

# Corporate governance practices in U.S. initial public offerings

December 2024 | Client update

Our 2024 IPO corporate governance survey reviews governance structures at the time of the IPO for U.S.-listed IPOs of “controlled” and non-“controlled” companies between October 1, 2022 and October 31, 2024. Consistent with our prior surveys, we found that companies continue to adopt corporate governance structures including anti-takeover defenses suited to their circumstances in advance of their IPOs, even as existing public companies face ongoing pressures to adopt more shareholder-friendly practices.

IPO governance survey

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## Introduction

Welcome to Davis Polk's 2024 IPO Corporate Governance Survey.

As a leading IPO adviser to both companies and underwriters alike, for well over a decade we have periodically surveyed the corporate governance practices in U.S.-listed IPOs, examining key corporate governance and related features such as classified boards, director independence, dual-class stock structures and other matters such as executive compensation practices.

Although for much of the last two years the IPO market has been tepid compared with its peak in 2021, we have begun to see signs of life in the latter half of 2024, and we are hopeful that we will continue to see a pickup in deal volume in 2025.

Our 2024 IPO Corporate Governance Survey includes the results of 26 of the largest IPOs for controlled companies (as defined under NYSE or Nasdaq listing standards) and 39 of the largest IPOs for non-controlled companies from October 1, 2022 through October 31, 2024. While our most recent surveys have examined approximately 50 controlled companies and 50 non-controlled companies, we present a smaller sample size of companies for this survey due to the paucity of IPOs over the past two years. This means that some of the results we present may not be as representative as in our prior surveys, although our findings are broadly consistent with our most recent survey in 2022 – and that survey can still serve as a helpful recent resource.

In recognition of their different governance profiles, we continue to present our data separately for non-controlled and controlled companies. As in prior years, we have excluded direct listings, deSPAC transactions and certain IPOs from our survey results, such as IPOs of FPIs, LPs, LLCs and REITs.

While many large public companies face ongoing pressures including from shareholders and proxy advisory firms to adopt more shareholder-friendly corporate governance practices, our survey reveals that these pressures have had little effect at the IPO stage, where companies have continued to adopt corporate governance structures suited to their circumstances.

We trust our survey continues to serve as a useful resource for private companies considering going public and for those seeking to get an understanding of the governance landscape of IPO companies.

# DavisPolk The companies\*

## Controlled companies

We examined 26 controlled companies, spanning 20 different industries:

Ardent Health Partners, Inc.	Kodiak Gas Services, Inc.
Atlas Energy Solutions Inc.	Loar Holdings Inc.
Atmus Filtration Technologies Inc.	Nextracker Inc.
BKV Corporation	OneStream, Inc.
Bowhead Specialty Holdings Inc.	PACS Group, Inc.
BrightSpring Health Services, Inc.	Savers Value Village, Inc.
Centuri Holdings, Inc.	Silvaco Group, Inc.
Concentra Group Holdings Parent, Inc.	Smith Douglas Homes Corp.**
Guardian Pharmacy Services, Inc.	StandardAero, Inc.
Ibotta, Inc.	Tempus AI, Inc.**
Ingram Micro Holding Corporation	TWFG, Inc.**
Kenvue Inc.**	UL Solutions Inc.
KinderCare Learning Companies, Inc.	WEBTOON Entertainment Inc.**

## Non-controlled companies

We examined 39 non-controlled companies, spanning 9 different industries:

ACELYRIN, INC.**	Lexeo Therapeutics, Inc.
Acrivon Therapeutics, Inc.	Maplebear Inc. (d/b/a Instacart)
Alto Neuroscience, Inc.	MBX Biosciences, Inc.**
Alumis Inc.	Metagenomi, Inc.**
Apogee Therapeutics, Inc.	Mineralys Therapeutics, Inc.
ArriVent BioPharma, Inc.	Neumora Therapeutics, Inc.
Artiva Biotherapeutics, Inc.	Prime Medicine, Inc.**
Astera Labs, Inc.	Proficient Auto Logistics, Inc.
Bicara Therapeutics Inc.	Rapport Therapeutics, Inc.
BioAge Labs, Inc.	RayzeBio, Inc.**
Boundless Bio, Inc.	Reddit, Inc.**
CAMP4 Therapeutics Corporation	Rubrik, Inc.
CARGO Therapeutics, Inc.	Sagimet Biosciences Inc.
CAVA Group, Inc.	Septerna, Inc.
CeriBell, Inc.	Skyward Specialty Insurance Group, Inc.
CG Oncology, Inc.	Turnstone Biologics Corp.
Contineum Therapeutics, Inc.	Upstream Bio, Inc.
Fractyl Health, Inc.	Waystar Holding Corp.
Klaviyo, Inc.	Zenas BioPharma, Inc.
Kyverna Therapeutics, Inc.	

\* Excludes direct listings, deSPAC transactions and IPOs by FPIs, LPs, LLCs and REITs.

\*\* Davis Polk & Wardwell LLP participated in the IPO.

# DavisPolk Significant findings

We continue to see IPO companies adopt governance terms suited to their own individual and unique circumstances, regardless of pressures affecting seasoned public companies to adopt more shareholder-friendly practices. For example, both controlled and non-controlled companies alike continue to adopt anti-takeover defenses in advance of their IPOs (including a high percentage of companies that adopt a classified board at the time of the IPO) and companies continue to adopt stricter provisions for shareholder action.

## Controlled companies

Of the controlled companies we examined:

**92%**

adopted a plurality vote standard for uncontested director elections

**100%**

effectively prohibited shareholders from acting by written consent

**100%**

effectively prohibited shareholders from calling a special meeting

**92%**

effectively required a supermajority shareholder vote to amend the bylaws

**89%**

effectively required a supermajority shareholder vote to amend the charter

**69%**

adopted a classified board at the time of IPO

Among the controlled companies that effectively prohibited shareholders from acting by written consent or from calling a special meeting, **92%** and **62%**, respectively, conditioned such prohibition on a trigger tied to a sunset date or a significant shareholder or group ceasing to own or control the vote of a specified percentage of outstanding shares, as we explain in more detail below. This means that on day 1, these actions are permitted subject to certain conditions being met as can be expected for controlled companies.

## Non-controlled companies

Of the non-controlled companies we examined:

**92%**

adopted a plurality vote standard for uncontested director elections

**100%**

effectively prohibited shareholders from acting by written consent

**100%**

effectively prohibited shareholders from calling a special meeting

**100%**

effectively required a supermajority shareholder vote to amend the bylaws

**77%**

effectively required a supermajority shareholder vote to amend the charter

**95%**

adopted a classified board at the time of IPO

The number of controlled and non-controlled companies that adopted stricter provisions for shareholder action continued to increase since our prior survey in 2022. While already very few companies in our prior survey permitted shareholders to call a special meeting or to take action by written consent, all companies in this year's survey effectively prohibited shareholders from calling a special meeting or from acting by written consent.

In addition, all of the controlled companies and non-controlled companies we examined adopted exclusive-forum provisions, consistent with what we saw in our 2022 survey. These included both exclusive-forum provisions addressing claims under the Securities Act of 1933 (the “’33 Act”) and exclusive-forum provisions addressing other claims against the company.

Additionally, of the controlled companies we examined, **42%** were private equity sponsor backed IPOs. In making this determination, we classified companies as being “private equity sponsor backed” based on whether a company had a controlling shareholder (or a shareholder with a significant stake) that was a private equity firm.

## Board and committee independence

Due to applicable exemptions for controlled companies from the independence requirements of the NYSE and Nasdaq, one of the key differences in corporate governance between controlled and non-controlled companies is board and board committee independence.

The average level of board independence at controlled companies was **64%** versus **78%** at non-controlled companies. Moreover, the percentage of non-controlled companies with an independent board chair was higher than that of controlled companies (**59%** of non-controlled versus **25%** of controlled companies).

In addition, the independence of board committees (other than the audit committee) differed significantly between controlled and non-controlled companies. These differences include:

### 68%

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of controlled companies had fully independent audit committees at the IPO versus **72%** of non-controlled companies

### 63%

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of controlled companies had fully independent compensation committees at the IPO versus **95%** of non-controlled companies

### 59%

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of controlled companies had fully independent governance/nominating committees at the IPO versus **95%** of non-controlled companies

### 25%

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of controlled companies had an independent chairman versus **59%** of non-controlled companies

# DavisPolk Selected Characteristics

## Primary listing exchange

### Controlled companies

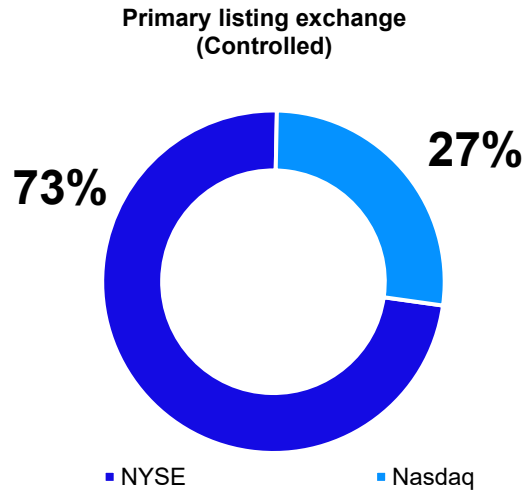
Of the 26 controlled companies we examined:

73% (19 of 26)

listed on the NYSE

27% (7 of 26)

listed on Nasdaq



### Non-controlled companies

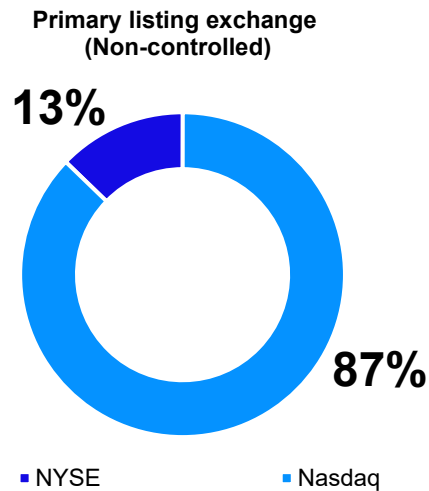
Of the 39 non-controlled companies we examined:

13% (5 of 39)

listed on the NYSE

87% (34 of 39)

listed on Nasdaq



# DavisPolk Classes of outstanding common stock

## Controlled companies

Of the **26** controlled companies we examined:

**65% (17 of 26)**

had one class of common stock outstanding after IPO

**27% (7 of 26)**

had two classes of common stock outstanding after IPO, with **57% (4 of 7)** of these having unequal voting rights

**8% (2 of 26)**

had three or more classes of common stock outstanding after IPO<sup>1</sup>

Classes of common stock outstanding (Controlled)



## Non-controlled companies

Of the **39** non-controlled companies we examined:

**82% (32 of 39)**

had one class of common stock outstanding after IPO

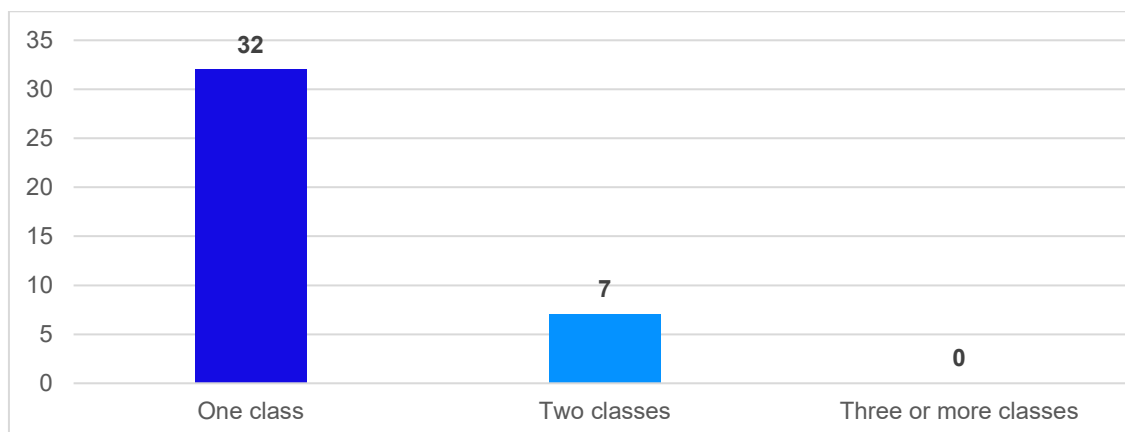
**18% (7 of 39)**

had two classes of common stock outstanding after IPO, with **all of these** having unequal voting rights

**0%**

had three or more classes of common stock outstanding after IPO

Classes of common stock outstanding (Non-controlled)



<sup>1</sup> The **two (2)** controlled companies with three or more classes of common stock outstanding after IPO both had an Up-C transaction structure.



# DavisPolk Outstanding stock as a percentage of authorized stock

For each of the companies in this survey, we compared the authorized share count in the post-IPO charter with respect to the class of common stock being offered in the IPO to the number of shares of such class of common stock that will be outstanding following the completion of the offering.<sup>2</sup>

## Controlled companies

Of the **26** controlled companies we examined:

- The **average** percentage of the number of outstanding class of common stock offered in the IPO to the authorized share count in the charter was **9.9%**.
- The **median** percentage of the number of outstanding class of common stock offered in the IPO to the authorized share count in the charter was **9.8%**.

## Non-controlled companies

Of the **39** non-controlled companies we examined:

- The **average** percentage of the number of outstanding class of common stock offered in the IPO to the authorized share count in the charter was **8.8%**.
- The **median** percentage of the number of outstanding class of common stock offered in the IPO to the authorized share count in the charter was **7.8%**.

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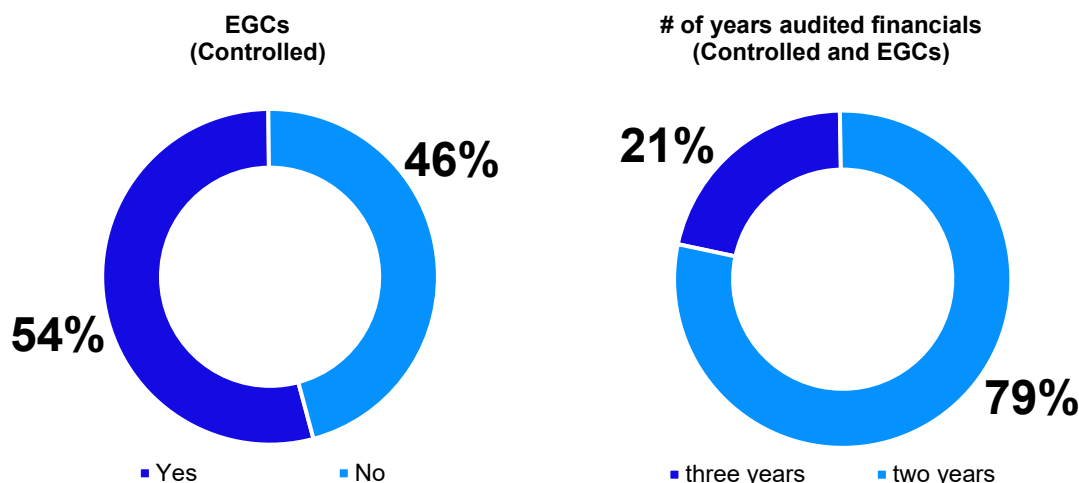
<sup>2</sup> The number of outstanding shares for each offered class of common stock was taken directly as presented by each company in "The Offering" section of their respective IPO prospectuses without giving effect to the exercise of any underwriters' over-allotment option, but there is some variation among companies in how such number is derived, including with respect to adjustments based on outstanding stock or equity awards, concurrent transactions, or other forms of corporate reorganizations in connection with the IPO.

# DavisPolk Emerging growth companies

## Controlled companies

Of the **26** controlled companies we examined, **54% (14 of 26)** identified themselves as emerging growth companies (“**EGCs**”) under the JOBS Act. Of these **14** controlled company EGCs:

- **79% (11 of 14)** included two years of audited financial statements in the registration statement
- **21% (3 of 14)** included three years of audited financial statements in the registration statement.
- **None** included a compensation discussion and analysis in their registration statement.
- **86% (12 of 14)** elected to delay adoption of newly applicable public-company accounting policies.



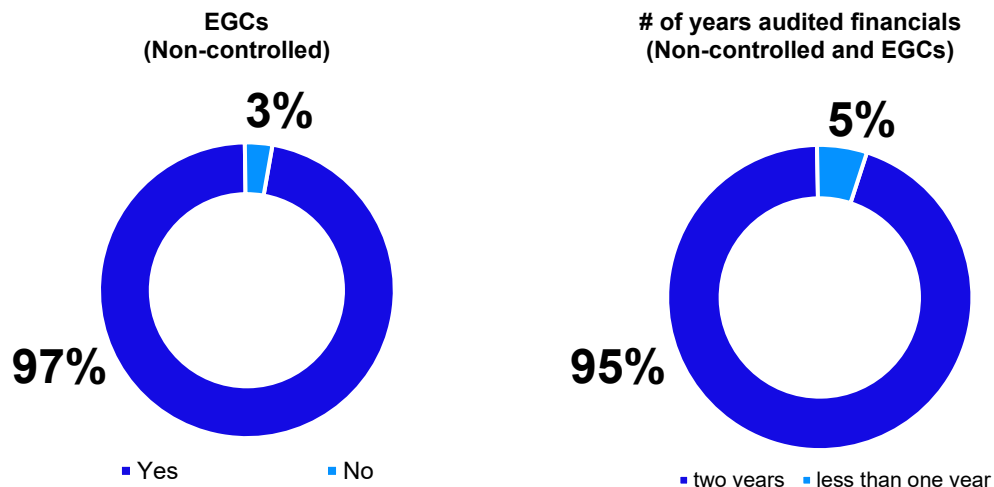
## Non-controlled companies

Of the **39** non-controlled companies we examined, **97% (38 of 39)** companies identified themselves as emerging growth companies under the JOBS Act of 2012. Of these **38** non-controlled companies that were also EGCs:

- **5% (2 of 38)** included less than one year of audited financial statements in the registration statement (due to recent inception<sup>3</sup>); **95% (36 of 38)** included two years<sup>4</sup> of audited financial statements in the registration statement; and **none** included three years of audited financial statements in the registration statement.
- **None** included a compensation discussion and analysis in their registration statement.
- **97% (37 of 38)** elected to delay adoption of newly applicable public-company accounting policies.

<sup>3</sup> Includes **one (1)** company that had a roll-up transaction and so the issuing entity was new.

<sup>4</sup> Includes **three (3)** companies that rounded to two years of financial statements.



## Emerging growth companies under the JOBS Act

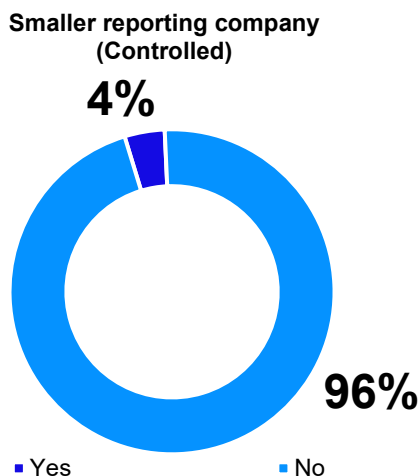
The JOBS Act of 2012 eased the IPO process and subsequent reporting and compliance obligations for emerging growth companies and loosened restrictions on research around the IPO of an emerging growth company. Under the JOBS Act, emerging growth companies can take advantage of various reporting and compliance exemptions, including not being required to comply with the auditor attestation requirements of the Sarbanes-Oxley Act, reduced executive compensation disclosure requirements and the ability to delay the adoption of new public-company accounting principles.

An “emerging growth company” is an IPO company that had annual gross revenues of less than \$1.235 billion during its most recent fiscal year. An emerging growth company retains this status until the earliest of: (1) the last day of the first fiscal year during which its annual revenues reach \$1.235 billion; (2) the last day of the fiscal year in which the fifth anniversary of its IPO occurs; (3) the date on which the company has, during the previous three-year period, issued more than \$1 billion in nonconvertible debt; and (4) the date on which the company becomes a “large accelerated filer” (essentially, a company with \$700 million of public equity float that has been reporting for at least one year).

# DavisPolk Smaller reporting companies

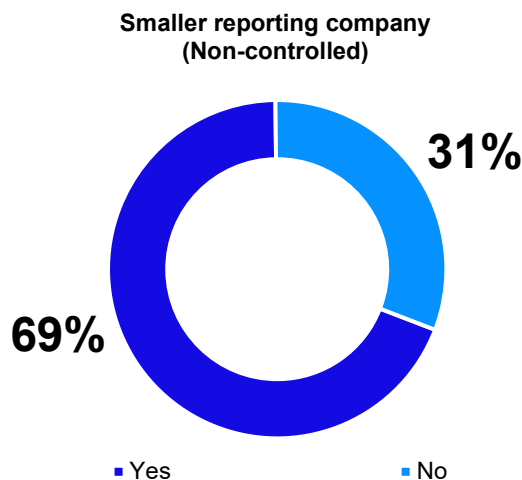
## Controlled companies

Of the **26** controlled companies we examined, **4% (1 of 26)** identified as a smaller reporting company.



## Non-controlled companies

Of the **39** non-controlled companies we examined, **69% (27 of 39)** identified as a smaller reporting company.



## Smaller reporting companies

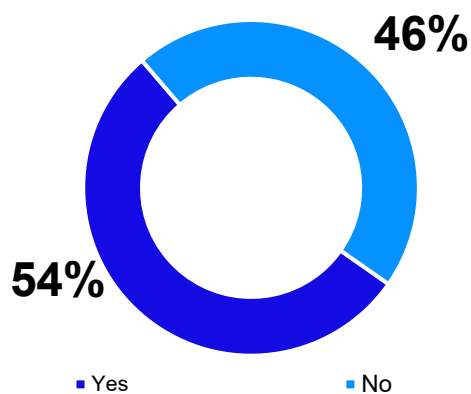
The SEC provides exemptions from certain IPO prospectus disclosure requirements for companies meeting the definition of a “smaller reporting company” as defined in Item 10(f)(1) of Regulation S-K. These benefits include an exemption from the requirement to include a standalone “Compensation Discussion & Analysis” section in the IPO prospectus and a requirement to provide two fiscal years of audited financial statements, rather than three. A “smaller reporting company” is an IPO company that either: (1) has a public float of less than \$250 million, or (2) has less than \$100 million in annual revenues and has no public float or a public float of less than \$700 million.

# DavisPolk **Controlled company exemptions**

## Controlled companies

Of the **26** controlled companies we examined, **54% (14 of 26)** elected to take advantage of one or more controlled company exemptions under applicable NYSE and Nasdaq requirements based on their controlled company status, such as the exemption from the requirements to have a majority independent board and a fully independent compensation and nominating and corporate governance committee. Any controlled company relying on these exemptions must disclose the exemption relied upon and explain the basis for its conclusion that such exemption is applicable. It should be noted, however, that many of the companies that explicitly stated that they are not taking advantage of any controlled company exemptions caveat that they may decide to take advantage of such exemptions at any point following the completion of the IPO.

**Controlled companies that relied on exemptions**

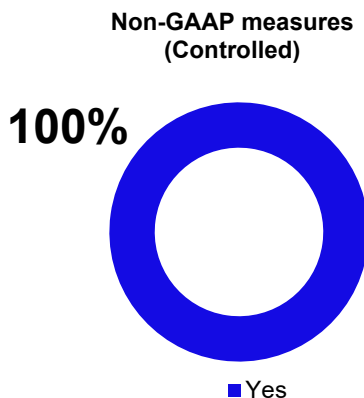


# DavisPolk Disclosure of non-GAAP financial measures

## Controlled companies

Of the **26** controlled companies we examined, **all companies** disclosed non-GAAP financial measures in their registration statement.

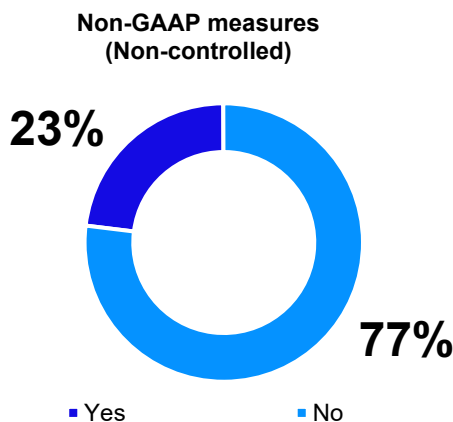
- These non-GAAP financial measures included Adjusted EBITDA, Adjusted EBITDA margin, free cash flow, non-GAAP operating (loss) income, non-GAAP net (loss) income, adjusted operating income, among others.



## Non-controlled companies

Of the **39** non-controlled companies we examined, **23% (9 of 39)** disclosed non-GAAP financial measures in their registration statement.

- These non-GAAP financial measures included EBITDA, Adjusted EBITDA, Adjusted EBITDA Margin, free cash flow, among others.



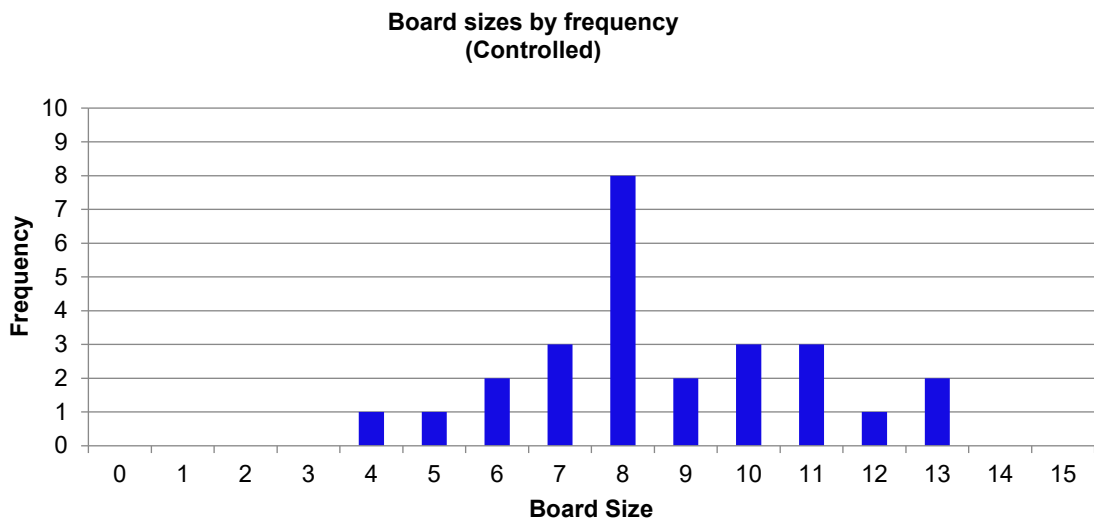
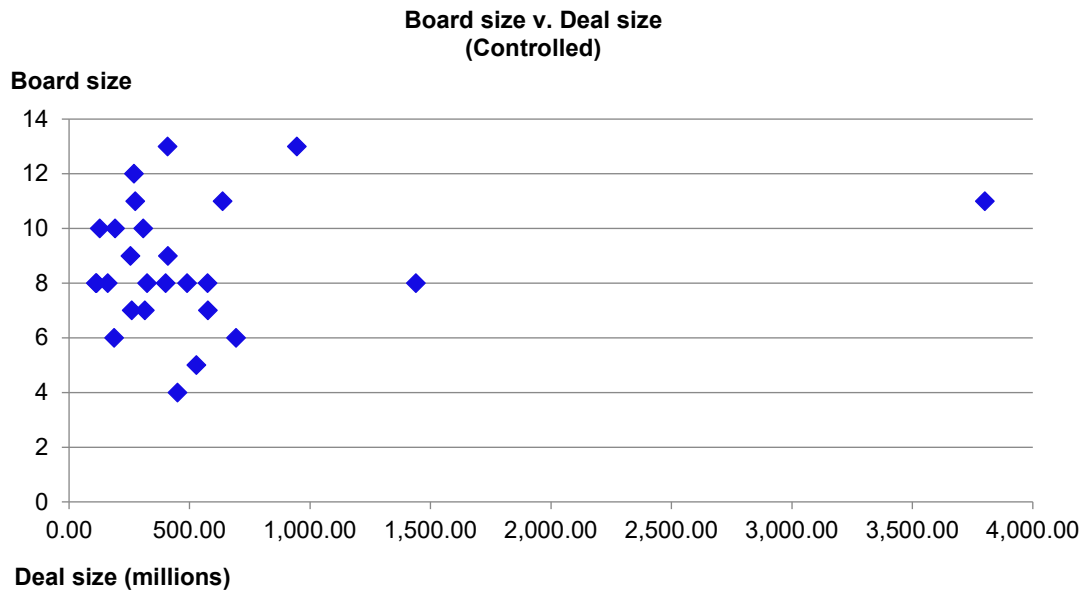
While we would typically expect a much higher percentage of non-controlled companies to disclose non-GAAP metrics, these results are likely due to the fact that **77% (30 of 39)** of the non-controlled companies in this survey are biotechnology, pharmaceutical or medical devices companies, most of which are early stage and disclose limited to no revenue at the time of IPO and therefore, non-GAAP metrics are not essential to marketing the transaction.

## Board size

### Controlled companies

Of the **26** controlled companies we examined:

- The average board size was **9** members.
- The median board size was **8** members.
- Board size ranged from **4** to **13** members.
- There was no correlation between deal size and board size.

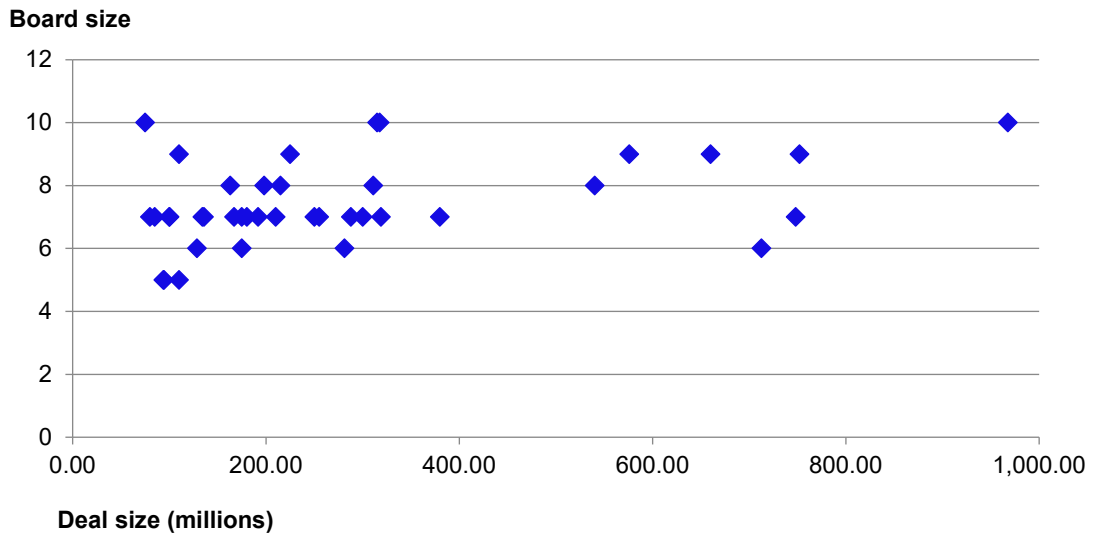


## Non-controlled companies

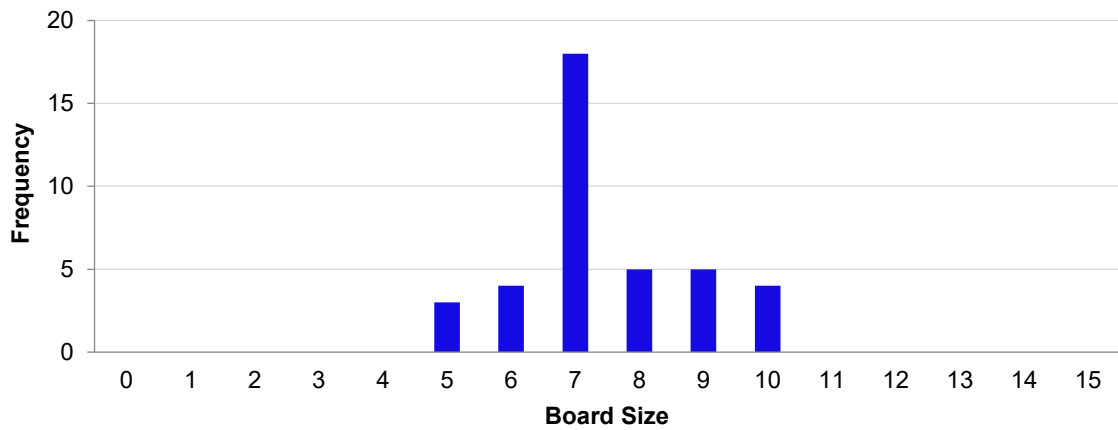
Of the **39** non-controlled companies we examined:

- The average board size was **7** members.
- The median board size was **7** members.
- Board size ranged from **5** to **10** members.
- There was no correlation between deal size and board size.

Board size v. Deal size  
(Non-controlled)



Board sizes by frequency  
(Non-controlled)





# DavisPolk Level of board independence

## Controlled companies

Of the **25**<sup>5</sup> controlled companies we examined:

- The average level of director independence was **64%** of the board.
- The median level of director independence was **71%** of the board.
- The level of director independence ranged from a low of **29%** to a high of **92%**.

## Non-controlled companies

Of the **39** non-controlled companies we examined:

- The average level of director independence was **78%** of the board.
- The median level of director independence was **80%** of the board.
- The level of director independence ranged from a low of **50%** to a high of **90%**.

## Requirement for director independence at time of IPO

An IPO company must have at least one independent director at the IPO in order to satisfy NYSE and Nasdaq audit committee listing standards, but in practice the vast majority of IPO companies have at least two independent directors who satisfy these standards given the phase-in period requires a second such director within 90 days of the IPO (and a third within one year of the IPO). While controlled companies are exempt from the requirement to have a majority of independent directors, NYSE and Nasdaq standards require that the board of a listed company consist of a majority of independent directors within one year of the listing date.

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<sup>5</sup> Excludes **one (1)** controlled company that did not disclose the independence of their directors.

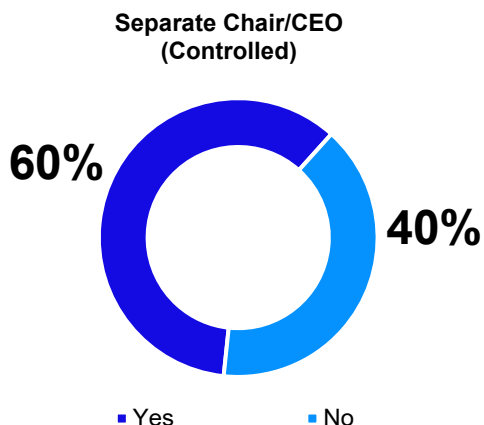
# DavisPolk Separation of chair and CEO

## Controlled companies

Of the **26** controlled companies we examined:

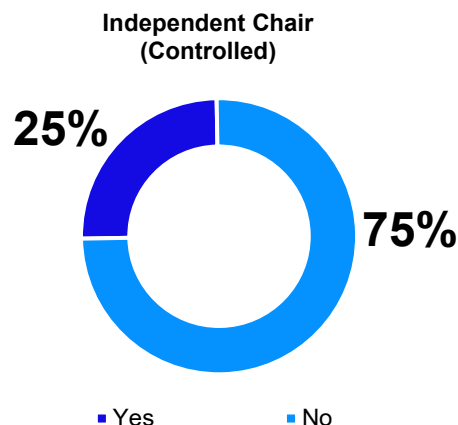
**60% (15 of 25)<sup>6</sup>**

had a separate chair and CEO



**25% (6 of 24)<sup>7</sup>**

had an independent chair

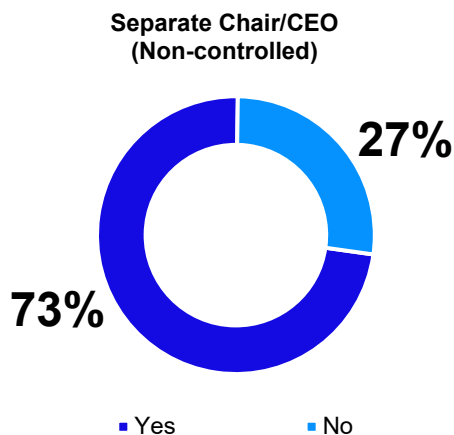


## Non-controlled companies

Of the **37<sup>8</sup>** non-controlled companies we examined:

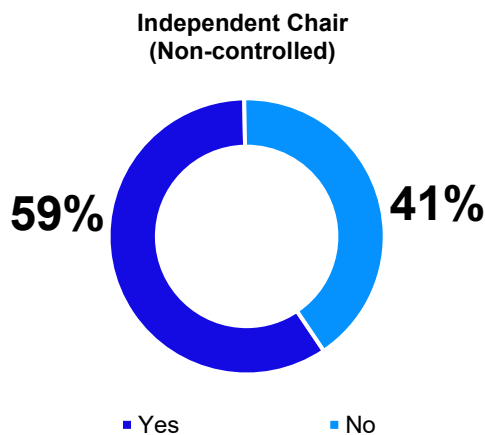
**73% (27 of 37)**

had a separate chair and CEO



**59% (22 of 37)**

had an independent chair



<sup>6</sup> Excludes **one (1)** controlled company that did not designate a chairperson.

<sup>7</sup> Excludes **one (1)** controlled company that did not disclose the independence of their chairperson.

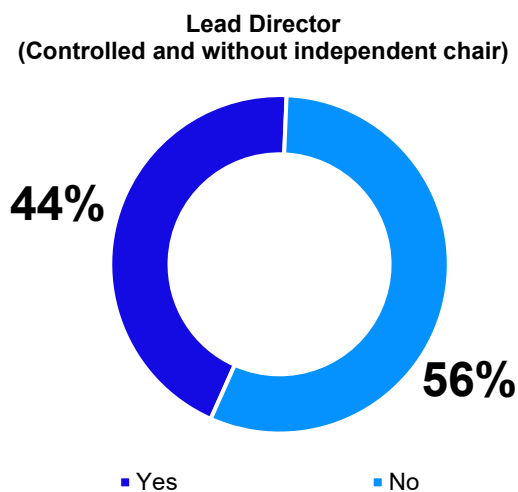
<sup>8</sup> Excludes **two (2)** non-controlled companies that did not designate a chairperson.

# DavisPolk Lead director

## Controlled companies

Of the **18** controlled companies<sup>9</sup> (**75%**) we examined that either combined the role of chair and CEO or did not have an independent chair:

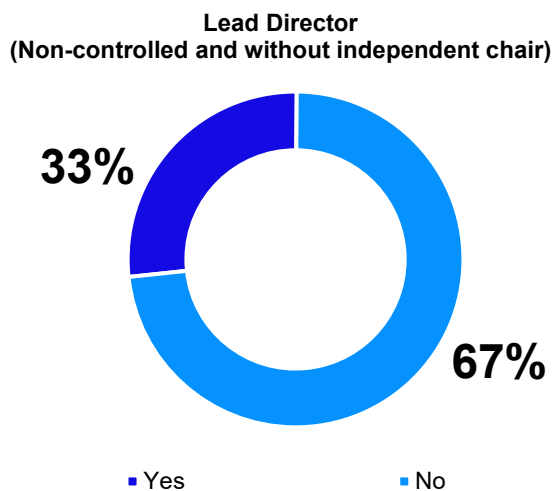
- **44% (8 of 18)** had a lead independent director.



## Non-controlled companies

Of the **15** non-controlled companies<sup>10</sup> (**41%**) we examined that either combined the role of chair and CEO or did not have an independent chair:

- **33% (5 of 15)** had a lead independent director.



<sup>9</sup> Excludes **one (1)** controlled company that did not designate a chair and **one (1)** controlled company that did not specify the independence of their chair.

<sup>10</sup> Excludes **two (2)** non-controlled companies that did not designate a chair.

**Alternative board leadership structures include combining the chair and CEO roles, or separating the roles and appointing an independent chair or lead director to serve with the CEO on the board.**

In the interest of balancing the demands of operating a corporation with those of leading a corporate board, companies utilize alternatives to the traditional combined CEO/chair leadership model. The benefits of appointing an independent chair or a lead independent director may include increased efficiency and improved succession planning. The main difference between the two is that an independent chair often takes primary responsibility for board agendas and meetings, and may represent the organization as well as interact with outside stakeholders. A lead director, often appointed when the CEO and chair roles are combined, may predominately chair executive sessions or act as a liaison between the other directors and the CEO. However, lead independent directors may have larger responsibilities in light of the interest of independent board leadership, and the range of duties can vary widely among companies.

# DavisPolk Audit committee financial experts

## Controlled companies

Of the 24<sup>11</sup> controlled companies we examined:

**58% (14 of 24)**

had only one financial expert

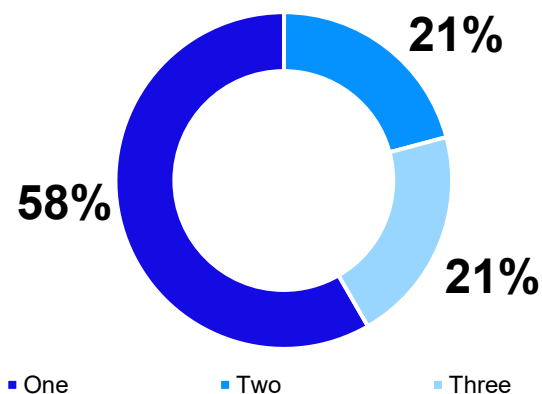
**21% (5 of 24)**

had two financial experts

**21% (5 of 24)**

had three or more financial experts

# of audit committee "financial experts"  
(Controlled)



## Non-controlled companies

Of the 39 non-controlled companies we examined:

**90% (35 of 39)**

had only one financial expert

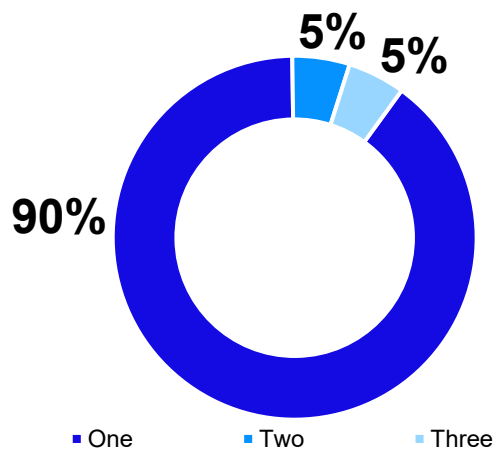
**5% (2 of 39)**

had two financial experts

**5% (2 of 39)**

had three or more financial experts

# of audit committee "financial experts"  
(Non-controlled)



<sup>11</sup> Excludes **two (2)** controlled companies that did not disclose their audit committee financial experts.

## **Audit committee financial expert**

The SEC requires a reporting company to disclose in its annual report (but not in its IPO prospectus) that the board has determined it has at least one audit committee financial expert, or explain why it does not.

An audit committee financial expert is a person who has the following attributes: (1) an understanding of generally accepted accounting principles and financial statements; (2) the ability to assess the general application of such principles in connection with accounting for estimates, accruals and reserves; (3) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the company's financial statements, or experience actively supervising one or more persons engaged in such activities; (4) an understanding of internal control over financial reporting; and (5) an understanding of audit committee functions.

# DavisPolk Audit committee independence

## Controlled companies

Of the **25<sup>12</sup>** controlled companies we examined:

**68% (17 of 25)**

had a fully independent  
audit committee

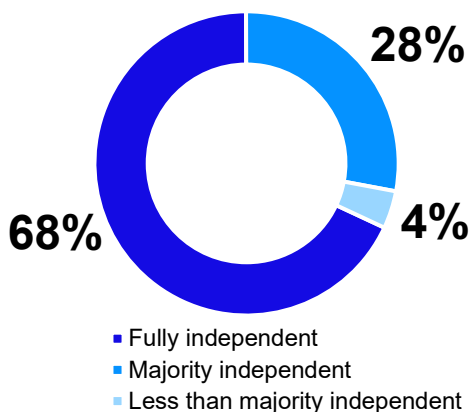
**28% (7 of 25)**

had at least a majority but  
not fully independent audit  
committee

**4% (1 of 25)**

had a less than majority  
independent audit  
committee

Audit committee independence  
(Controlled)



## Non-controlled companies

Of the **39** non-controlled companies we examined:

**72% (28 of 39)**

had a fully independent  
audit committee

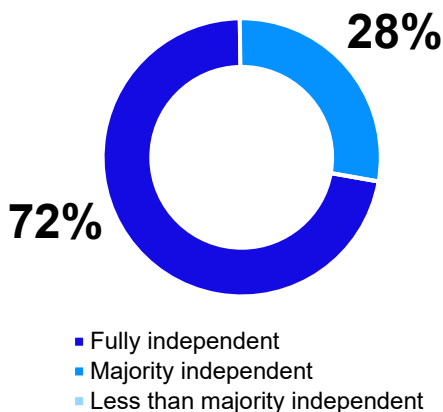
**28% (11 of 39)**

had at least a majority but  
not fully independent audit  
committee

**0%**

had a less than majority  
independent audit  
committee

Audit committee independence  
(Non-controlled)



<sup>12</sup> Excludes **one (1)** controlled company that did not disclose their audit committee independence.

## **Audit committee independence**

Under NYSE and Nasdaq rules, an IPO company (including a controlled company) must have at least one independent audit committee member at the time of listing, at least a majority of independent members within 90 days of the effective date of its registration statement and a fully independent committee within one year of the effective date of its registration statement.

In addition to the NYSE/Nasdaq independence standards applicable to all independent directors, audit committee members are required to meet additional independence tests set forth by the SEC, which provide that a director who serves on the company's audit committee may not (other than in his or her capacity as a member of the audit committee, the board or any other board committee): (1) accept any consulting, advisory or other compensatory fee from the company (excluding fixed, noncontingent payments under a retirement plan for prior service with the listed company); or (2) be an "affiliated person" of the company. In practice, the affiliated person prohibition means that directors affiliated with large shareholders tend not to sit on the audit committee even though they may otherwise be deemed independent under stock exchange listing standards.



# DavisPolk Governance/nominating committee independence

## Controlled companies

Of 22<sup>13</sup> companies examined:

**59% (13 of 22)**

had a fully independent governance/nominating committee

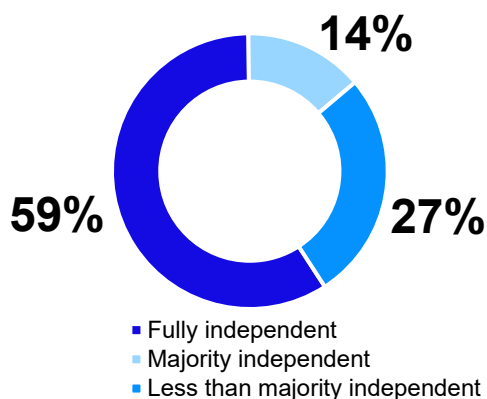
**14% (3 of 22)**

had at least a majority but not fully independent governance/nominating committee

**27% (6 of 22)**

had a less than majority independent governance/nominating committee

Governance/nominating committee independence (Controlled)



## Non-controlled companies

Of the 39 non-controlled companies we examined:

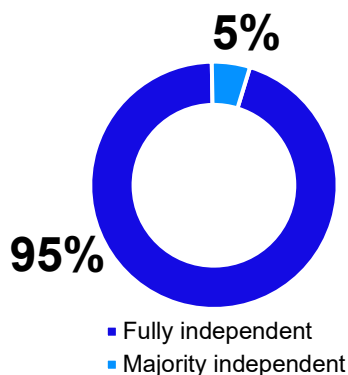
**95% (37 of 39)**

had a fully independent governance/nominating committee

**5% (2 of 39)**

had at least a majority but not fully independent governance/nominating committee

Governance/nominating committee independence (non-controlled)



<sup>13</sup> Excludes **two (2)** controlled companies that did not disclose the independence of their members and **two (2)** controlled companies that did not have a governance/nominating committee.

# DavisPolk Compensation committee independence

## Controlled companies

Of **24**<sup>14</sup> controlled companies we examined:

**63% (15 of 24)**

had a fully independent compensation committee

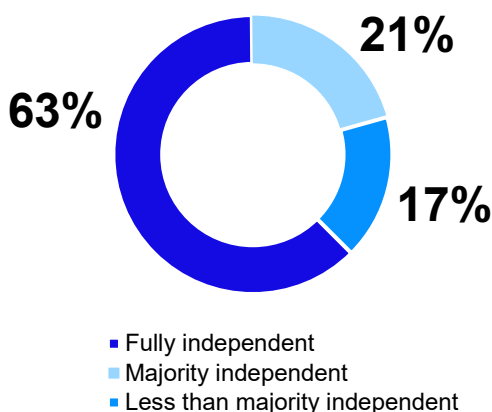
**21% (5 of 24)**

had at least a majority but not fully independent compensation committee

**17% (4 of 24)**

had a less than majority independent compensation committee

Compensation committee independence (Controlled)



## Non-controlled companies

Of the **39** non-controlled companies we examined:

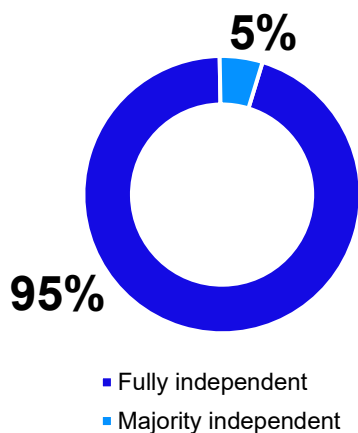
**95% (37 of 39)**

had a fully independent compensation committee

**5% (2 of 39)**

had at least a majority but not fully independent compensation committee

Compensation committee independence (Non-controlled)



<sup>14</sup> Excluded **two (2)** controlled companies that did not disclose the independence of their committee members.

## **Governance/nominating and compensation committee independence**

Under NYSE rules, a non-controlled IPO company must have at least one independent member on each of its governance/nominating and compensation committees by the earlier of the date the IPO closes or five business days from the listing date, at least a majority of independent members within 90 days of the listing date, and fully independent governance/nominating and compensation committees within one year of the listing date. Under Nasdaq rules, a non-controlled IPO company must have at least one independent member on each of its governance/nominating and compensation committees at the time of listing, at least a majority of independent members within 90 days of the listing date, and fully independent governance/nominating and compensation committees within one year of the listing date (though the company may also choose not to have a governance/nominating committee and instead rely on a majority of the independent directors to discharge the attendant duties). Under both NYSE and Nasdaq rules, compensation committee independence must be considered under each of the general listing standard independence requirements for directors as well as the additional affiliate and compensatory fee independence considerations applicable to compensation members. Controlled companies are entitled to an exemption from NYSE and Nasdaq rules requiring that governance/nominating and compensation committees consist of independent directors, although an independent compensation committee is useful for other purposes, including to facilitate exemptions from Section 16 short-swing profit rules for transactions involving equity compensation.

# DavisPolk Other facets of board committees

## Controlled companies

Of the **26** controlled companies we examined:

- **62% (16 of 26)** included additional committees, had different names for certain committees<sup>15</sup> or combined their compensation committee with their governance/nominating committee.
- **8% (2 of 26)** did not have a nominating and governance committee.
- **8% (2 of 26)** combined the nominating and governance committee with their compensation committee.

## Non-controlled companies

Of the **39** non-controlled companies we examined:

- **8% (3 of 39)** renamed certain committees to include additional responsibilities.<sup>16</sup>

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<sup>15</sup> For the controlled companies, the additional committees and committee names included an Executive Committee, Audit & Risk Committee, Human Capital and Compensation Committee and Quality of Care and Patient Safety Committee.

<sup>16</sup> For the non-controlled companies, the **three (3)** companies that deviated from the traditional naming of the committees included names such as Compensation and Talent Committee, Compensation and Management Development Committee, People, Culture and Compensation Committee and a Nominating Governance and Sustainability Committee.

## Davis Polk Anti-Takeover Defenses

### Shareholder rights plan (poison pill)

#### Controlled companies

Of the **26** controlled companies we examined, **none** had adopted a shareholder rights plan (poison pill). As discussed below, so long as a company has “blank check” preferred stock, a poison pill may be able to be adopted at a later time.

#### Non-controlled companies

Of the **39** non-controlled companies we examined, **none** had adopted a shareholder rights plan (poison pill). As discussed below, so long as a company has “blank check” preferred stock, a poison pill may be able to be adopted at a later time.

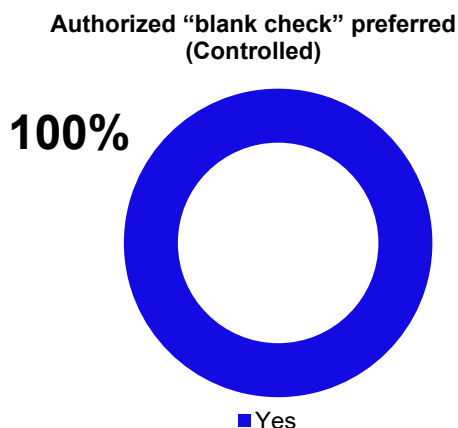
#### Adoption of a shareholder rights plan (poison pill)

A typical shareholder rights plan, or poison pill, grants the existing shareholders of a company (other than a hostile acquiror) the right to acquire a large number of newly issued shares of the company (and of the acquiror if the target company is not the surviving entity in the transaction) at a significant discount to fair market value, if the acquiror becomes an owner of more than a preset amount (typically 10-20%) of the target company’s stock without prior board approval. The board can elect to redeem the poison pill at a trivial amount (e.g., <\$0.01) or deem the rights plan inapplicable to certain acquirors, with the result that any potential acquiror must negotiate with the board (or replace the board through a proxy contest) before it acquires a significant stake. This is because the cost to the potential acquiror of crossing the ownership threshold would be prohibitive if the shareholder rights plan were triggered. So long as “blank check” preferred stock power is provided as described below, a shareholder rights plan can usually be adopted at a later time rather than at the IPO.

# DavisPolk “Blank check” preferred stock

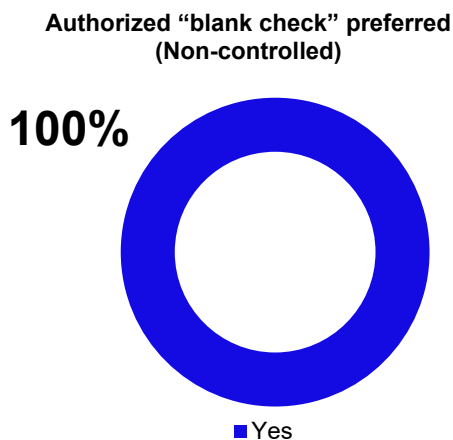
## Controlled companies

Of the **26** controlled companies we examined, **all companies** gave their board of directors authority to issue “blank check” preferred stock.



## Non-controlled companies

Of the **39** non-controlled companies we examined, **all companies** gave their board of directors authority to issue “blank check” preferred stock.



## Authority to issue “blank check” preferred stock

A company may generally include in its authorized and unissued share capital a certain amount of undesignated preferred shares. The board is authorized to issue preferred shares in one or more series and to determine and fix the designations, voting powers, preferences and rights of such shares and any qualifications, limitations or restrictions on such shares. The existence of this “blank check” preferred stock may allow the board to issue preferred stock with super voting, special approval, dividend or other rights or preferences on a discriminatory basis without a shareholder vote. This authority may be able to be used as a protective mechanism in the context of a hostile takeover attempt by permitting the adoption of a shareholder rights plan (poison pill) at that time.

# DavisPolk Classified board

## Controlled companies

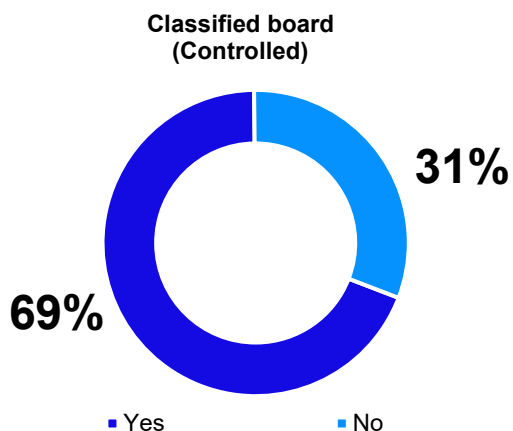
Of the **26** controlled companies we examined:

**69% (18 of 26)**

had a classified board at the time of IPO

**31% (8 of 26)**

did not have a classified board at the time of IPO



## Non-controlled companies

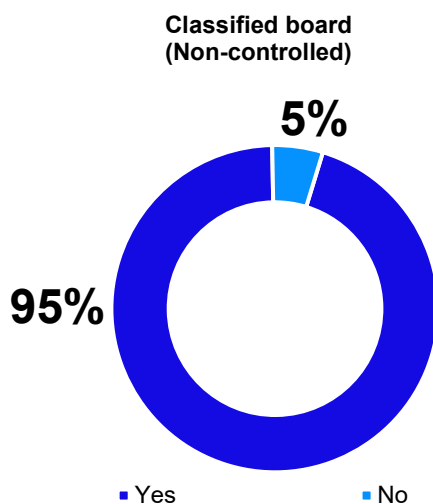
Of the **39** non-controlled companies we examined:

**95% (37 of 39 companies)**

had a classified board at the time of IPO<sup>17</sup>

**5% (2 of 39)**

did not have a classified board at the time of IPO



<sup>17</sup> Note that **one (1)** non-controlled company included a provision in their charter declassifying their board upon a significant shareholder or group ceasing to own or control the vote of a specified percentage of outstanding shares.

## **Classified board**

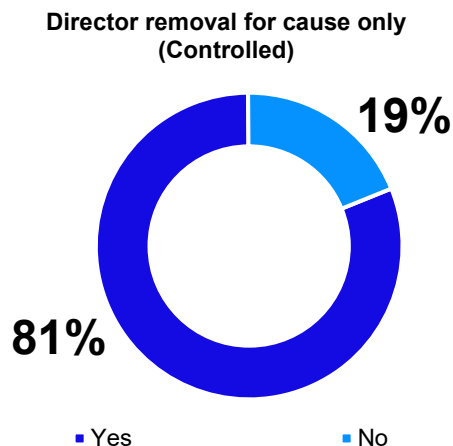
The implementation of a classified board often serves as a protective mechanism in the context of a takeover by ensuring that an activist or a potential acquiror cannot simply replace an entire board at one time with a more pliant board. It also serves to provide some directors with less scrutiny when all the directors up for election face opposition from proxy advisory firms or shareholders. Typically, a staggered board is composed of three equally divided classes of directors, with each class elected in successive years. A classified board serves as a complement to the protections afforded by a shareholder rights plan (as discussed above), in that it forces an activist or a potential acquiror to conduct a proxy contest at the company's annual shareholder meeting for two consecutive years (time it is not typically willing to wait, leading it to engage with the incumbent board) before it can take over the board and revoke the shareholder rights plan.



# DavisPolk Director removal for cause only

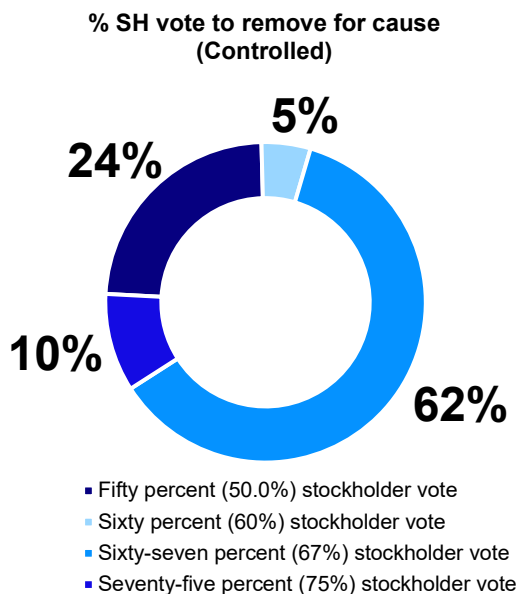
## Controlled companies

Of the **26** controlled companies we examined, **81% (21 of 26)** effectively required that shareholders could only remove directors for cause.<sup>18</sup>



Of these **21** controlled companies that effectively required that shareholders could only remove directors for cause:

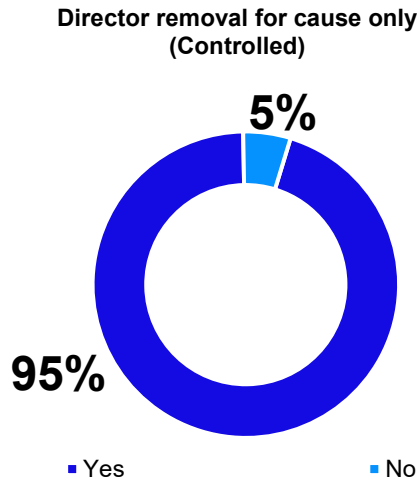
24% (5 of 21)	5% (1 of 21)	62% (13 of 21)	10% (2 of 21)
required a majority (50%) stockholder vote	required a sixty percent (60%) stockholder vote	required a two-thirds (67%) stockholder vote	required a seventy-five percent (75%) stockholder vote



<sup>18</sup> Note that these **twenty-one (21)** controlled companies included **fourteen (14)** companies (**67%**) whose provision allowing director removal only for cause included a sunset date or no longer applied when a significant shareholder or group ceased to own or control the vote of a specified percentage of outstanding shares.

# DavisPolk **Non-controlled companies**

Of the **39** non-controlled companies we examined, **95% (37 of 39)** effectively required that directors could only be removed by shareholders for cause.<sup>19</sup>



Of these **37** non-controlled companies that effectively required that shareholders could only remove directors for cause:

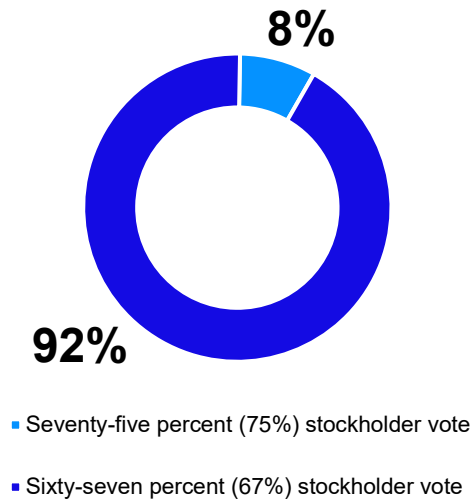
**92% (34 of 37)**

required a two-thirds (67%) stockholder vote

**8% (3 of 37)**

required a seventy-five percent (75%) stockholder vote

**% SH vote to remove for cause  
(Non-controlled)**



<sup>19</sup> **One (1)** non-controlled company counted in this survey as allowing shareholders to remove directors with or without cause did have a provision that restricted shareholders to removing directors only for cause while a significant shareholder or group had a specified beneficial ownership percentage in between 15% and 40%.

## **Director removal for cause only**

Director removal for cause is permitted only when a company has a classified board under Delaware law, and it is necessary to preserve the extended terms of those directors. Taken together, a classified board structure and a provision allowing director removal for cause only (as supplemented by restrictions on shareholder ability to call special meetings or to act by written consent, as discussed below) serve as a protective mechanism in the context of a takeover by forcing an activist or a potential acquiror to conduct a proxy contest at the company's annual shareholder meeting for two consecutive years before it can take over the board.

# DavisPolk Shareholder ability to call special meeting

## Controlled companies

Of the **26** controlled companies we examined, **all companies** effectively prohibited shareholders from calling a special meeting, and of these:

- **62% (16 of 26)** conditioned such prohibition on a trigger tied to a sunset date or a significant shareholder or group ceasing to own or control the vote of a specified percentage of outstanding shares.
- Of these **16** companies, prior to the trigger taking effect:

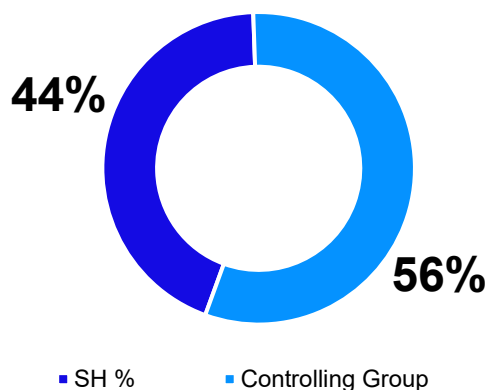
**44% (7 of 16)**

permitted shareholders to call a special meeting based on a certain percentage of shareholder votes approving

**56% (9 of 16)**

permitted a certain controlling group or beneficial owner to call a special meeting

Trigger exception allowing % of SH or only Controlling Group  
(Controlled with trigger exception for restriction on SH meeting)



## Non-controlled companies

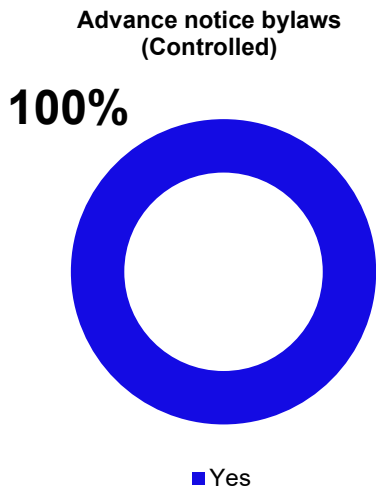
Of the **39** non-controlled companies we examined, **all companies** effectively prohibited shareholders from calling a special meeting.

- **5% (2 of 39)** conditioned such prohibition on a significant shareholder or group ceasing to own or control the vote of a specified percentage of outstanding shares.

# DavisPolk Advance notice bylaws

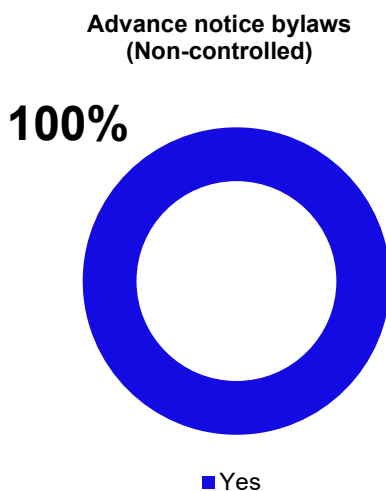
## Controlled companies

Of the **26** controlled companies we examined, **all companies** had bylaws setting forth notice and certain other requirements when a shareholder proposes business for shareholder consideration, including the nomination of a director for election.



## Non-controlled companies

Of the **39** non-controlled companies we examined, **all companies** had bylaws setting forth notice and certain other requirements when a shareholder proposes business for shareholder consideration, including the nomination of a director for election.



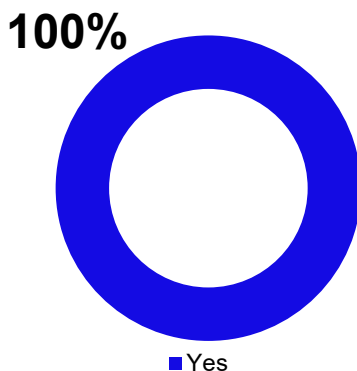
# DavisPolk Shareholder action by written consent

## Controlled companies

Of the **26** controlled companies we examined, **all companies** effectively prohibited shareholder action by written consent.

- **92% (24 of 26)** conditioned such prohibition on a trigger tied to a sunset date or a significant shareholder or group ceasing to own or control the vote of a specified percentage of outstanding shares.

Shareholder action by written consent prohibited  
(Controlled)

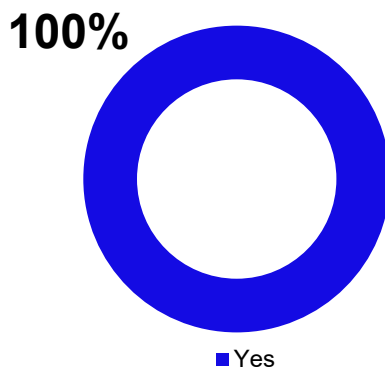


## Non-controlled companies

Of the **39** non-controlled companies we examined, **all companies** effectively prohibited shareholder action by written consent.

- **8% (2 of 39)** conditioned such prohibition on a trigger tied to a significant shareholder or group ceasing to own or control the vote of a specified percentage of outstanding shares.

Shareholder action by written consent prohibited  
(Non-controlled)



## Shareholder voting restrictions

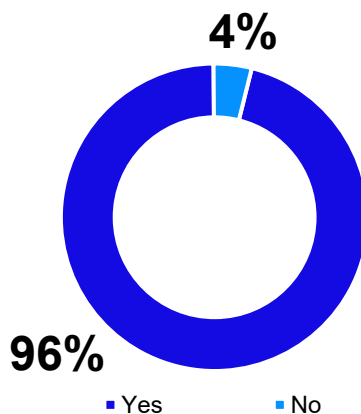
Shareholder voting restrictions serve to limit shareholders from acting without board involvement and can serve to restrict the ability of an activist or a potential acquirer from taking control of the company without having to negotiate with the board.

## Board authority to change board size

### Controlled companies

Of the **26** controlled companies we examined, **96% (25 of 26)** gave their board of directors exclusive authority to fix the size of the board.

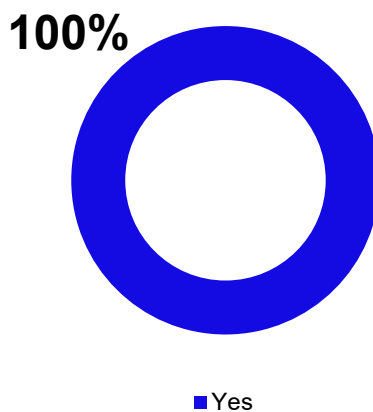
Board had exclusive authority to fix board size  
(controlled)



### Non-controlled companies

Of the **39** non-controlled companies we examined, **all companies** gave their board of directors exclusive authority to fix the size of the board.

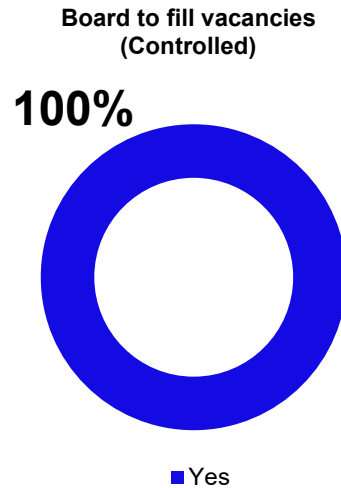
Board had exclusive authority to fix board size  
(Non-controlled)



# DavisPolk Board authority to fill vacancies on the board

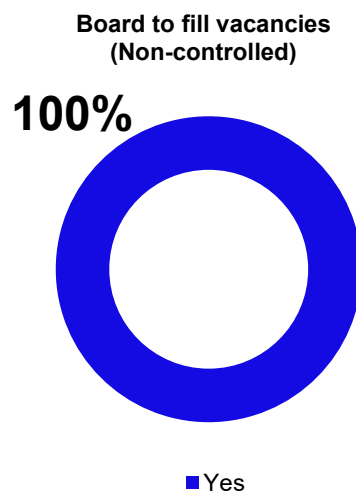
## Controlled companies

Of the **26** controlled companies we examined, **all companies** required that the board of directors fill any vacancies on the board.



## Non-controlled companies

Of the **39** non-controlled companies we examined, **all companies** required that the board of directors fill any vacancies on the board.





# DavisPolk Voting in uncontested board elections

## Controlled companies

Of the **26** controlled companies we examined:

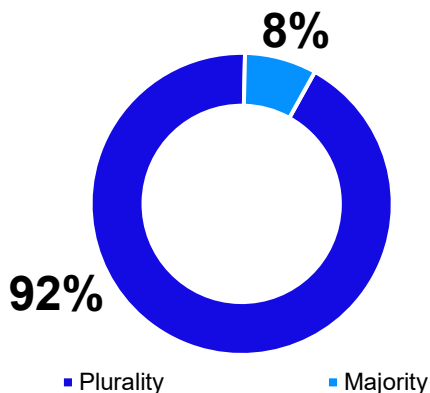
**92% (24 of 26)**

had a **plurality** standard for uncontested board elections

**8% (2 of 26)**

had a **majority** standard for uncontested board elections

Standard for uncontested board elections  
(Controlled)



## Non-controlled companies

Of the **39** non-controlled companies we examined:

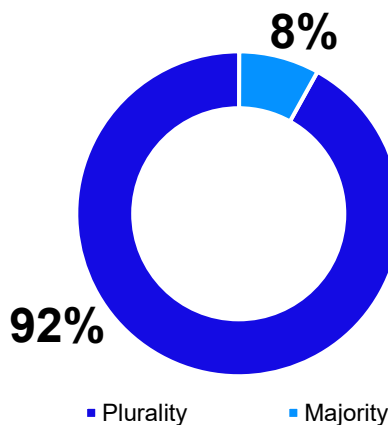
**92% (36 of 39)**

had a **plurality** standard for uncontested board elections

**8% (3 of 39)**

had a **majority** standard for uncontested board elections

Standard for uncontested board elections  
(Non-controlled)



## **Voting standard for director elections under Delaware law**

Under Delaware law, in the absence of a different provision in a company's certificate of incorporation or bylaws, directors are elected by a plurality vote. Under a plurality voting system, the nominees for director are elected based on who receives the highest number of affirmative votes cast. When the number of directors on the ballot equals the number of open seats (i.e., an uncontested election), all directors would be elected. Under a majority voting system, a nominee for director is elected only if he or she receives the affirmative vote of a majority of the total votes cast for and against such nominee. Incumbent directors retain the ability to hold over on the board in the event of less than majority support, although a company may have a policy requiring such directors to submit their resignation.

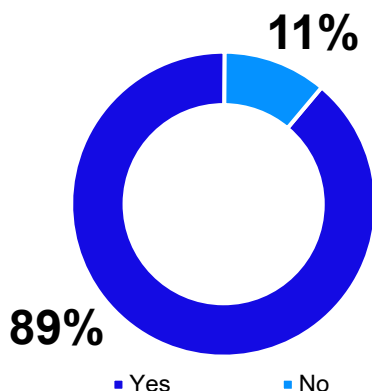
# DavisPolk Supermajority vote for amending the charter

## Controlled companies

Of the **26** controlled companies we examined, **89% (23 of 26)** required a supermajority vote for amending one or more provisions of the charter, and of these companies:

- **65% (15 of 23)** had their supermajority vote requirements on a trigger tied to a sunset date or when a significant shareholder or group ceased to own or control the vote of a specified percentage of outstanding shares.
- **17% (4 of 23)** required a shareholder vote of **75%** or more.

Supermajority SH vote for amending the charter  
(Controlled)

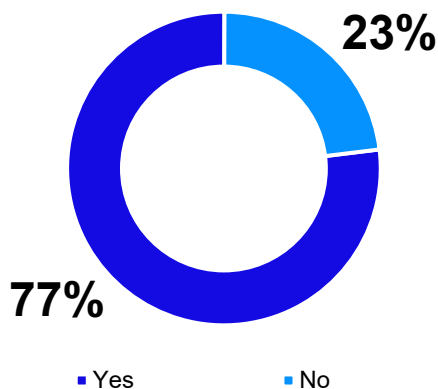


## Non-controlled companies

Of the **39** non-controlled companies we examined, **77% (30 of 39)** required a supermajority vote for amending one or more provisions of the charter, and of these companies:

- **3% (1 of 30)** had their supermajority vote requirements triggered when a significant shareholder or group ceased to own or control the vote of a specified percentage of outstanding shares.
- **10% (3 of 30)** required a shareholder vote of **75%** or more.

Supermajority SH vote for amending the charter  
(Non-controlled)



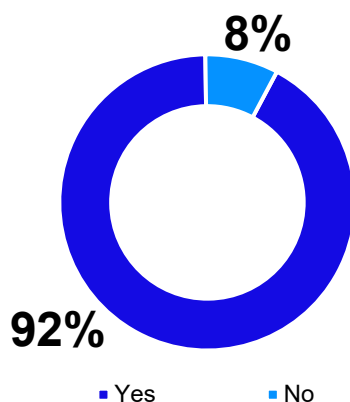
# DavisPolk Supermajority vote for amending the bylaws

## Controlled companies

Of the **26** controlled companies we examined, **92% (24 of 26)** required a supermajority vote for amending one or more provisions of the bylaws, and of these companies:

- **63% (15 of 24)** had their supermajority vote requirements on a trigger tied to a sunset date or when a significant shareholder or group ceased to own or control the vote of a specified percentage of outstanding shares.
- **13% (3 of 24)** required a shareholder vote of **75%** or more.

Supermajority SH vote for amending the bylaws  
(Controlled)

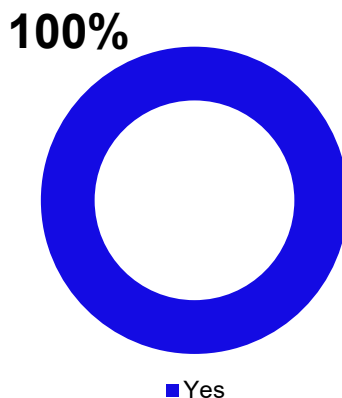


## Non-controlled companies

Of the **39** non-controlled companies we examined, **all companies** required a supermajority vote for amending one or more provisions of the bylaws, and of these companies:

- **3% (1 of 39)** had their supermajority vote requirements triggered when a significant shareholder or group ceased to own or control the vote of a specified percentage of outstanding shares.
- **8% (3 of 39)** required a shareholder vote of **75%** or more.

Supermajority SH vote for amending the bylaws  
(Non-controlled)



# DavisPolk Exclusive-forum provisions

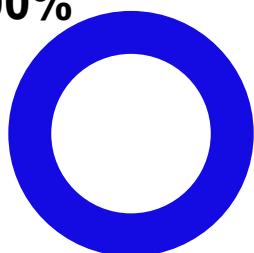
## Controlled companies

Of the **26** controlled companies we examined, **all companies** had an exclusive-forum provision. Of these:

- **All companies** specified the Court of Chancery in Delaware as the exclusive forum for non-'33 Act claims.
- **96% (25 of 26)** specified federal courts for '33 Act claims.
- **73% (19 of 26)** adopted it in their charter, **15% (4 of 26)** adopted it in their bylaws and **12% (3 of 26)** adopted it in both their charter and bylaws.

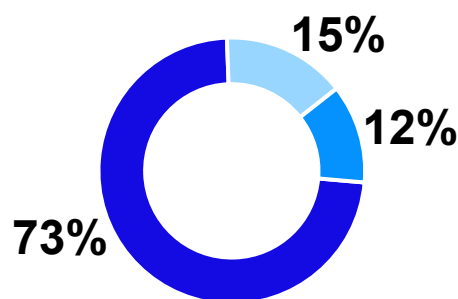
Exclusive-forum provision  
(Controlled)

100%



■ Yes

Adoption in governance documents  
(Controlled)



■ Adopted in their charter  
■ Adopted in their bylaws  
■ Adopted in both charter and bylaws

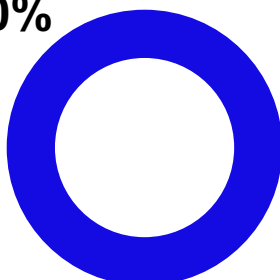
## Non-controlled companies

Of the **39** non-controlled companies we examined, **all companies** had an exclusive-forum provision.

- **All companies** specified the Court of Chancery in Delaware as the exclusive forum for non-'33 Act claims.
- **All companies** specified federal courts for '33 Act claims.
- **59% (23 of 39)** adopted it in their charter, **28% (11 of 39)** adopted it in their bylaws and **13% (5 of 39)** adopted it in both their charter and bylaws.

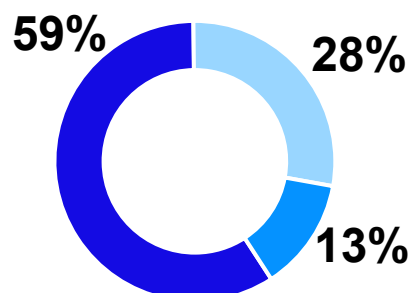
Exclusive-forum provision  
(Non-controlled)

100%



■ Yes

Adoption in governance documents  
(Non-controlled)



■ Adopted in their charter  
■ Adopted in their bylaws  
■ Adopted in both charter and bylaws

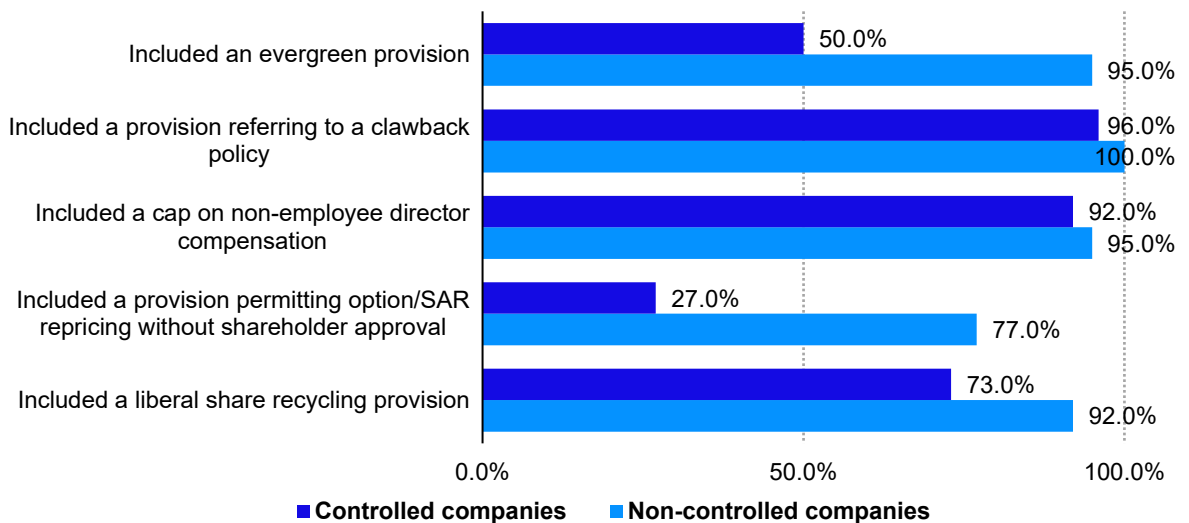
# Executive Compensation

## New equity compensation plan

### Controlled companies versus non-controlled companies

Of the **26** controlled companies and **39** non-controlled companies we examined, **all companies** adopted a new equity compensation plan at the time of IPO.

New Equity Compensation Plan (Controlled vs. Non-controlled)



### Controlled companies with an NECP

- For the **50% (13 of 26)** that included an evergreen provision:
  - The range was **1% to 10%**<sup>20</sup>
  - The most common was **5%**, with **31% (4 of 13)** companies using that percentage
- For the **92% (24 of 26)** that included a cap on non-employee director compensation:
  - **83% (20 of 24)** noted that the cap on non-employee director compensation applied to both cash and equity compensation, while **17% (4 of 24)** noted that the cap on non-employee director compensation applied only to equity compensation
  - The range was **\$500,000 to \$1,500,000**
  - **\$750,000** was the most common, with **63% (15 of 24)** of companies using that value

### Non-controlled companies with an NECP

- For the **95% (37 of 39)** that included an evergreen provision:
  - The range was **1% to 5%**
  - The most common was **5%**, with **89% (33 of 37)** companies using that percentage
- For the **95% (37 of 39)** that included a cap on non-employee director compensation:
  - **All companies** noted that the cap on non-employee director compensation applied to both cash and equity compensation, while **none** noted that the cap on non-employee director compensation applied only to equity compensation
  - The range was **\$200,000 to \$1,050,000**
  - **\$750,000** was the most common, with **70% (26 of 37)** of companies using that value

<sup>20</sup> For the **one (1)** controlled company with a 10% evergreen provision, the pool was 10% of outstanding shares minus the plan share reserve from the prior fiscal year.

# DavisPolk Equity compensation awards

## Controlled companies

Of the **26** controlled companies we examined:

- The number of outstanding equity compensation awards at the time of the IPO, as a percentage of the fully diluted number of common shares post-IPO, ranged from **0.0%** to **13.9%**.
- The number of outstanding equity compensation awards at the time of the IPO, combined with the number of shares reserved for issuance under the new equity compensation plan adopted, as a percentage of the fully diluted number of common shares post-IPO, ranged from **0.0%** to **24.4%**.
- The number of shares reserved for issuance under the new equity compensation plan adopted, as a percentage of the fully diluted number of common shares post-IPO, ranged from **3.2%** to **10.5%**.
- The number of companies that granted equity compensation awards in connection with the IPO is **18 (69%)**. Of these companies, **16 (89%)** granted RSUs, **5 (28%)** granted stock options and **3 (17%)** granted PSUs.

## Non-controlled companies

Of the **39** non-controlled companies we examined:

- The number of outstanding equity compensation awards at the time of the IPO, as a percentage of the fully diluted number of common shares post-IPO, ranged from **1.0%** to **18.2%**.
- The number of outstanding equity compensation awards at the time of the IPO, combined with the number of shares reserved for issuance under the new equity compensation plan adopted, as a percentage of the fully diluted number of common shares post-IPO, ranged from **7.4%** to **39.7%**.
- The number of shares reserved for issuance under the new equity compensation plan adopted, as a percentage of the fully diluted number of common shares post-IPO, ranged from **3.9%** to **28.9%**.
- The number of companies that granted equity compensation awards in connection with the IPO is **25 (64%)**. Of these companies, **7 (28%)** granted RSUs, **22 (88%)** granted stock options and **1 (4%)** granted restricted shares. Some companies granted more than one form of equity compensation award.

## Employee stock purchase plan (ESPP)

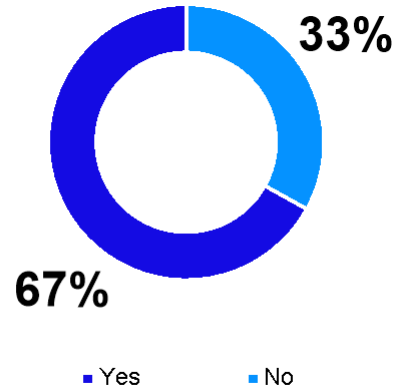
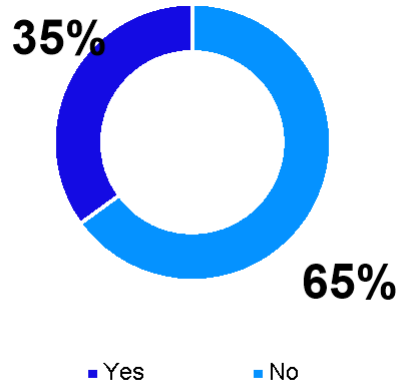
### Controlled companies

Of the **26** controlled companies we examined, **35% (9 of 26)** adopted an ESPP at the time of the IPO. Of these companies:

- **56% (5 of 9)** were EGCs
- The initial share reserve ranged from **0.5%** to **3.44%**
- **67% (6 of 9)** included an evergreen provision
  - The evergreen percentage ranged from **1%** to **5%**
  - The most common was **1%**, with **83% (5 of 6)** companies adopting that percentage

**Included ESPP  
(Controlled)**

**Included evergreen provision  
(Controlled with ESPP)**

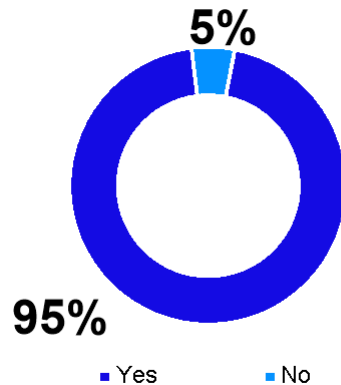


### Non-controlled companies

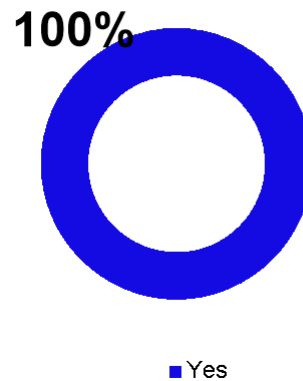
Of the **39** non-controlled companies we examined, **95% (37 of 39)** adopted an employee stock purchase plan at the time of the IPO. Of these companies:

- **97% (36 of 37)** were EGCs
- The initial share reserve ranged from **0.56%** to **2.07%**
- **All companies** included an evergreen provision
  - The evergreen percentage ranged from **1%** to **5%**
  - The most common was **1%**, with **95% (35 of 37)** companies adopting that percentage

Included ESPP  
(Non-controlled)



Included evergreen provision  
(Non-controlled with ESPP)



## Stock ownership/retention requirement

### Controlled companies

Of the **26** controlled companies we examined:

**39% (10 of 26)**

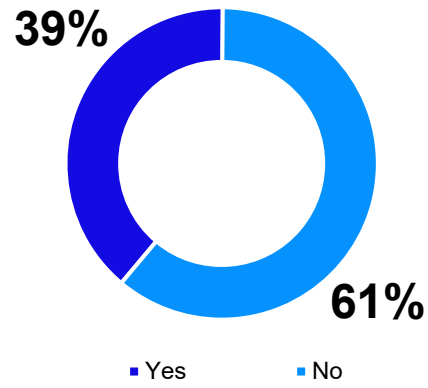
disclosed stock ownership/retention guidelines or policies

**61% (16 of 26)**

did not disclose stock ownership/retention guidelines or policies

Stock ownership/retention requirement  
(Controlled)

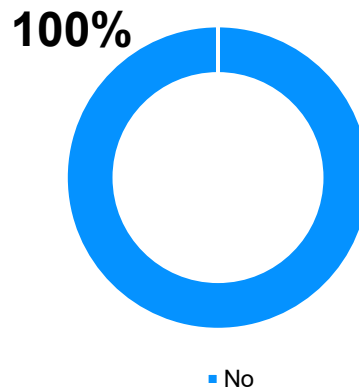




### Non-controlled companies

Of the **39** non-controlled companies we examined, **none** disclosed stock ownership/retention guidelines or policies.

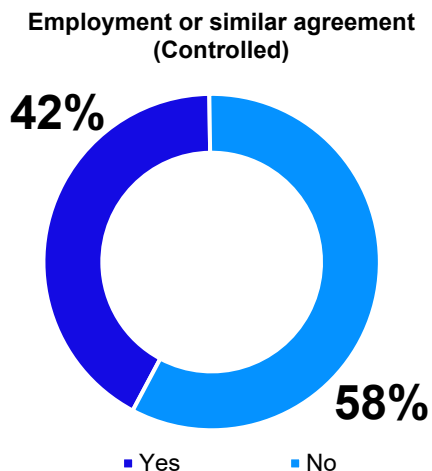
Stock ownership/retention requirement  
(Non-controlled)



# DavisPolk Employment and similar agreements

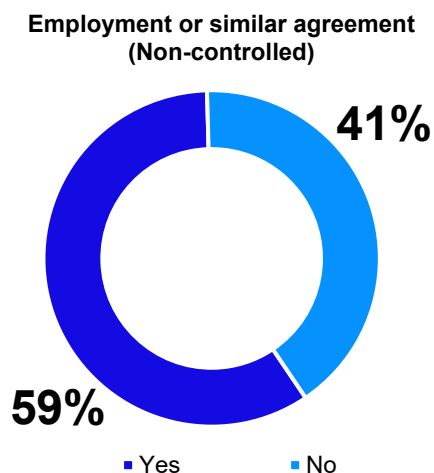
## Controlled companies

Of the **26** controlled companies we examined, **42% (11 of 26)** adopted one or more employment or similar agreements with their executives within six months prior to the IPO, with **73% (8 of 11)** of these companies being EGCs.



## Non-controlled companies

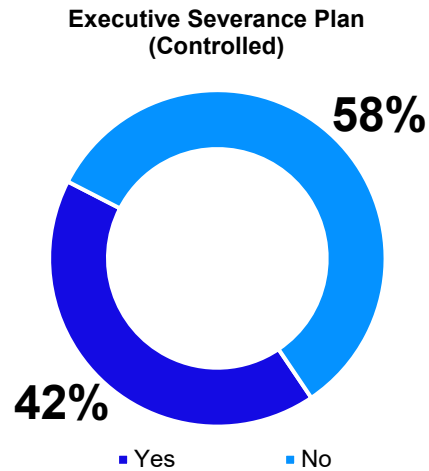
Of the **39** non-controlled companies we examined, **59% (23 of 39)** adopted one or more employment or similar agreements with their executives within six months prior to the IPO, with **all** of these companies being EGCs.



# DavisPolk Executive severance plan

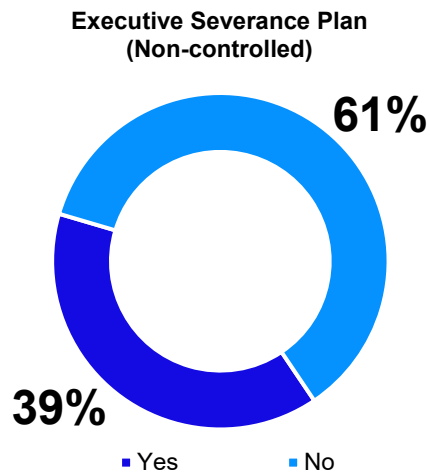
## Controlled companies

Of the **26** controlled companies we examined, **42% (11 of 26)**, maintained an executive severance plan, with **27% (3 of 11)** of these companies being EGCs.



## Non-controlled companies

Of the **39** non-controlled companies we examined, **39% (15 of 39)** maintained an executive severance plan, with **93% (14 of 15)** of these companies being EGCs.



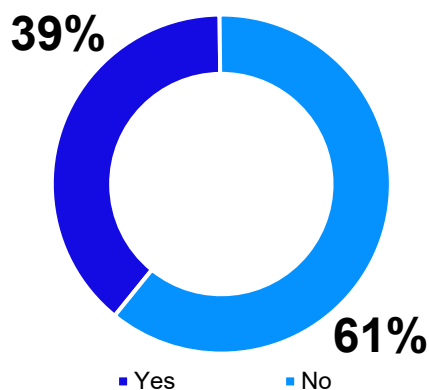
# DavisPolk Compensation consultants

## Controlled companies

Of the **26** controlled companies we examined, **39% (10 of 26)** disclosed the use of compensation consultants. Of these companies:

- **None** were EGCs.
- **90% (9 of 10)** specified the consultant used.
- These consultants included Farient Advisors, FW Cook, Korn Ferry, Meridian Compensation Partners, Semler Brossy Consulting Group and Willis Towers Watson.

Compensation consultant disclosure  
(Controlled)

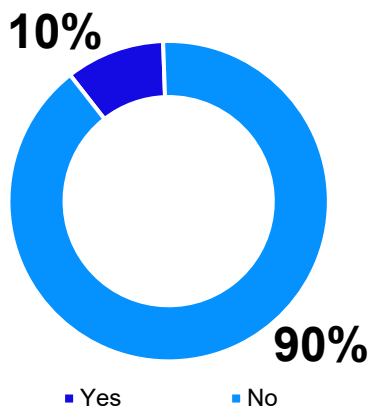


## Non-controlled companies

Of the **39** non-controlled companies we examined, **10% (4 of 39)** disclosed the used of compensation consultants. Of these:

- **75% (3 of 4)** were EGCs.
- **50% (2 of 4)** specified the consultant used.
- These consultants included Alpine Rewards and Semler Brossy Consulting Group.

Compensation consultant disclosure  
(Non-controlled)



## **Compensation consultants**

The SEC requires a listed company to disclose in its proxy statement any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person and describing the nature and scope of their assignment and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

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