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Primary Markets Policy Team
Financial Conduct Authority
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Sent via email: cp23-31@fca.org.uk

Dear team,

Railpen response | FCA CP23/31 Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for listing rules reforms

About Railpen

Railpen is the trading name of Railway Pension Investments Limited, which is authorised and regulated by the Financial Conduct Authority (FCA). Railpen acts as the investment manager for the railways pension schemes and is responsible for c. £34 billion of assets on behalf of over 350,000 members.

Sustainable Ownership is Railpen's approach to incorporating sustainability considerations into the investments it manages on behalf of members. Railpen's work is enabled by the Trustee's related investment belief: "Incorporating and acting upon climate risk and other environmental, social and governance factors is a significant driver of investment outcomes and part of our fiduciary duty."

As a UK asset owner, with an extensive history of investing at an early stage in high-growth, innovative and UK-based companies like Oxford Nanopore Technologies (ONT), Starling Bank and Gousto, we want to see the UK continue to thrive as a global financial powerhouse. We recognise that there are concerns about the health of the UK equity market – although we note that challenges attracting new listings are not unique to the UK – and agree that this is an important policy discussion to have.

However, and particularly given the far-reaching nature of these reforms, any proposals must i) be rooted in an objective and non-partisan consideration of the available evidence and ii) consider the impact on UK savers. We have welcomed the willingness of the FCA to meet with us and other concerned investors and investor bodies, enabling us to share our evidence base. However, the fact that several of the previous proposals outlined in CP23/310 are still going ahead – and in one key instance, without even the limited investor protections previously proposed – gives us cause for concern as to whether the evidence presented is being thoughtfully considered.

Summary

We remain profoundly disappointed at the direction of travel on the UK equity listings rules. On dual-class share structures, or DCSS, the FCA's latest proposals have taken a backwards step as regards investor protections even beyond what was originally proposed in CP23/10.

We are concerned that the views of investors – and in particular, those of the asset owners whose interests are most aligned with the needs of the everyday saver[1] – have not been truly heard. We think that this has resulted in an imbalanced set of proposals, aligned to the narrow commercial interests of only one set of agents within the capital markets ecosystem, which fails to take into account the history and evidence on the benefits of strong investor protections (and the issues which arise when these protections are not available)[2].

Instead of answering each specific question in the consultation, we offer broader thoughts in relation to the questions asked, as well as some of the additional evidence as requested in CP23/31 – for instance, the likely additional stewardship costs of the proposals as they currently stand. We do not repeat the extensive evidence base as to the broader problems with the current proposals that we provided in our response to CP23/10, although we would continue to encourage FCA officials to appropriately consider and review this evidence[3] [4].

We remain of the view, as outlined previously, that neither the FCA nor the issuer community have provided the necessary evidence to support these further changes to the UK listings regime – particularly as financial markets in the UK and elsewhere have not yet recovered from the impacts of the pandemic and as the previous changes to investor protections brought about in DP22/2[5] have not had time to bed in.

We would also welcome further transparency from the FCA regarding the substance of individual responses submitted previously. We would hope that any misunderstanding about the strength of both institutional and domestic investor concern would have been adjusted in light of the International Corporate Governance Network (ICGN's) recent Statement on Corporate Governance.

The FCA's statutory objectives include those to act in the long term interests of consumers and ensure that the relevant markets function well. We are concerned that the impact on savers, not least the retirement savings of working people, has been insufficiently considered in the policy debate. Ultimately, these proposals will not create the healthy capital markets the UK needs – in fact, they risk exacerbating the current situation and making the UK less appealing to the high-quality investors which any financial market needs in order to thrive[6].

We and other asset owners will continue to do what we can to safeguard the interests of our members should these proposals – as seems likely – go ahead without appropriate

[1] This close alignment of interests results from the fiduciary duty placed upon pension scheme trustees in the UK as articulated most recently in Paper-Pension-Fund-Trustees-and-Fiduciary-Duties-Decision-making-in-the-context-of-Sustainability-and-the-subject-of-Climate-Change-6-February-2024.pdf (fmlc.org).

[2] We suggest reading this excellent piece from a former regulator It takes two to tango – balancing the interests of companies and investors (morrowsodali.com) which states that "Business organisations are generally much more effective at lobbying and getting their point across [and]…the impact on companies is generally easier to understand if you are not an expert (which few regulators are)…[therefore proposals] tend to underestimate or undervalue the impact on investors' behaviour…there is a tendency to overlook the potential impact [of proposals] on factors such as the cost and availability of capital. There is often an unspoken or unrecognised assumption that investors will continue to invest in the companies in question regardless of the regulatory framework. This is a false assumption."

[3] Our response can be found at fca_listings_regime_june_2023.pdf (azureedge.net).

[4] We do, however, reproduce our 'myth-buster' from our previous submission in the Appendix as we think the points made here continue to be relevant.

[5] Which Railpen supported, believing the approach taken on dual-class share structures in DP22/2 to be a pragmatic compromise.

[6] We note that the Japanese Exchange Group has experienced significant growth in listed companies in the last few years, which arguably owes to the extensive corporate governance and stewardship reforms undertaken in an explicit (and successful) effort to improve the competitiveness of Japanese capital markets.

protections. However, it is regrettable that CP23/31 continues to propose removing the corporate governance safeguards which have for so long been the UK's primary competitive advantage, in the face both of the overwhelming opposition from domestic and international investors, and the overwhelming evidence base on the damaging implications of doing so.

Our response

We cover here the following three aspects:

1) Our position on key issues raised in the consultation
2) Additional evidence, as requested in CP23/31
3) Our views on the consultation approach

Key issues raised in the consultation: our position

Dual-class share structures (DCSS)

In our response to CP23/10, we flagged the extensive evidence to demonstrate the negative impact on financial performance of DCSS after very few years. The latest research from the Investor Coalition for Equal Votes (ICEV)[7] emphasises this and articulates how it strongly supports the case for a mandatory time-based sunset clause a few years after listing.

The FCA, in CP23/10, had also previously noted that "we…consider a time-related sunset provision to be the most effective safeguard against the entrenchment of enhanced voting rights and the permanent exposure to moral hazard by minority shareholders". Therefore, we are surprised that CP23/31 now states that the previous 10-year limit "may…be arbitrary" and that the academic evidence on when any benefits from DCSS disappear is "not conclusive".

We strongly disagree with this latter statement. We think the decision in CP23/31 to reverse the previous proposal for a mandatory, time-based sunset clause runs counter to the weight of academic evidence on this issue and constitutes a significant retrograde step that imposes even more risks to outcomes for everyday savers exposed to investments in UK companies that choose to list with DCSS[8].

In our Appendix, we share some case studies of companies where DCSS has led to egregious company behaviour, which independent shareholders have been unable to curtail because of the unequal voting rights arrangement.

We strongly encourage the FCA to reconsider its approach, to take heed of the growing evidence base, and institute a mandatory time-based sunset clause of seven years or less.

[7] The Investor Coalition for Equal Votes (ICEV) exists to push back against the growing trend for dual-class share structures (or unequal voting rights) without a time-based sunset clause of seven years or less. Chaired by Railpen, with the Council of Institutional Investors (CII) as Vice-Chair, the Coalition has grown to around $3tn assets under management in just over 18 months.
[8] An extensive literature review of the available research on dual-class share structures and its implications both for long-term financial value and the wider market can be found in the 2023 research ICEV undertook with Chronos Sustainability icev-report-2023-undermining-the-shareholder-voice.pdf (azureedge.net). A review of the evidence demonstrates that any benefits of DCSS decline very shortly after listing, supporting the case for a time-based sunset clause of seven years or less.

DCSS and the case for class-by-class vote disclosure

An issue currently undergoing significant debate in the US is that of class-by-class vote disclosure, whereby companies with multiple classes of shares might be required to separately disclose vote tallies for each class[9]. This gives visibility, to both investors and to the boards and management of companies, as to the nature of the preferences of both insider and independent shareholders. Where a gap in preferences between the different classes of shareholders might be significant, boards would be in a better position to respond to the concerns of their independent shareholder base.

Should the FCA proposals proceed as planned, whereby unequal voting rights are further enabled, we think there would be merit in considering such a proposal (we note that this disclosure would require a standardised methodology for tabulation of votes to be agreed). We also think that additional heft could be given to the resultant investor-company, were the disclosure to be backed up by a register[10] which collated resolutions at companies where there was a significant gap in preferences (above a certain threshold) between independent and insider investors and where boards were encouraged to formally respond to independent shareholders within a certain timescale.

To be clear, this is a fallback position should the FCA pursue its current plans: our overwhelming preference, as regards impactful investor protections, is the institution of a seven-year time-based sunset clause. However, we would also urge the FCA to consider class-by-class vote disclosure, which would align with the broader move to a "disclosure-based regime" as articulated in both CP23/10 and CP23/31.

Significant transactions and Related Party Transactions (RPTs)

We refer the FCA to our previous response and objections to the rolling back of protections for investors around significant transactions and related party transactions.

On significant transactions specifically, we would remind the FCA of the instances – as articulated in private meetings – where a company has gone out informally to its shareholders with a proposed significant party transaction, and where it was unable to get the support necessary to pass a shareholder vote. Had such a shareholder vote requirement not been in place, it is likely that the company would have felt empowered to go ahead with a transaction that clearly caused its investor base significant concerns and could have resulted in a significant loss of value.

Furthermore, in CP23/10 it is noted that larger investors are of the view that the votes are less important on significant transactions as it was felt the issuer's management would seek the approval of larger shareholders through engaging in advance. Such an attitude dismisses and disenfranchises smaller investors, including those retail investors and asset owners who do not necessarily have significant stewardship resources – and runs counter to current policymaker ambitions to democratise investment.

We again remind the FCA of its duty to protect consumers, and urge it not to condone such an approach, nor give this point serious consideration.

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[9] Not only is this an issue being explored by CII and others, but a resolution has also been tabled by shareholders at the Meta AGM (a company with DCSS) calling for class-by-class vote disclosure.
[10] Analogous to the Investment Association's (IA's) Public Register The Public Register / The Investment Association (theia.org).

Proposed metrics to monitor the impact of the proposals

Although we welcome the FCA's decision to monitor the impact of proposals, we think that that the current proposed metrics to support it in doing so are too narrow, particularly regarding measuring the level of shareholder dissatisfaction and the quality of a company.

Current metrics outlined in CP23/31 include an "increase in formal shareholder motions" and "notifications of potential misconduct". These fail, for instance, to recognise that it is much harder and more costly in the UK (than elsewhere, particularly the US) to file a shareholder resolution. Given the additional stewardship costs that the FCA's proposals will already be imposing on investors – and the negligible likelihood of success of such resolutions at companies that decide to pursue a dual-class share structure – it is highly unlikely that shareholders will deem such resolutions worthwhile on a cost-benefit analysis, except in especially egregious cases.

These metrics would therefore only reveal the tip of the iceberg with regards to poor quality companies that are not acting in alignment with the preferences of their shareholders. We note the widespread disquiet about the proposals among asset owners in particular, and would recommend the FCA takes due note[11].

We think that further metrics that could usefully be measured include:

- The number of votes against directors at UK-listed firms, particularly votes against the Chair of the Board or the Chairs of other Board Committees – where a company has dual-class share structures, such information would need to be disaggregated (please see our notes on class-by-class vote disclosure above)

- Annual surveys of institutional investor satisfaction with the quality of governance at UK-listed companies (and trends over time) – the pool of respondents should include both asset managers and asset owners, as well as savers

- The level of pre-declarations to the market of voting intentions at a company

- The level of qualified/modified audit opinions at UK-listed companies

- The proportion of (active) managers' capital invested in the UK over time, compared to the major world indices such as the MSCI ACWI or the FTSE All-World Index

The (additional) evidence base with respect to the FCA's proposals

On issues with Related Party Transactions in countries without a shareholder vote

The requirement for a compulsory shareholder vote on related party transactions is a vital protection, allowing investors the opportunity to make their views known, and felt, on transactions that are i) fundamental to shareholder value and ii) ripe for potential abuse (please see table below).

As regards the statement that "shareholder votes [on RPTs] usually result in approval", we, like others, continue to believe it is likely that the impact of a robust RPT regime means only those transactions that are most likely to be approved come to shareholders for a vote in the first place. We refer you to the additional thoughts provided by Railpen and others on this point previously.

[11] As articulated both through the response from the Pensions and Lifetime Savings Association (PLSA) to CP23/10 and the public letter from June 2023 from several of the UK's largest pension scheme investors.

Furthermore, below we provide some of the evidence on specific companies pursuing RPTs in jurisdictions where there is *not* a mandatory shareholder vote i.e. where companies felt immune from shareholder scrutiny and shareholders did not have the opportunity to express their opinion. Most of these companies collapsed or went bankrupt as a result. The current RPT regime in the UK means that our members have been protected from the severe consequences of being exposed to such egregious behaviour.

We therefore reiterate our concerns that unwinding the protections could mean a great number of companies of dubious quality listing in the UK and further discourage investors from investing in UK companies.

Company (jurisdiction)	Summary of situation
Enron Corp. (US)	In 2001, Enron used RPTs with special-purpose entities to help conceal billions of dollars in debt from failed business ventures and investments. These related parties misled not only their investors, but also the board of directors, the audit committee and their employees.
Adelphia Communications Corp (US)	In 2002, Adelphia officials announced that over $2 billion of unrecorded debt had been collected via co-borrowings between Adelphia and other entities owned by the Rigas family, through use of the family's private trust Highland Holdings.
Tyco International Ltd. (US)	Between 1992 and 2002, Tyco hid a large number of related party transactions from investors, resulting in the company overstating its operating income by an aggregate amount of at least one billion dollars.
Refco Inc. (US)	In 2005, it was announced that Refco's CEO and Chairman had hidden $430 million in bad debts from the company's investors, including through use of receivables owed to an unnamed entity that was discovered to have been owned by the CEO. He had been buying bad debts from Refco to prevent the company from needing to write them off and paying for these with money borrowed by Refco itself.
Hollinger, Inc and Hollinger International (Canada)	From 1999 to 2003, David Radler and Conrad Black (Deputy Chairman and Chairman/CEO, respectively) diverted to themselves and other insiders around $85 million of the proceeds from Hollinger International's sale of newspaper publications through use of RPTs.
Rite Aid Corp. (US)	The CEO, CFO and Vice-Chairman failed to disclose several RPTs and the CEO was found to have fabricated Finance Committee minutes for a meeting that never occurred, in connection with a corporate loan transaction.

On additional costs to investors (stewardship)

The FCA has previously carried out welcome work to help schemes improve value for money for their members, as well as to ensure we and others can better scrutinise the costs of the services our asset manager provide.

It is particularly disappointing that the proposals in CP23/31 to dilute corporate governance safeguards run counter to this work. Although the paper emphasises the need for investors to carry out their due diligence and analysis, it does not acknowledge that the greater due diligence and engagement required should these proposals go ahead (both pre-investment and post-investment, particularly around possible significant and related party transactions) will impose additional costs on managers, which will ultimately get passed on to owners and negatively impact the outcomes achieved for members.

We also think CP23/31 fails to sufficiently acknowledge the particular impact on index investors, who have far less discretion over investment decisions than active managers.

We are unclear as to whether an analogous level of quantification of the cost to UK companies of the current safeguards has been provided as part of the consultation process, however we acknowledge that CP23/31 requests that investors submit some estimate of the additional stewardship costs these proposals will bring about. We produce ours here.

We would be happy to share our full workings further, should the FCA be interested in discussing. The estimates below are based on our extensive experience as an active investor, with significant internal investment management and stewardship resources. We thereby assume:

- An active investment decision
- Additional time spent on pre-investment due diligence (particularly regarding companies with DCSS) and ongoing monitoring by portfolio managers and analysts and additional use of both senior and junior stewardship resource
- Additional time spent in obtaining and preparing for meetings with a wider and more senior range of both board and executive members at companies with DCSS
- An average holding period of a stock in an actively managed, internally run portfolio of five years
- That companies which are not made to institute a mandatory time-based sunset clause of seven years or less are unlikely to do so

We should also note – although this has not been considered in the figures below – that a smaller investor (or an investor with a smaller holding in a company) will need to work accordingly harder and dedicate more resource to seeking and obtaining a meeting with the appropriate individuals at a company.

CP23/31 proposal	Estimated cost per company/action as noted
Dual-class share structure (no sunset clause)	£44,000 over a five-year holding period (pre- and post- investment) *per company*
Significant transaction (no shareholder vote)	£10,000 per significant transaction (post-investment only) *per action*
Related Party Transaction (no shareholder vote)	£10,000 per related party transaction (pre- and post-investment) *per action*

On benefits to the UK from the current approach

The FCA has asked for evidence as to the benefits for the UK from the current approach. It is naturally hard to build a counter-factual argument, but we would suggest that the strong support of international investors – many of which are exactly the kind of investors we understand UK policymakers are keen to encourage to invest in the UK – for the current UK corporate governance regime demonstrates the advantages to the UK of being, as the Australian Council of Superannuation Investors (ACSI) noted in its response "a beacon of corporate governance". We also note that international investor associations including CII and ACSI had fed through their concerns at the proposals in CP23/10 (as well as supporting the ICGN Statement).

In previous conversations with the FCA and other policymakers, we have also highlighted that Railpen is overweight to UK listed equities and underweight to US listed equities, vis-à-vis the major global indices. As with other asset owners, we have a duty to beneficiaries and therefore invest on a globally diversified basis. In addition, while there are a variety of reasons that govern our allocation across jurisdictions, we would reiterate that a key aspect in our investment decisions for major exposures to UK or US companies has been their governance practices – including dual-class share structures and the nature of the shareholder rights and protections available to us. We understand we are not the only large asset owner or manager for which this is the case.

Therefore, while we do not wish to pre-judge the outcome, it is arguable that the FCA's proposals will change the calculus for scheme and manager investment decisions, exacerbating the lack of investment in UK companies and thereby the liquidity of the capital markets – which our pre-IPO and private companies tell us is a fundamental criterion in their choice of listing jurisdiction and which was also confirmed by the June 2023 UK Finance/EY report *UK Capital Markets – Building on Strong Foundations*. If the UK moves to a 'buyer beware' model, we must expect at least some investors to become wary.

<u>On what index providers are likely to do in response</u>

CP23/31 states "it will remain open to index providers to set higher or different standards to our proposed UKLR, or create alternative indices reflecting different users' investment preferences. Index providers may choose to consult on any changes that they propose." Railpen and several other asset owners in the Autumn of 2023 engaged with six index providers to understand their intentions on altering their index inclusion rules – for their standard indices – to protect our savers from the impacts of the FCA's proposals.

We received responses from all six. None of them seemed to agree that, in the words of the Council of Institutional Investors (CII), "public equity indexes have an extensive and ongoing history of exercising discretion to under-represent parts of the investable universe that don't meet fundamental norms of public equity." Several of them offered to create a bespoke index that would better meet the needs of investors concerned about the basic governance protections that CP23/31 would remove. Although this remains an option, investors pursuing this approach in the best interests of their members would have yet more additional costs imposed upon them – with consequences for member outcomes.

Our views on the consultation approach

We have welcomed the willingness of the FCA team to meet us and the many other concerned investors on several occasions throughout the consultation period. We recognise that this is a debate that has polarised opinion amongst the key actors in the UK financial markets ecosystem, as well as provoking strong feelings in the international investor community – and that this will pose challenges for the FCA from a policymaking perspective.

It is not unusual for views on a specific policy suggestion to diverge significantly amongst impacted groups. However, it is typically expected that in such scenarios, policymakers consider all views and evidence before finding a pragmatic compromise that works for all, recognising that for a policy to be successful it more often than not requires buy-in from more than one key constituency. We have seen this very recently, as regards the SEC's final climate disclosure rules, and the FCA-supported Vote Reporting Group is pursuing a similar conciliatory and collaborative approach.

We are therefore surprised that the proposals do not include any attempt to mitigate investors' serious concerns on any of the core issues raised in submissions to CP23/10, particularly given the strength of the evidence provided as to the impact on the ability to hold companies to account in the best interests of savers.

Connected to this, we are unclear as to how CP23/31 characterised some of the feedback and evidence received. This is particularly the case when it comes to dual-class share structures, with CP23/31 noting: "8 respondents provided mixed feedback… 14 respondents – including one trade association – were generally not supportive". We would be interested to understand more about how the FCA has defined "mixed" vs. "not supportive". Railpen has been engaging with several domestic and international trade associations on this issue, which included sight of many associations' final responses, and our perspective is that many more than just one provided "not supportive" feedback on dual-class share structures.

It is common practice for government departments and some regulators to be substantively transparent about the nature of the feedback received. We would urge the FCA to, at the very least, provide more details regarding how it categorises feedback as well as excerpts of the relevant submissions. Ideally, all responses would be put in the public domain.

We hope that the evidence and views contained in this submission – and which is in alignment with the views of many others – will be taken into account in the final rules.

Yours sincerely,

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APPENDIX 1 – MYTH-BUSTERS

We here reproduce points made in our previous response, in an attempt to counter some of the unhelpful and unfounded narrative that have been seen in some quarters of the media and commentariat on the UK listings review (and corporate governance) debate.

- **'UK investors also invest in other markets where they do not have the same voting and shareholder rights'.** The US is often cited as one example, with China as another. However, the FCA itself notes in the consultation paper that "…US requirements are supplemented by legal fiduciary duties on a company…and court-based processes". It is also far easier to e.g. file shareholder resolutions in the US than it is in the UK. These alternative lines of defence have made it easier for investors to overcome governance-related reservations and participate in the extensive and non-replicable US technology stocks rally. However, we would note that unequal voting rights and other standard US corporate governance practices which fall below what we would deem acceptable are considerations not only in our stock-specific investment decisions at Railpen but also in our governance-based exclusions process[12].

- **'Companies may still choose to list with equal voting rights, or offer shareholders a vote on a significant transaction or RPT, without being required by the listings rules to do so.'** Companies may still do so. However, this is also open to them in the US and a significant minority of companies still choose to list with unequal voting rights[13]. We also note that companies have been slower than the long-term investor community to respond on issues like climate change, gender diversity and workforce treatment. Although activity on these issues is the right thing to do for shareholders – in terms of having a material beneficial impact on financial performance – evidence indicates that companies' progress lags what investors would like to see. We therefore remain sceptical that companies will listen to the full breadth of their investor base on issues such as shareholder rights.

- '**UK initiatives such as the UK Stewardship Corporate Governance Codes will ensure that the UK maintains high standards of corporate governance[14].'** Has the FCA has, in its own conversations with the Financial Reporting Council (FRC) and other relevant regulators, gained an insight into the extent to which these organisations view the Codes as close substitutes for the protections offered by the listings rules?

  We think that these two Codes have played a powerful and important role in shaping investor and company attitudes towards corporate governance, environmental and social issues, as well as what it means to be a truly active steward of assets. However, such 'soft law' approaches – which rely on disclosure – while going some way to raise standards, are insufficient on their own and particularly in the absence of the voting rights which add weight to an investor's engagement efforts with a company on its behaviour. More and better disclosure is important for an investor's understanding of a company's approach to material issues, but if their ability to have their views on this information heard by the company is limited through a reduction/dilution of shareholder rights, the extent to which progress is encouraged is limited.

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[12] You can find further details of this exclusions process in our 2022 Stewardship Report.
[13] For instance, the CII found that in the US in 2022, 15.2% of companies which went public in 2022 had dual-class share structures with unequal voting rights.
[14] Since we first published this in our response to CP23/10, the proposed changes to the UK Corporate Governance Code have been cancelled – weakening this line of argument still further.

APPENDIX 2 – COMPANY CASE STUDIES (DUAL-CLASS SHARE STRUCTURES)

Here we provide a selection of examples – covering US and non-US companies, across a range of sectors – which show that, in companies with dual-class share structures, independent investors can struggle to ensure that these companies are being run in the interests of all investors and that appropriate corrective actions are taken in situations where companies are being poorly managed. They also demonstrate that the managerial 'entrenchment' that is enabled by dual-class share structures can contribute to poor investment performance, additional downside risk and shareholder preferences being thwarted or ignored.

Further case studies can be found in the November 2023 *Undermining the Shareholder Voice: The Risk and Risks of Unequal Voting Rights* published by the Investor Coalition for Equal Votes and produced in conjunction with Chronos Sustainability[15].

NEWS CORP

Description of Share Structure[1,2]

Share Class	Votes per Share	Economic Ownership (% as of 2023)	Voting Power (% as of 2023)	Ownership of Shares
Class A	0	64%	0%	Public investors
Class B	1	14%	39%	Rupert Murdoch and the Murdoch Family Trust (Rupert Murdoch has almost all of the shares under his name)
		22%	61%	Public investors

News Corp IPO date: July 2013
Time-based automatic sunset: none
Automatic referendum vote: none

Murdoch Family Control

News Corp was founded in 2013 by Rupert Murdoch following a spin-off of the media outlets of the original News Corporation, which he inherited from his father. A major catalyst for the split was the UK phone hacking scandal that involved the News of the World tabloid owned by Rupert Murdoch. Murdoch was ultimately held responsible for the illegal phone hacking practices that were carried out, with the UK cross-party parliamentary committee stating in its report, "We conclude, therefore, that Rupert Murdoch is not a fit person to exercise the stewardship of a major international company"[3], and also stating that the company was guilty of "wilful blindness" towards what was happening in the tabloid[4].

[15] ICEV Report 2023: Undermining The Shareholder Voice (railpen.com)

Both News Corp and 21st Century Fox (the other major company that emerged from the News Corporation spin off) are controlled by the Murdoch family. In September 2023, Rupert Murdoch announced his resignation as Chairman of 21st Century Fox and the Executive Chairman of News Corp. Following the resignation Rupert's son Lachlan Murdoch (previously Co-executive Chair and CEO of Fox and Co-executive Chairman of News Corp) will become the sole Chairman and CEO of Fox and the sole Executive Chairman of News Corp, while Rupert Murdoch will be appointed Chairman Emeritus of both Fox and News Corp[5].

Rupert Murdoch has fended off repeated shareholder proposals over the last decade to eliminate News Corp's dual-class share structure. For example, in 2015, a motion to eliminate dual-class shares was supported by 49.5% of the total votes cast[6, 7], which means about 80% of public investor votes were cast in favour of the motion. This was the closest external shareholders had come to having the motion pass. Despite the closeness of the vote, the 2015 News Corp AGM lasted approximately half an hour with limited discussion of the vote or of any changes that might be made as a result[8].

We also note that, from 2017 to 2020, most of the directors faced approximately 25% dissent each at AGMs, demonstrating significant independent shareholder discontent. However, due to the Murdoch family's voting power these directors were still re-elected[9].

There is currently a 44% limit to voting power in relation to the Murdoch Family Trust via a stockholders agreement. The Trust must forfeit votes at meetings to the extent necessary to ensure that the Trust and the Murdoch family collectively do not exceed 44% of the outstanding voting power of the shares of Class B common stock10. Even though the Murdoch family does not control a majority of the News Corp voting rights, this level of control is generally sufficient for the family to have veto power on any shareholder proposal.

PARAMOUNT GLOBAL

Description of Share Structure[11]

Share Class	Votes per Share	Economic Ownership (% as of 2021)	Voting Power (% as of 2021)	Ownership of Shares
Class A	1	6.7%	79.9%	Sumner M. Redstone National Amusements Inc Trust which is the family trust of the Redstone Family.
		1%	12.2%	Other directors
		0.7%	7.9%	Mario Gabelli et al. of GAMCO Investors
Class B	0	91.6%	0%	Public investors

Paramount Global was formed in 2019 through the merger of Viacom and CBS.

Time-based automatic sunset: none
Automatic referendum vote: none

Shari Redstone's Takeover and Dropping Share Prices In 2016, Sumner Redstone, the controlling shareholder for ViacomCBS removed Viacom CEO Philippe Dauman and Viacom board member George Abrams from the Sumner M Redstone National Amusements Trust that determines the fate of both Viacom and CBS in the event of Sumner Redstone's incapacitation or death[12]. There were claims that Redstone, who was 93 at the time, was being manipulated by his daughter Shari Redstone who wanted to secure more control over her father's $40 billion media empire[13]. With the removal of Abrams and Dauman, Shari Redstone then had majority support among the remaining members of the trust. In subsequent years - Sumner's Redstone's health worsened significantly in 2016 - Shari Redstone removed the governance protections her father had put in place, replacing directors on the NAI, Viacom, and CBS boards with friends and family[14]. In 2019, Shari Redstone successfully pushed through a merger of the two companies Viacom and CBS against the will of the CBS board, which had filed a restraining order in an attempt to dilute her voting power[15]. The Viacom board accepted a bid that, allegedly, significantly undervalued the company and significantly overvalued CBS[16]. CBS also took advantage of Shari Redstone's insistence on having Bob Bakish as CEO to lower the deal price[17]. Shari Redstone was subsequently sued by the shareholders of both companies and agreed to a $168 million settlement[18]. Despite this controversy and the settlement, Shari Redstone continues to hold her position as chairwoman of Paramount Global and as president of National Amusements.

PELOTON

Description of Share Structure[19,20]

Share Class	Votes per Share	Economic Ownership (% as of 2022)	Voting Power (% as of 2022)	Ownership of Shares
Class A	1	48.6%	17%	Public investors
Class B	20	51.4%	83%	John Foley holds 40% of voting rights and other insiders, combined, hold a further 43% of voting rights. Only founders and insiders can buy Class B shares.

Peloton IPO date: Sept 2019
Time-based automatic sunset: 2029
Automatic referendum vote: none

Peloton's Poor Performance and Governance

Peloton was founded in 2012 by Graham Stanton, Hisao Kushi, John Foley, Tom Cortese, and Yony Feng.

Peloton has performed poorly since its IPO. While its sales boomed as a result of the COVID-19 pandemic, in 2022, it recorded a net loss of $1.24 billion resulting from a drop in demand for its bicycles and treadmills and a stagnation in the number of subscriptions.
Peloton has long faced criticism for its governance and for its decision-making, including from independent shareholders[21]. The company's stock value has dropped to about 22% of its original value since 2019[22]. The company also faced scandals about the safety of its products after a child died and their treadmills had to be recalled, as well as bad publicity from a much-mocked Christmas advertisement[23].

In response to criticisms about their and the company's performance, Peloton's co-founders John Foley and Hisao Kushi eventually stepped down from their executive roles in early 2022. They hired Barry McCarthy as the new CEO, offering an extremely generous pay package, a decision that triggered criticism as, at the same time, Peloton had announced that it would be laying off 2,800 employees[24].

After stepping down as CEO, Foley then appointed himself executive chairman. In September 2022 it was announced that he and Kushi would be leaving the company although they and their co-founders still continue to control the majority of Peloton's voting rights.

Ever since its IPO in 2019, some company proposals for the election or re-election of directors have received about 90% support[25] due to the voting power structure of Foley and insiders holding a combined 83% voting power overall. This means that about 59% of independent investors were against the re-election of directors in these cases, yet the directors were elected anyway.

ROGERS COMMUNICATION INC

Description of Share Structure[26,27]

Share Class	Votes per Share	Economic Ownership (% as of 2022)	Voting Power (% as of 2022)	Ownership of Shares
Class A	50	29%	97.5%	Rogers Control Trust
		0.9%	2.5%	Public investors
Class B	0	70.1%	0%	Public investors

Rogers Communication Inc. IPO date: 1980
Time-based automatic sunset: none
Automatic referendum vote: none

The 2021 Rogers Family Power Struggle

Rogers Communication Inc. was founded in 1960 by Ted Rogers, after Ted Rogers and Joel Aldred raised sufficient money to purchase an FM radio station in Toronto via Aldred-Rogers Broadcasting.

In 2021, Edward Rogers wanted to replace the then-CEO Joe Natale and completely reshuffle Rogers Communication Inc's board. These proposals were publicly opposed by various members of the Rogers Control Trust (including Edward Rogers' mother and sisters), resulting in Edward Rogers being removed as chairman by the board of Rogers Communications Inc[28].

However, as Edward Rogers personally held the majority voting rights, he promptly replaced five board members with individuals loyal to him, and then had himself reinstated as chairman with the new board. This resulted in a legal battle, with the company insisting that this decision was invalid. For a time, Rogers Communication Inc. had two boards, each claiming that the other board was illegitimate. The legal battle ended with the court ruling in favour of Edward Rogers, acknowledging that his majority voting rights gave him the power to restructure the board in the manner that he wished[29].

In almost every director election in the period of 2017 to 2023, the directors received 100% support in votes reflecting the Rogers Control Trust's overwhelming voting power.

SIKA AND SAINT-GOBAIN

Description of Sika Share Structure (in 2018)[30]

Share Class	Votes per Share	Economic Ownership (% as of 2018)	Voting Power (% as of 2018)	Ownership of Shares
Supervoting shares	6	16%	52%	Burkard family
Standard shares	1	84%	48%	Public investors

Sika IPO date: 1971[31]
Time-based automatic sunset: none
Automatic referendum vote: none

The Saint-Gobain Takeover Bid

Sika was founded in 1910 by Kaspar Winkler, an Austrian who developed concrete waterproofing used in the St Gotthard tunnel. Winkler's descendants, the Burkard family, held the family's Sika shares in a holding company called Schenker-Winkler Holding. In 2014, the Burkard family decided to sell its holdings in Sika. The deal saw Saint-Gobain acquiring all outstanding shares of Schenker-Winkler Holding (SWH) from the Burkard family, for a purchase price of CHF2.75 billion. The share sale would have allowed Saint-Gobain to secure control without having to make an offer for the rest of the company. The sale led to four years of governance disputes, legal actions and, ultimately, stalemate between Saint-Gobain and the Sika board. The deal was seen as controversial, with Sika's Chairman Paul Johann Haelg stating "This transaction is not in the interest of Sika and its public shareholders."[32] Sika shareholders could have been left open to the possibility of Saint-Gobain extracting benefits from Sika for its own shareholders at the detriment of the rest of Sika's shareholders.

Several challenges were made to the deal, such as removing the "opting out" clause which exempts Saint-Gobain from having to make a similar purchase offer made to the Burkard family to other investors, which garnered 97% of affirmative votes amongst external shareholders, but ultimately failed anyway due to the majority voting rights held by the Burkard family[33]. Sika's board also limited the voting rights of the Burkard family to 5% on a number of AGM proposals between 2015-2017[34]. This provision effectively blocked the family's ability to change the composition of the board. The Burkard family adopted various strategies to forcefully change the board, including bringing legal action to overturn the board's ability to enact the provision in the company's articles, making legal attempts to unseat the board, taking legal action against individual directors, and blocking directors' pay[35].

A truce finally emerged in 2018 when Saint-Gobain, Schenker-Winkler Holding and Sika came to an agreement which gave Saint-Gobain 10.75% of Sika's shares, but not control. Saint-Gobain committed to holding these shares for at least two years with Sika having first refusal in case of an intended sale. As part of the agreement, Sika converted all of its shares into a single share class, effectively removing the dual-class share structure. In addition, the representatives of the Burkard family on the board resigned, and all ongoing litigation was terminated[36]. In 2020, Saint-Gobain sold its Sika stake, formally ending the bitter takeover battle. This battle that ensued ultimately reflected in poor performance for Saint-Gobain during this period, with a share price of 40.37 at the start of 2014 dropping to 18.72 in 2020, two months before selling the Sika stake[37]

SNAP INC

Description of Share Structure[38]

Share Class	Votes per Share	Economic Ownership (% as of 2023)	Voting Power (% as of 2023)	Ownership of Shares
Class A	0	69.2%	0%	Public investors
Class B	1	2.8%	1%	Snapchat management and pre-IPO Investors.
Class C	10	28%	99%	Evan Spiegel and Bobby Murphy only.

Snap Inc IPO date: Mar 2017
Time-based automatic sunset: none
Automatic referendum vote: none

Snap's Voiceless Shareholders amid Slowing Growth
Snap crossed into new territory by ascribing zero voting rights to its largest share class upon its IPO. The provisions in Snap Inc's IPO registration statement effectively allow two of its founders – Evan Spiegel and Bobby Murphy -to reduce their ownership to 1.4% each without relinquishing voting control. Snap Inc does have sunset provisions, but these are triggered only when both founders die, or if they have sold their shares before this point, removing the 10 votes per share voting power[39].

Spiegel has been criticised for being the key individual behind the ill-fated redesign of the Snapchat app in 2018 and for continuing to invest in the money-losing Spectacles (wearable smartglasses)[40]. However, given his and Murphy's control over the company, shareholders have no effective mechanism to challenge his decisions or to hold him to account. This lack of accountability was clearly illustrated by Snap Inc's 2018 shareholder meeting – shareholder meetings being perhaps the most important annual opportunity for a company to engage with its investors. The meeting lasted three minutes, consisting only of a recorded message from the company's legal counsel to remind investors that executives hold 96% of the voting rights and a more traditional meeting was unnecessary[41]. A new board member was also announced via this recording.

More recently, Snap Inc published its 2023 AGM notice which reminded stockholders of Spiegel and Murphy's now 99% voting rights, and stating that there was no need for other stockholders to vote[42].

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