

	Dual Class Common Stock: An Issue of Public and Private Law <i>By Jeffrey N. Gordon</i>		Against Mandatory Sunset for Dual Class Firms <i>By Zohar Goshen</i>		A Brief Response 1 <i>By John C. Coffee, Jr.</i>
---	---	---	--	---	--

Editor-At-Large
Reynolds Holding

THE CLS BLUE SKY BLOG

COLUMBIA LAW SCHOOL'S BLOG ON CORPORATIONS AND THE CAPITAL MARKETS

Editorial Board
John C. Coffee, Jr.
Edward F. Greene
Kathryn Judge

Our Contributors	Corporate Governance	Finance & Economics	M & A	Securities Regulation	Dodd-Frank	International Developments	Library & Archives
------------------	----------------------	---------------------	-------	-----------------------	------------	----------------------------	--------------------

Dual Class Companies Should Adopt a Coattail Provision



By Yvan Allaire January 18, 2019

Comment     

I would like to make two points in response to Professor Coffee's [piece](#) on dual class common stock.

First, American dual class companies should be obliged to include a "coattail" provision, as is the case in Canada. This provision, imposed since 1987 by the Toronto Stock Exchange, ensures the controlling shareholder cannot sell control without all shareholders being offered the same price and conditions for their shares. This provision removes an important source of potential "private benefits" of control.

Second, In the coming years, a battle will rage about sunset clauses, particularly of the time-based sort. An organized effort is already afoot, led by the Council of Institutional Investors to oblige future dual-class companies to include a time-based sunset at IPO time. At a minimum, companies considering a dual-class IPO will be urged by investment bankers and sundry influencers to include some time limit on the benefits of superior votes. There may even emerge a movement to pressure (or compel) dual class companies to adopt a time-based sunset long after their IPO.

Advocates for sunset clauses put forth the optimistic (disingenuous?) argument that shareholders of both classes may well vote for a renewal of the time-based sunset for another period if they are happy with the way the company is run. Unfortunately, no matter how stellar the performance of the company, if a vote were to be held to postpone the sunset, there would be an invasion of short-term funds of all stripes resorting to all types of financial maneuvers to make sure the proposal is voted down. The control premium resulting from the abandonment of the multiple classes of shares would be an irresistible attraction.

Clearly, some advocates of sunsets do not accept, or are prepared to forego, the benefits and longevity of dual-class family companies, which are abundantly documented (for recent instances, see Van Essen, Carney, Gedajlovic and Heugens (2015); Anderson, Ottolenghi and Reeb (2017); Jordan, Kim, & Liu (2016); Cremers, Lauterbach, Pajuste (2018)).

They believe that an economic system thrives best on creative destruction guided by an invisible hand. In fact, Adam Smith believed "moral sentiments" were essential to the success of capitalism, and Schumpeter did not believe this kind of capitalism could survive.

This post comes to us from Yvan Allaire, executive chair of the Institute for Governance of Public and Private Organizations (IGOPP).

Leave a Reply

Your email address will not be published. Required fields are marked *

Comment

Name *

Email *

[Post Comment](#)