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S&P Dow Jones Indices and FTSE Russell Announce Decisions on Exclusion of Companies with Multiple-Class Share Structures

Over the past week, two of the world's largest index providers have announced decisions to partially or fully exclude companies with multiple-class share structures from their indices. These new policies, made after substantive consultation with index users and other stakeholders, have wide-ranging implications for issuers and investors alike and highlight the growing roles of investors and index providers in shaping governance standards.

S&P Dow Jones Indices Announces Policy to Exclude Companies with Multiple-Class Share Structures

On July 31, S&P Dow Jones Indices announced in a press release that it would take immediate action to fully exclude companies with multiple-class share structures from entering its S&P Composite 1500 and component indices. The new policy, which took effect on August 1, does not apply to existing index constituents and covers the S&P 500, S&P MidCap 400 and S&P SmallCap 600, but not the S&P Global BMI Indices or the S&P Total Market Index.

In its announcement, S&P Dow Jones Indices wrote:

> Unlike the S&P Global BMI Indices and S&P Total Market Index, the S&P Composite 1500 follows more restrictive eligibility rules including a minimum float of 50% and positive earnings as measured by GAAP. In light of the Index Committee's review of the S&P U.S. Indices Methodology . . . a methodology change to make companies with multiple share class structures ineligible for inclusion in the S&P Composite 1500 is effective immediately.

FTSE Russell to Exclude Companies with Low or No Voting Rights

On July 26, FTSE Russell announced that beginning this fall it plans to exclude companies, including Snap Inc. and Blue Apron, with low, or no, voting rights from its indices. The new policy is the result of a months-long consultation by the index provider with index users and other stakeholders about whether FTSE Russell's indices should include a minimum hurdle rate for the percentage of a company's voting rights in the hands of non-restricted shareholders. Moving forward, companies seeking inclusion in FTSE Russell's indices will need to have at least 5% of voting rights held by unrestricted public shareholders, though the threshold will be reviewed on an annual basis.

FTSE Russell Consultation Findings and Proposal

Major findings of FTSE Russell's consultation process include:

- In total, 68% of respondents agreed that companies listed on the index should have some percentage of securities with voting rights.
- Of respondents who thought a minimum voting rights hurdle was sensible, 23% thought the rate should be set at 5% while 55% said it thought it should be set at 25%. FTSE noted that the majority of those in favor of this higher hurdle were users of FTSE UK Series indices where a minimum free float threshold of 25% already applies.
- Respondents expressed strong support for FTSE Russell global indices (88%) and Russell US indices (77%) to follow the proposal.

As a result of these findings, FTSE Russell proposed the following:

- Market constituents of all FTSE Russell indices must have greater than 5% of the company's voting rights in the hands of unrestricted shareholders.
- For potential new constituents, including IPOs, the rule will apply beginning from FTSE Russell's September semi-annual and quarterly reviews.
- For existing constituents, the rule will take effect starting in September 2022, allowing those companies to change their capital structure to comply with the new rule.

FTSE Russell Timeline and Next Steps

FTSE Russell announced that final ground rules and methodology for inclusion in affected indices would be announced on August 25th and become effective at the September quarterly and semi-annual index reviews. However, the index provider also announced that it would review the threshold and the sanction of non-compliant companies on an annual basis. According to an Excel file released by FTSE Russell, around 35 public companies would need to increase the voting rights of public investors by 2022 to avoid exclusion from its indices.

Takeaways for Issuers

These announcements raise important questions about the growing role of index providers in shaping governance standards. One other index provider, MSCI Inc., is conducting a stakeholder consultation on the issue of non-voting shares that is slated to conclude August 31.

Given the intense and sustained flow of funds into passive strategies over the past several years, listing standards for index providers have become an increasingly important battleground for investors concerned with corporate governance. FTSE Russell's decision leaves substantial latitude for issuers to implement share classes with highly differentiated voting rights. By comparison, S&P Dow Jones Indices' decision to exclude companies with multiple-class share structures from certain of its key indices is a much broader exclusion. Taken together, these new policies show clearly the growing willingness and ability of investors to assert their power in the market in ways that have economic impacts for public companies.

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