

Via Email

April 5, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Patrick T. McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Brad Sherman
Chair
Investor Protection, Entrepreneurship and
Capital Markets Subcommittee
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Bill Huizenga
Ranking Member
Investor Protection, Entrepreneurship and
Capital Markets Subcommittee
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: H.R. ____, To amend the Securities Exchange Act of 1934 to improve the governance of multiclass stock companies (Multi-class Bill)¹

Dear Madam Chairwoman, Ranking Member McHenry, Mr. Chairman and Ranking Member Huizenga:

Thank you for distributing the Multi-class Bill in connection with the March 30 hearing, “Oversight of America's Stock Exchanges: Examining Their Role in Our Economy (March Hearing).”² The purpose of this letter is to reiterate the Council of Institutional Investors’ (CII) strong support for the Committee on Financial Services (Committee) pursuing a mark-up of Multi-class Bill.³ We also respectfully request that this letter be included in the public record for the March Hearing.

¹ To amend the Securities Exchange Act of 1934 to improve the governance of multi-class stock companies. H.R. ____, 117th Cong. (discussion draft Mar. 26, 2022),

https://financialservices.house.gov/uploadedfiles/033022_bills-117pih-hr__toamendthesecuri.pdf.

² Oversight of America’s Stock Exchanges: Examining Their Role in Our Economy, Hearing Before the Subcomm. Investor Protection, Entrepreneurship & Cap. Markets of the H. Comm. Fin. Serv., 117th Cong. (Mar. 30, 2022), <https://financialservices.house.gov/events/eventsingle.aspx?EventID=409152>.

³ See, e.g., Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Brad Sherman Chair, Investor Protection, Entrepreneurship and Capital Markets Subcommittee, Committee on Financial Services, United States House of Representatives 1 (Nov. 2, 2021), [https://www.cii.org/files/issues_and_advocacy/correspondence/2021/November%20%202021%20letter%20to%20Subcommittee%20AB%20\(final\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2021/November%20%202021%20letter%20to%20Subcommittee%20AB%20(final).pdf) (“The purpose of this letter is to . . . reiterate the Council of Institutional Investors’ (CII) support for the discussion draft of a bill to amend the Securities Exchange Act of 1934 to improve the governance of multi-class stock companies . . .”).

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

As the leading voice for corporate governance, CII believes the Multi-class Bill is consistent with U.S. corporate governance principles⁵ and reflects the sound legislative policy recommendations of the U.S. Securities and Exchange Commission’s (SEC) 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 Multi-class Bill also importantly reallocates 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

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. While the Multi-class Bill encourages alignment with the one-share, one-vote principle, it would allow companies to go public with multi-class stock, and would allow these structures to stay in place in perpetuity so long as investors vote on a one share, one vote basis to

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, https://www.cii.org/ipo_policy (“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/reportspubs/annual-reports/sec-investor-advocaterreport-on-activities-2020.pdf>.

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-greene-20220330.pdf>.

keep the multi-class structure in place at least once every seven years. Companies that currently trade on exchanges with multi-class stock would not be affected by the Multi-class Bill.

We strongly agree with March Hearing witness NYU School of Law Professor and former SEC Commissioner Robert J. Jackson, Jr., who indicated in his written remarks that the Multi-class Bill “offers an attractive balance between accountability and the freedom visionary founders need to grow our most exciting young companies.”⁹ Professor Jackson explained that the Multi-class Bill is important because:

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 and Blackrock, who together represent millions of American investors, petitioned the exchanges years ago to place some limit on the use of dual class. The exchanges have done nothing to address it.

. . . 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.¹⁰

In addition, and as you are aware, an October 2021 version of the Multi-class Bill was supported broadly by the investor community as well as from many other organizations.¹¹

⁹ 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>.

¹⁰ *Id.* (footnotes omitted).

¹¹ 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 Aisha 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 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-

We note that exchanges in Hong Kong, Singapore and Mainland China, have significant limitations on the use of multi-class structures, as well as accompanying rules to boost shareholder protections at multi-class companies.¹² These restrictions 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 based on 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;

[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%20Committee%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](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.

¹² See 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>; 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>.

- Enhanced independence requirements for directors at companies with multi-class stock; and
- Additional rights for ordinary shareholders at multi-class companies.

In CII's view, the Multi-class Bill would create a far simpler, and more flexible regulatory regime around multi-class structures than those in Hong Kong, Singapore, Mainland China and many other markets. Importantly, the Multi-class Bill would not ban nor limit the kinds of companies that could go public with dual-class stock, nor would it designate who could hold the super voting stock.

We are hopeful that this letter is helpful to you and the Committee in its consideration of the Multi-class Bill. We would welcome the opportunity discuss this important matter in more detail with you or your staff at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lucy Nussbaum".

Lucy Nussbaum
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Council of Institutional Investors
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