

By the Numbers: Venture-backed IPOs in 2017



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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 49 venture-backed companies incorporated in the United States that were involved in IPOs on U.S. stock exchanges during 2017, 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)

Fifty-eight venture-backed companies¹ went public in the United States in 2017, including nine incorporated outside the United States. While the aggregate number of venture-backed IPOs increased from 42 in 2016, it was still nearly half of the high-water mark in 2014. The Snap Inc. IPO was certainly the largest of these, raising \$3.4 billion—nearly \$70 million more than all venture-backed IPOs in 2016 combined. Several other unicorns went public in 2017 also, including Stitch Fix, Roku and Blue Apron.

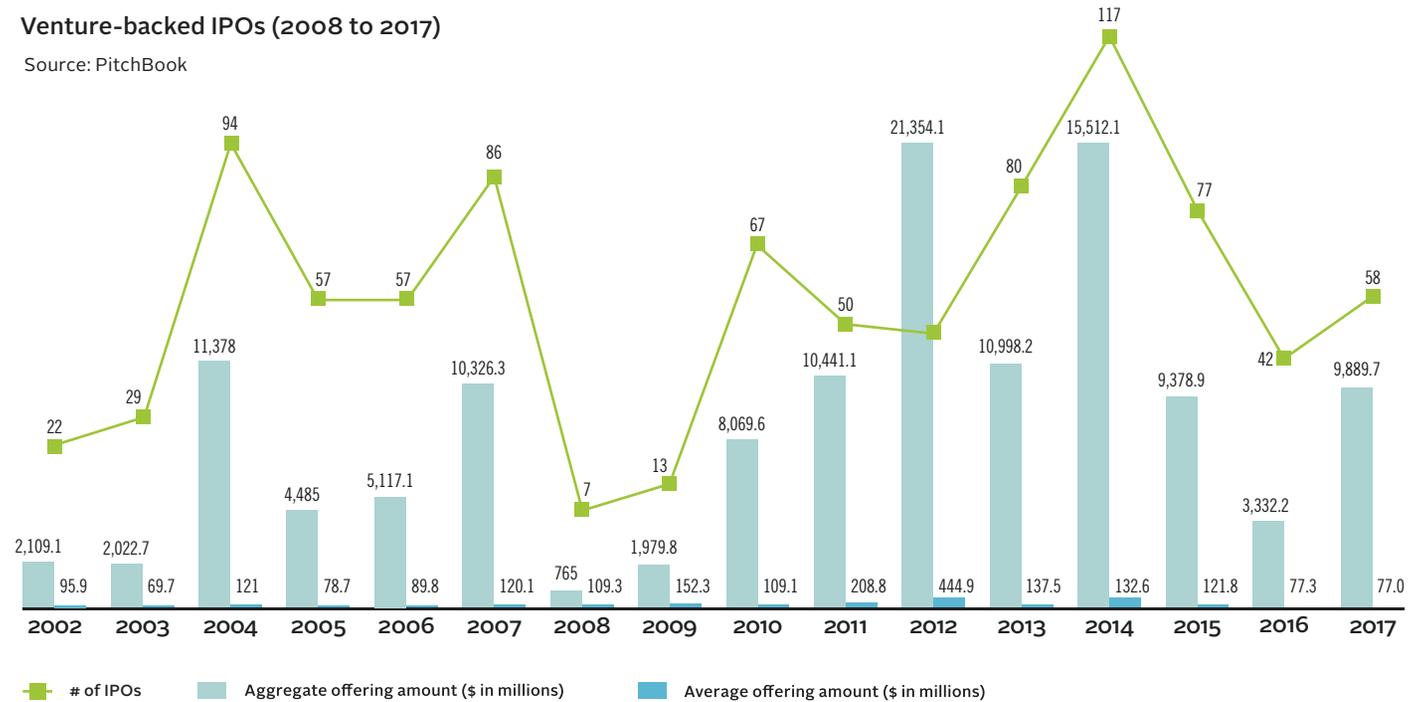
Life science companies continued to represent a majority of 2017 venture-backed IPOs, many of which relied in some part on insider participation, consistent with 2015 and 2016.

This survey focuses on the 49 venture-backed companies incorporated in the United States that completed their IPOs in 2017.

We have included key information about the IPOs in the body of the report. Additional information is included in the endnotes starting on page 15.

Venture-backed IPOs (2008 to 2017)

Source: PitchBook



About the companies and the IPOs

Completed IPOs in 2017

49

Venture-backed companies incorporated in the United States

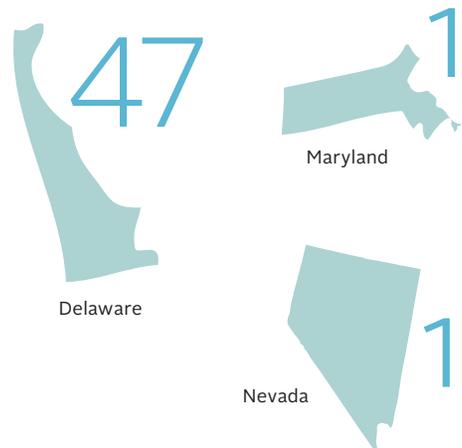
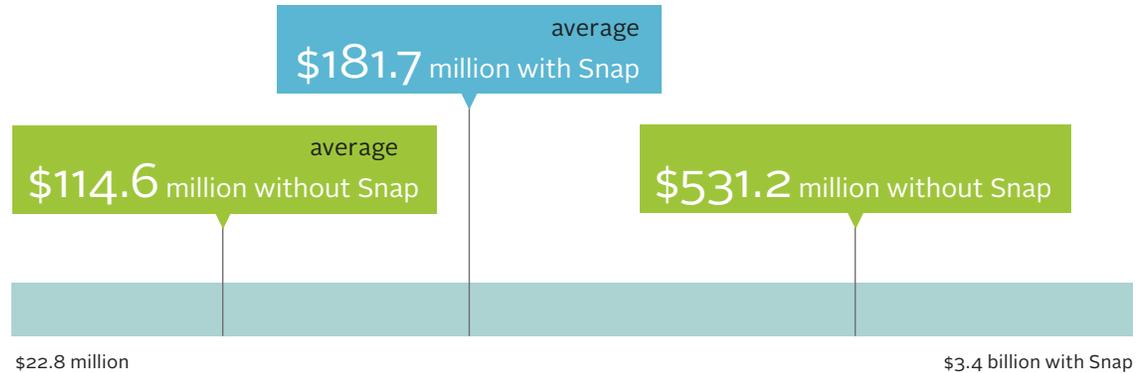
23

Technology companies

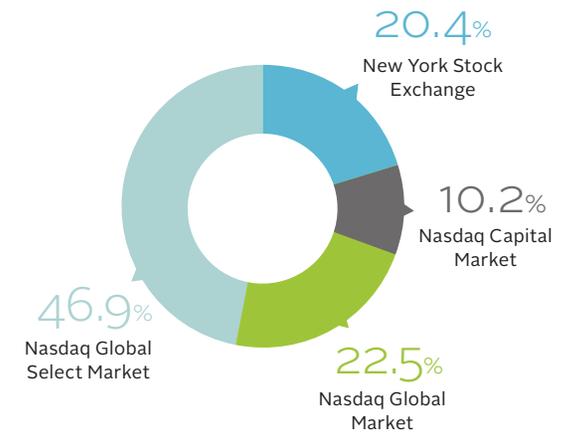
26

Life science companies

Deal size, measured by gross proceeds

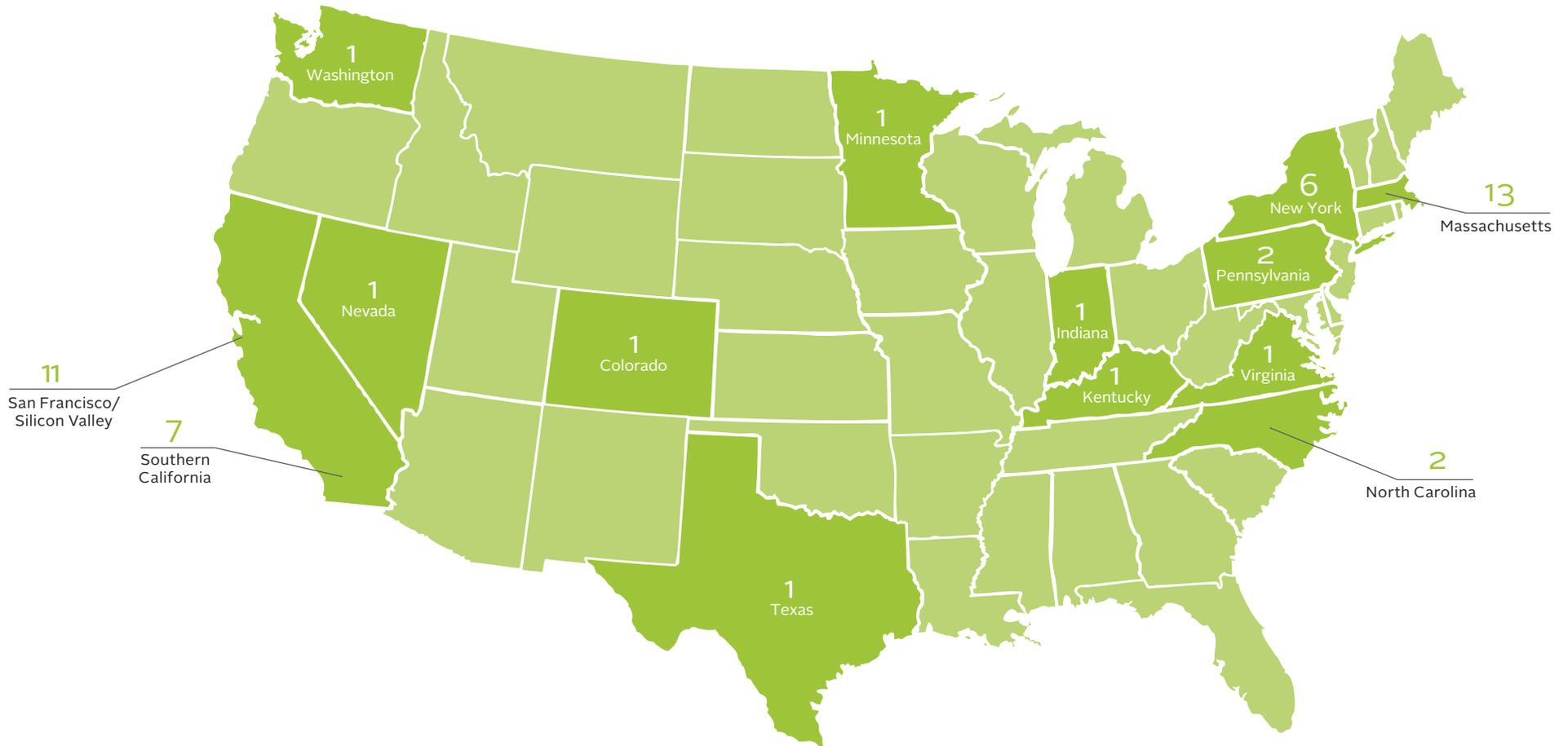


Listing exchange²

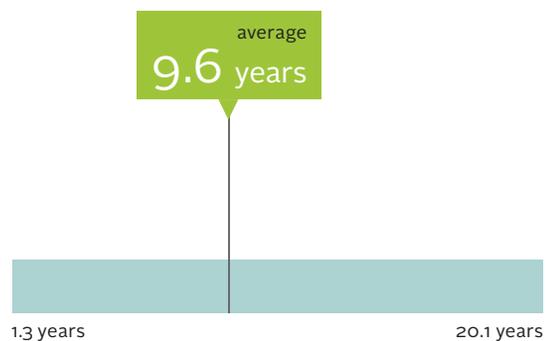


About the companies and the IPOs (continued)

Headquarters



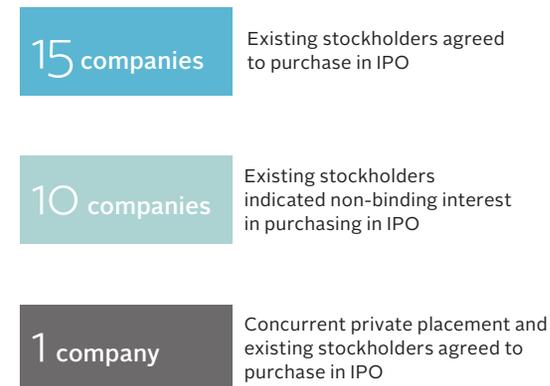
Time to IPO³



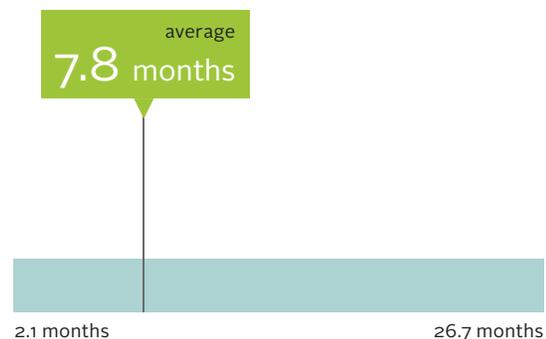
Selling stockholders



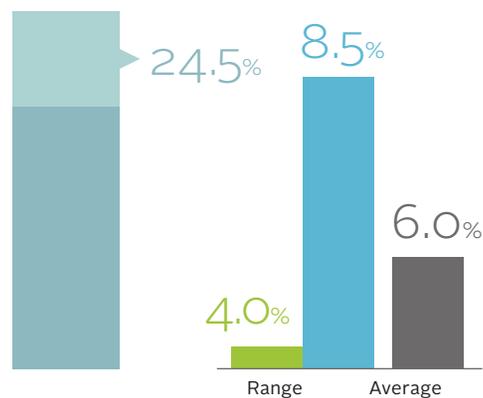
Buying stockholders



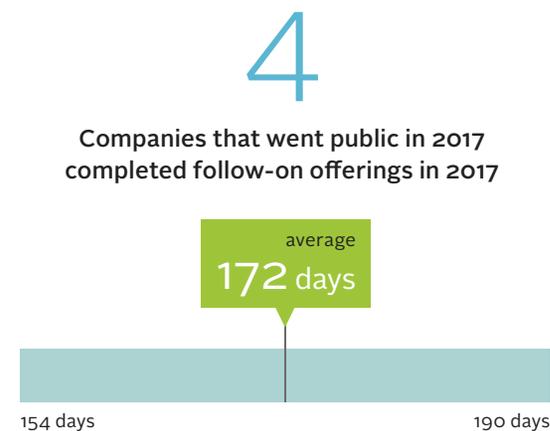
Time in registration⁴



Directed Share Program⁵
(percent of offering)



Follow-on offering



JOBS Act accommodations⁶

Confidential submission

100.0%

Initially submitted registration statement confidentially

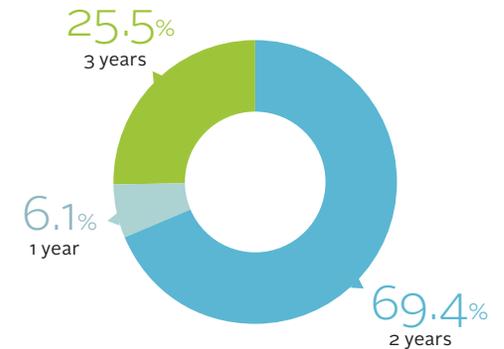
Time in confidential registration



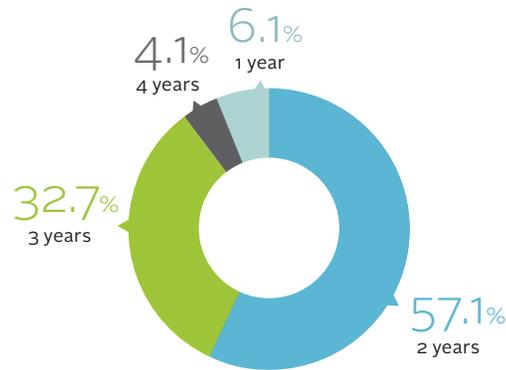
Time between first public filing and roadshow



Years of audited financials provided



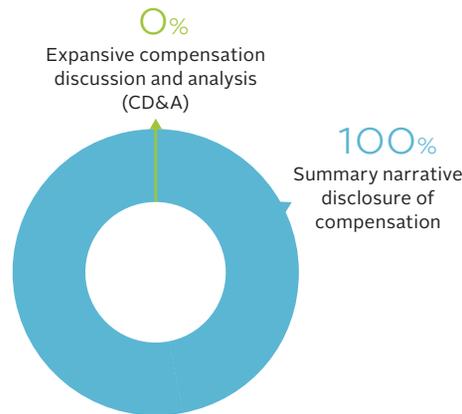
Years of selected financials provided



Companies elected to be subject to new public company GAAP



Executive compensation information



Company disclosed material weakness in internal controls⁷

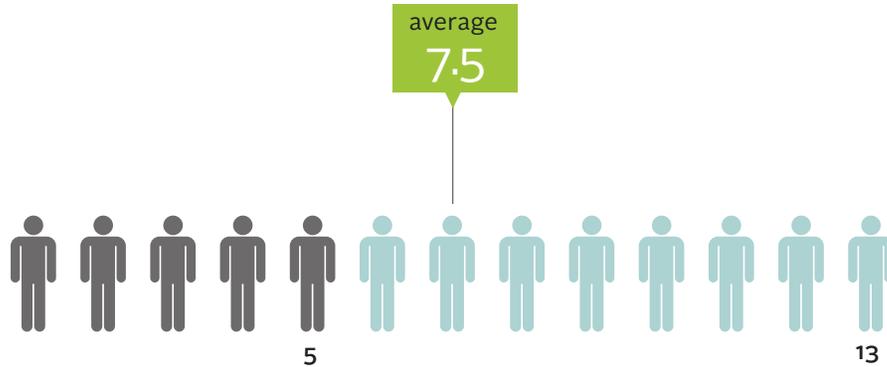


key findings

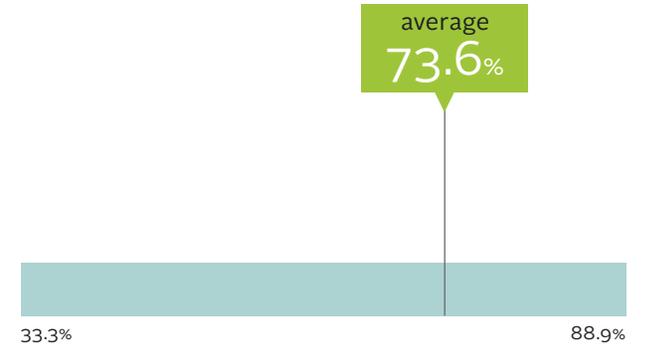
- All venture-backed companies took advantage of the JOBS Act accommodation to submit a registration statement confidentially, spending on average nearly 6 months in confidential registration and filing registration statements publicly an average of six weeks before their roadshow.
- All venture-backed companies provide limited executive compensation information.
- Nearly 25% of venture-backed companies chose the JOBS Act accommodation not to be subject to new public company generally accepted accounting principles (GAAP), a sharp increase, likely due to public company revenue recognition changes in ASC 606.
- Almost 75% of venture-backed companies took advantage of the JOBS Act accommodation to provide two years of audited financial statements. This is a slight decrease from 2016.
- Twenty percent 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

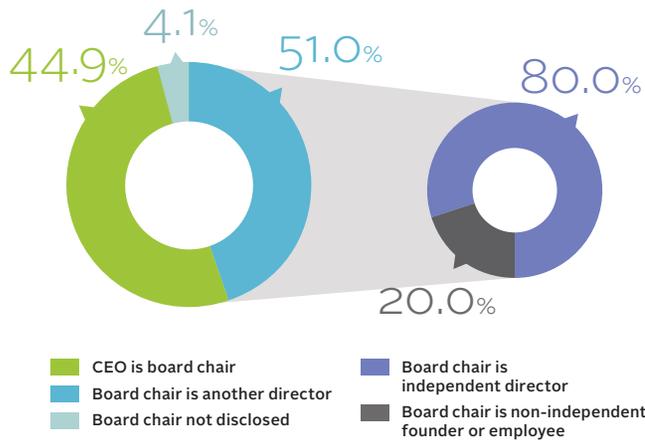
Board size



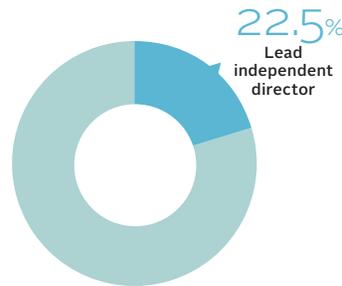
Directors who are independent¹⁰



Board chairs and lead directors⁸



Lead independent director⁹

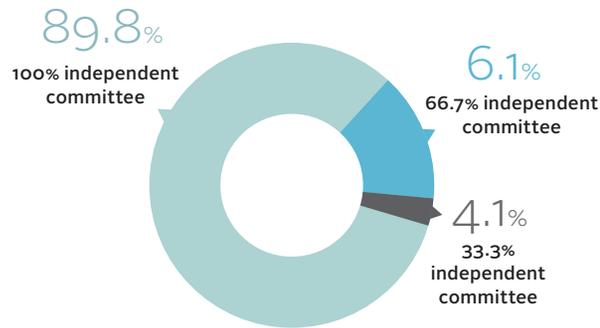


key findings

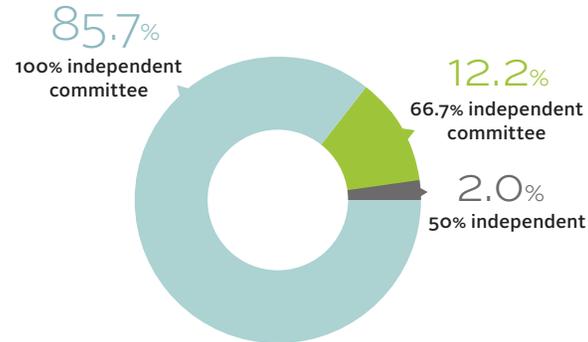
- A significant majority of venture-backed companies have substantially independent boards and board committees at the time of IPO.
- These findings are consistent with past years.

Board committees¹¹

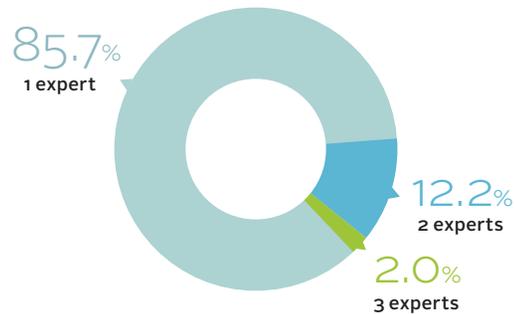
Audit committee independence



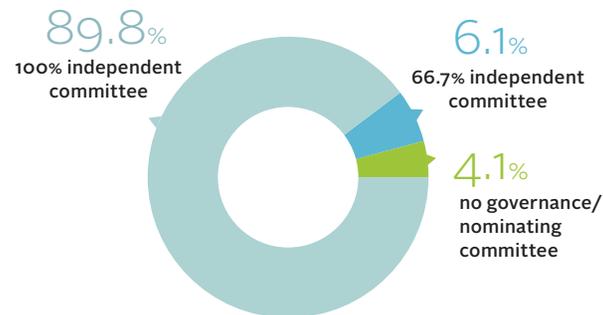
Compensation committee independence



Number of audit committee financial experts



Governance/nominating committee independence



key findings

- One company disclosed a risk committee and another company disclosed a loan committee and strategy committee.

Board policies¹²

Corporate governance guidelines



Code of business conduct



Board oversight of risk

12.2%

Board oversight:
6 companies

24.5%

Board and committee oversight:
12 companies

2.0%

Risk committee oversight:
1 company

Related-party transaction policy

87.8%

Stand-alone policy: 43 companies

12.2%

Policy in code of business conduct: 6 companies

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 past years.
- 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 compensation¹³

New equity compensation plan

95.9%

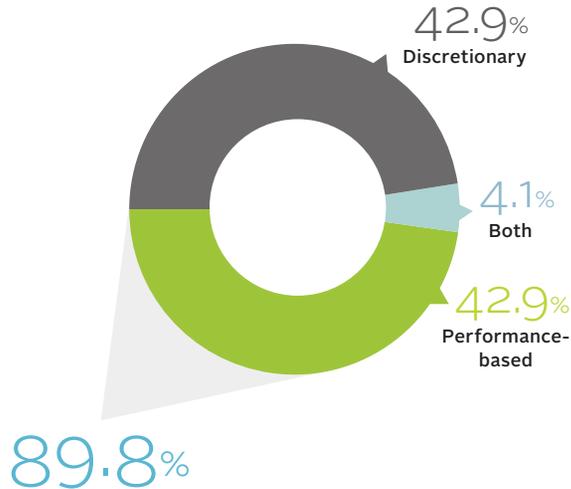
New equity compensation plan adopted in connection with IPO



91.5%

Plans that included an evergreen provision

Executive bonus plan



Non-employee director compensation plan

85.7%

Nearly always both cash- and equity-based

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 venturebacked 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 past years.
- Adopting an executive bonus plan, executive severance and change-in-control severance plans and a non-employee director compensation plan are widespread prior to an IPO.

New ESPP

73.5%

ESPP adopted in connection with IPO



94.4%

ESPPs that included an evergreen provision

Executive severance plan

85.7%

Executive severance plans

79.6%

Executive change-in-control severance plans

Key metrics & non-GAAP financial measures¹⁴

Key metrics

34.7%
17 companies

For example, key operational metrics disclosed by Snap included daily active users, while Tintri included number of customers.

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

key findings

- The use of key metrics increased over 2016 and the use of non-GAAP financial measures was consistent with 2016.

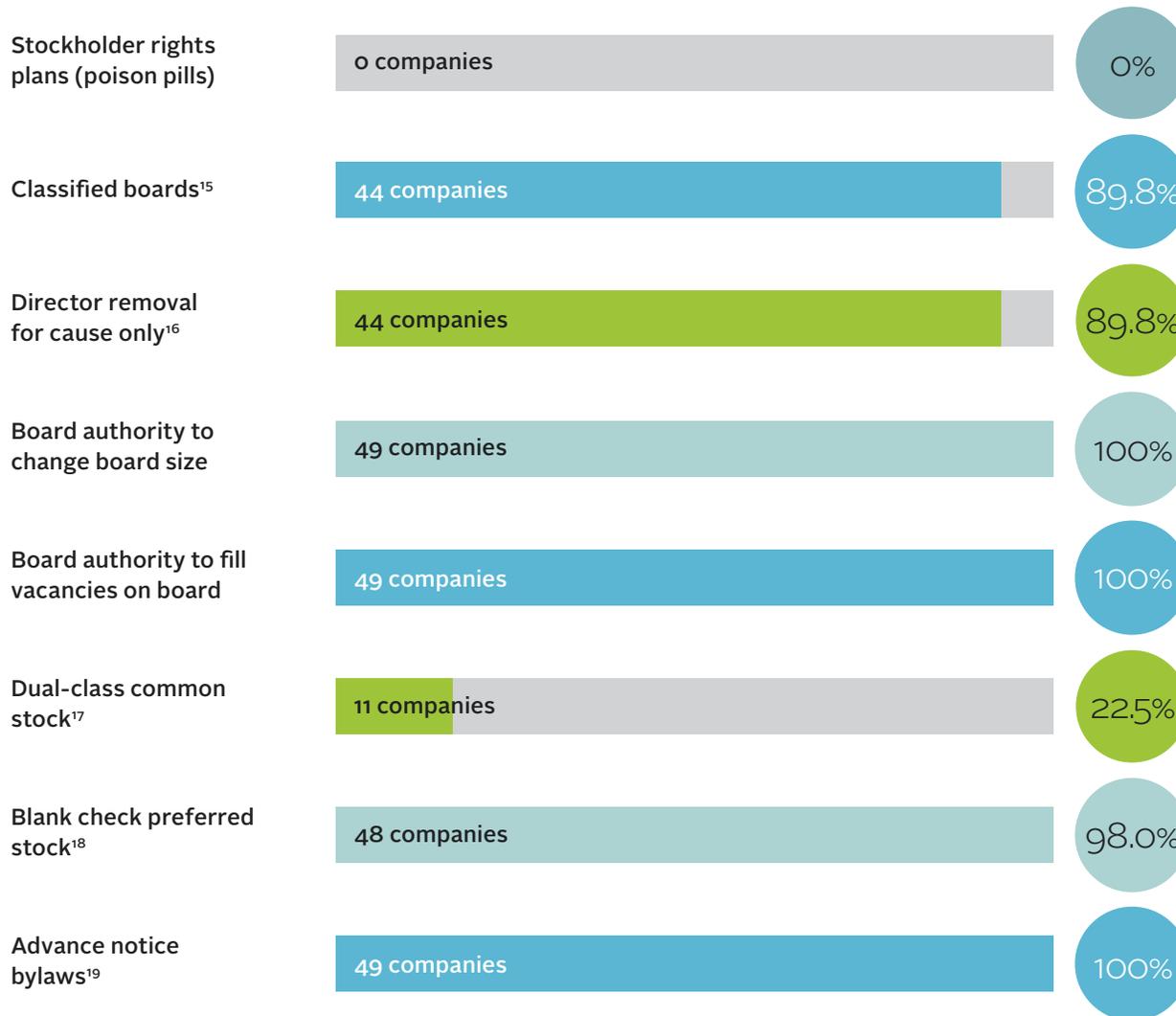
Non-GAAP financial measures

18 companies

36.7%

Adjusted EBITDA	9 companies	50.0%
Free cash flow	8 companies	44.4%
Non-GAAP net income (loss)	5 companies	27.8%
Non-GAAP operating income (loss)	3 companies	16.7%
Non-GAAP gross profit	2 companies	11.1%
Billings	1 company	5.6%

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.
- 95.9% of venture-backed companies adopted an exclusive forum provision in their governing documents.
- These findings are consistent with past years.

0%

Companies that committed to seek stockholder approval for their defensive measures within 3 years of IPO²⁰

Defensive measures (continued)

Prohibition on stockholder ability to act by written consent²¹

91.8%
45 companies

Prohibition on stockholder ability to call special meeting

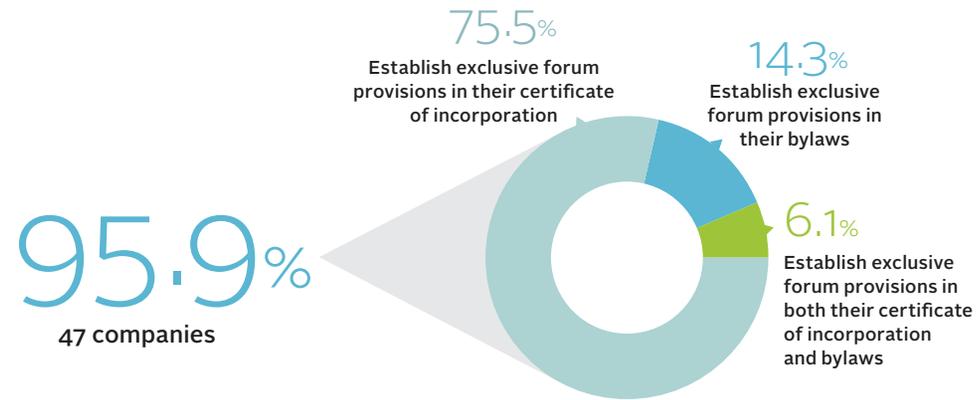
91.8%
45 companies

Director elections²²

100%
Plurality voting

0%
Majority voting

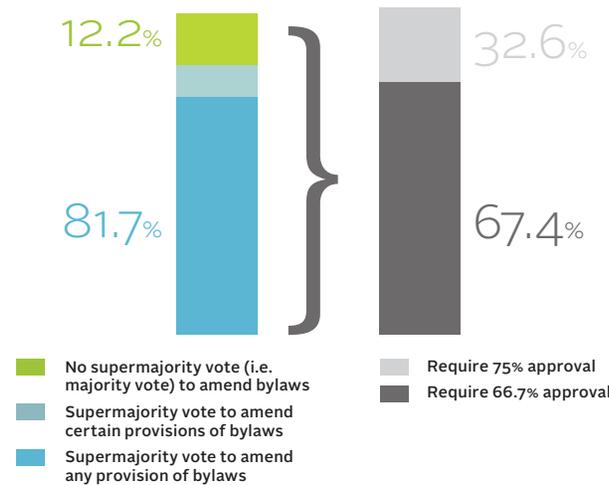
Exclusive forum provisions²³



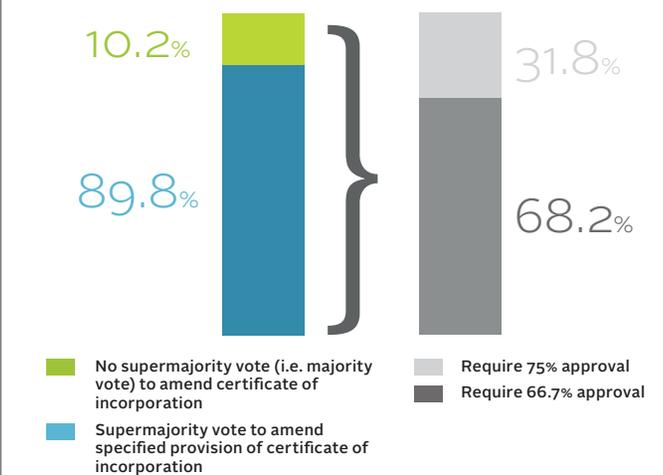
U.S. district court jurisdiction over 1933 Act fraud claims

22%
11 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. We looked at firm commitment underwritten IPOs with gross proceeds over \$20 million.

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

⁴ Measured from date of incorporation 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). In 2017, the SEC extended the ability to use confidential submissions to all companies, regardless of emerging growth status.

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 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, 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.

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

Endnotes (continued)

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.

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.

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 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.

¹³ 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 looked again 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.

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

²⁰In 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.

²¹When stockholders are prohibited from acting by written consent, any action requiring stockholder approval must occur at a stockholder meeting.

²²Plurality 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.

²³Exclusive 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).

In response to plaintiffs in IPO fraud class action suits bringing their claims in state rather than federal court, a growing number of companies have also begun to include exclusive forum provisions naming U.S. district court as the exclusive forum to hear cases brought under the Securities Act of 1933, the federal statute under which such IPO fraud cases are brought.

Acknowledgements

Richard C. Blake in Gunderson Dettmer’s public offerings/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, Owais Mahesri, Brian N. Savage, Keith J. Scherer, Albert W. Vanderlaan, and Albert Yeh 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 in 2017. We tailor our guidance to provide the practical advice and flexible terms highgrowth 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 lifecycle.

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.

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Most active global VC law firms in 2017

Firm Name	Deal Count
Gunderson Dettmer	687
Cooley	592
Wilson Sonsini Goodrich & Rosati	452
DLA Piper	388
Fenwick & West	362
Orrick, Herrington & Sutcliffe	362
Goodwin	307
Lathan & Watkins	178
O'Melveny & Myers	89
Perkins Coie	89
Sheppard Mullin Richter & Hampton	87
McCarter & English	83
Jones Day	67
WilmerHale	63
Morrison & Foerster	54
Bryan Cave	52
Silicon Legal Strategy	49
Rousaud Costas Duran	44
Nelson Mullins Riley & Scarborough	44
Osler, Hoskin & Harcourt	43
Andrews Kurth Kenyon	38
Stradling Yocca Carlson & Rauth	37
Ashfords	34
Pillsbury Winthrop Shaw Pittman	31
Sidley Austin	31
Foley Hoag	30

Source: PitchBook

