Via Email: response@hkex.com.hk

April 23, 2020

Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place
Central
Hong Kong

Re: Corporate WVR CP

Dear Sir or Madam:

The Council of Institutional Investors (CII) is pleased to respond to the HKEX Consultation Paper "Corporate WVR Beneficiaries."[1]

CII is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately $4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than 15 million participants. Our associate members include non-U.S. asset owners with about $4 trillion in assets, and a range of asset managers with more than $35 trillion in assets under management.[2] CII members share a commitment to healthy public capital markets and strong corporate governance.

As we stated in our 2018 letter to HKEX in response to the Consultation Paper "A Listing Regime for Companies from Emerging and Innovative Sectors," we share the view expressed by HKEX in the introduction of Chapter 8A of the Exchange rules that "the one-share, one-vote" principle "continues to be the optimum method of empowering shareholders and aligning their interests in a company."[3] For this reason, we do not support the proposal to expand the existing weighted voting rights (WVR) regime to enable corporate entities to benefit from WVR. Even with the conditions and safeguards laid out in the proposal, expansion of the WVR regime presents long-term principle-agent risks.

While we recognize that HKEX already allows issuers to list with individual WVR beneficiaries, expanding this right to corporate holders presents unique risks. Our primary concern, as described by the consultation paper, is that "allowing corporate entities, which do not have a natural limit to their lifespan, to benefit from WVR could potentially result in WVR structures

1 HKEX Consultation (hereinafter "Consultation), Jan. 2020 at https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/January-2020-Corporate-WVR/Consultation-Paper/cp202001.pdf.
2 For more information about the Council of Institutional Investors (CII), including its board and members, please visit CII's website at http://www.cii.org.
3 CII 2018 letter
https://www.cii.org/files/issues_and_advocacy/correspondence/2018/March%2022%20CII%20HKEX%20response%20FINAL.pdf; Consultation Paragraph 113, p. 29.

existing indefinitely."[4] Asking investors to trust corporate holders with WVR to control voting decisions at a company indefinitely presents serious concerns.

For this reason, while we oppose extension of WVR to corporate entities, if HKEX nonetheless takes that step, it is useful to have a mandatory time-defined sunset on all corporate WVR, as HKEX has proposed. However, we believe that the mandatory sunset (absent renewal by shareholders) should be no more than seven years, rather than the 10-year proposed maximum. A body of empirical research indicates that any benefits of holding WVR decline over time, with companies with WVR provisions eventually tending to be undervalued as compared to their peers around this time.[5] We believe even seven years is a liberal amount of time before a sunset, as it is unlikely that companies at IPO will sufficiently value potential risks in such structures even seven years after IPO.

CII has supported the possibility of shareholders voting to extend dual-class structures. We believe that any such extension should require the affirmative vote of the majority of outstanding shares of each class of stock, voting separately, with each class voting on a one-share, one-vote basis. We believe that the proposed 5-year interval as a maximum for the renewal vote would be reasonable.

As we stated earlier, we believe that deviating further from the "one-share, one-vote" principle could be problematic. However, should HKEX proceed in allowing corporate shareholders to have WVR, we believe some of the safeguards included in the proposal would be positive additions. Given our position generally opposing weighted voting rights, we generally support safeguards that reduce the number of listed companies with WVR. Along with a sunset provision and the safeguards already included in the individual WVR rule, we would generally support the following proposals from the consultation being included in any rule permitting WVR for corporate holders:

- Requirement that a corporate WVR beneficiary own at least 30% of the economic interest in the listing applicant, which we believe should lapse if it fails to maintain this ownership on an ongoing basis
- A maximum ratio of weighted votes permitted per share of five times the voting power of ordinary shares
- A minimum market capitalization requirement

In addition to these safeguards, CII suggests HKEX consider safeguards to ensure that WVR beneficiaries maintain strong corporate governance guidelines and standards regardless of where the company is listed. Further, companies that issue WVR (whether they are to individuals or corporate entities) should be required to have mechanisms that maintain accountability to non-WVR shareholders. We would generally support any proposed safeguards that would strengthen independence standards for directors and create channels for effective communication with independent shareholders at companies issuing WVR. We feel such measures that help ensure board members are responsive to outside shareholders are even more critical at companies where there are WVR that erode traditional channels of shareholder accountability.

[4] Consultation Paragraph 128, p. 31.

[5] See CII summary of 6 studies, https://www.cii.org/files/CII%20Summary%20of%20DC%20Studies.pdf.

While we understand the intent of the provisions to ensure that the WVR beneficiary plays a pivotal role in the listed company's ecosystem, we have some concerns that some of the other requirements seem subjective, which may result in limited effectiveness despite new discretionary burdens for the exchange. For example, the proposal would require the exchange to determine the existence of an ecosystem and the extent of the corporate holder's contribution to the listing applicant.[6] Further, proposed requirements would have the exchange determine if the corporate holder has "experience in emerging and innovative sectors."[7]

Thank you for considering our views. We believe that decisions made by HKEX are consequential not only for companies listed on the exchange but also more broadly in the region and globally. As such, we appreciate HKEX's the careful consideration before reaching any decisions. If we can answer any questions or provide additional information on this matter, please do not hesitate to contact me at [redacted].

Sincerely,

[redacted]

[6] Consultation Paragraph 22, p. 8.
[7] Consultation Paragraph 50, p. 12.