SHEARMAN & STERLING LLP

HOW HAS COMPENSATION GOVERNANCE EVOLVED?

10TH ANNUAL SURVEY

CORPORATE GOVERNANCE OF THE LARGEST US PUBLIC COMPANIES 2012

This survey and our companion survey regarding general governance 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.

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Introduction

The year 2012 marks the 10th anniversary of Shearman & Sterling's Annual Survey of Corporate Governance Practices of the Largest US Public Companies (the *"Survey"*). With the second full year under the mandatory say-on-pay regime of the Dodd-Frank Wall Street Reform and Consumer Protection Act (*"Dodd-Frank"*), many of the Top 100 Companies[1] have reassessed how they are paying their executives and how they present this information to shareholders.

SAY-ON-PAY VOTING IN 2012. Ninety-five of the Top 100 Companies held a say-on-pay vote during the 2012 proxy season. In each of 2011 and 2012, the say-on-pay vote failed at two Top 100 Companies, but no Top 100 Company received a negative vote two years in a row. The average levels of shareholder support for say-on-pay proposals at the Top 100 Companies remained fairly constant from 2011 to 2012 with 67% of the companies receiving approval levels in excess of 90% and 14% receiving approval levels below 70% in 2012 compared to 62% and 13%, respectively, in 2011.

INFLUENCE OF SHAREHOLDER ADVISORS. The 2012 proxy season once again highlighted the influence of Institutional Shareholder Services (*"ISS"*) and other proxy advisory firms on voting results. On average, there was an approximately 30% lower level of shareholder support if ISS recommended a vote against a company's say-on-pay proposal. ISS gave a negative recommendation to approximately 13% of the 2012 say-on-pay proposals, including each of the companies with a failed vote.

1 See "Survey Methodology" on page 64 of this Survey for the list of the Top 100 Companies.

Nonetheless, say-on-pay proposals passed at a significant majority of companies that received a negative recommendation from ISS.

Why? Companies were better prepared. With experience from 2011, many companies proactively crafted their proxy disclosures to provide a clear and concise description of the compensation program, tailoring disclosures to anticipate and address issues on which ISS and other shareholder advisors were likely to focus. Once a company received a negative recommendation from ISS or another advisor, it was equipped to react effectively by contacting significant shareholders and filing supplemental proxy materials that rebut the criticisms and reiterate why the compensation program is successful.

The most common reason for a negative recommendation from ISS is a CEO pay-for-performance disconnect. For 2012, ISS implemented a two-step pay-for-performance analysis focused on both relative and absolute measures of CEO compensation. The first is a quantitative test comparing:

- "relative alignment" of CEO pay and the company's total shareholder return percentile ranking (over one and three years);
- the multiple of the CEO's total pay relative to the median CEO pay for the company's peer group; and
- the five-year trend in the company's total shareholder return and CEO annual pay.

If a company fails the quantitative test, ISS analyzes mitigating factors such as the rigor of performance goals, the ratio of performance- to time-vested equity and performance-based compensation to total compensation, actual financial performance, benchmarking practices and completeness of proxy disclosures.

The ISS analysis has been widely criticized and was the focus of a substantial majority of the supplemental filings made in 2012. The most common complaint was that ISS's peer group created groupings of unrelated peers from different industry segments with significantly varying revenues. Beginning in July 2012, Glass, Lewis & Co. instituted a new voting policy that addresses many of these complaints. Glass Lewis uses a more directed peer group based on the company's self-designated peer group and the peer companies designated by such peers.

Moreover, while ISS has been criticized for looking only to total shareholder return, Glass Lewis measures the three-year weighted average of various metrics, including total shareholder return, change in operating cash flows, earnings per share, return on earnings and return on assets. An issue to watch in 2013 is how companies fare under the Glass Lewis policy and whether ISS will modify its 2013 voting policies similarly.

THE EXECUTIVE SUMMARY EVOLVES. The executive summary has become a regular component of the Compensation Disclosure and Analysis (*"CD&A"*), with 87 of the Top 100 Companies providing an executive summary in 2012—a nearly 15% increase from 2011. In prior years, the executive summary was used to highlight overall company performance, compensation-related corporate governance features and significant compensation decisions. In 2012, the executive summary emerged as the foundation of a company's pay-for-performance analysis. Executive summaries relied on narratives, graphs and charts and often focused on "realizable" or "realized" pay, rather than "pay opportunity" as calculated in the summary compensation table (and relied upon by proxy advisors). This allows shareholders to compare amounts actually paid to the named executive officers (*"NEOs"*) over a multi-year period with the company's financial performance for the same period.

DISCLOSURE OF 2011 SAY-ON-PAY RESULTS. The Securities and Exchange Commission ("SEC") rules require a company to disclose in its CD&A whether, and if so, how, the prior year's say-on-pay vote was considered in making compensation decisions. Eighty-six of the 87 Top 100 Companies that held a say-on-pay vote in 2011 provided the required CD&A disclosure and the remaining company disclosed its 2011 approval rate. The disclosures were made in either the executive summary or in a separate section of the CD&A and by the end of the proxy season fairly standard disclosures emerged. Not surprisingly, there was a direct correlation between a company's 2011 say-on-pay results and the level of disclosure provided in the 2012 proxy. Companies that received high levels of shareholder support on their say-on-pay proposals (including 67% of the Top 100 Companies) generally followed a standard disclosure format noting that the company reviewed the results of the shareholder vote, considered the high level of support indicative of shareholder confidence in the executive compensation

program and therefore made no significant modifications to the compensation program. On the opposite end of the spectrum, companies with a failed vote or that received low levels of support provided greater disclosures including (1) specifics of the shareholder engagement efforts following the 2011 vote, (2) enhancements to the performance-based aspects of the compensation programs, (3) the elimination of "problematic pay practices" such as tax gross-ups, excessive severance payments, single-trigger change in control benefits, above-median benchmarking and excessive perks and (4) the adoption of share ownership or share retention requirements.

CHANGES TO COMPENSATION PROGRAMS. The Survey results show that the Top 100 Companies continue to modify certain elements of their compensation programs by eliminating deemed "problematic pay practices" in favor of elements that are aligned with good governance practices. In particular:

- Since 2011, there has been a 23% reduction in the number of Top 100 Companies that are party to employment agreements with one or more of their NEOs. In addition, three companies adopted severance policies that will replace NEO employment agreements that have expired or will expire shortly.
- Since 2011, there was a 27% decrease in the number of Top 100 Companies providing for automatic single-trigger vesting of equity awards following a change in control.
- Thirty-two of the Top 100 Companies disclosed that they provide a full or modified gross-up payment to one or more of their NEOs to mitigate the impact of the "golden parachute" excise taxes imposed upon a change in control event, down from 38 companies in 2011. Nineteen companies noted that they have eliminated gross-ups for future contracts but will, continue to provide gross-ups under existing arrangements and seven companies have eliminated all gross-ups beginning in 2012 or 2013, including through the expiration of existing arrangements.
- While the overall use of executive perks has remained steady, there has been a noticeable decline from prior years in certain perks, including automobile benefits (a 10% reduction), matching charitable contributions (a 38% reduction) and security benefits (an 11% reduction). Nine of the Top 100 Companies announced that they would reduce or eliminate the use of certain perks in 2012 or 2013.
- Since 2011, there has been a 19% reduction in the number of Top 100 Companies that provide tax gross-ups on some or all of the perks provided to executives. An additional three companies disclosed that they reduced or eliminated tax gross-ups on perks beginning in 2012.

PREPARING FOR 2013. In June 2012, the SEC adopted final rules under Dodd-Frank mandating that companies disclose whether the retention of a compensation consultant raised any "conflicts of interest" and how the conflict is being addressed. This disclosure requirement is applicable for proxy statements for annual meetings held in 2013. It is unclear whether the SEC will adopt rules implementing the remaining Dodd-Frank provisions before the end of the year. Consequently, the 2013 proxy season could be the first in a number of years in which companies will not need to focus on any significant new disclosure requirements. This creates an opportunity for companies to look back at the past two proxy seasons to determine what worked and what did not work in their disclosures, as well as their shareholder outreach and say-on-pay processes. Compensation-related shareholder activism has remained fairly low during each of 2011 and 2012, with only 29 compensation-related shareholder proposals raised at the Top 100 Companies in 2012 and 28 in 2011. Now that companies have had two years to listen to shareholder feedback and make adjustments to their compensation programs and corporate governance practices, it will be interesting to see whether compensation-related shareholder activism will increase in 2013, particularly for companies with low say-on-pay approval rates.

August 2012

SAY-ON-PAY

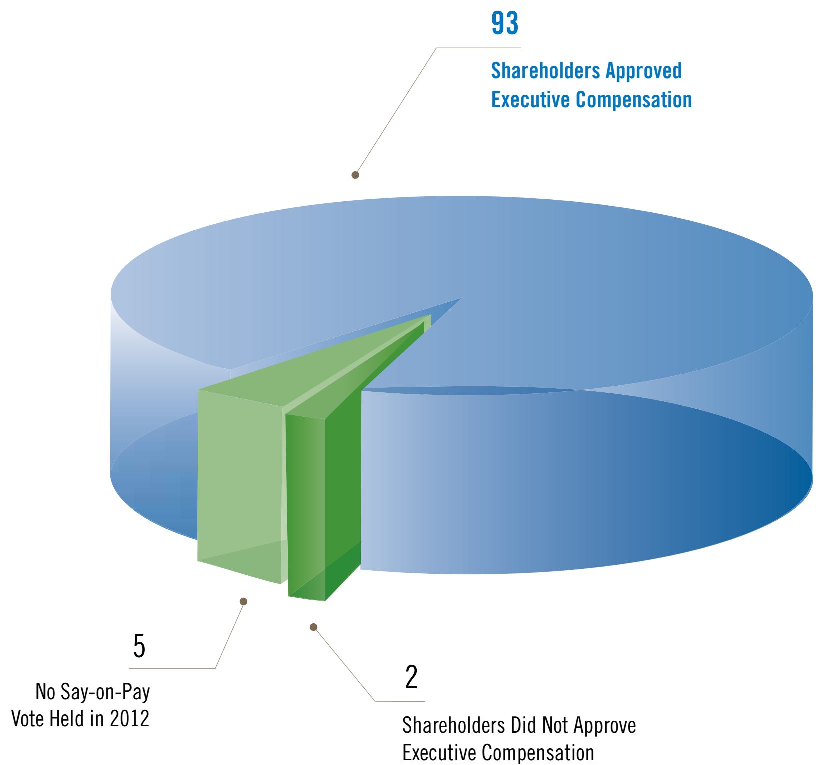
SAY-ON-PAY VOTING RESULTS 2012 marks the second proxy season under Dodd-Frank's mandatory say-on-pay regime. Dodd-Frank requires companies to provide shareholders with the right to cast a non-binding advisory vote approving the company's executive compensation as disclosed under Item compensation tables and the accompanying narratives).

Ninety-five of the Top 100 Companies held a say-on-pay vote in 2012. It was the first vote for 14 of these companies. Shareholders at three Top 100 Companies approved triennial voting in 2011 and accordingly were not obligated to hold a say-on-pay vote in 2012.

Of the 95 Top 100 Companies holding a say-on-pay vote,

98%

received approval

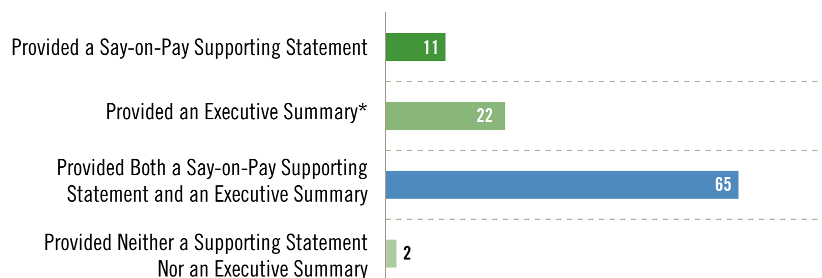


SAY-ON-PAY
(CONTINUED)

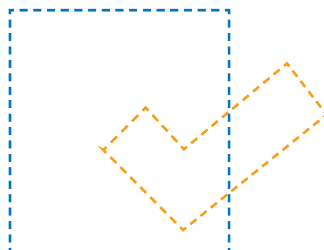
SAY-ON-PAY PROPOSAL FORMAT

The SEC's rules do not specify the format or wording for say-on-pay proposals. Some companies elected to include a detailed supporting statement for their executive compensation within the proposal, while others simply referred shareholders to the CD&A and other disclosures. Eighty-seven of the Top 100 Companies used an executive summary in their CD&A highlighting company performance, pay-for-performance and good corporate governance features that essentially served as a supporting statement for the vote.

OF THE TOP 100 COMPANIES:



*Includes three of the five Top 100 Companies that did not hold a say-on-pay vote in 2012.



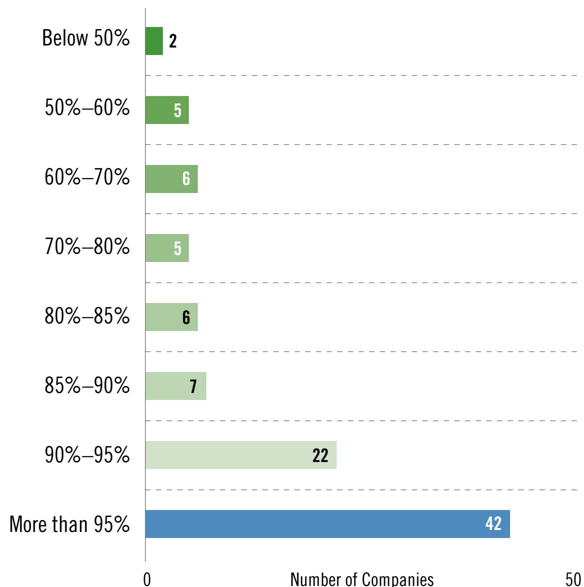
In addition,

29

of the Top 100 Companies provided an up-front "proxy summary" highlighting key points of the entire proxy, including the executive compensation provisions

2012 SAY-ON-PAY APPROVAL RATES*

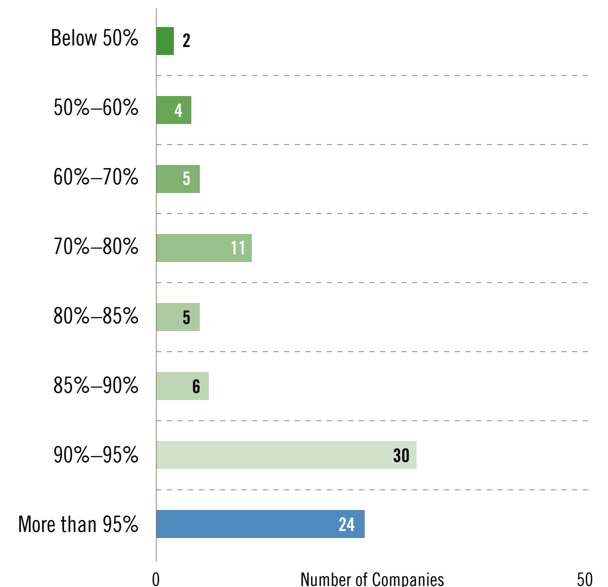
For the 95 Top 100 Companies that held a say-on-pay vote in 2012, the approval rates ranged from 45.1% to 99%. Sixty-seven percent of these companies received approval rates in excess of 90% and 14% received approval rates below 70%.



*Approval rates are calculated based on the ratio of votes "for" over the sum of votes cast plus abstentions as reported by the Top 100 Companies on their Forms 8-K.

2011 SAY-ON-PAY APPROVAL RATES*

Approval rates for the 87 Top 100 Companies that held a say-on-pay vote in 2011 ranged from 45.5% to 98.9%. Sixty-two percent of these companies received approval rates in excess of 90% and nearly 13% received approval rates below 70%.



Each of the Top 100 Companies whose shareholders did not approve say-on-pay resolutions in 2011 approved the proposals in 2012.

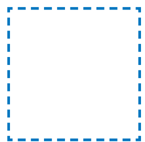
SAY-ON-PAY
(CONTINUED)

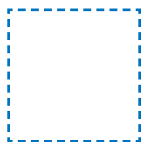
Dodd-Frank requires companies to disclose in their CD&A whether, and, if so, how, the prior year's say-on-pay vote was considered in making compensation decisions.

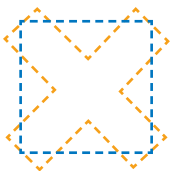
This year, of the 87 Top 100 Companies that had held say-on-pay votes in 2011:

Provided CD&A disclosure as to whether and how the prior vote was considered	86
Did not provide CD&A disclosure*	1
Noted that the company reviewed the results and elected not to significantly change the compensation program	58
Disclosed their shareholder engagement efforts following the vote	28
Listed the approval rate for the 2011 say-on-pay vote	58
Noted changes made to their compensation programs in response to the vote	22

*This company disclosed the 2011 shareholder approval rate, but did not provide the required disclosures.







SAY-ON-PAY FREQUENCY VOTE

Dodd-Frank requires that shareholders be given the opportunity to cast a non-binding advisory vote on the frequency with which the say-on-pay vote will be held at least once every six years. SEC rules do not specify the format or wording for the frequency proposal; however, shareholders must be given four choices on the proxy card: “one year,” “two years,” “three years” or “abstention from voting.”

2012

13 of the Top 100 Companies provided shareholders with a non-binding frequency vote in 2012. In each case stockholders approved, and the board adopted, annual voting.*

2011

Eighty-five of the Top 100 Companies held a frequency vote in 2011.*

OF THOSE COMPANIES:

Companies Approved Annual Voting	80
Companies Approved Triennial Voting	5

In each case, the board adopted the frequency approved by shareholders.

*Two of the Top 100 Companies remain subject to the rules under TARP. These companies are required to hold a say-on-pay vote, but not a say-on-pay frequency vote.

COMPENSATION CONSULTANT INDEPENDENCE

Dodd-Frank requires that compensation committees have the authority to retain or obtain the advice of compensation consultants, legal advisers and other advisers. Compensation committees must be afforded the sole discretion to appoint, compensate and oversee the work of these advisers and companies must provide committees with "appropriate funding" for payment of "reasonable compensation" to the advisers.

90

of the Top 100 Companies disclosed that the compensation committee has retained a compensation consultant

8

affirmatively stated that they did not retain a compensation consultant

2

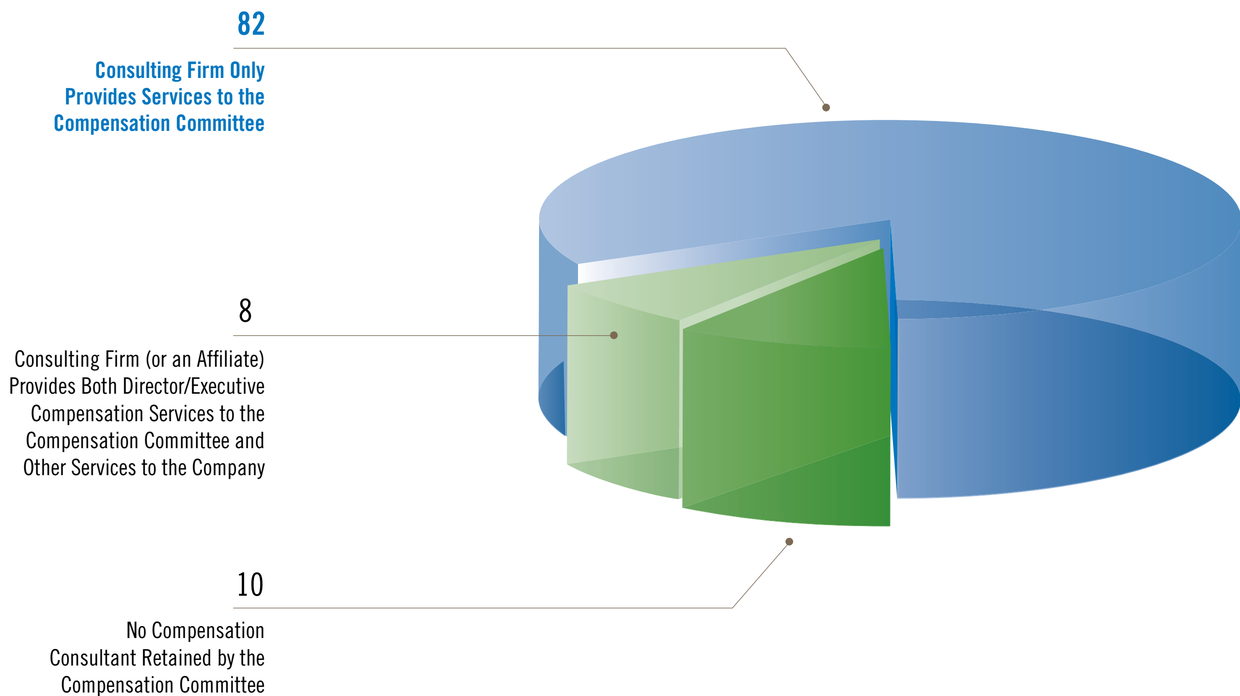
provided no disclosure regarding compensation consultants

On June 20, 2012, the SEC issued final rules regarding the independence of compensation committees and their selection of advisers under Dodd-Frank. The final rules do not require that a compensation adviser actually be independent, but companies must consider the following six independence factors before selecting a compensation consultant, legal counsel or other adviser:

- whether the entity employing the adviser provides other services to the company;
- the amount of fees received from the company by the employing entity as a percentage of its total revenues;
- the policies and procedures of the employing entity designed to prevent conflicts of interest;
- any business or personal relationship between the adviser and a member of the compensation committee;
- whether the adviser owns any stock in the company; and
- any business or personal relationship between the adviser or the employing entity and the company's executive officers.

INDEPENDENCE ASSESSMENT

Almost 91% of the consulting firms retained by compensation committees to advise on director and executive compensation do not provide any other services to the company. This is an almost 27% increase from 2011. At the eight Top 100 Companies where the compensation committee retained a consulting firm that directly or through an affiliate also provided other services to the company, the actual individuals providing services to the committee did not provide any other services to the company.



Dodd-Frank does not require compensation committees to retain advisers, nor does it preclude such advisers from providing other services to the company.

COMPENSATION CONSULTANT INDEPENDENCE (CONTINUED)

INDEPENDENCE DISCLOSURE

Companies are required to disclose the role of compensation consultants in determining or recommending the amount or form of executive and director compensation. In addition, if the compensation committee engages a consultant and the consultant (directly or through an affiliate) provides other services to the company, the company must disclose whether the decision to engage the consultant was made or recommended by management and whether the board or the compensation committee approved such other services.

Of the eight Top 100 Companies whose compensation consultant (or an affiliate) provides both director and executive compensation services to the compensation committee and other services to the company:

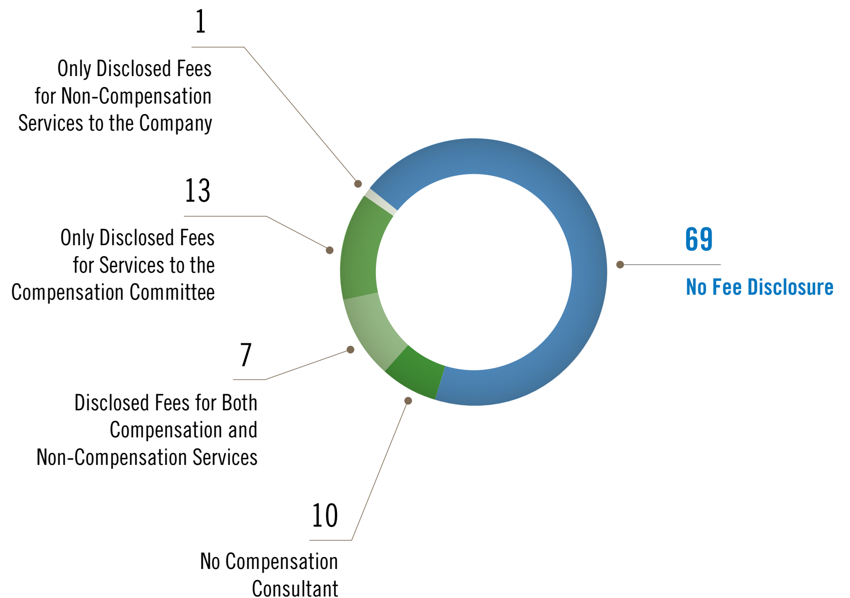
Disclosed the Services Provided to the Company	6
Disclosed that the Board/Committee Approves the Services Provided to the Company	1
Disclosed that the Board/Committee Reviews the Services Provided to the Company	6
Services are Provided by an Affiliate not the Actual Consultant	8
Services Provided Relate to Areas Other Than Director and Executive Compensation (e.g., Tax, Actuarial and Human Resources)	8

Five Top 100 Companies disclosed that the compensation committee has retained an independent legal adviser.

Management at 17 Top 100 Companies retained a separate compensation consultant.

FEE DISCLOSURE

Companies are required to disclose the fees paid to the compensation consultant (or an affiliate) for both director and executive compensation services and "other" services if the consultant (or an affiliate) receives fees in excess of $120,000 during the applicable year for such other services. No disclosure is required if the consultant's "other" services are limited to (1) consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors, and is generally available to all salaried employees or (2) providing information that is not customized for the company or is customized based on parameters that are developed by the consultant.



Pursuant to the SEC's final rules under Dodd-Frank, beginning July 27, 2012, a company must disclose whether the work of its compensation consultant has raised any conflicts of interest and, if so, the nature of the conflict and how the conflict is being addressed.

COMPENSATION CONSULTANT INDEPENDENCE (CONTINUED)

COMPENSATION CONSULTANT INDEPENDENCE POLICY

38

of the Top 100 Companies disclosed that they maintain a compensation consultant independence policy

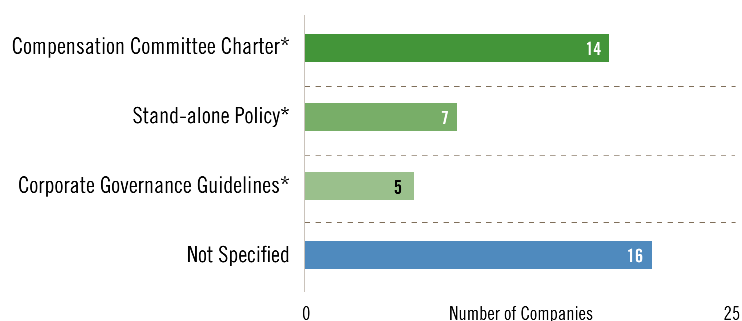
62

of the Top 100 Companies do not disclose whether they maintain a compensation consultant independence policy

The terms of the consultant independence policies at the Top 100 Companies vary widely.

- Approximately 40% of these companies require a periodic independence review by the compensation committee, generally annually.
- Fewer than 30% of these companies prohibit the consultant (and presumably its affiliates) from providing any other services to the company.
- Nearly 40% of these companies require pre-approval (by the compensation committee or the committee chair) of services other than compensation services provided to the board.
- About 15% of the policies provide that a consultant will not be deemed independent if the consulting firm (1) received fees in excess of a specified amount (often $120,000) or (2) received fees for services provided to the company that exceed a percentage of the firm's gross revenues (generally 1%).

LOCATION OF COMPENSATION CONSULTANT INDEPENDENCE POLICY



*One Top 100 Company documents its policy in both the compensation committee and corporate governance charters, one company sets forth the policy in the compensation committee charter and a stand-alone policy and one company relies on all three.

Forty-two percent of the 38 Top 100 Companies that describe a compensation consultant independence policy in their proxies do not specify where the policy is documented.

In certain instances, while the company may not maintain an independence policy, the engagement letter with the consultant prohibits the consultant from providing other services to the company.

CLAWBACK POLICIES

The number of Top 100 Companies disclosing that they maintain a clawback policy has remained constant since 2011, following a 45% increase since 2009. Dodd-Frank requires all public companies to implement a clawback policy. Clawback regulations were anticipated in early 2012, but have not yet been released and the SEC has not indicated when the regulations will be forthcoming.

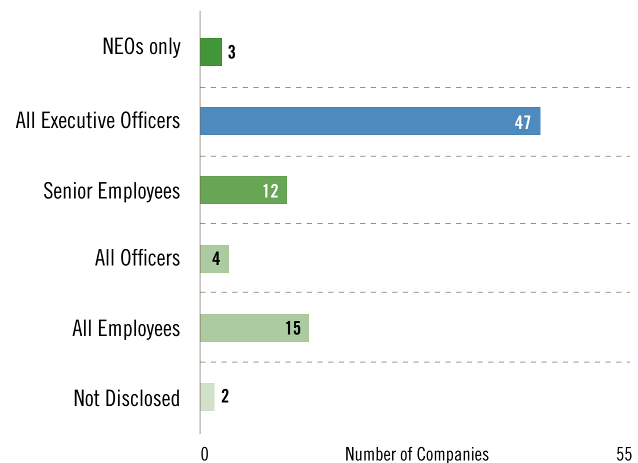
81 of the Top 100 Companies have publicly disclosed that they maintain a clawback policy in 2012

Four companies disclosed that they have adopted a clawback policy to be effective in calendar year 2012 or later.

WHO IS COVERED?

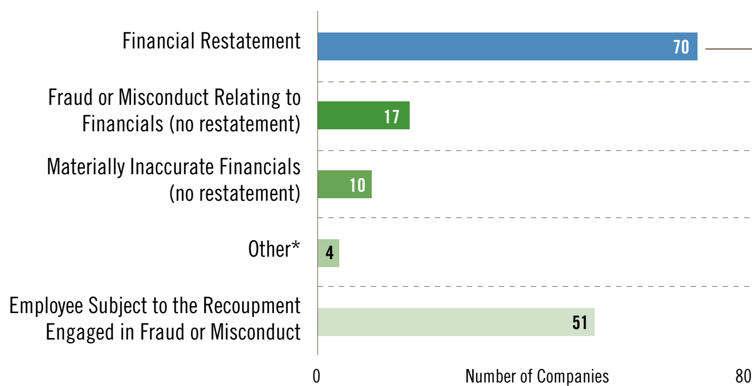
The threshold issue is determining whose compensation is subject to clawback. Clawbacks mandated under Dodd-Frank will apply to all current and former executive officers.*

*Two of the 15 Top 100 Companies that maintain a policy that can be triggered by more than one event apply each trigger to a different group of employees



WHAT ARE THE TRIGGERS?

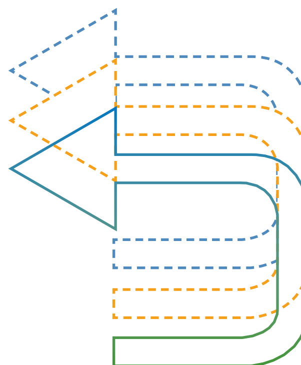
Dodd-Frank requires recoupment upon an accounting restatement due to material noncompliance with any financial reporting requirement. The restatement need not result from fraud or misconduct by the company or any of its employees. Voluntary clawback policies at many of the Top 100 Companies have more than one trigger.



*Includes two Top 100 Companies subject to the clawback provisions under TARP.

49 require fraud or misconduct related to the financial restatement

21 do not require fraud or misconduct



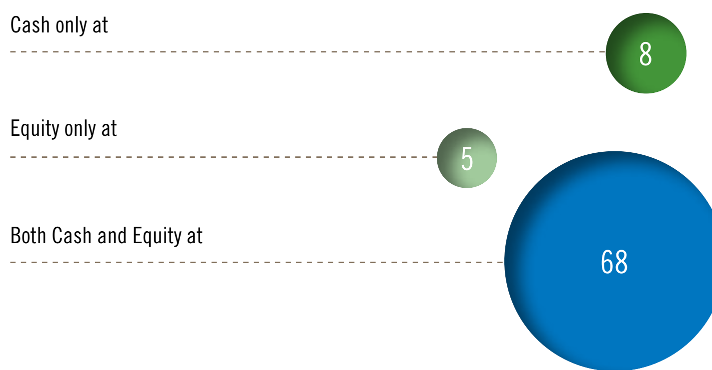
Seven of the Top 100 Companies disclose that their clawback policy also applies to former employees.

CLAWBACK POLICIES (CONTINUED)

WHAT COMPENSATION IS COVERED?

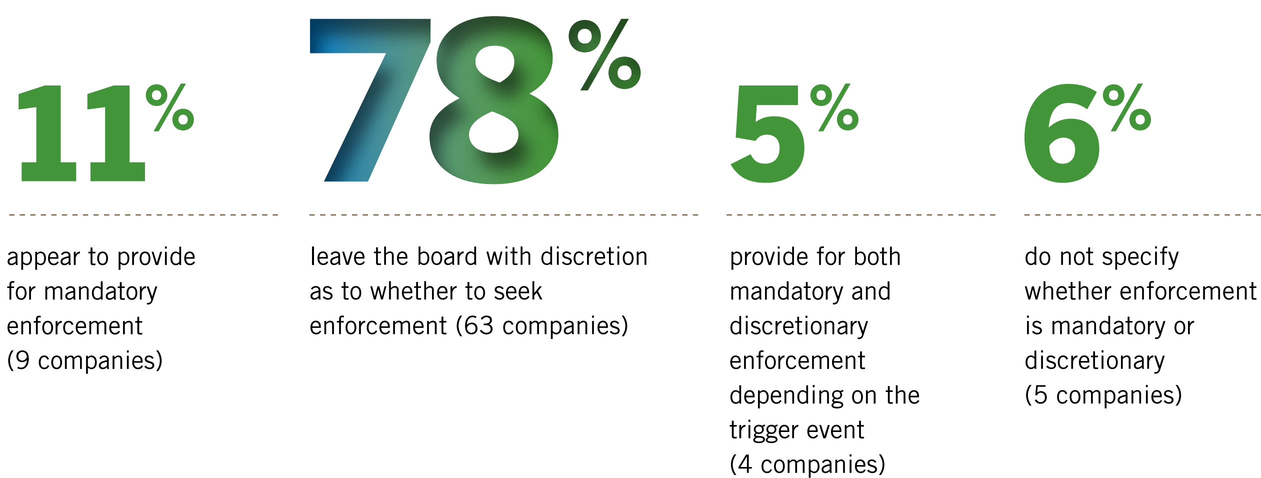
Dodd-Frank compliant clawbacks will require companies to recover "certain incentive-based compensation (including stock options)." While voluntary clawback policies generally permit a company to recoup "incentive compensation," practice varies on the forms of incentive compensation that may be recouped.

Of the 81 Top 100 Companies that maintain clawbacks, they may recoup:



HOW ARE CLAWBACK POLICIES ENFORCED?

Of the 81 Top 100 Companies that maintain a clawback policy:



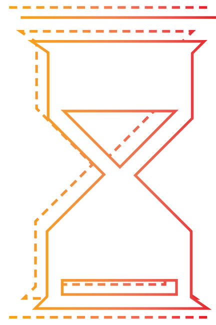
48

of the Top 100 Companies describe their clawback policy in their proxy statement, but do not publicly disclose where the policy is memorialized*

*Eight Top 100 Companies formalize their policies in more than one document.

WHERE IS THE POLICY DOCUMENTED?

Twelve Top 100 Companies formalize their clawback policy in their corporate governance guidelines, 17 companies disclose that the policy is part of an incentive award plan or agreement, nine set forth the policy in a publicly available compensation or corporate governance policy, and two have implemented the policy as a provision in the compensation committee charter. One company enters into agreements with its executives that set forth the terms of the clawback policy.



WHAT TIME PERIOD IS COVERED?

The clawback provisions under Dodd-Frank will apply to amounts received during the three-year period preceding the date on which the company is required to prepare a restatement.

- Seventy-nine percent of the Top 100 Companies that maintain clawback policies (64 companies) do not specify the time period covered by the policy.
- Eight Top 100 Companies provide for a three-year clawback period, two companies provide for a two-year period and seven companies provide for a one-year period.
- One company provides for a two-year recovery period and another provides for a five-year recovery period.
- Two companies state that the recovery will apply to the entire restatement period.
- Two Top 100 Companies adjust the time period based upon the event that triggers recovery.

NEO AGREEMENTS

Many shareholders perceive hefty severance benefits as payment for failure and are putting increasing pressure on companies to eliminate or curtail severance benefits. In recent years, companies have been revisiting contracts upon expiration, seeking reductions in severance multiples and post-termination benefits. Others are considering the elimination of individual contracts in favor of severance plans to allow for easier changes in the future.

NEO EMPLOYMENT AGREEMENTS

36 of the Top 100 Companies are parties to employment agreements with one or more NEOs compared to 47 in 2011, a 23% reduction

OF THE 36 COMPANIES:

Entered into employment agreements with all NEOs	9
Entered into employment agreements with at least one NEO (but not all)	27

CEO	18
CFO	10
Other NEOs	15

Three of the Top 100 Companies adopted new severance policies that will replace NEO employment agreements that have expired or will expire shortly.

NEO SEVERANCE PLANS AND ARRANGEMENTS

38

of the Top 100 Companies maintain stand-alone severance plans or arrangements benefitting one or more NEOs, compared to 39 companies in 2011.

Thirteen companies have adopted policies capping the severance multiple paid to NEOs unless prior shareholder approval is obtained. In all but one instance, the severance is limited to 2.99 times the NEO's base salary and annual bonus. In one instance, the multiple is two.

OF THE 38 COMPANIES:

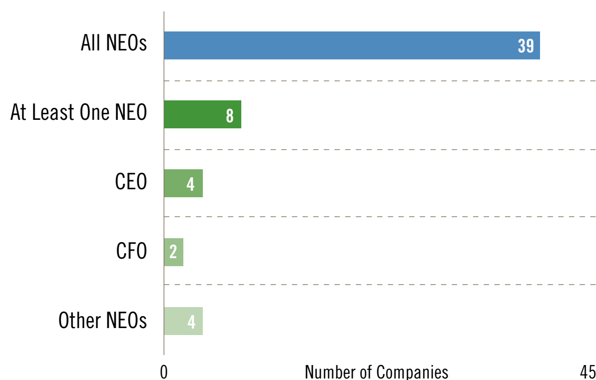
Maintain agreements with all NEOs	25
Maintain agreements with at least one NEO (but not all)	13

CEO	2
CFO	8
Other NEOs	12

CHANGE IN CONTROL BENEFITS

CHANGE IN CONTROL SEVERANCE BENEFITS

Of the Top 100 Companies, 47 disclosed that they provide change in control severance benefits to one or more of their NEOs.



CHANGE IN CONTROL SEVERANCE BENEFIT TRIGGER

46

of the Top 100 Companies that provide for enhanced severance payments upon a change in control require both a change in control and the NEO's termination of employment ("double trigger"). In general, the payments are made if the NEO experiences a termination "without cause" or a resignation for "good reason" following the change in control

1

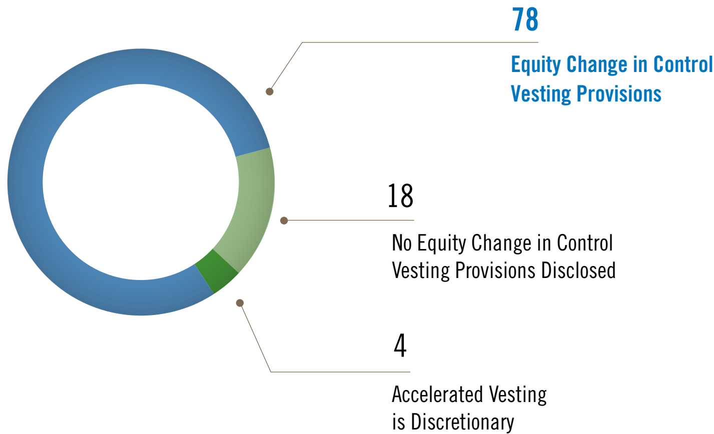
of the Top 100 Companies does not specify the triggering event

0

of the Top 100 Companies provide for payment solely upon a change in control ("single trigger") without the need for a termination

Two Top 100 Companies disclosed that they reduced their change in control severance protection period from three to two years. For one company, the change also applied to existing severance benefits. One company eliminated change in control benefits for new employees beginning in calendar year 2012.

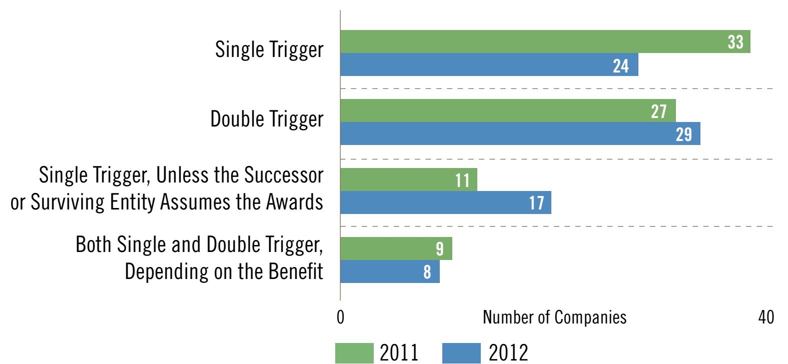
EQUITY CHANGE IN CONTROL PROVISIONS



At least three Top 100 Companies have announced that, beginning in calendar years 2012 or 2013, they will move to double trigger change in control vesting for equity awards.

EQUITY CHANGE IN CONTROL BENEFIT TRIGGERS*

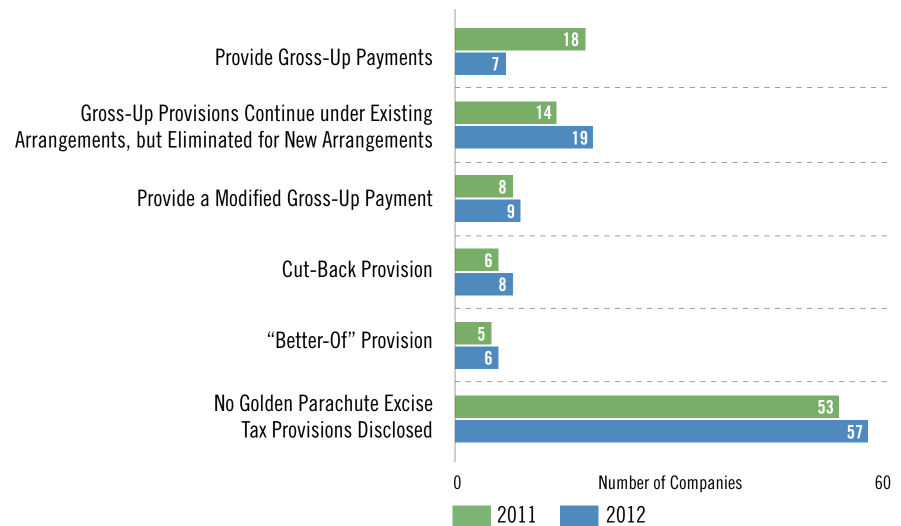
Equity change in control vesting can be either "double trigger" or "single trigger." There was an approximately 27% decrease in the number of Top 100 Companies providing for automatic single trigger vesting and a 55% increase in the number of companies providing for single trigger vesting only if the successor does not assume the equity awards. In certain instances, if the surviving entity in the change in control assumes the equity awards, the awards will vest if the employee is terminated within a specified period following the change in control, generally two years.



*Data is based on the change in control vesting provisions applicable to the most recent equity grants. In many instances, the vesting provisions differ for older awards.

CHANGE IN CONTROL TAX GROSS-UPS

Thirty-two of the Top 100 Companies disclosed that they provide some level of payments to one or more of their NEOs to mitigate the impact of the "golden parachute" excise tax imposed under the Internal Revenue Code ("Code") in change in control transactions. This is a moderate decrease from 38 companies in 2011.*



*Three Top 100 Companies provide multiple forms of change in control gross-up provisions depending on the executive or the benefit.

32

of the Top 100 Companies disclosed that they provide a full or modified gross-up to one or more NEOs

19

of the Top 100 Companies disclosed that they eliminated gross-ups for future contracts, but continue to provide gross-ups under existing arrangements

7

of the Top 100 Companies disclosed that they eliminated all gross-ups beginning in calendar year 2012 or 2013, including through the expiration of existing agreements

EXPLANATION OF TERMS

DESCRIPTION OF GOLDEN PARACHUTE PROVISIONS UNDER THE CODE

Section 4999 of the Code imposes a 20% excise tax on the amount of any "excess parachute payments" received by certain executives, and Section 280G of the Code disallows an employer deduction for those payments. Any gross-up payment made in connection with the excise tax will also be subject to the excise tax and be non-deductible. If the aggregate present value of all parachute payments paid to an executive (including cash and accelerated equity awards) equals or exceeds three times the executive's base amount, then the executive will be considered to have received an excess parachute payment.

EXCESS PARACHUTE PAYMENT

Code Sections 280G and 4999 are triggered if all parachute payments equal or exceed three times the executive's base amount. The amount of the excess parachute payment that is not deductible under Section 280G and subject to the excise tax under Section 4999 is any payment in excess of one times the executive's base amount.

SAFE HARBOR

The safe harbor is three times the executive's base amount, less one dollar. Many companies use a 2.99 multiple in making their calculations to avoid an inadvertent trigger.

BASE AMOUNT

An executive's base amount is the average of his or her compensation from the employer that was includible in his or her gross income for the most recent five calendar years ended prior to the year in which the change in control occurs.

MODIFIED GROSS-UP

The gross-up is only paid if the change in control payments exceed a specified amount over the safe harbor. For instance, a company may provide that it will only pay a gross-up if the aggregate amount of the change in control payments exceeds the safe harbor amount by 10% or more. At some companies, if the change in control payments are below this percentage, they will be reduced to the safe harbor amount. Eight of the nine Top 100 Companies that maintain a "modified" gross-up provide for a cutback.

CUT-BACK PROVISION

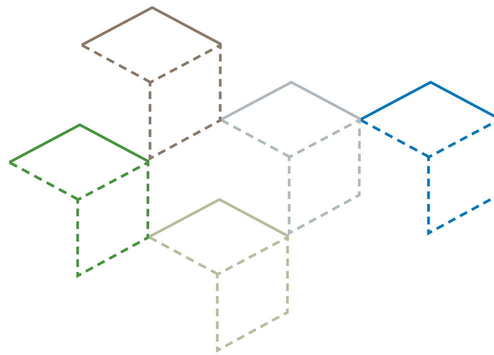
The change in control payments are automatically reduced to the safe harbor amount (or, in many instances, 2.99 times the base amount) so that no excise tax applies.

"BETTER OF" CUT-BACK PROVISION

Employees will receive change in control payments equal to the greater of (1) the after-tax amount they would have received after the imposition of the Section 4999 excise tax and (2) the "cut-back" amount (e.g., the safe harbor).

RELATIONSHIP OF COMPENSATION AND RISK

Under SEC rules, companies must disclose the relationship between the compensation practices that are applicable to all employees—not only those applicable to the NEOs—and the company's risk management philosophy if the risks arising from the company's compensation programs are "reasonably likely to have a material adverse effect" on the company.



In 2012,

95

of the Top 100 Companies provided some compensation-related risk disclosure in their proxy statements

5

of the Top 100 Companies did not provide compensation-related risk disclosure

SEC rules do not require a company to affirmatively state that its compensation programs are not reasonably likely to have a material adverse effect on the company. Following a series of SEC comment letters in 2010, a majority of public companies, including almost 76% of the Top 100 Companies, that provided risk disclosure made such a statement.

In 2012,

72

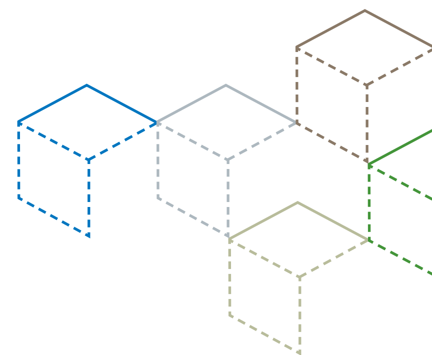
of the Top 100 Companies affirmatively stated that their compensation practices are not likely to have a material adverse effect on the company

23

of the Top 100 Companies that provided compensation-related risk disclosure did not provide an affirmative statement regarding risk

0

of the Top 100 Companies concluded that compensation-related risks are reasonably likely to have a material adverse effect on the company



RELATIONSHIP OF COMPENSATION AND RISK (CONTINUED)

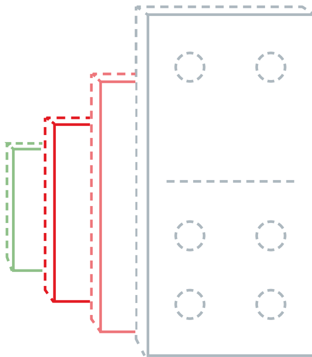
CONTENT OF RISK DISCLOSURE

There is no prescribed content or format for compensation-related risk disclosure. As in prior years, the 2012 proxy season showed a wide range of practices ranging from no disclosure to a detailed description of the risk analysis process or the various features of the company's policies and practices that are designed to discourage excessive risk-taking.

84% of the 95 Top 100 Companies that provided risk disclosure (80 companies) noted various features of their policies and practices that are designed to discourage excessive risk-taking

63% of the 95 Top 100 Companies that provided risk disclosure (60 companies) describe the company's risk assessment process

5% of the 95 Top 100 Companies that provided risk disclosure (5 companies) made a conclusory statement that they conducted a risk assessment and that their policies and procedures are not reasonably likely to have a material adverse effect on the company

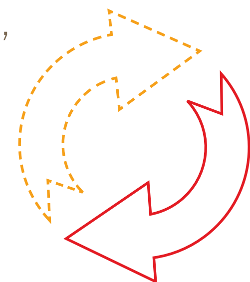


RISK MITIGATING FACTORS

While the amount and format of the risk disclosure varied widely, there were consistent themes among the factors cited to support a company's conclusion that compensation policies do not pose a risk to the enterprise. The most common factors noted by the Top 100 Companies include:

- Providing a mix of cash and one or more forms of equity awards, often emphasizing the equity portion.
- Utilizing a combination of fixed and variable compensation.
- Using a mix of annual and longer-term incentives, often emphasizing performance-based long-term incentives.
- The compensation committee exercising negative discretion in determining final award payouts.
- Varying the metrics used to determine payout in order to not put too much emphasis on any single measure, including company-wide, business unit and peer-relative goals.
- Using only publicly reported, readily ascertainable and/or audited performance metrics that are not subject to manipulation.
- Capping incentive award payouts (for example, no more than 200% of target) and utilizing linear payouts of incentive awards.
- Adding a risk adjustment feature to performance metrics.
- Relying on multi-year vesting periods and overlapping performance periods.
- Imposing share ownership and retention guidelines.
- Prohibiting hedging transactions.
- Implementing and enforcing clawback policies.
- Limiting multi-year guaranteed employment terms, tax gross-ups, single-trigger change in control vesting and perks.
- Setting up strong internal controls, governance and review structures and formal risk-management programs.
- Utilizing an independent compensation consultant.

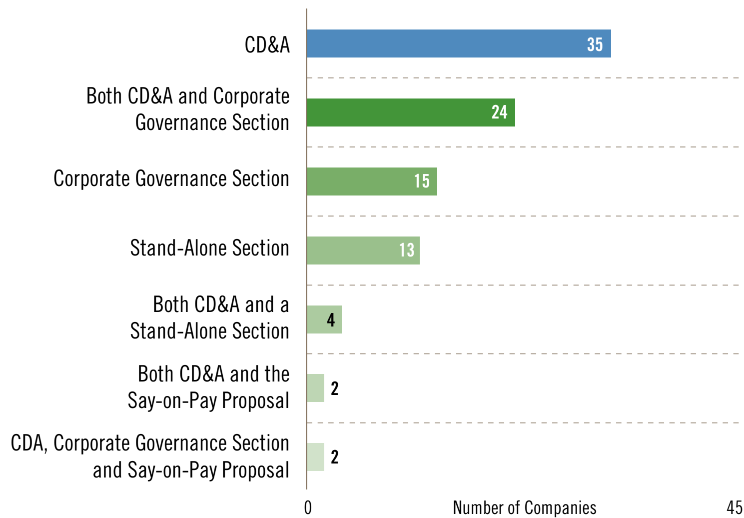
Process, as much as disclosure, seems to be the key to the evolving "best practice" on compensation risk.

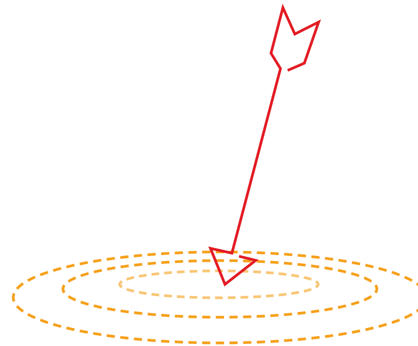


RELATIONSHIP OF COMPENSATION AND RISK (CONTINUED)

LOCATION OF RISK DISCLOSURE

There is no specified location for the risk analysis in the proxy. The SEC, by means of a Compliance and Disclosure Interpretation, has encouraged companies to present compensation risk disclosure together with their other Item 402 disclosures. The Top 100 Companies generally included the risk disclosure with their general corporate governance disclosures, in the CD&A or in a stand-alone section. Some companies have addressed risk in more than one part of the proxy statement. Four Top 100 Companies also included risk disclosure in their say-on-pay supporting statement.





RISK ASSESSMENT POLICIES

Many companies, including 50 of the Top 100 Companies, have begun to mandate an annual risk assessment in their governance documents, such as the compensation committee charter or the corporate governance guidelines.

42

of the Top 100 Companies maintain a risk assessment policy only in their Compensation Committee Charter

1

company maintains a risk assessment policy in both its Corporate Governance Guidelines and its Compensation Committee Charter

7

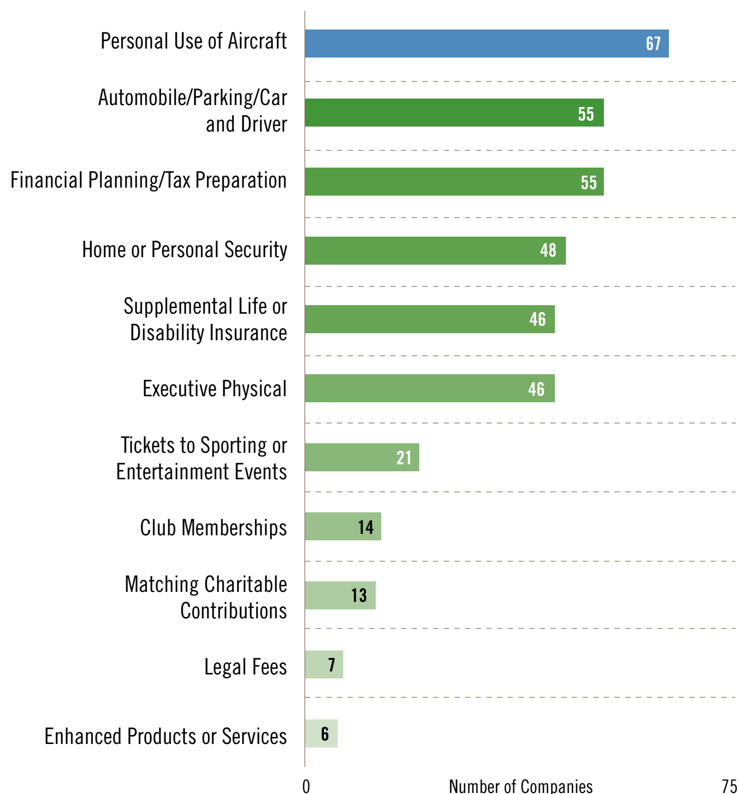
companies maintain a publicly-filed stand-alone risk assessment policy or describe a risk assessment policy in the proxy statement

The risk assessment policies generally authorize and require the reviewing party to assess whether the company's compensation practices are: (1) likely to incentivize or encourage management to take unnecessary risks or (2) reasonably likely to have a material adverse effect on the company.

The policies obligate either the company's compensation committee, a group of employees reporting to the compensation committee (e.g., human resources, risk and legal officers) or the outside compensation consultant to review and assess the risks posed by the company's compensation practices and programs. Some distinguishing features of the policies include: (1) that the review and assessment should occur on a regular, periodic or annual basis and (2) that the reviewing party should assess whether the risks associated with the company's compensation programs are likely to have a material adverse effect on the company.

EXECUTIVE PERKS

While the overall use of executive perks remained steady in 2012, there was a slight, but noticeable, decline from prior years in certain perks, including automobile benefits (a 10% reduction), matching charitable contributions (a 38% reduction) and security benefits (an 11% reduction). Personal use of corporate aircraft maintains its position as the most commonly offered perk, with a majority of the Top 100 Companies only offering aircraft use to the CEO.



Six Top 100 Companies provide an "allowance" that the executive can allocate to various perks.

Nine Top 100 Companies announced they will reduce or eliminate the use of certain perks in calendar year 2012 or 2013.

TAX GROSS-UPS FOR EXECUTIVE PERKS

Number of Top 100 Companies that disclosed that they provided tax gross-ups on some or all of the perks provided to executives:

38	16	13
in 2010	in 2011	in 2012

This is a

66%

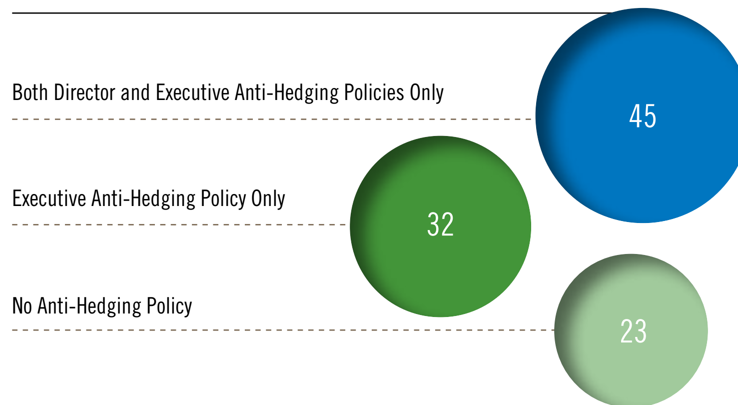
decrease since 2010

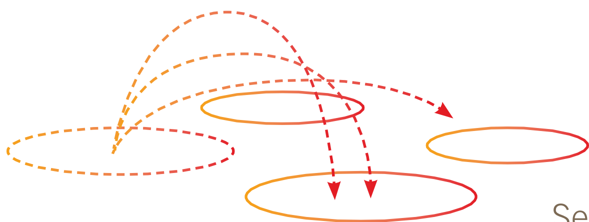
Three of the Top 100 Companies disclosed that they reduced or eliminated tax gross-ups on perks in calendar year 2012.

Three Top 100 Companies disclosed that they provided gross-ups for excise taxes imposed under Section 409A of the Code.

HEDGING POLICIES

Dodd-Frank requires companies to disclose whether any employees (not only executive officers) or directors are permitted to hedge against decreases in the value of the issuer stock granted as compensation or otherwise held directly or indirectly. The SEC has not yet issued disclosure rules regarding hedging activities, and has not provided an expected timeline for doing so.





Seventy-seven of the Top 100 Companies disclose that they prohibit their directors or executives from engaging in hedging and similar transactions.

STOCK OWNERSHIP GUIDELINES

Ninety-one of the Top 100 Companies maintain stock ownership guidelines for their directors and executives, up from 89 companies in 2011.

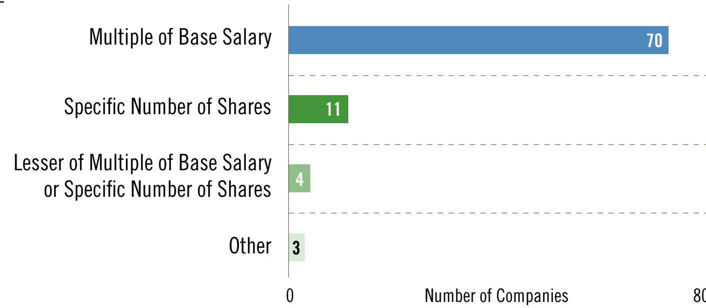
77	10	4
Both Director and Executive Stock Ownership Guidelines	Executive Stock Ownership Guidelines Only	Director Stock Ownership Guidelines Only

- The terms of stock ownership guidelines vary among the Top 100 Companies. In most instances, directors and executives are given a period of time (generally three to five years) to satisfy the guidelines.
- Many Top 100 Companies require directors and executives to retain a portion of the net, after-tax shares they receive in connection with equity awards until they are in compliance with the stock ownership guidelines.
- Certain companies will increase the portion of compensation paid in equity, require that director fees be paid in equity or reduce the amount of an annual grant if the director or executive is not in compliance with the guidelines.
- For at least two Top 100 Companies, once the guidelines are satisfied the number of shares required to be retained is fixed, notwithstanding future changes in base salary or stock price.

Nine of the Top 100 Companies disclosed that in calendar year 2012 they increased the required stock ownership guidelines for executives and six companies increased the director guidelines.

EXECUTIVE GUIDELINES

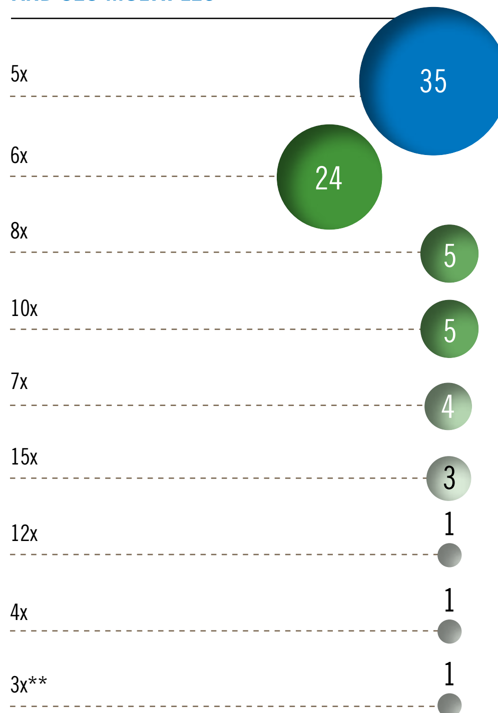
At the 87 Top 100 Companies that maintain executive stock ownership guidelines, the guidelines are expressed as:*



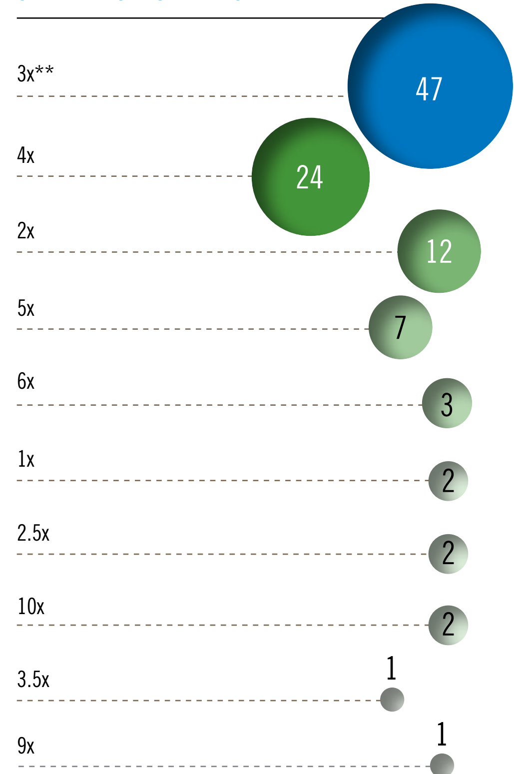
*One Top 100 Company sets different types of executive stock ownership requirements depending on the position.

Eighty percent of the 87 Top 100 Companies that maintain executive stock ownership guidelines require executives to hold a number of shares with a value equal to a multiple of their base salaries. The multiples vary widely based on position. With respect to the CEO and Executive Chair, the multiples ranged from three to 15 times base salary. With respect to the other NEOs, the multiples ranged from one to ten times base salary. One company disclosed a range of multiples rather than the specific multiples for each NEO.

EXECUTIVE CHAIR AND CEO MULTIPLES*



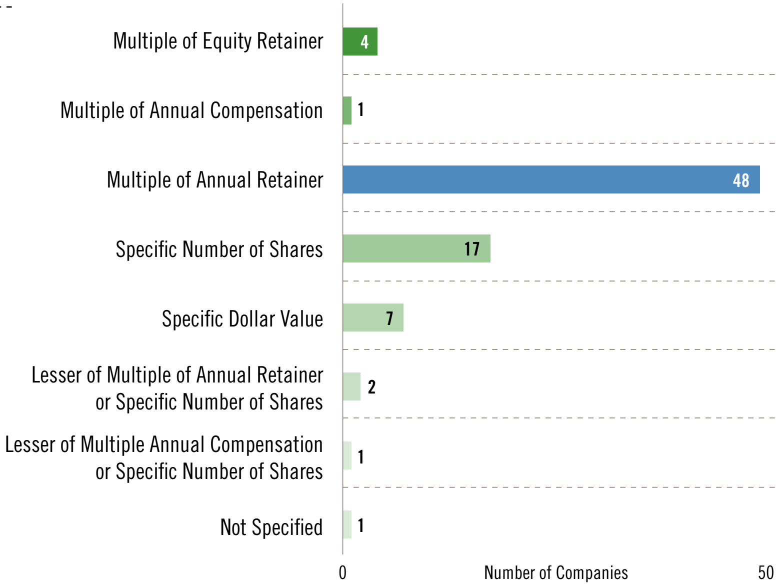
OTHER NEO MULTIPLES



*Two companies require different multiples for the Executive Chair and CEO.
**Includes one company that requires ownership of shares with a value equal to three times base salary plus bonus.

DIRECTOR GUIDELINES

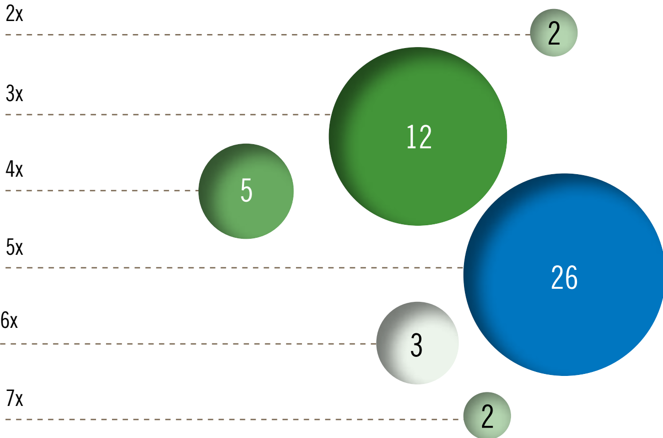
At the 81 Top 100 Companies that maintain director stock ownership guidelines, the guidelines are expressed as:



At the 50 Top 100 Companies where directors are required to hold shares with a value equal to a multiple of their annual cash retainer, the multiples range from two to seven times the annual retainer.*

*Includes two companies where guidelines are expressed as the lesser of a multiple of the annual retainer and specific number of shares.

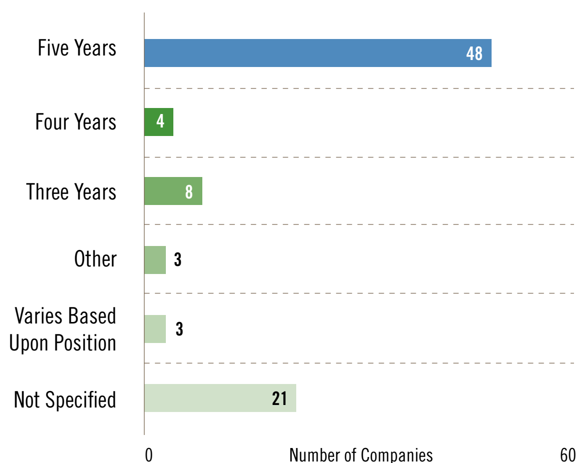
DIRECTOR MULTIPLES



YEARS TO SATISFY GUIDELINES

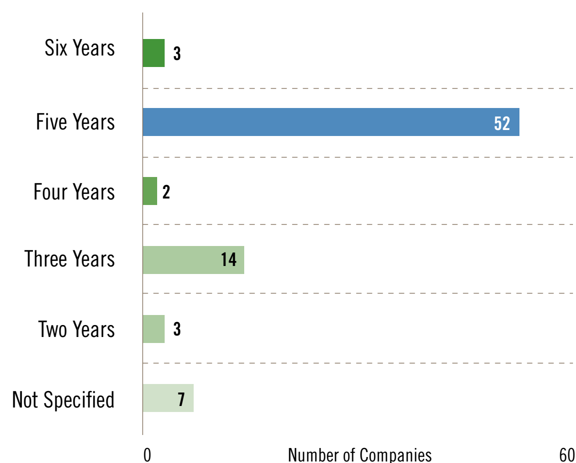
EXECUTIVES

Of the 87 Top 100 Companies that maintain executive stock ownership guidelines, 66 specify the number of years the director has to meet the requirements:



DIRECTORS

Of the 81 Top 100 Companies that maintain director stock ownership guidelines, 74 specify the number of years the director has to meet the requirements:

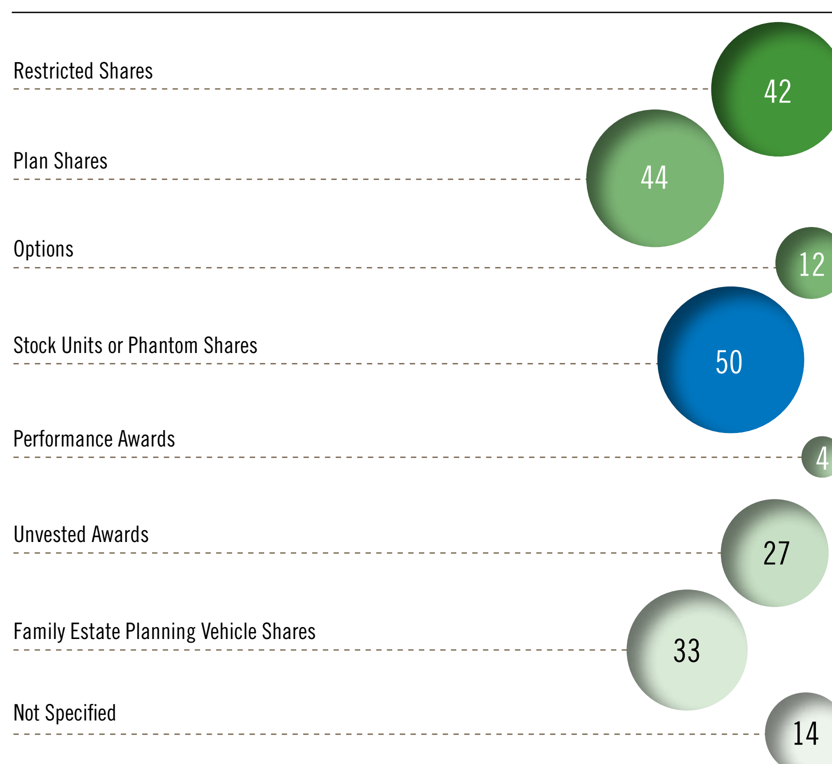


Eighty-five percent of the Top 100 Companies that maintain executive stock ownership guidelines (74 companies) disclose the progress by each executive towards satisfying the guidelines and 56% of the companies that maintain director stock ownership guidelines (45 companies) disclose the progress by each director. A significant majority noted that all directors and executives were in compliance or on their way to compliance within the required time period.

WHICH EQUITY INTERESTS COUNT?

Regardless of the ownership requirements, a company must determine what types of equity interests will count towards meeting the guidelines. Allowing executives and directors to count multiple types of equity interests toward the guideline levels can significantly aid executives and directors in meeting these guidelines. Equity interests that may count towards the guidelines include shares owned outright, restricted shares and the shares underlying stock units, phantom shares, options, and performance awards. Equity interests can also include plan shares, such as those acquired in a Section 401(k) plan or credited under a deferred compensation plan. Ownership guidelines must also consider whether to distinguish vested and unvested awards and shares and whether to give executives and directors credit for shares held by immediate family members and estate-planning vehicles, such as family trusts.

In general, eighty-six percent of the 91 Top 100 Companies that maintain stock ownership guidelines for their directors or executives (78 companies) specify the types of equity interests that count towards the guidelines. Certain other companies specify only what is not included in the ownership calculations.



Of the 12 Top 100 Companies that count outstanding options toward the stock ownership guidelines, 58% (seven companies) only count a portion of vested options (generally 50%). Two of the four companies that include performance awards in calculating stock ownership count the award based upon target performance.

STOCK RETENTION REQUIREMENTS

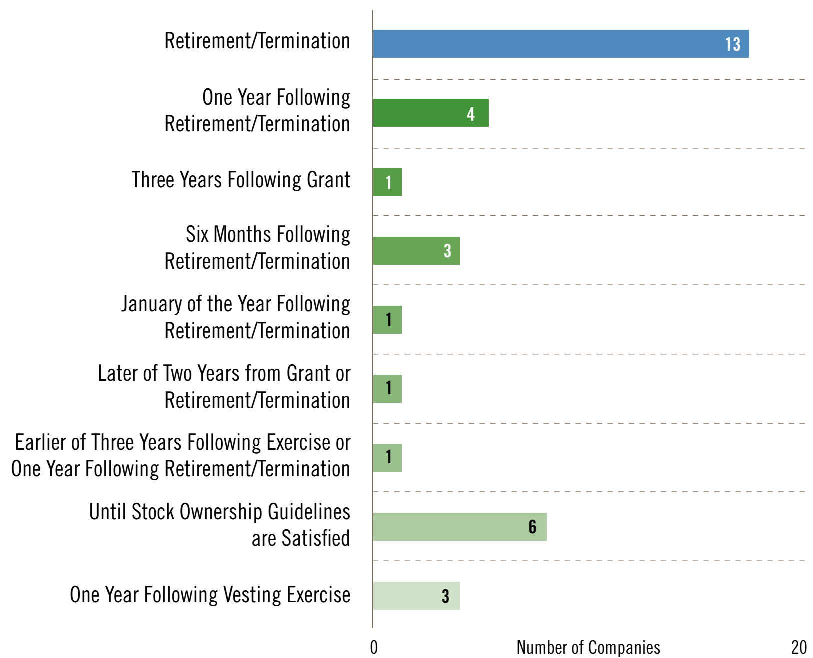
Unlike stock ownership guidelines, which require executives and directors to hold a specified number of shares during their tenure, stock retention requirements require directors and executives to retain all or a portion of the shares acquired from awards of equity-based compensation for a specified time period.

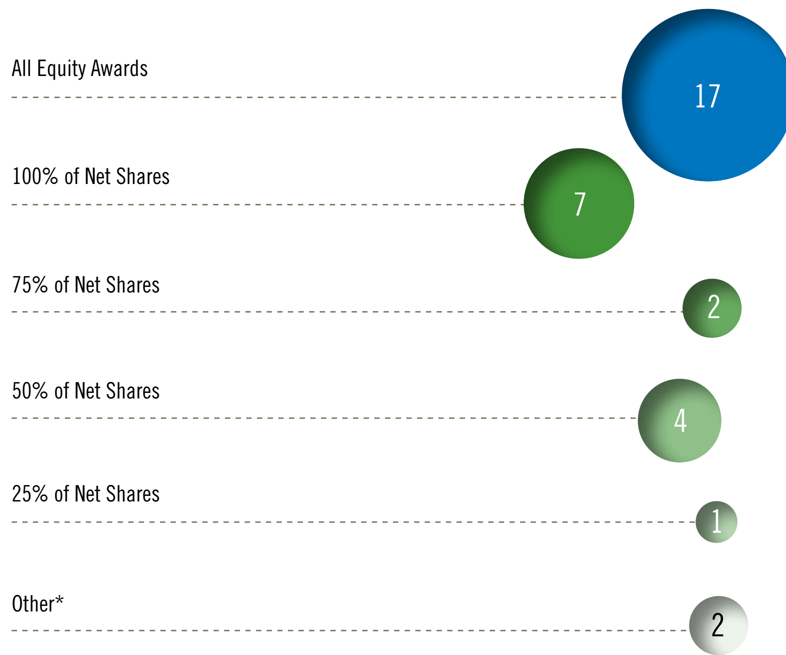
DIRECTOR STOCK RETENTION REQUIREMENTS

33 of the Top 100 Companies maintain director stock retention requirements

LENGTH OF DIRECTOR STOCK RETENTION PERIOD

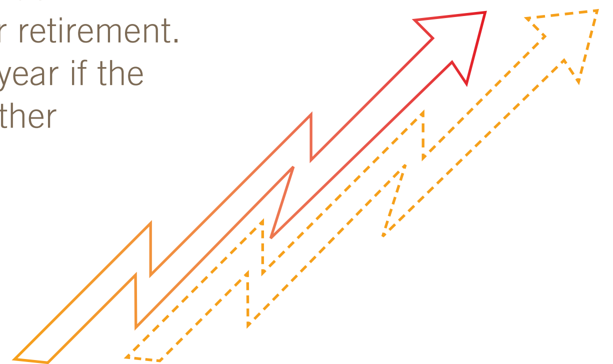
While the required retention periods vary significantly, 39% (13 companies) require directors to hold the shares until retirement or termination. The retention requirements at 18% (6 companies) apply only until the director is in compliance with the company's stock ownership guidelines.





Forty-seven of the Top 100 Companies grant deferred stock units as a component of director compensation. Deferred stock units are vested but are not settled until the director ceases to serve on the board.

One Top 100 Company waives the stock retention requirements upon a director's termination or retirement. Another extends the retention period by one year if the director's services terminate for any reason other than retirement.



STOCK RETENTION REQUIREMENTS (CONTINUED)

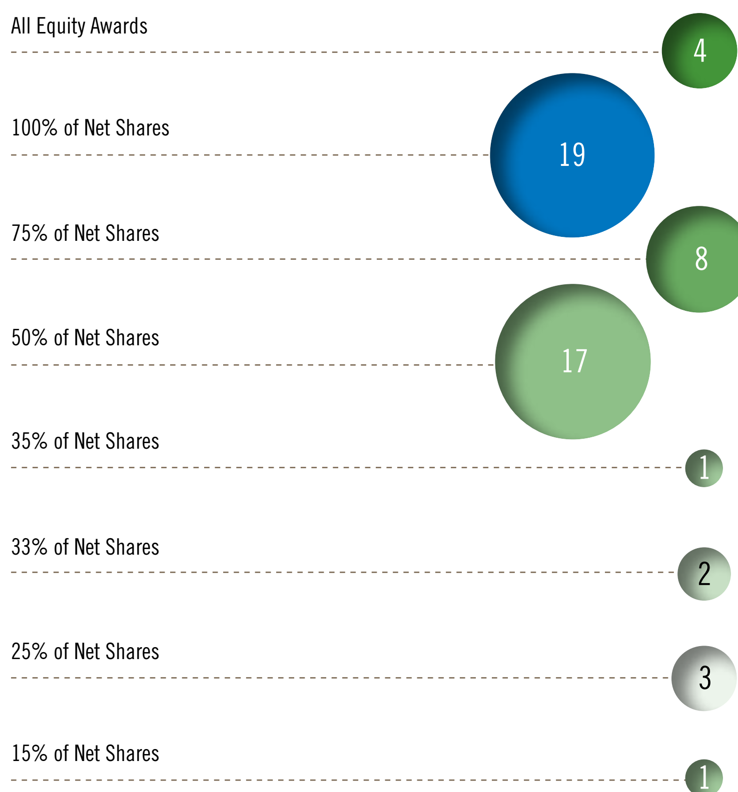
EXECUTIVE STOCK RETENTION REQUIREMENTS

49

of the Top 100 Companies maintain executive stock retention requirements

The terms of the requirements vary, but it is common for executives to be required to retain a portion of the after-tax shares received upon vesting or exercise of equity awards for a specified time period.

SHARES SUBJECT TO EXECUTIVE STOCK RETENTION REQUIREMENTS

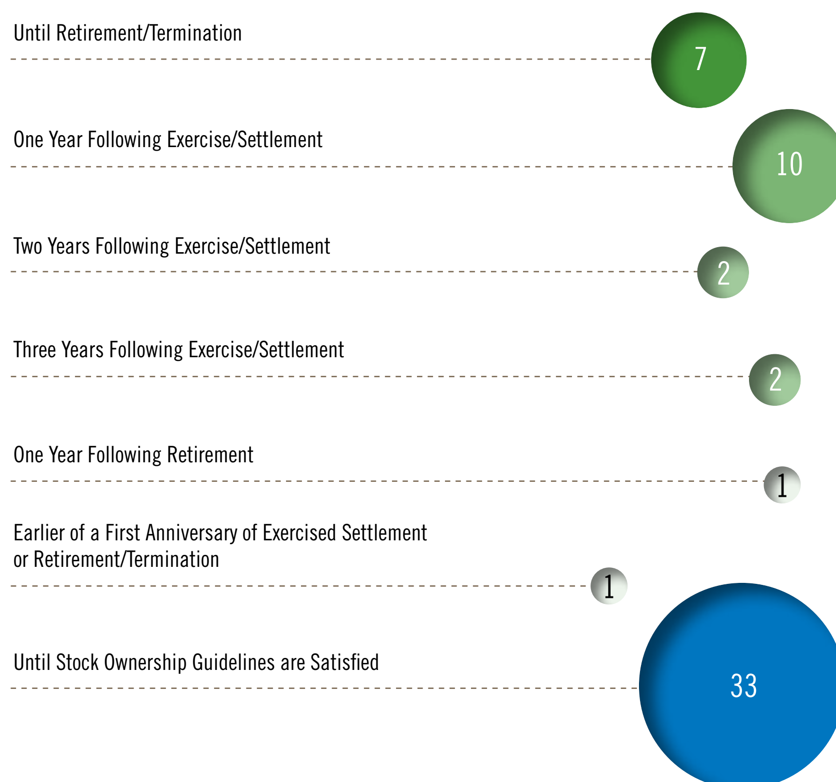


The retention requirements at 49% of the companies that maintain executive stock retention requirements apply only until the executive is in compliance with the company's stock ownership guidelines. At nine Top 100 Companies (18%), there are two stock retention requirements with one applying only until the executive satisfies the stock ownership guidelines.

Six companies vary the retention requirements based on the executive's position and the policy at one company applies only to the CEO. One Top 100 Company requires executives to retain 75% of their equity holdings calculated as of the beginning of the year. Another company requires executives to comply with its stock ownership requirements for six to 18 months following retirement or termination.

LENGTH OF EXECUTIVE STOCK RETENTION PERIOD

While the required retention periods vary, 29% (14 companies) require executives to hold a portion of the net shares received upon exercise or settlement of equity awards for a specified period (generally, one, two or three years).



At least two Top 100 Companies have disclosed that they have implemented stock retention requirements beginning in calendar year 2012.

Some companies extend the retention requirements for a significant period of time, including requirements to:

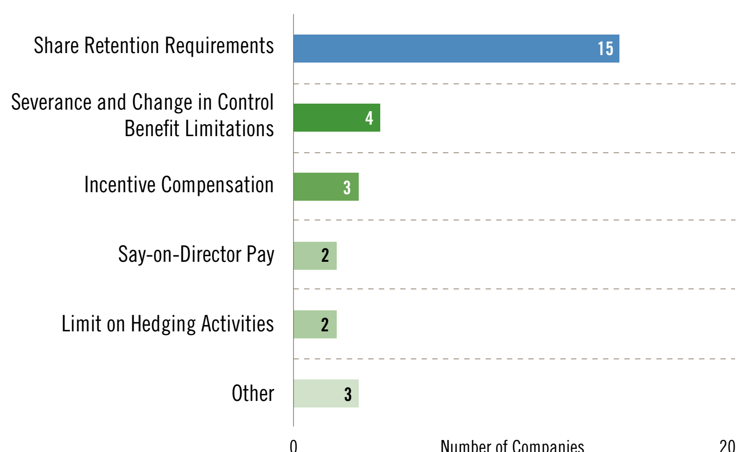
- Retain 50% or 75% of net shares for ten years following vesting or exercise (depending on position) and 50% for the remainder of employment.
- Retain 50% of restricted stock awards for ten years or until retirement, whichever is later, and retain the remaining 50% for five years.

COMPENSATION-RELATED SHAREHOLDER PROPOSALS

Twenty-nine compensation-related shareholder proposals were submitted to the Top 100 Companies during the 2012 proxy season, a slight increase from the 28 proposals in 2011. The most common proposal in 2012 related to share retention requirements, with shareholders at 15 companies requesting the adoption of such a policy in 2012, compared to six companies in 2011.

29

compensation-related shareholder proposals were submitted at 21 of the Top 100 Companies during the 2012 proxy season



None of these compensation-related proposals were approved by shareholders at the Top 100 Companies.

TYPES OF COMPENSATION-RELATED SHAREHOLDER PROPOSALS

SHARE RETENTION REQUIREMENTS

Requests that the company adopt a policy requiring senior executives to retain a significant portion of equity award shares for a specified period, often beyond termination. A majority of the 2012 proposals request that executives retain 25% of the net, after-tax shares for at least one year following termination. The requested percentages go as high as 75% of the net shares and the requested holding periods go as high as three years following termination.

INCENTIVE COMPENSATION

Includes: (1) adopting a policy whereby future grants of long-term incentive awards to senior executives vest and become payable only if total shareholder return equals or exceeds the median performance of a specified peer group or index, (2) requiring the board to make an annual report to shareholders on the effectiveness of incentive compensation programs and (3) prohibiting adjustments to performance metrics to exclude compliance costs.

LIMIT ON HEDGING ACTIVITIES

Limits an executive's ability to engage in certain hedging activities on the company shares, particularly with respect to shares held pursuant to share retention requirements.

SEVERANCE AND CHANGE IN CONTROL BENEFIT LIMITATIONS

Requests that the company adopt a policy that would prohibit accelerated vesting of equity awards upon a termination or change in control. One proposal also requested that the board seek shareholder approval of future severance arrangements with senior executives that provide for benefits exceeding 2.99 times the sum of the executive's base salary plus bonus.

SAY-ON-DIRECTOR PAY

Allows shareholders to annually pass a non-binding advisory resolution ratifying director compensation as disclosed in the proxy.

OTHER

Includes: (1) eliminating executive tax gross-ups, (2) requiring shareholder approval for future extraordinary executive retirement benefits and (3) requiring the compensation committee to prepare a report on pay disparity.

WHAT IS DIRECTOR COMPENSATION NOW?

Sarbanes-Oxley, Dodd-Frank and other market and regulatory reforms over the past decade have dramatically increased the time commitments for public company directors. There is a greater need for directors with specific expertise and skills (particularly in the areas of finance and compensation) who also meet enhanced independence requirements. Companies are seeking diverse board members with varied backgrounds and global work experience who possess the leadership skills, analytical abilities and character essential for public company board service. When added to limitations on the number of boards on which an individual can serve, it is a tall order to find qualified individuals who are willing to take on the responsibilities, liabilities and reputational risks of serving on public company boards.

While compensation is often not the primary motive for joining a board, companies do need to ensure that their director compensation packages value the necessary time commitments of the role and remain competitive in order to attract and retain the most qualified candidates. Finding the right balance in director compensation is not simple. Directors mostly receive fixed compensation matched to the director's board and committee roles. Ensuring that directors are aligned with shareholders through a meaningful equity stake and retention requirements is also a key priority.

Over the past ten years, we have monitored the components of director compensation and trends in director pay. While the basics of director compensation have remained fairly constant,

there have been some dramatic adjustments in pay composition. The following is an overview of the evolution of certain practices over the past ten years.

ANNUAL CASH COMPENSATION. Since 2003, the number of companies paying an annual cash retainer has remained steady at around 97% of the surveyed companies, but the amount of the retainer has significantly increased. Cash retainers paid at 85% of the surveyed companies in 2003 were less than $60,000 and the highest retainer paid was just over $95,000. In contrast, only 16% of the Top 100 Companies paid an annual retainer of less than $60,000 in 2012 with 84% of the companies paying between $60,000 and $150,000.

EQUITY COMPENSATION. Ninety-eight of the Top 100 Companies granted equity to their non-employee directors. While this number compares to 2003 levels, the type of equity awards has changed considerably with vested, full-value awards replacing stock options. Seventy surveyed companies granted stock options in 2003 (compared to 16 in 2012), and 96 Top 100 Companies granted full-value awards in 2012 (compared to approximately 30 in 2003). The value of equity compensation paid to directors has significantly increased:

- Our 2007 survey showed stock option grants with values ranging from $20,000 to just over $408,000, with two-thirds of the surveyed companies granting options valued at less than $70,000. The ranges in 2012 were from $17,000 to over $1 million, with two-thirds of the Top 100 Companies granting stock options valued at more than $70,000.
- Similarly, the full-value awards granted in 2012 were valued at ranges between $41,000 and $880,000, with 60% of the Top 100 Companies granting awards in excess of $170,000. This compares with a range of $15,000 to $395,000 in 2007, with 77 surveyed companies granting awards valued at less than $170,000.

COMMITTEE FEES. Over the past ten years, the number of companies paying additional compensation to committee members—and committee chairs in particular—has increased in line with the increased responsibilities imposed on committee members. In 2003, 80 surveyed companies paid committee fees to some or all committee members or chairs, compared to 98 of the Top 100 Companies in 2012.

Historically, audit committee members have, by far, received the highest fees. Dodd-Frank requirements (including mandatory say-on-pay) combined with greater scrutiny and regulation of executive compensation matters have increased the time commitment of compensation committees and their chairs. Fees paid to compensation committee members have correspondingly begun to increase.

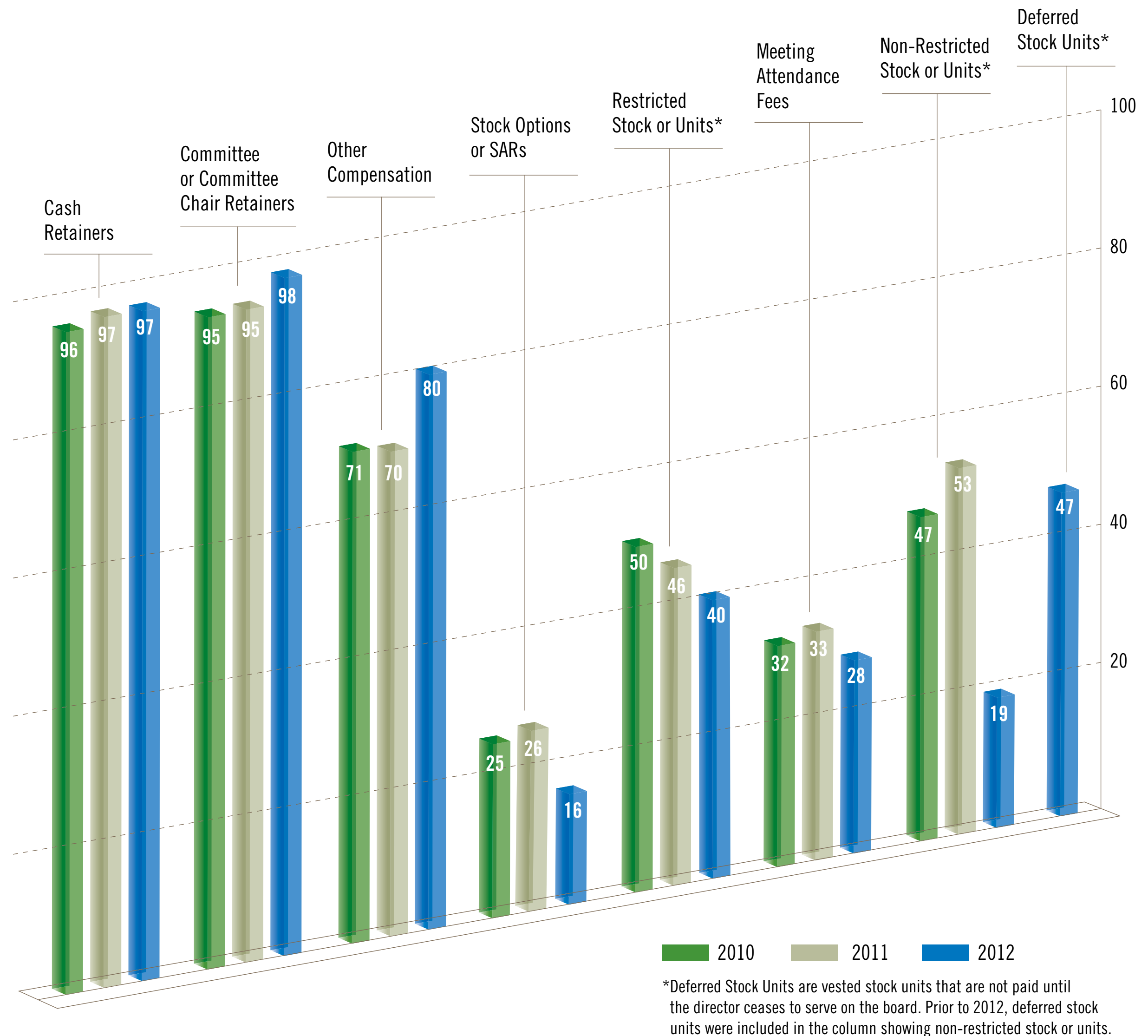
- The number of companies paying enhanced audit committee member fees has more than doubled, from 17 companies in 2003 to 39 in 2012.
- For audit committee chairs, there has been an almost 300% increase with 75 Top 100 Companies paying enhanced fees in 2012, compared to 27 in 2003.
- The use of enhanced compensation committee member fees more than doubled since 2003, growing from 4 companies to 11.
- Finally, enhanced compensation committee chair fees have increased by more than 200%, with 39 companies paying enhanced fees in 2012 compared to 17 in 2003.

MEETING ATTENDANCE FEES. Since 2003, there has been a steady decrease in the use of director meeting attendance fees. Fifty-four surveyed companies paid committee meeting attendance fees in 2003, compared to 26 companies in 2012. Similarly, 55 companies paid board meeting attendance fees in 2003, compared to 25 in 2012. This trend reflects the evolution in board process and electronic capabilities with greater communication happening between regularly scheduled meetings. Best governance practice deems meeting attendance mandatory, and increases in annual fees and committee retainers take into account increased time burdens on directors.

Overall, director compensation increases over the past ten years have not matched the level of growth in executive compensation. This may, in part, be a result of the inherent conflicts of interest where directors set their own pay and a reluctance to increase their fees, particularly during a downturn.

OVERALL COMPOSITION

Director compensation continues to be comprised of a mix of cash, equity and perquisites. While the compensation mix has been relatively constant since 2010, 2012 continued the trend of granting non-restricted stock or units and deferred stock units in lieu of stock options and restricted stock or unit awards.

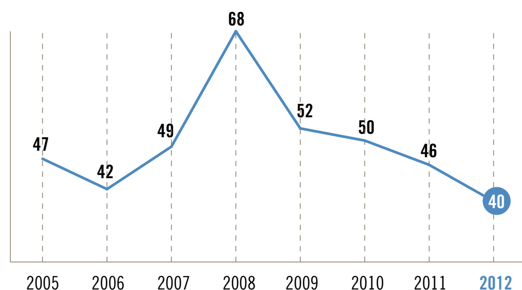


*Deferred Stock Units are vested stock units that are not paid until the director ceases to serve on the board. Prior to 2012, deferred stock units were included in the column showing non-restricted stock or units.

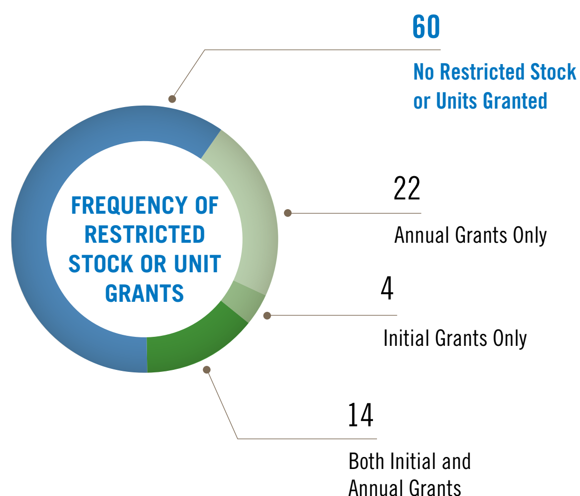
EQUITY AWARDS

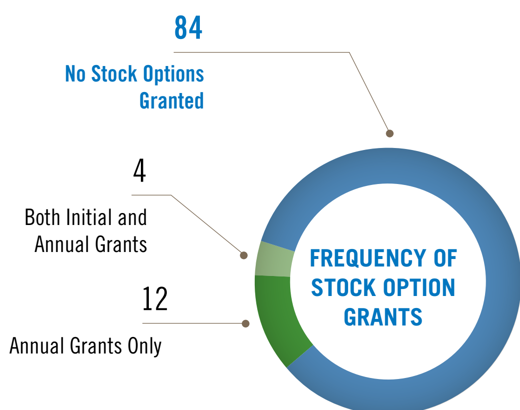
DIRECTOR RESTRICTED STOCK OR UNIT GRANTS

Of the Top 100 Companies, 40 grant restricted stock or restricted stock units as a component of director compensation.



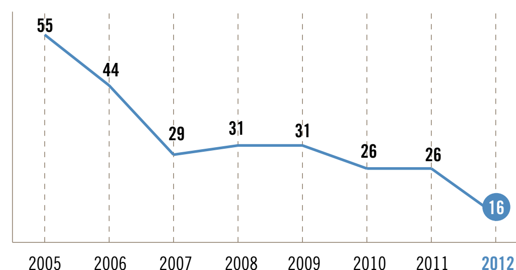
Number of companies granting restricted stock or units to directors





DIRECTOR STOCK OPTION GRANTS

Sixteen of the Top 100 Companies grant stock options as a component of director compensation.



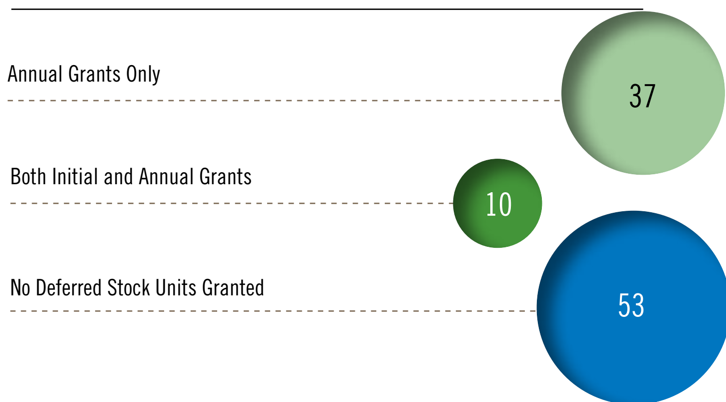
Number of companies granting stock options to directors

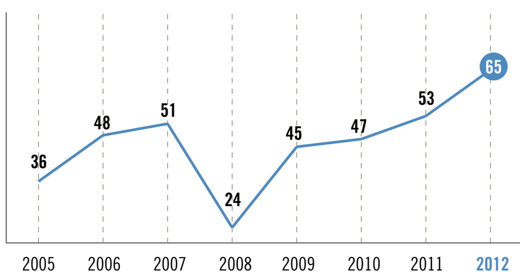
EQUITY AWARDS (CONTINUED)

DEFERRED STOCK UNIT GRANTS

Forty-seven of the Top 100 Companies grant deferred stock units as a component of director compensation. Deferred stock units are vested stock units that are not settled until the director ceases to serve on the board.

FREQUENCY OF DEFERRED STOCK UNIT GRANTS



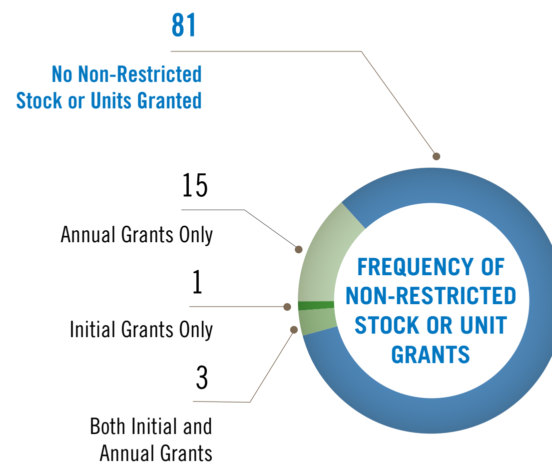


Number of companies granting non-restricted or deferred stock or units to directors*

*One company grants both types of awards.

DIRECTOR NON-RESTRICTED STOCK OR UNIT GRANTS

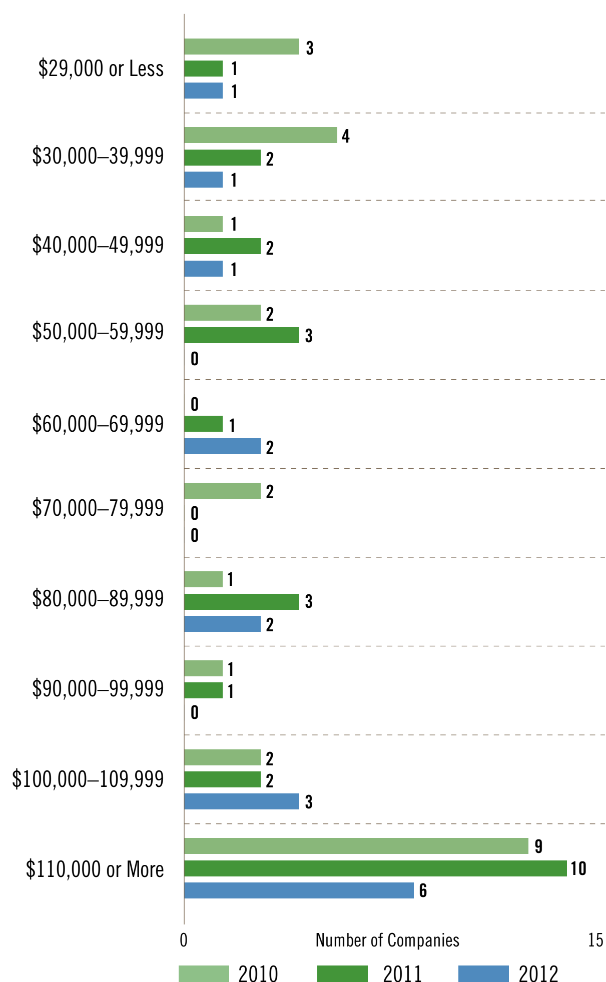
Of the Top 100 Companies, 19 grant non-restricted stock or units as a component of director compensation.



Ninety-eight of the Top 100 Companies grant some form of equity-based compensation to their non-employee directors. Seventy-nine companies determine the amount of the equity award as a specific dollar value, 13 companies specify a fixed number of shares and five provide for both, depending on the type of award. One Top 100 Company provides for discretionary equity grants.

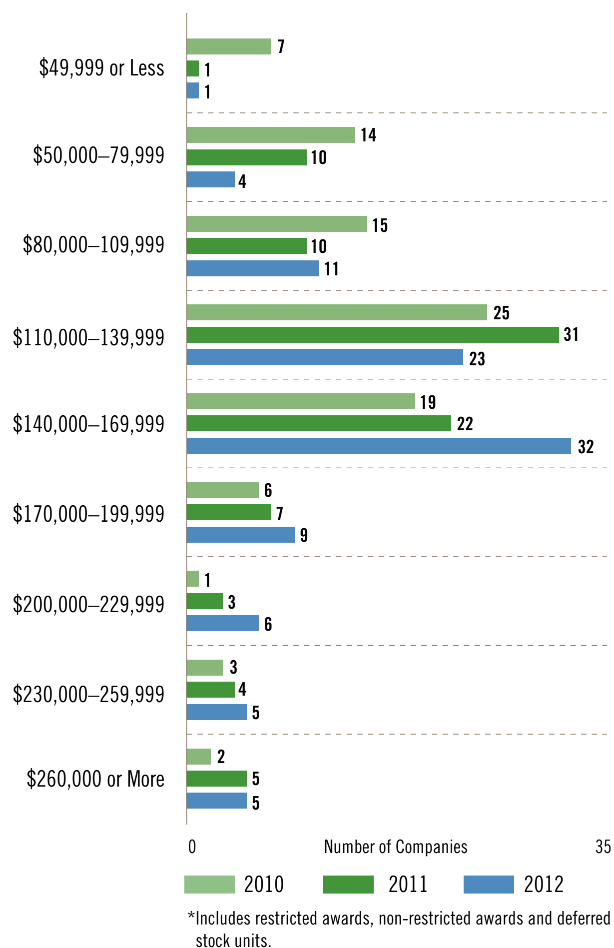
GRANT DATE FAIR MARKET VALUE OF ANNUAL STOCK OPTION GRANTS

The fair market value of annual stock options granted to directors (as determined under FAS 123R) ranged from $19,453 to $413,366 compared to a range of $17,690 to $1,020,326 in 2011.



GRANT DATE FAIR MARKET VALUE OF ANNUAL STOCK AWARDS

The fair market value of annual stock awards granted to directors (as determined under FAS 123R) ranged from $50,000 to $927,100 compared to a range of $41,000 to $883,350 in 2011.*



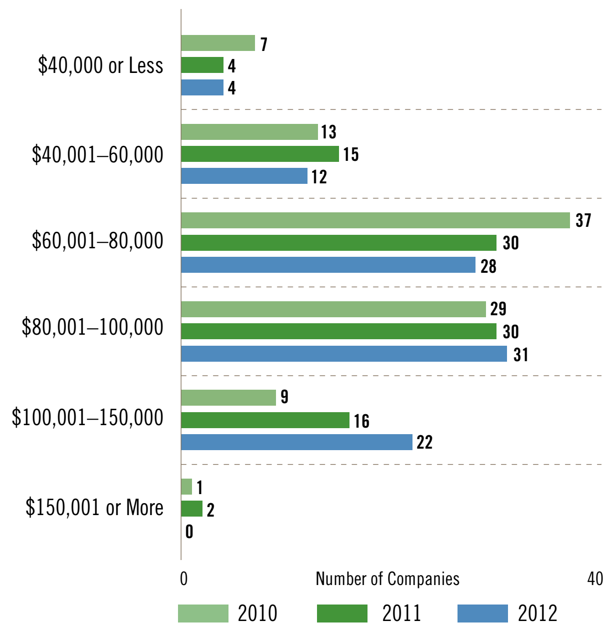
*Includes restricted awards, non-restricted awards and deferred stock units.

One Top 100 Company provides for discretionary equity grants and six companies allow directors to select the form of equity they receive.

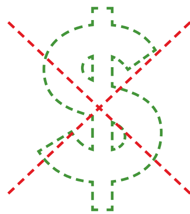
ANNUAL
CASH RETAINER

AMOUNT OF ANNUAL CASH RETAINER

Ninety-seven of the Top 100 Companies paid annual cash retainers to directors. Annual cash retainer amounts ranged from $25,000 to $150,000 in 2012, a reduction from the ranges in 2011 ($25,000 to $208,000).



Only three of the Top 100 Companies did not pay an annual cash retainer to directors in 2012.



EQUITY ELECTIONS IN LIEU OF CASH

Of the Top 100 Companies, 71 permit directors to elect to receive equity in lieu of cash retainers and fees. Three companies provide directors with a bonus equity grant if the director elects to receive equity in lieu of cash fees.

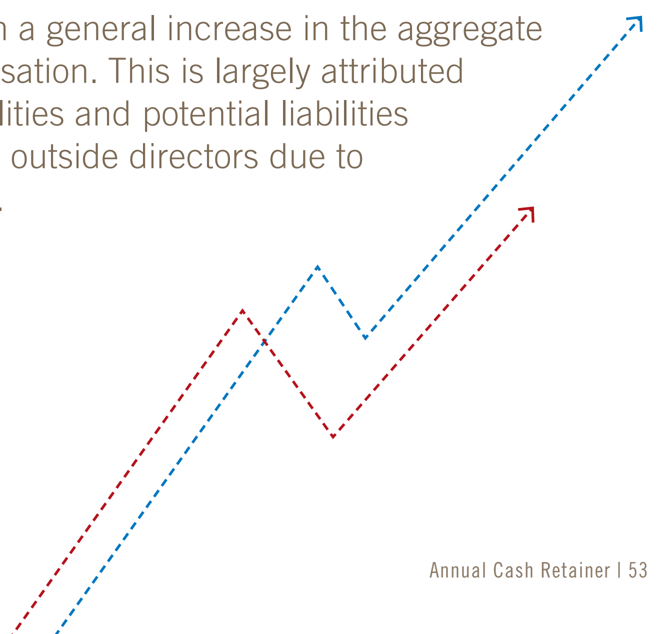
FORM OF EQUITY ELECTIONS

67 of the Top 100 Companies permit directors to elect to receive non-restricted stock or units

4 of the Top 100 Companies permit directors to elect to receive stock options in lieu of cash fees

7 of the Top 100 Companies permit directors to elect to receive restricted stock or units subject to vesting

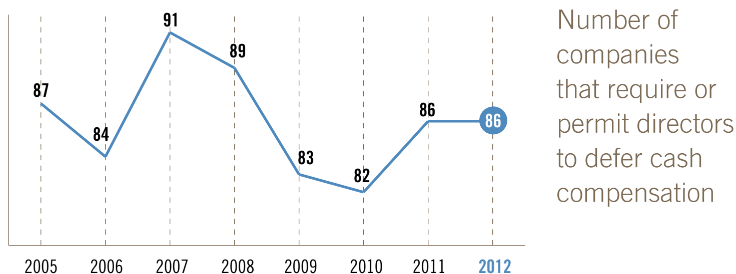
Since 2004, there has been a general increase in the aggregate amount of director compensation. This is largely attributed to the increased responsibilities and potential liabilities that have been imposed on outside directors due to the regulatory environment.



DEFERRALS

DEFERRAL OF DIRECTOR COMPENSATION Of the Top 100 Companies, 86 require or permit directors to defer all or a portion of their cash compensation or equity grants. Forty-seven companies grant deferred stock units that are not settled until termination of service.

Many Top 100 Companies grant deferred equity or require or permit directors to defer all or a portion of their cash compensation or equity grants in order to more closely align the interests of the directors with those of the shareholders. Shareholder activists continue to encourage companies to require that directors defer equity grants through or until their retirement from the board of directors to better align director and shareholder interests.



Number of companies that require or permit directors to defer cash compensation

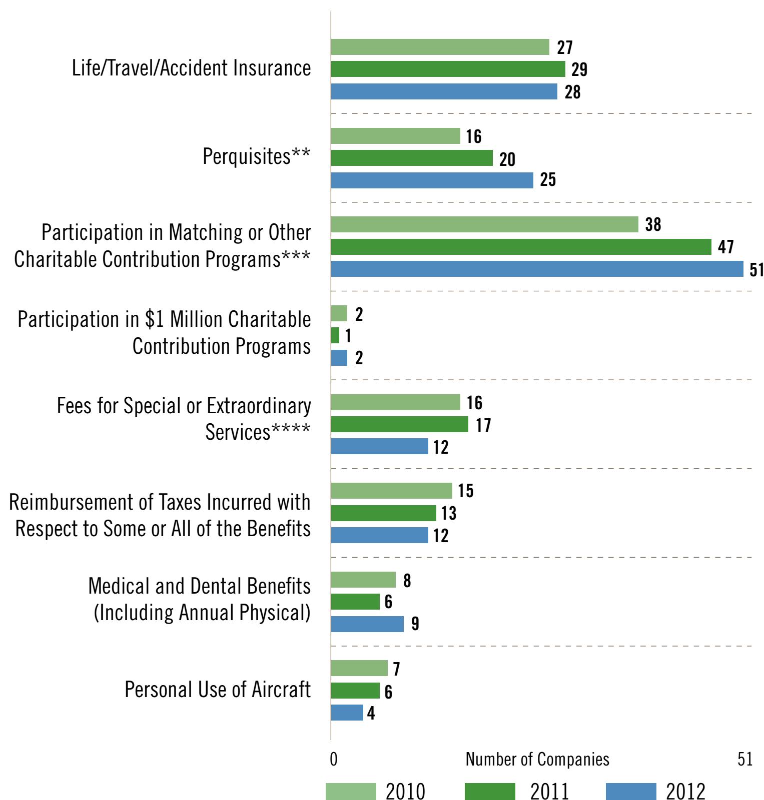
45	36	5	14
Both Permit Deferral and Require Deferral	Permit Deferral at the Election of the Director	Require Deferral	Deferral Alternatives Not Specified or No Deferrals Permitted

OTHER COMPENSATION

As is the case with executives, the provision of perquisites and benefits to directors has garnered significant debate among shareholder activists. The level of perquisites and benefits provided has remained fairly constant since 2010.

Twelve Top 100 Companies provide directors with tax gross-ups for some or all of the perquisites and benefits provided, down from 15 in 2010 and 13 in 2011. In a majority of these cases, the gross-up was made with respect to the costs associated with the directors' spouses accompanying the directors to board meetings and other official events at the company's expense. This reduction is in line with the trend toward reduced use of gross-ups for executives.

OTHER FORMS OF DIRECTOR COMPENSATION*



*Data only reflects current programs that are available to all directors. Frozen and grandfathered programs are excluded.

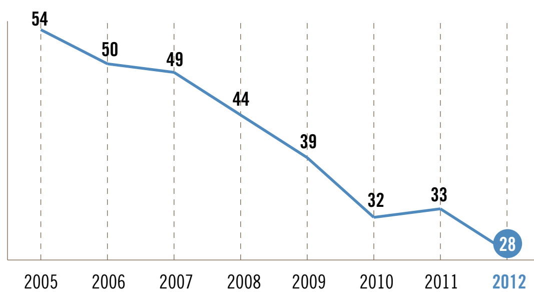
**The most common perquisites provided to directors are company products and services and tickets to sporting and similar events.

***Director matching charitable contribution programs are generally consistent with similar benefits provided to all employees.

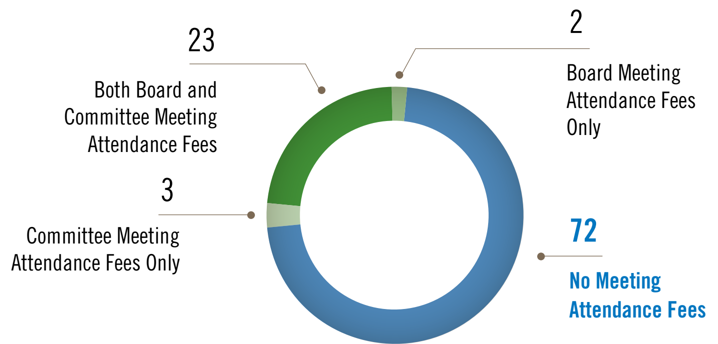
****Includes special meeting fees and fees for service on special committees.

MEETING ATTENDANCE FEES

Twenty-eight of the Top 100 Companies paid board and/or committee meeting attendance fees in 2012, continuing a steady downward trend. One company pays a $45,000 “meeting retainer” to each director.

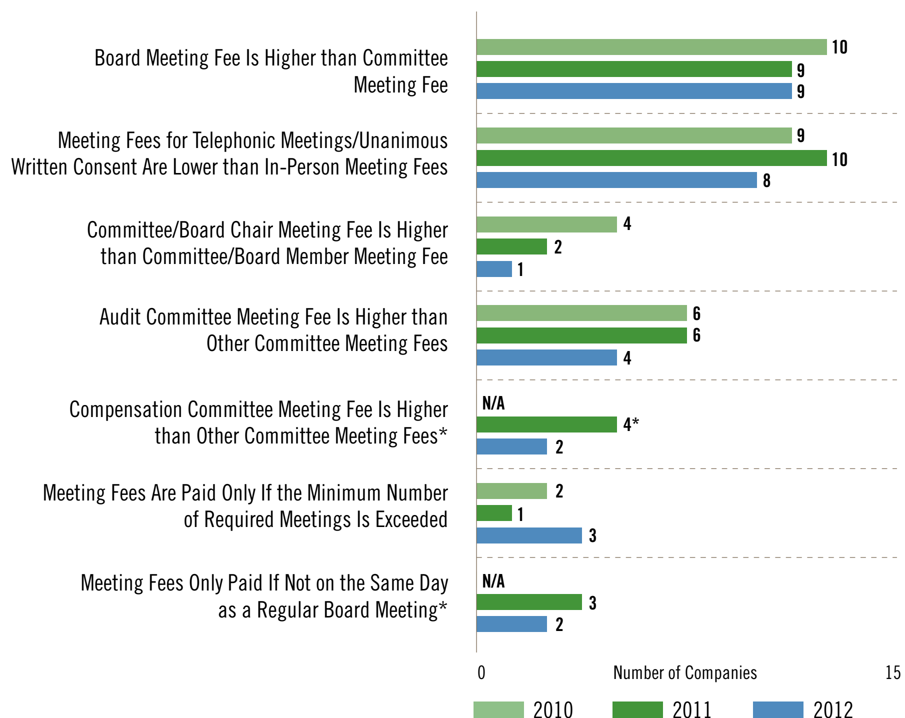


Number of companies paying meeting attendance fees to board and/or committee members



AMOUNT OF MEETING ATTENDANCE FEES

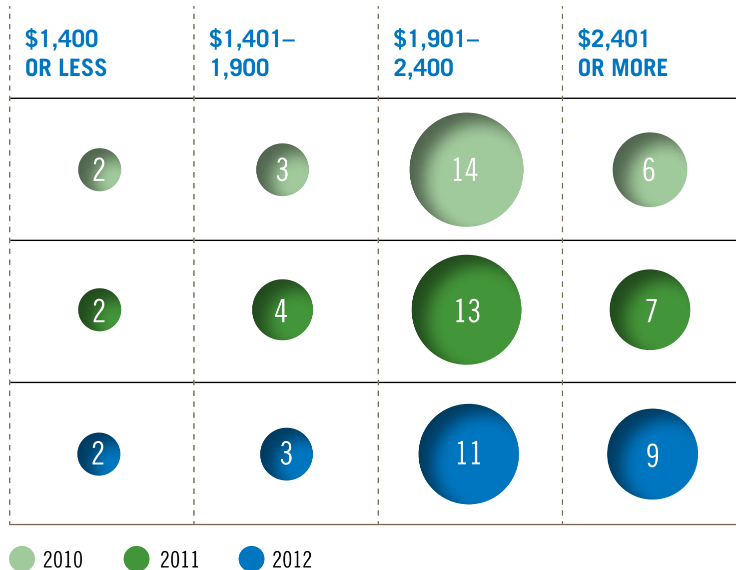
The amount of the meeting attendance fees differs based on the type of meeting (e.g., board or committee), the applicable committee and whether the meeting is in person or telephonic.



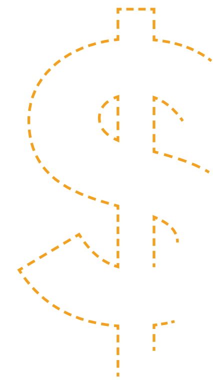
*Data not collected prior to 2011.

BOARD MEETING ATTENDANCE FEES

Twenty-five of the Top 100 Companies pay meeting attendance fees to members of the board, compared to 25 in 2010 and 26 in 2011. The amount of the fees has remained fairly constant.

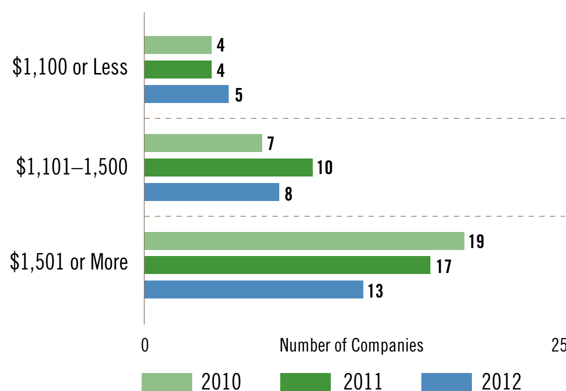


Three Top 100 Companies disclosed that they eliminated meeting fees last year, and one company disclosed that meeting fees were eliminated as of January 2012.



COMMITTEE MEETING ATTENDANCE FEES

Twenty-six of the Top 100 Companies pay meeting attendance fees to members of committees, compared with 30 in 2010 and 31 in 2011. The amount of meeting fees generally decreased in 2012.

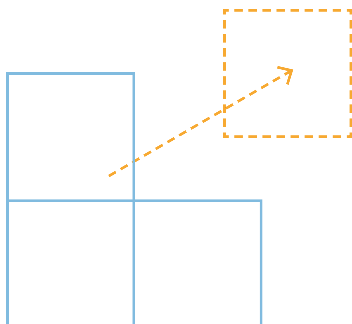


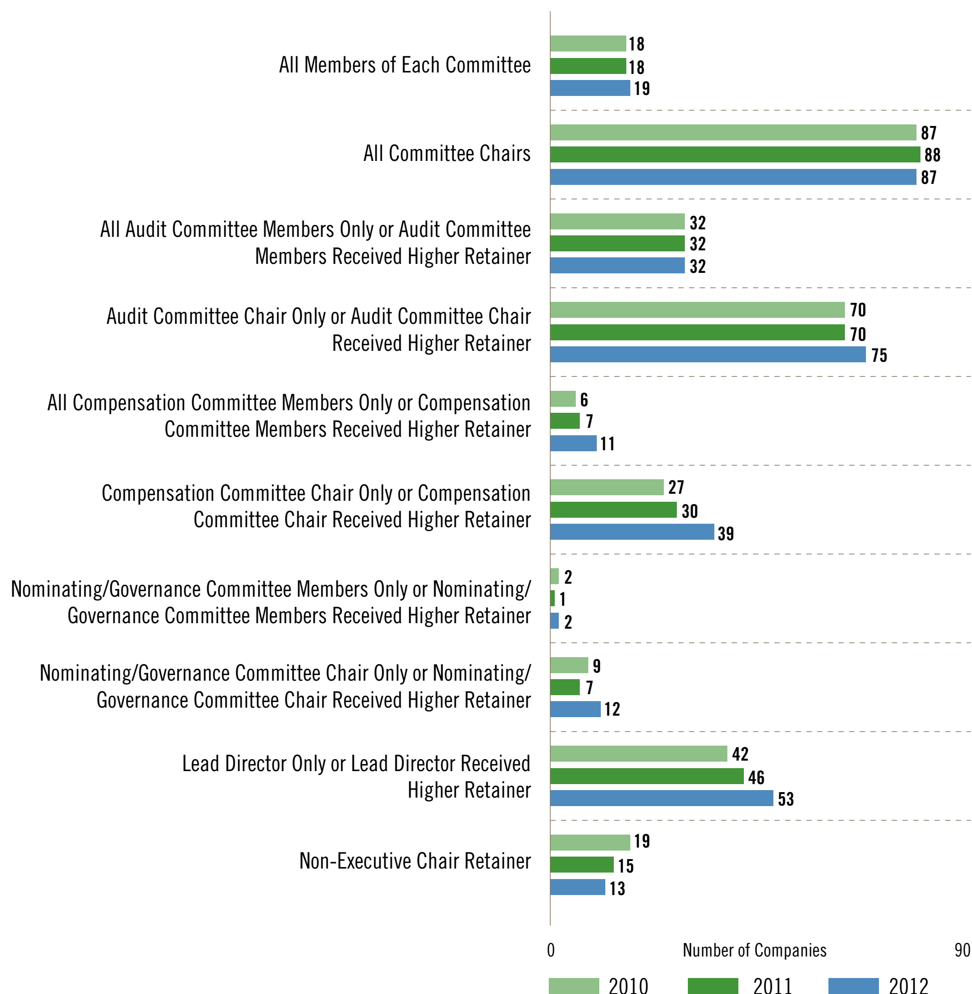
The low number of companies paying meeting fees evidences the consensus that director attendance at meetings is mandatory, not optional. Two Top 100 Companies reduce compensation if a director fails to attend at least 75% of all board or committee meetings.

COMMITTEE FEES

COMMITTEE AND COMMITTEE CHAIR RETAINERS Ninety-eight of the Top 100 Companies pay committee retainers to members and/or chairs of some or all of the board committees, compared to 95 in each of 2010 and 2011.

Nine of the Top 100 Companies pay all or a portion of the committee fees in equity. One company does not pay committee fees, but all committee chairs receive higher meeting fees.

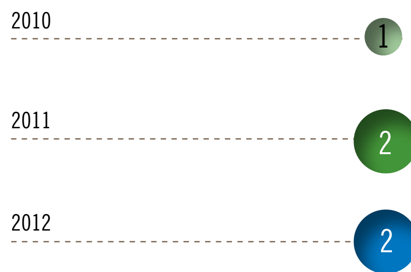




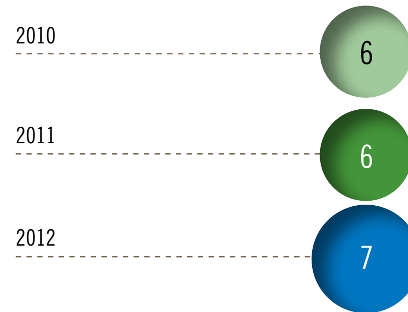
COMMITTEE RETAINERS

The number of companies that pay committee retainers has remained fairly constant since 2010. Of the Top 100 Companies, 19 pay a retainer to all committee members, up from 18 in each of 2010 and 2011. The fees paid range from $2,500 to $15,000.

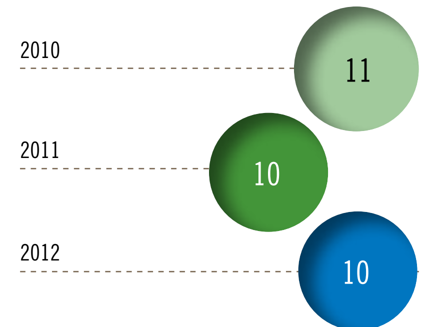
$3,000 OR LESS



$3,001–5,000



$5,001 OR MORE



COMMITTEE CHAIR RETAINERS

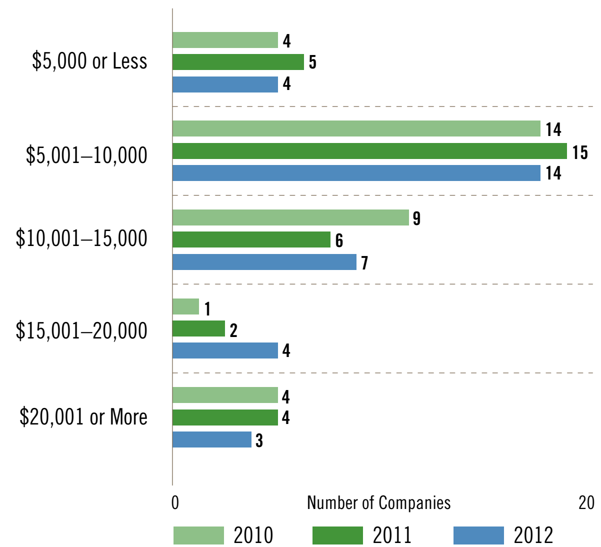
Of the Top 100 Companies, 87 pay a retainer to each committee chair, compared with 88 of the Top 100 Companies surveyed in 2011 and 87 in 2010. The fees paid range from $3,000 to $85,987.

	$5,000 OR LESS	$5,001–9,000	$9,001–13,000	$13,001–17,000	$17,001 OR MORE
2010	6	6	40	20	15
2011	5	3	42	24	14
2012	3	4	36	26	18

COMMITTEE FEES
(CONTINUED)

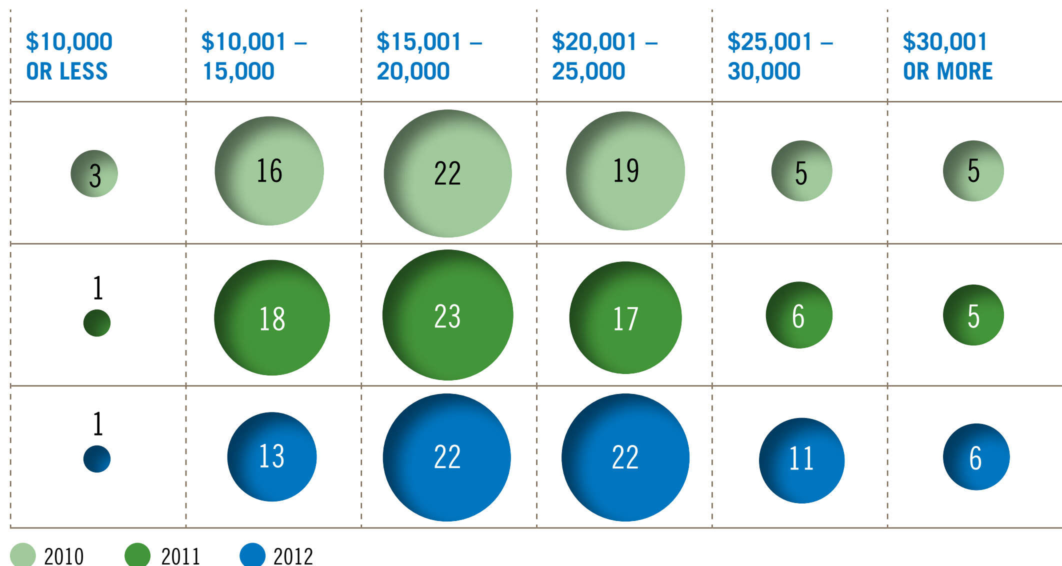
AUDIT COMMITTEE RETAINERS

While 19 of the Top 100 Companies pay a retainer to all committee members, 32 either (1) pay a retainer to members of the audit committee (but not all other committees) or (2) pay a higher retainer to members of the audit committee (compared to other committees). The fees paid for audit committee service range from $2,000 to $30,000.



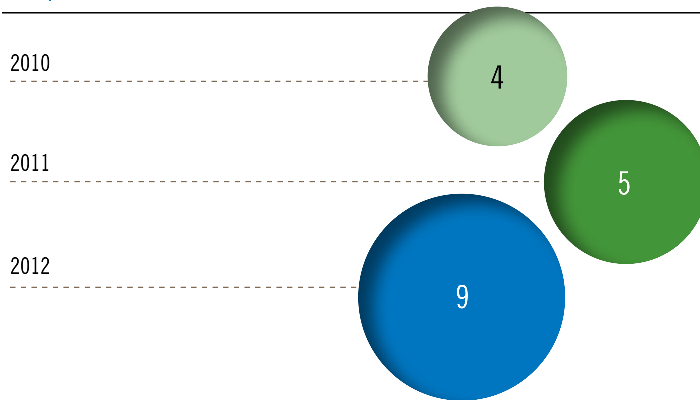
AUDIT COMMITTEE CHAIR RETAINERS

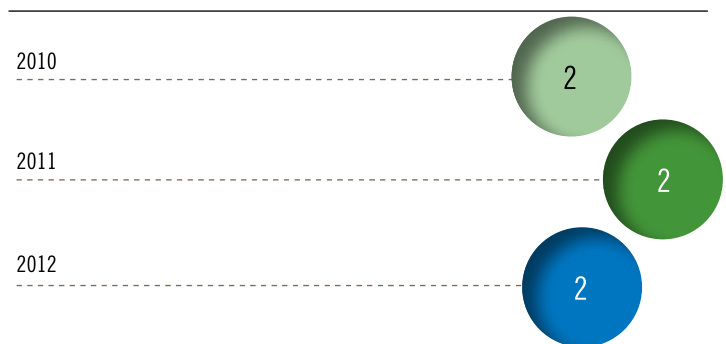
While 87 of the Top 100 Companies pay a retainer to all committee chairs, 75 either (1) pay a retainer to the chair of the audit committee (but not all other committee chairs) or (2) pay a higher retainer to the chair of the audit committee (compared to other committee chairs). The fees paid to audit committee chairs range from $10,000 to $40,000.



COMPENSATION COMMITTEE RETAINERS

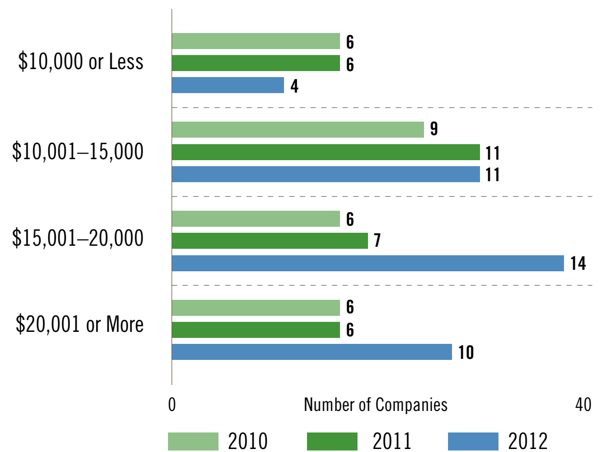
While 19 of the Top 100 Companies pay a retainer to all committee members, 11 either (1) pay a retainer to members of the compensation committee (but not all other committees), or (2) pay a higher retainer to members of the compensation committee (compared to other committees). The fees paid for compensation committee service range from $5,000 to $25,000.





COMPENSATION COMMITTEE CHAIR RETAINERS

While 87 of the Top 100 Companies pay a retainer to all committee chairs, 39 either (1) pay a retainer to the chair of the compensation committee (but not all other committee chairs) or (2) pay a higher retainer to the chair of the compensation committee (compared to other committees). The fees paid to compensation committee chairs range from $10,000 to $107,480.

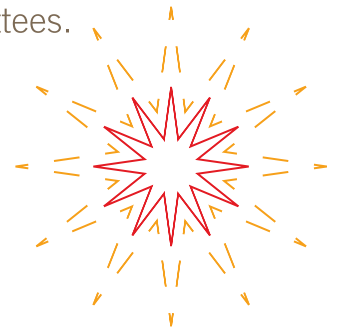


COMMITTEE FEES
(CONTINUED)

NOMINATING/GOVERNANCE COMMITTEE RETAINERS

While 19 of the Top 100 Companies pay a retainer to all committee members, two pay an additional retainer to members of the nominating/governance committee. The fees for nominating/governance committee service remained constant from 2011 and were $5,000.

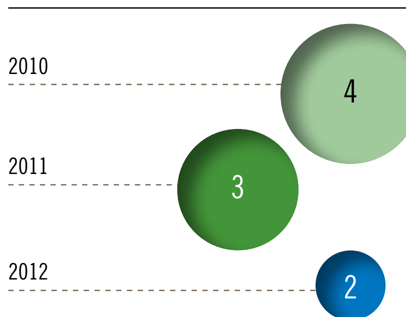
Twelve Top 100 Companies pay committee member or chair fees to certain specialized committees including the finance and risk committees.



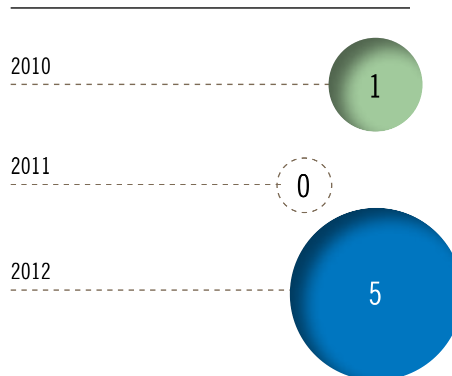
NOMINATING/GOVERNANCE COMMITTEE CHAIR RETAINERS

While 87 of the Top 100 Companies pay a retainer to all committee chairs, 13 either (1) pay a retainer to the chair of the nominating/governance committee (but not all other committees) or (2) pay a higher retainer to the chair of the nominating/governance committee (compared to other committees). The fees paid to nominating/governance committee chairs range from $10,000 to $25,000, the same as 2011.

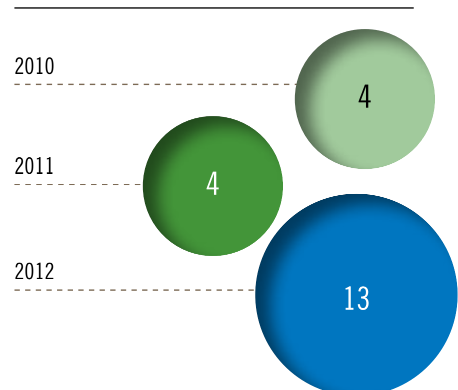
$10,000 OR LESS



$10,001–15,000



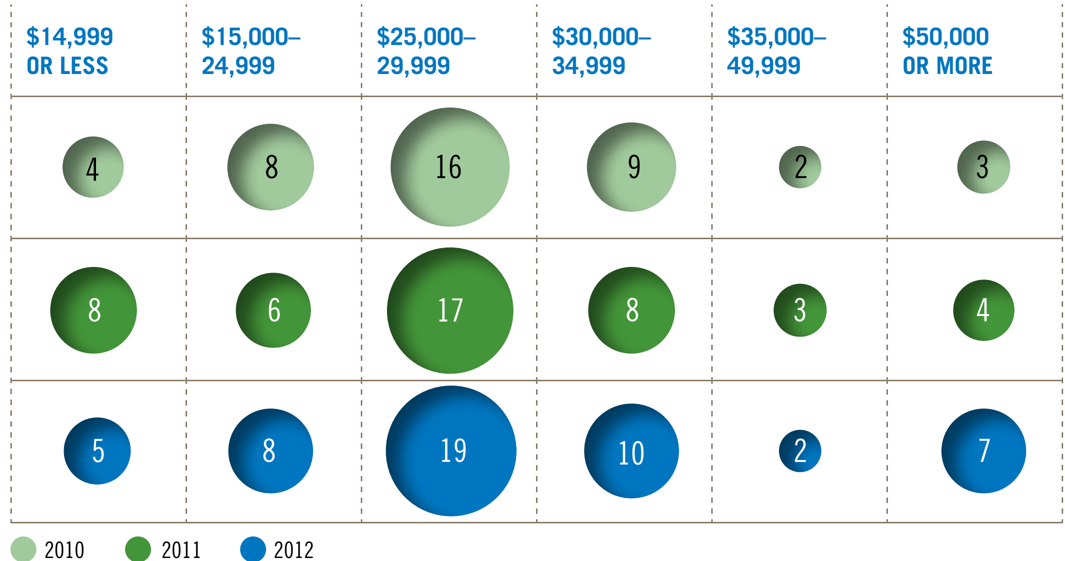
$15,001 OR MORE



BOARD LEADERSHIP

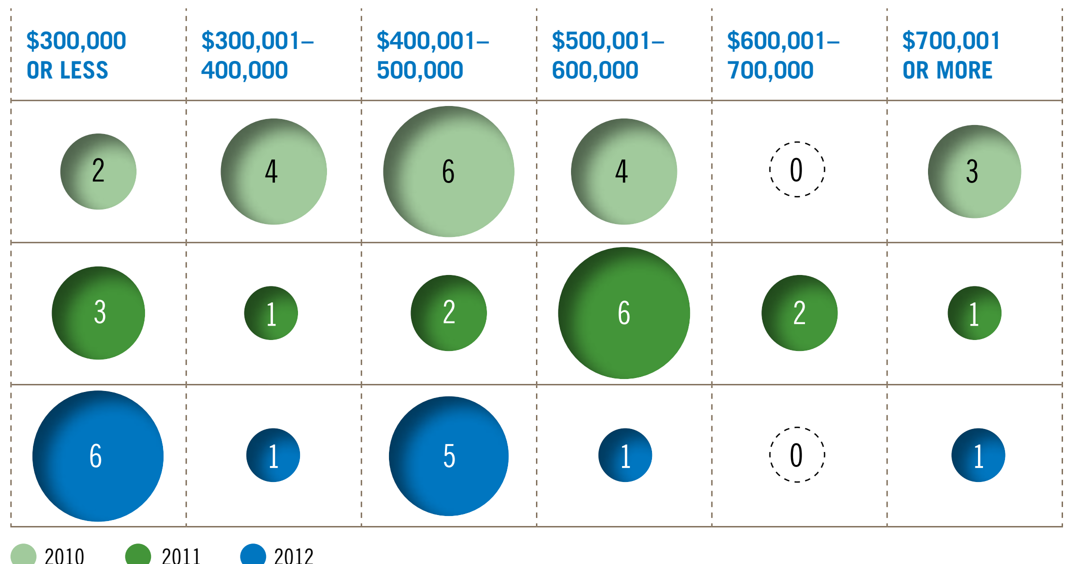
LEAD DIRECTOR RETAINERS

Eighty of the Top 100 Companies have lead directors, up from 69 in 2011. Fifty-two of these companies pay an additional retainer to the lead director, up from 42 in 2011. The lead director retainers paid range from $10,000 to $408,424.



NON-EXECUTIVE CHAIR RETAINERS

Twenty-nine of the Top 100 Companies have separated the role of chair and CEO. Fourteen of these companies pay an additional retainer to the non-executive chair, down from 15 in 2011. The non-executive chair retainers paid range from $90,000 to $1,015,438.*



*The amounts set forth in the chart reflect the aggregate value of all cash retainers and equity awards paid to the non-executive chair. Meeting fees and other compensation are not included.

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, compensation committee charters 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 general governance 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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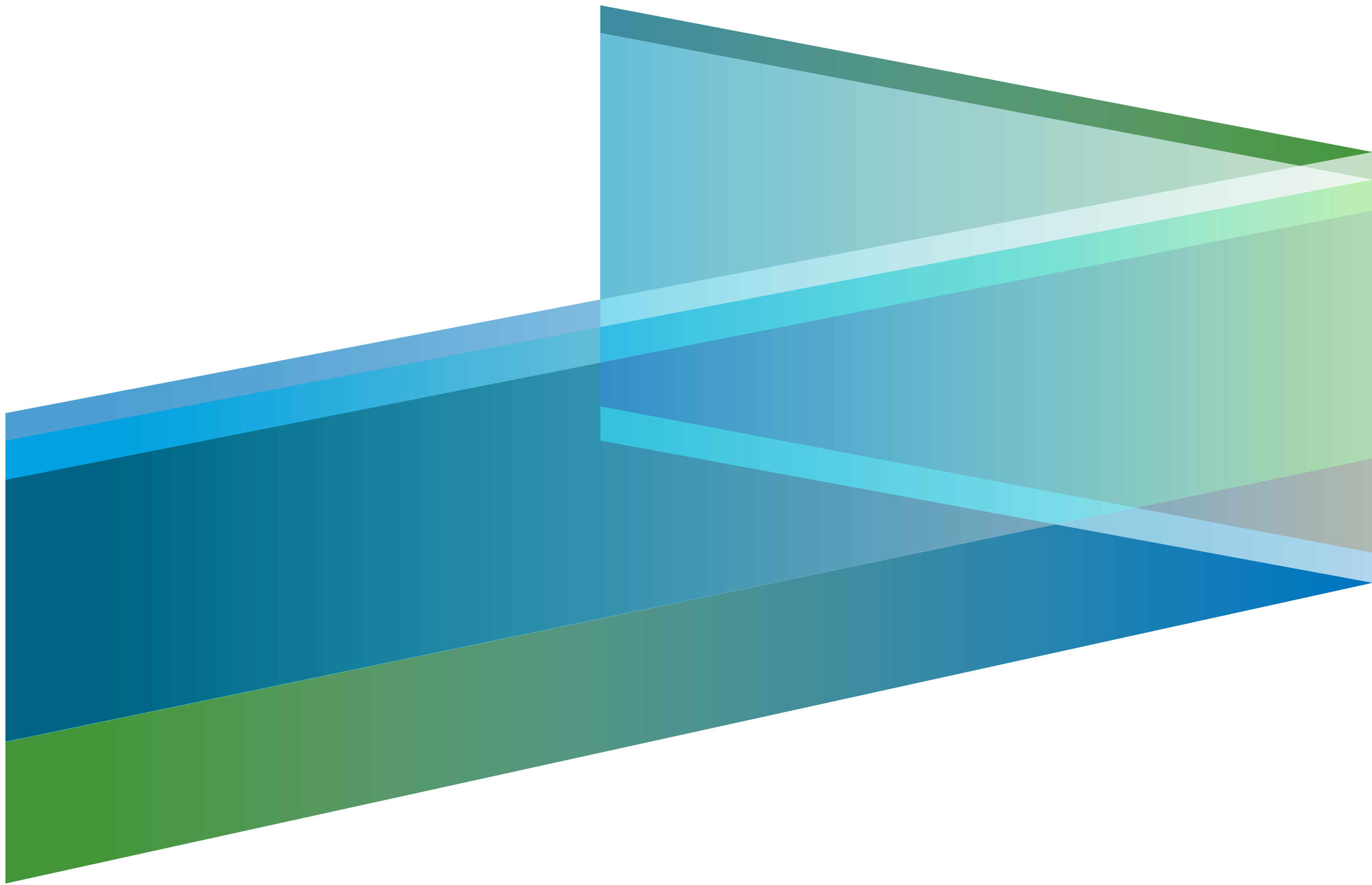

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