

Non-Controlled Company IPOs: Governance Survey

APRIL 2022

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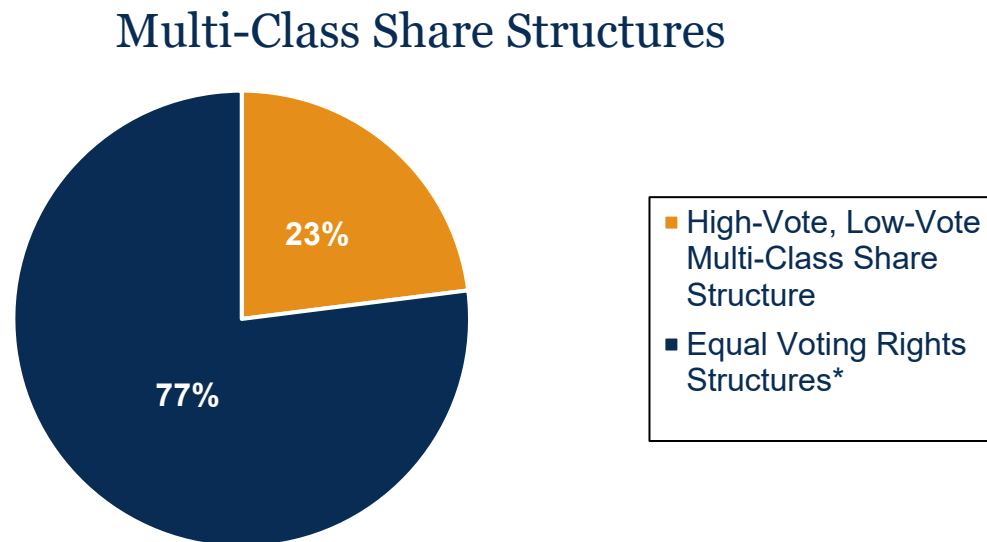
Survey Overview

- **We have reviewed the key governance structures of non-controlled companies that completed an Initial Public Offering (“IPO”) on or after January 1, 2019 through December 31, 2021 and with gross proceeds between \$200m and \$1bn—115 companies in total**
 - Our survey excluded sponsor-backed companies, controlled companies, SPACs, FPIs and REITs
 - Please see Appendix A for a list of surveyed companies
- **Of the 115 companies included in this sample 91% were incorporated in Delaware**

Governance Structure

Multi-Class Share Structures

- **A minority of surveyed companies (23%) feature high-vote/low-vote multi-class share structures that increase the voting power of insiders in proportion to their equity share**
 - 92% of companies with high-vote/low-vote structures used 10 votes per share for the high vote class or classes
 - The remaining 8% had 20 votes per share for the high vote class or classes
- **Multi-class share structures appear most often in founder-led tech IPOs, but are used by companies in other industries as well. These structures have attracted scrutiny from institutional investors and can result in the exclusion of the listed company from prominent equity indexes**
 - Institutional Shareholder Services and Glass Lewis recently announced that they will begin recommending that shareholders vote against certain directors if a company utilizes a common stock structure with unequal voting rights. Limited exceptions will pertain to newly public companies that provide for an adequate sunset period (seven years or less) for a multi-class share structure with unequal voting rights



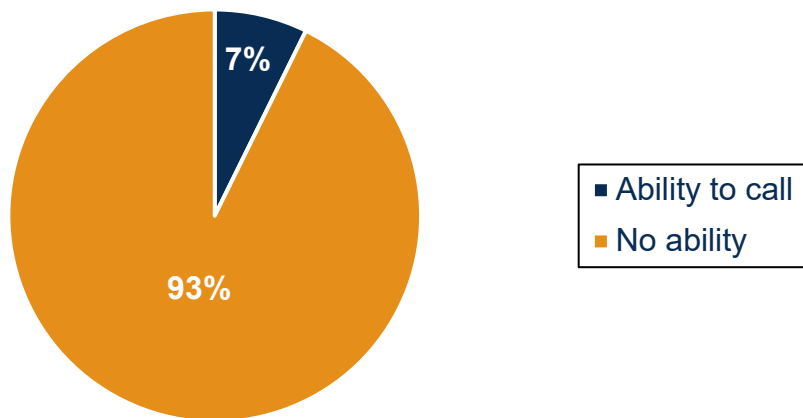
* Includes single class structures, multi-class structures with equal voting rights and multi-class structures with non-public no-vote shares.

Shareholder Action

Shareholder-Called Special Meetings

- **A minority of surveyed companies (7%) permitted shareholders to call special meetings**

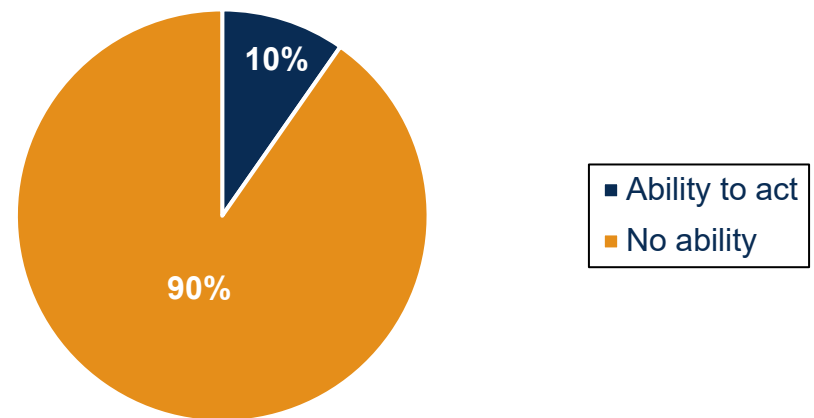
Shareholder Ability To Call
Special Meetings



Shareholder Action by Written Consent

- **Most surveyed companies (90%) did not permit shareholders to act by written consent, which is typical for public companies**
 - Four of the eleven companies that permitted shareholders to act by written consent did so only before specified principal stockholders' ownership dropped below a certain threshold
 - Two of the companies further required that the board had previously recommended or approved the action

Shareholder Ability To Act
by Written Consent

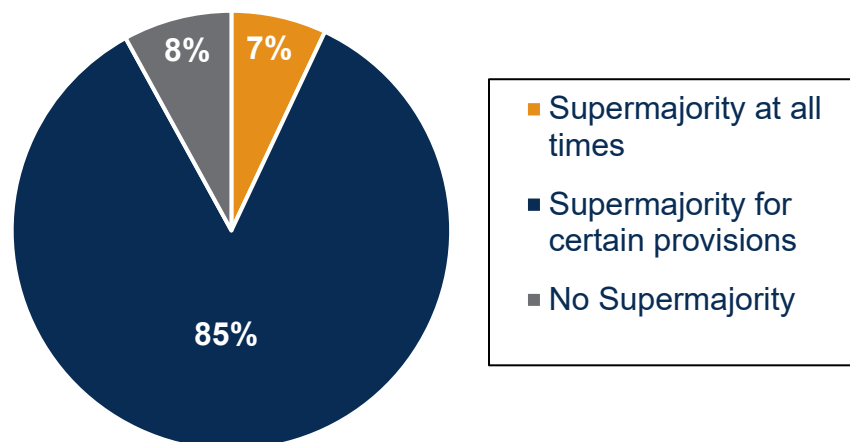


Amendments of Organizational Documents

Amendments of the Charter

- **Almost all surveyed companies (92%) have a supermajority threshold for charter amendments**
 - The most common threshold was 66 2/3% (90% of companies that required a supermajority)
- **Most surveyed companies (85%) require a supermajority only for key charter provisions¹**

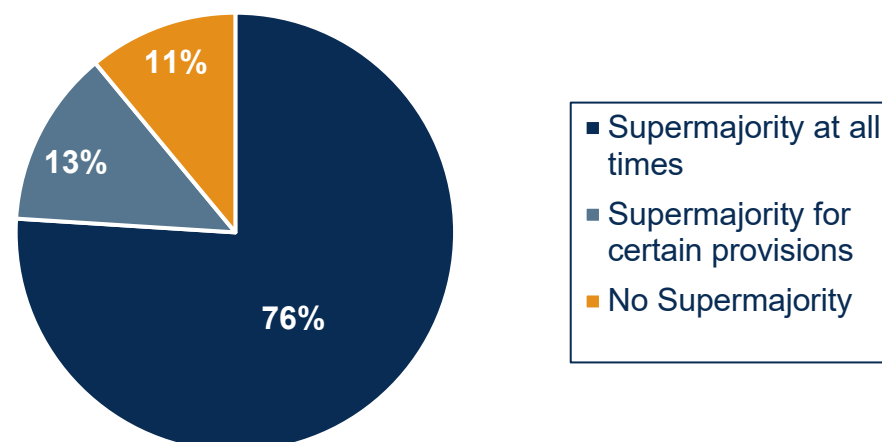
Vote To Amend Charter



Amendments of the Bylaws

- **Almost all surveyed companies (90%) have a supermajority threshold for bylaw amendments**
 - The most common threshold was 66 2/3% (88% of companies that required a supermajority)
- **A majority of surveyed companies (76%) always require a supermajority to amend the bylaws**

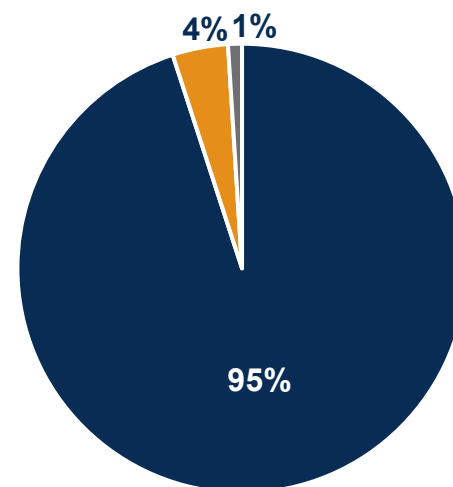
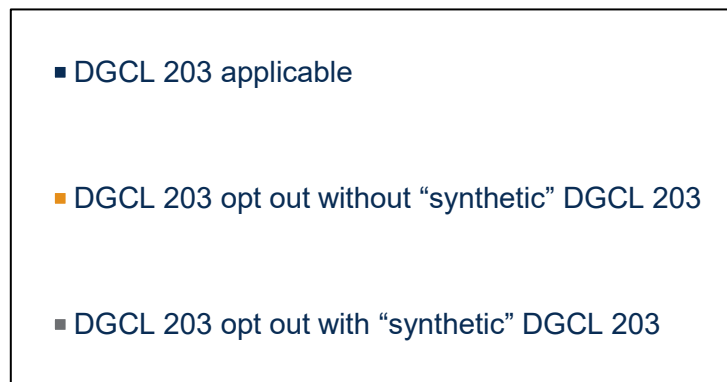
Vote To Amend Bylaws



¹ Provisions requiring a supermajority vote frequently include director-related provisions, shareholder actions (including special meetings and written consent), limitation of director liability, director indemnification, supermajority requirements for charter and bylaw amendments and the exclusive forum provision.

DGCL Section 203 Prohibitions on Business Combinations

- **Section 203 of the Delaware General Corporation Law (“DGCL”) requires board approval, with limited exceptions, for “business combinations” of the company with any “interested stockholder”**
 - An “interested stockholder” is any person who owns at least 15% of the company’s outstanding voting shares, or who owned 15% at any time during the previous three years and presently holds the power to direct the company’s management or is a director or officer of the company
 - While valuable for defense against a hostile acquirer, these provisions can complicate sales of a 15% or greater block, because the transferee will become an “interested stockholder” unless the company’s board approves
- **Virtually all Delaware-incorporated surveyed companies (95%) remain subject to Section 203 of the DGCL**
 - One company that opted out included a “synthetic” provision in their charter that mirrors DGCL 203 but carves out specified major stockholders and their transferees from the definition of “interested stockholder”



As a share of Delaware-incorporated companies.

Exclusive Forum Provisions

Corporate Law Claims

- **Nearly all surveyed companies (98%) included exclusive forum provisions in their organizational documents for certain state law claims**
 - These provisions allow a company to designate a court of its choice as the exclusive forum for any shareholder derivative actions or proceedings, claims of breach of fiduciary duty or similar claims arising under applicable provisions of state corporate law
 - All of the surveyed companies incorporated in Delaware chose the Court of Chancery of the State of Delaware as their exclusive forum

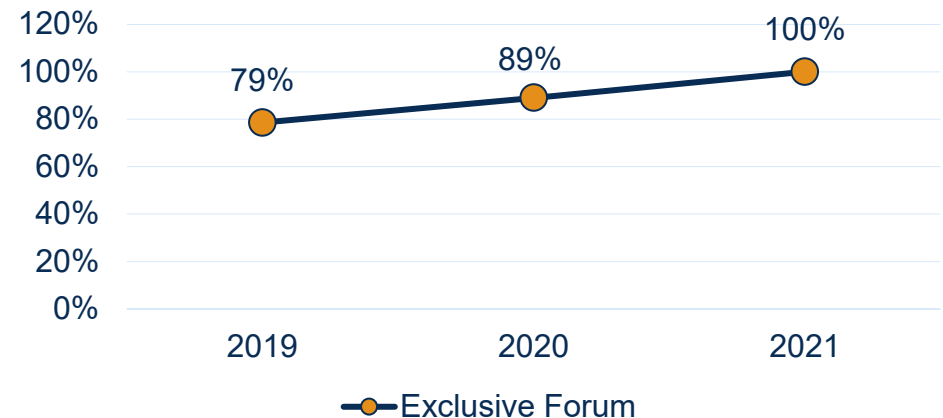
Exclusive Forum for Corporate Law Claims



Securities Act Claims

- **Exclusive forum provisions selecting federal courts for Securities Act claims rose among Delaware-incorporated surveyed companies in both 2021 and 2020, to 100% and 89%, respectively, with the Delaware Supreme Court upholding these provisions in charters in March 2020**

Exclusive Forum for Securities Act Claims



As a share of Delaware-incorporated companies

Advance Notice Requirements

- **Advance notice bylaws require that shareholders follow certain procedures for submitting director nominations and other business proposals in advance of meetings; one of their key defensive mechanisms is a timeliness requirement that sets forth windows for submissions**
- **Nearly all surveyed companies (97% for both nominations and proposals) included timeliness requirements for both director nominations and other business proposals**
 - The companies that did not include timeliness requirements were incorporated in jurisdictions other than Delaware
- **Most surveyed companies (88% for both nominations and proposals) used a 90/120 window—nominations or proposals must be received no later than 90 days, and no earlier than 120 days, prior to the meeting**

“Blank Check” Preferred Stock

- **A company may in its charter give the Board of Directors the authority to issue “blank check” preferred stock at any time in the future. “Blank check” preferred stock can be used defensively, such as for the issuance of a poison pill**
 - “Blank check” preferred stock is a class of preferred shares with voting, dividend, conversion or other rights and privileges as may be determined by the Board without shareholder approval
- **As with the broader market, the authority to issue “blank check” preferred stock was ubiquitous among surveyed companies**
- **At the time of offering, no surveyed companies had adopted an active poison pill**

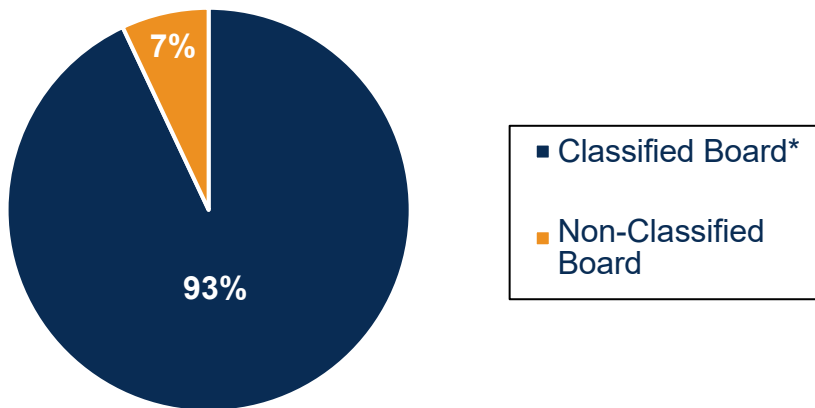
Board of Directors

Election of Board of Directors

Classified Boards

- Nearly all surveyed companies (**93%**) had classified (also known as “staggered”) boards
- In a classified board only a portion of the Board is elected each year (typically one-third per year), which serves as a defensive arrangement that requires an activist or hostile acquirer to win two elections to elect a majority of directors

Classified Board

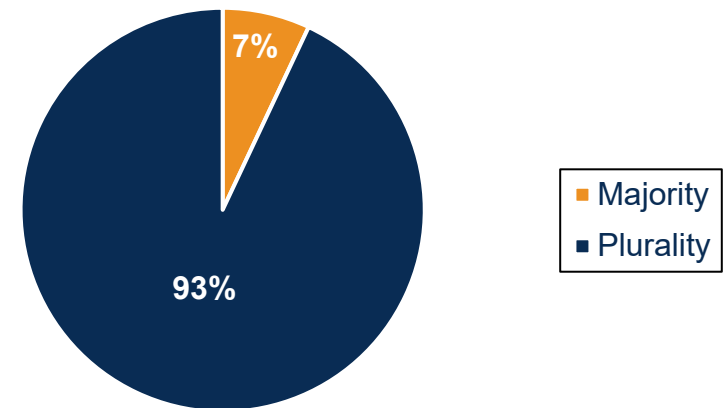


*One surveyed company with a classified board included a sunset provision providing for full declassification by its third annual meeting following the IPO offering date.

Director Election Standard

- Nearly all surveyed companies (**93%**) required a plurality of votes to elect directors (*i.e.*, one vote is sufficient to elect in an uncontested election)
- A small minority of surveyed companies required a majority of all present votes (*i.e.*, including abstentions) to elect directors
 - Of the seven companies with a majority standard, one had a plurality standard for contested elections (*i.e.*, the directors receiving the most votes are elected)
 - In the broader market, there are examples of “plurality plus” electoral standards, which require a director who does not receive a majority of present votes to resign (or to offer to resign)

Director Election Standard



Removal of Board of Directors

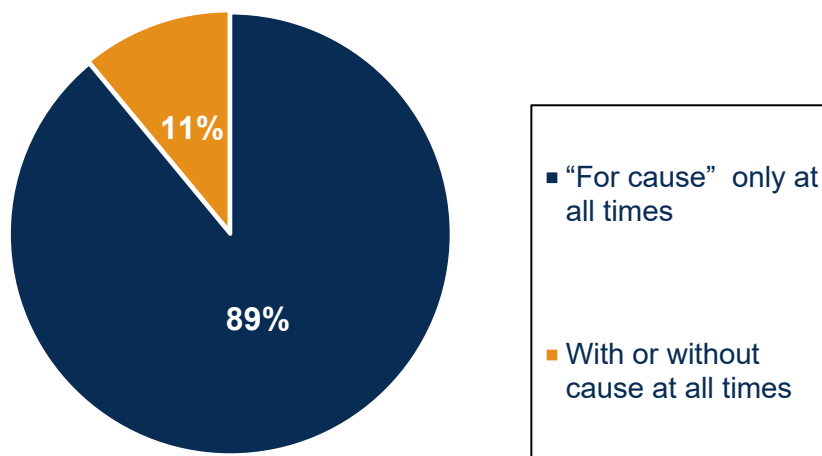
“For Cause” Removal

- Most surveyed companies (89%) use a “for cause” requirement for director removals
- Under Delaware law, only corporations with a classified board can have exclusively “for cause” removals

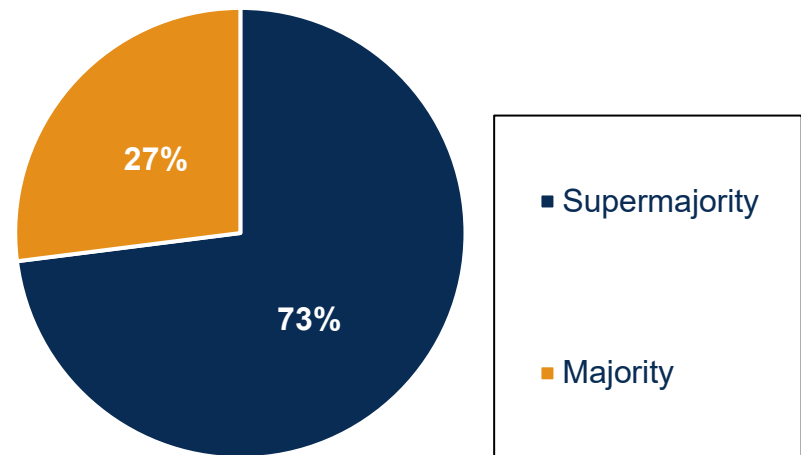
Supermajority Vote

- Most surveyed companies (73%) require a supermajority threshold for director removals
 - The most common threshold was 66 2/3% (86% of companies that required a supermajority)

Standard for Removal

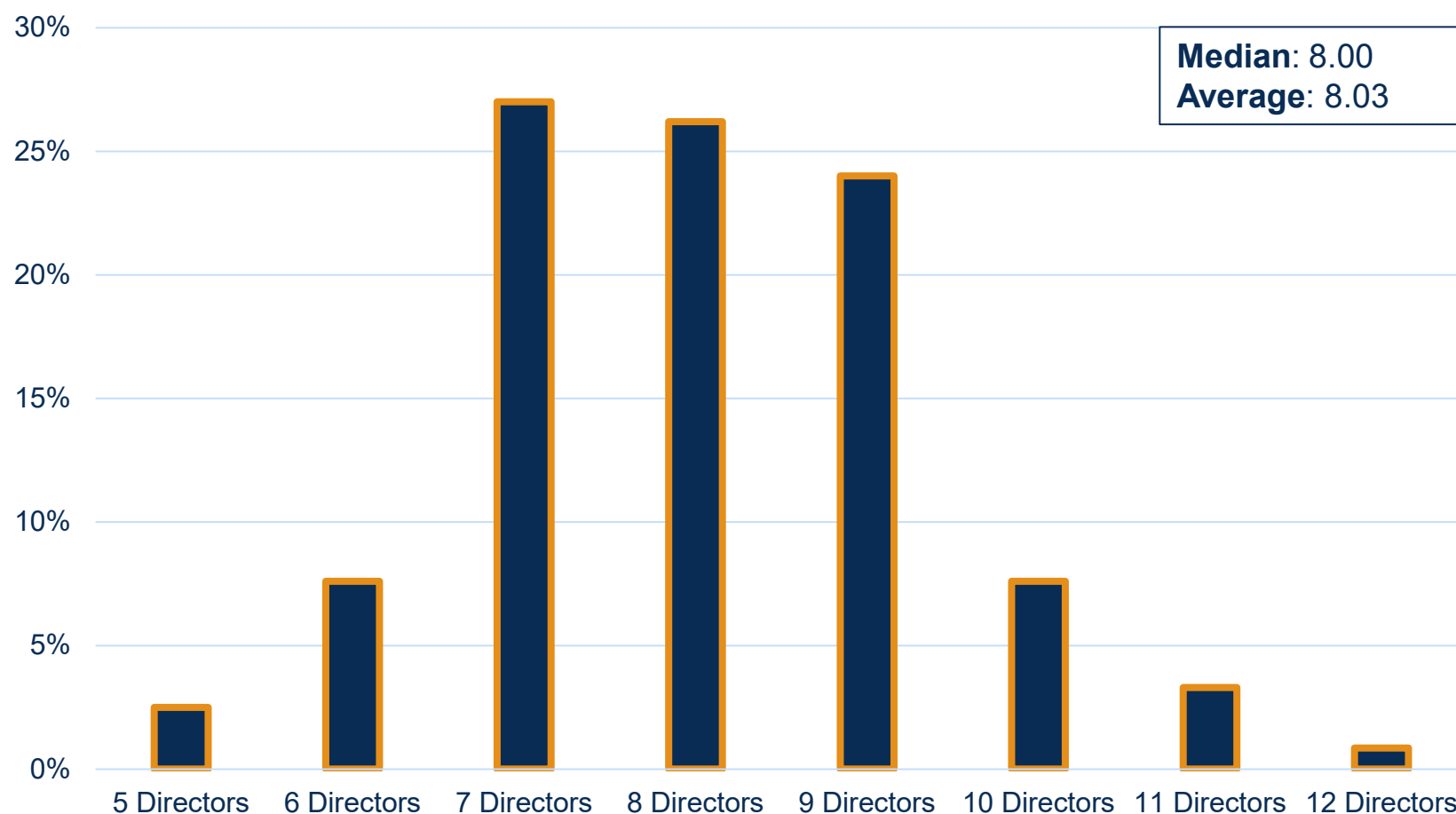


Vote To Remove Directors



Size of Board of Directors

- Surveyed companies varied in the number of directors at the time of the initial public offering, with 7, 8 and 9 directors as the most common formulation

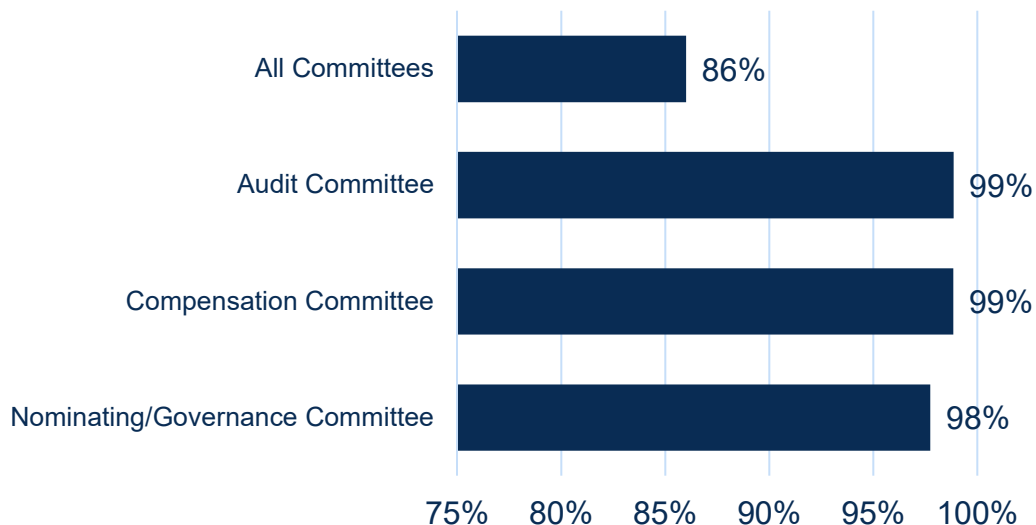


Board and Committee Composition at the IPO

Independent Directors

- Although non-controlled companies can phase in compliance with committee independence requirements under the Exchange Act, Rule 10A-3, NASDAQ and NYSE rules, the majority of companies are fully compliant at the time of the IPO
- 86% of surveyed companies would have been fully compliant with these listing requirements at the time of their IPOs, and most had a significant presence of independent directors

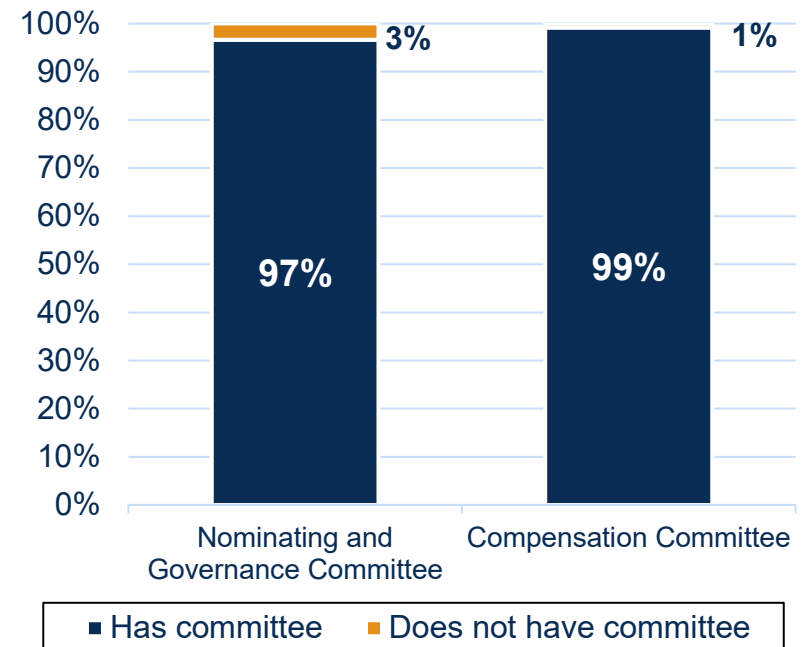
Average Number of Committees Fully Compliant with Independence Requirements



Committee Existence

- Nearly all surveyed companies had both compensation and nominating/governance committees

Committee Existence



Emerging Growth Companies

Financial Statements and Selected Historical Financial Information

- **97% of surveyed companies were “Emerging Growth Companies” (“EGCs”) under the JOBS Act**
- **EGCs may provide two years of audited financial statements (instead of three years)**
- **Most surveyed EGCs availed themselves of these reduced requirements, but a minority included more than the minimum required:**
 - 15% of surveyed EGCs provided more than two years of audited financial statements
 - 14% of surveyed EGCs provided more than two years of selected historical financial information
- **About half of the companies filing in 2021 (49%) took advantage of the 2021 SEC rule change alleviating them of the responsibility to provide Selected Historical Financials**

Compensation Disclosure and Adoption of Accounting Policies

- The JOBS Act excludes EGCs from certain executive compensation disclosure requirements
- All but one of the surveyed EGCs took advantage of these reduced executive compensation disclosure requirements
- The JOBS Act also gives EGCs the ability to delay their adoption of newly applicable public company accounting policies
- Nearly all surveyed companies (90%) opted to avail themselves of this permitted delay

Appendix A: Surveyed Companies

Surveyed Companies

2021 Offering Date

- Cullinan Management, Inc.
- Poshmark, Inc.
- ON24, Inc.
- Sana Biotechnology, Inc.
- Bolt Biotherapeutics, Inc.
- Talis Biomedical Corporation
- Olo Inc.
- Instil Bio, Inc.
- DigitalOcean Holdings, Inc.
- ACV Auctions Inc.
- Design Therapeutics, Inc.
- Coursera, Inc.
- Compass, Inc.
- Recursion Pharmaceuticals, Inc.
- Zymergen Inc.
- FTC Solar, Inc.
- The Honest Company, Inc.
- Procore Technologies, Inc.
- Flywire Corporation
- Singular Genomics Systems, Inc.
- Centessa Pharmaceuticals plc
- Lyell Immunopharma, Inc.
- Verve Therapeutics, Inc.
- ATAI Life Sciences N.V.
- Century Therapeutics, Inc.
- Sprinklr, Inc.
- Bright Health Group, Inc.
- Doximity, Inc.
- Confluent, Inc.
- Monte Rosa Therapeutics, Inc.
- Graphite Bio, Inc.
- Xometry, Inc.
- LegalZoom.com, Inc.
- Clear Secure, Inc.
- Phillips Edison & Company, Inc.
- F45 Training Holdings Inc.
- Sight Sciences, Inc.
- Blend Labs, Inc.
- Erasca, Inc.
- CS Disco, Inc.
- Couchbase, Inc.
- Absci Corporation
- Caribou Biosciences, Inc.
- Cytex Biosciences, Inc.
- Duolingo, Inc.
- Adagio Therapeutics, Inc.
- DICE Therapeutics, Inc.
- ForgeRock, Inc.
- Toast, Inc.
- Remitly Global, Inc.
- Cue Health Inc.
- AvidXchange Holdings, Inc.
- GitLab Inc.
- Rent the Runway, Inc.
- Udemy, Inc.
- LianBio
- Allbirds, Inc.
- Braze, Inc.
- Samsara Inc.

Note: Based on SEC filings and other publicly available information.

Surveyed Companies (cont'd)

2020 Offering Date

- Black Diamond Therapeutics, Inc.
- Schrodinger, Inc.
- Revolution Medicines, Inc.
- Passage Bio, Inc.
- Vroom, Inc.
- Avidity Biosciences, Inc.
- Generation Bio Co.
- Vaxcyte, Inc.
- Forma Therapeutics Holdings, Inc.
- Repare Therapeutics Inc.
- Fusion Pharmaceuticals Inc.
- Akouos, Inc.
- Lemonade, Inc.
- Accolade, Inc.
- Nkarta, Inc.
- Poseida Therapeutics, Inc.
- nCino, Inc.
- Relay Therapeutics, Inc.
- iTeos Therapeutics, Inc.
- Nurix Therapeutics, Inc.
- Annexon, Inc.
- AlloVir, Inc.
- Vital Farms, Inc.
- BigCommerce Holdings, Inc.
- Outset Medical, Inc.
- JFrog Ltd.

- Dyne Therapeutics, Inc.
- Sumo Logic, Inc.
- Athira Pharma, Inc.
- PMV Pharmaceuticals, Inc.
- Asana, Inc.
- Shattuck Labs, Inc.
- Kronos Bio, Inc.
- Root, Inc.
- Atea Pharmaceuticals, Inc.
- Olema Pharmaceuticals, Inc.
- Telos Corporation
- Kinnate Biopharma Inc.
- Silverback Therapeutics, Inc.
- AbCellera Biologics Inc.
- Upstart Holdings, Inc.

2019 Offering Date

- Gossamer Bio, Inc.
- Levi Strauss & Co.
- PagerDuty, Inc.
- Zoom Video Communications, Inc.
- Beyond Meat, Inc.
- CrowdStrike Holdings, Inc.
- Adaptive Biotechnologies Corporation
- BridgeBio Pharma, Inc.
- The RealReal, Inc.
- Medallia, Inc.
- Livongo Health, Inc.
- 10x Genomics, Inc.
- Cloudflare, Inc.
- Datadog, Inc.
- Bill.com Holdings, Inc.

Note: Based on SEC filings and other publicly available information.

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