AMS Securities (S) Pte Ltd v Thio Gwan Choon
[2001] SGHC 35

Case Number : Suit 22/2000/Z

Decision Date : 23 February 2001

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Alvin Yeo SC and Tay Peng Cheng (Wong Partnership) for the plaintiffs; Quek Mong Hua and Julian Tay (Lee & Lee) for the defendant

Parties : AMS Securities (S) Pte Ltd — Thio Gwan Choon

JUDGMENT:

Cur Adv Vult

1. In this judgment:

(a) an affidavit of evidence-in-chief will be referred to as AEIC, a reference to the notes of evidence will start with NE followed by the page number and the alphabet reference,

(b) I will refer to high net worth individuals as HNWIs,

(c) I will refer to the Plaintiffs (written) Closing Submissions as PCS and the Defendants as DCS.

BACKGROUND

2. This is a claim by AMS Securities (S) Pte Ltd (Amsteel Singapore) against its former chief executive officer (CEO) Thio Gwan Choon who was also an executive director, for losses sustained by it arising from transactions in 1997 of certain clients of Amsteel Singapore. The losses were substantial and Amsteel Singapores claim against Mr Thio as stated in its Statement of Claim was for about RM98.5m. In the course of the trial, this amount was reduced by about RM540,000.

3. Amsteel Singapore was part of a group of securities companies collectively known as the Amsteel Securities group. It was incorporated in January 1996 as a 100% wholly owned subsidiary of Amsteel Securities Philippines Inc, which was in turn wholly owned by Amsteel Holdings Philippines Inc. This company was in turn wholly owned by Amsteel Capital Holdings Sdn Bhd (Amsteel Capital), which operates as the headquarters of the Amsteel Securities group. This group was part of the Lion group.

4. The matters stated in paras 5 to 9 below are from evidence from one Lee Tak Suan. Mr Lee was the Group President of the Amsteel Securities group. I will refer to him also as GP.

5. GPs experience with the stockbroking business started when he became a shareholder of a stockbroking company in Kuala Lumpur in 1973. In 1983, he sold out his stake and left this industry for five to six years. Thereafter he joined a broking house in Thailand belonging to Standard Chartered Bank. He worked there for three and a half years and ended his stay there as Managing Director. He came back to Malaysia in 1993 and joined the Lion group where he became the General Manager of the Malaysian stockbroking arm ie. Amsteel Securities Malaysia Sdn Bhd (ASMSB). Six to eight months later in 1993, he was appointed as ASMSBs Managing Director.

6. The objective of the Amsteel Securities group was to build a regional securities group specialising in securities in the Far East, and providing a one-stop financial services centre encompassing securities dealing, asset management, and corporate finance to both retail and corporate clients. For that reason, securities companies were set up in Malaysia, Hong Kong, Philippines, Indonesia, Bangkok and London as well as in Singapore.

7. Amsteel Singapore was incorporated with the primary purpose of carrying on business as stock, shares and bond brokers and dealers, with an authorised capital of S$20m, and paid up capital of S$5m.

8. The role of Amsteel Singapore was to provide a strategic link to the Amsteel Securities groups international network and to facilitate transactions in securities quoted on various stock exchanges in which the companies within the Amsteel Securities group operated. The clients whom Amsteel Singapore was targeting were mainly European, North American, East and South East Asian based financial or investment investors and HNWIs, as well as investors in Singapore who wished to transact in securities quoted outside Singapore.

9. In the initial stages, the plan was for Amsteel Singapore to focus on transactions in securities quoted on the Kuala Lumpur Stock Exchange (KLSE). Amsteel Singapore would offer investors the direct option of transacting securities quoted on the KLSE, as opposed to trading in CLOB companies quoted on the Singapore Stock Exchange (SES). This would be done through investors opening trading accounts with Amsteel Singapore, who would then trade through their own corporate trading accounts with Malaysian firms having a licence to deal in securities quoted on the KLSE.

10. A Mission Statement prepared by Mr Thio on 9 April 1997 states:

> Mission Statement
>
> Maximise shareholders value through the provision of high quality broking services primarily on Malaysian shares.
>
> Medium term goals: (2-3 years)
>
> 1) Secure the largest market share of Malaysian trades originating from Singapore.
> 2) Establish the largest (*sic*) member of independent dealers for a foreign broking firm.
> 3) .
> 4) .
> 5) .
>
> Short term goals (1-2 years):-
>
> 1) Establish the most competitive incentive system to attract productive dealers & efficient support staff. (Outline in Competitive analysis, Marketing Plan).
> 2) .
> 3) .
>
> [Emphasis added.]

11. GP agreed that he had approved the Mission Statement (NE 27A). However he denied that the primary purpose of Amsteel Singapore was to trade in Malaysian shares On KLSE (NE 27B). I find that that was Amsteel Singapores primary purpose or at least initially so as admitted by GP (see para 9 above).

12. ASMSB was the first securities company owned by the Lion group. When the group bought the company in about 1991, it

was already an operating company.

13. According to GP (at NE 9E), ASMSB had had a very bullish 1993 and 1994 and the Lion group was emboldened to become a major player in the securities industry. His vision was to develop this business into a regional business.

14. Amsteel Singapore applied for and was granted a non-member dealers licence by the Monetary Authority of Singapore on 12 May 1997, which licence was valid for one year. As a non-member dealer, Amsteel Singapore was allowed to deal only in securities not listed or quoted on the SES. GP was a director of Amsteel Singapore as well as the other regional securities companies in the group.

15. Mr Thio was a graduate from the National University of Singapore in 1985. He had an accounting degree. After his graduation, he joined Citibank NA as a Management Associate. In 1986, he was promoted to be Operations Manager of a Citibank futures broking subsidiary.

16. In 1988, he was headhunted to join Lim & Tan Pte (Lim & Tan) as its Operations Manager. Subsequently he assumed the role of a dealer cum manager of business development in Lim & Tan. In 1993, he was an independent dealer, servicing both retail and institutional clients.

17. In 1997, he has headhunted by T.A.O. Group (Malaysia) Sdn Bhd (T.A.O.) to join Amsteel Singapore as its CEO.

18. Mr Thio was interviewed by GP and the Regional Operations Manager Choong Boon Pin. On the report from T.A.O. about Mr Thio, Mr Choong wrote, inter alia, the following: Obvious marketing man. Very enthusiastic.

19. GP agreed with this observation (NE 25A).

20. The terms of Mr Thios employment were stated in a letter dated 21 February 1997 from Amsteel Capital. The terms of employment provided, inter alia, that he was to report directly to GP.

21. GP described some of the duties of Mr Thio (at NE 37) as follows:

> Q What other duties were specifically given to Defendant?
>
> A He was the CEO of the Singapore office. Given our philosophy of developing a regional group, his task was very entrepreunial. We had provided support by exposing him to office operations. He was tasked to recruit dealers and remisiers. He was tasked to manage the business with risk adverse policies. Amsteel wanted to grow in the region and be a significant player in the long term.

22. Mr Thios employment with Amsteel Singapore commenced on or about 28 May 1997. Prior to that, in April 1997, he attended an orientation session at the office of Amsteel Capital.

23. Various other persons were employed for Amsteel Singapore:

(a) Lim Kim Siah - Operations Manager

(b) Alex Chong How Keit - Finance & Administration manager

(c) Tan Chin Poh - Research Manager.

24. Mr Thio said that the Credit Committee of Amsteel Singapore comprised these three managers but a witness Mr Anthony Lye Chee Fei said it was made up of these three and headed by Mr Thio. From the documentary evidence eg. DSB 59, I find that the Credit Committee comprised these three managers.

25. The losses which are the subject of the claim by Amsteel Singapore arose from trades done by four groups of clients, as classified by Amsteel Singapore, namely:

(a) the Dato Jerry Goh group (comprising five individuals),

(b) the Tai Kar group (comprising five individuals),

(c) Sim Joo Hock and Tan Poh Choon, and

(d) Tan Hun Leong @ Tan Han Kiang.

26. The first two groups were serviced by Mr Lye and the last two groups were serviced by Christian Yuei-Chen Wu.

27. Mr Lye was employed as Amsteel Singapores Associate Director - Independent Dealer on 22 July 1997.

28. He obtained a Bachelor of Business in Business Administration degree from Melbourne University. He started work in Vickers Ballas in about 1991 as a dealer.

29. I would digress briefly to point out that the term dealer is not used consistently.

30. Under the Securities Industry Act (Ch 289) (the Act) a dealer refers to the stockbroking company.

31. However, in industry parlance, a dealer refers to an individual who is employed by the stockbroking company to deal in securities. In this judgment, the term dealer is used in this sense. A dealer is different from a remisier who is not employed, but is engaged, by the stockbroking company. The term remisier is not used in the Act.

32. Both a dealer and a remisier, as understood by the industry, come within the definition of a dealers representative in the Act.

33. Coming back to My Lye, he was seconded to London, after one and a half years, to set up an office there and was there for also about one and a half years. He returned to Singapore in about 1994 or 1995. He then joined Ong & Company Private Limited (Ong & Company) as a director of a dealing team for one and a half to two years and then joined Amsteel Singapore. Therefore, by the time he joined Amsteel Singapore, he had about six years experience as a dealer. He was doing well in Vickers Ballas and in Ong & Company and he admitted that he was one of the top dealers of Ong & Company. It must have been quite a coup for Amsteel Singapore to have obtained his services.

34. Mr Wu was employed as a dealer by Amsteel Singapore about one month after Mr Lye on 26 August 1997. He was highly recommended by one Chia Seng who was at that time the head of a Citibank unit which was one of Amsteel Singapores valued clients.

35. Mr Wu graduated in 1992 from the University of Southern California with a Bachelor of Arts, Economics degree. Prior to joining Amsteel Singapore, he worked as a trading executive in two companies and a project director in a company in China.

36. Amsteel Singapore commenced operations on 28 July 1997. From August to October 1997, Amsteel Singapore was making profits, contrary to the expectation of GP, as GP had expected Amsteel Singapore, as a new start up, to start by making losses initially.

37. In November 1997, Amsteel Singapore made huge losses in the sense that some of its clients suffered huge losses for their purchases of securities for which they did not pay Amsteel Singapore.

38. The losses arose from transactions of the four groups of clients which I have mentioned above.

39. According to Mr Thio, the losses arose because of the severity of the regional economic crisis which hit Amsteel Singapore and other stockbroking houses from 20 November 1997. His position was that the severity of the crisis was not reasonably foreseeable.

40. According to Amsteel Singapore, the losses were caused by Mr Thios failure to comply with certain specific requirements and directions of the Amsteel Securities group and Mr Thios failure to exercise due diligence and to act in good faith, although Amsteel Singapore accept that the 1997 regional economic crisis was also a cause of the losses.

41. As a result of the losses, ASMSB did not renew its non-members licence after the first year.

WITNESSES AND INVESTIGATION REPORT

42. Amsteel Singapore relied on four witnesses:

(a) GP (PW1)

(b) Mr Loo Peng Hock (PW2)

(c) Mr Lye (PW3)

(d) Ms Tan Chitt Loo Elsie (PW4)

I have already mentioned something about GP and Mr Lye.

43. As for Mr Loo, he started work in 1981 in Public Bank Berhad in Malaysia. In 1994 he worked in OSK Securities Sdn Bhd. In October 1996 he joined Amsteel Capital and he was at all material times the Group Operations Manager. On 1 May 1999, he became the General Manager of ASMSB.

44. As for Ms Tan, she was at all material times the Group Audit Manager of the Lion group of which the Amsteel Securities group is part. At the time of the trial, she was the Chief Internal Auditor of the Lion group.

45. (a) On 19 December 1997, the directors of Amsteel Singapore passed a resolution to appoint a Domestic Inquiry Committee to carry out an investigation to, inter alia, ascertain whether there was any breach of company policies and determine whether there was any unlawful act by its officials. Ms Tan headed the committee which undertook this investigation. The other members of the committee were one Wong Kok Liang, Mr Loo and one Lim Yew Meng (who was the new Group Compliance Manager from November 1997).

(b) Ms Tan was first informed on or about 19 December 1997 that she was to head this committee. She and her audit team attended a meeting with GP, Wong Kok Liang, Mr Loo and Lim Yew Meng at ASMSBs office for this purpose. Mr Thio was not present at this meeting although he was a party to the resolution appointing the committee.

46. Ms Tan and her audit team spent only two days in Singapore for the investigation. They went to Singapore on 23 December 1997 and returned to Kuala Lumpur on 24 December 1997. The report was also completed very shortly thereafter. It is dated 29 December 1997 and was sent with a cover letter dated 29 December 1997 addressed to the board of directors of Amsteel Singapore. It was a short two page report with various enclosures which included statements from Mr Thio, Mr Lye and Mr Wu.

47. The first paragraph of the report states:

Introduction

> The CEO of AMSS [meaning Amsteel Singapore] over the period October to December 1997 in the course of its trading has approved trades and credit limits of clients exceeding what are considered to be prudent limits and as a result has caused AMSS to incur substantial potential bad and doubtful debts in respect of realised and unrealised contra losses amounting to RM 51 million and RM 52 million respectively in its clients account. Arising from this, the Board of AMSS on 19th December 1997 appointed the Investigating Committee comprising Ms Tan Chitt Loo (Elsie), Mr Wong Kok Liang, Mr Loo Peng Hock and Mr Lim Yew Meng to investigate the affairs of AMSS relating to these trades and credit limits and to report thereon to the Board.

48. The last paragraph of the report states:

> Our investigation clearly shows that the Chief Executive Officer Mr Thio Gwan Choon in managing AMSS has not discharged his responsibilities befitting a CEO and the trust given to him by the Group Management by not exercising due diligence and care and not prudently managing his risks when granting overriding approvals for exceptionally large amount of trades and consistently allowing roll over of large trades which exposed AMSS to high risks far exceeding the financial resources of AMSS and the capability of a newly (*sic*) set company.

49. Mr Thio said that he did not receive a copy of Ms Tans report. Neither was he informed about its contents nor was he told thereafter of any wrongdoing on his part. Mr Thio also said that he did not realise that he was the subject of the investigation.

50. Mr Alvin Yeo SC, counsel for Amsteel Singapore, suggested to Mr Thio that Mr Thio must have been aware that he was the subject of the investigation since he was a party to the resolution but Mr Thio denied he was aware. He had thought that Mr Lye and Mr Wu, the two dealers, were the subject of the investigation as they had been suspended before the resolution was passed.

51. Mr Thio also said that he had no inkling that Amsteel Singapore was considering making a claim against him until more than two years later when he learned about the present claim against him. He had tendered his resignation on 9 February 1998 and had seen GP about his resignation. He said GP was very cordial about the parting and expressed regret that they had worked together for a short time because the regional economic crisis had hit unexpectedly.

52. I should also mention that in the period between Mr Thios resignation and the commencement of the present action, Mr Thio had assisted Amsteel Singapore in its claims against some of its clients for their trading losses and had sworn some affidavits for Amsteel Singapore.

53. I accept Mr Thios evidence on the points mentioned in paras 49 to 51 above. Although he was a party to the resolution, the true purpose for appointing the committee was hidden from him.

54. At this stage, I would mention some points which I consider to be material.

55. Some allegations made against Mr Thio in the trial were not mentioned specifically in Ms Tans report or advocated by the witnesses for Amsteel Singapore. They were arguments of Mr Yeo.

56. In so far as some allegations were made by the witnesses for Amsteel Singapore, none of these witnesses were independent witnesses. They were persons who had been and, in the case of Mr Loo and Ms Tan, still were in the employ of the Amsteel Securities group at the time of trial.

57. In view of that, it was important to consider what other companies in the Amsteel Securities group were doing at the

material time. For this purpose, ASMSB was the best comparison because it too was trading in shares on the KLSE.

58. Mr Yeo argued that even if ASMSB was guilty of the very steps or omissions which Mr Thio was accused of, this did not necessarily exculpate Mr Thio in law. While this is true, it is still a factor I should not ignore.

59. Furthermore in so far as Amsteel Singapore was relying on evidence of certain witnesses, who should be aware of what was happening in ASMSB, in order to establish its allegations against Mr Thio, then evidence of ASMSBs practices becomes material as it may affect the credibility of the witnesses.

60. As for the witnesses for Mr Thio, they were:

(a) Mr Thio himself (DW1)

(b) Ms Esther Seet

(c) Mr Deepak Lakhi Ramchandaris (Mr Ram)

61. I have already mentioned something about Mr Thio.

62. As for Ms Seet and Mr Ram, Mr Yeo did not require to cross-examine them and it was agreed that their evidence be treated as admitted without their having to attend court.

63. Ms Seet qualified as a Chartered Accountant in 1980. She started work in Peat Marwick Mitchell & Co, as it was then known, till about July 1981. She then joined Lim & Tan as a Finance & Operations Manager and became a General Manager. She then became an Executive Director of Lim & Tan in 1993.

64. Mr Ram obtained a Bachelor of Business (Hons) Degree in 1993 from the National Technological University of Singapore. He was a house dealer of Lim & Tan from October 1993 to February 1997 when he joined J M Sassoon & Co (Pte) Ltd. In April 1997, he joined Amsteel Singapore. He was retrenched by Amsteel Singapore in July 1998 and became an Associate Director with Fraser Securities Pte Ltd.

65. Many allegations were made against Mr Thio and I will consider each of them in some detail. The burden is on Amsteel Singapore to establish its allegations and to prove causation.

OPERATIONS MANUAL

66. It was initially suggested by Amsteel Singapore that Mr Thio was tasked to ensure that Amsteel Singapore produce an operations manual similar to the one that ASMSB had, and that since such an operations manual had not been prepared by Amsteel Singapore, Mr Thio had failed in his duty.

67. However, this point was not pursued by Mr Yeo in his closing submissions.

68. In any event, I would say that I do not think it was right for Amsteel Singapore to have even taken this point initially, even if, for the sake of argument, Mr Thio was indeed tasked to ensure the production of this manual.

69. Firstly, ASMSB itself had taken a long time ie. three years after GP had become MD of ASMSB to produce its operations manual (NE 41C). Although ASMSBs operations manual could be used as a guide by Mr Thio to prepare the manual for Amsteel Singapore, Mr Thio obviously had a lot on his hands in 1997 with a new start-up, and it was not unreasonable for him to start with operations in Singapore first and then follow up with the production of an operations manual for Amsteel Singapore. This was all the more so when Amsteel Singapore was allowed to commence trading without anyone in Amsteel Capital insisting that

its operations manual must be completed first.

70. Secondly, Amsteel Singapore was not able to suggest any causal link between the absence of the operations manual and the losses suffered.

LETTER OF AUTHORITY CHART (LAC)

71. The Amsteel Securities group had an LAC for each of its regional offices which sets out the limits of authority for each office.

72. For Amsteel Singapore, a draft LAC was discussed and this was finalised on 27 October 1997. Although Mr Yeo asked some questions about the draft LAC, his focus was on the finalised LAC.

73. The finalised LAC for Amsteel Singapore stated, inter alia, the following (at AB 538):

> (a) For an application where the trading limit was more than RM2m (or S$1m), this was to be approved by CEO, GP to be advised in writing. CEO referred to Mr Thio.
>
> (b) This same requirement applied to trades which were more than RM1m (or S$500,000) in excess of the approved trading limit.

74. Amsteel Singapore had two interpretations of this requirement.

75. The first interpretation was that GP had to be advised by Mr Thio in writing before a trading limit of more than RM2m was granted or before trades up to that limit could be executed. Likewise, GP had to be advised by Mr Thio in writing before a client was allowed to engage in a trade which would exceed his limit by more than RM1m.

76. The second interpretation was that even if GP did not have to be advised in writing before the event, this had to be done after the event.

77. Mr Thios position was that he had read the finalised LAC to mean the second interpretation.

78. Also, he was not clear as to how the requirement to advise GP in writing was to be implemented. He said he had checked with Mr Loo but Mr Loo himself was uncertain. Mr Loo did not deny this discussion but said only that he could not remember it (NE 210D to F).

79. Mr Thio then had his own meeting with the management of Amsteel Singapore on 14 November 1997. Following that meeting, an e-mail dated 18 November 1997 was sent by Anita Chong, a Credit Administrator of Amsteel Singapore to GP (AB 542 to 544) with a list of the clients who had a trading limit of RM2m and over but one name was omitted ie. Tan Poh Choon. Mr Yeo suggested that the omission was deliberate. I do not agree. It was an inadvertent omission. There was no reason for Mr Thio to be prepared to have the other names listed but not Tan Poh Choons.

80. The e-mail from Anita Chong dated 18 November 1997 was the only written notification given to GP after 27 October 1997, the date when the LAC was finalised. Mr Yeo argued that this response was unreasonably slow. I am of the view that Mr Yeo was trying to find fault with Mr Thio. It must be remembered that Mr Thio was left to guess how the written feedback to GP was to be implemented and even Mr Loo could not assist him. Furthermore GP did not complain that the written response was unreasonably slow.

81. I find that Amsteel Singapore has failed to make out the first interpretation for various reasons.

82. Firstly, in so far as it relied on the evidence of GP and Mr Loo and Ms Tan, such evidence was unconvincing and, to some extent, inconsistent.

83. For example, at NE 46A to D, GP said:

> A A proposal of limits of authority chart was submitted to Defendant. I cannot remember the exact time this was done. He was given authority to allow clients to open accounts with the company up to S$2 million or RM2 million.
>
> Q How was that supposed to work?
>
> A There was a chart which authorises different levels of officers to different limits. For the CEO of Singapore, it was S$2 million or RM2 million.
>
> Q What is the limit?
>
> A It is the limit up to which he can approve.
>
> Q Above 2 million he has no authority to approve?
>
> A I agree.
>
> Q Who has authority to approve?
>
> A He has to come back to me for approval.

84. Yet, at NE 80, GP said:

> Q Refer to AB 533, item 3. For amounts above S$2 million, they are to be recommended by Credit/Margin Administrator and approved by CEO and Group President to be advised?
>
> A It is written there.
>
> Q This does not accord with what you had said earlier which was that for amounts above S$2 million, only you can approve?
>
> A I agree.

85. As regards Mr Loos evidence, at NE 210C he said:

> Q Do you agree that the LAC did not say that the Group President must be advised in writing before the Defendant gives the approval?
>
> A Agree.

86. Then at NE 212B to E, he said:

> Q As regards the transaction referred to in your AEIC, para 99, it would be covered by item 2 of PSB 45?

A Disagree.

Q Why?

A Based on LAC, Group President has to be advised in writing prior to approval by Defendant. Defendant was granted discretion of RM2 million. Anything above that he had to obtain prior approval from Group President.

Q You are mistaken because the requirement is not prior approval?

A Disagree.

87. As for Ms Tan, I have considered her evidence at NE 302C to 304C.

88. I am of the view that Ms Tan did not have personal knowledge as to how the terms in the LAC for Amsteel Singapore had come about. She was basing her evidence on what she knew generally and the basis of her general knowledge was vague.

89. Secondly, if the written advice to GP was to be given before the event, this could and would have been stated so as was the case for the regional office in the Philippines. For that office, the LAC effective 11 June 1997 stated:

> Above 10,000,000 [pesos] - Group President to be informed in writing prior to approval of transaction.
>
> [Emphasis added.]

90. Thirdly, in a memorandum dated 4 December 1997 from Lim Yew Meng to Mr Thio, Lim Yew Meng took Mr Thio to task for not giving written notice after the event. The first paragraph thereof states:

> **SUBJECT : Non Compliance of Limit of Authority**
>
> I refer to the Limit of Authority (LAC) issued to AMS Securities (S) Pte Ltd which states that while the trading limit for an individual/institutional client in excess of RM 2 million and any trading in excess of RM 1 million above the approved limit can be approved by you, you are required to advise the Group President, Mr Lee Tak Suan in writing of these approvals.

91. This memorandum, which was sent with the knowledge of GP, did not allude to the first interpretation at all but rather the second interpretation.

92. Mr Thio replied to Lim Yew Meng by telefax dated 8 December 1997. The telefax states:

> The Limit of Authority (LCA) was issued to AMS Securities (S) Pte Ltd only in November 1997. The format and frequency of advising/ reporting was still in the process of being finalised. The implementation details and timing was still being discussed with Mr Loo Peng Hock.
>
> In respect of clients credit limits exceeding RM2 million, Anita of Credit Administration, on the 18 November 1997 faxed a list to the Group President via Catherine.
>
> At all times, Group Operations & Compliance will have remote access to all our

trades and credit limit.

93. Lim Yew Meng then sent another memorandum to Mr Thio dated 10 December 1997.

94. The second paragraph of the memorandum dated 10 December 1997 states:

> 2. In respect of Anita Chongs memo of 18/11/97 attaching a list of clients requiring Mr Lee Tak Suans approval, I would like to point out that there was already a number of transactions exceeding RM 2 million allowed by you after the date of issue of the LAC but prior to Anita Chongs memo of 18/11/97 (see attached list). In other words the advice of the credit limits exceeding RM 2 million was in retrospect of transactions exceeding RM 2 million approved by you. You should have allowed a couple of days after Anita Chongs memo for Mr Lee Tak Suans response to seek Mr Lee Tak Suans response by phone before you consider allowing such transactions in view of the substantial amount involved.

95. It was only in this later memorandum that the first interpretation was first alluded to. I am of the view that this was an afterthought.

96. However, Mr Yeo referred to the e-mail dated 18 November 1997 from Anita Chong which stated:

> In compliance with Limits of Authority, attached is a list requiring [GPs] approval. We will forward more information upon Mr Lees request.

97. He argued that the reference to GPs approval supported the first interpretation rather than the second.

98. I do not agree with Mr Yeos argument. The word approval meant that GP could disagree if he so wished and give the necessary directions but it did not mean that no transaction could be carried out until GP had approved the trading limits.

99. I also refer to GPs handwritten comments on Anita Chongs e-mail which read:

> Lim Yew Meng/Loo Peng Hock
>
> (1) I do not wish to approve in retrospect.
>
> (2) Individual clients in respect of more than 500k - cash a/c. I need to know the financial background.
>
> (3) As a matter of policy, no trading of stocks for syndicates.
>
> (4) Give capital base, daily.
> Exposures/trading to be limited.
> Also consider the realised losses in review.
>
> (5) Above, topic for discussion on corporate policy and controls to be (*sic*) implement.

100. I should mention that the trial proceeded on the basis that his handwritten comments were written contemporaneously and not as an afterthought.

101. If GPs approval had to be sought before such trading limits were granted, GP would have expressed surprise when he received the e-mail because the e-mail suggested that the trading limits had already been granted and acted upon. GP did not

express any surprise. Neither did he send a written reply to Amsteel Singapore to grant approval which he would surely have done if he had thought Amsteel Singapore was awaiting his approval.

102. Mr Thio also said that before this e-mail was sent, he had kept GP informed orally of developments regularly when he spoke to GP two or three times a week. GP denied this.

103. Mr Yeo argued that Mr Thios evidence on this point was not true. He referred to Mr Thios reply to Lim Yew Meng dated 8 December 1997, the contents of which have been stated in para 92 above.

104. Mr Yeo said that if indeed Mr Thio had been keeping GP informed orally then this should have been stated in Mr Thios reply but it was not.

105. However, I note that Lim Yew Mengs earlier memorandum dated 4 December 1997 to Mr Thio, the contents of which are stated in para 90 above, was on the absence of written notification to GP and Mr Thio was responding to that.

106. Besides, Amsteel Singapore was a new start up. GP must have been interested to know what was happening there and could not have been so much in the dark as he would have me believe.

107. I find that Mr Thio did keep GP regularly informed orally of trading limits which were RM2m or above but he may have overlooked mentioning some.

108. I also doubt if Mr Thio actually orally provided GP with details of each and every trade in excess of the existing trading limits by more than RM1m. Based on the trades shown to me just for the four groups of clients, let alone the entire operations of Amsteel Singapore, the clients were allowed to exceed their respective trading limits quite frequently. In view of the frequency, I do not think that Mr Thio would have mentioned to GP every occasion for every client when each trading limit was exceeded by more than RM1m.

109. However the omission was not deliberate.

110. Coming back to Anita Chongs e-mail, I note that although it did provide a list of clients whose trading limits were RM2m or above, it did not list those clients whose trades exceeded their limits by RM1m.

111. Again I do not think this omission was deliberate.

112. Anita Chongs e-mail dated 18 November 1997 was a follow up from a management meeting of Amsteel Singapore on 14 November 1997. The minutes thereof suggest that Mr Thio and his management had thought that they were complying with the LAC by providing GP with the list of clients whose trading limits were RM2m or above.

113. Mr Yeo argued that the failure to observe the LAC is symptomatic of Mr Thios lack of risk management. I do not agree. Mr Thio was aware of his duty to keep GP informed and to manage risks. Any omission of his part to comply with the LAC was not deliberate or reckless as was being suggested.

114. Mr Thio relied on two other points regarding the knowledge of GP as giving rise to an estoppel or acquiescence. Mr Thios position was that aside from his oral discussions with GP and Anita Chongs e-mail, GP had the means to know and in fact knew all along about the details of the trading activities of the clients because (a) the TRACS 400 system of Amsteel Singapore was linked to ASMSBs TRACS 400 system and (b) reports were regularly sent by Amsteel Singapore to GP.

TRACS 400 system

115. Amsteel Singapore had a computer system known as TRACS 400. This was the same system that ASMSB had been

using.

116. According to Mr Thio, ASMSB had direct access to the information in Amsteel Singapores TRACS 400 through two avenues and was therefore aware all along about the trades of the clients of Amsteel Singapore.

117. The first avenue, according to Mr Thio, was the alleged connection by a lease line or lines between the TRACS 400 system in Amsteel Singapores back office and the TRACS 400 system in ASMSBs back office. In addition, Mr Thios position was that because the office of Amsteel Capital was on the second floor of the same building as ASMSB ie. Wisma Amsteel Securities, while ASMSBs operating offices were on the third and fourth floors, Amsteel Capital could and did have access to information in Amsteel Singapores TRACS 400 through ASMSBs TRACS 400.

118. The second avenue, according to Mr Thio, was a dial-up link between a stand alone computer in the office of Amsteel Capital and the TRACS 400 in the back office of Amsteel Singapore.

119. However, Mr Thios evidence on these two avenues was unsatisfactory.

120. For example, as regards the connection between the two TRACS 400 systems, he was uncertain whether ASMSBs TRACS 400 could access the TRACS 400 of Amsteel Singapore on-line real-time without any assistance from Amsteel Singapore.

121. At NE 338B to C, he said:

> Q Is it your position that TRACS 400 system in Plaintiffs office was linked in any way with head office and with ASMSB?
>
> A Yes.
>
> Q Describe the link.
>
> A The link can be through dedicated hot-line or lease-line that enables information to be downloaded from Plaintiffs to ASMSB. There were 2 lease-lines then. Or it would be through a dial up line which the vendor had established between head office and Plaintiffs TRACS 400.

122. At NE 342A to 344C, he said:

> Q Are you maintaining that there was a link via lease line between Plaintiffs TRACS and ASMSBs TRACS?
>
> A Technically the link would be through the front end system of the Plaintiffs which is connected to the TRACS 400 system of Plaintiffs. The Plaintiffs front end system would be linked to ASMSBs front end system which in turn was connected to TRACS 400 system.
>
> Q You have given a different answer?
>
> A Yes I wanted to clarify.
>
> Q PW2 said that the link between the 2 front end systems was not to allow the authorised person at Malaysian end to gain access to data but to allow Plaintiffs to put in buy or sell orders through ASMSB. Would you like to re-consider your answer that the main purpose of the lease line link was to allow remote access to Plaintiffs data?

A What Mr Loo said is one of the purposes. I do not fully agree with him.

Q Are you still maintaining that the main purpose of the lease line link was to gain access to Plaintiffs data?

A Yes.

Q Suggest that is not correct otherwise the link would be between the two backroom systems?

A Disagree.

Q Suggest that you have decided to add on the dial up link between Plaintiffs office and head office only after hearing Loo Peng Hock give evidence about the PC stand alone in head office?

A Disagree.

Q Is it your position that through the 2 links i.e. the lease line link and dial up line, the person in Malaysia could get access to all data and reports in Plaintiffs TRACS 400?

A Yes.

Q Was it on-line real-time?

A Between the 2 front offices it was real time but not for the backroom. I wish to change that. Head office can get the information on-line real-time.

Q Refer to NE 112E and F. Is it still your position that the front end system of Plaintiffs was linked to backroom of Plaintiffs on-line real-time?

A It was linked on-line but not real-time.

Q Refer to lease line link between front end system of Plaintiffs office and front end system of ASMSB. Would you agree that whoever is at Malaysian end could not see the data in Plaintiffs backroom system at all?

A Disagree.

Q If data in front end of Plaintiffs office had to be uploaded to Plaintiffs backroom system, then anyone else linked to Plaintiffs front end would not be able to access the data in Plaintiffs backroom system without it being specifically sent to the Plaintiffs front-end system or uploaded into it.

A No.

123. During cross-examination, Mr Thios evidence (as well as Mr Loos) was on the basis that the information in the front office computer of Amsteel Singapore had to be uploaded to its backroom computer system ie. the TRACS 400. The uploading meant that the information had to be manually transferred from the computer in the front office to the computer in the back office. This must have meant that ASMSBs TRACS 400 could not have direct access to information in Amsteel Singapores TRACS 400

because the two systems in the respective back offices were not directly linked. Mr Thio had adamantly refused to accept this.

124. Then in re-examination, Mr Thio suddenly said that uploading was an automatic process without requiring any manual intervention (NE 452B).

125. He also explained that when he said that ASMSB could not get the information real time, he meant that the backroom of Amsteel Singapore only processed the information from the front room at the end of the day on a batch basis (NE 452B to D).

126. He then contradicted himself again when he said that the processed information of Amsteel Singapore could be seen real-time by ASMSB instantaneously but yet ASMSB could not see the raw data that was not processed by Amsteel Singapore. He had no explanation why this was so, see NE 452F to 453B:

> Q Would the processed information seen be real-time?
>
> A Yes. It would be seen instantaneously.
>
> Q Would people in Malaysian end have been able to see the raw data that was not processed?
>
> A Probably not see the raw data that is unprocessed.
>
> Ct to DW1 Why not?
>
> DW1 (No answer).

127. I find that the position regarding the TRACS 400 systems was as explained by Mr Loo.

128. At NE 112A to F, Mr Loo said:

> Q Backroom computer system of Plaintiffs and Amsteel Securities (M) Sdn Bhd were linked via a hot line or lease line?
>
> A For Amsteel Securities (M) Sdn Bhd, it is regulated by KLSE. Neither the front office system or the backroom system is allowed to be linked with anyone else without approval of KLSE. There was a lease line between the front office systems of Plaintiffs and Amsteel Securities (M) Sdn Bhd. It is not an on-line system but a proprietary or direct line. Plaintiffs is a client of Amsteel Securities (M) Sdn Bhd. It allows Plaintiffs to open an account with Amsteel Securities (M) Sdn Bhd in Plaintiffs own name. This allows Plaintiffs dealer to transmit to Amsteel Securities (M) Sdn Bhd a buy or sell order. However the dealer in Plaintiffs office cannot execute the trade because of KLSE requirements. Whatever trade is sent to Amsteel Securities (M) Sdn Bhd is subject to approval of dealer in Amsteel Securities (M) Sdn Bhd who would check the credit and trading limits of Plaintiffs which has a master account with Amsteel Securities (M) Sdn Bhd.
> The front office system is a trading system and the backroom system is the processing system for settlement.
> The data from the front office is not automatically transmitted to the backroom.
> It has to be up-loaded to the backroom system. This is for Amsteel Securities (M) Sdn Bhd and applies to Plaintiffs too.

129. As for the second avenue through which Amsteel Capital was allegedly supposed to have been able to access information from Amsteel Singapores TRACS 400 system through the stand alone computer in Amsteel Capitals office, this was not alluded to by Mr Thio in his AEIC or by his counsel Mr Quek Mong Hua during cross-examination of the witnesses for Amsteel Singapore.

130. I find that this allegation was an afterthought by Mr Thio after he had learned in the course of the trial about the stand alone computer in Amsteel Capitals office that was linked to the TRACS 400 in Amsteel Singapores office.

131. I also find that this link was, as Mr Loo explained it, to enable the vendor of the TRACS 400 to develop and enhance the software for Amsteel Singapore by doing the work in Malaysia.

132. At NE 113D to 114C, Mr Loo said:

> Q Refer to AEIC para 21, 1st sentence, "Although technically was frequently down". I read this to mean that the computer at Amsteel Securities (M) Sdn Bhd could access to Plaintiffs system but in reality the link was frequently down.
>
> A The TRACS 400 system in Plaintiffs office was frequently down and needs a lot of customisation before change to ITSS or to suit Plaintiffs trading environment. Vendor of Plaintiffs office system was asked to travel to Singapore from Malaysia to resolve the technical problems. Vendor suggested that time a PC stand alone from Plaintiffs office with a menu of the TRACS system be loaded on the stand alone PC so that they can work from Malaysia on the customisation exercise. The PC had a dial up connection with Plaintiffs office. The intention was that once the customisation had been completed, the customised programme can be downloaded into a diskette and sent to Plaintiffs office. However the dial up connection was frequently down. This is what I am trying to describe in my para 21.
>
> Q Where was the PC stand alone put?
>
> A At Amsteel Capitals office, 2nd floor. AIT (M) Sdn Bhd was the vendor of the TRACS 400 system to Plaintiffs. The PC stand alone was in Amsteel Capitals office because of confidentiality reasons. Vendor can see the data but not outsiders.
>
> Q What kind of data was confidential?
>
> A The data in Plaintiffs computer system.

133. In re-examination (at NE 253E to 254B), Mr Loo said that the stand alone computer was not to allow the vendor, or anyone else to see the data in Amsteel Singapores TRACS 400. It was, for development and enhancing the software so the vendor working on the software can see the menu. Thats what I meant. I accept Mr Loos evidence on this point.

Reports

134. Mr Thio also took the position that Amsteel Singapore had sent GP various reports from which GP knew the details of the trades by the clients of Amsteel Singapore and never objected.

135. These reports were:

(a) Daily profit and loss (PSB 272 and 282)

(b) Daily Business Done (P&S) (Exhibit D1)

(c) Daily Business Done Summary (Purchases) (Exhibit D2A)

(d) Daily Business Done Summary (Sales) (Exhibit D2B)

(e) Weekly Schedule of Anticipated Funding Requirements (eg. AB 470 and 471)

(f) Weekly Analysis of Remisiers & Dealers outstanding positions (eg. AB 392)

(g) Weekly outstanding sales contracts or purchases contracts (not produced).

(h) Weekly or Fortnightly outstanding contra loss report & steps taken (PSB 36, NE 346E). This was supposedly sent regularly after 5 November 1997 although it was sent on an ad hoc basis prior to that (NE 346B, E, 379E/F).

(i) Monthly Financial Highlights including profit & loss and balance sheet (eg. PSB 358 to 378)

(j) Minutes of management meetings sent monthly (NE 346D).

136. GP accepted that he had received the daily profit and loss report. Of the other reports, only the Daily Business Done (P&S) report contained the details of the names of those clients who had transacted each day. As the rest of the reports do not contain such details, I need not consider them any further for the time being.

137. Each of the Daily Business Done (P&S) reports (which is a computer print-out) ran into several pages. For example, Exhibit D1 had twelve pages. Mr Thio said that this was sent by fax daily by Amsteel Singapore to Amsteel Capital but he did not have personal knowledge of this (NE 347B/C).

138. Also, he could not explain why, if Amsteel Capital had direct access to the information in Amsteel Singapores TRACS 400, there was a need for Amsteel Singapore to fax this document daily.

139. Mr Thio made two statements (at PB 8 to 9 and 10 to 13) to Ms Tan during her investigation.

140. In PB 8, he said in the first paragraph, Furthermore, on a daily basis, our Accounts Department will fax to Amsteel Singapore the Profit & Loss - Business Done Report.

141. During cross-examination on Friday 22 September 2000, he accepted (at NE 371C) that that statement referred to a different document ie. the daily reports on the profit and loss of Amsteel Singapore, an example of which is found at PSB 272. Another example is at PSB 282.

142. However on Monday 25 September 2000, also during cross-examination, he said (at NE 377D to 378B) that the statement in PB 8 referred to both types of daily reports meaning:

(a) the Daily Business Done (P&S) report which has details of the transactions done for each day and the names of the clients (see Exhibit D1), and

(b) the daily report on the profit and loss of Amsteel Singapore (see PSB 272 and

282) which does not have such details but has details of the gross and net commission of Amsteel Singapore.

143. When this inconsistency was brought to Mr Thios attention, Mr Thio said he did mention that the daily report on the profit and loss was not the only report, he was distracted and he was not given the chance to elaborate (NE 378C).

144. I do not accept Mr Thios explanation that he was distracted or not given the chance to elaborate. As suggested by Mr Yeo, I find that Mr Thio had reflected on his earlier answer over the week-end and decided to change his evidence on this point.

145. I also note that Mr Thios AEIC does not mention the Daily Business Done (P&S) report.

146. GP said he had never seen the Daily Business Done (P&S) report although he did see the daily report on the profit and loss of Amsteel Singapore. I accept GPs evidence on this point. It would have been a case of overloading GP with too much information if the Daily Business Done (P&S) report had been sent to him daily.

147. Mr Quek argued that if ASMSB had no direct link with Amsteel Singapores TRACS 400 system then there was all the more reason for the Daily Business Done (P&S) report to have been sent daily to GP.

148. I do not agree that the latter follows from the former. It all depends on what GP wanted to receive and he did not want to receive such detailed information.

149. I find that Mr Thio has failed to establish that the Daily Business Done (P&S) report was faxed daily by Amsteel Singapore to Amsteel Capital.

150. It seems to me that Mr Thios insistence that Amsteel Capital was aware of the details of every clients transactions done through Amsteel Singapore stems from two factors.

151. First, there was a system of supervision by Amsteel Capital with officers there which had a regional title similar to that of officers in Amsteel Singapore. For example, there was a Regional Operations Manager in Amsteel Capital to supervise the Operations Manager of Amsteel Singapore and presumably of the other regional offices as well. Mr Thio believed that the existence of the system of supervision as well as a built in reporting system from a daily to a weekly basis meant that Amsteel Capital knew the details of the transactions of every client of Amsteel Singapore.

152. In my view, Mr Thio had erred. Just because there was a system of supervision (or overseeing as Mr Thio called it) and some reports were regularly sent to Amsteel Capital did not mean that Amsteel Capital had detailed information of every clients transactions at all times.

153. The second factor that Mr Thio relied on was that Amsteel Capital had queried Amsteel Singapore about some outstanding contra losses of the clients of Amsteel Singapore. Mr Thio reasoned that Amsteel Capital was able to do so only because it had obtained direct information about the same from its own means.

154. This is where Mr Thio had erred again. It must not be forgotten that Amsteel Singapore did send reports on contra losses to Amsteel Capital. This was probably the source of the query or queries of Amsteel Capital and not because Amsteel Capital had detailed information of every clients transactions irrespective of whether the client made a profit or loss.

What GP knew and what he did or did not do

155. However, that is not all. Even though Mr Thio had not kept GP informed, either orally or in writing, of each and every one of the events which were supposed to be disclosed to GP (see para 73 above), this was not deliberate as Amsteel Singapore was

suggesting. Furthermore, it was incumbent on Amsteel Singapore to prove exactly what was not disclosed and that GP would have taken some step which would have averted the losses had GP been kept informed.

156. GP said that he had been kept in the dark about the trading limits and huge transactions but I do not accept his evidence on this point. As I have said, he was kept informed, but not of each and every event.

157. Furthermore, GP stopped short of actually asserting that had he known all the details, he would have taken some step or steps which would have averted the losses. Neither did he assert what that step or those steps would have been.

158. In Plaintiffs Skeletal Reply Submissions, para 20, it is submitted that Mr Thios failure to keep GP advised deprived him of an opportunity to keep Mr Thios actions in check. During oral submissions, Mr Yeo argued that I should draw an inference that GP would have taken some step which would have averted the losses.

159. I do not agree that I should draw such an inference.

160. In the absence of the assertions that GP should have made, Amsteel Singapores contention that Mr Thios failure to comply with the LAC had caused its losses did not have a leg to stand on.

161. Besides, I am of the view that GP knew enough to intervene, had he really wanted to do so.

162. Firstly, it will be re-called that in addition to Mr Thios oral information to him, GP had received the daily profit and loss reports of Amsteel Singapore, although he did not receive the Daily Business Done (P&S) report (see para 146 above). The daily reports he received disclosed the gross and net commission of Amsteel Singapore and gave a breakdown of commission earned by its dealers. From these reports, it was clear that:

> (a) Amsteel Singapores turnover, ie. trades done by its clients, was huge especially bearing in mind its relatively small capital base of S$5m. As at end October 1997, gross commission was just under S$3.7m which meant that its turnover (for slightly over three months) was slightly under $370m (on a gross commission of 1%. If the commission was less for trades over certain amounts, the turnover would have been even higher).
>
> (b) Most of the turnover came from the clients of Mr Lye who would be responsible for up to around 98% of the turnover (see the profit & loss report as at 10 October 1997 at PSB 282).

163. On the 80/20 principle, GP must have known that a large portion of Amsteel Singapores revenue was generated from a small portion of its clients. When this principle was mentioned to him (at NE 177B/C) he did not dispute the principle.

164. Thirdly, I also asked GP some questions.

165. At NE 190B to D:

> Ct to PW1 Refer to PSB 282. Did it not occur to you that since most of the revenue comes from one dealer, it was likely that most of his business came from a small group of clients?
>
> PW1 I did not do a review of it personally. This report is shared between myself, Choong and Loo Peng Hock. When I made comments like that they would know how to get back down to CEO.
>
> Ct to PW1 Were you not interested to know the spread of this dealer Anthony

Lye?

PW1 Sure I was but I never got down to review his clientele.

166. Fourthly, a monthly progress report dated 1 October 1997 submitted by Mr Thio to GP identified the top five clients for August and September 1997 in terms of revenue generated (AB 524). Although there was some dispute as to when GP received this report, he accepted that he would have seen it in October 1997 (NE 56E/F).

167. From this report, three of the top five clients for August 1997 were individuals:

	Aug-97	
Client	(000)	%
Wako Merchant Bank	590.3	49.93%
Wong Lai Leong	60.9	5.15%
Nyala Kancil (M) Sdn Bhd	54.6	4.62%
Alegesan A/L Thangiah	47.6	4.03%
Sambasivam A/L Ramanujam	46.4	3.92%
	799.9	67.64%
Total revenue generated	1,182.35	

168. For September 1997, three other individuals were among the top five:

	Sep-97	
Client	(000)	%
Wako Merchant Bank	154.8	11.62%
Nyala Kancil (M)	103.3	7.76%
Tan Chee Meng	88.2	6.62%
Choi Mei Choo	72.1	5.41%
Wong Lai Leong	54.7	4.11%
	473.1	35.52%
Total revenue generated	1331.91	

169. Although the transactions of the individuals who were among the top five clients for August 1997 and September 1997 are not the subject of Amsteel Singapores claims, the point is that GP did not seek any information about them when he received the report.

170. GPs reason for not making any inquiry was that he noticed from the figures for September 1997 that the share of the top five clients had come down from 67% to 35% and the contribution from individual clients had also come down.

171. I am of the view that these are not valid reasons. Whether the percentage amount of revenue contributed by the top five clients had come down or not, the point was whether he was concerned enough about the individual clients who were engaged in huge trading volumes to ask about them. Secondly, the contribution from individual clients, among the top five clients, had not come down but had in fact gone up in September 1997 from 13.1% to 16.14%.

172. GP must also have known that many of the trades were on speculative counters as such counters would generate high volumes regularly and also from contra loss reports (AB 519 to 522).

173. Yet GP did not at that time seek to curb the activities of Amsteel Singapore or demand for more information about the

various individuals who were clients.

174. I am aware that on one of the daily reports as at 10 October 1997 (PSB 282), GP wrote the following comments:

> Revenue generation must be broader based. Too dangerous dependent on Anthony Lye.

175. Mr Quek submitted that this comment reflected GPs concern from the point of generating revenue and not risk management. I agree.

176. I also refer to GPs handwritten comments on the e-mail dated 18 November 1997 from Anita Chong to him. The comments have been set out in para 99 above.

177. This was the first time that GP had asked for the financial background of those clients with a trading limit of more than $500,000 (it was not clear whether he meant in S$ or RM), but still there was no sense of urgency or alarm in his comment. Indeed, there is no evidence of his having chased Lim Yew Meng or Mr Loo for the information or that either of these two persons had acted upon his instructions immediately.

178. The truth of the matter was that GP knew what was happening (even though he did not know every detail) and chose not to curtail the activities of Amsteel Singapore.

179. Accordingly, although there were lapses on Mr Thios part regarding compliance with the LAC, Amsteel Singapore has failed to establish that the lapses prevented GP from averting the losses.

180. In so far as Mr Yeo has argued that the trades allowed by Mr Thio far exceeded the paid-up capital of Amsteel Singapore, this argument is neither here nor there.

181. Besides, I am of the view that GP was aware that the trades exceeded the paid-up capital of Amsteel Singapore because he knew the commission that was being generated and hence the turnover. In addition, the Weekly Schedule of Anticipated Funding Requirements, which was sent regularly to Amsteel Capital (see para 135 (e) above) would have also alerted GP that the turnover of Amsteel Singapore far exceeded its paid-up capital. That is why from time to time, the group had to assist Amsteel Singapore with its funding requirements.

NEW TRADING POLICY (NTP)

182. Amsteel Singapores next ground of complaint was that Mr Thio had failed to comply with an NTP laid down by GP at a meeting of 7 November 1997 and allegedly subsequently put in writing by a telefax dated 10 November 1997.

183. The document states:

FACSIMILE
MESSAGE

TO : Mr Thio Gwan Choon AMSS	FAX NO : 02-5368349
FROM: Lee Tak Suan	OUR FAX : 603-3434084
COPY:	OUR REF :
DATE: 10-11-97	No. Of Pages: 2 (including this)
SUBJECT: New Trading Policy	

The meeting held on 7th November 1997 refers.

The following new trading policies and guidelines shall take effect immediately and fully (*sic*) applied to your AMSS. You are required to ensure that the said policies and guidelines are fully observed at all times and implemented accordingly.

1. Total Maximum Limit/Exposure to Single Client or Client Acting in Concert for Margin/Securitised/Cash accounts.

The Total Maximum Limit/Exposure to Single Client or Clients acting in Concert shall be reduced to S$10,000,000 or 25% of your AMSS Paid-Up Capital + working capital fund/sub-ordinated loans provided by shareholders, whichever is lower, of which, the total Limit/Exposure to Cash Account shall at all times limit to S$2,000,000 or 5% of the aforesaid, whichever is lower.

You are to with immediate effect, take appropriate steps to reduce the limit/exposures of those accounts which have exceeded the aforesaid guided limits or securitized the accounts with sufficient collateral.

Eg. AMSS paid up capital - S$5M

Working capital/sub-ordinated loans provided by shareholders - US$20M FRN funds (US$20M x 1.57 = S$31.4M)

Total Maximum Limit/Exposure=25%x[S$5M+S$31.4M]=S$9.1M or ~ @ 2.09 = RM19.0M

Of which allowed Limit/Exposure

To Cash Account =5%x[S$5M+S$3.41M]=S$1.82M or ~ @ 2.09 = RM3.8M

2. Exposure to a Single Security

Your AMSS shall at all times limit its exposure to a Single Security to a maximum limit of 10% of the paid-up capital of the listed company, or to the Total Maximum Limit/Exposure to Single Client or Client Acting in Concert as stipulated per para. No.1 stated above, whichever is lower.

3. Price Capping on Securities

The following securities will be restricted with a price capping:

Counter		Capped Price
UCB	- Uniphoenix Corporation Bhd	- RM10-00
NBT	- North Borneo Timbers Bhd	- RM20-00
OMEGA	- Omega Holdings Bhd	- RM10-00
Malpac	- Malpac Holdings Bhd	- RM10-00

These securities will henceforth be valued at the current prevailing market value or the capped price, whichever is lower, and shall apply to the margin and securitized accounts accordingly.

4. Adequate Collateral and Securitization of Accounts to reduce credit exposures

As the mounting contra losses of AMSS is alarming, with immediate effect, you are to ensure that all cash trading account holders who are granted with a trading limit of and more than S$500,000-00, are to place up-front a cash or securities collateral of not less than 30% of the trading limit granted, prior to effecting of transaction.

Notwithstanding the above, securitized account trading with cash and/or securities collateral should be emphasized to reduce your companys credit exposures and mitigating of risks, on all cash trading accounts, if deemed required.

5. Risk Mitigation and Management

It shall always be (*sic*) on checked that while business development is (*sic*) importance, it must not, however, compromise the needs to mitigate risks. It should therefore always be maintained that while there is a desirous need to capture a fair market share with acceptable profitable margin, however, it shall be prudent that such be continuously maintained with minimal or no bad debts.

6. Proper Spread of Dealers Business Generation

AMSS (*sic*) currently heavily dependent on a dealer/remisier (*sic*) whom dealing business volume comprised (*sic*) of 85% of the total AMSS dealing business (and contra losses) warrant concerns. As a business prudence, a proper spread of business generation should be maintained from a few pools of dealers/remisiers so that should any unforeseen circumstances arise, your company will not be caught in an unfavourable situation. Therefore, you are to discreetly ensure that

such a proper spread be maintained.

7. Trade Warehousing

Trade warehousing is strictly prohibited.

Please be guided accordingly.

The document produced before me was not signed. Also, the first page had the date of 10-11-97 whereas the second page had the date of 13-1197.

184. According to Mr Loo, Mr Thio met with GP on 7 November 1997 (NE 141C/D). GP had been very concerned about Amsteel Singapores operations and particularly the contra losses of its clients. Mr Thio was supposedly summoned to Amsteel Capitals office for a meeting with GP which Mr Loo and one Mr Ee Beng Guan, an executive director of ASMSB, attended. However, Mr Ee did not give any evidence although he was apparently available as at the time of the trial he was an executive director of ASMSB (NE 145D).

185. Mr Loo said that GP had reprimanded Mr Thio at the meeting and orally issued the NTP to be complied with by Mr Thio.

186. Subsequent to the meeting, the NTP was supposedly put into writing by Mr Loo and supposedly (according to GP) sent by fax by GPs secretary to Mr Thio on or around 13 November 1997.

187. Amsteel Singapore alleged that Mr Thio had failed to comply with the NTP in various respects which were not identified specifically in PCS para 57. I understand that the allegations are that Mr Thio failed to comply with paras 1, 2, 4, 5, 6 and 7 of the NTP ie.

(a) to limit the maximum exposure of Amsteel Singapore to a single client or group of clients to S$10m or 25% of Amsteel Singapores paid up and working capital, whichever is lower,

(b) to limit Amsteel Singapores exposure to a single counter to 10% of its paid up capital or the limit above, whichever is lower,

(c) to obtain cash or securities collateral of not less than 30% of the trading limit of those accounts with a trading limit of S$500,000 or more,

(d) to be prudent about risk management,

(e) to ensure a spread of business,

(f) to strictly prohibit trade warehousing.

188. Mr Thios version was that the 7 November 1997 meeting was a regular one for him to present a report to GP. He said there was no reprimand. No NTP was orally issued by GP. Also Mr Thio had never received the alleged fax on the NTP.

189. The evidence of GP on this point was quite telling. Although he had alleged in his AEIC that the 7 November 1997 meeting was a reprimand session, he was not quite so willing to assert this in cross-examination. At NE 100A to E, he said:

Q What was purpose of meeting on 7 November 1997 that resulted in PB 1 and 2?

A Cannot provide a definite answer.

Q Refer to AEIC, para 40. How is it that just a week ago you could remember so clearly that the 7 November 1997 meeting was a reprimand session that resulted in the NTP and today you say you cannot remember?

A Before I signed this affidavit, I had a meeting with Loo Peng Hock who refreshed my memory. On that basis, I signed off the affidavit.

Q Are you saying that it was Loo Peng Hock who told you that it was a reprimand session?

A Yes.

Q You agreed with him?

A I was so reminded.

Q If you were reminded one week ago, how is it that today you cannot remember?

A My memory has not been one of my strong points. Not these last few years anyway.

190. Indeed, he could not remember the background to the alleged NTP. At NE 87E to 88A, he said:

Q Why was this New Trading Policy required?

A Cannot remember exactly. It obviously reflects an enhanced level of risk management policies for the Singapore unit.

Q To improve?

A Yes.

Q It does not mean that there was non-compliance of an old policy?

A I cannot remember whether any discussion of any compliance took place.

191. Secondly, when Lim Yew Meng subsequently wrote to Mr Thio on 4 December 1997 (see para 90 above) to complain about Mr Thios non-compliance with the LAC there was no mention in his memorandum about Mr Thios failure to comply with the NTP. His next memorandum dated 10 December 1997 (see para 94 above) also made no mention about the NTP.

192. Thirdly, it will be re-called that the directors of Amsteel Singapore had appointed a committee headed by Ms Tan to carry out an investigation.

193. When Ms Tan went to Amsteel Singapores office to meet, inter alia, Mr Thio, she had asked him whether he had seen the written NTP. Mr Thio said he had not.

194. From Ms Tans report dated 29 December 1997, it is clear that she had accepted Mr Thios position because nothing more was said in her report about Mr Thios failure to comply with the NTP.

195. However, in order to bolster Amsteel Singapores assertion that Mr Thio had failed to comply with the NTP, Ms Tans

AEIC made several references to the NTP. She also suggested during cross-examination that although her report did not specifically assert that Mr Thio had failed to comply with the NTP, this was nevertheless the case because her report referred to Mr Thios failure to comply with the LAC and a decision of Amsteel Singapore at its management meeting of 14 November 1997. She took the position that the essence of the NTP was covered in the LAC (which was dealt with in her report) and in the minutes of a management meeting of Amsteel Singapore of 14 November 1997.

196. However, the LAC and the NTP were different. If they were the same, there would have been no need for Amsteel Singapore to rely on the NTP as an additional ground of attack against Mr Thio.

197. I find that Ms Tans evidence that the essence of the NTP was covered in the LAC was a desperate attempt to lend credence to a belated allegation about the NTP. As for Ms Tans point about the management meeting of 14 November 1997, I will elaborate thereon later below.

198. I note that in Mr Loos AEIC at para 35, he said that the committee found several breaches of the NTP in its investigation. As I have said, the committees report did not allege any breach of the NTP.

199. I would add that if the NTP had indeed been sent by fax to Mr Thio (as alluded to by GP), the fax transmission report would have been available from the records of Amsteel Capital. GP confirmed that this should have been the case. Yet no such transmission report was produced.

200. Also, the files of Amsteel Singapore did not have the fax of the NTP that was supposedly sent to Mr Thio and the other managers in Amsteel Singapore had said to Ms Tan, and she accepted, that they had not seen the NTP.

201. It must also be remembered that GP had briefed Ms Tan on her investigation and Mr Loo was a member of Ms Tans committee. Both of these men must have been aware of the contents of Ms Tans report and yet did not ensure that Mr Thios alleged failure to comply with the NTP was addressed in the report or in a supplementary report. Instead, they apparently allowed the report to stand as it was.

202. In these circumstances, I found it strange, to say the least, that Amsteel Singapore should subsequently take the position that the NTP was sent to and received by Mr Thio.

203. It was also submitted for Amsteel Singapore that even if the written NTP had not been sent to Mr Thio, the substance thereof was nevertheless orally communicated by GP at the 7 November 1997 meeting to Mr Thio and that Mr Thio had failed to comply with the same.

204. To bolster this argument, Mr Yeo argued that because some of the matters discussed at the 14 November 1997 management meeting of Amsteel Singapore were similar to some of the matters stated in the NTP, this proved that GP did give the alleged directions for the NTP on 7 November 1997, which Mr Thio was seeking to carry out on 14 November 1997. This was also Ms Tans point.

205. Mr Thio disagreed. He said that the matters discussed at Amsteel Singapores management meeting of 14 November 1997 were initiated by him and did not emanate from the meeting with GP. The significance of this distinction is that while Mr Thio had to comply with directions from GP, he had more latitude to make exceptions if the direction was from his own internal management.

206. Mr Yeo went so far as to point out that the minutes of the 14 November 1997 meeting were not exhibited in Mr Thios AEIC. He argued that this was deliberate as Mr Thio knew that the minutes of the 14 November 1997 meeting would demonstrate that the NTP had been earlier raised by GP at the 7 November 1997 meeting.

207. I do not agree with this suggestion. The fact of the meeting of 14 November 1997 was referred to by Mr Thio in his AEIC already. The omission to exhibit the minutes was obviously inadvertent.

208. I am of the view that the fact that there is some similarity between the minutes of the 14 November 1997 meeting and the NTP is neither here nor there. On the one hand, it could suggest that Mr Thio was trying to carry out GPs directions. On the other hand, it could also mean that someone had used the minutes of the 14 November 1997 meeting in a clumsy attempt to fabricate an allegation about the NTP and then allege that Mr Thio had failed to comply with the NTP.

209. Secondly, if indeed GP had orally directed Mr Thio to comply with the NTP at the 7 November 1997 meeting, then again this oral directive should and would have been raised in Ms Tans report specifically. It was not.

210. I also refer to the following evidence from Mr Loo at NE 215F to 216:

> Ct to PW2 Is there anything in the investigation report that says that Defendant was told of the NTP on 7 November 1997?
>
> PW2 See PB 37, last comment on the right, "Violated Single client/acting in concert trading limit of RM30M as per Mgt minutes dd 26/9/97". There was no mention about the NTP in the report.
>
> Ct to PW2 Why is there no mention about the NTP in the report?
>
> PW2 I do not know.
>
> Ct to PW2 Who prepared the report?
>
> PW2 Elsie Tan.
>
> Ct to PW2 Did she send a draft to other members of the Investigating Committee before presenting the report to the Board of Directors of Plaintiffs?
>
> PW2 I think she must have.

211. I find that Amsteel Singapore has failed to establish that GP did give a direction about the NTP on 7 November 1997.

212. I also note that GP admitted during cross-examination that even if Mr Thio had complied with the NTP (assuming it existed), there could well have been losses (NE 157B). I understand Mr Yeos argument, however, to be that the losses would have been less severe.

213. However at NE 157C/D, GP said:

> Q Is it your position that non-compliance with NTP is a major complaint against Defendant?
>
> A No.

214. Yet, in presenting its case, Amsteel Singapore made a big issue about Mr Thios alleged non-compliance of the NTP.

INSTRUCTIONS ON 7 NOVEMBER 1997 ABOUT MCL, INNOVEST AND HOTLINE

215. There are other unsatisfactory aspects about the evidence of GP and of Mr Loo regarding the 7 November 1997 meeting.

216. GP had alleged in para 46 of his AEIC that he recalled having informed Mr Thio at that meeting that no further trades on

MCL Corporation Berhad (MCL) were to take place as ASMSB already had outstanding exposure to this counter. He also alleged that he had told Mr Thio to wind down on two other counters ie. Hotline Furniture Berhad (Hotline) and Innovest Berhad (Innovest). In para 47 of his AEIC, he alleged that Mr Thio had ignored his instructions and continued to trade in MCL, Hotline and Innovest which were the counters which ultimately caused substantial losses to Amsteel Singapore.

217. Mr Loo also said that GP had advised Mr Thio at the 7 November 1997 meeting not to be involved in and to wind down on speculative counters. They included MCL and Innovest (Mr Loos AEIC paras 94 and 99 and NE 147E to 148A and 213D to F).

218. However the alleged instruction about MCL, Innovest and Hotline is not even found in the written NTP.

219. Furthermore, the evidence showed that as at 7 November 1997, Amsteel Singapore had no exposure on Hotline or Innovest (NE 105D).

220. Quite clearly the allegation about winding down on Hotline and on Innovest had been fabricated.

221. As for MCL, I note that Ms Tans report also did not mention the existence of GPs alleged oral instruction to stop further trades on MCL or that Mr Thio had ignored it or that she had investigated this allegation. If the allegation were true, both GP and Mr Loo would have ensured that this point was investigated bearing in mind that GP had briefed Ms Tan on her investigation and Mr Loo was a member of the committee.

222. I find that the allegation about GP having told Mr Thio not to allow further trades in MCL was also fabricated.

223. The evidence of GP regarding MCL, Hotline and Innovest, and Mr Loo regarding MCL and Innovest was fabricated because, as GP himself put it (in his AEIC at para 47), these were the counters which ultimately caused substantial losses to the Plaintiffs, even though they were not the only counters which caused substantial losses.

CHECKS

224. One of the main allegations against Mr Thio was that he had failed to exercise due diligence and care in that he had granted high trading limits without conducting any check or adequate checks on the clients.

225. The impression given by Ms Tans report and the thrust of the claim was that Mr Thio was a loose cannon who gave high trading limits too easily.

226. However the evidence from Mr Thio at trial showed a different picture. At NE 351D to 352B, he explained the steps he would take before approving a trading limit of more than RM2m:

> (a) Personally meet the client together with the dealer to have an independent assessment.
>
> (b) Ask Credit Administrator Anita Chong to do a check on the clients background, specifically the companies that he claimed to own or be a director of and any adverse litigation against him.
>
> (c) Usually confer with at least two of the managers in the Credit Committee to seek their inputs on the reputation of the client.
>
> (d) Ask Research Manager whether he was aware of any useful information about the client and his companies.

(e) Sometimes look at prospectus and/or annual reports to verify.

(f) Ask Amsteel Singapores Operations Manager who had ten years experience to check around with his contacts in other stockbroking houses.

(g) Ask Amsteel Singapores Finance & Admin Manager to seek feedback from his contacts with bankers.

(h) Find out from the client some information pertaining to his trading experience, his net worth and who his brokers and bankers were as well as his plans for growth, restructuring and acquisition.

(i) Discreetly contact at least one of the brokers that the client has mentioned he had used before, if any.

227. While Mr Yeo questioned the checks which Anita Chong was supposed to have been tasked to do, he did not challenge the rest of the steps which Mr Thio said he generally took.

228. In addition, the account opening forms for each of the individuals in the first three groups of clients were also reviewed by an officer of Amsteel Singapore who put his/her signature to the form beside Mr Thios signature of approval. In other words, the documentary evidence suggested that Mr Thio did not approve the trading limits single-handedly.

229. Furthermore, when an upward revision of trading limit was allowed, a member of the Credit Committee and Mr Thio would sign on the relevant document to approve. So again Mr Thio did not approve the increase single-handedly.

230. Mr Yeo was left to argue that Mr Thio should have obtained documentary evidence of the worth of the clients especially those who were given high trading limits.

231. To this extent, Mr Yeos position was supported by the report and the evidence of Ms Tan. To Ms Tan, there was inadequate check by Mr Thio because she did not see any documentary evidence of his checks.

232. The question is whether Mr Thio was negligent in failing to obtain documentary evidence of the worth of clients who were considered HNWIs.

233. To an accountant like Ms Tan, such documentary evidence should have been obtained. However I have to consider the position of a stockbroker.

234. Mr Yeo sought to bolster his point by arguing that stockbrokers were financing their clients and therefore were like bankers. Just as bankers sought documentary evidence of the income or worth of a client, he argued that Mr Thio should also have sought such documentary evidence.

235. However, I am of the view that stockbrokers are not bankers and their practices are not the same. Indeed I note that none of the witnesses for Amsteel Singapore suggested that stockbrokers should carry on business in the same way as bankers did or do.

236. It is true that the minutes of a Credit Committee Meeting of Amsteel Singapore on 3 or 5 October 1997 (AB 528 and 529) mentioned the requirement to obtain documentary proof of earnings and net worth for limits for individuals above S$750,000.

237. However, that was the general requirement. Whether it should have been implemented with respect to a particular client depended on the particular facts.

238. I am reinforced in this view by the fact that ASMSB also had a similar general requirement to obtain documentary proof of

income (see AB 337). Yet, the evidence regarding ASMSB showed that it too did not invariably obtain documentary evidence from all its individual clients who were granted high trading limits.

239. For example, from the top five debtors or groups of debtors of ASMSB, there were three common clients with Amsteel Singapore:

(a) Chew Kar Hooi,

(b) Lim Tee Keong,

(c) Sim Joo Hock

240. Below is a table showing the trading limits granted to each of these three individuals by Amsteel Singapore and by ASMSB:

	Amsteel Singapore	ASMSB
1. Chew Kar Hooi	RM20 million	RM20 million for ordinary account RM20 million for margin account
2. Lim Tee Keong	RM20 million	RM20 million for ordinary account RM30 million for margin account
3. Sim Joo Hock	RM10 million	RM6 million

241. ASMSB also did not obtain documentary evidence of the income or net worth of these three clients.

242. As another illustration, one of the top five debtors of ASMSB was one Kam Hock Aun, a designer with Couture Colleczion. ASMSB had granted him a trading limit of RM20m without obtaining documentary evidence of his or her income or net worth (PSB 992 to 993).

243. I would again refer to the handwritten comments of GP when he received Anita Chongs e-mail dated 18 November 1997. I have set out these comments in para 99 above. I note that contrary to the assertion in PCS para 28, GP did not seek documentary evidence about the clients net worth when he received the list of clients with trading limits of RM2m and above. All he stated was that he needed to know their financial background.

244. I am of the view that while it would be ideal to have documentary evidence of income and net worth from the point of view of risk management, the reality is that a stockbroker does not always seek documentary evidence from an HNWI whose

business he is trying to cultivate. To do so might even kill the business opportunity, especially if he seeks such evidence while other stockbrokers do not.

245. Whether Mr Thio was negligent in allowing high trading limits for the clients concerned or clients to exceed their trading limits or in allowing them to buy certain counters must depend on the particular facts.

THE DATO JERRY GOH GROUP

246. The names of the clients of this group, as classified by Amsteel Singapore for the trial, and other details are set out below:

Name of debtor	Occupation	Date Account Opened	Trading Limit (RM / S$) (million)	Collateral
Lee Kok Keong	Director, Esprit Melaka City Sdn Bhd	19.9.97 (PSB 153 & 154)	RM10/ S$5.05 (PSB 153, 154)	Letter of Guarantee from Dato Jerry Goh. Cash collateral of RM1,551,800.15 (from Dato Jerry Goh).
Lee Lai	Manager, Esprit Corporation Sdn Bhd	19.9.97 (PSB 144 & 145)	RM10/ S$5.05 (PSB 144 & 145)	Letter of Guarantee from Dato Jerry Goh. Same cash collateral of RM1,551,800.15 (from Dato Jerry Goh).
Lok Joo Hean	General Manager, Corporate Manager, Esprit Group Bhd	19.9.97 (PSB 163/ AB 748)	RM10/ S$5.05 (PSB 163/ AB 748)	Letter of Guarantee from Dato Jerry Goh.

Chew Kar Hooi	CEO, Goodnite Holdings Bhd	10.10.97 (PSB 134 & 135)	RM20/ S$9 (PSB 134 & 135)	
Lim Tee Keong (Dato)	Director, Genting Bhd	10.10.97 (PSB 125 & 126)	RM20/ S$9 (PSB 125 & 126)	Sum of RM206,395.80 in Lim Tee Keongs trust account. Cash collateral of RM1 million

247. Mr Yeo argued that all these five were trading as a group and that as a group the aggregate trading limit of RM70m was too high.

248. Mr Yeos reasons for classifying these five individuals as a group were:

> (a) By early November 1997, four of the individuals had each given a power of attorney to Chew Kar Hooi to operate their respective accounts.
>
> (b) There was a letter of authorisation signed by all the five individuals to Amsteel Singapore to authorise it to set-off money in any of their accounts to pay losses incurred in any of the other accounts.
>
> (c) These individuals were trading in the same counters and in some cases, the shares were rolled over indirectly between themselves.

249. Mr Thio disagreed that Chew Kar Hooi and Dato Lim Tee Keong were trading as part of the group for the following reasons:

> (a) Chew Kar Hooi and Dato Lim Tee Keong had opened their accounts later on 10 October 1997 whereas the first three had opened theirs on 19 September 1997.
>
> (b) Chew Kar Hooi and Dato Lim Tee Keong were assessed on their own merit and had a higher standing than the first three.
>
> (c) The guarantee from Dato Jerry Goh was only in respect of the first three individuals.
>
> (d) A collateral of RM1,551,800.15 was demarcated as being for the Dato Jerry Goh group and a separate RM1m for Dato Lim Tee Keong.

250. Mr Thio said that the power of attorney was to formalise the confirmation of orders through a single individual. However the written confirmation of any trade for any account was sent to the respective individual and that Amsteel Singapore had always treated the five as having separate accounts with separate orders. However, if this was a valid point, then even the first three individuals would not be considered as part of the group and yet Mr Thio admitted that these three were part of the group.

251. As for the letter of authorisation, Mr Thio said that the right of set-off afforded Amsteel Singapore more protection. He refused to accept that that letter indicated that the five were trading as a group.

252. I am of the view that while the letter of authorisation afforded Amsteel Singapore more protection against losses, it was nevertheless an indication that the five were trading as a group.

253. In addition, Mr Thio had given two written statements to Ms Tan in the course of her investigation. PB 8 and 9 was a statement he had himself prepared (NE 414C). PB 10 to 13 was a statement which he did not prepare but he had signed. That statement was taken from him on 23 December 1997 and he signed it on 24 December 1997.

254. At PB 8, there was a heading Lim Tee Keong, Jerry Goh & Chew Kar Hooi Group. Beneath that Mr Thio said, This group of accounts have been in operation since October 1997 .. It is true that the first three clients accounts were actually opened earlier but the point is that Mr Thio himself was treating these three clients and the other two ie. Chew Kar Hooi and Dato Lim Tee Keong as one group. Similarly the heading in the statement at PB 10 and the substance thereof indicated that he was treating all five as one group although in PB 11 there is the following sentence Lim Tee Keong case was treated separately & his account was approved based on the fact that he is the son of Mr Lim Goh Tong.

255. Mr Lye also said that these five individuals were trading as a group. On the other hand, Mr Quek argued that Mr Lye also said that these five were treated by Amsteel Singapore as a group for administrative convenience. In my view this did not mean that they were not trading as a group.

256. For the reasons advanced by Mr Yeo and in the light of Mr Thios statements to Ms Tan and Mr Lyes evidence, I find that these five individuals were trading as a group.

257. However this does not necessarily mean that the trading limit for this group had to be restricted to RM30m (being the original limit for a group).

258. It must be remembered that the trading limit for a group was the general rule but exceptions could be made. The real question is whether Mr Thio was negligent in granting the trading limits to these five individuals when considered on an individual basis as well as on a group basis.

259. The Dato Jerry Goh group was recommended by two persons, namely, Marc and Shirley from the Hong Leong Group (HLG) in Malaysia to Mr Lye.

260. Lee Kok Keong was a director of Esprit Melaka City Sdn Bhd.

261. Lee Lai was a manager of Esprit Corporation Sdn Bhd.

262. Lok Joo Hean was a general manager of Esprit Group Bhd.

263. These three were close friends of Dato Jerry Goh and Dato Lim Tee Keong, both of whom had highly recommended them. Dato Lim Tee Keong also subsequently became a client of Amsteel Singapore. He is the fifth member of this group.

264. Dato Jerry Goh was a director and major shareholder of OConnors Sdn Bhd and Esprit Sdn Bhd. Also, Mr Lye said that at that time, Dato Jerry Goh had a pretty good reputation in the market. Lee Kok Keong and Jerry Goh always paid their losses (NE 264D).

265. Dato Lim Tee Keong was a director of Genting Berhad, Hartford Group and Focal Portfolio Sdn Bhd. He was also the Chairman of Hua Tai Industries Bhd which was listed on the KLSE and the son of Tan Sri Lim Goh Tong, whom Mr Thio described as the owner of Genting Berhad.

266. Chew Kar Hooi was a director of Good Nite Holdings Bhd, which was also listed on the KLSE. He had an account with three other Malaysian stockbrokers, ie. ASMSB, HLG and TA Securities.

267. Mr Thio said that for Chew Kar Hooi and Dato Lim Tee Keong, most major brokers and private brokers would fight to get their business (NE 420A).

268. Indeed, as the table in para 240 shows, Chew Kar Hooi and Dato Lim Tee Keong were also clients of ASMSB. Each of them had been granted a trading limit by ASMSB of RM20m for his ordinary account and another RM20m or RM30m for his margin trading account.

269. Furthermore, ironically, Mr Yeo informed me that ASMSB had treated these two individuals separately and not as a group even though each of them had given a guarantee to ASMSB to secure the others account. In my view, this reinforces Mr Thios point, which I accept, that each of these two persons could be assessed separately for the trading limit to be granted to each.

270. I would add that Mr Thio said that he did make inquiries of ASMSB regarding the Dato Jerry Goh group but claimed that ASMSB was not willing to share much information with him.

271. As for security, I am aware that in a 5 November 1997 management meeting of Amsteel Singapore (Mr Loos AEIC p 755) a decision was made for new and existing accounts with trading positions over RM1m, in general, to be secured with collateral of 10% for cash and 20% for shares.

272. However, as stated in the minutes, that was the general rule and again exceptions could be made.

273. According to Mr Lye, collateral of 10% for cash or 20% for shares was indeed requested but instead a guarantee from Dato Jerry Goh was provided (Mr Lyes AEIC para 19).

274. However, as can be seen from the table in para 246 above, cash collateral must have been provided subsequently, even though it was not up to 10% of the trading limits.

275. The counters which are the subject of this groups losses are Esprit Group Berhad and MCL.

276. The first three individuals were senior officers in companies in the Esprit group. Dato Jerry Goh who provided a guarantee for their accounts was a director and major shareholder of Esprit Sdn Bhd. These factors must have comforted Mr Thio when the group traded in Esprit shares.

277. As for MCL, Mr Yeo pointed out that the exposure of Amsteel Singapore to MCL was twice the paid-up capital of MCL. He argued that Mr Thio should have looked into MCL more carefully before allowing substantial purchases of MCL shares.

278. In my view, the paid-up capital of MCL is not relevant.

279. Furthermore, ASMSB had also allowed clients like Chew Kar Hooi and Dato Lim Tee Keong to make substantial purchases of MCL shares (NE 204B and 206B to E).

280. There is one other point made by Mr Yeo in respect of this group.

281. Mr Yeo referred to para 22 of Mr Lyes AEIC, regarding this groups exposure to MCL shares. It states:

> 22. Sometime around early November 1997, I had considered winding down the

MCL position. This was because by that time, the Plaintiffs exposure to the MCL counter was already very significant, and that particular counter was already trading at very high prices. However, the clients, upon learning of my intentions, approached the Defendant and appealed to him. The Defendant acceded to the clients requests and allowed them to continue to roll the deals. Significantly, when the final tranches of 894,000 MCL shares were rolled into the Plaintiffs between 14 - 19 November 1997, they were at a price of close to RM41 million. As the clients did not settle those outstanding shares, the Plaintiffs had to force sell them thereby incurring huge contra losses, which the clients were unable to pay for either.

282. Mr Lye was not challenged on this evidence and Mr Yeo argued that this paragraph amplified Mr Thios lack of prudence (PCS para 130).

283. However, Mr Lyes evidence does not mean that Mr Thio was necessarily negligent and indeed Mr Lye did not say that Mr Thio was negligent. Also, none of the other witnesses for Amsteel Singapore said that Mr Thio was negligent in making this decision .

284. Mr Thio was entitled to consider the pleas of this group and to exercise his judgment in the face of a weak market. Also, these clients had in the past been paying their losses, as Mr Lye himself had said (NE 273C).

285. Mr Yeo argued that in view of the weak stock market, Mr Thio should have taken tougher action against clients generally and in particular this group. This brings to mind the saying that when it is raining, creditors withdraw the umbrella.

286. Mr Thio had to decide how much support to give these clients in the prevailing circumstances. If he had insisted that they liquidate their positions, losses would have been likely and the situation would have been aggravated. If events had turned out for the better, the clients would have been able to get out at more favourable prices which would correspondingly benefit Amsteel Singapore. In addition, the clients would have been grateful for the support given.

287. Furthermore, Mr Thio did not just accede to this groups request. He was, in the meantime, trying to obtain more security as is evidenced by his letter dated 18 November 1997 to Chew Kar Hooi (DSB 37). It states:

18 November 1997

Mr Chew Kar Hooi — By Fax
Focal Portfolio Sdn Bhd — By A.R. Registered

10th Floor Menara Aetna
84 Jln Raja Chulan
Kuala Lumpur 50200

Dear Sir

RE: TRADING TERMS

We acknowledge receipt of your Phileo Allied Bank Cheque no. 362507 for RM1,000,000/- being collateral for trading purposes. In view of the extremely volatile markets, we are requiring all our clients to top up cash margin up to 20% for the trading account limits. Kindly furnish additional collateral to maintain your trading limit for the group of accounts.

Further to our letter dated 11 November 1997 and in view of the current market condition, please adhere strictly to the stated contra period i.e. all purchases must be contraed by T+5 excluding T+2 warehousing in Malaysia.

The Company will suspend any accounts which has violated the above contra period on two or more occasions.

Yours faithfully,

_____
Thio Gwan Choon
CEO

cc Anthony Lee

288. This letter also reinforces two points:

(a) that even prior to 20 November 1997, the stock market was weak,

(b) that Chew Kar Hooi was treated as part of the Dato Jerry Goh group at least for the purpose of providing security.

THE TAI KAR GROUP

289. Tai Kar Lim refers to Lim Lean Heng. The names of this group, as classified by Amsteel Singapore for the trial, and other details, are set out below:

Name of debtor	Occupation	Date Account Opened	Trading Limit (RM / S$) (million)	Revised Trading Limit (million)	Date Revised	Collateral
Choi Mei Choo	Director, Hai Ming Management Sdn Bhd	14.8.97 (PSB 189 & 190)	RM3.5/ S$1.9 (PSB 189 & 190)	RM5 (PSB 195/ AB 780) RM10/ S$5 (PSB 194/ AB 779)	21.8.97 (PSB 195/ AB 780 7.10.97 (PSB 194/ AB 779)	Letter of Guarantee from Lim Lean Heng

Lee Hor Sai	Director, EMC Logistics Bhd	14.8.97 (PSB 171 & 172)	RM4/ S$2.17 (PSB 171 & 172)	RM5 (PSB 190/ AB 776) RM10/S$5 (PSB 175/ AB 767)	21.8.97 (PSB 190/ AB 776) 7.10.97 (PSB 175/ AB 767)	Letter of Guarantee from Lim Lean Heng
Wong Lai Leong	Director, Hai Ming Management Sdn Bhd	14.8.97	RM3.5/ S$1.9 (PSB 180 & 181)	RM 5 (PSB 186/ AB 774) RM10/ S$5 (PSB 185/ AB 773)	21.8.97 (PSB 186/ AB 774) 7.10.97 (PSB 185/ AB 773)	Letter of Guarantee from Lim Lean Heng Cash collateral of RM3 million Net balance of RM411,148.29 in trust account amount of RM2,051,152.54 less contra loss of RM1,640,004.25)

Loh Seong Aun	Director, Hai Ming Management Sdn Bhd	21.8.97 (PSB 198 & 199)	RM5/ S$2.5 (PSB 198 & 199)	RM10/S$5 (PSB 203/ AB 785	7.10.97 (PSB 185/ AB 773)	Letter of Guarantee from Lim Lean Heng. Mr Thios position is that 780,000 LKT shares were pledged to the Plaintiffs for the accounts of Wong Lai Leong, Choi Mei Choo, Lee Hor Sai and Loh Seong Aun on 18.9.97 (DB 79-81) as collateral, and that these were not the same as the 780,000 LKT-A shares issued as a bonus on 6.10.97. Amsteel Singapores position is that 780,000 LKT-A shares were issued as a bonus issue on 6.10.97, and these were the collateral contemplated by DB 79-81 (which was executed on 18.9.97, ie before 6.10.97).
Loh Kee Lin	Executive Director, LKT Industrial Bhd	10.10.97 (PSB 205 & 206)	RM20/ S$9 (PSB 205 & 206)	-	-	Letter of Guarantee from Lim Lean Heng

Total				RM60/ S$29		

290. Mr Thio did not accept that Loh Kee Lin was part of the Tai Kar group.

291. Mr Yeo advanced similar factors for treating these five individuals as a group as he did for the Dato Jerry Goh group and Mr Thio disagreed for similar reasons also.

292. The two statements of Mr Thio to Ms Tan also appeared to treat all these five individuals as part of this group although PB 12 did mention that Loh Kee Lin was treated separately. The evidence of Mr Lye was that all of these individuals traded as a group although he did also say that they were treated as a group for administrative convenience.

293. I also note that Lim Lean Heng had given a guarantee or guarantees to secure the accounts of all these five clients although the guarantee for Loh Kee Lin was given later. Mr Thio said it was given not so much to secure Loh Kee Lins account but because Loh Kee Lin had given a power of attorney to Lim Lean Heng. In my view, this explanation reinforced the argument that Loh Kee Lin was part of the Tai Kar group.

294. I am of the view that Loh Kee Lin was trading as part of the Tai Kar group. Whether Mr Thio was entitled to assess him separately for his trading limit is another matter.

295. The Tai Kar group were introduced by Wako Merchant Bank Singapore to Mr Lye when he was with Ong & Company. Wako Merchant Bank functioned as a bank for HNWIs.

296. When Mr Lye joined Amsteel Singapore, he introduced these clients to Mr Thio.

297. Choi Mei Choo, Wong Lai Leong and Loh Seong Aun were directors of Hai Ming Management Sdn Bhd, a company listed on the KLSE.

298. These three individuals were also known to be business associates of Lim Lean Heng who controlled five to eight listed companies in Malaysia and was supposed to own a huge amount of land and hotels (NE 269). He was also a valued customer of many stockbrokers like Hwang DBS (in Malaysia) and HLG (see Mr Thios AEIC para 104).

299. Hor Sai was a director of EMC Logistics Berhad, another company listed on the KLSE.

300. According to Mr Thio, he had learned from inquiries made that these four individuals were valued clients of many stockbroking firms (see his AEIC para 102).

301. However, Mr Thio said that the fifth individual, Loh Kee Lin, had his own standing. He was the founder and a director of LKT Industries Berhad (LKT) in Penang who were and apparently still are the number one electronic parts producer in Malaysia (NE 269D) which was also listed on the KLSE (Mr Thios AEIC para 105). Mr Lye agreed that Loh Kee Lin was treated separately for credit rating purposes (NE 237C).

302. I find that Mr Thio had valid reason to consider Loh Kee Lin separately for the purpose of determining his trading limit even though Loh Kee Lin was trading as part of the Tai Kar group.

303. The fact that Loh Kee Lin was the founder and a director of LKT must also have comforted Mr Thio when the group was trading in LKT and LKT A shares (the latter being bonus shares), although as it turned out, this was the main counter giving rise to the losses of this group.

304. In addition to Lim Lean Hengs guarantee, there was also some collateral as mentioned in the table in para 289 above.

305. There is some dispute as to whether the share collateral was 780,000 LKT shares in addition to 780,000 LKT A shares issued as a bonus issue or whether the share collateral was in fact the 780,000 LKT A shares only.

306. Mr Yeo argued that it was the latter and these shares were not available as collateral until 6 October 1997 when the bonus shares were issued.

307. The pledge document at DB 79 to 81 refers to 780,000 LKT shares and not LKT A shares. However there is no other evidence, beyond Mr Thios assertion, that LKT shares were in fact deposited with Amsteel Singapore as collateral.

308. According to Mr Yeo, a TRACS printout of Amsteel Singapore dated 7 October 1997 showed that 780,000 LKT A shares were deposited into three accounts of this group (PCS para 297) but the printout was not identified by reference to any of the documents before me

309. Even if I were not to accept evidence about the TRACS printout, I am of the view that the collateral was 780,000 LKT A shares and there was no additional 780,000 LKT shares.

310. Of the 780,000 LKT A shares, 750,000 were sold on 7 October 1997.

311. Mr Yeo also argued that the trading limits of three of the individuals in this group were revised upwards twice in a span of about two months from the time they opened their accounts. However, this is neither here nor there. There is nothing wrong with revising a trading limit upwards.

312. Besides, as I have mentioned in para 229 above, Mr Thio did not approve the revisions single-handedly.

313. There is one other point I should mention.

314. In his AEIC at para 69, Mr Loo pointed out that in a memo dated 9 October 1997 to Mr Thio from the Credit Department of Amsteel Singapore, the aggregate maximum limit for the first four clients in this group was proposed to be RM20m which Mr Thio agreed with. Yet the approved trades were in excess of RM20m.

315. However, Mr Quek pointed out that at that time the only security was a guarantee (from Lim Lean Heng).

316. Subsequently, further security was provided, eg. RM3m cash and there was a credit balance of over RM2m in a trust account which could be used to set-off against any outstanding balance (NE 236A to 237A).

317. Mr Yeo gave illustrations showing that this group was allowed to trade in large amounts of LKT shares and even exceeded the aggregate of their trading limits (PCS paras 234 and 223).

318. However only the former point was taken in cross-examination but the latter was not taken specifically, so Mr Thio did not have a chance to respond thereto.

319. Mr Thio said that for LKT and LKT A shares, they had bucked the downward trend and this group of clients were having a history of contra gains (NE 440B and 441E).

THE DATO JERRY GOH GROUP AND THE TAI KAR GROUP - ROLL-OVERS AND SUMMARY

320. Another argument by Mr Yeo was that Mr Thio should not have allowed members of the Dato Jerry Goh group and Tai Kar group to roll-over their trades among members of the same group whether directly or indirectly through other brokers.

321. Mr Yeo argued that roll-overs should not be permitted as they continued to expose Amsteel Singapore to the risk of falling prices for the same shares.

322. As regards what ASMSB was doing, Mr Loo said that for margin accounts, which have to be secured to some extent, the settlement of outstanding positions could be rolled-over for a maximum of three months (NE 244C).

323. In my view, if roll-overs were as dangerous as Mr Yeo initially sought to portray, then they should not have been allowed at all even for margin accounts.

324. As for Ms Tan, she said at NE 316C to E:

> Q Risk that Plaintiffs might be left holding the shares was part of the risk of stockbroking?
>
> A Yes. However the frequency of roll over subjects Plaintiffs to higher degree of risk.
>
> Q Do you know whether clients of Plaintiffs had to pay interest for extended time of payment?
>
> A They had to.
>
> Q What frequency would make roll over acceptable and what would make it unacceptable?
>
> A There is no cut-off point. It is subject to prudent management.

325. Her evidence was not confined to margin accounts only.

326. Mr Thio said that it was a prevalent practice among Malaysian stockbrokers to allow roll-overs (NE 356D). He was not challenged on this.

327. Indeed, in oral submissions, Mr Yeo said that he was not challenging roll-overs per se.

328. Mr Yeo argued that it was foolhardy of Mr Thio to allow roll-overs to continue in view of the weak market conditions from early November 1997.

329. However, Mr Thio disagreed. He said that in some instances, by allowing the clients to roll-over their trades, the clients eventually managed to reduce their exposure (NE 435E/F and 441C/D). He was not challenged on this.

330. Besides, for every roll-over among the clients, commission was earned by Amsteel Singapore. Mr Thio did not allow the roll-overs for altruistic reasons only.

331. Mr Yeo also mentioned certain specific instances when purchases or roll-overs were allowed by Mr Thio even after 20 November 1997 (PCS paras 224 and 236 and 237) but these specific instances were not taken up during cross-examination of Mr Thio who therefore did not have an opportunity to respond thereto.

332. Besides, the roll-overs then may have been to release pressure on the adjusted net capital requirement for Amsteel Singapore, as mentioned in another e-mail from Anita Chong dated 26 November 1997 (DSB 28).

333. Having considered all the allegations and all the factors, I am of the view that Amsteel Singapore has not established that

Mr Thio was negligent in his many decisions regarding the Dato Jerry Goh group and the Tai Kar group.

SIM JOO HOCK AND TAN POH CHOON

334. These two clients were serviced by Mr Wu. The details of this group are stated below.

Name of debtor	Occupation	Date Account Opened	Trading Limit (RM / S$) (million)	Collateral
Sim Joo Hock	Managing Director, Ambangan Services Corporation Sdn Bhd	28.10.97 (PSB 94 & 95)	RM10/ S$4 (PSB 94 & 95)	Share collateral of 2 million Innovest shares pledged on 17.11.97. Mr Thios position is that there is an additional cash collateral of RM1.8 million. Amsteel Singapore dispute this.
Tan Poh Choon	Director, YCS Power (M) Sdn Bhd	28.10.97 (PSB 108 & 109)	RM10/ S$4 (PSB 108 & 109)	Share collateral as above was applicable to secure this account as well.

335. Mr Thio accepted that these two individuals were trading as a group.

336. Sim Joo Hock was the managing director of Ambangan Services Corporation Sdn Bhd (NE 428E/F).

337. Tan Poh Choon was a director of YCS Power Sdn Bhd (NE 429A).

338. Sim Joo Hock and Tan Poh Choon were both recommended by one Eric Tan who was an existing client of Amsteel Singapore who was a local property developer and a majority shareholder of Arus which was listed on the KLSE (Mr Thios AEIC para 111).

339. Sim Joo Hock was recommended as a big investor in Singapore and Malaysia (Mr Thios AEIC para 115).

340. Tan Poh Choon was recommended as an active and experienced share investor and a consultant in corporate structuring matters (Mr Thios AEIC para 112).

341. One of Mr Thios statements to Ms Tan (PB 11) states:

> 2) Sim Joo Hock and Tan Poh Choon
>
> The above accounts were introduced by the dealer, Chris Wu who only had 2 to 3 months experience in securities dealing based on another client, Mr. Eric Tans recommendation.
>
> No further reference check was conducted on Mr.Sim and Mr.Tans background.

342. However, Mr Thio said in cross-examination (at NE 408E) that he had already told Ms Tan (and her team) that he had met Sim Joo Hock twice and checked Sim Joo Hocks background, especially the brokers he dealt with in the past.

343. Mr Thio said this was an illustration as to how not everything in his statement was put in total context. Mr Thio was not challenged on his elaboration that he did conduct checks on Sim Joo Hock.

344. Sim Joo Hock was also a client of ASMSB which granted him a trading limit of RM6m (see the table at para 240 above). Although this was not as high as the RM10m trading limit granted to Sim Joo Hock by Amsteel Singapore, it shows that ASMSB also considered Sim Joo Hock to be an HNWI.

345. Mr Yeo said that Mr Thio did not even know that Sim Joo Hock also had an account with ASMSB until this was mentioned during the trial. Mr Yeo argued that the failure of Mr Thio to discover this showed that Mr Thio had not been thorough in his searches. Yet Mr Yeo did not elaborate as to how searches done on Mr Thios instructions would have revealed such information. Besides, Mr Thio did not pretend that he could obtain such information from searches. It depended on what each client had told him and inquiries made by him and members of his Credit Committee.

346. Sim Joo Hock and Tan Poh Choon had wanted to purchase a huge quantity of Innovest Bhd shares.

347. Mr Thio said that Mr Wu was told that Sim Joo Hock was buying the Innovest shares for someone but Sim Joo Hock refused to disclose the identity of that person. Mr Wu had also been told that Innovest would obtain a timber concession but this allegation was disputed by Mr Yeo.

348. Mr Thio said he had asked Mr Wu whether he knew of any adverse news about Innovest and Mr Wu did not mention any (NE 447B).

349. For this group, two million Innovest Bhd shares were provided as collateral.

350. Mr Thio said that there was also a cash security of RM1.8m but Amsteel Singapores position was that the RM1.8m was actually taken from an existing RM2m which was supposed to be security for another account ie. the account of Tan Hun Leong. Therefore, its position was that the RM1.8m was not a separate and fresh sum over and above the RM2m.

351. The RM1.8m was mentioned in only one document (DB 42) which was a note attached to a fax dated 21 November 1997 from the Credit Committee to GP (DB 39 and 40). This was a note on some outstanding positions prepared by Alex Chong (the Finance & Admin Manager).

352. It stated, inter alia:

2 A/C: R00399 & R00383 TAN POH CHOON & SIM JOO HOCK

OUTSTANDING POSITION

1,670,000	Innovest	RM 10,048,801.29
2,647,000	Innovest	RM 16,677,887.44
		RM 26,726,688.73
Cash Collateral:	RM 1,800,000.00	

353. On the other hand, this document omitted to mention the collateral of two million Innovest shares which was not disputed.

354. The RM1.8m was not mentioned in Mr Wus statement dated 3 December 1997 (PB 17 and 18), which was made before Ms Tan had commenced her investigation.

355. There was also a second statement from Mr Wu. This was made at the time of Ms Tans investigation (PB 19 to 20). It was made on 24 December 1997 and this was signed before Alex Chong. This statement also did not mention the RM1.8m cash collateral specifically. Instead, it stated that RM2m cash collateral came into Sim Joo Hocks trust account on 17 November 1997. It was meant as security to purchase shares in another counter known as Hotline for another client ie. Tan Hun Leong (whose account had not yet been opened then). Sim Joo Hock had requested to purchase Innovest shares on the back of this cash collateral as the share collateral of two million Innovest shares was provided only later, in the afternoon of 17 November 1997. This was inconsistent with Mr Wus earlier statement dated 3 December 1997 in which he had said that it was after receiving the two million share collateral that Sim Joo Hock gave orders to buy the Innovest shares.

356. Mr Thios two statements to Ms Tan were not clear as to whether the two million Innovest shares were provided as collateral before the first tranche of Innovest shares was purchased on 17 November 1997 or after. His evidence during cross-examination (at NE 447A to E) seemed to suggest that the share collateral was provided after the first tranche was purchased but his AEIC at para 115 said it was before.

357. Unfortunately, Mr Wu and Alex Chong (who was the author of the note referring to RM1.8m collateral) did not give evidence.

358. Mr Thio said that Mr Wu was not aware of his conversations with Sim Joo Hock and Alex Chong regarding the requirement of the RM1.8m (NE 409D). That is why Mr Wu did not mention the RM1.8m collateral in either of his (Mr Wus) two statements.

359. As regards PB 19 to 20, which was Mr Wus second statement (signed in the presence of Alex Chong), Mr Thio argued that it was an oversight of Alex Chong not to have mentioned the RM1.8m to Mr Wu.

360. Mr Thio insisted that based on the note prepared by Alex Chong (DB 42) and on his own recollection, there was this RM1.8m cash collateral over and above the RM2m which was deposited to secure Tan Hun Leongs account.

361. Yet, the RM1.8m collateral was not mentioned in either of his two statements to Ms Tan (PB 8 and 9, PB 10 to 13). It was also not mentioned in Mr Thios own AEIC.

362. On balance, I find that there was no additional cash collateral of RM1.8m. I also find that the RM2m which was deposited in Sim Joo Hocks trust account to secure the purchase of Hotline shares was temporarily used to secure the initial purchase of the Innovest shares until the two million Innovest shares were provided as collateral. The RM2m was subsequently used as collateral for the purchase of Hotline shares for Tan Hun Leongs account of which I will say more about below.

363. The RM1.8m was a figure mentioned by Alex Chong in his note as cash collateral for the purchases of Innovest shares. I find that he had made a mistake and the figure should have been RM2m. When the two million Innovest shares were provided as collateral, he omitted to substitute the cash collateral for the share collateral.

364. On 17 November 1997 the clients bought 3,317,000 Innovest shares in two tranches of 670,000 shares and 2,647,000 shares. On 18 November 1997, the clients bought another 1,000,000 Innovest shares. The total number purchased over two days was therefore 4,317,000 Innovest shares.

365. I have found that the two million Innovest shares were the only collateral as there was no RM1.8m as additional collateral. Even then, the two million Innovest shares constituted about 46% of the 4,317,000 Innovest shares purchased by these clients.

366. Mr Yeo made various arguments concerning this group.

367. First he made the point that the total purchase price for the purchases over two days amounted to RM26,616,000 which was in excess of the total trading limit of RM20m given to these two clients.

368. Mr Thio said he was aware of this. He said it was a temporary increase in trading limit and he was prepared to allow it based on the two million Innovest shares and RM1.8m collateral. As there was no additional RM1.8m, I find that he had allowed the temporary excess based only on the two million Innovest shares as collateral. Even then, the two million Innovest shares constituted about 46% of the 4,317,000 Innovest shares purchased over the two days.

369. Secondly, Mr Yeo argued that Mr Thio had disregarded prudence when he allowed Sim Joo Hock and Tan Poh Choon to trade in such high volumes on their first day of trading on 17 November 1997.

370. I do not agree that Mr Thio had disregarded prudence. He had obtained 46% share collateral. This was more than the general requirement of 20% for share collateral, imposed by his internal management.

371. However Mr Yeo also said that after the price drop in the later part of 18 November 1997, Mr Thio had demanded that the clients pay 50% cash before the date for payment was due. Mr Yeo argued that this demonstrated that Mr Thio had realised what an unjustified risk or gamble he had taken.

372. I do not agree.

373. Mr Thio did not at the relevant time think it was an unjustified risk or gamble given the collateral that he had obtained. The fall in Innovests share price on 18 November 1997, alerted him to take swift action because the value of the share collateral was drastically affected too. In my view, the move by him to get 50% cash demonstrated his responsiveness to changes in the market when he was aware of such changes and not a lack of prudence in his initial decision to allow the trades in Innovest shares. He exercised his judgment in the initial decision which turned out to be wrong because he did not foresee the drastic fall in Innovests share price, but that did not mean that he had been negligent.

374. Mr Yeos third argument was that Mr Thio should not have accepted shares of the same counter as collateral because if the share price of the counter drops then the value of the collateral would also drop. He was therefore arguing that Mr Thio should have obtained shares from another counter as collateral.

375. While it is logical to say that the value of the share collateral of the same counter would drop in tandem with the drop in price of the shares being bought, it does not follow that Mr Thio was negligent in accepting share collateral of the same counter. It was better than no collateral and the number of shares held as collateral was a substantial one.

376. Furthermore, a client may not have shares of another counter to be provided as security or may not wish to provide shares of another counter as security. Indeed, Mr Wus statement to Ms Tan (at PB 19) said that Mr Thio had asked for shares of various counters as collateral but only shares in Innovest were provided.

377. The alternative was not to allow the trades at all but Mr Thio thought he had adequate security.

378. As for ASMSBs practice, Ms Tan said that ASMSB may have also accepted shares of the same counter as collateral (NE 307E to 308B). From the documentary evidence, ASMSB did do so, see DSB 137 and 139.

379. I also note that none of the witnesses for Amsteel Singapore had gone so far as to say that Mr Thio was negligent in failing to obtain shares from another counter as security. That was Mr Yeos argument.

380. In the circumstances, I am of the view that Mr Thio was not negligent in failing to obtain shares from a different counter as security.

381. Mr Yeos fourth argument was that the Innovest shares had been suspended and subsequently re-quoted on 14 November 1997. On that day, the price of Innovest shares had dropped drastically twice by a total of RM3.61. This was just before the first purchase was made by Sim through Amsteel Singapore in the morning of 17 November 1997.

382. Mr Thio was unaware of such a steep price drop until after 20 November 1997 (NE 445A). Apparently Mr Wu did not mention this to him as Mr Wu was also unaware.

383. Mr Yeo argued that Mr Thio had not exercised due diligence and if he had, he would have discovered that the shares had been suspended and re-quoted on 14 November 1997 and that its share price had dropped by a total of RM3.61 that day. The suggestion was that had Mr Thio known all these facts, he would not have allowed the trades in Innovest shares or required more and/or different security.

384. There was no evidence before me that knowledge of a suspension of trading per se would have caused a stockbroker to be more wary of the share after it was re-quoted on the KLSE.

385. There was also no evidence before me as to how many other stockbrokers knew or did not know about the price drops for Innovest on 14 November 1997 and what steps they took.

386. Mr Yeo also suggested that Mr Thio was imprudent for relying on Mr Wu to bring up any adverse news about Innovest because Mr Wu was relatively inexperienced in the stockbroking industry and the price fluctuations of Innovest shares on the Friday before 17 November 1997 ie. 14 November 1997 were not normal.

387. I am of the view that the latter point is a non-issue. Mr Thio himself was unaware of the price fluctuations on 14 November 1997. This was not a case where he was aware but had allowed Mr Wu to convince him that his own information was wrong.

388. As for Mr Thios having relied on Mr Wu for adverse news, I do not think this was a case of over-reliance. True, Mr Wu was relatively inexperienced but Mr Thio could not be expected to know every aspect about every counter or every client. He had to place some reliance on dealers and remisiers as well as on others like members of the Credit Committee.

389. Mr Yeo also said that the purchases done through Amsteel Singapore for Innovest on 17 November 1997 constituted about 20% of the market total that day. He was implying that the Sim Joo Hock and Tan Poh Choon group had purchased the largest quantity that day. Even if this were true, it was neither here nor there. Obviously there were other stockbrokers who were also prepared to allow their clients to buy Innovest shares that day. There was no evidence before me as to what sort of security these other stockbrokers had obtained, if at all any, for these trades. There was no evidence before me as to what ASMSB did as regards Innovest shares.

390. None of the witnesses for Amsteel Singapore accused Mr Thio of failing to act with due diligence for failing to know about the previous suspension of Innovest shares and that the price of Innovest had dropped twice on 14 November 1997.

391. Also, apparently, Amsteel Capital with its support staff to supervise or oversee the regional offices did not see it fit to

send a warning notice to Amsteel Singapore (or ASMSB for that matter) about the price drops of Innovest on 14 November 1997 as there was no evidence of such a warning.

392. I would add that the price of Innovest shares at the close of trading on 17 November 1997 was higher than the prices at which this group had bought that same day. It was only after they bought another one million shares in the morning of 18 November 1997 that the price dropped drastically.

393. I am of the view that Mr Thios lack of knowledge of the suspension and of the subsequent drops in the prices of Innovest on 14 November 1997 did not amount to negligence.

394. I am of the view that Amsteel Singapore has failed to establish negligence in respect of Mr Thios decisions for this group.

Tan Hun Leong @ Tan Hang Kiang

395. Tan Hun Leong was also serviced by Mr Wu. He is the only individual in this fourth and last group. Details of his account are stated below:

Name of debtor	Occupation	Date Account Opened	Trading Limit (RM / S$) (million)	Collateral
Tan Hun Leong alias Tan Hang Kiang	Director, Zimmark Corporation (M) Sdn Bhd	19.11.97 (PSB 120 & 121/ AB760)	Not stated in account opening form (PSB 121/ AB 760)	Cash collateral RM2m.

396. Tan Hun Leong was a director of Zimmark Corporation Sdn Bhd. He was a nominee of Lim Kie Peng who was a director of Hotline.

397. Sim Joo Hock (who has been mentioned above) had introduced Mr Wu to Lim Kie Peng who had in turn given a power of attorney to Tan Hun Leong. However the trading account was opened in Mr Tans name.

398. On 17 November 1997, RM2m cash collateral was deposited in Sim Joo Hocks trust account for an intended purchase of Hotline shares for Mr Tans account which had not yet been opened as he had not yet signed the application form to open the account. As I have mentioned above, this RM2m was used temporarily to secure the purchase of Innovest shares on 17 November 1997, and then to secure the purchase of Hotline shares. Eventually, a total number of 1,322,000 Hotline shares were bought for about RM7.5m (see DSB 84, PSB 865 and NE 442E).

399. Mr Thio said he had on 17 November 1997 already granted a trading limit of RM10m to Mr Tan. The account opening form for Mr Tan was signed on 19 November 1997 when he came to Singapore bringing a power of attorney and a letter of undertaking from Lim Kie Peng (NE 443A to B). However the form did not specify the trading limit. Neither did it have Mr Thios signature to signify his approval to the opening of the account. All the account opening forms for the clients in the other three

groups had Mr Thios signature.

400. Mr Thio said that the absence of any written trading limit in the form and the absence of his signature on the form was an oversight (NE 443C). Yet Mr Yeo sought to make something out of it. I am of the view that Mr Thios evidence on this point should be accepted and nothing much should be made out of the absence of any written trading limit or of Mr Thios signature in the account opening form.

401. Mr Thio said that the background of Lim Kie Peng and the cash collateral warranted his decision to allow the purchases of Hotline shares to be made (NE 443E).

402. There was no evidence of any other check done by Mr Thio on Lim Kie Peng except that Mr Thio was informed that he was the Managing Director of Hotline. Also, Mr Thio did not say that he had conducted other checks.

403. I am of the view that Mr Thio had allowed these purchases (of RM7.5m) to be made because (a) of the cash collateral of RM2m and (b) Lim Kie Pengs position as Managing Director of Hotline. The fact that it was Sim Joo Hock who had introduced Lim Kie Peng must also have featured in Mr Thios mind.

404. In the circumstances, I am of the view that Mr Thio was not negligent in allowing Tan Hun Leong to purchase the Hotline shares.

FUNDAMENTALS

405. Mr Yeo also argued that Mr Thio should have given more weight to fundamentals than to speculative counters. Yet GP knew that Amsteel Singapore was allowing the trades in speculative counters.

406. Furthermore, there was and is no general rule that speculative counters have to be avoided by stockbroking companies. It depends on whether one adopts a conservative or aggressive approach.

407. Indeed, Mr Lye admitted that while he was with Ong & Company, his HNWI clients were trading in huge volumes on a contra basis (NE 262C/D). This meant that they too were trading in speculative counters. He agreed that it was common practice for HNWIs to trade in huge volumes on a contra basis (NE 271C/D).

408. Besides, I think that I am entitled to take judicial notice that in the 1997 regional economic crisis, even prices of blue-chip counters on the KLSE and SES also fell drastically.

WHEN THE ECONOMIC CRISIS STARTED

409. Another argument of Mr Yeo was that the stock market (for Malaysian stocks) did not crash overnight on 20 November 1997 as Mr Thio had alleged.

410. Mr Thio had produced charts from Bloomburg & Reuters relating to the KLSE (DB 82 to 85) in addition to a newspaper cutting of some articles in the 21 November 1997 issue of Business Times (AB 656) to substantiate his argument that it was only from 20 November 1997 that share prices had dropped dramatically.

411. In turn, Mr Yeo produced a Reuters print-out of weekly readings of KLCI from 12 January 1997 to 14 June 1998 and a Reuters print-out of monthly readings of KLCI from 31 January 1997 to 31 July 2000 (Exhibits P1A and P1B).

412. Mr Yeo submitted that the various charts and print-outs showed that the KL Composite Index fell more than 30% between

the period of 3 August to 2 November 1997 (see PCS para 78 and Exhibit P1A, P1B, DB 85 and NE 361A).

413. Based on this, Mr Yeo mounted his arguments on two fronts.

414. First, he argued that as the reports and charts clearly showed a downward trend in the stock market since July/August 1997, this, coupled with the earlier crash of the Thai and Indonesian markets, together with the devaluation of the Thai Baht and the Indonesian Rupiah, must have caused alarm bells to ring in the financial sectors (PCS para 85). The suggestion was that Mr Thio should have been more prudent since July/August 1997 instead of granting huge trading limits to clients and allowing them to exceed their already huge trading limits from time to time.

415. To bolster this argument, Mr Yeo pointed out that ASMSB had already, from about July 1997, frozen certain accounts and had started to force-sell the shares of clients of these accounts to reduce their outstanding balances.

416. However, none of the witnesses said that ASMSBs step was due to the regional economic crisis or the weak stock market.

417. There was also no evidence that aside from these specific accounts, ASMSB had generally adopted a more cautious approach from July 1997.

418. I find that the freezing of certain accounts and force-selling by ASMSB of shares held for these accounts from July 1997 was probably because these accounts had outstanding balances for some time as at July 1997. In any event, it was certainly not for the reason advocated by Mr Yeo.

419. Secondly, if the situation was already as bad as Mr Yeo sought to portray from about July 1997, GP would either have stopped Amsteel Singapore from commencing operations on 28 July 1997 or would have issued a specific directive that Amsteel Singapore take a cautious approach. None of these steps were taken.

420. On the contrary, as I have found, GP knew that Amsteel Singapore was taking an aggressive approach all along and he did not object.

421. I also note that neither Ms Tans report nor the pleadings of Amsteel Singapore nor the AEICs nor the oral evidence of the witnesses for Amsteel Singapore said that Mr Thio should have been more prudent from July or August 1997 because of the regional economic crisis.

422. The second front used by Mr Yeo was really his main argument of the two fronts. He argued that Mr Thio should have been more prudent, if not from July 1997, then at least from early November 1997 (PCS para 79).

423. For this argument, Mr Yeo relied on the same reports and charts which showed that the KL Composite Index fell more than 30% between 3 August to 2 November 1997.

424. He also relied on the AEIC of Mr Thios own witnesses, Ms Seet and Mr Ram, who had said in their respective AEICs that the last quarter of 1997 to January 1998 was a turbulent/depressing period for the financial markets of Asian countries.

425. However on this point, the two AEICs of Ms Seet and Mr Ram were general and did not specify more precisely when the turbulence hit the stock market.

426. Besides, Mr Yeo omitted to mention that Ms Seets AEIC also states (at para 11):

> 11. The impact on sharp decline of share prices for the Singapore and Malaysian stock markets was such that even the most prudent and careful dealers and investors (both retail and institutional) were caught off guard and defenceless against huge losses.

[Emphasis added.]

427. As for Mr Lye, he said that the economic crisis started towards middle October 1997 when banks began to pull away their credit lines and terminated margin facilities (NE 273A). Although he could not recollect exactly when this started (NE 273D), his recollection was that before November 1997 the stock market was getting very bad (NE 273E).

428. However, Mr Lye agreed that the economic crisis in November 1997 was not foreseeable. Indeed he also said that the ten clients in the first two groups that he was servicing would have remained HNWIs but for the crisis and could pay their contra losses before the crisis (NE 266F, 272 to 273B and 273C).

429. I note that there was a memorandum dated 10 November 1997 from ASMSB to remisiers and dealers. It states:

> SECURITISED ACCOUNTS - (force-selling of collateral shares)
>
> Our current policy pertaining to settlement of securitised accounts losses is thirty (30) calendar days after the date of contra.
>
> Losses which are not settled by the 30th calendar day (the due date) will be recovered by force-selling the collateral shares on the next market day following the due date.
>
> In view of the current volatile market conditions, the value of the collateral shares very often dropped sharply within a short period of time resulting in higher unsecured loss exposure risk.
>
> In order to minimise this risk, the Management have decided to reduce the credit period from thirty (30) to FIFTEEN (15) calendar days with effect from 1st December 1997.
>
> Therefore contra losses resulted from trades done on or after 1st December 1997 will be subject to this new policy.
>
> Your clients will be informed of this new policy via separate letters.
>
> The new policy is a temporary risk mitigating measure and we shall revert to the former policy as soon as the situations improve.
>
> Thank you.

430. In the meantime the management of Amsteel Singapore itself had its own meeting on 14 November 1997. I have referred to this meeting above in the context of other arguments.

431. However, Mr Yeo used the meeting of the 14 November 1997 in another way.

432. He said that the decisions taken in the meeting and in particular to reduce the RM30m group trading limit to RM20m reflected a weak stock market even then. He argued that Mr Thio had failed to comply with the decision to reduce the trading limit because Mr Thio had allowed the aggregate trading limit of two groups, the Dato Jerry Goh group and the Tai Kar group, to remain above RM20m.

433. Mr Thio said that the decision of 14 November 1997 was of general application and that it would take time to be implemented specifically (at NE 423F).

434. Mr Thio also said that the reason for reducing the trading limit for groups was that many other individuals were buying shares similar to those bought by groups. To accommodate these individuals, the decision was made to reduce the group trading limit to RM20m (NE 388B). The reason, he said, was not because of a weak stock market then (NE 388E to 389F).

435. I do not accept Mr Thios explanation for the decision to reduce the group trading limit. If the intention was to allow other clients to buy the same counters and yet not increase Amsteel Singapores exposure to such counters, then the simple solution was to limit each groups purchases of those counters but not its aggregate trading limit.

436. Furthermore, Mr Thios explanation is contradicted by a note which was issued by the Credit Committee of Amsteel Singapore to Mr Lye dated 17 November 1997, which note must have resulted from the 14 November 1997 meeting. It states:

> To Mr Anthony Lye
>
> REDUCTION OF LIMITS ON OUTSTANDING POSITIONS
>
> In view of the weak sentiments persisting in the Malaysian KLSE market, the Credit Committee has decided on the following measures for immediate implementation.
>
> 1. Outstanding position on each individual/group of clients will be limited to RM20 million or 5 times of cash collateral whichever (*sic*) lower. Current individual/group exposures in excess of the limit will have to be wound down before taking in any new positions.
>
> 2. The above will be strictly enforced and any subsequent excesses in the new limits set will result in suspension of the client.
>
> 3. Trades in excess of limits will only be approved on a case-by-case basis and provided that an undertaking is given to clear them out within T+5. The approval given must be properly documented.
>
> 4. Outstanding contra losses must be cleared within 7 business days, otherwise a firm repayment schedule must be presented. Failure to comply when aggregate outstanding contra losses for each individual/group of clients exceeds RM1 million will result in immediate suspension of the clients trading account.
>
> The above measures are necessary to limit our Companys exposures in a market beset by liquidity crunch. We advise that these are temporary measures which will be lifted once market conditions improve.
>
> THE CREDIT COMMITTEE
>
> 17 November 1997
>
> Cc: The CEO
>
> [Emphasis added.]

437. Furthermore, a circular was issued by the Credit Committee of Amsteel Singapore to all dealers dated 18 November 1997. This circular states:

> To All Dealers

WAREHOUSING TRADES & BLOCK DEALS

In view of the further weakening Malaysian market, as a matter of prudence the Credit Committee has decided on the following with immediate effect.

1. Block Deals

All block deals must be gradually reduced with subsequent deals to be capped at 50% in terms of quantity or value whichever is lower as compared to the preceding deal.

2. Warehousing Trades

All trades to be warehoused must have the prior approval of the CEO and a copy of the approval documents, be immediately, submitted to the Operations Manager for control.

Warehousing will only be approved on a case by case basis but at no time must the limit on warehoused trades exceed RM2.5 million per group of clients or RM10 million per Dealer. Trades collateralised at 20% cash or 30% shares (min. 3 counters spread evenly by value) maybe exempted at the discretion of the CEO.

Where the warehouse trade is in effect a block deal, point (1) above takes precedence.

The management takes a very strong view against unauthorised warehousing trades.

THE CREDIT COMMITTEE

18 November 1997

Cc: The CEO

[Emphasis added.]

438. In view of the note and the circular from the Credit Committee of Amsteel Singapore, as well as ASMSBs circular dated 10 November 1997 (see para 429 above) and the evidence of Mr Lye on this point, which I accept, I find that the stock market was weak in the beginning of November 1997.

439. However the decision taken by Amsteel Singapore in the meeting of 14 November 1997 which was followed up by the note dated 17 November 1997 and the circular dated 18 November 1997 from its Credit Committee showed that Mr Thio and the Credit Committee did take prudent steps even before 20 November 1997 in view of the weak market then.

440. With regard to the follow-up on the note and the circular from the Credit Committee of Amsteel Singapore, Mr Lye said in para 44 of his AEIC:

> 44. Although the memoranda were sent, they were not implemented strictly by the Plaintiffs in my case. When I approached the Defendant with news of resistance by the clients to the said changes, the Defendant constantly granted me exemptions from those guidelines because of the very bad market conditions.

> I reiterate that everything I did was with the Defendants prior approval.

441. Although Mr Thio had a different version, Mr Lye was not challenged on his assertion which I accept subject to the qualification in the next paragraph.

442. As regards the exemptions granted by Mr Thio to the Dato Jerry Goh group and Tai Kar group, it is not clear to me how constantly Mr Thio had granted such exemptions bearing in mind the note and the circular were dated 17 and 18 November 1997 respectively just before the 20 November 1997.

443. In any event, it was up to Mr Thio to decide whether to grant an exemption or not and the period of the exemption and it would be wrong to categorise every exemption granted or exception made by him as a breach of a decision of the internal management of Amsteel Singapore.

444. Furthermore, there is no suggestion by any of the witnesses that Mr Thio was negligent in granting exemptions to these two groups of clients because of the very bad market conditions.

445. I also note from a letter dated 18 November 1997 by Mr Thio to one of the clients Chew Kar Hooi (who is part of the Dato Jerry Goh group) that Amsteel Singapore had just received RM1m from Chew Kar Hooi as collateral and Mr Thio was asking for additional collateral. The contents of this letter have been stated in para 287 above. So Mr Thio was not just sitting idly by the side in these circumstances.

446. Although I have found the stock market to be weak in the beginning of November 1997, the situation was still not as alarming as from 20 November 1997.

447. A Business Times report of 21 November 1997 (AB 656) had various alarming news. An article therein had the heading KL stocks plunge 11% as market braces for more bail-outs. A smaller heading for the same article read, Ringgit hammered, breaching RM3.50 level against US dollar to hit RM3.5250.

448. A second article in the same page had a heading which read, No plans to suspend KLSE trades despite falls : Anwar. Although this was meant to be reassuring, it suggested that there were rumours or concerns that trades on the KLSE might be suspended.

449. A third article also on the same page had a heading which read, Malaysian govt in shock takeover of Bakun project.

450. In addition, the Credit Committee of Amsteel Singapore had issued a memorandum to all dealers dated 20 November 1997. It states:

> With immediate effect, all buy orders must be approved by the Credit Committee (Kim Siah, Alex, Chin Poh) before execution.

451. Furthermore, on 21 November 1997 the Credit Committee of Amsteel Singapore sent a fax dated 21 November 1997 to GP.

452. The first sentence thereof states:

> The sharp decline in the KLSE market yesterday has resulted in a crisis on our hands

453. Even then, the major worry for the Credit Committee was only as regards the Innovest shares.

454. I also note that in November 1997 but prior to 20 November 1997, there was only one memorandum from ASMSB to its remisiers and dealers dated 10 November 1997, the contents of which have been set out at para 429 above. Although this memorandum referred to current volatile market conditions, it was intended to implement a new policy on settlement of contra

losses from 1 December 1997 only. There was still no urgency yet. Contrast this with the situation from 20 November 1997. Between that date and 27 November 1997, ASMSB issued four memoranda, in view of the market situation, on margin accounts, one of which was with immediate effect, another effective 24 November 1997, and the last two effective 1 December 1997 (PSB 215 to 218).

455. The situation from 20 November 1997 was clearly much more severe than before and, to this extent, Mr Thio was right. However, prior thereto, on 18 November 1997, disaster had begun to strike Amsteel Singapore because that was the day when the price of Innovest shares had dropped drastically after the trades of Sim Joo Hock and Tan Poh Choon. Even then, Amsteel Singapore might have recovered from this if the general situation had not deteriorated even more from 20 November 1997. For example, MCL and Espirt and LKT and LKT A shares were suspended on or about 25 or 26 November 1997. When the suspension was lifted on or about 8 or 9 December 1997, their share prices collapsed (NE 223C to E).

WAREHOUSING

456. Apparently, Mr Thio at times allowed purchases of shares to be warehoused meaning that although the shares were purchased on a particular day, they were not booked into the clients account until one or two days later. This meant that effectively the client had a longer period to pay for the purchase than that specified in the relevant rules and bye-laws.

457. Mr Yeo initially sought to make much of this on the basis that warehousing was contrary to an alleged policy of the Amsteel Securities group and warehousing increased the exposure of Amsteel Singapore to market risks (PCS paras 63 to 68).

458. However in Mr Yeos oral closing submission, he said that he did not think that he could say that warehousing for one or two days caused the crash for Amsteel Singapore.

459. There is also no evidence before me that any warehousing permitted by Mr Thio caused the losses of Amsteel Singapore.

460. However Mr Yeo argued that because Mr Thio had allowed warehousing, this is one of the badges to show that Mr Thio was not having due regard to risks.

461. Yet Mr Lyes evidence was that Mr Thio did not encourage warehousing. It was allowed on a case by case basis (NE 275C).

462. In the circumstances, it is not necessary for me to dwell further on the warehousing point.

COMMON CLIENTS OF AMSTEEL SINGAPORE AND ASMSB

463. In the context of common clients between ASMSB and Amsteel Singapore, Mr Yeo argued that Mr Thio should not have granted high trading limits to, for example, Chew Kar Hooi and Dato Lim Tee Keong as they already had high trading limits from ASMSB.

464. Mr Thios evidence was that he knew in early November 1997 the high trading limits granted by ASMSB to Chew Kar Hooi and Dato Lim Tee Keong (NE 415F, 416E, 417C).

465. In any event, as Mr Thio put it, the reality was such that the same clients were being sought after by stockbrokers (NE 419F). I agree and I am of the view that this is not a practice peculiar to stockbrokers.

466. Furthermore, no witness said that Mr Thio should have refrained from granting high trading limits to these clients in view

of what ASMSB had already granted them.

467. There was also no directive from Amsteel Capital that its regional entities must either refrain from having common clients or exchange information to ensure that the group did not over-extend itself on the same client. It will also be re-called that Mr Thio had said that when he initially checked with ASMSB, on potential common clients, ASMSB was not very keen to share information with him (NE 353A/B).

OTHER COMPARISONS BETWEEN AMSTEEL SINGAPORE AND ASMSB

468. From the evidence produced by Amsteel Singapore, the top five debtors of ASMSB had each been given high trading limits too. For Chew Kar Hooi and Dato Lim Tee Keong, they had also traded in MCL and Esprit.

469. Mr Yeo argued that the top five debtors of ASMSB were serviced by the same remisier, Mr Peter Sia. Mr Yeos argument was that their losses were not suggestive of the corporate culture at ASMSB but rather mismanagement by the particular remisier involved.

470. I do not agree. It is clear that Amsteel Capital knew what was happening in ASMSB. GP was the MD of ASMSB. The office of Amsteel Capital was just below the offices of ASMSB in the same building.

471. The aggressive approach which led to ASMSBs losses was very much the corporate culture of ASMSB.

472. In addition, Mr Sia was not just some rogue remisier. He was also an executive director of ASMSB and still a 10% shareholder at the material time (NE 8F to 9A, NE 323C).

473. Mr Yeo sought to argue that this put Mr Sia in a somewhat special position. However I am of the view that Mr Sias approach was not very different from what the rest of ASMSB were doing. I do not accept that Amsteel Capital was prepared to let him adopt an aggressive approach while insisting that the rest of ASMSB must be more conservative.

474. Mr Yeo also argued that it was a striking feature that most of the accounts of the top five debtors showed no purchase transactions between November 1997 to June 1998. He said this was significant as that was the time when the trades which led to Amsteel Singapores losses were made (PCS para 372). By implication, Mr Yeo sought to argue that this showed that ASMSB had taken precautions whereas Mr Thios Amsteel Singapore had not.

475. I have already dealt with this point in paras 414 to 421 above.

476. Mr Yeo had another argument. He pointed out that ASMSBs operating loss for end of the financial year 1998 ie. 30 June 1998 was about RM148m. In comparison, Amsteel Singapores loss was about RM98m (PCS para 367).

477. Mr Yeo said that ASMSBs operating loss as compared to its monthly turnover or its shareholders funds was less than that of Amsteel Singapores. Accordingly, he argued that in relation to the volume of business done and financial resources, ASMSB had not over-extended itself whereas Amsteel Singapore had. He suggested that this showed that Mr Thio had poorer risk management then ASMSB (NE 332F).

478. I do not agree with this argument.

479. ASMSBs losses were huge. They were less than that of Amsteel Singapore if ASMSBs losses were compared to its turnover or shareholders funds, but not in absolute terms.

480. The reason why ASMSBs losses were less was fortuitous. As I have mentioned, ASMSB had started to force-sell shares

of certain defaulting clients from July 1997 and the main impact of the financial crisis did not hit until 20 November 1997. Had the financial crisis hit home on, say, 1 August 1997, ASMSBs losses would have been greater and Amsteel Singapores losses would have been very much less because Amsteel Singapore had only started trading on 28 July 1997.

481. Also, had these defaulting clients of ASMSB not had huge outstanding balances as at July 1997 but later, ASMSB would not have taken steps to force-sell their shares from July 1997.

482. Mr Yeo had a third argument. Under the regulations passed under the Securities Industry Act, stockbrokers have to meet a certain requirement pertaining to adjusted net capital (ANC).

483. Mr Yeo sought to make something out of the fact that Amsteel Singapore failed to meet the ANC requirement but this was due to the severe losses it had suffered. It was not as though Amsteel Singapore was consistently in breach of the ANC requirement throughout its period of operations.

484. Besides, as Mr Thio pointed out, ASMSB also failed at the relevant time to meet the Malaysian equivalent of the ANC requirement which was the Minimum Liquid Fund requirement.

485. At the end of the day, Mr Yeo impliedly conceded that ASMSB had engaged in similar practices as Mr Thios Amsteel Singapore when he urged me to bear in mind that ASMSB was a different entity from Amsteel Capital. In so doing, he sought to distance Amsteel Capital from what was happening in ASMSB. Such an argument must fail for the reasons I have mentioned in para 470 above.

OTHER STOCKBROKERS

486. Mr Yeo said that other more prudent stockbroking companies had managed to weather the storm but Amsteel Singapore did not. He argued that this demonstrated the unwarranted risks that Mr Thio took.

487. I am of the view that this is not a valid argument.

488. In the first place, there is no evidence about the practices of other stockbroking companies.

489. There is also very little evidence as to how other stockbroking companies performed during the crisis. True, some must have managed to weather the crisis, but others did not. Some must have been conservative and others more aggressive. Furthermore, some had more aggressive clients than others. The fact that huge losses have been incurred does not necessarily constitute negligence. Often the persons who are regarded as visionaries, when times are good, are the same persons who are accused of negligence when disaster befalls.

490. I also reiterate that Ms Seet had said in her AEIC that even the most prudent and careful dealers and investors were caught off-guard and defenceless against huge losses.

WHETHER THE CLIENTS IN THE FOUR GROUPS CAN PAY THEIR LOSSES

491. Amsteel Singapore has reached a settlement with Mr Lye on his indemnity (as a dealer) to it.

492. For the Tai Kar group, Amsteel Singapore has also reached a settlement in which RM11m is to be paid over four years.

493. According to Mr Loo at NE 252C to E, the settlement was reached after this group gave Amsteel Singapore grief over its litigation and the board of directors of Amsteel Singapore felt that suing all of them would be a long-drawn affair.

494. There is insufficient evidence before me to establish that this group and Lim Lean Heng (the guarantor) would have been unable to pay for their losses. Likewise, for the rest of the other three groups in question. The evidence only establishes that they had not paid their losses.

SUMMARY

495. I find that Mr Thio was caught up in the grand vision for the Amsteel Securities group. He decided to take an aggressive approach which was condoned, if not encouraged, by Amsteel Capital.

496. Yeo argued that Mr Thio did nothing to monitor or supervise the trades carried out by his dealers. I do not agree. Mr Thio was aware of the trades done. He was aware of the risks and he exercised his judgment. As events turned out, he was wrong, but he was neither wilful nor negligent.

497. Mr Yeo urged me to consider the various allegations against Mr Thio cumulatively and not in isolation. I have done that and I am not satisfied that Amsteel Singapore has established its case.

498. Perhaps the most telling evidence came from one of the witnesses for Amsteel Singapore, Mr Lye. At NE 275F to 276E he said:

> Q In your dealings with Defendant, did you find him conscientious and responsible?
>
> A Defendant was a good boss. He was responsible. During that time he was trying his best to do more business for Plaintiffs bearing in mind it was a new set-up. Even as a friend, he was kind. He was always there to listen and never asked for anything back in return despite helping a friend.
>
> Q Given the facts known and facts that were reasonably foreseeable, Defendant had acted reasonably and to the best of his ability?
>
> A Defendant did what he could bearing in mind uncertainty at the time.
>
> Q In your AEIC, it is not your intention to suggest that Defendant has been in neglect of duty anyway?
>
> A My AEIC contains facts. I think Defendant did what he could.

499. In the circumstances, the claim of Amsteel Singapore is dismissed.

500. I will hear the parties on costs.

Woo Bih Li

Judicial Commissioner

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