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Mr. Ken Lin
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Dear Mr. Lin,

Consultation Paper on The Stewardship Principles for Institutional Investors
("the Consultation")

We welcome the opportunity to respond to the Consultation.

The Asian Corporate Governance Association (ACGA) is a not-for-profit association chartered under the laws of Hong Kong. The association is dedicated to assisting companies and markets across Asia in their effort to improve corporate governance practices. In our educational outreach, we are guided by a practical, long-term approach. ACGA's operations are supported by a membership base of institutional investors, such as public pension funds and fund managers, as well as listed Asian companies, international accounting firms, business associations and universities. ACGA now has more than 100 corporate members, two thirds of which are institutional investors with around US\$24 trillion in assets under management globally. They are also significant investors in the Taiwan market.

Creating a Meaningful Responsible Investment Value Chain

ACGA strongly supports stewardship initiatives such as the one under consideration in Taiwan and the comply-or-explain approach envisaged. For Taiwan to fulfill its potential as a significant Asian capital market, we believe it is crucial for pension funds and public-equity investment managers to play a more engaged role in strengthening the architecture and practices of the market.

In our view, asset owners are ultimately responsible for the mandate they give to external asset managers and/or service providers. Subsequently, asset managers are also responsible for the mandate they give to their external asset managers and/or service providers and how they serve their clients' best interests and report to them (the "investment chain").

For the proposed Principles to be effective, it is critical that domestic institutional investors, both asset owners and asset managers, demonstrate leadership in the

Taiwan market. In the language of the Consultation, Taiwan’s “equity owners” (pension funds, insurance companies, investment trusts, and others) set the tone for domestic investors and their policies are critical to establishing a value chain for “equity managers”. As a result, we believe that the Principles should at least be mandatory for major Taiwanese state-owned equity owners to report on a comply-or-explain basis in order to establish a clear ownership obligation to the asset owners.

In the initial stage of implementation, say the first two years, we believe that there would be merit in allowing equity managers in Taiwan, foreign or local, to adopt the Principles on a voluntary basis. In other words, unlike domestic state-owned pension funds, they would not have a disclosure obligation if they did not follow the Principles. The purpose here is to avoid the problem of tick-the-box compliance, which is highly likely if all equity managers are required to follow the Principles from the start. We hope that this more flexible approach would also create tangible incentives for Taiwan equity managers to define a high level of performance on forms of responsible ownership appropriate to the Taiwan market and their individual business models. This competition in tandem with transparency would then support long-term value-added distinctions between asset owners and asset managers rather than encourage a low standard of safe harbour-style compliance.

We would like to comment on the specific Principles and Guidelines, as follows:

Principle 1: Establish and Disclosure Stewardship Policies

We agree with the principle expressed here, although find the wording in the Guideline unclear. We recommend that further explanation be provided to investors.

Principle 2: Establish and Disclose Policies on Managing Conflict of Interest

We agree with the principle expressed here and recommend investors be asked to provide more disclosure on their internal governance systems and how their boards undertake oversight of conflict-of-interest situations.

Principle 3: Pay Continued Attention to Investee Companies

We also agree with the principle expressed here, however believe the phrase “undisclosed information” should be more clearly defined in Guideline 3.1. We understand it refers to “material non-public information”, which if used by an investor would constitute insider trading. As there may be disagreement over the materiality of undisclosed information, it is important that the Guideline be as specific as possible.

We also recommend that the word “using” be replaced with “trading on”. There may be cases where an investor “uses” non-public information in its assessment of a company’s governance—for example, impressions gained in private meetings with company management—and this helps to inform its overall analysis of the company.

This is a normal process and should be distinguished from trading on inside information.

Principle 4: Appropriate Dialogue and Interaction with Investee Companies

To ensure that the Principles serve as a true catalyst for long-term, value-added responsible ownership, we would stress the importance of engagement between directors of listed companies and investor representatives of a senior level. Active and informed participation from both the corporate and investment communities is crucial to nurturing a strong governance culture in the Taiwan market.

With this in mind, we would like to offer three comments on Principle 4. We recommend the Guidelines be amended to provide greater clarity on the critical role played by directors as the primary stewards of a company, accountable to shareholders and responsible for overseeing the management of relationships with stakeholders. If strengthening company level corporate governance is a desired outcome, we believe that it is important that investor-company engagement be elevated from a middle management-mediated process, often lead by investor relations (IR) personnel, to a dialogue with and informed by the participation of senior executives and board directors (who hold fiduciary responsibilities). Because directors and senior executive managers are often one and the same person in Taiwan companies, it is important that independent directors are involved in this process too.

It should be noted that engagement is most effective when the focus is on specific material issues that influence company strategy and/or performance, rather than generic issues of good corporate governance practice that are already highlighted in corporate governance codes. Moreover, the Code would benefit from an explicit encouragement to investors to engage with companies on the link between director/executive remuneration and the achievement of strategic objectives, and how positive outcomes from the stewardship process be measured. It is critical that stewardship be seen as a means to an end (ie, better performing and governed companies), not an end in itself (ie, meetings for the sake of meetings).

Our second broad area of concern with Principle 4 reflects regulatory barriers that institutional investors often face in different markets when engaging collectively with companies. We note that the Principles do not include the idea that investors “should be willing to act collectively with other investors where appropriate”, as is the case with stewardship codes in the UK and Hong Kong. Nevertheless, in practice, there are likely to be instances where investors wish to collaborate or at least communicate if an issue is of common interest. We therefore believe that it would be prudent for the Financial Supervisory Commission (FSC) to publish an explanatory note on the specific regulations that investors should be aware of in Taiwan on concert parties and related insider trading rules, and the extent to which any of these matters would be triggered by the Stewardship Code.

Our third comment relates to the wording of Guideline 4.2, which states that dialogue “should include but not be limited to discussions with management, making public statements, speaking or submitting motions or casting votes at shareholder meetings”. We recommend that the word “should” be replaced with “may”, since institutional investors are a diverse group and approach stewardship in different ways: while talking to management and voting at shareholder meetings is non-controversial, many investors will balk at the notion that they *should* make public statements or submit motions at meetings.

Principle 5: Establish and Disclose a Clear Policy on Voting and Voting Results

This Principle makes an important contribution to stewardship norms in Taiwan by communicating important standards related to the implementation of effective voting practices. The establishment of transparent policies, a commitment to voting, and reporting of the results are all crucial steps. We also endorse the view that voting is not something that should always be outsourced to a proxy advisor. It is the equity owner or manager which has the stewardship obligation. It is only appropriate that these obligations should be communicated effectively both to clients and the market.

We would like to raise a concern, however, about the mechanics that appear to be implied in Guideline 5.3. The Guideline states that “an institutional investor shall carefully read the handbook for shareholder’s meetings prior to voting” and that an investor “shall judge on its own about how it should exercise its voting rights” even where a proxy advisor has been used, “so as to avoid mechanically voting for or against proposals or abstain”.

While we endorse the principle that investors should vote in an informed and thoughtful manner at each AGM for which they cast votes, certain practical market realities make it difficult for institutional investors, no matter how well intentioned, to do so in every instance. These include: the large number of holdings that institutions often have; the relatively short window between receipt of meeting handbooks and voting deadlines set by global custodian banks; and the fact that some meeting handbooks in Taiwan may not be translated into English. In addition, we believe that diligent investors with well-established voting policies and practices may be justified in delegating some degree of oversight to third-party service providers. We recommend, therefore, that Guideline 5.3 be amended to include language such as, “An institutional investor shall, to the best of its ability, carefully read the handbook”, thereby providing a degree of helpful flexibility.

Principle 6: Periodically Disclose Status of Fulfilment of Stewardship Responsibilities to Clients or Beneficiaries

We support the spirit of Principle 6 and its accompanying guidelines. One specific comment we would make here is that the word “advised” in Guideline 6.2 be changed to “should”, since institutional investors should be disclosing their stewardship activities to their clients and beneficiaries.

More generally we would recommend that in order to ensure a culture of informative disclosure develops, the FSC discourages boilerplate disclosure at the outset and tailored examples of good practice are provided on the TWSE website in due course. We support the decision to encourage web-accessible disclosure at the institution level as well as the decision to ask that any web-based disclosure also be placed on the Corporate Governance Center's designated website. Fliers and mailers should be discouraged or even prohibited.

We would also encourage regulators to review stewardship disclosures and relevant developments in corporate governance on a regular basis. The implementation of the Principles should be assessed annually in a high-level report prepared by the FSC. Material should be assembled in an orderly way on the FSC website to permit stakeholders to review the information in an efficient way. As a reference point, the UK FRC has undertaken an annual review of the disclosures made under the UK Stewardship Code and published the findings in a way that ensures transparency and provides both investors and corporates with useful benchmarks for future activity.

Other comments:

Making the Stewardship Process International

As noted above, we are mindful of the fact that many Taiwan equity investors are active international investors and that foreign investors play a meaningful role in Taiwan securities markets. To ensure that Taiwan's stewardship efforts result in a desired level of engagement internationally, it may be beneficial to consider two steps.

First, we believe that Taiwan-domiciled equity investors should be required to cross-reference their adherence to codes such as those in the UK, Japan, or other leading markets. Generally, there is considerable similarity amongst the Codes in other jurisdictions. Second, we believe that it might be appropriate to permit investors to standardise their reporting (i.e., providing one document for several markets) or to simply refer back to their home country reporting, with a top up on each foreign market. ACGA members have been very responsive to stewardship initiatives across the Asian region, but are also beginning to express caution about their ability to participate directly in initiatives that may be outside of their home or largest markets.

US ERISA regulation

In the International Trend section at the beginning of the document (page 2, paragraph 2), the Code could also include a reference to a recent US ERISA interpretive bulletin that supports the notion that "environmental, social and governance factors may have a direct relationship to the economic and financial



value of an investment, and when they do these factors are proper components of the fiduciary's analysis".¹

We would be pleased to answer any questions you may have regarding our comments above.

Yours truly,

A handwritten signature in blue ink, appearing to read 'J. Allen', is positioned above the typed name.

Jamie Allen
Secretary General

Co-authored by:
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¹ <https://www.federalregister.gov/articles/2015/10/26/2015-27146/interpretive-bulletin-relating-to-the-fiduciary-standard-under-erisa-in-considering-economically>