



April 27, 2016

William J. Baer
Assistant Attorney General for the Antitrust Division
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Baer:

I am writing on behalf of the Council of Institutional Investors (CII). CII is a nonprofit, nonpartisan association with more than 120 General (voting) Members. These include public, corporate and union pension funds, and other employee benefit plans, foundations and endowments with combined assets that exceed \$3 trillion. In addition, our Associate Members include more than 50 asset management firms that manage assets in excess of \$20 trillion.

We respect the tough job facing the U.S. Department of Justice, as well as the Federal Trade Commission, in enforcing antitrust laws and helping to maintain competitive markets. We appreciate that the evolution of markets can make the challenges especially difficult.

We have been encouraged by a recent increase in the appetite of “passive” investors to engage with management and boards, and increasing corporate support for such engagement. CII strongly supports engagement by investors with management and boards as essential to ensuring appropriate accountability to shareowners. CII Corporate Governance Policies indicate that corporate board members “should respond to communications from shareowners and should seek shareowner views on important governance, management and performance matters.”

Securities and Exchange Commission Chair Mary Jo White, on various occasions, also has voiced strong support for shareholder/company engagement, including in a [speech](#)¹ to the Transatlantic Corporate Governance Dialogue in December 2013, and as recently as January 2016 in a [keynote session](#)² at the Northwestern University School of Law’s Securities Regulation Institute, when she described outreach by boards and companies to shareholders as “all to the good.”

CII is concerned that recent DOJ comments and actions may chill appropriate engagement by asset managers and asset owners on corporate governance, executive compensation and shareholder rights. Recent enforcement actions against activist investors suggest that Hart-Scott-Rodino obligations may kick in with any discussions between investors and management

¹ <https://www.sec.gov/News/Speech/Detail/Speech/1370540434901>

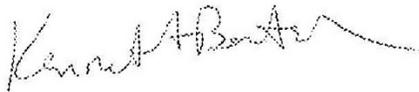
² <https://www.sec.gov/news/speech/securities-regulation-institute-keynote-white.html>

or boards on topics such as executive compensation. We also note your comments on March 9 to the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights. You indicated in those remarks that “common ownership,” involving common and active shareholders, may serve to lessen competition, and that DOJ is looking at this in more than one industry, and may seek new authority from Congress.

We respectfully request the opportunity to meet to discuss this subject. We would like to better understand DOJ’s concerns, and discuss our concerns about protecting shareholders’ voices in corporate governance. While ValueAct is a CII Associate Member and several other CII members retain ValueAct for asset management services, CII is not coordinating with ValueAct on its pending enforcement matter, and we explicitly do not seek to raise any pending enforcement matter with DOJ in such a meeting.

Thank you for consideration of this request for a meeting.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth A. Bertsch". The signature is written in dark ink and has a fluid, connected style.

Kenneth A. Bertsch
Executive Director
Council of Institutional Investors