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INVESTMENT MANAGEMENT

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Concept Paper on Weighted Voting Rights

We refer to your 29 August 2014 invitation to respond to the Concept Paper on Weighted Voting Rights ('**Concept Paper**'). We appreciate the opportunity to participate and provide comments to Hong Kong Exchanges and Clearing Limited ('**the Exchange**').

Norges Bank Investment Management is the investment management division of the Norwegian Central Bank ('**Norges Bank**') and is responsible for investing the Norwegian Government Pension Fund Global (the '**fund**'). The fund is invested in assets of about USD 860 billion of which approximately USD 19 billion is invested in equities listed in Hong Kong.

We are a diversified investor with an equity portfolio consisting of minority stakes in listed companies. We regard the protection of minority shareholder rights as a necessary requirement to safeguard and promote the fund's financial interests. As such, issues concerning the treatment and rights of different shareholders are of interest to us.

In this letter we have raised our main perspectives. In the appendix to the letter we have also detailed our response to your Consultation Questions.

- We recommend that the Exchange keep its current rule of not allowing weighted voting rights structures. Equal voting rights of shareholders, in proportion to their holding, ensures the influence of minority shareholders and in most circumstances will reduce potential for conflicts of interests.
- Through its listing rules, the Exchange plays the role of a regulator of the Hong Kong market. This is a key role of the Exchange. In our view, the commercial part of the Exchange should not be emphasised at the cost of its role in developing good market practices and standards.
- The Exchange has successfully sought greater international credibility in recent years through revisions to its code on corporate governance, among other things. Hong Kong's broad competitiveness as a financial market has been widely recognised by various international rankings, as referred to in the Concept Paper. In our opinion, Hong Kong should continue to differentiate itself on the quality of its regulations, the rule of law and governance.

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- A possible rule change must be seen in the context of other mechanisms that protect investors in the Hong Kong market. In our view, should the Exchange opt to make a rule change there is a need to review this together with other regulatory rules and provisions in the market to protect minority shareholders.
- Finally, we would also like to highlight that Hong Kong is regarded as the main market place for Mainland Chinese companies looking to attract foreign capital. Many of the Chinese companies seeking listing will have the presence of a controlling shareholder in one form or another. There is a risk that lowering listing requirements at the Exchange through the introduction of weighted voting rights structures will leave minority shareholders in such companies with less influence.

Once again, thank you for providing us with an opportunity to contribute our views.

Yours sincerely



Irond Grande
Deputy Chief Executive Officer



William Ambrose
Global Head of Ownership Strategies

Appendix 1:
Detailed response to Concept Paper from Hong Kong Stock Exchanges and Clearing Limited

Part B Consultation Questions

Please reply to the questions below that are raised in the Concept Paper downloadable from the HKEx website at: [add link]. Please indicate your preference by ticking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages.

We encourage you to read all of the following questions before responding.

1. Should the Exchange¹ in no circumstances allow companies to use WVR structures?

Yes (in no circumstances allow companies to use WVR structures)

No

Please give reasons for your views below.

We recommend the Exchange to keep its current Listing Rules and only in exceptional circumstances allow companies to use WVR structures.

We acknowledge the global variety in law, tradition and practices. This is also reflected in our communication with companies and their boards of directors. While advocating equal treatment and rights among shareholders, we accept differentiation if the benefits can be evidenced to the satisfaction of different shareholder groups. We therefore expect the board of directors of a company with a WVR structure to regularly test presumptions justifying unequal treatment. The board must set out what the differences are, how they are justified historically and going forward, and their likely effects.

Please only answer the remaining questions if you believe there are circumstances in which companies should be allowed to use WVR structures.

2. Should the Exchange permit WVR structures:

(a) for all companies, including existing listed companies; or

(b) only for new applicants (see paragraphs 147 to 152 of the Concept Paper);
or

(c) only for:

(i) companies from particular industries (e.g. information technology companies) (see paragraphs 155 to 162 of the Concept Paper), please

¹ References to “the Exchange” in this Questionnaire mean The Stock Exchange of Hong Kong Limited, a HKEx subsidiary.

specify below which industries and how we should define such companies;

or

- (ii) “innovative” companies (see paragraphs 163 to 164 of the Concept Paper), please specify how we should define such companies below;

or

- (iii) companies with other specific pre-determined characteristics (for example, size or history), please specify with reasons below;

or

- (d) only in “exceptional circumstances” as permitted by current Listing Rule 8.11² (see paragraph 81 of the Concept Paper) and, if so, please give examples below.

We recommend the Exchange to continue its current practice with regard to the application of the term "exceptional circumstances". To date, no companies using this exception have been listed.

Please give reasons for your views below.

² GEM Rule 11.25.

In our view, the Exchange plays an important role in enhancing the corporate governance standards of Hong Kong listed companies through its listing rules. The Exchange has played such a role over many years. The Exchange contributes to maintaining the quality of and public confidence in the market, to enhance the accountability of the listed companies and allow shareholders to more easily and efficiently monitor performance of directors.

If you wish, you can choose more than one of the options (b), (c) and (d) above to indicate that you prefer a particular combination of options.

3. If a listed company has a dual class share structure with unequal voting rights at general meetings, should the Exchange require any or all of the restrictions on such structures applied in the US (see the examples at paragraph 153 of the Concept Paper), or others in addition or in substitution?

Please identify the restrictions and give reasons for your views below.

We recommend the Exchange to keep its current Listing Rules and only in exceptional circumstances allow companies to use WVR structures.

In the potential case of the Exchange allowing companies to use WVR structures, the Exchange may put restrictions on such structures, as given in paragraph 153 in the Concept Paper. In other markets some of the restrictions are found in the companies' articles of association, and not regulated through listing rules.

We would like to make the following overall comments on these possible restrictions:

- 1) Restriction on Transfers
- 2) Minimum equity threshold held by founders or others
- 3) Change of control event
- 4) Retirement/incapacity/death of founder
- 5) Minimum threshold of shares outstanding
- 6) Vote of shareholders
- 7) Sunset clause

Restriction 1) - 5) all seek to restrict transfer of ownership and control to a party potentially not sharing the same interests as the founders/major shareholders. The initial establishment of unequal voting rights will often be explained by founders/major shareholders having interests that best serve the company. A restriction on transfer, in one form or the other, could help ensuring ownership is kept by founders/major shareholders. However, over time there is no guarantee that such restrictions on transfer will ensure the current holders of the shares will continue having the same interests as the original holders when the structure was established.

Restriction 6) should always be required, but must be accompanied with an additional requirement that such conversion only can happen at fair terms for the shareholders with single voting rights. This means that there should also be a vote among the shareholders with single voting rights accepting the terms.

Restriction 7) could be required, but must be accompanied with a requirement that such a conversion only can happen at fair terms for the shareholders with single voting rights. This means that there should also be a vote among the shareholders with single voting rights accepting the terms.

In addition to the requirements referred to above, we would recommend you consider the following as part of corporate governance disclosure requirements:

Boards of companies with WVR structures should on a regular basis disclose such structures, how they impact shareholders, and how they are justified historically and going forward. The board of the company should regularly test presumptions justifying the unequal treatment.

4. Should other WVR structures be permissible (see Chapter 5 of the Concept Paper for examples), and, if so, which ones and under what circumstances?

Please give reasons for your views below. In particular, how would you answer Question 2 and Question 3 in relation to such structures?

Other WVR structures, such as the ones mentioned in chapter 5 of the Concept Paper, should in general not be permissible.

Further, we recommend that all directors should be elected by the shareholder general meetings, all directors should be elected in the same manner and all directors are accountable to all shareholders. A structure of dual-class director election will be in breach with this fundamental board accountability principle.

In our view, all ordinary shares should have one vote each. Holders of non-voting ordinary shares will have no or little say in major decisions made by the company directly impacting their capital invested.

5. Do you believe changes to the corporate governance and regulatory framework in Hong Kong are necessary to allow companies to use WVR structures (see paragraphs 67 to 74 and Appendix V of the Concept Paper)?

Yes

No

If so, please specify these changes with reasons below.

A possible rule change must be seen in the context of other mechanisms that protect investors in the Hong Kong market. In such a situation, there is a need to review this together with other regulatory rules and provisions in the market to protect minority shareholders. Should the Exchange opt to make a rule change there is a need to review this together with other regulatory rules and provisions in the market to protect minority shareholders, such as the disclosure regime and the right of legal redress. A possible rule change would for instance also require a review of the Hong Kong Takeover code.

6. Do you have any comments or suggestions regarding the additional matters discussed in paragraphs 33 to 47 of the Concept Paper:
- (a) using GEM, a separate board, or a professional board to list companies with WVR structures (paragraphs 33 to 41 of the Concept Paper); and

Fair and equal treatment of shareholders is already a general principle of the Exchange's GEM market for growth companies and should continue to be so. This is also the case for most segmented markets by exchanges internationally.

Exemptions or special rules for certain types of companies would likely be difficult to define and could open the door to multiple exemptions.

- (b) the prospect of overseas companies seeking to list for the first time on the Exchange with a WVR structure or seeking a further primary or secondary listing here (see paragraphs 44 to 47 of the Concept Paper)?

7. Do you have any other comments or suggestions regarding WVR structures?

- End -