Council of Institutional Investors®
The voice of corporate governance

Via E-Mail

March 21, 2019

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-26-18

Dear Mr. Secretary:

I am writing in response to the Securities and Exchange Commission's (SEC or Commission) request for comment on earnings releases and quarterly reports (RFC).[1]

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]

Quarterly Reports

CII believes that investors, companies, and other market participants benefit from the current reporting frequency model, which requires from domestic issuers filing quarterly reports on Form 10–Q. In our view, the requirement to report historical earnings on a quarterly basis is a key element of the timely and accurate information flow that underpins the quality and efficiency of our capital markets. The requirement helps ensure that important information is promptly and transparently provided to the marketplace allowing investors to assess concrete progress against strategic goals.

We do not believe that requiring quarterly reporting leads public company managers to focus on short-term results to the detriment of long-term performance. The notion that quarterly reporting encourages short-term thinking is in our view outdated and generally not supported by empirical

[1] Request for Comment on Earnings Releases and Quarterly Reports, Securities Act Release No. 10,588; Exchange Act Release No. 84,842, 83 Fed. Reg. 65,601 (Dec. 21, 2018), https://www.govinfo.gov/content/pkg/FR-2018-12-21/pdf/2018-27663.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.

evidence. If the Commission wants to encourage long-term decision making by public company management the focus should be on discouraging quarterly forecasted earnings guidance rather than quarterly financial reporting.

Earnings Releases

CII would generally support Commission action to address time lapses between the issuance of a public company's earnings releases and the Form 10-Q report. For example, we have in the past supported SEC exploration of quarterly reports preceding their related earnings release and earnings call. We also would support the approach adopted by some public companies of issuing the two documents concurrently. In either case, we believe investors and other market participants would benefit from having a more complete and timely package of a company's performance and financial condition.

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Our detailed responses to select questions raised in the RFC are set forth below. The SEC questions to which we are responding appear in italics.

2. Do quarterly earnings releases provide benefits to investors, companies, or the marketplace separate and apart from the Form 10–Q report? If so, please describe the primary benefits. How do investors use earnings guidance to inform their investment decisions? To the extent there are benefits, do they stem largely from the content of the releases, their timing, or other reasons? Do they have any negative effects on investors, companies, or the marketplace? If so, please describe such effects.[3]

CII believes quarterly earnings reports – on actual performance – are a critical element of the robust disclosure infrastructure that is so important for investors, and makes the United States (U.S.) capital markets so strong.[4] The requirement for quarterly reporting is a key element in providing investors with prompt and reliable information on how a company actually is performing.[5]
We believe that less frequent reporting would likely lead to greater share price volatility, and more intense investor focus on short-term share price fluctuations, as investors expend more effort guessing how the company is doing. Quarterly earnings releases are an important reality-

[3] 83 Fed. Reg. at 65,605.
[4] *See, e.g.*, William Hinman, Director, Division of Corporation Finance, "Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks," Remarks at the 18th Annual Institute on Securities Regulation in Europe (Mar. 15, 2019), https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519 ("Robust disclosure decreases information asymmetries and is the foundation of reliable price discovery. When investors have confidence that they are receiving full and transparent disclosure, markets operate more efficiently and the cost of capital is reduced. I think the strength the U.S. markets have displayed over time shows that there is much that is right about our disclosure system and the information it generates and on which market participants rely).
[5] *See, e.g.*, Letter from Kerrie Waring, Chief Executive Officer, ICGN to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission (Mar, 21, 2019), https://www.sec.gov/comments/s7-26-18/s72618-5151504-183410.pdf ("There remains a strong view amongst these investor bodies that quarterly reporting is an important element of transparency for investors, as well as a positive discipline for management.").

check for investors on stock valuation. We do not believe that an 8-K requirement for near-real-time disclosure of material events is a substitute for the more holistic picture provided by quarterly reports.[6]

To be clear, CII believes that quarterly earnings guidance can have negative effects on investors, companies and capital markets. We see forward-looking guidance, which by definition is predictive and speculative, as very different from historical reporting on what has actually taken place. From discussions we have had with various market participants, we think there is considerable confusion on this distinction. Our views on guidance are discussed under Question 8, below.

6. When a company issues an earnings release that includes much of the information required by Form 10–Q before the form is filed, is the Form 10–Q still useful? Why or why not? How important to investors is the confirmation or interpretation by the Form 10–Q of the information in the earnings release? If investors rely on Form 10–Q as the primary document, is the historical financial information about the quarterly period included in the earnings release useful? Why or why not? Does the fact that Form 10–Qs are filed as opposed to furnished, and include certifications, impact the extent to which investors rely on them? Are there any instances when information disclosed in earnings releases may be useful to investors for purposes of interpreting the content of Form 10–Q? If so, when and how?[7]

The Form 10-Q report is critically important for our members, and should not be supplanted by an earnings release.[8] CII believes that investor reliance on the information required by Form 10-Q is enhanced by requirements that increase the quality and usefulness of the information and foster discipline and accountability of the company's reporting practices.[9] Those requirements include:

- Independent Auditor Review: The independent auditor's review and report on the company's quarterly financial information contained in the Form 10-Q provides the accountant with a basis for communicating to the investor and the public whether he or

[6] *See, e.g.*, Letter from Jack Ciesielski, R.G. Associates, Inc. to Mr. Brent J. Fields, Secretary, Securities and Exchange Commission (Feb. 24, 2019), https://www.sec.gov/comments/s7-26-18/s72618-4967861-178908.pdf ("If companies are allowed to omit information from the 10-Q because it is reported in an 8-K, it degrades the 10-Q information [and] [i]t's unclear how this serves investors better.").
[7] 83 Fed. Reg. at 65,605 (footnote omitted).
[8] *See, e.g.*, Letter from Neil M. Guglielmo, General Manager, Los Angeles City Employee' Retirement System to Mr. Brett J. Fields, Secretary, Securities and Exchange Commission 1 (Mar. 18, 2019), https://www.sec.gov/comments/s7-26-18/s72618-5141720-183362.pdf ("While some data may be released voluntarily or outside of the SEC process, the 10-Q provides an important stopgap to ensure that similar data is released by all companies.").
[9] Letter from Jeffrey P. Mahoney to The Honorable Bill Huizenga, Chairman, Subcommittee on Capital Markets, Securities, and Investment, Committee on Financial Services et al. 10-11 (May 22, 2018), https://www.cii.org/files/May%2022,%202018%20Letter%20to%20Capital%20Markets%20Subcommittee%20(final).pdf (describing requirements of the Form 10-Q that CII believes "potentially [increase] the quality of the quarterly financial information reported and [strengthen] the discipline and accountability of the company's reporting practices").

she is aware of any material modifications that should be made to the quarterly financial information for it to conform to with generally accepted accounting principles;[10]

- Management Certification: The Chief Executive Officer and Chief Financial Officer certifications accompanying the Form 10-Q state, among other things, that the report "fully complies" with the requirements of Exchange Act Sections 13(a) and 15(d) and that "information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer";[11]
- "Filed" versus "Furnished:" Filing rather than furnishing the Form 10-Q to the SEC subjects company management to enhanced civil liability for false or misleading statements contained in the quarterly reports;[12] and
- Data Tagging: extensible Business Reporting Language (XBRL) data tagging is generally required "for all primary financial statements, notes, and financial statement schedules filed with the SEC."[13]

8. Some have suggested that the practice of providing quarterly forward looking earnings guidance creates an undue focus on short-term financial results and thereby negatively affects the ability of companies to focus on long-term results. Is this the case and, if so, are there changes we could make to our rules that would discourage this practice or address this concern? For example, should we require that earnings guidance be filed with or furnished to the Commission? Are there other factors that promote a focus on short-term results? If so, what are they and what is their impact on investors and companies?[14]

CII believes that forward-looking quarterly earnings guidance can have negative effects on investors, companies, and the marketplace.[15] We do think it would be useful for the SEC to clearly require that earnings guidance be furnished to the Commission. And we think that in

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[10] *See* Interim Financial Statements, 17 C.F.R. § 210.8-03 (Apr. 23, 2009), *available at* https://www.law.cornell.edu/cfr/text/17/210.8-03; Interim Financial Statements, 17 C.F.R. § 210.10-01(d) (Aug. 12, 2011), *available at* https://www.law.cornell.edu/cfr/text/17/210.10-01; EY, SEC Financial Reporting Series, "2018 SEC Quarterly Reports – Form 10-Q" at 59 (2017) (on file with CII); *see also* Letter from Jack Ciesielski, R.G. Associates, Inc. to Mr. Brent J. Fields, Secretary, Securities and Exchange Commission (commenting that the 10-Q "is reviewed by auditors"); Finance, "Should Companies Abandon Quarterly Earnings Reports?," Knowledge@Wharton, Aug. 27, 2018, http://knowledge.wharton.upenn.edu/article/ending-quarterly-reporting/ (quoting David Zaring, Wharton professor of legal studies and business ethics that "[quarterly reports] are . . . looked at by . . . accountants . . . [and give] you the transparency you want to take the step of entrusting your money to somebody else.").

[11] *See, e.g.*, EY at 9.

[12] *Id.* at 53 ("Because the quarterly earnings release exhibit to the Item 2.02 of Form 8-K is considered 'furnished' versus 'filed' with the SEC, it is (1) not automatically incorporated by reference into registration statements, proxy statements or other reports and (2) not subject to liability under Section 18 of the Exchange Act").

[13] *Id.* at 8 ("The SEC requires filers to use extensible Business Reporting Language (XBRL) tags for all primary financial statements, notes and financial statement schedules filed with the SEC").

[14] 83 Fed. Reg. at 65,605 (footnote omitted).

[15] *See* Council of Institutional Investors, "Leading Investor Group Responds to President's Tweet on Quarterly Financial Reporting" (Aug. 17, 2018), https://www.cii.org/trump_tweet_response ("encourag[ing] companies to focus more on long-term performance by moving away from providing quarterly earnings per share *guidance* potentially dropping such guidance in the future"); *see also* "Business Roundtable Supports Move Away from Short-Term Guidance" (June 7, 2018), https://www.businessroundtable.org/archive/media/news-releases/business-roundtable-supports-move-away-short-term-guidance (quoting CII Executive Director Ken Bertsch, "[p]ractices that encourage long-term thinking and investment create value for millions of Americans without sacrificing the transparency and accountability that investors deserve").

cases where companies and executives provide guidance, not only on earnings but on other elements of future performance, it is critical that the SEC continue to use its authority to challenge misleading information.

As the leading voice for long-term investors, we generally support efforts to create a financial reporting regime that encourages companies to focus on long-term growth and sustainability.[16] For this reason, we generally support decisions by companies to not provide quarterly earnings guidance because we believe such guidance can cause undue focus on short term profits at the expense of long-term strategy and investment.[17]

More specifically, we believe quarterly earnings guidance can incentivize companies to unduly focus on "making the numbers" at the expense of the long-term interests of the company and its long-term shareowners.[18]

As Berkshire Hathaway Chairman and CEO Warren Buffett explained in an interview last June, when companies live by "making the numbers," they do things "that really are counter to the long term interests of the business." Buffett said he had never seen a company "whose performance has been improved by having some forecast out there by the CEO that we're gonna earn X," and that type of message from a CEO teaches employees that quarterly performance is "the end game." Buffett added that "ego gets involved" when executives make predictions, and "when they find they can't make the numbers, sometimes they make up the numbers."[19]

Similarly, in describing quarterly earnings guidance, BlackRock founder and CEO Laurence D. Fink has indicated: '"Today's culture of quarterly earnings hysteria is totally contrary to the long-term approach we need.'"[20]

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[16] *See* CII Response to European Commission, Consultation Document, "Fitness Check on the EU Framework for Public Reporting by Companies" 24 (July 12, 2018), https://www.cii.org/files/July%2012%202018%20EC%20Consulting%20Document%20(Final).pdf; *see also* "Business Roundtable Supports Move Away from Short-Term Guidance."

[17] CII Response to European Commission, Consultation Document, "Fitness Check on the EU Framework for Public Reporting by Companies" at 24 ("For this reason, CII supports decisions of companies to move away from reporting quarterly earnings guidance because we believe that providing such guidance can cause undue focus on short-term profits at the expense of long-term strategy and investment."); *see, e.g.*, Letter from Kerrie Waring, Chief Executive Officer, ICGN to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission ("When companies give quarterly guidance, the great temptation is to manage to short term numbers.").

[18] CNBC Transcript: "Berkshire Hathaway's Warren Buffett and JPMorgan Chase's Jamie Dimon Speak with CNBC's Becky Quick Today," NBCUniversal Media Village, June 7, 2018, https://www.nbcumv.com/news/cnbc-transcript-berkshire-hathaway%E2%80%99s-warren-buffett-and-jpmorgan-chase%E2%80%99s-jamie-dimon-speak-cnbc; *see* Letter from Sullivan & Cromwell LLP to Securities and Exchange Commission 6 (Mar. 7, 2019), https://www.sec.gov/comments/s7-26-18/s72618-5036366-183068.pdf ("A much more significant contributor to 'short-termism', we think, is companies' practices with respect to providing earnings guidance, and then focusing their reporting on that guidance.").

[19] CNBC Transcript: "Berkshire Hathaway's Warren Buffett and JPMorgan Chase's Jamie Dimon Speak with CNBC's Becky Quick Today;" *see* "Business Roundtable Supports Move Away from Short-Term Guidance" (quoting Berkshire Hathaway Chairman and CEO Warren Buffett that '"[c]ompanies, shareholders and, indeed, our country would be better served by focusing on concrete metrics and fundamentals rather than pre-emptive commitments to short-term performance'").

[20] Patrick Villanova, "Making Sense of the Quarterly Reporting Muddle," Forbes, Nov. 14, 2018, https://www.forbes.com/sites/forbesfinancecouncil/2018/11/14/making-sense-of-the-quarterly-reporting-muddle/#7e36f011c861 (quoting BlackRock founder and CEO Laurence D. Fink's 2016 letter to major CEO's).

We believe that if the Commission wants to help promote longer term decision making by public companies, they should encourage corporate managers to reconsider the practice of providing quarterly forward looking earnings guidance.[21]

9. What are the specific benefits of the required Form 10–Q disclosures to investors and the marketplace separate and apart from the earnings releases? Do they stem largely from the incremental financial statement disclosures, incremental management discussion and analysis, auditor review, officer certificates or other items? Are there sections of the Form 10–Q that are particularly informative for investors? Are there any quarterly disclosure requirements that we should eliminate because they elicit disclosures that are not material to investors to make it easier for investors to focus on the disclosures that are material? If so, which requirements should be eliminated?[22]

As indicated in response to question 6, CII believes that the specific benefits of the required Form 10-Q disclosures to investors and the marketplace separate and apart from the earnings releases include: independent auditor review, management certification, filed versus furnished, and XBRL data tagging.

11. What is the impact of the auditor review requirement of quarterly financial information on investors, companies, and other market participants? Do investors value the independent auditor review of quarterly financial information? Why or why not? Does the auditor review requirement have a relationship to the cost of capital for companies? If so, how?[23]

As indicated in response to question 6, CII believes that investors value the independent auditor review of quarterly financial information because they generally believe it will increase the quality, usefulness and reliability of the information and foster discipline and accountability of the company's reporting practices. We also believe that the auditor review requirement can lower the cost of capital for companies. As explained in our membership approved policies on financial gatekeepers:

> Auditors . . . play a vital role in ensuring the integrity and stability of the capital markets. They provide investors with . . . critical information they . . . cannot verify, to make informed investment decisions. With vast access to management and material non-public information, [auditors] . . . have an inordinate impact on public confidence in the markets. They also exert great influence over the ability of corporations to raise capital and the investment options of many institutional investors.[24]

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[21] *See, e.g.*, "The Benefits of Quarterly Reporting with Salman Arif," CII (Sept. 10, 2018), https://.www.cii.org/podcasts ("Now I want to highlight that if the regulators and the business community want to help promote longer term decision making by management, instead of reducing the frequency of mandatory disclosure, a more natural way would to end the voluntary practice that managers have of providing quarterly guidance").
[22] *Id.*
[23] 83 Fed. Reg. at 65,606.
[24] Council of Institutional Investors, Policies on Other Issues, **Financial Gatekeepers** (Apr. 13, 2010), https://www.cii.org/policies_other_issues#fin_gatekeepers.

15. One study indicates that the ''average public company needed 31.7 days to announce its earnings . . . and another four days after that to file its formal quarterly report.'' The study finds that companies that release both documents on the same day tend to ''take more time to deliver those pronouncements,'' while companies that publish an earnings release ''soon after the end of the quarter take more time to file their quarterly report.'' Why do some companies publish an earnings release before filing Form 10–Q while other companies publish an earnings report and file Form 10–Q on the same day or near the same time? Should the Commission take any action to address time lapses between an earnings release and Form 10–Q, and if so, what action? If the Commission should take action to facilitate a decrease in this delay, what is the best mechanism to facilitate such a decrease? Is it more or less burdensome to issue the two documents concurrently?[25]

CII would generally support Commission action to address time lapses between an earnings release and a Form 10-Q. For example, we have in the past supported "SEC exploration of quarterly reports preceding their related earnings release and earnings call . . . [to provide] investors with time to review GAAP financials before being inundated with non-GAAP information."[26]

We would also support the approach adopted by some companies of issuing the two documents concurrently. As distinguished investor/accountant/analyst Jack T. Ciesielski recently opined:

> [T]he SEC should call for companies to file their quarterly reports when they release their earnings, while keeping the same reporting guidelines. *That would give investors information about a company's performance and financial condition in a comprehensive package. Many companies do this, and the flexibility is already built into the reporting framework.*[27]

30. What are the benefits and costs to investors, companies, and other market participants associated with the current reporting frequency model, which requires from domestic issuers quarterly reports on Form 10–Q, annual reports on Form 10–K, and current reports on Form 8–K? Does the frequency of reporting lead managers to focus on short-term results to the detriment of long-term performance? Why or why not? If so, does this negatively affect investors? If so, how? Would less frequent reporting change management decision-making or otherwise positively affect investors? Or does the practice of issuing earnings guidance, including the frequency with which companies issue earnings guidance, lead managers to focus on short-term results to the detriment of long-term performance? Why or why not? Would more frequent reporting change management decisionmaking?[28]

CII believes that investors, companies, and other market participants benefit from the current reporting frequency model, which requires from domestic issuers quarterly reports on Form 10–Q, annual reports on Form 10–K, and current reports on Form 8–K. We generally share the view

[25] 83 Fed. Reg. at 65,606 (footnotes omitted).
[26] Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission 6 (July 8, 2016), https://www.sec.gov/comments/s7-06-16/s70616-49.pdf.
[27] Jack T. Ciesielski, Finance, Commentary, "Why We Should Stop Trying to Kill Quarterly Reporting," Fortune, Mar. 7, 2019 (emphasis added), http://fortune.com/2019/03/07/sec-quarterly-reporting/.
[28] 83 Fed. Reg. at 65,608.

of the SEC's Investor Advisory Committee that "the current degree, quality and frequency of disclosure for U.S. issuers overall is appropriate and a source of strength for the U.S. capital markets."[29]

More specifically, we believe the requirement to report historical earnings on a quarterly basis is a key element of the timely and accurate information flow that underpins the quality and efficiency of our capital markets.[30] The requirement helps ensure that important information is promptly and transparently provided to the marketplace, allowing investors to assess concrete progress against strategic goals.[31] As Wharton accounting Professor Daniel Taylor commented last year, "academic research has consistently shown that the U.S. capital markets are among 'the most liquid and safest in the world,' and the requirement of quarterly reporting strengthens that position."[32]

We do not believe that required quarterly reporting of historical earnings information, in itself, leads managers to focus on short-term results to the detriment of long-term performance.[33] For one thing, reporting companies' management and boards will likely continue to have quarterly information, whether or not they release it publicly.[34]

Moreover, the notion that quarterly reporting encourages short-term thinking is, in our view, outdated and not supported by empirical evidence.[35] We live in an era where real time open general ledgers and distributed ledger technology are becoming a reality.[36] In the modern world,

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[29] Letter from the SEC Investor Advisory Committee to the Division of Corporation Finance, U.S. Securities and Exchange Commission 1 (June 15, 2016), https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-approved-letter-reg-sk-comment-letter-062016.pdf.

[30] *See* "The Benefits of Quarterly Reporting with Salman Arif" ("noting that the US has the deepest, most liquid capital market in the world, and it is in no small part thanks to our disclosure standards"); Letter from Sullivan & Cromwell LLP to Securities and Exchange Commission at 4-5 ("As a general matter we would not support elimination of the requirement to report historical earnings on a quarterly basis, which we see as a key element of the timely and accurate information flow that underpins the quality and efficiency of our capital markets").

[31] *See* Letter from Neil M. Guglielmo, General Manager, Los Angeles City Employee' Retirement System to Mr. Brett J. Fields, Secretary, Securities and Exchange Commission at 2 ("LACERS supports the continued requirement for quarterly data reporting"); "Business Roundtable Supports Move Away from Short-Term Guidance" ("Importantly, companies . . . provide quarterly reporting — the retrospective reporting of actual performance that allows investors to assess concrete progress against strategic goals — and any clarification or update of annual guidance as needed."); Letter from Jeffrey P. Mahoney to The Honorable Bill Huizenga, Chairman, Subcommittee on Capital Markets, Securities, and Investment, Committee on Financial Services et al. 8-9 (explaining the benefits of quarterly reporting in response to a proposal to make quarterly financial filings optional).

[32] Finance, "Should Companies Abandon Quarterly Earnings Reports?"

[33] *See* Letter from Sullivan & Cromwell LLP to Securities & Exchange Commission at 6 ("We don't think that quarterly reporting of historical earnings information, in itself, is a significant contributor to the problem of 'short-termism.'").

[34] *Id.*

[35] *See, e.g.*, Nick Reeve, "Analysis: Is it Time to Scrap Quarterly Reporting for Listing Companies?," IPE, Aug. 31, 2018, https://www.ipe.com/news/regulation/analysis-is-it-time-to-scrap-quarterly-reporting-for-listed-companies/www.ipe.com/news/regulation/analysis-is-it-time-to-scrap-quarterly-reporting-for-listed-companies/10026393.fullarticle (referencing comment of Christoph Schlienkamp, board member of DVFA, that "notion that quarterly reporting encouraged short-term thinking was outdated").

[36] *See* "The Benefits of Quarterly Reporting with Salman Arif" ("We live in an era where real time open ledgers and the blockchain are becoming a reality"); s*ee also* Patrick Villanova, "Making Sense of the Quarterly Reporting Muddle" ("Business has embarked on a journey toward real-time "everything" on a 24/7/365 global basis.").

capital flows at the speed of light.[37] We believe that given today's dynamic and technology driven global business environment, permitting or requiring less frequent financial reporting would be a step into the past.[38]

The weight of empirical evidence does not support the conclusion that requiring quarterly reporting leads managers to focus on short-term results to the detriment of long-term performance. It is true that one study using data from the 1950s to the 1970s in the U.S. found that less frequent reporting reduced some myopic corporate decision making.[39] However, two more recent studies that use United Kingdom (U.K.) and Singaporean data from the 2000s, both failed to find evidence that the required reporting frequency had a negative impact on long term corporate decision making.[40]

In fact, as discussed further below, the SEC should be concerned that less timely reporting of historical results will lead to greater stock price volatility, as investors do more guess-work on what is happening at a company, increasing the potential for short-term profits and thereby intensifying short-termism. Less timely information and greater stock price volatility also would invite more insider trading, which CII believes undermines confidence in the market.

Finally, as indicated in response to question 2, we believe a much more significant contributor leading managers to focus on short-term results to the detriment of long-term performance is some companies' practices with respect to providing earnings guidance.

32. What would the costs and benefits be to investors, companies, and other market participants of a semi-annual reporting model for all or certain categories of reporting companies? Are there market practices in place, for example contractually mandated reports to lenders and indenture trustees, that rely on the current regulatory reporting regime? If so, how would these market practices be affected by changes to that regime and what are the downstream effects?[41]

CII believes that the costs to investors, companies, and other market participants of a semi-annual reporting model for reporting companies would likely outweigh the benefits.[42] Our view

[37] "The Benefits of Quarterly Reporting with Salman Arif."
[38] *Id.* ("And so clearly requiring less frequent financial reporting is a step into the past").
[39] *Id.* ("One study used data from the 1950s to the 1970s in the U.S., and found that less frequent reporting reduced some of this myopic corporate decision making").
[40] *Id.* ("But there are two more recent studies that use data from the 2000s, and the studies used U.K. data and Singaporean data, and both the studies failed to find any evidence that reporting frequency has an impact on long term corporate decision making [and] it is unclear if semi–annual reporting actually results in better long-term investment decisions by managers"); *but cf.* "A U.K. Critique of Quarterly Reporting with Andrew Ninian" (Nov. 15, 2018), https://www.cii.org/podcasts (discussing The Investor Association's opposition to quarterly reporting largely based on the concern about short-termism).
[41] 83 Fed. Reg. at 65,608.
[42] *See, e.g.*, Finance, "Should Companies Abandon Quarterly Earnings Reports?" (According to Professor Langevoort, "the potential problems arising from a switch to a half-yearly reporting mode outweigh the benefits.").

is supported by recent empirical research by Professors Salman Arif, Kelly School of Business at Indiana University and Emmanuel De George, London Business School.[43]

Professors Arif and De George studied the reports and stock price performance of more than 9,400 companies from 29 countries between 2001 and 2012. They found that a reduced frequency of reporting may lead investors to overreact to alternative sources of information for non-reporting periods.[44] Professor Arif believes the study indicates that moving from required quarterly to semi-annual reporting would likely make U.S. stocks much more risky and more volatile and harm the efficiency of the financial markets.[45]

Semi-annual reporting may cost investors and lessen market confidence by increasing the volume of insider trading.[46] As Donald Langevoort, a law professor at Georgetown University recently stated: '"The idea that you've slowed down the cycle and [are not demanding] formal disclosure so often means more and more secrets are going to be floating around the company for a longer period of time, and that's going to be tempting a lot of insider trading activity there.'"[47] Professor Taylor agrees, commenting that "the possibility of semi-annual reports encouraging insider trading 'is a huge risk' [and] . . . academic research has consistently shown that 'more transparent and timely information reduces insider trading, specifically.'"[48]

Moreover, the view that three months is "short-term," but six months is "long-term," seems highly questionable at best. A study published in 2017 by the CFA Institute examined the effects of the introduction of mandatory quarterly reporting in the U.K. in 2007 and the revocation of that requirement in 2014 and a return to requiring semi-annual reporting.[49] The study found that "moving from quarterly to semiannual reporting *is not* an effective remedy for undue corporate emphasis on short-termism."[50] The study concluded:

> If quarterly reporting leads company executives to focus on profits during the next three months, then a shift to semiannual reporting might plausibly lead corporate executives to focus on profits during the next six months—not on corporate investments with good prospects over the next three to five years.

[43] *See, e.g.,* Salman Arif et al., "Does Financial Reporting Frequency Affect Investors' Reliance on Alternative Sources?, Evidence from Earnings Information Spillovers Around the World" (Jan. 1, 2018) (Kelley Sch. of Bus. Res. Paper No. 17-7), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2900988.
[44] *See* "The Benefits of Quarterly Reporting with Salman Arif" ("what our findings indicate is that because semi-annual reporting causes investors to operate in an information vacuum for longer periods of time, they end up overreacting to other types of news that they believe is value relevant").
[45] *Id.* (commenting that semi-annual reporting "makes these stocks much more risky, creates excessive swings in stock prices, and harms the efficiency of financial markets").
[46] *Id.* (commenting that semi-annual reporting "creates higher information symmetry between insiders and investors and allows the insiders to earn higher profits from their trades at the expense of ordinary investors").
[47] Finance, "Should Companies Abandon Quarterly Earnings Reports?"
[48] *Id.*
[49] Robert C. Pozen et al., "Impact of Reporting Frequency on UK Public Companies," 3(1) Res. Found. Briefs, CFA Inst. (Mar. 2017), https://www.cfainstitute.org/en/research/foundation/2017/impact-of-reporting-frequency-on-uk-public-companies.
[50] *Id.*

> If regulators and politicians want companies to take a longer-term approach to investments, they should pursue broader reforms than shifting from quarterly to semiannual reporting. One possibly fruitful approach would be to lengthen the duration of executive pay. A study found that pay duration is longer in companies with more growth opportunities, more long-term assets, greater research intensity, and a lower risk appetite (Gopalan, Milbourn, Song, and Thakor 2014).[51]

Consistent with the results of the study, CII does not believe there is merit to the argument that semiannual reporting would allow for better long-term planning at companies. As Wharton professor of legal studies and business ethics David Zaring and Professor Langevoort have commented:

> "If you still have to report how everything's going in six months, I'm not sure that that's going to let you plan for 10 years down the road," Zaring said. Added Langevoort: "When you hear company executives talk about the long term, they're talking about at least a three- to five-year time horizon. *Three months versus six months is irrelevant to that question.*"[52]

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Thank you for consideration of our views. 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,

Jeff Mahoney

Jeffrey P. Mahoney
General Counsel

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[51] *Id.*

[52] Finance, "Should Companies Abandon Quarterly Earnings Reports?" (emphasis added); *see, e.g.*, "The Benefits of Quarterly Reporting with Salman Arif" ("If you think about it, realistically, adding an extra three months to the reporting cycle is unlikely to make much of a difference to business planning for multiyear horizons and we know from firms like Amazon, Apple, and Google, it is possible to plan and invest over very long horizons while still maintaining quarterly reporting").