

Via Hand Delivery

June 27, 2019

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

The Honorable Jack Reed
United States Senate
Washington, DC 20510

Re: S. 1256, the PCAOB Enforcement Transparency Act of 2019.¹

Dear Senators Grassley & Reed:

I am writing to express our general support for the PCAOB Enforcement Transparency Act of 2019 (Transparency Act).

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of 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 \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$35 trillion in assets under management.²

The provisions of the Transparency Act would amend the Sarbanes-Oxley Act of 2002³ to make the Public Company Accounting Oversight Board (PCAOB or Board) enforcement hearings and all related notices, orders, motions, and sanctions open and available to the public unless otherwise ordered by the Board.⁴

CII believes the current lack of transparency surrounding PCAOB disciplinary proceedings could provide accounting firms with an incentive to litigate cases in order to continue to shield conduct from the public.⁵ For example, we understand that one firm continued to issue no fewer than 29

¹ S. 1256, the PCAOB Enforcement Transparency Act of 2019, 116th Cong. (Apr. 30, 2019), <https://www.govinfo.gov/content/pkg/BILLS-116s1256is/pdf/BILLS-116s1256is.pdf>.

² For more information about the Council of Institutional Investors (“CII”), including its board and members, please visit CII’s website at <http://www.cii.org>.

³ Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002), <https://www.govinfo.gov/content/pkg/PLAW-107publ204/html/PLAW-107publ204.htm>.

⁴ See S. 1256, § 2.

⁵ See Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Carolyn B. Maloney, Chair, Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Committee on

additional audit reports on public companies without those companies knowing that it was subject to a PCAOB disciplinary proceeding.⁶ The boards and shareholders of those companies may have been deprived of important information about the proceeding against the firm and the substance of any violations.

We note that CII's membership approved policies explicitly identify "inspection results and fines levied by the Public Company Accounting Oversight Board" as a factor that an audit committee should consider when determining whether to change auditors.⁷ Moreover, we believe that same factor should also be considered by shareowners when exercising their oversight of the committee and when their casting their proxy votes for the election of the chair and members of the committee and for ratification of the external auditor.⁸ The Transparency Act would likely facilitate the ability of audit committees and shareowners to obtain more information about inspection results and fines levied by the PCAOB in a timelier manner.⁹

We generally agree with Senator Reed that:

"Concealing PCAOB disciplinary proceedings from the public creates a lack of transparency that invites abuse and undermines the Congressional intent behind the PCAOB, which was to shine a bright light on auditing firms and practices, and to bolster the accountability of auditors of public companies to the investing public. Over the years, some bad actors have used this loophole to shield themselves from public scrutiny and accountability."¹⁰

Similarly, we generally agree with Senator Grassley that: "Making PCAOB proceedings transparent and open would force the actions of bad actors to be exposed for the world to see."¹¹

Financial Services et al. 7 (June 18, 2019), [https://www.cii.org/files/issues_and_advocacy/correspondence/2019/June%2018%202019%20Letter%20to%20Subcommittee%20on%20Investor%20Protection%20Entrepreneurship%20and%20Capital%20Markets%20\(finalF\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2019/June%2018%202019%20Letter%20to%20Subcommittee%20on%20Investor%20Protection%20Entrepreneurship%20and%20Capital%20Markets%20(finalF).pdf); see also News Release, Senator Jack Reed, Reed, Grassley, Renew Bi-Partisan Push to End Secrecy Surrounding Accounting Watchdog Enforcement Proceedings (May 2, 2019), <https://www.reed.senate.gov/news/releases/reed-grassley-renew-bipartisan-push-to-end-secrecy-surrounding-accounting-watchdog-enforcement-proceedings>; see also *Examining Proposals to Strengthen Enforcement Against Securities Law Violators: Hearing Before the Subcomm. on Investor Protection, Entrepreneurship, and Cap. Markets*, 116th Cong. (June 19, 2019) (Testimony of Stephen J. Crimmins at 9), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba16-wstate-crimmins-20190619.pdf> (discussing support for draft of companion bill to S. 1256 by stating "administration of justice generally should be public, and to assure clean markets and build investor confidence, there is a particular need for 'public' hearings when the PCAOB evaluates 'public' accountants working for 'public' companies."); *Examining Proposals to Strengthen Enforcement Against Securities Law Violators: Hearing Before the Subcomm. on Investor Protection, Entrepreneurship, and Cap. Markets*, 116th Cong. (June 19, 2019) (written statement of Jordan A. Thomas, Partner, Labaton Sucharow at 8), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba16-wstate-thomasj-20190619.pdf> (describing draft of companion bill to S. 1256 as "improv[ing] public transparency").

⁶ See News Release.

⁷ Council of Institutional Investors, Corporate Governance Policies, § 2.8b Board Diversity (updated Oct. 24, 2018), https://www.cii.org/files/10_24_18_corp_gov_policies.pdf.

⁸ See, e.g., Letter from Jeffrey P. Mahoney at 7.

⁹ See Written statement of Jordan A. Thomas, Partner, Labaton Sucharow at 8 (describing draft of companion bill to S. 1256 "help[ing] bring to light, in a timely manner, auditing deficiencies at accounting firms or the companies they audit, and thereby help to deter violations.").

¹⁰ See News Release.

¹¹ *Id.*

We also understand that PCAOB's currently required confidential proceedings run counter to the public enforcement proceedings of other regulators, including the SEC,¹² the U.S. Department of Labor, the Federal Deposit Insurance Corporation, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority and others.¹³

Finally, and importantly, we note that language similar to the provisions of the Transparency Act has already been enacted into law and implemented for auditing and accounting firms hired by the U.S. Department of Defense.¹⁴ We are unaware of any reason why those provisions should not be applied more broadly.

If we can answer any questions or provide additional information with respect to this letter, please do not hesitate to contact me at 202.822.0800 or jeff@cii.org.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney".

Jeffrey P. Mahoney
General Counsel

¹² See Testimony of Stephen J. Crimmins at 9 (“SEC proceedings have been public for the SEC’s entire 85-year history, and no one has argued this should be changed”); Written statement of Jordan A. Thomas, Partner, Labaton Sucharow at 8 (“The public does not currently have great insight into the PCAOB’s enforcement work, due in part to the fact that, unlike the SEC, much of their work is not made public.”).

¹³ News Release.

¹⁴ *Id.*