London allowing dual class Premium listings: A Swedish commentary

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Abstract

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Keywords: Dual Class Shares, Multiple Voting Shares, UK Listing Review, Swedish Corporate Governance

JEL Classifications: G30, G32, G34, G38, K20, K22

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We thank Professor Paul Davies for his helpful comments and suggestions.

In the UK Listing Review it is suggested that the London Stock Exchange should allow companies with dual class share (DCS) structures with differentiated voting rights to list on the Premium segment. In this paper, we discuss this proposal. First, we present an overview of the DCS-debate together with the proposition in the Hill Review to allow for DCS-listings under certain conditions. Second, we discuss the arguments that are made against DCS-listings. For the sake of comparison and reference, we then give an overview of the Swedish DCS-regulation and the political economy. From there, we discuss the conditions for DCS-listing recommended in the Hill Review. Our conclusion is that several of the DCS-listing conditions suggested might not only hinder DCS-structures from being useful for companies that wish to utilize such structures but would in several cases disable the corporate governance mechanisms that would otherwise counteract several of the problems that DCS-structures can give rise to, most prominently the market for corporate control.

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Introduction

In the UK Listing Review, backed by the UK Treasury and carried out by former European Commissioner Lord Jonathan Hill (the *Hill Review*), presented on March 3, 2021, it is suggested that the London Stock Exchange (LSE) should allow companies with dual class share structures with differentiated voting rights (DCS-structures) to list on the Premium listing segment of the LSE. The suggestion has garnered a lot of attention in the DCS-debate, given how the LSE has, for a long time, been one of the bastions of the "one share, one vote" principle.

This development follows a pattern, that we have seen globally, of exchanges previously negative to DCS-listings now allowing them. For instance, since 2018 the Singapore Stock Exchange allows DCS-companies to list on the exchange, following the example of the Hong Kong Stock Exchange, which also allows DCS-listing since 2018. Another example of the DCS-development that has received quite some attention is how both Peter Thiel and Andreessen Horowitz have backed the Long-Term Stock Exchange in Silicon Valley, which was launched in September 2020 and directly endorses DCS-listings.

From a Swedish perspective, in a country where DCS-listings have not only been allowed but have constituted an important feature of the stock market for around a hundred years, we are impressed by the thorough work behind the recommendations in the Hill Review. However, in addition to recommending the LSE to allow DCS-premium listings, the review also proposes five conditions for such listings, with the purpose to ensure "high corporate governance standards".[3] While a couple of these seem well thought-out to us, several seem based on misunderstandings around DCS-structures, and our experience is that they might even be detrimental to the aim of the review. In this article, we discuss these conditions, drawing on the Swedish experience of DCS-listings and regulation.

The paper is structured as follows. In section 1, we present a brief overview of the discourse on DCS-structures and -listings, as well as a few thoughts on the political economy of the debate. Here, we also present the suggestions in the Hill Review of allowing dual class premium and standard listings in London. In section 2, we discuss the arguments which are made against DCS-listings, which we assume that the Hill Review has based its misgivings of DCS-listings on. In section 3, we give an overview of the Swedish DCS-tradition as well as the political economy of it, and most importantly the DCS-regulation. In section 4, we discuss the proposition in the Hill Review with reference to our overview of the arguments against DCS-listings and in relation to the Swedish experience of regulating DCS-companies. Our belief is that while some of the suggestions are warranted wholly or partially, others are unmotivated and even counterproductive given the goal of the review and might actually lower corporate governance standards as compared to allowing DCS-listings without these conditions.

[3] See Hill Review p. 11.

1. DCS-developments and the Hill Review

1.1. Recent trends in DCS-listings

A DCS-structure is a straightforward form of control enhancement mechanism that generally builds on dividing shares in two classes with regards to voting rights. One of the classes has a lower or *subordinate* voting value (commonly one vote), which we here refer to as *SV-shares*. The other class carries multiple votes (often ten). We refer to these as *MV-shares*. The purpose of DCS-structures is generally to permit a shareholder (or shareholders) to hold a controlling stake in a company without having to make the proportionate economical investment required for the size of the stake, should all shares have the same voting power.

For a long time, the use of DCS-structures in listed companies was a corporate governance taboo.[4] A corporate governance risk commonly associated with DCS-structures was the risk of management entrenchment and *tunneling*, the extraction of private benefits of control by controlling shareholders by various means.[5] Recently, however, there has been an upswing in the use of DCS-structures globally, and the corporate governance debate on such structures has become more nuanced. As a result, the permissibility of DCS-listings has become an increasingly important matter of competitiveness for capital markets around the world, and has been described as "[o]ne of the most contentious and long-standing debates in corporate governance"[6] and "[t]he most important issue in corporate governance today".[7]

In Singapore, allowing dual-class listings was first considered in 2012 following the proposed listing of Manchester United on the Singapore Stock Exchange (SGX).[8] At the time SGX upheld the "one share, one vote" principle with reference to the risk of power abuse from MV-shareholders. However, in 2016, the prohibition against the use of MV-shares was removed from the Singapore Companies Act, and the discussion concerning DCS-listings on SGX reignited. The SGX referred the question to the Listings Advisory Committee, an independent organ consisting of representatives from banks, law firms and companies, which in August 2016 recommended the SGX to permit DCS-listings.[9] After a public consultation, the SGX announced on 20

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[4] Although this has not always been the case, see section 1.2.

[5] See for instance Johnson, La Porta, Lopez-de-Silanes & Shleifer (2000), *Tunneling*, the American Economy Review, vol. 90 nr. 2, pp. 22–27, and Gilson & Gordon (2003), *Controlling Controlling Shareholders*, University of Pennsylvania Law Review, vol. 152 nr. 2, at p. 787.

[6] See Winden & Baker, *Dual-Class Index Exclusion*, Virginia Law & Business Review 2019, vol.13 nr 2, pp.101–153.

[7] Quote by John C. Coffee Jr.: https://clsbluesky.law.columbia.edu/2018/11/19/dual-class-stock-the-shades-of-sunset/

[8] See for instance: reuters.com/article/us-singapore-us-ipo-manchester-united-if/exclusive-manchester-united-drops-asia-ipo-for-u-s-idUSBRE85C0MO20120613, learn.asialawnetwork.com/2018/02/05/taking-stock-dual-class-shares-discussions-singapore/, and knowledge.freshfields.com/m/Global/r/1644/singapore_exchange_s_listing_advisory_committee_opens_door

[9] The SGX Listings Advisory Committee also recommended that DCS-structures should only be allowed for new listings (i.e. once listed with a single share class, a company should not be able to adopt a DCS-structure), that the reasons for each particular DCS-listing should be subject to assessment, and that the voting ratio between SV- and MV-shares should not be allowed to exceed 1:10.

January 2018 that it would allow primary DCS-listings,[10] and the IPO of the Chinese smartphone maker Xiaomi became the first DCS-listing on SGX in June 2018 (then valued at US $50 billion).[11]

The SGX's change in its listing regulation was almost synchronized with a similar revision of the Hong Kong Stock Exchange's (HKEX) listing rules the same year. After the story of how Alibaba chose the New York Stock Exchange (NYSE) for its 25 billion USD IPO in 2014, after the HKEX refused to accept its DCS-structure, HKEX started to reconsider its 30 year-long prohibition on DCS-listings (incidentally, HKEX was also the very first favoured listing venue for Manchester United in 2011, until the soccer giant looked to SGX and then to NYSE so it could hold on to its DCS-structure which a HKEX listing would not permit).[12] In August 2014, HKEX launched a public consultation on the allowance of DCS-structures, and from the responses concluded that there was ample support to continue to explore acceptable structures for a draft proposal of a regulation allowing listing of companies with dual-class shares. But after the Securities and Futures Commission of Hong Kong opposed the draft proposal, HKEX put the plans on ice. However, Hong Kong made a second attempt towards changing the regulation in 2017, and this time the attempt was not met with the same opposition. "The market has made it clear [that] they want the Exchange to take action to broaden Hong Kong's capital markets access and enhance its competitiveness," Charles Li, HKEX chief executive said in a statement,[13] as a comment to the public consultation on allowing DCS-listings in 2017, which came back supportive of permitting DCS-companies on the HKEX. With that, HKEX like SGX, allows DCS-listings since 2018 (in response, Alibaba founder Jack Ma announced that Alibaba would "seriously consider" a HKEX listing).[14, 15]

Thus, the Singapore and Hong Kong exchanges joined the likes of NYSE, Nasdaq New York, Toronto Stock Exchange (TSX), and many of the European exchanges, such as Euronext, to allow DCS-listings. At the same time, other jurisdictions have moved in a similar direction, allowing different forms of MV-shares. Italy introduced so-called *loyalty shares* in 2015, whereby listed companies were allowed to introduce a share structure where those who had held shares in a business for more than two years would get an extra voting right per share. This followed the example of France, which for a long time has allowed companies to opt-in on the use of loyalty shares (whereby investors holding shares for more than 2 years would typically get two instead of one vote per share). France took another step in 2014 through the *Loi*

[10] http://www.straitstimes.com/business/companies-markets/sgx-introducing-dual-class-shares

[11] https://www.reuters.com/article/sgx-regulation/singapore-details-rules-for-offering-dual-class-shares-follows-hong-kong-idUKL4N1TS3E3

[12] ft.com/content/6f0e9914-fa96-11e7-a492-2c9be7f3120a

[13] reuters.com/article/us-hkex-regulation/hong-kong-to-push-ahead-with-controversial-dual-class-shares-idUSKBN1E90UR

[14] www.reuters.com/article/us-alibaba-hongkong-listing/alibaba-will-seriously-consider-hong-kong-listing-says-founder-ma-idUSKBN1EY062

[15] It can also be noted that SGX, after the Hong Kong decision decided to lower the bar for proposed DCS-listings by allowing such listings for companies with an expected market capitalization of S$300 million (lowered from S$500 million).

Florange, and changed the default voting system from "one share, one vote", into the loyalty system (making it an opt-out share structure).[16]

Finally, the use of DCS-structures has had an upswing on several markets that have allowed DCS-listings for a long time, with the US being the prime example. With Google's dual-class IPO opening the floodgates in 2004, companies such as Facebook, LinkedIn, Groupon, Snap, Zynga and Fitbit have joined old US companies with DCS-structures, such as Ford and the New York Times.[17] And the rise in DCS-IPOs has not stopped. While in 2016 around 10 percent of companies that went public in the US were DCS–companies, the figure was 20 percent for the companies that listed in the US in 2017 and 2019.[18]

1.2. Short history of the DCS-debate

The development presented above paints a fairly clear picture. DCS-listings are on the rise, and it also seems reasonable to conclude that we will see more and more markets allowing DCS-listings, and a continued growth in the number of DCS-companies listed. However, few that have followed the debate on DCS-listings would probably have predicted this development just a decade ago. DCS-structures were, for a long time, a taboo. While DCS-companies were not uncommon in the US in the beginning of the 1900s, the NYSE stopped listing DCS-shares in the 1940s following a couple of decades of criticism of the use of multiple voting shares,[19] which were not allowed again until many decades later.[20]

The pattern was pretty much the same in the UK, where DCS-structures were neither uncommon nor criticized in the first half of the 1900s. Rather, introductions of DCS-structures were often associated with positive price effects.[21] In the 1950s, the climate around DCS-structures started to change, particularly from institutional investors who developed a "marked distaste" for multiple voting shares.[22] While the LSE did not outright ban the DCS-listings like the NYSE, the practice was, following the debate during the 1950s and 1960s, discouraged to the point of extinction, and the tradition has long been not to allow DCS-companies on the Premium segment.[23]

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[16] See Becht, Kamisarenka and Pajuste (2018), *Loyalty shares with Tenure Voting- a Coasian bargain? Evidence from the Loi Florange Experiment*, ECGI Law Working paper No. 398/2018.

[17] https://www.ft.com/content/25348bd8-9dd9-11e7-9a86-4d5a475ba4c5

[18] See Committee of Capital Markets Regulation, the rise of dual class shares: Regulation and implications: https://www.capmktsreg.org/wp-content/uploads/2020/04/The-Rise-of-Dual-Class-Shares-04.08.20-1.pdf and https://www.bloomberg.com/news/articles/2018-02-15/alphabet-to-snap-s-dual-class-shares-chided-by-sec-official

[19] See Jennings, *The Role of the States in Corporate Regulation and Investor Protection,* Law and Contemporary Problems 1958, vol. 23 nr. 2, pp. 193–230, and Robbins, *An Evaluation of the New York Stock Exchange Listing Policy on Voting*, New York Stock Exchange Study, 1978, p. 183.

[20] See Howell, *The Survival of the U.S. Dual Class Share Structure*, Journal of Corporate Finance 2017, vol. 44, issue C, pp. 440–450, and Reddy, *More than Meets the Eye: Reassessing the Empirical Evidence on US Dual-Class Stock*, University of Cambridge Faculty of Law Research Paper No. 20/2020, forthcoming in University of Pennsylvania Journal of Business Law, section I.A.

[21] See Ang & Megginson, *Restricted voting shares, ownership structure, and the market value of dual-class firms*, The Journal of Financial Research 1989, vol. 12 issue 4, pp. 301–318.

[22] See further Braggion & Gianetti, *Changing corporate governance norms: Evidence from dual class shares in the UK,* Journal of Financial Intermediation 2019, vol. 37, pp. 15–27.

[23] ft.com/content/e18a6138-2b49-11e3-a1b7-00144feab7de. Of course, this also makes the recommendation in the Hill Review controversial, especially to institutional investors, who have heavily criticized the recommendation in

While unsuccessful, the European Commission has also made several attempts towards introducing a "one share, one vote" principle in EU company law. The first attempt was made in the proposal for the fifth company law directive, in which article 33 stated that "[t]he shareholder's right to vote shall be proportionate to the fraction of capital subscribed which the share represents".[24] The entire proposed directive, which mostly aimed at harmonizing the corporate governance model within the EU, was eventually abandoned, and with that the "one share, one vote" effort.[25] Later attempts were also made in conjunction with the development of the Takeover-directive,[26] as well as in the work on a "one share, one vote"-recommendation spearheaded by Commissioner Charlie McCreevy up until 2006, which got an abrupt end when the studies on the governance effects of DCS-structures that the Commission ordered did not support regulatory intervention.[27] This ended the work to introduce a "one share, one vote" principle in EU company law, and most recently, it seems like the Commission might be heading in the opposite direction. In the Final Report of the European High Level Forum on the Capital Markets Union,[28] published in June 2020, the group recommends that "[a]ll companies, irrespective of their size, should be allowed to implement a dual class share system", since "[t]his will help companies avoid being taken over by larger companies, gives owners a vested interest in maintaining company growth, and helps foster a long-term outlook for the company, while keeping listing an attractive funding option".[29]

1.3. The Hill Review's recommendations

Today, DCS-companies are not allowed to list on the LSE Premium listing segment according to the Financial Conduct Authority's Premium Listing Principles, which are a part of the LSE's listing rules.[30] While DCS-listings are allowed on the Alternative Investment Market (AIM) as well as on the Standard listing segment, the ban on DCS-companies in the Premium segment effectively made the LSE an international example

light of Deliveroo's spectacularly unsuccessful DCS-IPO (https://www.ft.com/content/72de7a53-e7af-4c6b-af0f-cfd1f8fcbdf5).

[24] See the draft for a fifth company law directive, COM/1972/887/FINAL.

[25] The reason for this failure seems to have been the difficulty in achieving consensus among the member states, and particularly the UK's resistance to the proposal, see Dine, *Implications for the United Kingdom of the EC Fifth Directive*, International & Comparative Law Quarterly 1989, vol. 38, pp. 547–559, Murphy, *The Amended Proposal for a Fifth Company Law Directive – Nihil Novum*, Houston Journal of International Law 1984, vol. 7, pp. 215–235, and Temple, *The Fifth Directive on the harmonization of company law*, Common Market Law Review 1975, vol. 12, pp. 345–368.

[26] See Hirte, *The Takeover Directive a Mini-Directive on the Structure of the Corporation: Is it a Trojan Horse*? European Company and Financial Law Review 2004, vol. 1, at p. 10, and Skog, *The European Union's Proposed Takeover Directive, the "Breakthrough" Rule and the Swedish System of Dual Class Common Stock*, European Business Law Review 2004, vol. 15 no, 6, pp. 294–305.

[27] See Proportionality between ownership and control in EU listed companies: External study commissioned by the European Commission, carried out by ISS, Sherman & Sterling and the ECGI.

[28] An expert group "composed of highly experienced industry executives and top international experts and scholars" instituted by the EU Commission to produce recommendations for the development of the EU capital market, see https://ec.europa.eu/info/publications/cmu-high-level-forum_en

[29] See p. 66 in the report, available at https://europa.eu/!gU33Hm

[30] See Premium Listing Principle 3–4 of the Financial Conduct Authority's Listings Principles and Premium Listings Principles.

of the "one share, on vote" principle, and DCS-listings in the UK have been rare.[31] Therefore, the recommendation of the Hill Review to allow DCS-listings is significant both for the LSE and for the corporate governance debate in general.

The recommendation in the review is to allow companies with DCS-structures to list in the Premium listing segment.[32] However, several conditions are recommended to be applied to such listings. These are:

1. A maximum duration of the DCS-structure of five years (i.e., a five-year sunset clause).
2. A limitation of the difference in voting rights between MV- and SV-shares to a ratio of 20:1.
3. Limitations on the transferability of the MV-shares. The shares must convert on transfer, with a few exceptions.
4. A limitation on who is allowed to hold the MV-shares to individuals who are company directors.
5. Limiting the matters that could be subject to weighted voting to (a) matters ensuring MV-holders remaining as directors and (b) blocking takeovers.

2. The arguments against DCS-structures

The stated purpose of the conditions for DCS-listings is to maintain "high corporate governance standards" while allowing DCS-companies in the Premium segment.[33] The implication of the purpose statement is that DCS-structures are detrimental to the quality of corporate governance. However, the reasoning behind this conclusion is not presented. The Hill Review only further states that the conditions are "designed to address the concerns of founder-led companies" and are intended to ensure that the holder of the MV-shares is engaged in the running of, and maintains an economic interest in, the company.[34] Given the long debate and controversies surrounding DCS-structures and the conditions suggested, it seems reasonable that the conditions are intended to strike a compromise between, on the one hand, "the need to make sure [the LSE] attract[s] companies in vital innovative growth sectors" by allowing DCS-listings (as phrased in the review), and on the other hand, the strong opposition to DCS-listings from, mostly, institutional investors.[35] So, let us therefore look at the arguments that have been made against allowing DCS-listings, and now more frequently to limit the circumstances under which DCS-listings should be allowed.[36]

[31] For the development around DCS-structures in the UK, see Braggion & Gianetti, *Changing corporate governance norms: Evidence from dual class shares in the UK,* Journal of Financial Intermediation 2019, vol. 37, pp. 15–27.
[32] See Hill Review p. 11 and 19, and pp. 56–62 for the considerations.
[33] See Hill Review p. 11.
[34] See Hill Review p. 21.
[35] See Burson & Jensen, *Institutional ownership of dual-class companies*, Journal of Financial Economic Policy 2021, vol. 13 issue 2, pp. 206–222, and Braggion & Gianetti, *Changing corporate governance norms: Evidence from dual class shares in the UK,* Journal of Financial Intermediation 2019, vol. 37, pp. 15–27, both documenting the negative view of institutional investors on DCS-structures.
[36] See subsection 4.1 on this shift in the DCS-debate, from opponents of DCS-structures arguing against listing to now arguing for strict listing conditions instead.

2.1. The main arguments

The DCS-debate is clearly at least in part an ideological one, where assumptions and sometimes also emotions run high, and where it seems very hard for those of different views to find common ground on how to even approach the matter. The debate has never been this ideological in Sweden, since there is at least one common ground that most are willing to accept as a paramount starting point in capital market regulation, since it does not hinge on accepting any economical or empirical assumptions, but solely rests in basic legal theory. This common ground is that since the blank slate starting point of private law regulation in Western jurisdictions is freedom of contract, businesses should be allowed to choose and structure their corporate form as they see fit, unless there are at least *somewhat solid reasons* that warrant government restrictions or interventions from regulators or gate keepers. Note that this is not a *Laissez-faire* argument against regulation (Sweden is, after all, not particularly famous for its *Laissez-faire* economy), but simply a starting point for any private law legislative debate: if a matter is to be regulated, then the burden of proof on *why* regulation is needed falls on the one claiming the need for a rule.[37] This might seem like a trivial statement or a platitude, but since it is not rare that an ethical or even moral claim is made that the one-share, one-vote structure is the fundamental "main rule" which some companies *deviate* from, this "baseline" is worth underlining: The starting point for the debate must reasonably be that companies (with the approval of its shareholders) should be free to utilize whatever share and capital structure they see fit, unless it is shown with some degree of certainty that a certain structure might be harmful in one way or another (and investors must of course be equally free not to invest in companies that are not structured to their liking).

And of course, a number of arguments have also been put forth on *why* DCS-structures are harmful and why DCS-companies therefore should not be allowed to list their shares. The main arguments can be summarized as follows:

1. DCS-structures damage company value,
2. DCS-structures undermine the market for corporate control, or phrased differently, lead to controlling shareholder or managerial entrenchment,
3. DCS-structures lead to increased tunneling of company assets to controlling shareholders or managers (increased agency costs), and
4. DCS-structures make it hard to hold managers accountable.

We will discuss, in order, to what extent these arguments are empirically substantiated, focusing on studies of companies and markets comparable to the UK.

2.2. DCS-structures damage company value

[37] On this topic, though not a point made in the article, cf. Epstein, *Notice and Freedom of Contract in the Law of servitudes,* Southern California Law Review 1982, vol. 6, pp. 1353–1368, Trebilcock, *The Limits of Freedom of Contract*, 1997, Harvard University Press, Weber, *Restricting the freedom of contract: a fundamental prohibition,* Yale Human Rights and Development Journal 2013, vol 16 issue 1, pp. 51–103 (with reference to, among others, Lochner v. New York).

The first argument, that *DCS-structures damage company value*, could also be viewed as the only argument against DCS-structures, encompassing all others, and has been put forth by almost all critical of DCS-structures. The reasoning behind the argument is often that holders of MV-shares are not incentivized to maximize the company's potential, due to the free-rider problem. The argument has been studied empirically at length in many ways,[38] and in several studies, empiricists have found evidence of DCS-structures damaging company value over time, that DCS-firms trade at lower valuations, and that DCS-companies offer lower returns: [39]

> Jarrell & Poulsen, *Dual-class recapitalizations as antitakeover mechanisms*, Journal of Financial Economics 1988, vol. 20, pp. 129–152, Maynes, Reallocation of voting rights and shareholders' wealth, Canadian Journal of Economics 1992, vol 25, pp. 538–563, Taylor & Whittred, S*ecurity design and the allocation of voting rights: Evidence from the Australian IPO market*, Journal of Corporate Finance 1998, vol. 4 no. 2, pp. 107–131 (not on DCS-firm value per se, but in their sample, DCS-firms have lower market to book ratios), Claessens, Djankov & Lang, *Disentangling the incentive and entrenchment effects of large shareholdings*, Journal of Finance 2002, vol. 57, pp. 2741-2771, Lins, *Equity ownership and firm value in emerging markets*, Journal of Financial and quantitative Analysis 2003, vol. 38, pp. 159–184, Pajuste, *Determinants and Consequences of the Unification of Dual-Class Shares*, ECB Working Paper 2005 no. 465 (showing increase in market to book ratios for DCS-company share class unifications), Smart, Thirumalai & Zutter, *What is in a vote? The short- and long-run impact of dual-class equity on IPO firm values,* Journal of Accounting and Economics 2008, vol. 45 no. 1, pp. 94–115 (showing no difference in DCS-company returns, though a valuation discount), Bennedsen & Nielsen, *The Principle of Proportional Ownership, Investor Protection and Firm Value in Western Europe*, ECGI - Finance Working Paper No. 134/2006, Villalonga & Amit, *How Do Family Ownership, Control and Management Affect Firm Value?*, Journal of Financial Economics 2006, vol. 80, pp. 385–417, Dittman & Ulbricht, *Timing and Wealth Effects of German Dual Class Stock Unifications*, European Financial Management 2008, vol. 14 no. 1, pp. 163–196, King & Santor, *Family values: Ownership structure, performance and capital structure of Canadian firms*, Journal of Banking & Finance 2008, vol. 32, pp. 2423–2432, Masulis, Wang, & Xie, *Agency problems at dual-class companies*, Journal of Finance 2009, vol. 64 no. 4, pp. 1697–1727, Smith, Amoako-Adu & Kalimipalli, *Concentrated control and corporate value: a comparative analysis of single and dual class structures in Canada*, Applied Financial Economics 2009, vol 19, pp. 955–974, Bennedsen & Nielsen, *Incentive and entrenchment effects in European ownership*, Journal of Banking & Finance 2010, vol. 34, 2212–2229, Gompers, Ishii & Metrick, *Extreme Governance: An Analysis of Dual-Class Firms in the United States*, The review of financial studies 2010, vol 23 no. 3, pp. 1051–1088, Ikäheimo, Puttonen & Ratilainen, *External corporate governance and performance: evidence from the Nordic countries*, The European Journal of Finance 2011, vol. 17 no. 5-6, pp. 427–450 (showing negative impact on evaluation of DCS-companies), Amoako-Adu, Baulkaran & Smith, *Dual class discount, and the channels of extraction of private benefits*, Advances in Financial Economics 2013, pp. 165–216, Baulkaran, *Management entrenchment and the valuation discount of dual class firms*, The Quarterly Review of Economics and Finance 2014, vol. 54 no. 1, pp. 70–81, Lauterbach & Pajuste, *The long-term valuation effects of voluntary dual class share unifications*, Journal of corporate finance 2015, vol. 31 pp. 171–185, Anderson, Ottolenghi & Reeb, *The dual class premium: a family affair*, Fox School of Business Research paper no. 2017–021 (finding that DCS-companies without family owners exhibit Tobin's Q values that are higher versus their single class peers, though the opposite

[38] Including, for instance, studies of value effects of dual-class recapitalizations or unifications, on the relation between market capitalization and asset value in DCS-firms compared to single class firms (most commonly through *Tobin's Q)*, on differences in stock returns between DCS-companies and matched single class companies, on relative operating performance, and on the effects of acquisitions.

[39] The studies referred were collected by using the search terms "dual-class shares", "dual class shares", "differential voting rights" and "multiple voting rights" in Scopus, ScienceDirect, Google Scholar and JSTOR, and we have included studies using data from the UK, the US, Canada, Western Europe, Israel, Brazil, and Australia for comparability with the UK. We also identified further studies through references in papers we found and cross-referenced with other similar literature reviews. We have also added a short comment on the results of the studies where they are ambiguous or not easily categorized.

when DCS-shares are held by family owners), and de Andrade, Bressan & Iquiapaza, D*ual class shares, board of directors' effectiveness and firm's market value: an empirical study*, Journal of Management & Governance 2017, vol. 21 no. 4, pp. 1053-1092.

However, one can find just as many studies showing the opposite, that DCS-structures have positive effects on company value, or that they have no effect:

Jog & Riding, *Price effects of dual-class shares*, Financial Analysis Journal 1986, vol 42, pp. 58–67, Partch, *The creation of a class of limited voting stock and shareholder wealth*, Journal of Financial Economics 1987, vol. 18, pp. 313-340, concluding that "there is no evidence that current shareholders are harmed by the creation of limited voting common stock", Ang & Megginson, *Restricted voting shares, ownership structure, and the market value of dual-class firms*, The Journal of Financial Research 1989, vol. 12 no. 4, pp. 301–318, Cornett & Vetsuypens, *Voting Rights and Shareholder Wealth*, *The issuance of Limited Voting Common Stock*, Managerial and Decision Economics 1989, vol. 10, pp. 175–188 (finding that the "data do not lend support to the hypothesis that the concentration of voting power with incumbent management is detrimental to shareholder interests"), Lehn, Netter & Poulsen, *Consolidating corporate control: dual-class recapitalizations versus leveraged buyouts*, Journal of Financial Economics 1990, vol. 27 no. 2, pp. 557-580, Foerster & Porter, *Dual class shares: are there returns differences?* Journal of Business Finance & Accounting 1993, vol. 20 no. 6, pp. 893-903, Mikkelson & Partch, *The consequences of unbundling managers' voting rights and equity claims*, Journal of Corporate Finance 1994, vol. 1, pp. 175–199, Böhmer, Sanger & Varshney, *The Effect of Consolidated Control on Firm Performance: The Case of Dual-class IPOs*, in Lewis, *Empirical issues in raising equity capital*, Research Collection Lee Kong Chian School of Business 1995, Kryzanowski & Zhang, *Introduction of dual-class shares: Further evidence on Canadian pro-rata distributions*, International Review of Financial Analysis 1995, vol. 4 no. 1, pp. 67–79, Kunz, *Simplification of equity capital structure and market value*, Financial Markets and Portfolio Management 2002, vol. 16 no. 1, pp. 30–52, Smart & Zutter, *Control as a motivation for underpricing: a comparison of dual and single-class IPOs*, Journal of Financial Economics 2003, vol 69 no. 1, pp. 85–110, Bauguess, *Recontracting Ownership and Control: The Effects of Differential Voting Rights after Dual Class Recapitalization*, PhD thesis at Arizona State University 2004, Pajuste, *Determinants and Consequences of the Unification of Dual-Class Shares*, ECB Working Paper 2005, no. 465 (showing no change in operating performance after share class unification in DCS-firms), Ben-Amar & André, *Separation of Ownership from Control and Acquiring Firm Performance: The Case of Family Ownership in Canada*, Journal of Business Finance & Accounting 2006, vol. 33, no. 3-4, pp. 517–543 (studying the effects of acquisitions), Dimitriov & Jain, *Recapitalization of one class of common stock into dual-class: Growth and long-run stock returns*, Journal of Corporate Finance 2006, vol. 12, pp. 342–366, Smart, Thirumalai & Zutter, *What is in a vote? The short- and long-run impact of dual-class equity on IPO firm values*, Journal of Accounting and Economics 2008, vol. 45 no. 1, pp. 94–115 (showing a valuation discount but on the other hand no difference in DCS-company returns, and conclude that "there is at best only scant evidence suggesting that duals exhibit abnormally low operating performance"), Anderson, Duru, & Reeb, *Founders, heirs, and corporate opacity in the United States*, Journal of Financial Economics 2009, vol. 92, pp. 205–222 (finding that DCS-structures "appear to be associated with better firm performance" "in transparent founder or heir firms"), Arugaslan, Cook & Kieschnick, *On the decision to go public with dual class stock*, Journal of Corporate Finance 2010, vol. 16 no. 2, pp. 170–181, Hoi & Robin, Agency *Conflicts, Controlling Owner Proximity, and Firm Value: An Analysis of Dual-Class Firms in the United States*, Corporate Governance: an International Review 2010, vol 18 no. 2, pp. 124–135, Chemmanur, Paeglis & Simonyan, *Management quality and antitakeover provisions*, Journal of Law & Economics 2011, vol. 54 no. 3, pp. 651–692, Ikäheimo, Puttonen & Ratilainen, *External corporate governance and performance: evidence from the Nordic countries*, The European Journal of Finance 2011, vol. 17 no. 5-6, pp. 427–450 (showing no effect of DCS-structures on stock returns, but positive effect on operating performance), Lauterbach & Yafeh, *Long term changes in voting power and control structure following the unification of dual class shares*, Journal of Corporate Finance 2011, vol. 17 no. 2, pp. 215–228, Bauguess, Slovin, Sushka, *Large shareholder diversification, corporate risk taking, and the benefits of changing to differential voting rights*, Journal of Banking & Finance 2012, vol. 36 no. 4, pp. 1244–1253, Jordan, Liu & Wu, *Corporate payout policy in dual class firms*, Journal of Corporate Finance 2013, vol 26, pp. 1–19, Nüesch, *Dual-class shares, external financing needs, and firm performance*, Journal of Management and Governance 2016, vol 20, no. 3, pp. 525–551, Anderson, Ottolenghi & Reeb, *The dual class premium: a family affair*, Fox School of Business Research paper no. 2017–021 (finding that DCS-companies without family owners exhibit Tobin's Q values that are higher versus their single class peers, though the opposite when DCS-shares are held by family owners), Morey, *Multi-class stock and firm value*, CII publication, May 2017, Cremers, Lauterbach & Pajuste, *The Life-Cycle of Dual Class Firms*, ECGI Working Paper N° 550/2018 (showing higher valuation for DCS-firms early in the life-cycle), Dimitri Melas, *Putting the Spotlight on Spotify: Why Have Stocks with Unequal Voting Rights Outperformed?* MSCI: GLOBAL INVESTING, April 3, 2018) (available at https://www.msci.com/www/blog-posts/putting-the-spotlight-on/0898078592), Kim & Michaely, *Sticking around Too Long? Dynamics of the Benefits of Dual-Class Voting*, ECGI Finance Working Paper No. 590/2019, and Anh, Fisch, Patatoukas & Davidoff Solomon, *Synthetic Governance*, ECGI Finance Working Paper no. 693/2020.

As far as we are aware, all meta studies that have been carried out, including the rigorous research project carried out by ECGI on behalf of the European Commission, have shown that **there is no conclusive evidence on the effects of DCS-structures on company value in either direction**.[40] From a theoretical and scientific point of view, the argument (or, in other words, hypothesis), that DCS-structures *in general* damage company value, must therefore, at this point, be viewed as unsupported. Available data *does* show that DCS-structures *in some cases* seem to have a negative effect on company value, but the same data also shows that *in other cases*, DCS-structures have the opposite, positive, effect on company value. A call for prohibiting DCS-structures based on the best available understanding of the effects of DCS-structures on company value can therefore not be made. A call could reasonably be made for prohibiting DCS-structures in the cases when it has a value-destroying effect, but since we, at this point, do not know which cases these are, further research is needed before limiting the use of DCS-structures with reference to its effect on corporate market value.[41]

2.3. DCS-structures undermine the market for corporate control

The second argument often made in the DCS-debate is that *DCS-structures undermine the market for corporate control*. Another way of putting it is that DCS-structures lead to managerial or controlling shareholder entrenchment.[42] Such arguments are often targeted at specific individuals, such as Mark Zuckerberg or Larry Page, or as a critique against family ownership.[43]

[40] See *Proportionality between ownership and control in EU listed companies: External study commissioned by the European Commission*, carried out by ISS, Sherman & Sterling and the ECGI (available with related material at ecgi.global/content/one-share-one-vote-2007) and Adams & Ferreira, *One Share-One Vote – The Empirical Evidence*, Review of Finance 2008, vol. 12, pp. 51–91. See, also, mostly since then, Fisch & Davidoff Solomon, *The Problem of Sunsets*, Boston University Law Review 2019, vol. 99 pp. 1057–1094, Gurrea-Martínez, *Theory, Evidence and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate*, Singapore Management University School of Law Research Paper 2019 no. 32, Reddy, *More than Meets the Eye: Reassessing the Empirical Evidence on US Dual-Class Stock*, University of Cambridge Faculty of Law Research Paper No. 20/2020, forthcoming in University of Pennsylvania Journal of Business Law (concluding "that although dual-class firms are generally valued less than similar one-share, one-vote firms, they perform as well as, and, in many cases, outperform, such firms from the perspective of operating performance and stock returns"), Hossain & Kryzanowski, *A review of the literature on dual-class firms*, Managerial Finance 2019, vol. 45 no. 9, pp. 1199–1218 (concluding that "The literature arrives at no consensus on the benefits/drawbacks of" DCS-structures), Shen, *The anatomy of dual class share structures: A comparative perspective,* Hong Kong Law Journal 2016, vol 46, pp. 477–509, Pacces, *Featuring Control Power*, RILE 2007 (almost the entire dissertation of some 800 pages is highly relevant to the debate, but see in particular the conclusions at pp. 757–759), and Rydqvist, *Dual-class shares: a review*, Oxford Review of Economic Policy 1992, vol. 8 no. 3, pp. 45–57.

[41] One could of course argue that even if evidence is presented that shows negative effects market value for companies with DCS-structures, price discovery would sort out and "punish" these companies. This line of arguing is however based on the supremacy of freedom of contract over the goal of growth and societal welfare development, which we do not seek to address here, and which we at this point in time also think is a premature discussion to focus on.

[42] See most prominently Grossman & Hart, *One share-one vote and the market for corporate control*, Journal of Financial Economics 1988, vol. 20, pp. 175–202, Ruback, *Coercive dual-class exchange offers*, Journal of Financial Economics 1988, vol 20, pp. 153–173, Burkart, Gromb & Panunzi, W*hy higher takeover premia protect minority shareholders*, Journal of Political Economy 1998, vol. 106 no. 1, pp. 172-204, Harris & Raviv, *Corporate Governance: Voting rights and majority rules*, Journal of Financial Economics 1988, vol 20, pp. 203–235, and Bebchuk, Kraakman, & Triantis, *Stock Pyramids, Cross-Ownership and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control From Cash-Flow Rights,* in Morck (ed.), *Concentrated Corporate Ownership* 2000, pp. 445–460.

[43] See for instance, Shari Redstone in the FT View, May 15 2018, *A dysfunctional family reunion at CBS/Viacom.*

The law and economics framework of the market for corporate control in essence states that when a listed company is poorly managed, and the underperformance is identified by the market, the company will be the target of a takeover offer, in which the shares will be acquired by someone better suited to oversee the company and change the management accordingly.[44] The argument claims that DCS-structures will hamper this disciplinary market function, since holding multiple voting shares will protect a controlling shareholder from a "hostile" takeover bid. While we do not argue that, in individual cases, this might indeed be true and a problem, this cannot be enough to take a stance against DCS-structures from a policy perspective.[45] The question is if DCS-structures in general hinder the proper workings of the market for corporate control. And here, the evidence seems quite clear. If DCS-structures were an obstacle to takeovers, one would expect such stock to be significantly less common among takeover targets than among listed companies in general. Available data does not support this. In a study carried out in Sweden, with one of the most active takeover-markets in the world that also have a high percent of DCS-companies, the conclusion was that among the 245 Swedish listed companies that were subject to takeovers during the 13 year measuring period 64 percent of the acquired companies (157) were DCS-companies, compared to how 69 percent of all listed companies during the same period were DCS-companies.[46] Similar results have been found in several studies.[47] Though other studies have shown the opposite,[48] the conclusion is again that available

[44] See foremost Manne, *Mergers and the Market for Corporate Control*, Journal of Political Economy 1965, vol. 73 no. 2, pp. 110–120.

[45] In the cases of big tech, the legal problems (if there are any, which we neither intend nor are qualified to answer), rather seems to be of anti-trust character, cf. Srinivasan, *The Antitrust Case against Facebook: A Monopolist's Journey Towards Pervasive Surveillance in Spite of Consumers' Preference for Privacy*, Berkeley Business Law Journal 2019, vol. 16 no. 1, pp. 39–101, and Khan, *Amazon's Antitrust Paradox*, Yale Law Journal 2017, vol 126 issue 3, pp. 710-805.

[46] See Skog, *The European Union's Proposed Takeover Directive, the "Breakthrough" Rule and the Swedish System of Dual Class Common Stock*, European Business Law Review 2004, vol. 15 no, 6, pp. 294–305.

[47] See for instance Comment & Schwert, Poison or placebo? *Evidence on the deterrence and wealth effects of modern anti-takeover measures*, Journal of Financial Economics 1995, vol. 39 no. 1, pp. 3 – 43, Fields, *Control considerations of newly public firms: The implementation of antitakeover provisions and dual class shares before the IPO*, Working paper, Penn State University 1999, Amoako-Adu & Smith, *Dual class firms: Capitalization, ownership structure and recapitalization back into single class*, Journal of Banking & Finance 2001, vol. 25 op. 1083–1111, Arugaslan, Cook & Kieschnick, *On the decision to go public with dual class stock*, Journal of Corporate Finance 2010, vol 16 no. 2, pp. 170-181, Bauguess, Slovin & Sushka, *Large shareholder diversification, corporate risk taking, and the benefits of changing to differential voting rights*, Journal of Banking & Finance 2012, vol. 36 no. 4, pp. 1244-1253 (even finding that DCS-companies are taken over more often, and with higher premiums, than single class firms), and Bauguess, *Recontracting Ownership and Control: The Effects of Differential Voting Rights after Dual Class Recapitalization*, PhD thesis at Arizona State University 2004 (finding "no evidence to support the hypothesis that" DCS-structures are adopted "as an anti-takeover device", and that, to the contrary, "firms that conduct dual class recapitalizations are acquired at a greater rate and receive higher takeover premiums than benchmark firms with a single class share structure").

[48] See Mikkelson & Partch, *The consequences of unbundling managers' voting rights and equity claims*, Journal of Corporate Finance 1994, vol. 1, pp. 175 – 199, Smart & Zutter, *Control as a motivation for underpricing: a comparison of dual and single-class IPOs*, Journal of Financial Economics 2003, vol 69, no. 1, pp. 85-110, Holmen & Nivorozhkin, *The Impact of Dual Class Shares on Takeover Risk and the Market for Corporate Control*, Applied Financial Economics 2007, vol.17 no. 10, pp. 785-804, Baulkaran, *Management entrenchment and the valuation discount of dual class firms*, The Quarterly Review of Economics and Finance 2014, vol. 54 no. 1, pp. 70-81, Jordan, Kim & Liu, *Growth opportunities, short-term market pressure, and dual-class share structure*, Journal of Corporate Finance 2016, vol. 4, pp. 304-328, and Cremers, Lauterbach & Pajuste, *The Life-Cycle of Dual Class Firms*, ECGI Working Paper N° 550/2018.

data does not offer more support for that DCS-structures have negative effects on takeover frequency or the market for corporate control than for the opposite.[49]

In addition, in the EU, takeovers, both friendly and hostile, have traditionally been viewed as positive and value creating (generally thought to be, on aggregate, Pareto- or Kaldor-Hicks efficient), and mechanisms hindering takeovers have been negatively viewed. In that context, DCS-structures have been argued to hamper takeover activity by DCS-critics.[50] Today, we can see a slight shift in the attitude on takeovers, with an increasing acceptance of nationalism and member states and companies hindering unwanted (foreign) takeovers.[51] In this new context, DCS-structures are now sometimes instead criticized as *inefficient as a protection against hostile takeovers*, and it is instead said that DCS-structures "may actually increase the risk of a creeping takeover and, in the case of a multi-class share structure, incentivize the controlling shareholder to sell its stake at a premium to a potential acquirer".[52] While this shift does seem a bit opportunistic, the new argument is still equally rebuked by the fact that DCS-structures do not seem to have any effects on the market for corporate control – in either direction.

2.4. DCS-structures lead to increased agency costs

The third principal argument often made in the DCS-debate is that *DCS-structures lead to increased shirking and tunneling of company assets to controlling shareholders*, or in other words that DCS-structures exacerbates principal-agent risks for investors since it skews the alignment of ownership and voting rights.[53] One could of course argue that since DCS-structures do not seem to have a negative effect on company value, as discussed above, this seems implausible, since decreased company value should be the consequence of increased agency costs. Still, the argument does not hinge on that the market reacts to tunneling, only that it occurs with higher frequency in DCS-companies than in others. Such occurrences are of course hard to measure directly, since tunneling is by definition a covert activity. However,

[49] The same conclusion is reached in the literature review by Reddy, concluding that "the empirical evidence is inconclusive as to whether takeovers of dual-class firms are in fact less prevalent than OSOV [one share, one vote] firms" (Reddy, *More than Meets the Eye: Reassessing the Empirical Evidence on US Dual-Class Stock*, University of Cambridge Faculty of Law Research Paper No. 20/2020, forthcoming in University of Pennsylvania Journal of Business Law, at p. 29), and, as it seems, in Adams & Ferreira, *One Share-One Vote- The Empirical Evidence*, Review of Finance 2008, vol. 12, at p. 60.

[50] A critique starting with Grossman & Hart, *One share-one vote and the market for corporate control*, Journal of Financial Economics 1988, vol. 20, pp. 175–202, and today, DCS-structures are often described as "an extreme example of anti-takeover provisions" (cf. Cremers, Lauterbach & Pajuste, *The Life-Cycle of Dual Class Firms*, ECGI Working Paper N° 550/2018 at p. 2).

[51] The foreign direct investment regime is an example of this line of reasoning.

[52] blackrock.com/corporate/literature/whitepaper/blackrock-the-debate-on-differentiated-voting-rights.pdf

[53] See for instance DeAngelo & Rice, *Anti-Takeover charter amendments and stockholder wealth,* Journal of Financial Economics 1983, vol. 11 pp. 329–360, Jarrell & Poulsen, *Dual-class recapitalizations as antitakeover mechanisms*, Journal of Financial Economics 1988, vol. 20, pp. 129–152, Ruback, *Coercive dual-class exchange offers*, Journal of Financial Economics 1988, vol 20 pp. 153–173, Kang, Lee, Lee & Park, *The Association between related-party transactions and control-ownership wedge: Evidence from Korea*, Pacific-Basin Finance Journal 2014, vol 29, pp. 272–296, Bebchuk, Kraakman, & Triantis, *Stock Pyramids, Cross-Ownership and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control From Cash-Flow Rights,* in Morck (ed.), *Concentrated Corporate Ownership* 2000, pp. 445–460, and Masulis, Wang, & Xie, *Agency problems at dual-class companies*, Journal of Finance 2009, vol 64 nr 4, pp. 1697–1727.

economists have used control premiums paid for control blocks as well as MV-shares as a proxy measure, the logic being that premiums paid for controlling shares as compared to the price paid for non-controlling shares are viewed as a sign of the private benefits of control that can be siphoned.[54] If DCS-structures lead to increased tunneling of company assets, one would expect that control premiums would be high in markets where DCS-structures are prevalent. Tatiana Nenova's famous study *The value of corporate voting rights and control: A cross-country analysis* shows high control premiums in some countries where DCS-listings are frequent, including Brazil, Italy, and Mexico. However, the study also shows that the control premium for MV-shares is very low in the Scandinavian countries, including Sweden, where DCS-listings are common, and the same goes for Canada – also a market with plenty of DCS-listings.[55] Considering the argument being made – that DCS-structures lead to increased tunneling of company assets to controlling shareholders – again *the argument does not hold true in general*. While there are examples of markets where DCS-structures are prevalent and where agency costs seem heightened (at least by proxy), causality between DCS-structures and the latter is not shown.[56] Furthermore, studies comparing stock returns of DCS-companies as compared to single class companies fairly consistently show *higher* returns in DCS-firms, which can hardly be conciliated with disproportionate agency costs,[57] and the same goes for studies on DCS-company profitability.[58] To conclude, the causality seems to be between the general strength of minority protection in company law as well as in takeover law, as

[54] Though other measurements, such as discounts (Tobin's Q), financial performance, return on firm investments, and level of CEO-pay, are also used, cf. Henrik Cronqvist and Mattias Nilsson, *Agency Costs of Controlling Minority Shareholders*, Journal of Financial and Quantitative Analysis 2003, vol 38, pp. 695–719, Masulis, Wang, & Xie, *Agency problems at dual-class companies*, Journal of Finance 2009, vol 64 nr 4, pp. 1697–1727, de Andrade, Bressan & Iquiapaza, *Dual class shares, board of directors' effectiveness and firm's market value: an empirical study*, Journal of Management & Governance 2017, Vol. 21 no. 4, pp. 1053-1092, Cieślak, *Agency conflicts, executive compensation regulations and CEO pay-performance sensitivity*: evidence from Sweden, Journal of Management and Governance, vol 22 no. 3, pp. 535–563, and Bauguess, Recontracting Ownership and Control: *The Effects of Differential Voting Rights after Dual Class Recapitalization*, PhD thesis at Arizona State University 2004, in particular pp. 88–110 (finding "no evidence to support the hypothesis that these [sample] firms adopt a dual class share structure […] to expropriate wealth from minority shareholders").

[55] Nenova, The value of corporate voting rights and control: A cross-country analysis, Journal of Financial Economics 2003, vol. 68, pp. 325–351.

[56] Indeed, while there are studies supporting the argument (see the first listing of studies in subsection 2.2), there are, again, plenty of studies showing the opposite: Ben-Amar & André, *Separation of Ownership from Control and Acquiring Firm Performance*: *The Case of Family Ownership in Canada*, Journal of Business Finance and Accounting 2006, vol. 33, no. 3/4, pp. 517–543, Cheng, Mpundu & Wan, *Investment efficiency: Dual-class vs. Single-class firms*, Global Finance Journal 2020, vol. 45, 100477, Jordan, Liu & Wu, *Corporate payout policy in dual class firms*, Journal of Corporate Finance 2013, vol 26, pp. 1–19, and Banerjee & Masulis, *Ownership, Investment and Governance: The Costs and Benefits of Dual Class Shares,* ECGI - Finance Working Paper No. 352/2013, finding that "that dual-class shares can be a solution to agency conflicts rather than a result of agency conflicts" (see further the second listing of studies in subsection 2.2).

[57] We have not found any studies on the stock returns of DCS-firms showing abnormal negative returns, but several showing the opposite (cf. Reddy, *More than Meets the Eye: Reassessing the Empirical Evidence on US Dual-Class Stock*, University of Cambridge Faculty of Law Research Paper No. 20/2020, forthcoming in University of Pennsylvania Journal of Business Law, pp. 19–22 for a discussion on the US studies on DCS-share returns).

[58] For a summary of eleven studies on profitability in US DCS-companies, see Reddy, *More than Meets the Eye: Reassessing the Empirical Evidence on US Dual-Class Stock*, University of Cambridge Faculty of Law Research Paper No. 20/2020, forthcoming in University of Pennsylvania Journal of Business Law, pp. 22–27, concluding that they "either showed that dual-class firms outperform matched OSOV ["one share, one vote"] firms by at least one performance measure, […] or showed no difference in operating performance between dual-class and OSOV firms."

the countries with high control premiums are also judged to have weak protection of minority shareholders, which we shall return to.[59]

2.5. DCS-structures make it hard to hold managers accountable

The fourth and final argument against DCS-listings often put forth is that *DCS-structures make it impossible to hold managers accountable*.[60] Again, this is an argument that is very hard to test the validity of, and studies have yielded diverging results.[61] Given that there is no clear evidence of DCS-companies generally underperforming, of increased risk of tunneling or increased agency costs in DCS-firms, and perhaps most importantly of DCS-impacting the market for corporate control, as discussed above, it does at least not seem like DCS-structures leads to increases in unwanted behaviours that managers should be held accountable for. In addition, one of the main problems of corporate governance is of course how to make managers accountable to shareholders, i.e., decrease the risk of managerial entrenchment which the power imbalance between managers and dispersed shareholders can result in.[62] For this accountability-problem, DCS-structures constitute a potential solution, since it allows shareholders to hold significant influence over the management with decreased costs for under-diversification and decreased liquidity that holdings of large share blocks entails.[63] However, if DCS-structures decrease management insulation, one can argue that the accountability problem shifts from the *shareholder – manager* relation to the *major shareholder – minor*

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[59] See Nenova, *The value of corporate voting rights and control: A cross-country analysis*, Journal of Financial Economics 2003, vol 68, at p. 345. See also Doidge, *U.S. cross-listings and the private benefits of control: evidence from dual-class firms*, Journal of Financial Economics 2004, vol 72 no. 3, pp. 519–553 (concluding that differences in voting premiums decreases when minority shareholder protection improves), Amoako-Adu, Baulkaran & Smith, *Dual class discount, and the channels of extraction of private benefits*, Advances in Financial Economics 2013, vol. 16, pp. 165–216 (finding “that the discount in the value of dual class shares in relation to the value of closely controlled single class company shares is directly related to the channels through which controlling shareholder-managers can extract private benefits”), and da Silva & Subrahmanyam, *Dual-class premium, corporate governance, and the mandatory bid rule: Evidence from the Brazilian stock market*, Journal of Corporate Finance 2007, vol. 13 no. 1, pp. 1–24 (finding that “the DCS-premium is inversely related to an index designed to capture the firm's corporate governance practices. The results suggest that expropriations of minority shareholders are more likely at firms with poor corporate governance provisions and weak takeover rules relating to mandatory bids”).

[60] Cf. Holmen & Nivorozhkin, *The Impact of Dual Class Shares on Takeover Risk and the Market for Corporate Control*, Applied Financial Economics 2007, vol.17 no. 10, pp. 785–804, Baulkaran, *Management entrenchment and the valuation discount of dual class firms*, The Quarterly Review of Economics and Finance 2014, vol. 54 no. 1, pp. 70–81, Baran & Forst, *Disproportionate insider control and board of director characteristics*, Journal of Corporate Finance 2015, vol 35, pp. 62–80, and Shen, *The anatomy of dual class share structures: A comparative perspective,* Hong Kong Law Journal 2016, vol 46, pp. 477–509.

[61] Cf. Dimitriov & Jain, Recapitalization of one class of common stock into dual-class: Growth and long-run stock returns, Journal of Corporate Finance 2006, vol. 12, pp. 342 – 366 and Comment & Schwert, Poison or placebo? Evidence on the deterrence and wealth effects of modern anti-takeover measures, Journal of Financial Economics 1995, vol. 39 no. 1, pp. 3 – 43. See also the literature cited in subsection 2.3.

[62] See for instance Jensen & Meckling, *Theory of the firm: Managerial behaviour, agency costs and ownership structure*, Journal of Financial Economics 1976, vol. 3 no. 4, pp. 305–360, Fama, *Agency problems and the theory of the firm*, Journal of Political Economy 1980, vol. 88, pp. 288–307, and Jensen, *Agency costs of free cash flow, corporate finance, and takeovers*, American Economic Review 1986, vol. 76, pp. 323–339.

[63] See for instance Gilson, *Controlling shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, Harvard Law Review 2006, vol. 119 no. 6, pp. 1641–1679, Gilson, *The Nordic Model in an International Perspective: The Role of Ownership*, in Lekvall (ed.), The Nordic Corporate Governance Model, SNS Publishing 2014, and Columbia Law & Economics Working Paper No. 517, Lekvall (ed.), *The Nordic Corporate Governance Model*, SNS Publishing 2014 and Carlsson, *The benefits of Active Ownership, Corporate Governance*, The international Journal of business in society 2003, vol. 3 no.s 2, pp. 6–31.

shareholder relation (i.e., *Quis custodiet ipsos custodes?*).[64] But regardless how the argument is phrased, the fact is still that we do not see systematic evidence of DCS-companies underperforming or of increased tunneling in DCS-companies, which should be the case if DCS-structures systematically caused "agency problems" between majority and minority shareholders.

2.6. Conclusion: the empirical evidence does not support hindering DCS-listings

Above, we have addressed the main arguments presented against DCS-listings, which we also assume to have influenced the recommendations of the Hill Review, and shown that they simply are not supported by the empirical evidence. With this, we do however not mean to say that there are no drawbacks with DCS-structures. Though DCS-structures might be useful for some companies in some regards, as economist Thomas Sowell eloquently phrased it, "There are no solutions, only trade-offs".[65] The matter of debate here is, however, not if DCS-structures is a solution to any particular problem, or if DCS-structures comes with governance problems, *but if these problems are so severe that DCS-companies should not even be allowed to list their shares at stock markets*. *And with regards to this matter, we claim that there are not only no* compelling *reasons to stop DCS-listings, but, in fact, no clearly empirically supported reasons at all*. All governance structures have drawbacks. Yet, there is no general demand to prohibit listings of companies with staggered board structures,[66] poison pills,[67] voting caps, or other management insulating mechanisms, or companies with other control enhancement mechanism in place, for instance corporate pyramids. The drawbacks of DCS-structures are not unique for this particular form of control enhancement mechanism. They are even present in companies without DCS-structures or any other control enhancement mechanism, and therefore it does not make any sense to ban DCS-structures in particular – the situation is, as we have shown, much more complex than that. Adding to the complexity, we have here only touched on the broadest questions concerning DCS-structures, and when you drill into the details, you will quickly find an even more complex picture. You will for instance find evidence "that the managers from dual class firms are less likely to manipulate earnings compared to those from single class firms",[68] but also that management in DCS-companies are paid significantly more through equity based incentive programs.[69] Next, you will find evidence that "the quality of financial reports, as measured by their

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[64] Gilson & Gordon (2003), *Controlling Controlling Shareholders*, University of Pennsylvania Law Review, vol. 152 no. 2, pp. 785-843.

[65] Sowell, *The Vision of the Anointed*, Basic Books 1996, pp. 113.

[66] Which have been shown to have negative effect company value in some studies, (see for instance Bebchuck & Cohen, *The costs of entrenched boards*, Journal of Financial Economics 2005, vol. 78 pp. 409–433), but not in others (for instance Cremers, Litov & Sepe*, Staggered boards and long-term firm value, revisited,* Journal of Financial Economics 2017, vol. 126 no. 2, pp. 422–444).

[67] Also shown to have negative effects on company values in some studies, while positive in others (see Adams & Ferreira, *One Share-One Vote- The Empirical Evidence*, Review of Finance 2008, vol. 12, at pp. 69–70.

[68] Nguyen, *The Impact of Dual Class Structure on Earnings Management Activities*, Journal of Business Finance & Accounting 2010, vol 37 no. 3/4, pp. 456–485.

[69] Amoako-Adu, Baulkaran & Smith, Executive compensation in firms with concentrated control: The impact of dual class structure and family management, Journal of Corporate Finance 2011, vol 17 no. 5, pp.1580–1594.

ability to predict change in future earnings, is higher for DCS-companies than for their single-class counterparts",[70] but that they, when things go wrong, "are less timely in recognizing bad news in reported earnings".[71] Then there is evidence that DCS-companies tend to have more growth opportunities (higher sales growth and R&D intensity) and face less-short term market pressure,[72] while also making more value-destroying acquisitions.[73] After that, you might stumble on evidence *that* DCS-companies engage in tax avoidance less than other companies,[74] *but that* they have less experienced boards,[75] *that* DCS-companies are more innovative, *but not* in all firms,[76] *that* DCS-companies deploy more of several key board-related provisions associated with stronger governance, *but that* they exhibit lower board and board committee independence.[77] And so on. Furthermore, when trying to triangulate on these issues, you will go on to find opposing evidence in almost all instances.[78] And here, we have only focused on the empirical literature, leaving out the vast theoretical work made by many of the world's best scholars (and which is not less incongruous).[79]

But why, then, does DCS-structure draw so much criticism? Although we have followed the debate closely, we quite frankly do not know, a befuddlement that seems to be shared by others.[80] For instance, based on the study that the ECGI, ISS and Shearman & Stearling carried out on behalf of the European Commission on DCS-structures, the Commission concluded that "there is no conclusive evidence of a causal link between deviations from the proportionality principle and either the economic performance of listed companies or their governance. However, there is some evidence that [institutional] investors perceive these mechanisms negatively".[81] What the reason is for this negative perception is, however, not clear,[82] though it is clear that this view

[70] Solomon, Palas & Baranes, *The Quality of Information Provided by Dual-Class Firm*, American Business Law Journal 2020, vol. 57 no. 3, pp. 443–486.
[71] Khurana, Raman & Wang, *Weakened outside shareholder rights in dual-class firms and timely loss reporting*, Journal of Contemporary Accounting & Economics 2013, vol. 9 no 2, pp. 203–220.
[72] Jordan, Kim & Liu, Growth opportunities, short-term market pressure, and dual-class share structure, Journal of Corporate Finance 2016, vol. 41, pp. 304–328.
[73] Masulis, Wang, & Xie, *Agency problems at dual-class companies*, Journal of Finance 2009, vol. 64 nr. 4, pp. 1697–1727.
[74] McGuire, *Dual Class Ownership and Tax Avoidance*, The Accounting Review 2014, vol. 89 no. 4, pp. 1487–1516, finding "that the extent of tax avoidance declines as the difference between voting rights and cash flow rights increases".
[75] Baran & Forst, *Disproportionate insider control and board of director characteristics*, Journal of Corporate Finance 2015, vol. 35, pp. 62–80.
[76] Cao, Leng, Goh & Malatesta, *The innovation effect of dual-class shares: New evidence from US firms*, Economic Modelling 2020, vol. 91, pp. 347-357.
[77] Li & Zaitats, *Corporate governance and firm value at dual class firms*, Review of Financial Economics 2018, vol. 36 no. 1, pp. 47–71.
[78] See for instance Adhikari, Nguyen & Sutton, *The power of control: the acquisition decisions of newly public dual-class firms*, Review of Quantitative Finance and Accounting 2018, vol. 51 no. 1, pp. 113–138, finding that "newly-public dual-class acquirers perform better in the long-run".
[79] We will not go into the theoretical literature here, but for such overviews, see for instance, Burkhart & Lee, *The One Share – One Vote Debate: a Theoretical Perspective,* ECGI Finance Working Paper No. 176/2007.
[80] See for instance Anh, Fisch, Patatoukas, and Davidoff Solomon, *Synthetic Governance*, ECGI Finance Working Paper N° 693/2020, who "find this debate over corporate governance puzzling".
[81] See Commission press release IP/07/751 of June 4, 2007.
[82] See chapter five of the study, Report on the proportionality principle in the European Union, available at *ecgi.global/sites/default/files/final_report_en.pdf*.

has not changed.[83] Regardless, the arguments usually made against DCS-listings neither clearly support stopping DCS-companies from listing, nor that it is a better governance structure then "one share, one vote".

3. The Swedish regulation of DCS-listings

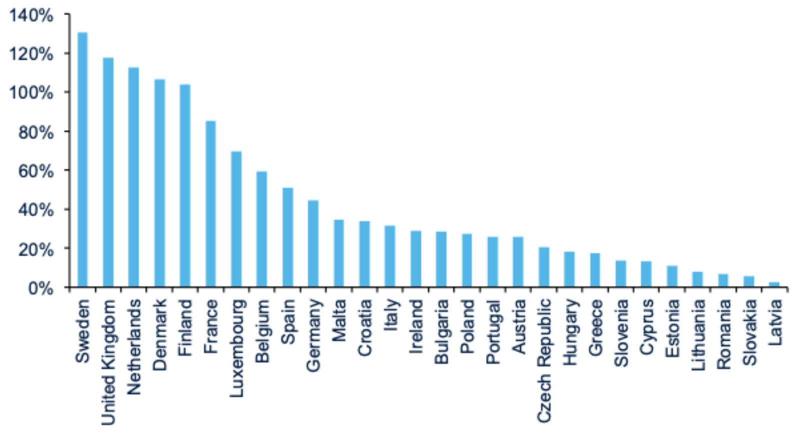
The main conclusion in the previous section is that there are no compelling reasons to stop DCS-companies from listing their shares, based on available empirical knowledge. This should not be a controversial conclusion, since it is the same as in most rigorous research oversights on the topic. However, *that is not the same as saying that DCS-listings* (or rather, DCS-structures regardless of the company being listed or not) *do not require specific regulation*. In this section, we discuss the Swedish regulation and experience of DCS-listings as an example of a market with a long practice of allowing DCS-listings, while at the same time having a strong capital market with few corporate governance issues.

3.1. A well-performing stock market, high corporate governance standards and many listed DCS-companies

At the time of writing, Sweden has 919 listed companies on its three stock markets, with a combined market value of 1.1 trillion pounds.[84] And the IPO market is going strong: according to analysts, 2021 will be an IPO record year, with a dozen IPOs expected and with a combined value of 17 billion pounds.[85] This makes Sweden stick out as most Western public markets have seen a decline in the number and value of listed companies. According to a recent OECD study, Sweden had the 7th largest market capitalisation in the EU and 15th largest in the world in 2017.[86] According to the Oxera Report *Primary and secondary equity markets in the EU* (which the Hill Review draws heavily upon with regards to DCS-listings), Sweden also had the highest market capitalisation in relation to GDP in 2018 in the EU (fig. 1), as well as the highest net-listings in the period 2010-2018 (fig. 2).[87]

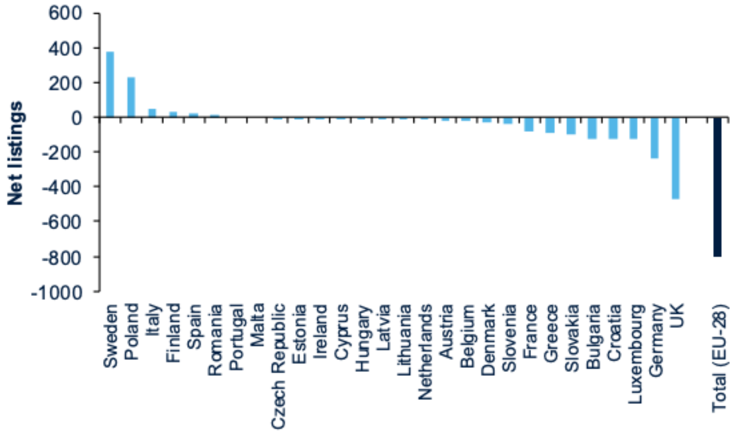
Figure 1: Market capitalisation as a % of GDP, 2018

[83] See for instance CIIs petitions and text pertaining to DCS-structures (cii.org/dualclass), Calpers on DCS-structures (Dual Class/Non-Voting Shares Update 1, 9 April 2018), and the oversight of institutional investors' views on DCS-structures in Proxy Monthly (2017), vol. 4 issue 6, at p. 7.
[84] According to data from Modular Finance, supplied by the Swedish Securities Council (collected on March 15, 2021).
[85] See di.se/nyheter/noteringsvag-pa-vag-mot-borsen-ser-ut-att-sla-alla-rekord/.
[86] See De La Cruz, Medina & Tang, *Owners of the World's Listed Companies*, OECD Capital Market Series 2019.
[87] The report is available at: oxera.com/wp-content/uploads/2020/11/Oxera-study-Primary-and-Secondary-Markets-in-the-EU-Final-Report-EN-1.pdf



Source: Oxera p. 21 (figure 2.1)

Figure 2: New listings net of delistings in the EU-28, 2010–2018



Source: Oxera p. 30 (figure 2.9)

So, while being far from the largest equity market in the world, the Swedish stock market is a fairly large market, and perhaps most importantly, one of very few Western markets that is growing in number of listed companies as well as market capitalisation. And with regards to corporate governance, Sweden seems to perform equally well in international comparisons. Though we are of course not claiming that it is a perfect system, agency costs seem (as already mentioned) to be low in international comparisons,[88] owners are highly engaged,[89] and minority shareholder protection is strong.[90]

At the same time, DCS-structures are exceedingly common. During the last hundred years, the use of DCS-structures, typically with an MV-class of shares with ten votes and a SV-class with one vote, which is the maximum difference allowed by law, have

[88] Cf. Nenova, The value of corporate voting rights and control: A cross-country analysis, Journal of Financial Economics 2003, vol 68, pp. 325–351.

[89] Gilson, *The Nordic Model in an International Perspective: The Role of Ownership*, in Lekvall (ed.), *The Nordic Corporate Governance Model,* SNS Publishing 2014, and Columbia Law & Economics Working Paper No. 517, and Lekvall (ed.), *The Nordic Corporate Governance Model*, SNS Publishing 2014.

[90] Gilson, *The Nordic Model in an International Perspective: The Role of Ownership*, in Lekvall (ed.), *The Nordic Corporate Governance Model,* SNS Publishing, and Columbia Law & Economics Working Paper No. 517, Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, Harvard Law Review 2006, vol. 199 no. 6, pp. 1641–1679, and Nenova, *The value of corporate voting rights and control: A cross-country analysis*, Journal of Financial Economics 2003, vol 68, pp. 325–351.

more or less been the norm for listed companies in Sweden, regardless of industry and size.[91] The percentage of the total number of listed companies utilizing DCS-structures has varied significantly over time, but has for the last seventy years not been lower than 40 percent (nor higher than 87 percent) of the total number of listed companies on the Stockholm Stock Exchange (SSE).[92] Around 25 percent of DCS-companies list both share classes (while 75 percent do not). There has at no time been any regulation prohibiting DCS-listings, nor have there been any widely known demands for not allowing DCS-companies to list their shares. Save for the regulation on the pricing of MV-shares in takeover bids, there has in fact not been any specific regulation targeting listed DCS-companies at all.[93] Instead, DCS-regulation is considered a company law matter.

3.2. Specific DCS-structure regulation

Since the Swedish company law of 1910, minority shareholder protection has been a *very* important focus for the legislator. To this end, no principal difference has been made between the protection afforded to minority shareholders in a company where the dominant shareholder holds a controlling stake of SV-shares, and minority shareholders in a company where the dominant shareholder holds a controlling stake consisting of MV-shares. Only one minority protection rule was originally specific for DCS-companies: a decision on changing the articles of association requires a qualified majority (between 2/3 and 9/10 depending on how radical the change) of both the *votes cast and of the voting shares* represented at the general meeting.[94] The reasoning behind the rule is founded in contract theory and is probably familiar to most: shareholders should not against their will be forced to accept changes in the fundamental condition for their investment that the articles of association embody, since such uncertainty would pose a risk to investor confidence in the corporate form and be prohibitive to equity fund raising.[95] This regulation is more or less unchanged to this day.

On a couple occasions however, the permissibility of DCS-structures in all companies has been debated, and in the 1940s this led to the second specific rule on DCS-shares.[96] The reason for the discussion was the bankruptcy of the company Swedish Match and the following Kreuger Crash, in which Ivar Kreuger's use of DCS-

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[91] See the Swedish Companies Act (2005:551) ch. 4 sec. 5. The law does not allow voteless shares.

[92] The last survey we carried out in 2015 showed that 42,8 percent of the listed companies on the Stockholm Stock Exchange main market utilized DCS structures. The share seems to have increased slightly since then. Cf. Henrekson & Jakobsson, *The Swedish Corporate Control Model: Convergence, Persistence or Decline?*, IFN Working Paper 857/2011.

[93] See for this particular question Skog & Lidman, T*he Regulation on Pricing of Multiple Voting Shares in Takeovers: The story of the Swedish regulation and a few reflections from recent trends*, Nordic Journal of Company Law 2018, no. 2, pp. 1–10.

[94] Today, consideration of votes and shares in general meeting decisions is made in a number of instances, such as in directed share issuances (see ch. 13 sec. 2 in the Swedish Companies Act), share buy-backs (ch. 19 sec. 18), and mergers (ch. 23 sec. 19).

[95] Johansson, *Bolagsstämma*, Juristförlaget 1990, p. 472.

[96] The question was also discussed in some political circles in the 1980s, which eventually led to the Swedish Government Official Reports (SOU) 1986:23 where the possibility to prohibit DCS-structures was analysed. The report did not lead to any regulatory changes.

structures as well as participating debentures (similar to non-voting shares) played a part in how he managed to keep others out of control and knowledge of the financial instability in the Swedish Match company group. Following the Kreuger Crash, it was debated if DCS-structures should be forbidden entirely, which however was deemed unnecessary. The regulatory measures that were taken to prevent a repeat was instead, first of all, that participating debentures were prohibited entirely. Second, the maximum ratio between SV- and MV-shares were limited to 1:10 (Kreuger had used a difference of 1000:1 or larger). It was considered if the maximum ratio should be 1:5, but after input from various stakeholders, it was decided that the 1:10 ratio was sufficient to allow for the purpose of DCS-structures, while at the same time prohibiting the absolute concentration of control that had contributed to the Kreuger Crash. Third, most importantly but unrelated to DCS-structures, consolidated company group accounting became mandatory, since Kreuger had managed to hide the economic downturn of the Kreuger empire through, at the time, sophisticated financial transactions between subsidiaries.[97]

3.3.Relevant minority protection

Beyond the rule on counting votes and shares for certain general meeting decisions and the capped maximum voting difference ratio of 1:10, there are no other specific safeguards against or limitations on DCS-structures in Swedish law. Instead, as we have hinted at, the most important protection against potential abuse of power from MV-shareholders and other corporate governance drawbacks of DCS-structures lies in the general protection that the company law affords to minority shareholders.[98] The Swedish minority shareholder protection is fairly well studied by economists as well as lawyers in an international context,[99] so we will not go into detail here, but the most important features are in our opinion the following:

- **Strict hierarchy between the general meeting and board and management.** All company organs are obliged to follow all decisions by higher organs (unless illegal).[100] Representatives of the shareholders (typically, the four largest) constitutes a nomination committee for board members, which prepares the election of board members independent

[97] For the Swedish development, see Swedish Government Official Reports (SOU) 1981:78 pp. 73–81 and 1986:23 pp. 41–45 (available in Swedish only).

[98] This approach also lines well with the finance literature on the importance of minority protection in corporate governance, see generally Djankov, La Porta, Lopez-de-Silanes & Shleifer, The Law and Economics of Self-Dealing, Journal of Financial Economics 2008, vol. 88 no. 3, pp. 430–465,La Porta, Lopez-de-Silanes, Shleifer & Vishny, Investor Protection and Corporate Governance, Journal of Financial Economics 2000, vol. 58, pp. 3–27 and La Porta, Lopez-de-Silanes, Shleifer & Vishny, Law and Finance, Journal of Political Economy 1998, vol. 106 no. 6, pp. 1113–1155.

[99] See for a few examples Gilson, *The Nordic Model in an International Perspective: The Role of Ownership*, in Lekvall (ed.), *The Nordic Corporate Governance Model,* SNS Publishing, and Columbia Law & Economics Working Paper No. 517, Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, Harvard Law Review 2006, vol. 199 no. 6, pp. 1641–1679, and Nenova, *The value of corporate voting rights and control: A cross-country analysis*, Journal of Financial Economics 2003, vol 68, pp. 325–351, Lekvall (ed.), *The Nordic Corporate Governance Model*, SNS Publishing 2014, Dent, *Corporate governance: the Swedish solution*, Florida Law Review 2012, vol. 64, pp. 1633–1668, and Pacces, *Featuring Control Power*, RILE 2007 (discussing and analysing Swedish regulation throughout the dissertation).

[100] Not explicitly stated in the law, but commonly derived from ch. 8 sec. 41 in the Swedish Companies act.

from the company.[101] It is mandatory that remuneration of the board is decided by the general meeting, and all equity based incentive programmes of board, management and other employees are to be decided by the general meeting as well.[102] The CEO may not be chair of the board.[103]

- **A strong principle of equal treatment of shareholders**. The principle states that neither the general meeting, the board of directors or any other company organ may make decisions that favour a shareholder or another party at the detriment of the company or other shareholders, unless, put shortly, it can be shown to be strictly commercially motivated.[104]
- **High degree of transparency**. Both towards shareholders and the capital market, with shareholders having a right to ask and get answers to questions on the general meeting (unless it would damage the company), and with a public shareholder registry. [105]
- **Strict majority vote requirements**. The majority vote requirements are not only strict for changes of the articles of associations (see above), but also applies to, for instance, directed share issuances (see just below), buy-backs (2/3 majority) and mergers (2/3 – 9/10 majority).[106]
- **Strict preemptive rights**. Shareholders have the right to acquire shares in issuances in proportion to their holdings, deviations from the preemptive right requires a 2/3 majority vote (unless if the issuance is directed to company insiders, for which a 9/10 majority vote is required), and directed issuances that are not commercially motivated in terms of pricing or receiver can be revoked by court if found in breach of the principle of equal treatment.[107]
- **Strict rules for related-party transactions (RPT)**. Even before the introduction of the EU RPT regulation, transactions with related parties were required to be carried out on market terms.[108]
- **Minority powers to take action**. Shareholders holding 10 percent of the shares or more can demand a second "minority" auditor[109] (afforded by the company) as well as require an extraordinary general meeting to be held,[110] demanding minimum dividends to be paid out,[111] and any shareholder has the right to demand that a "special investigator" is appointed (by public authority and at company expense) to examine any (mis)conduct carried out by the company and report the findings to the general meeting.[112] If more than 90 percent of the shares are held by one shareholder (thereby blocking these rights), the minority have the right to get their shares redeemed at market price.[113]
- **Extensive individual shareholder rights**. Individual shareholders regardless of size of holding have the right to challenge general meeting resolutions in court (which can nullify a general meeting decision) and can demand any issue to be tried by the general meeting.[114]

[101] See the Swedish Corporate Governance Code, available in English at: http://www.bolagsstyrning.se/the-code/current-code__3724
[102] See ch. 8 sec. 23a for board remuneration, and the Rules on Remunerations and Private Placements for board and management (mandatory for listed Swedish firms), available in English at: http://www.bolagsstyrning.se/rules-on-remuneration-and-on-private-pla__3739
[103] See ch. 8 sec. 49 in the Swedish Companies Act.
[104] See ch. 7 sec. 47 and ch. 8 sec. 42 in the Swedish Companies Act.
[105] See ch. 7 sec. 32 and ch. 4 sec. 10 in the Swedish Companies Act.
[106] See ch. 13 sec. 2 and ch. 16 (directed share issuances), chapter 19 (share buy-backs and transfers of own shares), and chapter 23 for mergers.
[107] See ch. 13 sec. 1–2 in combination with ch. 7 sec. 47 in the Swedish Companies Act.
[108] Now regulated in chapter 16a in the Swedish Companies Act.
[109] See ch. 9 sec. 9 in the Swedish Companies Act.
[110] See ch. 7 sec. 13 in the Swedish Companies Act.
[111] See ch. 18 sec. 11 in the Swedish Companies Act.
[112] See ch. 10 sec. 21 in the Swedish Companies Act.
[113] See chapter 22 in the Swedish Companies Act.
[114] See ch. 7 sec. 16 in the Swedish Companies Act.

- **Clear rules on general meeting notice**. The rules governing the notice of the general meeting guarantees all shareholders the possibility to attend, to present decision proposals and to receive all relevant documentations pertaining to meeting decisions.[115]
- **Delisting.** A company may only remove its shares from trading with the approval of the Swedish Securities Council, unless following a successful takeover bid. The Council's approval will generally only be granted if the delisting is in the interest of all shareholders, including the minority shareholders.[116]

4. Discussion of the proposals of the Hill Review

As summarized in section 1, the recommendation of the Hill Review is to allow companies with DCS-structures to list in the Premium listing segment, subject to several conditions. Since the motives of the conditions are not detailed in the review, we have assumed that they are at least in principle founded on the arguments that are usually made against DCS-listings, which we have discussed in section 2. In this section, we discuss the proposition in the Hill Review with reference to the Swedish experience of DCS-regulation (section 3). We conclude that while some of the suggestions are warranted, others seem unmotivated, and even counterproductive.

4.1. The five-year sunset clause and the transfer based sunset clause

The first condition for a DCS-listing that is recommended in the Hill Review is a mandatory sunset clause, meaning that the MV-shares of a DCS-company listed in the Premium segment would convert to SV-shares after the set time, proposed to be five years.[117] This recommendation is hardly surprising. Once it became clear that the campaign for prohibiting DCS-companies from listing at all would be unsuccessful, the proponents of the "one share, one vote" principle, such as the Council of Institutional Investors, instead set out to make sunset clauses for DCS-structures a listing requirement.[118] Mandatory sunset clauses have also been promoted by several scholars to counter problems with DCS-listings, the main argument seeming to be that DCS-companies underperforms in the long run.[119] However, just as many scholars

[115] See ch. 7 sec. 17 and the following in the Swedish Companies Act.
[116] See for instance statement 2016:12, 2019:15, 2019:30 and 2019:6 of the Swedish Securities Council, and the Council annual report of 2019.
[117] See pp. 11 and 19 in the review.
[118] See for instance the number of letters sent by the Council of Institutional Investors to several exchanges, the American Bar Association as well as the Delaware State Bar Association in 2019, available at https://www.cii.org/dualclass_stock. The suggestions were rejected by the receivers.
[119] See for instance Kim & Michaely, *Sticking around Too Long? Dynamics of the Benefits of Dual-Class Voting,* ECGI Finance Working Paper No. 590/2019, Bebchuk & Kastiel, *The Untenable Case for Perpetual Dual-class Stock*, Virginia Law Review 2017, vol. 103, pp. 585–631, Cremers, Lauterbach, Baran & Via, D*ual Class Share Structure and Innovation* (December 8, 2019), available at SSRN: https://ssrn.com/abstract=3183517, and Pajuste, *The Life-cycle of Dual Class Firm Valuation*, ECGI Finance Working paper No. 550/2018. See also Burson & Jensen, *Institutional ownership of dual-class companies*, Journal of Financial Economic Policy 2021, vol. 13 no. 2 pp. 206–222, arguing for sunset clauses based on institutional investor negativity towards DCS-structures, Baran & Forst, *Disproportionate insider control and board of director characteristics*, Journal of Corporate Finance 2015, vol. 35, pp. 62–80, Anand, *Governance Complexities in Firms with Dual Class Shares*, Annals of Corporate

have argued against sunset clauses, arguing that it creates moral hazard problems while at the same time reducing the attractiveness of DCS-structure and it only handles possible problems with DCS-structures through an arbitrary cut-off.[120]

As we have described in section 2, there is simply no clear empirical evidence of governance issues that time-based sunset clauses could potentially remedy. From the Swedish experience of regulating DCS-companies, sunset clauses might very well instead have negative governance effects. At the very least, it obviously limits any possible long-term governance upsides. The most engaged and active shareholders in Sweden that rely on DCS-structures (the most well-known ones the Wallenberg and Lundberg families, and the Persson's behind H&M) often hold their shares over many decennia, as ownership engagement typically does not lead to short term pay-offs, and the same goes for the advantages that may come with a stable ownership structure. So, from our perspective*, a mandatory 5-year sunset clause is not only unmotivated, but would also heavily degrade the possible upsides of allowing DCS-structures*.

In addition to the time-based sunset clause, the Hill Review also proposes a transfer-based sunset clause (condition 3, though phrased as a transfer prohibition), where MV-shares would be converted to SV-shares upon transfer. Again, the inspiration for such a mechanism is easy to find in the literature.[121] But just like with the time-based sunset clause, a transfer-based sunset clause cannot be empirically justified since the jury is still out on if there are any governance issues systematically related to DCS-structures. On the other hand, we see plenty of issues that a mandatory transfer-based sunset clause could bring with it. As we have discussed above, DCS-structures in and of themselves do not seem to interfere with the market for corporate control or control transactions.[122] However, if MV-shares cannot be transferred (without them converting to SV-shares that is), relocations of control through MV-shares literally becomes impossible. This, we believe, could be highly detrimental to companies with DCS-structures, since it would likely hamper the market mechanisms that would otherwise, on a system level, allocate control to where it should be most effective.[123] This would also hinder MV-shares from being used to challenge or put pressure on incumbent controlling shareholders, for instance by activists, which we have seen happen in Sweden on several occasions and which has the potential to be a positive

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Governance 2018, vol. 3 no. 3, pp 184–275 and Winden, *Sunrise, sunset: an empirical and theoretical assessment of dual class stock structures*, Columbia Business Law Review 2018, no 3, pp. 852–951. A sunset recommendation is also made in the Final report of the High Level Forum on the Capital Markets Union, see p. 66 in the report, available at https://europa.eu/!gU33Hm, though the Forum recommends that the clause should be "determined at the company's discretion".

[120] See for instance Fisch & Davidoff Solomon, The Problem of Sunsets, Boston University Law Review 2019, vol. 99 pp. 1057–1094, Sharfman, The Undesirability of Mandatory Time-Based Sunsets in Dual Class Share Structures: A Reply to Bebchuk and Kastiel, Southern California Law Review Postscript 1 (2019/20), and Moore, Designing Dual-Class Sunsets: The Case for a Transfer-Centered Approach, William & Mary Business Law Review 2020, vol. 12 pp. 93–166.

[121] Cf. Moore, *Designing Dual-Class Sunsets: The Case for a Transfer-Centered Approach*, William & Mary Business Law Review 2020, vol. 12 pp. 93–166, and for an overview on how sunsets are structured on different markets, Hochleitner, T*he non-transferability of super voting power: analyzing the "conversion feature" in dual-class technology firms*, Drexel Law Review 2018, vol. 11 no. 1, pp. 101–148.

[122] See subsection 2.3.

[123] See references in subsection 2.3.

corporate governance effect of DCS-structure since it could decrease the cost of acquiring “toehold stakes”.[124]

Taken together, our belief based on the available data and knowledge on DCS-structures is that an important mechanism that can prevent DCS-structures from having adverse effects on governance standards is a well-functioning market for corporate control. The compulsory sunset clauses recommended in the Hill Review can reasonably be expected to be detrimental to the market for corporate control, while not having any solidly substantiated benefits, thereby leading to lowered corporate governance standards than if DCS-listings were to be allowed on the Premium segment without sunset clauses.

4.2. Capped maximum ratio of 20:1

The second condition for allowing a DCS-listing suggested in the Hill review is that the maximum difference in voting rights is set to 20.1.[125] This recommendation is in line with the limitations or practices in several countries (including Sweden where the voting ratio is capped at 10:1).[126]

On the one hand, one can argue that a capped maximum ratio is uncalled for. There are no clear data supporting that higher differences in voting rights would lead to worse corporate governance. To this, it can be added that information on differences in voting rights are readily available to the market since the difference will have to be described in the articles of association, and since it is a governance aspect that receives plenty of attention in media and by analysts. Investing in a DCS-company is a free and informed choice, and regulation of the voting ratio level can thus be viewed as paternalistic.[127]

While we have sympathy for this line of reasoning, we believe that the capping of the maximum voting difference recommended in the Hill Review is wise. As discussed in section 3, an essential part of the DCS-regulation in Sweden is the protection of minority shareholders, of which strong minority rights are a part (see subsection 3.3). However, these protections presupposes that the control of the company is not *entirely* concentrated to one or a few shareholders, which a maximum voting difference will effectively prohibit when raising capital on the stock market, unless the controller can afford to hold on to a significant part of the equity of the company. For the same reason,

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[124] One of the most well covered examples of this was Cevian Capitals acquisitions of MV-shares in Volvo starting in 2006. For activism in companies with an incumbent controlling shareholder, see Kastiel, *Against all odds: hedge fund activism in controlled companies*, Columbia Business Law Review 2016, no. 1, pp. 60–132.

[125] See pp. 11 and 19 in the Hill Review.

[126] See ch. 4 sec. 5 in the Swedish Companies Act. In Switzerland, the maximum ratio is also set to 10:1 (see von der Crone & Plaksen, *The Value of Dual-Class Shares in Switzerland*, March 10 2010, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1542780), and the same goes for Singapore and Hong Kong (see Rule 210(10)(d) of the SGX Mainboard Rules and Rule 8A.10 ‘Restriction on Voting Power’ of the HKEx Main Board Listing Rules). Denmark previously had a maximum difference of 1:10, and Finland a maximum difference of 20:1, but both countries have recently removed their maximum ratios. Neither Canadian nor US law prescribes a maximum voting ratio, but in both countries, the 1:10 ratio is the most common (see Amoako-Adu & Smith, *Dual class firms: Capitalization, ownership structure and recapitalization back into single class*, Journal of Banking & Finance 2001, vol. 25 no. 6, pp. 1083–1111 for Canada and Gompers, Ishii & Metrick, *Extreme Governance: An Analysis of Dual-Class Firms in the United States*, The review of financial studies 2010, vol. 23 no. 3, pp. 1051–1088 for the US).

[127] We are certainly not the first to make this point – see for instance Gilson, *Evaluating Dual Class Common Stock: The Relevance of Substitutes*, Virginia Law Review 1987, vol. 73, pp. 807–844.

an extreme concentration of control will make it harder to challenge an incumbent shareholder by, for instance, activists. The reasoning can best be illustrated by the differences that alternative voting maximums have on the equity stake that will suffice to hold control over a company. Let us, for the sake of simplicity, say that control over the company is held at just over 50 percent of the votes.[128] The equation $x=(1/c)/(1+1/c)$ then shows the size of the percentage of the firm's total outstanding shares (x) in MV-shares[129] that will have to be held by a shareholder to be in voting control, assuming no other shareholder owns MV-shares, and where c is the votes of the MV-shares when SV-shares have one vote each. If the maximum voting ratio is capped to 10:1, this means that someone holding all the MV-shares will need to hold a little less than 9,1 percent of the total outstanding shares in MV-shares to have voting control. If the maximum voting ratio is capped to 20:1, as suggested in the Hill Review, the shareholder needs to hold approx. 4,76 percent of the outstanding shares as MV-shares (and so on, see table 1).

Table 1.

Maximum voting ratio	**% of outstanding shares in MV-shares required for vote control**
5:1	16,67%
10:1	9,09 %
20:1	4,762 %
100:1	1 %
1000:1	0,1 %

The table shows the percentage of outstanding shares that needs to be held in MV-shares for the holder to assert voting control of the company.

What then, is an appropriate difference in voting ratio? Though, as table 1 shows, differences in the maximum ratio quite dramatically change how large a percentage of the outstanding shares that needs to be held to achieve control, the question probably does not have a general answer. The experience from the Kreuger Crash was that a 1000:1 ratio was too high, given the other corporate governance standards in Sweden at the time. Had Kreuger's scheme to cover up the financial difficulties of the Kreuger group been possible with the 1000:1 ratio if the minority protection had been stronger in general (and with mandatory group accounting)? Perhaps, perhaps not. The thought experiment shows that such questions do not have easy answers and need a context. It will probably instead have to be up to each regulator to try to find a balance between, on the one hand, allowing for a voting ratio that will allow MV-shares to work effectively as a control enhancement mechanism, and, on the other hand, not letting corporate control become too concentrated. For the Swedish context, a ratio of 10:1 seem to strike a balance, but it's hard to say if a 20:1 ratio would be more or less effective.[130] The proposition in the Hill Review seems as well considered as any,

[128] In reality, this percentage will be significantly lower, depending on the percentage of shareholders attending the general meeting.
[129] Minus one vote.
[130] The Swedish legislator considered capping the maximum voting ratio at 5:1, but decided that it was unwarranted from a minority protection point of view while at the same time not allowing for the DCS-shares to be efficient. Swedish businesses have also lobbied for an increase in the maximum ratio to 20:1, without success. All in all, no

though, especially considering the suggestion to lower required free float from 25 to 15 percent, a lower maximum ratio might also suffice.[131]

4.3. Only directors may hold MV-shares, and extra votes may only be used to protect management

The fourth condition for DCS-listings suggested in the Hill Review concerns who may own MV-shares, and states that holders of MV-shares should be required to be company directors.[132] This condition is connected to one of the chief aims of the review – to make listing attractive to founder-led companies, for whom DCS-structures provide a way to stay in control of the company while raising public equity.[133]

Many times, DCS-structures will naturally be held by persons who are also company directors, however, it seems highly unclear why this should be a DCS-listing requirement. Almost all governance issues that are argued to arise from allowing DCS-structures in one way or the other connect to managerial entrenchment. As we have discussed in section 2, we do not believe that these arguments are sufficiently substantiated to merit particularly harsh regulation of DCS-listings. But even *if* these claims were to be substantiated, it would *still not* warrant director ownership of MV-shares as a prerequisite for allowing DCS-listings – the suggested requirement would just have the same drawbacks as discussed in relation to the Hill Review suggestion not to allow MV-share transferability (subsection 4.1). If anything, the opposite requirement would be more reasonable. Furthermore, the recommended condition would mean that one of the benefits of DCS-structures most often pointed to as the reason for allowing DCS-listings, that it can facilitate shareholder engagement (including, n.b., monitoring of the board and management) in cases where the shareholder is not also a director, would be impossible.[134]

Finally, the fifth condition for DCS-listing suggested in the Hill Review is that the matters that could be subject to weighted voting should be limited to ensure that the director holding MV-shares stays in office and is able to block takeovers.[135] As we described in subsection 3.2, one of the specific DCS-rules in Swedish company law is that the extra votes of MV-shares cannot be used in certain decisions, specifically in altering the articles of association. The limitation of what the extra MV-share votes may be used for suggested in the Hill Review certainly achieve this, but again, also effectively stops the MV-shares from being used by shareholders to engage in any credible way with management. Last, though we are not sure how the extra MV-votes are supposed to be used to block takeovers as suggested in the review, since takeovers are not voting matters, a mechanism that allows the MV-shareholder to block takeover

successful argument has been made for a change in either direction in the 80 years since the maximum difference was introduced, and it is also the same ratio allowed by law in several other countries (see note 126).

131 See p. 12 in the Hill Review.

132 See p. 19 in the Hill Review.

133 See p. 20 of the Hill Review.

134 See for instance Gilson, T*he Nordic Model in an International Perspective: The Role of Ownership*, in Lekvall (ed.), *The Nordic Corporate Governance Model,* SNS Publishing 2014, and Columbia Law & Economics Working Paper No. 517, and Lekvall (ed.), *The Nordic Corporate Governance Model*, SNS Publishing 2014.

135 Se p. 19 in the Hill Review.

bids is of course by design detrimental to the market for corporate control (see discussion in subsection 4.1).

5. Summary and conclusion

In the paper, we presented an overview of the DCS-debate in section 1 together with the proposition in the Hill Review to allow for DCS-listings under certain conditions. In section 2, we discussed the arguments that are made against DCS-listings, and which we assume to some extent motivates the conditions for DCS-listings. In section 3, we then gave an overview of the Swedish DCS-regulation and the political economy of it. Finally, in section 4, we discussed the conditions for DCS-listing recommended in the Hill Review with respect to the conclusions in section 2 and in relation to the Swedish regulation. Our conclusion is that several of the conditions suggested in the review might not only hinder DCS-structures from being useful for companies that wish to utilize such structures, but would in several cases be detrimental to the corporate governance mechanisms that would otherwise counteract several of the problems that DCS-structures can give rise to, most prominently the market for corporate control.

Based on the Swedish experience, we do not believe that DCS-listing conditions of the specific, *ex ante* kind suggested in the review are the most efficient way to regulate DCS-structures. If DCS-listings are to be allowed, our belief is that the focus should instead be to make sure that there are governance mechanisms that can be used against abuse from DCS-shareholders *ex post* (cf. our summary of minority protection regulation in subsection 3.2), combined with more general ex ante measures to secure that the *ex post* mechanisms can be utilized, such as limitations on the maximum voting ratio allowed, and prohibitions on measures insulating management or shareholders from the disciplinary effects of the market for corporate control.[136] Though it in part is quite contrary to the approach suggested in the Hill Review, it is a regulatory approach that seem to have been successful in Sweden, and one which we think is the most well substantiated way to allow for DCS-listings while maintaining high corporate governance standards.

[136] Cf B. Reddy, *Finding the British google: relaxing the prohibition of dual-class stock from the premium-tier of the london stock exchange*, Cambridge Law Journal 2020, vol. 79 no. 2, pp. 315–348, concluding that “the existing UK market and UK regulatory environment substantially protects inferior shareholders from the most egregious types of expropriation”.

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