Securities Regulation Daily Wrap Up, INITIAL PUBLIC OFFERINGS—CII.: Blue Apron's prospective IPO with triple-class structure would undermine shareholder confidence, (Jun. 23, 2017)

Securities Regulation Daily Wrap Up

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In a letter to officials of Blue Apron Holdings, Inc, Kenneth A. Bertsch, the executive director of the Council of Institutional Investors (CII), a nonpartisan, nonprofit association of employee benefit plans, foundations and endowments, warned that Blue Apron's plan to go public with a triple-class share structure that "severely limits accountability to public shareholders over the long-term, and without a reasonable sunset provision" would serve to undermine the principle of one-share, one-vote, which is a "foundation and core value of good corporate governance and equitable treatment of investors."

Commitment to healthy markets. CII members share a commitment to healthy public capital markets and strong corporate governance, Bertsch commented. He points out that Blue Apron proposes to issue low-voting shares on going public but with authority to issue shares with no voting rights whatsoever. CII believes public companies should provide all shareholders with voting rights proportional to their holdings and that newly public companies that do not do so should sunset the unequal structure over a reasonable period of time.

Structure undermines confidence. Bertsch continued that, as long-term investors, CII believes a decision by Blue Apron to go public with the triple-class structure will undermine confidence of public shareholders in the company. Independent boards accountable to owners should be empowered to actively oversee management and make course corrections when appropriate, he said. CII recognizes that the holders of super-voting shares will actually own a significant majority of shares immediately after the IPO, which will minimize the concerns in the short term, but CII's interest is in the longer-term health of capital markets. Bertsch called the structure a "ticking time bomb or the gross misalignment of ownership and control, with Class B holders operating the clock."

Some companies with a large disconnect between ownership and control have stumbled relatively quickly and without effective correction mechanisms, Bertsch commented, while others have encountered long-term challenges where insiders are entrenched. A 2016 study by the IRRC Institute concluded that "controlled companies featuring multiple classes of stock generally underperformed on a broad swath of financial metrics over the long term [and] are perceived as having more financial risk" than non-controlled firms. "Multi-class companies in the S&P 500 pay CEOs substantially more than companies with single-stock structures (especially as compared with single-class controlled companies), which benefits CEOs without comparable payoff for shareholders," Bertsch said. CII believes accountability is important for performance longer-term, including through bumps in the road that every company will experience.

CII is particularly concerned about the non-voting share class, the lack of a reasonable sunset provision, and the prospect that management likely will control a majority of voting power over time, even as its proportional ownership of common equity shrinks.

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