

“Tenure voting” as a New Voting Structure for Corporate Shareholders

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According to a [new paper](#) by UC Berkeley law professor Steven Davidoff Solomon and Wilson Sonsini Goodrich & Rosati lawyers David Berger and Aaron Benjamin, the dual-stock structure of public companies divides shareholders into two categories: the haves and have-nots of corporate governance.

On the one hand, the haves own dual-class shares that give voting control to company founders or the private equity firms that buy them. As a result, such shareholders are protected from shareholder activism and other demands. Moreover, since control is concentrated among the founders, they have exclusive authority to elect the board and the hire executives. For instance, Facebook or Google’s shareholders often have one vote or none per share whilst the founders have 10 per share. On the other hand, the have-nots have no controlling shares and are always in fear of activist hedge funds. Consequently, their votes are worth almost nothing because they either don’t count or don’t bother to vote. Such companies are vulnerable against hedge fund activism that often pressures companies to spinoff. This strategy is generally only aimed at increasing the stock price in the short term and walking away shortly after, seriously affecting the long-term health of the business.

This issue finds its origins in a 1980’s SEC regulation preventing companies from having dual-class stock. It aimed to achieve shareholder democracy by awarding each stock with one vote and preventing a controlling shareholder from pressuring the board to satisfy his needs rather than the company’s interests. Nowadays, companies that are already listed are prohibited from adopting dual-class shares. But dual-class stock is allowed for initial public offerings. Companies are now divided between those with a “one share one vote” structure and those with dual-class stock. The latter raises serious questions regarding a company’s corporate governance.

As a solution, an alternative mechanism called “tenure-voting” would be more rewarding to all shareholders. In order to fight against shareholder activism, France adopted tenure voting in the 2015 [Florange law](#), which automatically grants double voting rights to shares registered for more than two years. It is designed to reward long-term shareholding and decision-making. Solomon, Berger and Benjamin believe that “the award of more votes for a longer holding period will empower those shareholders who stick with the company. They will presumably have a greater stake in the welfare of the company (...) and be long-term investors.” Tenure voting can also [provide a counterweight in a dual-class setup](#). The founders may still have a larger voting bloc, but the power held by long-term investors would grow over time. That would allow some measured shareholder activism, while limiting founder power.

Nevertheless, opponents consider that such a mechanism further insulates controlling shareholders by enabling them to keep control and protect accommodating but unproductive boards. This can lead to weaker governance. Moreover, tenure voting might discourage activism in investors that will be reluctant to put millions of dollars in a company only to wait years before making a significant change in governance.