

## **The Risks of Investing in Endeavor**

### **Corporate Governance Structure Shortchanges Investors**

Endeavor Group Holdings Inc. (Endeavor or EDR), a Los Angeles-based talent agency with media and sports segments, is launching an IPO that one analyst termed “not for the faint of heart” given the company’s high levels of debt, volatile earnings, and “existential risks.”<sup>1</sup> Compounding these risks is a corporate governance structure that provides investors with little recourse for addressing management actions. Instead, Endeavor’s dual-class structure grants executives concentrated super-voting stock and its “controlled company” status provides little independent oversight. Finally, a number of anti-takeover provisions—including a classified board and a poison pill—further insulate Endeavor’s board from accountability to shareholders.

### **Endeavor’s Stock and Governance Structures Disadvantage Investors**

Endeavor’s dual-class stock structure gives CEO Ariel Emanuel, Executive Chairman Patrick Whitesell, and affiliates of private equity owner Silver Lake Partners control of most of the company’s non-traded Class Y shares, which carry 20 votes compared to the single-vote public Class A shares. Endeavor does not even offer a sunset provision on its dual-class shares to mitigate governance concerns.<sup>2</sup> The company admits that this concentrated control of voting shares may prevent ownership changes “even if such events are in the best interests of minority stockholders.”<sup>3</sup>

- Dual-class stock structures have been criticized by the Council of Institutional Investors (CII) and others for undermining accountability and increasing risk. CII recently wrote to Endeavor to suggest that Endeavor amend its IPO with a sunset date for its super-voting rights to “mitigate the adverse effects of misalignment between ownership and control.”<sup>4</sup> The CFA Institute of investment professionals similarly argues that “allowing [dual-class stock] structure will lead to an erosion of corporate governance standards.”<sup>5</sup>
- Dual-class stock does not generate long-term returns for public shareholders. One analysis found that firms with perpetual dual-class stock trade at a significant discount over time compared to those that sunset concentrated stock classes.<sup>6</sup> Another found that even at innovative companies any initial premium from dual-class stocks vanishes and turns negative over time.<sup>7</sup>
- Endeavor’s dual-class structure will likely disqualify it from inclusion in FTSE Russell and S&P Dow Jones indices, which Endeavor notes could adversely affect the market price of its Class A common stock.<sup>8</sup>

### *“Controlled Company” Status Deprives Investors of Independent Oversight*

As a result of voting share control by top executives and Silver Lake, Endeavor will be considered a “controlled company” and has stated it intends to dispense with certain important investor protections such as a majority-independent board of directors and executive compensation and nominations determined or recommended by independent directors.<sup>9</sup> These practices contravene CII Corporate Governance Policies, which advocate for at least two-thirds of board directors to be independent, and for companies to have audit, nominating, and compensation committees composed entirely of independent members.<sup>10</sup> Instead, Endeavor will lack the independent oversight that would ensure executives act in the interest of public shareholders.

### *Anti-takeover Provisions Ensure Perpetual Control*

Endeavor's structure also includes several poison pill measures discouraged by CII, which are designed to give executives indefinite control over the company.<sup>11</sup> Among the anti-takeover provisions, the company will have a staggered board with three classes, and the board will have the ability to issue a new class of preferred stock without shareholder approval, the effect of which would likely preclude any attempts to acquire Endeavor that the board does not approve. The company will also require a two-thirds supermajority vote to remove directors and, in some cases, to change by-laws or provisions of the company's incorporation.<sup>12</sup>

These provisions are particularly concerning as the company concedes that its top executives may have conflicts of interest with public investors. Endeavor's S-1 states that "Messrs. Emanuel's and Whitesell's, Executive Holdco's and the Silver Lake Equityholders' interests may not be fully aligned with yours, which could lead to actions that are not in your best interest. Because [those individuals and entities] hold part of their economic interest in our business through Endeavor Operating Company, rather than through the public company, they may have conflicting interests with holders of shares of our Class A common stock."<sup>13</sup> This is not a theoretical concern as Endeavor's conflicts of interest with its clients are currently having an impact on the company's representation segment, where it has lost 1,400 writer-clients since April.

### **Board Diversity is Far Behind the Times**

Finally, Endeavor has thus far chosen five men to sit on its board despite the recent controversies over diversity in Hollywood and the recent sexual assault scandals involving not only top executives such as Harvey Weinstein but also talent agents, one notably a former operating board member at Endeavor's talent agency.<sup>14</sup> Endeavor must add a woman to its board of directors by the end of 2019 in order to comply with California law and must add three women by the end of 2021 if the board is to consist of seven members as Endeavor has stated.<sup>15</sup> As an ISS survey recently found, gender diverse boards are better at managing risks, understanding key company stakeholders, and increased board attendance and effectiveness.<sup>16</sup>

If you have questions or would like to discuss these issues further, please contact the Writers Guild of America West's Research Director, Laura Blum-Smith at (323) 782-4688 or [lblumsmith@wga.org](mailto:lblumsmith@wga.org).

Please note that this communication is for informational purposes only, and is not intended to provide, and should not be relied on for investment, legal, tax, or accounting advice. Investors should consult their own advisors and investment professionals to evaluate the merits and risks of any investment.

Writers Guild of America West is currently involved in a dispute with Endeavor over practices in its talent representation segment.

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<sup>1</sup> Bernstein Pre-IPO Research, *U.S. Media: Endeavor IPO – not for the faint of heart* (July 9, 2019).

<sup>2</sup> Endeavor Group Holdings, Inc. Prospectus, Amendment No. 2 to Form S-1 (Prospectus), filed with the SEC on July 24, 2019, at 51, 68.

<sup>3</sup> *Id.* at 47, 58.

<sup>4</sup> Letter from Kenneth A. Bertsch, CII Executive Director, to Egon Durban, Endeavor Chairman, June 26, 2019, [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2019/Endeavor%20Group%20CII%20letter%20on%20multi%20class%20June%2026,%202019.pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2019/Endeavor%20Group%20CII%20letter%20on%20multi%20class%20June%2026,%202019.pdf).

<sup>5</sup> Mary Leung, CFA and Rocky Tung, *Dual-Class Shares: The Good, The Bad, and The Ugly*, CFA Institute (Aug. 2018).

<sup>6</sup> Robert J. Jackson Jr., *Perpetual Dual-Class Stock: The Case Against Corporate Royalty*, speech given Feb. 15, 2018, available at [https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty#\\_ftnref20](https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty#_ftnref20).

<sup>7</sup> Cremers, K. J. Martijn et al., *The Life-Cycle of Dual Class Firm Valuation* (Dec. 19, 2018). European Corporate Governance Institute (ECGI) - Finance Working Paper No. 550/2018.

<sup>8</sup> Prospectus at 49.

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<sup>9</sup> Prospectus at 51, 152.

<sup>10</sup> Council of Institutional Investors, Corporate Governance Policies, Oct. 24, 2018, at 6, available at [https://www.cii.org/files/10\\_24\\_18\\_corp\\_gov\\_policies.pdf](https://www.cii.org/files/10_24_18_corp_gov_policies.pdf).

<sup>11</sup> Press Release, Council of Institutional Investors, Investor Group Applauds CommonSense Principles 2.0, Oct. 18, 2017, available at [https://www.cii.org/files/about\\_us/press\\_releases/2018/10\\_18\\_18\\_cii\\_presser\\_commonsense\\_2\\_0-Final.pdf](https://www.cii.org/files/about_us/press_releases/2018/10_18_18_cii_presser_commonsense_2_0-Final.pdf).

<sup>12</sup> Prospectus at 58-59.

<sup>13</sup> *Id.* at 48.

<sup>14</sup> Tatiana Siegel, *A Year After #MeToo, Have Talent Agencies Actually Changed?*, Hollywood Reporter (Oct. 3, 2018), <https://www.hollywoodreporter.com/news/a-year-metoo-have-talent-agencies-actually-changed-1148878>; Megan Twohey, Jodi Kantor, et. al., *Weinstein's Complicity Machine*, NY Times (Dec. 5, 2017), <https://www.nytimes.com/interactive/2017/12/05/us/harvey-weinstein-complicity.html>; Zack Sharf, *Terry Crews Publishes Adam Venit's Apology Letter Over Harassment Fallout, Says He Now Accepts It*, IndieWire (Sept. 14, 2018), available at <https://www.indiewire.com/2018/09/terry-crews-publishes-adam-venit-apology-letter-sexual-harassment-1202003741/>.

<sup>15</sup> Cal. Corp. Code § 301.3. See Lucinda Shen, *Endeavor IPO Filing Shows What the Firm is Missing: Women*, Fortune (May 29, 2019), <https://fortune.com/2019/05/29/hollywood-talent-giant-endeavor-board-of-directors/>.

<sup>16</sup> Cristina Banahan and Gabriel Hasson, *Across the Board Improvements: Gender Diversity and ESG Performance*, Harvard Law School Forum on Corporate Governance and Financial Regulation (Sept. 6, 2018).