Post-IPO Summit Webinar Series:
*Everything You Need To Know About
Dual-Class Stock*

**SPEAKERS**

Jeff Vetter, Brett Pletcher

**Brett Pletcher** 01:16

So we'll get started here in a minute or so we'd still see some people trickling into the session. So once we've gotten a little bit more attendance we'll get started. Right, we'll give another minute or so then we'll get started. All right, so why don't we get started, I see that we've got a number of people who have already joined us, and then some additional folks will join us as we're getting started. Welcome, everybody. Good afternoon. Good morning, wherever you are. Thank you for taking the time to join our webinar this morning on dual-class stock. My name is Brett Pletcher. I am of counsel with the firm and I'm here with Jeff Vetter. I'll let him introduce himself in a moment. So why don't introduce myself first, and then we'll have Jeff introduce himself. So I joined Gunderson Dettmer right out of law school in 1996 and I was there as a associate and partner until 2005. Then I went in-house at Gilead Sciences and for those of you don't know Gilead Sciences is a Fortune 100-ish, biopharmaceutical company based in the Bay Area. And I was there for about 17 years. I was General Counsel there for about 13 of those years and I retired from that role in late 2022. I took several months off and rejoined Gunderson about the midpoint of last year. And I'm here to do three different things really one is to work with the late stage private companies and public companies, to work with the life sciences companies, given the background I have at Gilead Sciences, and then also to provide a service to our general counsel's in our heads of legals and our clients that I "call phone a friend." And that meaning that when I was in-house, I was always looking for somebody who kind of understood the announced environment understood what I was going through, to learn a lot of folks to talk to, particularly in the early days and articulate it and so looking for someone that had been in the role was someone that I was always looking for. And so that's a service that I am looking to provide here at the firm. That's me and I'll turn it over to Jeff to introduce himself and a little bit about the firm.

**Jeff Vetter** 05:04

I'm Jeff Vetter, I head up the capital markets and public company practice here at Gunderson. I've been at Gunderson now for about five years, I've been practicing for nearly 35 years, I've worked on 100+ IPOs over my career. And I think I've worked on the very first dual-class IPO in the tech market year with with the Facebook IPO. So I'm hoping I can give you guys a lot of color and context on this issue. Then briefly, just a slide about our firm here. But, I think we're known for doing a lot of venture capital transactions and working with a lot of private companies. But our capital markets and public company team has done nearly 400 public offerings and since 2010, has helped companies raise over 16 billion in public offerings.

 **Brett Pletcher** 06:09

Thanks, Jeff. So let me just give a quick, brief overview of what it is that we're going to talk about today. And then we'll get into the meat of the program. So we're aware that in-house attorneys and early and late stage private companies, they come to the wall with varying levels of experience with corporate capital structures. Some of us come in as IP lawyers, transactional lawyers, contract specialist, with limited exposure to corporate matters, while some of us come into the role as trained corporate attorneys. So in this webinar, we're going to keep that in mind as we discuss the details of dual-class stock. And we realize that some of you are aware of dual-class stock and what it is. But to get everyone on the same page, we're going to start from the basics and work toward the more complicated aspects of what the dual-class structure is, why it's implemented, when they're adopted, how they get put into place, and what it takes to live with them over time. So even though I have a corporate background, dual-class stock really took over after I went in-house. So I'll be approaching this discussion from the perspective of an in-house attorney with limited understanding of the ins and outs of dual-class stock. Jeff, on the other hand, as you heard, he's been dealing with dual-class stock for a long time. He's helped implement dual-class structures at Facebook, as he mentioned, also at workday and others. We'll leave some time at the end to answer questions, feel free to put questions in the Q&A as we go. And we'll get to those at the end. Of course, if we're not able to answer your questions, or have other questions you want to discuss privately, please feel free to reach out to Jeff or me after the webinar, and we'll work through it with you, we're going to post a much more detailed slide deck than what you're going to see today. We'll post that on our website, we'll also send you a link to where to find it on the website. And then finally, with respect to CLE, this program will qualify for CLE in California and New York. And we'll provide you with two codes during the program that you'll need to be able to claim that credit and then you'll also receive an email as well with the claim form on how to receive the CLE credit. So with that, why don't we go ahead and get started with the meat of our program. And Jeff, why don't high level you're going to discuss and tell us about what is a dual-class structure and why does it exist?

**Jeff Vetter** 08:30

Sure. Yeah. So typically, with a dual-class structure, a company will have two classes of common stock, one will be a well vote class, and the other will be high-vote, that they are otherwise identical in terms of their rights and preferences and any other kind of corporate issues. And the reason they these are implemented for tech companies is really to allow founders or a group of founders to maintain control the company wants its public. Historically, these dual-class structures has really just been with media companies. A great examples like Hearst, or the old Washington Post companies so that the family could control the companies and I think it had to do with, maintaining control over content and editorial reasons, and whatnot, among other things. Then right before Facebook's IPO, it implemented a dual-class structure. And since then, many tech companies have followed suit. We're not seeing it so much in sort of the biotech and life sciences space though. And why don't we put up slide four Here you can see that, dual-class structures has become more common if you will look at the green line for tech companies. And if you see, most recently, in 2021, there's not a lot of data subsequent to 2021, given the market conditions, but you'll see that 46% of tech IPOs had a dual-class structure that year. Why don't we go ahead with slide five, please. This just shows us who typically holds the high-vote stock, it's almost uniformly founders, but you'll sometimes see parent companies or VC funds or private equity funds that also will hold the high-vote stock.

**Brett Pletcher** 10:52

Okay, so let's dig in a little bit depth in terms of you mentioned that the reasons why the founders would be interested in having, high-vote stock, in order to be able to have some control of the company, why would kind of the rest of the corporation be interested in and having the founders take control?

**Jeff Vetter** 11:14

I think founders typically have a long term vision for a company. As a public company, you face a lot of pressure to kind of show consistent revenue growth, sort of up into the right and, and sort of a consistent path to profitability, your losses kind of continue to get lower over time. And, and companies will get their stock price will get, punished, if you sort of get off of that up into the right ramp. So a founder might feel restricted in what they can do in terms of, making investments in key areas. for the long term of the company that maybe public company, stockholders, wouldn't be as supportive of, what a great example of this is, Facebook's IPO. At the time of their IPO, they were transitioning to the mobile app, as opposed to just being a desktop application. And, they had also recently purchased Instagram, this hurt the stock price in the near term, because they weren't, people weren't seeing sort of the the immediate returns of those investments. But I think most people would agree, they, they would have liked to be holding Facebook stock that they had bought at the time of the IPO today. It's just an example of sort of the long term approach there.

**Brett Pletcher** 12:49

Alright, so let's start getting into some more details. So there's like, let's take a hypothetical company, let's take it back in time. So at the time it was founded, the founders are issued common stock, one vote per share, the investors were sold preferred stock that could be converted to common stock at one vote per share. So at what point does a company decide to implement this dual-class structure that gives the founders the multiple votes per share?

**Jeff Vetter** 13:16

Usually, dual-class structures are implemented at a time of a significant corporate event. Essentially, when they need to amend their certificate of incorporation. So usually, it will be at the time of an IPO or maybe in connection with like a late stage financing round.

**Brett Pletcher** 13:34

Right. So you have a late stage financing round, you have an IPO, let's just take the late stage financing round, for me, it kind of prior to an IPO, what would drive a private company in that situation, to adopt the dual-class structure kind of outside of the IPO context, where you indicated that the purpose for doing it around an IPO was to insulate the company from the interference from?

**Jeff Vetter** 13:58

Yeah, I think usually, it's just more a situation of a founder, maybe doing more advanced planning, they're taking in these new investors, and they're kind of thinking more longer term, about, getting closer to an IPO. And at the time of these financing rounds, the founders really do have more leverage when they're negotiating the terms of the of the round. And, the board's still may be kind of comprised of the people, the founders more familiar with and might be more willing to, be supportive of such a structure.

**Brett Pletcher** 14:38

Okay. So, so it's typically around going public is kind of when you see most commonly it sounds like and but by the time you see these companies go most companies go public, I think a lot of them, the venture capitalists and the other investors hold the majority of the stock until we understand why that the founders might want to retain control so that they and insulate themselves? Why would the investors who have bought the majority are close to majority of the stock?

**Jeff Vetter** 15:06

I think there's a few reasons. One, I think, venture capital funds, want to be be supportive of founders generally. And they also kind of agree that, they're investing for the long term, not the short term, and they don't like the idea of people kind of coming in and second guessing a company's direction. I think the other thing is like, for a lot of VC funds, that have been invested in a company for a number of years, by the time of the IPO, they're thinking about liquidity. And so they, when the lockup expires with the IPO, a lot of funds sell, after six months, but or for many of them, maybe they're only holding it for an additional year after the IPO. So they don't have kind of concerns about corporate governance, they're more focused on the value of their investment as opposed to long term governance. And in some structures, the VCs may also be holding the high-vote shares as well. So that's another reason why they might be indifferent.

**Brett Pletcher** 16:19

Yeah, so to some extent, what you're saying is for the early investors that are gain is baked in, they're going to sell out and, six months to a year, until they're not as sensitive to the fact that they're turning control back over to the founders of data point. So if you think about the typical venture backed company, that the typical have these voting agreements, that that give the investors the right to certain number of seats, oftentimes will also give the founders the rights to certain number of seats. But once the dual-class structure is implemented, particularly, but simply need to be for an IPO, or, not in connection with an IPO. But sometimes before and I feel connection with a different type of financing, for example, the founders now have control over who's on the board. So why is the board whatever the board agreed to that?

**Jeff Vetter** 17:09

Well, I think the important thing to keep in mind is when you do a dual-class structure, all you're doing is modifying the voting rights of the shares. And all the other corporate governance provisions that get negotiated as part of a financing such as information rights, rights to appoint certain numbers of board seats, the rights of, the preferred stock, like any any kind of class votes they have, those all remain the same. So for in the private company context, it there really isn't much of a change in governance.

17:46

Okay, so the real change then is going to come at the IPO, when all those arrangements just kind of fall away. Is that right?

**Jeff Vetter** 17:54

That's right. at the time of the IPO, all those arrangements, such as the rights to appoint board members, the preferred stock, information rights, co sale rights, those all terminate at the IPO. Usually, the only thing that remains in place are the registration rights for the investors. And sometimes there'll be some voting agreements that remain in effect, but not typically.

**Brett Pletcher** 18:24

In that context, you've had an IPO, that all those fall in the way that that dual-class stock setup, given the founders free reign over who's on the board, are they still have to comply with independence requirements and or the labor requirements of a financial expert, for example, those still applicable here?

**Jeff Vetter** 18:42

The answer to that is, it depends. So if the founder will end up having or a group of founders who end up controlling more than 50% of the voting power, then a lot of those independence and other governance requirements will go away because they'll be what's called a controlled company. So you would not be required to have a Comp Committee, although you would probably want to have one, for other reasons. And there's no requirement to have a nominating and Corporate Governance Committee, you also wouldn't be required to have a majority of the board members be independent. However you still have the audit committee independence requirements that would still apply. So you'd still have to have an audit committee with three independent members and one financial expert. But, if the founders will hold less than 50% of the voting power, and then all those board independents and majority board and all those other requirements do apply.

**Brett Pletcher** 19:43

Let's go back to the basics again, and talk about how the dual-class structure actually gets implemented. So how do we end up in a situation where certain stock owners have shares that have multiple votes per share, while other stockholders retain shares with one vote per share. What's the mechanism for making this happen? Sure.

**Jeff Vetter** 20:02

If the founder already holds 50% of the voting power. And I think you're going to have to look at each situation to figure out how best to implement it. But if the founder already holds 50%, it's actually pretty straightforward. You simply amend the certificate of incorporation with language that says all currently outstanding common stock is now called Class B and will have 10 votes, and you'll authorize a Class A with one vote. Going forward at the IPO and with your equity plans, you'll only issue will vote shares. And as holders of the high-vote shares, so the high-vote shares convert into low-vote shares at the time of sale. And so as that occurs, the percentage owned by the founders actually ends up going up if you just do the math. But it gets a little more complicated when the founder doesn't already hold 50% of the voting power. So in these situations, you probably need to you need to think about maybe amending your certificate of incorporation, such that the preferred stock will convert into low-vote shares instead of high-vote shares. And then any future issuances of either preferred or common would be in the form of low-vote shares. Or if you have a large number of common stock in the cap table already, we've seen situations where the founder will exchange their common stock for high-vote common stock. And the founder will be the only person who holds the high-vote shares. This is what you would do in situations where the founder has a small amount, small percentage that say 10% or less. But in those situations where you're where you need to do an exchange, you should probably get advice from a tax advisor as well. We've also seen founders ask investors to grant the founder a proxy to vote their shares as well. This is kind of a short term solution, because once you're public, those proxies expire once the shares are sold.

**Brett Pletcher** 20:03

So once the venture capitalists sell out the benefit from that proxy just goes away. Right?

**Jeff Vetter** 22:20

That's right, because they can't follow the share once you're public.

**Brett Pletcher** 22:26

Does creating that dual-class structure require a shareholder vote of some kind? Or is this done by a contract?

**Jeff Vetter** 22:34

Most companies are Delaware corporations. And so under Delaware law, because you're amending your certificate of incorporation, you need to have stockholder approval. And that's probably a reason why people do these situations when you're otherwise amending your Certificate of Incorporation anyway, like in a financing or at the IPO.

**Brett Pletcher** 22:58

Okay. So you mentioned that sometimes, all of the outstanding shares of common stock are converted to a class B, with maybe 10 votes, for example, through an amendment of the certificate of incorporation. But you also mentioned that sometimes only a subset of the common holders are given the high-vote shares. So how is that accomplished when you have people in the same class ending up with different level different voting shares? If that's somehow accomplished by an exchange agreement of some sort?

**Jeff Vetter** 23:27

That's exactly right. You need to have an exchange agreement, where the founder exchanges their shares for the high-vote shares. But again, there's potential tax implications there. So you certainly need to work with your tax accountant, and probably also your accountants.

**Brett Pletcher** 23:49

Why don't we dig into that piece for a second, you've mentioned a couple of times that there might be a tax issue here with this exchange. Can you explain what that tax issue could be?

 **Jeff Vetter** 23:59

Anytime you exchange, one security for a different security, you potentially will vote for high-vote shares, theoretically, those higher vote shares would be more valuable. And so, upon that exchange, there could be a risk that income is generated, or there's a capital gain to the founder. And so I think what you have to do is you do evaluation of the low-vote stock versus the high-vote shares and see and sometimes if it's sort of done early enough, people have taken the view that there's really a difference in the value at the time. And also, it might also have some issues, with a founder, you need to be aware of, like, if the founder originally got their shares, via an ISO so It's just important to make sure you talk to a tax advisor before for doing this exchange structure.

**Brett Pletcher** 25:08

You can certainly see in a situation like Facebook or something, all of a sudden you have some value difference between the low-vote and the high-vote. And you know that the billions and billions of Zuckerberg ended up with that could have been a big tax hit him. If not done correctly, it sounds like that.

**Jeff Vetter** 25:22

Just to follow up on that, that structure did not involve any kind of exchange of shares, we just simply amended the certificate of incorporation. So to say, I get all the existing holders now, vote shares have 10 votes, so there was no exchange. So there's no taxable event there. It's only when you do this exchange structure where it becomes potentially an issue.

**Brett Pletcher** 25:53

You've established that we sometimes have their circumstance where only certain stock holders that hold the class of shares will get that high-vote share, while others will keep the low-vote shares. So those folks that are holding the low-vote shares that end up with a little chair, do they have to consent to this in some way?

**Jeff Vetter** 26:07

Well, you need to approve the amendment to the Certificate of Incorporation to authorize the new class of common stock. So under Delaware law, it typically requires approval of a majority of the outstanding shares as a whole, as well as the majority of the common and a majority of the preferred, as well, and the preferred may have special voting rights as well that were negotiated as part of the fight a previous financing. So you need to look at that.

**Brett Pletcher** 26:40

Okay, so Delaware law can even determine what kind of consent is needed here and typically it's a stockholder vote. Can we have slide six on the screen? This is your first CLE, code 9350. We'll have a second one that will come up a little bit later. So 9350 is your first code. Alright, so now, how does a company figure if you have a situation where the founder doesn't have 50%, or well, over 50%? How does a company figure out how many votes can be given to each share of a founder stock?

 **Jeff Vetter** 27:25

Traditionally, most of these dual-class structures use a 10 to one structure, that that really is the most common. There are situations though, where, maybe the founders don't have significant, voting power. So maybe, kind of, well, south of 50%. In those cases, I've seen thresholds be, 20 to 1, 30 to one, even 75 to one, but they're not as common. But it really, you really just have to sort of get a spreadsheet out. And it's really a math exercise to get to the right number to get you to the right percentage. What I would say is at IPO, most bankers would advise companies to have a 10 to one structure.

**Brett Pletcher** 28:19

What's the reason for that? If there's some legal or financial reason to go with 10 to one? Or is it just harder to explain why you're going 30 to one versus 75 to one?

**Jeff Vetter** 28:27

That's exactly right. It's sort of an investor optics issue. Banks don't like to tread new ground in IPOs, they want to have the same structures that have worked in the past. And so because 10 to one has is the most common they prefer that you stick with that. I think the WeWork IPO had a much higher ratio, I think it was 20 to one, there are a number of other unusual provisions as well.

**Brett Pletcher** 29:00

Does that mean that sometimes it's not possible for a company to implement a dual-class structure?

**Jeff Vetter** 29:04

Well, I think you can always implement a structure. And, even if the founders not even going to end up with 50% voting power, if you can get the founder to 25 or 35%, that's a powerful block of shares as a public company. I think I think it can still be beneficial, even if you're not going to be over that 50%. Just in my experience, if you go with like a 20 to one voting ratio, change the terms of the preferred so that it converts to low-vote stock and not high-vote stock. A founder that is even under 10% voting power can still get up to 30 plus percent voting power. So it is compelling. And obviously the other thing is, if other pre IPO investors hold high-vote shares, as they convert those shares and sell those shares in the open market, the founders voting percentage actually increases over time if the founders don't sell, because you're having, you're putting, you're taking out high-vote shares, and they're now becoming just one vote per share.

**Brett Pletcher** 30:24

We've talked about that most of the time, maybe, it's the case that these dual-class structures are getting put in place at the time of the IPO. So if I put myself in the shoes of an institutional investor, I'm buying shares in an IPO, why would I buy newly issued shares that have no voting influence over how my investment is going to be going?

**Jeff Vetter** 30:48

What's interesting about that, that's sort of unique to IPOs, is that there's two groups of people at an institution, there's the people who focus on making the actual investment in an IPO and then you have the ones who make voting decisions down the road, like for stockholder meetings. So at the IPO, these institutional investors are looking at the structure just from a financial perspective and not from not really from the corporate governance angle. So if they think it's otherwise a good investment, and the terms are not, they're pretty plain vanilla, with the dual-class structure, that's not going to be an impediment to their investment. What, once your public, the the proxy departments that actually vote the shares, they will push back on them if they're not time limited, so, for example, ISS is now okay with these legacy dual-class structures, so long as they expire within seven years of the IPO. So, unless a dual-class structure is particularly extreme, like the WeWork case, investors are generally going to be comfortable and not not focused on it.

**Brett Pletcher** 32:09

You mentioned We Work in having an extreme structure, but you can share a little bit about what made it extreme and made the investors uncomfortable.

**Jeff Vetter** 32:21

We Work in as I mentioned earlier, they had a 20 to one voting ratio. And the other unusual provision was the high-vote stock would never convert down into low-vote stock. So long as the shares stayed in the founders family. So in other words, you could have his great grandkids, controlling the company down the road. I mean, there were there were other issues with the WeWork IPO. But this unusual approach didn't help. Oh, and I also point out that there was a, they had a third class of stock, class C stock that also voted 20 to 1. And that would never down convert so you have sort of this permanent, high-vote shares.

**Brett Pletcher** 33:15

I assume that the founders, at some point, during the seven year life of these dual-class structures are going to want to sell their shares. And so when they sell their shares, did those multiple votes per share get transferred? whoever buys them?

**Jeff Vetter** 33:31

No they don't. Upon a transfer of the high-vote shares, they automatically down convert into the low-vote stock. There will be some exceptions such as, if the founder if you're transferring the shares to like, a trust that the founder set up for estate planning purposes. But there's some small exceptions, but that's about it, typically, they convert once you transfer the shares. I would also point out that, in the high tech space, the whole reason for the high-vote sock is, because of the value of the founder to the company, so, it wouldn't really make sense, when the founder dies or transfers the shares to, continue to have the high-vote shares.

**Brett Pletcher** 34:26

You were mentioning that institutional investors buy the shares on the promise that the dual-class structure is temporary in terms of being seven years longer or not longer. When that structure expires, how does it get unwound? How did the founders go back to having this one vote per share?

**Jeff Vetter** 34:47

Sure, why don't we pull up slide seven. And this slide describes the typical sunset provisions and the dual-class structure. They're time based, there can be a class vote to terminate them, if the stock if the total number of high-vote shares that are outstanding gets below a specified threshold, like 10% of the outstanding bill down convert, or if the founder is no longer with the company, or dies, that sort of situation. And then so once once you have those high-vote shares down converted into low-vote shares, then everything is sort of self executing, usually, so what you might have some standard anti takeover provisions kind of sprang into being, such as limiting the ability of stockholders to call meetings or act by written consent, or maybe you would, have a class of if you didn't already have one, a classified board would would be implemented. If for some reason the founder wants to end the structure sooner, they can usually voluntarily convert those shares simply by, sending a letter to the transfer agent to do that. And sometimes, sometimes people have triggers in there that if the founders or other high-vote holders, sort of no longer hold some specified percentage of the outstanding shares, I think it's 5% is pretty common, then all of the high-vote chairs will bounce convert to the low-vote chairs.

**Brett Pletcher** 36:39

It sounds like there could also be some other complexities around structuring the sunset provisions. And maybe you can touch on a couple of the unique ones that show up there.

**Jeff Vetter** 36:49

It gets a little more complicated when you have multiple founders, then you have to start thinking about, hey, what if one of the founders leaves? Or what happens if one of the founders is moved out of their role? Or what if that founder gets a divorce, or what happens if the founder is hit by a bus? So you might have situations where you want the high-vote shares to remain high-vote shares for some transition period. So there can be an orderly transition. Or if it's a highly fractious situation, you may want them converted immediately. And, like, in the case of,when the founder dies, or the spouse, has a divorce? most companies don't want the ex spouse having a high-vote shares, or the children and the founder having high-vote shares.

**Brett Pletcher** 37:42

It sounds like in most situations, when the founder is removed or dies, that the shares get converted back to being one vote, but so maybe We Work was a different situation.

**Jeff Vetter** 37:53

Yeah, that's right. Usually, when a founder dies, those shares will convert to low-vote. In workday, we did do something interesting there. There were two founders. And what they did was they each gave each other voting power over their shares, if the other died or became incapacitated. You can do something like that as well, I have a proxy to still vote those shares.

**Brett Pletcher** 37:53

And you mentioned that the founders can sometimes decide that they want to terminate this early, have you seen that ever happen?

**Jeff Vetter** 38:32

Rarely, the only time it really comes up is just one of the founders sort of no longer active with the company. And then there's sort of technical reasons for that, because if you hold the high-vote shares, you're likely to still have section 16 reporting obligations just under the beneficial ownership rules. So many times these people would rather not have to keep reporting their transactions and the shares. So they'll, they'll either want to down convert their own shares or have the whole structure go away.

**Brett Pletcher** 39:12

Okay, got it. So now thinking about this, as in-house counsel, I assume that I will have a role in facilitating the charter amendments, to obtaining the shareholder votes necessary to implement the dual-class structure. I'm interested in the period between the time of the IPO and seven years later when this expires, how do I manage stockholder voting? Do I still have to have a stockholder meeting and prepare a proxy? Can I just go to the founders and ask them for approval? If I have to hold a stockholder meeting, what are the mechanics around voting this shares? How does that going to work?

**Jeff Vetter** 39:47

So as a public company, you're required both under the stock exchange rules and Delaware law to have an annual meeting, and the meetings are run no differently than Any other public company annual meeting. The transfer agent keeps a stockholder list for both the low-vote stock and the high-vote stock and so that it's very easy for them to tabulate votes and track the high-vote and the low-votes, they're now used to this it was there's a little bit of friction at first, because they weren't set up to do this back back when the dual-class was just starting to get popular. So even though you have to have an annual meeting, though, most dual-class structures do allow stockholders to call meetings or act by written consent, while the dual-class structure is in effect. And you'll see that like, Mark Zuckerberg did a few actions by written consent, just over the years. But so you can do that.

**Brett Pletcher** 40:53

Okay, so So if they don't have a stockholder meeting in a public company, what's on the ballot, so typically, what I saw on the ballot was, electric directors, you gratify your accountants, you to prove executive comp, some years, you would have an equity pool increase. And then, depending on the size of the company, you'll have stockholder proposals is that typically what you're going to see on the ballots as well?

**Jeff Vetter** 41:14

that's exactly right. And, in these dual-class situations, you're not too concerned about putting those items up for a vote, because you'll, they'll pass, sometimes you'll see a stockholder proposal to eliminate the dual-class structure, but because of its very nature, it's going to fail. And so it's really just more of a symbolic thing.

**Brett Pletcher** 41:40

Given all those things that we have to take in to a stockholder meeting, what's an example of something that I would not have to take to a stockholder meeting?

**Jeff Vetter** 41:50

The only thing I can think of would be, sometimes in these dual-class situations, the Class B may have some sort of special approval right, such as change or control or something like that. But that's pretty unique. It's not that common. There might also be some situations like merger transactions, potentially where you might need a class vote of both the Class A and the Class B. This came up in many of the dispatch transactions with a was a case called The Box Case, that required a separate class vote.

**Brett Pletcher** 42:38

If you're in a company that is controlled by a founder, there's got to be some unique aspects to dealing with that situation, or with dealing with a group of stockholders who don't really have any control of it. What's that like?

**Jeff Vetter** 42:52

If you have a group of founders with voting control, it's just much easier for them to resist a lot of the pressures you may see as a public company, activist stockholders or stockholders who want to weigh in on corporate policy. When you have a company that doesn't have significant voting power around the board table, or with the founders, you'd become more vulnerable to them. And you could have them nominate board members to be elected to the board. And I've just seen companies with kind of multiple activist board members, it just becomes hard, harder to just go to pursue long term growth initiatives and investments, because a lot of these folks are really more concerned on short term results like selling cash, selling assets, or distributing cash back, that kind of thing. So for tech companies, this is just it's a tough thing when when you're in that kind of situation.

**Brett Pletcher** 44:00

I can think of situations where I would have loved to have the ability to say, "I got this controlling stockholder and I can kind of be immune to some of those stockholder bullets." We're going to do just a couple more questions, and then we'll open it up for the audience to ask some questions. So voting control through a dual-class structure like this, where one person or a couple people can control the entire company, does that create a fiduciary duty on the part of the founders to the rest of the stockholders are some of their unique liability that wouldn't otherwise exist?

**Jeff Vetter** 44:40

I think the short answer is no. Under Delaware law, in your capacity as a stockholder, you don't owe a fiduciary duty to the company or any of the other stockholders. But you do need to be mindful of the fact that the founder is also a board member. And so in their capacity as a board member, they do owe fiduciary you'd use to the company and the stockholders. And so if you're approving a transaction that might involve the founder or something, you need to make sure that the founder is kind of recused from those both the board approval aspect of it, but they can they can still vote their shares in any manner they wish.

**Brett Pletcher** 45:21

And then just one last question, you mentioned that you don't typically see these in life sciences companies. What is it about life sciences companies that makes them such that you don't see them like you see them in the textbook?

**Jeff Vetter** 45:36

A lot of times in these life sciences companies, many times there's sort of not this kind of visionary founder type person, the founder or CEO doesn't really have a big percentage of the shares. And so it would be pretty difficult to kind of implement one, I think, because you have to do so much more in terms of bells and whistles to try to get them into some sort of significant voting percentage.

**Brett Pletcher** 46:16

Thanks, Jeff, for for all those great answers and giving us a real helpful primer on how this all works. I'm sure people have questions. So if you have questions please throw them into the Q&A there and we will do our best to answer those. Before we get to those, let's put up the last slide here, which is the last CLE code 8616. So that's the second code 8616. I Ours, we just had a question that came in that says, "Of the times that you've had a founder proposed this, what percentage of the time have you seen dual-class stock actually get approved?

**Jeff Vetter** 47:29

Maybe a couple of times, but most of the time, they're supportive. And it's for the reason, like I mentioned, the VCs perspective changes once the company goes public, because then they're often out of long term hold mode. And to extent they are going to hold it for the long term, it’s because they sort of agree with the founders vision. And so if anything, they want it more.

**Brett Pletcher** 48:20

So given that, I've got another question that came in that says “Given the current market dynamics, do you think companies will shy away from dual-class structures at the IPO?

**Jeff Vetter** 48:33

I think you won't see any unusual structures, I think you'll see the very point vanilla structure. So in other words, 10 to one voting ratio. Seven year sunset, you won't see anything unusual in terms of how long the shares can be passed down to kids, that kind of thing. So, I think it's just going to be, to the extent they do get out, it'll be very plain vanilla terms. There were three tech IPOs last fall, I thought at least one of them was dual-class, and I forgot which one but one of the three for sure was dual-class.

**Brett Pletcher** 50:18

So another question that came in is, is the non- gov committee required to be independent in dual in a dual-class company?

**Jeff Vetter** 50:48

Directors are all nominated and appointed by controlling stockholders. If you are 50%, if the founder whole or a group of founders holds 50% or more of the outstanding shares and voting power, you are, quote, controlled company. And so you don't need a nominating and Governance Committee. Just as a matter of corporate law, though, the board does still have to nominate a director, although I suppose stockholders could also separately, the controlling stockholders could also separately nominate a person as well. But that would sort of indicate that there was some sort of dysfunction going on at the company.

**Brett Pletcher** 51:30

Okay. And another question that came in is, does a dual-class, do the dual stock structure alleviate the need for other defensive measures, i.e. classified board advance notice poison pill? Or should companies implement those measures in addition to the dual-class?

**Jeff Vetter** 51:46

Yeah. So the one thing you don't have necessarily control over is how long will the founder hold the shares. So sometimes it is nice to have those other defensive measures in place, while the dual-class is in existence, what, at a minimum, what we do is, like I mentioned, we have them kind of sprang out once the high-vote chairs disappear. But some dual-class structures do have the full gamut, classified board, limiting the ability of stockholders to call meetings or act by written consent. But in other situations where the founder is sort of, well north of 50%, they like they don't want a classified board, because they want to be able to toss somebody out, if they don't, if they don't like them. Because with a classified board, you can only remove somebody for cause. And they also like to have the flexibility to act by written consent. So it kind of depends on the situation. But, but as long as you do have that kind of controlling vote, you really don't need those, those traditional anti-takeover measures until after the duel, until after the dual-class structure falls off.

**Brett Pletcher** 53:03

Okay, so I got another question. A twist on that question is, do you ever see dual-class combined with poison pill, where you usually end up with an up voting percentage from the high-vote shares that it's not required?

**Jeff Vetter** 53:15

Exactly, you since you have such a high percentage from the high-vote shares, you don't, you don't really need a poison pill. And, if you if you implement a poison pill, without putting it to a vote of the stockholders, within one year, ISS starts to rumble quite a bit. But you can always put a poison pill in, very quickly if the situation, if you have a situation arise. So, we don't, we don't usually advise people to have just to have one there, like, implemented we sometimes you just have you have all the documentation done. So you can implement it very quickly if need be. But that that's, that's you usually wait until the situation presents itself.

**Brett Pletcher** 54:05

Yeah, we had a situation where the stockholders forced us they get rid of our, our poison pill. And then we just did what we call a poison pill on the shelf where we had all the terms that we were going to want and just set it aside. So if every issue ever came up, the board could very quickly approve that poison pill without a socket or vote if it was an emergency, kind of situation. Well, I think we've gotten through our questions, and I certainly think more that comes in in the next few seconds. I think we can wrap up. Jeff, very, very helpful. I don't know if you have any closing comments that you want to make. This has been very informative to me to kind of get a sense of this having not been involved in

**Jeff Vetter** 54:50

Yeah, I think, we'll just we'll have to see how this evolves over time. That was a good question about whether the markets will be supported or not, but I'm thinking that plain vanilla structures will still be with us, particularly on the tech side.

**Brett Pletcher** 55:10

Okay, great. Well, thank you to everybody who joined us today. If you have any questions afterwards, feel free to reach out to Jeff or myself. And we'll be happy to answer it. And if for some reason, it's beyond our ability to answer him need to get some of our other corporate colleagues involved. We're happy to do that as well. So thank you very much and have a great day.