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**Response to the Hong Kong Stock Exchange's Concept Paper on Voting Rights
August 2014**

We welcome the Stock Exchange's Concept Paper on Voting Rights August 2014 ("Paper") and the initiative to canvass market views on weighted voting rights and Listing Rule 8.11. Our responses to the questions set out in the Paper are set out below. Terms defined in this Paper shall have the same meanings in this letter.

Question 1: We believe WVR structures should be permissible in certain circumstances.

Diversity and choice are core values of free market

As outlined in para.15 of the Paper, a substantial number of Mainland enterprises have opted for the US as their primary listing venue and almost one-third of them have WVR structures, comprising 70% of the total market capitalization of Mainland companies listed in the US. Although (as set out in para.19 of the Paper) there may be a wide range of reasons why those companies chose the US markets over Hong Kong, presumably the prohibition in Hong Kong against WVR had an important role in the decision-making process for such companies.

In addition to considering listing motivations, it may be just as valuable to consider Hong Kong's aspirations for its investors. As Hong Kong is one of the premium financial centers in the world, promoting freedom of choice and expanding investment opportunities and products will continue to be critical to the growth and development of this market.

A "blanket" rejection of WVR structures seems contrary to the importance of choice and variety in a well-respected and free market. In a highly dynamic marketplace, it remains essential to keep an open mind to all types of products and services, even those that may seem to create more risk. To continue to advance the market, it will be important to maximize diversity, give investors access to more kinds of products, and at the same time evaluate and address the risks associated with such diversity. In doing so, Hong Kong will maintain its competitive edge as a premium financial center of choice, both for listing candidates and investors alike.

Loss of value to investors

The WVR question calls for a weighing exercise, between the pros and cons of limiting market access to a certain class of companies that could potentially be structurally more open to abuse.

As regards the cons that arise from imposing limits on the number and variety of products available, a market that does not proactively maximize access to products and services for its participants risks undermining its own status as a premium free market. There is also an argument that limitations on products can result in a loss of value (or opportunity) for investors.

In this connection it may be helpful to look at the top three (by way of market capitalization) PRC mainland enterprises listed in the US.

Company	Listing Date	Market cap (US\$billion) as at date of listing	Market cap (US\$billion) as at 16.10.2014
JD.com	21.05.2014	28.57	32.9
Qihoo 360 Technology Co. Limited	29.03.2011	3.407	7.804
Baidu.com	04.08.2005	1.537	70.63

The market capitalizations of these enterprises have all shown dramatic increase since their debut in the US market. This can be a broad measure of the value that US investors have gained from these companies over the period – but is also an illustration of the opportunities missed for investors in other markets (including Hong Kong) that these companies did not select as their listing venue.

Class action: what it actually addresses in practice

Where there are safeguards in place against abuse and misconduct, WVR does not necessarily detract from the general principle of fair and equal treatment of shareholders.

Some market commentators are concerned that, as Hong Kong does not have a class action regime, shareholder actions against corporate wrongdoing are much less robust than the US, and that Hong Kong-based shareholders of WVR companies will be worse off than their US counterparts in terms of the protections available to them. While this is a valid concern, the Hong Kong regulators should treat it with caution lest it be given undue weight.

We would encourage the Exchange to embark on a formal consultation after considering the responses to the Paper, particularly to analyze whether the US class action regime is a cure for mischiefs that are prevalent in Hong Kong (or would become prevalent if WVR were allowed in Hong Kong). Given the structural differences between the US market and the Hong Kong market, class actions may not be the only sound remedy and, instead, Hong Kong may be able to rely on other types of cure for the same mischiefs.

In this connection, we have reviewed the securities-related class action suits brought in the US from January to mid-October 2014. Out of 106 cases surveyed, 97 are directly related to disclosure of information – e.g. providing false information in registration statements; failure to disclose material adverse facts in public records, filings and other disclosure materials; issuing and disseminating materially false and misleading statements; wrongful procurement of shareholders' support for transactions by making false and misleading recommendations, etc. Only 9 actions (less than 10% of the actions brought this year up to October) surveyed appear to relate to other forms of misconduct.

In such circumstances, it may be argued that there is not a direct correlation between what class actions in the US appear to be specifically targeted at, or particularly efficacious in

preventing, with the types of mischief that WVR is typically associated with – e.g. illicit transfer of value into private coffers, inability of outside bidders to change management and revive a failing business, etc.

Recent experience in US class actions showcases a system that effectively penalizes and deters disclosure malpractice. It is the area where public shareholder losses are mainly suffered and the key source of public lawsuits. In the meantime, there is nothing that specifically links WVR to a higher risk of inaccurate or improper disclosure. This raises the question that whether, because of class actions, the US market is actually better than Hong Kong at handling WVR-related issues.

If this observation is correct, Hong Kong need not be unduly concerned about shareholders not having class action in their arsenal. Hong Kong public shareholders may be no worse off than US shareholders and WVR companies may not present substantially more risk of misconduct than is presented in the US market, provided that our public shareholders are in fact sufficiently protected in other ways – e.g. as described in Paras. 66 and 68 of the Paper.

Regulatory challenges should be met directly

In reality, a ban on WVR companies from direct listing on the Hong Kong Stock Exchange does not prevent Hong Kong investors from investing in such companies. We have already discussed above the dramatic growth of some Chinese enterprises with WVR in the US market and the value gain this represents to investors there. Even though WVR companies are not allowed to be listed in Hong Kong, there are myriad ways for Hong Kong investors to access such companies indirectly – e.g. through overseas securities trading accounts or derivative products.

Since investors in Hong Kong are already exposed to investing in these companies through indirect channels, it is sub-optimal to leave these investors to resort to secondary or indirect channels, particularly in the event they need to seek proper redress in cases of abuse by these companies.

Question 2: We do not agree with (c). Attempting to draw a line between industry sectors or between high-tech / low-tech could be highly problematic and not very meaningful, as companies may be engaged in a number of industries with varying degrees of passivity.

Taking some companies that recently debuted in Hong Kong as examples, we note a number of companies engaged in businesses ranging from property management (Colour Life Services Group: 1778), bakery products retail (Christine International: 1210), and provision of financing solutions (Hanhua Financial Holding: 3903) that have online trading or other internet-based platforms, or some other “innovative” element in their business models. Many companies listed and traded in the US are likewise engaged in traditional businesses with e-commerce or other innovative features. The use of innovative technologies is a worldwide trend across different industries. Limiting access to WRV structures on this basis is an unlikely solution.

We also note with interest the Exchange’s finding in Para.32 of the Paper that none of the jurisdictions reviewed expressly restricts the use of WVR to a particular industry or other

specified criteria (other than that WVR should not be available to already-listed companies that did not have such a structure upon listing).

Question 3. We do not have specific views on this question.

Question 4. We do not see any problems, in principle, with allowing other forms of WVR structures outlined in Chapter 5 of the Paper. As discussed above, provided appropriate disclosures and safeguards are in place, there is no reason in principle why the one-share-one-vote or equal rights concept should be absolute.

Question 5: One of the expressed concerns related to whether Hong Kong investors will enjoy the same remedies as their US counterparts in the event of corporate wrongdoing involving WVR. While shareholder remedies are a crucial piece of the puzzle, the impact of the absence of class action on overall shareholder protection should be examined more closely. As we have discussed in Question 1, recent US securities class actions have mainly been taken against disclosure malpractice, which appears not to be a mischief normally associated with WVR. To nail down the real problem areas and devise suitable solutions to them, the regulators may consider conducting additional analysis of securities-related class actions, especially relating to the common types of abuses these actions are typically used to address.

Such an analysis could form the basis of a useful market discussion on whether the absence of class action actually makes WVR more risky to Hong Kong than they are to other major markets, and whether such risks can realistically be addressed by alternative remedies or preventive measures. Without doubt, Hong Kong already has a robust regulatory regime for connected transactions, which puts this market ahead of other markets in terms of the key protections against WVR-related risks.

Question 6: We do not think it is appropriate at this stage to list WVR companies on GEM, or any other separate trading platform. However, we are in favor of a simple designation system to allow investors to identify listed WVR companies with ease.

Question 7: We do not have any other comments at this stage.