

17 August 2017

Hong Kong Exchanges and Clearing Limited (SEHK)  
12/F, One International Finance Centre  
1 Harbour View Street  
Central, Hong Kong

Dear Mr. Charles Xiaojia Li,

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

On behalf of its members, the Asia Securities Industry and Financial Markets Association<sup>1</sup> has set forth comments on the New Board Concept Paper and the Consultation Paper on Review of the Growth Enterprise Market (GEM) and Changes to the GEM and Main Board Listing Rules (the "Papers"). Davis Polk & Wardwell has assisted us in preparing and coordinating this response.

Unless otherwise indicated, the terms used in this letter shall have the same meanings as in the Papers. Cross-references will be made to the Questionnaires accompanying the Papers to facilitate the evaluation of consultation results by the SEHK.

### **Creation of a New Board**

#### **1. Attracting new candidates**

Our association generally agrees that Hong Kong should open itself up to a more diverse range of listing candidates, including New Economy companies, pre-profit companies, and companies with non-conventional governance structures such as weighted voting rights (WVR).

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<sup>1</sup> ASIFMA is an independent, regional trade association with over 80 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the [GFMA](#) alliance with [SIFMA](#) in the United States and [AFME](#) in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

## DEVELOPING ASIAN CAPITAL MARKETS

The statistics cited in the Paper substantiate well the SEHK's proposals. The scope and size of the "missed opportunities" over the past decade make a strong argument for the necessity and urgency of reforms for the Hong Kong market in the direction indicated by the SEHK.

## **2. How to open up the market**

Members of the association believe that the stated goals could be achieved through various ways, and not necessarily by way of a two-tiered New Board. Creation of the New Board as envisaged in the Papers, especially the New Board PRO segment, seems to be a revolutionary step. A range of factors will have to be in place for this to be successful, many of which may be beyond the control of the SEHK or even the Hong Kong market.

Whilst we believe that time is of the essence – we would like to stress this sense of urgency – to relax the rules for New Economy companies, some of the features of New Board PRO are of a more aspirational nature and can be left for a later date when there has been enough time for both the SEHK and the market to consider in more detail the full range of options and the implications of each.

Instead of launching directly into a bifurcated New Board at this juncture, we believe the SEHK should focus on the proposals in relation to the establishment of New Board PREMIUM first. In this regard, the SEHK may consider either creating a separate board as envisaged in the Papers, or expanding the Main Board to accommodate a wider range of listing candidates. For example, the SEHK can consider adding a new segment or tier to the Main Board and/or by adopting some process whereby issuers that have not complied with the traditional listing requirements will be "earmarked" so that the market will be aware of the special features of such issuers, as well as the risks associated with trading in their securities. In the meantime, if the SEHK decides in the end to segregate new issuers onto a New Board, the positioning of the various boards should be very clearly articulated to avoid confusion.

We have in mind the innovative thinking of the SEHK behind Chapter 18 of the Main Board Listing Rules. At the time when this chapter was rolled out, it was clear that part of its purpose was to make special concessions from the general Main Board eligibility requirements to facilitate the listing of mineral companies. The Chapter 18 consultation and the rule amendment process took less than nine months in 2009-2010 and is a good example of a successful and efficient way to open up the market to a new category of issuers within a relatively short time. Over the years there have been a considerable number of issuers that have taken advantage of and been listed under Chapter 18. We believe that overall the Chapter 18 innovation could be a useful reference for us today.

If it is thought that the companies we have in mind this time — as compared to mining companies — are much bigger in scope and the potential risks more serious, we believe the issues can be managed by a "tiering" of the Main Board or some form of earmarking as we have mentioned. By building the necessary safeguards into the listing rules (perhaps in a dedicated chapter like Chapter 18) and putting in place robust investors' education, we believe the goals can be achieved with more expediency and less risk.

In the New Board Concept Paper, the SEHK states that one of the reasons for proposing a separate New Board is the problem of index inclusion raised by the board of the SFC, namely, that inclusion

in Hong Kong's main local benchmark index is limited to companies listed on the Main Board. We believe this does not necessarily mean we must segment the market into different boards; different tiers may also be a feasible approach. Index inclusion is a decision to be made by the index companies. These companies are not currently regulated, have their own commercial interests to pursue, and will react to market realities as they see fit. For example, S&P Dow Jones Indices recently announced that its S&P Composite 1500<sup>®</sup> and its component indices will no longer add companies with multiple share class structures. In our view, when designing the overall shape of Hong Kong's market for tomorrow, our regulators need not be overly influenced by an issue like index inclusion.

For an augmented market such as that we have proposed above, liquidity is essential and full access to the full range of investors (retail and institutional), including Chinese investors through the Stock Connect programmes, will be a key attraction for potential issuers. We will elaborate on this below. In our view, the ability to quickly build up a critical mass of listed issuers would be key to the success of the New Board. To this end, the SEHK should carefully analyse how to ramp up liquidity for the New Board if it were to be structured as a separate board. In this connection, we urge the SEHK to study ways to address some of the current practices that may have led to distortions in the price discovery process, which we believe could be a major deterrent to potential New Economy issuers listing in Hong Kong even if we were to introduce the proposals in the New Board Concept Paper.

#### New Board – Consultation Questions

*Q1. 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.*

A1. For the reasons stated, we agree that Hong Kong needs to attract a more diverse range of companies including New Economy industries. We believe, however, that a stand-alone New Board is not necessarily the only way to achieve this goal, and that the SEHK could consider expanding the Main Board by adding a new segment or tier to it as another possible option to implement the reforms. We suggest that the SEHK carefully analyse how to ramp up liquidity for the New Board if it were to be structured as a separate board, as the ability to quickly build up a critical mass of listed issuers would be key to the success of the New Board.

*Q2. 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.*

A2. We believe that the stated goals of the Papers could be achieved by including the targeted companies onto the Main Board, and not necessarily by way of segregation onto a New Board. However, if the targeted companies are segregated onto a New Board, we believe the positioning of the various boards should be very clearly articulated to avoid confusion.

### 3. New Board PREMIUM vs. New Board PRO

Turning to the proposed features of New Board PREMIUM and New Board PRO, we have some key observations:

- The financial track record requirements of New Board PREMIUM will be the same as the Main Board in force from time to time, except that companies with non-standard governance structures such as WVR will be able to list on New Board PREMIUM. This means that this proposed segment is created solely for this type of companies while other targeted issuers (e.g. pre-profit companies that do not meet the alternative eligibility tests under Main Board listing rule 8.05(2) and (3)) will not be accommodated. The resulting target group seems rather narrow to us. If the SEHK intends to make New Board PREMIUM a thriving segment, further consideration could be given to how it can be opened to further types of issuers – e.g. by giving it flexibility to accommodate more pre-profit companies.
- New Board PRO is proposed as a segment with “light-touch” regulation with no requirement for a listing sponsor, or a prospectus-standard listing document. At a glance, we have some concerns that regulation may be too light and that there may be problems with the types of issuers that will be attracted to this market. Given the experience with GEM, it may not be a suitable experiment to introduce at this point in time.
- New Board PRO is proposed as a “professional investors only” trading board that is specifically targeted at New Economy issuers. As opposed to this, New Board PREMIUM caters to all types of companies, not just New Economy ones. We are of the view that, to compete with other markets in attracting issuers — in particular New Economy star performers, access to a wide range of investors (both institutional and retail) and particularly the Mainland market through the Stock Connect programmes, will be an essential attraction. In fact, at this point in time a new board limited to professional investors is probably unlikely to give Hong Kong a significant “edge” over other favourite New Economy markets, such as NASDAQ.

Generally, we feel that a new market segment such as New Board PREMIUM will be beneficial and, indeed, necessary to the market. We urge the SEHK to consider ways to expand and energise it by widening the target issuers it can accommodate. As we have explained above, however, this segment need not be in the form of a stand-alone board.

On the other hand, the proposed features of New Board PRO may not help Hong Kong attract the kind of quality issuers that we need. In the worst-case scenario, an unsuccessful New Board PRO may “taint” the New Board and harm Hong Kong’s market reputation.

It appears to us that more thinking may be required in respect of a New Board PRO, for example, as to limiting the classes of “professional investors” that can appropriately participate in this board, what that will mean for market liquidity, and the likely reaction of the retail segment. Indeed, when it is time to study the relevant proposals, an essential question would be whether “professional vs. non-professional investors” is indeed the most suitable differentiator for the segment. We suggest allowing the market more time to weigh the pros and cons before embarking on the New Board PRO initiative.

Whether or not the SEHK adopts the New Board PRO proposals, we expect the market will have other opportunities to discuss the detailed requirements applicable to New Board PREMIUM, whether it is established as a stand-alone board or a segment/tier of the Main Board.

Nevertheless, we would like to stress here that the SEHK should not let this slow down the other reforms, in particular to pursue the goals behind New Board PREMIUM which we believe are urgent and essential.

#### New Board – Consultation Questions

*Q3. 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.*

A3. As explained above, we believe that segmentation concept behind New Board PREMIUM is sound, but the current blueprint may be too restrictive in terms of listing eligibility requirements. We believe the SEHK should relax the listing eligibility for this segment to include a broader range of pre-profit companies, without necessarily confining it to particular industries. As for New Board PRO, we believe that further study is required, and we suggest exploring it at a later stage.

*Q4. 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.*

A4. We believe New Board PRO is a project for the next stage. We also think that it is a feasible option for the New Board PREMIUM to be structured as a separate segment or tier of the Main Board.

*Q5. 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.*

A5. We do not express any views for the time being, as we think New Board PRO is a project for the next stage.

*Q6. 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.*

A6. As explained above, we believe the SEHK should relax the listing eligibility for this segment, in particular to accommodate pre-profit companies that do not meet Main Board listing rule 8.05(2) and (3). More generally, we would like to see more opportunities for the market to be engaged in the formulation of the detailed requirements for applying to the New Board.

*Q7. 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.*

A7. We do not express any views at this stage, as we think New Board PRO is a project for the next stage.

*Q8. 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.*

A8. We do not express any views at this stage, as we think New Board PRO is a project for the next stage.

*Q10. 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.*

A10. We have some concerns as to the lighter touch approach to regulation and, in any event, do not believe there is a pressing need to create New Board PRO at this point in time.

*Q11. 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.*

A11. As explained above, one of the key attractions of Hong Kong for potential issuers (especially New Economy star performers) will be access to the Mainland market through the Stock Connect programmes. We do not see any immediate benefit in a “professional investors only” board for the time being.

*Q12. 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*

A12. We do not express any views at this stage, as we think a professionals-only board requires further study and is a project for the next stage.

*Q13. 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.*

A13. We do not express any views at this stage, as we think New Board PRO is a project for the next stage.

*Q14. What are your views on the proposed role of the Listing Committee in respect of each segment of the New Board?*

A14. As we believe New Board PREMIUM should be structured as an additional tier to the Main Board, we do not propose any substantial changes to the Listing Committee's current role.

*Q15. 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.*

A15. We have some concerns as to the lighter touch approach to regulation and, in any event, do not believe there is a pressing need to create New Board PRO at this point in time.

*Q16. 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.*

A16. We believe that further consultation should be conducted with regard to the continuing obligations applicable to New Board issuers, in particular for those adopting non-conventional corporate governance structures such as WVR.

#### **4. Facilitating secondary listings**

In the context of New Board PRO listings, SEHK proposed that applicants will not be required to provide equivalent shareholder protection standards to those of Hong Kong under the 2013 Joint Policy Statement (JPS). It was further proposed that for New Board PREMIUM, applicants will have to comply with this requirement but exemptions would be made for companies already listed on a Recognised US Exchange.

We are in favour of removing this requirement entirely from the 2013 JPS for all issuers. For overseas-incorporated companies, demonstrating equivalent shareholder protection, although to some extent alleviated by the SEHK Country Guides, remains a cumbersome process.

More importantly, we have serious doubts as to the regulatory basis for this approach. It is no secret that the country of incorporation of a company very often has no connection whatsoever with the location of its business and assets, the place of residence of its owners and managers, or other factors likely to influence the location of enforcement actions. Instead of spending too much effort comparing the shareholder protection regime in each jurisdiction, it may be better for the market to focus on disclosure of the key differences and risks in this regard, and step up enforcement efforts through international cooperation. Ultimately, where a jurisdiction presents insurmountable problems, the SEHK will always have the power to reject the application on the



“suitability for listing” ground. There does not appear to be an inordinate amount of risk in this connection, and we would therefore urge the SEHK to consider removing the “equivalent shareholder protection” requirement altogether.

The SEHK also proposed removing the “centre of gravity” test under the 2013 JPS for either segment of the New Board, meaning there will be no restriction on the secondary listing of companies operating primarily in Mainland China. We strongly agree with this proposal.

#### New Board – Consultation Questions

*Q9. 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.*

A9. As explained above, we believe that the equivalent shareholder protection requirement should be removed for all listing applicants on all the boards and replaced by disclosure requirements and availability of cross-border enforcement. We are also in favour of removing the centre of gravity requirement for secondary listings.

### **5. Accepting WVR companies for listing in Hong Kong**

The association is generally in favour of opening up the market to companies with non-conventional governance structures such as WVR.

In the case of primary listings, if WVR companies are accepted in Hong Kong, we are in favour of the “disclosure only” approach, but we are supportive of considering the introduction of certain additional appropriate safeguards. In other words, in addition to full disclosure of the relevant facts and circumstances, other safeguards could be explored, such as restrictions on the types of persons that can hold WVR, a cap on the ratio of voting rights between the different classes of shares, sunset clauses, etc. These safeguards, as well as heightened scrutiny of connected transactions, could mitigate the risk of abuse. Additional safeguards could also be introduced by way of continuing disclosure – e.g. subjecting WVR companies to more frequent or more stringent financial and other disclosure obligations. The SEHK should further consult the market to work out the detailed requirements.

With regard to secondary listings, the SEHK proposed to allow eligible listing candidates to list under the “disclosure only” regime if they have a good compliance record as listed companies on the New York Stock Exchange (NYSE) and NASDAQ. In fact, we believe that for companies already listed elsewhere, there is typically no incentive to pursue a Hong Kong secondary listing if it entails the full process of amending constitutional documents.

Instead of adopting different approaches for primary vs. secondary listing, the SEHK may consider adopting the same approach across the board, but granting exemptions/waivers to secondary listing candidates in appropriate circumstances.



## New Board – Consultation Questions

*Q17. 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.*

A17. We are in favour of a “disclosure only” approach, to be supplemented by additional appropriate safeguards. This should be of general application regardless of the board on which the company is seeking a listing, although we believe New Board PRO is not a priority at this stage.

*Q18. 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.*

A18. We believe that some form of additional appropriate safeguards as well as heightened scrutiny of connected transactions should be in place to mitigate the risk of abuse. The SEHK may also consider adding more stringent continuing disclosure requirements as a further safeguard. The SEHK may further consult the market to work out the detailed requirements. This should be of general application regardless of the board on which the company is seeking a listing.

*Q19. 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.*

A19. We believe that the same approach should be adopted for primary and secondary listing candidates, with flexibility built in to grant exemptions/waivers to secondary listing candidates on a case-by-case basis.

*Q20. What are your views on the suspension and delisting proposals put forward for the New Board? Please give reasons for your views.*

A20. We believe New Board PRO is not a priority, but do not otherwise have strong views regarding the suspension and delisting procedures outlined by the SEHK.

*Q21. 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.*

A21. We do not have any specific views on new continuing quantitative performance criteria nor the proposed “watchlist” approach to delisting.

*Q22. 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.

A22. We have no strong views as to the likely enforcement regime to accompany the New Board (if it is created as anticipated by the SEHK). We are not able to comment on an “even lighter touch” enforcement approach at this stage, as the contents of this approach have not been clearly spelled out in the Concept Paper.

## 6. Proposed Main Board and GEM reforms

### a. Re-positioning of GEM and consequential stepping-up of both GEM and Main Board

We agree generally with the tightening up and re-positioning of GEM. We see no problem generally with the proposals regarding GEM listing rule amendments. Likewise, we have no issue with upgrading of the Main Board requirements as to initial market capitalisation and minimum public float so as to make them proportionate with the equivalent GEM requirements.

However, there will continue to be GEM companies suitable for transfer of listing to the Main Board. We suggest that, while the migration process may be tightened, it should be achieved in a reasonable manner. We would caution against an unduly stringent transfer regime.

#### GEM and Main Board listing rules reforms – Consultation Questions

*Q1. 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.

A1. We agree with the proposal to re-position GEM as outlined in the Consultation Paper.

*Q2. 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.

A2. We agree with the proposed process for GEM transfers to the Main Board. However, tightening up of the transfer process should be achieved in a reasonable manner and the resulting regime should not be unduly stringent.

*Q3. 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.*

A3. We agree with the retention of the current track record requirements for GEM.

*Q4. 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.*

A4. We agree with the retention of the current practice of not requiring a GEM applicant that can meet the Main Board requirements to list on the Main Board.

*Q5. 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.*

A5. We agree with the proposal to increase the cash flow requirement for GEM.

*Q6. 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.*

A6. We agree with the proposal to increase the market capitalisation requirement for GEM.

*Q7. 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.*

A7. We agree with the proposal to increase the post-IPO lock-up requirement for GEM controlling shareholders.

Q8. 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.

A8. We have no strong views on introducing a mandatory public offer of at least 10% for all GEM IPOs.

Q9. 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.

(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.

A9(a) & (b). We have no strong views on aligning the GEM listing rules with Main Board requirements in relation to placing to core connected persons, connected clients and existing shareholders and their respective close associates; and the application of PN18 Main Board listing rules to GEM offerings.

Q10. 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.

A10. We agree with the proposal to increase minimum public float value for GEM.

Q11. 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

A11. We have no strong views on continuing the use of the profit requirement (as opposed to a cash flow requirement) to determine eligibility to list on the Main Board.

*Q12. 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.*

A12. We have no strong views on the quantum of the current minimum profit requirement and see no pressing reason to revise it.

*Q13. Do you agree with the proposal to increase the minimum market capitalisation requirement at listing for Main Board applicants from at least HK\$200 million to at least HK\$500 million?*

Yes

No

*Please give reasons for your views.*

A13. We agree with the proposal to increase the minimum market capitalisation for the Main Board.

*Q14. 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.*

A14. We agree with the proposal to increase the minimum public float value for the Main Board.

## **b. Liquidity is key**

We strongly disagree with the proposed extending of the controlling shareholder's lock-up on the Main Board. Currently the Hong Kong market is at least as equally plagued by liquidity problems as by under-diversification of listed issuers. One can also say that the two issues are connected, as illiquidity reduces the attractiveness of our market to prospective issuers.

Our liquidity situation is likely to be exacerbated by the lengthening of the lock-up on the Main Board, which seems to have been proposed in order to bring the Main Board in line with the GEM. While the lengthening of the GEM lock-up has concrete regulatory goals, namely to increase the cost of such undesirable behaviour as "shell creation" and to reduce the risk of disorder and even manipulation of that market, the Main Board does not necessarily suffer from the same problems as GEM, nor should its regulation in this regard be brought in line with GEM automatically. We observe also that adopting this proposal would make the lock-up on our Main Board longer than that required on practically all other major international markets.

## GEM and Main Board listing rules reforms – Consultation Questions

*Q15. 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.*

A15. We strongly disagree with the proposal to increase the post-IPO lock-up requirements for Main Board issuers. The Main Board has not been affected by the same issues affecting the GEM, which called for the extension of the lock-up. We think this would have an adverse impact on the liquidity situation and do not see any apparent benefit or pressing necessity for this reform. It would also be a longer lock-up than is required by any other major international market.

### **c. Making Main Board and GEM rules more New Economy friendly**

The Review of the GEM and Changes to the GEM and Main Board Listing Rules consultation paper focuses on eligibility standards and does not address the issue of how to make the Main Board and GEM listing rules more friendly to New Economy companies. While much ink has been spilt on the New Board designed to attract these companies, there may be New Economy companies with conventional governance structures that qualify for a Main Board or GEM listing, but which are severely hampered by current Listing Rules or SEHK practices that are predicated on “old economy” concepts.

For example, compared to traditional companies, New Economy companies have very different approaches to relationships with controlling shareholders (that could raise reliance issues under the current regulations), competition, and business delineation (the traditional modes of geographical, customer or product delineation are increasingly becoming irrelevant in the Internet-based economy). Likewise, these companies’ employee compensation and incentivisation practices often run into problems when traditional listing rule concepts are applied to them.

We strongly urge the SEHK to take this opportunity to review the Main Board and GEM listing rules, independently of the New Board proposals, with a view to introducing suitable upgrades and modernisations catering to the unique needs of New Economy companies, and taking into full account the challenges posed to sponsors in fulfilling due diligence and other requirements under the Listing Rules.

### **GEM and Main Board listing rules reforms – Consultation Questions**

*Q16. 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.*

A16. We agree that the review of the Main Board and GEM rules can be considered independently of each other. In particular, we urge the SEHK to review the listing rules independently of the New Board proposals, to make the rules more friendly to New Economy companies.

## 7. Conclusion

We commend the SEHK for its efforts to further open up and diversify the Hong Kong market. We are in agreement with the general direction that the SEHK is taking, but would advise the SEHK to prioritise the reforms that will most effectively attract New Economy companies.

While New Board PRO contains some interesting aspects and merits further study, we believe much more thinking must go into it to make it a useful and safe addition to our market. On the other hand, the concepts behind New Board PREMIUM (either as a separate board or a new tier to the Main Board) are realistic and practicable, and can bring some concrete benefits to Hong Kong within a short time and at relatively low risk. We urge the SEHK to press ahead with this aspect of the reforms, regardless of the process concerning New Board PRO.

We stress again that liquidity is a key issue for the market, a problem no less acute than overweighting of traditional economy issuers. We advise the SEHK to bear this in mind when devising the next step.

## 8. Contacts

Please do not hesitate to contact Wayne Arnold, Executive Director, Head of Policy and Regulatory Affairs at ASIFMA ([warnold@asifma.org](mailto:warnold@asifma.org); +852 2531 6560), or Bonnie Chan, partner at Davis Polk & Wardwell ([bonnie.chan@davispolk.com](mailto:bonnie.chan@davispolk.com); 2533 3308) if you wish to discuss any of the above. We have no objections to disclosing the name of the Association in the version of this response published by the SEHK on its website.

Sincerely,



Mark Austen  
Chief Executive Officer  
Asia Securities Industry & Financial Markets Association