Via S&P Survey: www.surveymonkey.com/r/EONVSC

April 27, 2017

In re: S&P Dow Jones Indices consultation with members of the investment community on the eligibility of non-voting share classes in S&P DJI indices

cc: index_services@spglobal.com

QUESTIONS AND RESPONSES *(with language of preferred S&P Dow Jones-provided answer in italics)*:

1. Contact Information

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2. If the only listed share classes of a company do not have voting rights, should that company be eligible for inclusion in an index?

No, that company should not be eligible for inclusion in an index. Please see additional comments in response to Question 7.

3. For companies with multiple-class structures where one or more listed share class is non-voting:

Should only the non-voting share classes be ineligible?
Should all share classes be ineligible?
Should all share classes be eligible?

Only the non-voting share classes should be ineligible. We believe common stock should be listed on a one-share, one-vote basis, but are comfortable with inclusion of shares with superior voting rights in an index, so long as they meet other index requirements including on liquidity and float. That said, none of the alternative answers provided here correctly captures our view. As indicated in our response to Question 7, we prefer a broader policy affecting common share classes with inferior voting rights, including those with no voting rights. However, should S&P

choose to simply exclude no-vote share classes, in a three-class case (such as Alphabet where liquidity and float requirements are met), we would favor inclusion of the low-vote shares in the index to reflect the company's broad market cap.

4. If the company does not file information statements regarding shareholder ownership, should the company be ineligible for inclusion?

Yes, the company should be ineligible for inclusion. However, we presume the reason for such lack of disclosure relates to lack of voting rights, which is our primary concern. Lack of standard disclosures from the company, as well as from investors under 13G and 13D requirements, are additional reasons for concern.

5. If the methodology were to exclude all share classes so the company is not eligible, should current constituents be "grandfathered" and remain in the index?

Yes, current constituents should be "grandfathered" and remain in the index.

6. Should eligibility of non-voting shares differ in benchmark vs. investable index families?

No, eligibility of non-voting shares should not differ in benchmark vs. investable index families.

7. Do you have any additional comments?

Yes.

We believe that Snap-type no-vote shares are even worse that low-vote shares in a traditional dual class stock structure, and so if S&P adopts ONLY Prong 1 below (aimed just at excluding no-vote shares), that would be a significant step in protecting the market and long-term institutional holders (core clients of an index provider) from the worst form of multi-class shares. However, as CII has opposed dual-class structures throughout our 32-year history, we request consideration for Prong 2 below, recognizing that this is beyond the scope intended in the current consultation process.

PREFERRED POLICY

We request that S&P amend its methodology to exclude new classes of securities from the S&P Dow Jones equity indices after May 31, 2017, if EITHER of the following holds true:

Prong 1) The company's only listed share class is non-voting.

OR

Prong 2) The company has at least two classes of capital or common stock with unequal voting rights AND the company's charter or certificate of incorporation lacks a clear and irrevocable requirement that the multi-class structure be dissolved to a single common

share class, with one-share, one-vote, within a defined period of time set at no longer than five years, unless holders of a majority of the low-vote share class vote, on a one-share, one-vote basis, to extend the multi-class structure for a specific term not to exceed a term set at five additional years or less.

ALTERNATIVE POLICY SUGGESTION

Should S&P amend its methodology at this time only to exclude no-vote shares, an alternative to simply implementing Prong 1 above would be to exclude non-voting share classes unless:

(1) There is a sunset/renewal provision at no more than five years; AND

(2) Either of the following holds:

(a) There is another share class with voting rights that is eligible (i.e., that passes other screens including liquidity and float) OR

(b) Non-voting shares pay a higher dividend than voting shares AND/OR non-voting shares have preferential liquidation rights, which would offer some protection for shareholders that have no voting rights when the company goes bankrupt.

WHO WE ARE

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of public, corporate and union employee benefit funds, and other employee benefit plans, foundations and endowments with combined assets under management exceeding $3 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than $20 trillion in assets under management.

WHY WE ARE APPEALING TO YOU

Common shares with no voting rights threaten to substantially deepen the festering and growing problem of multi-class IPOs with unequal voting rights. All such multi-class structures diminish accountability, increase risk and are detrimental to public markets long-term. But shares with essentially no voting rights (as opposed to disproportionately low voting rights) cut out public shareholders altogether from governance structures and shareholder voice.

The decision of the NYSE to permit Snap Inc. to IPO with non-voting Class A common shares as *the company's sole public share class*, which listing occurred in March 2017, has brought this issue to a head. We do not believe that shares with zero voting rights should be classified for indexing purposes as "common stock" and included in equity and equity index like the S&P 500. No-vote shares arguably are more like master limited partnership units (excluded from S&P indices) than equity. At a minimum, there should be real sunset provisions, providing a clear plan to provide public shareholders with a vote in a reasonable period of time.

Long-term institutional investors, the primary clients of index providers, are particularly at risk from dual-class structures. We fear that Snap may lead to a stream of future IPOs with Snap-like no-vote structures, which will compound complexity for market participants, notably index providers. It would be wise to tackle the problem now, before the number of affected companies grows and the challenges become even more intractable.

Relative to stock exchanges, which are conflicted by competition to attract new listings, major index providers like S&P Dow Jones Indices are well-positioned to play a pivotal role in preserving value-enhancing market norms.

SNAP'S ENTIRELY NO-VOTE PUBLIC EQUITY STRUCTURE IS RADICAL EVEN COMPARED TO OTHER NO-VOTE SHARE CLASSES INCLUDED IN THE S&P 500

Absent from Snap's structure is the bedrock characteristic of public equity: that owners have a viable mechanism, outside of litigation, to protect against insider entrenchment and the associated risk to long-term performance. While equity indexes at times accommodate some variation in the strength of that mechanism, we contend that Snap warrants special scrutiny as it represents a total abandonment of this fundamental concept.

According to analysis conducted for CII by Covington & Burling, the rights of publicly-traded Snap shareholders are weaker in meaningful ways than shareholder rights at S&P 500 companies with publicly-available classes of non-voting stock. That is, public shareholders of Snap lack a choice that is presented by Alphabet, Brown Forman, CBS, Discovery Communications, McCormick & Co., Molson Coors, News, Twenty-First Century Fox, Under Armour and Viacom, the issuers with no-vote shares included currently in the S&P 500. That is rooted in the fact that these companies have classes of publicly-traded stock with voting rights.

Snap's only publicly-traded stock carries:

- No right to vote on the election of directors
- No right to vote on significant corporate transactions, such as merger or other sale of the company
- No ability to submit shareholder proposals
- No ability to make nominations to the board at the annual meeting of shareholders
- No ability to present floor proposals at annual meeting of shareholders
- No right to receive proxy statements and advance notice of corporate actions
- An exemption from beneficial ownership reports of Forms 3, 4 or 5 under Section 16 of the Exchange Act (with the exception of directors and officers)
- An exemption from beneficial ownership reports under Sections 13(d) and 13(g) of the Exchange Act
- An exemption from Dodd-Frank advisory shareholder votes on executive compensation and votes on the frequency of such votes

We also have concerns on handling of conflicts of interest and related party transactions under the Snap share structure, and note that Class A shares may be increased, diluting current shares, with no input from Class A shareholders.

JOBS ACT EXEMPTIONS EXACERBATE CONCERNS

We would note that disclosure concerns are exacerbated by Snap's exemption from certain requirements as an "emerging growth company" (EGC), including to the general requirement for audit of internal controls over financial reporting under Section 404(b) of the Sarbanes-Oxley Act.

THE BROADER PROBLEM

If S&P exclusively excludes companies with entirely no-vote public equity structures, other structures that distort the relationship between ownership rights from voting rights, albeit in slightly less perverse ways than Snap, could gain fresh legitimacy among IPO-contemplating companies and their advisors.

In cases where companies lack a one-share, one-vote structure, CII policy encourages the use of robust sunset provisions to phase out differential voting rights over a reasonable period. New research from Harvard University recommends a periodic vote by non-controlling shareholders to determine whether differential structures remain appropriate. We accept this approach if conducted on a binding basis at intervals no longer than every five years, and would fully support a decision by S&P to exempt any company from index exclusion if its governing documents guarantee compliance with this reasonable safeguard.

GRANDFATHERING

We believe the first prong of our proposal, to prohibit any company from S&P indices if their only listed share class is non-voting, has no grandfathering concern, at least for the S&P 500 index for which Snap's market cap suggests eventual eligibility, as Snap would mark the first incidence of a company with exclusively no-vote public shares joining an S&P index.

We acknowledge that for a multitude of practical reasons, the Prong 2 of our proposal cannot (and should not) apply on a backward-looking basis to companies already included on S&P indices. While our proposal sets May 31, 2017 as the key date after which companies joining S&P indices must adhere to the second prong, we would not object to a later date in calendar 2017 if deemed necessary.

CONCLUSION

The unprecedented Snap IPO puts a significant hazard on the horizon that risks further material deterioration in the quality of equity markets. We are concerned that if Snap is included in core indices, non-voting equity may gain unstoppable momentum. We also are concerned that excluding only Snap-like structures could spark further market deterioration through "Snap-lite"

offerings that similarly undermine the link between ownership and voting rights. Leading index providers like S&P have a unique opportunity, and indeed a responsibility, to appropriately respond to this long-term existential threat to the efficiency and soundness of our capital markets, without affecting a single existing index constituent.