

## 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.

Please refer to Appendix I.

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.

Please refer to Appendix I.

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.

Please refer to Appendices I and II.

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.

Please refer to Appendix II.

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.

As we take the view that the admission requirements of GEM and the Main Board in force from time to time should generally apply to the Restricted Companies, we disagree with the absence of a fast-track migration mechanism and see no reason for a public offer requirement to be imposed.

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.

Please refer to Appendix II.

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 do not support segregation of the Restricted Companies (as defined in Appendix I). However, we have no objection to the Exchange reserving its right.

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.

Please refer to Appendix II.

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.

As the Concept Paper does not quantify the cost burden of demonstrating equivalent shareholder protection and has not shown that it would be unduly onerous, we take the preliminary view that all issuers should be required to do so.

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.

Please refer to Appendix II.

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.

Please refer to Appendix I.

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.

Please refer to Appendix II.

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.

As we support the integration of the Restricted Companies (as defined in Appendix I) on GEM and the Main Board, the existing sponsor regime should apply.

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.

As we support the integration of the Restricted Companies (as defined in Appendix I) on GEM and the Main Board, the Listing Committee should approve, and the Listing Department should vet, all listing applicants.

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.

Please refer to Appendix II.

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.

Please refer to Appendix II.

17. For companies that list on the New Board with a WVR structure, should the Exchange take a disclosure-based approach as described in paragraph 153 of this Concept Paper? Should this approach apply to both segments of the New Board?

Please give reasons for your views.

We agree that companies with a WVR structure should be subject to additional disclosure requirements. As discussed in Appendix I, we take the view that disclosure, amongst other things, protects investors.

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 acknowledge the entrenchment and expropriation risks associated with WVR structures as set out on p. 24 of the Concept Paper. As we propose in Appendix I that both retail and professional investors should be allowed to trade in companies with a WVR structure, we agree that the Exchange should impose mandatory safeguards against such risks.

Amongst others, we consider that the maximum voting differential should be fixed at listing; and the voting rights of shareholders at listing should not be reduced by further issuance of WVR shares. As we support the integration of the Restricted Companies on GEM and the Main Board, we suggest that companies with a WVR structure should be easily identified by their stock codes, such as through demarcation with an asterisk.

We would not support a mandatory requirement of a sunset clause, as it would be difficult, if not possible, to determine an appropriate duration to support a company's long term goals.

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.

As we propose in Appendix I that both retail and professional investors should be allowed to trade in companies with a WVR structure, the Exchange should impose mandatory safeguards against entrenchment and expropriation risks.

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

Please give reasons for your views.

As we support the integration of the Restricted Companies (as defined in Appendix I) on GEM and the Main Board, the suspension and delisting regime for GEM and the Main Board in force from time to time should apply.

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.

No, there is no reason to impose the additional burden.

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

☐ Yes

☒ No

Please give reasons for your views.

In view of the proposed private market and our proposal in Appendix I that both retail and professional investors should be allowed to trade in the Restricted Companies, an even “lighter touch” enforcement regime should not apply.

- End -





## Appendix I

***Whether Hong Kong needs to seek to attract a more diverse range of companies and, in particular, those from New Economy industries to list here; and whether the New Board should be specifically restricted to particular industries***

As stated on pages 12 and 13 of the Concept Paper, (i) we are dependent on Mainland listings but face increasing competition from Mainland and U.S. listing venues; and (ii) we have low exposure to higher growth sectors, which could lower investor interest, valuations and appeal to prospective new issuers.

Our current listing regime serves certain groups of companies but not (i) companies with a “centre of gravity” in Greater China seeking a secondary listing in Hong Kong; (ii) pre-profit companies (“**Mainland Companies**”); and (iii) companies with non-standard governance features (the “**Restricted Companies**”).

As some of the Restricted Companies are Mainland Companies and/or higher growth, we agree that attracting such companies is an important objective to be actively pursued. This would address the aforementioned concerns.

While the Concept Paper covers the Restricted Companies, it is focused on New Economy companies. P. 28 of the Concept Paper states that the New Board is intended to fill identified gaps in Hong Kong’s listing framework, so that the needs of New Economy companies can be accommodated. The gaps, being the Restricted Companies, are much wider. We also note that the Concept Paper refers to the SFC’s statement dated 11 April 2017 on its approach to certain project companies seeking a listing in Hong Kong and the exercise of powers under the Securities and Futures (Stock Market Listing) Rules and concludes, therefore, with regard to international companies, the Concept Paper only focuses on those that are also New Economy companies, when there are international companies that are neither infrastructure project companies nor New Economy companies.

However, for our capital markets to be effective and sustainable, we must aim to accommodate and attract as many companies as are looking to raise capital. On principle, we should seek to provide companies from all sectors and at any developmental stage with an even playing field through fair and equal access to our markets.

Any wholesale deprivation of groups or classes of companies from access to our markets materially and adversely impacts our market development. For instance, our ban on companies with non-standard governance features has stifled investor expertise in technology, which in turn, has discouraged technology companies from listing. As such, restrictions such as those on the Excluded Companies should require compelling justification and not be based, as the restriction against Mainland Companies seeking a secondary listing in Hong Kong was, on the Exchange’s excessive suspicions of the motives or intentions of listing applicants. As stated on p. 17 of the Concept Paper, since the restriction was applied, several Mainland

Companies have listed on overseas markets for reasons other than “regulatory arbitrage”. By implication, the Exchange concedes that such companies have been prevented from pursuing secondary listings in Hong Kong for legitimate reasons.

In particular, we do not support the restriction of the New Board, or any of our boards, to New Economy companies. While New Economy companies are currently the face of non-standard governance structures, Russell 3000 Index companies in a wide range of industries have multi-class voting structures, including media companies such as CBS, financial service companies such as Berkshire Hathaway; consumer product companies such as Under Armour; and energy companies such as PBF Energy, Inc. There is no reason to exclude them. From a practical standpoint, the term “New Economy” is short-sighted. New industries will emerge and may displace current New Economy industries as the higher growth stocks. If the proposed New Board admits the latest fad alongside the fads of yesterday, it would house a mixed bag of industries with different needs and appeal to investors. If it does not, it will stagnate.

Opening up our markets to all companies will afford us the greatest flexibility and competitiveness going forward. If we continue to reform them reactively, we will lag behind. Case in point: as we belatedly court the Restricted Companies, the Financial Conduct Authority of the United Kingdom (“FCA”) reports in its discussion paper “Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape” dated February 2017 (“FCA Discussion Paper”) that according to stakeholders, secondary listings are declining as part of a long-term international trend, as it becomes increasingly easy for investors in most large financial centres to hold and trade shares in overseas companies.

***Whether the New Board would have a positive impact on Hong Kong’s ability to attract additional New Economy issuers to our market; whether the targeted companies should be segregated onto a New Board, rather than being included on the Main Board or GEM; and whether the New Board PRO should be restricted to professional investors only***

We disagree that the New Board would have a positive impact on our ability to attract additional New Economy issuers to our market. We refer to the FCA Discussion Paper, which discusses, amongst other things, the effectiveness of the standard listing regime:

*A number of venture capital firms we spoke to expressed the view that they would not choose to list a company on the standard segment because of the perceived investor preference for premium listed securities...*

*Stakeholders generally regard a standard listing as an unattractive option for a listing because it lacks clarity. Its purpose and obligations are unclear, while the name implies second best, according to our stakeholder feedback. Advisors often tell companies not to pursue this option.*

While the Exchange’s objective to attract New Economy companies is clear, the purpose and obligations of the proposed New Board are anything but clear to potential listing

applicants and ourselves as market practitioners. If the Exchange wishes to attract New Economy companies, we should not offer them “second best”.

There is simply no need to segregate the targeted companies onto a New Board. The Exchange proposes segregation for the following reasons:

- (i) to preserve and enhance the Main Board’s position as a board for the largest companies that can meet the highest standards;
- (ii) to meet the SFC’s regulatory expectations;
- (iii) to allow “passive” institutional investors greater flexibility as to their investor strategies; and
- (iv) to calibrate investor protection based on the level of perceived risk in each segment.

While we cannot speak to the SFC’s regulatory expectations, we consider that the Main Board’s position is well-protected. The Exchange is already equipped to separate the wheat from the chaff in vetting listing applicants. Consider the requirement of suitability, which since the issuance of GL68-13A, has proven to be a useful regulatory tool against shell companies. In fact, the principle that underpins suitability is that a regulator should not take a “one size fits all” approach to listing applicants. Indeed, Rule 2.06 of the Main Board Listing Rules and Rule 2.09 of the GEM Listing Rules states that suitability for listing depends on many factors, and that the Exchange retains a discretion to accept or reject applications.

As acknowledged on p. 27 of the Concept Paper, index inclusion criteria are determined by the index providers and, as such, could change in the future. We do not believe that the Exchange needs to intervene on behalf of institutional investors. On 26 July 2017, FTSE Russell announced that it plans to exclude companies with low, or no, voting rights from its indices. The announcement followed FTSE Russell’s own consultation on the matter. On 31 July 2017, S&P Dow Jones announced that, companies with multiple share classes will no longer be eligible for inclusion in the indices. Moreover, the Exchange should not conflate investor protection with affirmative action to protect institutional investing strategies.

We disagree that companies that would be listed on the New Board PRO should be restricted to professional investors. Transparency, disclosure and appropriate safeguards would provide adequate protection to retail investors. For pre-profit companies, this would not be ground-breaking. Exploration mineral companies are eligible for listing on the Main Board under Chapter 18 of the Main Board Listing Rules (“**Chapter 18**”). For our discussion on safeguards applicable to companies with non-standard governance features, please refer to our response to question 18. As it becomes increasingly easy for investors to hold and trade shares in overseas companies (as mentioned above), the Exchange should bear in mind that we are competing against other exchanges not only for listing applicants but retail investors as well. If we stop them from sharing in the wealth, they will take their money elsewhere. From a public policy perspective, as noted in the NASDAQ’s blueprint “The Promise of Market Reform:

Reigniting America's Economic Engine" dated May 2017 ("NASDAQ Blueprint"), a greater divide between the wealthiest and everyone else could result.

Further, on p. 20 of the Concept Paper, the Exchange asserts that Hong Kong has higher retail investor participation than the U.S. However, it does not provide the percentage of such participation for the U.S. based on market turnover for comparison purposes. By equity value held, retail investors comprise 37% of the U.S. market. By market turnover, our retail investor participation is 27% and declining.

An effective market is and must be an attractive market – they go hand in hand. While we are encouraged that the Exchange is interested in its own business development, it should be as interested in that of the companies that it serves. Accommodating the Restricted Companies is merely the precursor to attracting them; we must cater to their business needs and provide them with the full benefits of listing.

Competition for New Economy companies in particular is against private sources of capital as well as other exchanges. The FCA Discussion Paper expresses concern that companies which would have once access the primary capital markets at an earlier stage in their development are now staying private for longer. Similarly, the NASDAQ Blueprint reports that a growing number of companies have been choosing to remain private, and that some public companies are going private, posing an existential threat to public markets.

To compete, other exchanges have taken business-friendly approaches, as must we. NASDAQ is adapting their regulatory framework to alleviate challenges faced by potential listing applicants. It will offer, amongst other things, flexible quarterly reporting and disclosure relief. It will also promote long-termism – the focus on long-term goals. The FCA Discussion Paper discusses the provision of scale-up capital and patient capital to support the growth of science and technology companies. The London Stock Exchange already has a "High Growth Segment" with growth-based admission requirements for medium and large high growth companies that aspire to a premium listing on its main market.

Moreover, segregation would exacerbate the fragmented liquidity and price volatility, which have undermined confidence in our markets, GEM in particular. With GEM as a cautionary tale and these very real fears in mind, we take the view that the interests of both retail and professional investors would be better served by liquidity consolidation. NASDAQ recognises, and we agree, that such reforms would improve the trading experience for small and medium growth companies, and investors in these companies. From the NASDAQ Blueprint:

*This liquidity dilemma stems from a long-term trend towards fragmentation, where liquidity has spread across an increasing number of trading venues... As a result, every venue has a very thin crust of liquidity for small and medium growth companies... When the liquidity crust is broken, the order can quickly impact the*

*market's ability to efficiently absorb it, resulting in a poor experience for the investor who placed the order.*

*The Exchange, in considering any reforms, should aim to ensure a healthy, open and efficient market that benefits all stakeholders as opposed to creating an inefficient one and paternalistically shielding retail investors from it. Segregate for the sake of investor protection, and there will be few listed issuers and even fewer investors to protect. This would not be in the interests of Hong Kong and the stakeholders as a whole.*

## Appendix II

***If a New Board is adopted, whether it should be segmented into different segments according to the characteristics described in the Concept Paper (e.g. restriction to certain types of investor, financial eligibility etc.); and our views on the proposed roles of GEM and the Main Board in the context of the proposed overall listing framework***

*We do not support the adoption of a New Board for the reasons set out in Appendix I. GEM should continue to serve as a stepping stone to the Main Board, and the Restricted Companies should be listed on GEM or if they meet the financial criteria for admission (“Main Board Financial Criteria”), the Main Board.*

***Our views on the proposed financial and track record requirements that would apply to issuers on New Board PRO and New Board PREMIUM; whether we agree that the proposed admission criteria are appropriate in light of the targeted investors for each segment; and whether special measures should 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***

As we support the integration of the Restricted Companies on GEM and the Main Board, the admission requirements of GEM and the Main Board in force from time to time should generally apply. As such, we agree that Restricted Companies that wish to list on the Main Board should meet its financial and track record requirements. As for those that do not meet the Main Board Financial Criteria, we agree with the proposed minimum market capitalisation of HK\$200 million, or such minimum market capitalisation as in force for GEM from time to time, and propose that they should be subject to such track record requirements as in force for GEM from time to time.

However, *we agree that concessionary routes to listing on GEM or the Main Board could cater to the needs of, and be more appropriate for, pre-profit companies.* The FCA’s consultation paper “Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime” dated February 2017 (“**FCA Consultation Paper**”) states, and we agree, that:

*[The concessionary routes to premium listing on the London Stock Exchange for scientific research based companies and mineral companies] recognise that companies in these sectors have special attributes. In particular, they acknowledge that a three-year revenue-earning track record may say little about the value of a company, as investors typically use non-financial statement metrics to assess the issuer’s prospects.*

The FCA Consultation Paper proposes expanding the concessions to property companies. The Exchange should review on an on-going basis the attributes of pre-profit companies seeking to list in Hong Kong and prescribe *not less but more fitting* admission criteria for them. Chapter 18 (as defined in Appendix I) serves as a precedent. Such an approach would address the concern expressed on p. 23 of the Concept Paper that certain companies may take advantage of the pre-profit entry requirements, which may lower the actual or perceived quality of the relevant board.

As discussed in Appendix I, and in view of the general application of the admission requirements of GEM and the Main Board in force from time to time proposed above, we take the view that both retail and professional investors should be able to trade in the Restricted Companies. Further, from a practical standpoint, we do not consider that it would be feasible or desirable to impose “special measures” on Exchange Participants to ensure that retail investors do not participate in the initial placing and secondary trading of the Restricted Companies. The Exchange does not specify in the Concept Paper the “special measures” that it has in mind.

***Whether we should apply a “lighter touch” suitability assessment to new applicants to New Board PRO***

We are unclear as to what the Concept Paper means by a “lighter touch” suitability assessment. A listing applicant is either suitable, or it is not.

As discussed in Appendix I, the principle that underpins suitability is that a regulator should not take a “one size fits all” approach to listing applicants. Suitability is inherently an elastic concept. Much as the Exchange should prescribe not less but more fitting admission criteria for pre-profit companies, it should not give any company “a pass” but consider its suitability in light of its characteristics and circumstances as a whole.

***Our views on the proposed requirements for minimum public float and minimum number of investors at listing; and whether additional measures should be introduced to ensure sufficient liquidity in the trading of shares listed on New Board PRO***

As we support the integration of the Restricted Companies onto GEM or the Main Board, we consider that the requirements for minimum public float and minimum number of investors at listing for GEM and the Main Board in force from time to time should generally apply. As with concessionary routes to listing, appropriate concessions should be made giving due regard for the requirement of an open market – as discussed in Appendix I, we consider that liquidity is key to an effective and sustainable market. For instance, certain companies, in particular those at an earlier developmental stage, may require a transitional period to comply, for which the Exchange may consider offering a time-limited concession.

We note that under the AIM Rules for Companies, there is no specific numerical or percentage threshold for a sufficient free float. From the London Stock Exchange’s discussion paper “AIM Rules Review” dated July 2017, the London Stock Exchange considers a qualitative approach more meaningful and that, together with early discussions with nominated advisers, it strikes an appropriate balance between supporting liquidity in the secondary market and supporting innovation and emerging growth companies. Where concessions would be appropriate, we consider that the London Stock Exchange’s qualitative approach could be instructive and that timely and regular dialogue with the Exchange would provide market practitioners with greater clarity regarding compliance with the open market requirement.

***Whether we 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; and our views on the proposed continuous listing obligations for the New Board***

As we have proposed in Appendix I that both retail and professional investors should be allowed to trade in the Restricted Companies, a Prospectus should be produced.

As we support the integration of the Restricted Companies on GEM and the Main Board, we agree that companies meeting the Financial Requirements should comply with the continuous listing obligations for the Main Board in force from time to time.

We note from the NASDAQ Blueprint that NASDAQ will reduce the burden of corporate disclosure through, amongst other things, expanding classifications for disclosure relief, and the SEC should complete its “Disclosure Effectiveness Initiative” such that disclosure would be less onerous for companies and more meaningful to investors. We urge the Exchange to review whether our current disclosure requirements exceed what is necessary for retail investors to make an informed decision and similarly offer smaller companies disclosure relief.