

Sponsor-Backed Controlled Company IPOs: Governance Survey

APRIL 2022

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Topics

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Survey Overview

- **We have reviewed the key governance structures of Sponsor-backed companies that elected to rely on the controlled company exemption and completed an Initial Public Offering (“IPO”) on or after January 1, 2018 through December 31, 2021—93 companies in total**
 - Our survey excluded foreign private issuers, SPACs and companies with a market capitalization below \$250 million after the initial day of trading
 - Please see Appendix A for a list of surveyed companies

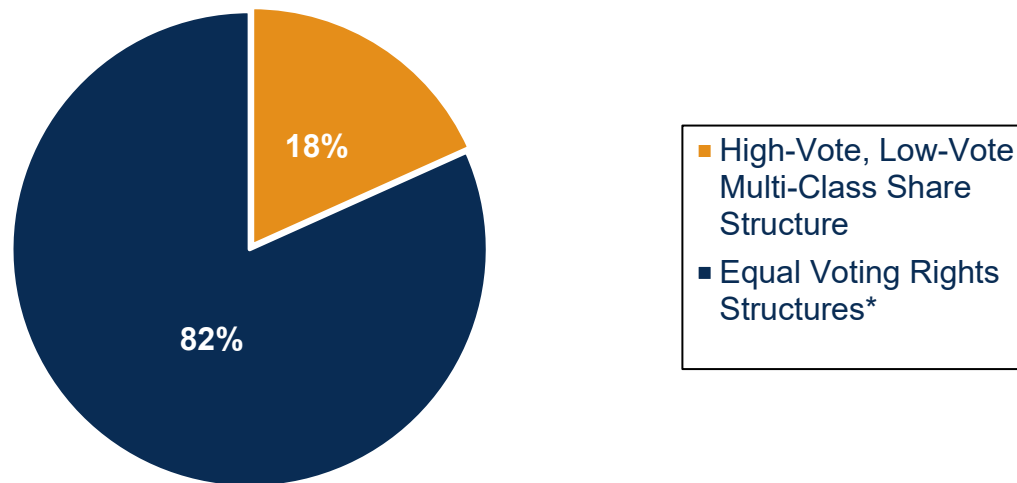
- **Of the 93 companies included in this sample:**
 - 94% were incorporated in Delaware
 - 31% were owned by at least two Sponsors
 - 22% utilized an “Up-C” structure

Governance Structure

Multi-Class Share Structures

- **A minority of surveyed companies (18%) feature high-vote/low-vote multi-class share structures that increase the voting power of insiders in proportion to their equity share**
 - All but two surveyed companies with high-vote/low-vote structures used 10 votes per share for the high vote class or classes, with one company using 5 votes per share and one company using 20 votes per share
- **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

Multi-Class Share Structures

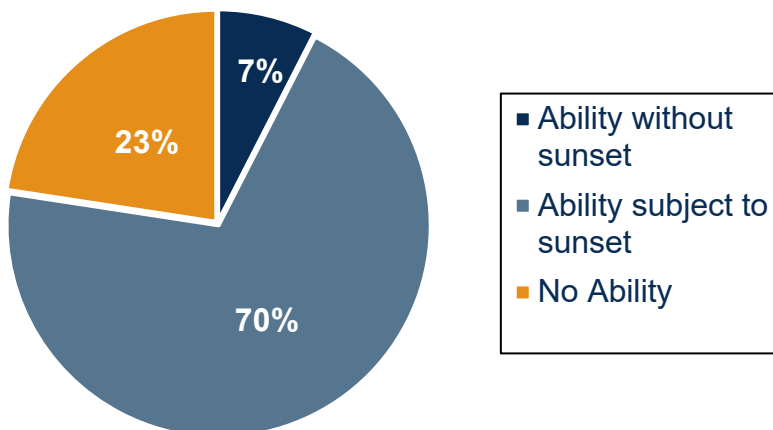


* Includes single class structures, multi-class structures with equal voting rights and multi-class structures with non-public no-vote shares.

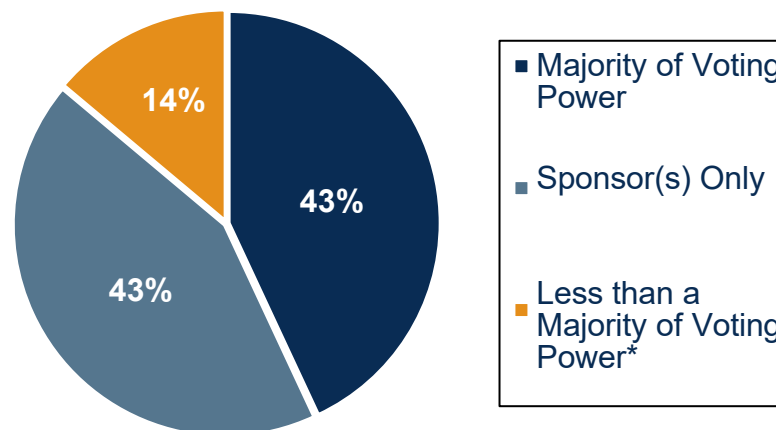
Shareholder-Called Special Meetings

- **Most surveyed companies (77%) permitted shareholders to call special meetings**
- **Commonly, this right is tailored to usage by the Sponsor(s) and functionally unavailable for public shareholders as a result of:**
 - **High Thresholds to Call Special Meetings:** 86% of companies that permitted shareholder-called special meetings permitted only the Sponsor(s) to call the meeting or required a majority of voting power to call
 - **Sunsets to Ability to Call Special Meetings:** 90% of companies that permitted shareholder-called special meetings eliminated the right upon the Sponsor(s) or specified other shareholders owning less than a certain percentage of voting power
 - Median Sunset Threshold: 50% of voting power
 - Average Sunset Threshold: 44% of voting power

Shareholder Ability To Call Special Meetings



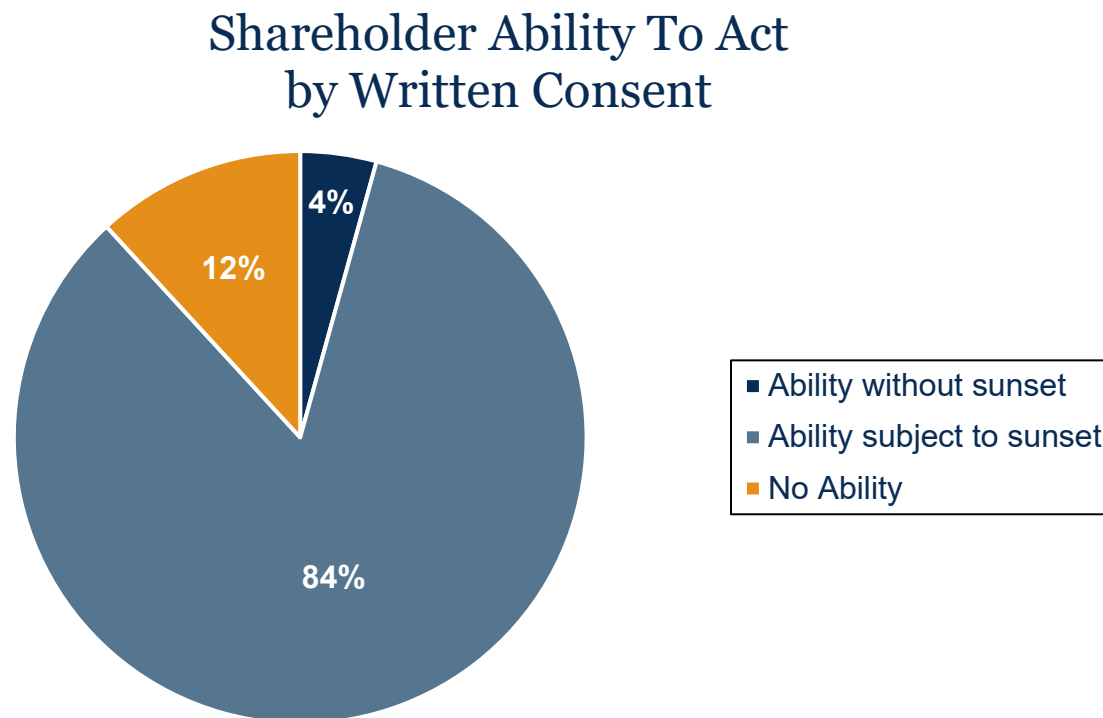
Threshold To Call Special Meetings



* 25% and 50% of voting power were most common.

Shareholder Action by Written Consent

- **Most surveyed companies (88%) permitted shareholders to act by written consent, a departure from standard practice among public companies of prohibiting action without a meeting**
- **Commonly, the ability to act by written consent is tailored to usage by the Sponsor(s) and functionally unavailable for public shareholders as a result of sunset provisions**
- **95% of companies that permitted action by written consent eliminated the right upon the Sponsor(s) or specified other shareholders owning less than a certain percentage of voting power**
 - Median Sunset Threshold: 50% of voting power
 - Average Sunset Threshold: 45% of voting power

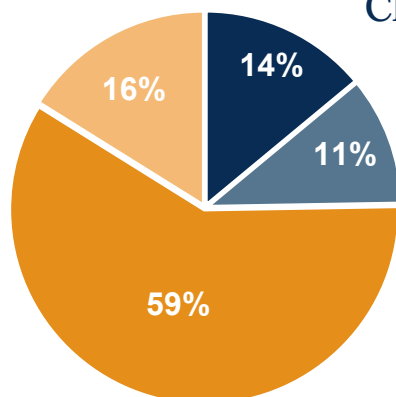


Amendments of Organizational Documents

Amendments of the Charter

- **Most surveyed companies (70%) have a springing supermajority threshold for charter amendments**
 - Supermajority vote of shareholders to amend the charter (typically 66.67%) upon the Sponsor(s) and/or specified other shareholders owning less than a certain percentage of voting power; and a majority vote only prior to this point
 - Median Springing Threshold: 50%
 - Average Springing Threshold: 47%
- **A minority of surveyed companies (25%) always require a supermajority to amend certain provisions of the charter**
- **Most surveyed companies require a supermajority only for key charter provisions¹**

Shareholder Ability To Amend the Charter

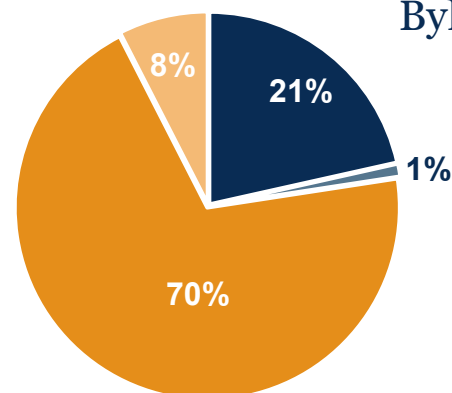


- Supermajority for certain provisions at all times (no springing provisions)
- Supermajority for certain provisions & springing supermajority for others upon trigger event
- No supermajority until springing provisions are triggered
- No supermajority or springing provisions

Amendments of the Bylaws

- **Most surveyed companies (71%) have a springing supermajority threshold for bylaw amendments**
 - Supermajority vote of shareholders to amend the bylaws (typically 66.67%) upon the Sponsor(s) and/or specified other shareholders owning less than a certain percentage of voting power; and a majority vote only prior to this point
 - Median Springing Threshold: 50%
 - Average Springing Threshold: 46%
- **A minority of surveyed companies (22%) always require a supermajority to amend the bylaws**

Shareholder Ability To Amend the Bylaws



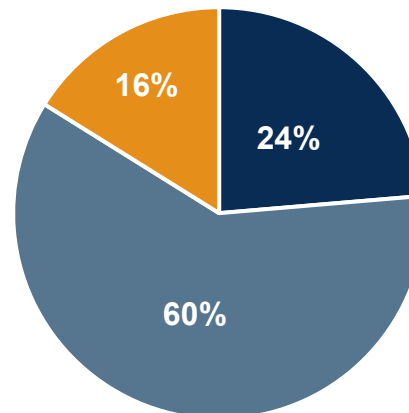
- Supermajority for certain provisions at all times (no springing provisions)
- Supermajority for certain provisions & springing supermajority for others upon trigger event
- No supermajority until springing provisions are triggered
- No supermajority or springing provisions

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, the exclusive forum provision, the corporate opportunities waiver and the DGCL 203 opt-out.

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 by the Sponsor(s) of a 15% or greater block, because the transferee will become an “interested stockholder” unless the company’s board approves
- **Most Delaware-incorporated surveyed companies (90%) opted out of Section 203 of the DGCL**
 - 8% of Delaware-incorporated surveyed companies sunset the opt-out when the Sponsor(s) owned less than a certain percentage of voting power
- **Nonetheless, to retain the defensive value of DGCL 203, most Delaware-incorporated surveyed companies that opted out (72%) included a “synthetic” provision in their charter that mirrors DGCL 203 except for carving out the Sponsor(s) and certain of their transferees from the definition of “interested stockholder”**

- DGCL 203 opt out without “synthetic” DGCL 203
- DGCL 203 opt out with “synthetic” DGCL 203
- DGCL 203 operative at all times



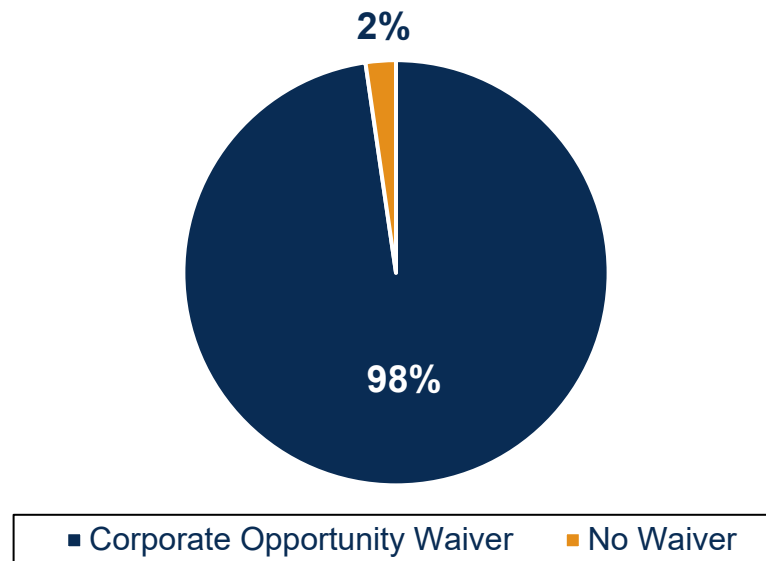
As a share of Delaware-incorporated companies.

The **vast majority** of surveyed Delaware-incorporated companies excluded the Sponsor(s) from being an “interested stockholder”, either through a full opt-out from Section 203 or a carve-out from a “synthetic” 203 provision

Corporate Opportunity Waivers

- Under Delaware law, fiduciary duties generally require that directors and officers present certain business opportunities to the corporation and receive a waiver from the Board before pursuing the opportunity; this corporate opportunities doctrine can inhibit Sponsor(s) with affiliated directors or officers in the corporation from pursuing investments in competing businesses
- Section 122 of the DGCL permits a corporation to waive certain corporate opportunities in its charter
- Nearly all Delaware-incorporated surveyed companies (98%) took advantage of this provision, waiving corporate opportunities for persons affiliated with the Sponsor(s) and their affiliates in their charters

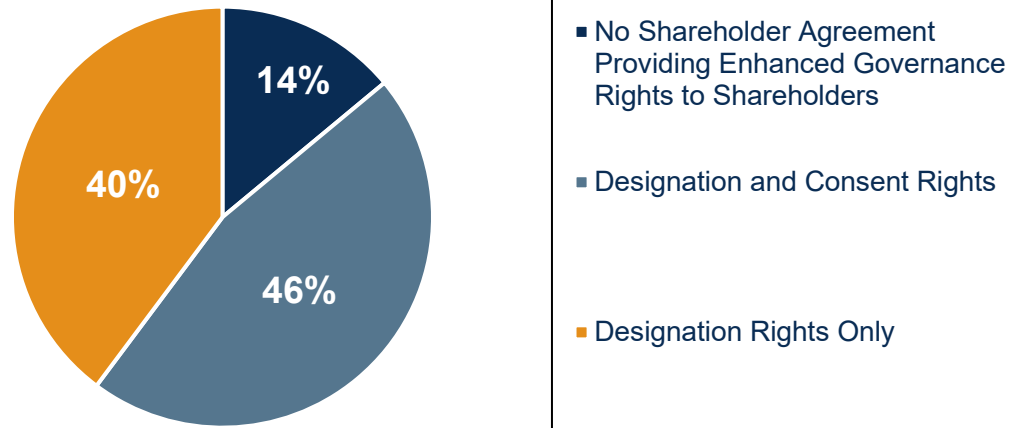
Corporate Opportunity Waivers



As a share of Delaware-incorporated companies.

Shareholder Agreements

- **Most surveyed companies (86%) entered into agreements with the Sponsor(s) and/or specified other shareholders that grant the shareholder parties enhanced governance rights, including:**
 - Designation of directors (100% of companies that had shareholder agreements); and
 - Consent rights for certain corporate transactions (54% of companies that had shareholder agreements)
- **Director Designation Rights: Most surveyed companies (86%) granted the shareholder parties the right to designate a certain number of directors for nomination by the Board of Directors**
 - These rights guarantee the shareholder parties board-level influence even after their voting power falls below a majority
 - The number of designated directors typically steps down on certain ownership thresholds
- **Transaction Consent Rights: Nearly half of surveyed companies (46%) granted the shareholder parties consent rights over certain corporate transactions**
 - Frequent transactions requiring consent include increases to the Board of Directors, amendments to organizational documents, certain acquisitions, certain equity issuances and certain incurrence of indebtedness

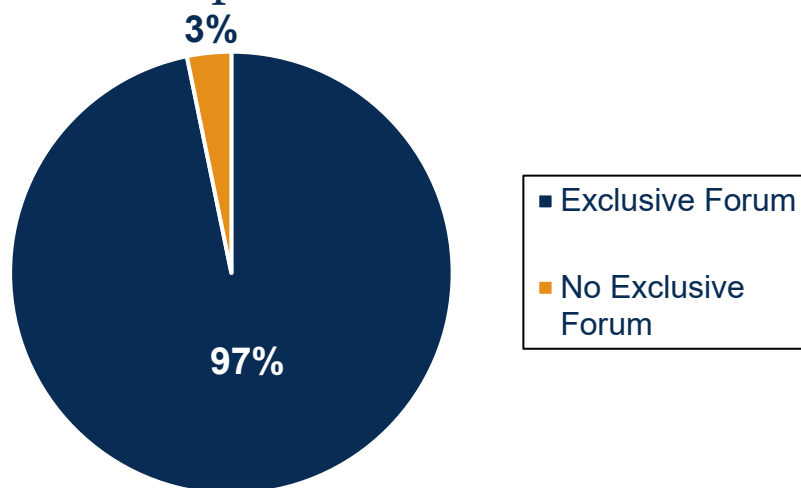


Exclusive Forum Provisions

Corporate Law Claims

- **Nearly all surveyed companies (97%) 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
 - 98% of surveyed companies incorporated in Delaware chose the Court of Chancery of the State of Delaware as their exclusive forum

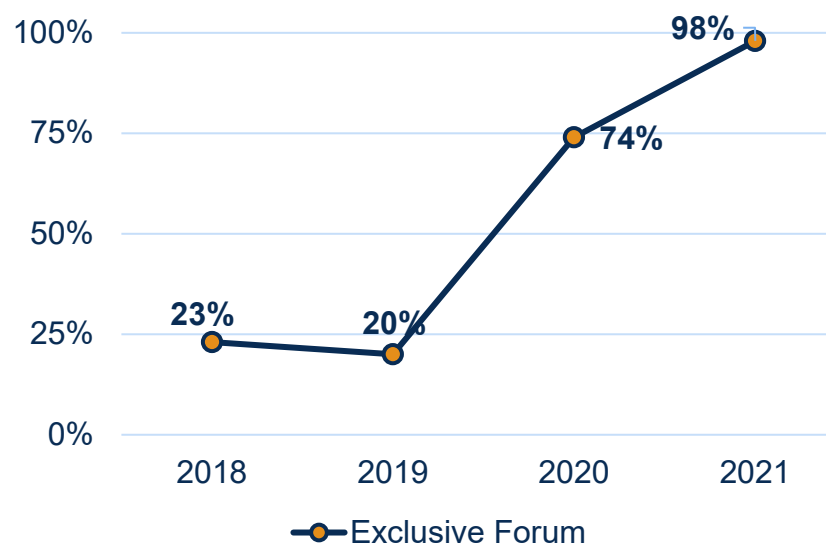
Exclusive Forum for Corporate Law Claims



Securities Act Claims

- **Exclusive forum provisions selecting federal courts for Securities Act claims skyrocketed among Delaware-incorporated surveyed companies in 2020 (to 74%) and 2021 (to 98%) with the Delaware Supreme Court upholding these provisions in charters in March 2020**

Exclusive Forum for Securities Act Claims



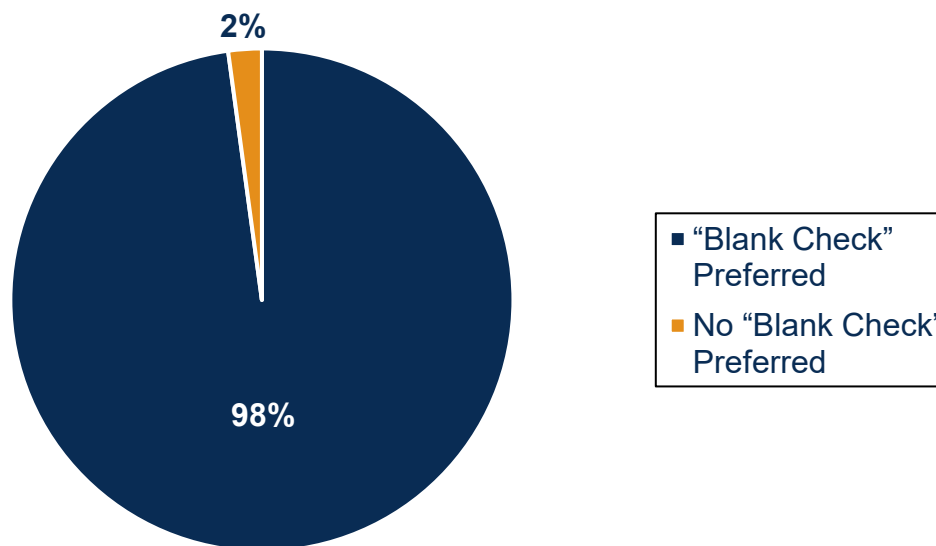
As a share of Delaware-incorporated companies.

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 (99% for both nominations and proposals) included timeliness requirements for both director nominations and other business proposals**
 - The sole company that did not include timeliness requirements was incorporated outside of the United States
- **Nearly all surveyed companies (97% 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**
- **Some surveyed companies carved out the Sponsor(s) from the advance notice provisions (47% for nominations, 42% for proposals)**

“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
- **Like the broader market, the authority to issue “blank check” preferred stock was ubiquitous among surveyed companies**
 - The two surveyed companies that did not provide for “blank check” preferred stock were incorporated outside of the United States
- **At the time of offering, no surveyed companies had adopted an active poison pill**

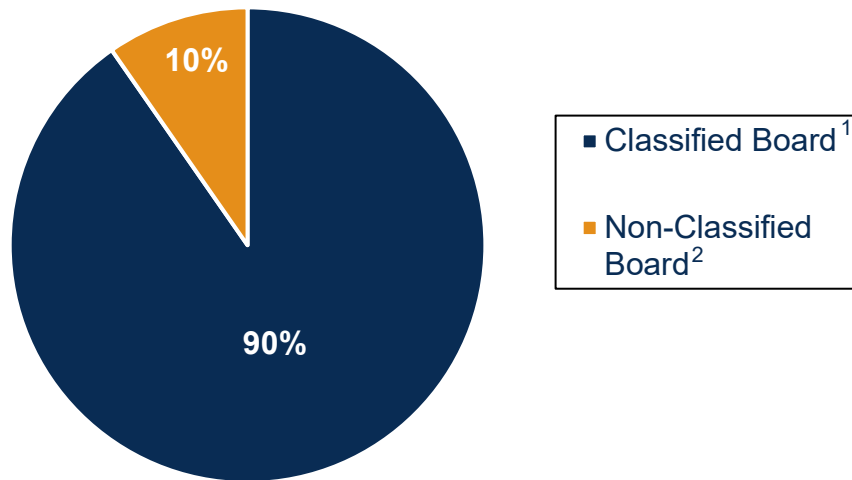


Board of Directors

Election of Board of Directors

Classified Boards

- Most surveyed companies (**90%**) had classified (also known as a “staggered”) boards at the time of the IPO
- 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

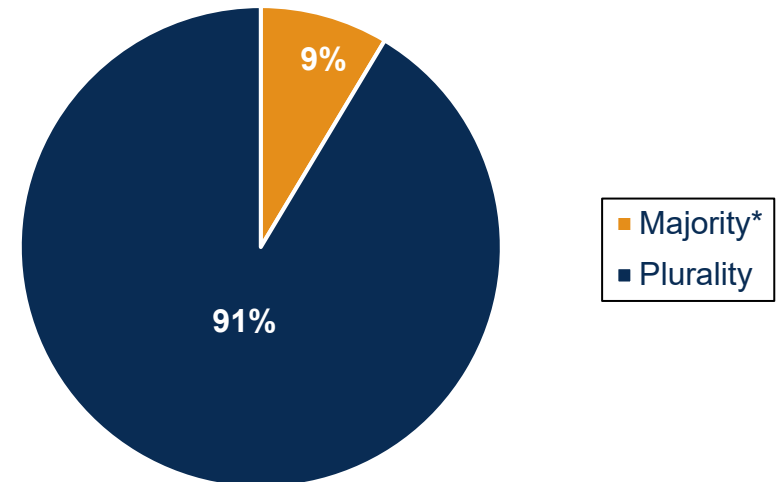


¹ Includes one surveyed company with a classified board at the time of the IPO that included a sunset provision in its charter providing for full declassification by its third annual meeting following the IPO offering date.

² Includes two surveyed companies with springing classified boards that became effective after the Sponsor(s) and/or specified other shareholders owned less than a certain percentage of voting power.

Director Election Standard

- Nearly all surveyed companies (**91%**) required a plurality of votes to elect directors (*i.e.*, one vote is sufficient to elect in an uncontested election)
- A minority of surveyed companies required a majority of all present votes (*i.e.*, including abstentions) to elect directors
 - Some companies with a majority standard require only a plurality in 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)



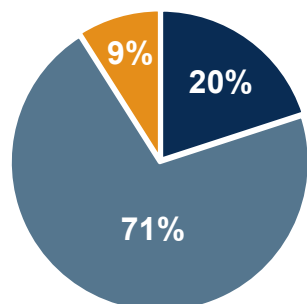
*Of the eight companies with a majority standard, four had a plurality standard for contested elections.

Removal of Board of Directors

“For Cause” Removal

- **Most surveyed companies (71%) use a springing “for cause” requirement for director removals**
 - Removal of directors only “for cause” upon the Sponsor(s) and/or specified other shareholders owning less than a certain percentage of voting power; removals prior this point may be with or without cause
 - Median Springing Threshold: 50%
 - Average Springing Threshold: 45%
- **A minority of surveyed companies (20%) always require that directors be removed only “for cause”**
- **Under Delaware law, only corporations with a classified board can have exclusively “for cause” removals**
 - All Delaware-incorporated surveyed companies with a classified board have a “for cause” requirement, although most (79%) do so via the springing provision

Standard for Removal

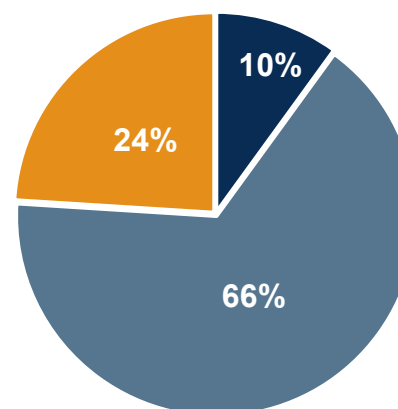


- “For cause” only at all times
- With or without cause, springing “for cause” removal
- With or without cause at all times

Supermajority Vote

- **Most surveyed companies (66%) use a springing supermajority threshold for removals**
 - Supermajority vote of shareholders to remove directors upon the Sponsor(s) and/or specified other shareholders owning less than a certain percentage of voting power; a majority vote is sufficient prior to this point
 - Median Springing Threshold: 50%
 - Average Springing Threshold: 44%
- **A minority of surveyed companies (10%) always require a supermajority vote to remove directors**

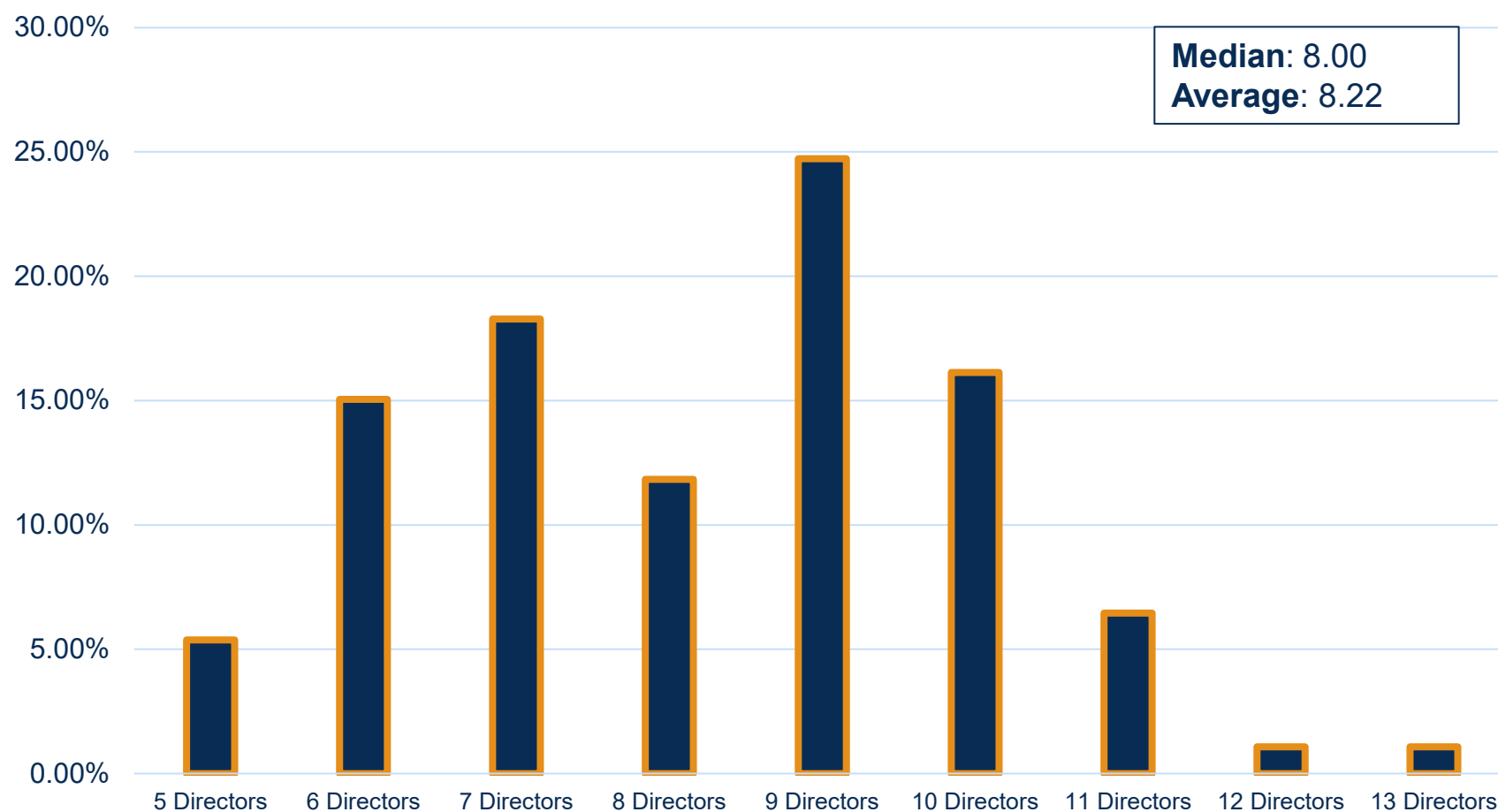
Vote To Remove Directors



- Supermajority at all times
- Majority, springing supermajority
- Majority at all times

Size of Board of Directors

- Surveved companies varied in the number of directors after the initial public offering, with 7 directors and 9 directors most common

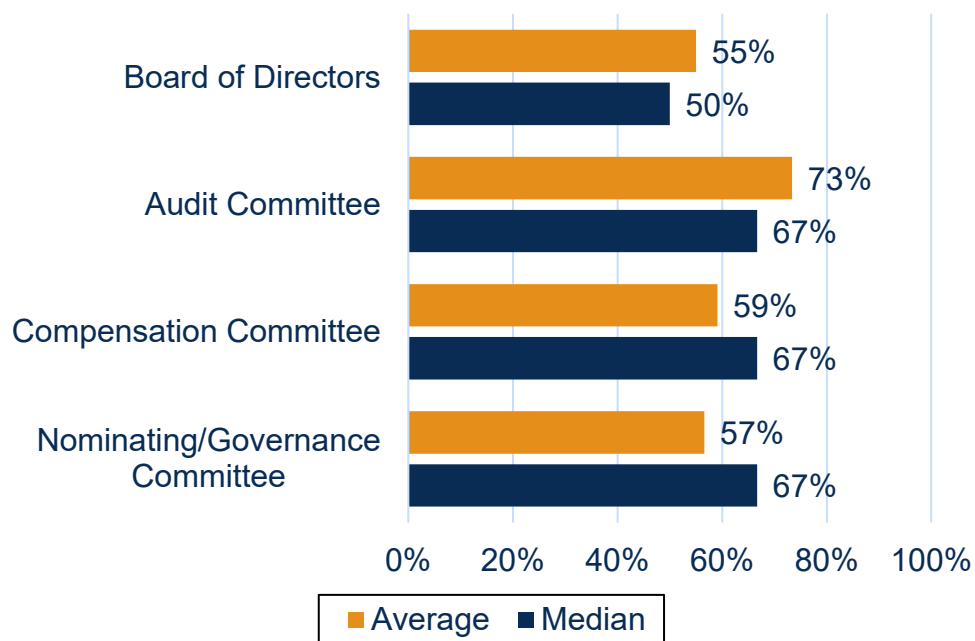


Board and Committee Composition at the IPO

Independent Directors

- The “controlled company” exemption relieves such companies from listing requirements to have a majority of independent directors on the Board of Directors and fully independent compensation and nominating/governance committees
- While only 9% of surveyed companies would have been fully compliant with these listing requirements at the time of their IPOs, many had a significant presence of independent directors

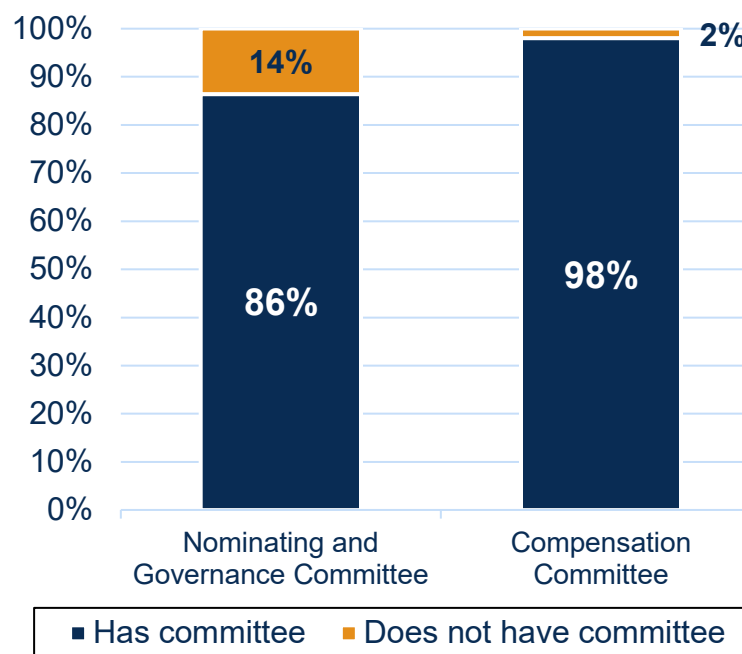
Percentage of Independent Directors



Committee Existence

- The “controlled company” exemption relieves such companies from listing requirements to have compensation or nominating/governance committees
- However, nearly all surveyed companies had both compensation and nominating/governance committees

Committee Existence



Emerging Growth Companies

Financial Statements and Selected Historical Financial Information

- **71% 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 large minority included more than the minimum required:**
 - 17% of surveyed EGCs provided more than two years of audited financial statements
 - 26% of surveyed EGCs provided more than two years of selected historical financial information
- **A significant minority of surveyed companies filing in 2021 (35%) 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
- The vast majority of surveyed EGCs (86%) opted to avail themselves of this permitted delay

Appendix A: Surveyed Companies

Surveyed Companies

2021 Offering Date

- Petco Health and Wellness Company, Inc.
- Driven Brands Holdings Inc.
- Shoals Technologies Group, Inc.
- Ortho Clinical Diagnostics Holdings plc
- Home Point Capital Inc.
- Signify Health, Inc.
- Apria, Inc.
- Bumble Inc.
- loanDepot, Inc.
- InnovAge Holding Corp.
- Hayward Holdings, Inc.
- JOANN Inc.
- Sun Country Airlines Holdings, Inc.
- The Duckhorn Portfolio, Inc.
- Vine Energy Inc.
- Diversey Holdings, Ltd.
- Frontier Group Holdings, Inc.
- agilon health, inc.
- SkyWater Technology, Inc.
- DoubleVerify Holdings, Inc.
- Latham Group, Inc.
- Agiliti, Inc.
- Aveanna Healthcare Holdings Inc.
- Endeavor Group Holdings, Inc.
- Paymentus Holdings, Inc.
- LifeStance Health Group, Inc.
- TaskUs, Inc.
- Convey Holding Parent, Inc.
- First Advantage Corporation
- Mister Car Wash, Inc.

- Integral Ad Science Holding Corp.
- Torrid Holdings Inc.
- EverCommerce Inc.
- Paycor HCM, Inc.
- Instructure Holdings, Inc.
- Core & Main, Inc.
- MeridianLink, Inc.
- PowerSchool Holdings, Inc.
- Traeger, Inc.
- European Wax Center, Inc.
- Weber Inc.
- Thoughtworks Holding, Inc.
- Dutch Bros Inc.
- a.k.a. Brands Holding Corp.
- Brilliant Earth Group, Inc.
- EngageSmart, Inc.
- Sterling Check Corp.
- Clearwater Analytics Holdings, Inc.
- Olaplex Holdings, Inc.
- Life Time Group Holdings, Inc.
- Informatica Inc.
- Arhaus, Inc.

2020 Offering Date

- Duck Creek Technologies, Inc.
- Oak Street Health, Inc.
- Rackspace Technology, Inc.
- Jamf Holding Corp.
- GoHealth, Inc.
- Dun & Bradstreet Holdings, Inc.
- Albertsons Companies, Inc.

- The AZEK Company Inc.
- Shift4 Payments, Inc.
- ZoomInfo Technologies Inc.
- Corsair Gaming, Inc.
- GoodRx Holdings, Inc.
- Academy Sports and Outdoors, Inc.
- Array Technologies, Inc.
- McAfee Corp.
- Datto Holding Corp.
- Guild Holdings Company
- Leslie's, Inc.
- Maravai LifeSciences Holdings, Inc.

2019 Offering Date

- Ping Identity Holding Corp.
- Dynatrace, Inc.
- Grocery Outlet Holding Corp.
- Chewy, Inc.
- Palomar Holdings, Inc.

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

Surveyed Companies (cont'd)

2018 Offering Date

- YETI Holdings, Inc.
- Solar Winds Corporation
- Osmotica Pharmaceuticals plc
- Cushman & Wakefield plc
- Tilray, Inc.
- BJ's Wholesale Club Holdings, Inc.
- Brightview Holdings, Inc.
- The Lovesac Company
- Construction Partners, Inc.
- Ceridian HCM Holding Inc.
- GrafTech International Ltd.
- Quintana Energy Services Inc.
- Victory Capital Holdings, Inc.
- PlayAGS, Inc.
- Gates Industrial Corporation plc
- ADT Inc.
- Liberty Oilfield Services, Inc.

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

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