Council of Institutional Investors®
The voice of corporate governance

Via Email

October 3, 2019

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Concept Release on Harmonization of Securities Offering Exemptions

Dear Madam Secretary:

The Council of Institutional Investors (CII), appreciates the opportunity to provide comments to the United States Securities and Exchange Commission (SEC or Commission) in response to the Concept Release on Harmonization of Securities Offering Exemptions (Release).[1] While the Release raises more than a hundred discrete issues, this comment letter focuses on a few of the areas of interest to some of our members.

CII is a nonprofit, nonpartisan association of U.S. asset owners, primarily pension funds, state and local entities charged with investing public assets and endowments and foundations, with combined assets of $4 trillion. Our associate members include non-U.S. asset owners with more than $4 trillion in assets, and a range of asset managers with more than $35 trillion in assets under management. CII members share a commitment to healthy public capital markets and strong corporate governance.[2]

Status of the U.S. Public Capital Markets

We believe that the U.S. public capital markets are fundamentally healthy and remain the preferred choice for businesses to seek capital, notwithstanding more robust private markets and access to capital through non-U.S. public markets.[3] And despite the current global economic

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[1] Concept Release on Harmonization of Securities Offering Exemptions, Securities Act Release No. 10,649, Exchange Act Release No. 86,129, Investment Adviser Act Release No. 5,256, Investment Company Act Release No. 33,512; 84 Fed. Reg. 30,460 (June 26, 2019), https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13255.pdf.
[2] For more information about the Council of Institutional Investors ("CII"), including its board and members, please visit CII's website at https://www.cii.org/about_us.
[3] *See*, *e.g.*, Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Bill Huizenga, Chairman, Subcommittee on Capital Markets, Securities, and Investment, Committee on Financial Services, United States House of Representatives et al. 2 (May 22, 2018), https://www.cii.org/files/May%2022,%202018%20Letter%20to%20Capital%20Markets%20Subcommittee%20(final).pdf ("We believe that the U.S. public capital markets are fundamentally healthy and remain the preferred choice for businesses to seek capital, notwithstanding more robust private markets and access to capital through non-U.S. public markets.").

slowdown, we note the U.S. markets continue to lead the world in initial public offering (IPO) proceeds.[4]

The decline in the number of U.S. public companies since the peak of 20 years ago has not, in our view, significantly diminished the ability of U.S. businesses to obtain capital.[5] A key factor in the decline has been the corresponding growth in the private markets.[6]

Compared to a few decades ago, companies have many more ways to access significant capital without utilizing the public markets. Venture capitalists, sovereign and mutual funds, among others have considerable capital to invest in private companies.[7] For example, between 2003 and 2017, private market fund raising increased from about $100 billion to nearly $750 billion.[8] Given the various choices U.S. businesses have for funding, many have chosen to remain private longer.

The excess of capital that is presently available to private companies—too much money chasing too few opportunities—has created some troubling practices that merit SEC attention.[9] As Professor Elisabeth de Fontenay, Professor of Law, at Duke University recently testified before the U.S. Congress, those practices and risks include:

> [A]mong many others, (1) the decline of underwriting standards in corporate debt (particularly leveraged loans); (2) rising leverage ratios in private equity financed acquisitions; (3) a spike in IPOs or private financing rounds for very large firms that have yet to achieve profitability; and (4) *a shift in bargaining power from*

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[4] *See, e.g.*, Martin Steinbach, EY, Why Global IPO Activity has Continued to Slow in Q2 2019 (July 13, 2019), https://www.ey.com/en_gl/growth/why-global-ipo-activity-has-continued-to-slow-in-q2-2019 ("the NYSE and NASDAQ ranked first and second respectively by proceeds globally in H1 2019").

[5] *See, e.g.*, Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Bill Huizenga, Chairman, Subcommittee on Capital Markets, Securities, and Investment, Committee on Financial Services, United States House of Representatives et al. at 2 ("The decline in the number of U.S. public companies since the peak of 20 years ago has not in our view significantly diminished the ability of U.S. businesses to obtain capital.").

[6] *See, e.g.*, Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment: Hearing Before the H. Comm. on Fin. Servs., Subcomm. on Investor Prot., Entrepreneurship & Capital Mkts., 112th Cong. (Sept. 11, 2019) (Written Testimony of Elisabeth de Fontenay, Professor of Law, Duke University at 13), https://law.duke.edu/sites/default/files/news/written-testimony-de-fontenay.pdf ("Over the last few decades, there has been exponential growth in the number of investment funds targeting the U.S. private markets.").

[7] *See, e.g.*, McKinsey & Company, The Rise and Rise of Private Markets 2 (2018), https://www.mckinsey.com/~/media/McKinsey/Industries/Private%20Equity%20and%20Principal%20Investors/Our%20Insights/The%20rise%20and%20rise%20of%20private%20equity/The-rise-and-rise-of-private-markets-McKinsey-Global-Private-Markets-Review-2018.ashx ("Private asset managers raised a record sum of nearly $750 billion globally, extending a cycle that began eight years ago").

[8] *Id.* at 7 (Exhibit 3).

[9] *See* Written Testimony of Elisabeth de Fontenay, Professor of Law, Duke University at 13 ("signs of an excess of capital are popping up throughout the capital markets, with troubling parallels to the period preceding the financial crisis of 2008-2009"); *see also* Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment: Hearing Before the H. Comm. on Fin. Servs., Subcomm. on Investor Prot., Entrepreneurship & Capital Mkts., 112th Cong. (Sept. 11, 2019) (Written Testimony of Renee M. Jones at 8-9), https://docs.house.gov/meetings/BA/BA16/20190911/109907/HHRG-116-BA16-Wstate-JonesR-20190911.pdf (discussing new risks created by the growing number of unicorns).

> *investors to founders (reflected in the rise of dual-class stock structures,* for example).[10]

Dual Class Stock Structures

As venture capitalists have faced greater competition for access to deals with sovereign wealth funds, mutual funds and other capital providers, they have been offering financing on more "founder-friendly" terms.[11] A far too frequent feature of those terms has been awarding founders with special voting rights through dual class stock with super voting power of typically 10 or more votes per share.[12] Those dual class stock structures often enable the founders to maintain control over the board of directors for lengthy periods (e.g., until the founders' deaths) or even into perpetuity, despite having a relatively small financial stake in the firm.[13]

When founders control the board, an important source of discipline over the companies' operations are neutralized.[14] And of particular concern for CII members and other long-term shareowners, there is no practical ability to exercise meaningful oversight of the founder and public company board, even in the face of extended poor performance or changed company circumstances that suggest a different management or long-term strategy.[15] Simply put, dual class stock structures with unequal voting rights raise the prospect that control over a growing number of our newly listed public companies, and ultimately of Main Street's retirement savings, will be forever held by a small, elite group of unaccountable corporate insiders—who in some cases will pass that power down to their heirs.[16]

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[10] Written Testimony of Elisabeth de Fontenay, Professor of Law, Duke University at 13 n.21 (emphasis added).
[11] *See, e.g.*, Written Testimony of Renee M. Jones at 8 ("As venture capitalists competed for access to deals with sovereign wealth funds and mutual funds, they began to offer financing on 'founder-friendly' terms.").
[12] *Id.* ("In the founder-friendly model, founders receive shares with super voting power (typically ten votes per share), which enables founders to maintain control over the board of directors, despite having relatively small financial stake in the firm."); *see also* Simon Constable, Goldman Sachs Warning: One-Share One Vote Or Else The Stock Will Suffer, Forbes.com, Sept. 30, 2019, https://flipboard.com/@forbes/goldman-sachs-warning-one-share-one-vote-or-else-the-stock-will-suffer/a-mxi5Pr5kSsaaiB3ALAmeHw%3Aa%3A3199486-a231054faa%2Fforbes.com ("So far this year 17% of IPOs have used a multi-vote share structure, up from 11% last year . . . [and] [a] mere 7% of IPOs used this structure in 2012."); Daniel Kausner, PWC, Dual Class IPO's Are on the Rise Tech Unicorns Jump on Board This New Trend (July 18, 2018), https://usblogs.pwc.com/deals/dual-class-ipos-are-on-the-rise-tech-unicorns-jump-on-board-this-new-trend/ ("Twenty-five percent of the companies that listed on U.S. exchanges in 2017 have dual-class voting compared to just 1% in 2005").
[13] *See, e.g.*, Written Testimony of Renee M. Jones at 8.
[14] *Id.* ("When founders control the board, an important source of discipline over the startup's operations is neutralized."). We note that founder super-voting rights have harmed various companies, including even when they are private and have concentrated ownership represented on their boards, such as at Theranos, We Company and Uber. *Id.* at 9 (discussing risks inherent in the governance model at Uber and Theranos). More dispersed shareholders in public markets have, in our view, even less ability to remove a value-destructive founder-CEO who controls the board notwithstanding stronger price signals from more liquid markets.
[15] *See, e.g.*, Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors to Director Angela Ahrendts et al. Airbnb, Inc. 1 (Sept, 30, 2019), https://www.cii.org/files/Airbnb.pdf ("many public company shareholders are skeptical on whether managers holding super-voting rights are held accountable by company boards, even in the face of extended poor performance or changed company circumstances that suggest different management and/or strategy").
[16] *See, e.g.*, Connie Loizos, In the Dual-Class Shares Debate, the Big Exchanges Should Get Off the Sidelines, msn.com, Sept. 30, 2019, https://www.msn.com/en-us/news/technology/in-the-dual-class-shares-debate-the-big-exchanges-should-get-off-the-sidelines/ar-AAI5JSL (opining that dual class stock "raises the prospect that control

CII believes that a developing market practice offers a logical and reasonable solution to the lack of accountability created by dual class stock public companies: put in place a simple, effective sunset mechanism on dual-class voting structures, so that markets do not suffer long-term damage from long-lasting unaccountability.[17] More specifically, we believe that time-based limits requiring dual class voting structures to sunset within a reasonable and specified period after IPO will allow companies to address any alleged problem of short-termism without requiring shareholders to entirely surrender the ability to hold the managers of their assets accountable.[18]

In our view, a sunset of no more than seven years offers an appropriate period to harness whatever benefits of innovation and control a dual class voting structure may provide while mitigating the agency costs it incurs over time.[19] And the market has validated this approach.

A limited but increasing number of dual class stock companies are choosing to go public with time-based sunset provisions incorporated into their charters.[20] CII has tracked 29 U.S. companies that went public with simple, time-based sunsets since 2004, including 21 from 2015-19. The sunsets range from three to 20 years. Most dual class stock structures sunset in seven or 10 years with five companies using sunsets of five years or less from 2004-18. The mean sunset in 2018 was 7.0 years, down from 9.5 years in 2017 and 10.3 years in 2016. Four of the companies that have such sunsets converted to one-share, one-vote in smooth processes well-understood by the market.

Time-based sunsets are simple, clear, and not subject to change by the controlling holder. A recent report by Goldman Sachs agrees that "it's time for public companies to stop shielding themselves from their shareholders, and a [time-based sunset is] a way to do it."[21]

CII, many institutional investors,[22] and other market participants have concluded that it is incumbent on the U.S. stock exchanges to, at a minimum, require time-based sunsets at newly

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over our public companies, and ultimately of Main Street's retirement savings, will be forever held by a small, elite group of corporate insiders—who will pass that power down to their heirs").

[17] *See, e.g.*, Letter from Ken Bertsch, Executive Director, Council of Institutional Investors et al. to Henry E. Gallagher, Jr., Council Chair, Corporation Law Section of the Delaware State Board Association 4 (Sept. 13, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/September%2013%202019%20Final%20DGCL%20letter.pdf (We believe the . . . developing market practice suggest a logical compromise: put in place a simple, effective sunset mechanism on multi-class voting structures, so that markets do not suffer long-term damage from perpetual or long-lasting unaccountability.").

[18] *Id.* ("We believe that time-based limits requiring multi-class voting structures to sunset within a reasonable and specified period after IPO will allow companies to address the alleged problem of short-termism without requiring shareholders to entirely surrender the ability to hold the managers of their assets accountable.").

[19] *Id.* ("A sunset of no more than seven years offers an appropriate period to harness whatever benefits of innovation and control a multi-class voting structure may provide while mitigating the agency costs it incurs over time.").

[20] See CII list of companies with time-based sunsets at https://www.cii.org/files/6-25-19%20Time-based%20Sunsets(1).pdf.

[21] Simon Constable (reporting that "Goldman . . . has a suggestion: [] **A sunset provision on dual-class stock** . . . [p]hasing out high-voting stock after 5-10 years . . . [and] Goldman says it's time for public companies to stop shielding themselves from their shareholders, and here's a way to do it").

[22] *See, e.g.*, Press Release, CII, Investors Petition NYSE, NASDAQ to Curb Listings of IPO Dual-Class Share Companies 1-2 (Oct. 24, 2018), https://www.cii.org/files/issues_and_advocacy/correspondence/FINAL%20Dual%20Class%20Petition%20Press%2

listed companies with dual class stock structures.[23] For example, Alan Patricof, a long-time, well known venture capitalist recently stated:

> [I]t's time the exchanges that list these companies' shares do something about . . . [dual class share structures]. "I'm not holier than thou in this industry," . . . "but if you want to be a publicly traded company, you should act like a public company."[24]

Last October, CII submitted listing standard petitions to the U.S. stock exchanges proposing requiring newly listed companies that choose dual class voting structures to adopt a sunset that triggers within seven years of an IPO.[25] To date, the exchanges have failed to act on our petitions.

We understand that some believe the Commission may not currently have the statutory authority to require the U.S. stock exchanges to adopt CII's petitions.[26] We, therefore, would respectfully recommend that the Commission request that the U.S. Congress amend the federal securities laws to explicitly permit the SEC to adopt rules requiring the U.S. stock exchanges to revise their listing standards generally consistent with our petitions.

Section 12(g) Thresholds

As indicated in the Release, the recent decline in the number of public companies and the corresponding growth in the private markets has been aided by the Jumpstart Our Business Startups Act of 2012 (JOBS Act).[27] Prior to the JOBS Act, Section 12(g) of the Securities and Exchange Act of 1934 (Exchange Act) required an issuer to register a class of its equity securities if, at the end of the issuer's fiscal year, the securities were ''held of record'' by 500 or more persons and the issuer had total assets exceeding $1 million.[28]

Section 501 of the JOBS Act revised the thresholds for registration by raising the shareholder of record test from 500 to 2,000 persons.[29] The result is that the current Section 12(g) thresholds

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0Release%20Oct%2024,%202018.pdf (noting that supporters of CII's petition include BlackRock and T. Rowe Price).

[23] *See, e.g.,* Connie Loizos (commenting that dual-class stock structures are "very much a product of their time, and if public market shareholders don't want to see more of the same, something has to be done [and] [i]t might be incumbent on the exchanges to do it.").

[24] *Id.*

[25] *See, e.g.,* Press Release, CII (includes links to petitions).

[26] *See, e.g.,* Commissioner Robert J. Jackson Jr., Remarks in San Francisco, California, Perpetual Dual-Class Stock: The Case Against Corporate Royalty n.6 (Feb. 15, 2018), https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty (noting that in the 1980's "[t]he SEC, led at the time by Chairman Arthur Levitt, attempted to intervene [to restrict dual class stock through stock exchange listing standards] —but was thwarted by a controversial ruling of the D.C. Circuit. *Business Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990))."

[27] *See* 84 Fed. Reg. at 30,464 n.30; *see also* H.R. 3606, 112th Cong. (2012), https://www.govinfo.gov/content/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.

[28] 84 Fed. Reg. at 30,464 n.30.

[29] H.R. 3606, § 501 ("Section 12(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(1)(A)) is amended to read as follows: ''(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of

effectively allow private companies with widely dispersed share ownership to delay an IPO indefinitely.[30]

The Release includes several requests for comment as to whether Section 12(g) thresholds and their application should be further weakened to, for example, increase "potential issuers [to] be more likely to use Regulation A,"[31] or "Regulation Crowdfunding,"[32] or to enhance "access to capital or secondary market liquidity" for certain securities.[33]

CII believes a further relaxing of Section 12(g) thresholds would likely lead to a further decline in the rate at which issuers become public reporting companies.[34] Allowing more firms to delay going public would likely limit high-growth opportunities in the public markets for retail investors, which SEC Chairman Jay Clayton has said is a concern.[35] Moreover, our public capital markets do provide clear price discovery and liquidity benefits, and we are not convinced that now is the time to discourage companies from going public by further dilution of Section 12(g) thresholds.[36]

At a minimum, CII believes the Commission should not take any action to broaden or expand Section 12(g) thresholds without compelling evidence that such a change would benefit long-term investors and the capital markets. Moreover, we would not object to a request by the Commission to the U.S. Congress to amend Section 501 of the JOBS Act to tighten the thresholds in Section 12(g).[37]

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record by either— ''(i) 2,000 persons, or ''(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and''"); s*ee, e.g.*, Written Testimony of Elisabeth de Fontenay, Professor of Law, Duke University at 21) ("At the request of Facebook when it was still a private company, Congress substantially raised the shareholder-of record test from 500 to 2,000 in the JOBS Act, allowing "private" firms with widely dispersed share ownership to avoid going public, if so desired.").

[30] *See. e.g.*, Written Testimony of Renee M. Jones at 13 ("As it now stands Section 12(g) allows unicorns to delay an IPO indefinitely, allowing these important companies to operate in secrecy, shrouded from public scrutiny and accountability.").

[31] 84 Fed. Reg. at 30,494 (request for comment # 62).

[32] 84 Fed. Reg. at 30,506 (request for comment # 90).

[33] 84 Fed. Reg. at 30,521 (request for comment # 131).

[34] *See, e.g.*, Written Testimony of Elisabeth de Fontenay, Professor of Law, Duke University at 21 (noting that changes in the Section 12(g) thresholds "ran directly counter to the JOBS Act's stated concern about the decline in IPOs").

[35] *See, e.g.*, Michelle Fox, SEC Chair Jay Clayton Wants Big Firms to Go Public Earlier So Retail Investors Can Get In On the Growth, CNBC.com, Apr. 26, 2019, https://www.cnbc.com/2019/04/26/sec-chair-jay-clayton-wants-big-companies-to-go-public-earlier.html (quoting SEC Chair Jay Clayton that, "'I like it when growth companies are entering our markets so that our retail investors have an opportunity to participate in the growth'").

[36] *See, e.g.*, Written Testimony of Elisabeth de Fontenay, Professor of Law, Duke University at 21 ("firms' delay in going public may . . . be highly detrimental to the price discovery and liquidity in the U.S. capital markets for which they are rightly renowned.").

[37] *Id.* ("In order to stem the decline in U.S. public companies, therefore, it may be necessary to reverse course on this portion of the JOBS Act and to tighten the size thresholds in Section 12(g).").

Regulation A+ Exemption

As indicated in the Release, the JOBS Act also spawned the so-called "Regulation A+" exemption from SEC registration as a public company. Regulation A was originally adopted by the Commission in 1936 as an exemption from registration for small issues of up to $5 million.[38]

Section 401 of the JOBS Act directed the Commission to adopt rules revising Regulation A to exempt from registration a class of securities for offerings of up to $50 million of securities within a 12-month period,[39] and concurrently authorized the Commission to adopt other terms, conditions, or requirements related to Regulation A as necessary in the public interest and for the protection of investors.[40] The end result is that under current SEC rules, Regulation A+ allows some small and midsize companies to raise up to $20 million in a 12- month period without registering under the Securities Act of 1933 or complying with the ongoing requirements of the Exchange Act or state securities law registration or qualification.[41]

The Release includes several requests for comment on whether the Regulation A+ exemption should be further softened to, for example, increase the maximum offering size,[42] extend the eligibility of the exemption to additional categories of issuers, "such as those organized with a principal place of business outside of the United States and Canada, investment companies, or blank check companies,"[43] and expand the types of securities issued under the exemption.[44]

Our concerns about the Regulation A+ exemption were heightened in April when Nasdaq publicly acknowledged they had "observed problems with certain Regulation A companies [including the] . . . potential for fraud by companies conducting offerings under Regulation A."[45] As reported in the Wall Street Journal in June, Nasdaq had broad "concerns about corporate governance and potential fraud in Reg A+ companies."[46]

CII most recently shared our concerns about Regulation A+ with the Commission in a July comment letter in response to the proposed changes to the disclosure requirements under Rule 3-

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[38] *See* 84 Fed. Reg. at 30,486 ("Regulation A was originally adopted by the Commission in 1936 as an exemption for small issues under the authority of Section 3(b) of the Securities Act [and] Section 401 of the JOBS Act amended Section 3(b) of the Securities Act by designating Section 3(b), the Commission's exemptive authority for offerings of up to $5 million").

[39] *See* H.R. 3606, § 401(a)(1)(b)(2)(A) ("The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed $50,000,000.").

[40] *Id.* § 401(a)(1)(b)(2)(G) ("Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include").

[41] *See* 84 Fed. Reg. at 30,486-87.

[42] *Id.* at 30,443 (request for comment # 48).

[43] *Id.* (request for comment # 49).

[44] *Id.* (request for comment # 50).

[45] Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Additional Requirements for Listings in Connection with an Offering under Regulation A of the Securities Act, Exchange Act Release No. 85,687, 84 Fed. Reg. 17,224, 17,225 (Apr. 24, 2019), https://www.govinfo.gov/content/pkg/FR-2019-04-24/pdf/2019-08205.pdf.

[46] Alexander Osipovich, IPOs, Exchanges Shy Away from Mini-IPOs After Fraud Concerns, Wall St. J., June 10, 2019, https://www.wsj.com/articles/exchanges-shy-away-from-mini-ipos-after-fraud-concerns-11560177205 ("Nasdaq cited . . . broader concerns about corporate governance and potential fraud in Reg A+ companies.").

05.[47] In that letter, we expressed surprise and disappointment "that no analysis appears to have been performed on the problems identified with Regulation A offerings and whether those problems should impact the proposed disclosures."[48] It remains unclear to us as to whether the SEC has conducted such an analysis.

We also note that the state securities regulators have significant concerns with the Regulation A+ exemption.[49] In recent Congressional testimony, the past President of The North America Securities Administrators explained:

> NASAA has repeatedly expressed significant concern regarding the viability and necessity of a marketplace for quasi-private securities offerings, especially on the scale envisioned by Regulation A+. Such a marketplace is difficult to police and has the potential to become a magnet for fraud. Moreover, by furnishing means for non-accredited investors to invest in early-stage companies that would otherwise be considered too risky for offer to the public, Reg. A+ not only entails objectively increased investment risk but puts retail investors into a position of essentially competing with sophisticated investors for access to investment opportunities in attractive pre-IPO companies. Not surprisingly, retail investors are at a steep structural disadvantage and oftentimes end up with the short end of the stick – that is, they assume significant risk without gaining access to most attractive deals, or to more favorable terms and prices available to venture funds and other "accredited investors" under Regulation D.[50]

At a minimum, CII believes the Commission should not take any action to broaden or expand the Regulation A+ exemption without compelling evidence that such a change would benefit long-term investors and the capital markets. We generally agree with the comments of Davis Polk that that the "current thresholds are high and large offerings should benefit from full SEC protection."[51] Moreover, we would not object to a request by the Commission to the U.S. Congress to eliminate the Regulation A+ exemption.[52]

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[47] Letter from Joseph W. Caputo, Council of Institutional Investors to Vanessa Countryman, Secretary, Securities and Exchange Commission 5-6 (July 29, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/July%2029%202019%20SEC%20Letter%20Amendments%20to%20Financial%20Disclosures%20About%20Acquired%20and%20Disposed%20Businesses%20Final2.pdf ("**Failure to Consider Implications of Regulation A Problems for this Proposal**").
[48] *Id.*
[49] *See, e.g.*, Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment: Hearing Before the H. Comm. on Fin. Servs., Subcomm. on Investor Prot., Entrepreneurship & Capital Mkts., 112th Cong. (Sept. 11, 2019) (Written Testimony of Michael S. Pieciak, NASAA Past President and Vermont Commissioner of Financial Regulation On Behalf of The North America Securities Administrators at 10-11), https://docs.house.gov/meetings/BA/BA16/20190911/109907/HHRG-116-BA16-Wstate-PieciakM-20190911.pdf
[50] *Id.* at 11.
[51] Letter from Davis Polk & Wardwell LLP to Ms. Vanessa Countryman, Secretary, Securities and Exchange Commission 2 (Sept. 24, 2019), https://www.sec.gov/comments/s7-08-19/s70819-6190713-192474.pdf.
[52] *See, e.g.*, Written Testimony of Michael S. Pieciak, NASAA Past President and Vermont Commissioner of Financial Regulation On Behalf of The North America Securities Administrators at 11 ("Congress should revisit the rationale for quasi-private offerings under Regulation A+ and consider whether the framework makes sense.").

If you have any questions regarding this letter or need additional information, please do not hesitate to contact me at 202.822.0800 or jeff@cii.org.

Sincerely,

Jeff Mahoney

Jeffrey P. Mahoney
General Counsel