

Performance Leads Governance: A Comment on Professor Tallarita’s Dual-Class Analysis

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The rise of dual-class stock structures in corporate governance has sparked intense academic, legal, and regulatory debate. In his recent contribution, Dual-Class Contracting, Professor Tallarita persuasively challenges some contemporary interpretations of contractarian theories by showing that dual-class structures do not reflect bespoke bargaining or firm-specific negotiation, but rather result from lawyer-driven standardization, social norms, and path dependency.

Drawing on Tallarita’s empirical findings, we argue that the reality of dual-class structures extends beyond governance formality. Specifically, we contend that investor behavior is driven not by structural governance ideals, but by corporate performance and mission alignment. Companies increasingly design governance structures based on what is most likely to drive performance, not on academic theories or even the views of proxy advisory firms.

Engaging directly with Tallarita’s accurate analysis, we move the debate one step forward by emphasizing that any account of dual-class structures must be grounded in empirical realities: the persistence of dual-class structures reflects not a market failure, but a rational understanding by market participants—including founders, investors, bankers, and others—that greater value has been and can be created through a variety of governance structures that allow companies to focus on mission and long-term value in addition to short-term performance.

I. INTRODUCTION	102
II. THE EVOLUTION AND FUNCTION OF DUAL-CLASS STRUCTURES	106
A. History, Context, and Mechanics of Dual-Class Stock	106
1. The Rise of Dual-Class Structures	106
2. Degree and Duration.....	108
3. Sunset Provisions: Origins, Purpose, and Extensions	110
III. REVISITING PRIVATE ORDERING: A RESPONSE TO PROFESSOR TALLARITA	111
A. Tallarita’s Critique of Contractarian Theories.....	111

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1. <i>The Binary Myth and the Spectrum of Voting Rights</i>	111
2. <i>Empirical Clustering: Two Dominant Configurations</i>	112
B. <i>The Failure of Bespoke Negotiation Narratives and the Role of Lawyers, Standardization, and Social Norms</i>	113
IV. PERFORMANCE OVER GOVERNANCE: THE TRUE MARKET DRIVER.....	116
A. <i>Empirical Evidence on Performance and Investor Behavior</i>	116
1. <i>Dual-Class versus Single-Class Performance Studies</i>	116
2. <i>Case Studies in Dual-Class Success: Alphabet, Meta, and Other Market Leaders</i>	119
B. <i>Performance Primacy and The Significance of Governance in Investor Behavior</i>	121
1. <i>Investor Prioritization of Performance</i>	121
2. <i>Governance as a Secondary Variable in Capital Allocation</i>	122
C. <i>From Form to Function: Rethinking Governance through the Lens of Performance</i>	124
V. CONCLUSION.....	125

I. INTRODUCTION

The rise of dual-class stock structures in the governance of American corporations, particularly within the technology sector, has generated intense debate across academic, legal, and regulatory circles.¹

Companies such as Google, Facebook, and Airbnb have pioneered governance models that enable founders to retain significant control despite holding a minority of the company's economic rights.²

These structures typically allocate disproportionate voting power to founders and a few early shareholders through mechanisms such as high-vote and low-vote share classes which depart from the modern common standard of one-share-one-vote.³ In some cases,

1. See, e.g., Jill E. Fisch & Steven Davidoff Solomon, *Dual-Class Stock* (U. Pa. Inst. for L. & Econ. Research Paper, Paper No. 23-21, Eur. Corp. Governance Inst. Law Working Paper, Paper No. 715/2023, 2023) in OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE (Jeffrey N. Gordon & Wolf-Georg Ringe eds., (forthcoming)), <https://ssrn.com/abstract=4436331> (providing history and background of dual-class stock); Roberto Tallarita, *Dual-Class Contracting*, 49 J. CORP. L. 971, 1028–30 (2024) (situating dual-class debate in recent corporate governance scholarship and arguing that dual-class structures reflect social norm standardization and not bespoke private bargaining); Bobby V. Reddy, *More Than Meets the Eye: Reassessing the Empirical Evidence on U.S. Dual-Class Stock*, 23 U. PA. J. BUS. L. 955 (2021) (reviewing the dominant empirical studies on dual-class firms and arguing that key methodological flaws—such as improper benchmarking and failure to adjust for firm age and survivorship bias—undermine conclusions about long-run underperformance); Jill E. Fisch, *Governance by Contract: The Implications for Corporate Bylaws*, 106 CAL. L. REV. 373, 394 (2018) (noting concerns regarding shareholder rights in dual-class companies); Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 VA. L. REV. 585, 596–602 (2017) (discussing growing debate over dual-class structures).

2. See Bebchuk & Kastiel, *supra* note 1, at 594–95 (discussing the adoption of dual-class structures by major technology companies); Tallarita, *supra* note 1, at 980–82 (providing examples of dual-class structures in leading technology companies and their implications for governance).

3. See Fisch, *supra* note 1, at 383–99 (explaining that dual-class structures allocate disproportionate voting rights to insiders); Bebchuk & Kastiel, *supra* note 1, at 596–601 (noting the departure from the traditional one-

this disproportionality is designed to end pursuant to sunset provisions—contractual arrangements that phase out dual-class structures upon a specified event or after a set period. In other cases, the unequal voting rights may persist indefinitely, including for the lifetime of the founder.⁴

Scholars have long debated the merits and drawbacks of dual-class structures. Critics argue that disproportionate control entrenches founders, undermines accountability, and creates agency costs that harm minority shareholders. Proponents, by contrast, contend that such structures enable visionary leaders to operate with strategic independence, shielded from short-term market pressures. On this view, dual-class stock allows companies to remain mission-driven and to better serve the corporation and its constituencies, while fostering sustainable long-term value.⁵

In this ongoing discourse, Professor Tallarita’s recent article, *Dual-Class Contracting*, offers a significant contribution by shifting the terms of the debate.⁶

Tallarita contends that dual-class structures are not a binary choice between one-share-one-vote and high-vote shares.⁷ Rather, they theoretically exist along a continuum or spectrum, where the voting ratio should reflect a negotiated balance of control based on the specific circumstances of each company.⁸ Moreover, a dual-class structure may last for the entire life of the founders or in perpetuity, thus creating a more pronounced (lifelong or perpetual) inequality than a dual-class structure that expires after five years, for instance.⁹

Along this spectrum, contractarian theories would predict that insiders and their lawyers, negotiating with investment bankers representing public investors, would tailor the dual-class structure to the firm’s unique situation. However, drawing on an innovative

share-one-vote principle in dual-class structures); Tallarita, *supra* note 1, at 983–1007 (analyzing the mechanics of disproportionate voting power allocation in dual-class companies).

4. See generally Lucian A. Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers*, 107 GEO. L.J. 1453 (2019); Michal Barzuza & Eric Talley, *Long-Term Bias*, 2020 COLUM. BUS. L. REV. 104; David J. Berger, Jill E. Fisch & Steven Davidoff Solomon, *Extending Dual-Class Stock: A Proposal*, 24 THEORETICAL INQUIRIES L. 23 (2024).

5. See Bebchuk & Kastiel, *supra* note 1, at 602–09 (arguing that dual-class structures entrench insiders and create agency costs harmful to minority shareholders); Zohar Goshen & Assaf Hamdani, *Corporate Control and Idiosyncratic Vision*, 125 YALE L.J. 560, 571–77 (2016) (defending dual-class and founder control as necessary to protect visionary leadership from short-term market pressures). See also Robert J. Jackson, Jr., Comm’r, U.S. Sec. & Exch. Comm’n, *Perpetual Dual-Class Stock: The Case Against Corporate Royalty* (Feb. 15, 2018), <https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty> [<https://perma.cc/4U6N-P3UM>] (criticizing perpetual dual-class stock for entrenching insider control, undermining market accountability, and contradicting democratic values; supporting dual-class structures only when paired with sunset provisions that allow eventual shareholder oversight). But see David J. Berger, *Why Dual-Class Stock: A Brief Response to Commissioners Jackson and Stein*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Feb. 22, 2018), <https://corpgov.law.harvard.edu/2018/02/22/why-dual-class-stock-a-brief-response-to-commissioners-jackson-and-stein/> [<https://perma.cc/MK52-MSAU>] (arguing that dual-class structures “respond to the changing nature of our corporate republic” and that mandatory sunset provisions fail to address the broader, systemic issues driving companies to adopt these structures). See also Aneil Kovvali & Leo E. Strine Jr., *The Win-Win That Wasn’t: Managing to the Stock Market’s Negative Effects on American Workers and Other Corporate Stakeholders*, 1 U. CHI. BUS. L. REV. 307 (2022).

6. See generally Tallarita, *supra* note 1.

7. *Id.* at 974.

8. *Id.* at 974–75.

9. *Id.* at 975.

dataset of dual-class company documents and measuring dual-class structures in two dimensions—namely degree and duration—Tallarita shows that, in practice, despite a broad spectrum of possible tailor-made options, most dual-class companies choose similar or identical levels of voting inequality.¹⁰

Dual-class structures cluster essentially around two specific configurations, making the empirical evidence inconsistent with the expectation of flexible private ordering based on a company's individual needs. Thus, it is not credible that dual-class structures result from bespoke negotiation tailored to company-specific realities.¹¹

In light of this, Tallarita argues that contractarian theories fail to accurately explain how dual-class structures are designed, negotiated, and implemented in practice.¹²

Put another way, he demonstrates that private ordering does not reflect pure contractual freedom, but rather results from a complex process shaped by social norms, legal standardization, and the role of corporate lawyers. Governance terms, he argues, are often standardized across companies not because they are freely bargained, but because they have become acceptable models adopted through path dependency and market norms. In his view, the idealized narrative of careful, negotiated private ordering collapses in the face of empirical evidence.¹³

We appreciate Tallarita's empirical rigor and his nuanced depiction of the forces shaping corporate governance. His study makes a substantial contribution to the ongoing debate over the dynamics that give rise to alternative governance structures. In particular, the demonstrated failure of contractarian theories—or, as we believe, of a misleadingly narrow way of thinking about contractarianism—to accurately capture the reality of dual-class structure origination, along with the identification of lawyers as transmitters of social norms and risk-minimization strategies, resonates deeply with our experiences as both practitioners and scholars.

We agree that dual-class governance structures cannot be fully explained as the result of individualized bargaining over governance terms but are instead shaped by a variety of factors. Much of the recent literature tends to reduce contractarian analysis to an overly narrow exercise in formalism—focused almost exclusively on detailed bargaining over specific clauses, as though the theory had no room for informal norms, heuristics, or commercially efficient shortcuts. On the contrary, the contractarian tradition that emerged in the 1980s and 1990s—grounded in the work of Coase, Williamson, and others—was entirely comfortable with economizing on contractual detail, relying on institutions, reputational constraints, and evolved market norms to support mutually beneficial arrangements.

Furthermore, we emphasize that the spectrum of founder control mechanisms may extend beyond formal dual-class share structures, as recent scholarship has demonstrated.¹⁴

10. *Id.* at 976.

11. Tallarita, *supra* note, 1 at 996–1007.

12. *Id.* at 971–72, 978.

13. *Id.* at 990–95.

14. *Id.* at 991–95; Fisch & Solomon, *supra* note 1, at 2; David J. Berger, *Dual-Class Stock and Private Ordering: A System That Works*, HARV. L. SCH. F. ON CORP. GOVERNANCE (May 24, 2017), <https://corpgov.law.harvard.edu/2017/05/24/dual-class-stock-and-private-ordering-a-system-that-works/> [https://perma.cc/G37J-XZT6]. See also Elizabeth Pollman, *Startup Governance*, 168 U. PA. L. REV. 155, 155

Companies can, for example, rely on complex combinations of shareholder agreements, charter provisions, director designation rights, and contractual arrangements to support a company's ability to maintain its long-term mission—even when actions that support that mission may negatively impact quarterly or short-term results.¹⁵

In short, we are persuaded by Tallarita's diagnosis of the failures of certain modern interpretations of contractarian theories. We contend that these interpretations—which seem to equate contractarianism with detailed haggling over petty clauses—are essentially mischaracterizations, as Tallarita's analysis demonstrates. By contrast, traditional contractarian theories may well encompass social norms and legal standardization. At the same time, we believe that the conclusion could move one step forward toward an even more fundamental reality. In practice, what matters most in the market is not governance structure, but corporate mission, which leads, among other things, to performance. Multiple recent studies have demonstrated that companies with dual-class structures not only may outperform from a financial perspective companies with single-class structures but also can allocate capital more efficiently and engage in and navigate risk-taking more effectively than many companies with a one-share/one-vote structure, even when viewed from a 5- or 10-year perspective.¹⁶

Companies with dual-class structures that deliver strong financial performance—such as Alphabet (Google's parent), Meta (formerly Facebook), and Berkshire Hathaway—have not suffered market penalties for their governance choices.¹⁷ Nor do investors systematically punish companies for extending or modifying sunset provisions.¹⁸

Investors, boards, and entrepreneurs operate in a world where corporate success—often rooted in maintaining and advancing the company's mission, rather than in governance formalism—ultimately dictates market outcomes. Put differently, market success is not built on governance formalities and checklists, but on the skills, vision, and capabilities of a wide range of corporate stakeholders—from founding entrepreneurs to frontline employees. Models that overlook this fundamental reality misrepresent the dynamics that actually shape corporate America.

Our response thus builds on Tallarita's powerful insights while expanding the focus toward what we believe should—and ultimately does—serve as the central explanatory variable in corporate governance debates: performance and mission matter more than “check-the-box” governance structures.

(2019) (“This Article offers an original, comprehensive framework for understanding the unique combination of governance issues in startup companies over their life cycles.”).

15. See Tallarita, *supra* note 1, at 979–82 (“The ‘Categorical’ Problem of Dual-Class Structures”).

16. See generally Jeffrey Sonnenfeld & Steven Tian, *Re-Thinking the Hostility Towards Dual-Class Share Structures: When Dual Class Shares Work Better*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Oct. 16, 2024), <https://corpgov.law.harvard.edu/2024/10/16/re-thinking-the-hostility-towards-dual-class-share-structures-when-dual-class-shares-work-better/> [<https://perma.cc/9HME-XABY>]; Jeffrey A. Sonnenfeld, *In Defense of Dual Class Shares*, YALE INSIGHTS (Jan. 10, 2025), <https://insights.som.yale.edu/insights/in-defense-of-dual-class-shares> [<https://perma.cc/Z3LF-8D2K>] (concluding that “there is strong evidence that companies with dual-class shares financially outperform peers” even over 5 and 10 year periods); Berger, Fisch & Solomon, *supra* note 4; Reddy, *supra* note 1.

17. Bebchuk & Kastiel, *supra* note 1, at 594–95.

18. See Bebchuk & Kastiel, *supra* note 4, at 1494–1501 (discussing behavior of investors in companies with dual-class structures).

To respond to Tallarita's insightful paper and demonstrate our argument, this Article proceeds as follows.

In Part II, we examine the evolution and function of dual-class structures, illustrating their widespread adoption, key characteristics, and the role and intended purposes of sunset provisions.

Part III engages directly with Roberto Tallarita's critique of private ordering and contractarian theories. Following his analysis, we agree that the dominance of social norms and legal standardization processes—particularly as transmitted through corporate lawyers—explains the remarkable convergence of governance models across public companies. Yet, while we highlight the strengths of his theoretical and empirical analysis, we also identify areas where we believe his conclusions can be further expanded.

To do so, in Part IV, we address the failure of certain contractarian narratives to accurately capture the real-world dynamics of corporate governance decisions, focusing in particular on the primacy of financial performance over governance structures in investor behavior.

Finally, we reiterate our conclusion that because dual-class structures can enhance long-term value while still providing protection to minority investors, any analysis of these structures must first consider what structure best supports the company's mission and values while creating economic value for stockholders and should not be limited to governance formalism.

II. THE EVOLUTION AND FUNCTION OF DUAL-CLASS STRUCTURES

A. *History, Context, and Mechanics of Dual-Class Stock*

1. *The Rise of Dual-Class Structures*

The dual-class stock structure, though often associated today with the rise of technology companies, has deep historical roots in American corporate law.¹⁹ Its origins can be traced back to the early twentieth century, when companies such as Ford Motor Company and Dodge Brothers employed voting mechanisms that deviated from the standard of one-share-one-vote.²⁰

Initially, the use of dual-class structures was driven by founders' desires to retain control and advance the company's mission while raising external capital to fuel business expansion.²¹

19. See Douglas C. Ashton, *Revisiting Dual-Class Stock*, 68 ST. JOHN'S L. REV. 863 (1994); Stephen M. Bainbridge, *The Case for Limited Shareholder Voting Rights*, 53 UCLA L. REV. 601, 628–35 (2006) (discussing the historical development of voting structures in American corporations).

20. See Ashton, *supra* note 19, at 890–95 (tracing the early use of dual-class structures, including Ford and Dodge Brothers).

21. See Fisch & Solomon, *supra* note 1, at 3–4 (describing the origins of dual-class stock in the U.S.); Lucian A. Bebchuk, Reinier Kraakman & George Triantis, *Stock Pyramids, Cross-Ownership, and the Dual Class Equity: The Mechanisms and Agency Costs of Separating Control from Cash-Flow Rights*, in CONCENTRATED CORP. OWNERSHIP 295, 297–98 (Randall K. Morck ed., 2000) (explaining the agency costs associated with separating control and ownership through structures like dual-class stock); Ronald J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, 119 HARV. L. REV. 1641, 1643 (2006) (discussing mechanisms founders use to retain control when raising external capital).

During the mid-20th century, however, regulatory attitudes shifted.²² In response to abuses in the 1920s and 1930s—involving pyramidal control structures and voting trusts—and to the broader economic crisis of the Great Depression, the New York Stock Exchange (NYSE) adopted a policy in 1940 prohibiting the listing of companies with nonvoting or limited-voting shares.²³ This stance reflected the growing consensus at the time that equal voting rights were a necessary safeguard for shareholder democracy and corporate accountability.²⁴

Despite these regulatory efforts, dual-class structures did not disappear. Companies already using such arrangements were grandfathered into listing rules, and private markets continued to experiment with variations of control mechanisms.²⁵

Moreover, certain industries began to embrace dual-class structures as a means of protecting companies' missions from external financial pressures. Indeed, the late twentieth century witnessed a renewed interest in dual-class governance, particularly following the success of media companies like The New York Times Company and The Washington Post Company, both of which adopted dual-class shares to insulate editorial independence and preserve control.²⁶ Nonetheless, dual-class structures remained relatively rare among public companies.²⁷

It was the emergence of the modern technology sector in the late 1990s and early 2000s that catalyzed a profound shift. Companies such as Google and Facebook embraced dual-class structures as a response to the perceived pressures faced by public companies to maximize value in the short-term—even at the risk of harming the long-term mission and strategic goals of the company.²⁸ The remarkable financial and technological success of

22. See Ashton, *supra* note 19, at 868–70 (discussing regulatory responses to control structures in the early 20th century); Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U.L. REV. 547, 560–61 (2003).

23. See Ashton, *supra* note 19, at 890–94 (describing the NYSE's 1940 rule change and its motivations); Stephen Choi & Jill Fisch, *How to Fix Wall Street: A Voucher Financing Proposal for Securities Intermediaries*, 113 YALE L.J. 269, 299–300 (2003).

24. See Lucian A. Bebchuk, *The Case Against Board Veto in Corporate Takeovers*, 69 U. CHI. L. REV. 973, 975–76 (2002); Leo E. Strine, Jr., *Toward a True Corporate Republic: A Traditionalist Response to Bebchuk's Solution for Improving Corporate America*, 119 HARV. L. REV. 1759, 1762–64 (2006).

25. See Ashton, *supra* note 19, at 897 n.143 (explaining grandfathering of existing companies and continued experimentation in private markets); Bainbridge, *supra* note 22, at 561 (discussing the persistence of alternative control mechanisms despite regulatory efforts).

26. See Fisch & Solomon, *supra* note 1, at 4 (noting the use of dual-class stock in media companies to protect editorial integrity); Bebchuk & Kastiel, *supra* note 1, at 590–91 (providing examples of dual-class stock adoption in media companies for independence purposes); Ashton, *supra* note 19, at 939–42 (discussing the use of dual-class stock by media companies to protect editorial independence and the resurgence of the structure). See also Tallarita, *supra* note 1, at 1033 (noting that, in 1976, the American Stock Exchange changed its listing standards to allow the listing of Wang Laboratories, Inc., which had been rejected by the NYSE precisely because of its unequal voting rights).

27. See Bebchuk & Kastiel, *supra* note 1, at 596–602 (noting that despite some high-profile examples, dual-class structures remained uncommon for much of the 20th century); Bainbridge, *supra* note 22, at 547.

28. See Bebchuk & Kastiel, *supra* note 1, at 591–95 (describing Google's and Facebook's adoption of dual-class structures to preserve founder control and focus on long-term value creation); Ashton, *supra* note 19, at 939–42 (noting that technology companies renewed the popularity of dual-class governance models to protect innovation and long-term strategies); Ofer Eldar, *Dual-Class IPOs: A Solution to Unicorn Governance Failure* 1, 3 n.16 (Eur. Corp. Governance Inst. Law Working Paper, Paper No. 741/2023, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4647143 (noting that between 2017 and 2019, nearly 30%

these mission-driven companies, and the willingness of public investors to accept governance arrangements favoring founders, fundamentally altered the perception of dual-class stock.²⁹

Today, dual-class structures have become a common feature not only among major technology and platform companies but also across a range of industries—from Warren Buffett’s Berkshire Hathaway to apparel maker Levi Strauss and other prominent firms such as Comcast and Dillard’s. In these contexts, such structures are no longer perceived as a mechanism for founder entrenchment, but rather as a governance model designed to enable innovation, strategic vision, and long-term value creation.³⁰

The reframing of dual-class structures as instruments for innovation and long-term value also shapes how they should be analyzed. The modern dual-class phenomenon cannot be fully understood through traditional models of negotiation or private ordering alone. Rather, it must be evaluated in light of economic performance and interpreted as a reflection of a broader transformation in the norms, expectations, and realities of corporate governance—including a response to the longstanding assumption that if corporations were run for the primary benefit of stockholders, then all stakeholders would benefit.³¹

2. Degree and Duration

As demonstrated in Professor Tallarita’s article, dual-class structures are defined not merely by the existence of multiple classes of stock with differential voting rights, but by the specific ways in which control is distributed between founders and investors.³²

Typically, two key dimensions—degree and duration—serve as the basic elements to operationalize and measure the mechanics of dual-class governance.³³ Understanding these dimensions is critical for assessing the governance implications of dual-class structures, their resilience against various pressures that may force the company to stray from its mission or long-term value proposition.³⁴

The degree of a dual-class structure refers to the disparity in voting power between high-vote and low-vote shares. In many prominent examples, such as Alphabet and Meta, insiders’ shares carry ten votes per share, while public shares carry only one.³⁵ However,

of companies going public adopted a dual-class share structure—an approach predominantly favored by founder-led technology firms).

29. See Fisch & Solomon, *supra* note 1, at 5.

30. See Bebchuk & Kastiel, *supra* note 1, at 594–95 (describing the increasing acceptance of dual-class structures among leading technology companies); see generally JAY R. RITTER, INITIAL PUBLIC OFFERINGS: UPDATED STATISTICS (2025) <https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf> [<https://perma.cc/HSB9-3TP5>] (reporting the widespread adoption of dual-class stock particularly among technology and platform companies).

31. See Kovvali & Strine, *supra* note 5, at 307–11.

32. See Jackson, *supra* note 5 (highlighting the dimensions of voting control and the significance of its distribution between insiders and public shareholders); Bebchuk & Kastiel, *supra* note 1, at 585–86.

33. See Ashton, *supra* note 19, at 881–84 (noting how degree of voting disparity and time limits shape the risks and benefits of dual-class stock).

34. See Tallarita, *supra* note 1, at 985–86; Gregory Shill, *The Social Costs (and Benefits) of Dual-Class Stock*, 75 ALA. L. REV. 221, 243–48 (2023).

35. See Tallarita, *supra* note 1, at 980–82 (noting that companies like Alphabet and Meta employ 10:1 voting ratios favoring insiders); Gladriel Shobe & Jarrod Shobe, *The Dual-Class Spectrum*, 39 YALE J. ON REG. 1286, 1297 n.38 (2022) (discussing the voting structures adopted by Alphabet and Meta). See also Vittoria Battocletti,

nothing theoretically constrains the voting differential to a 10:1 ratio; dual-class structures could, in principle, adopt a 2:1, 3:1, 20:1, or any other ratio negotiated between the parties involved.³⁶

The duration of a dual-class structure addresses the temporal dimension of control: whether and when the differential voting rights terminate. Some structures incorporate time-based sunset provisions, under which the dual-class arrangement dissolves after a set number of years (often five, seven, or ten years).³⁷ Others use event-based sunsets, triggering termination upon specified milestones, such as the founder's death, departure, or sale of a threshold percentage of insider shares.³⁸ A minority of companies adopt perpetual dual-class structures, where no sunset provision exists at all, thereby securing insider control indefinitely.³⁹

Professor Tallarita's empirical work shows that, despite the theoretical flexibility along these two dimensions, most dual-class companies cluster around similar degrees of voting disparity—most commonly 10:1, corresponding, in the absence of other relevant charter provisions, to a control lock of 9.09%—and similar temporal arrangements, often tied to the founder's departure or otherwise loosely event-based.⁴⁰

This pattern challenges the expectation that degree and duration are finely calibrated through bespoke negotiation reflecting firm-specific circumstances. Instead, it suggests a process of standardization, wherein governance configurations are borrowed, replicated, and socially validated across successive waves of public offerings.⁴¹

Nonetheless, as we argue throughout this Article, even carefully designed governance mechanisms are ultimately secondary to the decisive factor that shapes market perceptions: corporate performance.

Luca Enriques & Alessandro Romano, *Dual-Class Shares in the Age of Common Ownership*, 48 J. CORP. L. 541 (2023) (discussing dual-class voting structures and examples).

36. See Tallarita, *supra* note 1, at 991–94 (observing that dual-class structures could, in principle, adopt a wide range of voting disparities); Shobe & Shobe, *supra* note 35, at 1301–02 (noting the theoretical flexibility of voting ratios despite empirical clustering).

37. See Tallarita, *supra* note 1, at 993 (reporting that many dual-class companies adopt time-based sunset provisions, typically set at five, seven, or ten years); Fisch & Solomon, *supra* note 1, at 14 (noting the prevalence of time-based sunset clauses with durations between five and ten years).

38. See Tallarita, *supra* note 1, at 993 (discussing event-based sunset triggers such as founder death, departure, or sale of shares); Shobe & Shobe, *supra* note 35, at 1308 (analyzing the use of event-based sunset mechanisms in dual-class structures).

39. See Tallarita, *supra* note 1, at 976–77 (listing percentages of companies that chose perpetual control structures); Reddy *supra* note 1, at 1002–16.

40. See Tallarita, *supra* note 1, at 991–1007 (demonstrating that despite the theoretical flexibility of dual-class design, most companies cluster around a 10:1 voting disparity and adopt either perpetual or event-based sunset provisions). See also Shobe & Shobe, *supra* note 35, at 1300–05 (confirming the empirical clustering of dual-class structures along degree and duration dimensions).

41. See Tallarita, *supra* note 1, at 1007–41 (arguing that the clustering of dual-class structures reflects market standardization and the transmission of governance norms rather than bespoke bargaining); Fisch & Solomon, *supra* note 1 (discussing how market practices and lawyer-driven templates shape corporate governance choices). See generally Aurelio Gurrea-Martinez, *Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate*, 22 EUR. BUS. ORG. L. REV. 475 (2021) (explaining how governance choices are often driven by institutional and social norms rather than individualized negotiation, particularly in common law jurisdictions).

3. Sunset Provisions: Origins, Purpose, and Extensions

Before delving into the determinants of dual-class structures in today's market—particularly in light of Tallarita's findings—it is worth recalling the role and evolution of sunset provisions.

The growing use of sunset provisions in dual-class stock structures is a response to a push by institutional investors and others to convince founders and the market that the need or benefits of founder control dissipate after a company has been in the public markets for a certain period of time. Critics have claimed that while founder control may facilitate innovation and long-term strategic decision-making in the early stages of corporate development, the persistence of disproportionate control over time could entrench ineffective management, reduce accountability, and diminish firm value.⁴²

In more detail, sunset provisions typically operate through two principal mechanisms. Time-based sunsets typically specify that high-vote shares will convert into low-vote shares after a fixed number of years post-IPO. Event-based sunsets tie conversion to specific milestones, such as the death or departure of the founder, or a substantial sale of insider-owned shares.⁴³

The underlying logic of both mechanisms is that the rationale for founder primacy weakens over time, making continued differential voting rights increasingly difficult to justify from an investor protection standpoint. Proponents of sunset provisions argue that they offer a compromise: enabling visionary founders to execute long-term strategies insulated from short-term market pressures, while eventually restoring shareholder democracy and market discipline.⁴⁴

However, for years, scholars have exposed the myths underlying so-called “shareholder democracy.”⁴⁵ Numerous studies show that shareholders themselves often prefer firms with strong board control, and that companies with dual-class structures frequently outperform single-class companies, whether over one-, five-, or ten-year time horizons.⁴⁶

In addition, sunset provisions—particularly time-based ones—fail to account for the possibility that, even at the point of expiration, a company may still require mission-driven leadership and the agility to respond to evolving competitive pressures.

42. See Bebchuk & Kastiel, *supra* note 1, at 602–09 (arguing that indefinite founder control reduces accountability and can lead to managerial entrenchment at the expense of outside investors). See generally Jill E. Fisch & Steven Davidoff Solomon, *The Problem of Sunsets*, 99 B.U.L. REV. 1057 (2019).

43. See Shobe & Shobe, *supra* note 35, at 1308 (analyzing the use of event-based sunset mechanisms in dual-class structures); Gurree-Martínez, *supra* note 41, at 494–95 (explaining the use and mechanics of event-based sunset clauses).

44. See Fisch & Solomon, *supra* note 42, at 1078–83; Fisch & Solomon, *supra* note 1, at 14 (discussing sunset clauses as a compromise to temper agency costs while protecting founders' autonomy during early growth phases).

45. See Sergio Alberto Gramitto Ricci, Daniel Greenwood & Christina Sautter, *The Shareholder Democracy Lie*, 78 FLA. L. REV. (forthcoming 2026) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5143857; Lynn A. Stout, *The Mythical Benefits of Shareholder Control*, 93 VA. L. REV. 789, 791 (2007).

46. See generally Sonnenfeld, *supra* note 16; Sonnenfeld & Tain, *supra* note 16; Stout, *supra* note 45. See also Andrew William Winden, *Sunrise, Sunset: An Empirical and Theoretical Assessment of Dual-Class Stock Structures*, 2018 COLUM. BUS. L. REV. 852 (presenting “the first empirical analysis of the initial, or sunrise and terminal, or sunset provisions found in the charters of dual-class companies, with a data set of 139 U.S. public companies”).

Of course, sunset provisions may be—and often are—extended beyond their original terms. Extensions occur when the company modifies the initial terms of the sunset provision to prolong the period during which founders retain enhanced voting rights. Such extensions—typically implemented through charter amendments—may involve creating new triggering conditions or redefining existing milestones that would otherwise terminate the dual-class structure. In many cases, founders succeed in securing these amendments by invoking the continued relevance of the original justifications for adopting a dual-class structure or by citing new strategic needs that favor maintaining disproportionate voting rights.

Extensions may raise complex legal questions, particularly when challenged, but those issues lie beyond the scope of this Article.⁴⁷

III. REVISITING PRIVATE ORDERING: A RESPONSE TO PROFESSOR TALLARITA

A. Tallarita's Critique of Contractarian Theories

1. The Binary Myth and the Spectrum of Voting Rights

Modern contractarian theories of corporate governance envision the design of governance structures, including dual-class stock arrangements, as a product of negotiation among sophisticated parties. Founders, their counsel, investment bankers, and institutional investors are thought to engage in a bargaining process that balances control rights with investor protections, with market pricing mechanisms adjusting for any perceived inefficiencies.⁴⁸

47. See generally Berger, Fisch & Solomon, *supra* note 4; Fisch & Solomon, *supra* note 1. Note, however, that recent statutory developments have in part changed the question. See S. Substitute 1 for S.B. 21, 153d Gen. Assemb., Reg. Sess. (Del. 2025) (enacted), <https://legis.delaware.gov/BillDetail/141930> [<https://perma.cc/VXF7-CQQS>]. See generally Matthew A. Schwartz, William S.L. Weinberg & Brian T. Frawley, *Delaware Enacts Important Corporate Law Reforms*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Apr. 1, 2025), <https://corpgov.law.harvard.edu/2025/04/01/delaware-enacts-important-corporate-law-reforms/> [<https://perma.cc/S5UE-EW8H>]; Ann M. Lipton, *Delaware Decides Delaware Law Has No Value*, BUS. L. PROF. BLOG (Feb. 17, 2025), <https://www.businesslawprofessors.com/2025/02/delaware-decides-delaware-law-has-no-value/> [<https://perma.cc/7WA7-YDRC>]; Lucian Bebchuk, *Delaware: The Empire Strikes Back*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 4, 2025), <https://corpgov.law.harvard.edu/2025/03/04/delaware-the-empire-strikes-back/> [<https://perma.cc/F4C2-V3YZ>] (arguing that SB21 is a legislative reaction aimed at curbing judicial scrutiny of controlling shareholder transactions and warning that it would be severely detrimental to shareholder protection); Michael Maugans, *Analysis: Delaware Amendments Aim to Halt 'MFW Creep'*, BLOOMBERG L. (Mar. 3, 2025), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-delaware-amendments-aim-to-halt-mfw-creep> (on file with the *Journal of Corporation Law*) (analyzing how Delaware Senate Bill 21 seeks to address concerns over the expansion of the MFW doctrine in controlling shareholder transactions); Tiago Duarte-Silva & Aaron Dolgoff, *Did SB21's Changes to Delaware Corporate Law Harm Shareholders?*, CLS BLUE SKY BLOG (Apr. 16, 2025), <https://clsbluesky.law.columbia.edu/2025/04/16/did-sb21s-changes-to-delaware-corporate-law-harm-shareholders/> [<https://perma.cc/RD9M-TFA4>] (finding no empirical evidence that SB21 adversely affected shareholder value); Stephen M. Bainbridge, *A Course Correction for Controlling Shareholder Transactions*, 49 DEL. J. CORP. L. 525, 599–602 (2025) (endorsing SB21 as closely aligned with his prior proposals, praising it for enhancing doctrinal clarity, expanding the concept of director independence, and reversing the Chancery Court's narrowing trajectory under the MFW framework).

48. See Bebchuk & Kastiel, *supra* note 1, at 588–89 (describing the classic contractarian model in which rational actors design IPO-stage governance structures and rely on market forces to discipline inefficiencies); Fisch & Solomon, *supra* note 42, at 1063–64 (summarizing the assumption that dual-class governance is priced

Within this framework, governance terms—such as the voting ratio between classes or the duration of differential voting rights—should emerge as bespoke solutions reflecting the specific needs, risks, and business strategies of each company at the time of its initial public offering.

On this view, public investors willingly accept the governance structure offered at IPO in exchange for a commensurate adjustment in share price or valuation. Private ordering is presumed to ensure that any departure from the “one-share-one-vote” norm is justified by firm-specific benefits, internalized into the offering terms, and voluntarily accepted by informed, rational investors.

However, the empirical data presented in Professor Tallarita’s recent study challenges this foundational assumption. Tallarita’s comprehensive analysis of dual-class structures across a 27-year period demonstrates that the actual design of these governance structures does not reflect a bespoke, firm-specific negotiation process—or, at the very least, does not align with a narrow and misleading view of contractarian dynamics. Instead, his findings suggest a striking degree of standardization and convergence, irrespective of company-specific characteristics.⁴⁹

Tallarita’s work persuasively debunks what he calls the “binary myth”—the assumption that corporate governance choices in the IPO process are strictly between “single-class” (one-share-one-vote) and “dual-class” (high-vote/low-vote) structures. Rather, he argues, dual-class arrangements theoretically exist along a spectrum of possibilities. Companies could, in principle, adopt a wide variety of voting disparities (e.g., 2:1, 5:1, 10:1, 20:1), and design duration terms ranging from brief, time-bound sunsets to lifelong or perpetual structures. This flexibility should allow each company to precisely calibrate its governance model to its particular strategic context, balancing founder control with investor protection and public market acceptance.⁵⁰

Yet, as Tallarita’s empirical findings reveal, this spectrum is largely theoretical. In practice, companies overwhelmingly select a narrow band of voting disparities and duration arrangements—most commonly a 10:1 ratio with similar temporal features, often tied to the founder’s departure.⁵¹

This convergence suggests that the supposed flexibility of private ordering does not lead to meaningful variation or tailoring in governance design. The observation warrants closer empirical analysis.

2. Empirical Clustering: Two Dominant Configurations

As mentioned, despite the theoretical flexibility in degree and duration, most dual-class structures converge on remarkably similar configurations. Over the entire 27-year period Tallarita examines, 62% of companies selected a voting control lock in the narrow

by IPO investors and reflects informed consent); Tallarita, *supra* note 1, at 1025–30 (explaining that both classical and modern contractarian theories assume firm-specific, value-maximizing IPO charter design via market-driven bargaining).

49. Tallarita, *supra* note 1, at 992–94.

50. *Id.*; see also Shobe & Shobe, *supra* note 35, at 1302–15 (providing examples of how firms employ a flexible mix of rights and mechanisms to balance founder control with investor protection and market expectations).

51. See Tallarita, *supra* note 1, at 996–1007 (discussing degree and duration of voting inequality); see also *id.* at 1032–33 (explaining the 10:1 voting ratio as the possible result of a historical accident).

range between 9% and 10%—essentially corresponding to the 10:1 voting ratio—and less than 7% chose a control lock greater than 20%.⁵²

Similarly, duration choices exhibit a clear pattern of standardization. Between 1996 and 2010, an overwhelming 96% of dual-class structures adopted either a potentially lifelong (27%) or perpetual (69%) duration.⁵³ After 2010, the landscape shifted somewhat, but even between 2011 and 2022, 58% of companies continued to choose lifelong or perpetual structures.⁵⁴ Notably, perpetual structures became less common, falling to 21% during the 2011–2022 period and to only 13% in 2021–2022.⁵⁵

Perhaps most tellingly, degree and duration—the two primary dimensions of dual-class design—are not statistically associated with company-specific characteristics that prior literature had identified as predictive of a firm’s governance choices.⁵⁶

In other words, neither firm size, nor industry, nor projected growth, nor other observable variables meaningfully explain the governance configurations that are widely adopted.

Thus, Tallarita’s thorough research reveals an undeniable truth: the empirical clustering of dual-class structures significantly undermines the premise that such arrangements are merely the product of rational, firm-specific bargaining. Rather, it reveals the emergence of market norms and path-dependent governance templates—a phenomenon that we explore in greater detail in the following Part.

B. The Failure of Bespoke Negotiation Narratives and the Role of Lawyers, Standardization, and Social Norms

Tallarita’s empirical findings decisively challenge the narrative that corporate governance terms—particularly dual-class structures—are the product of bespoke negotiation among founders, their legal counsel, investment bankers, and public investors. More precisely, we believe that these findings challenge a misleading and unduly narrow interpretation of those dynamics.

As mentioned, under conventional contractarian theories the process of taking a company public should involve a balancing of interests: founders seeking to retain control, investors demanding protection against agency costs, and underwriters mediating these interests to optimize pricing and ensure successful market placement.⁵⁷ Within this framework, dual-class arrangements would be expected to vary meaningfully across firms, reflecting individualized negotiation processes tailored to each firm’s specific business model, growth trajectory, risk profile, and management capabilities.

Tallarita’s data, however, reveal a very different reality. As shown by the overwhelming clustering of degree and duration choices, dual-class structures are not

52. *Id.* at 976.

53. *Id.*

54. *Id.*

55. *Id.*

56. See Tallarita, *supra* note 1, at 976, 998–1007; Bebchuk & Kastiel, *supra* note 1, at 630.

57. See Michael Klausner, *The Contractarian Theory of Corporate Law: A Generation Later*, 31 J. CORP. L. 779, 782–84 (2006) (defining contractarian theory as a framework where IPO charters reflect rational design shaped by firm-specific attributes and balanced by market pricing forces). See generally Albert H. Choi, *Pricing Corporate Governance*, 75 UC S.F. L.J. 67 (2023) (detailing the IPO process as a strategic interaction among founders, investors, and underwriters, with a focus on governance choices and valuation impacts).

customized or tailored to individual firms. Instead, they frequently reflect standardized governance templates that are repeatedly employed across different IPOs, even where firm-specific circumstances would, in theory, warrant distinctive approaches.⁵⁸

Tallarita identifies several factors contributing to this standardization, chief among them the role of corporate lawyers. Lawyers act as transmitters of prevailing market norms, reproducing governance structures that have proven successful in prior IPOs. Rather than negotiating governance terms from first principles in each deal, legal advisors typically recommend models that are perceived as market-tested and broadly acceptable to investors.⁵⁹

This transmission of templates is not merely a matter of convenience; it reflects a deeper set of incentives within the IPO process. Companies and founders want investors to focus on the company's business, management team, and prospects, all of which go to the core mission and value of the company. While several factors may influence decisions about governance structures, it is ultimately the company's focus on its mission, business, and value proposition that drives governance decisions, not the other way around.

Legal advisors seek to provide companies with governance structures that support the companies' ability to pursue their mission, values, and goals. To the extent this can be done by adopting governance structures that can be easily analogized to earlier governance structures, doing so makes it easier for market participants to understand and accept the structure.

Underwriters likewise prefer governance terms that have been validated by prior market acceptance, reducing execution risk. Founders, for their part, are often more concerned with achieving a successful IPO and securing long-term control than with negotiating nuanced governance innovations.

Thus, the standardization of dual-class structures emerges as a rational strategy for all participants in the IPO process—one driven not by firm-specific negotiation but by the logic of risk minimization, path dependency, and norm replication.⁶⁰

Tallarita further argues that this dynamic is reinforced by social norms in the capital markets. Once a particular governance structure—such as the 10:1 voting ratio combined with a perpetual or event-based sunset—becomes associated with successful, highly valued companies like Google and Facebook, it becomes an accepted and expected configuration.

Subsequent market entrants replicate the structure not because it is optimal for their specific situation, but because it confers legitimacy and marketability.

The role of lawyers in perpetuating these norms cannot be overstated. As Tallarita explains, legal practitioners serve as key nodes in the diffusion of governance models, shaping client expectations and underwriting practices through informal benchmarks of what is “market” at any given time.⁶¹ This process further entrenches the prevailing governance configurations, making deviation costly and uncertain.

58. See Tallarita, *supra* note 1, at 991–1007.

59. *Id.* at 1007–16.

60. *Id.* at 1024–41; Marcel Kahan & Michael Klausner, *Standardization and Innovation in Corporate Contracting (or ‘The Economics of Boilerplate’)*, 83 VA. L. REV. 713 (1997) (explaining that standardization in corporate contracting is driven by “learning and network externalities” that encourage replication of familiar terms rather than optimization).

61. See Tallarita, *supra* note 1, at 1007–16 (“Dual-Class Contracting as Seen by IPO Lawyers”).

In short, Tallarita's analysis reveals that private ordering in the context of dual-class structures is less about tailored negotiation and more about the replication of standardized governance models driven by legal practice and social norm formation.

This finding poses a fundamental challenge to some overly narrow contractarian views: in the world of modern IPOs, governance terms are not crafted through bespoke bargaining that internalizes all relevant firm-specific information. They are produced through institutionalized standardization mechanisms that privilege familiarity, market acceptance, and perceived success.

Tallarita's critique resonates with our practical experience as both practitioners and scholars. In the real-world IPO process, governance terms are generally less the product of bespoke bargaining and more the result of adopting familiar models that the market has already validated—with only occasional departures in response to unique circumstances.

Put another way, the degree of individualized customization is less significant than the theoretical narrative may suggest, and the negotiation between founders on one side and investment bankers—representing the market and public investors—on the other, though often portrayed as central to IPO governance design, is in practice largely replaced by the substantial adoption of validated models grounded in market practice. Any customization that does occur tends to be confined to limited aspects of the structure and arises only in connection with truly unique circumstances.

These observations, however, do not suggest that contractarian theories are misguided or obsolete. Rather, they reinforce our earlier point that modern interpretations excluding social norms and legal standardization from the contractarian framework are mischaracterizations. Market norms—which are sometimes mistakenly regarded as anti-contractarian—can, in fact, fit comfortably within a broadly cast contractarian analysis.

We argue that market practices—and even the “legal culture” of transactional lawyering—can be fully internal to a contractarian account. In this, we believe that Tallarita's work can be read not as a rejection of that broader framework, but rather as an attempt to highlight how social norms—especially those entrenched in legal practice—become embedded in structural decisions like the adoption of dual-class stock. His insight, in our reading, is that the prevalence of certain governance structures reflects not only rational bargaining among founders and investors, but also the normative expectations of lawyers and advisors—whose role in “designing” governance is often under-theorized—as well as investors' ultimate focus on performance, which dual-class structures clearly seem to meet.

The implications of these observations reach even further.

As we argue below, recognizing this reality is crucial not only for understanding the origin of dual-class structures but also for assessing their true significance in the broader context of corporate governance debates. Ultimately, governance processes must be evaluated not in isolation, but in light of the market's overriding focus on corporate mission and performance rather than governance design.

IV. PERFORMANCE OVER GOVERNANCE: THE TRUE MARKET DRIVER

A. Empirical Evidence on Performance and Investor Behavior

1. Dual-Class versus Single-Class Performance Studies

Empirical research over the past two decades has consistently demonstrated that corporate performance—rather than governance formality—plays the decisive role in shaping investor behavior toward dual-class companies.

In particular, although the institutional investor community continues to voice concerns about the risks posed by dual-class stock and other so-called “controlled” companies, these firms remain among the most popular and widely held in the United States and globally. Whether it is many of the “Big Seven” or companies such as Berkshire Hathaway, dual-class companies continue to attract substantial investor interest for a straightforward reason: their performance—both in the long term and the short term—tends to exceed that of single-class companies. Simply put, while traditional theories often assume that “non-democratic” governance structures will be punished by the market, the evidence reveals a more basic reality: financial performance consistently overrides concerns about voting inequality in investor decision-making.⁶²

We do not imply that poor governance is irrelevant. To the contrary, we believe governance is critical. Where we differ from traditional governance theorists is in our view that the evidence supports the conclusion that sound governance and strong performance can arise from a variety of structural arrangements.

Tallarita’s findings—particularly his empirical challenge to contractarian theories—together with years of scholarship debunking the myth of shareholder democracy, help to reveal this more complete picture. On this view, the true drivers of investor behavior lie in a company’s long-term commitment to its mission and its financial performance, not in formal governance structures alone. This argument merits closer examination.

Several studies have examined the long-term performance of dual-class companies relative to their single-class counterparts, with mixed but instructive results. Early empirical work suggested that dual-class firms may underperform over extended periods, purportedly due to agency costs and reduced managerial accountability.⁶³ However, more recent research has challenged this narrative, showing that when controlling for factors such as firm size, industry, and growth opportunities, dual-class firms often match or even outperform single-class firms over certain horizons.⁶⁴

62. See Lindsay Baran, Arno Forst & M. Tony Via, *Dual Class Share Structure and Innovation* (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3183517 (finding dual-class firms often exhibit strong innovation and performance despite governance concerns).

63. See Ronald W. Masulis, Cong Wang & Fei Xie, *Agency Problems at Dual-Class Companies*, 64 J. FIN. 1697, 1721–22 (2009) (finding that the wedge between voting and cash flow rights leads to lower firm valuation and supports the underperformance view due to entrenched control); Bebchuk, Kraakman & Triantis, *supra* note 21, at 295 (analyzing how separation of control from ownership increases agency costs and reduces accountability).

64. See David J. Berger & Laurie Simon Hodrick, *Are Dual-Class Companies Harmful to Stockholders? A Preliminary Review of the Evidence*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Apr. 15, 2018), <https://corpgov.law.harvard.edu/2018/04/15/are-dual-class-companies-harmful-to-stockholders-a-preliminary-review-of-the-evidence/> [<https://perma.cc/4WV4-28KY>]; Valentin Dimitrov & Prem C. Jain, *Recapitalization of*

Among the Big Seven companies, some employ dual-class structures while others maintain single-class structures. Notably, corporate performance does not appear to correlate meaningfully with these differences in voting-rights configuration. More precisely, corporate performance outcomes in dual-class firms depend primarily on firm-specific characteristics rather than governance structure alone.⁶⁵

A 2018 study found that the performance gap between dual-class and single-class companies was largely attributable to firm-specific characteristics rather than governance structure alone.⁶⁶ Firms adopting dual-class structures tended to be younger, more innovative, and more reliant on intangible assets, factors that correlated with both stronger short-term performance and higher volatility. The governance structure itself was not the primary driver of long-term value erosion or creation.⁶⁷

Similarly, both further scholarship and other institutional frameworks emphasize that investors prioritize operational performance, earnings growth, and strategic execution over formal governance structures when evaluating dual-class companies.⁶⁸ While governance remains a relevant concern in proxy voting and stewardship engagements, it seldom triggers systematic divestment decisions when weighed against strong financial returns.⁶⁹

Importantly, event studies analyzing stock price reactions to IPOs of dual-class firms further reinforce this dynamic. Initial public offerings by dual-class companies frequently exhibit strong demand and positive aftermarket performance, particularly when associated with high-profile founders and compelling growth narratives.⁷⁰ In these contexts, public

One Class of Common Stock into Dual-Class: Growth and Long-Run Stock Returns, 12 J. CORP. FIN. 342, 347, 354, 364 (2006) (showing statistically significant abnormal positive returns—23.11% over four years—for firms that adopted dual-class recapitalizations); *see also* Sonnenfeld, *supra* note 16; Sonnenfeld & Tain, *supra* note 16; Reddy, *supra* note 1.

65. *See* Reddy, *supra* note 1, at 998–1002 (criticizing simplistic assumptions that dual-class automatically leads to under/overperformance and observing that results depend more on firm-specific characteristics than on governance structure *per se*); *see also* Tallarita, *supra* note 1, at 974 (noting that while some major tech companies like Alphabet and Meta employ dual-class structures, others, such as Walmart and Amazon, maintain single-class governance); Shobe & Shobe, *supra* note 35, at 1301–28.

66. *See* Hyunseob Kim & Roni Michaely, *Sticking Around Too Long? Dynamics of the Benefits of Dual-Class Voting* (Swiss Fin. Inst. Rsch. Paper, Paper No. 19-09, Eur. Corp. Governance Inst. Fin. Working Paper, Paper No. 590/2019, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3145209 (discussing other factors such as firm maturity).

67. *See id.* and accompanying text.

68. *See* BLACKROCK INVESTMENT STEWARDSHIP, GLOBAL PRINCIPLES FOR BENCHMARK POLICIES (2025), <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-engprinciples-global.pdf> [<https://perma.cc/C9MY-7UUL>] (opposing disproportional voting rights in principle, yet acknowledging dual-class structures are justified in some markets, while still urging regular review and shareholder approval to ensure accountability and minimize entrenchment); *see also* Elizabeth Pollman, *supra* note 14, at 176–85 (noting tolerance for founder control when associated with operational and strategic success).

69. *See* BLACKROCK INVESTMENT STEWARDSHIP, *supra* note 68 and supporting text.

70. *See* Martijn Cremers, Beni Lauterbach & Anete Pajuste, *The Life Cycle of Dual-Class Firm Valuation*, 13 REV. CORP. FIN. STUD. 459 (2024) (examining “U.S. dual- and single-class firms from 1980 to 2019 and document their valuation differences over their corporate life cycle.” Noting that, “[a]t the IPO, dual-class firms have

higher mean valuations than do single-class firms, and some evidence indicates that this premium may emanate from dual-class firm founders’ unique vision and leadership skills.” But, “[a]s firms age, the valuation premium of dual-class firms tends to dissipate”); Dhruv Aggarwal et al., *The Rise of Dual-Class Stock IPOs*, J. FIN. ECON. 122, 122 (2022) (finding that “the increasing popularity of dual-class structures is driven by founder-controlled firms”).

investors appear willing to accept—and even embrace—governance structures favoring insiders, provided the prospects for superior returns justify the associated potential risks with founder control.

These findings highlight the critical disconnect between theoretical governance concerns and practical investor behavior. Although dual-class structures might present some risks from a shareholder rights perspective, market participants have demonstrated a consistent willingness to accept this risk in favor of the potential benefits that a founder-led company may have—including a better incentive to continue to innovate and succeed over the long-term. Thus, while governance debates continue to occupy academic, regulatory, and stewardship discourse, they remain largely marginal in the ultimate calculus of market outcomes.

This empirical reality forms the foundation for our broader argument: in the world of modern corporate governance, formal structures matter, but performance dominates. Investors are not indifferent to governance; rather, they prioritize governance to the extent it is perceived to impact corporate success. Where strong performance persists, governance defects or deviations are tolerated—or even ignored—by the market.

Beyond that, recent work further supports the view that dual-class structures can produce significant benefits for firms and investors. Analyzing companies within the Russell 3000, a 2024 study conducted by Professor Jeffrey Sonnenfeld of the Yale School of Management finds that firms with dual and multi-class share structures have consistently outperformed single-class firms across multiple time horizons, including one-, five-, and ten-year periods.⁷¹ Notably, these findings extend beyond the technology sector and include historic outperformers across diverse industries such as Berkshire Hathaway, Visa, Nike, and Blackstone.⁷² Rather than constituting a structural defect, the research suggests that dual-class governance—when combined with strong leadership, a focus on the company’s mission, and a culture of long-term value creation—can shield companies from “short-termist” pressures and enable superior strategic decision-making.⁷³

Professor Sonnenfeld also notes that the most notorious corporate scandals in recent history have not originated from companies with dual-class structures, but rather from firms with standard one-share-one-vote governance models.⁷⁴

Finally, the study highlights that dual-class structures work particularly well when founders or controlling families are actively engaged and capable, or when they delegate authority wisely to professional management.⁷⁵ The stability afforded by dual-class

71. Sonnenfeld & Tian, *supra* note 16.

72. *Id.*

73. *Id.*

74. See Sonnenfeld & Tian, *supra* note 16 (noting that “curiously, none of the most notorious corporate collapses and scandals took place at companies with dual-class shares. Each of Enron, Worldcom, Tyco, Arthur Andersen, Bear Stearns, Lehman Brothers, Wirecard, Silicon Valley Bank, and First Republic Bank had single-class share structures, not dual-class shares; not to mention non-publicly traded collapses at FTX and Theranos.”); see also Sonnenfeld, *supra* note 16.

75. See Sonnenfeld & Tian, *supra* note 16 (arguing that dual-class structures are most effective when led by capable or engaged founders, or when professional managers are empowered under stable control, and emphasizing that flexible governance design can preserve long-term value by shielding firms from short-term pressures).

governance can be especially valuable in industries subject to cyclical downturns, where protection against opportunistic activist intervention preserves long-term value.⁷⁶

Accordingly, caution remains warranted against a one-size-fits-all regulatory mandate. Corporate governance design should instead remain flexible, context-dependent, and sensitive to firm-specific dynamics.⁷⁷

These findings reinforce our broader argument: while governance structures matter, it is the underlying performance, leadership quality, and strategic culture of the firm that ultimately drive market outcomes.

2. Case Studies in Dual-Class Success: Alphabet, Meta, and Other Market Leaders

The theoretical and empirical insights regarding the primacy of performance over governance structures are vividly illustrated by the market trajectories of Alphabet and Meta—two of the most prominent dual-class companies of the modern era. Despite persistent critiques of their governance frameworks, each company has enjoyed sustained market success, underscoring that financial performance, rather than governance formality, drives investor acceptance.

Alphabet provides perhaps the clearest example. Upon its 2004 IPO, Google adopted a dual-class capital structure granting its founders, Larry Page and Sergey Brin, disproportionate voting control relative to their economic ownership.⁷⁸ This structure was later reinforced by the issuance of non-voting Class C shares in 2014, which had the effect of further extending the control of the company by its founders. Alphabet's governance has been the subject of repeated criticism from shareholder activists and governance advisory firms, particularly regarding the minority voting rights of public investors and the perpetual nature of founder control. Nevertheless, Alphabet's extraordinary financial performance—characterized by consistent revenue growth, high profit margins, and market leadership in digital advertising and search—has insulated it from serious market backlash. Institutional investors have continued to hold substantial positions in Alphabet despite its governance structure, viewing the company's profitability and strategic execution as outweighing its governance deficiencies.⁷⁹

Meta Platforms similarly adopted a dual-class structure at its IPO in 2012, granting Mark Zuckerberg enhanced voting rights and substantial control over corporate decision-making.⁸⁰ Like Alphabet, Meta's governance design has drawn sustained criticism from many institutional investors, particularly after controversies surrounding data privacy, misinformation, and content moderation. Calls for governance reform, including proposals to eliminate the dual-class structure and implement more robust shareholder oversight, have repeatedly been raised at annual meetings, often receiving significant shareholder

76. *Id.*

77. *Id.*

78. See Google Inc., Amendment No. 9 to Registration Statement (Form S-1/A) 2, 24–25 (Aug. 18, 2004) (stating that Google issued Class B shares with ten votes per share to founders Larry Page and Sergey Brin, while Class A shares sold to the public carried one vote per share); see also Winden, *supra* note 46, at 880–86.

79. See Winden, *supra* note 46, at 903–05.

80. See Facebook, Inc., Restated Certificate of Incorporation (May 22, 2012) (detailing Facebook's dual-class structure, which issued Class B shares with ten votes per share to Mark Zuckerberg, granting him majority voting control); see also Tallarita, *supra* note 1, at 974; Winden, *supra* note 46, at 868, 876–80 (discussing further proposed charter amendments and related litigation).

support. Yet despite these pressures, Zuckerberg has maintained effective control, and Meta's stock performance—particularly during periods of strong revenue and user growth—has remained resilient. Investors have continued to reward Meta's ability to generate high returns on capital, expand into new markets, and innovate through acquisitions and product development, despite concerns over governance accountability.

Other examples similarly support the primacy of performance. Square (now Block), co-founded by Jack Dorsey, operates under a dual-class structure that has helped shield long-term strategy and innovation in financial services and digital payments. Despite criticism, its share price and influence have grown considerably since its IPO.⁸¹

Even outside the tech industry, numerous cases support our argument. Berkshire Hathaway offers a long-standing model of dual-class governance paired with exceptional returns, with Warren Buffett's control rarely challenged given the firm's performance record. Evercore and Blackstone—among others—also employ governance mechanisms, including dual-class structures or their functional equivalents, that centralize control among founders or key executives. These companies have achieved strong and sustained shareholder returns, reinforcing the idea that investors are willing to accept concentrated control when it is coupled with consistent financial results.⁸²

Finally, Snap represents a slightly different but equally instructive case. At its 2017 IPO, Snap introduced an unprecedented capital structure consisting of publicly traded non-voting shares, with all voting control retained by its co-founders, Evan Spiegel and Bobby Murphy.⁸³ This governance design provoked widespread condemnation, leading major index providers like S&P Dow Jones and FTSE Russell to exclude Snap from their indices on governance grounds.⁸⁴ Despite this exclusion and initial post-IPO stock price volatility,

81. See Martin Peers, *Jack Dorsey is Squarely in Control*, THE INFO. (Oct. 14, 2015), <https://www.theinformation.com/articles/jack-dorsey-is-squarely-in-control> (on file with the *Journal of Corporation Law*); Portia Crowe, *Why Square Priced Its IPO at \$9*, BUS. INSIDER (Nov. 19, 2015), <https://www.businessinsider.com/why-square-priced-its-ipo-at-9-2015-11> (on file with the *Journal of Corporation Law*); Rani Molla, *Two Years After Going Public, Square Is Now Worth More Than Twitter*, VOX (Nov. 17, 2017), <https://www.vox.com/2017/11/17/16670858/twitter-square-market-cap-chart> [<https://perma.cc/X639-6XMT>] (documenting the post-IPO increase in market valuation).

82. See Andrew Bary, *How Buffett Has Kept Control of Berkshire After Unloading Over Half His Stock*, BARRON'S (June 18, 2024), <https://www.barrons.com/articles/warren-buffett-berkshire-stock-voting-control-e3a5027f> (on file with the *Journal of Corporation Law*); see also Berger, *supra* note 14; Sonnenfeld, *supra* note 16; Suman Banerjee & Ronald W. Masulis, *Ownership, Investment and Governance: The Costs and Benefits of Dual Class Shares* (Eur. Corp. Governance Inst. Fin. Working Paper, Paper No. 352/2013, 2017), <https://ssrn.com/abstract=2182849>.

83. Snap Inc., Registration Statement (Form S-1) (Feb. 2, 2017) (disclosing that Snap issued only non-voting Class A shares to the public, while Class C and Class B shares with all voting rights remained exclusively with founders Evan Spiegel and Bobby Murphy). See also Winden, *supra* note 46, at 855; Letter from Kenneth A. Bertsch et al., to Evan Spiegel, Robert Murphy & Michael Lynton, Council of Institutional Invs. 2 (Feb. 3, 2017), https://www.cii.org/files/issues_and_advocacy/correspondence/2017/02_03_17_SNAP_IPO.pdf [<https://perma.cc/G8PH-Y9LC>] (criticizing Snap's "extreme" structure for denying any voting rights to public shareholders and cementing perpetual founder control).

84. See Press Release, S&P Dow Jones Indices, S&P Dow Jones Indices Announces Decision on Multi-Class Shares and Voting Rules (July 31, 2017), https://www.spice-indices.com/idpfiles/spice-assets/resources/public/documents/561162_spdjmultipclasssharesandvotingrulesannouncement7.31.17.pdf [<https://perma.cc/W343-4SEA>] (announcing exclusion of companies with multi-class share structures, like Snap, from key indices due to concerns over lack of shareholder voting rights); FTSE RUSSELL, VOTING RIGHTS CONSULTATION—NEXT STEPS (2017),

Snap ultimately achieved substantial market gains by executing a turnaround strategy focused on product innovation, user engagement, and revenue growth. Investors who prioritized financial performance over governance orthodoxy were rewarded, as Snap's valuation rebounded and the company secured a durable position within the competitive landscape of social media platforms.

Together, these case studies exemplify the pattern we observe across the broader market: dual-class governance structures, even when extreme by traditional standards, are tolerated and accepted as long as the companies deliver—or are perceived as capable of delivering—superior financial results. Governance concerns, while sometimes significant in principle, are subordinated to performance imperatives in the investment calculus of both institutional and retail market participants.

The experiences of Alphabet, Meta, Square, and Snap—as well as prominent financial firms such as Berkshire Hathaway, Blackstone, and Evercore—demonstrate that the mere existence of dual-class structures does not condemn companies to market penalties, nor does it necessarily erode long-term shareholder value. Quite the opposite: these companies' trajectories confirm that in contemporary capital markets, performance remains the central axis around which corporate legitimacy and investor support revolve.

B. Performance Primacy and The Significance of Governance in Investor Behavior

1. Investor Prioritization of Performance

The empirical studies demonstrating comparable or superior performance among dual-class firms lead to an inescapable conclusion: investors consistently prioritize financial returns when making investment decisions. Although corporate governance structures inform stewardship policies, voting guidelines, and engagement strategies, they rarely dictate capital allocation choices in the face of compelling performance metrics.

Institutional investors, in particular, often purport to balance governance concerns—typically framed around one-size-fits-all standards—against fiduciary duties to maximize returns for their beneficiaries. While stewardship codes and ESG frameworks call for governance engagement—and this engagement is also typically based on these types of standards—portfolio managers are evaluated primarily on investment outcomes—not on governance activism.

As a result, firms with founder control or even shareholder-unfriendly governance features continue to attract significant institutional capital so long as they deliver strong financial results.

A clear illustration of this dynamic emerges from the continued support for companies such as Alphabet and Meta, despite persistent critiques of their dual-class structures.

Proxy advisory firms such as Institutional Shareholder Services (ISS) and Glass Lewis have repeatedly recommended voting against directors at dual-class companies lacking sunset provisions or equitable voting rights.⁸⁵ Nonetheless, institutional investors,

russell/en_us/documents/other/ftsc-russell-voting-rights-consultation-next-steps.pdf [https://perma.cc/JSK3-SAQF] (stating that companies in which public shareholders hold less than 5% of voting power—such as Snap—are excluded from index eligibility). *See also* Fisch & Solomon, *supra* note 42, at 1076.

85. INSTITUTIONAL S'HOLDER SERVS., U.S. PROXY VOTING GUIDELINES: BENCHMARK POLICY RECOMMENDATIONS 14 (2025), <https://www.issgovernance.com/file/policy/active/americas/US-Voting->

including Vanguard, BlackRock, and Fidelity, have maintained substantial holdings in these companies, citing long-term value creation as the overriding consideration.⁸⁶

Moreover, the willingness of investors to fund new dual-class IPOs highlights the primacy of expected returns over governance orthodoxy. Despite increasing scrutiny and calls for stricter listing rules, major exchanges and underwriters routinely bring dual-class companies to market, and institutional participation in these offerings remains robust.⁸⁷

This pattern suggests a calculated tradeoff: investors accept the potential risks created by alternative governance structures at the IPO stage (and beyond) when they are offset by credible expectations of future financial performance and founder engagement.⁸⁸

Even activist investors—who often target governance vulnerabilities in public campaigns—tend to focus their efforts on underperforming companies, where governance flaws are compounded by strategic or operational shortcomings.⁸⁹ By contrast, high-performing dual-class companies are seldom the subject of activist challenges, regardless of their governance profile. Governance becomes salient only when performance falters; when it does not, concentrated control is tolerated, if not outright welcomed.

2. Governance as a Secondary Variable in Capital Allocation

The market's selective attention to governance issues thus confirms that performance—not structure—is the dominant variable shaping investor behavior.

Guidelines.pdf [https://perma.cc/BJ49-TF2S] (stating that ISS will generally recommend against directors at dual-class companies lacking a reasonable time-based sunset or adequate minority protections); *see also* GLASS LEWIS, 2025 U.S. BENCHMARK POLICY GUIDELINES (2024), <https://resources.glasslewis.com/hubfs/2025%20Guidelines/2025%20US%20Benchmark%20Policy%20Guidelines.pdf> [https://perma.cc/L3UT-JCJT].

86. Ning Chiu, *BlackRock Wants Equal Voting Rights but Opposes Exclusion from Indexes*, DAVIS POLK (Oct. 23, 2017), <https://www.davispolk.com/insights/client-update/blackrock-wants-equal-voting-rights-opposes-exclusion-indexes> [https://perma.cc/H82L-M54P] (noting that BlackRock advocates for equal voting rights but opposes the exclusion of dual-class companies from indexes, expressing concern that such exclusions could deprive index-based clients of investment opportunities—not to mention that many funds, including some of these companies, adopt dual-class structures themselves).

87. *See* Dhruv Aggarwal et al., *supra* note 70, at 122–23 (explaining the increase in prevalence of dual-class stock IPOs); Anandi Banerjee, *Dual-Class Firms: A Systematic Literature Review*, 23 EMPIRICAL ECON. LETTERS 257 (2024); Rob Kalb & Rob Yates, *Snap, Inc. Reportedly to IPO with Unprecedented Non-Voting Shares for Public*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Feb. 7, 2017), <https://corpgov.law.harvard.edu/2017/02/07/snap-inc-reportedly-to-ipo-with-unprecedented-non-voting-shares-for-public/> [https://perma.cc/D48B-WUUh] (reporting Snap's adoption of a dual-class structure with non-voting public shares); Caroline Escott, *Reddit's IPO Is a Regrettable Mis-Step in Corporate Governance*, FIN. TIMES (Mar. 21, 2024), <https://www.ft.com/content/c7e73652-f15f-4f74-aecb-74a17bdbb78a> (on file with the *Journal of Corporation Law*) (reporting Reddit's adoption of a dual-class structure without a time-based sunset provision).

88. *See* Cremers, Lauterbach & Pajuste, *supra* note 70; *see also* Matt DiGuseppe, *The Director's Guide to Shareholder Activism*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 14, 2024), <https://corpgov.law.harvard.edu/2024/07/14/the-directors-guide-to-shareholder-activism-3/> [https://perma.cc/P9UB-LJKX] (noting that activist investors typically target companies exhibiting both underperformance and governance issue).

89. *See* Damien J. Park, *Activist Investors and Target Identification*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 23, 2016), <https://corpgov.law.harvard.edu/2016/06/23/activist-investors-and-target-identification/> [https://perma.cc/FU49-9UYS] (discussing activist and their strategic investments in “undervalued and attractive target companies” and the factors they consider such as governance structures).

This consistent prioritization of returns over governance indicates that private ordering in corporate governance, while formally shaped by legal structures and contractual arrangements, is in practice governed by market expectations of profitability and growth. As long as dual-class firms continue to meet or exceed these expectations, their governance choices—however imperfect—are likely to remain acceptable to investors.⁹⁰

Thus, rather than signaling a market failure, the persistence of dual-class structures reflects a rational accommodation: investors are willing to tolerate deviations from so-called governance “ideals”—such as the assumption that single-class structures are inherently superior—in exchange for participation in corporate success. It is this empirical reality—rather than any formalistic notion of private bargaining or governance tailoring—that best explains the contemporary landscape of financial markets.

These dynamics reflect the pragmatic reality of modern investment management. Portfolio managers are tasked with generating returns, not with identifying governance structures favored by others. While stewardship teams within asset management firms advocate for improved governance practices through voting and engagement, ultimate investment decisions remain grounded in assessments of risk-adjusted returns—and alternative governance practices have not been shown to create greater governance or financial risks. Accordingly, even firms with governance arrangements traditionally viewed as suboptimal—such as dual-class structures, according to some critics—continue to attract capital when they deliver compelling financial results.⁹¹

This pragmatism is amplified by structural changes in capital markets. The rise of passive investment strategies, which account for an increasingly large share of public equity ownership, further diminishes the influence of detailed or complex scrutiny of governance structures in portfolio construction. Index funds are obligated to hold companies based on index composition, irrespective of governance concerns—further reducing the market pressure to conform to any particular governance structure.⁹² Even active managers, faced with competitive pressures to outperform benchmarks, are unlikely to forego investments in high-performing companies solely on governance grounds.

These trends also expose a critical misalignment between elements of academic governance theory and real-world investment practice. While some scholars and policymakers debate the virtues of governance purity or structural orthodoxy, capital allocators focus on outcomes. To most investors, evidence of good governance is based on real-world performance, not theoretical notions that are contrary to actual results. Indeed, many of the most prominent corporate governance failures over the last few decades—including WorldCom, Enron, Lehman Brothers, Silicon Valley Bank, and Tyco—had single-class structures at the time of their collapse.

90. See Bebchuk & Kastiel, *supra* note 1, at 627–29 (noting that investors tolerate governance defects when coupled with strong performance).

91. *Id.*; Winden, *supra* note 46, at 903–04.

92. See Scott Hirst & Kobi Kastiel, *Corporate Governance by Index Exclusion*, 99 B.U. L. REV. 1229, 1232–33 (2019) (explaining that passive index funds are structurally obligated to invest in companies based on index inclusion, even if those companies have weak governance, thereby undermining governance-based discipline in capital allocation); Fisch & Solomon, *supra* note 42, at 1076 (noting that BlackRock, although publicly opposing the dual-class structure, expressed concern that excluding dual-class companies from the index would deprive its index-based clients of “opportunities for returns”).

Again, this is not to downplay the critical importance of good corporate governance and ethics. Strong corporate governance, including board leadership and an ethical framework are crucial to corporate success. It is just to say that strong corporate governance can be obtained by a variety of different methods and structures—the market has come to recognize this reality and has shown itself willing to accept the risks that alternative governance structures may have in return for greater focus on mission, long-term gains, and ethical and strategic alignment.

In short, we contend that performance remains the dominant driver of investor behavior, that this performance can be—and often is—achieved by companies that use alternative governance structures, and that investors have come to realize that these alternative governance structures can lead to both greater financial and governance success.⁹³

Recognizing this reality is essential to any serious analysis of corporate governance structures, including the debate over dual-class stock. As we argue throughout this Article, efforts to assess or reform corporate governance must account for the empirical primacy of performance, lest they mischaracterize the forces that truly shape corporate America.

C. From Form to Function: Rethinking Governance through the Lens of Performance

The foregoing analysis reinforces a simple but often underappreciated reality: governance structures matter, yet performance is paramount. And corporate performance depends on a number of factors, including a company's ability to maintain focus on its mission, adapt to competitive pressures, and make bold, long-term strategic bets.

Put differently, while formal governance architecture deserves attention, it is not determinative. As long as a company meets or exceeds performance expectations, even structures viewed as “non-ideal” by some commentators—such as dual-class shares—are accepted and even endorsed as part of the broader calculus of value creation. Conversely, when performance falters, even single-class structures cannot shield management from market discipline.

In this light, studies by scholars such as Professor Sonnenfeld and others, showing that dual-class companies outperform single-class companies, should not be overly surprising.⁹⁴ Similarly, the conclusion reached by Professor Tallarita strongly resonates with our practical observations—and with what any practitioner regularly encounters in financial markets and within large organizations.

Indeed, as dual-class companies continue to outperform peers across various sectors, and as their market valuations remain robust, it becomes increasingly difficult to sustain a narrative that formal governance purity is essential for corporate legitimacy.

93. See Lucian A. Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy*, 119 COLUM. L. REV. 2056–60 (2019) (describing how index fund managers, despite stewardship efforts, lack incentives or mechanisms to use governance screening in portfolio construction).

94. See Sonnenfeld, *supra* note 16; Vijay Govindarajan et al., *Should Dual-Class Shares Be Banned?*, HARV. BUS. REV. (Dec. 3, 2018), <https://hbr.org/2018/12/should-dual-class-shares-be-banned> [<https://perma.cc/F96Q-7NZ2>]; Dimitris Melas, *Putting the Spotlight on Spotify: Why Have Stocks with Unequal Voting Rights Outperformed?*, MSCI (Apr. 3, 2018), <https://www.msci.com/www/blog-posts/putting-the-spotlight-on/0898078592> [<https://perma.cc/J788-SJYH>].

What is more, deviations from check-the-box governance, such as dual-class stock, may themselves be part of the success story. Dual-class stock, when properly designed and aligned with leadership capacity, can serve as a powerful mechanism to shield mission-driven companies from activist disruptions, preserve strategic continuity, and enable innovation. As Sonnenfeld's research and our case studies illustrate, some of the world's most successful firms leverage dual-class frameworks precisely to deliver superior performance.⁹⁵

Moreover, the dynamics we have described—rising index fund dominance, performance-driven capital allocation, and reputational feedback loops built on high-profile success stories—can create a virtuous cycle that reinforces the credibility of dual-class governance.

In terms of private ordering, we argue that dual-class companies' success reflects an evolving recognition that flexibility, not rigid procedural orthodoxy, better aligns governance mechanisms with the dynamic nature of modern corporate enterprise.

The heterogeneity of public companies, particularly in sectors driven by innovation and long-term investment horizons, suggests that flexibility remains essential to fostering entrepreneurial success. In this environment, governance reforms must be evaluated in light of their actual impact on corporate success, not merely their adherence to formalistic ideals.

From a regulatory standpoint, this implies a need for caution. Rather than imposing one-size-fits-all mandates, policymakers should focus on transparency, procedural integrity, and meaningful protections—without prescribing uniform governance outcomes.

While governance debates will and should continue to refine best practices, any comprehensive analysis must remain grounded in the empirical primacy of performance. Governance matters—but only insofar as it shapes, supports, or undermines the financial outcomes that ultimately drive market behavior.

Thus, future scholarship and regulation should shift focus from static ideals to dynamic realities. Corporate governance must be evaluated not for its theoretical elegance, but for its contribution to sustainable performance, long-term value creation, and adaptability in an evolving marketplace.

V. CONCLUSION

The modern landscape of dual-class governance reveals a deeper truth than narrow interpretations of contractarian theory can explain. As Professor Tallarita compellingly demonstrates, governance structures are not the product of bespoke negotiation in isolation, but instead emerge from standardization, social norm transmission, and legal practice. We agree—and go further.

The persistence and market success of dual-class companies reflect not a failure of governance but a recalibration of what “good governance” means and what it is expected to achieve. Investors today prioritize sustainable corporate performance over formalistic adherence to “one-share-one-vote” ideals. Where firms consistently deliver returns, market participants show a clear willingness to tolerate, or even prefer, governance arrangements that deviate from traditional norms.

95. See Sonnenfeld, *supra* note 16.

Moreover, control-enhancing mechanisms now span far beyond formal voting structures, forming a layered architecture of founder-friendly governance. This broader system supports strategic stability, protects mission-driven leadership, and promotes innovation—precisely the qualities that public markets have repeatedly rewarded.

In essence, governance matters, but it matters only insofar as it contributes to better performance. Regulatory efforts and scholarly critiques that fail to grapple with this empirical reality risk misdiagnosing the true drivers of capital-market dynamics.

Ultimately, the test for any governance model should not be theoretical elegance, but practical efficacy. Dual-class structures—when properly designed and accompanied by capable leadership—have proven not only viable but, in many cases, superior. The future of corporate governance must recognize that flexibility, not formalism, is the key to aligning governance with the complex demands of long-term value creation in modern markets.