

Company Drops Plans to Issue No-Vote Share Class

July 6, 2017 | Client Update | 2-minute read

In the midst of the controversy over Snap's issued no-vote shares, and Blue Apron's authorized but not issued no-vote shares, one company has discarded its efforts to form a class of stock without any voting rights.

In November 2016, IAC/Interactive Corp. announced a plan to adjust its capital structure through a charter amendment to enable a new class of non-voting capital stock, Class C. The company intended to declare and pay a dividend of one share of Class C for each outstanding share of IAC common stock and Class B common stock. Shareholders were asked to vote on the recapitalization at the company's December annual meeting.

After the company filed a definitive proxy statement and prior to the annual meeting, three class actions were filed in Delaware. Plaintiffs alleged generally that IAC's directors breached their fiduciary duties, that the creation of Class C common stock was not in shareholders' best interest and was designed to unduly benefit the company's controlling shareholder. CalPERS was later designated as the lead plaintiff.

Although the proposal to amend the charter passed at the annual meeting, the company decided not to effect the recapitalization during the pendency of litigation. After six months of discovery, the IAC board decided to abandon the recapitalization and not to file the new certificate; the case was dismissed for mootness. The plaintiffs intend to seek an award of attorneys' fees and expense reimbursement.

Currently S&P, MSCI and FTSE Russell are debating whether to include companies with common stock that does not have voting rights in their respective indexes. Some of the questions included in their consultation requests have raised the possibility that companies eligible for the indexes should provide their public shareholders with some threshold level of voting rights, anywhere from 5% to 25%, as a proportion of outstanding shares. In addition, rather than making a company entirely ineligible for inclusion, a company's weight in the index could be reduced due to the non-vote shares or the specific class could be disqualified from the index.

The Council of Institutional Investors (CII) has been advocating for the indexes to take action. In its [letter to Blue Apron](#), it asks for the possibility of a sunset provision of five years for the three classes to become a one vote-one share structure.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.