

March 28, 2023

European Commission
Directorate-General for Financial Stability, Financial Services and Capital Markets Union
1049 Brussels, Belgium

Via electronic submission

Re: Proposal for a Directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market

Dear European Commission members:

I write on behalf of the Council of Institutional Investors (CII), 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.¹

CII values the opportunity to share our views on the European Commission’s (“EC” or “Commission”) Proposal for a Directive dated December 7, 2022 regarding proposed amendments to the Listing Act.² Our comments, which pertain to the Listing Act procedure COM(2022)761 regarding multiple-vote share structures (“Directive”), build on the statements and policies voted on and approved by our members. CII acknowledges the European Commission’s efforts to streamline the listing rules for small and medium-sized enterprises (SMEs) and improve their access to market-based sources of financing.³ In this letter, we seek to build on our previous correspondence with the Commission in February 2022, in which we underscored the risks that dual-class share structures pose to investors while recommending the adoption of a mandatory time-based sunset of no greater than seven years.⁴

¹ For more information about the Council of Institutional Investors (“CII”), including its board and members, please visit CII’s website at <https://www.cii.org/>.

² See Proposal for a Directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market, European Commission (Dec. 7, 2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0761&from=EN>.

³ See “Listing Act” in *Questions and Answers on the Commission’s proposals on corporate insolvency and listing*, European Commission (Dec. 7, 2023), https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_7349.

⁴ See Letter from Amy Borrus, Executive Director, Council of Institutional Investors to *Directorate-General for Financial Stability, Financial Services and Capital Markets Union (FISMA)*, European Commission (February 15, 2022), <https://www.cii.org/files/EU%20Dual%20Class%20SPAC%20Consultation%20final%20posted.pdf>.

CII Position

CII believes that shareholders' voting rights should be proportional to their economic stake. We believe that "one share, one vote" is a core tenet of good corporate governance and discourages the adoption of dual-class share structures. Appropriate checks on unequal structures are crucial, as they entrench management and limit their accountability to public investors.⁵

CII has long advocated for companies with dual-class stock to adopt reasonable sunset clauses of seven years or less in their charters. However, time-based sunsets by private ordering generally must be adopted prior to or at the time of the initial public offering, presenting challenges for widespread adoption.

Therefore, CII also supports listing requirements or public policy whereby companies are required to conduct periodic referendum votes under which continued differential voting rights require a majority support from each outstanding share class, voting separately.⁶

CII is concerned with the global proliferation of unequal voting structures and has partnered with other investors and investor organizations, through the Investor Coalition for Equal Votes (ICEV), to raise awareness among companies and policymakers.

Dual-Class Safeguards

We acknowledge that the Directive calls for certain measures to mitigate certain negative impacts of multiple-vote share structures. Article 5 Section 1 calls for Member States to:⁷

- (1) Member States shall ensure fair and non-discriminatory treatment of shareholders, as well as adequate protection of the interests of the shareholders who do not hold multiple-vote shares and of the company through appropriate safeguards. To that effect, Member States shall do all of the following:
 - (a) ensure that a company's decision to adopt a multiple-vote share structure and any subsequent decision to modify a multiple-vote share structure that affects voting rights are taken by the general shareholders' meeting of that company and are approved by a qualified majority as specified in national law.

⁵ For more information on our dual-class stock advocacy, please visit https://www.cii.org/dualclass_stock.

⁶ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors 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/October%201,%202021%20letter%20to%20Committee%20on%20Financial%20Services%20\(final\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2021/October%201,%202021%20letter%20to%20Committee%20on%20Financial%20Services%20(final).pdf).

⁷ "Article 5: Safeguards for fair and non-discriminatory treatment of shareholders of a company" in *Directive*, p. 21.

- (b) limit the voting weight of multiple-vote shares on the exercise of other shareholders' rights, in particular during general meetings, by introducing either of the following:
 - (i) a maximum weighted voting ratio and a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent;
 - (ii) a restriction on the exercise of the enhanced voting rights attached to multiple-vote shares for voting on matters to be decided at the general meeting of shareholders and that require the approval by a qualified majority

Under Article 5 Section 2 of the Directive, Member States may choose to implement additional shareholder safeguards in the way of time, event, or transfer-based sunsets:⁸

- 2. Member States may provide for further safeguards to ensure adequate protection of shareholders and of the interests of the company. Those safeguards may include in particular:
 - (a) a provision to avoid that the enhanced voting rights attached to multiple-vote shares are transferred to third parties or continue to exist upon the death, incapacitation or retirement of the original holder of multiple-vote shares (transfer-based sunset clause);
 - (b) a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist after a designated period of time (time-based sunset clause);
 - (c) a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist upon the occurrence of a specified event (event-based sunset clause);
 - (d) a requirement to ensure that the enhanced voting rights cannot be used to block the adoption of decisions by the general shareholders' meeting aiming at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations.

While these measures could help mitigate some risk, we are concerned that the absence of any specific limits in these proposed limitations may not fulfill the Commission's stated goal of ensuring, across all Member States, "fair and non-discriminatory treatment of shareholders, as well as adequate protection of the interests of the shareholders who do not hold multiple-vote shares."⁹

⁸ Directive pg. 21-22.

⁹ Directive pg. 21

We support the harmonization of rules surrounding share structures, to the extent that they neither create nor preserve long-term vacuums in accountability to company owners. We have concerns that this Directive may create new avenues in some Member States to effectively reduce long-term accountability to shareowners, as states which previously did not allow listings with unequal voting rights will now be expected to allow these structures on SME Growth Markets.¹⁰ We support a more robust Directive, such as a mandatory sunset within seven years of initial public offering, or a mandatory periodic vote among each share class voting separately in order for such structures to continue. As well, the Directive could designate a maximum quantitative limit for section 5(1)(b)(i) and a description in 5(1)(b)(ii) of the scenarios where the exercise of enhanced voting rights would be restricted.

Furthermore, the Directive includes a non-binding call for a time-based sunset that does not specify a maximum duration for the sunset and leaves the implementation of the sunset at the discretion of a Member State. We believe that the Directive will more effectively protect shareholder rights and the long-term outcomes generally if amended to prescribe a mandatory time-based sunset of not greater than seven years.

We understand that the Commission must strike a balance between granting Member States the flexibility to adapt the Directive to the characteristics of local markets and pursuing “a maximum harmonisation of multiple-vote shares by introducing a detailed set of rules [...] to protect minority investors and the company from undue impact of these share structures.”¹¹ Whereas the former is less costly and only requires compliance with the high-level principles of the Directive, we believe that the latter best fulfills the Commission’s stated goal of protecting minority shareholders.

We respect the Directive’s role in creating a framework for national legislation for Member States but believe it can be more effective for the capital markets by requiring one of the following robust protections:

- A mandatory time-based sunset provision of no greater than seven years;
- A mandatory vote on the continuation of a dual-class structure by a majority of each share class, voting separately, on a reasonable periodic basis (we recommend at least every 7 years).

¹⁰ See “Multiple-vote shares: how did you balance the need to encourage entrepreneurs to list, while protecting all investors on capital markets?” in *Questions and Answers on the Commission's proposals on corporate insolvency and listing*, European Commission (Dec. 7, 2022), https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_7349.

¹¹ “Impact assessment” in *Directive*, p. 12-13.

CII Policies

Our comments on the Directive are derived from our membership-approved [policies and statements](#). Those policies that are particularly relevant to the Public Consultation include the following:

3.3 Voting Rights: Each share of common stock should have one vote. Corporations should not have classes of common stock with disparate voting rights. Authorized, unissued preferred shares that have voting rights to be set by the board should not be issued without shareowner approval.¹²

Investor Expectations for Newly Public Companies

The Council of Institutional Investors (CII) has long maintained that companies wishing to tap the public markets should adopt an equity structure and governance provisions that protect public shareholders' rights equally. A troubling number of companies enter the public markets with structures and practices that fundamentally compromise accountability to shareholders and entrench insiders, including:

- multi-class equity structure with unequal voting rights
- plurality vote requirement for uncontested director elections
- non-independent board leadership, whether from the chair or lead director
- classified board structure
- super-majority vote requirement for bylaw amendments and other proposals

As newly public companies grow into mature, established firms, special protections for insiders and disparities between economic ownership and voting power become especially problematic. Upon going public, a company should have a “one share, one vote” structure, simple majority vote requirements, independent board leadership and a non-classified board. CII expects newly public companies without such provisions to commit to their adoption over a reasonably limited period through sunset mechanisms.¹³

Thank you for consideration of CII's views. We are hopeful that this letter is helpful to the Commission in its consideration of the proposed Directive. If we can answer any questions or

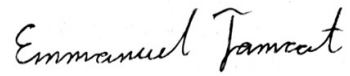
¹² § 3.3 Voting Rights, Corporate Governance Policies (updated Mar. 6, 2023), Council of Institutional Investors, https://www.cii.org/corp_gov_policies#shareowner_rights.

¹³ Investor Expectations for Newly Public Companies (adopted Mar. 23, 2016), Policies on Other Issues, Council of Institutional Investors, https://www.cii.org/content.asp?contentid=78#newly_public_companies.

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provide additional information, please do not hesitate to contact me at [+1 \(202\) 261-7091](tel:+12022617091) or emmanuel@cii.org.

Sincerely,

A handwritten signature in black ink that reads "Emmanuel Tamrat". The signature is written in a cursive style with a large initial 'E' and a stylized 'T'.

Emmanuel Tamrat
Research Analyst
Council of Institutional Investors