Ng Geok Eng v Public Prosecutor
[2006] SGHC 232

Case Number : MA 40/2006

Decision Date : 21 December 2006

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Suresh Damodara and Kesavan Nair (David Lim & Partners) for the appellant; April Phang (Deputy Public Prosecutor) for the respondent

Parties : Ng Geok Eng — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Principles – Appellant pleading guilty to charges under Securities and Futures Act and Securities Industry Act for offences of market rigging and deceitful practice – Whether sentences imposed manifestly excessive or inadequate – Correct sentencing approach and type of sentences to be imposed – Section 102(b) Securities Industry Act (Cap 289, 1985 Rev Ed), ss 197(1), 201(b) Securities and Futures Act (Cap 289, 2002 Rev Ed)

21 December 2006

Tay Yong Kwang J:

1 This was an appeal against sentence. The appellant, a 52 year old male, pleaded guilty and was convicted of a total of four charges, three of which were brought under the Securities and Futures Act (Cap 289, 2002 Rev Ed) ("the SFA") and one under the Securities Industry Act (Cap 289, 1985 Rev Ed) ("the SIA"). The gravamen of the appellant's offences stemmed from his use of various trading accounts to illicitly manipulate the share price of a company known as Autron Corporation Limited ("Autron"), which was listed on the mainboard of the Singapore Exchange Ltd ("the SGX"). The share trading accounts that he used were variously registered in his own name, as well as in the names of his wife, Lim Man Peng, and his friend, Low Swee Seh ("Low").

2 Of the three charges brought against the appellant under the SFA, one was for a count of creating a misleading appearance ("the first charge"), whilst the other two ("the second charge" and "the third charge" respectively), together with the single charge under the SIA ("the fourth charge"), were for the offences of engaging in practices that operated as a deceit ("the offence of deceitful practice") upon certain securities trading firms. These four charges were respectively to the following effect:

> (a) DAC 047239 ("the first charge")
>
> You, Ng Geok Eng (M/52 years), NRIC No. S0223774A, are charged that you, between October 2002 and April 2003, in Singapore, did create a misleading appearance with respect to the price of securities, namely shares in Autron Corporation Limited ("Autron"), a body corporate whose shares were traded on the Mainboard of the Singapore Exchange Ltd, a securities exchange in Singapore, to wit by executing trades of Autron shares using your own share trading accounts, one Lim Man Peng's and one Low Swee Seh's share trading accounts, in order to maintain the price of Autron shares, and you have thereby committed an offence under Section 197(1) and punishable under Section 204(1) of the Securities and Futures Act (Chapter 289, 2002 Revised Edition).
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> (b) DAC 047243 ("the second charge")
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> You, Ng Geok Eng (M/52 years), NRIC No. S0223774A, are charged that you, between October

2002 and April 2003, in Singapore, directly in connection with the purchase or sale of shares in Autron Corporation Limited ("Autron"), a body corporate whose shares were traded on the Mainboard of the Singapore Exchange Ltd, a securities exchange in Singapore, in the account of one Low Swee Seh ("Low") whose share trading account no. 01/0042171 was maintained with Fraser Securities Pte Ltd (the "Firm"), did engage in a practice which operated as a deceit upon the Firm, to wit by using Low's trading account to conduct trades in Autron shares without duly notifying the Firm in writing nor seeking its prior consent, which trades were carried out for your own benefit, and you have thereby committed an offence under Section 201(b) and punishable under Section 204(1) of the Securities and Futures Act (Chapter 289, 2002 Revised Edition).

(c) DAC 047247 ("the third charge")

You, Ng Geok Eng (M/52 years), NRIC No. S0223774A, are charged that you, between October 2002 and March 2003, in Singapore, directly in connection with the purchase or sale of shares in Autron Corporation Limited ("Autron"), a body corporate whose shares were traded on the Mainboard of the Singapore Exchange Ltd, a securities exchange in Singapore, in the account of one Low Swee Seh ("Low") whose share trading account no. 21/0350030 was maintained with Kim Eng Securities Pte Ltd (the "Firm"), did engage in a practice which operated as a deceit upon the Firm, to wit by using Low's trading account to conduct trades in Autron shares without duly notifying the Firm in writing nor seeking its prior consent, which trades were carried out for your own benefit, and you have thereby committed an offence under Section 201(b) and punishable under Section 204(1) of the Securities and Futures Act (Chapter 289, 2002 Revised Edition).

(d) DAC 047248 ("the fourth charge")

You, Ng Geok Eng (M/52 years), NRIC No. S0223774A, are charged that you, between April 2002 and August 2002, in Singapore, directly in connection with the purchase or sale of shares in Autron Corporation Limited ("Autron"), a body corporate whose shares were traded on the Mainboard of the Singapore Exchange Ltd, a securities exchange in Singapore, in the account of one Low Swee Seh ("Low") whose share trading account no. 28/0142588 was maintained with OCBC Securities Pte Ltd (the "Firm"), did engage in a practice which operated as a deceit upon the Firm, to wit by using Low's trading account to conduct trades in Autron shares without duly notifying the Firm in writing nor seeking its prior consent, which trades were carried out for your own benefit, and you have thereby committed an offence under Section 102(b) and punishable under Section 104(1)(a) of the Securities Industry Act (Chapter 289, 1985 Revised Edition).

3 In respect of the first charge, s 197(1) of the SFA provides as follows:

False trading and market rigging transactions

197. – (1) No person shall create, or do anything that is intended or likely to create a false or misleading appearance—

(a) of active trading in any securities on a securities market; or

(b) with respect to the market for, or the price of, such securities.

4 The relevant charging section for the second and third charges, s 201(b) of the SFA, is in turn *in pari materia* with the charging section for the fourth charge, s 102(b) of the SIA. The discrepancy between the charging Act for the second and third charges on the one hand, and for the fourth charge on the other, arose because the relevant periods of time referred to in the second and third

charges occurred after the SIA had been repealed and the SFA had come into operation. In the context of the present appeal, s 102(b) of the SIA and s 201(b) of the SFA are, for all intents and purposes, indistinguishable. Any observations which this court makes regarding s 201(b) of the SFA should accordingly be taken to apply to the same offence under s 102(b) of the SIA. Section 201(b) of the SFA provides that:

> **Employment of manipulative and deceptive devices**
>
> **201.** No person shall, directly or indirectly, in connection with the subscription, purchase or sale of any securities—
>
> …
>
> (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;
>
> …

Section 204(1) of the SFA and s 104(1)(a) of the SIA provide for a maximum fine of $250,000 or a maximum imprisonment term of seven years or both such punishments. They are general punishment provisions covering a myriad of offences.

5 In addition to these four counts, the appellant was initially charged with seven additional counts under the SFA and the SIA. He consented to six of these charges ("the TIC charges") being taken into consideration for the purposes of sentencing. The final charge was subsequently withdrawn after the appellant was sentenced and a discharge amounting to an acquittal was granted on this charge. The six TIC charges were as follows:

(a) One count of false trading under s 97(1) of the SIA, punishable under s 104(1)(a) of the same Act;

(b) Three counts of deceitful practice under s 102(b) of the SIA, punishable under s 104(1)(a) of the same Act; and

(c) Two counts of deceitful practice under s 201(b) of the SFA, punishable under s 204(1) of the same Act.

6 The District Judge sentenced the appellant to a fine of $250,000 (with 18 months' imprisonment in default thereof) for the offence of market rigging under the first charge, and to three months' imprisonment for each of the remaining three charges of deceitful practice. In addition, the District Judge ordered that the imprisonment sentences for the second and fourth charges run consecutively with each other and concurrently with that imposed for the third charge. The total sentence imposed was accordingly six months' imprisonment and a fine of $250,000.

7 The appellant then filed an appeal from this decision, contending that the sentence was manifestly excessive. After hearing each parties' arguments, I allowed the appeal and made the following orders: (i) that the appellant's sentence for the offence of market rigging be altered to a term of six months' imprisonment; and (ii) that the appellant's sentences for each of the three offences of deceitful practice be reduced to a fine of $50,000 (with three months' imprisonment in default). The net effect of these variations was to reduce the total fine payable from the original sum of $250,000 (with 18 months' imprisonment in default) to one of $150,000 (with nine months'

imprisonment in default). I now set out the detailed grounds for this decision.

8 Before launching into an exposition on the merits, I pause to highlight the somewhat unusual grounds which compelled me to allow the appeal. I reached this decision not because I disagreed with the overall effect of the District Judge's sentences, but rather because I found their relative severity to be disproportionate *inter se*. In particular, I found that the District Judge's emphasis on the offences of deceitful practice was misplaced. A sentence of imprisonment would have been eminently more justified for the charge of market rigging instead. Notwithstanding the net reduction in the total fines levied (see above at [7]), my decision in these proceedings can and should be regarded as being equally, if not more, a variation of the respective apportionments of punishment between each of the offences *inter se,* rather than as a reduction of the appellant's composite sentence.

The background

9 The facts of this case were largely undisputed and were substantially as set out in the amended Statement of Facts. The appellant accepted this version of events without qualification.

The manipulation of Autron's share price

10 As already explained (see above at [1]), the appellant used a number of share trading accounts, some of which belonged to his wife and Low, to trade in Autron shares so as to artificially maintain its share price. His underlying objective behind this conduct was to avoid margin calls on a substantial number of his own Autron shares that he had previously pledged to obtain credit from various financial institutions. In order to ensure that the Autron share price did not fall below the requisite maintenance margin, the appellant engaged in a scheme to manipulate the closing price of the Autron shares.

11 The appellant's *modus operandi* was to place purchase orders at the end of each trading day as part of the SGX's daily post-trading session ("the pre-close routine"). His manipulation of the Autron share price occurred between 1 April 2002 and 30 April 2003 ("the Relevant Period"), which comprised a total of 273 trading days.

12 On a normal trading day, upon the close of trading at 5.00pm, the market enters into the "pre-close" phase, which lasts until 5.05pm. During this five-minute window, no matching of orders takes place. All unmatched orders outstanding at the close of market can be amended or cancelled, and new orders entered. At 5.05pm, the market then goes into the "non-cancel" phase, which lasts until 5.06pm. During this one-minute period, no further order entry or amendment is allowed, and all remaining orders that can be matched are matched at a single price, which represents the closing price for the day. This closing price is in turn computed according to algorithms stipulated by SGX, and is generally set at the price with the largest tradable volume amongst the orders waiting to be matched.

13 During the Relevant Period, the appellant was responsible for 44.7% of the total buying volume in the pre-close routines. On 205 of these 273 days, the appellant used his own, his wife's or Low's trading account(s) to place bids during the pre-close routine to purchase Autron shares. On 74 of these 205 days, the appellant placed bids equivalent to the last traded price before the pre-close routine commenced ("the pre-closing last price"). In turn, on 131 out of these 205 days, the appellant placed upward pressure on Autron's share price by executing purchase orders that were at least one bid, *i.e.*, $0.005, higher than the pre-closing last price.

14 The appellant's aggressive trading in Autron shares extended beyond his involvement in the pre-

close routines. During the Relevant Period, the appellant traded in Autron shares on a total of 260 days, *i.e.*, 95% of the trading days during the Relevant Period. The volumes involved in these trades were far from trifling. On 32 of these 260 days, the purchase orders executed by the appellant made up for more than 50% of the day's traded volume. In addition, on another 45 days, his purchases of Autron shares represented 30% to 50% of the day's traded volume. In total, the appellant traded in 192.5 million Autron shares using his own, his wife's and Low's share trading accounts, thereby accounting for 22% of the total trades in Autron shares during the Relevant Period.

15 Based on the references made in the various charges as well as in Annex A to the amended Statement of Facts, it appeared that at least 18 accounts were supposedly used by the appellant during the Relevant Period. Five of these accounts were in Low's name, six were in the appellant's name, and seven were in his wife's name.

The proceedings before the District Judge

16 Given the appellant's plea of guilt and his consequent convictions, the sole issue before the District Judge was that of sentencing.

The appellant's mitigation plea

17 Despite the appellant's conviction for four offences and the six additional TIC charges, his plea in mitigation centred around the argument that the imposition of fines would adequately meet the ends of justice. Apart from highlighting the appellant's various educational and professional credentials, defence counsel sought to paint the appellant as a victim of circumstances. According to counsel, the appellant's decision to practise false trading resulted from his "desperation" since he was, at that time, a "novice in his months of trading".

18 One of the main pillars of the appellant's case rested on his assertion that his actions had little or no influence on Autron's share price, which continued to fall relentlessly despite his actions. In addition, counsel repeatedly highlighted that the appellant had made good any losses on the various accounts as they fell due and had derived no benefit from his actions. The appellant estimated that he had spent about $3.9 million on Autron shares, and had become heavily indebted as a result. Further, he had in fact executed all the trades with the relevant account holder's consent. This purportedly rendered the present facts distinguishable from cases where employees, dealers or remisiers had perpetuated a fraud on their clients by illegitimately trading with their clients' accounts without consent.

19 Counsel for the appellant also addressed the court on the appellant's previous convictions under the Penal Code (Cap 224, 1985 Rev Ed) ("the PC") and the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("the PCA"). The appellant had, on a previous occasion, pleaded guilty to and been convicted of two charges of accepting illegal gratification under s 6(a) of the PCA and one charge of cheating under s 420 of the PC. A total of six other related charges, three of cheating and three of accepting illegal gratification, were also taken into consideration for the purposes of sentencing. As a result of these convictions, the appellant spent a total of three months in jail. Counsel submitted that these antecedents should not be considered for the purposes of sentencing since most of the appellant's offences under the PC and the PCA had occurred after his offences under the SFA and the SIA.

The Prosecution's case

20 Before the District Judge, the Prosecution confined itself to tendering a list of sentencing

precedents for the offences of false trading and engaging in a practice which operated as a deceit. No specific submissions on sentencing were made, and the Prosecution indicated that it was happy to leave the question of sentencing to the court.

The District Judge's decision

21 In his Grounds of Decision, the District Judge held that the first and foremost consideration in sentencing is that of public interest: *Ng Geok Eng v PP* [2006] SGDC 110 ("Grounds") at [17]. In relation to the appellant's offence on the first charge of market rigging, he expressed the view that the public interest in market misconduct offences demands that the courts should protect investors' interests by imposing deterrent sentences: Grounds at [18]. Whilst a high fine can, in some cases, amply serve the twin aims of specific and general deterrence, this will depend on the specific criminal acts and the relevant circumstances of each case, including the role of the accused person and the extent of fraud perpetrated: Grounds at [18].

22 On the appellant's sentence for his three offences of deceitful practice under the second to fourth charges, the District Judge held that case law had established that where an offender chose to trade unauthorized on an account belonging to a member of the investing public, this would evidence a high degree of deceit so as to justify a custodial sentence: Grounds ([21] *supra*) at [19]. In this regard, the District Judge found three cases particularly useful: *Teo Kian Leong v PP* [2002] 1 SLR 147 ("*Teo Kian Leong*"), *PP v Goh Bock Teck* (MA 296/2002) and *PP v Leong Yew Cheong* (DAC 47229/05) ("*Leong Yew Cheong*"). According to the judge, all three cases supported the imposition of a custodial sentence where there was persistent unauthorised trading on another person's account: Grounds at [22].

23 In determining the appropriate sentence, the District Judge traversed the myriad mitigating factors which the appellant had advanced. To begin with, he held that no weight would be placed on the appellant's previous convictions for corruption and cheating since they were respectively unrelated to the present offences and had occurred well after the present offences: Grounds ([21] *supra*) at [27]. However, the appellant's lack of personal benefit and the absence of loss caused to third parties were generally weak mitigating factors since the principal aim of punishment was to deter prohibited conduct: Grounds at [26].

24 The District Judge went on to find that a number of aggravating factors were present on the facts. To begin with, the appellant's offences were carefully planned and pre-meditated, and involved a high level of deceit: Grounds ([21] *supra*) at [30]. In addition, the appellant's criminal conduct vis-à-vis the offences of market rigging and deceitful practice were carried out on a systematic and large scale over a long period of time: Grounds at [31]. The sentence would therefore have to be more severe to reflect the extent of the appellant's culpability: Grounds at [31].

25 After considering all the relevant facts, the District Judge imposed the statutory maximum fine of $250,000 for the appellant's first offence of market rigging. In addition, he imposed a custodial sentence of three months' imprisonment for each of the appellant's other three offences of deceitful practice. Two of these three sentences of three months' imprisonment were ordered to run consecutively: Grounds ([21] *supra*) at [33]. According to the District Judge, custodial sentences were warranted for the latter category of offences because the appellant had persistently and extensively conducted unauthorised trades using Low's accounts: Grounds at [33].

The appeal

26 In these proceedings, the appellant took issue with these sentences on the basis that they

were manifestly excessive. The parties' respective arguments before me were, in summary, as follows.

The appellant's case

27 Counsel's primary submissions before me were that the District Judge erred: (a) in imposing custodial sentences for the offences of deceitful practice under the second to fourth charges; and (b) in imposing the maximum amount of fine for the offence of market rigging under the first charge. In support of this position, counsel contended that the District Judge had, *inter alia*, considered non-existent aggravating factors, erroneously relied on factors relating to the market rigging offence for the purposes of sentencing him for the offences of deceitful practice, and failed to give adequate consideration to the appellant's mitigating circumstances.

28 During the hearing, counsel re-emphasized that the appellant's "priority" in the present appeal was to seek a reduction of his term of imprisonment. Counsel submitted that the appellant's offences of deceitful practice did not warrant the imposition of custodial sentences. In contrast to cases where remisiers engaged in unauthorised share trading using their clients' accounts, the appellant's conduct had not involved the abuse of any relationship of trust and confidence. The relevant account holders in the present case, i.e., Low and the appellant's wife, were well aware that the appellant was using their accounts and had in fact given him their full consent. For these reasons, counsel submitted that the appellant should be sentenced to a fine of not more than $100,000 for each of the three offences of deceitful practice.

29 When I questioned counsel about his position on the relative severity of the offences of market rigging and deceitful practice, he responded by agreeing that the offence of market rigging was inherently of a more serious nature, but adroitly went on to submit that even this category of offence would generally attract only a fine unless the acts of the accused had caused mayhem.

The Prosecution's case

30 In response, the Prosecution submitted that there were no valid grounds to interfere with the District Judge's sentences. The appellant had clearly participated in systematic and large scale trading over a long period of time for his own benefit. These market rigging trades had clearly compromised the integrity of the market.

31 On the issue regarding the relative severity in punishment for the offences of market rigging and deceitful practice, the Prosecution variously urged this court to: (a) maintain the existing distinction drawn between authorised and unauthorised share trading vis-à-vis the offence of deceitful practice under s 201(b) of the SFA; and (b) to set imprisonment as the new benchmark for market rigging offences under s 197(1) of the SFA.

The issues arising on appeal

32 The issues in this appeal fell to be resolved at two differing levels of generality. On a broader and more normative level was the question of how the relative severity in punishment for the offences of market rigging and deceitful practice could be reconciled in a principled and coherent manner. On a narrower and more limited plane, there was also the more specific and immediately relevant issue of whether, and if so how, the appellant's current sentences should be modified to reflect any changes in the general sentencing approach towards these two offences.

33 As a prelude, to set the ensuing discussion in its appropriate context, I begin with a short summary of the current sentencing practice vis-à-vis these two offences of market rigging under

s 197(1) and deceitful practice under s 201(b) of the SFA.

The current sentencing practice

34 It is accepted that the offences created under s 201 of the SFA are generally in the nature of "catch-all" provisions that cover all forms of securities fraud that have not been otherwise dealt with in other sections of the Act: see *PP v Cheong Hock Lai and others* [2004] SGDC 37 at [40]; *PP v Cheong Hock Lai and other appeals* [2004] 3 SLR 203 ("*Cheong Hock Lai*") at [41]; Hans Tjio, *Principles and Practice of Securities Regulation in Singapore* (LexisNexis, Singapore: 2004) at 406. As a result, the offence of deceitful practice under s 201(b) of the SFA is, of necessity, one that is amorphous and which is capable of incorporating a myriad of illegitimate trading practices. Any attempt to distil general sentencing benchmarks for an offence with such a widely varying scope would therefore be futile. We should approach the question of sentencing precedents by establishing principled distinctions between the different categories of offences that may fall within the broad scope of s 201(b) of the SFA.

35 In the present case, the appellant's offences of deceitful practice belonged to the sub-category of offences under s 201(b) which are often referred to as the "unauthorised share trading" cases. These cases involve the use of another person's share trading account to commit the offence of engaging in a deceptive practice under s 201(b) of the SFA. A significant number, if not a majority, of offenders caught for the unauthorised use of share trading accounts have been sentenced to imprisonment: see, for example, *Teo Kian Leong* ([22] *supra*); *Leong Yew Cheong* ([22] *supra*); *PP v Goh Bock Teck* [2002] SGDC 322 ("*Goh Bock Teck*"). In *Teo Kian Leong*, the High Court observed (at [42]) that "the sentencing precedents show that the sentences imposed by the subordinate courts in recent cases range between four to six months' imprisonment".

36 Notably, the term "unauthorised" is in fact capable of bearing two meanings. First, it could refer to the lack of consent on the part of the account owner. Second, it could refer to the lack of consent on the part of the securities trading firm with whom the account was opened. Based on the existing precedents, it would appear that custodial sentences have generally been imposed in both such categories of "unauthorised" share trading offences under s 201(b) of the SFA. Whilst most of the cases have involved situations where the trading was "unauthorised" in both senses of the word, a number of cases have arisen where the trading was conducted with the authority of the account holder but without the knowledge of the relevant securities trading firm: see, for example, *Leong Yew Cheong* ([22] *supra*); *Syn Yong Sing David v PP* (MA 266/98/01) (unreported). In these cases, the courts have sentenced the offender in question to incarceration even though the use of the share trading account was conducted with the consent of the relevant account holder.

37 A diametrically different landscape emerges when one turns to consider the existing sentencing practice for offences of market rigging under s 197(1) of the SFA. These offences have generally attracted sentences of fine rather than imprisonment. The approach adopted by the local sentencing precedents is most aptly exemplified by the decision in *PP v Kwek Swee Heng* (DAC 28926/2003 & DAC 3045-6/2003) ("*Kwek Swee Heng*"). In that case, the accused pleaded guilty to having created a misleading appearance in the price of shares in a company known as Links Island Holdings Ltd. The accused had, *inter alia*, executed trades at market close in a bid to raise the closing price of the shares. The share price rose from $0.28 to $1.43 within six months, which consequently prompted the SGX to suspend trading. Notwithstanding the extensive impact that the accused's conduct had on the general investing public, the court only sentenced him to fines totalling $90,000. The severe consequences caused by the false trading in *Kwek Swee Heng* were demonstrated by the fact that Parliament itself had cause to consider the potential relief that could be granted to aid victims of the disruption in trading: see *Singapore Parliamentary Debates, Official Report* (24 May 2002) vol 74 at

cols 2282 to 2287.

3 8 The current sentencing practice vis-à-vis market rigging offences is further illustrated by the fact that a custodial sentence only appears to have been imposed in one case, i.e., *PP v Gwee Yow Pin and another* (DAC 1738/2001) ("*Gwee Yow Pin*"). As observed by Aedit Abdullah DJ in *PP v Foo Jong Kan and another* [2005] SGDC 248 ("*Foo Jong Kan*") at [35], aside from *Gwee Yow Pin*, all the other instances when imprisonment was ordered were cases involving offences under s 201(b) of the SFA. In *Gwee Yow Pin*, the accused persons had artificially inflated the price of public listed shares from $0.15 to $0.875, causing the share counter to be suspended and the relevant stock de-listed as a result. The offenders were each sentenced to three months' imprisonment for their misconduct.

39 No written judgment appears to have been given in *Gwee Yow Pin* ([38] *supra*). This absence of express reasoning could, to a certain extent, explain why subsequent courts have remained reluctant to break through the perceived "glass ceiling" between the imposition of fines and imprisonment for market rigging offences, even in cases of considerable severity such as in *Kwek Swee Heng* ([37] *supra*).

A reconsideration of existing precedents

40 With these principles in mind, I now turn to consider whether a reformulation of our sentencing approach is needed vis-à-vis the offences of market rigging and unauthorised share trading under ss 197(1) and 201(b) of the SFA respectively. For the reasons that follow, I am of the view that our existing sentencing approach to these offences can and should be modified in two ways.

41 First, the current seeming lack of distinction between the two categories of "unauthorised" share trading should no longer be accepted. Imprisonment is generally more strongly warranted in situations where the lack of authority relates to the account holder, rather than the securities trading firm alone.

42 Second, the erstwhile reluctance to impose imprisonment for offences of market rigging should no longer prevail. Market rigging is an egregious form of disruption to the orderly conduct of our securities market and should be deterred more strongly in future cases. In appropriate cases, sentences of imprisonment can and should be imposed.

The different categories of unauthorised share trading

43 As indicated earlier (see above at [36]), the case authorities have not always distinguished between the two types of unauthorised share trading that may fall under the general purview of the offence of deceitful practice in s 201(b) of the SFA. In my view, only one of these forms of unauthorised share trading is sufficiently severe to warrant a sentencing norm of incarceration.

The public interest in protecting innocent investors

44 As a matter of general principle, the formulation of a sentencing norm is usually predicated upon the relevant public interest which obtains in relation to the offence in question. In *PP v Tan Fook Sum* [1999] 2 SLR 523 ("*Tan Fook Sum*") at [21], Yong CJ affirmed the applicability of the following principle advocated by Professor Tan Yock Lin:

> Generally speaking, *only the public interest should affect the type of sentence to be imposed* while only aggravating or mitigating circumstances affect the duration or severity of the sentence imposed.

[emphasis added]

45 Subsequent cases have applied this proposition in determining the appropriate *type* of sentence that should be imposed: see example *PP v Ng Tai Tee Janet and another* [2001] 1 SLR 343 at [11]-[13]; *Chng Gim Huat v PP* [2000] 3 SLR 262 at [106]-[107]; *UOB Venture Investments Ltd v Tong Garden Holdings Pte Ltd and another* [2000] SGHC 240. This proposition simply requires the type of sentence imposed for an offence to adequately cater to the needs of general deterrence. Such a sentence may then, of course, be subject to variation in specific cases based on the unique circumstances prevailing therein. This emphasis on "public interest" stems, *inter alia*, from the fact that deterrence, both specific and general, has gained significance in sentencing decisions in recent years: *Tan Fook Sum* ([44] *supra*) at [18].

46 In this regard, the public interest element in deterring unauthorised share trading takes on differing proportions as one shifts between the two different types of unauthorised share trading identified above (see [36] above). According to the court in *Tan Fook Sum* ([44] *supra*) at [20], "the public interest principle often means *the protection* of the public" (emphasis added). This is indeed the case for securities offences, where, in the words of Aedit Abdullah DJ in *Foo Jong Kan* ([38] *supra*) at [13], "the primary objective of the Court is *the protection of the investing public*" (emphasis added).

47 This formulation of the *overarching objective* behind punishing market misconduct is augmented by the legislative debates leading up to the SFA, and its predecessor Act, the SIA. From the following remarks of the Minister for Finance during the debates leading up to the 1970 Securities Industry Act (No. 61 of 1970), it is patent that the Legislature's aim in criminalizing such misconduct lay in its desire to protect public investors (see *Singapore Parliamentary Debates, Official Report* (30 December 1970) vol 30 at cols 461 to 462):

> I would like to place this Bill in its proper perspective by reminding Members that developments on the Stock Exchange have attracted both public comment and criticism since 1968. In fact, there has been, in this House and outside it, considerable pressure put upon the Government from time to time *to intervene in the public interest to protect investors from unscrupulous manipulation and rigging on the Stock Exchange*.
>
> Recent developments on the Stock Exchange…have focussed attention on the shortcomings and deficiencies of the Securities Market in Singapore and have raised the question as to what form of legislative intervention is needed to remedy these shortcomings and deficiencies, particularly as they affect the protection to be afforded to the investing public. *For there can be no doubt that some form of intervention is necessary to ensure that the Securities Market operates in a fair and open manner* and to prevent, as far as possible, certain persons, especially those with "insider" knowledge, from manipulating the market by illegal means for their own profit.
>
> [emphasis added]

48 The same objective was again emphasized by the Minister for Finance during the debates on the 1973 Securities Industry Bill (see *Singapore Parliamentary Debates, Official Report* (7 March 1973) vol 32 at col 549):

> In my Second Reading speech at the time that [the 1970 Securities Industry Act] was before Members, I dealt in considerable detail with the background to and the reasons for bringing in legislation to control the securities industry and trading in securities…The need, however, for such legislation being made operative has, if anything, become more pressing with the passing of

time. *We are continually being made aware from happenings in the market that investors need to be protected, so far as is possible to do so, by legislative intervention from unscrupulous manipulation and share rigging on the Stock Exchange*. These are matters which stockbrokers with the best will in the world as a body are unable or not agreeable to control voluntarily. Needless to say, statutory provisions on these matters will not provide the universal panacea. The Government will still look to the Stock Exchange for its co-operation in exposing *dishonesty and malpractices in share trading*.

[emphasis added]

The types of unauthorised share trading distinguished

49 In light of this, the types of sentence generally warranted for the two forms of unauthorised share trading offences under s 201 of the SFA should reflect the extent to which each species of offending conduct impinges upon the interests of public investors. There would evidently be a greater detriment caused to public investors where the lack of authority extends to the account holder. In addition, the prejudicial effect of such unauthorised trading would be particularly pronounced where the offender is the broker or remisier of the innocent investor whose account has been used. Apart from the detriment suffered by the particular investor, such events would clearly be inimical to the fair and open running of our securities market. Public confidence in the securities market would be severely undermined if the investing public is not able to trust the relevant industry professionals. The need to ensure general deterrence is therefore sufficiently pressing to warrant the imposition of a custodial sentence in the general run of cases imbued with these characteristics.

50 In contrast, the second category of unauthorised share trading offences under s 201(b) involves a lack of consent emanating from the securities firm with whom the account is opened. In such situations, the public interest in deterring such conduct would be considerably less significant. Though the deception practised against the securities firm is still objectionable, the degree of sanction required would, in most cases, be sufficiently expressed through a punishment of a lower order. The need to protect innocent investors would be less pressing since the trading would have occurred with the consent of the relevant investor who owned the account. No abuse of the broker-client relationship would be involved. Thus, where this second form of deceptive conduct under s 201(b) of the SFA is involved, considerations of general deterrence are arguably less relevant and the objectives of achieving specific or individual deterrence can take greater precedence.

51 Of course, this is not to say that sentences of imprisonment should never, or only very exceptionally, be imposed for unauthorised share trading offences which involve the consent of the account holder. What is instead meant is that a sentencing court faced with such an offence will retain a broader discretion to vary the appropriate form of sentence to suit the particular circumstances of the case. In contrast, where the facts involve acts of unauthorised share trading by a remisier without his client's consent, the public interest in ensuring general deterrence would generally apply strongly in favour of imposing a term of imprisonment.

52 The decision in *Cheong Hock Lai* ([34] *supra*) illustrates the judicial recognition that sentences of fine would generally be appropriate for s 201(b) offences which do not involve the deception of an innocent member of the investing public. According to Yong CJ (at [38]):

[T] he Prosecution was quite right to point out that custodial sentences have consistently been imposed for offences under s 102(b) after *Peh Bin Chat*, and despite the higher statutory maximum fine prescribed under s 104…*In all those cases, up to and save for this appeal, there was a clear abuse of position by professional securities dealers vis-à-vis laymen investors who*

came to them for assistance and advice on trading. These dealers instead used their clients' accounts to carry out unauthorised trades. Whilst it is not at all in question that the respondents' conduct was criminal in nature, these aggravating factors were simply not present on the facts before me. *The respondents traded in their own names, and for themselves, at all material times. No laymen investor clients were involved*.

[emphasis added]

53 On the facts in *Cheong Hock Lai* ([34] *supra*), Yong CJ held that the prosecution faced an "uphill task" in seeking to convince the court to impose a custodial sentence: see *Cheong Hock Lai* at [44]. This stemmed from the fact that it "was not a case in the category of previous…cases such as *Teo Kian Leong* and *Shapy Khan s/o Sher Khan*, *in which the interests of specific laymen investors suffered at the hands of their trusted fund managers*" (emphasis added): *Cheong Hock Lai* at [44]. This distinction between offenders who defraud innocent investors and those who defraud professional broking houses is supported by the following *dictum* in *Foo Jong Kan* ([38] *supra*) at [29]:

Within the context of the offence under the Securities Industry Act, *in weighing whether a custodial sentence is warranted, what is important [is] to consider the extent of the harm or damage that is caused*. Where the market is significantly affected, either through general loss of confidence or the suspension of trading for example, the appropriate punishment would probably involve a custodial element, both to deter and to punish commensurately.

[emphasis added]

54 In cases where the actual account holder is defrauded, the extent of harm would evidently be more palpable due to the potential detriment to the public confidence in the mechanics of the securities trading market. This consideration would be absent in situations where the offender acted with the consent of the account holder, and only misrepresented the situation to the securities firm with whom the account was opened.

5 5 Properly understood, the justification for ordering a custodial sentence in unauthorised share trading offences under s 201(b) of the SFA therefore lies not in the "unauthorised" nature of the offender's acts of trading *per se*, but rather in the more specific fact that the unauthorised trading was conducted by a broker or remisier using the client account belonging to an unknowing member of the investing public. As observed by Yong CJ in *Shapy Khan s/o Sher Khan v PP* [2003] 2 SLR 433 ("*Shapy Khan*") at [19], "the purpose of s 102(b) of the SIA [the predecessor of the current s 201(b) of the SFA] is clear — to curb unauthorised trade by dealers" (emphasis added). That this is the true rationale underlying the sentence of imprisonment is further evidenced by the following passage in Mavis Chionh DJ's judgment in *Goh Bock Teck* ([35] *supra*) at [15]:

In sentencing the accused, I was conscious that the sentence should address the need to deter other like-minded individuals. For this reason, I did not agree with defence counsel that a fine would be adequate punishment. *The trust which is reposed in dealers' representatives by their clients is an important element of their relationship; and indeed, one of the "givens" of the securities industry*. In committing the present offences, the accused abused that trust. *A message has to be sent to all other would-be offenders that such conduct will not meet with a mere fine*.

[emphasis added]

56 In summary, it is the cumulative identities of the accused as well as the person deceived that

provide sufficient impetus to impose a term of imprisonment.

The implicit focus on the innocent client's interests

57 The materiality of the consent (or lack thereof) on the part of the relevant account holder is evidenced by the continued consideration of this factor even when the charge is framed with reference to the securities firm, rather than the client himself. In *Shapy Khan* ([55] *supra*), the accused was charged for executing unauthorised trades through a third party's account in breach of s 102(b) of the SIA, the predecessor section to s 201(b) of the SFA. The charge averred that the accused, who was a dealer's representative, had practised a fraud upon the company with whom the account was maintained by representing to the company that various transactions executed on this account were for the client's, rather than the accused person's, interest. The District Judge sentenced the appellant to four months' imprisonment and this sentence was affirmed on appeal by the High Court.

58 Despite the focus in the charge on the deception that had been practised on the securities company, the High Court had regard to the accused's deception of his client, one Yeo, rather than the company: see generally *Shapy Khan* ([55] *supra*) at [17] to [27]. This is most clearly illustrated in the manner in which the court phrased the following question (at [19]): "Must the appellant have benefited from the trading for him to have deceived *Yeo* [his client] for the purposes of s 102(b) of the SIA?". Hence, even though the accused in *Shapy Khan* was technically convicted and sentenced for perpetuating a deception on the relevant securities company, the sentence of imprisonment was in truth attributable to his reprehensible conduct as a dealer's representative in deceiving his client, Yeo.

59 A similar approach was adopted in *Teo Kian Leong* ([22] *supra*). In that case, a dealer's representative was convicted under s 102(b) of the SIA for falsely representing to his employer that certain transactions were made on behalf of a number of account holders when they were in fact for his own interest. He was sentenced to six months' imprisonment for each charge and his appeal to the High Court was subsequently dismissed. Again, the High Court referred to the loss caused to his client as being an aggravating factor (at [45]-[46]):

> Even though it is true that the losses caused by the appellant in this case were only a fraction of that in *PP v Hew Keong Chan*…and *Syn Yong Sing David v PP*…*the circumstances of this case are aggravating and therefore demanded that the appellant be punished accordingly*.
>
> The appellant was the representative dealer of the eight complainants and an employee of a reputable bank. He deliberately abused the trust and confidence they had in him and came up with a scheme to profit and later escape responsibility…This was very different from the facts in *Syn Yong Sing David v PP* (supra).In that case, the accused had acted with the consent and connivance of his client…*On the other hand, the appellant in this case, while causing less loss to his clients, had acted against their wishes and caused them financial hardship*.
>
> [emphasis added]

6 0 The courts' general regard to the layperson investor in this category of offences supports its significance as a critical determinant of whether imprisonment should be imposed. To impose custodial sentences as a matter of course for all categories of unauthorised share trading, whether with or without the account holder's consent, would fail to advance the underlying sentencing objectives in this area of law. A term of imprisonment should only be the norm where the inherent nature of the offence poses a sufficient threat to the interests of innocent layperson investors. In cases of

unauthorised share trading, loosely so called, this element exists where the conduct in question involves the concordant abuse of investor confidence. This consideration is less immediate when the relevant account holder consents or where the account in question belongs to the accused: see, for example, *Cheong Hock Lai* ([34] *supra*).

The approach to offences of market rigging and false trading

61 This rationale for imposing custodial sentences in unauthorised share trading cases applies equally, if not *a fortiori*, to persons who engage in market rigging or false trading practices in breach of s 197(1) of the SFA. In my view, the current approach of imposing a fine in almost every case fails to sufficiently express the abhorrence with which our society regards such conduct. The disparity in sentencing practice for offences under ss 197(1) and 201(b) of the SFA is also untenable in both principle and logic. There seems little justification why offences of false trading and market rigging should generally merit only a fine whilst offences of unauthorised share trading attract the more severe penalty of imprisonment. An offence of false trading is one which strikes at the fundamental integrity of our securities market. Persons found guilty of such offences should be taken to task far more firmly than they have been thus far. The courts should not shy away from imposing custodial sentences for offences of false trading or market rigging. According to Mason J in *North v Marra Developments Ltd* (1981) 148 CLR 42 at 59:

> It seems to me that the object of [the offence of false trading or market rigging] is to protect the market for securities against activities which will result in artificial or managed manipulation. The section seeks to ensure that the market reflects the forces of genuine supply and demand…*It is in the interests of the community that the market for securities should be real and genuine, free from manipulation*. The section is a legislative measure designed to ensure such a market and it should be interpreted accordingly.
>
> [emphasis added]

6 2 A market regime in which false trading is rife is undoubtedly one that will be unable to garner any semblance of investor confidence. Whilst an rogue broker who fraudulently uses his client's trading account is undeniably guilty of jeopardising the public confidence in the securities industry, the same can equally be said of an accused who artificially inflates or deflates share prices to distort the true forces of market supply and demand. The unsettling effects of false trading and market rigging was expounded on by Ipp J in Western Australia case of *R v Lloyd* (1996) 19 ACSR 528:

> [A]s his Honour pointed out, the "main concern quite apart from those individual losses is the loss of faith and trust by the genuine share buying public in the operations of the securities market". As senior counsel for the appellant pointed out, *there is a critical need for investors, be they Australian or foreign, to have confidence in the Australian securities market, that being a factor vital to the Australian economy*. That confidence depends upon the securities market having integrity, and being seen to have integrity, and that integrity is undermined by market rigging schemes such as that in which the respondent was concerned. *The harm to the securities market is, indeed, a feature which seriously aggravates the criminality of the respondent's conduct*.
>
> [emphasis added]

63 Whilst unauthorised trading on investors' accounts causes tangible harm to identifiable members of the public, i.e., the account holder in question, it cannot be said that the effects of false trading and market rigging are in any way less real or severe. In the Hong Kong case of *Securities and*

Futures Commission v Choi Wai Zak and another [2003] 1 HKC 30 at [19], Lugar-Mawson J made the following observations when sentencing the two offenders to four months' imprisonment for each charge of false trading:

> What has to be borne in mind is this—and it may well have been forgotten by counsel both at trial and today on appeal—*market manipulation is a serious offence*. It is one the legislature has chosen to penalise by providing for a sentence of immediate imprisonment of two years' imprisonment. It is an offence that strikes at the fair and honest operation of the securities market. *It is not a victimless crime; its victims are all the other members of the investing public. It is an offence that can lead to large profits for the offender and to…equally large losses to the investing public*. And, perhaps, most importantly, it is an offence that necessarily involves those who commit it doing so by deception and dishonesty.
>
> [emphasis added]

64 Lugar-Mawson J's *dictum* in the passage above applies *a fortiori* to our local context. Our SFA prescribes an even higher maximum punishment of seven years' imprisonment, and the severity with which false trading and market rigging should be viewed is reflected by the parliamentary intention behind the SFA and its predecessor, the SIA. The various excerpts of the parliamentary debates extracted above clearly evidence Parliament's determination to "stamp out" any form of market manipulation which destroys a "true market in securities": see *Singapore Parliamentary Debates, Official Report* (30 December 1970) vol 30 at col 467. In this respect, the following statement by the then Deputy Prime Minister during the debates on the Securities Industry (Amendment) Bill 2000 further affirms Parliament's continuing intention for any incidents of false trading or market rigging to be dealt with seriously (*Singapore Parliamentary Debates, Official Report* (17 January 2000) vol 71 at col 670):

> Our aim is to create vibrant financial markets that fuel economic growth. This requires a regulatory framework that is sound, strong and in line with best practices. *Financial markets work freely only with an appropriate set of ground rules operating in the background which everyone knows and plays by*. Regulators and enforcement agencies must be able to promptly detect and deal with actions that harm investors. If investors lost confidence in the integrity of our securities markets, we will enter a vicious cycle. Stock valuations will be poor because there is little secondary activity. Good companies will shun listings on the market, while doubtful ones embrace the opportunity. Rules therefore do matter.
>
> [emphasis added]

65 The pernicious effects of an overly lax approach to offences of false trading and market rigging will only become more pronounced as Singapore develops into an international financial market. It is therefore imperative that "market riggers" be taken firmly to task. As stated by the Ontario Court of Appeal in *R v MacMillan* [1968] 1 OR 475 (at 482-483):

> The seriousness of crimes of this type is enhanced as the economy of the country develops and as more members of the public participate in trading on public stock exchanges…If the profits were sufficient, a fine would likely be regarded as in the nature of a licence to carry on such operations.

66 For these reasons, the present apparent schism in the respective sentencing practices vis-à-vis the offences under ss 197(1) and 201(b) of the SFA must be bridged. This will hopefully create a more coherent sentencing policy for securities offences. What is patent is that a greater degree of

sentencing parity must be struck, at the very least, by recognising that offences of false trading and market rigging should attract sentences of imprisonment in a broader category of situations than they have thus far.

The merits of the present appeal

67 With these general principles in mind, I now turn to assess the particular merits of the appeal before me. In this regard, my decision to vary the District Judge's sentence stemmed from two factors. First, the sentence imposed for the three offences of deceitful practice were manifestly excessive in the circumstances. Second, the sentence imposed for the offence of market rigging was manifestly inadequate. The manifest excessiveness and inadequacy of these respective sentences became particularly evident when their relative severity was considered.

68 The discrete sentences that had been imposed failed to accord with both the principle of ordinal proportionality (by omitting to preserve a correspondence between the relative seriousness of the appellant's offences under ss 197(1) and 201(b) and the relative severity of the punishments imposed for these offences), as well as with the principle of cardinal proportionality (by imposing sentences of imprisonment that were disproportionate to the inherent and actual gravity of each of the offences): see generally, *Xia Qin Lai v PP* [1999] 4 SLR 343 at [28].

The sentences for the offences under s 201(b) of the SFA

69 The imposition of a three month term of imprisonment for each count of deceitful practice was manifestly excessive because, first, the District Judge wrongly allowed the effects of the appellant's market rigging to affect the sentences for the distinct offences of unauthorised share trading. A plain reading of the judgment shows that the considerations for both these offences were conflated.

70 Much reference was made to the total volume of Autron shares that had been purchased during the Relevant Period. Whilst the frequency and duration of the appellant's unauthorised use of the relevant account(s) was undoubtedly a relevant consideration, the District Judge's focus appeared to be more on the aggressiveness of the appellant's stance towards the Autron share counter more than anything else. This consideration would arguably be one that was much more relevant to the appellant's offence of market rigging; the appellant's use of the share trading accounts to inflate the share price would not be a relevant aggravating factor vis-à-vis the distinct offences of deceiving the securities trading firms. As Choo Han Teck J stated in *PP v Huang Hong Si* [2003] 3 SLR 57 at [8]:

> What have frequently been labelled as "aggravating factors" are…more accurately factors that indicate the level of gravity of the crime *in specific relation to the offence upon which the accused was charged*…Such facts are not intended to be used to compare the crime of robbery with the crime of rape, for example. They are to be used to engage the court in the exercise of establishing how the offender is to be punished within the range of punishment prescribed for him *for that offence*.
>
> [emphasis added]

71 The objection to the District Judge's reliance on these considerations is particularly marked since the appellant had already been convicted and sentenced for the very offence of market rigging. To allow this self-same conduct to aggravate the appellant's offences of unauthorised share trading would be tantamount to "double counting". In this respect, regard can usefully be had to the decision of Chao Hick Tin JC (as he then was) in *Tham Wing Fai Peter v PP* [1989] SGHC 34. In that case, the accused had been convicted and sentenced to two years' imprisonment by the lower court. On

appeal, Chao JC found that the sentencing judge had wrongly decided to impose a deterrent sentence because of factors extraneous to the charge: at [8]. In reducing the term of imprisonment to a duration of one year, Chao JC held (at [6])

> Obviously in every case where a person is charged under s 406, there is an abuse of position of trust. What makes this case special is that, like the 36 forgery charges, it was uncovered during the investigations into the Pan-El debacle. The charges relating to the deals on forward contracts had been withdrawn. I do not think anything adverse to the appellant can or should be drawn from that fact. It is also clear to me that here was no link between this charge and the 36 forgery charges. Even assuming that there was such a link, the appellant is already now serving a deterrent sentence totalling eight years for the forgery offences…*I am inclined to agree with counsel for the appellant that to impose another deterrent sentence now on this charge would tantamount to making the appellant suffer double deterrent sentences arising out of basically the same matrix of facts relating to the appellant's stockbroking business*.
>
> [emphasis added]

7 2 Apart from the reliance on irrelevant matters, the District Judge erred in omitting to accord sufficient weight to a particular consideration that was highly relevant, i.e., that the appellant's use of the relevant share trading accounts had taken place with the account holder's - Low's - consent. For the reasons discussed earlier, the public interest element in cases involving layperson investors is a significant factor in favour of imposing a period of incarceration. While it is not altogether impossible for imprisonment to result in cases of unauthorised share trading where the account holder consented, this would clearly be an "uphill task": *Cheong Hock Lai* ([34] *supra*) at [44].

73 In my view, the District Judge also erred in holding that the imposition of a custodial sentence was justified "where there was persistent unauthorised trading on another person's account" (emphasis added): Grounds ([21] *supra*) at [22]. With respect, the District Judge's approach was erroneous insofar as it advocated a general blanket imposition of custodial sentences as long as the offender used an account that belonged to someone else. For the reasons set out above, custodial sentences should generally be limited to instances where an industry middle-man such as a broker or a dealer is involved.

The sentence for the offence under s 197(1) of the SFA

74 In a similar vein, but to an opposite effect, I found that the District Judge's approach towards the offence of false trading under s 197(1) of the SFA failed to have sufficient regard to the relevant sentencing principles. In particular, insufficient consideration was given to: (a) the considerable need for deterrence, both general and specific, as well as retribution, given the extent to which the appellant had undermined market forces; and (b) the need to ensure some degree of parity or more specifically, proportionality between the sentences imposed for the market rigging and unauthorised share trading offences *inter se*.

75 The appellant's relevant conduct fell within the category of malpractice generally referred to as "marking the close". This term is used to refer to the practice of making a purchase or sale of a security near the close of a day's trading to alter the closing price of the security. This might be done to avoid margin calls, to support a flagging share price or to affect the valuation of a portfolio. In the present case, the appellant marked the close of Autron share prices by manipulating the SGX's pre-closing routine. Notably, this routine was first introduced by SGX for the very object of preventing market manipulation of its order-driven trading system.

76 Turning first to consider the severity of the appellant's misconduct, the pervasiveness and sustained nature of the appellant's concerted attempt to rig the prices of Autron shares clearly called for a sufficiently harsh sentence so as to send an unequivocal message to potential offenders. His acts of false trading were not mere isolated events, but were rather, to use the District Judge's own words, "carried out on a systematic and large scale": Grounds ([21] *supra*) at [31]. Given the various statistics that were highlighted in both the amended Statement of Facts as well as in the District Judge's Grounds ([21] *supra*), it is clear that the appellant's conduct had an effect on the Autron share price. The closing prices for Autron shares were higher than the pre-closing last prices on 56 out of the 131 days when the appellant offered a bid more than the pre-closing last price.

77 Given the serious public interest considerations in favour of deterring market rigging practices, the circumstances in the present case were undoubtedly sufficiently egregious to warrant the imposition of a term of incarceration. A more lenient approach towards offenders such as the appellant would give potential offenders cause to think that they would be able to commit an offence and "still 'get away lightly' by being fined up to only a certain statutory limit": see *Rupchand Bhojwani Sunil v PP* [2004] 1 SLR 596 at [28].

78 The manifest inadequacy of the appellant's sentence for his s 197(1) offence becomes even more pronounced when one compares it with the sentences that were meted out for his three counts of deceitful practice. On the one hand, the appellant's use of Low's accounts had been conducted with Low's consent, albeit without the knowledge of the various securities firms. In addition, no loss had been caused to the relevant account holder or to the securities trading firms in question. On the other hand, the appellant's false trading had effects which extended beyond the immediate parties in question. His manipulation of the Autron share price would have had adverse effects on any investor in the open market then looking at purchasing these shares. The appellant's egregious conduct is exacerbated when one considers its insidious nature. It would have been impossible for any layperson investor to have detected that such malpractice was ongoing, least of all for the period of more than one year.

79 On the present facts, the one critical consideration that stood out in glaring contrast to the other background facts was the duration and pervasiveness of the appellant's false trades. It is imperative for the law to unequivocally express its abhorrence for persons who surreptitiously attempt to disrupt the forces of market fair play in such a severe and calculated manner. This public interest element, coupled with the appellant's individual circumstances, cumulatively suggest that a sentence of imprisonment should have been imposed. Even though the maximum fine was imposed upon the appellant, one can but wonder how effective a deterrent would a fine of $250,000 be vis-à-vis an offender like the appellant who, by his own admission, had spent in the region of about $3.9 million on these shares.

80 Despite the fact that the appellant's conduct warranted the imposition of a custodial sentence, I also had regard to the fact that the Prosecution had not adduced any proof that the appellant's illegitimate market rigging had caused actual monetary loss to identified investors in the open market. Hence, whilst the circumstances were sufficiently egregious to merit a term of imprisonment, the duration of imprisonment had to take into account this factor.

The overall sentence to be imposed

81 Viewing these considerations in their totality, I therefore reduced the appellant's sentence for each of the three offences of deceitful practice under s 201(b) to a fine in the amount of $50,000 (with three months' imprisonment in default). The imposition of the maximum fine of $250,000 for each of these offences would be inappropriate in the circumstances, not least because no loss had been

caused, even to the relevant securities trading firms who had been deceived by the appellant's use of Low's accounts.

82 In contrast, having regard to the sustained nature of the appellant's market rigging practice, a custodial sentence was eminently justified on the present facts. However, given the lack of any proven loss to any market investors, a term of six months' imprisonment would be adequate punishment. His unwavering determination to artificially prop up the price of the Autron shares struck at the very heart of our securities market. The investing public is entitled to rely on market prices as an accurate reflection of genuine demand and supply.

Conclusion

83 In the present case, the appellant's offences of deceitful practice were, in truth, nothing more than the means through which he perpetrated the central offence of market rigging. The sentences imposed hence needed to reflect the relative severity of the offences and the fact that it was the offence of market rigging which formed the gravamen of his unlawful conduct. For these reasons, I allowed the appellant's appeal and varied the sentences as stated (see above at [7]).