

Via Email: MAS\_MCP@mas.gov.sg

March 15, 2018

The Secretariat, Corporate Governance Council  
c/o Markets Policy & Infrastructure Department Monetary Authority of Singapore  
10 Shenton Way, MAS Building  
Singapore 079117

Dear Sir or Madam:

The Council of Institutional Investors (CII) is pleased to respond to the Consultation Paper on Recommendations of the Corporate Governance Council. We are using the template you provided to respond to select questions included in the consultation. Please find our responses attached in the Appendix below.

Sincerely,



Ken Bertsch  
Executive Director

## Appendix

<b>Consultation topic:</b>	Consultation Paper on Recommendations of the Corporate Governance Council
<b>Name<sup>1</sup>/Organisation:</b> <sup>1</sup> if responding in a personal capacity	Council of Institutional Investors (CII)
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<b>Confidentiality</b>	
I wish to keep the following confidential:	We are not requesting confidentiality.  <i>(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity to be kept confidential. Your contact information will not be published.)</i>

### General comments:

The Council of Institutional Investors (CII) is a nonpartisan, nonprofit association of public, corporate, and union employee benefit funds, other employee benefit plans, foundations, and endowments with combined assets under management exceeding \$3.5 trillion. Our member funds include major long-term shareholders 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 \$25 trillion in assets under management, most also with long-term investment horizons.<sup>1</sup> CII members share a commitment to healthy public capital markets and strong corporate governance.

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<sup>1</sup> For more information about the Council of Institutional Investors (Council or CII) and our members, please visit the Council's website at [http://www.cii.org/about\\_us](http://www.cii.org/about_us).

**Question 1: The Council seeks comments on the draft Introduction**

We support the Corporate Governance Council's desire to strengthen board quality and "enhance the eco-system to advocate good corporate governance practices in Singapore." Our primary concern, which extends beyond the scope of this particular consultation, is that we are concerned by some reports indicating that SGX may pull back from its long-standing support for equal voting rights, which could undermine progress in corporate governance resulting from this consultation. We believe that permitting multi-class equity structures would facilitate neither the long-term interests of investors nor the long-term interests of Singapore-listed companies.

**Question 2: The Council seeks comments on its proposed approach to streamline the Code as outlined in Paragraph 3.4. In particular, the Council would like to seek views on:**

- a. the 12 Provisions (or Guidelines) set out in Annex E, Table 1 to be shifted to the SGX LR;**

We support the shift provisions to mandatory listing rules for the Mainboard and Catalist (collectively "SGX LR"), although we found Appendix E to be confusing as it did not format correctly on browsers we use. (We also believe it would be helpful to provide a marked version of the draft revised Code.)

- b. the 15 Provisions (or Guidelines) set out in Annex E, Table 2 to be removed from the Code; and**

CII would recommend not removing following provisions from the Code, as each of these generally aligns with CII's member-approved policies:

- 2.4 The independence of any director who has served on the Board beyond nine years from the date of his first appointment should be subject to particularly rigorous review. In doing so, the Board should also take into account the need for progressive refreshing of the Board. The Board should also explain why any such director should be considered independent.
- 9.3 As best practice, companies are also encouraged to fully disclose the remuneration of the said top five key management personnel.
- 12.4(d) The duties of the Audit Committee should include reviewing the scope and results of the external audit.
- 12.8 The Board should disclose a summary of all the AC's activities in the company's Annual Report. The Board should also disclose in the company's Annual Report measures taken by the AC members to keep abreast of changes to accounting standards and issues which have a direct impact on financial statements.

16.3 In particular, the Chairman of the board and the respective Chairman of the AC, NC and RC should be present and available to address shareholders' queries at these meetings.

**c. the 24 Provisions (or Guidelines) set out in Annex E, Table 3 to be shifted to the Practice Guidance.**

We are concerned that the proposal to move 24 provisions from the Code to “Practice Guidance” would effectively result in dropping the requirement that non-compliant companies explain the basis for their non-compliance. We understand that certain aspects of these 24 provisions do not lend themselves well to explanation. For example, Guideline 1.1 describes the board’s role in very broad terms. However, we believe explanation for non-compliance remains reasonable and appropriate for certain objective, narrowly-drawn guidelines. In particular, we believe it is not unreasonable to expect companies to continue to explain:

- why a director does not meet independence requirements (See 2.3)
- why the company doesn’t report to shareholders on remuneration matters (Section 9)
- why the audit committee does not have explicit authority to investigate any matter within its terms of reference; does not have full access to and co-operation by management; does not have full discretion to invite any director or executive officer to attend its meetings; or does not have reasonable resources to enable it to discharge its functions properly (12.3)
- why the audit committee does not annually review the independence of external auditors; why the audit committee does not state the aggregate fees paid to the external auditor and the breakdown of those fees (12.6)

We would encourage consideration that these provisions remain part of the Code so that they continue to trigger an explanation requirement when companies do not comply.

**Question 4. The Council seeks comments on its proposed approach to rationalise the tests of director independence as outlined in Paragraph 4.3.**

While we support moving objective tests for independence to SGX LS, we do not support moving certain independence standards to the Practice Guidance, as doing so would eliminate any disclosure requirement for non-compliance. We would especially encourage keeping the following circumstances for non-independence in the Code:

- (i) a director who, or whose immediate family member, in the current or immediate past financial year, provided to or received from the company or any of its subsidiaries any significant payments or material services, other than compensation for board service;

(ii) a director who, or whose immediate family member, in the current or immediate past financial year, is or was a substantial shareholder, partner, executive officer or director of any organisation which provided to or received from the company or any of its subsidiaries any significant payments or material services;

**Question 5. The Council seeks comments on the recommendation to lower the shareholding threshold for assessing director independence from 10% to 5%, and the adequacy of a three-year transition period.**

CII believes that when board members hold substantial equity positions in the companies they govern, the alignment of interests between shareholders and board members strengthens. For that reason CII policy sets a substantial threshold (20% of equity or voting power) for the loss of status as an independent director. CII therefore opposes lowering the threshold for assessing director independence from 10% to 5%.<sup>2</sup>

**Question 6. The Council seeks comments on the two options: (i) to incorporate the nine-year rule as a hard limit, or (ii) to subject IDs who would like to serve more than nine years to a two-tier vote – all shareholders and non-controlling shareholders (as defined in the SGX LR). Both options will be SGX LR requirements. The Council also seeks views on the adequacy of a three-year transition period.**

CII opposes hard limits on board tenure, but acknowledges that boards have an obligation to consider all relevant facts and circumstances to determine whether a director should be considered independent, including years of service. Extended periods of board service may adversely impact the ability to bring an objective perspective to the boardroom.<sup>3</sup>

**Question 7. The Council seeks comments on the recommendation for companies to separately disclose non-controlling shareholders' votes on appointments and re-appointments of IDs who serve less than nine years.**

CII supports the disclosure of non-controlling shareholders' votes on appointments and re-appointments of independent directors. We believe this disclosure would enhance investors' understanding of the degree to which independent directors are likely to represent the preferences of the full breadth of shareholders.

**Question 9. The Council seeks comments on the recommendation to shift the baseline requirement for at least one-third of the board to comprise IDs to the SGX LR.**

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<sup>2</sup> See CII policy 7.3a, available at [https://www.cii.org/files/policies/09\\_15\\_17\\_corp\\_gov\\_policies.pdf](https://www.cii.org/files/policies/09_15_17_corp_gov_policies.pdf)

<sup>3</sup> See CII policy 7.1, available at [https://www.cii.org/files/policies/09\\_15\\_17\\_corp\\_gov\\_policies.pdf](https://www.cii.org/files/policies/09_15_17_corp_gov_policies.pdf)

CII supports moving this requirement to the SGX LR, and encourages the Council to periodically consider further movement over time toward requiring independent directors to comprise at least two-thirds of the board.<sup>4</sup>

**Question 10. The Council seeks comments on the recommendation for a majority of the board to comprise IDs, if the Chairman of the board is not independent.**

CII policy maintains the board should be chaired by an independent director, but in cases where the chair and CEO are combined, boards should appoint a lead independent director.<sup>5</sup> We do not oppose enhanced independence standards for companies opting to combine the chair and CEO roles. If the enhanced threshold were meaningfully higher than 50%, we would be sympathetic to relieving companies from the enhanced independence requirement if the board has a strong independent lead director. However, in light of the 50% threshold being so moderate, we are comfortable with the test as proposed.

**Question 11. The Council seeks comments on the recommendation for a majority of the board to comprise directors with no management or business relationships.**

We have no objection to adding this expectation as a supplement to the primary independence requirement, again with the understanding that the 30% threshold should gradually increase over time until reaching the two-thirds threshold at some point in the future.

**Question 12. The Council seeks comments on the recommendations for companies to disclose their board diversity policy and progress made in achieving the board diversity policy (including any objectives set by the companies).**

CII believes that a diverse board can enhance company performance, and that nominating charters (or board diversity policies) should reflect that boards should be diverse.<sup>6</sup> Facets of diversity include professional background, experience, expertise, age, race, gender, ethnicity and culture. We support the disclosure of board diversity policies and progress made toward achieving diversity goals.

**Question 13. The Council seeks comments on the recommendations for companies to disclose:**

- a. the relationship between remuneration and value creation; and**

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<sup>4</sup> See CII policies Section 2.3 at [https://www.cii.org/files/policies/09\\_15\\_17\\_corp\\_gov\\_policies.pdf](https://www.cii.org/files/policies/09_15_17_corp_gov_policies.pdf).

<sup>5</sup> See CII policies Section 2.4 at [https://www.cii.org/files/policies/09\\_15\\_17\\_corp\\_gov\\_policies.pdf](https://www.cii.org/files/policies/09_15_17_corp_gov_policies.pdf).

<sup>6</sup> See CII policies Section 2.8b at [https://www.cii.org/files/policies/09\\_15\\_17\\_corp\\_gov\\_policies.pdf](https://www.cii.org/files/policies/09_15_17_corp_gov_policies.pdf)

- b. the names and remuneration of employees who are substantial shareholders or immediate family of substantial shareholders, where such remuneration exceeds S\$100,000 during the year (revised from S\$50,000), in bands no wider than S\$100,000 (revised from S\$50,000).**

CII supports clear, comprehensive and prompt disclosure of executive compensation, providing all information necessary for shareowners to understand how (and how much) executives are paid, as well as how such pay fits within the overall structure of the company.<sup>7</sup> We support the proposed recommendation to highlight the connection between remuneration and value creation. We do not oppose the proposed modifications to the thresholds at which the names and remuneration of employees tied to substantial shareholders must be disclosed.

**Question 14. The Council seeks comments on the new Principle and Provisions relating to stakeholder engagement as set out in Paragraph 7.3, and whether there will be practical challenges in implementing them.**

CII recognizes companies' role in recognizing and balancing the varied interests of many stakeholders. We believe engagement and outreach with stakeholders, including through the company's website, can be a driver long-term value creation, and we would caution against setting the expectation to merely "manage relationships" with material stakeholder groups.

**Question 15. The Council seeks comments on the expectations of companies under the comply-or-explain regime as set out in Paragraph 8.5.**

We agree with the proposed clarifications of expectations under the comply-or-explain regime. We share a concern on use of boilerplate, and believe the revised language on expectations would encourage more thoughtful, meaningful and comprehensive communication, and will counter the misperception that there is no need to explain how a company complies with the Code. We agree that tiering application of the Code by large and small companies may create confusion, and that appropriate application of the Code is not simply a matter of company size.

**Question 16. The Council seeks comments on the proposed establishment of the CGAC, and the functions and composition of the CGAC as set out in Paragraphs 9.3 to 9.5.**

We agree that a new Corporate Governance Advisory Council ("CGAC") could play a useful role. The balance of representation on such a council would be critical to its success. We believe that the primary purpose of good corporate governance is so that companies are managed in the best long-term interests of shareholders, and that a CGAC should reflect strong membership

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<sup>7</sup> See CII policies Section 5.5h at [https://www.cii.org/files/policies/09\\_15\\_17\\_corp\\_gov\\_policies.pdf](https://www.cii.org/files/policies/09_15_17_corp_gov_policies.pdf).

from shareholders and/or organizations representing shareholder views. Companies managed for the long-term will seek to build trust for various stakeholders. CII believes that shareowners, other investors including fixed income investors, and other stakeholders benefit when governance practice provides adequate protections to owners and ensures that important information is promptly and transparently provided to the marketplace.

**Question 17. SGX seeks comments on the proposed amendments to the SGX LR described in paragraph 10.2 above.**

We generally agree with the effort to incorporate governance expectations into SGX listing requirements, reiterating two key points made previously: 1) We encourage the board independence threshold to move over time toward two-thirds independence, and 2) We believe a rigorous board review of directors after nine years of service would be preferable to a hard limit on service beyond nine years.