



To:

Chairman Gary Gensler  
United States Securities and Exchange  
Commission  
100 F Street, NE  
Washington, DC 20549

Commissioner Hester M. Peirce  
United States Securities and Exchange  
Commission  
100 F Street, NE  
Washington, DC 20549

Commissioner Allison Herren Lee  
United States Securities and Exchange  
Commission  
100 F Street, NE  
Washington, DC 20549

Commissioner Caroline A. Crenshaw  
United States Securities and Exchange  
Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Gensler, Commissioner Lee, Commissioner Peirce, and Commissioner Crenshaw,

**Re: Reforming Dual-class Share Structures and Removing Barriers to Shareholder Activism**

We, the undersigned organizations, write to urge the Securities and Exchange Commission (SEC) to enact reforms to increase corporate accountability and protect the rights of shareholders and the public at large.

Specifically, we urge the SEC to ban multi-class share structures and to repeal SEC rules that limit the ability of investors to file and resubmit shareholder resolutions. These two practices undermine investors' ability to address corporate wrongdoing and shift an unacceptable amount of risk onto the public.<sup>1</sup> Our organizations' missions center on protecting human and civil rights in the digital age, hence our emphasis on the tech sector, but we are concerned about barriers to shareholder advocacy and good corporate governance in all sectors of the economy.

**Multi-class shares endow company insiders with disproportionate voting power over ordinary shareholders.** Because the rules around these shares are encoded in the terms of the company's initial public offering (IPO), those in control of the company at the time of IPO can retain dominance indefinitely. Research suggests that any initial benefits to dual-class share structures are short-lived, exposing investors to "an inefficient structure with significant governance risks and costs."<sup>2</sup> Nonetheless, their use has increased over the past several decades: 2021 saw the highest number of dual-share initial IPOs since 1980<sup>3</sup> and it is estimated that 15% of the "Big Tech" sector utilize dual-class shares.<sup>4</sup> In just

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<sup>1</sup> Rydzak, Jan. (April 6, 2022). "It's time to bring down the barriers blocking shareholders on human rights." *Ranking Digital Rights*. <https://rankingdigitalrights.org/mini-report/its-time-to-bring-down-the-barriers-blocking-shareholders-on-human-rights/>.

<sup>2</sup> Bebchuk, Lucian A. & Kobi Kastiel. (2017). "The Untenable Case for Perpetual Dual-Class Stock." *Virginia Law Review*, 103(4), 585-631. [https://ecgi.global/sites/default/files/4\\_the\\_untenable\\_case\\_for\\_perpetual\\_dual-class\\_stock.pdf](https://ecgi.global/sites/default/files/4_the_untenable_case_for_perpetual_dual-class_stock.pdf).

<sup>3</sup> Temple-West, Patrick. (Jan. 7, 2022). "Investors lose ground in fight against supervoting shares." *Financial Times*. <https://www.ft.com/content/fba6f481-64ed-4d27-ab7e-30dd3ec58639>.

one illustration, in 2021 at Meta (then Facebook), four of the six shareholder proposals on the ballot would have passed with majority support if CEO Mark Zuckerberg (who controls nearly 60% of Meta's voting shares, despite owning less than 13% of its stock),<sup>5</sup> hadn't vetoed the initiatives.<sup>6</sup>

**The September 2020 amendments to shareholder proposal rules under SEC Act Rule 14a-8<sup>7</sup> disempowered minority investors and eroded the ideal of shareholder democracy.** Shareholder proposals are important tools that give voice to institutional and retail investors alike, providing a mechanism for shareholders to bring issues to the corporate agenda and press for good governance practices.<sup>8</sup> The 2020 amendments undermine shareholder proposals in two important ways: first, by increasing the thresholds and procedural requirements for submitting and resubmitting shareholder resolutions, and second, by preventing shareholder representatives from filing multiple proposals for a company. These changes tilt the balance of power further in favor of company directors and executives, who will now face fewer shareholder proposals and challenges to their behavior as a result.

The rule change occurred at a high point of investor interest in (and proposals submitted about) environmental, social, and governance (ESG) issues.<sup>9</sup> Under the updated regime, entire domains of important ESG reforms are dead on arrival. To this point, we strongly agree with Commissioner Lee, who argued in dissent to the rule updates that the amendments not only weakened ESG initiatives and harmed retail investors, but ultimately, “restrict shareholders’ ability to oversee and engage with management of the companies they own.”<sup>10</sup>

The current system also threatens human rights. As civil society organizations, we increasingly ally with shareholders in our efforts to hold companies accountable. But the compounding effects of multi-class stocks and an onerous rule system severely limit the possibility that corporations will encounter, much less address, human rights concerns. These changes came amid heightened interest in corporate governance and human rights issues: “human rights-related shareholder proposals are...surging,”

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<sup>4</sup> Dieterich, Chris, Maureen Farrell, & Sarah Krouse. (Aug. 2, 2017). “Stock Indexes Push Back Against Dual-Class Listings.” *The Wall Street Journal*. <https://www.wsj.com/articles/stock-indexes-push-back-against-dual-class-listings-1501612170>.

<sup>5</sup> Robertson, Benjamin & Andrea Tan. (Mar. 4, 2021). “Why Dual-Class Shares Catch On, Over Investor Worries.” *Bloomberg*. <https://www.bloomberg.com/news/articles/2021-03-04/why-dual-class-shares-catch-on-over-investor-worries-quicktake-klwbtryg>.

<sup>6</sup> Lauricella, Tom & Leslie Norton. (Oct. 7, 2021). “How Facebook Silences Its Investors.” *Morningstar*. <https://www.morningstar.com/articles/1061237/how-facebook-silences-its-investors>.

<sup>7</sup> SEC. (Sep. 23, 2020). “Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8,” SEC Release No. 34-89964. Securities and Exchange Commission. <https://www.sec.gov/news/press-release/2020-220>.

<sup>8</sup> Nili, Yaron. (Nov 4, 2020). “It’s Not Just Small Investors Who Will Be Silenced Thanks to the SEC’s New Rules.” *ProMarket*. <https://www.promarket.org/2020/11/04/small-investors-silenced-sec-new-rules-threshold/>.

<sup>9</sup> Kerber, Ross & Simon Jessop. (Dec. 23, 2021). “Analysis: How 2021 became the year of ESG investing.” *Reuters*. <https://www.reuters.com/markets/us/how-2021-became-year-esg-investing-2021-12-23/#:~:text=A%20record%20%24649%20billion%20poured,10%25%20of%20worldwide%20fund%20assets>  
ProxyPulse. “2022 Proxy Season Preview.” (2022). [https://www.broadridge.com/proxypulse/assets/docs/broadridge-proxypulse\\_2022-season-preview-and-2021-review.pdf](https://www.broadridge.com/proxypulse/assets/docs/broadridge-proxypulse_2022-season-preview-and-2021-review.pdf).

<sup>10</sup> Commissioner Allison Herren Lee. (Sep. 23, 2020). “Statement on Amendments to Rule 14a-8.” Securities and Exchange Commission. [https://www.sec.gov/news/public-statement/lee-14a8-2020-09-23#\\_ftn27](https://www.sec.gov/news/public-statement/lee-14a8-2020-09-23#_ftn27).

according to the UN.<sup>11</sup> Moreover, investors and proxy advisory firms increasingly include “explicit human rights considerations into their proxy voting guidelines, thereby instructing shareholder representatives on how to vote on human rights-related resolutions.”<sup>12</sup> Amid this mounting attention, corporations are fighting to exclude such material from proxy materials via SEC No-Action letters. In 2019, human rights and social issues were the most common subject of these letters.<sup>13</sup> Full integration of human rights, broadly, and the UN Guiding Principles on Business and Human Rights, specifically, into corporate value chains is a longstanding civil society priority.<sup>14</sup> SEC rules favoring corporate interests risk undoing recent gains in this area.

To rectify these issues, we urge the Commission to implement the following reforms through rule-making:

1. **End multi-class share structures:** Unequal voting structures disenfranchise shareholders, hitting those who call for action on human rights especially hard. The SEC should eliminate these structures entirely, prioritizing companies under “bad actor disqualification” provisions, then newly listed companies, and finally existing companies. It should also require companies to disclose how their stock structures impact corporate governance.
- **Restrict multi-class share structures for companies subject to “bad actor disqualification” provisions.** Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act prohibits certain “bad actors” from using safe harbor under Rule 506 of Regulation D.<sup>15</sup> The SEC should conduct rulemaking to update the so-called Bad Actor Rule to prohibit any “covered person” involved in a “disqualifying event” from maintaining a multi-class share structure, including companies currently designated as bad actors. Preventing “Bad Actors” from retaining inequitable stock structures is necessary to enhance the system of corporate accountability for firms in violation of SEC rules. Meta (then Facebook) was infamously placed under “bad actor” status in 2019 pursuant to the Cambridge Analytica scandal. It should not be allowed to sidestep accountability by maintaining a multi-class share structure, especially given ongoing whistleblower claims and class action lawsuits.
- **Newly public companies should be barred from offering non-voting share classes entirely.** Common shares that come with no voting rights undermine shareholder governance and entrench insider control at the expense of shareholders’ rights.

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<sup>11</sup> OHCHR. “Taking stock of investor implementation of the UN Guiding Principles of Business and Human Rights.” (2021). <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation.pdf>.

<sup>12</sup> Ibid.

<sup>13</sup> Bokermann, Susan. (Jan. 21, 2020). “Analysis: ESG Concerns Demonstrated in SEC No-Action Letters.” *Bloomberg Law*. <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-esg-concerns-demonstrated-in-sec-no-action-letters>.

<sup>14</sup> Muñoz Quick, Paloma. (Mar. 22, 2022). “Bridging the Human Rights Gap in ESG.” BSR. <https://www.bsr.org/en/our-insights/blog-view/bridging-the-human-rights-gap-in-esg>.

<sup>15</sup> SEC. (July 10, 2013). “Final Rule: Disqualification of Felons and Other ‘Bad Actors’ from Rule 506 Offerings.” Securities and Exchange Commission. <https://www.sec.gov/rules/final/2013/33-9414.pdf>.

- **Existing companies with unequal voting structures must adopt sunset provisions.** Terminating skewed voting after a honeymoon period is one step toward correcting unaccountable governance structures. Other approaches recommend that companies eliminate their unequal voting structures within seven years of the IPO<sup>16</sup> or that company insiders must yield power gradually.<sup>17</sup> Any of these would be an improvement.
  - **Companies should be compelled to clearly disclose the gap between ownership and voting power.** Requiring clear, accessible data—total percentage of equity owned and total percentage of voting rights—can help shareholders, CSOs, and the public to better understand how much power corporate elites truly hold. Insiders should also disclose how low their ownership stake can get before they are forced to relinquish control.
2. **Repeal SEC rules that hinder shareholder action.** The 2020 rule changes disproportionately target small stockholders and bury important proposals. The SEC must rescind its rules that restrict participation according to stock ownership (which marginalize small shareholders), raise the thresholds of support needed for shareholders to resubmit proposals, and limit shareholders' ability to build coalitions.

**The time for corporate governance reform is now.** Civil society organizations and ever-growing segments of the investor community are increasingly aligned in efforts to establish ESG practices in line with human rights standards. President Biden's transformative corporate responsibility initiatives further underscore the salience of these topics. To date, the president has issued a number of important executive orders, encompassing such issues as climate-related financial risk<sup>18</sup> and the regulatory review of the previous administration's ESG rules.<sup>19</sup> Updating the National Action Plan (NAP) on Responsible Business Conduct (RBC) is further evidence of the Biden Administration's commitment to ensuring that the private sector functions in ways that are consistent with the public interest.<sup>20</sup> With respect to the NAP, we would be remiss not to highlight that human rights underpin the entire notion of "Responsible Business Conduct"<sup>21</sup> and that RBC is a requisite for the full enjoyment of human rights across state, corporate, and private spheres of life.

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<sup>16</sup> Council of Institutional Investors. (last accessed April 6, 2022). "Dual-Class Stock." [https://www.cii.org/dualclass\\_stock](https://www.cii.org/dualclass_stock).

<sup>17</sup> Coffee, John C, Jr. (Nov. 19, 2018). "Dual-Class Stock: The Shades of Sunset." *The CLS Blue Sky Blog*. <https://clsbluesky.law.columbia.edu/2018/11/19/dual-class-stock-the-shades-of-sunset/>.

<sup>18</sup> The White House. (May 20, 2021). "Executive Order on Climate-Related Financial Risk." <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/>.

<sup>19</sup> The White House. (Jan. 20, 2021). "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

<sup>20</sup> U.S. Department of State. (June 22, 2021). "National Action Plan on Responsible Business Conduct." <https://www.state.gov/responsible-business-conduct-national-action-plan/>.

<sup>21</sup> Kaufmann, Christine & Roel Nieuwenkamp. (Dec. 10, 2018). "Human rights is an integral part of responsible business conduct." *OECD: On the Level*. <https://oecdonthellevel.com/2018/12/10/human-rights-is-an-integral-part-of-responsible-business-conduct/>.

**As President Biden highlighted in the State of the Union,<sup>22</sup> corporate actors have operated with impunity for too long, amassing profits and consolidating power while engaging in rights-abusing business practices.** Many of the worst offenders come from the “Big Tech” sector, companies such as Meta (Facebook) and Alphabet (Google) that are frequent targets of public scrutiny. Yet, these firms have proven resistant to substantive or long-term change. This outcome, we argue, is due to the existence of multi-class shares. Rules that inhibit shareholder participation in corporate governance activities worsen the existing accountability gaps.

Many of us have long advocated for corporate governance reform in the technology sector. “It’s the business model”<sup>23</sup> is a clarion call for recognizing that, because harms associated with Big Tech stem from structural financial incentives, they must be addressed at the source. Today we take this call one step further, for where there’s a business model problem, surely there is a boardroom problem as well.

**Specifically, we urge the Securities and Exchange Commission to end multi-class share structures and repeal rules that hinder shareholder action. The stakes for human rights could not be higher, in all areas where corporations wield influence over our civic life.**

Sincerely,

Access Now  
Accountable Tech  
American Federation of Teachers  
Campaign for Accountability  
Center for Digital Democracy  
Coalition For Women In Journalism  
Fair Vote  
Foundation The London Story  
Defend Democracy  
Media Alliance  
Mnemonic  
OpenMedia  
Open Technology Institute  
Ranking Digital Rights  
Real Facebook Oversight Board  
The Signals Network  
Open MIC (Open Media and Information Companies Initiative)  
Public Citizen  
SumOfUs  
Taraaz  
United Church of Christ Media Justice Ministry

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<sup>22</sup> The White House. (Mar. 1, 2022). “Remarks of President Joe Biden – State of the Union Address As Prepared for Delivery.” <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/>.

<sup>23</sup> Ranking Digital Rights. (2020). *It’s the Business Model: How Big Tech’s Profit Machine is Distorting the Public Sphere and Threatening Democracy*. <https://rankingdigitalrights.org/its-the-business-model/>.