

Consultation Paper: Framework for the Implementation of Electronic Commerce in the Capital Market



21 March 2000

Securities Commission

INTRODUCTION

- The SC is presently working on developing an Electronic Commerce (EC) framework paper for an orderly and effective implementation of EC in the capital market.
- The EC framework paper is intended to outline the implementation of national-level initiatives on economic activities through EC and also to ensure that the development of EC domestically is in line with international developments.

INTRODUCTION

- The Consultation paper intends to raise issues that will assist in facilitating EC and make recommendations to remove any impediments that may stifle the growth of EC in the Malaysian capital market.
- SC views that the development of EC in the capital market must be a collaborative effort between the public and the private sectors to achieve the proper equilibrium between enterprise and regulations.

INTRODUCTION

- This Consultation paper is a follow up from SC's last public comment on EC in September 1997.
- Basically, the Consultation paper is divided into 3 distinct parts.
- The implementation of the recommendations in relation to regulatory clarifications is targeted to be within one year from receipt of the public comments and feedback from this Consultation paper.

CURRENT LANDSCAPE

- Since 1995, KLSE members who wished to provide electronic means of order-routing had to comply with the ECOS Rules.
- Initially electronic order-routing took the form of proprietary system i.e. linkages via Intranet and dial-up infrastructure.
- The late 1990s saw a shift towards order-routing via the Internet which is much cheaper and accessible by the public.
- Presently, approval for Internet order-routing is based on compliance with the ECOS Rules.

CURRENT LANDSCAPE

- MESDAQ saw the listing of its first company (Supercomal) in 1999 together with the posting of its electronic prospectus.
- Aside from that, there is an upsurge of a new breed of intermediaries in the form of technology vendors and financial portals.

PRINCIPLES

- There are 6 underlying principles that will be used in the development of EC in the capital market :
 - Consider medium of operation irrelevant
 - Be transparent and consistent
 - Facilitate capital formation
 - Co-operate and share information with other regulators
 - Take account of investors without electronic access
 - Lead in promoting and facilitating adoption of EC

ISSUES IN CONSULTATION PAPER

Physical infrastructure

- Trading Infrastructure

Regulatory infrastructure

- Primary market
- Provision of financial services
- Stock market facilities
- Documentation for submissions and disclosures
- Enforcement
- Training and education

PHYSICAL INFRASTRUCTURE

TRADING INFRASTRUCTURE

Recommendations

- Order-routing: To allow member companies to develop their own system in-house provided it complies with requirements of the Exchange.
- ECOS be revised by the Exchange.
- Exchange to conduct preliminary vetting of third party technology solutions providers to ensure compliance required by Exchange.
- The Exchange to upgrade their current trading engine facilities.

PHYSICAL INFRASTRUCTURE TRADING INFRASTRUCTURE

- Clearing & Settlement: SC to facilitate efforts by exchanges and their member companies to explore the possibility of integrating the current clearing and settlement systems.
- The central depository to look into providing depositors' access to their securities balances via the Internet.
- STP: That any infrastructure developed should incorporate STP.

REGULATORY INFRASTRUCTURE

CROSS BORDER ISSUES OR OFFER OF SECURITIES

Recommendations

- Offers or issues that are accessible in Malaysia is an offer within the purview of s.32 of the Securities Commission Act 1993 which requires prior approval of the SC.

Note:

The SC had on 18 August 1999 released a policy statement that provides practical measures to ensure that issues or offers do not fall within the ambit of s.32.

REGULATORY INFRASTRUCTURE

ELECTRONIC PROSPECTUS

Recommendations

- Electronic prospectuses to appear on the website of relevant regulatory authorities.
- To reconsider amending the existing requirements for prospectus to facilitate electronic-based prospectus.
- To prepare guidelines on the following:
 - Electronic applications forms to be accompanied by an electronic prospectus;
 - Ensure the electronic prospectus is secure and protected from unauthorised alteration;

REGULATORY INFRASTRUCTURE

ELECTRONIC PROSPECTUS

- Presentation of the prospectus in a way to encourage investors to decide on the basis of the prospectus and not on the basis of promotional material or pressure selling;
- Paper copies to be made available; and
- Disclaimers as to eligibility of the offer to avoid cross-border problems.

REGULATORY INFRASTRUCTURE

ADVERTISING AND SHARE-HAWKING

Recommendations

- Distinction between advertising and share-hawking depends on the extent to which the message is available to the public.
- SC's view:
 - Group e-mail (mass mailing), web-sites, electronic bulletin boards and chat rooms are considered advertising; and
 - Individual e-mail to be considered solicitation

REGULATORY INFRASTRUCTURE

INFORMATION VS OFFER

Recommendations

- The posting of corporate and securities information on an issuer's website would constitute an offer requiring SC approval, when it includes both detailed information and a means to subscribe.

REGULATORY INFRASTRUCTURE

UNIT TRUST FUNDS

Recommendations

- To permit transactions on units in unit trust funds via computer transmission
- The SC to work with relevant third party solution providers to develop standards and guidelines for the electronic sale of units.
- An offer sent by mass e-mail with a hyperlink to a prospectus must clearly state in the body of the e-mail that the offer is prohibited by law unless accompanied by a prospectus.

REGULATORY INFRASTRUCTURE

CROSS BORDER OFFER OF SERVICES

Recommendations

- The provisions of services in relation to dealing in securities, fund management and investment advice that is accessible in Malaysia, is an activity for which licensing is required pursuant to the Securities Industry Act, 1983.
- The SC will take into consideration several factors to determine whether to subject the providers of such services to the licensing provisions.

REGULATORY INFRASTRUCTURE DISINTERMEDIATION AND THE LICENSING REGIME

Recommendations

- To allow investors to put in their orders directly to the trading engine of the exchange via a member company.
- The exchange to develop appropriate interface standards to automate order-routing.
- SC to study the artificiality of the two-tiered licensing regime in the electronic environment.

REGULATORY INFRASTRUCTURE

BRANCHING

Recommendations

- Broker-client linkages: Electronic broker-client linkages and Internet kiosks should not be considered a branch of the member company provided they are established within the geographical area of the licensed premises of the member company, and are not manned by any personnel.
- Off-site servers: Member companies to be allowed to site their servers off-site, without it being considered a branch.

REGULATORY INFRASTRUCTURE TECHNOLOGY INTERMEDIARIES

Recommendations

- To clarify that such activities do not constitute dealing in securities or operating a stock market.
- Relevant exchanges to develop standards or issue minimum guidelines and work with vendors to ensure compliance.
- Compensation arrangements between these technology partners and capital market intermediaries to be on an up-front flat-fee basis.

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- To look into registration of financial portals.
- Consultation Paper : Framework for the Implementation of
Electronic Commerce in the Capital Market

REGULATORY INFRASTRUCTURE

KNOW YOUR CLIENT AND SIGNATURES

Recommendations

- Category of persons authorised to witness the account opening signatures should be expanded.
- To consider replacement of all requirements for written signatures with the technologically neutral term “authentication”.

REGULATORY INFRASTRUCTURE ADVERTISING

Recommendations

- Relevant authorities should issue guidelines relating to content of advertising and promotional material.
- To allow market intermediaries to certify through its compliance officers that such material conforms with the relevant guidelines.

REGULATORY INFRASTRUCTURE

INVESTMENT INFORMATION AND INVESTMENT ADVICE

Recommendations

- Newspapers vs online news vendors: SC to grant exemption to provide investment advice to media advisers that makes information available to the public, regardless of the medium.
- Factual information: Dissemination of purely factual information through information service providers will not be considered investment advice.

REGULATORY INFRASTRUCTURE

INVESTMENT INFORMATION AND INVESTMENT ADVICE

- *Investment advice over the Internet:*
 - Will be subject to the requirement of disclosure of interest and suitability of the customer.
 - Whether the information constitutes a recommendation, would depend on the degree of intervention by the adviser.
 - Internet advisers would require a license if it can be proved that they carry on the business of providing securities recommendations.

REGULATORY INFRASTRUCTURE

ELECTRONIC CONTRACT NOTES

Recommendations

- SC to look into amending the existing Securities Industry (Contract Note) Regulations 1997 to allow for electronic contract notes by incorporating the following matters:
 - Requirement for consent of the client to be obtained;
 - Reporting requirements to the authorities.

REGULATORY INFRASTRUCTURE

ELECTRONIC RECORD-KEEPING

Recommendations

- The SC to:
 - Require intermediaries to have written procedures for dealing with electronic communications; and
 - Require intermediaries to ensure security and integrity of their data storage systems and that they are available and accessible to the regulator or enforcer.

REGULATORY INFRASTRUCTURE

SECURITY/OPERATIONAL INTEGRITY

Recommendations

- SC to study the need to impose encryption or other security requirements on intermediaries' electronic communications

REGULATORY INFRASTRUCTURE

STOCK MARKET FACILITIES

Recommendations

- The SC to issue guidelines as to factors it will take into account when deciding whether a dealing activity becomes operating a stock market:
 - The extent of the trade execution facilities;
 - Range of securities dealt with;
 - Range of market users;
 - Extent to which the market and operators are subject to appropriate business rules;

REGULATORY INFRASTRUCTURE

STOCK MARKET FACILITIES

- Does the activity occur within the scope of a broader market and is subject to the supervision of a securities exchange; and
- Volume and value of the transactions.

REGULATORY INFRASTRUCTURE DOCUMENTATION FOR SUBMISSION AND DISCLOSURE

Recommendations

- SC to look into amending provisions in the securities and futures laws to make them both traditional and electronic-friendly.

REGULATORY INFRASTRUCTURE

ENFORCEMENT

Recommendations

- SC will continue to enforce laws within its jurisdiction and will seek co-operation from similar overseas organisations.

REGULATORY INFRASTRUCTURE

TRAINING AND EDUCATION

Recommendations

- SC to assist in creating training and education programmes for intermediaries and investors
- Market institutions and intermediaries to provide educational information on their web-sites.
- SC to work with market intermediaries to provide re-training programmes on challenges brought on by technology.

Q & A

THANK YOU