



Issued on: 15 August 2017

## **Hong Kong Exchanges and Clearing Limited on the New Board Concept Paper (June 2017)**

The Smart City Consortium (“SCC”) is pleased to present our view and stance as a formal response to the subject milestone consultation paper by HKEX. (Please find attached a detail answers to the questionnaire).

### **Introducing the SCC**

The SCC’s background began as an NGO in March 2016 with the aims to provide opinions and recommendations to the HKSAR Government in relation to formulating policies and standards for developing Hong Kong as a world-class Smart City. The SCC encourages worldwide collaboration with different stakeholders to create a collaborative ecosystem that fosters innovation and sustainable economic growth for Hong Kong. Since its foundation, the SCC has published various reports including the Advisory Paper (Interim Report) for Building a Smart City in Hong Kong in October 2016 which was submitted to the Office of the Government Chief Information Officer (“OGCIO”).

### **Why Smart City initiatives matter to our community as a whole**

At the SCC, we believe the development of a world-class smart city, and the fostering of innovation and technology across a broad range of industries are critically important to Hong Kong - for improving our citizen’s daily lives, enhancing our economic dynamics and ensuring Hong Kong remains highly competitive and relevant on a global basis in today’s highly competitive environment. The smart city strategy is in line with the HKSAR Government’s 2016 Policy Address which stated, “Innovation and Technology can improve our everyday life in a wide range of aspects, including communication, transportation, healthcare, education, the environment, public order, consumer spending and food safety.” Building the “Smart City” is a



global trend and all major financial centers & many major cities across the globe are pushing very hard and investing heavily (including funding from the capital market) into implementing smart city strategies, development and initiatives including innovation and technology based companies.

We believe the ideas and proposal, as set out in the Concept Paper, is relevant to the smart city vision and strategy, as we elaborate below.

### **Importance of a vibrant ecosystem**

To build a world-class smart city, a vibrant ecosystem is becoming crucially important to companies investing into research and development, technology and devising new economy's business models. Fostering a strong ecosystem is at the top of the SCC's vision and we have undertaken numerous initiatives since the SCC's foundation on this front. We also view funding and access to the capital market as a very important component of a strong ecosystem. This is evidenced by the facts that the more successful smart cities in the world at present are supported by a greater availability of funding from their respective governments, the private sector and access to the capital market.

We believe having access to a variety of sources in funding from the angel and seed rounds as well as the venture capital and private equity rounds, to capital market access are instrumental in boosting an infant, technological, innovative and knowledge-based economy. In the last few years, it our observation that funding channels for starts-up, technology and innovation projects, or New Economy companies (which will be further discussed) has gradually increased at private rounds in this region.

However, in recent years, there appears to be a lack of review and discussion on how the Hong Kong capital market infrastructure can support these companies. Elsewhere in USA, we noted that the Jumpstart Our Business Startups Act has been enacted and substantially changed a number of laws and regulations to make it a lot



easier for startups to go public; with a smoother path to registration of an IPO or to raise private capital including exemptions for crowdfunding. We also noted that the London Stock Exchange Group launched its private placement platform in April 2017 to help fast-growing businesses gain access more easily this year; while this is a private placement regime, we understand the support of the exchange and its infrastructure are useful. In May 2017, in the media it was stated that Singapore Exchange Limited was discussing a deal with the city's technology regulator to develop a system designed to support startups for listing.

While each city has a different legal framework and market infrastructure, given what has been happening around the world in both innovation and the role of capital in supporting the process, we wish and believe that the different stakeholders would work together and make progress on broadening access to the capital market in this area.

With the above in mind and our belief that the capital market is a strong ecosystem partner for technology and innovation, we welcome HKEX's New Board Concept Paper to review the equity capital market infrastructure. We note that the Concept Paper may be more about ensuring Hong Kong maintain its leading IPO center status from the capital market perspective. While the SCC will be more concerned and interested in having the capital market as a strong partner in our community's collaborative ecosystem for smart city initiatives, we think the mutual goals are complementary and work hand-in-hand for our city.

### **New Board – purpose and does it help the ecosystem?**

We note from the Concept Paper that certain key purposes are to attract New Economy industries "...in order to provide greater diversity and investment opportunities to investors to Hong Kong, and to serve the needs of a wider range of issuers" and to ensure "continued success of Hong Kong's IPO market" noting that a number of large of Mainland Chinese New Economy companies have already sought listings elsewhere.



We believe the purposes set out above are vital. Besides this, it may also bring significant values to our society including but not limited to:

1. More successful stories of local technological and innovative businesses through IPOs can encourage and promote a culture of innovation and entrepreneurship.
2. Allowing international New Economy businesses to list in Hong Kong, will give a strong advantage to Hong Kong in their consideration of where to base their international headquarters outside their home countries.
3. Additional press releases, media exposures and investor presentations for more technology and innovation-based businesses to be listed here in Hong Kong will help to share and boost the knowledge of technological innovations in our community.
4. Increase the awareness of the investors and research analyst talent pools in the technology and innovation sectors in our city.
5. With more local and international businesses listed and headquartered in Hong Kong, more employment opportunities will be created for our STEM graduates.

As such, enabling access to the capital market through IPOs complements our city's strategy from various perspectives.

Now, whether it must be done through the New Board is a question. We note the comment at section 4.2 about the reasons to establish the New Board, rather than the possible approach and concerns to include the targeted issuers on the Main Board or GEM via new chapters to the Listing Rules. We fully appreciate the rationale behind this notion. However, for the New Board Pro's listing requirements relating to market capitalization and the number of professional investors, we think it is too harsh for many startups or established companies alike even if some of them have already completed angel and seed round private fundraisings or have some form of cash flow and/ or profit. We also would suggest HKEX to elaborate the future roadmap and transfer mechanism for New Board Pro issuers, so that it is a meaningful and appealing venue for potential issuers.



### **“New Economy” and recommendations**

We note in the Definitions section that New Economy refers to “Industries include Biotechnology, Health Care Technology, Internet & Direct Marketing Retail, Internet Software & Services, IT Services, Software, Technology Hardware, Storage & Peripherals”. However, paragraph 101 has stated that “..it is hard to define such companies..”.

We would like to comment that according to the OECD, New Economy refers to "aspects or sectors of an economy that are producing or intensely using innovative or new technologies" and "where people depend more and more on computers, telecommunications and the Internet to produce, sell and distribute goods and services". We are also of the view that innovative or new technologies involves the latest breakthroughs in medical research, material science, computing intelligence or related technologies to collect data, or developing the capability to reuse these data, creating value, and creating new forms of intellectual property - as a direct result of increased connectedness, adoption and market influences.

It is a good sentence in paragraph 101 that “..the definition of such companies is likely to evolve over time.” In this regard, the regulators may also consider having more technology and innovation representatives in the SFC, the Exchange vetting team and the listing committee on an ongoing basis. We also strongly encourage the regulators, Exchange vetting team and the listing committee to exchange views and receive regular presentations/updates from major government bodies, non-government organizations, relevant industries and academics regarding the prevailing development. Regulators including the SFC, the Exchange and the Listing Committee, upon consultation with the government and relevant stakeholders as they see fit, may sit down on a regular basis to review this definition and any progress it has made. Annual reviews should also be conducted on this matter.



## **Summary**

We note that over the years for New Economy or technology and innovation based businesses, certain features, such as their shareholding structure or the need to access the capital market remains quite common. Other major financial centers and certain exchanges are taking measures including the changing of laws in some countries to make it easier for these types of companies. While our suggested and recommended measures may not guarantee 100% of the companies listed will be “New Economy” companies, we are hopeful with the right positioning and endeavors by the regulators and different stakeholders such as HKSTP, Cyberport and various incubator programs, more technological and innovative businesses across various industries will be interested in the New Board. A successful implementation will also bring significant value to Hong Kong as outlined in this letter, which is much-needed. We sincerely hope you will find our feedback is constructive and useful. We will be more than happy to share further and exchange views.

## 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.

To develop Hong Kong as a world leading Smart City, to foster the knowledge economy, enhance quality of life and create a vibrant eco-system by using Information Technology and promoting more effective resource management, there is a very strong need to enhance the technology and innovation ecosystem in Hong Kong as a global finance city in particular with our strengths of broadening the access to capital market, development to a top-tier fintech hub as well as our long-standing leadership in corporate finance and trading centre.

On proper execution and governance, we agree with the proposal that the New Board will have a positive impact in strengthening Hong Kong's technology and innovation ecosystem, and will attract additional New Economy issuers.

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 take neutral stance as long as the proposal could broaden access to capital for New Economy companies. Without the proposed New Board, New Economy companies would not have met the admission requirements of the existing Main Board/GEM Board. We understand the proposed New Board is designed in such a way that it would be easier for the capital market regulators to manage admission and ongoing supervision, as well as to enforce public investor protection measures.

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.

Considering our answer to Question 2 above, we are receptive to the proposed segmentation under which the New Board will be structured according to the characteristics described and the rationales outlined in the consultation paper.

We are also open to the idea that the New Board should focus on the New Economy companies. In this regard, we note the definition of "New Economy" in the "Definitions" section of your consultation paper, and also in paragraphs 101 and 102 which talk about the difficulty to define such companies.

We would like to comment that according to the Organisation for Economic Co-operation and Development (OECD) (<http://stats.oecd.org/glossary/detail.asp?ID=6267>), New Economy refers to "aspects or sectors of an economy that are producing or intensely using innovative or new technologies" and "industries where people depend more and more on computers, telecommunications and the Internet to produce, sell and distribute goods and services". We are also of the view that innovative or new technologies involve the latest breakthroughs in medical research, material science, computing intelligence or related technologies to collect data, to develop the capability to reuse these data, to create value, and to create new forms of intellectual property - as a direct result of increased connectedness, adoption and market influences.

As to your question on restricted industries, we consider that currently, industries which show most of the features set out in the paragraph above are far more likely to be considered as "New Economy" companies.

We also agree with your sentence in paragraph 101 that "...the definition of such companies is likely to evolve over time." In this regard, the regulators may also consider, on an ongoing basis, having more technology and innovation representatives in the SFC, the Exchange vetting team and the listing committee. We also strongly encourage the regulators, Exchange vetting team and the listing committee to exchange views and receive regular presentations/updates from major government departments, non-governmental organisations, industries and academics regarding the prevailing development of the "New Economy". Regulators including the SFC, the Exchange and the Listing Committee upon consultation with the government and relevant stakeholders as they see fit may sit down on regular basis to review this definition and its progress. Annual reviews should also be conducted on this matter.

Through the measures and the collective wisdom and experience of the regulators, we hope that by and large there will be a lot more "New Economy" companies listed on the New Board.



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.

Overall, we are receptive to the proposal, except that we are of the view that there is no need to increase the operating cashflow requirements for listing on the GEM board given that it is a board for small to mid-sized issuers. Also, we wonder whether GEM should still be called GEM given its new positioning as outlined in the paper.

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.

To significantly improve the appeal of the New Board (both Premium and Pro), we would suggest HKEX consider the road-map of the New Board more thoroughly. For example, whether companies listed on New Board Premium and New Board Pro can move to Main Board/GEM board once they fulfil the respective requirements.

We agree with the proposal that New Board Pro issuers should meet all the admission criteria and other listing requirements of the relevant board should it wish to move to the other board, including the protection to the retail investors.

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.

We are receptive to the idea of having "...minimum financial criteria.." and certain pre-revenue (vis-a-vis "pre-profit") potential issuers in certain specific sectors, such as, biotechnology should be permitted for New Board Pro but subject to a minimum market capitalisation (albeit we think it is reasonable that it is lower than that of GEM) in which professional investors should play a significant role in determining whether or not they want to invest.

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.

Because of the rationales behind maintaining the clear segregation of the listing structures as outlined in the consultation paper, we agree the HKEX should refuse applications on New Board PRO under reasonable grounds should it believe the applicants could meet the eligibility requirements of other boards.

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.

Further to our comments in question 6 above, we believe the minimum market capitalisation for New Board Pro should be lower than that of GEM; and HK\$100 million would be more appropriate as it is much aligned in the size-test of "small private company" under the HKICPA (SME-FRF & SME-FRS (Revised)) financial reporting standard which could be conditionally exempted under the new Company Ordinance Chapter 622.

<http://www.hkicpa.org.hk/en/standards-and-regulations/standards/sme-frf-frs/smefrfe/>

We are of the view that the requirement that issuers who wish to list on the New Board PRO must have a minimum of 100 investors at the time of listing is too harsh as it would be extremely difficult for pre-profit companies to invite 100 professional investors if they do not have strong nexus. We suggest this threshold be significantly lowered to, for example, 10 professional investors.

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 receptive to the proposal based on our understanding that the US has a robust regulatory and enforcement system. It is our understanding that Hong Kong would become a more attractive listing venue for companies already listed on a Recognised US Exchange if they are not forced to vary their constitutional documents and are given a greater degree of flexibility. We tend to think that for other reputable financial centres such as London and Australia, similar approaches could be taken. In fact, a more holistic approach is to launch a pilot scheme with the Recognized Exchanges (set out in the SFO) located at the jurisdictions that a bilateral/multilateral Enforcement MOUs signed on the SFC/IOSCO level.

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.

It appears to be a consensus amongst many market participants that listings on the Main Board and GEM boards are subject to stringent disclosure and vetting requirements, and as well as a suitability assessment, which all results in a very high costs for preparing the applications. Hence, we are of the strong view that a "lighter touch" suitability assessment should apply to New Board Pro and HKEX should apply the same suitability requirement standard recently proposed by the SFC (Suitability, Platform and Advice paper)

We think that the comments should be limited to material disclosure issues to ensure that the business model and its risks are clearly stated, whilst questions regarding sustainability of the business should be dispensed with. Before the launch of New Board Pro, HKEX and industrial associations can conduct training sessions to the professional investors to enlighten them on this point as well.

A light touch should also be associated with a clear and short timeline from filing to listing.

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.

Further to our comments to your question 2 above, we agree that the New Board Pro should be restricted to professional investors only.

We are of the view that it is fine to use the definition of "professional investors" in Part 1 of Schedule 1 to the SFO and high net worth professional investors prescribed under the Professional Investor Rules.

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.

Noting our comments to Question 11 and there should be a mechanism to ensure the investors are professional investors.

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.

Agreed, as per our comments on your question 10.

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 encourage the SFC, the listing committee and the Exchange vetting team to regularly exchange views and receive regular presentations from major government bodies, non-governmental organisations, academics, technology and innovation associations/corporates regarding the current development of technological and innovative business models. The regulators may also consider, on an ongoing basis as necessary, having more technology and innovation representatives in the listing committee and the exchange's vetting team. The listing Committee together with regulators should conduct annual reviews and consultations on the definition of "New Economy" and the progress of implementation.

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.

See our comments to question 10.

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 are receptive to this proposal, and suggest the regulators review and consider, on a regular basis, particularly for New Board Pro, whether or not certain continuous listing obligations are too stringent.

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 tend to agree, and particularly for the New Board Pro.

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.

If the Exchange is going to impose any mandatory safeguards, we believe that appropriate measures would include restricting the sale of shares by controlling shareholders within a certain period after Listing on the New Board. The Exchange should also give guidance on whether purchasers can inherit special rights if they buy shares from existing shareholders.

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 agree with the proposal as it would allow more flexibility and make Hong Kong a more attractive listing venue especially for issuers in innovative industries which usually rely heavily on human capital such as the technical expertise and market knowledge of their owner or manager.

Regarding other jurisdictions, kindly refer to our feedback to Question 9 above.

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 receptive to the suspension and delisting proposal put forward by the New Board, and suggest the regulators review such practice on an ongoing basis.

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.

We think the suspension and delisting proposals would be good enough at the present stage.

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.

In light of situations relating to potential technical issues, such as certain proposed laws in China (e.g. Draft Investment Law) which may not be implemented or the implementation date of which is very uncertain, we think that the regulators should consider situations on a case-by-case basis and consider whether it is necessary to request the New Board Pro issuers to fully comply with the requirements.

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