

Via Hand Delivery

April 25, 2023

The Honorable Patrick McHenry
Chairman
House Committee on Financial Services
2129 Rayburn HOB
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
4340 O’Neill HOB
Washington, DC 20515

Re: H.R. 2795, the *Enhancing Multi-Class Share Disclosures Act*¹

Dear Chairman McHenry and Ranking Member Waters:

On behalf of the Council of Institutional Investors (CII), we write to express our general support for H.R. 2795, the *Enhancing Multi-Class Share Disclosures Act* sponsored by Representative Gregory Meeks (Multi-Class Act).

CII is a nonprofit, nonpartisan association of United States (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 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.²

The principle of one share, one vote is a foundation of good corporate governance and one of the first policies that CII members endorsed.³ Equal voting rights proportionate to each investor’s

¹ Enhancing Multi-Class Share Disclosures Act, H.R. 2795, 118th Cong. (Apr. 24, 2023), <https://www.govinfo.gov/content/pkg/BILLS-118hr2795ih/pdf/BILLS-118hr2795ih.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 See CII, Corporate Governance Policies § 3.3 Voting Rights (updated Mar. 6, 2023), https://www.cii.org/corp_gov_policies (“Each share of common stock should have one vote [and] [c]orporations should not have classes of common stock with disparate voting rights”); CII, CII Policies, Investor Expectations for Newly Public Companies (adopted Mar. 23, 2016), https://www.cii.org/policies_other_issues/newly_public_companies (“Upon going public, a company should have a “one share, one vote” structure . . . [and] CII expects newly public companies without such provisions to commit to their adoption over a reasonably limited period through sunset mechanisms.”).

share ownership is the predominant capital structure in the market. But, in recent years, a prominent minority of companies going public— from Alphabet (Google’s parent) to Zillow — have embraced dual- or even triple-class capital structures with unequal voting rights.

Typically, founders and insiders lock in their control by issuing themselves a class of stock with 10 votes per share while offering public shareholders a class with only one vote per share. Often over time, this founder-knows-best approach presents increasing risk to long-term investors by entrenching management and blindsiding executives to the need for change.

That lack of accountability at the top can also harm corporate culture and the community at large. Consider the costly blunders by Facebook and Google on issues ranging from data privacy to sexual harassment to perceived political bias. Insiders at both companies have outsize voting power that dwarfs their equity stakes, letting them do as they please with little risk of losing their jobs.

Academic research indicates that while dual-class companies have a value premium in the early years after their IPO, over time that evaporates and becomes a discount within six to nine years from IPO.⁴ That is why CII presses dual-class companies to incorporate time-based sunset provisions to convert to one-share, one-vote within seven years of IPO, unless all classes of shareholders, voting on a one-share, one-vote basis, periodically approve keeping the dual-class structure.

The Multi-Class Act amends the Securities Exchange Act of 1934 to require companies with multi-class stock structures to make certain disclosures in their proxy or consent solicitation materials. That disclosure would show information about the voting power of each person who is a director, director nominee or executive officer of the company or who, directly or indirectly, holds five percent or more of the total combined voting power of all classes of securities entitled to vote in the election of directors.⁵ We note that the amendment is generally consistent with a recommendation by the Investor as Owner Subcommittee of the Securities and Exchange Commission Investor Advisory Committee.⁶

⁴ See Commissioner Robert J. Jackson Jr., Speech, Perpetual Dual-Class Stock: The Case Against Corporate Royalty (Feb. 15, 2018), <https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty> (“finding that seven or more years out from their IPOs, firms with perpetual dual-class stock trade at a significant discount to those with sunset provisions.”); Martijn Cremers et al., The Life Cycle of Dual-Class Firm Valuation 3 (ECGI, Working Paper No. 550/2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062895 (“while dual-class companies tend to have a value premium for a while after making their public debut, that benefit fades to a discount in six to nine years.”).

⁵ See Enhancing Multi-Class Share Disclosures Act, H.R. 2795, 118th Cong. § 1(1)-(2).

⁶ U.S. Securities and Exchange Commission, Investor Advisory Committee, Recommendation of the Investor as Owner Subcommittee, “Dual Class and Other Entrenching Governance Structures in Public Companies” 6 (Feb. 27, 2018), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac030818-investor-as-owner-subcommittee-recommendation.pdf> (“Require public companies that have dual class or other entrenching governance structures to prominently and clearly disclose the numerical relationship between (a) the amount of common equity or its equivalent economic beneficial ownership interest held by any person entitled to control or direct the voting of five percent or more of shares entitled to voting rights in the election of directors or the equivalent body . . . and (b) the amount of voting rights held or controlled by such a person . . .”).

We believe that improving disclosure about public companies with multi-class structures is an important precursor to future legislation that would amend existing U.S. stock exchange listing standards to require meaningful, time-based sunsets.⁷ We, therefore, generally support the Multi-Class Act.

Thank you for considering CII's views. If you have any questions, please contact me at (202) 261-7081 or jeff@cii.org. Thank you for your consideration.

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

⁷ See To amend the Securities Exchange Act of 1934 to improve the governance of multi-class stock companies, to require issuers to make annual diversity disclosures, and for other purposes, H.R. ____, 117th Cong. (discussion draft Mar. 26, 2022), [Bill 117PIH-H.R. Draft](#); see also Letter from Jeffrey P. Mahoney, General Counsel, CII to The Honorable Sherrod Brown, Chair, and The Honorable Pat Toomey Ranking Member, Committee on Banking, Housing & Urban Affairs, United States Senate 1-7 (June 2, 2022) (providing input on legislative provisions with respect to multi-class structures in connection with the “Jumpstart our Business Startups Act of 2022”), [https://www.cii.org/files/issues_and_advocacy/correspondence/2022/June%202022%20JOBS%20Act%204_0%20letter%20\(final\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2022/June%202022%20JOBS%20Act%204_0%20letter%20(final).pdf).