

SFC statement on the SEHK's draft proposal on weighted voting rights

25 Jun 2015

The Securities and Futures Commission (SFC) issues the following statement in relation to The Stock Exchange of Hong Kong Limited's (SEHK) draft proposal on weighted voting rights (WVR).

The SEHK's Consultation Conclusions on WVR published on 19 June 2015 outlined some of the relevant features of the draft proposal for a second stage consultation on WVR. The SFC has considered a more detailed version of the proposal.

The Board of the SFC has unanimously concluded that it does not support the draft proposal for primary listings with WVR structures.

The Board's views are set out below.

Eligible applicants would be required to have a very high expected market capitalisation

- Size offers no assurance that a company would treat its shareholders fairly. Any corporate misconduct by an issuer with a large market capitalisation will likely affect more investors and have a greater impact on our markets. For example, these issuers are more likely to become index components which will compel index funds and other types of "passive" institutional investors (which invest public money) to buy and hold their stocks even if fund managers disagree with their WVR structures.

The SEHK would expect eligible applicants to have certain features relating to their businesses and the contribution of their founders as identified in a set of "enhanced suitability" criteria

- The SFC has significant concerns about these proposals that require regulators to assess compliance with the criteria for companies to be eligible for WVR (for example, whether the applicant has some unique features that cannot be easily replicated and are likely to provide a sustainable competitive advantage, as well as the contribution of the founder or founders). Such criteria can only be applied subjectively and are therefore inherently vague. A regime that relies on the subjective judgement of regulators to determine which listing applicants are eligible for WVR would give rise to regulatory uncertainty and could result in inconsistent and unfair decision-making. The SFC is opposed to proceeding on this basis.

WVR structures would be permitted for new listing applicants only (with appropriate anti-avoidance measures)

- The SFC is of the view that Hong Kong's securities markets and reputation would be harmed if WVR structures became commonplace. Among other things, the SFC considered whether the draft proposal justifiably restricts the extent to which WVR structures would be permitted and whether there were effective measures to prevent circumvention of these restrictions by ineligible applicants.
- For example, the draft proposal limits WVR structures to new applicants only. This means that existing listed companies and future issuers that list without WVR structures would not be permitted to adopt such structures. For this feature to work, there must be effective measures to prevent ineligible issuers from bypassing the limitation through arrangements such as spin-offs, assets transfers or other forms of corporate restructuring. The SFC has significant concerns regarding the effectiveness of anti-avoidance provisions proposed by the SEHK.
- It is insufficient to look only at controlling the number of WVR issuers. The SFC is concerned, for example, with the potential impact of acquisitions of existing listed assets by WVR issuers. Unrestricted, post-listing transactions could over time result in the transfer of a significant proportion of existing listed businesses and assets to WVR structures. In the SFC's view, such a development would be detrimental to our markets and the interests of the investing public generally.
- Separately, the draft proposal does not explain how many proposed safeguards and conditions (for example, whether a founder remains actively involved in management) can be monitored on an ongoing basis and what actions can be taken either by regulators or by public shareholders if they are not complied with.

A focus of the discussion to date on WVR has been competition from the United States for the listing of Mainland China businesses. Hong Kong's business and competitive environment is affected by many factors and can change significantly within a relatively short period. In carrying out its

regulatory functions, the SFC considers both long term and short term objectives and seeks to uphold the core principles of fairness and transparency which underpin Hong Kong's reputation as an international financial centre.

The Board of the SFC has noted the extensive local and international public debate on and widespread coverage of the WVR issue over many months and has discussed the importance of Hong Kong's reputation as an international financial centre. Against this background, the Board decided that it is in the public interest to issue this statement.

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證監會就聯交所有關不同投票權架構的建議草案發表聲明

2015年6月25日

證券及期貨事務監察委員會（證監會）就香港聯合交易所有限公司（聯交所）有關不同投票權架構的建議草案發表以下聲明。

聯交所於2015年6月19日就不同投票權架構發表的諮詢總結概述了建議草案的部分相關特點，以便就不同投票權架構進行第二階段的諮詢。證監會研究過該建議的更詳盡版本。

該建議草案涉及公司以不同投票權架構在聯交所作主要上市。證監會董事局一致決定不支持。

董事局的意見如下：

符合資格的申請人須擁有非常高的預計市值

- 公司規模龐大並不能保證它會公平地對待其股東。市值大的發行人如有任何企業失當行為，將可能影響更多投資者，並對我們的市場造成更大的影響。舉例來說，這些發行人有更大機會成為指數成份股，令到指數基金及其他利用公眾資金進行投資的“被動式”機構投資者，在即使基金經理並不贊同這些發行人的不同投票權架構的情況下，被迫買入並持有它們的股票。

聯交所要求合資格申請人具備某些與其行業及公司創辦人貢獻有關的特徵，並將其作為一系列“加強適當性”要求

- 證監會強烈關注有關建議。有關建議需要監管機構評核上市申請人是否符合“加強適當性”要求（例如上市申請人有一些不能很容易複製的獨特特徵；是否有可能維持競爭優勢；以及公司創辦人的貢獻），以釐定公司是否合資格採用不同投票權架構。由於在適用這些要求時只能依賴主觀判斷，故有其內在的不明確性。一個依賴監管機構主觀判斷來釐定哪些上市申請人可採用不同投票權架構的制度，不但會導致監管上的不確定性，亦可能導致決策的過程不一致和不公平。證監會不贊成在此基礎上繼續進行。

只有新的上市申請人才會獲准採用不同投票權架構（配以適當的反規避措施）

- 證監會認為，假如不同投票權架構變得普遍，香港的證券市場及聲譽將會受損。證監會所考慮的包括建議草案能否有理有據地限制不同投票權架構採用的情況，以及是否設有有效措拖以防止不合資格的申請人規避這些限制。
- 舉例來說，根據建議草案，只有新申請人才能採用不同投票權架構，這意味著目前已上市的公司及日後並非以不同投票權架構上市的發行人均不得採用這種架構。要使這一限制發揮作用，必須設立有效的措施，防止不合資格的發行人利用分拆、資產轉移或其他形式的企業重組等安排去規避此項限制。證監會對於聯交所建議的反規避條文是否有效，表示重大關注。
- 單單對採用不同投票權架構發行人的數目加以控制是不足夠的。證監會對不同投票權架構的發行人收購現有上市資產所帶來的潛在影響有所關注。假以時日，若不受限制的話，上市後交易可導致現有上市業務及資產的重大部分被轉移至不同投票權架構之下。證監會認為，有關發展在整體上對市場及投資大眾的利益構成不利影響。
- 此外，建議草案沒有解釋當中多少項建議的保障措施的條件（例如，創辦人是否持續積極參與公司的管理）能夠獲得持續監察，以及監管機構或公眾股東可對違反規定的公司採取那些行動。

對不同投票權架構的討論的一個焦點，是與美國就中國內地業務的上市地的競爭。香港的營商及競爭環境受多項因素影響，並可在相對較短時間內出現重大轉變。證監會在執行其監管職能時，會考慮長遠及短期目標，致力維持公平透明等核心原則，鞏固香港作為國際金融中心的聲譽。

證監會董事局注意到多個月來本地及海外公眾對不同投票權架構事宜的廣泛討論及報道，並就香港國際金融中心聲譽的重要性作出討論。有鑑於此，董事局基於公眾利益發表本聲明。

完

最後更新日期：2015年6月25日