

Governance Practices for IPO Companies: A Davis Polk Survey

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With ongoing pressure on companies that are past the IPO stage to update or modify their corporate governance practices to align with the views of some shareholders and proxy advisory firms, we thought this would be a good time to review corporate governance practices of newly public companies to see if they have also shifted in recent years. Our 2016 survey is an update of our 2009, 2011 and 2014 surveys and focuses on corporate governance structures at the time of the IPO for the 50 largest U.S.-listed IPOs of “controlled companies” (as defined under NYSE and NASDAQ listing standards) and the 50 largest U.S.-listed IPOs of non-controlled companies from November 2013 through March 2016. Results are presented separately for controlled companies and non-controlled companies in recognition of their different governance profiles.

[Access survey results excluding controlled companies](#)

[Access survey results for controlled companies only](#)

Our 2016 survey shows that companies continued to deploy various takeover defenses in advance of their IPOs, at the same time seasoned public companies have been abandoning takeover defenses in the face of investor opposition and amid warnings by proxy advisory firms that they will scrutinize governance at IPO companies. Indeed, with respect to many of the defensive measures we examined, our 2016 survey reveals a higher prevalence of such measures today than in any of our previous surveys. For instance:

- 98% of non-controlled companies and 96% of controlled companies had **plurality voting for uncontested director elections**
- 96% of non-controlled companies and 84% of controlled companies effectively prohibited **shareholder action by written consent**
- 90% of non-controlled companies and 76% of controlled companies had **classified (or staggered) boards**
- 90% of non-controlled companies and 78% of controlled companies required a **supermajority shareholder vote for amending bylaws**
- 86% of non-controlled companies and 80% of controlled companies prohibited shareholders from calling **special meetings**
- 84% of non-controlled companies and 88% of controlled companies had **exclusive-forum provisions**

On the basis of experience to date, and excluding true outliers, we do not think an IPO company's corporate governance structure has a meaningful impact on the success of its IPO or on the willingness of investors to participate. As a result, we believe that IPO companies can continue to tailor their governance practices to fit their individual preferences.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed on the last pages of the surveys or your regular Davis Polk contact.

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