

Securities Markets Manipulation A Legal Analysis

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Abstract: There are numerous practices that effect and mischief the trustworthiness of financial markets. This study essentially went for investigating the meaning of market manipulation at the common law and the Malaysian law. Hence, there are four fundamental objectives to this study: define market manipulation and its common forms, how does the manipulator benefit from manipulation? Critically evaluate of the securities commission's « SC » role to fight market manipulation and evaluate the effectiveness of the law through its enforcement and implementation according to the recent cases in Malaysia.

In general, to accomplish these targets, this study follows a critical analysis approach. What's more, the study enforcement body battle market manipulation and evaluate how effective the law is through its enforcement and implementation according to the treaty with the new judiciary and cases related to market manipulation. That was taken as a foundation for the analysis and evaluation.

Keywords: capital markets and services act 2007 « CMSA », market abuse, market manipulation, manipulator, securities commission « SC ».

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A. Statement of the Problem

There will be always an asshole who will manipulate the system. We have seen world greatest scandal like Enron Corp or World.Com. Likewise in Bursa Malaysia, we have alike kind of stories. 'Just be careful in what you want to invest'. The issue of market manipulation itself may fluctuate in the financial market. Consequently, the regulation of market manipulation ought to be addressed.

Another viewpoint that must be underlined is that the term market manipulation in the case of Malaysia is indistinct because of the absence of an unmistakable article or area in existing law that defines or clarifies the term 'market manipulation'. This has caused confusion in terms of what is regarded as 'market manipulation' as distinguished from other problems and wrongful practices of the Malaysian in extant literature. In this manner, the term market manipulation is controversial and has distinctive meanings. Accordingly, there is a need to clarify this definition from a legal standpoint.

Hence, the essential target of this study is to write legal analyses how market manipulation has been defined, regulated and enforced since the establishment of the CMSA 2007. Another important point in my research is the CMSA 2007 and the enforcement bodies like "SC" is succeeded to preclude this kind of market abuse?

B. Research questions

For the purpose of this study, the following questions were addressed:

- 1) What do we mean by market manipulation under common law and the section 176 of the CMSA?
- 2) What are the market manipulation's forms?
- 3) Does the Securities Commission the role in the fight against market manipulation? If yes how? And what is the mechanism?
- 4) Is there any suggestions to prohibit market manipulation?

C. Research Objectives

The main objectives of this research can be summarized in the following manner:

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- 1 - Define the term « market manipulation » and discover its common forms under the common law as a prior step to evaluation.
- 2 - How does the manipulator benefit from manipulation?
- 3 - Critically evaluate of the securities commission's « SC » role to fight market manipulation;
- 4 - Evaluate the effectiveness of the law through its enforcement and implementation according to the recent cases in Malaysia.

This research is limited to the Malaysian and only assesses market manipulation as a type of market abuse practice. It does not deal with other forms of abuse like insider dealing as there is an abundance of studies on such aspects.

Besides, insider dealing has been regulated in Malaysia for quite a while; in this manner, it is clear and unambiguous. It may be helpful to specify here that, although there was a regulation for insider dealing in Malaysia, but this law was not enforced. It was extremely uncommon to find out about past cases in such manner.

D. Methodology

The methodology used in this study is the qualitative method. This part discloses the methodology used to lead the study, including the research design.

*** Research Design**

Research design is a structure or plan for leading a research. It specifies the details or the procedures needed to obtain the information relevant to the research problem. The research design used in a study should be the one that is most suited for answering all the research questions. In this study, the researcher has adopted a qualitative research design as the strategy was perfect for legal analysis approach of the exploitation of the information that resulting in market manipulation.² Qualitative research is a systematic, subjective approach to describe life experiences and give them, meaning, with the approach's aim to ascertain opinions, attitudes behavior, likes or dislikes. Specifically, the fundamental reason for a qualitative study is to discover how individuals feel, what they think about a certain phenomenon or why they carry on surely. The major forms in this approach contain field observation, content analysis, group studies. The data collected in qualitative researches are in the form of field notes or some form of textual materials. Qualitative research essentially includes data in the form of words, description or narratives. As for this study, the researcher has used the content analysis approach. The role of data analysis in a qualitative research is to extract meanings from what the researcher has studied, and what and how something happens or exists.³ In this study, the design adopted is a doctrinal legal approach which is fundamentally the same as the qualitative study in social sciences. Doctrinal research (also referred to as the pure legal, academic, traditional, armchair research) is essentially a library based study, which means that the materials needed by the researcher may be available in libraries, archives and other databases. The basic aim of such research is to discover, explain, examine, analyses the working of certain laws or legal institutions—and present in a systematic form, facts, principles, provisions, concepts, theories. On this account, the researcher is mainly referred to secondary data, namely text books, articles from journals, government reports and the provisions of the relevant laws and legislations. For instance, to accomplish objective one and to defining the term 'market manipulation' and its common forms', a review and analysis of existing literature on the theme will be carried out. As will be demonstrated shortly, the local, as well as the regional, literature on this subject is almost non-existent; hence, the Western literature was explored. That is to say, the explanatory method was used, with reference to this literature, to achieve the objective of defining market manipulation. In general, the objectives of such research are achieved through these approaches.

E. Scope of the study

This study concentrates on the legal analysis of market manipulation as a shape of market abuse. What's more, the extent of the search is in dealing with trying to understand the concept of market manipulation under common law and Malaysian law and try to find a clear definition to this significant term. In addition, the scope of this work extent to covers the general ways of market manipulation. Besides, the Malaysian efforts to keep the financial market protected from mal-practices.

F. Literature Review

This study can be viewed as unique, as there are no past studies that address the legal analysis of market manipulation. There are some studies identified to market manipulation in Malaysia, they do not talk

²A. C Parker, "A Qualitative Study of Key Success Factors for Multinational Corporations Operating in Sub-Saharan Africa" (Doctoral dissertation, Stellenbosch University, 2009).

³Y Anwarul, "Legal Research And Writing", *Malaysia law Journal SdnBhd* (2007).

about market manipulation and its forms as form of market abuse but they discuss it as form of market fraud. for instance: an article written by Raziah Bi Mohamed Sadique, Jamal Roudaki, Murray B. Clark and Norhayati Alias concern about "Corporate Fraud: An Analysis of Malaysian, Securities Commission Enforcement Releases".⁴ However, Yeon, Asmah's article "Law Enforcement In Malaysian Securities Markets" she does not utilize the term market manipulation below the title market fraud, she employ it under the title of market abuse.⁵ additionally, the the CMSA 2007, use the term market manipulation under the major types of market misconduct or prohibited conduct in securities market.⁶

These are the only local studies that are connected to the present research themeto a certain extent. This lack of legal literature on market manipulation in the Malaysia is partially due to the malaysian's status as a young market with new regulations.

Likewise, there exists a study by Sa'eed Bo Hawara entitled 'Altalaob Fe Alaswaq Almaliya (Market Manipulation in financial markets)', (Aldawraaleshronlelmojtam' alfeghi, Makka 2010). This research defines market manipulation and its forms by attempting to examine the Sharia regime and apply the understanding gained on market manipulation.

Despite what might be expected, there are various studies in regards to market manipulation in Western Literature, since their systems and stock markets are more mature. The literature and experiences of the US and the UK are the main sources for defining the term 'market manipulation' and its forms. In any case, it ought to be cleared up that it is not the purpose of this thesis to analyse or criticize the studies conducted in the UK and US.

G. Research Outline

In exhibiting the subject, this study is separated into nine sections, notwithstanding the introduction and conclusion.

Part one; is an introductory part with regard to the practices that can harm the integrity of financial market and which one I will focus on it in this work.

part two addresses the first objective of this study, which is to provide a definition of the term 'market manipulation'. As expressed, this concept is missing in numerous nations and is also controversial, so there is a need to give a more extensive definition to the term. This part depends on Western writing as there are various past studies that define and deal with market manipulation. This part also provides the elements of market manipulation. While, section three handles the second point from the main target of this study and addresses the types of market manipulation under the common law.

Part number four handles the second target of this study and replies in short way to the following question: How Does the Manipulator profit From Manipulation?

From the part number five until the last part of this study, we will concentrate on the market manipulation under the Malaysian law. For this reasons, the part number five demonstrates the meaning of market manipulation as indicated by the section 176 of the CMSA 2007.

About the part six, we can say that this part shows that the market manipulation is one of eight offenses under the term 'market misconduct' under the Malaysian law. Nonetheless, the section seven and eight examines the role of securities commission 'SC' and its departments to battle against market manipulation. Consequently, part six deals with the third aim of this study. Also, it provides a discussion of the role of Investigation and Enforcement Department.

Part number nine talks about three cases related on Market Manipulation under The Malaysian Law. Consequently, part deals with the fourth goal of this study. While, part ten exhibits assessment of "SC" effort's. finally, the very last part of this study is the conclusion where we can discover some suggestions to prohibit market manipulation from its sources and cut it from its roots.

I. INTRODUCTION

There are numerous practices that effect and damage the respectability of financial markets. These acts fall under the general title of "Market Abuse". These activities fall under the general title of "Market Abuse". This title can be separated into two principle shapes, insider trading and market manipulation.

The quickly changing structure of trading systems raises essential issues about risk management in investment firms. However, a lot of alternative trading systems use computer trading programs that enable traders more easily to disguise insider trading and market manipulation.

⁴Raziah Bi Mohamed Sadique et al., "Corporate Fraud: An Analysis Of Malaysian Securities Commission Enforcement Releases", *World Academy of Science* 66 (2010): p. p1213-1222.

⁵Yeon, Asmah. "Legal Perspective on Civil Remedies in the Malaysian Securities Industry." *JPAIR Multidisciplinary Research* 13, no. 1 (2013).

⁶Ibid. 4

As of late, more and more securities exchanges have been exploring mergers and collaborations with their counterparts in different nations. Cross-border flows of investment funds from both institutional and retail investors have also been steadily on the increase. This has been encouraged by web trading services that have been provided by the growing number of stockbroking firms and corporations.

In these circumstances, there is a growing need to comprehend the principles and laws directing securities industries of different jurisdictions and to take note of the areas where these rules deviate from each other.⁷ One area of law that requires watchful examination in such manner is that pertaining to the Securities Markets Manipulation.

Market manipulation remains the greatest worry of investors in today's securities market, in spite of quick and strict reactions from regulators and exchanges to market participants that pursue such practices.⁸ In this research we are essentially interested in Securities 'Markets Manipulation'. Because, there is a need to clear up the precise meaning of market manipulation. The term market manipulation has been described as 'a term of art' by the US Supreme Court. Shows that it is so hard to define the term with one complete definition. As the word manipulation has variable meanings.⁹

What's more, market manipulation additionally shows in various structures or sorts of conduct and this may make the work of defining the term much all the more hard. Several attempts have been made to define the term market manipulation in the jurisprudential and judicial contexts. These attempts are not satisfactory. Then again, this absence of a satisfactory definition of market manipulation enhances the importance of discovering manipulative forms, thereby enabling the development of a clear concept of the term market manipulation.

II. THE CONCEPT OF SECURITIES MARKET MANIPULATION

We begin to clarify the concept of stock market manipulation by asking the following question:

2.1 What Do We Mean By Securities Markets Manipulation?

In order to understand the definition of market manipulation, it might be useful at first to illuminate the concept of an efficient market.

The theory of an efficient market was developed by Eugene Fama in the 1960s.¹⁰

According to the Efficient Market Hypothesis; share prices reflect all the relevant information in a financial market.¹¹

In this way, it is fundamental to analyse the connection between security prices and the available information in the market. Notwithstanding, it is first significant to illuminate the prices of securities and how they are determined as a first step towards understanding the concept of market manipulation. The prices of securities are fundamentally determined by supply and demand. The supply and demand of securities are indicative of what investors believe to be shares in the stock market that are worth paying a particular price for or the price at which they are prepared to sell the securities.¹²

In this sense, investors' decisions regarding what shares to buy or sell are made on the basis of the only known information on such shares. As needs be, efficient information is important because it affects investors' opinions regarding trade. Therefore, information should be perfect or complete.¹³

Along these lines, this theory is related to information available in the market that affects share prices. The market can be said to be efficient when the stock prices reflect the relevant information on the share. In this

⁷Victor C.S. Yeo, "A Comparative Analysis Of Insider Trading Regulation - Who Is Liable And What Are The Sanctions?", *SSRN Electronic Journal* (2001).

⁸Golmohammadi, Koosha, Osmar R Zaiane and David Díaz. "Detecting Stock Market Manipulation Using Supervised Learning Algorithms." In *Data Science and Advanced Analytics (DSAA), 2014 International Conference on*, 435-441: IEEE, 2014.

⁹"Manipulation - Definition of Manipulation in English from the Oxford Dictionary", *Oxforddictionaries.Com*, last modified 2016, accessed April 18, 2016, <http://www.oxforddictionaries.com/definition/english/manipulation>.

¹⁰Ronald Gilson and Reinier Kraaman, 'The Mechanism of Market Efficiency Twenty Years Later: The Hindsight Bias', in Armour and McCahery (eds.) *After Enron: Improving Corporate Law and Modernising Securities Regulation in Europe and the US* (Hart, Oxford, (2006) p.33.

¹¹Malkiel, Burton G and Eugene F Fama. "Efficient Capital Markets: A Review of Theory and Empirical Work." *The Journal of Finance* 25, no. 2 (1970): 383-417.

¹²Barnes, Paul. *Stock Market Efficiency, Insider Dealing and Market Abuse*: Gower Publishing, Ltd., 2009 p.130.

¹³ *Ibid* 6

case, market efficiency has three levels. The first is feeble efficiency, which is when prices reflect all past historical information.

The second is semi-strong efficiency, which is when prices reflect the past and new public information. The third is strong efficiency, which is when prices reflect hidden or insider information.¹⁴ Thus, the question that arises at this stage is what is market manipulation?

To define the term market manipulation, it is necessary to differentiate between **market manipulation** and **market abuse**. Indeed, generally mistakenly been utilized reciprocally by the scholarly world.¹⁵

What's more, some legislation unsuccessful to utilize the term 'market manipulation' and in its place used the term 'market abuse'; for example, the FMSA 2000 Act does not use the term market manipulation. On the contrary, section 9 of SEA 1934 has used the term. Moreover, legislations generally refer to market manipulation practises instead of using the term market manipulation.¹⁶ Thus, it is imperative to differentiate between these two terms.

Market abuse is an offence towards investors in the financial market. Therefore, it is 'a general term to depict activities by investors that unfairly take benefit of other investors'.¹⁷ In this manner, it is viewed as an offense in the market and legislation determines its practices.¹⁸ By and large, market abuse takes the type of market manipulation and insider dealing.

Insider dealing may be defined as using or seeking to use inside information (i.e. information that is not available to the public) at the interest or advantage of an inside dealer.¹⁹

Market manipulation can be defined as influencing other traders to trade according to the manipulator's interest.

In brief, market abuse is an offence, controlled by regulations, which may consist of market manipulation and insider dealing. therefore, market abuse and market manipulation are dissimilar terms. Though, they are at times utilized conversely, market abuse is a much broader term that includes any offence towards the market. Whereas, market manipulation has a more narrow definition that only includes the manipulative practises. In terms of defining the term market manipulation, it must be declared first that the term 'market manipulation' by itself is unclear. though, judicial and jurisprudential bodies have suggested definitions for the term 'manipulation', although these are still not very satisfactory.²⁰ Both, the FSMA 2000 and SEA 1934 as well as the EC Market Abuse Directive have not defined market manipulation. Their approaches may be divided into two categories.

The first is to attempt to determine the core of the concept of market manipulation. The second is to give examples of manipulative forms or practises. Actually, diverse types of manipulation may have distinctive centers or concepts, and it may be hard to include all the manipulative forms in the definition that is based on the core.

2.2 Judicial approach

Judicial bodies have made numerous attempts to define manipulation in financial markets. Truth be told, market manipulation has been described as 'virtually a term of art' by the US Supreme Court.²¹ This depiction proposes that it is hard to give a reasonable meaning of the term since it is a variable idea that varies in each practice. According to Avgouleas, one of the traditional definitions was used in the US case of *Cargil Inc v Hardin*.²² It was stated that manipulation is the consequence of 'conduct that has been intentionally engaged in which has resulted in a price which does not reflect essential forces of supply and demand. In this connection,

¹⁴ Ibid. 5

¹⁵ Ibid. 5

¹⁶ Avgouleas, Emiliós E. "The Mechanics and Regulation of Market Abuse: A Legal and Economic Analysis." *OUP Catalogue*, (2005).

¹⁷ Ibid. 6

¹⁸ Swan, Edward J and John Virgo. *Market Abuse Regulation*: Oxford University Press, 2010.

¹⁹ 'FSMA market abuse regime: a review of the sunset clauses A consultation' (2008) HM TREASURY p.5. See also Morgan Lewis, 'A summary of the financial services authority's (market abuse regime) in the United Kingdom', (2006) available at: < <http://www.morganlewis.com/pubs/Market%20Enforcement.pdf>> Last accessed on 30 June 2012.

²⁰ Perdue, Wendy Collins. "Manipulation of Futures Markets: Redefining the Offense." *Fordham L. Rev.* 56, (1987): 345.

²¹ *Santa Fe Industries, Inc v Green*, 430 US 462, 477. (1977)

²² Ibid. 10

manipulation is behavior that is not related to the basics of supply and demand that impacts the price of a financial asset.²³

This type of manipulation requires a genuine aim to change the security price according to the manipulator's needs and interests, in this way proposing the cost of this security does not reflect the principle of supply and demand.²⁴

Another definition for the term 'manipulation' emerged in the case of *Santa Fe Industries, Inc v Green*.²⁵ In this case, manipulation alluded to 'practices', for example, wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity'.²⁶ This definition says the issue of deceiving and this might be a decent stride towards defining manipulation. Notwithstanding, "misleading" practices stay indistinct and unidentified. In addition, this definition contracts market. Moreover, this definition narrows market manipulation to misleading other investors and away from manipulating prices.

However, this definition is incomplete because the term 'artificially affecting' is not defined and the difference between artificial and real is questionable in this case.

2.3 Jurisprudential approach

Inside the scholarly world, several attempts have been made to define manipulation.

One definition is 'conduct intended to induce people to trade a security or force its price to an artificial level'.²⁷ This speaks to another utilization of the term 'artificial level' consequently this term stays indistinct. Another conceivable meaning of market manipulation is '...where someone seeks to distort the price of financial instruments, or effect transactions or orders to trade or disseminate information in a manner that gives or is likely to give false or misleading signals about financial instruments'.

This definition is more pertinent, as it gives three routes in which market manipulation occurs. In any case, it can be reasoned that the term 'market manipulation' is hard to define and both approaches have unsuccessful to provide an understandable definition.

According to Avgoileas, manipulation can be defined in the following manner:

'Behaviour effected through any one, or a combination of any of the following: misrepresentations and other false statements or concealments, artificial transactions and trading schemes, which are made or structured in such a way as to induce market participants to engage in the trading of financial investments or the exercise of rights in financial investments.

Relevant trading must be in such a direction or the exercise of rights must be effected in such a way as to either lead the price of these investments to an artificial level, and/or enable the perpetrators of the behaviour to materialise, from interests held in the specific or related investments, financial gains that would not be possible, in the absence of such behaviour'.²⁸

This definition is much more organised than the past definitions and includes the important elements of manipulation, such as manipulative practises, intent, direction of the practises and manipulation measurements. Consequently, despite the fact that attempt at defining market manipulation is better than previous attempts, it is still unfinished.

2.4 The Elements of Securities Market Manipulation

As indicated by Fischel and Ross, the behavior would be considered manipulation if it is related to the following elements:

- 1) Interfering with the free process of supply and demand;
- 2) Inducing others to trade; or
- 3) Forcing the price of a security to an artificial level.²⁹

²³Easterbrook, Frank H. "Monopoly, Manipulation, and the Regulation of Futures Markets." *Journal of Business*, (1986): S103-S127.

²⁴Michael J Watson, Q.C., 'The Regulation of Capital Markets: Market Manipulation and Insider Dealing', British Columbia, Canada. P. 15, Available at: <http://www.icclr.law.ubc.ca/Publications/Reports/wats_pap.pdf> Last accessed on 30 June 2013.

²⁵Ibid.15

²⁶Campbell Jr, Rutherford B. "Santa Fe Industries, Inc. V. Green: An Analysis Two Years Later." *Me. L. Rev.*30, (1978): 187.

²⁷Thel, Steve. "The Original Conception of Section 10 (B) of the Securities Exchange Act." *Stanford Law Review*, (1990): 385-464.

²⁸Ibid.10

²⁹Fischel, Daniel R and David J Ross. "Should the Law Prohibit" Manipulation" in Financial Markets?" *Harvard Law Review* 105, no. 2 (1991): 503-553.

These three elements may be stretched into two elements, as interfering with supply and demand would all the while prompt others to trade in addition to creating an artificial price. As needs be, it is valuable to consider each of the following remaining elements independently:

- 1) Creating artificial prices; and
- 2) The intent of inducing others to trade.

2.4.1 Creating artificial prices

Creating artificial prices is a standout amongst the most widely recognized elements taken into account when defining manipulation as it is considered to be at the core of manipulation, which is clear from the beforehand specified definitions. Be that as it may, the term, ‘artificial prices’ has not been clearly defined and there is no clear division between artificial and non-artificial prices.³⁰ Along these lines, the distinction between artificial and non-artificial prices is not easy and may be unavoidable. One conceivable approach to illuminate this distinction might be by associating the creation of artificial prices with the awful aim of impacting others.

2.4.2 The Intent of Inducing Others Trades to Trade

There is a strong requirement for adequate evidence of intent.³¹ The intent of inducing others to trade is really the distinction between ‘innocent’ manipulative practices and ‘guilty’ ones. Be that as it may, finding evidence of intent can be hard.³² The need for adequate evidence of intent is such that ‘...the manipulator actually to the relevant price effect or to induce market participants, by virtue of the resulting price (or the creation of misleading impressions by other means), to trade in the instruments affected by manipulative scheme’.

From the aforementioned elements and considering the incomplete nature of the above definitions it is obvious that, market manipulation is hard to define. It can be summarized that market manipulation definitions rotate around a central subject defined as ‘a conduct with the intent to create an artificial price in order to influence other traders to trade or to profit from price changing. Artificial prices in the case of market manipulation are the consequence prices from false information, fake orders, rising or declining the price or artificial transactions’. This definition may hold all important and related aspects of market manipulation; however, it requires illuminations and clarification of manipulation forms.

III. FORMS OF MARKET MANIPULATION

Avgoeas has made a reasonable division that includes many forms and practices and hence, this division has been followed in this section. He has partitioned market manipulation forms into three categories:

- 1) Manipulation based on information;
- 2) Manipulation based on artificial transactions; and
- 3) Price manipulation.³³

Each of these categories will be addressed independently.

3.1 Information-Based Manipulation

The primary type is called “information-based manipulation” and implies spreading false information using information channels, such as the Internet, text messages, email etc.

One of the significant elements utilized in determining stock prices is ‘accurate information’. Such fake information will negatively affect the security’s price and/or movement. Notwithstanding, if the data were right, then it would influence the security in a legitimate way and not a manipulative way. For instance, a rumour might be in regards to an agreement with high income in regards to a particular organization. This would encourage investors to purchase shares in this precise company according to that bogus news of the agreement; this would likewise raise the share price. This type of manipulation can happen in Internet talk rooms, online journals, and daily papers or through instant messages and different types of media. It can be viewed as the easiest type of market manipulation as well as the first step towards other forms of market manipulation. For instance, artificial transactions or price manipulation.

Another conceivable type of information-based manipulation is broker misrepresentation; This is when a broker provides misleading advice regarding a security to profit from the misinformation. In other words, the broker could be an issuer or have option and may take this route to promote the price of securities.

³⁰Ibid.14

³¹Ibid. 10

³²Ibid.23

³³Ibid.10

Furthermore, if the broker owns shares, a conflict of interest will begin. In such cases, a broker advises his customer to buy a particular share and, before recommending it to others, collects this share for himself. So, that he can profit from the augment in the price, which occurred in particular after his recommendation.

3.2 Manipulation Based on Artificial Transactions

The second type of market manipulation is an artificial transaction. As the name recommends, artificial transactions are not genuine and there are no real changes in ownership of the security.³⁴ This type is likewise called a wash sale, matched orders, or pools.³⁵ Matched orders can be made when someone begins trading with a specific security; as it were, the purchaser and the vendor are the similar. They start purchasing and offering to give a false impression to different brokers with respect to the condition of the security. This matched-order technique ought to have the same number of shares at the same time and at the same price.

The manipulator will profit by inducing others to buy this security, which will in turn increase its price. 'Pools' are the same as matched orders, but need more than one person to arrange.

The purchaser(s) and merchant(s) have an agreement to purchase and buy to make a false impression. Therefore, pool transactions impact others to trade by making artificial transactions, and the manipulator may profit by value changes also. 'Wash deals' require one individual to perform the same procedure of purchasing and selling a particular security. There is no adjustment in the ownership of the security be that as it may, for this situation, the manipulator profit from the price difference rather than by creating a false impression.

3.3 Price Manipulation

Price manipulation is defined as manipulating the price of a security in the market. It usually takes place in the form of:

- 1) Trade-based manipulation;
- 2) Contract-based manipulation; or
- 3) Market-power manipulation.³⁶

3.3.1 Trade-based manipulation

It is called **Trade-based manipulation** because the manipulator's profit is derived from trades. For this situation, there is an awesome need to determine intent, since the intent of the manipulator should be to pressure others by creating a misleading impression.

Trade-based manipulation has dissimilar types. For instance, trading at the end of the day, purchase-based manipulation and sale-based manipulation. Trading might be led in the last few minutes of the day to augment the reported price of a security in a particular way or to give a false impression that a certain security. This practice is generally performed to make a stunning shutting cost.³⁷ This shape of manipulation means to create false high prices. Notwithstanding, making a bogus false impression of the share.

Purchase-based manipulation : (which is also termed market pegging) is when a manipulator purchases a particular security to control the supply and, as a result, controls the price.

The aspire of this scheme is to corner the market. It works especially well when the manipulator has the capability to control such a security. also, manipulators advantage from this form when they vend the security after growing the price.³⁸

Sale-based manipulation: depends on the idea of selling a security to reduce its price to profit from this lower price and buy it at its lower price. The aspire of this scenario is to income from the price dissimilarity because selling gives a negative impression of a certain security, which leads traders to sell at lower prices.³⁹

The outcome is that the manipulator will purchase the share at lower prices, gather an extensive amount of shares, and then benefit when the share price goes back up.

3.3.2 Contract-based manipulation

Is a shape in which the manipulator profits indirectly from a security price through the other Contract that is related to this security.⁴⁰

³⁴Al-Zumai, Fahad. "Protection of Investors in Gulf Cooperation Council Stock Markets: A Case Study of Kuwait, Bahrain and United Arab Emirates." *School of Oriental and African Studies* (University of London), 2006.

³⁵Lomnicka, Eva. "Preventing and Controlling the Manipulation of Financial Markets: Towards a Definition Of market Manipulation'." *Journal of Financial Crime* 8, no. 4 (2001): 297-304.

³⁶Ibid.10

³⁷Ibid.23

³⁸Ibid.10

³⁹Ibid.23

As it were, the dealer would not expect to buy a security at a low cost or offer at a high cost, yet would rather profit by the manipulative Practice as far as another agreement or statement.⁴¹ This may happen in a case where a corporate officer raises the cost of his firm's share to 'trigger a bonus clause in his compensation package based on the firm's stock price'.⁴²

3.3.3 Market power

Market power may likewise be distinguished as **market control**.⁴³ It alludes to the capacity of a man to control the supply and demand of a certain financial asset in the market. The concept of this system is that the manipulator has the authority to control a security and change the price according to individual interests.⁴⁴ In all actuality, this form may not as a matter classified as a type of market manipulation as it could be a characteristic exceptional to the manipulator, instead of to other investors. Hence, the manipulator in general, has the ability to impact supply and demand as well as trades, which helps control the security price in the advantage of the manipulator.⁴⁵

In view of the aforementioned types of manipulation, it can be reasoned that market manipulation has diverse forms or practises and every form has its own concept or characteristic behavior. As well, it can be accomplished that the main objective of market manipulation is to create a false impression of trading.⁴⁶

IV. HOW DOES THE MANIPULATOR BENEFIT FROM MANIPULATION?

The primary goal of the manipulator is often to benefit either directly through price differences in transactions themselves or indirectly by influencing others to trade under false circumstances. There is a special method for profiting from every kind of manipulative behavior. For instance, impacting different merchants to exchange a particular offer by spreading bits of gossip can help the manipulator offer shares at higher. In addition, making imaginary trades can impact different merchants to trade as well. This case relies on upon whether the manipulator's aim is to either increase or reduce the cost of the share. If the manipulator works to reduce the price, then the aim is to sell at lower prices; if the manipulator works to augment the price, then the goal is to benefit from higher prices.

Additionally, last-minute trades are mainly to support a flagging price, which may affect the market index or portfolio valuation. In addition, manipulative behavior may be indulged in with the aim of influencing the price of shares to an underlying index or to persuade someone to purchase or buy shares.⁴⁷

V. DEFINITION OF MARKET MANIPULATION UNDER MALAYSIAN LAW: SECTION 176 OF CMSA

Stock market manipulation is the act of transacting in the securities of a company that will have or is likely to have the effect of raising or lowering or maintaining the price of the company's securities on a stock market, with the intention of inducing other persons to purchase or subscribe for the company's securities. Such acts are illegal under the CMSA.

1. Note: Essentially, the law provides that a person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, any number of transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering or fixing the price of securities of the corporation on a stock market in Malaysia, for the purpose or purposes which may include the purpose of inducing other persons, to purchase or dispose of the securities of the corporation or of a related corporation.⁴⁸

The CMSA 2007 indicates market manipulation under the title "Market Misconduct".

VI. SECURITIES MARKETS CRIMES UNDER THE CMSA 2007

According to CMSA 2007, there are eight main types of market misconduct or prohibited conduct in securities market i.e.:

⁴⁰Ibid.23

⁴¹Ibid.23

⁴²Ibid.23

⁴³Ibid.10

⁴⁴Kozinn, Benjamin E. "Great Copper Caper: Is Market Manipulation Really a Problem in the Wake of the Sumitomo Debacle, The." *Fordham L. Rev.*69, (2000): 243.

⁴⁵Jarrow, Robert A. "Market Manipulation, Bubbles, Corners, and Short Squeezes." *Journal of financial and Quantitative Analysis* 27, no. 03 (1992): 311-336.

⁴⁶Ibid.28

⁴⁷Ibid.28

⁴⁸"Market Misconduct | Bursa Malaysia Market", *Bursamalaysia.Com*, last modified 2016, accessed April 18, 2016, <http://www.bursamalaysia.com/market/regulation/market-surveillance/market-misconduct/>.

- 1) False trading (s. 175(1));
- 2) Market rigging transactions (s. 175(2));
- 3) Stock market manipulation (s. 176);
- 4) False or misleading statements (s. 177);
- 5) Fraudulently inducing persons to deal in securities (s. 178);
- 6) Use of manipulative and deceptive devices (s. 179);
- 7) Dissemination of information about illegal transactions (s. 181); and
- 8) Insider trading (s. 188).

The conventional way on how to battle these crimes is by utilizing the technique of criminal sanctions where under section 182 a person International Peer Reviewed Journal who contravenes section 175, 176, 177, 178, 181 or 188 commits an offence and on conviction the offender could be imprisonment for a term not exceeding ten years and fined of not less than One million ringgit.⁴⁹

VII. SECURITIES COMMISSION "SC" AS ENFORCEMENT BODY

On March 1, 1993, the Securities Commission in Malaysia appeared with four Divisions partitioned into fourteen Departments. A short account of the regulatory bodies of the commission follows.

A. Issues and Investment Division

1. Securities Issues Department
2. Takeovers and Mergers Department
3. Trust and Investment Management Department

B. Market Supervision Division

The Market Supervision Division works as the enforcement arm of the commission.

It comprises three departments, namely:

1. Surveillance and Compliance Department (SCD);

2. Investigation and Enforcement Department;

3. Licensing Department.

C. Research and Development Division

D. Finance and Administration Division

VIII. INVESTIGATION AND ENFORCEMENT DEPARTMENT

This department is from the most significant departments of the SC. The statutory functions of the commission which fall inside the preview of MSD under section 15(1) of the Securities Commission Act of 1993, such as suppressing illegal, dishonorable, and improper practices in dealing in securities trading, are completed by this department.

In performing these functions, the department acts as the primary investigative arm of the commission, collecting evidence to support prosecution for breaches of various provisions of securities laws.

The investigating officer of the commission is empowered by the enforcement and investigation provisions in the Securities Commission Act of 1993 to investigate any offenses under that Act, the Securities Industry Act of 1983, and the Securities Industry (Central Depositories) Act of 1991, as well as the Futures Industry Act of 1993.

He implementation and examination provisions are significant as they empower a researching officer in carrying out an investigation or inspection to enter into any place or building, to need persons to create documents, and to appear before an investigation officer to be addressed verbally.

It is by goodness of this arrangement that the commission has practiced its energy to investigate and to indict the related offenses under the 1983 Security Industry Act ("SIA"). In this way, MSD with the help of its two departments is doing the task of investigating improper or prohibited market practices which can create a false market for securities and enable persons involved in such securities to derive unfair advantages.

The improper or prohibited market practices can be classified as follows:

- * Illegal trading;
- * Short selling;
- * Insider trading;
- * Improper utilization of proceeds from rights issue; and
- * Improper corporate disclosure and dissemination of false information.

⁴⁹ Ibid. 4

* Market manipulation;⁵⁰

IX. MARKET MANIPULATION CASES UNDER THE MALAYSIAN LAW

9.1 Case N:01 Wong & Bun v SC

The Securities Commission Malaysia (SC) sees market manipulation as genuine type of market abuse in the financial market.

The SC reiterates its positive stand on the choice by the High Court which avowed the conviction on the manipulation case of Suremax Group Bhd's (Suremax) shares.

The capital market regulator in a press statement said the Kuala Lumpur High Court had around the same daytime dismissed the appeal by Datuk Phillip Wong Chee Kheong and Francis Bun Lit Chun and affirmed their conviction for their participation in the manipulation of Suremax shares. It said Wong, 52 and Bun, 43, were discovered guilty under Section 84 of the Securities Industry Act 1983 for the manipulation of Suremax's Shares Between November 24, 2004 And March 22, 2005.

The SC said they had committed the offence by executing trades in nine accounts that did not include any adjustment in the beneficial ownership of the said shares, consequently making a deceptive appearance of dynamic trading in Suremax shares on Bursa Malaysia.

The SC included they were charged on October 25, 2005 with 38 witnesses being called by the prosecution.

It said both accused testified when the defence was called. Moreover, the SC said Justice Kamardin Hashim in maintaining the conviction by the Sessions Court in January 2011, expressed that the trial judge did not err and found that the witnesses called by the prosecution were believable.

He reiterated that the trial was directed reasonably and that there was no preference to both appellants amid the behavior of the trial. The SC noted that the High Court will decide the sentence to be imposed on Thursday, March 27, 2014 as counsel for the appellants had asked for requested entries be heard by the court before the appeal against sentence is finally decided.

It said the High Court ordered that bail be increased to RM500,000 for every appellant whilst awaiting the outcome on the appeal against their respective sentences. The SC likewise noticed the two appellants face a jail term of up to 10 years.

Then, the SC watched that the Sessions Court had, in 2011, sentenced Wong to 24 months imprisonment and forced a fine of RM3 million whilst Bun was sentenced to three months correctional facility and a fine of RM2 million.

As the capital market regulator, SC says it will reliably monitor market abuse actions and will continue to apply its enforcement powers beside people who are found to have violated the law. It reiterated its commitment to pursue the enforcement of such offences to guarantee that the honesty of the capital market is protected.⁵¹

9.2 Case N : 02 Dato' Phillip Wong Chee Kheong & Francis Bun Lit Chun v SC

In Kuala Lumpur, 9 March 2016, The Court of Appeal unanimously upheld convictions against Dato' Phillip Wong Chee Kheong, 54, and Francis Bun Lit Chun, 46, former directors of the Impetus Group of Companies for manipulating Suremax Group Berhad shares over a period of four months.

The manipulation which was committed between November 2004 and March 2005 resulted in charges brought by the Securities Commission Malaysia (SC) in October the same year. The Sessions Court convicted Dato' Phillip Wong and Bun in 2011 after hearing 38 prosecution witnesses.⁵² The President of the Court of Appeal Justice Md Raus Shariff together with Court of Appeal Justice Hamid Sultan Abu Backer and Justice Idrus Harun affirmed the convictions and sentences that were meted out by the Sessions Court. As a result, Dato' Phillip Wong is jailed for two years and fined RM3 million, while Francis Bun is jailed for three months and fined RM2 million. The jail sentences commenced today.

In persuading the Court of Appeal to consider the gravity of the offence committed, SC's prosecution team highlighted that market manipulation is not a victimless offence. Many account holders whose accounts

⁵⁰ Qureshi, Mohd. "Regulatory Mechanisms of Securities Trading in Malaysia (with Special Reference to Insider Trading)." *Pac. Rim L. & Pol'y J.* 4, (1995): 649.

⁵¹ "Market Manipulation Serious Form Of Market Abuse", *Borneopost Online | Borneo , Malaysia, Sarawak Daily News*, last modified 2014, accessed April 18, 2016, <http://www.theborneopost.com/2014/03/20/market-manipulation-serious-form-of-market-abuse/>.

⁵² "Court Of Appeal Jails Former Directors For Market Manipulation securities Commission Malaysia | Securities Commission Malaysia", *Sc.Com.My*, last modified 2016, accessed April 18, 2016, http://www.sc.com.my/post_archive/court-of-appeal-jails-former-directors-for-market-manipulation/.

were used in this manipulation, suffered millions of ringgit in losses. The manipulation committed in this case had the effect of increasing the price of Suremax shares by 77% in a span of four months.⁵³

9.4 Case N : 03

Kuala Lumpur, 4 September 2012

SC Charges Former Remisier For Market Manipulation

The Securities Commission Malaysia (SC) today charged former remisier Dato' David Goh Hock Choy in the Kuala Lumpur Sessions Court for manipulating Lii Hen Industries Bhd (Lii Hen) shares.

Goh, 50, was charged under section 84(1) of the Securities Industry Act 1983 (SIA) with creating a misleading appearance of active trading of Lii Hen shares by being involved in the sale and purchase of Lii Hen shares that did not result in any change of beneficial ownership. The trades were executed through 42 accounts at nine stockbroking companies between March 2004 and October 2004.

Meanwhile, Siow Chung Peng, 42, was charged in the same court with abetting Goh in the commission of the offence. Both Goh and Siow claimed trial to the charges. The SC had sought assistance from PDRM for the issuance of an Interpol Red Notice on Goh as he had been out of Malaysia since July 2011. He was arrested on arrival at the Kuala Lumpur International Airport this morning. The offence of market manipulation is punishable under section 88B of the SIA that provides for a fine of not less than RM1 million and an imprisonment of not exceeding 10 years, upon conviction.

Sessions Court Judge S. M. Komathy Suppiah granted Goh bail at RM300,000 with one surety while Siow was granted bail at RM50,000 with one surety. They were also ordered to surrender their travel documents to the court and to report to the SC's investigating officer every two weeks.⁵⁴

X. SC EFFORTS TO FIGHT MARKET MANIPULATION

Credible enforcement when securities laws are broken provides investors the confidence that our markets operate in a reasonable and precise way and that unwarranted conduct is properly punished, says the Securities Commission Malaysia (SC).

The SC said in its 2014 Annual Report that it had continuously taken enforcement action for different breaches of securities laws chiefly for market misconduct such as insider trading and market manipulation.

The enforcement system works in tandem with efforts to make knowledgeable and sure investors with the capability to take ownership and responsibility for their investment decisions, it said.

It likewise referred to its strengthened its complaints handling mechanisms, promote an independent dispute resolution process through the Securities Industry Dispute Resolution Centre, and administer the Capital Market recompense Fund.

"Our enforcement efforts sustained to be concentrated on sending a obvious message to the public that action will be taken for breaches of law," it said.

It said persons were charged where infractions were egregious in nature, and monetary penalties were actively pursued to deny offenders of ill-gotten gains.

In examples where investors suffered financial loss as a consequence of breaches, the SC said it undertook efforts to retribute the impacted investors, and continued to be vigilant against unlicensed activities by deploying enforcement teams to halt these scams.

It said market abuse continued to be a focal area as it intensified efforts in dealing with market manipulation and insider trading.

It said a multi-disciplinary taskforce was established to address these abuses from the onset, leveraging on both the SC's expertise as well as its collaboration with Bursa Malaysia.

"Forty per cent of total enforcement actions initiated were insider trading breaches, and this underscores the seriousness with which we view the abuse of informational asymmetry in the marketplace," the SC said.

The variety in the range of enforcement tools available below the securities laws also provides the SC the capacity to pursue a diversity of enforcement actions, it added.

The securities laws allow the SC to institute civil proceedings for a variety of breaches and the Capital Market and Services Act in particular allows it to claim three times the gains made or losses avoided by those in breach of market manipulation as well as insider trading provisions, it said.

⁵³Ibid.46

⁵⁴"Court Of Appeal Imposes 12 Months Jail Sentence For Market Manipulation securities Commission Malaysia | Securities Commission Malaysia", *Sc.Com.My*, last modified 2016, accessed April 18, 2016, http://www.sc.com.my/post_archive/court-of-appeal-imposes-12-months-jail-sentence-for-market-manipulation/.

A more advanced monitoring system for the derivatives market will be deployed in 2015 to enhance the surveillance capability of the Securities Commission (SC).

In its 2014 annual report, the commission said the system would enable comprehensive information analysis of demography and participants' ranking, allowing each participants' contract and its impact on the market to be closely reviewed.

"Market misconduct have to be pre-emptively curbed, thus SC and Bursa Malaysia have augmented pre-emptive measures such as engagements with participating organisations and the issuance of unusual market activity queries or market alerts on questionable transactions," it said.

These comprehensive oversight activities has resulted in enforcement action by Bursa Malaysia increasing by more than four-fold in 2014, SC said.

Last year, approximately 14,000 alerts were analysed, some of which were assessed for further investigation and in 200 instances, pre-emptive action stopped trading activities deemed improper.

"We continued to intensify our market surveillance and oversight activities to ensure quick and timely detection of market abuse activities, as well as, deter others from such behaviour," it added.⁵⁵

XI. CONCLUSION AND SUGGESTIONS

Manipulation is a central worry of the regulation of financial markets. But manipulation is not defined in any of the regulatory statutes and, notwithstanding much scholastic and legal analysis, no agreeable meaning of the term has been advertised.

The term is often used to allude to direct that is better understood as something else usually fraud or monopoly. In different cases, the term is utilized to refer to trading made with "bad intent" when the underlying transactions are otherwise indistinguishable from normal market activity. "Trading with bad intent" does provide the term "manipulation" with sole meaning, and such trading may be unwanted if manipulations do affect securities prices. though, there is no compelling cause to be worried about such trading because it is likely to be self-detering. Therefore and in light of the fact that the implementation of restrictions is liable to be immoderate, real trades ought not be forbidden as manipulative regardless of the trader's intent.

To prevent market manipulation firms ought to do following ideas:

Hiring of employees

Firms ought to use due diligence in picking new representatives. Adhering to the general Markets in Financial Instruments Directive (MiFID) requirements, firms ought to operate under "risk based hiring standards". Firms ought to apply standards that take into account the department and role a new employee will have. particularly stringent hiring criteria must be placed on employees who perform key tasks in the risk management and monitoring of trades.

FIA EPTA recommends that a firm's hiring process comprise a background check of the applicant in addition to a criminal records check, especially in terms of criminal offenses related to market manipulation and trading. The process also ought to take into account the preceding employment history and education of the applicant and exchange qualifications to the extent relevant.

Depending on the applicant's background and function inside the firm, he or she may be required to complete a range of training exercises designed to provide sufficient knowledge of market regulations and prohibited trading practices.

in addition, some jurisdictions put additional necessities on the hiring process and will need new workers to register with the pertinent regulatory power and/or exchanges.

Training of Employees

Firms ought to make sure that, once hired, new workers get appropriate training in their roles, and that all workers are subject to on-going refresher training programmes, when appropriate.

Staff training classically consists of interior training, which perhaps, complemented by exterior training exercises.

a. Internal Training

Firm preparing for its representatives is one of the fundamental supporters to making a workplace that avoids manipulative practices. A firm's training process start from the point that a prospective worker gets an employment offer. The hiring process must refer to compliance training and documentation to which the

⁵⁵BA Reports, "Securities Commission To Deploy Advanced Monitoring System » Borneoaseanreports", *Borneoaseanreports.Com*, last modified 2016, accessed April 18, 2016, <http://borneoaseanreports.com/securities-commission-to-deploy-advanced-monitoring-system/>.

employee will be required to adhere, including rules regarding prevention of market manipulation. also, if a firm has a written code of behavior, staff should be required to familiarise themselves with and agree to abide by it. On commencement of their roles, employees ought to be required to complete training programs that contain the regulatory requirements applicable to the firm's business and employees' responsibilities to act consistently with these requirements. Training must be tailored to suit the needs of the employees, depending on the department in which they work.

Firms may also consider assigning new employees a mentor from the senior staff to provide a contact point for questions. New employees should also be supervised more closely in the first few months to ensure that they understand all rules and regulations.

Training is, however, not only relevant for new employees, but also existing ones. Given that rules and regulations are in a constant state of flux, employees will have to be made aware of changes relevant to their work. Firms, therefore, should consider when it is appropriate to require employees to attend training and refreshment courses, especially pending implementation of significant regulatory changes.

In order to continuously demonstrate suitability as well as expertise, firms will maintain training records.

b. External Training

additionally, internal training, firms must also think when it is appropriate to take improvement of external training opportunities for their staff. This preparation might comprise certification through trading venues, and training and skill from other organizations recognised by local authorities.

Software Development And Change Management

Firms that trade using Electronic Trading Systems (ETS), will develop procedures for software development, testing, and change management.⁵⁶

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