

Via Email

August 11, 2020

The Honorable Michael D. Crapo
Chair
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

Re: H.R. 5084, the Improving Corporate Governance through Diversity Act of 2019¹

Dear Mr. Chairman and Ranking Member Brown:

I am writing on behalf of the Council of Institutional Investors (CII) to respectfully request that your committee pass H.R. 5084, the “Improving Corporate Governance through Diversity Act of 2019,” which the United States (U.S.) House of Representatives passed in a strong bi-partisan vote last November.²

CII is a nonprofit, nonpartisan association of U.S. 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, including public pension funds and defined contribution plans with more than 15 million participants – true “Main Street” investors through their funds. Our associate members include non-U.S. asset owners with about \$4 trillion in assets, and a range of asset managers with more than \$40 trillion in assets under management.³

¹ Improving Corporate Governance through Diversity Act, H.R. 5084, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/5084/text>.

² Improving Corporate Governance through Diversity Act, H.R. 5084, 116th Cong. (2019), <https://clerk.house.gov/Votes/2019630> (Yeas and Nays: 281 - 135).

³ 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>.

CII's membership approved policies state:

The Council supports a diverse board. The Council believes a diverse board has benefits that can enhance corporate financial performance, particularly in today's global market place. Nominating committee charters, or equivalent, ought to reflect that boards should be diverse, including such considerations as background, experience, age, race, gender, ethnicity, and culture.⁴

Our policy is supported by a growing body of evidence indicating that diverse boards can benefit long-term investors.⁵ For example, PwC's 2019 Annual Corporate Directors Survey found that 87% of corporate directors said that board diversity enhances board performance and 76% of directors agree that board diversity enhances the performance of the company.⁶

The Improving Corporate Governance through Diversity Act of 2019 would require public companies to annually disclose the voluntarily self-identified race, ethnicity, gender and veteran status of their board of directors, nominees, and executive officers.⁷ H.R. 5084 also requires the Securities and Exchange Commission (SEC) Office of Minority and Women Inclusion to, among other things, solicit comment on and publish best practices for compliance with diversity disclosures.⁸

H.R. 5084 would also require the SEC to establish a Diversity Advisory Group that includes representatives from government, academia, and private sector issuers and investors to study, identify, and recommend strategies that issuers could use to increase racial, ethnic, and gender diversity among board members.⁹ In addition, the SEC would report annually to your committee data on the status of issuer board diversity.¹⁰

Recently CII issued a statement calling for action to ensure that "all members of our community are treated fairly and equitably, and structural discrimination is dismantled."¹¹ Passage of H.R. 5084 would be a small but positive step forward by embracing the need for greater racial, ethnic, and gender diversity among public company boards of directors.¹²

⁴ Council of Institutional Investors, Corporate Governance Policies, § 2.8b Board Diversity (updated Mar. 10, 2020), [https://www.cii.org/files/03_10_20_corp_gov_policies\(1\).pdf](https://www.cii.org/files/03_10_20_corp_gov_policies(1).pdf).

⁵ See, e.g., Kweilin Ellingrud, Accelerating Board Diversity, Forbes (June 26, 2020), <https://www.forbes.com/sites/kweilinellingrud/2020/06/26/accelerating-board-diversity/#3874b1a15106> ("Corporate performance studies have shown time and again that diversity at both the board and management levels correlates to higher financial performance").

⁶ See The Evolving Board Room: Signs of Change, PwC's 2019 Annual Corporate Directors Survey (2020), <https://www.pwc.com/us/en/services/governance-insights-center/assets/pwc-2019-annual-corporate-directors-survey-full-report-v2.pdf.pdf>.

⁷ § 2(s)(2)(A)-(B).

⁸ § 2(s)(5).

⁹ § 3(a)-(b).

¹⁰ § 3(c).

¹¹ Press Release, Council of Institutional Investors, Leading Investor Group Calls for Action on Racism (June 9, 2020), <https://www.cii.org/calltoaction>.

¹² See, e.g., Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gregory W. Meeks, Chair, Subcommittee on Consumer Protection and Financial Institutions, Committee on Financial Services 1 (Feb. 6, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/February%206%202019%20Representative%2

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We urge you to consider H.R. 5084. If we can answer any questions or provide additional information that would be helpful to you or your committee please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive, flowing style.

Jeffrey P. Mahoney
General Counsel

CC: The Honorable Mitch McConnell, Majority Leader, United States Senate
The Honorable Charles E. Schumer, Minority Leader, United States Senate