

Dear Sir,

I am responding to the above consultation paper. I am a former employee of HKEx, involved for more than twenty years in researching the securities markets, and also involved specifically in the 2006-08 GEM review and the 2008-09 Professional Board review.

The concept paper rightly identifies certain major gaps in HKEx's listing facility - namely its ability to list WVR companies, pre-profit companies, and Mainland secondary listings. However, the proposed New Board would not be a good solution to these problems. Instead efforts should be focused on accommodating such companies on the existing Main Board and GEM. Also, the focus on 'New Economy' companies appears short-sighted, even dated; any new listing channels should be available to issuers from all industries. Conversely, if a New Board is to be set up, consideration should be given to addressing other problems, touched on but not fully addressed in the paper, such as the restrictive listing regime under the JPS for foreign companies (both primary and secondary listings of such companies).

Overall comments are given below. The completed questionnaire is attached.

### New Board structure

While setting up a new board might appear to solve the problem of existing regulatory constraints 'in one bound', it creates new problems which are not discussed in the paper adequately if at all. It is true that many overseas exchanges have attempted to segment their markets (through the creation of new segments or new boards), but the number of successful cases is much smaller. The attractiveness of a listing venue depends heavily on network effects - the number and nature of issuers already listed there, the willingness of investors to invest there - and for a new board these attractions are potential, only. In the case of the proposed New Board, there will actually be disincentives - firstly, the board will be characterised as riskier and (presumably) of lower quality, and retail investors may not be allowed on it, at least not on New Board PRO. Would large successful companies like Alibaba actually want to list on such a board?

Another problem is that the Hong Kong market structure would become quite complicated, with four boards (five if the Private Market is counted), and, presumably, procedures for transfer/promotion/relegation among them. The complexity would be offputting to retail investors and even institutions - not to mention to issuers themselves.

It is not clear if the proposed market is actually to be called 'New Board'. A better name should be found, as this recalls Deutsche Boerse's failed Neuer Markt ('New Market'). Also, after a few years the market would no longer be 'new'.

The impact of the New Board on the existing Main Board does not seem to be discussed at all. Yet it is crucial that whatever is done to chase new categories of companies does not impact the reputation of the Main Board, on which the outstanding performance and prosperity of the Hong Kong market is based. The tone of the paper is unfortunate, in that it seems to be sidelining the Main Board, even criticising it (low PE, few growth companies). If the New Board should be successful, it may tend to overshadow the Main Board; alternatively, there might be pressure to open an easy route for New Board companies to transfer to the Main Board even where not truly qualified. If the New Board is a damp squib, or worse, ends up with failing companies (as was the experience of Hong Kong's last new board, ie GEM), there would be reputational impact on the Main Board.

Each of the three gaps identified in the paper can be solved on the existing Main Board and GEM if enough thought and political will is put in, with a better and simpler overall result. WVR companies are discussed below; there is no good reason to deny retail investors access to these companies on the Main Board. Pre-profit companies are already allowed to list on the Main Board in the shape of mineral companies and infrastructure companies; further categories can be added. Mainland companies listed on reputable markets overseas should simply be allowed to secondary-list in Hong Kong on the Main Board; again, there is no good argument against this. The existing Main Board is actually segmented in a sense already, at least at admission level, with separate channels for infrastructure companies and for mining companies, and one company, RUSAL, which is (or was) for professionals only. The Main Board is therefore already a broad church. I suggest that more thinking be devoted to how new types of issuer could be accommodated on the Main Board rather than create new boards.

### New economy

It seems that the New Board is to be restricted to so-called New Economy stocks (except in respect of Mainland secondary listings?). However, I suggest that any new Board or new channel should be open to issuers of all types on a non-discriminatory basis. It is difficult to distinguish New Economy from Old, in that all companies nowadays have online offerings and revamp their business models from time to time, and conversely, New Economy companies invest in Old Economy assets (eg Amazon's acquisition of Whole Foods). 'New Economy' was a term that became popular describing internet companies in the 1990s dotcom bubble; it should not form the basis for a board today.

Even if New Economy companies can be identified, there is a danger in limiting a board to companies of one sort. If that segment of the economy performs poorly, the whole board may be compromised. This was the experience of Neuer Markt, which had to be closed in the mid-1990s after the bursting of the dotcom bubble, while London's AIM, which had a more diversified base of issuers, survived. Hong Kong more or less had its own New Economy board then, in the form of GEM, with disastrous results. History should not be repeated.

### Professionals-only Board

New Board PRO would be for professionals only. However, HKEx has actually explored the potential for a Professional Board before, in 2008/09, and concluded negatively. The relevant press release, of 4 March 2009 states,

On the whole, overseas exchange experience does not provide compelling examples of successful equity market segments that exclude retail investors. In addition, some market practitioners expressed concerns about the practicality of the proposed exclusion of retail investors and others felt that the priority should be given to further enhancement of the Main Board rather than the launch of another new board. <https://www.hkex.com.hk/eng/newsconsul/hkexnews/2009/0903046news.htm>

It is surprising that no reference to this experience is made in the paper. What has changed since 2009? Are market professionals or issuers any keener now on a market that does not have retail investors? Have any overseas markets made a success of their respective professional boards?

### WVR companies

The arguments in the Exchange's original consultation paper on such companies remain valid. Numerous overseas exchanges allow such companies to list; although the US has a class action regime (which itself has shortcomings and encourages rent-seeking), other markets with WVR listings do not necessarily have such regimes. HKEX already allows departures from proportionate voting in the form of pyramid structures (by which the principal can exercise control via relatively small economic holdings). It is true that institutional investors tend to prefer one share one vote, but there are issues with the governance of institutional investors (who in many cases have only diffuse accountability to their underlying unit-holders, and who in some markets themselves constitute a dangerous concentration of power - eg in the US market the top three fund managers hold 15-20% of most large stocks and so have effective control). There seems no good moral reason to prevent the listing of WVR companies on the Main Board

As a practical matter, allowing retail investors to buy WVR stocks on the New Board is surely hardly different from allowing them to do so on the Main Board - there are in any case products listed on the Main Board, such as warrants and CBBCs, which are far riskier than WVR companies, and yet there are no constraints on retail investors buying those.

#### Thresholds

The paper sets out capitalisation thresholds for the New Board and Main Board and GEM, which in the case of the Main Board are substantially different from today. A back-testing exercise should be performed to see what the impact of the new thresholds would have been, other things equal.

Also, I suspect that there are many existing companies listed on the Main Board and GEM which would not meet the proposed capitalisation and free float requirements. Would they be delisted? If not, why not?

#### Other comments

A 'straw man' is normally put out as a kind of ruse or misrepresentation to provoke comments and get one's opponent to expose his weaknesses. I think the intention is just a concept paper or 'green paper'.

The accelerated delisting mechanism proposed for the New Board sounds good - but why cannot such a mechanism be introduced for the Main Board and GEM, where it is needed? The issues concerning delisting - the impact on existing shareholders, the impact on the shell-recycling business of market practitioners (not a good reason!) - are not discussed.

The Private Market would not have any trading or matching functions. Would it have even display of interest functions? If not, it would not seem to be useful. Why would any issuer use it?

Para 136, stating that the Exchange would retain the discretion to direct issuers to a board other than the one they applied to (based on criteria which would necessarily be subjective - see discussion of New Economy above) opens a disturbing prospect of paternal intervention in the listing decision.

Para 138, liquidity. The problems with GEM may have more to do with the placees not being independent of the principal ('friends and family') than with the quantitative requirements per

se. It may be worth looking at how other markets, eg London, deal with the public-ness of public shareholders.

Para 146-8. There appear to be problems with the Listing Department's approach to vetting GEM applications (bureaucratic, too strict, according to some practitioners); it may therefore not help merely to extend existing LD practice to the New Board. Conversely, it would appear inconsistent if the LC deals with delistings of companies the LD has listed.

## Part B Consultation Questions

Please reply to the questions below that are raised in the Concept Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017061.pdf>

Please indicate your preference by checking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages.

1. What are your views on the need for Hong Kong to seek to attract a more diverse range of companies and, in particular, those from New Economy industries to list here? Do you agree that the New Board would have a positive impact on Hong Kong's ability to attract additional New Economy issuers to our market?

Please give reasons for your views.

Yes, HK should try to attract more diverse issuers. The New Board would only have marginal benefit in attracting good quality New Economy issuers (since new, unproven, of lower quality and reputation); effort should be focused on opening up the Main Board instead.

2. What are your views on whether the targeted companies should be segregated onto a New Board, rather than being included on the Main Board or GEM?

Please give reasons for your views.

Prefer to include on MB. Too many boards is too complicated and diffuses liquidity.

3. If a New Board is adopted, what are your views on segmenting the New Board into different segments according to the characteristics described in this paper (e.g. restriction to certain types of investor, financial eligibility etc.)? Should the New Board be specifically restricted to particular industries?

Please give reasons for your views.

More segments is more complex and offputting to both issuers and investors. NB should not be restricted to particular industries; such industries cannot be defined objectively; and it is a bad idea anyway - concentration risk!

4. What are your views on the proposed roles of GEM and the Main Board in the context of the proposed overall listing framework?

Please give reasons for your views.

I am afraid that the proposed New Board will marginalise them, if successful, or cause negative impact if unsuccessful.

5. What are your views on the proposed criteria for moving from New Board PRO to the other boards? Should a public offer requirement be imposed for companies moving from New Board PRO to one of the other boards?

Please give reasons for your views.

The issuers should meet the full requirements of the target board. That said, the processes of transfer are one of the things that make the whole four-(or five)board structure too complex

6. What are your views on the proposed financial and track record requirements that would apply to issuers on New Board PRO and New Board PREMIUM? Do you agree that the proposed admission criteria are appropriate in light of the targeted investors for each segment?

Please give reasons for your views.

There are too many segments and the structure is too complex. If implemented, the HK\$500 million capitalisation requirement for the Main Board may be too high.

7. What are your views on whether the Exchange should reserve the right to refuse an application for listing on New Board PRO if it believes the applicant could meet the eligibility requirements of New Board PREMIUM, GEM or the Main Board?

Please give reasons for your views.

This would be arbitrary exercise of discretion - setting a dangerous precedent for intervening in the market process (non-intervention is one of the key distinguishing features of the HK market vis-à-vis the Mainland). You have to accept issuer choice - it is one of the (negative) consequences of having so many segments.

8. What are your views on the proposed requirements for minimum public float and minimum number of investors at listing? Should additional measures be introduced to ensure sufficient liquidity in the trading of shares listed on New Board PRO? If so, what measures would you suggest?

Please give reasons for your views.

Liquidity in smaller companies cannot be assured. The numerical requirements are not objectionable, but is there a way to prevent 'friends and family' issues, ie to ensure that the investors are not related or hired parties?

9. What are your views on whether companies listed on a Recognised US Exchange that apply to list on the New Board should be exempted from the requirement to demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong? Should companies listed elsewhere be similarly exempted?

Please give reasons for your views.

Of course they should be exempt! No company listed on a reputable exchange should be required to demonstrate HK equivalence. How can we claim to have higher standards than, eg OECD member jurisdictions?

10. What are your views on whether we should apply a “lighter touch” suitability assessment to new applicants to New Board PRO? If you are supportive of a “lighter touch” approach, what relaxations versus the Main Board’s current suitability criteria would you recommend?

Please give reasons for your views.

I'm in favour of applying a more sensible (not necessarily lighter) touch to applicants to all boards - risk-based, proportionate, not box-ticking.

11. What are your views on whether the New Board PRO should be restricted to professional investors only? What criteria should we use to define a professional investor for this purpose?

Please give reasons for your views.

I don't think it would be helpful - would issuers want to list on such a board? Do market professionals support it? They didn't when the question was last examined by HKEX in its 2009 exploration of the Professional Board.



12. Should special measures be imposed on Exchange Participants to ensure that investors in New Board PRO-listed securities meet the eligibility criteria for both the initial placing and secondary trading?

Yes

No

Please give reasons for your views.

I don't think there should be a distinction - initial and secondary should be open to all. Don't agree with a professional market.

13. What are your views on the proposal for a Financial Adviser to be appointed by an applicant to list on New Board PRO, rather than applying the existing sponsor regime? If you would advocate more prescriptive due diligence requirements, what specific requirements would you recommend be imposed?

Please give reasons for your views.

Prefer to keep a single sponsor regime, but to streamline, if possible, for all applications.

14. What are your views on the proposed role of the Listing Committee in respect of each segment of the New Board?

Please give reasons for your views.

Delegation of vetting powers to the LD in respect of GEM doesn't seem to be working well, according to practitioners. The reasons for this need to be ascertained and addressed before extending the model to other boards. That said, the long term aim should be to retire the LC to an advisory or oversight role (and ultimately decommission it entirely), in line with international practice. But steps towards this ultimate goal need to be measured.

15. Do you agree that applicants to listing on New Board PRO should only have to produce a Listing Document that provided accurate information sufficient to enable professional investors to make an informed investment decision, rather than a Prospectus? If you would advocate a more prescriptive approach to disclosure, what specific disclosures would you recommend be required?

Yes

No

Please give reasons for your views.

yes, if New Board PRO is created. However, I would prefer not to have a professional board at all, but to reform the Main Board so as to accommodate the targeted issuers.

16. What are your views on the proposed continuous listing obligations for the New Board? Do you believe that different standards should apply to the different segments?

Please give reasons for your views.

It is too complicated to have four (or five) boards, with different standards for segments within these.

17. For companies that list on the New Board with a WVR structure, should the Exchange take a disclosure-based approach as described in paragraph 153 of this Concept Paper? Should this approach apply to both segments of the New Board?

Please give reasons for your views.

A disclosure-based approach is preferable, as other regulatory restrictions may create problems of their own. But such disclosure-based approach should be applied to the Main Board and GEM! Then no need for a New Board.

18. If, in addition, you believe that the Exchange should impose mandatory safeguards for companies that list on the New Board with a WVR structure, what safeguards should we apply? Should the same safeguards apply to both segments of the New Board?

Please give reasons for your views.

Prefer no New Board. No particular safeguards needed in respect of WVR companies, they are not especially risky.

19. Do you agree that the SEHK should allow companies with unconventional governance features (including those with a WVR structure) to list on PREMIUM or PRO under the “disclosure only” regime described in paragraph 153 of the Concept Paper, if they have a good compliance record as listed companies on NYSE and NASDAQ? Should companies listed elsewhere be similarly exempted?

Please give reasons for your views.

It should be disclosure only, regardless of their overseas listing provenance. Certainly any exemptions should not be restricted to NYSE and NASDAQ.

20. What are your views on the suspension and delisting proposals put forward for the New Board?

Please give reasons for your views.

A more active delisting policy should be applied to all boards, especially the Main Board and GEM. However, it will be necessary to deal with the shell reactivation industry - and also to consider the position of existing shareholders in these companies. A fuller discussion and analysis is needed.

21. Should New Board-listed companies have to meet quantitative performance criteria to maintain a listing? If so, what criteria should we apply? Do you agree that companies that fail to meet these criteria should be placed on a “watchlist” and delisted if they fail to meet the criteria within a set period of time?

Please give reasons for your views.

See comments to 20 above - a more active delisting policy should be followed. Suspensions, however, should be short or very short, at most hours until information can be digested.

22. Do you consider that an even “lighter touch” enforcement regime should apply to the New Board (e.g. an exchange-regulated platform)?

- Yes  
 No

Please give reasons for your views.

There should not be a New Board, just the existing MB and GEM, with a standardised enforcement regime

- End -