



**ICGN**

International Corporate Governance Network

S&P Dow Jones Indices

Submitted online through Survey Monkey

3 May 2017

Dear Sirs,

**RE: S&P Dow Jones Indices consultation with members of the investment community on the eligibility of non-voting share classes in S&P DJI indices**

The International Corporate Governance Network (ICGN) welcomes the opportunity to respond to the consultation on the eligibility of non-voting share classes in S&P DJI indices.

**Question 1:** ICGN contact information. See background information on ICGN in our response to Question 7.

**Question 2:** If the only listed share classes of a company do not have voting rights, should that company be eligible for inclusion in an index?

**ICGN response:**

**No, that company should not be eligible for inclusion in an index.** The protection and enhancement of minority shareholder rights has been a long-standing focus of ICGN and its members. Our Global Governance Principles emphasize the importance of equal voting rights for all shareholders and call for disclosure and explanation of any divergences as well as commensurate extra protections for minority shareholders. Ownership structures that allow disproportionate control via voting rights over publicly listed companies relative to economic interests and investment risk are a backward step for good governance, as they can lead to entrenchment of control and an erosion of accountability to minority shareholders.

ICGN has long advocated a preference for the 'one share, one vote' standard as the optimal structure for companies wishing to benefit from access to public capital. This ensures the equitable treatment of all shareholders and prevents managerial entrenchment, particularly in companies where the board is dominated by a controlling owner.

We believe there is no strong evidence that differential voting rights provide companies with a better environment for long-term planning and execution. Indeed, the weight of evidence suggests otherwise. ICGN's recent Viewpoint on differential rights cited a recent research literature review of this topic, by Stanford University academics David Larker and Brian Tayan. They conclude that "the evidence suggests that companies with dual-class structures tend to have lower governance quality".

For example, in an empirical study of dual class structures in the United States (Paul

A. Gompers, Joy Ishii and Andrew Metrick, "Extreme Governance: An Analysis of Dual Class Firms in the United States" *Review of Financial Studies* 23 (2010): 83-120), the study's authors concluded "we find that firm value is positively associated with insiders' cash-flow rights, negatively associated with insiders' voting rights, and negatively associated with the wedge between the two." The authors go on to say that "a majority owner of a private company can rationally choose to sacrifice some firm value in order to maintain private benefits of control." That may be well and good for the controlling owner. But it also suggests that these private benefits come at a cost to minority investors.

**Question 3:** For companies with multiple-class structures where one or more listed share class is non-voting:

- Should only the non-voting share classes be ineligible?
- Should all share classes be ineligible?
- Should all share classes be eligible?

**ICGN response:**

**All the share classes should be ineligible.**

Reflecting ICGN's global purview, we observe that since the financial crisis in 2008, there has been resurgence in the promotion and use of differential ownership and control structures, including dual class share structures, in many global markets (including United States, France, China, and Brazil). As noted in Question 2 it is our view that these will not be beneficial over the mid to long term for companies, institutional investors and economies generally. Particularly in cases of controlled companies we see dual class shares leading to compromised minority shareholder rights around the world, and that tolerating dual class structures is something that should be strongly discouraged. We believe that ineligibility of all share classes from benchmark indices can have a significant impact on discouraging dual class structures – or setting in motion sunset provisions to eliminate them where they exist now. The rejection of differential ownership and control structures by the Hong Kong Securities and Futures Commission, the removal of respective proposals from the European Shareholder Rights Directive and the Italian Growth Decree all reflect investor engagement with regulatory bodies and their concern about such structures.

**Question 4:** If the company does not file information statements regarding shareholder ownership, should the company be eligible for inclusion?

**ICGN response:**

**Yes, the company should be ineligible for inclusion.**

In many cases it is likely to be the case that the lack of disclosure is due to the lack of voting rights.

**Question 5:** If the methodology were to exclude all share classes so the company is not eligible should current constituents be "grandfathered" and remain in the index?

**ICGN response:**

**No, current constituents should not be “grandfathered” and should not remain in the index.**

This position is consistent with our strong stance against dual class share structures of any sort. The only way we think a “grandfathering” of current constituents would be tenable would be if the company were to commit to sunset of such structures after a fixed period of time. On this point we reference the recent working paper by Harvard Law School academics, Lucien Bebchuk and Kobi Kastiel: “The untenable case for perpetual dual-class stock”, Discussion Paper 905, Harvard Law School, Cambridge MA 02138 (forthcoming Virginia Law Review, Volume 101, June 2017).

**Question 6:** Should eligibility of non-voting shares differ in benchmark vs. investable index families?

**ICGN response:**

**No, eligibility of non-voting shares should not differ in benchmark vs investable index families.**

**Question 7:** Do you have any additional comments?

**ICGN response:**

**Yes.** Background: ICGN’s mission is to promote high standards of governance in companies and responsible investment practices by investors, with a long-term perspective on sustainable value creation. This mission extends systematically to promoting efficient financial markets and economies world-wide. ICGN was established over 20 years ago and today our membership of governance professionals spans over 45 countries and includes investors representing assets under management in excess of US\$26 trillion.

Our policy positions are guided by the ICGN Global Governance Principles and the ICGN Global Stewardship Principles both of which have been developed in consultation with ICGN Members and as part of a wider peer review. They reflect our global perspective as an institutional investor-led body, and we would like to emphasise the important role that investors play as de-facto guardians of good corporate governance to help ensure the health and prosperity of financial markets, and ultimately society as a whole. As such, ICGN plays an important role in serving as a single source of international experience and a platform for balanced and constructive dialogue between investors, companies and policymakers.

ICGN contacts:

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Yours faithfully,

A handwritten signature in black ink, appearing to read 'K. Waring', written in a cursive style.

Kerrie Waring  
Executive Director, ICGN

Copy:  
Erik Breen, Chairman, ICGN Board of Governors