

HKE_x LISTING DECISION

HKE_x-LD87-2015 (published in May 2015) (Updated in August 2018)

Party	Company A – a Main Board issuer The Group – Company A and its subsidiaries
Issue	Whether the Exchange would direct the resumption of trading in Company A’s shares under Rule 6.07
Listing Rules	Main Board Rules 6.05 to 6.07 and Paragraph 4 of Practice Note 11
Decision	The Exchange directed the resumption of trading in Company A’s shares

FACTS

1. At its request, trading in Company A’s shares was suspended pending release of inside information about regulatory investigations in the PRC involving its director and controlling shareholder (**Mr. A**). It subsequently disclosed that:
 - Mr. A was not contactable. Based on the information available to Company A, Mr. A was assisting regulatory authorities in the PRC in their investigations. The subject matter of the investigations and Mr. A’s involvement in this matter were unknown to Company A. The regulatory authorities asked Company A about certain projects of the Group, took away certain books and records of the Group, and froze certain bank accounts of the Group.
 - Company A failed to repay certain bank loans when due, which triggered cross-defaults of other bank loans.
2. During the trading suspension, Company A continued to announce information available to it regarding the investigations, its assessment of the impact of the investigations on the Group, its negotiations on repayment schedules of outstanding bank loans and other actions taken to manage the Group’s cash flow. Company A also published its audited financial results required by the Rules, which did not reveal any accounting irregularities or possible fraudulent activities on the part of the Group. The Group continued to operate its businesses and was able to secure new contracts with customers.

3. Based on Company A’s disclosures, the Exchange considered that the reasons for the initial trading suspension no longer applied and Company A had satisfied the conditions for trading resumption imposed on it (see also guidance ~~for long suspended companies~~ on long suspension and delisting set out in the Exchange’s Guidance Letter ~~HKE*X-GL66-1395-18~~). (Updated in August 2018)
4. In response, Company A sought to continue the trading suspension for these reasons:
 - *Exceptional circumstances of the case:* Company A referred to Note 1 to Rule 6.05 which states that “*The Exchange is under an obligation to maintain an orderly and fair market for the trading of all Exchange listed securities and listed securities should be continuously traded save in exceptional circumstances.*” It viewed “*exceptional circumstances*” as those not ordinarily encountered or anticipated and were beyond the control of the listed issuer concerned. It believed that its situation was exceptional and merited the Exchange allowing the continuing suspension.
 - *Trading resumption not in the best interests of shareholders:* Company A submitted that with the benefit of the trading suspension, it had made significant progress in negotiating with banks for new repayment schedules of its outstanding loans. It was concerned that there would likely be panic selling of its shares by some shareholders after trading resumption, which would undermine the prospects of its negotiations with banks of the Group’s credit facilities.
 - *Undisclosed information:* Company A did not have the details of the investigations and was unable to make an informed view on the impact of the investigations on the Group’s operations. It would be appropriate for the trading suspension to continue pending better understanding of these matters.

APPLICABLE LISTING RULES

5. Main Board Rules 6.05 to 6.07 and Paragraph 4 of Practice Note 11 states that:

“6.05 The duration of any trading halt or suspension should be for the shortest possible period. It is the issuer’s responsibility to ensure that trading in its securities resumes as soon as practicable following the publication of an appropriate announcement or when the specific reasons given by the issuer supporting its request for a trading halt or suspension of trading in its securities, under rule 6.02, no longer apply

Note : (1) The Exchange is under an obligation to maintain an orderly and fair market for the trading of all Exchange listed securities and listed securities should be continuously traded save in exceptional circumstances.

(2) *The Exchange considers that the continuation of any trading halt or suspension beyond such period as is absolutely necessary denies reasonable access to the market and prevents its proper functioning.*

6.06 *Where trading has been halted or suspended the issuer shall notify the Exchange of:*

(1) *any change in circumstances affecting the reasons provided to the Exchange supporting the trading halt or suspension under rule 6.02; and*

(2) *any additional reasons which the issuer wishes the Exchange to take into account in the Exchange's determination whether or not the trading halt or suspension should be continued.*

Note : (1) It is the issuer's responsibility to provide the Exchange with all relevant information, which is within the issuer's knowledge, to enable the Exchange to make an informed decision whether or not the trading halt or suspension of trading in the issuer's securities continues to be appropriate.

6.07 *The Exchange shall have the power to direct the resumption of trading of halted or suspended securities. In particular the Exchange may:*

(1) *require an issuer to publish an announcement, in such terms and within such period as the Exchange shall in its discretion direct, notifying the resumption of trading in the issuer's halted or suspended securities, following the publication of which the Exchange may direct resumption of trading; and/or*

(2) *direct a resumption of trading following the Exchange's publication of an announcement notifying the resumption of trading in the halted or suspended securities."*

Paragraph 4 of Practice Note 11

"In the interest of a fair and continuous market, the Exchange requires a trading halt or suspension period to be kept as short as is reasonably possible. This means that an issuer must publish an appropriate announcement as soon as possible after the trading halt or suspension arises. Under normal circumstances, the Exchange will restore dealings as soon as possible following publication of an appropriate announcement, or after specific requirements have been met. Failure by an issuer to make an announcement when required, may, if the Exchange feels it to be

appropriate, result in the Exchange issuing its own announcement and a restoration of dealings without an announcement by the issuer...”

ANALYSIS

6. The Exchange has a statutory duty to maintain a fair, orderly and informed market for the trading of securities and act in the interest of the investing public. The structure of the Listing Rules and the continuing obligations regime place the onus on listed issuers to avoid or minimise the duration of any suspension of trading. In the interest of promoting a continuous market for trading of listed securities, the duration of any suspension should be for the shortest possible period.
7. The Exchange disagreed with the reasons provided by Company A for the continued suspension of trading:
 - The Exchange did not consider Company A’s circumstances to be “exceptional” to justify the trading suspension. Suspension is a tool to facilitate the Exchange’s role to maintain a fair, orderly and efficient market for the trading of securities or for the protection of investors. “Exceptional circumstances” to justify continuing suspension must serve these purposes. Where Company A might consider its circumstances to be “exceptional” and continued trading suspension to be in its best interests, the Exchange must also consider the interest of the investing public.

This case did not fall into any “exceptional circumstances” in the Rules that require trading suspension. Company A submitted that it did not have any unpublished information constituting inside information under the Securities and Futures Ordinance (**SFO**).

- A trading suspension should not be used as a means to facilitate negotiations of the Group’s credit facilities. Issuers are not allowed to suspend trading in listed shares to artificially “maintain” a price which may not be reflective of the market price. Provided that investors are provided with all material information about the listed securities, the securities will be traded on an informed basis.
- While Company A did not have the details of the investigations and was unable to ascertain any future impact of the investigations on the Group, it had disclosed all available information regarding the investigations to the extent possible. The impact of the investigations on the Group had been revealed through its announcements and financial reports published after the trading suspension. Company A had admitted that it had no inside information disclosure obligation under the SFO. It was not appropriate to continue with the trading suspension pending future development in the investigation.

- Whether trading in Company A's shares was suspended or not, it was obliged to disclose inside information as soon as reasonably practicable to comply with the SFO.
8. The Exchange considered that Company A had failed to provide sufficient reasons to justify the continued trading suspension. Having considered the circumstances of this case and the fact that Company A did not have any inside information yet to be disclosed, the Exchange decided to direct the resumption of trading in Company A's shares under Rule 6.07.

CONCLUSION

9. The Exchange directed the resumption of trading in Company A's shares under Rule 6.07.