

## 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.**

We agree that Hong Kong needs to attract a more diverse range of companies (in particular, those from the New Economy industries) to list in Hong Kong. The global economy has transformed significantly over the past few decades since the establishment of the Main Board and even GEM. There have never been so many technology driven companies before, with many of them generating revenue and profit at tremendous levels rarely observed in companies operating in traditional industries. Due to the growth risk profile of such New Economy companies, in particular the higher risks taken by founders or angel or venture capital investors at the early development stage of such companies, many New Economy companies have adopted WVR structures to secure the control of their founders and early stage investors. These structures have been initially developed and have become more commonly seen in the United States over the last several decades, but are rarely seen in Hong Kong due to the restrictions in the current listing regime in Hong Kong.

The existing Main Board/GEM have high sector concentrations in traditional industries. This is partly due to the fact that the regulatory regime of the traditional Main Board/GEM have not been able to accommodate the characteristics of the New Economy companies. For examples:

- pre-profit companies and even profit making companies which do not have sufficient track record period are generally not allowed to list in Hong Kong;
- companies with non-standard governance features (such as WVR structures) are excluded from the list of potential listing candidates; and
- Mainland Chinese companies are not allowed to conduct secondary listings in Hong Kong.

Given the typical profiles of New Economy companies, many of them will not be able to satisfy the requirements of the current listing regime. It has been and will continue to be a loss to the SEHK for such New Economy companies to choose to list elsewhere instead of Hong Kong, simply because of the existing regulatory structures. This is particularly so when many of these companies have managed to list on other stock exchanges successfully and there has not been much evidence

suggesting minority shareholder abuse or prejudice. Hong Kong, and the SEHK, cannot afford to lose out in this global competition in attracting upcoming, innovative, profitable and generally more robust companies, to list on the SEHK.

Whilst we appreciate the concerns of the regulators in relation to sustainability and the equality among all shareholders, such issues should not form a presumptive basis of any resistance against attracting a more diverse range of companies to list in Hong Kong as long as appropriate measures/standards can be put in place or where investors have been warned accordingly such that overly regulatory paternalism is unnecessary. Today's investors are increasingly highly sophisticated institutions who are able to understand the risks and benefits of investing in companies with WVR, and often choose to do so precisely because of the benefits that WVR may provide to certain types of companies, especially New Economy companies.

As discussed above, established markets such as NYSE and NASDAQ in the United States have accepted the practice and there is no reason for Hong Kong to forgo such an opportunity to attract New Economy companies in the era of globalization. Other Asian markets are also moving to allow the listing of companies with WVR and/or alternative capital structures. For example, the Singapore Exchange ("SEL") recently announced that companies with dual-class shares that have primary listings on developed market exchanges can have secondary listings on the SEL, and that it expects to reach a decision on whether companies with WVR can have their primary listings on the SEL by the end of 2017.

We support the New Board proposal and agree that it would be a good solution to allow companies listed on the New Board under a different regulatory regime from the current listing regime for the Main Board or GEM. Shareholders of companies listed on the New Board can and should be well apprised of the characteristics of the new regime and pre-warned about the risk profiles of New Economy companies (including those with WVR structures) such that there will not be any allegation of prejudicial treatment of minority shareholders. In light of the foregoing, with the supporting system catering for companies in the New Economy industries, we believe that the New Board will have a positive impact on Hong Kong's ability to attract additional New Economy companies to Hong Kong market.

## **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.**

As discussed above, we are conscious of the regulatory concerns about issues such as sustainability and equality among shareholders. As such, it would be more appropriate to segregate New Economy companies from the Main Board/GEM to cater to a potentially separate group of investors and New Economy issuers with different characteristics from companies in the more traditional industries. This would avoid any confusion among investors as to which companies have traditional governance features and which companies do not. It will also help to avoid potential allegations of unequal regulatory treatment among companies listed on the same board.

In any event, the current Main Board and GEM listing criteria, in particular, the financial tests, have often set a bar too high for many New Economy companies at growth stage, which may have significant potentials but have yet generated enough revenue, profit or cash flow. The Main Board already has about two thousands of listed companies comprising mainly those in the traditional industries. It will take time and effort to change established perception of the Main Board and GEM as markets for traditional industries. The New Board will also be helpful in setting reasonable comparable valuations that more accurately reflect investor preferences and risk appetites, thereby enabling more meaningful analyst coverage and analysis by investors.

**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.**

We note that other international markets have adopted multiple listing boards or differentiated segments within listing boards as a means to cater to the needs of different types of issuers. For example, NASDAQ has three distinctive tiers: The Nasdaq Global Select Market, The Nasdaq Global Market and The Nasdaq Capital Market. Although the corporate governance requirements are the same across all three tiers, the initial financial and liquidity requirements for the Nasdaq Global Select Market are more stringent than those for the Nasdaq Global Market and likewise, the initial listing requirements for the Nasdaq Global Market are more stringent than those for the Nasdaq Capital Market.

However, given the SEHK already has two existing tiers the Main Board and GEM and for the following reasons, we do not believe that the New Board itself should be further segmented into two sub-boards (New Board Premium and New Board Pro) as currently proposed:

1. The New Board will likely take some time to build up its market reception and investor base. Having further segmentation within the New Board will create further uncertainty and unnecessary internal dilution for potential listing candidates and even investors. We believe it would be more desirable to concentrate resources and potential listing candidates and investors into one unified New Board, which should enhance its success rate from the launch.
2. There may not be enough good companies to be listed for two sub-boards, at least initially. At the regional level, China's New Economy has just kicked off and the size and quality of the New Economy industries still take time to build. It may take some time to produce a sizable number of good quality companies as good listing candidates for the New Board. As a point of reference, there are fewer than 150 Chinese companies listed in the United States, among which New Economy companies (e.g. the well-known internet giants such as Alibaba and Baidu) may only account less than 1/3. Segmenting the New Board will significantly reduce the number of listed companies on each sub-board.

3. According to the characteristics of New Board PRO described in the concept paper, New Board PRO may not be sufficiently attractive to listing candidates and investors alike due to the following factors:
  - (a) a market comprised entirely of professional investors will likely lack liquidity, which is a current problem faced by NEEQ in mainland China, which targets a similar group of companies;
  - (b) for small-cap and growth stage companies, listing in Hong Kong is too expensive considering time and monetary costs for setting up the necessary shareholding structure (e.g. putting a red-chip structure in place in the case of PRC companies), professional costs and fees. If a PRC company chooses to issue H shares, CSRC approval is required. Based on our experience, listing expenses is an important factor for all listing candidates, particularly for small-cap companies. Such concerns will apply equally to listings on the New Board so the benefits of a listing on New Board PRO may not be commensurate with the listing costs incurred; and
  - (c) there is no proposal for a fast-track migration mechanism between New Board PRO and any of the other boards, which will make New Board PRO even less attractive.
4. Taking NEEQ for example, it has not accomplished its task of providing financing to growth stage small-and-medium enterprises due to the lack of liquidity and in some cases, the sub-prime quality of the listed companies. The market already has similar concerns with the existing GEM and the SEHK should avoid creating another illiquid board.

Instead of a further segmentation within the New Board, we suggest only having one tier at this stage which focuses on the more established New Economy companies (with revenue but not necessarily generating profits) such as the US listed Chinese technology companies and the good quality companies listed on NEEQ.

We don't think it is possible to restrict the New Board to particular industries in an exhaustive manner. However, HKEX may issue guidance or policy paper on the industries that it encourages to list on the New Board from time to time.

#### **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 agree that the Main Board and GEM should continue to focus on established companies in traditional industries with different risk profile compared with New Economy companies.

With the development of New Board, the market could evolve to allow an overlap between Main Board/GEM on the one hand and the New Board on the other hand in terms of industry coverage. This would be akin to the NYSE and Nasdaq. For example, LinkedIn Corp. chose the NYSE partly because it did not wish to be grouped with social networking sites.

**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 do not consider that New Board PRO should be established as a separate sub-board from New Board PREMIUM. However, if it does, no matter which board a New Board PRO-listed company migrates to, it should meet all the admission criteria and other listing requirements of the relevant board considering the relatively low entry requirements of New Board PRO and different risk profiles of New Board PRO-listed companies.

However, the requirement to raise additional capital via a public offer is not necessary. Raising additional capital is a commercial decision involving various business and financial considerations. This is also the case when SEHK considers reverse takeovers, where it only requires compliance with new listing requirements but not public offerings. It would also seem unfair to the existing shareholders of New Board PRO companies if the SEHK imposes a mandatory dilution of their shareholding simply because they are professional investors. There is also no question of the absence of conditions for an open market since the issue would have been considered at the time of listing of the company on New Board PRO. We also note there is no suggestion in the concept paper that having an open market is a condition that the regulators would be prepared to give up in the case of New Board PRO.

**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 described above, we propose to not have segmentation and the current proposed listing criteria for New Board PREMIUM should be more flexible to allow pre-profit companies that have sizeable assets and business scale to list on the New Board, applying the “equity with assets” test which we observe on Nasdaq.

If we have to have New Board PRO, we think the admission criteria should be comparable to that for GEM with alternative financial tests (similar to those seen in The Nasdaq Capital Market) suitable to certain New Economy companies (e.g., biotech companies at R&D stage that generate no revenue at all) or simply those set out in the concept paper.

**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.**

There is no need to reserve such a right. To do so would cause lots of uncertainty and unpredictability in the listing regime of the New Board. This will also inhibit interest from potential listing candidates in the infancy stage of the New Board.

**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.**

We would suggest increasing the minimum number of shareholders required to at least 200 or more. Even New Board PRO companies must have a reasonable number of shareholders to ensure sufficient liquidity. This may, however, be difficult as the board is only open to professional investors only. This is also one of the reasons why we are of the view that New Board PRO should not be established.

We consider that the current public float requirements for the Main Board and GEM are reasonable and should apply to New Board too.

**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 consider they should demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong regardless of the exchange it is already listed on. We, however, view that the New Board may want to consider a simplified listing process for companies that are already listed on an internationally recognized exchange and subject to sufficient disclosure and shareholder protection standards that are equivalent or comparable to those in Hong Kong.

**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.**

Suitability for listing – key areas	Relax or not
(1) suitability of directors and controlling shareholders	No
(2) non-compliances	Yes

(3) deteriorating financial performance	Suggest alternative criteria to measure financial performance of New Economy companies, in particular technology companies (e.g. substantial increase in the number of users could be an important indicator of business performance)
(4) reliance on parent group / connected persons / major customer	Suggest taking into account the characteristics of growth stage life science and technology companies, which may rely on parentco or major customers or suppliers during a key stage of their early development (e.g. rely on certain hospital or CRO company for pre-IND or IND work).
(5) gambling	No
(6) contractual arrangements (VIEs)	Yes
(7) reliance on unrealised fair value gains to meet profit requirement	Profit requirement should not apply to listing applicants for New Board PRO listing.
(8) Unsustainable business model	Suggest more tolerance on unique business models
(9) Use of proceeds	Yes
(10) Future objectives and strategies	No
(11) Profit and revenue growth	Should not be applicable to New Board PRO listing applicants
(12) Potential sunset industries	No

**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.**

Based on the characteristics described in the paper, New Board PRO should be restricted to professional investors only. As for the definition of “professional investor”, we would suggest using the same definition as that used in Schedule 1 of the Securities and Futures Ordinance (Cap 571) and Section 3 of the Securities and Futures (Professional Investor) Rules (Cap 571D). Again, we support the proposal to establish the New Board but not New Board PRO.

**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.**

For initial placing, yes. For secondary trading, it may not be practicable to require the Exchange Participant to do so given the time constraint for due diligence before processing trading order, in particular for individual professional investors. Even if a broker conducts due diligence when opening an account for a client, it is too burdensome for the broker to keep track of the client's status. Again, this is one of the reasons why we do not agree with the establishment of New Board PRO.

**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.**

We think the existing sponsor regime should apply to New Board PRO listing too. Professional investors are unable to do their own due diligence and have to rely on disclosure in the prospectus or listing document. Although they are presumably better positioned to exercise business judgement, there is not much they can do if the information disclosed in the listing document is wrong or misleading. The sponsor regime should apply to ensure that disclosure in the listing document is true, accurate and complete and not misleading.

**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.**

The listing applications for New Board PRO should still be approved by the Listing Committee. Delegation of Listing Committee's power will undermine investors' confidence.

**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.**



Since shares can only be placed to professional investors, a prospectus is not necessary. In any event, a lot of the information which is currently required to be contained in prospectuses is obsolete and investors rarely refer to such information, if at all.

**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 agree that companies listed on the New Board should comply with the continuous listing obligations applicable to Main Board-listed companies.

**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.**

Yes. The disclosure should be made prominently, in detail and plain English to make sure investors understand it. Given the customized nature of WVR structures, it would be meaningless to create a New Board unless the Exchange takes a disclosure-based approach.

**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.**

The Exchange should not impose any mandatory safeguards. The nature of WVR structures is that they are often tailor-made and not every company applies the same WVR structure. The US practices also show significant variances and evolvments in recent years. It would be impossible to preempt every possible scenario and mandatory safeguards, if any, will soon become obsolete as new structures evolve over time. It will be more efficient to simply require such structures to be disclosed fully and clearly.

**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.**

First of all, we believe that the companies already listed on NYSE or NASDAQ should be treated equally as companies already listed elsewhere. There should not be unequal treatment as the

argument that the US has in place more robust regulatory environment than other jurisdictions is untenable.

Secondly, we believe that a New Board listing applicant that has its primary listing in one of the 22 capital markets that FTSE and MSCI identify as “Developed Markets” should be allowed to list on a “disclosure only” basis. “Disclosure only” regime is the way forward and this should be applied equally to all applicants.

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

**Please give reasons for your views.**

We agree with SEHK’s proposal.

**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 don’t think it is practical to set such performance criteria. Financial figures, share price and liquidity criteria could all be misleading and do not necessarily reflect a company’s future performance or potential. The listing status should be kept as long as a company is still solvent. We believe that this provides the best protection to shareholders. We are open to placing such companies on a “watchlist” and even with the SEHK making announcements about the fact that the companies in question have been placed on a watchlist in order to warn potential investors. However, they should not be delisted immediately without being afforded a reasonable period of time for correction because of their failure to meet certain criteria as it deprives the company of a chance to revive or improve its business and the existing shareholders of the potential to benefit from any such revival of business.

**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.**

No, we don’t. Enforcement is crucial to protect the integrity of the market and maintain confidence of investors in the market and should not be loosened. The fact that Hong Kong lacks the active shareholders activism and private litigation environment as in the U.S. also supports the argument for more vigilant enforcement actions.