

## 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.

New Economy issuers make up a relatively high percentage in other comparable exchanges e.g. NYSE and NASDAQ compared to only 3% of the total market capitalisation on the Exchange. To remain competitive and for Hong Kong to remain one of the world's most attractive and relevant venues for IPOs, Hong Kong should seek to attract a diverse range of companies from different industries, especially those from the New Economy industries. We agree that efforts should be made to entice and provide a platform for New Economy companies to list in Hong Kong, which will have a positive impact to the Hong Kong market, but caution needs to be exercised in selecting the means to achieve this goal. In particular, a balance needs to be struck between the safeguards which serve to preserve and guarantee the integrity of the Hong Kong market and ensure the protection of the interests of minority shareholders on one hand and the inherent risks in scrutinizing and regulating companies from New Economy industries due to the nature of their business and the corporate governance structures under which they seek to operate on the other hand. We have reservation whether establishing a New Board would be the best way to attract New Economy companies to list in Hong Kong. For further details of our reasoning, please refer to our response to questions 2 and 3.

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 agree that there is a need for Hong Kong to seek to attract a more diverse range of companies, and in particular, those from New Economy industries, and in line with such goal, we believe that a more imminent issue for the Exchange is to facilitate the listing of companies that have WVR capital structures. As indicated in the Concept Paper, one major attraction of the US market over HK when potential issuers consider venues for listing, and in particular for listing of technology companies, is that companies with WVR structures are permitted to list there. Singapore is currently considering feedback on the Consultation Paper on Possible Listing Framework for Dual Class Share Structures. SGX recently clarified in its news release on 28 July 2017 that companies with dual class shares structure (i.e. WVR structure) that are primary listed in "developed markets" can seek a secondary listing on SGX. Given that Hong Kong faces stiff competition from Singapore and US due in part to our inability to provide for WVR structures, we think that it will be more appropriate to focus the efforts on providing a listing framework for companies with WVR structures which is a relatively common structure for New Economy companies.

We would propose that instead of segregating companies with WVR structures to a New Board, we should allow them to list on the existing Main Board under the existing Listing Rules framework together with a new chapter of the Listing Rules being devoted to companies with WVR structures. This approach has been taken by the Stock Exchange before, for instance, the Main Board Listing Rules have dedicated chapters for particular types of companies (e.g. Chapter 18 on mineral companies, Chapter 19A on issuers incorporated in the PRC and Chapter 21 for investment companies). We expect that the new chapter on companies with WVR structures will include detailed rules on qualification for listing, continuing obligations and mandatory safeguards (please refer to our response to question 18). In this way, we can avoid the potential confusion for both the regulators and the market practitioners to have four different sets of rulebooks for listing on the Exchange (namely, (i) the Listing Rules for Main Board; (ii) the Listing Rules for GEM Board; (iii) the listing rules for New Board PRO; and (iv) the listing rules for New Board Premium), and also from investors perspective, the question of what status stocks listed on the New Boards would have as compared to stocks listed on the Main Board.

As the retail investors will be able to trade stocks listed on the New Board Premium, in practice and in reality, there will be little difference between introducing WVR structures on the New Board over the existing Main Board and GEM Board. A new chapter in the Listing Rules for companies with WVR structures will enable these companies to be listed upon the same basis and principles as set out in the Listing Rules, ensuring regulatory consistency in considering such listing applications.

Moreover, we should consider whether the allowing of companies with WVR structures would automatically mean that the Hong Kong market would be able to attract New Economy companies to list in Hong Kong as compared to other countries such as the US. The decision on where to list depends on a number of factors including, investors' appetite to invest in such companies, valuation of New Economy companies, market structure to support New Economy companies to grow (which includes a community of industry-focused analysts) and also a regulatory framework to support the listing of the New Economy companies (which includes factors such as profit requirement, track record period requirement and acceptance of WVR structures). It would be difficult to guarantee that by setting up a separate new board for companies with WVR structures, Hong Kong would automatically attract sufficient interest from listing applicants to sustain a thriving market with which to support the maintenance of a separate board.





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.

If the New Board is adopted, we do not agree with the proposal that there should be two different segments with New Board PRO being restricted only to professional investors. Please refer to our answers to Question 11 for further details.

Further, whilst we agree that the New Economy industries should be targeted, we recognize the biggest difficulty the Exchange may face is how to define "New Economy", and keep relevant and updated this definition, as a result of the fast evolving nature of new technology and market trends. As indicated by the Exchange in the Q&A on Proposed New Board and GEM Review, while the Listing Committee will retain the ultimate discretion to determine the listing eligibility for the New Board on a principle-based approach, this will create regulatory uncertainty and potential inconsistent decision-making, and it will also be difficult for market practitioners to advise potential applicants as to whether or not they are eligible for listing on the New Board. Listing applicants may only discover they do not qualify for the relevant segment after incurring the expenses of engaging various professional advisers.

Another concern should the New Board be restricted to particular industries is that the New Board would be highly dependent on those specific industries, and extremely sensitive to the risks of what themselves are also high-risk industries (e.g. dot-com bubble and crisis), as well as the pressure of attracting sufficient New Economy issuers to support the maintenance of the New Board.

Most companies with WVR structures are New Economy companies. Once the Exchange allows the listing of companies with WVR structures, it will be inevitable that more attractive New Economy companies will seek to be listed on the Exchange and that the goal to attract more New Economy companies will be achieved without having a separate New Board that exclusively list a defined set of New Economy companies.

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 GEM should continue to serve the need of established small and mid-sized companies and that the Main Board continue to serve as a "premier board" for larger companies that can meet Hong Kong's highest market standards. For further details, please refer to our responses to the GEM CP.

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.

If New Board PRO is adopted as per the proposals as set out in the Concept Paper, we agree that there should be no fast track migration mechanism between the New Board PRO to New Board PREMIUM, or from New Board PRO to the Main Board or GEM.

As proposed in the Concept Paper, the New Board PRO will not impose any requirements on track record, cash flow, profit, and all that would be required would be an expected minimum market capitalisation of at least HK\$200 million. Applicants to New Board PRO also will not be required to provide equivalent shareholder protection, no sponsors will be required to be appointed, nor will the Prospectus requirements of CWUMPO apply. Given the very relaxed listing requirements of New Board PRO as compared to other boards where the appointment of sponsors and the Prospectus requirements have to be adhered to, it will only be sensible that if a New Board PRO company were to be "upgraded" to another board which will make its securities eligible for trading by retail investors, it will have to meet all the relevant admission criteria and listing requirements applicable to the relevant board. The public offer requirements of the relevant board that a New Board PRO company proposes to upgrade to should also be applied to ensure an appropriate public float and spread of shareholders.



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.

If New Board PRO and New Board PREMIUM are adopted, we agree that the quantitative entry requirements for New Board PREMIUM should be equivalent to those of the Main Board. However, we do not agree with the proposal that the only quantitative entry requirement for New Board PRO is the minimum market capitalization of HK\$200 million. Such low listing criteria for New Board PRO may attract troubled or low quality companies to be listed on New Board PRO which will drag down the overall market quality. We have reservation whether Hong Kong would be going in the right direction in developing the market by lowering the standards of companies to be listed.

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.

We agree that the Exchange should reserve the right to refuse an application for listing on New Board PRO if it believes that the applicant could meet the eligibility requirements of New Board PREMIUM, GEM or the Main Board. If the New Board PRO is adopted, it is inevitable that some companies that meet the eligibility requirements of New Board PREMIUM, GEM or even the Main Board would prefer to be listed on New Board PRO instead given there is no need to appoint a sponsor, no need to conduct due diligence, no prospectus and no Listing Committee approval required. The New Board PRO may end up simply serving as the cheapest gateway to get listed on the Exchange without having to fulfill the requirements that would have applied to other boards. As the intention of New Board PRO is to provide a platform for pre-profit companies from New Economy industries to get listed, reserving the right to refuse an application for listing on New Board PRO is critical in order to ensure that the New Board PRO will not be abused by other applicants who fall outside of that category to circumvent the application of the more stringent requirements under the Listing Rules.

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 agree that the minimum public float requirement for both New Board PREMIUM and New Board PRO should be the same as the Main Board (i.e. 25% of the total number of issued shares) and that the minimum shareholder requirement of New Board PREMIUM to be the same as the Main Board (i.e. at least 300 holders). However, it is doubtful whether imposing a minimum requirement of having 100 holders for New Board PRO will be sufficient to ensure liquidity in the trading of shares. As New Board PRO is proposed to be restricted only to professional investors, trading will be even more limited and therefore liquidity will be relatively low for New Board PRO compared to other boards. Lack of liquidity will potentially result in issues that we are facing today with GEM board, where there may be sharp movements in share prices due to lack of an open market and highly concentrated shareholdings among a small group of shareholders. Therefore, we think that additional measures should be introduced to New Board PRO to ensure there is sufficient liquidity.



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.

Careful thought should be given to the differences between shareholder protection given to shareholders on the Recognised US Exchange as compared to Hong Kong and how these could be potentially addressed. We disagree that there should be a blanket exemption for companies listed on a Recognised US Exchange to be exempted from the requirement to demonstrate that they are subject to shareholder protection standard equivalent to those of Hong Kong. The Exchange should adopt a case by case basis approach to assess each and every case to ensure that the shareholder protection standards in Hong Kong are not diluted. The Exchange should also bear in mind the differences between the United States and Hong Kong generally including the nature of shareholders in the jurisdiction and also the legal framework of both in deciding whether a same regulatory framework can be simply applied in both jurisdictions or whether there might necessarily need to be tailored regulatory regimes to account for the different factors in the two jurisdictions.

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

Please give reasons for your views.

We do not support applying a "lighter touch" suitability assessment to new applicants to New Board PRO. As set out in our answers to question 5, given the relaxed requirements for applicants to New Board PRO, we have reservations that the proposed framework for New Board PRO will be sufficient to ensure the quality of listing applicants. If the Exchange were to apply a "lighter touch" suitability assessment, it will open the floodgate to companies that involve higher risks to be listed on New Board PRO and lower the overall quality of listed issuers on New Board PRO and weaken the purpose and perception of New Board PRO.

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.

We do not agree with establishing a New Board PRO that is open to professional investors only. The SFO imposes a relatively low bar for individuals and corporations to qualify as a "professional investor" under the SFO definition - a securities portfolio of HK\$8 million. It is questionable whether or not under current circumstances, such "professional investors" who qualify under the SFO definition possess the necessary skills and knowledge to make an informed assessment about such New Board PRO applicants where no due diligence standard is required (except conducting appropriate investigations), no sponsor and no Prospectus requirements are imposed. In view of the proposed listing requirements of New Board PRO which are very relaxed, we have reservations as to whether all professional investors will be in the position to make appropriate investment decisions and assess the risks involved in the trading of the shares of such New Board PRO companies. Moreover, the New Board PRO may not necessarily attract enough interest from New Economy companies as they would also have other sources of funding other than equity fundraising via listing, such as angel investors, VC funds and PE funds. As per our answers to Question 2, we think that the more appropriate approach is to allow companies with WVR structures to be listed within the existing listing framework instead of segregating to a New Board.

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

☒ Yes

☐ No

Please give reasons for your views.

As stated in our answers to question 2, we have reservations with the establishment of a New Board. If the New Board PRO is to be established, we agree that the Exchange Participants should put in place some measures in order to identify whether or not the investors fulfil the requirements of "professional investor" under the SFO. The Exchange will also need to consider how this can be policed and also whether market intermediaries might seek to circumvent this by, e.g. offering products to retail investors which closely track New Board PRO stocks.

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 disagree with the proposal of appointing a Financial Adviser instead of applying the existing sponsor regime. As set out in our answers to question 11 above, the definition of "professional investor" under the SFO imposes a relatively low bar for one to qualify as a "professional investor" and we also have reservations as to whether or not all of such professional investors would be in the position to assess the risks involved in trading in the shares of these high risks companies that are pre-profit from the New Economy industries. Given the higher-risk nature of the listing applicants to the New Board PRO, we believe that the existing sponsor regime should apply in order to ensure that the current due diligence requirements as applicable to the Main Board should apply to New Board PRO as well, so that the professional investors will be better placed to be making informed investment decisions based on a set of well established due diligence standards and properly developed disclosure.

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 believe that a consistent approach should be adopted for the proposed role of the Listing Committee in respect of both segments of the New Board. It is proposed in the Concept Paper that, amongst other things, no due diligence standard would be required (except conducting appropriate investigations), no sponsor and no Prospectus requirements would be imposed on the New Board PRO listing applications, and given the higher level of risks involved with pre profit companies, we have reservation that such listing applications should be only vetted and approved by the Listing Department without going through the Listing Committee. The market will benefit from drawing on the expertise and input from the Listing Committee in relation to the listing applications for the New Board PRO which will potentially expose investors to much higher level of risks than any other boards on the Exchange. Further, from a practice perspective, the vetting by the Listing Committee does not add materially to the burden or timetable of the vetting process given the benefits of such a step.

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.

For the same reasons as set out in our answers to question 13, we are of the view that the same Prospectus standard should apply to New Board PRO applicants. We believe that it will be potentially confusing to the investors who may be expecting the same level of disclosure in the listing document of New Board PRO applicants as the other boards on the Exchange, and making investment decisions based on the listing document assuming that the same level of disclosure is applicable to New Board PRO. It is a much simpler and straightforward approach to be adopting the same Prospectus standard as the existing boards on the Exchange and this also enhances regulatory certainty and consistency when regulators assess whether or not the disclosure is sufficient and appropriate.

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.



Other than the proposed rules in relation to super-majority voting on certain fundamental matters which shall only be applicable to the New Board, we believe that the same continuous listing obligations as applicable to the Main Board-listed companies should apply to the New Board listed companies. Applying the same vetting standard and the same Listing Rules across the various boards (but for those set of rules that are particularly catered for the New Economy companies) will ensure regulatory consistency and as a result, the investing public will be more receptive to the New Board as they are subject to the same continuing listing obligations as the current Main Board-listed companies. The existing continuing listing obligations imposed by the Listing Rules have been proved to be effective and successful. Issuers on the New Board should abide by the same set of rules.

In addition to the existing continuous listing obligations, the Exchange has to design how to deal with the WVR structure issues within the existing framework, for instance, the Exchange will have to consider how the definitions of "connected persons" and "associate" in the Listing Rules apply to companies with WVR structures and the additional safeguards to minority shareholders' protection to address the corporate governance risks associated with WVR structures.

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.

For companies with WVR structure to be listed, we do not agree with simply adopting a disclosure-based approach, which would also not be consistent with the current approach adopted by the Exchange and the SFC with regards to other matters concerning listing suitability. In particular, the WVR structure is a completely new concept to Hong Kong, and there was huge market debate when the WVR Concept Paper was published, with particular concerns highlighted in relation to the monitoring of safeguards on an ongoing basis and what actions can be taken by the regulators or shareholders if they are not complied with. Further, disclosure-based approach may be more appropriate for countries where class actions are allowed such that investors who suffer from loss can sue the companies for deficiency in disclosure.

As discussed in our answers to question 2, as retail investors will be able to trade stocks listed on the New Board Premium, in practice and in reality, there will be little difference between introducing WVR structures on the New Board as compared to the existing Main Board and GEM Board, and concerns over WVR structures cannot be dealt with simply by moving such WVR structures to the New Board. We believe that some mandatory safeguards and structural restrictions have to be imposed in order to ensure that a right balance is struck between market needs and protection of the interests of minority shareholders.

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.

We suggest the Exchange consider imposing the following mandatory safeguards for companies with WVR structure:

- (i) a minimum shareholding level in the company to be maintained by the beneficiaries of WVR after listing;
- (ii) sunset clause to provide for conversion of the multiple voting shares into ordinary shares at a fixed future date after listing;
- (iii) automatic conversion of the multiple voting shares to ordinary shares if there is a change in control of the company after listing;
- (iv) set a maximum differential between each multiple voting shares and ordinary shares in order to minimise concentration of voting rights;
- (v) beneficiaries of weighted voting rights to be automatically deemed to be "connected persons" under the Listing Rules;
- (vi) restriction on the issuance of multiple voting rights after listing except in the event of a rights issue, in order to prevent further dilution of the voting rights of the existing shareholders; and
- (vii) voting on the basis that one multiple voting share to carry only one vote for certain decisions such as appointment of independent directors.

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 do not agree with the proposal that companies with unconventional governance features could list on either PREMIUM or PRO if they are listed on a Recognised US Exchange if they have a good compliance record. It is not clear how the Exchange will determine whether a compliance record is "good" or not, and some sort of subjective judgment may need to be made in order to determine whether the compliance record is "good" or not. This gives rise to issues of regulatory uncertainty and potential inconsistent decision-making as the Exchange becomes involved with determining whether or not a company has "good compliance record". The Exchange should adopt a case by case basis approach to assess each and every case to ensure that the standards required to be listed in Hong Kong are not diluted.

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

Please give reasons for your views.

As set out in our answers to question 2, we think the more appropriate approach is to introduce a new chapter in the Listing Rules for companies with WVR structures, enabling these companies to be listed upon the same basis and principles as set out in the Listing Rules, and therefore, the existing Listing Rules regarding suspension and delisting for the Main Board should be equally applicable. The proposal that the Exchange would immediately cancel the listing of a New Board PRO-listed company if it had been suspended for a continuous period of 90 calendar days may be overly harsh and may not necessarily be in the best interest of investors, as it would not provide enough time for the New Board PRO-listed company to remedy the matters or the situation which could have led to such suspension, or force such issuers into speedy resolutions of issues without having the necessary time to consider the best option or pursue various solutions.

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 do not agree with the proposal that the Exchange should impose quantitative criteria that New Board-listed companies have to maintain on a continuous basis. Such quantitative performance criteria will, to a certain extent, be dependent on the market conditions (e.g. share price above a threshold, or market capitalisation above a threshold). For instance, it is inevitable that when oil prices drop, the share price of oil companies will drop too to reflect the drop in oil prices. These are market circumstances which are beyond the control of such companies. We think that it will be unfair to put these companies to "watchlist" as a result of conditions and circumstances which are beyond their control.

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

☐ Yes

☒ No

Please give reasons for your views.

We disagree that a "lighter touch" enforcement regime should apply to the New Board. Given the very nature and features of the New Board which mainly target at pre profit companies and companies with non standard governance features from the New Economy industries that are more prone to higher level of risks, applying a "lighter touch" enforcement regime may not be sufficient to ensure that these companies adhere to the relevant listing rules rigorously. By choosing to list, such companies should also be acknowledging that they will be conducting themselves in a manner expected of a publicly listed company. Therefore, the proposal that the SFC would continue to play a leading role in market regulation and certain areas of listing regulation for the New Board, in the same way as it does for Main Board and GEM seems to be more appropriate to address the potential issues that may arise from companies listed on the New Board.

- End -