Via Electronic Delivery

June 2, 2022

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing
& Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing
& Urban Affairs
United States Senate
Washington, DC 20510

Re: Jumpstart our Business Startups Act of 2022

Dear Chairman Brown and Ranking Member Toomey:

On behalf of the Council of Institutional Investors (CII), we write to encourage enactment of legislation that many investors and other market participants believe would "maintain America's position as a global leader in active and efficient capital markets" by enhancing corporate accountability to long-term investors.[1]

More specifically, CII recommends that the Committee on Banking, Housing & Urban Affairs (Banking Committee) consider pursuing draft legislation, which we have entitled the "Multi-Class Accountability Act" (Multi-Class Act).[2] Following a discussion of the basis for our support for the Multi-Class Act, the remainder of this letter addresses CII's views on several of the provisions contained in the "Jumpstart our Business Startups Act of 2022" (JOBS Act 4.0) for which we and many of our members have strongly held views.[3]

CII is a nonprofit, nonpartisan association of United States (U.S.) public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately $4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than 15 million participants – true "Main Street" investors through their pension funds. Our associate members include non-U.S. asset

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[1] The JOBS Act 4.0, Legislation to Accelerate Economic Growth and Spur Job Creation, S. Banking Comm. Republican Staff (Apr. 2022), https://www.banking.senate.gov/imo/media/doc/the_jobs_act_4.0onepager.pdf.
[2] To amend the Securities Exchange Act of 1934 to improve the governance of multi-class stock companies, and for other purposes, H.R.___, 117th Cong. (discussion draft Mar. 26, 2022), *available at* https://financialservices.house.gov/uploadedfiles/033022_bills-117pih-hr___toamendthesecuri.pdf (hereinafter *Multi-Class Act*).
[3] Jumpstart our Business Startups Act of 2022, S. ___, 117th Cong. (draft Apr. 2022), *available at* https://www.banking.senate.gov/imo/media/doc/the_jobs_act_4.0discussiondraft.pdf.

owners with about $4 trillion in assets, and a range of asset managers with more than $40 trillion in assets under management.[4]

Multi-Class Act

As the leading voice for corporate governance, CII believes the provisions in the Multi-Class Act, which is under consideration by the House Committee on Financial Services (Committee on Financial Services), are consistent with U.S. corporate governance principles[5] and reflect the sound legislative policy recommendations of the U.S. Securities and Exchange Commission's (SEC or Commission) Office of the Investor Advocate.[6] Those recommendations include establishing minimum listing standards for the stock exchanges in a core area of corporate governance, multiple classes of stock with unequal voting rights.[7]

The provisions in the Multi-Class Act also importantly reallocate the division of authority between the SEC and the exchanges for adopting future corporate governance listing standards in light of the exchanges' "acute conflict of interest between their commercial business interests and regulatory obligations"[8]

We believe the provisions in the Multi-Class Act offer a simple, flexible solution to ensure investors have a voice at the companies in their portfolios, which strengthens companies' accountability to shareholders and their communities.[9] While the provisions in the Multi-Class Act encourage alignment with the one-share, one-vote principle, they would allow companies to

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[4] For more information about the Council of Institutional Investors ("CII"), including its board and members, please visit CII's website at http://www.cii.org.
[5] *See* Council of Institutional Investors, Corporate Governance Policies § 3.3 Voting Rights (updated Sept. 22, 2021), https://www.cii.org/files/09_22_21_corp_gov_policies.pdf ("Each share of common stock should have one vote [and] [c]orporations should not have classes of common stock with disparate voting rights"); Council of Institutional Investors, CII Policies, Investor Expectations for Newly Listed Companies (adopted Mar. 23, 2016), https://www.cii.org/policies_other_issues#newly_public_companies ("Upon going public, a company should have a 'one share, one vote' structure . . . [and] CII expects newly public companies without such provisions to commit to their adoption over a reasonably limited period through sunset mechanisms.").
[6] U.S. Securities and Exchange Commission, Office of the Investor Advocate, Report of Activities, Fiscal Year 2020 at 2, 10-11 (filed Dec. 29, 2020), https://www.sec.gov/advocate/reports-and-publications/annual-reports/sec-investor-advocate-report-activities-2020.
[7] *Id.* at 10 ("If a company chooses to issue multiple classes of stock with differing voting rights, then the dual-class stock must contain a 'sunset' provision.").
[8] Testimony of Ellen Greene, Managing Director, Equity and Options Market Structure, Securities Industry Financial Markets Association (SIFMA), Before the U.S. House of Representatives, Committee on Financial Services, Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Hearing Entitled: "Oversight of America's Stock Exchanges: Examining their Role in our Economy" 5 (Mar. 30, 2022), https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-greenee-20220330.pdf.
[9] *See, e.g.*, Letter from Lucy Nussbaum, Senior Research Analyst, Council of Institutional Investors to The Honorable Maxine Waters, Chairwoman & The Honorable Patrick T. McHenry, Ranking Member, Committee on Financial Services, United States House of Representatives et al. 2 (Apr. 5, 2022), https://www.cii.org/files/April%205%202022%20Letter%20to%20%20HCFS%20on%20hearing%20and%20bill%20final.pdf ("The Multi-class Bill offers a simple, flexible solution to ensure investors have a voice at the companies in their portfolios, which strengthens companies' accountability to shareholders and their communities.").

go public with multi-class stock, and would allow these structures to stay in place in perpetuity so long as each class of investors vote on a one share, one vote basis at least once every seven years to keep the multi-class structure in place.[10] In addition, and importantly, companies with multi-class stock that currently trade on exchanges would not be affected by the provisions of the Multi-Class Act.

Finally, the Multi-Class Act would give the Commission clear statutory authority to set minimum listing standards that apply to all exchanges and associations[11] in order to more efficiently "update outdated" corporate governance listing standards on a going-forward basis when necessary to enhance investor protection.[12] As the SEC's Office of Investor Advocate explained:

> [I]t is time to revisit this allocation of responsibility. The primary listing exchanges are now for-profit entities that, unlike their prior mutual ownership structure, have an inherent conflict of interest between protecting investors and generating business revenue from listed issuer fees. Our Office has long been concerned about an apparent race-to-the-bottom in this area—with the primary listing exchanges proposing to voluntarily lower their qualitative corporate governance standards in an effort to attract issuers, but at the expense of the protections the original standards provided investors.
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> If these for-profit businesses are to be entrusted with regulatory responsibility for corporate governance standards, it would make sense for Congress to . . . give the Commission clear statutory authority to set minimum listing standards that apply to all exchanges.[13]

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[10] *See Multi-Class Act*, *supra* note 2, § 1(a)(2)("to require the elimination of any distinctions between share ownership and voting power of shares described under paragraph (1) no later than the end of the 7-year period following the date of the initial public offering of the issuer, except that such 7-year period may be extended for additional 7-year periods if the holders of each class of stock, voting separately and by an affirmative vote of the majority of the shares of each class, approve each such extension"); *see also* Commissioner Robert J. Jackson Jr., Speech, Perpetual Dual-Class Stock: The Case Against Corporate Royalty (Feb. 15, 2018), https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty ("finding that seven or more years out from their IPOs, firms with perpetual dual-class stock trade at a significant discount to those with sunset provisions"); Martijn Cremers et al., The Life Cycle of Dual-Class Firm Valuation 3 (ECGI, Working Paper No. 550/2018), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062895 ("while dual-class companies tend to have a value premium for a while after making their public debut, that benefit fades to a discount in six to nine years").

[11] *See Multi-Class Act, supra* note 2, § 2(e)(1) ("The Commission shall have the authority to issue such rules and regulations governing national securities exchanges and national securities associations as the Commission determines necessary or appropriate in the public interest for the protection of investors or to promote fair corporate suffrage.").

[12] The JOBS Act 4.0, Legislation to Accelerate Economic Growth and Spur Job Creation, S. Banking Comm. Republican Staff; s*ee* U.S. Securities and Exchange Commission, Office of the Investor Advocate, Report of Activities, Fiscal Year 2020 at 10.

[13] U.S. Securities and Exchange Commission, Office of the Investor Advocate, Report of Activities, Fiscal Year 2020 at 10.

We strongly agree with the recent Congressional testimony of NYU School of Law Professor and former SEC Commissioner Robert J. Jackson, Jr., who stated that the Multi-Class Act "offers an attractive balance between accountability and the freedom visionary founders need to grow our most exciting young companies."[14] Professor Jackson explained:

> For decades, the New York Stock Exchange refused even to list companies with nonvoting shares. But after lobbying from corporate insiders in the 1980s, NYSE reversed course, and today companies crucial to the American economy and society are controlled through dual-class structures. The practice has gone so far as to allow insiders to pass control of American public companies to their chosen heirs—America's own corporate royalty. The Council of Institutional Investors . . . petitioned the exchanges years ago to place some limit on the use of dual class. The exchanges have done nothing to address it.
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> . . . Since for-profit stock exchanges pursue listings, not investor protection, they cannot be expected to adopt such limits on their own. Putting to one side the optimal approach to this question, all should agree that exchanges have no economic incentive to limit the use of dual class.[15]

We note that a substantially similar version of the Multi-Class Act[16] issued by the Committee on Financial Services last October was supported broadly by the investor community as well as by many other organizations.[17] As one example, an October 2021 letter from the Ohio Public

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[14] Testimony of Professor Robert J. Jackson, Jr., New York University School of Law, Before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets of the Committee on Financial Services, United States House of Representatives, Hearing on Oversight of America's Stock Exchanges: Examining their Role in our Economy 7 (Mar. 30, 2022), https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-jacksonr-20220330.pdf.

[15] *Id.* (footnotes omitted).

[16] *See* To amend the Securities Exchange Act of 1934 to improve the governance of multi-class stock companies, to require issuers to make annual diversity disclosures, and for other purposes, H.R.___, 117th Cong. (discussion draft Sept. 24, 2021), https://financialservices.house.gov/uploadedfiles/bills-117pih-improvinggovernanceatmulti-classstockcompanies.pdf.

[17] *See* Letter from Americans For Financial Reform to Chairwoman Waters, Ranking Member McHenry, and Members of the Committee (Oct. 5, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/10_05_21-AFR-Support-Letter-to-HFSC-for-Hearing.pdf; Letter from Marcie Frost, Chief Executive Officer, California Public Employees' Retirement System to The Honorable Maxine Waters, Chair, House Committee on Financial Services, U.S. House of Representatives (Oct. 1, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/Letter%20to%20HFSC%20Final.pdf; Letter from Aeisha Mastagni, Portfolio Manager, Sustainable Investment and Stewardship Strategies, California State Teachers' Retirement System to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services, United States House of Representatives et al. (Oct. 5, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/House%20FSC%20CII%20Draft%20Bill%20Comment%20Letter%20on%20Dual-Class%20Shares%20and%20Diversity%20Final.pdf; Letter from Dylan Bruce, Financial Services Counsel, Consumer Federation of America to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services et al. (Oct. 5, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/CFA-Supports-House-Bills-to-Strengthen-Investor-Protections-Letter-10_5_21.pdf; Letter from Tyler Gellasch, Executive Director, Healthy Markets

Employees Retirement System, which has approximately $113 billion in assets under management and more than 1.1 million active, inactive and retired members, explained:

> The Draft Bill provides a reasonable initial period of seven years during which management may pursue their goals, but then provides shareholders with the discretion regarding whether that period should be extended. OPERS believes this strikes an appropriate balance between corporate and shareholder interests and creates opportunities for constructive engagement. As such, OPERS strongly supports this commonsense reform.[18]

More recently, an April letter from the California State Teachers' Retirement System (CalSTRS), the largest educator-only pension fund in the world with a global investment portfolio valued at

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Association to The Honorable Maxine Waters, Chairwoman, House Committee on Financial Services et al. (Oct. 5, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/HMA%20Letter-to-HFSC-re-Markup-10-5-2021-1.pdf; Letter from Joanne Beatty, Director – Engagement, Hermes Equity Ownership Services Limited to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services, United States House of Representatives et al. (Oct. 11, 2021), https://www.cii.org//Files/Hermes-CII%20governance%20and%20diversity%20disclosure-October%202021-PUBLIC.pdf; Letter from Jonathan Grabel, Chief Investment Officer, The Los Angeles County Employees Retirement Association to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services, United States House of Representatives et al. (Oct. 4, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/LACERA%20letter%20to%20House%20Financial%20Services%20Committe%20regarding%20CII%20bill%209%204%202021.pdf; Letter from Melanie Senter Lubin, NASAA President, Maryland Securities Commissioner to The Honorable Maxine Waters, Chairwoman, House Committee on Financial Services et al. (Oct. 4, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/NASAA-Letter-to-HFSC-Re-10_5_21-Hearing-FINAL.pdf; Letter from Thomas P. DiNapoli, State of New York, Office of the State Comptroller to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services, United States House of Representatives et al. (Oct. 1, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/Letter%20from%20NYS%20Comptroller%20Thomas%20P_%20DiNapoli.pdf; Letter from Karen E. Carraher, Executive Director, Ohio Public Employees Retirement System to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services et al. (Oct. 1, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/OPERS%20Letter%20-%20Financial%20Services%20Committee%20-%20Draft%20Bill%20-%2010012021.pdf; Letter from Public Citizen to Chair Maxine Waters, Honorable Members of the Committee, U.S. House of Representatives Financial Services Committee (Oct. 5, 2021), https://www.cii.org//Files/Public%20Citizen%20comment%20on%20HFS%20bills%20Oct%205%20%202021.pdf; Letter from Michael Marshall, Head of Sustainable Ownership, Railpen et al. to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services, United States House of Representatives et al. (Oct. 1, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/Railpen%20letter_SEC%20Bill%20011021%20(002).pdf; Letter from Theresa J. Whitmarsh, Chief Executive Officer, Washington State Investment Board to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services, U.S. House of Representatives et al. (Oct. 14, 2021), https://www.cii.org//Files/WSIB_%20United%20States%20House%20Committee%20on%20Financial%20Services%20re%20CII%20legislation%20proposal%20_WSIB%20101421.pdf.

[18] Letter from Karen E. Carraher, Executive Director, Ohio Public Employees Retirement System to The Honorable Maxine Waters, Chairwoman, Committee on Financial Services et al. at 2.

approximately $327 billion and with more than 975,000 beneficiaries, publicly supported the Multi-Class Act (CalSTRS Letter).[19] The CalSTRS Letter explained:

> One share, one vote is foundational to good corporate governance. CalSTRS' principles reflect that an essential right is the ability to vote on companies' governing structures. A shareholder vote is an important check and balance in the investor – issuer relationship, particularly for many investors that use passive investment strategies for significant portions of their portfolios and cannot simply avoid purchasing dual-class stock companies. CalSTRS fundamentally believes shareholders should have a say in transactions that materially affect their investments. A single class of common stock with equal voting rights ensures accountability to shareholders and the community. Public shareowners like CalSTRS rely on the board of directors they elect to be engaged and to push for change when management is failing.
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> As more companies have gone public with unequal voting rights, global competition has continued to erode corporate governance standards. Time-based sunsets on U.S. exchanges could help stop this "race to the bottom" pressure, which presents a meaningful risk to long-term performance and could have reputational risks for the U.S. financial markets, which lag behind other markets in maintaining high governance standards.
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> We once again express our support for provisions that align with our one-share, one-vote principle within CalSTRS' Corporate Governance Principles. We welcome the Committee's and the United States Congress' efforts to promptly adopt legislation consistent with the . . . Discussion Draft bill. We welcome the opportunity to work with you and your staff on this issue of critical importance to CalSTRS, other long-term investors, and the capital markets.[20]

As indicated, CII believes the enactment of the provisions of the Multi-Class Act would maintain and enhance America's position as a global leader in active and efficient markets by establishing high governance standards for listed companies. We note that stock exchanges in Hong Kong, Singapore and Mainland China, currently have significant limitations on the use of multi-class

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[19] *See* Letter from Aeisha Mastagni Portfolio Manager, Sustainable Investment and Stewardship Strategies, California State Teachers' Retirement System to The Honorable Maxine Waters, Chairwoman & The Honorable Patrick T. McHenry, Ranking Member, Committee on Financial Services, United States House of Representatives 3 (Apr. 6, 2022), https://www.cii.org/files/CII%20Draft%20Bill%20Comment%20Letter%20on%20Dual-Class%20Share%20Final.pdf ("The Committee's March 2022 Discussion Draft bill on this topic contains the key elements that CalSTRS, many other investors, and many other market experts believe would be appropriate and would strongly support.").

[20] *Id.* at 4-6.

structures, as well as accompanying rules to boost shareholder protections at multi-class companies.[21] These restrictions generally include:

- Minimum market capitalization for companies going public with multi-class shares;
- Limitations on the kinds of companies that can go public with multi-class shares;
- Limitations on who can hold shares with super-voting rights;
- Minimum holding requirements and ownership-based sunsets for dual-class companies;
- Mandatory event-based sunsets based on transfer of shares, cessation of board service or other arrangements;
- Minimum voting thresholds for ordinary shareholders;
- Limits on the voting ratio of holders of super-voting shares to ordinary holders;
- Limits on the voting items for which super-voting shares can be used;
- Enhanced independence requirements for directors at companies with multi-class stock; and
- Additional rights for ordinary shareholders at multi-class companies.[22]

In CII's view, the Multi-Class Act would create a far simpler, more flexible and superior regulatory regime around multi-class structures than those in Hong Kong, Singapore, Mainland China, and many other exchanges."[23]

We respectfully request that the Banking Committee consider amending the JOBS Act 4.0 to include the provisions of the Multi-Class Act. In addition, and as indicated, among the existing provisions of the JOBS Act 4.0 CII has strongly held views on the following:

JOBS Act 4.0

Section 101

The provisions of Section 101 of the JOBS Act 4.0 would "[r]equire[] an SEC study of middle-market IPO underwriting costs to determine how to encourage more middle-market IPOs."[24] CII generally supports the provisions of Section 101 as currently drafted.

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[21] *See* Aurelio Gurrea-Martinez, Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate (Feb. 2021), https://link.springer.com/content/pdf/10.1007/s40804-021-00212-4.pdf; Thomas J. Egan et al., The Revival of Dual Class Shares, Baker McKenzie (Mar. 2020), https://www.bakermckenzie.com/-/media/files/insight/publications/2020/03/the-revival-of-dual-class-shares.pdf.
[22] *See, e.g.,* Aurelio Gurrea-Martinez, Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate.
[23] The JOBS Act 4.0, Legislation to Accelerate Economic Growth and Spur Job Creation, S. Banking Comm. Republican Staff.
[24] The JOBS Act 4.0, Section by Section (Apr. 2022), https://www.banking.senate.gov/imo/media/doc/the_jobs_act_4.0sectionbysection.pdf; *see* Jumpstart our Business Startups Act of 2022, S. ___, 117th Cong. § 101(b) (draft Apr. 2022), thttps://www.banking.senate.gov/imo/media/doc/the_jobs_act_4.0discussiondraft.pdf ("STUDY.—The Commission, in consultation with the Financial Industry Regulatory Authority, shall carry out a study of the costs

We agree with the following comments of Senator Cynthia Lummis (R-Wyoming), co-sponsor of the Section 101 provisions:

> "Big companies figured out years ago that they could reduce costs by changing IPO fee structures. Wyoming is full of small and mid-sized companies and they should not be penalized simply because of historic fee structures and restrictions on how IPOs are funded.[25]

As further explained by Professor Jackson:

> You see, when I was a banker, we charged a standard fee for a middle-market IPO: seven percent. We would negotiate a reduced price for large, high-profile companies, where the client's bargaining power produced a better deal. But for middle-market companies, our fee was always seven percent. Whatever industry the company was in, whatever its growth profile, however qualified its management team was, if they were a smaller firm, they always paid seven percent.
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> . . . In larger IPOs—where the company can use its bargaining power to insist on lower fees—the price of going public is different. In fact, nearly half of those companies paid less than 7% when going public.[26]

And we agree with Professor Jackson's conclusion that enactment of the provisions of Section 101 could "make sure that the SEC finally grapples with how Wall Street taxes middle-market companies—and gets to work on making American capital markets work for businesses of all sizes."[27]

Section 104

The provisions of Section 104 of the JOBS Act 4.0 would "[p]ermit[] public companies to choose to file reports semiannually rather than quarterly . . . ."[28] The stated intent of the

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associated with small- and medium-sized companies to undertake IPOs and Tier 2 offerings, as defined in section 230.251 of title 17, Code of Federal Regulations.").

[25] Press Release, Lummis, Sinema, Warner, Hagerty Introduce Bill To Make It Easier For Street Businesses to Go Public (Apr. 4, 2020), *available at* https://www.lummis.senate.gov/press-releases/lummis-sinema-warner-hagerty-introduce-bill-to-make-it-easier-for-main-street-businesses-to-go-public/.

[26] Commissioner Robert J. Jackson, Jr., Speech, The Middle-Market IPO Tax (Apr. 25, 2018), https://www.sec.gov/news/speech/jackson-middle-market-ipo-tax (footnotes omitted).

[27] Press Release, Lummas. Sinema, Warner, Hagerty Introduce Bill To Make It Easier For Main Street Businesses to Go Public (Apr. 4, 2020), *available at* https://www.lummis.senate.gov/press-releases/lummis-sinema-warner-hagerty-introduce-bill-to-make-it-easier-for-main-street-businesses-to-go-public/.

[28] The JOBS Act 4.0, Section by Section; *see* Jumpstart our Business Startups Act of 2022, S. ___, 117th Cong. § 104 ("'ISSUER ELECTION.—With respect to any report that, under this section, or under a rule issued under this section, an issuer is required to file on a quarterly basis, the issuer may elect to instead file the report on a semiannual basis.'").

provisions is "to reduce short-term thinking by public companies and reduce expensive, unnecessary regulatory filings." [29]

CII generally opposes the provisions of Section 104 as currently drafted. We believe there is currently no compelling basis for permitting public companies to replace quarterly financial reporting with semi-annual financial reporting that would either reduce (1) short-term thinking or (2) reporting costs. And we note that the SEC most recently solicitated comments related to both issues in 2018, in connection with its "Request for Comment on Earnings Releases and Quarterly Reports" (RFC).[30]

Short-term thinking

In CII's 2019 comment letter in response to the RFC (CII 2019 Letter), we described in detail, with supporting citations, why we believe quarterly financial reporting does not increase short-term thinking.[31] The CII 2019 Letter explains:

> We do not believe that required quarterly reporting of historical earnings information, in itself, leads managers to focus on short-term results to the detriment of long-term performance. For one thing, reporting companies' management and boards will likely continue to have quarterly information, whether or not they release it publicly.
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> Moreover, the notion that quarterly reporting encourages short-term thinking is, in our view, outdated and not supported by empirical evidence. We live in an era where real time open general ledgers and distributed ledger technology are becoming a reality. In the modern world, capital flows at the speed of light. We believe that given today's dynamic and technology driven global business environment, permitting or requiring less frequent financial reporting would be a step into the past.
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> The weight of empirical evidence does not support the conclusion that requiring quarterly reporting leads managers to focus on short-term results to the detriment of long-term performance. . . . In fact, . . . the SEC should be concerned that less timely reporting of historical results will lead to greater stock price volatility, as investors do more guess-work on what is happening at a company, increasing the potential for short-term profits and thereby intensifying short-termism. Less timely

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[29] Jobs Act 4.0, Section by Section.

[30] *See* Request for Comment on Earnings Releases and Quarterly Reports, Securities Act Release No. 10,588, Exchange Act Release No. 84,842, 83 Fed. Reg. 65,601 (Dec. 21, 2018), https://www.govinfo.gov/content/pkg/FR-2018-12-21/pdf/2018-27663.pdf.

[31] *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Brent J. Fields, Secretary, Securities and Exchange Commission 8-11 (Mar. 21, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/March%2021,%202019%20letter%20to%20SEC%20on%20RFC%20(final).pdf (footnotes omitted).

> information and greater stock price volatility also would invite more insider trading, which CII believes undermines confidence in the market.
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> Moreover, the view that three months is "short-term," but six months is "long-term," seems highly questionable at best. A study published in 2017 by the CFA Institute examined the effects of the introduction of mandatory quarterly reporting in the U.K. in 2007 and the revocation of that requirement in 2014 and a return to requiring semi-annual reporting. The study found that "moving from quarterly to semiannual reporting is not an effective remedy for undue corporate emphasis on short-termism." The study concluded:
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>> If quarterly reporting leads company executives to focus on profits during the next three months, then a shift to semiannual reporting might plausibly lead corporate executives to focus on profits during the next six months—not on corporate investments with good prospects over the next three to five years.[32]

Reporting costs

The CII 2019 Letter also describes in detail why we believe semiannual reporting would not reduce financial reporting costs.[33] The CII 2019 Letter explains:

> CII believes that the costs to investors, companies, and other market participants of a semiannual reporting model for reporting companies would likely outweigh the benefits. Our view is supported by recent empirical research by Professors Salman Arif, Kelly School of Business at Indiana University and Emmanuel De George, London Business School.
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> Professors Arif and De George studied the reports and stock price performance of more than 9,400 companies from 29 countries between 2001 and 2012. They found that a reduced frequency of reporting may lead investors to overreact to alternative sources of information for non-reporting periods. Professor Arif believes the study indicates that moving from required quarterly to semi-annual reporting would likely make U.S. stocks much more risky and more volatile and harm the efficiency of the financial markets.
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> Semi-annual reporting may cost investors and lessen market confidence by increasing the volume of insider trading. As Donald Langevoort, a law professor at Georgetown University recently stated: '"The idea that you've slowed down the

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[32] Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Brent J. Fields, Secretary, Securities and Exchange Commission at 8-11 (footnotes omitted).
[33] *See id.* at 9-10.

> cycle and [are not demanding] formal disclosure so often means more and more secrets are going to be floating around the company for a longer period of time, and that's going to be tempting a lot of insider trading activity there.'" Professor Taylor agrees, commenting that "the possibility of semi-annual reports encouraging insider trading 'is a huge risk' [and] . . . academic research has consistently shown that 'more transparent and timely information reduces insider trading, specifically."[34]

The RFC was followed by SEC public roundtables in July of 2019.[35] We believe it is notable that of the 17 diverse roundtable participants on two panels only one person expressed any interest in the SEC exploring semiannual reporting.[36] As described by the law firm Cleary Gottlieb, instead of advocating for permitting semiannual reporting, the roundtable participants "converged on the view that while there is room to lighten the load of quarterly disclosure requirements on public companies, it will not be an antidote to short-termism."[37]

Finally, we note that less than a year after the roundtables, the SEC publicly reemphasized the benefits of quarterly financial reporting to investors with the onset of the pandemic.[38] An April 2020 joint statement by then SEC Chairman Jay Clayton and Director of the SEC Division of Corporate Finance Bill Hinman observed:

> In the coming weeks, our public companies will be doing what they routinely do after quarter-end—. . . . This quarterly routine is fundamental to the functioning of our equity and credit markets. SEC-registered public companies—which include over 60 of the world's 100 largest companies—provide investors and our markets with information, in many cases extensive information, regarding their operational and financial condition at least quarterly. This information, *particularly the quantitative information (e.g., financial statements) is predominately historical. Investors and analysts use this information, including management commentary regarding trends, and future expectations of financial condition and risks, to gauge value and estimate future firm performance. These historically-based projections of future performance have long been among the most meaningful drivers of investment decisions.*[39]

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[34] *Id.* (footnotes omitted).
[35] *See* Roundtable on Short Term and Long-Term Management of Public Companies (July 18, 2019), *available at* https://www.youtube.com/watch?v=zROJZVt-wW0.
[36] *See* id. (Rory Sabino, Vice President, Investor Relations, Continental Resources, Inc.).
[37] Nicholas Grabar, The Short-Termism Debate, Cleary Gottlieb (Jan. 11, 2021), https://www.clearygottlieb.com/news-and-insights/publication-listing/the-short-termism-debate.
[38] *See, e.g.,* Chairman Jay Clayton & William Hinman, Director, Division of Corporation Finance, The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19 (Apr. 8, 2020), https://www.sec.gov/news/public-statement/statement-clayton-hinman.
[39] *Id.* (emphasis added).

Section 105

The provisions in Section 105 of the JOBS Act 4.0 would: (1) amend Section 14(a) of the Securities Exchange Act of 1934 (Exchange Act) to define "solicitation" to include voting recommendations that institutional investors voluntarily purchase from proxy advisors;[40] and (2) amend Section 14 of the Exchange Act and SEC Rule 14a-8 to: (a) make the rule optional for issuers;[41] (b) require that investors hold at least 1% of the market value of a company's securities to have the right to submit a shareholder proposal; [42] and (c) rescind the significant social policy exception contained in the rule.[43] CII generally opposes all of the provisions of Section 105 as currently drafted and we discuss our concerns with each provision in turn.

Proxy amendments

The stated purpose of proposed amendments to Section 14(a) is to: "Protect[] public companies from bad proxy advice by ensuring that advice given by proxy advisors (e.g., ISS & Glass Lewis) is subject to SEC regulation."[44] CII believes that treating the provision of proxy research and related voting recommendations to institutional investors as a "solicitation" under the Exchange Act[45] makes no sense.[46]

As the SEC explained in its 2019 proposing release, "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice" (2019 Release), "any person engaging in a proxy solicitation, unless exempt, is generally subject to the filing and information requirements . . . ."[47] The 2019 Release goes on to explain what the filing and information requirements for proxy

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[40] Jumpstart our Business Startups Act of 2022, S. ___, 117th Cong. § 105(a) ("Proxies").

[41] *See* § 105(b)(1) ("The rules of the exchange do not require an issuer to be in compliance with section 240.14a–8 of title 17, Code of Federal Regulations, or any successor regulation, as a condition of having a security of the issuer listed on the exchange").

[42] *See* § 105(b)(3) ("Not later than 30 days after the date of enactment of this Act, the Commission shall amend section 240.14a–8(b)(1) of title 17, Code of Federal Regulations, or any successor regulation— (A) by amending clause (i) to read as fol1lows: ''(i) You must hold at least 1 percent of the market value of the company's securities.'').

[43] *See* § 105(b)(2) ("BASES FOR EXCLUSION.—Not later than 1 year after the date of enactment of this Act, the Commission shall amend section 240.14a–8(i) of title 17, Code of Federal Regulations, or any successor regulation, to provide that all of the bases for exclusion of a proposal under that provision shall apply without regard to whether the proposal relates to a significant social policy issue.").

[44] The JOBS Act 4.0, Section by Section.

[45] *See* Proxies, 15 U.S.C. § 78n(a) (2012), *available at* https://www.law.cornell.edu/uscode/text/15/78n ("Solicitation of proxies in violation of rules and regulations").

[46] *See, e.g.,* Brief for Council of Institutional Investors at al. as Amici Curiae Supporting Plaintiffs, ISS v. SEC at 5-9 (U.S.D.C. D. D.C.C. Oct. 2020) (No. 1:19-cv-3275-APM), *available at* https://www.cii.org/files/issues_and_advocacy/legal_issues/Doc_%2024-1%20-%20Brief%20Amici%20Curiae.pdf. (arguing why treating proxy research and related voting recommendations delivered to an institutional investor requesting that information does not constitute a solicitation under Section 14(a)).

[47] Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Exchange Act Release No. 87,457, 84 Fed. Reg. 66,518, 66,519 (proposed Dec. 3, 2019), https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24475.pdf.

soliciting entail.[48] Among other things, the person making the solicitation is required to prepare a proxy statement with the information prescribed by Schedule 14A,[49] together with a proxy card in a specified format, file these materials with the Commission, and furnish them to every shareholder who is solicited.[50] Schedule 14A "requires extensive information to be included in the proxy statement, such as descriptions of matters up for shareholder vote, securities ownership information of certain beneficial owners and management, disclosures of the registrant's executive compensation and related party transactions, and, for certain matters, financial statements."[51]

If proxy advisors were to become subject to the regime that the proposed amendments contemplate, they would be required to prepare and submit thousands of public filings a year. The potentially enormous increase in filing costs would likely have to be absorbed by the proxy advisors' primary customers—institutional investors. The result is that the proposed amendments would create a costly and likely unworkable regime to regulate proxy advice that would create significant barriers to entry for proxy advisory firms. And perhaps most importantly, institutional investors—the primary customers of proxy advisors—have not asked for and would not support such a regime.

Shareholder proposal amendments

The stated purpose of the proposed amendments to Section 14 is to "limit frivolous shareholder proposals."[52] Rule 14a-8,[53] the shareholder proposal rule that Section 105(b) would amend, sets out the conditions that a shareholder must meet in order the company to potentially include a proposal in its proxy materials.

In 2020 the SEC amended Rule 14a-8 to limit the eligibility of shareholders to submit proposals (2020 Amendments). [54] Notably, as part its of deliberations in connection with the 2020 Amendments the SEC explicitly considered and rejected a Section 105(b)(3)-like proposed amendment that would limit the eligibility to shareholders to submit proposals to those holding at least 1% of the market value of the company's securities.[55] The SEC's analysis of the issue included the following findings:

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[48] *See id.* at 66,524 ("Among other things, the person making the solicitation is required to prepare a proxy statement with the information prescribed by Schedule 14A, together with a proxy card in a specified format, file these materials with the Commission, and furnish them to every shareholder who is solicited.").
[49] Schedule 14A, 17 C.F.R. § 240.14a-101 (1986), *available at* https://www.law.cornell.edu/cfr/text/17/240.14a-101.
[50] *See id.*
[51] 84 Fed. Reg. at 66,524.
[52] The JOBS Act 4.0, Section by Section; *see* Jumpstart our Business Startups Act of 2022, S. ___, 117th Cong.§ 105(b) ("Shareholder Proposals").
[53] *See* Shareholder Proposals, 17 C.F.R. § 240.14a-8 (2020), *available at* https://www.law.cornell.edu/cfr/text/17/240.14a-8.
[54] *See* Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a–8, Exchange Act Release No. 89,964, 85 Fed. Reg. 70,240 (Nov. 3, 2020), https://www.govinfo.gov/content/pkg/FR-2020-11-04/pdf/2020-21580.pdf.
[55] *See id.* at 70,287.

> Using proponents' exact ownership information from the proxy statements and assuming no change in proponents' ability to aggregate their holdings to submit a joint proposal, we estimate that using a one-percent ownership threshold and removing the $2,000/one-year threshold would have resulted in an upper bound estimate of 149 proposals, *or 99 percent of the proposals to be considered in 2018 shareholder meetings that provide exact proponents' ownership information, being excludable under the final amendments*, again assuming no change in proponent behavior.
>
> The advantage of a percentage-of ownership threshold is that it would permit shareholders owning the same proportion of a larger company as of a smaller company to submit a proposal, and so the rule would have similar effects on smaller and larger companies. *The percentage-of ownership threshold, however, may be somewhat harder to implement because of changes in companies' capital structure over time. We also believe that a percentage-of-ownership threshold of one percent would prevent the vast majority of shareholders from submitting proposals, which, in turn, could have a chilling effect on shareholder engagement. In addition, the types of investors that hold more than one percent of a company's shares are generally large institutional investors and commenters noted that these types of investors are more likely to be able to communicate directly with management, and thus do not typically use shareholder proposals.* [56]

CII agrees with the SEC's analysis and findings that led to the rejection of a Section 105(b)(3)-like proposed amendment to Rule 14a-8. As we explained in response to the SEC's 2019 proposed rule on "Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a–8" (2019 Proposed Rule):[57]

> [R]aising ownership thresholds to very high levels [like 1%] based on percentage of shares owned, and would have, for example, required ownership of $1 billion or more of stock at the largest companies. Almost all shareholder proposals historically have been submitted by holders with much smaller positions, including the mid-century Greyhound proposals on segregation, and proposals that over the years have led to many corporate governance and disclosure improvements.
>
> . . . .

[56] *Id.* (emphasis added).
[57] Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a–8, Exchange Act Release No. 87,458, 84 Fed. Reg. 66,458 (proposed rule Nov. 5, 2019), https://www.federalregister.gov/documents/2019/12/04/2019-24476/procedural-requirements-and-resubmission-thresholds-under-exchange-act-rule-14a-8.

> . . . [W]e note that for many of the 70-plus years that this Rule [14a-8] was on the books, there was no ownership requirement. A requirement that proponents own $1,000 of stock for one year was adopted in 1983 in response to a concern that individuals could submit a proposal after owning only one share for one day. The dollar amount was raised to $2,000 in 1998, but otherwise the Rule has operated on a basic and salutary principle that access to the proxy should be available to shareholders on a broad basis. . . . Raising the eligibility requirements to the levels [like 1%] . . . would unnecessarily limit availability of the shareholder proposal mechanism to smaller investors with diversified portfolios.[58]

In connection with the 2020 Amendments, the SEC also considered and rejected a commentator's suggestion, similar to what has been proposed for Section 105(b)(1),[59] to make Rule 14a-8 optional.[60] The SEC referenced several commentator reactions to the adoption of such an approach, including:

- '''most publicly traded companies would opt for the stable expectations of sticking with the SEC . . . rule'''[61]
- "a shareholder-proposal process governed by state law would increase administrative and legal costs for shareholders and companies, as well as state governments"[62]
- "the staff's no action process 'is superior to litigation of differences over inclusion of shareholder proposals'"[63]

For those and other reasons, CII believes most companies and most shareholders would oppose a provision like Section 105(b)(1). As we again explained in response to the 2019 Proposed Rule:

> Experience suggests that most participants view the Division of Corporation Finance as a fair arbiter, even if one may disagree with the result in a given case. The [SEC has considered] . . . several alternative structures . . . . There was nearly universal opposition to such alternatives, and we do not believe that the situation has changed to the extent that such a radical change is warranted. We believe the

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[58] Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors et al. to Vanessa A. Countryman, Secretary, Securities and Exchange Commission 8 n.18, 11 (Jan. 30, 2020), https://www.cii.org/Files/issues_and_advocacy/correspondence/2020/20201030%2014a-8%20comment%20letter%20FINAL.pdf.
[59] *See* Jumpstart our Business Startups Act of 2022, S. ___, 117th Cong. § 105(b)(1).
[60] *See* 85 Fed. Reg. at 70,262 ("commenter suggested that companies should have the option to elect a system governed by state law").
[61] *Id.*
[62] *Id.*
[63] *Id.*

> SEC's Rule 14a-8 no-action process generally is superior to litigation of differences over inclusion of shareholder proposals.[64]

CII also generally opposes the provisions of Section 105(b)(2) that appears intended to eliminate the potential for shareholder proposals to raise significant social policy issues.[65]

As background, we note that Rule 14a-8(i)(7), the so-called ordinary business exception, is one of 13 substantive exceptions that companies routinely use for omitting shareholder proposals from their proxy statements.[66] More specifically, the ordinary business exception permits a company to omit a proposal that "deals with a matter relating to the company's ordinary business operations."[67] The purpose of the exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."[68]

Since 1976 the SEC has determined that whether a shareholder proposal relates to "ordinary business" is subject to an exception for certain proposals that raise "significant social policy issues."[69] We generally agree with the recent statement of the Director of the SEC Division of Corporate Finance Renee Jones that "[t]his exception is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement, while also recognizing the board's authority over most day-to-day business matters."[70]

As we explained in explained in response to the 2019 Proposed Rule:

> Lobbyists for corporate executives have suggested there is a particular problem with shareholder proposals that raise issues related to environmental and social impacts on company performance, and that this problem justifies limiting shareholder proposal rights in general (including corporate governance proposals).

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[64] Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors et al. to Vanessa A. Countryman, Secretary, Securities and Exchange Commission at 38-39.
[65] *See* Jumpstart our Business Startups Act of 2022, S. ___, 117th Cong. § 105(b)(2).
[66] *See* Shareholder Proposals, 17 C.F.R. § 240.14a-8(i) ("If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?").
[67] 17 C.F.R. § 240.14a-8(i)(7) ("*Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations").
[68] Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40,018, Investment Company Act No. 23,200, 63 Fed. Reg. 29,106, 20,108 (May 25, 1998), https://www.federalregister.gov/documents/1998/05/28/98-14121/amendments-to-rules-on-shareholder-proposals.
[69] *See* Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 12,999, Public Utility Holding Act Release No. 19,771, Investment Company Act Release No. 9,539, 41 Fed. Reg. 52,994, 52,998 (Dec. 3, 1976), https://archives.federalregister.gov/issue_slice/1976/12/3/52980-53001.pdf#page=15 ("Thus, where proposals involve business matters that are mundane in nature and do not involve any substantial policy or other considerations, the subparagraph may be relied upon to omit them.").
[70] Renee Jones, Director, Division of Corporation Finance, Speech at the CII Spring 2022 Conference: The Shareholder Proposal Rule: A Cornerstone of Corporate Democracy (Mar. 8, 2022), https://www.sec.gov/news/speech/jones-cii-2022-03-08.

> For example, the Business Roundtable – which advocates mainly for large company CEOs and arguably was the key lobbying group spurring the current efforts (now joined by the majority of the SEC) to reduce shareholder proposal rights – says the shareholder proposal process needs “modernization” because the thresholds for resubmission of proposals are too low and because “excluding proposals relating to general social issues is difficult for companies.” It is true that all social policy proposals could be excluded before 1970, based on SEC precedents that permitted Greyhound Corp. to exclude shareholder proposals in the late 1940s and early 1950s urging the company to desegregate buses. Those proposals to desegregate buses may have been viewed at the time as “idiosyncratic,” with “no rational relationship to the creation of long-term shareholder value” and in “conflict with what a typical investor views as material to making an investment or voting decision,” to use the Business Roundtable’s words on recent social policy matters implicated in shareholder proposals. However, in our view, those proposals were prescient, dealt with a socially important issue with long-term implications both for society and for shareholder value, and were material to how Greyhound operated.
>
> If anything, . . . data suggest that companies are increasingly engaging in dialogue with proponents and are recognizing the value of folding ESG considerations into their daily operations. Some have referred to a shift in corporate attitudes as a “new paradigm.”. . .
>
> For these reasons, the Council views [amendments of Rule 14a-8 to reduce the number of shareholder proposals] . . . as bad policy that cannot be defended on the ostensible ground of cost savings.[71]

Finally, we note that since the adoption of the “significant social policy issue” exception in 1976, the SEC has undertaken multiple rulemaking proceedings to consider the wisdom of this standard and other elements of Rule 14a-8. On each occasion, after hearing criticisms from both sides, the Commission voted to retain and re-affirm the exception as striking the appropriate balance in this area. We see no reason to now reject a standard that has stood the test of time for nearly half a century.

<u>Section 307</u>

The provisions in Section 307 of the JOBS Act 4.0 would “[p]reempt state securities law registration for secondary transactions for Regulation A Tier 2 securities.”[72] The stated intent of

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[71] Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors et al. to Vanessa A. Countryman, Secretary, Securities and Exchange Commission at 8-10.
[72] The JOBS Act 4.0, Section by Section; *see* Jumpstart our Business Startups Act of 2022, S. ___, 117th Cong. § 307 (“Exemption From State Regulation of Securities”).

the provisions is to "help companies raise money through Reg. A+ by improving the secondary market for Reg A+ securities."[73]

CII generally opposes the provisions of Section 307 as currently drafted. As we explained in our October 2019 letter in response to the SEC's "Concept Release on Harmonization of Securities Offering Exemptions":[74]

> [S]tate securities regulators have significant concerns with the Regulation A+ exemption. In recent Congressional testimony, the past President of The North America Securities Administrators explained:
>
> > NASAA has repeatedly expressed significant concern regarding the viability and necessity of a marketplace for quasi-private securities offerings, especially on the scale envisioned by Regulation A+. Such a marketplace is difficult to police and has the potential to become a magnet for fraud. Moreover, by furnishing means for non-accredited investors to invest in early-stage companies that would otherwise be considered too risky for offer to the public, Reg. A+ not only entails objectively increased investment risk but puts retail investors into a position of essentially competing with sophisticated investors for access to investment opportunities in attractive pre-IPO companies. Not surprisingly, retail investors are at a steep structural disadvantage and oftentimes end up with the short end of the stick – that is, they assume significant risk without gaining access to most attractive deals, or to more favorable terms and prices available to venture funds and other "accredited investors" under Regulation D.
>
> At a minimum, CII believes the Commission should not take any action to broaden or expand the Regulation A+ exemption without compelling evidence that such a change would benefit long-term investors and the capital markets. We generally agree with the comments of Davis Polk that the "current thresholds are high and large offerings should benefit from full SEC protection." Moreover, we would not object to a request by the Commission to the U.S. Congress to eliminate the Regulation A+ exemption.[75]

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[73] Jobs Act 4.0, Section by Section.

[74] Concept Release on Harmonization of Securities Offering Exemptions, Securities Act Release No. 10,649, Exchange Act Release No. 86,129, Investment Adviser Act Release No. 5,256, Investment Company Act Release No. 33,512, 84 Fed. Reg. 30,460 (June 26, 2019), https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13255.pdf.

[75] Jeffrey P. Mahoney, General Counsel, Council of Institutional investors to Secretary, Securities and Exchange Commission 8 (Oct. 3, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/October%203%202019%20Comment%20Letter.pdf (footnotes omitted).

We note that the SEC ultimately considered and rejected providing a preemption from state securities law registration for secondary transactions for Regulation A+ in its final rule on "Facilitating Capital Formation and Expanding Investment Opportunities" issued in November 2020.[76] For the reasons indicated, we continue to believe there is no compelling evidence that such a change would benefit long-term investors and the capital markets.

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Thank you for considering CII's views. As always, we welcome the opportunity to discuss our perspectives on these issues or other issues at your convenience.

Sincerely,

Jeffrey P. Mahoney
General Counsel

Attachment

CC: The Honorable Maxine Waters, Chairwoman, Committee on Financial Services, United States House of Representatives (via email)

The Honorable Patrick T. McHenry, Ranking Member, Committee on Financial Services, United States House of Representatives (via email)

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[76] Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Securities Act Release No. 10,884, Exchange Act Release No. 90,300, Investment Company Act Release No. 34,082, 86 Fed. Reg. at 3496, 3534-35 n.389 (Jan. 14, 2021), https://www.govinfo.gov/content/pkg/FR-2021-01-14/pdf/2020-24749.pdf ("While such preemption could further advance the development of a national securities market by easing the compliance obligations of investors that trade in the secondary markets, we . . . are not adopting any changes to preemption of State securities laws for secondary trading at this time.").