

By the Numbers: Venture-backed IPOs in 2013



By the Numbers: Venture-backed IPOs in 2013

Table of contents

Introduction	1
About the companies and the IPOs	3
JOBS Act accommodations	6
Directors and independence	8
Board committees	9
Board policies	12
Stock plans	13
Key metrics and non-GAAP financial measures	14
Defensive measures	15
Endnotes	17
Acknowledgements	19
Legal disclaimer	19
About Gunderson Dettmer	20
For more information	20

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?" We analyzed the 71 venture-backed companies incorporated in the United States that were involved in IPOs on U.S. stock exchanges during 2013, 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, stock plans, key metrics and non-GAAP financial measures, and defensive measures.

introduction (continued)

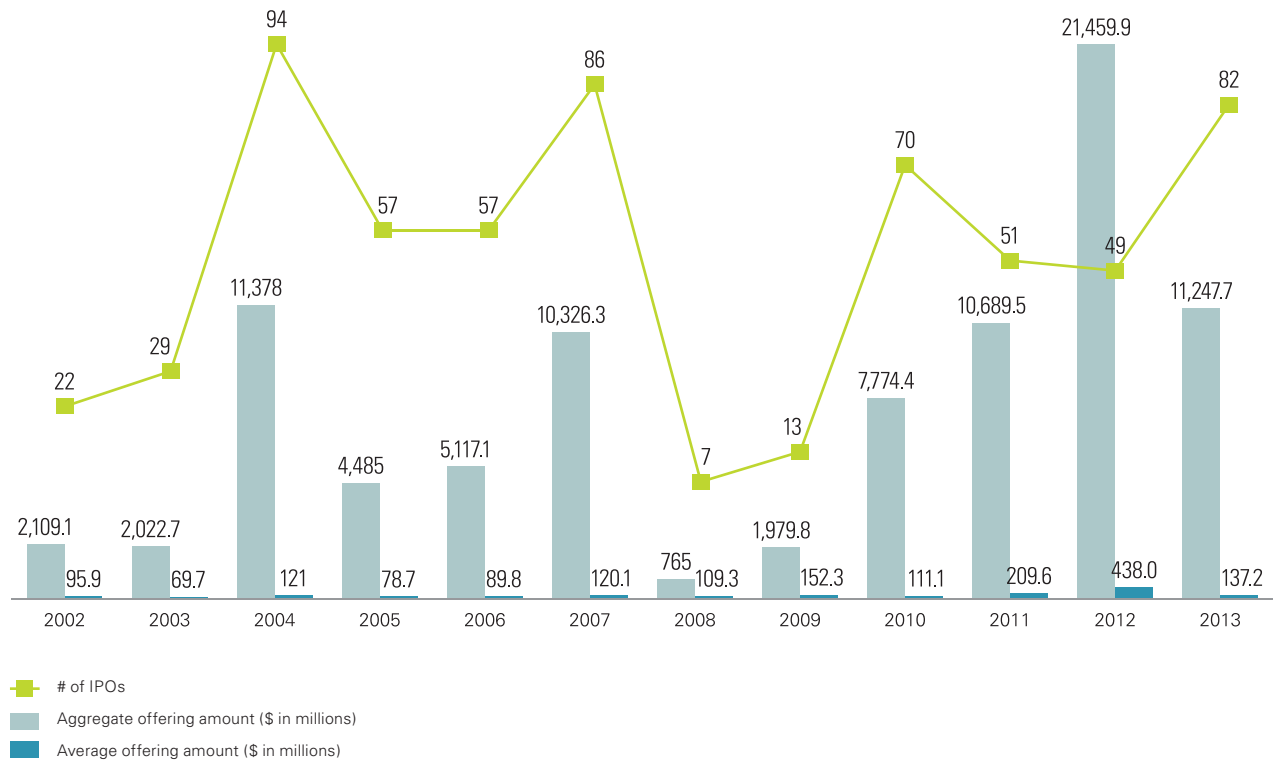
2013 was the strongest year for venture-backed initial public offerings (IPOs)¹ in almost a decade: 82 deals (the most since 2007) generated aggregate proceeds of over \$11.2 billion,² an average offering amount of \$137.2 million.² At least one venture-backed company went public each month in 2013, and the pace of IPOs has accelerated in the first two months of 2014.

This survey focuses on the 71 venture-backed companies incorporated in the United States that completed their IPOs in 2013.

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 2013)

Source: Thomson Reuters & National Venture Capital Association



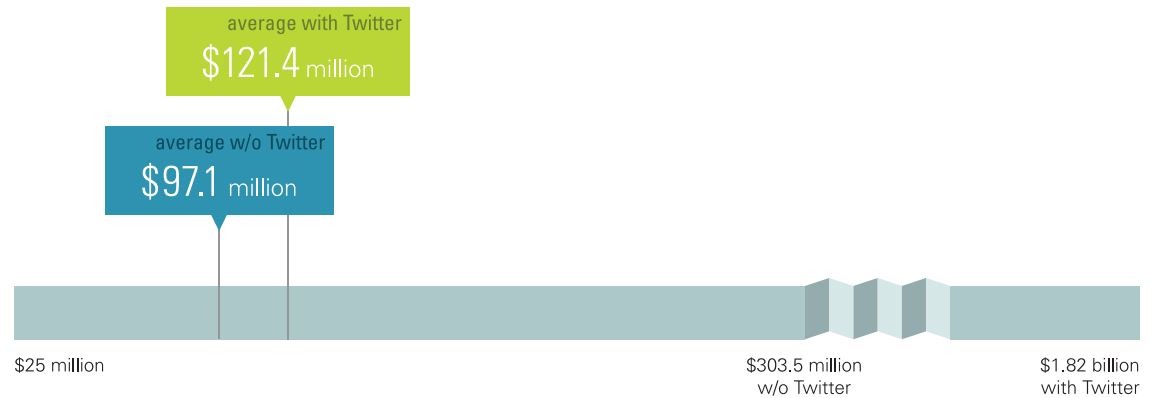
about the companies and the IPOs

Completed IPOs in 2013

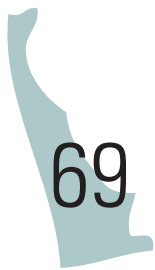
71

Venture-backed companies incorporated in the United States

Deal size, measured by gross proceeds



State of incorporation



Delaware

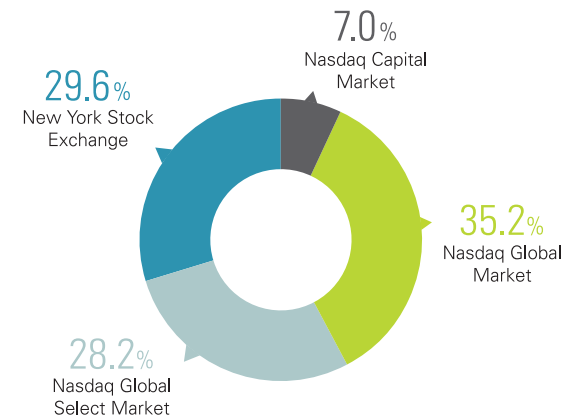


Virginia



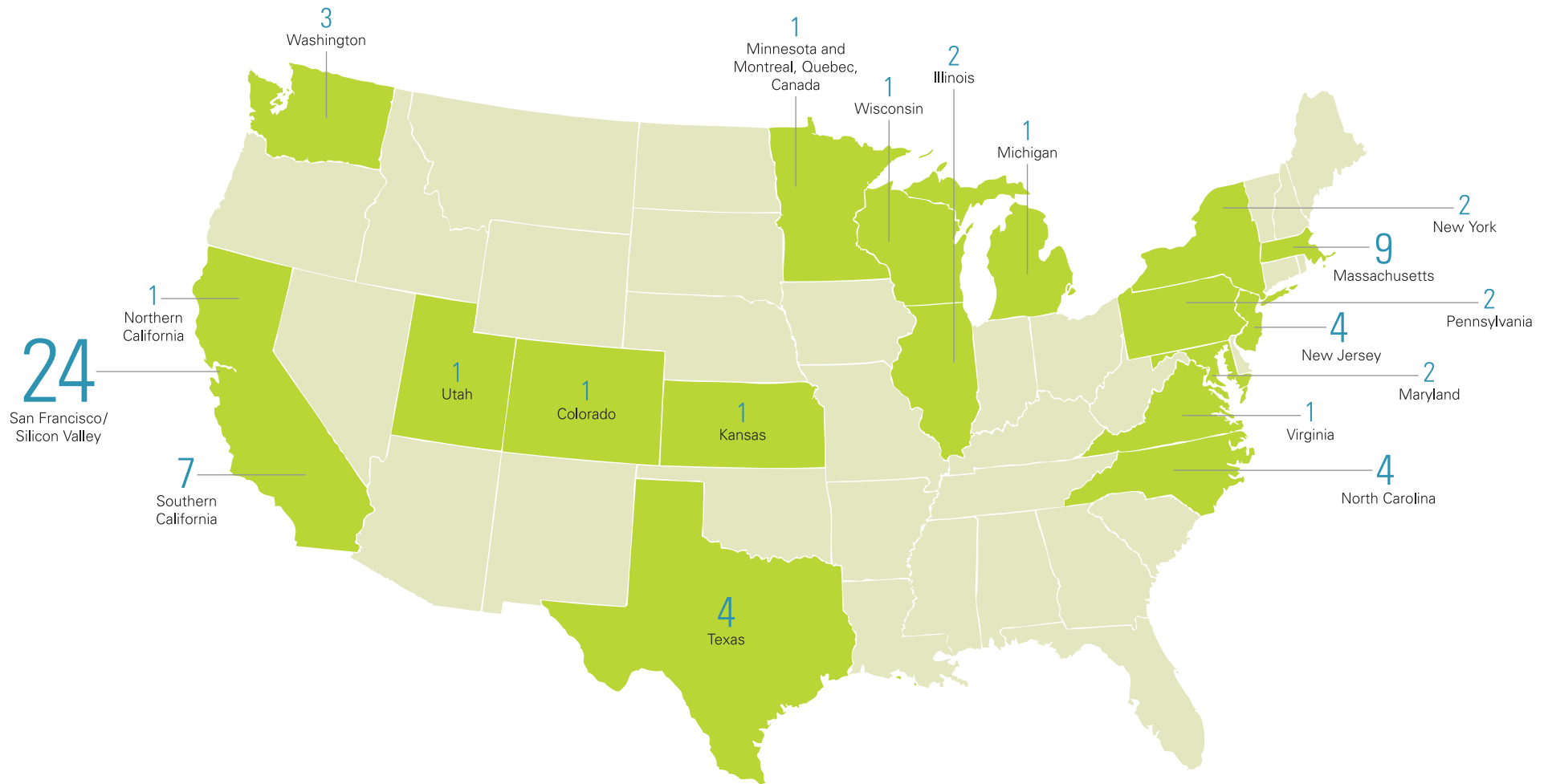
Wisconsin

Listing exchange³



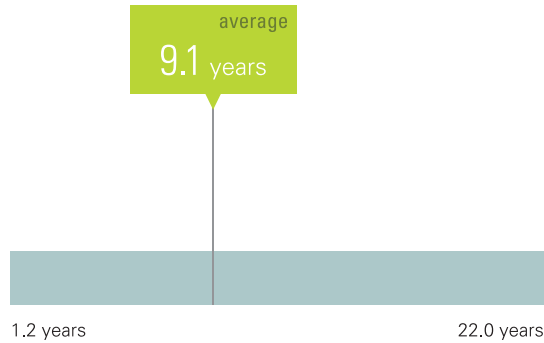
about the companies and the IPOs (continued)

Headquarters

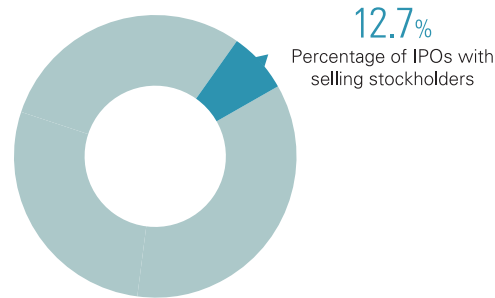


about the companies and the IPOs (continued)

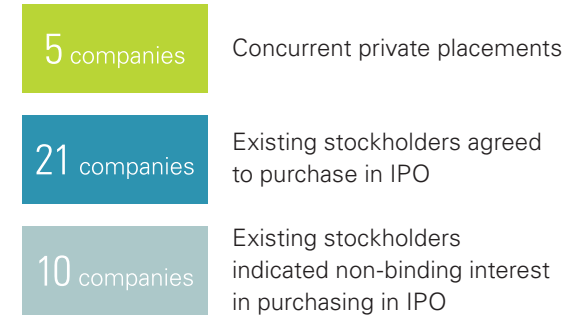
Time to IPO⁴



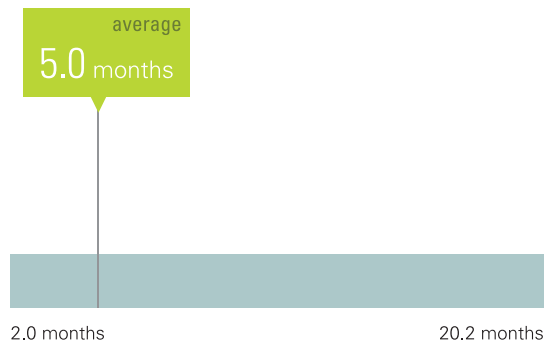
Selling stockholders



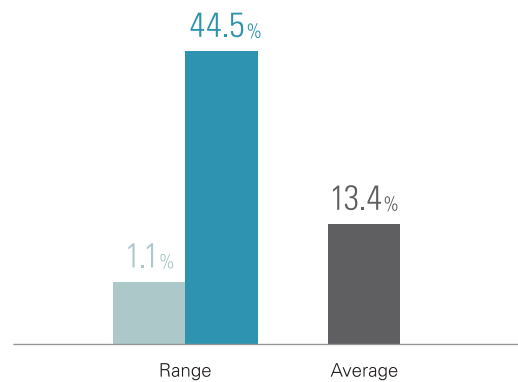
Buying stockholders



Time in registration⁵

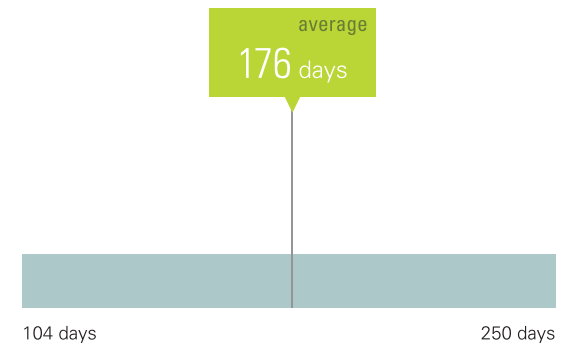


Shares offered by selling stockholders (percent of offering)



Follow-on offering

23
Companies that went public in 2013 have already completed follow-on offerings



JOBBS Act accommodations⁶

Confidential submission

90.1%

Initially submitted registration statement confidentially

Four, including Twitter, publicly announced that they had done so

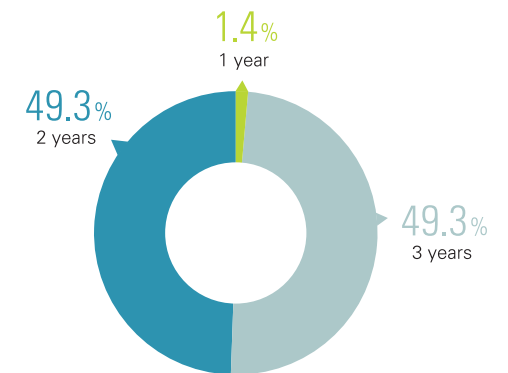
Time in confidential registration



Time between first public filing and roadshow

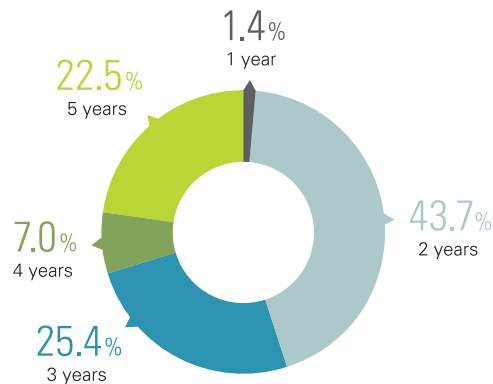


Years of audited financials provided



JOB S Act accommodations (continued)

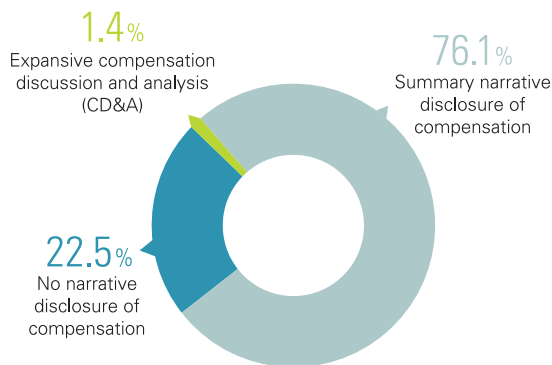
Years of selected financials provided



Intent to delay auditor attestation disclosed

47.9%
34 companies

Executive compensation information



Company elected to be subject to new public company GAAP

84.5%
60 companies

key findings

- Over 90% of venture-backed companies took advantage of the JOBS Act accommodation to submit a registration statement confidentially, spending on average nearly 3 months in confidential registration and filing registration statement publicly approximately one month before their roadshow.
- Nearly half of venture-backed companies still provide 3 years of audited financial statements, but over two-thirds provide 3 or less years of selected financial information.
- A significant majority of venture-backed companies provide limited executive compensation information.
- Despite the JOBS Act accommodation, a significant majority of venture-backed companies choose to be subject to new public company generally accepted accounting principles (GAAP).

directors and independence

Board size



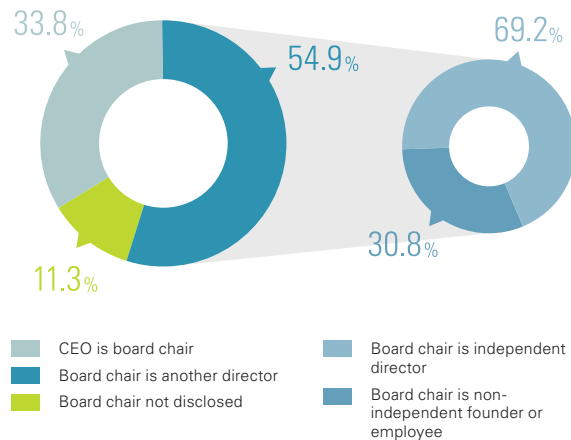
Directors who are independent⁷



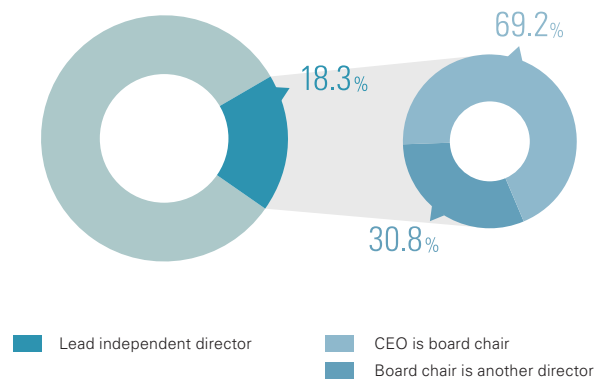
key findings

- 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%.

Board chairs and lead directors⁸

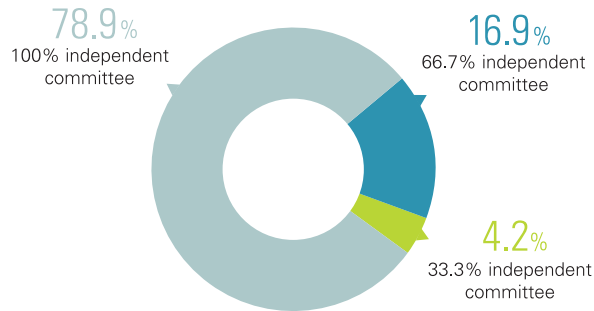


Lead independent director⁹



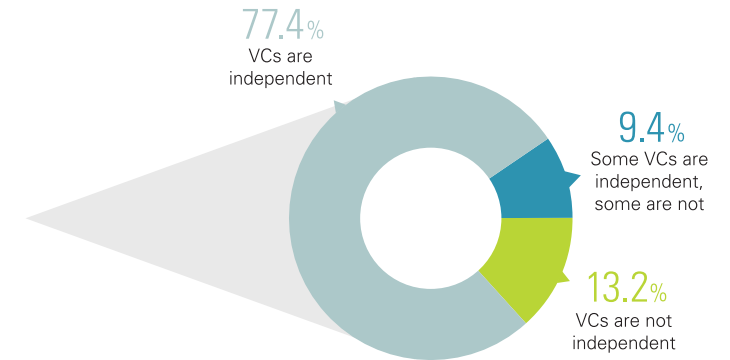
board committees—audit¹⁰

Audit committee independence

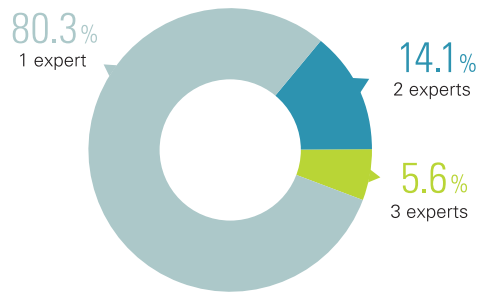


Companies with VCs on audit committee¹²

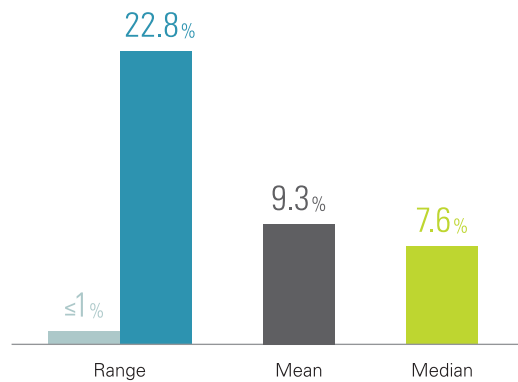
74.6%
53 companies



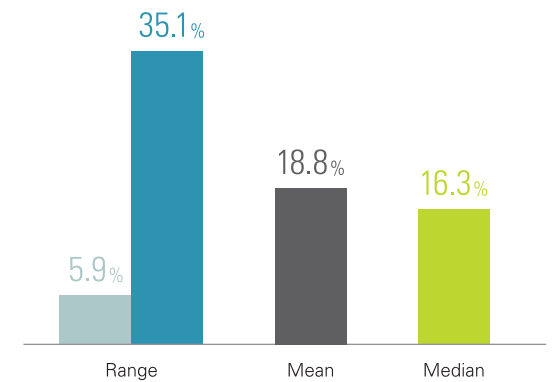
Number of audit committee financial experts¹¹



Independent VCs: shareholdings post-IPO

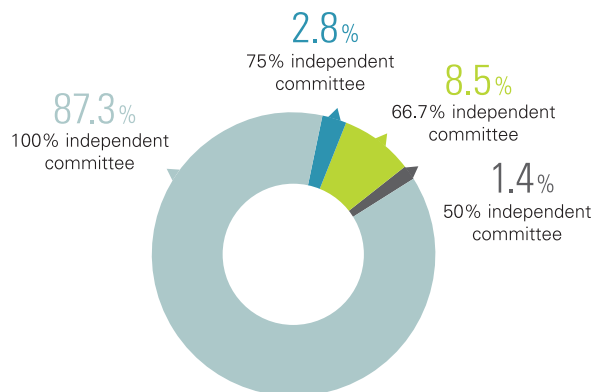


Non-independent VCs: shareholdings post-IPO



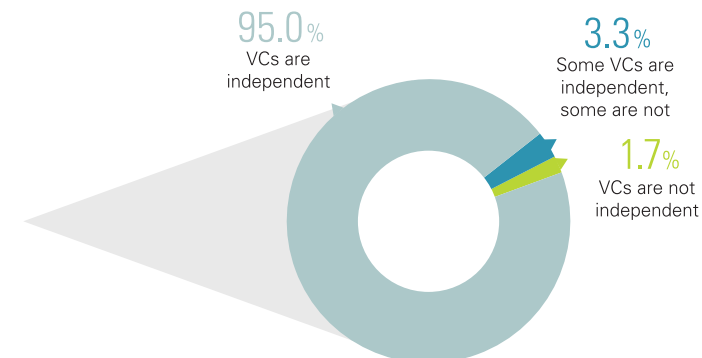
board committees—compensation

Compensation committee independence

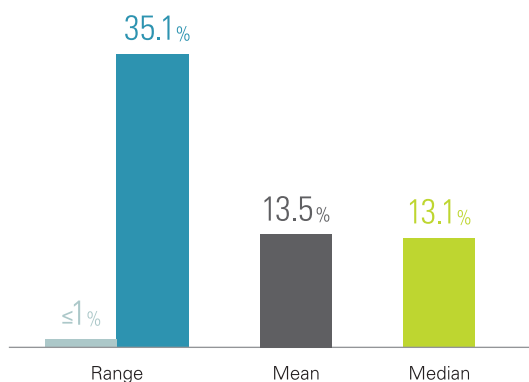


Companies with VCs on compensation committee

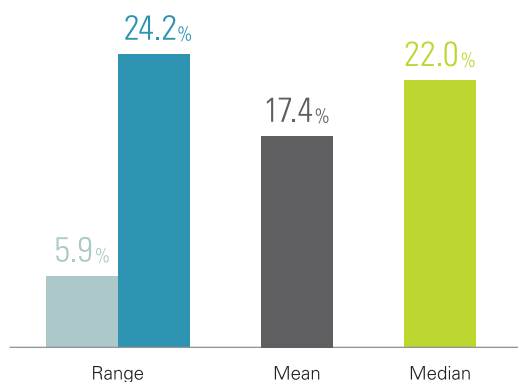
84.5%
60 companies



Independent VCs: shareholdings post-IPO



Non-independent VCs: shareholdings post-IPO

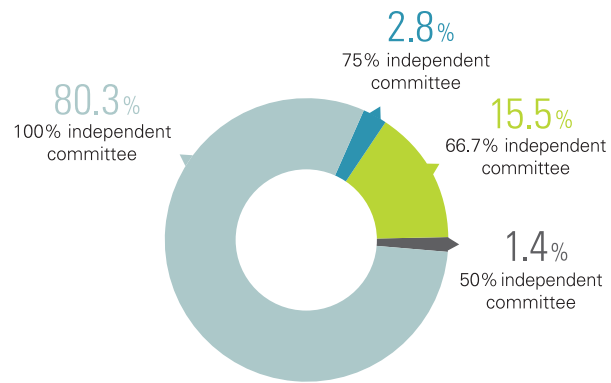


key findings

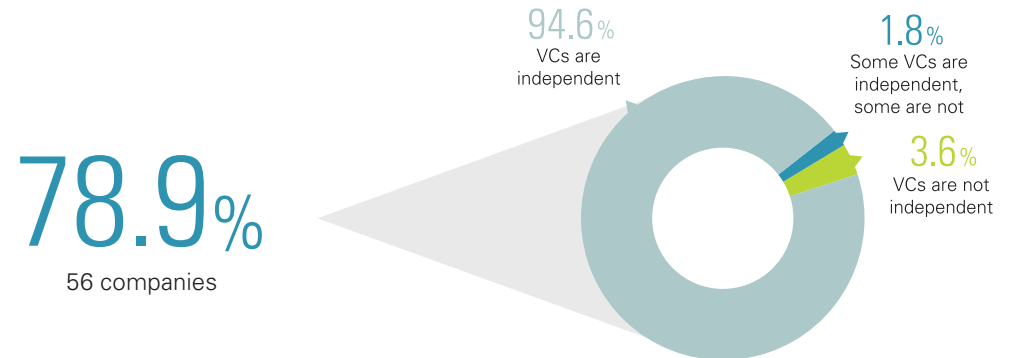
- A significant majority of venture-backed companies have substantially independent boards and board committees at the time of IPO.
- VCs frequently serve on board committees as independent directors, often despite stock ownership in excess of 10%.

board committees—governance/nominating¹³

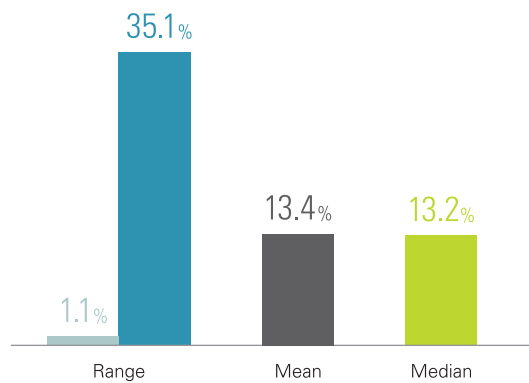
Governance/nominating committee independence



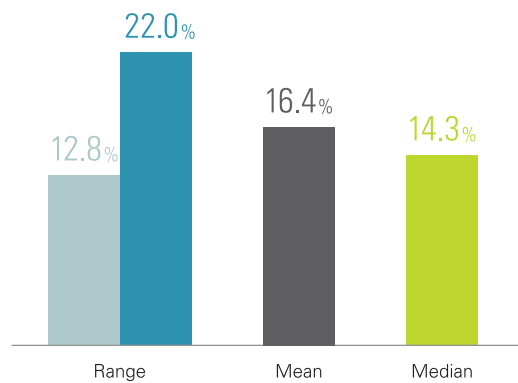
Companies with VCs on governance/nominating committee



Independent VCs: shareholdings post-IPO



Non-independent VCs: shareholdings post-IPO



key findings

- Other Committees: Only 1 company disclosed the existence of another committee—a compliance committee.

board policies¹⁴

Corporate governance guidelines



Related-party transaction policy



key findings

- A significant majority of venture-backed companies disclose the adoption of key board policies, including corporate governance guidelines, codes of business conduct and related party transaction policies, prior to the time of IPO.

Code of business conduct



stock plans¹⁵

New equity compensation plan

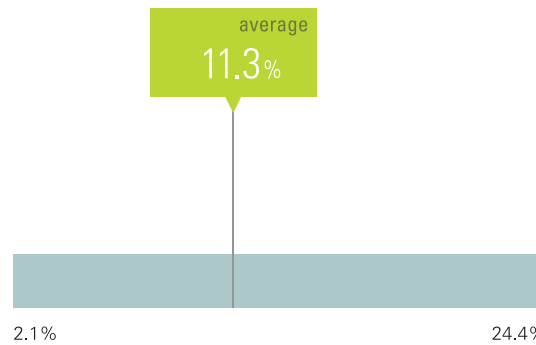
95.8%

New equity compensation plan adopted in connection with IPO

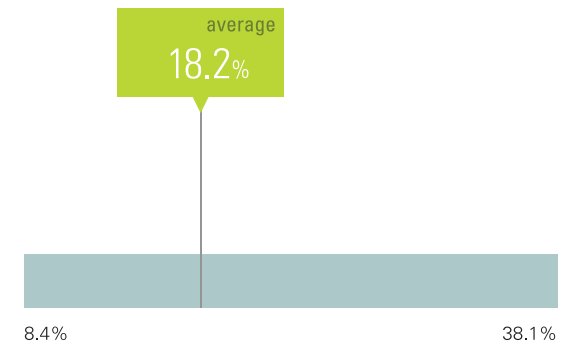
92.6%

Plans that included an evergreen provision

Outstanding equity awards at the time of the IPO as a percentage of fully diluted common stock immediately after the IPO¹⁶



Outstanding equity awards at the time of the IPO, combined with shares reserved for issuance in new equity compensation plans, as a percentage of fully diluted common stock immediately after the IPO¹⁷



New ESPP

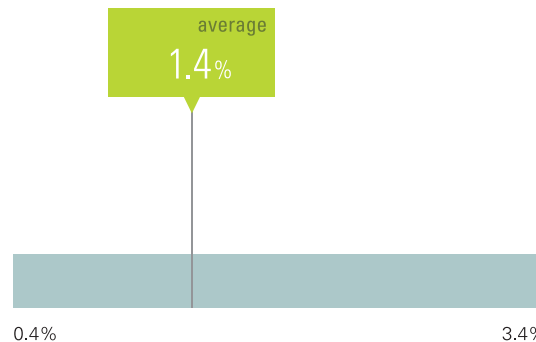
63.4%

ESPP adopted in connection with IPO

80.0%

ESPPs that included an evergreen provision

Shares reserved for issuance in new ESPP as a percentage of fully diluted common stock immediately after the IPO¹⁸



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.
- Nearly two-thirds of venture-backed companies adopt an employee stock purchase plan (ESPP) at the time of IPO, most of which include an “evergreen” provision.

key metrics & non-GAAP financial measures¹⁹

Key metrics

25.4%

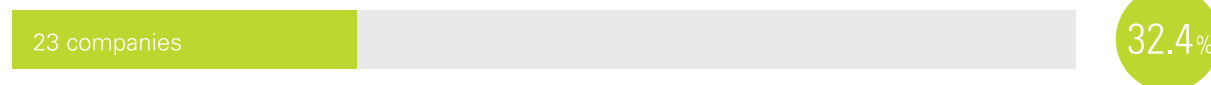
18 companies

For example, key operational metrics disclosed by Twitter included monthly active users (MAUs), timeline views, timeline views per MAU and advertising revenue per timeline view.

key findings

- Over a quarter of venture-backed companies disclose non-financial key metrics in their IPO prospectus, and nearly one-third disclose non-GAAP financial measures.

Non-GAAP financial measures



Adjusted EBITDA	20 companies	87.0%
Non-GAAP operating income (loss)	4 companies	17.4%
Non-GAAP net income (loss)	4 companies	17.4%
Free cash flow	4 companies	17.4%
Non-GAAP gross margin	4 companies	17.4%
EBITDA	2 companies	8.7%
Billings	2 companies	8.7%
Non-GAAP revenue	1 company	4.3%

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.
- Nearly 75% of venture-backed companies adopted the newest form of defensive measure—an exclusive forum provision—in their governing documents.



defensive measures (continued)

Prohibition on cumulative voting

100%

71 companies

Prohibition on stockholder ability to act by written consent²⁵

94.4%

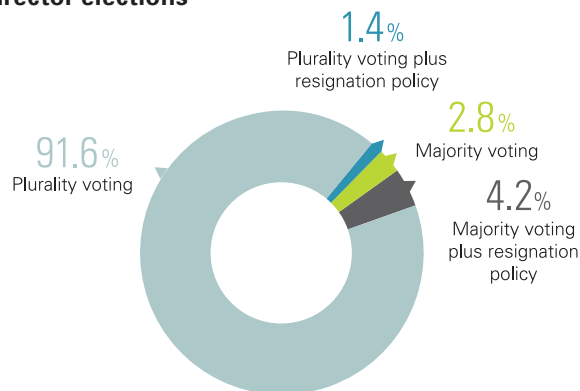
67 companies

Prohibition on stockholder ability to call special meeting

97.2%

69 companies

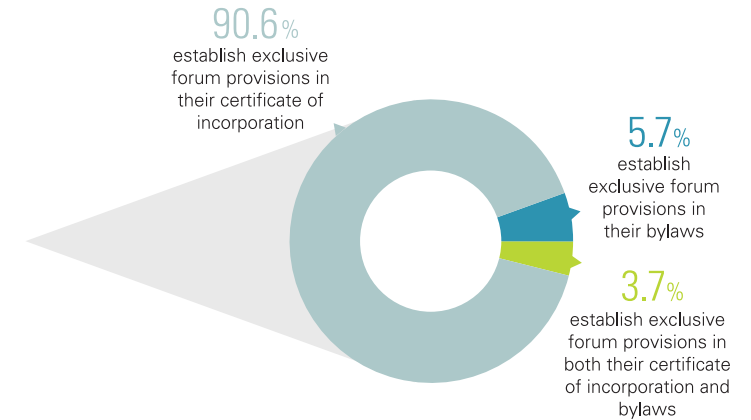
Director elections²⁶



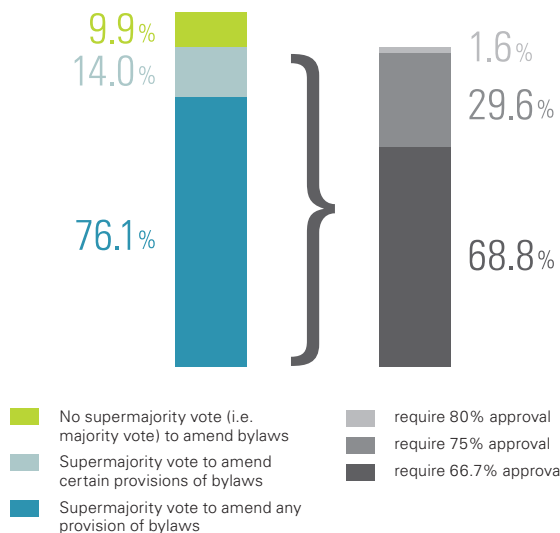
Exclusive forum provisions²⁷

74.6%

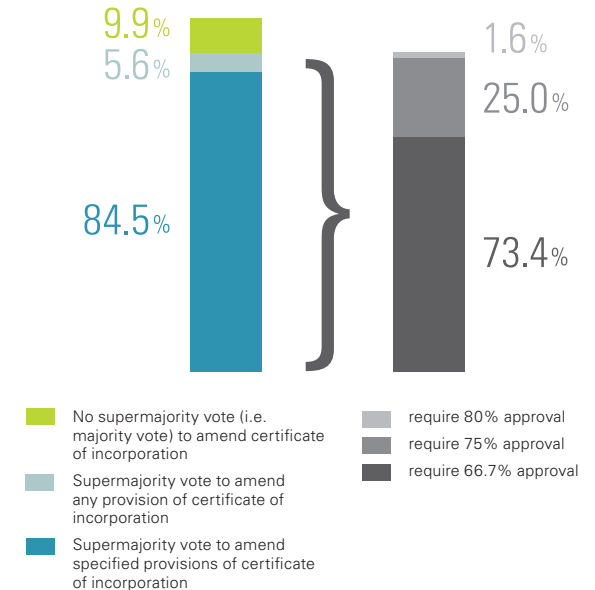
53 companies



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).
- ² Source: Thomson Reuters & National Venture Capital Association, http://www.nvca.org/index.php?option=com_docman&task=doc_download&gid=1030&Itemid=93.
- ³ 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 http://www.nasdaq.com/about/nasdaq_listing_req_fees.pdf.
- ⁴ Measured from date of incorporation to date of effectiveness of IPO.
- ⁵ Measured from date of first submission or filing with Securities and Exchange Commission (SEC) to date of effectiveness of IPO.
- 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.
- 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 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.
- ⁸ 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.
- ⁹ 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.
- ¹⁰ 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

endnotes (continued)

independence are more strict than the requirements for compensation committee independence.

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ 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.

¹⁶ Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards.

¹⁷ Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards and all shares reserved for issuance under the new equity compensation plans.

¹⁸ Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards, all shares reserved for issuance under the new equity compensation plans, and shares reserved for issuance under the new ESPP.

¹⁹ 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.

In November 2013, Mary Jo White, Chair of the SEC, indicated that the staff of the SEC was focusing on companies’ use of unique financial or operational metrics, particularly in situations in which investors may be misled. Further, in December 2013, *The Wall Street Journal* reported that the SEC had

endnotes (continued)

- established a task force to scrutinize companies' use of non-GAAP financial measures, specifically in circumstances when non-GAAP financial measures were used to mislead investors. Whether these initiatives result in SEC enforcement actions or further regulatory changes remains to be seen.
- ²⁰ 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.
- ²¹ 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.
- ²² 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.
- ²³ 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.).
- ²⁴ 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.

- ²⁵ When stockholders are prohibited from acting by written consent, any action requiring stockholder approval must occur at a stockholder meeting.
- ²⁶ Plurality voting means that the directors receiving the highest number of votes are elected, without a resignation policy (this is the default under Delaware law). Plurality voting with a resignation policy requires directors who did not receive a plurality vote to resign subject to board approval of such resignation. 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. Majority voting with a resignation policy requires directors who did not receive a majority vote to resign subject to board approval of such resignation.
- ²⁷ 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, a leader in Gunderson Dettmer's public offering and public company practice, and Meaghan S. Nelson, an associate in that practice, designed and oversaw this survey. Thanks to Robert V. Gunderson, Jr., Scott C. Dettmer, Brooks Stough, Sharon J. Hendricks and other Gunderson Dettmer partners for their support in this survey. Special thanks to Gunderson Dettmer associates Ross S. Barbash, Jeremy S. Klein and Stephanie P. Lane for their invaluable assistance on the survey.

Legal disclaimer

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP provides these materials on its web pages for information purposes only and not as legal advice. The Firm does not intend to create an attorney-client relationship with you, and you should not assume such a relationship or act on any material from these pages without seeking professional counsel.

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice. Our website may contain attorney advertising as defined by laws of various states.

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 170 attorneys in seven offices—Silicon Valley, Boston, Los Angeles, New York, San Diego, San Francisco and Beijing, China—we represent more than 2,500 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 matters, public offerings, mergers and acquisitions, financings, intellectual property and commercial agreements, strategic alliances, executive compensation, and tax matters.

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, 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](https://twitter.com/GundersonLaw) and [@GunderIPO](https://twitter.com/GunderIPO). To ensure that you receive future editions of this survey, email GunderIPO@gunder.com.

