

14 March 2018

The Secretariat, Corporate Governance Council  
c/o Markets Policy & Infrastructure Department  
Monetary Authority of Singapore  
10 Shenton Way, MAS Building  
Singapore 079117

Submitted via email to: [MAS\\_MCP@mas.gov.sg](mailto:MAS_MCP@mas.gov.sg)

## **RE: Consultation Paper on Recommendations of the Corporate Governance Council**

Dear Sir/Madam,

BlackRock<sup>1</sup> is pleased to have the opportunity to respond to the “Consultation Paper on Recommendations of the Corporate Governance Council” (the Consultation Paper), issued by the Monetary Authority of Singapore (MAS).

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We welcome the opportunity to comment on the issues raised by this consultation paper and will continue to contribute to the thinking of the Monetary Authority of Singapore on any issues that may assist in the final outcome.

### **Executive summary**

BlackRock welcomes the MAS’s initiative to improve the corporate governance disclosures and practices in Singapore through the revision of the Corporate Governance Code. We agree with the MAS’s view that a well-rounded board with the appropriate mix of skills, experience and independence is central to good corporate governance, and support the proposals aimed at strengthening board quality by encouraging board renewal and enhancing board independence.

However, we think more needs to be done in order to achieve a truly meaningful improvement in the quality of corporate governance in Singapore. Such measures, as elaborated in our consultation response enclosed in this letter, include:

1. Provide more detailed guidelines for the Diversity Policy that is proposed to be mandated to all companies to avoid a boiler plate policy that lacks substance;
2. Strengthen independence testing for directors by including provisions that relate to material compensation received by independent directors for services rendered to the company outside of board service as a baseline requirement under the Listing Rules rather than the Practice Guidance;
3. In addition to the separate disclosure for the election of IDs, introduce a process whereby an ID who fails to receive majority support from the minority shareholders is required to stand again for re-election at the following AGM. This process should continue until the ID receives majority support from minority shareholders, and once majority support is achieved the ID would be subject to usual retirement by rotation rules.

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<sup>1</sup> BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

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In regards to disclosure on director election, we believe that boards should undertake an appropriate search for competent directors. Board quality is a factor taken into account in the investment process and currently most Singapore listed companies provide little information to allow investors to assess the process undertaken by the board to identify suitable candidates. A robust process utilising a skills matrix with a focus on the long term in our view will result in a high quality board, and we would like to see boards disclose this information when seeking shareholder approval in appointing directors.

We welcome further discussion on any of the points that we have raised.

Yours faithfully,

**Pru Bennett**  
Head of Investment Stewardship APAC

**Winnie Pun**  
Head of Public Policy APAC

## Consultation Questions

### Question 1: The Council seeks comments on the draft Introduction

BlackRock is supportive of the tone conveyed in the draft introduction and in particular the focus on good corporate governance relating to longer term performance rather than a compliance oriented issue.

### Question 2: The Council seeks comments on its proposed approach to streamline the Code as outlined in Paragraph 3.4. In particular, the Council would like to seek views on:

- a. the 12 Provisions (or Guidelines) set out in Annex E, Table 1 to be shifted to the SGX LR;
- b. the 15 Provisions (or Guidelines) set out in Annex E, Table 2 to be removed from the Code; and
- c. the 24 Provisions (or Guidelines) set out in Annex E, Table 3 to be shifted to the Practice Guidance.

We are supportive of the Council's decision to amend the Code in conjunction with amendments to the SGX Listing Requirements (LR), and support shifting important requirements or baseline market practices into the LR for mandatory compliance.

However, we disagree with the provisions of Guideline 2.3 (c), (d), and (f) of the current Code being shifted to the Practice Guidance.

We believe that all non-executive directors, and in particular, independent directors should be free from material conflicts of interest. Independent directors, their immediate family or related professional company, which has provided material professional services to a company at any time during the last three years, may be placed in a position where they would have to make decisions that may place their interest against those of the shareholders they represent.

Considering that the mandatory independence level of boards in Singapore is set at just one-third of the board, it is critically important to have in place a stringent independence test for independent director candidates. Ideally, rather than shifting the above provisions into a non-binding Practice Guidance, we believe that they should be incorporated into the amended LR.

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**Question 3. The Council seeks views on whether the Practice Guidance provides useful guidance, albeit non-binding, to help companies comply with the Code and adopt best practices. The Council also welcomes suggestions on the topics to be covered by the Practice Guidance.**

We agree that the Practice Guidance provides useful and relevant guidance on best practices.

**Question 4. The Council seeks comments on its proposed approach to rationalise the tests of director independence as outlined in Paragraph 4.3.**

We agree with the principle-based definition of director independence as defined under Paragraph 4.3 of the consultation paper. However, as detailed in our response to Question 2, we do not agree with the currently proposed list of provisions being shifted into the LR and Practice Guidance. Please refer to our response to Question 2.

**Question 5. The Council seeks comments on the recommendation to lower the shareholding threshold for assessing director independence from 10% to 5%, and the adequacy of a three-year transition period.**

We welcome the lowering of the shareholding threshold to 5%, in line with practices of several jurisdictions in the region. A three-year transition is considered reasonable.

**Question 6. The Council seeks comments on the two options: (i) to incorporate the nine-year rule as a hard limit, or (ii) to subject IDs who would like to serve more than nine years to a two-tier vote – all shareholders and non-controlling shareholders (as defined in the SGX LR). Both options will be SGX LR requirements. The Council also seeks views on the adequacy of a three-year transition period.**

A hard limit of 9 years may be arbitrary and could induce a box-ticking approach to director independence testing. We believe a cogent explanation provided by the board or NC on its attestation of the director's independence, together with a two-tier vote disclosure would better facilitate a thoughtful and transparent refreshment of the board.

To strengthen the effectiveness of the proposed disclosure system, and in order to better promote engagement between shareholders and the board, we would like the Council to consider a process whereby any ID that fails to garner majority support of the minority shareholders is required to stand for re-appointment at the following AGM. This process should continue until the said ID receives majority support from minority shareholders. Once majority support is achieved, the ID would then be subject to usual retirement by rotation rules.

**Question 7. The Council seeks comments on the recommendation for companies to separately disclose non-controlling shareholders' votes on appointments and re-appointments of IDs who serve less than nine years.**

BlackRock is supportive of the separate disclosure of non-controlling shareholders' votes on the appointment/re-appointment of independent directors. This would give minority shareholders a greater voice with respect to the election of directors, and also provide greater transparency on shareholder concerns over the board's composition. Ultimately, it would serve as a feedback channel for the board to utilize in its board refreshment plans. For the new disclosure requirement to be effective and relevant, it must be augmented with the process we have proposed above, whereby an ID is required to stand for re-appointment in case his/her appointment fails to generate majority support by the non-controlling shareholders in the following year and henceforth annually until majority support from minority shareholders is achieved.

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In addition, for the new disclosure requirement to serve its intended purpose, we believe it is critical that shareholders get a transparent view of votes cast only by independent shareholders. Per the Listing Manual and the revised Code, the new disclosure is designed to only exclude the controlling shareholder, currently defined as a person who holds directly or indirectly 15% or more of the total number of issued shares or in fact exercises control over a company. It is unclear whether shares held by the nominees, associates, and other related parties of the controlling shareholders that are defined more broadly under the law – such as under the Interested Person Transactions rule - are to be excluded along with that of the controlling shareholders for the disclosure of non-controlling shareholders' votes.

**Question 8. The Council seeks views on any operational issues with the separate disclosure of non-controlling shareholders' votes on ID appointments, and suggestions on how such issues could be addressed.**

It is difficult to assess the magnitude of extra workload that companies would face under the new disclosure system. This would depend on the level of visibility that companies currently have on vote instructions submitted by the controlling shareholder, as well as the logistics involved in sifting out votes from other shareholders that would constitute as indirect/related holdings of the controlling shareholder.

Rather than placing the burden on the company, a more efficient way to approach this would be introducing two separate resolutions that shareholders vote on for the same director nominee. One item would be voted by all shareholders, whereas the second would require the controlling shareholder (including all deemed interests of the controlling shareholder) to abstain from voting, leveraging the current voting regime applicable for approval of related-party transactions.

**Question 9. The Council seeks comments on the recommendation to shift the baseline requirement for at least one-third of the board to comprise IDs to the SGX LR.**

BlackRock is supportive of the proposed change; in addition, we would like the Council to consider increasing the minimum independence requirement from the current one third to majority in light of the predominance of large block shareholders at majority of companies in Singapore.

**Question 10. The Council seeks comments on the recommendation for a majority of the board to comprise IDs, if the Chairman of the board is not independent.**

We are supportive of the proposed change; however, we would like the Council to consider increasing the minimum independence requirement from the current one third to majority irrespective of the independence of the Chairman of the board, in light of the predominance of large block shareholders at majority of companies in Singapore.

**Question 11. The Council seeks comments on the recommendation for a majority of the board to comprise directors with no management or business relationships.**

We are supportive of the proposed change; again however, we would prefer the board to be majority independent, rather than majority non-executive

**Question 12. The Council seeks comments on the recommendations for companies to disclose their board diversity policy and progress made in achieving the board diversity policy (including any objectives set by the companies).**

There is growing research to support the notion that diverse teams drive better decision making. We believe that boards should comprise competent directors who have a diversity of skills and experience and be selected via a transparent process.

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Based on our analysis of reporting on diversity policies we have found the policies to be perfunctory in nature and tend to have a narrow focus on gender diversity. While gender is only one form of diversity it does relate to 50% of the population. In our view, if the board can address gender diversity, other forms of diversity will also be addressed as the culture within the organisation changes.

The Australian Securities Exchanges' Principles of Corporate Governance in 2014 introduced new recommendations on diversity. Prior to the mandating of the new recommendations the level of women on boards at ASX 200 companies was 14%<sup>2</sup> and disclosures were considered perfunctory. Since the introduction of the diversity recommendations the percentage has risen to 26%<sup>3</sup> and disclosures have improved significantly<sup>4</sup>.

Based on the success of the Australian recommendations BlackRock would like to recommend the revised Code include a requirement for the board or relevant committee to:

- Set measurable objectives for achieving its diversity policy – including gender diversity and to assess annually both the objectives and the company's progress in achieving them;
- Disclose at the end of each reporting period the measurable objectives for achieving gender diversity set by the board or relevant committee of the board in accordance with the entity's diversity policy and its progress towards achieving them, and the respective proportions of men and women on the board, in senior executive positions and across the whole organisation (including how the entity has defined "senior executive" for these purposes).

Further, we suggest the Code adopt the ASX Corporate Governance Principles "Suggestions for the content of a diversity policy" as follows:

In addition to addressing the matters referred to above, a listed company's diversity policy could:

1. Articulate the corporate benefits of diversity in a competitive labor market and the importance of being able to attract, retain and motivate employees from the widest possible pool of available talent.
2. Express the organization's commitment to diversity at all levels.
3. Recognize that diversity not only includes gender diversity but also includes matters of age, disability, ethnicity, marital or family status, religious or cultural background, and sexual orientation and gender identity.
4. Emphasize that in order to have a properly functioning diverse workplace, discrimination, harassment, vilification and victimization cannot and will not be tolerated.
5. Ensure that recruitment and selection practices at all levels (from the board downwards) are appropriately structured so that a diverse range of candidates are considered and that there are no conscious or unconscious biases that might discriminate against certain candidates.
6. Identify and implement programs that will assist in the development of a broader and more diverse pool of skilled and experienced employees and that, over time, will prepare them for senior management and board positions.
7. Recognize that employees (female and male) at all levels may have domestic responsibilities and adopt flexible work practices that will assist them to meet those responsibilities.

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<sup>2</sup> Reference BlackRock's 2012 paper

<sup>3</sup> <http://aicd.companydirectors.com.au/advocacy/board-diversity/mixed-news-in-latest-report-on-progress-to-30-per-cent-target>

<sup>4</sup> Reference BlackRock 2016 paper

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BlackRock would also like to see the Code amended to require the board to conduct annual evaluation of the performance of the board and each director and that every third year the evaluation review be conducted by a specialist external facilitator.

Well-functioning boards are critical to effective board discussion and debate which drives better investment decision making.

Further, we would like to suggest the wording in the revised Code be gender neutral. Currently gender references to a director occur in the following places:

- Revised Draft Code
  - Footnote 4 on page 5;
  - At 4.3 (twice)
  - At 6
- Practice Guidance
  - Under the heading Director Competencies
  - Under the heading Multiple Directorships

**Question 13. The Council seeks comments on the recommendations for companies to disclose:**

- a. **the relationship between remuneration and value creation; and**
- b. **the names and remuneration of employees who are substantial shareholders or immediate family of substantial shareholders, where such remuneration exceeds S\$100,000 during the year (revised from S\$50,000), in bands no wider than S\$100,000 (revised from S\$50,000).**

We would like to see companies provide a description of the remuneration policy for senior executives including the following:

- ratio of fixed and performance based remuneration;
- a description of the performance measures used, the rationale behind their use and they are related to strategy and long term performance
- a summary of the methods used in assessing whether the performance condition is satisfied and an explanation of why those methods were chosen

**Question 14. The Council seeks comments on the new Principle and Provisions relating to stakeholder engagement as set out in Paragraph 7.3, and whether there will be practical challenges in implementing them.**

BlackRock supports the strengthening of stakeholder engagement by companies. We also believe that it must be firmly grounded on the principle that effective management of stakeholder interests benefit shareholders over the long-term, and that it must be clearly articulated in the company's strategy as developed under the oversight of the board. The proposed provision does not provide a sufficiently clear framework as to how stakeholder engagement relates to shareholder value, and we would like the Council to consider articulating this context clearly in Paragraph 7.3.

**Question 15. The Council seeks comments on the expectations of companies under the comply-or-explain regime as set out in Paragraph 8.5.**

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This is reasonable and well structured.

**Question 16. The Council seeks comments on the proposed establishment of the CGAC, and the functions and composition of the CGAC as set out in Paragraphs 9.3 to 9.5.**

BlackRock is supportive of the establishment of Corporate Governance Advisory Committee (CGAC) to monitor and advocate good corporate governance practices.

**Question 17. SGX seeks comments on the proposed amendments to the SGX LR described in paragraph 10.2.**

We are generally supportive of all changes with the exception of the introduction of a hard 9-year rule. Please refer to our response to Question 6

## **Conclusion**

We appreciate the opportunity to address and comment on the issues raised by the Consultation Paper on the Corporate Governance Council's Recommendation and will continue to work with MAS on any specific issues which may assist in the discussions of revising the Corporate Governance Code.