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The International Comparative Legal Guide to:

# Corporate Governance 2019

**12th Edition**

A practical cross-border insight into corporate governance

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**Published by**
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

**GLG Cover Design**
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**Printed by**
Stephens & George
Print Group
July 2019

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**ISBN** 978-1-912509-87-4
**ISSN** 1756-1035

**Strategic Partners**

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## EDITORIAL

Welcome to the twelfth edition of The International Comparative Legal Guide to: Corporate Governance.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

It is divided into two main sections:

Seven general chapters. These are designed to provide an overview of key issues affecting corporate governance law, particularly from a multi-jurisdictional perspective.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 33 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Sabastian V. Niles & Adam O. Emmerich of Wachtell, Lipton, Rosen & Katz for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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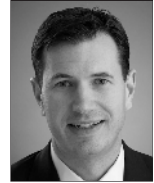
# Dual-Class Share Structures in the United States

Cravath, Swaine & Moore LLP

George F. Schoen



Keith Hallam

## I. Introduction

For some time, dual-class share structures[1] have been a major source of controversy amongst corporate governance professionals. However, the recent IPO filings of prominent technology companies 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 . . . [t]his is highly risky for long-horizon investors and for the integrity of the capital markets . . . [t]he 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]

Others argue that dual-class share structures are appropriate in certain situations, but also acknowledge there may be scenarios where this is less likely to be the case. In this context, 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 lifecycle, this may no longer be the case.

And yet, still others have argued that dual-class structures support entrepreneurship and innovation:

> 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.[4]

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.

## II. The Current and Historical Landscape

### a. Historical Backdrop

In the United States, the permissibility of dual-class structures has varied over time.[5] 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 non-voting common stock by several prominent companies, including the Dodge Brothers and Industrial Rayon Corporation.[6] Despite little public explanation for the move at the time,[7] 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.[8]

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 the next 60 years.[9] 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,[10] the NYSE filed a proposal with the Securities and Exchange Commission (SEC) to amend its listing requirements to allow listed companies to use dual-class structures.[11]

In response, in 1988 the SEC adopted Rule 19c-4 to limit the ability of existing companies with one share, one vote to recapitalise to dual-class structures, although the Rule would not prohibit dual-class structures as a part of initial public offerings.[12] The Rule was ultimately invalidated by the D.C. Circuit on the grounds that the



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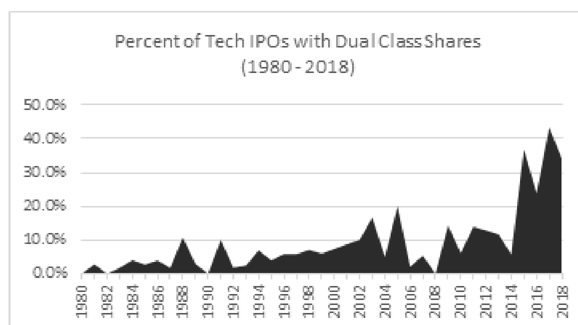
SEC lacked authority to adopt the rule, but the SEC was able to subsequently persuade the main stock exchanges to prohibit companies from changing to dual-class structures under their listing standards.[13] As a result, while companies are restricted in their ability to recapitalise with a dual-class structure, they have generally been able to go public with dual-class structures for about 30 years.[14]

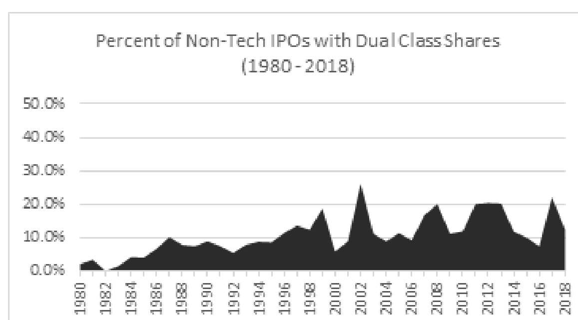
However, in the wake of Snap's IPO, which featured a non-voting dual-class structure that resulted in public investor backlash, the major indices undertook public consultations on the issue of dual-class shares.[15] As a result, the FTSE Russell announced in July 2017 that it would exclude companies from its indexes unless greater than 5% of the company's voting power was in the hands of unrestricted shareholders.[16] That same month, the S&P Dow Jones Indices announced it would fully exclude companies with multiple-class share structures from entering its component indexes, which include the S&P 500, S&P MidCap 400 and S&P SmallCap 600.[17] Finally, MCSI, after initially considering taking action, ultimately chose not to exclude dual-class companies from its indexes.[18]

### b. Current Landscape

As of February 2019, CII reports there are 216 U.S. incorporated public companies having market capitalisations of at least $200 million that have two or more outstanding classes of common stock with unequal voting rights, including such household names as Nike, Berkshire Hathaway, Ford, Coca-Cola, CBS, The New York Times Company, Comcast, Facebook and Alphabet (Google's parent company).[19] In 2018 and 2017, 15 out of 140 IPOs (11%) and 23 out of 124 IPOs (19%), respectively, had dual-class structures with unequal voting rights.[20]

On the whole, the percentage of companies that IPO with dual-class or similar structures has increased significantly over the last 40 years, particularly for technology companies. In 2018, 34.2% of technology companies had IPOs with dual-class share structures, and 12.5% of non-technology companies had initial public offerings with dual-class share structures, relative to 0% and 2%, respectively, in 1980.[21]




Source: Jay R. Ritter, *Initial Public Offerings: Dual Class IPOs* (December 31, 2018), Table 23 (Updated December 19, 2018).

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 opponents now including Senator Elizabeth Warren, the Council of Institutional Investors and a number of leading mutual funds.[22]

## III. The Debate

### a. 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 the founder to utilise their special skills to create value for the long-term, this in turn translates to superior returns that benefit the founder, the company and all other investors.[23]

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*."[24]
- "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."[25]

And in fact, Google justified issuing a new class of non-voting 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.[26]

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.[27]

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.[28] Specifically, returns for all dual-class IPOs in 2017 were 32%, relative to 27% for all IPOs and 19% for the S&P.[29] 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.[30]

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.[31]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### b. Opponents of Dual-Class Structures

Arguments against dual-class structures focus on the problems of entrenchment and poor long-term economic returns.[32]

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.[33]

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.[34] 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 decision making and can capture the full private benefits of that control.[35]

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 find dual-class companies underperform in the long-term.[36] One such study concluded:

> 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.[37]

In February 2018, SEC Commissioner Robert J. Jackson Jr. proposed in a speech that companies should not be allowed to have perpetual dual-class stock.[38] Supporting this position was an SEC study covering 157 dual-class IPOs in the United States over the prior 15 years.[39] 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, over time the companies with sunset provisions began to trade at a premium compared to companies with perpetual dual-class stock (with the premium becoming more significant over time).[40]

## IV. 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.

### a. 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.[41] 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.[42]

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.[43]

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 continue to cultivate entrepreneurship and innovation.[44] 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.[45]

### b. 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.[46] However, for advocates of this position, the avenues for reform have been somewhat limited.[47]

From a regulatory standpoint, the D.C. Circuit's prior invalidation of Rule 19c-4 undermines the Commission's authority to issue a rule mandating "one share, one vote".[48]

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 has prevented the exchanges from acting:

> U.S. exchanges have rebuffed previous proposals to act, and multiple non-U.S. exchanges with long-standing "one share, one vote" requirements recently have yielded to "race to the bottom" pressure to attract new listings.[49]

In this context, as previously discussed, opponents of dual-class structures have turned to a new *de facto* regulator – equity index providers.[50] However, despite the recent 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;[51] similarly, the actions taken by the FTSE Russell index only impact a handful of companies.[52]

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


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> 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 . . .[53]

### c. 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.

**1. 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.[54]

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.[55]

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 SEC Commissioner Robert 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.[56]

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.[57]

**2. Additional Disclosure Requirements**

In addition to proposals focused on reducing the life span 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.[58] 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 non-traditional 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.[59]

The SEC's Investor Advisory Committee recommended a number of disclosure-related actions the Division of Corporate Finance could take to remedy these issues.[60] And in response, the Enhancing Multi-Class Share Disclosures Act was subsequently introduced in Congress,[61] which would direct the SEC to issue a rule requiring issuers with multi-class stock structures to make certain disclosures regarding the voting power of certain individuals.[62]

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.

## V. Conclusion

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

On one side, proponents argue 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. Relatedly, 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.

In this way, there is both a normative and an empirical debate regarding dual-class shares. The normative debate is whether, as a matter of principle, founders should be able to select the governance structure they desire when bringing their companies to public markets (as long as the structure is adequately disclosed), versus whether shareholder equity ownership should be aligned with voting rights. And from an empirical standpoint, the debate is whether founder control creates shareholder value because it insulates innovative founders from short-term market pressures, versus whether founder control destroys shareholder value because it misaligns the incentives of controllers and public shareholders.

As the debate continues to unfold, corporate governance professionals will be watching the numerous stakeholders – indexes,


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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. (March 14, 2019), http://ctwinvestmentgroup.com/wp-content/uploads/ 2019/03/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. 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/.
5. Lucian 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).
6. Bebchuk & Kastiel, *supra* note 5 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).
7. Seligman, *supra* note 6 at 697.
8. *Id.* (citations omitted).
9. Bebchuk & Kastiel, supra note 5 at 596; CFA Institute, Dual-Class Shares: The Good, The Bad, and The Ugly (2018) at 31.
10. Seligman, *supra* note 6 at 700, 701 n.80; Bebchuk & Kastiel, *supra* note 5 at 596.
11. *See Bus. Roundtable v. SEC*, 905 F.2d 406, 408 (D.C. Cir. 1990)); *see also* Bebchuk & Kastiel, *supra* note 5 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 5 at 596.
12. Bebchuk & Kastiel, *supra* note 5 at 597 (citations omitted). 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 . . . ." Voting Rights Listing Standards; Disenfranchisement Rule, 53 Fed. Reg. 26,376, 26,394 (1988) (codified as at 17 C.F.R. § 240.19c-4 (1990)), invalidated by *Bus. Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990)). 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 does not insist on equal voting rights in public offerings).
13. Bebchuk & Kastiel, *supra* note 5 at 597.
14. *Id.*
15. *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).
16. 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 15 at 350.
17. CamberView Partners, *supra* note 16. 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.*
18. Council of Institutional Investors, *supra* note 15.
19. Council of Institutional Investors, *Dual Class Companies List* (February 2019), https://www.cii.org/files/Feb%2020 19%20Dual%20Class%20Companies%20List.pdf. The list excludes companies that use Up-C structures with two classes of outstanding shares but have no wedge between voting and equity interests. *Id.*
20. Council of Institutional Investors, *Dual-Class IPO Snapshot: 2017-2018 Statistics* (Jan. 2, 2019), https://www.cii.org/files/ 2018Y%20IPO%20Stats%20for%20Website%20FLIP.pdf. Number of IPOs excludes foreign private issuers (FPIs), special purpose acquisition companies (SPACs), master limited partnerships (MLPs) and other foreign companies. *Id.*
21. Jay R. Ritter, *Initial Public Offerings: Dual Class IPOs* (Dec. 31, 2018), https://site.warrington.ufl.edu/ritter/files/2019/04/ IPOs2018DualClass.pdf. The sample is 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). *Id.* Nearly all unit offers, limited partnerships, and SPACs (with the exception of the 2012 IPO of The Carlyle Group LP), have dual class stock features. *Id.*
22. *See* Bebchuk & Kastiel, *supra* note 5 at 597–99; *see also* Condon, *supra* note 15 at 352.
23. *See e.g.*, Condon, *supra* note 15 at 355–57 (explaining arguments in favour of dual-class share structures).
24. 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) at 27, *available at* https://www.sec.gov/Archives/edgar/data/ 1288776/000119312504143377/d424b4.htm#toc59330_1.
25. *Id.* at 29 (explaining the company's reason for maintaining a dual-class voting structure with unequal voting rights).
26. Larry Page & Sergey Brin, Founders' Letter 2012 (April 2012), *available at* https://www.sec.gov/Archives/edgar/ data/1288776/000119312512160666/d333341dex993.htm.
27. Dimitris Melas, *Putting the Spotlight on Spotify: Why Have Stocks with Unequal Voting Rights Outperformed?* (April 3, 2018), MSCI (Apr. 3, 2018), https://www.msci.com/www/ blog-posts/putting-the-spotlight-on/0898078592.
28. 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).


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29. *Id.*
30. *Id.*
31. Melas, *supra* note 27 (explaining 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 28 (explaining that there is somewhat of a "self-selection" bias, given that most dual class IPOs are TMT sector-related (which have higher returns)).
32. Condon *supra* note 15, at 352.
33. Bebchuk & Kastiel, *supra* note 5 at 603.
34. *Id.* at 604–606.
35. Lucian A. Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers* (European Corporate Governance Institute (ECGI), Law Working Paper No. 434/2018, 2019) at 11.
36. CFA Institute, *supra* note 9 at 16–18.
37. *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)).
38. Commissioner Robert J. Jackson Jr., Perpetual Dual-Class Stock: The Case Against Corporate Royalty (Feb. 15, 2018) *available at* https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty; *see also* CFA Institute, *supra* note 9 at 18 (citing Commissioner Jackson's February 15, 2018 speech and study).
39. Commissioner Robert J. Jackson Jr., *supra* note 38.
40. *Id.*; *see also* CFA Institute, *supra* note 9 at 18.
41. Friedman, *supra* note 4.
42. 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/.
43. Condon *supra* note 15, at 357 (explaining freedom of contract arguments).
44. Friedman, *supra* note 4.
45. *Id.*
46. *See e.g.*, Council of Institutional Investors, *supra* note 15.
47. *Id.*
48. *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").
49. Council of Institutional Investors, *supra* note 15.
50. Andrew Winden & Andrew Baker, *Dual-Class Index Exclusion*, Harv. L. Sch. F. on Corp. Governance & Fin. Reg. (Aug. 22, 2018), https://corpgov.law.harvard.edu/2018/08/22/dual-class-index-exclusion/.
51. Council of Institutional Investors, *supra* note 15.
52. *Id.*
53. Wen, *supra* note 48 at 1515.
54. Bebchuk & Kastiel, *supra* note 5 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.*
55. *Id.*
56. Commissioner Robert J. Jackson Jr., *supra* note 38.
57. *See e.g.*, Lucian Bebchuk & Kobi Kastiel, *supra* note 5 at 629.
58. 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.
59. *Id.* at 4–6.
60. SEC Investor Advisory Committee, *supra* note 58 at 6.
61. *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.
62. 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.

**Acknowledgment**

The authors wish to thank Gabriel Rust-Tierney, an associate at Cravath Swaine & Moore LLP, for his contributions to this chapter.


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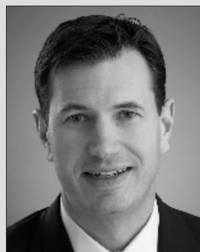

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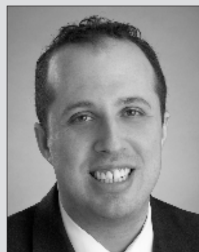

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