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特許秘書

The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation on Concept Paper on New Board

16 August 2017

By Email Only: response@hkex.com.hk

Corporate Communications Department
c/o Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Dear Sirs,

Re: Consultation on Concept Paper on New Board

About HKICS

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional institute representing Chartered Secretaries as governance professionals in Hong Kong and Mainland China with over 5,800 members and 3,200 students. HKICS originates from the Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions and over 30,000 members and 10,000 students internationally. It is also a Founder Member of the Corporate Secretaries International Association (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

The Consultation

These HKICS submissions to HKEX are in response to HKEX's invitation for comments to the 'Concept Paper on New Board' issued by HKEX in June 2017. In these submissions, capitalised terms used herein shall have the meanings set out under the Consultation Paper, unless the context requires otherwise.

Overall position

As a governance institute, HKICS subscribes to the one-share-one-vote voting structure as being in the best form of governance from an investor protection point of view. However, HKICS takes cognisance that in order for Hong Kong to stay competitive as a leading international financial centre, there could be a need for Hong Kong to be innovative to attract both primary and secondary listings on the Exchange.

In this connection, Hong Kong had lost out a number of high profile IPOs to other leading markets, and as a concept, HKICS believes it is well worth exploring whether reform would be required to make Hong Kong a more user friendly location for the listing for businesses with international exposures from the Mainland or other acceptable jurisdictions, which do have a choice as to where to channel their primary and/or secondary listings, as the case may be, should take place.

To the extent that the discussion of attracting listings onto the Exchange would require consideration of WVR structures as alternatives to the one-share-one-vote voting structure, HKICS's primary concern is that Hong Kong, as a whole, should not be seen to be lowering its corporate governance standards as an international financial centre under whatever proposals or actions that HKEX proposes to adopt or take; and in the context, this would mean that there should be appropriate and sufficient safeguards for shareholders in particular for retail investors' protection under whatever innovative approaches that HKEX proposes to introduce.

Consultation Paper, Concept Paper on New Board – General Comments

As introduced under the Consultation Paper, the New Board Proposal is a concept being explored to fill the gaps for New Economy industries, namely relating to pre-profit companies; companies with non-standard governance features; and Mainland Chinese companies wishing to list with a secondary listing in Hong Kong, to attract investors and international listings. In a nutshell, under the two sets of Consultation Papers as to the proposed segmentation for companies, and with the creation of a New Board PRO and a New Board PREMIUM, Hong Kong would potentially have the following boards available for selection by listing candidates which would accommodate the existing as well as the New Economy industries:

1. **New Board PRO.** This is for early-stage companies with no financial or track record criteria, which would not meet the financial or track record criteria for GEM Board or the Main Board. The Board would be open to Professional Investors (PIs) only, and therefore, a 'lighter touch' approach would be adopted. Without commenting on the business aspects as to whether there should or not be a New Board PRO, but approaching the matters from a governance perspective, HKICS would not be as concerned as to the governance aspects for a Board where there would only be participation by PIs (but subject to appropriate safeguards where they manage funds from the public). This is because from a governance perspective, sophisticated investors would be in a better position to manage their risk appetite, and should therefore be left to accept the risk rewards they desire.

2. **GEM Board.** We commented upon the proposals under a separate but linked GEM Board Consultation Paper. We note that there could be a potential gap where a New Board PRO company could be allowed to be transferred to being a GEM Board and/or a Main Board company, but not where a GEM Board company being able to be transferred to being a Main Board Company. Therefore, HKICS submits that from a governance point of view, similar positions be adopted for all boards. That is, they should either all be stand-alone boards, or be permitted to be transferred *inter se*, which could potentially include a downgrade where continuous listing requirements could not be satisfied at the listed Board, but rather another Board. Alternatively, all boards should be stand-alone, and transfers be deemed to be new listings which however does seem to be a less flexible arrangement. HKICS submits that it is more important to be consistent from a governance point of view, as otherwise, there could be potential regulatory arbitrage. This issue extends to delisting, and a consistent regime should be applied across all boards.

3. **Main Board.** The current main board for listing of companies would require the one-share-one-vote structure. We have commented upon the lock-up for two years being acceptable under our submissions to the GEM Board Consultation Paper. As to other business issues, including the increases to market capitalisations and free float, we would leave these to other market participants as they do not *per se* affect governance.

4. **New Board PREMIUM.** This is being proposed for listed issuers that meet the Main Board's financial and track record requirements, but has non-standard governance structures. That is, they do not follow strictly the one-share-one-vote structure.

HKICS reiterates that to the extent that the discussion of attracting listings onto the Exchange (including under New Board PREMIUM) would require consideration of WVR structures as alternatives to the one-share-one-vote structure, HKICS's primary concern is that Hong Kong, as a whole, should not be seen to be lowering its corporate governance standards as an international financial centre under whatever proposals or actions that HKEX proposes to adopt or take; and in the context, this would mean that there should be appropriate and sufficient safeguards for shareholders in particular for retail investors' protection under whatever innovative approaches that HKEX proposes to introduce.

Consultation Paper, Concept Paper on New Board – Questions and Answers

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?**

We believe that the concept should be explored, with detailed proposals for enhancing the governance structures as trade-off for the one-share-one-vote structure where WVR structures are to be adopted.

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?**

It could cause less confusion to retail investors if targeted companies are segregated onto a New Board if a New Board is adopted.

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?**

The New Board has to be fit-for-purpose, and thus aligned with market consensus for the strategic objectives for the good of Hong Kong as an international financial centre, but we offer no specific views as to whether the New Board should be restricted to 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 see our general comments on the topic set out above.

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 see our general comments on the topic set out above.

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?**

In line with our general comments, we offer no views as to detailed business issues which do not *per se* affect governance.

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?**

There should be the power to determine the appropriateness of any listing forum for any application as part of the general discretion, which should however be reserved for use in appropriate cases, and subject to appeal to the Listing Committee as part of the requisite checks and balances to prevent overconcentration of powers.

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?**

We submit that the current Main Board open market requirements should be adopted by other boards, as there should be consistency as to the regulatory approaches, subject only to necessary modifications for the particular board.

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?**

Where shareholder protection standards are equivalent, there could be an exemption in accordance with the proposal from a governance point of view. This would most certainly be appropriate for US listed issuers, as there are class actions in the US, with parties bearing own costs, except in limited circumstances, which are major protections for minority shareholders.

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?**

We have no issue if the board is limited to PIs (but subject to appropriate safeguards where they manage funds from the public), as they could consider their own risk assessment. We had Member views that this should be complimented with investor education to help investors to understand the risks that they are taking on for their own risk assessment.

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?**

We have no issue with such an approach. The current SFC criteria would be acceptable.

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?**

We offer no views as to detailed business issues which do not *per se* affect governance.

- 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?**

We have no issue if the board is limited to PIs (but subject to appropriate safeguards where they manage funds from the public), as they could consider their own risk assessment.

- 14. What are your views on the proposed role of the Listing Committee in respect of each segment of the New Board?**

We submit that the current Main Board requirements should be adopted by other boards, as there should be consistency as to the regulatory approaches, subject only to necessary modifications.

- 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?**

We have no issue if the board is limited to PIs (but subject to appropriate safeguards where they manage funds from the public), as they could consider their own risk assessment.

- 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?**

We submit that the current Main Board requirements should be adopted by other boards, as there should be consistency as to the regulatory approaches, subject only to necessary modifications.

- 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?**

We have no issue if the board is limited to Pls (but subject to appropriate safeguards where they manage funds from the public), as they could consider their own risk assessment. Otherwise, we submit that the current Main Board requirements should be adopted by other boards, as there should be consistency as to the regulatory approaches, subject only to necessary modifications.

- 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?**

The Exchange could consider to allow for the board initially to have only Pls (but subject to appropriate safeguards where they manage funds from the public), pending further opening up of the board following investor education to the general public. HKICS is also open to other innovative approaches to mitigate the governance issues from adoption of WVR structure.

- 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?**

We have no issue if the board is limited to Pls (but subject to appropriate safeguards where they manage funds from the public), as they could consider their own risk assessment. Otherwise, we submit that the current Main Board requirements should be adopted by other boards, as there should be consistency as to the regulatory approaches, subject only to necessary modifications.

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

We submit that the current Main Board requirements should be adopted by other boards, as there should be consistency as to the regulatory approaches, subject only to necessary modifications. Thus, any suspension and delisting reform would require market consensus, and should be generally applicable across the boards.

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?

In line with our general comments, we offer no views as to detailed business issues which do not *per se* affect governance. Additionally, we submit that the current Main Board requirements should be adopted by other boards, as there should be consistency as to the regulatory approaches, subject only to necessary modifications. Thus, any 'watchlist' reform would require market consensus and should be generally applicable across the boards.

22. Do you consider that an even "lighter touch" enforcement regime should apply to the New Board (e.g. an exchange-regulated platform)?

We have no issue if the board is limited to PIs (but subject to appropriate safeguards where they manage funds from the public), as they could make their own risk assessment. Otherwise, we submit that the current Main Board requirements should be adopted by other boards, as there should be consistency as to the regulatory approaches, subject only to necessary modifications.

Should you have any questions, please feel free to contact Samantha Suen FCIS FCS(PE), Chief Executive, HKICS or Mohan Datwani FCIS FCS(PE), Senior Director, and Head of Technical and Research, HKICS at 2881 6177 or research@hkics.org.hk.

Yours faithfully,

Ivan Tam FCIS FCS

President

The Hong Kong Institute of Chartered Secretaries