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VIA EMAIL

MSCI Equity Index Committee
7 World Trade Center
250 Greenwich Street
New York, NY 10007

Re: Consultation on the treatment of unequal voting structures in the MSCI equity indexes

Ladies and Gentlemen:

We welcome the opportunity to comment on MSCI's *Consultation on the Treatment of Unequal Voting Structures in the MSCI Equity Indexes*.

We recognize the importance of continued focus on the question of multiple-class share structures, but we believe the approach in the proposal is highly problematic. The relationship between equity interests and voting rights is a complex topic. The composition of broad equity market indexes is the wrong mechanism to address it, and "one share one vote" is the wrong principle. Index composition is too blunt an instrument to achieve an appropriate balance of the interests at play.

The purpose of this letter, however, is to focus on one feature of the MSCI proposal that may otherwise escape attention, which is the impact on Latin American equities. Cleary Gottlieb is the leading international law firm in Latin America, with more than 50 years of experience in the region. We are regular counsel in securities matters to many of the largest companies in Latin America, including more than 20 with U.S.-listed equity. Many of our clients would be adversely affected by MSCI's proposal because their participation in MSCI's equity index would be either reduced or eliminated.

Dual-class structures are more common in Latin America than in the United States, so MSCI's proposal would have more significant consequences for Latin American markets than in the United States. Moreover, the market context is different in important respects, and in particular (1) governments still play a significant role as shareholders in some countries, often with a different class of stock, and (2) most major publicly traded companies in the region have controlling shareholders. As a result:

- The proposal would underweight major Latin American public companies, and particularly some of the largest companies in the region. It would exaggerate the underweighting, because the proposal ignores the specific features of classes with different voting rights.

- The overweighting of single-class companies is unjustified. The prevalence of controlling shareholders means that there is no clear correlation between single-class capital structure and enhanced rights for public shareholders. Indeed, under local law and listing rules holders of a non-voting class often have special rights that minority holders of a voting class may not have.

We believe these consequences are essentially accidental, since the proposal is driven by concerns specific to the U.S. market. The proposal also fails to take into account the alternative shareholder protections provided by law in many Latin American countries, and the specific characteristics of classes other than common stock in each jurisdiction. MSCI should instead consider following the example of the U.S. Securities and Exchange Commission (SEC) and the principal U.S. securities exchanges, which broadly defer to home country corporate governance rules.

Impact on Latin American Markets

Dual-class structures are particularly common in Latin America, where business groups controlled by founders, governments or families are more prevalent. Under MSCI's proposal, companies with dual-class share structures in this region will be disproportionately impacted. According to data contained in the proposal, securities representing 20% of the weight of the MSCI Emerging Markets Index will be impacted by this proposal, nearly double the global average of 11.2%. In Latin America, companies with unequal voting structures represent 55% of the weight of indexed companies in Brazil, 33% in Mexico, and 82% in Colombia. In North America, however, companies with unequal voting structures represent only 11% of the index weight. As a result, Latin American in general, and certain Latin American jurisdictions in particular, would be disproportionately affected by MSCI's proposal.

Under MSCI's proposal, companies with multiple-class share structures listed in the Emerging Markets Index will be singled out and adversely impacted. Given that in this market context most listed companies have controlling shareholders, the "one share, one vote" principle adopted by single-class companies may not provide additional protections to minority shareholders.

The proposal also ignores the specific features of multiple class structures in different jurisdictions. In the U.S. market, typical multiple-class structures lend themselves to analyzing each class as either common, high-vote, low-vote or non-voting. Practices in Latin America are different. For example, many Mexican companies have a class of shares that (a) elects a specific number of directors, (b) votes on some matters presented to shareholders but not others, and (c) has additional rights that other classes do not have (some of which are described in the following paragraphs). The MSCI proposal treats such a class as non-voting, assigning it zero weight, which seriously misrepresents its actual voting power.

Alternative Shareholder Protections in Latin America

"One share, one vote" is not the only mechanism for ensuring that shareholders' interests are protected; law and regulations as well as listing requirements of local stock exchanges may also guarantee shareholders protections beyond the power of their vote. The following are a few examples for the two largest jurisdictions in the region.

In Brazil, a company with an unequal voting structure may not have more than 50% of its equity capital in the form of non-voting stock, and it must provide non-voting shareholders with a dividend priority or a residual claim priority. Non-voting shareholders representing 10% of the equity capital of a publicly held company have the right to remove and elect a member of the board of directors. Rights of non-voting shareholders can only be modified with the approval of the majority of holders of non-voting shares, in addition to approval by the majority of voting share. These are minimum requirements, and some companies have adopted stronger requirements in their bylaws to protect non-controlling shareholders.

In Mexico, a company with an unequal voting structure may not have more than 25% of its equity capital in non-voting or limited-voting shares without regulatory approval. Under Mexican law, minority shareholders of a publicly-traded company have extensive specific rights based on their holdings of voting, limited-voting or non-voting shares. For example, (a) shareholders representing 5% of the shares have the right to initiate a shareholder derivative suit against the directors for breach of fiduciary duties, (b) shareholders representing 10% of the shares can request a shareholders' meeting, and the postponement of a vote if prior disclosures are insufficient, and (c) shareholders can appoint and revoke one board member and an alternate for every 10% of shares owned (and a number of companies allow for more than one director for every 10%). Shareholders also have special class voting rights (including 95% approval of all shares to delist and approval by a shareholders' meeting of any transaction that involves 20% or more of the company's consolidated assets), and related party transactions require approval by disinterested shareholders or by a committee of independent directors.

The specific calculation methods in the MSCI proposal take no account of the nuances in shareholder rights that arise from provisions such as these.

Deference to Home Country Rules

MSCI should consider the longstanding tradition of deference to foreign standards by the SEC and the principal U.S. securities exchanges. SEC disclosure and accounting rules have several significant accommodations for foreign issuers, including on matters of fundamental importance to shareholders like acceptance of IFRS financial statements, dramatically different rules on executive compensation, and a complete exemption from the proxy rules.

Similarly, the New York Stock Exchange (NYSE) recognizes that foreign private issuers are subject to their home country corporate governance rules. A listed foreign private issuer is only required to have an independent audit committee, disclose significant differences in corporate governance practices, notify the NYSE of any non-compliance, and submit an executed written affirmation. This practice of deference also recognizes that home country rules are created to suit each country's specific regulatory history and environment, and that where corporate governance principles are concerned there are no one size fits all solutions across borders.

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We thank you for your willingness to consider our input on MSCI's *Consultation on the Treatment of Unequal Voting Structures in the MSCI Equity Indexes*. If you have any questions regarding our comments or would like to discuss further, please contact Nicolas Grabar at +1 (212) 225-2414.

Sincerely,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

Nicolas Grabar, a Partner