THE GLOBE AND MAIL

Investors call for limits on dual-class shares in light of Rogers battle

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Rogers Communications Inc.'s Rogers Building is pictured from Ted Rogers Way in Toronto on April 22, 2014. The family battle at Rogers has led to renewed scrutiny on dual-class stock structuring.

DARREN CALABRESE/THE CANADIAN PRESS

Canadian investor organizations want stricter requirements for companies with dual-class stocks to trade on public exchanges amid a growing debate about the drawbacks of such shares and a controversy over voting rights at Rogers Communications Inc. RCI-B-T (/investing/markets/stocks/RCI-B-T/) +0.61%

Dual-class stock structuring – where different classes of shares in a single company have different voting rights – has been criticized for limiting public shareholders' ability to hold underperforming businesses to account. The family battle at Rogers, where most public shareholders have no voting rights, has revived calls for regulators to impose controls on such structures.

"This for us is the opportunity to push regulators to promote that conditions must be attached if a new IPO comes to market with a dual-class structure," said Catherine McCall, executive director of the Canadian Coalition for Good Governance (CCGG). The organization represents 54 major institutional investors in Canada, which collectively manage $5-trillion in assets.

Opinion: Rogers family battle exposes perils of corporate Canada's addiction to dual-class shares

Opinion: Why regulators need to address problems with dual-class shares

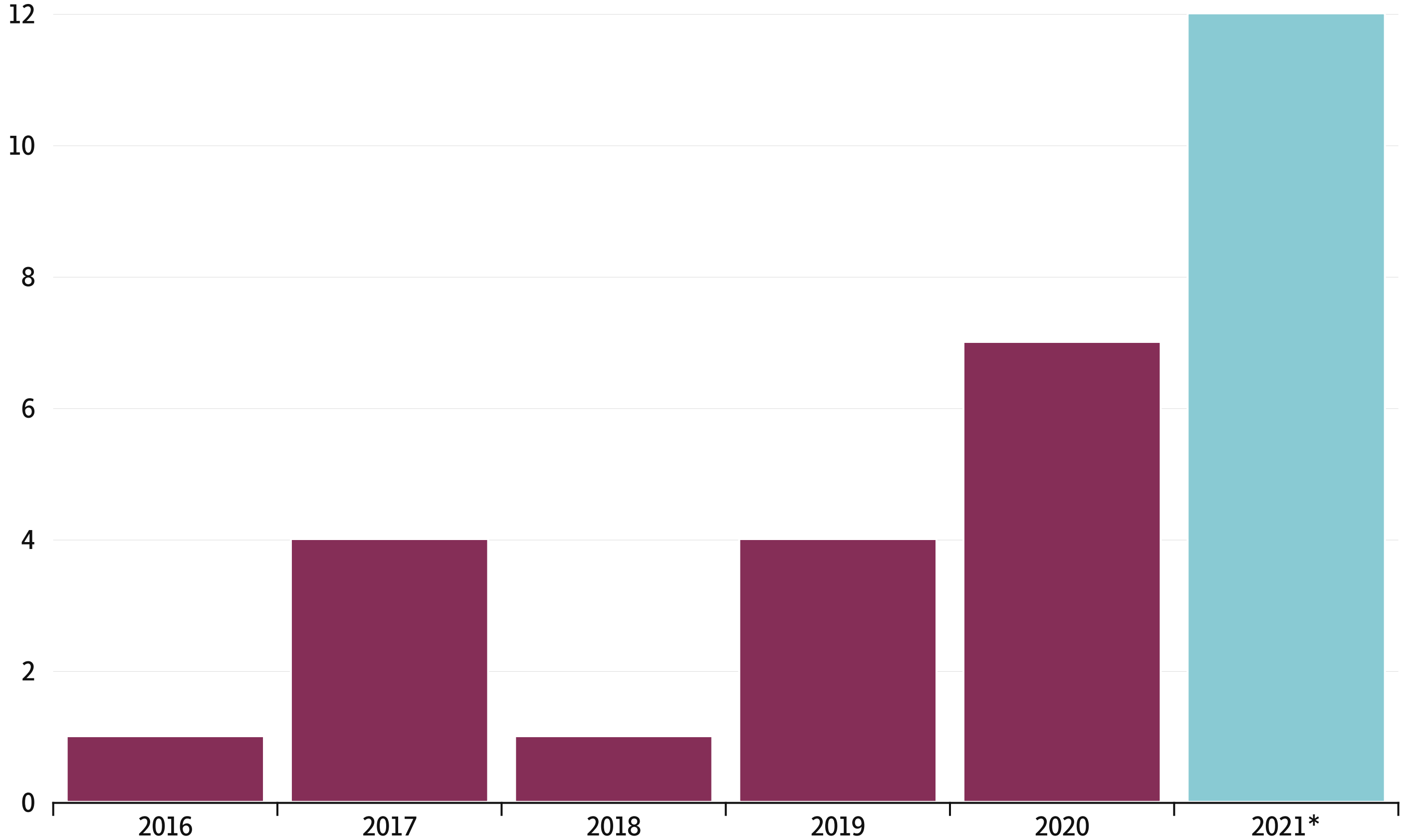
The Rogers case has brought the hazards of dual-class share structures and zero-voting shares back into the limelight. A family trust holds more than 97 per cent of the voting shares, and public shareholders cannot vote on changes to the board of directors, which has led to a court fight over who is in control.

Dual-class share structures, also known as multiple-class, have seen a resurgence in recent years among tech companies that are following the lead of Facebook and Alphabet. Shopify Inc. is among those companies.

According to data from the TMX Group, the number of companies with dual class shares listed on the Toronto Stock Exchange, including those moving over from the TSX Venture Exchange, is rising. More companies with this structure listed in the first nine months of 2021 alone than in the prior two years combined – 12 in 2021, compared with seven in 2020 and four in 2019.

Dual-class companies on TSX

Number of new listings with dual-class shares on the TSX, including TSXV grads



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DATA SHARE

Of the 1,700 companies listed on the TSX, about 90 have dual-class share structures.

In the United States, 24 per cent of companies that went public in the first half of 2021 adopted a multiclass structure with unequal voting rights, according to the Council of Institutional Investors. Half have sunset clauses under which controlling shareholders give up their superior voting rights under specific conditions in the future. Just five of the 431 new listings offered shares with no vote.

In 2018, the Hong Kong and Singapore exchanges let companies with multiple share classes list, followed by the Shanghai exchange in 2019. The London Stock Exchange still does not allow dual-class companies on its premium segment or in its main index, the FTSE 100.

Dual-share structure shares have been controversial since U.S. auto manufacturer Dodge Brothers Inc. first proposed them in 1925.

Ms. McCall said most of CCGG's members agree that one share should equal one vote, so the amount of capital company leaders put into a corporation should match their voting interest.

The organization advocates for a maximum ratio of four-to-one multiple shares to subordinates, sunset clauses with periodic review from shareholders, and provisions that require a company making a takeover bid to offer holders of subordinate shares the same amount as multiple-voting shares.

Ms. McCall cites studies from the National Bureau of Economic Research that suggest that while large ownership stakes in managers' hands tend to improve corporate performance, heavy voting control by insiders weakens it.

"When you access the public markets, it comes with certain obligations. Dual-class capital introduces an element of unfairness that has to be restricted in some way, or you can end up in bad situations," she said.

Others go further.

Kevin Thomas, chief executive officer of the non-profit Shareholder Association for Research and Education (SHARE), which advocates for shareholder rights, says dual-class shares should be banned.

"Some companies with dual-class shares will say they have a strong program of shareholder engagement," he said. "They will still speak to their shareholders, but without the votes. There's no obligation for them to respect what they hear or to even listen at all. It's a charade."

SHARE advocates prohibiting new dual-class shares except on the TSX Venture Exchange, requiring a three-year sunset provision for companies with existing structures, and abolishing all non-voting stock.

"What happens when the old leadership is past its best-before date? It's like sour milk in the fridge. We need to pull it out," Mr. Thomas said.

Others say too many restrictions could hurt growth. David Beatty, academic director at the David and Sharon Johnston Centre for Corporate Governance Innovation, is a long-time proponent of the dual-class system. Without them, he said, leaders may view progress only in terms of quarterly reports.

"The work we did at the Johnston Center showed that family companies with dual-class shares significantly outperformed the widely held companies. Families tend to be much more long-term in their orientation," he said.

Mr. Beatty cited the National Bank of Canada's Family Index report, which in 2020 compared the returns of 38 family-owned companies with the S&P TSX Composite. It found family companies achieved absolute returns of 180.9 per cent, compared with the S&P/TSX Composite's 140.5 per cent.

Mr. Beatty said Canadian stock exchanges should remain open to dual-class shares to encourage tech firms to list in Canada rather than in places with more lenient rules. In 2014, Chinese company Alibaba listed on the New York Stock Exchange instead of in Hong Kong, which didn't allow dual-class shares.

Ms. McCall said many Canadians cannot avoid investing in dual-class shares because they are included in index funds or held on their behalf by pension plans and other institutions.

François Dauphin, CEO of the Institute for governance, said investors can still sway companies despite dual-class shares.

"In most places, shareholders do have a say," he said. "With the media around, at some point companies will have to talk to shareholders and justify why they're going against most people's opinions."

One benefit of dual-class share structures is that they keep companies virtually immune to hostile takeovers, he said. This is particularly relevant in the tech field, which sees many acquisitions.

He said company founders in this area "have a vision to put in place. It's good that they have that kind of control."