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May 13, 2023

China Securities Regulatory Commission

Listing department

Focus Place, 19 Jinrong Street, Xicheng District
Beijing, China 100033

Submitted via email to: ssb@csrc.gov.cn

Re: Consultation Paper on Measures for the Administration of Independent Directors of Listed Companies

To whom it may concern:

BlackRock¹ is pleased to have the opportunity to respond to the “Consultation Paper on Measures for the Administration of Independent Directors of Listed Companies” (Measures),² issued by the China Securities Regulatory Commission (CSRC) on April 14, 2023.

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates the responsible growth of capital markets. We appreciate this opportunity to comment on the consultation and seek to contribute to the discussion to help shape a final outcome that balances and protects the financial interests of all relevant stakeholders.

Based on our experience as an investor in the Chinese and global markets, as well as our observations of corporate governance practices, we would like to share the below considerations that, in our view, can help further enhance the effectiveness of independent non-executive directors (INED) and overall corporate governance practices of listed companies. In our experience, sound corporate governance is critical to the success of a company, the protection of investors’ economic interests, and long-term financial value creation.

¹ 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.

² Unless otherwise noted, the terms used in this consultation response would have the same meaning as those used in the Measures.

Enhance transparency and effectiveness of the INED nomination and election processes by institutionalizing nomination committees

The Measures proposed provide further regulation for the INED nomination and election process, including candidate review mechanisms, information disclosure, and INED election processes. Given that these functions fall under the purview of the nomination committee, BlackRock recommends that listed companies establish nomination committees to institutionalize the key aspects of the INED nomination and election process proposed in the Measures, but also to help enhance the transparency, independence, and effectiveness of the entire process.

Below are some of our recommendations regarding the responsibilities of the nomination committee:

Regarding the INED nomination process, in addition to disclosing information such as the review of the qualifications of nominees and nominators as outlined in the Measures, we also suggest considering disclosing in detail the process for selecting and nominating INEDs, such as how the candidate's qualifications and background align with the company's long-term strategy, or how diversity is incorporated into the consideration of the board's overall skills matrix, among other factors. BIS considers diversity broadly and in connection with a company's business model, strategy, location, and size. We may consider professional characteristics, such as a director's industry experience, specialist areas of expertise, and geographic location, as well as demographic characteristics. We see diversity in the board room as a means to promoting diversity of thought and avoiding "group think" in the board's exercise of its responsibilities to advise and oversee management. It would also allow boards to have deeper discussions and make more resilient decisions.

The Measures also emphasize nominees' independence from their nominators. BlackRock welcomes the proposal and recommends further disclosure enhancements. For example, disclosing the "ultimate nominators" of candidates (i.e., the person/entity behind the immediate nominator) can help investors better understand any potential relationship between INEDs and the major shareholders and/or ultimate controller. In addition, when re-nominating an incumbent INED, we recommend disclosing whether the INED has received relatively low support from minority shareholders in previous elections, and if so provide an explanation why the nomination committee is re-nominating this candidate.

Regarding the election process, we note that the Measures encourage contested elections for INEDs, in which case the number of nominees will exceed the number of board seats required. BlackRock recognizes that the use of contested elections to provide shareholders with more choice is well-intentioned. At the same time, based on BlackRock's proxy voting experience in the Chinese market, we are of the view that it is important for the board to clearly indicate its views about the candidates in a contested election. The board, and in particular the nomination committee, have the responsibility to recommend the best candidates (and provide detailed disclosure of the selection process and rationale) after fully considering the company's long-term strategy and business model, rather than simply providing multiple candidates for shareholders to choose from. Simply putting forward candidates for contested elections may be interpreted as the board and the nomination committee not fully and

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effectively performing their duties. In addition, we believe that the performance of both the INEDs and the board should be regularly (e.g., every three years) evaluated by a third-party to ensure board effectiveness. The results of such assessments, as well as action plans to address any issues identified, should be published in periodic reports. We also recommend that past performance evaluations of board members, including INEDs, be effectively linked to recommendations to re-elect them.

Strengthen minority shareholder communication through the Lead INED

BlackRock welcomes the emphasis that the Measures place on INED communication with minority shareholders. In our experience, this is one of the key functions of INEDs and contributes to ensuring the effectiveness of the board. We recommend disclosing in annual reporting, important subjects such as the frequency of communication between INEDs and minority shareholders, and the measures taken to seek and understand shareholders' opinions.

In addition, we note that the Measures propose that listed companies have meetings consisting of only INEDs, who in turn, will elect one director among themselves to convene and preside over such meetings. The convener INED aligns with the concept of the Lead INED that BlackRock encourages.³ The Lead INED plays an important role on the board, including that of facilitating the communication among INEDs, as well as between INEDs and other members of the board. The Lead INED also helps to strengthen the voice of INEDs as a whole, and can provide a balance to the dominant influence of controlling shareholders. We recommend that the Measures consider the gradual increase of the convener INED's scope of role to include the responsibility of communicating with minority shareholders and consider formally introducing the Lead INED role in the future.

Ensure sufficient INED empowerment through appropriate incentives and protection mechanisms

We note that the Measures clearly specify enabling mechanisms for INEDs to effectively perform their duties, including requirements for listed companies and relevant personnel to provide INEDs with the necessary support. These requirements range from financial and human resources to access to information, as well as oversight mechanisms in cases of poor cooperation or obstruction of INEDs performing their duties.

We recommend the Measures adopt more positive incentives to motivate increased INED participation in board governance. INED compensation is one of the key topics that the market has been paying attention to. We encourage companies to better link INEDs' compensation with the long-term performance of the company and shareholders' interests, for example, through granting part of INEDs' compensation in shares in lieu of cash (we do not support granting INEDs' share options, or share awards with performance or time-based vesting conditions. The asymmetric benefit characteristics or time constraints of such stock incentive plans may lead to potential conflicts of interest). In cases where shares are awarded as part of the compensation structure, the company should, in due course, publish a clear INED share ownership policy. The Measures also indicate that listed companies can establish Directors and Officers (D&O) insurance for INED protection. We recognize that D&O insurance can

³ BlackRock. "[BlackRock Investment Stewardship- Proxy voting guidelines for Chinese securities.](#)" January 2023.

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help reduce the risk and provide effective protection for INEDs to perform their duties, which is also conducive to the recruitment of talented INEDs. However, without careful deliberation on specific terms and clauses, D&O insurance may affect INEDs' incentives to perform their duties, thereby weakening their sense of responsibility, and might impact INEDs' accountability. For these reasons, we encourage companies to provide sufficient disclosure on the scope and amount of D&O insurance coverage, as well as the governance mechanisms for review and approval of insurance coverage. We would be concerned if gross negligence or wilful misconduct is in effect included in the coverage.

Considering that corporate governance issues may involve aspects outside INEDs' professional fields, BlackRock welcomes the clarification in the Measures that listed companies should bear the expenses incurred for INEDs to hire professional consultants or exercise other responsibilities. It should be emphasized that professional consultants should be appointed by INEDs rather than management, to avoid conflicts of interest in situations, such as reviewing related party transactions, to ensure that the interests of all shareholders are protected.

Further enhance the definition of independence

We believe that an INED's independence is key to ensuring objectivity in the decision-making of the board and its ability to oversee management. To avoid conflicts of interest or undue influence from related parties, we take the view that independence between INEDs and related parties should be maintained across multiple dimensions such as connection to related parties, a cooling off period, and so on.

We are pleased to note that, compared to the current rules,⁴ the Measures present a more comprehensive assessment of an INED's independence, in particular, taking into consideration the connection between INEDs and the controlling shareholder and ultimate controller. In terms of the cooling-off period, the Measures have retained the 12-month cooling-off period required for listed company personnel to become INEDs, an interval shorter than other major Asian markets.⁵ In our experience, a longer cooling-off period is appropriate to ensure an INED's independence. For instance, the INED should not have been employed within the last five years in an executive capacity by the company or another group company, and should not have been appointed a director immediately after ceasing to hold any such employment. Also, the INED should not have been employed as a principal or employee of a professional adviser or a consultant with a material relationship with the company or another group member within the last three years.⁶

Limit external mandates of INEDs

As the role and expectations of a director are increasingly demanding, directors must be able to commit an appropriate amount of time to board and committee matters. It is important that every director has the capacity to meet all of his/her responsibilities - including when there are unforeseen events. Therefore, in our view, he/she should not take on an excessive number of roles that would impair his/her ability to fulfill his/her duties. As such, we welcome regulatory mechanisms to ensure INEDs have sufficient

⁴ CSRC. "[Rules for Independent Directors of Listed Companies.](#)" January 2022.

⁵ For the cooling-off period required for relevant personnel of listed companies to become independent directors, Singapore requires three years, Hong Kong and South Korea two years.

⁶ BlackRock. "[BlackRock Investment Stewardship - Proxy voting guidelines for Chinese securities.](#)" January 2023.

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time and energy to effectively perform their duties. The Measures propose that, in principle, an INED can serve as INED at a maximum of three domestically listed companies. Currently, INEDs can serve on the boards of up to five listed companies, and are not limited to serving only on the boards of domestically listed companies.

While we understand that this change might be desired for better supervision and management of INEDs' concurrent directorships, we note the following considerations on external board mandates:

First, limiting an INED's external board mandate to three domestically listed companies may be relatively stringent compared to other regions or comparable markets.⁷ BlackRock considers six listed companies to be an appropriate upper limit for a director's external board mandate for the China market. We look to companies to provide a clear explanation of the capacity to contribute in situations where a board candidate is a director serving on more than six public company boards. When assessing the capacity of candidates with concurrent management roles/directorships at multiple listed companies, BlackRock usually considers whether the listed companies are of the same group or operate in related industries.

Moreover, the current scope of the Measures does not include directorships at non-domestically listed companies, or non-independent directorships at listed companies. Such positions would demand a similar amount of time and effort, thus affecting an INED's ability to perform his/her duties. We therefore recommend that the Measures further clarify the scope of an INED's external board mandates, including the position of the mandate. The listed company should disclose all of the external board mandates and positions of INED candidates, so that investors can better assess each INEDs' ability to properly perform their duties.⁸

In addition, to ensure a smooth transition of the INED system reform, if the external board mandates are to be limited to three domestically listed companies, we recommend first ensuring that the relevant support infrastructure (such as an INED database for listed companies) are already in place and mature. Reducing the upper limit of external board mandates implies that INEDs who are currently on the board of five domestically listed companies would need to resign from two, potentially leading to a supply shortage of INED candidates in the short term.

Review the INED tenure policy

The Measures maintain the current tenure limit of six years. Enforcing periodic board refreshment has obvious merits for ensuring independence. However, a six-year tenure limit is one of the most stringent in the APAC region,⁹ and may impact the effectiveness

⁷ For instance, when proposing to elect an INED candidate who will be holding their seventh (or more) listed company directorship, the Stock Exchange of Hong Kong requires boards to disclose why the board believes the individual would still be able to devote sufficient time to the board. See [Listing Rules, Appendix 14, B.3.4\(b\)](#).

⁸ For instance, in some developed markets, investors believe further limits should be placed on external board mandates of directors of listed companies, i.e., the director should not undertake non-executive directorship at more than one listed company.

⁹ At a maximum of six years, China's INED tenure limit is one of the most stringent within APAC. South Korea also requires tenure to be capped at six years, or nine years if directors serve in another affiliated company within the same conglomerate group. Hong Kong and Taiwan have no hard limit on tenure, though an explanation is required from companies if their INEDs serve more than nine years. In Singapore, a nine-year tenure limit is mandatory, effective at issuers' annual general meetings held for the financial year ending on or after December 31, 2023. A nine-year tenure

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of INEDs and the board. Such impacts may include the board's inability to retain talent beyond the tenure limit, and a lack of board continuity if INEDs step down around the same time or, of even more concern, simultaneously upon expiration of tenure. There is also a real risk of insufficient checks and balances on the board especially when executive directors have served for an extended period of time and the INEDs are seen as having less authority or credibility as a result of their lack of experience.

From our own observations of the Chinese market, as well as insights gained through engaging with companies, we have noted that in several instances, the tenure limit would require an INED to step down just when an adequate understanding of the company's business and culture has been developed. Listed companies would not be able to retain and maximize the use of their INEDs' expertise, and would need to frequently seek new INED candidates suitable to the company's needs.

As such, there is an opportunity to review the current INED tenure policy to address overall board continuity and talent retention issues. Comparing to practices in other markets, a nine to twelve-year tenure limit can reasonably balance the benefits from the experience of longer-serving members and fresh perspectives of newer members.

BlackRock is supportive of efforts to promote a more effective INED system that could empower INEDs to be fit-for-purpose, and welcomes the public consultation on the Measures. We hope that our considerations can contribute to the CSRC's work and the further enhancement of corporate governance in China's capital market.

Regards,

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limit is also mandatory in the Philippines; companies may still retain INEDs as non-independent directors, though the board should provide meritorious justification(s) and seek shareholders' approval during the annual shareholders' meeting. The nine-year tenure limit is recommended in Thailand. For Malaysia, a 12-year cap will become effective by June 1, 2023; all long-serving independent directors impacted by this enhancement must resign or be redesignated as non-independent directors by June 1, 2023. India has hard tenure cap at ten years although exempting those appointed before 2014. Japan, Australia, and New Zealand have no tenure limit for INEDs.