

# CONSULTATION CONCLUSIONS TO CONCEPT PAPER ON WEIGHTED VOTING RIGHTS

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**Hong Kong Exchanges and Clearing Limited**  
**香港交易及結算所有限公司**

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## DEFINITIONS

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TERM	DEFINITION
“ACGA”	the Asian Corporate Governance Association
“AIMA”	the Alternative Investment Management Association
“AUM”	assets under management
“Concept Paper”	the Weighted Voting Rights Concept Paper published by the Exchange on 29 August 2014
“dual-class share structure”	authorised and/or issued share capital that includes two classes of ordinary shares carrying unequal voting rights at general meetings
“Exchange”	The Stock Exchange of Hong Kong Limited, a wholly-owned subsidiary of HKEx
“Fidelity”	Fidelity Worldwide Investment
“Freshfields”	Freshfields Bruckhaus Deringer, a law firm
“FSDC”	Financial Services Development Council
“GEM”	The Exchange’s Growth Enterprise Market
“Government”	The Government of the Hong Kong Special Administrative Region of the People’s Republic of China
“HKEx”	Hong Kong Exchanges and Clearing Limited
“HKVCA”	Hong Kong Venture Capital and Private Equity Association
“JPS for Overseas Companies” or “JPS”	Joint Policy Statement Regarding the Listing of Overseas Companies (27 September 2013) (see <a href="#">link</a> to HKEx website)
“Listing Committee”	the Listing Committee of the Exchange
“Listing Rules” or “Rules”	The Rules Governing the Listing of Securities on the Exchange (both GEM and Main Board unless otherwise stated)
“multiple voting shares”	ordinary shares that entitle the holder to more than one vote for each share held on all matters that are subject to shareholder approval at general meetings
“Norges Bank IM”	Norges Bank Investment Management

<b>TERM</b>	<b>DEFINITION</b>
“ordinary shares”	shares that entitle the holder to no preferential economic interest in a company (i.e. no pre-determined or preferential rights to a dividend and no superior claim on the residual economic value of a company on its winding-up)
“overseas company”	a company to which the JPS for Overseas Companies applies (JPS, paragraph 16) (see <a href="#">link</a> to HKEx website)
“person”	an individual, a company or other body
“professional body”	a respondent to the Concept Paper that identified themselves, or that we have categorised, as an industry association / professional body
“pro-responses”	the sub-set of unique responses to the Concept Paper (56) that supported the listing of companies with WVR structures in some circumstances
“Rules”	the Rules Governing the Listing of Securities on the Exchange. Main Board Rules unless otherwise specified.
“SFC”	Securities & Futures Commission of Hong Kong
“SFO”	Securities and Futures Ordinance (Cap. 571)
“Takeovers Code”	The Codes on Takeovers and Mergers and Share Buy-backs of the SFC
“Takeovers Panel”	The Takeovers and Mergers Panel of the SFC
“unique responses”	104 responses to the Concept Paper (of 200 responses in total) containing original content
“US”	the United States of America
“World Bank Report”	The World Bank and International Finance Corporation’s yearly “Doing Business” measure of business regulations for small to medium sized enterprises.
“WVR structure”	governance structure that give certain persons voting power or other related rights disproportionate to their shareholding

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# EXECUTIVE SUMMARY

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## Introduction

1. The Concept Paper sought views on whether governance structures that give certain persons voting power, or other related rights disproportionate to their shareholding (WVR structures), should be permissible for companies listed or seeking to list on the Exchange's markets.
2. We received 200 responses to the Concept Paper from a broad range of respondents (see Appendix I).<sup>1</sup> 104 responses contained original content (96 responses were entirely identical, in content, to other responses).<sup>2</sup>
3. Having carefully considered all of the responses, the Exchange concludes from the responses that there is support for a second stage consultation on proposed changes to the Rules on the acceptability of WVR structures.
4. It is clear from the responses that this remains a subject on which there are strong and divided views. Therefore, although we conclude that there is support for a second stage consultation, we expect that the changes we will propose for consultation will be evolutionary rather than revolutionary. We are considering proposing that, generally, "one share, one vote" should prevail but that WVR structures should be allowed for certain companies in certain circumstances and with certain safeguards. We seek to define those circumstances and safeguards. These proposals will, in essence, develop the "exceptional circumstances" concept that already exists in the Rules (but which, in practice, has never been used successfully to bring a company to listing on the Exchange) and extend them to "limited circumstances" in which certain companies with WVR structures could be listed with enhanced investor protection safeguards.
5. Given the nature of the Concept Paper, and the variety of responses received, the Exchange is in the process of finalising a draft proposal that is intended to be refined through discussions with stakeholders to ensure that we have the benefit of their views before we put forward a proposal for formal consultation. We will take into account this feedback to refine a proposal for the second stage consultation.
6. Finally, we have adopted what we consider to be an appropriate methodology to analyse the responses that is consistent with our past, publicly stated, practice and, we believe, the practices adopted by other relevant bodies in Hong Kong and elsewhere. Others may have different views on the methodology. We have, therefore, been very transparent about our methodology and, where appropriate, have included alternative analyses. As was made clear at the launch of the Concept Paper, the purpose of this exercise was to promote an informed, focused and coherent discussion, and to use the responses to assist in forming a judgment, necessarily both objective and subjective, on

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<sup>1</sup> Mr. David Webb, an activist shareholder and independent commentator, submitted a response attaching the results of a "Keep 1-share-1-vote" petition that Mr. Webb stated 349 persons had signed. These were counted as one response (see further paragraphs 52 to 54 below).

<sup>2</sup> Some of the 104 unique responses were submitted on behalf of a group of respondents. Charltons, a law firm, represented one group of sponsor firms and Freshfields represented two groups of sponsor firms. 22 responses were submitted by professional bodies representing their members.

the way forward in the best interest of the market as a whole and in the public interest.

## **Market Feedback and Conclusions**

### **Acceptability of WVR Structures**

7. Accountancy firms, sponsor firms / banks, law firms and listed company staff overwhelmingly supported permitting WVR structures in some circumstances. One accountancy firm stated that companies should be permitted to list with WVR structures in exceptional circumstances only. The professional bodies representing these industry groups were also supportive. The Law Society of Hong Kong, for example, took the view that there are suitable circumstances when WVR should be allowed and that a simplistic “one share one vote” structure, in the absence of a controlling shareholder with a long term strategy, can lend itself to short-termism.
8. Strong support for permitting WVR structures in some circumstances also came from listed companies, although their views varied considerably on what those circumstances should be. A third of this support originated from those who thought that WVR structures should only be permitted in exceptional circumstances. Great Eagle Holdings Limited (stock code: 41), for example, stated that "one-share-one-vote" should be upheld other than in an "extremely exceptional situation" and that the Exchange should use its discretion on a case-by-case basis if the prospective listing will bring significant value and benefits to the Hong Kong economy and with approval of the Financial Secretary.
9. Responses to the Concept Paper from investment managers were, on a strict numerical basis, split on the question. Some opposed the use of WVR structures in all circumstances. An equal number thought that there were circumstances in which WVR structures could be permitted. One of these investment managers, Norges Bank IM, recommended that the Exchange keep its current Listing Rules and only in exceptional circumstances allow companies to use WVR structures. Among those that opposed permitting WVR structures in all circumstances, were institutions with very large amounts of AUM globally, such as BlackRock and Fidelity. The investment managers that supported WVR structures in some circumstances tended to be smaller firms primarily investing in the Hong Kong market, although their number did include one large global investment manager that wished to remain anonymous.
10. Of the four professional bodies representing investment managers that responded, two (a local association representing investment management firms that wished to remain anonymous, and ACGA) each gave substantive responses setting out reasons why WVR structures would be detrimental to the Hong Kong market. ACGA included a summary of the results of a survey of their members that, it stated, included 54 of its institutional investor members that have significant exposure to the Hong Kong market. It said the survey concluded that there was, “overwhelming opposition” to WVR structures amongst its members. A third professional body, the HKVCA, an association representing Hong Kong based private equity managers, were supportive of allowing the use of WVR structures, to provide the companies in which they invested with more choice of high quality listing venues. The fourth professional body, AIMA, a global hedge fund association, stated that, as guiding principles, liquidity, transparency and sound corporate governance are important elements of healthy capital markets but did

not state a specific view on the appropriateness or otherwise of WVR structures for the Hong Kong market.

11. We received three unique responses from HKEx Participants. One supported the Exchange further considering allowing companies to use WVR structures for the reasons stated in the Concept Paper and two HKEx Participants opposed weighted voting rights in all circumstances. In addition, four responses from associations representing HKEx Participants opposed the concept of WVR structures<sup>3</sup>. The Hong Kong Securities Association, for example, was concerned that this would violate the principle of fair and equal treatment of all shareholders; reduce investor protection; and commented that certain check and balance mechanisms, such as class actions, were available to investors in US but not Hong Kong listed companies.
12. The clearest opposition to WVR structures came from retail investor respondents and the vast majority of HKEx Participant staff, responding in their individual capacity, who opposed allowing WVR structures in all circumstances. Mr. David Webb, an activist shareholder and independent commentator, submitted a response opposing WVR structures and attaching the results of a “Keep 1-share-1-vote” petition that Mr. Webb stated 349 persons had signed.
13. Generally speaking, very few respondents to the Concept Paper believed WVR structures should be permitted unconditionally. Many that supported them in some circumstances thought limits of one form or another should be established to decide which companies were permitted to have them. Some believed they should only be listed on GEM or a separate board. Almost all thought that safeguards should be put in place to restrict the use of WVR structures, and the activities of the companies that had them, after listing. A few respondents caveated their responses further by saying that companies should be permitted to use WVR structures in exceptional circumstances only or only if accompanied by reform of Hong Kong’s legal and regulatory framework through, for example, the introduction of a class action regime.
14. In the main, respondents did not present new evidence to support or oppose the use of WVR structures.<sup>4</sup>

### **Other Questions**

15. Responses to the remaining Concept Paper questions 2 to 7 came from the sub-set of responses (56) that supported the listing of companies with WVR structures in some circumstances.
16. A majority of these pro-responses, particularly those from market practitioners, stated that the Exchange should only allow new applicants to use WVR structures and emphasised the importance of other restrictions on their use (e.g. on transferability). There was little support for permitting WVR structures only for companies from particular industries or “innovative” companies. Most of those who responded to the question, particularly market practitioners, supported allowing WVR structures only

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<sup>3</sup> The Hong Kong Securities Association, the Hong Kong Securities & Futures Employees Union, the Hong Kong Securities and Futures Professionals Association and the Institute of Securities Dealers Ltd.

<sup>4</sup> See, however, further paragraphs 95 to 99.

for companies with pre-determined characteristics (e.g. size and history). Few specifically opposed this concept.

17. There was strong support amongst pro-responses, from most respondent categories, for the safeguards that apply to companies with WVR structures listed in the US (e.g. loss of weighted voting rights on transfer or on holding less than a minimum equity shareholding). Most pro-responses supported the application of some or all of the safeguards mentioned in the Concept Paper. Most wanted the mandatory application of these safeguards in some form but a small number stated that these safeguards should be applied on a purely voluntary basis, as they are in the US.
18. Most of the pro-responses that commented supported flexibility on the variety of WVR structures that should be permissible. Support on this point was particularly strong from market practitioners. There was little support for using GEM, a separate board, or a professional board to list companies with WVR structures due to concerns that a non-Main Board listing would stigmatise companies with WVR structures and result in poor liquidity. No pro-responses stated that only overseas companies should be permitted to use WVR structures.
19. We received a small number of pro-responses to the question of whether companies with WVR structures should be listed only in “exceptional circumstances”. These were equally divided into those, mostly market practitioners, who favoured removing this restriction to improve the clarity and certainty of Rule requirements and those, from a range of respondent categories, who supported retaining the “exceptional circumstances” provision. None provided a specific definition of “exceptional circumstances”.
20. Most pro-responses stated that some changes to Hong Kong’s legal and regulatory framework were necessary to allow companies with WVR structures to be listed. Of these, most said that changes to other Rules (e.g. those governing connected transactions) and the Takeover Code may be necessary. A small number<sup>5</sup> stated that the introduction of a class action regime was a necessary pre-requisite; however, twice as many responses disagreed. These noted that class actions in the US were concerned with matters other than abuses under WVR structures. Opposition to changes to Hong Kong’s legal and regulatory framework was particularly strong amongst market practitioners. Professional bodies were split on whether change to Hong Kong’s legal and regulatory framework was necessary.

## Methodology

21. Our aim in publishing the Concept Paper was to promote an informed, focused and coherent discussion and to elicit comments from a broad cross-section of the market. We wanted to know whether there are opinions we had not heard and whether there is broad consensus for change (or maintaining the status quo) and, importantly, the reasons for change (or maintaining the status quo). Our goal was to take account of the responses to come to a balanced view on any further action in the best interest of the market as a whole and in the public interest.

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<sup>5</sup> Five of 28 pro-responses (two law firms, two investment managers and a professional body).

22. The effectiveness of this process depends upon the submission of original responses from a broad range of respondents that give considered and substantive reasons for their views. Our methodology, accordingly, aims to accurately categorise respondents and identify different viewpoints. It is also in line with our past, publicly stated policy. It necessitated a qualitative assessment of the responses in addition to a quantitative assessment.
23. A qualitative analysis was particularly important as the questions posed by the consultation were conceptual and did not propose particular Rule changes. This analysis enabled the Exchange to properly consider the broad spectrum of respondents and their views, either for or against, WVR structures and to see if there was a “middle ground” on which some consensus could be reached. In addition, we also conducted a comprehensive quantitative analysis, the results of which are set out in Appendix II.
24. As in past consultations, for the purpose of our quantitative analysis, we counted the number of responses we received not the number of respondents they represented. This means that a response from, for example, a professional body is counted as one response irrespective of its membership and a response from an individual or institution representing others is counted as one response. Also following past practice, for our quantitative analysis, we counted only the 104 responses containing original content.<sup>6</sup> Our qualitative analysis enabled the Exchange to give due weight to responses submitted on behalf of multiple persons or institutions and the rationale for their position. Chapter 2 describes our methodology in full. We acknowledge that others may have chosen a different methodology.
25. We have categorised professional bodies as a single group rather than strictly assigning them, individually, to other categories (e.g. by assigning brokers’ associations to the “HKEx Participants” category). This is in line with our past practice. Subjective judgment is required to assign professional bodies to other categories and some do not fit easily with other categories of respondent. Nevertheless we have attempted, in these conclusions, to accurately reflect the opinions of various sections of the market by mentioning certain professional bodies in the context of the categories to which they are most closely related.
26. Other bodies may have categorised investment managers by their AUM and weighted the importance of their views accordingly. We have not done so because this is not our past practice and also because we believe that the size of an institution’s global assets does not mean that we should necessarily attach more insight to their arguments or viewpoint. This would also raise issues as to the treatment of representative bodies that have considerable variances in the number and type of members. However, in the interests of transparency, we have included a brief analysis of the AUM of the investment managers that responded to the Concept Paper in paragraph 83.

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<sup>6</sup> This practice was followed in our “Consultation Conclusions on Proposed Amendments to the Listing Rules Relating to Corporate Governance Issues (January 2003)”, see paragraph 10 of those consultation conclusions.

## **Issues, Draft Proposal and Way Forward**

27. The Exchange is in the process of finalising a draft proposal (in the nature of a “Straw Man”) for discussion with stakeholders with a view to refining the proposal and then publishing a second stage formal consultation on proposed changes to the Rules for companies seeking a listing with a WVR structure.

### **Issues**

28. A number of key issues were raised by respondents and others in relation to ring-fencing, safeguards, competition and secondary listing. We provide more detail on these issues in Chapter 4 and will seek to address these in the draft proposal and in the second stage formal consultation. More detail on the draft proposal is provided in Chapter 5.
29. To further explore the issue of competition with other markets (referred to in paragraphs 11 to 23 and Chapter 3 of the Concept Paper), we will seek market feedback on the relative importance of the permissibility of WVR structures to a company’s choice of listing venue. We will also seek feedback on whether the current prohibition on secondary listing for companies with a “centre of gravity” in Greater China should be relaxed to a certain extent, with or without conditions.

### **Draft Proposal and Way Forward**

30. We expect to begin preliminary discussions with stakeholders on the draft proposal shortly after publication of these Consultation Conclusions, with a view to the formal consultation commencing later in the third quarter of 2015 or early in the fourth quarter of 2015, depending on the market feedback.
31. We provide more details on our current thinking with regard to the draft proposal and the proposed way forward in Chapter 5.

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## CHAPTER 1: INTRODUCTION

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### Background

32. The Concept Paper sought views on whether governance structures that give certain persons voting power, or other related rights disproportionate to their shareholding (WVR structures), should be permissible for companies listed or seeking to list on the Exchange's markets.

#### Reasons for the Consultation

33. The Listing Rules should “*reflect currently acceptable standards in the market place*”<sup>7</sup>, and, as such, the Exchange has a responsibility periodically to review the Listing Rules to ensure that they do so. 25 years have elapsed since the restriction on WVR structures was implemented in the Listing Rules as Rule 8.11. The Listing Division has, in the recent past, both during and prior to 2013, received a number of enquiries from participants in the market on the acceptability of WVR structures.
34. The FSDC, established by the Government in January 2013, commented in its paper “Positioning Hong Kong as an International IPO Centre of Choice” that:
- ... the “one share one vote” concept may be studied in more detail and re-considered with the benefit of public consultation... While there may be good reasons for the rule [Listing Rule 8.11] to be upheld, we believe the Government and the regulators should keep reviewing some of the fundamental underpinnings of the market, and to what extent modifications or partial relaxations may be appropriate. The regulators should continue to keep an open mind, which is crucial for ensuring our market is up to date.”*<sup>8</sup>
35. The Exchange considered that there was sufficient merit in WVR structures being the subject of a review, and further that this topic warranted a comprehensive public debate in Hong Kong.

#### Purpose of the Concept Paper

36. The Concept Paper sought views on the concept of WVR structures to promote an informed, focused and coherent discussion on a topic that is of great market interest and potential significance to Hong Kong. The Exchange did not advocate the status quo or a change and did not put forward specific Listing Rules for consultation. The Concept Paper was intended to be a neutral, factual and analytical presentation of the relevant issues and considerations. The Exchange stated that it had formed no view for or against WVR structures.
37. The Concept Paper stated that, subject to comments and views received in response to the Concept Paper, the Exchange anticipated the paper may lead to one of the following outcomes:
- (a) A conclusion that no amendment to the Rules to allow companies to use WVR structures was appropriate at this time and that current practice is supported. In

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<sup>7</sup> Main Board Listing Rule 2.03.

<sup>8</sup> FSDC, “Positioning Hong Kong as an International IPO Centre of Choice”, (18 June 2014), paragraph 4.9.2, page 58.

this case, the Exchange would publish conclusions explaining the reasons for any such outcome.

- (b) Support for a material change to the Listing Rules on the acceptability of WVR structures. In these circumstances, the Exchange would again publish conclusions. Any change to the Listing Rules would require a second stage formal consultation process including consultation on the details of the scope and language of any proposed Listing Rule changes.

38. The consultation period ended on 30 November 2014, although the Exchange did accept responses submitted after this date.

## Number of Responses and Nature of Respondents

39. The Exchange received 200 responses to the Concept Paper from a broad range of respondents. 104 responses contained original content (96 responses were entirely identical, in content, to other responses). Our methodology for counting responses is described in Chapter 2.

<b>RESPONDENT CATEGORY<sup>9</sup></b>	<b>NUMBER OF RESPONSES</b>	<b>PERCENTAGE OF RESPONSES<sup>10</sup></b>
<b>INSTITUTIONS</b>		
<b>Market Practitioners:</b>	<b>36</b>	<b>35%</b>
Investment Managers	17	16%
Sponsor Firms / Banks	7	7%
Accountancy Firms	6	6%
Law Firms	6	6%
<b>Professional Bodies</b>	<b>22</b>	<b>21%</b>
<b>Listed Companies</b>	<b>9</b>	<b>9%</b>
<b>HKEx Participants</b>	<b>3</b>	<b>3%</b>
<b>None of the above</b>	<b>1</b>	<b>1%</b>
<b>INDIVIDUALS</b>		
<b>HKEx Participant Staff</b>	<b>9</b>	<b>9%</b>
<b>Retail Investors</b>	<b>4</b>	<b>4%</b>
<b>Institutional Investors</b>	<b>2</b>	<b>2%</b>
<b>Listed Company Staff</b>	<b>2</b>	<b>2%</b>

<sup>9</sup> Charltons represented one group of sponsor firms and Freshfields represented two groups of sponsor firms. These were counted as three responses in accordance with our method of counting responses and not respondents (see paragraphs 52 to 54).

<sup>10</sup> The percentages in this column do not total 100% due to rounding.

<b>RESPONDENT CATEGORY<sup>9</sup></b>	<b>NUMBER OF RESPONSES</b>	<b>PERCENTAGE OF RESPONSES<sup>10</sup></b>
<b>None of the above</b>	<b>16</b>	<b>15%</b>
<b>TOTAL</b>	<b>104</b>	<b>100%</b>

**Table 1: Number and Percentage of Responses by Respondent Category<sup>11</sup>**

40. All the responses are available on the HKEx website<sup>12</sup> and a list of the respondents (other than those who requested anonymity) forms Appendix I. We would like to thank all those who responded.
41. This paper should be read in conjunction with the Concept Paper, that is posted on the HKEx website<sup>13</sup>.

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<sup>11</sup> We categorised the respondents shown in Table 1 according to the methodology set out in paragraphs 44 to 48.

<sup>12</sup> Responses received to the Concept Paper can be accessed at:  
<http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/cp2014082r.htm>

<sup>13</sup> The Concept Paper can be accessed at:  
<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2014082.pdf>

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## CHAPTER 2: METHODOLOGY

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### The Purpose of Our Methodology

42. Our aim in publishing the Concept Paper was to promote an informed, focused and coherent discussion and to elicit comments from a broad cross-section of the market. We wanted to know whether there are opinions we had not heard and whether there is broad consensus for change (or maintaining the status quo) and, importantly, the reasons for change (or maintaining the status quo). Our goal was to take account of the responses to come to a balanced view on any further action in the best interest of the market as a whole and in the public interest.
43. The effectiveness of this process depends upon the submission of original responses from a broad range of respondents that give considered and substantive reasons for their views. Our methodology, accordingly, aims to accurately categorise respondents and identify different viewpoints. It is also in line with our past, publicly stated policy. It necessitated a qualitative assessment of the responses in addition to any quantitative assessment.

### Identifying the Category of Respondents

44. The Exchange published a questionnaire with the Concept Paper that respondents could complete and submit to us. The questionnaire asked respondents:
  - (a) whether their response represented the view of their institution<sup>14</sup> or their personal view; and
  - (b) to choose one of the following categories that best described them:
    - (i) For institutions: “HKEx participant”; “listed company”; “professional body”; “market practitioner”; or “none of the above”.
    - (ii) For individuals: “listed company staff”; “HKEx participant staff”; “retail investor”; “institutional investor”; or “none of the above”.
45. In this Conclusions Paper, respondents are categorized, in the absence of manifest error, according to these descriptions. If a respondent did not use a questionnaire to respond or chose no description or multiple descriptions of themselves on a questionnaire, the Exchange used its best judgment to categorise the respondent using the most appropriate description.
46. Given that “market practitioners” comprised different categories of respondent, the Exchange assigned an appropriate sub-category for respondents identified as “market practitioners”. These were: “accountancy firm”; “investment manager”; “law firm”; and “sponsor firm / bank”.
47. We have categorised professional bodies as a single group rather than strictly assigning them, individually, to other categories (e.g. by assigning brokers’ associations to the “HKEx Participants” category). This is in line with our past practice. Subjective

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<sup>14</sup> The questionnaire referred to institutions as “companies” to distinguish them from individual respondents.

judgment is required to assign professional bodies to other categories and some do not fit easily with other categories of respondent. Nevertheless we have attempted, in these conclusions, to accurately reflect the opinions of various sections of the market by mentioning certain professional bodies in the context of the categories to which they are most closely related.

48. It is not the Exchange's practice to categorise "investment managers" by their AUM, for the purpose of analyzing consultation responses, as we believe that the size of an institution's global assets does not mean that we should necessarily attach more insight to their arguments or viewpoint. This would also raise issues as to the treatment of representative bodies that have considerable variances in number and type of members. It is not our practice to categorise professional bodies by the size and nature of their membership. However we acknowledge that some methodologies may take a different approach and so we have included a brief analysis by AUM of the investment managers that responded in paragraph 83.

## **Qualitative Analysis**

49. The Exchange performed a qualitative analysis to enable it to properly consider the broad spectrum of respondents and their views, either for or against, a particular concept. A qualitative analysis was particularly important in this case as the questions posed by the consultation were conceptual and did not propose explicit Rule changes. This meant some respondents' submissions were discursive rather than answering the specific questions with specific answers. Secondly, as stated in paragraph 52, some respondents claimed to represent their respective individual/corporate members and some other respondents claimed to represent a number of institutions (see Appendix I for details of these respondents). So, a qualitative analysis enabled the Exchange to give due weight to responses submitted on behalf of multiple persons or institutions and the underlying rationale for their position.
50. In performing its qualitative analysis, the Exchange conducted an assessment of the following matters:
  - (a) The nature of respondents – we determined whether support or opposition originated broadly from many categories of respondent, or only from particular categories of respondent.
  - (b) The reasons given for each respondent's views – we considered whether respondents supported or objected, in principle or philosophically, to a particular regime or else had views based on the potential practical consequences of the implementation of a particular regime and the ability of the regulators to minimise or eliminate those practical consequences.
  - (c) New evidence – we determined whether respondents put forward evidence to support their views, such as market data, surveys, academic research or jurisdictional examples, of which the Exchange was previously unaware.

## Quantitative Analysis

51. The Exchange performed an analysis to determine the support, in purely numerical terms, for each of the concepts questioned in the Concept Paper. The result of this analysis forms Appendix II.

### Counting Responses not Respondents

52. For the purposes of its quantitative analysis, the Exchange counted the number of responses received not the number of respondents those submissions represented. This means:

- (a) A submission by a professional body is counted as one response even though that body/association may represent many individual members.
- (b) A submission by an individual claiming to represent many other individuals is counted as one response. Mr. David Webb, an activist shareholder and independent commentator, gathered 349 signatures to an online petition to keep “one share, one vote”<sup>15</sup> that he launched in conjunction with his response to the Concept Paper. In accordance with our previous publicly stated policy we counted this as one response.
- (c) A submission by a law firm representing a group of market practitioners (e.g. sponsor firms / banks) is counted as one response.<sup>16</sup>

53. However, as indicated in paragraph 49, when undertaking our qualitative analysis of responses, we have taken into account the number and nature of the persons or firms represented by other respondents.

54. Our method of counting responses, not the respondents they represent, is the Exchange’s long established publicly stated policy. This is stated in: the three consultation conclusions for the “Combined Consultation Paper” in November 2008 and July and October 2009; “Consultation Conclusions on New Listing Rules for Mineral and Exploration Companies (May 2010)”; and our two most recent consultation conclusions on internal control<sup>17</sup> and on the disclosure of financial information<sup>18</sup> in December 2014 and February 2015 respectively.

### Approach to Identical Responses

55. Submissions with entirely identical content were counted as one response. We received 96 responses with content that was entirely identical to another response. After excluding these responses, there were 104 responses with original content.

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<sup>15</sup> These signatures are available to view on Mr. Webb’s website here:  
<http://webb-site.com/codocs/1share1votePetition.pdf>.

<sup>16</sup> The law firms Freshfields Bruckhaus Deringer and Charltons both represented groups of market practitioners (see Appendix I).

<sup>17</sup> Consultation Conclusions on Risk Management and Internal Control: Review of the Corporate Governance Code and Corporate Governance Report (December 2014)

<sup>18</sup> Consultation Conclusions on Review of Listing Rules on Disclosure of Financial Information with reference to the New Companies Ordinance and Hong Kong Financial Reporting Standards and Proposed Minor/Housekeeping Rule Amendments (February 2015)

56. Of the 96 responses, 86 had content that was entirely identical to that submitted by The Hong Kong Securities and Futures Professionals Association. Each of these 86 responses appeared to select one or more paragraphs from the association's response and use it verbatim in their own response without adding content.
57. Our method of counting identical responses as one response follows our publicly stated policy. This was stated in our "Consultation Conclusions on Proposed Amendments to the Listing Rules Relating to Corporate Governance Issues (January 2003)".<sup>19</sup> We note that other bodies in Hong Kong and overseas have also used this method of counting identical responses for their consultation conclusions.

## **Questions 2 to 7**

58. For these questions, respondents were asked to answer only if they believed that there are circumstances in which companies should be allowed to use WVR structures. Accordingly, for the purpose of questions 2 to 7, the Exchange counted only pro-responses. In total, there were 56 such responses.

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<sup>19</sup> Paragraph 10 of this document states "We received a total of 167 responses coming from a variety of market sectors, including 13 submissions from professional and grade associations and one from a political party. There was also a submission representing near identical responses from 337 individuals who submitted their views to us indirectly via a website operated by a financial analyst. For the purpose of our statistical analysis, this submission has been treated as a single response."

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## CHAPTER 3: MARKET FEEDBACK AND CONCLUSIONS

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### Introduction

59. In this chapter we provide a qualitative analysis of the response to each of the Concept Paper questions in terms of:
- (a) the nature of the respondents that commented;
  - (b) the reasons for their views; and
  - (c) whether they presented any new evidence for our consideration.
60. In addition we also provide a quantitative analysis of responses in purely numerical terms. We provide a less detailed analysis for questions on which we received few comments. Please see Chapter 2 for a full description of the methodology we used to analyse the responses.

#### Question 1

Should the Exchange in no circumstances allow companies to use WVR structures?

### Qualitative Analysis

#### Breakdown by Nature of Respondent

##### Sponsor Firms / Banks

61. All sponsor firms that responded supported the use of WVR structures in some circumstances. Of these, we received three responses from groups of sponsor firms, responding collectively. The largest group, of seven sponsor firms, from large banking groups, stated that the Exchange should not impose an absolute ban on companies using WVR structures as it was important for Hong Kong to be competitive with other global financial centres. They stated that an absolute ban would not be in the interests of Hong Kong. This is because a ban reduces investor choice and results in a situation where the public invests in overseas listed securities without the benefit of the Hong Kong regulatory system or enforcement mechanisms and experience, and generally at greater expense. The group stated that allowing WVR structures would be an incremental change that was consistent with the Exchange's evolutionary path to provide Hong Kong investors with an investment choice that captures current market opportunities.

##### Accountancy firms

62. All responses from accountancy firms supported the use of WVR structures in some circumstances. PwC, for example, stated that:

*“With the increasing number of companies using WVR structures and the globalisation of financial markets, we consider that a framework should be explored and developed to allow companies with WVR structure[s] to be listed on the Exchange while upholding the quality of shareholder protection so as to maintain the competitiveness of Hong Kong as a leading listing venue.”*

63. One accountancy firm, Ernst & Young (known as EY), stated that appropriate safeguards should be put in place to ensure that the principle of sufficient investor protection is not compromised and, in addition, WVR structures should be permitted in exceptional circumstances only.
64. Two professional bodies representing the accounting profession also responded.<sup>20</sup> The Association of Chartered Certified Accountants supported allowing companies to use WVR structures in some circumstances to provide investors with more options for investment; attract new overseas companies to list in Hong Kong; and enhance Hong Kong's competitiveness and position as an international financial centre. The Hong Kong Institute of Certified Public Accountants submitted a more caveated response. They stated that although they had no objection, in principle, to HKEx exploring the feasibility of permitting companies with WVR structures to be listed they stated that this would have a great impact on, for example, investor protection and shareholder's redress, which merited a careful and holistic review bearing in mind the limited options for shareholder actions against listed companies and their directors in Hong Kong.

### **Law Firms**

65. All but one of the law firms that responded supported the use of WVR structures in some circumstances. For example, Slaughter and May wrote that Hong Kong benefits from a highly developed legal and regulatory system in which investors are protected against directors and majority shareholders favouring themselves or their connected persons at the expense of other shareholders. They believed that new applicants with an A/B (weighted voting rights) structure would generally fit within the existing legal and regulatory framework in Hong Kong with the result that Hong Kong investors would be afforded the same degree of protection while also being allowed to choose for themselves whether they wish to invest in a company with such a structure.
66. One law firm, Davis Polk & Wardwell, did not respond to the question of whether WVR structures should be allowed in some circumstances. Its response addressed only the question of whether the absence of a US-style class action procedure was a material reason why WVR structures should not be permitted for companies currently listed or seeking to list on the Exchange. They concluded that this should not be regarded as a material reason why WVR structures should not be permitted for companies currently listed or seeking to list on the Exchange.
67. One professional body representing law firms, the Law Society of Hong Kong, responded to the Concept Paper. They took the view that there are suitable circumstances when WVR structures should be allowed. They stated that a simplistic "one share one vote" structure, in the absence of a controlling shareholder with a long term strategy, can lend itself to short-termism which may not be suitable for new applicants which seek to raise funds to pursue long term strategies.

### **Listed Companies**

68. The responses from listed companies were evenly split three ways, on a strict numerical

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<sup>20</sup> The Hong Kong Institute of Certified Public Accountants and the Association of Chartered Certified Accountants.

- basis. Three companies supported WVR structures in some circumstances (but not limited to exceptional circumstances), three supported WVR structures only in exceptional circumstances and three opposed WVR structures in all circumstances.
69. Swire Pacific Limited welcomed the open debate on the merits of weighted voting rights and hoped that this would lead to such rights being fully permitted for companies listed on the Exchange. They acknowledged that they had a WVR structure, two classes of shares (A and B) listed on the Exchange, that was put in place in the 1970s. They stated that it is for the shareholders of a company, through the agreement among them evidenced by the company's constitutive documents, to decide whether to accord different voting rights to different classes of shares. They stated that the existence and consequences of WVR structures must be properly disclosed, but so long as they are, they failed to see how investors are disadvantaged as those who object need not invest. If objectors predominate, they stated that the cost of capital for companies with WVR structures will rise but that this is a matter for the market to resolve, not regulation.
  70. Haitong International Securities Group Limited stated that, based on the research included in the Concept Paper, companies listed on US markets with WVR structures include a number of sizeable and good companies (e.g. Visa, Mastercard, Google, Facebook and Groupon). Several Mainland Chinese companies listed on US markets with WVR structures have recorded large share price increases since listing. This may illustrate, respectively, that the risk involved in WVR structures does not necessarily result in poor corporate governance or poor profit/share price performance. They considered it worthwhile to find a way to list good companies that adopt WVR structures, while setting out conditions to minimise the conflict of interests between investors and the companies' management to protect shareholders.
  71. Cheung Kong (Holdings) Limited stated that the "one-share, one-vote" principle should be upheld as it was an important principle underlying a wide spectrum of corporate governance practices in respect of investor protection in Hong Kong, and is commonly accepted as a measure of fairness and equality for shareholders. The company noted that Rule 8.11 allows the listing of WVR structures in "exceptional circumstances" and requested guidance from the Exchange as to what constituted such circumstances, giving due regard to the importance of investor protection and maintaining a level-playing field amongst existing listed issuers and new listing applicants. If WVR structures were allowed in exceptional circumstances, it would be important to balance the interests of listing applicants, the investing public and existing listed issuers. Similarly, Great Eagle Holdings Limited stated that "one-share-one-vote" should be upheld other than in an "extremely exceptional situation" and that the Exchange should use its discretion on a case-by-case basis if the prospective listing would bring significant value and benefits to the Hong Kong economy and only with approval of the Financial Secretary.
  72. Of the listed companies that opposed WVR structures in all circumstances, CLP Holdings Limited, stated that the fair treatment of all shareholders remains of fundamental importance to investors. They said "one share one vote" structure continues to be the best to promote good corporate governance and any deviations from this structure require adequate minority protections, which are at risk of abuse. They believed upholding the "one share one vote" structure is in the long term interest of Hong Kong as an international financial centre where all shareholders are treated fairly.

73. One professional body representing listed companies responded to the Concept Paper, the Chamber of Hong Kong Listed Companies. They also stated that the “one share one vote” principle should be upheld but noted that Rule 8.11 allowed WVR structures in “exceptional circumstances” with the Exchange as the gatekeeper. In their opinion, this struck a good balance between upholding “one share one vote” and allowing room for flexibility if it is deemed necessary. They believed the Exchange should allow WVR structures on a case-by-case basis and only in exceptional circumstances with guidelines as to what constituted such circumstances. They also recommended endorsement by the Financial Secretary should be sought to provide check-and-balances.

### **Investment Managers**

74. The responses to the Concept Paper from investment managers were, on a strict numerical basis, split between those that supported allowing WVR structures in some circumstances and those that opposed them in all circumstances. The identities of these investment managers (where they did not request anonymity) are shown in Table 2 below.

<b>In Some Circumstances Allow WVR Structures</b>	<b>In No Circumstances Allow WVR Structures</b>
Avant Capital Management (HK) Limited	Aberdeen Asset Management Asia Ltd
CICC Hong Kong Asset Management	BlackRock
Norges Bank IM*	British Columbia Investment Management Corporation
Thai Hong Kong Investors Ltd	Fidelity
An anonymous investment manager	Hermes Investment Management
An anonymous investment manager	State Street Asia Limited
An anonymous investment manager	USS Investment Management Limited
An anonymous investment manager	An anonymous investment manager

\* *Recommended allowing WVR structures in exceptional circumstances only.*

**Table 2: Investment Managers:  
Responses to Concept Paper Question 1 on the Acceptability of WVR Structures**

75. One anonymous investment manager stated that, in its view, WVR structures should be allowed in Hong Kong, subject to a few restrictions that the Exchange should consider. It believed the main advantage of a WVR structure is that it permits companies to stay true to the founders’ core values and objectives, which can generate large shareholder returns. It stated that having a WVR structure could enable a company to build for the future, without the risk of short-term orientated shareholders forcing the board and/or the CEO to change course. It added that fast growing companies seeking an IPO may already have had one or more rounds of equity financing and, as a result, the founders

may have already diluted their own stake in the company. A WVR structure at IPO enables the company to grow further while maintaining continuity of management and retaining the founder's vision.

76. CICC Hong Kong Asset Management stated that when they invest in a controlled company they are making a largely economic investment, on the basis of the company's business and its management team, knowing that they have very limited influence, acting alone or with other investors, to make changes to either of those things. They said they consider this essentially the same as investing in a company with a WVR structure, and would not consider themselves any worse off as an investor in such a company from an investor rights point of view. Moreover, given Hong Kong and China based investors are highly experienced in dealing with controlled companies and the risks that they present, they thought that such investors would be well placed to evaluate companies with WVR structures and the associated risks.
77. An anonymous investment manager in favour of allowing WVR structures in some circumstances said, in their response, that there may be a wide range of reasons why some Mainland Chinese companies chose the US markets over Hong Kong but presumably the prohibition in Hong Kong against weighted voting rights had an important role in the decision-making process for such companies. It said diversity and choice are core values of a free market. As Hong Kong is one of the premium financial centres in the world, promoting freedom of choice and expanding investment opportunities and products will continue to be critical to the growth and development of the market. It stated that a "blanket" rejection of WVR structures seems contrary to the importance of choice and variety. At the same time, the risks associated with this diversity should be evaluated and addressed.
78. Norges Bank IM recommended that the Exchange keep its current Rules and only in exceptional circumstances allow companies to use WVR structures. They stated that equal voting rights of shareholders, in proportion to their holding, ensures the influence of minority shareholders and in most circumstances reduces potential for conflicts of interest. Nevertheless they acknowledged the global variety in law, tradition and practices. While advocating equal treatment and rights among shareholders, they accepted differentiation if the benefits can be evidenced to the satisfaction of different shareholders groups. They therefore expected the board of directors of a company with a WVR structure to regularly test presumptions justifying unequal treatment.
79. One large investment manager, Fidelity, stated in their response that they were opposed to the introduction of weighted voting rights and did not believe that companies should be permitted to introduce them. This was because such structures have the potential to reduce the alignment of interests between controlling and minority shareholders, a key "soft" protection in a low free float market such as Hong Kong. Also, Fidelity stated that the collective incentive for shareholders to monitor and engage with management is reduced, under a WVR structure, because minority shareholders will have no meaningful way of influencing the outcome of key decisions. BlackRock, another large investment manager, wrote that under no circumstances should the Exchange allow companies to use weighted voting right structures. It said that "one share one vote" is an important shareholder protection that needs to be maintained in the Exchange's listing requirements. BlackRock did not support the introduction of any form of weighted voting rights as these would further disadvantage minority shareholders in

Hong Kong listed companies. Introducing weighted voting rights, would, in their view, make Hong Kong a less attractive market for minority and foreign investors when taken into consideration with the other unique characteristics of the market.

80. Of the four professional bodies representing investment managers that responded, two: ACGA<sup>21</sup>, and a local association representing investment management firms that wished to remain anonymous, each gave substantive responses setting out reasons why WVR structures would be detrimental to the Hong Kong market. ACGA included a summary of the results of a survey of its members on the subject that it had announced on 15 April 2014, prior to the publication of the Concept Paper<sup>22</sup>. It said the survey respondents included 54 of ACGA's institutional investor members that have significant exposure to the Hong Kong market. ACGA stated that the survey's main findings included a conclusion that fair treatment of all shareholders remained of fundamental importance to institutional investors in the Hong Kong market. Their survey claimed that investors would likely apply an average discount to the Hong Kong market of around 13% if non-standard shareholding structures became common. ACGA stated that such an outcome would be greatly detrimental to Hong Kong's long-term positioning as an international financial centre. Three of the investment managers, shown in Table 2, that opposed WVR structures stated that they supported ACGA's response or attached ACGA's response to their own.
81. On the other hand, a third professional body, the HKVCA, an association representing Hong Kong based private equity managers, were supportive of allowing the use of WVR structures, to provide the companies in which their members invested with more choice of high quality listing venues. The fourth professional body, AIMA, a global hedge fund association, stated that, as guiding principles, liquidity, transparency and sound corporate governance are important elements of healthy capital markets but did not state a view on the appropriateness or otherwise of WVR structures for the Hong Kong market.

### *AUM*

82. It is not the Exchange's practice to categorize investment managers by their AUM for the purpose of an analysis of responses to a consultation paper. This is because we believe that the size of an institution's global assets does not mean that we should necessarily attach more insight to their arguments or viewpoint and would raise issues as to the treatment of representative bodies that have considerable variances in number and type of members.
83. In the interests of transparency, however, we would highlight that most of the responses from investment managers with high global AUM thought that the Exchange should in no circumstances allow WVR structures. Those that supported WVR structures in some circumstances were mostly local firms, invested primarily in the Hong Kong

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<sup>21</sup> ACGA's membership comprises more than 100 global and regional pension and investment funds, financial institutions, listed and unlisted companies, law and accounting firms, business associations and educational institutions operating or involved in Asia.

<sup>22</sup> Link to survey:  
[http://www.acga-asia.org/public/files/ACGA\\_Survey\\_Alibaba\\_and\\_Non-standard\\_Shareholding\\_Structures\\_April2014.pdf](http://www.acga-asia.org/public/files/ACGA_Survey_Alibaba_and_Non-standard_Shareholding_Structures_April2014.pdf)

market, and had smaller AUMs.

### ***Professional bodies representing investment managers***

84. Our past practice is to categorise professional bodies as a single group rather than assigning them, individually, to other categories. Nevertheless we have included, in paragraphs 80 and 81 above, a summary of the views of professional bodies whose members are predominantly investment managers.

### **HKEx Participants**

85. We received three responses from HKEx Participants. One supported the Exchange further considering allowing companies to use WVR structures. However, the two others thought the Exchange should in no circumstances allow the use of these structures.
86. Four responses from professional bodies representing HKEx Participants also opposed the use of WVR structures.<sup>23</sup> The Hong Kong Securities and Futures Professionals Association, for example, stated that it had found strong opposition from its members. One of the reasons they cited was that it could mean that a person holding more than half of the shares of a company with a WVR structure would not be able to appoint a director to challenge the company's management. Meanwhile, the former majority shareholders could cash out most of their shares but still hold control over the company. They also thought that if shareholders rights are reduced, investors would be reluctant to participate in the Hong Kong market and that allowing companies with unfair structures to list here would be harmful to Hong Kong's reputation and interrupt its economic development.
87. The Hong Kong Securities Association was concerned that allowing WVR structures would violate the principle of fair and equal treatment of all shareholders; reduce investor protection; and commented that certain check and balance mechanisms, such as class actions, were available to investors in US but not Hong Kong listed companies.

### **Professional Bodies**

88. A summary of the responses from professional bodies, as a group, and sorted by number of members, is set out in Table 3 below.

<b>In Some Circumstances Allow WVR Structures</b>	<b>In No Circumstances Allow WVR Structures</b>
Association of Chartered Certified Accountants (170,000+ members)	The Institute of Securities Dealers Ltd. (2,000+ members)
Hong Kong Institute of Certified Public Accountants (35,000+ members)	Hong Kong Securities Association (1,000+ members)

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<sup>23</sup> 香港證券業協會(Hong Kong Securities Association); 香港證券及期貨從業員工會 (Hong Kong Securities & Futures Employees Union); 香港證券及期貨專業總會(Hong Kong Securities and Futures Professionals Association); and 證券商協會有限公司(The Institute of Securities Dealers Ltd.)

<b>In Some Circumstances Allow WVR Structures</b>	<b>In No Circumstances Allow WVR Structures</b>
The Law Society of Hong Kong (8,500+ members)	Hong Kong Professionals and Senior Executives Association (600+ members)
The Hong Kong Society of Financial Analysts (6,000+ members)*	Hong Kong Securities & Futures Employees Union (600+ members)
The Hong Kong Institute of Directors (2,000+ members)	Asian Corporate Governance Association (100+ members)
The British Chamber of Commerce (1,200+ members)	Anonymous brokers' association
Hong Kong Venture Capital and Private Equity Association (300+ members)	Anonymous investment manager association
Hong Kong Investor Relations Association (280+ members)	
The Chamber of Hong Kong Listed Companies (200+ members)*	
The Professional Commons (100+ members)	
Federation of Share Registrars Limited (20+ members)	
Anonymous professional body	

\* *Recommended allowing WVR structures in exceptional circumstances only.*

**Table 3: Professional Bodies:  
Responses to Concept Paper Question 1<sup>24</sup>**

89. The professional bodies that are closely aligned with another category of respondent are mentioned in the paragraphs above. Some professional bodies do not easily fit within another category of respondent. Of these, The British Chamber of Commerce, The Federation of Share Registrars, The Hong Kong Institute of Directors, The Hong Kong Investor Relations Association and The Professional Commons all supported permitting the use of WVR structures in some circumstances.
90. The Hong Kong Institute of Directors, for example, stated that, although there was a substantial voice amongst its membership against the idea, the Institute believes there are circumstances in which companies should be allowed to use WVR structures. It questioned the real effect of “one share, one vote” when many listed companies in Hong Kong are already closely controlled and stated that it was not efficient to ban all

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<sup>24</sup> The membership figures shown in the table are based on information contained in the response or else published on the website of the relevant professional body. Three professional bodies expressed no view “for” or “against” in response to Concept Paper Question 1.

measures that seek to separate ownership and control (e.g. voting agreements). The Institute also thought it important that a dissatisfied shareholder should be able to “vote with his feet” and so liquidity in the shares of a company with a WVR structure may be important. The Professional Commons stated that it would not support WVR structures unless there was sufficient protection established to protect all shareholders (large or small).

### **Individuals**

91. The clearest opposition to WVR structures came from particular categories of individual respondent, namely retail investors and HKEx Participant staff. Almost all of those who responded from these categories opposed WVR structures in all circumstances. The responses from these individuals, for the most part, objected on principle and did not give detailed reasons for their views.
92. Mr David Webb, an activist shareholder and independent commentator, stated that he had gathered 349 signatures to his online petition to keep “one share, one vote”.<sup>25</sup> Mr Webb also submitted detailed arguments on the potential practical pitfalls of allowing WVR structures. He stated that the lack of proportionality between equity and voting rights of a controlling shareholder would mean they would be minded to benefit themselves with over-priced acquisitions, under-priced disposals, continuing supplies or sales of goods and services or over-paying themselves as directors. Mr Webb also claimed that WVR structures would facilitate greater insider dealing; could enable a controlling shareholder to avoid the creeper provision of the Takeovers Code; and allow cheaper privatisations.

### **Reasons for Views**

#### **Summary of Arguments in Favour of Allowing Companies to Use WVR Structures**

93. Responses in favour of permitting companies to list with WVR structures gave the following reasons for this view, in order of frequency. Reasons (a) and (b) were most frequently cited and in a roughly equal number of responses:
  - (a) A balance could be struck between a listing applicant’s objectives and investor protection by ensuring that appropriate safeguards were put in place to mitigate the potential risks of WVR structures.
  - (b) WVR structures should be permitted for the sake of Hong Kong’s global competitiveness and to enable Hong Kong to maintain its role as a leading international financial centre.
  - (c) WVR structures helped ensure continuity of management after listing. This may be necessary if a company had gone through many rounds of equity financing before applying to list on the Exchange and this had diluted the founder’s original shareholding.

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<sup>25</sup> These signatures are available to view on Mr. Webb’s website here:  
<http://webb-site.com/codocs/1share1votePetition.pdf>.

- (d) Allowing companies to list with WVR structures could increase the diversity of choice in companies listed on the Exchange. The Exchange had failed to attract many information technology companies and social media companies, which tended to list with WVR structures in the US instead.
- (e) Most of the companies listed on the Exchange were controlled by a single shareholder or a group of shareholders. The manner of control mattered little if it had the same practical outcome. The existing regulatory framework in Hong Kong had developed to address the potential abuses, such as “value shifting”, that could be perpetrated by controllers.
- (f) It was sub-optimal for Hong Kong investors to have to resort to secondary or indirect channels to invest in Chinese companies that could not list in Hong Kong because they had WVR structures. Hong Kong institutional investors had less chance of securing an allocation in the IPO of such companies and Hong Kong retail investors had no chance at all. Also, Hong Kong investors in companies listed overseas do not have the protection of the Hong Kong legal and regulatory regime.

#### **Summary of Arguments Against Allowing Companies to Use WVR Structures**

94. Responses opposed to permitting companies to list with WVR structures gave the following reasons for this view, in order of frequency. Most of these responses opposed WVR structures on principle (see reason (a) directly below):
- (a) In principle, economic exposure and voting rights should not be separated. This is unfair and misaligns the interests of the controlling shareholder with that of minority shareholders. This could lead to a heightened risk of controllers taking advantage of their position to extract private benefits from a company at a disproportionate cost to its public shareholders (e.g. through over-priced acquisitions or under-priced disposals).
  - (b) The wider regulatory and legal regimes of the US and Hong Kong were not comparable. In the US, unlike in Hong Kong, lawyers can charge fees on a contingency basis and shareholders can initiate class actions to collectively take legal action against a company to achieve redress for damages.
  - (c) The “one-share, one-vote” principle can be regarded as a competitive advantage. It has served Hong Kong well for three decades and over 1,500 companies have successfully listed under this principle. Allowing this principle to be compromised may result in Hong Kong becoming a less attractive market for minority and foreign investors and quality listing candidates.
  - (d) WVR structures could be used as an anti-takeover device to entrench existing management and prevent shareholders from realising the full benefits of strategic or financial consolidation.
  - (e) The collective incentive for shareholders to monitor and engage with management may be reduced because minority shareholders would have no meaningful way of influencing the outcome of key decisions.

- (f) Allowing companies to list with WVR structures would introduce complexity that would make it harder for investors to determine the accurate value of a potential investment. This may reduce the participation of individual investors in the market as a whole and increase the chance that some of them misjudge the relevant risks.

## New Evidence

95. In the main, respondents did not present new evidence to support or oppose the use of WVR structures.<sup>26</sup> However, the following information was provided by the named respondents below in their respective submissions.
96. The Law Society of Hong Kong produced data on the types of securities class action suits brought in the US. This was to show that these are not generally used to rectify the type of governance issues most likely to arise from WVR structures (see paragraph 146).
97. ACGA reported the results of a debate held at its anniversary conference in November 2014. This resulted in a 63% vote against allowing WVR structures, as proposed in the Concept Paper (21% were in favour and 16% were undecided).
98. The Hong Kong Securities and Investment Institute, a financial services training institute, reported to us a survey of its members. The survey showed that 71% of respondents to its survey were interested in, or would consider investing in a stock with, a WVR structure. 66% believed the key implication of a WVR structure was that it would jeopardise the rights of minority shareholders and 66% would like to have restrictions imposed on WVR structures.
99. BlackRock stated that its analysis suggests that those Chinese companies choosing to list in the US have done so for a variety of reasons, most notably lighter touch corporate governance and reporting requirements afforded to them as “Foreign Private Issuers”, rather than because WVR structures are possible.

## Quantitative Analysis

100. All responses answered question 1 of the Concept Paper. The majority<sup>27</sup> stated that the Exchange should allow companies to use WVR structures in some circumstances. A substantial minority<sup>28</sup> stated that the Exchange should in no circumstances allow companies to use WVR structures. Some<sup>29</sup> commented on the question but expressed no opinion for or against.

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<sup>26</sup> It was separately brought to our attention during the consultation period that the World Bank Report 2015 ranks Hong Kong second and the United States ranks 25<sup>th</sup> on investor protection. As stated in the Concept Paper, the World Bank Report 2014 had ranked Hong Kong third on investor protection and the United States sixth. The fall in the US ranking was a result of a change in the methodology used for the World Bank Report. The new methodology took into account new investor protection indicators, unrelated to WVR structures, on which the US scores poorly (e.g. automatic pre-emption rights).

<sup>27</sup> 56 of 104 unique responses.

<sup>28</sup> 40 of 104 unique responses.

<sup>29</sup> 8 of 104 unique responses.

## Conclusions

101. Those respondents in support of the use of WVR structures and those opposed generally agree that these structures can lead to a heightened investor protection risk. This is principally the risk that controllers will take advantage of their position to extract private benefits from a company at a disproportionate cost to its public shareholders. However, supporters and opponents differ on whether it is possible to put in place sufficient safeguards to mitigate these risks. Those in support of WVR structures believe the heightened risk can be balanced with enhanced safeguards. These could include any or all of the restrictions that US listed issuers impose voluntarily on themselves (see paragraph 130). They could also include strengthening other Rules that aim to prevent “value shifting”.
102. There is less common ground between supporters and opponents on whether permitting WVR structures would be a competitive advantage or disadvantage for the Hong Kong market. Supporters claim that Hong Kong risks losing a significant number of listings of Chinese companies to the US, and other jurisdictions, if it continues to restrict the listings of WVR structures to “exceptional circumstances”. Some of these lost listings may be the best-known and fastest growing brands in China. Those that object to WVR structures do so partly on the basis that high standards of investor protection can be a competitive advantage. They attract new listings as companies willing to sign up to high standards can get a higher price for their shares. Respondents to an ACGA’s survey, for example, stated that investors would likely apply an average discount to the Hong Kong market of around 13% if non-standard shareholding structures became common.
103. On this competitiveness issue, the Exchange does not see these two arguments as mutually exclusive and does not agree that it follows that the implementation of WVR structures by individual companies, with appropriate ring-fencing and safeguards, will result in a fall in the reputation of the Hong Kong market as a whole. It should be possible for investors to accurately price investments based on their individual and unique risks and benefits. This is as long as there is full disclosure. If reputational risk to the market as a whole is a genuine concern, it can be mitigated by ensuring that only those who meet high eligibility standards can list with a WVR structure. As indicated in paragraph 180, the Exchange will seek to discuss this further with stakeholders as part of the second stage consultation process.
104. Having considered the responses to the Concept Paper, the Exchange concludes that, overall, there is market support for a second stage consultation on proposed changes to the Rules on the acceptability of WVR structures. This is on the basis that the Exchange believes there are measures that it can put in place to mitigate the potential risks posed by WVR structures and that it is possible to create a regime with the necessary investor protections. We believe these protections can be implemented in the Rules, without the need for legislative change (see paragraphs 144 to 150).

**Respondents were asked to answer the remaining questions only if they believed that there are circumstances in which companies should be allowed to use WVR structures.**

## Questions 2(a)&(b)

Should the Exchange permit WVR structures: (a) for all companies, including existing listed companies; or (b) only for new applicants?

## Qualitative Analysis

### Breakdown by Nature of Respondent

105. Most market practitioners and professional bodies supported a restriction to new companies only. Most listed companies favoured allowing all companies to use WVR structures. Most individual respondents did not comment on this question. Of those that did comment, slightly more were in favour of a restriction to new companies only.

### Reasons for Views

106. Respondents argued that allowing listed issuers to implement WVR structures would unfairly reduce and restrict the interests of their existing shareholders. They believed that, following the implementation of a WVR structure, the relative value and voting power of shares held by ordinary shareholders would be lower than it had been prior to the re-structuring.
107. In contrast, at the time of the listing of a new applicant it would have no public shareholders. So, respondents commented that the interests of public shareholders would not be unfairly reduced or restricted by the implementation of its WVR structure. Those that subscribed for an allocation in the IPO could do so in full knowledge of the existence and terms of the WVR structure and any risks associated with it.
108. One response, on behalf of a group of four Chinese sponsor firms, stated that WVR structures were more appropriate for companies in the early stage of their development to allow the founders to maintain control and help ensure the company reaches its full potential. They stated that the superior voting rights provided by a WVR structure should diminish as a company matured. Existing listed companies are more mature and, consequently, it was not appropriate for them to have a WVR structure.
109. There was general support amongst respondents for a general anti-avoidance provision to prevent existing listed companies circumventing a prohibition on them implementing WVR structures. However, there was some support for allowing listed companies to de-list and re-list with a WVR structure or spin-off a company with a WVR structure. This was provided that there were safeguards for minority shareholders such as a high shareholder approval threshold (e.g. 75%) and the ability for a minority (e.g. 10%) to block such proposals.

## Quantitative Analysis

110. Most pro-responses answered this question<sup>30</sup>. Of those that answered, most stated that the Exchange should only allow new applicants to list with WVR structures. Some

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<sup>30</sup> 45 of 56 pro-responses.

stated that all companies should be permitted to have a WVR structure.<sup>31</sup>

## Conclusions

111. Having considered the responses, the Exchange concludes that WVR structures should be restricted to new applicants only, for the reasons set out in paragraphs 106 to 107, and that an anti-avoidance Rule should prevent circumvention of this restriction by companies that are listed as at, or after, the date of this document.

### Questions 2(c)(i)&(ii)

Should the Exchange permit WVR structures only for companies from particular industries (e.g. information technology companies) or "innovative" companies?

## Qualitative Analysis

### Breakdown by Nature of Respondent

112. All listed companies who commented, plus most market practitioners and professional bodies who commented, disagreed with permitting WVR structures only for companies from particular industries or "innovative" companies. Of the individuals that commented on this question, most agreed with a restriction to particular industries or "innovative" companies.

### Reasons for Views

113. Respondents stated that companies in other sectors (e.g. media and fashion) often had WVR structures and "innovation" was not unique to a particular industry. Some considered that a restriction to particular industries (e.g. the information technology industry) would address only a short term issue. In future, Hong Kong may face competitive pressure for the listings of companies in other industries. Many respondents also emphasised the potential for classification problems. They stated that the Exchange's industry classification was likely to be highly subjective and arbitrary. Also, some companies may have businesses in many different industries and it would be difficult to "pigeon hole" them as belonging to a particular one.

## Quantitative Analysis

114. The majority of pro-responses answered this question<sup>32</sup>. Of those that answered, most disagreed that the Exchange should restrict the use of WVR structures to particular industries or "innovative" companies. A small number, mostly individual respondents, supported such a restriction.<sup>33</sup>

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<sup>31</sup> 11 of 56 pro-responses.

<sup>32</sup> 35 of 56 pro-responses.

<sup>33</sup> Nine of 56 pro-responses.

## Conclusions

115. Having considered the responses, the Exchange concludes that the use of WVR structures should not be restricted to particular industries or “innovative” companies for the reasons given in paragraph 113.

### Question 2(c)(iii)

Should the Exchange permit WVR structures only for companies with other specific pre-determined characteristics (for example, size or history)?

## Qualitative Analysis

### Breakdown by Nature of Respondent

116. Support for a restriction to companies with pre-determined characteristics came primarily from market practitioners, listed companies and professional bodies. Most individuals that commented supported this restriction.

### Reasons for Views

117. Many respondents stated that companies with WVR structures should have a large market capitalisation and a long clean track record of regulatory compliance. Some emphasised the need for companies with WVR structures to have a widely dispersed shareholder base and a highly liquid market in their shares. This would enable shareholders to exit easily if they believed that the risk associated with the WVR structure outweighed the value of their investment.
118. Some respondents suggested that a company applying to list with a WVR structure should have a cogent rationale for implementing the structure. They said the applicant should be able to justify its need for the structure due to its particular circumstances and explain why it had not chosen a traditional structure.

## Quantitative Analysis

119. Almost half of pro-responses answered this question.<sup>34</sup> Of those that answered, most<sup>35</sup> agreed that the Exchange should permit WVR structures for companies with specific pre-determined characteristics and some<sup>36</sup> disagreed with this restriction.

## Conclusions

120. Having considered the responses, the Exchange concludes that companies with WVR structures should have certain pre-determined characteristics and should meet higher eligibility standards. This will mitigate concerns expressed by respondents that

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<sup>34</sup> 26 of 56 pro-responses.

<sup>35</sup> 20 of 56 pro-responses.

<sup>36</sup> Six of 56 pro-responses.

permitting the use of WVR structures will become commonplace in Hong Kong and risk damaging the reputation, and consequently the competitiveness, of the Hong Kong market (see paragraph 175).

**Question 2(d)**

Should the Exchange permit WVR structures only in "exceptional circumstances" as permitted by current Listing Rule 8.11?

## Qualitative Analysis

### Breakdown by Nature of Respondent

121. Support for listing companies with WVR structures under an “exceptional circumstances” provision came from two market practitioners, a third of listed companies and two professional bodies. Very few individuals commented on this question. Those that did, supported the use of the “exceptional circumstances” provision.
122. Primarily market practitioners opposed the retention of the “exceptional circumstances” provision.

### Reasons for Views

123. Those in favour of a restriction to “exceptional circumstances” stated that the Exchange should only allow companies to list with WVR structures on a case-by-case basis at the discretion of the Listing Committee and where the prospective listing would bring significant value and benefits to the Hong Kong economy. Two responses (from Great Eagle Holdings Limited and the Chamber of Hong Kong Listed Companies) suggested that the Financial Secretary should approve the listings of companies in these circumstances.
124. Those that opposed retention of the “exceptional circumstances” provision stated that, for 25 years, this provision had been regarded as an outright ban. Consequently retaining it would not increase the likelihood that a company with a WVR structure would be listed. These respondents said that the provision prevented the establishment of clear eligibility criteria for companies with WVR structures leading to uncertainty regarding the success of a prospective listing.
125. Four responses supported the removal of the “exceptional circumstances” provision except where it would provide flexibility to the Exchange to list companies that did not meet certain WVR structure eligibility criteria (e.g. companies with non-A/B share structures).

## Quantitative Analysis

126. About a third of pro-responses answered this question<sup>37</sup>. Of those that answered, half

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<sup>37</sup> 18 of 56 pro-responses.

stated that the Exchange should permit WVR structures only in “exceptional circumstances” and half disagreed.

## Conclusions

127. Having considered the responses, the Exchange concludes that it should not list companies with a WVR structure only under “exceptional circumstances”. We agree with respondents who stated that this has, for a long time, acted as an effective ban on WVR structures. We also agree that retaining this provision, even with more guidance on its meaning, would leave too much uncertainty for those planning a listing.
128. The Exchange also concludes that the “exceptional circumstances” provision should not be retained to provide the flexibility to list companies that do not meet certain WVR structure eligibility criteria. This is because the Exchange has, and would retain, the ability to waive eligibility criteria under Rule 2.04, in individual cases. Such waivers could be granted based on a company’s circumstances in the normal manner.

### Question 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, or others in addition or in substitution?

## Qualitative Analysis

### Breakdown by Nature of Respondent

129. The majority of most categories of respondent who answered this question supported the imposition of one or more of the safeguards described in the Concept Paper.
130. The following is a list of the restrictions described in the Concept Paper that received the most support from respondents, in order of the strength of support that they received:
  - (a) Restriction on transfers – the loss of superior voting rights on transfer of multiple voting shares to parties un-affiliated with the original holder.
  - (b) Minimum equity threshold held by founders or others – the loss of superior voting rights if the beneficiary holds less than a particular proportion of the equity in the company. There was no consensus from respondents on the appropriate threshold.
  - (c) Sunset clause – the loss of superior voting rights at a pre-set future date.
  - (d) Shareholder vote – the loss of superior voting rights after a vote by independent shareholders.
  - (e) Continued active involvement of the founder (beneficiary of the WVR structure) in the management of the company.
  - (f) Cap on votes per share – a limit on the number of votes that could be cast by the holder, per share.

131. Some respondents also suggested requiring the boards of companies with WVR structures to have a greater proportion of independent non-executive directors.<sup>38</sup> Other restrictions mentioned by respondents included: stronger lock-up requirements, a high board lot, upgrading Corporate Governance Code requirements and a restriction on further issues of superior voting shares after listing.

## Reasons for Views

132. Respondents that supported the restrictions described in the Concept Paper said they were necessary to provide the appropriate corporate governance checks and balances on WVR structures.
133. The minority that opposed the imposition of mandatory restrictions noted that these were voluntary in the US. They stated that these restrictions should be a matter of negotiation between the company and its initial institutional investors. If the nature of the WVR structure and restrictions were fully disclosed, investors would price the investment accordingly.
134. Two respondents, Freshfields and CICC Hong Kong Asset Management, took the middle ground and stated that the Exchange should impose mandatory restrictions but have a high degree of flexibility to waive them and add additional obligations on a case-by-case basis to ensure investor protection whilst not placing unduly onerous restrictions on issuers.

## Quantitative Analysis

135. Most pro-responses answered this question.<sup>39</sup> The majority of these stated that the Exchange should require some or all of the restrictions on dual-class share structures described in the Concept Paper, and others.<sup>40</sup> A minority opposed mandatory restrictions and thought that the restrictions mentioned in the Concept Paper should be applied on a voluntary basis, as they are for companies with WVR structures listed in the US.<sup>41</sup>

## Conclusions

136. Having considered the responses, the Exchange concludes that a number of the restrictions listed in paragraph 130, and possibly others, should be mandatory for companies with WVR structures. This would mitigate the concerns expressed by both supporters and opponents of WVR structures that there is a heightened investor protection risk associated with these structures.

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<sup>38</sup> 7 of 56 pro-responses.

<sup>39</sup> 46 of 56 pro-responses.

<sup>40</sup> 38 of 56 pro-responses.

<sup>41</sup> 8 of 56 pro-responses.

#### **Question 4**

Should other WVR structures be permissible, and, if so, which ones and under what circumstances?

## **Qualitative Analysis**

### **Breakdown by Nature of Respondent**

137. All listed companies and most market practitioners and professional bodies, who commented on this question, supported the listing of companies with non-dual class share structures. Dissenting views came from some market practitioners and a professional body. Almost all individual respondents had no comment on this question.

### **Reasons for Views**

138. Respondents believed that if other WVR structures achieved substantially the same outcome as a dual-class share structure, they should, in principle, be permitted. This would be dependent upon full disclosure of the WVR structure, its effects and risks. One respondent, Slaughter and May, stated that where there is uncertainty as to the applicability of the Hong Kong investor protection regime to a particular WVR structure (e.g. it may not be caught under the definition of “control” in the Takeover Panel rules) then a company could be required to provide a detailed analysis and remedy (e.g. through its articles of association).<sup>42</sup> Some respondents were also supportive of tailoring investor protection safeguards to different structures.

## **Quantitative Analysis**

139. Just over half of pro-responses answered this question.<sup>43</sup> Most stated that the Exchange should not restrict the types of WVR structures that were permissible.<sup>44</sup> A few responses stated that companies with WVR structures should only be permitted to list if they had a dual-class share structure.<sup>45</sup>

## **Conclusions**

140. Having considered the responses, the Exchange agrees that it is unreasonable to allow one form of WVR structure and ban another if both have the same outcome.
141. That said, structures that confer weighted voting rights through multiple classes of shares can be more easily accommodated under the current legal and regulatory framework in Hong Kong, including the Rules and the Takeovers Code and should be the preferred method of introducing WVR structures in the absence of other compelling factors. This is because Hong Kong’s legal and regulatory framework is built mostly on

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<sup>42</sup> A similar approach is taken, under the JPS for Overseas Companies, to ensuring that overseas companies are subject to equivalent shareholder protections as that available in Hong Kong.

<sup>43</sup> 32 of 56 pro-responses.

<sup>44</sup> 27 of 56 pro-responses.

<sup>45</sup> 5 of 56 pro-responses.

the assumption that control over a company will be exercised at general meetings through the voting power attached to shares.

142. Share based WVR structures can confer very strong forms of control. The beneficiary of a conventional dual-class share structure, for example, can control decision making both at general meetings and at the board of directors. This is because persons with multiple votes per share can normally ensure the approval of all ordinary resolutions at general meetings on which they can vote, including the election of their own candidates to board positions.
143. However, it is possible for a company to implement a WVR structure that attaches much weaker, more restricted rights to shares. For example, a share-based WVR structure could confer the right to nominate directors to the board of directors only, rather than granting blanket superior voting rights at general meetings. Such a WVR structure would fit with Hong Kong's existing legal and regulatory regime and is likely to attract fewer additional regulatory restrictions, in proportion to the relative weakness of the shareholder's rights.

#### **Question 5**

Do you believe changes to the corporate governance and regulatory framework in Hong Kong are necessary to allow companies to use WVR structures?

## **Qualitative Analysis**

### **Breakdown by Nature of Respondent**

144. Market practitioners were split on this question with proponents from each category on both sides. Most professional bodies, listed companies and HKEx Participants, who commented on this question, supported change to the legal and regulatory framework. Of the individuals that responded, most supported change.

### **Reasons for Views**

145. Respondents that opposed changing the corporate governance and regulatory framework stated that Hong Kong has a highly developed legal and regulatory system in which investors are protected against directors and majority shareholders favouring themselves or their connected persons at the expense of other shareholders. They claimed that the connected transaction Rules, Takeover Panel rules and directors' fiduciary duties were already adequate to protect investors. They also stated that the SFC had the necessary powers, under legislation, to seek remedies on behalf of shareholders, which it had used in a number of high profile cases.
146. Some respondents thought that the availability of a class action regime was an essential pre-requisite for permitting the listing of companies with WVR structures. Others questioned the relevance of a class action regime. These respondents stated that, in the US, class action cases are most often brought to seek remedies for matters relating to disclosure of information (e.g. providing false information in registration statements, failure to disclose material adverse facts in public records etc.) and not for the abuses of control that possibly arise under a WVR structure. Also, some were concerned that

there was a higher risk of frivolous cases being brought once a class action regime was implemented.

## Quantitative Analysis

147. Most pro-responses answered this question.<sup>46</sup> A majority stated that changes to the corporate governance and regulatory framework in Hong Kong were necessary to allow companies to list with WVR structures.<sup>47</sup> These responses stated that changes to Rules (e.g. those governing disclosure and/or connected transactions) and/or the Takeover Code may be necessary. A small number<sup>48</sup> stated that the introduction of a class action regime was a necessary pre-requisite to allow the listing of companies with WVR structures. However, twice as many stated that this was not necessary.<sup>49</sup>
148. A significant minority of responses disagreed that any changes to the corporate governance and regulatory framework in Hong Kong were necessary.<sup>50</sup>

## Conclusions

149. Having considered the responses, the Exchange concludes that changes to other Rules and possibly the Takeovers Code may be necessary to allow companies to list with WVR structures. The Exchange has conducted a wholesale review of the Rules and will propose changes to them as part of the second stage consultation process. The Exchange will, either through or with the SFC, also consult again with the Takeover Panel on the appropriate way forward regarding any necessary changes to the Takeover Code.
150. The Exchange does not believe that a class action regime is a necessary pre-requisite for the acceptability of WVR structures for the reasons set out in paragraph 146.

### Question 6(a)

Do you have any comments or suggestions regarding using GEM, a separate board, or a professional board to list companies with WVR structures?

The Concept Paper stated that it does not seek to address the more general question of the re-positioning of GEM or the creation of a professional (or other) board for companies with WVR structures, but that we would take into account any views from the market submitted in response to the Concept Paper on the acceptability or desirability of using GEM, another separate board focused on, for example, specific sectors or companies with specified characteristics, or a professional board, to list companies with WVR structures.

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<sup>46</sup> 45 of 56 pro-responses.

<sup>47</sup> 28 of 56 pro-responses.

<sup>48</sup> Five of the 28 responses that agreed that changes were necessary (two law firms, two investment managers and a professional body).

<sup>49</sup> 10 of the 28 responses that agreed changes were necessary.

<sup>50</sup> 17 of 56 pro-responses.

## Qualitative Analysis

### Breakdown by Nature of Respondent

151. Opposition to this concept was particularly strong from market practitioners and professional bodies. Listed companies were evenly split on this question. Most individual respondents had no comment on this question. Those that did comment were evenly split for and against.

### Reasons for Views

152. Respondents commented that the purpose of changing the Rules to allow WVR structures should be to attract good quality companies to list in Hong Kong that may otherwise choose to list elsewhere. Requiring them to list on a separate board would imply that they are inferior to Main Board companies and would be counter-productive.
153. One respondent, the Hong Kong Institute of Directors, stated that liquidity would suffer if companies with WVR structures were listed on a separate board and this would make it harder for dissatisfied investors to exit. Another respondent, Freshfields, stated that it has not been necessary to create separate boards for particular types of listed companies in the past and saw no reason to change this approach.
154. Instead of using a separate board, many respondents supported differentiating companies with WVR structures from other companies by using stock codes beginning with a particular number and/or stock names including a marker (e.g. “X”).

## Quantitative Analysis

155. Most pro-responses answered this question.<sup>51</sup> The majority disagreed with using GEM, a separate board or a professional board to list companies with WVR structures.<sup>52</sup>

## Our View

156. Having considered the responses, the Exchange’s preliminary view is that GEM, a separate board or a professional board should not be used to list companies with WVR structures for the reasons set out in paragraphs 152 and 153.<sup>53</sup> The Exchange’s preliminary view is that, instead, these companies should be differentiated using other methods, such as using a stock name that includes a marker.

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<sup>51</sup> 40 of 56 pro-responses.

<sup>52</sup> 30 of 56 pro-responses.

<sup>53</sup> We acknowledge that we asked for the views of respondents on the remaining Concept Paper questions only if they believed that there are circumstances in which companies should be allowed to use WVR structures; including the question of whether GEM, a separate board or professional board should be used to list companies with WVR structures. As stated above, our preliminary view is that there is little support for this, but we intend to seek further views on this matter in the second stage consultation.

**Question 6(b)**

Do you have any comments or suggestions regarding 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?

The Concept Paper stated that we prefer to consult on the specific question of whether overseas companies should be able to list with WVR structures as part of a future exercise, looking holistically at the listing regime for overseas companies, and the Concept Paper does not seek specific views on this question. However, we would take note of any views that respondents may wish to submit in this area.

**Qualitative Analysis**

157. Respondents favoured giving a secondary listed company some greater flexibility regarding WVR structures if, for example, it is already listed in a market with credible regulatory standards. However, one response, from a group of four Chinese sponsor firms, stated that the Exchange should re-consider whether all automatic waivers should be granted to a secondary listed company with a WVR structure.

**Quantitative Analysis**

158. A fifth of the pro-responses answered this question.<sup>54</sup> Most commented that overseas companies should be subject to the same Rules on WVR structures as other companies. No respondent supported restricting WVR structures to secondary listed companies only.

**Our View**

159. Having considered the responses, the Exchange's preliminary view is that the use of WVR structures should not be restricted to overseas companies only.

**Question 7**

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

160. In answer to this question respondents generally raised points that are covered in this paper or the Concept Paper.
161. One anonymous investment manager, Freshfields and KPMG asked the Exchange to revisit the Exchange's current bar on companies with a Greater China "centre of gravity" carrying out secondary listings in Hong Kong. This is currently contained in paragraphs 94 and 95 of the JPS for Overseas Companies. The Exchange intends to seek views on this matter as part of the second stage consultation (see paragraphs 181 to 184).

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<sup>54</sup> 12 of 56 pro-responses.

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## CHAPTER 4: ISSUES

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### Introduction

162. It is clear from the responses to the Concept Paper that those who support permitting WVR structures, for the most part, do not support their use by all companies under all circumstances; nor does the Exchange. A considerable variety of views and suggestions were put forward. Therefore, this will not be the Exchange's proposal in the second stage consultation.
163. In addition, the Chief Executive Officer of the SFC clearly articulated in his remarks at the SFC's media luncheon on 19 March, 2015 the crucial questions he considered needed to be answered by any second stage consultation on any concrete proposal for change. A copy of this speech forms Appendix III. Accordingly, as part of the development of a second stage proposal for public consultation, the Exchange will explore how to deal with the issues raised in the Concept Paper responses and posed by the SFC.
164. We set out some of these issues below in summary form, with the Exchange's preliminary thoughts, to provide some guidance to the market on our current direction and thinking. These may change or be refined as the second stage proposal is refined taking into consideration market feedback.

### Ring-fencing

#### Restriction to new companies

165. In light of the Concept Paper responses, we expect that any second stage proposal will limit WVR structures to new companies seeking to list on the Exchange for the first time. The question then arises as to how to ensure existing companies do not seek to avoid this restriction through re-incorporation or other re-structuring or through spin-offs, reverse takeovers or other corporate activities. We will therefore develop an appropriate "anti-avoidance" measure on which we will seek feedback from the market.

#### Types of companies

166. In light of the Concept Paper responses, it is clear that there is no support for permitting all new companies to list on the Exchange with a WVR structure. However, respondents, in general, did not wish to limit the availability of WVR structures to any particular industry or, specifically, to "innovative" companies. On the whole respondents, instead, favoured ring-fencing through other specific pre-determined characteristics (for example by size of company).
167. Some respondents to the Concept Paper suggested that a company applying to list with a WVR structure should have a cogent rationale for implementing the structure. Respondents said the applicant should be able to justify its need for the structure due to its particular circumstances and explain why it had not chosen a traditional structure.
168. The precise parameters of ring-fencing to a "type of company" will be established in light of feedback from the market. It is acknowledged that it is unlikely that a completely "bright line" test in this regard can or should be developed and that, on the

basis of certain principles and Rules, some element of discretion and judgment will necessarily have to remain with the Exchange and the SFC.

## **Safeguards**

### **Permissible WVR structures**

169. The majority of the Concept Paper respondents believe that permissible WVR structures should not be limited to dual-class share structures. However, as some noted, in particular Mr David Webb (see paragraph 92), WVR structures that confer weighted voting rights only through a company's constitutional documents pose a greater issue for the Takeovers Code. The Exchange would expect, as part of the second consultation exercise, either through or jointly with the SFC, to consult more fully with the Takeovers Panel as to their views on the implications of different WVR structures under the Takeovers Code.

### **Limit on extent of rights**

170. Many respondents to the Concept Paper supported the mandatory imposition of one or more of the safeguards applied, on a voluntary basis, to US listed companies described in the Concept Paper. In particular, respondents believed the Exchange should at least require:
- (a) a restriction on transfer where a beneficiary of weighted voting rights loses these rights if they are transferred to un-affiliated parties; and
  - (b) an ongoing requirement for the beneficiary of weighted voting rights to hold a particular proportion of the equity of the company or else lose their weighted voting rights.
171. The Exchange will explore how these requirements (and others) could work in practice and the precise threshold for calculation of any minimum equity shareholding requirement.

### **Strengthening the role of independent non-executive directors**

172. Several respondents thought that the Exchange should strengthen the role of the independent non-executive directors on the board of directors (see paragraph 131). The Exchange intends to look at requirements including, but not limited to the role, nomination and election of independent non-executive directors. We will explore upgrading Corporate Governance Code and Corporate Governance Report requirements (Appendix 14 of the Rules) on these matters to mandatory requirements.

### **Review of existing Rules**

173. Many respondents believed that changes to the corporate governance and regulatory framework in Hong Kong were necessary to allow companies to use WVR structures. In particular some thought that the Exchange would need to review existing Rules that aim to prevent controlling shareholders from extracting private benefits at the expense of minority shareholders. We have conducted this review, and will suggest possible changes (if any) as part of the second stage proposal.

## Disclosure and differentiation requirements

174. The majority of respondents to the question did not support the Exchange creating a separate board or a professional board to list companies with WVR structures. However, many did support imposing enhanced disclosure requirements for companies with these structures. Several respondents also agreed that such companies should be required to have a marker in their stock names or differentiated from other companies in another way. The Exchange will consult on the necessary disclosure and differentiation requirements as part of the second stage proposal.
175. A survey included in ACGA's response said it had found that investors would likely apply an average discount to the Hong Kong market of around 13% if non-standard shareholding structures became commonplace here. ACGA stated that such an outcome would be greatly detrimental to Hong Kong's long-term positioning as an international financial centre. The Exchange would not expect that any proposal it put forward would lead to such companies becoming commonplace in Hong Kong but will discuss further with stakeholders, as part of the second stage consultation, how to address such concerns and whether the concerns expressed by ACGA are widely supported or justified.

## Competition

176. In his March 2015 speech, the CEO of the SFC posed the following question:
- “If the fear is that our IPO market is losing out to foreign stock exchanges, are we sufficiently certain that a major rule change allowing weighted voting rights will in fact increase our competitiveness significantly and for many years to come? ... [F]rom the viewpoint of some companies wanting to go public, would a weighted voting rights proposal be the magic bullet that would cause them to choose Hong Kong over a foreign stock exchange? A difficulty here is that the choice of listing venue involves a lot of factors. These include relative valuations, research coverage, exchanges that specialise in sectors, the broader legal and regulatory environment, the depth of a local investor base and so on.”*
177. The Concept Paper stated that a number of arguments had been put forward by commentators and others as grounds for either maintaining the status quo or allowing WVR structures, but that it was likely that those relating to Hong Kong's competitive position vis-à-vis other markets, principally the US, require the most consideration and debate. Therefore the Concept Paper focused on these in detail. It noted that the Exchange faced competition for the listings of Mainland Chinese companies, 102 of which, at the time, had chosen to primary list in the US (on NYSE or NASDAQ), rather than in Hong Kong. Almost a third of these companies (29%) have a WVR structure and this third represents 70% of the market capitalisation of all US listed Mainland Chinese companies.
178. However, the Concept Paper also noted that the fact that Mainland Chinese companies choose to primary list on foreign markets that restrict the use of WVR structures (e.g. Singapore and the UK) indicates that there are other reasons these companies choose to

list outside Hong Kong. The Concept Paper acknowledged that companies take many factors into account when choosing a listing venue and listed many of them.<sup>55</sup>

179. In general, respondents to the Concept Paper did not question the validity of the concern that the Exchange's current restriction on WVR structures is a factor in Chinese companies' decision to list in the US, rather than Hong Kong. BlackRock, in its response, stated that they had found little evidence that Chinese companies choose to list on US markets simply because they allow WVR structures (which is not what the Exchange had stated in any event). They suggested that the "Foreign Private Issuer" status that was given to these companies, exempting them from a number of requirements, including quarterly reporting, may be a stronger regulatory reason for Chinese companies choosing the US over Hong Kong (see paragraph 99).
180. The Exchange believes that the data provided in the Concept Paper, together with anecdotal and other representations made to it on previous occasions, support the "competition" argument. Nevertheless, as part of our consultation on the second stage proposal we will ask market participants and others the factors that companies consider when choosing a listing venue and, therefore, the importance of the permissibility of WVR structures to this decision.

## Secondary listing

181. This is an important and, to some degree, a separate issue giving rise to different considerations from the main question of WVR structures for companies seeking a primary listing on the Exchange; and accordingly we will focus some attention on this as part of the second stage consultation process.
182. Respondents to the Concept Paper favoured giving a secondary listed company some greater flexibility regarding WVR structures if, for example, it is already listed in a market with credible regulatory standards. A response from a group of Chinese sponsor firms stated that the Exchange should re-consider whether all automatic waivers should be granted to a secondary listed company with a WVR structure. We will look at both these matters when formulating the second stage proposal.
183. One anonymous investment manager, Freshfields and KPMG asked the Exchange to revisit the Exchange's current bar on companies with a Greater China "centre of gravity" carrying out secondary listings in Hong Kong. The JPS for Overseas Companies states that the Exchange will not accept an application for secondary listing from an issuer that has its "centre of gravity" in Greater China<sup>56</sup>. Various factors are taken into account to determine the "centre of gravity" including place of headquarters, operations and nationality of management. The purpose of this requirement is to avoid a potential "hollowing out" of the Main Board caused by issuers based in Hong Kong and Mainland China seeking a primary listing and raising funds on another exchange (in Mainland China or overseas) and then secondary listing in Hong Kong. At the time of the inception of the policy it was felt that an issuer may choose to do so to avoid the more stringent requirements of our Rules for primary listed issuers and to take

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<sup>55</sup> Concept Paper, paragraphs 8, 15 and 19.

<sup>56</sup> JPS for Overseas Companies, paragraphs 94 and 95.

advantage of the waivers granted to secondary listed issuers.

184. The Exchange agrees that a review of the “centre of gravity” restriction is appropriate in this context and will seek views on this matter and, as part of its second stage consultation, to put forward a proposal in this regard.

## **Form of Rules**

185. We are currently considering setting requirements for companies with WVR structures in the form of Rule changes and a guidance letter. Most of the requirements would be “bright line” Rules that would provide clarity and certainty on our requirements.
186. We will seek feedback from stakeholders on the form of requirements for companies with WVR structures as part of our second stage consultation exercise.

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## CHAPTER 5      DRAFT PROPOSAL AND WAY FORWARD

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187. As indicated in the Executive Summary above (paragraphs 3 and 4), our intention is to move to a second stage consultation on a formal proposal.
188. We are in the process of finalising a draft proposal (in the nature of a “Straw Man”) that is intended to be refined, first, through discussions with stakeholders to ensure that we have the benefit of their views before we put forward a proposal for formal consultation, and then through a formal consultation process to ensure that the proposal has the appropriate support. We expect to begin the discussions shortly after the publication of these Consultation Conclusions with a view to the formal consultation commencing later in the third quarter or early in the fourth quarter of 2015.
189. As part of the development of the proposal during the preliminary discussion stage, and then as part of the formal second stage consultation, we will seek to address the issues identified in Chapter 4, and any others that emerge.
190. By way of transparency to the broader market, it is currently envisaged that the draft proposal will include the following features:

### **Ring-fencing:**

- (a) Restrictions to new applicants only with appropriate anti-avoidance language to prevent existing Exchange listed companies (listed as at, or after, the date of this document) seeking to avoid this restriction.
- (b) A very high expected market capitalisation test in addition to existing eligibility criteria for listing on the Main Board.
- (c) “Enhanced suitability” criteria to be contained in a Guidance Letter to supplement the existing Guidance Letter (HKEx-GL68-13) that will not restrict WVR structures to particular industries or sectors but will identify certain features that the Exchange would expect such companies to have related to the applicant’s business and the contribution of the founder or founders.
- (d) Restrictions on who can hold weighted voting rights at any point in time and the percentage shareholding interest such persons hold in the relevant company prior to listing on the Exchange together with requirements on such persons in order for them to retain weighted voting rights post-listing.

### **Safeguards:**

- (e) A general restriction to WVR structures that are in the form of different classes of shares in order to meet concerns expressed in relation to the operation on the Takeovers Code, although such shares could carry differing levels of weighted voting rights.
- (f) A minimum shareholding level in the relevant company to be maintained by the permitted beneficiaries of weighted voting rights, after listing, in order for those rights to survive, amongst other requirements for such beneficiaries.

- (g) Beneficiaries of weighted voting rights be deemed “connected persons” under the Rules irrespective of whether they would otherwise fall within the definition.
- (h) An issuer with a WVR structure would be clearly differentiated with a stock name marker; would need to include prominent and ongoing disclosure around the weighted voting rights structure; and make detailed disclosure on the voting activities of those holding weighted voting rights.

**Corporate Governance measures:**

- (i) An issuer with a WVR structure would be expected to put in place certain enhanced corporate governance measures including around independent non-executive directors, the establishment of a Corporate Governance Committee, the role of the Compliance Adviser and communication with shareholders.

**Secondary listing and “centre of gravity”:**

- (j) The ability for companies with WVR structures to secondary list on the Exchange even though their WVR structure would not meet the requirements for a primary listing for companies with such structures, subject to them meeting the requirements of the JPS for Overseas Companies.
  - (k) A limited waiver from the current “centre of gravity” test for Greater China companies that were primary listed on a Recognised Exchange before the date of this Consultation Conclusions paper with or without a WVR structure.
191. For the avoidance of doubt, the draft proposal: has been developed by the Exchange; is in the process of being finalised; and may be altered prior to discussions with stakeholders. In addition, since any Rule amendments require approval by the SFC’s board of directors, their view will be material to the final proposal that we put forward for formal second stage consultation.

## APPENDIX I: LIST OF RESPONDENTS

### NAMED RESPONDENTS<sup>57</sup>

NAME	CATEGORY	REPRESENT
<b>INSTITUTIONS</b>		
Aberdeen Asset Management Asia Ltd	Market Practitioner	Not applicable
AIA Group Limited	Listed Company	Not applicable
AIMA	Professional body	1,400 corporate members based in over 50 countries. Manage a combined US\$1.5 trillion in global assets (as at March 2014)
AM Capital Limited	Market Practitioner	Not applicable
Asian Corporate Governance Association	Professional body	100+ corporate members (two thirds of which are institutional investors with around US\$18 billion AUM)
Association of Chartered Certified Accountants	Professional body	170,000+ members
Avant Capital Management (HK) Limited	Market Practitioner	Not applicable
Baker & McKenzie	Market Practitioner	Not applicable
BAML	Market Practitioner	Not applicable
BlackRock	Market Practitioner	Not applicable
The British Chamber of Commerce in Hong Kong	Professional body	1,200 members, including 66 companies in the financial services sector
British Columbia Investment Management Corporation	Market Practitioner	Not applicable
Cadwalader, Wickersham & Taft LLP in association with Joseph P.C. Lee & Associates	Market Practitioner	Not applicable
Cathay Pacific Airways Limited	Listed Company	Not applicable
The Chamber of Hong Kong Listed Companies	Professional body	200+ members

<sup>57</sup> The membership figures shown in the table are based on information contained in the response or else published on the website of the relevant professional body.

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENT</b>
Charltons	Market Practitioner	Altus Capital Limited Anglo Chinese Corporate Finance Limited Optima Capital Limited Quam Capital Limited Qilu International Capital Limited Sommerley Limited
Cheung Kong (Holdings) Limited	Listed Company	Not applicable
China International Capital Corporation (Hong Kong) Limited	HKEx Participant	Not applicable
CICC Hong Kong Asset Management	Market Practitioner	Not applicable
CLP Holdings Limited	Listed company	Not applicable
Davis Polk & Wardwell	Market Practitioner	Not applicable
Deacons	Market Practitioner	Not applicable
Ernst & Young	Market Practitioner	Not applicable
Federation of Share Registrars Limited	Professional body	20+ members
Fidelity	Market Practitioner	Not applicable
Freshfields	Market Practitioner	BOCI Asia Limited China Merchants Securities (HK) Co., Limited CITIC Securities International Company Limited ICBC International Holdings Limited
Freshfields	Market Practitioner	Citigroup Global Markets Asia Limited Credit Suisse (Hong Kong) Limited Deutsche Bank AG, Hong Kong Branch HSBC Corporate Finance (Hong Kong) Limited Morgan Stanley Asia Limited Nomura International (Hong Kong) Limited UBS Securities Hong Kong Limited
Freshfields	Market Practitioner	Responding on own behalf

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENT</b>
Great Eagle Holdings Limited	Listed Company	Not applicable
Haitong International Securities Group Limited	Listed Company	Not applicable
Hermes Investment Management	Market Practitioner	Not applicable
Hong Kong Aircraft Engineering Company	Listed Company	Not applicable
Hong Kong Institute of Certified Public Accountants	Professional body	35,000+ members
The Hong Kong Institute of Chartered Secretaries	Professional body	5,700+ members
The Hong Kong Institute of Directors	Professional body	2,000+ members
Hong Kong Investor Relations Association	Professional body	280+ members (70% are listed companies)
香港專業及資深行政人員協會 (Hong Kong Professionals and Senior Executives Association)	Professional body	640+ members
香港證券及期貨從業員工會 (Hong Kong Securities & Futures Employees Union)	Professional body	Not included in their response or on publicly accessible sections of their website
Hong Kong Securities and Futures Professionals Association	Professional body	Not included in their response or on publicly accessible sections of their website
Hong Kong Securities and Investment Institute	Professional body	540 responses to a survey
香港證券業協會 (Hong Kong Securities Association)	Professional body	1,000+ members
The Hong Kong Society of Financial Analysts	Professional body	120,000+ members
HKVCA	Professional body	300+ members (165 are Hong Kong based private equity managers)
The Institute of Securities Dealers Ltd. 證券商協會有限公司	Professional body	2,000+ members
Keywise Capital Management (HK) Limited	Market Practitioner	Not applicable
KPMG	Market Practitioner	Not applicable
The Law Society of Hong Kong	Professional body	8,500+ members

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENT</b>
Norges Bank IM	Market Practitioner	Not applicable
The Ontario Teachers' Pension Plan	Market Practitioner	Not applicable
The Professional Commons	Professional body	100+ members
PwC	Market Practitioner	Not applicable
QBS System Limited	Unknown	Not applicable
Rosefinch Global Asset Management (HK) Limited	Market Practitioner	Not applicable
Shinewing Risk Services Limited	Market Practitioner	Not applicable
Slaughter and May	Market Practitioner	Not applicable
State Street Asia Limited	Market Practitioner	Not applicable
Swire Pacific Limited	Listed Company	Not applicable
Swire Properties Limited	Listed Company	Not applicable
Thai Hong Kong Investors Limited	Investment Manager	Not applicable
USS Investment Management Limited	Market Practitioner	Not applicable
<b>INDIVIDUALS</b>		
Mr. Brian Lo	Listed Company Staff	Not applicable
Chan Mofiz	Unknown	Not applicable
Chaw Cho Tung	Listed Company Staff	Not applicable
立法會議員張華峰 (Christopher Cheung)	Legislative Councillor (Financial Services)	Not applicable
Ms. Chung Mei Lin	Retail Investor	Not applicable
David Paterson	Unknown	Not applicable
David Webb	Independent Commentator	349 signatories to a "Keep 1-Share-1-Vote" petition
George Hongchoy	Listed Company Staff	Not applicable
J S Wadhvani	Unknown	Not applicable
Jianghuawhu	Unknown	Not applicable

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENT</b>
Kevin Chan	Listing Committee Member	Not applicable
Lau Wong Oi Lai	HKEx Participant Staff	Not applicable
LEE Legend	Retail Investor	Not applicable
Ng Yuk Peng	HKEx Participant Staff	Not applicable
Qing YE	Unknown	Not applicable
Mr. Suen Chi Wai	Retail Investor	Not applicable
Tian Shu Chen	Unknown	Not applicable
Trevor G Cooper	Unknown	Not applicable
Tsui Siu Lung	HKEx Participant Staff	Not applicable
Vincent Kwan	Unknown	Not applicable
Wong Kong Chi	Unknown	Not applicable
Wong Kwan Chung	HKEx Participant Staff	Not applicable
劉觀霞	Unknown	Not applicable
楊海峰	Unknown	Not applicable
涂榮萍	HKEx Participant Staff	Not applicable
黃先生	HKEx Participant Staff	Not applicable
黃有成	Retail Investor	Not applicable

## ANONYMOUS RESPONDENTS

<b>RESPONDENT CATEGORY</b>	<b>NUMBER</b>
<b>INSTITUTIONS</b>	
Market Practitioners	12
HKEx Participants	5
Listed Companies	3
Professional Bodies	2
<b>INDIVIDUALS</b>	
HKEx Participant Staff	58
Retail Investors	18
Institutional Investors	5
Listed Company Staff	4
None of the above or unknown	6
<b>TOTAL:</b>	<b>113</b>

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## APPENDIX II: SUMMARY RESULTS OF QUANTITATIVE ANALYSIS

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NO.	QUESTION	RESPONSE
<b>Q1</b>	Should the Exchange <u>in no circumstances</u> allow companies to use WVR structures?	<b>Agreed</b> (in no circumstances allow) 40 (38%)
		<b>Disagreed</b> (in some circumstances allow) 56 (54%)
		<b>No view expressed “For” or “Against”</b> 8 (8%)
<b>The responses to the remaining questions below were provided by the sub-set of respondents in support of WVR structures in certain circumstances. The percentages shown are of this sub-set, not of all responses.</b>		
<b>Q2(a)&amp; (b)</b>	Should the Exchange permit WVR structures: (a) for all companies, including existing listed companies; or (b) only for new applicants?	<b>Permit for all companies including existing listed companies</b> 11 (20%)
		<b>Permit for new applicants only</b> 34 (61%)
		<b>No Comment</b> 11 (20%)
<b>Q2(c)(i) &amp;(ii)</b>	Should the Exchange permit WVR structures only for companies from particular industries (e.g. information technology companies) or "innovative" companies?	<b>Agreed</b> 9 (16%)
		<b>Disagreed</b> 26 (46%)
		<b>No Comment</b> 21 (38%)
<b>Q2(c)(iii)</b>	Should the Exchange permit WVR structures only for companies with other specific pre-determined characteristics (for example, size or history)? <i>(see paragraph 117 for a summary of the pre-determined characteristics mentioned by respondents)</i>	<b>Agreed</b> 20 (36%)
		<b>Disagreed</b> 6 (11%)
		<b>No Comment</b> 30 (54%)

NO.	QUESTION	RESPONSE
Q2(d)	Should the Exchange permit WVR structures only in "exceptional circumstances" as permitted by current Listing Rule 8.11?	<b>Agreed</b> 9 (16%)
		<b>Disagreed</b> 9 (16%)
		<b>No Comment</b> 38 (68%)
Q3	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, or others in addition or in substitution?	<b>Agreed</b> 38 (68%)
		<b>Disagreed</b> 8 (14%)
		<b>No Comment</b> 10 (18%)
Q4	Should other WVR structures be permissible, and, if so, which ones and under what circumstances? <i>(see paragraph 138 for a summary of the circumstances given by respondents)</i>	<b>Agreed</b> 27 (48%)
		<b>Disagreed</b> 5 (9%)
		<b>No Comment</b> 24 (43%)
Q5	Do you believe changes to the corporate governance and regulatory framework in Hong Kong are necessary to allow companies to use WVR structures? <i>(see paragraphs 145 to 146 for a summary of the changes mentioned by respondents)</i>	<b>Agreed</b> 28 (50%)
		<b>Disagreed</b> 17 (30%)
		<b>No Comment</b> 11 (20%)
Q6(a)	Do you have any comments or suggestions regarding using GEM, a separate board, or a professional board to list companies with WVR structures?	<b>Agree that GEM, a separate board or a professional board should be used to list companies with WVR structures</b> 10 (18%)
		<b>Disagree on using GEM, a separate board or a professional board to list companies with WVR structures</b> 30 (54%)
		<b>No Comment</b> 16 (29%)

NO.	QUESTION	RESPONSE
Q6(b)	Do you have any comments or suggestions regarding 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?	<b>Only overseas companies should be able to list with WVR structures</b> 0 (0%)
		<b>Overseas companies should be subject to the same Rules on WVR structures as other companies</b> 12 (21%)
		<b>No Comment</b> 44 (79%)

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## **APPENDIX III: SFC SPEECH: “OPENING REMARKS AT SFC’S MEDIA LUNCHEON” – ASHLEY ALDER CHIEF EXECUTIVE OFFICER, 19 MARCH 2015**

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SECURITIES AND FUTURES COMMISSION  
證券及期貨事務監察委員會

Speech

### **Opening remarks at SFC’s media luncheon**

**Ashley Alder  
Chief Executive Officer**

**19 March 2015**

There has been a lot of public commentary on the subject of weighted voting rights.

Both the Securities and Futures Commission and Hong Kong Exchanges and Clearing Limited (HKEx) understand that this subject requires a sophisticated, level-headed review to nail down and then weigh up all the potential benefits and risks of any proposals for change.

I should make clear that the SFC is not deaf to new ideas – actually far from it. We should always look carefully at proposals that could result in Hong Kong enhancing its success as a truly international financial centre in the years ahead. Stock Connect is a pretty good example. We should always keep an open mind, as we do on the subject of weighted voting rights.

HKEx’s recent consultation on the “Concept Paper” on weighted voting rights was a good starting point and HKEx will issue conclusions on this in due course.

So the question is: after this first consultation, what comes next? Now, as this is about changes to the Listing Rules of the Stock Exchange of Hong Kong Limited (Stock Exchange), the Stock Exchange and the Listing Committee will continue to lead, and, obviously I don’t want to pre-empt their future work.

However, I can give you a good idea of some of the questions which will be crucial to answer if any concrete proposals for change are to be pursued.

The first question is pretty simple. If the fear is that our IPO market is losing out to foreign stock exchanges, are we sufficiently certain that a major rule change allowing weighted voting rights will in fact increase our competitiveness significantly and for many years to come?

So, on the one hand, we need to anticipate investor reaction to any weighted voting rights proposals, bearing in mind that our markets are nothing without a deep investor base. Would some be attracted by a change, or others repelled? Would fund managers apply a “governance discount” to stock prices, or adjust portfolio weightings away from Hong Kong? Or would they be neutral?

On the other hand, from the viewpoint of some companies wanting to go public, would a weighted voting rights proposal be the magic bullet that would cause them to choose Hong Kong over a foreign stock exchange? A difficulty here is that the choice of listing venue involves a lot of factors. These include relative valuations, research coverage, exchanges that specialise in sectors, the broader legal and regulatory environment, the depth of a local investor base and so on. And here we are really just looking at the US, not least because weighted voting rights are not a feature in other leading markets.

Obviously the US environment for listed companies offers a mix that is extremely different to Hong Kong – lots of securities litigation, low retail participation and, although disclosure standards are high, there isn’t much to compare with the sort of corporate governance rules we are used to here. And I should say that these rules in Hong Kong often hinge on shareholder approvals – whether under the Listing Rules or the Takeovers Code.

In the US, weighted voting rights are in fact used only by a small minority of listed companies. But the US also has things like poison pills and other mechanisms that can protect management from unhappy shareholders or unwelcome takeover bids. Some companies don’t even hold Annual General Meetings for shareholders. And valuations will always differ. These are just examples – but the point is that we need to bear in mind the whole picture when looking at competitiveness between different markets. And relative valuations in each market may also reflect investor’s views on the overall regulatory environment, including the existence of weighted voting rights.

The second question is also conceptually straightforward. Should weighted voting rights only be available to specific types of companies where it might make more sense for its business and stakeholders? This question is particularly important for Hong Kong as many of its listed companies are already majority controlled. Also it is difficult to see why a standard industrial, financial or services company which otherwise would list without weighted voting rights should have the option to use them.

Many have said that weighted voting rights makes sense where the whole enterprise value is completely tied up with the identity of a founder. But how to identify these companies? Some have said that a separate exchange board could cater for companies wanting to use weighted voting rights. Others have different ideas. But the question of how weighted voting rights might only be available within a ring-fence of some kind is important, and needs thorough examination when any specific proposals for change are put together.

The next question is about investor protection. Without previewing the consultation conclusions to be released by HKEx, it wouldn’t surprise you that those against any change would be more concentrated amongst the investor community, but that quite a few others express views along the lines of “weighted voting rights may be ok for Hong Kong, but...”. This begs another question – “But” what?

This is really all about safeguards to ensure that any weighted voting rights proposal which dilutes the ability of shareholders to have a voice is balanced and proportionate. In fact, the small minority of companies in the US which use weighted voting rights normally do employ safeguards of various types. These vary, but they include sunset provisions, the disappearance of weighted voting rights if a founder departs, minimum equity to be held by a founder and so on.

In addition, we need to look at the future of existing Listing Rules that currently link investor protection to shareholder approvals, such as those dealing with related party transactions. So, as Hong Kong contemplates a possible rule change, we need to look at which safeguards should be hardwired into any proposal.

These questions are just a flavour of the deeper issues that we know have to be looked at very carefully if we move forward. And I really hope that a better appreciation of the real issues involved will enable commentators of all types to engage in a more sophisticated and clear eyed conversation on such an important subject for Hong Kong's future as an international financial centre.

