



普頓資本有限公司  
PROTON CAPITAL LIMITED

18 August 2017

Hong Kong Exchanges and Clearing Limited  
12/F, One International Finance Centre  
1 Harbour View Street  
Central, Hong Kong

By email & by hand

Dear Sirs,

**Re: New Board Concept Paper**

We are a corporation licensed under the Securities and Futures Ordinance for Type 1 (dealing in securities) and Type 6 (advising on corporate finance) regulated activities. We refer to the Concept Paper on New Board (the "**Concept Paper**") and enclose herewith the duly completed Questionnaire with our additional comments and views stated in the Appendix for your attention.

We strongly oppose to the establishment of the New Board PRO and agree to the establishment of New Board Premium only.

The admission criteria of New Board PRO are even lower than GEM. Setting up the New Board PRO will only replicate the old and existing unresolved problems of GEM and in the worst case create further new problems. This will only make the existing Hong Kong stock market even more chaotic and intensify the existing problems, e.g. creating shell listed companies and selling of shell companies.

Based on the proposed regulatory considerations as set out in section 5 of the Concept Paper, New Board PRO companies would not be subject to Sponsor Regime and prospectus issuance requirement under CWUMPO whereby directors of New Board PRO companies need not bear any civil and potential criminal liability for misstatements in listing documents. This means that New Board PRO will be a board with minimum (if not none) regulation and will enjoy extraordinary preferential treatment / supreme status.

Regarding delisting, history proves that it is very difficult for the Exchange to delist listed companies in a timely manner OR according to the time limit as set in the GEM/ Main Board listing rules even though the Exchange always claims that it will do so.

GEM listing rules 9.15 provides that the Exchange can delist a company in 6 months. Since the establishment of GEM in 1999, the Exchange has never been able to delist a company in 6 months (not to say 18 months under Main Board Rules for the past 20 years). Companies can buy time by making use of the appeal mechanism with submission of lousy resumption proposals and, in a few cases, apply to the High Court for judicial review.

Based on the aforesaid, I can't see how the Exchange can delist New Board PRO / New Board PREMIUM listed companies in a timely manner as suggested.

Should you have any queries, please contact the undersigned at [REDACTED]

Yours faithfully,  
For and on behalf of  
PROTON CAPITAL LIMITED

[REDACTED]

Alvin H. Y. Leung  
Managing Director

## 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 the appendix.

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 the appendix.

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 the appendix.

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 the appendix.

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.

Please refer to the appendix.

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 the appendix.

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.

Please refer to the appendix.

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 the appendix.

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.

Please refer to the appendix.

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 the appendix.

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 the appendix.

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.

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.

Please refer to the appendix.

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.

Please refer to the appendix.

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 the appendix.

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 the appendix.

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.

Please refer to the appendix.

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.

Please refer to the appendix.

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.

Please refer to the appendix.

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

Please give reasons for your views.



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.

Please refer to the appendix.

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.

Please refer to the appendix.

- End -

## **APPENDIX**

### **to Questionnaire to the New Board Proposal (the "Proposal")**

<b>Question no.</b>	<b>Yes / No</b>	<b>Views / suggestions</b>
1.	-	<p>Strongly oppose to the proposed establishment of the New Board PRO. Creating the New Board will just make the existing Hong Kong stock market even more chaotic and intensify the existing problems, e.g. creating shell listed companies and selling of shell companies.</p>
2.	-	<p>The target companies should NOT be segregated onto a New Board.</p> <p>The target companies can be included on the Main Board or GEM and governed by the existing rules and regulations simply by adding an additional chapter to the Main Board / GEM Listing Rules. It is redundant and unduly onerous to create an additional board.</p>
3.	-	<p>No need.</p> <p>It is difficult to draw a fine line and clearly ascertain the risk appetites of different investors and implementation is difficult which will end up in creating more problems. For example, the GEM was created originally as a higher risk market and for those investors with high risk appetite. Up till now, any person on the street can and would buy stocks of GEM companies.</p>
4.	-	<p>The names of the GEM and Main Board tell their roles already.</p> <p>Growth enterprises, which include but not limited to enterprises in new industries with growth potential as well as small and medium sized companies, should go for the GEM.</p> <p>Mature and sizable companies should go for Main Board. Companies in new industries which size is big enough can be listed at Main Board. The existing MB Rule 8.05 (market capitalization test) already has relevant provisions to cater for these kind of companies.</p>

5.	-	Disagree to establish the New Board PRO. In the unfortunate event that New Board PRO is established, New Board PRO listed issuers should be subject to the same admission requirements (including but not limited to public offer requirement) of GEM / Main Board as if they are other normal GEM / Main Board new listing applicants. There shouldn't be any preferential treatment or relaxation of admission requirements to the New Board PRO listed issuers for transfer to other board of the HKEx.
6.	-	<p>DISAGREE to establish the New Board PRO and DISAGREE the proposed admission criteria for New Board PRO.</p> <p>If a New Board PRO company is not required to have any track record / minimum financial hurdles, there will not be any objective admission criteria for screening New Board PRO applicants. The New Board PRO will inherent and replicate all the existing problems of GEM and even worse, problems not exist in GEM now will arise in the New Board PRO. This will further intensify the existing chaotic situation of Hong Kong stock market especially that GEM has been widely criticized for being a factory for producing listed shell companies in the past few years.</p> <p>When the GEM was established in 1999, new applicants were not required to have any profit which resulted in numerous problems and forced the Exchange to change the GEM Rules to include the net positive cashflow requirement of at least HK\$20 million. The Exchange should learn from this painful history.</p> <p>Agree to establish the New Board PREMIUM. The new applicants to the New Board PREMIUM shall meet financial track requirements equivalent to those of the Main Board in force from time to time.</p>
7.	-	<p>Agree.</p> <p>The Exchange should reserve the right to refuse for applicants of New Board PREMIUM, GEM or Main Board as well if they could meet the eligibility requirements of a higher board.</p> <p>Applicants should be allowed to apply for the right board that they are eligible rather than taking a less risky approach of applying for lower tier board then opt for transfer to a higher board later.</p>

8.	-	<p>There should be a minimum of 300 professional investors.</p> <p>Actually it appears to us that this proposal of setting up New Board PRO is just a replicate of the GEM when it was firstly introduced in 1999. If the Exchange insists to introduce the New Board PRO, the Exchange will just replicate all of the old and existing problems of GEM. This is going to be a non-starter.</p>
9.	-	<p>Disagree.</p> <p>Hong Kong's law system is different from the US and there's no class action right in Hong Kong. It will be very costly and difficult for Hong Kong investors to protect their rights overseas. The Exchange should be the frontier to ensure shareholders' rights are protected for overseas companies listed in Hong Kong. Companies failing to demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong should NOT be granted listing approval in any circumstances.</p> <p>Shareholders protection is importance to Hong Kong securities market.</p>
10.	-	Disagree. Please refer to replies to questions 6 and 8.
11.	-	<p>There is a Professional Investor Ordinance in Hong Kong. However, there's no guarantee that a professional investor is still a professional investor places order to buy or sell the listed shares of New Board PRO company. In reality, many professional won't invest in GEM listed companies needless to say the New Board PRO listed company. Also, each order of a corporate professional investor is around US\$2 million to US\$3 million. Given the proposed size / market capitalization of a New Board PRO company, which is rather very small, the shares of New Board PRO company would not be able to satisfy one order of a corporate professional investor.</p> <p>In our view, the proposed New Board PRO is a non-starter.</p>
12.	-	-

13.	-	Disagree. The existing sponsor regime is established after years of development and under the regulation of the SFC. Sponsor regime as well prospectus requirement should be applied to the New Board PRO. Waiver of prospectus requirement means that directors of New Board PRO companies need not bear any civil and potential criminal liability for misstatements in listing documents. New Board PRO will be a board with minimum (if not none) regulation and will enjoy extraordinary preferential treatment / supreme status.
14.	-	Based on the proposed regulatory considerations as set out in section 5 of the Concept Paper, New Board PRO companies would not be subject to Sponsor Regime and prospectus issuance requirement under CWUMPO whereby directors of New Board PRO companies need not bear any civil and potential criminal liability for misstatements in listing documents. This means that New Board PRO will be a board with minimum (if not none) regulation and will enjoy extraordinary preferential treatment / supreme status. We don't see the Listing Committee can have any role in any segment of the New Board.
15.	No	<p>The Exchange's proposal is against the laws of Hong Kong.</p> <p>Any document offering shares to 50 persons or more should be registered as a prospectus otherwise it will violate the Hong Kong's Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32).</p> <p>As it is impossible to control the circulation of the listing document to less than 50 persons (especially that a recipient may forward the document to another person by a click via computer), it is a MUST for the listing document to be issued as a prospectus.</p>
16.	-	DISAGREE to apply different standards to different segments.
17.	-	additional requirement, such as sun set provision, should be added to the listing of companies having WVR structure in any board of the Exchange in Hong Kong.
18.	-	Yes

19.	-	Other measures such as corporate governance provisions, extension of liabilities of directors, quarterly reporting should be added.
20. and 21.	-	<p>Should follow the prevailing GEM rules from time to time on suspension and delisting.</p> <p>Regarding delisting, history proves that it is very difficult for the Exchange to delist listed companies in a timely manner OR according to the time limit as set in the GEM/ Main Board listing rules even though the Exchange always claims that it will do so.</p> <p>GEM listing rules 9.15 provides that the Exchange can delist a company in 6 months. Since the establishment of GEM in 1999, the Exchange has never been able to delist a company in 6 months (not to say 18 months under Main Board Rules for the past 20 years). Companies can buy time by making use of the appeal mechanism with submission of lousy resumption proposals and, in a few cases, apply to the High Court for judicial review.</p> <p>Based on the aforesaid, we can't see how the Exchange can delist New Board PRO / New Board PREMIUM listed companies in a timely manner as suggested.</p>
21.	-	Agree only to set up New Board Premium. So, quantitative performance must be set up and this should not be too difficult for companies like Alibaba to meet certain quantitative measures.
22.	No	Disagree, New Board listed companies should be subject to the same enforcement regime as in the case of GEM and Main Board, and of course, subject to the requirements of SFO.