Council of Institutional Investors®
The voice of corporate governance

Dr. Ursula von der Leyen
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CC:
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Subject: CII Recommendations to the European Union on Shareholder Rights

Dear Dr. von der Leyen,

As the new College of Commissioners defines its priorities for the coming years, we would like to offer the perspective of institutional investors.

CII is a nonprofit, nonpartisan association of 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 $5 trillion. CII members are 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 fifteen million participants – true "Main Street" investors through their pension funds. Our associate members, several of which are based in the E.U., include non-U.S. asset owners with about $4.8 trillion in assets, and a range of global asset managers with approximately $55 trillion in assets under management. CII is a leading voice for effective governance, strong shareowner rights and sensible financial regulations that foster fair, vibrant capital markets. CII promotes policies that enhance long-term value for global institutional asset owners and their beneficiaries.

In particular, we would like to highlight the four issues below.

1. **Removing barriers to voting rights.**

CII policy 3.1[1] provides that the "Right to Vote is Inviolate: A shareowners' right to vote is inviolate and should not be abridged." We are concerned about features of the voting process that may serve primarily to reduce voting power, such as burdensome power of attorney and physical attendance requirements. We are also concerned about obstacles to split-voting and the need for bans on share blocking throughout the European Union.

2. **Improve Annual General Meetings (AGM) practices**

CII policy 4.1 provides that:

> Companies should consider that many investors have a preference for in-person meetings, but companies should also be afforded the flexibility to choose an in-person, hybrid or virtual-only format depending on their shareowner base and current circumstances. Companies incorporating virtual technology into their shareowner meeting should use it as a tool for broadening, not limiting, shareowner meeting participation. Companies are encouraged to disclose the circumstances under which virtual-only meetings would be held and to allow for comparable rights and opportunities for shareholders to participate electronically as they would have during an in-person meeting.
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> Companies should make shareowners' expense and convenience primary criteria when selecting the time, format and location of shareowner meetings. Registration and proof of ownership requirements should not be onerous. Appropriate notice of shareowner meetings, including notice concerning any change in meeting date, time, place, format or shareowner action, should be given to shareowners in a manner and within time frames that will ensure that shareowners have a reasonable opportunity to exercise their franchise.
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> During the annual general meeting, shareowners should have the right to ask questions, orally or in writing. Directors should provide answers or discuss the matters raised, regardless of whether the questions were submitted in advance. While reasonable time limits for questions are acceptable, the board should not ignore an important question because it comes from a shareowner who holds a small number of shares or who has not held those shares for a certain length of time. When meetings are virtual, companies should make questions transparent to shareowners, with allowance for omission of questions that are belligerent or abusive.

Given this policy, we are concerned that some member states are moving in the direction of fully virtual or closed-door AGMs, in some cases making temporary measures adopted in response to COVID-19 permanent.[2] This could significantly limit the ability of all shareholders to fully participate in these meetings, including asking unmoderated questions in live meetings.

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[1] CII's policies on corporate governance are available at https://www.cii.org/corp_gov_policies.
[2] We wrote recently on this issue to the Italian Ministry of Economy and Finance: https://www.cii.org/files/Final%20Letter%20to%20Italian%20MEF.pdf.

CII policy 4.3 provides that:

> Each ballot item should clearly identify and describe the subject matter and pertinent information, including the identity of the proponent or lead filer, in the proxy statement so shareowners can engage and make informed decisions.
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> It further provides that:
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> To promote the ability of shareowners to make informed decisions regarding whether to recall loaned shares: (1) shareowner meeting record dates should be disclosed as far in advance of the record date as possible, and (2) proxy statements should be disclosed six or more days before the record date where practicable.

CII policy 3.2 states that: "To allow for informed voting decisions, it is essential that investors have full and accurate information about access mechanism users and their director nominees."

Based on this policy, we would recommend further work to ensure that meeting materials, including relevant information about candidates for director positions, are distributed early enough to allow investors to make informed decisions, including investors not based in the E.U. We are also concerned that the voting deadlines set by intermediaries and custodians can be sometimes significantly ahead of the AGM, making it harder for investors, particularly non-E.U. investors, to cast timely and informed votes.

The market may also benefit from a common approach to a record date so that it is clear who is eligible to vote. Investors also support systematic vote counting, the publication of the vote tally, and transparency on voting outcome by agenda item.

3. Addressing dual-class stock.

CII has long opposed dual-class stock companies, strongly favoring that each share of common stock should have one vote. Unequal voting rights misalign economic interests and corporate control, often entrenching management and other insiders. We encourage companies that do not adopt equal voting structures upon IPO to embrace reasonable time-based sunset provisions ensuring long-term alignment.[3]

Our concern about unequal voting rights includes examples such as loyalty shares, where longer-term holders have more voting rights per share. The empirical evidence does not suggest that loyalty shares have been successful in supporting longer-term investment.[4,5] Similarly, the Court

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[3] See CII Statement Investor Expectations for Newly Public Companies, https://www.cii.org/policies_other_issues#newly_public_companies.

[4] Loyalty Shares with Tenure Voting: Does the Default Rule Matter? Evidence from the Loi Florange Experiment, Journal of Law and Economics (2020) by Marco Becht, Yuliya Kamisarenka, and Anete Pajuste.

[5] The Capital Market Consequences of Tenure-Based Voting Rights: Evidence from the Florange Act, Management Science (2022) by Thomas Bourveau, Francois Brochet, and Alexandre Garel. Compare to Encouraging long-term

of Justice of the European Union ruled against many configurations: of "golden shares," another form of misaligning economic interests and corporate control.[6]

Where such dual-class stock is permitted, we recommend safeguards, such as:

1. A mandatory time-based sunset clause of 7 years or less, as supported by the academic literature.[7]
2. A mechanism to allow shareholders, with approval by a majority of outstanding shares of each class voting separately on a one-share, one-vote basis, to extend the multi-class structure by terms of seven years or less.

If it is not possible to adopt these approaches, some more modest approaches that may reduce the negative effects of dual-class structures, but which would not be a substitute for mandatory sunsets and shareholder approval, include:

1. Limits on the ability to transfer such shares, given that theories of why dual-class stock might be beneficial for some founder-led companies does not support unequal voting rights for their heirs or other transferees.
2. A limit to the maximum voting ratio that can be applied.
3. Ensuring that unequal voting rights cannot apply to certain material decisions.

We also recommend class-by-class vote disclosure for companies with multiple shares that have disparate voting rights (CII Policy 4.4). This information may be useful for investors before making an initial investment decision, as well as to judge the performance of the board.

4. Remove perceived obstacles to collaborative engagement.

Investors need reassurance that they can engage jointly with companies on important governance matters, without the risk of being perceived as acting in concert with other investors, a concern that also exists in the United States.[8] The European Commission could ask the European Securities and Markets Authorities to review its 2014 Statement.[9] It is also important to ensure that the guidance has sufficient legal weight to be consistently implemented in all EU Member States.

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shareholders: The effects of loyalty shares with double voting rights, Finance (2024) by François Belot, Edith Ginglinger, and Laura Starks.

[6] See The Portuguese State's holding of 'golden' shares in Portugal Telecom constitutes an unjustified restriction on the free movement of capital (2010), Court of Justice of the European Union.

[7] See, for example, The Life-Cycle of Dual Class Firm Valuation, European Corporate Governance Institute (ECGI) - Finance Working Paper No. 550/2018, (2017) by Martijn Cremers, Beni Lauterbach, and Anete Pajuste. We also shared these concerns in a 2021 (https://www.cii.org/files/CII%20UK%20dual%20class%20listings%20review%20final.pdf) and 2022 (https://www.cii.org/files/issues_and_advocacy/correspondence/2022/28-07-22%20ICEV%20FCA%20letter.pdf) letters to the United Kingdom.

[88] See our 2018 letter to the Federal Trade Commission on this topic: https://www.cii.org/files/20181206%20CII%20letter%20to%20FTC%20on%20common%20ownership%20v3.pdf.

[9] Information on shareholder cooperation and acting in concert under the Takeover Bids Directive, 2019. European Securities and Markets Authorities.

Thank you for the opportunity to share our input. If you have any questions, please feel free to contact at us at bob@cii.org or 202.822.0800.

Sincerely,

Robert McCormick