THE IMPACT OF SOX ON THE DUAL-CLASS VOTING PREMIUM

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We examine the impact of corporate governance laws on the private benefits of control, using the enactment of the Sarbanes-Oxley Act of 2002 (SOX) as a natural quasi-experiment. We find a large decline in the average voting premium of U.S. dual-class firms targeted by major SOX provisions that enhance board independence, improve internal controls and increase litigation risks. These targeted firms also improve the efficiency of investment, cash management, and CEO compensation. Overall, the evidence suggests that SOX is effective in curbing the private benefits of control.

Keywords: Private Benefits of Control, Voting Premium, Corporate Governance, Sarbanes-Oxley Act (SOX)

INDEX FUNDS AND THE FUTURE OF CORPORATE GOVERNANCE: THEORY, EVIDENCE, AND POLICY

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Index funds own an increasingly large proportion of American public companies, currently more than one fifth and steadily growing. The stewardship decisions of index fund managers—how they monitor, vote, and engage with their portfolio companies can be expected to have a profound impact on the governance and performance of public companies and the economy. Understanding index fund stewardship, and how policy making can improve it, is critical for corporate law scholarship. This Article contributes to such understanding by providing a comprehensive theoretical, empirical, and policy analysis of index fund stewardship.

We begin by putting forward an agency-costs theory of index fund incentives. Stewardship decisions by index funds depend not just on the interests of index fund investors but also the incentives of index fund managers. Our agency-costs analysis shows that index funds have strong incentives to (i) under-invest in stewardship, and (ii) defer excessively to the preferences and positions of corporate managers.

We then provide the first comprehensive and detailed evidence of the full range of stewardship activities that index funds do and do not undertake. This body of evidence, we show, is inconsistent with a no-agency-costs view but can be explained by our agency-cost analysis.

We next put forward a set of policy reforms that should be considered in order to encourage index funds to invest in stewardship, to reduce their incentives to be deferential to corporate managers, and to address the concentration of power in the hands of the largest index fund managers. Finally, we discuss how our analysis should reorient important ongoing debates regarding common ownership and hedge fund activism.

The policy measures we put forward, and the beneficial role of hedge fund activism, can partly but not fully address the incentive problems that we analyze and document. These problems are expected to remain a significant aspect of the corporate governance landscape, and should be the subject of close attention by policymakers, market participants, and scholars.

Keywords: Index funds, passive investing, institutional investors, corporate governance, stewardship, engagement, monitoring, agency problems, shareholder activism, hedge fund activism

EXECUTIVE COMPENSATION, CORPORATE GOVERNANCE, AND SAY ON PAY

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This monograph explores the relation between corporate governance and executive compensation and evaluates the conditions under which sharehol-

ders can benefit from the right to interfere with the pay setting process by voting on the compensation proposed by the board of directors (Say on Pay). The first part of the monograph lays out the theoretical framework. The second part provides an overview of the origins and country-specific differences in Say on Pay regulation and a detailed summary and evaluation of the empirical literature on the subject.

THE PERILS OF DELL'S LOW-VOTING STOCK

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Dell Technologies Inc. ("Dell") is planning a "backdoor-IPO" transaction that would bring it back to the public market with a multiclass structure. Dell's return to the public market is expected to make it one of the ten largest multiclass companies with an aggregate capitalization substantially exceeding \$50 billion. Building on our earlier work on multiclass structures, this Article identifies and analyzes three governance risks and costs that Dell's IPO structure would create for public investors holding Dell's low-voting stock:

- Lifetime entrenchment of Michael Dell ("MD"): He would be able to retain control indefinitely even after he ceases to be a fitting leader and even if he becomes disabled or incompetent.
- Small-minority controller: Although MD would initially hold a majority of the equity capital, Dell's structure would enable him to unload most of his shares and still retain control even with a small equity stake, and his status as small-minority controller would be expected to produce substantial governance risks and costs.
- Midstream changes: Dell's governance structure would enable MD to adopt subsequent changes in governance arrangements, without any support from public investors, which would increase Dell's governance risks beyond the risks associated with a small-minority controller.

Each of these governance risks can be expected to both (i) decrease the expected future value of Dell by increasing agency costs and distortions, and (ii) increase the discount to a per-share value of Dell at which low-voting shares of Dell can be expected to trade. Both types of effects would operate to reduce the value at which the low-voting shares of public investors would trade and therefore should be taken into account in assessing the risks to such investors posed by Dell's planned structure.

Keywords: corporate governance, agency problems, multiclass, dual-class, controlling shareholder, controlling minority shareholder, small-minority controller, perpetual control, sunset, wedge, nonvoting stock, IPO

CORPORATE GOVERNANCE, ESG, AND STOCK RETURNS AROUND THE WORLD

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Non-financial performance measures, such as Environmental, Social, and Governance ("ESG") measures, are potentially leading indicators of firms' financial performance. Investor interest in ESG and its relation with future stock returns has increased recently. We draw on the prior academic literature in corporate governance and ESG to construct new corporate governance and ESG metrics. We then compare the return predictability of the new metrics to that of off-the-shelf metrics from a leading ratings provider. The new governance and ESG metrics, in contrast to the off-the-shelf metrics, display statistically and economically significant return predictability in a global investable universe.

Keywords: Corporate governance, ESG, Stock returns, Global equities

ACTIVIST SHAREHOLDERS AT DE FACTO CONTROLLED COMPANIES

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Bocconi Legal Studies Research Paper No. 3270453

Activist campaigns are likely to increasingly target controlled companies. Studies concerning activism at controlled companies focus on shareholder-empowering tools, such as board representation rights, as a pathway for reducing majority-minority agency costs. However, no clear dividing line between de jure and de facto controlled companies is drawn when analyzing the potential corporate governance effects of successful activist intervention. Building on the recent Telecom Italia case, this Article analyzes the possible worrisome corporate-governance consequences of successful activist intervention at de facto controlled companies, showing that such a distinction is not a trivial one. Under certain conditions, the interplay of activism and de facto control predicts instability, or at least inefficiency, at the corporate governance level following successful activist intervention. Where board representation rights apply and the shareholder base includes a significant share of institutional investors, institutions' teaming up with activists can bring about substantial changes in the governance structure of the form, typically at the board level, and terminate control, regardless of any change in corporate ownership and the voting rights. Reversing the ordinary balance of powers between minority and majority shareholders whilst not correspondingly shifting corporate control can bring about a situation characterized by both the disadvantages of not having a controller and those associated with contestable control. In such a situation, the monitoring role to be played by institutional shareholders is bound to be pivotal. This Article warns to potential corporate governance pitfalls of activism at de facto controlled companies within a regulatory environment that ensures shareholder board representation, and complements the skeptical view about promoting shareholder engagement with a view to the risk of institutions' inadequate monitoring.

Keywords: corporate governance, hedge funds, activism, institutional investors, shareholder empowerment, controlled companies, de facto control

THE DOUBLE-EDGED SWORD OF CEO ACTIVISM

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CEO activism — the practice of CEOs taking public positions on environmental, social, and political issues not directly related to their business — has become a hotly debated topic in corporate governance. To better understand the implications of CEO activism, we examine its prevalence, the range of advocacy positions taken by CEOs, and the public's reaction to activism. We ask:
- How widespread is CEO activism?
- How well do boards understand the advocacy positions of their CEOs? • Are boards involved in decisions to take public stances on controversial issues, or do they leave these to the discretion of the CEO?
- How should boards measure the costs and benefits of CEO activism?
- How accurately can internal and external constituents distinguish between positions taken proactively and reactively by a CEO?

Note: The Stanford Closer Look series is a collection of short case studies through which we explore topics, issues, and controversies in corporate governance and executive leadership. In each study, we take a targeted look at a specific issue that is relevant to the current debate on governance and explain why it is so important. Larcker and Tayan are co-authors of the books Corporate Governance Matters and A Real Look at Real World Corporate Governance.

Keywords: corporate governance, activism, CEO activism, corporate activism, advocacy, corporate advocacy, corporate social responsibility, ESG, ESG investing, social issues, environmental issues, controversy, corporate reputation, reputation management, boards of directors, risk management, corporate governance

ARE ALL INTERIM CEOS CREATED EQUAL? EVIDENCE FROM INVESTOR PERCEPTIONS AND CEO BEHAVIOR

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Examine the market perception of different types of interim CEO successions as well as CEO behavior of different types of interim CEOs. Using a hand-collected dataset, I find that there are two types of interim CEOs: aspiring and place-holding. I find that the market perceives the appointment of place-holding interim CEOs as bad news and the appointment of aspiring interim CEOs as similar to the appointment of permanent CEOs. I further study actions taken by interim CEOs and do not find evidence that aspiring interim CEOs act myopically. Rather they appear to invest more in discretionary expenses, such as research and development, which suggests that they focus on increasing long-term shareholder value. Thus, market expectations of aspiring interim CEOs are in line with CEO behavior. In addition, analysis of CEO effort suggests that place-holding interim CEOs exert less effort than permanent CEOs. Specifically, I find preliminary evidence that they issue less accurate forecasts. Overall, this paper provides initial evidence consistent with career concerns of interim CEOs resulting in different CEO behavior.

Keywords: Interim CEOs, CEO Behavior, Career Concerns, Corporate Governance

CORPORATE GOVERNANCE FOR RESPONSIBLE INNOVATION: APPROACHES TO CORPORATE GOVERNANCE AND THEIR IMPLICATIONS FOR SUSTAINABLE DEVELOPMENT

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The grand challenges that humanity faces — poverty, inequality, hunger, conflict, climate change, deforestation — hinder the progress of sustainable development. These issues can only be addressed by fundamental changes in behavior, as well as in the modes and processes of production and of business more generally. In this paper we will develop the concept of responsible innovation and discuss the potentials and limitations of various models of corporate governance with regard to responsible innovation. Our analysis imports from the political sciences theoretical and empirical insights into how alternative forms of participative and reflexive governance can help address the social and environmental challenges that society faces. The paper thereby offers examples of innovative corporate governance that can help to generate innovations that do good and avoid harm.

Keywords: Corporate Governance, Corporate Social Responsibility, Deliberation, Democracy, Grand Challenges, Habermas, Reflexive Governance, Sustainable Development