



5550 Yonge Street
Toronto, Ontario M2M 4H5

416 228.5900 or
1 877 812.7989

fax: 416 730.5349

www.otpp.com

November 8, 2012

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong
E-mail: response@hkex.com.hk

Sent via e-mail

Dear Sir/Madam,

The Ontario Teachers' Pension Plan (Ontario Teachers') is an independent organization responsible for investing more than C\$117 billion in assets and administering the pensions of 300,000 working and retired teachers in the province of Ontario, Canada.

The Asian Corporate Governance Association (ACGA) has provided its thoughts on the Consultation Paper on Board Diversity issued in September 2012 by the Stock Exchange of Hong Kong Limited. As an ACGA member with significant investments throughout Asia, Ontario Teachers' would like to indicate our support of the ACGA's views as expressed in the attached letter. We would also like to express our preference for an implementation date of January 1, 2013 for the proposed amendments.

We appreciate the opportunity to provide our views on this issue. Please do not hesitate to contact us if we can be of further assistance.

Yours sincerely,

Attachment

ASIAN CORPORATE GOVERNANCE ASSOCIATION (ACGA)

Response to the "Consultation Paper on Board Diversity"

October 2012

This submission contains ACGA's response to the "Consultation Paper on Board Diversity" published by the Hong Kong Exchanges and Clearing Limited in September 2012. We would be pleased to discuss any of these issues further with Exchange.

We generally support the principles behind the proposed amendments that the Exchange has set out in the Consultation including promoting board diversity; introducing the new measures in the Corporate Governance Code; having the nomination committee or the board develop a policy on diversity of board members and disclosing the policy or a summary of it in the corporate governance report; and introducing a note under the new proposal clarifying what the Exchange means by diversity.

However, we do not believe that introducing a mandatory disclosure provision requiring that "if the issuer has a policy concerning diversity, it should disclose details of the board's policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objective" will be of any benefit. We think such a rule will ensure that, in most cases, companies will use boilerplate language and comply with the form rather than the spirit of the rule.

Chapter 3: Proposals and Consultation Questions

Q.1: Do you agree that the Exchange should promote board diversity?

ACGA: Yes, we do agree that the Exchange should promote board diversity. As the consultation paper notes exchanges and regulators around the world, including the US, UK, Australia and more recently, Malaysia and Singapore have been revising their rules and guidelines to incorporate board diversity. Hong Kong, as a major global exchange, needs to join the discussion and also take into account an issue that has become increasingly relevant issue not only for stakeholders but companies around the world. Besides regulators, companies, non-profit as well as for-profit private organisations, and professional associations, including the International Corporate Governance Network, the Alliance for Board Diversity (a collaboration of four leadership organizations: Catalyst, The Executive Leadership Council, the Hispanic Association on Corporate Responsibility, and Leadership Education for Asian Pacifics, Inc.), the Association of Chief Executives of Voluntary Organisations and the Australian Institute of Company Directors have all either published research on this issue and/or are working with their members and the community at large on this agenda.

In August 2012, Credit Suisse released a research paper titled *Gender Diversity and Corporate Performance* that found "in a like-for-like comparison, companies with at least one woman on the board would have outperformed in terms of share price performance, those with no women on the board over the course of the past six years. Credit Suisse had that research shows not only makes a significant difference on the profitability of a company but also on its corporate governance. Credit Suisse, in its review, had analyzed the performance of "close to 2,400 companies [from around the world] with and without women board members from 2005 onward".

While most of the research that has been done on board diversity tends to concentrate on gender diversity, which we support, we would like to stress that we are not merely advocating gender diversity, rather we encourage companies to broadly encompass diversity across the board, including gender, ethnicity and age. The Tyson Report on the Recruitment and Development of Non-executive directors (June 2003) stated in its report that “Experts on corporate governance agree that the best boards are composed of an appropriate mix of individuals with different skills, experiences and knowledge...groups that are more diverse in skill or knowledge-based dimensions have the potential to consider a greater range of perspectives and to generate more high-quality solutions to problems than less diverse groups (Milliken and Martins 1996)”.

However, what we are concerned about is the implementation phase once the Exchange makes the amendments because we believe it is important for the Exchange to collaborate with educational institutions and professional associations, such as the Hong Kong Institute of Directors, the Hong Kong Institute of Chartered Secretaries and the Women’s Foundation to promote this initiative by holding workshops and seminars to educate companies and directors on the benefits of board diversity as well as answer and address questions and concerns they might have on this initiative.

Q.2: If your answer to Q.1 is “yes”, do you agree that our Corporate Governance Code and Corporate Governance Report is the appropriate place for the new measures on board diversity?

ACGA: Yes, we agree that the new measures should be a comply-or-explain principle rather than a mandatory one. Forcing companies to diversify their boards through rules or by introducing a quota system will ensure that companies comply in form rather than in spirit, by simply appointing inexperienced female family members to their boards, or without thinking sufficiently about the range of skills needed appoint trophy directors, community leaders and so on.

We are aware that the danger of boilerplate disclosure and compliance in form not spirit can, and probably will, occur even a Code Provision, the company still has the option of explaining if it chooses not to comply. And we believe that the educational role the Exchange should play following any amendments will in the long term ensure that companies and directors give more meaningful thought to such decisions.

Q.3: Do you agree with our proposal to introduce CP A.5.6 (the nomination committee or the board should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report)?

ACGA: Yes, we agree in principle with this proposal because we believe that a company policy will help an issuer’s nomination committee or board to focus on the issue of diversity specifically for that company. The directors on the nomination committee or the board will have a direction and strategy that the company has put in place to help them choose candidates for future directors or even the management and help them to understand how diversity can add value to its business. A policy will also highlight where the company is in terms of diversity, the changes it needs to make and the priority of such changes. It is, therefore, important that the Exchange encourages companies to take the time to formulate such a policy, especially in its educational role. Providing case studies of how companies in Hong Kong, such as the Bank of China, created its policy and what the policy has done to shape its board nomination processes would probably be a useful tool in educating companies.

In the event that a company does have such a policy, it is important that it discloses it to its stakeholders in order that they understand whether it has such a policy in place, and what the company sees as its strategy going forward.

Q.4: Do you agree with our proposal to introduce a note under CP A.5.6 to clarify what we mean by diversity and do you agree with the content of the note?

ACGA: Yes, we do. As we have already mentioned earlier in this response, we believe that diversity should not be defined or a quota system introduced since this will, in all likelihood, lead to companies conforming to the form rather than the spirit of the measures. The note the Exchange proposes, and the content of the note, is one that we endorse since it will help clarify the scope of diversity for companies.

Q.5: Do you agree with our proposal to introduce a new mandatory disclosure provision in the Code stating that if the issuer has a policy concerning diversity, it should disclose details of the board's policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives?

ACGA: We doubt that introducing a mandatory disclosure provision in the Code would prove to be of great benefit. CP A.5.6 already states that the company "should disclose the policy or a summary of the policy in the corporate governance report". Since the comply-or-explain provision is already there, and companies in Hong Kong to date have complied with Code Provisions, we do not see the need for the mandatory disclosure provision. And as we stated earlier in our response, we endorse the comply-or-explain principle rather than a rule because rules tend to get companies to start ticking boxes and using boilerplate language. It is far better, in our opinion, if a company chooses not to have a policy and merely explain why it does not.

Q.6: Which of the following would you prefer as the implementation date of the amendments set out in this paper?

- (i) 1 January 2013
- (ii) 1 April 2013
- (iii) 1 June 2013
- (iv) 1 September 2013
- (v) Other (please specify)

ACGA: We do not have any preference on the implementation date.