CERF Fellowship Report April 2024

My research has continued to focus on attracting listings to the UK equity markets and boosting the growth of the British tech-industry.

My book on the subject of dual-class stock – 'Founders Without Limits: Dual-Class Stock and the Premium Tier of the London Stock Exchange' – was published at the end of 2021. Dual-class stock is a capital structure which enables founders to retain control through holding shares with disproportionately high voting rights, and issuing shares with lower voting rights, but equal cash-flow rights, to the public. Thereby, dual-class stock can allow a founder to divest of its investment in a company that he or she controls, and raise further equity funding on the public markets, while maintaining control. The book scrutinises the adoption of dual-class stock around the world and applies the evidence in the context of the premium tier of the London Stock Exchange. My research has additionally led to four articles on dual-class stock. The subject of dual-class stock is front-and-centre of current corporate governance debates in the UK. I have engaged, and will seek to continue to engage, with the regulators on this topic. The four articles are described further below.

Continuing with the theme of the London Stock Exchange, I recently published two articles on special purpose acquisition companies (SPACs). SPACs are shell companies incorporated and listed with the singular purpose of acquiring another company or business. They have been viewed as a mechanism through which private companies can more easily float. My first SPAC paper, using the US market as a foundation, critically analysed the use of SPACs, making predictions about the manner in which the UK market will develop following revisions to the Main Market's Listing Rules. My second paper takes a detailed look at how the SPAC markets in London and Amsterdam have in fact developed. The paper validates the predictions regarding London outlined in the first paper, and notes a similar market has developed in Amsterdam, where a more flexible SPAC regime exists with no mandatory SPAC regulations. I conclude that institutional investors are broadly able to influence SPAC terms by private ordering, and that regulations should instead have focused on protecting retail investors.

I have also recently co-authored four papers. Firstly, a published paper evaluating the recent round of primary markets reforms in the UK, and the propensity for those reforms to resuscitate the London Stock Exchange. The paper additionally investigates the reasons for the secular decline of the London Stock Exchange and the potential for a renaissance. Secondly, I have a co-authored a paper assessing whether it is time to abolish the UK Corporate Governance Code. The paper forms part of my current portfolio of research seeking ways in which to reinvigorate the London Stock Exchange, and it provides evidence that the UK Corporate Governance Code may now be more of a hinderance rather than a benefit to UK listed companies. The paper has gained significant traction in the media and amongst policy circles. The final two co-authored papers take a deep dive into the potential reasons for the decline of the London Stock Exchange as an equity market, and the historical impact of law and regulation on the UK's equity markets. I am continuing, with my co-author, to research the factors impacting the health of the London Stock Exchange, and, as an off-shoot, I recently completed a paper comparing the US and UK approaches to executive compensation. My current research also focuses on private equity, since the rise of private equity has an indirect impact on the public markets, and on what possible reforms could work more effectively to attract companies to the London Stock Exchange, allow them to flourish and keep them there over the long-term.

I have also completed research into the UK's Stewardship Code. The Stewardship Code encourages asset managers and asset owners to, *inter alia*, steward and engage with the firms in which they invest. The Stewardship Code was substantially up-dated in 2020, after the previous version of the Code attracted significant criticism, and my research assesses the propensity for the new version to more effectively encourage the issuer-specific engagement originally envisaged by the Code. The research scrutinises the Code by focusing on the legal, regulatory and commercial incentives, or lack thereof, for asset managers to undertake issuer-specific engagement. The paper also discusses hedge fund activism,

and the likelihood for asset managers generally to exercise holistic-risk engagement of portfolio companies, including in relation to ESG factors.

Finding the British Google: Relaxing the Prohibition of Dual-Class Stock From the Premium-Tier of the London Stock Exchange

Abstract: There is a dearth of British tech-companies listing on the London Stock Exchange (LSE), and the LSE lacks a large, innovative tech-company such as Google. The UK Government, concerned as to the loss of UK tech-companies to foreign acquirors, views the encouragement of UK tech-firm listings as a policy priority. Dual-class stock, currently prohibited from the LSE Main Market's premium-tier, allows founders to list their firms, and retain majority-control, while holding significantly less of the cash-flow rights in the company. This article will broach the potential for dual-class stock to attract UK tech-company listings, and explore the benefits that dual-class stock can engender for UK tech-companies and their public shareholders. The risks of dual-class structures will also be discussed, but it will be shown that in a UK regulatory context, in relation to high-growth tech-companies, the risks may not be as severe as presumed, and easily moderated through judicious controls.

Progress: I have published my research in the Cambridge Law Journal (B. Reddy, 'Finding the British Google: Relaxing the Prohibition of Dual-Class Stock form the Premium-Tier of the London Stock Exchange' (2020) 79 *CLJ* 315), available at: <https://www.cambridge.org/core/journals/cambridge-law-journal/article/finding-the-british-google-relaxing-the-prohibition-of-dualclass-stock-from-the-premiumtier-of-the-london-stock-exchange/3D2E2F2CCFBF653D3151F7B2AC6E681F>

I presented the paper in March 2021 at the Faculty of Law's (Cambridge University) conference on 'Funding Innovation: Current Issues in Corporate Finance'.

The Emperor's New Code? Time to Re-Evaluate the Nature of Stewardship Engagement Under the UK's Stewardship Code

Abstract: John Kingman's review of the Financial Reporting Council (FRC) doubted the effectiveness of the UK's Stewardship Code in encouraging informed and engaged stewardship by institutional investors of the companies in which they invest (issuers). Accordingly, the FRC published the Stewardship Code in 2020 in a final opportunity to prove its effectiveness and relevance, and, in particular, enhance issuer-specific engagement by institutional investors. The up-date has enhanced the reach and substance of the code. However, the legal, regulatory, contractual and competitive environment in which institutional investors exist will constantly forestall soft-law attempts to foster greater issuer-specific engagement, a point perhaps tacitly acknowledged by the 2020 Stewardship Code with its wider scope. Instead, in relation to engagement, stewardship disclosure should focus on the types of engagement that institutional investors are motivated to exercise in practice, such as engagement in response to hedge fund activism, and engagement on systemic risks.

Progress: I have published my research in The Modern Law Review (B. Reddy, 'The Emperor's New Code? Time to Re-Evaluate the Nature of Stewardship Engagement Under the UK's Stewardship Code' (2021) 84 *MLR* 842), available at: <https://www.modernlawreview.co.uk/july-2021/emperors-new-code-time-re-evaluate-nature-stewardship-engagement-uks-stewardship-code/> The paper was recognised as a "top cited paper" in The Modern Law Review (1 January 2021 – 15 December 2022).

More Than Meets the Eye: Reassessing the Empirical Evidence on US Dual-Class Stock

Abstract: Some of the largest and most successful publicly traded companies, such as Alphabet and Facebook, have implemented a capital structure known as dual-class stock. Dual-class stock enables a company's controller to retain voting control of a corporation while holding a disproportionately lower level of the corporation's cash-flow rights. Dual-class stock has led a tortured life in the US, and is perhaps the most controversial area of corporate governance today. Between institutional investor

derision and the exclusion or restriction of dual-class stock from certain indices, one may assume that dual-class structure must be harmful to outside stockholders. However, in this article, the existing empirical evidence on US dual-class stock will be reassessed by contrasting studies that use different measures of performance. It will be shown that although dual-class firms are generally valued less than similar one-share, one-vote firms, they perform as well as, and, in many cases, outperform, such firms from the perspective of operating performance and stock returns. When it comes to dual- class stock, more than meets the eye, and a presumption that dual-class stock is harmful for outside stockholders should not guide policy formulation.

Progress: I have published my research in the University of Pennsylvania Journal of Business Law (B. Reddy, 'More Than Meets the Eye: Reassessing the Empirical Evidence on US Dual-Class Stock' (2021) 23 U. Penn. J. Bus. L. 955), available at <https://scholarship.law.upenn.edu/jbl/vol23/iss4/3/>

Up the Hill and Down Again: Constraining Dual-Class Shares

Abstract: The headline recommendation of Jonathan Hill's 2021 UK Listing Review was that dual-class shares structures be permitted on the London Stock Exchange's premium tier. The aspiration was to encourage more high-quality UK equity listings, particularly of high-growth tech-companies, for which dual-class shares are especially beneficial. Dual-class shares allow founders to list their companies, and retain majority-control, while holding significantly less of the cash-flow rights in the company. However, in the UK, dual-class shares are usually discussed in qualified terms, in an attempt to placate sceptical institutional shareholders. Using the UK Listing Review as a platform, this article explores the constraints commonly proposed to be attached to dual-class shares, and argues that, although it is important to protect public shareholders, constraints must not be too severe. A balance must be respected, otherwise UK initiatives to relax rules on dual-class shares could deter the very companies they are intended to attract.

Progress: I have published my research in the Cambridge Law Journal (B. Reddy, 'Up the Hill and Down Again: Constraining Dual-Class Shares' (2021) 80 CLJ 515), available at: <https://www.cambridge.org/core/journals/cambridge-law-journal/article/up-the-hill-and-down-again-constraining-dualclass-shares/9247F7EE2EE16CD93B32B4540EBE7B15>

I presented an early version of this paper in May 2021 at the CERF Cavalcade. I presented this paper at CERF in the City in June 2022.

Founders without Limits: Dual-Class Stock and the Premium Tier of the London Stock Exchange

Big Tech has flourished on the US public markets in recent years with numerous blue-chip IPOs, from Google and Facebook to new kids on the block such as Snap, Zoom and Airbnb. A key trend is the burgeoning use of dual-class stock. Dual-class stock enables founders to divest of equity and generate finance for growth through an IPO, without losing the control they desire to pursue their long-term, market-disrupting visions. Bobby V. Reddy scrutinises the global history of dual-class stock, evaluates the conceptual and empirical evidence on dual-class stock and assesses the approaches of the London Stock Exchange and ongoing UK regulatory reforms to dual-class stock. A policy roadmap is presented that optimally supports the adoption of dual-class stock while still protecting against its potential abuses, and which will more effectively attract high-growth, innovative companies to the UK equity markets, boost the economy and unleash the true potential of 'founders without limits'.

Progress: My book was published with Cambridge University Press (2021), available at: <https://www.cambridge.org/core/books/founders-without-limits/CC6CD8B75ACBC6C0FC7201FE836B9B3F>

I was the keynote speaker at a seminar on dual-class stock for the International Trade Law Research Circle and Institute of Advanced Legal Studies at the University of Macau in January 2022.

I presented on the book at the Max Planck Institute for Comparative and International Private Law Conference in Hamburg in May 2022.

Warning the UK on Special Purpose Acquisition Companies (SPACs): Great for Wall Street but a Nightmare on Main Street

Abstract: Special Purpose Acquisition Companies (SPACs) are non-operating entities seeking public listings with the sole intention of subsequently acquiring other companies. Once a target has been acquired, the SPAC de-lists and the newly enlarged group reapplies for listing as a, now publicly-owned, operating entity, thereby streamlining the process to IPO for the target. SPACs have surged in the US recently, with SPAC sponsors making concerted efforts to attract not only institutional, but also retail, investors. With a view to invigorating SPAC activity in the UK, new regulations have been introduced that will enable UK SPAC sponsors to mimic the structure of US SPACs. However, in this article, it will be discussed that unlike the more benign nature of traditional UK SPACs, the typical US-style SPAC is simply a financial instrument for institutional investors built upon the investment of retail investors, and promoting such an evolution in the UK may be misguided.

Progress: I have published my research in the Journal of Corporate Law Studies (B. Reddy, 'Warning the UK on Special Purpose Acquisition Companies (SPACs): Great for Wall Street but a Nightmare on Main Street' (2022) JCLS), available at: <https://www.tandfonline.com/doi/full/10.1080/14735970.2022.2036413?scroll=top&needAccess=true>

I presented my research at the Commercial Law Centre, Harris Manchester, Oxford Conference on 'Reform of the Listing Rues' in January 2022, and served on a panel at the International Corporate Governance Network meeting in Stockholm in March 2023.

I presented this paper at the CERF Monday Lunchtime Talk Series in February 2022.

Will Listing Rule Reform Deliver Strong Public Markets for the UK? (with Brian Cheffins)

Abstract: There is a general consensus that the UK needs strong public markets. To help to ensure that Britain is well-positioned on this front, the Financial Conduct Authority reformed the London Stock Exchange's listing regime in 2021. This paper outlines and evaluates these reforms, assessing in so doing their potential to resuscitate the UK's public equity markets. The paper acknowledges that the reforms may increase UK initial public offerings to some degree but maintains concerns about strong public markets will continue to exist. This is because the reforms do nothing to address exits from the stock market and modest market capitalisations of companies that remain listed.

Progress: We have published our work in The Modern Law Review, available at <https://onlinelibrary.wiley.com/doi/full/10.1111/1468-2230.12758>

I presented my research at the capital markets reform conference held at the London School of Economics in October 2022, with an audience composed of policymakers, politicians, journalists and academics. I also presented and published a blog for CERF on this topic.

Thirty Years and Done: Time to Abolish the UK Corporate Governance Code (with Brian Cheffins)

Abstract: A 1992 Code of Best Practice developed by a committee Sir Adrian Cadbury chaired revolutionised UK corporate governance. The Code, which introduced non-statutory best practice provisions with which listed companies could choose not to comply so long as they explained why, has evolved into the more expansive UK Corporate Governance Code of today. This paper argues that after

three decades it is time to do away with the code approach and 'comply-or-explain'. Much of the current Code's content is now irrelevant, and disclosure and compliance expectations have escalated to levels that create substantial net costs for companies. Additionally, the Code is now being used to address 'stakeholder' issues for which the Code's shareholder enforcement dependent comply-or-explain mechanism is poorly suited. The Code correspondingly should be abolished, with some key points it addresses being dealt with instead by new disclosure requirements under the Financial Conduct Authority's Listing Rules.

Progress: We have published our work in the Journal of Corporate Law Studies, available at <https://www.tandfonline.com/doi/full/10.1080/14735970.2022.2140496>

Our paper has created a good degree of interest among the wider corporate governance community with our research being referred to in the Financial Times, Bloomberg and Board Agenda.

Deconstructing Private Equity Buyout Valuations

Abstract: In this article, the most common method by which private equity firms value potential private company acquisitions – "discounted cash-flow" – is deconstructed and simplified for lawyers. For an M&A lawyer, a deeper understanding of how companies are valued can be an important aid to providing effective advice to private equity clients.

Progress: I have published my work in the Journal of Business Law ((2022) 8 Journal of Business Law 629).

I have adapted the subject matter of this paper as a chapter for the forthcoming book, The Palgrave Encyclopaedia of Private Equity (Springer, 2023).

Boxing Clever: Explaining UK and US Private Equity Locked Box Perspectives

Abstract: Recently, it has become common in UK private company M&A transactions to fix price based upon historic accounts – locked-box mechanisms. However, US acquisitions are customarily subject to post-closing adjustment mechanisms. In this article, the differing path dependencies of UK and US M&A are explained, before noting that perhaps the status quo is not as rational as it first appears.

Progress: I have published my work in The Company Lawyer ((2022) 43 The Company Lawyer 385).

The UK and Dual-Class Stock-Lite – Is It Really Even Better Than the Real Thing?

Abstract: In December 2021, the Financial Conduct Authority (FCA) revised the Listing Rules that apply to companies listed on the Main Market of the London Stock Exchange (LSE) to permit the premium tier listing of companies with specified weighted voting rights shares structures. The revision, broadly based upon the concept of "dual-class stock", was premised on a desire to attract innovative, high-growth firms to the LSE. The structure was developed to allow founders to list their firms, sell equity and issue further shares for growth without having to fully relinquish voting control. However, the FCA was clearly also concerned that an unconstrained dissociation between voting and cash flow rights could incentivize more pernicious behavior on the part of founders. Accordingly, specified weighted voting rights structure embodies various conditions that restrain the ability of a founder to access the full gamut of advantages that dual-class stock can offer. As a result, specified weighted voting rights shares is more dual-class stock-lite rather than a fully fledged premium tier move toward multiple voting right share structures. In this article, each of the conditions attached to the use of specified weighted voting rights shares is scrutinized in the context of whether they appropriately balance the desire of founders for flexibility with public shareholder protection. It will be discussed that if the intention was to encourage visionary founders to list their high-growth firms on the LSE,

overall, the conditions attached to specified weighted voting rights shares are too severe and will unlikely achieve that purpose.

Progress: I have completed the paper and it is forthcoming in the international journal, Theoretical Inquiries in Law.

I presented my work on this paper at the Buchmann Faculty of Law, Tel Aviv conference on controlling shareholders in January 2023.

Murder on the City Express - Who is Killing the London Stock Exchange's Equity Market?

Abstract: In Agatha Christie's Murder on the Orient Express, Poirot deduced that no single culprit was responsible for a murder on the eponymous train. In this article, which is intended to serve as an aide memoire to assess anticipated reforms, we similarly reason that there is no single suspect responsible for a recent decline in fortunes of the London Stock Exchange's equity market. We note that globally-relevant factors, such as the rise of private capital, may have impacted the health of the U.K.'s primary stock market. However, sufficiently material differences in various stock market metrics exist between the London Stock Exchange and stock markets elsewhere to suggest that U.K.-specific factors are also significant. We canvass several of those factors: Britain's listing requirements and corporate governance regime, a paucity of public company investment research, the withdrawal of U.K. pension and insurance firms as public company investors, a U.K. investment culture that prioritises dividends over growth, a lack of world- leading British corporations, and managerial shortcomings. We suggest that all of these factors likely have contributed to the U.K.'s equity market travails, a finding which implies that generating effective reforms will require coherent and expansive policymaking.

Progress: The paper provided the basis for a roundtable event I co-convened in Cambridge in June 2023 attended by regulators, policymakers, practitioners, founders and academics on 'Globally Competitive Public Markets'. I also be presented the paper at a joint conference between the University of Notre Dame and UCL held in London in September 2023, and gave a keynote address at the Westminster Business Forum on the same topic in February 2024. The paper has garnered a great deal of interest in industry and we were solicited to post a blog on the topic by the Harvard Corporate Governance Forum.

We have published our work in The Company Lawyer ((2023) 44 The Company Lawyer 215)

Law and Stock Market Development in the UK Over Time: An Uneasy Match

Abstract: Britain has a reputation for having a stock market-oriented corporate economy and there is an extensive literature maintaining that laws affording substantial protection to outside investors are needed for a thriving stock market. Historically, however, UK equity markets have not always flourished and, when they have, law's contribution has been open to question. This paper considers the uneasy match between law and Britain's stock market development from when shares first began to trade publicly through to the present day, offering in so doing insights on the relationship between law and equity markets and current reforms intended to revive a flagging UK stock exchange.

Progress: We published our work in the Oxford Journal of Legal Studies (2023) 43 OJLS 725, available at https://academic.oup.com/ojls/article/43/4/725/7241440).

Going Dutch? Comparing Regulatory and Contracting Policy Paradigms Via Amsterdam and London SPAC Experiences

Abstract: The Special Purpose Acquisition Company (SPAC) is a cash-shell listed with the sole purpose of acquiring an operating business. Although SPACs, in a high interest rate environment, may have

recently fallen out-of-favor, it was not long ago when they dominated the US markets. SPACs did not, though, come without controversy. Arguably the incentives ingrained in typical SPACs make them poor investments for long-term shareholders, while lucrative for their sponsors and shareholders seeking to exit prior to an acquisition. Europe was not immune to the SPAC craze, but London and Amsterdam took differing approaches. While London employs a regulatory paradigm pursuant to which SPACs (to avoid a trading suspension upon announcement of an acquisition) must adopt specific terms, Amsterdam follows a contracting paradigm, giving market participants broad scope to implement any SPAC terms that they see fit. In this article, the terms of the cohort of London- and Amsterdam-listed SPACs from 2021 and 2022 are comprehensively scrutinized in the context of the terms that are embedded in the typical US SPAC. This article finds that many of the terms mandated by London's regulatory rules are also found in Amsterdam-listed SPACs. However, many of those London- and Amsterdam-listed SPACs also display many of the qualities seen in the US which have caused so much consternation. Taking inspiration from the phrase 'going Dutch', it is argued that an optimal SPAC policy that assuages concerns levied at US SPACs should take contributions from both the regulatory and contracting paradigms.

Progress: I have completed this paper and it is due to be published in the international journal, European Business Organization Law Review.

I presented a version of this paper to the CUHK Business School in March 2024, and will be presenting it at a University of Notre Dame workshop in April 2024 and at CERF Cavalcade in May 2024.

Getting in a Bind – Comparing Executive Compensation Regulations in the US and the UK

Abstract: Executive compensation is a topical issue on both sides of the Atlantic, with concerns that the pay of managers of US and UK publicly traded companies has spiralled out of control. However, a minority narrative has emerged that a discrepancy in pay levels favoring executives of US over UK companies is leading to corporations shunning the London Stock Exchange and an exodus of talent from the UK to the US. When determining the reasons for cross-border pay variations, regulation is an obvious candidate for blame, but is it the only piece of the puzzle? In this article, US and UK executive compensation regulations are compared, finding that the UK does indeed have a stricter regulatory environment, with, in particular, shareholders being given a binding "say-on-pay" in contrast to a simple advisory vote in the US. The divergence in pay levels between the US and the UK cannot, though, solely be attributed to differences in regulations, and cultural attitudes toward high pay also play a role, together with the general outperformance of the US exchanges in recent years. It is easy to get in a bind over regulations, but with executive compensation, other factors are also at play.

Progress: I have completed this paper and it is due to be published in the Notre Dame Journal of International and Comparative Law.

Bobby V. Reddy, April 2024