

Via Email

November 10, 2016

policy@issgovernance.com

Re: ISS 2017 Benchmark Voting Policy Consultation

The Council of Institutional Investors (CII) is pleased to respond to the ISS 2017 Benchmark Voting Policy Consultation. We are a nonpartisan, nonprofit association of employee benefit plans, foundations and endowments with combined assets under management exceeding \$3 trillion. Our general member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate (non-voting) members include a range of asset managers with more than \$20 trillion in assets under management.¹

We focus this input on proposed ISS voting policy updates affecting IPO companies with multi-class capital structures.² In 2016 CII's members approved a statement on core, accountability-oriented investor expectations for newly public companies.³ The language of that statement reads, in part:

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.

Most importantly, we underscore our position that the most appropriate approach to equity structure for IPO companies is “one share, one vote.” We note that among recent IPOs, nine in ten took this approach, based on CII analysis. For the few IPO companies that take the unorthodox approach, it is critical that the governing documents include meaningful sunset provisions.

During CII's development of the statement, consideration was given to which forms of sunset provisions may be most suitable or favorable to long-term company performance. While some sunset provisions are time-based, others are based on stock ownership thresholds, and others are a hybrid of the two. After listening to input from various market participants, CII concluded that there is no single best format for sunset provisions at all companies. As such, the “reasonably limited period” found in the statement should be read broadly to accommodate all reasonable time-based, ownership-based and hybrid sunset provisions.

Additionally, CII considered prior to the adoption of the statement whether to explicitly define “reasonable” provisions. Ultimately, CII chose not to take a more prescriptive approach. What is

¹ For more information about the Council of Institutional Investor (Council or CII) and our members, please visit the Council's website at <http://www.cii.org/members>.

² See <https://www.issgovernance.com/file/policy/unilateral-board-actions-multi-class-capital-structure-at-ipo.pdf>.

³ See http://www.cii.org/ipo_policy.

reasonable may depend on company circumstances. For example, companies requiring particularly substantial capital investment, experiencing particularly long business cycles, or competing in industries particularly susceptible to premature acquisition could potentially warrant greater latitude on the length or terms of sunset provisions. Companies in industries associated with lower up-front costs, shorter-term business cycles and minimal risk of premature acquisition may warrant shorter sunset provisions.

Notwithstanding these company-specific considerations, we submit two examples of sunset provisions that seem clearly unreasonable from the perspective of CII staff. With respect to a time-based sunset provision, one company proposed a 17-year schedule for phasing out its multi-class structure.⁴ With respect to an ownership-based threshold, another company pledged to collapse its multi-class common structure if the superior class constitutes less than 5 percent of total voting power.⁵ These provisions may “tick the box” for having a sunset provision, but they are not, in staff’s view, meaningful in any way.

In contrast, other recent IPO companies have undertaken more moderate approaches. For example, with respect to time-based triggers, one company established it will switch to “one share, one vote” after seven years.⁶ With respect to a more moderate ownership-based trigger, another company established that it will adopt “one share, one vote” in the event that the founder holds less than 25 percent of outstanding common.⁷

Thank you for considering CII’s input. We appreciate the effort of ISS, and the efforts of all proxy advisors, to obtain, understand and incorporate the views of market participants into voting policy frameworks.

Sincerely,



Glenn Davis
Director of Research

⁴ See Amendment No. 4 to Nutanix Form S-1 filing at <https://www.sec.gov/Archives/edgar/data/1618732/000119312516707549/d937439ds1a.htm>.

⁵ See Square Form S-1 filing at https://www.sec.gov/Archives/edgar/data/1512673/000119312515343733/d937622ds1.htm#toc937622_17.

⁶ See Twilio Form S-1 filing at https://www.sec.gov/Archives/edgar/data/1447669/000104746916013448/a2227414zs-1.htm#ec43901_description_of_capital_stock_general.

⁷ See Virtu Financial Form S-1/A filing at https://www.sec.gov/Archives/edgar/data/1592386/000104746915008561/a2226568zs-1a.htm#ea76101_description_of_capital_stock.