



**FENWICK  
& WEST**

**2019**  
**PROXY SEASON**

# Results of the 2019 Proxy Season in Silicon Valley

A Comparison of Silicon Valley Companies and  
Large Public Companies

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## Overview

Shareholder activism has been a significant phenomenon amongst the largest U.S. public companies, with activists of a variety of stripes waging campaigns on a wide range of issues. As such activism has continued to grow, it has spread to Silicon Valley companies. In addition, state corporate law, the requirements of the rules and regulations of the U.S. Securities and Exchange Commission or stock exchanges, corporate governance practices and tax laws also lead companies to place a variety of proposals before stockholders for approval.

As a companion supplement to Fenwick’s “*Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*”<sup>1</sup> survey, this report summarizes significant developments relating to stockholder voting at annual meetings in the 2019 proxy season among the technology and life sciences companies included in the Fenwick – Bloomberg Law Silicon Valley 150 List<sup>2</sup> (SV 150). Our report also includes stockholder voting developments at the large public companies included in the Standard & Poor’s 100 Index (S&P 100), as trends typical in the S&P 100 have often migrated to Silicon Valley. We highlight statistics underscoring developments in director elections, “say-on-pay,” and a variety of other compensation, governance and policy matters.

## Annual Meeting Proposals and Voting

In the 2019 proxy season,<sup>3</sup> 143 of the SV 150 companies and 99 of the S&P 100 companies held annual meetings.<sup>4</sup> Generally, such annual meetings will, at a minimum, include voting with respect to election of directors and ratification of the selection of the auditors of the company’s financial statements. Fairly frequently, it will also include an advisory vote with respect to named executive officer compensation (“say-on-pay”).

- 1 The 2019 edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, covering data through the 2019 proxy season, will be published in the fourth quarter. The 2018 edition is available at <https://fenwick.com/CorporateGovernance>.
- 2 The Fenwick – Bloomberg Law SV 150 List was created by Fenwick & West in partnership with Bloomberg Law to rank Silicon Valley’s largest public companies by revenue. See the Methodology section starting on page 36.
- 3 See “Methodology—Proxy Season / Proxy Statements” below for a discussion of the definition of the proxy season for purposes of this report.
- 4 See footnote 60 and associated text for a discussion of the companies that did not hold annual meetings.

**Overview** *(continued)*

While not as common as those matters, annual meetings will increasingly also include voting on one or more of a variety of proposals that may have been put forth by the company’s board of directors or by a stockholder that has met the requirements of the company’s bylaws and applicable federal securities regulations. In addition to being broken down by proponent, the proposals can generally be categorized by major subject area: compensation, governance, policy issues and other general business. Within each of these major subject areas, there are topics that occur with some frequency either historically or as a new trend.<sup>5</sup> In addition to providing results for the matters commonly voted on at annual meetings (director elections, auditor approval and “say-on-pay”), this report provides breakdowns and results of voting in these other major subject categories and topics within them.

**About the Data: Group Makeup of the Fenwick – Bloomberg Law Silicon Valley 150 List**

In 2019, there were approximately 245 public technology and life sciences companies in “Silicon Valley,”<sup>6</sup> of which the Fenwick – Bloomberg Law SV 150 List captures those that are the largest by one measure – revenue.<sup>7</sup> The 2019 constituent companies of the SV 150 range from Apple and Alphabet, with revenue of approximately \$262B and \$137B, respectively, to DSP Group and Fluidigm, with revenue of approximately \$117M and \$113M, respectively, in each case for the four quarters ended on or about December 31, 2018. Apple went public in 1980, Alphabet (as Google) in 2004, DSP Group in 1994, and Fluidigm in 2011, with the top 15 companies averaging 20 more years as a public company than the bottom 15 companies in the SV 150. Apple and Alphabet’s peers clearly include companies in the S&P 100, of which they are also constituent members (10 companies were constituents of both indices for the survey in the 2019 proxy season<sup>8</sup>), where market capitalization averages approximately \$279B.<sup>9</sup> DSP Group and Fluidigm’s peers are smaller technology and life sciences companies that have market capitalizations well under \$1B, many of which went public relatively recently. In terms of number of employees, the SV 150 averages approximately

<sup>5</sup> See the “Methodology—Taxonomy of Proposals” section for a discussion of the topics included in each subject area category.

<sup>6</sup> The number fluctuates constantly as some companies complete initial public offerings and others are acquired. As of October 14, 2019, Hoover’s included 303 public companies headquartered in Silicon Valley (which was historically defined by *The Mercury News* [fka the *San Jose Mercury News*] as Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara counties). Of the 303 public companies in Silicon Valley, we consider approximately 243 of them technology or life sciences companies based on their “D&B Hoovers Industry” descriptions from Hoover’s as well as their initial sources of funding. The number of Silicon Valley public technology and life sciences companies is down from a high of 417 reached in 2000 during the dot-com era, although it has risen slowly in recent years. See “Vanishing Public Companies Lead to The Incredible Shrinking Silicon Valley” (*SiliconBeat*, February 17, 2010), “Biotech has an age problem: Too many startups, too little experience” (*San Francisco Business Times*, May 31, 2018) and “While tech waffles on going public, biotech IPOs boom” (*TechCrunch*, July 21, 2018).

<sup>7</sup> There are approximately 60 public companies that are outside of the technology or life sciences industries but are located in the Silicon Valley region (defined as Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara counties) (see footnote 6). See also the “Methodology—Group Makeup” section below for a more detailed discussion of the makeup of the SV 150 and the geography of Silicon Valley for its purposes, including footnote 52.

<sup>8</sup> The 10 companies that were members of both the SV 150 and the S&P 100 in the 2019 proxy season (with their SV 150 rank) are: Apple (1), Alphabet (2), Intel (3), Facebook (5), Cisco (6), Oracle (7), Gilead Sciences (9), Netflix (15), PayPal Holdings (16) and NVIDIA (18).

<sup>9</sup> The average market capitalization of the SV 150 at the time of announcement of the current index list (see footnote 52) was approximately \$27.4B, ranging from Aemetis at approximately \$12M to Apple at approximately \$741.4B, with a median of \$3.1B. The median revenue of the SV 150 for the four quarters ended on or about December 31, 2018, was approximately \$858M. It is also worth noting that for the 2019 proxy season year, 36 of the SV 150 companies were also constituents of the most recent S&P 500.

**Overview** *(continued)*

11,200 employees, ranging from SYNEX, with 229,000 employees spread around the world in dozens of countries, to companies such as Aemetis, with 140 employees in the U.S. and India, as of the end of their respective fiscal years 2018 (Innoviva, ranked 120 in the SV 150, has the fewest full-time employees — six).

**About the Data: Group Makeup of the Standard & Poor's 100 Index**

The companies included in the S&P 100 are a cross-section of the very largest public companies in the U.S. Just as the SV 150 companies are not necessarily representative of Silicon Valley generally, so the S&P 100 companies are not necessarily representative of companies in the U.S. generally.<sup>10</sup> Far larger than a typical public company in the U.S. and far larger than U.S. corporations generally, the S&P 100 companies average approximately 145,000 employees and include Wal-Mart with 2.2 million employees in more than two dozen countries at its most recent fiscal year end.

It is also important to understand the differences between the technology and life sciences companies included in the SV 150 and the large public companies included in the S&P 100. Compared to the S&P 100 (or the broader S&P 500), SV 150 companies are on average much smaller and younger, have much lower revenue and are concentrated in the technology and life sciences industries. About 19% of SV 150 companies have 10,000 employees or more, compared to 95% of S&P 100 companies (with 100% of the S&P 100 having 5,000 or more employees, compared to 31% of the SV 150). SV 150 companies also tend to have significantly greater ownership by the board and management than S&P 100 companies (whether measured by equity ownership or voting power).

The 2019 constituent companies of the S&P 100 range from the aforementioned Wal-Mart, with revenue of approximately \$500.3B, market capitalization of approximately \$271B and approximately 2.2 million employees, to Simon Property Group with revenue of approximately \$5.6B, market capitalization of approximately \$52B and 5,000 employees. The average market capitalization of the S&P 100 was approximately \$144B, ranging from Halliburton at approximately \$23B to Microsoft at approximately \$780B, with a median of \$90.2B. The median revenue of the S&P 100 for the four quarters ended on or about December 31, 2018, was approximately \$38.4B. The industries included in the S&P 100 range from financial services to apparel, food products, air transport and more.

**Fenwick – Bloomberg Law SV 150 Subgroups — Contact Us for More Information**

While not specifically studied in this report, it is worth noting that the broad range of companies in the Fenwick – Bloomberg Law SV 150 (whether measured in terms of size, age or revenue) is associated with a

<sup>10</sup> Standard & Poor's defines the S&P 100 Index as "a sub-set of the S&P 500," which measures the performance of large cap companies in the U.S. The Index comprises 100 major, blue chip companies across multiple industry groups. Individual stock options are listed for each index constituent. To be included, the companies should be among the larger and more stable companies in the S&P 500, and must have listed options. Sector balance is considered in the selection of companies for the S&P 100. This index is widely used for derivatives, and is the index underlying the OEX options. Standard & Poor's full methodology is [available on its website](#).

**Overview** *(continued)*

corresponding range of governance practices. Comparison of governance practice statistics and trends for the top 15,<sup>11</sup> top 50,<sup>12</sup> middle 50<sup>13</sup> and bottom 50<sup>14</sup> companies of the SV 150 (in terms of revenue) bears this out.<sup>15</sup> A few examples of such comparisons are included in this report. Additional comparison information of the top 15, top 50, middle 50 and bottom 50 companies of the SV 150 (as well as other data not presented in this report<sup>16</sup>) may be obtained by consulting your Fenwick & West securities partner.

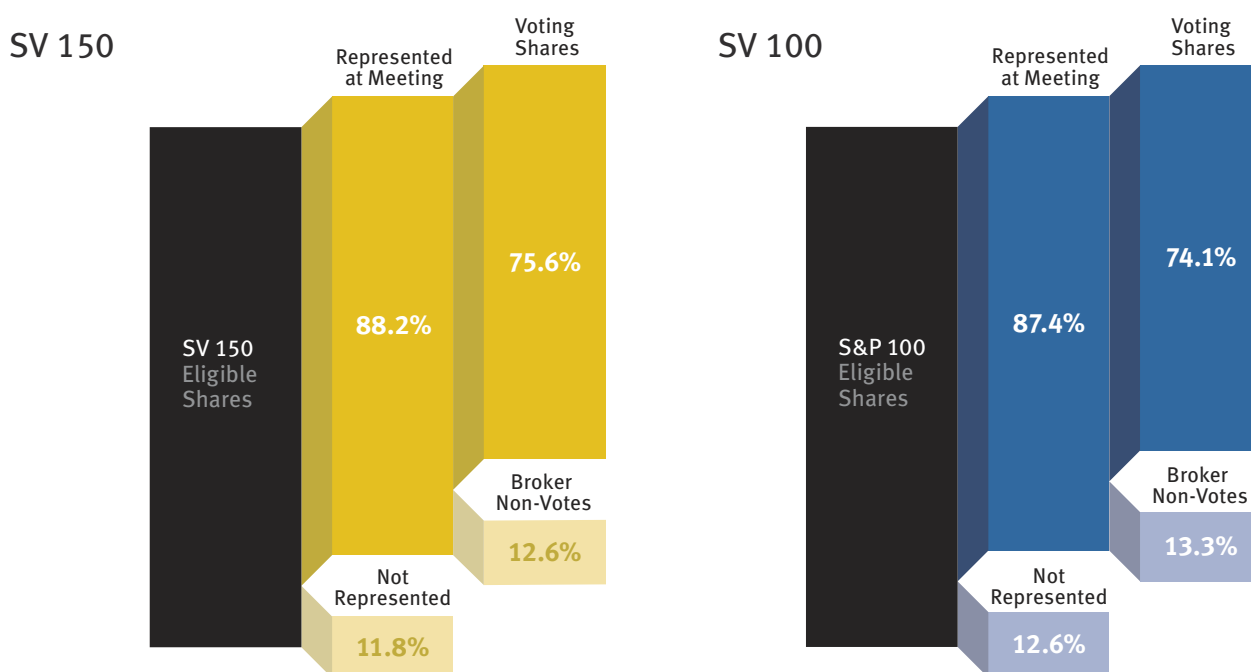
- 11 The top 15 of the SV 150 includes companies, eight of which are included in the S&P 100 (see footnote 8), with revenue of approximately \$16B or more and market capitalizations averaging \$191B, ranging from SYNEX at approximately \$4.1B to Apple at approximately \$741.3B at the time of announcement of the current index list (see footnote 52).
- 12 The top 50 of the SV 150 includes companies with revenue of approximately \$1.8B or more and market capitalizations averaging \$76B, ranging from Shutterfly at approximately \$1.3B to Apple at approximately \$741.3B at the time of announcement of the current index list (footnote 52).
- 13 The middle 50 of the SV 150 includes companies with revenue of at least approximately \$445M but less than approximately \$1.8B and market capitalizations averaging \$3.7B, ranging from Ultra Clean Holdings at approximately \$320M to Splunk at approximately \$15.2B at the time of announcement of the current index list (footnote 52).
- 14 The bottom 50 includes companies with revenue of at least approximately \$113M but less than \$443M and market capitalizations averaging \$1.5B, ranging from Aemetis at approximately \$12M to Okta at approximately \$6.8B at the time of announcement of the current index list (footnote 52).
- 15 Contrasting the top 15 or top 20 SV 150 companies (in the latter case, companies with revenue of approximately \$10.8B or more and market capitalizations averaging \$160B at the time of announcement of the current index list) against the remaining SV 150 companies is similarly enlightening (footnote 52). In 2019, the SV 150 included 23 life sciences companies (broadly defined) and 127 technology companies. There are also some differences between technology and life sciences companies as groups within the SV 150.
- 16 Such as comparisons of the top 15 or top 20 SV 150 companies against the remaining SV 150 companies, comparisons of technology and life sciences companies as separate groups within the SV 150, or other details related to the topics covered in this report.

## Annual Meeting Participation

One of the basic questions of shareholder democracy is whether stockholders participate at annual meetings at levels such that the results can be seen as, in some meaningful sense, representative of the interests of stockholders as a whole. In the 2019 proxy season, an average of approximately 88.2% of shares of SV 150 companies were represented in person or by proxy at company annual meetings. However, in addition to the approximately 11.8% that were not represented, an additional approximately 14.2% of eligible shares were represented via proxy by brokers who did not receive instructions as to voting for the bulk of matters for which broker discretionary voting is not permitted (so-called “broker non-votes”).<sup>17</sup> This compares to approximately 12.6% not represented and approximately 15.3% broker non-votes in the S&P 100 in the same period. However, the ranges of representation and voting were somewhat broader in the SV 150 than the S&P 100 (e.g., 55.6% – 98.8% voting in the SV 150, compared to 56.8% – 94.2% voting in the S&P 100).

*The following graphs show the average percentage of shares eligible to vote at annual meetings that were represented and that voted at the annual meetings of the companies in the SV 150 and S&P 100 in the 2019 proxy season.*

### VOTING SHARES — BRANCHING AVERAGE PERCENTAGE — 2019 PROXY SEASON



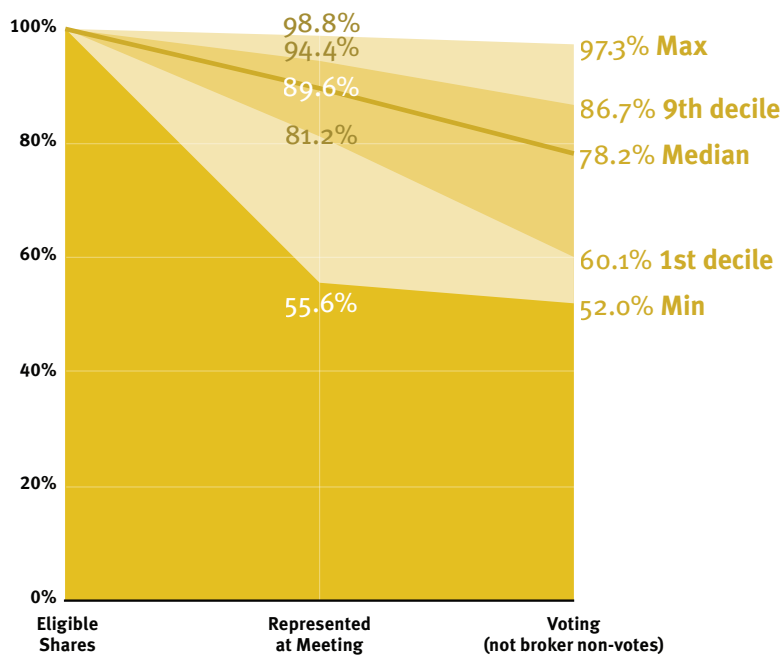
<sup>17</sup> New York Stock Exchange Rule 452 governing brokers (which consequently applies to shares listed on other stock exchanges) significantly limits discretionary voting by brokers when they have not received voting instructions from the beneficial owners of the shares. As a practical matter, discretionary voting is generally limited to voting with respect to ratification of the company’s auditors. Generally, broker non-votes are counted for purposes of determining the presence of a quorum to validly conduct business, but are otherwise disregarded for purposes of determining the outcome of matters voted upon at the meeting. There are exceptions, such as matters requiring approval of a majority or super-majority of shares outstanding (such as amendments to the company’s certificate of incorporation or approval of a merger). In such instances, broker non-votes and shares not represented are effectively the same as votes against the matter.

Annual Meeting Participation *(continued)*

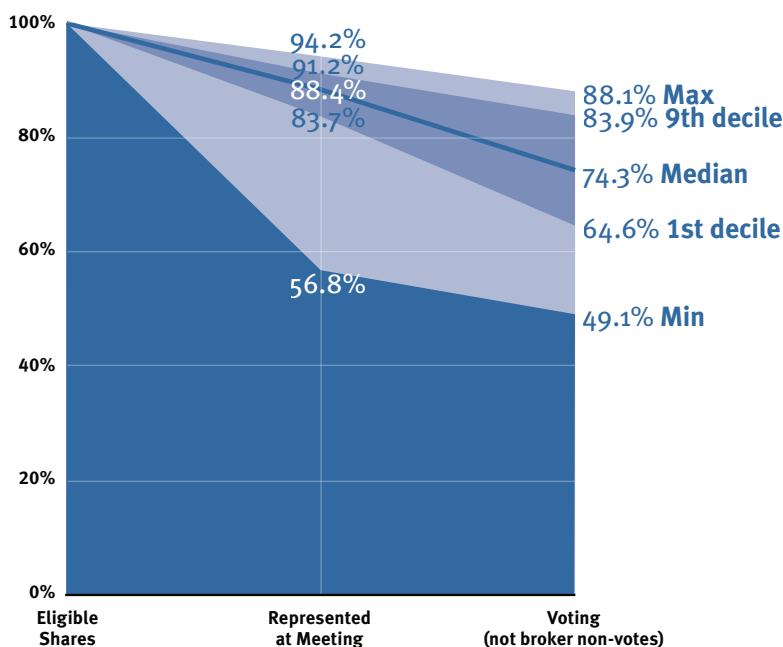
The following graphs show the distribution by percentage of shares eligible, of the shares that were represented and the shares that voted at the annual meetings of the companies in the SV 150 and S&P 100 in the 2019 proxy season (showing the median percentage, maximum and minimum percentages for the group, and the cutoffs for the deciles with the lowest and greatest percentage of shares represented or voting).

DISTRIBUTION OF REPRESENTED AND VOTED SHARES — 2019 PROXY SEASON

SV 150



S&P 100



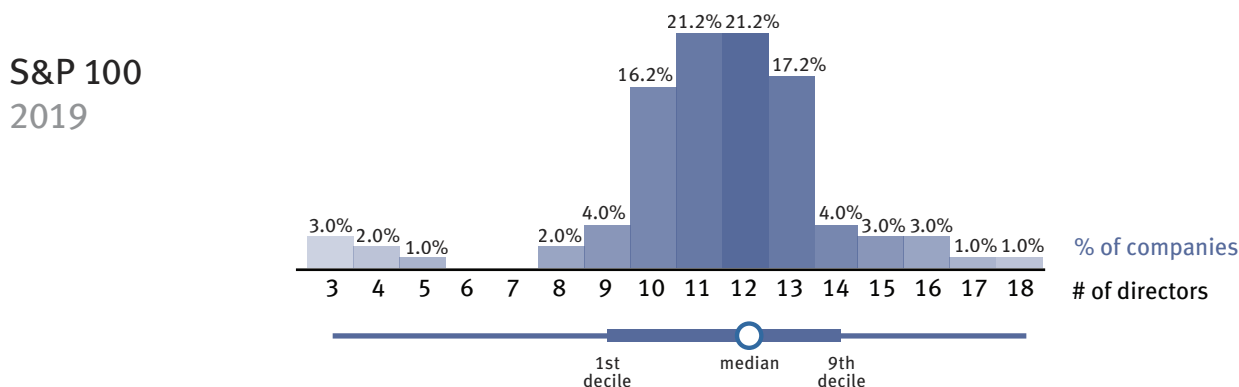
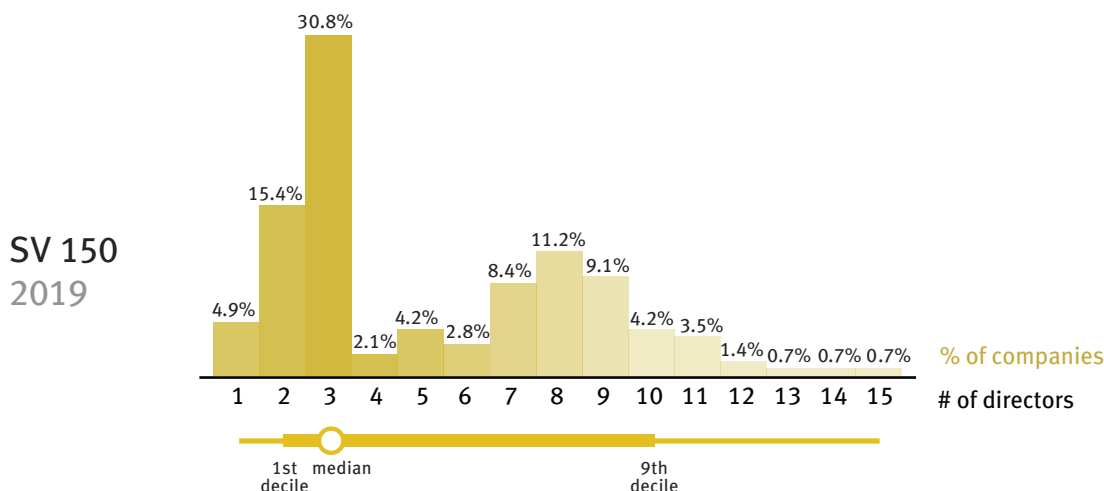


## Director Elections

The average size of the board slate actually up for election among the SV 150 was 5.3 directors (median = three), compared to 11.3 directors among the S&P 100 (median = 12). The most common number of directors being elected (mode) was three directors, with the number ranging from one to 15 directors being elected in the SV 150 (compared to a mode of 12 and range of three to 18 directors among the S&P 100). This is largely driven by classified boards, which were present in 53.1% of SV 150 companies in 2019<sup>18</sup> (compared to only 5.1% among the S&P 100).

*The following graphs show the distribution by number of director nominees for election at the annual meeting among the SV 150 companies and S&P 100 companies during the 2019 proxy season (including the median and the cutoffs for the decile with the most and fewest nominees).*

### DIRECTOR ELECTIONS — DISTRIBUTION BY NUMBER OF DIRECTOR NOMINEES



<sup>18</sup> For a more detailed discussion of classified boards, including trends and comparisons to the large public companies in the S&P 100, as well as a breakdown of data for the top 15, top 50, middle 50 and bottom 50 of the SV 150, see the most recent edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, available at <https://fenwick.com/CorporateGovernance>.

Director Elections (continued)

**Contested Elections**

For the first time in a number of years, there were no contested elections in the SV 150 or the S&P 100.<sup>19</sup>

**Uncontested Elections**

There were 143 uncontested elections of directors in the SV 150 (and 99 in the S&P 100). Since they were uncontested, election of the board-nominated candidates was generally not in doubt, subject only to any applicable majority voting policy.<sup>20</sup> In the 2019 proxy season, all directors in the SV 150 and S&P 100 received more “for” votes than “against” or “withheld” in uncontested elections (compared to one in the SV 150 that did not and none in the S&P 100 in 2018).

Uncontested Director Elections	SV 150			Top 15			Top 50			Middle 50			Bottom 50			S&P 100		
	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017
Number of Companies Holding Director Elections	143	142	137	15	15	15	50	49	47	45	45	45	48	48	45	99	97	99
Average of Average %age of Shares For (of Votes Cast or Withheld)	93.2	94.4	95.0	92.1	96.3	93.6	94.5	96.2	96.4	92.7	95.6	96.0	92.4	91.4	92.7	94.8	97.0	96.3
Average of Average %age of Shares For (of Shares Represented)	80.1	80.8	81.6	77.3	82.8	81.2	82.8	84.2	84.3	79.0	81.9	82.7	78.3	76.4	77.8	80.6	83.2	83.0
Average of Average %age of Shares For (of Shares Eligible)	70.2	71.1	71.8	68.2	72.5	71.8	72.6	73.7	72.8	70.8	73.1	74.4	67.3	66.6	68.2	69.5	72.2	70.8

In the SV 150, the median of the average percentage of votes for (as opposed to votes against or withheld)<sup>21</sup> each company’s nominees was 96.5%, ranging from 40.2% on average up to 99.9% who voted for the board-sponsored nominees (compared to a median of 97.5% and range of 7.1% to 99.5% in the S&P 100).

Approximately 21.7% of the SV 150 that had uncontested elections (or 31 companies) had an average of 10% or more of the vote against or withheld from their board-nominated candidates (compared to 7.1%, or seven companies, in the S&P 100). That percentage falls to 8.4% (or 12 companies) that had 20% or more of the vote against or withheld from their nominees (compared to three in the S&P 100).

19 See “Methodology—Contested / Uncontested Elections of Directors” for a discussion of which elections are treated as contested or uncontested and related matters.

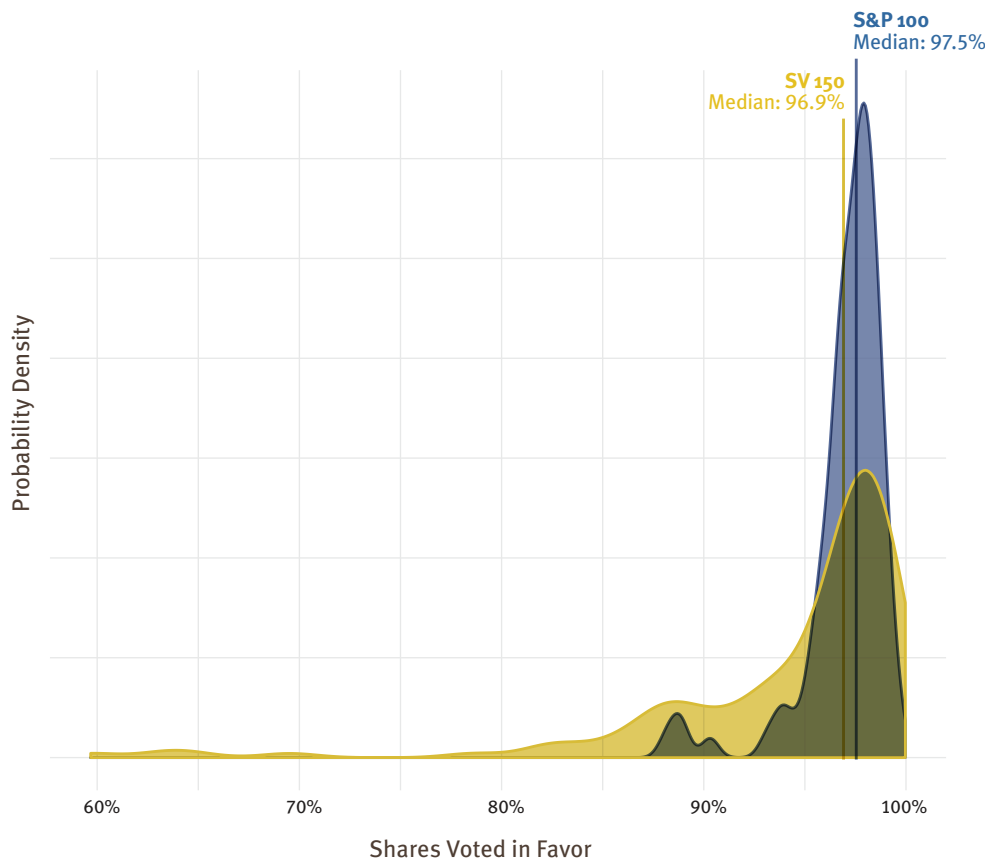
20 Generally, where some form of majority voting policy or requirement exists, each board nominee is required to receive more votes “for” their election than votes “withheld” (or “against” in instances where that choice is also offered). For a more detailed discussion of majority voting, including trends and comparisons to the large public companies in the S&P 100, as well as a breakdown of data for the top 15, top 50, middle 50 and bottom 50 of the SV 150, see the most recent edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, available at <https://fenwick.com/CorporateGovernance>.

21 I.e., excluding broker non-votes (and shares that were not present or represented at the meeting).

Director Elections *(continued)*

The following graph shows the distribution by average percentage approval for board-nominated director candidates among the SV 150 companies and S&P 100 companies during the 2019 proxy season (showing the median for each group).<sup>22</sup>

**BOARD SLATE APPROVAL DISTRIBUTION — SV 150 VS. S&P 100**

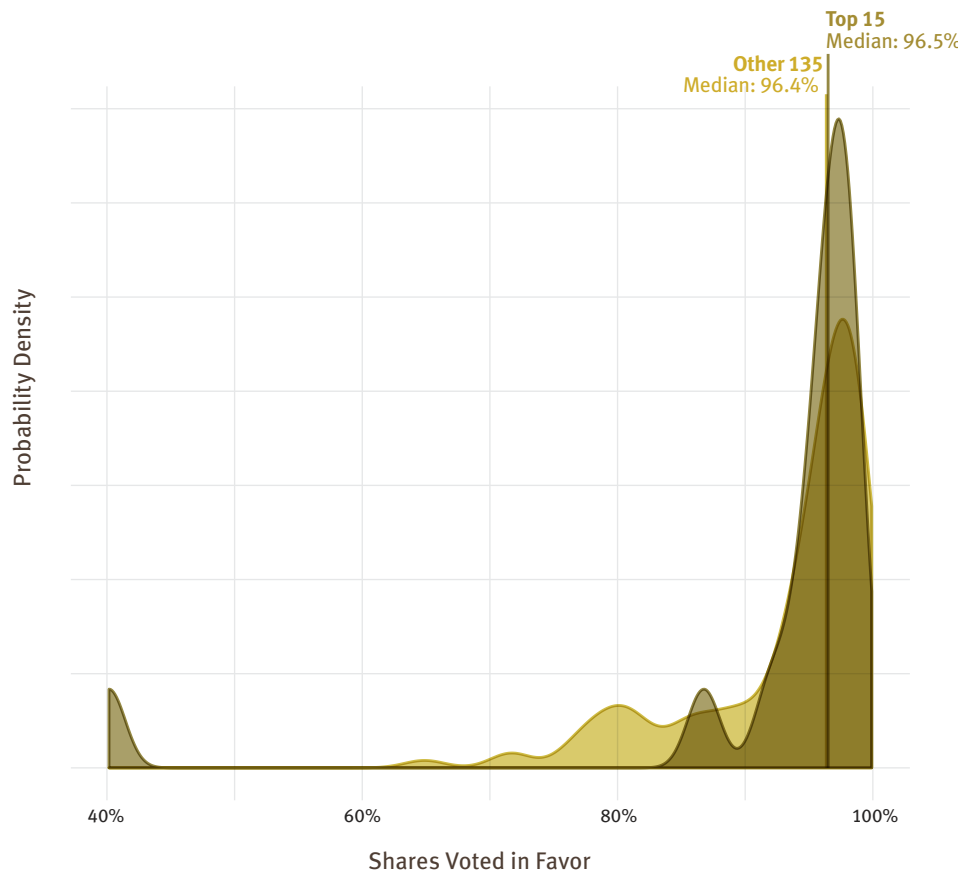


22 See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

Director Elections (continued)

The following graph shows the distribution by average percentage approval for board-nominated director candidates of the SV 150 companies broken down by the top 15 and remaining 135 companies during the 2019 proxy season (showing the median for each subgroup).<sup>23</sup>

SV 150 BOARD SLATE APPROVAL DISTRIBUTION BREAKDOWN — TOP 15

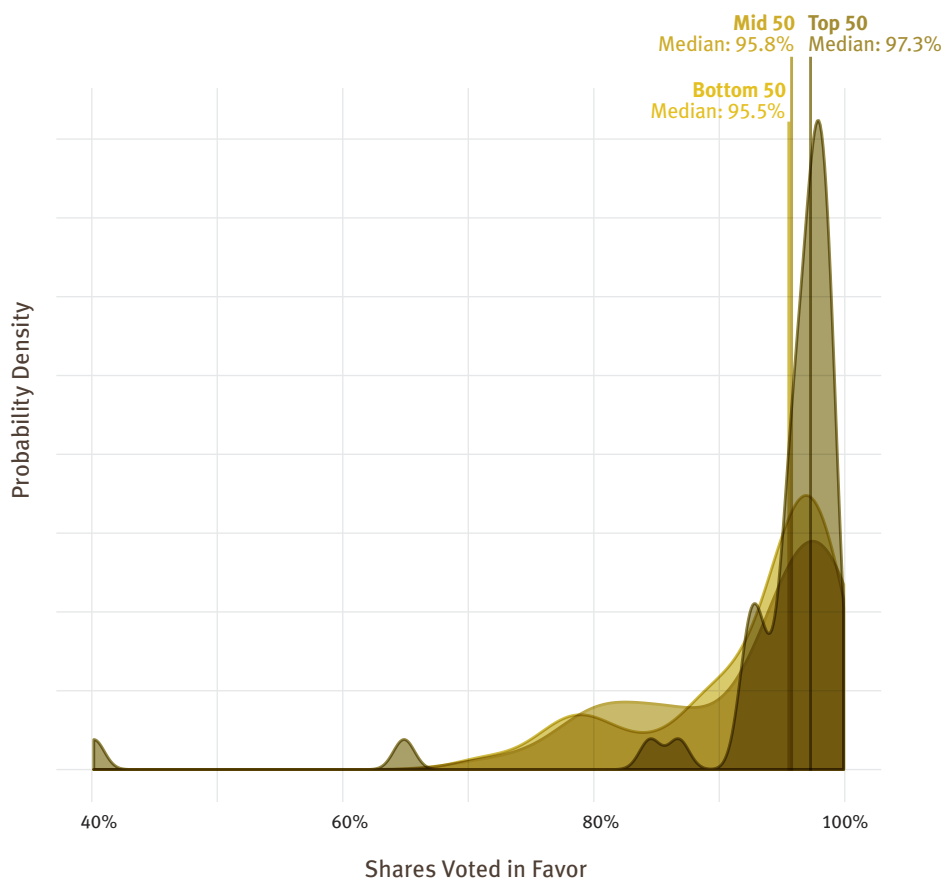


23 See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

Director Elections *(continued)*

The following graph shows the distribution by average percentage approval for board-nominated director candidates of the SV 150 companies broken down by the top 50, middle 50 and bottom 50 companies during the 2019 proxy season (showing the median for each subgroup).<sup>24</sup>

SV 150 BOARD SLATE APPROVAL DISTRIBUTION BREAKDOWN BY 50s



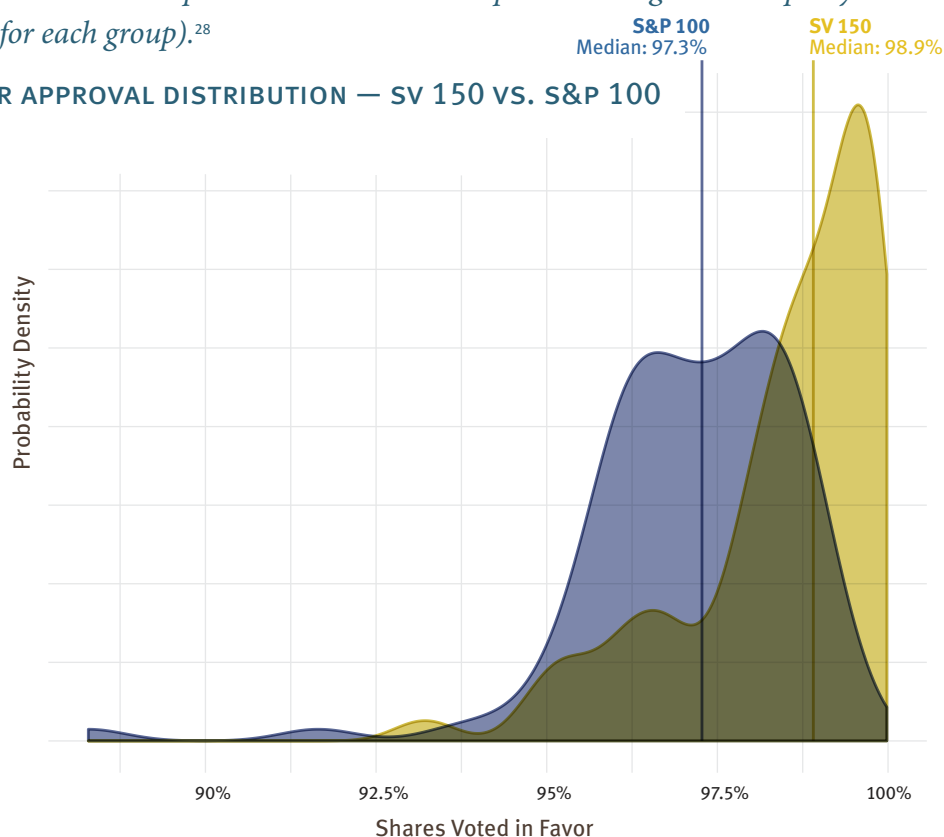
24 See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

## Auditor Ratification

Companies are not required to seek stockholder approval of the independent public accounting firm that audits their financial statements. However, companies generally seek approval of their auditors in a non-binding vote at each annual meeting.<sup>25</sup> A total of 141 companies (out of 143) in the SV 150 and 98 companies (out of 99) of the S&P 100 that held annual meetings in the 2019 proxy season included auditor ratification among the matters being voted upon by stockholders.<sup>26</sup> Generally these votes are uncontroversial. Unsurprisingly, the selection of auditors was ratified at 98.6% for the SV 150 companies, and 99% for the S&P 100. In the SV 150, the median percentage approval was 99.2% with a range of 93.5% to 100% (compared to a median of 97.5% and range of 88.7% to 99.4% in the S&P 100).<sup>27</sup> Among SV 150 companies, only 3.5% had 5% or more that voted against or abstained with respect to auditor ratification (no companies had 10% or more against/abstained).

*The following graph shows the distribution by average percentage approval of ratification of auditors among the SV 150 companies and S&P 100 companies during the 2019 proxy season (showing the median for each group).<sup>28</sup>*

**AUDITOR APPROVAL DISTRIBUTION — SV 150 VS. S&P 100**



- 25 Generally, this is done as a matter of stockholder relations, sometimes seen as a carryover from English practice where stockholder approval of the appointment of auditors is mandated. It may also have benefits in stockholder litigation. The reasons for seeking auditor ratification are beyond the scope of this report (suffice it to say that there is very limited literature on the subject). It has also been observed that, with the changes in permissible broker discretionary voting, the inclusion of auditor ratification may aid achievement of a voting quorum at annual meetings in marginal cases.
- 26 One of the SV 150 companies (Ubiquiti Networks) withdrew its proposal for auditor approval, having dismissed its auditor prior to the meeting. Two of the SV 150 companies (Square and Elastic N.V.) and one of the S&P 100 (Berkshire Hathaway) did not propose that its stockholders approve its auditor.
- 27 The average approval in the SV 150 was 98.5% of shares voting or abstaining (compared to 97.1% in the S&P 100).
- 28 In light of the very narrow range of approval rate when measured as a percentage of shares voting or abstaining, as well as the different purposes of stockholder ratification, this graph includes all shares eligible as of the record date in the denominator (unlike the other similar graphics in this report). See “Methodology—Results (including Tables and Graphics)” below for a discussion of the representation of distribution as a probability density.

## Say-on-Pay

Beginning in 2011, public companies have generally been required to hold a periodic non-binding vote on whether stockholders approve the compensation paid to the company's named executive officers, as disclosed in the proxy statement, including the Compensation Discussion and Analysis, compensation tables and narrative discussion (commonly referred to as a "say-on-pay" vote).<sup>29</sup> In the 2019 proxy season, 115 companies in the SV 150 held say-on-pay votes at their annual meetings (as did 95 companies in the S&P 100).<sup>30</sup> Of those, six companies in the SV 150 lost the say-on-pay vote (one in the S&P 100).<sup>31</sup>

In the SV 150, the average support was 87.9% of votes cast (ignoring abstentions and broker non-votes), with a median of 94.6% and range of 18.2% to 99.9% (compared to an average of 89.1% in the S&P 100, with a median of 93.3% and a range of 50% to 97.8%). If abstentions are included (effectively treated as non-support), average support in the SV 150 drops to 87.4%, with a median of 94.1% and range of 18.2% to 99.8% (compared to an average of 88.5% in the S&P 100, with a median of 92.7% and a range of 49.8% to 97.5%).

Opposition to named executive officer compensation reached 15% or more of votes cast (ignoring abstentions and broker non-votes) at 20.9% of SV 150 companies (compared to 17.9% of S&P 100 companies). Within those SV 150 companies with relatively lower levels of support, opposition reached 30% or more at 16 companies (of which 11 had opposition of 40% or more, including six companies where opposition exceeded 50%).<sup>32</sup>

Say-on-Pay Proposals	SV 150			Top 15			Top 50			Middle 50			Bottom 50			S&P 100		
	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017
Number of Companies Holding Say-on-Pay Votes	115	114	115	13	12	14	47	45	46	36	38	40	32	31	29	95	94	98
Number of Say-on-Pay Proposals that Passed	109	107	113	12	10	13	44	42	44	34	38	40	31	27	29	94	90	96
Average %age of Shares For (of Votes Cast)	87.9	87.6	90.7	83.2	83.1	89.6	85.7	87.7	90.7	88.2	91.5	91.6	90.8	82.5	89.4	89.1	89.9	89.6
Average %age of Shares For (of Votes Cast or Abstained)	87.4	86.8	90.3	82.9	82.7	89.3	85.2	87.3	90.4	87.7	90.0	91.1	90.2	82.2	88.9	88.5	89.2	89.0
Average %age of Shares For (of Shares Represented)	75.2	74.8	78.2	70.1	70.4	76.8	74.8	75.9	79.3	74.4	77.9	79.0	76.8	69.5	75.4	74.8	76.3	76.6
Average %age of Shares For (of Shares Eligible)	67.0	67.4	69.2	62.1	61.9	68.0	66.7	67.5	68.1	67.1	71.5	71.8	67.4	62.2	67.5	65.3	66.7	67.0

<sup>29</sup> See *Section 14A(a)(1)* of the Securities Exchange Act of 1934, as amended, and Rule 14a-21(a). The primary exception is "emerging growth companies," which are exempted from the requirement.

<sup>30</sup> Public companies are not required to hold say-on-pay votes every year (though many do). Rather, under *Section 14A(a)(1)* of the Securities Exchange Act of 1934, as amended, and Rule 14a-21(a), the say-on-pay vote must be held at least once every three years. See "Say-on-Pay Frequency" below for a discussion of the periodic vote requirements and stockholder input regarding the timing.

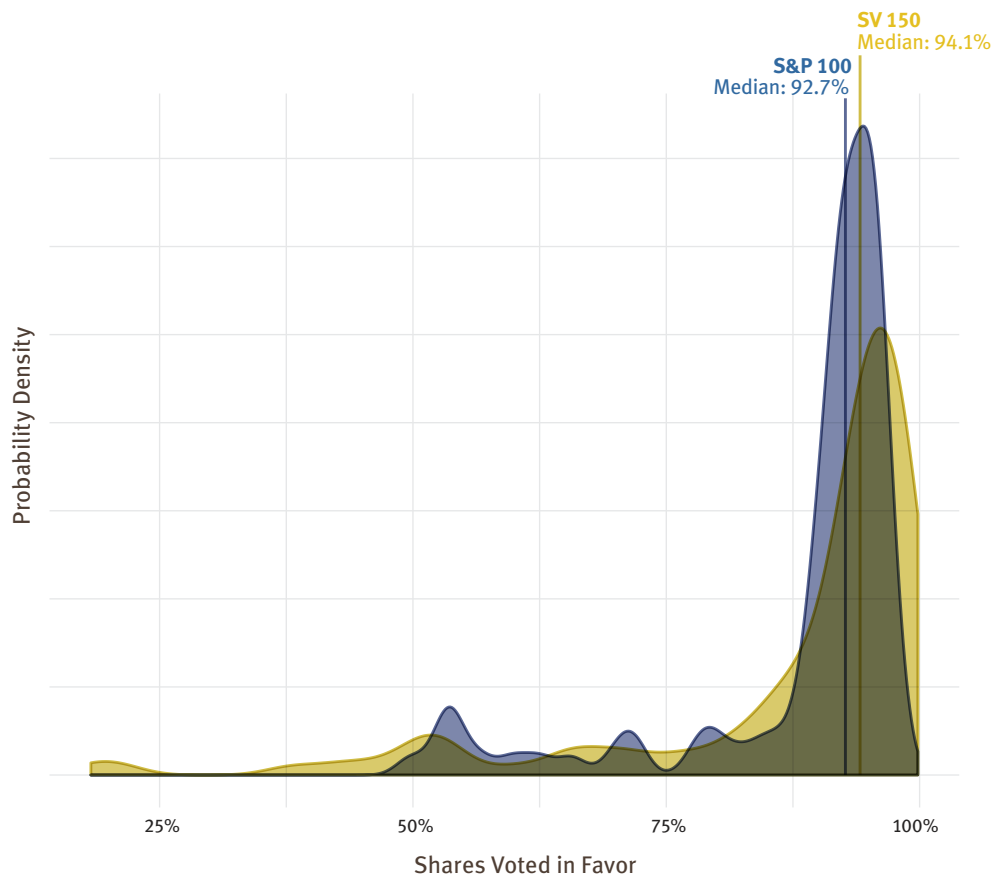
<sup>31</sup> Those companies (in order of SV 150 rank) are Netflix, Palo Alto Networks, Align Technology, Proofpoint, Lending Club and Xperi. That equates to a 94.8% passage rate for the SV 150. In the S&P 100, the company is Netflix, which equates to a 98.9% passage rate.

<sup>32</sup> Within the S&P 100, 17 companies had opposition of 15% or more.

Say-on-Pay (continued)

The following graph shows the distribution by percentage approval of executive officer compensation among the SV 150 companies and S&P 100 companies during the 2019 proxy season (showing the median for each group).<sup>33</sup>

SAY-ON-PAY APPROVAL DISTRIBUTION — SV 150 VS. S&P 100



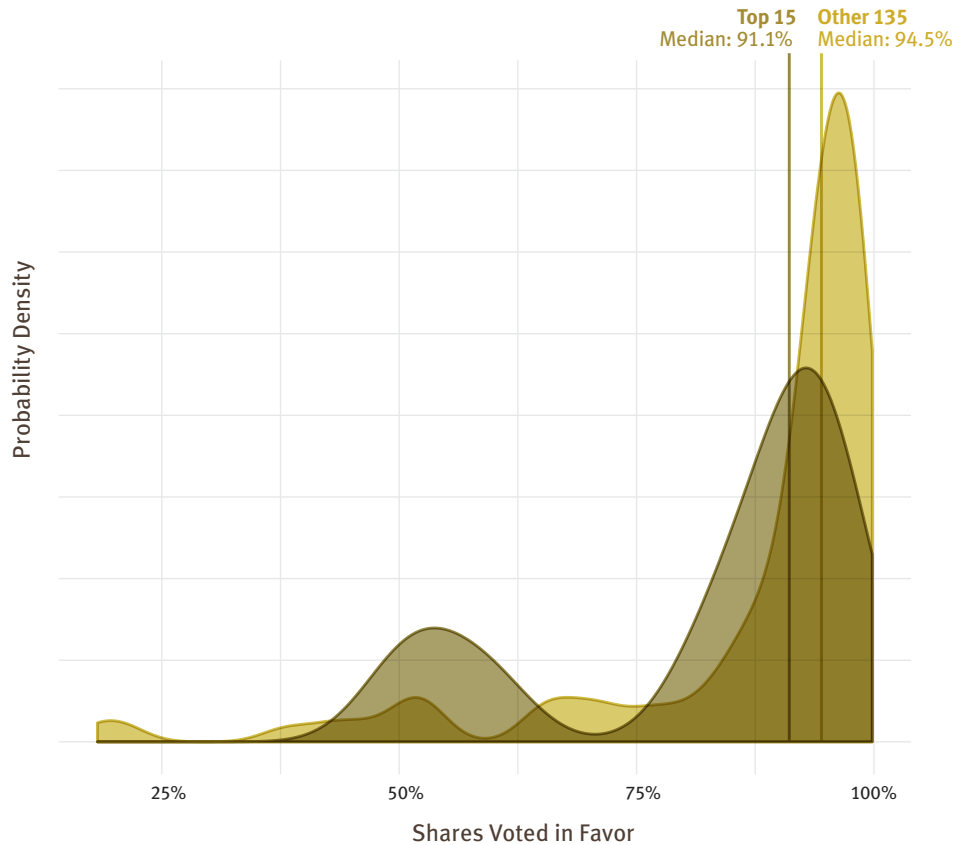
33 See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.



Say-on-Pay (continued)

The following graph shows the distribution by percentage approval for board-nominated director candidates among the SV 150 companies broken down by the top 15 and remaining 135 companies during the 2019 proxy season (showing the median for each subgroup).<sup>34</sup>

SV 150 SAY-ON-PAY APPROVAL DISTRIBUTION BREAKDOWN — TOP 15

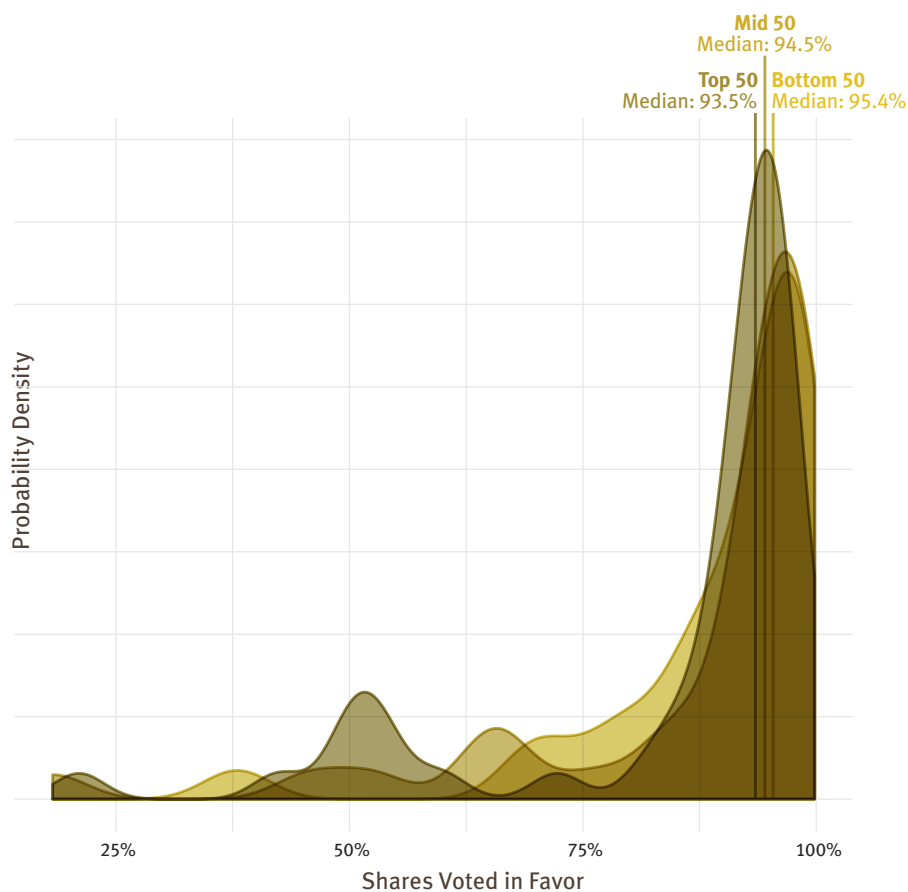


34 See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

Say-on-Pay (continued)

The following graph shows the distribution by average percentage approval for board-nominated director candidates of the SV 150 companies broken down by the top 50, middle 50 and bottom 50 companies during the 2019 proxy season (showing the median for each subgroup).<sup>35</sup>

SV 150 SAY-ON-PAY APPROVAL DISTRIBUTION BREAKDOWN BY 50s



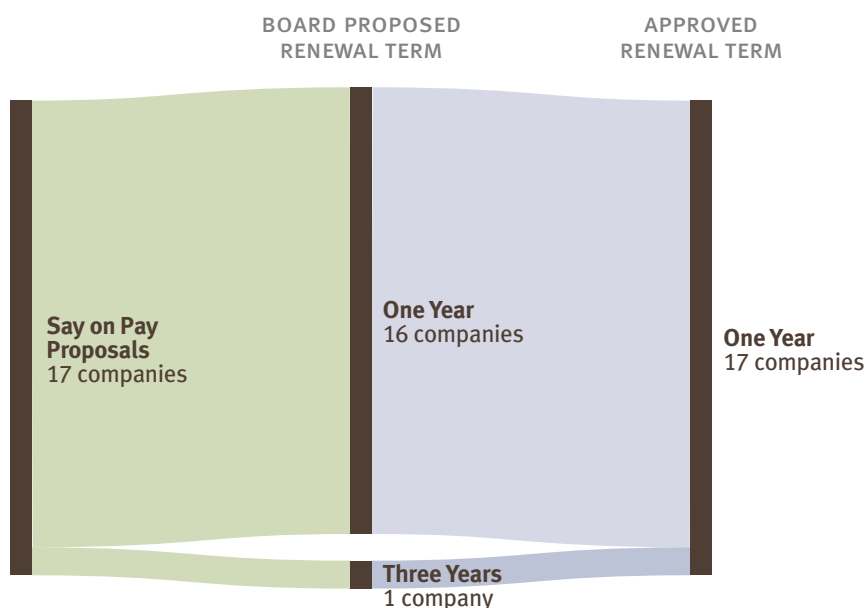
35 See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

## Say-on-Pay Frequency

While the decision regarding how frequently to hold votes by stockholders regarding approval of executive officer compensation (i.e., whether say-on-pay votes will be held annually, biennially or triennially) is up to a company's board of directors, public companies are required to hold a non-binding vote of stockholders at least once every six years regarding the frequency of say-on-pay votes for the board's consideration when making that decision.<sup>36</sup> Among the SV 150 companies, 17 companies held say-on-pay frequency votes (sometimes referred to as a "say-on-frequency" vote) during the 2019 proxy season.<sup>37</sup> Of those, the board recommended annual frequency at 17 companies. Where annual frequency was recommended, it was approved by stockholders (17 companies). No company approved triennial frequency (though one company's board recommended that frequency). This is a change to the pattern in the SV 150 in recent proxy seasons, wherein the few triennial recommendations by the board were generally approved by stockholders.

*The following graph shows the distribution by frequency proposed by company boards and the frequency approved by stockholders among the SV 150 companies during the 2019 proxy season (showing the breakdown of the result by frequency recommended).*

### SV 150 SAY-ON-PAY FREQUENCY VOTING



<sup>36</sup> See Section 14A(a)(2) of the Securities Exchange Act of 1934, as amended, and [Rule 14a-21\(b\)](#).

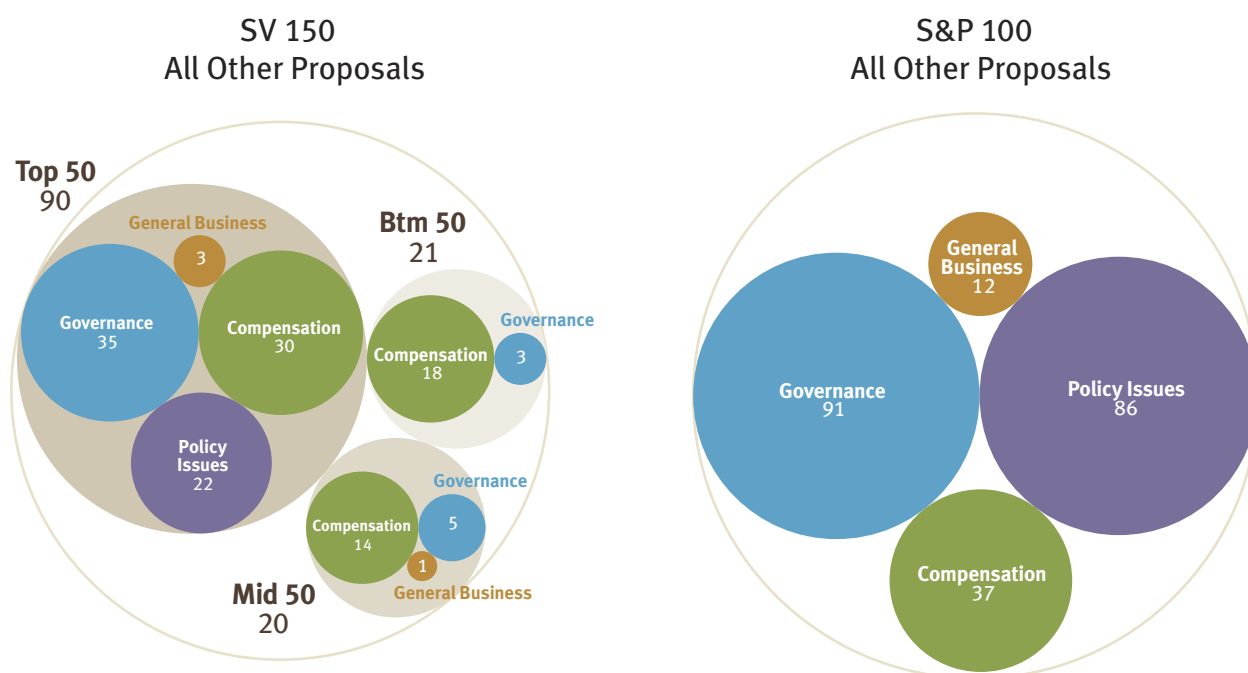
<sup>37</sup> One S&P 100 company held a say-on-frequency vote in the 2019 proxy season compared to 10 companies in 2018.

## Other Proposals Voted On

Stockholders voted on 543 matters at the 143 annual meetings held by SV 150 companies (compared to 516 matters at 99 annual meetings of S&P 100 companies).<sup>38</sup> Excluding the director elections, say-on-pay (and say-on-frequency) and auditor approval covered above, SV 150 company stockholders were asked to vote on 127 proposals (compared to 223 such proposals voted on by stockholders of S&P 100 companies).<sup>39</sup>

*The following graph illustrates the number of proposals during the 2019 proxy season in the SV 150 broken down by subject area category and by top 50, middle 50 and bottom 50 companies, as well as the S&P 100 broken down by subject area category, excluding director elections, say-on-pay (and say-on-frequency) and auditor approval.*

### PROPOSAL BREAKDOWN BY PROPONENT AND SUBJECT AREA CATEGORY — SV 150 VS. S&P 100



<sup>38</sup> Director elections at each company were treated as a single matter, irrespective of the number of directors being elected. The stockholder proposals do not include competing board slates.

<sup>39</sup> There would have been 128 such proposals in the SV 150 but one company’s stockholders did not vote on a stockholder proposal that had been included by a stockholder in the proxy statement for the annual meeting, because the proponent failed to present the proposal at the company’s annual meeting. There would have been 224 such proposals in the S&P 100. Director elections, say-on-pay, say-on-frequency and auditor approval represented a large portion of the total number of proposals (and number of proposals in each subject area category).

Other Proposals Voted On *(continued)*

Generally, stockholders at larger companies were asked to vote on more matters than at smaller companies. These proposals, which were either advanced by the companies’ boards of directors or by stockholders, generally can be grouped into categories of compensation, governance, policy issues or other general business. The increased number of proposals considered by stockholders at larger companies was a function of the fact that only three stockholder-sponsored proposals were voted upon by stockholders outside of the top 50 companies in the SV 150 companies, as well as the fact that larger companies are significantly more likely to hold say-on-pay votes annually.

Silicon Valley 150 and S&P 100 Total Number of Proposals Voted Upon	SV 150			Top 50			Middle 50			Bottom 50			Top 15			Other 135			S&P 100		
	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017
<b>Number of Companies Holding Annual Meetings</b>	143	143	138	50	49	48	45	46	45	48	48	45	15	15	15	128	128	123	99	99	100
<b>ALL PROPOSALS:</b>	543	572	592	234	239	250	157	165	178	152	168	164	92	86	97	451	486	495	516	544	620
<b>Compensation</b>	192	217	265	78	88	115	60	63	82	54	66	68	22	22	34	170	195	231	134	152	235
Change-in-Control Payouts/Vesting (Golden Parachutes)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	2
Clawbacks	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	2	2	5
Director Compensation	1	5	2	0	3	1	0	1	1	0	1	0	1	1	1	4	1	1	4	4	4
Equity Awards	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0	1	0	0
Option/Equity Plan Change/Approval	58	55	69	28	23	33	13	12	16	17	20	20	8	4	5	50	51	64	17	25	24
Pay Benchmarking	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0
Pay Ratio	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	2
Performance Metrics/Pay for Performance/162(m)	1	8	11	1	4	4	0	1	3	0	3	4	1	2	1	0	6	10	7	4	11
Say-on-Pay	115	114	115	47	45	46	36	38	40	32	31	29	13	12	14	102	102	101	95	94	98
Say-on-Pay Frequency	17	32	65	2	11	28	11	11	22	4	10	15	0	3	10	17	29	55	1	10	83
Stock Retention	0	0	1	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	1	0	2
Option/Equity Repricing or Exchange Program Approval	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Other Compensation	0	1	1	0	1	1	0	0	0	0	0	0	0	0	1	0	1	0	5	7	4

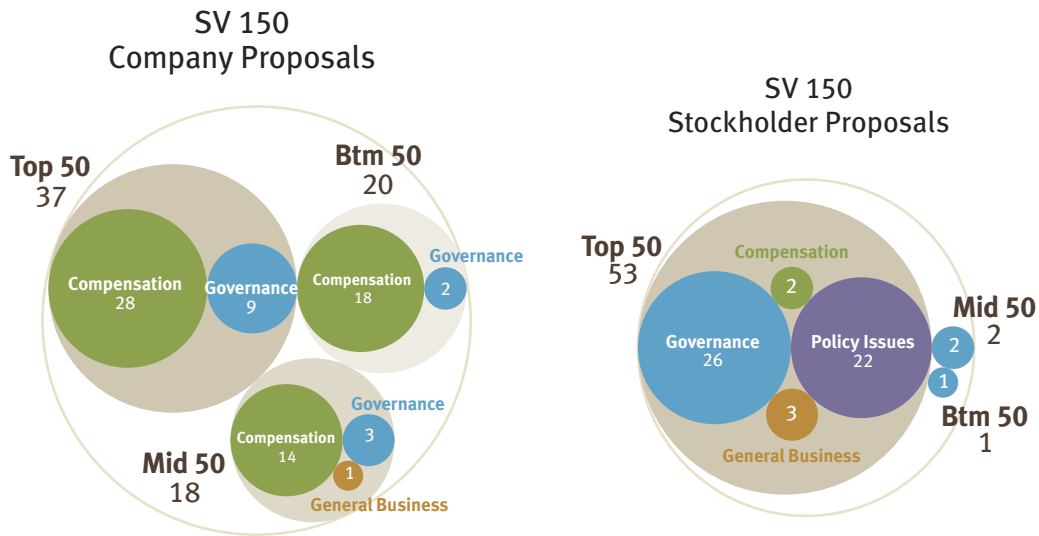
Other Proposals Voted On (continued)

Silicon Valley 150 and S&P 100 Total Number of Proposals Voted Upon	SV 150			Top 50			Middle 50			Bottom 50			Top 15			Other 135			S&P 100		
<b>Governance</b>	<b>187</b>	<b>180</b>	<b>169</b>	<b>85</b>	<b>80</b>	<b>67</b>	<b>51</b>	<b>51</b>	<b>51</b>	<b>51</b>	<b>49</b>	<b>51</b>	<b>37</b>	<b>33</b>	<b>31</b>	<b>150</b>	<b>147</b>	<b>138</b>	<b>190</b>	<b>209</b>	<b>177</b>
Board Declassification	5	2	5	0	0	2	4	2	1	1	0	2	0	0	1	5	2	4	3	3	1
Board Diversity	3	1	1	3	1	1	0	0	0	0	0	0	2	1	1	1	0	0	5	2	1
Board Slate Approval	143	143	138	50	49	48	45	46	45	48	48	45	15	15	15	128	128	123	99	99	100
Certificate/Bylaws Change	1	2	3	1	1	1	0	1	1	0	0	1	0	0	0	1	2	3	0	6	4
Cumulative Voting - Addition	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	3	2
Cumulative Voting - Repeal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Elimination of Dual-Class Voting	2	2	2	2	2	2	0	0	0	0	0	0	2	2	2	0	0	0	4	4	4
Elimination of Supermajority	11	4	2	8	4	2	1	0	0	2	0	0	4	2	1	7	2	1	9	10	7
Independent Chair	6	3	2	6	3	2	0	0	0	0	0	0	5	3	2	1	0	0	26	27	21
Majority Voting Standard	2	1	1	2	1	1	0	0	0	0	0	0	2	0	1	0	1	0	3	2	1
Proxy Access	1	8	5	1	7	3	0	0	0	0	1	2	1	4	3	0	4	2	11	14	10
Recapitalization	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Stockholder Ability to Act by Written Consent	4	6	3	4	6	3	0	0	0	0	0	0	4	5	3	0	1	0	14	11	5
Stockholder Rights Plan/Poison Pill	4	1	2	4	0	0	0	1	1	0	0	1	0	0	0	4	1	2	0	1	0
Stockholder Ability to Call Special Meetings	1	4	3	0	3	1	1	1	2	0	0	0	0	0	1	1	4	2	9	22	17
Other Governance Issues	4	3	2	4	3	1	0	0	1	0	0	0	2	1	1	2	2	1	5	4	5
<b>Policy Issues</b>	<b>19</b>	<b>21</b>	<b>20</b>	<b>19</b>	<b>20</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>15</b>	<b>14</b>	<b>18</b>	<b>4</b>	<b>7</b>	<b>2</b>	<b>82</b>	<b>75</b>	<b>115</b>
Animal Testing/Welfare	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Anti-Discrimination/Diversity	8	8	3	8	8	3	0	0	0	0	0	0	7	4	2	1	4	1	17	7	13
Environmental/Sustainability	1	1	3	1	1	3	0	0	0	0	0	0	1	1	3	0	0	0	14	18	29
Health & Food Safety	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6	0	4
Human Rights	1	3	0	1	3	0	0	0	0	0	0	0	0	2	0	1	1	0	8	10	7
Political/Lobbying Activities	6	5	6	6	5	6	0	0	0	0	0	0	4	5	6	2	0	0	28	31	39
Privacy and Data Security	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Charitable Contributions	0	0	2	0	0	2	0	0	0	0	0	0	0	0	2	0	0	0	0	1	4
Israel/Palestine/Holy Land	0	0	3	0	0	3	0	0	0	0	0	0	0	0	3	0	0	0	0	0	12
Other Policy Issues	3	4	3	3	3	3	0	0	0	0	1	0	3	2	2	0	2	1	9	6	7
<b>General Business</b>	<b>145</b>	<b>154</b>	<b>138</b>	<b>52</b>	<b>51</b>	<b>48</b>	<b>46</b>	<b>51</b>	<b>45</b>	<b>47</b>	<b>52</b>	<b>45</b>	<b>18</b>	<b>17</b>	<b>15</b>	<b>127</b>	<b>137</b>	<b>123</b>	<b>110</b>	<b>108</b>	<b>107</b>
Auditor Approval	141	143	137	49	49	48	45	46	44	47	48	45	15	15	15	126	128	122	98	98	99
Reincorporation	0	3	1	0	1	0	0	1	1	0	1	0	0	1	0	0	2	1	0	0	0
Stock Repurchase	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Other General Business	4	8	0	3	1	0	1	4	0	0	3	0	3	1	0	1	7	0	12	9	8

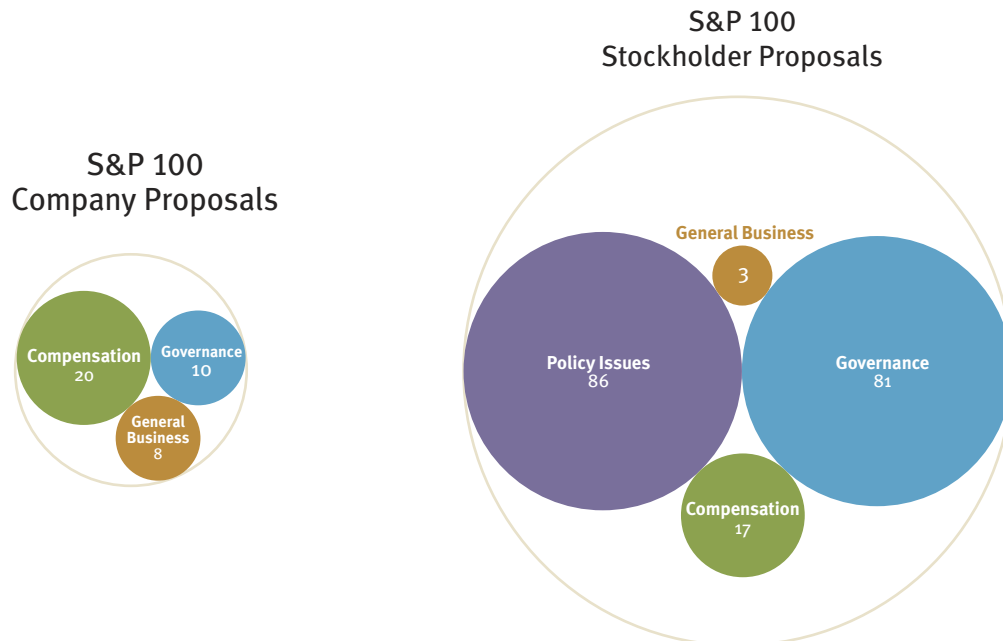
Other Proposals Voted On (continued)

The following graphs illustrate the number of proposals put forth by companies and those put forth by stockholders during the 2019 proxy season in the SV 150 broken down by subject area category and by top 50, middle 50 and bottom 50 companies, as well as the S&P 100 broken down by proponent and subject area category.<sup>40</sup>

SV 150 PROPOSALS BREAKDOWN BY PROPONENT AND CATEGORY — 2019 PROXY SEASON



S&P 100 PROPOSALS BREAKDOWN BY PROPONENT AND CATEGORY — 2019 PROXY SEASON



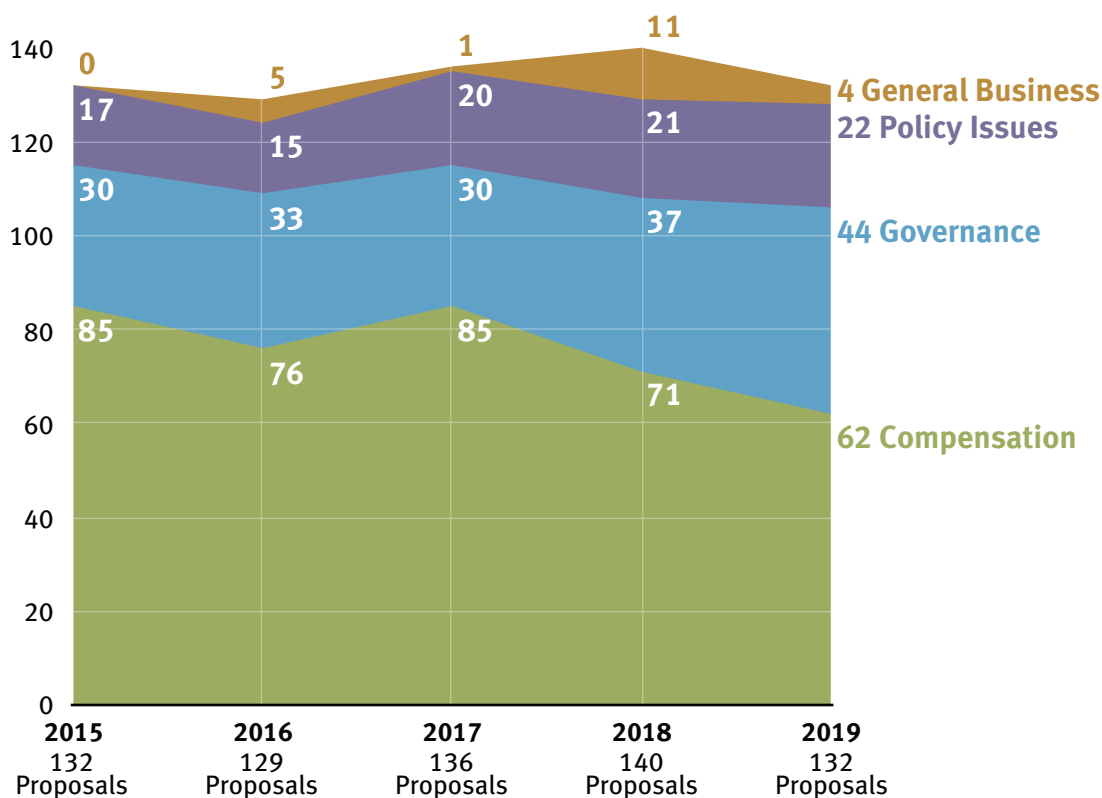
40 See footnotes 38 and 39 for a discussion of the proposals represented in these graphs.

Other Proposals Voted On *(continued)*

Company-sponsored proposals are spread across compensation (primarily say-on-pay/frequency and equity plan proposals), governance (primarily director elections) and other general business (primarily auditor approval), while stockholder-sponsored proposals are more frequently focused on governance matters or policy issues. Company-sponsored proposals are also significantly more likely to be passed than those sponsored by stockholders. These trends are the same for SV 150 and S&P 100 companies.

*The following graph shows all proposals, excluding the director elections, say-on-pay, say-on-frequency and auditor approval, broken down by subject area category voted on by stockholders at SV 150 companies between 2015 and 2019, irrespective of proponent.<sup>41</sup>*

SV 150 PROPOSAL BREAKDOWN BY CATEGORY OVER TIME – 2015-2019



<sup>41</sup> See footnote 39 for a discussion of the proposals represented in this graph.



## Company Proposals

Excluding the director elections, say-on-pay (and say-on-frequency) and auditor approval voting covered above, stockholders at SV 150 companies voted on 75 company-sponsored proposals in the 2019 proxy season, primarily in compensation-related subjects, as well as some governance matters (compared to 38 such proposals at S&P 100 companies).

Silicon Valley 150 Company-Sponsored Proposals	Total			Passed			Average %age of Shares For (of Votes Cast)			Average %age of Shares For (of Votes Cast or Abstained)			Average %age of Shares For (of Shares Represented)			Average %age of Shares For (of Shares Eligible)		
	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017
<b>ALL COMPANY PROPOSALS:</b>	75	86	95	73	86	95	90.9	91.5	90.4	90.5	90.7	90.0	77.0	77.3	78.1	68.2	68.9	69.7
<b>Compensation</b>	59	69	83	59	69	83	89.5	92.2	90.4	89.1	91.4	90.0	75.8	77.3	78.0	67.4	69.3	69.6
Director Compensation	1	5	2	1	5	2	97.4	93.0	96.9	97.2	92.8	96.8	76.7	78.4	80.3	72.8	72.9	70.6
Equity Awards	0	1	0	0	1	0	0.0	94.2	0.0	0.0	80.4	0.0	0.0	63.6	0.0	0.0	52.0	0.0
Option/Equity Plan Change/ Approval	58	55	69	58	55	69	89.3	91.5	89.3	89.0	90.9	88.8	75.8	77.5	76.8	67.3	69.5	68.6
Performance Metrics/Pay for Performance	0	8	11	0	8	11	0.0	96.1	96.0	0.0	95.7	95.8	0.0	76.2	85.0	0.0	67.9	76.2
Option/Equity Repricing or Exchange Program Approval	0	0	1	0	0	1	0.0	0.0	92.1	0.0	0.0	92.0	0.0	0.0	79.4	0.0	0.0	63.1
Other Compensation-Related Matters	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Governance</b>	15	7	11	13	7	11	96.3	88.2	89.9	95.6	87.6	89.7	80.6	80.2	77.1	70.5	70.9	68.9
Board Declassification	4	2	2	4	2	2	99.8	100.0	99.6	99.7	99.8	99.6	83.7	91.0	74.2	75.0	83.4	63.9
Certificate/Bylaws Change	1	2	3	1	2	3	99.9	87.1	86.3	99.8	85.5	86.1	91.9	84.4	76.3	80.7	71.4	67.2
Cumulative Voting – Repeal	0	0	0	0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Elimination of Supermajority	4	0	1	3	0.0	1	99.8	0.0	99.7	99.6	0.0	99.7	83.2	0.0	91.1	72.7	0.0	83.3
Proxy Access	0	0	1	0	0.0	1	0.0	0.0	99.6	0.0	0.0	99.5	0.0	0.0	90.3	0.0	0.0	79.1
Stockholder Ability to Act by Written Consent	1	0	0	1	0	0	98.6	0.0	0.0	98.4	0.0	0.0	84.9	0.0	0.0	73.0	0.0	0.0
Stockholder Ability to Call Special Mtgs	3	2	1	3	2	1	85.7	76.4	87.1	83.2	76.4	87.1	76.6	69.6	81.9	66.6	62.2	77.4
Stockholder Rights Plan/ Poison Pill	1	1	2	1	1	2	90.8	90.1	93.6	90.2	90.0	93.2	69.4	71.1	76.7	61.8	62.5	68.3
Other Governance Issues	1	0	1	0	0	1	99.7	0.0	56.7	99.6	0.0	56.6	64.6	0.0	53.7	51.8	0.0	52.0
<b>General Business</b>	1	10	1	1	10	1	96.7	88.8	97.8	96.5	87.4	97.7	96.5	75.6	97.7	80.9	64.7	86.5
Reincorporation	0	3	1	0	3	1	0.0	97.7	97.8	0.0	97.5	97.7	0.0	83.0	97.7	0.0	71.8	86.5
Other General Business	1	7	0	1	7	0	96.7	85.1	0.0	96.5	83.1	0.0	96.5	72.4	0.0	80.9	61.6	0.0

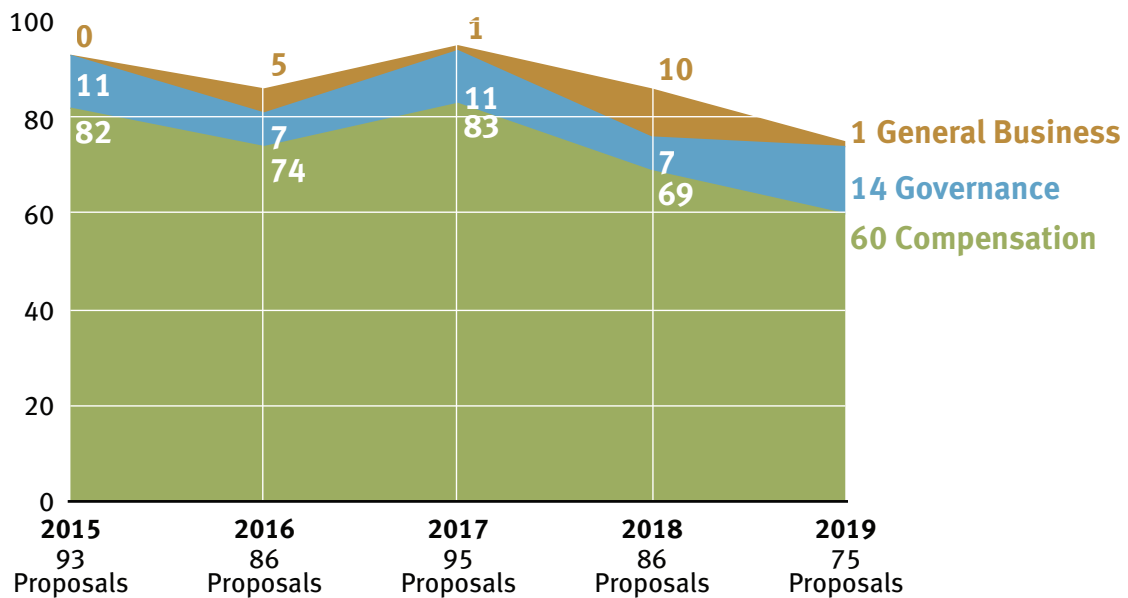
Company Proposals (continued)

S&P 100 Company-Sponsored Proposals	Total			Passed			Average %age of Shares For (of Votes Cast)			Average %age of Shares For (of Votes Cast or Abstained)			Average %age of Shares For (of Shares Represented)			Average %age of Shares For (of Shares Eligible)		
	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017
<b>ALL COMPANY PROPOSALS:</b>	38	56	50	36	49	47	94.8	92.7	95.3	94.3	92.2	94.6	82.8	81.3	82.8	71.8	69.2	71.7
<b>Compensation</b>	20	33	39	20	33	39	91.9	93.5	94.6	91.6	93.0	94.1	79.9	79.7	81.6	70.5	68.6	71.4
Director Compensation	1	4	4	1	4	4	97.2	96.6	93.3	97.0	96.4	92.9	86.1	81.8	81.6	72.1	72.6	72.9
Option/Equity Plan Change/ Approval	17	25	24	17	25	24	91.3	92.4	94.3	91.0	91.8	93.9	80.1	79.4	82.4	71.4	67.8	72.3
Pay Benchmarking	1	0	0	1	0	0	95.6	0.0	0.0	95.4	0.0	0.0	82.1	0.0	0.0	68.7	0.0	0.0
Performance Metrics/Pay Performance/162(m)	1	4	11	1	4	11	93.3	97.5	95.6	91.8	97.1	94.9	69.5	79.4	80.0	56.1	69.1	69.1
<b>Governance</b>	10	15	8	8	8	5	98.9	88.0	98.2	98.6	87.5	97.1	80.8	77.9	84.6	69.9	66.1	71.2
Certificate/Bylaws Change	0	4	3	0	2	3	0	76.7	97.4	0	76.4	95.4	0	65.2	95.4	0	55.6	75.9
Board Declassification	1	2	1	1	0	0	99.8	91.7	99.4	99.7	91.4	98.9	79.6	77.2	79.3	66.8	67.1	70.1
Elimination of Supermajority	4	6	2	2	3	0	98.8	96.5	97.3	98.4	95.5	96.5	78.6	88.6	70.2	69.5	72.9	60.4
Proxy Access	0	0	1	0	0	1	0	0.0	99.6	0	0.0	99.5	0	0.0	90.3	0	0.0	79.1
Stockholder Ability to Act by Written Consent	2	0	0	2	0	0	98.1	0.0	0.0	97.9	0.0	0.0	87.2	0.0	0.0	77.1	0.0	0.0
Stockholder Ability to Call Special Mtgs	1	3	1	1	3	1	99.2	83.7	99.5	98.9	83.5	99.4	85.5	74.1	80.7	76.9	65.7	71.5
Other Governance Issues	2	0	0	2	0	0	99.1	0.0	0.0	98.9	0.0	0.0	76.8	0.0	0.0	61.3	0.0	0.0
<b>General Business</b>	8	8	3	8	8	3	96.7	98.1	96.8	95.5	97.9	94.7	92.7	94.3	92.8	77.4	77.5	76.5
Other General Business	8	8	3	8	8	3	96.7	98.1	96.8	95.5	97.9	94.7	92.7	94.3	92.8	77.4	77.5	76.5

Company Proposals (continued)

The following graph shows company-sponsored proposals, excluding the director elections, say-on-pay, say-on-frequency and auditor approval, broken down by subject area category voted on by stockholders at SV 150 companies between 2015 and 2019.

SV 150 COMPANY-SPONSORED PROPOSAL BREAKDOWN BY CATEGORY OVER TIME — 2015–2019

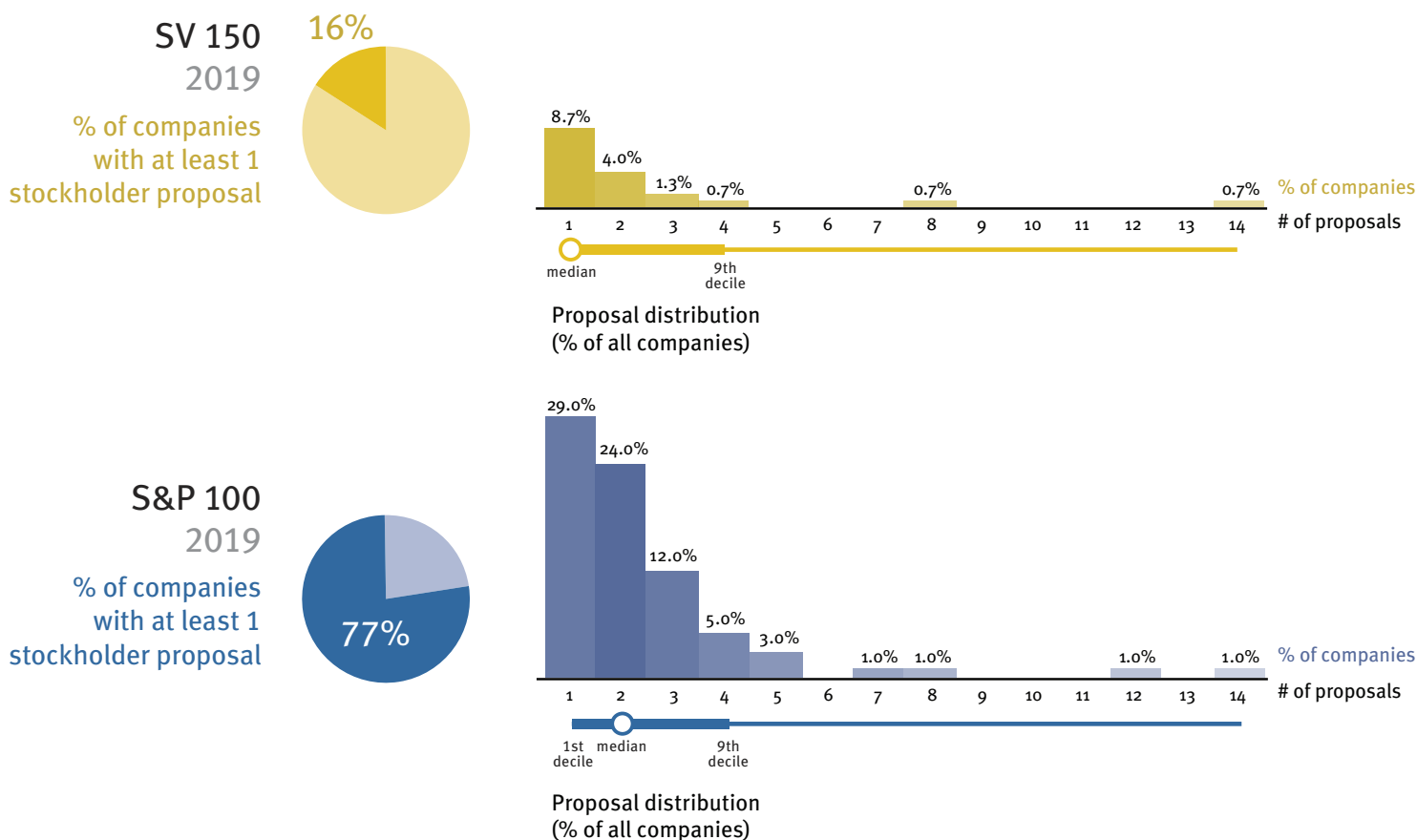


## Stockholder Proposals

Excluding competing director slates,<sup>42</sup> SV 150 company stockholders were asked to vote on 52 stockholder-sponsored proposals at annual meetings during the 2019 proxy season (compared to 179 such proposals voted on by stockholders of S&P 100 companies).<sup>43</sup> Within the SV 150, more than 73% of stockholder-sponsored proposals were voted on at the top 15 companies. Three were voted on outside of the top 50 companies.

*The following graphs show the percentage of all companies with at least one stockholder-sponsored proposal, and the distribution by number of stockholder-sponsored proposals, voted upon by stockholders of companies in the SV 150 and the S&P 100 during the 2019 proxy season (including the median and cutoffs for the decile with the most and fewest such proposals).*

### STOCKHOLDER PROPOSALS — DISTRIBUTION BY NUMBER OF PROPOSALS



42 See “Director Elections—Contested Elections” above for a discussion of competing director slates.

43 There would have been 53 such proposals in the SV 150, but one company’s stockholders did not vote on one stockholder proposal that had been included by a stockholder in the proxy statement for the annual meeting, because the proponent failed to present the proposal at the company’s annual meeting (Twitter). There would have been 178 such proposals in the S&P 100, but one proposal was withdrawn prior to the Annual Meeting and was not presented; therefore, no vote was taken on such proposal (CVS Healthcare). The stockholder-sponsored proposal for which the proponent failed to appear was in the top 50 companies.

Stockholder Proposals (continued)

The stockholder-sponsored proposals voted on in the SV 150 generally focused on governance matters or policy issues (this was also true in the S&P 100). They were also generally unsuccessful (only five succeeded). The average support for stockholder-sponsored proposals was approximately 25.7% at the SV 150 companies (compared to approximately 25.8% at S&P 100 companies). The most common topic for stockholder-sponsored proposals in the SV 150 were anti-discrimination/diversity (eight proposals, of which none succeeded) and elimination of supermajority (seven proposals, of which three were successful). The most common such topic in the S&P 100 was regarding political/lobbying activities (28 proposals, none of which succeeded).

Silicon Valley 150 Stockholder-Sponsored Proposals	Total			Passed			Average %age of Shares For (of Votes Cast)			Average %age of Shares For (of Votes Cast or Abstained)			Average %age of Shares For (of Shares Represented)			Average %age of Shares For (of Shares Eligible)		
	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017
<b>ALL PROPOSALS:</b>	52	54	42	5	9	5	25.7	31.9	24.1	25.4	31.5	23.8	21.9	26.7	20.2	19.4	23.6	18.0
<b>Compensation</b>	1	2	2	0	0	0	6.1	20.8	13.2	6.0	20.2	13.1	4.9	16.3	9.0	4.2	14.5	7.8
Clawbacks	0	1	0	0	0	0	0.0	37.9	0.0	0.0	36.6	0.0	0.0	29.2	0.0	0.0	25.8	0.0
Performance Metrics/Pay for Performance	1	0	0	0	0	0	6.1	0.0	0.0	6.0	0.0	0.0	4.9	0.0	0.0	4.2	0.0	0.0
Stock Retention	0	0	1	0	0	0	0.0	0.0	24.2	0.0	0.0	24.1	0.0	0.0	16.5	0.0	0.0	14.2
Other Compensation	0	1	1	0	0	0	0.0	3.7	2.2	0.0	3.7	2.2	0.0	3.4	1.5	0.0	3.1	1.3
<b>Governance</b>	29	30	20	5	8	5	34.6	38.8	37.6	34.3	38.6	37.4	29.3	32.6	31.7	26.0	28.9	28.1
Board Declassification	1	0	3	1	0	1	92.3	0.0	44.7	92.2	0.0	44.5	86.6	0.0	34.5	82.3	0.0	30.7
Board Diversity	3	1	1	0	0	0	1.3	2.0	4.9	1.3	2.0	4.7	1.0	1.9	3.2	0.9	1.6	2.8
Elimination of Dual-Class Voting	2	2	2	0	0	0	27.3	25.1	24.5	27.2	25.1	24.5	25.6	23.6	23.0	23.0	20.5	20.5
Elimination of Supermajority	7	4	1	3	2	1	52.2	48.6	63.3	51.8	48.5	63.0	42.7	41.8	51.8	37.6	37.3	46.5
Independent Chair	6	3	2	0	0	0	27.1	30.3	28.3	27.0	30.1	28.3	23.6	24.5	23.8	20.6	21.0	19.9
Majority Voting Standard	2	1	1	0	0	1	27.4	71.7	64.6	27.4	71.4	64.2	25.8	57.0	52.8	23.1	50.4	47.4
Proxy Access	1	8	4	0	2	0	29.5	41.2	33.2	29.3	40.8	32.9	19.3	34.8	27.0	16.8	31.2	23.9
Stockholder Ability to Act by Written Consent	3	6	3	0	3	0	46.0	53.7	44.1	45.7	53.5	44.0	37.6	44.6	38.9	33.0	38.9	33.6
Stockholder Ability to Call Special Meetings	1	2	2	1	1	2	57.5	43.1	51.6	57.4	42.6	51.5	53.4	36.0	47.8	45.6	32.6	44.4
Other Governance Issues	3	3	1	0	0	0	14.4	5.6	10.1	13.8	5.5	10.0	10.6	5.0	7.9	9.2	4.3	6.9
<b>Policy Issues</b>	19	21	20	0	1	0	17.1	24.5	11.8	16.7	23.8	11.4	14.7	20.5	10.0	13.2	18.0	8.9
Anti-Discrimination/Diversity	8	8	3	0	0	0	19.3	34.3	15.1	18.8	33.0	14.9	16.8	29.0	13.8	15.0	25.3	12.5
Environmental/Sustainability	1	1	3	0	0	0	0.0	8.7	23.1	0.0	8.7	22.6	0.0	8.2	19.2	0.0	7.1	17.1
Human Rights	1	3	0	0	0	0	7.4	4.2	0.0	7.2	4.1	0.0	6.4	3.2	0.0	5.8	2.8	0.0
Political/Lobbying Activities	6	5	6	0	0	0	23.3	19.5	17.3	22.8	19.2	16.5	20.0	16.6	14.6	18.0	14.7	13.0
Charitable Contributions	0	0	2	0	0	0	0.0	0.0	1.4	0.0	0.0	1.3	0.0	0.0	1.0	0.0	0.0	0.8
Israel/Palestine/Holy Land	0	0	3	0	0	0	0.0	0.0	2.4	0.0	0.0	2.3	0.0	0.0	1.9	0.0	0.0	1.7
Other Policy Issues	3	4	3	0	1	0	7.8	30.3	2.3	7.7	29.8	2.3	6.4	24.3	1.6	5.6	21.5	1.4
<b>General Business</b>	3	1	0	0	0	0	1.1	1.4	0.0	1.1	1.4	0.0	1.0	1.3	0.0	0.9	1.2	0.0
Other General Business	3	1	0	0	0	0	1.1	1.4	0.0	1.1	1.4	0.0	1.0	1.3	0.0	0.9	1.2	0.0

Stockholder Proposals (continued)

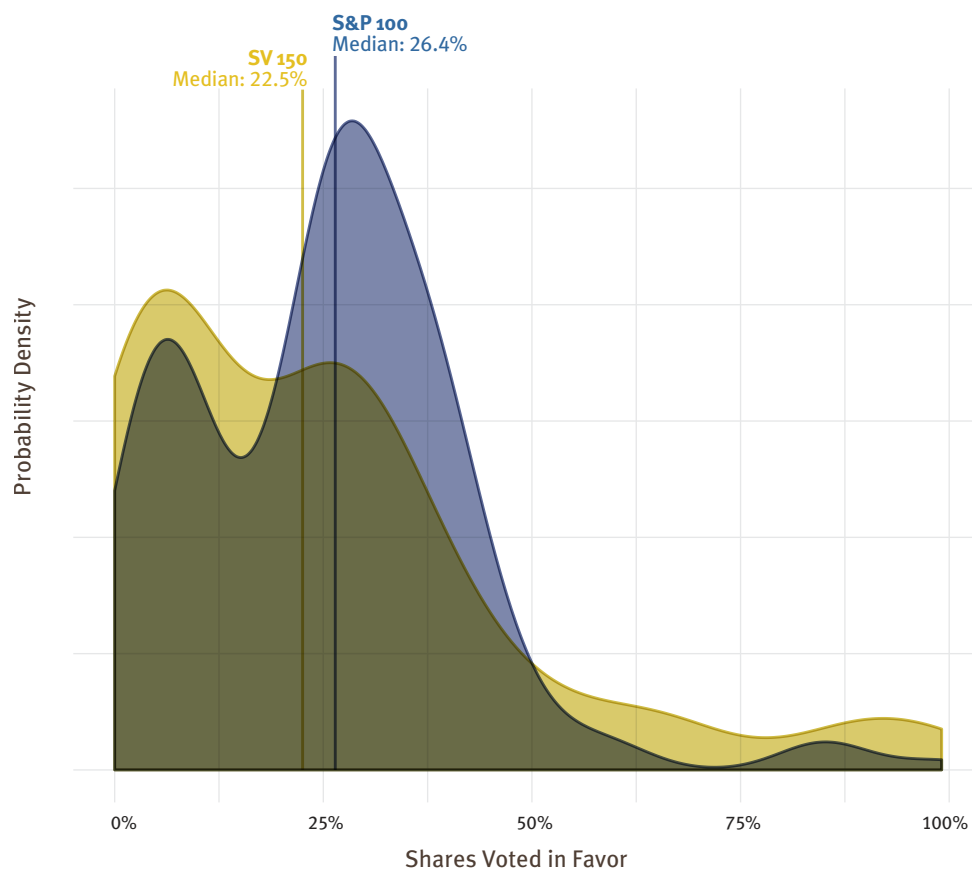
S&P 100 Stockholder-Sponsored Proposals	Total			Passed			Average %age of Shares For (of Votes Cast)			Average %age of Shares For (of Votes Cast or Abstained)			Average %age of Shares For (of Shares Represented)			Average %age of Shares For (of Shares Eligible)		
	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017	2019	2018	2017
<b>STOCKHOLDER PROPOSALS:</b>	<b>179</b>	<b>187</b>	<b>205</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>25.8</b>	<b>27.3</b>	<b>21.4</b>	<b>25.5</b>	<b>26.9</b>	<b>20.8</b>	<b>21.4</b>	<b>22.5</b>	<b>17.3</b>	<b>18.7</b>	<b>19.5</b>	<b>15.1</b>
<b>Compensation:</b>	<b>17</b>	<b>15</b>	<b>15</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>15.8</b>	<b>18.8</b>	<b>16.0</b>	<b>15.6</b>	<b>18.6</b>	<b>15.7</b>	<b>12.7</b>	<b>15.7</b>	<b>12.9</b>	<b>11.1</b>	<b>13.7</b>	<b>11.2</b>
Change-in-Control Payouts/Vesting (Golden Parachutes)	2	2	2	0	0	0	36.1	19.9	22.2	35.9	19.8	22.1	29.6	17.6	19.7	25.3	15.2	17.7
Clawbacks	1	2	5	0	0	0	46.1	39.5	15.1	45.8	39.2	14.8	36.5	31.1	11.9	31.5	27.2	10.5
Equity Awards	0	1	0	0	0	0	0.0	12.9	0.0	0.0	12.9	0.0	0.0	12.5	0.0	0.0	11.1	0.0
Pay Benchmarking	0	1	0	0	0	0	0.0	7.9	0.0	0.0	7.8	0.0	0.0	6.3	0.0	0.0	5.4	0.0
Pay Ratios	2	2	2	0	0	0	8.8	6.5	5.9	8.6	6.4	5.6	7.0	5.6	4.9	6.1	4.9	4.3
Performance Metrics/Pay for Performance	6	0	0	0	0	0	7.1	0.0	0.0	7.0	0.0	0.0	5.7	0.0	0.0	5.0	0.0	0.0
Stock Retention	1	0	2	0	0	0	24.8	0.0	27.5	24.5	0.0	27.2	19.2	0.0	20.2	17.1	0.0	17.4
Other Compensation-related matters	5	7	4	0	0	0	13.1	18.4	13.1	12.9	18.2	13.0	10.7	15.4	11.1	9.4	13.5	9.3
<b>Governance:</b>	<b>80</b>	<b>95</b>	<b>70</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>32.4</b>	<b>34.1</b>	<b>30.0</b>	<b>32.1</b>	<b>33.7</b>	<b>29.6</b>	<b>27.3</b>	<b>28.3</b>	<b>24.7</b>	<b>23.7</b>	<b>24.5</b>	<b>21.5</b>
Board Declassification	2	1	0	0	0	0	61.4	21.3	0.0	61.2	21.3	0.0	55.6	19.9	0.0	50.2	17.4	0.0
Board Diversity	5	2	1	0	0	0	7.4	9.2	4.9	7.3	9.1	4.7	5.6	7.0	3.2	4.8	6.0	2.8
Certificate/Bylaws Change	0	2	1	0	0	0	0.0	45.8	1.6	0.0	44.5	1.5	0.0	44.2	1.2	0.0	34.6	1.0
Cumulative Voting – Add	2	3	2	0	0	0	8.3	9.4	9.7	8.2	9.3	9.6	6.7	7.6	7.8	5.5	6.2	6.5
Elimination of Dual-Class Voting	4	4	4	0	0	0	29.3	34.2	28.2	29.1	33.9	27.9	25.8	30.9	24.9	22.3	26.8	21.4
Elimination of Supermajority	4	4	5	1	1	0	68.1	49.4	7.3	67.4	49.0	7.2	55.2	38.8	6.2	48.4	34.1	5.5
Independent Chair	26	27	21	1	0	0	31.4	33.3	32.7	31.1	32.9	32.2	26.3	27.4	27.1	22.3	23.7	23.5
Majority Voting Standard – Director Elections	3	2	1	0	1	0	20.8	47.8	45.8	20.8	47.6	45.3	19.5	38.9	34.4	17.5	33.0	29.5
Proxy Access	11	14	9	0	0	2	29.2	29.1	35.5	29.0	28.8	35.0	24.6	24.0	27.5	21.8	20.9	23.7
Recapitalization	0	1	0	0	0	0	0.0	36.2	0.0	0.0	36.0	0.0	0.0	29.5	0.0	0.0	25.4	0.0
Stockholder Ability to Act by Written Consent	12	11	5	1	1	0	38.7	39.5	42.2	38.3	39.1	42.0	32.2	32.7	35.7	28.3	28.3	31.0
Stockholder Ability to Call Special Mtgs	8	19	16	2	0	1	44.3	42.0	39.5	44.1	41.6	39.1	37.2	34.7	32.9	32.7	30.3	28.8
Shareholder Rights Plan/Poison Pill	0	1	0	0	0	0	0.0	46.4	0.0	0.0	46.1	0.0	0.0	37.0	0.0	0.0	31.5	0.0
Other Governance Issues	3	4	5	0	0	0	3.1	6.9	5.8	3.1	6.9	5.7	2.7	6.0	4.9		5.3	4.3
<b>Policy Issues:</b>	<b>78</b>	<b>75</b>	<b>115</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>22.1</b>	<b>20.9</b>	<b>17.7</b>	<b>21.7</b>	<b>20.4</b>	<b>16.9</b>	<b>18.1</b>	<b>17.1</b>	<b>14.0</b>	<b>16.0</b>	<b>14.8</b>	<b>12.2</b>
Animal Testing/Welfare	0	1	0	0	0	0	0.0	3.2	0.0	0.0	3.2	0.0	0.0	2.8	0.0	0.0	2.4	0.0
Anti-Discrimination/Diversity	17	7	13	0	0	0	22.3	22.7	11.8	21.7	21.8	11.2	18.8	18.7	9.7	16.7	16.5	8.6
Environmental/Sustainability	13	18	29	0	2	3	17.3	24.9	26.0	16.8	24.4	25.0	13.9	20.2	20.4	12.1	17.5	17.8
Health & Food Safety	6	0	4	0	0	0	12.8	0.0	16.2	12.5	0.0	15.4	9.7	0.0	12.1	8.5	0.0	10.4
Human Rights	7	10	7	0	0	0	19.5	6.2	9.0	19.1	6.2	8.6	15.4	5.3	7.2	13.4	4.4	6.4

Stockholder Proposals (continued)

Political/Lobbying Activities	28	31	39	0	0	0	28.0	27.1	23.2	27.6	26.5	22.0	23.1	22.0	18.5	20.5	19.1	16.0
Privacy and Data Security	0	1	0	0	0	0	0.0	11.6	0.0	0.0	11.3	0.0	0.0	8.9	0.0	0.0	7.7	0
Charitable Contributions	0	1	4	0	0	0	0.0	3.2	2.8	0.0	3.1	2.7	0.0	2.5	2.0	0.0	2.2	1.7
Israel/Palestine/Holy Land	0	0	12	0	0	0	0.0	0.0	3.3	0.0	0.0	3.0	0.0	0.0	2.6	0.0	0.0	2.2
Other Policy Issues	7	6	7	1	0	0	18.0	6.9	6.0	17.6	6.8	5.9	14.8	6.2	5.2	13.1	5.3	4.6
<b>General Business:</b>	<b>4</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7.1</b>	<b>3.5</b>	<b>4.1</b>	<b>6.7</b>	<b>3.5</b>	<b>4.0</b>	<b>5.2</b>	<b>2.7</b>	<b>3.5</b>	<b>4.5</b>	<b>2.1</b>	<b>3.0</b>
Stock Repurchase	0	1	0	0	0	0	0.0	5.6	0.0	0.0	5.6	0.0	0.0	4.2	0.0	0.0	3.1	0.0
Other General Business	4	1	5	0	0	0	7.1	1.4	4.1	6.7	1.4	4.0	5.2	1.3	3.5	4.5	1.2	3.0

The following graph shows the distribution by percentage approval of stockholder-sponsored proposals (across all subject areas) voted on by stockholders at SV 150 companies and S&P 100 companies during the 2019 proxy season (showing the median for each group).<sup>44</sup>

STOCKHOLDER PROPOSAL APPROVAL DISTRIBUTION — SV 150 VS. S&P 100

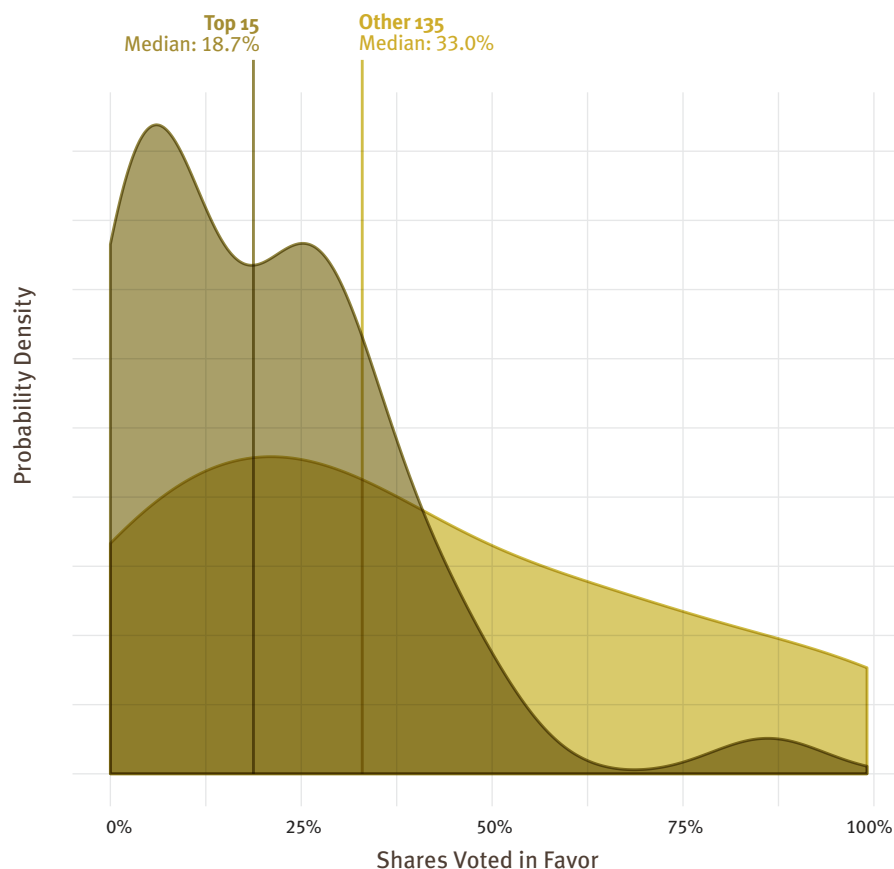


44 See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

Stockholder Proposals (continued)

The following graph shows the distribution by percentage approval of stockholder-sponsored proposals (across all subject areas) voted on by stockholders at SV 150 companies broken down by the top 15 and remaining 135 companies during the 2019 proxy season (showing the median for each subgroup).<sup>45</sup>

SV 150 STOCKHOLDER PROPOSAL DISTRIBUTION BREAKDOWN — TOP 15 AND OTHER 135



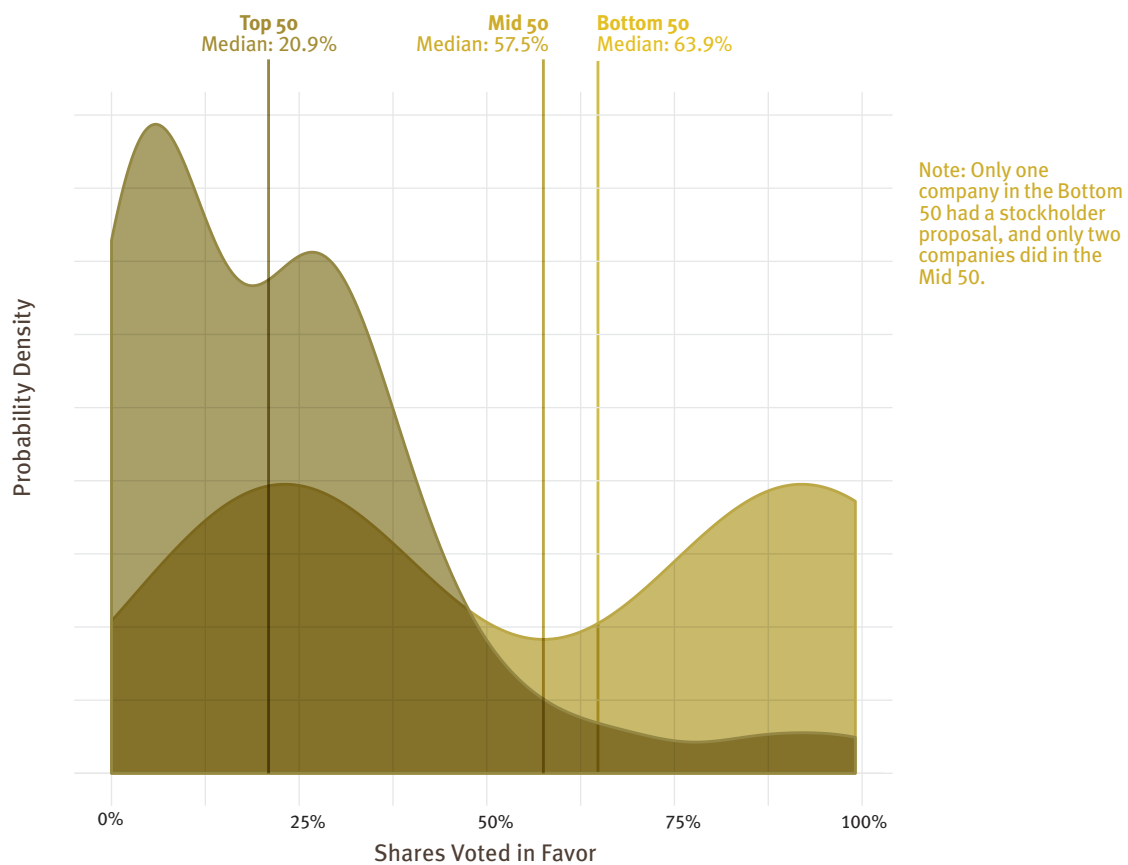
<sup>45</sup> There were 38 stockholder proposals voted on by stockholders among the top 15 companies and 14 among bottom 135 companies of the SV 150, though one of the bottom 135 companies, Twitter, had a proposal included in the proxy statement that was not voted on (see footnote 39 for details). See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.



Stockholder Proposals (continued)

The following graph shows the distribution by percentage approval of stockholder-sponsored proposals (across all subject areas) voted on by stockholders at SV 150 companies for the top 50, middle 50 and bottom 50 companies during the 2019 proxy season (showing the median for the subgroup).<sup>46</sup>

SV 150 STOCKHOLDER PROPOSAL DISTRIBUTION BREAKDOWN BY 50s

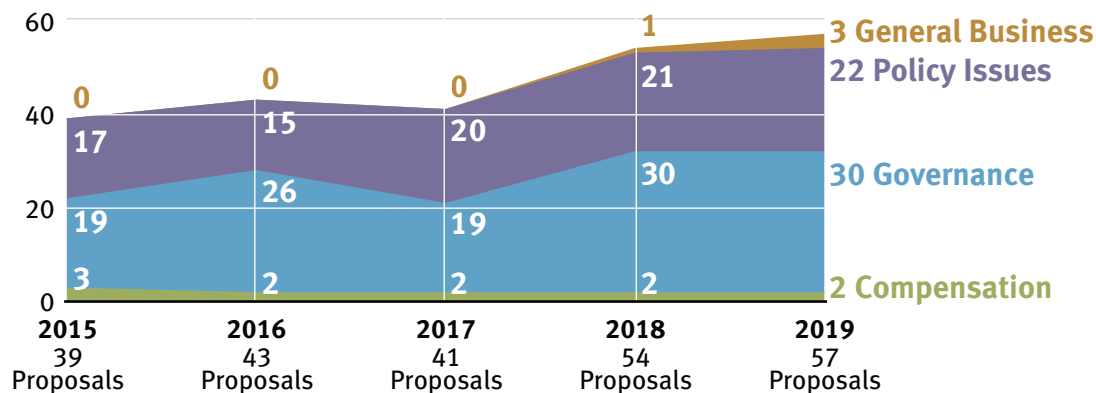


<sup>46</sup> There were 54 stockholder proposals voted on by stockholders among the top 50 companies and three stockholder proposals voted on by stockholders among each of the middle 50 companies and bottom 50 companies of the SV 150. Note from the graph: Only one company in the bottom 50 had a stockholder proposal, and only two companies did in the mid-50. See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

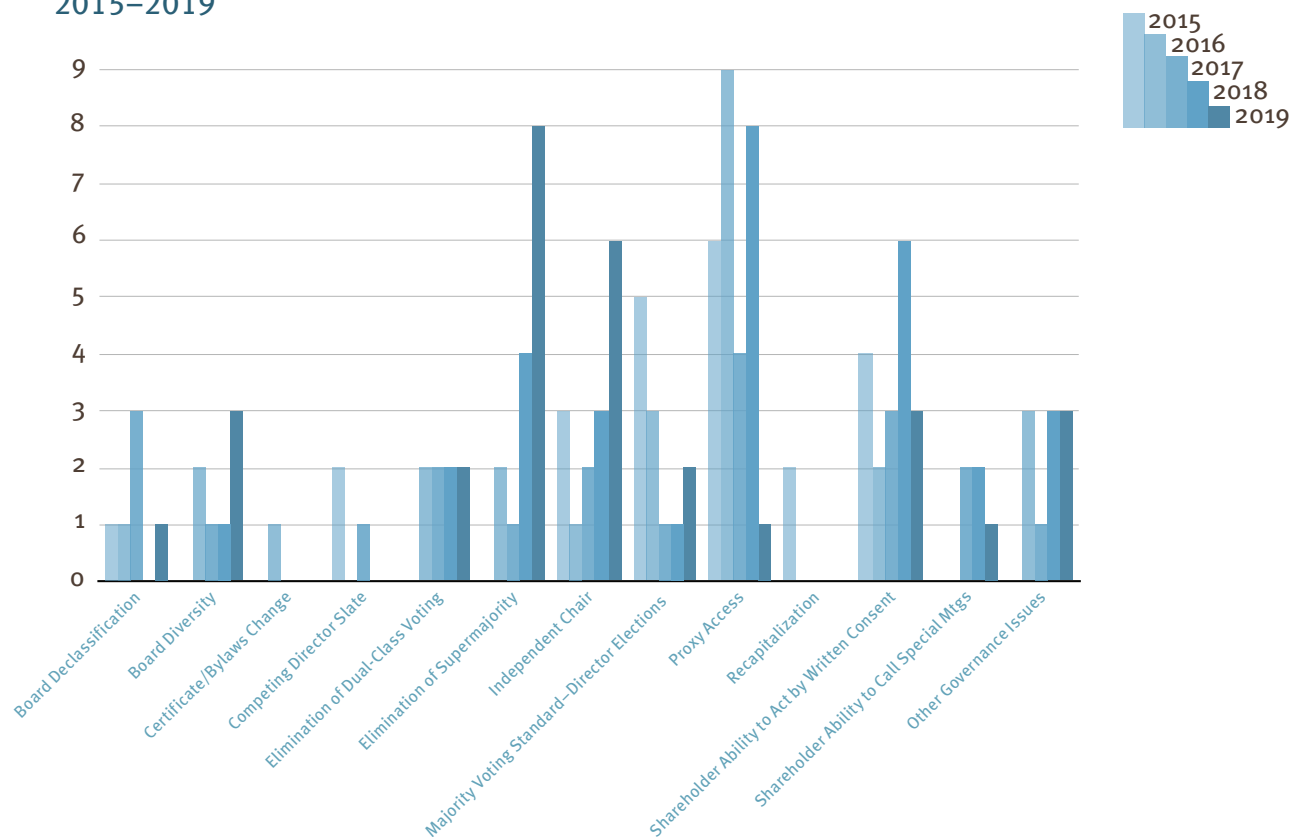
Stockholder Proposals (continued)

The following graphs show stockholder-sponsored proposals voted on by stockholders at SV 150 companies broken down by subject area category and broken down by topic within the Governance area between 2015 and 2019.<sup>47</sup>

SV 150 STOCKHOLDER PROPOSAL BREAKDOWN BY CATEGORY OVER TIME — 2015–2019



SV 150 GOVERNANCE-RELATED STOCKHOLDER PROPOSAL BREAKDOWN BY SUBJECT OVER TIME — 2015–2019

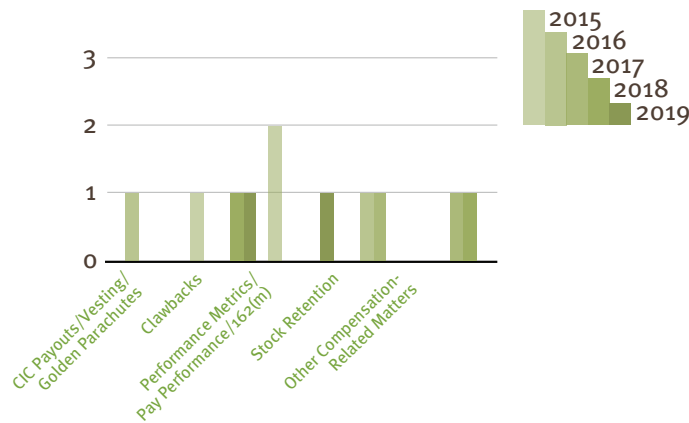


<sup>47</sup> The graph excludes competing director slates and stockholder proposals that had been included by a stockholder in the proxy statement for the annual meeting, but the proponent failed to present the proposal at, or withdrew the proposal prior to, the applicable meeting.

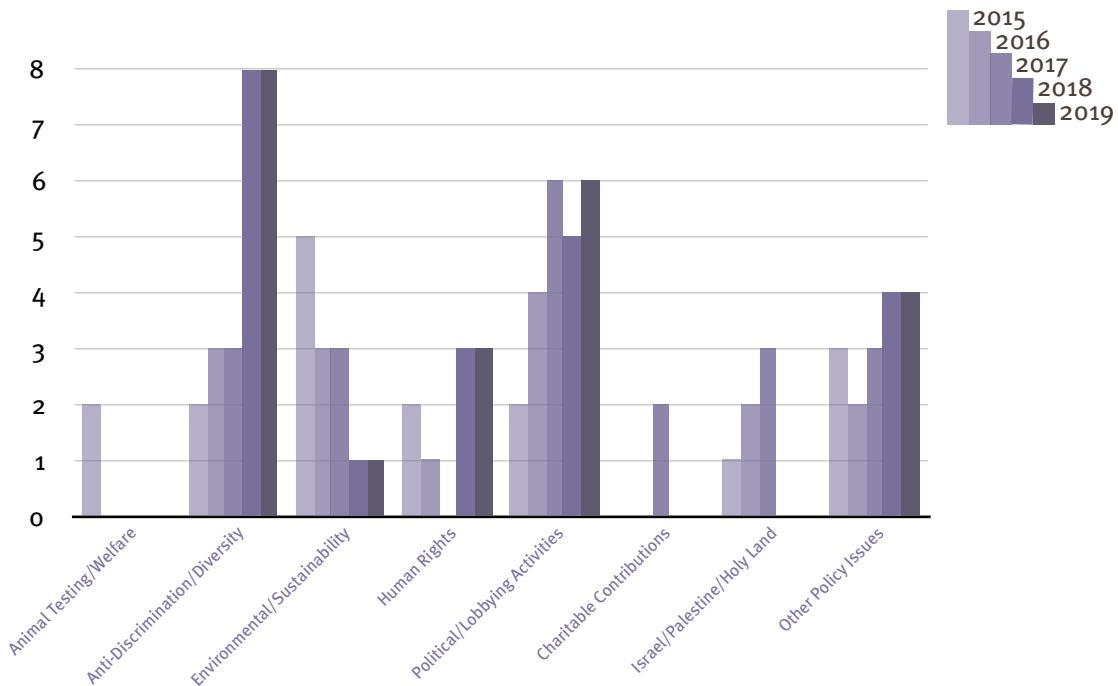
Stockholder Proposals (continued)

The following graphs show all compensation-related and policy-related stockholder-sponsored proposals voted on by stockholders at SV 150 companies broken down by topic between 2015 and 2019.<sup>48</sup>

SV 150 COMPENSATION-RELATED STOCKHOLDER PROPOSAL BREAKDOWN BY SUBJECT OVER TIME — 2015–2019



SV 150 POLICY-RELATED STOCKHOLDER PROPOSAL BREAKDOWN BY SUBJECT OVER TIME — 2015–2019

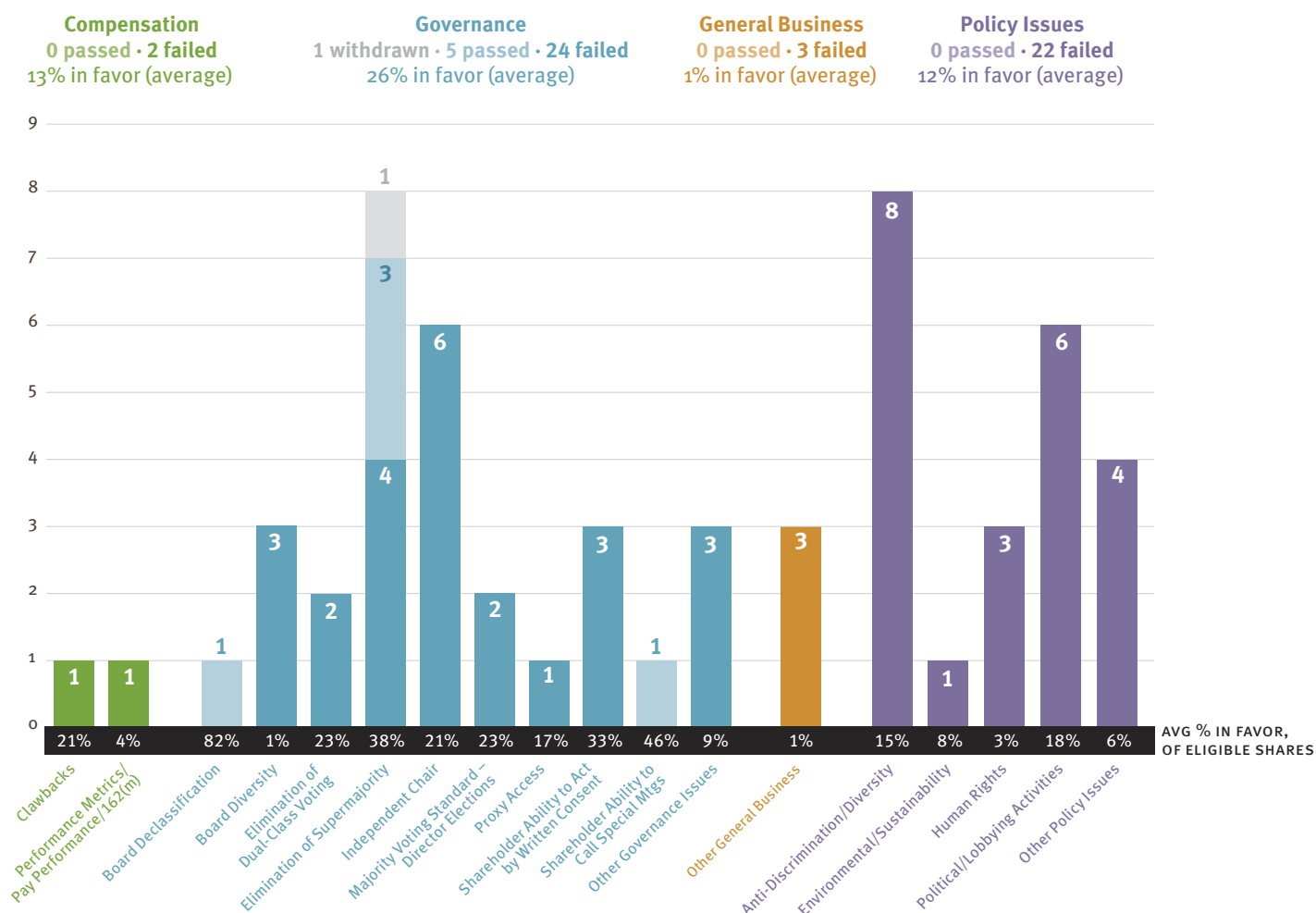


<sup>48</sup> These graphs exclude stockholder proposals that had been included by a stockholder in the proxy statement for the annual meeting, but the proponent failed to present the proposal at, or withdrew the proposal prior to, the applicable meeting.

Stockholder Proposals (continued)

The following graph shows the distribution by subject area category and topic of the stockholder-sponsored proposals voted on by stockholders at SV 150 companies during the 2019 proxy season, showing the number that passed or failed and the average percentage of shares in favor of such proposals (out of shares eligible to vote on the record date for the annual meeting).<sup>49</sup>

SV 150 STOCKHOLDER PROPOSALS BY CATEGORY — 2019 PROXY SEASON



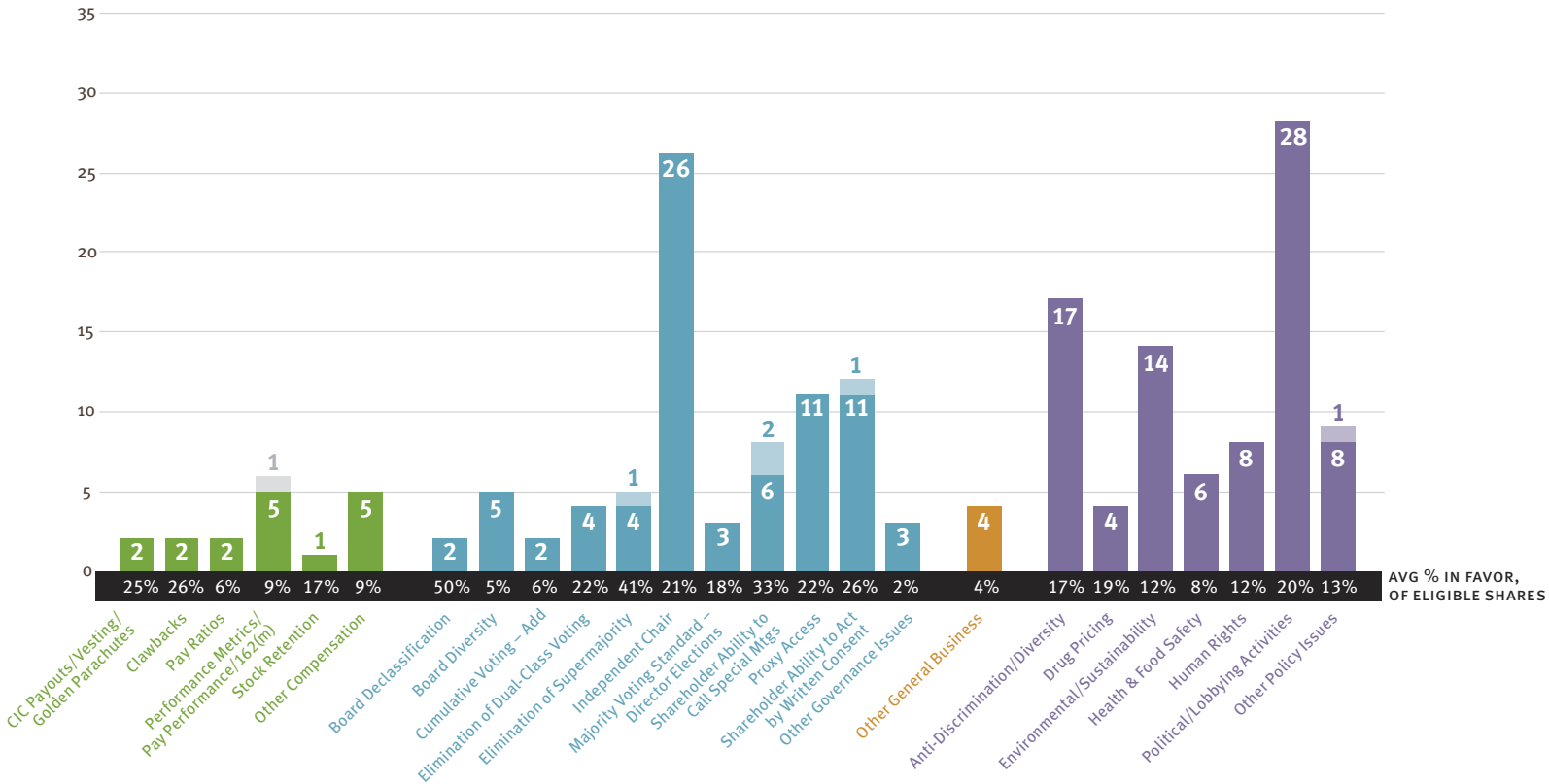
49 The graph excludes competing director slates and stockholder proposals that had been included by a stockholder in the proxy statement for the annual meeting, but the proponent failed to present the proposal at, or withdrew the proposal prior to, the applicable meeting.

Stockholder Proposals (continued)

The following graph shows the distribution by subject area category and topic of the stockholder-sponsored proposals voted on by stockholders at S&P 100 companies during the 2019 proxy season, showing the number that passed or failed and the average percentage of shares in favor of such proposals (out of shares eligible to vote on the record date for the annual meeting).<sup>50</sup>

S&P 100 STOCKHOLDER PROPOSALS BY CATEGORY — 2019 PROXY SEASON

<p><b>Compensation</b> 1 withdrawn · 0 passed · 17 failed 13% in favor (average)</p>	<p><b>Governance</b> 4 passed · 77 failed 23% in favor (average)</p>	<p><b>General Business</b> 0 passed · 4 failed 4% in favor (average)</p>	<p><b>Policy Issues</b> 1 passed · 85 failed 16% in favor (average)</p>
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## Methodology

### Group Makeup

We reviewed the proxy statements, and current reports on Form 8-K disclosing the results,<sup>51</sup> for the annual meetings of the technology and life sciences companies included in the Fenwick – Bloomberg Law Silicon Valley 150 List (SV 150)<sup>52</sup> and the large public companies in the Standard & Poor’s 100 Index (S&P 100).<sup>53</sup> The makeup of the indices has changed over time as determined by their publishers,<sup>54</sup> with the SV 150 makeup being updated generally once annually and the S&P 100 changing more frequently.<sup>55</sup> For analytical purposes, companies are included in the survey if they appeared in the relevant index as determined as of the most recent calendar year end.<sup>56</sup> In addition, companies are not included in the data set (on a subject-by-subject basis) if information is not available because no SEC filing with the relevant data was made (generally as a result of acquisition). For example, in the 2019 proxy season, seven such companies were not included in the SV 150 data set for all subjects as no annual meeting was held. All but one of the S&P 100 companies held annual meetings in the 2019 proxy season.

### Proxy Season / Proxy Statements

To be included in the data set for a particular “proxy season,” the definitive proxy statement for a company’s annual meeting generally must have been filed by the company with the U.S. Securities and Exchange

- 51 Since 2010, Item 5.07 of Form 8-K has required disclosure (within four business days) of the results of any matter submitted to a vote of stockholders. Prior to then, such results were often reported months later in quarterly reports on Form 10-Q or annual reports on Form 10-K.
- 52 For the 2019 proxy season, Fenwick & West partnered with Bloomberg Law to create the Fenwick – Bloomberg Law Silicon Valley 150 List, ranking the largest public technology and life sciences companies in Silicon Valley. The rankings are based on revenues for the most recent available four quarters ended on or near December 31, 2018. For many years, *The Mercury News* (fka the *San Jose Mercury News*) had published the SV 150 Index and discontinued announcement of the SV 150 in May 2017. Our list is modeled on the same criteria previously used by *The Mercury News*, which had defined Silicon Valley as comprising public “companies headquartered in Santa Clara, Santa Cruz, southern San Mateo and southern Alameda counties [in California] on the basis of worldwide revenue for the most recent available four quarters ended on or near [the most recent December 31].” However, in recognition of the continued geographic spread of technology and life sciences companies beyond the traditional Silicon Valley area, beginning in the 2012 proxy season, *The Mercury News* expanded the definition for purposes of the index to “include [the entirety of] the five core Bay Area counties: Santa Clara, San Mateo, San Francisco, Alameda and Contra Costa.” (According to local lore, the term “Silicon Valley” was coined in 1971 to describe the concentration of semiconductor companies in what was then the northern portion of Santa Clara County. The term has since expanded to include all technology and life sciences companies and their geographic spread in the region.) For a discussion of the change in geographical area and its history, see “O’Brien: Welcome to the new and expanded Silicon Valley” in *The Mercury News* (April 22, 2012). The most recent determination of the makeup of the SV 150 is based on the revenues of public companies in Silicon Valley (as thus defined) for the most recent available four quarters ended on or near December 31, 2018. That group was used for purposes of the 2018 proxy season in this report (while *The Mercury News*’s selections were used for data prior to the 2018 proxy season).
- 53 See footnote 10 for the makeup of the S&P 100.
- 54 The constituents of the Standard & Poor’s 100 (S&P 100) Index are determined by S&P Dow Jones Indices LLC (a joint venture between S&P Global, the CME Group and News Corp.), and the constituents of the Fenwick – Bloomberg Law Silicon Valley 150 List (SV 150) were determined by Fenwick & West in collaboration with Bloomberg Law based closely on the original methodology used for decades by *The Mercury News* (see footnote 52).
- 55 However, while changes are more frequent, Standard & Poor’s has noted that “in past years, turnover among stocks in the S&P 100 has been even lower than the turnover in the S&P 500.” Given the relative rapidity of acquisitions and the volatility of the technology business, annual constituent turnover in the SV 150 is somewhat greater than the S&P 100 in terms of the number of companies changing.
- 56 I.e., the Fenwick & West survey for the 2019 proxy season included companies constituent in the Fenwick – Bloomberg Law SV 150, based on “the most recent available four quarters ended on or near December 31, 2018,” and the Standard & Poor’s 100 constituents were based on the index makeup as of December 31, 2018.

**Methodology** (continued)

Commission (SEC) by June 30 of that year, irrespective of when the annual meeting was actually held.<sup>57</sup> In some instances, a company may not have consistently filed its annual meeting proxy statement on the same side of the cutoff date each year.<sup>58</sup> In such cases, we have normalized the data by including only one proxy statement per year for a company (and including a proxy statement in a “proxy season” year even though it was filed beyond the normal cutoff).<sup>59</sup> In some instances, a company may not have filed an annual meeting proxy statement during a year at all (or held any annual meeting).<sup>60</sup> In such instances, data was not included in this survey for such companies.

**Taxonomy of Proposals**

When categorizing the matters voted on by stockholders, each proposal was categorized by topic, with the topics themselves categorized by subject area in accordance with the taxonomy set forth below. These topics and subject areas are based on those seen at companies nationally as reflected in a variety of studies of company- and stockholder-sponsored proposals, particularly those involving the S&P 100, S&P 500 or Fortune 100 or Fortune 500 (though not exclusively).

**Governance:**

- Board Declassification
- Board Diversity
- Board Slate Approval
- Certificate/Bylaws Change
- Competing Director Slate
- Cumulative Voting (Add or Repeal)
- Elimination of Dual-Class Voting
- Elimination of Supermajority
- Independent Chair
- Majority Voting Standard for Director Elections
- Proxy Access
- Recapitalization
- Stockholder Ability to Act by Written Consent
- Stockholder Ability to Call Special Meetings
- Stockholder Rights Plan/ Poison Pill
- Strategic Alternatives for Dual Class Company
- True Board Diversity
- Other Governance Issues

**Compensation:**

- Adjust Performance Measures for Stock Buybacks
- Change-in-Control Payouts/Vesting/Golden Parachutes
- Clawbacks
- Death Benefits
- Director Compensation
- Equity Awards
- Option/Equity Plan Change/Approval
- Pay Benchmarking
- Pay Ratios
- Performance Metrics/Pay for Performance
- Say-on-Pay
- Say-on-Pay Frequency
- SERP-Related
- Stock Retention
- Option / Equity Repricing or Exchange Program Approval
- Other Compensation

**Policy Issues:**

- Animal Testing/Welfare
- Anti-Discrimination/ Diversity
- Charitable Contributions
- Drug Pricing
- Environmental/ Sustainability
- Health & Food Safety
- Human Rights
- Israel/Palestine/Holy Land
- Political/Lobbying Activities
- Privacy and Data Security
- Other Policy Issues

**General Business:**

- Auditor Approval
- Reincorporation
- Stock Repurchase
- Other General Business

57 I.e., the proxy statements included in the 2019 proxy season survey were generally filed with the SEC from July 1, 2018, through June 30, 2019 (the annual meetings were usually held about two months following the filing of the proxy statement).

58 This report is a companion supplement to a Fenwick survey titled *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, which analyzes governance trends over time in the SV 150, as well the large public companies included in the S&P 100 index (see footnote 1). For consistency, the cutoff application used in that survey was utilized for purposes of including annual meeting results in this report.

59 E.g., several companies generally filed proxy statements in June each year, but in a particular year filed in July (or later). The data for such a proxy statement was “moved” into the data set for the “proxy season” year before the cutoff.

60 This can occur for a variety of reasons, including (among others) instances where: (a) a company failed to file its periodic reports in a timely manner due to a pending or potential accounting restatement, or (b) a company was acquired or had agreed to be acquired (and determined to defer an annual meeting during the pendency of the acquisition).

**Methodology** *(continued)***Contested / Uncontested Elections of Directors**

For purposes of this study, an election was deemed to be uncontested when the only candidates for election were nominees of the company (generally, returning board members or new director candidates recruited by the board), and the only choice a stockholder had was to either vote “for” or “withhold” the vote from each candidate,<sup>61</sup> rather than choosing the candidates that they most wanted to elect from a larger list than the number of board seats to be elected, including nominees from one or more other stockholders (which would be deemed a contested election). Instances where a proxy advisory firm may have recommended that stockholders “withhold” the vote from one or more board nominees, or where one or more stockholders may have engaged in some form of “withhold the vote” campaign or similar effort, were not counted as a contested election.

**Results (Including Tables and Graphics)**

There are a variety of bases upon which the success of various proposals could be measured:

- Percentage of votes cast (i.e., including only those shares specified as “for” or “against,” but excluding abstentions, broker non-votes and shares not represented at the meeting)
- Percentage of votes cast or abstained (i.e., excluding broker non-votes and shares not represented at the meeting)
- Percentage of shares represented at the meeting (i.e., adding in broker non-votes, but excluding shares not represented at the meeting) or
- Percentage of shares eligible to vote (i.e., including all shares outstanding as of the record date)

In each case, the percentages presented in this report adjust for dual-class voting (where applicable).<sup>62</sup> With the exception of director elections, the tables present results on these bases. In the case of director elections, the first basis is excluded, as votes “withheld” and abstentions are effectively votes “against” in such elections.

The reporting in the tables and graphics of a proposal as having “passed” or “failed” was based on the reporting of such outcomes in the applicable Form 8-K. In some instances, a matter will have been reported

61 In some instances, voting “against” a board-nominated candidate is also made available by the company to stockholders as a choice on the proxy card (which serves effectively as a ballot in proxy voting). This is more common among larger companies. For purposes of calculating voting percentages and majority voting in this study, “against” votes were aggregated with “withheld” votes (as opposed to “for” votes). Similarly, some companies offer a choice of “abstain” (as opposed to “withhold”). In such instances, those were also treated the same as “withheld” for purposes of calculating voting percentages and majority voting in this report.

62 Where shares have more than one vote (or a fraction of a vote) per share, they are treated effectively as additional (or fractional) shares for purposes of the statistics presented in this report. For a more detailed discussion of dual-class voting, including trends and comparisons to the large public companies in the S&P 100, as well as a breakdown of data for the top 15, top 50, middle 50 and bottom 50 of the SV 150, see the most recent edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, available at <https://fenwick.com/CorporateGovernance>.

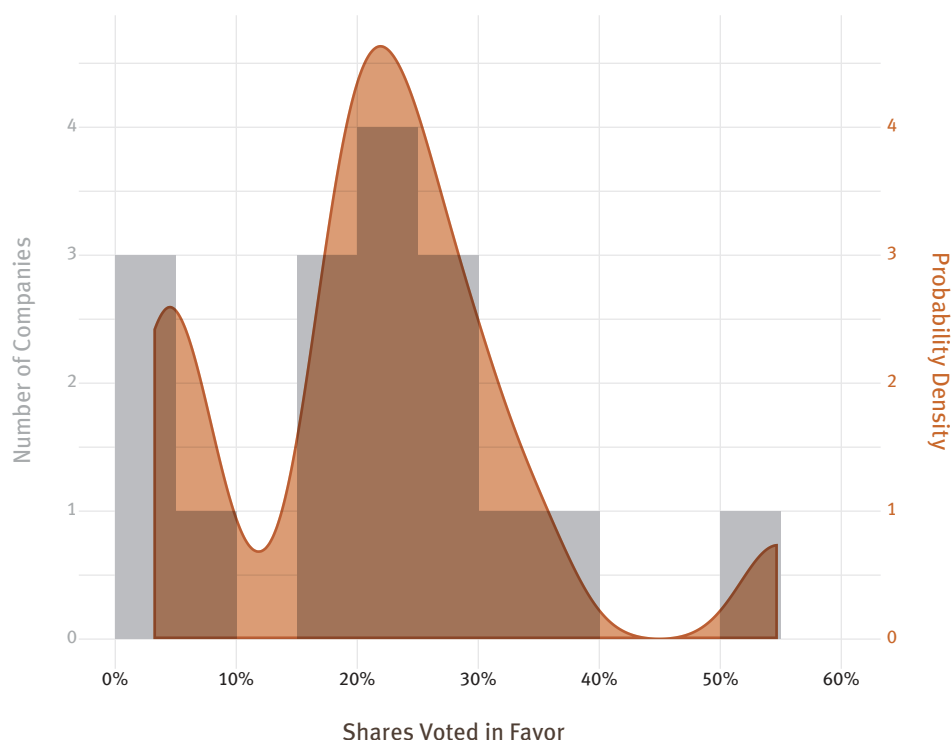


**Methodology** *(continued)*

as “failed” even though the number of shares voted “for” such matter exceeded the number of shares voted “against” (or even the shares voted “against” plus abstentions and/or broker non-votes). This is generally due to a requirement in the applicable company’s charter or bylaws requiring that such matter be approved by something more than a majority of shares voted at the meeting (e.g., a majority of shares outstanding or some super-majority of shares).

The numerical results as reflected in the company Forms 8-K were generally accepted as-is. There were instances in which it appeared likely that the reported information contained some errors (e.g., the total number of director votes was different from the total votes reported in other matters), but the source/nature of the error could not be identified. In those instances, they were simply treated as if correct. In rare instances, the source/nature of the error was fairly obvious (e.g., reporting of broker non-votes for one matter that was different for all other matters for which discretionary broker voting was not permitted). In those instances, editorial judgment was applied, and a good-faith correction was made to the information used in the statistics presented in this report.

Each of the graphics showing distribution curves (such as the graph on page 9) represents the probability density of the distribution being represented. In other words, the relative values on the y-axis reflect the relative probability of data points appearing on the x-axis (i.e., greater values on the y-axis mean a likelihood of a larger number of instances of the value at that point on the x-axis). The probability density curve should be thought of as a smoothing of a traditional distribution histogram of the same information (as shown in the illustrative graphic below).



**Methodology** *(continued)*

Unless otherwise noted, the values on the x-axis are based on the amount of support expressed as a percentage of votes in favor of the proposal out of all votes “for,” “against” or “withheld”/“abstained” (ignoring broker non-votes and shares that were not represented at the meeting for calculation of the support-level percentage).

## About the Firm

Fenwick & West provides comprehensive legal services to technology and life sciences clients of national and international prominence. Fenwick is committed to providing innovative, cost-effective and practical legal services that focus on global technology industries and issues. We have built internationally recognized practices in a wide spectrum of corporate, intellectual property, tax and litigation areas. We have also received praise for our innovative use of technology, our pro bono work and diversity efforts. We differentiate ourselves by having a deep understanding of our clients' technologies, industry environments and business needs. For more information, visit [www.fenwick.com](http://www.fenwick.com).

## About the Author



David A. Bell co-chairs Fenwick's corporate governance practice. His practice also includes counseling public companies in corporate, securities and compliance matters, as well as initial public offerings mergers and acquisitions, venture capital financings, intellectual property licensing and advising startup companies. He represents a wide range of technology companies, from privately held start-ups to publicly traded corporations.

*The views expressed are those of the author and do not necessarily represent the views of any other partner of Fenwick & West LLP or the firm as a whole, nor do they necessarily represent the views of the firm's many clients that are mentioned in this report or are constituents of either the Fenwick – Bloomberg Law Silicon Valley 150 List or the Standard & Poor's 100 Index.*

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