

Via E-Mail: clientservice@msci.com

August 3, 2017

MSCI Equity Index Committee
7 World Trade Center
250 Greenwich Street
New York, NY
10007

Dear Members of the MSCI Equity Index Committee:

I am writing in response to MSCI's June 12 Consultation on the Treatment of Non-Voting Shares in the MSCI Equity Indexes.¹ As you are aware this formal consultation follows MSCI's March 3 announcement welcoming feedback from the investment community on companies lacking publicly available shares with voting rights and those companies' eligibility for inclusion in the MSCI Global Investable Markets Indexes (GIMI) and MSCI US Equity Indexes.² The Council of Institutional Investors (CII) commends MSCI for moving forward with a formal consultation as have other major index providers.

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.³

This response summarizes our understanding of the MSCI proposal and provides answers to the discussion items raised in the consultation. For background on the motivation for our initial concerns about no-vote and low-vote share classes please refer to our March 29 letter.⁴

¹ See consultation presentation at

https://app2.msci.com/webapp/index_ann/DocGet?pub_key=LLDu%2BH5J4r0%3D&lang=en&format=html and related announcement at

https://app2.msci.com/webapp/index_ann/DocGet?pub_key=7B%2FG%2FNxdj3k%3D&lang=en&format=html indicating solicitation of feedback through August 31, 2017.

² See March 3 announcement at

https://app2.msci.com/webapp/index_ann/DocGet?pub_key=LLDu%2BH5J4r0%3D&lang=en&format=html.

³ For more information about the Council of Institutional Investors ("CII"), including its members, please visit the CII's website at <http://www.cii.org/members>.

⁴ See March 29 CII letter at

http://www.cii.org/files/issues_and_advocacy/correspondence/2017/03_29_17_MSCI_letter_request_for_consultation.pdfhttp://www.cii.org/files/issues_and_advocacy/correspondence/2017/03_29_17_MSCI_letter_request_for_consultation.pdf.

Summary of the MSCI proposal

The proposal would have no effect on shares with voting rights. Prospective index constituents would face exclusion of non-voting shares from the MSCI GIMI and MSCI US Equity Indexes if the voting power of listed shares is less than 25% of the total voting power. For existing index constituents, non-voting shares would be excluded if the same calculation falls below the 16.67% threshold.

MSCI indicates the proposal would result in the exclusion of Snap Inc. from the MSCI All Country World Index (ACWI) and its deletion from the MSCI US Equity Index. Additionally, after one year, six companies' non-voting shares would be deleted from the MSCI ACWI, including one U.S. security, Eaton Vance's non-voting stock. The exclusion of these six companies' non-voting shares would amount to a reduction of the ACWI by 0.08%, unless those companies change their capital structure to satisfy the 16.67% threshold. Currently, for each of the six companies, their listed shares represent zero percent of their total voting power.⁵

CII response to MSCI discussion items

MSCI: Should MSCI exclude companies with only non-voting listed shares, like SNAP?

CII: Yes, MSCI should exclude companies with only non-voting listed shares. However, we believe this approach, by itself, would not adequately address the problem of no-vote shares, as companies only would need to publicly issue one share with voting rights to ensure compliance.

MSCI: Do you agree with excluding non-voting shares in cases where listed voting power is low? Is the proposed threshold of 25% for new constituents appropriate?

CII: While we support the exclusion of non-voting shares in cases where listed voting power is low, and view MSCI's proposed 25% threshold for new constituents and 16.67% threshold for existing constituents as preferable to solely excluding companies with only non-voting listed shares, we believe MSCI should go further. We encourage MSCI to at least exclude all new non-voting share classes, including from companies currently included in indexes. An even better approach, in our view, would be for MSCI to take a comprehensive forward-looking position similar to that of S&P Dow Jones, which as of this week no longer will add any multi-class companies to its Composite 1500 index and component indexes.⁶ Coupled with MSCI's proposed 16.67% threshold for existing constituents, such an approach would firmly establish MSCI as having the most robust policy among its peers.

⁵ See Consultation p. 4.

⁶ See S&P Dow Jones July 31, 2017 Press Release at https://www.spice-indices.com/idpfiles/spice-assets/resources/public/documents/561162_spdjimulti-classsharesandvotingrulesannouncement7.31.17.pdf?force_download=true.

If MSCI elects to move forward with the proposal as described in the consultation, we respectfully urge adding the following provisions:

- In the absence of a prohibition on all new multi-class structures, at least prohibit new no-vote share classes. On a going-forward basis, we encourage MSCI to exclude new classes of non-voting shares from index eligibility. Under the proposal, both prospective and existing constituent companies will be able to issue zero-vote shares without any impact on the threshold test. Without a prohibition of future no-vote classes from the index, there could be little to stop no-vote equity from flooding the index.⁷
- Exempt companies with one-share, one-vote structures. It is not impossible that a company with a one-share, one-vote equity structure could fail to comply with the proposed thresholds. One-share, one-vote companies are not the problem with reference to voting rights, and they should be exempt from the proposed voting rights threshold tests. In our view, other rules and potential rules, including on required minimum float, are the way to address problems on inclusion in an index of a controlled company that operates on a one-share, one-vote basis.

Should MSCI go beyond its proposal and contemplate general exclusion of all new classes of shares with inferior voting rights, we believe it may be prudent to consider a limited exception if there is a firm, time-based sunset provision, as described below. To be clear, we view the general exclusion as the optimal approach, and we urge MSCI to at least exclude any new share class with no voting rights, or at least impose the percentage restrictions contemplated in the proposal. But it may be reasonable to permit in the index a more traditional multi-class structure (with at least minimal voting rights that provide public shareholders with at least 25% of voting power) IF the company's governing documents ensure that for a term no greater than five years following the company's IPO, either (1) the share structure dissolves to a single one-share, one-vote class, or (2) common shareholders cast a binding vote on a "one share, one vote" basis on whether to (a) convert all common shares to a one share, one vote structure, or (b) retain the multi-class structure for another term up to five years. This would permit those relying on the index for investment or benchmarking to capture early-stage public company growth, even with entities with protective structures in place, while assuring that in the longer term, appropriate structures of accountability to shareholders are in place.

To be clear, CII would prefer that no company adopt a dual-class stock structure, even in the

⁷ With reference to the United States, we acknowledge that legal challenges that face a controlling shareholder and company in creation of a new class of shares with no voting rights (with the goal of cementing and prolonging insider control), are formidable and increasing, notwithstanding the success of Google (now Alphabet) in such an approach. (IAC/Interactive backed off such a plan in the face of a strong challenge from the California Public Employees' Retirement System; see <https://corpgov.law.harvard.edu/2017/07/18/calpers-v-iac-clear-win-for-investors-protecting-shareholder-voting-rights/>. Facebook faces a continuing legal challenge to its plans.) However, companies recently have gone public with a non-voting share class authorized at or pre-IPO, presumably reducing legal risk for those companies as compared with IAC. These include Blue Apron (see <https://www.sec.gov/Archives/edgar/data/1701114/000104746917004316/a2232581z424b4.htm>) and Altice USA (see <https://www.sec.gov/Archives/edgar/data/1702780/000104746917004208/a2232514z424b4.htm>).

short-term. We accept that much can go wrong in the short-term, and a protective structure even for five years is not ideal and in some cases will delay necessary and appropriate corrective action. However, we recognize a strong desire by management and boards of some private companies considering tapping public markets for protective structures, and the core of our concern is lack of accountability in the long-term, beyond a reasonable time horizon for understanding risks and opportunities.

MSCI: Should securities with limited voting rights (e.g. right to vote is only limited to certain circumstances) be considered as voting shares?

CII: For prospective index constituents, securities with limited voting rights (e.g., voting rights only for a minority of board seats) should not count as “voting shares” when calculating the threshold test. However, to limit disruption for existing index constituents, we would not oppose counting as “voting shares” existing share classes with limited voting rights.

MSCI asks the following subsidiary questions in the Appendix of the consultation, to which we provide responses as indicated:

MSCI: Should calculation of company listed voting power consider securities for which voting rights are limited to only specific matters as non-voting shares? (e.g. for Coca-Cola Femsa and Scripps Networks Interactive the resulting company listed voting power would be 0%, which may result in removal of securities)

CII: Please refer to above.

MSCI: Should securities with very low voting rights compared to the other share classes be treated similarly to non-voting shares and potentially excluded? (e.g. Universal Health Services listed B shares have 0.1 vote per share, while unlisted C shares have 100 votes per share)

We believe securities with very low voting rights compared to other share classes should be subject to exclusion from the index if the company fails to satisfy the 16.67/25% threshold test, as should the company’s other classes of securities.

MSCI: Is the suggested compliance period for existing constituents appropriate? Should MSCI retain securities if the company has announced plans to change the capital structure or to limit such change to shareholder vote?

CII: We believe the proposed one-year compliance period for existing constituents is acceptable but could be lengthened to three years. Specifically, a one-time, three-year grace period that ends on the three-year anniversary of an initial breach of the 16.67% threshold would minimize disruption and afford companies ample opportunity for adaptation.

MSCI: Should MSCI apply grandfathering for existing constituents (i.e., retain existing constituents)?

CII: Existing constituents should not be indefinitely grandfathered from the 16.67% test. We support a three-year grace period to comply with the threshold.

MSCI: Should all non-voting shares ... be considered as “non-equity” and excluded even if the company listed voting power is high? Currently, around 60 securities in the MSCI ACWI Index (index weight of 2.4%) have no voting rights.

CII: If an existing constituent passes the 16.67% threshold test, non-voting shares already outstanding should remain in the index. To exclude all non-voting shares currently outstanding from the index would be too disruptive. We note the consultation identifies 10 existing constituents whose no-vote shares would remain in the index because the voting power of listed shares exceeds 16.67% of total voting power. None of the companies would be in conflict with the threshold even if it were doubled.⁸

For prospective constituents, non-voting equity should not be eligible for index inclusion even if the company passes the 25% threshold test.

MSCI: Should companies with low listed voting power be consistently removed (both voting and non-voting lines)? Currently, about 20 securities in the MSCI ACWI Index (index weight of 0.3%) have voting rights but listed voting power below 25%.

CII: If an existing index constituent fails the 16.67% test and cannot pass it even with a three-year grace period (as suggested by CII), then all of that company’s shares—both voting and non-voting—should be excluded from the index.

The consultation identifies seven existing index securities currently below the 16.67% threshold. Those voting securities represent 0.23% of the MSCI ACWI Index. The seven affected companies would have three years (under CII’s recommendation) to rectify a median shortfall of 5.67 percentage points.

If a potential new index constituent does not satisfy the 25% test, then neither voting nor non-voting shares should be eligible for inclusion in the index. Of course, potential new index constituents pose no disruption to the existing index, and would have an indefinite period of time to satisfy the 25% test before joining the index.

MSCI: Should the calculation of voting power exclude shares held by strategic investors (even if listed)?

CII: No. Shares held by strategic investors need not be treated differently than other shares for the purpose of calculating voting power.

MSCI: Should the MSCI GIMI Indexes over time take steps towards reflecting potential ESG issues, such as corporate governance problems or specific unacceptable business involvement,

⁸ See Consultation p. 5.

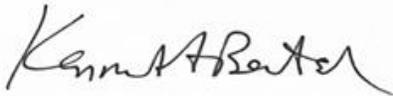
such as controversial weapons? Should other global broad benchmarks be created that would address this emerging trend?

CII: We support creation of benchmarks responsive to market demand, but would differentiate the voting rights issue (which is fundamental and goes to the nature of the security included in the index) from other governance, as well as environmental and social factors. Voting rights should be considered in any index of common equity, in our view. Other matters can be dealt with through offering supplemental, differentiated indexes, as MSCI already is doing, with admirable responsiveness to investors with its breadth of offerings. The principle of a firm's owners exercising control in proportion to their ownership stake is more appropriately described as capitalism than an ESG issue.

As we have previously communicated, the Snap IPO with exclusively non-voting shares ignited a long-simmering broader concern among members of the investment community about the risk of a material deterioration in the quality of equity markets. CII's membership includes strong supporters of passive index strategies, and we believe that major index providers have a critical role to play in preventing non-voting and multi-class equity structures from gaining unstoppable momentum. We respectfully call upon MSCI to take strong measures to protect the "one share, one vote" principle by which the vast majority of publicly-traded companies abide, understanding that exchanges have not taken a stand for competitive reasons; nor will federal regulators do so for jurisdictional reasons. Index providers are uniquely positioned to stem the tide toward the separation of voting rights from ownership, and a decision by MSCI to take substantive action would strengthen its alignment with other major index providers.

Thank you for consideration of our views. If we can answer any questions or provide additional information on this important matter, please do not hesitate to contact me at 202.822.0800 or ken@cii.org.

Sincerely,



Kenneth A. Bertsch
Executive Director
Council of Institutional Investors