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Hong Kong Exchanges and Clearing Limited
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By hand and e-mail: response@hkex.com.hk

Dear Sirs

Re: New Board Concept Paper

We refer to the New Board Concept Paper (the "**Concept Paper**") and enclose our submission in relation to the consultation questions raised in the Concept Paper.

If you have any queries on our submission, please contact either John Moore [redacted] or Roger Cheng [redacted]

Yours faithfully,

[redacted]

Encl.

SLAUGHTER AND MAY

SUBMISSION BY SLAUGHTER AND MAY

ON

NEW BOARD CONCEPT PAPER

Slaughter and May
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Consultation Questions

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.

   Given Hong Kong's current high concentration of issuers from low growth sectors, such as property and finance, and the high level of dependency on PRC listings, we are supportive of initiatives to attract a more diverse range of high quality companies from around the world to list in Hong Kong, and we believe a degree of flexibility is required to attract certain of these companies.

   As further detailed elsewhere in this document, we support the Exchange's proposal to allow (with appropriate disclosure and safeguards): (i) retail and professional investors to invest in companies with non-traditional governance structures; and (ii) professional investors to invest in early-stage companies. We would suggest that such listings be accommodated on the existing boards rather than a new board. However, should the Exchange determine that the only feasible way to move forward with the proposals is through the adoption of a new board structure, then we are also supportive of a new board, subject to appropriate disclosure and safeguards.

   In addition, in the same way that the existing regime allows investors (both retail and professional) to invest in mineral and project companies that do not have the usual financial track record, consideration should also be given to allowing retail investors similarly to invest in early-stage scientific research-based companies, subject to appropriate safeguards. See our response to question 11 for additional details.

   While we agree that it is important to attract new economy companies to list in Hong Kong, we believe that the quality of new listing applicants, rather than whether they are old or new economy companies, is of greater importance. Companies with good growth potential and valid commercial justification for non-standard governance features can be found in both the old and new economies. Accordingly, restricting the New Board purely to new economy companies seems unnecessarily narrow and may not sufficiently address the issue of diversifying the Hong Kong market (especially from its reliance on PRC issuers).

   Finally, we support removing the prohibition on the secondary listings of companies with a Greater China focus where they already have a primary listing on a major exchange.

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.

   New Board or Existing Boards:

   If companies with weighted voting rights or other non-traditional governance structures ("**WVR Companies**") and/or which do not satisfy the usual financial track record criteria ("**Early Stage Companies**") are allowed to list in Hong Kong, we would suggest that such listings be accommodated on segments of the existing boards. Allowing such listings on the existing boards presents a more straightforward option to achieve the same objectives, is less likely to affect the liquidity of the existing boards and is more likely to attract high quality companies looking for a premium listing. However, should the Exchange determine

that the only feasible way to move forward with the proposals is through the adoption of a new board structure, then we are also supportive of a new board, subject to appropriate disclosure and safeguards.

Early Stage Companies:

There seems to be no strict need to set up a new board for Early Stage Companies. For example, the Listing Rules already accomodate mineral companies and project companies without the requisite financial track record to list on the existing boards. If retail investors were to be excluded from certain stocks, we think segmentation of the existing boards would be sufficient to help distinguish between the different targeted investors. See our response to question 11 for additional details.

WVR Companies:

One of the reasons for mooting a New Board is to mitigate concerns that WVR Companies (if allowed to list on the existing boards) could be included in the Hang Seng Index, and passive fund managers would then be forced to invest. On the other hand, the lack of inclusion in the Hang Seng Index could deter big names from wanting to list on the New Board, and the Concept Paper acknowledged that the Hang Seng Index's eligibility rules could change in the future in any event. In this respect, we note certain major indices are currently reviewing their rules concerning the inclusion of companies with weighted shares. The FTSE Russell recently released its consultation conclusions in this regard and has proposed that companies which have 5% or less of their voting rights (aggregated across all of their equity securities — including those that are not listed or trading) in the hands of unrestricted (free-float) shareholders will be ineligible for index inclusion. S&P Dow Jones has announced that companies with multiple share class structures will be ineligible for the S&P Composite 1500 and its component indices (save for companies that are already included in those indices at the date of the announcement). The Hang Seng Index may be influenced by international developments on this should WVR Companies be permitted to list in Hong Kong.

The Concept Paper notes that setting up a New Board would mean the Main Board would not be affected by any attempt at circumvention by companies not eligible to adopt WVR structures. However, we think issues of circumvention could also apply to a New Board – for example, where New Board issuers acquire existing Hong Kong-listed assets and businesses (whether old or new economy). We would suggest that the Exchange clarifies whether and how it intends to deal with post-listing transactions by New Board issuers which may involve existing listed assets or old economy assets.

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.

Limited to specific industries:

If adopted, we believe the New Board should not distinguish companies based on old verus new economy as: (i) good quality companies with growth potential can come from the old or new economy; (ii) businesses considered innovative now may not be in the future and old economy businesses (such as financial institutions) are developing and adopting highly sophisticated technology — it does not seem sensible to distinguish which types of companies can adopt WVR structures on this basis; and (iii) it would be difficult for a regulator to assess whether a company is sufficiently "new economy" at the time of listing and thereafter.

If the purpose of restricting the New Board to specific industries is to prevent WVR structures from being too widespread, the Exchange could consider imposing a high market capitalisation requirement instead. See our response to question 6 below.

Professional segment:

See our response to question 11.

4. ***What are your views on the proposed roles of GEM and the Main Board in the context of the proposed overall listing framework?***

Please give reasons for your views.

We have concerns about the impact of a new board on the liquidity of the existing boards. We believe this concern may be particularly acute for the GEM board which already has thin trading and which, under the proposal, would be restricted to old economy SMEs.

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.

Given the involvement of retail investors on the other boards and assuming that the New Board PRO to be only open to professional investors only, we agree moving from New Board PRO to the other boards should require the company to issue a prospectus and meet the relevant admission critiera and other listing requirements of the relevant board.

There should be no need to impose a public offer requirement if the New Board PRO company meets the relevant public float requirements of the other boards.

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 approprate in light of the targeted investors for each segment?***

Please give reasons for your views.

We think they are appropriate in light of the proposed targeted investors.

If (as we suggest) both old and new economy companies are permitted to list with WVR structures, then the argument for incorporating WVR Companies into the Main Board is even stronger given the financial and track record critiera of the New Board Premium and the Main Board are proposed to be the same.

7. ***What are your views on whether the Exchange should reserve the right to refuse an applicaton 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 think such companies should be allowed to choose to list on the New Board Pro as they may not otherwise choose to list at all if they are unable to benefit from the streamlined

listing process of the New Board Pro — the streamlined nature being justified due to its more restricted investor base.

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?***

Plesae give reasons for your views.

We agree that in order to help ensure adequate liquidity in secondary trading, New Board PREMIUM listing applicants should follow the Main Board open market requirements in force from time to time, and New Board PRO listing applicants should follow the open market requirements currently applicable to GEM issuers at the point of listing (i.e., a minimum of 100 investors at the time of listing and a minimum public float at the time of listing of 25%). In the case of New Board PRO, the Exchange should be prepared to revise the open market requirements should New Board PRO experience similar issues to those experienced by GEM-listed companies as discussed more fully in the "Joint Statement Regarding the Price Volatility of GEM Stocks" published by the Exchange and the SFC on 20 January 2017.

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.

We are of the view that so long as the company listed on a Recognised US Exchange is incorporated in a recognised or acceptable jurisdiction, it should fall within and comply with the established shareholder protection regime for the relevant jursidction, subject to the ability to seek waivers if the requirement would be unduly cumbersome due to the fact that it is already listed. Any companies that are not incorporated in a recognised or acceptable jurisdiction should be required to demonstrate equivalent shareholder protection. This is because many of the major jurisdictions with which investors are familiar are already recognised or acceptable jurisdictions, and any companies incorporated in other jurisdictions should go through the exercise of comparing their shareholder protection standards against those in Hong Kong.

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 be recommend?***

Please give reasons for your view.

We believe the Exchange should apply the existing suitability guidance letters to the New Board PRO. The guidance letters are aimed at identifying factors more likely to lead to a company becoming a "shell company" after listing and/or affect the sustainability of the company. We are not persuaded that these factors are less important for New Board PRO listing applicants and feel that it is important to maintain the quality of listing applicants on New Board PRO in order to maintain Hong Kong's market reputation.

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 proposed New Board PRO would allow the listings of companies that do not satisfy the usual financial track record criteria. The question is whether retail investors should be allowed to invest in such companies.

Although there are examples of markets — such as the AIM market — which allow retail investors to invest in companies (from any industry) without a track record, we can understand why the Exchange did not propose this for the GEM board or a new junior board in light of : (i) the market quality issues experienced on the GEM market (in particular, those relating to shell companies); and (ii) the high proportion of retail investors in Hong Kong compared to some other markets. On balance, we therefore agree with excluding retail investors from the proposed New Board PRO. In addition, we think the Exchange could consider excluding non-institutional investors from the PRO market so as to exclude the risk that high net-worth investors and their companies will be sold PRO stocks whilst under the impression that such stocks are less risky due to their listed status.

On the other hand, we think there is merit in expanding the types of Early Stage Companies that can list on the existing boards. Currently, the list includes mineral and project companies. These are sectors where investors typically look to non-financial metrics (such as the project in question and the experience of the management team) to assess the company's prospects rather than the typical track record. We would suggest (following the London Stock Exchange's example) that scientific research-based companies (which would encompass biotech) could be added to the list and open to retail investors with appropriate safeguards. The safeguards could include the directors and senior management team having sufficient relevant experience in that industry, an independent expert's report and involvement of institutional investors.

We note the Exchange abandoned the "Professional Board" project in 2009 on the basis that "on the whole, overseas exchange experience does not provide compelling examples of successful equity market segments that exclude retail investors." We would be interested to know whether the Exchange believes there are now more compelling examples which are likely to translate to the Hong Kong market.

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

[X] *Yes*

[ ] *No*

Please give reasons for your views.

Special measures (together with robust enforcement action for breaches of such measures) should be required to avoid the example of Chapter 37 debt securities being sold to retail investors in the secondary market. In addition, the Exchange and the SFC should consider restricting retail products linked to the New Board PRO.

13. ***What are your views on the proposal for a Financial Adviser to be appointed by an applicant to list on New Board PRO, rather than applying the existing sponsor regime? If you would advocate more prescriptive due diligence requirements, what specific requirements would you recommend be imposed?***

Please give reasons for your views.

We agree a New Board PRO listing should not require a sponsor or be held to a sponsor-level of due diligence.

However, clear and specific guidance should be issued on the alternative standards expected of Financial Advisers on PRO listings.

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 agree with the suggested approach.

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?***

[X] ***Yes***

[ ] ***No***

Please give reasons for your views.

We agree with the suggested approach.

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.

We agree that, at a minimum, companies listed on the New Board should be expected to comply with the continuous listing obligations applicable to Main Board-listed companies as set forth in paragraph 151 of the Concept Paper. In addition, in the same way that GEM issuers are subject to mandatory quarterly financial reporting, the Exchange could consider requiring Early Stage Companies to do the same given the higher investment risk.

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 the Concept Paper? Should this approach apply to both segments of the New Board?***

Please give reasons for your views.

In addition to disclosure (which should encompass alerting investors to the WVR structure prior to listing and any secondary purchase), the safeguards as described in our response to question 18 should apply to certain WVR Companies.

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.

For investors who are willing to accept lesser voting rights or other non-traditional governance structures, on balance we think they should be given the choice to do so provided full disclosure is made at the time of the IPO and a clear alert is given to the investor (possibly through the broker) prior to any purchases in the secondary market. For this reason, safeguards such as "sunset clauses" as mentioned in the Concept Paper should not be necessary.

Hong Kong benefits from a highly developed legal and regulatory system in which investors are protected against directors and majority shareholders favouring themselves or their connected persons at the expense of other shareholders (who would generally be a minority). We believe that new listing applicants with a simple form of weighted voting right structure would generally fit within the existing legal and regulatory framework in Hong Kong, with the result that Hong Kong investors would be afforded the same degree of protection while also being allowed to choose for themselves whether they wish to invest in a company with such a structure and whether to sell their shares should the founder cease to run the company or on a change of control.

For companies with other minority control structures which are not maintained through the exercise of voting rights, we think they should also be permitted to list provided the applicant proposing the structure binds itself (through its statutes of incorporation or otherwise) to certain key investor protection standards that may otherwise not apply (e.g., where the "control" test in the Takeover Code does not readily apply to the structure in question). See our previous submission to the 2014 Concept Paper on Weighted Voting Rights, a copy of which is attached as Appendix A, for a more detailed analysis on this point.

Similarly, where a company has a share structure that involves zero voting rights held by its public shareholders, we think the applicant should be permitted to list only if it is required to comply with the spirit of certain key investor protection standards that may otherwise not apply due to the absence of independent shareholders with the right to vote. For example, it should be required to obtain some form of approval from independent shareholders for connected transactions, takeover transactions and other matters that require an independent vote under the existing rules.

Depending on the outcome of this concept paper, it may be necessary to consult the SFC in the context of a takeover of a WVR Company under the Hong Kong Takeovers Code to ensure that potential issues are addressed (including on offer pricing).

However, for WVR Companies with a secondary listing in Hong Kong, the existing principle under the Takeovers Code should continue to apply such that only those considered a "public company in Hong Kong" would be subject to the Takeovers Code.

Finally, the Exchange could also consider enhanced corporate governance measures on a comply or explain basis.

19. ***Do you agree that the SEHK should allow companies with unconventaional 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.

Yes, but this is subject to the minimum safeguards described at our response to question 18 that are applicable to certain types of WVR Companies.

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

Please give reasons for your views.

We agree with the suggested approach.

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 believe that generally the delisting criteria currently applicable to Main Board-listed companies should be equally applicable to New Board-listed companies. These do not include quantitative criteria but there are grounds for delisting based on insufficient operations. It would be difficult to legislate for quantitive thresholds due to the different market capitalisation and nature of businesses of different companies.

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 see no compelling reasons to apply a "lighter touch" enforcement regime to the New Board. Any enforcement regime for breaches of the Listing Rules or market misconduct provisions need to be strictly enforced in order to protect investors and the reputation of our markets.

Appendix A

HKEx 2014 Concept Paper on Weighted Voting Rights
Response from Slaughter and May

We set out below some general comments and observations in relation to the issues raised in Hong Kong Exchanges and Clearing Limited ("**HKEx**")'s Concept Paper on Weighted Voting Rights. We also briefly respond below to the specific questions raised in the Concept Paper. As a general comment at the outset, we commend the Concept Paper on being balanced and well-researched.

Introduction

1. In summary, we believe there are circumstances in which the "one-share, one-vote" concept should not be rigidly applied. It should be measured against the goal of achieving the right level of investor protection while accommodating the wishes of the owners of a new applicant who wish to maintain a higher level of control, albeit with less than a majority of the equity shares.

2. Hong Kong benefits from a highly developed legal and regulatory system in which investors are protected against directors and majority shareholders favouring themselves or their connected persons at the expense of other shareholders (who would generally be a minority). We believe that new applicants with an A/B (weighted voting rights) structure would generally fit within the existing legal and regulatory framework in Hong Kong with the result that Hong Kong investors would be afforded the same degree of protection while also being allowed to choose for themselves whether they wish to invest in a company with such a structure.

3. We also believe the Listing Committee should be encouraged or empowered to exercise its discretion under Listing Rule 8.11 to approve the listing of companies with other minority control structures, as long as the applicant proposing the structure voluntarily (through its statutes of incorporation or otherwise) binds itself to the relevant Hong Kong investor protection provisions which are not otherwise readily applicable to it (see further below).

Proportionality

4. With regard to the issue of proportionality discussed in paragraph 57 of the Concept Paper, we observe that while investors in Hong Kong listed companies currently do have a degree of proportionate risk and reward, ultimately in practice there are very few circumstances in which (to give just two examples) the level of dividend or the composition of the board is actively influenced by public investors. This is because those investors are generally in the minority.

Value shifting

5. Regarding the risk of value shifting (paragraph 59), this is a risk that is equally common to both existing listed family or SOE controlled companies with large non-listed private groups, as well as companies with weighted voting rights structures. This risk can be mitigated for companies with weighted voting right structures in the same way as it is now for listed companies i.e., under the connected transaction rules and other rules requiring an independent shareholders' vote, as well as the import of Hong Kong law principles on directors' duties through Listing Rule 3.08.

Moral hazard

6. A key discussion point in relation to proportionality is the moral hazard of having a small minority being able to manage a company and make decisions which ultimately turn out to be poor but they suffer the economic consequences much less than the other shareholders. Poor management by a family-controlled board in a large family-controlled company will have equal proportionality consequences for the family shareholders as for the minority public shareholders. While this is a factor against weighted voting rights structures, one could also point to a number of companies over the years where directors' poor decision-making has caused ruin for shareholders, sometimes resulting in new legislation or regulation, sometimes in claims for breach of directors' duties, and other times where there has been no legal redress since there has been no culpability other than poor judgement. However, in general, these directors have not been entrenched by weighted voting rights. Therefore, this is where the arguments of full and clear disclosure and the free decision-making of the investing public versus not allowing weighted voting rights are particularly acute.

Class actions

7. We query whether investors would necessarily be prejudiced by the lack of a class action legal system in Hong Kong if they were provided with the ability to invest in companies with a weighted voting rights structure. The combination of Hong Kong rules of law regarding the fair treatment of shareholders (as also adhered to in many other jurisdictions) as well as the Hong Kong investor protection regime (principally under the Securities and Futures Ordinance ("**SFO**")) are a counter-weight to the risk of the minority controllers acting in their own self-interest to the prejudice of the other shareholders.

8. While it is accepted that the cost of going to Court can be prohibitive, a US-style class action system (and the potential cost savings it might bring for individual litigants) would not be a necessary addition to the Hong Kong investor protection regime if companies with weighted voting rights were to be allowed to list in Hong Kong. However, we note the Department of Justice has established a cross-sector Working Group to consider the Law Reform Commission's proposal that a mechanism for class actions should be adopted in Hong Kong.

9. Until then, the current combination of regulatory enforcement and the Hong Kong legal system should be sufficient with respect to companies with weighted voting rights structures. The situation for Hong Kong shareholders is not materially altered whether they invest in a company with a family/SOE controlling block of shares or a minority controlling stake in a company with weighted voting rights or other control structures. While bad behaviour will take place from time to time, it is hard to judge whether the deterrent effect of the US-style class action lawsuits would have a greater effect than the threat of censure and fines by the regulator and/or shareholders bringing proceedings in the Hong Kong court.

Takeover Code

10. As mentioned in the Introduction, the simplest form of A/B weighted voting rights structure would generally fit within the existing securities regulatory regime in Hong Kong, including the application of the Takeover Code 'control' test. This is because the basis of the Takeover Code is control over voting rights in a public company. However, other structures under which a higher degree of control is maintained by a minority over, say, the appointment of directors or veto rights through the company's constitution will not fit so readily within certain aspects of the current investor protection regime. For example, the control test in the Takeover Code may be harder to apply where control is maintained through means other than the exercise of voting rights.

Connected transactions

11. The weighted voting rights proposal by way of A/B class shares should not require a change to the connected transaction rules under Chapter 14A of the Listing Rules. The connected transactions regime regulates transactions between a listed issuer and its connected persons, including its substantial shareholders. A "substantial shareholder" is any person who is entitled to exercise, or controls the exercise of, 10% or more of the voting rights at any general meeting of the company. The Exchange also has the power to deem any person to be a connected person (Rule 14A.07(6)). If a shareholder or group of shareholders has weighted voting rights giving the power to exercise, or control the exercise of, 10% or more of the voting rights – e.g., in respect of the power to appoint directors to the board of the listed issuer at a shareholders' meeting – they would fall within the definition of "substantial shareholder" under the Listing Rules and would therefore be a connected person.

12. If a new applicant came forward with a structure that would appear to circumvent the connected transaction rules – e.g., through a superior board control structure – the Exchange could still make sure the relevant person(s) holding that power fall within the ambit of Chapter 14A through its deeming power referred to above.

Disclosure of interests under Part XV SFO

13. Subject to one point highlighted below, the Hong Kong disclosure of interests regime appears to be set up to accommodate weighted voting rights – in the sense that:

    (a) disclosures are made in respect of voting shares in a listed corporation;

    (b) those voting shares may be listed or unlisted; and

    (c) the 5% threshold for what constitutes a "substantial shareholder" under the SFO applies in respect of each class of voting shares.

14. In the case of Swire Pacific Limited – the only company listed in Hong Kong with a dual class structure – separate disclosure is made under Part XV of the SFO in respect of notifiable interests in the 'A' and 'B' shares.

15. "Voting shares" are shares of a class which carry rights to vote in all circumstances at general meetings. However, if a weighted voting structure did not satisfy this definition of "voting shares" – e.g., the 'B' shares carry a right to vote only in certain circumstances, such as in relation to appointment of directors – the ongoing disclosure obligations under Part XV of the SFO would appear not to apply to those shares. This would require an amendment to the SFO.

Listing Rule 8.11

16. It may be hard to change the regulatory framework to cater for a whole variety of minority control structures. For alternative structures which are not simply based upon A/B class shares, flexibility needs to be afforded to the Listing Committee to consider such structures. Where there are potential deficiencies in the investor protection regime – for example, there is no clear application of the Takeover Code "control" test – the new applicant should provide a detailed analysis of the compatibility of the proposed structure with the then current investor protector regime and could be obliged to provide remedies e.g., through voluntary additions to the new applicant's statutes of incorporation. For example, there are companies that have changed domicile and ceased to be subject to parts of the UK Takeover

Panel's jurisdiction but, to reassure shareholders, these companies have written parts of the UK Takeover Code into their statutes so as to adhere to the UK Takeover Code rules voluntarily.

Consultation Questions

In answer to your specific questions:

1. We believe weighted voting rights structures should in principle be permitted.

2. (a)(b) The Exchange should permit weighted voting rights structures only for new applicants. We believe that as a first step companies listing with a weighted voting rights structure should have a large market capitalisation. We do not believe existing listed companies should be able to change their structures as otherwise shareholders which have subscribed for shares on the basis of equal voting rights may be prejudiced. Existing issuers wishing to adopt a weighted voting rights structure should provide shareholders with a reasonable exit through delisting, and reapply for a new listing with the weighted voting rights structure.

   (c) We do not believe the weighted voting rights proposal should be limited to any particular type of company or industry. It would not be fair for this only to be made available to certain industries.

   (d) We believe the "exceptional circumstances" provision under Listing Rule 8.11 should be available for companies that seek to list with control provisions other than A/B class shares and the Listing Committee should be empowered or encouraged to exercise its discretion accordingly.

3. We do not see in paragraph 153 of the Concept Paper a set of restrictions that is applied to all companies universally. We believe there is merit in requiring the extra control elements to lapse if the shares are transferred outside of the immediate controlling group or the control proportion becomes too low compared to the number of non-control shares in issue (for example a 15% ratio).

4. Yes, please see above our view that it should be for those advocating a new structure to establish how the existing investor protections can be maintained.

5. We believe that very few changes would be necessary if only A/B weighted voting rights shares were to be allowed.

6. (a)(b) We believe that flexibility is required to attract overseas companies with alternative structures but which agree to be bound by Hong Kong's investor protection regime. We do not believe companies with weighted voting rights structures should be listed only on a particular board or on GEM. What matters is the quality of the company, a high level of disclosure and maintenance of high investor protection standards. Both primary and secondary listings should be encouraged.

7. We have no further comments at this stage.

Slaughter and May
(PWHB/LPR)
28 November 2014