

Via Hand Delivery

July 10, 2019

The Honorable Maxine Waters
Chair
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

Re: July 11, 2019, Markup of H.R. 281; H.R. 1018; H.R. 2852; H.R. 3279; H.R. 3614; H.R. 3618; H.R. 3619; H.R. 3620; H.R. 3621; H.R. 3622; H.R. 3624; H.R. 3625; H.R. _____, the Improving Credit Reporting for All Consumers Act; H.R. _____, the Clarity in Credit Score Formation Act of 2019; and H.R. _____, the Stronger Enforcement of Civil Penalties Act of 2019¹

Dear Madam Chair and Ranking Member McHenry:

I am writing on behalf of the Council of Institutional Investors (CII) to express our appreciation to you for holding the above referenced markup and to provide you with our views on H.R. 1018, the “Improving Corporate Governance through Diversity Act of 2019,”² and H.R. 3279, the “Diversity in Corporate Leadership Act of 2019.”³ We would respectfully request that this letter be made a part of the markup public record.

CII is a nonprofit, nonpartisan association of 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

¹ U.S. House Committee on Financial Services, Markups, Markup of H.R. 281; H.R. 1018; H.R. 2852; H.R. 3279; H.R. 3614; H.R. 3618; H.R. 3619; H.R. 3620; H.R. 3621; H.R. 3622; H.R. 3624; H.R. 3625; H.R. _____, the Improving Credit Reporting for All Consumers Act; H.R. _____, the Clarity in Credit Score Formation Act of 2019; and H.R. _____, the Stronger Enforcement of Civil Penalties Act of 2019 (July 11, 2019), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403650>.

² H.R. 1018, Improving Corporate Governance through Diversity Act of 2019, 116th Cong. (2019), <https://financialservices.house.gov/uploadedfiles/bills-116hr1018ih-impcorp.pdf>.

³ H.R. 3279, Diversity in Corporate Leadership Act of 2019, 116th Cong. (2019), <https://financialservices.house.gov/uploadedfiles/bills-116hr3279ih-divcorplead.pdf>.

retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$35 trillion in assets under management.⁴

Board Diversity

CII generally supports H.R. 1018, the “Improving Corporate Governance Through Diversity Act of 2019,” and H.R. 3279, the “Diversity in Corporate Leadership Act of 2019.”

CII’s membership approved policies state:

The Council supports a diverse board. The Council believes a diverse board has benefits that can enhance corporate financial performance, particularly in today’s global market place. Nominating committee charters, or equivalent, ought to reflect that boards should be diverse, including such considerations as background, experience, age, race, gender, ethnicity, and culture.⁵

Our policy is supported by a growing body of research indicating that diverse boards can benefit long-term investors. For example, a recent memorandum by FCLTGlobal, an independent not-for-profit organization,⁶ states:

Diversity matters, both for board and company performance. A variety of studies have demonstrated the value of multidimensional diversity—across ages, genders, ethnicity, and beyond. One notable 2017 study found that greater board diversity was associated with reduced financial risk, larger R&D investments, and better operating performance. FCLTGlobal’s own research confirmed this assessment. Looking at MSCI ACWI firms between 2010 and 2017 and using a diversity metric that compasses both age and gender, we found that the most diverse boards (top 20 percent) added 3.3 percentage points to ROIC, as compared to their least diverse peers (bottom 20 percent.).⁷

In addition, PwC’s recently issued 2018 Annual Corporate Directors Survey found that 84% of corporate directors said that board diversity enhances board performance.⁸

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 Council of Institutional Investors, Corporate Governance Policies, § 2.8b Board Diversity (updated Oct. 24, 2018), https://www.cii.org/files/10_24_18_corp_gov_policies.pdf.

⁶ FCLTGlobal, Our Work, <https://www.fcltglobal.org/about/our-work> (last visited June 19, 2019).

⁷ Ariel Fromer Babcock, et al., The Long-Term Habits of a Highly Effective Corporate Board, Harv. L. Sch. F. on Corp. Governance & Fin. Reg. (Apr. 19, 2019), <https://corpgov.law.harvard.edu/2019/04/19/the-long-term-habits-of-a-highly-effective-corporate-board/>.

⁸ The Evolving Board Room: Signs of Change, PwC’s 2018 Annual Corporate Directors Survey (2019), <https://www.pwc.com/us/en/services/governance-insights-center/library/annual-corporate-directors-survey.html>.

H.R. 1018, the “Improving Corporate Governance through Diversity Act of 2019,” and H.R. 3279, the “Diversity in Corporate Leadership Act of 2019.”

H.R. 1018 would require public companies to annually disclose the voluntarily, self-identified gender, race, ethnicity and veteran status of their board of directors, nominees, and senior executive officers.⁹ The bill also requires the Securities and Exchange Commission (SEC or Commission) Office of Minority and Women Inclusion (Office) to, among other things, solicit comment on and publish best practices for compliance with diversity disclosures.¹⁰

H.R. 1018 would also require the Director of the Office to establish an advisory council that includes issuers and investors to advise on the disclosure requirements.¹¹ It is our understanding the proposed “The Amendment in the Nature of a Substitute” makes technical changes to the bill.¹²

Similarly, H.R. 3279 would affirmatively require issuers to specifically disclose to shareholders with respect to the gender, racial, and ethnic diversity of their board of directors and nominees.¹³ In addition, the Commission would be required to establish a diversity advisory group,¹⁴ and the SEC would report annually to the Committee on Financial Services on issuer board diversity data.¹⁵ It is our understanding the proposed “The Amendment in the Nature of a Substitute” makes technical changes to the bill.¹⁶

CII generally agrees with Investor Protection, Entrepreneurship and Capital Markets Subcommittee Chair Carolyn B. Maloney, the sponsor of H.R. 3279, that:

“Studies have repeatedly found that companies with more diverse leadership are better positioned to succeed. Why wouldn’t companies want to show off that they’re making smart financial decisions by moving towards more diversity and equality on their boards?”¹⁷

⁹ See H.R. 1018, § 2(s)(2).

¹⁰ *Id.* § 2(s)(4)(B).

¹¹ *Id.* § 2(s)(4)(C).

¹² See H.R. 1018 (as proposed to be amended July 11, 2019), <https://financialservices.house.gov/uploadedfiles/bills-116-hr1018-m001137-amdt-2.pdf>.

¹³ See H.R. 3279, § 2(b).

¹⁴ *Id.* § 2(a)(1).

¹⁵ *Id.* § 2(a)(3).

¹⁶ See H.R. 3279 (as proposed to be amended July 11, 2019), <https://financialservices.house.gov/uploadedfiles/bills-116hr3279ih-divcorplead.pdf>.

¹⁷ Press Release, Rep. Carolyn B. Maloney, Maloney Introduces Bill to Increase Corporate Board Diversity (June 14, 2019), <https://maloney.house.gov/media-center/press-releases/maloney-introduces-bill-to-increase-corporate-board-diversity>.

CII also generally agrees with Consumer Protection and Financial Institutions Subcommittee Chair Gregory W. Meeks, the sponsor of H.R. 1018, that:

“Diversity has been proven to have a positive impact on business performance, and it is only natural for investors to want to know which companies are choosing to bring in a wealth of different perspectives into their corporate board rooms.”¹⁸

While we acknowledge that earlier this year the SEC issued interpretative guidance directed at improving public company disclosure of board diversity,¹⁹ CII believes, consistent with our policies, more can and should be done to improve board diversity disclosure. We, therefore, generally support the key elements of both H.R. 1018 and H.R. 3279: (1) required disclosure of diversity in the proxy statement for directors and board nominees;²⁰ and (2) establishment of an advisory council or group to guide companies about strategies to increase board diversity or otherwise assist in compliance with the requirements.²¹

In our view, the disclosures and the advisory committees or groups that would be required by H.R. 3279 or H.R. 1018 would likely contribute to enhancing public company board consideration of diversity consistent with CII’s policies.²² CII believes long-term investors, including our members, will benefit from the long-term shareowner value that can result, in part, from corporations embracing board diversity.²³

If we can answer any questions or provide additional information that would be helpful to you or the Committee on Financial Services, please do not hesitate to contact me at 202.822.0800 or jeff@cii.org.

Sincerely,



Jeffrey P. Mahoney
General Counsel

¹⁸ Press Release, U.S. Representative Gregory W. Meeks, Rep. Meeks and Sen. Menendez Introduce Corporate Diversity Bill (Feb. 6, 2019), <https://meeks.house.gov/media/press-releases/rep-meeks-and-sen-menendez-introduce-corporate-diversity-bill>.

¹⁹ U.S. Securities and Exchange Commission, Regulation S-K, Questions and Answers of General Applicability, Question 116.11 (Feb. 6, 2019), <https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm>.

²⁰ See H.R. 1018, § 2(s)(2); H.R. 3279, § 2(b).

²¹ See H.R. 1018, § 2(s)(4); H.R. 3279, § 2(a)(2).

²² See, e.g., Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gregory W. Meeks, Chair, Subcommittee on Consumer Protection and Financial Institutions, Committee on Financial Services 1-2 (Feb. 6, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/February%202019%20Representative%20Meeks%20Letter.pdf.

²³ *Id.* at 2.