

SHEARMAN & STERLING_{LLP}

**WHAT ARE THE LATEST
TRENDS IN GOVERNANCE
PRACTICES?**

10TH ANNUAL SURVEY

**CORPORATE GOVERNANCE
OF THE LARGEST
US PUBLIC COMPANIES
2012**

This survey and our companion survey regarding executive and director compensation practices are available on the Shearman & Sterling LLP website at corp.gov.shearman.com. This site also includes information about our annual corporate governance symposium and contact information for members of our corporate governance advisory group.

We are publishing the surveys in an App available for download from the iTunes Store® and Google play®. Details can be found at corp.gov.shearman.com.

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Introduction

The results of our 10th Annual Survey of Corporate Governance Practices of the Largest US Public Companies (the “*Survey*”) show continued focus on corporate governance practices by both corporate boards and shareholders. Although the passage of the landmark Dodd-Frank Wall Street Reform and Consumer Protection Act (“*Dodd-Frank*”) in July 2010 was an important event in the area of corporate governance, its impact has been limited principally to the advent of “say-on-pay” shareholder advisory votes. Nonetheless, corporations and their boards continue to be under significant scrutiny and shareholders continue to pursue a variety of corporate governance reforms, including in the area of so-called “proxy access”. In light of the increased willingness of institutional investors to support (and in many cases, actively advocate for) these reforms, as well as the continued influence of proxy advisory firms, we expect this trend to continue and therefore it remains critical for listed companies to regularly assess their corporate governance practices and other characteristics that could invite shareholder scrutiny.

PROXY ACCESS

The proxy access rules proposed by the Securities and Exchange Commission (the “*SEC*”) in August 2010 were challenged in a lawsuit filed by the US Chamber of Commerce and Business Roundtable and ultimately vacated by the US Court of Appeals for the District of Columbia Circuit in July 2011. The proxy access rules would have allowed shareholders owning an aggregate of at least three percent of a company’s shares continuously for at least three years to include nominees for directors representing up to 25% of the board in the company’s proxy materials. The SEC has indicated that it does not plan to propose new proxy access rules in the near term. Although this was a setback for proponents who had anticipated proxy access becoming a reality when the SEC’s authority to issue proxy access rules was confirmed in Dodd-Frank, proxy access is now being pursued through shareholder proposal submissions. A companion rule amendment proposed by the SEC together with its proxy access rules narrowed an exception in the existing proxy rules that permitted the exclusion of proxy access shareholder proposals from a company’s proxy statement. This rule amendment was not vacated in the *Business Roundtable* lawsuit and became effective in September 2011.

The 2012 proxy season was the first time that shareholders were permitted to submit proposals seeking proxy access. At least 23 such proposals have so far been submitted at U.S. listed companies. Of these, two proposals passed and eight successfully were excluded on technical grounds that shareholder proponents have now addressed in the wording of their proposals. However, only one of the Top 100 Companies included in this Survey received a proxy access shareholder proposal this year, and it was rejected. Although the share ownership requirements and other terms of the proposals that were rejected varied significantly, the two proposals that passed had terms similar to those contained in the SEC’s vacated proxy access rules. While the results of one proxy season provide only a limited set of information, going forward, proxy access proposals may become a popular method for shareholders to pursue corporate governance reform.

MAJORITY VOTING

Of the Top 100 Companies, 91 have implemented some form of majority voting in uncontested director elections, up from 85 companies last year. Of the remaining nine Top 100 Companies that have not implemented majority voting, one put forth a management proposal and three received a shareholder proposal to do so during the 2012 proxy season. It is clear at this point that majority voting is the rule rather than the exception, which is a marked change from just six years ago when only 11 of the companies we surveyed had implemented majority voting in uncontested director elections. As a result, listed companies that have not yet implemented majority voting should be prepared for this issue to continue to receive a great deal of focus for the foreseeable future from shareholders and advocacy groups.

Of the 91 Top 100 Companies that have implemented majority voting in uncontested elections, the vast majority have adopted mandatory resignation policies, with various approaches to the manner in which a decision whether to accept a resignation is made.

COMPANY AND BOARD LEADERSHIP

Since 2010, public companies have been required to disclose their board leadership structure, specifically whether the same person serves as CEO and chair of the board or whether two individuals serve in those positions and why they believe their leadership structure is appropriate. Common explanations for splitting the offices of CEO and chair of the board included that the two offices have different responsibilities, with the CEO focusing on daily operations of the company's business and the chair providing leadership to the board in the oversight of management. Justifications for combining these offices included unified leadership in identifying and carrying out strategic priorities, as well as in certain instances the particular longevity, experience and in-depth knowledge of the individual. In 71 of the Top 100 Companies, the same person served as the CEO and chair of the board and in 29 of the companies, the CEO and chair of the board are different individuals. However, in the 2012 proxy season, the number of shareholder proposals calling for an independent chair of the board more than doubled and we expect to see continued pressure on boards to separate the two offices.

POLITICAL CONTRIBUTION POLICIES

For the first time this year, we reviewed disclosure the Top 100 Companies make about their political contribution policies. These policies have received significant attention since the 2010 US Supreme Court decision in *Citizens United v. Federal Election Commission*, which confirmed that companies may advocate for the election or defeat of candidates for office, including through ads, even though contributions to individual campaigns are not permissible. Of the Top 100 Companies, 95 have a disclosed political contributions policy, and five of those companies expressly state that corporate funds may not be used for political contributions. Five companies referred to the *Citizens United* decision in their policies and each stated that, notwithstanding the case, it did not intend to use corporate funds to make independent political contributions.

SHAREHOLDER PROPOSALS

The number of shareholder proposals the Top 100 Companies included in their proxies in 2012 remained essentially unchanged from 2011. While the number of proposals remained constant, 2012 saw a significant shift in the topics that received the most attention.

The number of shareholder proposals calling for the board to adopt a policy requiring its chair to be an independent director and not a current or former CEO rose to 25 in 2012, more than doubling the number of similar proposals in 2011. The call for an independent chair was also the corporate governance related proposal most frequently submitted to shareholders in 2012. From 2009 through 2011, the corporate governance related proposal most frequently submitted to shareholders called for the board to take the steps necessary to permit shareholders holding a certain percentage of the company's stock to call special meetings. Only six proposals seeking this right were submitted to shareholders in 2012, compared to 20 in 2011. Interestingly, as was the case in 2011, the average level of support for corporate governance related shareholder proposals was generally below a majority. Even though these proposals do not generally garner majority support, in some cases they may be one of the drivers behind some of the management proposals in recent years implementing corporate governance reforms.

August 2012

DIRECTOR INDEPENDENCE

INDEPENDENCE POLICIES Both the NYSE and NASDAQ listing standards require that a majority of a listed company's directors be independent. Of the Top 100 Companies, 50 have adopted stricter standards for the minimum number of independent directors than the NYSE and NASDAQ listing standards require. A handful of the Top 100 Companies indicate that they have a goal of attaining a higher threshold than the one expressed in their policies. Seven of the Top 100 Companies limit the number of non-independent or non-management directors on their boards.

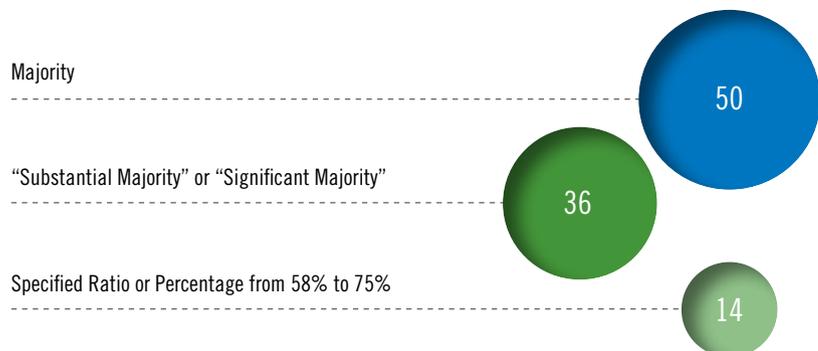
50

More than a Simple Majority of Independent Directors

50

Simple Majority of Independent Directors

DETAILS OF INDEPENDENCE POLICIES



ACTUAL NUMBER OF INDEPENDENT DIRECTORS

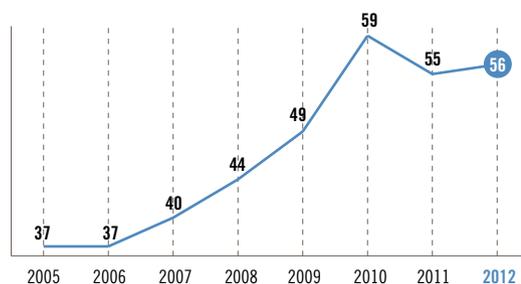
Independent directors constituted 75% or more of the directors on the boards of 93 of the Top 100 Companies. The CEO was the only non-independent director at 56 of the Top 100 Companies. At the Top 100 Companies, COOs served on the boards of five companies and CFOs served on the boards of three companies. Thirty-two of the Top 100 Companies had a total of 51 non-management directors who were also not independent.

93

Companies at which Independent Directors
Constitute 75% or More of the Board

32

Companies with Non-Management
Directors Who Were Not Independent



Companies at which
CEO is the only
non-independent
director

The boards of 24 of the Top 100 Companies have two members who are not independent and only five of the Top 100 Companies have greater than three non-independent board members.

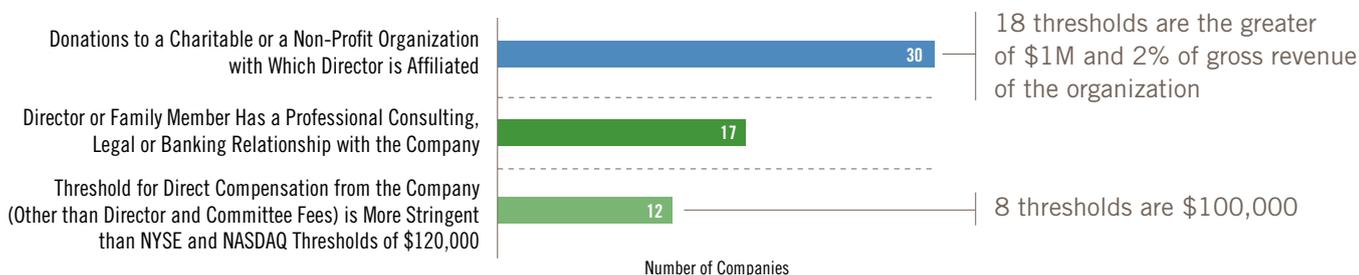


DIRECTOR INDEPENDENCE (CONTINUED)

HEIGHTENED STANDARDS

Under the NYSE and NASDAQ listing standards, there are five categories of relationships between the listed company and the director or any of his or her immediate family members that disqualify the director from being independent. Forty-two of the Top 100 Companies have adopted independence standards in their corporate governance guidelines more stringent than the listing standards, the most common of which disqualifies a director from being independent if the company makes a contribution over a certain threshold to a charitable or non-profit organization with which the director is affiliated. Companies' boards must still affirmatively determine whether each director is independent even if the director satisfies the NYSE or NASDAQ bright-line independence standards or heightened standards adopted by the company.

MOST COMMON HEIGHTENED STANDARDS

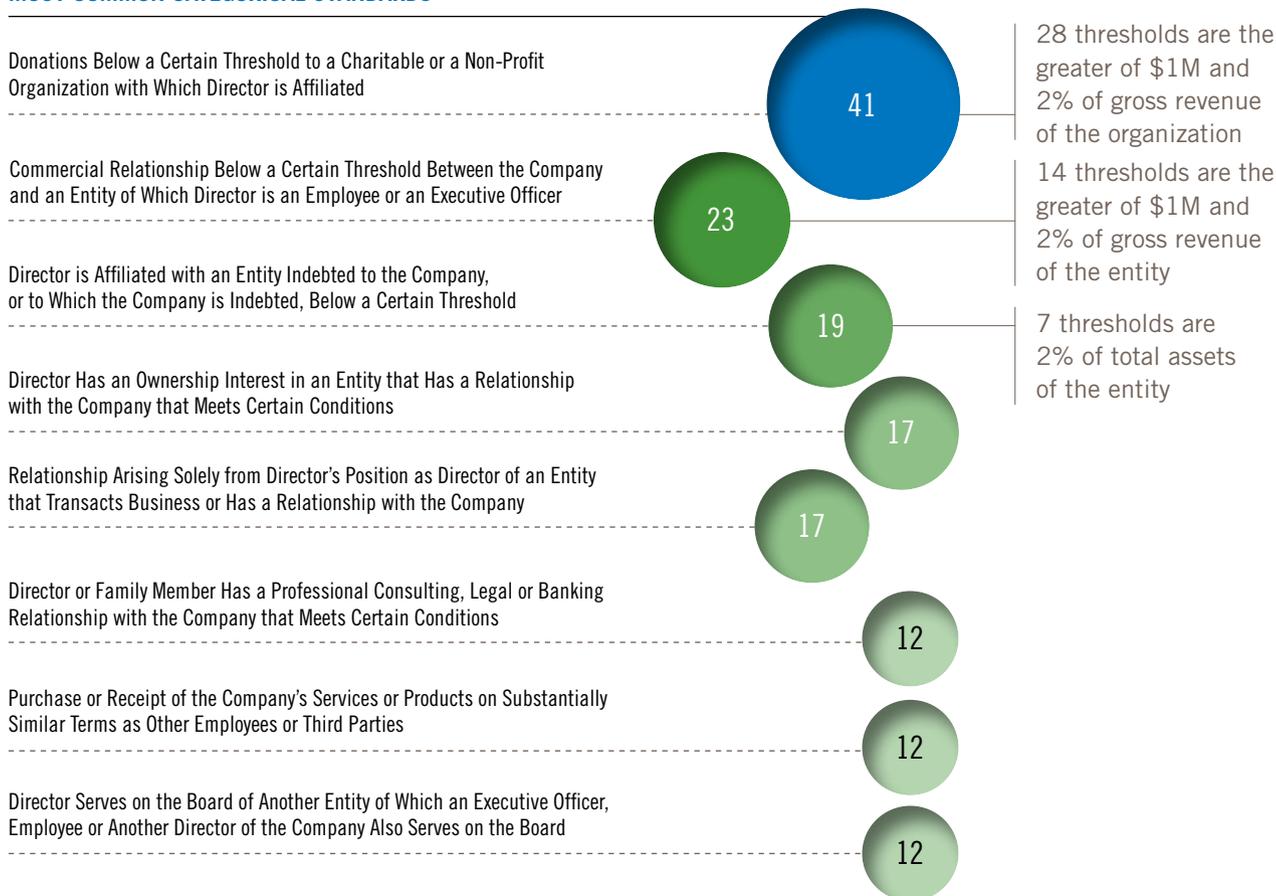


The next most common heightened standards adopted by the Top 100 Companies were director affiliation with an entity that is indebted to the company (or to which the company is indebted); director or immediate family member affiliation with the company's auditor; and an extended "look back" period for certain relationships.

CATEGORICAL STANDARDS

NYSE listing standards in effect prior to January 1, 2010 expressly permitted boards to adopt categorical standards in making independence determinations, that is, to assume that certain relationships between a director and the listed company are immaterial as long as those standards were disclosed in the company's annual proxy statement. Current NYSE listing standards omit explicit reference to companies' use of categorical standards. Notwithstanding this change, 44 of the Top 100 Companies have continued to use categorical standards.

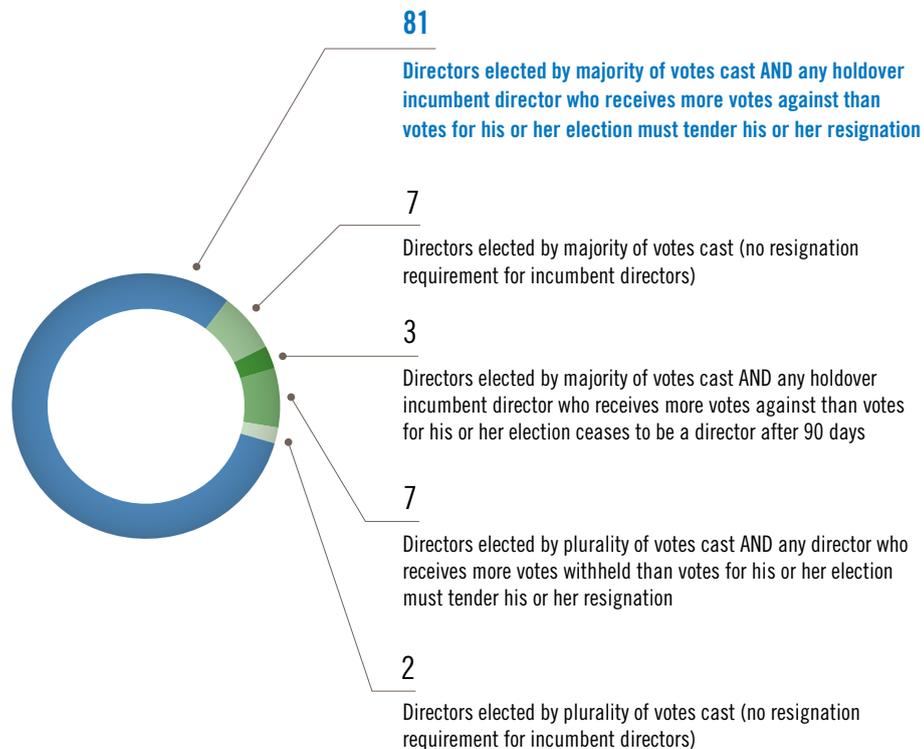
MOST COMMON CATEGORICAL STANDARDS



MAJORITY VOTING

VOTING STANDARDS IN UNCONTESTED DIRECTOR ELECTIONS

Since we first began reviewing voting standards in 2006, the number of surveyed companies that use a majority voting standard in uncontested director elections has increased dramatically, from 11 companies in 2006 to 91 of the Top 100 Companies in 2012.

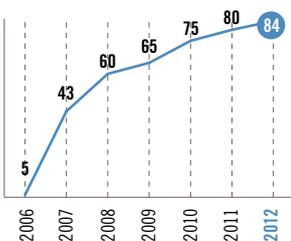


91

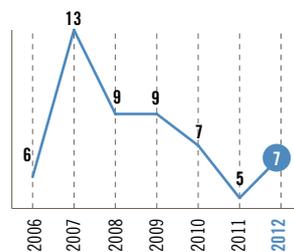
Majority

9

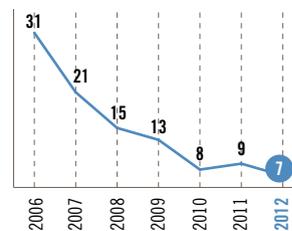
Plurality



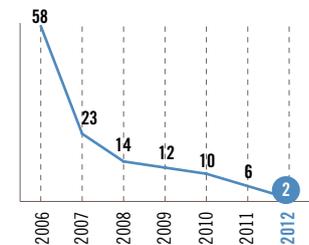
Companies that use majority standard with a resignation requirement (including automatic removal)



Companies that use majority standard without a resignation policy



Companies that use plurality standard with a resignation requirement



Companies that use plurality standard without a resignation policy

Q & A ON POLICIES AND PROCEDURES RELATING TO DIRECTOR RESIGNATION

Of the Top 100 Companies, 88 (including seven of the nine companies that elect directors through a plurality of the votes cast) have policies requiring an incumbent director to tender a resignation, and three have adopted policies that a director's term automatically expires after 90 days, if the director fails to receive more "for" votes than "against" votes.

Q: WHAT CORPORATE DOCUMENTS CONTAIN DIRECTOR RESIGNATION POLICIES?

A: Thirty-three of the 91 Top 100 Companies that have adopted director resignation policies or 90-day holdover policies have included them only in their corporate governance guidelines, 22 have included them only in their organizational documents and 36 have included them in both their corporate governance guidelines and their organizational documents.

Q: WHO DECIDES WHETHER TO ACCEPT OR REJECT A TENDERED RESIGNATION?

A: Eighty-one of the 88 Top 100 Companies that have adopted director resignation policies require the full board to determine whether to accept a tendered resignation. Seventy-one of these companies also require the nominating/governance committee to evaluate the resignation and make a recommendation to the board with respect to a tendered resignation.

Q: IS THERE A PRESUMPTION THAT A TENDERED RESIGNATION SHOULD BE ACCEPTED?

A: Only 11 of the 88 Top 100 Companies that have adopted director resignation policies presume that a tendered resignation should be accepted unless the board finds a "compelling reason" to reject the resignation or finds rejecting the resignation is in the best interest of the company.

Q: HOW LONG DOES THE RELEVANT DECISION-MAKING BODY HAVE TO MAKE A DECISION WHETHER TO ACCEPT OR REJECT A TENDERED RESIGNATION?

A: Of the 88 Top 100 Companies that have adopted resignation policies, 68 companies require that the decision-making body either make a decision on the tendered resignation or publicly disclose its decision within 90 days after the certification of the election results. For the remaining companies that specify a time period, most require a decision or disclosure within 60 to 120 days, while four companies provide until the next regularly scheduled board meeting to make the decision.

Q: HOW DO COMPANIES DISCLOSE THE DECISIONS OF THE RELEVANT DECISION-MAKING BODY TO ACCEPT OR REJECT A TENDERED RESIGNATION?

A: Seventy-eight of the 88 Top 100 Companies that have adopted resignation policies require public disclosure of the acceptance or rejection of a tendered resignation and the reason for the decision. Of these, 23 companies specifically require that the decision and reason be disclosed in a Form 8-K filed with the SEC.

BOARD LEADERSHIP

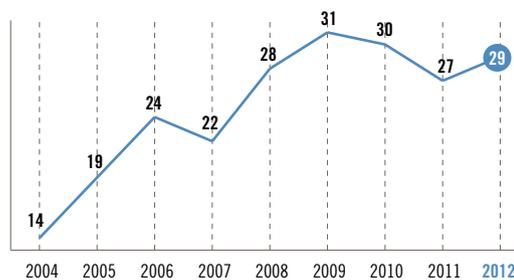
SEPARATION OF THE OFFICES OF CEO AND CHAIR OF THE BOARD

Separate individuals serve as CEO and chair of the board at 29 of the Top 100 Companies, and of these companies, 18 have adopted an explicit policy of splitting or combining the two offices. The chair is independent at 12 of the 29 companies with a separate chair of the board.

APPROPRIATENESS OF STRUCTURE

Since 2010, public companies have been required to disclose why they believe their leadership structure is appropriate given their specific characteristics or circumstances.

A common explanation given for splitting the offices of CEO and chair of the board is that the two offices have different responsibilities. Companies often note that the CEO is responsible for daily operations and management of business affairs, while the chair is charged with independent leadership of the board. Another common explanation is that the split allows the company to benefit from the unique skills, leadership ability and/or industry experience that each person possesses. Companies combining the offices of CEO and chair of the board often note that their approach best serves shareholders by providing unified leadership in identifying and carrying out strategic priorities, and sometimes point to the experience and in-depth knowledge the individual has gained with the company or in the industry.



Companies that have separate individuals serving as CEO and chair of the board

71

CEO Serves as Chair of the Board

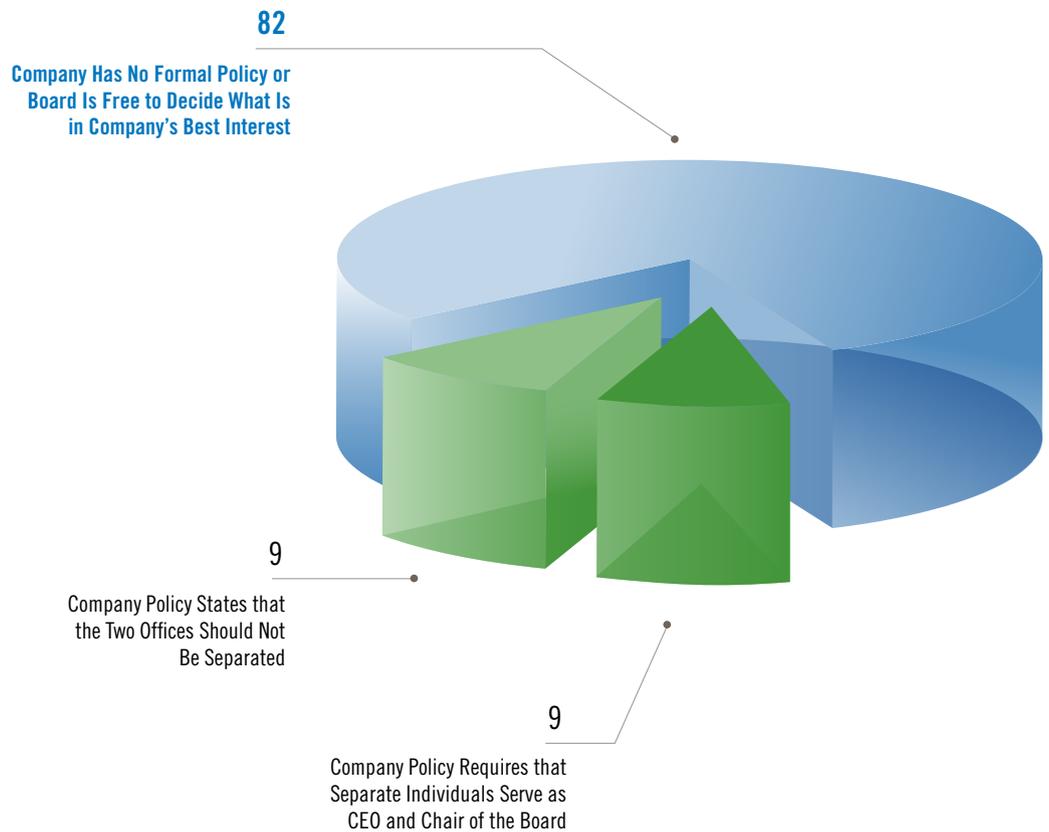
29

CEO Does Not Serve as Chair of the Board

POLICIES ON SEPARATION OF THE OFFICES OF CEO AND CHAIR

More than 80% of the Top 100 Companies disclose that the board has retained the flexibility to separate or combine the offices of the CEO and chair of the board depending on which board leadership structure is in the best interests of the company at the time or that they have no formal policy addressing the issue. Nine companies have adopted an explicit policy of separating the offices of CEO and chair of the board, while nine other companies specifically state that the offices of CEO and chair of the board should not be separated.

There was a dramatic increase during the 2012 proxy season in the number of Top 100 Companies that had shareholder proposals relating to the separation of the offices of CEO and chair of the board (see page 34). Twenty-five of the Top 100 Companies had a shareholder proposal on the issue, more than double the number of companies from last year. Like last year, however, none of these proposals received majority support.



BOARD LEADERSHIP

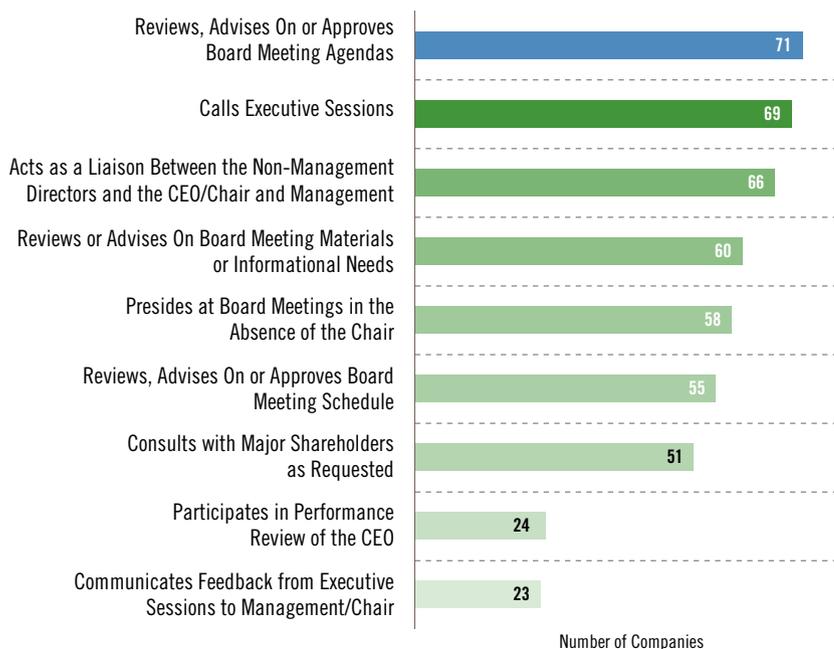
(CONTINUED)

LEAD INDEPENDENT DIRECTOR Proxy disclosure rules require public companies combining the offices of CEO and chair of the board to disclose whether they have a lead independent director and, if so, what specific role the lead independent director plays in the leadership of the board. Sixty-six of the 71 Top 100 Companies that have combined the offices of the CEO and chair of the board disclosed that they have a lead independent director. Of the 29 Top 100 Companies that split these offices, the chair is independent at 12 of these companies, while 14 companies have disclosed that they have a lead independent director.

DUTIES OF LEAD INDEPENDENT DIRECTORS*

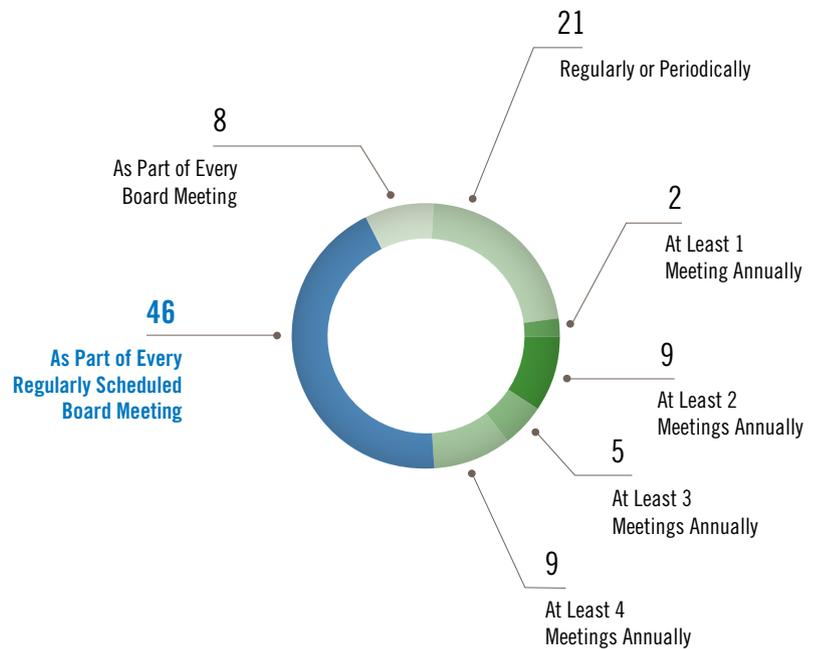
All 80 of the Top 100 Companies with a lead independent director have specified responsibilities for these directors. The principal responsibilities given to lead independent directors at these companies are detailed to the right.

*For tallying purposes, the terms “presiding director” and “lead independent director” are used interchangeably.



FREQUENCY OF EXECUTIVE SESSIONS

The NYSE listing standards require either non-management directors or independent directors to meet at regularly scheduled executive sessions outside the presence of management. If a company chooses to hold regular meetings of all non-management directors, the NYSE listing standards state that it should hold an executive session including only independent directors at least once a year. The NASDAQ listing standards provide that executive sessions of independent directors should occur at least twice a year. The frequency of executive sessions at the Top 100 Companies is detailed to the right.

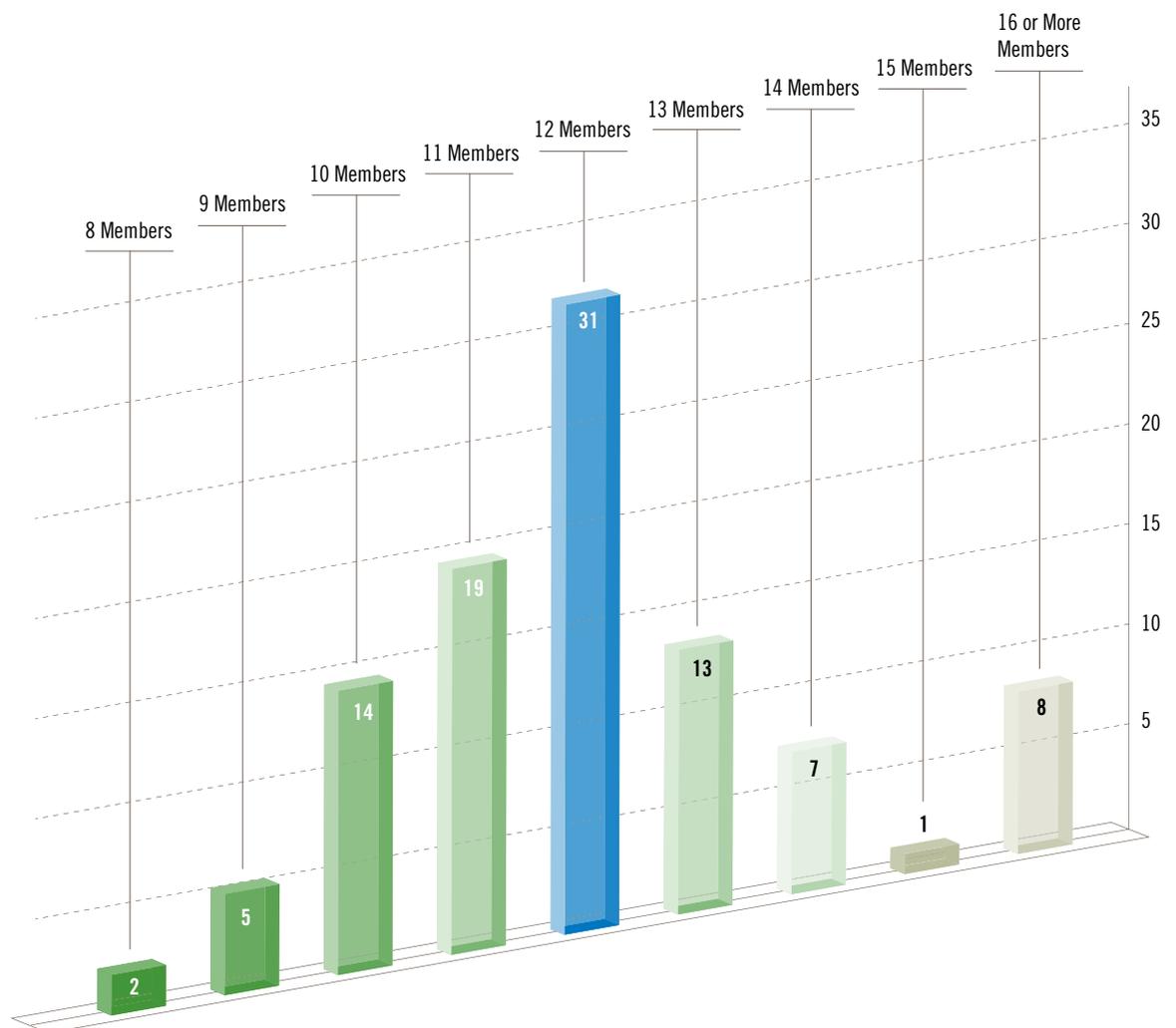


SELECTION OF DIRECTOR TO PRESIDE OVER EXECUTIVE SESSIONS

The NYSE listing standards require that the name of the director presiding over executive sessions of non-management or independent directors be disclosed. If the same person is not the director presiding at every meeting, companies must disclose the procedure used to select a presiding director for each executive session. Of the Top 100 Companies, 80 have designated a lead independent director or presiding director. In nearly all these companies, that director presides over executive sessions. For the substantial majority of the remaining companies, either the chair of the board presides or the director presiding is rotated among the company's committee chairs.

BOARD STRUCTURE & PRACTICES

SIZE OF BOARD The size of the boards of directors of the Top 100 Companies ranged from eight to 17 members, with an average of 12 members. The board size of 82 of the Top 100 Companies ranged from nine to 13 members.



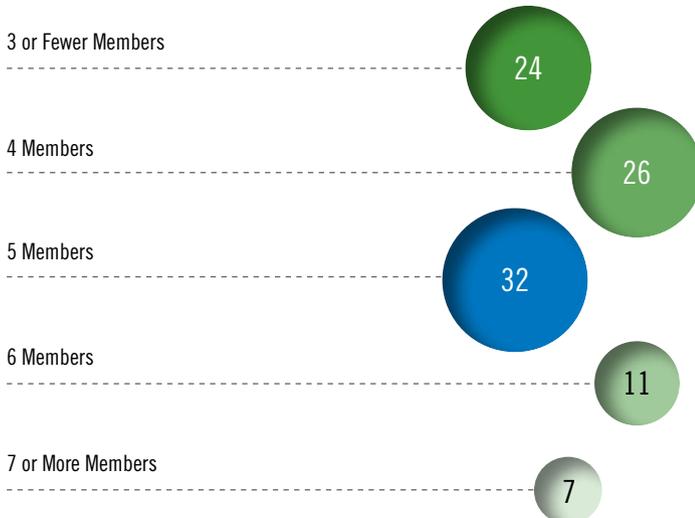
SIZE OF AUDIT COMMITTEE

The number of members of the audit committees for the Top 100 Companies ranged from three to eight members. The number of financial experts on the audit committees of the Top 100 Companies ranged from one to six, with an average of three financial experts.



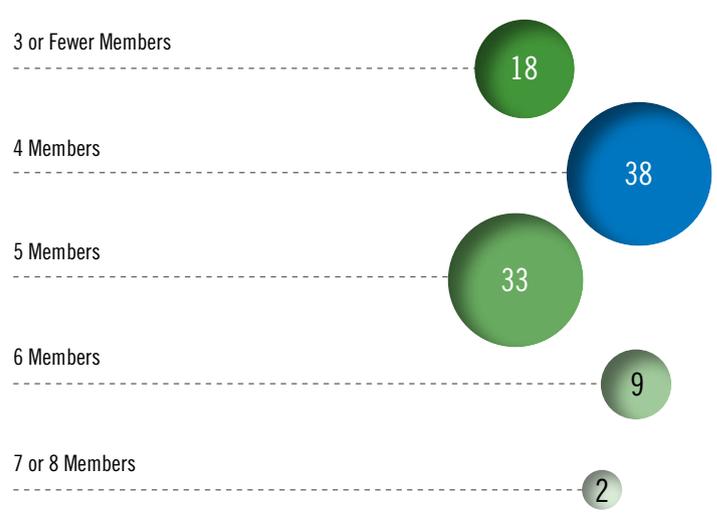
SIZE OF NOMINATING/GOVERNANCE COMMITTEE

The size of the nominating/governance committees of the Top 100 Companies ranged from two to 12 members.



SIZE OF COMPENSATION COMMITTEE

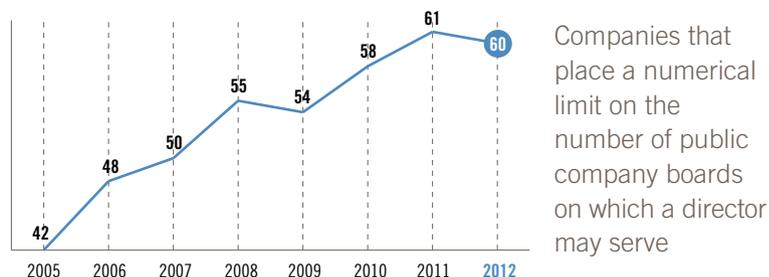
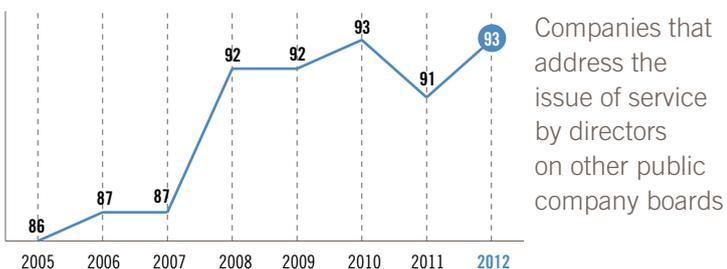
The size of the compensation committees of the Top 100 Companies ranged from two to eight members.



DIRECTOR ELIGIBILITY CRITERIA

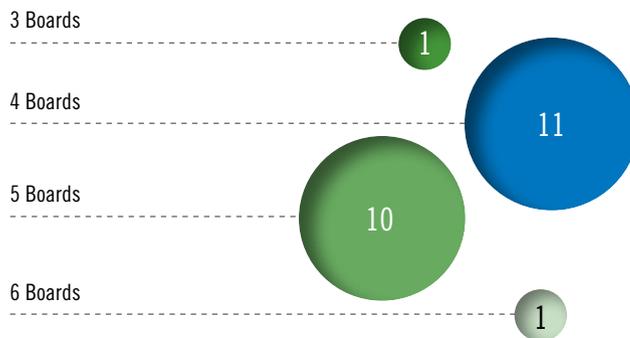
SERVICE ON OTHER PUBLIC COMPANY BOARDS

The two principal mechanisms used to manage the service of directors on other boards are placing a numerical limit on the number of public company boards on which a director may serve and requiring a director to notify the board or a committee of the board of changes in the number of public company boards on which the director serves.



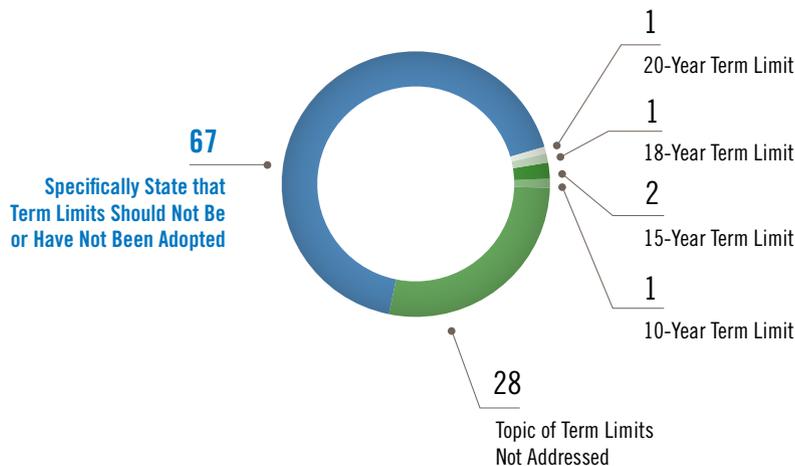
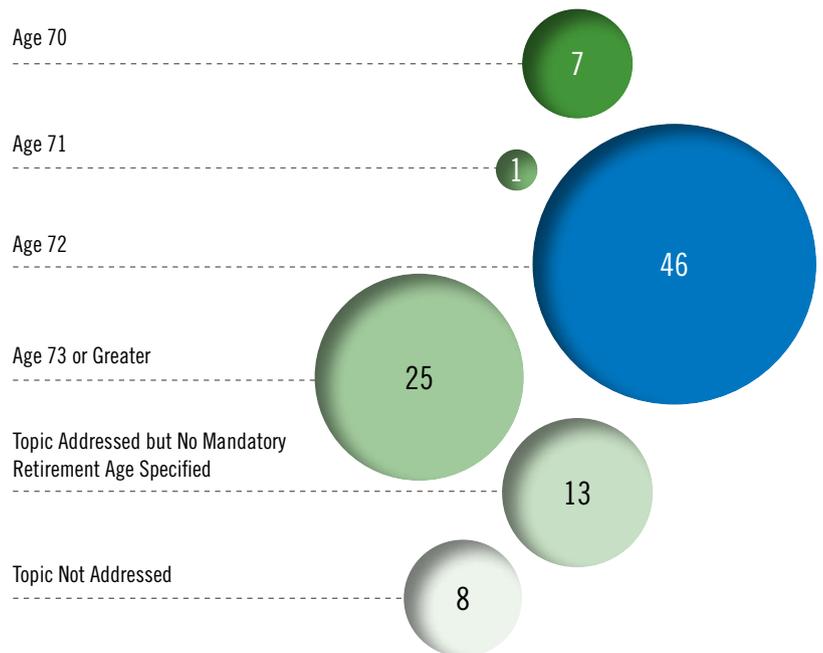
Of the 60 Top 100 Companies that impose a numerical limit on the number of public company boards on which their directors may serve, 23 impose a uniform numerical limit for all of the directors (described at right), and the remaining 37 impose limits based upon various factors, such as the employment or independence status of the directors.

TOTAL NUMBER OF BOARDS THAT A DIRECTOR MAY SERVE ON



RETIREMENT AGE

Although not required by either the NYSE or NASDAQ listing standards, 79 of the Top 100 Companies have disclosed a mandatory retirement age for their non-employee directors. Of the 21 Top 100 Companies that did not disclose a mandatory retirement age, 13 addressed the topic while eight did not. As has been the case in each of our previous Surveys, 72 is the most commonly selected age for mandatory retirement. Of the 79 Top 100 Companies that disclose a mandatory retirement age, 33 expressly permit the board or a committee of the board to make exceptions to the retirement age policy. Common practice requires employee directors (other than chairs in certain instances) to retire from the board when they retire from employment with the company.



TERM LIMITS

Of the 72 Top 100 Companies that address the topic of term limits, only five have adopted mandatory term limits for their directors. The mandatory term limits apply only to non-management directors at two of these companies. Most of the 67 Top 100 Companies that specifically state that term limits should not be, or have not been, adopted cite the value of the insight and knowledge that directors who have served for an extended period of time can provide about the company's operations and practices. Many of these 67 Top 100 Companies also state that periodic reviews by the board or a board committee of each director's performance serve as an appropriate alternative to mandatory term limits.

AUDIT COMMITTEE CRITERIA

AUDIT COMMITTEE FINANCIAL EXPERTS

Companies must disclose whether at least one member of the audit committee is an audit committee financial expert and, if not, why not. Although SEC rules require companies with an audit committee financial expert to disclose the identity of only one such expert, 68 of the Top 100 Companies voluntarily disclosed the identity of more than one audit committee financial expert in their most recent proxy statements.

32

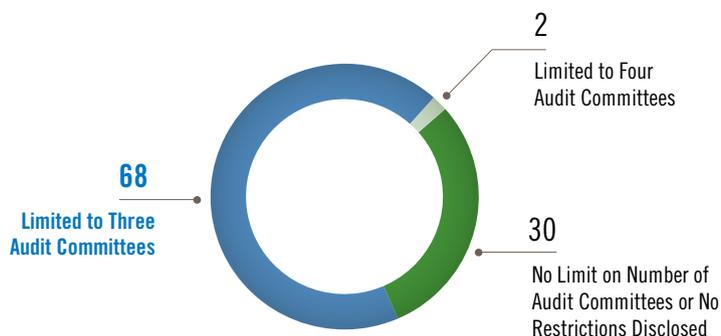
Identify All Audit Committee Members as Audit Committee Financial Experts (“ACFEs”)

36

Identify Two or More (but Less than All) Audit Committee Members as ACFEs

32

Identify Only One Audit Committee Member as an ACFE



SERVICE ON MULTIPLE AUDIT COMMITTEES

As a result of NYSE listing standards relating to service on multiple audit committees, many companies have adopted limits on the number of audit committees on which their audit committee members may serve. Of the Top 100 Companies, 70 limit the number of audit committees on which their audit committee members may serve.

ADDITIONAL COMMITTEES OF THE BOARD

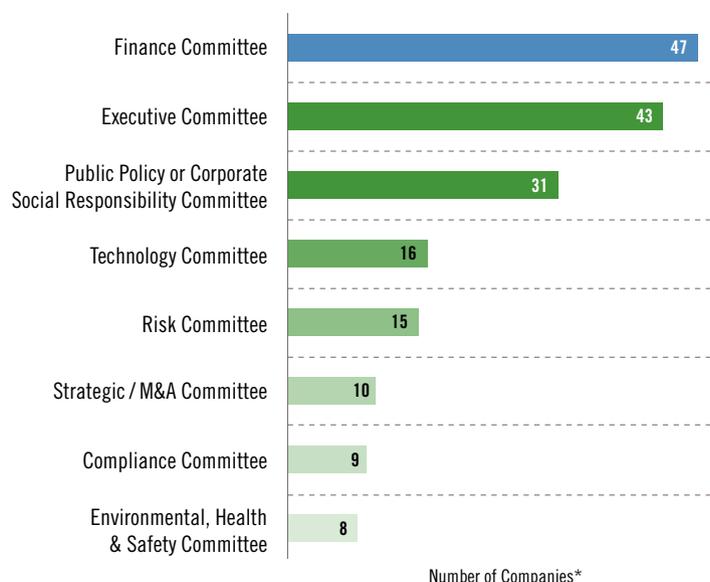
Eighty-nine of the Top 100 Companies have established committees of the board of directors in addition to the audit, compensation and nominating/governance committees. The three most common additional committees are finance, executive and public policy committees.

89

Have Additional Committees

11

Do Not Have Additional Committees



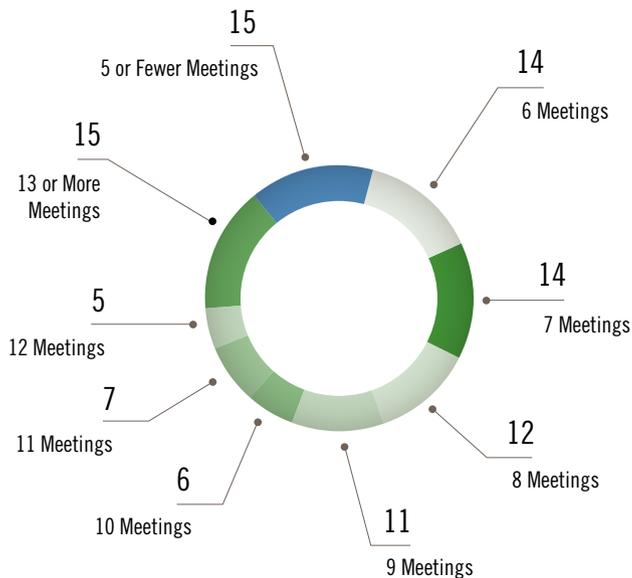
* When one committee (e.g., the finance and risk committee) is a combination of two committee categories, that combined committee is counted in each category. Committees are categorized based on their area(s) of responsibility rather than formal committee names.



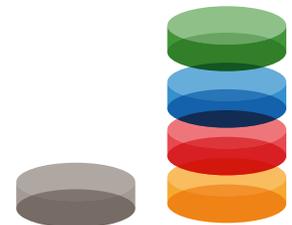
BOARD & COMMITTEE MEETINGS

NUMBER OF BOARD MEETINGS

During 2011, the Top 100 Companies held an average of nine board meetings, with a median of eight meetings.



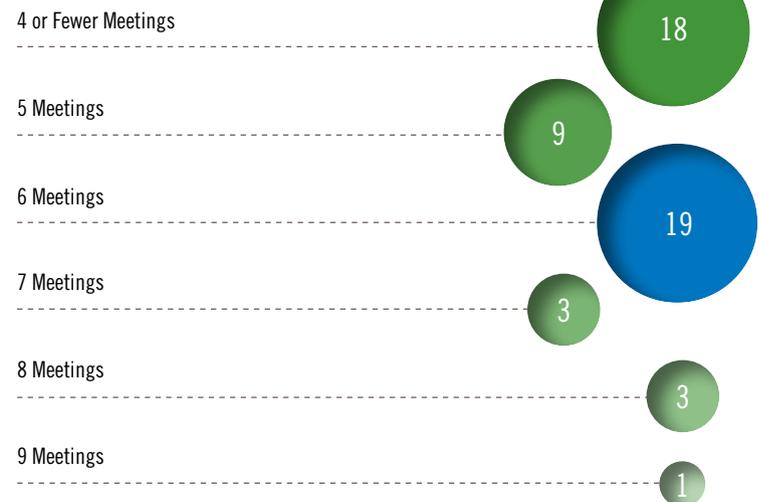
One of the Top 100 Companies did not specify the number of board meetings held in 2011.



MINIMUM NUMBER OF BOARD MEETINGS

Of the Top 100 Companies, 53 set a minimum number of board meetings each year. The minimum number of meetings ranges from three to nine.

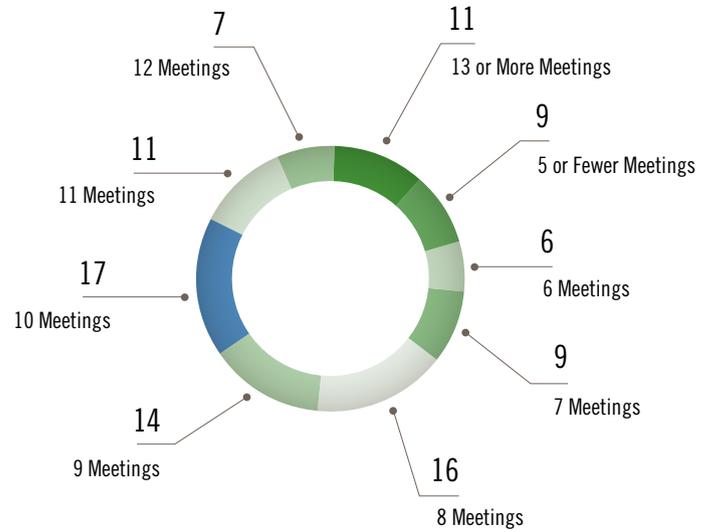
MINIMUM NUMBER OF BOARD MEETINGS PER COMPANY:



Forty-seven of the Top 100 Companies do not address this topic or do not require a minimum number of meetings.

NUMBER OF AUDIT COMMITTEE MEETINGS

During 2011, the Top 100 Companies held an average of nine audit committee meetings. The median number of audit committee meetings was also nine.



MINIMUM NUMBER OF AUDIT COMMITTEE MEETINGS

Of the Top 100 Companies, 90 require a minimum number of audit committee meetings each year. The minimum number of meetings ranges from four to nine.

MINIMUM NUMBER OF AUDIT COMMITTEE MEETINGS PER COMPANY

68

4 Meetings

4

5 Meetings

14

6 Meetings

4

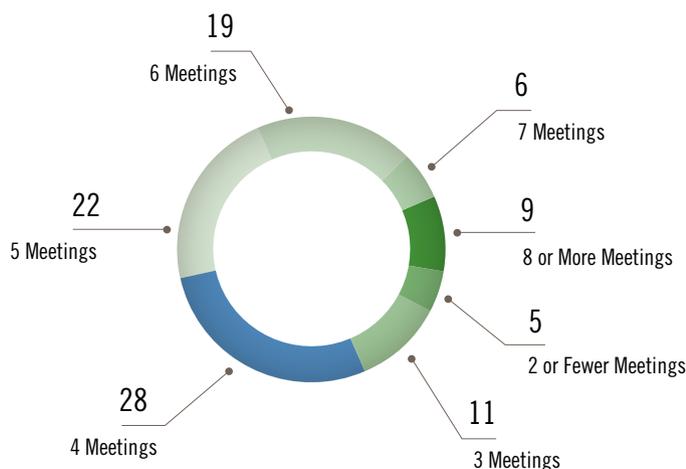
7 to 9 Meetings

Ten of the Top 100 Companies do not address this topic or do not require a minimum number of meetings.

BOARD & COMMITTEE MEETINGS (CONTINUED)

NUMBER OF NOMINATING/GOVERNANCE COMMITTEE MEETINGS

During 2011, the Top 100 Companies held an average of five nominating/governance committee meetings, with a median of five meetings.



MINIMUM NUMBER OF NOMINATING/GOVERNANCE COMMITTEE MEETINGS

Of the Top 100 Companies, 58 require a minimum number of nominating/governance committee meetings each year. The minimum number of meetings ranges from one to six.

MINIMUM NUMBER OF NOMINATING/GOVERNANCE COMMITTEE MEETINGS PER COMPANY:

19

4 Meetings

6

18

14

1

1 Meeting

2 Meetings

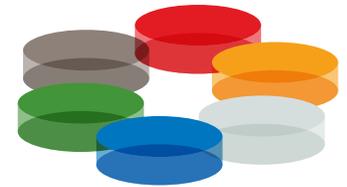
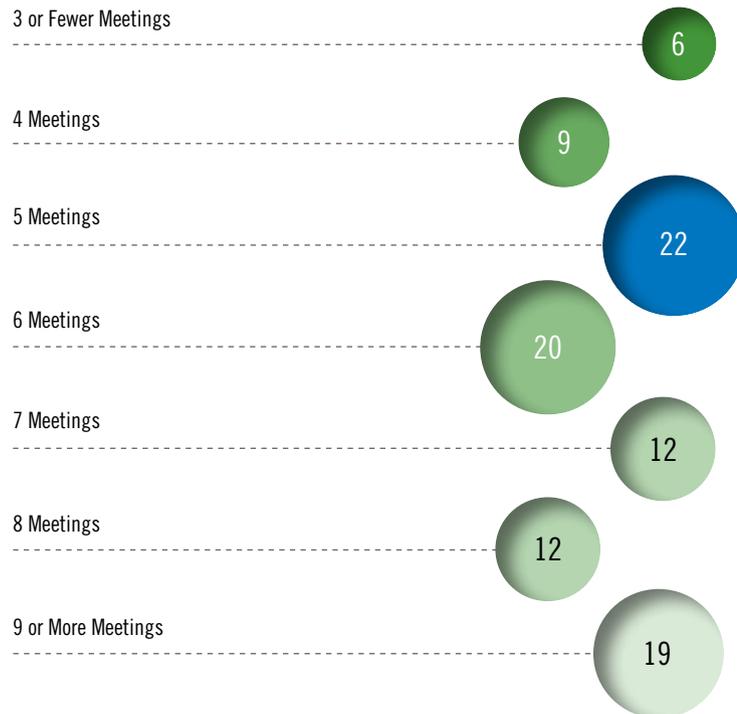
3 Meetings

5 or More Meetings

Forty-two of the Top 100 Companies do not address this topic or do not require a minimum number of meetings.

NUMBER OF COMPENSATION COMMITTEE MEETINGS

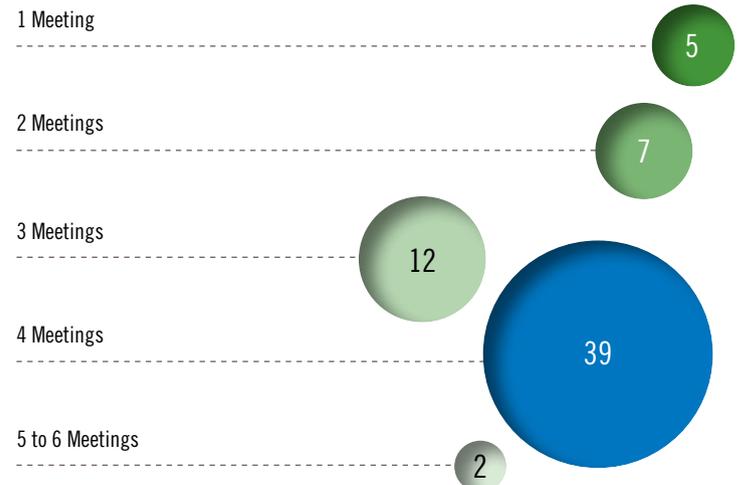
During 2011, the Top 100 Companies held an average of seven compensation committee meetings, with a median of six meetings.



MINIMUM NUMBER OF COMPENSATION COMMITTEE MEETINGS

Of the Top 100 Companies, 65 require a minimum number of compensation committee meetings each year. The minimum number of meetings ranges from one to six.

MINIMUM NUMBER OF COMPENSATION COMMITTEE MEETINGS PER COMPANY:

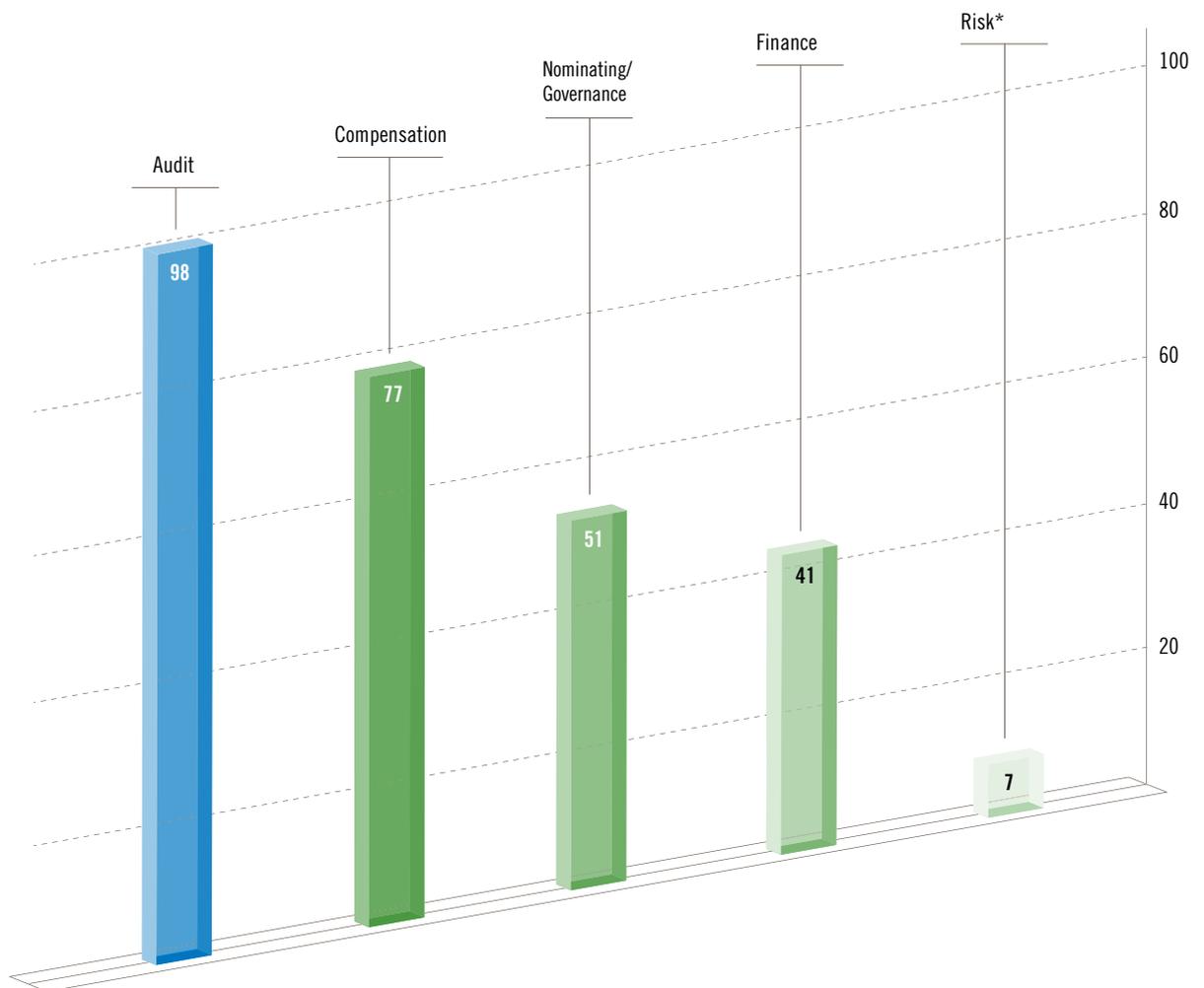


Thirty-five of the Top 100 Companies do not address this topic or do not require a minimum number of meetings.

RISK OVERSIGHT

SEC disclosure rules which became effective in 2010 require public companies to disclose in their proxy statements the board's role in the company's risk oversight process. While the disclosures show that boards use a wide variety of approaches to administer their risk oversight function, most of these companies disclosed that their boards delegated certain oversight responsibilities to one or more committees.

BOARD COMMITTEES CHARGED WITH SOME DEGREE OF RISK OVERSIGHT



*Does not include combined committees (e.g., finance and risk committees).

COMMITTEES DELEGATED PRIMARY RISK OVERSIGHT RESPONSIBILITY

Seventeen of the Top 100 Companies have specifically delegated primary risk oversight responsibility to one board committee.

11

Audit Committee

2

Risk Committee

2

Finance and Risk Committee

1

Finance and Audit Committee

1

Audit and Corporate Responsibility Committee

Top 100 Companies with a Chief Risk Officer.

23

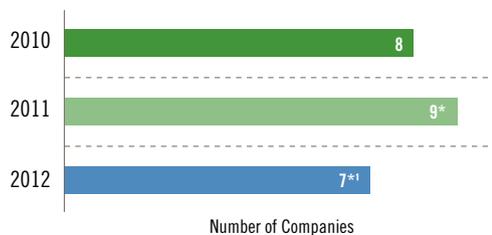
Top 100 Companies that disclosed they have formalized enterprise risk management programs or procedures.

62

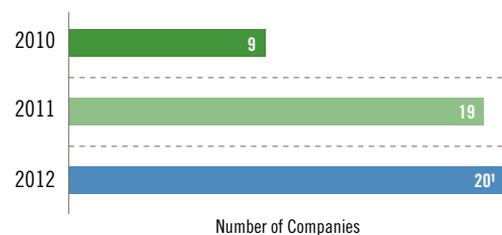
One company disclosed it is in the process of developing a formalized enterprise risk management program.

Twenty-one of the Top 100 Companies have either board and/or management risk committees.

BOARD RISK COMMITTEES



MANAGEMENT RISK COMMITTEES



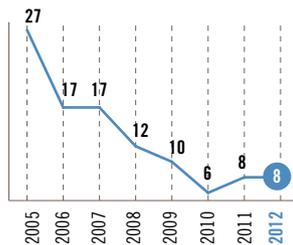
*Does not include combined committees (e.g., finance and risk committees).

¹ Two of the Top 100 Companies have both a board and management risk committee.

POISON PILLS

OF THE TOP 100 COMPANIES, EIGHT HAVE A

“POISON PILL” The prevalence of shareholder rights plans, or poison pills, has been steadily declining for years. Of the eight companies that have poison pills, four have implemented poison pills specifically to protect their net operating losses.



8

Companies that Have
a Poison Pill

92

Companies that Do Not
Have a Poison Pill



NOL POISON PILLS

An “NOL poison pill” is a shareholder rights plan adopted by a company for the purpose of protecting its net operating loss (“NOL”) assets (in contrast to a typical shareholder rights plan, which is adopted solely as a takeover defense). NOL poison pills began to receive attention during the recent economic downturn and the Delaware Supreme Court in October 2010 validated the adoption and use of an NOL poison pill in certain circumstances as a legitimate exercise of the business judgment of a board of directors.

TERM AND SHAREHOLDER APPROVAL

Three of the four non-NOL poison pills have a term of ten years and each of the four NOL poison pills has a term of three years. Of the eight poison pills, only the four NOL poison pills have been approved by shareholders.

CLASSIFIED BOARDS & OTHER STRUCTURAL DEFENSES

THE PREVALENCE OF CLASSIFIED BOARDS HAS BEEN STEADILY DECLINING FOR YEARS

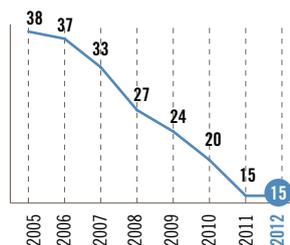
Of the Top 100 Companies, 15 have a classified or staggered board of directors. Four of these 15 Top 100 Companies are in the process of declassifying their boards. The shareholders of an additional four companies voted on management proposals to declassify their boards. Three of the proposals were approved while one, which required the approval of 80% of the outstanding shares, was not approved.

85

Boards Are Not Classified

15

Boards Are Classified



OTHER STRUCTURAL DEFENSES

In addition to classified boards, many companies' organizational documents provide for other types of structural defenses. The following structural defenses are employed by some of the Top 100 Companies:

Blank Check Preferred Stock Is Authorized

96

Shareholder Action by Less than Unanimous Written Consent Is Not Permitted

70

Certain Actions Require Supermajority Vote

40

Shareholders Are Not Permitted to Call a Special Meeting

28

Of the Top 100 Companies, 10 had a shareholder proposal to permit shareholder action by less than unanimous written consent. This was the structural defense-related shareholder proposal most frequently submitted to shareholders. See pages 34 and 37.

At the 72 Top 100 Companies that permit shareholders to call special meetings, 25% is the most common voting threshold required to call a meeting (33 companies).

POLITICAL CONTRIBUTIONS POLICIES

OF THE TOP 100 COMPANIES, 95 HAVE ADOPTED A POLITICAL CONTRIBUTIONS POLICY Political contributions policies set forth guidelines relating to the political activities of a company and its employees. Generally, these policies are contained in the company's code of conduct or in a standalone political contributions policy. Political contributions policies have attracted increased interest following the US Supreme Court's 2010 decision in *Citizens United*.

95

Companies that Have a Political Contributions Policy

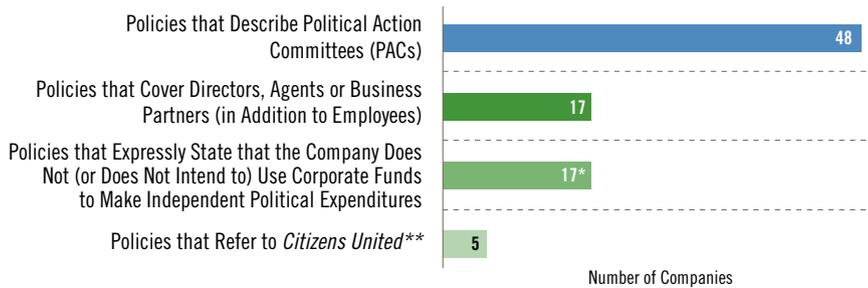
5

Companies that Do Not Have a Political Contributions Policy

The Supreme Court's decision in *Citizens United v. Federal Election Commission* (2010) allows companies to make independent expenditures (although not directly to candidates or political parties) to directly advocate for the election or defeat of candidates and to spend money on electioneering communications.

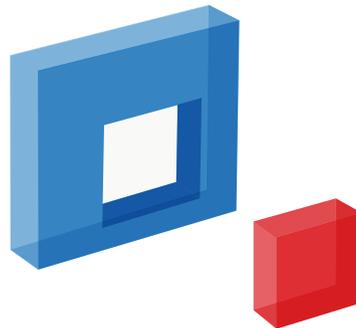
ISSUES ADDRESSED

Some of the notable issues addressed by political contributions policies are detailed below.



*Includes one company that limited its restriction to electioneering communications.

**All five companies that referenced *Citizens United* expressly stated that, notwithstanding the case, the company does not intend to use corporate funds to make independent political expenditures.



OTHER NOTABLE TERMS

The political contributions policies of the 95 companies that have such policies typically contain terms prohibiting the use of company assets for political contributions, except when approved by an authorized person such as the CEO, a board committee or an administrative-level officer. Some of the policies expressly state that the company actively makes corporate political contributions to advance certain business initiatives and public policy goals.

RELATED PERSON TRANSACTIONS

COMPANIES DISCLOSING RELATED PERSON TRANSACTIONS

Of the Top 100 Companies, 66 disclosed transactions in which the company was a participant and in which a related person had a direct or indirect material interest. In total, those 66 companies disclosed the specifics of 231 related person transactions. While a small number of companies disclosed a larger number of such transactions, 43 of the 66 companies disclosed only one, two or three transactions. In addition several companies disclosed related person transactions without disclosing all of the specifics of such transactions.

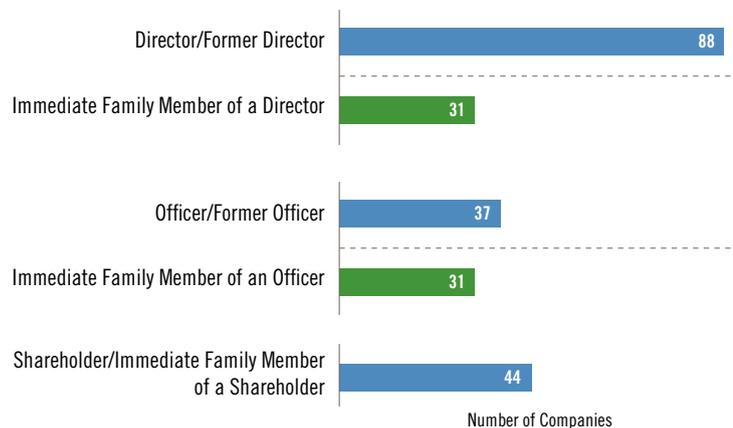
66

Disclosed Transactions with Related Persons

34

Disclosed No Transactions with Related Persons

BASIS ON WHICH THE PARTICIPANT CONSTITUTES A RELATED PERSON*



*Each transaction is only counted in the highest applicable category.

Q & A ON RELATED PERSON TRANSACTIONS

Almost all of the Top 100 Companies disclose that they have a written policy governing evaluation of related person transactions.



Q: WHAT ARE THE MOST COMMON TYPES OF RELATED PERSON TRANSACTIONS?

A: Forty-one of the Top 100 Companies engage in business transactions with a related person. Forty-two of the Top 100 Companies employ a relative of a related person. In total, these companies disclosed 106 business transactions and 64 instances where the company employed a related person's relative.

Q: WHO IS RESPONSIBLE FOR EVALUATING RELATED PERSON TRANSACTIONS?

A: The nominating/governance committee and/or the audit committee are responsible (solely or in combination) for evaluating related person transactions in 88 of the Top 100 Companies.

Q: DOES THE BODY RESPONSIBLE FOR EVALUATING RELATED PERSON TRANSACTIONS DELEGATE SUCH RESPONSIBILITY?

A: A significant number of the Top 100 Companies permit the committee of the board responsible for evaluating related person transactions to delegate such responsibility to the chair of such committee if it is impracticable or inadvisable to wait until the next committee meeting to approve such transaction.

Q: WHAT FACTORS ARE TYPICALLY CONSIDERED TO DETERMINE WHETHER A TRANSACTION WITH A RELATED PERSON WILL BE APPROVED?

A: The Top 100 Companies generally use a similar set of standards, with the most commonly cited (by 55 companies) being whether the transaction

is at arm's length and no less favorable than if made with an unrelated party. The other most frequently cited factors include the extent of the related person's interest in the transaction, whether there is a real or apparent conflict of interest, and any impact on the related person's independence.

Q: WHAT LEVEL OF DETAIL DO THE TOP 100 COMPANIES PROVIDE ON THEIR RELATED PERSON TRANSACTION POLICIES?

A: Companies' proxy statements generally include a brief summary of the related person transaction policy, although in some cases the entire policy is reprinted in the proxy statement. Many of the Top 100 Companies provide their policies on their websites, including within a broader code of ethics or as a standalone document.

Q: DOES IT APPEAR THAT ANY CATEGORY OF "RELATED PERSON" IS MOST COMMONLY INVOLVED IN RELATED PERSON TRANSACTIONS?

A: As shown on the previous page, the Top 100 Companies collectively reported a significant number of transactions across all of the categories of related persons which require disclosure, with directors accounting for the largest number of related person transactions.

RELATED PERSON TRANSACTIONS

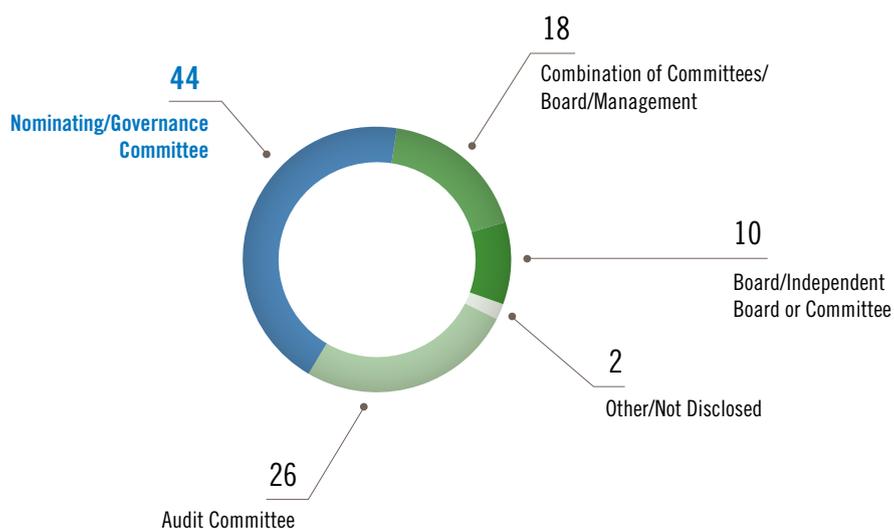
(CONTINUED)

POLICIES

Public companies must disclose a summary of the policies and procedures they use to review, approve or ratify related person transactions. The nominating/governance committee and/or audit committee at 70 of the Top 100 Companies is solely responsible for approving related person transactions, and these committees play a role in approving these transactions at an additional 18 of the Top 100 Companies. Many of the Top 100 Companies utilize various information collection and review procedures involving a wide array of departments, employees and committees to analyze transactions before they are presented to the committee that is ultimately responsible for approving or ratifying the transaction. Committees comprised solely of members of management have some responsibility for approving related person transactions at eight of the Top 100 Companies.

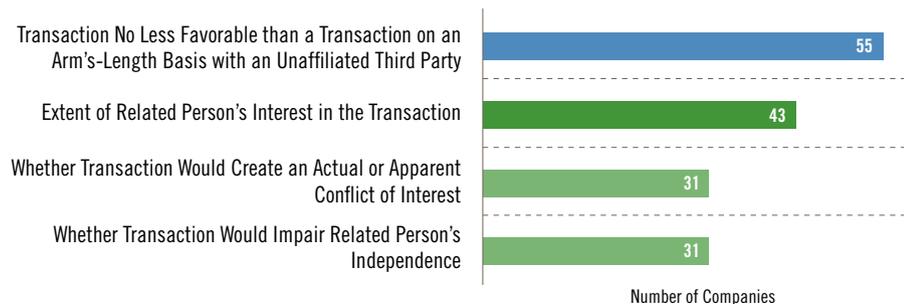


BODY RESPONSIBLE FOR APPROVAL OF RELATED PERSON TRANSACTIONS



Of the Top 100 Companies, 81 disclose detailed standards to be applied or factors to be considered when reviewing a transaction. The factors most frequently cited by such companies are detailed to the right.

FACTORS CONSIDERED IN APPROVAL PROCESS



Other factors considered include: the terms/size of the transaction, the commercial reasonableness of the transaction, the benefits of the transaction to the company, the purpose/business reasons for the transaction, the availability of alternative transactions and an assessment of the materiality of the transaction to the company and/or its shareholders.

TRANSACTIONS EXPRESSLY PRE-APPROVED

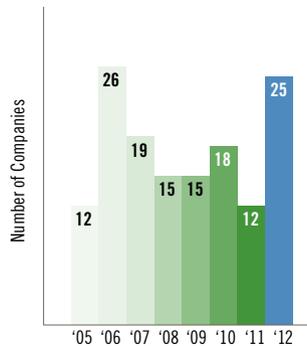
Of the Top 100 Companies, 38 specify certain transactions that are deemed pre-approved or presumed not to involve a material interest or conflict. The most common types of pre-approved transactions are detailed to the right.



Other commonly disclosed pre-approved transactions include: ordinary course banking/financial services transactions, transactions in the ordinary course of business less than a specified amount, transactions in which the rates were fixed by law, transactions resulting from a competitive bidding process and indemnification payments made to directors.

GOVERNANCE RELATED SHAREHOLDER PROPOSALS

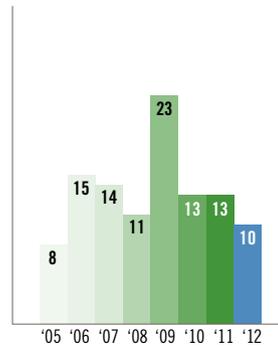
SHAREHOLDER PROPOSALS The proxy statements of 49 of the Top 100 Companies included corporate governance related shareholder proposals. The following four were included most frequently, continuing a recent trend. It is worth noting that in 2012 one company received a proxy access proposal.



INDEPENDENT BOARD CHAIR:

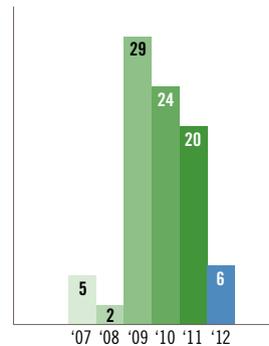
Calls for the board to adopt a policy requiring its chair to be an independent director and not a current or former CEO or employee.

Includes one company where the proposal was brought at the meeting.



CUMULATIVE VOTING FOR DIRECTORS:

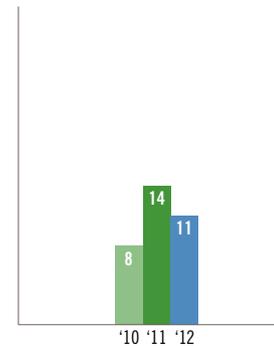
Calls for the board to take steps necessary to provide for cumulative voting for directors (by granting each shareholder a number of votes equal to the number of shares owned by such shareholder multiplied by the number of directors to be elected and the right to cast all votes for a single candidate).



CERTAIN SHAREHOLDERS CAN CALL SPECIAL MEETINGS:

Calls for the board to take steps necessary to amend the company's governing documents to give shareholders holding a certain percentage of the company's outstanding shares the power to call special shareholder meetings.

Data not collected prior to 2007. Includes one proposal to amend existing right to allow shareholders to call special meetings.

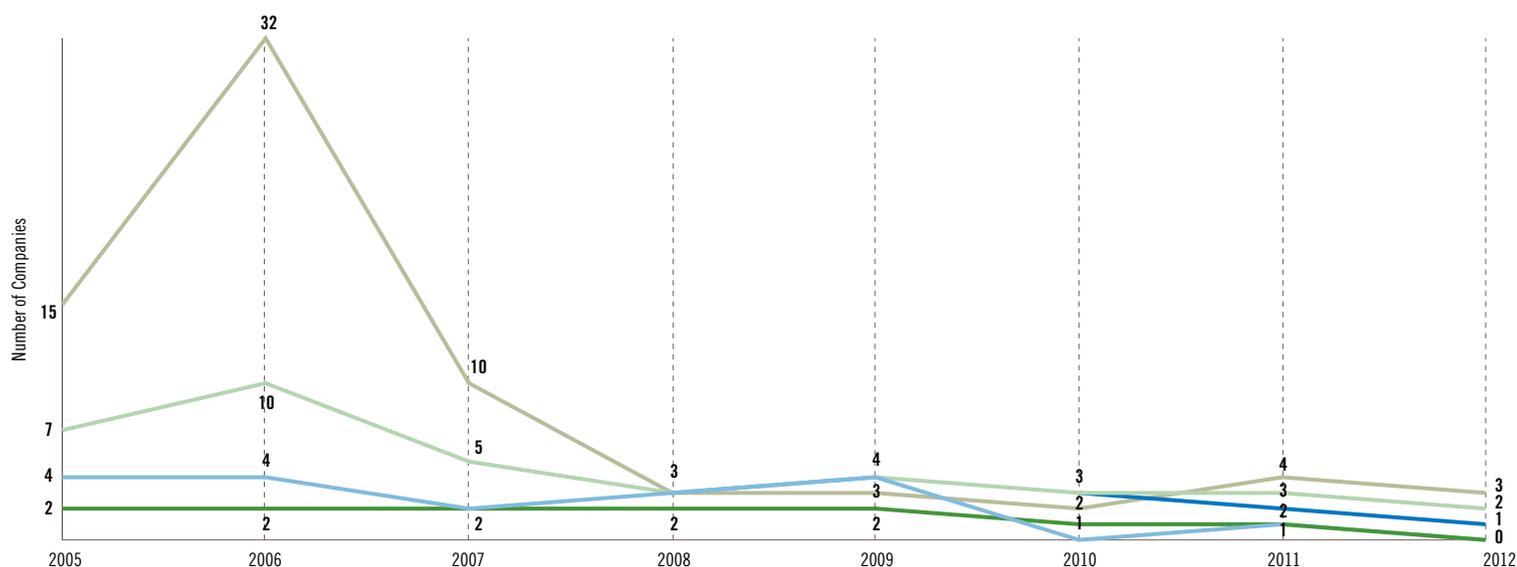


SHAREHOLDER ACTION BY WRITTEN CONSENT:

Calls for the board to take steps necessary to permit shareholders to act by written consent.

Data not collected prior to 2010. Includes one proposal to amend existing right to shareholder action by written consent.

The following corporate governance related shareholder proposals have generally appeared less frequently in the proxy statements surveyed in recent years.



DIRECTOR ELECTIONS BY MAJORITY VOTE:

Calls for the board to take steps necessary to amend the company’s governing documents to provide that nominees standing for election must receive the affirmative vote of a majority of the votes cast.

ANNUAL ELECTION OF DIRECTORS:

Calls for the board to take steps necessary to amend the company’s governing documents to require each director to be elected or re-elected annually.

REMOVAL OF SUPERMAJORITY VOTING REQUIREMENT:

Calls for the board to take steps necessary to eliminate all supermajority voting standards, unless required by law, and adopt a simple majority voting standard.

ONE VOTE PER SHARE:

Calls for the board to take steps necessary to recapitalize the company so that all shares are entitled to only one vote.

SUCCESSION POLICY:

Calls for the board to adopt a succession planning policy to develop criteria for the CEO position, identify internal candidates and use a formal assessment process.

Data not collected prior to 2010.

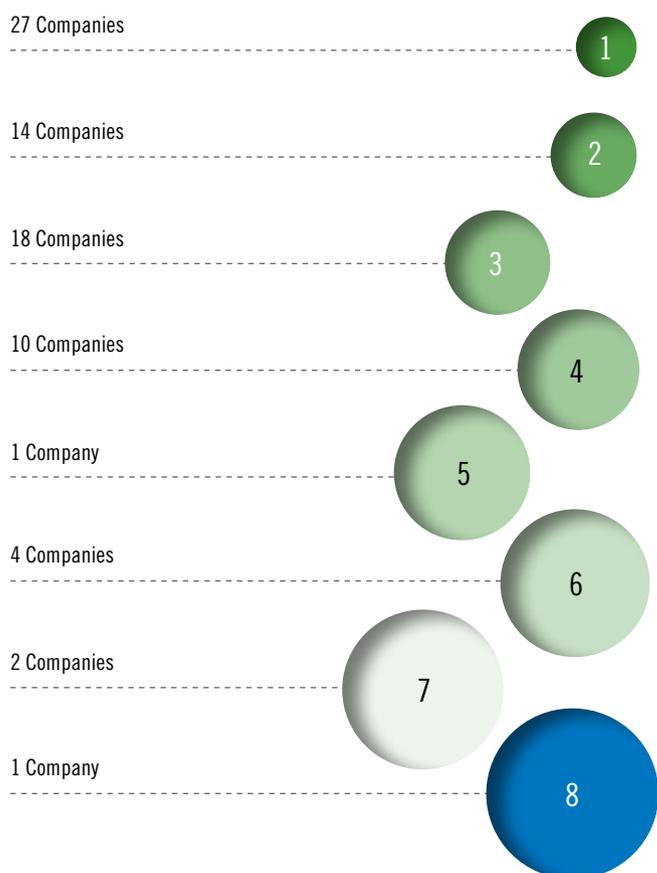
None of the proxy statements surveyed for the last three years has included any shareholder proposals calling for boards to either **nominate two candidates for each board seat or submit to a shareholder vote the adoption, amendment or repeal of poison pills.**

SHAREHOLDER PROPOSALS

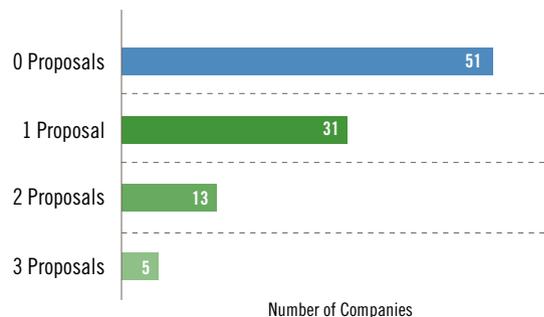
NUMBER OF SHAREHOLDER PROPOSALS

Seventy-seven of the Top 100 Companies had at least one shareholder proposal. Forty-nine of the Top 100 Companies had at least one corporate governance related shareholder proposal. Notably, 23 of the Top 100 Companies did not receive any shareholder proposals in 2012 that were required to be included in their proxy statement.

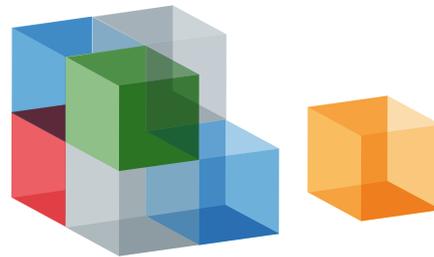
TOTAL NUMBER OF SHAREHOLDER PROPOSALS



SHAREHOLDER PROPOSALS RELATED TO CORPORATE GOVERNANCE

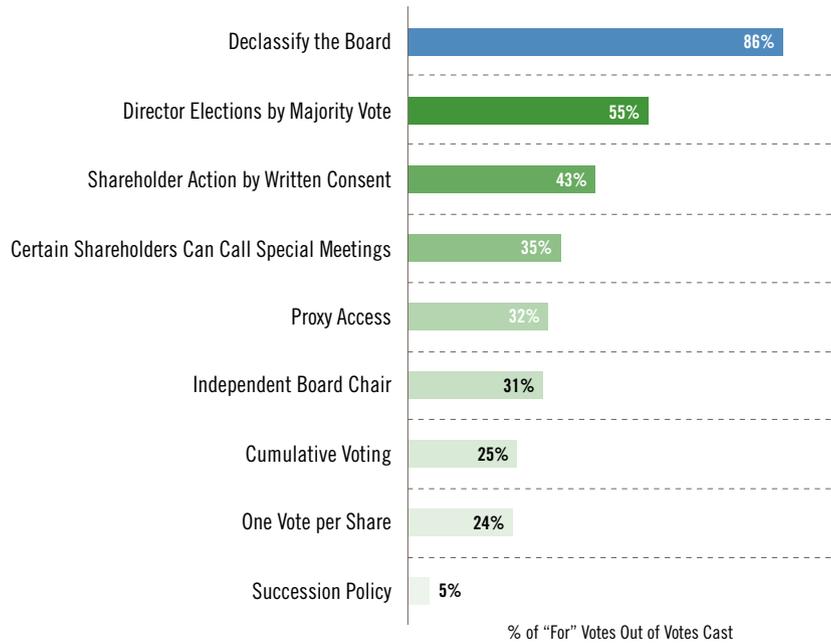


Shareholder proposals for director elections by majority vote had an average level of support of over 50%.



AVERAGE LEVEL OF SUPPORT FOR SHAREHOLDER PROPOSALS

The results for shareholder proposals have been calculated as a percentage of votes cast.



MANAGEMENT PROPOSALS

NUMBER OF CORPORATE GOVERNANCE RELATED MANAGEMENT PROPOSALS

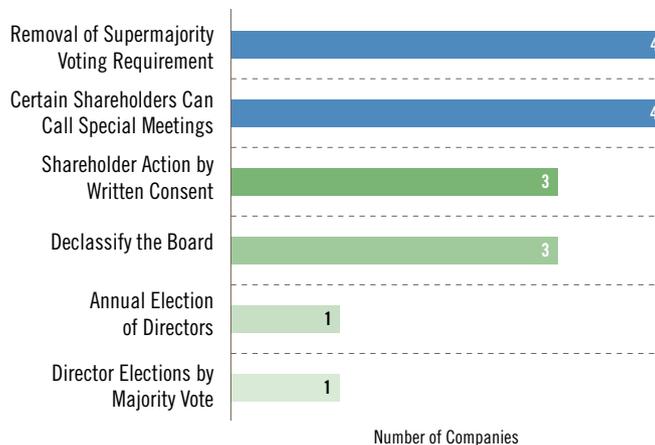
Twelve of the Top 100 Companies had at least one management proposal related to corporate governance and four of those companies had more than one such proposal. Eighty-eight proxy statements of the Top 100 Companies did not contain any management proposals related to corporate governance.

NUMBER OF MANAGEMENT PROPOSALS RELATED TO CORPORATE GOVERNANCE SUBMITTED TO SHAREHOLDERS



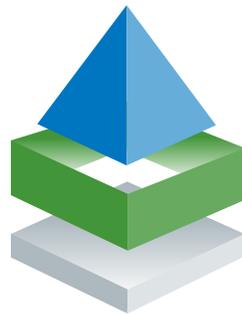
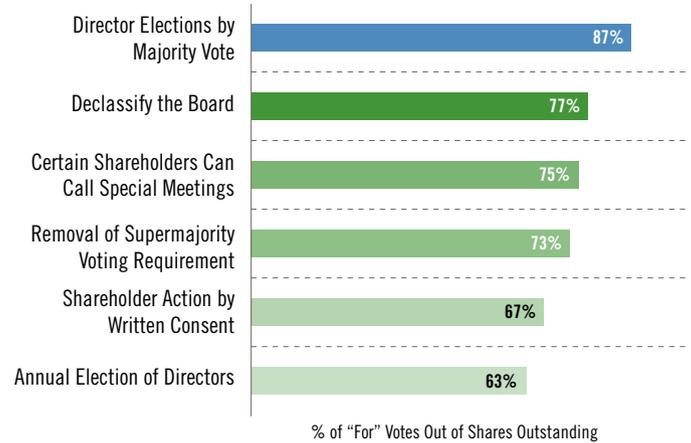
DETAILS OF CORPORATE GOVERNANCE RELATED MANAGEMENT PROPOSALS

The Top 100 Companies included a total of 16 governance related management proposals in their proxy statements.



AVERAGE LEVEL OF SUPPORT FOR MANAGEMENT PROPOSALS

The average level of support for management proposals related to corporate governance was relatively high, with the lowest average (for Annual Election of Directors) being approximately 63%. The results for management proposals have been calculated as a percentage of shares outstanding based on the publicly available information closest to the record date.



The average level of support for management proposals related to corporate governance remains high.

ADVANCE NOTICE

OVER THE LAST SEVERAL YEARS, AS THE NUMBER OF shareholder proposals and shareholder director nominations has increased, a significant number of public companies have incorporated advance notice provisions into their bylaws. These bylaw provisions ensure that companies and boards have sufficient information about the proposal and the parties introducing them and adequate time to consider the proposals.

94

Companies that Have Advance Notice Bylaws*

*The advance notice provision for one company was provided in its articles of incorporation

6

Companies that Do Not Have Advance Notice Bylaws

REFERENCE DATE FOR ADVANCE NOTICE PERIOD

The notice period mandated by advance notice provisions for the submission of shareholder proposals at an annual meeting are set by reference to the date of a particular event. For the 94 Top 100 Companies that have adopted advance notice bylaws, the most commonly used reference dates are as follows:

Anniversary of Previous Annual Meeting

74

Anniversary of Previous Proxy Statement

12

Date of Upcoming Annual Meeting

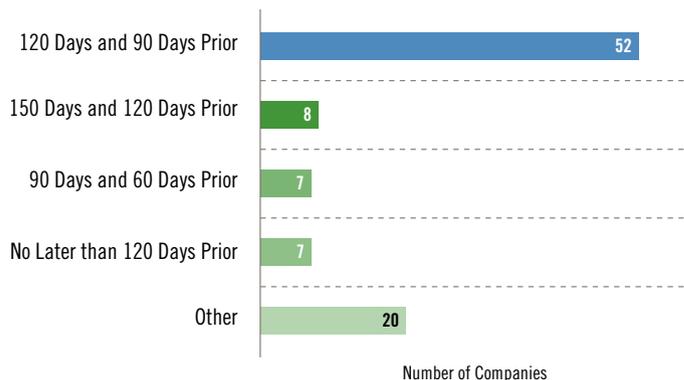
8

ADVANCE NOTICE PERIOD

The notice period mandated by advance notice provisions is defined as a certain minimum and/or maximum number of days prior to the applicable reference date used. For the 94 Top 100 Companies that have adopted advance notice bylaws, the most frequently used advance notice periods are as follows:

Many companies provide for adjustments to their standard advance notice periods in the event their annual meeting falls outside a specified time period. Fifteen companies have included a separate advance notice period for director nominations.

PROPOSAL MUST BE SENT/RECEIVED BETWEEN:



A majority of the Top 100 Companies have expanded the scope of information that must be included in a proposing shareholder's notice in order to better gauge the extent of the proposing shareholder's interest in their stock. As an example, approximately 60% of the Top 100 Companies have adopted advance notice bylaws that require proposing shareholders to disclose various indirect ownership interests in the company's stock, such as through derivatives.

SURVEY METHODOLOGY

We reviewed the corporate governance practices of 100 of the largest US public, non-controlled companies that have equity securities listed on the NYSE or NASDAQ. These companies, which we selected based on a combination of their latest annual revenues and market capitalizations, are referred to as the “Top 100 Companies.” Generally, we reviewed the annual proxy statements and corporate governance guidelines on the companies’ websites available as of June 1, 2012 for the companies listed in alphabetical order below.

3M Company
Abbott Laboratories
Aetna, Inc.
Altria Group, Inc.
Amazon.com, Inc.
American Express Company
American International Group, Inc.
AmerisourceBergen Corporation
Amgen Inc.
Anadarko Petroleum Corporation
Apache Corporation
Apple Inc.
Archer-Daniels-Midland Company
AT&T Inc.
Bank of America Corporation
Berkshire Hathaway Inc.
Best Buy Co., Inc.
Bristol-Myers Squibb Company
Cardinal Health, Inc.
Caterpillar Inc.
Chevron Corporation
Cisco Systems, Inc.
Citigroup Inc.
Colgate-Palmolive Company
Comcast Corporation
ConocoPhillips
Costco Wholesale Corporation
CVS Caremark Corporation
Deere & Company
DIRECTV
E. I. du Pont de Nemours
and Company
eBay Inc.
Eli Lilly and Company
EMC Corporation

Emerson Electric Co.
Express Scripts Holding Company
Exxon Mobil Corporation
FedEx Corporation
Ford Motor Company
Freeport-McMoRan Copper
& Gold Inc.
General Dynamics Corporation
General Electric Company
General Motors Company
Google Inc.
Halliburton Company
Hess Corporation
Hewlett-Packard Company
Honeywell International Inc.
Humana Inc.
Intel Corporation
International Business
Machines Corporation
Johnson & Johnson
Johnson Controls, Inc.
JPMorgan Chase & Co.
Kraft Foods Inc.
Lockheed Martin Corporation
Lowe’s Companies, Inc.
Marathon Oil Corporation
MasterCard Incorporated
McDonald’s Corporation
McKesson Corporation
Medtronic, Inc.
Merck & Co., Inc.
MetLife, Inc.
Microsoft Corporation
Monsanto Company
Morgan Stanley

News Corporation
NIKE, Inc.
Occidental Petroleum Corporation
Oracle Corporation
PepsiCo, Inc.
Pfizer Inc.
Philip Morris International Inc.
Prudential Financial, Inc.
QUALCOMM Incorporated
Sysco Corporation
Target Corporation
Texas Instruments Incorporated
The Boeing Company
The Coca-Cola Company
The Dow Chemical Company
The Goldman Sachs Group, Inc.
The Home Depot, Inc.
The Kroger Co.
The Procter & Gamble Company
The Southern Company
The Walt Disney Company
U.S. Bancorp
Union Pacific Corporation
United Parcel Service, Inc.
United Technologies Corporation
UnitedHealth Group Incorporated
Valero Energy Corporation
Verizon Communications Inc.
Visa Inc.
Walgreen Co.
Wal-Mart Stores, Inc.
WellPoint, Inc.
Wells Fargo & Company

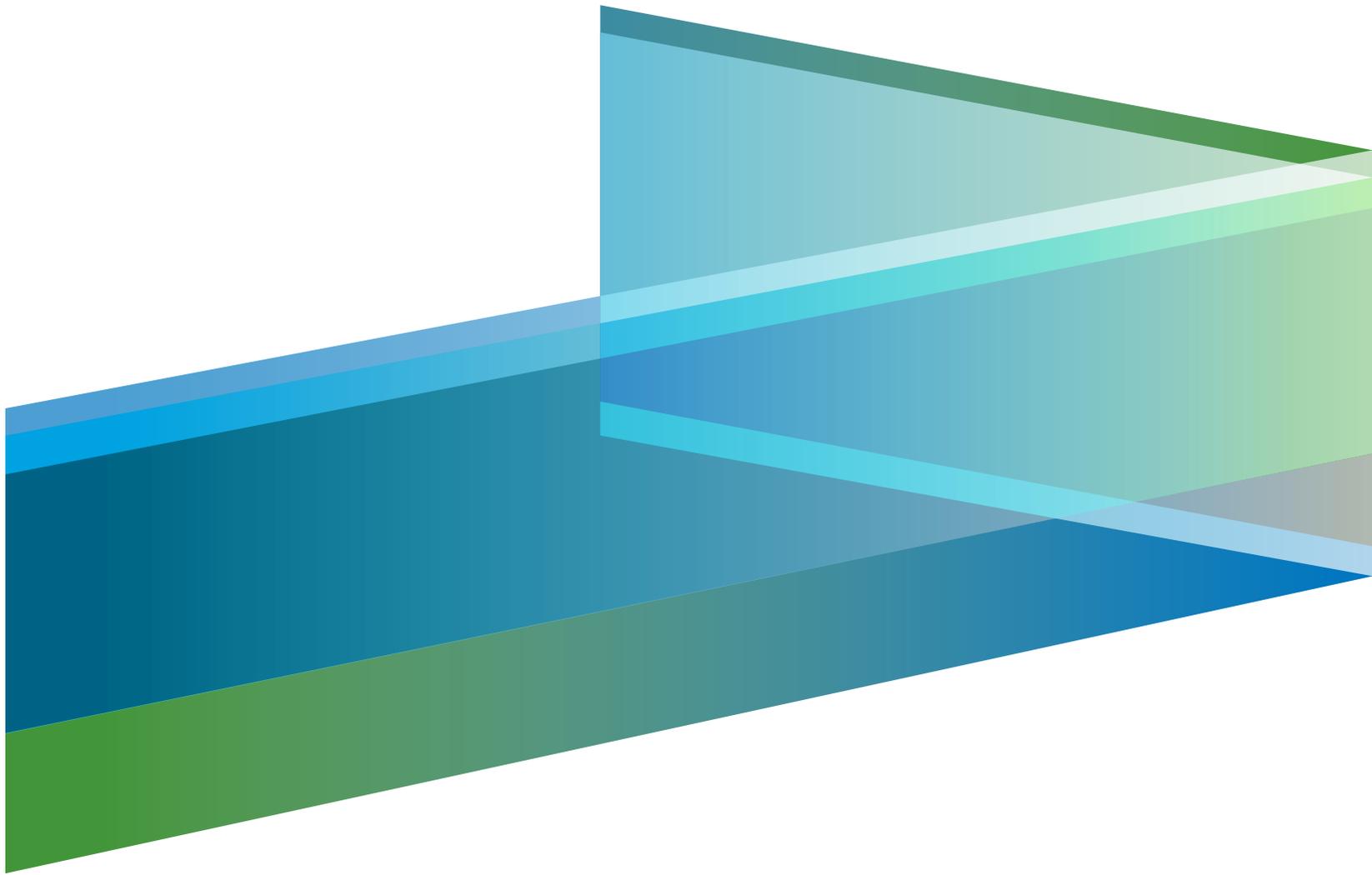
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Eighty-four of the Top 100 Companies are listed on the NYSE and 19 are listed on NASDAQ. (Three of the Top 100 Companies are listed on both the NYSE and NASDAQ.)

This survey and our companion survey regarding executive and director compensation practices are available on the Shearman & Sterling LLP website at corpgov.shearman.com. This site also includes information about our annual corporate governance symposium and contact information for members of our corporate governance advisory group.

We are publishing the surveys in an App available for download from the iTunes Store® and Google play®. Details can be found at corpgov.shearman.com.

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