Via Electronic Mail

March 27, 2014

Charles Li Xiaojia
Executive Director & Chief Executive
Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central, Hong Kong

Dear Mr. Li:

We are writing in response to your March 17th news release commenting on Alibaba Group Holding Limited's plans for an initial public offering in the U.S. ("Release").[1] The Council of Institutional Investors ("CII") is a U.S. based, nonprofit, nonpartisan association of pension funds and other employee benefit funds, foundations and endowments with combined assets of over $3 trillion. CII's mission is to educate its members, policymakers and the general public about corporate governance, shareowner rights and related investment issues, and to advocate on our members' behalf.[2]

The Release indicates that Hong Kong Exchanges and Clearing Limited ("HKEx") is considering "possible changes" to its listing standards relating to "shareholder structures."[3] We understand that those changes may soon be released as part of a public consultation.[4] While we currently have every intention of commenting on the consultation when issued, we would like to take this opportunity to share with you our strong opposition to any possible changes to the HKEx listing rules that would deviate from the fundamental principle of one share, one vote.

CII has long believed that when it comes to public equity markets, voting power should be proportional to the economic interests of the holders. Our members, like many investors, want boards that are empowered to actively oversee management and make course corrections when appropriate.[5]

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[1] HKEx News Release, Charles Li's Comments on Alibaba's US Listing Plan 1 (Mar. 17, 2014), https://www.hkex.com.hk/eng/newsconsul/hkexnews/2014/140317news.htm.
[2] For more information about the Council of Institutional Investors ("CII"), including its members, please visit CII's website at http://www.cii.org/about_us.
[3] HKEx News Release at 1.
[4] Jamie Allen & Michael Cheng, A Touch of (Dual) Class, Fin. Asia, Mar. 18, 2014, at 1, http://www.financeasia.com/News/375362,a-touch-of-dual-class.aspx.
[5] *See, e.g.,* James Kristie, Dual-Class Stock: Governance at the Edge, Directors & Boards 37, 38-39 (2012 Q3) (quoting Scott Goebel, senior vice president and general counsel of Fidelity Management & Research Co.: "If you think about . . . dual class stock, all other things being equal, this capital structure is less likely to have alignment and less likely to have the accountability that we look for in comparison to single-class stock structures [and] . . . [t]hat is because there is a disconnect between the economics and voting authority in the dual-class stock structure."), *available at* http://sites.udel.edu/wccg/executive-compensation/dual-class-stock-governance-at-the-edge/.

When CII was formed in 1985, the very first provision of our very first set of corporate governance best practices was the principle of one share, one vote.[6] Almost thirty years later, that principle remains a key element of our membership approved corporate governance policies.[7] The current policy provision simply states:

> **One Share, One Vote**: Each share of common stock should have one vote. Corporations should not have classes of common stock with disparate voting rights. Authorized, unissued preferred shares that have voting rights to be set by the board should not be issued without shareowner approval.[8]

Our policy is generally supported by empirical research indicating that multi-class stock structures do not perform as well as traditional arrangements.[9] For example, a 2012 study of the ten-year performance and risk review of the Standard & Poor's 1500 found:

- Companies with multi-class stock structures underperform companies with noncontrolling single-class structures over three-, five-, and ten-year time periods;
- Companies with multi-class stock structures have more material weaknesses in internal controls than non-controlled companies; and
- Companies with multi-class stock structures have more related party transactions than non-controlled companies.[10]

The principle of one-share, one vote is particularly critical to CII members because of their long-term investment horizons and their heavy use of passive investment strategies. More than ninety percent of CII members index some portion of their funds' portfolios.[11]

As long-term passive investors, our members' interests may be perfectly aligned with the interests of the founders and initial executives of the company. At some point, however, the founder and the initial executives may lose interest, change jobs, or fail as managers. When that time arrives, our members still remain as shareowners.

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[6] Council of Institutional Investors, Shareholder Bill of Rights (Apr. 5, 1989) (on file with CII) ("Each share of common stock, regardless of its class, shall be entitled to vote in proportion to its relative share in the total common stock equity of the corporation.").
[7] Council of Institutional Investors, Corporate Governance Policies § 3.3 (updated Sept. 27, 2013), http://www.cii.org/corp_gov_policies#shareowner_rights.
[8] *Id.*
[9] *See, e.g.,* Steven M. Davidoff, Thorny Side Effects of Silicon Valley Tactic to Keep Control, Dealbook, N.Y. Times, Sept. 3, 2013, at 2 ("studies have shown that in general, this type of dual-class structure does not perform as well as traditional arrangements"), http://dealbook.nytimes.com/2013/09/03/thorny-side-effects-in-silicon-valley-tactic-to-keep-control/?_php=true&_type=blogs&_r=0.
[10] IRRC Institute & ISS, Controlled Companies in the Standard & Poor's 1500: *A Ten-Year Performance and Risk Review* 3 (Oct. 12), http://irrcinstitute.org/pdf/FINAL-Controlled-Company-ISS-Report.pdf.
[11] Council of Institutional Investors, Asset Allocation Survey 2011, at 1 (2011) (on file with CII).

The principle of one share, one vote, provides our members with a tool to hold founders and executives accountable should their interests begin to diverge from the interests of long-term investors.[12]

The potential harm of multi-class stock structures is not limited to long-term passive investors like CII members. The harm is potentially much broader, much more societal based.[13] As Charles Elson, director of the Weinberg Center for Corporate Governance at the University of Delaware, has explained:

> Where you have dual-class stock, the controlling shareholder controls the board. Though having legal responsibilities to oversee management and monitor effectively, the board, practically speaking, becomes much less of a monitor. Instead, what you're doing is exporting the monitoring function to third parties—to the government, the courts, and regulators. That then creates a significant public cost. In the end, when there is a problem and someone has to clean up the mess that maybe a beholden board has not caught, the damage isn't just limited to shareholders. The damage is to society in general and the public pays for it.[14]

Finally, multi-class stock structures are clearly not a requirement for the "new era of economic development" led by "new economy or technology companies" as you described in the Release.[15] As one example, less than six months ago Twitter, Inc. raised over $1.8 billion in its initial public offering and co-founder Evan Williams and CEO Dick Costolo's shares entitle them to the same voting power as the shares held by everyone else.[16] In addition, at one of the most successful and well known new economy global companies—Amazon.com—founder and CEO Jeffrey P. Bezos owns approximately nineteen percent of the company. Mr. Bezos, however, has seen no need to create a special share class to lock in his control.[17]

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[12] *See, e.g.,* Letter from Senator Elizabeth Warren to Mr. John Carey, Vice President-—Legal, NYSE Regulation, Inc. 1-2 (June 5, 2013) ("Under unequal voting arrangements, . . . long-term investors will have limited recourse in holding management and the board accountable if the company heads in a wrong direction."), http://www.warren.senate.gov/files/documents/Senator%20Warren%20letter%20to%20NYSE,%20Nasdaq%20-%206-5-2013.pdf.

[13] *See, e.g.,* James Kristie at 38.

[14] *Id.*

[15] HKEx News Release at 1.

[16] Peter Kafka, One Thing Twitter Won't Have When It Goes Public: Two Classes of Stock, All Things D, Oct. 3, 2013, at 1 ("The messaging here is clear: 'At Twitter,' the company's filing would like to say but can't because it can't actually speak, 'we are way more responsive to shareholder interests than many of our peers."), *available at* http://allthingsd.com/20131003/one-thing-twitter-wont-have-when-it-goes-public-two-classes-of-shares/.

[17] Steven M. Davidoff at 3.

As indicated, we look forward to the release of your consultation. In the meantime, if you have any questions regarding our views on this issue, please feel free to contact me at 202.261.7081 or jeff@cii.org.

Sincerely,

Jeff Mahoney

General Counsel