Orrick Technology IPO Insights
for Q2 2014

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Orrick Technology IPO Insights
Q2 2014

Welcome to the inaugural issue of *Orrick Technology IPO Insights*, a quarterly publication highlighting trends in U.S. information technology company IPOs. We isolate technology companies in order to analyze and present concerns specific to them in the IPO process – we believe that lumping technology companies together with companies in the consumer and retail, manufacturing, life sciences, and other industries can muddy the water and lead to misguided conclusions about the issues that technology companies face.

Each issue of *Orrick Technology IPO Insights* will present data on the technology company IPOs for the most recent quarter and for the overall period since the 2008 Financial Crisis. We will also feature detailed analysis on one or two specific aspects of technology IPOs from partners in Orrick's capital markets practice.

In this issue, Andy Thorpe, an Orrick partner who is one of the top IPO counsels to issuers, according to statistics from *IPO Vital Signs*, and who worked for many years for the SEC in the Office of Rulemaking within the Division of Corporation Finance, where he played a significant role in drafting many of the regulations under the Sarbanes-Oxley Act, explores differences in antitakeover measures between new public companies and more mature public companies. (You can find current and historical Antitakeover Defense data beginning on page 12 of the report.) Andy's thoughts begin on page III.

We hope that you will find these observations to be useful. If you have any questions or comments, please do not hesitate to contact Christopher Austin (*caustin@orrick.com*; 212-506-5234), Karen Dempsey (*kdempsey@orrick.com*; 415-773-4140), Brian Margolis (*bmargolis@orrick.com*; 212-506-5125) or Andy Thorpe (*athorpe@orrick.com*; 415-773-5970).

Quarterly Commentary
Q2 2014

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ANDREW THORPE, a partner in Orrick's San Francisco office, is a member of the Corporate group. Mr. Thorpe's practice focuses on securities regulation, public offerings, mergers and acquisitions and corporate governance. His diverse industry experience spans semiconductors, software, life sciences, medical devices, clean technology, financial services, telecommunications and the Internet. Mr. Thorpe provides clients with his valuable perspective from having extensive experience on all sides of the table in capital markets transactions – issuer, underwriter and the SEC. Prior to entering private practice, Mr. Thorpe worked in the Division of Corporation Finance of the Securities and Exchange Commission, where he was responsible for reviewing public companies' Securities Act and Exchange Act filings. From January 2001 to April 2005, Mr. Thorpe served as special counsel with the Office of Rulemaking within the Division of Corporation Finance. While in this position, he played a significant role in drafting many of the regulations emanating from the Division, including those mandated by the Sarbanes-Oxley Act of 2002.

Corporate Governance Practices for New Public Companies

Conducting an initial public offering is one of the transformative events in a company's lifecycle. Becoming a public company requires numerous significant changes that are necessary to handle compliance with SEC regulations, an accelerated financial reporting process, constant Wall Street scrutiny, and investor relations. Companies often hire a general counsel, a CFO and additional finance personnel in anticipation of an IPO. In addition, due to the corporate governance listing standards of the Nasdaq and NYSE, most companies are required to implement significant corporate governance changes at the time of an IPO. These changes include recruiting additional board members, creating independent board committees, and holding executive sessions with independent board members.

Public company boards are also subjected to more scrutiny from shareholders than prior to the IPO. The investment bankers taking a company public and the institutional investors that invest in an IPO will expect a company to comply with the corporate governance requirements of the national securities exchanges at the time of the IPO. The data presented in this publication indicates that newly public companies are not expected to implement "best practices" when it comes to anti-takeover protections. It appears that institutional investors are willing to accept these anti-takeover measures in newly public companies, whereas the same measures are subject to significant shareholder activism in larger, established public companies.

As the data in this report demonstrates, the vast majority of IPO companies implement a corporate governance structure that includes a relatively standard package of anti-takeover protections. These protections consist of the following:

- blank check preferred stock;
- classified board of directors;
- advance notice provisions for shareholder proposals/nominations;
- no shareholder action by written consent;
- no cumulative voting;
- supermajority vote required to amend charter;
- limitation on removing directors without cause;
- board vacancies filled by board vote; and
- no special meetings called by shareholders.

It is interesting that each of these protective measures is in contravention of the guidelines of the major proxy advisory services (e.g., Institutional Shareholder Services or Glass Lewis), as well as the in-house governance advisors of major institutional investors.

Accordingly, what is not acceptable for a mature public company with a large market capitalization is perfectly acceptable for a newly public company that recently concluded an IPO. This poses two questions.

- First, why aren't proxy advisory firms and shareholder activists campaigning against these standard anti-takeover measures at the IPO stage?
- Second, why aren't companies adopting what the proxy advisory firms and shareholder activists are seeking at the outset?

With regard to the first question, most IPOs simply do not appear on the radar screens of governance advisors due to the relatively low market capitalization of these companies, as well as the small public float. Unless the company conducting an IPO has a market capitalization of at least $1 billion, or the company has a popular mass market consumer brand, an IPO company can can be reasonably confident that there will not be a significant amount of scrutiny applied to anti-takeover provisions. In addition, many proxy advisory firms provide a grace period to allow sufficient time for new public companies to develop better corporate governance practices. With regard to the second question, newly public companies are implementing these standard anti-takeover measures in order to protect against the real threat of a hostile takeover shortly after the company goes public. Most technology companies are significantly smaller in size than, and are susceptible to a takeover by, the major players in the technology space that have vast amounts of cash on their balance sheets. Very few companies desire to go through the trouble of executing an IPO and becoming a public company only to have their plans cut short by a hostile acquisition. The standard anti-takeover measures can stave off an unwanted advance, and enable a company to continue to execute the strategy it set forth in the IPO prospectus.

In conclusion, companies engaged in the IPO process should not be overly concerned that they are implementing anti-takeover provisions even though the provisions are contrary to the governance guidelines applied to larger and more established public companies. The ability to protect against a hostile takeover, and the market's wiliness to accept these anti-takeover measures in IPO companies, far outweighs the risk of shareholder activism after the company has been public for some time and grown to a level of interest for the corporate governance advisory community.

State of Headquarters

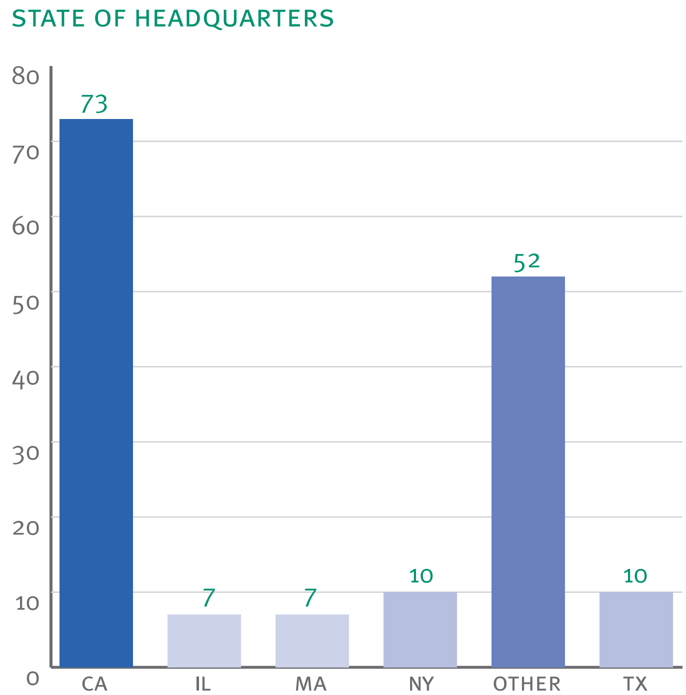
Q2 2014 vs. Historical (2009 – 2014)

Seven of the 12 technology companies going public in Q2 (58.3%) were headquartered in California, with only single representatives from each of Illinois, Missouri, Oklahoma, Texas and Virginia. In our broader study, California accounted for 46% of technology companies going public since 2009, followed by New York and Texas with 6% each. Illinois and Massachusetts rounded out the top five with 5% each.

Q2 2014

COMPANY	STATE OF HQ
Arista Networks	CA
Five9	CA
GoPro	CA
Grubhub	IL
Mobile Iron	CA
Opower	VA
Paycom	OK
Rubicon Project	CA
Sabre	TX
SunEdison Semiconductor	MO
TrueCar	CA
Zendesk	CA

Historical (2009 – 2014)



VC-backed
Q2 2014 vs. Historical (2009 – 2014)

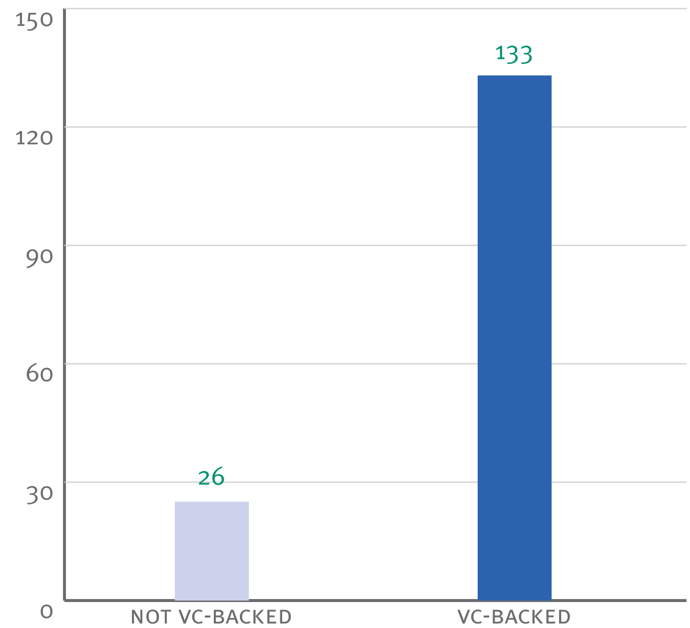
Venture-backed companies represented the lion's share of technology companies going public in Q2 – 10 of the 12 (83.3%) were funded with VC money. This corresponds closely with the overall trend since the 2008 Financial Crisis, where venture-backed companies accounted for 83.6% of the total.

Q2 2014

COMPANY	VC BACKED
Arista Networks	No
Five9	Yes
GoPro	Yes
Grubhub	Yes
Mobile Iron	Yes
Opower	Yes
Paycom	Yes
Rubicon Project	Yes
Sabre	No
SunEdison Semiconductor	No
TrueCar	Yes
Zendesk	Yes

Historical (2009 – 2014)

VC-BACKED VS. NOT VC-BACKED



Post-Money IPO Valuation
Q2 2014 vs. Historical (2009 – 2014)

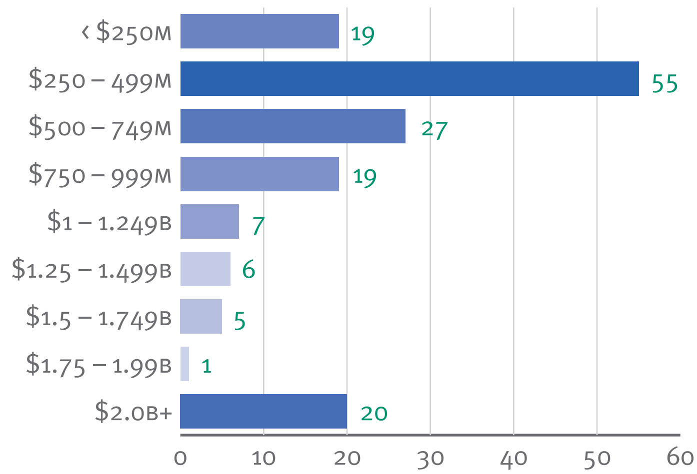
Sabre, which provides technology solutions to the global travel and tourism industry, was the largest debut in Q2, with a post-money valuation of $4.136 billion. Q2 had an unusual number of large transactions, with Arista Networks, GrubHub and GoPro also exceeding the $2.0 billion mark. In the broader survey, the valuation sweet spot for technology company IPOs remains between $250 million and $499 million range, with 34.6% of companies falling into that range.

Q2 2014

COMPANY	POST-MONEY IPO VALUATIONS ($ IN MILLIONS)
Sabre	4,136.60
GoPro	2,955.40
Arista Networks	2,734.00
Grubhub	2,038.00
Opower	901.7
Paycom	762.2
TrueCar	639.3
Zendesk	631.7
SunEdison Semiconductor	525.5
Rubicon Project	520.7
Five9	322.3
Mobile Iron	100

Historical (2009 – 2014)

POST-MONEY IPO VALUATION



Selection of Exchange
Q2 2014 vs. Historical (2009 – 2014)

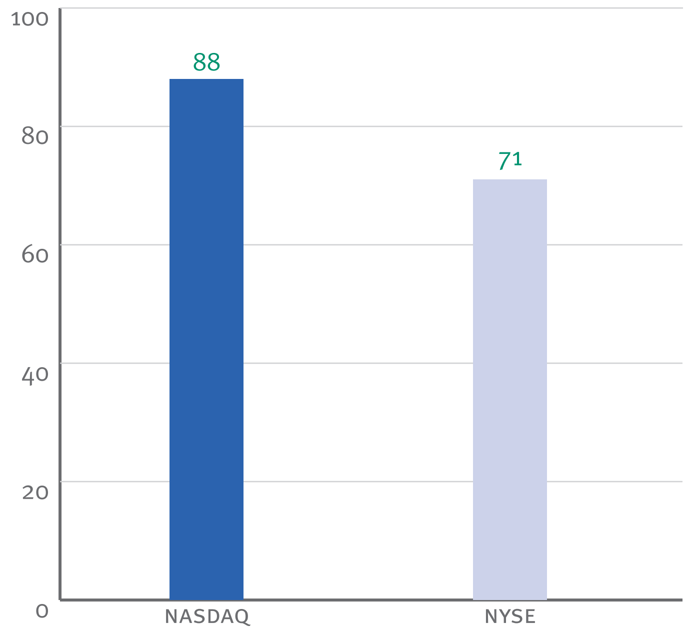
NASDAQ and the New York Stock Exchange evenly split the 12 technology companies listing in Q2. Over the broader period, NASDAQ retained the lead, accounting for 55.3% of companies compared to the 44.7% on the New York Stock Exchange.

Q2 2014

COMPANY	EXCHANGE
Arista Networks	NYSE
Five9	NASDAQ
GoPro	NASDAQ
Grubhub	NYSE
Mobile Iron	NASDAQ
Opower	NYSE
Paycom	NYSE
Rubicon Project	NYSE
Sabre	NASDAQ
SunEdison Semiconductor	NASDAQ
TrueCar	NASDAQ
Zendesk	NYSE

Historical (2009 – 2014)

SELECTION OF EXCHANGE



Confidential Filings
Q2 2014 vs. Historical (2009 – 2014)

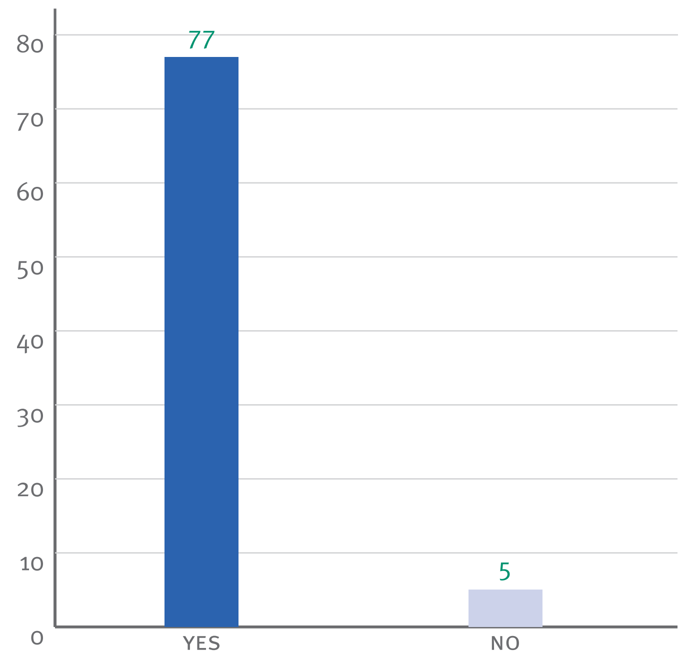
Since the JOBS Act was enacted in April 2012, 59 of the 77 technology companies that qualified as Emerging Growth Companies (EGCs) have elected to make confidential filings, representing 72% of the total. In Q2, 11 of the 12 technology companies going public qualified as EGCs, and 10 of those 11 elected to make confidential filings.

Q2 2014

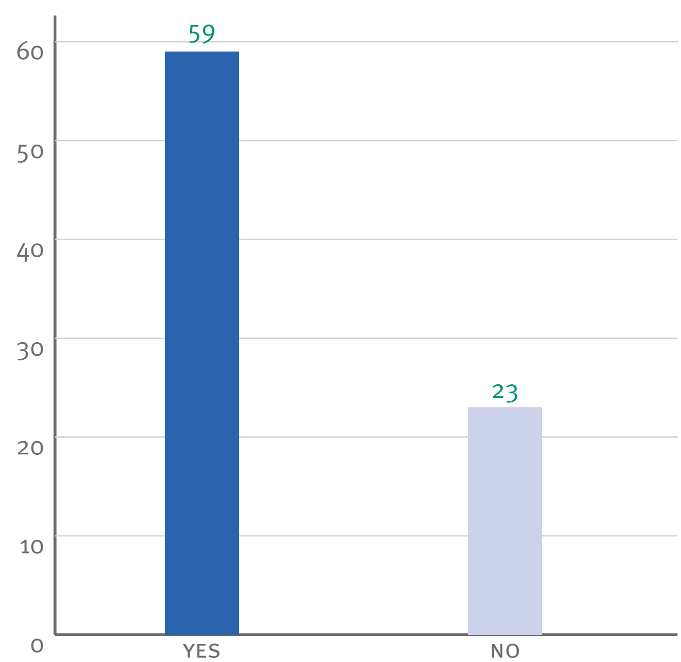
COMPANY	EGC / JOBS ACT ELIGIBLE	CONFIDENTIAL FILING
Arista Networks	Yes	Yes
Five9	Yes	Yes
GoPro	Yes	Yes
Grubhub	Yes	Yes
Mobile Iron	Yes	Yes
Opower	Yes	Yes
Paycom	Yes	Yes
Rubicon Project	Yes	Yes
Sabre	No	N/A
SunEdison Semiconductor	Yes	No
TrueCar	Yes	Yes
Zendesk	Yes	Yes

Historical (2009 – 2014)

OF COMPANIES QUALIFIED FOR EGC STATUS



OF EGCS MAKING CONFIDENTIAL FILINGS



Length of IPO Process
Q2 2014 vs. Historical (2009 – 2014)

The prevalence of confidential filings since the enactment of the JOBS Act skews the historical data on days between the filing of the S-1 and effectiveness, significantly increasing the number of deals that are done completed in the 30-90 day range. Within our survey, the historical median for the number of days between the filing of the S-1 and effectiveness prior to enactment of the JOBS Act was 123.5 days. The overall median has now declined to 102 days.

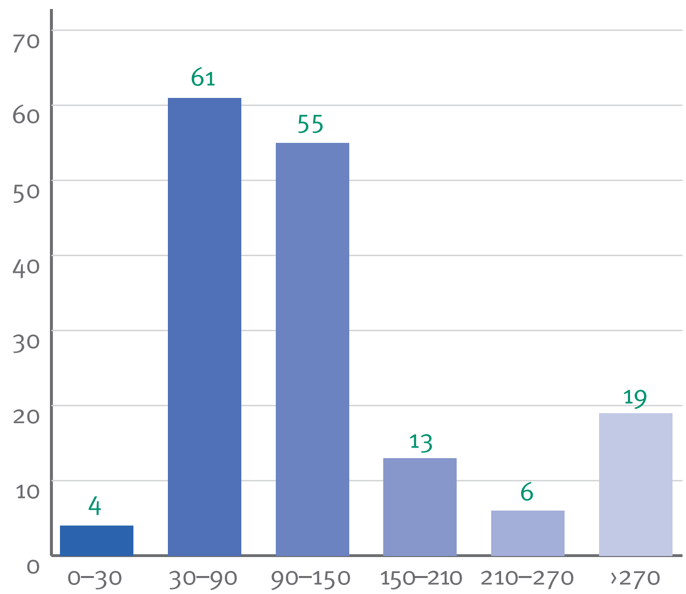
We note, however, that for EGCs filing confidentially under the JOBS Act, the median length of time between the filing of the draft registration statement and effectiveness of the S-1 is 116 days, which is close to the historical median for the length of the process. In Q2, the length of process under the JOBS Act was a bit shorter, with a median of 109.5 days.

Q2 2014

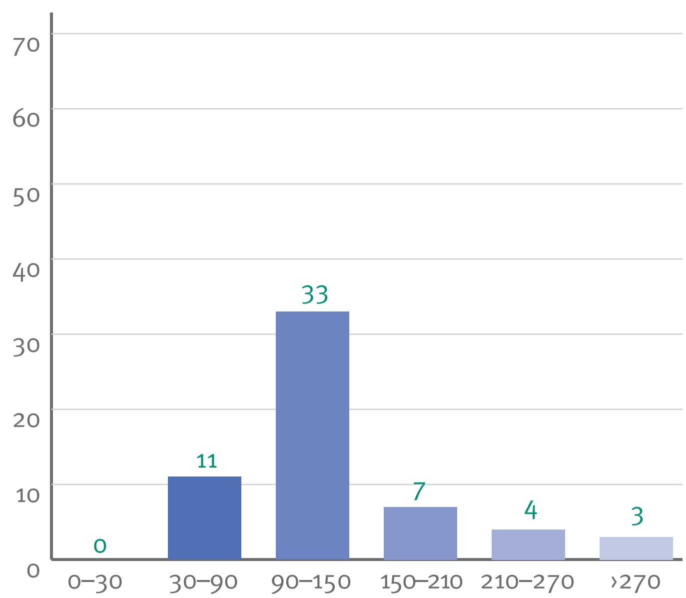
COMPANY	DAYS BETWEEN FIRST PUBLIC FILING AND FFECTIVENESS	DAYS BETWEEN JOBS CONFIDENTIAL FILING OF S-1 AND EFFECTIVENESS
SunEdison Semiconductor	254	—
Sabre	85	—
Arista Networks	66	125
Mobile Iron	65	93
Rubicon Project	46	75
GoPro	37	138
Zendesk	34	89
Grubhub	34	101
TrueCar	31	90
Paycom	31	122
Opower	31	142
Five9	31	118
Median	**35.5**	**109.5**

Historical (2009 – 2014)

DAYS BETWEEN FIRST PUBLIC FILING AND EFFECTIVENESS



DAYS BETWEEN JOBS CONFIDENTIAL FILING OF S-1 AND EFFECTIVENESS



Number of Lead Left Transactions

Q2 2014 vs. Historical (2009 – 2014)

Morgan Stanley was the leader in lead left transactions in Q2, with 5 deals. For the historical period, Morgan Stanley continues to lead with 43 deals, but Goldman Sachs has made inroads, with 21 deals since the beginning of 2013 to Morgan Stanley's 14, in large part on the strength of Goldman's 15 transactions in 2013.

Q2 2014

COMPANY	NUMBER
Morgan Stanley	5
Goldman Sachs	2
J.P. Morgan	2
Citigroup	1
Barclays	1
Deutsche Bank	1

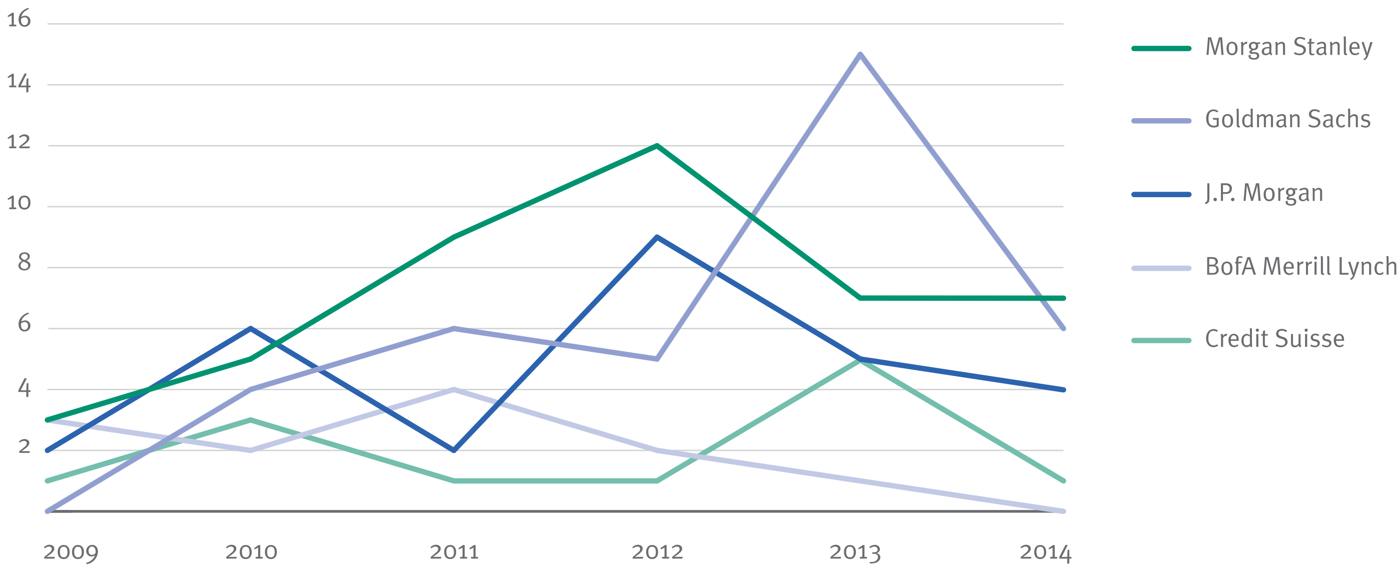
Historical (2009 – 2014)

LEAD LEFT UNDERWRITER IN U.S.-BASED TECH COMPANY IPOS, 2009-2014							
Includes only NASDAQ Global Market and NYSE-Listed Companies							
Underwriter	**Total**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Morgan Stanley	43	3	5	9	12	7	7
Goldman Sachs	36	-	4	6	5	15	6
J.P. Morgan	28	2	6	2	9	5	4
BofA Merrill Lynch	12	3	2	4	2	1	-
Credit Suisse	12	1	3	1	1	5	1
Citigroup	5	1	-	1	1	1	1
Deutsche Bank	5	-	-	1	1	1	2
Barclays	4	-	-	1	1	1	1
Stifel	3	-	1	-	1	-	1
Thomas Weisel	2	-	2	-	-	-	-
FBR	1	-	-	-	-	1	-
Raymond James	1	-	-	-	-	1	-
Sandler O'Neill & Partners	1	-	-	-	-	1	-
Imperial Capital	1	-	-	1	-	-	-
Lazard	1	-	-	1	-	-	-
UBS	1	-	-	1	-	-	-
Piper Jaffray	1	-	1	-	-	-	-
SunTrust Robinson Humphrey	1	-	1	-	-	-	-
Jefferies	1	1	-	-	-	-	-

Number of Lead Left Transactions

Q2 2014 vs. Historical (2009 – 2014)

NUMBER OF LEAD LEFT TRANSACTIONS



Pricing Relative to Initial Range

Q2 2014 vs. Historical (2009 – 2014)

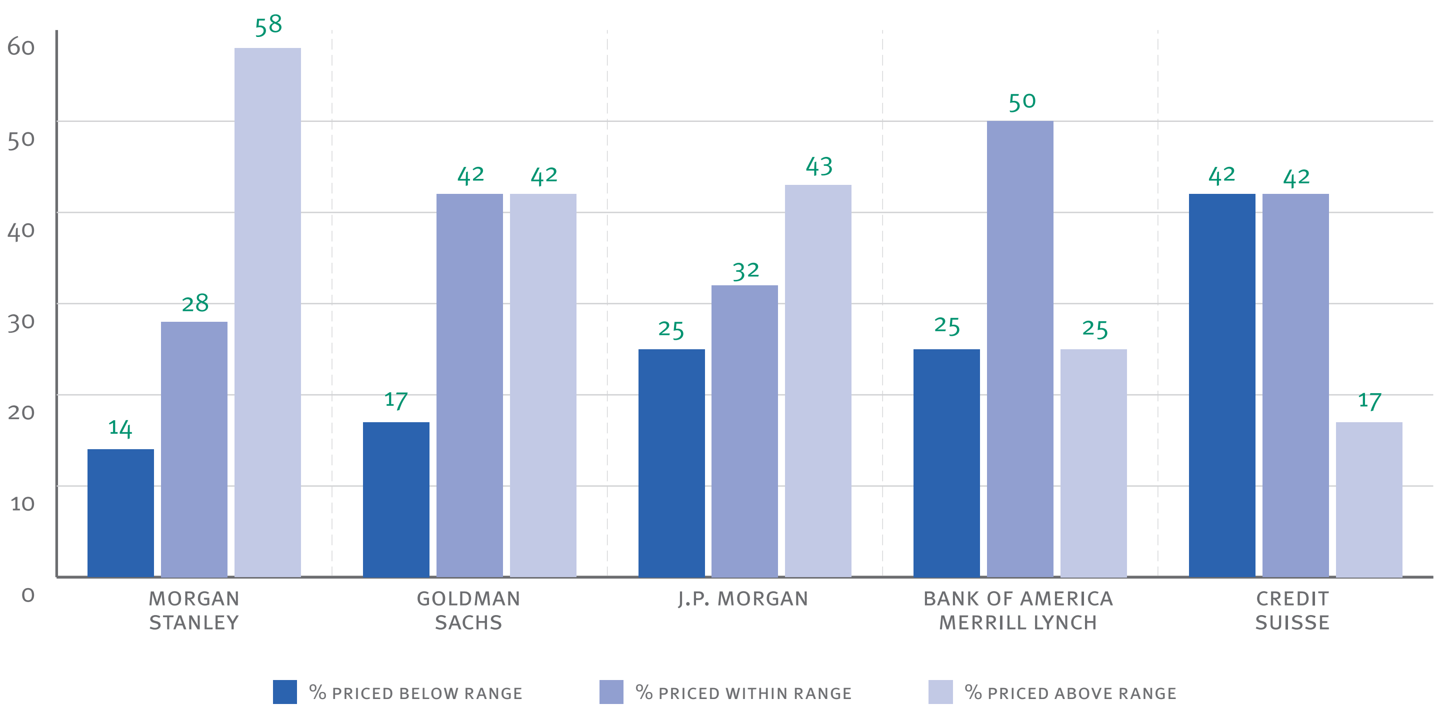
In Q2, the number of deals priced within or above the pricing range initially specified in the red herring prospectus exceeded the number priced below the range by an 8 to 4 margin. Among the top 5 underwriters (by lead left transactions), Morgan Stanley priced the highest percentage of deals above the range during the historical period.

Q2 2014

COMPANY	BELOW RANGE	WITHIN RANGE	ABOVE RANGE	TOTAL
Morgan Stanley	1	3	1	5
Goldman Sachs	1	1	—	2
J.P. Morgan	1	1	—	2
Citigroup	—	—	1	1
Deutsche Bank	—	1	—	1
Barclays	1	—	—	1

Historical (2009 – 2014)

LEAD LEFT DEALS: PRICING RELATIVE TO INITIAL RANGE



Size of Directed Share Offerings

Q2 2014 vs. Historical (2009 – 2014)

Offerings including a directed share program are in the minority, representing 28.3% of deals in the historical period. For the bulk of the deals of which a directed share program is a part, the directed shares represent between 5.0% and 7.49% of the total offering.

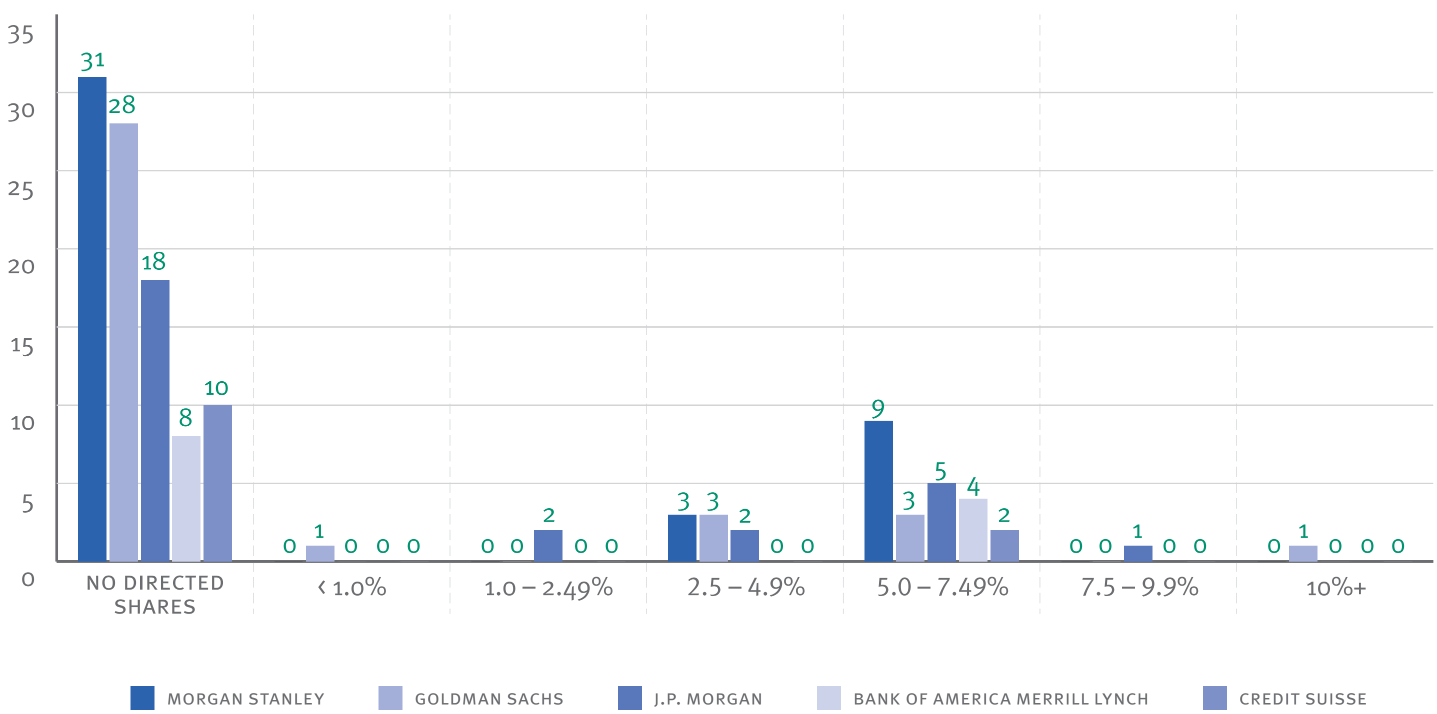
In Q2 there was an increased prevalence of directed shares, with 5 of the 12 offerings (41.7%) including such a program.

Q2 2014

DIRECTED SHARE PROGRAM	NO DIRECTED SHARES	‹1.0%	1% – 2.49%	2.5% – 4.9%	5.0% – 7.49%	7.5% – 9.9%	10%+	TOTAL
Morgan Stanley	4	0	0	1	0	0	0	5
Goldman Sachs	1	0	0	0	0	0	1	2
J.P. Morgan	0	0	0	0	2	0	0	2
Citigroup	1	0	0	0	0	0	0	1
Deutsche Bank	1	0	0	0	0	0	0	1
Barclays	0	0	0	0	1	0	0	1
Total	**7**	**0**	**0**	**1**	**3**	**0**	**1**	**12**

Historical (2009 – 2014)

SIZE OF DIRECTED SHARE OFFERINGS



Underwriter's Discount
Q2 2014 vs. Historical (2009 – 2014)

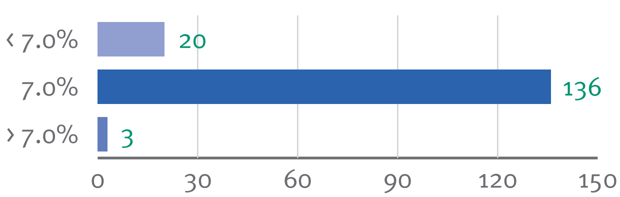
Over the historical period, 85.5% of offerings (136 of 159) had an underwriting discount (the difference between the price an underwriter pays an issuer and the price at which it sells the offering to the public) of 7%. In Q2, an anomalous 33% (4 of 12) of offerings had a discount below 7%. The table below details the gross proceeds for the offerings in the historical period in which the issuers were able to negotiate a discount below 7%. These were in large part for large offerings - the median offering was $540.13 million, and the mean was $1.639 billion.

Q2 2014

UNDERWRITER	‹7.0%	7.0%	›7.0%
Morgan Stanley	2	3	—
Goldman Sachs	—	2	—
J.P. Morgan	1	1	—
Citigroup	—	1	—
Deutsche Bank	1	—	—
Barclays	—	1	—
Total	**4**	**8**	**0**

Historical (2009 – 2014)

UNDERWRITER'S DISCOUNT



Gross Proceeds for Exceptions (<7.0%)

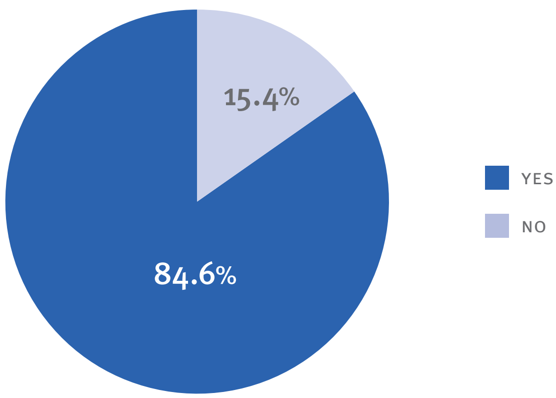
COMPANY	PROCEEDS ($ IN MILLIONS)
Facebook (1.1%)	18,407.91
Verisk Analytics (4.0%)	2,155.91
Twitter (3.25%)	2,093.00
Zynga (3.25%)	1,000.00
Groupon (6.0%)	700
Workday (6.0%)	637.00
Sabre (5.25%)	627.2
CommScope Holding Co., Inc. (5.25%)	576.92
Vantiv (5.5%)	575
EVERTEC (5.5%)	505.26
CDW (5.5%)	454.54
GoPro (6.0%)	427.20
West (5.7%)	425.5
Bankrate (6.0%)	300
Zulily (6.5%)	290.95
Aeroflex (6.25%)	267.15
Endurance Int'l Grp Holdings (5.0%)	252.61
Arista Networks (6.0%)	225.75
STR Holdings (6.5%)	139.95
SunEdison Semiconductor (6.75%)	93.60
Median	**540.13**
Mean	**1,639.03**

Antitakeover Defenses
Q2 2014 vs. Historical (2009 – 2014)

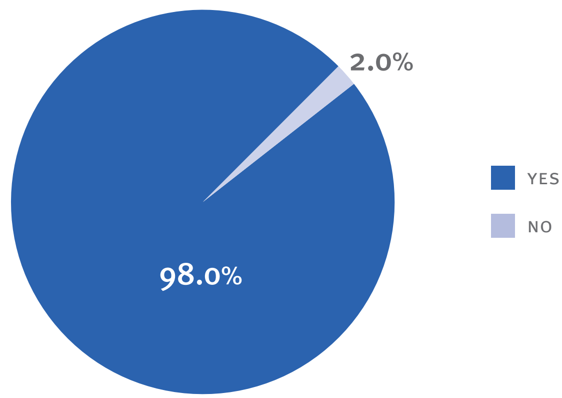
Below are the Q2 and historical percentages of adoption of various antitakeover defenses. The Q2 results largely corresponded with historical norms.

BLANK CHECK PREFERRED STOCK

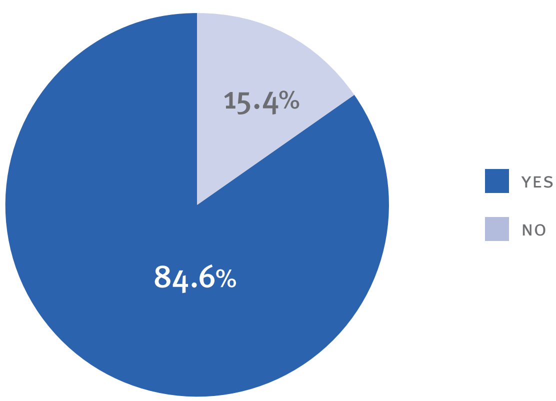
Q2 2014

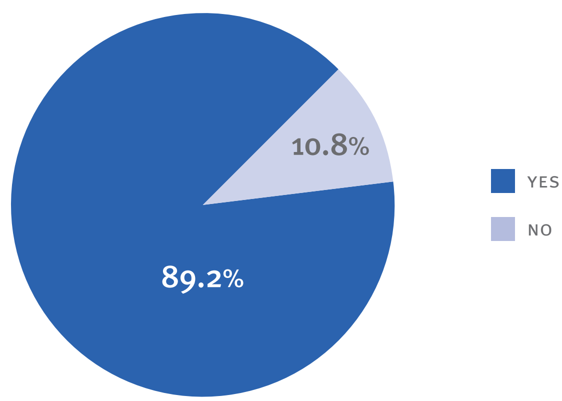


Historical (2009 – 2014)

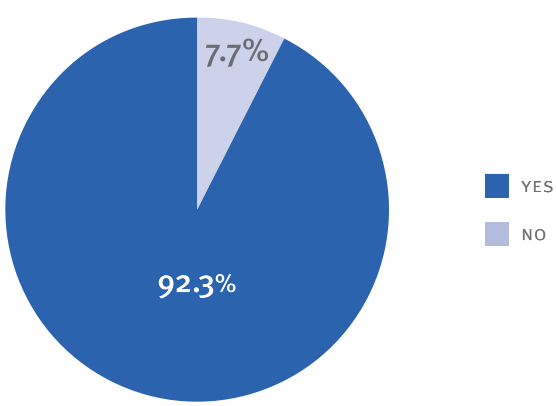


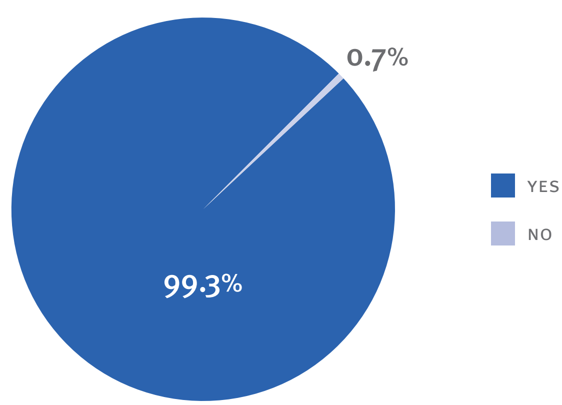
CLASSIFIED BOARD





REQUIRE ADVANCE NOTICE OF S-H PROPOSAL



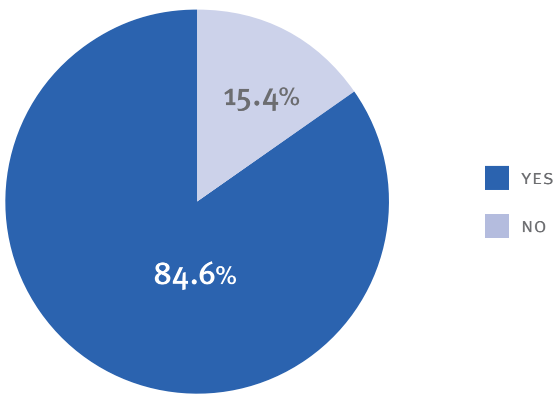


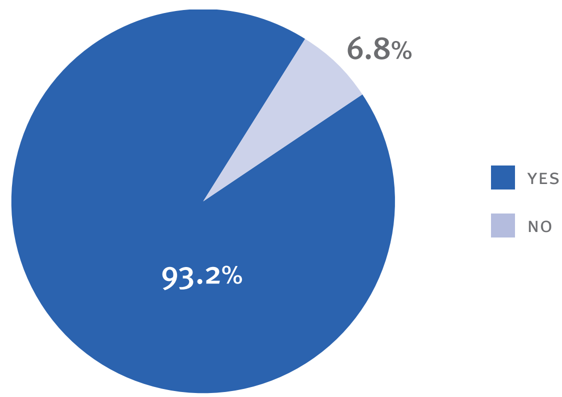
Antitakeover Defenses
Q2 2014 vs. Historical (2009 – 2014)

Q2 2014

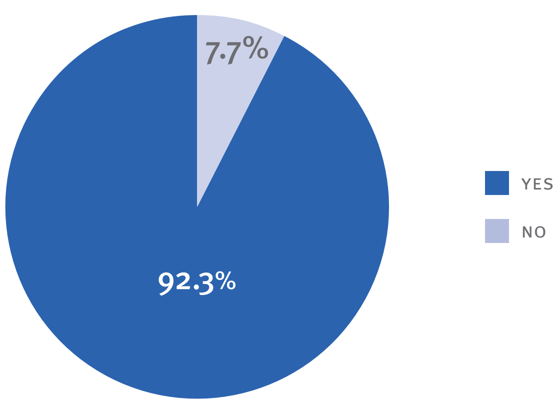
Historical (2009 – 2014)

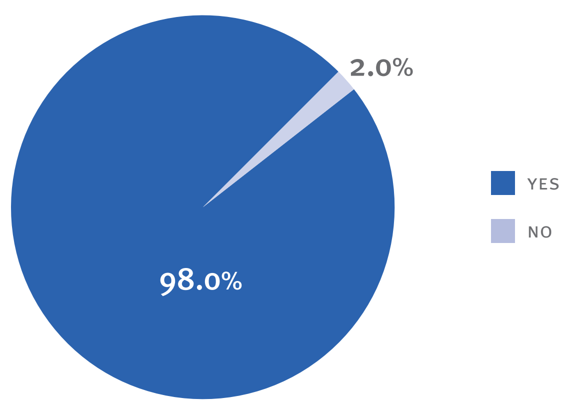
ELIMINATE S-H ACTION BY WRITTEN CONSENT



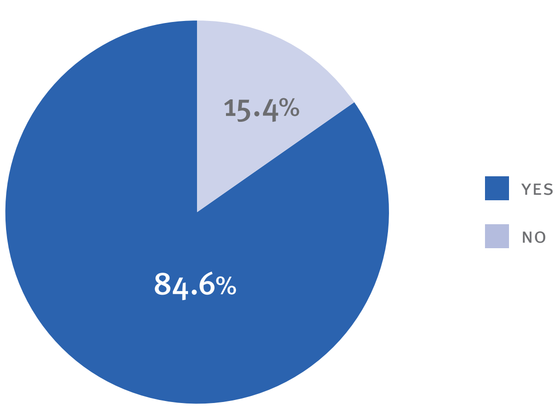


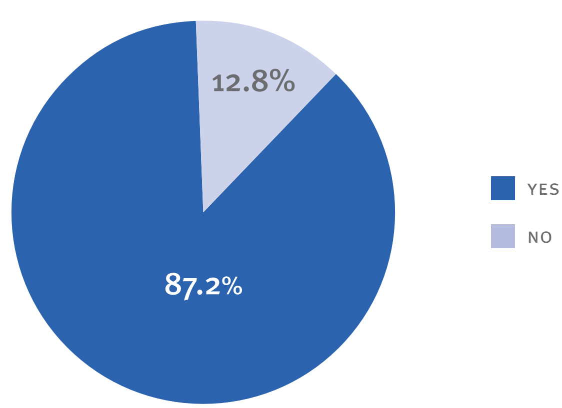
ELIMINATE CUMULATIVE VOTING





SUPERMAJORITY TO AMEND CHARTER



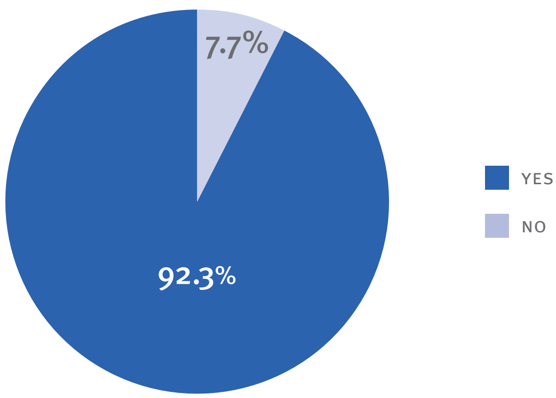


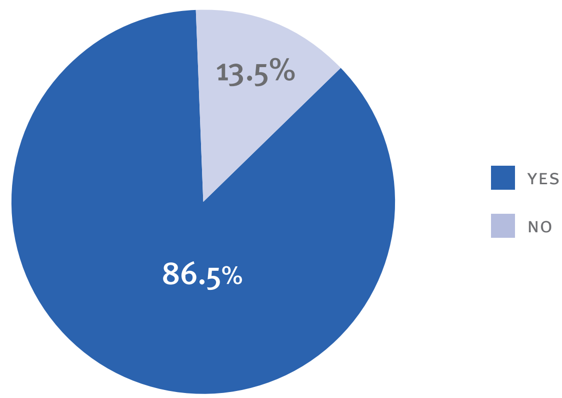
Antitakeover Defenses

Q2 2014 vs. Historical (2009 – 2014)

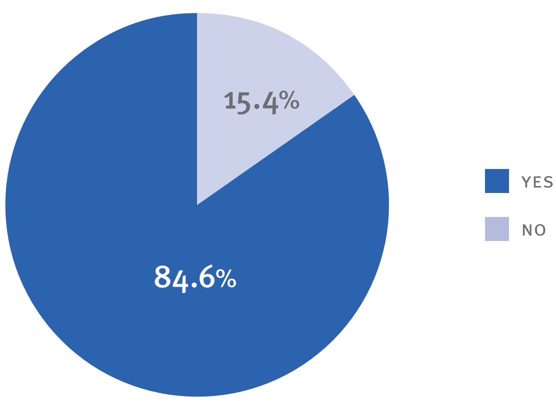
Q2 2014 | Historical (2009 – 2014)

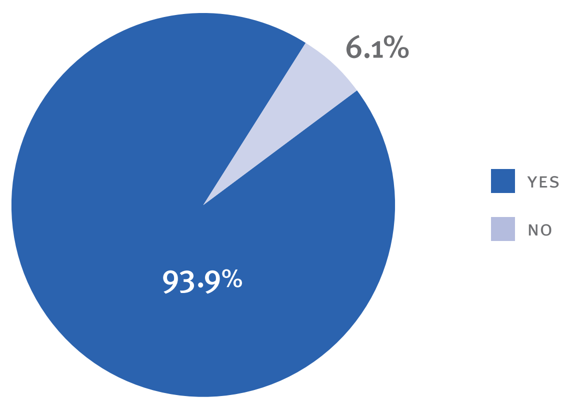
LIMITATION ON REMOVING DIRECTOR WITHOUT CAUSE



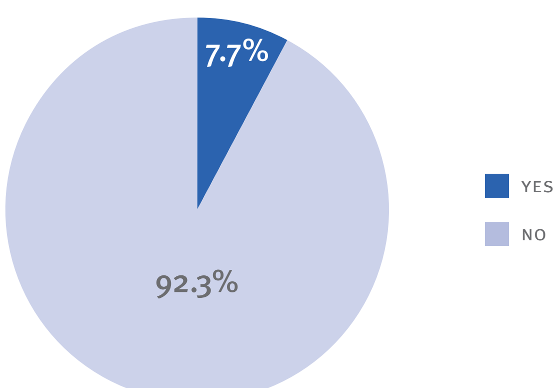


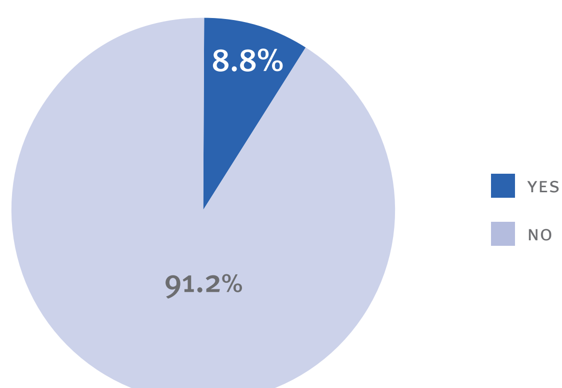
BOARD VACANCIES FILLED BY BOARD VOTE





DUAL CLASS STOCK STRUCTURE



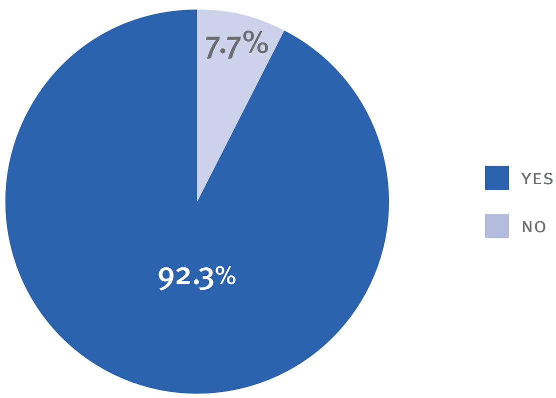


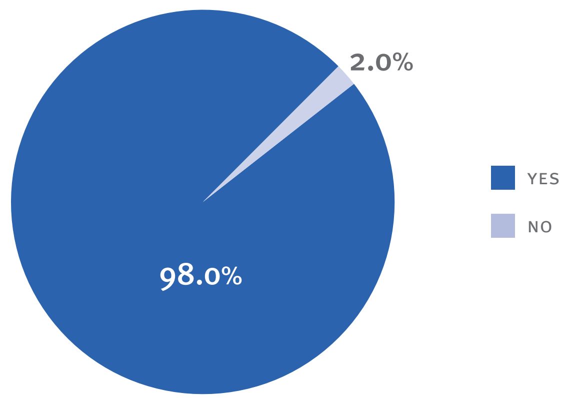
Antitakeover Defenses
Q2 2014 vs. Historical (2009 – 2014)

Q2 2014

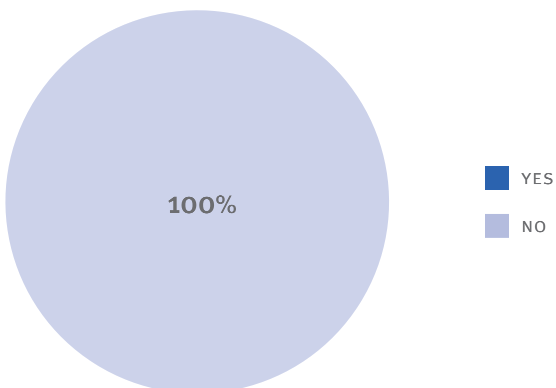
Historical (2009 – 2014)

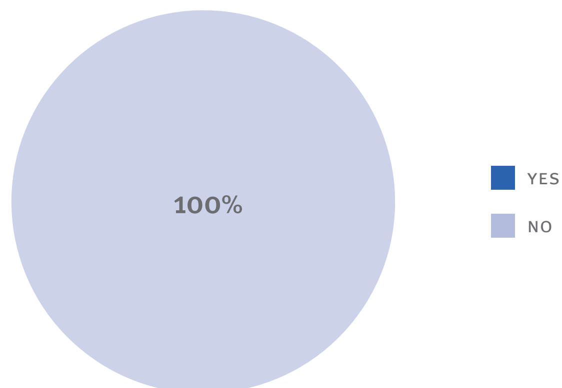
LIMITATION ON WHO CAN CALL S-H MEETING





OTHER DEFENSES (POISON PILLS, ETC.)





Methodology

METHODOLOGY

Data included in the Orrick Technology IPO Insights report includes U.S. technology companies with principal executive offices in the U.S. and an effective date on or after April 15, 2009, and is gathered leveraging public resources such as the U.S. Securities and Exchange Commission web site, press articles found via Google search and market information via Google Finance. All transaction details are derived from SEC documentation, while details regarding use of the overallotment option are gathered through SEC documentation and press reports.

The companies considered in our report's data include the following:

2U
A10 Networks
Active Network (ACQUIRED)
Aeroflex Holding Corp.
Aerohive Networks
Ambarella
Amber Road
Ancestry.com (ACQUIRED)
Angie's List
Applied Optoelectronics
Archipelago Learning (ACQUIRED)
Arista Networks
Audience
Bankrate
Barracuda Networks
BazaarVoice
BenefitFocus
Boingo Wireless
Borderfree
BrightCove
BroadSoft
Cafepress
Calix
Carbonite
Castlight
CDW
ChannelAdvisor
Chegg
CommScope Holding Company, Inc.
Control4
Convio (ACQUIRED)
Cornerstone OnDemand
Coupons.com
Covisint
Cvent
Cyan
Demand Media
Demandware
DynaVox (DELISTED)
E2OPEN
Ellie Mae
Eloqua (ACQUIRED)
Endurance International Grp Holdings
Envestnet
Envivio
EPAM Systems
Epocrates (ACQUIRED)
EVERTEC
Everyday Health
Exa Corporation
Exacttarget (ACQUIRED)
ExOne
Facebook
Financial Engines
FireEye
Five9
Fortinet
FriendFinder Networks (ACQUIRED)
Fusion-io
Gigamon
Global Geophysical Services (DELISTED)
GoGo
GoPro
Groupon
Grubhub
Guidewire Software
Health Insurance Innovations
HomeAway
Imperva
Infoblox
Inphi Corporation
Intermolecular
IntraLinks Holdings
InvenSense
Jive Software
Kayak Software (ACQUIRED)
KEYW Holding Corporation
LifeLock
LinkedIn
Liquid Holdings Group
LogMeIn
M/A-Com Technology Solutions
Marin Software
Marketo
Mavenir Systems
Maxlinear
MediaMind Technologies (ACQUIRED)
Medidata Solutions
MedQuist Holdings (DELISTED)
Meru Networks
Millennial Media
Mobile Iron
Model N
Motricity

Methodology

Neophotonics
Nimble Storage
OpenTable
Opower
Palo Alto Networks
Pandora Media
Paycom
Paylocity Holding Corp.
Peregrine Semiconductor
Proofpoint
Q2 Holdings
Qlik Technologies
Qualys
QuinStreet
Rally Software
ReachLocal
RealD
RealPage
Responsys (ACQUIRED)
RetailMeNot
RingCentral
Rocket Fuel
Rosetta Stone
RPX Corp.
Rubicon Project
Ruckus Wireless
Sabre
SciQuest
SemiLEDs
ServiceNow
ServiceSource International
Shutterstock
Silver Spring Networks
SolarWinds
Splunk
SPS Commerce
SS&C Technologies
STR Holdings
SunEdison Semiconductor
Synacor
Tableau Software
Tangoe
TeleNav
Textura
Tremor Video
TrueCar
Trulia
Twitter
Ubiquiti Networks
Vantiv
Varonis Systems
Veeva Systems
Verisk Analytics
Violin Memory
Vitacost
Vocera Communications
West
Workday
Xoom
Yelp
YuMe
Zendesk
Zillow
Zulily
Zynga