Corporate & Commercial

New Board Concept Paper

The Stock Exchange of Hong Kong Limited ("**SEHK**") issued a new board concept paper (the "**Concept Paper**") on 16 June 2017, under which the establishment of a new listing board (the "**New Board**") independent of the Main Board and the GEM Board was proposed.

Background

The Main Board is currently positioned as a board for the largest companies that can meet the highest standards. It has been expressed that it is desirable to preserve and enhance the reputation of the Main Board as our "premier" board and not include the targeted issuers that carry risks that are new and different. Segregating these companies to the New Board would address these concerns and would also ensure that there is no confusion as to the purpose and perception of the Main Board.

Purpose of the New Board

In order to provide greater diversity and more investment opportunities to investors in Hong Kong, the identified gaps within the current listing regime of the market structure have to be addressed. For example, in the Concept Paper, the Exchange pinpoints that the current listing regime in Hong Kong does not accommodate companies with one or more of the following characteristics:

1. pre-profit companies;
2. companies with non-standard governance features; and
3. Mainland Chinese companies that wish to secondarily list in Hong Kong.

The "Straw Man" Proposal

It is believed that a segmented approach would be the best way to attract a greater diversity of issuers to list in Hong Kong, while being able to calibrate shareholder protection standards based on the level of perceived risk in each segment. Thus, a new board comprising two distinct segments are preliminarily proposed:

1. **New Board PRO**, which targets at earlier stage companies that do not meet the financial or track record criteria for GEM or the Main Board; and
2. **New Board PREMIUM**, which targets 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.

Features of the New Board

Weighted voting rights (“**WVR**”) structure permitted

SEHK reckons that one major attraction of the US market for many companies is the permission for WVR structures. It also acknowledges that Singapore is actively considering allowing the listing of companies with WVR structures, while London is considering an “international segment” on which large international companies with WVR structures can list. In order to maintain competitiveness of Hong Kong as an IPO centre, the Exchange invites views on two possible approaches:

1. the “Disclosure-based approach” – applicants should disclose that they have a WVR structure and the risks associated with the structure and other matters, such as the identities of WVR holders, their voting activities and the details of any transfers of WVR; or
2. in addition to the disclosure requirement, mandatory safeguards would be imposed for companies with WVR structures, for example, restrictions on the types of persons that can hold WVR, the minimum equity that they must hold in the company on an ongoing basis and restrictions on the transfer of WVR to other persons, requiring a “sunset clause” providing for the WVR structure to fall away after a pre-determined period of time. The safeguards could vary according to whether the company is listed on New Board PREMIUM or PRO. Further, issuers already listed on a recognised US exchange with a good compliance record would be allowed to maintain their current WVR structures.

The Board of SFC expressed concern that SEHK’s draft proposal on WVR structures would not restrict the extent to which WVR structures would be permitted to list on the Main Board and questioned whether the proposals would be effective to prevent circumvention by ineligible applicants. Restricting WVR structures to a New Board, rather than the Main Board, would mean the Main Board would not be affected by any attempt at circumvention.

Accelerated delisting mechanism

The New Board features an accelerated delisting mechanism for companies that do not adhere to the ongoing listing requirements of the New Board, for instance, SEHK would suspend a New Board-listed company if, for example, it fails to publish periodic financial information within the deadlines set out in the New Board Listing Rules; or SEHK considers that the company or its business is no longer suitable for listing.

The Exchange proposes to only exercise this judgement in extreme circumstances. For example, if a New Board-listed company commits an act that brings SEHK and/or Hong Kong into disrepute but that would otherwise not trigger a suspension.

No fast-track migration mechanism

There would be no fast-track migration mechanism between the New Board and the Main Board or GEM, or from New Board PRO to New Board PREMIUM. For a listed company on New Board PRO wishing to list on these platforms to attract retail investors, it would have to meet all the admission criteria and other listing requirements of the relevant board (e.g. issuing a prospectus).

Summary of the Features of the New Board

A brief comparison of the characteristics of the New Board PRO and the New Board PREMIUM segments has been provided in Appendix 1.

Potential Risks Associated with the Targeted Issuers

Low Company Success Rates

New Economy companies without a track record of business operations or profitability are likely to involve higher risks as they may not succeed and could cause shareholders to lose part or possibly all of their investment.

Risk of “Old Economy” Companies Listing on the new Board

The New Board aims at attracting more high growth companies from innovative sectors, or so-called New Economy companies. However, it is difficult to define such companies as they may encompass a range of difficult sectors.

If there is no sector or other definition of such companies, it could be possible for companies from industries that we are not seeking to attract to list on the New Board. These “old economy” companies may take advantage of the pre-profit entry requirements but have less potential for future growth. As a result, this may lower the actual or perceived quality of the New Board and weaken its purpose in the future.

Entrenchment and Expropriation Risks Associated with WVR Structures

If a company has a WVR structure, its managers are insulated from the treat of removal. No matter how poorly they perform, it is difficult for the company’s fortunes to be revived by an outside bidder replacing management, without management consent.

Vision for Hong Kong’s Future Listing Framework

The New Board is intended to fill identified gaps in Hong Kong’s listing framework, so that the needs of New Economy companies can be accommodated, while maintaining appropriate regulatory standards.

The Main Board will be positioned as a “premier board” with a proposed increase of minimum market capitalisation requirement to HK$500 million, along with existing financial and track record criteria.

New Board PREMIUM will provide a listing venue for companies that meet the Main Board's financial eligibility criteria and track record requirements, but which have non-standard governance structures that would preclude listing on the Main Board.

Appendix 1

	New Board PRO	**New Board PREMIUM**
Target issuers	Earlier-stage / pre-profit New Economy companies which (i) do not meet the financial or track record criteria for GEM or Main Board and (ii) unable or unwilling to meet the equivalent shareholder protection requirements under 2013 JPS N.B. The Exchange may refuse an application for listing on the New Board PRO if it has reason to believe that the applicant could meet the eligibility requirements for New Board PREMIUM, GEM or the Main Board	New Economy companies which meet the financial or track record criteria of the Main Board, but unable to meet certain criteria, e.g.: • Non-standard equity governance structures • US-listed companies with standards differing from Hong Kong
Investor eligibility	Professional investors only	Both retail and professional investors
Admission financial criteria	No financial or track record requirements, subject to a minimum expected market capitalisation of HK$200 million (i.e. the prevailing Main Board requirement)	Same as Main Board
Minimum public float	25%	25%
Number of investors at the time of listing	100 investors	300 investors (Same as Main Board)

Regulatory approach	"lighter touch" approach to suitability assessment	Similar to Main Board
WVR Structures	permitted	permitted
Listing adviser	Financial advisers (Type 6 licence holders)	Sponsor
Overseas issuers	• Place of incorporation and place of central management and control must be in jurisdictions with regulatory cooperation measures in place with the SFC • Secondary listings by Mainland Chinese companies permitted • No requirement for Hong Kong equivalent shareholder protection as required by the 2013 JPS Regarding the Listing of Overseas Companies jointly issued by the SFC and the Exchange in September 2013	• Place of incorporation and place of central management and control must be in jurisdictions with regulatory cooperation measures in place with the SFC • Secondary listings by Mainland Chinese companies permitted • Need to provide Hong Kong equivalent shareholder protection standards, but there will be waivers for US-listed companies
Delisting	Automatic delisting if continuously suspended for 90 days	Automatic delisting if continuously suspended for 6 months

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