

By the Numbers:

Venture-backed IPOs in 2016



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introduction

As the nation's leading business law firm for entrepreneurs, emerging growth companies and venture capitalists (VCs), we are frequently asked, "what's market in an IPO?" As we have in the past, we analyzed the 34 venture-backed companies incorporated in the United States that were involved in IPOs on U.S. stock exchanges during 2016, reviewing their IPO prospectuses and corporate governance documents. This report outlines what we learned, "by the numbers," in the following key areas: JOBS Act accommodations, directors and independence, board committees, board policies, executive and director compensation, key metrics and non-GAAP financial measures, and defensive measures.

introduction (continued)

Only 42 venture-backed companies¹ went public in the United States in 2016, including eight incorporated outside the United States, making it the most challenging year by number of venture-backed IPOs and by aggregate offering amount raised since the recessionary times of 2009. In contrast, the Snap Inc. IPO in March 2017 raised \$3.4 billion—nearly \$70 million more than all venture-backed IPOs in 2016 combined. The average offering amount per IPO in 2016 was only \$77.3 million—the lowest average since 2003.

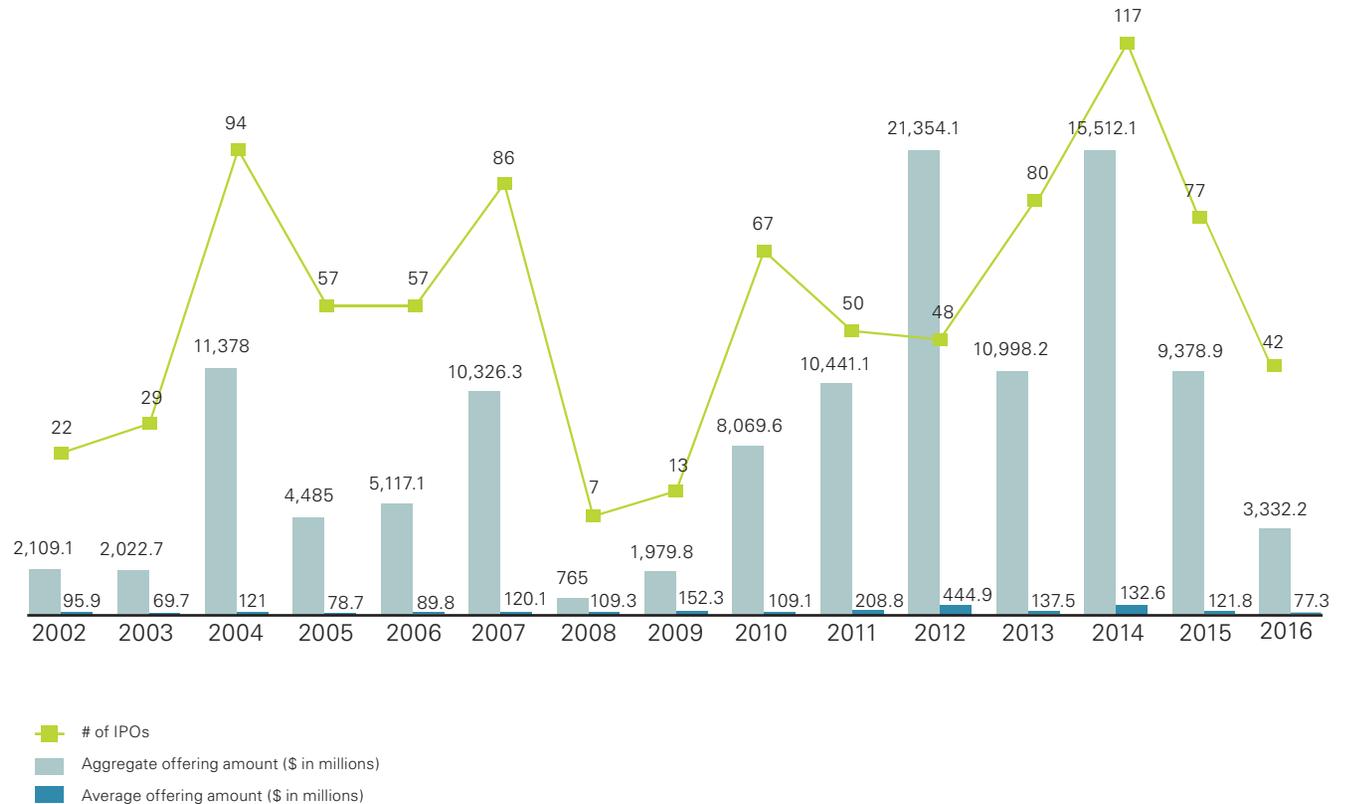
Life science companies represented over a majority of 2016 venture-backed IPOs, many of which relied in some part on insider participation, consistent with 2015.

This survey focuses on the 34 venture-backed companies incorporated in the United States that completed their IPOs in 2016.

We have included key information about the IPOs in the body of the report. Additional information is included in the endnotes starting on page 17.

Venture-backed IPOs (2002 to 2016)

Sources: Thomson Reuters & National Venture Capital Association (2002 to 2015); PitchBook & National Venture Capital Association (2016)



about the companies and the IPOs

Completed IPOs in 2016

34

Venture-backed companies incorporated in the United States

13

Technology companies

21

Life science companies

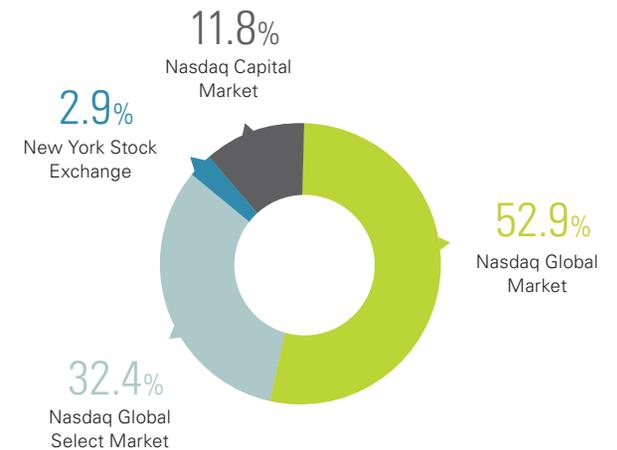
Deal size, measured by gross proceeds



State of incorporation

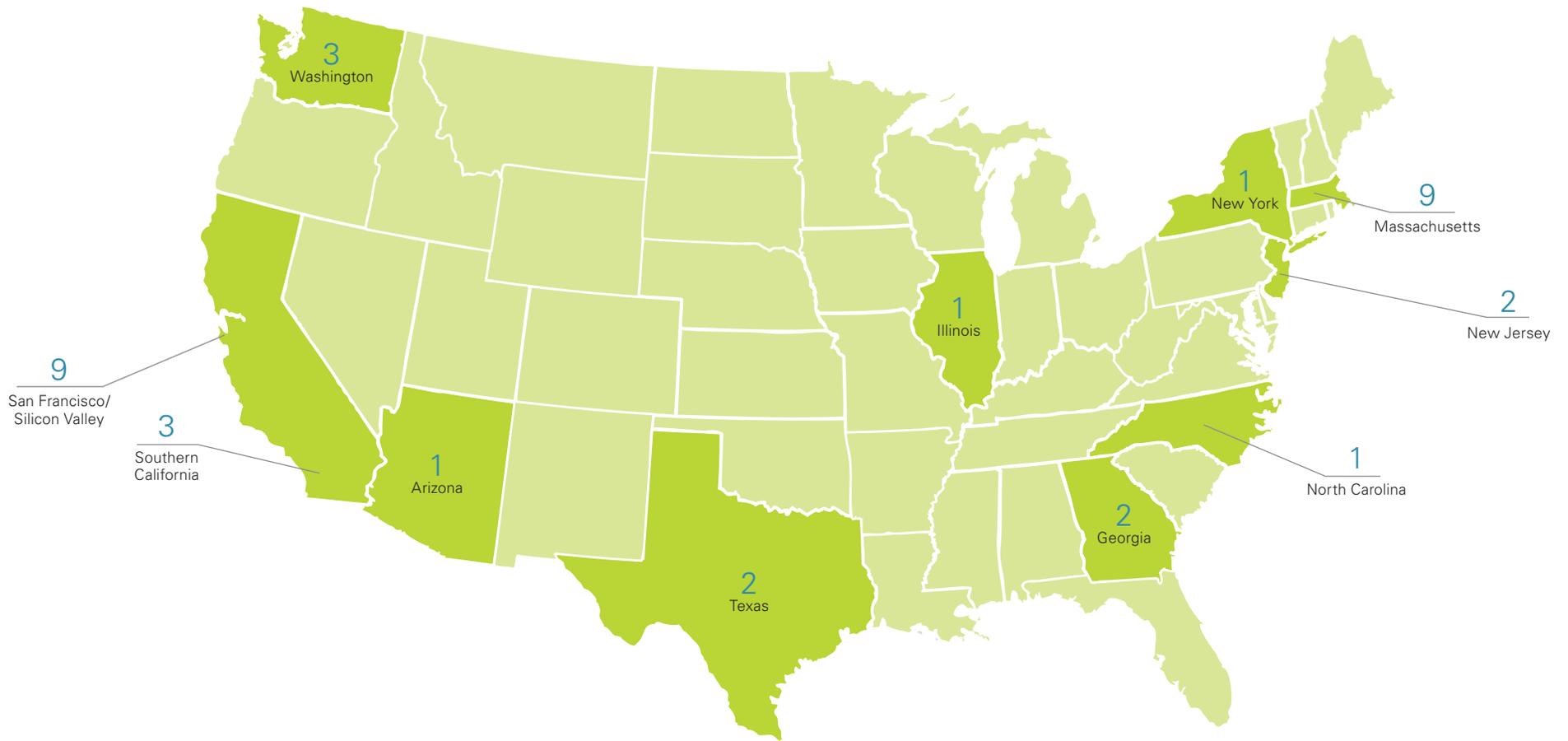


Listing exchange²



about the companies and the IPOs (continued)

Headquarters



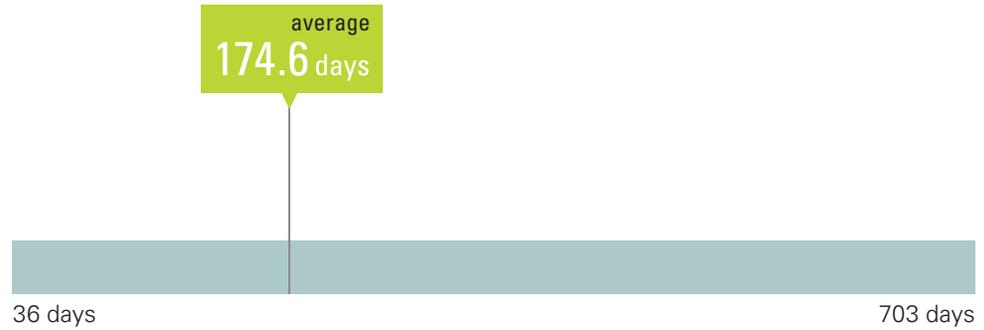
JOBs Act accommodations⁶

Confidential submission

100.0%

Initially submitted registration statement confidentially

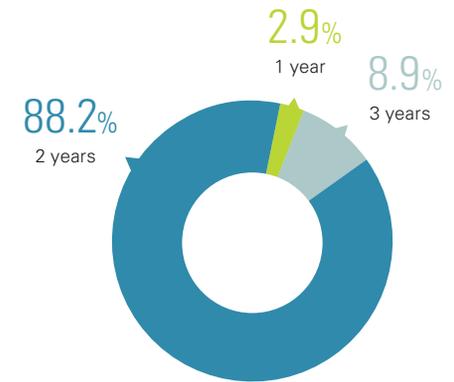
Time in confidential registration



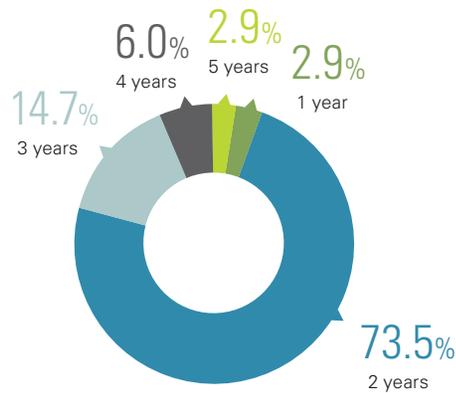
Time between first public filing and roadshow



Years of audited financials provided



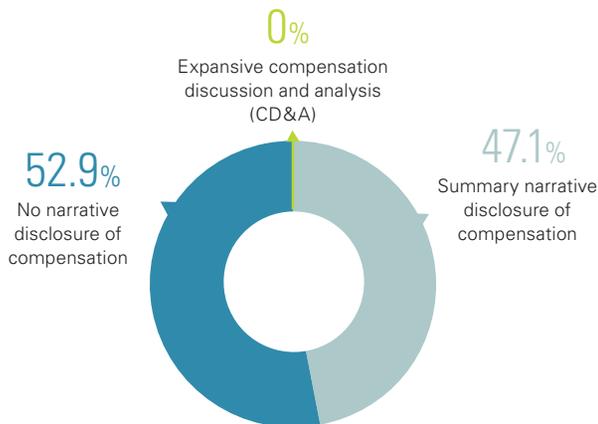
Years of selected financials provided



Company elected to be subject to new public company GAAP



Executive compensation information



Company disclosed material weakness in internal controls⁷

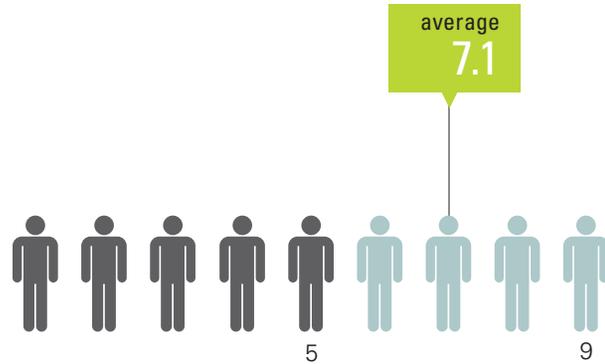


key findings

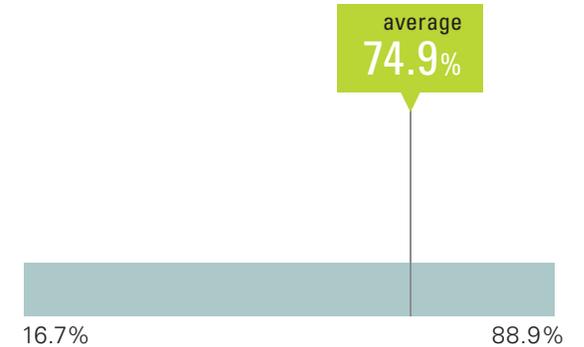
- All venture-backed companies took advantage of the JOBS Act accommodation to submit a registration statement confidentially, spending on average nearly 6 months in confidential registration and filing registration statements publicly an average of over two months before their roadshow.
- Over 88% of venture-backed companies took advantage of the JOBS Act accommodation to provide two years of audited financial statements. This is an increase of over 8% from 2015.
- A significant majority of venture-backed companies provide limited executive compensation information.
- Despite the JOBS Act accommodation, nearly all venture-backed companies choose to be subject to new public company generally accepted accounting principles (GAAP).
- Almost one-third of venture-backed companies disclose material weakness in their internal controls in their risk factor or MD&A section of their IPO prospectus, or both.

directors and independence

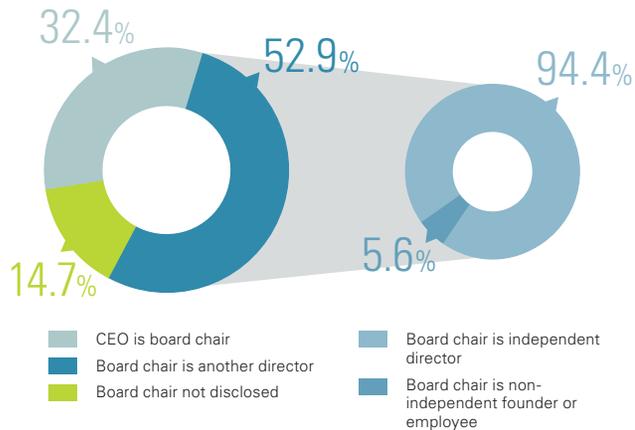
Board size



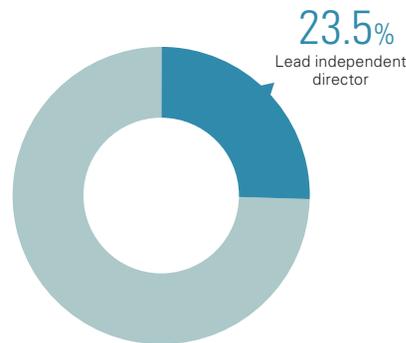
Directors who are independent⁸



Board chairs and lead directors⁹



Lead independent director¹⁰

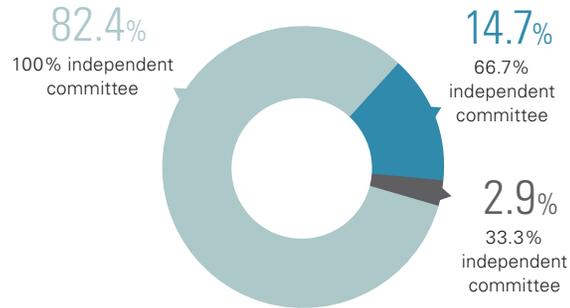


key findings

- A significant majority of venture-backed companies have substantially independent boards and board committees at the time of IPO.
- VCs frequently serve on board committees as independent directors, often despite stock ownership in excess of 10%.
- These findings are consistent with 2013 and 2015.

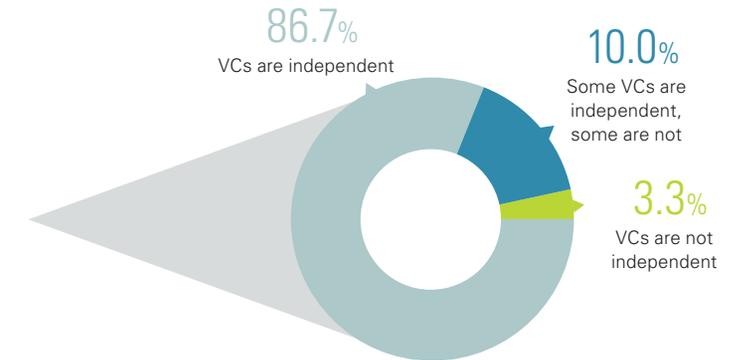
board committees—audit¹¹

Audit committee independence

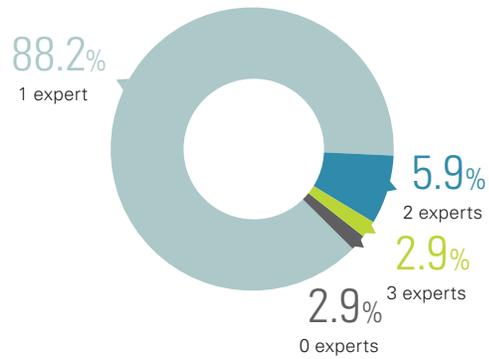


Companies with VCs on audit committee¹³

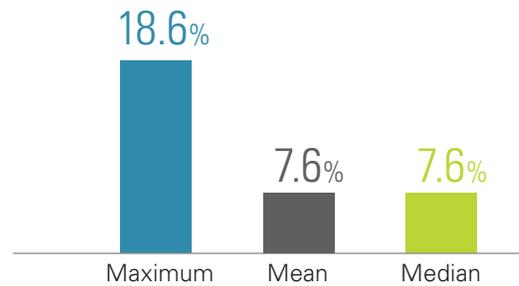
88.2%
30 companies



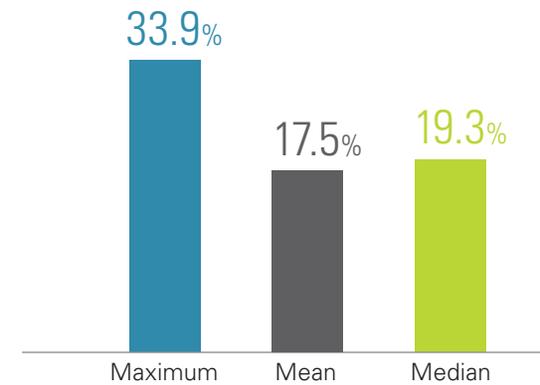
Number of audit committee financial experts¹²



Independent VCs: shareholdings post-IPO

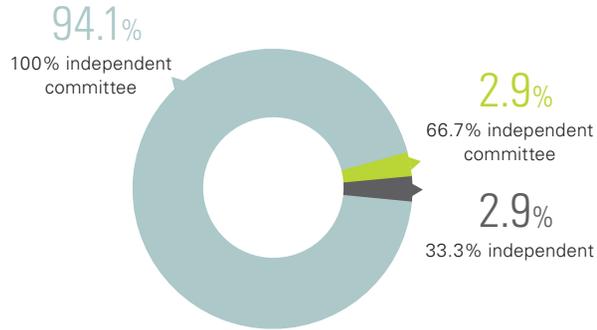


Non-independent VCs: shareholdings post-IPO



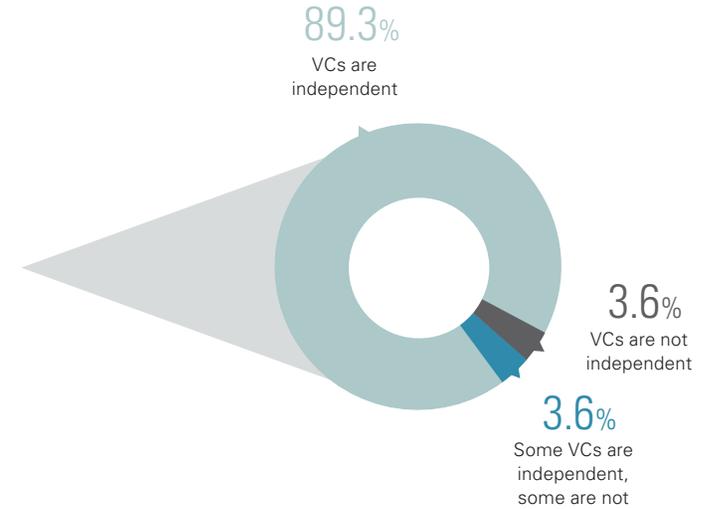
board committees—compensation

Compensation committee independence

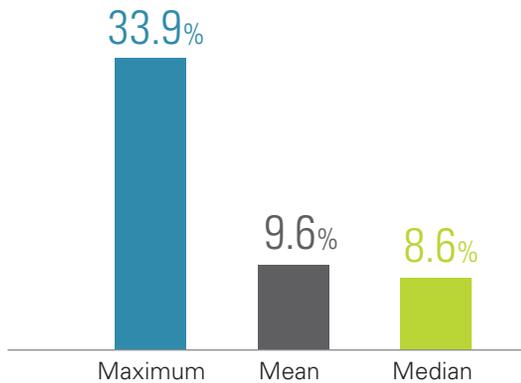


Companies with VCs on compensation committee

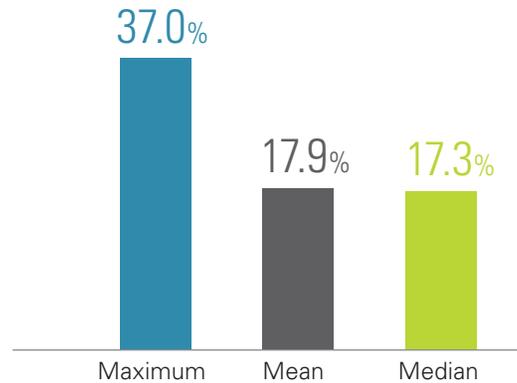
82.4%
28 companies



Independent VCs: shareholdings post-IPO



Non-independent VCs: shareholdings post-IPO

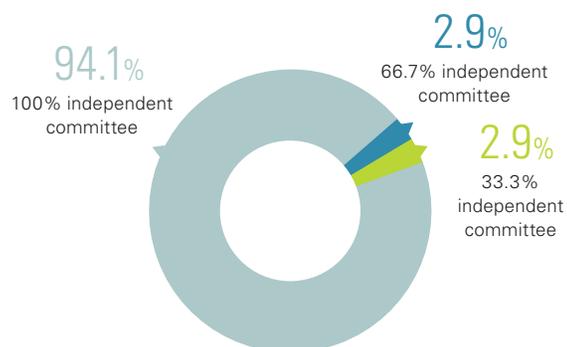


key findings

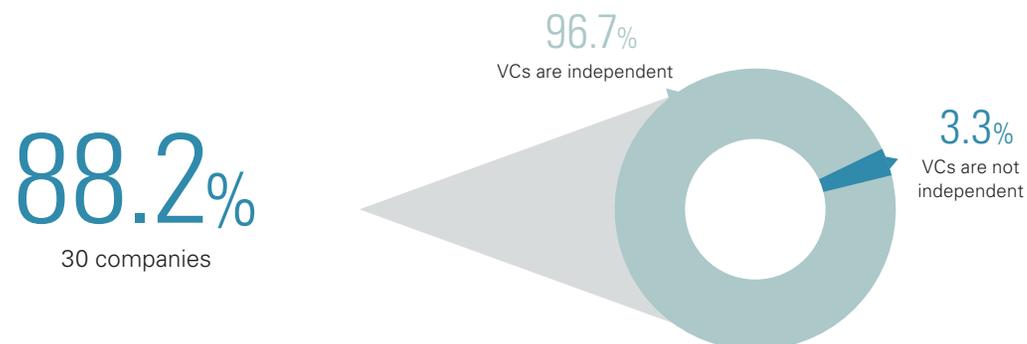
- A significant majority of venture-backed companies have substantially independent boards and board committees at the time of IPO.
- VCs frequently serve on board committees as independent directors, often despite stock ownership in excess of 10%.
- These findings are consistent with 2013 and 2015.

board committees—governance/nominating¹⁴

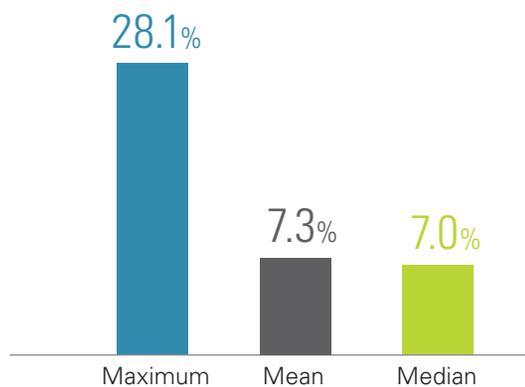
Governance/nominating committee independence



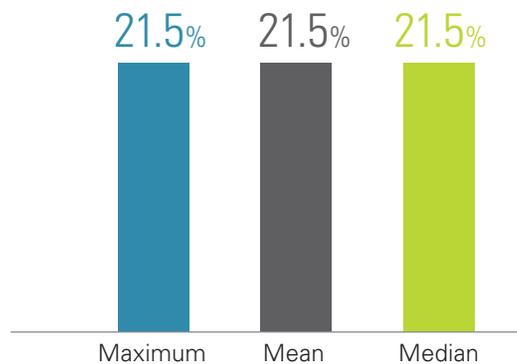
Companies with VCs on governance/nominating committee



Independent VCs: shareholdings post-IPO



Non-independent VCs: shareholdings post-IPO



key findings

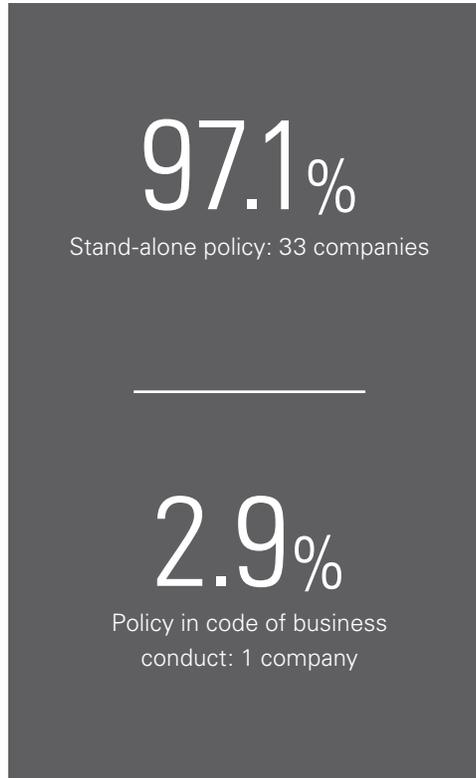
- Other Committees: No companies disclosed the existence of another committee.

board policies¹⁵

Corporate governance guidelines



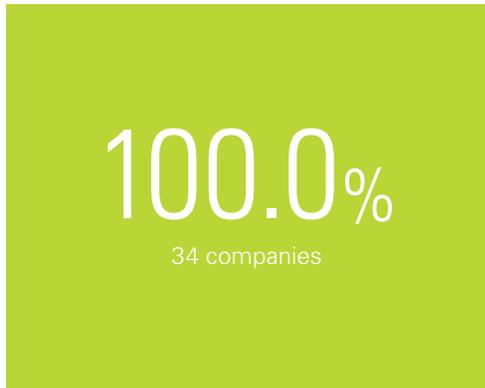
Related-party transaction policy



Board oversight of risk



Code of business conduct



key findings

- A significant majority of venture-backed companies disclose the adoption of key board policies, prior to the time of IPO, including corporate governance guidelines, codes of business conduct and related party transaction policies. This finding is consistent with 2013 and 2015.
- In a growing trend, nearly half of venture-backed companies voluntarily disclose board or committee oversight—or both—of management’s enterprise risk management function.

executive and director compensation¹⁶

New equity compensation plan

94.1%

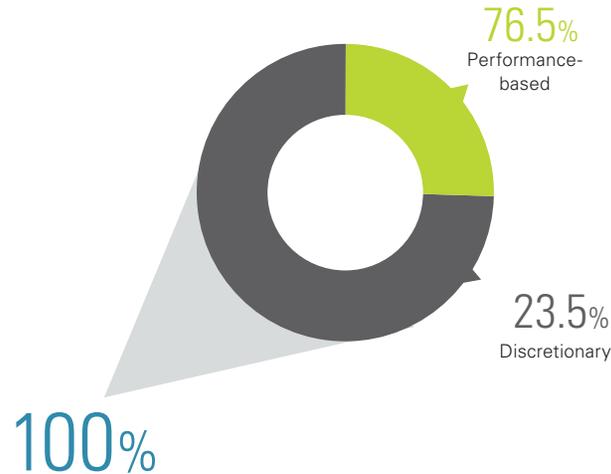
New equity compensation plan adopted in connection with IPO



90.6%

Plans that included an evergreen provision

Executive bonus plan



Non-employee director compensation plan

91.2%

Nearly always both cash- and equity-based

New ESPP

76.5%

ESPP adopted in connection with IPO



96.2%

ESPPs that included an evergreen provision

Executive severance plan

94.1%

Executive severance plans

91.2%

Executive change-in-control severance plans

key findings

- Nearly all venture-backed companies adopt a new equity compensation plan at the time of IPO, and nearly all of such plans include an “evergreen” provision.
- Three quarters of venture-backed companies adopt an employee stock purchase plan (ESPP) at the time of IPO, most of which include an “evergreen” provision.
- These findings are consistent with 2013 and 2015.
- Adopting an executive bonus plan, executive severance and change-in-control severance plans and a non-employee director compensation plan are nearly universal prior to an IPO.

key metrics & non-GAAP financial measures¹⁷

Key metrics

14.7%

5 companies

For example, key operational metrics disclosed by Coupa included total customers and cumulative spend under management, while Twilio included number of active customer accounts.

In a growing trend, several companies also gave a revenue retention rate metric.

key findings

- Consistent with 2015, the use of key metrics and non-GAAP financial measures was down slightly from previous years, driven in part by the number of life sciences IPOs that tend to have a lesser emphasis on historical financial performance.

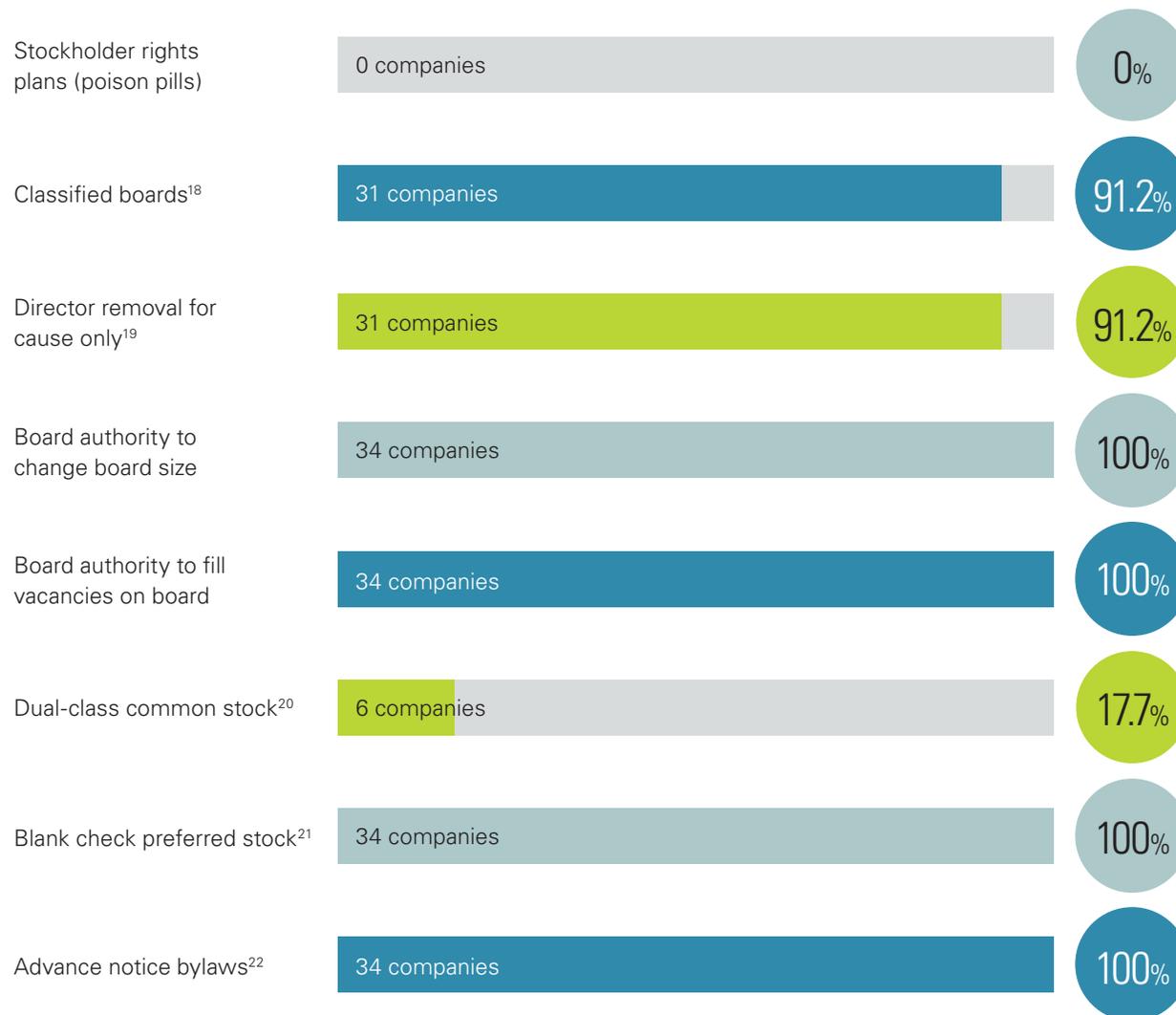
Non-GAAP financial measures

12 companies

35.3%

Adjusted EBITDA	8 companies	66.7%
Non-GAAP gross margin	4 companies	33.3%
Free cash flow	3 companies	25.0%
Non-GAAP operating income (loss)	3 companies	25.0%
Non-GAAP net income (loss)	2 companies	16.7%
Billings	1 company	8.3%

defensive measures



key findings

- No venture-backed company adopted a stockholder rights plan, or “poison pill,” in connection with its IPO.
- Dual-class common stock structures are still relatively uncommon.
- Other defensive measures were liberally adopted.
- 91.2% of venture-backed companies adopted an exclusive forum provision in their governing documents.
- These findings are consistent with 2013 and 2015.

0%

Companies that committed to seek stockholder approval for their defensive measures within 3 years of IPO.²³

defensive measures (continued)

Prohibition on stockholder ability to act by written consent²⁴

91.2%
31 companies

Prohibition on stockholder ability to call special meeting

100%
34 companies

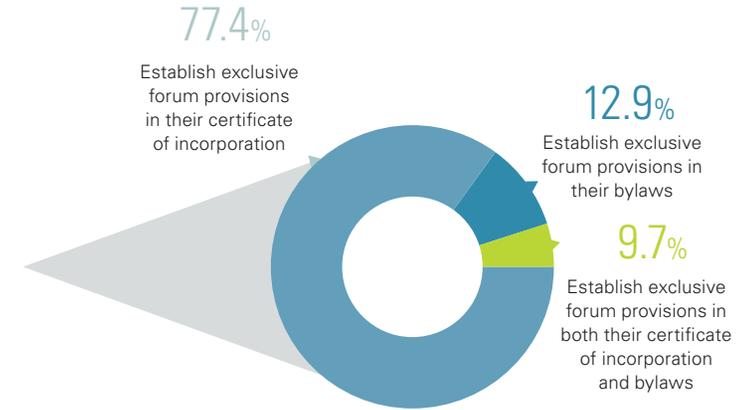
Director elections²⁵

100%
Plurality voting

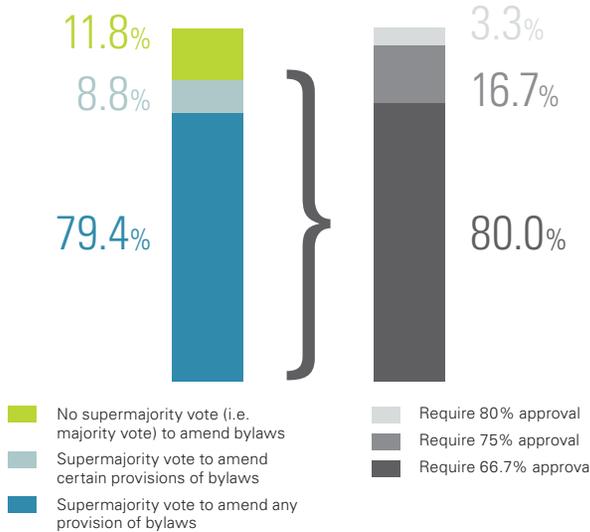
0%
Majority voting

Exclusive forum provisions²⁶

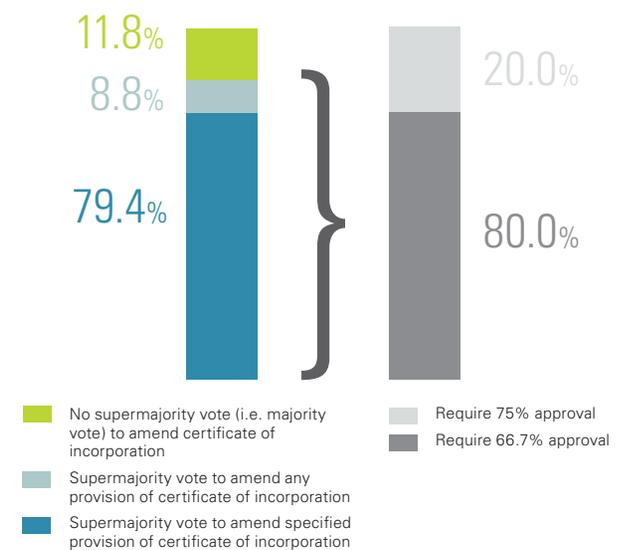
91.2%
31 companies



Supermajority stockholder vote required to amend bylaws



Supermajority stockholder vote required to amend certificate of incorporation



endnotes

¹ “Venture-backed” means that at least one U.S. venture capital firm invested in the company prior to its initial public offering (IPO), as determined by PitchBook.

² The Nasdaq Capital Market, The Nasdaq Global Market and The Nasdaq Global Select Market are all parts of The Nasdaq Stock Market. The Nasdaq Global Select Market has somewhat more rigorous listing standards than The Nasdaq Global Market. Both have more rigorous listing standards than The Nasdaq Capital Market. For more information, see <https://listingcenter.nasdaq.com/assets/initialguide.pdf>.

³ Measured from date of incorporation to date of effectiveness of IPO.

⁴ Measured from date of first submission or filing with Securities and Exchange Commission (SEC) to date of effectiveness of IPO.

⁵ Directed share programs involve reserving a portion of the IPO shares to be sold to institutions or individuals associated with the company.

⁶ In April 2012, the Jumpstart Our Business Startups Act (JOBS Act) was enacted. The JOBS Act addresses the ability of “emerging growth companies” to raise capital (both publicly and privately) and to determine the timing of becoming a public company.

The JOBS Act permits emerging growth companies to submit a registration statement confidentially to the SEC, so long as they publicly file the registration statement at least 21 days prior to launching a roadshow (reduced to 15 days by the Fixing America’s Surface Technology (FAST Act) in December 2015).

The JOBS Act also seeks to simplify IPO disclosure by permitting emerging growth companies, generally on an “à la carte” basis, to provide simplified disclosures in their IPO prospectuses in certain areas, specifically:

- Two years of audited financial statements, rather than three years as was previously required;
- MD&A based on such two years of financial statements;
- Selected financial data for only the periods covered by the audited financial statements, rather than five years as was previously required; and
- Reduced executive compensation disclosure, including fewer tables involving fewer executive officers and no compensation discussion and analysis (CD&A).

In addition, emerging growth companies may choose to remain subject to private company GAAP and to take advantage of longer phase-in periods for auditor attestation of internal controls and certain new accounting pronouncements adopted after the effective date of the JOBS Act.

⁷ While no company is required to test their internal controls under Section 404 of the Sarbanes-Oxley Act of 2002 before their IPO, companies that discover “material weakness” in their internal controls will disclose that fact in their IPO prospectus.

⁸ The listing standards of both the NYSE and Nasdaq require that, within one year of a listed company’s IPO, a majority of the members of the board of directors be independent, as defined in the listing standards.

⁹ Although companies are not required to disclose in their IPO prospectus whether the board chair and CEO positions are separated, many companies provide such information voluntarily.

¹⁰ Many companies whose CEO is also the board chair choose to have a lead independent director, and some companies choose to have both an independent board chair and a lead independent director. Although companies are not required to disclose in their IPO prospectus whether there is a lead independent director, many companies provide such information voluntarily.

¹¹ The listing standards of both the NYSE and Nasdaq require that listed companies have an audit committee and compensation committee each consisting of at least one independent director at the time of the IPO; that a majority of each committee consist of independent directors within 90 days of the IPO; and that each member of each committee be independent within one year of the IPO. Independence for audit committee and compensation committee purposes requires an individual to meet the general NYSE and Nasdaq independence requirements as well as stricter independence requirements specified by SEC rules. The requirements for audit committee independence are more strict than the requirements for compensation committee independence.

¹² Although companies are not required to disclose in their IPO prospectus whether at least one of their audit committee members is an “audit committee financial expert” as defined under SEC rules, most companies provide such information voluntarily.

endnotes (continued)

¹³ Under the listing standards of both the NYSE and Nasdaq, stock ownership is one factor to be considered in determining independence, but even significant stock ownership, by itself, is not a bar to a finding of independence. Under the stricter audit committee independence rules of the SEC, however, one may not serve on a listed company's audit committee if one is an "affiliated person" of the company. Affiliate status is measured by control, including stock ownership, and the SEC rules provide a safe harbor from affiliate status for audit committee membership at and below 10% stock ownership, while not specifying at what level of ownership such affiliated person status would necessarily obtain. Under the SEC's rules regarding independence for compensation committee purposes, affiliate status as a result of stock ownership must be considered but is not a bar to independence at any specified level.

We examined whether directors affiliated with venture capital funds that had invested in the IPO companies were members of various board committees, and if so, whether they were determined to be independent. We also examined the aggregate stock ownership of the director and all venture capital funds with which he or she was affiliated. We did not examine other indicia of control or other relationships that would bear upon affiliate or independence status.

¹⁴ Under the NYSE listing standards, companies are required to have an independent nominating committee; under the Nasdaq listing standards,

companies are required to have an independent nominating committee or have a majority of independent directors nominate directors annually. The listing standards of both the NYSE and Nasdaq permit independence phase-in periods similar to the audit committee and compensation committee phase-in periods discussed above.

¹⁵ Although companies are not required to disclose in their IPO prospectus whether they have adopted corporate governance guidelines or a code of business conduct, many companies provide such information voluntarily. Companies are required to disclose in their IPO prospectus the existence of policies regarding related-party transactions. Although companies are not required to disclose board and committee oversight of management's enterprise risk management function, a growing number—nearly a majority—provide such information voluntarily.

¹⁶ Many venture-backed companies adopt a new equity compensation plan and an employee stock purchase plan in connection with an IPO. Often, such plans include an "evergreen" provision that automatically increases the size of the available pool of equity available to be granted each year.

This year we also looked at three new categories of executive and director compensation disclosure, i.e., whether companies disclosed the existence of:

- Executive bonus plans, and whether such plans were performance-based or discretionary;

- Executive severance and executive change-in-control severance plans executive bonus plans; and
- Non-employee director compensation plans.

¹⁷ In addition to financial results presented in accordance with GAAP, many companies track key business and operational metrics as well as non-GAAP financial measures for their own internal purposes and for external disclosure. SEC rules govern the public disclosure of non-GAAP financial measures, requiring presentation of the most directly comparable GAAP financial measure and a reconciliation between the two measures. In addition, SEC rules require that the presentation of key metrics and non-GAAP financial measures may not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the presentation not misleading in light of the circumstances under which it is presented.

¹⁸ Determined as of IPO date. Director elections in companies with classified boards are staggered over a three-year period with approximately one-third of the directors subject to reelection each year.

¹⁹ Under Delaware law, "cause" for removal of directors consists of, for example, malfeasance in office, gross misconduct or neglect, false or fraudulent misrepresentation inducing the director's appointment, willful conversion of corporate funds, breach of the obligation of full disclosure, incompetency, gross inefficiency, or moral turpitude.

- ²⁰ Pre-IPO stockholders at companies with multiple classes of common stock typically have greater voting rights than stockholders who buy common stock in the IPO.
- ²¹ Blank check preferred provisions allow the board of directors, without further stockholder approval, to issue preferred stock in one or more series and to determine the rights, preferences, and privileges of the preferred stock (e.g., rights to voting, dividend, redemption, etc.). A common use of blank check preferred is to adopt a poison pill.
- ²² Advance notice bylaws set forth certain requirements that a stockholder must meet in order to bring a matter of business before a stockholder meeting or nominate a director for election.
- ²³ In 2016, Institutional Stockholder Services (ISS), a proxy advisory firm that makes recommendations to institutional stockholders on how to vote at annual meetings of public companies, began enforcing its voting policy that recommends a “vote against” or “withhold vote” for directors of a company that, prior to or in connection with its IPO, adopted bylaw or certificate of incorporation provisions that ISS considers adverse to stockholders’ rights, including a classified board, director removal only for cause, supermajority voting requirements in certificate of incorporation or bylaws, prohibition on action by written consent of stockholders or ability to call a special meeting of stockholders, and forum selection.

ISS’ voting recommendation may be mitigated if a company either holds annual director elections for all directors (i.e. has no classified board) or publicly commits to putting the adverse provisions to a stockholder vote within three years of IPO. This year we looked at IPO prospectuses for disclosure of commitments to put defensive measure provisions that ISS finds “adverse” to a stockholder vote and did not find any companies providing such disclosure.

- ²⁴ When stockholders are prohibited from acting by written consent, any action requiring stockholder approval must occur at a stockholder meeting.
- ²⁵ Plurality voting means that the directors receiving the highest number of votes are elected (this is the default under Delaware law).

Majority voting means that a director is only elected if the number of votes cast “for” exceed the number of votes cast “against” such director.

- ²⁶ Exclusive forum provisions require that certain types of litigation (such as derivative suits brought on behalf of the company, claims of breach of fiduciary duty, claims arising pursuant to any provision of the Delaware General Corporation Law, or claims governed by the internal affairs doctrine) be brought solely and exclusively in the Court of Chancery of the State of Delaware (or another specified forum).

Acknowledgements

Richard C. Blake and Heidi E. Mayon in Gunderson Dettmer’s public offering and public company practice designed and oversaw this survey. Thanks to Robert V. Gunderson, Jr., Scott C. Dettmer, Brooks Stough, Sharon J. Hendricks, Jeffrey C. Thacker, and other Gunderson Dettmer partners for their support in this survey. Special thanks to Gunderson Dettmer colleagues Colin G. Conklin, Cathy Kwon, Brian N. Savage, Keith J. Scherer, and Albert W. Vanderlaan for their invaluable assistance on the survey.

Legal disclaimer

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About Gunderson Dettmer

Gunderson Dettmer is the only business law firm of its kind—singularly focused on the global venture capital and emerging technology marketplace. With more than 220 attorneys in nine offices—Silicon Valley, Boston, Los Angeles, New York, San Diego, Ann Arbor, San Francisco, Beijing, and Singapore—we represent more than 2,000 high-growth companies from a broad range of industries in every stage of development. We provide our clients with counsel on general corporate and securities law, mergers and acquisitions, financings, intellectual property and commercial agreements, strategic alliances, executive compensation, and tax matters.

The firm is consistently recognized for its market leadership. PitchBook ranked the firm the most active law firm for venture capital transactions and venture-backed exits in 2016.

We tailor our guidance to provide the practical advice and flexible terms high-growth companies require. All of our attorneys represent companies at every stage of growth and have the experience to advise at any stage of the corporate life-cycle.

We combine our deep market knowledge and strong industry relationships with a unique practice experience to provide practical, business-oriented counsel designed for the needs of the emerging-growth company marketplace.

For more information

For more information on the above survey findings or any related matters, please contact Richard C. Blake at rblake@gunder.com or Heidi E. Mayon at hmayon@gunder.com, the Gunderson Dettmer attorneys with whom you regularly work or any member of the firm's corporate and securities practice. Contact information for our attorneys can be found at www.gunder.com. Follow us on Twitter @GundersonLaw and @GunderIPO. To ensure that you receive future editions of this survey, email GunderIPO@gunder.com.

2016's most active VC law firms: global financings

Firm Name	Deal Count
Gunderson Dettmer	644
Cooley	497
Wilson Sonsini Goodrich & Rosati	381
DLA Piper	268
Fenwick & West	226
Orrick Herrington & Sutcliffe	161
Latham & Watkins	133

Source: PitchBook

2016's most active VC law firms: exits (acquisitions, buyouts, IPO)

Firm Name	Deal Count
Gunderson Dettmer	74
Wilson Sonsini Goodrich & Rosati	69
Cooley	66
DLA Piper	49
Fenwick & West	48
Orrick Herrington & Sutcliffe	44
Goodwin	43

Source: PitchBook

