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Your reference 貴行檔案編號

Our reference 本行檔案編號

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Dear Sirs

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

We refer to the Consultation Paper on Review of the Growth Enterprise Market (GEM) and Changes to the GEM and Main Board Listing Rules (the "Consultation Paper") and enclose our submission in relation to the consultation questions raised in the Consultation Paper.

If you have any queries on our submission, please contact either John Moore (+852 [REDACTED] / [REDACTED]) or Roger Cheng (+852 [REDACTED] / [REDACTED]).

Yours faithfully,

Encl.

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# SLAUGHTER AND MAY

SUBMISSION BY SLAUGHTER AND MAY

ON

CONSULTATION PAPER ON REVIEW OF THE GROWTH ENTERPRISE MARKET (GEM) AND  
CHANGES TO THE GEM AND MAIN BOARD LISTING RULES

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## Consultation Questions

1. *Do you agree with the proposal to re-position GEM as a stand-alone board and hence remove the GEM Streamlined Process for GEM Transfers and re-introduce the requirements to (a) appoint a sponsor to conduct due diligence for GEM Transfers, and (b) publish a “prospectus-standard” listing document such that GEM Transfer applications are treated as a new listing application (without requiring the applicant to conduct an offering)?*

Yes

No

*Please give reasons for your views.*

There may be no need to eliminate the streamlined process for GEM transfers to the Main Board if the Exchange enhances the requirements that GEM transfer applicants must meet in order to be eligible for the streamlined process.

We suggest some requirements in our response to question 2 which the Exchange could consider applying to any GEM transfer applicant that wishes to benefit from the streamlined transfer process.

2. *Do you agree with the proposal to require all GEM Transfer applicants to have (a) published and distributed at least two full financial years of financial statements after their GEM listings; and (b) not been subject to any disciplinary investigations by the Exchange in relation to a serious breach or potentially serious breach of any Listing Rules for 24 months before they can be considered for a GEM Transfer?*

Yes

No

*Please give reasons for your views.*

As mentioned above, we believe there may be no need to eliminate the streamlined transfer process if sufficient protective measures are adopted to enhance the quality of GEM transfer applicants.

We agree with the proposal to require all GEM transfer applicants to have published and distributed at least two full financial years of financial statements after their listing. However, instead of a transfer applicant not being subject to any disciplinary investigations in relation to a serious breach or potentially serious breach of the Listing Rules, we would suggest that this be a requirement that the Exchange has not taken any disciplinary actions against the applicant for the last 24 months (as an investigation may find there has been no breach). To make use of the streamlined process to transfer to the Main Board, we would also suggest introducing an additional requirement that during the last 24 months, there has been no change in the applicant’s principal business and/or controlling shareholders/management.

3. *Do you agree with the proposal to retain the current track record requirement under the GEM Listing Rules (i.e., two financial years)?*

Yes

No

*Please give reasons for your views.*

We believe the current track record requirement is reasonable for an SME board. GEM listing applicants should not be expected to be as well established as Main Board listing applicants, and increasing the track record requirement could have the effect of denying certain small to mid-sized companies access to the capital markets.

4. *Do you agree with the proposal to retain the current practice of not requiring a GEM applicant that can meet the Main Board admission requirements to list on the Main Board instead of GEM?*

Yes

No

*Please give reasons for your views.*

We agree with giving applicants who otherwise satisfy the criteria for a Main Board listing the choice of listing on GEM instead of the Main Board. Based on the data presented in the Consultation Paper, the percentage of listing applicants who meet the Main Board listing requirements but who instead choose to list on GEM is small, and there does not appear to be an issue of GEM applicants abusing the rules to circumvent the Main Board's initial listing requirements. In addition, the current requirement that GEM applicants who would otherwise qualify for a Main Board listing justify their decisions to list on GEM instead of the Main Board should provide insight into the rationale behind these decisions and allow the Exchange sufficient opportunity to address any issues arising in connection with these listings.

5. *Do you agree with the proposal to increase the Cashflow Requirement from at least HK\$20 million to at least HK\$30 million?*

Yes

No

*Please give reasons for your views. We invite suggestions on other potential quantitative tests for admission to GEM.*

We believe most of the issues experienced by the GEM market (such as shell company listings) have only involved a minority of GEM issuers, but they have had a disproportionately adverse impact on the reputation of the GEM Board. We therefore support efforts to enhance the quality of entrants to the GEM market, as well as efforts to address price volatility in GEM stocks. This view also explains our responses to questions 6 to 10 below.



6. *Do you agree with the proposal to increase the minimum market capitalisation requirement at listing from HK\$100 million to HK\$150 million?*

Yes

No

*Please give reasons for your views.*

We agree with this as the market capitalisation requirement has not changed since 2008. See also see our response to question 5.

7. *Do you agree with the proposal to increase the post-IPO lock-up requirement such that controlling shareholders of GEM issuers:*

(a) *cannot dispose of any of their equity interest in a GEM issuer within the first year of listing; and*

(b) *cannot dispose of any interest in the subsequent year that would result in them no longer being a controlling shareholder as defined under GEM Listing Rule 1.01?*

Yes

No

*Please give reasons for your views.*

See our response to question 5.

8. *Do you agree with the proposal to introduce a mandatory public offering mechanism of at least 10% of the total offer size for all GEM IPOs?*

Yes

No

*Please give reasons for your views.*

We think the focus should be on taking a more robust approach to the placing arrangements of GEM applicants rather than introducing a mandatory public offering tranche. Recent examples of SFC objections to GEM listings with public offerings have shown that having a public offering is not a guarantee of an open market and we note other exchanges have the option of placing-only offerings.

We would also suggest that guidance be given on post-listing shareholder concentration requirements.

9. Do you agree with the proposals to align the GEM Listing Rules on:

- (a) *Placing to core connected persons, connected clients and existing shareholders, and their respective close associates with those under Appendix 6 to the Main Board Listing Rules and Guidance Letter HKEX-GL85-16 “Placing to connected clients, and existing shareholders or their close associates, under the Rules”; and*

Yes

No

*Please give reasons for your views.*

See our response to question 5.

- (b) *the allocation of offer shares between the public and placing tranches and the clawback mechanism with those in Practice Note 18 to the Main Board Listing Rules?*

Yes

No

*Please give reasons for your views.*

See our response to question 5.

10. Do you agree with the proposal to increase the minimum public float value of securities from HK\$30 million to HK\$45 million?

Yes

No

*Please give reasons for your views.*

See our response to question 5.

11. Do you agree with using the Profit Requirement to determine eligibility to list on the Main Board?

Yes

No

*If not, what alternative test should be used? Please give reasons for your views.*

We generally think the Profit Requirement has worked well as one of the potential tests for testing eligibility.

12. *If you agree to retain the Profit Requirement, do you agree that the current level of profit under the Profit Requirement should remain unchanged?*

Yes

No

*Please give reasons for your views.*

The Profit Requirement seems generally on par with other major markets.

13. *Do you agree with the proposal to increase the minimum market capitalisation requirement at listing for Main applicants from at least HK\$200 million to at least HK\$500 million?*

Yes

No

*Please give reasons for your views.*

We agree with the proposal to increase the minimum market capitalisation requirement, as no changes have been made to the market capitalisation requirement since 2004 and most GEM issuers could have met the current Main Board market capitalisation requirement. In addition, increasing the market capitalisation requirement to HK\$500 million will more closely align the Main Board's capitalisation requirement to comparable requirements on the New York Stock Exchange, the Nasdaq and the Singapore Stock Exchange.

14. *Do you agree with the proposal to proportionately increase the minimum public float value of securities for Main Board applicants from HK\$50 million to HK\$125 million?*

Yes

No

*Please give reasons for your views.*

See our response to question 13. If the minimum market capitalisation requirement is to be increased to HK\$500 million, then the minimum public float should be proportionately increased to HK\$125 million.

15. *Do you agree with the proposal to increase the post-IPO lock-up requirement such that the controlling shareholders of Main Board issuers:*

(a) *cannot dispose of any of their equity interest in a Main Board issuer within the first year of listing; and*

(b) *cannot dispose of any interest in the subsequent year that would result in them no longer being a controlling shareholder as defined under Main Board Listing Rule 1.01?*

Yes

No

*Alternatively, do you believe that it is not appropriate to extend the post-IPO lock-up requirements for Main Board applicants, given that they are less likely to have the characteristics identified in the 2016 Suitability Guidance Letter because of their larger size and our proposal to raise the minimum market capitalisation requirement to HK\$500 million.*

*Please give reasons for your views.*

The listing of shell companies appears to be less of an issue for the Main Board. The risk of shell companies would be even lower if the Exchange were to raise the market capitalisation requirement for the Main Board to the proposed HK\$500 million threshold as set forth in the Consultation Paper.

16. *Do you agree that the proposals for the Main Board should be considered independently irrespective of the outcome of the proposals for GEM?*

*Yes*

*No*

*Please give reasons for your views.*

The proposals for the Main Board would, if adopted, preserve the Main Board's status as listing venue for larger companies and position the Main Board closer to comparable overseas exchanges. Accordingly, the proposals for the Main Board should be considered independently irrespective of the outcome of the proposals for GEM.