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Superstar CEOs and Corporate Law

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# From Powerful CEOs to Powerful Shareholders

In this part, we begin by describing the transition from powerful chief executive officer (CEO) to powerful shareholder. We then explain how even in era of powerful shareholders, corporate law is far from dead. Some CEOs remain quite powerful either because investors believe they have star qualities and uniquely contribute to company value, or because a control enhancing mechanism such as dual-class shares enables them maintain majority control over time. In both cases, shareholders have limited ability to monitor powerful CEOs.

## The Traditional View: Powerful Managers

Corporate law and scholarship distinguish between controlled and widely held companies.[[1]](#footnote-2) In controlled companies, a single shareholder holds a majority of the voting rights, and therefore has the power to appoint board members.[[2]](#footnote-3) While controlling shareholders are generally insulated from the market’s disciplinary force for corporate control and interventions by activist shareholders,[[3]](#footnote-4) their large equity stake provides them with powerful incentives to supervise management.[[4]](#footnote-5) But the interests of controlling shareholders are not always aligned with those of other investors, as they may exploit their dominant position for private benefit through related party transactions or other ways, at the expense of minority shareholders.[[5]](#footnote-6) Therefore, the principal concern in controlled companies has long been the protection of minority investors from expropriation by controlling shareholders.

In widely held companies, share ownership is more dispersed, and no single shareholder can dictate vote outcomes or elect all members of the board. As a result, until at least two decades ago, the CEOs of these companies had the de facto power to lead them, and the concern was that they would use that power to promote their own interests at the expense of investors.[[6]](#footnote-7) Therefore, under the dominant view in corporate law scholarship, an important goal of corporate law with respect to widely held companies is to address the agency problem that arises from the misalignment of shareholder and management interests.[[7]](#footnote-8)

To be sure, shareholders of widely held companies have always held the formal power to elect board members, who in turn have the power to appoint the CEO. Until recently, therefore, CEOs of widely held public companies theoretically kept their positions only as long as investors were satisfied with their performance. They were still considered quite powerful, however.[[8]](#footnote-9)

CEO power was the result of several factors. First, while shareholders had the formal power to nominate directors, they were quite passive and lacked sufficient incentives to become informed enough to do so.[[9]](#footnote-10) Electoral challenges were rare, and shareholders often voted for the directors nominated by management.[[10]](#footnote-11) Shareholder passivity was reinforced by legal rules governing director elections. For example, under plurality voting, which used to be the prevailing method for director elections, the directors who receive the most votes are elected.[[11]](#footnote-12) This means that when the directors nominated by management are the only candidates for election, as is often the case, even directors who have no shareholder support may be elected.[[12]](#footnote-13) Under this system, the crucial step was to be nominated, as being on the company’s slate virtually assured being elected.

Second, CEOs were often actively involved in board appointments, including those of independent directors. In many cases, CEOs chaired the board and played an important role in putting together the list of directors nominated by the company.[[13]](#footnote-14) It was therefore quite difficult to be elected to the board if the CEO objected to the potential candidate’s nomination.[[14]](#footnote-15)

Third, the Delaware courts historically adopted a permissive approach to the use of structural defenses, such as the poison pill, which insulated CEOs from hostile takeover attempts.[[15]](#footnote-16) Many companies took advantage of that approach by adopting not only antitakeover charter provisions, but also a poison pill provision and a staggered board—a combination that has proven to be a serious impediment to hostile takeovers.[[16]](#footnote-17)

The prevailing view among policymakers and academics (at least up until two decades ago) was therefore that it was vital to limit CEO power in order to limit managerial agency costs. And the main recommendation for addressing this problem was to make corporate boards more accountable to shareholders and less dependent on the CEO.[[17]](#footnote-18)

## The Rise of Powerful Shareholders

Today, a combination of governance, legal, and market changes have made shareholders significantly more powerful.[[18]](#footnote-19) Some of these changes are a direct result of federal intervention or changes to corporate law; others are the result of shareholder demands or market developments.[[19]](#footnote-20) But at the end of the day, the cumulative effect of these changes has been a persistent trend toward shareholder empowerment.[[20]](#footnote-21)

The first significant change is the push toward board independence. In the past three decades, market and legal changes resulted in an overwhelming decrease in insiders in the boardroom.[[21]](#footnote-22) Initially driven by market demand, this movement in this direction accelerated as legislation such as the Sarbanes-Oxley Act[[22]](#footnote-23) (SOX) was passed and stock exchanges demanded greater board independence.[[23]](#footnote-24) The main rationale for such reforms was that «non-insiders» are better suited to monitoring managerial behavior and protecting shareholders' interests.[[24]](#footnote-25) The result of these changes, as Jeff Gordon showed in a well-known article, was that the nominal independence of board members increased dramatically over a half-century, from 20 percent in 1950 to around 80 percent in 2005, with the CEO often being the sole insider in the boardroom.[[25]](#footnote-26) And as recent research by one of this article’s authors confirmed, the trend toward board independence continues.[[26]](#footnote-27)

The second significant change is that the de-classification of the boards of America's largest corporations and the constant move toward majority voting for director election has given shareholders the power to elect directors. When a board is classified, each class of directors faces election every two or three years.[[27]](#footnote-28) This deters hostile takeovers because a potential acquirer cannot simply replace an entire board at once.[[28]](#footnote-29) When combined with a poison pill, this protection becomes extremely effective, forcing a potential acquirer to conduct a successful proxy contest at the company’s annual shareholder meeting for two consecutive years before it can take over the board and revoke the pill.[[29]](#footnote-30) As a result, there has never been a hostile takeover of a firm with an effective staggered board where the firm kept its pill in place.[[30]](#footnote-31)

While the academic debate on the merits of classified boards is still alive and kicking,[[31]](#footnote-32) shareholders have already made up their minds.[[32]](#footnote-33) Their efforts[[33]](#footnote-34) to de-stagger corporate America have been remarkably successful: whereas 60 percent of S&P 500 firms had classified boards in 2000, only 10 percent did twenty years later.[[34]](#footnote-35) Moreover, while boards are free under Delaware law to adopt a poison pill, directors hesitate to do so unilaterally, fearing that would cause proxy advisers to recommend, and institutional investors to vote, against reappointing them to the board.[[35]](#footnote-36)

Another change toward increasing shareholder power is the rise of majority voting for directors. As noted earlier, under the traditional plurality voting standard, directors do not have to earn the support of a majority of shareholders to be elected. In uncontested elections (which are the most frequent type of election), as long as there is a vacancy on the board, directors can be elected with minimal support (e.g., even a single vote).[[36]](#footnote-37) Under majority voting however, a director is elected to the board only if she obtains a majority of votes.[[37]](#footnote-38) Shareholder campaigns on this subject had a tremendous impact, such that majority voting is now standard in large companies.[[38]](#footnote-39)

With board de-classification and the shift toward majority voting rules, elections are held more frequently and directors run a real risk of losing their jobs (especially in large public companies).[[39]](#footnote-40) This, of course, profoundly influences directors' sense of accountability to shareholders.

Perhaps the most important changes in this context are the growing power of large institutional investors and the rise of activist hedge funds. Institutional investors collectively own the majority of the shares of US public companies today[[40]](#footnote-41) and their holdings are increasingly concentrated in a few large asset managers.[[41]](#footnote-42) As a result of their increased stake and ownership concentration, institutional investors have become powerful players with a dominant impact on vote outcomes in most public companies.[[42]](#footnote-43) In recent years, these investors have been willing to use their power to engage more often with portfolio companies, monitoring executive compensation more closely and voting against it when they believe it is excessive, supporting precatory shareholder proposals that empower shareholders, and withholding votes from directors that systematically ignore shareholder demands or precatory proposals that receive broad support.[[43]](#footnote-44) Recently, they have also shown increased interest in using their votes to advance social causes, such as combating climate change[[44]](#footnote-45) and increasing boards’ ethnic and gender diversity.[[45]](#footnote-46)

The rise in institutional investors has also generated demand for voting advice from proxy advisers. As Kahan and Rock explain, proxy advisers function as «central coordinating and information agents.» As such, «they help create a unified front of institutional investors, and thereby increase collective institutional shareholder influence.»[[46]](#footnote-47) Proxy advisers can also facilitate activist campaigns or the adoption of governance practices that the majority of investors support because they can credibly threaten to withhold support from directors and boards that do not respond to shareholder-approved proposals.[[47]](#footnote-48) It is therefore not surprising that corporate executives often ask to discuss management initiatives directly with proxy advisers, as if they were shareholders.[[48]](#footnote-49)

Perhaps most importantly, the rise in institutional ownership has facilitated the rise of activist hedge funds.[[49]](#footnote-50) These investors often take a significant equity position in target companies and use various tools, from direct communication with management to proxy fights, to bring about change in the target companies’ business strategy or governance.[[50]](#footnote-51) Successful activist campaigns are often supported by institutional investors.[[51]](#footnote-52) The emergence of activist hedge funds, which “have shaken up boardrooms” and forced many publicly traded firms to make radical changes, is considered a groundbreaking shift in the corporate governance of public firms.[[52]](#footnote-53) In many cases, these investors manage to make director appointments that lead to the departure of CEOs whose performance is deemed unsatisfactory by the market .[[53]](#footnote-54)

The combined effect of the changes described above has been to empower shareholders and weaken CEOs' power over corporate strategy and governance.[[54]](#footnote-55) One of the primary outcomes of the shareholder empowerment trend is the shortening of CEO tenure. Steven Kaplan and Bernadette Minton provide evidence that CEO tenure in large US companies was shorter between 1998 and 2005 than it was in the 1970s to the 1990s.[[55]](#footnote-56) Marcel Kahan and Ed Rock show that between 2000 and 2007 in a significant portion of S&P 500 companies, the tenure of outside directors precedes the CEO’s.[[56]](#footnote-57) This finding still holds today,[[57]](#footnote-58) which Kahan and Rock believe to be proof that outside directors are acting independently and are not obligated to the current CEO. The decreasing commitment to the CEO is also reflected in board members’ greater willingness to meet directly with shareholders—a willingness that helps institutional and activist investors achieve their goals more easily.[[58]](#footnote-59)

To summarize, the persistent trend toward shareholder empowerment and the rise of activist hedge funds mean that CEOs of widely held companies are much less powerful today than they were two decades ago. CEOs lost their formal influence over director nomination and contested elections are more prevalent. We do not argue that managerial agency costs have become extinct. It is fair to say, however, that underperforming CEOs face a realistic risk of removal by disgruntled investors.

## Powerful Shareholders: Is Corporate Law Dead?

The dramatic rise of shareholder power has triggered two types of responses from commentators. Some argue that corporate law has lost its importance. Others link the rise in shareholder power to the increasing use of dual-class shares, which insulate company insiders from shareholder pressure.

As stated above, for many years the dominant view in corporate law scholarship was that corporate law’s principal objective for widely held companies was to contain the power of managers in order to protect shareholders.[[59]](#footnote-60) However, in a market environment in which shareholders are sufficiently sophisticated, powerful, and active, there is less need for legal intervention to protect their rights.

Edward Rock, for example, has claimed elsewhere that “since the early 1980s, the US system has shifted from a manager-centric system to a shareholder-centric system.”[[60]](#footnote-61) More recently, Zohar Goshen and Sharon Hannes argued that the “transformation of American equity markets from retail to institutional ownership has relocated control over corporations from courts to markets and has led to the death of corporate law.”[[61]](#footnote-62) They use this theory to explain Delaware’s recent limits on judicial intervention. Under this view, with powerful shareholders, there is less need for judicial review of managerial conduct.

The second response to the rise in shareholder power is that the balance has tilted too far in favor of powerful shareholders, who push corporate leaders to favor short-term gains over long-term value creation.[[62]](#footnote-63) Critics link the risk of too much shareholder power to an important recent market development, the rise in dual-class initial public offerings (IPOs), which has once again shifted the balance of power, this time toward founder CEOs. Recent data shows that almost 30 percent of IPOs between 2017 and 2019 had dual-class structures.[[63]](#footnote-64) These structures are especially prevalent among high-tech companies, with 43.2 percent of the tech IPOs in 2021 adopting them.[[64]](#footnote-65)

Dual-class structures enable company founders to lock in control (that is, ownership of more than 50 percent of the voting rights, resulting in majority control of the board) with only a small (or even extremely small) fraction of the company’s equity capital.[[65]](#footnote-66) The desirability of dual-class structures has long been the subject of heated debate, with some scholars and practitioners expressing concerns about the perils of entrenching company insiders for indefinite periods of time.[[66]](#footnote-67) Others, however, emphasize that dual-class structures enable founders to pursue their vision even when shareholders disagree with their strategy.[[67]](#footnote-68)

Interestingly, supporters of dual-class shares often hold the view that for companies to develop long-term projects, managers must be insulated from shareholder pressure.[[68]](#footnote-69) They further argue that in a market environment characterized by powerful shareholders who can unseat CEOs, founders increasingly insist on a dual-class structure so they can maintain control of their company and implement their long-term strategy.[[69]](#footnote-70)

Recent examples, however, challenge this view. Even in the era of strong, active shareholders, some CEOs remain quite powerful for long periods, even without dual-class shares. As the examples of Amazon, Netflix, J.P. Morgan, Tesla, and other companies listed in Table 1 demonstrate, CEOs can stay at the helm for long periods of time even when they hold only a minority share, and sometimes only a tiny fraction, of the company’s equity interest and voting rights. Moreover, some of these companies are newcomers that invested heavily in their long-term plans with the support of their shareholders, and without the protection of dual-class shares. Therefore, even in the era of strong, activist shareholders, some CEOs may become quite powerful simply because they make—or investors believe they make—a unique contribution to company value. We elaborate on this point in the next part.

Table 1. Prominent Examples of Former and Current Powerful CEOs[[70]](#footnote-71)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Company* | *CEO* | *Founder* | *Chair-CEO* | *Ownership (%)*  | *Tenure* |
| Amazon | Jeffrey Bezos | Yes | Yes | 15 | 27 |
| Apple | Steve Jobs | Yes | No | 0.6 | 14 |
| Fedex | Fred Smith | Yes | Yes | 7.5 | 50 |
| Hess | John Hess | Yes | Yes | 10.5 | 43 |
| Netflix | Reed Hastings | Yes | Yes | 1.2 | 24 |
| J.P. Morgan Chase | James Dimon | No | Yes | 0.3 | 17 |
| Microsoft | Bill Gates | Yes | Yes | 12.3 | 25 |
| Oracle | Larry Ellison | Yes | Yes | 25 | 37 |
| Salesforce.com | Marc Benioff | Yes | Yes | 3.4 | 22 |
| Tesla | Elon Musk | Yes | No | 18.3 | 17 |
|  |  |  |  |  |  |

Moreover, notwithstanding the rise of shareholder power, the courts continue to be preoccupied with protecting investors from powerful managers or controlling shareholders. In the case of Tesla, the Delaware court found that Elon Musk, the company’s visionary founder, exercised effective control even though he holds only 17% of the company's voting rights—well below the 50% threshold needed to lock up control.[[71]](#footnote-72) In fact, Tesla’s top five investors together hold the same percentage of shares.[[72]](#footnote-73)

It therefore seems that even in an era of powerful, activist shareholders, corporate law is far from being dead, as some CEOs remain quite powerful. Moreover, as we show in Part II, CEOs can be powerful even when there are no control enhancing mechanisms, such as dual-class shares.

# Superstar CEOs

Our core claim is that some CEOs—we call them «superstar CEOs»—remain powerful even when shareholders are powerful and boards are accountable to shareholders. The power of these CEOs stems not from their formal control over director elections, but from the market’s belief that through their vision or other exceptional abilities as CEOs, they make a unique contribution to company value. In this part, we outline the features that make a CEO uniquely valuable and explore the implications of these features for corporate governance. We begin by focusing on the perception that a particular CEO is uniquely valuable (Section A). We then consider other factors that often, but not always, bolster the power of superstar CEOs, and in particular founder status and a significant equity stake (Section B). Finally, we analyze the corporate governance implications of having a superstar CEO (Section C).

## Unique Contribution to Company Value

*1. Star Qualities*

It is worth noting at the outset that there is no precise definition of a «Superstar CEO.» At some level, all CEOs are expected to be talented leaders with some positive effect on the value of their companies,[[73]](#footnote-74) and it can be difficult to draw a clear distinction between a CEO who simply does a good job and a «superstar» or visionary CEO. Within our framework however, «superstar” CEOs are CEOs who are perceived as uniquely valuable to the success of their companies. More importantly for our analysis, they are individuals who directors, investors, and markets believe make a unique contribution to company value, such that replacing them would reduce that value.

Superstar CEOs may be critical to their companies’ success for various reasons. For example, their vision may include a corporate strategy that makes their company outperform competitors. A CEO may possess exceptional skills for implementing the company’s strategy. There is no one formula. And the precise reasons that make certain individuals uniquely valuable are not important for our analysis. For our purposes, what matters is that the market believes that the CEO is a superstar, and that without the continuing leadership of that CEO, the company’s value is likely to decrease significantly.

The business and finance literature as well as the media have long identified the “star” CEO phenomenon. The legal literature, in contrast, has largely overlooked the fact that some CEOs are perceived as essential to a company’s success.[[74]](#footnote-75) Before we discuss the finance literature, we would like to provide some recent examples.

*2. Examples*

The superstar CEO phenomenon is not new, but our era of fast technological changes and the rise of a “winner takes all” market provide many well-known examples of superstar CEOs. Due to space limitations, we will focus on three highly influential CEOs: Elon Musk of Tesla, Reed Hastings of Netflix, and Jeff Bezos of Amazon. This discussion will show that the market belief that these individuals are uniquely valuable allows them to exercise significant influence over their companies even though they have only limited voting rights.

*Tesla*. One prominent example is Teslaand its founder, Elon Musk. Under his leadership, Tesla’s share price increased by 2,600% within five years of its IPO, making Tesla the world’s most valuable automaker.[[75]](#footnote-76) *Forbes* magazine recently named Elon Musk today’s most successful business mind (along with Jeff Bezos), indicating that he «works to revolutionize transportation both on Earth and in space.»[[76]](#footnote-77) Musk is often viewed as the «face of Tesla.»[[77]](#footnote-78) The CEO of Panasonic recently suggested he is «a genius who defies common sense.»[[78]](#footnote-79) And as another prominent expert in the auto industry put it: “Elon is Tesla, Tesla is Elon.”[[79]](#footnote-80)

The notion that Musk makes a unique contribution to Tesla was one of the reasons the Delaware court held him to be a controlling shareholder in the derivative lawsuit over the acquisition of SolarCity.[[80]](#footnote-81) In that case, the court found that when Musk insistently brought the proposed acquisition to the board for consideration, the board was “well aware of Musk's singularly important role in sustaining Tesla in hard times and providing the vision for the Company's success.” His master plans, the court explained, “provide the architecture by which the Company has been and will be operated.”[[81]](#footnote-82) And as the company itself acknowledged in its public filings, Tesla is “highly dependent” on the services of Elon Musk, and if it were to lose his services, that loss “could negatively impact the company business, prospects, as well as cause its stock price to decline.”[[82]](#footnote-83)

This dependence on Musk might be why the board and investors did not oust Musk after he smoked marijuana on a live-streamed show [[83]](#footnote-84) and his use of Twitter cost the company $20 million for a fine imposed by the SEC. In August 2018, Musk posted a tweet saying that Tesla would be taken public with shares priced at $420 and that he had secured funding (although the funding had not been secured at the point). The SEC claimed that the tweet had no factual basis, but eventually Musk and Tesla settled with the SEC, agreeing to pay a fine of $20 million each.[[84]](#footnote-85) Musk’s unique contribution might also explain why the SEC did not suspend him for misleading investors. He was forced to step down as the company's chair and to add additional independent directors to the board, but most importantly for our purposes, he was allowed to remain CEO.[[85]](#footnote-86)

*Netflix*. In 1997, Reed Hastings co-founded Netflix, the first online DVD rental store.[[86]](#footnote-87) In 1999, he took over the CEO position, demoting his co-founder and partner at the time, Marc Randolph.[[87]](#footnote-88) Hastings has also served as Netflix's chair of the board since its inception. Under his leadership, Netflix became the largest entertainment-media company by market capitalization, with over 195 million subscribers worldwide.[[88]](#footnote-89) Netflix’s success is not trivial: it had to change its core business model over the years and adapt to its customers’ desires (including changing its core business from a DVD rental service to a streaming service).[[89]](#footnote-90)

Netflix’s success is attributed to its unique culture, which encourages competitiveness, critical thinking, invention, and transparency.[[90]](#footnote-91) Reed Hastings is the public face of this culture, which he named “No Rules Rules,”[[91]](#footnote-93) A PowerPoint presentation outlining Hastings’s radical management philosophy has been viewed over 20 million times since he posted it online. Sheryl Sandberg, the chief operating officer of Facebook, described it as “the most important document ever to emerge from Silicon Valley.”[[92]](#footnote-94) Hastings's book about his management philosophy is a bestseller in the Unites States and abroad, and he is considered to be a great storyteller, presenting even his worst mistakes as breakthrough moments.[[93]](#footnote-95)

Interestingly, Hastings holds only a tiny fraction—1.2%—of Netflix's voting rights. Without an effective lock on control, Hastings could be subject to shareholder pressure and even be ousted at any given minute. In the past decade, shareholders expressed significant concerns about Netflix’s corporate governance structure, and at some point a majority of them even supported a precatory proposal to split the CEO and chair roles.[[94]](#footnote-96) Yet the dependence on Hastings and his ability to turn Netflix into a huge success story explains why the vast majority of the shareholders voted to elect him to the board on three different occasions in the past three years.[[95]](#footnote-97) It also explains why they did not try to vote him out of office despite the fact that Netflix has systematically ignored shareholder demands and proposals that receive large support.[[96]](#footnote-98)

*Amazon*. Jeff Bezos, who founded Amazon in his garage in Seattle in 1994, served as CEO for 27 years.[[97]](#footnote-99) He is credited with having the strategic vision that led the company to its phenomenal success, transitioning it from a modest online bookseller into one of the world's most powerful corporations.[[98]](#footnote-100) Under his leadership, Amazon share price has increased 198,989%(!) since its IPO in 1997, making Amazon the fifth largest company by market cap as of the end of 2021.[[99]](#footnote-101) The media viewed Bezos as a unique leader, describing him as having a “magic touch,” or as a “once in a generation type CEO.”[[100]](#footnote-102)

Not surprisingly, investors also believed that Bezos was essential to the company’s meteoric growth,[[101]](#footnote-103) and he was praised for his ability to make big, important decisions without offering his shareholders any financial or strategic rational.[[102]](#footnote-104) Jeff Bezos holds 15% of the company’s voting rights,[[103]](#footnote-105) but as one commentator noted, “his influence would be the same if he had 51 percent shares outstanding or 1 percent.”[[104]](#footnote-106) And while recently Bezos handed over the CEO role to Andy Jassy, he still retains a key role, as Executive Chair of the company, and will remain engaged in important Amazon initiatives and focus his attention on new products.[[105]](#footnote-107)

*3. Empirical Evidence*

The business and financial literature has developed a rich body of research that examines the contribution of individual business leaders to company value. Due to the inevitable difficulty of defining what a superstar CEO is, this literature has relied on external, measurable proxies to identify CEOs that are uniquely valuable to their companies. One prominent proxy, through which the CEO is often elevated to superstar status, is the receipt of business awards from a prestigious national magazine or newspaper.[[106]](#footnote-108) Earlier studies also looked at other factors that could make a CEO more powerful or dominant, such as being the company founder, the share of equity the CEO owns, the number of positions the CEO holds (such as serving as both chair of the board and president), and whether the CEO is the only insider on the board.[[107]](#footnote-109) These factors do not, by themselves, make a superstar, but they can be highly correlated with superstar CEO status.

The startup literature highlights the importance of the quality of entrepreneurs as a major factor that ultimately determines the decisions of venture capital (VC) firms to invest in startups.[[108]](#footnote-110) These findings are particularly applicable to experienced entrepreneurs, who often receive higher valuations because of the reduced risk of operating failure from the point of view of the VC.[[109]](#footnote-111)

Other studies focus on larger, public companies. These studies empirically document the impact of individual CEOs on firm value and try to identify the characteristics of individual CEOs that make them uniquely valuable to their companies.[[110]](#footnote-112) For example, a long line of research shows that CEOs who founded companies tend to increase firm value or operating performance, and their firms enjoy higher valuation than professional CEO firms.[[111]](#footnote-113) Other studies have shown that family ownership increases firm value only if founders serve as CEO or as chair,[[112]](#footnote-114) and that the founder premium is prevalent in the early stages of the company life cycle, then disappears as the firm matures and expands.[[113]](#footnote-115)

Another line of studies establishes the link between individual CEOs and firm value by showing how the sudden departure of certain CEOs or founders has been painful to their organizations.[[114]](#footnote-116) In particular, these studies document a significant decrease in firm value when the CEO suddenly dies or experiences another unexpected event (such as hospitalization). The impact is especially heavy (i) when the CEO is powerful or young, (ii) in growing, family-controlled firms, or (iii) in human-capital-intensive industries.[[115]](#footnote-117) In contrast, the sudden death of older, long-tenured, entrenched CEOs is associated, on average, with large value gains to shareholders.[[116]](#footnote-118)

Other studies have tried to identify the channels through which individual CEOs may affect firm value by focusing on the link between certain CEO characteristics or managerial “styles” and firm performance.[[117]](#footnote-119) Some studies also suggest that founders can have a significant effect on their firms by contributing their distinctive human capital.[[118]](#footnote-120) They therefore emphasize the importance of retaining founder CEOs,[[119]](#footnote-121) especially for technology-driven acquisitions of young firms.[[120]](#footnote-122) Interestingly, some economists have argued that CEOs might take strategic measures to make themselves indispensable, for example by making the firm invest in assets that have a higher value under them than under the best alternative manager.[[121]](#footnote-123)

There is also a line of literature that examines the overall effects (both positive and negative) of superstar CEOs on their firms decision-making.[[122]](#footnote-124) In particular, empirical evidence shows that dominant CEOs are prone to taking bigger risks and thus could lead the company to either “big wins or big losses,”[[123]](#footnote-125) and that founder CEOs are more overconfident than professional CEOs and thus invest more in innovation.[[124]](#footnote-126) Founder CEOs also tend to pursue market expansion more aggressively than professional CEOs, but lack the administrative infrastructure essential to a growing firm.[[125]](#footnote-127)

On the negative side, empirical evidence shows that the presence of a founding CEO increases the probability of restating earnings and accounting manipulation,[[126]](#footnote-128) as well as the chances of backdating the executive stock options (especially in the high-tech industry).[[127]](#footnote-129) The business press also discusses the problems that arise when companies are too dependent on their charismatic leaders.[[128]](#footnote-130) And management experts discuss the difficulty of filling the position of a visionary CEO.[[129]](#footnote-131)

Taken together, the sources above suggest that certain individuals can make a difference for firm performance and company value. Or at least they demonstrate that markets believe that some CEOs make a unique contribution to company value. Striving to better understand this phenomenon and its financial implications, management scholars and financial economists have long studied the emergence of these powerful CEOs and their overall impact on firms’ value and decision-making.

The legal literature, in contrast, has largely overlooked the phenomenon of superstar CEOs and its governance implications.[[130]](#footnote-132) Yet the idea that certain corporate leaders might make a unique contribution occasionally plays a role in court decisions.[[131]](#footnote-133) Part of the reason legal scholars ignore the phenomenon of superstar CEOs stems, in our view, from the fact that they are hard to define. And as we show in the next section, that difficulty has legal implications. It should not, however, prevent us from examining those implications (as financial economists have long been doing).

## Founder Status, Equity Stake, and Structural Power

In this section we discuss several additional factors that bolster the power of CEOs, and therefore of superstar CEOs. These include founder status, having a large equity stake, and other structural factors, such as long tenure and a combined chair-CEO role.

*1. Founder Status and Significant Equity Stake*

Superstar CEOs are often, but not always, founders who have a significant equity stake. For example, Elon Musk, the legendary founder of Tesla, holds 18% of the company’s shares;[[132]](#footnote-134) Jeff Bezos, the founder of Amazon, holds 11.2% of the company’s shares;[[133]](#footnote-135) and Larry Ellison, the co-founder of Oracle, held about 25% of Oracle's shares when he was the CEO.[[134]](#footnote-136)

This is not a coincidence. As shown in Table 1, it is typically the case that superstar CEOs are founders. Since founders are the ones who have the vision to invent new products and markets or disrupt existing ones, they often become instrumental to their companies.[[135]](#footnote-137) More broadly, data we collected from the GMI data set shows that in 2018, about 11% of US public companies that did not have a controlling shareholder were founder or family owned. While the CEOs of such companies may, on average, outperform non-founder CEOs,[[136]](#footnote-138) it is unlikely that they all have superstar qualities. Founder status is therefore not a perfect approximation for superstar status.

A significant equity stake is often the outcome of the CEO being the company founder.[[137]](#footnote-139) While a founder’s stake can become diluted as the company raises more capital, some founders are able to retain a significant percentage of shares after the company goes public. And as we further explain in the next section, a significant minority ownership stake provides superstar CEOs with an additional form of power.

It is important to note that our framework excludes founder CEOs who retain majority control after an IPO, usually through the use of a dual-class share structure. Mark Zuckerberg, for example, holds about 60% of Facebook’s voting rights, which would clearly make him a controlling shareholder.[[138]](#footnote-140) In the case of founder/controlling shareholders, it is impossible to disentangle the sources of their power and determine whether it stems from control of the voting rights or the founders’ unique contribution to the firm’s value. Therefore, our analysis focuses on companies where, at least in theory, investors could outvote the CEO.[[139]](#footnote-141) For example, Larry Ellison’s 25% equity stake, although significant, was not enough for him to control the vote at Oracle in 2015, when a majority of the shareholders voted not to approve his executive compensation.[[140]](#footnote-142)

It is also important to note that it is not necessary to be a founder or hold a significant equity stake to be a superstar CEO. First, even extremely talented founders can get massively diluted over time. Examples of founders without a significant equity stake include Reed Hastings of Netflix, who holds only 1.2% of the company’s shares, and Apple under Steve Jobs, who held less than 1% of the firm’s shares.[[141]](#footnote-143) Second, markets may lose their faith in founders. Consider Apple’s decision to fire Steve Jobs in the 1980s.[[142]](#footnote-144)

Moreover, not all superstar CEOs are company founders. There are also talented professional CEOs who become instrumental to the success of their companies over the years. Jamie Dimon is a prominent example of a non-founder CEO who is perceived to be essential to his company’s success. Dimon, the famed CEO of J.P. Morgan, was featured four times on *Time* magazine’s list of the world’s 100 most influential people, and was several times named the most admired CEO among peers or the top CEO of the year.[[143]](#footnote-145)

Another example is Carlos Ghosn, the Brazilian-born executive who led the of Renault-Nissan alliance for two decades and, according to experts, “saved Nissan.”[[144]](#footnote-146) *Fortune* identified him as one of the ten most powerful people in business outside the US,[[145]](#footnote-147) and for several consecutive years, surveys jointly published by the *Financial Times* and *PricewaterhouseCoopers* named him as one of the world’s most respected business leaders.[[146]](#footnote-148) After that, he quickly achieved celebrity status in Japan and in the business world.[[147]](#footnote-149) Ghosn was eventually arrested for alleged corruption at the end of 2018. The market reaction in the period that followed his arrest shows his immense impact, as shares in both Nissan and Renault sunk by one-third.[[148]](#footnote-150)

A third prominent example of a non-founder superstar CEO is Leslie Moonves, who served as the CEO of CBS Corporation for about two decades, until his resignation in September 2018.[[149]](#footnote-151) Under his direction, CBS became a ratings powerhouse and the network was ranked first in total viewers for ten consecutive years.[[150]](#footnote-152) Along the way, he became “one of the most powerful men in television”[[151]](#footnote-153) and has often been one of America’s highest-paid CEOs.[[152]](#footnote-154)

*2.* *Structural Power*

The financial literature often cites structural factors, such as long CEO tenure (relative to the industry average) and concentration of titles (e.g., combined chair and CEO), as an indication of power.[[153]](#footnote-155) According to this view, a CEO who is also chair of the board or president of the company has greater influence.[[154]](#footnote-156) Table 1 supports this view: all the superstar CEOs in our top-10 sample have a median tenure of 25 years, which is significantly longer than the roughly five-year median tenure of all CEOs in the S&P 500;[[155]](#footnote-157) moreover, eight of our top-10 superstar CEOs serve as both chair and CEO, and a ninth (Musk) held both of those positions before settling with the SEC.[[156]](#footnote-158)

We note, however, that according to the traditional view, these structural factors are a source of CEO power. For example, when leadership roles are combined, they arguably confer much greater power on the CEO.[[157]](#footnote-159) Similarly, CEOs with tenure that is longer than the industry median should be more powerful vis-à-vis the board, and are more likely to be involved in nominating the directors.[[158]](#footnote-160)

In our framework, causation goes in the opposite direction: the CEO’s power stems mostly from being instrumental to the firm’s success, and it is the market’s belief in the CEO’S star quality that enables him to retain the CEO position for a long time or to hold a dual role. The case of Satya Nadella, Microsoft’s current CEO, is a clear example of that dynamic. After successfully leading Microsoft over the past seven years, making it more prominent in technology and business in general such that its stock value rose more than 600% over seven years, the company’s board unanimously decided to also make him chair of the board, replacing an independent director.[[159]](#footnote-161)

## Superstar CEOs and Corporate Governance

Our analysis sheds new light on the relationship between superstar CEOs, boards, and shareholders. We explore the implications of that relationship below. First, we discuss the ways in which the star qualities of some CEOs provide them with power vis-à-vis boards and shareholders, even in our era of powerful shareholders and independent boards. We also consider the implication of having a superstar CEO who has a significant equity stake. We then discuss the limits of CEO power, which critically depends on investors’ belief that the CEO is vital for the company’s success. Finally, we expand our analysis by considering the case of powerful CEOs in private companies and the increasing use of dual-class shares by powerful CEOs. We conclude by summarizing the governance implications of our analysis.

### CEO Power: Boards

Boards of directors do not run companies. Rather, they appoint CEOs and monitor their performance.[[160]](#footnote-162) As we explained above, during the early 2000s and 2010s, governance reforms were based on the premise that to ensure the effective performance of their oversight function, boards should become sufficiently independent from management and accountable to shareholders.[[161]](#footnote-163)

But what happens if directors who are fully accountable to shareholders and genuinely committed to the company’s success believe that the CEO is crucial to the company’s success? Their belief might limit their ability to effectively oversee the CEO’s activities.[[162]](#footnote-164) They might also doubt their own judgment and ability to question the decisions of their superstar CEOs. After all, investors (who elect the board members) believe that it is the CEO’s vision and insights that allow the company to become successful. And it is exactly that perception, which is shared by boards, investors, and the market alike, that gives a CEO power vis-à-vis the board of directors.

Consider, for example, members of the board’s nominating committee, who must nominate new members to the board. They consider a candidate who seems very promising, but the CEO strongly disapproves of that candidate. The directors might defer to the CEO and not nominate the candidate because they believe the costs of a confrontation with the CEO—or even the potential for a disharmonious working relationship between the CEO and the would-be director—outweigh the benefits of having the candidate join the board. They might also believe that the CEO knows better than they do which candidates would be best positioned to work with her and improve corporate performance.

The same logic applies to other board decisions: approving a strategic transaction that the CEO proposes; deciding on the CEO’s pay package; or, based on the *Tesla* case,[[163]](#footnote-165) disciplining the CEO for misusing their Tweeter account.

As we further stress below, the CEO’s power does not stem from the directors’ agency costs (such as them being slack, too beholden to the CEO, or lacking the qualifications needed to oversee the CEO). Rather, it stems from the directors’ belief that alienating the CEO or questioning his judgment would reduce company value.

### CEO Power: Shareholders

Similar thinking may be seen among shareholders. One of the ways to be sure board decisions are beneficial for the company is to put them to a shareholder vote.[[164]](#footnote-166) But when a company is led by a superstar CEO, providing shareholders with additional say on corporate affairs might not significantly enhance their ability to discipline the CEO. If they believe that the CEO is crucial to the company's success, they might defer to her judgment on corporate affairs. Any threat to remove the CEO would lack bite, as the shareholders would not want to throw the baby out with the bathwater. The examples of Tesla, Netflix, and Oracle nicely illustrate this point.

As we mentioned in Section **[XX]**, Elon Musk, the leader of Tesla, has been involved in a series of scandals in recent years, such as smoking marijuana on a live-streamed show and posting a tweet that could be considered a violation of securities law. Moreover, as we discuss in the next section, there are at least two derivative lawsuits pending against Musk, with one plaintiff accusing him of abusing his power to make Tesla acquire SolarCity. But judging by their ballots, Tesla investors seem to be very content with Musk. Data we collected from the Voting Analytics database shows that Musk has been up for reelection to the board twice since Tesla went public in 2014 (in 2017 and 2020) and each time, his appointment was approved by extremely high margins: over 97% of the votes cast at these board elections supported his reelection.[[165]](#footnote-167)

Moreover, between 2014 and 2019 Tesla received 12 shareholder proposals that eventually were submitted to a shareholder vote at the company’s annual meetings. Some of those proposals were on topics that generally receive large shareholder support, such as declassifying boards, the adoption of majority voting, and proxy access rights.[[166]](#footnote-168) Yet none of them received majority support at Tesla, despite the fact that eight were supported by ISS, the largest, most influential proxy advisory firm.[[167]](#footnote-169)

Elon Musk has also received the largest stock option package ever granted by a public company. It was valued at $2.6 billion at the date of the award, and the amount Musk can ultimately realize was estimated at $55 billion, giving him the option to acquire 12% of the company’s then-outstanding shares.[[168]](#footnote-170) Interestingly, this massive, unprecedented compensation package was approved by 73% of Tesla shareholders, who are unaffiliated with company management.[[169]](#footnote-171) Another interesting feature of the plan is that it ensured that Musk would be paid if and only if he succeeded in driving very substantial increases in stockholder value. If Tesla’s results fell short of the required milestones—even by a penny—the options contingent on those milestones would not vest, and Musk would be paid nothing. Five years after the plan was approved, Musk had achieved all but two of the twenty milestones and Tesla’s market capitalization had grown more than ten times, rivaling that of General Motors.[[170]](#footnote-172)

As the Tesla case clearly illustrates, when a CEO performs extraordinarily well and delivers tens of billions of dollars in actual returns, shareholders are willing to “bite the bullet,” open the wallet, and forgive any unacceptable behavior.

Other high profile examples show that even when shareholders are dissatisfied with the company’s governance, they do not discipline a powerful (or superstar) CEO the way they would another CEO or board member. Consider the case of Netflix. In 2013, Netflix shareholders who were dissatisfied with the company's lack of an accountability mechanism submitted a proposal to split the CEO and chair roles. New York City Comptroller Scott Stringer, who was one of the proposal’s biggest advocates, told the *New York Times* that “a board that ignores its shareholders is a house of cards.”[[171]](#footnote-173) At the company’s annual meeting, 73% of the shareholders voted in favor of this non-binding proposal, but the board of directors did not take any action, arguing that their current model had been highly effective. The following year, a similar proposal received only 47% of the vote.[[172]](#footnote-174) As one commentator explained, “given that Netflix shares soared nearly 300 percent in 2013 . : : investors were not inclined to penalize Hastings after such an accomplishment.”[[173]](#footnote-175)

More broadly, data we collected from the ISS database shows that 26 governance-related proposals that were submitted to Netflix between 2013 and 2020 received majority support.[[174]](#footnote-176) That seems like a huge win for shareholders but Netflix, as the data further show, routinely disregarded these results. Usually when companies systematically ignore shareholder concerns, their directors are subject to withhold campaigns that are embarrassing at the least, and which can result in their defeat or resignation.[[175]](#footnote-177) Hastings, however, received significantly more supporting votes than negative votes in three separate elections (2014, 2017, and 2020) despite the fact that ISS recommended that shareholders withhold their support.[[176]](#footnote-178)

As the head of the Environmental, Social, and Governance (ESG) department of a large institutional investor pointed out, the fact that Netflix shareholders remain mostly powerless is “even more egregious” because the company does not have a dual-class stock structure providing the company founder with majority control.[[177]](#footnote-179) Under our analysis, however, this outcome is not surprising at all. As long as the market believes in a CEO’s star qualities, shareholders are unlikely to discipline that CEO. How long the company and the board can ignore shareholder concerns depends on how well the company does. As another governance expert explained: “shareholders are more likely to overlook bad ESG or corporate governance standards when a company’s stock is outperforming.”[[178]](#footnote-180) And Netflix’s stock performance has been way ahead of the NASDAQ for the most recent five-year period.[[179]](#footnote-181)

Interestingly, while a majority of Netflix shareholders were unwilling to unseat Hastings, they did escalate their action against some of Netflix’s outside directors. Six of them received less than majority support in at least one corporate election (mostly in 2019),[[180]](#footnote-182) but since the company has a plurality voting system, they continued to serve on the board and were not forced to resign.

Another interesting example is that of Larry Ellison, the powerful founder of Oracle, who was one of the highest-paid executives in corporate America. In 2012, the company shareholders started to express concerns with regard to his lucrative pay packages. For two years in a row (2012 and 2013), they voted against Ellison's pay package in non-binding say-on-pay votes.[[181]](#footnote-183) Since Ellison held 24% to 25% of the company's outstanding shares, the overwhelming majority of investors opposed his compensation package. More interestingly, however, at the same annual meetings, the very same shareholders voted in favor of his reelection to the board by wide margins (97% and 95%, respectively).

How can one explain this split in voting patterns? As the outcome of say-on-pay votes demonstrate, Ellison was unable to dictate outcomes despite his significant percentage of shares. Why did shareholders vote against Ellison's executive pay package while at the same time overwhelmingly supporting his reelection to the board? The most plausible explanation is that given their belief in his contribution to the company, the shareholders preferred not to use their power to “rock the boat” and oust Ellison from the company even though they were dissatisfied with the size of his pay package.[[182]](#footnote-184) Indeed, in the seven years that followed (2014–2020), Ellison was reelected to the board by a very large margin in all but one of these cases.[[183]](#footnote-185)

Oracle shareholders did, however, express their disapproval of several independent directors who served on the company’s compensation committee during the relevant period. In 2013 and 2016 for example, a majority of non-Ellison votes withheld support for those directors due to their failure to address stockholder concerns about executive compensation,[[184]](#footnote-186) and they were able to continue serving on Oracle’s board only due to Ellison’s support.[[185]](#footnote-187) Eventually Oracle made some changes to its long-term equity grants to executives to address shareholder concerns,[[186]](#footnote-188) but it took it six proxy seasons to do so, and that was well after Ellison handed over the CEO role. Most interestingly, while investors escalated their fight against independent directors who served on the compensation committee or the special committee that approved a high profile related-party transaction with Ellison, they avoided taking similar steps against Ellison.

A recent empirical study provides systemic evidence that goes beyond these three examples to support the theory we present in this article. The study finds that shareholders in general, and mutual funds in particular, are more likely to vote with management (i.e., against shareholder proposals) when the CEO is a superstar (as measured by winning prestigious business awards).[[187]](#footnote-189) In particular, the authors show that shareholder proposals, especially contested ones and those that are supported by ISS, are significantly more likely to fail when the CEO is a superstar. The authors of the study therefore conclude that CEOs who benefit from superstar status become immune to changes in governance policies promoted by shareholders.[[188]](#footnote-190)

Taken together, the examples and empirical evidence presented in this section show that when CEOs are perceived as delivering high returns to shareholders, the latter tend to tolerate practices they would otherwise consider unacceptable. To be clear, this evidence does not suggest that shareholders will unable to influence corporate governance or executive compensation. Rather, it shows the limits of solutions that are based solely on shareholder votes when the company has a powerful CEO.

### Equity Ownership

As we discussed in Section [XX], some superstar CEOs are founders and have a significant equity stake. A large equity stake has two major effects on the relationship between a superstar CEO, the board, and the shareholders.

First, a CEO is more powerful when she has a significant equity stake because as a blockholder, she exerts considerable influence through voting in director elections, and can in many cases be the pivotal shareholder who determines vote outcomes, so directors depend on her for reelection.[[189]](#footnote-191) Directors would not want to be in a position where a large shareholder objects to their appointment, even if there is a theoretical possibility that they would be elected despite that objection. It is also more difficult (though not impossible) to oust a CEO who has a significant equity stake, as in our framework the control is contestable.[[190]](#footnote-192)

Second, a significant equity stake provides CEOs with incentives to enhance firm value. As in the case of a majority shareholder (although to a lesser extent), a shareholder with a significant equity stake bears a significant portion of the costs of her actions and receives a significant portion of the benefits.[[191]](#footnote-193) This analysis is supported by a significant body of empirical work, which consistently documents the positive effect of the rise in insiders’ ownership rights on company valuation.[[192]](#footnote-194)

### The Limits of CEO Superstar Power

So far we have shown that even in an era of powerful shareholders and independent boards, some CEOs can be quite powerful due to their vison and star qualities, and that such power his further enhanced when a CEO holds a significant equity stake. CEO power, however, is not without limits.

In the past, CEO power was the outcome of formal influence on board member nominations and shareholder passivity. In the present era of active, powerful shareholders, however, CEO power crucially depends on the widespreadperception that the CEO is vital to the company’s success. It is therefore limited in both duration and scope. If the company is underperforming, investors might lose faith in the CEO’s vision or star qualities. As a result, institutional investors might exert pressure or the company may become the target of an activist attack.

Moreover, powerful CEOs are protected from disciplinary action by the company’s board and shareholders only to the extent of their unique contribution to company value. Assume, for example, that a CEO is believed to be responsible for generating 5% of the company’s value. Such a powerful CEO will be immune from market pressures as long as her actions are not expected to decrease value by more than 5%. Once a CEO causes a company harm that exceeds 5% of its value, powerful shareholders are more likely to oust her.

This can also happen when a powerful CEO becomes a liability for other reasons, such as misconduct that significantly undermines the company’s reputation. The case of Papa John's demonstrates this point. John Schnatter started selling pizzas in 1984 in the back of his father’s Indiana Tavern. In 1985, he founded Papa John's, and under his leadership, the company grew into one of the top-selling pizza delivery companies in the United States, with 5,000 stores and $1.7 billion in revenue.[[193]](#footnote-195) In addition to being the CEO and the owner of almost 30% of company shares, Schnatter also held an outsized role as the face of the company. He often starred in the company’s commercials and delivered its signature line, “Better ingredients, better pizza.”[[194]](#footnote-196)

But in November 2017, he criticized the NFL’s handling of national anthem protests, calling the whole affair a “debacle.” Papa John’s shares crashed by 11% in hours and kept falling. Schnatter lost his CEO title and estimated franchise sales dropped by more than 5%.[[195]](#footnote-197) Still, little changed in the company’s day-to-day management according to a *Forbes*’ investigation, and if anything, Schnatter actually became “more involved than ever” in an attempt to manage the crisis.[[196]](#footnote-198) Then in July 2018, *Forbes* learned that Schnatter had used the N-word and made other controversial remarks on a conference call.[[197]](#footnote-199) After that was reported, company shares fell nearly 5%, bringing the stock’s decline to about 30% over a nine-month period.[[198]](#footnote-200) On the day that news broke, Schnatter resigned as chair[[199]](#footnote-201) and the share price rebounded, closing 11% higher.[[200]](#footnote-202) To protect the company against a hostile takeover attempt by Schnatter, an independent committee of Papa John's board subsequently adopted a poison pill provision that effectively prevented Schnatter (and his family members or friends) from raising their combined stake to 31%.[[201]](#footnote-203)

As a comprehensive *Forbes* report shows, Schnatter’s alleged behavior included not only inappropriate statements, but also other problematic conduct ranging from spying on his workers to engaging in sexually inappropriate conduct. That conduct has resulted in at least two confidential settlements[[202]](#footnote-204) and the toxic culture he created turned into a public relations and financial disaster for the company. The National Football League terminated its sponsorship deal with it, Major League Baseball suspended a joint promotion arrangement, and the New York Yankees cut ties with the.[[203]](#footnote-205) To recover, Papa John's did everything to distance itself from Schnatter: it removed his picture from marketing materials, booted him from subleased office space at the corporate headquarters, and asked him not to speak to the media.[[204]](#footnote-206) Schnatter’s example shows that even a powerful founder with a significant equity stake is not immune to being ousted (unlike founders of companies with dual-class shares). But it happens only in extreme circumstances.

It may also take shareholders some time to react, as in the case of Dov Charney, the powerful founder of American Apparel, who also lost his jobs over sexual harassment and the creation of a toxic working environment. Charney, who founded the successful clothing company in 1989, managed to hold on to his CEO title notwithstanding a well-publicized record of sexual harassment allegations (including allegedly masturbating in front of a reporter in 2004 and facing lawsuits for sexual harassment by eight former female employees in 2005 and 2011).[[205]](#footnote-207) It was only in June 2014 that the board ousted him as CEO, after an internal investigation revealed that he had allowed an employee to post naked photos on the internet of a former American Apparel employee who had sued Charney for sexual harassment.[[206]](#footnote-208)

Other prominent examples are those of Carlos Ghosn and Leslie Moonves. Ghosn, the powerful CEO of Nissan and Renault, was ousted from the company after being accused of and arrested for corruption in late 2018.[[207]](#footnote-209) Moonves, the superstar CEO of CBS Corporation, resigned in September 2018, a few weeks after *The* *New Yorker* revealed that six women had accused him of sexual harassment and intimidation and the company was facing a lawsuit in federal court in New York for securities fraud.[[208]](#footnote-210)

Taken together, these examples show that there are limits to a superstar CEO’s power, in particular when he is involved in sexual harassment or illegal activities that significantly undermines the company’s reputation. However, as the data we present in Section [XX] shows, when it comes to less egregious actions, such as being inattentive to shareholder governance demands, extracting lucrative executive pay, or smoking marijuana on a live-streamed show, shareholders may show more patience, as long as the CEO’s performance is exceptional.

### Powerful CEOs in Private Companies

CEOs can also become extremely powerful in private companies—even those that have powerful, sophisticated investors. In theory, private firms are less likely to suffer agency costs. There is less separation between ownership and control, and the shareholders exercise stricter oversight of the board and management.[[209]](#footnote-211) For example, VC investors serve on boards and have a reputation for closely monitoring founders.[[210]](#footnote-212) However, a close look at two recent case studies reveals that even in private companies with low agency costs, shareholders are not rushing to exercise their power over superstar CEOs.

The first case study concerns Uber's CEO and co-founder, Travis Kalanick. Under Kalanick's leadership, Uber made the headlines, but not necessarily in the way its investors would have wished. Uber and its CEO were constantly accused of inappropriate sexual behavior. In 2014, Kalanick made several sexist remarks in an interview[[211]](#footnote-213) and was caught visiting an escort with a group of senior employees in Seoul.[[212]](#footnote-214) In another incident during a promotional tour in France, the company partnered with a French app that sends users photos of women. Due to negative media coverage in the US, Uber abandoned the partnership but did not apologize.[[213]](#footnote-215)

However, Uber's reputation for sexual misconduct was not based on the incidents above alone. In 2017, a former Uber engineer said that the company systematically failed to address reports on sexual harassment and described a toxic working environment for female employees.[[214]](#footnote-216) Kalanick denied any former knowledge of the allegations.[[215]](#footnote-217) In response, the company hired Eric Holder, former US attorney general, to investigate the claims.[[216]](#footnote-218) The investigation eventually included 215 employee complaints. Four months later, Uber fired more than 20 employees as part of its internal investigation concerning the sexist culture.[[217]](#footnote-219)

Uber also had its name linked with privacy controversies. The company collected data on users' geopositioning and credit card information,[[218]](#footnote-220) and used technology to track down drivers that simultaneously worked for Lyft, its main competitor.[[219]](#footnote-221) Other scandals include a lawsuit by Waymo, Alphabet's self-driving car company, accusing Uber of technology theft,[[220]](#footnote-222) and a $20 million settlement reached in 2017 after the company admitted it misled drivers as to their expected earnings.[[221]](#footnote-223)

One might rightfully wonder: Where were Uber's major investors? How did they react to the company's ongoing involvement in those scandals? In 2014, Billy Gurley of Benchmark emphasized his confidence in Kalanick's skills.[[222]](#footnote-224) At the same time, however, Peter Theil, another prominent investor, said that Uber was the “most ethically challenged company in Silicon Valley.” He thought Uber was on the verge of “going too far.”[[223]](#footnote-225)

But Thiel's concerns did not change how Uber's investors treated Kalanick until three years later, when they started more seriously questioning Kalanick's ability to lead the company. After the sexual harassment scandal exploded in June 2017, Gurley began thinking the company's management needed a change. David Bonderman of TPG Capital started arguing frequently with Kalanick during board meetings,[[224]](#footnote-226) and other investors wrote an open letter to Kalanick expressing their disappointment in his failure to change the firm's “toxic atmosphere.”[[225]](#footnote-227) Nevertheless, some of Uber's investors still showed faith in Kalanick and thought he should stay in the company, even if he did not remain CEO. [[226]](#footnote-228) Only in June 2017, long after VC investors became aware of Kalanick’s inappropriate behavior, did he resign from his role as Uber's CEO.[[227]](#footnote-229)

Another story of a powerful private-company CEO concerns Adam Neumann of WeWork. Neumann made WeWork notorious for its unusual working atmosphere, which included company-planned summer camps that involved heavy drinking and marijuana use. Neumann himself used to walk around the office in bare feet and installed a pool and sauna in his office in Manhattan.[[228]](#footnote-230) However, it was not only Neumann's “unique” working routine that made WeWork catch the eyes of the press. Between 2016 and 2018, former WeWork employees exposed the company's poor handling of sexual harassment accusations and said the environment was toxic for women.[[229]](#footnote-231)

Under Neumann's leadership, WeWork was also criticized for its poor corporate governance and financial misbehavior. Neumann used to do business with the company regularly: he owned stakes in buildings leased to the company and repeatedly borrowed money from it. Neumann also had his relatives and friends employed by WeWork and gave his wife a key position in the company.[[230]](#footnote-232)

Nevertheless, WeWork's board and investors did not rush to discipline their CEO and demand change. Even though Bruce Dunlevie from Benchmark warned the board that Neumann holds excessive power and control over the company, the board approved Neumann’s proposal to recapitalize the company's voting structure in his favor.[[231]](#footnote-233) JP Morgan and Goldman Sachs in particular seemed to neglect their oversight duties, presenting Neumann with unrealistic valuations and not objecting to Neumann taking loans from the company.[[232]](#footnote-234)

The cases of Uber and WeWork provide evidence that the phenomenon of powerful CEOs is not limited to public corporations. The VC firms invested in these two private companies were familiar with the CEOs' problematic behavior but abstained from taking disciplinary action for a long time. This is further evidence of the strength of superstar CEOs. Even though the previous literature shows that investor oversight in private firms is more efficient and less costly, the cases of Uber and WeWork show that investors will not rush to discipline CEOs with star qualities even when their behavior is extremely problematic. They consider the powerful CEOs' stardom and vision an asset and are reluctant to engage in closer oversight.

### Powerful CEOs and Dual-Class Shares

Our analysis also has implications for the debate about companies with dual-class shares. A prominent justification for the use of a dual-class structure is that founders need absolute control to implement their long-term corporate strategy.[[233]](#footnote-235) Our analysis challenges this view, however. Some visionary founders have been able to lead companies over the long term without dual-class shares and with control that could be challenged. As long as such founders significantly outperform and the market has faith in their star quality, shareholders are unlikely to oust them. In fact, as our examples of Netflix and others demonstrate, shareholders may even allow such founders to maintain pay arrangements and other governance practices that they generally disfavor.

Our analysis offers a more nuanced understanding of the dynamic underlying the dual-class structure. To begin with, founders do not need such a structure to be able to focus on the long term. They do need it, however, when rightly or wrongly, the market no longer considers them essential to their company’s success. As one of the authors of this paper has explained elsewhere, the dual-class structure allows founders to pursue their vision against investors’ objections.[[234]](#footnote-236) That is, when they lose their star aura and investors start thinking about changing the company’s leadership.

But why would investors agree to such a system at the outset? Why are dual-class IPOs on the rise,[[235]](#footnote-237) despite empirical evidence and analyses (including by one of us) showing that the costs of these structures tend to increase over time? And why would a large proportion of dual-class firms still go public without time-based sunset provisions, which limit their duration, despite the increasing opposition of proxy advisers and large institutional investors to the use of perpetual dual-class shares?[[236]](#footnote-238)

Our analysis sheds light on this puzzle by explaining how powerful founders may be able to bargain with venture capitalists or other investors for more control rights.[[237]](#footnote-239) If founders are perceived as crucial for success in the company’s early days, they are likely to use their considerable bargaining power to insist on adopting dual-class shares at the IPO stage. In other words, founders insist on the dual-class structure precisely when it is most likely to be less desirable for investors or the market.[[238]](#footnote-240)

The considerable bargaining power of talented founders is further enhanced by changes in product markets. Technological changes and the rise of “winner take all” markets are increasing the demand for CEOs that can move fast and disrupt entrenched players in the market or even entire industries.[[239]](#footnote-241) These CEOs, in turn, require more control rights at the IPO stage. Investors give them these control rights not because they believe the founders will always know how to lead the company better than the markets do, but because the founders are perceived as indispensable at the IPO stage.

### Governance Implications

Our analysis suggests that superstar CEOs can be quite powerful. However, the source of their power is not the misalignment of interests between directors and shareholders, shareholder general passivity, or the formal power that CEOs exercise in director elections. It is the market’s belief that the CEO has such a unique vision or leadership skills that the company’s success depends on that CEO’s continued leadership. That finding has several implications.

First, it shows that the failure of corporate boards to more closely supervise CEOs may not always be the result of agency costs. That would explain why the superstar CEO phenomenon may also be observed in private companies that have powerful, sophisticated investors, such as Uber and WeWork, .[[240]](#footnote-242) Elizabeth Polman claims this puzzle can be explained by the complex capital structure of late-stage startups and the conflicts of interests among venture capitalists serving as directors who want to maintain their founder-friendly reputation.[[241]](#footnote-243) Our analysis provides an alternative explanation as to why this phenomenon takes place in private companies: VC firms who believe in the founder’s unique ability to produce superior returns are at a structural disadvantage. As long as the CEO is perceived as a star and the company depends on her vision and leadership, they are less likely to challenge the CEO.

Second, our analysis suggests that making the directors more independent or accountable to shareholders will not address the problem of unaccountable superstar CEOs. In fact, CEOs are powerful precisely because boards believe they produce value for shareholders.

Third, and similarly to the previous point, our analysis highlights the limits of shareholder voting rights in the presence of a powerful CEO. Even if shareholders are dissatisfied with a superstar CEO’s behavior and have the formal power to do so, they are unlikely to replace her. This is because a change in company leadership may have an adverse financial effect on them. Therefore, they will at most use their voting power to send a *non-binding* signal of dissatisfaction to the powerful CEO (which will not result in any concrete action), or oust other independent directors.[[242]](#footnote-244)

Finally, CEO power is also contingent upon the perception of star qualities. Once this fades away, a CEO who misbehaves can, and often will, be replaced.[[243]](#footnote-245) The need for legal intervention thus becomes weaker as control becomes easier to challenge, and where activist hedge funds or powerful institutional investors are able[[244]](#footnote-246) to remove misbehaving CEOs who have lost their “golden touch.”

1. See, e.g., Lucian A. Bebchuk & Assaf Hamdani, *The Elusive Quest for Global Governance Standards*, 157 U. Pa. L. Rev. 1263 (2009); Ronald J. Gilson, Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy, 119 Harv. L. Rev. 1641 (2006). [↑](#footnote-ref-2)
2. *See, e.g.,* Lucian A. Bebchuk & Assaf Hamdani, *Independent Directors and Controlling Shareholders*, 165 U. Pa. L. Rev. 1271, 1273 (2017). [↑](#footnote-ref-3)
3. See, e.g., *Kobi Kastiel, Against All Odds: Hedge Fund Activism in Controlled Companies*, 2016 Colum. Bus. L. Rev. 60, 126 (2016). [↑](#footnote-ref-4)
4. *See, e.g.,* Lucian A. Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers*, 107 Geo. L.J. 1453, 1459 (2019); Zohar Goshen & Assaf Hamdani, *Corporate control, dual class, and the limits of judicial review*, 120 Columbia Law Review 941, 963-64 (2020). [↑](#footnote-ref-5)
5. See, e.g., Simeon Djankov et al., *The Law and Economics of Self-Dealing,* 88 J. Fin. Econ. 430 (2008). For a review of The analysis of the relative efficiency of rules regulating self-dealing was developed several years earlier. For a review of this prevailing view and related studies, see Zohar Goshen & Assaf Hamdani, *Corporate Control and Idiosyncratic Vision*, 125 Yale L.J. 560, 571-73 (2016). [↑](#footnote-ref-6)
6. See, e.g., Lucian A. Bebchuk & Assaf Hamdani, *The Elusive Quest for Global Governance Standards*, 157 U. Pa. L. Rev. 1263 (2009). [↑](#footnote-ref-7)
7. *See, e.g.,* ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 139–40 (1932) (observing that managers “while in office, have almost complete discretion in management”); Michael C. Jensen & William H. Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, 3 J. FIN. ECON. 305, 308, 315 (1976) (noting that “there is good reason to believe that the agent will not always act in the best interests of the principal”); Roberta Romano, Metapolitics and Corporate Law Reform, 36 Stan. L. Rev. 923, 923 (1984) (“[A]fter half a century, discussion of the corporate form still invariably begins with Berle and Means’ location of the separation of ownership and control as the master problem for research.”). [↑](#footnote-ref-8)
8. *See, e.g.,* Lucian Bebchuk & Jesse Fried, Pay without Performance: The Unfulfilled Promise of Executive Compensation 23-33; Marcel Kahan & Edward Rock, *Embattled CEOs*, 88 TEX. L. REV. 987, 1038 (2010); Jay Lorsch & Elizabeth Maciver, *Pawns or Potentates: The Reality of America's Corporate Boards* (Harvard Business School Press, Cambridge, MA) 20-23 (1989). [↑](#footnote-ref-9)
9. *See, e.g.,* Bernard S. Black, *Shareholder Passivity Reexamined*, 89 Mich. L. Rev. 520, 584-91 (1990) (discussing rational apathy, and shareholder’s lack of incentives to become informed). See also Bayless Manning, *The Shareholder’s Appraisal Remedy: An Essay for Frank Coker*, 72 YALE L. J. 223, 261 (1962) (“It is commonplace to observe that the modern shareholder . . . does not think of himself or act like an ‘owner.’ He hires his capital out to the [corporate] managers and they run it for him; how they do it is their business, not his, and he always votes ‘yes’ on the proxy.”). [↑](#footnote-ref-10)
10. *See, e.g.,* Lucian A. Bebchuk, *The Myth of the Shareholder Franchise*, 93 Va L. Rev. 675, 680 (2007) (providing empirical evidence on the small number of electoral challenges). *See also* Kobi Kastiel & Yaron Nili, *Competing for Votes* 10 Harvard Business Law Review 287, 290 (2020) (explaining how in the past, shareholder voting was largely inconsequential, and shareholders often sided with management). [↑](#footnote-ref-11)
11. Claudia H. Allen, Neal, Gerber & Eisenberg, LLP, *Study of Majority Voting in Director Elections*, at ii (2007), http://www.ngelaw.com/files/upload/majoritystudy111207.pdf («Until recently, virtually all directors of U.S. public companies were elected under a «plurality' vote standard.»); Kahan & Rock, *supra* note 8, at 1010 («[o]f S&P 100 companies, only ten deviated from plurality voting in 2003»). [↑](#footnote-ref-12)
12. See Allen, *id.*, at ii («A nominee in an election to be decided by a plurality could theoretically be elected with as little as one vote, thereby ensuring that, in an uncontested election, nominees slated by a board will be elected and that board seats will not be left vacant.»). [↑](#footnote-ref-13)
13. *See*, e.g., Anil Shivdasani & David Yermack *CEO involvement in the selection of new board members: An empirical analysis,* 54 J. Fin. 54 1829, 1830 (1999) (CEO is involved in nominating directors when the company has no nominating committee and the CEO serves on the board or when the CEO is a member of the nominating committee); Lucian Bebchuk & Jesse Fried, Pay without Performance: The Unfulfilled Promise of Executive Compensation 23-33 (2004). [↑](#footnote-ref-14)
14. *See* Jay Lorsch & Jack Young, *Pawns or Potentates: The Reality of America's Corporate Boards*, 4 The Executive 85, 85-86 (1990) (“in spite of the existence of nominating committees in most boards, the chairman/CEO still is a major influence on the selection of directors. It is no exaggeration to say that many directors are beholden to the CEO for their position, when they are in fact supposed to be monitoring the CEO's performance/position.”) [↑](#footnote-ref-15)
15. *See, e.g.,* Moran v. Household Int’l, Inc., 500 A.2d 1346, 1357 (Del. 1985) (applying the business judgment rule to the board’s adoption of a poison pill because it was adopted “in the good faith belief that it was necessary to protect” the corporation); Air Prods. & Chems., Inc. v. Airgas, Inc., 16 A.3d 48, 57 (Del. Ch. 2011) (approving the board’s continued use of a poison pill even when combined with a staggered board—a board in which only a third of its members are up for reelection every year). [↑](#footnote-ref-16)
16. Lucian Arye Bebchuk, John C. Coates, & Guhan Subramanian, *The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy*, 54 Stan. L. Rev. 887, 910, 913 (2002) (explaining that there has never been a hostile acquisition of a firm with an effective staggered board where the firm kept its pill in place); [↑](#footnote-ref-17)
17. Bebchuk & Hamdani, *supra* note 1, at 1276-80 (discussing the need to make directors more accountable to shareholders); Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 Stan. L. Rev. 1465, 1468 (2007) (estimating that the percentage of independent directors has increased from around 20% in 1950 to around 80% in 2005). [↑](#footnote-ref-18)
18. Edward B. Rock, *Adapting to the New Shareholder-Centric Reality,* 161 University of Pennsylvania Law Review 1907, 1922 (2013) («the old story of dispersed ownership, passive shareholders, and directors under the thumb of an imperial CEO is no longer accurate»). [↑](#footnote-ref-19)
19. S*ee, e.g.*, Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 Colum. L. Rev. (forthcoming 2021) (manuscript at 4-10) https://ssrn.com/abstract=3775846. [↑](#footnote-ref-20)
20. *Id.* [↑](#footnote-ref-21)
21. Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 Stan. L. Rev. 1465, 1473 n. 9 (2007). [↑](#footnote-ref-22)
22. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745. [↑](#footnote-ref-23)
23. N.Y. Stock Exch., N.Y.S.E. Listed Company Manual §§ 303A.01, .04, .05, .06 (2021) https://nyse.wolterskluwer.cloud/listed-company-manual/document?treeNodeId=csh-da-filter!WKUS-TAL-DOCS-PHC-%7B0588BF4A-D3B5-4B91-94EA-BE9F17057DF0%7D--WKUS\_TAL\_5667%23teid-69 [https://perma.cc/F4QK-2SW3]; Nasdaq, Nasdaq Stock Market LLC Rules § 5605(b)(1), (c)(2), (d)(2), (e) (2021) https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%205600%20Series. [↑](#footnote-ref-24)
24. Kobi Kastiel & Yaron Nili, *«Captured Boards»: The Rise of «Super Directors» and the Case for a Board Suite*, 19 Wis. L. Rev. 25-26 (2017). [↑](#footnote-ref-25)
25. Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 Stan. L. Rev. 1465, 1473 n. 9 (2007). [↑](#footnote-ref-26)
26. Kobi Kastiel & Yaron Nili, *The Corporate Governance Gap*, 131 Yale L.J. (forthcoming, 2022) (manuscript pp. 39-40), https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3824857 (hereinafter: Kastiel & Nili, *The Corporate Governance Gap*). [↑](#footnote-ref-27)
27. Lucian Arye Bebchuk, John C. Coates IV & Guhan Subramanian, *The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy*, 54 Stan. L. Rev. 887, 894 (2002). [↑](#footnote-ref-28)
28. *Id*. [↑](#footnote-ref-29)
29. *Id*. at 912-13.Cite Airgas Delaware case XX (allowing the board to keep the poison pill even after the bidder won one round of director elections). [↑](#footnote-ref-30)
30. *Id.* at 914. [↑](#footnote-ref-31)
31. For a review of the empirical evidence showing that annual elections annually make directors more accountable to shareholders, see Lucian Bebchuk, Scott Hirst, & June Rhee, *Toward the Declassification of S&P 500 Boards*, Harv. Bus. L. Rev. 157, 165 (2013). For the opposite view, *see* K.J. Martijn Cremers, Lubomir P. Litov & Simone M. Sepe, *Staggered Boards and Long-Term Firm Value, Revisited*, 126 J. Fin. Econ. 422, 422-23 (2017) (finding a positive association between staggered boards and long-term firm value). *See also,* Yakov Amihud, Markus Schmid, and Steven Davidoff Solomon, *Settling the Staggered Board Debate*, 166 U. PA. L, Rev. 1475 (2018). [↑](#footnote-ref-32)
32. Marcel Kahan & Edward Rock, *Embattled CEOs*, 88 Tex. L. Rev. 987, 1008 (2010) (hereinafter: Kahan & Rock, *Embattled CEOs*). [↑](#footnote-ref-33)
33. A notable example in that regard is the Shareholder Rights Project at Harvard Law School, which assisted institutional investors in using shareholder proposals to precipitate the declassification of previously staggered boards at roughly 100 S&P 500 and Fortune 500 companies. *See* Lucian Bebchuk, Scott Hirst, & June Rhee, *Toward the Declassification of S&P 500 Boards*, Harv. Bus. L. Rev. 157 (2013). [↑](#footnote-ref-34)
34. Kastiel & Nili, *The Corporate Governance Gap*, *supra* note 27, at pp. 33-34. [↑](#footnote-ref-35)
35. Zohar Goshen & Sharon Hannes, *The Death of Corporate Law*, 94 New York University Law Review, 263, 279-280 (2019); Institutional S’holder Servs., United States Proxy Voting Guidelines: Benchmark Policy Recommendations 13 (Nov. 21, 2016). [↑](#footnote-ref-36)
36. Stephen J. Choi, Jill E. Fisch, Marcel Kahan & Edward B. Rock, *Does Majority Voting Improve Board Accountability?*, 83 U. Chi. L. Rev. 1119 (2016). [↑](#footnote-ref-37)
37. *Id.* [↑](#footnote-ref-38)
38. *Id*. *See, also* David Webber, The Rise Of The Working-Class Shareholder: Labor’s Last Best Weapon 75 (2018) (discussing how the United Brotherhood of Carpenters Fund utilized shareholder proposals to successfully influence many target companies to adopt majority voting in shareholder elections); Kastiel & Nili, *The Corporate Governance Gap*, *supra* note 27, at 43-44 (showing that 88% of companies that make up the S&P 500 required a majority vote for board elections in 2020, and above 60% and 55% of the S&P 400 and S&P 600, respectively, require majority voting. [↑](#footnote-ref-39)
39. Kahan & Rock, *Embattled CEOs*, *supra* note 33, at 1042. [↑](#footnote-ref-40)
40. *See, e.g.,* Edward B. Rock, *Institutional Investors in Corporate Governance*, in The Oxford Handbook of Corporate Law and Governance 363, 365 (Jeffrey N. Gordon & Wolf-Georg Ringe eds., 2018); Assaf Hamdani & Sharon Hannes, *The Future of Shareholder Activism*, 99 B.U. L. Rev. 971, 973 (2019). [↑](#footnote-ref-41)
41. *See, e.g.,* Lucian A. Bebchuk & Scott Hirst, The Specter of the Giant Three, 99 B.U. L. Rev. 721, 725-26 (2019); John C. Coates, The Future of Corporate Governance Part I: The Problem of Twelve (Harvard Pub. Law Working Paper No. 19-07 2018), <https://corpgov.law.harvard.edu/wp-content/uploads/2019/11/John-Coates.pdf>. [↑](#footnote-ref-42)
42. Bebchuk & Hirst, *id.*, at 732-40 (documenting that the “Big Three” collectively vote about 25% of the shares in all S&P 500 companies and that stock held by index funds has risen dramatically over the past two decades and can be expected to continue growing). [↑](#footnote-ref-43)
43. Kobi Kastiel & Yaron Nili, *Competing for Votes*, 10 Harv. Bus. L. Rev. 287 312-314, 319-312 (2020) (providing evidence that «investors do not always stick in the pocket of management» in connection with votes on proxy fights, shareholder proposals, say-on-pay votes and uncontested director elections); Ryan Bubb & Emiliano Catan, *The Party Structure of Mutual Funds* (Feb. 14, 2018) (analyzing voting by mutual funds by breaking it down into three major groups: the managerial, shareholder intervention, and shareholder veto; the characterization of which depends on whether they vote with or against management). [↑](#footnote-ref-44)
44. Lund & Pollman, *The Corporate Governance Machine*, *supra* note 19, at p. 3. [↑](#footnote-ref-45)
45. *See, e.g.,* BlackRock, Our 2021 Stewardship Expectations: Global Principles and Market-Level Voting Guidelines (2021), https://www.blackrock.com/corporate/literature/publication/our-2021-stewardship-expectations.pdf. [↑](#footnote-ref-46)
46. Kahan & Rock, *Embattled CEOs*, *Supra* note 33, at p. 1007. [↑](#footnote-ref-47)
47. Kastiel & Nili, *The Corporate Governance Gap*, *supra* note 27, at pp. 9-10. [↑](#footnote-ref-48)
48. Leo E. Strine, Jr., *The Delaware Way: How We Do Corporate Law and Some of the New Challenges We (and Europe) Face*, 30 Del. J. Corp. L. 673, 688(2005) [«[P]owerful CEOs come on bended knee to Rockville, Maryland, where ISS resides, to persuade the managers of ISS of the merits of their views about issues like proposed mergers, executive compensation, and poison pills. They do so because the CEOs recognize that some institutional investors will simply follow ISS’s advice…»]. [↑](#footnote-ref-49)
49. Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 Colum. L. Rev. 863, 874-75 (2013) [↑](#footnote-ref-50)
50. Alon Brav, Wei Jiang, Frank Partnoy & Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, 63 J. Fin. 1729, 1734-36 (2008) (describing the main characteristics of hedge funds); Lucian A. Bebchuk, Alon Brav, Wei Jiang & Thomas Keusch, *Dancing with Activists*, 137 J. Fin. Econ. 1 (2020) (providing a comprehensive analysis of the drivers, nature, and consequences of activists’ engagements and settlements with companies). [↑](#footnote-ref-51)
51. [↑](#footnote-ref-52)
52. *See,* Frank Partnoy & Randall Thomas, *Gap Filling, Hedge Funds, and Financial Innovation*, *in* New Financial Instruments and Institutions: Opportunities and Policy Challenges 101, 101 (Yasuyuki Fuchita & Robert E. Litan eds., 2007) (observing that activist hedge funds “have shaken up boardrooms and forced radical changes at many publicly-traded firms”). See also Jonathan Macey, for instance, claimed that hedge funds and private equity firms “are the newest big thing in corporate governance” and that they “actually deliver on their promise to provide more disciplined monitoring of management.” Jonathan R. Macey, Corporate Governance: Promises Kept, Promises Broken 241, 272 (2008). Marcel Kahan and Ed Rock expressed hope that activist hedge funds “may act ‘like real owners’ and provide a check on management discretion.” Kahan & Rock, *supra* note \_, at 1047. [↑](#footnote-ref-53)
53. Marcel Kahan & Edward B. Rock, *Hedge Funds in Corporate Governance and Corporate Control*, 155 U. Pa. L. Rev. 1021, 1029-32, 1061-62 (2007); Dancing with activists, supra note [\_], at \_\_. [↑](#footnote-ref-54)
54. Goshen & Square; Lund & Pollman; Kahan & Rock; Kastiel & Nili, *The Corporate Governance Gap*, *supra* note 27, at p. 10. [↑](#footnote-ref-55)
55. Steven N. Kaplan & Bernadette A. Minton, How Has CEO Turnover Changed? 1, 1-4 (Nat'l Bureau of Econ. Res. working paper no. 12465, Aug. 2006), https://www.nber.org/system/files/working\_papers/w12465/w12465.pdf. [↑](#footnote-ref-56)
56. Kahan & Rock, *Embattled CEOs*, *Supra* note 33, at p. 1032. [↑](#footnote-ref-57)
57. Kastiel & Nili, *The Corporate Governance Gap*, *supra* note 27, at pp. [XX]. [↑](#footnote-ref-58)
58. Kahan & Rock, *Embattled CEOs*, *Supra* note 33, at pp. 1030-32, 1042. [↑](#footnote-ref-59)
59. Cross reference. [↑](#footnote-ref-60)
60. *See* Edward Rock, *Adapting to the New Shareholder-Centric Reality*, 1910. [↑](#footnote-ref-61)
61. Zohar Goshen & Sharon Hannes, *The Death of Corporate Law*, 94 New York University Law Review, 263, 265 (2019). [↑](#footnote-ref-62)
62. *See, e.g.,* Roe & Shapira*, The Power of the Narrative in Corporate Lawmaking*, HBLR 3 (2020) (describing the view that “executives, confronted with a demanding stock market of traders and activists, focus too much on boosting the immediate quarterly financial statements, rather than on the business’s long-term health.») [↑](#footnote-ref-63)
63. Dhruv Aggarwal, Ofer Eldar, Yael V. Hochberg & Lubomir P. Litov, *The Rise of Dual-Class Stock IPOs*, 2-8 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3690670. [↑](#footnote-ref-64)
64. Jay R. Ritter, *Initial Public Offerings: Updated Statistics***,** Warrington College of Business, 68 **(**Oct. 1, 2021) <https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf>. [↑](#footnote-ref-65)
65. *See, e.g.,* Lucian A. Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers*, 107 Geo. L.J. 1453 (2019). [↑](#footnote-ref-66)
66. Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 Va. L. Rev. 585 (2017); Robert J. Jackson Jr., Comm’r, U.S. Sec. & Exch. Comm’n, Perpetual Dual-Class Stock: The Case Against Corporate Royalty (Feb. 15, 2018), https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty; Petition from Council of Institutional Inv’rs to Elizabeth King, Chief Regulatory Officer, Intercontinental Exch. Inc. (Oct. 24, 2018), https://www.cii.org/files/issues\_and\_advocacy/correspondence/2018/20181024%20NYSE%20Petition%20on%20Multiclass%20Sunsets%20FINAL.pdf. [↑](#footnote-ref-67)
67. See, e.g., Zohar Goshen & Assaf Hamdani, Corporate Control and Idiosyncratic Vision, 125 Yale L.J. 560, 567 (2016). [↑](#footnote-ref-68)
68. For early work raising the claim that dual-class stock facilitates long-term planning, see George W. Dent, Jr., Dual Class Capitalization: A Reply to Professor Seligman, 54 Geo. Wash. L. Rev. 725, 748 (1986), and Daniel R. Fischel, Organized Exchanges and the Regulation of Dual Class Common Stock, 54 U. Chi. L. Rev. 119, 137–38 (1987). *See also* Steven Davidoff Solomon, *Shareholders Vote with Their Dollars to Have Less of a Say*, N.Y. Times: DealBook (Nov. 4, 2015), http://www.nytimes.com/2015/11/05/business/ dealbook/shareholders-vote-with-their-dollars-to-have-less-of-a-say.html (“Many defend dual-class stock because it may insulate a company from pressure to take short-term actions at the behest of shareholders.”). [↑](#footnote-ref-69)
69. Vijay Govindarajan , Shivaram Rajgopal , Anup Srivastava and Luminita Enache, *Should Dual-Class Shares Be Banned?*, HBR (Dec. 3, 2018) ( “A dual-class structure, offering immunity against proxy contests initiated by short-term investors, could be optimal if it enables founder-managers to ignore pressures from the capital markets and avoid myopic actions such as cutting research and development and delaying corporate restructuring.”). *See also* Bernard S. Sharfman, *The Undesirability of Mandatory Time-Based Sunsets in Dual Class Share Structures: A Reply to Bebchuk and Kastiel*, 93 S. Cal. L. Rev. Postscript 1 (2019); David J. Berger, *Dual-Class Stock and Private Ordering: A System That Works*, Harv. L. Sch. F. on Corp. Governance & Fin. Reg. (May 24, 2017), <https://corpgov.law.harvard.edu/2017/05-24/dual-class-stock-and-private-ordering-a-system-that-works/>. [↑](#footnote-ref-70)
70. <https://ceoworld.biz/2021/10/12/best-ceos-2021/>; https://www.businessinsider.com/best-ceos-past-30-years-2011-7#some-men-are-born-great-some-achieve-greatness-22 [↑](#footnote-ref-71)
71. [add cross reference to Part III] [↑](#footnote-ref-72)
72. <https://money.cnn.com/quote/shareholders/shareholders.html?symb=TSLA&subView=institutional>; [↑](#footnote-ref-73)
73. Cite sources that explain rising CEO pay by the competition for talents. [↑](#footnote-ref-74)
74. One exception is the discussion by Guhan Subramanian [↑](#footnote-ref-75)
75. Tesla, Inc. (TSLA), yahoo! finance, https://finance.yahoo.com/quote/TSLA/ [https://perma.cc/9YAH-JA83] (last accessed December 9, 2021). [↑](#footnote-ref-76)
76. https://www.forbes.com/lists/innovative-leaders/#3610349f26aa [↑](#footnote-ref-77)
77. *In re* Tesla Motors, Inc., 2020 Del. Ch. LEXIS 51, 2020 WL 553902 (Del. Ch. Feb. 4, 2020). [↑](#footnote-ref-78)
78. See Panasonic CEO Says Tesla's Elon Musk a «Genius' who Can Be «Overly Optimistic', Reuters (last updated July 7, 2020, 12:00 PM), https://www.reuters.com/article/us-panasonic-tesla-idUSKBN2482BF [https://perma.cc/Y5XT-A82T]. [↑](#footnote-ref-79)
79. <https://www.mccarter.com/insights/teslas-stock-option-grant-to-elon-musk-part-2-new-york-law-journal/> (quoting Ed Kim, vice president of industry analysis at AutoPacific, and noting that «Mr. Musk is a visionary leader of Tesla and Tesla very much depends on his outstanding talents in the design, production and marketing of Tesla vehicles»). [↑](#footnote-ref-80)
80. *In re* Tesla Motors, Inc., 2020 Del. Ch. LEXIS 51, 2020 WL 553902 (Del. Ch. Feb. 4, 2020). [↑](#footnote-ref-81)
81. *Id.* [↑](#footnote-ref-82)
82. *Id.* [↑](#footnote-ref-83)
83. https://www.theguardian.com/technology/2018/sep/07/tesla-chief-elon-musk-smokes-marijuana-on-live-web-show [↑](#footnote-ref-84)
84. <https://www.cnbc.com/2018/10/29/teslas-elon-musk-says-his-tweet-that-led-to-a-20-million-fine-was-worth-it.html>; http://fortune.com/2018/10/01/tesla-shares-soar-musk-sec-settlement/. [↑](#footnote-ref-85)
85. *Id.* [↑](#footnote-ref-86)
86. Nicole Sperling, [*Long Before ‘Netflix and Chill', He Was the Netflix C.E.O*](https://www.dropbox.com/home/Superstar%20CEOs?preview=Sperling%2C+Nicole%2C+Long+Before+%E2%80%98Netflix+and+Chill%2C%E2%80%99+He+Was+the+Netflix+C.E.O.%2C+New+York+Times+(Online).pdf)*.* **New York Times**. 15.09.2019. [↑](#footnote-ref-87)
87. *Id.* [↑](#footnote-ref-88)
88. [Number of Netflix paid subscribers worldwide from 3rd quarter 2011 to 3rd quarter 2020](https://www.statista.com/statistics/250934/quarterly-number-of-netflix-streaming-subscribers-worldwide/), **Statista**. 16.11.2020. [↑](#footnote-ref-89)
89. Initially Netflix tried to divide the subscription into DVDs and streaming, which caused the subscription price to increase. This decision, led by Hastings himself, caused 800,000 subscribers to leave in just few months. Hastings had to pull back his idea and apologies to Netflix's costumers. *See* [Rani Molla and Peter Kafka, *How one of Netflix’s biggest mistakes helped build its culture,*](https://www.dropbox.com/home/Superstar%20CEOs?preview=Rani+Molla+and+Peter+Kafka%2C+How+one+of+Netflix%E2%80%99s+biggest+mistakes+helped+build+its+culture%2C+Vox.pdf)**Vox.** 23.06.2020. [↑](#footnote-ref-90)
90. For example, Hastings treats his employees as members of a pro sports team, which means they should expect to be replaced by better performers for their spot if Netflix can find them ([*Netflix Shows How to Build a Winning Culture*](https://www.dropbox.com/home/Superstar%20CEOs?preview=Netflix+Shows+How+to+Build+a+Winning+Culture%2C+The+Spectator.pdf)*.* **The Spectator.** 19.09.2020); When an employee is fired, the reasons for his dismissal are emailed to the whole staff (Todd Spangler, *[Reed Hastings on New Book, Netflix’s Future and One of His Toughest «Keeper Tests»,](https://www.dropbox.com/home/Superstar%20CEOs?preview=Todd+Spangler%2C+Reed+Hastings+-++Netflix+Future%2C+Hardest+Keeper+Test%2C+Lessons+From+Book%2C+Variety.pdf)* **Variety.** 07.09.2020); Any employee can access confidential information, and executives seal multimillion-dollar deals without the approval of top brass ([*The Hastings doctrine: Can Reed Hastings preserve Netflix’s culture of innovation as it grows?*](https://www.dropbox.com/home/Superstar%20CEOs?preview=The+Hastings+doctrine+-+Can+Reed+Hastings+preserve+Netflix%E2%80%99s+culture+of+innovation+as+it+grows%2C+The+Economist.pdf) **The Economist.** 12.09.2020); and High-achieving employees are rewarded with the highest salaries in the business (Brandon Katz, [*Netflix CEO Reed Hastings Explains Why His Company Pays So Well*](https://www.dropbox.com/home/Superstar%20CEOs?preview=Katz+Brandon%2C+Netflix+CEO+Reed+Hastings+Explains+Why+His+Company+Pays+So+Well%2C+The+New+York+Observer.pdf)*,* **The New York Observer.** 21.09.2020). [↑](#footnote-ref-91)
91. Nicole Sperling, *[Long Before ‘Netflix and Chill', He Was the Netflix C.E.O](https://www.dropbox.com/home/Superstar%20CEOs?preview=Sperling%2C+Nicole%2C+Long+Before+%E2%80%98Netflix+and+Chill%2C%E2%80%99+He+Was+the+Netflix+C.E.O.%2C+New+York+Times+(Online).pdf).* **New York Times**. 15.09.2019. [↑](#footnote-ref-93)
92. [*The Hastings doctrine: Can Reed Hastings preserve Netflix’s culture of innovation as it grows?*](https://www.dropbox.com/home/Superstar%20CEOs?preview=The+Hastings+doctrine+-+Can+Reed+Hastings+preserve+Netflix%E2%80%99s+culture+of+innovation+as+it+grows%2C+The+Economist.pdf) **The Economist.** 12.09.2020. [↑](#footnote-ref-94)
93. *See* Nicole Sperling, [*Long Before ‘Netflix and Chill', He Was the Netflix C.E.O*](https://www.dropbox.com/home/Superstar%20CEOs?preview=Sperling%2C+Nicole%2C+Long+Before+%E2%80%98Netflix+and+Chill%2C%E2%80%99+He+Was+the+Netflix+C.E.O.%2C+New+York+Times+(Online).pdf)*.* **New York Times**. 15.09.2019; [Rani Molla and Peter Kafka, *How one of Netflix’s biggest mistakes helped build its culture,*](https://www.dropbox.com/home/Superstar%20CEOs?preview=Rani+Molla+and+Peter+Kafka%2C+How+one+of+Netflix%E2%80%99s+biggest+mistakes+helped+build+its+culture%2C+Vox.pdf)**Vox.** 23.06.2020. [↑](#footnote-ref-95)
94. [Add a cross reference to below] [↑](#footnote-ref-96)
95. *Id.* [↑](#footnote-ref-97)
96. *Cf* the sources in supra note 43. [↑](#footnote-ref-98)
97. https://www.usatoday.com/story/tech/2021/07/05/amazon-ceo-jeff-bezos-leaving-andy-jassy/7847643002/ [↑](#footnote-ref-99)
98. Jeffrey Dastin, Arjun Panchadar, *Jeff Bezos keeps Amazon voting power in divorce settlement,* REUTERS (April 4, 2019, 8:31 PM)<https://www.reuters.com/article/us-people-bezos/jeff-bezos-keeps-amazon-voting-power-in-divorce-settlement-idUSKCN1RG2CI>; https://www.ndtv.com/world-news/jeff-bezos-leaves-enduring-legacy-as-he-steps-away-as-amazon-ceo-2478759 [↑](#footnote-ref-100)
99. Amazon.com, Inc. (AMZN), https://finance.yahoo.com/quote/AMZN/ (last accessed December 9, 2021). *See also* https://companiesmarketcap.com/. [↑](#footnote-ref-101)
100. Brian Sozzi, *Why Amazon CEO Jeff Bezos' departure would be bad news for investors*, YAHOO (May 30, 2019) <https://finance.yahoo.com/news/why-amazon-ceo-jeff-bezos-departure-would-be-bad-news-for-investors-181555666.html> [↑](#footnote-ref-102)
101. *Id* [↑](#footnote-ref-103)
102. James Mackintosh*, Where Bezos Leads, Amazon Shareholders Blindly Follow,* WALL ST. J. (June 22, 2017 8:16 pm) <https://www.wsj.com/articles/where-bezos-leads-amazon-shareholders-blindly-follow-1498147966> (discussing Bezos' ability to launch the big takeover of Whole Foods without offering any strategic or financial rationale. [↑](#footnote-ref-104)
103. See Table 1. [↑](#footnote-ref-105)
104. *Id.* [↑](#footnote-ref-106)
105. https://www.ndtv.com/world-news/jeff-bezos-leaves-enduring-legacy-as-he-steps-away-as-amazon-ceo-2478759 [↑](#footnote-ref-107)
106. *See*, Ulrike Malmendier & Geoffrey Tate, *Superstar CEOs*, 124 Q.J. Econ. 1593 (2009); Manuel Ammann, Philipp Horsch & David Oesch, *Competing with Superstars* 62 Management Science, 2842 (2016); Thomas David, Alberta Di Giuli & Arthur Petit-Romec, *CEO Reputation and Corporate Voting* (working paper, 2020). [↑](#footnote-ref-108)
107. *See*, e.g., Finkelstein, S., *Power in top management teams: dimensions, measurement, and validation*, Academy of Management Journal, 35, 505, 509-512 (1992); Adams, Renée B., Heitor Almeida, and Daniel Ferreira, *Powerful CEOs and Their Impact on Corporate Performance*, 18.4 The Review of Financial Studies 1403, 1404-1409 (2005). [↑](#footnote-ref-109)
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111. Adams, R., Almeida, H., & Ferreira, D, *Understanding the relationship between founder-CEOs and firm performance,* 16 Journal of Empirical Finance, 136, 137 (2009) (finding evidence consistent with a positive causal effect of founder–CEOs on firm performance); Fahlenbrach, R, *Founder-CEOs, Investment Decisions, and Stock Market Performance,* 44(2) Journal of Financial and Quantitative Analysis, 439 (2009). [↑](#footnote-ref-113)
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131. [**add a cross reference**] [↑](#footnote-ref-133)
132. The founder status and his significant equity stake which amounted to 22% in the past was one of the reasons underlying the court’s holding that Musk controlled Tesla. [**Add a cross reference**]. [↑](#footnote-ref-134)
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137. There is also a link between founder statues and dual class shares that enable founder to retain control for a long period of time. [See recent study by Ofer Eldar et al.] [↑](#footnote-ref-139)
138. [Add reference from Facebook public filings.] [↑](#footnote-ref-140)
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*Just Gave His Most Detailed Account Ever of How Steve Jobs Got Fired from Apple*,

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143. See, e.g., <https://www.barrons.com/articles/barrons-top-ceos-2020-jpmorgan-chases-jamie-dimon-51593218399>; <https://fortune.com/2020/05/15/most-admired-fortune-500-jamie-dimon-ceo-daily/>; https://ceo-na.com/executive-interviews/one-of-a-kind/. [↑](#footnote-ref-145)
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148. https://www.nbcnews.com/business/autos/can-renault-nissan-alliance-survive-without-carlos-ghosn-n1120166*.* [↑](#footnote-ref-150)
149. https://www.foxnews.com/entertainment/cbs-chief-les-moonves-steps-down-amid-sexual-misconduct-allegations [↑](#footnote-ref-151)
150. https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/07/27/who-is-leslie-moonves-the-cbs-chief-executive-under-investigation-after-allegations-of-misconduct/ [↑](#footnote-ref-152)
151. *Id.* [↑](#footnote-ref-153)
152. https://www.latimes.com/business/hollywood/la-fi-ct-moonves-severance-investigation-20181129-story.html. [↑](#footnote-ref-154)
153. See, e.g., Renée B. Adams, Heitor Almeida & Daniel Ferreira. «Powerful CEOs and Their Impact on Corporate Performance.» The Review of Financial Studies 18.4 (2005): 1403, 1419. [↑](#footnote-ref-155)
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160. **[add a basic reference]** [↑](#footnote-ref-162)
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162. The notion that successful CEOs gain leverage over boards was noted by Hermalin & Weisbach. They use this insight to explain why CEOs might have a say on director appointment. *See* Benjamin E. Hermalin & Michael S. Weisbach, *Endogenously chosen boards of directors and their monitoring of the CEO*, 88 Am.Econ. Rev.96, 97 (1998) (“If a CEO keeps his job, then retaining him must be worth more to the directors than replacing him. This means that this CEO is, to some extent, a rare commodity, which gives him bargaining power vis-a-vis the directors. He is, therefore, able to bargain for a board that is more favorable to him”). [↑](#footnote-ref-164)
163. [**Cite**] [↑](#footnote-ref-165)
164. For example, Afra Afsharipour & J. Travis Laster, Enhanced Scrutiny on the Buy-Side, 53 Ga. L. Rev. 443 (2019) (arguing that for a regime that would encourage public companies to subject decisions to acquire other companies to a shareholder vote). [↑](#footnote-ref-166)
165. [↑](#footnote-ref-167)
166. [**Add reference**] [↑](#footnote-ref-168)
167. [**Add reference to the database + on ISS**] [↑](#footnote-ref-169)
168. [to add source] [↑](#footnote-ref-170)
169. [to add source] [↑](#footnote-ref-171)
170. [**Add cross reference**] [↑](#footnote-ref-172)
171. https://www.hollywoodreporter.com/business/business-news/netflix-shareholders-reject-plan-split-710445/ [↑](#footnote-ref-173)
172. Amol Sharma and Joann S Lublin, [*Netflix Shareholders Vote Down Proposal to Split CEO and Chairman Positions*,](https://www.dropbox.com/home/Superstar%20CEOs?preview=Sharma%2C+Amol%3B+Lublin%2C+Joann+S%2C+Netflix+Shareholders+Vote+Down+Proposal+to+Split+CEO+and+Chairman+Positions%2C+Wall+Street+Journal.pdf) **Wall Street Journal.** 10.06.2014. [↑](#footnote-ref-174)
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175. Kobi Kastiel & Yaron Nili, *The Giant Shadow of Corporate Gadflies*, 94 S. Cal. L. Rev. 569, 575 (2021). [↑](#footnote-ref-177)
176. [**add reference to the dataset**]. [↑](#footnote-ref-178)
177. https://www.marketwatch.com/story/netflix-investors-losing-patience-say-company-ignores-them-on-governance-11623257126 [↑](#footnote-ref-179)
178. *Id.* [↑](#footnote-ref-180)
179. *Id.* [add cross reference to above] [↑](#footnote-ref-181)
180. Add reference to the dataset. [↑](#footnote-ref-182)
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182. Note, this is different from the finding that shareholder say-on-pay votes are determined by the company’s performance. *See* Jill E. Fisch, Darius Palia, and Steven Davidoff Solomon, *Is Say on Pay All About Pay? The Impact of Firm Performance* 8 Harv. Bus. L. Rev. 101 (2018). [↑](#footnote-ref-184)
183. [↑](#footnote-ref-185)
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185. *Id.* [↑](#footnote-ref-187)
186. https://www.forbes.com/sites/robinferracone/2018/02/26/oracles-road-to-moving-the-needle-on-say-on-pay-votes/?sh=420f8ee1348a [↑](#footnote-ref-188)
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188. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3551223 [↑](#footnote-ref-190)
189. [**add a cross reference to the example of Oracle / Tesla cases in which the court relied upon it to determine that directors lacked independence**.] [↑](#footnote-ref-191)
190. [add a cross reference to the Pappa John] [↑](#footnote-ref-192)
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192. See, e.g., Paul A. Gompers, Joy Ishii & Andrew Metrick, *Extreme Governance: An Analysis of Dual-Class Firms in the United States*, 23 REV. FIN. STUD. 1051, 1052-55, 1067 (2010); Ronald W. Masulis, Cong Wang & Fei Xie, *Agency Problems at Dual-Class Companies*, 64 J. FIN. 1697, 1697 (2009). For additional review of the empirical evidence, see Bebchuk and Kastiel, *The Perils of Small Minoirty Controllers*, at 1471-73. These studies focus dual-class companies, though their implication on the incentives generated by large equity stake are relevant also to single-class firms. [↑](#footnote-ref-194)
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195. Noah Kirsch, *The Inside Story Of Papa John's Toxic Culture*, Forbes Digital (July 19, 2018), [https://www.forbes.com/sites/forbesdigitalcovers/2018/07/19/the-inside-story-of-papa-johns-toxic-culture;](https://www.forbes.com/sites/forbesdigitalcovers/2018/07/19/the-inside-story-of-papa-johns-toxic-culture;%20)  Matthew Haag*, Papa John's Chief Executive to Step Down, Weeks After Blaming N.F.L. for Sales Slump*, N.Y.TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/business/papa-johns-john-schnatter.html>. [↑](#footnote-ref-197)
196. Noah Kirsch, *The Inside Story Of Papa John's Toxic Culture*, Forbes Digital (July 19, 2018), <https://www.forbes.com/sites/forbesdigitalcovers/2018/07/19/the-inside-story-of-papa-johns-toxic-culture/> [↑](#footnote-ref-198)
197. *Id.* [↑](#footnote-ref-199)
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199. Kirsch, *Id.* See also Racial Slur Leads to Papa John's Founder Quitting Chairman Post, *supra* note [\_\_]. [↑](#footnote-ref-201)
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