

CORPORATE GOVERNANCE AND DISCLOSURE PRACTICES OF VENTURE-BACKED COMPANIES IN U.S. INITIAL PUBLIC OFFERINGS

July 2011 through June 2012

TABLE OF CONTENTS

| | |
|--|---------|
| Background | Page 1 |
| Key Findings | Page 1 |
| Companies | Page 1 |
| Directors and Independence | Page 2 |
| Board Committees | Page 4 |
| Board Policies | Page 7 |
| Stock Plans | Page 8 |
| Key Metrics and Non-GAAP Financial Measures | Page 8 |
| Defensive Measures | Page 9 |
| Law Firms and Underwriters | Page 14 |
| JOBS Act | Page 15 |
| For More Information | Page 16 |
| About Wilson Sonsini Goodrich & Rosati | Page 16 |
| Acknowledgements | Page 16 |
| Appendix | Page 17 |

Background

Last year, Wilson Sonsini Goodrich & Rosati surveyed various corporate governance and disclosure practices of venture-backed companies incorporated in the United States and involved in U.S. initial public offerings (IPOs) from January 2010 through June 2011. This year, we examined the 45 U.S. venture-backed companies involved in the largest IPOs measured by deal size from July 2011 through June 2012, and reviewed practices and trends in the following areas:

- Directors and independence
- Board committees
- Board policies
- Stock plans
- Key metrics and non-GAAP measures
- Defensive measures

Key Findings

We noted the following key findings in our survey:

- Directors and Independence
 - Even though newly public companies have phase-in periods within which to comply with stock exchange requirements regarding majority board independence, each company surveyed had a majority of independent directors on its board, and most companies were substantially independent at the time of the IPO, which was consistent with last year's findings.
 - Of the companies surveyed, more companies separated the chairman and CEO roles than combined them, representing an increase from last year.
- Board Committees
 - Even though newly public companies have phase-in periods within which to comply with stock exchange requirements regarding fully independent board committees, almost all of the companies surveyed had board committees that were substantially comprised of independent members at the time of the IPO, which was consistent with last year's findings.
 - Frequently, board committees of the companies surveyed included members who were venture capitalists affiliated with venture funds that had invested in the companies, and, frequently, the venture capitalists were determined to be independent directors, notwithstanding their share ownership, which was consistent with last year's findings.
- Board Policies
 - Nearly all the companies surveyed had adopted, or planned to adopt, key corporate governance board policies in connection with the IPO, such as corporate governance guidelines, codes of business conduct, and related party transactions policies or procedures.

- Stock Plans
 - Most of the companies surveyed adopted a new equity compensation plan in connection with the IPO, frequently with "evergreen" provisions, which allow shares automatically to be added to the available pool annually.
 - Slightly less than a majority of the companies surveyed adopted an employee stock purchase plan in connection with the IPO, but those that adopted one frequently included an evergreen provision.
- Key Metrics and Non-GAAP Financial Measures
 - Almost half of companies surveyed disclosed key metrics (e.g., subscribers or number of users for Internet companies) in addition to financial metrics, which is an increase over last year's findings.
 - More than half of the companies surveyed disclosed non-GAAP financial measures (frequently, adjusted EBITDA), which is an increase over last year's findings.
- Defensive Measures
 - None of the companies surveyed adopted a shareholder rights plan, or "poison pill," in connection with the IPO, although other defensive measures were liberally adopted, which was consistent with last year's findings. A growing number of companies included exclusive forum provisions in their governing documents.

Companies

We looked at the following 45 companies¹:

Angie's List, Inc.
 Audience, Inc.*
 Bazaarvoice, Inc.*
 Brightcove Inc.
 CafePress, Inc.
 Carbonite, Inc.
 Cempra, Inc.
 Ceres, Inc.
 ChemoCentryx, Inc.
 Clovis Oncology, Inc.
 Demandware, Inc.
 Digital Domain Media Group, Inc.
 Enphase Energy, Inc.
 Envivio, Inc.
 EXA Corporation
 ExactTarget, Inc. †
 Facebook, Inc.
 FX Alliance Inc.
 Greenway Medical Technologies, Inc.
 Groupon, Inc.
 Guidewire Software, Inc. †
 Horizon Pharma, Inc.
 Imperva, Inc. †

¹Source: National Venture Capital Association and Thomson Reuters. "Venture-backed" means that at least one U.S. VC firm had invested in the company prior to the IPO. Overall, WSGR provided representation to either the issuer or the lead underwriter in connection with the IPOs of 13 of the 45 companies listed, or 29%. The symbol "*" indicates that WSGR represented that company in connection with its IPO, while the symbol "†" indicates that WSGR represented the lead underwriter in connection with the IPO of that company.

Infoblox Inc. †
 Intermolecular, Inc.
 InvenSense, Inc. †
 Jive Software, Inc.*
 Merrimack Pharmaceuticals, Inc.
 Millennial Media, Inc. †
 NewLink Genetics Corporation
 Proofpoint, Inc. †
 Proto Labs, Inc.
 ServiceNow, Inc.
 Splunk Inc.*
 Supernus Pharmaceuticals, Inc.
 Synacor, Inc.
 Tangoe, Inc.
 TESARO, Inc.
 Ubiquiti Networks, Inc.*
 Verastem, Inc.
 Vocera Communications, Inc.
 WageWorks, Inc.*
 Zeltiq Aesthetics, Inc.
 Zillow, Inc.
 Zynga, Inc.

By deal size, measured by gross proceeds, the IPOs ranged from \$34.1 million to \$16.0 billion, with an average deal size of \$476.1 million and a median deal size of \$85.5 million. Excluding Facebook, Inc., the average deal size was \$123.1 million and the median deal size was \$83.9 million.

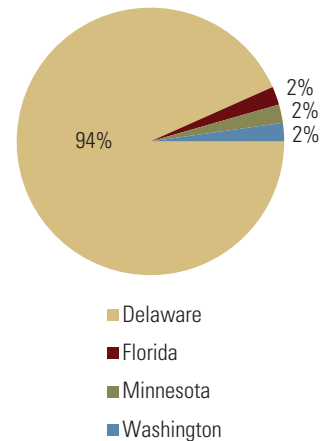
The companies are headquartered in the following locations, incorporated in the following states, and listed on the following exchanges:

Headquarters

Bay Area, California: 19 companies
 Massachusetts: 7 companies
 Illinois: 2 companies
 Indiana: 2 companies
 Maryland: 2 companies
 New York: 2 companies
 Southern California: 2 companies
 Colorado: 1 company
 Connecticut: 1 company
 Florida: 1 company
 Georgia: 1 company
 Iowa: 1 company
 Minnesota: 1 company
 North Carolina: 1 company
 Texas: 1 company
 Washington: 1 company

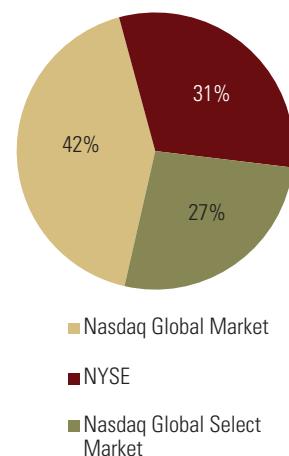
State of Incorporation

- 42 companies, or 93.3%, are incorporated in Delaware
- 1 company, or 2.2%, is incorporated in Florida
- 1 company, or 2.2%, is incorporated in Minnesota
- 1 company, or 2.2%, is incorporated in Washington



Listing Exchange

- 19 companies, or 42.2%, are listed on The Nasdaq Global Market²
- 14 companies, or 31.1%, are listed on the NYSE
- 12 companies, or 26.6%, are listed on The Nasdaq Global Select Market



Directors and Independence

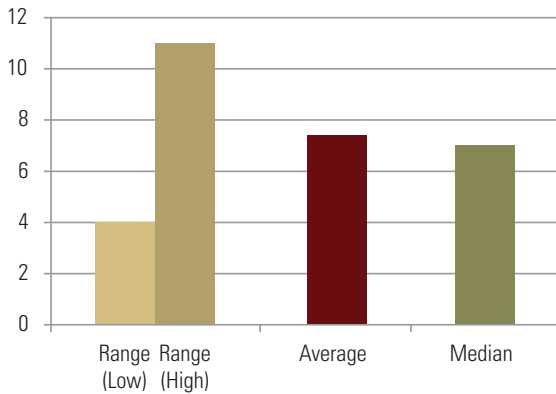
Using data obtained from final IPO prospectuses, we examined information regarding the size of the board of directors, director independence levels, identity of board chairman, existence of lead independent directors, and use of the controlled company exemption.

² The Nasdaq Global Market and The Nasdaq Global Select Market are both components of The Nasdaq Stock Market. The Nasdaq Global Select Market has somewhat more rigorous listing standards than The Nasdaq Global Market. Both have more rigorous listing standards than The Nasdaq Capital Market. For more information, see http://www.nasdaq.com/about/nasdaq_listing_req_fees.pdf.

Board Size

Of the companies examined:

- Board sizes ranged from 4 to 11 directors
- Average board size was 7.4
- Median board size was 7



Director Independence

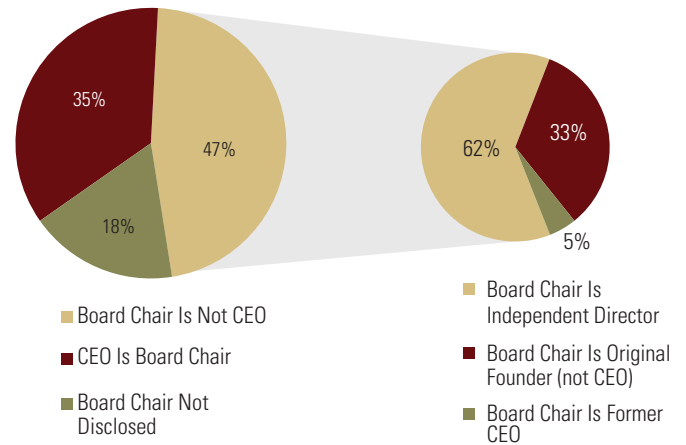
The listing standards of both the NYSE and Nasdaq require that, within one year of a listed company’s IPO, a majority of the members of the board of directors be independent, as defined in the listing standards. At the time of the IPOs of the companies examined:

- Average level of director independence was 78.7%
- Median level of director independence was 78.9%
- Levels of director independence ranged from 50% to 100%
- 22 companies, or 48.9%, disclosed that the CEO was the only non-independent director

Board Chairs and Lead Directors

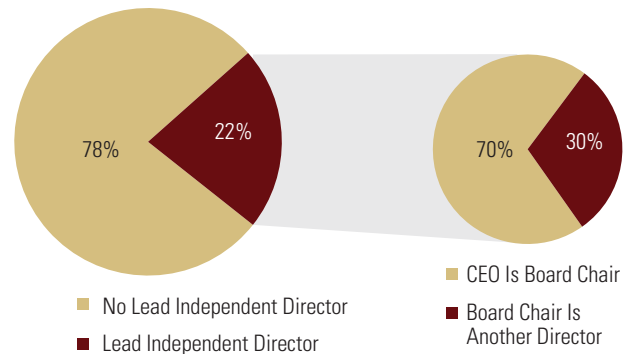
An IPO prospectus is not required to disclose whether the board chair and CEO positions are separated, but many companies provide such information. Of the companies examined:

- 16 companies, or 35.6%, disclosed that the CEO was also the board chair
- 21 companies, or 46.7%, disclosed that the board chair was another director
 - In 13 of these companies, or 61.9%, the board chair was an independent director
 - In 7 of these companies, or 33.3%, the board chair was an original founder of the company and was not the CEO; 2 of such persons were also independent directors
 - In 1 of these companies, or 4.8%, the board chair was a former CEO
- 8 companies, or 17.8%, did not disclose a board chair



In addition, although not required, many companies provided information in their IPO prospectus regarding the existence of a lead independent director. Of the companies examined:

- 10 companies, or 22.2%, indicated that the board had a lead independent director
 - In 7 of these companies, or 70%, the CEO was board chair
 - In 3 of these companies, or 30%, another director who was not CEO was board chair



Following a company’s IPO, it is required to disclose information about its board leadership structure in its annual proxy statement, including whether or not, and why, the board chair and CEO positions are separated and whether the board has a lead independent director.

Controlled Company Exemption

The listing standards of both the NYSE and Nasdaq exempt a "controlled company," or one in which more than 50% of the voting power for the election of directors is held by an individual, a group, or another company, from certain corporate governance requirements, including those relating to independence of the board of directors. Of the companies examined:

- 3 companies, or 6.7%, stated that they would utilize the controlled company exemption. Of those 3 companies and at the time of the IPO:
 - One company had a 71.4% level of director independence, as well as a 100% level of independence for each of the audit, compensation, and governance committees
 - One company had a 77.8% level of director independence, as well as a 100% level of independence for each of the audit, compensation, and governance committees
 - One company had a 85.7% level of director independence, as well as a 100% level of independence for each of the audit, compensation, and governance committees

Board Committees

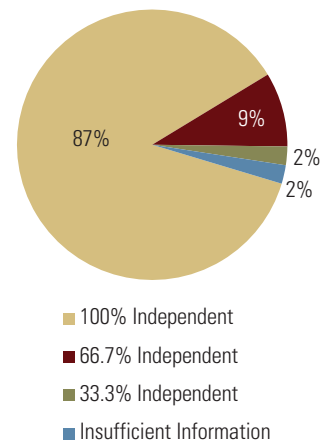
Using data obtained from final IPO prospectuses, we examined information regarding board committees, including independence.

Audit Committee

Independence

The listing standards of both the NYSE and Nasdaq require that listed companies have an audit committee comprised of at least 1 independent director at the time of the IPO; that a majority of the committee be comprised of independent directors within 90 days of the IPO; and that each member of the committee be independent within 1 year of the IPO. Independence for audit committee purposes requires an individual to meet the NYSE and Nasdaq independence requirements as well as stricter independence requirements specified by Securities and Exchange Commission (SEC) rules. Of the companies examined:

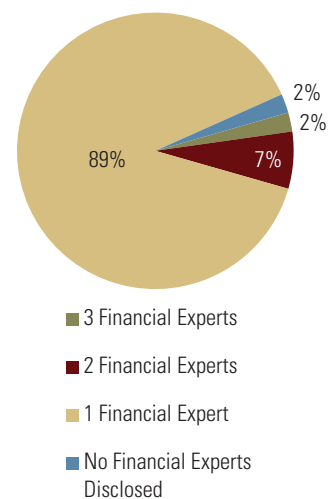
- 39 companies, or 86.7%, had a 100% independent audit committee
- 4 companies, or 8.9%, had a 66.7% independent audit committee
- 1 company, or 2.2%, had a 33.3% independent audit committee
- 1 company, or 2.2%, did not provide sufficient information to calculate audit committee independence



Audit Committee Financial Experts

Following a company's IPO, it is required to disclose in its annual proxy statement whether it has at least one "audit committee financial expert," as defined by SEC rules, serving on the audit committee. An IPO prospectus is not required to disclose such information, but most companies provided it. Of the companies examined:

- 1 company, or 2.2%, had 3 audit committee financial experts
- 3 companies, or 6.7%, had 2 audit committee financial experts
- 40 companies, or 88.9%, had 1 audit committee financial expert
- 1 company, or 2.2%, did not disclose the presence of an audit committee financial expert

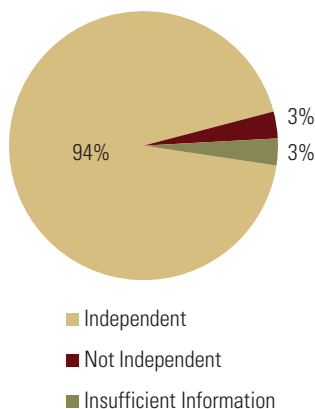


Venture Capitalists on Audit Committees

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

We examined whether directors affiliated with venture capital funds that had invested in the IPO companies were members of audit committees, and if so, whether they were determined to be independent. We also examined the aggregate stock ownership of the director and all venture capital funds with which he or she was affiliated.³ Of the companies examined:

- 31 companies included venture capitalists who had invested in the company on the audit committee
 - In 29 companies, or 93.5%, the venture capitalists were found to be independent
 - In 1 company, or 3.2%, the venture capitalist was not found to be independent
 - In 1 company, or 3.2%, not enough information was provided to determine independence of the venture capitalists on the audit committee



- For independent venture capitalists on the audit committee:
 - Average shareholdings post-IPO were 12.0%
 - Median shareholdings post-IPO were 10.0%
 - Maximum shareholdings post-IPO were 24.6%
 - Minimum shareholdings post-IPO were less than 1%
- For the single, non-independent venture capitalist on the audit committee:
 - Shareholdings post-IPO were 28.1%

Governance/Nominating Committee

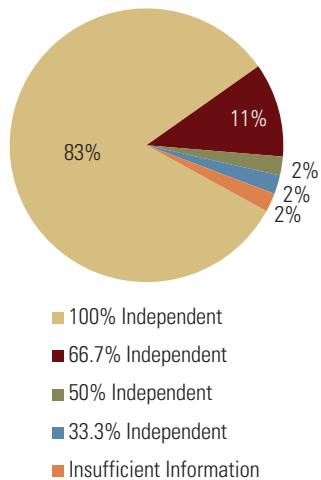
Under the NYSE listing standards, companies are required to have an independent nominating committee; under the Nasdaq listing standards, companies are required to have an independent nominating committee or have a majority of independent directors nominate directors annually. The listing standards of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

We examined independence matters, including independence and aggregate stock ownership of venture capitalists, for governance/nominating committees.

Independence

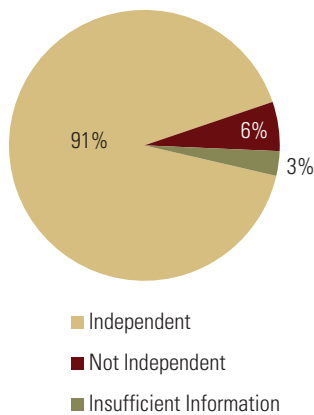
- 37 companies, or 82.2%, had a 100% independent governance/nominating committee
- 5 companies, or 11.1%, had a 66.7% independent governance/nominating committee
- 1 company, or 2.2%, had a 50% independent governance/nominating committee
- 1 company, or 2.2%, had a 33.3% independent governance/nominating committee
- 1 company, or 2.2%, did not provide sufficient information to calculate governance/nominating committee independence

³ We did not examine other indicia of control or other relationships that would bear upon affiliate or independence status.



Venture Capitalists on Governance/Nominating Committees

- 34 companies included venture capitalists who had invested in the company on the governance/nominating committee
 - In 31 companies, or 91.2%, the venture capitalists were found to be independent
 - In 2 companies, or 5.9%, the venture capitalists were not found to be independent
 - In 1 company, or 2.9%, not enough information was provided to determine independence of the venture capitalists on the governance/nominating committee



- For independent venture capitalists on the governance/nominating committee:
 - Average shareholdings post-IPO were 16.3%
 - Median shareholdings post-IPO were 14%
 - Maximum shareholdings post-IPO were 49.4%
 - Minimum shareholdings post-IPO were less than 1%

- For non-independent venture capitalists on the governance/nominating committee:
 - Average shareholdings post-IPO were 18.2%
 - Maximum shareholdings post-IPO were 28.1%
 - Minimum shareholdings post-IPO were 8.3%

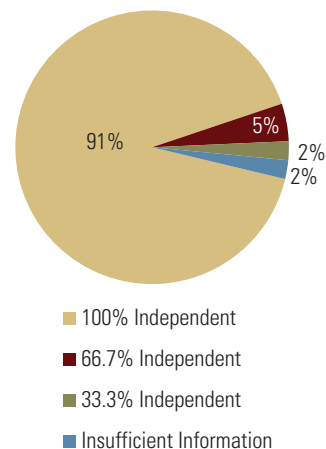
Compensation Committee

Under the NYSE listing standards, companies are required to have an independent compensation committee; under the current Nasdaq listing standards, companies are required to have an independent compensation committee or have a majority of independent directors approve the compensation of the executive officers.⁴ The listing standards of both the NYSE and Nasdaq permit independence phase-in periods similar to the audit committee phase-in period discussed above.

We examined independence matters, including independence and aggregate stock ownership of venture capitalists, for compensation committees.

Independence

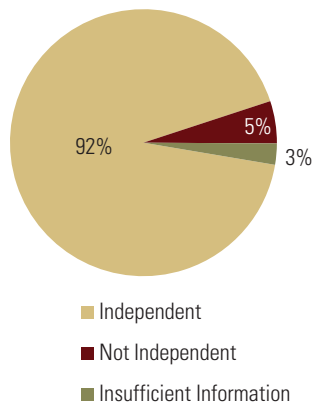
- 41 companies, or 91.1%, had a 100% independent compensation committee
- 2 companies, or 4.4%, had a 66.7% independent compensation committee
- 1 company, or 2.2%, had a 33.3% independent compensation committee
- 1 company, or 2.2%, did not provide sufficient information to calculate compensation committee independence



⁴ As required by the Dodd-Frank Act of 2010 and SEC Rule 10C-1, both the NYSE and Nasdaq have proposed amended listing standards tightening the standards of independence for compensation committee members. In addition, the Nasdaq has proposed requiring listed companies to have a compensation committee comprised of at least two independent directors, rather than permit a majority of independent directors to approve the compensation of executive officers. These proposed listing standards have not yet been adopted by the SEC.

Venture Capitalists on Compensation Committees

- 39 companies included venture capitalists who had invested in the company on the compensation committee
 - In 36 companies, or 92.3%, the venture capitalists were found to be independent
 - In 2 companies, or 5.1%, the venture capitalists were not found to be independent
 - In 1 company, or 2.6%, not enough information was provided to determine independence of the venture capitalists on the compensation committee



- For independent venture capitalists on the compensation committee:
 - Average shareholdings post-IPO were 17.3%
 - Median shareholdings post-IPO were 15.2%
 - Maximum shareholdings post-IPO were 58.5%
 - Minimum shareholdings post-IPO were 1.4%
- For non-independent venture capitalists on the compensation committee:
 - Average shareholdings post-IPO were 18.2%
 - Maximum shareholdings post-IPO were 28.1%
 - Minimum shareholdings post-IPO were 8.3%

Other Committees

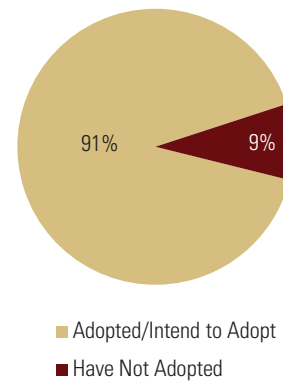
- 2 companies disclosed the existence of other committees
 - 1 company disclosed an executive committee
 - 1 company disclosed a mergers & acquisitions committee

Board Policies

An IPO prospectus is not required to disclose whether a company has adopted corporate governance guidelines or a code of business conduct, but many companies provide such information. An IPO prospectus is required, however, to disclose the existence of policies regarding related party transactions. Of the companies examined:

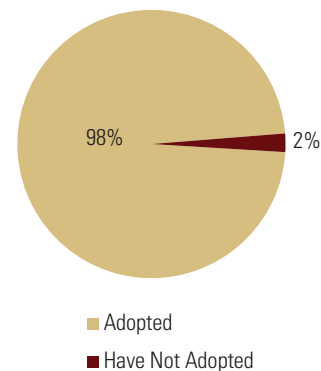
Corporate Governance Guidelines

- 41 companies, or 91.1%, had adopted or intended to adopt corporate governance guidelines



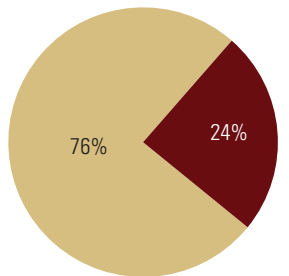
Code of Business Conduct

- 44 companies, or 97.8%, had adopted a code of business conduct



Related Party Transactions Policy

- 34 companies, or 75.6%, had adopted or intended to adopt a stand-alone related party transactions policy
- 11 companies, or 24.4%, disclosed that approval of related party transactions was governed by a board committee charter or code of business conduct

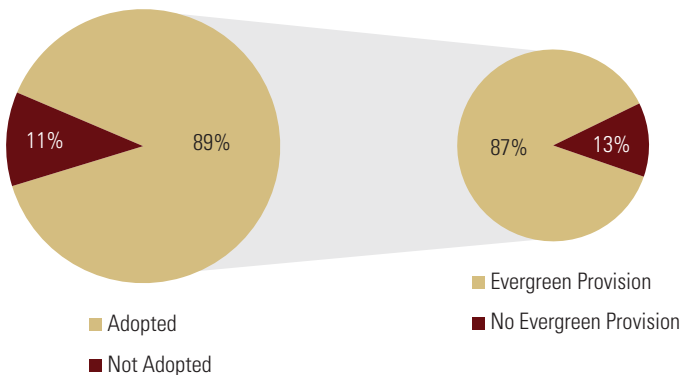


■ Adopted/Intend to Adopt Policy
 ■ Approval Governed by a Board Committee Charter or Code of Business Conduct

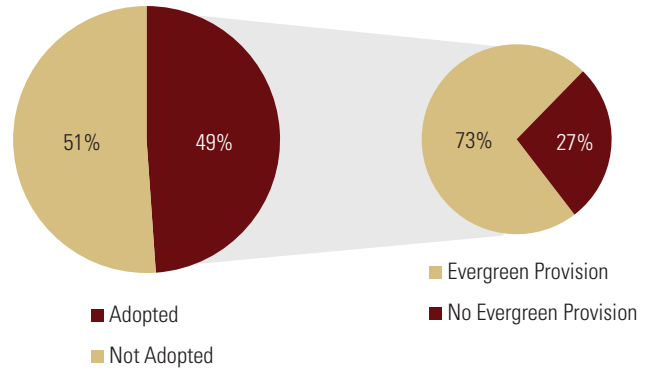
Stock Plans

Many venture-backed companies will adopt a new equity compensation plan and employee stock purchase plan in connection with an IPO. Using data obtained from final IPO prospectuses, we examined whether companies were adopting such plans, whether such plans included an “evergreen” provision that would automatically increase the size of the available pool of equity available to be granted each year, and the size of the outstanding equity awards and available pool of equity under the plans at the time of the IPO. Of the companies examined:

- 40 companies, or 88.9%, adopted a new equity compensation plan in connection with the IPO
 - Plans at 35 of those companies, or 87.5%, included an evergreen provision



- 22 companies, or 48.9%, adopted a new employee stock purchase plan (ESPP) in connection with the IPO
 - ESPPs at 16 of those companies, or 72.7%, included an evergreen provision



- Outstanding equity awards at the time of the IPO as a percentage of fully diluted common stock immediately after the IPO⁵
 - Average was 15.2%
 - Median was 14.7%
 - Maximum was 38.9%
 - Minimum was 2.0%
- Outstanding equity awards at the time of the IPO, combined with shares reserved for issuance in new equity compensation plans, as a percentage of fully diluted common stock immediately after the IPO⁶
 - Average was 21.2%
 - Median was 20.6%
 - Maximum was 39.8%
 - Minimum was 6.8%
- Shares reserved for issuance in new ESPP as a percentage of fully diluted common stock immediately after the IPO⁷
 - Average was 1.6%
 - Median was 1.4%
 - Maximum was 5.2%
 - Minimum was 0.6%

Key Metrics and Non-GAAP Financial Measures

In addition to financial results presented in accordance with generally accepted accounting principles (GAAP), many companies track “key metrics” as well as non-GAAP financial measures for their own internal purposes and for external disclosure. SEC rules govern the public disclosure of non-GAAP financial measures, requiring presentation of the most directly comparable GAAP financial measure

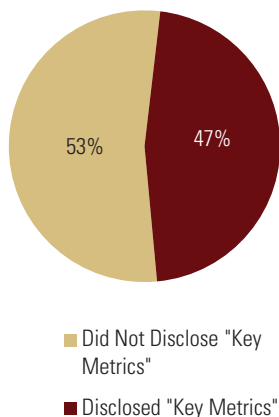
⁵ Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards.
⁶ Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards and all shares reserved for issuance under the new equity compensation plans.
⁷ Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards, all shares reserved for issuance under the new equity compensation plans, and shares reserved for issuance under the new ESPP.

and a reconciliation between the two measures. In addition, SEC rules require that the presentation of key metrics and non-GAAP financial measures may not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the presentation not misleading in light of the circumstances under which it is presented.

Using data obtained from final IPO prospectuses, we looked at disclosure of key metrics and non-GAAP financial measures. Of the companies examined:

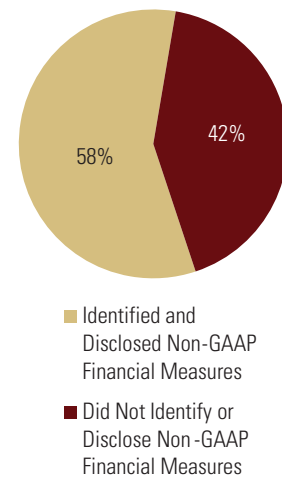
Key Metrics

- 21 companies, or 46.7%, disclosed “key metrics”
- For example, “key metrics” disclosed by Bazaarvoice, Inc., a leading provider of social commerce solutions, included number of active clients, revenue per active client, active client retention rate, and revenue per employee
- Please see Appendix A for the full list of key metrics disclosed by the 21 companies



Non-GAAP Financial Measures

- 26 companies, or 57.8%, identified and disclosed non-GAAP financial measures, including:
 - Adjusted EBITDA (18 companies)
 - Non-GAAP operating income (loss) (4 companies)
 - Free cash flow (3 companies)
 - Billings (3 companies)
 - Bookings (2 companies)
 - Adjusted or non-GAAP net income (loss) (1 company)

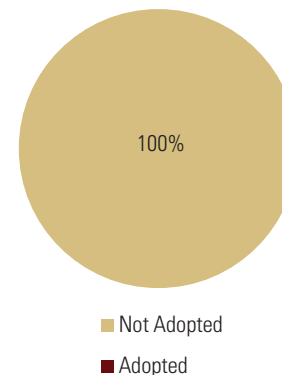


Defensive Measures

Using data obtained from final IPO prospectuses, as well as bylaws, certificates of incorporation, and other documents filed with the SEC at the time of the IPO, we examined what measures companies took to protect themselves from hostile takeovers. Of the companies examined:

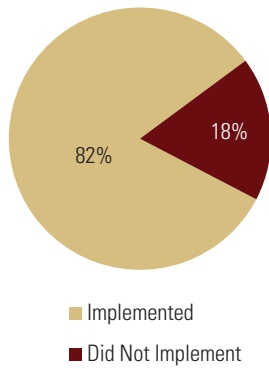
Shareholder Rights Plans (“Poison Pills”)

- No company had adopted a shareholder rights plan at the time of the IPO



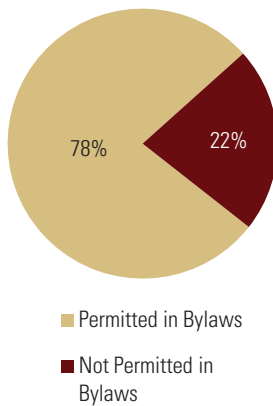
Classified Boards

- 37 companies, or 82.2%, implemented a classified board in connection with the IPO, meaning that following the IPO, director elections will be staggered over a three-year period with approximately one-third of the directors subject to reelection each year



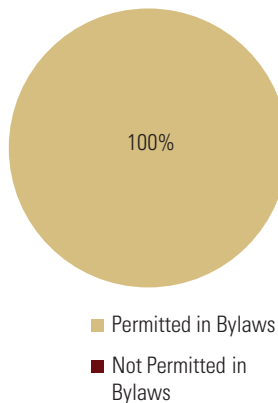
Director Removal for Cause Only

- 35 companies, or 77.8%, had bylaws that permitted removal of a director for cause only (e.g., malfeasance in office, gross misconduct or neglect, false or fraudulent misrepresentation inducing the director’s appointment, willful conversion of corporate funds, breach of the obligation of full disclosure, incompetency, gross inefficiency, or moral turpitude)



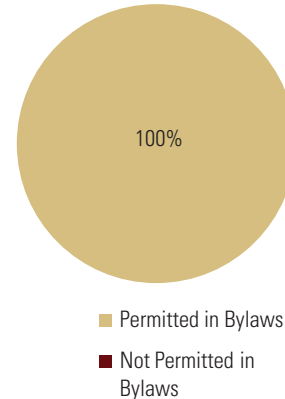
Board Authority to Change Board Size

- 45 companies, or 100%, had bylaws that permitted the board of directors to change the size of the board



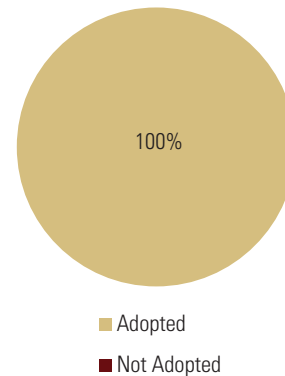
Board Authority to Fill Vacancies on Board

- 45 companies, or 100%, had bylaws that permitted the board of directors to fill a vacancy on the board



Advance Notice Bylaws

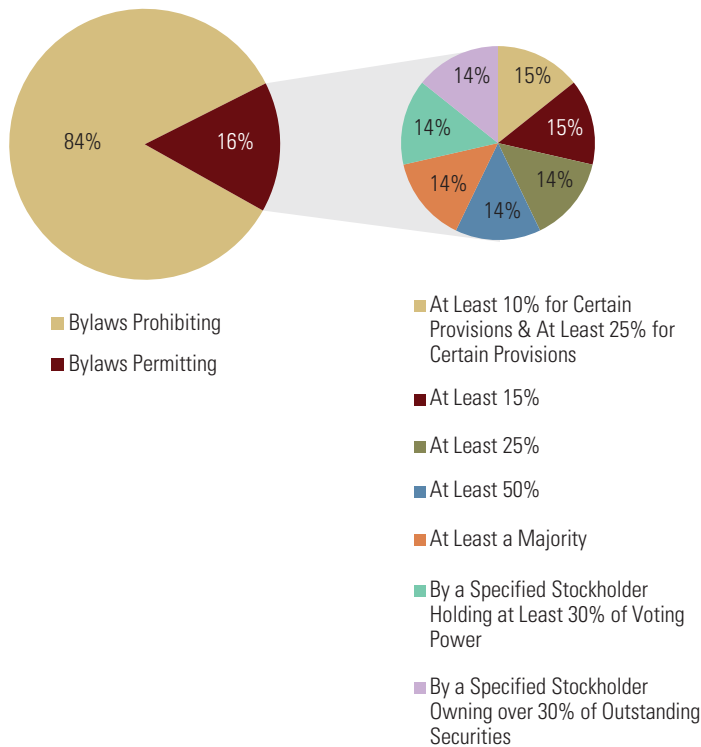
- 45 companies, or 100%, had advance notice bylaws that set forth certain requirements that a stockholder must meet in order to bring a matter of business before a stockholder meeting or nominate a director for election



Stockholder Ability to Call Special Meeting

- 38 companies, or 84.4%, had bylaws that prohibited stockholders from calling a special meeting
- 7 companies, or 15.6%, had bylaws that permitted stockholders to call a special meeting
 - Of the 7 companies:
 - 1 company permitted stockholders comprising at least 10% of voting power to call a special meeting, unless the special meeting is for the purpose of facilitating a business combination, in which case it must be called by stockholders comprising at least 25% of voting power
 - 1 company permitted stockholders comprising at least 15% of voting power to call a special meeting
 - 1 company permitted stockholders comprising at least 25% of voting power to call a special meeting

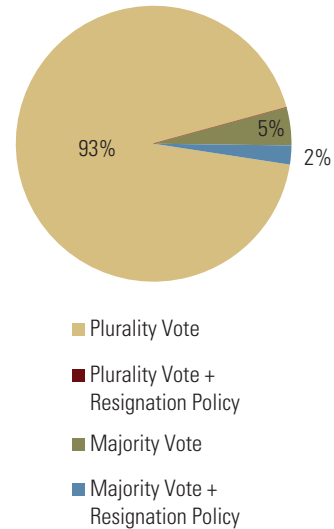
- 1 company permitted stockholders comprising at least 50% of voting power to call a special meeting
- 1 company permitted stockholders comprising at least a majority of voting power to call a special meeting
- 1 company permitted a specified stockholder to call a special meeting, but only for so long as that specified stockholder held at least 30% of voting power
- 1 company permitted a specified stockholder to call a special meeting, but only for so long as that specified stockholder owned over 30% of the outstanding securities



Director Elections

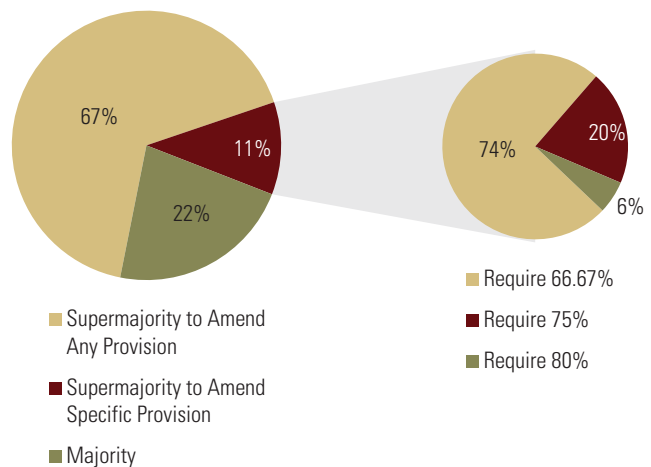
- 42 companies, or 93.3%, had bylaws that provide director election by a plurality voting standard, meaning that the directors receiving the highest number of votes are elected, without a resignation policy (this is the default under Delaware law)
- No company had bylaws that provide director elections by a plurality voting standard and had a resignation policy whereby directors who did not receive a majority vote were expected to resign subject to board approval of such resignation
- 2 companies, or 4.4%, had bylaws that provide director elections by a majority voting standard, meaning that a director is only elected if the number of votes cast "for" exceed the number of votes cast "against" such director, without a resignation policy

- 1 company, or 2.2%, had bylaws that provide director elections by a majority voting standard, but also had a resignation policy whereby directors who did not receive a majority vote were expected to resign subject to board approval of such resignation



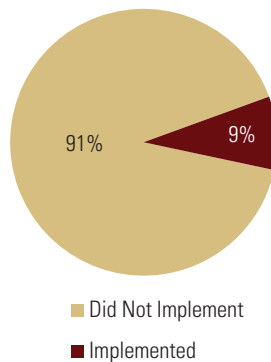
Supermajority Stockholder Vote Required to Amend Bylaws

- 30 companies, or 66.7%, had a supermajority voting standard for stockholders to amend any provision of the bylaws
- 5 companies, or 11.1%, had a supermajority voting standard for stockholders to amend specified provisions of the bylaws
 - Of the 35 companies with some form of supermajority voting standards:
 - 26 companies, or 74.3%, require 66.67% approval
 - 7 companies, or 20%, require 75% approval
 - 2 companies, or 5.7%, require 80% approval
- 10 companies, or 22.2%, permitted a majority voting standard for stockholders to amend the bylaws



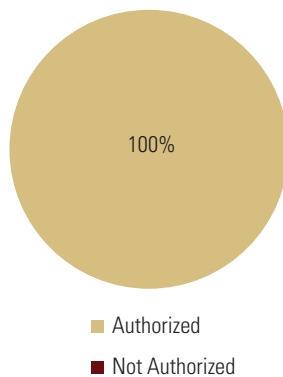
Dual-Class Common Stock

- 4 companies, or 8.9%, implemented dual-class common stock



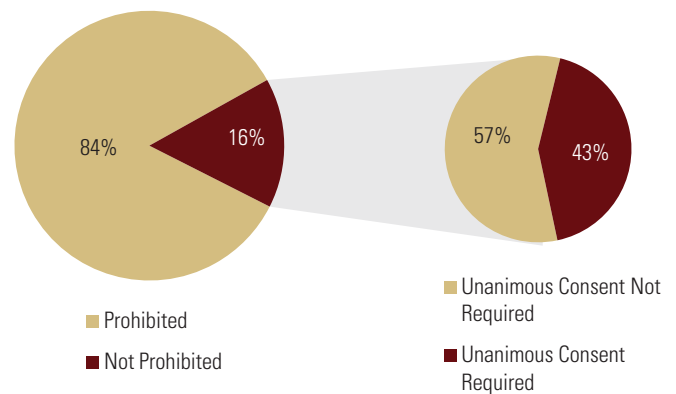
Blank Check Preferred

- 45 companies, or 100%, have a certificate of incorporation authorizing blank check preferred, which allows the board of directors, without further stockholder approval, to issue preferred stock in one or more series and to determine the rights, preferences, and privileges of the preferred stock (e.g., rights to voting, dividend, redemption, etc.)



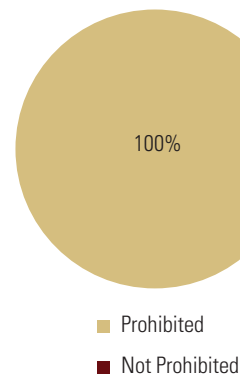
Stockholder Ability to Act by Written Consent

- 38 companies, or 84.4%, have a certificate of incorporation prohibiting stockholders from acting by written consent, meaning that any action requiring stockholder approval must occur at a stockholder meeting
- 7 companies, or 15.6%, permit stockholders to act by written consent
 - Of the 7 companies that permit stockholders to act by written consent:
 - 3 companies, or 42.9%, required the written consent to be unanimous



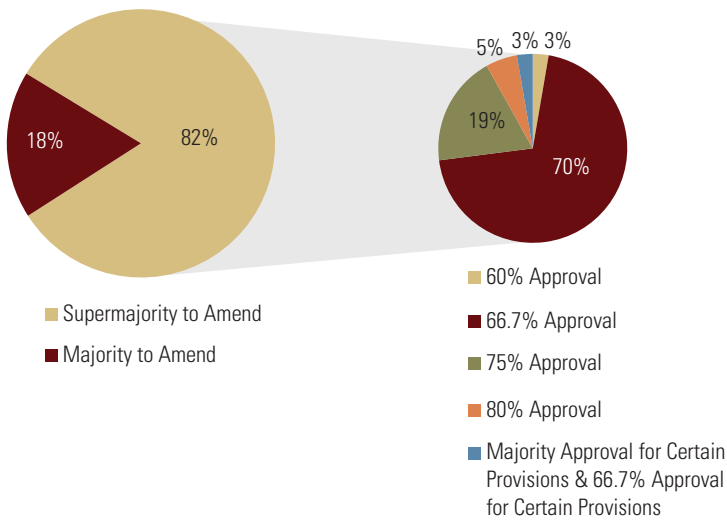
Cumulative Voting

- 45 companies, or 100%, have a certificate of incorporation prohibiting cumulative voting



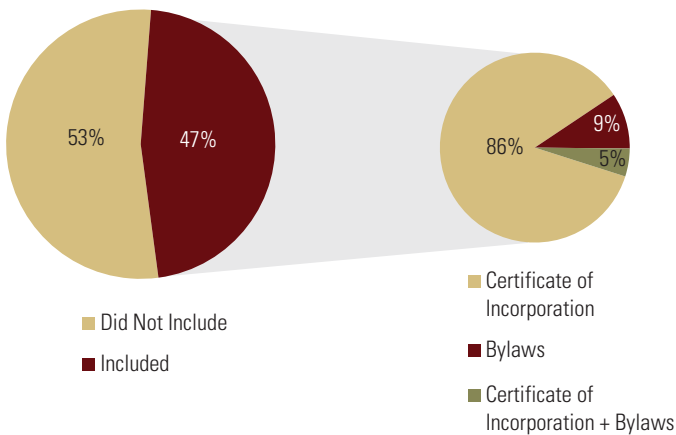
Supermajority Stockholder Vote Required to Amend Certificate of Incorporation

- 37 companies, or 82.2%, have a supermajority voting standard for stockholders to amend specified provisions of the certificate of incorporation
 - Of the 37 companies with supermajority voting standards:
 - 1 company, or 2.7%, requires 60% approval
 - 26 companies, or 70.3%, require 66.7% approval
 - 7 companies, or 20%, require 75% approval
 - 2 companies, or 5.4%, require 80% approval
 - 1 company, or 2.7%, requires a majority voting standard for amendments approved by 2/3 of the board of directors and 66.7% if approved by less than 2/3 of the board of directors
- 8 companies, or 17.8%, have a majority voting standard for stockholders to amend the certificate of incorporation



Exclusive Forum Provisions

- 21 companies, or 46.7%, included exclusive forum provisions in their governing documents. These provisions require that certain types of litigation (such as derivative suits brought on behalf of the company, claims of breach of fiduciary duty, claims arising pursuant to any provision of the Delaware General Corporation Law, or claims governed by the internal affairs doctrine) be brought solely and exclusively in the Court of Chancery of the State of Delaware (or another specified forum).
 - Of the 21 companies with exclusive forum provisions:
 - 18 companies, or 85.7%, included an exclusive forum provision in their certificate of incorporation
 - 2 companies, or 9.5%, included an exclusive forum provision in their bylaws
 - 1 company, or 4.8%, included an exclusive forum provision in both its certificate of incorporation and bylaws
 - Of the 21 companies, all provided for Delaware as the jurisdiction for the exclusive forum provisions



Law Firms and Underwriters

Law Firms

The law firms providing representation in the venture-backed company IPOs included in the survey were:

| Law Firm | Issuer Representations | Underwriter Representations | Total Number of Representations |
|---|------------------------|-----------------------------|---------------------------------|
| Wilson Sonsini Goodrich & Rosati, P.C. | 6 | 7 | 13 |
| Davis Polk & Wardwell LLP | 1 | 9 | 10 |
| Cooley LLP | 5 | 4 | 9 |
| Latham & Watkins LLP | 2 | 6 | 8 |
| Fenwick & West LLP | 5 | 2 | 7 |
| Goodwin Procter LLP | 3 | 3 | 6 |
| Wilmer Cutler Pickering Hale and Dorr LLP | 4 | 2 | 6 |
| Ropes & Gray LLP | 1 | 2 | 3 |
| DLA Piper LLP | 1 | 1 | 2 |
| Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP | 1 | 1 | 2 |
| Kirkland & Ellis LLP | 1 | 1 | 2 |
| Paul Hastings LLP | 1 | 1 | 2 |
| Pillsbury Winthrop Shaw Pittman LLP | 2 | 0 | 2 |
| Simpson Thacher & Bartlett LLP | 0 | 2 | 2 |
| Cahill Gordon & Reindel LLP | 0 | 1 | 1 |
| Dechert LLP | 0 | 1 | 1 |
| Faegre Baker Daniels LLP | 1 | 0 | 1 |
| Foley Hoag LLP | 1 | 0 | 1 |
| Foley & Lardner LLP | 1 | 0 | 1 |
| Gibson, Dunn & Crutcher LLP | 1 | 0 | 1 |
| Hogan Lovells US LLP | 1 | 0 | 1 |
| Morgan, Lewis & Bockius LLP | 0 | 1 | 1 |
| Morrison & Foerster LLP | 1 | 0 | 1 |
| O'Melveny & Myers LLP | 0 | 1 | 1 |
| Perkins Coie LLP | 1 | 0 | 1 |
| Shearman & Sterling LLP | 1 | 0 | 1 |
| Sullivan & Triggs, LLP | 1 | 0 | 1 |
| Willkie Farr & Gallagher LLP | 1 | 0 | 1 |

Underwriters

The underwriters most frequently appearing as “lead left” underwriter in the venture-backed company IPOs included in the survey were:

| Lead Underwriter | Total Number of Transactions |
|--------------------------|------------------------------|
| Morgan Stanley | 12 |
| J.P. Morgan | 11 |
| BofA Merrill Lynch | 4 |
| Goldman, Sachs & Co. | 4 |
| Stifel Nicolaus Weisel | 3 |
| Citigroup | 2 |
| UBS | 2 |
| Barclays Capital | 1 |
| Citi | 1 |
| Credit Suisse | 1 |
| Deutsche Bank Securities | 1 |
| Jefferies | 1 |
| Wells Fargo | 1 |
| William Blair | 1 |

JOBS Act

In April 2012, the Jumpstart Our Business Startups Act, or JOBS Act, was enacted. The JOBS Act is a collection of legislative measures introduced over the previous year that focuses on the ability of “emerging growth companies” to raise capital (both publicly and privately) and to determine the timing of becoming a public company. It codifies many of the reforms to the IPO and capital-raising processes presented to the U.S. Department of the Treasury by the IPO Task Force—a working group of venture capitalists, CEOs, public investors, academics, investment bankers, and securities lawyers, including Wilson Sonsini Goodrich & Rosati partner Steve Bochner. Our WSGR Alert regarding the JOBS Act is located at <http://www.wsgr.com/publications/PDFSearch/wsgralert-JOBS-act.pdf>.

Among other things, the JOBS Act seeks to simplify the burden of IPO disclosure by permitting emerging growth companies, generally on an

“a la carte” basis, to provide simplified disclosures in certain areas. Specifically, emerging growth companies may elect to disclose in their IPO prospectuses:

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

In addition, emerging growth companies may choose to take advantage of longer phase-in periods for certain new accounting pronouncements adopted after the effective date of the JOBS Act.

We looked at these disclosure points in the final IPO prospectuses of 38 emerging growth companies that completed their IPOs from April 5, 2012, through September 30, 2012, and found the following:

- 32 companies included 3 years of audited financial statements; 5 companies included 2 years of audited financial statements; and 1 company included 1 year of audited financial statements (all that was available)
- Companies that included 3 years of audited financial statements generally included 4–5 years of selected financial data; companies that included 2 years of audited financial statements generally only included 2 years of selected financial data
- 23 companies included a CD&A section; 15 companies excluded the CD&A
- Only 4 companies elected to take advantage of the extended public accounting transition period permitted under the JOBS Act

Because many of the 38 emerging growth companies that we reviewed began their IPO processes prior to the enactment of the JOBS Act, we found it difficult to identify any clear trends or market practices with respect to these matters. We will continue to review the disclosure practices of emerging growth companies to determine whether any clear trends emerge.

For More Information

For more information on the above survey findings or any related matters, please contact your regular Wilson Sonsini Goodrich & Rosati attorney or any member of the firm's corporate and securities practice.

About Wilson Sonsini Goodrich & Rosati

Wilson Sonsini Goodrich & Rosati offers a broad range of services and legal disciplines focused on serving the principal challenges faced by the management and boards of directors of business enterprises. Consistently ranked among the top corporate law firms nationwide by *Corporate Board Member* and other trusted sources, we currently represent more than 300 public and 3,000 private companies across a diverse range of industries in the United States and abroad. We consistently rank No. 1 by Dow Jones VentureSource for the number of issuer-side venture financing deals handled each year. In addition, we have represented more U.S. companies in connection with their IPOs than any other law firm since 1998, according to *IPO Vital Signs*.

Acknowledgements

WSGR partner Richard Cameron Blake and associate Meaghan S. Nelson designed and oversaw this survey. Special thanks to partners Steven E. Bochner, Robert G. Day, Jose F. Macias, Katharine A. Martin, Rezwan D. Pavri, Jeffrey D. Saper, David J. Segre, Barry Taylor, and David S. Thomas; and associates Jay Purcell, Jeff Kao, Jessica McBride, Douglas K. Schnell, Tait O. Svenson, and Matthew M. Tolland, who provided invaluable insight in the design and reporting of the survey. Special thanks also to 2012 WSGR summer associates Kathleen Ferris, Wendy Guo, Lillian Jenks, Taylor Margot, Jack Miller, Kei Nishimura, Killian Nolan, Sogoal Salari, Max Samuel, and Dominick Severance for their invaluable assistance on the survey.

Disclaimer

This communication is provided for your information only and is not intended to constitute professional advice as to any particular situation.

Appendix A

The below table provides information pertaining to the 21 companies, or 46.7%, that disclosed key metrics, including the specific metrics disclosed.

| Company | Business Description | Key Metrics |
|--------------------|--|--|
| Angie's List, Inc. | Online resource for ratings and reviews of service providers | Total paid memberships Gross paid memberships added Marketing cost per paid membership acquisition First-year membership renewal rate Membership renewal rates Participating service providers Total service provider contract value Contract value backlog |
| Bazaarvoice, Inc. | Software-as-a-service social commerce company | Number of active clients Revenue per active client Active client retention rate Revenue per employee |
| Brightcove Inc. | Provider of cloud content services | Number of customers Average monthly streams Recurring dollar retention rate |
| CafePress, Inc | Consumer products company | Total customers Total number of orders Average order size |
| Carbonite, Inc. | Online file and data backup company | Total customers Annual retention rate Renewal rate |

| Company | Business Description | Key Metrics |
|------------------|---|--|
| Demandware, Inc. | Provider of an on-demand e-commerce platform | Number of customers Number of customer e-commerce sites Subscription dollar retention rate Total contract value backlog |
| EXA Corporation | Provider of software products for simulation-driven designs | License revenue renewal rate License revenue renewal rate with capacity |
| ExactTarget, Inc | Provider of interactive marketing software for targeted marketing | Recurring subscription revenue Subscription revenue renewal rate |
| Facebook, Inc. | Online social network | Number of monthly active users (MAUs) Number of daily active users (DAUs) Number of mobile DAUs Average revenue per user (ARPU) |
| FX Alliance Inc. | Electronic foreign exchange platform | Total trading volume (relationship trading & active trading) Average daily trading volume (relationship trading & active trading) Average transaction fee (relationship trading & active trading) |
| Groupon, Inc. | Daily deal website | Subscribers Cumulative customers Featured merchants Groupons sold Average revenue per subscriber Average cumulative Groupons sold per customer Average revenue per Groupon sold Cumulative repeat customers |

| Company | Business Description | Key Metrics |
|---------------------------------|--|---|
| Guidewire Software, Inc. | Provider of a software suite for property and casualty insurance life cycle | Four-quarter recurring revenues Term license revenues Total maintenance revenue |
| Imperva, Inc. | Provider of business security solutions | Number of customers |
| Intermolecular, Inc. | Provider of technology products and services to pharmaceutical, biotechnology, and energy industries | Revenue growth and mix Backlog |
| Jive Software, Inc. | Provider of social business software | Number of Jive Engage platform customers |
| Merrimack Pharmaceuticals, Inc. | Biopharmaceutical company | Organizational health Collaboration networks Research and development productivity Health and economic outcomes of products |
| Proofpoint, Inc. | Provider of cloud-based email security, eDiscovery, and compliance solutions | Total revenue Subscription revenue Adjusted subscription gross profit |
| Synacor, Inc. | Provider of a cloud-based, multi-device platform | Unique visitors Search queries Advertising impressions |
| Tangoe, Inc. | Provider of software and related services in the communications market | Recurring technology and services revenue growth Deferred revenue Revenue retention rates |
| Zillow, Inc. | Online marketplace for real estate | Unique users Premier agent subscribers |
| Zynga, Inc. | Provider of social game services | Daily active users (DAU) Monthly active users (MAU) Monthly unique users (MUU) Average daily bookings per average DAU (ABPU) |



Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

WWW.WSGR.COM

AUSTIN BRUSSELS GEORGETOWN, DE HONG KONG NEW YORK PALO ALTO SAN DIEGO SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, DC