FENWICK

Corporate Governance Practices and Trends

A Comparison of Large Public Companies and Silicon Valley Companies

2020 Proxy Season

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Full Bio

David A. Bell co-chairs Fenwick's corporate governance practice. His practice also includes counseling public companies in corporate, securities and compliance matters, as well as initial public offerings, mergers and acquisitions, venture capital financings, intellectual property licensing and advising startup companies. He represents a wide range of technology companies, from privately held startups to publicly traded corporations. David is a Fellow of the American College of Governance Counsel.

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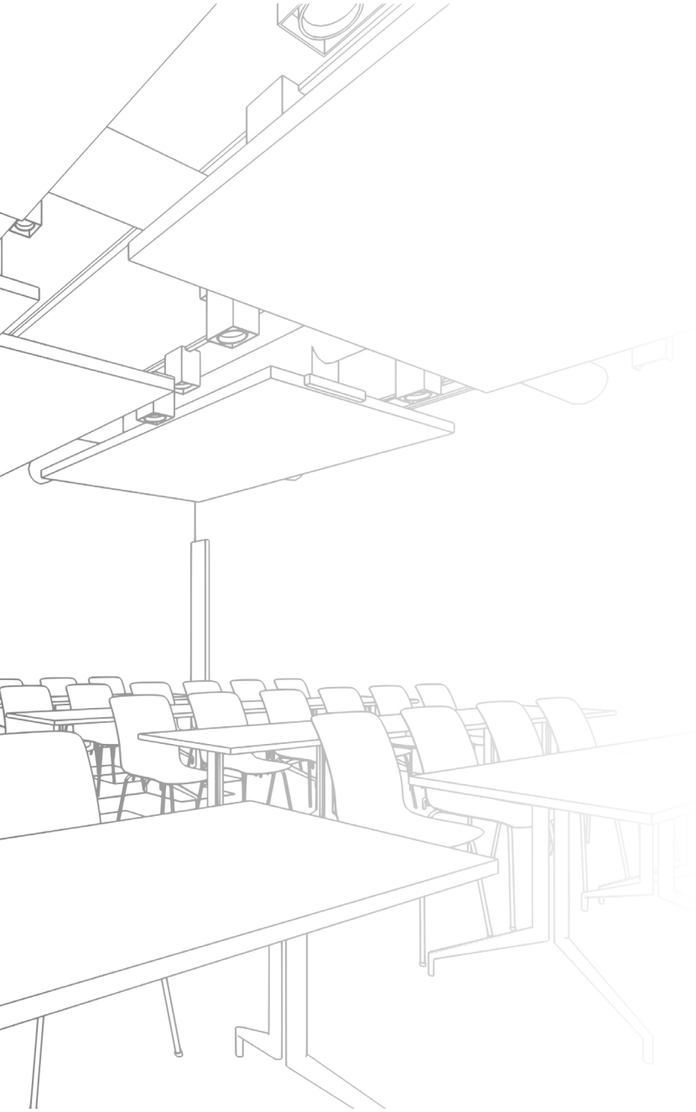

Corporate governance practices vary significantly among public companies. This is a reflection of many factors, including:

- Differences in the stage of development of companies, including the relative importance placed on various values (for example, focus on growth and scaling operations may be given more importance);
- Differences in the investor base for different types of companies;
- Differences in expectations of board members and advisors to companies and their boards, which can vary by size, age of company, stage of development, geography, industry and other factors; and
- The reality that corporate governance practices that are appropriate for large, long-established public companies can be meaningfully different from those for newer, smaller companies.

Since the passage of the Sarbanes-Oxley Act of 2002, which signaled the initial wave of corporate governance reforms among public companies, Fenwick has surveyed the corporate governance practices of the companies included in the Standard & Poor's 100 Index (S&P 100) and the technology and life sciences companies included in the Fenwick – Bloomberg Law Silicon Valley 150 List (SV 150) each year.

In this report, we present statistical information for a subset of the data we have collected over the years, updating for the 2020 proxy season. These include size and number of meetings for boards and their primary committees, the number of insider directors, board leadership makeup, majority voting, board classification and use of a dual-class voting structure, as well as the frequency and number of stockholder proposals. We have also included data covering the number of women on boards of directors, stock ownership guidelines for executive officers and directors, and additional information about committees beyond the primary committees. In each case, we present comparative data for the S&P 100 companies and for the technology and life sciences companies included in the SV 150, as well as trend information.

Governance practices and trends (or perceived trends) among the largest companies are generally presented as normative for all public companies. Fenwick collects information regarding public company governance practices to enable boards and companies in Silicon Valley to understand the actual corporate governance practices among their peers and neighbors, and understand how those practices contrast with practices among large companies nationally.

About the Data: Group Makeup of the Fenwick – Bloomberg Law Silicon Valley 150 List

In the 2020 proxy season, there were approximately 245 public technology and life sciences companies in "Silicon Valley,"[1] of which the Fenwick – Bloomberg Law SV 150 List captures those that are the largest by one measure—revenue.[2] The 2020 constituent companies of the SV 150 range from Apple and Alphabet, with revenue of approximately $268B and

1 The number fluctuates constantly as some companies complete initial public offerings and others are acquired. As of October 5, 2020, D&B Hoovers included 309 public companies headquartered in Silicon Valley (which was historically defined by *The Mercury News* [fka the San Jose Mercury News] as Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara counties, when they published the SV 150 List). Of the 309 public companies in Silicon Valley, we consider approximately 245 of them technology or life sciences companies based on their "D&B Hoovers Industry" descriptions as well as their initial sources of funding. The number of Silicon Valley public technology and life sciences companies is down from a high of 417 reached in 2000 during the dot-com era, although it has risen slowly in recent years. See "What the 'Tech Exodus' Could Mean for Silicon Valley," (*Bloomberg,* August 18, 2020), "From the Editor's Desk: Is Silicon Valley Still the Epicenter of the Startup Universe," (*Crunchbase News,* August 21, 2020) and "In Boom and Bust San Francisco, Pandemic Brings Grim New Reality," (*Bloomberg*, May 28, 2020).

2 Based on review of the "D&B Hoovers Industry" descriptions, there are approximately 65 public companies that are outside of the technology or life sciences industries but are located in the Silicon Valley region (defined as Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara counties) (see footnote 1). See also the "Methodology—Group Makeup" section below for a more detailed discussion of the makeup of the SV 150 and the geography of Silicon Valley for its purposes, including footnote 46.

Overview

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$162B, respectively, to Ooma and Model N, with revenue of approximately $152M and $145M, respectively, in each case for the four quarters ended on or about December 31, 2019. Apple went public in 1980, Alphabet (as Google) in 2004. Apple and Alphabet's peers clearly include companies in the S&P 100, of which they are also constituent members (11 companies were constituents of both indices for the survey in the 2020 proxy season), where market capitalization averages approximately $374B.[3] Ooma and Model N's peers are smaller technology and life sciences companies that went public relatively recently and have market capitalizations well under $1B. In terms of number of employees, the SV 150 averages approximately 12,300 employees, ranging from SYNNEX, with 235,000 employees spread around the world in dozens of countries, to companies such as Aemetis, with 160 employees in the United States and India, as of the end of their respective fiscal years 2019 (Innoviva, ranked 131 in the SV 150, has the fewest full-time employees—six).

About the Data: Group Makeup of the Standard & Poor's 100 Index

The companies included in the S&P 100 are a cross-section of the very largest public companies in the United States. Just as the SV 150 companies are not necessarily representative of Silicon Valley generally, so the S&P 100 companies are not necessarily representative of companies in the U.S. generally.[4] Far larger than a typical public company in the U.S. and far larger than U.S. corporations generally, the S&P 100 companies average approximately 144,000 employees and include Walmart with 2.2 million employees in more than two dozen countries at its most recent fiscal year-end.

The 2020 constituent companies of the S&P 100 range from the aforementioned Walmart, with revenue of approximately $521.1B, market capitalization of approximately $338.8B and approximately 2.2 million employees, to Simon Property Group, with revenue of approximately $5.6B, market capitalization of approximately $45.3B and 4,500 employees. The average market capitalization of the S&P 100 was approximately $190B, ranging from Allstate at approximately $36.2B to Apple at approximately $1.3T, with a median of $125B. The median revenue of the S&P 100 for the four quarters ended on or about December 31, 2019, was approximately $39.6B. The industries included in the S&P 100 range from financial services to apparel, food products, air transport and more.

Comparing the SV 150 with the S&P 100

It is important to understand the differences between the technology and life sciences companies included in the SV 150 and the large public companies included in the S&P 100. Compared to the S&P 100 (or the broader S&P 500), SV 150 companies are on average much smaller and younger, have much lower revenue, and are concentrated in the technology and life sciences industries. About 20% of SV 150 companies have 10,000 employees or more, compared to 94% of S&P 100 companies (with 98% of the S&P 100 having 5,000 or more employees, compared to 33% of the SV 150). As the graphs on pages 4–7 illustrate, SV 150 companies also tend to have significantly greater ownership by the board and management than S&P 100 companies (whether measured by equity ownership or voting power).

3 The average market capitalization of the SV 150 at the time of announcement of the current index list (see footnote 46) was approximately $38.9B, ranging from Aemetis at approximately $19M to Apple at approximately $1.3T, with a median of $5.4B. The median revenue of the SV 150 for the four quarters ended on or about December 31, 2019, was approximately $986M. It is also worth noting that for the 2020 proxy season, 39 of the SV 150 companies were also constituents of the most recent S&P 500.

4 Standard & Poor's defines the S&P 100 Index as "a sub-set of the S&P 500," which measures the performance of large cap companies in the U.S. The Index comprises 100 major, blue chip companies across multiple industry groups. Individual stock options are listed for each index constituent. To be included, the companies should be among the larger and more stable companies in the S&P 500, and must have listed options. Sector balance is considered in the selection of companies for the S&P 100. This index is widely used for derivatives, and is the index underlying the OEX options. Standard & Poor's full methodology is available on its website.

Overview

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For purposes of the most direct comparison of the data presented in this report, the top 15[5] of the SV 150 are peers with the companies in the S&P 100. As noted above, 10 of those top 15 companies were constituents of both indices for the 2020 proxy season.[6]

Fenwick – Bloomberg Law SV 150 Subgroups—Contact Us for More Information

While not specifically studied in this report, it is worth noting that the broad range of companies in the SV 150 (whether measured in terms of size, age or revenue) is associated with a corresponding range of governance practices. Comparison of governance practice statistics and trends for the top 15, top 50,[7] middle 50[8] and bottom 50[9] companies of the SV 150 (in terms of revenue) bears this out.[10] A few examples of such comparisons are included in this report. Additional comparison information of the top 15, top 50, middle 50 and bottom 50 companies of the SV 150 (as well as other data not presented in this report)[11] may be obtained by consulting your Fenwick & West securities partner.

5 The Top 15 of the SV 150 includes companies, 11 of which are included in the S&P 100 (see footnote 6), with revenue of approximately $17B or more and market capitalizations averaging $281B, ranging from Salesforce at approximately $6.6B to Apple at approximately $1.3T at the time of announcement of the current index list (see footnote 46).

6 The 11 companies that were members of both the SV 150 and the S&P 100 in the 2020 proxy season (with their SV 150 rank) are: Apple (1), Alphabet (2), Intel (3), Facebook (4), Cisco (6), Oracle (7), Gilead Sciences (12), Netflix (13), PayPal Holdings (14), Adobe (19) and NVIDIA (20).

7 The Top 50 of the SV 150 includes companies with revenue of approximately $2.2B or more and market capitalizations averaging $108.4B, ranging from Super Micro Computer at approximately $1.2B to Apple at approximately $1.3T at the time of announcement of the current index list (see footnote 46).

8 The Middle 50 of the SV 150 includes companies with revenue of at least approximately $481M but less than approximately $2.2B and market capitalizations averaging $6.3B, ranging from GoPro at approximately $669M to Veeva Systems at approximately $15.2B at the time of announcement of the current index list (see footnote 46).

9 The Bottom 50 includes companies with revenue of at least approximately $145M but less than $457M and market capitalizations averaging $2.2B, ranging from Aemetis at approximately $19M to Coupa Software at approximately $9.6B at the time of announcement of the current index list (see footnote 46).

Overview

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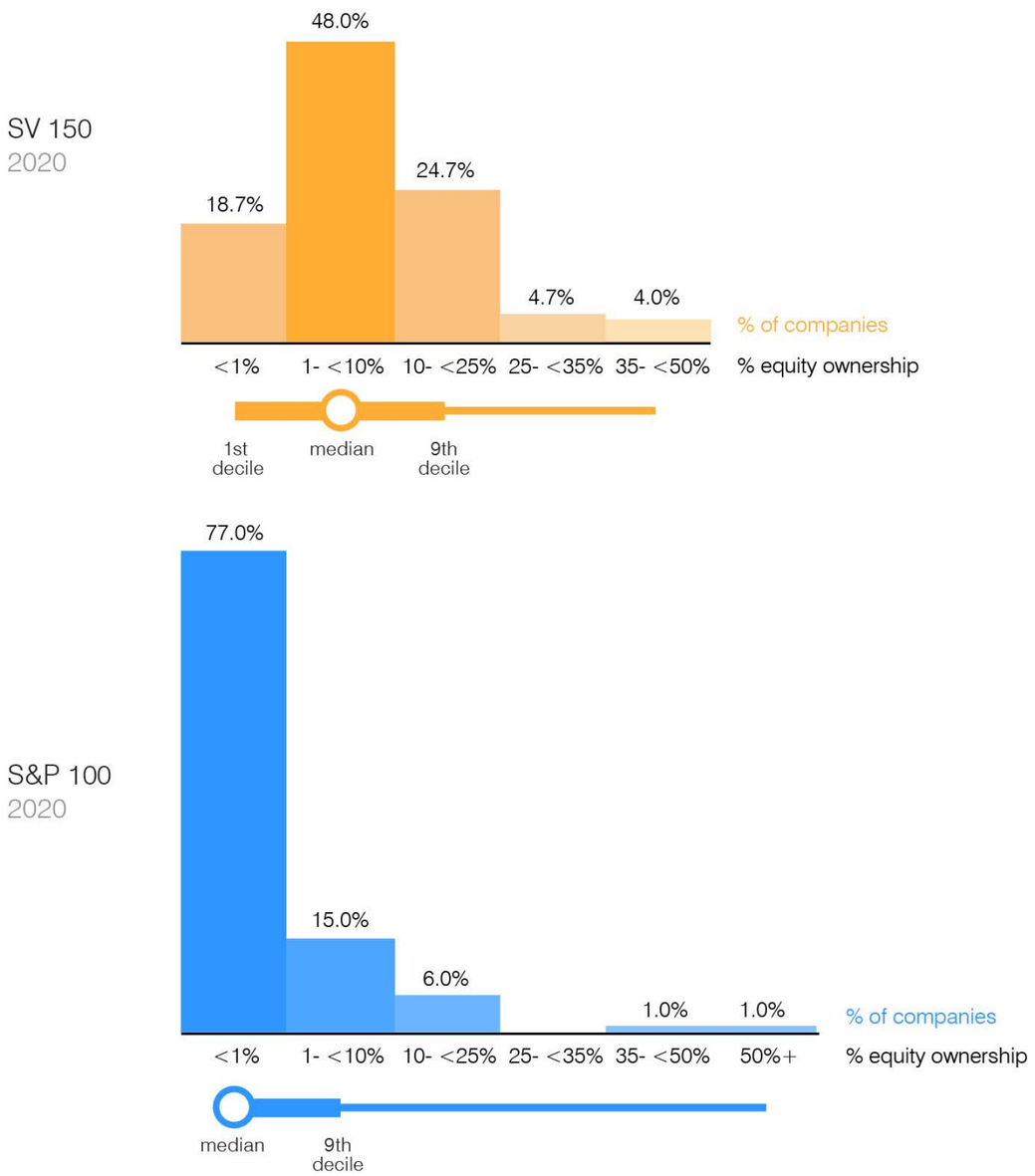
Equity Ownership by Executives and Directors

The distribution of simple equity ownership skews higher among the technology and life sciences companies in the SV 150 (average 9.2%) than among S&P 100 companies (average 2.6%).

The graphs on this page show the distribution of the percentage of simple equity ownership of the directors and executive officers of the companies in each of the SV 150 and the S&P 100 for the 2020 proxy season.

EXECUTIVE AND DIRECTOR EQUITY OWNERSHIP — DISTRIBUTIONS



Overview

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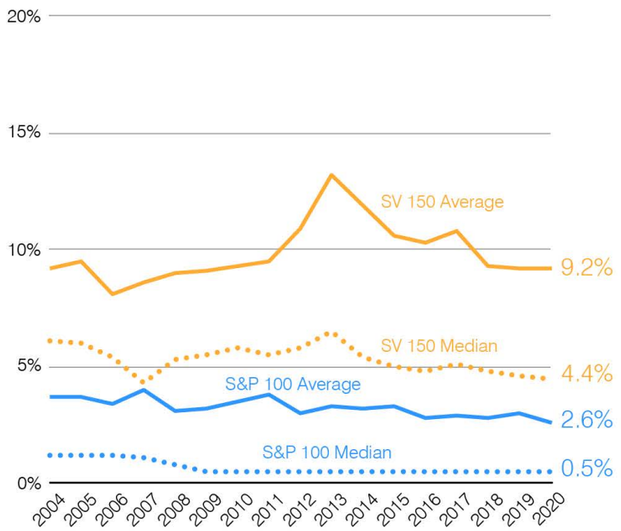
Equity Ownership by Executives and Directors (*continued*)

As noted above, the distribution of simple equity ownership skews higher among the technology and life sciences companies in the SV 150, and that difference has held fairly steady over time—increasing in recent years.

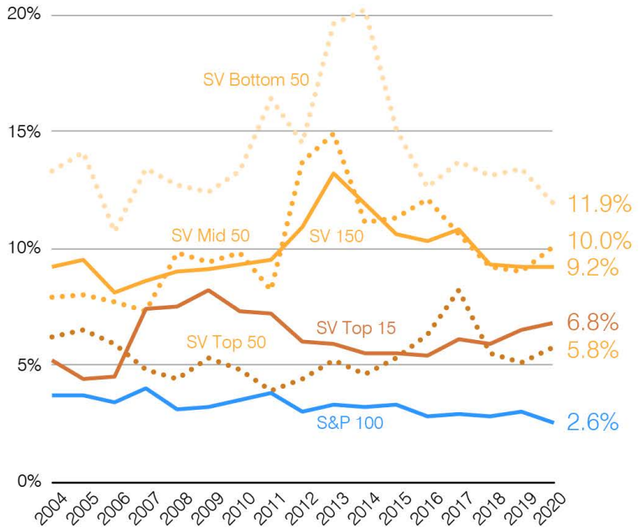
The graphs on this page show the average and median percentages of simple equity ownership of the directors and executive officers of the companies in each of the SV 150 and the S&P 100 as a group from the 2004 through 2020 proxy seasons as well as the percentages of average equity ownership for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies, and the distribution of the percentage of simple equity ownership in each of the SV 150 and the S&P 100.

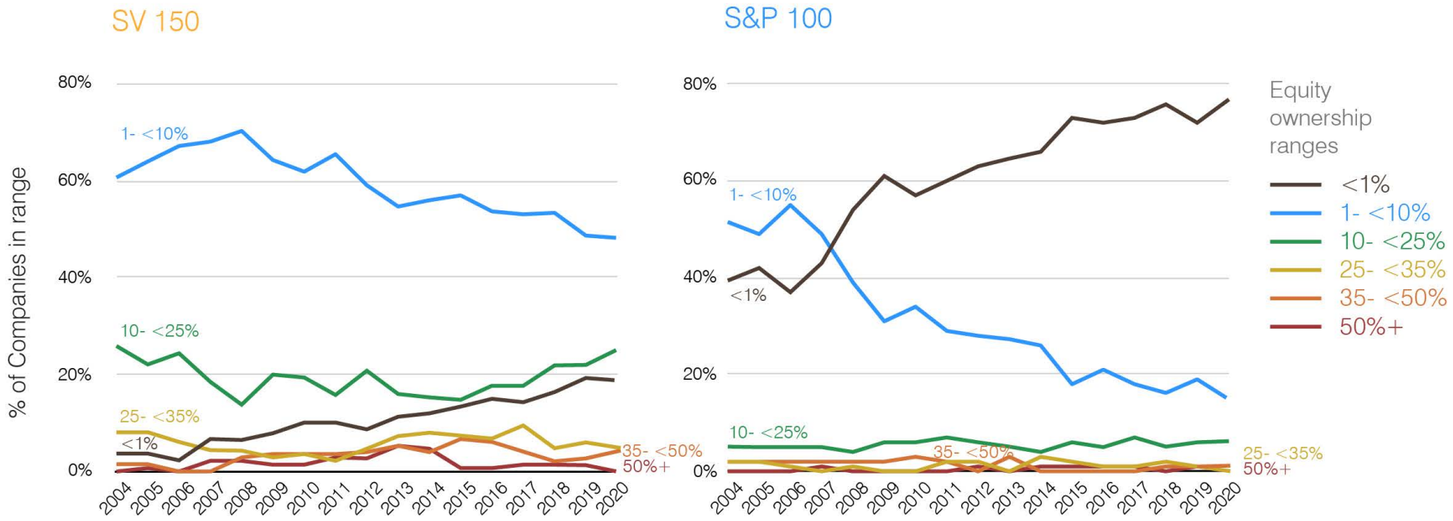
EXECUTIVE AND DIRECTOR EQUITY OWNERSHIP—TRENDS OVER TIME

Average & Median Comparison



SV 150 Breakdown – Average Equity Ownership





Overview

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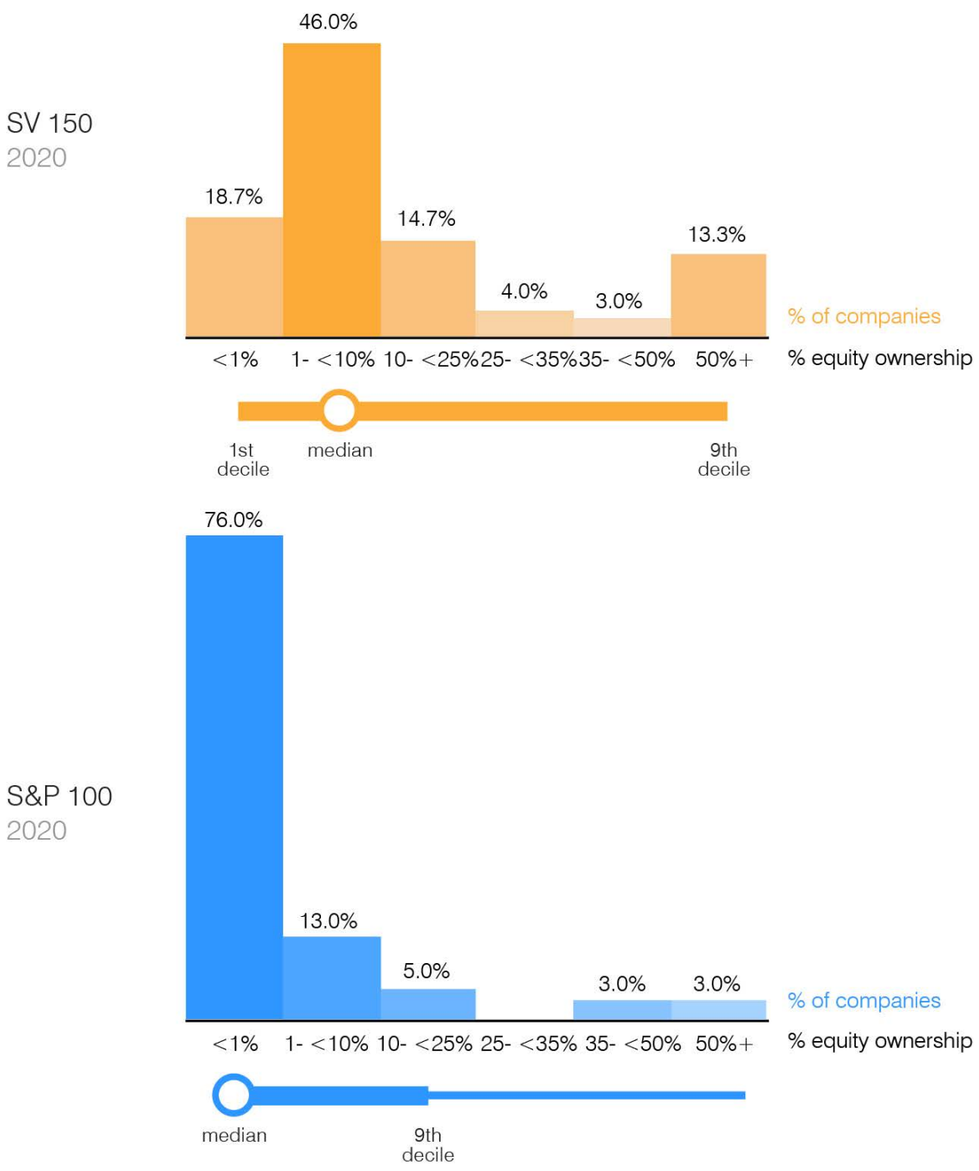
Voting Power Ownership by Executives and Directors

The distribution of voting power ownership skews higher among the technology and life sciences companies in the SV 150 (average 15.7%) than among S&P 100 companies (average 4.2%).

The graphs on this page show the distribution of the percentage ownership of total voting power of the directors and executive officers of the companies in each of the SV 150 and the S&P 100 for the 2020 proxy season.

EXECUTIVE AND DIRECTOR VOTING OWNERSHIP — DISTRIBUTIONS



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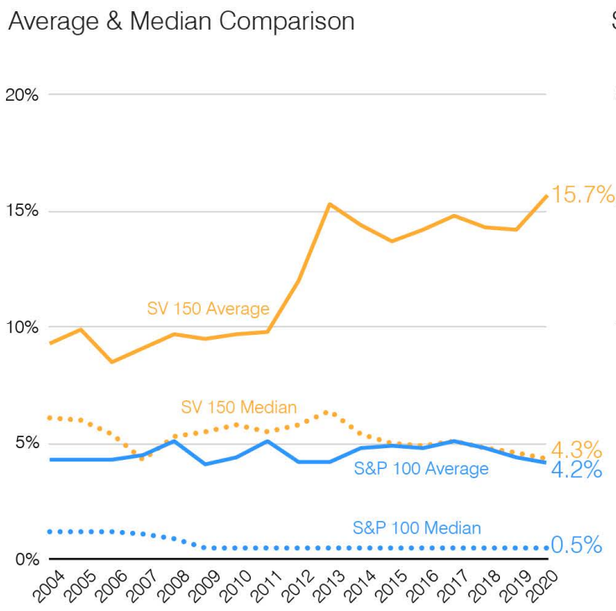
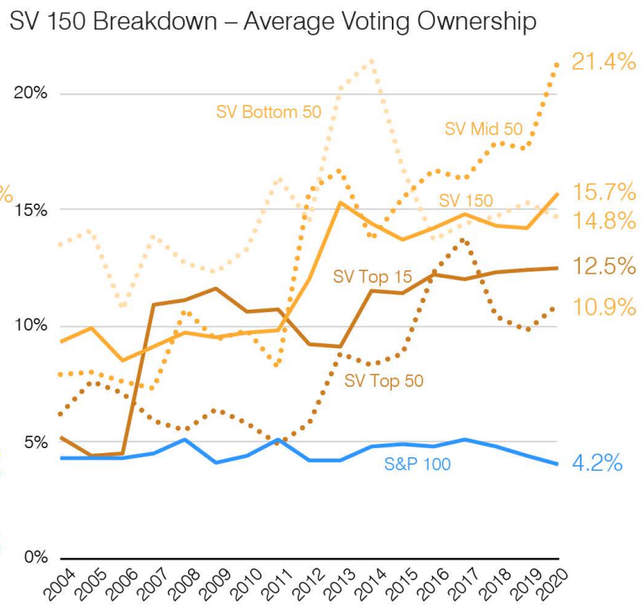
Voting Power Ownership by Executives and Directors (*continued*)

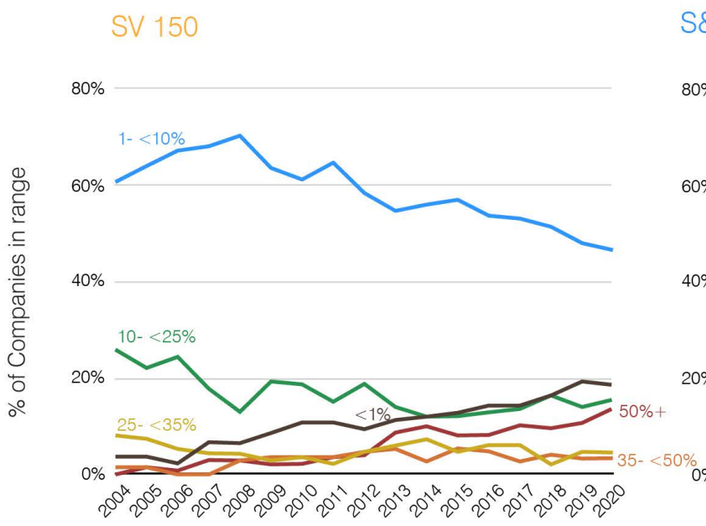
As noted above, the distribution of voting power ownership skews higher among the technology and life sciences companies in the SV 150, and that difference has held fairly steady over time.

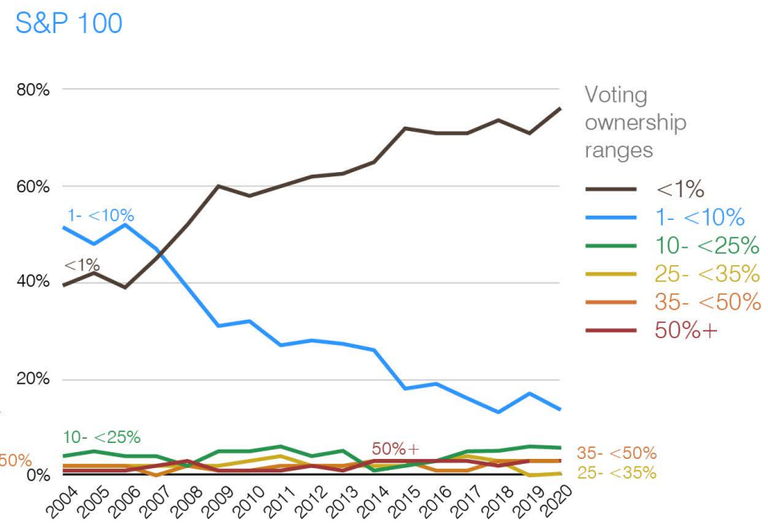
The graphs on this page show the average and median percentages of ownership of total voting power of the directors and executive officers of the companies in each of the SV 150 and the S&P 100 as a group from the 2004 through 2020 proxy seasons, as well as the percentages of average voting ownership for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies, and the distribution of the percentage of total insider voting power in each of the SV 150 and the S&P 100.

EXECUTIVE AND DIRECTOR VOTING OWNERSHIP — TRENDS OVER TIME







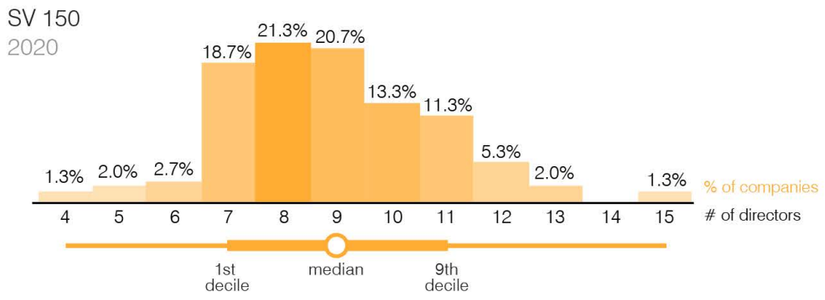


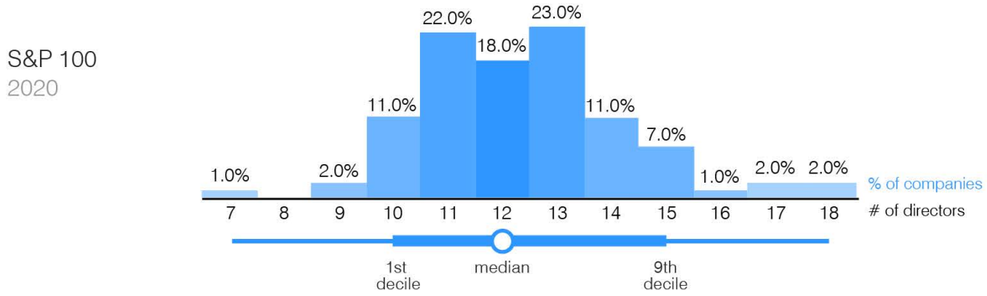
Board Size and Meeting Frequency

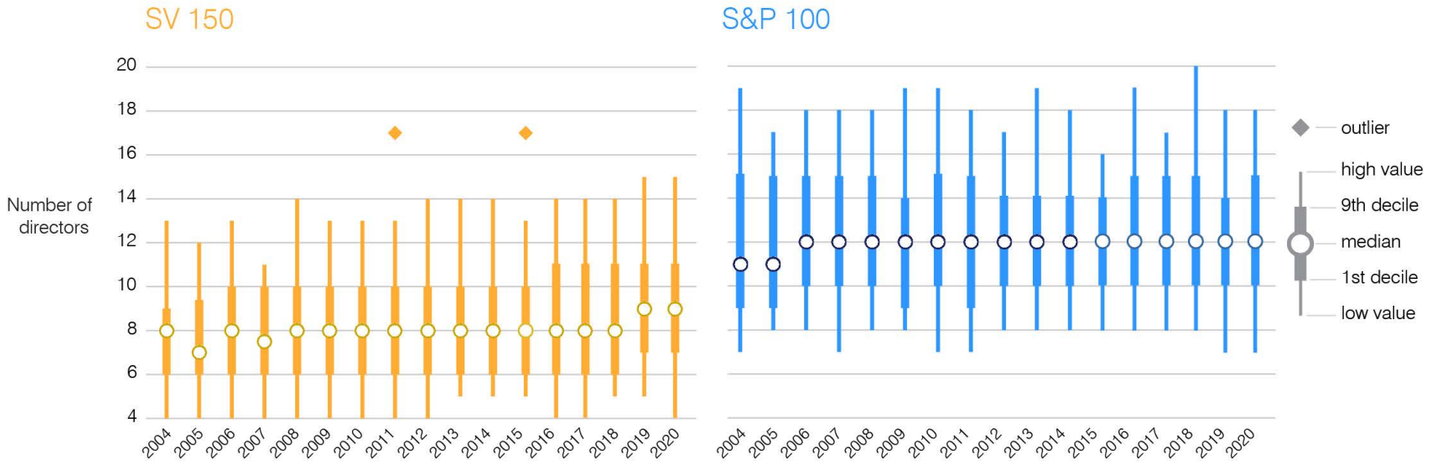
The number of directors tends to be substantially lower among the technology and life sciences companies in the SV 150 (average = 8.9 directors) than among S&P 100 companies (average = 12.4 directors).

The graphs on this page show the distribution by number of directors among the two groups during the 2020 proxy season, as well as the trend over the period from the 2004 through 2020 proxy seasons (showing both the median number and the cutoffs for the deciles with the most and fewest directors).

SIZE OF BOARD OF DIRECTORS — DISTRIBUTION AND TRENDS OVER TIME







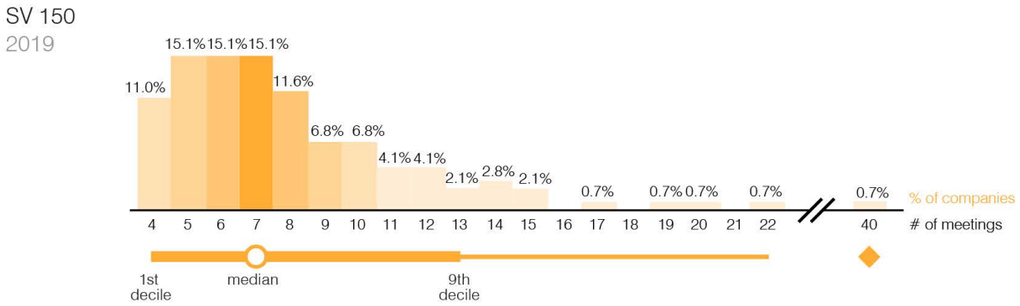
Board Size and Meeting Frequency

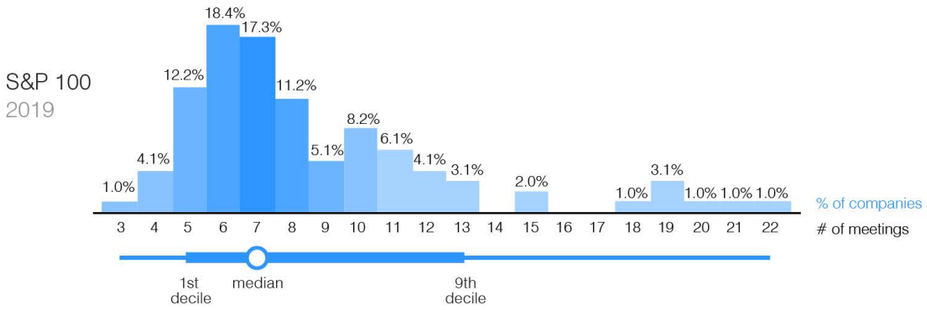
Continued

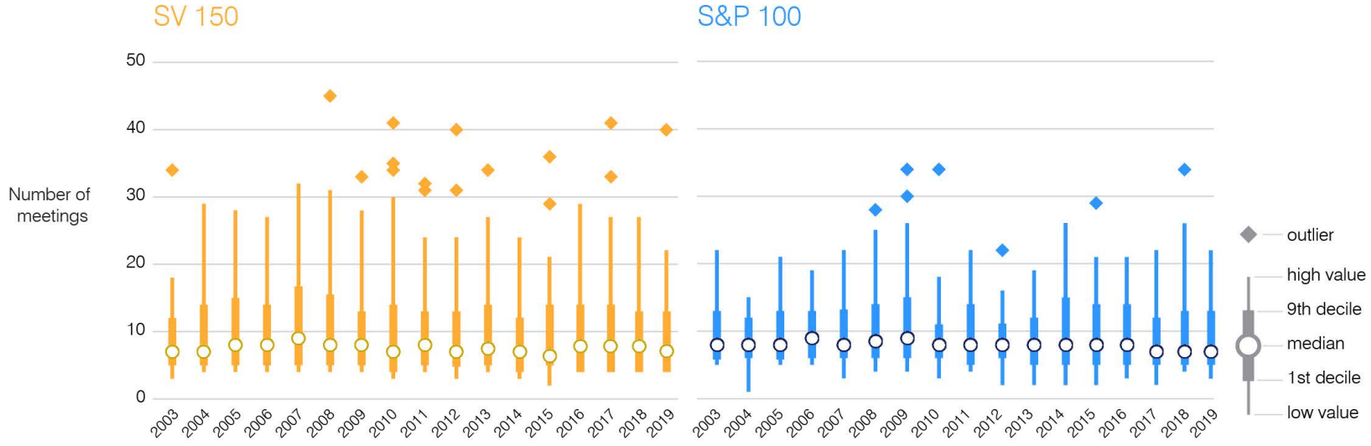
The technology and life sciences companies in the SV 150 held board meetings slightly less often in fiscal 2019 (average = 8.1 in 2019 compared to 8.2 in 2018). The same was true for S&P 100 companies, which decreased meeting frequency (average = 8.6 in 2019 compared to 8.8 in 2018).

The graphs on this page show the distribution by number of board meetings among the two groups in fiscal 2019 as reported during the 2020 proxy season, as well as the trend over the period from fiscal 2003 through 2020 (showing both the median number and the cutoffs for the deciles with the most and fewest meetings), as reported in the 2004 through 2020 proxy seasons.

NUMBER OF BOARD OF DIRECTORS MEETINGS—DISTRIBUTION AND TRENDS OVER TIME





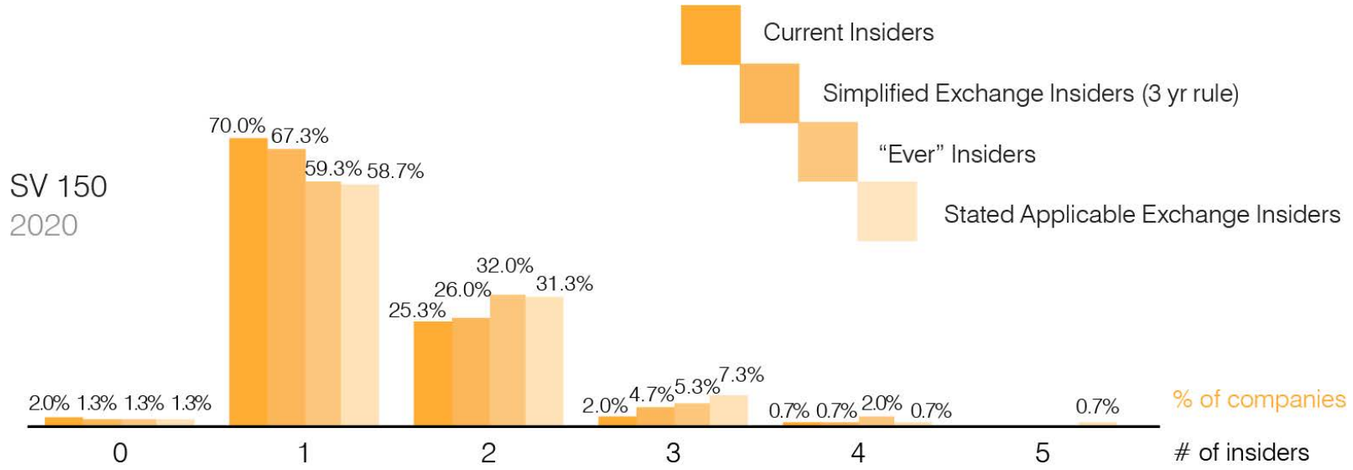


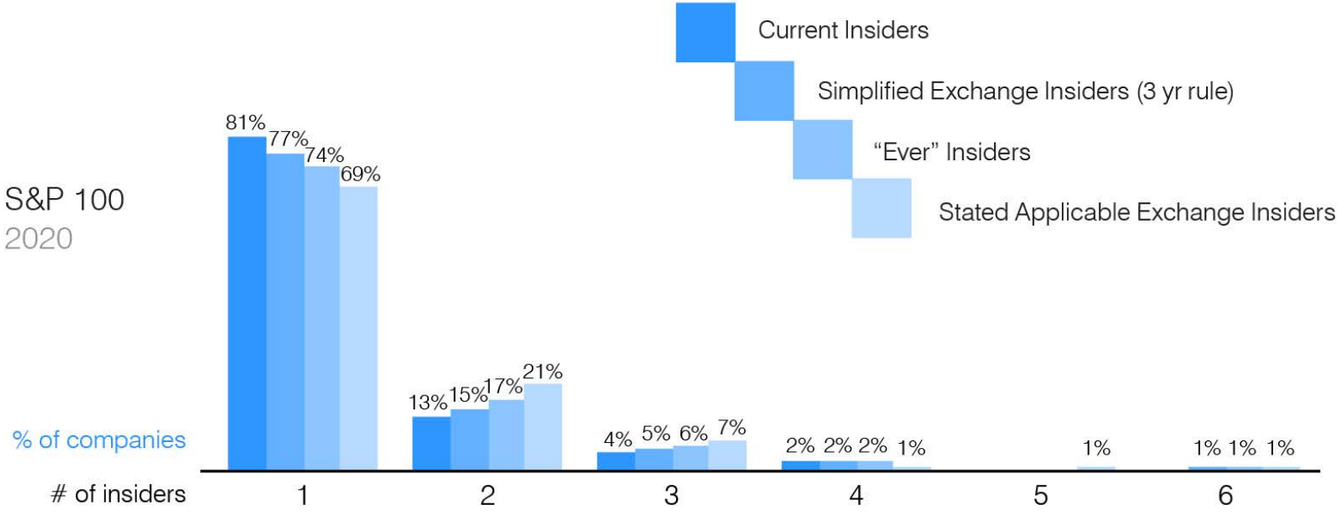
Insider Directors

Insider directors are more common among members of the boards of the technology and life sciences companies included in the SV 150 than among board members at S&P 100 companies. While generally their prevalence has declined over time in both groups, the SV 150 has not reached the level of the S&P 100 at the start of the period covered by the survey. This is largely a function of the relative size of the boards in the two groups rather than the absolute number of insider directors per board.

The graphs on this page show the distribution by number of insider directors among the two groups during the 2020 proxy season. In these graphs, we have shown "insider" status determined in various ways. See the discussion under "Insider / Independent" in the Methodology section at the end of this report for a description of the different methods of determining whether a director is an insider.

INSIDER DIRECTOR—DISTRIBUTION OF NUMBERS OF INSIDERS



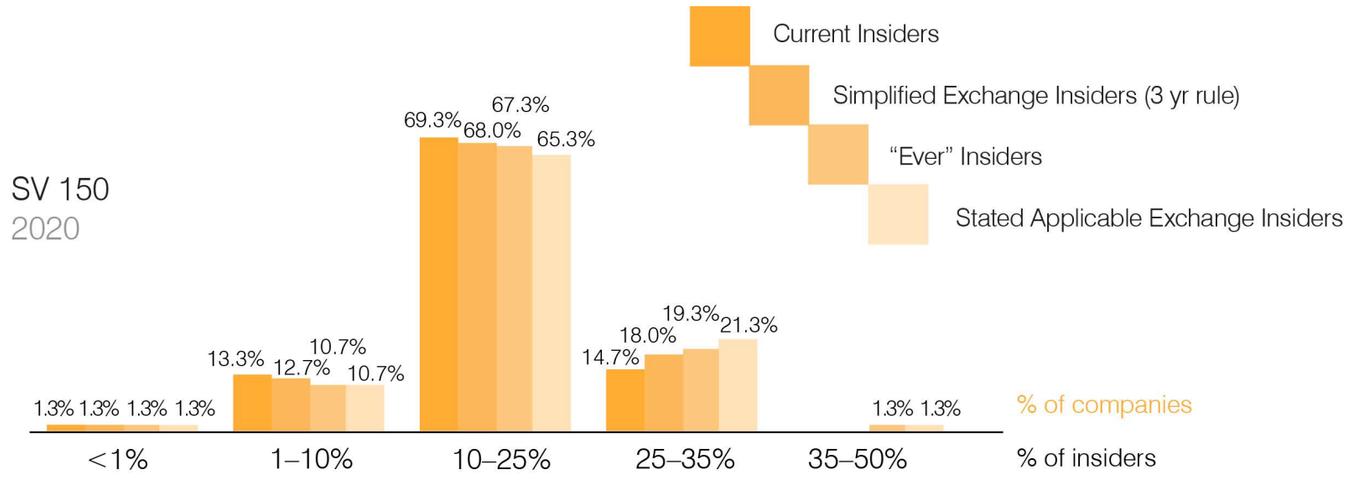


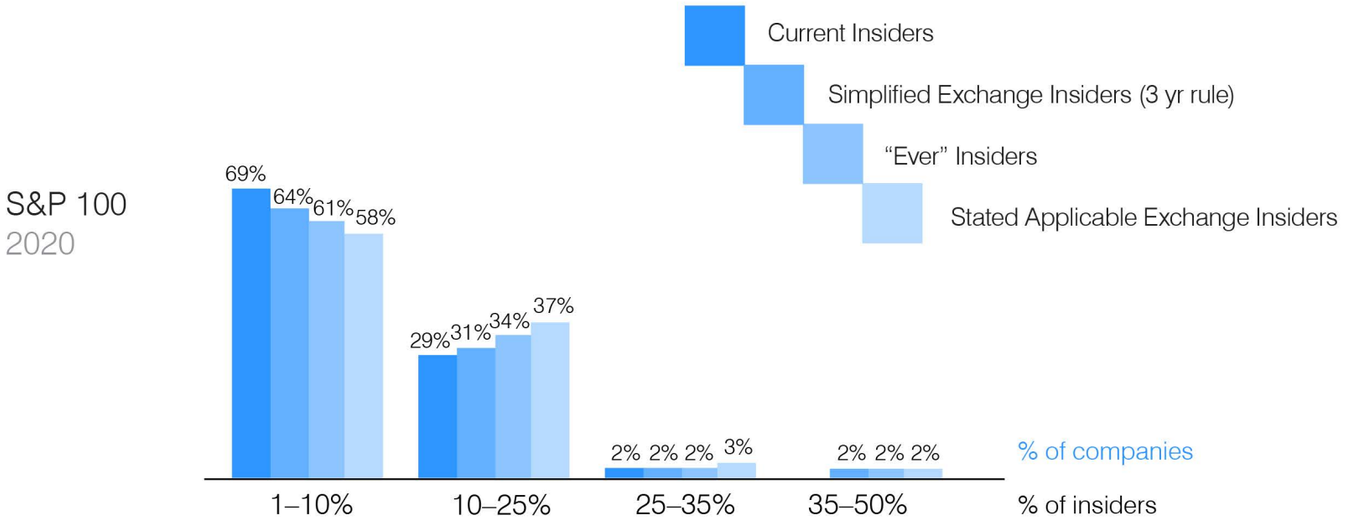
Insider Directors

Continued

The graphs on this page show the distribution by percentage of insider directors among the two groups during the 2020 proxy season. In these graphs, we have shown "insider" status determined in various ways. See the discussion under "Insider / Independent" in the Methodology section at the end of this report for a description of the different methods of determining whether a director is an insider.

INSIDER DIRECTOR—DISTRIBUTION OF PERCENTAGES OF INSIDERS



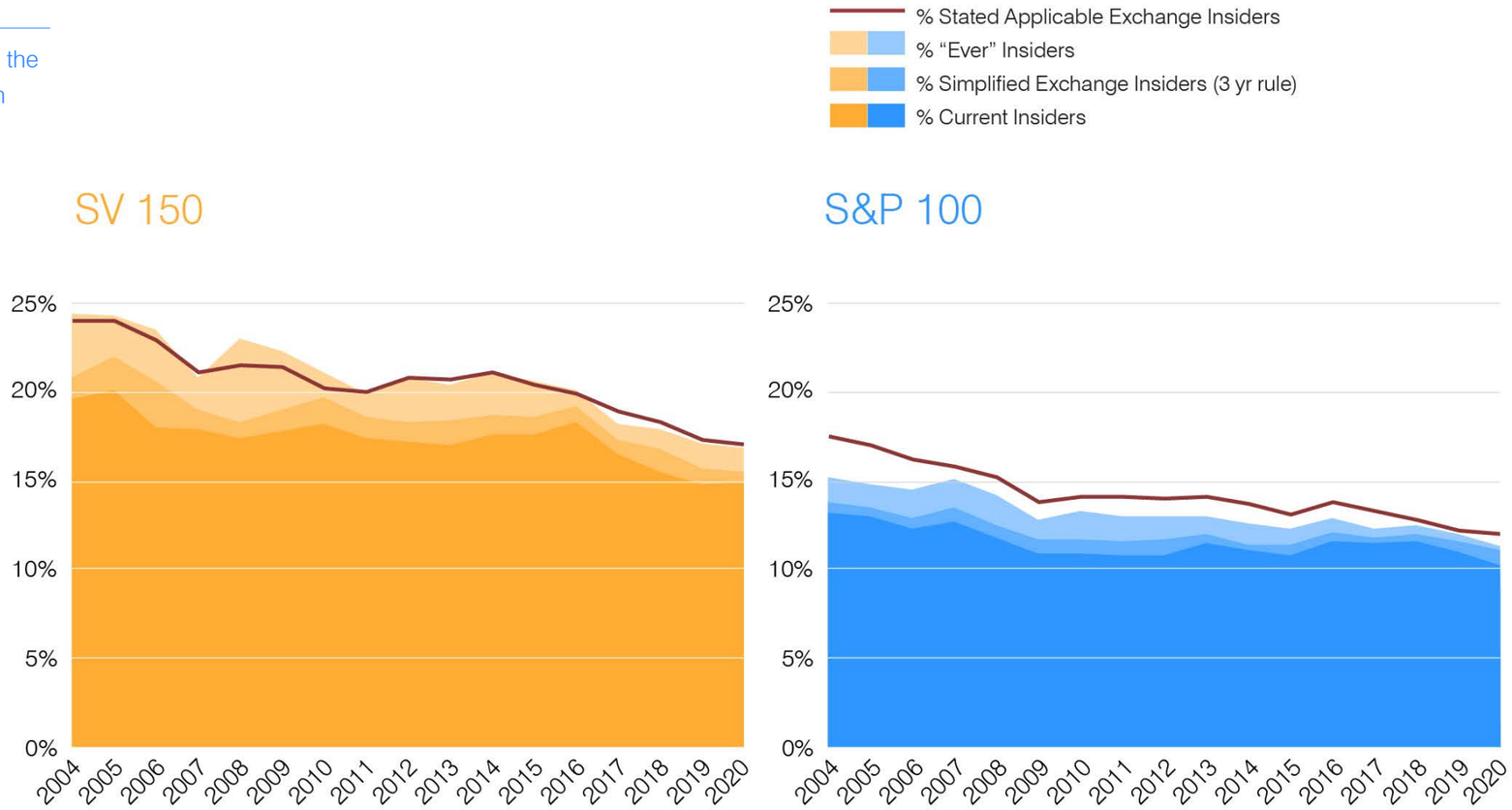


Insider Directors

Continued

The graphs on this page show the trend of the average as a percentage of the full board that are insiders for each group. In these graphs, we have shown "insider" status determined in various ways over the period from the 2004 through 2020 proxy seasons.

INSIDER DIRECTOR — TRENDS OVER TIME

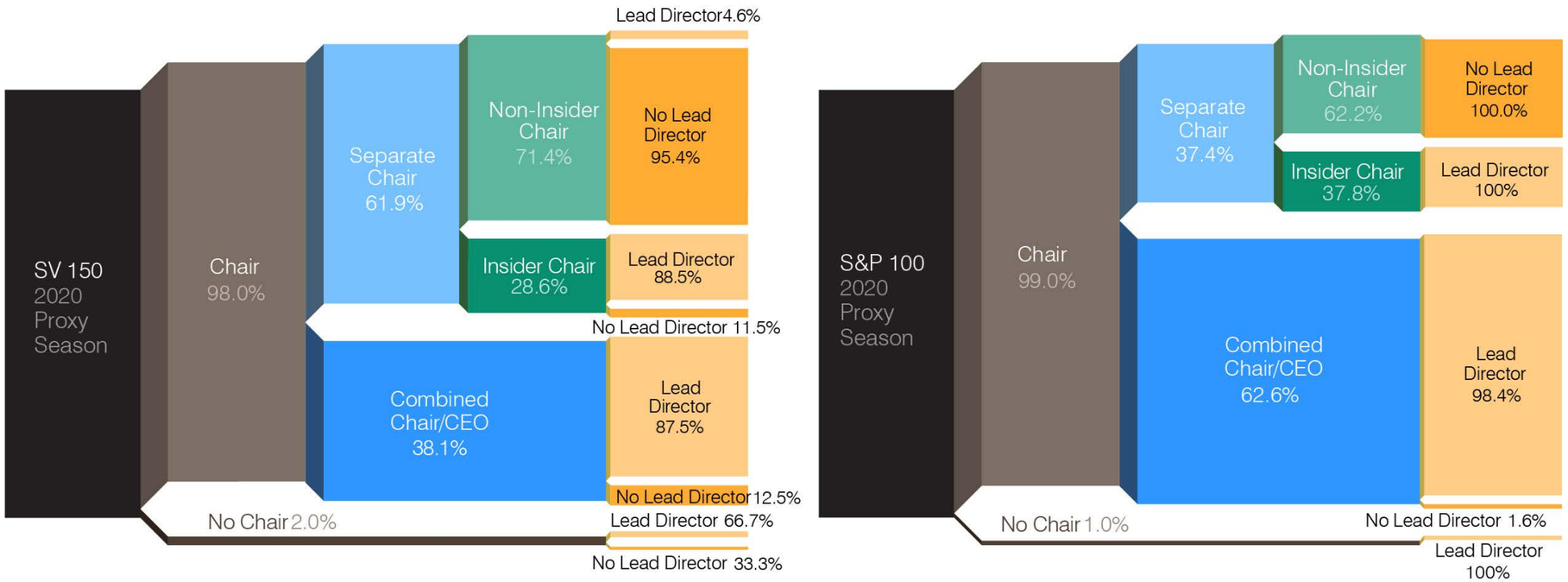


Board Leadership

These graphs show the percentage of companies during the 2020 proxy season with a board chair, then of those with a chair, the percentage with a separate chair (rather than a combined chair/CEO), and then of those with a separate chair, the percentage with a chair who is not an insider (under the applicable exchange standard). In addition, for each branch, the graphic shows the percentage with some form of lead director (separate from any chair).

During the period covered by this survey, insider dominance of board leadership started lower and declined more rapidly among the technology and life sciences companies in the SV 150 than among S&P 100 companies. By the 2011 proxy season, almost half of SV 150 companies did not have a chair who was an insider (whether measured as a current insider or under the applicable exchange listing standard)—though that trend has largely stalled since then. In the SV 150, 50.7% of companies in the 2020 proxy season did not have a current insider chair, compared to only 27.3% in the S&P 100, and 48.7% in the SV 150 had no insider chair under the applicable exchange listing standard, compared to only 24% in the S&P 100. In the 2020 proxy season, combined chair/CEOs existed at about 37.3% of companies in the SV 150, while combined chair/CEOs existed at about 62% of S&P 100 companies (albeit with lead directors also present at about 75.8% of all S&P 100 companies).

BOARD LEADERSHIP—BRANCHING PERCENTAGES



Board Leadership

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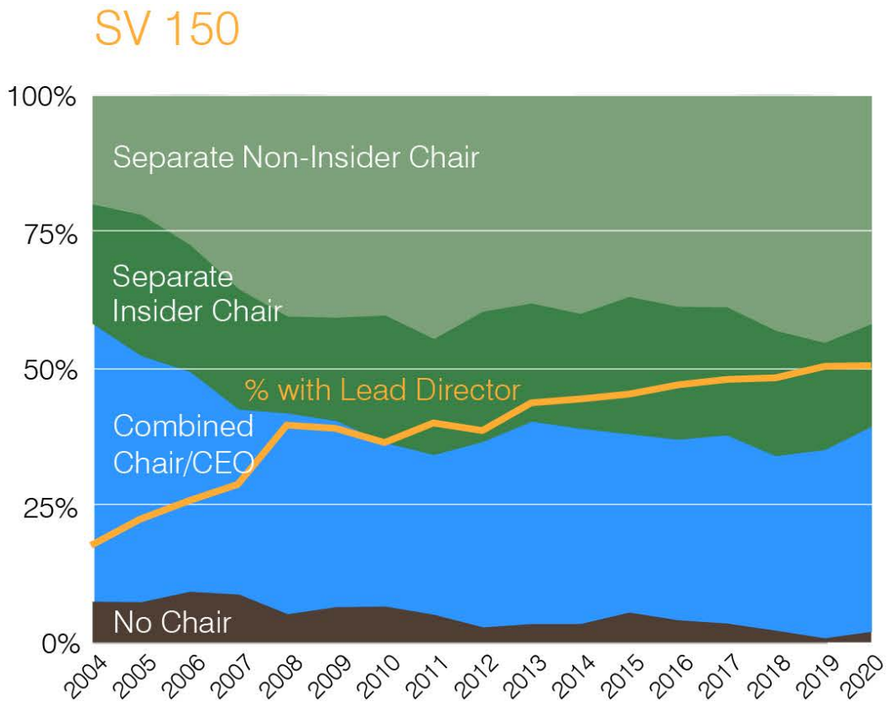
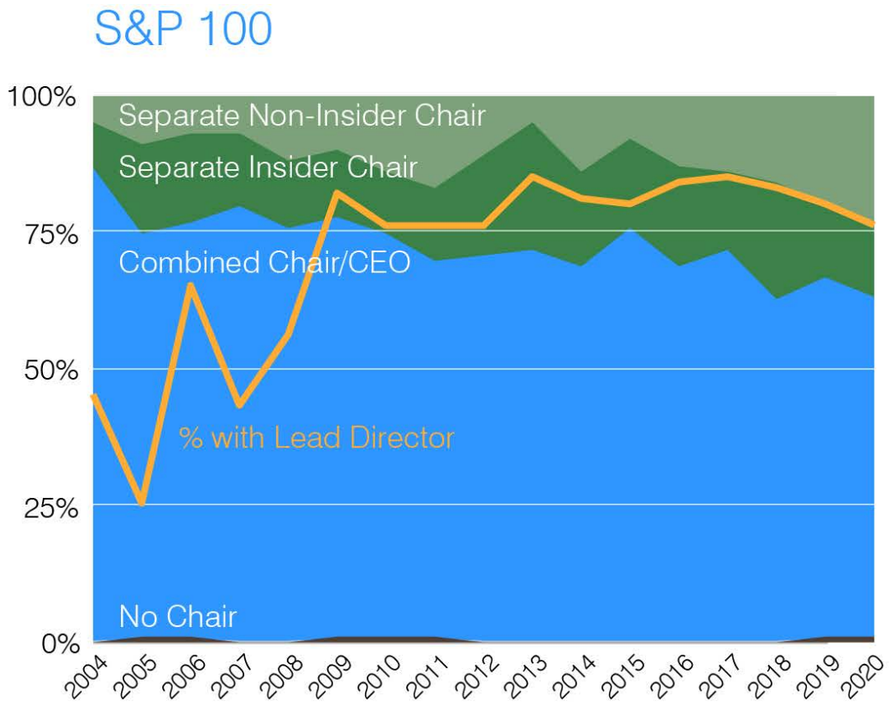
The graphs on this page track, from the 2004 through 2020 proxy seasons, the percentage of all companies with no chair, a combined chair/CEO, a separate but insider chair and a separate and non-insider chair (under the applicable exchange standard), as well as the percentage of all companies with some form of lead director.

BOARD LEADERSHIP—TRENDS OVER TIME



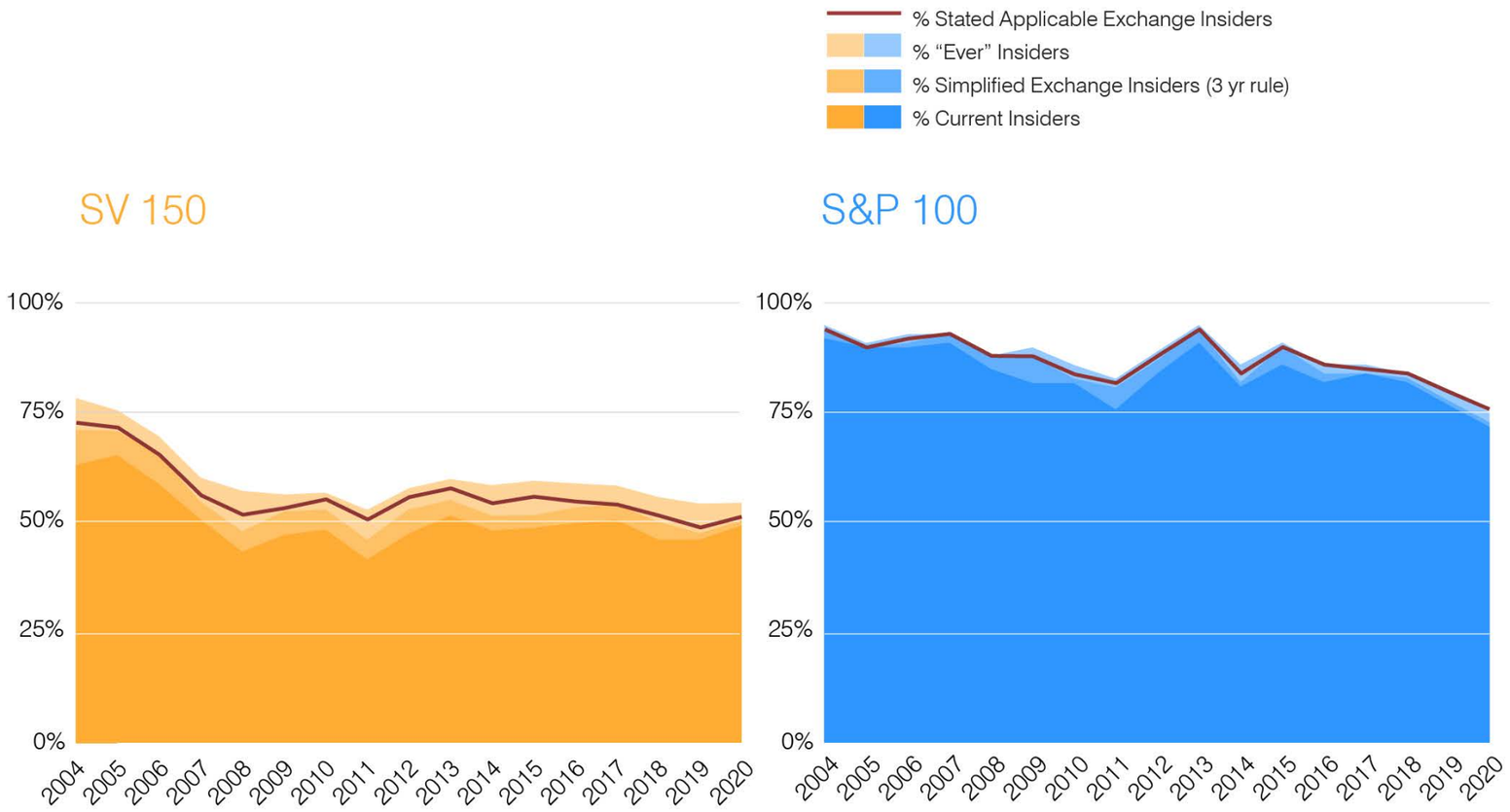


Board Leadership

Continued

The graphs on this page show the trend over time of the percentage of boards with chairs who are insiders for each group. In these graphs, we have shown “insider” status determined in various ways. See the discussion under “Insider / Independent” in the Methodology section at the end of this report for a description of the different methods of determining whether a chair is an insider.

INSIDER BOARD CHAIR — TRENDS OVER TIME



Board Diversity[12]

Under SEC disclosure rules adopted in 2009, companies are required to disclose whether they consider diversity in identifying nominees to the board of directors. However, companies have the flexibility to define diversity for themselves, and such definitions typically include a wide range of factors, not simply traditional diversity factors such as gender, race and ethnicity.[13]

Consequently, it has been fairly difficult to measure board diversity in a systematic way when relying primarily on the information in public filings,[14] though we expect that to change significantly beginning next year as a result of strong investor interest in such information as well as recent regulatory developments.

Nasdaq is seeking approval of new rules that would require its U.S. companies to publicly disclose board diversity statistics and require most listed companies to have at least one woman and one person who self-identifies as an underrepresented minority or LGBTQ+ on the board or explain why they do not.[15] Institutional Shareholder Services (ISS), the leading proxy voting advisory firm, has announced benchmark voting policy changes, increasing expectations for board racial and ethnic diversity and related disclosure. For shareholder meetings after February 1, 2022, ISS will generally recommend a vote "against" or "withhold" from the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members.[16] Similarly, Glass Lewis, the other leading proxy voting advisory firm, will recommend voting against nomination committee chairs where their boards have more than six members but fewer than two women, as well as seek racial and ethnic diversity disclosure from companies.[17]

In addition, as we discuss below in more detail, in 2020 California became the first state in the U.S. to require directors from underrepresented communities on corporate boards with the passage of AB 979.

Until expected improvements in diversity disclosure become more widespread, through the 2020 proxy season we have elected to track gender as a measure of board diversity for the technology and life sciences companies in the SV 150

12 See Gender Diversity in Silicon Valley: A Comparison of Silicon Valley Public Companies and Large Public Companies (2018 Proxy Season) for a substantially more detailed review of gender diversity on the board of directors, as well as among the management teams, of SV 150 and S&P 100 companies. That report, a supplement to this survey, covers data from the 1996 through 2018 proxy seasons and includes a discussion of factors underlying the statistics as well as references to additional materials on the subject. To be placed on an email list for future editions of the gender diversity survey when published, visit https://www.fenwick.com/corporate-governance-survey-subscription-form.

13 See current Item 407(c)(2)(vi) of Regulation S-K and SEC Release No. 33-9089. Companies typically include factors such as diversity of business experience, viewpoints, personal background (sometimes specifying race and gender) and relevant knowledge, skills or experience in technology, government, finance, accounting, international business, marketing and other areas (if they provide even this level of definition in their disclosures) when describing how their boards consider diversity when making nomination decisions. They do not typically describe how each sitting director or nominee measures against each of those factors (to the extent they enumerate them at all as part of the definition). However, in December 2020, Nasdaq proposed new rules requiring disclosure of board diversity information covering both gender and underrepresented minorities as well as requiring listed companies to explain why they do not meet specified minimum diversity requirements.

14 However, for a report on traditional diversity factors, see data from Deloitte showing that companies continue to make slow progress in promoting boardroom diversity: Women and minorities comprise nearly 34% of the board seats of Fortune 500 companies, according to "Missing Pieces Report: The 2018 Board Diversity Census of Women and Minorities on Fortune 500 Boards," by Alliance for Board Diversity and Deloitte (2019). Executive recruiter Spencer Stuart reported that S&P 500 boards are heeding the growing calls from shareholders and other stakeholders for enhanced boardroom diversity of gender, age, race/ethnicity and professional backgrounds. A record breaking 59% of the new directors are diverse (defined as women and minority men), up from half last year. See "2019 U.S. Spencer Stuart Board Index Highlights" (October 2019).

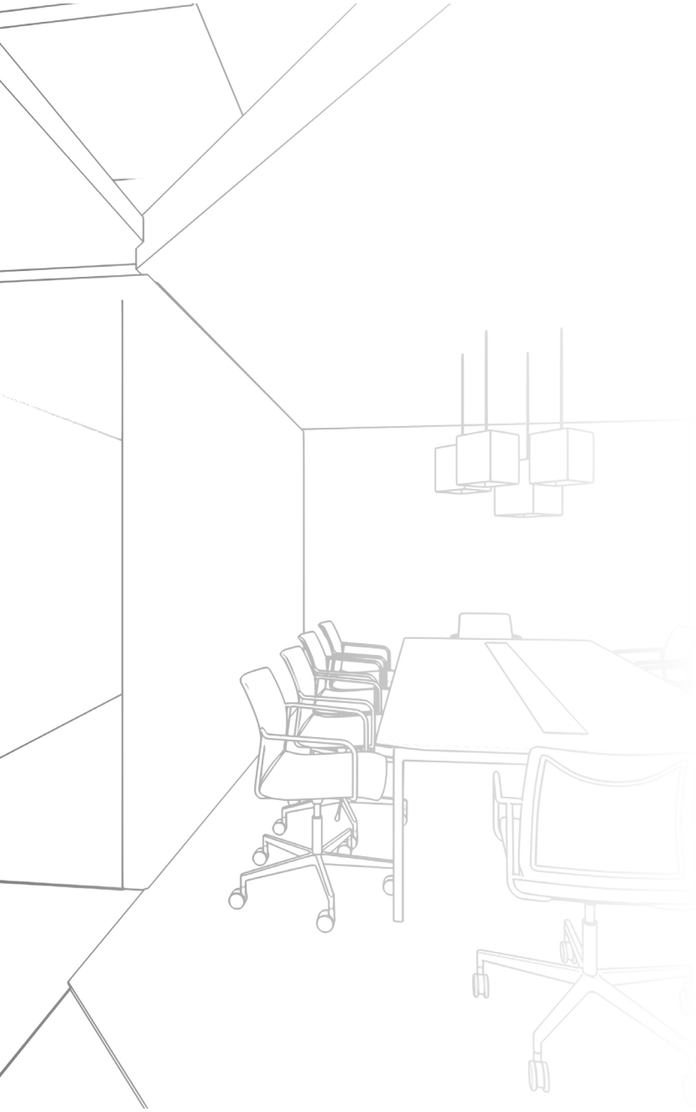
15 For a discussion of Nasdaq's proposed board diversity rules, see Fenwick's previous publication "Nasdaq Proposes New Rules on Board Diversity" (December 2020).

16 For a discussion of ISS's diversityrelated voting guidelines, see Fenwick's previous publication "ISS Policy Changes for 2021: Increased Expectations for Diversity and Accountability" (November 2020).

17 For a discussion of Glass Lewis's diversity-related voting guidelines, see Fenwick's previous publication "Glass Lewis Announces 2021 Proxy Voting Policy Guidelines" (December 2020).

Board Diversity

Continued



and S&P 100 companies because gender can be more readily measured in public filings. We are also tracking the effect of SB 826, a 2018 California law that requires inclusion of women on corporate boards, which we discuss in greater detail below.

A review of our data suggests that board size may be a significant factor affecting the number of women directors, and to some degree that is a function of the relatively small size of many SV 150 companies.[18] For example, while S&P 100 companies tend to have more women directors than SV 150 companies when measured in absolute numbers (S&P 100 average = 3.5 and SV 150 average = 2.3 women in the 2020 proxy season), the difference (while significant) is less pronounced when measured as a percentage of the total number of directors (S&P 100 average = 28.7% of directors and SV 150 average = 25.7% of directors in the 2020 proxy season). In addition, the data for the top 15 of the SV 150 is closer to that of the S&P 100 than to the SV 150 generally (top 15 average = 3.4 in the 2020 proxy season, up from average = 1.9 in the 2011 proxy season), despite having a smaller average board size (top 15 of SV 150 average = 11.1; S&P 100 average = 12.4). When measured as a percentage of the total number of directors, the top 15 of the SV 150 now exceed their S&P 100 peers (top 15 average = 30.3% women directors in the 2020 proxy season).[19]

Further, significantly affecting the average in the SV 150 are the three companies without any women directors (2% of SV 150 companies, down from 82% in 1996 and 52% as recently as 2011). All three have seven or fewer total board members. Overall, 2020 continued the long-term trend in the SV 150 of increasing numbers of women directors (both in absolute numbers and as a percentage of board members) and declining numbers of boards without women members. The rate of increase in women directors for the SV 150 continues to be higher than among S&P 100 companies.

18 While our data focuses on a limited number of public companies in Silicon Valley and large public companies nationally, this observation appears to be true among the largest companies as well. See the "Missing Pieces Report: The 2018 Board Diversity Census of Women and Minorities on Fortune 500 Boards," by Alliance for Board Diversity and Deloitte (2019), which includes data for Fortune 100 and Fortune 500 companies. See also the International Shareholder Services' "U.S. Board Study: Board Diversity Review" (April 11, 2018). More recent research from The Boston Club's "Winds of Change: 2018 Census of Women Directors and Executive Officers of Massachusetts Public Companies" indicates less correlation between size and diversity in the last year.

19 As many companies add board seats, their boards generally expand the mix of skills and experiences that they seek to have represented, often into areas where women are more represented than they are in the mix in effect for smaller boards or companies at earlier stages of development.

Board Diversity

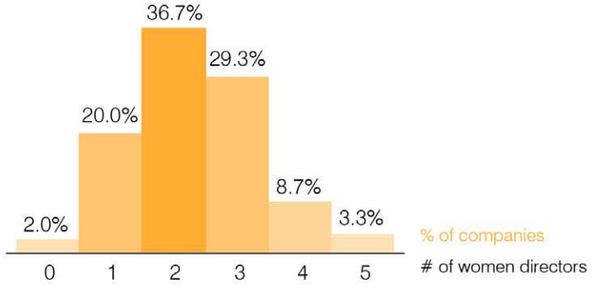
Continued

The graphs on this page show the percentage of companies with at least one woman director and the distributions by number of women directors among the boards of companies in each group during the 2020 proxy season.

WOMEN DIRECTORS—2020 PROXY SEASON DISTRIBUTION

SV 150
2020

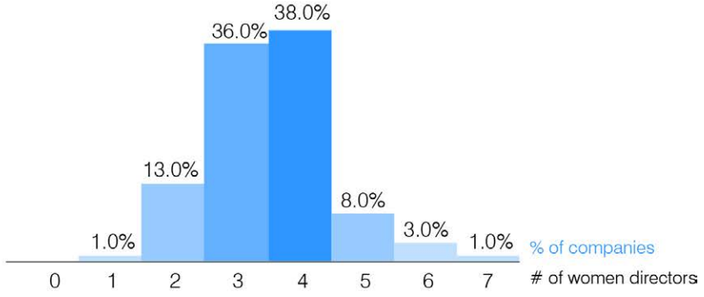
% of companies with at least 1 woman director



Women directors distribution
(% of all companies)

S&P 100
2020

% of companies with at least 1 woman director



Women directors distribution
(% of all companies)

Board Diversity

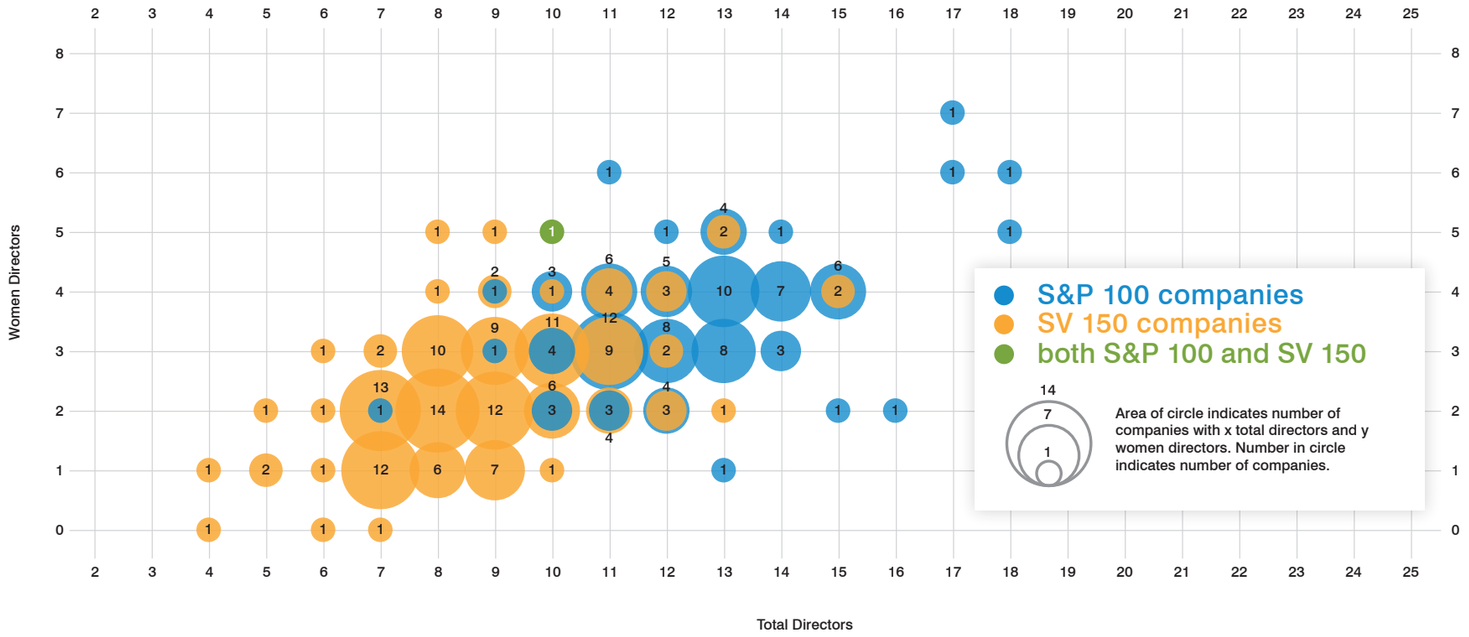
Continued

During the period covered by the survey, both groups of companies have made significant gains in the average percentage of board members that are women (SV 150 average = 2.1% in 1996 and 25.7% in the 2020 proxy season; top 15 of the SV 150 average = 5.7% in 1996 and 30.3% in the 2020 proxy season; S&P 100 average = 10.9% in 1996 and 28.7% in the 2020 proxy season), though there was a period of relative stagnation from the 2008 through 2011 proxy seasons. There has been a distinct downward trend in the percentage of SV 150 companies with no women directors (82.3% in 1996; 2% in the 2020 proxy season), there were no such companies in the S&P 100 in the 2020 proxy season (10.6% in 1996).[20] Our data show that, within the SV 150, this fairly closely tracks with the size of a company (measured by revenue), which also correlates with board size, with 6% of the bottom 50 companies having no women directors in the 2020 proxy season but that being true for none of the top 15 companies of the SV 150.

The graph on this page shows the distribution of women directors by number of women directors at each board size among the boards of companies in each group during the 2020 proxy season.

DISTRIBUTIONS BY BOARD SIZE VS. NUMBER OF WOMEN DIRECTORS

S&P 100 (100 companies) **vs.** **SV 150** (150 companies)



20 Progress among companies in the Top 15 of the SV 150 has been even greater, with a drop from 50.0% of companies with no women serving as directors in 1996 to all companies having at least two women directors in 2020. In fact, the number of companies with no women serving as directors fell meaningfully at all levels of the SV 150.

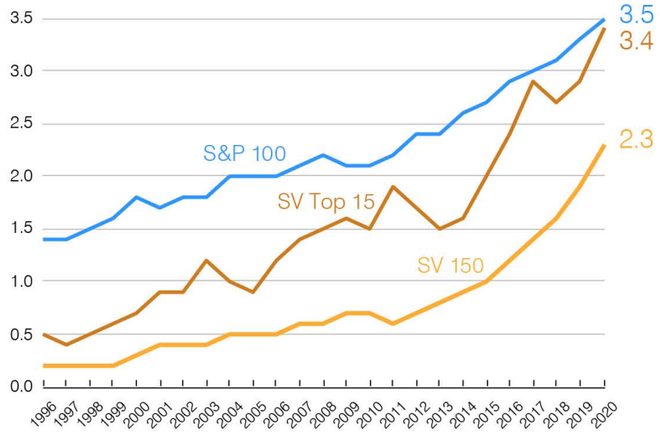
Board Diversity

Continued

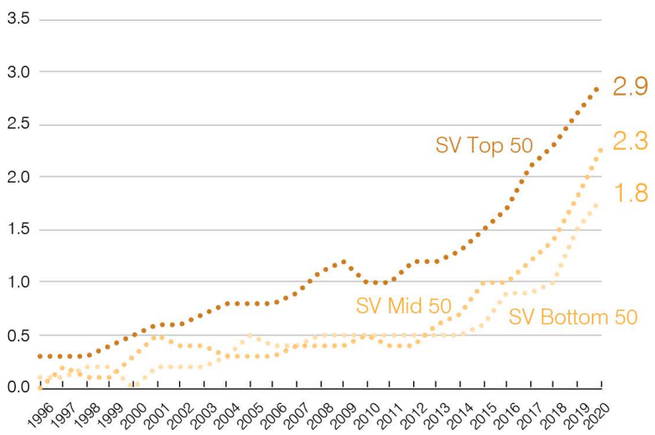
The graphs on this page show the average number and the average percentage of women directors for each of the SV 150, the top 15 of the SV 150 and the S&P 100 (and with the SV 150 broken down by the top 50, middle 50 and bottom 50 companies), over the period from the 1996 through 2020 proxy seasons.

AVERAGE NUMBER OF WOMEN DIRECTORS — 1996–2020

S&P 100 vs. SV Top 15 vs. SV 150

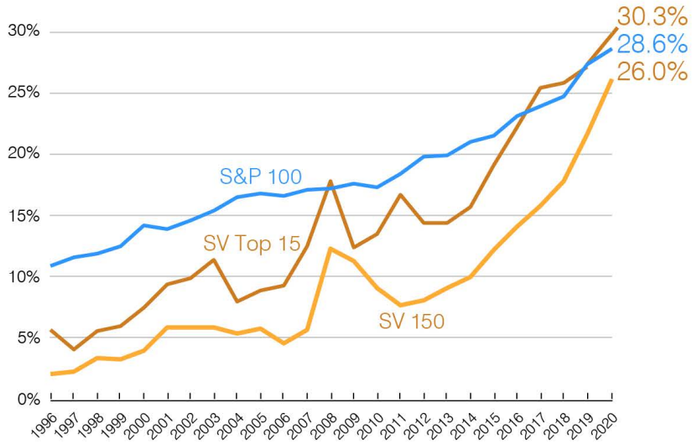


SV 150 Breakdown

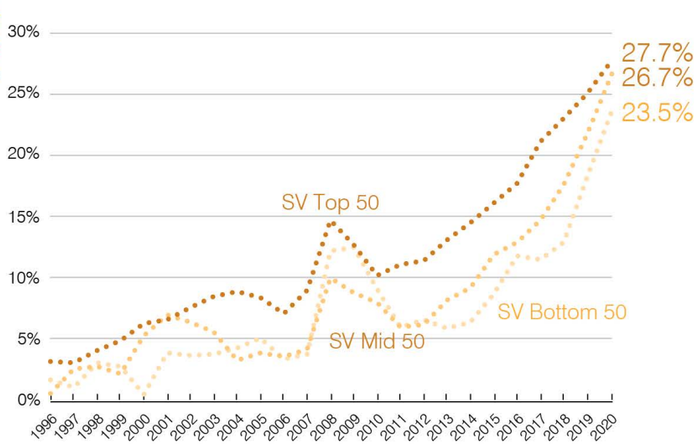


AVERAGE PERCENTAGE OF WOMEN DIRECTORS — 1996–2020

S&P 100 vs. SV Top 15 vs. SV 150



SV 150 Breakdown



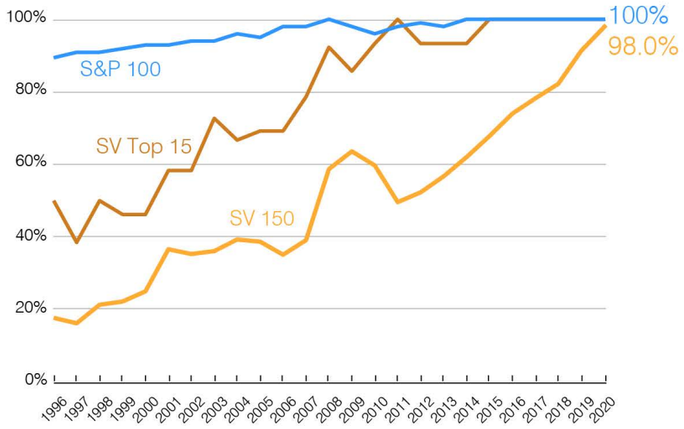
Board Diversity

Continued

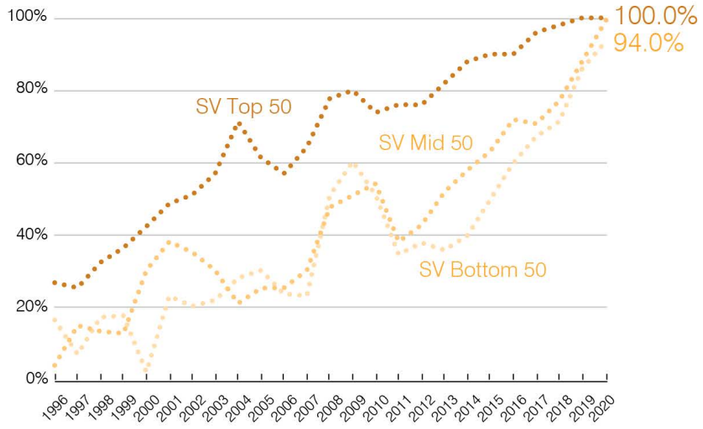
The graphs on this page show the percentage of companies with at least one woman director in each of the SV 150, the top 15 of the SV 150 and the S&P 100 (and with the SV 150 broken down by the top 50, middle 50 and bottom 50 companies) over the period from the 1996 through 2020 proxy seasons.

PERCENTAGE OF COMPANIES WITH AT LEAST ONE WOMAN DIRECTOR — 1996–2020

S&P 100 vs. SV Top 15 vs. SV 150



SV 150 Breakdown



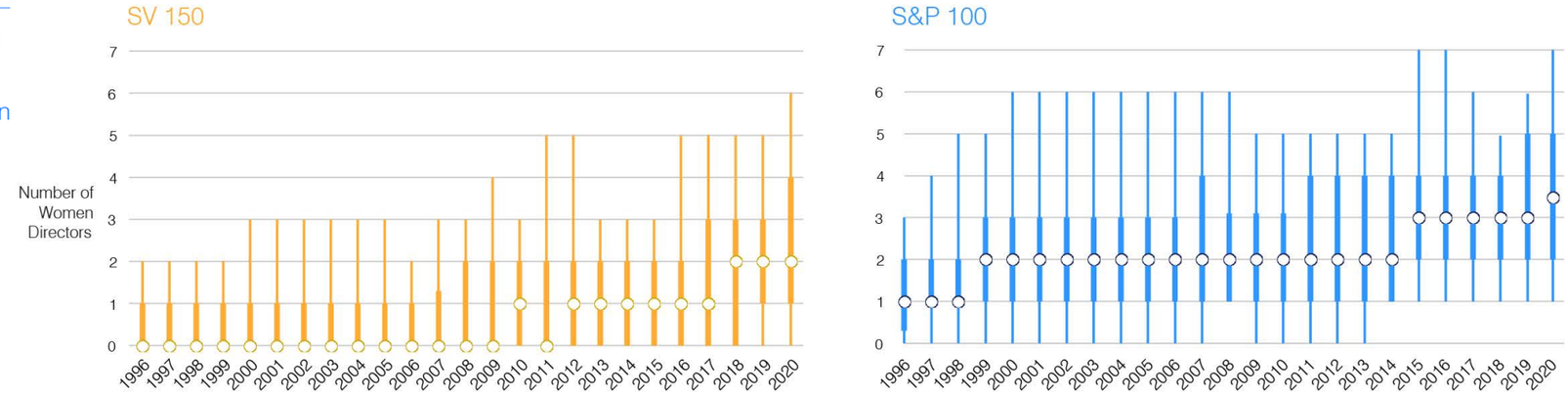
Board Diversity

Continued

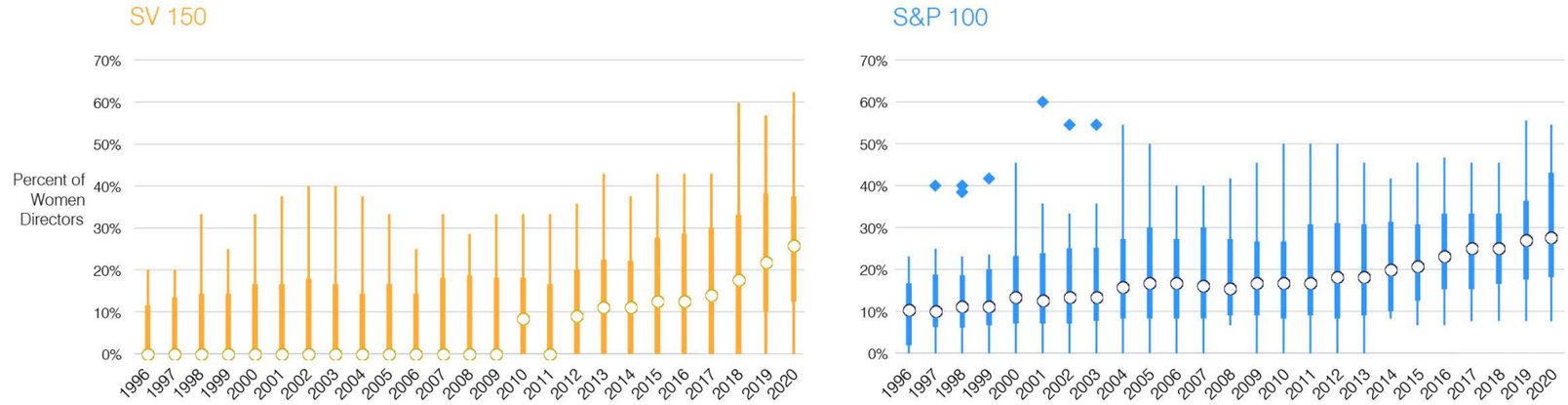
The graphs on this page show the trend in the distribution by number and percentage of women directors in each group (showing both the median number or percentage and the cutoffs for the deciles with the most women directors) over the period from the 1996 through 2020 proxy seasons.

DISTRIBUTION OF NUMBER AND PERCENTAGE OF WOMEN DIRECTORS — 1996–2020

Women Directors: Numbers
1996–2020



Women Directors: Percentages
1996–2020



Board Diversity

Continued

California Raises the Bar on Corporate Board Diversity

In 2018 and 2020, California passed landmark laws mandating that public companies in California include women and people from underrepresented communities on corporate boards.[21] Assuming these laws withstand legal challenges,[22] they are poised to have a significant effect on the makeup of boards in the SV 150 and S&P 100 companies headquartered in California.

Gender

Governor Jerry Brown signed SB 826 into law in September 2018, mandating public companies headquartered in California have at least one woman on the board in calendar year 2019. The law also calls for at least two women on boards that have five or more total directors, and at least three women on boards of six or more directors in calendar year 2021. Not meeting the requirement carries fines in the six figures for each violation and related impact on brand and reputation.

Our data show that most SV 150 companies will need to add women to their boards by 2021 in order to comply. As of the 2020 proxy season (generally proxy statements filed in the 12 months prior to June 30, 2020), three companies had no women directors. As of December 2020, two of the three had one woman director (it is possible that the third had a woman on its board for a portion of the year, which would have satisfied the requirement). While 98% of SV 150 companies had at least one woman on the board by that time (satisfying the 2019 standard), most have board sizes that require inclusion of more than one woman under the 2021 standard. Most SV 150 companies have six or more total directors on their boards (145 of the 150 companies for which data is available). Of those, only 64 — or about 43% — meet or exceed the new legal requirement of having at least three women directors. Three SV 150 companies have boards with five directors. Of those, one meets the requirements of the new law.

That said, our data, anecdotal experience and media reports suggest that the law is having the effect desired by its sponsors.[23] Fenwick's data show that as

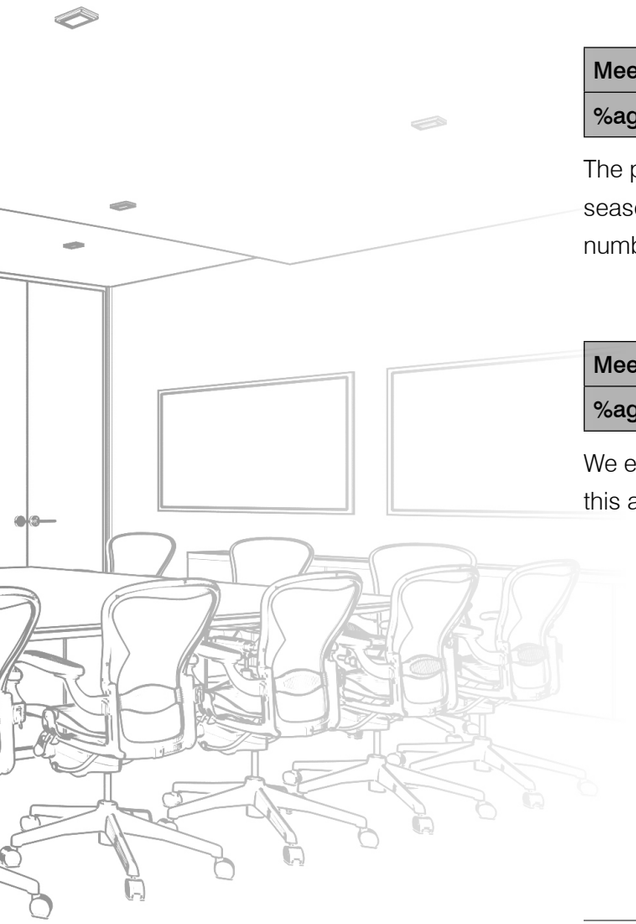
21 Fenwick covered the new laws and their requirements in more detail in, "New California Law Requires Representation of Women on Public Company Boards" (October 2018) and "California's Proposed AB 979 Requires Public Company Boards to Include Racial and Ethnic Diversity" (July 2020).

22 There are two lawsuits challenging SB 826. In August 2019 Judicial Watch, a conservative activist group, filed a lawsuit against the California Secretary of State on behalf of three California taxpayers, challenging the constitutionality of SB 826 under the Equal Protection Clause. The group claims the bill discriminates on the basis of gender, and therefore must pass "strict scrutiny" review by the court, which requires showing that the law is narrowly tailored to serve a compelling government interest, which, Judicial Watch argues, California has not done. In November 2019, Pacific Legal Foundation filed a second Equal Protection challenge on behalf of a stockholder of a company headquartered in California. In October 2020, Judicial Watch challenged the constitutionality of AB 979. See "Group sues to block California boardroom diversity law," *Associated Press* (October 5, 2020) and "ANALYSIS: Mandated Board Diversity Takes Center Stage in 2021," *Bloomberg Law* (November 16, 2020).

23 Public companies are approaching the search for women board candidates with more urgency following the passage of California's board diversity statute; see for example: "California's Diversity Law Shows Quotas Work," *Bloomberg*, February 29, 2020; "California Companies Are Rushing to Find Female Board Members," *The New York Times* (December 17, 2019); "Tech's Urgent Quest for Women Directors," *The Wall Street Journal* (November 9, 2018), which reports a 70% increase in inquiries from companies to find qualified female candidates for board seats, from August to September of that year.

Board Diversity

Continued



of the 2020 proxy season, the percentage of SV 150 companies meeting the 2019 requirement under California's new law, broken down by subgroup, is:

	Top 15	Top 50	Mid 50	Btm 50
Meet 2019 Standard	100%	100%	100%	94%
%age change from 2019	No change	No change	Up from 88%	Up from 86%

The percentage of companies whose boards as configured for the 2020 proxy season would meet the 2021 standard applicable to them (based on the number of directors), broken down by subgroup, is:

	Top 15	Top 50	Mid 50	Btm 50
Meet 2021 Standard	80%	62%	42%	24%
%age change from 2019	Up from 53%	Up from 42%	Up from 26%	Up from 14%

We expect our data for the 2021 proxy season to reflect accelerated activity in this area, particularly among smaller companies.[24]

24 See footnote 23. See also "Companies Still Need More Women Leaders a Year After California Diversity Law, Study Says," *The Sacramento Bee* (October 24, 2019).

Race, Ethnicity and LGBT

Building on SB 826, California became the first state to require directors from underrepresented communities on corporate boards. Governor Gavin Newsom signed AB 979 into law in September 2020, which requires inclusion of at least one director who "self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender" by the end of 2021 with increased inclusion by the end of 2022 (see table below summarizing the combined requirements of AB 979 and SB 826 by the end of 2022). As with SB 826, not meeting the requirements of AB 979 carries fines in the six figures for each violation, and may negatively impact a company's brand and reputation. Despite legal challenges to the statute, we expect California-based public companies to comply.

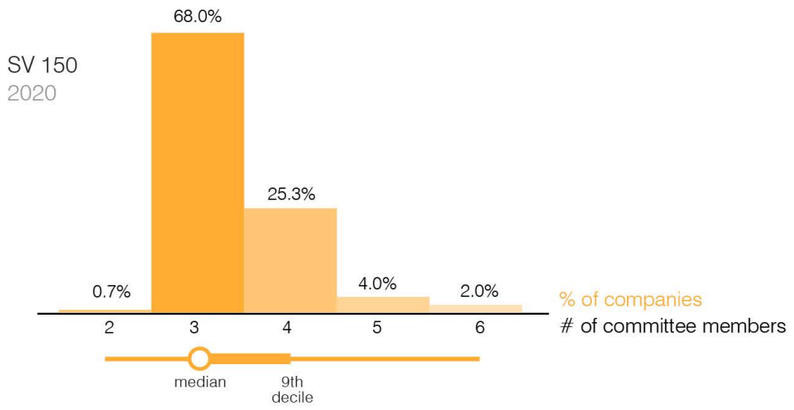
Combined Requirements of California Board Diversity Legislation				
Board Size:	**4 or fewer**	**5**	**6 – 8**	**9 or more**
Women	1	2	3	3
Underrepresented Community	1	2	2	3

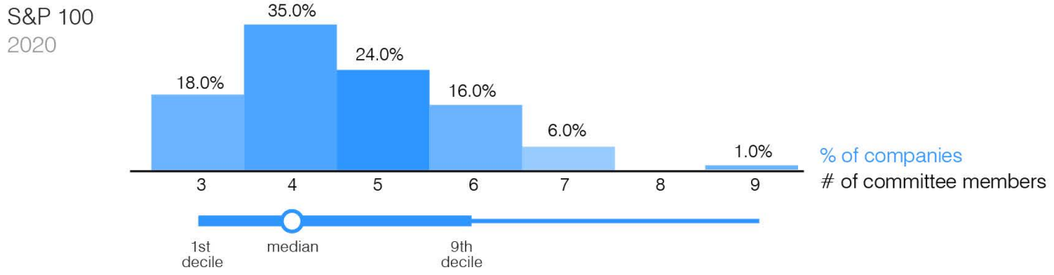
Audit Committee Size and Meeting Frequency

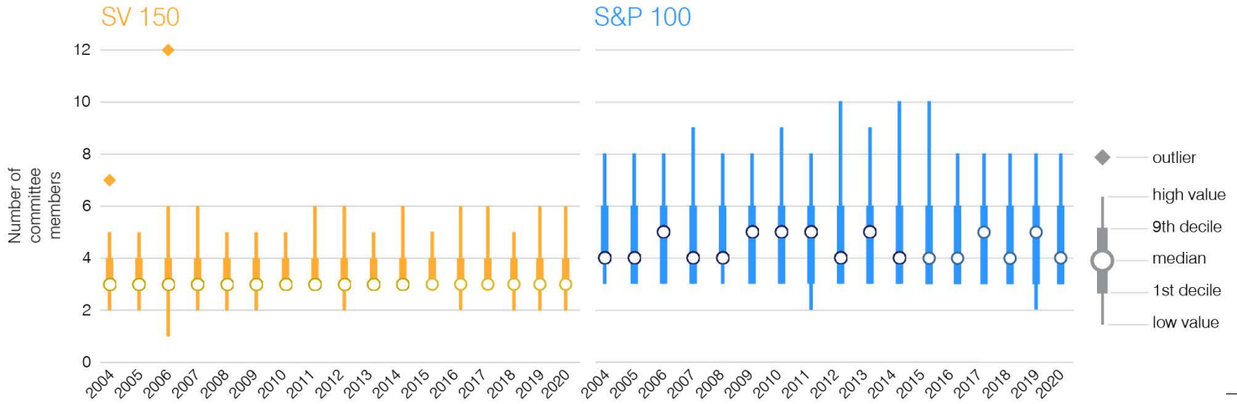
Audit committees tend to be smaller among the technology and life sciences companies in the SV 150 (average = 3.4 directors) than among S&P 100 companies (average = 4.6 directors).

The graphs on this page show the distribution by number of audit committee members among the companies in each group during the 2020 proxy season, as well as the trend over the period from the 2004 through 2020 proxy seasons (showing both the median number and the cutoffs for the deciles with the most and fewest directors).

AUDIT COMMITTEE SIZE — DISTRIBUTIONS AND TRENDS OVER TIME







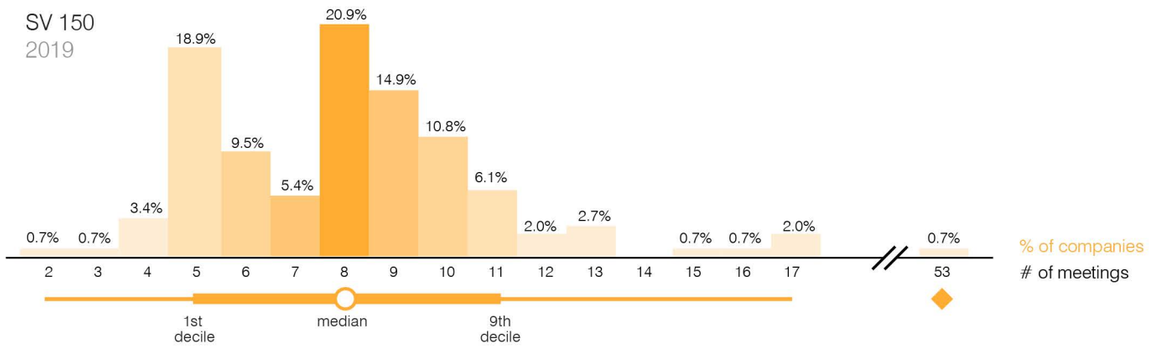
Audit Committee Size and Meeting Frequency

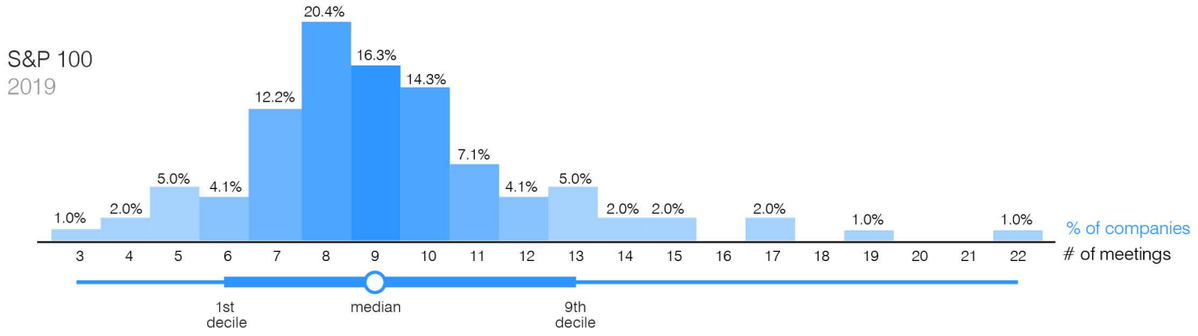
Continued

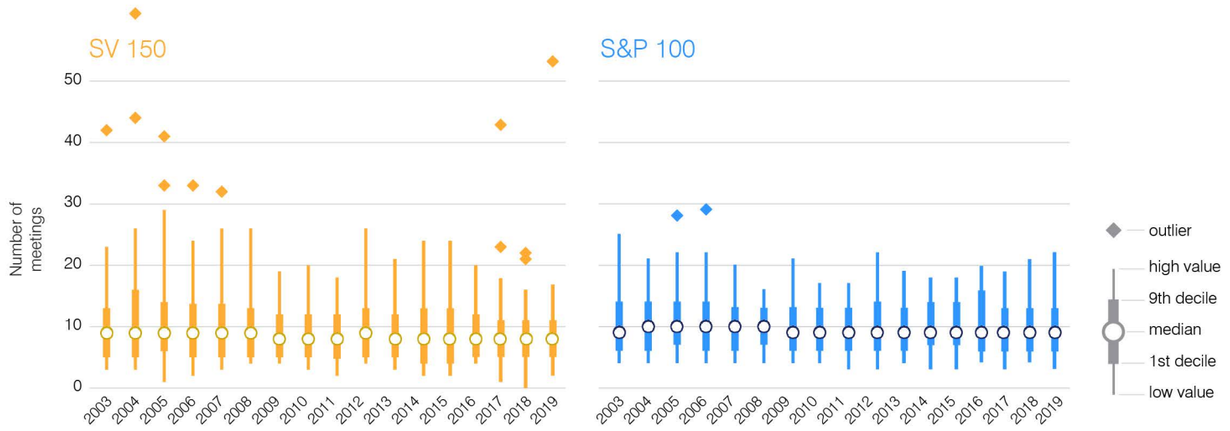
In both groups, after peaking in 2007, a trend largely driven by a surge of internal investigations (such as for stock option backdating issues), the number of audit committee meetings appears to have stabilized at levels similar to those found in the first year following the adoption of the Sarbanes-Oxley Act of 2002 (SV 150 average = 8.3 meetings; S&P 100 average = 9.3 meetings).

The graphs on this page show the distribution by number of audit committee meetings among the members of each group in fiscal 2019 as reported during the 2020 proxy season, as well as the trend over the period from fiscal 2003 through 2019 (showing both the median number and the cutoffs for the deciles with the most and fewest meetings), as reported in the 2004 through 2020 proxy seasons.

NUMBER OF AUDIT COMMITTEE MEETINGS — DISTRIBUTIONS AND TRENDS OVER TIME





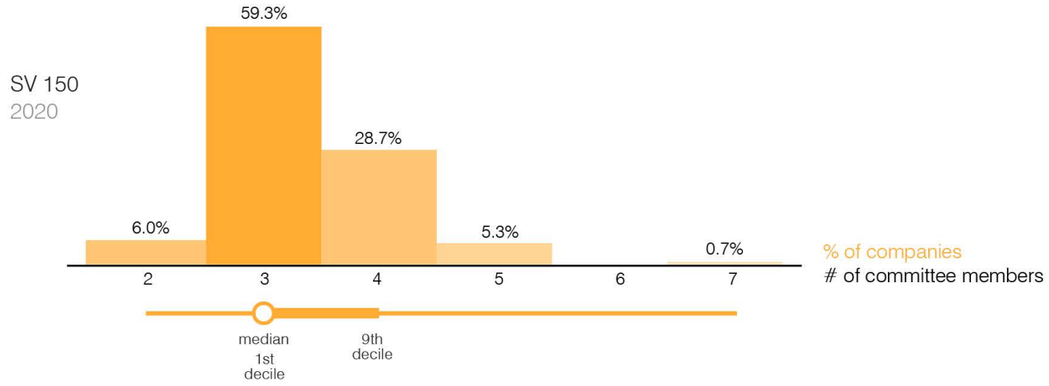


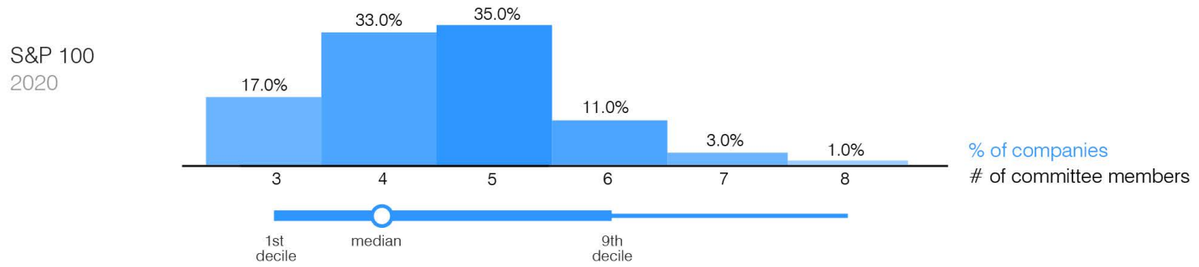
Compensation Committee Size and Meeting Frequency

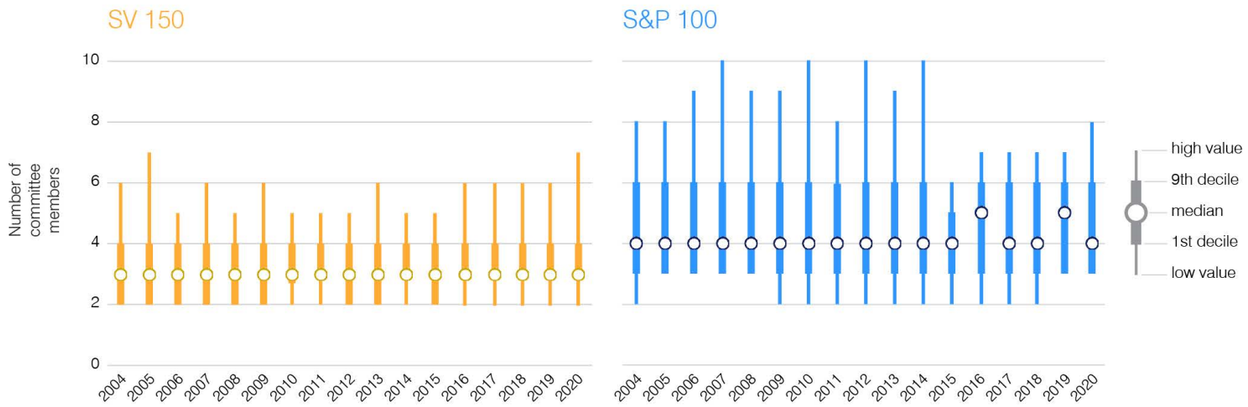
Compensation committees tend to be larger among S&P 100 companies (average = 4.5 directors) than among the technology and life sciences companies in the SV 150 (average = 3.4 directors).

The graphs on this page show the distribution by number of compensation committee members among companies in each group during the 2020 proxy season, as well as the trend over the period from the 2004 through 2020 proxy seasons (showing both the median number and the cutoffs for the deciles with the most and fewest directors).

COMPENSATION COMMITTEE SIZE — DISTRIBUTIONS AND TRENDS OVER TIME







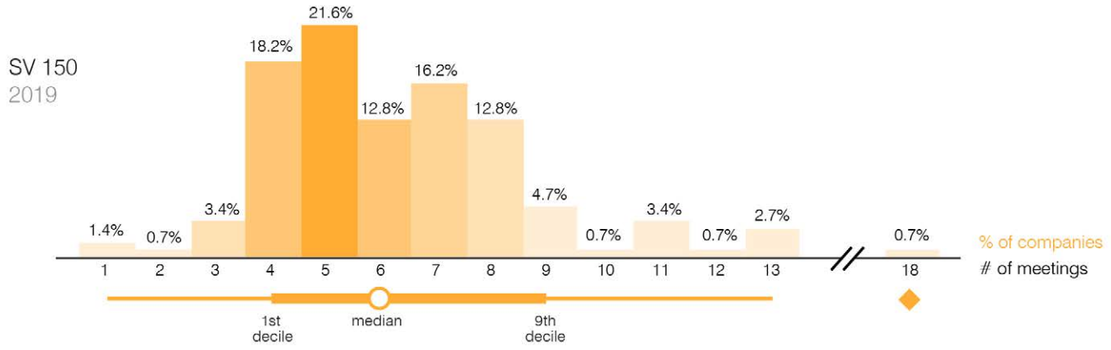
Compensation Committee Size and Meeting Frequency

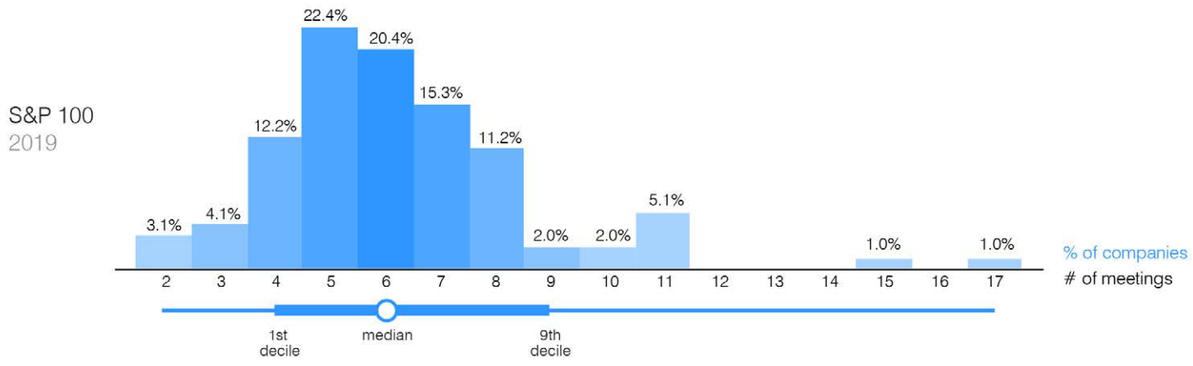
Continued

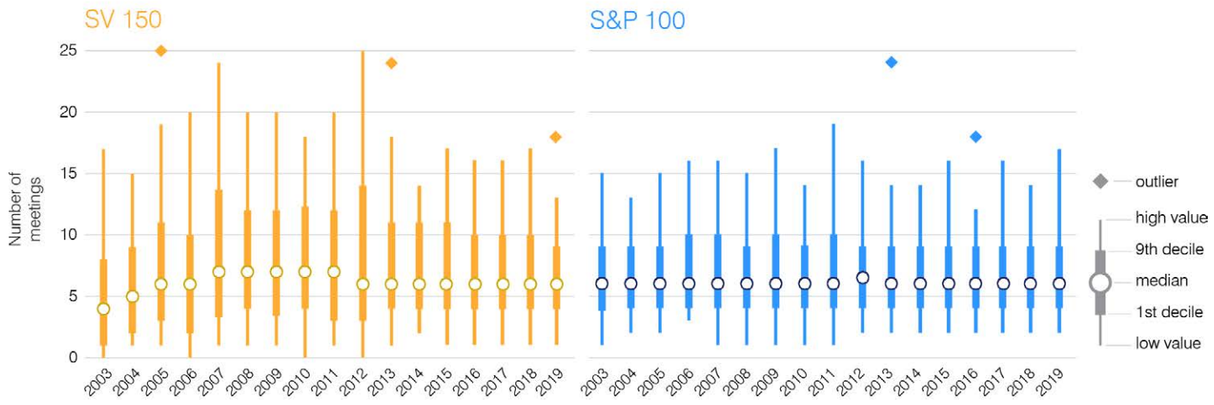
In both groups, the increased workload and attention for compensation committees has not led to increased meeting frequency in recent years (S&P 100 average = 6.3 meetings; SV 150 average = 6.3 meetings).

The graphs on this page show the distribution by number of compensation committee meetings among the members of each group in fiscal 2019 as reported during the 2020 proxy season, as well as the trend over the period from fiscal 2003 through 2019 (showing both the median number and the cutoffs for the deciles with the most and fewest meetings), as reported in the 2004 through 2020 proxy seasons.

NUMBER OF COMPENSATION COMMITTEE MEETINGS — DISTRIBUTIONS AND TRENDS OVER TIME





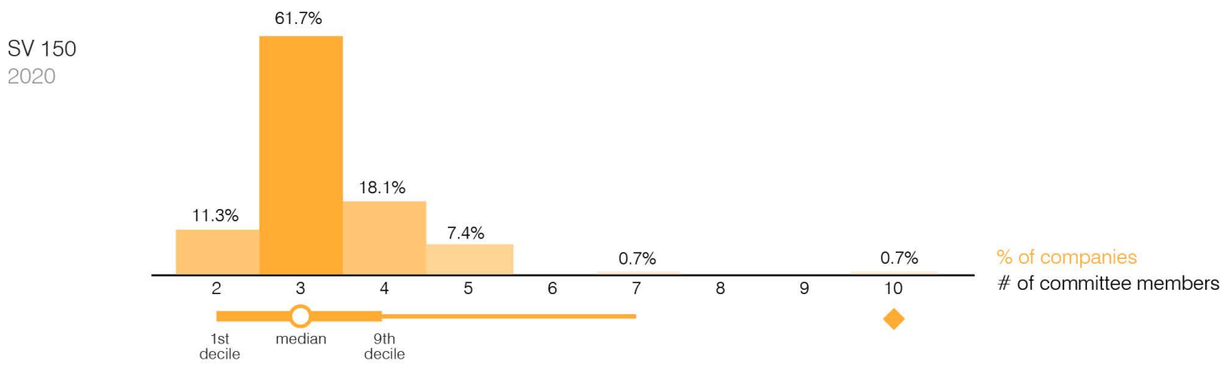


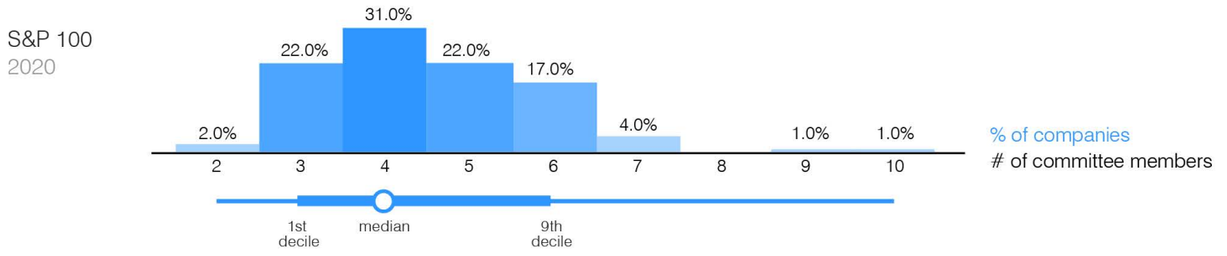
Nominating Committee Size and Meeting Frequency

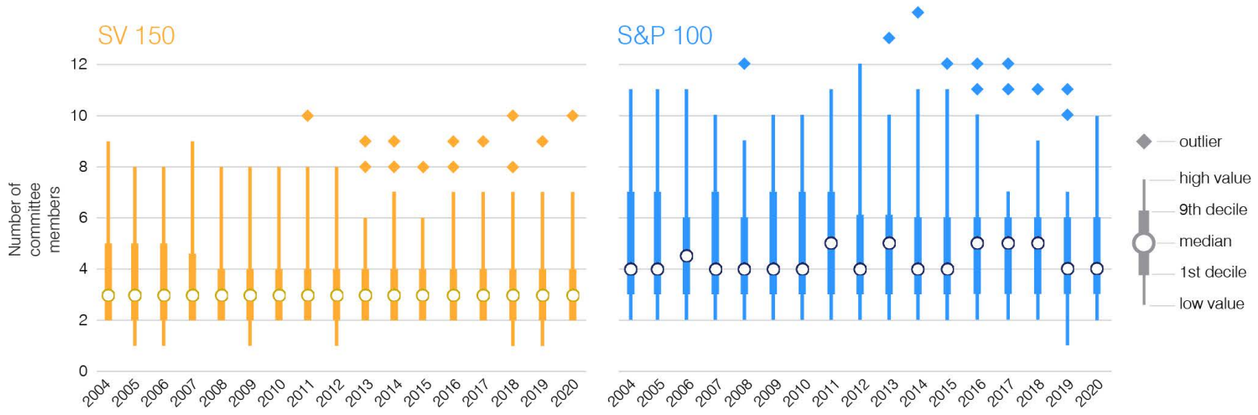
Nominating committees tend to be smaller among the technology and life sciences companies in the SV 150 (average = 3.3 directors) than among S&P 100 companies (average = 4.5 directors).

The graphs on this page show the distribution by number of nominating committee members among the companies in each group during the 2020 proxy season, as well as the trend over the period from the 2004 through 2020 proxy seasons (showing both the median number and the cutoffs for the deciles with the most and fewest directors).

NOMINATING COMMITTEE SIZE—DISTRIBUTIONS AND TRENDS OVER TIME







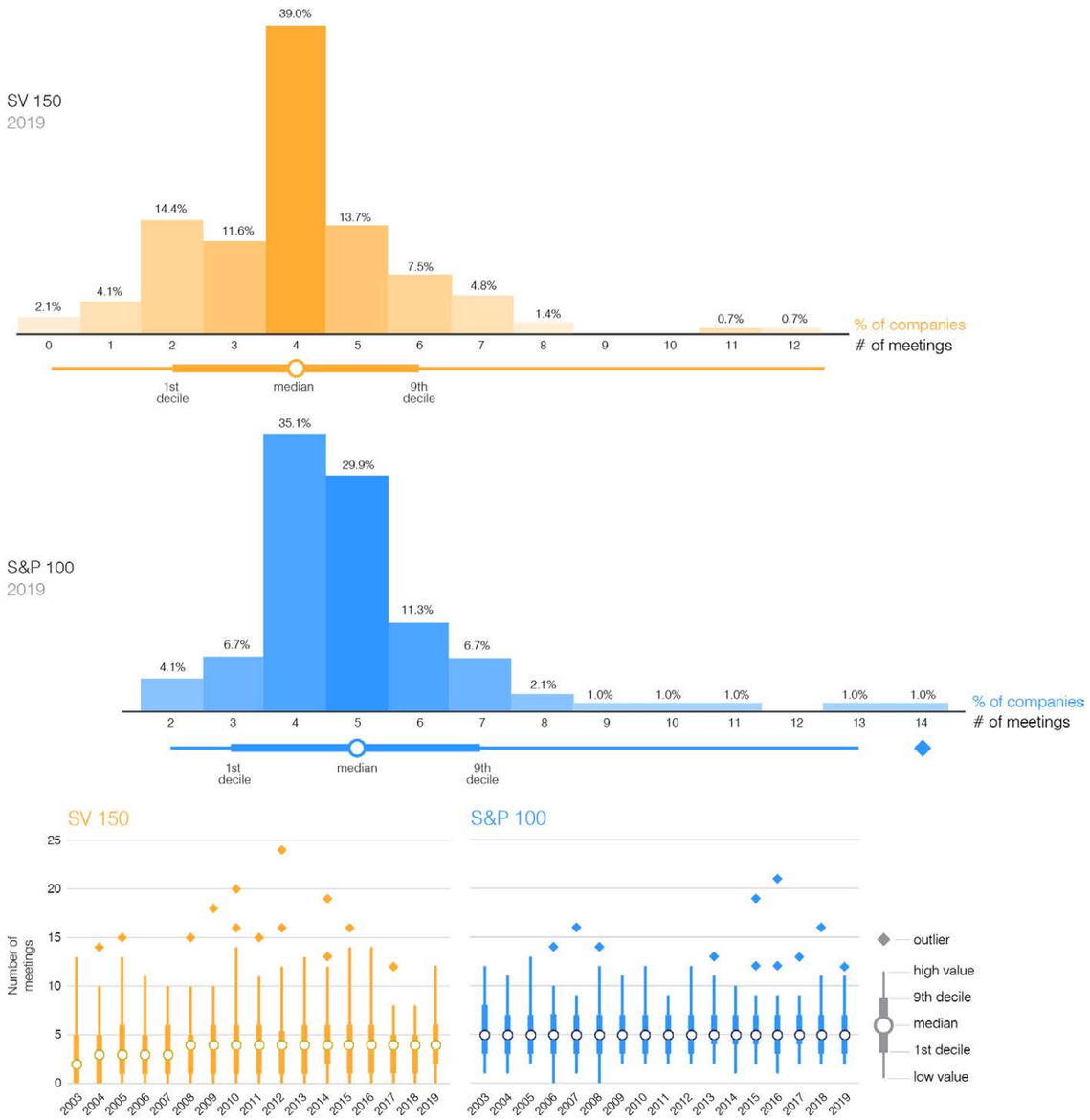
Nominating Committee Size and Meeting Frequency

Continued

In both groups, nominating committees generally hold meetings more frequently over time, though the trend is somewhat more pronounced among the SV 150 companies (SV 150 average = 4.0 meetings; S&P 100 average = 5.0 meetings).

The graphs on this page show the distribution by number of nominating committee meetings among the members of each group in fiscal 2019 as reported during the 2020 proxy season, as well as the trend over the period from fiscal 2003 through 2019 (showing both the median number and the cutoffs for the deciles with the most and fewest meetings), as reported in the 2004 through 2020 proxy seasons.

NUMBER OF NOMINATING COMMITTEE MEETINGS — DISTRIBUTIONS AND TRENDS OVER TIME

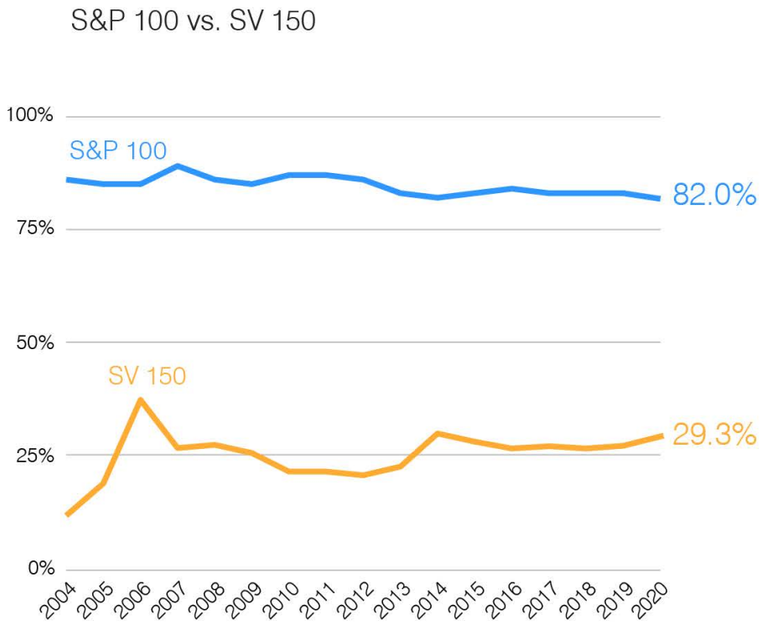


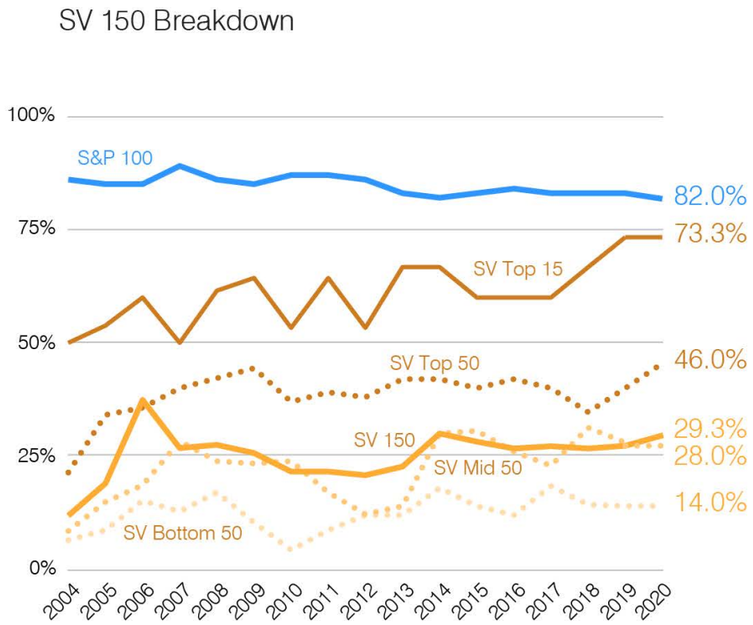
Other Standing Committees

The graphs on this page show, over the period from the 2004 through 2020 proxy seasons, the percentage of all companies in each group with at least one standing committee other than the three primary committees, as well as the same information for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies.

Standing committees other than the three primary board committees are quite common among S&P 100 companies (82%) and relatively uncommon among the technology and life sciences companies in the SV 150 (29.3%). These committees can serve a wide variety of purposes. Finance, risk management, executive, public policy and technology committees are most common among the S&P 100; with finance, some amalgam of strategy/M&A, executive, technology and cybersecurity committees most common among the SV 150 companies. Our data show that, within the SV 150, the rate of formation of other standing committees tracks to a degree with the size of a company (measured by revenue), with an approximately 73.3% rate among the top 15 (somewhat closer to the S&P 100, though still meaningfully lower) and an approximately 28% and 14% rate among the middle 50 and bottom 50 in the 2020 proxy season, respectively. However, there are clearly other factors contributing to their relative infrequency in Silicon Valley such as board size and industries with differing business needs and regulatory environments.

OTHER COMMITTEES—TRENDS OVER TIME





Other Standing Committees

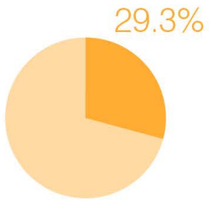
Continued

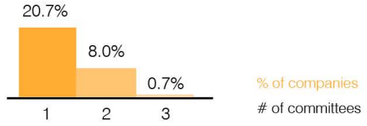
The graphs on this page show the distribution by number of standing committees other than the three primary board committees (for those that have any such other committees) among the members of each group as reported during the 2020 proxy season, as well as the trend over the period from the 2004 through 2020 proxy seasons (showing both the median number and the cutoff for the decile with the most such committees).

OTHER COMMITTEES—DISTRIBUTIONS AND TRENDS OVER TIME

SV 150
2020

% of companies with at least 1 other committee

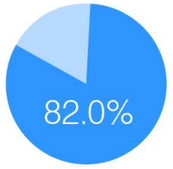


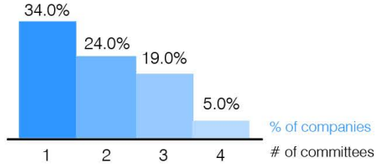


Other committee distribution
(% of all companies)

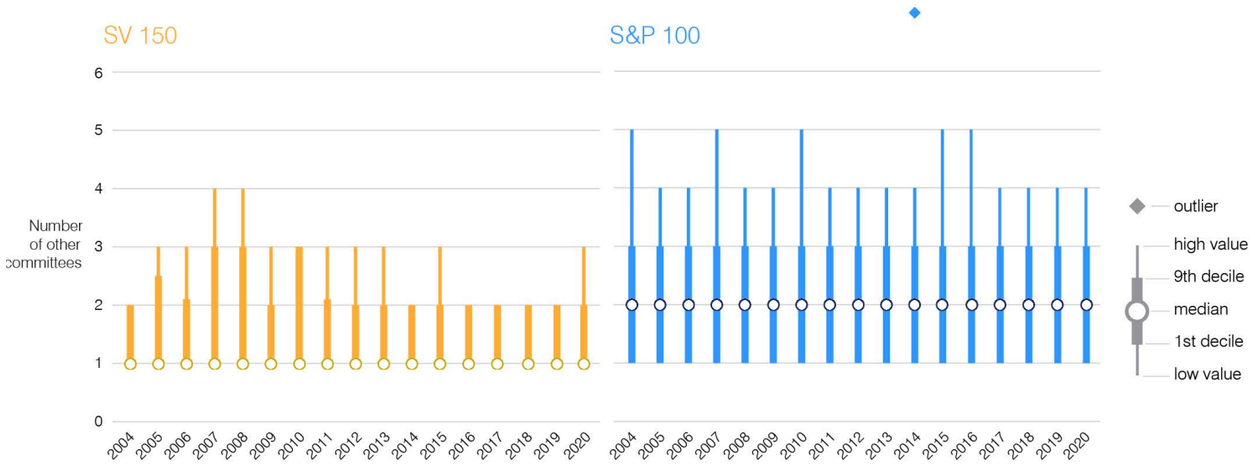
S&P 100
2020

% of companies with at least 1 other committee





Other committee distribution
(% of all companies)



Majority Voting

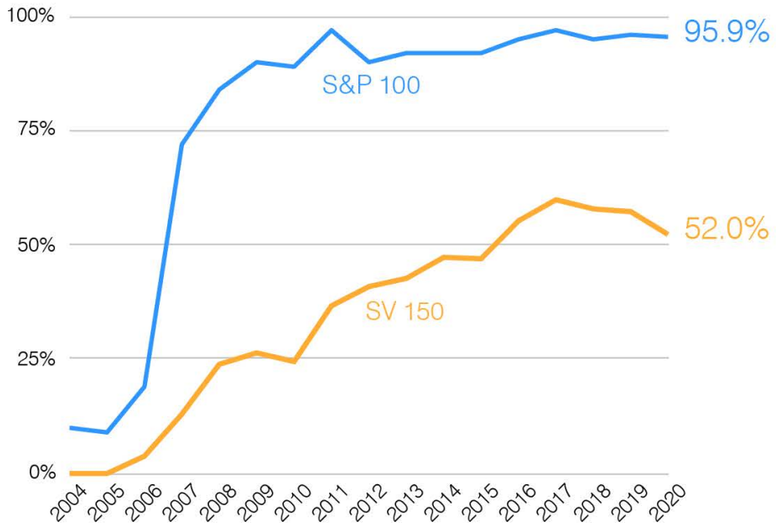
The graphs on this page show, over the period from the 2004 through 2020 proxy seasons, the percentage of all companies in each group with some form of majority voting, as well as the same information for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies.

The rate of implementation of some form of majority voting has risen substantially over the period of this survey. The increase has been particularly dramatic among the S&P 100 companies, rising from 10% to 95.9% between the 2004 and 2020 proxy seasons. Among the technology and life sciences companies in the SV 150, the rate has risen from 0% as recently as the 2005 proxy season to 51.3% in the 2020 proxy season (increasing about 29% from the 2010 proxy season). Our data show that, within the SV 150, the rate of adoption fairly closely tracks with company size (measured by revenue), with an approximately 73.3% rate among the top 15 (more similar to the S&P 100) and an approximately 32% rate among the bottom 50 in the 2020 proxy season.

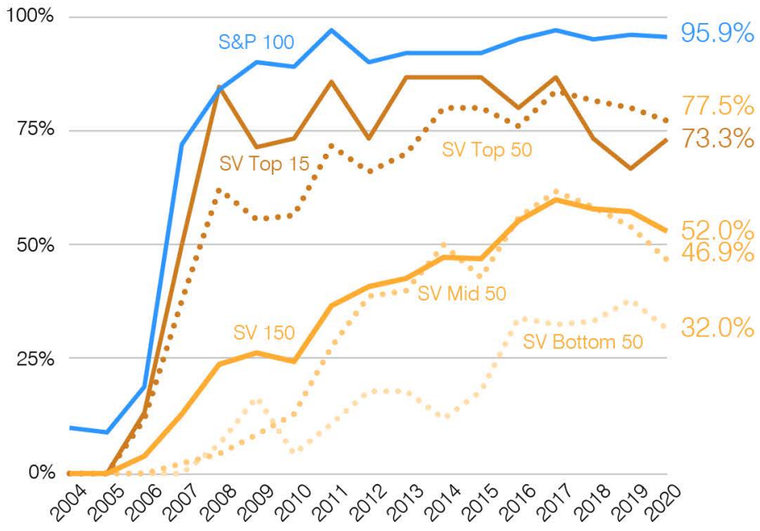
Of those with some form of majority voting, 76.6% of the SV 150 (and 88.3% of the S&P 100) had the "traditional" (rejectable resignation) style majority voting, 14.3% had "plurality plus" (compared to 3.2% of the S&P 100) and 2.6% had "consequential" (compared to 4.3% in the S&P 100)—with 6.5% of SV 150 companies (and 4.3% of the S&P 100) disclosing insufficient information in their proxy statements to determine the type of majority voting.[25]

MAJORITY VOTING—TRENDS OVER TIME

S&P 100 vs. SV 150



SV 150 Breakdown



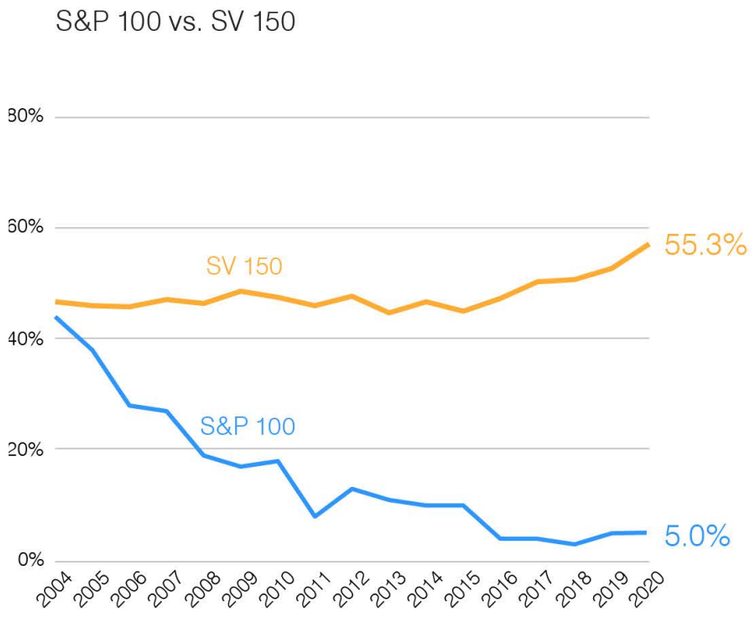
25 See "Methodology—Majority Voting" section below for a discussion of the types of majority voting provisions and how they are counted for this survey.

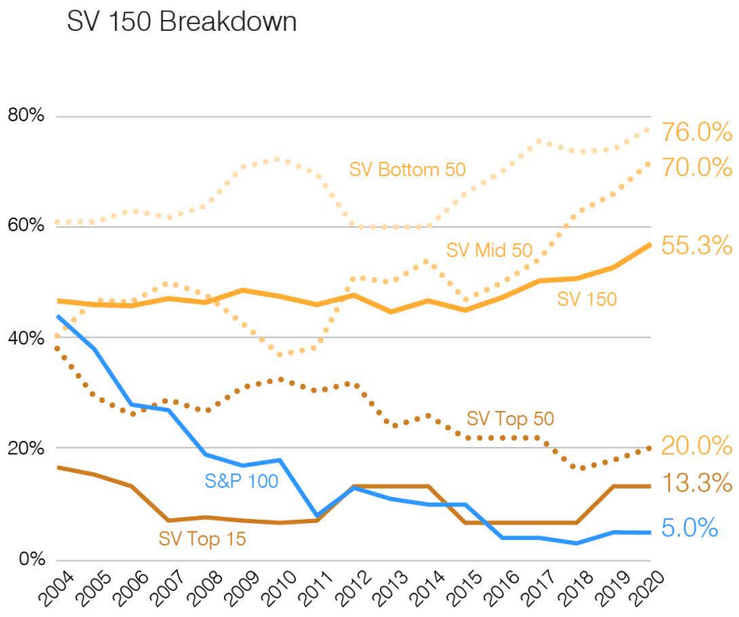
Classified Board

The graphs on this page show, over the period from the 2004 through 2020 proxy seasons, the percentage of all companies in each group with a classified board, as well as the same information for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies.

Classified boards are now significantly more common among the technology and life sciences companies in the SV 150 than among the S&P 100 companies, though that has not always been the case. This graph illustrates that declassifying boards has been a trend among the largest public companies, but not among Silicon Valley companies. At the beginning of the survey period, both groups had similar rates of classified boards. But, while the frequency among the S&P 100 declined dramatically during the period of the survey, the rate has held fairly steady among the technology and life sciences companies in the SV 150. Our data show that, within the SV 150, the rate among the top 15 companies had fallen in half (to a rate similar to the S&P 100) in the 2011 proxy season, but had rebounded to 13.3% in the 2012 through 2014 and 2020 proxy seasons (tracking a similar slight rebound in the S&P 100). Between 2015 and 2018, the top 15 companies had held steady at 6.7%, but increased to 13.3% for 2019 and 2020; and after holding at 4.0% for the previous couple of years, the S&P 100 increased to 5.0% in the 2019 and 2020 proxy seasons. Meanwhile, the rate among the bottom 50 companies had actually increased to 75.5% in the 2017 proxy season and is now at 76% in the 2020 proxy season. To a major extent, this reflects the reality that one of the principal reasons for classification, as a takeover defense, is less compelling for some larger companies due to the sheer size of the companies and relative dispersion of their stockholdings. The changes in recent years within the SV 150 largely reflect changes in the constituent companies of the subdivisions of the SV 150.

CLASSIFIED BOARD—TRENDS OVER TIME



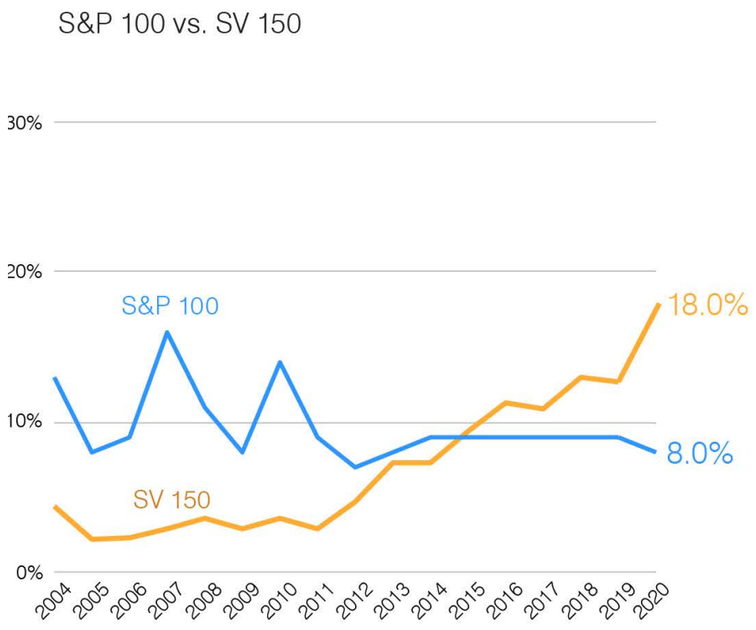


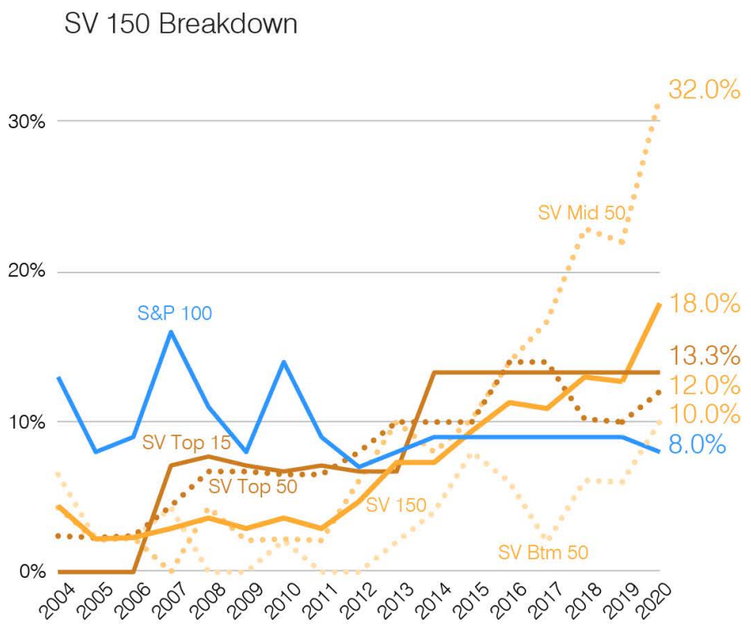
Dual-Class Voting Stock Structure

The graphs on this page show, over the period from the 2004 through 2020 proxy seasons, the percentage of all companies in each group with a dual-class voting stock structure, as well as the same information for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies.

Adoption of dual-class voting stock structures has continued its now decadelong upward trend among Silicon Valley technology companies (though it is still a small percentage of companies). Historically, dual-class voting stock structures have been significantly more common among S&P 100 companies than among the technology and life sciences companies in the SV 150, though the frequency in the SV 150 has surpassed the S&P 100 in recent years. However, in both groups dual-class voting remains a small minority. Other than the recent overall trend in the SV 150, the variation in the percentage of each group over time is primarily a function of changes in the constituents of each group. Within the SV 150, our data suggests that there has been an increase in dual-class voting structures among the midsize to larger companies, with little appearance among the smallest companies. That has been a function of companies such as Alphabet (Google), Facebook, Square, Fitbit, GoPro, Lyft, Twilio and Zuora joining the SV 150 with dual-class structures, while smaller companies with dual-class voting have departed as constituents of the SV 150 (offset by the recent addition of companies such as Coherus Biosciences, Livongo Health and Amyris).

DUAL-CLASS STRUCTURE—TRENDS OVER TIME





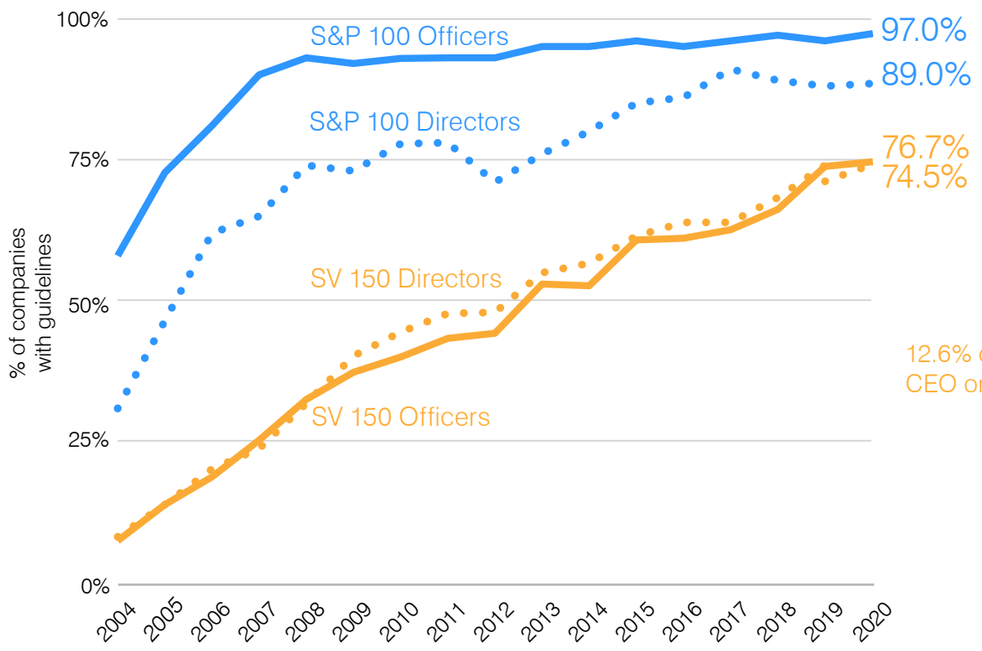
Stock Ownership Guidelines

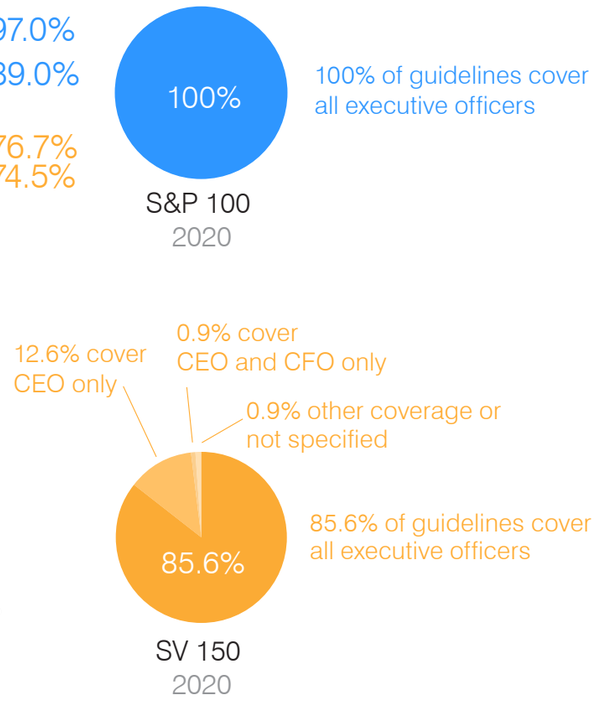
Alignment of executive officer and director economic interests with those of stockholders in the form of requirements that executive officers and directors hold specified amounts of a company's stock has been on the rise during the period of the survey. Generally, the prevalence of stock ownership guidelines has increased over time in both groups, but with the SV 150 in 2015 initially surpassing the level of the S&P 100 at the start of the period covered by the survey. Further, our data show that, within the SV 150, the rate among the top 15 and top 50 companies has risen to a rate generally comparable to that of the S&P 100, while the rate among the bottom 50 companies has risen more slowly. Such policies are still only implemented at about three-quarters of the middle 50 and at about three-fifths of bottom 50 companies (increasing from none in the 2004 proxy season to 57.1% in the 2020 proxy season, with much of the growth occurring since 2017).

We believe these differences are primarily a function of entrepreneurial ownership and the general culture of equity compensation in Silicon Valley, where insiders typically own larger stakes in their companies (particularly so at newly public companies) and boards feel less need to establish guidelines to encourage alignment of interests (or for stockholder relations).[26]

The graph on this page shows the percentage of all companies in each of the S&P 100 and the SV 150 with stock ownership guidelines for executive officers over the survey period and the coverage of those guidelines for each group in the 2020 proxy season, as well as the percentage of each group with stock ownership guidelines for directors over the same period.

STOCK OWNERSHIP GUIDELINES—EXECUTIVE OFFICERS AND DIRECTORS





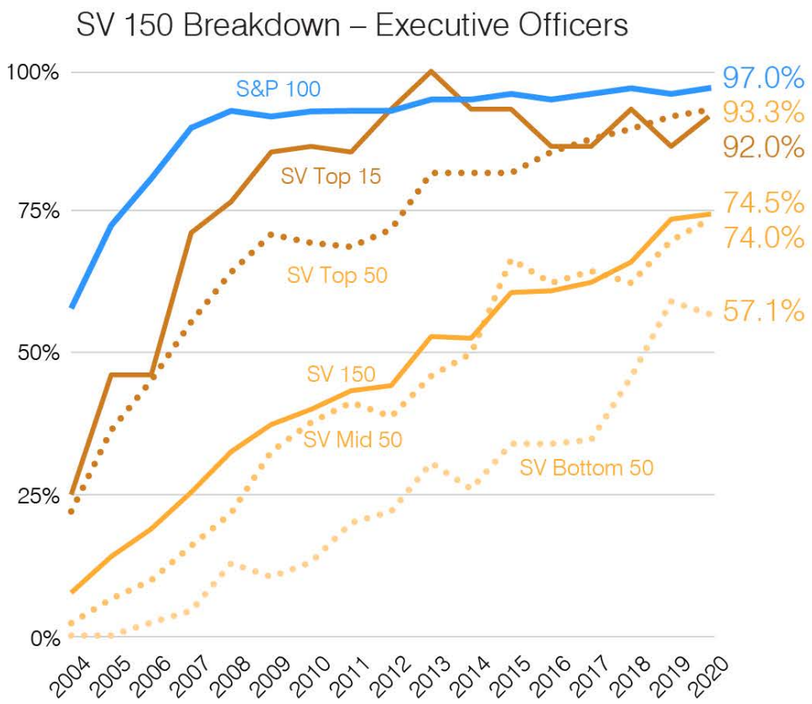
26 For example, our data show that equity ownership of executive officers and directors among the Bottom 50 companies in the SV 150 ranges over time from roughly five to 20 times that of executive officers and directors at S&P 100 companies (also depending on whether you are comparing averages or medians). See the data regarding the actual equity and voting ownership of executive officers and directors for each group on pages 4-7.

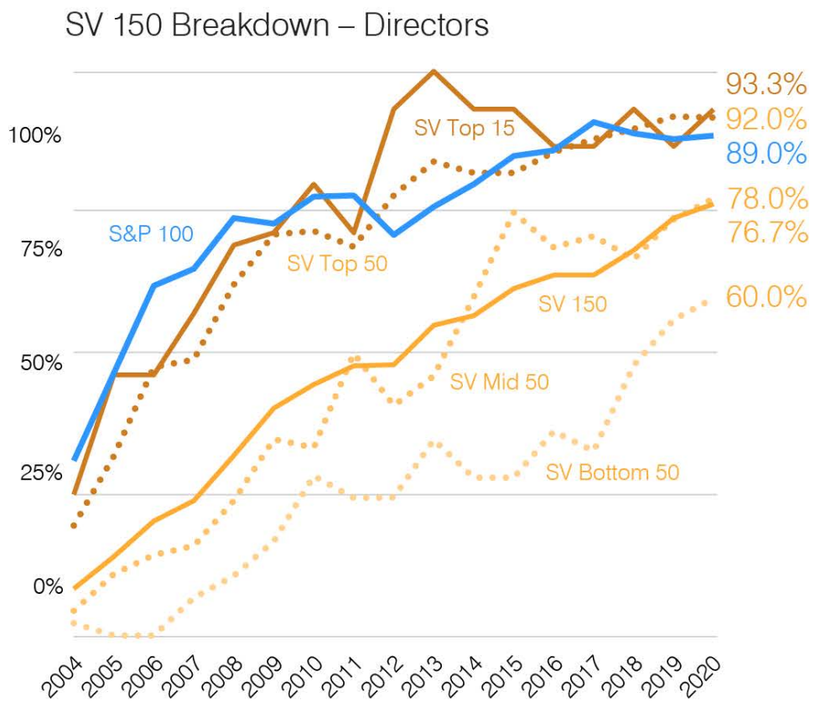
Stock Ownership Guidelines

Continued

The graphs on this page show, over the period from the 2004 through 2020 proxy seasons, the percentage of all companies in each of the S&P 100 and the SV 150 with stock ownership guidelines for executive officers and directors, separately, and for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies.

STOCK OWNERSHIP GUIDELINES—EXECUTIVE OFFICERS AND DIRECTORS (SV 150 BREAKDOWN)





Stock Ownership Guidelines

Continued

Minimum Holding Amount Requirements for Executives

Among the 111 SV 150 companies with stock ownership guidelines for executive officers, all but one disclosed the terms of their guidelines (either in their proxy statement or via reference to their website). Of those, seven companies specified the requirement based simply on a fixed number of shares or a fixed minimum value of shares that must be held, while 103 companies instead specified the requirement based on a multiple of base salary (and one that has no minimum holding amount and instead only had a holding period requirement).[27] Of the companies using a multiple, three companies specified 1 – 2x, 29 specified 3x, 42 specified 4 – 5x, 21 specified 6x and seven specified 7 – 10x of base salary for the CEO.[28] In addition, 81 companies specified a grace period of five years to reach the minimum, and 17 companies specified a grace period that ranged from two years to 50 months (while the remaining companies did not specify a grace period).[29] Twenty-three companies stated that they require a minimum retention level pending achievement of the identified target (either during the grace period or simply until the minimum retention level is met), of which one company required 100%, 16 companies required 50%, and three required 25% retention (generally as a percentage of "net shares" or a similar concept).[30] Of those with stock ownership guidelines, 45 companies specified which equity holdings are counted toward meeting the minimum, of which:

- 34 companies discussed time-based stock options, of which five excluded them, 29 only included vested options, and none included both vested and unvested options — generally only the "in-the-money" value of such options was counted where such options were included (or the company was silent on the subject);[31]
- 20 companies discussed performance-based stock options, of which one excluded them, and 19 only included vested options — generally only the "in-the-money" value of such options was counted where such options were included (or the company was silent on the subject);[32]
- 37 companies discussed time-based RSUs, of which two excluded them, 25 only included vested RSUs, and 10 included both vested and unvested RSUs;[33]
- 29 companies discussed performance-based RSUs, of which one excluded them, 22 only included vested RSUs, and six included both vested and unvested PSUs (RSUs with performance-based vesting);[34]
- 27 companies discussed restricted shares, of which three excluded them, 16 only included vested shares, and eight included both vested and unvested shares;[35]
- Ten companies expressly included shares in 401(k) plans;[36] and
- Nine companies expressly included shares subject to purchase via contributions to the company's employee stock purchase plan (ESPP).[37]

27 The CEO is required to hold the net shares from any equity awards granted in 2017 or later for 36 months from the date of settlement or exercise, as applicable (or until separation of service, if earlier).

28 Among the 14 companies in the Top 15 of the SV 150 with stock ownership guidelines for executives, three companies specified the requirement based on a fixed number of shares or a fixed minimum value of shares that must be held, while 11 companies instead specified the requirement based on a multiple of salary. Of the companies using a multiple, no company specified 1x, one specified 3–5x, five specified 6x and four companies specified 7–10x base salary for the CEO.

29 In the Top 15, 12 companies had a five-year grace period to reach the minimum (with the remainder not specifying a grace period).

30 "Net shares" or a similar concept generally means the shares that remain after shares are sold or withheld to pay any applicable exercise price or satisfy withholding tax obligations in connection with the exercise, vesting, settlement or payment of an equity award. In the Top 15, one company specified in its proxy statement disclosure that it required a minimum retention level pending achievement of the stated target, requiring 25% retention.

31 Of the seven companies in the Top 15 of the SV 150 that specified which equity holdings are counted toward meeting the minimum, six discussed time-based stock options, of which none excluded them, six included vested only and none included both vested and unvested options.

32 In the Top 15, two companies discussed performance-based stock options, both of which excluded them.

33 In the Top 15, four companies discussed time-based RSUs, three of which counted vested shares toward the minimum holding requirement and one included both vested and unvested options.

34 In the Top 15, two companies discussed performance-based RSUs, both of which counted vested shares toward the minimum holding requirement.

35 In the Top 15, three companies discussed restricted shares, one of which included vested and two of which included both vested and unvested shares when measuring holdings.

36 In the Top 15, three companies expressly included shares in 401(k) plans.

37 In the Top 15, no companies expressly included shares subject to purchase via contributions to the company's ESPP.

Stock Ownership Guidelines

Continued

All of the 97 S&P 100 companies with stock ownership guidelines for executive officers disclosed the terms of their guidelines (either in their proxy statement or via reference to their website). Of those, eight companies specified the requirement based simply on a fixed number of shares or a fixed minimum value of shares that must be held, while 87 companies instead specified the requirement based on a multiple of base salary (and two that have no minimum holding amount and instead simply required holding a portion of equity awarded as compensation during their tenure).[38] Of the companies using a multiple, one company specified 3–4x, eight specified 5x, 49 specified 6x, 25 specified 7–10x, and four specified more than 10x of base salary for the CEO. In addition, 58 companies specified a grace period of five years to reach the minimum, four companies specified a grace period of two to four years, and two specified a six-year grace period (while the remaining companies did not specify a grace period). Forty-five companies stated that they required a minimum retention level pending achievement of the identified target (either during the grace period or simply until the minimum retention level is met), of which 16 companies required 100%, 11 required 66.7%–75%, 15 required 50%, and three required 25% retention (generally as a percentage of "net shares" or a similar concept). Of those with stock ownership guidelines, 68 companies specified which equity holdings are counted toward meeting the minimum, of which:

- 49 companies discussed time-based stock options, of which 26 excluded them, 18 only included vested options, and five included both vested and unvested options — generally only the "in-the-money" value of such options was counted where such options were included (or the company was silent on the subject);
- 43 companies discussed performance-based stock options, of which 25 excluded them, 15 only included vested options, and three included both vested and unvested options — generally only the "in-the-money" value of such options was counted where such options were included (or the company was silent on the subject);
- 30 companies discussed time-based RSUs, of which two excluded them, 10 only included vested RSUs, and 18 included both vested and unvested RSUs — though three companies counted less than the full value of unvested RSUs;
- 22 companies discussed performance-based RSUs, of which four excluded them, 13 only included vested RSUs and five included both vested and unvested PSUs — though three companies counted less than the full value of unvested RSUs;
- 19 companies discussed restricted shares, of which one excluded them, 11 only included vested shares, and seven included both vested and unvested shares — though three companies counted less than the full value of unvested restricted shares;
- 15 companies expressly included shares in 401(k) plans; and
- 11 companies expressly included shares subject to purchase via contributions to the company's employee stock purchase plan (ESPP).

38 One company required retention of 75% of net shares.

Stock Ownership Guidelines

Continued

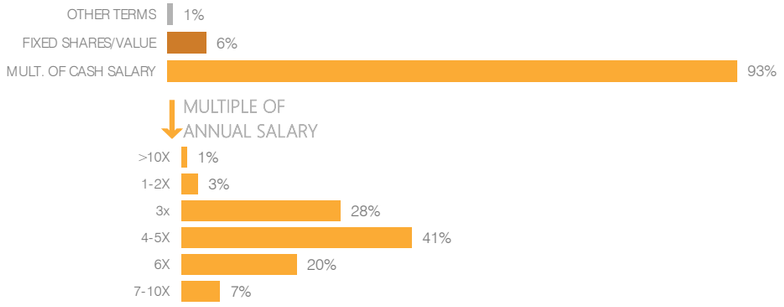
Minimum Holding Amount Requirements for Executives (*continued*)

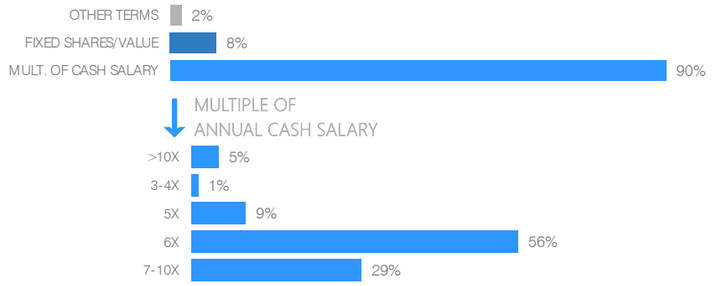
The graphs on this page show for each group the percentage of companies with stock ownership guidelines for executive officers, the type of target for minimum holding amount requirements and, where the target is a multiple of base salary, the multiple applicable to the Chief Executive Officer (CEO), as well as any grace period to achieve the target and any minimum retention level required pending achievement of the target.

STOCK OWNERSHIP GUIDELINES FOR EXECUTIVES—2020 PROXY SEASON

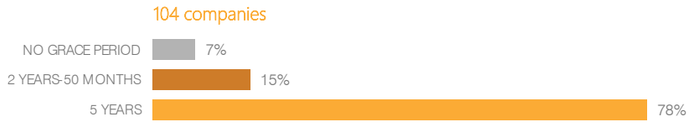
MINIMUM HOLDING AMOUNT REQUIREMENTS FOR EXECUTIVES—2020 PROXY SEASON

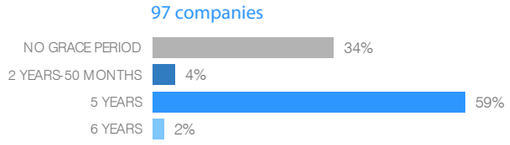
TYPE OF MINIMUM TARGET



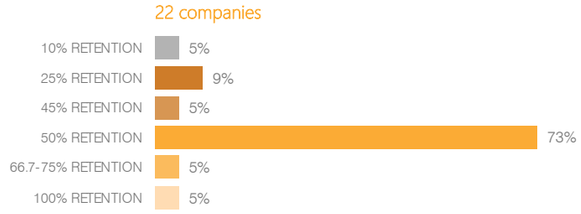


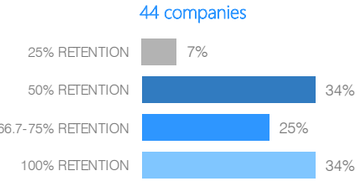
GRACE PERIOD TO REACH MINIMUM





MINIMUM RETENTION LEVEL PENDING TARGET





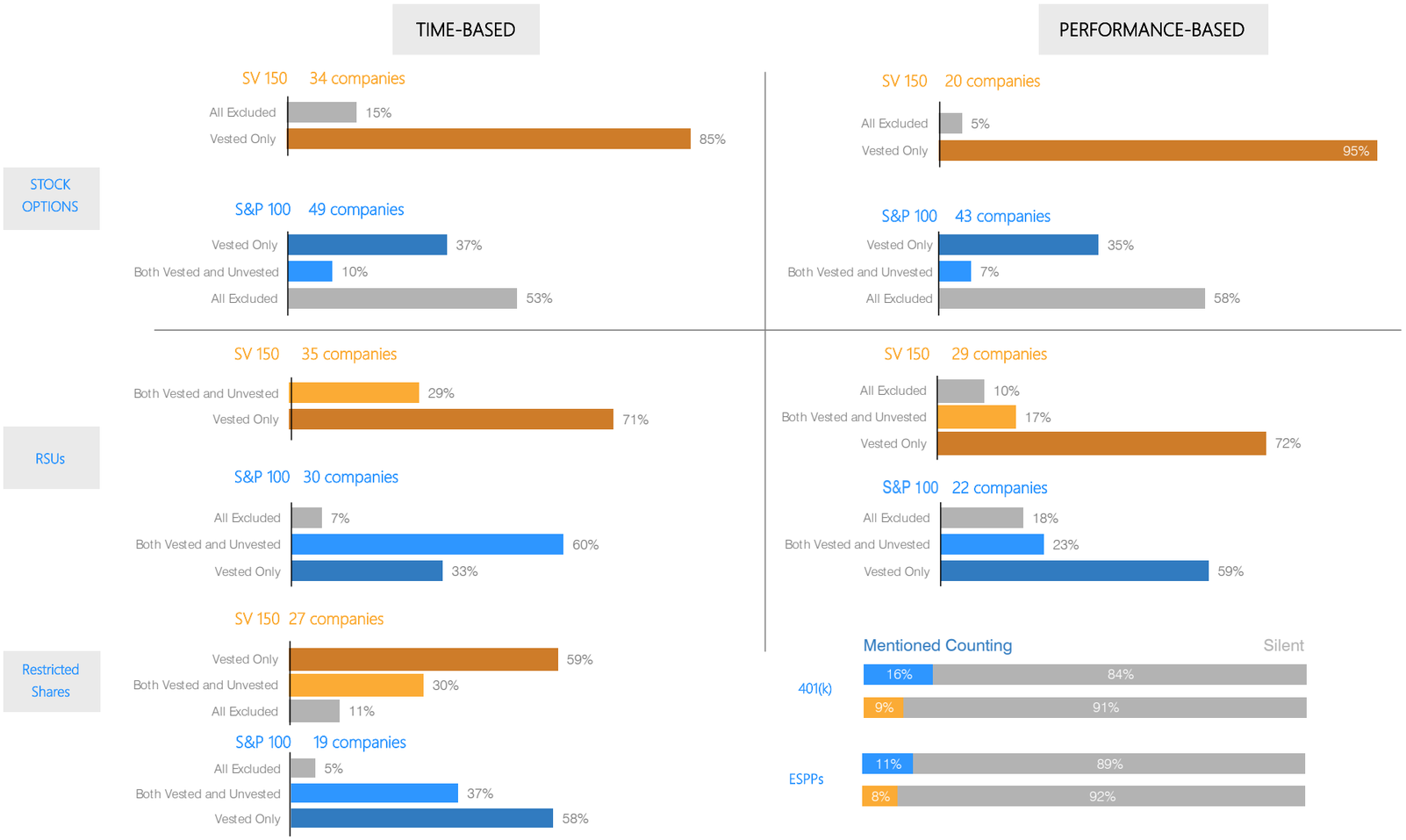
Stock Ownership Guidelines

Continued

Minimum Holding Amount Requirements for Executives (*continued*)

The graphs on this page show for each group whether stock options with time-based vesting, stock options with performance-based vesting, restricted stock units (RSUs) with time-based vesting, RSUs with performance-based vesting (PSUs) and restricted shares are counted toward achievement of the minimum holding target and whether such counting includes only vested or both vested and unvested equity, as well as whether the stock ownership guidelines discuss inclusion of shares in 401(k) plans or employee stock purchase plans (ESPPs).

EQUITY HOLDINGS THAT COUNT TOWARD MINIMUM — 2020 PROXY SEASON



Stock Ownership Guidelines

Continued

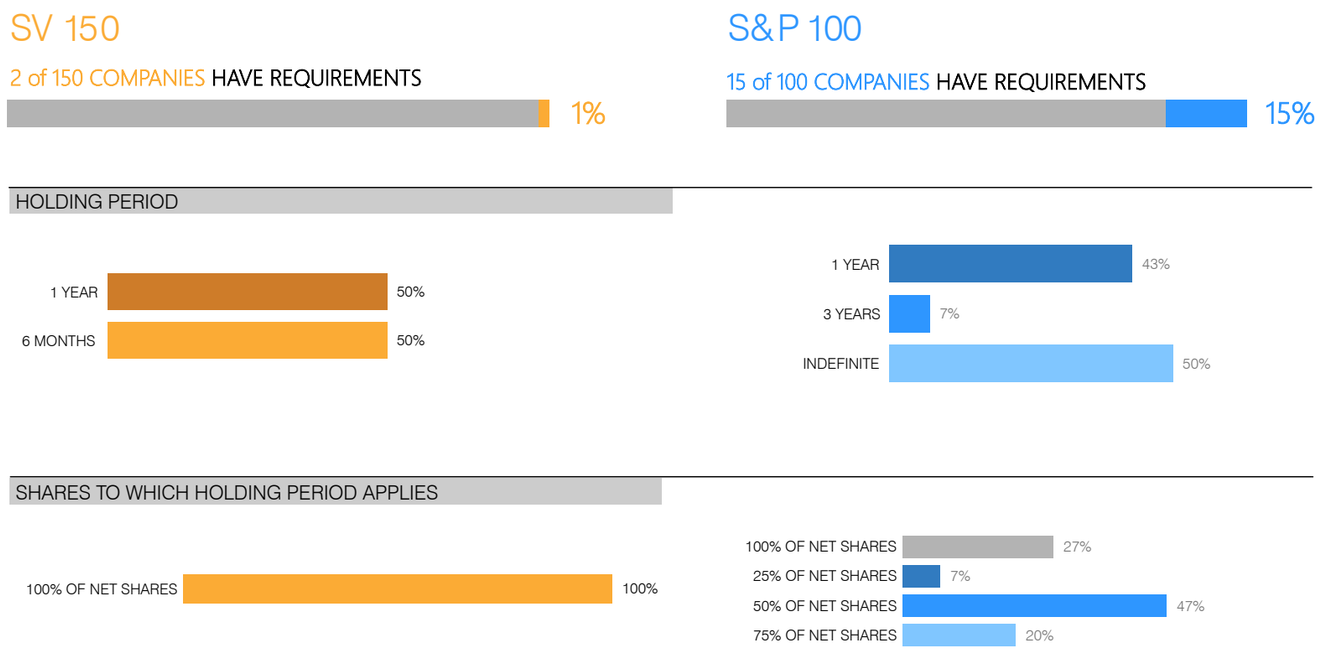
Minimum Holding Period Requirements for Executives

Additionally, two companies in the SV 150 also had minimum holding period requirements for executive officers in addition to, or in some cases in lieu of, the minimum holding amount requirements discussed above.[39] One SV 150 company had a minimum holding period requirement of six months, and one company had a period of one year. These minimum holding period requirements applied to 100% of "net shares" (or a similar concept) at both companies.

In the S&P 100, 15 companies had such minimum holding period requirements for executive officers. For six companies the period was one year. Seven companies specified an indefinite period (generally applying until retirement or other separation of employment, or for some period thereafter). These minimum holding period requirements applied to 100% of "net shares" (or a similar concept) at four of the companies, three companies applied it to 75%, seven to 50% and one applied it to 25% of such shares.

The graphs on this page show for each group the percentage of companies with minimum holding period requirements for executive officers (in addition to, or in lieu of, minimum holding amounts), the minimum holding period applicable to the CEO and the portion of equity holdings to which the requirement applied.

MINIMUM HOLDING PERIOD REQUIREMENTS FOR EXECUTIVES—2020 PROXY SEASON



39 One of them (Tesla) is in the Top 15 of the SV 150.

Stock Ownership Guidelines

Continued

Minimum Holding Requirements for Directors

Among the 115 SV 150 companies with stock ownership guidelines for non-employee board members, all of the companies disclosed the terms of their guidelines (either in their proxy statement or via reference to their website). Of those, 16 companies specified the requirement based simply on a fixed number of shares or a fixed minimum value of shares that must be held, while 99 companies instead specified the requirement based on a multiple of the directors' annual cash retainer. Of the companies using a multiple, 46 companies specified a multiple of 3x, seven companies specified 4x, 35 specified 5x, six specified 6x, and four companies specified 8–10x.[40] In addition, 87 companies specified a grace period of five years to reach the minimum, 19 companies specified a grace period that ranged from two to four years, and no companies specified a one-year grace period (while the remaining companies did not specify a grace period).[41] Seventeen companies specified in their proxy statement disclosure that they required a minimum retention level pending achievement of the stated target (either during the grace period or simply until the minimum retention level is met), of which three companies required 100%, 11 companies required 50%, two required 25% retention, and one required 10% (generally as a percentage of "net shares" or a similar concept).[42]

All of the 89 S&P 100 companies with stock ownership guidelines for non-employee directors disclosed the terms of those guidelines. Of those, 14 companies specified the requirement based simply on a fixed number of shares or a fixed minimum value of shares that must be held, while 71 companies instead specified the requirement based on a multiple of the directors' annual cash retainer (and four companies simply specified that such directors must hold some or all of their net shares received as compensation during their tenure). Of the companies using a multiple, 53 companies specified a multiple of 5x, 11 specified a multiple of 3–4x, and six specified a multiple of 6–8x. In addition, 67 companies specified a grace period of five years to reach the minimum, five companies specified a grace period that ranged from two to four years, and two companies specified a six-year grace period (while the remaining companies specified a grace period of over six years). Seventeen companies specified in their proxy statement disclosure that they required a minimum retention level pending achievement of the stated target (either during the grace period or simply until the minimum retention level is met), of which 10 companies required 100%, two companies required 75%, four required 50%, and one required 25% retention (generally as a percentage of "net shares" or a similar concept).

Companies typically do not specifically discuss which holdings are counted toward meeting the requirements for non-employee directors, or they state or imply that holdings are counted the same as for executive officers (as applicable).

40 Among the 14 companies in the Top 15 of the SV 150 with stock ownership guidelines for non-employee directors, four companies specified the requirement based on a fixed number of shares or a fixed minimum value of shares that must be held, while 10 companies instead specified the requirement based on a multiple of the directors' annual cash retainer. Of the companies using a multiple, nine companies specified 5x and one company specified 6x annual cash retainer.

41 In the Top 15, 14 companies specified a five-year grace period.

42 In the Top 15, no company specified such a minimum retention level.

Stock Ownership Guidelines

Continued

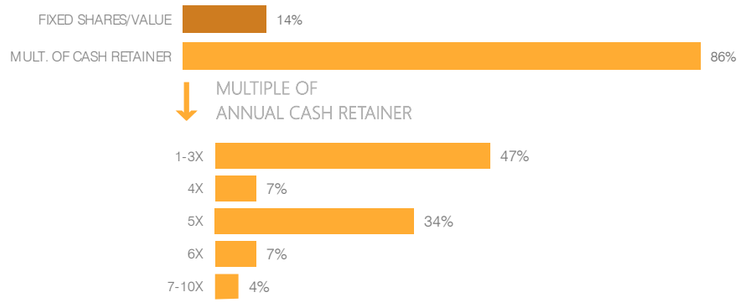
Minimum Holding Requirements for Directors (*continued*)

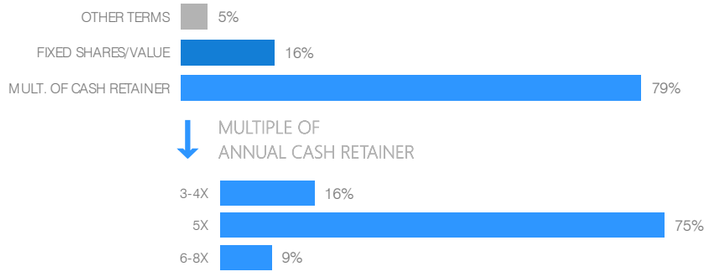
The graphs on this page show for each group the percentage of companies with stock ownership guidelines for non-employee directors, the type of target for minimum holding amount requirements and, where the target is a multiple of the annual cash retainer, the applicable multiple, as well as any grace period to achieve the target and any minimum retention level required pending achievement of the target.

STOCK OWNERSHIP GUIDELINES FOR DIRECTORS — 2020 PROXY SEASON

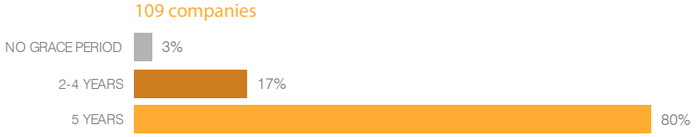
MINIMUM HOLDING AMOUNT REQUIREMENTS FOR DIRECTORS

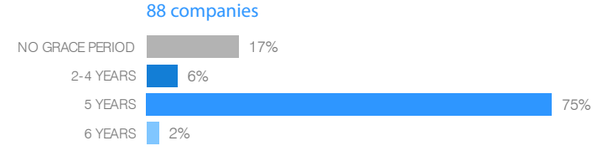
TYPE OF MINIMUM TARGET



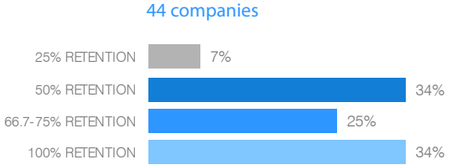


GRACE PERIOD TO REACH MINIMUM





MINIMUM RETENTION LEVEL PENDING TARGET



Stockholder Proposals

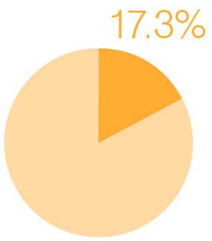
Stockholder activism, measured in the form of proposals included in the proxy statements of companies, is substantially lower among the technology and life sciences companies in the SV 150 than among S&P 100 companies. However, our data show a marked increase in recent years among the technology and life sciences companies in the top 15 of the SV 150, where 86.6% had at least one stockholder proposal. Three companies in the SV 150 had four or more proposals during the 2020 proxy season (with an average of 2.12 proposals among those with any), compared to 16 such companies in the S&P 100 (with an average of 2.73 among those with any). Our data reflect a current general downward trend of stockholder activism, measured in terms of stockholder proposal frequency, particularly in the S&P 100—although the SV 150, where there are any proposals, has had an upward trend in number of proposals in recent years. Contested elections, another form of stockholder activism, were exceedingly rare among both the SV 150 and the S&P 100. There were no contested elections in eight of the years surveyed among the SV 150 (and two years in which there were five contested elections, and seven years with only one or two). There were no contested elections in eight of the years among the S&P 100 during the 17 years of the survey (and nine years in which each had only one or two contested elections). This trend continued in the 2020 proxy season, when the SV 150 had no contested elections, and the S&P had no contested director elections.

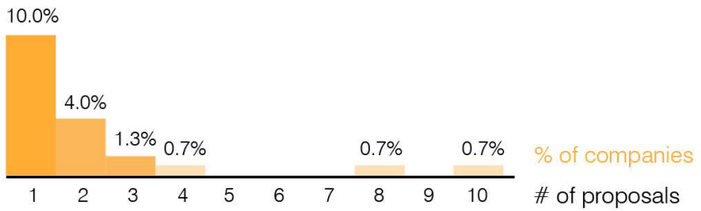
The graphs on this page show for each group during the 2020 proxy season the percentage of all companies with at least one stockholder proposal, and the distribution by number of stockholder proposals, included in the company's proxy statement.

STOCKHOLDER PROPOSALS—DISTRIBUTIONS

SV 150
2020

% of companies with at least 1 stockholder proposal

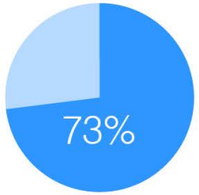


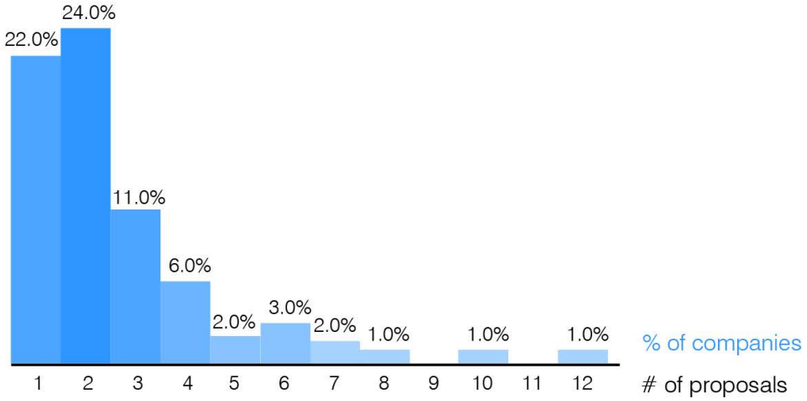


Proposal distribution
(% of all companies)

S&P 100
2020

% of companies with at least 1 stockholder proposal





Proposal distribution
(% of all companies)

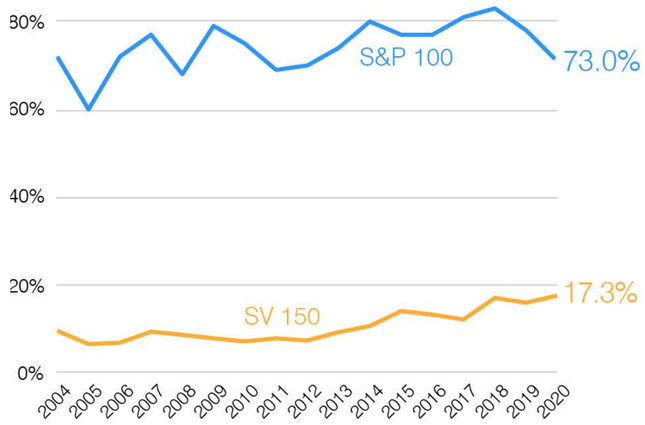
Stockholder Proposals

Continued

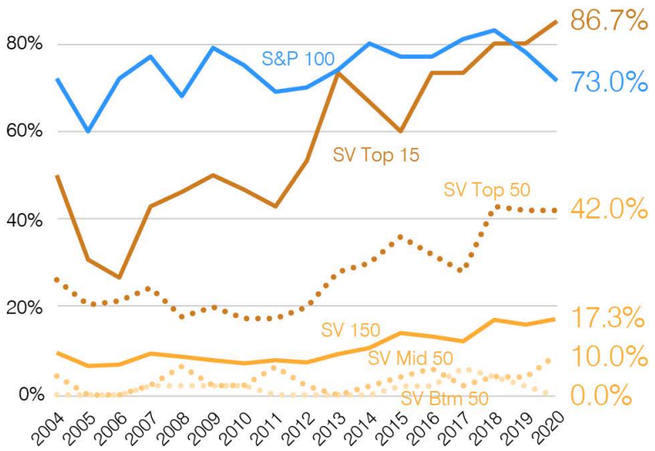
The graphs on this page show for each group, over the period from the 2004 through 2020 proxy seasons, the percentage of all companies with at least one stockholder proposal included in the company proxy statement and the average and median number of such proposals per company, as well as the percentage of all companies with at least one stockholder proposal and the average number of proposals for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies.

STOCKHOLDER PROPOSALS — TRENDS OVER TIME

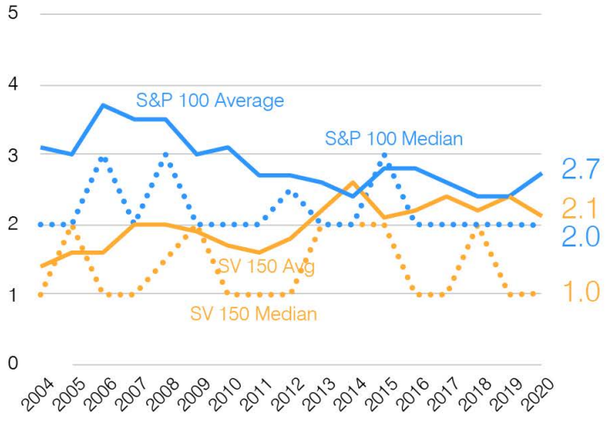
Percentage of Companies
with at least one Stockholder Proposal



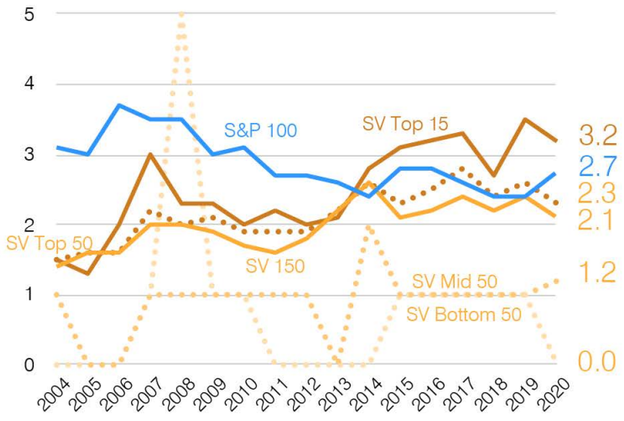
SV 150 Breakdown –
at least one Stockholder Proposal



Number of Stockholder Proposals
per Company



SV 150 Breakdown –
Average # of Stockholder Proposals

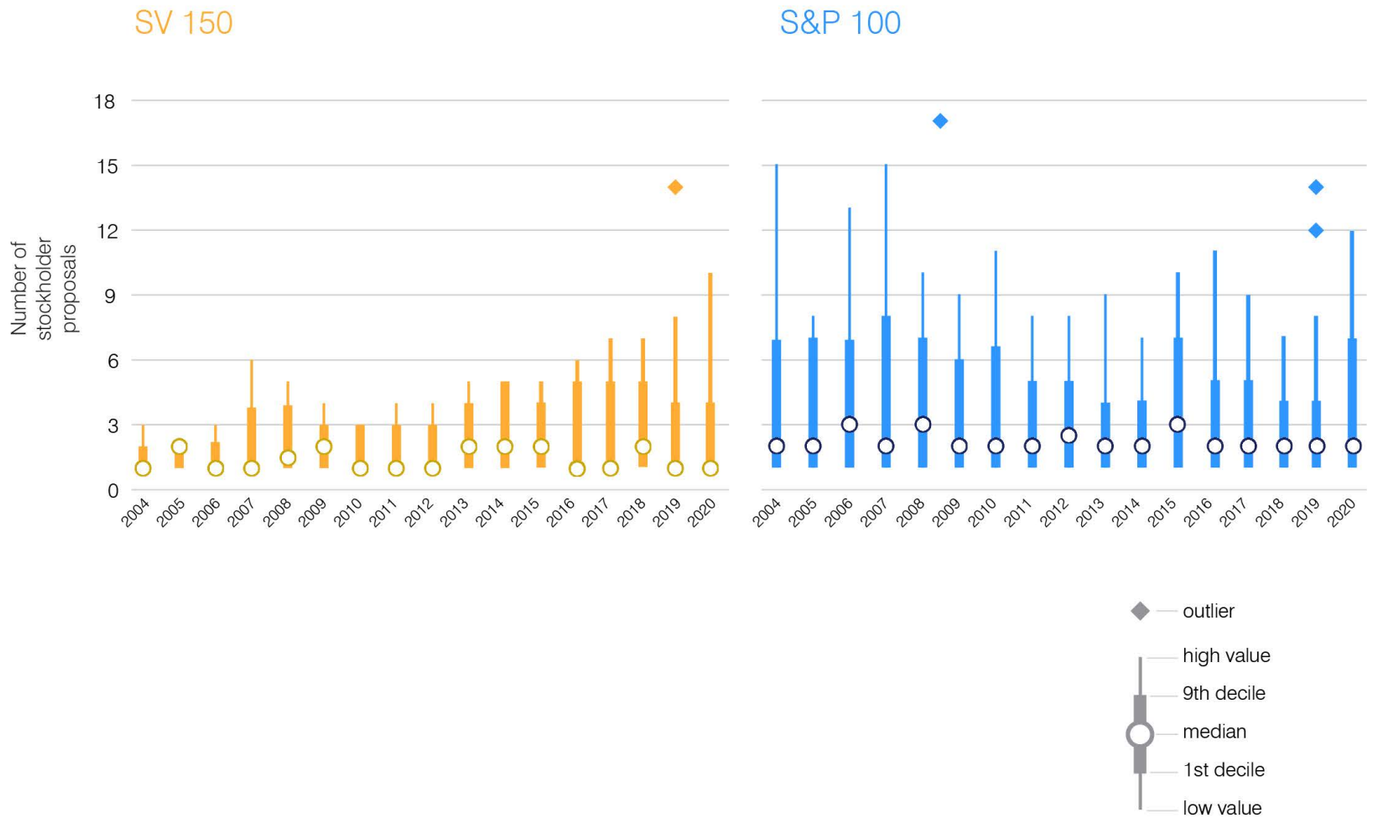


Stockholder Proposals

Continued

The graphs on this page show for each group the range, over the period from the 2004 through 2020 proxy seasons, of the number of stockholder proposals included in company proxy statements, showing both the median and the cutoffs for the deciles with the most and fewest proposals (among those that have any such proposals).

STOCKHOLDER PROPOSALS — RANGE TRENDS OVER TIME



For a substantially more detailed review of stockholder proposals and other aspects of annual meeting voting in the SV 150, as well as the S&P 100, see the companion Fenwick publication 2020 Proxy Season Results in Silicon Valley and Large Companies Nationwide, released in November 2020. To be placed on an email list for future editions of the Proxy Season Results Survey when published, visit www.fenwick.com/subscribe-proxy.

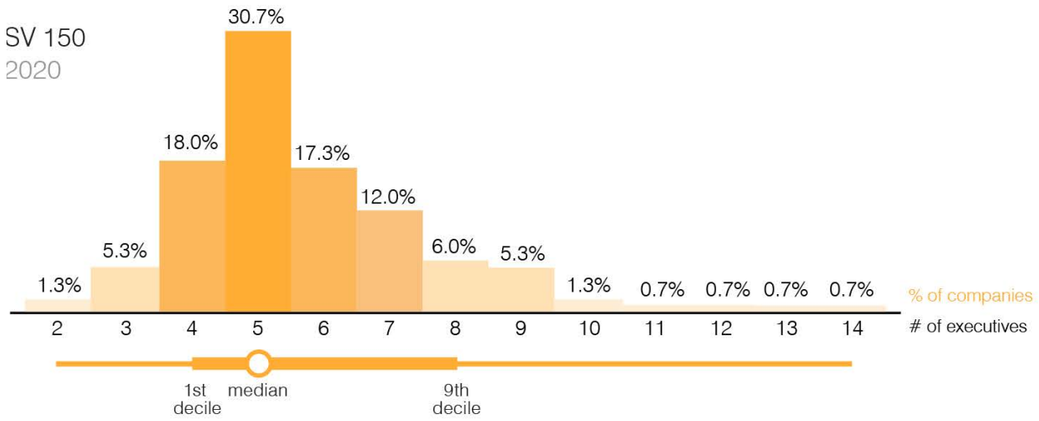
Executive Officers

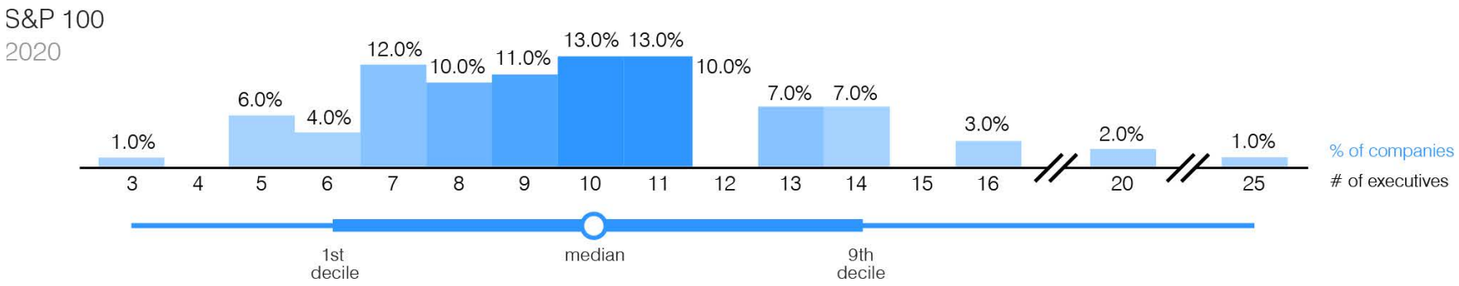
Number of Executive Officers

The number of executive officers tends to be substantially lower among the technology and life sciences companies in the SV 150 (average = 5.7 executive officers) than among S&P 100 companies (average = 10.2 executive officers), generally reflecting the scale differences between the groups of companies. In both groups there has been a general decline in the average number of executive officers per company (a trend that continued in the 2020 proxy season), as well as a narrowing of the range of that number in each group (SV 150 max = 20 and min = 4 in the 1996 proxy season compared to max = 14 and min = 2 in the 2020 proxy season; S&P 100 max = 41 and min = 5 in 1996 proxy season compared to max = 25 and min = 3 in the 2020 proxy season).

The graphs on this page show the distribution by number of executive officers among the two groups during the 2020 proxy season.

NUMBER OF EXECUTIVE OFFICERS — DISTRIBUTIONS AND TRENDS OVER TIME





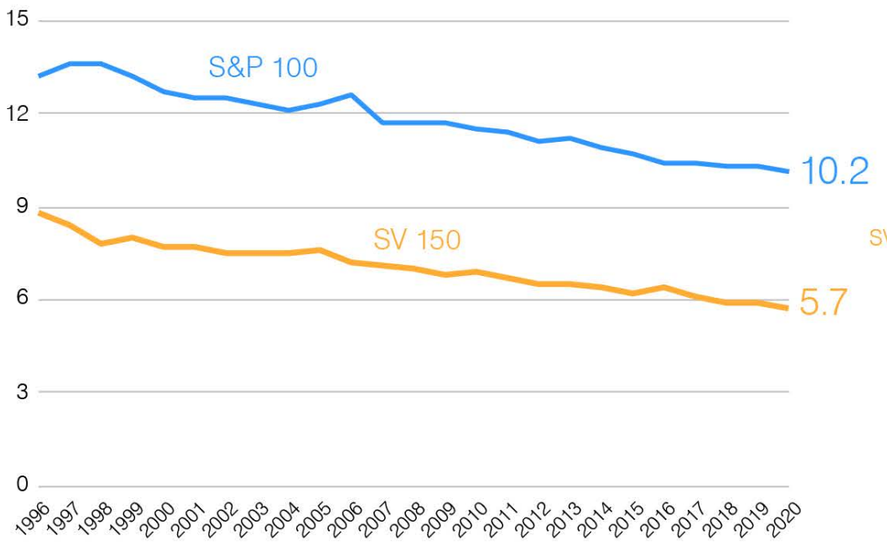
Executive Officers

Continued

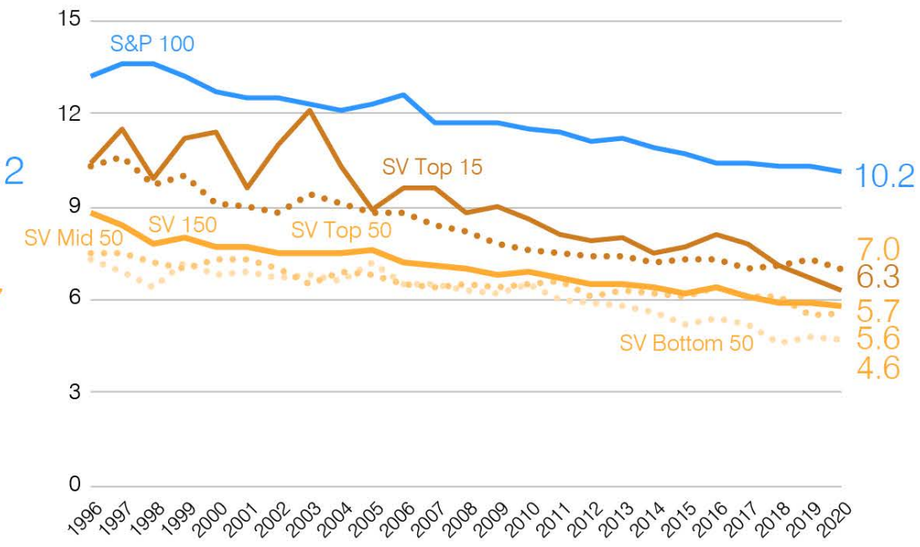
The graphs on this page show the average number of executive officers in each group, as well as the same information for the SV 150 broken down by the top 15, top 50, middle 50 and bottom 50 companies, over the period from the 1996 through 2020 proxy seasons.

AVERAGE NUMBER OF EXECUTIVE OFFICERS—TRENDS OVER TIME

S&P 100 vs. SV 150



SV 150 Breakdown

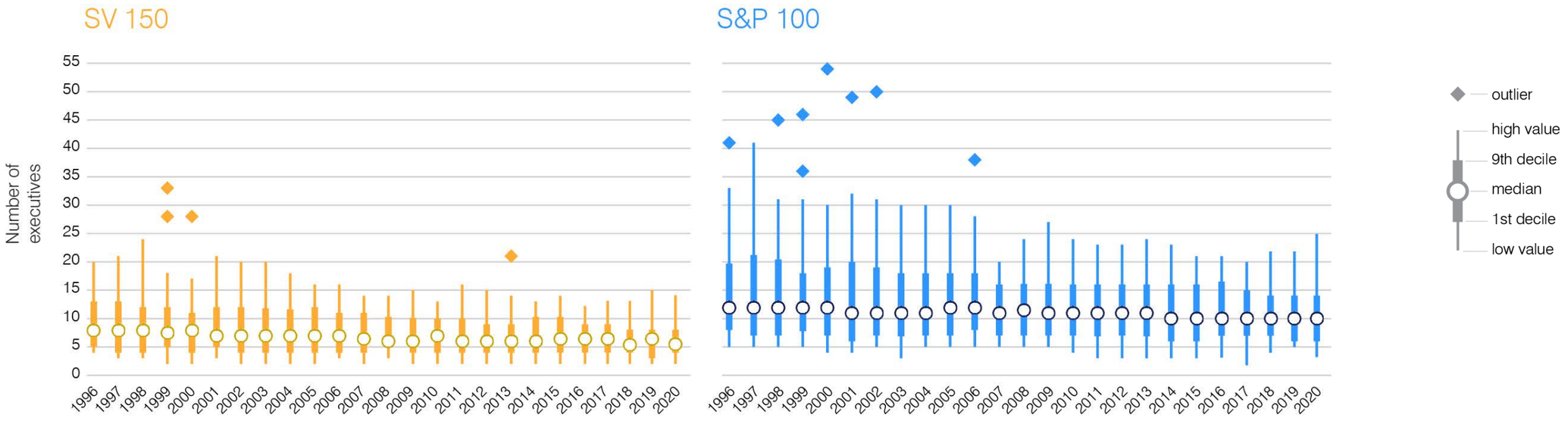


Executive Officers

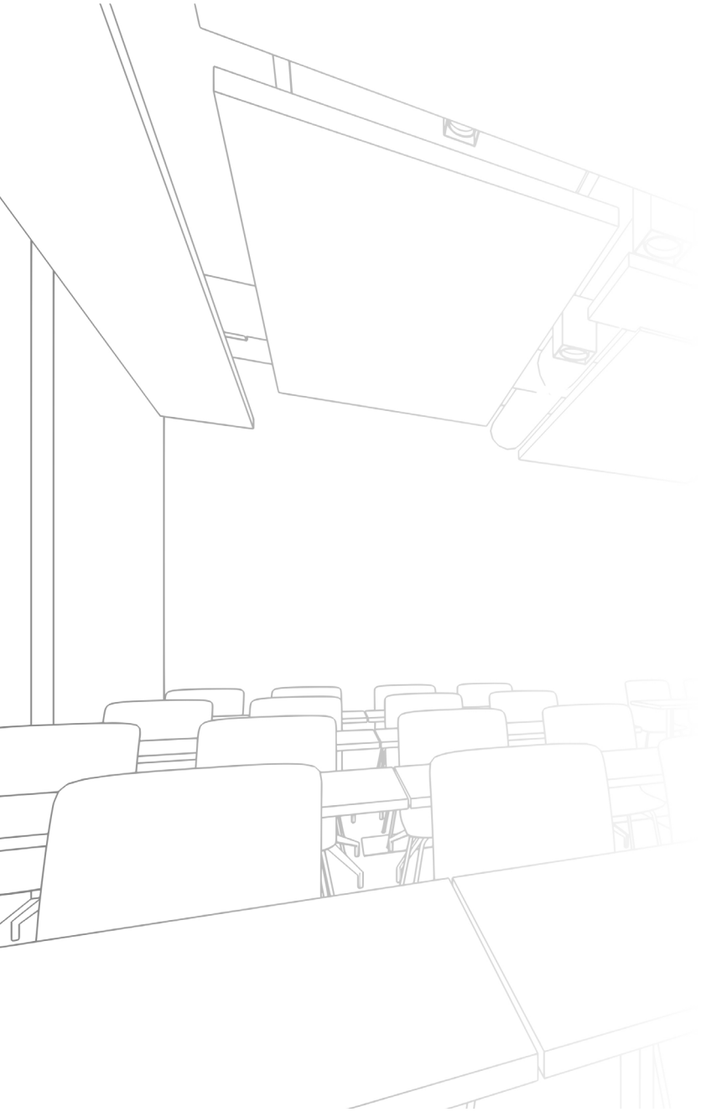
Continued

The graphs on this page show the range of the number of executive officers per company in each group, showing both the median and the cutoffs for the deciles with the most and fewest executive officers, over the period from the 1996 through 2020 proxy seasons.

RANGE OF NUMBER OF EXECUTIVE OFFICERS—TRENDS OVER TIME



Executive Officer Makeup



The type of officers included among company executive officers has varied over time, with some types substantially increasing over time—running counter to the overall steady decline in the number of executive officers. In addition to the Chief Executive Officer (CEO), the breakdown in the 2020 proxy season is the following:[43]

- 98.7% of SV 150 companies identified a Chief Financial Officer (CFO), compared to 99% in the S&P 100;
- 74% of SV 150 companies identified a General Counsel (GC), Chief Legal Officer (CLO) or other senior legal executive, compared to 95% in the S&P 100;
- 38% of SV 150 companies identified a Chief Technology Officer (CTO) or other senior engineering or research and development executive, compared to 43% in the S&P 100;
- 41.3% of SV 150 companies identified a President, Chief Operating Officer (COO) or other senior operations executive, compared to 30% in the S&P 100;
- 32.6% of SV 150 companies identified a senior sales executive, compared to 24% in the S&P 100;
- 16% of SV 150 companies identified a senior corporate or business development executive, compared to 25% in the S&P 100;
- 4.6% of SV 150 companies identified a senior marketing executive (separate from the senior sales executive), compared to 2% in the S&P 100; and
- 76.67% of SV 150 companies identified at least one other position (separate from those included above) among their executive officers, compared to 99% in the S&P 100.

Generally, the frequency of inclusion of these positions has held relatively steady or declined slightly over time. In the SV 150, the number of senior sales executives has declined somewhat more rapidly than other positions (while the S&P 100 has seen steady growth in that position, though from a very small base). Similarly, the S&P 100 has seen more significant decline in President/COO-type executive officers, particularly in recent years (with the SV 150 showing a slightly slower decline in that position). Conversely, the inclusions of GC/CLO and CTO/Engineering/R&D executives have markedly increased during the survey period in both groups.

The overall decline in the average number of executive officers at companies in each group appears to be driven largely by the decline in the number of executive officers that hold some position other than (and separate from) those identified above. The percentage of the total executive officers that fall in the category of "other" executive officer positions has declined significantly over time (29.8% of all executive officers in the SV 150 in the 2020 proxy season compared to 46.7% in the 1996 proxy season; 58.4% of all executive officers in the S&P 100 in the 2020 proxy season compared to 69.6% in the 1996 proxy season).

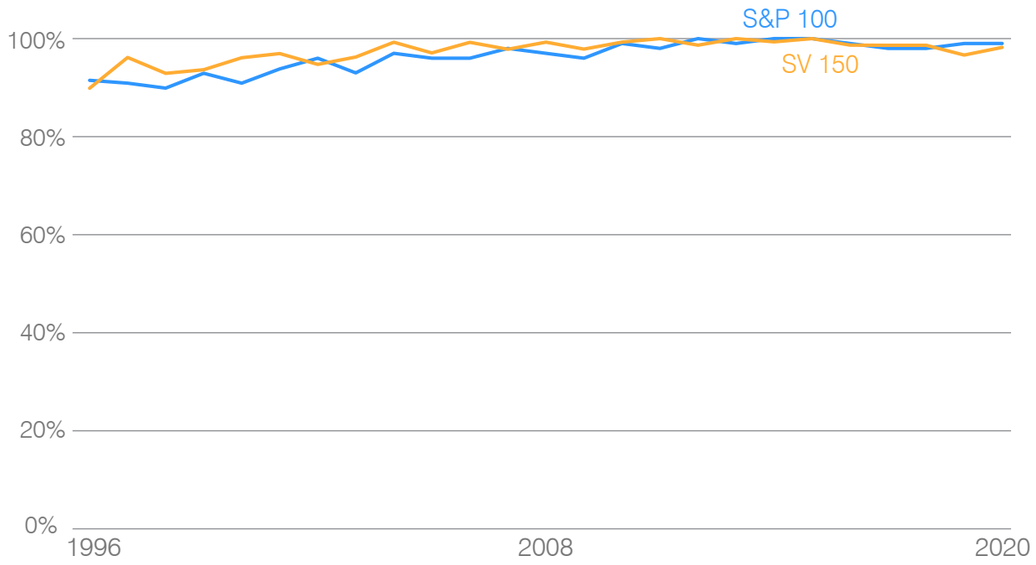
43 In some companies, a single executive may hold more than one of these positions with such executives consequently counted in more than one of these categories (e.g., President and CFO). In addition, some companies have more than one person holding a position (e.g., Co-Presidents), in which case the position is only counted once.

Executive Officer Makeup

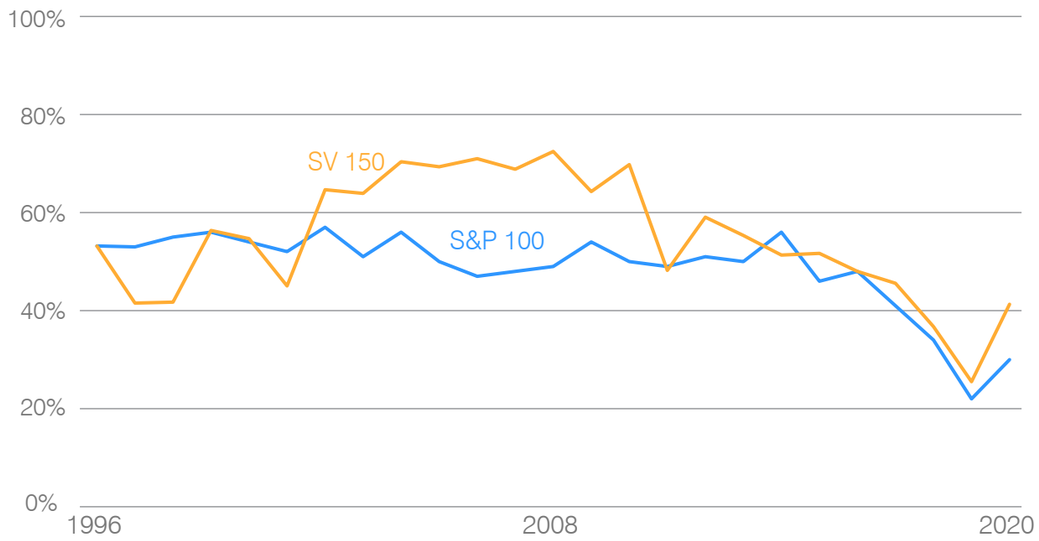
Continued

The graphs on this page show the percentage of companies in each group that have included CFO or other senior finance executive and a President and/or COO or other senior operations executive as an "executive officer" from the 1996 through the 2020 proxy seasons.

PERCENTAGE OF COMPANIES INCLUDING CFO AS AN EXECUTIVE OFFICER



PERCENTAGE OF COMPANIES INCLUDING PRESIDENT AND/OR COO AS AN EXECUTIVE OFFICER

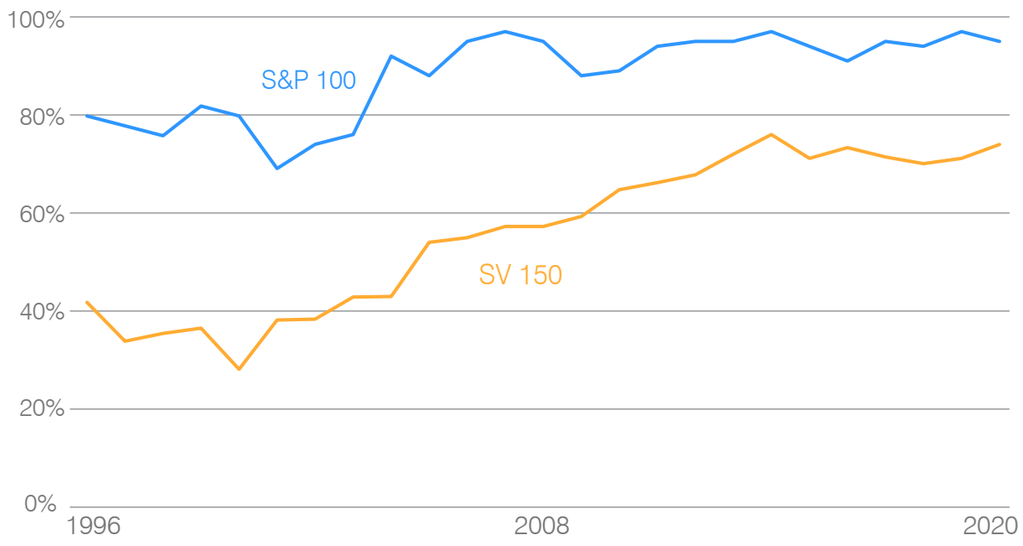


Executive Officer Makeup

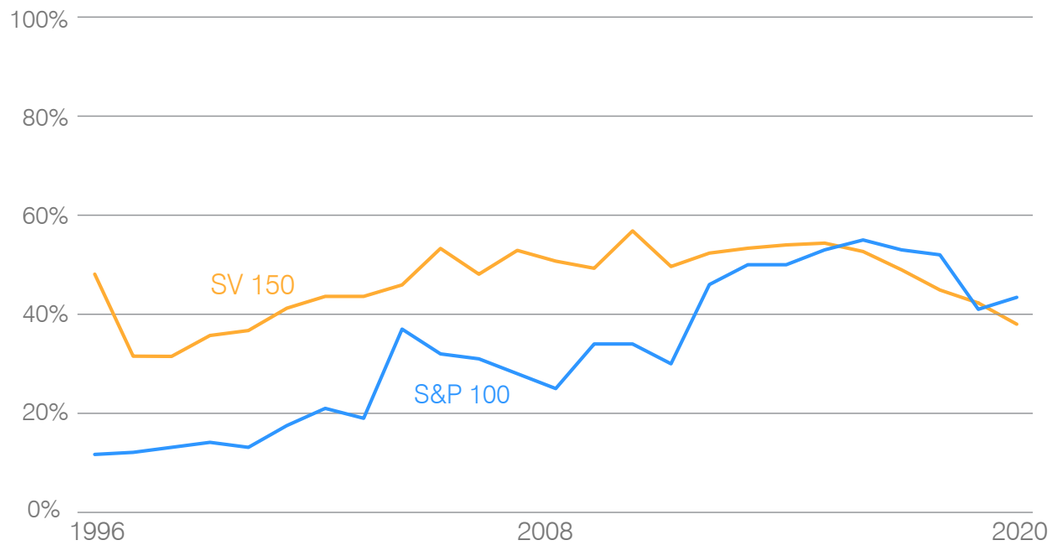
Continued

The graphs on this page show the percentage of companies in each group that have included a GC, CLO or other senior legal executive and a CTO or other senior engineering or research and development executive as an "executive officer" from the 1996 through 2020 proxy seasons.

PERCENTAGE OF COMPANIES INCLUDING GC OR CLO AS AN EXECUTIVE OFFICER



PERCENTAGE OF COMPANIES INCLUDING CTO, ENGINEERING OR R&D EXECUTIVE AS AN EXECUTIVE OFFICER

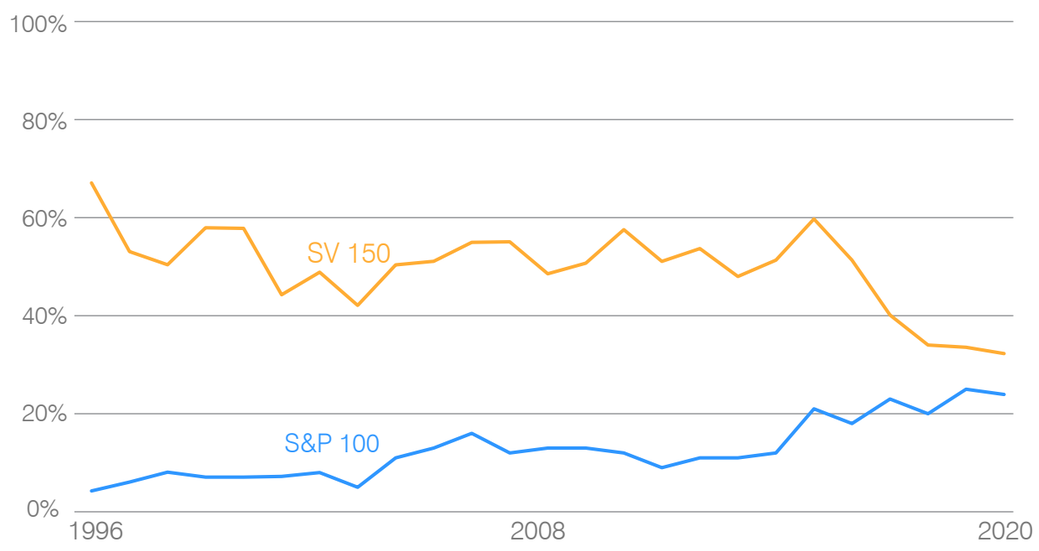


Executive Officer Makeup

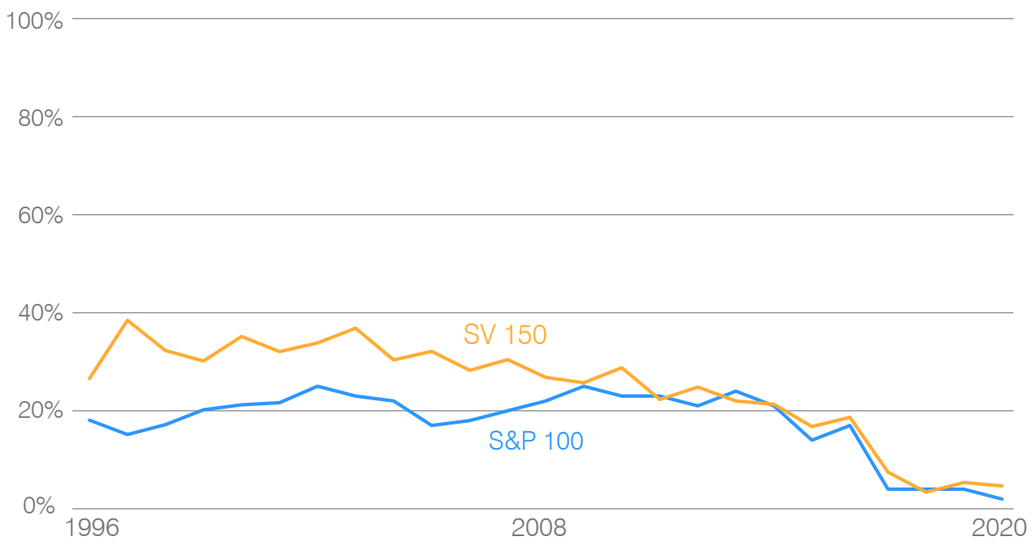
Continued

The graphs on this page show the percentage of companies in each group that have included a senior sales executive and a senior marketing executive (separate from the senior sales executive) as an "executive officer" from the 1996 through 2020 proxy seasons.

PERCENTAGE OF COMPANIES INCLUDING SENIOR SALES EXECUTIVE AS AN EXECUTIVE OFFICER



PERCENTAGE OF COMPANIES INCLUDING SENIOR MARKETING EXECUTIVE AS AN EXECUTIVE OFFICER

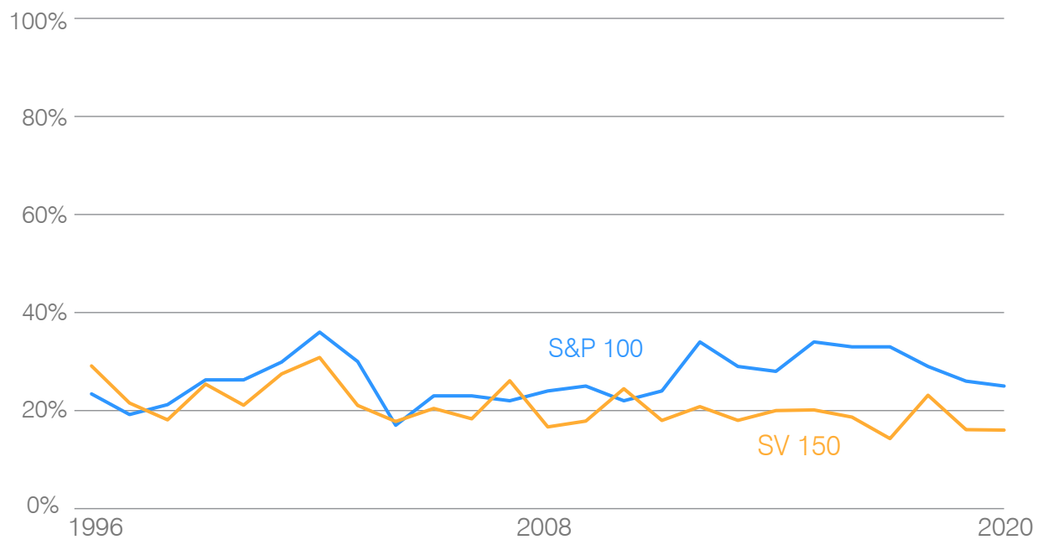


Executive Officer Makeup

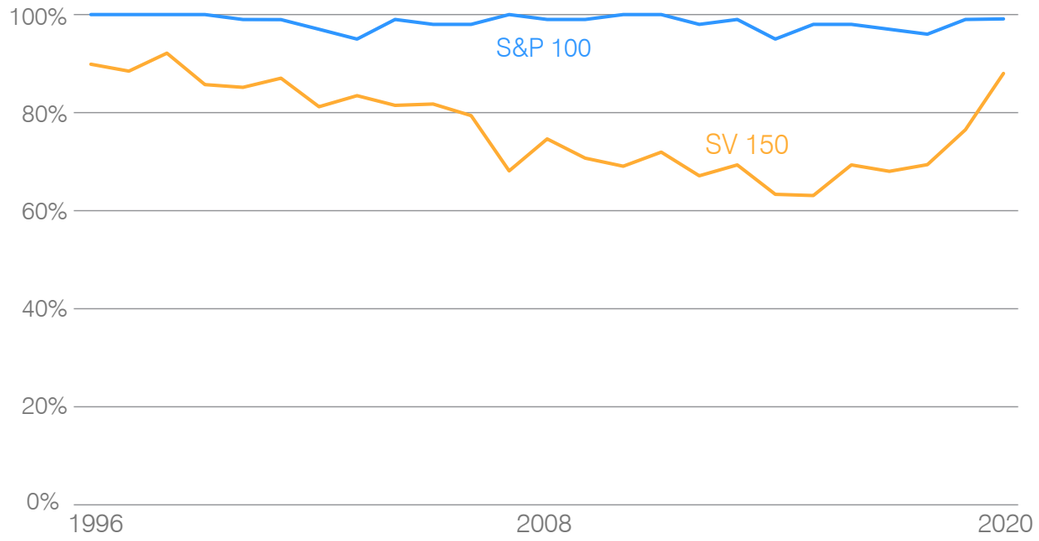
Continued

The graphs on this page show the percentage of companies in each group that have included a senior corporate and/or business development executive, as well as the percentage in each group that have included at least one other officer position (separate from those positions in the preceding graphs), as an "executive officer" from the 1996 through 2020 proxy seasons.

PERCENTAGE OF COMPANIES INCLUDING SENIOR CORPORATE AND/OR BUSINESS DEVELOPMENT EXECUTIVE AS AN EXECUTIVE OFFICER



PERCENTAGE OF COMPANIES INCLUDING "OTHER" EXECUTIVE(S) AS AN EXECUTIVE OFFICER



Fees Paid to Auditors

We compared the audit fees paid in the 2019 proxy season by SV 150 and S&P 100 companies. The data show that companies in the SV 150 paid on average a fraction of the audit fees paid by companies in the S&P 100, with SV 150 companies paying on average $4.7 million compared to $23.5 million paid by S&P 100 companies. Year over year, average audit fees have increased in both the SV 150 and the S&P 100. In the SV 150, companies paid on average $4.7 million in the 2020 proxy season, compared to $4.3 million the prior season, up by 9.5%. S&P 100 companies paid on average $23.5 million in 2020, compared to $22.9 million previously, representing a 2.6% increase. In the S&P 100, audit fees ranged from a minimum of $2.9 million to a maximum of $76.9 million. SV 150 companies paid audit fees ranging from $278,000 to $26.5 million.

In general, our data show that the larger the SV 150 company by revenue, the higher its audit fees. The average audit fees of $15.4 million among the Top 15 companies of the SV 150 (by revenue) were more similar to the fees paid by their peers in the S&P 100, though generally still substantially less (ranging from a minimum of $4.9 million to a maximum of $26.5 million). The average audit fees among the Top 50, Middle 50 and Bottom 50 steadily decline with revenue size ($9.2 million, $3.0 million and $2.0 million, respectively). Additionally, the data show that average audit fees in the 2020 proxy season increased for SV 150 companies among the Top 15 (to $15.4 million, compared to $13.7 million in 2019), Top 50 (to $9.2 million, compared to $8.2 in 2019) and Bottom 50 (to $2.0 million, compared to $1.9 million in 2019), but decreased for companies among the Middle 50 (to $3.0 million).

These trends generally held for the other fee categories (audit-related fees, tax fees, all other fees), as well as for total fees. If anything, the trend was more pronounced at the higher end of the revenue scale.

	Audit Fees		Audit-Related Fees		Tax Fees		All Other Fees		Total Fees	
	Average †	Range*	Average †	Range*	Average †	Range*	Average †	Range*	Average †	Range*
S&P 100	$23.5M (+3.1%)	$2.9M–$76.9M	$4.1M (-10.9%)	$4.0K–$32.7M	$2.8M (+12.0%)	$23.8K–$35.1M	$300K (0%)	$0.5K–$8.4M	$30.6M (+1.3%)	$3.7M–$114.5M
SV 150	$4.7M (+3.7%)	$178K–$26.5M	$264K (-33.7%)	$0.9K–$7.2M	$612K (+5.7%)	$3.0K–$8.5M	$48K (-37.7%)	$0.9K–$1.3M	$5.7M (+3.8%)	$278K–$32.4M
Top 15	$15.4M (+9.8%)	$4.9M–$26.5M	$1.5M (-26.6%)	$4K–$7.2M	$2.9M (-1.1%)	$110K–$8.5M	$177K (+0.6%)	$9.K–$1.3K	$19.8M (+4.3%)	$7.9M–$32.4M
Top 50	$9.2M (+10.0%)	$2.5M–$26.5M	$626K (+-27.2%)	$4.0K–$7.2M	$1.5M (+6.2%)	$44K–$8.5M	$86K (-48.5%)	$2.0K–$1.285K	$11.3M (+5.6%)	$3.7M–$32.4M
Mid 50	$2.9M (-1.5%)	$1.2M–$5.0M	$109K (-59.2%)	$0.9K–$1.1M	$287K (-5.6%)	$5.9K–$1.3M	$49.0K (+88.5%)	$4.8K–$893K	$3.4M (-5.4%)	$1.3M–$6.3M
Btm 50	$2.0M (+8.5%)	$278K–$3.9M	$45.0K (-27.4%)	$2.0K–$901K	$74.0K (+34.5%)	$3.0K–$796K	$70K (-81.1%)	$900–$222K	$2.1M (+6.4%)	$278K–$4.5M

† Percentage change represents year-over-year comparison between the 2019 and 2020 proxy seasons.

* Companies reporting $0 were included in the average but not in the range. For the S&P 100, four companies report $0 for Audit-Related Fees, five companies report $0 for Tax Fees and 35 companies report $0 for All Other Fees. For the SV 150, 76 companies report $0 for Audit-Related Fees, 37 companies report $0 for Tax Fees and 58 companies report $0 for All Other Fees. For the SV 150 Top 15, three companies report $0 for Audit-Related Fees, five companies report $0 for All Other Fees. For the SV 150 Top 50, 16 companies report $0 for Audit-Related Fees, two companies report $0 for Tax Fees and 16 companies report $0 for All Other Fees. For the SV 150 Middle 50, 28 companies report $0 for Audit-Related Fees, 13 companies report $0 for Tax Fees and 15 companies report $0 for All Other Fees. For the SV 150 Bottom 50, 32 companies report $0 for Audit-Related Fees, 22 companies report $0 for Tax Fees and 27 companies report $0 for All Other Fees.

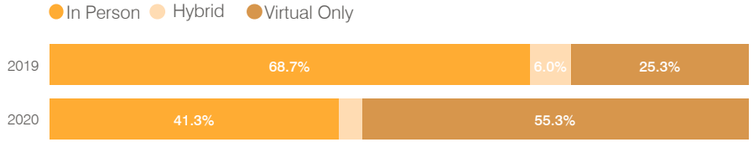
Meeting Locale

Virtual-only stockholder meetings increased substantially in 2020, largely driven by the COVID19 pandemic lockdowns and restrictions. Their use in the SV 150 more than doubled (54.3% in the 2020 proxy season compared to 25.3% in the 2019 proxy season) and more than quadrupled in the S&P 100 (37% in 2020 versus 8% in the 2019 season). Looking only at meetings held on April 1, 2020 or later, 68.2% of meetings were virtual-only – though only about a third of those companies specifically cited the COVID19 pandemic as the reason. Hybrid virtual and in-person meetings declined as many were shifted to virtual-only.[44] Logically, in-person meetings saw significant declines.

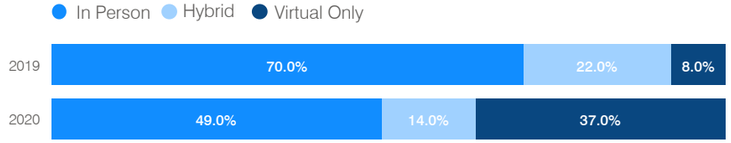
Meeting Locale SV 150 Breakdown

The meeting location patterns and trends in the top 15 companies of the SV 150 were similar to their peers in the S&P 100, while the use of virtual-only meetings increased as company size moved down the SV 150 ranks.

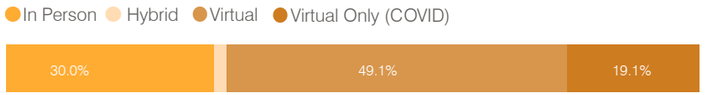
SV 150 Meeting Locale



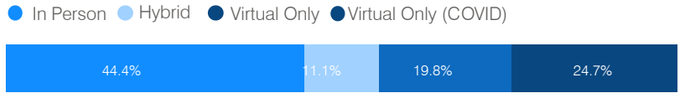
S&P 100 Meeting Locale



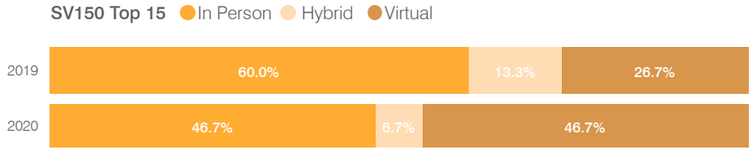
SV 150 Meetings Held After 4/1/2020 (COVID Effect)

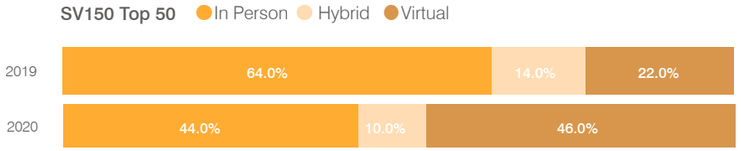


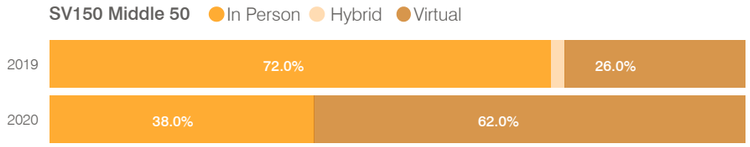
S&P 100 Meetings Held After 4/1/2020 (COVID Effect)

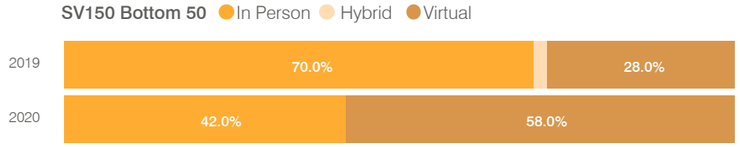


SV 150 Meeting Locale Breakdown









44 For the subset of 35 SV 150 companies and 44 S&P 100 companies that had filed proxy materials prior to April 1, 2020 for inperson stockholder meetings scheduled after that date, 20% of the SV 150 companies went forward with those in-person meetings while the remainder and all of the S&P 100 companies switched to virtualonly, citing COVID as the rationale.

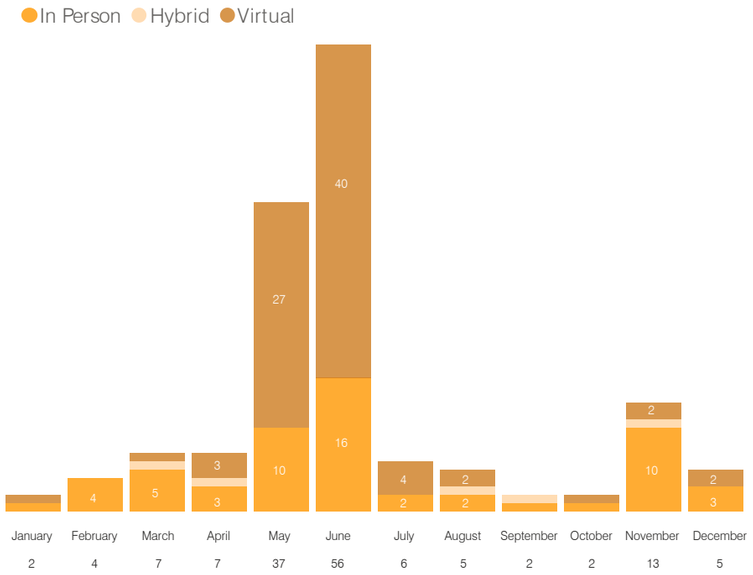
Meeting Locale

Continued

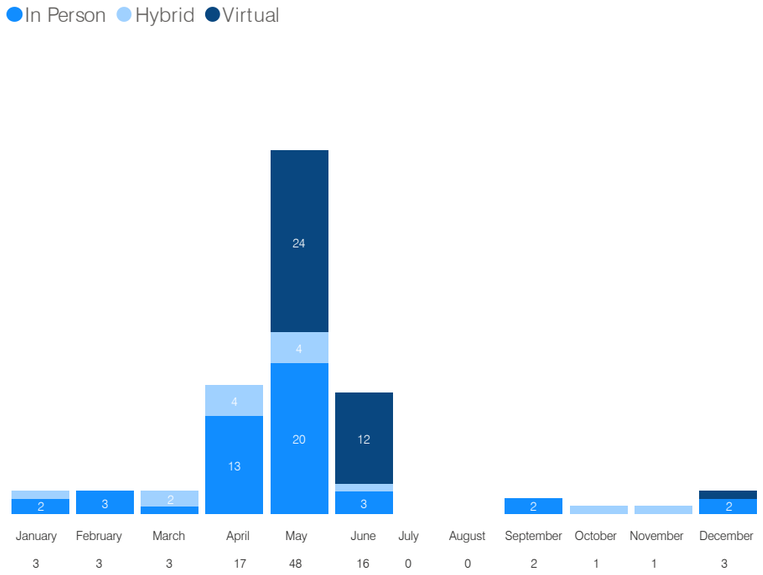
Meeting Locale by Month

A supermajority of the S&P 100 hold annual meetings in the second quarter of the year with 82% of annual meetings held between April and June. May is the most popular month with 48 annual meetings. The SV 150 favors the months of May and June to hold meetings, with 93 (63.7%) annual meetings in these two months.

SV 150 Meeting Locale By Month



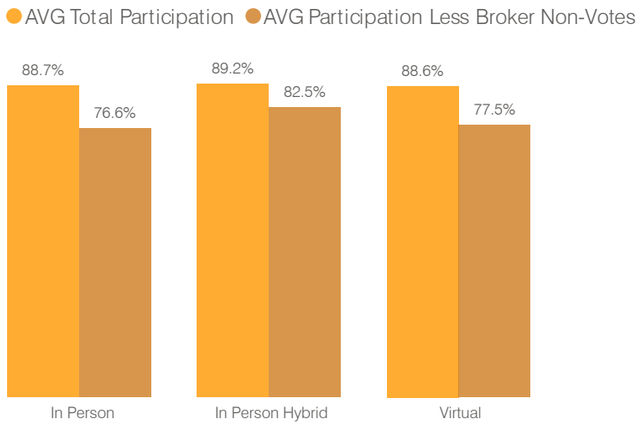
S&P 100 Meeting Locale By Month



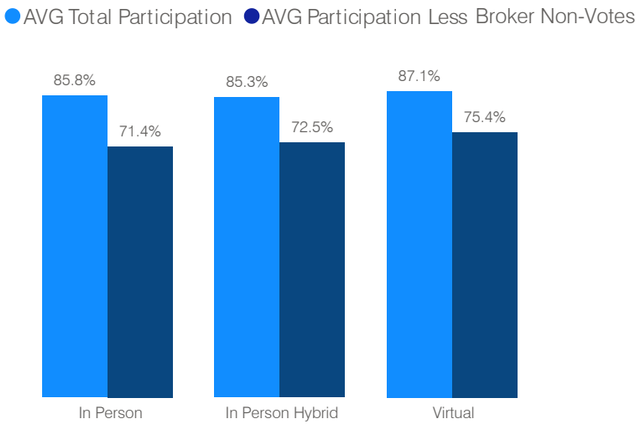
Participation

In general, meeting locale did not have a substantial effect on the level of stockholder participation, when measured by percentage of shares represented at the meeting. Excluding broker nonvotes, virtual-only meetings had slightly greater participation than in-person meetings, though the difference was more pronounced in the S&P 100 (75.4% participation at virtual-only meetings compared to 71.4% at in-person meetings) than in the SV 150 (77.5% compared to 76.6%).

SV 150 Participation



S&P 100 Participation



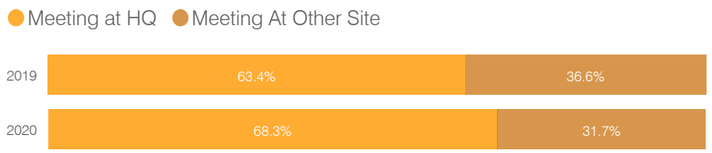
Meeting Locale

Continued

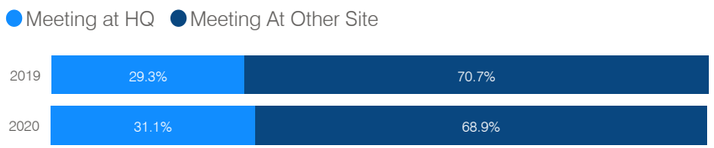
Location of In-Person Meetings

Where in-person meetings were held (including the in-person portion of hybrid meetings), companies in the SV 150 were substantially more likely than S&P 100 companies to hold their annual meetings at their headquarters (HQ) rather than at some other location (68.3% versus 31.1%). When measured by percentage of shares represented at the meeting, stockholders were more likely to participate in meetings held at HQs than at other locations. Meetings held farther from companies' HQs had less participation (measured similarly) than those held locally.

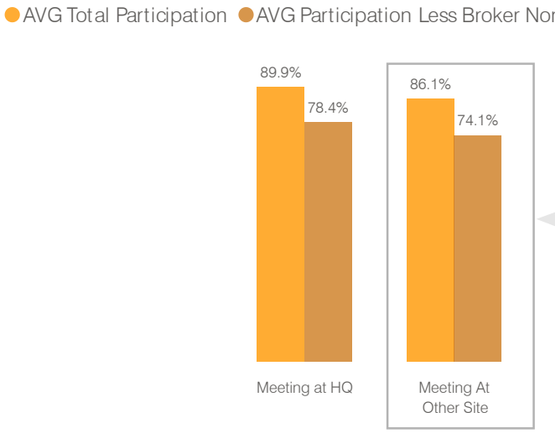
SV 150 Meeting at HQ



S&P 100 Meeting at HQ



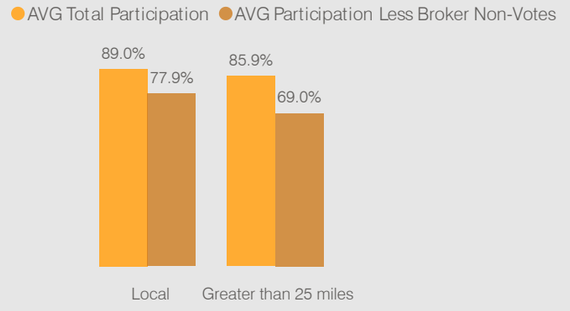
SV 150 Participation By Meeting Locale



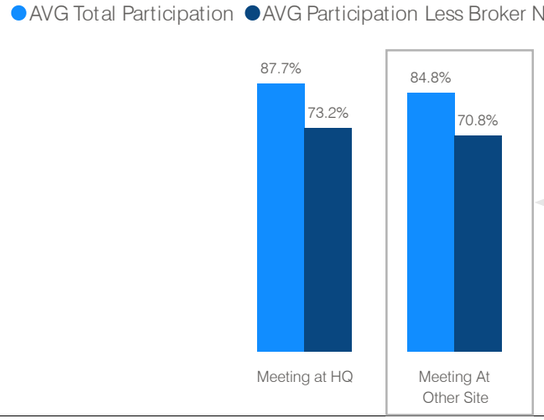
SV 150 HQ to Meeting Site Distance (mi.)

7.02	867.09
MEDIAN Distance	AVG Distance

SV 150 Participation By Meeting Distance



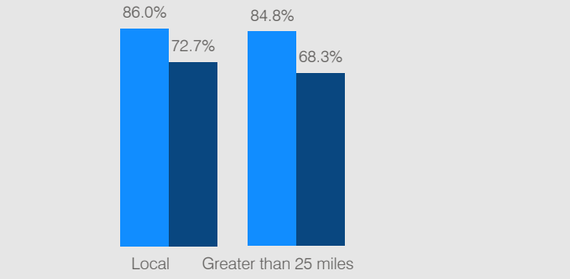
S&P 100 Participation By Meeting Locale



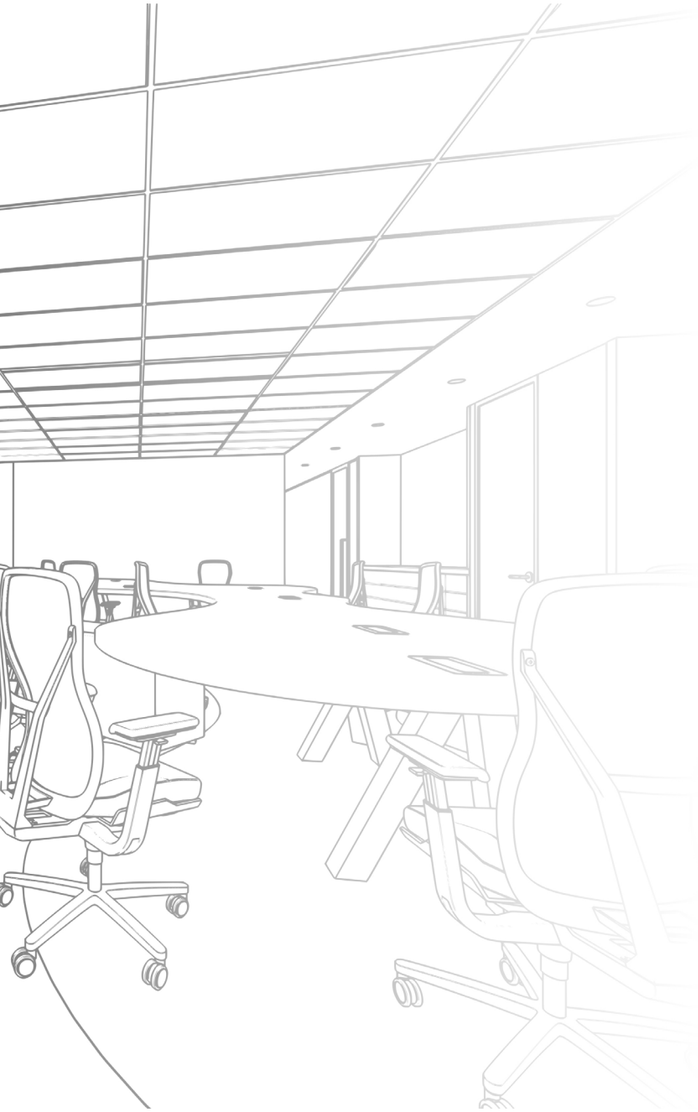
S&P 100 HQ to Meeting Site Distance (mi.)

7.21	338.17
MEDIAN Distance	AVG Distance

S&P 100 Participation By Meeting Distance



Methodology



Group Makeup

We reviewed the corporate governance practices of the companies included in the Standard & Poor's 100 Index (S&P 100)[45] and the technology and life sciences companies included in the Fenwick – Bloomberg Law Silicon Valley 150 List (SV 150).[46] The makeup of the indices has changed over time as determined by their publishers,[47] with the SV 150 makeup being updated generally once annually and the S&P 100 changing more frequently.[48] For analytical purposes, companies are included in the survey if they appeared in the relevant index as determined in the most recent calendar year-end.[49] Further, in past years, to focus the survey on the industries most relevant to Silicon Valley, companies were excluded from the SV 150 data set if they were not primarily in the technology or life sciences industries (broadly interpreted).[50] To some degree, the volatility in the statistical trends within each of the indices is a reflection of changes in the constituents of the index over time.[51] Finally, some companies are constituents of both indices.[52] Those companies are included in the data sets of both groups for purposes of this survey. In addition, companies are not included in the data set (on a subject-by-subject basis) if information is not available because no SEC filing with the relevant data was made (generally as a result of acquisition). For example, in the 2020 proxy season, four such companies were not included in the SV 150 data set for all subjects as no annual meeting was held. All but two of the S&P 100 companies held annual meetings in the 2020 proxy season.

Proxy Season / Proxy Statements

To be included in the data set for a particular "proxy season," the definitive proxy statement for a company's annual meeting generally must have been filed by the company with the U.S. Securities and Exchange Commission

45 Standard & Poor's defines the S&P 100 Index as "a sub-set of the S&P 500," which measures the performance of large cap companies in the United States. The Index comprises 100 major blue-chip companies across multiple industry groups. Individual stock options are listed for each index constituent. To be included, the companies should be among the larger and more stable companies in the S&P 500, and must have listed options. Sector balance is considered in the selection of companies for the S&P 100. This index is widely used for derivatives, and is the index underlying the OEX options. Standard & Poor's full methodology is available on its website.

46 Since the 2019 proxy season, Fenwick has partnered with Bloomberg Law to create the Fenwick – Bloomberg Law Silicon Valley 150 List, ranking the largest public technology and life sciences companies in Silicon Valley. The rankings are based on revenues for the most recent available four quarters ended on or near December 31, 2019. For many years, *The Mercury News* (fka the *San Jose Mercury News*) had published the SV 150 Index and discontinued announcement of the SV 150 in May 2017. Our list is modeled on the same criteria previously used by *The Mercury News*, which had defined Silicon Valley as comprising public "companies headquartered in Santa Clara, Santa Cruz, southern San Mateo and southern Alameda counties [in California] on the basis of worldwide revenue for the most recent available four quarters ended on or near [the most recent December 31]." However, in recognition of the continued geographic spread of technology and life sciences companies beyond the traditional Silicon Valley area, beginning in the 2012 proxy season, *The Mercury News* expanded the definition for purposes of the index to "include [the entirety of] the five core Bay Area counties: Santa Clara, San Mateo, San Francisco, Alameda and Contra Costa." (According to local lore, the term "Silicon Valley" was coined in 1971 to describe the concentration of semiconductor companies in what was then the northern portion of Santa Clara County. The term has since expanded to include all technology and life sciences companies and their geographic spread in the region.) For a discussion of the change in geographical area and its history, see "O'Brien: Welcome to the new and expanded Silicon Valley" in *The Mercury News* (April 22, 2012). The most recent determination of the makeup of the SV 150 is based on the revenues of public companies in Silicon Valley (as thus defined) for the most recent available four quarters ended on or near December 31, 2019. That group was used for purposes of the 2020 proxy season in this report (while *The Mercury News*'s selections were used for data prior to the 2018 proxy season).

47 The constituents of the Standard & Poor's 100 (S&P 100) Index are determined by S&P Dow Jones Indices LLC (a joint venture between S&P Global, the CME Group and News Corp.), and the constituents of the Fenwick – Bloomberg Law Silicon Valley 150 List (SV 150) were determined by Fenwick in collaboration with Bloomberg Law based closely on the original methodology used for decades by *The Mercury News (*see footnote 1).

48 However, while changes are more frequent, Standard & Poor's has noted that "in past years, turnover among stocks in the S&P 100 has been even lower than the turnover in the S&P 500." Given the relative rapidity of acquisitions and the volatility of the technology business, annual constituent turnover in the SV 150 is somewhat greater than the S&P 100 in terms of the number of companies changing.

49 I.e., the Fenwick survey for the 2020 proxy season included companies constituent in the Fenwick – Bloomberg Law SV 150, based on "the most recent available four quarters ended on or near December 31, 2019," and the Standard & Poor's 100 constituents were based on the index makeup as of December 31, 2019.

50 E.g., for the 2011 proxy season, the following companies were excluded from the SV 150 data set for purposes of the survey (in order of rank within the index): Franklin Resources (14), Con-Way (17), Robert Half (25), Granite Construction (38), West Marine (66), California Water (74), Essex Property (79), SJW (105), Financial Engines (138), Coast Distribution (141) and Mission West (142). However, beginning with the 2012 proxy season, *The Mercury News* removed all of the non-technology/life sciences companies from the SV 150 and created a parallel Bay Area 25 (BA 25) index made up of the 25 largest such companies ranked by revenue. While not presented in this report, Fenwick does collect and analyze the same set of data for the BA 25 (and companies that we excluded from the SV 150 for purposes of this survey prior to the 2012 proxy season), which can be obtained by consulting your Fenwick & West securities partner. In addition, companies are not included in the data set (on a subject-by-subject basis) if information is not available because no SEC filing with the relevant data was made (generally as a result of acquisition). For example, in the 2020 proxy season, four companies were not included in the SV 150 data set for all subjects. Similar exclusions occurred in prior years.

51 Other factors include changes in board membership and turnover in the chief executive officer of constituent companies.

52 The 11 companies that were members of both the SV 150 and the S&P 100 in the 2020 proxy season (with their SV 150 rank) are: Apple (1), Alphabet (2), Intel (3), Facebook (4), Cisco (6), Oracle (7), Gilead Sciences (12), Netflix (13), PayPal Holdings (14), Adobe (19) and NVIDIA (20).

Methodology

Continued

(SEC) by June 30 of that year, irrespective of when the annual meeting was actually held.[53] In some instances, a company may not have consistently filed its annual meeting proxy statement on the same side of the cutoff date each year. In such cases, we have normalized the data by including only one proxy statement per year for a company (and including a proxy statement in a "proxy season" year even though it was filed beyond the normal cutoff).[54] In some instances, a company may not have filed an annual meeting proxy statement during a year at all (or held any annual meeting).[55] In such instances, data was gleaned for that company from other SEC filings to the extent available.[56]

Generally, where a trend graphic identifies a year, it presents information as of the time of the proxy statement (such as the number of directors or whether the company has majority voting for directors, a classified board or dual-class stock structure), in which event the data speaks as to circumstances in effect at the time of the proxy statement (rather than at some particular time during the preceding year or immediately following the annual meeting) and is presented by "proxy season" (as defined for purposes of the survey). Generally, any discussion of the data will be by proxy season and will contain a "2020" statistic in the graphic. However, some information (primarily meeting data) is shown in graphics for the year for which the data was presented in the relevant proxy statements rather than the year of the proxy statements themselves. For example, a proxy statement filed in April 2020 included data about the number of board and committee meetings for 2019. That data would be included in the graphic in the year "2019" statistic (and no "2020" statistic would be included since the fiscal year for the relevant data is ongoing).

Insider / Independent

A variety of meanings are ascribed to the terms "insider" and "not independent," which are colloquially used somewhat interchangeably. We have attempted to cover a range of these meanings within the same survey. At the narrowest end of the spectrum, a director is considered an insider if he or she is currently an officer or otherwise an employee of the company (and not an insider if he or she is not currently an officer/employee). At the broadest end of the spectrum, some commentators consider a director to be an insider if he or she has ever been an officer of the company. In between, the stock exchanges have promulgated rules that define independence as not having been an officer or otherwise an employee of a company for the last three years, in addition to other specified criteria that vary somewhat by stock exchange.[57]

However, companies have not always been required to state with respect to each director whether he or she meets the applicable stock exchange's independence criteria (as implemented by that company).[58] Consequently, when our survey was initiated, we also utilized a simplified version of the stock exchange rules, only applying the three-year employment test to the director since that information can be gleaned from the requisite biographical summary that has long been included in proxy statements.[59] This allowed us to include all companies surveyed in this particular version of "insider" status

53 I.e., the proxy statements included in the 2020 proxy season survey were generally filed with the SEC from July 1, 2019, through June 30, 2020 (the annual meetings were usually held about two months following the filing of the proxy statement).

54 E.g., several companies generally filed proxy statements in June each year but in a particular year filed in July (or later). The data for such a proxy statement was "moved" into the data set for the "proxy season" year before the cutoff.

55 This can occur for a variety of reasons, including (among others) instances where: (a) a company failed to timely file its periodic reports due to a pending or potential accounting restatement, or (b) a company was acquired or had agreed to be acquired (and determined to defer an annual meeting during the pendency of the acquisition).

56 Generally, Forms 10-K or S-4 and Schedules 14D-9 or TO as well as proxy statements for mergers (Schedules 14A) when the company is in the process of being acquired. These sources generally provide only a subset of the data available in an annual meeting proxy statement (Schedule 14A). Sometimes these filings were made beyond the standard cutoff for the relevant proxy season for purposes of the survey but were nonetheless included in the survey data set for that proxy season if they generally presented data for the period that would have been covered by the proxy statement for that company if it had been filed. See footnote 54 and accompanying text.

57 See, e.g., Section 303A.02 of the New York Stock Exchange (NYSE) Listed Company Manual and Rule 5605(a)(2) of the Nasdaq Stock Market (Nasdaq) Marketplace Rules. They generally provide coverage for compensation from the company to a director above a specified level (other than for board service) [currently each exchange specifies $120,000 during any 12 months within the last three years], certain levels of business relationship between the company on whose board a director serves and a company that employs him or her, and similar employment by, compensation to or business relationships with a director's immediate family members, among other factors. Further, in implementing these rules, a number of companies have adopted their own independence standards (e.g., to define "material relationships" that will preclude independence under a portion of the NYSE rule).

58 Current Item 407(a) of Regulation S-K requires such disclosure. Prior to its adoption in 2006, companies were merely required to state whether a majority of their directors were independent, and some merely stated that fact rather than identifying their independent or non-independent directors (though for many of those independence could be largely deduced based on the disclosures in the proxy statement regarding independence of members of the primary board committees and director biography — particularly with smaller boards).

59 Accordingly, family member relationships or other indicia of non-independence are not factored in for this purpose.

Methodology

Continued

throughout the period covered (while not all have been historically included for the applicable stock exchange independence criteria statistics across the period),[60] and we have carried that methodology forward for trend analysis purposes.

Finally, for purposes of the statistics regarding insider board chairs in this report, we have collected information based on the same four meanings. However, when only presenting one meaning of insider board chair, the statistics generally have presented information based on the applicable stock exchange standard (or simplified three-year employment rule where that is not available).[61]

Nominating and Governance Committees / Other Standing Committees

Generally, the companies surveyed have a unified committee with responsibility for both nominating and governance functions. However, a small number of companies have separate committees for nominating functions and for governance functions.[62] For statistical purposes, where separate committees existed, the data for the nominating committee were included (and data for the governance committee ignored) for the information presented in this report. Such separate governance committees were also ignored for purposes of the statistics for "Other Standing Committees" included in this report. Similarly, an exceedingly small number of companies have had a committee that combined the nominating function with the function of one of the other primary committees in a single committee.[63] In such rare instances, the data for that committee were included in the data set for each of the primary committees it comprised.[64] In addition, some companies have not formed a nominating committee,[65] and instead nomination decisions are made by the independent directors as a group.[66] In such instances, we excluded such companies from the data set for the nominating committee statistics. Further, with respect to the statistics regarding "Other Standing Committees" included in this report, we have disregarded "Stock Option," "Equity Incentive" and other committees whose sole (or almost exclusive) function is to approve grants to non-executive employees and consultants of the company.[67]

Equity / Voting Ownership

The percentage of equity and voting ownership statistics was based on beneficial ownership data presented in the Security Ownership of Certain Beneficial Owners and Management table,[68] as well as other information regarding voting and conversion rights included elsewhere in proxy statements and other filings with the SEC. A fair number of companies report aggregate ownership by all executive officers and directors as a group of "less than 1%" (whether measured as simply equity or voting ownership).[69] For purposes of calculating the average ownership statistics, companies that reported "less than 1%" ownership were treated as having ownership of 0.5% in the data set.[70]

60 Where a company did not provide enough information to determine the independence of each director (e.g., by affirmative statement or by elimination through biographical and committee membership information), the company was excluded from the data set for calculating the statistics based on the applicable stock exchange criteria.

61 For purposes of the Lead Director statistics, we have not applied this methodology. Rather, we have included any company as having a Lead Director if the proxy statement identified a specific director as having the title of "Lead Director," "Lead Independent Director" or "Presiding Director" (or a similar title). Generally all such directors were independent under all of the methods we applied (including the applicable stock exchange independence requirement), though some were not under the "Ever" [a company officer] rule.

62 While always rare, it has become increasingly less common over time.

63 Such as a unified "Compensation and Corporate Governance Committee" that the proxy statement described as having nominating functions.

64 E.g., data for a unified "Compensation and Corporate Governance Committee" that the proxy statement described as having nominating functions was included in the data for the Compensation Committee and the Nominating Committee with respect to that company.

65 This was considerably more common, particularly in the SV 150, prior to the wave of governance reforms in the wake of the Sarbanes-Oxley Act of 2002.

66 In some instances, particularly before the wave of governance reforms in the wake of the Sarbanes-Oxley Act of 2002, the nominating decisions were made by the board as a whole.

67 These "committees" generally consist of the CEO as the sole member or are made up of members of the company's management team operating with delegated authority in order to relieve the board of the burden of routine grants of stock-based compensation. Consequently, they are not really indicative of general board operations.

68 Item 403 of Regulation S-K (required by Item 6(d) of Schedule 14A).

69 SEC regulations permit such reporting. In the 2020 season, this included approximately 77% of S&P 100 companies and 18.7% of SV 150 companies.

70 Companies that reported an actual numerical ownership percentage that happened to be less than 1% were included in the data set with the numerical ownership percentage reported.

Methodology

Continued

Majority Voting

There are a variety of ways to implement majority voting. These range from strict majority voting provisions in the charter or bylaws that require a majority of "for" votes for a director to be elected (and if less than a majority, the director simply does not take, or loses, office) to various resignation policies implemented in corporate governance principles that simply require a director to tender a resignation if less than a majority of "for" votes are received, which may or may not be accepted by the board or nominating committee (which retains full discretion in making the decision)—with a range of variations in between (often implemented in bylaws), generally with contested elections retaining plurality voting. The effectiveness of any of these (including the charter implementations) is further affected by state laws that often provide for holding over of an incumbent even if a majority of "for" votes is not received (to prevent an unnecessary vacancy). Consequently, rather than attempt to illustrate the trends among the many variations, historically we have simply presented trend data regarding whether the companies surveyed have implemented any form of majority voting policy for uncontested elections (rather than simply utilizing strict plurality voting for all director elections).

In early 2017, the Council of Institutional Investors (CII), which advocates on behalf of pension funds and other employee benefit funds, as well as like-minded foundations and endowments, issued an FAQ on majority voting for directors, in which they identified the following continuum of director election voting schemes:[71]

- strict plurality;
- "plurality plus" board-rejectable resignation;
- majority voting with board-rejectable resignation; and
- consequential majority voting.

71 See Council of Institutional Investors "FAQ: Majority Voting for Directors" for a more fulsome explanation and discussion of these classifications.

In this survey, we count the companies using the latter three categories as having some form of majority voting (the data presented in the graphs on page 33)—with the first category counted as not having majority voting. However, since the 2019 proxy season, we have supplemented that information with a breakdown of the percentage of companies (in each group) that used majority voting fitting into each of the latter three CII categories (or for which there was insufficient information to determine the categorization).

Dual-Class Structure

Generally, where a company has more than one class of stock and those classes have disparate voting rights, they were included in the data set as having a dual-class structure. However, in some instances companies may have a class of stock with disparate voting rights, but that class is incredibly small compared to the overall voting power represented by all voting stock or there are other indicia that the voting rights are not really effectively disparate.[72] In such cases, such companies were not included in the data set as having a dual-class voting stock structure.

Executive Officer and Director Stock Ownership Guidelines

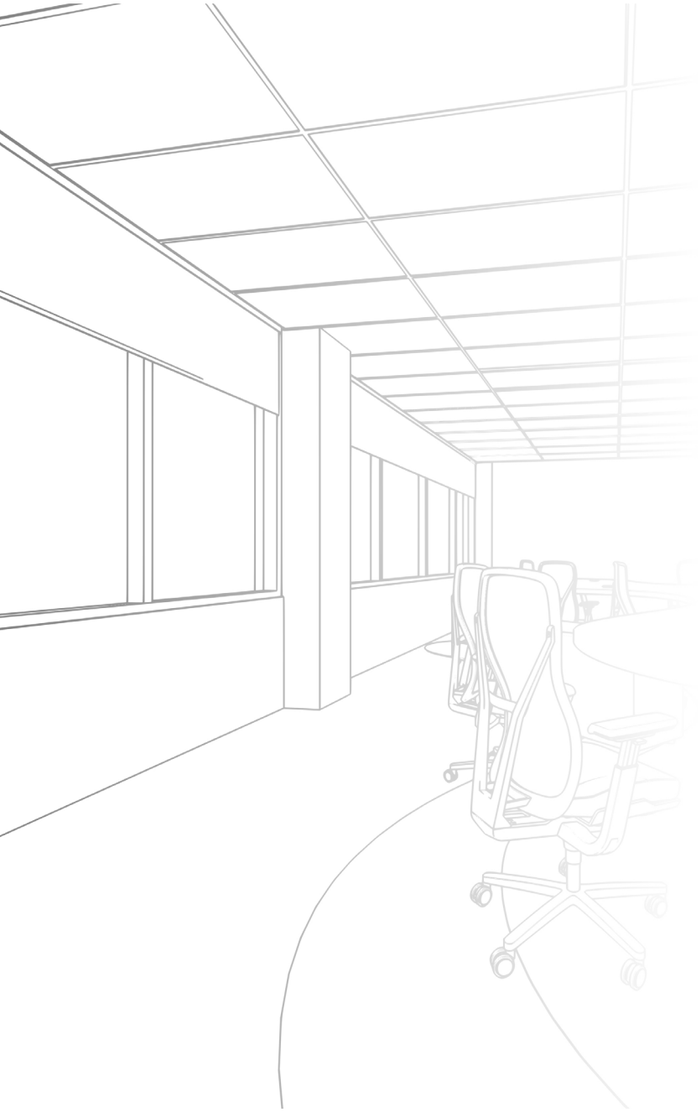
Generally companies disclose whether they have, and details regarding, any stock ownership requirements for executive officers and directors in the Compensation Discussion and Analysis (CD&A) sections and Director Compensation sections of their proxy statements.[73] However, the SEC only began requiring the CD&A section be included in proxy statements filed on or after December 15, 2006. Further, SEC rules do not strictly call for disclosure of director stock ownership requirements. In our experience, companies that had such executive officer or director ownership guidelines generally have

72 E.g., where the company might have a class of preferred stock outstanding in addition to its common stock and each share of preferred stock is entitled to more votes than each share of common stock, but the preferred stock is also convertible to common stock at the same ratio as the ratio of votes per share of preferred to votes per share of common. Some editorial judgment was necessarily applied in drawing such distinctions.

73 Among the items that the SEC listed as examples of material elements of the company's compensation for the named executive officers to be included in CD&A is "the company's equity or other security ownership requirements or guidelines and any company policies regarding hedging the economic risk of such ownership." See current Item 402(b)(2)(xiii) of Regulation S-K, which requires such disclosure.

Methodology

Continued



disclosed them for stockholder-relations reasons even in the absence of such requirements. In addition, where a company later disclosed stock ownership requirements and provided a history of those guidelines that indicated that they were adopted in prior years, we have retroactively applied that information in our data set (even though those guidelines were not discussed in the proxy statement covering that prior period).[74] Consequently, we believe that the trend information regarding stock ownership guidelines presented in this report is fairly representative of company practices in this area.

Executive Officers

SEC regulations define the term "executive officer" as a company's "president, any vice president of the [company] in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the [company]."[75] A company's determination of executive officers under this definition is an inherently factual one, with the focus less on a person's title and more on their actual duties or substantive role within the company. The SEC staff will not provide advice or concurrence regarding a determination. So companies, with the advice of their counsel, must apply the facts, judicial decisions and various statements by the SEC staff when applying the rule.[76] We have not tried to second-guess these inherently subjective conclusions, and have simply accepted the executive officer determinations made by companies and/or their boards as reflected in their SEC filings.[77] It is possible that the number of executive officers is effectively systematically under-reported due to the timing of executive departures.[78]

In some companies, a single executive may hold more than one of these positions with such executive consequently counted in more than one of the types of executives when discussing executive officer makeup—but such executive is only counted once when discussing overall number of executive officers.[79] In addition, some companies have more than one person holding positions with the same or overlapping titles,[80] in which case the position is only counted once when discussing executive officer makeup, but the executives are counted separately when discussing overall number of executive officers.

Gender

In almost all cases, the proxy statement or other company SEC filings clearly identify the gender of each of its executive officers and directors.[81] In a small number of instances, we resorted to limited supplemental research (apart from reviewing SEC filings) to identify gender.[82] This generally took the form of researching a relevant individual on freely available public sources.[83] We

74 This was a fairly rare circumstance.

75 See Rule 3b-7 under the Securities Exchange Act of 1934, as amended. The rule goes on to provide that "[e]xecutive officers of subsidiaries [of a company] may be deemed executive officers of the [parent company] if they perform such policy making functions for the [parent company]."

76 As noted in "Study: Benchmarking the Number of 'Executive Officers'" by TheCorporateCounsel.net and LogixData, "[i]n particular, determining whether a business unit, division or function is a 'principal' one—or whether a person's sphere of responsibility involves significant policymaking—can be challenging. Internal company politics can play a role too. Sometimes people are deemed to be 'executive officers' even though they really do not have important functions or policymaking responsibilities, but are deemed as such because the company doesn't want to tell them that their stature isn't equal to others at the same level on the organization chart, etc." Companies and their advisors often use as a starting point in this analysis an informal rule of thumb that any officer who reports directly to the CEO (or sometimes president) should be presumed to be an executive officer, absent meaningful substantive indicia to the contrary.

77 As a practical matter, the judgment of who is an executive officer is made annually by the board of directors of most companies at the time the board approves the list of executive officers in connection with the filing of their Forms 10-K (or proxy statement).

78 For example, if an executive officer resigns shortly prior to the filing of the company's proxy statement and the company has not yet hired a replacement (even though it intends to do so—and in fact for most of the years preceding and succeeding the filing has a person filling the position of the departed executive), then that company may list one fewer executive officer in its proxy statement than it generally has in practice.

79 E.g., a person with the title President and CFO or a person with the title GC and Senior Vice President of Corporate Development.

80 E.g., Co-Presidents.

81 I.e., through the use of the prefix "Mr." or "Ms." or pronouns "his" or "her" in the individual's biographical description or elsewhere in the filing(s).

82 Most typically these involved instances in which the prefix "Dr." was consistently used (and the prefixes "Mr." or "Ms." or gendered pronouns were not).

83 I.e., the bios for such individual on the relevant company's web page or the web pages for other companies for which the individual serves as an executive officer or director, LinkedIn profiles, biographical profiles prepared by reputable online sources, etc.

Methodology

Continued

accepted the gender identifications in SEC filings or such supplemental sources at face value.

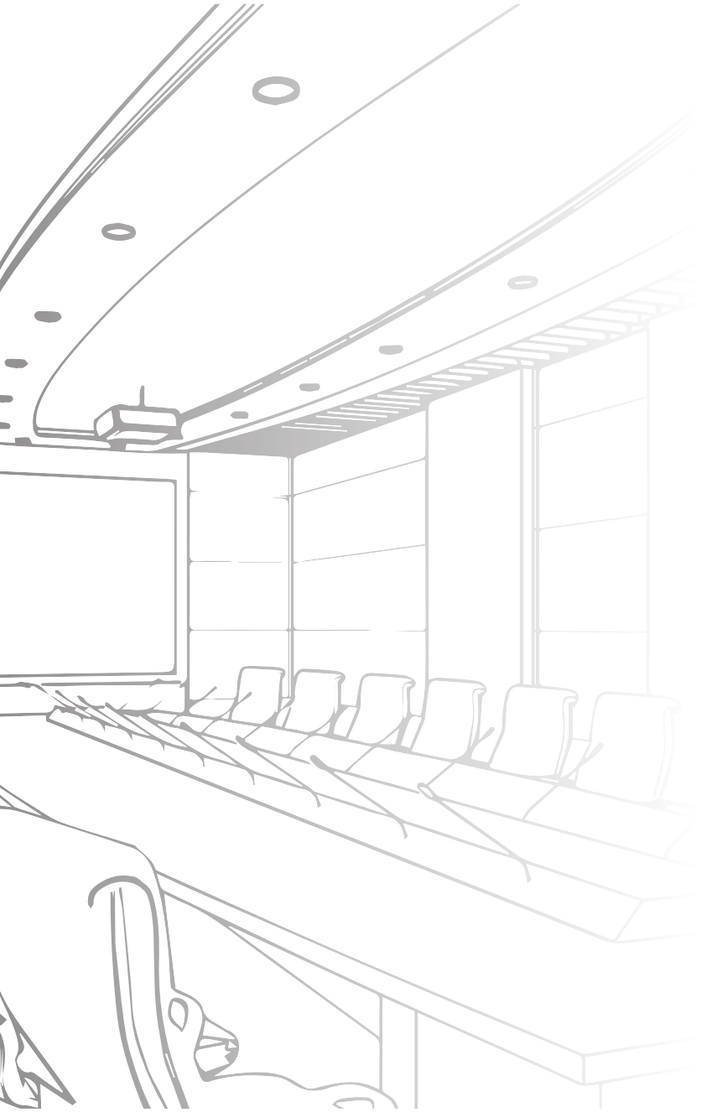
Meeting Locale

For purposes of determining whether physical / in-person meetings were held at a company's headquarters, we treated all meeting addresses within 0.1 miles of its principal offices address as likely being part of the same headquarters campus. We also used April 1, 2020 as the somewhat arbitrary cutoff for annual meeting dates (based on the timing of the Form 8-K announcing voting results) for purposes of distinguishing pre- and COVID-pandemic period meetings, recognizing that the onset of coronavirus-related restrictions varied by geography.

Outliers

For purposes of the distribution graphs (such as those at the bottom of page 9), outliers have been determined by applying a fence equal to 1.5 times the interdecile range (i.e., the difference between the first and ninth decile amounts multiplied by 1.5). Any result beyond that fence is shown as an outlier (represented by a ◆).

About the Firm and Author



About the Firm

Fenwick provides comprehensive legal services to technology and life sciences clients of national and international prominence. Fenwick is committed to providing innovative, cost-effective and practical legal services that focus on global technology industries and issues. We have built internationally recognized practices in a wide spectrum of corporate, intellectual property, tax and litigation areas. We have also received praise for our innovative use of technology, our pro bono work and diversity efforts. We differentiate ourselves by having a deep understanding of our clients' technologies, industry environments and business needs. For more information, visit www.fenwick.com.

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The efforts and expertise of the many associates and other researchers who have participated in the survey data gathering over the years, as well as the information graphics and design specialists who have assisted in the preparation of this report, are greatly appreciated.

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