

Fulton County



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It's all in the family when deciding on selling

Minority family shareholders can keep control of company with dual classes of stock

By Andy Peters, Staff Reporter

MEDIA BARON RUPERT MURDOCH'S unsolicited \$5 billion bid to acquire the publisher of the *Wall Street Journal* has directed a spotlight on founding families who have an outsized say in how their companies are managed.

Dow Jones & Co., which publishes the *Wall Street Journal* and *Barron's*, is controlled by members of the Bancroft family through a special class of stock. Although the Bancrofts own a minority position in the financial value of Dow Jones, they control a majority of Dow Jones's voting rights through a stock class that's not available to the public.

Some institutional investors have said in media reports the Bancrofts should jump at the offer made by Murdoch's News Corp., which represented a 67 percent premium on Dow Jones's stock the day the offer was made. These investors, who include T. Rowe Price Group Inc., Vogel Capital Management and others, said Dow Jones likely won't see a better offer. Because these investors don't comprise a majority of Dow Jones's voting shares, they have no legal means to force the Bancrofts to take the offer.

But the Bancrofts have said they oppose a sale to Murdoch, according to regulatory filings. James H. Ottaway Jr., a former newspaper publisher who sold his company for Dow Jones's Class B stock, said he also opposes a sale to Murdoch.

Each share of the Class B stock owned by Bancroft family members and their hand-picked associates holds 10 votes in corporate matters that come before Dow Jones's board of directors. But each share of the other class of Dow Jones stock, called Class A stock, only holds one vote.

Families who control companies through special shares with juiced-up voting power can sometimes be reluctant to change or adjust to prevailing market forces, said one securities attorney.

“[Dual classes of stock are] a good idea for the controlling owners, but bad idea for the subordinate shareholders and maybe the market generally,” said Schreeder, Wheeler & Flint partner Chester J. “Chet” Hosch.

Although dual-class ownership structures are fairly common in publicly traded and privately held companies, it's not more widespread because the arrangements can cause tension with minority

shareholders, Hosch said. “There’s always a conflict that has to be taken into consideration,” he said.

“Subordinate shareholders are trapped between the status quo and the loss of marketability of their investment,” Hosch said.

But dual classes of stock can help a family remain close, said Joseph H. Astrachan, who directs the Cox Family Enterprise Center at Kennesaw State University. A family’s historic, vested interest in a company can help its management negotiate downturns in the market or other stormy financial waters.

“There are benefits beyond profits,” Astrachan said. “In the bad times, the family will stand behind the company when others would abandon it.”

Dow Jones isn’t the only family-controlled company being targeted by takeover candidates or institutional investors.

The Dolan family of Bethpage, N.Y., has offered to take private for \$10.6 billion the cable TV company they founded, Cablevision Systems Corp. But some investors and analysts, including T. Rowe Price and Gamco Investors, have said the Dolans are trying to get full control of Cablevision on the cheap, hurting outside investors. The Dolans control Cablevision through a dual-class ownership structure, although they own a minority of Cablevision’s regular class of common stock.

Morgan Stanley has been trying to force New York Times Co. to dump its dual-class stock structure, claiming that the set-up has allowed the Sulzberger and Ochs families to mismanage the newspaper publishing company. But the Sulzberger and Ochs families have always managed the *New York Times* with an eye toward the long-term viability of the company, and for protecting the *Times*’ journalistic integrity, Astrachan said.

“During World War II, the Sulzbergers did not seek to increase advertising pages,” he said. “They didn’t make as much money, but when [the war ended] they emerged with great credibility.”

Family-controlled companies sell shares to the public—and open themselves up to criticism from investors—because of the opportunities to raise money in the public markets. If they could have predicted the groundswell of criticism fomented by Morgan Stanley, the Sulzberger-Ochs family might have remained privately held.

“If they had known that there would be this kind of clamor about voting control, I doubt they would have gone public,” in 1967, Astrachan said.

Investors should know going into a family-controlled company that there are two classes of stock, said Hunton & Williams partner Ronald J. Lieberman. Such a structure must be disclosed in all securities filings.

Companies controlled by a family through special stock classes aren’t exempt from the requirements of the Sarbanes-Oxley Act, said Lieberman. These companies still must file detailed financial

reports with the Securities & Exchange Commission.

“You’re not going to get out of SOX just because you have dual classes of stock,” Lieberman said.

Special voting classes of common stock are taxed at the same rate as regular shares of common stock, said Powell Goldstein partner Frank A. Crisafi.

“All stock is taxed in this manner regardless of its terms,” said Crisafi, who practices corporate tax law. “The stock held by the Bancroft family should fall under these rules.”

A few publicly traded companies in the Atlanta area are controlled by founding families through a dual-class stock structure, including Aaron Rents Inc., Crawford & Co. and Haverty Furniture Cos. Some Atlanta companies, including Cagle’s Inc., Oxford Industries Inc. and Rollins Inc., are controlled by their founding families but don’t have dual classes of common stock. These families’ control is maintained through a majority-ownership of the sole class of stock. Cox Enterprises, which is privately held, owns a majority of the shares of Cox Radio.

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