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Via Email

December 13, 2019

Ken Bertsch, Executive Director
Jeff Mahoney, General Counsel
Council of Institutional Investors
1717 Pennsylvania Ave, NW
Suite 350
Washington, D.C. 20006

Dear Messrs. Bertsch and Mahoney,

Thank you for your letter of September 13, 2019 on behalf of the Council of Institutional Investors (the "Council"). I appreciate the Council's recognition of the Model Business Corporation Act (the "Model Act") as the general corporation statute for the majority of jurisdictions in the U.S., and the role of the Corporate Laws Committee (the "Committee") in reviewing and revising the Model Act. The Committee respects the important work of the Council in engaging with public companies.

The Committee reviewed and discussed your proposal during its December meetings, and for the reasons set forth below, does not believe that amending the Model Act to limit the authority of corporations listed on national securities exchanges to adopt multi-class common voting structures is advisable.

As your letter notes, the Model Act is designed to provide a set of default rules for corporations while allowing shareholders and directors the flexibility of private ordering to revise or amend the default rules, subject to very limited exceptions. In this way, the Model Act provides a baseline of certainty but also flexibility. The Committee believes this approach is necessary to ensure the continuing attractiveness and viability of the corporate structure.

Section 7.21 of the Model Act provides that each outstanding share of the corporation is entitled to one vote per share unless otherwise provided in the articles of incorporation. Thus, the Model Act sets one-share, one-vote as the default rule for share voting for all corporations, public and non-public.

Prior versions of the Model Act included provisions applicable to non-public corporations but only if reference to those provisions was specifically included in the articles of incorporation. This dichotomy made for uncertainty and complexity, particularly for non-public corporations. Nearly 30 years ago, this approach was abandoned and the Model Act now applies to any incorporated entity. In the 2016 revisions to the Model Act all references to public corporations were eliminated.

The current Model Act draws few distinctions between non-public corporations and corporations that are listed or publicly traded, ensuring that the Model Act is of general utility to all corporations. This reduces uncertainty for non-public and closely-held corporations. The Committee believes this approach is appropriate and reflects the very large number of private corporations that are created under the Model Act in comparison to the number of publicly traded corporations incorporated under the Model Act.

In light of these fundamental principles of the Model Act, we do not believe it is advisable to adopt the Council's proposed Section 7.21(e). I trust the Council will understand the reasoning of the Committee and appreciate the Committee's interest in preserving the Model Act's utility and attractiveness for all corporate entities.

Best regards,

A handwritten signature in black ink, appearing to read "Laurie A. Smiley", with a long horizontal flourish extending to the right.

Laurie A. Smiley
Chair, Corporate Laws Committee