

By the Numbers:

Venture-backed IPOs in 2015



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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 did in 2013, we analyzed the 60 venture-backed companies incorporated in the United States that were involved in IPOs on U.S. stock exchanges during 2015, 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)

2015 proved to be a tough year for venture-backed IPOs with the total number of IPOs completed decreasing by 37% from 2014.¹ Life sciences companies represented over a majority of the IPOs completed in 2015, almost all of which relied in some part on insider participation. The outlook for IPOs in 2016 is still uncertain following a dramatic decrease in IPO activity in the first quarter of 2016 compared to IPO activity in the comparable periods over the last five years. Despite the decrease in activity, there is still optimism by the pipeline of outstanding pre-IPO companies ready to access the public markets.

This survey focuses on the 60 venture-backed companies incorporated in the United States that completed their IPOs in 2015.

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 2015)²

Source: Thomson Reuters & National Venture Capital Association



about the companies and the IPOs

Completed IPOs in 2015

60

Venture-backed companies incorporated in the United States

Deal size, measured by gross proceeds



State of incorporation



Delaware

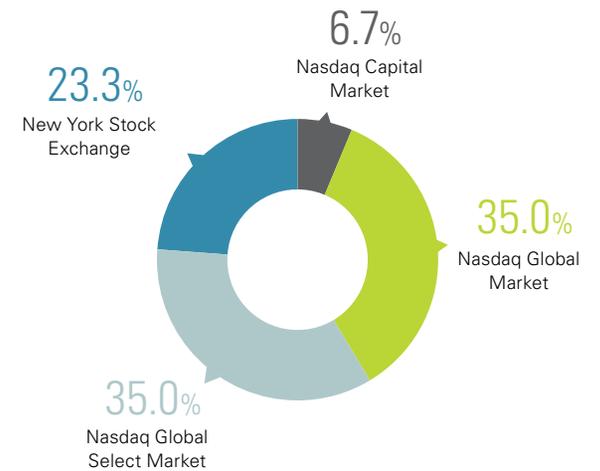


Kansas



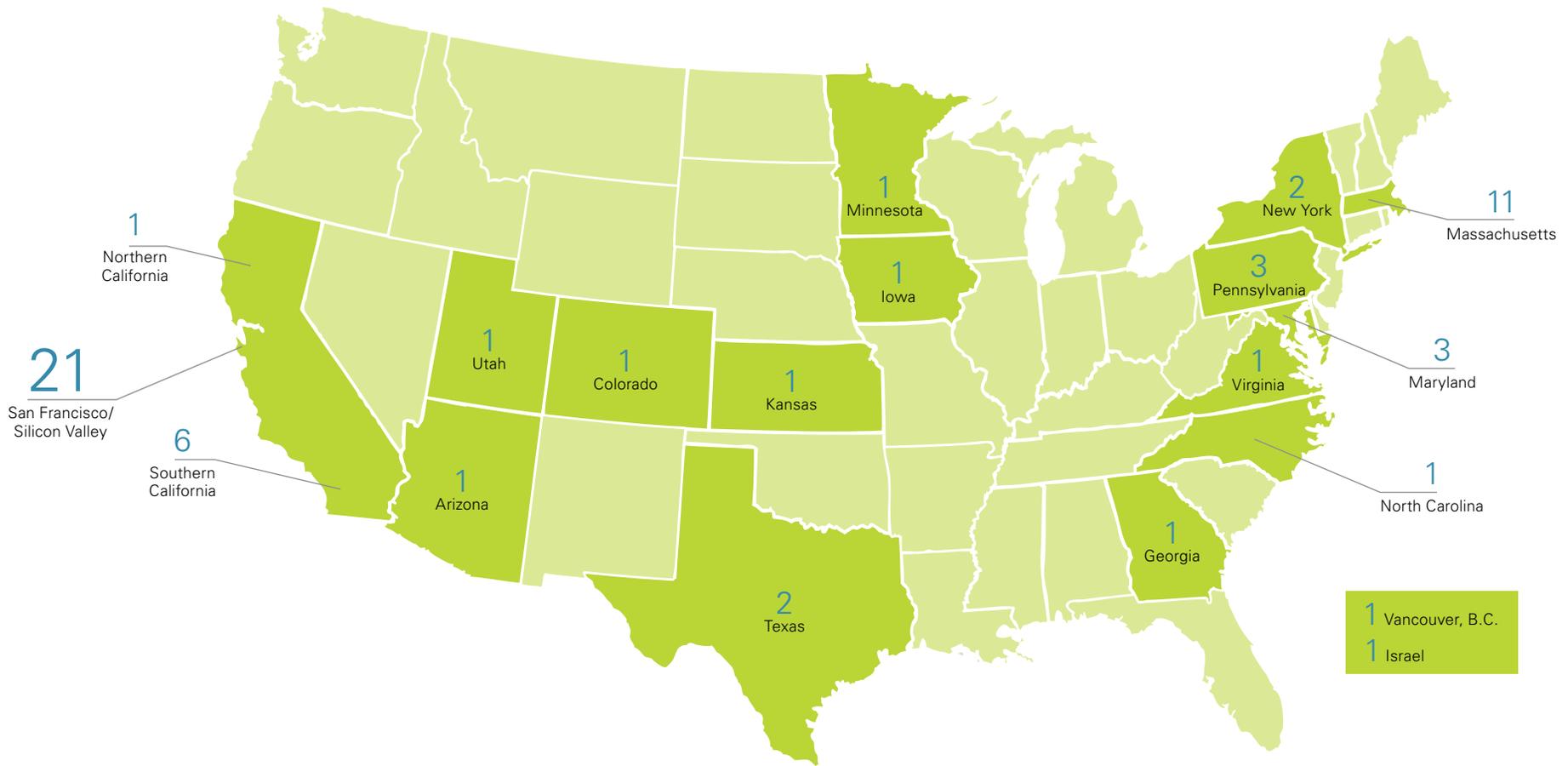
Virginia

Listing exchange³



about the companies and the IPOs (continued)

Headquarters



JOBs Act accommodations⁶

Confidential submission

100.0%

Initially submitted registration statement confidentially

Time in confidential registration

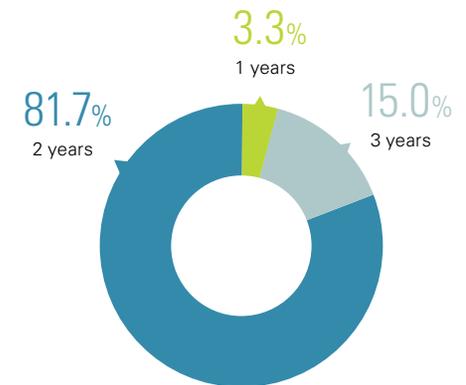


Time between first public filing and roadshow

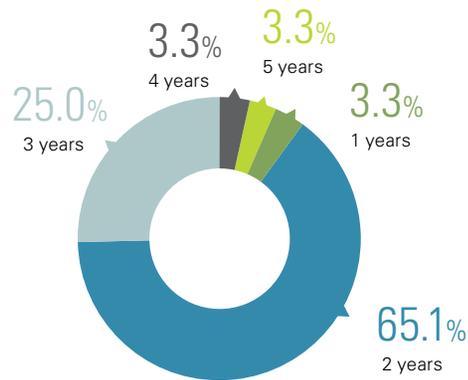
average
36.9 days



Years of audited financials provided



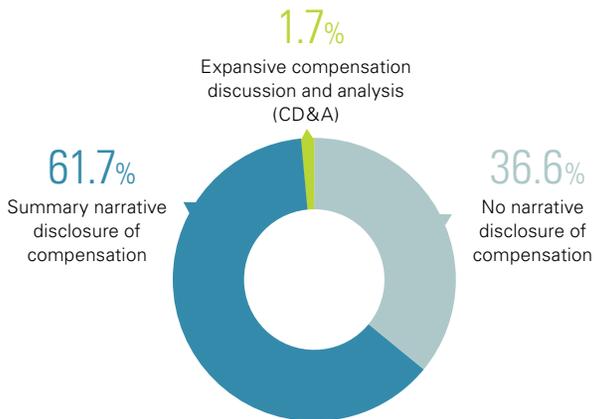
Years of selected financials provided



Company elected to be subject to new public company GAAP

86.7%
52 companies

Executive compensation information



key findings

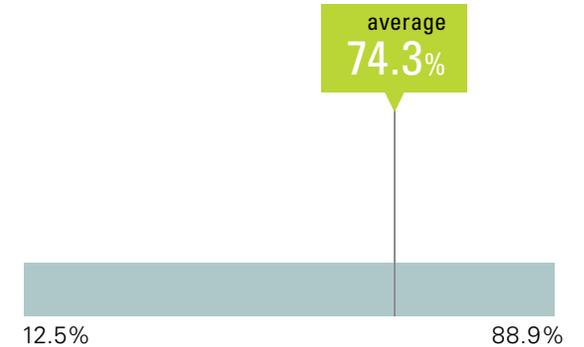
- All venture-backed companies took advantage of the JOBS Act accommodation to submit a registration statement confidentially, spending on average 3 months in confidential registration and filing registration statement publicly approximately one month before their roadshow.
- Over 80% of venture-backed companies took advantage of the JOBS Act accommodation to provide two years of audited financial statements. This is an increase of over 30% from 2013 driven in part by the number of life sciences IPOs that tend to have a lesser emphasis on historical financial performance.
- A significant majority of venture-backed companies provide limited executive compensation information.
- Despite the JOBS Act accommodation, a substantial majority of venture-backed companies choose to be subject to new public company generally accepted accounting principles (GAAP).

directors and independence

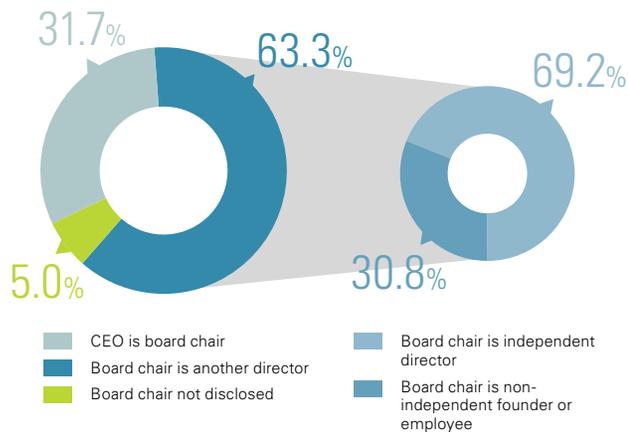
Board size



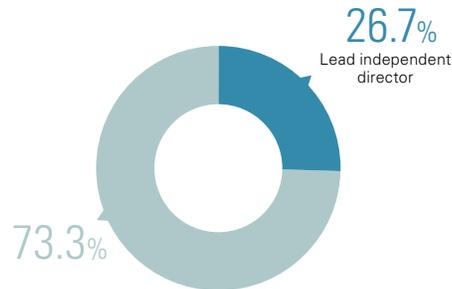
Directors who are independent⁷



Board chairs and lead directors⁸



Lead independent director⁹

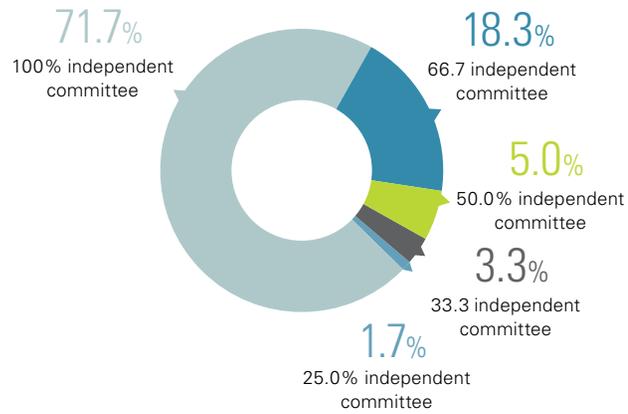


key findings

- 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.

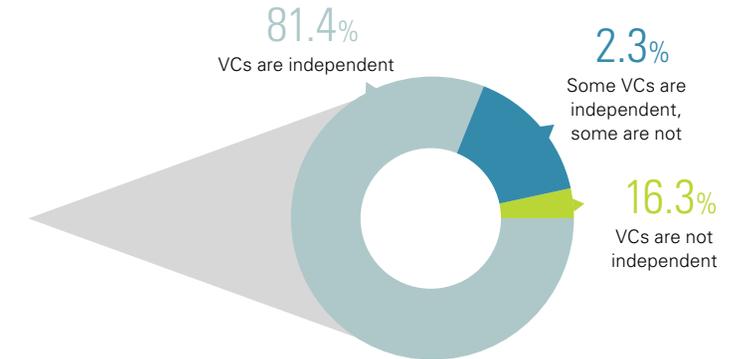
board committees—audit¹⁰

Audit committee independence

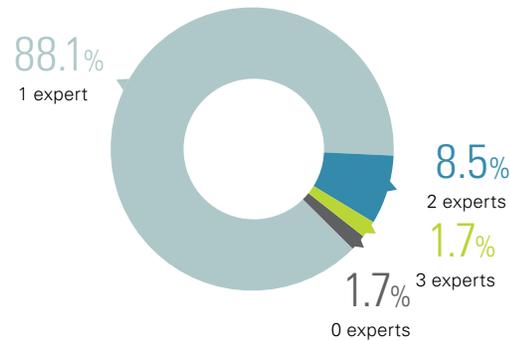


Companies with VCs on audit committee¹²

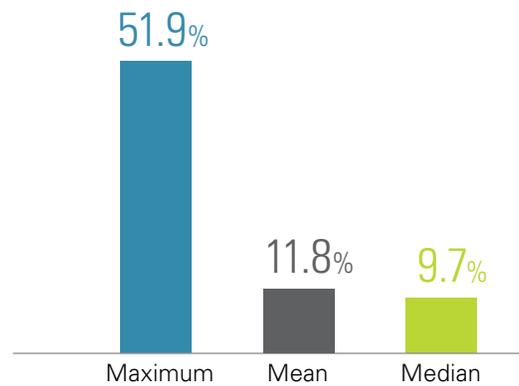
73.3%
43 companies



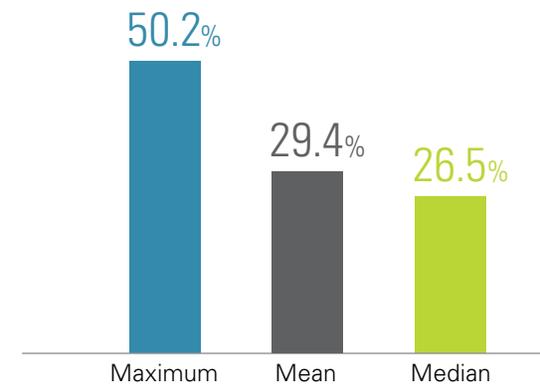
Number of audit committee financial experts¹¹



Independent VCs: shareholdings post-IPO¹³

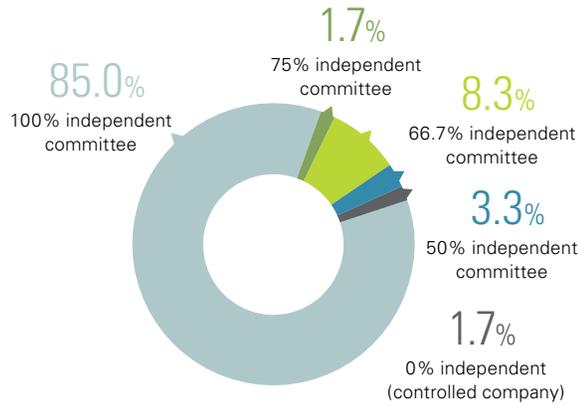


Non-independent VCs: shareholdings post-IPO



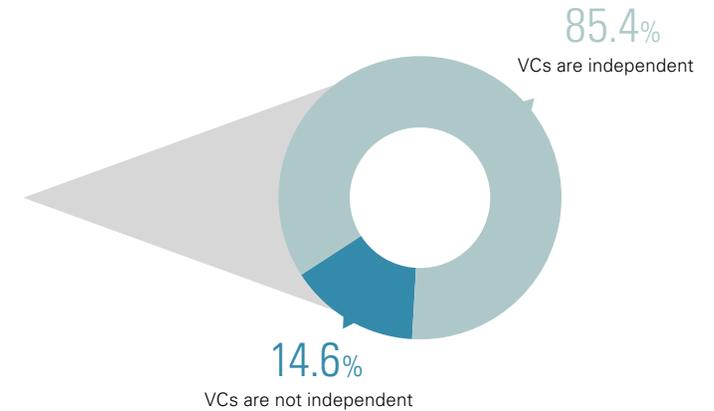
board committees—compensation

Compensation committee independence

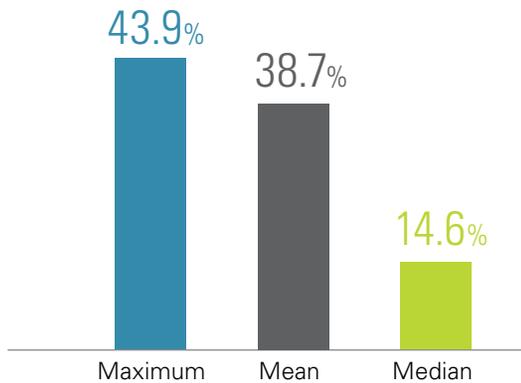


Companies with VCs on compensation committee

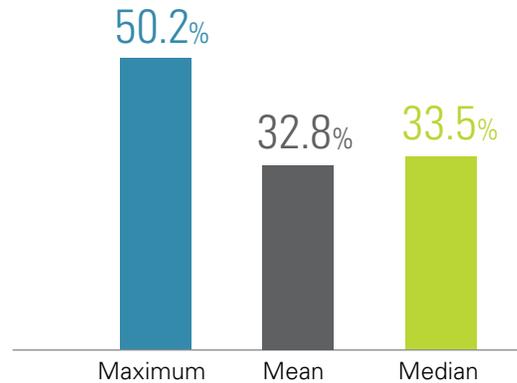
80.0%
48 companies



Independent VCs: shareholdings post-IPO



Non-independent VCs: shareholdings post-IPO

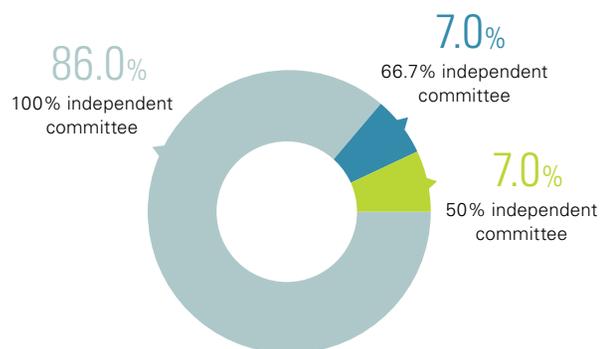


key findings

- 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.

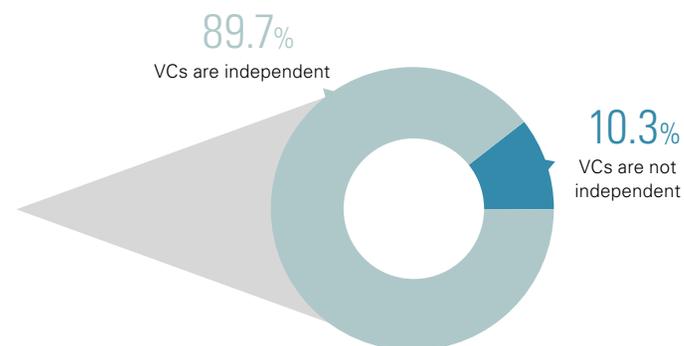
board committees—governance/nominating¹⁴

Governance/nominating committee independence

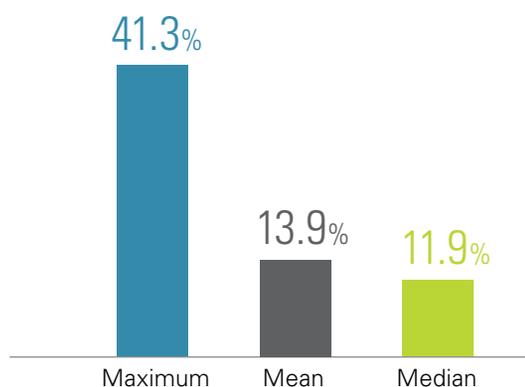


Companies with VCs on governance/nominating committee

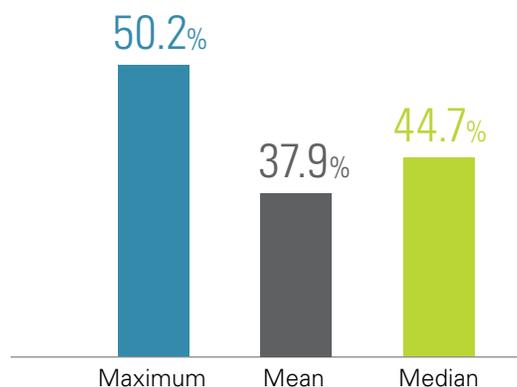
65.0%
39 companies



Independent VCs: shareholdings post-IPO



Non-independent VCs: shareholdings post-IPO



key findings

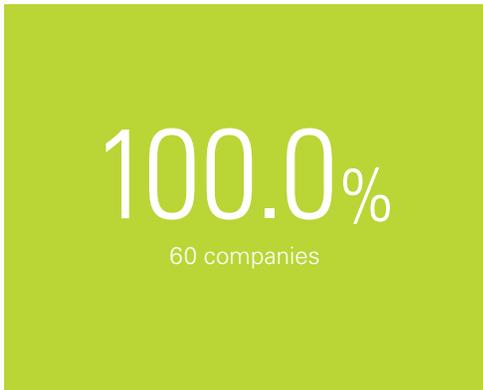
- 2 companies had not constituted a governance/nomination committee at the time of their IPO.
- Other Committees: Only 2 companies disclosed the existence of another committee—a credit committee and compliance and regulatory affairs committee.

board policies¹⁵

Corporate governance guidelines



Code of business conduct



Related-party transaction policy



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.

stock plans¹⁶

New equity compensation plan

93.3%

New equity compensation plan adopted in connection with IPO

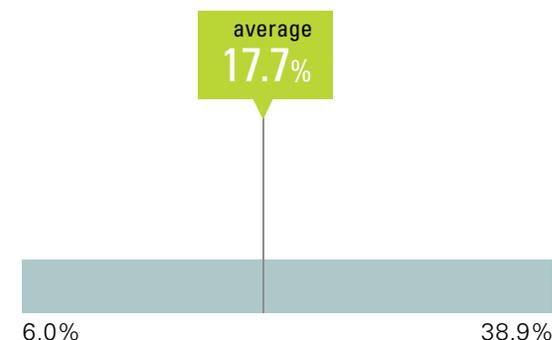
93.3%

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 IPO¹⁷



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 IPO¹⁸



New ESPP

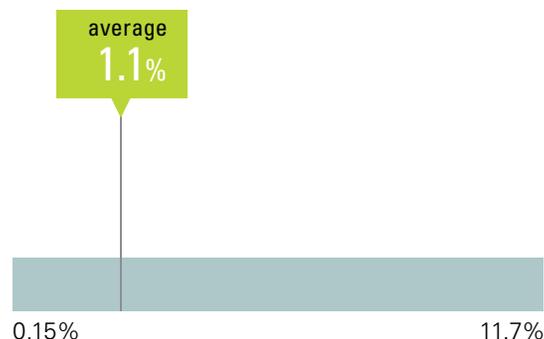
75.0%

ESPP adopted in connection with IPO

91.5%

ESPPs that included an evergreen provision

Shares reserved for issuance in new ESPP as a percentage of fully diluted common stock immediately after the IPO¹⁹



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.

key metrics & non-GAAP financial measures²⁰

Key metrics

20.0%

12 companies

For example, key operational metrics disclosed by Etsy included active sellers, active buyers and percent of mobile visits, while Fitbit included devices sold and active users.

key findings

- 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

14 companies

23.3%

Adjusted EBITDA	10 companies	71.4%
EBITDA	3 companies	21.4%
Non-GAAP operating income (loss)	2 companies	14.3%
Non-GAAP gross margin	2 companies	14.3%
Billings	2 companies	14.3%
Non-GAAP revenue	2 companies	14.3%
Free cash flow	1 company	7.4%

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.
- 80% of venture-backed companies adopted an exclusive forum provision in their governing documents.
- These findings are consistent with 2013.

defensive measures (continued)

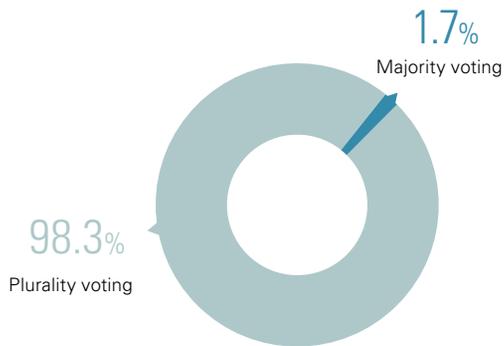
Prohibition on stockholder ability to act by written consent²⁶



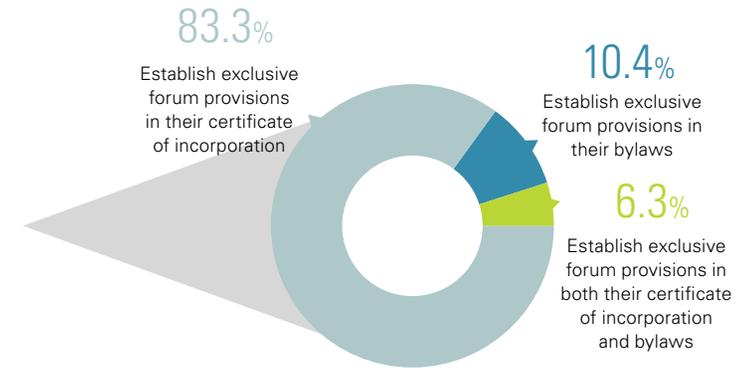
Prohibition on stockholder ability to call special meeting



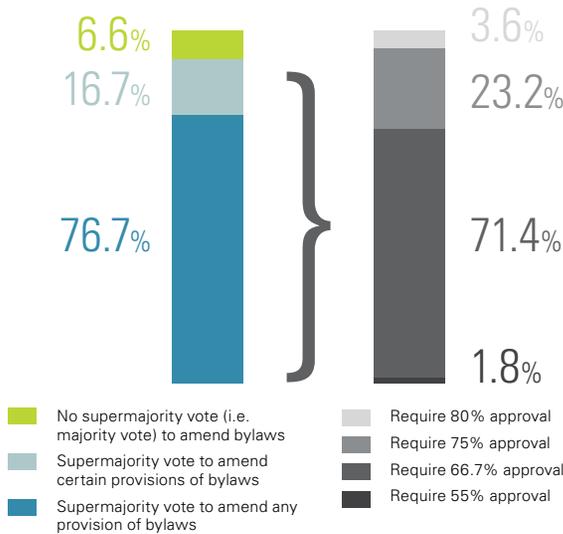
Director elections²⁷



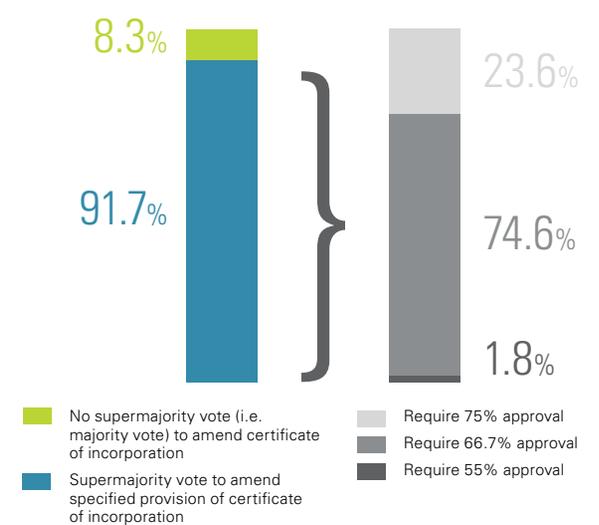
Exclusive forum provisions²⁸



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). In 2014, 95 venture-back companies went public.

² Source: Thomson Reuters & National Venture Capital Association, <http://nvca.org/pressreleases/seventy-seven-venture-backed-companies-went-public-in-2015/>.

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 <https://listingcenter.nasdaq.com/assets/initialguide.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 (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 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 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.

endnotes (continued)

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 The 51.9% maximum is not consistent with the result in 2013 (which was 22.8%) nor with typical practice and may have been based on company-specific circumstances not self evident from the IPO prospectus.

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.

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.

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.

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 and all shares reserved for issuance under the new equity compensation plans.

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.

- ²³ 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.
- ²⁴ 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.).
- ²⁵ 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.
- ²⁶ When stockholders are prohibited from acting by written consent, any action requiring stockholder approval must occur at a stockholder meeting.
- ²⁷ 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.

- ²⁸ 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).

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

