

RESPONSE TO HKEX CONCEPT PAPER ON NEW BOARD

by

BOCI Asia Limited

ICBC International Holdings Limited

18 August 2017

Introduction

We refer to the concept paper (the "**Concept Paper**") published by the SEHK on 16 June 2017 regarding the proposed establishment of a New Board. This is a joint response by the two investment banks listed on the cover. This response has been prepared principally by our respective Hong Kong equity capital markets and corporate finance teams advising issuer clients (the "**Responding Group**"). Herbert Smith Freehills have coordinated this response, and if you have any queries on it, you should contact their Matt Emsley [REDACTED] and Jason Sung [REDACTED] in the first instance.

Unless otherwise defined, all capitalized terms used herein shall have the same meaning as defined in the Concept Paper.

Question 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.

Our Response:

We welcome and support the proposal to introduce a new board to permit listing of companies which are currently unable to list in Hong Kong. We are of the view that the implementation of a new board is necessary to maintain Hong Kong's competitiveness as an attractive listing venue.

As noted in the Concept Paper, the companies currently listed on the SEHK are concentrated in certain sectors with a growing portion of listings by Mainland companies. Hong Kong is lagging behind other global exchanges in attracting issuers engaged in New Economy industries.

We consider that the proposed New Board would help bridge the gap between Hong Kong and other international exchanges in terms of New Economy issuers. The New Board would also better accommodate the needs of different types of issuers as well as broaden investment choices for different types of investors.

However, we are concerned about the implications of the proposed New Board on the existing boards in Hong Kong, in particular GEM. The SEHK should carefully consider the positioning of each of the existing boards and the proposed board to ensure that each is, and will continue to be, viable and will have a clear identity and purpose. The SEHK should also ensure that there will be sufficient interest (both from potential listing applicants and investors) in each of the boards and that they can be properly distinguished in the market to ensure there is no confusion.

Our concern is partly driven by the history of the launch of the GEM Board and its relatively unsuccessful performance to date. The original proposal for the GEM Board in 1998 limited participation to sophisticated investors by setting a high minimum transaction size. This was not ultimately pursued due to liquidity concerns. We have similar concerns for the success of the current proposals in the Concept Paper.

Given the above, we would like to suggest a number of modifications to the straw man proposal put forward by the SEHK and to seek clarification on certain aspects. These are set out in our responses below to certain of the questions posed by the SEHK in the Concept Paper.

In particular, please see our response to Question 3 on the definition of "New Economy".

Question 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.

Our Response:

We generally agree with the proposed approach of segregating the targeted companies onto a New Board. Based on the proposals in the Concept Paper, we believe that the targeted companies will be different from Main Board and GEM issuers in a number of aspects including their governance structure, risk profile and target investors. Given this, it is appropriate, in our view, for such companies to be regulated on a different basis with a separate listing regime and possibly a set of different listing rules.

That said, we reiterate the concerns set out in our response to Question 1. Prior to implementing a segregated new board, the SEHK should be satisfied that there is sufficient support for a separate new board, in particular among investors. Investor appetite will be critical to the success of the New Board, and the continued viability of both the Main and GEM boards.

Question 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.

Our Response:

Sub-division of the New Board

In principle, we support the proposal to further segregate the New Board into New Board Premium and New Board PRO based on the different characteristics and investors.

We agree that companies satisfying the different track record requirements should be separated and broadly support the proposal to create the New Board PRO to allow pre-profit companies without a track record to seek a listing in Hong Kong. Restricting certain types of investors from participating in the New Board PRO will protect retail investors from the greater risks associated with issuers on that segment of the New Board.

Certain amongst the Responding Group have reservations with the proposal to impose sector based criteria for access to the New Board. The Concept Paper focuses on the opportunities for Hong Kong in respect of New Economy companies. This approach may be too limiting and we would welcome further data and analysis by the SEHK as to why the New Board should be restricted to New Economy sectors.

The Concept Paper proposes that the New Board would accommodate companies with non-standard governance features including WVRs. In our view, the listing of companies with WVR structures should not be limited to those in New Economy sectors. We consider that such a distinction is arbitrary and difficult to justify from the perspective of ensuring the competitive position of Hong Kong and an investor protection standpoint. An alternative option suggested by a member of the Responding Group is to approach segregation of companies on the New Board from a corporate governance perspective. Irrespective of industry, the New Board would be distinguished from the existing Main and GEM boards based on its acceptance of companies with non-standard governance features such as WVRs,

Notwithstanding certain of the views above, if sector limitations are to be introduced, there needs to be clear basis to support why the covered industries should have the benefit of the New Board, whilst other industries do not.

Adoption of the definition of New Economy

We consider that it is very difficult to define "New Economy". If the SEHK proceeds with the sector requirement, in our view, both a bright-line test and a principles-based test should be adopted when assessing a listing applicant's prima facie eligibility to list on the New Board as a "New Economy" company.

Bright-line test

In order to provide certainty and guidance to the market, what is meant by "New Economy" companies should be clearly defined and be as comprehensive as practicable. The SEHK has provided a definition of "New Economy" in the Concept Paper to cover industries including Biotechnology, Health Care Technology, Internet & Direct Marketing Retail, Internet Software & Services, IT Services, Software, Technology Hardware and Storage & Peripherals (the "**Defined Sectors**"). These sectors are a good starting point. Detailed market feedback should be sought as to what additional industries should be added. For example, in our view, industries such as

FinTech, energy conservation, new material manufacturing and research and development in pharmaceuticals should also be captured in the scope of New Economy.

Another area which requires consideration is how to best classify companies which have diverse sector exposures. We are concerned that a company may seek to artificially package its business to meet the New Board criteria. Our initial view is that a minimum revenue contribution from the New Economy sector (e.g. 50% or more) must be met before a company can qualify as a "New Economy" company under the bright-line test. The list of industries/sectors comprised within the New Economy should be a "live" document and subject to annual review by the SEHK and the Listing Committee. As the world economy continues to develop and evolve, the review process will allow for new, emerging industries to be added as New Economy. Equally importantly, this process will also allow for the elimination of industries which are no longer considered "new" so that no further New Board listing applications from applicants operating primarily in such industries will be permitted.

Principles-based test

Where the business of a New Board listing applicant does not fall within any of the industries listed in the New Economy sector-based bright-line test, we consider that the relevant listing applicant should also be given the opportunity to make a pre-IPO submission to the SEHK to assess its prima facie eligibility to qualify as a "New Economy" business. In this connection, we think the SEHK should set out key principles or basic criteria that it will consider when assessing whether a listing applicant can qualify as "New Economy".

Each application under the principles-based test will need to be assessed by the SEHK and the Listing Committee on a case-by-case basis on the merits of the listing applicant and the particular industry in which the listing applicant operates. Where the SEHK determines that the listing applicant satisfies the principles-based test, we would propose that the SEHK grant a ruling to the listing applicant prior to the formal New Board listing application being made. Where the relevant listing applicant is sufficiently representative of an industry, the SEHK can also consider revising the sector list in the New Economy definition outside of its annual review cycle (as proposed above).

Question 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.

Our Response:

We do not believe that the Main Board, being the premier board, will be significantly impacted by the introduction of the New Board and, indeed, its reputation and the quality of the companies seeking to list on it may be enhanced.

However, we have a genuine concern that the function and positioning of the New Board may somewhat overlap with the GEM board, depending on whether some of the ring-fence features in the Concept Paper will be adopted. As previously mentioned in our responses to Questions 1 and 2, it will be important to ensure that proper consideration is given to the positioning of GEM to avoid the issues faced by GEM during 2000 onwards when its popularity decreased and it struggled to define its identity.

Question 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.

Our Response:

As envisaged in the Concept Paper, the listing application process and the eligibility requirements for a New Board PRO listing applicant differ significantly from that for a Main Board or GEM listing applicant or even a New Board Premium applicant. Therefore, in our view, a fresh listing application process should be required for any migration of a New Board PRO issuer to list on the Main Board, GEM or New Board Premium. In particular, we consider that:

- Sponsor(s) should be appointed to conduct due diligence on the applicant and to verify the New Board PRO issuer's compliance with the listing criteria for the board to which it is proposing to migrate.
- Extra due diligence should be performed on the compliance history of the New Board PRO issuer. Where the migration involves a further offering of shares, analysis of previous use of proceeds and any future planned use of proceeds should also be performed.
- A new listing application process should be commenced in accordance with the procedures applicable to the board to which New Board PRO issuer is proposing to migrate. We would envisage that this would require the full set of listing application documents being prepared and submitted to the SEHK for vetting.

Whilst a New Board PRO issuer would have already been listed on the New Board PRO by the time it seeks to migrate to Main Board or GEM and would have complied with the minimum public float requirement, we nonetheless think that a public offering should be required at the time when it applies to be listed on the Main Board, GEM or New Board Premium. This will mitigate the risk of the New Board Pro being used as a mechanism to circumvent the public offer requirements of the other boards.

Question 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.

Our Response:

We agree that different sets of listing criteria should apply to issuers on the New Board PRO and issuers on New Board Premium given the different risk profiles and investors base of the two sub-boards.

Question 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.

Our Response:

If the SEHK proceeds to implement the New Board without imposing the sector specific New Economy requirements, we do not consider that the SEHK should have the right to refuse a listing application for the New Board PRO where the applicant could meet the eligibility requirements of one of the other boards. The choice of board should sit with the listing applicant.

However, if sector segregation is pursued in the final structure of the New Board, the New Board PRO would mainly be a target board for pre-profit New Economy companies with strong growth potential. Such characteristics should then be the distinctive factor which sets the New Board PRO apart from the other Hong Kong boards. In such circumstances, we would agree that the SEHK should retain discretion to veto a New Board PRO listing application if it believes that the applicant could meet the eligibility requirements of the New Board Premium, GEM or Main Board.

Question 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.

Our Response:

The SEHK has proposed that a New Board PRO applicant must have a minimum of 100 investors at the time of listing and a minimum public float at listing of 25%. These minimum investor headcount and public float requirements are identical to the current requirements for GEM. We agree that liquidity should be an important policy objective for New Board PRO. That said, for the reasons set out below, we believe it would be beneficial for the SEHK to consider this requirement further, in particular with respect to New Board PRO:

- Due to the intrinsic risk profile of a New Board PRO listing applicants (notably the lack of proven trading record), the investor base for such companies is likely to be more restricted than that for a company seeking a Main Board or GEM (or even a New Board Premium) listing. . We consider that the proposed investor headcount threshold will be challenging because of concerns over the genuine investor demand for new start-up companies, being the target issuers of New Board PRO. Having a 100 investor headcount requirement could have the effect of significantly reducing the success rate of New Board PRO listings.
- As the SEHK has pointed out in the Concept Paper, post-listing volatility and the associated risks are likely to be less of a concern in a professionals-only market as proposed for New Board PRO. We think the regulatory approach to liquidity of securities for New Board PRO should be distinguishable from that applicable to GEM (which allows access by retail investors who are more vulnerable to price volatility).

We would also suggest that the SEHK consider whether the Placing Guidelines in Appendix 6 of the Main Board Listing Rules should also apply to IPOs by New Board Premium and New Board PRO listing applicants. We would suggest that the SEHK may consider the approach adopted by the Financial Industry Regulatory Authority of the United States to allow placing of shares to existing shareholders, directors, connected persons under certain circumstances, in particular in IPOs by New Board PRO listing applicants.

Question 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.

Our Response:

We agree that class actions can be a useful and powerful tool for shareholders and investors to protect their own interests and can deter listed companies from infringing the interests and rights of minority shareholders. However, whether shareholder protection standards can be lowered or exempted for companies listed on a Recognized US Exchange who apply for listing on the New Board depends on whether shareholders and investors based in Hong Kong can readily access and avail themselves of class actions and other US-style investor protection mechanisms to protect their interests. This question should be carefully considered by the SEHK taking appropriate local counsel's advice. In particular:

- In the case of a Hong Kong based investor trading shares on the New Board, the sale or acquisition of shares is likely to take place in Hong Kong. The United States may not have the strongest nexus with the case in question. In respect of a class action brought by Hong Kong based investors, legal analysis should be performed to determine (i) whether US courts will, as a general matter, accept cases brought by Hong Kong based investors; and (ii) where jurisdiction is challenged by the defendant, whether the US courts are likely to decline jurisdiction (for example, on the ground that the case has a stronger nexus with Hong Kong rather than the US).
- Hong Kong based investors may face much higher litigation costs and logistical difficulties if they want to pursue proceedings in the US courts, potentially making class actions and other US-style protection options less effective in terms of protecting the interests and rights of Hong Kong-based investors.
- The SEHK may also wish to consider whether ancillary services (for example, litigation counsel who are experienced in class actions) are readily accessible to Hong Kong-based investors at reasonable costs.
- Hong Kong does not yet have a "class action" culture. Hong Kong local investors may not necessarily be familiar with shareholder protection mechanics that are not normally available in Hong Kong. Measures should be put in place to raise such awareness. As a minimum, investors in a Hong Kong IPO of a company listed on a Recognized US Exchange should be fully informed of the shareholder protection options (such as class actions) that are available to them (for example, by way of prominent disclosure in the listing document or offering circular).
- Regard must also be given as to whether Hong Kong-based investors would be successful in enforcing a favourable judgment handed down by a US court (especially where the assets of such company are located outside the US.). In particular, consideration should be given as to whether Hong Kong courts, if asked to enforce a US judgment, would decline to enforce such judgment based on public policy grounds (for example where the award included punitive damages).

Question 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.

Our Response:

Given the New Board PRO targets professional investors, we agree with the proposed "lighter touch" suitability assessment. For example, during the early stages of development, a start-up business could rely on one or only a few key suppliers or customers. The SEHK may wish to adopt a more relaxed approach in terms of reliance or concentration risk when evaluating the suitability of such listing applicants. Similarly, the SEHK may consider relaxing its approach to a listing applicant's reliance on a controlling shareholder which is more common in early-stage companies.

The SEHK may also consider adopting a disclosure-based approach to certain suitability concerns so that issues can be addressed through disclosure rather than this impacting the ability to list. This approach could be used to cater for non-compliance instances or concerns around the business or business model.

Question 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.

Our Response:

Given the risk profile of targeted New Board PRO issuers, we agree that only professional investors should be allowed to participate in any investment in New Board PRO issuers.

We are also of the view that the "professional investor" definition in the Securities and Futures Ordinance should be adopted for this purpose. The placing agent should also be required to follow the latest professional investor regime imposed by the Securities and Futures Ordinance.

We would suggest that the SEHK further clarifies as to whether retail investors are allowed to invest in New Board PRO companies through secondary trading. If retail investors are restricted from participating in the investment in New Board PRO companies, the SEHK may consider having the offering circular restricted to professional investors only, similar to the approach in the bond market. If retail investors are allowed to invest in the secondary market, we presume that the offering circular will also be made available to the retail investors. The SEHK may also need to consider the responsibilities and duties of care of the issuer and of the underwriters for the disclosure in the offering circulars to retail investors who purchase shares in close proximity in time with the IPO of any New Board PRO company.

Question 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?

Please give reasons for your views.

Our Response:

We are of the view that there needs to be pre-screening of investor's eligibility to participate in the subscription and trading of securities issued by a New Board PRO issuer. This will help to ensure that retail investors do not inadvertently take on risks which are not suitable for their profile. Exchange Participants are best placed to police the investor eligibility requirements given their proximate relationship with the investors.

Therefore, we support the proposal that special measures should be imposed on Exchange Participants to ensure investors in New Board PRO-listed securities meet the eligibility criteria for both initial placings and secondary trading.

Question 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.

Our Response:

The existing sponsor regime should apply to New Board PRO listing

Sponsors currently play a key role in the listing process of an applicant seeking to list on the SEHK. The existing rules and regulations in Hong Kong impose stringent requirements on sponsor firms and individuals who are licensed to carry out sponsor work (notably paragraph 17 of the Code of Conduct, the Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers and Chapter 3A of the Listing Rules) than firms and individuals who are licensed to conduct Type 6 regulated activities. Sponsor firms are likely to have gained much more exposure and practical experience in listing/IPO work than financial advisors who are not otherwise involved in such work. For the reasons set out below, we are of the view that the current sponsor regime should apply to New Board PRO listings:

- **Risk profile and governance structure of New Board PRO issuers:** New Board PRO issuers are not required to have a proven financial trading record in order to be eligible to list on the New Board. These listing applicants are likely to pose higher risks. Further, New Board PRO issuers are to be permitted to have, and are likely to have, unconventional governance structures which may be complicated and difficult to understand. It is, therefore, important to have appropriately qualified and experienced professionals involved in the listing application process to identify the relevant risks and ensure that such risks and any unconventional governance structures are properly brought to the attention of the investors by way of disclosure in the listing document or offering circular. We believe that sponsor firms and their licensed individuals are more qualified and experienced than financial advisors to flag and address the higher risks involved in New Board PRO listings and make sense of any unconventional governance structures adopted.
- **Market quality concerns:** The entrance criteria for New Board PRO applicants are much lower compared with those for Main Board, GEM and New Board Premium applicants. There is a real risk that New Board PRO, if not properly regulated, will be abused by low-quality and non-compliant companies and consequently the market quality of New Board PRO will be adversely affected. Sponsor firms have been acting as gatekeepers for Hong Kong's capital markets for a very long time. We believe that sponsor firms are best positioned to help screen listing applicants as a front line quality controller and thus help maintain the quality and integrity of New Board PRO. We believe that the sponsor regime should be applied for at least the first three years after launching the New Board PRO to ensure its smooth running and operation before any decision is made to switch to an alternate approach of appointing Financial Advisers on such listings.
- **Guidance to issuers and communication with SEHK:** We expect that New Board PRO issuers will need a fair amount of guidance from professionals familiar with the Hong Kong listing regime to help them navigate the listing application process, especially in the early stages following the launch of New Board PRO. Similarly, we also expect that the listing application process for New Board PRO issuers will require a fair amount of communication with the SEHK due to the risk profile and governance structure of the listing applicants. We are of the view that sponsor firms are better placed to assume such roles, to provide guidance to issuers and to communicate with the SEHK. Sponsor firms are likely to possess a greater amount of hands-on experience of similar issues to those likely to be

faced by New Board PRO listing applicants by virtue of their previous IPO deal execution experience.

- **Availability of existing Listing Rule regime:** The existing Listing Rules already contain a well-established framework for sponsors to carry out their sponsor work in a listing. For example, the issuer's obligations to assist the sponsors are prominently set out in Rule 3A.05 of the Listing Rules. If the sponsor regime continues to apply for New Board PRO listing applications, these provisions can be readily applied to a New Board PRO listing application without the need to create a new set of rules for financial advisors.

Due diligence requirements applicable to New Board PRO applicants

Whilst New Board PRO will only be open to professional investors, we would generally expect a broadly equivalent level of due diligence to be carried out to that required for Main Board listing applicants. It is important that regulators communicate clearly with the market as to the expectations on the coverage, depth and approach to due diligence before the New Board PRO is launched. We would suggest that the current due diligence standards contained in the Listing Rules (e.g. Practice Note 21) are modified for Main Board PRO applicants to reflect the early stage nature of such applicants. Certain aspects of PN21 due diligence may be less relevant and certain aspects will be even more important, depending on the stage of development of the relevant New Board Pro issuer. For example, we consider that, where a company has non-standard governance standards, there should be a requirement to carry out enhanced due diligence on the governance structure and the impact this will have for investors with corresponding disclosure in the listing document or offering circular. Similarly, greater emphasis may need to be put on the industry if it is a new industry that the market is not familiar with.

We consider that sponsors will be best placed to determine the areas requiring enhanced due diligence focus based on their experience and the specific nature of the business of the listing applicant.

We would also envisage that the SFC would make corresponding changes to the requirements in the Code of Conduct for use in the listings of New Board PRO issuers.

Question 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.

Our Response:

We consider that the Listing Committee has served the Hong Kong capital markets well in past decades. We think the role of the Listing Committee in supervising and approving listing applications for New Board Premium applicants should be similar to the role it currently assumes for Main Board applicants. We also consider that, for New Board PRO, delegated authority to the Listing Department to vet and approve listing applications is appropriate.

Question 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?

Please give reasons for your views.

Our Response:

If retail investors are allowed to participate in initial offerings or secondary trading of the securities issued by New Board PRO companies, we are of the view that the existing Prospectus regime should apply to New Board PRO listing applications.

If participation in initial offerings and secondary trading of New Board PRO securities is limited to professional investors, in principle, we agree that a slightly modified disclosure approach may be appropriate, further details of which are set out below.

Content requirement of the Listing Document or offering circular

We consider that the Listing Document or offering circular should comply with both the general disclosure requirement and the specific disclosure requirement set out below:

- General disclosure requirement: We agree that the Listing Document or offering circular of a New Board PRO issuer should contain all information that is necessary and sufficient to enable a professional investors to make an informed investment decision.
- Specific disclosure requirement: We also consider that the listing rules for New Board Pro should set out specific disclosure requirements (or, minimum disclosure requirements) for New Board PRO issuers to follow when preparing their Listing Document or offering circular. The current Appendix 1 Part A of the Listing Rules could be modified for use by New Board PRO issuers. We also consider that additional specific disclosures should be required for New Board PRO issuers reflecting the specific characteristics of such issuers. By way of example, WVR structure details (e.g. trigger event of conversion founder shares; voting ratio of different classes of shares) and more detailed industry-related information are suggested areas requiring enhanced disclosure.

Accuracy of the Listing Document or offering circular and associated liabilities

Hong Kong legislation (notably CWUMPO) currently provides the basis for investors to bring legal actions against an issuer, its directors and anyone who has authorized the issuance of a prospectus if the investor has suffered a loss/damage due to any untrue statement in a Prospectus. If New Board PRO issuers are not required to publish a Prospectus, this regime will not apply. The SEHK and the SFC may consider clarifying the liability regime that will apply in the event of a mis-statement in the Listing Document or offering circular, which, in our view, should be similar to the existing prospectus regime. We suggest that the regime should ensure that investors can seek redress when there is defective disclosure in the listing document and also be sufficiently powerful to deter an issuer and parties involved in the listing application process from preparing a listing document in a fraudulent or negligent manner.

Question 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.

Our Response:

Under the current proposal put forward by the SEHK, retail investors will be allowed to subscribe for and trade securities of a New Board Premium issuer. In order to ensure that the retail investor's interests are properly protected, we are of the view that the same level of continuous listing obligations as currently applies to Main Board issuers should be applied to New Board Premium issuers.

For New Board PRO issuers, if investor access is restricted to professional investors only, we are of the view that continuous listing obligations for such companies should be more "disclosure focused" and be relaxed in some areas for such issuers. For example, in the context of connected transactions, if the regime for reliance on a controlling shareholder is relaxed, we would expect New Board applicants to have a greater number of connected transactions. We would suggest that the thresholds to seek shareholder approval for these are relaxed, but the thresholds requiring disclosure are lowered so that investors are provided with greater information.

.Given the nature of the proposed New Board applicants, we would propose that certain ongoing disclosure requirements are tightened. For instance, we would suggest mandatory quarterly reporting, which will enable investors to have greater oversight of the performance of the company.

Question 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.

Our Response:

Please see our response to Question 19.

Question 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.

Our Response:

Please see our response to Question 19.

Question 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.

Our Response:

To the extent that retail investors are allowed to subscribe for shares of a New Board PRO or New Board Premium issuer through an initial offering or secondary trading, we are of the view that mandatory safeguards should be put in place rather than simply having a "disclosure only" regime. This is because:

- Companies with unconventional governance structures carry inherent risks which retail investors may not fully understand and appreciate even if they have been prominently advised and warned of such risks. We think some of the mandatory safeguards proposed in the Concept Paper are meaningful for the protection of retail investors.
- We do not think that a company's past compliance record accurately reflects the inherent risk profile of a company with unconventional governance features. Moreover, where a company listed on another major stock exchange is not subject to frequent audits, a "clean" public compliance record may not be representative of the company's actual compliance history.

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

Please give reasons for your views.

We consider that any proposals for suspending and delisting issuers on the New Board must take into account the impact this would have on minority shareholders. The SEHK must focus on the potential prejudice to minority shareholders when considering this.

Question 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.

As for our response to Question 20, we would encourage the SEHK to ensure that the interests of minority shareholders are protected when determining the appropriate performance criteria for New Board-listed companies and consequences of failing to meet those standards.

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

Please give reasons for your views.

We do not consider that a lighter touch to enforcement should be implemented for New Board-listed companies which should be treated on par with Main Board and GEM companies. This will be particularly important if concessions are made to the listing and ongoing compliance requirements for New Board companies. Where such companies are required to meet lesser requirements, it is particularly important that they are held to account for failings to meet those reduced standards.