CGI GLASS LEWIS

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Regulatory Policy & Advisory
Bursa Malaysia Securities Berhad
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Re: Public Comment on the Public Consultation Paper on Proposed Amendments to the Main Market and ACE Market Listing Requirements in Relation to New Issue of Securities and Others.

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on the Consultation Paper (the "Paper") on Proposed Amendments to the Main Market and ACE Market Listing Requirements in Relation to New Issue of Securities and Others. The Paper seeks to update and enhance certain practices relating to both the Main Market and ACE Market Listing Requirements.

Founded in 2003, Glass Lewis is a leading, independent governance services firm that provides proxy research and vote management services to more than 1,300 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis' Web-based vote management system, ViewPoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record-keep, audit, report and disclose their proxy votes.

From its offices in North America, Europe, and Australia, Glass Lewis' 360+ person team provides research and voting services to institutional investors globally that collectively manage more than US$35 trillion. Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the

determination of voting recommendations for specific shareholder meetings.

The responses provided below are not meant to be exhaustive. Instead, they are designed to address what Glass Lewis sees particularly relevant issues raised in the Paper. Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted,

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Enclosure

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Proposal 1.4 – Imposing the 50% Limit to an Exercise or Conversion of Convertible Equity Securities

Glass Lewis generally views the issuing of equity securities or the exercise or conversion of such securities into shares as a capital management function generally best left in the hands of management, overseen by the board and subject to shareholder approval in compliance with regulatory requirements. Our main concerns relating to the issuance of convertible securities revolve around the potential dilutive impact to shareholders on the exercising or conversion of securities into shares. In this case, we support the proposed limit of 50% of a company's issued shares, on the exercising or conversion of convertible equity securities, as it is consistent with the existing treatment of warrants under the current listing rules and, as such, removes a capital management loophole that currently enables companies to conduct regulatory arbitrage.

However, we note that in limited or extreme circumstances, a company may need to issue additional capital to avoid insolvency, and therefore, the 50% limit may be too low of a limit. In such instances, companies should be afforded the ability to offer convertible securities, provided shareholders are also able to vote on a mechanism similar to the Whitewash Waiver as found the Rules on Take-Overs, Mergers and Compulsory Acquisitions. Specifically, a shareholder vote on a Whitewash would provide shareholders with the knowledge and understanding that their holdings in a company may be diluted, or there could be a change of control, should securities be converted into paid-up shares. To aid in this potential shareholder vote, companies should issue a circular to shareholders which explains the need for the additional capital and consequences of shareholders supporting or opposing the capital issuances. Likewise, the circular should include a report from the company's auditor or an independent financial adviser indicating the company's financial position and their opinion on whether shareholders should support the issuance of securities which could be converted into paid-up shares exceeding 50% of a company's issued share capital. Such a circular would significantly aid shareholders' ability to make an informed decision on whether the issuance of convertible securities is necessary as well as the possible consequences of issuing convertible securities.

Proposal 2.1 – Enhancing Transparency on Material Loan Covenants Linked to Controlling Shareholders

Glass Lewis supports additional measures to ensure financial transparency by controlling shareholders for listed companies. In this

case, shareholders should be aware of the borrowings, loans or covenants that controlling shareholders may enter, especially if the controlling shareholders provide shares of a company as collateral. As there is a risk of borrowers not repaying their debts, where this could result in a change in a company's shareholders, then other minority shareholders should be aware of agreements where a controlling shareholders' stake can be taken over by a creditor. Further, by disclosing the state of borrowings by controlling shareholders, other minority shareholders can gain a "fuller picture" of the financial state of a company and whether its controlling shareholders are also financially stable.

For a recent comparison, India strengthened its regulations relating to the pledging or encumbering of shares by major shareholders, commonly known as promoter directors or Persons Acting in Concert. Specifically, the Securities and Exchange Board of India ("SEBI") released new regulations in July 2019 to require companies to disclose encumbrances on shares by a company's promoters.[1] Moreover, SEBI released a follow-up circular in August requiring promoters to disclose if their encumbered shares are equal to or exceed: (a) 50% of their shareholdings in a the company; or (b) 20% of the total share capital of the company" while stock exchanges are required to disclose such information.[2]

SEBI's decision to enact new regulations may have been influenced by a report written by CRISIL, which identified risks associated with promoters encumbering shares in order to secure borrowings. This includes potential lacking in liquidity by promoters, while volatility in markets could even lead to decreases in the value of a company's shares, which could result in higher risks for refinancing and possible default.[3]

Furthermore, as related to Proposal 1.4, there may be instances where a company needs to issue convertible securities that could be converted up to 50% of a company's issued share capital. Where controlling shareholders have encumbered their shares or the issuance of convertible debt requires the encumbrance of a controlling shareholders' share holdings, then all shareholders should be made aware of any potential linking of a company's shares to debt covenants.

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[1] Securities and Exchange Board of India. "Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2019." Mumbai. July 29, 2019.
[2] Securities and Exchange Board of India. "Circular: SEBI/HO/CFD/DCR1/CIR/P/2019/90." Mumbai. August 7, 2019.
[3] CRISIL. Covering the Pledge. March 25, 2019. Pages 7 and 5.

Lastly, we acknowledge the definition of material information as provided in Listing Rule 9.03. However, shareholders would benefit from further guidance on how companies would make a materiality judgement in relation to loan covenant.

Proposal 2.2 – Enhancing Transparency and Regularization Requirements for Unlisted Subsidiaries or Associated Companies Undertaking Corporate Rescue Mechanisms Pursuant to the Companies Act, 2016

Where a company and/or its subsidiaries are facing liquidity issues or other situations which may result in restructuring, insolvency, or worse, shareholders should be notified of any steps that may be taken to addresses such situations. While the Companies Act, 2016, offers the alternatives of Judicial Management ("JM") or Corporate Voluntary Arrangement ("CVA") regardless of which option is chosen, for transparency purposes, Glass Lewis believes that the market must be informed of instances where companies are involved in JM or CVA. This is especially the case where the JM or CVA process could lead to debt resolution processes with the possibility of changes in control of a subsidiary or even to a company itself when additional equity must be issued to satisfy the obligations of a company's creditors.

As for the announcement of a judicial manager being appointed, which may be in addition to a receiver, manager, liquidator, special administrator, or such other person, Glass Lewis supports the disclosure of the appointment of such individuals. In fact, this is already being done in India following the adoption of India's Insolvency and Bankruptcy Code, 2016. Furthermore, SEBI's Listing Obligations and Disclosure Requirements require companies to disclose events that relate to the corporate insolvency resolution process ("CIRP"), including the appointment of an Interim Resolution Professional, meetings or creditors, as well as briefs of resolution plans.[4]

As for the PN17/GN3 criteria, Glass Lewis supports the additional disclosure for the appointment of a judicial manager as part of the expanded PN17/GN3 criteria disclosure. By being transparent about the status of a company's financial health, or that of its subsidiaries or associated companies, investors will be able to make informed investment decisions.

[4] Securities and Exchange Board of India. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last Amended on July 29, 2019]. Schedule III, Part A, Section A(16).

Proposals 2.3 and 2.4 – Increasing the Cooling-off Period for Independent Directors and Subjecting Non-Independent Directors to Cooling-Off Period

Glass Lewis believes that board independence is crucial for ensuring proper oversight of management. In assessing a director's independence, it is important to recognize that directors may have had relationships with a company, whether by way of former employment, share ownership, or through material relationships. Although the current Listing Rules prescribe a two-year lookback for employment, share ownership or material relationships, we believe that lookback periods for past employment should be at least five years, and three years for all other relationships.

In assessing relationships other than former employment, we view a look-back period of three years as enough to determine independence as the relationship would not be current. Further, temporal separation of three years would reduce instances of directors having a business or personal interest outcome of the decisions they may need to make as a director.

For independent directors who were previously an employee of a company or its subsidiaries or holding company, we believe that a five-year lookback period should be adopted over a two-year lookback. The lengthened period is preferable to ensure a proper separation from the cessation of employment to becoming an independent director. Further, the unwinding of conflicting relationships between former management and board members is more likely to be complete and final after five years.

To this end, where a director is continually re-designated from an executive director to an independent director, we believe they should leave the board for a period of three years, as proposed in Proposal 2.4, before becoming an independent director. By leaving the board, a director may further distance themselves from other long-serving directors and relationships that could otherwise diminish their independence.

Likewise, in recognition of the Malaysian Code on Corporate Governance 2017 (the "Code"), and the provisions relating to independent director tenure, cooling-off periods should be specified for directors who have served in excess of 9 years per the Code.[5] Notably,

[5] Practice 4.2, Malaysian Code on Corporate Governance. The Code also provides for the one-tier and two-tier voting process to allow independent directors serving in excess of 9 or 12 years to remain as independent directors. A cooling-off period of

Bursa Malaysia can look to India, which uses a three-year cooling-off period for directors to be considered again if they previously served in excess of 10 years or two consecutive terms, provided they are not associated with a company in either a direct or indirect capacity.[6] By specifying a cooling-off period for tenured independent directors, this may serve as a timeline for companies to consider how independent directors may regain their independence following long tenures of service.

three years should only take effect upon a tenured director leaving a board, regardless of the outcome of the one-tier or two-tier vote to retain that director as an independent director.

[6] Section 149(11), Companies Act, 2013.