
CHAPTER 8

THE PRESENTATION AND RELEASE OF THE CONSULTATION PAPER

PRESENTATION

8.1 In commenting on the fifth draft of the Consultation Paper, the SFC's Corporate Finance Division expressed concern about the length and drafting (See extract at paragraph 7.36). It urged the Listing Division to have a "fresh pair of eyes" to go through the draft. We pause to note that in the preparation of the consultation paper on corporate governance, the HKEx engaged an external consultant to edit the paper. This was not done for this Consultation Paper. Perhaps, it should have been. Had there been more time, may be it would have been looked at and edited with outside help. In any event, for this case, the CCU assisted in the editing of the draft for public consumption.

8.2 It has been pointed out by a number of commentators, including market professionals and financial analysts that:-

- (a) The proposals are technical in nature.
- (b) The Paper is over 100 pages long.
- (c) There is no direct or specific emphasis that the price threshold of \$0.5 is merely a trigger for consolidation rather than delisting.
- (d) The paper does not include any proposal on or discussions of the merits or otherwise of an alternative trading platform.

TIMING FOR THE RELEASE OF THE PR PACKAGE

8.3 Three press conferences or media briefings were held on the 24th and 25th of July 2002:-

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- (a) **24 July 2002 (p.m.)**. After a briefing for the LegCo Panel on Financial Affairs, the Secretary, in conjunction with the SFC Chairman, and the Chairman and Chief Executive of the HKEx, held a joint press conference to announce their consensus on a three-pronged programme to enhance the quality and competitiveness of the Hong Kong market. The three measures were the establishment of an integrated Listing Committee with even broader representation, the introduction of a streamlined listing process and stronger back-end enforcement of disclosure requirements.
- (b) **25 July 2002 (late morning)**. At a media briefing, the Corporate Finance Division of the SFC announced the findings of its study⁵³ on the quality of the Hong Kong stock market. The paper benchmarked Hong Kong's market against leading stock markets in the world and concluded that it was important for Hong Kong to have an effective delisting mechanism to facilitate an orderly exit of companies that were no longer suitable for listing. Only SFC staff attended the press briefing.
- (c) **25 July 2002 (around noon)**. The Chief Executive of the HKEx conducted a press briefing to announce the release of the Consultation Paper on Initial Listing and Continuing Listing Eligibility Criteria (the Consultation Paper).

8.4 The Secretary, the SFC Chairman and the Chairman and the Chief Executive of the HKEx were present at the press conference on the 24 July only. The Government's whole preparation since early July was for this package. It was to be, we suspect, the Secretary's coming out party and the platform for him to make an impression. The second briefing was related to a paper prepared by the SFC in December 2001. It was an abbreviated version as the actual paper was considered too technical and negative. The SFC's idea on the timing of the second briefing was to set the scene and present a united front with the HKEx on the latter's proposals. For the third press conference, only the HKEx's executive personnel, and not even its Chairman, were at the press conference launching the Consultation Paper. There can be no question, despite not very well-thought out

⁵³ The study is entitled "Quality of Market and the case for More Effective Delisting Mechanism". An excerpt can be found in http://www.hksfc.org.hk/eng/press_releases/html/index.html.

assertions to the contrary, that this was the Consultation Paper of the HKEx and not anybody else's.

TIMING FOR THE RELEASE OF THE CONSULTATION PAPER

The HKEx's Plan

8.5 As shown in **Annex 7.2**, the HKEx's plan to introduce a revised delisting mechanism has been widely reported in the media since early 2001. The HKEx had committed itself to releasing the Consultation Paper in July 2002.

- (a) On the 8 June 2002, the HKEx sent the second draft of its Consultation Paper to the SFC which included a tentative timetable targeting public consultation on the 15 July 2002.
- (b) On the 3 July 2002, the Chairman of the HKEx had written to the FS in answer to his concerns and mentioned that a consultation paper would be issued "by end July/early August".
- (c) On the 9 July 2002, the Listing Division informed the Bureau of the timetable for circulating the paper to the Listing Committee on the 10 July for deliberation on the 18 July and for public consultation on the 25 July.
- (d) In an article in the HKEx's magazine, the Exchange, released to the media and the public on the 17 July 2002, the HKEx indicated the imminent publication of the Consultation Paper. The article said that the Consultation Paper would cover the requirements for initial listing eligibility, the requirements for continuous listing eligibility and delisting procedures. The circulation of the July edition exceeded 3,000 copies.

Why 25 July 2002?

8.6 The HKEx chose the date and time for the release of the Consultation Paper. It had exchanged notes with both the Bureau and the SFC about that date. In picking the date, the HKEx took into account the following:-

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- (a) The HKEx had made public and other commitments (see paragraph 8.5) regarding its plan to announce the Consultation Paper on the 25 July 2002, or in July 2002.
 - (b) The exercise was a market consultation exercise. Market comments and media enquiries were expected.
 - (c) There would be the joint news conference chaired by the new Secretary on Wednesday, the 24 July 2002, to announce the revised listing structures and corporate governance reforms. The HKEx Board would also be meeting in the morning of Friday, the 26 July 2002, to decide on the extension of trading hours, with an announcement anticipated after the meeting. The HKEx did not want the news conference on the Consultation Paper to clash with these other events. The messages could have been confusing to the public.
 - (d) Since some of the proposals in the Consultation Paper were already widely reported, the HKEx wanted to publish the consultation paper as soon as possible.
 - (e) Because of the lead time for producing the Consultation Paper after incorporating comments of the Listing Committee made on the 18 July, Thursday the 25 July was the earliest possible day the HKEx could publish the Consultation Paper.

8.7 The HKEx was anxious to maintain the 25 July date even though the first printed copies of the Consultation Paper could only be delivered to the HKEx on the morning of the 26 July 2002 because of a production delay. The HKEx could only distribute photocopies of the Consultation Paper to journalists just before the press conference on the 25 July. Printed copies of the Consultation Paper were sent out to stakeholders only on the following day.

Why a Thursday?

8.8 There is a widely held view by market participants that the HKEx should not have released the Consultation Paper in the course of a trading day. Quoting the following examples, the Corporate

Communication Unit (CCU) of the HKEx drew our attention to its practice of not releasing major announcements on Fridays “because there are fewer readers of financial news over the weekend and certain important financial newspapers, do not publish on Saturdays and Sundays, including Asian Wall Street Journal, Hong Kong Economic Times and Hong Kong Economic Journal”. (Note: we have since found out that the latter two newspapers do in fact publish on Saturdays, although not on Sunday. If the CCU had also realized that at the time, perhaps it would not have considered Friday so inappropriate.) These examples were:-

Consultation Paper Relating to	Release Date	Time
Derivatives and Warrants	31.5.2001 (Thursday)	After market closed
Extension of Trading Hours	4.9.2001 (Tuesday)	Lunch break
Corporate Governance	21.1.2002 (Monday)	3:00 p.m.
Dissemination of Listed Issuers’ Announcements	12.3.2002 (Tuesday)	After market closed
Third Party Clearing	10.7.2002 (Wednesday)	After market closed

8.9 The main concern of the HKEx was, it seems to us, to maximize publicity and media coverage. How the proposals might have affected the market would not appear to have been at the forefront of the minds of the CCU.

PRESS CONFERENCE

8.10 Seventy-three journalists from 39 news organizations attended the press conference. Twenty-eight journalists also joined the media lunch. The Chief Executive of the HKEx announced the release of the Consultation Paper and responded to media questions.

8.11 During the media lunch, the Chief Executive and the Head of Listing, Regulation and Risks Management requested that journalists report the proposals comprehensively and avoid sensational reports and headlines. They also made the following points:-

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- (a) Listed companies trading below the \$0.5 share price threshold would not be immediately delisted.
 - (b) There would be a 12-month transition for companies to raise their share price to the threshold level, and that consolidation would be one way for companies to comply with the requirement.

8.12 We note, however, that neither the six-page press release nor the media briefing paper emphasized these points. Also, in response to questions on the likely number of companies which may be delisted, the Chief Executive did not provide any numbers. His rationale was that until after the consultation has gathered in the views of the market, it was not possible to know which of the criteria for delisting would be in place and until those were decided, it was not possible to tell how many companies would have had to be delisted.

8.13 Mr K C Kwong has acknowledged, very fairly, that with hindsight, the message could have been made clearer and that he could have further emphasized that there would not be automatic delisting of stocks trading below the threshold, and that the number of companies which may be at risk of delisting, even if all the proposals were accepted by the market and implemented, would likely be small (i.e. 20 to 30).

DISTRIBUTION OF THE CONSULTATION PAPER

8.14 The HKEx sent the press release and consultation paper to over 90 news organizations, over 170 analysts and fund managers from 96 local and overseas investment firms, by fax and by email. In addition, the HKEx posted the press release and the Consultation Paper on its website on the afternoon of the 25 July. On the 25 July, there were 114 and 34 visits to its website to browse the English and Chinese versions of the Consultation Paper respectively. The numbers increased to 330 and 180 respectively in the following day.

8.15 Hard copies were made available on the 26 July 2002. Throughout the day, 123 English copies and 104 Chinese copies were picked up from the HKEx office.