IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 49

Court of Appeal / Criminal Appeal No 40 of 2022

Between

Soh Chee Wen

… *Appellant*

And

Public Prosecutor

… *Respondent*

Court of Appeal / Criminal Appeal No 41 of 2022

Between

Quah Su-Ling

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Appeal]

[Criminal Law — Statutory offences — Securities and Futures Act]
[Criminal Law — Statutory offences — Penal Code]

Soh Chee Wen
v
Public Prosecutor and another appeal

[2025] SGCA 49

Court of Appeal — Criminal Appeal Nos 40 of 2022 and 41 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Andrew Phang Boon Leong SJ
3 March, 5–6, 8 May, 10 October 2025

10 October 2025 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 It is not the role of an appellate court to retry a matter that comes before it. This principle, which is so entrenched it may be said to be trite, is reflected in the high threshold that must be met before findings of fact will be overturned on appeal. It should therefore be obvious that it would be ill-advised, especially in a case as factually intensive as the present, to mount an appeal, the central thrust of which is to contend for a different set of factual conclusions premised on the appellate court reconsidering essentially the same contentions that had already been advanced and rejected at first instance. This is even more the case where the appellant fails to engage meaningfully with the reasons for which those contentions were rejected; or where the appellant's submissions do not even characterise the approach and reasoning of the trial judge accurately. Faced

with these realities, we feel constrained to reiterate the altogether banal point that whenever a factual finding is challenged on appeal, it is incumbent on the appellant to identify precisely where the trial judge is said to have erred and to demonstrate that the high threshold for appellate intervention has indeed been crossed.

2 CA/CCA 40/2022 ("CCA 40") and CA/CCA 41/2022 ("CCA 41") (collectively, "the Appeals") are the respective appeals of Mr Soh Chee Wen (the "First Appellant") and Ms Quah Su-Ling (the "Second Appellant") (collectively, the "Appellants") against their convictions and sentences in HC/CC 9/2019 ("CC 9"). In CC 9, the Appellants were jointly tried for various offences arising out of an alleged scheme to manipulate the markets for and prices of three counters that were being traded on the Mainboard of the Singapore Exchange ("SGX"), namely Blumont Group Limited ("Blumont"), Asiasons Capital Ltd ("Asiasons") and LionGold Corp Ltd ("LionGold") (collectively, "BAL"). Following the trial, which spanned more than two years and took around 200 hearing days, a Judge of the General Division of the High Court (the "Judge") convicted the First Appellant of 180 of the 189 charges brought against him and the Second Appellant of 169 of the 178 charges brought against her. The Judge sentenced the First Appellant to 36 years' imprisonment and the Second Appellant to 20 years' imprisonment (see *Public Prosecutor v Soh Chee Wen and another* [2023] SGHC 299 ("GD")). The GD spanned some 895 pages and 1,493 paragraphs not including the annexes. While we do not equate quantity with quality, it has to be said, after careful review of the GD, that it was reflective of exemplary diligence and care, and of clear exposition. In any case, the Appellants challenge their convictions and sentences in the present appeals.

3 Given the scale of the materials and the nature of the issues that were before us, we decided to hear the Appeals over three tranches, dealing respectively with the following broad heads of issues: (a) preliminary issues raised by the Appellants; (b) substantive issues relating to the Appellants' convictions; and (c) if the Appellants' convictions were affirmed in whole or in part, issues relating to their sentences. Counsel agreed with this approach when it was proposed at a case management conference. The first two tranches of the hearing having now been concluded, this judgment addresses the preliminary issues and the Appellants' appeals against their convictions.

The proceedings below

4 We begin with a brief account of the trial below. It was the Prosecution's case that, between 1 August 2012 and 3 October 2013 (the "Relevant Period"), the Appellants masterminded a scheme to artificially inflate the markets for, and so manipulate the prices of, BAL shares (the "Scheme"). The Appellants were alleged to have carried out the Scheme by controlling, coordinating their use of, obtaining financing for, and conducting illegitimate trading activity using an extensive web of 189 trading accounts (the "Relevant Accounts") held with 20 financial institutions ("FIs") in the names of 60 individuals and companies (the "Relevant Accountholders") (see GD at [25]).

5 Arising from their alleged involvement in the Scheme, the Appellants each faced the following 178 charges (see GD at [4]–[5]):

(a) Ten charges of being a party to conspiracies to commit offences under s 197(1)(*b*) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) (the "SFA"), which prohibited "[f]alse trading and market rigging transactions". Six of these ten charges concerned the *markets* for BAL

shares (the "False Trading Charges") while the remaining four concerned the *prices* of BAL shares (the "Price Manipulation Charges").

(b) 162 charges of being a party to conspiracies to commit offences under s 201(*b*) of the SFA, which prohibited the use of manipulative or deceptive devices in connection with the subscription, purchase or sale of securities (the "Deception Charges").

(c) Six charges of being a party to conspiracies to commit the offences of cheating and dishonestly inducing property to be delivered, under s 420 of the Penal Code (Cap 224, Rev Ed 2008) (the "Penal Code") (the "Cheating Charges").

We refer to the False Trading, Price Manipulation, Deception and Cheating Charges collectively as the "Conspiracy Charges".

6 In addition to the Conspiracy Charges, which were brought against both Appellants, 11 further charges were brought against the First Appellant alone, comprising (see GD at [4]):

(a) Three charges of being concerned in the management of Blumont, Asiasons and LionGold while being an undischarged bankrupt, contrary to s 148(1) of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act") (the "Company Management Charges").

(b) Five charges of perverting the course of justice contrary to s 204A of the Penal Code, and a further three charges of attempting to pervert the course of justice contrary to s 204A read with s 511 of the Penal Code (collectively, the "Witness Tampering Charges").

7 The Appellants claimed trial to all these charges. Their defence consisted, fundamentally, of the denial that they had been in control of any of the 189 Relevant Accounts. Central to this denial was the alternative factual narrative they advanced to the effect that many of these Relevant Accounts had in fact been controlled and used by certain other individuals to carry out illegal activities without the Appellants' knowledge or involvement. These individuals, according to the Appellants, were the true wrongdoers who should be held responsible for any manipulation of the markets for and prices of BAL shares (see GD at [122]). Aside from this general denial of control over the Relevant Accounts, the Appellants also raised a litany of legal and factual arguments specific to each group of charges. These included preliminary objections to the framing of the charges, such as the objections that these were insufficiently particularised, or that they were duplicitous.

8 Two aspects of the proceedings below merit a brief mention at this stage. First, the Conspiracy Charges were originally framed as charges of *abetment by conspiracy* under s 107(1)(*b*) punishable under s 109 of the Penal Code. However, shortly after the commencement of the trial, the Prosecution applied to amend these charges to charges of *criminal conspiracy* under s 120A punishable under s 120B of the Penal Code. The Judge allowed the Prosecution's application. However, notwithstanding the amendment, the Prosecution's position remained that the substantive offences underlying the Conspiracy Charges had been completed. This being the case, the Prosecution accepted that it would be appropriate to include references to s 109 of the Penal Code so that it would be clear what the applicable sentencing provision would be (see GD at [1502]–[1506]). We will shortly explain the significance of this amendment to the arguments advanced by the Appellants.

9 Second, the Second Appellant elected not to give evidence in her defence. Her primary explanation for this election was that she was unrepresented following the close of the Prosecution's case and she considered that she would be prejudiced if she took the stand and gave evidence in such circumstances, having regard to the complexity of the issues raised in the case (see GD at [6] and [285]).

The Judge's decision

10 Following the trial, the Judge convicted the Appellants of most of the charges. Of the Conspiracy Charges, the Judge convicted the Appellants of: (a) all ten False Trading and Price Manipulation Charges; (b) 153 of 162 of the Deception Charges; and (c) all six Cheating Charges. The Judge also convicted the First Appellant of all 11 of the additional charges brought against him, namely: (a) all three Company Management Charges; and (b) all eight Witness Tampering Charges (see GD at [1489]).

11 The Judge sentenced the First Appellant to an aggregate of 36 years' imprisonment (see GD at [1453]) and the Second Appellant to an aggregate of 20 years' imprisonment (see GD at [1454]). Key to the Judge's decision was her finding that the substantive offences underlying the Conspiracy Charges had been carried out. In the premises, the Judge concluded that the Appellants were liable, under s 109 of the Penal Code, to the same punishment as is provided for the underlying offences (see GD at [1319]–[1339]).

The parties' cases on appeal

12 In the Appeals, the Appellants challenge their convictions and sentences in their entirety, save that the First Appellant does not challenge his convictions or the related individual sentences for the Company Management Charges. The

Prosecution, on the other hand, submits that the Appeals are unmeritorious and should be dismissed in their entirety.

Outline of this judgment

13 We begin by addressing two preliminary objections raised by the Appellants to the framing of the Conspiracy Charges, namely, that the Conspiracy Charges are insufficiently particularised and duplicitous. Having done so, we turn to the substantive issues relating to the appeals against conviction. Under this head, we first consider the overarching issue of whether the Appellants did exercise control over the Relevant Accounts, this being an issue which cuts across the Conspiracy Charges as a whole. Next, we address the First Appellant's Witness Tampering Charges, which, as we explain, are probative of both Appellants' liability for the Conspiracy Charges. We next address one other preliminary objection to the framing of the Conspiracy Charges, which is that the Appellants should have been charged with a single offence relating to a single conspiracy and not with multiple charges relating to multiple conspiracies. Having done so, we consider other legal and factual arguments specific to each category of Conspiracy Charges, going from the False Trading and Price Manipulation Charges to the Deception Charges and then the Cheating Charges. Finally, we consider several arguments relating specifically to the Second Appellant's convictions.

Whether the Conspiracy Charges were legally defective

14 We first address two preliminary arguments which the Appellants mount against the Conspiracy Charges in general. The Appellants submit that the Conspiracy Charges were defective on two grounds: (a) first, they were insufficiently particularised; and (b) second, they were duplicitous as they

alleged more than one offence by referring to ss 120B and 109 of the Penal Code. Neither of these submissions finds favour with us.

Whether the Conspiracy Charges were sufficiently particularised

15 We first consider whether the Conspiracy Charges were sufficiently particularised by the Prosecution. In gist, the Appellants submit that they were unable to effectively defend the Conspiracy Charges because these were insufficiently particularised in three main respects. First, the Conspiracy Charges failed to specify the circumstances in which each of the relevant conspiracies had been entered into. Second, the Conspiracy Charges failed to specify the precise acts which the Appellants had conspired to commit, the transactions which were the subject-matter of each charge and the Relevant Accounts to which those transactions related. Third, the Appellants argue that the time period stated in each Conspiracy Charge was overly broad. As the Appellants explained in their oral submissions, these arguments are rooted in ss 124(1) and 125 of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"), which require the charge to contain certain details as are reasonably sufficient to give an accused person notice of what he is charged with. We will deal with the foregoing points raised by the Appellants in turn.

The circumstances surrounding the entering into of each conspiracy

16 The Appellants contend that the Conspiracy Charges were deficient because they failed to specify when or where the Appellants were said to have entered into each conspiracy. According to the First Appellant, this supposedly made it impossible for them to answer the charges because, for example, they

were not able to explore the possibility of providing an alibi for the period when the conspiracy was allegedly entered into.[1]

17 We do not accept this submission because criminal liability under s 120B of the Penal Code is predicated upon a person *being a party* to a criminal conspiracy and not the specific act of *entering into* that criminal conspiracy. This is borne out by the plain words of s 120B, which punishes persons who are party to a criminal conspiracy:

> **Punishment of criminal conspiracy**
>
> **120B.** Whoever *is a party* to a criminal conspiracy to commit an offence shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
>
> [emphasis added]

18 It necessarily follows, in our view, that the offence under s 120B continues for such time as the offender remains a party to the criminal conspiracy. We find support for this in the Bruneian case of *Public Prosecutor v Khoo Ban Hock & ors* [1988] 2 MLJ 217 ("*Khoo Ban Hock*"), where the High Court of Brunei considered an equivalent provision in the Penal Code (Cap 22, 1984 Rev Ed) (Brunei) (the "Bruneian Penal Code") and concluded that the offence was a continuing one. In *Khoo Ban Hock,* several foreign nationals had been charged with being parties to a criminal conspiracy under s 120A of the Bruneian Penal Code. The court considered whether it had jurisdiction to entertain these charges despite the suggestion that the accused persons may have entered into the criminal conspiracy while they were outside Brunei. This was relevant because the court's jurisdiction extended only to offences committed by a foreign national within Brunei. After considering the plain text of the

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[1] First Appellant's Written Submissions dated 17 January 2025 ("1AWS") at para 32.

provision and relevant Indian and English authorities, the court concluded that a criminal conspiracy is a continuing offence. The offence is committed once the parties arrive at an agreement, but the offence does not *conclude* upon such agreement. Instead, it *continues* for as long as the accused persons remain party to the agreement to carry out the plan. As such, the court held that the accused persons could be charged with the offence of being party to a criminal conspiracy so long as they continued to be party to it while they were *in Brunei*, even if they might have first entered into the agreement outside Brunei.

19 We consider *Khoo Ban Hock* to be persuasive because ss 120A and 120B of the Bruneian Penal Code (as they then were) are worded similarly to the equivalent provisions in our Penal Code. Sections 120A and 120B of the Bruneian Penal Code read:

> **120A.** When 2 or more persons agree to do, or cause to be done –
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> (*a*) an illegal act; or
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> (*b*) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
>
> **…**
>
> **120B.** (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, or rigorous imprisonment for a term of 2 years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
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> (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punishable with imprisonment of either description for 6 months and with fine.

Further, we also consider that the reasoning and the interpretation placed on the words "whoever is a party to" in s 120B of the Bruneian Penal Code, in *Khoo Ban Hock*, are entirely sensible and accord with their plain and natural meaning.

20 Given our determination that the offence under s 120B of the Penal Code is a continuing one, it was open to the Prosecution to charge the Appellants for a specified period of their offending, even if this might not have commenced from the moment the conspiracies were entered into. Indeed, as the Prosecution made clear in the proceedings below, its case was that the purported agreements *subsisted* (but were not necessarily entered into) during the periods specified in the charges.[2] It is also clear from the following extract of the First Appellant's submissions, in the course of the proceedings below, that he understood this to be the Prosecution's position:[3]

> 11. The wording of each of the 162 Deception Charges in the Proposed Amended Charges contains the following phrase:
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> …
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> 12. The date ranges as illustrated above could possibly refer to either:
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> (a) the date ranges during which the alleged agreement between the accused persons was in force; or
>
> (b) the date ranges during which the accused persons entered into the alleged agreement to engage in a practice which was likely to operate as a deception upon the financial institutions.
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> 13. *It is apparent that the Prosecution intends for the date ranges in the Deception Charges to refer to paragraph 12(a) above*, as the charges refer to the period during which the accused persons were "party to a criminal conspiracy". …
>
> [emphasis added]

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2 Record of Proceedings ("ROP") (Vol 70) at p 5248 at para 72.

3 ROP (Vol 71) at pp 5729–5730 at paras 11–13.

21 We note that this is also logical given the nature of the offence. A criminal conspiracy is generally established as a matter of inference, and direct evidence of criminal conspiracies will rarely be available given that the relevant agreements tend to be made in private (*Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [19]; *Er Joo Nguang and another v Public Prosecutor* [2000] 1 SLR(R) 756 at [35]). It follows that the precise circumstances surrounding the inception of the agreement, such as *when* and *where* the agreement was formed, may never be known to persons other than the co-conspirators. It would be unsatisfactory if such parties could not be charged with an offence under s 120B of the Penal Code, even in the face of overwhelming evidence that the conspiracy subsisted during some later period, simply because it was unclear when or where the conspiracy was initially formed. This is often an inevitable reality, especially in the case of prolonged and complex conspiracies such as the present.

22 The Prosecution may therefore choose to charge the co-conspirators for a shorter, known period of their offending (meaning a specified period during which they remained parties to the conspiracy). Where this is so, as is the case for most of the Conspiracy Charges, the gravamen of the charge would be the accused persons' continued involvement in the conspiracy during the specified period. The Conspiracy Charges therefore cannot be said to be defective for failing to particularise the date or other circumstances surrounding the entry into the conspiracies. It suffices in this regard that they state when the accused person is alleged to have been party to the alleged conspiracies.

23 For completeness, we observe that the Prosecution's case for some of the Deception Charges where the trading accounts were opened during the Relevant Period was that the conspiracies "crystallised on or about the account

opening date".[4] The Prosecution's case for these charges was somewhat different, in that those agreements were alleged to have been entered into on or about the account opening date.[5] As such, the time period stated in the charges began from the date on which the account was opened. In those circumstances, it cannot be said that the Prosecution had insufficiently particularised the circumstances relating to the inception of the conspiracy for these charges. Nonetheless, we consider that the gravamen of those charges remains the Appellants' *continued involvement* in the conspiracy (and not the act of entering into it) and in line with this, those charges too specify a date range when the Appellants were party to the relevant conspiracy.

24 In any case, s 127 of the CPC states that an error or omission in stating the necessary particulars will only be a material error if the accused person is in fact misled by that error or omission. We do not see how the omission to state the circumstances under which the conspiracies were entered into can be said to have misled or prejudiced the Appellants. The First Appellant contends that he was unable to provide an alibi or otherwise disprove the existence of the conspiracies by adducing evidence showing that the conspiracies had not been entered into on a particular date as specified in the charge.[6] But as we have already explained, this is misconceived and would not have assisted him in defending the Conspiracy Charges. This was pointed out by the Prosecution in its submissions below,[7] which we agree with. Even assuming that the First Appellant was able to show that a conspiracy was not *formed* on a particular

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4 ROP (Vol 70) at p 5247 at para 70.

5 ROP (Vol 71) at p 5755 at para 9.

6 1AWS at para 32.

7 ROP (Vol 71) at pp 5755–5757 at paras 9–15.

day, this is conceptually distinct from and ultimately not relevant to whether he was *a party to the conspiracy* during a different and particularised time period.

The precise acts which the Appellants conspired to commit

25 The Appellants' next objection is that the Conspiracy Charges did not specify relevant details relating to each purported conspiracy. By way of illustration, the Appellants contend that the False Trading and Price Manipulation Charges should have specified the precise agreement which the Appellants had entered into, which would entail identifying: (a) the Relevant Account(s) which the Appellants had conspired to use for each time period; (b) the specific Trading Representatives ("TRs") the Appellants had agreed to work with in respect of each time period; and (c) in relation to the Price Manipulation Charges, the specific price or prices to which the shares in question were to be manipulated. The First Appellant also contends that the Deception Charges should have specified the purportedly manipulative trades[8] as well as the manner in which the First Appellant allegedly exercised control over the Relevant Accounts.[9] During the oral hearing, Mr Sivananthan Nithyanantham ("Mr Sivananthan") for the Second Appellant also raised the general argument that *all* the Conspiracy Charges should have particularised the acts and/or transactions which were committed in pursuance of the conspiracies.

26 The Appellants had unsuccessfully mounted a similar argument at the trial below (see GD at [180]–[190]). For much the same reasons given by the Judge (see GD at [182]), we reject the Appellants' submission. The Conspiracy Charges are charges under s 120B of the Penal Code, and for criminal liability

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8 1AWS at para 159.

9 First Appellant's Petition of Appeal dated 27 August 2024 at para 8(a).

to be established under this provision, what needs to be established is an agreement between the Appellants to commit an offence; there is no need for them to have taken steps to carry out that agreement (see *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [75]). It was theoretically possible for the Appellants to be *convicted* on the Conspiracy Charges even if they had never actually come to control the Relevant Accounts, deceive the FIs, or instruct the various trades. It would have sufficed if they had *agreed* to commit the underlying offences. It thus follows that the mere fact that the charges did not specify the precise trades or transactions which the Appellants had purportedly conducted in furtherance of each conspiracy did not render those charges defective.

27 Further, while some degree of particularisation would have been appropriate, we are satisfied that the Conspiracy Charges did provide the Appellants with sufficient notice about the conspiracies to which they had allegedly been a party. For instance, each of the Deception Charges stated: (a) the period during which the Appellants were alleged to have been a party to the relevant conspiracy; (b) the Relevant Account which the Appellants had conspired to use; (c) the purportedly deceptive practice which the Appellants had conspired to engage in; (d) the specific FI which the Appellants wanted to deceive; and (e) the specific securities which were to be traded. A sample Deception Charge, brought against the First Appellant, is set out below:

12th charge

> That you, Soh Chee Wen, on or about 12 March 2013, through to 3 October 2013, in Singapore, were party to a criminal conspiracy with one Quah Su-Ling ("Quah") to commit an offence under section 201(b) of the Securities and Futures Act (Chapter 289) ("SFA"), *to wit*, you and Quah agreed to engage in a practice which was likely to operate as a deception upon AmFraser Securities Pte Ltd (nka KGI Fraser Securities Pte Ltd) (the "Firm"), directly in connection with the purchase or sale of

> shares in Blumont Group Ltd, Asiasons Capital Limited and LionGold Corp Ltd (the "Securities"), bodies corporate whose shares were traded on the Mainboard of the Singapore Exchange Securities Trading Ltd, a securities exchange in Singapore, which practice was to conceal the involvement of you and Quah in the instructing of orders and trades of the Securities in the account of one Peter Chen Hing Woon (account no. [redacted]) maintained with the Firm, and you have thereby committed an offence punishable under section 120B read with section 109 of the Penal Code (Chapter 224) read with section 2014(1) of the SFA.

28 These details would undoubtedly have allowed the Appellants to understand the nature of the allegations levelled against them, which is that they were parties to a conspiracy to deceive a specific FI by concealing their involvement in the instructing of orders and trades of specified securities in a specified account. The omission of the disputed particulars, such as the precise manner in which the Appellants had exercised control over the account pursuant to the conspiracy or the precise trade(s) which had been committed pursuant to the conspiracy, could not have prevented the Appellants from understanding the substance of the allegations levelled against them. It may be noted that the foregoing sample charge is a Deception Charge, and as we have already noted at [25], this specific complaint was raised in relation to the other Conspiracy Charges. Indeed, during the oral hearing before us, counsel for the First Appellant, Mr Narayanan Sreenivasan SC ("Mr Sreenivasan") implicitly accepted that the Deception Charges had provided sufficient notice of the relevant FIs and TRs involved in relation to each charge:

> … I'm not raising the same arguments for charge 11 to 172 because there, even though there are problems with particularisation, we know who the broker is. We know who the stockbroking house is, we know which accounts the broker has, even though we got the information somewhere else. So we are not guessing in the dark.

29 But the fact is that the False Trading and Price Manipulation Charges too set out the essential particulars concerning the alleged conspiracies. These

charges stated: (a) the time period during which the Appellants were alleged to have been a party to the relevant conspiracy; (b) the relevant security which the Appellants allegedly wanted to create a false appearance in (whether in respect of the market for or the price of the security); (c) and the Relevant Accounts which the Appellants had conspired to control to achieve this goal. A sample Price Manipulation Charge is set out below:

6th charge

> That you, Soh Chee Wen, in September 2013, in Singapore, were party to a criminal conspiracy with one Quah Su-Ling ("Quah") to commit an offence under [section] 197(1)(b) of the Securities and Futures Act (Chapter 289) ("SFA"), *to wit*, you and Quah agreed to engage in a course of conduct, a purpose of which was to create a false appearance with respect to the price of the securities of Asiasons Capital Limited ("Asiasons"), a body corporate whose securities were traded on the Mainboard of the Singapore Exchange Securities Trading Ltd, which course of conduct involved controlling trading accounts (set out in the enclosed Annex A and which were in existence in September 2013) for trading in order to manipulate the price of Asiasons securities, and you have thereby committed an offence punishable under section 120B read with section 109 of the Penal Code (Chapter 224) read with section 204(1) of the SFA.

30 Further, the Prosecution had also provided an annex ("Annex A") to the charge sheet, which furnished additional details of the Relevant Accounts that the Appellants had conspired to control, such as the account numbers, the names of the Relevant Accountholders, the FI with which the account was registered, the account opening date, and the status of the account as at 3 October 2013, this being the last date of the Relevant Period. The First Appellant contends that this was insufficient because Annex A failed to particularise *which* of the Relevant Accounts pertained to each of the False Trading and Price Manipulation Charges. However, we do not think that such granularity is even realistic in the context of a charge that pertains to manipulating the market for a specified security. This would tend to be investigated by looking at the overall

picture than at each of the specific trades said to have been carried out to this end.

31 There is also no need for such granularity in the context of the Conspiracy Charges as would extend to specifying the precise transactions which were purportedly carried out pursuant to the relevant conspiracies. As alluded to earlier (at [26]), this is because the crux of the offence of criminal conspiracy under s 120B of the Penal Code is an *agreement* to commit the underlying offence.

32 During oral arguments, the Appellants submitted that the particularisation of the underlying offence took on greater importance in the present case because the Prosecution sought to have the Appellants sentenced pursuant to s 109 of the Penal Code on the basis that the conspiracies had *in fact* been carried to fruition. As the completion of the underlying offences materially affected the manner in which the Appellants would be punished, they argued that the Prosecution should be required to set out the further particulars of each underlying offence in the Conspiracy Charges even if such details might not have been necessary to establish criminal liability under s 120B of the Penal Code. In effect, the Appellants contend that ss 124(1) and 125 of the CPC require the Prosecution to furnish sufficient particulars relating *both* to liability and punishment.

33 In our judgment, the argument is flawed for at least two reasons. First, the underlying offence in the case of the 6th Charge set out above, was to engage in a course of conduct to create a false appearance with respect to the price of Asiasons securities by using the Relevant Accounts to trade in those shares in order to manipulate their price. To invoke s 109 of the Penal Code when punishing the offence of participating in a criminal conspiracy to achieve this

end, it would not have been necessary to establish each and every transaction that is said to have been engaged in. The key question, instead, would have been whether the alleged course of conduct was engaged in for the purpose that is set out in the relevant charges. And to this extent, the provided particulars were sufficient.

34 Second, a close reading of s 123 of the CPC leads us to conclude that the required particulars concern facts giving rise to criminal *liability* and not punishment. We briefly reproduce the relevant subsections of the provision below:

> **Form of charge**
>
> **123**.—(1) Every charge under this Code must state the offence with which the accused is charged.
>
> …
>
> (5) The fact that the charge is made is equivalent to a statement that the case fulfils every legal condition required by law to constitute the offence charged.
>
> (6) If the accused has been previously convicted of any offence and it is intended to prove that previous conviction for the purpose of affecting the punishment which the court is competent to award, the fact, date and place of the previous conviction must be stated in the charge; but if the statement is omitted, the court may add it at any time before sentence is passed.
>
> …
>
> (6A) If the accused is subject to a remission order made under the Prisons Act 1933 and it is intended to prove the remission order for the purpose of affecting the punishment the court is competent to award, the charge must state —
>
> (*a*) the fact of the remission order; and
>
> (*b*) the remaining duration of the remission order on the date of the offence stated in the charge,
>
> but if the statement is omitted, the court may add it at any time before sentence is passed.

35 To begin with, s 123(1) of the CPC mandates that every charge must state the *offence* with which the accused is charged. The charge itself may be seen as a statement that, if proved, would fulfil *every legal condition required by law to constitute the offence alleged* (see s 123(5) of the CPC). This suggests that what *must* be particularised are the facts which allegedly give rise to criminal liability. This interpretation is also supported by ss 123(6) and 123(6A) of the CPC, which state that the charge must include certain particulars if the Prosecution intends to prove certain facts for the purpose of affecting the punishment the court is competent to award. These provisos would be otiose if the starting position was that the charge must also particularise facts relevant to the sentence to be imposed.

36 Furthermore, even the plain words of ss 123(6) and 123(6A) do not suggest that particulars relating to *how* the offence was alleged to have been committed need to be set out within the charge. The relevant provisos essentially require the bare facts which afford the basis for imposing enhanced sentences to be stated in the charge.

37 In the final analysis, there is nothing in the relevant provisions that supports the contention advanced by the Appellants, and we therefore conclude that it is sufficient for the Conspiracy Charges to assert that the underlying offences were completed, which was done in this case by inserting a reference to s 109 of the Penal Code in the charges (see [52] below). It was not necessary for the Conspiracy Charges to particularise the specific *manner* in which the offences were purportedly completed or the specific transactions that were carried out as a result. In any case, it remains open to the Appellants, at the sentencing stage, to point to any real prejudice this might have caused them, assuming they were in fact unaware of what was being alleged against them for the purpose of sentencing.

The time period stated in each charge

38 Lastly, the First Appellant contends that the date ranges stated in the Conspiracy Charges were overly broad. As the Conspiracy Charges alleged that the Appellants were parties to the relevant conspiracies over a period of several months, the First Appellant submits that this prevented him from identifying the specific impugned trades. Instead, the First Appellant argues that the Conspiracy Charges should have stated "reasonable periods of time of related activity", which would have allowed the Appellants to identify the Relevant Accounts and TRs forming the subject of each charge.

39 This argument again misunderstands the nature of the Conspiracy Charges. As explained earlier, the Conspiracy Charges relate to the Appellants' continued involvement in various conspiracies. As such, the Conspiracy Charges allege that the conspiracies *subsisted* throughout the range of the dates stated in the charges. They do not purport to state a range of dates on which the Appellants carried out the underlying offences. We therefore find no merit in the Appellants' submission that the date ranges in the Conspiracy Charges were overly broad.

Whether the Conspiracy Charges were duplicitous

40 Before the Judge, the Appellants' chief contention on the framing of the Conspiracy Charges related to the issue of sentence. Specifically, they submitted that they ought to have been sentenced pursuant to s 116 rather than s 109 of the Penal Code (see GD at [1317(a)]). On appeal, the Second Appellant's argument is a somewhat different one. She submits that the Judge erred in failing to appreciate that abetment by conspiracy (under s 107(1)(*b*) of the Penal Code) and criminal conspiracy (under s 120A of the Penal Code) are

separate and distinct offences comprising distinct elements.[10] As a result, the Conspiracy Charges, by referring to *both* ss 120B and 109 of the Penal Code, were legally defective because they contravened s 132 of the CPC (which provides that every distinct offence must be charged and tried separately). This ostensibly resulted in grave prejudice to the Second Appellant, because it supposedly made it impossible for her to put up a defence properly in respect of both liability and sentencing.[11] On this basis, it was submitted that the Conspiracy Charges were defective and legally unsustainable, and that the Appellants' convictions premised on them are wholly unsafe and liable to be set aside.[12]

41 In our judgment, it is permissible for the Conspiracy Charges to refer both to ss 120 and 109 of the Penal Code. It follows that the Conspiracy Charges were not improperly framed. In any event, there is no evidence to suggest that the Appellants were misled or otherwise prejudiced by the manner in which the Conspiracy Charges were framed. Accordingly, even if the Conspiracy Charges were legally defective, the appropriate recourse would have been to amend these charges and not to set aside the Appellants' convictions. We explain.

The legal permissibility of the simultaneous references to ss 120 and 109 of the Penal Code

42 The Judge was satisfied that it was permissible to rely on s 109 of the Penal Code when sentencing an offender convicted under s 120A of the Penal Code.

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10 Second Appellant's Written Submissions dated 17 January 2025 ("2AWS") at paras 13(a) and 13(c).

11 2AWS at paras 13(b) and 13(d).

12 2AWS at para 6.

43 She began by looking at the plain wording of s 120B of the Penal Code, which provides that "a party to a criminal conspiracy to commit an offence shall, where no express provision is made in this Code for the *punishment* of such a *conspiracy*, be punished *in the* ***same manner as if*** he had ***abetted*** *the offence* that is the subject of the conspiracy" [emphasis added] (see [17] above for the full text of the provision). In this regard, ss 109 and 116 of the Penal Code outline how abettors are to be punished. For ease of reference, we reproduce both of these sections in full:

> **Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment**
>
> **109.** Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
>
> …
>
> **Abetment of an offence punishable with imprisonment**
>
> **116.** Whoever abets an offence punishable with imprisonment shall, if that offence is not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for that offence, or with both.

As can be seen, if an individual abets an offence and that *abetted offence is committed* as a consequence, s 109 of the Penal Code is the applicable provision, and the abettor is liable to face the *full punishment* of that offence as if he were a primary offender. Conversely, if the abetted offence is *not committed* as a consequence, s 116 of the Penal Code would be the applicable provision and the

abettor typically faces, at most, *one-fourth* of the maximum term of imprisonment, leaving aside any fine that may also be imposed, for the abetted offence.

44 Accordingly, on a plain and logical reading of the aforementioned provisions, since s 120B of the Penal Code requires that a criminal conspirator be punished "as if" he were an abettor, his punishment would similarly depend on whether the substantive offence underlying the conspiracy had actually been committed (see GD at [1332]).

45 Apart from the plain wording of the statute, the Judge found further support for such a view in the case law. For instance, in *Lau Cheng Kai and others v Public Prosecutor* [2019] 3 SLR 374, Chan Seng Onn J (as he then was) accepted (at [43]) that in the case where "the offence which is the subject of the criminal conspiracy has been committed, s 109 [of the Penal Code] is the more appropriate section" to be read with s 120B of the Penal Code (see GD at [1333]–[1335]).

46 We agree with the Judge's reasoning. As we explained in our brief oral remarks at the oral hearing on 3 March 2025, s 120B of the Penal Code (which is the punishment provision for a *criminal conspiracy* offence) provides that an offender will be punished "as if" he had abetted the offence. The applicable punishment for the *abetment* of an offence, in turn, is set out in various other provisions in the Penal Code and the choice of the applicable provision depends on what the Prosecution is able to establish. Such a position is in accordance with the plain reading of the relevant provisions of the Penal Code, and also supported by the case law. In *Tay Huay Hong v Public Prosecutor* [1998] 3 SLR(R) 290, which was cited by the Prosecution, the accused person was similarly charged with the offence of criminal conspiracy punishable under

s 120B of the Penal Code (Cap 224, 1985 Rev Ed), which is substantially similar to the version of s 120B that is relevant to our present purposes. On the issue of sentence, Yong Pung How CJ observed, referring to both ss 109 and 120B, that the accused person "was party to a conspiracy to commit an offence" and was "therefore liable to be punished as if he had abetted [that] offence" (at [39]).

47 Counsel for the Second Appellant, Mr Sivananthan, submitted at length before us that the offences of criminal conspiracy and abetment by conspiracy were distinct offences. However, this was irrelevant and therefore of no assistance to his case. It is incontrovertible, and indeed was accepted by the Judge below, that criminal conspiracy and abetment by conspiracy are distinct offences with distinct elements. However, it does not follow that they cannot share the same punishment provisions when that is precisely what is contemplated by the plain reading of the provisions in the Penal Code. The Second Appellant's submission in effect was that criminal conspiracy, being a distinct offence, could only be punished under s 116 of the Penal Code. However, as we indicated to Mr Sivananthan, had this been Parliament's intention, s 120B of the Penal Code would simply have said so in terms. It would have been wholly unnecessary for s 120B to state that a party to a criminal conspiracy is to be punished "as if he had abetted such offence". To adopt the Second Appellant's position would effectively be to rewrite these clear words.

The lack of prejudice to the Second Appellant

48 Quite apart from the legal permissibility of how the Conspiracy Charges were framed, we make a separate but related point on the *effect* of this.

49 It is trite that the purpose of the charge is to ensure that the accused person knows the offence of which he is accused and is thus able to meet the

case against him. In *Viswanathan Ramachandran v Public Prosecutor* [2003] 3 SLR(R) 435, Yong CJ (citing Norris R in *Lim Beh & Ors v Opium Farmer* (1842) 3 Kys 10 at 12) made the following observation as to the purpose of a charge (at [24]):

> [I]f there be any one principle of criminal law and justice clearer and more obvious than all others, it is that the offence imputed must be positively and precisely stated, so that the accused may certainly know with what he is charged, and be prepared to answer the charge as he best may.

50 In the present case, even assuming (contrary to our judgment on this) that it was legally impermissible for the Conspiracy Charges to invoke the punishment provision in s 109 when the Appellants were charged with the offence of criminal conspiracy under s 120B, we are unable to see how the Second Appellant can be said to have been prejudiced as a result. In particular, there is no indication that the framing of the Conspiracy Charges rendered the Second Appellant unable to meet the case against her. We say this for two reasons.

51 First, it was patently clear, from the plain language of the Conspiracy Charges, what precisely the Second Appellant was being accused of (namely, her engaging in a criminal conspiracy pursuant to s 120A of the Penal Code) and how she was liable to be punished (namely, under s 109 of the Penal Code). For ease of illustration, we reproduce, in full, one of the False Trading Charges brought against the Second Appellant:

> **1st charge**
>
> That *you, Quah Su-Ling, between 2 January and 15 March 2013, in Singapore, were party to a criminal conspiracy with one Soh Chee Wen ("Soh") to commit an offence under 197(1)(b) of the Securities and Futures Act (Chapter 289) ("SFA"), to wit*, you and Soh agreed to do acts with the intention of creating a false appearance with respect to the market for the securities of Blumont Group Ltd ("Blumont"), a body corporate whose

> securities were traded on the Mainboard of the Singapore Exchange Securities Trading Ltd, which acts involved controlling trading accounts (set out in the enclosed Annex A and which were in existence between 2 January and 15 March 2013) for trading and holding Blumont securities, and *you have thereby committed an offence punishable under section 120B read with section 109 of the Penal Code (Chapter 224) read with section 204(1) of the SFA*.
>
> [emphasis added]

52 In our judgment, it is clear that the Second Appellant was only charged with a single offence, which is that of being party to a criminal conspiracy to commit an offence under s 197(1)(*b*) of the SFA. The subsequent reference to s 109 of the Penal Code, which was prefaced by the words "thereby committed an offence *punishable under*" [emphasis added], could not plausibly have been understood as an allegation of a further and distinct offence of abetment by conspiracy. Hence, it cannot be said that the Conspiracy Charges were in any way duplicitous, or liable to mislead the Second Appellant in any way.

53 Second, the fact that the Second Appellant was unrepresented following the close of the Prosecution's case did not preclude her from understanding the case which she had to meet as regards the Conspiracy Charges. In a letter to the Second Appellant dated 6 June 2022, the court expressly informed the Second Appellant that "the offence for which [she] is being charged is ***criminal conspiracy***, not for the abetment of an offence" [emphasis in original].[13] The court further explained that the reference to s 109 of the Penal Code was included simply to make clear to the Appellants that "the Prosecution's case [was] that the offence underlying the criminal conspiracy was actually committed" so that the Appellants were aware of "the potential punishment they could face in the event that the Prosecution's case against them is made out". It

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13 ROP (Vol 117A) at p 30966.

did not, however, have the effect of charging her with two offences in a single charge.[14] Finally, the letter also made clear that "[i]t is not the court's position that it is proper or legal for two distinct offences to appear in a single charge, or that it is proper or legal for [the Appellants] to be punished on a single charge for two distinct offences".[15]

54 The upshot of all this is that even if the Conspiracy Charges were duplicitous, which we have held they were not, in the absence of any evidence that the Appellants had suffered prejudice as a consequence, the appropriate recourse would have been for us simply to amend the charges to remove any reference to s 109 of the Penal Code. In this connection, s 390(4) of the CPC provides that "the appellate court may frame an altered charge (whether or not it attracts a higher punishment) if satisfied that, based on the records before the court, there is sufficient evidence to constitute a case which the accused has to answer". Contrary to the Second Appellant's argument, it would have been neither necessary nor appropriate for us to set aside the Appellants' convictions on the Conspiracy Charges even if those charges were found to be duplicitous.

55 We therefore do not accept that the Conspiracy Charges were duplicitous. And in any event, there is nothing to suggest that the Appellants were misled or otherwise prejudiced by the manner in which the Conspiracy Charges were framed. There is therefore no basis to set aside the Appellants' convictions on this ground.

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14 ROP (Vol 117A) at p 30967.

15 ROP (Vol 117A) at p 30968.

The Second Appellant's allegation of bias against the Judge

56 Before we leave the preliminary issues relating to the framing of the Conspiracy Charges, we wish to address a serious allegation made by Mr Sivananthan with respect to the Judge's conduct of the hearing for the amendment of the charges (the "Amendment Hearing").

57 During the first hearing before us on 3 March 2025, Mr Sivananthan alleged that the Prosecution had only ever intended to prove, in relation to the Conspiracy Charges, that the Appellants were parties to the alleged criminal conspiracies. According to Mr Sivananthan, it was not originally the Prosecution's case that the Appellants had gone further than this by also committing the substantive offences underlying those criminal offences. He submitted that it was *the Judge* who prompted the Prosecution to reconsider its position by suggesting, during the Amendment Hearing, that the Conspiracy Charges be amended to incorporate references to s 109 of the Penal Code. Mr Sivananthan submitted that the Judge was wrong to have done so. When we invited clarification from Mr Sivananthan as to the precise nature of his objection to how the Judge dealt with the matter, he informed us that he was alleging actual bias, apparent bias and excessive inference on the part of the Judge. We reminded Mr Sivananthan that these were serious allegations to level against the Judge. Mr Sivananthan eventually informed us that he was withdrawing those allegations, although he maintained that the Judge was wrong to have allowed the Prosecution's application to amend the Conspiracy Charges. Despite this, Mr Sivananthan inexplicably repeated his allegations of bias at the subsequent hearing on 6 May 2025, *both* in an *aide-memoire* and in his oral submissions. Once again, Mr Sivananthan asserted that the Prosecution's original intention had been only to prove that the Appellants were parties to various criminal conspiracies. It was the Judge who had allegedly

suggested, during the Amendment Hearing, in Mr Sivananthan's words: "No, why don't you go further? If you can show that the acts were committed, then [s] 109. You can go for the full sentencing tariff". Mr Sivananthan submitted that, in so doing, the Judge had descended into the arena and exhibited apparent bias.

58 In our view, this was a clear, blatant and mischievous mischaracterisation of the proceedings and the Amendment Hearing.

59 It is true that at the Amendment Hearing, the Prosecution had indicated that they did not intend to allege *in the Conspiracy Charges* that "pursuant to [the] criminal conspiracy, the accused persons have committed" the underlying offences, but this was only because such an assertion was "not a necessary ingredient for a 120A offence".[16] The Prosecution maintained "unequivocally that [its] case is still the same [… and it intends] to still prove all the acts … in pursuance" of the conspiracy.[17] In response, Mr Sreenivasan for the First Appellant took the position that it would be impermissible for the Prosecution to omit such a specification and leave the Conspiracy Charges vague; instead, he said, the Prosecution should be made to "take the next step and specify which abetment section they want [the Appellants] punished under – 109 or 116".[18] ***Counsel for the Second Appellant at the time, Mr Sui Yi Siong, aligned himself with Mr Sreenivasan's position on this matter***.[19]

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16 ROP (Vol 7) at p 312, Transcript on 27 August 2019 at p 5 lines 8–14.

17 ROP (Vol 7) at p 103, Transcript on 15 July 2019 at p 3 lines 2–26.

18 ROP (Vol 7) at p 322, Transcript on 27 August 2019 at p 15 lines 23–27; see also ROP (Vol 7) at p 325, Transcript on 27 August 2019 at p 18 lines 20–28.

19 ROP (Vol 7) at p 329, Transcript on 27 August 2019 at p 22 lines 4–17.

60 It was pursuant to this exchange and discussion that the Judge invited the Prosecution to consider incorporating references to s 109 of the Penal Code in each of the Conspiracy Charges.[20] She made this invitation *after* the Prosecution acceded to the Appellants' request for the Conspiracy Charges to expressly state the Prosecution's position on whether the underlying offences had been completed (see GD at [1506]).

61 Having regard to what actually transpired during the Amendment Hearing, it is clear to us that the Second Appellant cannot seriously claim to have been confused or otherwise prejudiced by the framing of the Conspiracy Charges. As noted above, her counsel at the time had supported the request made on behalf of the First Appellant that the Prosecution do precisely what her present counsel was complaining of. More troublingly, it is equally obvious that Mr Sivananthan's allegations of bias against the Judge were wholly without merit. The Prosecution's express position had always been that the Appellants had committed the substantive offences underlying the criminal conspiracies, and this remained its position even when it applied to amend the Conspiracy Charges. It is therefore simply false for Mr Sivananthan to assert that the Prosecution had only adopted this position upon prompting by the Judge.

62 In *BOI v BOJ* [2018] 2 SLR 1156 (at [141]), and indeed even at the hearing before us, we warned that allegations of judicial bias are extremely serious as they can be weaponised by disgruntled litigants to cast baseless aspersions against judges and waste valuable court time and resources in the process. It is even more reprehensible when this is done by counsel. In our view, Mr Sivananthan's conduct in this regard was wholly irresponsible and improper. It was unacceptable for him, during the first hearing before us on 3 March 2025,

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[20] ROP (Vol 7) at p 344, Transcript on 27 August 2019 at p 37 lines 11–21.

to have advanced spurious allegations of bias against the Judge based on a false characterisation of the events at the Amendment Hearing. It was even more unsatisfactory for him, having then withdrawn these allegations, to subsequently repeat them before us on 6 May 2025.

A review of the Judge's main factual findings

63 We turn to the substantive issues pertaining to the appeals against conviction. We begin with a discussion of the factual issues raised by the Appellants before turning to each set of charges. At the conclusion of the second tranche of the oral hearing of the Appeals, which concerned the Judge's decision on conviction, it became clear that the core of the Appellants' – and in particular, the First Appellant's – appeal against the Judge's decision on conviction centred on her determination that the Appellants exercised control over the Relevant Accounts. It is therefore appropriate for us to start with this foundational factual finding, since this undergirds all the Conspiracy Charges and is the key finding against which the Appellants have directed most of their attacks.

The applicable law for appellate intervention

64 We begin with a few observations on the limited nature of review afforded to an appellate court. As we have said at the outset, in a factually intensive case such as the present, it is not advisable for appellants to seek to challenge the trial judge's findings just by inviting the appellate court to review all the material that had been before the trial court and consider arriving at a different set of findings and conclusions.

65 Indeed, it is well settled that in an appeal based on points of fact, the appellate court will be slow to overturn the trial judge's findings of fact, especially where they hinge on the trial judge's assessment of the credibility and

veracity of witnesses, unless they can be shown to be plainly wrong or against the weight of the evidence (see *Yap Giau Beng Terence v Public Prosecutor* [1998] 2 SLR(R) 855 at [24]). In *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983, the High Court observed (at [67]) that for a verdict to be assessed as going "against the weight of evidence", the appellant must be able to show that any advantage enjoyed by the trial judge, afforded by having seen and heard the witnesses first hand, is not sufficient to explain and justify the trial judge's conclusions on credibility (citing *Benmax v Austin Motor Co Ltd* [1955] AC 370 at 375). The court also referred with approval (at [68]) to the statement of the High Court of Australia in *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq) and others* (1999) 160 ALR 588 at [93] that appellate intervention would be justified where the trial judge's conclusion was "plainly wrong" *as demonstrated by incontrovertible facts or uncontested testimony*. In short, the factual findings of a trial judge should be taken as *prima facie* correct and would not lightly be disturbed in the absence of good reasons (*Syed Jafaralsadeg bin Abdul Kadir Alhadad v Public Prosecutor* [1998] 3 SLR(R) 352 at [56], referring to *Tan Chow Soo v Ratna Ammal* [1969] 2 MLJ 49). This is, and is intended to be, a significantly high threshold that entails showing that the trial judge made an error in his or her analysis and evaluation of the material that was presented and/or misunderstood the applicable legal principles upon which that analysis and evaluation was to be conducted.

The First Appellant's case on appeal

66 Although the First Appellant's case on appeal is multi-faceted and his challenges against the Judge's findings are manifold, the key thrust of his case is that the *bulk* of the trading activity in the Relevant Accounts during the Relevant Period was conducted by a group of individuals acting on their own or

collectively, but *not* at the Appellants' behest or with their knowledge. These individuals were Mr Dick Gwee ("Mr Gwee"), Mr Ken Tai ("Mr Tai"), Mr Henry Tjoa ("Mr Tjoa") and Mr Gabriel Gan ("Mr Gan"), who belonged to a group which the parties and the Judge referred to as the "Manhattan House Group" ("MHG"), as well as one Mr Leroy Lau ("Mr Lau"). Because these individuals operated as a separate entity allegedly *beyond* the control of the Appellants and coordinated their trades amongst themselves *without* the Appellants' knowledge, involvement or consent, it was submitted that none of the trading activities in the Relevant Accounts connected to them could be attributed to the Appellants.

67 A related point raised by the First Appellant – though it is, if at all, only relevant to the issue of sentencing – is that even assuming that the Appellants did exercise control over *some* of the Relevant Accounts, it cannot be said that they had successfully manipulated the market and price for BAL shares. This is because the bulk of the manipulative trades, which *caused* the false and/or misleading appearance in the market for and price of BAL shares, were conducted by the MHG and Mr Lau, and *not* by the Appellants – who, according to the Appellants, did not ultimately exercise control over those accounts connected to the MHG and Mr Lau. In the First Appellant's submission, it follows that the Appellants' convictions for the False Trading and Price Manipulation Charges should be set aside. He advances a similar argument in respect of the Deception and Cheating Charges.

68 In this regard, the First Appellant's primary ground of attack on appeal concerns the Judge's treatment of the oral evidence of the members of the MHG and Mr Lau. More specifically, the First Appellant takes issue with the Judge's assessment of their credibility as well as the inferences that she drew from their evidence. In short, the First Appellant argues that the members of the MHG and

Mr Lau were not witnesses of truth and that their evidence ought not to have been accepted. Their evidence was not only internally inconsistent (as between their court testimonies and their prior statements to the authorities) but also against the weight of the evidence as a whole. These individuals also had a strong motive to lie to protect themselves. In the circumstances, the Judge erred in accepting their evidence. Leaving aside the Judge's treatment of the oral evidence of these individuals, the First Appellant also attacks the Judge's reliance on certain objective evidence to support the conclusions she arrived at in convicting the Appellants.

The Judge's approach to the evidence

69 As has already been noted, a party seeking to overturn a factual finding on appeal is required to identify precisely how the trial judge is said to have erred. It is therefore appropriate to carefully examine the approach that the Judge took in concluding that the Appellants, in fact, did control the Relevant Accounts.

70 The Judge, of course, was mindful of the fact that a key strand of the Appellants' case in the proceedings below was that "the bulk of the trading activity carried out in all 189 accounts could be traced to accounts under the management of a few individuals" and these individuals had been trading "*amongst themselves* … without the knowledge or involvement of the accused persons and with the goal of 'churning' trades in order to earn commissions" [emphasis in original] (see GD at [129]–[130(a)]). The Judge was also aware that the Appellants' primary strategy, to advance their narrative, was to challenge the cogency and credibility of the evidence of the alleged rogue traders who testified on behalf of the Prosecution (see GD at [129]–[134]). We make this point because it follows from the First Appellant's election to adopt

what in essence is the identical approach on appeal, that the burden rests upon him to show that the Judge's assessment of these individuals' evidence was plainly wrong or against the weight of the evidence, and this is not achieved just by making assertions to this effect.

71 The Judge was equally aware that a key factual pillar of the Prosecution's case was that the Appellants controlled the Relevant Accounts and used this to effect the Scheme. To determine whether that premise was made out, the Judge divided the 189 Relevant Accounts into five main categories. The first category consists of the 61 Relevant Accounts which had been under the management of the MHG. The Judge found that it would be useful to analyse the Appellants' control of these accounts independently, in light of the centrality of the MHG in the Appellants' case before her. Indeed, the MHG remains central to their case on appeal as well (see above at [67]–[68]).

72 The remaining four categories were divided according to whether the accounts formed the subject of the Deception Charges, and whether the account was an account with a foreign or local FI. The first demarcation, on whether the accounts formed the subject of the Deception Charges or not, served broadly to differentiate between accounts which the Second Appellant had the actual authority to instruct orders and trades in, and accounts where the Appellants had concealed their involvement in the instructing of orders and trades in (see GD at [633]). The second demarcation, on whether the account was one with a foreign or local FI, arose because, before the Judge, the Appellants had advanced two distinct lines of argument regarding the Deception Charges based on whether the accounts were foreign or local accounts (see GD at [144]–[157]). As regards the local accounts, the Appellants' main defence for the bulk of these accounts, for which they purportedly gave direct instructions to the TRs, was that there was no deception as the knowledge of the TR could be attributed to

their FIs. However, as regards the foreign accounts, the Appellant's defence was that since they gave instructions through the accounts' intermediaries, it was akin to relaying their instructions through an authorised person (see GD at [986]). Within these five main categories, the Judge further sub-divided the accounts into groups based on the identity of either the TR or Relevant Accountholder associated with those accounts. The Judge then carefully went through each of these sub-groups to determine whether the Appellants exercised control over the identified Relevant Accounts.

73 We do not propose to set out the Judge's analysis of each of these categories and sub-groups in exhaustive detail. Instead, we outline her approach to the evidence by reference to two illustrative examples, namely, the Relevant Accounts held in the names of Mr Lau and Ms Cheng Jo-Ee ("Ms Cheng") respectively. Mr Lau had a single Relevant Account, which was a local account and was the subject of the Deception Charges. Ms Cheng had five Relevant Accounts, either in her own name or for which she was an authorised signatory, all of which were categorised as foreign accounts that were the subject of the Deception Charges. We have focused on these individuals' accounts because these were among the ones that featured significantly during the second tranche of the oral hearing, apart from the Relevant Accounts managed by the MHG.

74 We turn to the Relevant Account belonging to Mr Lau, who was an important witness because of the volume of his trading activity and his centrality to the Appellants' alternative factual narrative that he was trading for and in collaboration with the MHG. Although we will return to Mr Lau's evidence and the Relevant Account in greater detail subsequently (at [112] below), we briefly canvass the Judge's approach here as an illustrative example of her approach to the witnesses' evidence on the issue of control.

75 The Judge first began with an overview of Mr Lau's alleged role in the Appellants' Scheme based on his witness testimony. Mr Lau testified that he was a "highly skilled day trader" who was operating with a general mandate and/or instructions from the Appellants to trade BAL shares in his account in a way that would assist in manipulating the liquidity and price of BAL, though he also, at times, acted on the Appellants' specific instructions (see GD at [308]–[313]).

76 Next, the Judge proceeded to outline various strands of evidence which corroborated Mr Lau's testimony. Such evidence broadly consisted of messages between Mr Lau and the First Appellant, as well as corroborative evidence emanating from other witnesses (such as Mr Tai and one Mr Wong Xue Yu ("Mr XY Wong")). The Judge found that these messages were especially damning because they showed regular communications between Mr Lau and the First Appellant that were interspersed with bids being made to transact LionGold shares using Mr Lau's account, as well as trading instructions that were conveyed in messages from the First Appellant to Mr Lau. The Judge accordingly accepted Mr Lau's testimony and found his "account of the facts to be detailed, specific, independently logical, and thus indicative of the truth … [further,] it also cohered with the objective evidence adduced" (see GD at [314]–[315]).

77 Finally, the Judge considered and rejected the First Appellant's attempt to discredit Mr Lau's evidence and paint him as an unreliable witness. The First Appellant's attack rested on two main planks. First, it was said that the nature of Mr Lau's trading activities was such that he would have needed to make split-second decisions in response to market conditions. He could not, therefore, have been taking instructions from the Appellants. We digress to observe that it was not Mr Lau's evidence, nor the Prosecution's case that each and every

transaction carried out by Mr Lau on the First Appellant's instructions was preceded by a specific conversation or direction. In fact, Mr Lau's claim, that he had been given a general mandate to carry out what the Judge referred to as "market rolling activities", would be indicative of the opposite. These activities refer to a practice Mr Lau had with the Appellants where he would coordinate "rollover trades" with them, by purchasing shares from the Relevant Accounts that were to be paid for or sold within five days from the date of the trade. Ensuring that the transaction was completed in this way within five days was crucial because as long as the shares were bought and then resold within that period, the purchaser would not need to incur the expense necessary to purchase the shares. They would either enjoy the nett profit or have to contend only with the nett loss, depending on whether the shares were resold at a higher or lower price than that at which they were bought. Importantly, such a practice allowed the Appellants to refresh the positions in Relevant Accounts by trading and purchasing more shares in those accounts.

78 Second, it was argued that Mr Lau had revised his testimony in court to cover up his own wrongdoing (see GD at [316]–[317]). The Judge was unpersuaded by these arguments. She found that the First Appellant's bare assertions did not stand up to scrutiny when placed against the evidence of Mr Lau and the corroborative objective evidence adduced by the Prosecution. In this connection, the Judge had specific regard to the First Appellant's inability to furnish *any* explanation for the most probative and incriminating messages exchanged between the First Appellant and Mr Lau (see GD at [318]–[320]).

79 In a similar vein, we turn to the Relevant Accounts belonging to Ms Cheng. Ms Cheng held one personal Relevant Account and was the authorised signatory of four other corporate accounts.

80 As regards three of the four corporate accounts, the Judge first took note of Ms Cheng's testimony and her ready admission that she made these three accounts available to the Appellants to place trades in BAL shares. The Judge then proceeded to review the extensive communication records between the First Appellant and Ms Cheng and found that it was "readily apparent that the First [Appellant] had given BAL trading instructions" for transactions that were entered into using these accounts. The Judge also noted that: (a) these three accounts inexplicably traded almost exclusively in BAL shares; and (b) an e-mail sent by Ms Cheng to the First Appellant of a spreadsheet showed they were tracking BAL shareholdings in her accounts. Finally, the Judge considered and rejected the First Appellant's submission that he was just "giving trading advice to his girlfriend for her to make money". In the Judge's view, it was clear from the contents of the messages that these were trading instructions. It was also significant that the timing of the various orders placed in BAL shares (in particular, Blumont shares) coincided with communications between the First Appellant and Ms Cheng. Therefore, after applying this analytical method, the Judge found that collectively, these various strands of evidence, namely Ms Cheng's own testimony, the communications between her and the First Appellant, the trading patterns in the accounts in question, the monitoring of these trades, and the untenable explanation advanced by the First Appellant when confronted with some of these points, supported the conclusion that the three corporate accounts in the name of Ms Cheng were in fact being controlled by the First Appellant (see, generally, GD at [602]–[606]).

81 However, as regards Ms Cheng's final corporate account and her personal account, she denied that they were controlled by the Appellants. With respect to the aforementioned accounts, the Judge rejected the Prosecution's argument that the First Appellant controlled these accounts based solely on the

notion that Ms Cheng's accounts were *generally* available for the Appellants' use. She observed that the mere fact that the Appellant had *generally* drawn on Ms Cheng's accounts could not, without more, support the inference that a *specific* account was being used and controlled by the Accused (see GD at [608]–[616]).

82 It will be apparent from this brief summary that the Judge's forensic approach to the evidence of the numerous witnesses who testified was layered and textured. Her analysis, in sum, consisted of three main steps:

(a) First, she reviewed the witness's testimony on the role they played in the Scheme, having regard to factors that made the evidence more reliable or less so.

(b) Second, she considered the available corroborating evidence which supported the witnesses' evidence. Such corroborating evidence typically came in the form of other witnesses' testimony and/or corroborative objective evidence.

(c) Third, and finally, she evaluated the combined weight of the witnesses' testimony and corroborating evidence against the Appellants' counter-narrative and determined which of the two she ultimately found to be the true version of events. In particular, she considered whether the Defence had been able to account for the difficult inferences that were suggested by the evidence taken as a whole

Such an approach was, in our judgment, sensible and appropriate – it was wholly insufficient for the Appellants to focus on the supposed limitations of a *discrete* layer or strand of the evidence when it was evidently their combined force that underlay the Judge's conclusions.

83 We also develop a point in this connection that relates specifically to how the Judge treated the available *objective* evidence. This generally comprised: (a) communication records, which included recorded calls, messages, and e-mails exchanged between the relevant persons; (b) spreadsheets and other documentary records which indicated the Appellants' control over and coordination or monitoring of the Relevant Accounts; (c) the investigative analysis carried out by the Commercial Affairs Department (the "CAD") in relation to these records; (d) raw trading data of BAL shares obtained from the SGX; and (e) analytical work carried out by the Government Technology Agency ("GovTech") (see GD at [107]). Despite finding some of the objective evidence highly probative, the Judge was cognisant of their limitations and certainly did not regard them as being conclusive of the Appellants' guilt on their own. Rather, the Judge regarded the objective evidence as being primarily of corroborative value (see, for instance, GD at [116]–[120]).

84 It was only upon a careful and holistic consideration of various interlocking strands of evidence, including the testimonies of various witnesses, the expert evidence and the objective evidence, that the Judge came to a conclusion as to whether the Appellants had been in control of each of the Relevant Accounts. We also note that the Judge eschewed a broad-brush approach in favour of a granular one, as seen in her treatment of the Relevant Accounts associated with Ms Cheng (see above at [80]–[81]).

Whether the threshold for appellate intervention has been met

85 We return to the First Appellant's complaints directed at the Judge's factual findings, which rest heavily on the Judge's treatment of the oral evidence of members of the MHG and Mr Lau. The primary difficulty, as we have already

alluded to above, is that these complaints typically ignore the multi-layered and textured approach that was an integral feature of the Judge's analysis. Most significantly, he ignores her careful review and consideration of the objective evidence and oral evidence as a whole, as well as how those pieces of evidence corroborated and supported one another (both in terms of how the objective evidence supported the testimony of various witnesses, as well as how those testimonies corroborated one another). We have illustrated this in the examples cited above. To persuade us that the Judge's findings were plainly wrong or against the weight of the evidence, it was neither sufficient nor satisfactory for the First Appellant to engage with a specific aspect of her reasoning in isolation, without acknowledging the various other interlocking strands supporting it. It is thus to the Judge's analysis of these various other strands that we now turn.

The witness testimonies relied on by the Judge

86 As mentioned above, the Judge's approach to evaluating this issue of control began with the consideration of the relevant witnesses' testimony. We similarly begin our analysis on this footing.

87 The core of the First Appellant's case is that the MHG and Mr Lau were rogue traders conducting manipulative trades on their own initiative and for their own illicit ends. The First Appellant attacks the Judge's treatment of the oral evidence of the key witnesses who testified on behalf of the Prosecution and her decision not to impeach their credibility. He contends that the Judge failed to acknowledge that there were clear inconsistencies in their evidence which undermined their credibility.

88 We disagree. As we will explain in the following section, the First Appellant's submissions largely fail to engage with the other strands of

evidence, in particular the objective evidence that supported the Judge's decision. In any case, even focusing solely on the oral evidence, the First Appellant has not demonstrated that the Judge's assessment of the evidence of the various witnesses and of their credibility was plainly wrong or against the weight of the evidence. We explain our view by taking, as illustrative examples, the Judge's assessment of the evidence of Mr Tai, Mr Gan and Mr Lau. We confine ourselves to these examples because they suffice to highlight the lack of merit in the Appeals.

(1) Mr Tai

89 Mr Tai served as the intermediary for 11 of the Relevant Accounts held with Interactive Brokers LLC ("IB") and 21 of the Relevant Accounts held with Saxo Bank A/S ("Saxo"). As an intermediary, he had a limited power of attorney ("LPOA") to instruct or place trades on behalf of the Relevant Accountholders through his two companies, Algo Capital Limited ("Algo Capital") and Algo Capital Group Limited ("Algo Capital Group") (see GD at [688]). By way of a brief background, Mr Tai had initially been a TR with AmFraser Securities Pte Ltd ("AmFraser") when he met the Second Appellant. After he resigned from his position at AmFraser, he joined DMG & Partners Securities Limited ("DMG") in the first quarter of 2011, where he acted as the TR for eight of the Relevant Accounts (see GD at [651]–[653]). As DMG became uncomfortable with the high volume of Asiasons and LionGold trades being executed in the eight Relevant Accounts, Mr Tai left his position as a TR on 31 October 2011 (see GD at [661]). He then incorporated Algo Capital and Algo Capital Group and obtained LPOAs to place trades on behalf of the accountholders in question (see GD at [662] and [670]).

90 The First Appellant submits that the Judge erred when she accepted Mr Tai's evidence despite this having been undermined by various internal and external inconsistencies. We do not accept this submission for two main reasons. First, on close examination, many of the inconsistencies alleged by the First Appellant were more apparent than real. Second, and more importantly, the Judge did not uncritically accept Mr Tai's evidence. On the contrary, she was fully alive to the existence of some material inconsistencies in his evidence. Nonetheless, for reasons that she was careful to articulate, the Judge was ultimately satisfied that Mr Tai remained a witness of credit. The First Appellant has not explained why the Judge was wrong to so conclude.

91 We begin with the first point. In our view, many of the alleged inconsistencies were not true inconsistencies at all. For example, the First Appellant claims that Mr Tai's evidence was inconsistent with Mr Tjoa's. According to the First Appellant, Mr Tai had testified that he did not give instructions to Mr Tjoa to execute trades except when he (Mr Tai) was tasked by the Appellants to oversee and direct the placing of orders by the MHG for BAL trades.[21] For context, this refers to the Prosecution's contention at trial that the Appellants, in giving the MHG a mandate to trade in certain ways to advance the Scheme, would from time to time after March 2013 assign specific members of the MHG the responsibility for coordinating those trades. The person in charge would then be responsible for monitoring and directing the actual trades that were to be placed by other members of the MHG. This was to allow the First Appellant to focus on the corporate activities of the BAL companies. In the First Appellant's submission, Mr Tai's evidence was contradicted by Mr

[21] 1AWS at paras 317 and 320.

Tjoa's evidence that the latter had received instructions from Mr Tai even during periods when Mr Tai had not been delegated such a role.[22]

92 However, a close examination of Mr Tai's evidence resolves the apparent inconsistency. When Mr Tai was asked whether he had played a role in directing the trading activities in the Relevant Account managed by Mr Tjoa, he explained that there were times where he would assist the Appellants by conveying and relaying instructions from them to Mr Tjoa and his assistants. One such instance was whenever the Second Appellant "wasn't able to get in touch with [Mr Tjoa] she would call [Mr Tai] to relay the trading instructions" to Mr Tjoa's assistants.[23] Another instance was when Mr Tai was operating in the same location and office as the Appellants, and he would thus assist in relaying their instructions to Mr Tjoa.[24] Hence, as the Prosecution points out, although there were instances where Mr Tjoa or his assistants did receive instructions from Mr Tai, in reality this occurred when Mr Tai was for one reason or another relaying specific instructions on behalf of the Appellants to Mr Tjoa. This was distinct from the occasions when Mr Tai gave instructions in the course of overseeing and directing the MHG's trading operations pursuant to the general mandate given by the Appellants.

93 Indeed, as the Judge noted, Mr Tjoa had "directed his assistants to accept [instructions from Mr Tai] pursuant to the [Appellants'] confirmation that Mr Tai was in fact helping them" (see GD at [663]). The existence of such a pattern of relaying instructions is also supported by the objective communication

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22 1AWS at p 249; citing ROP (Vol 15) at p 362, Transcript 3 March 2020 at p 12 lines 10–13.

23 ROP (Vol 8) at pp 86–87, Transcript 1 October 2019 at p 84 line 6 to p 85 line 23.

24 ROP (Vol 12) at pp 214–215, Transcript 8 January 2020 at p 62 line 7 to p 63 line 19.

records. In its submission on appeal, the Prosecution highlights that for 62% of the communications (in August 2012) and 51.8% of the communications (in September 2012) between Mr Tai and Mr Tjoa or his assistants, which led to orders being placed in the Relevant Accounts controlled by the latter, such communications were made within five minutes of phone communications between the Appellants and Mr Tai.[25] Thus, the alleged inconsistencies between Mr Tjoa's and Mr Tai's evidence were not truly inconsistencies and ultimately do not undermine Mr Tai's evidence that he generally communicated with Mr Tjoa to direct trading to implement the Scheme pursuant to the general mandate given by the Appellants.

94 Turning to the second point, the Judge specifically noted that there *were* some material inconsistencies between Mr Tai's evidence in court and his statements to the investigative authorities (see GD at [690]). Mr Tai's explanation for these discrepancies, as detailed in his conditioned statement, was that he had initially lied to the CAD to avoid incriminating himself as well as the Appellants. However, he subsequently lost trust in the First Appellant and decided to come clean to the authorities about the Appellants' involvement and role (see GD at [690]–[691]). Indeed, that also accounts for why Mr Tai had initially denied that the Appellants had been involved in any illicit activities but subsequently revealed details about the Appellants' activities, while still protecting other individuals involved in the Scheme. This followed a pattern of sorts as he progressively lost trust in the Appellants and simultaneously became aware of the mounting evidence against them. The Judge ultimately accepted Mr Tai's explanation and concluded that his credibility was not impeached notwithstanding the material inconsistencies in his evidence (see GD at [691]–

[25] Prosecution's Written Submissions dated 17 January 2025 ("PCWS") at para 211(c).

[692]). Nonetheless, the Judge "treated his evidence with caution" and made sure to test it against the evidence of other witnesses and the objective evidence. Having done so, the Judge accepted Mr Tai's evidence that the Appellants controlled the 32 Relevant Accounts held with Saxo and IB under his management (see GD at [693]).

95 By way of illustration, one of the material inconsistencies in Mr Tai's evidence pertained to the trades done through the Algo Capital Group's account in IB. Initially, in a statement (dated 24 June 2015) to the CAD, Mr Tai claimed that those trades were "butter-finger trades" meaning that they had been entered into in error. Mr Tai subsequently admitted in court that that was a lie and that the trades were in fact deliberate trades done by him.[26] He also explained that he had initially lied to obscure the First Appellant's involvement and to avoid implicating himself (see GD at [690(a)]). He only decided to come clean when he realised the mounting evidence against him, and also because he no longer trusted the Appellants to uphold certain promises they had made to him, in exchange for his taking the rap for them (see GD at [690]–[691]). In *Ng Kwee Leong v Public Prosecutor* [1998] 3 SLR(R) 281 ("*Ng Kwee Leong*"), Yong CJ observed that "even if a witness is found to have lied on a matter, it does not necessarily affect his credibility as a whole" such that the whole of his evidence must be rejected. That said, the judge should scrutinise their evidence with great care and give due consideration to the witness's lie in assessing the credibility and veracity of their evidence (at [15]). In our view, the Judge was fully conscious of Mr Tai's lies and had carefully considered his testimony alongside other supporting evidence before accepting his explanation as an adequate explanation for the inconsistency in his evidence.

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[26] 1AWS at para 307; citing ROP (Vol 8) at pp 392–394, Transcript on 3 October 2019 at p 43 line 1 to p 46 line 14.

(2) Mr Gan

96 Mr Gan was a TR with DMG from 2011 to 2016. During this period, he was the TR for two Relevant Accounts. One was held in the name of Mr Lim Kuan Yew ("Mr KY Lim"), while the other was held in the name of Mr Nelson Fernandez ("Mr Fernandez").[27] Mr Gan testified that the Appellants had given him specific trading instructions in respect of these two accounts. He averred that the Appellants' instructions were largely to trade on a rolling contra basis (see GD at [705]). For context, as has already been noted, accountholders were given a few days from the date of the purchase of shares for the settlement of the same, which may be effected by either paying for or selling the shares. Contra trading referred to the purchase and subsequent sale of shares before the end of the settlement period. Through this practice, traders would only have to pay for commissions, transaction costs and contra losses (if any) instead of paying for and "picking up" the shares. This also allowed the trader to either receive or incur a "contra" profit or loss from the difference between the sale price and the purchase price of the shares (see GD at [75]). A rolling contra, meanwhile, referred to the act of "rolling over" positions in trading accounts through the repeated use of contra trading (that is, by repeatedly purchasing and selling shares before the end of the settlement period, thereby inflating the apparent liquidity of the shares) (see GD at [76]). The Judge accepted Mr Gan's testimony because it was corroborated by both the analysis conducted by GovTech (see [142] below) (the "Govtech Analysis") and the objective records (see GD at [715]).

97 On appeal, the Appellants challenge the Judge's reliance on Mr Gan's testimony by contending that he was not a truthful witness. In essence, they

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[27] ROP (Vol 109) at pp 26758–26759, paras 29 and 33.

maintain that Mr Gan repeatedly lied to investigators from the start of the investigations in his various investigative statements to conceal the truth about Mr Gwee's involvement in the Scheme. For completeness, we observe that this contention was raised by the Appellants at trial as well (see GD at [709(f)]). We consider that this contention merits some further analysis because the Judge did not deal with this purported inconsistency *in detail* as she was of the view that it did not directly concern the issue of whether the Appellants were in *control* of the Relevant Accounts in question. Nonetheless, she took the view that such inconsistencies had been adequately explained by Mr Gan (see GD at [710]). In a similar vein, we do not think that these criticisms take the Appellants far because, again, they relate either to matters which were not in fact inconsistencies or were inconsistencies for which there was a reasonable explanation.

98 For example, the First Appellant alleges that Mr Gan deliberately lied in his statement to the CAD in order to conceal the extent of Mr Gwee's involvement in instructing Mr Gan to conduct BAL trades in the Relevant Accounts.[28] The First Appellant highlights that, in Mr Gan's statement to the CAD on 7 December 2016, he said that Mr Gwee had not instructed him to place orders in the Relevant Accounts when Mr Gwee had in fact given him orders to trade in BAL shares.[29] The First Appellant contends that Mr Gan's true motive for lying was to conceal Mr Gwee's involvement in the Scheme.

99 There are two difficulties with this. First, as we highlighted during the oral hearing, *even if* Mr Gan had omitted or attempted to conceal Mr Gwee's involvement in the Scheme, this does not necessarily undermine his testimony

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28 1AWS at paras 368 and 378(a).

29 1AWS at para 368; citing ROP (Vol 20) at p 45, Transcript on 3 July 2020 at p 43.

regarding *the Appellants'* involvement in the same. Put simply, even if Mr Gwee had been involved in the Scheme, this said nothing about whether the Appellants too had been involved.

100 Second, a further examination of the record reveals that there was no real inconsistency in Mr Gan's evidence to begin with. Mr Gan explained under cross-examination that what he meant by his statement to the CAD was that Mr Gwee had only given him general instructions to conduct BAL trades, but had not given him *specific* instructions to trade *using the accounts of Mr KY Lim and Mr Fernandez*.[30] He had named the Appellants, but not Mr Gwee, in his statement to the CAD because the Appellants had given him specific instructions to conduct BAL trades using the two accounts.[31] This explanation was sensible and cohered with what Mr Gan had actually said in his statement to the CAD, where he said that Mr Gwee did not give such instructions *for the accounts held by Mr KY Lim and Mr Fernandez*:[32]

Question 148:	Who else asked you to trade in Blumont, Asiasons?
Answer:	John Soh (JS) and Quah Su-Ling (QSL). They placed the orders for trades in Lim Kuan Yew and Nelson's accounts.
Question 149:	What about the account holders?
Answer:	They also placed orders, but quite rarely. They did give me discretionary powers to trade. Despite this, JS and QSL called to give orders for them. Dick Gwee did not give orders *for these two account holders*.

[emphasis added]

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30 ROP (Vol 20) at p 48, Transcript on 3 July 2020 at p 46 lines 2–18.

31 ROP (Vol 20) at p 48, Transcript on 3 July 2020 at p 46 lines 10–14.

32 ROP (Vol 112) at p 27997.

101 When viewed in context, it is clear that Mr Gan was saying that the Appellants had given him specific instructions to place orders *in the accounts of Mr KY Lim and Mr Fernandez*, while Mr Gwee had not given such specific instructions. We observe that the same explanation had been raised by the Prosecution in resisting the application to impeach Mr Gan's credit in the proceedings below.[33] It is clear from the GD that the Judge was aware of the Appellants' allegation (see GD at [709(f)]), but she did not deal with each purported inconsistency raised by the Appellants because the alleged inconsistencies did not directly address the central issue of whether *the Appellants* controlled the two accounts. In any event, she concluded that any inconsistencies had been adequately explained (see GD at [710]).

102 More broadly, the First Appellant seeks to paint Mr Gan as an untruthful witness who, by his own admission, was prepared to lie to the CAD at the start of its investigations.[34] However, as we have observed earlier (see [95] above), it does not follow from the fact that a witness has previously lied to the authorities on a specific matter that the *entirety* of his evidence should be disbelieved. A court may well, for good and cogent reasons, accept one part of the testimony of a witness and reject another (see *Ng Kwee Leong* at [15]). It is notable that the Judge did not blindly accept Mr Gan's evidence. She only accepted Mr Gan's account of the events after testing it against various strands of objective evidence, such as the GovTech Analysis and several e-mails which showed that the Appellants had been monitoring Mr KY Lim's and Mr Fernandez's accounts (see GD at [706]–[707]). In particular, the GovTech Analysis showed that there was a large number of BAL trades in Mr KY Lim's and Mr Fernandez's accounts which were preceded by communications between the Appellants and

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33 ROP (Vol 105) at p 25081 at paras 26 and 27(b).

34 1AWS at para 368.

Mr Gan in the period from August 2012 through May 2013. However, there was a "distinct drop" in such communications prior to BAL trades in these accounts from June 2013 to October 2013, which was consistent with Mr Gan's evidence that the Appellants had delegated the supervisory role of directing and overseeing market operations for Blumont and Asiasons to Mr Gan, Mr Tai, and Mr Tjoa during this period (see GD at [706]).

103 On appeal, the First Appellant seeks to undermine these strands of objective evidence by suggesting that: (a) the GovTech Analysis was deficient and could not be relied upon; and (b) the e-mails which the Judge relied upon fell outside the Relevant Period. We disagree. We reject the Appellants' general criticism of the GovTech Analysis (see [145] onwards below for elaboration). We also observe that the Judge was fully cognisant that some of the corroborative e-mails fell outside the Relevant Period (see GD at [707(b)]). Nonetheless, it is implicit in the Judge's reasoning that she regarded these e-mails as shedding light on the Appellants' conduct *during* the Relevant Period, and the Appellants have not demonstrated that the Judge was wrong to so reason. In any event, the Judge also relied on e-mails *within* the Relevant Period which showed that the Appellants continued to track the trades conducted in Mr KY Lim's account (see GD at [707(b)]).

104 For completeness, we observe that certain features of Mr Gan's evidence in fact *bolstered* his credibility as a witness. Of significance is the fact that Mr Gan disclosed the Appellants' practice of delegating the task of overseeing the market activities of the BAL trades to certain members of the MHG (as explained above at [91]) even before this became evident from the GovTech Analysis. According to the Prosecution, Mr Gan had first made this point in an investigative statement recorded in February 2017. Although this statement was not admitted into evidence, this was repeated in a further statement from Mr

Gan on 14 July 2017 which was admitted into evidence.[35] This was before GovTech was engaged to perform its analysis in September 2017. The fact that Mr Gan made this disclosure, without knowing that it would or even could be supported or corroborated by the GovTech Analysis, added to his credibility.

105 We therefore do not accept the Appellants' attempts to discredit the Judge's assessment of Mr Gan's evidence as plainly wrong or against the weight of the evidence.

106 Before we turn to the Judge's treatment of Mr Lau's evidence, we address one general argument that was made by the First Appellant in relation to all the witnesses from the MHG – namely, that their evidence ought to have been given limited weight because they had all conspired to cover up for Mr Gwee at the Appellants' expense.[36] In sum, the First Appellant's argument is that their characterisation of Mr Gwee, in effect, as the First Appellant's deputy should not be believed because it was "part of their story to implicate the Appellants instead of Mr Gwee".[37]

107 We will address the First Appellant's case theory regarding the role of Mr Gwee (as the true mastermind behind the market manipulation activities observed) later in this judgment (from [179] onwards below). For the reasons that are set out there, the Judge was not wrong to reject this case theory. This severely undermines the force of the First Appellant's argument against this aspect of the Judge's analysis.

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35 ROP (Vol 112) at pp 28054–28055.

36 1AWS at para 82.

37 1AWS at paras 120–121.

108 In any case, we touch on the weight to be given to the evidence of the MHG in the light of the manner in which certain aspects of their accounts evolved over time. Mr Tjoa explained that he had not revealed the involvement of Mr Tai, Mr Gwee, Mr Gan, and his assistants, in his statements to the CAD because, unlike the Appellants, they had not been charged when Mr Tjoa made certain statements to the CAD in 2017 and 2018. In contrast, he had disclosed the Appellants' involvement (and by implication his own involvement) in the BAL trades to the CAD at that time as the Appellants had *already been charged* in November 2016. The Judge accepted this explanation because, among other things, it was consistent with the pattern of the First Appellant's behaviour which formed the subject of the Witness Tampering Charges (see GD at [724]–[725]). We agree and also note that Mr Tjoa's explanation makes logical sense.

109 The First Appellant takes issue with this and submits that the MHG had initially covered up Mr Gwee's role in order to frame the Appellants. However, he has not demonstrated how or why we should conclude that the Judge's acceptance of Mr Tjoa's explanation was plainly wrong or against the weight of the evidence.

110 More significantly, there is a fundamental logical flaw in the First Appellant's case. If it were true that that the members of MHG intended to protect Mr Gwee at all costs and at the Appellants' expense, it is difficult to understand why they subsequently *did* implicate Mr Gwee by giving detailed evidence about his extensive involvement in the Scheme by helping to relay instructions and acting on behalf of the First Appellant. For instance, Mr Tai's evidence was that Mr Gwee had helped to point out "rookie mistakes" on his part, which would otherwise have raised suspicions.[38] Similarly, Mr Gan

[38] ROP (Vol 108) at p 26410, para 228.

testified about meetings involving the MHG which Mr Gwee had arranged to "discuss the coordination of trades among [them]selves for [the First Appellant]".[39] If the witnesses from the MHG were indeed determined to frame the Appellants as the masterminds of the Scheme in a bid to protect themselves and Mr Gwee, it is implausible that they would have implicated Mr Gwee in this way. Notably, Mr Gwee himself tried to underplay his own involvement in order to avoid incriminating himself even as the First Appellant's "lieutenant" (see [181]–[181] below). This highlights the implausibility of the Appellants' case that the other witnesses were somehow trying to protect Mr Gwee. Certainly, Mr Gwee did not see it that way.

111 Finally, Mr Gwee's involvement in *assisting* the First Appellant was independently corroborated by Mr Lau, who was *not* part of the MHG. According to Mr Lau, Mr Gwee had informed him that "he helped [the First Appellant] with trading strategy, and that he got to keep the profits he made from trading for [the First Appellant], but [the First Appellant] would bear his losses (just like what [the First Appellant] promised [Mr Lau])". Also significant was the following message sent by the First Appellant to Mr Lau on 23 July 2013: "Careful. Don't be too long. Maybe dick hit you", when the First Appellant was informed that the Mr Lau still had accounts selling Blumont shares. This message was relevant because the Prosecution's case was that Mr Gwee assisted the Appellants by coordinating the trading activity for Blumont shares within the MHG at the material time. The message thus served as a warning for Mr Lau, who was not a part of the MHG, not to trade in Blumont stock in a certain manner as his trades might otherwise fall victim to the manipulation of that counter through Mr Gwee. This indicates that the First

[39] ROP (Vol 109) at p 26762, para 49.

Appellant was aware of, and was in fact coordinating, Mr Gwee's trades with Mr Lau.[40]

(3) Mr Lau

112 Mr Lau was responsible for a single Relevant Account with DMG, and he traded in his own name with a view to making profits for himself. He was initially not keen to trade in LionGold, despite being guaranteed a profit by the First Appellant if he did so, and only traded in nominal quantities to begin with, largely as a courtesy to the First Appellant (see GD at [308]–[309]). He subsequently agreed to engage in market rolling activities (as described above at [77]), primarily for LionGold shares, with the Appellants during the Relevant Period so as to create artificial liquidity. After Mr Lau helped the First Appellant achieve his plan for LionGold on the trading front, the Appellants then asked him to assist them by engaging in similar market rolling activities in Asiasons and Blumont shares as well. Mr Lau agreed as he wished to maintain his relationship with the First Appellant (see GD at [310]–[312]).

113 As with Mr Tai and Mr Gan, the First Appellant attacks Mr Lau's credibility by pointing to various inconsistencies in his evidence. For example, according to the First Appellant, Mr Lau initially claimed in his conditioned statement to have received specific trading instructions from the Appellants. However, he resiled from this in his testimony, conceding under cross-examination that he had made independent trading decisions. The First Appellant draws upon this alleged inconsistency to attack Mr Lau's credibility.

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40 PCWS at para 248; citing TCFB-169b at s/n 1774 and 1773.

He also suggests that Mr Lau's evidence ultimately supported the Appellants' position that they did not control Mr Lau's Relevant Account.[41]

114 In our view, this alleged inconsistency falls away on a proper understanding of Mr Lau's evidence. Beginning with his conditioned statement, Mr Lau did state that he had taken trading instructions from and coordinated roll-over trades with the Appellants.[42] As he explained, this was because roll-over trades "required careful coordination and communication".[43] At the same time, however, Mr Lau clearly indicated that his role in the Scheme was marked by a considerable degree of autonomy, and was not limited to the execution of specific trading instructions. For instance, Mr Lau said that the First Appellant had given him an "overall mandate" to bring about a stable increase in the prices of BAL shares while ensuring their liquidity.[44] The Judge was alive to this feature of Mr Lau's role in the Scheme (see GD at [308]).

115 Equally, Mr Lau did not say that he was making trading decisions that were independent of the Scheme. The First Appellant asserts that Mr Lau accepted under cross-examination that he had not received specific trading instructions from the Appellant.[45] But this did not amount to an admission by Mr Lau that his trading decisions bore no relationship to the Scheme. It was entirely consistent for Mr Lau to make particular trading decisions while doing so within his general mandate from the Appellants to advance the Scheme. It is

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41 1AWS at paras 46, 76, 200, 411–412, 418(a) and 425–426.

42 ROP (Vol 110) at p 26964, paras 46–47.

43 ROP (Vol 110) at p 26968, para 59.

44 ROP (Vol 110) at p 26963, para 44(b).

45 1AWS at paras 411–412; citing ROP (Vol 25) at pp 360–361, Transcript on 13 October 2020 at p 116 line 19 to p 117 line 7 and ROP (Vol 25) at pp 370–371, Transcript on 13 October 2020 at p 126 line 10 to p 127 line 14.

also significant that Mr Lau's apparent concession that he acted with a degree of autonomy should be understood in the context of his testimony as a whole. Mr Lau at various points denied having complete "discretion or decision" over his trading decisions. The following extract was cited in part by the Judge (see GD at [318]) but, tellingly, has not been engaged with by either of the Appellants on appeal:[46]

> Q. Just 'yes' or 'no' first, and then you can explain or expand your answer. When you were working with her to coordinate rollover trades in the so-called controlled accounts, she never gave you direct and specific instructions; is that your evidence?
>
> A. She never give me direct and specific instruction about my trading account, because she can't.
>
> Q. So whatever trades that you made in your trading account was entirely your own decision and discretion. Right?
>
> A. Not necessary my own discretion or decision, because if she had to sell, I have to buy. But the quantity, the timing to buy, I can decide.
>
> Q. So you can decide not to buy.
>
> A. I cannot decide not to buy. I say the quantity, per time, the timing, the trade done, I can decide. But if she has to sell 3 million and nobody to buy from her, I must buy what, I cannot decide not to buy. If not how -- all her account will be force-sold what.
>
> Q. So did Su-Ling instruct you to place orders or just discuss with you about rolling over?
>
> A. Discuss with me lor.
>
> Q. Not instruct you, right? Can't be. Just discuss with you, right?
>
> A. Yeah.
>
> I think I want to change the word 'discuss' to 'coordinate', your Honour. She coordinate with me.

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46 ROP (Vol 27) at pp 37–39, Transcript on 19 October 2020 at p 35 line 20 to p 37 line 4.

> Ct. All right.
>
> Q. All right, so she doesn't instruct you, she coordinates with you, but ultimately when, how, how much to carry out a rollover, that's entirely your decision. Right?
>
> A. No. Depend on how many share she have to sell. It's not my decision. My decision is a function of her number of proxy account, quantity due for the particular day what.

116 In our judgment, when Mr Lau's testimony is assessed as a whole, we do not think he can fairly be said to have disavowed the notion that trading instructions were being given or that the adopted strategies were driven by the Appellants.

117 Mr Lau's evidence was largely consistent across his conditioned statement and testimony, and it was to the effect that, while the Appellants had occasionally given him specific trading instructions, they had given him a more general mandate to conduct trades that would facilitate the Scheme. We therefore do not accept the First Appellant's contention that Mr Lau's credibility was undermined by inconsistencies in his evidence.

118 It is also important to note here as well that the Judge did not *uncritically* accept Mr Lau's evidence but was careful to test it against the objective evidence, referring in particular to certain text messages exchanged between the First Appellant and Mr Lau (see GD at [315]). As noted at [122] below, in one exchange which took place on 23 July 2013, Mr Lau had informed the First Appellant at 10.41am that he was "helping SL roll LG now". The First Appellant responded: "[m]ust let her know[,] [o]therwise she panic". To this, Mr Lau replied: "[d]on't worry talking 2 her". The Prosecution's evidence also showed that, on 23 July 2013, the Second Appellant and Mr Lau had in fact been engaged in regular communications which were interspersed with LionGold bids and offers entered in Mr Lau's account (see GD at [314(a)]).

119 In addition, there were other messages sent by the First Appellant by which he communicated specific trading instructions to Mr Lau. For example, on 1 August 2013, the First Appellant asked Mr Lau at 3.36pm: "Can take 250 blu for me". Less than one minute later, Mr Lau replied: "Done". About 40 seconds after the First Appellant's message, a bid for 250,000 Blumont shares had in fact been entered in Mr Lau's account (see GD at [314(d)] and [123] below). The Judge also considered that the substantial volume of communications between the Second Appellant and Mr Lau called for an explanation which, having declined to give evidence, the Second Appellant was unable to provide (see GD at [322]). In all the circumstances, on a proper understanding of Mr Lau's evidence and having regard to the corroborating objective evidence, the Judge was entitled to accept the material portions of Mr Lau's evidence.

The key objective evidence relied on by the Judge

120 Having addressed the testimonies of some of the key witnesses, we now turn to consider the existing corroborative evidence in the form of objective evidence that was relied upon by the Judge.

(1) The communications between the Appellants and other individuals

121 Among the most incriminating pieces of objective evidence relied on by the Judge were various communications (typically text messages and e-mails) between the Appellants and others involved in the Scheme. In the Judge's view, these clearly showed that the Appellants conveyed trading instructions to the various TRs and Relevant Accountholders and therefore called for an explanation, but no satisfactory explanation was offered by either of the Appellants. We elaborate with some examples of text messages and e-mails that were considered by the Judge.

122 We begin with the text messages. In relation to Mr Lau, two particular exchanges stand out. First, as has just been noted at [118] above, on 23 July 2013, between 10.41am and 10.42am, the following messages were exchanged between Mr Lau and the First Appellant:

> **Mr Leroy Lau (23 Jul 2013, 10.41.18am):** Helping SL roll LG now
>
> **First Appellant (23 Jul 2013, 10.41.59am):** Must let her know. Otherwise she panic
>
> **Mr Leroy Lau (23 Jul 2013, 10.42.57am):** Dont worry talking 2 her

Aside from the tenor of these messages, the Judge observed that the evidence presented by the Prosecution extended to comparing Mr Lau's communication records with the Second Appellant (referred to in the message as "SL") against the trading activity in his account, which showed that calls took place around the time that orders were placed for LionGold (referred to in the message as "LG") by Mr Lau in his own account that day (see GD at [53]).

123 Second, as just been noted at [119] above, on 1 August 2013, the following exchange took place between Mr Lau and the First Appellant:

> **First Appellant (1 Aug 2013, 3.36.10pm):** Can take 250 blu for me
>
> **Mr Leroy Lau (1 Aug 2013, 3.37.22pm):** Done

This exchange, even more than the previous one, clearly showed the First Appellant directing Mr Lau to engage in certain transactions. The Judge also noted that the SGX trading data indicated that a bid for 250,000 Blumont shares was entered in Mr Lau's account about 40 seconds after the First Appellant's message (see GD at [314(d)]).

124 As alluded to above, the Appellant attempted to provide alternative explanations for some of these communications. However, these were rejected by the Judge, and nothing has been put forward that leads us to disagree with her.

125 Turning to the communications between Ms Cheng and the First Appellant, the First Appellant generally sought to characterise his exchanges with Ms Cheng as nothing more than trading advice or in some instances conversations that related to their intimate relationship instead of trading instructions.[47] The Judge disagreed. In her view, the messages in question "plainly were trading instructions" and not trading advice or anything else (see GD at [604]).

126 On appeal, the First Appellant merely reasserts his position that these were advisory or romantic messages, without engaging with the Judge's reasons for rejecting this explanation. With respect, this is not helpful. To illustrate the point, we set out some messages between the First Appellant and Ms Cheng to reflect the general tenor of their communications:[48]

> **First Appellant (4.26.16pm):** Take two million sons at 88
>
> **Ms Cheng (4.28.42pm):** Done
>
> **First Appellant (4.32.14pm):** Take 3.5 m lion at 1075
>
> **Ms Cheng (4.37.17pm):** Done
>
> **First Appellant (4.37.54pm):** Thanks darling.. Now take 12m of blu at 41. Slight excess over ten m.. Will pass you more cash tomorrow.
>
> **Ms Cheng (4.42.28pm):** My chq hasn't cleared at ubs today. I have $7m balance there. So far done $5.5m oredi, can do $1.5m more until tmr. How?

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47 1AWS at paras 456–458.

48 See GD at [603(a)].

> **First Appellant (4.45.47pm):** No worries darling. Yes q buy 3.5m at 415
>
> **Ms Cheng (4.46.07pm):** I mean today can do up to $7m until chq clears tmr.. I'm applying another $30m line there tmr as well. Daddy old man conservative no lvr. Can take 3.5m blu 1st?
>
> **Ms Cheng (4.52.33pm):** 42 on the bid how?
>
> **Ms Cheng (4.54.38pm):** I'm in q behind at 415 but bid now 1.3m at 42 how?
>
> **Ms Cheng (5.01.27pm):** If u sell to 415, I'm right after 600k, thus 4.1m can complete
>
> **First Appellant (5.06.02pm):** Thanks darling. Kiss kiss.
>
> **Ms Cheng (5.06.21pm):** Completed: 3.5m blu 415; 2m asons 88; 3.5m LIGO 1075

127 In our judgment, it would be fanciful to suggest that these messages reflected anything other than the First Appellant's trading instructions to Ms Cheng, notwithstanding the amorous terms in which these were being conveyed.

128 We next touch on the evidence that consisted of e-mails. The Judge relied on various e-mails which showed the Appellants' perspectives on the purpose of the Relevant Accounts, which is that they were to be used as nominee accounts to carry out the Scheme. We begin with two e-mails sent by the Second Appellant to the First Appellant on 29 January and 8 July 2012.

129 The 29 January 2012 e-mail contained a list of what appeared to be trades conducted on several dates in January 2012. We set out a sample extract of the list:[49]

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[49] Common Hearing Bundle (Vol 4) at Tab 223, pp 1943–1946.

> **Trades on wed 25 jan (t5 on wed 1 feb)**
>
> …
>
> 150 @ 88 alex d
>
> 327 @ 88 ron d
>
> 190 @ 88 g d
>
> 50 @ 88 j cimb
>
> 250 @ 88 lincoln
>
> 300 @ 88 ken u
>
> 200 @ 88 wcy dmg
>
> …

130 The Prosecution explained, and this was not disputed during the oral hearing, that the *title* "[t]rades on wed 25 jan (t5 on wed 1 feb)" set out the date on which the trades were transacted (25 January), and the corresponding date by which the purchased shares needed to be rolled over or settled (in five business days, meaning on 1 February). The *list*, in turn, was a collection of shorthand references setting out "the volume of the trades, the price of the trade, and something to identify the account [in] which the trade had been done". Thus, "50 @ 88 j cimb" was traced to a purchase of 50,000 shares of LionGold at a price of 88 cents in the account of one Mr James Hong at CIMB (Singapore) Pte Ltd.

131 It was plainly probative of the Prosecution's case that the Appellants were monitoring the trades conducted in these various accounts in this way. Indeed, that the Appellants even had access to the trading data in respect of these accounts was a fact calling for an explanation, but nothing satisfactory was forthcoming.

132 Turning to the 8 July 2012 e-mail from the Second Appellant to the First Appellant, the Judge relied on the following extract (see GD at [288]):

> As complete as it can get.
>
> Take note that i didn't compute the values.. Can leave that to may ling to insert the formula.
>
> Missing:
>
> 1. CDP statements. I only have for mummy and me ***and ron***.
>
> ***Most of your noms were places .. hence there would be free of payment shares in the cap which i cannot capture***
>
> 2. WCY, James and Neo. I don't have their latest statement. Please check with them
>
> 3. Not sure also about Edwin -- any margins that he has?
>
> 4. Kim Eng accounts with KC.
>
> 5. Fraser with Wilson
>
> 6.Hau siew Kiak (3,990,000 may ban), Lim You Moy (400,000 kimeng), are they ours? i didn't include them
>
> After all this,
>
> would you like to have one of each company/bvi/ etc...
>
> Let me know.
>
> Not as tedious as it seems.
>
> [emphasis in original]

133 At trial, the First Appellant accepted that "noms" likely referred to nominees but claimed that these nominees were shareholders whose proxy votes were needed for an upcoming annual general meeting. In our view, the Judge was right to reject his explanation and to find, instead, that the Second Appellant was referring to the nominee accounts *she* had brought into the Scheme and which she could use to assist in the various manipulative transactions. As the Judge noted, the e-mail directly referred to "CDP statements", which are records relating to holdings and transactions in an account with the Central Depository (Pte) Ltd. Conversely, the e-mail made no reference to anything remotely related to proxy votes at an annual general meeting of some unspecified company (see GD at [289]–[290]).

134 The First Appellant's only response to these e-mails was his submission, in oral arguments, that they had limited significance and relevance because they predated the Relevant Period. However, the timing of these e-mails was a consideration to which the Judge was fully alive and which she was careful to address. For instance, as regards the 29 January 2012 e-mail, she concluded that although this e-mail was sent several months before the Relevant Period, it remained highly probative because there was no reason for the Second Appellant to have sent that e-mail to monitor the trades carried out in so many disparate accounts, unless she (with the First Appellant) controlled those same accounts. The Judge therefore found that these e-mails, particularly when considered in conjunction with the evidence of other TRs who testified that the Appellants instructed them to conduct rollover trades, broadly supported a finding that the accounts listed in the e-mail were within the Appellants' sphere of influence and control (see GD at [418(a)]). Aside from this, once the First Appellant's hopeless attempt to explain this away as a communication that pertained to coordinating the proxy votes for a general meeting of shareholders is rejected, it leaves the court with no explanation for the email, save the obvious one: that the Appellants had been controlling these accounts illicitly from before the Relevant Period. Thus, even if the e-mail alone does not provide any *direct* evidence to show that the Appellants controlled the accounts *during* the Relevant Period, its existence provides important context to the Appellants' activities prior to the Relevant Period and, together with the absence of other explanations and in the light of the other incriminating evidence as a whole, serves as *additional* support for inferring that the Appellants did in fact control the Relevant Accounts during the Relevant Period.

135 More pertinently, e-mails continued to be exchanged between the First and Second Appellants throughout the Relevant Period. For instance, one e-mail

which was noted by the Judge was sent by the Second Appellant to the First Appellant on 19 May 2013. The Judge found this e-mail to be of significant probative value and reproduced it in full in her judgment (see GD at [774]). In the interests of brevity, we reproduce the salient portions of the e-mail below:[50]

> Dear John,
>
> …
>
> From Day one. I have been grateful to you for giving me a chance to shine and to lead. I never had lofty ambitions – my basic needs: a salary a home and kids *and perhaps to beat the system in the stock market …*
>
> …
>
> *I take care of the groups needs*. I think i may have been overzealous in protecting your interest that i may have overlook rewarding IPCo staff and all.
>
> *You see, less for us, means more for you, more for the group. It is afterall, the big picture that we have to look at, as you have taught me.*
>
> …
>
> Sorry, i am being *too protective.*.
>
> *My First instinct has always been to* ***preserve cash in Company****. So that we can* ***buy more lion gold, asiasons and whatever that you need*** *…*
>
> …
>
> *That Lion Gold with a* ***cash hoard of $22m*** is allowed to keep this intact so that they can be seen as a generous employer - JUST THE contract salary (not inclusive of bonuses) range from 50k to 23k per month. And there is talk about amending the contract to include sign on bonus since they could not justify the "performance " bit for the share issuance.
>
> *Everyday,* ***private money (your funds) is supporting the market roll of Lion Gold****. We are* ***absorbing shares that corporate have so successfully placed out*** *. I want to remind all of the original plan...****Lion Gold placement money was to come back and defend the market.*** *I am still waiting for the calvary to come.*

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[50] Common Hearing Bundle (Vol 4) at Tab 235 pp 2001–2003.

> *Until this is resolved, there should not be any celebration or any party.*
>
> I feel that in Lion Gold, there is a party on. Everyday the company buys lunch because raymond says the kopi tiam is 10 mins walk away... and staff cannot go.. (hello... in hk we walk to our lunch venue .. company dont buy our meals unless it is overtime)
>
> Then the increase in directors fee, (after a substantial increase) and performance bonus etc.. why are they draining the company's resources so fast? When everyone knows that the group needs all its resouces …
>
> …
>
> Please remember that we all respect you and your needs come before anybody else"s.
>
> And ALL of us are preserving resources to be used by the group...
>
> except .. the one still delusional and having a party..
>
> …
>
> *I shall stop here.. i shant go onto* ***contra losses*** *ITE G1 etc.. will have to* ***mete out -- from private funds*** … they are just the ***operating costs*** i treat it as..
>
> I hope you will be able to drive the same culture in the family.
>
> While there is a war, all guns to the battlefield.. none should be left in the store.
>
> And no one should partake the spoils of war .. it is only for the General and Chief to mete out .. ...
>
> [emphasis added in italics and bold italics]

136 We agree with the Judge that this e-mail, which was sent in the middle of the Relevant Period, shed significant light on the inner mechanics of the Appellant's plan and Scheme to manipulate the BAL markets, as well as the Second Appellant's awareness of and involvement in the said Scheme (which we will return to at [267]–[268] below). The context of this e-mail was the Second Appellant's concerns over the financial resources of a group of companies that included, among others, LionGold and IPCO International

Limited ("IPCO") (a company of which she was the Chief Executive Officer). We highlight three salient points about the aforementioned e-mail.

137 First, the Second Appellant stated that her "[f]irst instinct has always been to preserve cash in [IPCO]. So that [she and the First Appellant] can buy more lion gold, asiasons and whatever that [he] need[s]". The Prosecution highlighted, during the oral hearing, that at the time this e-mail was sent on 19 May 2019, the First Appellant had been an undischarged bankrupt with no trading accounts of his own. Thus, the reference to him "buy[ing] more" LionGold and Asiasons shares necessarily meant that he was making such purchases in accounts that were *not* in his own name, but rather through nominee accounts. This was further supported by the Second Appellant's later remarks that LionGold had "a cash hoard of $22m" and that "private money ([the First Appellant's] funds) [was] supporting the market roll of Lion Gold". Once again, the fact that the Second Appellant regarded the money used to support the trading activities in LionGold shares as private moneys that were at the First Appellant's disposal, notwithstanding the fact that he did not have any trading accounts, clearly suggests that he was trading using accounts that were not in his name.

138 Second, the Second Appellant asserted that the Appellants were "absorbing shares that [the corporate department of LionGold] [had] so successfully placed out" and reminded the First Appellant that the original plan had been that the "Lion Gold placement money was to come back and defend the market". This points to a coordinated plan between the Appellants to "absorb" and buy the shares which LionGold placed out in the market, and that any placement money which was raised in such a manner was to be used by the Appellants to "defend the market" for LionGold. As explained by the Prosecution during the oral hearing, this reference to defending the market is

also important because it shows that the Appellants had coordinated market trading activities with corporate actions, like share placements, and is indicative of the Appellants' Scheme to maintain control over and manipulate the market for BAL shares.

139 Third and finally, the Second Appellant stated that she would not go on to discuss "contra losses" suffered in the Relevant Accounts held by G1 Investments Pte Ltd, ITE Assets Holding Pte Ltd and so on. Rather she simply acknowledged that the Appellants would "have to mete out -- from private funds" and she would simply treat them as "the operating costs". The Second Appellant's clear concern about the trading losses in some of the Relevant Accounts which were held not in their names, but instead in the names of these corporate entities, showed that the Appellants not only controlled the trading activities of these accounts but that they also managed the profits and accounted for the losses suffered by these same accounts, with the losses forming part of the operating costs of the Appellants' Scheme. This is made especially clear by the Second Appellant's observation that the losses suffered would have to be borne using their *private* funds.

140 In the face of the foregoing objective records of the incriminating communications involving the Appellants, we cannot see how the First Appellant can mount a serious attack against the Judge's factual findings, much less show that they are plainly wrong or against the weight of the evidence.

(2) The GovTech Analysis and expert evidence

141 We turn to some other pieces of objective evidence relied on by the Judge which the First Appellant *does* attempt to deal with and to cast doubt on. The First Appellant focuses on two particular sources of evidence in this regard:

(a) the analysis that was done by GovTech of calls involving the Appellants that were made to one or more of the TRs or account holders around the time that trades were booked; and (b) the expert evidence of the Prosecution's expert, Professor Michael James Aitken ("Professor Aitken"). We deal with each in turn.

142 We first address the GovTech Analysis. As explained by the Judge (see GD at [115]), the GovTech Analysis essentially consisted of four main components:

(a) First, there were compilations of the telecommunications records of the Appellants, the Relevant Accountholders and the TRs.

(b) Second, there was an analysis of the records of telecommunications between the Appellants on one end, and the TRs and intermediaries on the other, to determine whether there had been communications between the Appellants and TRs or intermediaries shortly preceding the booking of BAL orders in the Relevant Accounts.

(c) Third, there was an analysis of the records of telecommunications between the Relevant Accountholders on one end, and the TRs and intermediaries on the other, to similarly determine whether there were proximate communications prior to the placement of BAL orders.

(d) Fourth, there was a spreadsheet consolidating the instances of trading activity in the Relevant Accounts which were preceded by proximate communications between the Appellants and the relevant TR.

143 The objective of the GovTech Analysis was to determine whether there was a correlation between the orders placed in the 189 Relevant Accounts and communications between the Appellants and the TRs within a preceding five-minute (for local brokerage accounts) or ten-minute (for private banks and foreign FIs) window of those orders.

144 The GovTech Analysis, when viewed as a whole, was damaging to the Appellants' case. As the Prosecution points out, of the various orders placed in the accounts, "there were *more than 26,500 instances* where an order had been preceded by a communication between either of the Appellants and the TR" [emphasis in original]. In contrast, there was a clear dearth of similar communications between the TRs in question and the Relevant Accountholders preceding the placement of orders for the Relevant Accounts. This, as the Prosecution argues, strongly suggested that the relevant trades had been placed on the instructions of the Appellants rather than the Relevant Accountholders.[51]

145 On appeal, the First Appellant's criticisms against the GovTech Analysis generally mirror his arguments before the Judge and can be summarised as follows. It was presumptuous for the Prosecution, and for that matter the Judge, to conclude that the proximity of such a communication to the placement of a BAL trade, without any additional information about the contents of that communication, necessarily implied a causative relationship. Since the analysis was conducted on the premise of this faulty assumption, the GovTech Analysis was devoid of *any* evidential value. Alternatively, if the GovTech Analysis was to be interpreted as showing a causal connection between a proximate communication and a trade, then the absence of proximate communications on particular days necessarily established that no trading

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[51] PWCS at paras 70–71.

instructions had been given for that date. This alternative argument assumes particular significance in the First Appellant's arguments on appeal given that a significant amount of the trades done by members of the MHG and Mr Lau had no similar correlation to the communications captured in the GovTech Analysis.

146 This is not to say that there were *no* communications whatsoever between the Appellants and members of the MHG or Mr Lau which were captured in the GovTech Analysis. Indeed, the Judge highlighted that the GovTech Analysis served to corroborate the testimonies of members of the MHG (see, for instance, GD at [706]). Ultimately, however, we do not consider the relative lack of communications captured in the GovTech Analysis, as regards members of the MHG and Mr Lau, to be particularly significant in assessing the Prosecution's case. As we will explain, the absence of such communications was indeed something the Judge took note of, and is an observation that is aligned with, rather than opposed to, the Prosecution's broader case theory.

147 The Judge, in considering the GovTech Analysis, was conscious of its limitations. In particular, she noted that the GovTech Analysis sometimes contradicted the primary evidence of certain TRs, Relevant Accountholders or even the Prosecution's case. Nonetheless, the Judge concluded that the GovTech Analysis bore substantial corroborative value. Furthermore, at points where the GovTech Analysis contradicted the primary evidence tendered by the Prosecution (such as the testimony of its witnesses), the Judge generally found that these discrepancies had been satisfactorily explained (see GD at [116]–[120]).

148 In our view, the First Appellant has not successfully demonstrated that the Judge, who was clearly alive to the limitations of the GovTech Analysis, erred in her treatment of the same. The first contention that the Judge was wrong to place significance on the correlation between the large number of proximate communications involving the Appellants and the TRs on the one hand, and the placement of a trade on the other, is incorrect. Perhaps, taken by itself, this might not have sufficed to support the inference of control; but in the context of the other evidence, this became powerfully corroborative of that fact, and of the involvement of the Appellants in the placement of those orders and trades. At the very least, the effect of the analysis was to place the onus on the Appellants to provide an explanation, and this they either did not do (in the case of the Second Appellant) or could not successfully do (in the case of the First Appellant).

149 As to the First Appellant's alternative argument (namely, that the absence of proximate communications on particular days must then mean that no trading instructions had been given), this again does not follow for several reasons. First, as the Judge observed, an inherent limitation in the GovTech Analysis was that communications by way of WhatsApp, Blackberry Messenger and other such platforms sent and received over a data network would not be specifically identified in the telecommunication companies' record and were thus not included in the analysis (see GD at [115(a)]). There was evidence that such platforms were widely used as well by those involved in these transactions.

150 Moreover, specific to the MHG and Mr Lau, it had been their evidence and the Prosecution's case that there were certain periods where these individuals were given a general mandate to transact on the Appellant's behalf. For instance, there were periods where members of MHG testified to having been delegated the function of giving instructions in respect of placing BAL trades (see above at [91]). Further, it is unsurprising that limited communications existed between the members of MHG and the Appellants given that the group's purported leader, Mr Gwee, was brought into the Scheme as an "experienced hand" to oversee the "market-rolling activities" for Asiasons and subsequently Blumont and served as the First Appellant's "deputy" (see GD at [683]). Similarly, as regards Mr Lau, the lack of large volumes of communications can readily be explained by his evidence that he had been given an "overall mandate" by the Appellants to trade in BAL shares (see above at [114]). In the circumstances, the absence of evidence of proximate communications could hardly be construed as dispositive evidence of the absence of any instructions from the Appellants.

151 At the oral hearing, Mr Sreenivasan raised an additional argument regarding the GovTech Analysis. Rather than focusing on the purported unreliability of the evidence, he sought to persuade us that the GovTech Analysis, in fact, militated against the finding that the trades in the BAL counters were done pursuant to instructions from the Appellants. To illustrate the point, we use the following table as an example. This was a table which the Prosecution had prepared and presented in the course of cross-examining the

First Appellant. It combines the GovTech Analysis with the trading data relating to the orders and trades which were entered in the Relevant Accounts:[52]

LionGold 10 Dec 2012

Details of Comms 1	**Buy** 2	**Sell** 3	**Details of Comms** 4
TEL-74-01, filter for 10 Dec 2012 (KT records) Call made from 678 number to KT's HP Time of call: 10:32:33	Neptune (Saxo)-KT (71-0069257) **57,000 matched** Order volume: 200,000 Trade ID: 26052 Order ID: 206162 Time entered: 10:33:23	G1-OGH account (28-0372038) **Order to sell 250,000 LG shares at $1.065** Time entered: 10:20:17	(a) TCFB-207, s/n 1034 Message from JS to JH Time of message: 10:18:36 (b) TEL-6-05 Pg 14 Outgoing call made by JH to OGH landline 63182002 Time of call: 10.19
TEL-119, filter for 10 Dec 2012 (LLK records) Call made from 678 number to LLK HP Time of call: 10:35:31	KAM-LLK account (21-0322219) **193,000 matched** Order volume: 300,000 Trade ID: 26051 Order ID: 209833 Time entered: 10:36:03		

152 We have marked up the table to indicate the four columns contained in the table, which we will refer to shortly. References to "678" and to "JS" are both references to the First Appellant. "JH" refers to one Mr James Hong Gee Ho ("Mr Hong") (the authorised signatory for two of the Relevant Accounts) and "KT" refers to Mr Tai, while "LLK Handphone" refers to the handphone of one Mr Lincoln Lee Lim Kern ("Mr Lee") and "OGH Landline" refers to the landline of Mr Aaron Ong Guan Heng ("Mr Ong"). Both of these latter individuals are TRs who assisted the Appellants in their Scheme.

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52 Common Hearing Bundle (Vol 4) at Tab 258 p 2160.

153 If one starts at the top of column 4, it will be evident that the First Appellant messaged Mr Hong at 10:18:36 and a few seconds later, Mr Hong called Mr Ong's landline. If one then turns to column 3, it will be evident that a few seconds after that, a sell order was placed for 250,000 LionGold shares at $1.065 in Mr Ong's Relevant Account. Mr Sreenivasan submitted that this did not amount to probative evidence suggesting that buy and sell orders in the Relevant Accounts were generally preceded by instructions emanating from the Appellants. This was because, according to Mr Sreenivasan, there was a significant time difference between the call made on the selling side of the set of transactions in question and those on the purchasing side. In this instance, if one looks at columns 1 and 2, it will be apparent that the First Appellant called Mr Tai at 10:32:33 and less than a minute later, Mr Tai placed an order that purchased 57,000 shares of the 250,000 LionGold shares that had been offered for sale. And then at 10:35:31, the First Appellant called Mr Lee's handphone which was followed a few seconds later by Mr Lim placing a purchase order for the remaining 193,000 LionGold shares. Mr Sreenivasan placed emphasis on the gap of nearly 15 minutes between the sell and the purchase orders.

154 However, as we explained to Mr Sreenivasan at the oral hearing, it was unhelpful to focus solely on the apparent connections between the first and the fourth columns. The true significance of the analysis lay in the presence of connections across *all* four columns (that is to say between the first and the second, the second and the third, the third and the fourth, and finally, the first and the fourth columns). Seen in that light, it becomes clear that the "buy" and "sell" orders (which were in relatively close proximity to each other) were each shortly preceded by communications between the First Appellant and the Relevant Accountholder and/or TR of the Relevant Accounts who executed the orders.

155 Taking a step back, it seems to us that the First Appellant adopts the binary view that the GovTech Analysis either had to be perfectly consistent with the other evidence or else it should be treated as being devoid of any evidential value. In our judgment, the Judge was correct to resist such a false dichotomy. As she observed, the GovTech Analysis generally served to corroborate other evidence and it went towards showing that in numerous instances, there was a proximate communication preceding a trade in a Relevant Account. On the other hand, the absence of evidence of such proximate communications was equivocal and did not point in the opposite direction to the conclusion that the Appellants did not exercise control over the Relevant Accounts in question. This was, as we have already noted, because there were multiple channels and means of communication between the relevant parties, which did not always involve the use of channels that could be tracked and then featured in the GovTech Analysis; and also because of the fact that the Scheme was carried out in part under general mandates given by the Appellants.

156 We next consider the expert evidence of Professor Aitken. Professor Aitken was a market surveillance expert who testified on behalf of the Prosecution at the trial. He gave expert evidence on the "effects produced by the BAL trading activity carried out in the Relevant Accounts" (see GD at [121]), which the Judge relied on to conclude that the Relevant Accounts were being used to conduct illegitimate trading practices. The thrust of the First Appellant's submissions on appeal is that Professor Aitken's terms of reference, which were predicated on the assumption that all 189 Relevant Accounts were controlled by common persons, were flawed because on the Appellants' case, such an assumption was untrue.

157 In this context, the First Appellant highlights that Professor Aitken was never asked to identify the key accounts which contributed to either the volume

of trades in or price increases of BAL shares and was never told to look at accounts associated with Mr Gwee. According to the First Appellant, it was telling that Professor Aitken had conceded, during his cross-examination, that there would be a higher chance of his identifying what seemed to be wash trading if he was told to assume that a greater number of Relevant Accounts were controlled by the Appellants. For clarity, wash trading refers to a practice where parties act in concert by trading shares between themselves, without acting as independent commercial parties, thereby generating artificial trading volume (see GD at [78]). In this connection, Professor Aitken had conceded that his conclusions on the number of wash trades would have changed if he did not assume that the Relevant Accounts under Mr Lau were controlled by the Appellants. Furthermore, the First Appellant contends that the Relevant Accounts could not be assumed to have been acting in concert because the trading practices of Mr Lau, who placed orders on both the "buy" and "sell" side, made it likely that he would be the natural counterparty to any orders emanating from the remaining 188 Relevant Accounts.

158 This submission, which was rejected by the Judge below, also does not find favour with us. It is important, in this connection, to reiterate the *purpose* for which the Prosecution relied on Professor Aitken's evidence in the proceedings and which the Judge accepted. This was to establish that the trades in the Relevant Accounts "exhibited several types of manipulative behaviour", which were the "driving forces behind the artificial liquidity and price patterns in [the] BAL shares".[53] Professor Aitken's evidence was *not* directed at proving control of the Relevant Accounts; but at identifying features that showed illegal use of those accounts, *assuming* the fact of control. Of course, the Prosecution

[53] ROP (Vol 59) at p 473 at para 110.

then had to establish as a separate matter, the Appellants' control over the Relevant Accounts, and it sought to do this through *other types of evidence*, such as the direct evidence of various account holders and TRs, corroborated by the objective data or other evidence. This was noted by the Judge, who observed that "Professor Aitken's evidence served to *round off* the Prosecution's case, on the basis that they could *separately* establish control [of the 189 Relevant Accounts]" [emphasis added] (see GD at [815]). The Judge relied on Professor Aitken's evidence to the extent it showed the existence of illicit trading practices between the Relevant Accounts but this was on the basis that the Prosecution had to (and did) prove that the Appellants controlled the accounts. The First Appellant's criticism of Professor Aitken's terms of reference therefore misses the mark.

159 For much the same reason, Mr Lau's trading practices as a "one-tick trader" did not detract from the probative value of Professor Aitken's evidence. For context, a price "tick" refers to the minimum price which a particular share could move and, during the Relevant Period, this was half a cent for shares trading at a price below $2.00 and one cent for those above $2.00 (see GD at [802]). According to the First Appellant, Professor Aitken's conclusions were influenced by Mr Lau's "one-tick" trading strategy, where Mr Lau would place orders either to purchase shares one tick below a particular price or to sell shares one tick above a particular price. The First Appellant highlights that Professor Aitken had conceded, under cross-examination, that Mr Lau's trading practices made it more likely for Professor Aitken's algorithms to pick up as a pre-arranged trade those between Mr Lau's account and the other Relevant Accounts:[54]

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54 ROP (Vol 43) at pp 266–268, Transcript on 10 March 2021 at pp 81–83; ROP (Vol 43) at pp 361–362, Transcript on 11 March 2021 at pp 11–12.

Q: … Now, this is -- if you look at the transactions he's doing on both sides of the spread, [Mr Lau] is quite obviously what we called this morning a day trader or the one who trades the spread. I call it a one-tick trader. Am I right?

…

Q: Now, you see, when you have somebody as prolific as Leroy, always there, buy/sell, buy/sell, buy/sell, and if the prosecution tells you his is an impugned account, don't you agree that it's more likely than not to be a wash trade, because he's always there on one leg of the transaction?

…

Q: So if there are 189 impugned accounts, and let's assume Leroy is one of them, any time the 188 trades with him, it will be caught as a wash trade. Am I right?

A: You're correct.

Q: And if he is always there on both sides of the book, the chances of hitting Leroy will be very high. Agreed?

A: Yes.

Q: And, therefore, the percentage of wash trades will go up because Leroy is always there to be hit. Agreed?

A: Yes.

…

Q: Second, you have pointed out that Mr Lau was responsible for 54 per cent of the trades. Am I right?

A: 54 per cent of trading on that day, 24 per cent of which were wash trades, yeah.

Q: Okay. So just let's look at his 54 per cent of trading on that day. The -- that means he was involved in half the deals, right?

A: Yes. On average, yes.

Q: Which means anybody who trades has a 50 per cent chance of hitting him, right?

A: On average, yes.

Q: So if the 100 and other -- if the other 10 impugned accounts were trading that day, they would have had a 50 per cent chance of hitting him, right?

A: Yes, he was standing there -- well, he was standing on one -- both sides of the book, so, yes, I mean, he's going to be hitting on both sides. If he's going to -- if he's sitting there on both -- I'll show you with the replay version.

Q: No, no. Hold on, hold on. Because you have zeroed in on wash trades when I had asked you to look at Leroy Lau's trading pattern and how it was responsible for constrained [*sic*]. Let's clear this off the books first. Leroy Lau was standing on both sides of the book, right?

A: Yes.

Q: And if any of the impugned accounts traded that day, there was a 50 per cent chance they would hit him, right?

A: Yes.

Q: And, therefore, it would become a wash trade?

A: Yes.

Q: So if Leroy Lau is always standing on both sides of the book and the impugned accounts, other impugned accounts are trading, the fact that he's standing on both sides of the book would increase significantly the chances of a wash trade. Right?

A: Yes.

160 The First Appellant submits on this basis that Professor Aitken had been over-inclusive in identifying such trades as pre-arranged given that Mr Lau's trading pattern, which entailed placing both "buy" and "sell" orders, made it inherently more likely for all the accounts to have traded with Mr Lau. However, this contention proceeds on the premise that Mr Lau's account was not also *controlled* by the Appellants. Ultimately, the Judge took the contrary view based on the direct evidence of various witnesses and other strands of objective evidence. As we have explained, the Appellants have not persuaded us that she erred in this regard.

161 The First Appellant further attacks Professor Aitken's evidence because he had been instructed to assume the Appellants' control of the *trades* in the Relevant Accounts, especially those that Mr Gwee and Mr Tai apparently traded for their own benefit to earn commissions. The First Appellant pointed out that Mr Tai made around $200,000 a month in commissions and was engaged in what was referred to as "ping pong trades" with Mr Tjoa, where both parties would repeatedly trade shares back and forth with each other, to churn commissions for themselves. The thrust of this argument was that Professor Aitken would likely have identified illicit market practices in such accounts that he had been instructed to assume were under the control of the Appellants, without taking account of the fact that some of these transactions were carried out by Mr Tai and Mr Gwee independent of any question of such control.

162 We will return to Mr Tai's purported practice of engaging in excessive trades to churn large amounts of commissions for himself subsequently (at [173] below). Briefly, however, the First Appellant's claim ignores the fact that the Judge *had* considered Mr Tai's "ping pong trades" with Mr Tjoa, and rejected the Appellants' contention that, in executing these trades, Mr Tai and Mr Tjoa were acting on a frolic of their own, outside the Appellants' control. The First Appellant claimed that it was all too convenient that the "ping pong trades" occurred during the periods when the Appellants had allegedly assigned Mr Tai to direct the trading activities of the MHG, and that Mr Tai had fabricated his evidence in respect of his stewardship of the MHG's trading activities in order to mask his own "ping pong trades" (see GD at [699]). However, this claim failed to address the *other* pieces of corroborative evidence which had supported Mr Tai's evidence that he had been delegated the task of instructing the MHG's trading activities during the relevant periods, which was further supported by Mr Tjoa and Mr Lau's testimonies (see GD at [679]). We agree with this

reasoning. We also agree with the Judge's observation that the mere fact that certain individuals earned a commission from trading in BAL shares did not mean that their trades could not have formed part of the overarching Scheme (see GD at [696]).

163 In sum, we observe that the First Appellant was cognisant of the fact that Mr Gwee and Mr Tai were profiting from the BAL trades, but he viewed this as a necessary incident of the Scheme, in that this was in fact *facilitative* of the Scheme. Accordingly, this too does not take the Appellants far in their effort to undermine the weight that the Judge placed on Professor Aitken's report.

Whether the First Appellant's case theory cohered with the evidence

164 We turn now to the final stage of the analytical structure outlined above (at [82]). Specifically, we consider the various witnesses' testimony in tandem with the corroborating pieces of evidence and weigh that against the Appellants' counter-narrative to determine whether the Judge's decision, that the former was to be preferred, was plainly wrong or against the weight of the evidence.

165 The Appellants' case, both before the Judge and on appeal, has been that it was the MHG and Mr Lau who were in fact responsible for the bulk of the manipulative trading activities observed in the BAL counters. In advancing this case theory, apart from attacking the testimony and credibility of various witnesses, the First Appellant focuses on two main lines of argument. First, he contends that the *trading activities* of the members of the MHG and Mr Lau were self-serving in nature and were not done pursuant to or in furtherance of the Scheme. Second, he questions the *role* played by MHG, and in particular, Mr Gwee, in the manipulation of BAL shares.

(1) Trading activities of the members of the MHG and Mr Lau

166 We first address two key trading practices which the Appellants rely on to allege that the MHG and Mr Lau had been operating their own market manipulation scheme without the Appellants' involvement. As regards Mr Lau, this concerns his purported practice of short-selling BAL shares; and for the MHG, this concerns Mr Tai and Mr Tjoa's alleged practice of "churning" trades to earn commissions.

167 We begin with Mr Lau's alleged practice of short-selling.

168 The First Appellant alleges that Mr Lau was short-selling BAL shares. He submits that this was contrary to the alleged objectives of the Scheme, foremost amongst which was to steadily increase the price of BAL shares. In addition, the short-selling of BAL shares would have made rollover trades (as defined above at [77]) more difficult and increased the volatility of BAL shares, both of which would have undermined the Appellants' control over the market. On this basis, the First Appellant submits that the Appellants could not plausibly have been exercising control over Mr Lau's Relevant Account.[55]

169 The First Appellant's submission rests on the premise that Mr Lau had indeed been short-selling BAL shares. However, this was rejected by the Judge for the following reasons. First, the Judge opined that a closer look at the objective evidence revealed that Mr Lau had not in fact been short-selling BAL shares. Second, and more importantly, even if it was true that Mr Lau had engaged in the short-selling of BAL shares, the First Appellant failed to properly address and contend with the objective communications records, which "plainly

[55] 1AWS at paras 76, 96, 146, 150–151, 405–409, 427(b)–(c) and 431.

showed" that Mr Lau was working in coordination with the Appellants to assist them in engaging in manipulative market activities, sometimes even at their direct instructions (see GD at [314] and [1079]).

170 The First Appellant has not made any serious attempt to controvert the Judge's reasoning on appeal. We will briefly explain the Judge's conclusion that, on a proper assessment of the evidence, Mr Lau had not in fact been short-selling BAL shares. Her analysis as regards the communication records, which showed Mr Lau receiving specific trading instructions from the First Appellant, has been discussed and addressed above (at [119] and [122]–[123]).

171 The First Appellant largely relies on the fact that Mr Lau's orders were marked with a "short" flag in the order and trade data. However, it does not automatically follow from this that Mr Lau had been short-selling BAL shares. As the Prosecution points out, Mr Lau was a day trader and his typical trading behaviour "was to queue large orders on both sides of the order book at the start of the trading day at multiple levels, which he then employed to trade [BAL shares] on [the First Appellant's instructions]".[56] In other words, Mr Lau would place orders *both* for the sale and the purchase of BAL shares at the start of each trading day. As the day progressed, these orders would either be fulfilled (fully or partially) or left unfulfilled based on the availability of BAL shares which could be bought or sold in the relevant counter at that time. As a result, since Mr Lau would queue each order at the *start* of the day, it was not possible for him to know at the outset whether he would be able to sell all the relevant shares at a profit (and consequently, whether the orders would be short) since he could not control when and at what price his orders, as opposed to the orders of other

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56 PCWS at para 355.

market participants, were traded with.[57] According to Mr Lau, he continued to trade in this way because the First Appellant had asked him to do so. It both afforded a plausible basis for denying that the trades were being transacted for manipulative purposes, and served an important function in the Scheme because it helped provide "market depth" and an appearance of strength in these counters that would encourage others to trade in them.

172 This analysis is also supported by the First Appellant's own expert evidence. The First Appellant relies on the opinion of his expert witness, Mr David John White ("Mr White"), that "[Mr Lau] utilised short-selling in order to facilitate his day trading methodology". However, Mr White conceded under cross-examination that he had "no idea whether [Mr Lau] was bearish or bullish" on BAL shares.[58] To take LionGold shares as an example, Mr Lau's Central Depository records showed that he was consistently taking long positions on LionGold shares.[59] When shown these records, the First Appellant accepted that Mr Lau was consistently "holding on to LionGold shares" at the end of each day and was "generally bullish" about these shares.[60] This is significant because the nature of short-selling means that the trader expects that the stock price is likely to decline. As such, they might engage in trading activities such as a "naked short", in which they would first sell a stock without owning or borrowing it, in the hopes that they could purchase it at a lower price at a later time to fulfil their initial sale of the stock and pocket the difference in price. In contrast, a trader who is "bullish" towards a certain stock generally

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57 PCWS at para 355.

58 PCWS at para 354; ROP (Vol 56) at p 115, Transcript on 29 June 2021 at p 113 lines 17–19.

59 PCWS at para 356.

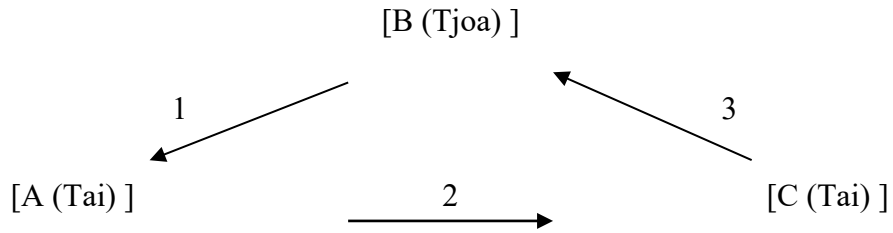
60 ROP (Vol 53) at pp 485–493, Transcript on 11 June 2021 at p 109 line 3 to p 117 line 9.

expects that the price for that stock is poised to rise. They thus tend to take "long positions" (where they buy up shares) because they expect the price of the stock to rise. The short point is that the Appellants' contention that Mr Lau engaged in short-selling is just not consistent with the view of the First Appellant's own expert that Mr Lau was bullish about BAL shares.

173 We turn to Mr Tai's trading patterns. The First Appellant claims that Mr Tai regularly engaged in self-serving trades for his own purposes that had no connection to the Scheme. Indeed, according to the First Appellant, Mr Tai himself admitted that these trades were conducted without the Appellants' knowledge or permission. One key example concerned certain transactions that were purportedly entered into for "commission churning".

174 According to Mr Tai, one of his key objectives in relation to LionGold shares was that he had to use his various accounts to repeatedly conduct rollover trades (as described above at [77]) with Mr Tjoa's accounts. This was done so as to create artificial demand and liquidity for the LionGold shares, by trading in large volumes of those shares. For example, this would involve Mr Tai using one of his accounts ("[A]") to purchase shares from one of Mr Tjoa's accounts ("[B]"). He would then sell those same shares to another one of his accounts ("[C]"), before finally selling the shares back to Mr Tjoa's account [B]. In other

words, the traded shares would change ownership in accordance with the following diagram:



175 The First Appellant first contends that Mr Tai's practice of trading with himself (meaning the trades between accounts [A] and [C]) was unauthorised and not done at as part of any arrangement or plan by the Appellants.[61] Rather, such trades were unnecessary and were done for the sole purpose of artificially inflating the number of transactions so as to enable Mr Tai to make a profit from the commissions from each transaction.[62] Further, the First Appellant argues that even if it was the case that Mr Tai was only involved in rollover trades with Mr Tjoa, in the manner just described, the volume of trades Mr Tai engaged in each day should not be more than twice that of Mr Tjoa. Despite that, the evidence showed "that [Mr Tai's] trades far exceeded what was needed to roll over [Mr Tjoa's] shares",[63] with similarly large trading volumes observed for Asiasons shares. Therefore, since Mr Tai's trading volume greatly outstripped that of Mr Tjoa, this suggested Mr Tai was engaging in trading between his own accounts for the sole purpose of churning commissions for himself.[64] Such an inference is supported by the fact that Mr Tai had been making approximately

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61 ROP (Vol 12) at pp 298–299, Transcript on 9 January 2020 at p 12 line 19 to p 13 line 21.

62 1AWS at paras 280–282, 290 and 346.

63 1AWS at para 284, pp 214–216.

64 1AWS at p 220; citing ROP (Vol 12) at pp 234–235, Transcript on 8 January 2020 at p 82 line 3 to p 83 line 1.

$200,000 a month in commissions which must mean that he was engaging in excessive amounts of trades for the self-interested reason of "commission churning".

176 Although these points might appear to undermine this aspect of the Prosecution's case, they are ultimately not relevant in considering whether the Appellants controlled the Relevant Accounts under Mr Tai's management. First, in relation to Mr Tai's admission that he had a practice of trading with himself, and that such a practice was not done pursuant to any arrangement or instructions by the Appellants, the Judge reasoned that this did not mean that he was acting contrary to the Appellants' interest or instructions. She accepted Mr Tai's explanation that this triangle-shaped arrangement (as illustrated above at [174]), served an important purpose in facilitating the Scheme. As Mr Tai explained, the triangle-shaped arrangement was necessary to avoid a "V-shaped" transaction. An example of a "V-shaped" transaction would be if Mr Tai used account [A] to purchase shares from Mr Tjoa's account [B] as part of a market roll, and Mr Tai sold those same shares directly back to account [B] from account [A]. These "V-shaped" transactions needed to be avoided as they would more easily attract the suspicion and attention of regulators (see GD at [696]). In our view, this satisfactorily explains the seemingly large volume of self-trading done by Mr Tai between his own accounts.

177 Second, and more importantly, even if one accepts that Mr Tai did engage in *more* trades than was necessary for the Appellants' Scheme, this was not germane to whether the Appellants exercised control over the Relevant Accounts associated with him. As the Judge observed, the fact that Mr Tai had earned such commissions "was not inconsistent with the alleged Scheme [as] it was the very incentive that led to him (and other TRs) accepting instructions from the [the Appellants] in the first place" (see GD at [696]). Indeed, the First

Appellant was fully aware of the fact that Mr Tai was making such profits from commissions. Mr Lau testified that when the Second Appellant complained to him and the First Appellant that Mr Tai was "churning [the Appellants'] account, [and] overtrading unnecessarily", the First Appellant was not "very interested in all these complaint[s] because he's a big-picture man" and responded to the Second Appellant's complaints by stating that "[e]verybody need[s] to make a living, so if he churn[s] a bit, overtrade[s] a bit, [this is] part of the [cost] of maintain[ing the] operation".[65] This shows that the First Appellant was not only aware that Mr Tai was making a profit from such activities, but that he had accepted as much as part of the cost of maintaining his operation in furtherance of the Scheme. Moreover, as the Prosecution points out, the fact that Mr Tai, and to a lesser extent Mr Tjoa, were engaging in large amounts of trades would also fit neatly with the Appellants' broader goal of creating a false appearance of liquidity in the BAL counters (since it would drive up the volume of trades).[66]

178 For all these reasons, we see no basis to depart from the Judge's finding that the Appellants exercised control over the Relevant Accounts associated with the MHG and Mr Lau.

(2) The role of Mr Gwee

179 We finally address Mr Gwee's role in the Scheme. In brief, the Appellants' case is that the true mastermind behind the manipulative trades in the BAL counters was Mr Gwee, who acted as the *de facto* leader of MHG and conspired with the other members to coordinate and execute various

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65 ROP (Vol 25) at pp 206–207, Transcript on 5 October 2020 p 31 line 17 to p 32 line 19.

66 PCWS at para 285.

manipulative trades to enrich themselves – and in particular, Mr Gwee himself. This was done without the knowledge or involvement of the Appellants.[67]

180 However, as we pointed out repeatedly at the oral hearing, this presumes a false dichotomy. Even taking the First Appellants' case at its highest and accepting that members of the MHG *did* engage in trades for Mr Gwee's benefit, sometimes even at the expense of their accountholders, it just does not follow that Mr Gwee was the ultimate mastermind of the Scheme. The question remains whether Mr Gwee was operating autonomously or in tandem with the Appellants. To address this question, we will first review Mr Gwee's own testimony (as regards the role he played in the Appellants' Scheme), and the evidence which the Judge relied on to arrive at her finding as regards his role. Next, we will consider the trading data which the First Appellant points to as evidence of the MHG working together to profit Mr Gwee at the Appellants' expense. Finally, we will briefly address the First Appellant's contention that he suffered some prejudice as a result of the Prosecution's failure to make clear its position about the role played by Mr Gwee.

181 We begin with a discussion of Mr Gwee's own evidence. In brief, Mr Gwee testified that he did not coordinate trading activities with Mr Tai, Mr Tjoa, Mr Gan, and Mr Lau, amongst other individuals. He denied coordinating the MHG's market rolling activities for the First Appellant as he did not want to incur legal and financial risks.[68] However, the Judge did not place much weight on Mr Gwee's evidence, save for where it was supported by "the tested and objectively supported evidence of" the other witnesses, because she considered that he had sought to avoid incriminating himself by "downplaying his

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67 1AWS at paras 5 and 77–89

68 ROP (Vol 41) at p 211, Transcript on 24 February 2021 at p 16 lines 20–24.

involvement" (see GD at [686]–[687]). Instead, she relied heavily on the testimonies of *other* witnesses who attested to Mr Gwee's role in the MHG. In particular, she observed that the "most salient observation" to be made as regards the Mr Gwee's role in relation to the Appellants' Scheme came from the evidence of Mr Tai, Mr Gan, Mr Tjoa and Mr Lau. It was the testimonies of these other witnesses that allowed the Judge to conclude that Mr Gwee "had not been the individual behind the alleged Scheme" – and it is these testimonies to which we now turn.

182 Collectively, the evidence of the members of the MHG and Mr Lau was that Mr Gwee had been brought into the Scheme by the First Appellant to assist him in overseeing the market rolling activities (as described above at [77]) for Asiasons and, subsequently, Blumont shares. He had served the role of being the First Appellant's "deputy" who would aid in overseeing the implementation of the Scheme such that whenever the First Appellant was busy with acquisitions and corporate finance, the other traders and intermediaries could look to Mr Gwee instead. He would also advise members of the MHG on how best to conduct the manipulative trades so as to avoid raising the suspicion of the regulators.[69] Finally, Mr Gwee was also entrusted to manage the trades in several of the Relevant Accounts (see GD at [683]). Given that we have upheld the Judge's findings that Mr Gan, Mr Tjoa, Mr Tai and Mr Lau were witnesses of truth (see GD at [687]), and thus her decision not to impeach their credibility, it follows that their collective mutually corroborative testimonies on the role played by Mr Gwee ought to be accorded significant probative value.

183 Moreover, apart from the evidence of the members of the MHG and Mr Lau, other witnesses *separate* from this group also testified to similar effect,

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69 PCWS at paras 319–321.

namely that Mr Gwee acted as the First Appellant's lieutenant. One example is Mr Lee, a TR with Maybank Kim Eng Securities Pte Ltd, who managed three Relevant Accounts (see GD at [331]). He stated that the First Appellant had introduced Mr Gwee as the person who was helping the First Appellant with his trading operations. Mr Gwee then told Mr Lee that Mr Gan "would be calling [him] to give orders", and Mr Lee did in fact receive such trading instructions from Mr Gan, alongside instructions from the Appellants.[70]

184 Apart from his attempt to impeach the credibility of the various witnesses, the First Appellant placed significant emphasis on the fact that Mr Gwee had personally profited from the Scheme to support his claim that Mr Gwee had been the true mastermind of the scheme to manipulate the markets of BAL. In our view, the fact that Mr Gwee had made personal profits was not probative of the real question in this case, which was whether Mr Gwee was operating independently and without the knowledge or control of the Appellants. On this issue, the Judge found that it was understood between the First Appellant and Mr Gwee that the latter would profit from his participation in the Scheme because this was integral to its successful realisation. Notably, the First Appellant was well aware of Mr Gwee's trading activity and of the fact that Mr Gwee as well as his immediate family members (such as his brother) would profit from this.[71]

185 To illustrate this, we highlight an exchange that took place between Mr Gan and the First Appellant, in which the former updated the latter on what had transpired when he was interviewed by the MAS. Two portions of this exchange are of note. First, Mr Gan informed the First Appellant that Mr Gwee would, at

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70 ROP (Vol 110) at pp 26929–26930, paras 50–53.

71 PCWS at paras 323–324.

times, instruct Mr Tai, Mr Tjoa and himself to remove their orders for BAL shares to allow Mr Gwee to purchase those shares at a lower price, or he would sell shares at a higher price to the same individuals. In response, the First Appellant affirmed that he was aware of such practices and that he was the one paying for Mr Gwee's losses and guaranteeing his profits, exclaiming: "[w]ho pay? … [I p]ay lor. I'm not stupid, I know … But I didn't know … he'd be this terrible".[72] Second, the First Appellant told Mr Gan that he knew Mr Gwee and his brother had made $40m to $50m in profits from their trading activities, and dismissed Mr Gan's claim that he had made a loss of $30m in trading as nonsense.[73]

186 In essence, while the First Appellant may have resented the fact that Mr Gwee and his brother were making handsome profits, he was aware of it and accepted it as something he could not avoid in order to achieve the ends of the Scheme. This was also consistent with Mr Gwee's testimony that "when [he] was at the LionGold office, [the First Appellant] was all along aware of [his] trading positions … [and] was encouraging [Mr Gwee] to make money".[74]

187 As the First Appellant himself observes, "[t]he fact that [Mr Gwee] made significant trades, $50 million in profits, was giving instructions and apparently coordinating with [Mr Lau] can mean one of two things – he was [the First Appellant]'s lieutenant, or that he was manipulating trades independently".[75] It is by no means the inexorable inference that Mr Gwee was engaging in independent acts of market manipulation. Conversely, the

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72 ROP (Vol 109) at pp 26804–26805.

73 ROP (Vol 109) at pp 26804–26805.

74 ROP (Vol 42) at p 273, Transcript on 3 March 2021 at p 31 lines 7–9.

75 1AWS at para 116.

collective weight of the objective evidence and the testimonies of the various witnesses all point to the conclusion that Mr Gwee was the First Appellant's lieutenant in implementing the Scheme, even as he profited from it, and that the Appellants were the true masterminds of the Scheme. Of course, the charges proceed on the basis that the Appellants would have hoped to make even greater profits, but these were dashed by the collapse of the Scheme.

188 Next, we address the trading activities which the Appellants allege serve as a clear example of the MHG working in concert to benefit Mr Gwee. In the period immediately preceding the sharp falls in the price of BAL shares on 4 and 7 October 2013, there was a sudden surge in the prices of Blumont shares on 1 and 2 October 2013 (see GD at [14]–[18]). The First Appellant contends that it was chiefly the manipulative trades of Mr Gwee and the MHG, as well as Mr Lau albeit to a lesser extent, which caused this price surge that caught the attention of regulators. In particular, he contends that members of the MHG conducted trades using various Relevant Accounts without the Appellants' knowledge to allow Mr Gwee to make a profit. They allegedly did so by arranging for Mr Gwee to purchase close to two million shares from Relevant Accounts controlled by the MHG when the share prices were low, before buying back those very same shares after the rest of the MHG caused the share prices to increase.[76] This was referred to as a "pump-and-dump" scheme. Mr Gwee purportedly traded in these two million shares through personal accounts held by him as well as his immediate family members including his brother.[77]

189 The Judge noted that Ms Cheng, Mr Tai and Mr Lau all provided consistent and independent testimonies that the Appellants instructed them to

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[76] 1AWS at paras 45, 117–119 and pp 109–110.

[77] 1AWS at paras 77, 103 and 118.

conduct trades to support the price of Blumont shares during this period by placing large amounts of buy orders for Blumont shares (see GD at [913]). She then rejected the First Appellant's claim that Mr Tai was not acting under the Appellants' instructions during this period (of 1 and 2 October 2013), and that he was instead coordinating with Mr Gwee to allow him and his family members to profit from the sale of Blumont shares at the expense of Relevant Accounts. This was because the Judge found that such a narrative did not account for the *actual* manner of Mr Tai's trading pattern. If it was indeed true that Mr Tai was tasked to buy back the shares being sold by Mr Gwee (mainly through his brother's account), one would expect that Mr Tai's buy orders would simply match Mr Gwee's sell orders. Yet, what actually transpired was that Mr Tai placed buy orders for more than 6,000,000 Blumont shares *in excess* of what he needed to have placed to completely meet the sell orders entered in Mr Gwee's brother's account (which totalled 3,775,000 shares). There appeared to be no logical reason, if Mr Tai's only objective was to coordinate trades with Mr Gwee to buy up Blumont shares from his brother's account, for Mr Tai to have placed such a large amount of buy orders (see GD at [918(b)]).

190 Additionally, the Judge analysed the primary SGX trading data for Blumont shares, which indicated that the sell orders which Mr Tai's buy orders traded against were for relatively small quantities and all of which had been entered by non-Relevant Accounts. In other words, Mr Tai was generally buying up Blumont shares that were being sold in *small* quantities by accounts that were not part of the Relevant Accounts. He was not, as the First Appellant suggests, buying up shares from Mr Gwee's brother's account which sold *3,755,000 shares*. Indeed, the trading data indicated that less than one-third of the shares sold by Mr Gwee's brother were actually bought by Mr Tai. The Judge opined that the fact that there were sales of Blumont shares in *small* quantities from

non-Relevant Accounts suggests that there were other market participants who contributed to the downward pressure being applied to the price of Blumont shares. Thus, members of the MHG (along with Ms Cheng and Mr Lau) had been instructed, by the Appellant, to abate this general downwards pressure by buying up large quantities of those very shares – which is just what Mr Tai did (see GD at [918(a)]–[918(c)]).

191 Before leaving this issue, we address the First Appellant's contention that the Prosecution failed to make clear its position on Mr Gwee's role as the First Appellant's lieutenant until an impermissibly late stage in proceedings, thereby prejudicing his defence.

192 This was rejected by the Judge when it was raised before her. The Judge observed that Mr Tai, Mr Gan, Mr Tjoa and Mr Lau (who were the main individuals testifying as to Mr Gwee's role) "gave their own accounts as to the role of Mr Gwee vis-à-vis the [Appellants'] Scheme, and their evidence-in-chief was given substantially by conditioned statements which had been disclosed to the Defence". Those statements clearly stated that it was the Appellants who were responsible for the Scheme, with Mr Gwee playing the role of the First Appellant's chief implementer. The broad contours of the Prosecution's position on Mr Gwee's role and involvement would therefore have been clear to the Appellants from the time the conditioned statements were disclosed (see GD at [686]). We agree with the Judge's assessment and would only add that in addition to the MHG's and Mr Lau's statements, the Prosecution also disclosed four of Mr Gwee's CAD statements before the trial began pursuant to its duty of disclosure (see *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205), with the remaining statements being voluntarily disclosed

in May 2020 (long before Mr Gwee took the stand in February 2021).[78] We therefore do not accept that the Appellants were prejudiced by the Prosecution's conduct in this respect.

Conclusion on the Judge's factual findings

193 In conclusion, the First Appellant has failed to show that the Judge was plainly wrong in her analysis of the available evidence or that the findings she made were clearly against the weight of the evidence. He therefore fails to meet the threshold for us to interfere with the Judge's factual findings.

194 In the final analysis, even if the First Appellant's case is taken at its highest (which is that experienced traders were also conducting market manipulation activities for personal gains), this is not inconsistent with the Judge's determination that the Appellants were the masterminds behind the Scheme and had controlled and used the Relevant Accounts in furtherance of that Scheme. We therefore see no basis for interfering with the Judge's factual determination that the Appellants at the material time exercised control over all of the Relevant Accounts and used this to advance the Scheme. In that light, we turn to the various groups of charges.

The Witness Tampering Charges

195 We begin with the Witness Tampering Charges, which, as foreshadowed earlier, are probative of both Appellants' liability for the Conspiracy Charges. The Witness Tampering Charges alleged that the First Appellant had intentionally perverted or attempted to pervert the course of justice by asking Mr Tai, Mr Gan, Mr XY Wong and Mr Peter Chen Hing Woon ("Mr Chen") to

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78 PCWS at para 317(a).

conceal the truth about various aspects of the Scheme from the investigating authorities. The Judge convicted the First Appellant of all the Witness Tampering Charges, accepting the evidence of the various witnesses that the First Appellant had indeed made such requests to them (see GD at [1197]–[1288]).

196 The First Appellant's main submission on appeal is that none of the alleged acts, even if proven, would have amounted to witness tampering offences under 204A or s 204A read with s 511 of the Penal Code. He mounts this argument at a general level by asserting that, at the relevant time, he did not know that Mr Tai, Mr Gan, Mr XY Wong and Mr Chen were going to be Prosecution witnesses. He asserts that he believed they were likely to be co-accused persons and further submits that there is nothing impermissible in co-accused persons discussing their potential lines of defence amongst themselves.[79] This can be readily rejected because the alleged acts went well beyond a discussion of potential lines of defence. On the Prosecution's case, the First Appellant had caused or attempted to cause these witnesses to lie to the investigating authorities. As the Judge observed, and we agree, this would clearly have amounted to an offence regardless of whether the witness in question was a Prosecution witness or a potential co-accused person (see GD at [1225]).

197 At a more specific level, the First Appellant also seeks to place an innocent construction on some of his statements to Mr Tai, Mr Gan, Mr XY Wong and Mr Chen. According to him, these were "not clear exhortations to lie" but "exhortations of a general nature" bearing an "ambiguous" meaning.[80]

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79 1AWS at paras 251, 253, 261, 268 and 276.

80 1AWS at paras 252 and 276.

However, the Judge carefully considered the meaning of these statements in context before concluding that, properly understood, they amounted to requests to conceal the truth from the investigating authorities. Conversely, the First Appellant isolated the statements from their surrounding context in an attempt to clothe them with a more innocuous complexion. We agree with the Judge's approach. We also see no reason to depart from her conclusions as to the proper meaning, when read in context, of the First Appellant's communications with the various witnesses.

198 As an example, one of the Witness Tampering Charges concerned a remark by the First Appellant to Mr Gan to "just stick to your usual stupid answers" before the latter was to be interviewed by the Monetary Authority of Singapore (the "MAS"). The First Appellant submitted before the Judge that this was his exasperated response to Mr Gan's "constant, relentless stupid questions" and he was not instructing Mr Gan to do anything (see GD at [1241]). On appeal, he further maintains that he did not know at the time that Mr Gan had been lying to the authorities and could not therefore have been *instructing* Mr Gan to lie.[81] However, the Judge placed the First Appellant's remark in the context of his conversation with Mr Gan (see GD at [1238]). She noted that it was the First Appellant who had informed Mr Gan that the MAS was still trying to gather evidence against him despite the CAD having apparently given up. Following that, the First Appellant had told Mr Gan directly, "you just stick to your usual stupid answers", because in that way, the authorities would not be able to "crack it". The Judge accordingly concluded that it was obvious that the First Appellant had raised the subject and then suggested answers that Mr Gan should adopt and endorsed the false answers Mr Gan had offered (see GD at

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[81] 1AWS at para 263

[1242]). We agree with the Judge's analysis and do not think the First Appellant has made a serious attempt to engage with it.

199 Another of the Witness Tampering Charges pertained to a separate comment by the First Appellant to Mr Gan to "deny everything". Before the Judge, the First Appellant described this as "a common sense textbook answer" (see GD at [1233]). He continues to defend its propriety on appeal by asserting that he was merely referring to certain allegations made by the "delusional" Mr Tai.[82] According to the First Appellant, Mr Gan had told him earlier in their conversation that Mr Tai was "going around talking about [Mr Gan's] and [Mr Tjoa's] involvement",[83] and it was Mr Gan who was "worried about being fingered by [Mr Tai]". By responding that Mr Tai was "delusional" and that Mr Gan could simply "deny everything", the First Appellant was merely trying to "comfort" Mr Gan and "calm his fears"[84] rather than "asking [Mr Gan] to deny everything for me".[85] However, again, the Judge had considered the meaning of the First Appellant's comment in context. Examining his conversation with Mr Gan (see GD at [1228]–[1229]), she noted that it was the First Appellant who had raised the issue of Mr Tai potentially having provided the authorities with incriminating evidence; and he then tried to prepare Mr Gan on how he should respond if he were to be questioned on this matter at subsequent interviews. He also used the words "our stand" during the conversation, indicating that it was his intention for Mr Gan to align himself with the First Appellant against Mr Tai (see GD at [1234]). We agree with the

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82 1AWS at para 261.

83 ROP (Vol 55) at p 28, Transcript on 16 June 2021 at p 26 lines 7–16.

84 ROP (Vol 49) at pp 309–310, Transcript on 24 May 2021 at p 88 line 19 to pp 89 line 5; ROP (Vol 55) at p 28, Transcript on 16 June 2021 at p 26 lines 7–16.

85 ROP (Vol 49) at p 309, Transcript on 24 May 2021 at p 88 lines 23–24.

Judge's interpretation, and again, we do not think the First Appellant has made a serious attempt to controvert it.

200 The First Appellant also alleges that the Judge's reasoning was circular in some respects. He observes that the Judge convicted the Appellants of the Conspiracy Charges relying in part on the evidence of Mr Tai, Mr Gan, Mr XY Wong and Mr Chen. It was undisputed that there were certain inconsistencies between their testimonies in court and their investigative statements. However, the Judge did not find their credibility to be impeached, due in part to their explanations that they had lied in their investigative statements under the First Appellant's influence. According to the First Appellant, this was a "circular argument" because it meant that the Appellants' convictions on the Conspiracy Charges were predicated on the First Appellant's convictions for the Witness Tampering Charges, and *vice versa*.

201 We do not see any circularity in the Judge's reasoning. Contrary to the First Appellant's characterisation, the Judge did not generally rely on the Witness Tampering Charges to explain why she accepted the evidence of Mr Tai, Mr Gan, Mr XY Wong and Mr Chen in relation to the Conspiracy Charges despite the inconsistencies between their testimonies in court and what they said in their investigative statements. Rather, the Judge saw the primary relevance of the Witness Tampering Charges to the Conspiracy Charges in this way. The Witness Tampering Charges all involved various attempts by the First Appellant to minimise the Appellants' involvement in the Scheme and/or to redirect suspicion to other persons. This raised the question of why the First Appellant had thought such conduct to be necessary if the Appellants were truly innocent of the Conspiracy Charges. The Judge reasoned (see GD at [886]):

> … In summary, I found the First [Appellant] guilty of all eight [Witness Tampering Charges] and this, in my view, supported

> the more general conclusion that the [Appellants] had indeed entered into a general conspiracy to manipulate the markets for and prices of BAL shares. To be clear, I do not mean that it supported any *particular* allegation. However, the very fact that the First [Appellant] considered it necessary to obstruct the investigations suggested that there was something unlawful to be uncovered. In fact, three of the charges … alleged that the First [Appellant] had tampered with Mr Gan with a view to diverting suspicion away from the *Second* [Appellant]. If the Second [Appellant] had not been involved in any of the trading activities which led to the Crash, there would be no need for him to seek to misdirect the authorities from her.
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> [emphasis in original]

202 We respectfully agree with the Judge. We also observe that this extract is found towards the end of the Judge's analysis on the False Trading and Price Manipulation Charges. The Witness Tampering Charges thus played only a confirmatory role in the Judge's reasoning and were certainly not the primary basis on which she convicted the Appellants of the Conspiracy Charges.

203 Further, where the Judge *did* refer to the Witness Tampering Charges to explain her acceptance of a particular witness's evidence in relation to the Conspiracy Charges, this was justified by some direct nexus between the First Appellant's exercise of influence and the witness's decision to lie to the investigating authorities. For example, Mr Chen claimed in an investigative statement that there were financiers who funded the share trading in his accounts, but in his testimony, he suggested that the financing was provided solely by the First Appellant. The Judge accepted Mr Chen's explanation that he had lied to the CAD in his investigative statement because the First Appellant had instructed him to take steps to distance the First Appellant from the trading activity in his accounts. Accordingly, the Judge took the view that this shift in Mr Chen's evidence did not undermine his credibility. Instead, she found him generally to be a forthcoming and creditworthy witness (see GD at [221] and [225]).

204 Similarly, Mr Tai stated in an investigative statement that the Relevant Accountholders of Saxo accounts would sometimes call him to place orders in their accounts, and that he would also sometimes decide what orders to place in their accounts without first getting their instructions. However, he later testified that the trading activities in the Relevant Accounts held with Saxo were wholly controlled by the Appellants, and that he had not received any instructions from the accountholders. Despite regarding this as a material inconsistency, the Judge accepted Mr Tai's explanation that he had lied to the CAD in his investigative statement because the First Appellant had specifically told him to exclude the Appellants from any involvement in the accounts under his management. Accordingly, the Judge did not consider Mr Tai's credit to have been impeached (see GD at [690]–[692]). We see no reason to disagree with the Judge's analysis.

205 For these reasons, we affirm the First Appellant's convictions on the Witness Tampering Charges. We also agree that the Witness Tampering Charges supported the Appellants' convictions on the Conspiracy Charges. The Second Appellant submits that, as the Conspiracy Charges were brought against the First Appellant alone, they could have had no bearing on her guilt in relation to the Conspiracy Charges. We address this submission more specifically at [260]–[265] below.

Whether there should have been a single Conspiracy Charge

206 We next turn to the Conspiracy Charges and first address the Appellants' general objection that these were framed as separate and discrete charges. In the course of the oral arguments, it became apparent that there were two aspects to this argument. The first is a legal one – the Appellants submit that the Conspiracy Charges should not have been framed as discrete charges for

discrete conspiracies, as they each relate to the same overarching Scheme.[86] The second is a factual argument that the Judge erred in relying solely on the existence of the overarching Scheme, as defined at [4] above, to infer the existence of the separate conspiracies for each Conspiracy Charge. For reasons that we explain below, we are not persuaded by either of these arguments.

Whether the Prosecution could bring the Conspiracy Charges as separate charges

207 The first aspect of the Appellants' argument relates to the circumstances in which separate charges may be brought for offences under s 120B of the Penal Code. The Appellants both argue that the Conspiracy Charges are defective because they relate in essence to the same overarching conspiracy. They adopt slightly different positions in this regard. The thrust of the First Appellant's submission is that since all the Conspiracy Charges relate to *one* overarching conspiracy, there can only be one offence of criminal conspiracy under s 120B of the Penal Code.[87] Accordingly, the Prosecution should only have brought *one* charge for criminal conspiracy under s 120B instead of 179 Conspiracy Charges. The Second Appellant adopts the same reasoning as the First Appellant but concedes that there may legitimately be one charge for *each sub-category* of the Conspiracy Charges, namely: (a) the False Trading and Price Manipulation Charges; (b) the Deception Charges; and (c) the Cheating Charges.[88] In other words, the Second Appellant argues that the Prosecution should have brought three charges for criminal conspiracy under s 120B of the Penal Code. The Appellants cite *Ratanlal & Dhirajlal's the Indian Penal Code*

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86 1AWS at paras 21–30.

87 1AWS at paras 22 and 30.

88 2AWS at para 86.

vol 1 (Anjana Prakash Ed) (LexisNexis, 35th Ed, 2021) ("*Ratanlal*") in support of their position.

The nature of the Scheme and the conspiracies which were the subject of the Conspiracy Charges

208 As a preliminary matter, the Appellants' argument misunderstands the Prosecution's case and the Judge's findings. As the Judge noted, the Prosecution's case was that the Appellants had participated in a general conspiracy (meaning the Scheme) to manipulate the markets for and prices of BAL shares during the Relevant Period. However, the Scheme did not form the subject of any specific charge. Rather, it formed the overarching factual background to all the Conspiracy Charges. As against this, the charges were concerned with narrower aspects of the Scheme (see GD at [9(b)]). In other words, on the Prosecution's case, the overarching Scheme co-existed alongside multiple other conspiracies in furtherance of the Scheme, such as conspiracies to create a false appearance with respect to the market for BAL shares or to dishonestly induce certain FIs to provide margin financing. Those other conspiracies, rather than the Scheme, were the subject of the Conspiracy Charges. The Judge substantially accepted the Prosecution's case, finding that the Appellants were parties to the general Scheme as well as most of the related conspiracies that formed the subject of the Conspiracy Charges. We see no inconsistency between these findings. Co-conspirators may simultaneously be parties to multiple criminal conspiracies at higher and lower levels of generality. In the present case, the fact that the Appellants were parties to an overarching Scheme does not mean that they could not also have been parties to specific and distinct conspiracies to implement the Scheme.

209 In fact, Mr Sreenivasan ultimately appeared to accept at the oral hearing that the Judge had identified the correct legal approach (namely, that the Prosecution had to prove the fact of each individual conspiracy alleged and that it was not sufficient for the Prosecution to assert that the individual conspiracies had automatically been proven simply because they pertained to the overarching Scheme). However, he then contended that the Judge had failed to *apply* this statement of the law to the facts. We will return to Mr Sreenivasan's second argument later in this judgment. At this juncture, we merely state that this argument finds no favour with us, for reasons that will be apparent later in this judgment.

Whether the Prosecution was entitled to bring separate Conspiracy Charges

210 Having established the nature of the conspiracies which are the subject of the Conspiracy Charges, we turn to consider the substance of the Appellants' argument. We begin our analysis with s 132(1) of the CPC, which requires (among other things) that a separate charge be brought for every distinct offence of which a person is accused:

> **Separate charges for distinct offences**
>
> **132.**—(1) For every distinct offence of which any person is accused, there must be a separate charge and, subject to subsection (2), every charge must be tried separately.

211 The object behind this requirement is to avoid prejudice to the accused person in having to defend against distinct offences that are lumped together in one charge (*Lim Chuan Huat and another v Public Prosecutor* [2002] 1 SLR(R) 1 ("*Lim Chuan Huat*") at [14]). Commentators have also observed that it would be unfair to leave the offender with a record for having committed multiple offences if what was done was in fact a single offence (see Criminal Procedure in Singapore and Malaysia (Tan Yock Lin and S Chandra

Mohan gen eds) (Lexis Nexis, 2012) at para 904, citing *Public Prosecutor v Wong Siu Fai* [2002] 1 SLR(R) 1161 at [4]). The question is whether the Conspiracy Charges each amount to a distinct offence. If so, there can be nothing objectionable about the bringing of separate charges. This would not only be permitted but *mandated* by s 132(1) of the CPC.

212 The term "distinct" has been interpreted to mean "not identical" in the predecessor to s 132(1) of the CPC (see *Tham Wing Fai Peter v Public Prosecutor* [1988] 1 SLR(R) 349 ("*Peter Tham*") at [63], followed in *Xia Qin Lai v Public Prosecutor* [1999] 3 SLR(R) 257 ("*Xia Qin Lai*") at [18]). Two offences would be distinct if they are not related in any way. But interrelated offences may yet be distinct; "it would depend on the circumstances of the case in which the offences were committed whether there is only one transaction and only one offence was committed" (*Peter Tham* at [63]; *Xia Qin Lai* at [18]).

213 In determining whether the offences are properly to be regarded as distinct offences, in *Public Prosecutor v Fernandez Joseph Ferdinent* [2007] 4 SLR(R) 1 we identified the following relevant considerations (at [22]–[23]):

(a) whether the offences were committed on different occasions;

(b) the places at which the offences were committed;

(c) the persons aggrieved or injured by the offences; and

(d) the nature of the acts constituting the offences.

214 In our judgment, these remain useful pointers to whether distinct offences have been committed.

215 The Conspiracy Charges each allege that the Appellants were party to a criminal conspiracy. We reproduce the text of ss 120A and 120B of the Penal Code below:

> **Definition of criminal conspiracy**
>
> **120A.**–(1) When 2 or more persons agree to do, or cause to be done –
>
> (*a*) an illegal act; or
>
> (*b*) an act, which is not illegal, by illegal means,
>
> such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
>
> (2) A person may be a party to a criminal conspiracy notwithstanding the existence of facts of which he is unaware which make the commission of the illegal act, or the act, which is not illegal, by illegal means, impossible.
>
> **Punishment of criminal conspiracy**
>
> **120B.** Whoever is a party to a criminal conspiracy to commit an offence shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

216 While the plain text of the provisions utilises words in the singular (such as "illegal *act*" and "a criminal conspiracy to commit *an offence*" [emphasis added]), s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed) states that words in the singular include the plural. It may thus be argued that since an agreement to commit multiple offences amounts to a single offence of criminal conspiracy, only a single charge may arise pursuant to s 132(1) of the CPC in the present case.

217 In our view, such a reading of s 132(1) of the CPC is overly simplistic. In situations such as the present, where accused persons are alleged to have

agreed to commit multiple offences, the nature of the accused persons' agreement(s) may fall into three possible categories:

(a) First, the accused persons may have entered into multiple *separate* agreements to commit *each* of the offences.

(b) Second, the accused persons may have entered into a *single agreement* to commit all the offences. For instance, the accused persons may have entered into a single agreement to steal a motor vehicle to traffic in controlled drugs, which are offences under s 379A(1) of the Penal Code and s 5(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) respectively.

(c) Third, the accused persons could have entered into an *overarching* agreement to commit *all* the offences, *as well as* separate additional agreements to commit *each* of the offences. The third scenario is thus a combination of the first and second scenarios.

218 The precise nature of the accused persons' agreement(s) is a question of fact, which is to be determined in all the circumstances of the case. This inquiry is important as different consequences might flow from the proper characterisation of the agreement(s) in question. In the first scenario, it appears to us that the Prosecution may only proceed with separate charges for criminal conspiracy, with each charge corresponding to each agreement to commit an offence. In a similar vein, in the absence of full arguments on these issues, we take the provisional view that the Prosecution may, under the second scenario, *ordinarily* only bring a single charge in relation to the single agreement to commit all the offences. However, in the third scenario, we consider that the Prosecution has the discretion to determine how broadly or narrowly it wishes to frame the charge(s) for criminal conspiracy. It might choose to bring a single

charge in relation to the overarching agreement (as was done in two Indian cases which we will turn to later in this judgment), or it may bring separate charges in relation to each separate agreement to commit each offence.

219 We have set out our observations on the nature of the conspiracies in the present case earlier in this judgment (see [208] above). In brief, the overarching Scheme was not the subject of any of the Conspiracy Charges. Instead, it formed the overarching factual background to all the Conspiracy Charges, explaining the motive and context behind those charges. We pause to briefly recapitulate the different categories of Conspiracy Charges which were brought against the Appellants:

(a) The six False Trading Charges allege that the Appellants were party to criminal conspiracies to commit offences under s 197(1)(*b*) of the SFA to perform acts or engage in courses of conduct with the intention or purpose of creating a false appearance with respect to the *market* of the BAL securities. These six charges were evenly divided amongst the three BAL counters, and were further divided into two time periods which directly preceded and followed an amendment to s 197(1)(*b*) of the SFA. These charges are summarised in the following table:

Charge	**False appearance with respect to market for security**	**Period**
1	Blumont	2 January 2013 to 15 March 2013
2		18 March 2013 to 3 October 2013

4	Asiasons	1 August 2012 to 15 March 2013
5		18 March 2013 to 3 October 2013
8	LionGold	1 August 2012 to 15 March 2013
9		18 March 2013 to 3 October 2013

(b) The four Price Manipulation Charges allege that the Appellants were party to criminal conspiracies to commit offences under s 197(1)(*b*) of the SFA to either manipulate or support the *price* of the BAL securities. These charges are summarised in the following table:

Charge	**Counter**	**Period**	**Trading in order to**
6	Asiasons	September 2013	Manipulate the price
10	LionGold	August and September 2013	Manipulate the price
3	Blumont	Between 2 and 3 October 2013	Support the price
7	Asiasons	Between 1 and 3 October 2013	Support the price

(c) The Deception Charges allege that the Appellants were party to criminal conspiracies to commit an offence under s 201(*b*) of the SFA to engage in a practice which was likely to operate as a deception on various FIs to conceal their involvement in the instructing of orders and trades of securities in various trading accounts. These charges differed with respect to the period of deception alleged, the FI which was

purportedly deceived, the particular share or shares purchased, and the account in which the orders were instructed.

(d) The Cheating Charges allege that the Appellants were party to criminal conspiracies to commit the offences of cheating and dishonestly inducing property to be delivered under s 420 of the Penal Code.

220 Applying the aforementioned principles to the present case, separate charges may be brought for the Deception and the Cheating Charges because the Prosecution's case below was that each charge related to a separate and distinct conspiracy.[89] In a similar vein, the Prosecution's position was that the Price Manipulation Charges related to separate agreements. This was because the Prosecution's case in its opening statement was that certain Price Manipulation Charges were "targeted acts of price manipulation" that were meant to suit specific objectives[90] while other Price Manipulation Charges were "a desperate bid to stave off a market crash which would unravel their scheme".[91] In our judgment, the Deception, Cheating, and Price Manipulation Charges plainly relate to the first scenario that we have described above (at [217(a)]) and the Prosecution cannot be faulted for having brought these charges in the manner that they did.

221 However, it was arguably less clear whether the Prosecution's position below was that the False Trading Charges related to separate conspiracies. While the Prosecution stated in the Prosecution's Reply Submissions for

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89 ROP (Vol 70), p 5226 at para 16.

90 ROP (Vol 82) at p 11692, para 17.

91 ROP (Vol 82) at p 11692, para 17.

Amendment of Charges ("Amendment Submissions") that the Deception and Cheating Charges related to *separate* agreements,[92] it did not explicitly state whether this extended to the False Trading Charges. This is also to be seen in the light of the fact that the False Trading Charges relate to different time periods, which occur respectively before and after an amendment to s 197(1)(*b*) of the SFA on 18 March 2013. Notwithstanding these difficulties, we consider that the Prosecution was entitled to frame the False Trading Charges in such a manner.

222 To begin with, the Prosecution cannot be faulted for having categorised the False Trading Charges according to each of the relevant BAL counters. In the first place, in so far as the Appellants denied the conspiracy altogether, it was certainly not their case that there was only a single agreement, to undertake all of the conduct involving all three BAL counters, that is covered by the False Trading charges. Second, returning to the pointers that suggest that certain offences may be distinct from others (see [213] above), where one is concerned with different counters, absent specific evidence that suggests otherwise, it seems to us to follow as a matter of logic that each of these would be an agreement to carry out a distinct offence and hence capable of forming the subject of a separate charge. We are therefore satisfied that the Prosecution cannot be faulted for having brought separate False Trading Charges.

223 Even where the charges concern the same BAL counters, they nonetheless relate to different offences under s 197(1)(*b*) of the SFA by virtue of the different time periods prescribed in the charge. As the Judge below observed, s 197(1)(*b*) of the SFA was amended on 18 March 2013 to introduce a *mens rea* element which required an accused person to have committed an act

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92 ROP (Vol 70), p 5226 at para 16.

with, at least, a purpose of creating a false or misleading appearance as to the market for the shares (see GD at [160] and [172]–[174]). There was thus a material amendment to the offence under s 197(1)(*b*) of the SFA coming into effect on 18 March 2013. The False Trading Charges for the shares of each company were divided into two charges, which covered the time periods before and after the SFA amendments came into effect on 18 March 2013. Even if the Appellants had a single conspiracy to create a false or misleading appearance as to the market for the shares of a single company, this conspiracy would have concerned *two* distinct offences, namely the pre-amendment and post-amendment versions of s 197(1)(*b*) of the SFA.

224 We consider such offences to be distinct in so far as they comprise different elements. We therefore consider that the Prosecution was entitled to bring separate charges in relation to the pre-amendment and post-amendment versions of s 197(1)(*b*) of the SFA *on the facts of this case*. To mandate that a single charge be brought would likely create confusion in the mind of the Appellants as to the case they had to meet, given that the pre-amendment and post-amendment versions of s 197(1)(*b*) of the SFA had different *mens rea* requirements. It may be noted that under s 120A(1)(*a*) of the Penal Code, a criminal conspiracy is constituted when two or more persons agree to do an illegal act. In turn, the definitions of "illegal" and "offence" in ss 43 and 40(2) of the Penal Code make it clear that an illegal act includes an act which is an offence or, in other words, an act which is punishable under the Penal Code or under any other law for the time being in force. Where there is a relevant change in the law, it seems inevitable that the consideration of whether there is an agreement to commit an illegal act, meaning in this case an act punishable under the SFA, must be assessed independently; it cannot be the case that this would necessarily constitute one and the same offence of conspiracy. This is also

consistent with the purpose of s 132(1) of the CPC, which is to prevent prejudice to the accused person in having to defend against distinct offences which are grouped together in one charge. It thus follows that the Prosecution was entitled to bring separate False Trading Charges in relation to the pre-amendment and post-amendment versions of s 197(1)(*b*) of the SFA.

The secondary materials cited by the Appellants

225 Second, the Appellants' reliance on *Ratanlal* does not assist them. Both Appellants argue, on the strength of *Ratanlal* at para s 120B.10, that only one charge under s 120B of the Penal Code can be brought in respect of a criminal conspiracy even if it is for the commission of multiple offences.[93] They submit that since the Prosecution's position was that there was one overarching scheme (meaning the Scheme, as defined above) between the Appellants, only one charge under s 120B should have been brought against them. Reliance was placed on some Indian cases which are mentioned in *Ratanlal*, but these were concerned with the opposite scenario, namely where the accused persons alleged that a *single* s 120B charge was defective because it related to multiple distinct conspiracies. Furthermore, as we elaborate below, these cases do not state that the Prosecution *must* prefer a single conspiracy charge in such circumstances. Instead, the cases are merely concerned with whether it is *permissible* for the Prosecution to prefer a single conspiracy charge:

> (a) In *Swamirathnam v State of Madras* AIR 1957 SC 340 ("*Swamirathnam*"), several accused persons were convicted of, among other offences, a conspiracy to cheat members of the public. One of the appellants argued on appeal that there had been a misjoinder of charges

93 1AWS at para 24.

because several distinct conspiracies had been grouped together and tried at one trial. This was rejected by the court, which held that the charge, *as framed*, only disclosed a single conspiracy although it was spread over the course of several years. The conspiracy only had one object, which was to cheat members of the public. The fact that others joined the conspiracy and that incidents of cheating occurred in pursuance of the conspiracy did not split the single conspiracy into several conspiracies. In our judgment, *Swamirathnam* does not assist the Appellants because the court only had to consider whether it was *permissible* for the Prosecution to prefer a single conspiracy charge in that case. The court did not consider whether the Prosecution *could only* bring a single conspiracy charge in such a situation. In any event, we observe that the conspiracies alleged in the present case differ from that in *Swamirathnam*. The latter entailed a single conspiracy with a single object, which was to cheat members of the public by employing the same *modus operandi*. In contrast, the conspiracies in the present case differ in various respects. For instance, they concern agreements to commit different offences, to deceive different financial institutions, and to manipulate different BAL counters.

(b) *Srichand K. Khetwani v State of Maharashtra* AIR 1967 SC 450 ("*Khetwani*") concerned an appellant who had been convicted of being a party to a single conspiracy pursuant to which several co-conspirators were to abuse their official positions to issue import licenses in the names of bogus applicants in order to obtain a pecuniary advantage. Further to the conspiracy, several licenses were issued to fictitious companies. The appellant contended that the charge was defective because it alleged a single conspiracy when there were, in truth, eight conspiracies which related to the issuance of licenses to each fictitious

company. The court rejected this argument and concluded that, based on the charge *as framed*, the conspiracy was a general conspiracy to issue licenses in the names of fictitious firms for pecuniary benefit. The conspiracy, *as framed in the charge*, was not to enter into conspiracies with each bogus firm for the benefit of that firm alone. The fact that eight licenses had been issued to fictitious companies did not by itself transform a single conspiracy into eight different conspiracies, each with respect to the licenses issued to a particular company. Again, *Khetwani* does not stand for the proposition that in such a situation, it is *only* permissible to file a single conspiracy charge. Instead, the court was concerned with whether it was *permissible* for the Prosecution to frame the conspiracy charge in the way that it did.

Whether the Judge assumed the existence of the individual conspiracies from the existence of the Scheme

226 Turning to their second line of argument, the Appellants further contend that while the Judge recognised that the Prosecution could not assert that the individual conspiracies for the Conspiracy Charges had been established solely on the basis that those charges pertained to the way in which the broad Scheme had been executed, the Judge failed to apply this principle in finding that the individual conspiracies were established.

227 We do not accept this. The Judge was cognisant of the fact that the Prosecution had chosen to allege the existence of discrete conspiracies for each charge, and that the Prosecution could not just assert that these conspiracies had been proven once the overarching Scheme had been proven on the basis that the Conspiracy Charges pertained to the manner in which the Scheme had been executed (see GD at [977]–[978]). On the contrary, the Judge cautioned herself

against doing this before finding that the individual conspiracies were established. We illustrate this with reference to the following examples.

228 In respect of the False Trading Charges, the Judge explicitly recognised that it was not sufficient that the overarching Scheme existed and that the Appellants controlled the Relevant Accounts; she then examined each False Trading Charge to determine whether the "slightly narrower *false trading* conspiracies could be inferred" [emphasis in original] (see GD at [895]). For instance, in respect of the 1st charge, the Judge went on to examine the extent to which the Relevant Accounts had been used to trade in the relevant security (Blumont shares) and the fact that the Relevant Accounts had substantially increased their shareholding of Blumont shares for the specified period in order to infer the existence of the specific conspiracy for the first charge (see GD at [897]–[899]). This granular analysis is also exemplified by her treatment of the 8th charge, where she recognised that unlike some of the other False Trading Charges, the Relevant Accounts' Liongold shareholding *did not* substantially increase during the specified period (see GD at [906]). However, she was of the view that such a conspiracy could nonetheless be inferred because the Relevant Accounts held a substantial amount of LionGold shares and had been engaged in wash trades of LionGold shares during that period (see GD at [907]). Hence, the Judge did not just assume, from her finding of the existence of the Scheme, that the False Trading Charges were made out. Rather, she was alive to the Prosecution's burden to separately establish the individual conspiracies underlying the False Trading Charges and carefully considered the factual nuances specific to each of these individual conspiracies.

229 The Judge treated the Deception Charges with the same degree of rigour. Indeed, she acquitted the Appellants of several of these charges on the basis that there was insufficient evidence to show that the accounts in question were

controlled by the Appellants (see GD at [1074]) and because the accounts in some of the Deception Charges had been concealed by the First Appellant from the Second Appellant (see GD at [1107]–[1110]).

230 These examples demonstrate that, contrary to the Appellants' submission, the Judge was cognisant of the fact that she had to separately infer the existence of each distinct conspiracy, and that she did not rely solely on the existence of the Scheme to draw these inferences. We therefore reject the second aspect of the Appellants' argument. Having dealt with the preliminary issue, we consider the Appellants' substantive arguments in relation to the Conspiracy Charges.

The False Trading and Price Manipulation Charges

231 In respect of the False Trading and Price Manipulation Charges, the Appellants focus their arguments on the Judge's factual findings. Given our analysis and conclusion on the factual contentions raised by the Appellants above, we see no reason to disturb their convictions on both the False Trading and Price Manipulation Charges.

The Deception Charges

232 The Deception Charges alleged that the Appellants were parties to a criminal conspiracy to engage in a practice which was likely to operate as a deception upon various FIs, in connection with the purchase or sale of shares in BAL. The practice in question was the concealment of the Appellants' involvement in the orders and trades of the BAL shares. The Judge ultimately convicted the Appellants of 153 of the 161 charges brought by the Prosecution (see GD at [1111]). She also concluded that the underlying offence of deception was committed in respect of all 153 charges. To this end, representatives from

each of the nine local FIs "gave evidence that their respective FIs had not been aware that the [Appellants] were the ones instructing trades in the Relevant Accounts held with them" (see GD at [513]). Similarly, representatives of the foreign FIs testified that they were unaware of the Appellants' role and involvement. It was thus clear to the Judge that the Appellants' control of the Relevant Accounts was successfully concealed from the FIs.

233 On appeal, the First Appellant raises two main arguments in relation to the Deception Charges. First, he claims that there was no deception where the Appellants were permitted by the Relevant Accountholders to use their accounts. Second, he submits that there was no deception because the TRs of the relevant FIs were aware of the Appellants' involvement. We address each of these arguments in turn.

234 The first argument concerns those Deception Charges which involve the Appellants relaying instructions *through* the Relevant Accountholder or authorised person. The First Appellant submits, in respect of these charges, that there was no deception because "the trading instructions were given by authorised persons",[94] who were willing to allow their accounts to be used by the Appellants as they wished. The First Appellant contends that the FI is not concerned to look beyond the authorised person, because "how an accountholder decides the trade is not relevant to the FI".[95]

235 This submission is without merit. In the first place, as the Deception Charges make clear, the victims of the deceptions were not the authorised persons but the FIs, since it stipulates that the Appellants "agreed to engage in

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94 1AWS at para 165.

95 1AWS at para 178.

a practice which was likely to operate as a deception upon" the relevant *FI*. It is therefore entirely irrelevant that the authorised persons may have been aware of or permitted the Appellants' use of their accounts.

236 Further, the First Appellant's claim that the FIs did not need to look beyond the authorised person was squarely contradicted by the evidence of the representatives of multiple FIs. These witnesses testified that, even if the individual giving instructions was the accountholder or an authorised representative, concerns would remain about the possibility of nominee trading or other illicit trading activities. For instance, the evidence of a representative of Coutts & Co Ltd was that it "would not approve an application to open an account if [it] knew that the applicant was acting as a nominee or proxy for someone else … [as it] would effectively mean allowing unknown persons to open and/or control Coutts accounts (through their nominees or proxies) without having gone through any of [the FI's] checks and controls". These same principles would apply to authorised persons.[96]

237 Indeed, as the Judge rightly observed, by giving indirect instructions through authorised persons, the manner by which the Appellants "concealed their involvement … was arguably more insidious than in cases involving direct instructions to the TRs", because this "cloaks the potential discovery of wrongdoing behind a veneer of legitimacy" (see GD at [975] and [1071]). If anything, where instructions are given through authorised persons, it would be even harder for FIs to detect the involvement of third parties utilising the accounts for improper purposes.

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[96] ROP (Vol 108) at p 26250, paras 18–19.

238 We turn to the First Appellant's second claim, namely that there was no deception perpetuated on the FIs because their TRs were aware that the Appellants were giving instructions on behalf of the Relevant Accountholders.[97] He argues that since FIs are "corporate bodies and act through individuals", the TRs in these cases were the individuals through whom the FIs acted. Since the TRs "knew that the [First Appellant] gave the orders", the FIs could not be said to have been deceived.[98]

239 The Judge, in rejecting this argument, held that the TRs' knowledge could not be attributed to their respective FIs. First, the Judge reasoned that the TRs, as agents of their FIs, were not acting within the scope of their actual or ostensible authority when they took instructions from the Appellants (either directly or indirectly) because the Appellants had not been properly authorised in writing to give such instructions (see GD at [995]). Second, the Judge was also of the view that the FIs should not be deemed to possess their TRs' knowledge because there was no principle, rule or policy which could justify saddling the FIs with the knowledge of the TRs (see GD at [1002]). We agree with her conclusion for broadly the same reasons.

240 First, it cannot seriously be suggested that the TRs – in accepting instructions from the Appellants *without* proper formal authorisation, and in breach of the Singapore Exchange Securities Trading Limited Rules (the "SGX-ST Rules") (that were in force at the time) which required written authorisation for third-party trading – had acted within the scope of their authority. As the Prosecution points out, by not obtaining written authorisation, the FIs were at

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97 1AWS at paras 167–168.

98 1AWS at paras 167–168 and 174–177.

serious risk of regulatory sanctions.[99] We agree. It cannot be within the TRs' actual authority (whether express or implied) to accept third-party trading instructions without formal authorisation because it is inconceivable that the FIs would "pas[s] a resolution that expressly gives consent to the [TRs] to act on its behalf to" breach the SGX-ST Rules, nor would flouting the SGX-ST rules "fall within the usual scope of [the TRs'] office" (see *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 ("*Skandinaviska*") at [30]). In fact, given that a failure to obtain formal written authorisation before accepting third-party instructions would cause the FIs to be in breach of the SGX-ST Rules, it is clear that the TRs' decision to do precisely that could not have been in the interests of their principal, the relevant FI. Such acts by the agent that go directly against the principal's interests "will not be within the scope of the express or implied grant of actual authority" (*Skandinaviska* at [46]). For much the same reasons, apparent or ostensible authority also cannot be made out here, since it cannot reasonably be suggested that it would be within the scope of an agent's authority to cause its principal to contravene regulations such as the SGX-ST Rules (*Skandinaviska* at [80]).

241 Second, even if the TRs were acting within their actual or ostensible authority (which they were not), the principles of attribution would nonetheless be inapplicable to impute their knowledge to the FIs. In *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329, we observed that an individual's knowledge or state of mind should not be attributed to a company "where the company is itself the target of [the] agent's … dishonesty" (at [68]–[70]). We concluded that there was no rule of attribution

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[99] PCWS at para 852.

applicable where the company, against which knowledge of a director is being attributed, is a victim of the director's wrongdoing.

242 Here, the FIs are victims of their agents' (namely, the TRs') dishonesty and their flagrant breaches of the SGX-ST Rules. As the Judge observed, the absence of *any* principle, rule, policy or logic justifying attribution is especially significant in this case because the individuals seeking to rely on it (namely, the Appellants) are not innocent third parties but rather individuals who are complicit in the breaches of duty by those agents (see GD at [1000]–[1002]). Both the Appellants must have been aware that they needed express formal authority from *both* the Relevant Accountholder and the FI to instruct trades for another person's account and sought to subvert this requirement. This is driven home by the fact that the First Appellant was an undischarged bankrupt who could not lawfully have transacted in his own name, and the Second Appellant had, on one occasion, responded to a TR who requested for her to complete certain third-party authorisation forms by threatening to take her business to another brokerage (see GD at [988]). To attribute the TRs' knowledge to the FIs in such circumstances would be to create a perverse incentive for future offenders to work with similarly compromised agents to deceive and defraud their principal. This cannot be correct.

243 We therefore uphold the Appellants' convictions on the Deception Charges.

The Cheating Charges

244 The Cheating Charges alleged that the Appellants had conspired to induce Goldman Sachs International ("Goldman Sachs") and IB to provide more than $820m in margin financing in relation to six Relevant Accounts. The

Appellants were said to have done so by dishonestly concealing the fact that they were engaging in a course of conduct, at least one purpose of which was to create a false appearance in the market for BAL securities. Two of the Cheating Charges pertained to Relevant Accounts held with Goldman Sachs while the other four pertained to Relevant Accounts held with IB. The Judge convicted the Appellants of all six Cheating Charges (see GD at [1115]–[1157]).

245 The First Appellant's primary submission on appeal is that, "for an omission to amount to deception, there must either be a duty to act in a particular manner or to state a particular fact, or circumstances where silence is in itself a statement".[100] He argues that, because none of these conditions were satisfied in the present case, the Appellants cannot be said to have deceived Goldman Sachs and IB. The Cheating Charges are therefore said not to have been made out.[101]

246 We reject this submission, albeit for somewhat different reasons from those provided by the Judge. The Judge held that it was not necessary, where a deception is brought about by omission, for an accused person to be under a separate legal obligation to disclose the relevant information (see GD at [1120]–[1123]). The Judge was therefore satisfied, on the facts, that a deception had indeed been practised on Goldman Sachs and IB. In her view, it could not seriously be doubted that it was relevant and material for a bank to which shares are being pledged as collateral, to know that those shares were the subject of manipulative trading practices (see GD at [1128]–[1130] and [1155(a)]).

247 However, as much as what the Judge held was correct, we do not even accept the premise that the Appellants were guilty only of omitting to disclose

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100 1AWS at para 229.

101 1AWS at paras 222, 229 and 238.

certain facts to Goldman Sachs and IB. We stress the fundamental point that the Appellants had held out the BAL securities to Goldman Sachs and IB *as collateral for margin financing*. This could only have been understood as a positive representation that these BAL securities were legitimate collateral for the facilities they were to secure. In our view, illus (*e*) to s 415 of the Penal Code is germane to the point. It reads:

> *A*, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives *Z*, and thereby dishonestly induces *Z* to lend money. *A* cheats.

248 To say that A is concealing from Z the fact that the articles in question are not diamonds, misses the sting of the situation, which is that, by *pledging* these articles *as diamonds*, A makes a positive representation to Z about the nature of these articles. Because he knows that this representation is false, A practises a deception on Z. Similarly, in the present case, the Appellants represented to Goldman Sachs and IB that the BAL securities were legitimate collateral for margin financing despite knowing that the BAL securities were the subject of manipulative trading practices. In so doing, the Appellants practised a deception on those FIs. Before us, Mr Sreenivasan questioned whether an offence would be committed if a party had pledged shares to a bank without disclosing, despite having reason to believe, that the prices of those shares was about to fall. As we explained to Mr Sreenivasan, this analogy was inapposite because we are not concerned with what may be described as market risks. On the Prosecution's case, the Appellants had pledged the BAL securities knowing that these securities were *then* the subject of *ongoing* manipulative trading practices for which the Appellants were themselves responsible.

249 The First Appellant also submits that even if the Appellants had practised a deception on Goldman Sachs and IB, those FIs cannot be said to

have been deceived or induced to provide margin financing. This, he says, is because Goldman Sachs and IB had conducted their due diligence and had satisfied themselves that all desired conditions were met before extending financing.[102]

250 This was also advanced before the Judge and we agree with her reasons for rejecting it. The Judge accepted the evidence of Goldman Sachs and IB through their representatives that they would not have provided margin financing to the Relevant Accounts had they known that BAL shares were the subject of manipulative trading practices (see GD at [1126(d)], [1131]–[1133] and [1155(b)]). It is entirely irrelevant that without such deception and on an entirely different set of factual premises, Goldman Sachs and IB might have arrived at such a decision.

251 We therefore uphold the Appellants' convictions on the Cheating Charges.

Further arguments and some observations specific to the Second Appellant

252 We now address two further submissions specific to the Second Appellant's convictions.

253 First, at various points in her reasoning, the Judge drew adverse inferences against the Second Appellant from her election not to give evidence in her defence (see, for instance, GD at [284]–[287], [307], [530] and [537]). Broadly speaking, the Judge drew these inferences where the facts were, in her view, such as to call for an explanation from the Second Appellant.

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102 1AWS at paras 224, 230 and 245–248.

254 The Second Appellant submits that the Judge was wrong to draw any adverse inferences against her. She first argues that an adverse inference should not be indiscriminately drawn in every case without consideration of all the circumstances. More specifically, she submits that no adverse inference should be drawn if a witness's election not to give evidence has been satisfactorily explained and is attributable to reasons other than the merits of the case or the issue in question.[103] In relation to the present case, the Second Appellant contends that she had adequately accounted for her election not to give evidence. Before the Judge, the Second Appellant had explained that, in view of the complexity of the case against her, "it would … be unfair and prejudicial if [she] were to take the stand without legal representation".[104] The Second Appellant submits that this was a sufficient explanation for her election,[105] especially because the Conspiracy Charges were "defective and confusing" by reason of their duplicity.[106] The Judge should have accepted this explanation and declined to draw any adverse inferences from her election.

255 We rejected this submission at the hearing on 3 March 2025. The Second Appellant did not raise any complaint against the Conspiracy Charges when she was called upon to make her election. She asserted, on the contrary, that "all the evidence has already been out there, questioned and rebutted by my lawyers".[107] In our view, her claim that she was confused by the Conspiracy Charges is nothing more than an afterthought. In any event, as we have already explained,

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103 2AWS at paras 122–123.

104 ROP (Vol 46) at p 81–82, Transcript on 11 May 2021 at p 5, line 3 to p 6, line 2.

105 2AWS at paras 125–127 and 136–137.

106 Second Appellant's Petition of Appeal dated 27 August 2024 ("2APOA") at para 20; 2AWS at paras 158–159.

107 ROP (Vol 46) at p 81, Transcript on 11 May 2021 at p 5, lines 19–21.

the Conspiracy Charges were not duplicitous or otherwise legally defective. This aspect of the Second Appellant's explanation therefore falls away.

256 More generally, the obligation of a witness of fact in every case, however complex, is simply to give evidence on issues of fact within his or her knowledge.[108] The Second Appellant claimed that, because she was not legally trained, she was unable without legal representation to understand the implications of the "variety of legal penal sections" engaged by the "multiple charges" against her.[109] The short answer is that the Second Appellant would not and could not properly have been asked to opine on these or other matters of law had she taken the stand. In line with this, even if she had been represented at the relevant time, had she given evidence, this would not have been with the benefit of legal advice and consultation. In the premises, the Second Appellant has not satisfactorily explained her election not to give evidence. Accordingly, the Judge was entitled at the appropriate junctures to draw an adverse inference from this election.

257 The Second Appellant is also plainly wrong to allege that the Judge had drawn adverse inferences against her "in relation to the control of all 189 trading accounts" [emphasis in original].[110] On the contrary, the Judge was careful to avoid an over-broad approach in drawing these adverse inferences. This is most clearly seen in the following extract (see GD at [287]):

> In any event, it was clear that the Second [Appellant's] arguments against an adverse inference being drawn from her silence were general ones. She was seeking to avoid the 'ultimate adverse inference' that she was guilty of the offences charged (*Oh Laye Koh* at [14]). Although I did not agree with her

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108 PCWS at para 1053.

109 ROP (Vol 46) at p 81, Transcript on 11 May 2021 at p 5, lines 11–16.

110 2APOA at para 21.

> arguments, I did not think that such a broad adverse inference was appropriately drawn in the present case. There were simply too many issues underlying the False Trading and Price Manipulation Charges, and the Second [Appellant's] silence alone could not be said, so generally, to lead to the conclusion that every one of those issues ought to be decided against her. A more specific and targeted approach was desirable, and it was the one I took.

258 To further illustrate the point, the Judge did draw an adverse inference against the Second Appellant in concluding that she had exercised control over Mr Chen's and Mr Goh Hin Calm's Relevant Accounts (see GD at [307]). Conversely, in respect of Mr Lau's Relevant Account, the Judge noted the substantial volume of communications between the Second Appellant and Mr Lau but "did not think that it was necessary to draw an adverse inference against [the Second Appellant]", although she noted that this did not make any analytical difference because the Second Appellant's election had deprived her of an opportunity to present an account of the facts (see GD at [322]).

259 In short, the Judge was entitled to reject the Second Appellant's explanation for her election not to give evidence. She was also entitled to draw an adverse inference from that election where the facts were such as to call for an explanation from the Second Appellant. In doing so, the Judge adopted a careful approach, which we see no basis to fault.

260 Second, as we have noted at [201] above, in convicting the Appellants of the Conspiracy Charges, the Judge had regard to the Witness Tampering Charges which, in her view, "supported the more general conclusion that the [Appellants] had indeed entered into a general conspiracy to manipulate the markets for and prices of BAL shares". This was because "the very fact that [the First Appellant] considered it necessary to obstruct the investigations suggested that there was something unlawful to be uncovered" (see GD at [886]).

261 The Second Appellant now challenges this aspect of the Judge's reasoning. In her submission, as the Witness Tampering Charges concerned the First Appellant alone, they could not have had any bearing on her own guilt for the Conspiracy Charges. Accordingly, the Judge was wrong to draw inferences against both Appellants from the Witness Tampering Charges.[111] Indeed, the Second Appellant goes so far as to submit that the Judge should not have jointly tried the Witness Tampering Charges, which undermined the Judge's ability to "judicially consider unbiasedly" the Conspiracy Charges against her.[112]

262 This argument is without merit. As we observed at the preliminary hearing on 3 March 2025, no objection was taken during the proceedings below to the joint trial of the Witness Tampering Charges. On the contrary, the Second Appellant's counsel had expressly confirmed at the commencement of the proceedings below that the Second Appellant had no objection to a joint trial with the First Appellant,[113] which would necessarily have entailed a joint trial of the Witness Tampering Charges. It is much too late for the Second Appellant to raise this issue now.

263 The Second Appellant also initially advanced an allegation of bias against the Judge in tandem with her objection to the joint trial of the Witness Tampering Charges. This was a distinct and additional allegation of bias from that raised in connection with the Judge's handling of the Prosecution's application to amend the Conspiracy Charges (see [56]–[63] above). As noted at [261] above, the Second Appellant submitted that, by jointly trying the Witness Tampering Charges, the Judge deprived herself of the ability to

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111 2AWS at paras 165 and 167–169.

112 2APOA at paras 44–48; 2AWS at para 166.

113 ROP (Vol 1) at p 109, Transcript on 25 March 2019 at p 7, lines 21–25.

"judicially consider unbiasedly" the charges against the Second Appellant.[114] Before us, Mr Sivananthan similarly asserted that the Judge's findings on the Witness Tampering Charges had prejudiced her mind against the Second Appellant. This allegation is utterly spurious and we dismiss it out of hand. It is premised on the absurd expectation that the Judge should approach each of the factual issues in the present case with an empty or vacant mind. Given the interplay between the various factual issues, the Judge was entitled in her evaluation of the evidence to form certain provisional views and to consider their interactions with other factual issues. There is no basis at all for suggesting that she had approached this exercise with a closed mind. While it may be open to the Second Appellant to challenge the inferences the Judge drew from the Witness Tampering Charges, it does not follow in any way from this that the Judge was biased against her. When we made these observations during the hearing, Mr Sivananthan eventually withdrew the allegation of bias against the Judge.

264 In our judgment, the Judge was entitled to draw inferences against both Appellants from the Witness Tampering Charges. Although the Witness Tampering Charges were brought against the First Appellant alone, it is significant that he had attempted also to minimise the Second Appellant's involvement in the Scheme. We entirely agree with the Judge's reasoning as follows (see GD at [886]):

> … However, the very fact that the First Accused considered it necessary to obstruct the investigations suggested that there was something unlawful to be uncovered. In fact, three of the charges (see [1213], [1236] and [1244]) alleged that the First [Appellant] had tampered with Mr Gan with a view to diverting suspicion away from the *Second* [Appellant]. If the Second [Appellant] had not been involved in any of the trading activities

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114 2APOA at paras 46 and 48.

> which led to the Crash, there would be no need for him to seek to misdirect the authorities from her.
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> [emphasis in original]

265 The three charges referred to by the Judge concerned requests by the First Appellant to Mr Gan to: (a) falsely inform the CAD that a certain Malaysian telephone number was not used by the Second Appellant, and that she did not instruct the conduct of trades in the securities of BAL through the accounts of Mr KY Lim and Mr Fernandez; (b) falsely inform the MAS that both Appellants were not involved in the trades in the securities of BAL through the accounts of Mr KY Lim and Mr Fernandez; and (c) feign ignorance to the investigating authorities as to why the Second Appellant and Mr Neo Kim Hock were paying for trades in the securities of BAL through the accounts of Mr KY Lim and Mr Fernandez. The obvious question arising from all this was why the First Appellant had felt the need to misdirect the authorities not only from himself but also from the Second Appellant. In our view, absent a reasonable alternative explanation, the Judge was entitled to infer from the Witness Tampering Charges that the Second Appellant too was involved in the Scheme. Even so, we emphasise that this was not the only or even the primary basis on which the Judge convicted the Second Appellant on the Conspiracy Charges.

266 We should finally say that Mr Sivananthan eventually informed us, in the course of his oral reply submissions, that the Second Appellant was "not arguing against the *actus reus* of whatever took place and whatever [she] has done". When we sought to clarify this point, Mr Sivananthan elaborated that the Second Appellant did not deny having engaged in "the various acts attributable to her" and accepted that she "had given instructions or had opened accounts and so forth". The Second Appellant only denied having had the requisite *mens*

rea on the basis that she was unaware of the "game plan" and had simply followed the First Appellant's instructions blindly and unthinkingly.

267 However, as Mr Sivananthan candidly accepted when we put this to him, the obvious difficulty with such an argument was that the Second Appellant had elected not to give evidence during the trial below. In the circumstances, she was in no position to advance any claim about her state of knowledge at the relevant time. In particular, she was in no position to offer an alternative explanation for the objective evidence which, to put it at its lowest, strongly pointed to the conclusion that she was possessed of the requisite *mens rea*. Key amongst this was the e-mail sent by the Second Appellant to the First Appellant on 6 February and 19 May 2013 titled "compromised… Fw: All guns to the battlefield" (see GD at [774]–[776]).

268 For the reasons set out earlier (see [135] above), we agree with the Judge that this e-mail shed light on the inner mechanics of the Appellants' relationship and the Second Appellant's state of mind (see GD at [774]). In particular, it plainly contradicted the Second Appellant's assertion that she was unaware of the First Appellant's "game plan". The Second Appellant was in no position to offer an alternative interpretation of this e-mail, or more generally to deny having been possessed of the requisite *mens rea*, when she elected not to give evidence in her defence. In the end, Mr Sivananthan was left to acknowledge that he had little to say on liability and that his submissions would mainly address sentencing. This left us with an even dimmer view of his repeated and ill-advised allegations of bias against the Judge. It remains to be seen how the manner in which Mr Sivananthan chose to conduct the Second Appellant's case in CCA 41 improperly, with persistent, irresponsible, baseless and mischievous allegations of judicial impropriety, and without any regard to the facts, which was a course he presumably took on his client's instructions, will bear on our

consideration of the remaining issue of sentencing as far as the Second Appellant is concerned.

Conclusion

269 For these reasons, we dismiss the Appellants' appeals against their convictions and will deal separately with the appeals against their sentences.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Andrew Phang Boon Leong
Senior Judge

Narayanan Sreenivasan SC and Lim Wei Liang Jason (Sreenivasan Chambers LLC) for the appellant in CA/CCA 40/2022;
Sivananthan Nithyanantham (David Nayar and Associates) for the appellant in CA/CCA 41/2022;
Nicholas Tan Beng Leong, David Koh Yi-Da, Regina Lim Siew Mei, Michelle Tay, Yee Jia Rong and Louis Ngia Jin Liang (Attorney-General's Chambers) for the respondent.