

[Securities Regulation Daily Wrap Up, INITIAL PUBLIC OFFERINGS—CII again criticizes IPOs with multi-class share structures, \(May 18, 2018\)](#)

Securities Regulation Daily Wrap Up

[Click to open document in a browser](#)

By [John M. Jascob, J.D., LL.M.](#)

The Council of Institutional Investors (CII) has again written to companies that are about to engage in initial public offerings to express concerns about their multi-class share structures. In separate but similar letters to independent directors of [GreenSky, Inc.](#) and [Pluralsight, Inc.](#), CII wrote that the dual-and tri-class voting structures employed by the two companies, respectively, would severely limit long-term accountability to public shareholders. Accordingly, CII urged the companies to reconsider using their unequal voting rights structures as public companies, or, failing that, to incorporate sunset provisions that revert to one share, one vote within seven years.

CII noted that under GreenSky's unequal voting structure, holders of Class B shares will carry super-voting rights that entitle them to ten votes per share. Under Pluralsight's structure, the Class C shares owned by co-founder, CEO, and Chairman Aaron Skonnard will carry super-voting rights entitling him to ten votes per share. CII acknowledged that both companies appear to be employing an "Up-C" structure that confers certain tax benefits and requires the companies to issue two separate classes of common stock. In CII's view, however, nothing about the Up-C structure, however, requires the class of shares held by insiders to carry super-voting rights.

CII pointed out that most publicly traded companies that use the Up-C structure, including Shake Shack, Spirit Airlines, and GoDaddy, provide insiders and public investors equal voting rights by assigning one vote to both Class A and Class B shares. As a result of the super-voting rights attached to their Class B shares of GreenSky, however, insiders will control 97 percent of the voting power, leaving public shareholders with just 3 percent of the vote despite owning over 20 percent of the company. In the case of Pluralsight, CEO Skonnard will control over 54 percent of the voting power despite owning just 10 percent of the equity.

One share, one vote. CII observed that the principle of "one share, one vote" was the first policy adopted by CII when it was formed in 1985. This approach has been underlined repeatedly by market participants since that time, including recent moves by index providers to discourage unequal voting structures. CII believes that a company's decision to go public with an unequal voting structure will undermine confidence of public shareholders in the company. And when the company encounters performance challenges, as most companies do at some point, disenfranchised public shareholders will have no ability to influence management or the board.

Although acknowledging that some technology companies have attracted capital on public markets despite having multi-class structures, CII noted that the performance record of these companies is decidedly mixed, with the evidence suggesting that unequal voting structures do not enhance company value beyond the short-term. In addition, Yelp, Fitbit, Kayak, Twilio, and Mulesoft all went public with time-based sunsets on their unequal voting structures. Accordingly, public shareholders at these companies know that they will have a say in company matters equal to their ownership interests within reasonable periods of time. To emphasize this point, CII quoted the remarks of SEC Commissioner Robert Jackson in a recent speech, "If you run a public company in America, you're supposed to be held accountable for your work—maybe not today, maybe not tomorrow, but someday."

IndustryNews: IPOs SecuritiesOfferings CorporateGovernance CorpGovNews GCNNews