

**NEW BOARD CONCEPT PAPER**

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**RESPONSE PAPER FROM  
ADDLESHAW GODDARD (HONG KONG) LLP  
ON BEHALF OF  
A GROUP OF FINANCIAL INSTITUTIONS AND PERSONS**

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## INTRODUCTION

1. We are a group of financial institutions and persons listed in Appendix 1. In terms of the number of sponsors who have successful IPOs in 2017 up to 31 July 2017, we represented about 25% of the sponsor community.
2. We refer to the *New Board Concept Paper* issued by SEHK in June 2017.
3. This Response Paper consists of executive summary, general response and specific response. The specific response is direct to the questions set out in the questionnaire on the *New Board Concept Paper*.
4. The definitions set out in the *New Board Concept Paper* should apply to this Response Paper unless otherwise stated.
5. As an overall submission, Hong Kong needs to be competitive to stay as a leading financial centre, and our submissions, are all intended to achieve a balanced approach between regulations and doing business which careful reading of our comments would bear out.

## **NEW BOARD CONCEPT PAPER**

### **EXECUTIVE SUMMARY**

1. We agree that Hong Kong should have a New Board, or even New Boards, to accommodate companies that are currently not allowed to list on the existing platforms.

### **New Economy industries**

2. We agree with the proposal that the New Board should cover pre-profit companies, WVR companies and other companies that the Hong Kong regime currently does not accommodate.
3. However, we do not agree with the proposal that the New Board caters for "New Economy" industries only. Historical development of GEM alerts us the risk of having a listing venue to cater just for certain industries. Based on the US Bureau of Labor Statistics data on survival rates of Silicon Valley high-tech firms between 1991 and 2009, it shows that after 15 years of starting, only about 13% of these firms were still in business.
4. Further, it would be uncertain for the shareholders, working parties and the regulators to determine whether a listing applicant is or is not engaging in New Economy industries. There would certainly be companies reorganising their business to at least touch upon the "New Economy" industries in order to get listed.

### **Investor eligibility**

5. We agree with the proposal that New Board PREMIUM should be open to retail and professional investors.
6. We consider New Board PRO should be subject to the same due diligence process, prospectus disclosure requirements, suitability assessment and enforcement regime as that for Main Board and GEM applicants. Realistically, we do not think SFC would and should trade off the inevitable increased risk for investors for "light touch" regulation.
7. Based on the above, we consider that New Board PRO should be open to all types of investors. Furthermore, the liquidity and trading volume for New Board PRO would be expected to be minimal if no retail investors are participating. This would result in lower market valuation and thereby affect the attractiveness of New Board PRO.

### **Financial and track record requirements**

8. We agree with the proposal that New Board PREMIUM applicants should meet the Main Board's financial eligibility criteria and track record requirements.
9. We do not agree with the proposal that New Board PRO applicants would not be required to have any track record at all. The risk would be significant for

the investors and the market. We suggest New Board PRO applicants should have at least 1 year of track record.

### **"Lighter touch" suitability assessment for New Board PRO**

10. We consider that the sponsor regime implemented in October 2013 has increased and reinforced the quality of Main Board and GEM issuers. We are of the view that, for New Board PRO to succeed and be sustainable, New Board PRO should follow suit, i.e. New Board PRO should be subject to the same due diligence process, prospectus disclosure requirements, suitability assessment (such as those set out in GL68-13) and enforcement regime as that for Main Board and GEM applicants.
11. Hence, we do not agree that SEHK should apply a "lighter touch" in relation to the suitability assessment of new applicants to New Board PRO.
12. Realistically, we do not think that SFC would and should trade off the inevitable increased risk for investors with "light touch" regulation.

### **Weighted voting rights**

13. We consider it is essential to have both disclosure-based and mandatory safeguards approaches for WVR companies listed on any of New Board PREMIUM and New Board PRO.
14. It is necessary for the investors and the market to know the details and extent of WVR features of a New Board issuer. At the same time, there should be mandatory safeguards to avoid WVR companies from having an entrenched person (like a founder) or a group of entrenched persons (like the management) under which they could not be questioned or removed under any circumstances.

### **Open market requirements**

15. We agree with the proposal that New Board PREMIUM should follow Main Board open market requirements in force from time to time.
16. We do not agree with the proposal that New Board PRO to follow GEM's current open market requirements, i.e. a minimum of 100 investors at the time of listing and a minimum public float at listing of 25%. After all, GEM's current open market requirements call into question shareholding concentration and the issue of volatility in share price. One of the proposal under the *Consultation Paper on the Review of the GEM and Changes to the GEM and Main Board Listing Rules* is to align GEM with Main Board open market requirements (such as mandatory public offering and reallocation mechanism), which we agree.
17. Based on the above, for New Board PRO to succeed and be sustainable, New Board PRO should be aligned with Main Board's open market requirements.
18. Realistically, we do not think that SFC would and should agree for New Board PRO to adopt GEM's current open market requirements which could result in shareholding concentration and the issue of volatility in share price.

## **Fast-track migration**

19. Since it is proposed that New Board PREMIUM issuers would have non-standard governance structures and that New Board PRO issuers would have lesser track record, we agree with the proposal that there should be no fast-track migration mechanism between the New Board and the Main Board or GEM, or from New Board PRO to New Board PREMIUM.

## **Suspension**

20. We consider that SEHK should adopt the same factors and requirements to determine whether to suspend a New Board issuer.
21. We believe that SFC would apply the same rules and regulation under SFO in determining whether a New Board issuer should be suspended.

## **Delisting**

22. We do not agree with the proposed accelerated "90 day" and "6 months" delisting mechanisms for New Board PRO and New Board PREMIUM, respectively. Both New Boards would have investors, whether professional or retail. It is not right to have a delisting mechanism that delists suspended company without giving additional time to rectify any issues of concern or alternative solutions to maintain the listing status.
23. We also do not agree that New Board issuers to meet quantitative performance criteria to maintain a listing with a "watchlist" approach. There had been similar discussions several years ago and the stock market was shaken. If this were implemented, there would be a panic disposal of stocks where the issuer approached the watchlist criteria. What investors fear the most is not poor stock performance but suspension or delisting.
24. We would suggest SEHK to apply the same delisting procedures for Main Board and GEM to New Board issuers.
25. We believe that SFC should use the same rules and regulation under SFO in determining whether a New Board issuer should be delisted.

## **Enforcement**

26. We do not agree that a "lighter touch" enforcement regime should apply to the New Board.
27. To be fair for all issuers listed in Hong Kong, the enforcement regime should be the same for Main Board, GEM, New Board PREMIUM and New Board PRO issuers.
28. We do not think SFC would agree to have "light touch" enforcement for New Board.

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## NEW BOARD CONCEPT PAPER

### GENERAL RESPONSE

1. According to the *New Board Concept Paper*, it is proposed that there would be 2 New Boards:
  - (a) New Board PREMIUM which would provide a listing venue for companies that meet the Main Board's financial eligibility criteria and track record requirements, but which have non-standard governance structures that would preclude listing on the Main Board. New Board PREMIUM would be open to retail and professional investors.
  - (b) New Board PRO would provide a listing venue for companies that do not meet the existing financial and track record eligibility requirements of the Main Board or GEM, subject to a minimum market capitalisation at the time of listing of HK\$200 million; and companies that are unable or unwilling to meet the equivalent shareholder protection requirements under 2013 JPS. New Board PRO would be open to professional investors only.
2. We agree that there is an urgent need for Hong Kong to seek to attract a more diverse range of companies, subject to certain points we discussed below.
3. We think it would be very useful to refer to GEM when analysing the New Board. Please refer to Appendix II (The Development of GEM) to the *Consultation Paper on the Review of the GEM and Changes to the GEM and Main Board Listing Rules*, which sets out the brief history and lessons from the development of GEM.
4. We consider the success of GEM is mainly attributable to the fact that:
  - (a) GEM is a financing and listing platform for SMEs, which satisfy lower financial requirements and demonstrate a certain level of promise of growth;
  - (b) GEM does not differentiate specific industries for listing;
  - (c) GEM issuers have same quality as those of a Main Board issuer, as both GEM and Main Board issuers are subject to the same due diligence process, prospectus disclosure requirements, suitability assessment and enforcement regime; and
  - (d) GEM Streamlined Process makes it easier, as well as providing hope for GEM issuers to transfer to the Main Board if it could realize its promise of growth and satisfy the financial requirements for listing on Main Board.

## New Economy industries

### ***Risks for New Board to cater for New Economy industries only***

5. Paragraph 4 on page 6 of the *New Board Concept Paper* pointed out that:
- "4. A review of our current market structure has identified gaps within our current listing regime that need to be addressed in respect of companies from New Economy industries in order to provide greater diversity and investment opportunities to investors in Hong Kong, and to serve the needs of a wider range of issuers. Specifically, the Hong Kong regime currently does not accommodate:
- (a) Pre-profit companies;
  - (b) Companies with non-standard governance features; and
  - (c) Mainland Chinese companies that wish to secondarily list in Hong Kong."
6. We agree with the proposal that the New Board should cover pre-profit companies, WVR companies and other companies that the Hong Kong regime currently does not accommodate.
7. However, we do not agree with the proposal that the New Board caters for "New Economy" industries only. It is not just the historical development of GEM that alerts us the risk for the New Board to cater just for New Economy industries. We become more alert when noticing paragraphs 99 and 100 on page 23 of the *New Board Concept Paper*:
- "99. It is also noted that New Economy companies without a track record of business operations or profitability are likely to involve higher risks. While early stage companies are recognised widely as essential engines for economic growth with the potential to produce very high returns for their investors in the long term, many such companies will not succeed and could cause shareholders to lose part or possibly all of their investment.
100. The US Bureau of Labor Statistics data on survival rates of Silicon Valley high-tech firms between 1991 and 2009 shows that about 50% of these firms survived five years after starting (i.e. about 50% fail). After 10 years of starting, about 25% of these firms had survived. After 15 years of starting, only about 13% of these firms were still in business."
8. If the success rates for high-tech firms was so low in US, a superpower that is well known for having and growing high-tech firms, we expect there would be even more risk for New Board to cater just for New Economy industries. Any seeming collapse or bursting of a New Economy industry could have an adverse impact upon such New Board and it could result in a situation as with GEM in early 2000s where investors had a loss of confidence.



### ***It is uncertain and unfair to define and determine New Economy industries***

9. According to the *New Board Concept Paper*, "New Economy" industries include "*Biotechnology, Health Care Technology, Internet & Direct Marketing Retail, Internet Software & Services, IT Services, Software, Technology Hardware, Storage & Peripherals*".
10. If the New Board is only for New Economy industries, there will certainly be many companies, which may not be engaging in any of the industries above, repackaging their business to having connections with these "New Economy" industries. It would be an uncertainty for the shareholders, working parties and the regulators to determine whether a listing applicant is or is not engaging in New Economy industries. For example, any "traditional" industries, such as financial institution, product or service company, could reorganise its business to fall within "internet & direct marketing retail" as part of the New Economy.
11. A regime that relies on the subjective judgement of regulators to determine whether listing applicants are engaged in New Economy industries would give rise to regulatory uncertainty and could result in inconsistent and unfair decision-making.

### **Investor eligibility**

12. The *New Board Concept Paper* proposed that New Board PREMIUM, which is designed for companies that are able to meet the Main Board's financial eligibility criteria and track record requirements with non-standard governance features, should be opened to retail and professional investors.
13. The *New Board Concept Paper* proposed that New Board PRO, which is designed for companies that do not meet the existing financial and track record eligibility requirements of the Main Board or GEM, should be opened to professional investors only.
14. We agree with the proposal that New Board PREMIUM should be opened to retail and professional investors, provided that New Board PREMIUM listings are subject to, apart from the non-standard governance features, the same due diligence process, prospectus disclosure requirements, suitability assessment and enforcement regime as with that for Main Board and GEM applicants.
15. As for New Board PRO, as we submit under paragraphs 21 to 26 on pages 8 and 9 of this Response Paper, that New Board PRO should also be subject to the same due diligence process, prospectus disclosure requirements, suitability assessment and enforcement regime as that for Main Board and GEM applicants. Realistically, we do not think that SFC would and should trade off the inevitable increased risk for investors for "light touch" regulation.
16. Based on the above, we do not agree that New Board PRO should be restricted to certain type of investors. New Board PRO, if it is expected that New Board PRO will develop and sustain, it should be opened to all investor types. Furthermore, the liquidity and trading volume for New Board PRO are

expected to minimal if no retail investors are allowed to participate. This would result in lower market valuation, which would affect the attractiveness of New Board PRO.

### **Financial and track record requirements**

17. The *New Board Concept Paper* proposed that New Board PREMIUM applicants should meet the Main Board's financial eligibility criteria and track record requirements.
18. The *New Board Concept Paper* proposed that New Board PRO applicants could have no track record or minimum financial criteria, subject to a minimum market capitalisation at the time of listing of HK\$200 million.
19. We agree with the proposed financial and track record requirements for New Board PREMIUM.
20. We do not agree with the proposal that New Board PRO applicants are not required to have any track record at all. The risk would be enormous for the investors and the market. We suggest New Board PRO applicants should have at least 1 year of track record.

### **"Lighter touch" suitability assessment for New Board PRO**

21. Paragraph 9 on page 7 of the *New Board Concept Paper* pointed out that:
  - "9. *New Board PRO would be open to professional investors only, and accordingly would provide a "lighter touch" approach to initial listing requirements. As New Board PREMIUM would be open to retail investor participation, a more stringent regulatory approach would apply.*"
22. Paragraph 140 on page 32 of the *New Board Concept Paper* pointed out that:
  - "140. *We would apply a "lighter touch" suitability assessment for new applicants to New Board PRO. This would mean not applying our existing suitability guidance set out in Guidance Letters GL68-13 and GL68-13A to applicants to New Board PRO66. We would, however, retain the right to deny listing or apply additional or more stringent suitability criteria based on any event, condition or circumstance that makes the listing of the applicant inadvisable or unwarranted in the opinion of SEHK (for example, if the applicant operates an illegal business).*"
23. We consider the sponsor regime implemented in October 2013 has increased and reinforced the quality of Main Board and GEM issuers. We are of the view that, for New Board PRO to succeed and be sustainable, New Board PRO should follow suit, i.e. New Board PRO should be subject to the same due diligence process, prospectus disclosure requirements, suitability assessment (such as those set out in GL68-13) and enforcement regime as that for Main Board and GEM applicants.

24. In particular, the suitability assessment set out in GL68-13 is important to provide confidence in New Board PRO to the investors and the market. GL68-13 basically identified important deficiencies in listing applicants which may affect the suitability for listing, such as suitability of directors and controlling shareholders, non-compliances, deteriorating financial performance, undue reliance on parent group/connected persons/major customers, unsustainable business models, etc. These are serious deficiencies and it would not be in the interest of investors and the market collectively.
25. In short, for New Board PRO to succeed and be sustainable, the listing applicants to New Board PRO should be subject to same set of rules. We do not agree that SEHK to apply a "lighter touch" suitability assessment to new applicants to New Board PRO.
26. Realistically, we do not think that SFC would and should trade off the inevitable increased risk for investors for "light touch" regulation.

### **Weighted voting rights**

27. Paragraphs 152 to 154 on page 35 of the *New Board Concept Paper* pointed out that:
  - "152. *We propose two possible approaches to regulating companies with, or seeking, a listing on the New Board with a WVR structure.*"
  - "153. *One option would be to take a disclosure-based approach. This would require such companies to prominently disclose that they have a WVR structure and the risks associated with the structure. In addition, we could potentially require them to disclose other matters, such as the identities of WVR holders, their voting activities and the details of any transfers of WVR.*"
  - "154. *An alternative approach would be to impose mandatory safeguards for companies with WVR structures in addition to disclosure requirements. The safeguards that we could impose could vary according to whether the company was listed on PREMIUM or PRO. Examples of such safeguards include restrictions on the types of persons that can hold WVR, the minimum equity that they must hold in the company on an ongoing basis and restrictions on the transfer of WVR to other persons. We could also require that the WVR structure fall away after a pre-determined period of time (i.e., a "sunset clause").*"
28. We consider it is essential to have both disclosure-based and mandatory safeguards approaches for WVR companies listed on any of New Board PREMIUM and New Board PRO.
29. It is necessary for the investors and the market to know the details and extent of WVR features of a New Board issuer. At the same time, it is required to have mandatory safeguards to avoid WVR companies from having an entrenched person (like a founder) or a group of entrenched persons (like the

management) under which they could not be questioned or removed under any circumstances.

### **Open market requirements**

30. Paragraphs 137 and 138 on page 31 of the *New Board Concept Paper* pointed out that:

*"137. To help ensure adequate liquidity in secondary trading, New Board PREMIUM would follow Main Board open market requirements in force from time to time."*

*"138. To help ensure adequate liquidity in secondary trading for New Board PRO issuers we propose to require a listing applicant to have a minimum of 100 investors at the time of listing and a minimum public float at listing of 25%. These proposed requirements are the same as those that currently apply for GEM issuers at the point of listing..."*

31. We agree with the proposal that New Board PREMIUM should follow Main Board open market requirements in force from time to time.

32. We do not agree with the proposal that New Board PRO to follow GEM's current open market requirements, i.e. a minimum of 100 investors at the time of listing and a minimum public float at listing of 25%. After all, GEM's current open market requirements raised the shareholding concentration issue and the issue of volatility in share price. One of the proposal under the *Consultation Paper on the Review of the GEM and Changes to the GEM and Main Board Listing Rules* is to align GEM with Main Board open market requirements (such as mandatory public offering and reallocation mechanism), which we agree.

33. Based on the above, for New Board PRO to succeed and be sustainable, New Board PRO should be aligned with Main Board's open market requirements.

34. Realistically, we do not think that SFC would and should agree for New Board PRO to adopt GEM's current open market requirements which raised the shareholding concentration issue and the issue of volatility in share price.

### **Fast-track migration**

35. Paragraph 127 on page 29 of the *New Board Concept Paper* pointed out that:

*"127. There would be no fast-track migration mechanism between the New Board and the Main Board or GEM, or from New Board PRO to New Board PREMIUM. For a listed company on New Board PRO wishing to list on these platforms to attract retail investors, it would have to meet all the admission criteria and other listing requirements of the relevant board (e.g. issuing a prospectus). A requirement to raise additional capital via a public offer may also be imposed."*

36. As set out in our Response Paper to the *Consultation Paper on the Review of the GEM and Changes to the GEM and Main Board Listing Rules*, we consider that, subject to certain conditions, GEM Streamlined Process should remain because current due diligence process, prospectus disclosure requirements and enforcement regime for GEM and Main Board listings are the same. We do not agree that GEM Transfer applicants would be required to appoint a sponsor and issue a "prospectus standard" listing document. GEM Transfer applicants had done all these when it was first listed on GEM. It is unfair for GEM issuers to go through the same IPO process once more to transfer to Main Board.
37. In contrast, since it is proposed that New Board PREMIUM issuers would have non-standard governance structures and that New Board PRO issuers would have lesser track record, we agree with the proposal that there should be no fast-track migration mechanism between the New Board and the Main Board or GEM, or from New Board PRO to New Board PREMIUM.

### **Suspension**

38. Paragraph 159 on page 37 of the *New Board Concept Paper* proposed that SEHK would suspend a New Board-listed company's securities for a material breach of the New Board Listing Rules, such as failure to publish periodic financial information within the deadlines or SEHK considers that the company or its business is no longer suitable for listing.
39. We consider that SEHK should adopt the same factors and requirements to determine whether to suspend a New Board issuer.
40. We believe that SFC would use the same rules and regulation under SFO in determining whether a New Board issuer should be suspended.

### **Delisting**

41. Paragraphs 160 and 161 on page 37 of the *New Board Concept Paper* pointed out that:
- "160. It is proposed that SEHK would immediately cancel the listing of a company listed on the New Board PRO if it had been suspended for a continuous period of 90 calendar days."*
- "161. Where retail investors are exposed, it is seen as desirable to give a suspended company additional time to rehabilitate itself, so as not to be delisted. It is proposed therefore that SEHK would cancel the listing of a company listed on the New Board PREMIUM if it had been suspended for a continuous period of 6 months."*
42. Paragraph 164 on page 37 of the *New Board Concept Paper* pointed out that:
- "164. We also seek views on whether to require companies listed on the New Board to meet quantitative criteria on a continuous basis (e.g. share price above a threshold). Failure to meet*

*these criteria over a set period of time would result in the company being placed on a "watchlist". If the company was subsequently not able to meet the required thresholds after a period on the "watchlist", the company's securities would be delisted..."*

43. We do not agree with the proposed accelerated "90 day" and "6 months" delisting mechanisms for New Board PRO and New Board PREMIUM, respectively. Both New Boards would have investors, whether professional or retail. It is not right to have a delisting mechanism that delists suspended company with such haste and without giving it additional time to rectify itself or provide solution to maintain the listing status.
44. We also do not agree that New Board issuers to meet quantitative performance criteria to maintain a listing and the "watchlist" approach. There have been similar discussion several years ago and it was a stock market disaster. If this was implemented, there could be a panic disposal of stock whenever the issuer is getting close to the criteria. What fear the investors most is not a poor performance stock but delisting.
45. We suggest SEHK to apply the same delisting procedures of Main Board and GEM to New Board issuers.
46. We believe that SFC would use the same rules and regulation under SFO in determining whether a New Board issuer should be delisted.

#### **Enforcement**

47. We do not agree that a "lighter touch" enforcement regime should apply to the New Board.
48. To be fair for all issuers listed in Hong Kong, the enforcement regime should be the same for Main Board, GEM, New Board PREMIUM and New Board PRO issuers.
49. We do not think that SFC should agree to have "light touch" enforcement for New Board.

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## NEW BOARD CONCEPT PAPER

### SPECIFIC RESPONSE

- Q1 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?**

We refer to paragraphs 1 to 49 on pages 5 to 12 of this Response Paper.

We agree that Hong Kong should have a New Board, or even New Boards, to accommodate companies that are currently not allowed to list on the existing platforms, subject to the points we raised.

We suggest that the New Board should be open to any industry, not just closely defined New Economy industries, to ensure its sustainability, fairness and avoid the regulatory uncertainty and the historical decline of GEM.

- Q2 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?**

We consider that the stages of development, the profitability and the risks of targeted companies for the New Board are different from those of GEM and Main Board. All these need to be segregated onto a New Board to ensure minimum impact upon GEM and Main Board.

- Q3 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?**

According to the *New Board Concept Paper*, it is proposed that there would be 2 New Boards:

- (a) New Board PREMIUM would provide a listing venue for companies that meet the Main Board's financial eligibility criteria and track record requirements, but which have non-standard governance structures that would preclude listing on the Main Board. New Board PREMIUM would be opened to retail and professional investors.
- (b) New Board PRO would provide a listing venue for companies that do not meet the existing financial and track record eligibility requirements of the Main Board or GEM, subject to a minimum market capitalisation at the time of listing of HK\$200 million; and companies that are unable or unwilling to meet the equivalent shareholder protection requirements under the 2013 JPS. New Board PRO would be opened to professional investors only.

We agree with the proposal to segment the New Board into different segments according to the characteristics described in this paper, subject to the following points.

*Restricted to certain types of investors*

We do not consider any New Board should be restricted to certain type of investors. New Board PRO, if it is expected to have high growth generally, it should be opened to all types of investors. Furthermore, the liquidity and trading volume for New Board PRO are expected to be minimal if no retail investors are participating. This would result in lower market valuation and thereby affect the attractiveness of New Board PRO.

*Different financial eligibility*

New Board PREMIUM and New Board PRO are supposed to target different listing applicants and shareholders from those of GEM and Main Board. We support having different financial eligibility for New Board PREMIUM and New Board PRO, but we suggest New Board PRO applicants should have at least 1 year of track record.

*Restricted to particular industries*

As explained in the response to Q1 above, we do not agree that the New Board should be specifically restricted to particular industries. The New Board should be open to any industry, not only closely defined New Economy industries, to ensure its sustainability, fairness and avoid the regulatory uncertainty and the historical decline of GEM.

**Q4 What are your views on the proposed roles of GEM and the Main Board in the context of the proposed overall listing framework?**

Please see our Response Paper to the *Consultation Paper on the Review of the GEM and Changes to the GEM and Main Board Listing Rules*.

In short, apart from certain minor improvements to GEM and Main Board, such as post-IPO lock up requirement, mandatory public offer mechanism and reallocation between public offer and placing tranches, we do not consider GEM and Main Board should be overhauled.

**Q5 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 see paragraphs 30 to 37 on pages 10 and 11 of this Response Paper.

We agree with the proposed criteria for moving from New Board PRO to the other boards, i.e. there should be no fast-track migration mechanism between the New Board and the Main Board or GEM, or from New Board PRO to New Board PREMIUM.



We consider New Board PRO should have the same open market requirements as that of Main Board, i.e. mandatory public offering and reallocation mechanism, right from the start. On such a basis, there would be no question of public offer requirement be imposed for companies moving from New Board PRO to one of the other boards.

**Q6 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?**

We refer to paragraphs 17 to 20 on page 8 of this Response Paper.

We agree with the proposed financial and track record requirements for New Board PREMIUM.

We do not agree with the proposal that New Board PRO applicants are not required to have any track record at all. The risk would be enormous for the investors and the market. We suggest New Board PRO applicants should have at least 1 year of track record.

**Q7 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?**

Yes.

**Q8 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?**

We refer to paragraphs 30 to 34 on page 10 of this Response Paper.

We agree with the proposal that New Board PREMIUM would follow Main Board open market requirements in force from time to time.

For New Board PRO to succeed and be sustainable, New Board PRO should be aligned with Main Board's open market requirements. Otherwise it would likely have the same volatility in share price issue as in GEM before the implementation of the *Guideline to Sponsors, Underwriters and Placing Agents involved in the Listing and Placing of GEM stocks* on 20 January 2017.

Realistically, we do not think that SFC would and should agree for New Board PRO to adopt GEM's current open market requirements which raised the shareholding concentration issue and the issue of volatility in share price.

**Q9 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?**

No. All companies that come to list in Hong Kong should be subject to shareholder protection standards equivalent to those of Hong Kong.

It would be unfair for other issuers which first came to list in Hong Kong, and it could easily be abused by certain issuers which deliberately chose to list in other foreign jurisdictions with lower shareholder protection standards and then come to list in Hong Kong without the requirement to demonstrate equivalent shareholder protection.

**Q10 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?**

We refer to paragraphs 21 to 26 on pages 8 to 9 of this Response Paper.

For New Board PRO to succeed and be sustainable, the listing applicants to New Board PRO should be subject to the same set of rules. We do not agree that SEHK to apply a “lighter touch” suitability assessment to new applicants to New Board PRO.

Realistically, we do not think that SFC would and should tradeoff the inevitable increased risk for investors for “light touch” regulation.

**Q11 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?**

We refer to paragraphs 21 to 26 on pages 8 and 9 of this Response Paper.

We consider New Board PRO should also be subject to the same due diligence process, prospectus disclosure requirements, suitability assessment and enforcement regime as that for Main Board and GEM applicants. Realistically, we do not think that SFC would and should trade off the inevitable increased risk for investors for “light touch” regulation.

Based on the above, we do not agree that New Board PRO should be restricted to certain type of investors. New Board PRO, if expected to have high growth generally, should be open to all types of investors. Furthermore, the liquidity and trading volume for New Board PRO are expected to minimal if no retail investors are participating. This would result in lower market valuation and thereby affect the attractiveness of New Board PRO.

**Q12 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?**

We do not consider any New Board should be restricted to certain type of investors.

**Q13 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?**

We note that it was proposed in paragraph 145 on page 33 of the *New Board Concept Paper* that:

*"145. an applicant to list on New Board PRO should be required to appoint a Financial Adviser, who would be expected to exercise their own professional judgement as to what investigations are appropriate for the applicant and to ensure that the Listing Document provides accurate and sufficient information to enable professional investors to make an informed investment decision"*

However, realistically, we do not believe that SFC would and should agree to this. If the duties, responsibility and obligations of a Financial Adviser licensed for Type 6 regulated activity (advising on corporate finance) is subject to the SFC Code of Conduct, we contemplate that SFC would take strict action upon such Financial Advisers if there is wrong, inaccurate and/or misleading information in the listing document of new applicants to New Board PRO.

It would also give rise to regulatory uncertainty and could result in inconsistent and unfair decision-making by regulators. Existing sponsor regime should apply to New Board PRO.

**Q14 What are your views on the proposed role of the Listing Committee in respect of each segment of the New Board?**

We consider the Listing Committee should approve or reject New Board PREMIUM and New Board PRO just like Main Board and GEM (as proposed).

We expect New Board applications would involve more complex issues than Main Board and GEM applications, which the practitioners and regulators are already familiar with. We do not consider any delegated authority should shorten the time to listing for New Board applicants.

Like GEM listings, we also believe that the New Board listing approval process would benefit from the Listing Committee members' collective market expertise and that this outweighs the main disadvantage of imposing additional workload on the Listing Committee.

**Q15 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?**

We do not see the real difference between a listing document that provides accurate information and a prospectus. Both such documents would have to be true, accurate and not misleading in any event. We do not agree to an approach where the severity of penalty for wrong, inaccurate or misleading information under both documents are different.

Realistically, we do not think that SFC would and should allow New Board PRO applicants to issue a listing document, which does not provide equivalent shareholder protection and standards as that of prospectus.

**Q16 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?**

We believe that same standards of continuous listing obligations as Main Board and GEM should apply to New Board applicants.

**Q17 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?**

We refer to paragraphs 27 to 29 on page 9 of this Response Paper.

We consider it is essential to have both disclosure-based and mandatory safeguards approaches for WVR companies listed on any of New Board PREMIUM and New Board PRO.

**Q18 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?**

We refer to paragraphs 27 to 29 on page 9 of this Response Paper.

It is necessary for the investors and the market to know the details and extent of WVR features of a New Board issuer. At the same time, it is required to have mandatory safeguards to avoid WVR companies from having an entrenched person (like a founder) or a group of entrenched persons (like the management) under which they could not be questioned or removed under any circumstances.

**Q19 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?**

We consider that all companies coming to list in Hong Kong should be subject to shareholder protection standards equivalent to those of Hong Kong.

It would be unfair for other issuers which first came to list in Hong Kong, and it could be easily abused by certain issuers which deliberately chose to list in other foreign jurisdictions with lower shareholder protection standards and then come to list in Hong Kong without the requirement to demonstrate equivalent shareholder protection.

**Q20 What are your views on the suspension and delisting proposals put forward for the New Board?**

We refer to paragraphs 38 to 46 on pages 11 and 12 of this Response Paper.

We consider that SEHK should adopt the same factors and requirements to determine whether to suspend a New Board issuer.

We do not agree with the proposed accelerated "90 day" and "6 months" delisting mechanisms for New Board PRO and New Board PREMIUM, respectively. Both New Boards would have investors, whether professional or retail. It is not right to have a delisting mechanism that delists suspended company with such haste without giving it additional time to rectify itself or provide solution to maintain listing status.

We suggest SEHK to apply the same delisting procedures of Main Board and GEM to New Board issuers.

**Q21 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?**

We do not agree that New Board issuers to meet quantitative performance criteria to maintain a listing and the "watchlist" approach. There have been similar discussions several years ago and there were shock waves for the stock market. If this were implemented, there would be a panic disposal of stock whenever the issuer approaches the criteria. What investors would be most afraid of is not poor stock performance but suspension or delisting.

We suggest SEHK to apply the same delisting procedures of Main Board and GEM to New Board issuers.

**Q22 Do you consider that an even “lighter touch” enforcement regime should apply to the New Board (e.g. an exchange-regulated platform)?**

No. We do not think that SFC would or should agree to have "light touch" enforcement for New Board.

\* \* \* \* \*

## **Appendix 1**

### **List of financial intuitions authorizing this Response Paper**

*(in alphabetical order)*

1. CLC International Limited
2. Convoy Capital Hong Kong Limited
3. Dakin Capital Limited
4. Euto Capital Partners Limited
5. Ever-Long Securities Company Limited
6. Frontpage Capital Limited
7. Gransing Securities Co., Limited
8. Huabang Corporate Finance Limited
9. Kingston Corporate Finance Limited
10. Messis Capital Limited
11. Red Sun Capital Limited
12. TC Capital International Limited
13. VC Capital Limited
14. WAG Worldsec Corporate Finance Limited

**List of persons authorizing this Response Paper**

*(in alphabetical order)*

1. Chan, Hi Kit (SPDB International Capital Limited)
2. Chan, Ivan Chuk Cheung (Changjiang Corporate Finance (HK) Limited)
3. How, Sze Ming (Southwest Securities (HK) Capital Limited)
4. Lo, Steven Wing Shing (Southwest Securities (HK) Capital Limited)
5. Tai, Alexander Kwok Leung
6. Wan, Joseph Jason (Dongxing Securities (Hong Kong) Company Limited)