International
Comparative
Legal Guides

Practical cross-border insights into corporate governance law

Corporate Governance
2022

15th Edition

Contributing Editors:

Adam O. Emmerich & Sabastian V. Niles
Wachtell, Lipton, Rosen & Katz

ICLG.com

Expert Analysis Chapters

Q&A Chapters

Dual-Class Share Structures in the United States

Keith Hallam

Cravath, Swaine & Moore LLP

Daniel J. Cerqueira

Introduction

For some time, dual-class share structures[1] have been a major source of controversy amongst corporate governance professionals. However, the IPO filings of prominent technology companies in recent years featuring dual-class share structures have served to reignite the debate.

For example, in response to Lyft's IPO filing in March 2019, a group of institutional investors wrote to the company's board stating they were "alarmed" by the company's plan to adopt a perpetual dual-class voting structure and urging the company to reconsider or, at a minimum, adopt a near-term sunset provision, expressing concerns that:

- "[t]his arrangement imposes a significant gap between those who exercise control over the company and those who have economic exposure to the consequences of that control";
- "[a] decade ago, IPOs often did not include sunset provisions or other qualifications . . . . Since 2010, however, it has been increasingly common for such companies to include provisions to ensure that the dual-class set up is temporary"; and
- "the appropriate governance structure for long-term investors is the one-share, one-vote system . . . Lyft is imposing unnecessary and uncompensated investment risk on potential shareholders . . . ."[2]

The Council of Institutional Investors (CII) also publicly criticised Lyft's proposed corporate governance structure, with CII's executive director stating:

> Lyft's dual-class share structure leaves investors virtually powerless . . . . This is highly risky for long-horizon investors and for the integrity of the capital markets . . . . The message the filing sends is that the Lyft founders can govern the company as supreme monarchs in perpetuity and also that they have a 'let them eat cake' attitude toward their investors.[3]

Another recent example that continued the debate on dual-class share structures was the failed IPO of The We Company (the parent company of WeWork), where the company reduced the voting power of high-vote shares held by then-CEO Adam Neumann in response to concern from public investors, prior to ultimately abandoning the IPO due to (among other things) concerns regarding the company's valuation and corporate governance practices.

Given the potential risks of the structure, some argue that dual-class share structures can be appropriate in certain situations, but also acknowledge there may be scenarios where this is less likely to be the case. Under this view, dual-class structures can allow innovative founders to maintain and grow their long-term vision of the company by insulating them from short-term market pressures and activist threats. However, at a certain point in the company's life cycle, the benefits may become less compelling.

In a sign that current dual-class companies may be rethinking their share structures in light of increased public and industry pressure, Blue Apron's board recently made the decision to recapitalize into a one-share, one-vote equity structure. In a letter to the Blue Apron board, CII commended the decision, stating:

> We believe your decisive action to ensure that voting power aligns with the equity stake of all Blue Apron shareholders is a significant development with positive implications not only for Blue Apron's long-term performance, but also for other multi-class companies whose boards are rethinking their equity structure.[4]

The debate on dual-class shares often focuses on what policies create the most overall value, whether for shareholders or society at large, and how best to manage any risks associated with dual-class share structures. Some argue that private ordering offers a better solution than additional regulation—including regulation in the form of categorical policies from nongovernmental actors such as index providers and proxy advisors. Thus, if the goal is to encourage long-term value creation, support entrepreneurship and innovation and promote the overall health of U.S. capital markets, policymakers should not put undue restrictions on the use of dual-class share structures:

> One of America's greatest strengths is that we are a magnet for entrepreneurship and innovation. Central to cultivating this strength is establishing multiple paths entrepreneurs can take to public markets. Each publicly-traded company should have flexibility to determine a class structure that is most appropriate and beneficial for them, so long as this structure is transparent and disclosed up front so that investors have complete visibility into the company. Dual class structures allow investors to invest side-by-side with innovators and high growth companies, enjoying the financial benefits of these companies' success.[5]

This chapter provides: (1) a historical overview and review of the current landscape; (2) an overview of the arguments on both sides of the debate; and (3) a discussion of various proposals put forth by academics, regulators and other corporate governance professionals regarding dual-class share structures.

The Current and Historical Landscape

Historical backdrop

In the United States, the permissibility of dual-class structures has varied over time.[6] Starting in 1926, the NYSE refused to list the stocks of companies with nonvoting common stock or multiple classes of stock with unequal voting rights in response to public opposition to the issuance of nonvoting common stock by several prominent companies, including the Dodge Brothers and Industrial Rayon Corporation.[7] Despite little public explanation for the move at the time,[8] subsequent statements by the chairman of the NYSE Committee on Stock List reveal sentiments similar to those of opponents today:

> This device [common stock without voting power] was being increasingly used to lodge control in small issues of voting stock, leaving ownership of the bulk of the property divorced from any vestige of effective voice in the choice of management. The committee felt that this tendency ran counter to sound public policy, and accordingly decided to list no more nonvoting common stocks.[9]

With very few exceptions, the NYSE's practise of refusing to list companies with nonvoting stock or multiple classes of stock with unequal voting rights continued for about the next 60 years.[10] However, by the mid-1980s, competitive and market circumstances led the NYSE to make a change. Faced with increased competition from other U.S. exchanges such as NASDAQ and AMEX, as well as a belief that NYSE voting rules did not provide adequate takeover defences,[11] the NYSE suspended its practice of not listing dual-class companies, ultimately proposing to formally amend its listing requirements to allow listed companies to use dual-class structures.[12]

Following the NYSE proposal, and after the NYSE, AMEX and the National Association of Securities Dealers failed to reach a consensus on a minimum voting rights listing standard, the Securities and Exchange Commission (SEC) adopted Rule 19c-4 in 1988 to limit the ability of existing companies with one share, one vote to recapitalise to dual-class structures, although the rule would not have prohibited dual-class structures as a part of initial public offerings.[13] The rule was ultimately invalidated by the D.C. Circuit on the grounds that the SEC lacked authority to adopt the rule, but the SEC was able to subsequently persuade the main stock exchanges to limit the ability of companies to change to dual-class structures under their listing standards.[14] As a result, while companies are limited in their ability to recapitalise with a dual-class structure, they have generally been able to go public with dual-class structures for more than 30 years.[15]

However, in the wake of Snap's IPO, which featured a nonvoting dual-class structure that resulted in public investor backlash, the major indices undertook public consultations on the issue of dual-class shares.[16] As a result, the FTSE Russell announced in July 2017 that it would exclude companies from its indices unless greater than 5% of the company's voting power was in the hands of unrestricted (free float) shareholders.[17] That same month, the S&P Dow Jones Indices announced it would fully exclude companies with multiple-class share structures from entering the S&P Composite 1500 and its component indices, which include the S&P 500, S&P MidCap 400 and S&P SmallCap 600.[18] Finally, MSCI, after an 18-month consultation, ultimately chose not to exclude dual-class companies from its benchmark indices, instead choosing to launch a new index series that includes voting rights in its weighting criteria and construction methodology to "reflect the desire of many investors to account for unequal voting structures in the indexes they use."[19]

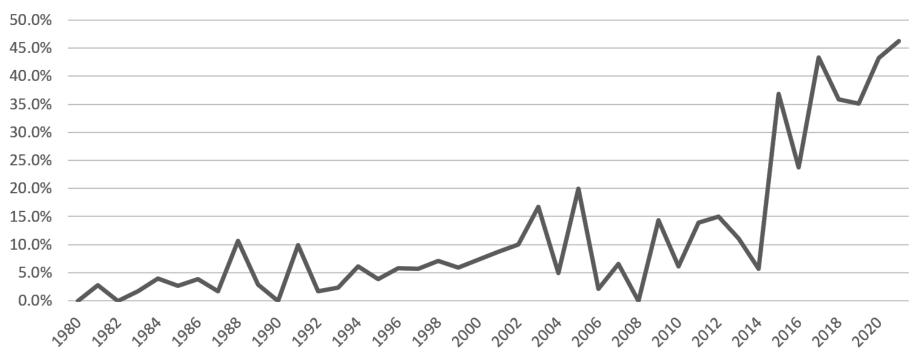
Current landscape

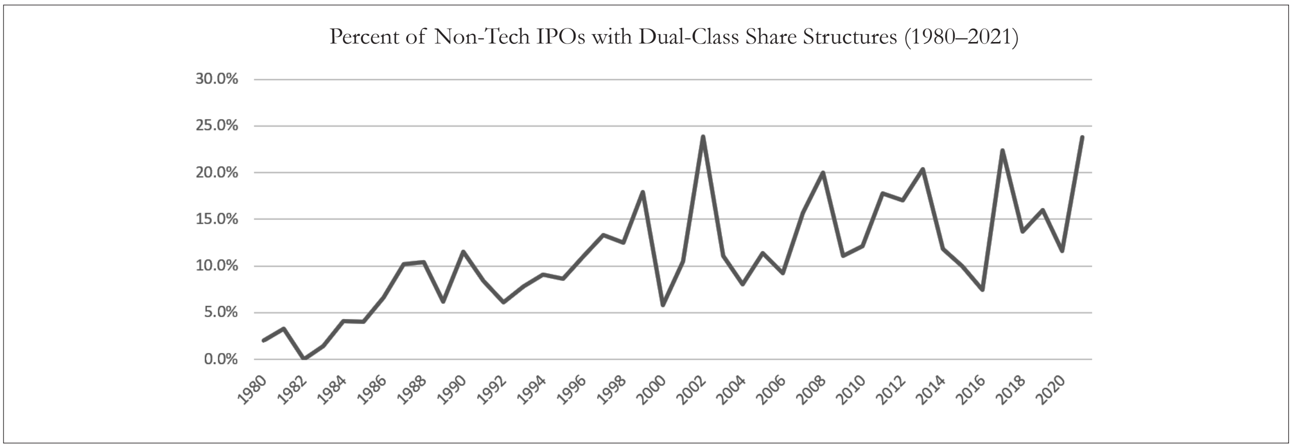
According to Deal Point Data, approximately 7.7% of Russell 3000 companies have dual-class share structures (as of May 2022), including such household names as Meta (Facebook's parent company), Berkshire Hathaway and Alphabet (Google's parent company).[20] In terms of recent IPOs, in 2021 and 2020, 98 out of 309 IPOs (31.7%) and 33 out of 165 IPOs (20.0%), respectively, had dual-class structures with unequal voting rights.[21]

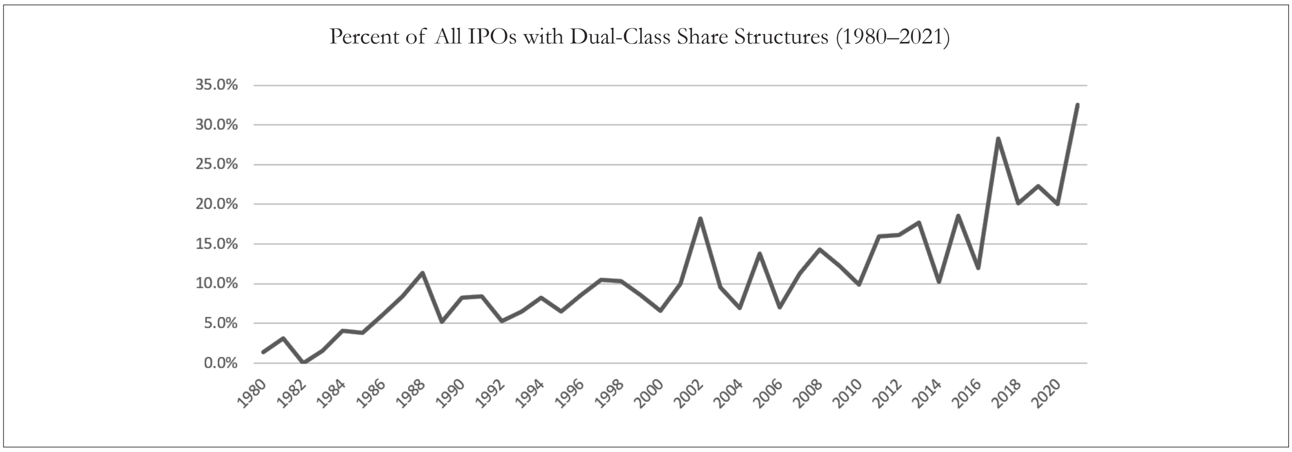
On the whole, the percentage of companies that IPO with dual-class structures has increased significantly, particularly for technology companies, in the last decade. In terms of yearly averages, 22.6% of technology company IPOs per year had dual-class share structures from 2010–2019, relative to 8.9% and 5.0% from 2000–2009 and 1990–1999, respectively.[22] Non-technology companies have exhibited a similar trend, although the increase has been less extreme—from 2010–2019, on average 15.2% of non-technology company IPOs per year featured dual-class share structures, relative to 12.9% and 10.3% from 2000–2009 and 1990–1999, respectively.[23] Taken together, dual-class share structures comprised on average 17.2% of all IPOs per year from 2010–2019, relative to 11.6% from 2000–2009 and 7.9% from 1990–1999.[24]

So far this decade, an average of 44.7% and 17.4% of technology company and non-technology company IPOs per year, respectively, have had dual-class share structures, with dual-class share structures comprising an average of 25.9% of all IPOs per year.[25]

Percent of Tech IPOs with Dual-Class Share Structures (1980–2021)







Source: Jay R. Ritter, *Initial Public Offerings: Dual Class Structure of IPOs Through 2021* (February 16, 2022), Table 23: Dual Class IPOs, by Tech and Non-tech, 1980-2021.

And while the debate regarding dual-class shares is not new, the increasing use of the structure, particularly amongst technology companies since the early 2000s, has intensified the debate, with critics now including Senator Elizabeth Warren, the Council of Institutional Investors and a number of leading mutual funds.[26]

The Debate

Proponents of dual-class structures

Proponents primarily argue that dual-class structures allow innovative founders to maintain and grow their long-term vision of the company by insulating them from short-term market pressures. And by allowing founders to utilise their special skills to create value for the long-term, this in turn translates to superior returns that benefit the founders, the company and all other investors.[27]

This argument applies in particular to technology companies that are research intensive and have long product development life cycles. For example, Google's Letter from the Founders in the company's final prospectus highlighted the company's long-term focus and the importance of independence to achieve its long-term goals:

- "As a private company, we have concentrated on the long term . . . . As a public company, we will do the same. In our opinion, outside pressures too often tempt companies to sacrifice long term opportunities to meet quarterly market expectations. . . . If opportunities arise that might cause us to sacrifice short term results but are in the best long term interest of our shareholders, *we will take those opportunities*."[28]
- "We are creating a corporate structure that is designed for stability over long time horizons. . . . We want Google to become an important and significant institution. That takes time, stability and independence."[29]

And in fact, Google justified issuing a new class of nonvoting capital stock in 2012 based on the company's accomplishments, which were due in part to the company's independence:

> Technology products often require significant investment over many years to fulfill their potential. For example, it took over three years just to ship our first Android handset, and then another three years on top of that before the operating system truly reached critical mass. . . . Long-term product investments, like Chrome and YouTube, which now enjoy phenomenal usage, were made with a significant degree of independence.[30]

There is some evidence to support this point. For example, research by MSCI shows that unequal voting stocks in aggregate outperformed the market over the period from November 2007 to August 2017, and that excluding dual-class stocks from market indexes would have reduced the indexes' total returns by approximately 30 basis points per year over MSCI's sample period.[31]

Slightly more recent data from PwC and Dealogic shows that in 2017 and through June 20, 2018, dual-class IPOs outperformed the broader IPO index.[32] Specifically, returns for all dual-class IPOs in 2017 were 32%, relative to 27% for all IPOs and 19% for the S&P.[33] Through the first half of 2018, returns for all dual-class IPOs were 52%, relative to 35% for all IPOs and 4% for the S&P.[34]

However, both studies suggest this outperformance could in part be due to "selection bias"—both highlight that the outperformance of stocks with unequal voting rights was partly explained by the fact that the technology-related sector (which features many dual stock companies), in general, enjoyed strong performance over the period that was examined.[35]

For the current year, as of May 5, 2022, multi-class stocks and multi-class IPOs on average have neither underperformed nor outperformed the broader market and broader IPO index, respectively.[36]

Opponents of dual-class structures

Arguments against dual-class structures focus on the problems of entrenchment and poor long-term economic returns.[37]

For example, Professors Bebchuk and Kastiel cite a wide range of distorted choices that can result from entrenchment and misaligned incentives:

> Such distorted choices may include the appointment or retention of the controller or a family member as an executive rather than a better outside candidate, engagement in inefficient self-dealing transactions with an entity that is affiliated with the controller, the usurpation of an opportunity that would be more valuable in the hands of the company rather than the controller, or other choices aimed at increasing private benefits of control at the expense of the value received by other shareholders.[38]

Relatedly, opponents of dual-class share structures also argue they produce lower long-term economic returns than companies with one vote per share. Again, Professors Bebchuk and Kastiel argue this is because any special skills the original controllers may have is likely to erode over time.[39] Moreover, they argue that as controllers decrease their economic ownership over time, significant governance risks are created:

> These controllers own a small fraction of the company's equity capital and thus bear only a small . . . share of the losses that their actions may inflict on the company's value. Yet, they exercise effective control over decisionmaking and can capture the full private benefits of that control.[40]

Empirical studies also provide evidence that, while dual-class companies may outperform in the short term, they underperform over the long term. For example, a study by the CFA Institute in August 2018 summarised the conclusions of various studies that found that dual-class companies underperform in the long term.[41] It summarised the conclusions of one such study as follows:

> Looking into firms in the S&P Composite Index as of the beginning of 2012, the report found that single-class firms would outperform DCS [dual-class share] firms with 3-, 5-, and 10-year timeframes. The study suggests that besides their financial underperformance, DCS firms also tend to illustrate more weaknesses in accounting controls and are subject to higher price volatility. Some characteristics of weak corporate governance standards, such as frequent related-party transactions and inconsistent distribution of rights among shareholders, were also considered relatively more common in DCS firms.[42]

Similarly, in February 2018, then-SEC Commissioner Robert J. Jackson Jr. proposed in a speech that companies should not be allowed to have perpetual dual-class stock and encouraged the securities exchanges to consider proposed listing standards to address the issue.[43] Supporting this position was a study by Commissioner Jackson and his staff covering 157 dual-class IPOs in the United States over the prior 15 years.[44] The study found that, although the valuations of dual-class companies with and without sunset provisions were similar at the time of the IPO and two years thereafter, seven or more years after their IPOs companies with perpetual dual-class stock trade at a significant discount compared to companies with sunset provisions.[45] The study also found that, among the small number of firms that decided to change from dual-class to "one share, one vote" later in their life cycles, such changes were associated with significant increases in valuation.[46]

However, the results of these studies have been met with skepticism among some, who highlight that the empirical evidence on dual-class shares is inconclusive. The argument is that while most studies indeed find that the value of dual-class firms declines over time, they also show that the same firms may experience higher valuations at the IPO stage and may generate other benefits, such as increased innovation, additional protection against short-term market pressure and promotion of local industry.[47]

Additional data on dual-class company performance

Still, other data suggests that dual-class share structures do not have a meaningful impact on long-term performance, implying that stakeholders concerned with performance should focus on factors such as R&D spending, board diversity, distribution of capital and environmental, social and governance (ESG) matters that are more predictive of long-term performance.[48]

A study by FCLTGlobal – a nonprofit founded in 2016 by BlackRock, CPP Investments, The Dow Chemical Company, McKinsey & Company, and Tata Sons – analysed 5,886 companies that issued shares between 1998 and 2016 from 21 countries (of which 180 were dual-class companies), weighting each firm equally and tracking their performance for 10 years following IPO.[49] The study concluded:

- "No statistically significant performance differences in cumulative 10-year returns since IPO," as dual-class companies did not clearly outperform or underperform "one share, one vote" companies in terms of total shareholder return (TSR) or return-on-invested-capital (ROIC);
- "Little evidence of superstar effects or greater variability among companies with multi-class shares," as (1) the worst performing dual-class companies performed similarly to the worst performing "one share, one vote" companies, and (2) while the best performing dual-class companies slightly outperformed the best "one share, one vote" companies in terms of TSR, that outperformance did not hold for ROIC; and
- "No meaningful difference in survival rates," as 50–60% of companies in the sample, regardless of whether dual-class or "one share, one vote," remained in the sample by year 10.[50]

Additionally, since investors often construct portfolios that mirror cap-weighted market indices where the overall return is driven by large, successful companies, the study also analysed the impact to investors if they were to choose to preferentially hold shares in dual-class companies in amounts that roughly reflect their market capitalisation.[51] In this context, the study revealed that dual-class companies performed significantly better than "one share, one vote" companies.[52] However, this phenomenon was driven entirely by the "Alphabet effect"—the enormous success of Alphabet offset underperformance by many smaller dual-class firms, and after removing Alphabet from the data set there was no statistically significant difference in performance between dual-class and "one share, one vote" companies.[53]

Policy Proposals Regarding Dual-Class Share Structures

From a policy perspective, attitudes regarding the best way to regulate (or not regulate) dual-class share structures tend to fall into three categories: (1) private ordering; (2) outright prohibition; and (3) permissibility, but with constraints and/or additional disclosure requirements. Additional proposals focus on ensuring dual-class issuers are able to efficiently raise capital and are not subject to excessive share price discounts due to perceived corporate governance risks.

Private ordering

According to this view, the regulation of dual-class share structures should be left to the market. That is, companies should have the flexibility to go to public markets with the capital structure that they believe is most appropriate and beneficial to them, as long as the structure is transparent and disclosed to investors.[54] In this context, one such proponent of private ordering as the best form of regulation articulates his reasoning as follows:

> There is no reason to limit [the use of dual class structures]. With many sophisticated parties, the IPO market does not suffer from negotiation failures. Indeed, the effectiveness of negotiations is reflected in the great variety of terms (including many voluntary sunsets), and although increased use of dual class should be expected, still, it is kept below 20 percent of IPOs.[55]

Similar arguments are also made from a freedom of contract perspective, whereby proponents argue that mandatory one share, one vote structures unreasonably and inappropriately interfere with shareholders' sovereignty, and that shareholders should be free to purchase shares as they wish, as they are always free to sell the shares if they disagree with the company's governance practices.[56]

Proponents also argue that any additional regulation would harm the capital markets and the economy. Under this view, as a policy matter, it is important to continue to support dual-class share structures in order to promote long-termism and cultivate entrepreneurship and innovation.[57] And by allowing innovative founders to take multiple paths to market, investors are able to enjoy the financial benefits of the success of these companies.[58]

Outright prohibition

In contrast to the private ordering approach, others view the "one share, one vote" principle as the optimal approach to corporate governance – both from a normative and empirical perspective – and believe dual-class structures should not be allowed to be in place in order to IPO.[59] However, for advocates of this position, the avenues for reform have been somewhat limited.[60]

From a regulatory standpoint, the D.C. Circuit's prior invalidation of Rule 19c-4 undermines the SEC's authority to issue a rule mandating "one share, one vote."[61]

The U.S. securities exchanges could attempt to address the matter by requiring companies to have "one share, one vote" governance structures in order to be listed, but from the perspective of CII, competition amongst exchanges has prevented them from acting.[62]

In this context, as previously discussed, opponents of dual-class structures have turned to a new *de facto* regulator—equity index providers.[63] However, despite the successes with the S&P and the FTSE Russell, the actions of these indexes may not go far enough for some. For example, under the S&P's new rules for inclusion, existing constituents with dual-class structures remain permanently grandfathered;[64] similarly, the actions taken by the FTSE Russell index only impact a handful of companies.[65] Additionally, even proponents of these actions acknowledge that index exclusion is less than desirable. For example, CII notes:

> [I]ndex exclusion is sub-optimal given the essential element of full diversification in passive strategies: excluding multi-class voting stock from core indices means they fail to reflect the broadest market set of equities available.[66]

Finally, Congressional action has long been viewed as another meaningful avenue for policy change, and for some, the best avenue, particularly relative to U.S. securities exchanges:

> [U]nless the exchanges can come to a mutual agreement to change their rules, only Congress will be able to compel a change in the current policy. Because of difficulties in overcoming collective action problems, any one exchange would likely be unwilling to make the first move . . . . [A] congressional mandate would . . . overcome such problems . . . .[67]

In fact, legislative action may be forthcoming, as discussed below, in the form of mandatory sunset provisions for dual-class companies.

Permissibility with constraints and/or additional disclosure requirements

The middle ground between private ordering and outright prohibition are proposals to allow dual-class structures with limitations or additional disclosure requirements. In this context, the two most common proposals concern mandatory sunset provisions and enhanced disclosures.

Mandatory sunset provisions

Requiring dual-class companies to have mandatory sunset provisions – which allow unequal voting features to be removed after a specified period of time or after controller equity ownership drops below a certain level – is perhaps the most commonly discussed approach to harmonise the benefits of dual-class share structures with the potential risks the structure can impose. Specifically, it is based on the idea that: (1) the unique skills of a founder that justify control initially will erode over time; and (2) the risks inherent in dual-class structures will increase over time. As articulated by Bebchuk and Kastiel, deterioration of skills occurs because:

> [I]n a dynamic business environment, even a founder who was the fittest leader at the time of the IPO might eventually become an inferior leader due to aging or changes in the business environment, and this risk increases the expected costs of providing the founder with a lifetime lock on control. Indeed, the expected costs of a lifetime lock on control are likely to be especially large when the founder is young or even middle-aged at the time of the IPO.[68]

And relatedly, risk also tends to increase, as:

> [M]any dual-class structures enable controllers to substantially reduce their fraction of equity capital over time without relinquishing control . . . . When the wedge between interests of the controller and those of the public investors grows over time, the agency costs of a dual-class structure can also be expected to increase.[69]

Similarly, proponents of mandatory sunset provisions also rely on data that suggests perpetual dual-class companies underperform in the long term in order to justify this position, leading individuals such as then-SEC Commissioner Robert J. Jackson Jr. to conclude in his February 2018 speech that:

> While it is fair to ask people to place their eternal trust in their partner, our country's founding principles and our corporate law counsel against the creation of corporate royalty. The solution to that problem is not to leave ordinary Americans out of the growth that all of you here in Silicon Valley are creating. The solution is to return to the tradition of accountability that has served our nation and our markets so well.[70]

As such, mandatory sunset provisions – which can be structured to allow for extended dual-class features if a majority of shareholders unaffiliated with the controller so desire – are viewed as a compromise to allow founders to go to public markets with the capital structure they desire, while also building in mechanisms to mitigate risks down the road.[71]

This approach was endorsed by CII in September 2019 in letters submitted to the Delaware State Bar Association and the American Bar Association (ABA), in which the organisation proposed amendments to the Delaware General Corporation Law (DGCL) and the Model Business Corporation Act (MBCA) that would limit the duration of dual-class structures to seven years from IPO (unless extended by the vote of a majority of outstanding shares of each class of shareholders voting separately on a one share, one vote basis, with such extensions limited to a term of seven years or less).[72] CII had previously submitted letters in October 2018 to NASDAQ and the NYSE petitioning the exchanges to amend their listing standards to impose the same requirements for companies going public on a forward-looking basis, but both exchanges declined to act.[73]

Both the ABA and Delaware State Bar Association declined to pursue CII's proposed amendments, citing (among other things) the legislative goal to provide a set of default rules for corporations, while also granting directors and shareholders flexibility via "private ordering" to revise those rules (subject to limited exceptions).[74]

However, despite the exchanges, the ABA and the Delaware State Bar Association declining to act, proponents of sunset provisions may still see increased implementation of the structure if the market continues to express a preference for such features in dual-class issues.[75] For instance, Institutional Shareholder Services (ISS) revised its U.S. proxy voting guidelines for 2020 such that the proxy advisor will generally recommend that shareholders vote against, or withhold votes from, the entire board (except new nominees, who are considered on a case-by-case basis) of newly public companies with a dual-class structure if the structure is not subject to a "reasonable" time-based sunset.[76] Under the updated guidelines, "reasonableness" will be determined based on "the company's lifespan, its post-IPO ownership structure and the board's disclosed rationale for the sunset period selected"; however, "[n]o sunset period of more than seven years from the date of the IPO will be considered to be reasonable."[77] As explanation for the change, ISS notes (among other things), that:

> In ISS' 2019 Global Policy Survey, for U.S. companies, ISS asked investors whether a time-based sunset requirement of no more than seven years was seen as appropriate. For those who provided an answer to the question, 55 percent of investor respondents agreed that a maximum seven-year sunset is appropriate.[78]

ISS further amended its proxy guidelines in December 2021 such that, beginning February 1, 2023, ISS will generally recommend voting against directors at any company (including those previously grandfathered) with a common stock structure with unequal voting rights and will continue to recommend voting against incumbent directors in subsequent years unless the unequal voting structure is removed or a reasonable sunset provision (no more than seven years) is implemented.[79] Similarly, Glass Lewis recently amended its guidelines so that, starting in 2022, it would recommend voting against the chair of the governance committee at companies with multi-class share structures and unequal voting rights, unless the company provides for a reasonable sunset of the multi-class share structure (generally seven years or less).[80]

In addition, Congress is considering a legislative proposal that would mandate sunset provisions for new companies that go public with dual-class share structures. The draft bill would amend the Securities Exchange Act of 1934 to require dual-class companies going public to sunset the structure after seven years.[81] The legislation focuses on newly public companies and would allow the dual-class structure to remain in place for seven additional years, conditional on approval from a majority of each class of shareholders.[82] In October 2021, CII wrote to the House Committee on Financial Services in support of the draft bill, stating that the legislation "is consistent with U.S. corporate governance principles and reflects the sound, 'near-term', legislative policy recommendations of the [SEC's] Office of the Investor Advocate."[83]

As such, time-based sunsets could continue to become more prevalent as the market continues to coalesce around the appropriate timespan for issuers to have dual-class share structures. While just a few years ago, time-based sunsets were uncommon and, if incorporated, often extended beyond the first decade of the company's public life, in the first half of 2021, 51% of newly public U.S. dual-class companies had time-based sunsets.[84]

Additional disclosure requirements

In addition to proposals focused on reducing the lifespan of dual-class structures, other proposals focus on enhancing disclosures related to dual-class share structure risks.

For example, in February 2018, the SEC's Investor Advisory Committee issued a recommendation on "Dual Class and Other Entrenching Governance Structures in Public Companies," citing gaps in the current disclosure regime.[85] As articulated by the committee, these gaps relate to:

(1) **wedge data**, as current disclosures do not provide investors with clear quantitative information on the "wedge" between ownership and control that dual-class and other entrenching structures create;
(2) **governance change risks**, as current disclosures do not adequately disclose the risk that existing control shareholders can use multi-class control structures to increase the "wedge" between ownership and control over time;
(3) **conflict risks disclosures**, as offerings do not provide specific details about the kinds of conflicts or disputes that have arisen in the past, at least in part due to the existence of nontraditional governance; and
(4) **index or listing risks**, as prospectuses do not specifically address the risks of being excluded from major indices or from being delisted from a stock exchange as a result of the previously mentioned governance change risks.[86]

The SEC's Investor Advisory Committee recommended a number of disclosure-related actions the Division of Corporate Finance could take to remedy these issues.[87] And in response, the Enhancing Multi-Class Share Disclosures Act was subsequently introduced in Congress,[88] which (although never enacted) would have directed the SEC to issue a rule requiring issuers with multi-class stock structures to make certain disclosures regarding the voting power of certain individuals.[89]

As a result, similar to proposals for sunset provisions, enhanced disclosures seek to maximise the benefits associated with dual-class structures, while also improving investor awareness of associated risks.

Policies focused on improved capital allocation

In contrast to the investor protection focus of many policy proposals related to dual-class share structures, a relatively recent article that surveyed the empirical research on the performance of dual-class share companies suggests that policymakers should instead focus on ensuring the valuations of dual-class companies are not overly discounted in public markets.[90] Specifically, the study concludes that stockholders protect themselves against the potential risks of dual-class companies by discounting the price of dual-class stock, and that trends in the empirical research indicate that stockholders are discounting this risk too much.[91]

As a result, the study suggests that policymakers should shift their focus from deterring dual-class structures and instead focus on reducing the cost of capital for dual-class companies.[92] Such an approach would focus on implementing policies that mitigate the risks associated with dual-class firms in order to ease stockholder concerns regarding dual-class structures.[93] And while outside the scope of the article, proposals for such policy measures include limiting the use of dual-class structures to the types of firms and controllers more likely to use the structure to create value for (and not harm) outside shareholders, constraining the ability of controllers to extract the worst types of private benefits, or requiring dual-class firms to convert to "one share, one vote" when there are indicators that the structure has become harmful to outside stockholders.[94]

Conclusion

The recent IPOs of prominent technology companies have reignited the debate over dual-class share structures.

On one side, proponents argue that dual-class structures allow innovative founders to pursue their long-term vision with the independence necessary to create long-term value for the company and its shareholders. Under this view, to promote the health of the economy and capital markets, it is important to give innovative entrepreneurs the flexibility to access capital markets in the way that is most suitable for their company.

In contrast, opponents argue that dual-class share structures violate what they view as the fundamental principle of corporate governance that voting power should be aligned with economic interest. They argue that at a minimum, dual-class structures should be subject to restrictions on duration, or should at least require enhanced disclosures.

Still others suggest that investors are not harmed by dual-class share structures because they incorporate the risk of such structures into their valuation of dual-class issuers. Moreover, under this view, investors are in fact too steeply discounting the risk associated with dual-class structures. Thus, policymakers should focus on reducing the cost of capital for dual-class companies by developing policies that mitigate risk and provide outside stockholders with greater comfort around dual-class issuers.

As the debate continues to unfold, corporate governance professionals will be watching the numerous stakeholders – indexes, exchanges, investors, regulators and lawmakers alike –to see where they land and the resulting implications for both dual-class structures and corporate governance issues more broadly.

Endnotes

1. In this chapter, the term "dual-class share structures" is used to describe share structures in which companies have more than one class of shares with unequal voting rights.
2. Letter from a Group of Institutional Investors to the Board of Directors of Lyft, Inc. at 1-2 (March 14, 2019), *available at* https://static1.squarespace.com/static/5d374de8aae9940001c8ed59/t/5e5eb649961f053234864702/1583265353536/Lyft-IPO-dual-class-sign-on_Final.pdf.
3. Press Release, Council of Institutional Investors, Council of Institutional Investors Says Lyft's Planned Dual-Class Structure is Harmful to Investors (March 2, 2019), https://www.cii.org/lyftdualclassipo (quoting Ken Bertsch, CII executive director).
4. Council of Institutional Investors, Letter to Blue Apron Board (October 6, 2021), *available at* https://www.cii.org/files/issues_and_advocacy/DualClassStock/2021%20CII%20letter%20to%20Blue%20Apron.pdf.
5. Adena Friedman, Nasdaq Inc., *The Promise of Market Reform: Reigniting America's Economic Engine*, Harv. L. Sch. F. on Corp. Governance & Fin. Reg. (May 18, 2017), https://corpgov.law.harvard.edu/2017/05/18/the-promise-of-market-reform-reigniting-americas-economic-engine/.
6. Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 Va. L. Rev. 585, 596 (2017); Ronald J. Gilson, *Evaluating Dual Class Common Stock: The Relevance of Substitutes*, 73 Va. L. Rev. 807, 807 n.1 (1987).
7. Bebchuk & Kastiel, *supra* note 6 at 596; Joel Seligman, *Equal Protection in Shareholder Voting Rights: The One Common Share, One Vote Controversy*, 54 Geo. Wash. L. Rev. 687, 689-695 (1986).
8. Seligman, *supra* note 7 at 697.
9. *Id.* (citations omitted).
10. Bebchuk & Kastiel, *supra* note 6 at 596; CFA Institute, Dual-Class Shares: The Good, The Bad, and the Ugly (2018) at 31.
11. Seligman, *supra* note 7 at 700, 701 n.80; Bebchuk & Kastiel, *supra* note 6 at 596.
12. *See* Voting Rights Listing Standards; Disenfranchisement Rule, 53 Fed. Reg. 26,376, 26,376-77 (1988) [hereinafter Disenfranchisement Rule] (codified at 17 C.F.R. § 240.19c-4 (1990)), invalidated by *Bus. Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990)) (providing background to Rule 19c-4); *see also Bus. Roundtable v. SEC*, 905 F.2d 406, 408 (D.C. Cir. 1990)); Bebchuk & Kastiel, *supra* note 6 at 596 (citations omitted). The amendments would allow both (1) new issuances of dual-class stock, and (2) companies to change their existing capital structure to dual-class (with the latter subject to approval by a majority of independent directors and public shareholders unaffiliated with the controller). Bebchuk & Kastiel, *supra* note 6 at 596.
13. *See* Bebchuk & Kastiel, *supra* note 6 at 597 (citations omitted); *see also* Disenfranchisement Rule *supra* note 12 at 26,376-77 (explaining the background to Rule 19c-4). The rule prohibited national securities exchanges and national securities associations from listing the stock of a corporation, "if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer . . . ." Disenfranchisement Rule *supra* note 12 at 26,394. Excluded from the SEC's new rule was a prohibition on dual-class share structures issued as a part of an initial public offering, as well as other exceptions. *Id.*; *see also* Louis Lowenstein, *Shareholder Voting*

Rights: A Response to SEC Rule 19c-4 and to Professor Gilson, 89 Colum. L. Rev. 979, 985-90 (1989) (criticising SEC Rule 19c-4 because it did not insist on equal voting rights in public offerings).

14. Bebchuk & Kastiel, *supra* note 6 at 597.
15. *Id.*
16. *See e.g.*, Council of Institutional Investors, *Dual-Class Stock*, https://www.cii.org/dualclass_stock; Zoe Condon, *A Snapshot of Dual-Class Share Structures in the Twenty-First Century: A Solution to Reconcile Shareholder Protections with Founder Autonomy*, 68 Emory L.J., 335, 350 (2018).
17. FTSE Russell, FTSE Russell Voting Rights Consultation – Next Steps at 3, *available at* https://research.ftserussell.com/products/downloads/FTSE_Russell_Voting_Rights_Consultation_Next_Steps.pdf.
CamberView Partners, *S&P and FTSE Russell on Exclusion of Companies with Multi-Class Shares*, Harv. L. Sch. F. on Corp. Governance & Fin. Reg. (August 5, 2017), https://corpgov.law.harvard.edu/2017/08/05/sp-and-ftse-russell-on-exclusion-of-companies-with-multi-class-shares/.
See also Condon, *supra* note 16 at 350.
18. CamberView Partners, *supra* note 17. The new policy does not apply to existing index constituents and does not apply to the S&P Global BMI Indices or the S&P Total Market Index. *Id.*
19. Press Release, MSCI Will Retain the MSCI Global Investable Market Indexes Unchanged and Launch a New Index Series Reflecting the Preferences of Investors on Unequal Voting Structures (October 30, 2018), https://www.msci.com/documents/10199/238444/PR_Voting_Results.pdf/0b548379-fbe7-71c7-b392-7140b2215cc9;
see also MSCI, MSCI Voting Rights-Adjusted Indexes Methodology (May 2019), *available at* https://www.msci.com/eqb/methodology/meth_docs/MSCI_Voting_Rights_Adjusted_Indexes_Methodology_May2019.pdf (explaining the methodology for constructing the voting rights-adjusted indexes).
20. Deal Point Data (as of May 5, 2022). Data includes companies whose charter authorizes more than one series of common stock with unequal voting rights that are also currently outstanding as well as companies with any of the following stock structures: (1) Supervoting Rights: a company that has more than one series of common stock that are both authorized in the company's charter and are outstanding where the additional class (or additional classes) of common stock is entitled to at least three times the votes per share as the primary common shares. Companies with this structure most commonly use a one vote versus 10 votes per share approach. The supervote shares are usually held by founders and insiders and are not publicly traded. For the relatively few cases where the supervote shares are also publicly traded, Deal Point Data will still include them because ownership of the supervote shares can be concentrated among one or a few stockholders that would therefore have unequal say in company matters. This item does not include situations where the sole additional class is non-voting common stock. (2) Enhanced Director Voting Rights: a company that has more than one series of common stock that are both authorized in the company's charter and are outstanding with different voting rights related to director elections. This includes situations where the additional class of common stock is entitled to elect a specified number or percentage of the Board or are entitled to elect a designated class of directors regardless of the number of votes per share. The additional class (or classes) are usually held by founders and insiders and are not publicly traded. If the additional class of common is publicly traded, Deal Point Data will still include them because ownership of the shares can be concentrated among one or a few stockholders that would therefore have unequal representation on the Board. This does not include situations where the sole additional class is non-voting common stock. (3) Time-Phased / Tenure Voting: a company that has adopted a time-phased system (or "tenure voting system") for determining the number of votes per common share. Under this system, the number of votes per share is determined based on the length of time the holder continuously owned the share (*i.e.*, long-term holders have more votes per share than short-term holders). For example, a share held continuously for a specified time period will be entitled to 10 votes per share and a share held for less than the period will be entitled to one vote per share.
21. Jay R. Ritter, *Initial Public Offerings: Dual Class Structure of IPOs Through 2021* (February 16, 2022), Table 23: Dual Class IPOs, by Tech and Non-tech, 1980-2021, https://site.warrington.ufl.edu/ritter/files/IPOs-Dual-Class.pdf.
Data set defined as, "IPOs with an offer price of at least $5.00, excluding ADRs, unit offers, closed-end funds, REITs, natural resource limited partnerships, small best efforts offers, banks and S&Ls, and stocks not listed on CRSP (CRSP includes Amex, NYSE, and NASDAQ stocks)."
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *See* Bebchuk & Kastiel, *supra* note 6 at 597-99; *see also* Condon, *supra* note 16 at 352.
27. *See e.g.*, Condon, *supra* note 16 at 355-57 (explaining arguments in favor of dual-class share structures).
28. Larry Page & Sergey Brin, Letter from the Founders—"An Owner's Manual" for Google's Shareholders, Google Inc., Registration Statement (Form S-1) at 27 (August 18, 2004), *available at* https://www.sec.gov/Archives/edgar/data/1288776/000119312504143377/d424b4.htm#toc59330_1.
29. *Id.* at 29 (explaining the company's reason for maintaining a dual-class voting structure with unequal voting rights).
30. Larry Page & Sergey Brin, Founders' Letter 2012 (April 2012), *available at* https://www.sec.gov/Archives/edgar/data/1288776/000119312512160666/d333341dex993.htm.
31. Dimitris Melas, MSCI, *Putting the Spotlight on Spotify: Why Have Stocks with Unequal Voting Rights Outperformed?* (April 3, 2018), https://www.msci.com/www/blog-posts/putting-the-spotlight-on/0898078592.
32. Daniel Klausner, Capital Markets Advisory Leader, PwC Deals, *Dual Class IPOs are on the rise: Tech unicorns jump on board this new trend*, PwC (July 18, 2018), http://usblogs.pwc.com/deals/dual-class-ipos-are-on-the-rise-tech-unicorns-jump-on-board-this-new-trend (citing data from PwC US Capital Markets Watch and Dealogic; 2017 IPO returns as of 12/29/2017; 2018 year-to-date IPO returns as of 6/20/2018; IPO data excludes SPACs).
33. *Id.*
34. *Id.*
35. Melas, *supra* note 31 (noting that the outperformance of stocks with unequal voting rights was partly explained by the fact that the technology sector (which features many dual class stocks) enjoyed strong performance over the sample period); Klausner, *supra* note 32 (explaining that there is somewhat of a "self-selection" bias, given that most dual class IPOs are TMT sector-related (which have higher returns)).

36. FactSet data (as of May 5, 2022). Dual-class data includes share performance of U.S. publicly listed companies as of May 5, 2022 and data on U.S. companies that have gone public between April 30, 2022 and May 5, 2022. Dual-class data was compared to the average performance of non-dual-class stocks and non-dual-class IPOs, respectively, for the period between April 30, 2022 and May 5, 2022.
37. Condon *supra* note 16 at 352.
38. Bebchuk & Kastiel, *supra* note 6 at 603.
39. *Id.* at 604-606.
40. Lucian A. Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers*, 107 Geo. L.J. 1453, 1466 (2019).
41. CFA Institute, *supra* note 10 at 16-18.
42. *Id.* at 16-17 (citing Lukomnik, J. and S. Quinn, Investor Responsibility Research Center Institute and Institutional Shareholder Services, *Controlled Companies in the Standard & Poor's 1500: A Ten Year Performance and Risk Review* (2012)).
43. Former SEC Commissioner Robert J. Jackson Jr., Perpetual Dual-Class Stock: The Case Against Corporate Royalty (February 15, 2018) *available at* https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty; *see also* CFA Institute, *supra* note 10 at 18 (citing former Commissioner Jackson's February 15, 2018 speech and study).
44. Former SEC Commissioner Robert J. Jackson Jr., *supra* note 43.
45. *Id.*; *see also* CFA Institute, *supra* note 10 at 18.
46. Former SEC Commissioner Robert J. Jackson Jr., *supra* note 43.
47. Aurelio Gurrea-Martinez, *Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate*, 22 European Bus. L. Rev. 475, 487 (2021).
48. FCLTGlobal, The Long-Term Impact of Multi-Class Shares (2020) at 11.
49. *Id.* at 8, 13. The data set was comprised of publicly listed companies in an MSCI All-Country World Index with at least two companies that have issued shares with differential voting rights between 1998 and 2016, excluding regulated companies in the financial and utility industries and companies in Pakistan and the United Arab Emirates where there was minimal data. *Id.* at 8. The sample was also limited to companies with an initial market capitalization above $100 million in order to prevent small firms from distorting the analysis. *Id.* at 8, 13.
50. *Id.* at 9-10.
51. *Id.* at 9.
52. *Id.*
53. *Id.*
54. Friedman, *supra* note 5.
55. Zohar Goshen, *Against Mandatory Sunset for Dual Class Firms*, The CLS Blue Sky Blog (January 2, 2019), http://clsbluesky.law.columbia.edu/2019/01/02/against-mandatory-sunset-for-dual-class-firms/.
56. Condon *supra* note 16 at 357 (explaining freedom of contract arguments).
57. Friedman, *supra* note 5.
58. *Id.*
59. *See e.g.*, Council of Institutional Investors, *supra* note 16.
60. *Id.*
61. *Bus. Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990); *see also* Tian Wen, *You Can't Sell Your Firm and Own it Too: Disallowing Dual-Class Stock Companies from Listing on the Securities Exchanges*, 162 U. Pa. L. Rev. 1495, 1515 (2014) ("In light of [*Bus. Roundtable*], any change in policy to disallow companies with dual-class structures from listing on the various U.S. stock exchanges would have to come either as a collective decision from the stock exchanges themselves, or as a congressional mandate.").
62. Council of Institutional Investors, *supra* note 16.
63. Andrew Winden & Andrew Baker, *Dual-Class Index Exclusion*, Harv. L. Sch. F. on Corp. Governance & Fin. Reg. (August 22, 2018), https://corpgov.law.harvard.edu/2018/08/22/dual-class-index-exclusion.
64. Council of Institutional Investors, *supra* note 16.
65. *Id.*
66. Council of Institutional Investors, Letter to Henry E. Gallagher, Jr., Council Chair, Corporation Law Section of the Delaware State Bar Association at 2 (September 13, 2019) [hereinafter CII Letter to the Delaware Bar], *available at* https://www.cii.org/files/issues_and_advocacy/correspondence/2019/September%2013%202019%20Final%20DGCL%20letter.pdf; Council of Institutional Investors, Letter to Laurie A. Smiley, Chair, American Bar Association Corporate Laws Committee at 2 (September 13, 2019) [hereinafter CII Letter to the ABA], *available at* https://www.cii.org/files/issues_and_advocacy/correspondence/2019/September%2013%202019%20Final%20MBCA%20letter.pdf.
67. Wen, *supra* note 61 at 1515.
68. Bebchuk & Kastiel, *supra* note 6 at 592. In this context, Bebchuk & Kastiel explain further that these concerns are further aggravated when a dual-class structure allows a founder to transfer control to an heir who might be unfit to lead the company. *Id.*
69. *Id.*
70. Former SEC Commissioner Robert J. Jackson Jr., *supra* note 43.
71. *See e.g.*, Lucian Bebchuk & Kobi Kastiel, *supra* note 6 at 629.
72. CII Letter to the Delaware Bar *supra* note 66 at 1 ("Pursuant to [the proposed amendment language], no multi-class voting structure would be valid for more than seven years after an initial public offering (IPO), a shareholder adoption, or an extension approved by the vote of a majority of outstanding shares of each share class, voting separately, on a one-share, one-vote basis. Such a vote would also be required to adopt any new multi-class voting structure at a public company. The prohibition would not apply to charter language already existing as of a legacy date."); CII Letter to the ABA *supra* note 66 at 1 (proposing the same amendment to the MBCA).
73. Council of Institutional Investors, Letter to John Zecca, Senior Vice President, General Counsel North America and Chief Regulatory Officer, NASDAQ Stock Market (October 24, 2018) *available at* https://www.cii.org/files/issues_and_advocacy/correspondence/2018/20181024%20NASDAQ%20Petition%20on%20Multiclass%20Sunsets%20FINAL.pdf; Council of Institutional Investors, Letter to Elizabeth King, Chief Regulatory Officer, Intercontinental Exchange Inc. (October 24, 2018) *available at* https://www.cii.org/files/issues_and_advocacy/correspondence/2018/20181024%20NYSE%20Petition%20on%20Multiclass%20Sunsets%20FINAL.pdf.
74. American Bar Association, Letter to Ken Bertsch and Jeff Mahoney of the Council of Institutional Investors at 1 (December 13, 2019) [hereinafter ABA Response Letter to CII], *available at* https://www.cii.org/files/issues_and_advocacy/correspondence/2019/ABA%20Response%20to%20CII%20request%20to%20reform%20MBCA.pdf ("[T]he Model Act is designed to provide a set of default rules for corporations while allowing shareholders and directors the flexibility of private ordering to revise or amend the default rules, subject to very limited exceptions."); Henry E. Gallagher, Jr., Letter to Ken Bertsch and Jeff Mahoney of the Council of Institutional Investors at

1 (January 28, 2020) [hereinafter Delaware Bar Response Letter to CII], *available at* https://www.cii.org/files/1-28-2020%20Letter%20to%20CII%20(05512328xCCC1C).pdf ("The Council has thoroughly discussed and considered your legislative proposal, and has determined not to recommend its adoption. The Council reached this conclusion for the principal reason . . . that: 'corporate law is designed to serve an 'enabling' function in many areas, by providing a set of default rules that can be varied through private ordering.'").

75. The CII Letter to the Delaware Bar notes that, "[a] limited, but increasing, number of multi-class companies are choosing to go public with time-based sunset provisions incorporated into their charters." CII Letter to the Delaware Bar, *supra* note 66 at 4. And this was one of the reasons the Delaware State Bar Association declined to add sunset provisions as a mandatory provision to the DGCL, noting that, "it has not been the practice of the Council to recommend adding mandatory terms to the DGCL when market and other developments (including the increasing usage of sunset-based dual class structures to which your letter refers) may obviate any need to address any concerns legislatively." Delaware Bar Response Letter to CII, *supra* note 74 at 1.
76. Institutional Shareholder Services, *Americas Proxy Voting Guidelines Updates for 2020* (November 11, 2019) at 7-8, *available at* https://www.issgovernance.com/file/policy/latest/updates/Americas-Policy-Updates.pdf.
77. *Id.* at 8.
78. *Id.*
79. ISS, Americas Proxy Voting Guidelines Updates for 2022 (December 7, 2021) at 8, *available at* https://www.issgovernance.com/file/policy/latest/updates/Americas-Policy-Updates.pdf.
80. Glass Lewis, 2022 Policy Guidelines (2022) at 9, *available at* https://www.glasslewis.com/wp-content/uploads/2021/11/US-Voting-Guidelines-US-GL-2022.pdf.
81. Congressional Research Service, Dual Class Stock: Background and Policy Debate (December 8, 2021) at 2, *available at* https://crsreports.congress.gov/product/pdf/IF/IF11992/2.
82. Reuters, U.S. house panel considers bill curbing dual-class stock (October 1, 2021), *available at* https://www.reuters.com/business/us-house-panel-considers-bill-curbing-dual-class-stock-2021-10-01/.
83. Council of Institutional Investors, Letter to Chairwoman Maxine Waters and Ranking Member Patrick T. McHenry (October 1, 2021), *available at* https://www.cii.org/files/issues_and_advocacy/correspondence/2021/October%201,%202021%20letter%20to%20Committee%20on%20Financial%20Services%20(final).pdf.
84. Council of Institutional Investors, Dual-Class Stock (2022), *available at* https://www.cii.org/dualclass_stock?elqTrackId=9916197ccd934df8a427bcf3f4b41699&elq=978abd5508704add806856cb7e1eb7c5&elqaid=2222&elqat=1&elqCampaignId=1660.
85. SEC Investor Advisory Committee, Recommendation of the Investor Advisory Committee: Dual Class and Other Entrenching Governance Structures in Public Companies (February 27, 2018), *available at* https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-on-dual-class-shares.pdf.
86. *Id.* at 4-6.
87. *Id.* at 6.
88. *See e.g.*, Press Release, Rep. Meeks' Bill to Enhance Disclosures for Investors About Corporate Insiders with Outsized Voting Power Passes Committee (July 11, 2018), https://meeks.house.gov/media/press-releases/rep-meeks-bill-enhance-disclosures-investors-about-corporate-insiders-outsized.
89. Enhancing Multi-Class Stock Disclosures Act, H.R. 6322, 115th Cong. (2018); *see also* Congressional Budget Office, H.R. 6322, Enhancing Multi-Class Share Disclosures Act (July 11, 2018), https://www.cbo.gov/publication/54215.
90. Bobby V. Reddy, *More than Meets the Eye: Reassessing the Empirical Evidence on US Dual-Class* Stock (2020).
91. *Id.* at 36.
92. *Id.*
93. *Id.*
94. *Id.* at 34.

Keith Hallam is a partner in Cravath's Corporate Department. His practice primarily focuses on mergers and acquisitions and activist defense. Keith also advises corporations and their directors on general corporate and governance matters.

Keith's M&A highlights include representing AerCap in its $30 billion acquisition of GE Capital Aviation Services; SMBC Aviation Capital in its pending $6.7 billion acquisition of Goshawk Aviation; Swvl in its $1.5 billion SPAC combination with Queen's Gambit; Scientific Games in the $6.05 billion sale of SG Lottery to Brookfield; and the pending $1.2 billion sale of OpenBet to Endeavor.

Keith frequently contributes to dialogues surrounding developments in corporate law. In 2021, he spoke at the 13D Monitor Active Passive Investor Summit on its "Covid 19: A Year Later – Where Are We and How It Will Affect Activism" panel. For *The Legal 500*'s 2021 "Mergers & Acquisitions Country Comparative Guide," Keith authored a "Hot Topic" article entitled "SPAC Transactions in the United States."

Cravath, Swaine & Moore LLP
Worldwide Plaza, 825 Eighth Avenue
New York, New York 10019-7475
USA

Tel: +1 212 474 1458
Fax: +1 212 474 3700
Email: khallam@cravath.com
URL: www.cravath.com

Daniel J. Cerqueira is a partner in Cravath's Corporate Department. He focuses his practice on mergers and acquisitions, corporate governance, activist defense and general corporate matters. Dan's clients have included AerCap, Altra, AmerisourceBergen, Ashland, Biogen, Blue Current, Brookfield Asset Management, Buckeye Partners, Cincinnati Bell, Disney, FS Investments, GreenSky, Hibu Group, IBM, Illumina, Occidental Petroleum, Pinnacle Foods, Southwest Gas, Starwood Hotels and Univision.

Dan received a B.A. from Cornell University in 2010 and a J.D. *magna cum laude* from Harvard Law School in 2013. He joined Cravath in 2013 and was elected a partner in 2020. In 2021, he was named an M&A "Rising Star" by *The Deal* in *The Dealmaker Quarterly*.

Cravath, Swaine & Moore LLP
Worldwide Plaza, 825 Eighth Avenue
New York, New York 10019-7475
USA

Tel: +1 212 474 1156
Fax: +1 212 474 3700
Email: dcerqueira@cravath.com
URL: www.cravath.com

For over two centuries, Cravath has been known as one of the world's preeminent law firms. Each of our practice areas is highly regarded, and our lawyers are widely recognized for their best-in-class legal work. Our representation of significant global companies and financial institutions, some of which have retained the Firm from their inception, has enabled us to develop an extremely broad-based practice. We strive to be the firm of choice for clients with respect to their most challenging legal issues, business transactions and critical disputes.

www.cravath.com

CRAVATH

CRAVATH, SWAINE & MOORE LLP

ICLG.com

Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms

The International Comparative Legal Guides are published by: glg global legal group