

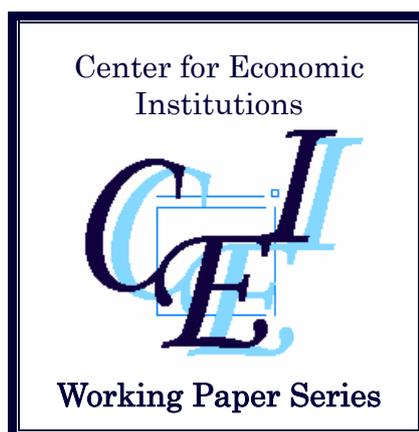
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*"Private Contracting and Corporate Governance:  
Evidence from the Provision of Tag-Along  
Rights in an Emerging Market"*

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# Private Contracting and Corporate Governance: Evidence from the Provision of Tag-Along Rights in an Emerging Market\*

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**ABSTRACT:** We analyse controlling owners incentive to provide non-controlling owners with better protection against self-dealing through offering new shares with tag-along rights, - the private contracting alternative to equal price provision in takeover legislation. Our model identifies two counteracting effects: The benefit of offering tag-along rights is the *anti-expropriation effect* which makes it harder for new owners to finance a takeover through expropriation of minority owners. The cost is the *rent transfer effect* which implies that there is a wealth transfer from controlling owners to existing minority owners. Empirically we test the implications of the model using data on equity offerings in Brazil. Consistent with the theoretical predictions we find that offering tag-along rights increases market value of a firm and that companies offering shares with tag-along rights offer larger claims, have less disproportional ownership structure, have a smaller group of existing minority shareholders and are more likely to issue new shares. The paper, thus, find strong support for private contracting being an important alternative governance mechanism to legal protection of investors.

JEL CLASSIFICATIONS: G30, G32, G34 and G38

KEYWORDS: Private contracting, Corporate governance, Emerging markets, Tag-along rights.

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# 1 Introduction

The law and finance literature suggests that the level of investor protection provided by the legal system is key to financial development (La Porta et al. 1997, 1999) and economic growth (King and Levine 1993, Beck et al. 2000, Mahoney 2001). The basic intuition behind this assertion is that investor protection is critical to the willingness of minority investors to participate in the financing of corporations (Shleifer and Wolfenzon, 2002). Thus, protection of outside investors is instrumental to both the overall development of financial markets as well as the development of individual firms.

Whereas the prior literature has showcased that the protection of outside investors at the country level is shaped by institutions such as legal origin or colonization, relatively little is known about the benefits and costs of protection of outside investors at the firm level. Private contracting is obviously one possible way to mitigate distortion in resource allocation due to insufficient protection of investors. To understand the possible scope and limitation of private contracting it is indeed important to understand why controlling owners voluntarily give up the right to future expropriation of non-controlling owners.

In the present paper we analyze this question focusing on why controlling owners issue shares with tag-along rights. In the event of a takeover tag-along rights secures that all shares within a given class will receive the same price. Thus, tag-along rights is the private contracting alternative to an equal price provision in the takeover legislation and is - therefore - paramount in protection of non-controlling owners investment.

The first part of our paper analyzes theoretically a controlling owner's incentive to issue shares with tag-along rights. The key benefit of issuing new shares with tag-along right is the *anti-expropriation effect*. In the absence of tag-along rights, the owner may sell to a new investor who creates less value or diverts corporate funds. The new owner is willing to pay a premium to the controlling owner because it can be financed through expropriation of the non-controlling owners. Tag-along rights blocks this finance opportunity and - therefore - induce that the firm is only sold to new owners that create weakly more value or expropriate less resources. Our first result shows that when the controlling owner is the sole owner of the company new shares will always be issued with tag-along rights.

We then proceed to analyze the case where there is a group of minority shareholders without tag-along rights already present in the firm. In this case, issuing shares with tag-along rights implies a rent transfer from the controlling owner to the existing - unprotected - minority owners.

Thus, this *rent transfer effect* is the cost tag-along rights. Our second result characterizes that for a sufficiently large group of minority owners it is beneficial for the controlling owner not to issue tag-along rights.

Our model delivers a number of results which we tests on data from equity offerings in Brazil. Consistent with the *anti-expropriation* and *rent transfer* effects we find: 1) Offering shares with tag-along rights increase the market value of a firm; 2) If a firm is owned by a single shareholder, all equity offerings come with tag-along rights; and, 3) Companies that issue shares with tag-along rights offer larger claims, have less disproportional ownership structure, have a smaller group of existing minority shareholders and are more likely to issue new shares (primary offering) than companies that offering shares without take-along rights.

We believe that the issue of tag-along rights in Brazil is an important example of private contracting in corporate governance for at least four reasons: First, tag-along rights is an instrument that is used voluntary by controlling owners to increase investor protection for non-controlling owners. Second, most private contracts are hard to observe for researchers, due to the difficulty of obtaining data. In Brazil issues with tag-along rights are publicly announced, which creates a novel opportunity to analyze empirically the incentives to engage in this form of contractual corporate governance. Third, Brazil is known to have poor investor protection and high private benefits of control, which increases the scope for contractual corporate governance. Fourth, recent regulation of the governance system in Brazil has fostered an almost ideale laboratory for an empirical investigation of private contracting as a substitute for legal protection of minority investors.

To motivate the importance of tag-along rights as a private governance instrument in the absence of legally induced equal price treatment, the following three cases from Chile and Brazil are very illustrative:

The first case is Endesa España's takeover of Chile's largest private energy sector holding company, Enersis S.A.. In August 1997 Endesa made a tender offer to the shareholders of Enersis offering to buy the voting shares for USD 253.34<sup>1</sup> and the non-voting shares having right to high dividend for USD 0.30 per share. Prior to the tender offer Enersis was controlled by five investments funds which again were controlled by the former management and employees of Enersis. This group was able to control Enersis through ownership of the voting-shares which

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<sup>1</sup>Plus 5 options to purchase shares in Endesa Espana at a discount. For simplicity we ignore the value of the options.

represented 0.06 percent of the cash flow rights. However, Endesa España's proposed takeover offer would split the value of Enersis with 84 percent to the controlling owners and 16 percent to the minority owners.<sup>2</sup>

The second case is from Brazil and illustrates that expropriation through block sales may involve government ownership. In 2000, the Brazilian Government was the controlling owner of the Banespa bank with 66.7 percent of the voting shares (33.3 percent of the total cash flow rights). In November 2000 the Government decides to sell their stake to the Spanish bank Banco Santander Central Hispano. The offer given by Banco Santander was 912 percent above the current share price of the voting shares. The combination of absence of both mandatory tender offer and equal price provision in the Brazilian legislation made it possible for Banco Santander only to give a tender for the Government's shares without a tender offer to the residual voting shareholders or to the preference shareholders.<sup>3</sup>

Our third case illustrates the effect of tag-along rights and is the HSBC takeover of the Brazilian firm Bital in August 2002. Bital was owned by the Berrondo family, Banco Santander, and other shareholders. The Berrondo family owned 54 percent of both the voting and cash flow rights at the time of the takeover. Without tag-along rights HSBC would have been able to acquire the controlling stake from the Berrondo family and thereby obtain control with 54 percent of the votes. However, Bital has extended full tag-along rights to minority shareholders and consequently HSBC was forced to acquire all outstanding shares.

The paper proceed as follows: Section 2 builds a simple model that provides testable results characterizing a controlling owner's incentive to issue shares with tag-along rights. Section 3 describes our empirical data and tests the implication of our model. Section 4 concludes.

## 1.1 Related Literature

The theoretical and empirical literature on private contracting is much less developed than the paralleling literature on regulative and legal investor protection. The seminal book by Easterbrook and Fischel (1991) analyzes the interaction between corporate law and private

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<sup>2</sup>The voting shares occupy 0.06 percent of the cash flow rights and are offered 253.34 USD per share. Similarly the non-voting shares having rights to high dividends occupy 99.94 percent of the cash flow rights and are offered 0.3 USD per share. For each million of outstanding shares Enersis would have to pay  $0.0006 \cdot 253.34 = 1.520$  million USD to the controlling group and  $0.9994 \cdot 0.3 = 0.298$  million USD to the preferred shareholders. Thus, firm value is split with  $1.52/(1.52 + 0.298) = 84$  percent to the controlling group and  $0.298/(1.52 + 0.298) = 16$  percent to the minority owners.

<sup>3</sup>There are several other examples of recent takeovers in Brazil where minority investors have suffered the same fate, e.g. the takeover of the brewing group Quilmes by Ambev of Brazil and the takeover of the natural resource group Perex Companac by Petrobras (both in 2002).

provision of investor protection. The scope for private contracting is shaped by the content of the corporate law and the legal praxis. The authors identify a tradeoff between the two means of protecting investors: On one side the main cost of public regulation is that there exist limits for how detailed laws and court praxis can cater to the needs of individual firms. On the other side, the main cost of private contracting is the existence of hold up problems generated by opportunistic behavior of individual investors.

Most recent research on private contracting has followed the track laid out by Easterbrook and Fischel by analysing the interaction between corporate law and private contracting. Bergman and Nicolaievsky (2007) provide a theoretical analysis that endogenizes the degree of private investor protection as a function of variation in legal regimes. The crucial element in their model is that legal regimes varies in the ability to enforce corporate laws and private contracts and that this shapes the scope for private investor protection.

Empirical papers have shown support of the idea that private contracting is affecting by the degree of legal investor protection. DeAngelo, DeAngelo and Skinner (1994) show on US data that private debt contracts are more detailed than those of public debt. Similarly, Lerner and Schoar (2005) identifies cross country variation in the organization of private equity investment and that these variations cater to the degree of investor protection in the corporate law.

Our paper differ from the above approaches in that we do not focus on cross country variation in legal protection. We focus on the cost of benefits for controlling owners in offering extended investor protection to minority owners. Whereas we concede that these costs and benefits are shaped by the degree of legal investor protection we emphasize the tradeoff in incentives that are present in the controlling owners choice.

The paper closest to our theoretical part is Chemla, Habib and Ljungqvist (2007) who provide a theoretical analysis of shareholder agreements. They model the effect of option mechanisms in a double moral hazard setting where two involved parties can provide value increasing investments. They provide a rational economic explanation for many well known clauses in shareholder agreement including put and call options, tag-along and drag-along rights, demand and piggy-back rights and catch-up clauses. We differ from their model in two directions: First, whereas in their model tag-along rights affects incentives to invest in risky projects, tag-along rights in our model affects the prices that shares can be sold at by being a commitment to avoid future expropriation of non-controlling owners. Second, we proceed to test the economic consequences of our results.

## 2 A model of tag along rights.

In this section we present a simple framework to analyze controlling owners incentive to provide private protection of minority owners. The model focuses on the controlling owner's decision to issue offer with or without tag-along rights. We follow the legal approach in many countries and define tag-along rights as a right to receive the same price for shares as the controlling owner in any future sale of controlling ownership blocks.

The model has four dates. At Date 0, the firm consists of a controlling owner, which we will denote the founder,  $f$  and a group of (old) minority owners, who possess a cash flow stake of  $\alpha_o \geq 0$ . At date 1, the founder issues a stake,  $\alpha_n$ , of the firm to a new group of minority owners. We assume that the old and new minority owners are different and that neither of the groups will possess any control rights absent of any tag-along rights that the controlling owner decides to give the minority owners. If the firm keeps its current controlling owner, he is able to create value of  $V$  at date 2. We assume that the controlling owner cannot divert any cash flow and, therefore, pays out  $V$  to the owners according to the distribution of cash flow rights.

At Date 1, after the founder has sold shares to the new minority owners, and before any value is realized, a potential buyer arrives and makes an offer for the founder's and the minority owners' ownership stakes. To be specific, we assume that the buyer can generate value  $V$  too. However, to introduce a role of tag-along rights we assume that the buyer is a worse owner/manager than the founder because he diverts cash flow,  $d > 0$ , at no cost.<sup>4</sup>

The buyer offers a price  $p_f$  for one unit of controlling owner's ownership stake and a price  $p_m$  per unit of minority ownership. The founder receives  $(1 - \alpha_o - \alpha_n)p_f$  for his stake in the firm and the two groups of minority owners receive  $\alpha_o p_m$  and  $\alpha_n p_m$  for their stakes, respectively. We make the natural assumption that the founder has bargaining power in a sale situation but that the minority owners have not. To be specific, we, therefore, assume that the potential acquirer and the founder find a price,  $p_o$ , that share the rent from the sale equally between them and that the minority owners will receive a take it or leave offer. We further assume that minority owners are willing to sell as long as the price weakly exceeds the value of staying on as minority owners.

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<sup>4</sup>It is straight forward to make several extensions of this simplified model. For instance we can assume that both owners can divert cash flow as long as the potential acquirer can divert more cash flow than the controlling owner. Similar, we can assume that the potential acquirer creates less value than the founder or we can assume a distribution of potential buyers that are heterogeneous in how much value they can create and allow for that some of these create more value than the current founder. The present assumption is chosen to simplify the algebra and the intuition below.

From our definition of tag-along rights, as an equal price rule, it follows that  $p_m = p_f$  if the firm has granted tag-along rights to minority investors.

The following time line illustrates the model:

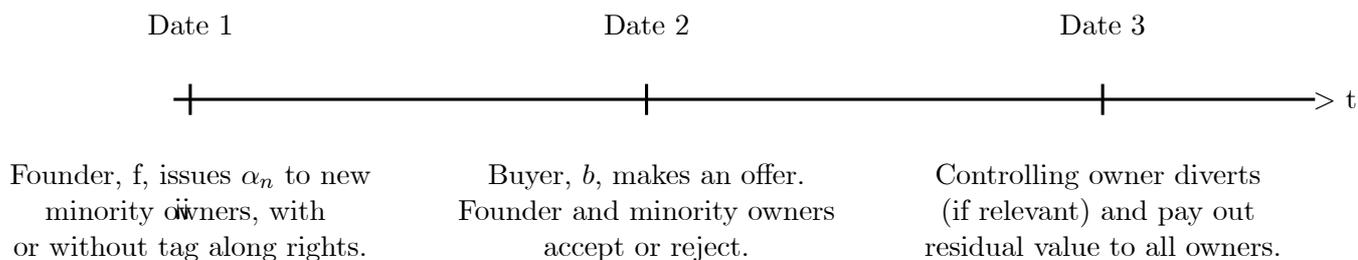


Figure 1: Time line.

The model is solved through backward induction. The minority owners will accept a price for the new shares at Date 1 that is at least as high as the expected value of the shares at date 3.

## 2.1 No existing minority owners

We begin with the simplified case where there are no existing minority owners, i.e.  $\alpha_o = 0$ .

**Proposition 1.** *Assume  $\alpha_o = 0$  and the founder wishes to issue a minority fraction  $\alpha_n$ :*

- a) The founder's payoff decreases in the size of the stock issue ( $\alpha_n$ ) when shares are issued without tag-along rights.*
- b) The founder will always issue shares with tag-along rights.*

*Proof.* First, assume the founder issues shares without tag-along rights. The founder will sell shares if and only if  $(1 - \alpha_n)p_f \geq (1 - \alpha_n)V \Leftrightarrow p_f \geq V$ . The buyer will buy if and only if  $(1 - \alpha_n)p_f + \alpha_n p_m \leq V$ . The buyer will offer the minority owners a price which equals the continuation value given sale  $p_m = (1 - d)V$ . The buyer will therefore extract rent  $\alpha_n dV$  from the minority owners. This rent will be shared with the founder through the price negotiation, implying that

$$(1 - \alpha_n)p_f = (1 - \alpha_n)V + \frac{1}{2}\alpha_n dV \leftrightarrow$$

$$p_f = V + \frac{1}{2} \frac{\alpha_n}{1 - \alpha_n}.$$

The payoffs for the buyer is:

$$\Pi_b^{-TA} \equiv V - (1 - \alpha_n)p_f - \alpha_n p_m = \frac{1}{2}\alpha_n dV. \quad (1)$$

The founder issues  $\alpha_n$  shares at Date 1 for the security price  $S^{-TA} = (1 - d)V$ , which is the residual value for the minority owners after a sale of the company at Date 2. Thus, the total payoff for the founder,  $\Pi_f$ , becomes:

$$\begin{aligned} \Pi_f^{-TA} &\equiv \alpha_n S^{-TA} + (1 - \alpha_n)p_f = \alpha_n(1 - d)V + (1 - \alpha_n)V + \frac{1}{2}\alpha_n dV. \\ &= V - \frac{1}{2}\alpha_n dV. \end{aligned}$$

This proves part a) of the proposition.

Second, assume the founder issues shares with tag-along rights. In this case, the buyer has to offer an equal price to all shares. We will denote the equal price  $p = p_f = p_m$ . The condition for the founder to sell her shares is:  $(1 - \alpha_n)p \geq (1 - \alpha_n)V$ . The condition for the buyer to be willing to buy the shares remains:  $p \leq V$ . This is only satisfied for  $p = V$ , which makes the founder and the minority owners willing to sell. Given this price is offered at date 2, the security price per unit at date 1 will be  $s^{+TA} = p$  and the expected payoff,  $\Pi_f^{+TA}$ , for the founder is  $V$ . The benefit of issuing shares with tag-along rights is:

$$\begin{aligned} \Delta_{TA} \equiv \Pi_f^{+TA} - \Pi_f^{-TA} &= V - (V - \frac{1}{2}\alpha_n dV) \\ &= \frac{1}{2}\alpha_n dV > 0 \quad \forall \alpha_n > 0. \end{aligned}$$

□

The founder internalizes through the price of the minority shares all future value creation and rent extraction. Without tag-along rights, the potential buyer can buy the firm and exploit the minority owners through diversion of corporate resources. The rent that the buyer extracts is shared with the founder in order to persuade the founder to sell the firm after the share issues. The problem for the founder is that she cannot commit not to sell the firm after the share issue.

The potential buyers of the minority shares at date 1 recognize this problem, and therefore demand a discount in the security price up front. Hence, offering shares with tag-along rights serve as a commitment not to sell the firm to a future owner that are willing to pay the founder a premium on his shares financed through expropriation of the non-controlling owners. This is the *anti-expropriation effect* of tag-along rights.

Since we have assumed that the two types of controlling owners generate the same firm value, there is no social loss from not granting tag-along rights to minority investors. However, there is a private cost for the founder, since he will have to share the ex-post private benefit with the future buyer of the firm.

## 2.2 Existing minority owners

Next, we analyze the situation where there is a group of old minority owners,  $\alpha_o > 0$  without tag-along rights.

**Proposition 2.** *Assume that there exists minority owners,  $\alpha_o > 0$ , without tag-along rights before the founder makes a share issue of  $\alpha_n$  shares. Then:*

- a) *The founder's payoff from issuing shares without tag-along rights relative to not issuing shares decreases in  $\alpha_n$ .*
- b) *The founder's payoff from issuing shares without tag-along rights relative to not issuing shares increases in  $\alpha_o$ .*
- c) *The founder will not provide tag-along rights on share issues if and only if  $\alpha_o > \alpha_n$ .*

*Proof.* First, assume the founder issues shares without tag-along rights. After the issue the founder sells iff  $(1 - \alpha_n - \alpha_o)p_f \geq (1 - \alpha_n - \alpha_o)V \Leftrightarrow p_f \geq V$ . The buyer offers the minority owners the continuation value of staying in the firm, i.e.  $p_m = (1 - d)V$ . The buyer extracts rent  $(\alpha_n + \alpha_o)dV$  from the minority owners. This rent is shared with the founder through price negotiation, implying that

$$p_f = V + \frac{1}{2} \frac{\alpha_n + \alpha_o}{1 - \alpha_n - \alpha_o} dV.$$

The security price for minority shares (from new as well as existing minority owners) is  $S^{-TA} = (1 - d)V$ , which is the residual value for the minority owners after a sale of the company at Date 2. The payoff for the buyer is:

$$\Pi_b^{-TA} \equiv V - (1 - \alpha_n - \alpha_o)p_f - (\alpha_n + \alpha_o)p_m = \frac{1}{2}(\alpha_n + \alpha_o)dV.$$

The founder issues  $\alpha_n$  shares at Date 1 for the security price  $S^{-TA}$ . Thus, the total payoff for the founder,  $\Pi_f$ , becomes:

$$\begin{aligned}\Pi_f^{-TA} &\equiv \alpha_n S^{-TA} + (1 - \alpha_n - \alpha_o)p_f \\ &= \alpha_n(1 - d)V + (1 - \alpha_n - \alpha_o)\left(\frac{1}{2} \frac{\alpha_n + \alpha_o}{1 - \alpha_n - \alpha_o} dV\right) \\ &= (1 - \alpha_o)V + \frac{1}{2}(\alpha_o - \alpha_n)dV.\end{aligned}$$

The founders payoff from issuing shares without tag-along rights relative to not issuing shares is  $\Pi_f^{-TA} - (1 - \alpha_o)V = \frac{1}{2}(\alpha_o - \alpha_n)dV$  which increases in  $\alpha_o$  and decreases in  $\alpha_n$ . This proves part a) and b) of the proposition.

Second, assume the founder issues new shares with tag-along rights. In this case, the buyer offers  $p = p_f = p_m$  for both share classes. The condition for the founder to sell after the issue is:  $(1 - \alpha_n - \alpha_o)p \geq (1 - \alpha_n - \alpha_o)V$ . The condition for the buyer to buy is:  $p \leq V$ . Hence, the acquisition price will be  $p = V$  which makes the founder and the minority owners willing to sell. Given this price, the security price per share at date 1 will be  $s^{+TA} = p$  and the founder's expected payoff,  $\Pi_f^{+TA}$ , is  $(1 - \alpha_o)V$ . The benefit of issuing shares with tag-along rights is:

$$\Delta_{TA} \equiv \Pi_f^{+TA} - \Pi_f^{-TA} = -\frac{1}{2}(\alpha_o - \alpha_n)dV < 0 \Leftrightarrow \alpha_o > \alpha_n.$$

□

The intuition behind the proposition is the following. The *anti-expropriation effect* of tag-along rights secures that the firm ends up with the controlling owner that diverts less corporate resources. As explained in the intuition of Proposition 1, this is beneficial for the owner in itself. However, the cost of issuing tag-along rights, is the transfer of rent from the founder to the old — previously unprotected — minority owners. This *rent transfer effect* is a negative externality for the founder and increases in the size of the old minority claims. Part b) shows that when the size of the old minority owner is too large, the *rent transfer effect* dominates and the founder prefers to offer shares without tag-along rights even though he recognizes the possibility that he will sell the firm to a new buyer that diverts more.

Whether the *anti-expropriation* or the *rent transfer* effect dominates depend on the relative size of the existing and new groups of non-controlling shareholder. Without tag-along rights both groups of minority owners will be exploited ex-post and the founder and the buyer will equally share the rent. The rent extracted from the old minority owners increases both owners

payoff. However, the rent extracted from the new owners decreases the founder's payoff because it is reflected in the security price of the issue at Date 1. Thus, the founder internalizes the rent that the new buyer extracts from the new minority owners. In the case where  $\alpha_o > \alpha_n$  the rent that the new owner extract from the old group is larger than the rent extracted from the new group. However, the founder receives half of the rent extracted from the old group but pays ex-ante half of the rent extracted from the new group. Hence, the founder prefers not to use tag-along rights whenever the old group is larger than the new group.

Notice that the expected value of the existing minority owners' ownership stake strictly increases by the added protection when tag-along rights are given. Thus, when shares are traded, the following corollary holds:

**Corollary 1.** *Issuing shares with tag-along rights increases the security price of the existing minority shares.*

Comparing Proposition 1 and 2 provides the main insight of our model. In the absence of any externality, security prices will reflect any future rent extraction in the firm. When the founder owns the whole corporations, she will internalize all future rent extraction and will, therefore, implement the best possible protection of all share classes through private contracting. When founders do not implement the strongest possible protection it is because of the presence of externalities, in this case the transfer of rent to existing unprotected minority owners.

### 2.3 Empirical implications

The two propositions and the corollary above contains a number of empirically refutable implications.

**Hypothesis 1.** *If a firm is public traded, issuing shares with tag-along rights increases the market value of the firm.*

This follows directly from Proposition 2. The market value reflects the value of the firm based on what the marginal investor pays. Since the marginal investor is a minority owner and existing minority owners continuation value increases after the new shares are issued with tag-along rights, there must be a positive stock price reaction. In the proof of Proposition 2 it is reflected by  $S^{+TA} - S^{-TA} > 0$ .

**Hypothesis 2.** *If a firm is owned by a single shareholder, all equity offerings extend tag-along rights to minority investors.*

This follows directly from Proposition 1. Since the cost of future rent extraction will be reflected in the security price of the new share issue and that the owner cannot internalize all the benefits of future rent extraction, it is optimal for the single owner to protect the new minority owners as well as possible. This is done through issuing shares with tag-along rights.

**Hypothesis 3.** *Conditioned on the size of the issue, companies that issue shares with tag-along rights have a smaller group of existing minority shareholders than companies that issue shares without take-along rights.*

This hypothesis follows from Proposition 2 c). The cost of take-along rights increases in the size of the group of existing minority owners. The benefit increases in the size of the new group of minority owners. Hence, given the size of the new issue, the incentives to use tag-along right decreases in the size of the existing minority owners.

**Hypothesis 4.** *Companies that issue shares with tag-along rights issue larger claims than companies that issue shares without take-along rights.*

This is consistent with Proposition 2. A larger share issue increases the incentives to use tag-along rights relative to issue shares without.

**Hypothesis 5.** *Assume that the controlling owners of firms with disproportional ownership structures in general internalizes less cash flow than the controlling owners of firms with proportional ownership structure. Then it follows that companies issuing shares with tag-along rights have less disproportional ownership structures than companies issuing shares without take-along rights.*

The assumption is empirical verifiable and true in most countries (see Bennedsen and Nielsen 2006 for evidence from European countries). Since a smaller cash flow stake implies that there are more existing minority owners in the firm, this reduces the founder's incentives to issue shares with tag-along rights.

### **3 Evidence from the Provision of Tag-Along Rights in Brazil**

We now proceed by testing the theoretical prediction of the incentive to provide minority investors with tag-along rights on a sample of equity issues in Brazil. Evidence on the provision of

tag-along rights in Brazil is interesting for at least four reasons. First, although Brazil classifies as an emerging market the Brazilian stock exchange accounts for nearly 70 percent of the trading volume in Latin America. Second, it is well-documented that the legal protection of minority investors in Brazil is poor: Brazil ranks 52 out of 72 countries in the anti-self-dealing index (Djankov et al., 2006) and laws are poorly enforced (La Porta et al., 2000). Third, Brazil has the *highest* average block premia among the countries in Dyck and Zingales (2004). Thus, in an international comparison the scope for contractual corporate governance is extremely high. Finally, Brazil's recent reforms of the governance system has fostered an almost ideal laboratory for an empirical investigation of private contracting as a substitute for legal protection of minority investors.

Prior to 1997 the Brazilian law protected minority voting shareholders by a mandatory offer for all voting shares upon acquisition of control or crossing of the 50 percent voting power threshold at a price equal to the purchase price of the controlling block. In addition, in case the offer was extended to non-voting share, the law granted a minimum price provision equal to the book value per share to the non-voting shares. In an effort to ease the privatization of Brazilian companies, Law 9457/1997 was adopted in May 1997. Among other things, the reform revoked the mandatory offer provision at an equal price.<sup>5</sup> In October 1999, pressure from local pension funds and international institutional investors resulted in the provision of Law 10.303 by the Securities and Exchange Commission of Brazil. The law reinstated tag-along rights to voting shares at the 80 percent threshold. Preference shares still have no tag-along rights. These dramatic changes to the legal protection of minority investors in Brazil create a novel opportunity to study private contracting as a substitute for legal protection.

### 3.1 Data

We combine data from three sources to empirically investigate the incentive to issue tag-along rights in Brazil.

First, data on equity issues are from the Securities and Exchange Commission of Brazil (Comissão de Valores Mobiliários - CVM). This data include information on the date of the

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<sup>5</sup>Law 9457/1997 abolishes existing requirements to disclose the price of sales of 5 percent blocks of voting stock or more, including controlling block. It further repeals article 254, which provides for a mandatory offer for all outstanding voting shares in case of a control transfer at the same price and terms as the control block sale. Non-voting shares have never been subject to a mandatory offer in Brazilian Law. Finally, the law eliminates withdrawal rights in most cases, including most mergers, and spin-offs, and lowers the price at which shareholders can withdraw in the cases in which withdrawal rights are still effective. See Nenova (2001) for a comprehensive overview of the legal reform.

issue, issue size, type and form. Second, we obtain the ownership structure prior to the issue from the firms' yearly CVM filings which are equivalent to quarterly 20-F files in the US. Part 3 in the CVM filing includes information on the largest shareholders as well as the definition of the controlling group, as it is in the company's shareholder agreement. Third, we identify companies that have tag-along rights using data from The São Paulo Stock Exchange (BOVESPA). On their homepage, [www.bovespa.com.br](http://www.bovespa.com.br), BOVESPA publishes an up-to-date list of firms that voluntarily have extended tag-along rights to minority shareholders. The list provides information on the corporate resolution and the date of the event as well as information on whether the firm has extended full or partial tag-along rights.

We restrict the sample to offerings from January 2000 until November 2006. We do this to avoid spurious correlations driven by the period in-between the two legal reforms. Panel A in Table 1 shows the development of the Brazilian stock market from 2000 to 2006. Although the number of firms has decreased, the size of the Brazilian stock market has increased significantly from 2000 to 2006; Market capitalization increased from 225 to 723 billion USD, whereas the number of listed firms decreased from 534 to 381. The number of IPOs have been relatively modest, but has increased significantly toward the end of the period. From 2000 to 2003 only 3 firms experienced an IPO compared to 42 from 2004 to 2006.

In total 116 equity offerings occurred from 2000 to 2006. In the empirical analysis we exclude offerings for companies that a) already have full tag-along rights prior to the offering and b) small OTC offerings for which no reliable data sources exist. We thereby exclude 9 and 7 offerings, respectively. Thus, our dataset (i.e. sample of offerings) consists of 99 observations where each observation represents an equity offering. The distribution of offering across years is shown in Panel B in Table 1. The number of offerings have been around 15 in most years. The main exceptions are 2003 and 2006 where there were 4 and 33 offerings, respectively.

Panel C in Table 1 shows the distribution of the type of equity offerings: Around 25 percent of all offerings are primary transactions, 37 percent are secondary, whereas the residual 37 percent is a combination of primary and secondary transactions.

In Brazil, some companies have decided to extend full tag-along rights with a 100 percent threshold for both voting and non-voting shares, whereas other firms have extended partial right by either including only voting share or by lowering the threshold. From Panel D it is evident that 54 of the 99 issuing firms granted full tag-along rights, 6 granted partial tag-along rights (i.e. with a threshold below 100 percent), whereas 39 of the issuing firms decided not to provide

tag-along rights to minority investors.

Table 2 provides descriptive statistics on the equity offerings conditional on whether no, partial or full tag-along rights were offered to minority investors. We report both the average and median characteristics of the offering firm. We focus on firm and issue characteristics related to the theoretical mode: Offering type, whether its an IPO, offering size, the minority ownership stake prior to the offering and whether the firm has dual share classes. For firms with dual class shares we report the controlling owner's wedge measured by votes over cash flow rights.

Table 2 shows that the share of the transaction that is primary is larger for firms with full tag-along rights compared to firms granting no rights. Firms with full tag-along rights issue shares in the primary market in 77.8 percent of the cases compared to only 43.6 percent for firms with no tag-along rights. If we focus on the share of the offerings which is primary (i.e. primary share), the average for firms with tag-along rights is 51.1 percent compared to 34.2 percent for firms without additional protection of minority shareholders.

Interestingly, Table 2 reveals that almost all Brazilian IPOs from 2000 to 2006 decided to extend full tag-along rights to minority investors. Out of the 41 IPOs in the sample 40 (98 percent) extend tag-along rights to minority shareholders. These firms correspond to 74.1 percent of all firms that grant tag-along rights in Brazil from 2000 to 2006, whereas the single IPO without tag-along rights corresponds to only 2.6 percent.

Table 2 shows that on average offering size for firms with no tag-along rights is slightly larger than firms with full tag-along rights. However, this is reversed when we focus on the median size. As these differences might be explained by the size of the firm (as well as the rate of inflation) it is more informative to focus on the relative size of the offering. Interestingly, Table 2 shows that on average the relative size of the offering is larger for firms that grant full tag-along rights. Firms with full tag-along rights on average issues shares equivalent to 39 percent of the firm, compared to 21 percent for firms without tag-along rights.

Table 2 also reports the average minority stake prior to the offering using three definitions of majority investors. The minority stake is defined as one minus the majority stake for each of the three definitions. At first glance it appears that ownership is extremely concentrated in Brazil. The largest owner on average possesses around half of the firm. It appears for all three measures of the minority investors that the stake possessed by majority owners is larger in firms that grant full tag-along rights. If we focus on the largest owner the average minority stake is 47.6 percent compared to 54.2 percent for firms with no tag-along rights. This difference is

even large if we define controlling owner(s) according to the shareholder agreement. In this case existing minority owners in firms with tag-along rights possess 35.4 percent compared to 54.2 percent in firms no tag-along rights.

Finally, firms with no tag-along rights use disproportional ownership more frequently as 64.1 percent have dual class shares compared to only 28.8 percent for firms with full tag-along rights. When we condition on having dual class shares, Table 2 reveals that firms without tag-along rights also tend to have a larger wedge between concentration of votes and cash flow rights. Wedge is defined as the largest owner's voting rights divided by her cash flow rights. Among the firms with dual class shares the controlling owner possesses 1.83 voting rights for each percentage cash flow rights in firms without tag-along rights. The corresponding wedge for firms with tag-along rights is 1.69. Thus, among firms with disproportional ownership, the concentration of voting power is larger in firms that do not grant tag-along rights to minority investors.

### 3.2 Preliminary empirical results

This section summarizes the empirical results regarding the hypothesized incentives to provide minority shareholders with tag-along rights.

Hypothesis 1 conjectures that the market value of firms that grant tag-along rights should increase as a response to the announcement. We test this prediction by conducting a (preliminary) event study of the share price reaction to the announcement of the provision of tag-along rights to minority shareholders. We analyse the stock price reaction around the announcement date using four alternative windows including 1, 5, 10 and 20 days on each side of the event, respectively. We expand the event window to include up to 20 days prior to the announcement to take into account the possible insider trading, which can be substantial in emerging markets. We note that announcements of equity issues generally are associated with a negative stock price reaction (XX - reference). This will *ceteris paribus* provide a negative bias on the estimated announcement effect related to the provision of tag-along rights, since we cannot disentangle the individual effect of the two. However, as the potential bias is expected to be negative this will make it harder to establish hypothesis 1.

Table 4 shows that the average one-day cumulative abnormal return of granting tag-along rights is 2.42 percent, which is significant at the 5 percent level. If we use the three alternative event windows we find similar although slightly larger positive stock price reactions. The five-day window has an average cumulative abnormal return of 4.67 percent, compared to 5.31 and

6.68 percent for the 10 and 20-day windows, respectively. In summary, we find strong evidence of a positive stock price reaction to tag-along rights, which is consistent with hypothesis 1.

Hypothesis 2, which follows directly from proposition 1, conjectures that firms in which the entire firm is owned by the founder should always issue shares with tag-along rights. Out of the 99 equity offerings in the sample, the founder possess the entire firm prior to the offering in 6 cases. In all 6 cases the founder choose to grant full tag-along rights to the new minority investors. We thereby gain empirical evidence in favor of proposition 1 (hypothesis 2) as all firms that are entirely owned by the founder have chosen to extend full tag-along rights to minority investors.<sup>6</sup>

We proceed by testing hypothesis 3 through 5 by estimating the probability of firm  $i$  granting tag-along rights using a logit model, where the dependent variable is an indicator variable taking the value 1 if the firm extends full tag-along rights to the minority shareholders. Thus, the benchmark also include firms that grant partial tag-along rights. We conjecture that the direction of this potential bias will make it harder for us to establish significant results.<sup>7</sup>

Table 5 reports the results from this analysis. We first test the three hypothesis separately (Model I through V), and subsequently perform a joint test (Model VI and VII). We do this because the correlation matrix in Table 3 shows that the variables of interest are highly correlated.

In Model I in Table 5 we test hypothesis 3, which states that companies that issue shares with tag-along rights have a smaller group of existing minority shareholders than companies that issue shares without rights. We measure minority ownership as one minus the largest owner's stake. As predicted by the theoretical model, we find that the incentive to provide tag-along rights is negatively correlated with the minority investors' ownership stake. The marginal effect is significant both economically and statistically: an increase in the minority stake of 10 percentage points decreases the probability of granting tag-along rights with 8.5 percent - an effect that is significant at the 1 percent level. In Section 3.3 we provide a robustness check of the definition of the majority owners with little effect on the estimated relationship. Thus, we find strong evidence consistent with hypothesis 3.

Hypothesis 4, which conjectures that firms that issue shares with tag-along rights issue larger

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<sup>6</sup>Note, that we cannot formally test hypothesis 2 as the variation in tag-along rights is fully identified by the variable of interest.

<sup>7</sup>We obtain identical results in a robustness check where we include firms with partial tag-along rights among the firms with full tag-along rights or alternatively use an ordered probit model (See Section 3.3 for details).

claims than companies that issue shares without, is tested in Model II in Table 5. We include the relative size of the offering (number of shares issued over total outstanding shares) to proxy for offering size. We find a positive and significant correlation between the relative offering size and the probability of granting tag-along rights. The marginal effect reveals that if the relative size of the offering increases with 10 percentage points the probability of tag-along rights increases with 12.4 percent. Thus, the incentive to grant tag-along rights to minority shareholders is increasing in the relative offering size, which is consistent with hypothesis 4.

In Model IV in Table 5 we test hypothesis 5, which states that firms that issue shares with full tag-along rights have less disproportional ownership compared to firms that grant no additional rights. To measure the degree of disproportional ownership we include the *wedge*, which is the largest owners votes over cash flow stake. For firms with proportional ownership the wedge takes the value one, whereas for firms with disproportional ownership the wedge is larger than one. When we include the wedge among our regressors we find a negative and significant effect on the provision of tag-along rights. The intuition behind this result is simple: When the founder controls the firm through disproportional mechanisms the voting rights exceeds the cash flow rights, which makes it more expensive to grant tag-along rights to minority shareholders. Thus, we obtain evidence in favor of hypothesis 5.

Model V in Table 5 shows an additional test related to hypothesis 5 where we include an indicator for dual class shares. Following hypothesis 5 we expect firms with dual class shares to grant tag-along rights less often, since dual class shares allow the controlling owner to possess control with a small fraction of the cash flow rights. Thus, in firms with dual class shares the cost of granting full tag-along rights is higher. Consistently, we find a negative and significant correlation between firms with the dual class shares and the incentive to grant full tag-along rights to minority investors. The marginal effect is economically large, firms with dual class shares are 38 percent less likely to grant tag-along rights compared to firms following a one-share-one-vote rule.

Finally, in Model VI and VII in Table 5 we perform a joint test of hypotheses 2 through 5. In Model VI we include the wedge to test hypothesis 5, whereas Model VII uses the indicator variable for dual class shares. Although our results generally lose significance due to multicollinearity (see Table 3), our main results are confirmed. Firms with large minority shareholders are less likely to grant tag-along rights, whereas firms with relative large offerings and a high degree of disproportional ownership (or dual class shares) are less likely to offer tag-along rights when

they issue equity.

### **3.3 Robustness**

In this section we perform a number of robustness check related to the prior analysis. One valid concern with our results is the definition of majority versus minority investors. In the prior analysis we assumed that the majority owner is the largest owner of the firm. Although ownership (in an international comparison) is highly concentrated in Brazil, our results might be biased by measurement problems. In Table 6 we have therefore replicated our empirical analysis using two alternative definitions of the majority owner. In Model I through III we measure the majority ownership stake by the sum of three largest owners, whereas in Model IV through VI we use the controlling coalition reported by the firm to the Securities and Exchange Commission of Brazil.<sup>8</sup> Table 6 clearly shows that generally non of our results are affected by the definition of majority owner(s). Minority stake is negative and significant across all specifications.

## **4 Conclusion**

To be written...

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<sup>8</sup>In Brazil it is mandatory to report the ownership stakes of the controlling coalition in the CVM-filing, which is the Brazilian equivalent to the 20-F statement in the US.

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**Table 1, Development of the Brazilian Stock Market 2000-2006**

This table shows the development of the Brazilian stock market from 2000 to 2006. Panel A reports total market capitalization in billion USD, number of listed firms and number of IPOs, Panel B reports the number of equity issues and their type, whereas Panel C reports the number for firms granting full or partial tag-along rights to the shareholders. A primary offering is issues of new shares, whereas secondary offerings are sale of blocks of existing shares. Firms extend full tag-along rights when a) All share classes are included, and b) The offering price threshold is 100 percent. Partial tag-along rights when a) Not all share classes are included or b) The offering price threshold is below 100 percent.

	2000	2001	2002	2003	2004	2005	2006	Total
<b>A. Market development</b>								
Market capitalization (bn USD)	225	185	124	234	341	482	723	
Number of listed firms	534	495	468	426	410	390	381	
Number of IPOs	1	1	1	0	7	9	26	45
<b>B. Equity offerings</b>								
All offerings	17	14	17	4	13	18	33	116
Sample of offerings	13	10	17	4	11	17	27	99
<b>C. Type of offering</b>								
<i>Primary</i>								
- Number of issues	5	2	5	1	1	4	7	25
- Share of issues (%)	38.5	20.0	29.4	25.0	9.1	23.5	25.9	25.3
<i>Secondary</i>								
- Number of issues	7	7	10	2	3	5	3	37
- Share of issues (%)	53.8	70.0	58.8	50.0	27.3	29.4	11.1	37.4
<i>Combination of primary and secondary</i>								
- Number of issues	1	1	2	1	7	8	17	37
- Share of issues (%)	7.7	10.0	11.8	25.0	63.6	47.1	63.0	37.4
<b>D. Provision of tag-along rights</b>								
Full tag-along rights (N, firms)	1	0	7	0	9	13	24	54
Partial tag-along rights (N, firms)	0	0	4	0	1	0	1	6

**Table 2, Descriptive Statistics on Equity Issues in Brazil, 2000-2006.**

This table shows the descriptive statistics on equity issues in Brazil from 2000 to 2006. We report the mean and median of the variables for firm firms that have granted no, partial or full tag-along rights to shareholders. A primary offering is issues of new shares, whereas secondary offerings are sale of blocks of existing shares. Primary share is the share of the offering, which was a primary issue. Offering size is measured in Brazilian \$ and as a share of the number of outstanding shares. We measure the minority stake using three definitions of the majority owners(s): the largest owner measured by votes, the 3 largest owners measured by votes and the group of controlling owners as defined by the firm in its ownership filing at the Securities and Exchange Commission of Brazil. Dual class shares is a dummy for whether the firm has dual class shares. Wedge is defined as the largest owner's share of votes over share of cash flow. We only report the wedge for firms with dual class shares.

	Tag-along Rights					
	No (n=39)		Partial (n=6)		Full (n=54)	
	Mean	Median	Mean	Median	Mean	Median
Offering type						
Primary (%)	43.6	0.00	50.0	50.0	77.8	1.00
Secondary (%)	71.8	1.00	83.3	1.00	75.9	1.00
Primary share (%)	34.2	0.0	25.0	9.0	51.1	48.0
IPO (%)	2.6		0.0		74.1	
Offering size						
BR\$	885.4	484.4	163.8	174.0	786.0	614.5
Share of firm	21.4	19.0	14.7	11.5	39.0	37.0
Minority stake (%)						
Largest owner	54.2	66.0	63.8	66.5	47.6	52.5
3 largest owner	46.3	44.0	51.3	61.0	26.5	26.5
Controlling owners	54.2	54.0	55.0	63.5	35.4	31.5
Dual class share (%)	64.1	100.0	83.3	100.0	28.8	0.00
Wedge	1.83	1.81	2.16	2.13	1.69	1.45

**Table 3, Correlation matrix**

*Minority stake* is the share of votes held by minority investors, where the largest owner is assumed to be controlling. *Offering size* is the relative size of the offering measured as a percentage of the firm. *Primary share* is the share of the offering that is sold in the primary market. *Wedge* is defined as the largest owner's share of votes over share of cash flow. *Dual class shares* is an indicator variable taking the value 1 if the firm has dual class shares.

	Minority stake ( $\alpha_o$ )	Offering size ( $\alpha_n$ )	Primary share (%)	Wedge	Dual class shares
Minority stake ( $\alpha_o$ )	1.000				
Offering size ( $\alpha_n$ )	-0.188	1.000			
Primary share	0.128	-0.256	1.000		
Wedge	0.470	-0.367	0.005	1.000	
Dual class shares	0.369	-0.429	-0.122	0.772	1.000

**Table 4, Event study of the Announcement Effect of Granting Tag-Along Rights**

This table shows the average cumulative abnormal return (CAR) for Brazilian companies around the announcement day where the firm decided to grant tag-along rights to minority shareholders. We report the average CAR for windows four alternative windows including 1, 5, 10 and 20 days one each side around the event, respectively. Test-statistics based on robust standard errors are reported in parentheses. \*\*\*, \*\* and \* denote significance at the 1-, 5- and 10-percent levels, respectively.

	Event window			
	[-1;1]	[-5;5]	[-10;10]	[-2;20]
Cumulative abnormal return (%)	2.42	4.67	5.31	6.68
Standard deviation (%)	0.70	0.66	0.63	0.56
T-test	2.00**	2.13**	1.77*	1.79*
Signs-rank test	2.92***	1.10	2.19**	2.92***

Note: Preliminary results

**Table 5, Determinants of Tag-Along Rights**

This table shows the determinants of tag-along rights in a logit model. The dependent variable, *full tag-along rights*, is an indicator variable taking the value 1 if the firm extends full tag-along rights to the shareholders and 0 otherwise. *Minority stake* is the share of votes held by minority investors, where the largest owner is assumed to be controlling. *Offering size* is the relative size of the offering measured as a percentage of the firm. *Primary share* is the share of the offering that is sold in the primary market. *Wedge* is defined as the largest owner's share of votes over share of cash flow. *Dual class shares* is an indicator variable taking the value 1 if the firm has dual class shares. T-statistics based on robust standard errors are reported in parentheses. \*\*\*, \*\* and \* denote significance at the 1-, 5- and 10-percent levels, respectively.

	(I)	(II)	(III)	(IV)	(V)	(VI)	(VII)
Minority stake ( $\alpha_0$ )	-3.452*** (-3.57)					-3.833*** (-2.79)	-3.714** (-2.51)
Offering size ( $\alpha_n$ )		1.238*** (3.57)				4.056** (2.54)	3.748** (2.30)
Primary share			0.274** (2.06)			1.136* (1.66)	1.063 (1.55)
Wedge				-1.298** (-2.54)		-0.345 (-0.59)	
Dual class shares					-1.649*** (-3.74)		-0.645 (-1.29)
N	99	99	99	99	99	99	99
Pseudo-R <sup>2</sup>	0.088	0.149	0.036	0.084	0.112	0.247	0.254

**Table 6, Robustness of Determinants of Tag-Along Rights**

This table shows the determinants of tag-along rights in a logit model. The dependent variable, *full tag-along rights*, is an indicator variable taking the value 1 if the firm extends full tag-along rights to the shareholders and 0 otherwise. *Minority stake* is the share of votes held by minority investors, where the largest owner is assumed to be controlling. *Offering size* is the relative size of the offering measured as a percentage of the firm, whereas *primary share* is the share of the offering that is sold in the primary market. *Wedge* is defined as the largest owner's share of votes over share of cash flow. *Dual class shares* is an indicator variable taking the value 1 if the firm has dual class shares. T-statistics based on robust standard errors are reported in parentheses. \*\*\*, \*\* and \* denote significance at the 1-, 5- and 10-percent levels, respectively.

Definition of majority owner	3 largest owners			Controlling coalition		
	(I)	(II)	(III)	(IV)	(V)	(VI)
Minority stake ( $\alpha_o$ )	-5.220*** (-4.05)	-5.657*** (-3.06)	-4.069** (-2.42)	-5.079*** (-2.85)	-5.079*** (-2.85)	-3.424** (-2.21)
Offering size ( $\alpha_n$ )		4.225** (2.22)	3.278** (2.03)		4.438*** (2.67)	3.776** (2.26)
Primary share		0.853 (1.36)	0.878 (1.29)		0.860 (1.40)	0.815 (1.25)
Wedge		0.436 (0.41)			0.239 (0.34)	
Dual class shares			-0.982* (-1.83)			-0.989* (-1.70)
N	99	99	99	99	99	99
Pseudo-R <sup>2</sup>	0.175	0.285	0.306	0.137	0.270	0.291