

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.

As noted in section 2.1 of the New Board Concept Paper (NBCP), the Stock Exchange of Hong Kong has been the top IPO venue in 5 out of the last 8 years. As such, there is no demonstrable need for Hong Kong to lower its corporate governance standards so as to attract more technology company listings. Hong Kong remains a healthy and robust center for global capital markets, and the fact that it does not attract as many technology companies to list is a function of other regional markets having a far greater critical mass of domestic technology companies (e.g. Korea or Taiwan). It is natural for technology companies to seek listings in the market in which they are domiciled, and with a few exceptions, Hong Kong has not had a robust technology sector for several decades.

The New Board could have a positive impact on Hong Kong's ability to attract certain types of New Economy industries, but if improperly executed the New Board could be filled more with a large number of smaller companies of dubious value that are exploiting regulatory arbitrage with China to list here. Such a New Board, if perceived to be filled with low quality issuers, would in fact be a disincentive to new issuers to list in Hong Kong.

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.

We found that the NBCP focused almost exclusively on the commercial rationale of the New Board rather than on any serious discussion of why Hong Kong did not previously entertain WVR in the first place and to discuss issues of corporate governance. We find this omission troubling. This lack of discussion casts some doubt over the will of the HKEX to robustly defend the protection of minority shareholder rights from an ethical perspective.

As such, we are not convinced at this time that the creation of a New Board would not result in progressive encroachment of differing standards of WVR onto the main board. Especially given the acknowledgement that if index providers start including large issuers that are listed on the New Board into existing indices, then it creates a significant gray area.

Given these significant concerns and objections, while all else being equal we would prefer segregation, we do not believe the fundamental concerns over corporate governance principles to be adequately addressed in the NBCP and therefore have some considerable doubt over the ability of the exchange to segregate issuers, and standards.

As we shall discuss in relation to question 17, to the extent we must have WVR we would want the above issues addressed comprehensively, and would also want to see sunset provisions to be executed within a reasonable time frame. We would also favor cumulative voting rights with respect to the selection of Directors.

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.

One consideration that we find is also a significant omission is the fact that there is a highly developed ecosystem globally, and also specifically in China, for the funding of private companies by various types of angel networks, venture capitalists, private equity investors and even public equity market investors that are willing to participate in private and unlisted companies. The large and burgeoning so called 'unicorn' market is demonstrable proof that there is no real limit on the market valuations achievable while still private.

As such, we are not sure what the purpose of the 'New Board' PRO is for, given that many of the abovementioned market participants also sit in Hong Kong. If the idea is that Hong Kong would essentially be a center of incubation for earlier stage technology companies that seek a public listing, setting aside the relative inexperience of regulators and also professional public equity market participants in Hong Kong with such companies, it seems that we would unfortunately be attracting quite a lot of lower quality companies that actually cannot attract experienced sources of private capital that are already available to companies of the size envisioned by the PRO board. We would therefore generally be against the creation of a board segment that combines the relatively lax reporting requirements of the Hong Kong Exchange (only semiannual, with less required disclosure on cash flow than other peers regionally and globally) with the potential for regulatory arbitrage deemed necessary by companies and management teams that cannot attract capital from the already robust early stage private equity capital markets. We have already shared our views on the New Board PREMIUM effectively in sections 1 and 2. Given the difficulty of defining industries and companies, we do not think giving priority or exclusivity to specific industries within such a board is a good idea.

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.

We welcome the suggestions of the HKEX to improve the governance of the GEM board and also to make stricter the ability to take companies from GEM to main board. These measures can only improve corporate governance in the Hong Kong market. However, because we find the discussion of being able to 'ring fence' a totally separate corporate governance regime inadequate in the NBCP, and because we also do not in fact see the commercial argument for the SEHK as being necessarily beneficial for investors and participants of the Hong Kong equity and futures markets, we would say we are against the creation of a third board at this time, especially when the GEM board has by and large not been an impressive source of investment choices to Hong Kong investors and governance of many of its companies has been problematic.

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.

We agree that there should be no fast track process, should we in fact have a New Board PRO in Hong Kong. For reasons of fairness to retail investors, once a company is deemed ready to move to another board and meets all the requirements to do so, there should be at least a retail offering of shares as well.

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.

As stated in point 3, we find there is already a finely honed and well developed ecosystem for providing equity capital to private companies in the Greater China region and globally. Many of those participants are already in the Hong Kong market. We therefore don't think it fulfills a particular need, and may in fact be subject to adverse selection, with the end result being the listing of a lot of sub-standard unprofitable enterprises that could not maintain their private status and raise equity capital from the usual channels.

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.

That seems reasonable to refuse an application to the PRO board, if we were to have all these market 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.

Again, we find that companies that are successful at an early stage in attracting capital, will most likely remain private. It is the companies that are less successful in doing so through VC funding that will attempt to list in the PRO board. The 100 investor minimum is a reasonable idea but we find the concept needs to be squared with the existing realities of the robust private capital market that already exists in the region.

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.

We are not against companies seeking secondary listings in Hong Kong, and do not regard the provisions of the 2013 JPS regarding having a "centre of gravity" outside Greater China as necessary. As the reporting requirements of US exchanges are stricter than those of Hong Kong, we would find this exemption acceptable.

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.

Please see points 3 and 8. We are not convinced that the New Board PRO segment fulfills an unmet need for attractive early-stage growth companies to attract equity capital. As such, a relaxation of standards would likely have adverse consequences for the companies that actually end up listing on the New Board.

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.

See points 3, 8 and 10. The private capital markets are already robust enough to enable professional investors to get access to earlier stage companies.

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.

See our comments for 3,8,10 and 11.

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.

The reputation of Hong Kong's capital markets are only as strong as its weakest link. We would therefore recommend that to the extent these companies are publicly listed, recognized sponsors known to conduct due diligence in a systematic and proper manner be preferable, especially given the high likelihood in our view of a number of companies of dubious quality to use this channel. We do not think there should be any relaxation of standards in this regard.

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.

We do not have sufficient information on the quality of the staff of the Listing Department to be able to comment on their suitability, in lieu of the listing committee, to approve new listings for the PRO board. It seems appropriate that the process be the same for the New Board Premium as for the Main Board in being vetted by the Listing Committee.

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.

Without knowing the contents of the Listing Document and the requirements therein, it is difficult for us at AB to make a judgment that this would be sufficient in lieu of an offering prospectus.

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.

We do not think that the New Board companies should be subject to more favorable standards or requirements for continuous listing than Main Board companies. We would in fact support greater and more frequent disclosure of financial information of Hong Kong listed companies in general, in line with the normals of other jurisdictions.

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.

We would point out recent developments in the US market by index providers such as S&P and Russell in excluding WVR companies that do not meet certain minimum shareholder ownership requirements from their indices. We think this issue is one that is attracting significant concern. We are not in favor of WVR and the New Board without a further examination of how it would be implemented and how investors would be protected in Hong Kong. However, should the HKEX decide to go ahead anyway, we would recommend disclosure at a bare minimum, and would be in favor of restrictions on who can own WVR, holding minimums, and restrictions on transfer. We do like the sunset clause idea floated in point 154 and favor such provisions, to be executed within a reasonable time frame, on a global basis. As noted in our response to question 2, we would also be in favor of cumulative voting as a protection to minority shareholders for all companies on the new board, not just those written into the articles of incorporation. We would also not want a case like SNAP, obviously, where minorities have no rights to vote at all.

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.

Yes, we would want these to apply for both boards, especially given our views expressed on the PRO board earlier. We would support the sunset provisions we mention above, and also cumulative voting rights.

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.

We believe that the additional protections afforded investors in the US, such as class action lawsuits, are helpful legal remedies that help safeguard minority investor rights, that do not exist in Hong Kong. However, we would be far more comfortable with such a scheme if the HKEX made its case for WVR beyond commercial reasons (which as we make clear in our answer to Q1, appears questionable) and discussed both the implications of a WVR system in Hong Kong, the philosophical rationale for it, whether it is truly necessary, and how it would be truly ringfenced away from the Main Board.

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

Please give reasons for your views.

We are in favor, if we are ultimately required to have a New Board, to impose these suspension and delisting proposals. We also like the watchlist idea to prevent the creation of a secondary 'shell' market, which runs contrary to principles of good corporate governance, especially in the context of a New Board.

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.

Yes, we agree, although our objections overall to the New Board more generally remains.

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.

We believe that venture capital and private equity capital markets already provide sufficient capital and liquidity to attractive early stage technology companies. We do not believe that a light touch enforcement regime should be used to entice potential issuers when we regard, as mentioned earlier, a likely scenario being a large number of low quality companies engaging in regulatory arbitrage in listing on the New Board.

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