

Via Email: [response@hkex.com.hk](mailto:response@hkex.com.hk)

March 22, 2018

Corporate and Investor Communications Department  
Hong Kong Exchanges and Clearing Limited  
12/F, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

Re: Emerging and Innovative Companies CP

Dear Sir or Madam:

The Council of Institutional Investors (CII) is pleased to respond to the HKEX Consultation Paper, “A Listing Regime for Companies from Emerging and Innovative Sectors.”<sup>1</sup> Our comments pertain to Chapter 3 of the consultation, “Issuers with WVR Structures,” and Chapter 4, “Draft Amendments to the Rules.” In accordance with the consultation’s guidance we provide our comments below under separate headings of the same descriptions.

The Council of Institutional Investors (CII) is a nonpartisan, nonprofit association of U.S.-based 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 based in the United States and around the globe with more than \$25 trillion in assets under management, most also with long-term investment horizons.<sup>2</sup> CII members share a commitment to healthy public capital markets and strong corporate governance.

#### Issuers with WVR Structures

We share your view that “the one-share, one-vote” principle “continues to be the optimum method of empowering shareholders and alignment their interests in a company.”<sup>3</sup> Our concern

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<sup>1</sup> HKEX Consultation (hereinafter “Consultation”), Feb. 2018, at <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/February-2018-Emerging-and-Innovative-Sectors/Consultation-Paper/cp201802.pdf?la=en>.

<sup>2</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).

<sup>3</sup> Consultation Paragraph 107, p. 33. Section 3.3 of CII’s member-approved corporate governance policies state, in part, “Each share of common stock should have one vote. Corporations should not have classes of common stock with disparate voting rights.” The full language of the policy is available at [https://www.cii.org/corp\\_gov\\_policies#shareowner\\_rights](https://www.cii.org/corp_gov_policies#shareowner_rights).

is that even with well-intentioned safeguards, including a prohibition on the transfer of super-voting rights and the loss of super-voting rights upon death or departure, the Consultation presents a solution that 1) holds the door open for substantial long-term principal-agent challenges, and 2) creates significant subjective processes for the HKEX Listing Committee based on vague criteria, creating new discretionary burdens for the HKEX and uncertainty in the market.

We believe it would be better for HKEX to maintain its commitment to one-share, one-vote as a core requirement for listing. HKEX's historic high standard on this issue has benefited markets generally and the credibility of the Hong Kong market for investors specifically. Reduction of standards may have broader market impacts on companies listed on the exchange, as HKEX will be ceding some of the high ground and a measure of respect. We do not see meaningful analysis in the Consultation on possible costs to investors, to listed company credibility and to the market generally in permitting WVR structures. Nor do we see evidence that HKEX will provide the resources and expertise that would be required for the Listing Committee and for enforcement to accomplish the subjective tasks being assigned.

However, should HKEX move forward on permitting WVR structures for certain newly-listed, high-growth and innovative companies, we would suggest that elements of the complex and subjective approach outlined in the Consultation could be replaced by a simpler rule that offers greater objectivity and less agency risk for long-term investors. Specifically, we respectfully request that any rule permitting WVR structures in primary listings do so on the condition that such companies' governing documents include a WVR sunset provision, under which higher-vote share classes convert into the inferior class no later than seven years from the date of the initial public offering.

This safeguard would not only absolve HKEX from certain subjective elements of the case-by-case review contemplated in the Consultation, but also would provide a clear and reasonable path to what CII and HKEX agree is the optimal structure for the alignment of companies and shareholders. As a second, even more accommodating alternative, we could support the HKEX requiring new WVR listings to have a WVR sunset referendum provision, under which low-vote shareholders could vote on whether to extend the WVR structure for another period.

We understand that HKEX naturally has reservations about the lack of time-based sunset requirements under the listing standards of global exchanges with which HKEX competes. We are optimistic that over the course of the coming years, the community of market participants, service providers and regulators will increasingly converge toward the reasonable view that enabling perpetual or long-lasting WVR (inclusive of extending super-voting rights until insiders' death or departure) is an extreme position. We would suggest that even while permitting WVR structures, HKEX has a unique opportunity to lead among its global peers that permit WVR by incorporating a reasonable time-based sunset requirement into its listing standards. With great respect, we urge you to seize this opportunity.

To be clear, given a goal that focuses on innovative and high growth companies of potentially large size, we agree that any rule permitting WVR should include market capitalization and revenue thresholds. Ring-fencing provisions also are important to ensure that companies do not

use artificial means to circumvent restrictions (although we have some concern in the HKEX proposal on potential for spin-offs that could list with WVR structures). In addition, it is critical for market transparency that issuers with WVR structures be prohibited from increasing the proportion of WVR in issue, or from issuing any further WVR.

Among other objective rules that should be put in place for any WVR companies:

- Require all the beneficiaries of a company's WVR structure to collectively beneficially own a minimum percentage of the underlying economic interest in the applicant's total issued share capital at time of initial listing (although we are concerned that 10% sets this minimum too low). We urge against dilution of this with a subjective add-on permitting a lower minimum shareholding for certain companies, which seems to be suggested in the Consultation.
- Require that a WVR structure be attached to a specific class of shares, capped at no more than 10 times the voting power of ordinary shares (we would prefer a lower cap).
- Require that non-WVR shareholders be able to cast at least 10% of the votes eligible (we would prefer a higher percentage).
- Require votes on certain key matters, including those identified in paragraph 28 of the Consultation Paper, on a one-share one-vote basis.
  - In addition to those items listed, related-party transactions involving entities associated with the WVR holder should be subject to approval by shareholders voting on a one-share one-vote basis, with the WVR holder excluded from participating in such vote.
- Require enhanced disclosure and clear labeling of WVR structures, as described in paragraphs 33 to 36, which are essential.

There are additional objective elements identified in the Consultation Paper that would be important to retain that we do not list here.

#### Draft Amendment to the Rules

Consistent with the views expressed above, we request that HKEX amend the proposed language in 8A.23, entitled Conditions for End of WVR Structure, as follows:

A listed issuer's WVR structure must cease when none of the beneficiaries of weighted voting rights at the time of the issuer's initial listing have beneficial ownership of shares carrying weighted voting rights, or no later than the seventh anniversary of the listed issuer's initial public offering.

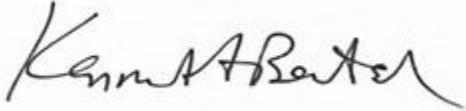
As indicated above, we could support additional language to provide a right of shareholders without WVR to extend the threshold. This could be done by inserting the following after the words "public offering" above:

, unless that structure is extended for an additional term of no more than seven years by a majority vote of shares of non-WVR shareholders

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Thank you for considering our views. If we can answer any questions or provide additional information on this matter, please do not hesitate to contact me at +1.202.822.0800 or [ken@cii.org](mailto:ken@cii.org).

Sincerely,

A handwritten signature in black ink that reads "Ken Bertsch". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Ken Bertsch  
Executive Director