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HKEX's Proposed New Board Presents Unique Opportunities for Early Stage Tech Canadian Companies

The Hong Kong Stock Exchange ("**HKEX**") has successfully established itself as an international financial centre and a world renowned stock exchange. In five of the last eight years, the HKEX has been the [world's number one exchange](#) based on capital raised through initial public offerings (IPOs). In order to retain and reinforce this market leading position, the HKEX has undertaken a review of its listing regime to identify areas where the current regime could be developed to provide access to a broader range of companies.

On June 16, 2017, the HKEX issued a consultation paper (the "**New Board Proposal**") on establishing a new listing board (the "**New Board**"), separate from the Main and GEM boards, on the HKEX. The New Board Proposal is designed to enhance Hong Kong's ability to attract "new economy" companies from sectors where innovation, technology and intellectual property are the primary drivers for their growth. In particular, the New Board Proposal is targeted towards early stage, pre-profit companies that do not meet the financial or track record criteria for the GEM board and the Main Board of the HKEX. The New Board Proposal is open for consultation until August 18, 2017.

Accordingly, the New Board presents an unique opportunity for early-stage tech Canadian companies to access the liquidity and

capital of one of the world's largest IPO markets without being burdened by cumbersome regulatory requirements.

Background

The New Board Proposal is driven by strategic and competitive reasons. First, as it stands right now, the HKEX has a heavy reliance on mainland Chinese companies. For example, from January 2006 to May 2017, the market capitalization of mainland Chinese companies listed on the HKEX increased from approximately 50% to 64%. Moreover, during the five years ending 2016, mainland Chinese IPOs accounted for approximately 60% of the total number of IPOs on the HKEX and approximately 91% of the IPO funds raised. Second, the HKEX has a relatively low exposure to companies in the fast growing "new economy" sector. Listings on the HKEX are concentrated in traditional sectors like financial services and property, which together account for approximately 44% of the total market capitalization. On the other hand, "new economy" companies listed on the HKEX in the past ten years only make up approximately 3% of its total market capitalization. Third, from a competitive perspective the HKEX has recognized that it has lost a number of prospective listings, particularly technology companies, such as Alibaba, to the US capital markets due to their more accommodating listing requirements.

In light of these considerations, the HKEX has drafted the New Board Proposal to attract companies with one or more of the following characteristics:

- **Pre-profit companies:** In certain high growth sectors, it is standard practice for companies go public even though they do not have established track record of profitability as many of them have yet to reach the commercialization stage; and
- **Companies with non-standard governance features:** Weighted or dual class voting class structures are common in technology companies (e.g., Facebook). These structures provide the founders of the company with a disproportionate level of voting rights relative to their economic interests.

Under the current listing requirements of the HKEX, a company with either one, or two of the abovementioned characteristics would be unable to list on the HKEX.

The New Board Proposal

The New Board Proposal which proposes to create the New Board also divides the New Board itself into two distinct segments: (a) the New Board PRO and (b) the New Board Premium. The rationale in having two segments is to tailor shareholder protections to the perceived risk level of each segment.

New Board PRO

The New Board PRO segment is designed for early-stage, pre-profit companies that do not meet the financial or track record criteria for the GEM Board or the Main Board. Although applicants will be subject to a minimum market capitalization of HK\$200M (CAD\$30M) at the time of listing, no specific financial or track record requirement will be imposed. Applicants to the New Board PRO would be required to have a minimum of 100 investors at the time of listing and a minimum public float of 25 percent.

The New Board PRO will only be open to “professional investors.” These are defined as persons who meet certain prescribed financial criteria (e.g. having a portfolio of at least HK\$8 million or approximately CAD\$1.3 million). This is similar to the accredited investor criteria under Canadian securities law. Given the early-stage development and the investor eligibility requirement, the New Board PRO would allow a light-touch approach to the vetting process. A New Board PRO applicant can appoint a financial advisor (instead of a sponsor) to carry out due diligence and disclosure for listing purposes. The New Board PRO will also provide relief to overseas issuers from the current HKEX requirement to provide shareholder protections equivalent to those prescribed under Hong Kong law.

New Board Premium

The New Board Premium segment will target “new economy” companies that meet the existing financial and track record

requirements of the Main Board with the exception of having standard governance structures. The New Board Premium will be open to both retail and professional investors similar to the Main Board.

Unlike, the new Board Pro, the New Board Premium applicants would be required to provide equivalent shareholder protection standards. Applicants to the New Board Premium will also have to demonstrate a higher market capitalization than the New Board PRO.

A summary of the proposed requirements of the New Board PRO and New Board Premium are set out below:

	New Board PRO	New Board PREMIUM
Target issuers	<ul style="list-style-type: none"> ▪ Earlier stage/pre-profit New Economy companies which do not meet the financial or track record criteria for GEM for the Main Board 	<ul style="list-style-type: none"> ▪ New Economy companies meeting Main Board financial and other key requirements, but unable to meet certain criteria (e.g. non-standard equity governance structure)
Investor eligibility	<ul style="list-style-type: none"> ▪ Professional investors only 	<ul style="list-style-type: none"> ▪ Retail and professional investors
Admission financial requirements	<ul style="list-style-type: none"> ▪ No financial or track record requirements ▪ Minimum market capitalization at listing of HK\$200 million 	<ul style="list-style-type: none"> ▪ Same as Main Board
Shareholding structure	<ul style="list-style-type: none"> ▪ Weighted Voting Rights structures permitted 	<ul style="list-style-type: none"> ▪ Weighted Voting Rights structures permitted
Minimum public float value at listing	<ul style="list-style-type: none"> ▪ 25%, subject to a minimum of 100 investors 	<ul style="list-style-type: none"> ▪ Same as Main Board
Overseas issuers	<ul style="list-style-type: none"> ▪ Must have IOSCO MMOU/SFC bilateral agreement 	<ul style="list-style-type: none"> ▪ Must have IOSCO MMOU/SFC bilateral agreement

	New Board PRO	New Board PREMIUM
	<ul style="list-style-type: none"> ▪ No requirement for Hong Kong equivalent shareholder protection as required by the 2013 Joint Policy Statement ▪ Permits secondary listing of Mainland companies 	<ul style="list-style-type: none"> ▪ Waivers for issuers already listed on NYSE and NASDAQ from Hong Kong equivalent shareholder protection standards ▪ Permits secondary listing of Mainland companies
Listing adviser	<ul style="list-style-type: none"> ▪ Financial adviser must be appointed. The financial adviser would be expected to exercise their own professional judgment as to what investigations are appropriate for the applicant and to ensure that the listing document provides accurate and sufficient information to enable professional investors to make an informed investment decision 	<ul style="list-style-type: none"> ▪ Sponsor must be appointed. The sponsor would be responsible for carrying out due diligence in accordance to the standards under the Securities Futures Commission’s (Hong Kong) Code of Conduct
Listing document	<ul style="list-style-type: none"> ▪ Contains all material information that would be required by a professional investor in order to make an investment decision 	<ul style="list-style-type: none"> ▪ Full prospectus as the Main Board
Vetting and approval of the listing	<ul style="list-style-type: none"> ▪ Listing Department 	<ul style="list-style-type: none"> ▪ Listing Committee
Continuous listing obligations	<ul style="list-style-type: none"> ▪ Expected to comply with the standards applicable to Main Board-listed companies in respect of: <ul style="list-style-type: none"> (a) timely disclosure of material information; (b) publication of financial statements for half-year and full-year under prescribed accounting standards; 	

	New Board PRO	New Board PREMIUM
	<ul style="list-style-type: none"> (c) notifiable and connected party transaction rules; (d) directors’ suitability and minimum independent non-executive director representation; (e) requirement to appoint a company secretary; (f) general meetings will be required; (g) super-majority voting is required on certain fundamental matters such as changes to constitutive documents, and voluntary winding up; and (h) pre-exemption rights for existing shareholders to protect them from dilution 	
Suspension and delisting	<ul style="list-style-type: none"> ▪ The HKEX would suspend a New Board Issuer for material breach of the Listing Rules ▪ Automatic delisting if continuously suspended for 90 calendar days 	<ul style="list-style-type: none"> ▪ The HKEX would suspend a New Board Issuer for material breach of the Listing Rules ▪ Automatic delisting if continuously suspended for 6 months

Why HKEX?

HKEX offers Canadian issuers a number of unique advantages as a listing venue, including the following:

Access to an International Financial Centre: Hong Kong has close trading and business links to other Asian economies, and is a strategically located high growth centre. This has allowed HKEX to provide many multinational companies with fund-raising opportunities due to its access to a large pool of institutional and high net worth investors in Asia.

Providing a Gateway to Mainland China: Hong Kong has a high concentration of investors familiar with China and Asia, and provides an ideal platform for Canadian issuers with an existing Asian presence or plans to expand to Asia to achieve exposure to

the rapidly growing mainland Chinese market in a relatively familiar capital markets environment.

Favorable Valuations: The HKEX has historically provided its listed companies with a more favorable price to earnings valuations relative to other international markets.

Robust Legal and Regulatory Framework: Hong Kong has an established legal system based on the English common law which provides a solid foundation for companies to raise funds in an established regulatory framework in line with international standards.

McMillan LLP

McMillan LLP is the only Canadian headquartered law firm with an office in Hong Kong and has a successful track record in advising Canadian companies seeking financing and making investments in Asia as part of its China Practice Group. Our China Practice Group leading team of specialists is highly regarded for its experience and excellence in negotiating cross-border transactions, assisting listings on the HKEX, and providing unrivaled strategic advice.

The McMillan team is also highly esteemed for its depth of expertise in assisting Canadian companies list—and dual-list—on the HKEX. This includes major market participants such as China Gold International, BBI Life Sciences Corporation, and Sunwah International Limited. McMillan also has an established track record of advising Asia Pacific-based clients on financings and cross-border and investment with respect to their business in Canada.

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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