USS
INVESTMENT
MANAGEMENT
LIMITED

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

27th November 2014

Sent by E-mail: response@hkex.com.hk

Dear Sir/Madam,

Re: Concept Paper on Weighted Voting Rights ("Concept Paper")

We welcome the opportunity to respond to the Concept Paper on Weighted Voting Rights as published by the Hong Kong Exchanges & Clearing (HKEx) in August 2014. By way of background, Universities Superannuation Scheme (USS) is one of the largest pension schemes in the UK, with total fund assets of approximately £42 billion. USS has been an investor in the Hong Kong market for several decades, and currently has £940m invested directly in companies listed on the Hong Kong Stock Exchange.

The scheme's trustee is Universities Superannuation Scheme Ltd, a corporate trustee which provides scheme management and trusteeship. USS Investment Management Ltd (a wholly owned subsidiary of Universities Superannuation Scheme Ltd) is the principal investment manager and advisor to the scheme. As an institutional investor that takes seriously its fiduciary obligations, USS aims to be a long-term, engaged and responsible owner of the companies and assets in which it invests. We devote substantial resources to implementing an active approach towards the stewardship of our assets and seek to promote robust corporate governance in all companies in which we invest.

USS supports the principle of 'one-share, one-vote'. We believe the existence of differential rights and benefits, such as those that exist in the US and other markets, create perverse incentives and can lead to an undesirable concentration of power. Separating economic exposure from shareholder ownership rights can also lead to a misalignment of interests between the controlling shareholder and other shareholders.

As investors, we provide risk capital to the companies in which we invest. In return, we get the opportunity to receive a future income stream (dividends) and the right to hold the managers of that capital to account. Both income and ownership rights are essential for investors in managing the principal–agency relationship which is an inherent part of equity investment. The alignment of ownership rights with the equity capital injected into the company provides a fair and transparent way for shareholders to oversee the management of their capital. Introducing rules which dilute this

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right will increase the risk of that equity investment for shareholders, and thus result in a higher cost of capital for listed companies.

We supported the initial decision of HKEx to reject dual class ownership structures. We believe the long-term interests of HKEx will be protected, and the competitive position strengthened, if the exchange continues to uphold high standards of governance and maintains the long-term attractiveness of the market for long-term investors such as USS.

USS is also a member of the Asian Corporate Governance Association and strongly supports their submission on the Concept Paper (attached for reference).

I hope that you find USS's perspective on these issues useful as you consider the responses to the concept document. Please feel free to contact me should you require any additional information.

Yours sincerely,

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November 28, 2014

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By email and post

Dear Sir/Madam,

Concept Paper on Weighted Voting Rights ("Concept Paper")

We welcome the opportunity to respond to the Concept Paper on Weighted Voting Rights published by Hong Kong Exchanges and Clearing (HKEx) on August 29, 2014.

The Asian Corporate Governance Association (ACGA) is a not-for-profit association chartered under the laws of Hong Kong. The association is dedicated to assisting companies and markets across Asia in their effort to improve corporate governance practices. In our educational outreach, we are guided by a practical, long-term approach. ACGA's operations are supported by a membership base of institutional investors, such as public pension funds and fund managers, as well as listed Asian companies, law and accounting firms, and universities. ACGA now has over 100 corporate members, two thirds of which are institutional investors with around US$18 trillion in assets under management globally. They are also significant investors in the Hong Kong market.

Our position has been clear and consistent on this issue: We firmly believe that no amendment to the Listing Rules to allow companies to use weighted voting right structures (more commonly called "dual- class shares") is appropriate in Hong Kong at this time or in the future. Our reasoning is as follows:

1. International investors do not favour the separation of economic interests and ownership rights

As fiduciaries for their clients, many leading global institutional investors strongly oppose as a matter of principle the separation of economic exposure and ownership rights (ie, where the interests of the controlling shareholder is misaligned with a company's other shareholders, especially minority shareholders, because of differential voting rights or other control structures).

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Jurisdictions like Sweden may allow multiple voting rights or dual-class shares, but they also have fair provisions for takeovers to ensure that all share classes are treated equally in the event of a takeover. Investors expect economic interests to be in line with ownership rights over and above "fair treatment".

This perspective is being strengthened by the development of "stewardship codes" globally and within the Asian region. Japan introduced the region's first stewardship code earlier this year and around 160 domestic and foreign institutional investors have become signatories. Malaysia introduced a similar code in June of this year, while domestic state pension funds and other institutions in Thailand jointly announced a new set of proxy voting guidelines in March 2014. Other jurisdictions are also contemplating some form of stewardship code.

Global investors accord a high priority to the rights and duties that come with their shareholdings in Hong Kong listed issuers; any separation between economic exposure and ownership rights is fundamentally unacceptable.

2. International investors oppose weighted voting rights in Hong Kong

On Tuesday, April 15, 2014, ACGA held a press conference to release our "Survey on Alibaba and Non-Standard Shareholding Structures in Hong Kong". The survey asked global and regional institutional investors a series of questions on the dual-class share issue, their views on the special partnership structure sought by Alibaba in its earlier proposed Hong Kong listing, and whether they would discount the Hong Kong market if non-standard shareholding structures became common.

Survey respondents included 54 of ACGA's institutional investor members that have significant exposure to the Hong Kong market and came from around Asia, several European countries, North America and Australia/New Zealand. (Note: The 54 respondents represented more than half of ACGA's 100 corporate members and more than 75% of our investor membership base.)

Some of the main findings of the survey included:

- Fair treatment of all shareholders remained of fundamental importance to institutional investors in the Hong Kong market.
- There was overwhelming opposition to dual-class shares in Hong Kong and the proposed Alibaba partnership structure.
- Providing exemptions under the Listing Rules for so-called "innovative companies" would set the wrong precedent.

The most striking result, however, was that investors would likely apply an average discount to the Hong Kong market of around 13% if non-standard shareholding structures became common. This would be greatly detrimental to Hong Kong's long-term positioning as an international financial centre.

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3. Many business stakeholders also oppose weighted voting rights
In addition to the widely based opposition to dual-class shares that has emerged in Hong Kong over the past year, including corporate chambers, brokers, directors and many local listed companies themselves, we found that participants at our recent 15th Anniversary Conference in Hong Kong were also largely opposed. The event was held over November 4-5, 2014 and attracted a record attendance of more than 250 high-level delegates from more than 20 countries in Asia and other parts of the world. Around 40% of the delegates were from Hong Kong.

One of the opening plenary sessions of the conference was a debate titled:

> "Market Competitiveness vs Corporate Governance: Are the two at odds?"

Prior to and after the debate we asked delegates to vote on the following question:

> "Should the Hong Kong market allow "weighted voting rights" (eg, dual classes of shares) as proposed in the Concept Paper published recently by HKEx?"

The vote before the debate was 27% in favour, 49% against. and 25% undecided. After the debate, the vote shifted considerably: just 21% were in favour, 63% against and only 16% remained undecided.

We also asked delegates to vote on the following resolution:

> "We resolve to recommend against allowing weighted voting rights in the Hong Kong market".

The resolution was duly passed with 66% in favour, 15% against and 20% abstaining.

(Note: All percentages above have been rounded.)

4. Hong Kong does not need more flexible Listing Rules
Proponents of weighted voting rights believe that Hong Kong needs more flexibility in its Listing Rules to cater for companies with different capital structures. We believe this is not the case. Firstly, the "one share, one vote" principle has served Hong Kong well for almost three decades and more than 1,500 companies from different company law jurisdictions, both private-sector and state-owned, have successfully listed here under this regime. Such companies could rightfully complain they now face an unlevel playing field if IPOs with non-standard shareholding structures were permitted, or they may start demanding equal treatment (which would only compound the damage to the market).

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Secondly, existing rules have allowed the listing of numerous IPOs with low disclosure and governance standards, leading to investor losses and enforcement challenges for regulators. Just this year, 12 newly listed companies out of 85 have issued profit warnings within two months. Considering the destruction of value that many IPOs have left in their wake over the past few years, it is hardly convincing to argue that Hong Kong needs looser listing rules.

5. Hong Kong and the US are not the same
Over the past year, several market commentators have argued that Hong Kong should allow dual-class shares because the US does. Simple cross-border comparisons of regulatory systems are often dangerous because they lack historic context and a broad understanding of the specific characteristics of each particular system.

The US securities market was founded on strong disclosure laws, the caveat emptor principle, and accords small shareholders extensive legal remedies to sue companies. Like most securities markets in Asia, Hong Kong is characterized by more of a balance between the "merit-based" and "disclosure-based" approach to regulation, the regulator takes a more active role in approving new listings, and small shareholders have relatively few legal remedies.

Therefore, introducing weighted voting rights while leaving everything else the same—as is being proposed—creates the conditions for even greater abuse of minority shareholders. Investor risk and the probability of corporate governance failures will almost certainly increase, while offering minority shareholders no counterbalancing protection. Such a short-term strategy is not only irresponsible from a policy and regulatory point of view, it could well produce a net loss in economic value terms for Hong Kong over the medium to longer term.

6. Whither the Takeovers' Code?
We are disappointed that the Concept Paper failed to deal with one other important aspect of the Hong Kong regulatory system: namely, the possible impact on The Code on Takeovers and Mergers. Hong Kong's Takeovers Code, which has been in effect for over 30 years, is based on the principle of equal treatment of all shareholders and requires a mandatory offer to be made to all shareholders once an acquirer of shares has reached a certain trigger point for control (currently 30%). Non-standard shareholding structures would give significant problems for the concept of "control" under the Takeovers Code. In fact, dual-class shares may even render the Takeovers Code unworkable—since any investor that bought 30% of the company, and then undertook a general offer, would still be unable to control the company or its board.

ACGA is not opposed to a proper debate on the core regulatory values of the Hong Kong market and to this extent welcomes the Concept Paper. We believe, however, that this discussion should take the overall interests of Hong Kong into account and not be unduly influenced by one particular company. Making policy "on the hoof" and in response to individual cases is poor regulatory practice.

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We also recommend that due consideration must be given to Hong Kong's long-term competitive positioning vis-à-vis the Shanghai and Shenzhen exchanges, and to the nature of the regulatory regimes in Hong Kong and China. The arrival of Shanghai-Hong Kong Stock Connect presages closer regulatory cooperation in future and it will be to Hong Kong's detriment if HKEx introduces weaker listing rules than those found in China, which does not allow dual-class shares.

We believe that Hong Kong's long-term future lies in maintaining, and indeed enhancing, its reputation as a quality market with some of the highest investor protection standards in Asia.

We would be happy to discuss any of the above points further upon request.

Yours truly,

Jamie Allen
Secretary General
Asian Corporate Governance Association

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