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CORPORATE SHAREHOLDERS IN SINGAPORE – RETAIL SHAREHOLDERS, EFFECTIVE EMPOWERMENT AND THE UNFULFILLED PROMISE OF THE DIGITAL REVOLUTION

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Under Singapore's companies legislation, shareholders are vested with significant powers, placing them in the position to play an important monitoring role. Although there are discernible corporate governance benefits to encouraging shareholders to take on a more participatory role, many have argued against shareholder empowerment. Indeed, it is often asserted that shareholders are ill-equipped to play any role in corporate governance for a variety of reasons, including the generally-held view that shareholders, in particular retail investors, are rationally apathetic. The situation is presumed to be exacerbated in Singapore's "concentrated shareholding" corporate environment. In this research, we sought empirical data to assess the state of shareholder involvement in Singapore and whether information technologies, especially manifested in the form of social media, will have any effect on shareholder behaviour. Our purpose is to reach a view as to whether the superior position statutorily accorded to shareholders in Singapore is ultimately largely aspirational where public or retail shareholders are concerned. This paper presents our results and analysis.

I. Introduction and Background to Study[1]

Companies are creatures of statute, and the statutory regime for the governance of companies is almost universally premised on a dichotomy between the shareholders as a collective group and the board of directors. All corporate powers are vested in one or the other of these "organs", but how the law regulates the precise allocation of those powers differs across jurisdictions. In the corporation law statutes of some jurisdictions, most notably in North America and Canada, the board of directors is conferred "original and undelegated"[2] powers. Under this "statutory" model, the shareholders have little say in how the board chooses to exercise the powers conferred on it. The *Delaware General Corporation Law*, for example, provides that

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[1] This research follows on from earlier work done by the first author and published in P Koh, "Shareholder Empowerment in the Digital Age" in Andrew Godwin, Lee Pey Woan & Rosemary Langford, eds, *Technology and Corporate Law: How Innovation Shapes Corporate Activity* (Gloucestershire: Edward Elgar Publishing, 2021) at ch 7.

[2] *Manson v Curtis* (1918) 223 NY 313, 322 (*per* Collins J).

"the business and affairs of every corporation organised under this chapter[3] shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation".[4] The effect of such provisions was explained judicially[5] as follows:

> In corporate bodies, the powers of the board of directors are, in a very important sense, original and undelegated. The stockholders do not confer, nor can they revoke those powers. They are derivative only in the sense of being received from the state in the act of incorporation. The directors convened as a board are the primary possessors of all the powers which the charter confers, and like private principals they may delegate to agents of their own appointment the performance of any acts which they themselves can perform. The recognition of this principle is absolutely necessary in the affairs of every corporation whose powers are vested in a board of directors. All powers directly conferred by statute, or impliedly granted, of necessity, must be exercised by the directors who are constituted by the law as the agency for the doing of corporate acts.
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> In the management of the affairs of the corporation, they are dependent solely upon their own knowledge of its business and their own judgment as to what its interests require.[6]

As Bainbridge notes, "[this] statutory decision-making model … is one in which the board acts and the shareholders, at most, react".[7]

In contrast, jurisdictions such as Singapore operate what is essentially a *shareholder-centric* corporate governance regime. Under this regime, the balance of power is significantly tilted in favour of shareholders, pursuant to what appears to be a deliberate policy choice justified by the notion of "shareholders as owners".[8] Accordingly, the operative legislation (in Singapore, this is the Companies Act 1967 ("Companies Act")),[9] leaves the matter of power allocation to the incorporators, who would cause an appropriate provision to be inserted into the company's constitution. Any subsequent change or alteration to the constitution remains the exclusive

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3 8 Del C (1953) § 101 which provides that "[a]ny person, partnership, association or corporation, singly or jointly with others, and without regard to such person's or entity's residence, domicile or state of incorporation, may incorporate or organize a corporation under this chapter…".

4 8 Del C (1953) § 141.

5 *Manson v Curtis* (1918) 223 NY 313, 322.

6 *Ibid* at 322-323 (references omitted).

7 Stephen M Bainbridge, "The Case for Limited Shareholder Voting Rights" (2006) 53(3) UCLA Law Review 601 at 603.

8 A similar position may be found in Australia and the United Kingdom: Helen Anderson *et al*, "The Evolution of Shareholder and Creditor Protection in Australia: An International Comparison" (2012) 61(1) ICLQ 171.

9 Cap 50, 2020 Rev Ed. It is arguable that s 157A of the Companies Act, which provides that "[t]he business of a company shall be managed by, or under the direction or supervision of, the directors", is a close approximation of a power allocation provision and that therefore Singapore operates a statutory power-allocation model. However, s 157A has been interpreted by the Singapore High Court in *TYC Investment Pte Ltd v Tay Yun Chwan Henry* [2014] 4 SLR 1149 as stipulating a default position, rather than a mandatory position, and is thus readily altered by the shareholders: *TYC Investment* at [87]. See also generally, Pearlie M C Koh, "Power Allocation and the Role of Shareholders - A Comparative Examination" (2019) 15(2) *Berkeley Business Law Journal* 409.

purview of the shareholder body.[10] By enshrining the shareholders' right to dictate the contents of the company constitution, the Companies Act is effectively vesting in the shareholder body the right to determine the company's constitutional division of powers and thence the contours of shareholder intervention rights.

Additionally, certain fundamental decisions concerning the company's operations and its assets are by the statute explicitly reserved solely for shareholder decision. Thus, shareholder approval is required for certain merger transactions,[11] for the disposal of substantially the whole of the company's undertaking,[12] as well as for the issue of new shares.[13] Importantly, the Companies Act preserves shareholder exclusivity over the composition of the board of directors. Shareholders are collectively empowered to appoint and remove directors, and in the case of public companies, the right of removal is exercisable by way of an ordinary resolution, notwithstanding anything in the company's constitution or in any agreement between the company and the affected director.[14] Apart from these statutorily-enshrined matters, the Companies Act also provides the means for shareholders to participate more generally in corporate affairs. Shareholders[15] may requisition the directors to convene an extraordinary meeting, or they may directly convene a general meeting themselves.[16] Shareholders may also propose resolutions to be moved at the company's annual general meetings.[17] Through the mechanism of the shareholder vote, therefore, shareholders in Singapore are legislatively equipped to take on a monitoring function in the company, serving as important checks on management. Thus, even though company constitutions almost invariably vest powers to manage the company and its funds in the board of directors, a practice arguably cultivated, at least in Singapore, by the successive iterations of legislatively-provided default provisions,[18] shareholders are amply equipped to deal with any "agency problems"[19] that may be created thereby.

[10] Companies Act, *ibid*, s 26.

[11] Companies Act, *ibid*, s 215C.

[12] Companies Act, *ibid*, s 160.

[13] Companies Act, *ibid*, s 161.

[14] The power to remove directors is similarly vested in the shareholders in Australia: Corporations Act 2001 (Cth) s 203D; and in the UK: Companies Act 2006 (c 46) (UK) s 168.

[15] Holding not less than 10% of the total paid-up capital of a company: Companies Act, *supra* note 9, s 176. If the directors fail to do so within 21 days after receiving such a requisition, the requisitionists may proceed to convene a meeting themselves. In addition, reasonable expenses incurred by the requisitionists as a result of the failure of the directors to convene a meeting are to be borne by the company, and the company may retain these sums out of remuneration or fees that are due to the directors in default.

[16] Companies Act, *ibid*, s 177. To call a meeting on their own accord, there must be at least 2 shareholders holding not less than 10% of the total number of issued shares of the company (excluding treasury shares).

[17] Companies Act, *ibid*, s 183. The section allows any number of members holding not less than 5% of total voting rights, or not less than 100 members holding shares in the company for which there is an average paid up capital of not less than $500, to propose resolutions. Analogous provisions may be found in the companies legislation of Australia and UK.

[18] See the earlier versions of the Companies Act, 4th Schedule (Table A) and Companies (Model Constitutions) Regulations 2015 (S 833/2015 Sing).

[19] See generally Reinier Kraakman *et al*, *The Anatomy of Corporate Law – A Comparative and Functional Approach*, 3d ed (Oxford University Press, 2017) 29.

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The question, however, is whether shareholders, as a collective group, are well-placed to live up to the legislative expectation. This question is mostly germane to publicly-held companies,[20] where a sharper separation of shareholder interests and management control is appropriate because of the wider dispersion of shareholders. In such companies, there is arguably a greater imperative to monitor the board and management. There is, however, little empirical evidence of shareholders in public companies in fact exercising their rights of supervisory intervention.[21] Commentators have long suggested that such shareholder apathy is in fact rational because collective shareholder action is pragmatically difficult. In Singapore, the disincentives that engender such apathy in public companies are likely to be exacerbated given its corporate environment. It is a demonstrated fact that the extant corporate landscape in Singapore is dominated by companies in which shareholding, and hence presumably control, is concentrated in the hands of families[22] or the state.[23] Singapore, it has been observed, is a "concentrated shareholding"[24] jurisdiction. In such jurisdictions, it would be fair to expect any monitoring or engagement with the board for supervisory purposes to be undertaken by the controllers themselves who are not affected by the collective action issues that plague dispersed shareholders and who would, in any event, have little real need to "intervene" given the likely propensity of the board to act in accordance with their wishes.[25] Although

[20] In closely-held companies, this is largely a non-issue given the likely overlap in make-up of the general meeting and the board, and the concomitant alignment of interests. In such companies, therefore, the shareholders are in effect the controllers of management.

[21] Professor Mak Yuen Teen led an interesting study on shareholders meetings in Singapore a few years ago (see Mak Yuen Teen & Chew Yi Hong, "The Shareholder Report on Shareholder Meetings Volume 2: Shareholders Awaken?" (April 2016) <http://governanceforstakeholders.com/wp-content/uploads/2013/07/Shareholder-Meetings-Volume-2-updated.pdf>. The study tracked the number of instances of shareholder requisitioning for meetings, covering 906 meetings held in 2015 – 711 annual general meetings (AGMs) and 195 extraordinary general meetings (EGMs) by 715 issuers with a primary listing on Singapore Exchange (SGX). In that year, there were seven shareholder requisitions involving six listed companies to convene extraordinary general meetings for the purpose of placing resolutions proposed by the requisitions before the shareholders. Five of these requisitions involved proposals to remove and/or appoint directors. In three of these cases, the shareholders did not get to exercise their vote as the convened meetings were either not held, or the requisitions were withdrawn. In two instances, the shareholders voted in favour of the proposed board changes. The remaining two requisitions involved the same company and concerned proposals to place before the shareholders for approval, an intended disposal of the company's interest in another company and the appointment of an independent financial adviser or professional to review the company's business. These resolutions were ultimately rejected by shareholders.

[22] There is no universal definition of "family", and the concept of a "family-controlled" entity is therefore subject to interpretation.

[23] The Singapore government, through Temasek Holdings Pte Ltd, is the controlling shareholder in a number of listed entities known as Government-Linked Companies: see Dan W Puchniak & Luh Luh Lan, "Independent Directors in Singapore: A Corporate Governance Outlier?" in Dan W Puchniak, Harald Baum & Luke Nottage, eds, *Independent Directors in Asia: A Historical, Contextual and Comparative Approach* (Cambridge: Cambridge University Press, 2017) 311 ["Puchniak & Lan"] at 331.

[24] Luh Luh Lan & Umakanth Varottil, "Shareholder Empowerment in Controlled Companies: The Case of Singapore" in Jennifer G Hill & Randall S Thomas, eds, *Research Handbook on Shareholder Power* (Gloucestershire: Edward Elgar Publishing, 2015) ch 26, 572 ["Lan & Varottil"].

[25] Lucian A Bebchuk & Assaf Hamdani, "The Elusive Quest for Global Governance Standards" [2009] 157 U Pa L Rev 1263 at 1291; see also Ernest Lim, *Sustainability and Corporate Mechanisms in Asia* (Cambridge: Cambridge University Press, 2020) at 211.

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the other minority and dispersed shareholders are equally vested with participatory rights, given their overall inability to affect or influence voting outcomes, it is logically unsurprising that they should be generally passive. Against this background, should it then be peremptorily concluded that the superior position statutorily accorded to shareholders in Singapore, with the attendant supervisory and intervention rights, is largely ornamental where public or retail shareholders are concerned? Is it practically unrealistic to expect these shareholders to take on any role in corporate governance?

We would venture that there is good reason, on empirical and theoretical grounds, to suggest otherwise. First, although studies have variously affirmed the dominance of controlled companies in Singapore, a closer examination of the presented data shows that this position is not absolute. One study,[26] which examined the shareholding structure in the top 100 companies listed on the Singapore Exchange, concluded that "[c]orporate ownership is highly concentrated, and mainly owned by families, groups of families or interests groups and the Singapore government" on the basis of data which showed that 54 out of the 100 companies were "majority controlled", which the author defined as present when "more than 50% of the voting rights are held by an individual and/or associates".[27] Of this 54 companies, 39 were family-controlled whilst 15 were state-controlled. In a more recent study of family-controlled companies conducted by the Centre for Governance, Institutions and Organisations at the University of Singapore,[28] the authors utilised varying definitions of a "family firm" with different qualifying criteria. By the broadest definition, a family firm would be one where the founders or their family members are amongst the 20 largest shareholders or have positions as board members.[29] With this definition, the study found that a significant 60.8% of the companies listed on the Singapore Exchange could be classified as family firms,[30] a figure that has been cited as evidence of the extent of family-controlled companies in Singapore.[31] However, when the authors tightened their definitional criteria by applying additional indicia of control, the percentage of qualifying companies fell. With the additional requirement for family members to hold at least 5% of the shares of the company, the qualifying percentage fell to 51.4% of the total.[32] What these figures demonstrate is that whilst controlled companies clearly dominate Singapore's listed scene, there

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26 Tan Lay Hong, "Exploring the Question of the Separation of Ownership From Control: An Empirical Study of the Structure of Corporate Ownership in Singapore's Top Listed Companies" <http://docs.business.auckland.ac.nz/Doc/exploring-the-question-of-ownership-fromcontrol.pdf> (2010).

27 *Ibid* at 26.

28 Marleen Dieleman, Jungwook Shim & Muhammad Ibrahim, "Success and Succession: A Study of SGX-Listed Family Firms" (2013) <https://bschool.nus.edu.sg/cgio/wp-content/uploads/sites/7/2018/10/Success-and-Succession-2013.pdf> ["Success and Succession"].

29 This definition adopts a very generous concept of "control" as being *either* a "large" shareholder or a director is strictly insufficient without more to confer control over corporate decisions, which, as is trite, are governed by the majority principle. Nevertheless, such a person may be able to influence decision-making, but the degree of influence was not a factor the authors considered, perhaps inevitably so, given the difficulty of measuring the same.

30 *Ibid* at 9.

31 See Puchniak & Lan, *supra* note 23 at 326.

32 The tightest definition utilized by the authors required *both* that a family member holds the CEO or Chairman position and that the ownership held by the family to be at least 5%. With this definition,

is nonetheless a considerable minority of non-controlled companies where public shareholder engagement can have an impact. We would further venture that even in controlled companies, there may yet be an unfulfilled role for public shareholders, individually or collectively. As Pinto noted,[33] "even if the vote of the minority shareholders will not affect the decision directly…, the fact that a vote needs to be taken could change the behaviour of those in control". This, we suggest, should be the ultimate aim of corporate governance rules.

Secondly, the regulatory environment in Singapore, both for companies generally and for listed companies in particular, is in fact designed to be supportive of a corporate governance role for the minority shareholder. We have already noted the strong participatory rights conferred on shareholders generally by the Companies Act. However, as has been cogently noted, a focus on the empowerment of shareholders by conferring participatory rights without discernment is "myopic"[34] and "dissatisfying".[35] The corporate governance concerns in a concentrated shareholding environment arise less out of a separation of ownership and control, than of the *lack* of a separation of ownership and control. The reality is that in such companies, the controlling shareholders are in the position to dictate the constitution of the board and consequently influence its decisions. As Lan and Varottil pithily put it, "the controlling shareholders are well-endowed with the power to hire and fire managers, thereby reflecting synchronised interests between the controlling shareholders and the management".[36] In such companies, therefore, the main concern for minority shareholders is the risk of inequitable extraction of value from the company by the majority to the exclusion of the minority, or as Bebchuk and Hamdani would call it, "controller opportunism".[37] Nevertheless, the conferment of strong shareholder participatory rights is only one aspect of the wider regulatory regime for the governance of listed entities. It remains the case that any act that affects the company and its assets often, if not necessarily, involves an exercise of the directors' powers, a consequence of section 157A of the Companies Act which vests by default management powers in the board. An act that is tainted by the board's position of conflict (because of their alignment with the controllers) or failure to prioritise the interests of the company and its members *as a whole*[38] is likely disclose a breach of directors' duties. Although the minority cannot prevent the controllers from authorising such acts, they are statutorily enabled to call the errant directors to account on the company's behalf via the statutory derivative procedure contained in section 216A of the Companies Act.[39] If the controllers are themselves involved

the percentage of SGX-listed firms studied that fell within the definition was 43.5%: Success and Succession, *supra* note 28 at 9.

[33] Arthur R Pinto, "The European Union's Shareholder Voting Rights Directive from an American Perspective: Some Comparisons and Observations" (2009) 32 Fordham Int'l LJ 587.

[34] Lan & Varottil, *supra* note 24 at 589.

[35] *Ibid*.

[36] *Ibid* at 574.

[37] Lucian A Bebchuk & Assaf Hamdani, "Independent Directors and Controlling Shareholders" (2017) 165 U Pa L Rev 1271 at 1279.

[38] *Greenhalgh v Arderne Cinemas Ltd* [1951] Ch 286 at 291 (CA, Eng).

[39] Additionally, such expropriative behaviour may be sufficient to found a shareholder's application for a remedial order under section 216 of the Companies Act, *supra* note 9 for oppression.

in management, as is not unlikely the case in family companies,[40] the possibility of being called to account by minority shareholders should minimally discourage self-serving behaviour, especially since a breach of duties may be criminally punishable[41] under the Companies Act and result in the errant director being disqualified from acting as a director or being involved in management.[42] The fact that the controlling majority is in the position to forgive any directorial wrongdoing by ratification is explicitly dealt with in section 216B, which provides that any such approval will not preclude the court from granting the minority shareholder leave to proceed with the action. As the High Court noted in *Teo Gek Luang v Ng Ai Tiong*,[43] the first reported decision on section 216A, the impetus for enabling such derivative actions is "to improve the standards of private corporate governance".[44]

The additional regulation imposed by stock exchange rules on listed companies in Singapore is also coherent with an expectation of robust minority involvement. Two categories of rules are especially pertinent – rules that govern related party transactions and those that mandate an independent element on the board of directors. The first category operates to provide a platform for minority shareholder engagement. Thus, transactions entered into between the company and its "interested persons", a category defined as "a director, chief executive officer, or controlling shareholder",[45] are required to be first approved by a majority of the disinterested minority.[46] This requirement, it has been observed,[47] is especially important in the case of controlled companies as it directly fetters the decision-making ability of the majority, placing this power in the hands of the minority. The second category of rules, operating in conjunction with the Code of Corporate Governance,[48] prescribes a strong independent element on the board of directors.[49] Significantly, a director is "independent" if he has no relationship (whether familial, business, financial, employment, or otherwise) with "the company, its related corporations, its substantial shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the

[40] See Success and Succession, *supra* note 28 at 13 where the authors found that about a third of the board seats on SGX-listed family firms (on the broadest definition: see *supra*, text to note 29) are occupied by family members. The study also found that the majority of family members who hold directorships in family firms are executive directors: at 16.

[41] Companies Act, *supra* note 9, s 157(3)(*b*).

[42] Companies Act, *ibid*, s 154.

[43] [1998] 2 SLR(R) 426.

[44] *Ibid*, at [13].

[45] Singapore Exchange, *Rulebooks*, Singapore: SGX, 2020 r 904(4).

[46] *Ibid*, r 919.

[47] Lan & Varottil, *supra* note 24 at 584.

[48] The Monetary Authority of Singapore, *Code of Corporate Governance*, Singapore: MAS, 2018 mandates certain principles of "good governance". Although non-statutory, listed companies are required to disclose their corporate governance practices and give explanations for deviations from the Code in their annual reports. Specifically, the listing rules provide that the company "must describe in its annual report its corporate governance practices with specific reference to the principles and the provisions of the Code. [It] must comply with the principles of the Code. Where [the company's] practices vary from any provisions of the Code, it must explicitly state, in its annual report, the provision from which it has varied, explain the reason for variation, and explain how the practices it had adopted are consistent with the intent of the relevant principle."

[49] See Singapore Exchange, *Mainboard Rules*, Singapore: SGX, 2022 ch 2 r 210(5)(*d*) and Singapore Exchange, *Catalist Rules*, Singapore: SGX, 2022 ch 4 r 406(3)(*d*).

exercise of the director's independent business judgment in the best interests of the company".[50] The presence of directors who are not allied with the majority should mean that minority concerns will not be blithely belittled or ignored, again providing encouragement for minority shareholders to surface their concerns, if any.

Thirdly, and in our view, most significantly, the attitudes of the investing public have been shifting in recent times. It has been observed by various non-academic commentators that shareholder activism appears to be on the rise in Asia generally[51] and in Singapore specifically.[52] Given the enabling legislative backdrop, the crucial, if not the most compelling, factor that will foment and advance effective shareholder involvement is the willingness and desire of shareholders to be engaged and to engage. It is an incontrovertible fact, though, that a number of practical obstacles stand indubitably in the way of retail shareholder action, the most obvious of which are information asymmetry and the difficulties of collective action. Nevertheless, any conversation about the role of public shareholders cannot be undertaken without regard to the significant potential that digital technology-enabled tools, including electronic mail, social media platforms and the Internet, hold in influencing how shareholders behave. The state of information flows and communication has been radically altered in this century by the advent of information technology. There has been a proliferation of electronic applications and social media portals which are "new, powerful communication tools capable of influencing users' opinions in the realm of politics and policy".[53] The public in general, and by logical inclusion, investor shareholders in particular, have better and deeper access to information today than ever before, and technology has made it very much easier for large-group communication and information sharing. It was observed at the turn of the century that "the greatest promise"[54] of these technologies is the potential to reduce the various disclosure and communication costs associated with coordinating shareholder voting.[55] Such a state of affairs might be thought to be supportive of improved awareness amongst public shareholders, and, concomitantly, more active monitoring of corporate affairs by them.

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[50] *Code of Corporate Governance*, *supra* note 48, Art 2.1.

[51] See Tan Zhai Yun, "The impact of shareholder activism", *The Edge Singapore* <https://www.theedgesingapore.com/issues/shareholder-activism/impact-shareholder-activism> (Sep 17, 2018).

[52] See Bernard Lui, "The Shareholder Rights and Activism Review: Singapore", *The Law Reviews* <https://thelawreviews.co.uk/title/the-shareholder-rights-and-activism-review/singapore> (23 August 2021). The author, a director at Morgan Lewis Stamford LLC, attributed the changing attitudes to several factors, including hedge fund activism, the rise of investor lobby groups, increasing investor sophistication and greater corporate governance coverage in traditional as well as social media. The author also documented several instances of activist activity in Singapore. A particularly notable case concerned Hyflux Ltd, currently in compulsory liquidation, which saw its retail investors actively rallying support to reject certain restructuring plans. There are also other cases where the lead was taken by sophisticated investors and hedge funds. Most recently, activist fund Quarz Capital publicly criticised the management of a Temasek-controlled real estate company.

[53] Matthew R Auer, "The Policy Sciences of Social Media" (2011) 39(4) *Policy Studies Journal* 709 [Auer].

[54] Douglas R Cole, "E-Proxies for Sale – Corporate Vote-Buying in the Internet Age" (2001) 76(3) Wash L Rev 793, 813 [Cole].

[55] See *eg* Ige Omotayo Bolodeoku, "Corporate Governance in the New Information and Communication Age: An Interrogation of the Rational Apathy Theory" (2007) 7(1) JCLS 109; and Cole, *ibid*.

Accordingly, in this research, we seek to assess the state of shareholder activity in Singapore, and the extent to which modern information technologies may affect this. In particular, we seek empirical evidence to enable us to:

(i) understand the attitudes of shareholders in Singapore towards active involvement in the governance of their companies;
(ii) appreciate the driving factors behind such involvement or lack thereof and thus the shareholders' reasons for any real or perceived apathy with respect to company affairs;
(iii) determine the extent to which technological developments are likely to affect the level of shareholder engagement with their companies; and
(iv) recognise the limitations of digital technology in shareholder empowerment generally.

The results will demonstrate the prevalence, or lack, of shareholder apathy and the reasons therefor. This will allow us to confirm or deprecate any general assumption about the retail investor and his role in corporate governance.

II. Method

A. *Survey*

Data was gathered by means of a survey[56] which we outsourced to Qualtrics.[57] Qualtrics, founded in 2002, is an USA-based company headquartered in Utah. It is an experience management platform with offerings ranging from online surveys to market insights. Their capabilities range from experience ID to smart analysis.

The survey consisted mostly of a series of statements and the respondents were asked to indicate the extent to which they agreed or disagreed with those statements. The survey was broadly divided into two sections. In the first section, we sought information that will facilitate our understanding of how investors saw their role as shareholders, and how this is manifested in practice. The questions here thus sought to determine the respondents' actual voting activity and patterns, their motivations for attending or not attending meetings, and the matters that concern them as shareholders and investors.

In the second section, we focused on securing information that demonstrates the impact of social media and digital sources of information on shareholder activity. Specifically, we hoped to understand whether such facilitative technology influences communication and information sharing amongst investors, and whether this has any part in shaping decision making by investors. The questions in this section attempt to determine the extent to which the respondents, as investors and

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[56] We drew inspiration for our survey from a variety of resources, including the studies commissioned by the Investor Education Centre of Hong Kong, "Retail Investor Study: Research Report" <https://www.ifec.org.hk/common/pdf/about_iec/IEC-Retail-Investor-Study-report.pdf> (December 2017), and studies conducted by the Pew Research Centre <https://www.pewresearch.org/>.

[57] See https://www.qualtrics.com/about/.

shareholders, rely on and trust information obtained from the Internet generally as well as on social networking platforms more specifically.

B. Data and Sample

Qualtrics was engaged to collect data on a sample of 505 Singapore retail investors with our designed online survey. Participants have to be either Singapore citizens or permanent residents and be of age to invest in stocks and shares. More than 80% of the respondents fell between 18 and 61 years of age, with the largest group comprising those between 31-40 years of age (35.8%). About two-thirds of the respondents were men. More than 90% of the respondents had at least a secondary education, with more than half holding at least a bachelor's degree. Most of the respondents have been investing for at least a year, with 54.2% having been involved in investing for at least 6 years. Our sample thus provided a good demographic spread.

The advantage of outsourcing to Qualtrics is the quality of data collected. There are inbuilt safeguards such that data is only completed by the same person once and that the fastest third of participants and straight liners were excluded. Further, Qualtrics is a panel aggregator which reduces the biases associated with a single panel of participants.

III. Results and Analysis

A. Shareholder Participation – Incidence and Interpretation

As noted above, the corporate governance regime envisaged by the Companies Act places the shareholders, as a collective whole, at its apex and affirms the shareholders' pre-eminent, "ownership" position. This attests to the clear legislative intention for the shareholders to take on a "stewardship" role in corporate governance. However, unless the shareholders themselves are shown not only to be capable, but also prepared and willing to accept that challenge, the legislative intent may well remain merely an abstract aspiration. The first step then to understand shareholders' attitudes towards their position in the company is to ascertain the extent of their involvement.

Out of the 505 responses we received to our survey, only about one-third[58] attended company meetings to vote. Of this subset, the highest representation was from those who had been investing for between one to five years (45.0%). However, if we compared the numbers *within* each subgroup organised by reference of years of investing, we found a higher proportion (53%) of attendees amongst those who had between 11 and 15 years of investing experience. The other subgroups had between 25% (those with 16-20 years of investing experience) and 40% (those with 6–10 years of investing experience) of attendees within their respective subgroup.

[58] Specifically, this was 172 of the respondents, which amounted to 34.1% of all the respondents.

These findings provide support for the stereotype of the apathetic public shareholder. That insight in itself is anticipated and unhelpful. We therefore sought to appreciate the reasons for the respondents' decision not to attend and participate in company meetings. We provided a number of statements of possible explanations. Among participants who had never voted in shareholder meetings, the majority of the respondents would minimally agree that the reason for their lack of participation was that their shareholding was too small to make any difference to the voting outcome (mean=4.27, s.d.=1.21, Table 1). What is also interesting is that using factor analysis, we are able to group the 13 statements into three broad categories of reasons – the lack of understanding of one's role (*eg* not knowing if one can vote, or how to vote – items); too much effort in getting involved (*eg* voting process is too time consuming) and having shareholdings in too many companies (*eg* I have too many shareholdings to warrant monitoring of resolutions). We found that among the three categories, respondents found effort in getting involved to be most daunting (mean=4.14, s.d.=0.90), followed by the fact that they have too many shareholdings (mean=3.54, s.d.=-.85). Again, this provides ballast for the rationalisation that is generally assumed to underpin observed shareholder apathy. Retail shareholders commonly hold diversified investment portfolios and any individual stake in a particular company is not likely to be significant. As our results demonstrate, this gives them little incentive to expend the time and effort to take on a participatory role in company affairs.[59] As Bernard Black observed:[60]

> The act of voting, and becoming informed enough to vote intelligently, requires an investment of time, which is a scarce resource. Yet a shareholder's vote is unlikely to affect whether a proposal wins or loses. The cost and futility of becoming informed leads shareholders to choose rational apathy…[61]

Table 1: Reasons for not ever voted in shareholder meeting (N=333)

		Mean*	**Standard Deviation**
1.	My shareholding is too small to make a difference.	4.27	1.21
2.	It is too much hassle to vote.	4.17	1.07
3.	Voting process is too time consuming.	4.10	1.05
4.	Voting power of small shareholders is not enough to make a difference.	3.99	1.13
5.	My shareholding is too small for me to spend time and effort monitoring corporate actions.	3.96	1.17
6.	I am not sure about the process of voting.	3.64	1.31
7.	I am not interested in the company's actions as I can exit the company at any time.	3.55	1.10

(*Continued*)

[59] Brett H McDonnell, "Professor Bainbridge and the Arrowian Moment: A Review of the New Corporate Governance in Theory and Practice" (2009) 34(1) Del J Corp L 139, 155.

[60] Bernard S Black, "Shareholder Passivity Re-examined" (1990) 89(3) Mich L Rev 520, 527.

[61] See also Frank H Easterbrook & Daniel R Fischel, *The Economic Structure of Corporate Law* (Massachusetts: Harvard University Press, 1991) at 66.

Table 1: (*Continued*)

		Mean*	Standard Deviation
8.	I could not understand the information given about the corporate actions.	3.42	1.19
9.	I am holding the shares for the short-term.	3.42	1.23
10.	I do not know how to vote.	3.38	1.28
11.	I have too many shareholdings to warrant monitoring of resolutions.	3.27	1.22
12.	I do not know that minority shareholders can vote.	3.16	1.39
13.	I was not aware that I could vote.	2.83	1.43

* Ranges from 1 (strongly disagree) to 6 (strongly agree)

There is however another angle to the story. Although our data shows that only a distinct one-third would attend and vote at company meetings, it is important to note that this is nevertheless a very significant minority. It appears that shareholder apathy, while prevalent, is not pervasive. Accordingly, we suggest that it would be myopic to simply conclude on this basis that there is little point in empowering shareholders for a role in corporate governance. The data we had collected in connection with the respondents' motivations and concerns justifies this insight. We had sought to better understand why those who chose to attend company meetings did so, and asked the respondents to indicate their agreement with a list of statements disclosing possible motivations for attending company meetings (see Table 2). The most commonly cited reason was to understand how the company is run (mean=4.85, s.d.=0.93) followed by concerns about the corporate actions being taken at the meeting (mean=4.76, s.d.=0.92).

We also sought to determine if the attendance was driven mainly by self-regarding reasons, which might suggest less of a propensity for concern for corporate governance generally. Our results provide food for thought. Most of the respondents (95.3%) would at least "somewhat agree" that they attended the meetings because "the corporate actions proposed at the meeting affected [their] interests as a shareholder". This is not unexpected – as Napoléon once declared, arguably not without good reason, "men are moved by two levers only: fear and self-interest".[62] However, a closer examination of the responses showed up something else – a higher percentage of the respondents would in fact more strongly affirm their agreement (i.e. "strongly agree") with the statement that they attended meetings because they were "interested in how the company is run" (29.8%) as compared with those who were as affirmative with respect to the statement that they attended the meetings because "the corporate actions proposed at the meeting affected [their] interests as a shareholder" (23.5%). This suggests that there are pockets of small investors who are sufficiently invested and concerned with the management of the company that they might be galvanised into taking on a more active monitoring role.

[62] J Christopher Herold, *The Age of Napoleon* (New York: American Heritage Inc, 2002) at 94.

Table 2: Motivation to attend shareholder meeting (N=172)

		Mean*	Standard Deviation
1.	I am interested in how the company is run.	4.85	.931
2.	I was concerned about the corporate actions being taken at the meeting.	4.76	.922
3.	The corporate actions proposed at the meeting affected my interests as a shareholder.	4.71	.907
4.	I am curious about what goes on in shareholder meetings.	4.60	.895
5.	I want to support the company's management.	4.52	.980
6.	I want to influence the outcome of the meeting.	4.42	1.10

* Ranges from 1 (strongly disagree) to 6 (strongly agree)

This inference is further supported by the next data set. We had sought to identify matters of concern to the respondents, and had provided a list of eleven possibilities for the respondents to indicate the extent of their concern on a 6-point scale. Table 3 presents the responses of all participants in descending order of concern.

Table 3: Issues of concerns as a shareholder (N=505)

		Mean*	Standard Deviation
1.	Weak financial performance	4.91	1.14
2.	Ineffective management	4.67	1.22
3.	Excessively high executive compensation	4.59	1.21
4.	Executive compensation that is not performance-linked	4.54	1.23
5.	Unsatisfactory dividend policy	4.50	1.20
6.	Overvaluing an acquisition	4.36	1.19
7.	Inefficient operations	4.16	1.24
8.	Board composition	4.00	1.24
9.	Undervaluing the company as the target	3.98	1.28
10.	Lack of concern for responsible environmental or social policies	3.68	1.36
11	Too much cash on balance sheet	3.55	1.34

* Ranges from 1 (strongly disagree) to 6 (strongly agree)

At the top of the list of concerns is "weak financial performance", which most of the respondents (89.4%) are at least "concerned" with. The next highest ranked concern is over "ineffective management", which 83.8% of the respondents would be minimally "concerned" with. Again, these largely general matters of concern trumped the more self-regarding concern of "unsatisfactory dividend policy" (80.9%) or "undervaluing the company as the target of a takeover attempt" (66%). The responses to our inquiry into matters of concern may thus be said to be largely consistent with and supportive of our supposition.

It is submitted that these observations are not purely academic optimism. The data from our survey has to be considered against the overall regulatory regime. It should be reiterated that shareholder empowerment is achieved through a bundle of

different rights, including the specific measures targeted at *minority* shareholders. Empowering minority shareholders is one of the pillars of effective corporate governance, and underpins the inclusion of the statutory derivative action contained in section 216A of the Companies Act. As already noted, this statutory action directly empowers shareholders, subject to the leave of court, to intervene in the enforcement, prosecution and defence of corporate rights. The operation of the statutory derivative action is supported by the shareholders' statutory right to intervene in corporate governance through the proposal of resolutions and to convene or requisition meetings, which are made explicitly exercisable by only a minority of the shareholders. These mechanisms provide concerned shareholders with the option of being proactive in drawing attention to any alleged wrongdoing, and may, as Moore asserts, "enable perceived governance or business performance issues to be resolved before they occasion further costs to the firm".[63]

We had also sought to discover, through our survey, two further pieces of information about the respondents' voting patterns. First, we wanted to know whether the respondents would support a fellow shareholder's campaign generally and, more specifically, the types of campaigns supported. The purpose of this is to ascertain whether, even where the respondents themselves would not initiate any inquiry, discussion or debate vis-à-vis corporate affairs, they might nonetheless be prepared and willing to support a fellow shareholder's efforts. Our results are interesting. A respectable 58.0% of all respondents would support a fellow shareholder's initiative to pressurise management. This is significantly higher than the 34.1% who would attend and participate in meetings. It is also notable that of the 333 participants who have never attended a meeting to vote, 159 (47.9%) of them stated that they would support an activist shareholder's campaign to pressurise the company's management.

Additionally, the matters that would, according to our survey, unite the shareholders in this regard are aligned with matters that are of concern to the respondents generally, namely "weak financial performance" and "ineffective management". We would surmise that this has implications for the effectiveness of any shareholder campaign targeted at these specific concerns. Indeed, larger institutional investors and sophisticated investors, being more confident of retail investor support, may be galvanised to adopt a more involved position, and fulfil the "stewardship" role they are encouraged to adopt.[64] Accordingly, if otherwise reticent shareholders may yet be persuaded to take a stand, this is likely to result in a more emphatic shareholder voice overall.

Secondly, we attempted to determine if the voting patterns could be meaningfully differentiated accordingly to whether the respondents were satisfied or dissatisfied

[63] Marc Moore, "Shareholder Primacy, Labour and the Historic Ambivalence of UK Company Law" in Harvey Wells, ed, *Research Handbook on the History of Corporate and Company Law* (Gloucestershire: Edward Elgar Publishing, 2018) 148.

[64] The avowed purpose of the Singapore Stewardship Principles for Responsible Investors (available at <http://www.stewardshipasia.com.sg/>) is to "enhance a positive investment environment by encouraging companies to pursue the spirit of good governance and stewardship, with the ultimate objective of helping companies secure their performance over the long term": see https://www.stewardshipasia.com.sg/enable/investors. See also generally Dan W Puchniak & Samantha Tang, "Singapore's Puzzling Embrace of Shareholder Stewardship: A Successful Secret" (2020) Vand J Transnat'l L 989.

with the company's performance. In this regard, we sought especially to ascertain whether, when voting, the respondents would tend to be more supportive of the company's management, the campaigning shareholder or to make their own decisions. Perhaps unsurprisingly, our results showed that the respondents would tend to support the decisions or recommendations of the company's management across a range of matters (*eg* dividend distribution, election of shareholder nominees to the board in contested elections) when the company is performing satisfactorily. This position shifts markedly when there is discontent with the company's performance. Where this is the case, the respondents would tend to support the campaigning shareholder. These results, we suggest, are reflective of the position as legislatively intended. The default power allocation position adopted under the Companies Act,[65] which vests, at first instance, management power in the board of directors, recognises the value of centralising the decision-making authority so as to facilitate effective and efficient corporate operations. This recognition has been judicially reinforced by the doctrine of division of powers. By this doctrine, neither corporate organ is, as a general rule, permitted to supplant the authority that has been constitutionally conferred on the other organ. As Lord Greer LJ explained in *John Shaw & Sons (Salford) Ltd v Shaw*:[66]

> A company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers … They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders.[67]

Our results suggest that the respondents would broadly subscribe to this view of how the company should operate.

However, the desirability of insulating the board's exercise of power from interference by shareholders does not mean that shareholders should play no role in the exaction of board accountability. These are different issues. The shareholders' expression of "voice" through their vote is the means by which they may monitor the performance of those to whom they have entrusted the task of managing their investment. Patently, this "voice" would need to be expressed only if there is reason to be concerned with how the company is being managed. And as our survey results show, this is broadly consistent with how our respondents would react.

There is one further point of note. We had also sought to ascertain whether those respondents who would support a fellow shareholder's campaign would simply vote in alignment with the campaigning shareholder without more. In other words, we hoped to determine whether any support extended to the campaigning

[65] Companies Act, *supra* note 9, s 157A which vests management powers at first instance on the board of directors.

[66] [1935] 2 KB 113.

[67] *Ibid* at 134. The doctrine has been affirmed by the Court of Appeal in *Chan Siew Lee v TYC Investment Pte Ltd* [2015] 5 SLR 409.

shareholder is more likely to be indiscriminate or considered. Accordingly, we had asked the respondents to indicate the extent to which they would trust different sources of information when considering voting proposals put forward by a fellow shareholder. We had provided a list of possible sources, including the campaigning shareholder, the board of directors and independent sources such as investment professionals and financial news media. The results, ranked in descending order of the degree of trust reposed, are presented in Table 4. The top sources of information which the respondents would trust were "Financial advisors or other investment professionals", "Financial news media" and "Academic experts". Interestingly, the respondents would trust the board of directors and the company's chief executive officer more than they would trust the proposing shareholder. This suggests that, while the respondents would be galvanised to take notice of the matter of concern, how they would exercise their "voice" would be the subject of further consideration, undertaken with the benefit of mostly objective sources of information. This, we believe, is a desirable outcome and augers well for the corporate governance scene in Singapore.

Table 4: Sources of trusted information

		Mean*	**Standard Deviation**
1.	The proposing shareholder	2.50	0.69
2.	The company's Board of Directors	2.66	0.75
3.	The company's Chief Executive Officer	2.63	0.77
4.	Investment/ financial blogs	2.53	0.76
5.	Company webpages	2.49	0.78
6.	Social media	2.21	0.83
7.	Financial news media	2.76	0.73
8.	Friends, relatives, and/or colleagues	2.38	0.79
9.	Academic experts	2.75	0.73
10.	Financial advisors or other investment professionals	2.76	0.75

* Ranges from 1 (Do not trust at all) to 4 (Trust a great deal)

B. The Unfulfilled Promise of the Digital Revolution

The other aspect of our research focused on the effect, if any, of technological developments and advances, especially in the social media sphere, on shareholder behaviour generally, and on shareholder engagement with their companies in particular.

A common argument levered against the empowerment of shareholders in dispersed companies is that retail shareholders are rationally apathetic. The individual stake that retail shareholders hold in any one company is unlikely to be sufficiently significant to justify the time and effort necessary to keep tabs on the company and its management, nor to make any difference even if they were to vote. As Bernard Black observed:

> The act of voting, and becoming informed enough to vote intelligently, requires an investment of time, which is a scarce resource. Yet a shareholder's vote is unlikely to affect whether a proposal wins or loses. The cost and futility of becoming informed leads shareholders to choose rational apathy: They don't take the time to consider particular proposals, and instead adopt a crude rule of thumb like "vote with management".[68]

Even if there are matters that might affect their personal investment in the particular company, ease of exit (by the sale of their shares on the market) often trumps trying to take on the Goliathan task of effecting or pursuing change. Shareholder passivity is also encouraged by collective action issues – as units of the collective whole, individual shareholders will have different motivations for investing, different views as to their role as shareholders, and may be differently informed vis-à-vis corporate affairs. The lack of homogeneity renders effective collective action somewhat illusive. Minority shareholders are therefore more likely to either trust the board, or depend on the monitoring efforts of larger investors. Or, they may simply decide not to vote at all,[69] as our survey results affirm.

The above notwithstanding, we were keen to investigate whether the tremendous change that digital technology has wrought on human interactions will add anything to the conversation about shareholder empowerment. Modes of communication and the manner in which information is shared between and amongst people have been inexorably altered by electronic mail and the Internet.[70] At the same time, "social media", a phrase which refers to the various forms of Internet-based programmes and applications that utilise computer-based technologies to facilitate information sharing through virtual networks and communities,[71] has contributed massively to information sharing through virtual networks and communities[72] The instantaneous and on-going nature of social media platforms make them potent communication tools. It has been observed that "[t]he particular appeal of these platforms is their real-time impact…[as they] allow activists to participate in disputes or launch new causes almost instantly".[73] There is another aspect of social media that could potentially play a role in influencing the incidence of shareholder engagement. Unlike the more traditional forms of communication which tend to be mono-directional, social media facilitates and thrives on multi-way interactions amongst users. This,

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[68] Bernard S Black, "Shareholder Passivity Re-examined" (1990) 89 Mich Law Rev 520 at 527.

[69] Gaia Balp, "The Corporate Governance Role of Retail Investors" (2018) 31(1) *Loyola Consumer Law Review* 47 at 68.

[70] This potentiality of the Internet was judicially noted in *Citizens United v Federal Election Commission* (2010) 558 US 310, 370 where Justice Kennedy noted that "[s]hareholder objections raised through the procedures of corporate democracy ... can be more effective today because modern technology makes disclosures rapid and informative".

[71] *Cambridge Dictionary*, online, *sub verbo* "social media" <https://dictionary.cambridge.org/dictionary/english/social-media>.

[72] *Ibid*.

[73] Remus Valsan, "Social Media and Shareholder Activism" <https://www.ecclblog.law.ed.ac.uk/2014/05/08/social-media-and-shareholder-activism/#:~:text=Activist%20shareholders%20use%20a%20variety,blogs%20or%20dedicated%20electronic%20forums> (8 May 2014).

it has been observed, creates a notion of "community" amongst the users of social media.[74] As Auer notes:[75]

> A reader of an article at CNN.com is not necessarily part of a network involving other CNN website visitors; if that same reader posts a comment about the article on CNN's blog (or on another blog or on the microblogging platform Twitter), he or she has entered an electronic community where user opinions and values are shared. Indeed, values and opinions are *shaped* and shared…because digital posts spawn commentary, sway views, and spur action.

Studies have tended to confirm that the attitudes and behaviour of members of online social networks are influenced by others within those networks and that "clustered ties…can be highly efficient for promoting behaviour diffusion".[76] This functional characteristic of social media may be attributable to the fact that social media promotes interactive engagement, which might to some extent replicate face-to-face interactions.[77] Indeed, the critical role that social media played in galvanising groups of disparate individuals to particular, often emotive, causes has been widely reported.[78]

Whilst there does not appear to have been studies done specifically on the use of social media by minority shareholders, both as a means of information sharing and as a platform on which to galvanise themselves into action in the corporate governance arena, there is nevertheless evidence demonstrating the powerful effect that social media can have as a tool of influence on the investing public. A well-documented[79] example is the effect that Carl Icahn's tweets[80] had on the share price of Apple Inc.[81] Twitter[82] is a microblogging site which enables relevant information to be disseminated in short messages quickly and directly. For the shareholder or investor who intends to influence others, tweets provide a very cost-effective method of communication. The effect of a succinct tweet is also likely to be more compelling than traditional sources for corporate information. As Seth Oranburg

[74] Auer, *supra* note 53 at 711.

[75] *Ibid* [emphasis in original].

[76] Damon Centola. "The Spread of Behavior in an Online Social Network Experiment" (2010) 329(5996) *Science* 1194 at 1197.

[77] William Young *et al*, "Can Social Media be a Tool for Reducing Consumers' Food Waste? A Behaviour Change Experiment by a UK Retailer" (2016) 117 *Resources, Conservation and Recycling* 195 at 197.

[78] See *eg* Gideon Rachman *et al*, "Leaderless rebellion: how social media enables global protests", *Financial Times* <https://www.ft.com/content/19dc5dfe-f67b-11e9-a79c-bc9acae3b654> (26 October 2019).

[79] Tami Dinh, Karla Kopf & Barbara Seitz, "The Power of Social Media – Shareholder Activism via Twitter and a Firm's Market Value" [2017] *In: Die Unternehmung - Swiss Journal of Business Research and Practice* 50 at 57.

[80] Carl_C_Icahn (Twitter) <https://twitter.com/carl_c_icahn?lang=en>.

[81] Hayley Tsukayama, "Apple Shares Jump on Tweets from Carl Icahn" *Washington Post*, <https://www.washingtonpost.com/business/technology/apple-shares-jump-on-tweets-from-carl-icahn/2013/08/13/b2c32ffe-044a-11e3-88d6-d5795fab4637_story.html> (13 August 2013).

[82] See generally A Kaplan and M Haenlein, "The early bird catches the news: Nine things you should know about micro-blogging" (2011) 54(2) *Business Horizons* 105.

noted, "[s]hareholders who would never rationally read a 300-page proxy statement might respond to a 140-character tweet".[83]

All this strongly suggests that social media has immense potential to affect the operational contours of shareholder empowerment. The question is whether this potential is realised in practice, a question that we hoped to provide a response to.

About 92% of our respondents would access social networking platforms to acquire information of their companies. We provided a list of popular platforms and these are ranked in descending order of frequency of access by our respondents in Table 5. It appears that the most frequently accessed platform is Facebook. Interestingly, Twitter, while potentially influential as indicated earlier, is accessed somewhat less frequently in the Singapore context.

Table 5: Frequency of access of social media platforms for news about shares*

		Frequency
1.	Facebook	289
2.	WhatsApp	192
3.	YouTube	155
4.	LinkedIn	133
5.	Instagram	101
6.	Telegram	93
7.	Twitter	74
8.	Snapchat	25
9.	Tumblr	25

* Respondents are asked to indicate as many as applies.

We were also interested to ascertain the extent to which these respondents trusted the information obtained from these social networking platforms. The highest ranked platforms in terms of trust on a four-point scale ranging from 1 (Do not trust at all) to 4 (Trust a great deal) are LinkedIn (mean=2.45, s.d.=0.86), YouTube (mean=2.22, s.d.=0.84); WhatsApp (mean=2.20, s.d.=0.83), Facebook (mean=2.19, s.d.=0.78) and Instagram (mean=2.07, s.d.=0.84).

Again on a four point scale ranging from 1 (Do not trust at all) to 4 (Trust a great deal), we asked respondents to indicate their trust in the more traditional online sources. Our results showed, in descending order, trust in the webpages of newspapers and investment journals (mean=2.72, s.d.=0.71), trust in the webpages of brokerage and investment advisory firms (mean=2.69, s.d.=0.71), trust in the company webpages (mean=2.64, s.d.=0.73) and trust in online investment blogs and forums (mean=2.50, s.d.=0.69). Compared with other more traditional sources of relevant corporate information, including financial news media, financial advisors or other investment professionals and academic experts, respondents trusted social media platforms much less. Among the reasons for the trust in the four types of traditional online sources, accuracy of coverage was most often cited.

[83] Seth Oranburg, "How Twitter is Disrupting Shareholder Activism" <https://clsbluesky.law.columbia.edu/2015/01/14/how-twitter-is-disrupting-shareholder-activism/> (14 January 2015) [Oranburg].

These results indicate fairly clearly that the respondents are diffident as to the creditability and reliability of social media as a source of information about their companies. There are undoubted concerns over accuracy and adequacy of information conveyed. This is perhaps unsurprising as much of the content online is disparate and unfiltered.[84] Literally anyone can create, even anonymously, any number of social media accounts. It is also possible that some of these "users" are programs, or "bots", rather than humans. This means that there is little objective control[85] over who shares information and the quality of the information shared. With the potentially limitless number of "shares", the propensity for the information to get distorted also increases. In contrast, websites and online resources maintained by advisory professionals, traditional media and also the company itself, are more likely to adhere to professional standards of reporting, thus providing information that is conceivably balanced and accurate.

Trusting the source of information is the necessary first step towards acting on the information, and allowing that information to influence one's conduct and behaviour. We would therefore surmise that given the relatively low levels of trust of social media exhibited by the respondents, its influence on their decisions as shareholders would be correspondingly muted. Our survey results however tell a more nuanced story. Whilst only 38% of the respondents would minimally "somewhat agree" with the statement "I am an active member of a shareholder chat group or forum", slightly more than half (52.9%) of the respondents would minimally "somewhat agree" with the statement "I would share or forward an online post concerning the company I am invested in". Further, a more creditable 57% would minimally "somewhat agree" with the statement "If a shareholder in my company called for a meeting of shareholders via online messaging, I would attend". This last percentage is however consistent with the proportion of the respondents who would support a fellow shareholder's campaign, suggesting that those who are prepared and willing to, are likely lend their support in any case.

We also extracted the responses within the subgroup of respondents who had indicated that they would be supportive of a fellow shareholder's campaign. As would be expected, a higher proportion amongst those who had expressed a propensity for a more active role in the company would minimally "somewhat agree" with the statement that "I am an active member of a shareholder chat group or forum" (45.2%). A decent 60.4% of this subgroup would minimally "somewhat agree" with the statement "I would share or forward an online post concerning the company I am invested in", whilst a strong 79.4% would minimally "somewhat agree" with the statement "If a shareholder in my company called for a meeting of shareholders via online messaging, I would attend".

What these results tell us is that the overall low levels of trust in social media platforms does not necessarily translate into an outright dismissal of social media as a mode for the *communication* of relevant information. Whilst the results might suggest some degree of hesitancy towards active involvement in online shareholder groups or forums, there is nevertheless a compelling showing that social media does

[84] Auer, *supra* note 53 at 721.

[85] But note the Protection from Online Falsehoods and Manipulation Act 2019 (No 18 of 2019, Sing), which aims to control online falsehoods.

minimally play a part in calling attention to the issue at hand and mobilising the respondents to act by sharing and attending the meetings.

We cannot affirmatively conclude from our data that social media plays a significant part in shifting the attitudes of the respondents. We would deduce, however, from the low level of trust that that this outcome is unlikely for those who would not, in any case, support a fellow shareholder's campaign, and those who would. We submit that this is not speculation without basis. Although social media and related digital tools such as messaging applications, can reduce the tangible costs associated with information gathering, knowledge sharing and communication, they do little to mitigate the perhaps immeasurable costs of the time and effort that have to be expended in the undertaking. The vast resources available on the Internet, as well as the multiple sources of connections and channels for the receipt of information and opinions may create a "saturation effect"[86] which can have a counter-productive impact. For shareholders who are short-term investors who tend to be focused on financial returns in the nearer term,[87] these costs will appear all the more unjustifiable when juxtaposed against the ease of exit.

The nature and type of the decisions that have to be made in the arena of corporate governance are also relevant considerations, especially for those shareholders who are prepared to stay the course and take on a more participative role. Monitoring management involves making decisions that are somewhat more nuanced and complex than the "buy or sell" decisions made by consumers and investors which have been the subject of numerous studies. As Auer notes, because of its instantaneous nature, e-communications tend to "tap impulses rather than reason".[88] Corporate governance decisions are less emotive and are therefore unlikely to generate as much attention or effect as say, a campaign on corporate social responsibility issues like climate change or genetically-modified foods.

IV. Conclusion

The extant corporate governance regime in Singapore empowers shareholders to act as monitors and stewards of their companies. Such empowerment can only achieve its purpose if the subject of its focus rises to the task. However, retail investors/shareholders are likely to have a range of identities, interests and thus preferences in connection with their investment, They are patently not a homogenous group. This raises important policy questions about shareholder empowerment as a feasible tenet of corporate governance function. Indeed, many have argued against the empowerment of shareholders generally and derided any realistic role for the retail investor, especially in the dominated companies. Nevertheless, our research provides evidence that the basic supposition that underpins shareholder empowerment should

[86] Daniel J Power and Gloria Phillips-Wren, "Impact of Social Media and Web 2.0 on Decision-Making" (2011) 20(3) *Journal of Decision Systems* 249 at 255.

[87] Lisa M Fairfax, "Making the Corporation Safe for Shareholder Democracy" (2008) 69(1) *Ohio State Law Journal* 53 at 83. See also Lorraine Talbot, "Why Shareholders Shouldn't Vote: A Marxist-progressive Critique of Shareholder Empowerment" (2013) 76(5) MLR 791 at 793.

[88] Auer, *supra* note 53 at 722.

not be dismissed without more. Our results demonstrate that the popular assumption that retail shareholders are passive is potentially fallacious. Even if still a minority, the fact that there are retail investors interested and willing to be involved suggests that there is more to the overall picture than has thus far been conceded. Further, and importantly, our results show that retail investors are not necessarily motivated only by self-serving concerns, and that the proper management and governance of companies are important issues that can unite and galvanise them. Our results also show that generally, retail shareholders would prefer to adhere to the centralised decision-making model of corporate governance advocated by the Companies Act. It is therefore unlikely, as some commentators feared,[89] that shareholder empowerment would lead to sub-optimal decision making as shareholders hijack the process.

The question then is whether the massive strides in digital technology will indeed have any actual impact on shareholder democracy, and whether this would contribute to better shareholder engagement and hence monitoring of management. The potential for social media to facilitate a more participatory corporate environment is evident. In this digital age, shareholders have better access to a wider range of information and technological tools have made it very much easier for them to share information and to galvanise collective action. Indeed, Seth Oranburg went so far as to assert that social media could render shareholder democracy, "long considered a myth,…a reality".[90] Our data however confirms that significant trust issues continue to plague the use of social media, detracting somewhat from its plain promise.

Be that as it may, our research presents persuasive evidence that retail investors in Singapore can be properly and appropriately mobilised to fulfil their legislatively-endowed role as shareholders, thus validating the legislative aspiration for shareholders generally. This, we submit, provides impetus for further inquiry which, we suggest, could focus on the following broad questions:

(1) As retail investors tend to be concerned with matters of financial performance and effective management, how should companies be encouraged to convey such information more efficaciously with the ultimate aim of fostering mutual and constructive engagement?
(2) Should and how may institutional/sophisticated investors as well as private investor associations be incentivised to take the lead and provide relevant information generally and voting recommendations particularly for general dissemination to retail investors?
(3) How should web-based tools and platforms be more effectively utilised to encourage retail investor participation?

We suggest that these questions should be considered from the perspective of the retail investor as only then can the issue of shareholder passivity be properly considered. Patently, the dialogue on shareholder empowerment has yet to arrive at a denouement, and should continue apace.

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89 See *eg* Bernard S Sharfman, "What's Wrong with Shareholder Empowerment" (2012) 37 J Corp L 903 at 905.

90 Oranburg, *supra* note 83.