock-out prices.

50 Having established that the 9:34 am call on 2 October 2007 had presented an *opportunity* for Teo to give Ng instructions to purchase CE accumulators on that day for him, the next question is what was *actually* said during this call. To discern what was likely to have been said, I now examine the events before and after the call. It can be seen from the Table of Events of 2 October 2007 that it was Teo who initiated contact with Ng on 2 October. Although there is no record of the content of his SMS sent at 7:47 am, there is a record of Ng's reply just two minutes later at 7:49 am. She was indeed very quick with her SMS response to Teo on that day. I wondered why it was so urgent for Teo to send an SMS early in the morning to Ng. It certainly could not be for social matters or mere market updates or discussions. More likely than not, it was for business transactions that need to be carried out which are time sensitive. CIC argued that it is apparent from Ng's reply that Ng was responding to Teo's query on, *inter alia*, the status of the US market and this meant that Teo was considering entering into more accumulator transactions. [note: 50] Ng updated Teo that the US market had performed very well the night before and opined that the rally in the US market should continue when she sent an SMS to Teo with the following message: "Ok, last night us very good. Rally shld continue." It is very significant to note that Ng, in this SMS, wanted to know whether she could purchase more accumulators for Teo and she had in fact specifically asked Teo "Can I do somemore?" *i.e.* purchase more accumulators for him. Ng also suggested that Teo consider China Energy, Cosco and Ferrochina accumulators when she ended her SMS by saying, "Looking at china energy, cosco, ferrochina." Ng's SMS reply, sent at 7:49 am, was however only received by Teo at 9:34 am after Teo disembarked an airplane in Penang and switched on his phone. I am inclined to believe that when Teo saw Ng's SMS asking him whether she could purchase more accumulators for him, Teo wasted no time in responding and he immediately called Ng (approximately 6 seconds later), apparently rather urgently at 9:34:06 am. This 9:34:06 am call from Teo to Ng lasted 2 minutes and 22 seconds. During cross-examination, much time was spent trying to establish whether Teo had first read Ng's SMS and then called her or whether he had first called Ng and then read her SMS. Teo said that he could not remember. Whatever the order might have been, given that Ng's question in her SMS ("Can I do somemore?") had not been answered, it was very likely that she would have asked Teo again during the telephone conversation whether he wanted to buy more accumulators. Indeed, Teo admitted that it was more likely than not that she asked him if he wanted to buy more CE accumulators. [note: 51] CIC's case is that it was during this call that Teo authorised the purchase of CE accumulators on his behalf. Ng's testimony at the first trial was that Teo authorised her to purchase the CE accumulators on his behalf during this call. Teo, on the other hand, gave evidence that during this call, Ng told him that the Second CE Accumulator (*i.e.* item number 14 in the Table of Accumulators) and the second Cosco accumulator (*i.e.* item number 13 in the Table of Accumulators) which he had previously established had been knocked out, and Teo instructed Ng to sell his Cosco shares but keep his CE shares. [note: 52] He was adamant that if Ng had asked him whether he wanted to buy more CE accumulators, he would have said no.

51 Teo gave several reasons to support his argument that he could not have authorised Ng to purchase CE accumulators during the 9:34 am call. For the purpose of analysis, the following three stages will be considered: the instructing stage, the ordering stage and the allocating stage.

52 With respect to the instructing stage, it was argued that Ng could not have accepted Teo's alleged instructions to purchase CE accumulators during the 9:34 am call because Ng was informed before the call that her order for 5,000 CE accumulator shares per day placed at 9:22 am, presumably for Client A and Client B (at entry number 8 of the Table of Events of 2 October 2007), could not be fully filled and that DBS Bank did not want to establish anymore CE accumulators. [note: 53] This argument is misconceived. It was open to Ng in those circumstances to accept instructions from Teo to establish CE accumulators because upon receiving Teo's mandate, Ng would have the power but not the obligation to establish accumulators on Teo's behalf. In any case, there were other counterparties apart from DBS Bank which CIC could, and in this case did, deal with, such as Goldman Sachs.

53 For the ordering stage, it was argued that Teo could not have given instructions to purchase CE accumulators of up to S$6 million during the 9:34 am call because after this call, Ng had five further telephone conversations with Lillian but did not place any orders for CE accumulators. It was only at 10:32 am that Ng finally placed an order for CE accumulators, and this was not an order for S$6 million worth of accumulators, but for US$1 million worth of accumulators. [note: 54] These arguments fail to take into account the discretion which must necessarily be given to relationship managers. Save when there are contrary instructions and as long as they act within the terms of their mandate, relationship managers may decide how to combine the orders from various clients, the number of tranches to split up each order into, the size of each tranche and the time that they should place each tranche with PBA depending on the prevailing market conditions and other factors which would ordinarily be taken into account when making investment decisions. Thus, for example, even if immediately after the 9:34 am call, Ng was able to establish S$6 million worth of accumulators within the range of the initial, knock-out and strike prices allegedly instructed by Teo, I do not think that she had no discretion to wait if for some reason she thought it better to do so, such as if she thought that she might be able to get a better deal later in the day. In any case, it is not Teo's allegation that Ng had delayed the placing of orders for an unacceptable amount of time or for unacceptable reasons.

54 Teo further argued that Ng placed orders for him before he had an opportunity to instruct her to do so, as Ng had placed orders for the Third to Fifth CE Accumulators before his 9:34 am call to Ng. However, the Simplified Table of Events of 2 October 2007 and the Table of Allocation will show that Ng did not place an order for Teo before speaking with him: Ng had secured 12,500 CE accumulator shares per day in three tranches under the Third to Fifth CE Accumulators for orders which she made ***after*** speaking with Client A and Client B but before speaking with Teo, and correspondingly, Ng had allocated the ***same*** number of 12,500 CE accumulator shares per day under the Third to Sixth CE Accumulators to Client A and Client B. Similarly, ***after*** speaking with Teo and Client C, Ng secured orders of 11,000 CE accumulator shares per day in two tranches under the Sixth CE Accumulator, and correspondingly allocated the ***same*** number of 11,000 CE accumulator shares per day to Teo and Client C under the Third to Sixth CE Accumulators. The Table of Allocation clarifies how Ng made the allocations.

55 In relation to the allocation stage, it was argued that since Ng stated that she would only enter into a transaction after she had received her clients' instructions, the Third to Fifth CE Accumulators ordered by Ng before she spoke with Teo must have been ordered for Client A and/or Client B and not Teo; yet, shares to be delivered under the Third to Fifth CE Accumulators were allocated to Teo. In response, CIC submitted that Ng only consolidated and allocated her confirmed transactions at the end of each day to each of her clients, thereby explaining why shares to be delivered under the Third to Fifth CE Accumulators were allocated to Teo. I find that even if Teo's argument is correct, it does not lend much weight to Teo's case that he had not authorised the purchase of any CE accumulators;

all that can be said is that Teo should only have been allocated shares under the Sixth CE Accumulator, instead of shares under the Third to Sixth CE Accumulators. However, this is not the position that he has taken in this case and therefore I need not examine the propriety or otherwise of what CIC said was Ng's consolidation and allocation process.

56 I will however make this observation. On the facts before me, CIC is not buying the accumulators on behalf of Client A, Client B, Client C and Teo as their agent. If that were the case, then perhaps it is arguable that CIC should not be consolidating and thereafter, re-allocating and re-distributing the CE accumulators bought on that day for each of them. Instead, CIC arguably should have approached PBA to place separate and discrete orders for each client without combining any of their orders, when making purchases on their behalf. However, CIC's counterparties such as DBS Bank and Goldman Sachs may not be too interested in dealing with small orders and if they do, they may not quote good prices for the small orders. Where orders from individual clients are small, relationship managers may choose to consolidate their clients' orders into larger orders before placing them with PBA and perhaps better prices could be obtained on account of bulk orders, which if secured can later be sub-divided and distributed to their clients, whilst keeping the quantities allocated to each client the same as or within what each client has originally ordered. Hence, assuming that CIC was acting only as an agent for Teo and assuming that Teo had placed an order with Ng for 7,500 CE accumulator shares per day on 2 October 2007 at 9:34 am, and if the argument is that Ng should have instructed PBA to approach DBS Bank or Goldman Sachs to specifically secure an order for the same exact amount of 7,500 CE accumulator shares per day ***soon after*** obtaining Teo's instructions at 9:34 am (instead of delaying it to 10:32 am and 11:44 am), I think it would then be likely that the 7,500 CE accumulator shares secured for Teo on that day would be at the initial price of about S$1.795, a strike price of S$1.6335 and a knock-out price of S$1.8489 (based on the parameters governing the third CE Accumulator, which was established at about 9:36 am on that same day). One has to bear in mind that the share price may fluctuate throughout the day. It would appear that the price of CE shares on the Singapore Exchange started at a high of about S$1.81 at about 9:00 am when the market opened on 2 October 2007, and then stayed fairly stable for the next 40 minutes or so at about S$1.795, before gradually slipping downwards by 4½ cents to S$1.74 by about 11:40 am and 11:56 am as can be seen from the initial prices for CE shares set out in the Table of Accumulators and the times at which the corresponding CE accumulators were established as set out in the Simplified Table of Events of 2 October 2007. It is obvious to me that Ng was delaying placing out the orders with PBA so that she could get better initial prices and therefore correspondingly lower strike prices for accumulation, when she noticed a slight weakening in the price of CE shares as the morning progressed. Ng was obviously trying to do her best for all her clients. She was proved right in that her later orders on that day, which she had delayed placing, were secured by her at much better prices *i.e.* a lower initial price of S$1.74, a lower strike price of S$1.5843 and a lower knock-out price of S$1.7922 (as can be seen from the details at item 18 in the Table of Accumulators for the Sixth CE Accumulator, which were placed out much later in two tranches at about 10:32 am and near noon time at about 11:44 am, and which were eventually secured at about 11:39 am and 11:56 am respectively).

57 I calculated that the maximum total obligation (which is to include the doubling effect when the spot price falls below the strike price) for a year's accumulation (based on approximately 252 trading days in a year) at the rate of 7,500 CE accumulator shares per day multiplied by two, and at the strike price of S$1.6335 that would likely be applicable at 9:36 am on 2 October 2007 would have been **S$6,174,630** (*i.e.* See item 15 of the Table of Accumulators for the Third CE Accumulator established at 9:36 am on 2 October 2007, which has a total obligation of $823,284 when the accumulation obligation is at the rate of 1,000 CE accumulator shares per day. Multiplying that by 7.5 will give the maximum total obligation of **S$6,174,630** for a CE accumulator that requires accumulation at 7,500 CE accumulator shares per day). Compare that with the maximum total

obligation of the 7,500 CE accumulator shares per day that were actually distributed to Teo, which comes to a slightly lower figure of **S$6,046,178** (*i.e.* Add up the total obligations for the 7,500 CE accumulator shares per day from item 15 to item 18 in the Table of Accumulators as follows: S$823,284 + S$1,614,514 + S$1,629,130 + S$1,979,250 = **S$6,046,178**). If CIC had strictly acted as an agent and promptly bought an exact amount of 7,500 CE accumulator shares per day at about 9:34 am specifically for Teo without co-mingling Teo's order with the orders of Ng's other clients, Teo would have been worse off by some **S$128,452** being the difference between **S$6,174,630** and **S$6,046,178** (*i.e.* Teo would have been slightly worse off by about 2% in so far as his maximum obligation is concerned for this order.) I therefore cannot see any reason for Teo to complain when Ng watches the market and the price movements of the CE shares and when she delays placing out the orders upon noticing an intra-day weakening in the CE share price with a view to securing a better deal for all her clients, and when she combines the orders and later re-allocates them in a manner she thinks would be fair to all her clients. In this case, Teo came out better off than if Ng had immediately placed out Teo's order with PBA and secured the order immediately for him at about 9:36 am. In any case, it is my view that CIC is entitled to consolidate their clients' orders for the day before purchasing the corresponding amounts in various tranches from its counterparties, namely DBS Bank or Goldman Sachs; and after securing the orders in bulk on that day for itself, CIC is entitled to re-distribute them to their various clients to fulfil individual orders. The principal reason is that CIC is not acting as an agent separately for each client. CIC is in fact acting as a principal party selling smaller, repackaged accumulators separately to Client A, Client B, Client C and Teo from the pool of accumulators that CIC has purchased or secured for itself on that day. In this case, CIC even prepares its own accumulator term sheets to evidence the transaction between itself and its clients, although the details may have been extracted from the corresponding accumulator term sheets from DBS Bank or Goldman Sachs that evidence the terms of the accumulator contracts between DBS Bank/Goldman Sachs with CIC.

58 In other words, after CIC has successfully secured bulk orders from DBS Bank or Goldman Sachs, CIC is not prohibited from subdividing the big pool of accumulators that CIC has purchased for itself for the purpose of acting as a principal seller to sell smaller re-packaged quantities of accumulators from that pool to Ng's clients, namely Client A, Client B, Client C and Teo. CIC has greater flexibility when it is dealing as a principal (and not strictly as an agent) vis-à-vis its own clients.

59 Accordingly, there is no merit whatsoever in the argument that just because Teo had been allocated from the pool of CE accumulators (*i.e.* the Fifth, Fourth and Third) which were purchased by CIC from DBS Bank ***before*** Teo called Ng at 9:34 am on 2 October 2007, it must follow that those Accumulators were not authorised by him. The second and final phone call between Teo and Ng on 2 October 2007 was made by Teo to Ng at 5:35 pm. Ng gave evidence that during this call, she informed Teo that she had established the Third to Sixth CE Accumulators. Teo denied this. Although he could not remember what the conversation was about, he stated that he might have called to ask Ng whether she had sold his Cosco shares pursuant to his instructions in the 9:34 am call [note: 55] .Although there is some merit to CIC's suggestion that this would not have taken over three minutes, I do not think that the case turned on this point.

60 In summary, during the 9:34 am call on 2 October 2007, Teo had an opportunity to give Ng instructions to purchase CE accumulators (at [46]) and it was likely that there was a discussion on whether to purchase CE accumulators (at [50]). I find that the way in which Ng received instructions to purchase CE accumulators (at [52]), placed orders for CE accumulators (at [53] and [54]), and allocated the CE accumulators established (at [44], [45] and [55]) on 2 October 2007 does not rule out the possibility that Teo had instructed Ng to purchase 7,500 CE accumulator shares per day during the 9:34 am call. In my view, from the totality of the circumstances, in particular the timing

and sequence of the events, and the content of Ng's SMS sent at 7:49 am, it is more likely than not that instructions to purchase CE Accumulators had been given by Teo to Ng on 2 October 2007, which resulted in the purchase of a total of 7,500 CE accumulator shares per day for Teo on that same day.

Events of 3 October 2007

61 On 3 October 2007, there were various recorded telephone conversations between Ng and Lillian and transcripts of these conversations have been provided. According to Ng's and Teo's telephone records, there were also telephone conversations between Ng on the one hand and Teo, Client A and Client B on the other. These calls were not recorded save for one call between Ng and Client A. Ng and Teo gave evidence on what was said during the calls between them. From the evidence, the chronology of events on 3 October 2007 which are material to this dispute is as follows: [note: 56]

Table of Events of 3 October 2007

No.	Time	Event	Content
1	From 09:27 to 10:09	4 calls between Lillian and Ng	Ng requests for and obtains quotes for Sembcorp and CE accumulators. Ng tells Lillian that she would take orders and then let Lillian know.
2	10:13:56 – 10:14:07	Ng calls Teo	Ng is unable to reach Teo.
3	10:15:14 – 10:25:21	Ng calls Client B	No evidence given.
4	10:27:27 – 10:28:42	Ng calls Teo	Ng says that Teo instructed her to buy a CE accumulator and a Sembcorp accumulator. Teo denies this.
5	10:29:21 – 10:30:29	Ng calls Lillian	Ng places orders which eventually establish the Seventh CE Accumulator and the Sembcorp Accumulator.
6	10:30:38 – 10:32:51	Lillian calls Vera (from Goldman Sachs)	Lillian tells Vera that she wants to place an order for a CE accumulator. Vera places an order for an accumulator for 86,500 CE shares per week.
7	10:36:57 – 10:39:27	Lillian calls Ng	Lillian informs Ng that an order for an accumulator for 86,500 CE shares per week has been placed and that an order for a Sembcorp accumulator has been placed.
8	11:00:17 – 11:01:51	Ng calls Teo	Ng says she informed Teo that the CE and Sembcorp accumulators had been established. Teo denies this.
9	From 11:05 to 12:56	3 calls between Ng and Lillian	Ng gets updates on her orders for the CE and Sembcorp accumulators and makes adjustments on the initial prices.

10	13:49:45 – 13:52:38	Ng calls Client A	Ng tells Client A that she is queuing again for CE and Sembcorp accumulators.
11	15:27:47 – 15:28:05	Lillian calls Ng	Lillian informs Ng that the Seventh CE Accumulator is established.
12	16:31:25 – 16:34:57	Ng calls Lillian	Ng confirms with Lillian that the Seventh CE Accumulator was for 86,500 CE shares delivered weekly.
13	16:47:10 – 16:48:22	Lillian calls Ng	Lillian informs Ng that the Sembcorp Accumulator is established.

62 The allocation of the Seventh CE Accumulator and the Sembcorp Accumulator among Ng's clients, according to CIC, is as follows: [note: 57]

Client	**Seventh CE Accumulator (17,300 shares per day)**	**Sembcorp Accumulator (3,700 shares per day)**
Client A	6,000	1,200
Client B	5,300	1,200
Teo	6,000	1,300

63 Again, for CIC's case to stand, there must have been, at the very least, an opportunity for Client A, Client B and Teo to give Ng instructions to purchase accumulators before Ng placed orders for the Seventh CE Accumulator and the Sembcorp Accumulator. This is the case here, as there were three calls between Ng and Client A from 6:55 pm to 7:54 pmon the evening of the previous day after the close of the market *i.e.* on 2 October 2007 (see entry numbers 23 to 25 in the Table of Events of 2 October 2007) during which CIC alleged that Client A gave Ng instructions to establish the Seventh CE Accumulator and the Sembcorp Accumulator, a call between Ng and Client B at 10:15 am on 3 October 2007 (see entry number 3 in the Table of Events of 3 October 2007) and a call between Ng and Teo at 10:27 am on 3 October 2007 (see entry number 4 in the Table of Events of 3 October 2007), before Ng proceeded to place consolidated orders with PBA for the Seventh CE Accumulator and the Sembcorp Accumulator at 10:29 am on 3 October 2007 for Client A, Client B and Teo.

64 Once again, having established that the 10:27 am call presented an opportunity for Teo to give Ng instructions to purchase CE accumulator shares and Sembcorp accumulator shares on his behalf, the next question is what was actually said during this call. To discern what was likely to have been said, I now examine the events before and after the 10:27 am call.

65 From 9:27 am to 10:09 am on 3 October 2007, there were four calls between Lillian and Ng, where Ng had requested and obtained quotes for Sembcorp and CE accumulators. Ng also told Lillian that she would take orders and then let Lillian know what they were. The fact that Ng had specifically told Lillian that she would take clients' orders first and then let Lillian know subsequently what they were indicates clearly to me her intention to seek her clients' instructions first. Her conduct at this point of time does not, on a balance of probabilities, indicate to me that Ng was a client relationship manager who was going to act on a frolic of her own to place orders willy-nilly, or who was going to use her clients' accounts to trade for herself or to take positions without the client's knowledge and

consent in order to benefit personally from those positions when the trades turn out in her favour and to foist those positions on her clients when the trades turn out against her. In any event, there is clear evidence from Kwek that it is virtually impossible for Ng to do that, given the various internal controls, notification systems, client accounts and payment systems operated by CIC. Basically, Ng will be found out very quickly if she were to buy accumulators behind the back of her clients so to speak, or if she were to misuse her clients' accounts and overdraft/credit facilities to take positions on accumulators for her own personal benefit. Second, because the strike price is always set at a discount to the initial price at the time of purchase of an accumulator, one will only know later whether the trade will turn out to be favourable. The spot price basically must fall below the strike price and remain below the strike price for the trade to be unfavourable. By that time, a client, upon receiving independent notification of the trades which were truly not his, would certainly be alarmed and would have reported the whole matter to CIC. Ng would soon be caught for her wrong doing perhaps even before she can profit from those trades. Given the strict controls within CIC, my assessment is that Ng would not likely take on such a huge risk on a balance of probabilities.

66 From the Table of Events of 3 October 2007, it can be seen that four minutes after Ng obtained quotes for the Sembcorp and CE accumulators and told Lillian from PBA that she would take orders and get back to Lillian, Ng made an unsuccessful attempt at 10:13:56 am to reach Teo.

67 Ng then talked to Client B and thereafter, she managed to speak to Teo at 10:27 am. It is very significant to note that less than a minute after finishing her 10:27 am call to Teo, Ng placed with Lillian orders for the Seventh CE Accumulator and the Sembcorp Accumulator. CIC's case is that it was during this 10:27 am call that Teo instructed Ng to purchase CE and Sembcorp accumulators. CIC further alleged that Ng called Teo at 11:00 am to inform him that those accumulators had been established. Teo, on the other hand, stated that the 10:27 am call was about whether to sell the shares in his account, including the CE and NOL shares. [note: 58] When asked to explain why there was a need for Ng to call him again only about thirty minutes later at 11:00 am, he stated that he could not remember but she could have been reporting the share prices to him and again discussing with him whether to sell his CE and NOL shares. [note: 59] The lack of a satisfactory explanation from Teo for the second call from Ng at 11:00 am and the close proximity between the calls where Ng first obtained quotes from Lillian for the CE and Sembcorp accumulators and the subsequent calls where Ng talked to Client B and Teo, followed immediately by the call where Ng placed orders with Lillian, suggest strongly to me that Teo must have instructed Ng during the 10:27 am call to purchase the CE and Sembcorp accumulators. Both the proximity of timing and sequence of calls are highly probative to show that Ng had sought and obtained instructions from Teo before she proceeded to order the CE and Sembcorp accumulators for Teo.

68 It was accepted by both parties that when Lillian conveyed Ng's order for CE accumulators to Vera (see entry number 6 in the Table of Events of 3 October 2007), a mistake was made such that instead of an order being placed for S$86,500 worth of CE shares per week, an order was placed for 86,500 CE shares per week, resulting in an over-order of about 33,500 shares per week. Teo alleged that Ng allocated the excess shares to Teo without Teo's consent to cover up Lillian's mistake. [note: 60] When cross-examined at the first trial, Ng gave evidence that she had realised Lillian's error but did not correct it because apart from the order that she had placed with Lillian, she had other orders to fill, and 86,500 CE shares per week fell within the range of shares that she had been instructed to order for all of her clients. [note: 61] Ng's evidence is supported by the contemporaneous note written by Ng on 3 October 2007 setting out how shares to be delivered under the Seventh CE Accumulator were to be allocated amongst her three clients. When asked why she did not place all her clients' orders together when she spoke to Lillian, Ng explained that depending on the market, she may place

a full order or orders in tranches. [note: 62] I note that this is consistent with how Ng placed her orders in tranches on 2 October 2007 and I accept Ng's evidence that this was her practice. I also accept her explanation for not correcting Lillian's error because it is unlikely that Ng would risk civil and criminal liability just to cover up her colleague's error, when her evidence during re-examination at the first trial was that she knew of an easier and more sensible way of rectifying the mistake:

> Q: - - when would you have discovered that mistake?
>
> A: Your Honour, the latest I would discover the mistake would be by the end of the day.
>
> Q: What are the options open to you to rectify that mistake if any?
>
> A: Well, your Honour, I will just go to my boss, tell him that a mistake has been done, it's too much orders, so we will deal with that, we will call back Goldman and then discuss the unwinding costs.
>
> Q: Do you know offhand what the unwinding costs would be?
>
> A: I don't know offhand what the unwinding costs would be, your Honour, but it would not – it would be minimal, because you know, it was done that day, the price has not, like, moved significantly, so – but I do not – I do not have the exact costs for it.
>
> Q: But do you know whether you would be made personally liable for the unwinding costs?
>
> A: I don't think so, your Honour.

69 I accept Ng's evidence that the unwinding costs would be minimal if unwinding is done quickly and the price of the CE Accumulators is not likely to have moved much after a day or so, unless there has been a violent and drastic market fall similar to the event on Black Monday on 19 October 1987, when stock markets around the world crashed within a short space of time. Nothing of that sort happened on 3 October 2007 and I am inclined to believe that unwinding costs, if done quickly on the same day or the very next day, would not be significant. If CIC wanted to, it can of course also temporarily warehouse these excess orders resulting from mistakes made by staff, and sell them later to its other clients. If CIC has no intention of taking positions on these excess accumulators (due to internal policies or otherwise), then CIC could have easily unwound them the very next day at the latest, thereby incurring for itself not very significant unwinding costs, as I do not believe that the market or spot price of CE shares would have moved very much between 3 October and 4 October 2007.

70 Teo also alleged that there was a further mistake on 3 October 2007, this time made by Ng when she placed orders with PBA using figures which took into account the potential doubling effect, whereas PBA placed orders with its counterparties using figures which did not take into account the doubling effect. Teo argued that this resulted in Ng placing twice as many orders than she had been instructed to, and that Ng had then dumped the excess on Teo. [note: 63] CIC, on the other hand, responded that there was no mistake because the established practice between Ng and PBA was that the figures Ng gave to PBA would *not* take into account the doubling effect, and it was also industry practice *not* to include the doubling effect when banks placed orders with their counterparties. I accept CIC's evidence on its internal practices and on the practices of the industry it is in, since it is CIC and not Teo who would know best about these industry practices. In any event as between CIC and Teo, it would appear from the previous undisputed accumulator transactions that the manner in which (a) instructions and orders were given to Ng; and (b) the fulfilled orders from DBS and Goldman

Sachs were in turn later sold by CIC acting as principal to Teo as the buyer, shows that the accumulator transactions between CIC and Teo were done on the same basis as the industry practice as described by CIC. I therefore reject the argument of Teo that Ng had placed twice as many orders as she had been instructed to because of the doubling effect.

71 In summary, the sequence of events on 3 October 2007 leads me to believe that Teo had in fact instructed Ng to establish the Seventh CE Accumulator and the Sembcorp Accumulator (from [63] to [68][67]). I find on a balance of probabilities that Ng had not dumped shares on Teo in order to cover up a mistake, whether committed by PBA (at -[69]) or allegedly by Ng (at [70]).

Events after 3 October 2007

72 The events after 3 October 2007 further point towards Teo having instructed Ng to purchase the Third to Sixth CE Accumulators on 2 October 2007 and the Seventh CE Accumulator on 3 October 2007.

(1) Teo's inaction for more than a month after 3 October 2007

73 It is not disputed that after 3 October 2007, there were no further conversations between Teo and Ng until 11 October 2007. Ng gave evidence that this was because the Disputed Accumulators and the Sembcorp Accumulator were still running and both Ng and Teo were waiting for the stock market to improve. [note: 64] Teo did not have any satisfactory explanation for the gap in communication between him and Ng during this period. He alleged that it was only during a telephone conversation with Ng on 16 October 2007 that he discovered that Ng had entered into the Disputed Accumulators and the Sembcorp Accumulator on his behalf. Yet, he did not raise any issue or complaint to CIC's management until more than a month later on 20 November 2007. To explain the delay, Teo claimed that he had on 18 October 2007 acceded to Ng's request for a month to resolve the issue of the Disputed Accumulators with her superiors. [note: 65] CIC's position is that this story is made up by Teo.

74 I do not accept Teo's explanation for several reasons. First, it is difficult to believe that Teo would have been willing to give Ng a month to resolve the issue of what he claims to be the unauthorised trades that she did behind his back. It seems strange that Teo should rely on the very person whom he says got him into this big mess to get him out of it. Teo sought to explain the generosity that he displayed towards Ng by saying that she had been his relationship manager since her Citibank days and that he trusted her. This trust seems completely misplaced especially when one considers Teo's allegation that Ng had already on two previous occasions established accumulators under Teo's account without authorisation. It would have made a lot more sense for Teo to complain directly to Ng's superiors, instead of trusting her to own up to her mistakes on her own accord. Further, there is no reason to give Ng a grace period of a full month, when he could simply have spent a few minutes to call up and lodge an official complaint with CIC in simple, clear and unambiguous terms that those trades were never ordered by him. It was not as if Teo was intellectually incapable of doing that. Second, Teo's behaviour after 18 October 2007 was inconsistent with his claim that he had on that day given Ng one month to resolve the matter. If Teo's story is true, Teo should have been anxious to obtain updates from Ng in the days after 18 October 2007 on whether the issue had been resolved. Yet, Teo was not interested in knowing whether Ng managed to resolve the issue with her superiors. Not only did he not initiate any contact with Ng, Teo even failed to answer or return Ng's two calls on 2 November 2007 (which was the scheduled settlement date for three of the Disputed CE Accumulators) and Ng's two calls on 5 November 2007. Teo's actions are more consistent with an evasive client trying to delay or avoid paying what is owed than with a furious client hounding his errant relationship manager for a speedy resolution of the huge financial mess created by the

latter. Third, even on Teo's version of events, it should have soon become clear to Teo that Ng was not resolving the matter for him and this should have led Teo to lodge a complaint with Ng's superior much earlier than he did. According to Teo, Ng gave him the first update on the matter on 13 November 2007, but it was bad news for Teo – Ng said that her superiors wanted her to persuade Teo to accept liability on the accumulators. Thereafter, Teo claimed that Ng made several attempts (on 13, 15 and 19 November) to persuade him to accept the accumulators. Yet, not only did Teo continue to wait the month out before confronting Ng's superiors directly, he also continued to deal with Ng on matters pertaining to his account (see [75] and [79] below). Fourth, if it were indeed true that Ng had used Teo's account and entered into the disputed accumulator trades behind his back (*i.e.* without his knowledge, instructions and authorisation), this would be a serious criminal offence committed by Ng, and given the delays and the failure of Ng to sort out the financial mess to Teo's account created by Ng's criminal act, I would have expected Teo to report this matter to the Commercial Affairs Department ("CAD") or the police without further delay. Teo never reported to the CAD or the police nor did he threaten Ng that he would do so if she failed to resolve the matter. During the trial, Teo was unable to provide any satisfactory explanation for his conduct. Teo's conduct after 3 October 2007 is plainly inexplicable and inconsistent with his version of the facts. Thus, it can only be inferred that Teo made no protest to CIC's management about the Disputed Accumulators from 3 October 2007 to 19 November 2007 because the Disputed Accumulators were authorised by him. This also explains why Teo did not lodge a police report against Ng: he should know that making a false police report is a crime.

(2) Teo's issuance of a cheque for S$160,000 to CIC

75 It is not disputed that on 7 November 2007, Teo issued to CIC a cheque for S$160,000 ("the Cheque"). The Cheque was used to pay for CE shares delivered to Teo under the Disputed Accumulators. CIC claimed that Teo had issued the Cheque to CIC for this purpose. On the other hand, Teo claimed that Ng told him that the money was for shares to be delivered under the First and Second CE Accumulators and the Sembcorp Accumulator. [note: 66] It is difficult to believe Teo's claim since Teo had on 2 October 2007 already instructed Ng to use the funds in his account to pay for the shares acquired under the First and Second CE Accumulators and confirmation notes showing the debit of his account were sent to him. [note: 67] Under cross-examination, Teo conveniently claimed not to have read the letters sent to him by CIC.

76 Additionally, I find it difficult to believe that Teo did not know at that time that he had more than sufficient funds in his account to pay for the shares delivered to him under the undisputed First and Second CE Accumulators. Even though he might not have known the exact amount available in his account, he would still have known that he had several hundred thousand dollars in cash in his account, which would have been more than ample to cover these payments. He would also have realised that the money available in his account would have increased from original amounts he deposited with CIC as a result of the profitable run he was having with his accumulator transactions prior to these Disputed Accumulators.

77 If Teo had truly never ordered any of the Disputed Accumulators, it should have made no sense to him that Ng would be asking him for money to top up his account at this point of time. All the earlier undisputed accumulator transactions had been knocked out already. Further, given the money earlier deposited by Teo with CIC coupled with the substantial profits he made on the earlier accumulator transactions, why should there be any need to pay $160,000 to CIC? Teo does not need to be a genius to realise that. Instead of finding out what the $160,000 was for, I find it inexplicable on Teo's version of events that he should even send any money at all, let alone a cheque for such a large sum of $160,000 to be deposited with CIC at the request of Ng. However, on CIC's version of

events, this behaviour of Teo makes complete sense. It is in fact very strong evidence corroborating Ng's evidence that Teo had in fact given instructions to her to purchase the Disputed Accumulators.

78 To sum up, if Teo's version of the facts were true, then Ng's request for money must have raised a warning flag for him, and he would have exercised great care before paying the money. Also, since it was Teo's case that he had been aware of the unauthorised transactions since 16 October 2007, he must have known that as long as the issue remained unresolved, there would be outstanding liabilities in relation to these disputed transactions in his CIC account, and there was no reason for him to issue a cheque to CIC without any qualifications or reservations as the payment of $160,000 can only be for and in relation to his outstanding liabilities under these disputed transactions. Thus, the paying of the cheque can only be consistent with Teo having authorised the purchase of the Disputed Accumulators.

(3) Sale of shares acquired under the undisputed accumulators to pay for shares to be acquired under the Disputed Accumulators

79 On 16 November 2007, CIC sold 180,000 CE shares on Teo's behalf. 60,000 CE shares were acquired by Teo under the First and Second CE Accumulators, whereas the remaining 120,000 CE shares were acquired by Teo under the Disputed Accumulators. CIC claimed that Teo had instructed CIC to sell these shares (which included those from the undisputed accumulators) and to use all the sale proceeds as payment for some of the CE shares which had been delivered under the Disputed Accumulators. Teo claimed that he had only instructed CIC to sell shares accumulated under the First and Second CE Accumulators but not shares accumulated under the Disputed Accumulators. However, confirmation notes reflecting the sale of the CE shares, including those accumulated under the Disputed Accumulators, were sent to and received by Teo, who did not raise any objection. Teo conveniently alleged that he did not read any of these confirmation notes [note: 68]. Teo also claimed that CIC had unilaterally used the sale proceeds to acquire shares accumulated under the Disputed Accumulators without his knowledge. However, once again, he must have known that at the time of the sale, the issue of the Disputed Accumulators had not yet been resolved and thus there would be outstanding liabilities in relation to these transactions in his CIC account; yet, he did not seek to withdraw the sale proceeds arising from the sale of the undisputed 60,000 CE shares acquired under the First and Second CE Accumulators to prevent them from being used to pay for shares accumulated under the Disputed Accumulators or to protest that these sale proceeds from the undisputed 60,000 CE shares belonging to him have been wrongfully used to pay for transactions that he never entered into. This lends credence to CIC's claim that the purpose of the sale was to fund the purchase of new shares accumulated under the Disputed Accumulators.

(4) Meetings between Teo and CIC's senior management

80 On 20 November 2007, Teo met with Ng and Kwek. CIC's position is that because Teo had been facing heat from Ng to top up the margin shortfall for his account in order to pick up shares to be delivered under the Disputed Accumulators, Teo met Kwek to complain about the margin requirement and the size of his exposure in the hope that CIC would then excuse Teo from having to put in funds and top up the margin. [note: 69] Teo's position is that Teo met Kwek to complain about the unauthorised transactions and to deny liability under them.

81 To support its position, CIC had three of its officers give evidence on the 20 November 2007 meeting. First, Kwek's testimony was that he asked Teo at the outset whether Teo was denying liability under the Disputed Accumulators and Teo's reply was "no". [note: 70] Second, Ng's evidence was that at the meeting, Teo expressed his surprise at the size of his exposure under the Disputed

Accumulators and made numerous other allegations that he was not well versed in the accumulator, only dealt with blue chip shares, was not aware of the risks involved with the accumulator and that the Disputed Accumulators were not in proportion to his net worth and risk appetite. [note: 71] Third, the head of CIC's credit risk department, Ms Tay Lian See ("Tay"), gave evidence that after the meeting she heard Ng asking Teo "How could you", and in response, Teo kept silent. [note: 72] Tay's evidence was not challenged by Teo and CIC argued that this substantiated CIC's position that Ng was unhappy that Teo had made false complaints to Kwek that he was not aware of CIC's margin requirements or his high exposure levels. [note: 73] On the other hand, Teo's testimony was that he told Kwek that the Disputed Accumulators were unauthorised and that he was not responsible for them. [note: 74] He also gave evidence that he informed Kwek that he had instructed Ng to limit his exposure in accumulators to $1 million but Ng had entered into the CE accumulators way in excess of the limit and authority he had given her.

82 CIC's position is supported by the following contemporaneous note of the meeting prepared by Kwek after the meeting:

> 1. Mr Teo expressed surprise at the size of his exposure. He made remarks like he is not well versed with equity accumulator, he was only into blue chips, he was not fully apprised of the risks involved, the sizes of the contract are very high relative to his networth and risk appetite, *etc*. **When I pressed as to whether he is denying the contracts, he said no but that the bank has to take some responsibility for them**.
>
> 2. I told him that if the contracts are valid, then we have to address the near term issue of funds to pick up the shares as and when they get 'striked' in the weeks ahead. The other issue is margin for the remaining tenor of the contracts. Mr Teo did not want to commit himself on these matters. He wants to meet up with GM of the branch so that all his concerns can be addressed. We told him that we will schedule a meeting next week when the GM is back from Paris.
>
> 3. He questioned our margin requirements *vis-à-vis* the contracts done. Sue said that she had all along been asking him to bring in additional funds but he has not responded.
>
> [emphasis added]

On cross-examination, Teo agreed that the first paragraph of Kwek's note was an accurate representation of what went on at the meeting, save for the last line. I am more inclined to believe what Kwek had set out in his note because there is no conceivable reason for Kwek, after being informed that Teo was complaining about Ng's unauthorised trades, to then cover up Ng's misconduct and thereby taint himself as well. This is especially so given that CIC is not allowed to hold equity accumulators for itself, and to knowingly allow CIC to continue to do so would be a very serious matter. Further, if, as Teo alleged, he had told Kwek that the trades were unauthorised, there would be no need to talk about his lack of understanding of how accumulators worked and their associated risks. These matters would be irrelevant if the trades were indeed unauthorised.

83 In fact, Teo's evidence in court is inconsistent with the contemporaneous e-mail dated 21 November 2007 which Teo himself authored and sent to Kwek. I set out the relevant portions below:

> In my meeting with your GM, I would like to specifically address the issue on **how do we resolve the last few deals on China Energy that has an huge exposure that I did not expect nor have agreed upon.**

Like I have mentioned in our conversation, I have been misled several times which include the following;

1) I was told by the bank that **my total exposure** was about S$9m which include China Energy and Sem Marine about 2 weeks ago. When Sem Marine got subsequently knocked out, I expect the exposure to be reduced. Unfortunately, I was informed earlier this week that just the China Energy exposure alone now stands at S$10m.

2) I was never clear about how exactly the accumulator deals worked. I have trusted [Ng] to follow my clear instructions to only deal with Blue Chips and also not to expose me by more than S$1m, maximum. I was always assured by her that she will monitor and not overdo it. I was shock earlier this week when I learned about the **huge exposure** from the deals on China Energy and Sem Marine that she has done in early Oct.

FYI...what [Ng] had done had caused me great distress and I looked forward to **a good conversation** with you and your GM **once again** next week. Can we meet next Wednesday at 9.00am to see if we can work out **an amicable solution**.

[emphasis added]

A plain reading of the first line of this e-mail shows that Teo's complaint relates to the size of the exposure under the Disputed Accumulators. This is consistent with subsequent parts of the e-mail where Teo expressed concern that his exposure under the Disputed Accumulators stood at S$10 million and his shock about the huge exposure under the Disputed Accumulators and the Sembcorp Accumulator. Pertinently, despite Teo's allegation that he had already made it clear that he would not be liable under the Disputed Accumulators, Teo referred to having been misled on his "total exposure" under the Disputed Accumulators. Finally, CIC argued that the final paragraph of the e-mail lent further support to its case: Teo's evidence – that he had aired his complaint about the unauthorised trades but that Kwek did not want to commit on the issue – was inconsistent with Teo's description of the 20 November 2007 meeting as being "a good conversation". Additionally, the fact that Teo expressed a willingness to work out "an amicable solution" must have meant that he was willing to compromise by accepting some liability under the Disputed Accumulators. This is more consistent with Teo's actual complaint in this e-mail that he did not know the exposure under his accumulators would be so high, instead of Teo's alleged complaint in this action that he had not authorised the purchase of the accumulators at all. Teo's explanation of this e-mail during cross-examination was that his English was not good and that his idea of an amicable solution was to listen to CIC's management without the intention of paying a single cent. I found that Teo had no problems expressing himself on the witness stand and I have no doubt that Teo's English is good enough to clearly convey the message that he did not tell Ng to buy the Disputed Accumulators if he had in fact intended to do so. In fact, this is what he eventually said to CIC, albeit after it became very clear to Teo that the Disputed Accumulators were unsalvageable loss-making investments, the prospect of a recovery in the CE share price to any level near (or above) the strike prices was slim and the prospect of the Disputed Accumulators being knocked out was extremely remote (see [87 and [88] below). I also cannot accept Teo's strained meaning of "an amicable solution".

84 On 23 November 2007, Teo sent another e-mail to Kwek. I set out the relevant paragraph below:

I want to take this opportunity to restate my position that I have never authorise [Ng] at the level of investment for China Energy in early Oct. My instruction has always been consistent at $1m maximum exposure and only on blue chips. Incidentally, I did get a confirmation

> SMS from [Ng] dated 27 Sep 07 that she understands. She confirms in the SMS that Labroy Marine is blue chip. So is STX. As for China Energy, she won't be accumulating much. **From my records, pls note that all the unauthorised trade on China Energy were done in the following week. Therefore, I will not bear the responsibilities on these unauthorised trades.** To be fair, I will not be interested even if the shares get knocked out next week. As I have mentioned in our earlier conversation, I am not in this league to have such an appetite. Similarly, I am also not prepared to pick up the next batch of shares that you mentioned earlier that is due next week.
>
> [emphasis added]

While in the first line, Teo reiterated his position in the e-mail of 21 November 2007 that he had not authorised ***the level of investment*** under the Disputed Accumulators, he later referred to the trades as being "unauthorised". This is ambiguous, especially in light of what was said in the first line, since the term "unauthorised" may mean that no instructions were given to establish accumulators or it may mean that instructions were given to establish accumulators but not at the level or quantity that they were eventually established. As such, I find that this e-mail does not help Teo's case. Instead, it is another instance of Teo equivocating (see [85] and [89] below).

85 On 28 November 2007, Teo met Kwek and CIC's General Manager, Mr Jean Luc Anglada ("Anglada"). Anglada gave evidence that Kwek had asked Teo if he was reneging on the transactions, and Teo's answer was far from clear – Teo replied that there was too much loss and too much exposure. [note: 75] Kwek also gave evidence that Teo did not deny his liability for the Disputed Accumulators. [note: 76] On the other hand, Teo claimed that he restated his position that he had not authorised the Disputed Accumulators. [note: 77] Anglada in turn claimed that if Teo had indeed stated this, CIC would have immediately closed-out the transactions and then left the issue of whether the Disputed Accumulators were authorised for later. However, since in Anglada's view, Teo had not made a clear claim that the transactions were unauthorised, these transactions continued to be booked under Teo's account. [note: 78] Anglada's position is reinforced by an e-mail dated 3 December which he sent to Teo. I set out the relevant portions below:

> To follow up with my discussion on 28th November 2007 with Mr. Paul Kwek and yourself, I herein confirm that we are investigating the matter thoroughly and will be in a position to present conclusions to you as planned on 5th December 2007.
>
> In the meantime, I need to reiterate that it is your duty to give us instruction, even without prejudice, on the position to adopt for the equity accumulators.
>
> The alternatives are:
>
> - to instruct the bank to immediately close out on the position and crystallise the loss
>
> - to continue with the transaction but you have to provide necessary funds to perform the obligations under the transactions.
>
> Please note that nothing in this letter should be taken as an admission of your claim that the transactions are unauthorised. The Bank's position is that the transactions are authorised.
>
> This letter is sent to you purely to set out the two (2) options open to you which you can adopt, without prejudice to both the Bank's position and your position on the validity of the

transactions.

Teo's counsel argued that Anglada must have known that Teo's claim was that the transactions in question were unauthorised since Anglada had stated in his letter that "nothing in this letter should be taken as an admission of your claim that the transactions are unauthorised". However, I find that this letter is consistent with Anglada's position that there had been much equivocation from Teo and it was not clear what Teo's claim was. Thus, one of the conflicting claims that Teo had been making was that the transactions were unauthorised. I accept CIC's position that the nature of Teo's complaint was not clear at this time because had Teo been clear with his claim that the transactions were unauthorised, CIC's would have had to immediately close out the transactions since CIC is not allowed to hold shares. The fact that the transactions were not closed out is testament to the fact that CIC had not gotten a clear answer. Further, I accept Kwek's and Anglada's evidence as I see no reason for both Kwek and Angalada to lie in order to cover up for Ng.

86 On 5 December 2007, Teo again met with Kwek and Anglada. Kwek gave evidence that Teo again complained about the level of his exposure. [note: 79] At the meeting, Teo asked for details of the Disputed Accumulators [note: 80] and the indicative cost of unwinding them. [note: 81] If Teo had not authorised the purchase of the Disputed Accumulators, he would have concentrated on putting his position across to CIC and this information should have been none of his concern. His request suggests that he had in fact authorised the transactions and was thus interested to find out the details of his contracts and how much he would have to pay if he walked away from them.

(5) Teo's rejection of the Disputed Accumulators

87 Two months after the date of the disputed transactions, CE shares were still performing badly. In fact, the share price had been on a general downward trend since 2 October 2007.

88 On 11 December 2007, CIC gave Teo the details of the Disputed Accumulators [note: 82] and on 17 December 2007, CIC gave Teo their estimated unwinding costs. [note: 83] It was around this time that Teo stopped equivocating and began to state his position that the Disputed Accumulators were unauthorised in very clear terms. In an e-mail dated 11 December 2007 to CIC, Teo stated that "[he] did not authorise the last few trades for China Energy". Also, after Kwek provided Teo with the estimated unwinding costs for the Seventh CE accumulator on 13 December 2007 (which amounted to up to $1.12 million for one accumulator), Teo replied on the same day, stating that "[he was] maintaining [his] stand that the contracts were unauthorised." By this time, the market price of CE shares on the Singapore Exchange had fallen to below S$1.20 per share, which largely explains why the unwinding costs had become so large. The CE share price had in fact dropped from the average price of about S$1.78 on 2 October 2011 to about S$1.16 by 17 December 2011 [note: 84]. This represents a substantial drop of some 35% in the CE share price. It must have been obvious to Teo by this time that it was not likely for the CE share price, which was then hovering around S$1.16, to recover to above the average knock-out price of S$1.82 for the Third to Sixth CE Accumulators or the knock-out price of S$1.73 for the Seventh CE Accumulator. On 17 December 2011, Teo wrote an e-mail to Anglada stating the following:

> Per my several earlier e-mails and meetings, I maintained that the last 5 China Energy Accumulators contracts were not authorised by me. [Ng] had gone ahead to acquire these contracts without my approval and evaded providing the appropriate updates despite my numerous earlier requests.

89 CIC suggested that the reason for Teo's equivocation *at the beginning* was that he was

adopting a wait-and-see attitude: if the Disputed CE Accumulators were knocked out, he could accept the transactions and the resulting profit, whereas if the price of CE shares continued falling, he could (as he later did) assert that he had all along denied authorising the trades and disclaim liability for the Disputed Accumulators. To support their contention, CIC submitted market analysts' recommendations in November which projected a target price of the CE shares which was higher than the Disputed Accumulators' knock-out price, indicating that profits under the Disputed Accumulators were possible. It was only after the Disputed Accumulators failed to be knocked out after two months that Teo finally decided to clearly and strongly deny authorising the trades. I find Teo's pattern of behaviour to be consistent with CIC's suggestion and with CIC's case. His pattern of behaviour does not sit well with Teo's defence at the trial.

90 On 24 December 2007, a document entitled "Watchlist and Provisions Report as at 30 November 2007" ("Watchlist Report") was submitted by CIC's Credit and Risk Department via e-mail to CIC's head office in Paris. Tay gave evidence that the Watchlist Report had been prepared by her in the middle of December 2007 based on her knowledge of the following: [note: 85]

(a) Teo's account had been under margin since at least 4 October 2007;

(b) Kwek's note on the meeting of 20 November 2007 (at [82]);

(c) Anglada's e-mails to Teo dated 3 December 2007 (at [85]) and 6 December 2007;

(d) Teo's e-mail to Anglada dated 11 December 2007 (at [88]); and

(e) Teo issuing the Cheque in response to CIC's call for more margin (at [75]).

Under the section entitled "reasons for watchlist/provisions" in the Watchlist Report, the following is stated:

> RM booked equity accumulator transactions above approved credit limit and pending adequate funding. When the equity market corrected severely, unrealized losses escalated. **Matter is tenuous as the client is arguing that he did not authorise the outstanding 5 equity accumulator trades that caused that huge under margin and asset shortfall position**. Top up requirement as at end Nov 07 was USD4.920k based on internal guidelines for the full funding of the maximum potential number of shares that may be picked up during the life of the equity accumulator. Based on estimated unwinding cost of the equity as at end Nov 07, against the market value of the customer's asset held by the bank, there is a shortfall of USD1,372.88k.
>
> [emphasis added]

Under the section entitled "follow up action required/proposed", the following is stated:

> Meetings and correspondence with the customer to clarify his trading positions.
>
> ...
>
> After which to decide whether to crystallize the position by unwinding the outstanding positions and issue legal letter of demand for the shortfall if the customer remains adamant in denying the trades are authorised by him.

91 Teo argued that the bolded words in the passage quoted above suggested that CIC was aware

on 30 November 2007 that Teo was alleging that the Disputed Accumulators were unauthorised and that this contradicted Kwek's note of the 20 November 2007 meeting and the evidence of Kwek and Anglada that Teo did not deny that the Disputed Accumulators were authorised at the meetings of 20 November 2007 and 28 November 2007. This argument cannot stand in light of Tay's evidence that the Watchlist Report was prepared in mid-December using materials dated up to and including 11 December 2007. This meant that the Watchlist Report reflected what Tay was aware of in mid-December. Tay gave evidence that her statement in the Watchlist Report that Teo was arguing that he had not authorised the Disputed Accumulators was based on the claim that he had made in his e-mail. However, she further deposed that because "it was not clear whether [Teo] was merely complaining about the exposure being too high or whether he was disclaiming the Disputed Accumulators entirely" [note: 86], she wrote in the Watchlist Report that it was necessary for Teo to "clarify his trading positions" so that CIC could decide whether to unwind the Disputed Accumulators. I accept Tay's explanation of what she wrote in the Watchlist Report as an accurate representation of the situation in mid-December because it is evident that Teo's claim in his e-mail of 11 December 2007 has now become one of a complete lack of authority, but with his previous equivocation it remained unclear what his true position was.

CIC's and Teo's other arguments

92 Having dealt with the arguments on the events of 2 October 2007 and 3 October 2007, and the conduct of CIC and Teo after the establishment of the Disputed Accumulators, I will now address CIC's and Teo's other arguments on why it was or was not likely that Teo instructed the purchase of the Disputed Accumulators.

(1) Ng's motivation for entering into unauthorised transactions

93 CIC argued that there is no plausible motivation for Ng to enter into unauthorised transactions whereas it is clear why Teo would want to disclaim liability for huge loss-making investments. [note: 87] Teo suggested two reasons as Ng's motivation. First, he argued that Ng wanted to cover up a mistake that she or PBA had made when placing orders for accumulators. I have found that this was not the case (at [68]-[70] above). Second, Teo argued that Ng did unauthorised trades in order to receive a bigger bonus. To refute this claim, Anglada and Kwek gave evidence on Ng's remuneration structure. Kwek gave evidence that Ng's bonus was a function of a few factors, including whether Ng met her revenue and Assets Under Management ("AUM") targets. [note: 88] Since, at the end of September 2007, Ng was very close to the revenue target which she had to reach by December 2007 but far from her AUM target, [note: 89] it would have made sense for her to be focussing on reaching her AUM target. [note: 90] Anglada and Kwek gave evidence that buying unauthorised accumulators would not have helped Ng to reach her AUM target. [note: 91] If shares delivered under an accumulator are paid for with money from the client's account, the relationship manager's AUM would stay the same. While the relationship manager's AUM would increase if CIC grants a loan to the client to pay for the accumulated shares or if the client deposits money with CIC for the margin requirement, this would also necessitate the client finding out that an unauthorised transaction had taken place on his account as the relationship manger would have to explain why a loan or margin top-up was necessary. [note: 92] Finally, I explored the possibility that Ng was bullish on CE shares and had wanted to use Teo's account or a fictitious account to trade to benefit herself, and I was convinced by the answers from Kwek that this could not have been done: [note: 93]

COURT: ... but eventually how is she going to get the money from the profit. ... She has no capacity in terms of she has no margin. She wants to use somebody's client account to trade to benefit herself, thinking that it's a profitable trade...

A: Okay, it is possible let's say the share gets delivered and the share makes money –

COURT: The share is delivered in whose name.

A: Into the client's name.

COURT: But it goes into the client account, how does it go in.

A: Yes, that's right. So it therefore calls for you to be able to –

COURT: How do you intercept?

A: Not possible to intercept. It's not possible. It's just not possible.

COURT: It's not possible to get any profit out – if anything happens, it's the client who is going to benefit.

A: That's right.

COURT: ... he says suddenly I have an [un]expected windfall ...

A: That is absolutely right.

...

COURT: Can you create a fictitious account?

A: You can create a fictitious account but there must be money in the fictitious account first because if there's no money, it'll get flagged up for margin shortfall of 3 million. None of us is dumb enough to say how come there's this account – they will surface, the margin will surface. The margin call of 3 million for this fictitious account. Sue, who is this account, can you get the 3 million in for this fictitious account or not.

So it has to start off – whether it's a fictitious account or anything, it must start off with there must be money enough to cover the margin.

COURT: Can the RM transfer money from another client's account who has got money in there to a fictitious account?

A: The RM cannot because the input of the transfer of money from account A to account B is done by the back office, not by her.

COURT: There's this [investigation], whether she has done anything that would enable her to scam the system to get the money in to get --

A: If you are talking about Sue and her record, the answer is up to today no.

COURT: Did you check?

A: Yes.

...

A: Yes, there's no fictitious account that we know of.

Thus, from the evidence given by CIC's officers, which I accept, there was little for Ng to gain and a

lot for her to lose, including incurring civil and criminal liability, from doing unauthorised trades using the clients' accounts and without clients' instructions. This lends support to my finding that the trades were, on balance, more likely to have been authorised.

(2) Ng's draft e-mail to Teo

94 Both parties made submissions on the Draft E-Mail (at [36] above). Teo argued that the italicised words in the Draft E-mail meant that Teo must have raised some dispute concerning the Disputed Accumulators, and the fact that Ng had not sent the Draft-Email to Teo could be because Teo had not agreed to accept the Disputed Accumulators. [note: 94] CIC in turn argued that the italicised words are consistent with Ng's evidence that on 13 November 2007, (which is the date of the conversation which Ng refers to in the Draft-Email) Teo had reassured her that he would not be walking away from the transactions and would remit the necessary funds to top up his margin. [note: 95] I am of the opinion that the italicised words are ambiguous: they could be a reference to a complaint that Teo had about the Disputed Accumulators, though there is no indication of what the nature of this complaint might be, or they could refer to assurances from Teo that he would comply with his obligations under the Disputed Accumulators. It is difficult to draw any inference from the fact that the Draft E-mail was never sent. I cannot accept Teo's submission that Ng had not sent it because what she wrote about Teo agreeing to see through the accumulators was false, since it would not make sense for Ng to draft an e-mail to Teo describing a conversation that never occurred and then keep it.

(3) Complaints of Ng's other clients

95 Both parties made arguments in relation to Ng's other clients – Client A, Client B and Client C – whose orders CIC claimed to have been consolidated with Teo's orders to establish the Disputed Accumulators and the Sembcorp Accumulator. Teo argued that both the fact that Client A and Client B had complained that they had not authorised the establishment of the Disputed Accumulators and the Sembcorp Accumulator, and the fact that Client C had claimed that his share of the Disputed Accumulators had exceeded his mandate to Ng, lends support to his case that he had not authorised Ng as well. [note: 96]

96 In response, CIC argued that the complaints of Ng's other clients were without merit for several reasons. [note: 97] First, the other clients only complained after the price of CE shares had fallen and recovery was a dim prospect. Second, the other clients made payments in response to CIC's margin calls associated with the Disputed Accumulators. None of them objected when CIC liquidated assets in their accounts and set off the proceeds to reduce the margin shortfall. Third, the other clients voluntarily remitted fresh funds thereby ensuring that their accumulators would not be terminated while they sought to negotiate with CIC. Client A remitted US$388,000 to CIC on 18 October 2007, Client B remitted US$25,000 to CIC on 12 February 2008 and Client C paid in full and remains a client of CIC. Fourth, the transcript of the recorded conversation between Client A and Ng on 3 October 2007 (see entry number 10 in the Table of Events of 3 October 2007) shows that Client A had agreed to Ng queuing up to buy CE and Sembcorp accumulators and that Client A was indeed aware that Ng had placed an order for the Seventh CE Accumulator and the Sembcorp Accumulator on his behalf. I set out the relevant portion of the transcript below: [note: 98]

MS SUE:	Er, second thing is that, erm, I am queuing again for China Energy and Sembcorp Marine.

MR	Mm.
MS SUE:	China Energy today has retrieved back. Right now it's about 1.68, 1.69 level. So I will do again and for Sembcorp Marine, I am queuing at 5.30. Right now it's still 5.35, 5.40, so I am waiting for end day lah, by end day, because today market is, erm, quite, erm, down a little bit, you know, not moving –
MR	Okay.
MS SUE:	-- anywhere.
MR	Okay.

97 It is perhaps not entirely surprising that all the clients involved in the Disputed Accumulators should raise some complaint or other, given the large amount of losses racked up under these accumulators. As such, I am unable to say, as Teo's counsel has, that it is "too much of a coincidence" that they too have complained and that this leads to an inference that there is validity in all the complaints, including Teo's.

98 If I were to disregard the fact that I have not heard the testimony of Client A and Client B, then the evidence presented by CIC appears to point instead to the direction that the trades for Clients A and B were not unauthorised. From the totality of the evidence adduced by CIC in relation to the trades of Client A, Client B and Client C, they appear to contradict Teo's allegation that Ng had also entered into unauthorised accumulator transactions for these other clients of hers. Hence, I do not think that the evidence adduced in relation to the complaints of Client A, Client B and Client C, if I were to take them into account to decide Teo's case, would have assisted Teo.

99 However, in my opinion, it is not the purpose of this action, to make findings on whether or not the complaints of Ng's other clients are valid, and it is also not proper to do so given that I do not have all the evidence, such as the testimony of the clients themselves, before me. Teo's use of shreds of evidence showing complaints from other clients (likely also to be inadmissible hearsay evidence if it is to prove the truth of their complaints when these other clients are not called as witnesses) to argue that Ng had established accumulators without authority from her other clients, making it similarly likely that she had established the Disputed Accumulators without Teo's authority because she has the propensity to enter into unauthorised trades, seems to me to be an attempt at using similar fact evidence to bolster his defence, and I think also in circumstances where their prejudicial value far exceeds their probative value, which is something that I will not allow. Similarly, I must hasten to add that in deciding this case, I have not taken into account any evidence adduced by CIC to show that the alleged complaints of Client A, Client B and Client C were untrue. Accordingly, in coming to my decision for this case, I have completely ignored all such evidence adduced by both CIC and Teo in respect of Clients A, B and C.

100 If I am wrong to do so and if I should have taken such evidence into account instead, then my view is that the totality of the evidence points towards the direction that Ng had not entered into any unauthorised transactions in relation to her Clients A, B and C, thereby showing that it is not likely for Ng to have done the contrary with respect to Teo. Teo's use of the complaints of Clients A, B and C to support his case backfired as CIC had strong objective evidence to prove to the contrary.

(4) Teo's trading pattern

101 Both parties claimed that Teo's trading pattern supported their respective cases.

102 Teo's position was that since he had never bought accumulators with such large maximum obligations within two days, he was unlikely to have done so on 2 October 2007 and 3 October 2007. [note: 99] I find however that the evidence reflects the contrary. First, Teo had accepted banking facilities for up to US$15 million in total (which was several times the amount of his cash deposits with CIC). He had requested for and was given a loan facility of up to US$5 million, an amount of up to US$5 million to facilitate his entering into Treasury Contracts and an amount of up to US$5 million to facilitate his entering into Margin Trading Transactions. It would appear from this that from the beginning of his banking relationship with CIC, Teo had already made plans to enter into large trading and investment transactions. As such, he must have an appetite for taking on the kind of risks involved when assuming the large obligations that naturally flow from making such large transactions.

103 Second, the previous pattern of trades as can be seen from the ***undisputed*** transactions prior to 2 October 2007, shows that he in fact had exposed himself to huge total maximum obligations from several accumulator trade positions which were simultaneously open/alive at the same time (*i.e.* before they were knocked out). Yet while still having large maximum obligations, he continued to buy more accumulators and further expose himself to even greater total maximum obligations. I will start by giving the *first* example. While the second Noble Accumulator (item number 2 in the Table of Accumulators) purchased on 25 July 2007 was still open with a maximum obligation of S$1,069,770, he purchased another accumulator, the Keppel Accumulator, on 1 August 2007 which had a maximum obligation of $663,805 (item number 3 in the Table of Accumulators), thereby exposing himself to a total obligation of S$1,733,575. His maximum exposure returned to S$1,069,770 when this Keppel Accumulator was knocked out on 3 August 2007. A *second* example. While the second Noble Accumulator (item number 2 in the Table of Accumulators) purchased on 25 July 2007 was still open with a maximum obligation of S$1,069,770 and had not yet been knocked out, he added two Keppel Accumulators (item numbers 4 and 5 in the Table of Accumulators) on 13 and 15 August 2007 respectively to his accumulator positions. This meant that for the period between the 15 August 2007 and 23 August 2007, a total of three accumulator positions were simultaneously open and he was therefore exposed to a total maximum obligation of S$2,431,015 for that period. On 23 August 2007, one of the Keppel Accumulators was knocked out and his total maximum exposure was reduced to S$1,760,958. On 27 August 2007, the remaining Keppel Accumulator was also knocked out and his total maximum exposure dropped back to S$1,069,770, which was the exposure from the second Noble Accumulator that was still running. A *third* example will demonstrate his risk appetite for accumulators growing even further as he was getting more experience from buying them. While this second Noble Accumulator (item number 2 in the Table of Accumulators) was still open, he further purchased two DBS Accumulators on 13 September 2007 (item numbers 7 and 8 in the Table of Accumulators) with maximum obligations of S$1,795,086 and S$1,822,561 respectively. Then he added on yet another DBS Accumulator purchased on 18 September 2007 (item number 9 in the Table of Accumulators). This meant that for the period between 13 September 2007 and 17 September 2007, he had altogether three accumulator positions open simultaneously. His maximum total exposure on these three accumulators ballooned to a hefty total of S$4,687,417. When he further added the third DBS Accumulator on 18 September 2007, his maximum total exposure increased further to S$6,867,205. Fortunately for him, two of the three DBS Accumulators were knocked out on the next day, *i.e.*19 September 2007 (item numbers 7 and 9 in the Table of Accumulators), whereupon his maximum total exposure reduced to S$2,892,331. More examples can be given but it is not necessary to so. These examples from his previous trading history in accumulators show that taking on very large positions in accumulators is nothing exceptional for him. In fact, it shows his appetite for taking on huge risks.

104 Due to the highly leveraged nature of the accumulator product, Teo might have thought that he could undertake the large obligations since he does not have to pay upfront the full amount of the

maximum obligation at the time of purchase. The maximum obligation is computed by multiplying the strike price by the total number of those shares that the investor is obliged to accumulate at double the ordinary rate in the worst case scenario that the market price remains below the strike price throughout the whole accumulation period of one year. Since the delivery and payment for the shares are evenly spread out throughout the year, the investor does not need to have ready cash to pay the full amount of the maximum obligation in order to establish the accumulator. If luck is with the investor and the price moves upwards beyond the knock-out price, the accumulator is knocked out and the obligation to accept further delivery ceases. The "maximum obligation" thus falls away to zero. Hence, the "maximum obligation" of an accumulator gives an indication of the investor's maximum potential loss in the very unlikely scenario that the all underlying shares delivered are worthless (*i.e.* share price has collapsed to zero and remains at zero for the whole year.) I will now explain how an investor may fund the purchase of an accumulator with a minimum outlay. I will take the example of the Seventh CE Accumulator that has a maximum obligation of $4,571,400 based on an accumulation per day of 6,000 CE shares. Assume that the CE share price stays above the strike price. Assume delivery is on a weekly basis and a week is taken as 5 working days. Teo would then have to pay about $45,714 a week (*i.e*. strike or discounted price of $1.5238 x 6,000 x 5) for the 30,000 CE shares delivered to him per week as long as the market price of CE shares remains above the strike price of $1.5238. The price paid of S$45,714 is at a discount because the 30,000 CE shares are actually worth about $50,400 (*i.e*. initial price of $1.68 x 6,000 x 5) at the time of establishing the Seventh CE Accumulator. If the price of CE shares rises by 3 cents to $1.71, Teo would still pay the same amount of $45,714 but now for $51,300 (*i.e*. market price of $1.71 x 6,000 x 5) worth of shares. He can then sell these shares for a profit of $5,586 (*i.e*. $51,300 minus $45,714) and apply the sale proceeds to pay for the CE shares that would be delivered the next week. If, however, the price of CE shares falls by 20 cents to $1.48, with the doubling effect, Teo would pay $91,428 (*i.e*. strike or discounted price of $1.5238 x 12,000 x 5) for $88,800 (*i.e*. market price of $1.48 x 12,000 x 5) worth of shares. He can then sell these shares for a loss of $2,628 ($91,428 minus $88,800) and re-use the sale proceeds to help pay for the CE shares to be delivered the following week.

105 Two observations are pertinent. *First*, a 3 cents rise in the market price of the CE shares brings him a large profit of $5,586 yet a much larger drop of 20 cents in the market price of the CE shares brings him only a fairly small loss of $2,628. The structured accumulator product appears to give a relatively good bargain. To the investor who is not familiar with the kind of high risks involved in such structured financial products and the effects of volatility on the probability of a substantial loss where there is an upper limit set via a knock-out price when the price rises but there is no corresponding pre-set knock-out price on the downside when the price falls, these accumulators would on the surface appear to be an attractive leveraged play. There is a good buffer from falls in the price of the CE shares in the form of a discounted price at which the investor is to accumulate the CE shares. I would not be surprised if this superficially "attractive feature" of the accumulator had influenced Teo into making such bold moves to take on large accumulator positions. *Second*, if Teo continues to sell the Seventh CE accumulator shares immediately each time they are delivered to him, then he does not have to fork out that much money to see through his obligations for that accumulator even though his maximum obligation is as high as S$4.571 million. He can then take on bigger accumulator positions without too much worry. If one were to harbour a bullish view on CE shares, in that it is highly improbable for the CE share price to fall from the current spot price at the time of establishing the accumulator of S$1.68 to a price below the pre-set discounted price of S$1.52 (given the buffer of 16 cents on the downside), then it is possible to continuously roll each transaction as explained above and to keep selling each consignment of CE shares delivered at the market price to pay for the purchase of the next consignment of CE shares. If the investor is right on his outlook for CE shares that the market price will stay above S$1.52, then he can readily see through the Seventh CE Accumulator even when the total potential obligation may be as high as S$4.571 million and he has only $500,000 deposited with the bank. In the process, he will also make a lot of money. Of course,

as with everything else, if his outlook is very wrong and the share price nose dives and he fails to unwind fast enough, then he will quickly suffer large losses because it is a leveraged play with double accumulation and there is no pre-set knock-out price on the downside when the price falls. Thus, I find it difficult to accept Teo's argument that it is inconceivable for him, a man of modest means with only about S$500,000 worth of assets with CIC, to enter into CE accumulators with a maximum obligation of S$10 million to S$11 million and a Sembcorp accumulator with a maximum obligation of S$3 million. Whether or not to enter into the CE Accumulator transaction depends more on his outlook on the likely future performance of CE shares rather than on his lack of financial capacity to enter those transactions, which on the facts as explained above did not and would not prevent him from entering those trades in question if he had wanted to.

106 I accept the contention of CIC that since Teo had profited from all his previous accumulators, and because he had a strong positive outlook on CE shares [note: 100], he became greedier and ventured to take more risk by entering even larger CE accumulator positions. In this case, greed came before the fall. At that time on 2 and 3 October 2007, there was evidence of much bullishness in the Singapore market on shares of China based firms listed on the Singapore Exchange. The price of CE was rapidly rising from 27 September 2007, when it was trading at about S$1.41 (see item 12 in the Table of Accumulators). It rose quickly to S$1.67 on 1 October 2007 (see item 14 in the Table of Accumulators). When the stock market opened for trading the following day on 2 October 2007, the price of CE share literally shot upwards to S$1.81 (see item 17 in the Table of Accumulators). This is a spectacular rise of 28% in the price of CE shares within a matter of days. Teo's Second CE Accumulator established on 1 October 2007 was immediately knocked out the next day due to the rapidly rising CE counter, with punters chasing up its stock price. That in part I think explains why Teo urgently sent an SMS to Ng as early as 7:47 am that morning of 2 October 2007, probably with a view to purchase even more CE Accumulators. I find that Teo at that time was very bullish on the CE counter and that was the reason why he was prepared to take the risk of entering into such large CE Accumulator transactions on both 2 October 2007 and 3 October 2007.

107 I further note that Teo admitted in his own evidence in court that he had at 9:34 am on 2 October 2007 specifically instructed Ng to sell his Cosco shares but keep his CE shares. He was therefore even more bullish on the CE shares than he was with Cosco shares. The undisputed fact that he chose to keep the CE shares delivered to him under the First and Second CE Accumulators instead of immediately selling them off for a profit reflects his bullishness on this stock at that time. It is not surprising to me that he had gone on to "bang hard on this counter". Teo would have made a lot of money but for the fact that the CE share price gradually started falling not long after the Third to Seventh CE Accumulators were established. What started as a gradual fall became a persistent fall, from which the CE share price never recovered, resulting in huge financial losses eventually for Teo.

108 For Teo who had been successfully punting on accumulators since 20 July 2007 and who was making good returns on them whilst the going was good, I find it hard to believe that he would step hard on the brakes and suddenly stop doing any more accumulators on 2 October 2007 as he appears to be claiming. It is hard to stop whilst still having a successful run. Teo failed to give me a reason that would reasonably convince me on why he decided to stop trading in accumulators on 2 October 2007, especially when both Teo and Ng, who was advising him, were still so bullish on CE shares. The reasons that he gave for stopping – because accumulators were risky investments and because of the sub-prime crisis (which did not prevent him from holding on to his CE shares accumulated under the First and Second CE Accumulators) – hardly persuaded me at all. The timing of his alleged realisation that he should stop dabbling in accumulators, which coincided with the losing trade on the CE accumulators, was just too remarkably coincidental and too fortuitous. If indeed Teo's explanation is not made up, then I would have to believe that he was especially blessed with very good foresight

and good fortune to be able to stop just in the neck of time, and it was simply Ng's bad luck to start trading behind his back (whether or not for her own benefit) just at this point of time when the CE share price was turning down and the CE Accumulators were going to become instruments of financial disaster. On balance, I think that Teo has denied his instructions to Ng to purchase the Disputed Accumulators in an attempt to escape from his obligations under the Disputed Accumulators, which turned out to be loss-making.

(5) Teo's various mandates to Ng

109 Teo argued that he could not have instructed Ng to purchase the Disputed Accumulators because these accumulators were outside the confines of the mandate which he had given to Ng. Teo claimed to have given Ng different mandates at different times but he had difficulty expressing what these mandates were and during which period each mandate applied. First, Teo pleaded in his Defence and Counterclaim that on 20 July 2007 *before* he established any accumulator, he expressly instructed Ng that his exposure on accumulators should not exceed the value of his deposits with CIC, which was about S$500,000, and that he would only accumulate shares which are "blue chips" (the "Alleged First Mandate"). [note: 101] However, in his Affidavit of Evidence-in-Chief ("AEIC"), he stated that he told Ng to limit his exposure to the value of his deposits with CIC *after* the first accumulator that he had established was knocked out on 23 July 2007 [note: 102], which is different from what he had pleaded earlier. During cross-examination, he began by claiming that what he pleaded in his Defence and Counterclaim was true [note: 103] but when questioned further, he said that what was in his AEIC was true, [note: 104] thus implying that what was stated in his Defence and Counterclaim was now wrong. Second, Teo claimed during cross-examination that he changed his mandate to $1 million somewhere between 10 September 2007 and 13 September 2007 (the "Alleged Second Mandate"). [note: 105] Third, Teo stated that before the third DBS accumulator was done on 18 September 2007, he asked Ng what his exposure would be if he were to go into the third DBS accumulator. When she replied "$2 million", he agreed because DBS was a "blue chip" (the "Alleged Third Mandate"). [note: 106] Fourth, Teo pleaded in his Defence and Counterclaim that on 27 September 2007, he specifically instructed Ng to accumulate only "blue chip" share counters and to limit his exposure to about $1 million (the "Alleged Fourth Mandate"). [note: 107] When questioned under cross-examination on why, then, did he authorise the First CE Accumulator on 27 September 2007 when to his mind CE was not a "blue chip", [note: 108] he stated that it was because the maximum exposure was under $1 million. [note: 109]

110 Even if I were to accept Teo's evidence that there were these four mandates in force at different periods (which CIC disputed), it does not support Teo's case that he could not have authorised the purchase of the Disputed Accumulators. I find that the inconsistencies present in Teo's evidence about his mandates are significant because if he himself was not clear about what his mandates were and when they applied, how could Ng have been aware what exactly were the restrictions placed on her? Further, it can be seen that Teo's alleged mandates were not set in stone: he may decide to establish accumulators that exceed his mandate (as in the case of the third DBS accumulator) or Ng may ask him for permission to go beyond his mandate and he may agree (as in the case of the First CE Accumulator). This meant it was open for Ng to ask Teo if he wanted to purchase the Disputed Accumulators which were on a non-blue chip share counter and beyond the $1 million limit that he claimed was in place on 2 October 2007 and 3 October 2007. Indeed, she did ask Teo in her SMS on 2 October 2007 whether she could "do some more" and she was looking at China Energy, Cosco and Ferrochina, which are all clearly non-blue chip share counters (see entry number 2 in the Table of Events of 2 October 2007). In this SMS, it does not appear to me that she was seeking permission to vary his alleged specific mandate prohibiting her from doing non-blue chips. In

other words, there was no hint in the SMS that Ng was asking whether she could order more accumulators based on these counters for him because they were non-blue chips and a variation to his mandate had to be sought first. It must be borne in mind that prior to this SMS on 2 October 2007, Ng had already purchased for him two Cosco Accumulators (one on 25 September 2007 and the other on 1 October 2007) and two CE Accumulators (one on 27 September 2007 and the other on 1 October 2007), which were the same non-blue chip counters for which she was asking whether more could be done. Finally, I note that for every mandate Teo alleged to have given to Ng, there is at least one example of an accumulator which fell outside of the mandate and which Teo has never alleged to be unauthorised. When the Alleged First Mandate was in force, the second Noble accumulator entered into on 25 July 2007 and the Keppel accumulators entered into from 1 August 2007 to 10 September 2007 each had a maximum obligation exceeding $500,000. When the Alleged Second Mandate was in force, the DBS accumulators entered into on 13 September 2007 each had a maximum obligation exceeding $1 million. When Teo gave the Alleged Third Mandate on 18 September 2007, his total maximum obligation under all his accumulators exceeded $2 million. When the Alleged Fourth Mandate was in force, the Second Cosco accumulator and the Second CE Accumulator entered into on 1 October 2007 each had a maximum obligation exceeding $1 million. Teo has not disputed that the term sheets of all these accumulators were sent to him and he has not alleged that the accumulators were entered into in excess of his authority in the sense that the dollar limits of exposure set under his various changing mandates had been exceeded on each of the transactions or that they were non-blue chips when they should have been only blue chips. As such, Teo's arguments on his alleged mandates to Ng do not help his case. In fact, I find it hard to believe that there was such a series of complicated and changing mandates imposed on Ng. I believe that Teo was tailoring his evidence and creating these fictional mandates to suit his version of the facts for what were authorised, and what were allegedly unauthorised transactions carried out in breach of his mandate on dollar quantum or for blue chip counters only, with changes or ad hoc exceptions made to his so called mandates created along the way to try to accommodate those undisputed transactions that fell outside his mandate. In the course of inventing these multiple mandates, he got himself entangled in his own web of lies.

(6) Teo's lack of knowledge and diligence

111 Teo claimed that Ng never informed him, prior to 19 November 2007, that the accumulators required him to accumulate double the quantity of shares at the discounted/strike price if the market price fell below the discounted price. [note: 110] Further, Teo claimed that Ng never informed him that he could terminate an accumulator prior to its maturity or before it was knocked out. [note: 111] However, it is set out clearly in the Risk Disclosure Statement (at [7] above) that Teo is to make his own assessment before entering into any transaction and that CIC is not responsible to give any advice or recommendation. If Teo did not know or understand the features of the accumulator, as he has alleged, the onus was on him to either consult professionals or even ask Ng and he cannot now blame Ng for his lack of knowledge on the product. Further, the doubling effect is set out clearly in the term sheets sent to him after each accumulator was established. In fact, he has purchased many undisputed accumulators and received many term sheets clearly stating the doubling effect prior to the present disputed transactions. It is his own folly if he chooses not to read them and wants to remain ignorant of what the terms of the accumulators were. It seems that he is prepared to indulge in high risk behaviour by entering into sizeable transactions without even bothering to read what the terms are all about. More importantly, the fact that Teo did not know about the doubling effect or that accumulators could be closed-out at a certain cost (even if his absence of knowledge is true) is irrelevant to the question of whether Teo had instructed Ng to establish the Disputed Accumulators.

112 Teo also claimed that he did not read the three contracts that he signed when he opened his

account and that he also did not read the letters sent to him by CIC and thus never saw the term sheets, confirmation notes, statements of account and loan confirmation slips. However, Teo's lack of diligence cannot save him as it is trite law that, subject to certain exceptions which are inapplicable and need not concern us here, a person is bound by a contract that he has signed, whether he has read and understood its terms.

Finding

113 For all the above reasons, I find on a balance of probabilities that Teo instructed Ng to purchase the Disputed Accumulators. I am even prepared to go further to say that the evidence leaning against him is fairly overwhelming. As such, it is not necessary to examine the issue of whether Teo is estopped from denying that he had authorised Ng to purchase the Disputed Accumulators.

What CIC is entitled to claim from Teo

114 I now turn to the question of what CIC is entitled to claim from Teo. When Teo, after receiving the letter of demand dated 14 March 2008 from CIC's solicitors, failed to pay the sum he owed CIC for shares delivered to him under the Disputed Accumulators, it was a clear repudiation of the contracts between CIC and Teo whereby CIC agreed to deliver shares to Teo pursuant to the terms of the Disputed Accumulators and Teo agreed to pay for them. CIC elected to accept Teo's repudiation and exercised its rights under the Terms and Conditions of the Account Opening and Custodian Agreement and the Terms and Conditions for Treasury Services (see [6] and [8] above) to close-out and terminate the Disputed Accumulators. This resulted in CIC having to pay closing-out costs to its counterparties. Thus, Teo is contractually obliged to pay the outstanding amounts due to CIC for the CE shares delivered to him pursuant to the Disputed Accumulators until the various closing-out dates (at [21]). Teo is also liable in contractual damages to CIC for the closing-out costs (at [20]) as these are losses flowing naturally from Teo's repudiatory breaches.

115 Teo did not challenge CIC's right to close-out and terminate the Disputed Accumulators. However, he argued that he should not be liable for the closing-out costs because the terms sheets for the Disputed Accumulators do not provide that he is liable to pay these costs and CIC cannot unilaterally impose them on Teo. This argument cannot be accepted because the term sheets need not provide what Teo must pay in the event that he breaches the contracts; this falls to be determined by ordinary contract principles which require him to pay the reasonably foreseeable losses caused to CIC and this must include the closing-out costs. Teo further argued that since Anglada testified that it was CIC's internal policy to immediately close-out an accumulator which is alleged to have been unauthorised and it was clear, at least by 23 November 2007, that Teo was making such allegations about the Disputed Accumulators, CIC should have closed-out the Disputed Accumulators and sold the CE shares accumulated thereunder in November 2007 or December 2007 instead of April 2008, something which would have cut CIC's losses. I do not accept this argument. In the first place, CIC's internal policy is not law and CIC is not legally obliged to follow it. While, in law, an innocent party to a contract which has been breached has a duty to mitigate his losses, I do not find it so unreasonable of CIC to have only closed-out the accumulator transactions in April 2008 because Teo had not made his position clear until about mid-December 2007 and the direction in which the market would move from then on was anyone's guess. This is not a case where the earlier CIC unwound the transactions, the smaller the losses will invariably be. With hindsight, of course one can say CIC should have unwound the positions immediately in mid-December 2007 when Teo was no longer equivocating and the losses would have been smaller. What happens if the CE share price recovers strongly after unwinding in mid-December 2007? Share prices are always volatile and CE shares are no exception. In any case, it does not lie in the mouth of the wrongdoing party to a contract to split

hairs on what the innocent party should or should not have done, and this is more so here when CIC asked Teo a few times whether he wanted to close-out the Disputed Accumulators and Teo refused to answer.

116 Teo did not dispute that CIC had the right under the overarching contractual documents to realise the assets held in Teo's account and to apply the sale proceeds towards settlement of the outstanding amount due from Teo to CIC under the Disputed Accumulators. After the set-off, Teo still owed CIC $6,408.196.77 and CIC extended to Teo various loans to cover this amount. Teo challenged his liability under these loans on the ground that he had never given any drawdown notices to CIC under the loan facility. [note: 112] CIC responded that the past dealings between Teo and Ng showed that there was an understanding between the parties that where Teo had insufficient funds to pick up the shares under an accumulator, a loan should be utilised to pick up the shares. [note: 113] I find this to be the case given that CIC had previously provided loans to Teo for the purpose of picking up shares under the undisputed accumulators and since Teo claimed never to have requested any loans, Teo would not have requested these loans. Yet, upon receiving the loan confirmation notes which stated that "[CIC] must be notified in writing of any errors or omissions within 14 days ... or the client is deemed to have agreed to the transaction details", Teo never disputed CIC's authority to extend these loans. The implication would be that Teo had acquiesced to the extension of these loans. More pertinently, Teo also did not raise any issue on the loans extended to him for the Disputed Accumulators until the commencement of this suit, long after the 14-day period for objecting had passed. Thus, I find these loans to have been validly extended, meaning that Teo was liable to CIC as of 29 August 2008 for $6,459,519.83, being the sum stated on the conclusive certificate of indebtedness issued by CIC.

Conclusion

117 For the above reasons, I give judgment for CIC and dismiss Teo's counterclaims. Teo is to pay CIC the following:

(a) $2,782,803.66 for the shares delivered to Teo pursuant to the terms of the Disputed Accumulators;

(b) $3,625,393.11 for the costs of closing out the Disputed Accumulators; and

(c) Interest of S$51,323.06 as at 29 August 2008 for the loans extended by CIC to Teo.

118 I will also state that even without the admission of the evidence of Ng under s 33 of the EA, I would still have given judgment for CIC because on the totality of the other evidence before me, much of it being circumstantial in nature, I do find that they lead me to the irresistible conclusion that Teo must have given Ng the requisite instructions on 2 October 2007 and 3 October 2007 to enter into the Disputed Accumulator transactions.

119 Subject to parties wishing to address me on costs, I will order costs on an indemnity basis which is as provided in the Account Opening and Custodian Agreement.

120 Finally, I observe that the difficulties encountered in this case could have been easily obviated through the recording of the phone calls between Ng and Teo. It is worthwhile for banks and relationship managers to consider adopting the practice of making recordings of their clients' investment instructions in order to avoid disputes of this kind. Even if there is no opportunity to record the conversations as the relationship manager is outside the office and transactions are frequently done over the mobile phone, arrangements can easily be made by the relationship manager

for an officer within the bank, having a phone recording facility, to call the client back immediately and repeat the terms of the agreed transactions for them to be recorded. Alternatively, the transactions can be confirmed via SMS.

[note: 1] Plaintiff's Closing Submissions at paragraph 22.

[note: 2] Defendant's Closing Submissions at paragraphs 1-2.

[note: 3] Statement of Claim (Amendment No. 3) at paragraph 3; Defence and Counterclaim (Amendment No. 4) at paragraph 3.

[note: 4] Statement of Claim (Amendment No. 3) at paragraph 10; Defence and Counterclaim (Amendment No. 4) at paragraph 7.

[note: 5] Defence and Counterclaim (Amendment No. 4) at paragraph 13.

[note: 6] At paragraph 15.

[note: 7] Plaintiff's Closing Submissions at paragraphs 44-49.

[note: 8] Defence and Counterclaim (Amendment No. 4) at paragraph 15.

[note: 9] Statement of Claim (Amendment No. 3) at paragraph 30; Plaintiff's 2nd Supplementary Core Bundle of Documents at page 241.

[note: 10] Statement of Claim (Amendment No. 3), paragraphs 31-32.

[note: 11] Statement of Claim (Amendment No. 3), paragraphs 33-34.

[note: 12] Plaintiff's Closing Submissions at paragraph 64.

[note: 13] Statement of Claim (Amendment No. 3), paragraphs 35-36.

[note: 14] Statement of Claim (Amendment No. 3) at paragraph 40.

[note: 15] Statement of Claim (Amendment No. 3) at paragraph 41.

[note: 16] Statement of Claim (Amendment No. 3) at paragraphs 42-43.

[note: 17] Statement of Claim (Amendment No. 3) at paragraph 45.

[note: 18] Statement of Claim (Amendment No. 3) at paragraph 46.

[note: 19] Statement of Claim (Amendment No. 3) at paragraph 47.

[note: 20] Statement of Claim (Amendment No. 3) at paragraph 38.

[note: 21] Statement of Claim (Amendment No. 3) at paragraph 48.

[note: 22] Statement of Claim (Amendment No. 3) at paragraphs 49-50.

[note: 23] Statement of Claim (Amendment No. 3) at paragraph 51.

[note: 24] Statement of Claim (Amendment No. 3) at paragraph 53.

[note: 25] Statement of Claim (Amendment No. 3) at paragraph 55.

[note: 26] Statement of Claim (Amendment No. 3) at paragraphs 58-60, 64-66.

[note: 27] Statement of Claim (Amendment No. 3) at paragraphs 60-63.

[note: 28] Defence and Counterclaim (Amendment No. 4) at paragraph 28.

[note: 29] Defence and Counterclaim (Amendment No. 4) at paragraph 29.

[note: 30] Defence and Counterclaim (Amendment No. 4) at paragraph 30.

[note: 31] Defence and Counterclaim (Amendment No. 4) at paragraphs 31-33.

[note: 32] Defence and Counterclaim (Amendment No. 4) at paragraphs 34-35.

[note: 33] Defence and Counterclaim (Amendment No. 4) at paragraph 36.

[note: 34] Defence and Counterclaim (Amendment No. 4) at paragraphs 37-38.

[note: 35] Defence and Counterclaim (Amendment No. 4) at paragraph 40.

[note: 36] Defence and Counterclaim (Amendment No. 4) at paragraph 41.

[note: 37] Defence and Counterclaim (Amendment No. 4) at paragraph 42.

[note: 38] Defence and Counterclaim (Amendment No. 4) at paragraph 50.

[note: 39] Defence and Counterclaim (Amendment No. 4) at paragraph 45.

[note: 40] Defence and Counterclaim (Amendment No. 4) at paragraph 52.

[note: 41] Defence and Counterclaim (Amendment No. 4) at paragraphs 54-55.

[note: 42] Defence and Counterclaim (Amendment No. 4) at paragraphs 63.

[note: 43] Defence and Counterclaim (Amendment No. 4) at paragraphs 64.

[note: 44] *Teo Wai Cheong v Crédit Industriel et Commercial* [2011] SGCA 13 at [20]-[23].

[note: 45] *Teo Wai Cheong v Crédit Industriel et Commercial* [2011] SGCA 13 at [26]

[note: 46] Affidavit of Jean-Luc Anglada filed on 19 October 2011, at paragraphs 13-25.

[note: 47] *Teo Wai Cheong v Crédit Industriel et Commercial* [2011] SGCA 13 at [27]

[note: 48] Exhibit P-25; Exhibit D-1.

[note: 49] Exhibit P-28.

[note: 50] Plaintiff's Closing Submissions at paragraph 139.

[note: 51] Transcript of 16 January 2012 at page 14.

[note: 52] Transcript of 16 January 2012 at pages 4-5.

[note: 53] Defendant's Closing Submissions at paragraphs 422-423.

[note: 54] Defendant's Closing Submissions at paragraphs 430-449.

[note: 55] Transcript of 16 January 2012, at pages 33-34.

[note: 56] Exhibit P-25; Exhibit D-1.

[note: 57] Exhibit P-31.

[note: 58] Transcript of 17 January 2012 at pages 30-31.

[note: 59] Transcript of 17 January 2012 at pages 34-36.

[note: 60] Defendant's Closing Submissions at paragraphs 471-472.

[note: 61] Plaintiff's 3rd Supplementary Bundle of Documents ("3PSB"), at page 3078.

[note: 62] 3PSB at page 3080.

[note: 63] Defendant's Closing Submissions at paragraphs 471-472.

[note: 64] AEIC of Ng Su Ming at paragraph 147.

[note: 65] Defence and Counterclaim (Amendment No. 4) at paragraph 35.

[note: 66] Defence and Counterclaim (Amendment No. 4) at paragraph 36.

[note: 67] Ng's AEIC at paragraph 131.

[note: 68] Transcript of 19 January 2012, at page 15.

[note: 69] Plaintiff's Closing Submissions at paragraph 242.

[note: 70] Transcript of 16 November 2011 at page 70.

[note: 71] Affidavit of Evidence-in-Chief of Ng Su Ming at paragraph 169.

[note: 72] AEIC of Ms Tay Lian See at para 23.

[note: 73] Plaintiff's closing submissions at para. 245.

[note: 74] AEIC of Mr Teo Wai Cheong at para. 79.

[note: 75] Transcript of 3 November 2011, at page 81.

[note: 76] AEIC of Paul Kwek Pong Hwee at paragraph 18.

[note: 77] AEIC of Teo Wai Cheong at paragraph 82.

[note: 78] Transcript of 3 November 2011 at page 81.

[note: 79] Transcript of 16 January 2012 at page 92.

[note: 80] AEIC of Teo Wai Cheong at page 183.

[note: 81] 6AB at page 3249.

[note: 82] 6AB at page 3243.

[note: 83] 6AB at page 3249.

[note: 84] P8 - 2

[note: 85] AEIC of Tay Lian See at paragraphs 21-22.

[note: 86] AEIC of Tay Lian See at para. 24

[note: 87] Plaintiff's Closing Submissions, paragraphs 256-279.

[note: 88] Transcript of 10 November 2011, at page 147.

[note: 89] Exhibit P-11.

[note: 90] Transcript of 3 November 2011, at page 51.

[note: 91] Transcript of 3 November 2011, at page 52.

[note: 92] Plaintiff's Closing Submissions at paragraph 264.

[note: 93] Transcript of 11 November 2011, at pages 64-66.

[note: 94] Defendant's Closing Submissions at paragraphs 607-608.

[note: 95] AEIC of Ng Su Ming at paragraph 158 and CIC's Skeletal Submissions for Summons No. 4607/2011 at paragraph 20.

[note: 96] Defendant's Closing Submissions at paragraphs 491-553.

[note: 97] Plaintiff's Closing Submissions at paragraphs 153-155.

[note: 98] Defendant's Core Bundle of Documents at page 182.

[note: 99] Defendant's Closing Submissions at paragraphs 382 to 392.

[note: 100] Plaintiff's Closing Submissions at paragraphs 156-167.

[note: 101] Defence and Counterclaim (Amendment No. 4) at paragraph 15(d).

[note: 102] AEIC of Teo Wai Cheong at paragraph 47.

[note: 103] Transcript of 13 January 2012 at page 4.

[note: 104] Transcript of 13 January 2012 at page 129.

[note: 105] Transcript of 13 January 2012 at page 26.

[note: 106] Transcript of 13 January 2012 at page 26.

[note: 107] Defence and Counterclaim (Amendment No. 4) at paragraph 20.

[note: 108] Transcript of 13 January 2012 at page 33.

[note: 109] Transcript of 13 January 2012 at page 34.

[note: 110] Defence and Counterclaim (Amendment No. 4) at paragraph 14.

[note: 111] Defence and Counterclaim (Amendment No. 4) at paragraph 14.

[note: 112] Defendant's Closing Submissions at paragraphs 759-768.

[note: 113] Plaintiff's Closing Submissions at paragraphs 460-465.