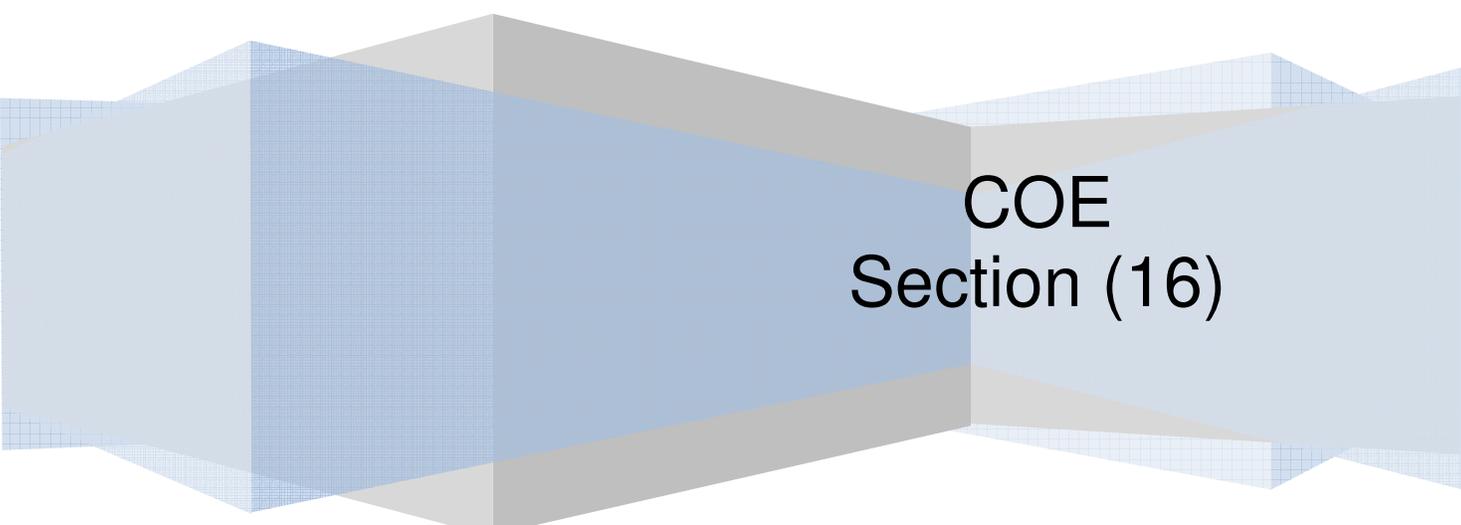




Securities and Futures Act

**Section 213-231
Insider Trading**



COE
Section (16)

PART XII

MARKET CONDUCT

Division 3 — Insider Trading

Application of this Division

213. This Division shall apply to —

(a) acts occurring within Singapore, in relation to —

- (i) securities of any corporation, whether formed or carrying on business in Singapore or elsewhere;
- (ia) securities of any business trust;
- (ii) securities listed for quotation or quoted on a securities market in Singapore or elsewhere; or
- (iii) securities traded on a futures market in Singapore or elsewhere; and

(b) acts occurring outside Singapore, in relation to —

- (i) securities of a corporation that is formed or carries on business in Singapore;
- (ia) securities of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;
- (i) securities listed for quotation or quoted on a securities market in Singapore; or
- (iii) securities traded on a futures market in Singapore.

[1/2005]

[Malaysia SIA, s. 89P]

Interpretation of this Division

214. In this Division —

"debenture" has the same meaning as in section 2 and, in relation to a business trust, means a debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

"financial performance" , in relation to a business trust, means the performance of the business relating to the trust property of the business trust which is managed and operated by the trustee of the business trust;

"information" includes —

(a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;

(b) matters relating to the intentions, or the likely intentions, of a person;

(c) matters relating to negotiations or proposals with respect to —

- (i) commercial dealings;
- (ii) dealing in securities; or
- (iii) trading in futures contract;

(d) information relating to the financial performance of a corporation or business trust, or otherwise;

(e) information that a person proposes to enter into, or had previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and

(f) matters relating to the future;

"purchase", in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party, acquiring the option or right under the contract, or taking an assignment of the option or right, whether or not on another's behalf;

"securities" means —

(a) in relation to a corporation, for the purposes of sections 213 (a) (i) and (b) (i) and 218 —

- (i) debentures, stocks or shares issued or proposed to be issued by a corporation;
- (ii) any right, option or derivative in respect of any such debentures, stocks or shares;
- (iii) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —

- (A) the value or price of any such debentures, stocks or shares;
- (B) the value or price of any group of any such debentures, stocks or shares; or
- (C) an index of any such debentures, stocks or shares;

(iv) a futures contract only if the commodity which is the subject of the futures contract is a share or stock of a corporation; or

(v) such other product or class of products as the Authority may prescribe, but does not include such product or class of products as the Authority may prescribe as not being securities;

(b) in relation to a business trust, for the purposes of sections 213 (a) (ia) and (b) (ia) and 218 (1A) and (4A) —

- (i) units in a business trust;
- (ii) derivatives of units in a business trust;
- (iii) debentures of a business trust;
- (iv) any right, option or derivative in respect of any such debentures; or
- (v) such other product or class of products as the Authority may prescribe, but does not include such product or class of products as the Authority may prescribe as not being securities;

(c) in any other case —

- (i) debentures or stocks issued or proposed to be issued by a government;
- (ii) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;
- (iii) any right, option or derivative in respect of any such debentures, stocks or shares;
- (iv) any unit in a collective investment scheme;
- (v) any unit, or derivative of a unit, in a business trust;
- (vi) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
 - (A) the value or price of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust;
 - (B) the value or price of any group of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust; or
 - (C) an index of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust;
- (vii) a futures contract only if the commodity which is the subject of the futures contract is a share or share index, or stock or stock index; or
- (viii) such other product or class of products as the Authority may prescribe, but does not include —
 - (AA) bills of exchange;
 - (BB) promissory notes;
 - (CC) certificates of deposit issued by a bank or finance company; or

(DD) such other product or class of products as the Authority may prescribe as not being securities;

"sell" , in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party —

- (a) grant or assign the option or right; or
- (b) take, or cause to be taken, such action as releases the option or right, whether or not on another's behalf;

"trust property" has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A).

[1/2005]

[SIA, s. 2; Malaysia SIA, s. 89]

Information generally available

215. For the purposes of this Division, information is generally available if —

- (a) it consists of readily observable matter;
 - (b) without limiting the generality of paragraph (a) —
 - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and
 - (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
 - (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
 - (i) information referred to in paragraph (a);
 - (ii) information made known as referred to in paragraph (b) (i).
- [Aust. Corporations 2001, s. 1002B]

Material effect on price or value of securities

216. For the purposes of this Division, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

[Aust. Corporations 2001, s. 1002C]

Trading and procuring trading in securities

217. —(1) For the purposes of this Division, trading in securities that is ordinarily permitted on the securities market or futures market shall be taken to be permitted on that securities market or futures market even though trading in any such securities on that securities market or futures market is suspended.

(2) For the purposes of this Division but without limiting the meaning that the expression “procure” has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

[Aust. Corporations 2001, s. 1002D]

Prohibited conduct by connected person in possession of inside information

218. —(1) Subject to this Division, where —

(a) a person who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation; and

(b) the connected person knows or ought reasonably to know that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities of that corporation, subsections (2), (3), (4), (5) and (6) shall apply.

[1/2005]

(1A) Subject to this Division, where —

(a) a person who is connected to any corporation, where such corporation —

(i) in relation to a business trust, acts as its trustee or manages or operates the business trust; or

(ii) in relation to a collective investment scheme that invests only in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any units of which are listed on a securities exchange, is the trustee or manager of the scheme,

possesses information concerning that corporation, business trust or scheme, as the case may be, that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation, of securities of that business trust or of units in that scheme, as the case may be; and

(b) the connected person knows or ought reasonably to know that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities of that corporation, of those securities of that business trust or of those units in that scheme, as the case may be, subsections (2), (3), (4A), (5) and (6) shall apply.

[1/2005]

(2) The connected person must not (whether as principal or agent) —

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities referred to in subsection (1) or (1A), as the case may be; or

(b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities referred to in subsection (1) or (1A), as the case may be.

[1/2005]

(3) Where trading in the securities referred to in subsection (1) or (1A) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the connected person must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the connected person knows, or ought reasonably to know, that the other person would or would be likely to —

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or

(b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

[1/2005]

(4) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation referred to in subsection (1), where the prosecution or plaintiff proves that the connected person was at the material time —

(a) in possession of information concerning the corporation to which he was connected; and

(b) the information was not generally available, it shall be presumed, until the contrary is proved, that the connected person knew at the material time that —

(i) the information was not generally available; and

(ii) if the information were generally available, it might have a material effect on the price or value of securities of that corporation.

[1/2005]

(4A) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation which —

(a) in relation to a business trust, acts as its trustee or manages or operates the business trust; or

(b) in relation to a collective investment scheme, is the trustee or manager of the scheme,

as the case may be, referred to in subsection (1A), where the prosecution or plaintiff proves that the connected person was at the material time —

(i) in possession of information concerning the corporation, business trust or scheme, as the case may be; and

(ii) the information was not generally available, it shall be presumed, until the contrary is proved, that the connected person knew at the material time that —

(A) the information was not generally available; and

(B) if the information were generally available, it might have a material effect on the price or value of securities of that corporation, of securities of that business trust or of units in the scheme, as the case may be.

[1/2005]

(5) In this Division —

(a) “connected person” means a person referred to in subsection (1) or (1A) who is connected to a corporation; and

(b) a person is connected to a corporation if —

(i) he is an officer of that corporation or of a related corporation;

(ii) he is a substantial shareholder within the meaning of Division 4 of Part IV of the Companies Act (Cap. 50) in that corporation or in a related corporation; or

(iii) he occupies a position that may reasonably be expected to give him access to information of a kind to which this section applies by virtue of —

(A) any professional or business relationship existing between himself (or his employer or a corporation of which he is an officer) and that corporation or a related corporation; or

(B) being an officer of a substantial shareholder within the meaning of Division 4 of Part IV of the Companies Act in that corporation or in a related corporation.

[1/2005]

(6) In subsection (5), “officer”, in relation to a corporation, includes —

(a) a director, secretary or employee of the corporation;

(b) a receiver, or receiver and manager, of property of the corporation;

(c) a judicial manager of the corporation;

(d) a liquidator of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

Prohibited conduct by other persons in possession of inside information

219. —(1) Subject to this Division, where —

(a) a person who is not a connected person referred to in section 218 (referred to in this section as the insider) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities; and

- (b) the insider knows that —
- (i) the information is not generally available; and
 - (ii) if it were generally available, it might have a material effect on the price or value of those securities,
- subsections (2) and (3) shall apply.

(2) The insider must not (whether as principal or agent) —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

(3) Where trading in the securities referred to in subsection (1) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or

(b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

[Aust. Corporations 2001, s. 1002G]

Not necessary to prove intention to use

220. —(1) For the avoidance of doubt, in any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or plaintiff to prove that the accused person or defendant intended to use the information referred to in section 218 (1) (a) or (1A) (a) or 219 (1) (a) in contravention of section 218 or 219, as the case may be.

[1/2005]

(2) In any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or plaintiff to prove the absence of facts or circumstances which if they existed would, by virtue of sections 222 to 230 or any regulations made under section 341, preclude the act from constituting a contravention of section 218 or 219, as the case may be.

[Malaysia SIA, s. 89F]

Penalties under this Division

221. —(1) A person who contravenes section 218 or 219, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after a court has made an order against him for the payment of a civil penalty under section 232 in respect of that contravention.

[SIA, s.104]

Exception for redemption of units in collective investment scheme

222. Sections 218 (2) and 219 (2) shall not apply in respect of the redemption of units in a collective investment scheme by a trustee or manager under a trust deed relating to that collective investment scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less —

- (a) any liabilities of that collective investment scheme to which the units relates; and
- (b) any reasonable charge for purchasing the units.

[1/2005]

[Malaysia SIA, s. 89N]

Exception for underwriters

223. —(1) Sections 218 (2) and 219 (2) shall not apply in respect of —

- (a) subscribing for, or purchasing, securities under an underwriting agreement or a sub-underwriting agreement;
- (b) entering into an agreement referred to in paragraph (a); or
- (c) selling securities subscribed for, or purchased, under an agreement referred to in paragraph (a).

[1/2005]

(2) Sections 218 (3) and 219 (3) shall not apply in respect of the communication of information in relation to securities —

- (a) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or
- (b) by a person who may be required under an underwriting agreement to subscribe for, or purchase, any such securities if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:
 - (i) enter into a sub-underwriting agreement in relation to any such securities;
 - (ii) subscribe for, or purchase, any such securities.

[1/2005]

[Aust. Corporations 2001, s. 1002J]

Exception for purchase pursuant to legal requirement

224. —(1) Sections 218 (2) and 219 (2) shall not apply in respect of the purchase of securities pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

[16/2003]

(2) Sections 218 (2) and 219 (2) shall not apply in respect of the sale of securities pursuant to any requirement imposed by the Government or any requirement imposed under any written law or order of court.

[16/2003]

[Aust. Corporations 2001, s. 1002K]

Exception for information communicated pursuant to legal requirement

225. Sections 218 (3) and 219 (3) shall not apply in respect of the communication of information pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

[Aust. Corporations 2001, s. 1002L]

Attribution of knowledge within corporations

226. —(1) For the purposes of this Division —

(a) a corporation is taken to possess any information which an officer of the corporation possesses and which came into his possession in the course of the performance of duties as such an officer; and

(b) if an officer of a corporation knows or ought reasonably to know any matter or thing because he is an officer of the corporation, it is to be presumed, until the contrary is proved, that the corporation knows or ought reasonably to know that matter or thing.

(2) A corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the corporation if —

(a) the decision to enter into the transaction or agreement was taken on its behalf by a person other than that officer;

(b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person who made the decision and that no advice with respect to the transaction or agreement was given to that person by a person in possession of the information; and

(c) the information was not so communicated and no such advice was so given.

[Malaysia SIA, s. 89G]

Attribution of knowledge within partnerships and limited liability partnerships

227. —(1) For the purposes of this Division —

(a) a partner of a partnership or a limited liability partnership (as the case may be) is taken to possess any information —

(i) which another partner of the partnership or limited liability partnership (as the case may be) possesses and which came into such other partner's possession in his capacity as a partner of the partnership or limited liability partnership (as the case may be); or

(ii) which an employee of the partnership or a manager of a limited liability partnership (as the case may be) possesses and which came into the possession of such an employee or manager in the course of the performance of his duties as such an employee or manager; and

(b) if a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (as the case may be) knows or ought reasonably to know any matter or thing in his capacity as such a partner, manager or employee, it is to be presumed that every partner of the partnership or limited liability partnership (as the case may be) knows or ought reasonably to know that matter or thing.

[5/2005]

(2) The partners of a partnership or limited liability partnership (as the case may be) do not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the partners, or a manager or managers, or an employee or employees, of the partnership or limited liability partnership (as the case may be) are in actual possession of information if —

(a) the decision to enter into the transaction or agreement was taken on behalf of the partnership or limited liability partnership by any one or more of the following persons:

- (i) a partner who is taken to have possessed the information merely because another partner, or a manager or employee, of the partnership or limited liability partnership, was in possession of the information;
- (ii) an employee of the partnership or limited liability partnership or a manager of the limited liability partnership who was not in possession of the information;

(b) the partnership or limited liability partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and

(c) the information was not so communicated and no such advice was so given.

[5/2005]

(3) A partner of a partnership or limited liability partnership (as the case may be) does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement otherwise than on behalf of the partnership or limited liability partnership merely because he is taken to possess information that is in the possession of another partner, a manager or an employee of the partnership.

[5/2005]

[Malaysia SIA, s. 89H]

Exception for knowledge of person's own intentions or activities

228. An individual does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.
[Aust. Corporations 2001, s. 1002P]

Exception for corporations and its officers, etc.

229. —(1) A corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because it is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities.

(2) Subject to subsection (3), a corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because an officer of the corporation is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(3) Subsection (2) shall not apply unless the officer of the corporation mentioned in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

(4) Subject to subsection (5), a person does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement on behalf of a corporation in relation to securities merely because he is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4) shall not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the corporation or in the course of acting as an agent of the corporation.

[Malaysia SIA, s. 89K]

Unsolicited transactions by holder of capital markets services licence and representatives

230. —(1) The holder of a capital markets services licence to deal in securities or trade in futures contracts, or a representative of such a holder does not contravene section 218 (2) or 219 (2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, securities that are traded on the stock market or futures market if —

(a) the licensed person entered into the transaction or agreement concerned on behalf of another person (referred to in this section as the principal) under a specific instruction by the principal to enter into that transaction or agreement which was not solicited by the licensed person;

(b) the licensed person has not given any advice to the principal in relation to the transaction or agreement or otherwise sought to procure the principal's instructions to enter into the transaction or agreement; and

(c) the principal is not an associate of the licensed person.

(2) Nothing in this section shall affect the application of section 218 (2) or 219 (2) in relation to the principal.

[Malaysia SIA, s. 89M]

Parity of information defences

231. —(1) In any proceedings against a person for a contravention of section 218 (2) or 219 (2) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person's possession, it is a defence if the court is satisfied that —

(a) the information came into the first-mentioned person's possession solely as a result of the information having been made known as referred to in section 215 (b) (i); or

(b) the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

(2) In an action against a person for a contravention of section 218 (3) or 219 (3) because the person communicated information, or caused information to be communicated, to another person, it is a defence if the court is satisfied that —

(a) the information came into the first-mentioned person's possession solely as a result of the information having been made known as referred in section 215 (b) (i); or

(b) the other person knew, or ought reasonably to have known, of the information before the information was communicated.

[Aust. Corporations 2001, s. 1002T]