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Sent: Wednesday, December 06, 2017 12:02 AM
To: response
Subject: CP on CG Review

Dear Sirs

We are delighted to have the opportunity to respond to the Hong Kong Consultation Paper on Review of the Corporate Governance Code. We commend the Exchange for opening up the consultation to interested stakeholders.

We are London based investment managers who invest globally on behalf of clients (predominately domiciled in the UK). We are investors in Hong Kong listed entities. As specialist ethical and responsible investors we take an informed approach to proxy voting, registering our votes in all markets consistent with local best practice. Corporate Governance is of strategic importance for us, and is taken into account when making investment decisions. A strong, supported corporate governance regime, in our view, provides the necessary reassurance required to attract inward investment and allocation of capital.

We warmly commend the Exchange for its emphasis on transparency and accountability and for the reforms it has earlier made in the areas of diversity and ESG reporting.

Our detailed comments follow the Exchange's Consultation Paper by paragraph/question number.

Part I

Question 1

We strongly support the comply or explain proposal to ensure companies provide a transparent explanation where a director already holds six appointments. We believe directors must be able to devote sufficient time to be fully engaged in the appointed role, and that may be compromised where a multitude of similar appointments are held. We trust the Exchange will provide guidance on the quality of information companies will be required to disclose to provide assurance around adequate time commitments.

Overall we view seven appointments to be potentially excessive and would prefer guidance to settle at no more than five public directorships in total.

Question 2 & 3

Diversity is important to us and has been integrated into our voting policy. We support all reasonable measures to improve diversity and support the requirement of a formal Board policy on diversity. We agree with the Exchange's proposals to require (on a comply or explain basis) that the Board should disclose the process for identifying nominees, their skills and expertise and how they would contribute towards diversity.

Question 4

We support the Exchange's proposal to update Mandatory Disclosure Requirement L.(d)(ii) in order to provide consistency with the proposed Code compliance amendment.

Question 5 & 6

Independence is critical in providing assurance and oversight of executives and we fully support a robust approach to ensuring every Board is required to have a credible independent quota of NEDs. Whilst the list provided of factors that may compromise independence is not exhaustive, a vital component for us is that the NED should not receive variable remuneration in the form of incentives. Whilst we are comfortable with remuneration paid in shares, we believe strongly the integrity of independence relies on having no material business association with the Board, its members or the company.

We fully support and endorse the Exchange's proposal to extend the 'cooling off period' for former professional advisors and audit partners from one to three years.

We do not view one year as an adequate test of independence, and three years will, in our view, provide additional rigour to former advisors etc. joining a Board that they previously advised or acted for in an audit capacity.

Question 7

We do not concur with the Exchange's proposal to revise Rule 3.13(4) by introducing a one year cooling off period for independent NEDs having material interests in the past year. We should prefer to see an alignment of cooling off periods (see question 5 & 6 above) as a minimum three year period, or, as a transition arrangement, two years. We do not believe one year to be an appropriate test of independence, and that in order to provide reassurance to stakeholders, a longer, defined period is necessary. Three years would also align the HK Exchange with international best practice, although we note that the Singapore Exchange only requires a one year cooling off period in such cases.

Question 8

Being a UK domiciled shareholder, we are used to the UK Corporate Governance Code citing cross-directorships as compromising independence. We subscribe to the view that such cross-directorships can, but may not always, compromise independence, but that it is a risk. As an interim measure, we commend the Exchange's proposal (on a comply or explain basis) for disclosure of any cross-directorships held by an independent NED. This would aid transparency, and shareholders could form their own judgement when exercising their proxies on whether they judge the nominee to be independent.

We would further recommend Board disclosure on why (on a comply or explain basis) it does not view specific cross-directorships to compromise independence and how the Board proposes to continually monitor such arrangements as an ongoing test of independence.

Question 9 & 10

We believe it to be helpful and invaluable to understand any close family connections that may affect or compromise independence. We recommend Rule 3.13 requires such disclosure and any other relevant, close familial ties that may affect the Board's assessment of independence.

In our view the definition of 'immediate family member' should include the categories set out in paragraph 81 (spouse, child or step-child) but should also properly include sibling (brother/sister), parent (father/mother) and other close family members such as uncle/aunt.

Part II

Question 11

We view this proposal as showing undisputed leadership given the disclosure of a Nomination Policy is not viewed as normal market best practice in major jurisdictions.

We support and commend the Exchange for proposing to amend Mandatory Disclosure Requirement L.(d)(ii) to disclose the nomination policy adopted during the year. We believe this will foster greater understanding of the nomination process itself and may help improve the nomination process overall given the requirement to disclose; we believe this could also be a positive influence on improving Board diversity.

Part III

Question 12

We do not envisage any difficulties in the Exchange's proposal under CP A.6.7. We believe stakeholders should be provided with disclosure on director attendance at general, Board and Committee meetings as a test of commitment and availability. As part of our voting policy we take into account attendance levels and will oppose the re-election of directors with less than 75% attendance. We view this to be a sensible non-problematic proposal.

Question 13

The proposal and rationale set out in paragraphs 101-102 raise considerable challenges. We do not in principle support the combination of Chairman and CEO in a single nominee; the Chairman should in our view, be independent on appointment.

We appreciate this raises challenges in family controlled companies and where non-independent NEDs may be connected to the combined Chair/CEO. For transparency and accountability purposes, we believe the Board should set out governance processes in such situations as to how the independent NEDs are able to exercise their independence and remain accountable. The suggestion set out in Question 13 is not an unreasonable solution, but potentially provides few additional safeguards for shareholders. In such cases a lead independent NED should be clearly defined and be potentially designated as Vice-Chairman and be the designated director for expressing the views of the INEDs and other external shareholders.

Part IV

Question 14

Dividend policy is important to us and to our clients, many of whom are investing for yield. We strongly support the Exchange's proposal to introduce CP E.1.5 requiring Boards to disclose their dividend policy; this will help transparency and also fulfil a fundamental financial discipline.

Part V

Question 15

We believe the proposal is made with good intentions, however it may be necessary to consult further to understand the extent of any 'dissent' to the routine dissemination of corporate communications by electronic means. Digital disenfranchisement is a material consideration that should be borne in mind; nevertheless we believe that, based on the results of any wider consultation, an optimum methodology could and should be adopted and that the intention to disseminate electronically, is sound.

We thank you for the opportunity to consult of the Exchange's consultation and thank you for taking our views into consideration.

Kind regards

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