

Via E-Mail

April 22, 2021

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Patrick T. McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: April 20, 2021, Full Committee Markup¹

Dear Madam Chairwoman and Ranking Member McHenry:

I am writing on behalf of the Council of Institutional Investors (CII) to express our strong support for the “Amendment in the Nature of a Substitute to H.R. 1277, ‘Improving Corporate Governance Through Diversity Act’” (H.R. 1277 Amended).² It is our understanding that H.R. 1277 Amended was considered as part of the Committee on Financial Services (Committee) “full Committee Markup” on April 20 (Committee Markup) and passed the Committee by a bipartisan voice vote.³

CII is a nonprofit, nonpartisan association of United States 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

¹ Hybrid Markup - FY20 Budget Views and Estimates; H.R. 1087; H.R. 1187; H.R. 1277; H.R. 2123; H.R. 2516; H.R. 2543; H.R. 2547; H.R. 2553 (Apr. 20, 2021), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407639>.

² Amendment in the Nature of a Substitute to H.R. 1277, Improving Corporate Governance Through Diversity Act of 2021, 117th Cong. (Apr. 20, 2021), https://financialservices.house.gov/uploadedfiles/04.20.2021_bills-117-1277-m001137-amdt-8.pdf.

³ Hybrid Markup - FY20 Budget Views and Estimates; H.R. 1087; H.R. 1187; H.R. 1277; H.R. 2123; H.R. 2516; H.R. 2543; H.R. 2547; H.R. 2553; *see* Press Releases, Chairwoman Maxine Waters, Committee Passes Legislation to Advance Racial Equity, Protect Consumers, and Improve Disclosures by Public Companies (Apr. 21, 2021), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=407679> (“**The Improving Corporate Governance Through Diversity Act (H.R. 1277)**), a bill by Representative Gregory Meeks (D-NY), which would require public companies to annually disclose the voluntarily, self-identified gender, race, ethnicity and veteran status of their board directors [and] [t]he bill passed the Committee by a bipartisan **voice vote**.”).

to protect the retirement savings of millions of workers and their families, including public pension funds with more than 15 million participants – true “Main Street” investors through their pension 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.⁴

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.⁵

Generally consistent with our policy, CII has been a long-time supporter of the provisions of the Improving Corporate Governance Through Diversity Act.⁶

H.R. 1277 Amended incorporates, with some modest revisions, the provisions of the Improving Corporate Governance Through Diversity Act of 2021 (Diversity Act).⁷ The Diversity Act appears to have broad support from market participants, including from the National Association for the Advancement of Colored People, the National Urban League, the U.S. Chamber of Commerce, and the Latino Corporate Directors Association.⁸

More specifically, it is our understanding that H.R. 1277 Amended would require disclosure of data, based on voluntary self-identification, on the racial, ethnic and gender composition of a company’s board of directors and nominees for a board seat, as well as senior executive officers; disclosure of voluntary self-identification as a veteran, would also be required.⁹ H.R. 1277

⁴ 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>.

⁵ Council of Institutional Investors, Corporate Governance Policies, § 2.8b Board Diversity (updated Sept. 22, 2020), https://www.cii.org/files/policies/09_22_20_corp_gov_policies.pdf.

⁶ 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, United States House of Representatives 1 (Feb. 6, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/February%206%202019%20Representative%20Meeks%20Letter.pdf (“I am writing on behalf of the Council of Institutional Investors . . . to express our strong support for H.R. ____, the “Improving Corporate Governance Through Diversity Act of 2019 . . .”).

⁷ See Improving Corporate Governance Through Diversity Act of 2021, H.R. 1277, 117th Cong. § 2-3 (Feb. 24, 2021), available at <https://www.congress.gov/117/bills/hr1277/BILLS-117hr1277ih.pdf>.

⁸ See Memorandum from FSC Majority Staff to Members, Committee on Financial Services 4 (Apr. 15, 2021), <https://financialservices.house.gov/uploadedfiles/hmkp-117-ba00-20210420-sd003.pdf>; see MENENDEZ INTRODUCES BILL TO PROMOTE CORPORATE DIVERSITY (Feb. 23, 2021), <https://www.menendez.senate.gov/newsroom/press/menendez-introduces-bill-to-promote-corporate-diversity> (“The National Urban League, Nareit, Financial Services Forum, American Bankers Association, International Council of Shopping Centers, Bank Policy Institute, American Council of Life Insurers, NAIOP the Commercial Real Estate Development Association and Real Estate Roundtable also support the legislation.”).

⁹ Amendment in the Nature of a Substitute to H.R. 1277, Improving Corporate Governance Through Diversity Act of 2021, Amendment in the Nature of a Substitute to H.R. 1277, Improving Corporate Governance Through Diversity Act, 117th Cong. § 2(s)(1)-(2)(b).

Amended would also require disclosure of any policy, plan or strategy adopted by the board of directors (or board committee) to promote racial, ethnic and gender diversity at the company.¹⁰

CII believes H.R. 1277 Amended is in line with our above referenced policy on board diversity, which reflects the view that corporate governance best practices include the expectation that corporate boards will reflect the diversity of the company's communities, customers and employees.¹¹ We also believe that diverse boards and senior executive officers can have a significant positive effect on financial performance¹² and that diverse boards and senior executive officers can be achieved without quotas that can result in "check-the-box" diversity.¹³

We believe that the disclosure-oriented approach in H.R. 1277 Amended is an important way of fulfilling several key goals in terms of investor knowledge and a better functioning market.

1. Providing material information to investors. Diversity, both at the board level and at the senior executive ranks, is important to many investors, yet it is difficult to obtain that information – and to compare companies against their peers. H.R. 1277 Amended can play an important role to provide guidance to public companies and investors alike. As Commissioner Allison Herren Lee of the Securities and Exchange Commission stated at CII's fall 2020 conference, diversity disclosure "gets investors the information they need to make investment decisions based on their own judgment of what indicators matter for long-term value [and] [i]mportantly, it can also drive corporate behavior."¹⁴ We believe the cost of compliance is minimal, and the benefits to investors can be significant.¹⁵

¹⁰ *Id.* § 2(s)(c).

¹¹ *See, e.g.*, Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Sherrod Brown, Chairman, Committee on Banking, Housing & Urban Affairs, United States Senate et al. 6 (Mar. 18, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/2021%20Investor%20Advocate%20Letter.pdf ("This legislation [the analogous diversity provisions of the SEC as Investor Advocate Act of 2021] is in line with CII's policy on board diversity, which reflects the view that corporate governance best practices include the expectation that corporate boards will reflect the diversity of the company's communities, customers and employees.").

¹² *See, e.g.*, Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Secretary, Securities and Exchange Commission 5-7 & n.22 (Apr. 1, 2021), [https://www.cii.org/files/issues_and_advocacy/correspondence/2021/April%201%202021%20Letter%20to%20SEC%20on%20diversity%20proposal%20\(final\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2021/April%201%202021%20Letter%20to%20SEC%20on%20diversity%20proposal%20(final).pdf) (citations generally supporting the view that there is an extensive body of research and other materials demonstrating that diverse boards are positively associated with company performance).

¹³ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Secretary, Securities and Exchange Commission (Dec. 30, 2020), [https://www.cii.org/Files/December%2030%202020%20Letter%20to%20SEC%20on%20diversity%20proposal%20\(final\)-ABcomments%20LN.v2.pdf](https://www.cii.org/Files/December%2030%202020%20Letter%20to%20SEC%20on%20diversity%20proposal%20(final)-ABcomments%20LN.v2.pdf) ("We, however, believe diverse boards can be achieved without quotas which may result in "check-the-box" diversity.").

¹⁴ *See* Commissioner Allison Herren Lee, Remarks at the Council of Institutional Investors Fall 2020 Conference: Diversity Matters, Disclosure Works, and the SEC Can Do More (Sept. 22, 2020), <https://www.sec.gov/news/speech/lee-cii-2020-conference-20200922>.

¹⁵ *See, e.g.*, Notice of Filing of Amendments No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Listing Rules Related to Board Diversity and To Offer Certain Listed Companies Access to a Complimentary Board Recruiting Solution To Help Advance Diversity on Company Boards, Exchange Act Release No. 91,286, 86 Fed. Reg. 14,491 (Mar. 10, 2021), <https://www.federalregister.gov/documents/2021/03/16/2021-05343/self-regulatory-organizations->

2. *Improving corporate performance.* There is an extensive body of research demonstrating that diverse boards are positively associated with improved corporate governance and company performance.¹⁶ This research and related materials leads CII to conclude that the provisions of H.R. 1277 Amended would likely contribute to public company board and senior executive officer consideration of diversity and such consideration can benefit long-term shareholder value.¹⁷

3. *Disclosure as a cost-effective approach.* A key virtue of H.R. 1277 Amended's emphasis on disclosure is that the compliance cost to public companies will be minimal. This is particularly the case in light of the benefits to investors of a better understanding of a company's approach to diversity issues and more uniform disclosure that permits investors to better compare a company with its peers in the industry or elsewhere in the economy.¹⁸

Thank you for holding the Committee Markup and for passage of H.R. 1277 Amended. If we can answer any questions or provide any additional information about CII's strong support for H.R. 1277 Amended, please do not hesitate to contact me.

Sincerely,



Jeffrey P. Mahoney
General Counsel

[the-nasdaq-stock-market-llc-notice-of-filing-of-amendments-no-1-and](#) (concluding that diversity “disclosures would provide consistent information to the public and would enable investors to continually review the board composition of a company to track trends, as well as simplify or eliminate the need for a company to respond to multiple investor requests for board diversity information”).

¹⁶ See, e.g., Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Secretary, Securities and Exchange Commission at 5-7 & n.22.

¹⁷ See, e.g., Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Maxine Watters, Chair, Committee on Financial Services, United States House of Representatives et al. 4 (July 10, 2019),

[https://www.cii.org/Files/July%2010%202019%20%20Letter%20to%20Committee%20on%20Financial%20Service s%20.docx%20\(finalI\)%20KB.pdf](https://www.cii.org/Files/July%2010%202019%20%20Letter%20to%20Committee%20on%20Financial%20Services%20.docx%20(finalI)%20KB.pdf) (“In our view, the disclosures . . . that would be required by H.R. 3279 or H.R. 1018 would likely contribute to enhancing public company board consideration of diversity consistent with CII’s policies [and] CII believes long-term investors, including our members, will benefit from the long-term shareowner value that can result, in part, from corporations embracing board diversity.”).

¹⁸ See 86 Fed. Reg. at 14,490 n.80 (finding that “the majority of the organizations were in agreement that companies would benefit from a disclosure-based, business-driven framework to drive meaningful and systemic change in board diversity, and that a disclosure-based approach would be more palatable to the U.S. business community than a mandate.”).