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## QUESTIONNAIRE ON THE NEW BOARD PROPOSAL

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### Part B 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.**

In view of the transformation of the global economy from traditional to new and the high momentum that technology companies has driven the growth of the world economy and capital markets over the years, we agree that there is a need for Hong Kong (HK) as one of the key international financial centres to revamp its capital market to cope with these developments and to attract a more diverse range of companies to list in addition to those from the traditional economic pillars of HK, namely consumer business, real estate and financial services.

However, whether the New Economy companies would find HK capital market appealing and pick HK as its listing destination depends on many factors. One of the key factors but not the only determining one is whether HK possesses such a listing platform for these companies. An example would be whether the eco-system of the listing destination, i.e. its investor community and capital market framework are conducive to the development and thriving of the corresponding industries that these New Economy companies belong to.

Accordingly, we believe it is important to highlight that the key to enhancing the listing regime of HK lies with the landscape or plan that the regulators would like to set for HK's capital market. Through positioning the Main Board (MB), Growth Enterprise Market (GEM) and New Board in an integral manner instead of isolating certain changes to the Listing Rules to rectify some ongoing issues for individual or some market segments from other market(s), we will be able to develop or refine Listing Rules or admission criteria that will work well for each individual market segment and do not create direct competition or overlapping among the markets, which eventually may lead to confusion to the listing candidates, issuers and investors. For such reasons, the positioning of these three markets needs to be first in place as blueprints for the future HK capital market in order to help revise and set the parameters for listing/ admission and delisting appropriately.

For the creation of a new board, we believe the lessons learnt from the establishment of the GEM and its early days, as well as the mechanism and operation of the National Equities Exchange and Quotations on the Chinese Mainland should be taken.

Furthermore, we believe it is equally important that the New Board would be supported by other fundamentals like government policies in promoting and nurturing the innovative sectors in the city in order to give the new listing platform a further boost to ensure it can truly transform HK into the listing destination of choice for the New Economy issuers.

That said, to ensure the New Board to become a complement to the HK capital market, in particular as the first board for New Economy companies to enter the listing regime, it is crucial to have both a mechanism that allows issuers to move from one market segment to another segment as well as another mechanism on delisting of suspended

companies for all the three markets (MB, GEM and New Board). These two mechanisms and the positioning of the three markets together help shape the listing/ admission and delisting paradigms and most important of all the blueprints for future HK's capital market.

Such view and their details are also being put forward in our submission to the 'Questionnaire on Review of the Growth Enterprise Market (GEM) and Changes to the GEM and Main Board Listing Rules'. They can be found in our response to the first question of that questionnaire.

**2. What are your views on whether the targeted companies should be segregated onto a New Board, rather than being include on the Main Board or GEM?**

**Please give reasons for your views.**

We agree that there is a need of establishing a new board for fast growing and emerging businesses that may not be able to fulfill the listing requirements of the MB and GEM given their significantly higher risk profile. At the same time, these business may require a non-standard governance structure to maintain business control and creative rights for the founder(s), especially at their infancies, as such we believe that it is appropriate to have a new board (i.e. New Board PRO) that only opens to the professional investors.

However, given the limited number of potential eligible candidates for listing on the New Board PREMIUM, we are concerned about the market vitality and turnover if non-standard governance premium businesses are to be separated from the MB under the New Board PREMIUM. The list of U.S.-listed Chinese companies in weighted voting rights (WVR) in the 'WVR Concept Paper' in 2014 as well as the privatization phenomenon among many U.S.-listed Chinese companies in recent years suggest that the number of possible candidates for the New Board PREMIUM today can be likely to be fewer than 40. If the U.S. as a developed international market with perceived higher shareholder protection is only capable of attracting this number of listed WVR companies, we can imagine the New Board PREMIUM may even look less impressive to investors.

So for the sizable companies in WVR, we believe the MB can be their listing destination instead. Certain measures such as creating a dedicated set of stock codes to ring-fence these companies, and developing a new chapter of Listing Rules to govern these companies can be solutions of mitigating the investment risks of these companies when they are being traded together with the standard governance issuers in the same market.

- 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.**

As what we put forward in our view at Q2, we do not find very compelling reasons for creating a separate board for premium companies with WVR structures. So our views and reasons from questions thereafter in this questionnaire will focus on the New Board PRO, which we support its establishment for the longer benefits of HK's capital market.

As the macro-economic, political and business environment all are ever-changing and very dynamic now, an openness to high growth companies from any sectors should be adopted as the principle of the New Board PRO. In this way, the market does not need to revise its admission criteria or positioning on a frequent basis that may affect the stability of its development, which is expected to take time to become mature.

- 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 set out our views to this question at Q1.

If the New Board PRO is for pre-profit, fast growing or New Economy companies, then it is justified to position the GEM as a market for small and medium-sized enterprises and the MB for companies at a premium status.

- 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 other boards?**

**Please give reasons for your views.**

We generally agree with the proposal of “no fast-track migration mechanism” for issuers from the New Board PRO to the other boards. It is because such a move should be regarded as a significant leap of the issuers, in particular when the New Board PRO is a closed investment environment solely for professional investors in contrast to an open and public trading marketplace of other boards. In addition, the proposed due diligence requirements and vetting process under the New Board PRO as stated in Q13 and Q14, respectively, may be less onerous than those for the other boards and hence a direct migration is not recommended.

Since a public offering requirement has been applying to the MB applicants and is planning for the GEM applicants, we cannot find a reason why a transfer applicant from the New Board PRO can be exempted from this offering mechanism if they would like to list on larger and open markets as the MB and GEM.

- 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.**

We generally agree with the lower entry criteria of the New Board PRO given it is designed for companies at early or pre-profit stage. However, it is worthwhile to re-examine whether the gap of the criteria of the minimum expected market capitalization at the time of listing for the New Board PRO and GEM issuers needs to be widened from the perspective of the positioning and value proposition of the two markets.

As what we put forward in our views at Q2 and Q3, we do not find very compelling reasons for creating a separate board for premium companies with WVR structures.

- 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.**

As an international financial center, HK should not be an exception of the best practices that other major stock exchanges have. That means issuers and listing candidates should be given a freedom to select the market where they wish to be exposed and presented to the investors as long as they can fulfill the listing requirements/ admission criteria of the market that they aim at.

- 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.**

Given the minimum investment sum of each professional investor may be much higher than an average retail investor, it may be difficult for the issuer to allocate the orders sufficiently among the investors from the proposed listing sum to achieve the minimum of 100 investors at the time of listing under the current proposal.

Accordingly, we believe there is a need to strike a balance between ensuring an "open" market the securities for which listing is sought" and the feasibility of having a large number of placees for IPOs in a closed market for the professional investors.

- 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 agree with this proposal given both Nasdaq and the New York Stock Exchange are on the list of 15 recognized exchanges in the 'Joint Policy Statement Regarding the Listing of Overseas Companies' by the Securities & Futures Commission and the Stock Exchange of HK (the Exchange). So if the regulators can allow the secondary listing of

listed companies from any one of these 15 stock exchanges when they can fulfill listing rules of MB, companies listed from other than the two stock exchanges from the U.S. should be exempted as well.

**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.**

At this stage, it is difficult to draw a sharp line between 'lighter touch' suitability assessment and vetting. In fact the 'lighter touch' assessment first applied during the early days of the GEM was soon proved to be a failure as a thorough vetting process was kicked in eventually. It was mainly attributed to the difficulty of determining what need to be "touched" more and less and the definition of 'light touch' can be ambiguous.

We suggest to develop a separate guidance on the criteria and factors in evaluating whether a new applicant to New Board PRO is suitable for listing to give more directions and to prevent market confusion.

**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.**

Given the high volatility of business performance of the New Board PRO issuers and hence the additional risks associated with their investment, we agree that the market should only be opened to professional investors, who have the professional expertise and experience to manage the investment risks of these companies than ordinary retail investors.

In terms of the definition of a professional investor, it should be aligned with the 'Code on Professional Investors' under the Securities & Futures Ordinance (SFO). There is no particular compelling reason for the definition of professional investors for the New Board PRO to be different from that of the SFO in order to ensure the functions and operations of the New Board PRO.

**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.**

The reasons are the same as the first part of our response to Q11. As such, both securities of the initial placing and secondary trading should only be opened to professional investors and special measures that support this will be required.

**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 generally agree that given the New Board PRO would be opened to professional only, a less onerous standard can be applied.

We suggest the Exchange may consider adopting the practices from other markets like AIM under the London Stock Exchange (LSE) as well where a nominated adviser is appointed to ensure fulfilment and compliance with the listing rules and regulations of the new applicants.

**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 recommend a protocol whereby the Listing Division can report back to the Listing Committee on the vetting and approval on the New Board PRO applications and to seek views from the Listing Committee, where appropriate.

That said, we suggest the Exchange may consider adopting the practices from other markets like AIM under LSE where a registration-based approach is being implemented. For the time being, for companies that wish to get admitted into AIM, they need to appoint a nominated adviser, which is a full-time corporate finance adviser approved by the LSE. But to ensure protection to the investment community, we believe such a mechanism for the New Board PRO has to be backed by a system of heavy enforcement actions including disciplinary actions and penalties. Such that the nominated advisers have to uphold a high level of professionalism and integrity and remain prudent with their disclosure work for New Board PRO companies.

**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.**

We agree in general that an applicant of the New Board PRO would only be required to produce a Listing Document that provides accurate information to enable professional investors to make an informed investment decision given the investment expertise and experience of the professional investors.

**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 generally agree that a selected list of continuous listing obligations applicable to the MB-listed companies is the minimum compliance requirement for the New Board PRO issuers from a corporate governance perspective. A regular reporting remains essential for the investors to make informed investment decisions.

**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 with the proposal of adopting a risk disclosure-based approach for the New Board PRO issuers, which will help provide greater transparency and assurance to the 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.**

Yes, such safeguards will be necessary to protect the reputation and integrity of the New Board PRO as well as interests of the investors.

The following mechanisms and measures are suggested for the New Board PRO applicants and issuers as well as the WVR companies that can meet the listing requirements of the MB. They were drawn from our recommendations to the 'Questionnaire on Weighted Voting Rights Concept Paper' in 2014, which we find they can still be considered under the current context.

1. More transparency to investors, market and regulators
  - a. Requiring companies to state when and under what circumstances the special voting rights will be available to be exercised and their corresponding risks in the listing document/ IPO prospectus;
  - b. Stating and explaining how the rights enjoyed by holders of multiple voting shares are limited and incorporate where relevant as disclosure in the listing document on how this would affect the investors' rights and risks to facilitate decision-making process of the investors; and,
  - c. Encouraging these issuers to have quarterly operating and financial disclosure after admission.
2. Uplifting standard of corporate governance
  - a. Increasing the number of independent non-executive directors in these companies for a more balanced view on governance;
  - b. Assessing whether certain 'recommended best practices' under the 'Code on Corporate Governance Practices' (the "Code") could be moved up to the 'code provision' category; and,

- c. Assessing the need for additional requirements under the Code for WVR structures.
3. Refinement of regulatory framework to accommodate WVR structured companies
- a. Raising the cost of a minimum board lot size at time of listing for WVR-structured applicants from HK\$2,000 for general listing applicants under the current practice to a more significant amount;
  - b. Extending the moratorium for individuals or corporate shareholders that hold more/ preferential voting rights;
  - c. Limiting the issuance of shares with higher/ preferential voting rights after listing, such as not allowing companies to issue these share class (es) and removing the additional voting rights after these shares were sold;
  - d. Setting a valid period for using the special voting rights such as only at times when the company's founder is still around; and
  - e. Assigning a different class of stock code or stock symbol for WVR companies, which are to be listed on the MB to help investors differentiate the investment risk. This is a similar practice to assigning '8' to the beginning of the stock code of a GEM issuer.

**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.**

If the U.S.-listed WVR companies that plan to list on the New Board PRO or the MB have been proven in good governance compliance, certainly they can enjoy the 'disclosure only' regime. The U.S. is one of the most diverse, longstanding and robust capital market, including those for WVR companies like the class action. We cannot find any better examples than the U.S. for such a 'disclosure only' regime to be applied simply because multiple voting shares are actually not available or allowed in many major stock exchanges.

**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 two proposals in general. But the suspension and delisting proposals for the New Board PRO should not be formulated and implemented independently from the suspension and delisting mechanisms for the MB and GEM. The details should be considered as a whole for each board's positioning and HK's capital market landscape to avoid confusion to the investors.

**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 it is crucial to ensure the quality of our capital market which is largely backed by the quality of the listed companies. The latter should be benchmarked and reviewed



regularly, and supported by a mechanism that allows issuers to move up or down from their market to another under the future listing framework. If some issuers can no longer fulfill the listing requirements of the market where they have been listed for a period of time, there is a need to consider whether their listing status in that market should be maintained. That may imply some that are listed on the GEM may need to be moved down to the New Board PRO. If the New Board PRO is to become part of the listing framework, this mechanism should be applied to its issuers as well. The Nasdaq Market Tiers which is part of the U.S.' sophisticated market tier system can be a good reference for setting the transfer listing mechanism among the three markets.

Furthermore, as what we state in Q1, a delisting mechanism for suspended companies at all three markets is equivalently important, not just solely for the New Board PRO. To ensure the delisting mechanisms of all the three markets can complement each other, an overhaul to those for the MB and GEM may be needed.

**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.**

Given details on the authorities of enforcement that the Exchange will be empowered and can be exercised under the New Board PRO are minimal at this stage, it is difficult to make an assessment.

That said, every business should be treated equally when they are in front of the law. To protect and sustain HK's reputation as an international financial center, we believe there is no room for an even 'lighter touch' enforcement regime for whichever businesses that wish to establish a presence in the market.

- End -