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Leading Investor Group Calls Out Directors Responsible for Dual-Class Companies Without “Sunsets”

Washington, D.C., August 7, 2019 — The Council of Institutional Investors (CII) today published a list of 159 directors who served on boards of U.S. public companies at the time they went public with dual-class share structures with unequal voting rights and no provision to “sunset” that structure within a reasonable time period.

Specifically, the list focuses on directors of companies that made their initial public offering (IPO) in 2018 and 2019 to date; it excludes directors of dual-class IPO companies that put in place time-based “sunsets” of seven years or less to wind down to one class of stock with equal voting rights.

The “Dual-Class Enablers” spreadsheet identifies other U.S. public company boards on which these individuals currently serve.

CII, which represents pension funds and other long-term investors, believes that differential voting rights let founders operate like dictators, often to the detriment of all shareholders.

“The board that brings a company to public markets with unequal voting rights is responsible for the decision to disempower public shareholders,” said CII Executive Director Ken Bertsch. “The board’s decision can be a red flag of discomfort with accountability to outside shareholders.” He said that investors “may want to raise concern about that in their engagement with other boards on which these directors serve. Some investors may choose to vote against directors of single-class companies who participated in pre-IPO board decisions to adopt dual-class equity structures without sunsets elsewhere.”

Said Bertsch: “A dual-class company’s adoption of a clear and reasonable time-based ‘sunset’ provision at IPO substantially ameliorates concerns for CII and many investors about the lack of accountability.” Evidence and logic suggest that damage from unequal voting rights is a longer-term problem, he said.

A significant benefit of the list could be its deterrent effect. “It may cause directors of private-companies that are considering an IPO to think more carefully about the benefits and costs of adopting a dual-class structure,” Bertsch explained. “Similarly, directors who serve on nominating committees at single-class companies may think twice about a candidate for board service who was responsible for taking a company public with an open-ended dual-class structure.”
The list currently identifies 68 dual-class directors in 2018 and 91 so far for companies that made their IPO in 2019. The list excludes companies with IPOs that were less than $200 million, special-purpose acquisition companies (SPACs), foreign private issuers (FPIs) and real estate investment trusts (REITs). CII staff will update the list periodically.

CII and many institutional investors believe that every share of a public company’s common stock should have equal voting rights. The vast majority of U.S. public companies have a one share, one vote structure. Other companies typically have a superior class of common stock with more votes per share than an inferior class, with founders, their families or other insiders holding the superior class shares.

Dual-class structures with differential voting rights are becoming more popular with IPO companies, particularly in tech sectors. In the first half of 2019, 26% of IPOs (excluding FPIs, SPACs, and REITs) had dual-class structures with unequal voting rights, up from 11% in 2018. However, this trend is partially offset by an increasing number of dual-class IPOs that sunset the provisions (see list here).

Last October, CII filed petitions with the New York Stock Exchange and the NASDAQ asking both to limit new listings of companies with dual-class share structures (see press release). The petitions asked the exchanges to amend their listing standards to require that, going forward, companies seeking to list that have multiple share classes with differential voting rights include sunset provisions in their governing documents to convert the share structure within seven years of IPO to one share, one vote.

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About CII: The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of U.S. asset owners, primarily pension funds, state and local entities charged with investing public assets and endowments and foundations, with combined assets of $4 trillion. CII's associate members include non-U.S. asset owners with more than $4 trillion in assets and a range of asset management firms with more than $35 trillion under management. CII is a leading voice for effective corporate governance, strong shareowner rights and transparent and fair capital markets.