

Via e-mail: [listingrules@sgx.com](mailto:listingrules@sgx.com)

26 April 2018

Tan Boon Gin  
CEO of SGX Regulation (SGX Regco.)  
Singapore Exchange Limited  
11 North Buona Vista Drive  
#06-07, The Metropolis Tower 2  
Singapore 13859  
Attn: Listing Policy & Product Admission

*Re: Consultation on Proposed Listing Framework for Dual Class Share Structures*

Dear Mr. Gin:

I am writing on behalf of the Council of Institutional Investors (CII) in response to the Consultation on Proposed Listing Framework for Dual Class Share Structures.<sup>1</sup> The attached appendix uses the SGX template. Thank you for considering CII's views. We would be glad to discuss our perspective in more detail. My contact information is provided in the Appendix.

Sincerely,



Kenneth A. Bertsch  
Executive Director  
Council of Institutional Investors

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<sup>1</sup> Consultation on Proposed Listing Framework for Dual Class Share Structures, March 28, 2018, available at <http://www.sgx.com/wps/wcm/connect/bc5e0f06-26d4-4564-9445-e14d79529846/Consultation+Paper+on+Proposed+Listing+Framework+for+Dual+Class+Share+Structures.pdf?MOD=AJPERES>

## APPENDIX

<b>Consultation topic:</b>	<b>Proposed Listing Framework for Dual Class Share Structures</b>
<b>Date:</b>	21 April 2018
<b>Name/Organisation:</b>	Council of Institutional Investors
<b>Contact number for any clarifications:</b>	202.822.0800
<b>Email address for any clarifications:</b>	ken@cii.org
<b>Statement of interest (if applicable)</b>	<p>CII is a U.S.-based nonpartisan, non-profit association of employee benefit plans, foundations and endowments with combined assets under management exceeding \$3.5 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 \$25 trillion in assets under management.<sup>2</sup> The “one share, one vote” principle was among our first member-approved policies when we were founded in 1985.</p> <p>We believe exchanges serve the long-term interests of a broad range of market participants when they support the alignment of economic rights with voting rights. As these two aspects of ownership diverge, new risks are introduced with the potential to harm long-term performance.</p> <p>As stated in our recent letter to the SGX Listings Advisory Committee (LAC)<sup>3</sup>, we commend several recent advancements in Singapore to improve the landscape for public investors, particularly in the areas of securities enforcement, corporate governance and audit reporting. However, we believe that by permitting DCS, the SGX would take a significant step in the wrong direction.</p> <p>We submit our comments while acknowledging that the global problem of unequal voting rights began not in Singapore but in CII’s home country. Since 1994, when the New York Stock Exchange (NYSE) and NASDAQ established their current, liberal rules on this subject, investors have seen deterioration of voting rights at IPOs, culminating this year with the SNAP IPO. CII has a long history of</p>

<sup>2</sup> For more information about the Council of Institutional Investors 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> See CII letter to SGX LAC dated March 29, 2017 at [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2017/03\\_29\\_17\\_letter\\_to\\_SGX.pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2017/03_29_17_letter_to_SGX.pdf).

	<p>appealing to both the NYSE and NASDAQ to reverse course on DCS, and we intend to continue those efforts.<sup>4</sup></p> <p>Though the proposal puts forward some meaningful measures to mitigate the negative implications of DCS (such as the prohibition of no-vote share classes and the establishment of a maximum voting differential of 10:1), we continue to believe that a one-share, one-vote listing standard would be optimal.</p> <p>Perceiving that SGX is unlikely at this juncture to maintain its long-standing position, our response provides some suggestions for further reducing DCS-related risks raised by the LAC, including entrenchment, expropriation, poor quality listings and lack of clarity.<sup>5</sup> Thank you for your consideration.</p>
<b>Confidentiality</b>	
I do not wish to be specifically identified as a respondent. <input type="checkbox"/>	
<i>*Please tick only if you do not wish to be specifically identified as a respondent.</i>	

**Question 1. Definition**

*SGX proposes to introduce the following new definitions:*

- (a) "dual class share structure" ("DCS structure") which refers to a share structure that gives certain shareholders voting rights disproportionate to their shareholding. Shares in one class carry one vote, while shares in another class carry multiple votes;*
- (b) "enhanced voting process" which refers to a voting process in a general meeting of the issuer where votes are cast on the basis that one MV share is limited to one vote;*
- (c) "multiple voting share" ("MV share") which refers to a share in a dual class share structure that carries multiple votes with the rights attaching to it specified in the Articles of Association or other constituent documents of the issuer in compliance with Rule 210(10) of the Mainboard Rules. Such share is neither listed nor traded. For the avoidance of doubt, save for multiple voting rights, the rights attaching to each MV share must be the same as the rights attaching to each OV share; and*

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<sup>4</sup> CII's most recent correspondence with the NYSE regarding this matter is available at [http://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2014/03\\_27\\_14\\_CII\\_letter\\_to\\_NYSE\\_one\\_share\\_one\\_vote.pdf](http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_27_14_CII_letter_to_NYSE_one_share_one_vote.pdf). CII's most recent correspondence with Nasdaq regarding this matter is available at [http://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2014/03\\_27\\_14\\_CII\\_letter\\_to\\_nasdaq\\_one\\_share\\_on\\_e\\_vote.pdf](http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_27_14_CII_letter_to_nasdaq_one_share_on_e_vote.pdf).

<sup>5</sup> See LAC Consultation at p. 23.

- (d) *“ordinary voting share” (“OV share”) which refers to a share in a dual class share structure that carries one vote with the rights attaching to it specified in the Articles of Association or other constituent documents of the issuer.*  
*Do you agree with the abovementioned definitions?*

**Feedback:** We support SGX retaining its one-share, one-vote requirement. If SGX moves forward with permitting DCS structures, we generally support SGX’s proposed definitions, which we understand to forbid OV shares having less than one vote per share, and to prohibit structures with more than two classes.

**Question 2. Suitability requirement**

*The issuer and the issue manager must establish that the issuer is suitable for listing with a DCS structure. The factors that SGX may take into account include:*

- (a) *the business model of the company, for example, that the company has a conceptualised long-term plan that contemplates ramping up growth at a fast pace;*
- (b) *operating track record of the company or business;*
- (c) *the role and contribution of intended MV shareholders to the success of the company or business;*
- (d) *how actively involved the intended MV shareholders are in the company or the business;*
- (e) *participation by sophisticated investors; and*
- (f) *other features of the company or business that require a DCS structure.*

*Do you agree with the requirement that the issuer must establish that it is suitable for listings with a DCS structure? If so, please provide your views on the suitability factors that SGX should consider and reasons for your views.*

**Feedback:** If SGX moves forward with permitting DCS structures, we support incorporating all the suitability factors listed above and suggest adding suitability factor (g): whether the DCS structure includes an irrevocable, time-based sunset requirement, under which the MV share class converts to the OV share class no later than the seventh anniversary of the issuer’s initial listing. We believe this consideration is important in light of recent academic research finding that DCS is associated with an erosion of long-term shareholder value over time.<sup>6</sup>

While we support the suitability safeguards, we do believe that as presently crafted

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<sup>6</sup> See Cremers, Lauterback, Pajuste. *The Life-Cycle of Dual Class Firms* working paper (2018), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3062895](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062895). See also Kim, Michaely. *Sticking around too Long? Dynamics of the Benefits of Dual-Class Structures* (2018), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3145209](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3145209).

the rules will provide only limited protection (at most) to non-inside investors. As proposed, this process would not require the issuer and issue manager to consider the listed factors. Moreover, no guidance is provided as to how company-specific facts related to these factors should inform the determination suitability or unsuitability.

We suggest, at a minimum, requiring the issuer and the issue manager to consider all enumerated factors, rather than making consideration optional, as proposed. We further suggest requiring the issuer to attest in the prospectus that after having considered each of these factors with the issue manager, the issuer has concluded the company's DCS structure is suitable. (This same suggestion is made in our response to Question 10.)

**Question 3. *Moratorium***

*Do you agree that the holders of MV shares must observe a moratorium on the transfer or disposal of their entire shareholdings in the issuer in respect of their interests in both MV shares and OV shares for at least 12 months after listing?*

**Feedback:** If SGX moves forward with permitting DCS structures, we generally support a moratorium barring MV shareholders from transferring or otherwise disposing of their MV and OV holdings for one year after listing.

**Question 4. *Maximum voting differential***

*(a) Do you agree that the voting rights attaching to MV shares should be capped at 10 votes per share?*

**Feedback:** If SGX moves forward with permitting DCS structures, we support the adoption of a maximum voting differential to exert some control over the degree of misalignment between voting rights and economic rights. We recognize the historical prevalence of the 10:1 ratio, and we believe that recent forays into even more oppressive structures make the proposed cap a constructive limitation.

In light of recent empirical evidence, we suggest that SGX provide that the maximum differential adjusts to 1:1 on or before the seventh anniversary of the the DCS issuer's nascence as a public company.

DCS companies could comply with this requirement by amending their governing documents, either to provide that MV shares carry one vote per share upon the appropriate date, or by providing for the automatic conversion of MV shares into OV shares, on a share-for-share basis, on the appropriate date. (If SGX opts to adopt this

approach to a sunset requirement, CII would withdraw its suggestion in Question 2 to suggest consideration of a time-based sunset provision for the purpose of determining the suitability.)

- (b) *Do you agree that the issuer should not be allowed to change the ratio post-listing?*

**Feedback:** We suggest that SGX permit the issuer to lower—but never raise—the ratio post-listing. Doing so may facilitate the adoption of reasonable time-based sunset provisions, including the adoption of such provisions after the initial listing.

**Question 5. Rights of OV shareholders**

- (a) *With regard to the total voting control that OV shareholders can collectively exercise, do you think that OV shareholders must hold: at least 10% the total voting rights of the issuer on a one-share-one-vote basis (Option 1); or at least 10% of the total voting rights of the issuer (Option 2)?*

**Feedback:** We believe OV shareholders should be able to collectively exercise a minimum of 10% of voting rights on a one-share, one-vote basis (Option 1).

- (b) *Do you agree that OV shareholders holding at least 10% of the total voting rights on a one-share-one-vote basis must be able to convene a general meeting?*

**Feedback:** CII supports shareholders' ability to call shareholder meetings. If SGX moves forward with permitting DCS structures, we support the proposal to reserve that right for shareholders representing 10% of voting rights on a one-share-one-vote basis.

**Question 6. Restriction on issuance of MV shares post-listing**

- (a) *Do you agree that an issuer shall not be allowed to issue MV shares post-listing except in the event of a rights issue? Should the exception be extended to bonus issue, scrip dividends and subdivision and consolidation of shares which do not raise new funds?*

**Feedback:** We support restrictions barring DCS companies from issuing MV shares post-listing except in the event of a rights issue. We oppose extending the exception.

- (b) *Under Section 64A of the Companies Act, a public company with a DCS structure shall not undertake any issuance of MV shares unless it is approved by shareholders by a special resolution. Do you agree that the issuance of MV shares must be approved by a special resolution of shareholders at a general meeting?*

**Feedback:** We support requiring DCS companies to obtain prior approval by a special resolution of shareholders at a general meeting.

- (c) *In undertaking any corporate action (including a share buy-back), do you agree that the issuer must ensure that the proportion of the total voting rights of the MV shares as a class against those of the OV shares after the corporate action will not increase above that proportion existing prior to the corporate action?*

**Feedback:** We support requiring DCS companies to ensure that MV voting rights do not proportionately increase as a result of a corporate action, including a share buy-back.

#### **Question 7. Automatic conversion of MV shares**

- (a) *Do you agree that initial holders of MV shares must be directors of the issuer?*

**Feedback:** We do not oppose requiring initial holders of MV shares to be directors.

- (b) *An issuer with a DCS structure must have automatic conversion provisions in its Articles of Association or other constituent documents meeting the following criteria:*
- i. If the holder of MV shares sells or transfers part or all of any interest in respect of his MV shares (which, for the avoidance of doubt, would include the beneficial interest and voting rights of the MV shares) to any party (including other holders of MV shares), whether or not for value, such MV shares will be converted into OV shares on a one-for-one basis.*
  - ii. If the holder of MV shares ceases to be a director (whether through death, incapacity, retirement, resignation or otherwise), his MV shares will be converted into OV shares on a one-for-one basis.*

*Do you agree with the abovementioned automatic conversion events? If your answer is no to any of the conversion events, please state the reasons.*

**Feedback:** We agree with the proposed automatic conversion of MV shares into OV shares upon transfer. We support amending the second automatic conversion event to exclude board membership status: If the MV holder dies, becomes incapacitated, retires or resigns, his or her MV shares convert into OV shares on a one-for-one basis.

(c) *Do you agree that the shareholders can waive the conversion through the Enhanced Voting Process on the basis that one MV share is limited to only one vote?*

**Feedback:** If all shareholders, voting on a one-share, one-vote basis, support an exemption from or both of the above conversion events, we would have no objection to shareholders' preference to waive conversion.

(d) *Do you agree that the relevant holder of the MV shares, and his associates, should be required to abstain from voting on the resolution?*

**Feedback:** We accept that requiring the MV holder and his or her associates to abstain from the vote on whether to grant a waiver from mandatory conversion is reasonable given the conflict of interest that may exist for the MV holder.

#### **Question 8. Independence element on board committees**

*Do you agree that the majority of the Audit Committee, Nominating Committee and Remuneration Committee, including the respective chairmen, must be independent?*

**Feedback:** We support requiring fully independent audit, remuneration and nominating committees (including chairmen).

#### **Question 9. Reserved matters under the Enhanced Voting Process**

*Do you agree that the following matters should require shareholders' approval through the Enhanced Voting Process (i.e. each MV share is limited to one vote)?*

(a) *changes to the issuer's Articles of Association or other constituent*

- documents;
- (b) variation of rights attached to any class of shares;
  - (c) appointment and removal of independent directors;
  - (d) appointment and removal of auditors;
  - (e) winding up of the issuer; and
  - (f) delisting of the issuer.

*You may also propose other matters that should be subject to the Enhanced Voting Process. Please state reasons for your proposal.*

**Feedback:** We support extending the Enhanced Voting Process to the list of matters shown above. We suggest amending (a) to clarify that the Enhanced Voting Process applies for proposed transactions resulting in a change in control.

**Question 10. Disclosure of rights of shareholders**

*Do you agree that an issuer with a DCS structure should disclose the following additional information?*

- (a) *The issuer must disclose its DCS structure, holders of MV shares and their respective shareholding and voting percentage both at the point of listing and thereafter, on a continuing basis, in its annual report.*
- (b) *The shareholders' circular must contain information on the voting rights of each class of shares.*
- (c) *The issuer must, in its prospectus, disclose the risks of DCS structures, rationale for adoption of its DCS structure, matters subject to the Enhanced Voting Process including implications to holders of OV shares, and key provisions in the Articles of Association or other constituent documents relating to DCS structures in a prominent manner.*
- (d) *The issuer must include a prominent statement on the cover page of its prospectus, and on a continuing basis, in its announcements (including financial statement announcements), circulars and annual reports, highlighting that the issuer is a company with a DCS structure.*

*You may also suggest other disclosure requirements and provide reasons for your suggestion.*

**Feedback:** We support these disclosure requirements, but would somewhat expand them.

We suggest requiring that risk disclosure be provided not only in the prospectus but also in the annual report. We further suggest requiring that the prospectus include an attestation by the issuer that the company's DCS structure is suitable after having considered all factors enumerated by SGX.

We suggest specifying that DCS companies must include in their rationale a description of the basis for the duration of their DCS structure. Companies should be required to explain specifically why they believe a perpetual DCS structure, or a particular time-based sunset approach, will serve the company's long-term interest.