

# Controllers Unbound

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# Overview

- ▶ Increase in importance of controlled companies in the United States
- ▶ SB 21 weakens litigation-based controller constraints
- ▶ Two underdeveloped areas of expected impact
  - Increasing “channels of opportunism” for controllers
  - Transformation of US ownership patterns
- ▶ Efficiency costs and comparative dimension
- ▶ Inability of market discipline to respond

# The Rise of Controllers in the US

- ▶ Clearly true
- ▶ Not just more controllers, but controllers playing a role in many economically important companies
- ▶ The controlling stockholder model has historically been dominant elsewhere in the world
- ▶ Are these new US controllers distinctive?
  - Dual class share structures and small minority controllers
  - Individual (and influential) founders
  - Tech companies
- ▶ Both DExit and SB 21 reduce the constraints on controllers
- ▶ But consider a different US phenomenon – the rise of unboundedness
- ▶ This is NOT a byproduct of SB 21

# Controllers Unbounded?



# Big Personalities Unbounded?



Is there a broader rise of personality-driven influence in the US?  
If so, what should be the role of corporate law in attempting to  
constrain that?

# Theorizing the Impact of Greater Controller Power on Investors

- ▶ Greater payoff (lower cost) of pursuing value-decreasing private benefits
- ▶ Increased incidence of controlled companies, so more tunneling
- ▶ Small controllers make things worse
- ▶ But what about the effect of these structures on the existence and profitability of public companies?
- ▶ Is this like the debate over poison pills and takeovers?

# The Realities of Corporate Law

- ▶ Corporate law needs to respond as the corporation evolves
- ▶ What explains the rise in founder-driven controlled companies (and the staying power of founders after the IPO)?
- ▶ Controller insulation is a product of legislative changes, state competition and private ordering
- ▶ Consider SpaceX
  - Texas incorporation
  - Dual class
  - Additional
  - Compensation
  - Insulation
  - Waiver of
  - And more
- ▶ What explains these ownership structures?
  - Competition from the private capital markets?
  - Is there something special about technology companies?

The image shows the SpaceX logo in white, stylized capital letters against a dark blue background with a glowing blue horizon line at the bottom. The logo is centered horizontally and partially overlaps the text of the slide.

SPACEX

# The Efficiency Analysis

- ▶ The inability of capital markets effectively to discipline controller self-dealing (and dual class makes this worse)
- ▶ But do capital markets view these corporate law developments adversely?
- ▶ If not, why not?
- ▶ Competing efficiency stories
- ▶ Competing self-dealing narratives
  - Related party transactions
  - Executive compensation
- ▶ Consider also the role (and the weakening) of capital market protection through securities regulation
- ▶ What is the relationship of developments at the SEC to the efficiency analysis?

# The Importance of Shareholder Rights

- ▶ Bebchuk & Kastiel highlight the impact of SB 21 on the Djankov et al. and World Bank anti-self dealing indices
- ▶ But what is the benchmark? Are we convinced that the prior amount of shareholder litigation was optimal?
- ▶ The competing narrative has long been that shareholder litigation is excessive, costly and value-reducing
- ▶ And the evidence on this is mixed
- ▶ Note also that the analysis of tunnelling outside US primarily involves companies without dual class

# The Role of Competition

- ▶ How much latitude does Delaware have in light of competition from other states?
- ▶ Does SB 21 reflect a race to the bottom?
- ▶ Is Texas really catering to controllers?
- ▶ What is Texas selling?



# Key Takeaways

## ▶ For investors

- Then why is everyone (except Mike Levin) lining up to invest in SpaceX?

## ▶ For academics

- How should we assess the impact of these developments?
- What is the right counterfactual?

**Be afraid. Be very afraid.**

# Bottom Line

- ▶ Timely and important project about the potential implications of SB 21
- ▶ Key insight is that relaxing judicial oversight of controllers affects both controller behavior at existing companies and incentives for creating and maintaining controlling shareholder structures
- ▶ Absent turning back the clock, the article does not engage with potential solutions