IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 240

Magistrate's Appeal No 9849 of 2020/02

Between

Lau Wan Heng

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Securities and Futures Act]
[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]

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Lau Wan Heng
v
Public Prosecutor

[2021] SGHC 240

General Division of the High Court — Magistrate's Appeal No 9849 of 2020/02
See Kee Oon J
3 September 2021

22 October 2021 Judgment reserved.

See Kee Oon J:

1 The appellant pleaded guilty in a District Court to one charge under s 197(1A)(*a*) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("SFA") (the "Market Rigging Offence") and 12 charges under s 201(*b*) SFA (collectively, the "Proceeded Deceptive Practice Offences"). Nineteen other related charges under s 201(*b*) SFA were taken into consideration ("TIC"), with her consent, for the purpose of sentencing.

2 The appellant admitted to the Statement of Facts ("SOF") without qualification. The District Judge ("DJ") sentenced her to 20 months' imprisonment for the Market Rigging Offence, and six weeks' imprisonment for each Proceeded Deceptive Practice Offence. The sentences for the Market Rigging Offence and three of the Proceeded Deceptive Practice Offences were ordered to run consecutively, yielding a global term of 20 months and 18 weeks'

imprisonment. The appellant now appeals against her sentence. She commenced serving her sentence on 15 February 2021.

Background facts

3 The main background facts are as follows.[1] Koyo International Ltd ("Koyo") is a Singapore-incorporated company whose shares have been listed on the Catalist board of the Singapore Exchange ("SGX") since 2009.

4 Between 12 August 2014 and 15 January 2016, Lin Eng Jue ("Andrew") led a scheme to manipulate the price of Koyo shares ("the scheme"). There were altogether eight scheme members, including Andrew, Yeo An Lun ("Yeo"), Goh Qi Rui Rayson ("Rayson"), Teo Boon Cheang ("Steven"), Ang Wei Jie Simon ("Simon") and the appellant. The scheme employed a total of 53 trading accounts opened in the names of 15 individuals with eight brokerages. On Andrew's directions, the scheme members used various trading accounts under their control to trade Koyo shares amongst one another, as well as with other third parties trading on the market, and gradually pushed up the price at which Koyo shares were traded on the SGX.

5 Most of the trades conducted by the scheme members were on a "contra" basis. Contra trading involves buying shares without paying the full price of the shares upfront. The brokerage firms involved in the scheme permitted their accountholders to purchase shares without making full payment upfront, but the brokerages generally required the accountholders to make payment for the shares purchased within three days after the trade. The accounts used in the scheme were subject to trading limits set by the brokerage on the total value of shares that could be purchased on a "contra" basis.

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1 As set out in the Amended Statement of Facts ("SOF") dated 17 September 2020.

6 The appellant, who was initially a broker and later a remisier with CGS-CIMB Securities (Singapore) Pte Ltd ("CIMB"), was part of the scheme from 6 February 2015 to 15 January 2016 (*ie*, 234 days), after having been introduced to Andrew by the CEO of Koyo.

7 Between February 2015 and October 2015, Andrew obtained the appellant's assistance to procure trading accounts. The appellant convinced her existing clients at CIMB, as well as her family members who had trading accounts with CIMB and other brokerages, to let her use their trading accounts to trade Koyo shares. The individuals who provided their trading accounts were promised a commission of 10% from any profits made through their accounts and were assured that any losses incurred would be paid by the scheme members. These trading accounts were then used to trade Koyo shares on Andrew's instructions, in pursuance of the scheme.

8 Between October 2015 and January 2016, the appellant obtained more trading accounts to be used in the scheme. She informed her clients that she was considering leaving CIMB and joining either RHB Securities Singapore Pte Ltd ("RHB") or KGI Fraser Securities Pte Ltd ("KGI"). She convinced her clients to open or reactivate trading accounts with the latter two brokerages. The appellant also convinced her family members to open trading accounts with other brokerages.

9 Altogether, the appellant procured 31 trading accounts for the scheme. The accounts the appellant contributed to the scheme were used to perform 5,544 trades involving Koyo shares on a total of 176 days.

10 On 15 January 2016 (Friday), SGX issued a "trade with caution" warning, stating that a "small group of individuals was responsible for 60% of

the trading volume of Koyo [between 26 October 2015 and 14 January 2016], of which at least half of these trades were due to this group of individuals buying and selling among themselves". After this announcement, Koyo's share price crashed by almost 84%, from $0.34 on 15 January 2016 to closing at $0.056 on 18 January 2016 (the following Monday). A total of $3,119,034.93 in contra trading losses was incurred in the 31 accounts procured by the appellant, and Koyo's market capitalisation fell by more than $58 million.

The decision below

11 The DJ's grounds of decision are published at *Public Prosecutor v Lau Wan Heng* [2020] SGDC 293 ("GD"). In arriving at the sentence of 20 months' imprisonment for the Market Rigging Offence, the DJ considered factors which contributed to the appellant's culpability, the degree of harm caused by the Market Rigging Offence, the appellant's relative level of criminality as compared to the other co-accused persons involved in the scheme, as well as the unreported case of *Public Prosecutor v Goh Hin Calm* HC/CC 13/2019 (20 March 2019) ("*Goh Hin Calm*"). I will elaborate on each of these considerations in turn.

12 The DJ identified the following culpability-enhancing factors:

(a) the appellant was motivated by personal gain;

(b) the market rigging scheme was sophisticated and operated for a substantial period;

(c) the appellant had played a critical role in the scheme; and

(d) the appellant had deceived her clients.

13 As for the harm caused by the Market Rigging Offence, the DJ took into account:

(a) the severe market distortion, having regard to the increase in share price during the period of the scheme and the volume of trades performed in pursuance of the scheme;

(b) the extent of damage wrought by the scheme, having regard to the crash in share price and loss in market capitalisation when the scheme unravelled;

(c) the contra trading losses that resulted from the crash in Koyo's share price;

(d) the amelioration of the actual extent of harm caused to innocent third parties given that only one-third of the Koyo shares were floating, with most of the remainder being held by Koyo's CEO and/or his family; and

(e) the fact that the accountholders were not truly innocent, blameless victims.

14 When comparing the appellant's criminality with that of her co-accused, the DJ made two key observations. First, the appellant was not the mastermind, but operated under Andrew's directions. Second, the appellant's overall criminality was higher than that of Yeo.

15 On the basis that *Goh Hin Calm* was the most apposite sentencing precedent to the case at hand, the DJ applied a downward adjustment of 16 months from *Goh Hin Calm*'s sentence of 36 months' imprisonment to arrive at 20 months' imprisonment for the Market Rigging Offence, on account of the

harm caused, as well as the culpability and overall criminality displayed by the appellant.

16 Turning to the Proceeded Deceptive Practice Offences, the DJ distinguished the appellant's case from that of Rayson and Yeo, who received three weeks' and two weeks' imprisonment per charge respectively, on account of the greater number of charges faced by the appellant and the fact that she harnessed accounts for the scheme from her clients and family members. The DJ also noted that for the nine TIC charges under s 201(*b*) SFA relating to the CIMB accounts, the party deceived was the appellant's own employer, to whom the appellant owed the duty of fidelity. After considering the precedent of *Public Prosecutor v Prem Hirubalan* [2016] SGHC 156 ("*Prem Hirubalan*"), in which a sentence of three months' imprisonment was imposed on a s 201(*b*) SFA charge, the DJ sentenced the appellant to six weeks' imprisonment for each Proceeded Deceptive Practice Offence, with three of these sentences to run consecutively.

17 In arriving at her decision, the DJ gave weight to several mitigating factors put forward by the Defence, namely, the appellant's cooperation during investigations, her genuine remorse, and her rehabilitative efforts.

The parties' submissions on appeal

18 In this appeal, the appellant argues that the imposition of 20 months' imprisonment for the Market Rigging Offence is manifestly excessive because the DJ had not given sufficient weight to the following factors:[2]

(a) the appellant was not the mastermind of the scheme;

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[2] Appellant's Submissions at paras 9, 28 and 30.

(b) the appellant's clients were in on the scheme;

(c) the Prosecution has not proven the loss suffered by identified members of the public; and

(d) the principle of sentencing parity.

19 As for the Proceeded Deceptive Practice Offences, the appellant submits that the imposition of a six-week imprisonment term for each Proceeded Deceptive Practice Offence, and the running of three of these sentences consecutively, is manifestly excessive.[3] First, the custodial threshold has not been crossed.[4] Second, the crux of these three deceptive practice charges was identical: all involved trades carried out in RHB or KGI between November 2015 and January 2016.[5] Finally, having regard to the principles of proportionality and totality, the global sentence is crushing.[6]

20 The Prosecution, on the other hand, submits that the DJ's ruling should be upheld, and in doing so, proposes that a sentencing framework for offences under s 197 SFA should be prescribed.[7]

21 The Prosecution put forward four reasons in support of a sentencing framework for s 197 SFA offences. First, although there is some guidance provided in *Ng Geok Eng v Public Prosecutor* [2007] 1 SLR(R) 913 ("*Ng Geok Eng*") and *Public Prosecutor v Ng Sae Kiat and other appeals* [2015] 5 SLR

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3 Appellant's Submissions at para 33.

4 Appellant's Submissions at paras 34–36, 43 and 45.

5 Appellant's Submissions at paras 37–38.

6 Appellant's Submissions at para 39.

7 Respondent's Submissions at paras 1 to 6.

167 ("*Ng Sae Kiat*") for sentencing under the SFA, such guidance is limited.[8] Second, the pool of reported sentencing precedents is small and the precedents are inconsistent.[9] Third, a precedent-based sentencing approach for s 197 SFA offences is difficult to rationalise, with certain quantifiable and non-quantifiable features that are not always present in all the precedents, and which are given different weights in different reported decisions.[10] Finally, a precedent-based approach is not always conducive to achieving broad consistency in sentencing across cases.[11] To this end, the Prosecution submits that a sentencing framework will aid in achieving broad consistency, and assist the lower courts in novel situations where there are no analogous precedents.[12]

22 The sentencing framework proposed by the Prosecution is as follows:[13]

(a) First step: Identify the level of harm and the level of culpability having regard to the following (non-exhaustive) factors.[14]

Factors going towards harm	**Factors going towards culpability**
1. Scale of the market rigging 2. Extent of financial loss 3. Extent of distortion to the market for the particular security	1. Degree of planning and premeditation 2. Level of sophistication of scheme 3. Frequency and duration of offending

8 Respondent's Submissions at para 53.

9 Respondent's Submissions at para 54.

10 Respondent's Submissions at para 55.

11 Respondent's Submissions at para 56.

12 Respondent's Submissions at para 57.

13 Respondent's Submissions at paras 87–95.

14 Respondent's Submissions at paras 64–83.

4. Extent of distortion to the broader market 5. Involvement of a syndicate 6. Involvement of a transnational element 7. Damage to public confidence and reputational harm to financial institutions	4. The offender's role 5. Abuse of position of breach of duty of fidelity 6. Whether there was any deception 7. Extent of personal benefit 8. Motivation for offending 9. Mental state of the offender

(b) Second step: Identify the applicable indicative sentencing range using the following matrix.[15]

	Slight harm	**Moderate harm**	**Severe harm**
Low culpability	Fine or up to 1 year's imprisonment	1 to 2 year's imprisonment	2 to 3 years' imprisonment
Moderate culpability	1 to 2 year's imprisonment	2 to 3 years' imprisonment	3 to 4.5 years' imprisonment
High culpability	2 to 3 years' imprisonment	3 to 4.5 years' imprisonment	4.5 to 7 years' imprisonment

(c) Third step: Identify the starting point within the indicative range, with regard to the level of harm caused by the offence and the offender's culpability.

(d) Fourth step: Adjust the starting point on account of the following offender-specific factors.[16]

Aggravating factors	**Mitigating factors**

15 Respondent's Submissions at para 89.

16 Respondent's Submissions at para 84.

1. Offences taken into consideration 2. Relevant antecedents 3. Evident lack of remorse	1. A guilty plea 2. Cooperation with the authorities 3. Actions taken to minimise harm to victims

(e) Fifth step: Impose a fine to disgorge gains (if any) in addition to any fine or imprisonment imposed as punishment.

(f) Sixth step: Adjust the sentences to take into account the totality principle.

The proposed sentencing framework set out above would apply to all offences under s 197 SFA for offenders who claim trial.[17]

23 It is the Prosecution's case that the appellant should have been placed in the category of severe harm and high culpability, if not for countervailing considerations which pushed this case down to the moderate harm and moderate culpability category.[18] A case falling within this category would have attracted an indicative sentencing range of between two and three years' imprisonment under the Prosecution's proposed sentencing framework.[19] The appropriate starting point would have been near the top end of the range at three years' imprisonment,[20] though a reduction to between 24 and 30 months' imprisonment would have been appropriate due to the appellant's remorse and cooperation.[21] Seen in this light, the Prosecution argues that the term of 20

17 Respondent's Submissions at para 85.

18 Respondent's Submissions at paras 98 and 100.

19 Respondent's Submissions at para 89.

20 Respondent's Submissions at para 102.

21 Respondent's Submissions at paras 104–105.

months' imprisonment imposed for the Market Rigging Offence is actually lenient.[22]

24 Regarding the individual sentences for the Proceeded Deceptive Practice Offences, the Prosecution contends that a custodial sentence is eminently sensible given the appellant's dire financial circumstances,[23] and the appellant's disregard for her duty of fidelity.[24]

25 The Prosecution also argues that the DJ did not violate the one-transaction rule in ordering three sentences for the Proceeded Deceptive Practice Offences to run consecutively.[25] In any event, considering that the appellant obtained 31 accounts for the scheme, involving ten account holders and seven brokerages, it was appropriate for the DJ to run three sentences consecutively.[26] The global sentence is also in keeping with the totality principle.[27]

The issues for determination

26 There are four main issues which arise for my determination:

(a) whether the sentence of 20 months' imprisonment for the Market Rigging Offence is manifestly excessive;

(b) whether the custodial threshold has been crossed for the Proceeded Deceptive Practice Offences, and if so, whether the

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22 Respondent's Submissions at paras 3 and 106.

23 Respondent's Submissions at paras 128–130.

24 Respondent's Submissions at para 134.

25 Respondent's Submissions at para 138.

26 Respondent's Submissions at paras 139–140.

27 Respondent's Submissions at para 141.

sentence of six weeks' imprisonment for each Proceeded Deceptive Practice Offence is manifestly excessive;

(c) whether the imprisonment terms of three Proceeded Deceptive Practice Offences should be ordered to run consecutively; and

(d) whether the aggregate sentence is in keeping with the totality principle.

The sentence for the Market Rigging Offence

27 In determining whether the sentence for the Market Rigging Offence is manifestly excessive, I begin by considering whether a sentencing framework for s 197 SFA offences should be prescribed.

Whether a sentencing framework for s 197 SFA offences ought to be prescribed

28 Counsel for the appellant (Ms Bestlyn Loo) expressed her objections to the Prosecution's proposed sentencing framework in her oral submissions, but the arguments in support of those objections were neither comprehensive nor convincing. As such, I do not think it is necessary to take counsel's objections into account.

29 The Prosecution has advanced a forceful case for developing a sentencing framework for s 197 SFA offences. However, after having regard to several considerations, in particular the relatively small number of s 197 SFA prosecutions and the resulting paucity of reported sentencing decisions, I decline to lay down a sentencing framework for s 197 SFA offences in the present case.

30 At the outset, I am of the view that existing case law does provide adequate guidance on factors relevant to the sentencing of s 197 SFA offences. *Ng Geok Eng* at [61]–[66] sets out comprehensive reasons as to why deterrent sentences for s 197 SFA offences should be imposed, albeit without going into the specific sentencing factors that the court should consider. *Ng Sae Kiat* at [58] sets out numerous sentencing factors in respect of s 201(*b*) SFA offences, many of which are applicable to s 197 SFA offences. Taken together, *Ng Geok Eng* and *Ng Sae Kiat* provide useful reference points in calibrating appropriate sentences for s 197 SFA offences.

31 The Prosecution has correctly observed, however, that some of the factors set out in *Ng Sae Kiat* (*eg*, the identity of the defrauded party) have limited application to s 197 SFA offences,[28] and certain factors unique to s 197 SFA offences do not feature in the list of factors set out in *Ng Sae Kiat*. This is understandable given that s 201(*b*) SFA and s 197 SFA criminalise different offences which involve some distinct considerations. However, laying down a sentencing framework is not the only response to this gap. Guidance can also be rendered by setting out a list of non-exhaustive harm and culpability factors which include considerations unique to s 197 SFA offences.

32 Next, in advocating for a sentencing framework, the Prosecution points to the small pool of reported sentencing precedents which appear to diverge before and after *Ng Sae Kiat*.[29] In this connection, the Prosecution submits that there were "numerous cases" between *Ng Geok Eng* and *Ng Sae Kiat* in which the District Court continued to impose fines for s 197 SFA offences.[30] The

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28 Respondent's Submissions at para 53(b).

29 Respondent's Submissions at para 54.

30 Respondent's Submissions at paras 38–41 and 53(a).

Prosecution contends from its review of the precedents that the imposition of fines became "exceedingly rare" and imprisonment terms "became the norm" only after *Ng Sae Kiat*.[31]

33 I am not persuaded that these submissions are helpful in justifying the need for a sentencing framework. First, the perceived divergence in outcomes in reported sentencing decisions must be understood in context. It can be attributed to the distinct fact patterns underlying those decisions, rather than to any inconsistency in judicial reasoning. Second, although the Prosecution has pointed to "numerous" post-*Ng Geok Eng* cases where fines were imposed, there were in fact only four examples (with six offenders in total) highlighted in its submissions.[32] The specific cases cited were *Public Prosecutor v Franco Giuseppe* [2011] SGDC 184, *Public Prosecutor v Lee Siew Ngan* [2012] SGDC 100, *Public Prosecutor v Ng See Kim Kelvin and another* [2012] SGDC 141 and *Chua Li Hoon Matilda and others v Public Prosecutor* [2009] SGHC 116. In all these instances, the Prosecution's appeals against sentence were either discontinued or dismissed, thus affirming the sentencing outcomes. It is settled law that fines can have a deterrent effect in appropriate cases, and it may have been entirely fortuitous that all the cited examples simply did not warrant custodial terms. The fact that fines were imposed is by no means indicative of any clear sentencing pattern. The reference to these cases where fines were found to be appropriate on the facts therefore does not bolster the Prosecution's case for a sentencing framework to be laid down.

34 I turn next to address the Prosecution's submission that the imposition of fines became "exceedingly rare" after *Ng Sae Kiat* and imprisonment terms

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31 Respondent's Submissions at para 44.

32 Respondent's Submissions at paras 39–41.

"became the norm" thereafter. Reference was made to only two reported cases, namely *Soh Guan Cheow Anthony v Public Prosecutor and another appeal* [2017] 3 SLR 147 ("*Anthony Soh*") and *Public Prosecutor v Soligny Bruno Ludovic* [2019] SGDC 20.[33] With respect, this submission is flawed. It speculates on a purported causal link to *Ng Sae Kiat* when custodial sentences would in all likelihood have been imposed in any event on the facts of these two cases. Moreover, two reported cases in the span of six years after *Ng Sae Kiat* was decided (in 2015) are hardly empirically or even anecdotally demonstrative of the claim that fines became "exceedingly rare" and imprisonment terms thereafter "became the norm". The Prosecution did not cite any other case examples, but even if there were other unreported cases where fines were not imposed, that would not necessarily signify the emergence of a "norm" if the facts at hand did not merit fines in the first place.

35 It is important to exercise prudence in relying on small sample sizes before readily drawing broad inferences and conclusions. It is this self-same small pool of reported sentencing precedents, which represents a subset of an already limited number of s 197 SFA prosecutions overall, that engenders difficulty in specifying either a sentencing benchmark or indicative sentencing ranges within the harm-culpability matrix proposed by the Prosecution. There have been relatively few prosecutions under s 197 SFA or its predecessor, s 97 of the Securities Industry Act (Cap 289, 1985 Rev Ed), over the years. Hence, as the Prosecution acknowledges, there is a corresponding paucity of reported decisions from both the lower courts and the High Court. Sentencing trends and patterns are not clearly discernible given the varying factual circumstances in each case.

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[33] Respondent's Submissions at paras 44–51.

36 Sentencing is always a fact-sensitive exercise. Having regard to the varying fact patterns, the available sentencing precedents do not go so far as to demonstrate that there is an undue clustering of sentences at the lower end of the sentencing range. The precedents do not suggest that there have been serious inconsistencies or obvious anomalies in sentencing practice. It would be fair to infer that the courts have also not encountered major difficulties in reasoning towards appropriate sentencing decisions.

37 A workable and instructive sentencing framework should endeavour to rationalise and encapsulate the broad sentencing trends demonstrated in the more recent decisions. An attempt to construct a sentencing framework without sufficient guidance from reported sentencing precedents can lead to arbitrary indicative sentencing ranges that lack proper justification. Where there are few sentencing precedents, there may be difficulty in obtaining a sense of the prevailing sentencing practice, especially for newer or less commonly encountered offences. Specifying a sentencing framework under such circumstances may be an exercise in abstraction. This is particularly so where the offence in question can be committed in factually diverse situations involving varying degrees of harm and/or culpability.

38 The potential problems of arbitrariness and abstraction are demonstrated by the Prosecution's attempted justifications for the indicative sentencing ranges set out in its proposed sentencing framework. The Prosecution does not refer to sentencing decisions under s 197 SFA, primarily because there are few such decisions to begin with. But perhaps this may reflect its apparent reluctance to rely on the examples mentioned above at [33] where fines were imposed, notwithstanding that the appeals against sentence in those cases were either discontinued or dismissed. Instead, the Prosecution directly imports the sentencing ranges in the recently pronounced sentencing framework for

offences under s 6 read with s 7 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (see *Public Prosecutor v Wong Chee Meng and another appeal* [2020] 5 SLR 807 ("*Wong Chee Meng*") at [84]) into its proposed sentencing framework for s 197 SFA offences.[34] This glosses over the fact that the respective offences cover vastly different factual situations of offending and involve distinct policy considerations and protected interests.

39 The Prosecution also contends that the sentencing ranges in *Wong Chee Meng* should apply instead of those set out in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") for s 172A(2) of the Casino Control Act (Cap 33A, 2007 Rev Ed). According to the Prosecution, this is because market rigging offences ordinarily warrant a custodial sentence, and *Wong Chee Meng* prescribes an indicative range of fines or up to one year's imprisonment for the slight harm-low culpability category, whereas *Logachev* restricts the slight harm-low culpability category to fines.[35] Even if I accept the Prosecution's argument, however, the Prosecution has not addressed the question of why the custodial sentence in the slight harm-low culpability category should be capped at one year's imprisonment. Similarly, it is not clear whether the proposed sentencing ranges for the higher high harm and culpability categories of the matrix are correctly pegged at the baseline of two years' imprisonment upwards.

40 In my assessment, it would be inadvisable to prescribe a sentencing framework for s 197 SFA offences at this juncture, without the benefit of rationalisation against a larger pool of sentencing precedents. To do so runs the risk of imposing arbitrary indicative sentencing ranges. In this connection, I

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[34] Respondent's Submissions at para 88.

[35] Respondent's Submissions at para 88.

would respectfully abide by the views of The Honourable the Chief Justice Sundaresh Menon in *Ng Soon Kim v Public Prosecutor* [2020] 3 SLR 1097 at [11]. In that case, Menon CJ declined to prescribe a sentencing framework for a s 324 Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") offence as he was not satisfied that there was sufficient sentencing jurisprudence existing under that provision. Similarly, it is more appropriate in my view to allow case law on s 197 SFA to develop further in response to the various factual situations that may come before the sentencing court. Accordingly, I decline to endorse the sentencing framework proposed by the Prosecution.

41 I accept that it is possible to craft a sentencing framework from first principles in an appropriate case without necessarily having to rely on a substantial existing body of sentencing precedents. Whether this approach is viable requires judicious assessment on a case-by-case basis. There should be a reasonable degree of confidence that fact-sensitive nuances in the relevant sentencing considerations have been properly taken into account for sufficient guidance to aid in the formulation of indicative sentencing ranges.

42 Nevertheless, my observations above on the indicative sentencing ranges do not affect my assessment of the harm and culpability factors proposed by the Prosecution. These factors, in my view, are broadly applicable to the sentencing of most s 197 SFA offences and would provide considerable assistance in calibrating the appropriate sentence in future cases. I now turn to elaborate on these factors, before I apply these factors to the case at hand.

Offence-specific factors: harm

43 I agree with the Prosecution that the following non-exhaustive factors have a bearing on the degree of harm occasioned by the accused's offending conduct:[36]

(a) scale of the market rigging;

(b) extent of financial loss;

(c) extent of distortion to the market for the particular security;

(d) extent of distortion to the broader market;

(e) involvement of a syndicate;

(f) involvement of a transnational element; and

(g) whether and to what extent there was damage to public confidence and reputational harm to financial institutions, over and above what is ordinarily occasioned by market rigging offences.

I will elaborate on the first four factors.

44 First, as observed by the Prosecution, the scale of market rigging may be assessed by reference to:[37]

(a) the number of trading accounts used;

(b) the number of orders placed;

(c) the number of trades executed;

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36 Respondent's Submissions at paras 64 and 97(g).

37 Respondent's Submissions at para 65.

(d) the dollar value of the trades executed;

(e) the number of accountholders whose trading accounts were used to place the orders or trades;

(f) the number of brokerages whose accounts were used; and

(g) the period over which the scheme was carried out.

45 In so far as the second factor (*ie*, extent of financial loss) and the third factor (*ie*, distortion to the market for the particular security) are concerned, the former relates to the losses incurred by various parties when the market rigging offence is discovered and a drop in share price ensues, whereas the latter assesses the degree of distortion while the market rigging is still ongoing. In assessing the distortion to the market for the particular security, the following factors may be considered: (a) extent of distortion to price, (b) extent of distortion to volume (both trading volume, and where appropriate, order book depth), and (c) gain or loss to market capitalisation brought about by the rigging.

46 Market rigging may also result in distortions in the broader market where, for example, the security that is manipulated is an important constituent of a broader stock market index. Such distortions in the broader market must also be taken into account when assessing the harm caused by the offender. The creation of a false appearance as to the identity of a major shareholder may lead to further distorted market signals as well.

Offence-specific factors: culpability

47 I also agree with the Prosecution that the following non-exhaustive factors are relevant in determining an offender's culpability in respect of an offence under s 197 SFA:[38]

(a) degree of planning and premeditation;

(b) level of sophistication of the offence, or scheme (if any);

(c) frequency and duration of offending;

(d) the offender's role;

(e) abuse of position or breach of duty of fidelity;

(f) whether there was any deception;

(g) extent of personal benefit;

(h) motivation for offending; and

(i) mental state of the offender.

I will elaborate further on some of these factors.

48 First, it is uncontroversial that the greater the degree of planning and premeditation, the greater the culpability of the accused. The presence of planning and premeditation evinces a considered commitment towards law-breaking and therefore reflects greater criminality on the part of the accused: see *Logachev* at [56].

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[38] Respondent's Submissions at para 64.

49 Next, the level of sophistication of the offence looks at the complexity and scale of the criminal operation in question: see *Logachev* at [57]–[58]. In a market rigging case such as the present, the degree of sophistication can be shown through the number of accounts utilised and number of accountholders involved in creating a false or misleading appearance of active trading.

50 Steps taken to conceal the s 197 SFA offence can be a factor demonstrating a high degree of planning and premeditation,[39] or a high level of sophistication of the offence. Depending on the facts of the case, it may be appropriate to amalgamate (a) the sophistication and (b) the involvement of planning and premeditation into a single aggravating factor: see *Wong Chee Meng* at [96]. What is key, at the end of the day, is to avoid double-counting aggravating factors: *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [92].

51 Turning to the third factor set out above, the frequency of offending is assessed by how often the offender took active steps towards the commission of offences, whereas the duration of offending refers to the time period over which the offender's conduct lasted. Where the offender is part of a scheme perpetrating the market rigging offence, the assessment of frequency and duration should be focused on the period over which the offender's individual acts in support of the scheme were committed. This has to be the case since the ultimate inquiry is directed towards ascertaining the offender's individual culpability.

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[39] Respondent's Submissions at para 74.

52 The offender's role in the overall scheme is also crucial. An offender who is higher up in the scheme's hierarchy is generally more culpable than an offender who occupies a position at the lower rungs (see *Logachev* at [60]–[61]).

53 Deception employed by the offender in the course of a market-rigging scheme adds to his or her culpability. This deception must, of course, go beyond the elements of a s 197 SFA offence, and the facts underlying the deception must not be double-counted if they have already been accounted for in other harm or culpability factors.

Offender-specific factors

54 After considering the relevant offence-specific factors relating to harm and culpability set out above, the sentencing court should proceed to assess the offender-specific factors. Offender-specific aggravating factors include offences taken into consideration for the purpose of sentencing the accused, the accused's relevant antecedents, and his or her evident lack of remorse. Factors which would mitigate the accused's sentence include a guilty plea, his or her cooperation with the authorities, and restitution made by the accused to those who have suffered financial losses as a result of the offending conduct: see *Logachev* at [63]–[70]. As these are all well-established in case law, I do not propose to revisit them.

Application to the facts

55 I am satisfied that the sentence of 20 months' imprisonment for the Market Rigging Offence is not manifestly excessive in the light of the relevant offence-specific and offender-specific factors. The appellant's sentence for the Market Rigging Offence is also justifiably higher than those of her co-accused, notwithstanding that they were part of the same criminal enterprise. As the main

disputes between the parties centre around the offence-specific factors of harm and culpability, and the application of the principle of sentencing parity, I will focus the analysis on these issues and address the parties' submissions where appropriate.

The harm caused by the appellant

(1) The appellant contributed substantially to the scale of the scheme

56 The market rigging scheme was of a very large scale. The scheme manipulated the share price of Koyo for about 18 months, from 12 August 2014 to 15 January 2016.[40] During this period, 53 trading accounts opened in the name of 15 individuals with eight brokerages were used to implement the scheme.[41]

57 The appellant contributed substantially to the scheme. The harm caused by the appellant's offence was significant and can be approximated from the harm caused by the scheme, by reference to the extent to which the appellant contributed to the scale of the scheme. The appellant was involved in the scheme for 234 days from 6 February 2015 to 15 January 2016.[42] During this period, she was the single largest contributor of accounts to the scheme, having procured 31 out of the 53 accounts used by the scheme.[43] Of the 15 accountholders implicated, ten were the appellant's family or clients who were roped into the scheme by the appellant,[44] and of the eight brokerages implicated, the appellant

40 SOF at para 7.

41 SOF at para 12.

42 SOF at para 29 and Annex A.

43 SOF at para 29.

44 SOF at paras 21–22.

contributed accounts from seven.[45] The accounts the appellant contributed to the scheme were used to perform 5,544 trades involving Koyo shares on a total of 176 days.[46]

58 In the Prosecution's written submissions, the duration of offending is analysed as part of the harm inquiry,[47] while the fact that the appellant was a frequent and active participant in the scheme is analysed as part of the culpability inquiry.[48] In assessing frequency, the Prosecution relies on the fact that the accounts which the appellant procured were used to trade Koyo shares on 176 days, and that constitutes 75% of the days she was involved in the scheme.[49]

59 I find that splitting the duration and frequency of offending in this manner risks double-counting, since the Prosecution's method for calculating frequency is predicated, in part, on the duration of the appellant's involvement in the scheme. The duration and frequency of offending should be analysed in the present case as one composite whole that either goes towards assessing the scale of the market rigging under the harm inquiry, or as a factor indicating culpability. Since the Prosecution has taken into account the duration of offending for the purpose of assessing the appellant's contribution to the scale of the scheme, I have considered the duration and frequency of offending in the assessment of the harm caused by the appellant's conduct. The appellant did not object to the computational method adopted by the Prosecution in assessing

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45 SOF at paras 21–22 and 24.

46 SOF at Annex A.

47 Respondent's Submissions at para 97(a)(ii).

48 Respondent's Submissions at para 99(c).

49 Respondent's Submissions at para 99(c).

frequency in the present case; it also affords a useful measure to evaluate the relative criminality of the appellant and her co-accused (see below at [87]). That said, it is conceivable that different methods of computation and evaluation might be more appropriate in other cases, depending on the circumstances at hand.

(2) The scheme caused extensive financial loss

60 Next, the scheme caused extensive financial loss. When SGX issued a "trade with caution" warning on 15 January 2016 (Friday),[50] Koyo's share price crashed by almost 84%, from $0.34 on 15 January 2016 to closing at $0.056 on 18 January 2016 (the following Monday).[51] Following the crash in Koyo share prices on 18 January 2016, a total of $3,119,034.93 in contra trading losses was incurred in the 31 accounts procured by the appellant, of which $2,399,202.20 was borne by the accountholders and $399,953.14 was borne by the brokerage firms.[52] The unpaid outstanding losses suffered by the brokerage firms was reduced to $69,834.96, after the appellant paid CIMB as a result of legal action taken against her.[53] Market capitalisation of Koyo fell by more than $58 million when the scheme unravelled.[54]

61 Nevertheless, as the DJ rightly appreciated, the weight placed on the harm caused to the accountholders ought not to be overstated as the

50 SOF at para 16.

51 SOF at para 17.

52 SOF at para 32.

53 SOF at paras 33–34.

54 SOF at para 18.

accountholders had knowingly permitted their accounts to be used for the trading of Koyo shares, in exchange for a cut of the profits.[55]

62 The DJ also considered that the actual extent of harm caused to innocent third parties was ameliorated by the fact that during the operation of the scheme, only approximately one-third of Koyo shares were available for trading by the public.[56]

63 On this point, the appellant argues that the DJ erred by failing to appreciate that the Prosecution had not proven the amount of loss caused to identified public investors, apart from the accountholders and the brokerage firms. For this argument, the appellant relies on *Ng Geok Eng* at [80], where the court held that the duration of imprisonment had to account for the fact that the Prosecution had not adduced proof that the accused's market rigging in that case "had caused actual monetary loss to identified investors in the open market".[57]

64 The Prosecution, on the other hand, invites this court to infer that the investing public must have suffered some loss, even though no evidence demonstrating loss to identified investors was adduced. The Prosecution argues that other members of the public who were not involved in the scheme were trading Koyo shares over the period of the scheme's operation, as can be inferred from the fact that one-third of Koyo's shares were publicly traded, trades conducted by the scheme accounted for two-thirds of the total trading volume, and cross-trades between the 53 accounts represented 43.16% of the total market volume.[58] Hence, when the scheme unravelled in January 2016, the

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55 SOF at paras 19(d) and 28.

56 GD at [78].

57 Appellant's Submissions at paras 28–31.

58 SOF at paras 5 and 15.

sudden and sharp drop in price must have occasioned some losses to these unsuspecting investors.[59]

65 I note that the DJ appeared to have given some albeit not much weight to the fact that harm was caused to innocent third parties. In so far as the appellant is arguing that the DJ ought to have disregarded this point entirely, I am unable to accept the appellant's argument. I understand *Ng Geok Eng* at [80] as reducing the weight placed on the harm caused to public investors, where there is no evidence that the accused's market rigging had caused actual monetary losses to identified public investors. It is well-settled that the mere absence of an aggravating factor is neutral and not mitigating: *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 at [24]. Accordingly, when the court in *Ng Geok Eng* at [80] took into account the absence of evidence of harm caused to public investors in calibrating the length of the imprisonment term, the need for calibration must have arisen in the context of assessing the weight placed on this factor. Had the court in *Ng Geok Eng* disregarded the harm caused to public investors entirely, this fact would have merely been a neutral factor that would not have had a bearing on the duration of the sentence.

66 Indeed, it would be artificial for this court to entirely disregard the harm suffered by investors on the open market, when the SOF clearly disclosed that public investors were trading Koyo shares alongside the scheme members(see above at [64]).[60] Nevertheless, the weight to be placed on this factor should be reduced, given that the Prosecution has not identified members of the public who have suffered losses, nor adduced evidence of the extent of such losses. As

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59 Respondent's Submissions at para 97(b).

60 SOF at paras 5 and 15.

a result, the DJ did not err in giving some weight to the fact that harm was caused to innocent third parties.

(3) The scheme severely distorted the market for Koyo shares

67 Third, the market was severely distorted while the scheme was in operation. During the lifetime of the scheme, the price of Koyo shares more than doubled, rising from 16 cents to 40 cents,[61] with the scheme accounting for approximately two-thirds of the trading volume of Koyo shares.[62]

The appellant's culpability

(1) The appellant was motivated by personal gain

68 First, there is no doubt in my mind that the appellant was driven by personal gain. The appellant agreed to assist Andrew, and in turn, she received a share of the profits from the contra trading.[63] As she was the trading representative in charge of the CIMB accounts, she was also simultaneously earning commissions on the trades performed for the scheme, where CIMB accounts were used.[64]

(2) The scheme was highly sophisticated and involved a considerable degree of planning

69 Second, I agree with the DJ that the market rigging scheme was highly sophisticated. As 53 trading accounts opened in the name of 15 individuals were

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61 SOF at para 13.

62 SOF at para 15.

63 SOF at paras 21 and 28.

64 SOF at para 21.

used to implement the scheme,[65] there must have been considerable coordination and planning. Arrangements were also made for the distribution of profits and loss,[66] and there were various chains of communication.[67] For the avoidance of doubt, I regard the level of sophistication and the degree of planning involved as a single aggravating factor.

(3) The appellant had played a crucial role in the scheme

70 Third, as noted by the DJ and the Prosecution,[68] the appellant had played a critical role in the scheme. She personally executed 2,805 trades from nine CIMB accounts under her charge,[69] relayed trading instructions from Andrew to the other trading representatives between October 2015 and January 2016,[70] and assisted with the distribution of profits between scheme members.[71]

71 Of particular significance is the fact that the appellant had procured 31 out of the 53 accounts used by the scheme.[72] Access to an increasing pool of accounts was necessary for the scheme to be sustained. As mentioned at [5] above, the accounts were subject to a trading limit on the total value of shares that could be purchased without making full payment upfront.[73] The greater the number of accounts the market rigging scheme had at its disposal, the greater the credit limit available to the scheme. This was crucial to the scheme: as

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65 SOF at para 12.

66 SOF at para 11(b).

67 SOF at para 25.

68 GD at [68]–[70]; Respondent's Submissions at para 99(d).

69 SOF at para 21 and Annex A.

70 SOF at para 25.

71 SOF at para 28.

72 SOF at paras 21–22, 24 and 26 and Annex A.

73 SOF at para 9.

scheme members were pushing up the prices of Koyo shares, an ever-increasing aggregate credit limit was required so that the same number of Koyo shares, which had previously been traded at lower prices, could be bought.

72 The appellant's instrumental role in procuring accounts was underscored by the fact that when she was informed, sometime in August 2015, that CIMB intended to reduce the trading limits for Koyo shares in the CIMB accounts under her charge, she convinced her clients to open additional accounts with other brokerage firms, so as to contribute greater credit limits to the scheme. This resulted in the appellant's CIMB clients opening or reactivating a total of nine KGI trading accounts and eight RHB trading accounts, which were then handed over to Andrew for the purposes of the scheme.[74] In other words, the appellant assisted the scheme in overcoming a difficulty which had cropped up, and thereby sustained the scheme in its final phase (*ie*, between October 2015 and January 2016).[75]

73 In these circumstances, it is patently clear that the appellant had played a pivotal role in the success and continuance of the scheme, especially in its final phase.

74 Against this, counsel for the appellant argues that the appellant was not the mastermind of the scheme and it was unfair for the appellant's sentence to be higher than the sentences for other masterminds of equally sophisticated and lengthy market rigging schemes, such as in *Public Prosecutor v Chan Chwee Leong* [2006] SGDC 249 ("*Chan Chwee Leong*") and *Ng Geok Eng*, where the masterminds were only sentenced to 12 and six months' imprisonment

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74 SOF at paras 24–25.

75 SOF at para 11(c).

respectively.[76] It is said that the appellant's level of offending and role in the scheme involved a lower level of criminality, as compared to the accused persons in these other cases.[77]

75 I am not persuaded by the appellant's arguments in this regard. I accept that on first blush, having regard to the facts of the present case and the facts in *Chan Chwee Leong*, the appellant's sentence for the Market Rigging Offence appears to be disproportionately higher than the sentence meted out in *Chan Chwee Leong*. However, I agree with the Prosecution's submission that the decision in *Chan Chwee Leong* was rendered by the District Court before the written judgment for *Ng Geok Eng* was handed down. Under the prevailing sentencing practice prior to *Ng Geok Eng*, market rigging offences under s 197(1) SFA generally attracted fines. Seen in that light, the 12-month imprisonment term in *Chan Chwee Leong* was a significant escalation from the prevailing norm.[78] I note that the District Court in *Chan Chwee Leong* at [27] did expressly observe that the High Court in *Ng Geok Eng*, by substituting a term of six months' imprisonment in lieu of a fine, intended to signal that sentences for s 197(1) SFA offences must send a strong deterrent message. However, the District Court in *Chan Chwee Leong* did not have the benefit of the written judgment for *Ng Geok Eng* and the comprehensive reasons set out therein justifying the need for stronger deterrent sentences. Accordingly, the District Court in *Chan Chwee Leong* may not have appreciated the *extent* of deterrence required for s 197(1) SFA offences, when it sentenced the accused to 12 months' imprisonment.

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76 Appellant's Submissions at para 11.

77 Appellant's Submissions at paras 12–19.

78 Respondent's Submissions at para 122.

76 As for the case of *Ng Geok Eng*, I accept the Prosecution's submission that it is distinguishable because the scheme in *Ng Geok Eng* was much less sophisticated than that in the present case.[79] The accused in *Ng Geok Eng* operated at least 18 accounts belonging to himself, his wife and a friend (*Ng Geok Eng* at [1] and [15]), while the scheme in the present case employed 53 accounts opened in the name of 15 individuals, with various chains of communication coordinating the performance of trades.[80] In addition, the accused in *Ng Geok Eng* acted alone in the execution of trades despite using accounts belonging to others (*Ng Geok Eng* at [10]–[11]), whereas the appellant in the instant case was involved in a syndicate which coordinated the execution of trades by multiple parties.[81]

(4) The appellant had deceived her clients

77 The appellant's culpability is compounded by the fact that she had deceived her clients in the course of the market rigging scheme. I agree with the DJ that there are three instances where the appellant was, as the DJ rather mildly put it, "less than upfront with her clients". First, to induce her clients into opening accounts with KGI or RHB, she told her clients that she was considering leaving CIMB for either of those brokerage firms because of "work issues". Her clients were not informed of the true reason behind the need for them to open KGI or RHB accounts, which was that the CIMB accounts were running out of credit limits and the appellant needed them to open RHB and KGI accounts to contribute greater credit limits to the scheme.[82] Second, the appellant did not inform a number of her clients that their KGI or RHB accounts

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79 Respondent's Submissions at para 117.

80 SOF at paras 12 and 25.

81 Respondent's Submissions at para 117.

82 GD at [72]; SOF at para 24.

were in fact used by third parties to trade on their behalf.[83] Third, despite the initial promise that any losses incurred would be paid by scheme members, Andrew had in fact stopped paying for contra losses since September 2015, but the appellant did not convey this to her clients, thus exposing them to substantial losses.[84]

78 On this issue, the appellant's main submission is that the DJ placed excessive emphasis on the fact that the appellant did not inform a number of her clients that their accounts had been used by third parties.[85] The appellant claims that this should only be a neutral point since the accountholders were "in on the scheme" – they willingly relinquished their accounts to the appellant, and consented to trades done through their accounts, regardless of who placed the trades on their behalf.[86] Further, the clients must have known that someone else must have been trading on their behalf at KGI or RHB, since they knew that the appellant had yet to leave CIMB.[87]

79 I do not accept the appellant's submission. Nothing in the SOF suggests that the scope of the clients' consent extended to allowing anyone to place trades on their behalf. In fact, paragraph 25(c) of the SOF expressly stated that at least seven of the appellant's clients were not aware and did not consent to any third-party trading on their behalf. Furthermore, the clients' willingness to open KGI or RHB accounts when the appellant informed them that she was leaving CIMB to join either KGI or RHB[88] showed that (a) they reposed a degree of trust in the

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83 GD at [72]; SOF at para 25(c).

84 GD at [72]; SOF at para 24.

85 Appellant's Submissions at para 21.

86 Appellant's Submissions at para 21.

87 Appellant's Submissions at para 22.

88 SOF at para 24.

appellant, and (b) the impetus for opening KGI and RHB accounts was so that the appellant, whom they trusted, could trade on their behalf. This makes it implausible that they would consent to any other third party placing trades on their behalf.

(5) The appellant's knowledge of the wider plan

80 The final factor which heightens the appellant's culpability, which was not expressly considered by the DJ, is the mental state of the appellant. The appellant's charge under s 197(1A)(*a*) SFA requires the appellant to know that her conduct would create a false or misleading appearance of active trading of Koyo shares. As noted by the Prosecution,[89] beyond this element of knowledge, the SOF revealed that the appellant was informed by Andrew that the ultimate aim was to push Koyo's share price towards a target, in order for a potential reverse takeover to happen.[90] I would not go so far as to infer from this without more that the appellant shared Andrew's objective and therefore consciously intended to manipulate stock prices. The fact remains, nonetheless, that she was aware that the creation of the false or misleading appearance was part of a wider, nefarious plan to engineer a reverse takeover, and yet she went along with it. In my view, this is a distinct aggravating factor which adds to the appellant's blameworthiness.

The principle of sentencing parity

81 The principle of sentencing parity provides that where two or more offenders are to be sentenced for their participation in the same offence, the sentences passed on them should be the same, unless there is a relevant

89 Appellant's Submissions at para 99(i).

90 SOF at para 19.

difference in their responsibility for the offence or their personal circumstances: *Public Prosecutor v Ramlee and another action* [1998] 3 SLR(R) 95 at [7]; *Ng Sae Kiat* at [74].

82 The Prosecution submits that the appellant's offence was demonstrably more harmful, and she was more culpable than Steven, Rayson and Yeo. In support of its submission, the Prosecution points to factors such as the degree to which each of these co-accused contributed to the scale of market rigging, the frequency and duration of their offending, the role that they played in the overall scheme, and the personal benefits they received from the scheme.[91]

83 In contrast, counsel for the appellant contends that the appellant's sentence of 20 months' imprisonment is disproportionately higher when compared to the sentences imposed on Steven, Rayson and Yeo, who received imprisonment terms of three, four and six months respectively. They too had carried out the mastermind's instructions and similarly profited from the scheme. Moreover, Rayson and Yeo had been involved in the scheme for a longer period than the appellant.[92] Counsel for the appellant also labels Yeo as the mastermind's right-hand man,[93] and on that basis, seeks to show that the appellant's higher sentence was disproportionate.

84 It is unclear what basis the appellant has for pegging Yeo as Andrew's right-hand man. I also find it odd that the appellant uses the label of "right-hand man" on both Simon and Yeo in its written submissions.[94] To be clear, Yeo was only described in the Prosecution's address on sentence below as Andrew's

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91 Respondent's Submissions at paras 109–111.

92 Appellant's Submissions at para 32.

93 Appellant's Submissions at para 32.

94 Appellant's Submissions at paras 3 and 32.

"runner".[95] This does not equate to Yeo being his "right-hand man". The two labels are far from synonymous. As for Simon, there is no mention in the SOF of him being Andrew's right-hand man either, although the Prosecution did submit below that both Simon and the appellant ought to be considered "masterminds" along with Andrew.[96]

85 More fundamentally, employing the label of "right-hand man" is not helpful in applying the principle of sentencing parity. While it is well-established as a general principle that an offender who is higher up in the scheme's hierarchy is generally more culpable than an offender who occupies a position at the lower rungs, it is unhelpful to go one step further to rank the parties by their relative positions in the criminal enterprise. The sentencing court should prioritise substance over form and undertake a qualitative, fact-specific analysis as to how the offender has contributed and to what extent the offender is instrumental to the overall scheme. An offender who takes on a pivotal role in the scheme may be highly culpable, even if he or she is not the mastermind of the scheme (Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2nd Ed, 2019) at para 12.077; see for example, *Than Stenly Granida Purwanto v Public Prosecutor* [2003] 3 SLR(R) 576 at [17]).

86 Yeo handed the log-in credentials of the accounts to Andrew, executed trades personally and acted as a runner to settle contra losses in accounts held or controlled by other scheme members. But Yeo only contributed ten accounts opened in his own name.[97] This pales in comparison with how the appellant proactively convinced clients and family members to open accounts with

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95 Prosecution's Address on Sentence at para 12.

96 17 September 2020 Transcript at p 34 lines 24–26.

97 Statement of Facts for *Public Prosecutor v Yeo An Lun* at paras 19, 23, 24 and 26.

multiple brokerages and thereby contributed 31 out of the 53 accounts used by the scheme.[98] Bearing in mind how fundamental trading accounts were to the continuance of the scheme (see above at [71]), the appellant's success in roping in more accountholders and substantially expanding the pool of trading accounts at the scheme's disposal indicates that the appellant played an equally, if not more, pivotal role.

87 On a similar note, the roles played by Steven and Rayson in the scheme are even smaller as compared to the appellant. Steven contributed only one account in his name.[99] Rayson did not provide any accounts and merely traded using four accounts already employed by the scheme.[100]

88 There are also additional factors setting the appellant's criminality apart from Yeo's, Steven's and Rayson's. The 5,544 trades placed from the accounts under the appellant's charge far outstripped the numbers from Steven's, Rayson's and Yeo's accounts, which were 504, 194 and 1,708 respectively.[101] As for the frequency and duration of offending, Steven and Rayson assisted the scheme for 76 days and 220 days respectively,[102] while the appellant was involved in the scheme for 234 days.[103] Yeo was part of the scheme for 358

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98 SOF at paras 21–22, 24 and 29.

99 Statement of Facts for *Public Prosecutor v Teo Boon Cheang and Goh Qi Rui Rayson* at para 20.

100 Statement of Facts for *Public Prosecutor v Teo Boon Cheang and Goh Qi Rui Rayson* at para 25.

101 Statement of Facts for *Public Prosecutor v Teo Boon Cheang and Goh Qi Rui Rayson* at paras 23 and 27; Statement of Facts for *Public Prosecutor v Yeo An Lun* at Annex A.

102 Statement of Facts for *Public Prosecutor v Teo Boon Cheang and Goh Qi Rui Rayson* at paras 23 and 27.

103 SOF at para 29 and Annex A.

days,[104] but the frequency at which trades were placed from the accounts under the appellant's control far exceeded those in the case of Yeo, Steven and Rayson respectively.[105]

89 In the light of these distinguishing factors, I agree with the Prosecution that the appellant deserves a much heavier sentence than her three co-accused, Yeo, Steven and Rayson.

Whether the sentence for the Market Rigging Offence is manifestly excessive

90 The fact that the appellant's sentence for the Market Rigging Offence may rank among the highest sentences that have been imposed thus far for a market rigging charge is not by itself a reason for a reduction in her sentence. Each case turns on its own circumstances. Moreover, the number of available sentencing precedents or reported decisions is not large to begin with. Correspondingly, it is not unusual that there is a smaller absolute number of cases involving longer custodial sentences.

91 I see no reason to differ from the DJ's analysis that *Goh Hin Calm* was the most apposite sentencing precedent having regard to the nature and modus operandi of the respective schemes in the two cases. Their culpabilities were similar in that: (a) the accused in *Goh Hin Calm* acted as a runner to settle contra losses while the appellant assisted with the distribution of profits,[106] and (b) both provided trading accounts for use by the schemes in question.[107] However, the

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104 Statement of Facts for *Public Prosecutor v Yeo An Lun* at Annex A.

105 Statement of Facts for *Public Prosecutor v Teo Boon Cheang and Goh Qi Rui Rayson* at paras 23 and 27; Statement of Facts for *Public Prosecutor v Yeo An Lun* at Annex A.

106 SOF at para 28.

107 SOF at paras 11(b) and 11(c).

scheme in *Goh Hin Calm* was far more sophisticated and far larger in scale. In addition, much more extensive harm was occasioned as it involved 189 trading accounts, 60 nominees, 25 brokers and a loss of $8 billion in market capitalisation. Notwithstanding that *Goh Hin Calm* was an unreported decision where the Prosecution and Defence had reached an agreed sentence, I agree with the DJ's analysis, not least because I was the judge who heard *Goh Hin Calm's* case. The DJ was therefore justified in applying a downward adjustment of 16 months from *Goh Hin Calm*'s sentence of 36 months' imprisonment to arrive at 20 months' imprisonment.

92 I do not think that it is necessary to comment in detail on *Anthony Soh*. It will suffice to note that that case involved a vastly different factual scenario of a self-engineered false takeover to artificially drive up the share price.

93 Upon considering the various offence-specific and offender-specific factors which were accepted by the DJ, and having regard to the sentencing precedents, I am satisfied that the sentence of 20 months' imprisonment is not manifestly excessive.

The sentence for each Proceeded Deceptive Practice Offence

94 The key issue, in so far as the individual sentence for each Proceeded Deceptive Practice Offence is concerned, is whether the custodial threshold has been crossed.

95 The Prosecution argues that the appellant displayed a disregard for her duty of fidelity, and this warrants a substantial custodial sentence.[108] Meanwhile, the appellant advances two key reasons as to why, in her view, the custodial

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108 Prosecution's Submissions at para 134.

threshold has not been crossed. First, no innocent member of the investing public was deceived because the appellant's deception was practised on the brokerage firms instead of the accountholders.[109] The appellant's clients had in fact permitted the appellant to use their accounts.[110] In support of this point, the appellant cites *Ng Geok Eng* at [60], where the court held that "[a] term of imprisonment should only be the norm where the inherent nature of the offence poses a sufficient threat to the interests of innocent layperson investors".[111] Second, the appellant was not a remisier with the two brokerage firms which were deceived (*ie*, KGI and RHB), so the question of whether the appellant had breached her fidelity to these two firms does not arise.[112] The appellant makes reference to *Ng Sae Kiat* at [64], where the High Court held that custodial sentences would ordinarily be warranted where employees in a financial institution had abused the duty of fidelity they owe their employer in a premeditated and brazen manner, over a period of time, for personal gain.

96 I accept that the appellant had used the accounts with her clients' consent, and the Proceeded Deceptive Practice Offences do not involve a breach of the duty of fidelity. However, the Proceeded Deceptive Practice Offences by their very nature involved deception perpetrated on KGI and RHB. I disagree with the appellant that the custodial threshold is not crossed in circumstances where the accountholders consented to the use of their accounts, and the offence did not involve a breach of the duty of fidelity.[113] This position is not supported by prevailing case law.

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109 Appellant's Submissions at paras 34–36.

110 Appellant's Submissions at paras 43(b), 43(c) and 45.

111 Appellant's Submissions at para 35.

112 Appellant's Submissions at paras 43(a) and 45.

113 Appellant's Submissions at paras 34–36, 43 and 45.

97 The case of *Ng Geok Eng* at [36] and [49]–[51] draws a distinction between two types of unauthorised share trading under s 201(*b*) SFA: (a) situations where the account owner did not consent and (b) situations where there is lack of consent on the part of the securities trading firm with whom the account was opened. Where the facts fall within the first category, the need to ensure general deterrence is sufficiently pressing to warrant the imposition of a custodial sentence in most cases, given the greater detriment caused to public investors and the diminishing of public confidence in the securities market (*Ng Geok Eng* at [49]). For the second category, "the degree of sanction required would, *in most cases*, be sufficiently expressed through a punishment of a lower order" [emphasis added] because the "need to protect innocent investors would be less pressing since the trading would have occurred with the consent of the relevant investor who owned the account" (*Ng Geok Eng* at [50]).

98 The High Court in *Ng Geok Eng* at [51] went on to clarify that:

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

99 The statement made in *Ng Geok Eng* at [60], which the appellant relies upon (see above at [95]), must be read in light of the High Court's holding at [51]. Accordingly, *Ng Geok Eng*, properly understood, stands for the following proposition. A term of imprisonment is not the norm where there is no threat to innocent layperson investors, but the court still retains the discretion to

determine the appropriate form of sentence where there is consent from the accountholder. This discretion to vary the type of sentence is broader in a situation where there is consent from the accountholder, as compared to a situation where there is no consent from the accountholder.

100 In a similar vein, the more recent High Court decision in *Ng Sae Kiat*, which was heard by a three-judge coram, emphasised at [60]–[61] that the identity of the defrauded party alone is not determinative of whether a custodial sentence should be imposed, and that other aggravating factors can be taken into account.

101 Finally, the fact that there is no breach of fidelity duty involved is not a consideration that precludes the imposition of an imprisonment term. The language used in *Ng Sae Kiat* at [64] does not indicate that the court will confine custodial sentences *only* to situations where employees in a financial institution abuse the duty of fidelity they owe their employers. In fact, it is clear from [61]–[62] of *Ng Sae Kiat* that all the facts that have a bearing on an accused person's criminality will be taken into account for the purpose of determining whether a custodial sentence is warranted.

102 Turning to the facts of this case, the circumstances clearly justify a custodial sentence. In the general run of cases where there is consent by the accountholder, the need to ensure general deterrence is less relevant, and the objective of specific deterrence takes greater precedence (*Ng Geok Eng* at [50]). But the scale and the duration of the deception perpetrated by the appellant on securities trading firms render the appellant's overall criminality so grave that general deterrence assumes the same importance as specific deterrence, if not more. The appellant committed 12 Proceeded Deceptive Practice Offences. Each charge relates to one account. The deception was carried out concurrently

on two securities trading firms for three to four months. An additional 19 s 201(*b*) SFA charges were taken into consideration for sentencing, involving five other securities trading firms. The glaring pervasiveness of the appellant's deception makes it imperative for the court to categorically denounce such conduct and deter others from behaving similarly. Six weeks' imprisonment for each Proceeded Deceptive Practice Offence is thus appropriate.

Whether the imprisonment terms of three Proceeded Deceptive Practice Offences should run consecutively

103 The DJ ordered the sentences of imprisonment for DAC 929626-2019 (the "First Deceptive Practice Charge"), DAC 929628-2019 (the "Second Deceptive Practice Charge") and DAC 929635-2019 (the "Third Deceptive Practice Charge") to run consecutively.

104 The appellant contends that these three sentences should have been ordered to run concurrently, since the crux of these charges was identical: all involved trades carried out in RHB or KGI between November 2015 and January 2016 in the final phase of the scheme.[114] In response, the Prosecution argues that the one-transaction rule is not violated. The three charges relate to three different accountholders and two different brokerages.[115] In any event, due to the large number of offences, it is appropriate to run three sentences consecutively.[116]

105 I do not think that the DJ breached the one-transaction rule. The deception in the First Deceptive Practice Charge was on KGI, whereas the

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114 Appellant's Submissions at paras 37–38.

115 Prosecution's Submissions at para 138.

116 Prosecution's Submissions at para 140.

deception in the Second Deceptive Practice Charge was on RHB. The involvement of two different victims entails the invasion of two separate legally protected interests. The Third Deceptive Practice Charge also involves deception on RHB, over the same relevant period as the Second Deceptive Practice Charge. While there appears to be "proximity" in time as between the Second and Third Deceptive Practice Charges, the deception, in reality, was perpetrated on RHB through two different accountholders, and each charge involved multiple occasions of offending over a few months.

106 Moreover, the one-transaction rule is an evaluative rule directed towards the enquiry as to whether an offender should be doubly punished for offences that have been committed simultaneously or close together in time. This brings into play moral considerations and it would be impossible to resolve these solely by reference to the facts (*Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [32]). The multiplicity of offences here greatly enhances the appellant's culpability, brings the need for general deterrence to the fore and hence justifies the imposition of three consecutive sentences to adequately reflect the gravity of the Proceeded Deceptive Practice Offences.

107 I am aware that the multiplicity of offences has been considered at the first stage of calibrating the individual sentence for each Proceeded Deceptive Practice Offence and at the second stage of determining whether the global sentence should be enhanced by consecutive sentencing. There is authority to the effect that this factor should have primary relevance at the second stage (*ADF v Public Prosecutor* [2010] 1 SLR 874 at [92]). If the multiplicity of the offences is *only* considered at the second stage, arguably, the individual sentence for each Proceeded Deceptive Practice Offence could be lower than six weeks' imprisonment. However, even if the individual sentences are adjusted downwards slightly, I am of the view that to appropriately encompass

the appellant's overall criminality, an imprisonment term close to 18 weeks in respect of the Proceeded Deceptive Practice Offences would still have been in order.

108 For completeness, I make three further points. First, I agree with the DJ that the imprisonment term faced by the appellant is justifiably higher than those of Rayson and Yeo. The appellant was much more culpable when compared to them. Quite apart from the significantly higher number of s 201(*b*) SFA charges the appellant faced, unlike Rayson and Yeo, the appellant actively procured the accounts through which deception on two securities trading firms (*ie*, KGI and RHB) was perpetrated. These considerations justify a much higher term of six weeks' imprisonment for the appellant, as compared to three weeks' and two weeks' imprisonment for Ray and Yeo respectively.

109 Second, the DJ should not have placed reliance on the breach of fidelity disclosed in the nine TIC charges relating to CIMB.[117] In so far as these nine TIC charges relate to a different victim, that justifies a sentencing uplift for the Proceeded Deceptive Practice Offences as it shows the appellant's pattern of criminality in committing s 201(*b*) SFA offences. However, the breach of fidelity disclosed in the TIC charges should not be a *separate* aggravating factor, because this fact is not present in the charges for the Proceeded Deceptive Practice Offences. The proceeded charges relate to deception on RHB and KGI, and the appellant does not owe a duty of fidelity to these firms since there is no employer-employee relationship. The aggravating effect of TIC charges should be premised on the similarities between the offending conduct covered by the TIC charges and the proceeded charges. As the High Court in *Navaseelan Balasingam v Public Prosecutor* [2007] 1 SLR(R) 767 at [17] noted, "the …

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117 GD at [90].

effect of having admitted [to outstanding] charges would be that the [accused] had committed many more similar offences and that fact must aggravate the charges proceeded with". Nonetheless, this does not render the total sentence of 18 weeks' imprisonment manifestly excessive in the light of the scale, duration and overall pervasiveness of the appellant's deception.

110 Lastly, I accept that fines should be considered to disgorge profits where there is evidence of an offender's financial gain arising from the offences. However, it is undisputed that the appellant was in dire financial straits and was heavily in debt owing to her involvement in the offences. Imposing a fine in such circumstances would likely result in the appellant serving an additional default term of imprisonment instead. The Prosecution rightly accepted that fines would not be appropriate in view of her financial circumstances.

Whether the global sentence offends the totality principle

111 Looking at the facts holistically, I am satisfied that the aggregate sentence is in line with the totality principle. As the Prosecution has highlighted, the appellant played a crucial role in a large-scale, highly sophisticated scheme, which occasioned extensive harm. She also faced a large number of charges.[118]

112 As against this, the appellant argues that the global sentence is crushing, in comparison with the sentence in *Prem Hirubalan*, where a global sentence of ten months' imprisonment was imposed. However, a meaningful comparison cannot be made with *Prem Hirubalan*, which involved a factually distinct situation. In particular, the multiplicity and scale of the offences in the instant case is far greater than what was present in *Prem Hirubalan*, where the offender pleaded guilty to only two charges under s 201(*b*), along with one other charge

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118 Prosecution's Submissions at para 141.

under s 406 of the Penal Code. Only two additional charges were taken into consideration for the purpose of sentencing.

113 Counsel for the appellant also attempts to compare the appellant's culpability with that of Andrew and Simon,[119] presumably on the basis that Andrew is the mastermind with Simon as his right-hand man.[120] But there are clear difficulties in seeking to suggest that her global sentence is excessive based on such a comparison. Andrew and Simon have not been sentenced, let alone convicted after trial. It is neither possible nor productive to attempt any comparison between the appellant's sentence and Andrew and Simon's presumptive sentences.

Conclusion

114 Having considered the facts and the parties' submissions, I find that the sentence of 20 months' imprisonment for the Market Rigging Offence is not manifestly excessive and the custodial threshold has been crossed for the Proceeded Deceptive Practice Offences. The DJ had accorded due weight to the mitigating factors. She did not err in ordering the imprisonment terms of three Proceeded Deceptive Practice Offences to run consecutively, and the global sentence is in keeping with the totality principle. For these reasons, I dismiss the appellant's appeal against sentence.

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119 Appellant's Submissions at para 39.

120 Appellant's Submissions at para 3.

See Kee Oon J
Judge of the High Court

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