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Today, the *Wall Street Journal* published an interesting article that may have some bearing on corporate governance and shareholder's rights. The article reported that S&P Dow Jones Indices will no longer allow publicly traded companies with multiple share classes to be listed in the S&P 500 index. Other companies that own indices, such as FTSE Russell and MSCI Inc. are said to be considering similar moves. The decision has been widely reported in the financial press, but not in the general press.

The move is a response to the increasing practice among companies to issue more than one class of shares, and to assign different ownership rights to each class. Perhaps the biggest difference among share classes issued by a company are the voting rights of those different classes. One share class may carry a right of one vote per share, while another share class might have ten votes per share. This split means that the holders of the class with ten votes per share could have more control over how the company is run, out of proportion to the actual value of those shares.

The use of multiple share classes is popular among technology companies where the founders are often still deeply involved in the company. When the company needs capital to grow, private investors often purchase shares in the company in order to provide that capital. In the early stages of growth, the new investors are often sophisticated and wealthy, and demand an opportunity to have a say in how the company is run. These investors usually receive shares with the same, or similar voting rights as the original founders, reducing the voting control of the founders. Giving up some control is the price founders might need to pay in order to raise more capital.

When a company decides to "go public" by selling shares in an initial public offering (IPO), it is often as a step to raise more capital and fund future growth. If the new shares carry the same voting rights as the original shares held by the founders and early investors, voting control becomes even less concentrated as new investors buy in. Activist investors who want to see changes made can buy up large blocks of shares in an effort to convince the company to grant them a seat on the board of directors, where they can advocate for change.

In order to keep such activist investors from getting any control, the company may choose to issue a new class of shares with lower voting rights, or even with no voting rights. These shares may be the ones offered to the public in the IPO, perhaps on the theory that investors will ignore this issue in their rush to get in on a hot stock. In essence, the company is telling investors that they like their money but not their opinion.

Since decisions about share classes are made by the board of directors, standards of quality governance come into play. The board should be chartered to act in the long-term best interests of the company's shareholders, and often that means the chairman of the board is not the same person as the chief executive. The chairman represents the stockholder's interests, while the chief executive serves the board as the manager of the company. Governance standards recommend that the majority of board

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members should not be company employees or persons with a material relationship (such as the top executive of a key supplier to the company).

This can get sticky when the top executives are also top shareholders of the company, as is often the case in newer companies. In this case, does the board continue to act favorably to its largest shareholders to the detriment of smaller holders? If the largest shareholders control more than 50% of the stock of the company, the board is indeed obligated to serve them.

Once the need for capital becomes large enough that the top shareholders risk losing majority voting rights, the temptation of multiple share classes comes into play. A recent example is that of Snap, Inc., the developers of SnapChat. Snap recently sold class A shares with no voting rights in its IPO in March, while early investors hold class B shares with limited voting rights. The company's co-founders are the only owners of Snap's class C shares, and they control 90% of the voting rights. Other large companies with multiple share classes and different voting rights include Alphabet, Facebook, Visa, Comcast and Berkshire Hathaway.

In the case of Berkshire Hathaway, both classes of shares (A; 1 vote and B; 1/10,000 of a vote) are publicly traded. The stratospheric price of the class A shares (about $266,950 each at this writing) means that they are rarely traded and can remain in the hands of early shareholders. Overall, class A shares carry 85% of the total vote of all shareholders. It would be difficult to mount an activist challenge to Berkshire Hathaway management considering that it would take nearly $22 billion in class A shares to get even a 5% stake in the company. That presumes that class A shareholders who are often loyal to Warren Buffett would even be willing to sell. Buying the cheaper class B shares (about $177 each) to get to 5% of the vote would require $77 billion.

The move by S&P Dow Jones Indices will prevent new multi-share class companies from joining the S&P 500, which could mean reduced access to capital for them (existing multi-class companies are grandfathered in). Since many investors own index funds that cover all of the companies in the S&P 500, not being listed removes a key source of investor capital provided by those funds. Experts in corporate governance have long advocated a greater focus on the fiduciary duty of the board, and list many practices that reinforce that duty. While these practices are well known and by no means novel, some company boards continue to serve founders at the expense of all shareholders.

Perhaps this move, in changing how companies get access to capital will bring about needed changes in governance. Such a shift could be in favor of all of us small investors, whether we own shares directly or through the many types of funds we hold. In the end, money talks, and making it talk in a way that helps all shareholders is a good thing.

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