



By email < response@hkex.cm.hk > and by post

18 August 2017

Our Ref.: C/CFC, M112691

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

Dear Sirs,

**Re: (i) New Board Concept Paper ("Concept Paper")
(ii) Consultation Paper on Review of the Growth Enterprise Market (GEM) and
Changes to the GEM and Main Board Listing Rules ("Consultation Paper")**

The Hong Kong Institute of Certified Public Accountants ("the Institute") welcomes the opportunity to provide comments on the subject papers in relation to capital market enhancements. The Concept Paper sets out proposals for the establishment of a New Board to open Hong Kong's capital markets to a broader range of issuers, while the Consultation Paper proposes to reposition GEM as a stand-alone board to serve small to medium-sized companies and to amend Listing Rules to address concerns on the quality and performance of GEM new listing applicants and listed issuers.

The Institute supports that HKEX should continuously review Hong Kong's listing regime and identify areas where the current regime could be strengthened and expanded in order to meet the evolving needs of investors and issuers and enhance Hong Kong's competitiveness as a global capital centre.

"New Economy" industries

The Institute supports that HKEX should review and, if appropriate, expand its listing framework so as to attract a more diverse range of companies to come to list in Hong Kong. While the Institute has no objection, in principle, to the establishment of a New Board to attract potential issuers which do not fit into the current listing regime, we have reservations on the proposal set out in the Concept Paper.

The proposed New Board is intended for "New Economy" industries but there is no generally accepted definition of New Economy¹.

We note that examples of "New Economy" industries are provided in the Concept Paper for demonstration but they need to be further clarified. For example, "Internet & Direct Market Retail" appears to relate to a new mode of operation by the retail industry, while "Software and Technology Hardware" appears to relate to new and innovative products.

¹ "New Economy", as defined under OECD Glossary of Statistical terms, describes aspects or sectors of an economy that are producing or intensely using innovative or new technologies. This relatively new concept applies particularly to industries where people depend more and more on computers, telecommunications and the Internet to produce, sell and distribute goods and services.



In view of the unclear scope, it could be argued that financial services industries such as banking and insurance industries, which continuously develop new products and services and apply new technologies in their operations, would also qualify as "New Economy" industries.

This "New Economy" concept, even if exists, is an evolving concept which can potentially embrace all new industries when technology is constantly being improved and/or any industry that use new technologies to partly or wholly produce, sell or distribute their goods and services. In our opinion, it is impractical to restrict the New Board to any particular industries and any attempt to draw a line will be arbitrary. Consequently, the New Board will simply be for companies that fail to satisfy existing listing requirements.

Companies with non-standard governance structure

--- We would draw attention to the Institute's position expressed in its response to the HKEX consultation on weighted voting rights ("WVR") submitted in November 2014 ("WVR submission", attached at Appendix 1). The Institute has no objection, in principle, to HKEX exploring the feasibility of permitting companies with different voting right structures to be listed in Hong Kong, but changes should not be made on a piecemeal basis without a holistic review of the implications of the WVR on investor protection. We reiterate our recommendations in the WVR submission for introducing wider changes to the corporate governance and regulatory framework in Hong Kong to maintain appropriate investor protection, and for educating the market and investors on the non-standard governance structure and the associated risks.

We maintain our view that companies with WVR structures would need to explain and justify the adoption of a WVR structure and have effective safeguards to protect the interests of ordinary shareholders before being permitted to be listed. Consideration should be given to impose restrictions or conditions on WVR structure that take into account the circumstances of each company to avoid abuses of WVR, such as:

- restrictions on the types of persons that can hold WVR
- restrictions on transfer of WVR to third parties
- requirements to impose a sunset clause on WVR structure.

The basic principle is to avoid abuse of the use of dual/ multiple class share structure to the disadvantage of other shareholders. The Institute considers that investor protection, which is central to Hong Kong's high regulatory standards and the core value of Hong Kong's securities market, should not be compromised.

New Board PRO and New Board PREMIUM

It is proposed in the Concept Paper that New Board PRO is targeted at earlier stage companies that do not meet the financial or track record criteria for GEM or the Main Board. New Board PREMIUM is targeted at companies that meet the existing financial and track record requirements of the Main Board, but which are currently ineligible to list in Hong Kong because they have non-standard governance structures.

We note that the proposed admission financial requirements, the vetting and approval process of new listing applicants and the continuous listing and corporate governance obligations of New Board PREMIUM issuers would be same as the Main Board, and,



this segment is open to both retail and professional investors. As such, it appears that there is little point in creating a New Board PREMIUM to accommodate companies with non-standard governance structures (e.g., WVR). Shares that carry different voting rights can be differentiated from other classes through use of different stock code and stock short names.

Given the above, we consider that there is no need for a separate New Board PREMIUM, and the New Board could simply be a listing venue for pre-profit/ early stage companies that do not meet the existing financial or track record eligibility requirements of the Main Board or GEM and for professional investors only (i.e., the New Board PRO). This would make the proposed listing framework, comprising three boards – New Board, GEM and Main Board, more distinctive and easier to understand. The New Board will be for companies which cannot fit into the current listing framework, while GEM will be re-positioned as a board for small to medium-sized companies and the Main Board for bigger-sized companies.

Given that a New Board PRO issuer would not involve an open offer to the public and only professional investors are eligible to participate, we consider that it is acceptable to adopt a light touch approach on the vetting process of New Board PRO applications.

Instead of applying the sponsor regime, it is acceptable that an applicant to list on New Board PRO would appoint a Financial Adviser, who would exercise its own professional judgement as to what extent of investigations and due diligence work are appropriate for the applicant.

Although it may not be necessary for a New Board PRO applicant to produce a prospectus-standard listing document, HKEX should have rules to set out certain specific items of information to be contained in the listing document, in particular the relevant financial information about the applicant and the level of due diligence work and assurance expected to be provided by certified public accountants on such information.

We do not have objection to the listing applications for the New Board PRO be vetted and approved by the Listing Department under delegated authority from the Listing Committee. Nevertheless, we recommend that there should be a mechanism for the Listing Department to regularly report back to the Listing Committee and seek Listing Committee's view whenever necessary.

In order to maintain the standard and reputation of the Hong Kong capital market, in particular from the investor protection perspective, we consider that applicants for listing on the New Board PRO should demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong, irrespective of their place of incorporation, except those apply for a secondary listing on New Board PRO and can demonstrate to the satisfaction of the Listing Department, or the Listing Committee, that they are unable to do so due to the restrictions and regulations of the exchange that they are primary listed.

Segmented approach

While there are merits to adopt a segmented approach with multiple listing boards as a means to cater for the different needs of different types of issuers and different risk appetite of different investors, we consider that the characteristics and the scope of each of the boards should be clearly delineated to avoid confusion. In addition, we



suggest that HKEX should provide a clear roadmap and mechanism of how a listed issuer can migrate its listing from one board to another, when the characteristics of an issuer have changed due to growth and development. Such information would be important for the issuer to plan for its future corporate finance strategies and also crucial to the success of the segmented approach and the attractiveness of each board.

The Consultation Paper proposes that the migration or transfer of its listing from GEM to the Main Board be treated as a Main Board new listing applicant. We are concerned that the proposed re-positioning of GEM and removal of the streamlined transfer process from GEM to Main Board might discourage SME with ambitions and potential to grow from listing on GEM. Reduction in capital raising activities will lead to decrease in the volume of trading on GEM, thereby turning GEM into an inactive board.

In addition, should a New Economy company initially listed on the New Board PREMIUM be allowed to migrate to the Main Board when its non-standard governance features ended or the industry in which it engaged no longer be considered as a New Economy industry? If so, how could this be done? Would it be required to withdraw its listing from the New Board PREMIUM before submission of an application to list on the Main Board? Or could it be traded on the New Board PREMIUM until it migrates its listing to the Main Board? We believe that if a listed issuer no longer has the characteristics for listing on a designated board/ segment and meets the listing criteria for another board/segment, there should be clear mechanism to facilitate their migration to a more suitable board/segment.

The Institute's comments on the detailed proposals in relation to the New Board and review of the GEM and changes to the GEM and Main Board listing rules are set out in
--- the questionnaires attached to this letter.

If you have any questions on this submission or wish to discuss it further, please contact me at the Institute by phone on [REDACTED] or email [REDACTED] or Mary Lam, Director, Member Support by phone on [REDACTED] or email [REDACTED]

Yours faithfully,

[REDACTED]

Raphael Ding
Chief Executive & Registrar

Enc.

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.

Refer to our comments in the covering letter, in particular those under the heading of "New Economy" industries.

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.

Refer to our comments in the covering letter.

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.

Refer to our comments in the covering letter, in particular those under the heading of New Board PRO and New Board PREMIUM. We are of the view that there is no need for a separate New Board PREMIUM, and the New Board could simply be a listing venue for pre-profit/ early stage companies that do not meet the existing financial or track record eligibility requirements of the Main Board or GEM and for professional investors only (i.e., the New Board PRO).

As explained in the covering letter, we do not consider it necessary to restrict the New Board PRO to any particular industries.

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.

Refer to our comments in the covering letter and our response to the consultation paper on review of GEM and changes to the Listing Rules.

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.

For a company listed on New Board PRO wishing to list on GEM or the Main Board to attract retail investors, it should have to meet all the admission criteria and other listing requirements of the relevant board and be treated as a new listing applicant, i.e. appoint a sponsor to conduct due diligence for the application, publish a prospectus standard listing document and follow the public offer requirement of the relevant board.

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.

Refer to the comments in our covering letter and our response to Q3, we do not see the need for a New Board PREMIUM.

We agree that the proposed admission criteria for New Board PRO, as set out in the Concept Paper, are appropriate as it is open to professional investors only.

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 believe that a company should be given the discretion to apply for listing on a board that it wishes so long as it can meet the eligibility requirements of that particular board.

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 have no objection to the proposed requirements for minimum public float and minimum number of investors at listing.

We do not see the need to introduce additional measures to ensure sufficient liquidity in the trading of shares listed on New Board PRO, at least at the initial stage, in order to gauge the market response. This could be subject to a further review after the New Board PRO has been up and running for a certain period of time.

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.

Applicants for listing on the New Board PRO should demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong, except those apply for a secondary listing on the New Board PRO and can demonstrate to the satisfaction of the Listing Department, or the Listing Committee, that they are unable to do so due to the restrictions and regulations of the exchange on which they are primary listed.

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 agree that a "lighter touch" suitability assessment could be applied to new applicants to New Board PRO in order to attract a more diverse range of industries to list in Hong Kong.

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.

The New Board PRO should be restricted to professional investors who meet the standard of professional investor under the Securities and Futures Ordinance.

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.

In view of the high risk potentially arising from issuers listed on the New Board PRO, their securities might not be suitable for retail investors. Therefore, we consider that there should be measures imposed on Exchange Participants to ensure that investors in the New Board PRO securities meet the eligibility criteria for both the initial placing and secondary trading.

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.

No objection to the appointment of a Financial Adviser for New Board PRO listing, rather than applying the existing sponsor regime.

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 it would be sufficient that applications for listing on the New Board PRO be vetted and approved by the Listing Department under delegated authority from the Listing Committee. Nevertheless, we recommend that there should be a mechanism for the Listing Department to regularly report back to the Listing Committee and seek Listing Committee's view whenever necessary.

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.

Although it may not be necessary for a New Board PRO applicant to produce a prospectus-standard listing document, HKEX should have rules to set out certain specific items of information to be contained in the listing document, in particular the relevant financial information about the applicant and the level of due diligence work and assurance expected to be provided by certified public accountants on such information.

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.

In view of the high risk nature of New Board PRO-listed companies, it is proposed to add the following to their continuous listing obligation:

(i) appoint a qualified accountant to look after the finance function, at least for the initial period, say, 3 years.

(ii) comply with the Corporate Governance Code and Corporate Governance Report section c.2 in relation to risk management and internal control.

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 do not agree that the Exchange should take a disclosure-based approach for listing of companies with a WVR structure.

Refer to our comments in the covering letter, under the heading of companies with non-standard governance structure, we are of the view that companies with WVR structures would need to explain and justify the adoption of a WVR structure and have effective safeguards to protect the interests of ordinary shareholders before being permitted to be listed. Consideration should be given to impose relevant restrictions or conditions on WVR structure taking into account the circumstance of each company and its reasons for adopting a dual or multiple class structure to avoid the abuse of control. Examples of such safeguards include:

- restrictions on the type of persons that can hold WVR shares
- restrictions on transfer of WVR shares to third parties
- requirement to have sunset clause on WVR structure

Reference could be made to other exchanges on the various conditions and safeguards.

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.

Same comments as Q17.

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.

Same comments as Q17, which should apply generally to companies with unconventional governance features irrespective of their original place of listing.

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

Please give reasons for your views.

We propose that the continuous suspension period of a New Board PRO listed issuer be extended from 90 calendar days to at least 6 months before its listing is to be cancelled, as 90 days is too short to take any remedial action.

In addition, a clear appeal mechanism of delisting decision should be provided in the Listing Rules.

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 see the need to require New Board PRO-listed companies to meet quantitative performance criteria to maintain a listing, at least at the initial stage, in order to gauge the market response. This could be subject to a further review after the New Board has been up and running for a certain period of time.

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 suggest that this could be subject to a further review after the New Board PRO has been up and running for a certain period of time.

- End -