

SHEARMAN & STERLING<sub>LLP</sub>

**12TH ANNUAL SURVEY**  
of the Largest US  
Public Companies

**Corporate  
Governance  
2014**



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# Introduction

We are pleased to share Shearman & Sterling's 12th Annual Survey of Corporate Governance Practices of the Largest US Public Companies (the "Survey"). Since we published last year's Survey, shareholder activists have continued to be a strong and visible force influencing governance issues. While some shareholder activists continue to focus on the implementation of structural reforms, such as seeking to eliminate classified boards, others have become more vocal in emphasizing "operational," "financial" or "strategic" changes. In this regard, there are an increasing number of shareholder activists with growing influence that are seeking to change a company's operating plan, strategic direction (including by advocating for spin-offs and other M&A transactions) or management. These shareholder activists are positioning themselves as significant "value creators," rather than merely proponents of best corporate governance practices.

The increasing success of operational and strategic activism has been facilitated by the widespread adoption of many structural corporate governance best practices, which has contributed to the enhanced influence of shareholders in corporate governance matters. It can also be attributed to the sophistication of the investors practicing

these forms of activism, who often come into the market with high credibility, track records of success and detailed analyses that support their investment theses and demands for change.

Nonetheless, shareholders remain focused on a number of other governance practices that have not yet been widely adopted. These include the separation of the CEO and board chair roles and proxy access — permitting shareholders satisfying certain ownership criteria to include board nominees in the company's proxy statement. While it remains to be seen whether these governance practices also will be widely adopted in the future, we expect shareholders to remain interested in seeking change until they do.

### **Shareholder Activism**

Since we published last year's Survey, six of the Top 100 Companies have been the target of a publicly disclosed shareholder activism campaign focused on the operations, financial matters, strategic direction, governance or management of the company. These campaigns focused on a variety of issues, such as the proposed spin-off of company businesses, programs to return cash to shareholders and the election

of activist supported directors. It will be interesting to continue to monitor these activist campaigns and to assess whether the investment theses of the proponents are born out. It will also be interesting to see whether the evolution of companies' responses to operational and strategic activism will alter the level of engagement between companies and activists.

### **Women In Leadership**

This is the second year in which we reviewed the role that women play in leadership at the Top 100 Companies. In 2014, women held approximately 22% of the total number of board seats at the Top 100 Companies, which is relatively consistent with last year. Only one company had a board where women held 40% or more of the board seats. Eighty-eight of the companies we surveyed had more than one woman on the board and 43 companies had two women board members. Women serve as the Chief Executive Officer and chair of the board at eight of the Top 100 Companies. As board diversity issues continue to be in the spotlight, nominating and governance committees will need to stay focused on diversity issues when looking at the composition of the board.

## Political Spending Policies

Since the 2010 US Supreme Court decision in *Citizens United v. Federal Election Commission* confirmed that companies may make “independent political expenditures,” the issue of corporate political spending has been scrutinized by investors demanding more and better public disclosure. Political spending is the subject of rulemaking petitions pending before the Securities and Exchange Commission (the “SEC”) that ask the SEC to develop rules that would require companies to disclose corporate political spending, and while the SEC seemed poised to propose new rules in 2013, it dropped political spending from its 2014 rulemaking agenda.

Nearly all of the Top 100 Companies disclose a political contributions policy. Although the policy at 38 companies states that the company does not use (or intend to use) corporate funds to make “independent political expenditures” — effectively negating the freedom afforded to companies by the *Citizens United* decision — the policies at 56 of the Top 100 Companies do permit the company to make political contributions to advance business

initiatives. In 2014 we saw an increase in the number of companies that received a shareholder proposal calling on the board to provide disclosure (or enhance current disclosure) of political spending, from 39 in 2013 to 47 companies.

## Proxy Access

In the 2014 proxy season, investors remained focused on proxy access. The SEC-proposed proxy access rules were vacated following a successful legal challenge by the US Chamber of Commerce and the Business Roundtable in 2010, and the SEC has not to date proposed revised rules. The SEC’s originally proposed proxy access rules would have allowed shareholders owning at least three percent of a company’s shares continuously for at least three years to include in the company’s proxy materials their nominees for directors representing up to 25% of the board. A companion rule amendment allowed shareholders to pursue proxy access through shareholder proposal submissions, beginning with the 2012 proxy season. Prior to the completion of this year’s proxy season, only one of the Top 100 Companies had in place a proxy access regime for the benefit of its shareholders.

In 2014, six of the Top 100 Companies received a proxy access shareholder proposal (none of which received shareholder approval) compared to five in 2013 and one in 2012. The results in 2014 continued to be mixed — one received more than 40% support and the remainder each received less than 10% support. Unlike 2013, however, no proxy access shareholder proposal received majority support. This year one of the Top 100 Companies submitted a proposal to its shareholders to amend its by-laws and implement proxy access and one announced that it will submit a proxy access by-law amendment to a vote of shareholders at its 2015 annual meeting. The proposal submitted to a vote passed with the support of 60.5% of the shares entitled to vote.

### **Board Leadership**

The separation of the offices of CEO and of chair of the board is a governance practice that continues to receive significant attention from shareholders. At 65 of the Top 100 Companies, the CEO also served as the chair of the board. Although this year saw fewer shareholder proposals at the Top 100 Companies calling for an independent chair of the

board than in 2013, after a significant increase from 2012, it remains the most frequently submitted governance-related shareholder proposal. Despite the lack of majority support for these proposals, we expect shareholders to continue pressuring boards to separate the two offices.

### **Shareholder Proposals**

The number of shareholder proposals the Top 100 Companies included in their proxies in 2014 remained unchanged from 2013. Permitting shareholders to take action by written consent remained a frequently submitted corporate governance related proposal, while the number of proposals calling for the board to permit shareholders holding a certain percentage of the company's stock to call special meetings saw a slight increase.

The average level of shareholder support for corporate governance related shareholder proposals at the Top 100 Companies was generally below a majority, which is consistent with 2012 and 2013. Even though corporate governance related shareholder proposals do not generally garner majority support, they will continue to play a significant role in shaping corporate governance practices.

August 2014

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# Shareholder Activism

Recent years have seen an increase in instances of shareholder activism by activist investors at US-listed companies, and activist investing has increasingly become an investment strategy in its own right. As our Survey demonstrates, even the largest US-listed companies are not immune from this phenomenon, with six of the Top 100 Companies having been the subject of a publicly disclosed activist campaign during the period covered by our Survey. It is possible — and perhaps likely — that a meaningful number of additional Top 100 Companies were the subject of a private approach from a shareholder activist.

Our Survey also demonstrates the emphasis on operational, financial or strategic matters by activist investors, with five of the seven reported activist campaigns involving Top 100 Companies focusing on issues in these areas (one of the Top 100 Companies was the subject of two separate activist campaigns). We expect shareholder activism — and the governance, operational, financial and strategic issues that are implicated — to continue to be a very significant focus for boards of directors.

Of the Top 100 Companies,



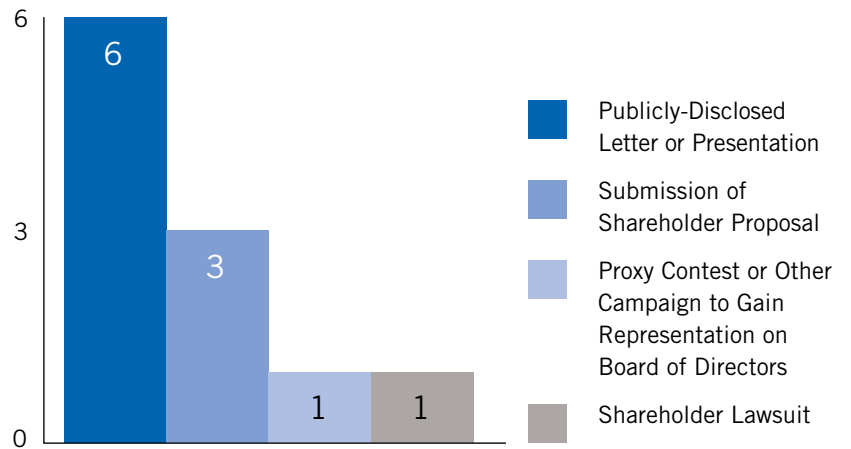
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were the subject of a publicly disclosed shareholder activist campaign.\*

\*One company was the subject of two shareholder activist campaigns.

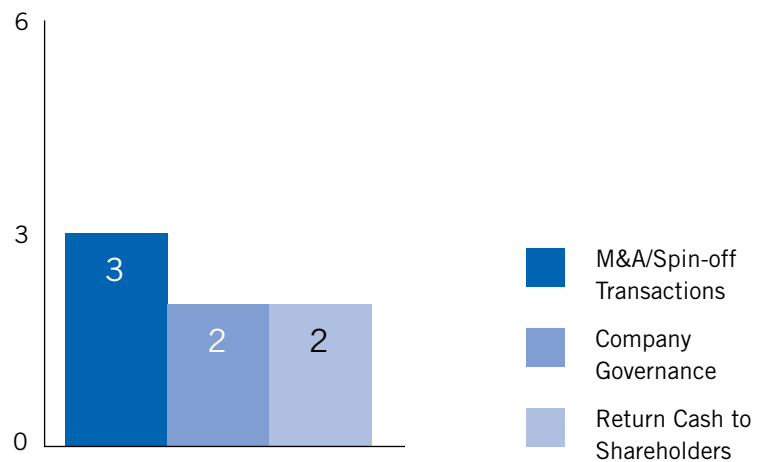


**At the six Top 100 Companies that were the subject of shareholder activism, the shareholder activists acted through one or more of the following means:**



Only one activist investor filed a Schedule 13D pursuant to the federal securities laws in connection with its activism campaign.

**At the six Top 100 Companies that were the subject of shareholder activism, the shareholder activists proposed the company pursue actions related to:\***

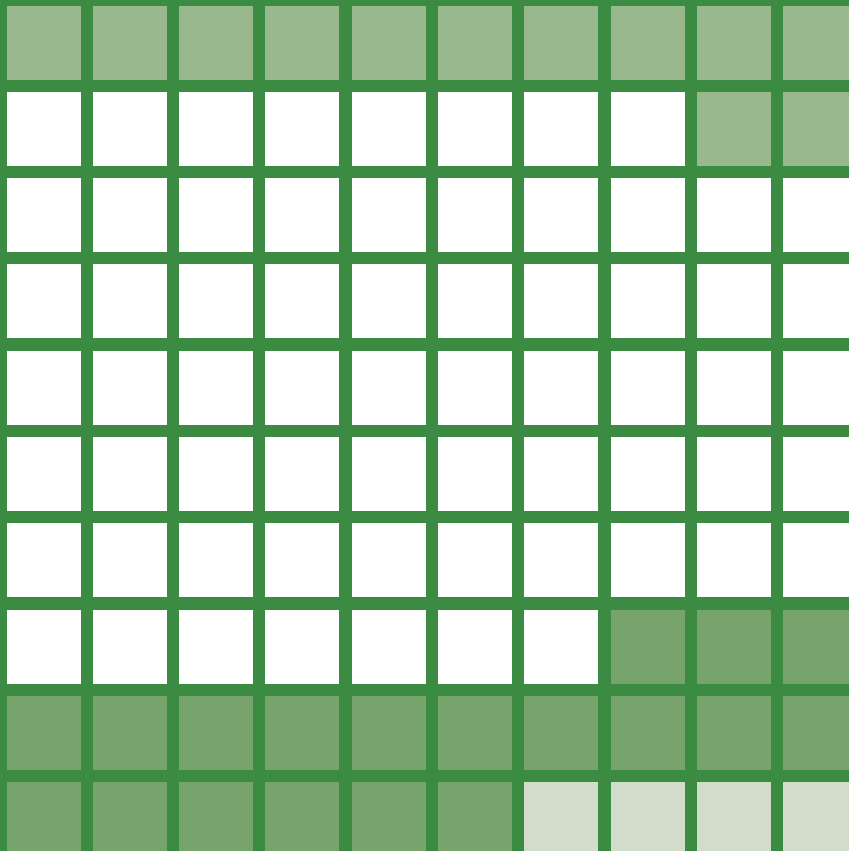


\*One company was the subject of two shareholder activist campaigns.

# Board Refreshment

In today's constantly evolving and complex global business environment, board composition is increasingly in the spotlight. "Board refreshment" includes issues facing nominating/governance committees related to director tenure, experience, diversity and performance, all of which contribute to effective board leadership. While director continuity provides many benefits, nominating/governance committees are tasked with the responsibility of balancing those benefits with the need for fresh perspectives, diverse views, specialized experience and independence. The average board tenure at the Top 100 Companies is 8.4 years. While a significant number of companies experienced a change in the composition of the board, the boards of 35 of the Top 100 Companies remained unchanged.

## Tenure of Directors



## Average Years of Service

12 companies  
Less than 5 years of service

**65** companies  
5–10 years of service

19 companies  
10–15 years of service

4 companies  
15–20 years of service

## Director Independence

Independent directors constituted 75% or more of the directors on the boards of 92 of the Top 100 Companies. The CEO was the only non-independent director at 59 of the Top 100 Companies. COOs served on the boards of six companies and CFOs served on the boards of two companies. Twenty-eight of the Top 100 Companies had at least one non-management director who was also not independent.

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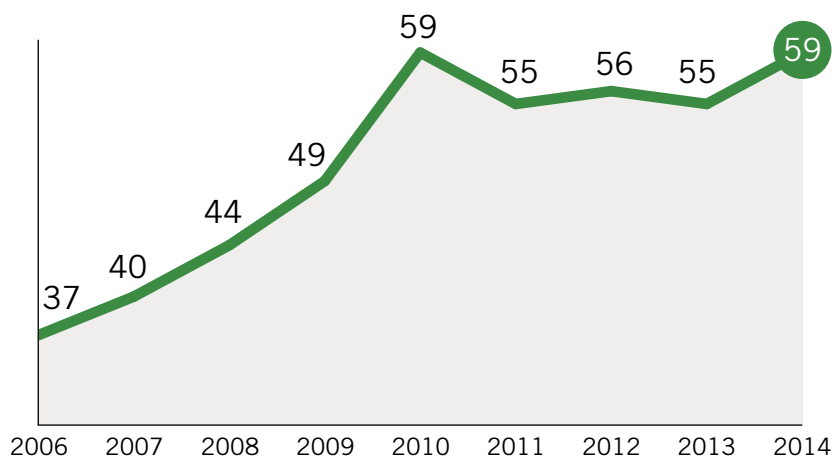
**92** companies have boards comprised of 75% or more independent directors

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**28** companies have non-management directors who were not independent

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### Companies at Which the CEO is the Only Non-Independent Director



The boards of 22 of the Top 100 Companies have two members who are not independent, the boards of 13 companies have three non-independent members and the boards of only five companies have more than three non-independent members.\*

 Read more on our website:  
[corpgov.shearman.com](http://corpgov.shearman.com)

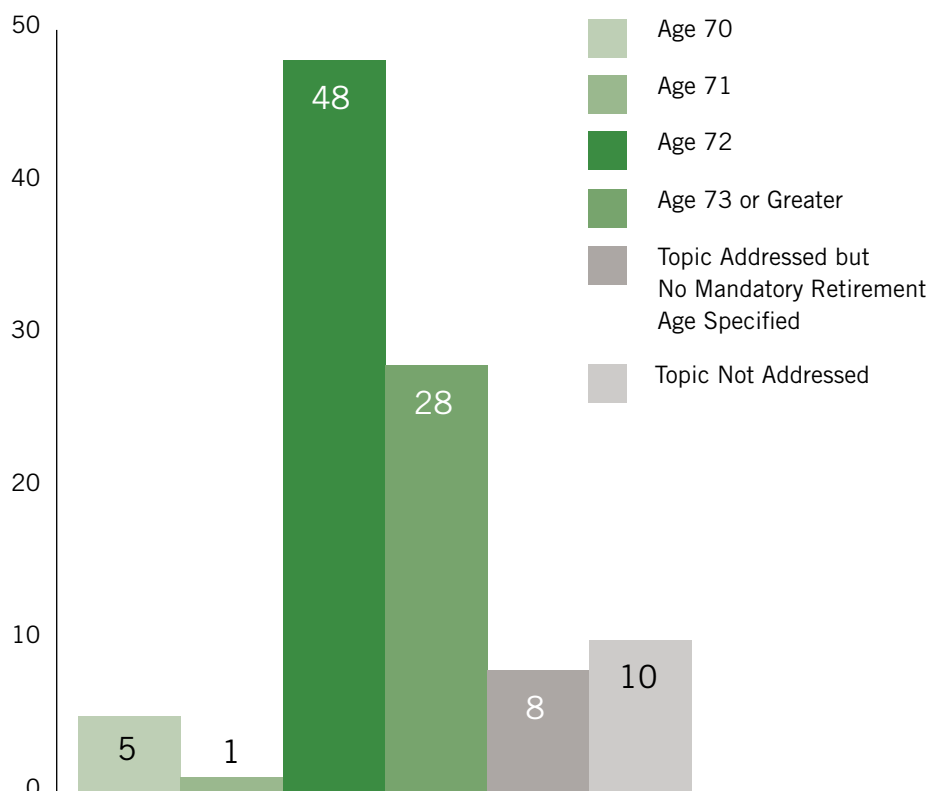
\*One company had an interim CEO who was not a member of the board of directors at the time the company filed its proxy statement.

## Mechanisms to Encourage Board Refreshment

Refreshing the board is often accomplished by adopting a mandatory retirement age for non-employee directors or, less frequently, by imposing mandatory term limits on service. Bright-line standards can eliminate the need to make difficult decisions about the continued service of an individual director, but they often do not take into account whether the directors are functioning effectively and can thereby prolong the tenure of under-performing directors. The NYSE mandates board self-evaluations and many companies rely on them as a more effective means for ensuring board composition is appropriate.

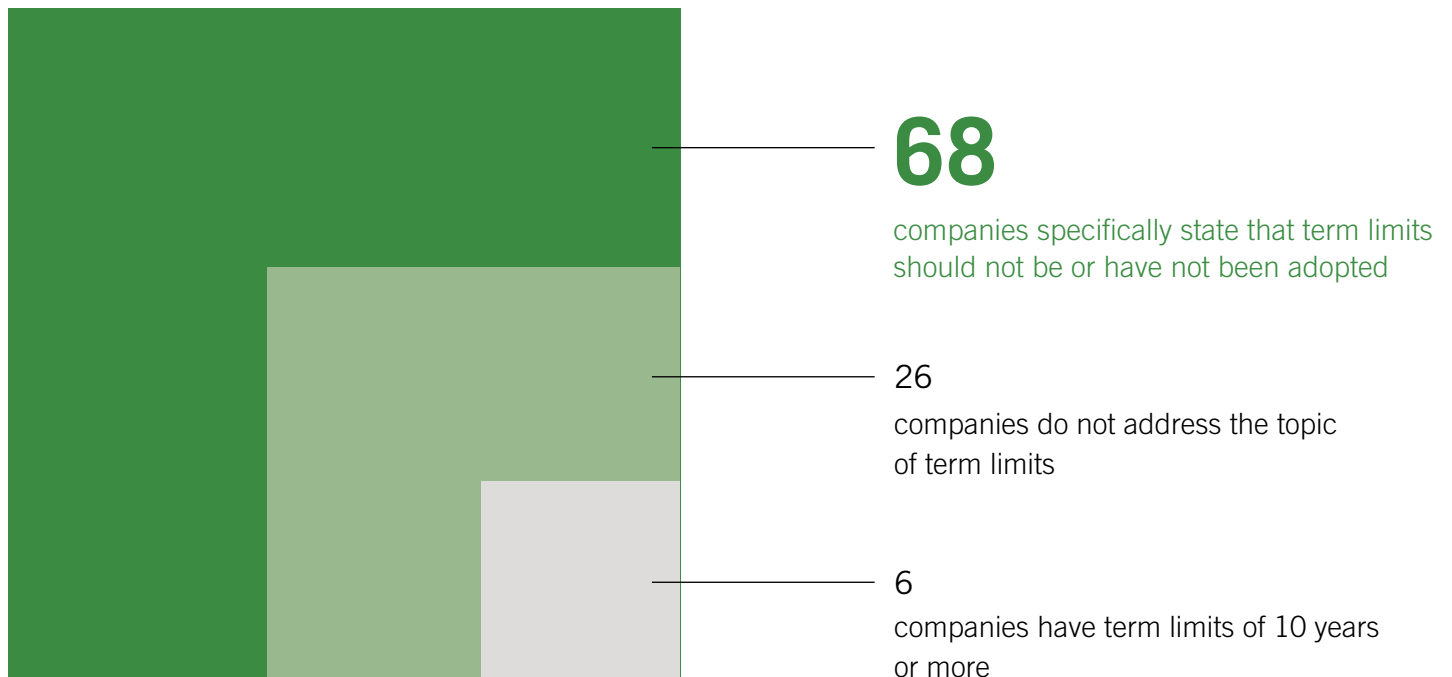
### Retirement Age

Although not required by either the NYSE or NASDAQ listing standards, 82 of the Top 100 Companies have disclosed a mandatory retirement age for their non-employee directors. Of the 18 Top 100 Companies that did not disclose a mandatory retirement age, eight addressed the topic while ten did not. Age 72 continues to be the most commonly selected age for mandatory retirement. Of the 82 Top 100 Companies that disclose a mandatory retirement age, 40 expressly permit the board or a committee of the board to make exceptions to the retirement age policy. Common practice requires employee directors (other than chairs in certain instances) to retire from the board when they retire from employment with the company.



## Term Limits

Of the 74 Top 100 Companies that address term limits, only six have adopted mandatory term limits for their directors. The mandatory term limits apply only to non-management directors at two of these companies. Most of the 68 Top 100 Companies that specifically state that term limits should not be, or have not been, adopted cite the value of the insight and knowledge that directors who have served for an extended period of time can provide about the company's operations and practices. Many of these 68 companies also state that periodic reviews by the board or a board committee of each director's performance serve as an appropriate alternative to mandatory term limits.



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# Women in Leadership

Women held approximately 22% of the total number of board seats at the Top 100 Companies in 2014. Thirteen of the Top 100 Companies have boards composed of more than 30% women members, and only one of these companies has a board of 40% or more women members.

Eighty-eight of the Top 100 Companies have more than one female member on the board and only one company had no women serving on its board.

## Number of Women Serving on Boards



Companies with 1 Woman Director



Companies with 2 Women Directors



Companies with 3 Women Directors



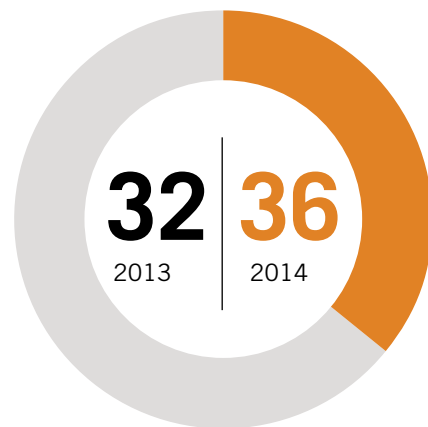
Companies with 4 or More Women Directors

A woman served as the CEO at ten of the Top 100 Companies and as both CEO and chair of the board at eight of those companies. A woman served as the CFO at 14 of the Top 100 Companies.

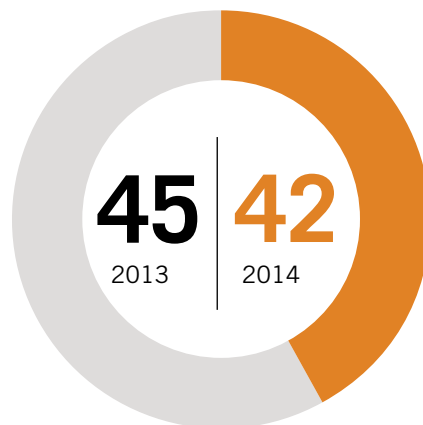
### Total Board Seats of Each Company Held by Women



Companies Where Women Comprise 31%–50% of the Board



Companies Where Women Comprise 21%–30% of the Board

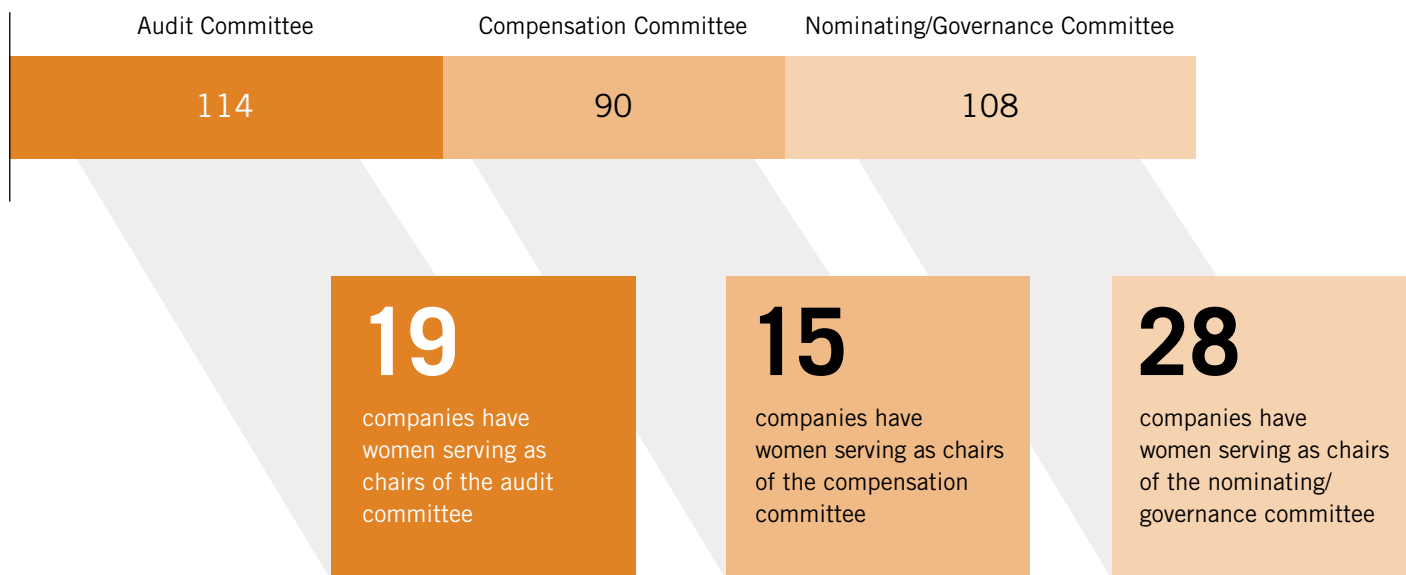


Companies Where Women Comprise 11%–20% of the Board



Companies Where Women Comprise 0%–10% of the Board

## Number of Women Serving on Board Committees



At the Top 100 Companies, women held approximately 25% of the total number of audit committee seats, approximately 21% of the total number of compensation committee seats and approximately 23% of the total number of nominating/governance committee seats.



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# Board Leadership

Public companies are required to describe the leadership structure of their boards and to disclose why they believe their leadership structure is appropriate given their specific characteristics or circumstances.

## Separation of the Offices of CEO and Chair

Separate individuals serve as CEO and chair of the board at 35 of the Top 100 Companies, and of these companies, 24 have adopted an explicit policy addressing separation of the two offices. The chair is independent at 19 of the 35 companies with a separate chair of the board.

**65**

CEO Serves as  
Chair of the Board

**35**

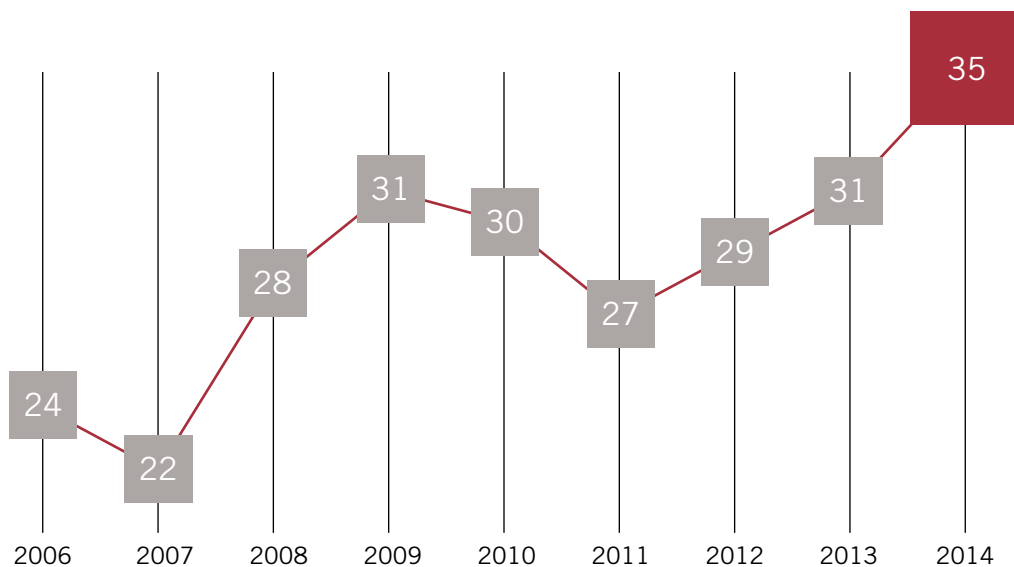
CEO Does Not Serve  
as Chair of the Board

## Appropriateness of Structure

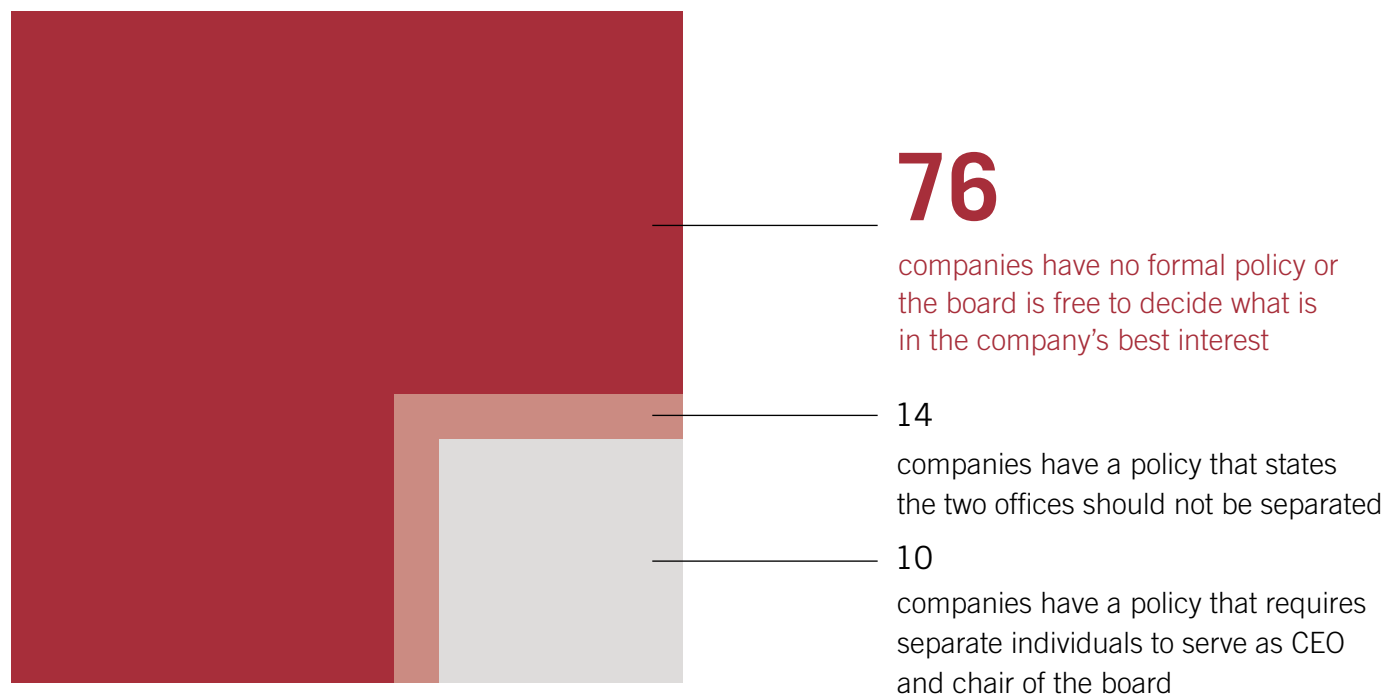
One of the most common explanations companies give for splitting the offices of CEO and chair of the board is that the two offices have different responsibilities. Companies often note that the CEO is responsible for daily operations and management of business affairs, while the chair is charged with independent leadership of the board. Another common explanation is that the split allows the company to benefit from the unique skills, leadership ability and/or industry experience that each person possesses.

Companies combining the offices of CEO and chair of the board often note that their approach best serves shareholders because it provides unified leadership in identifying and carrying out strategic priorities, and in-depth knowledge of the company and the industry.

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



## Policies on Separation of the Offices of CEO and Chair



Seventy-six of the Top 100 Companies disclose that the board has retained the flexibility to separate or combine the offices of the CEO and chair of the board, depending on which board leadership structure is in the best interests of the company at the time, or that they have no formal policy addressing the issue. Ten companies have adopted an explicit policy of separating the offices of CEO and chair of the board, while 14 companies specifically state that the offices of CEO and chair of the board should not be separated.

## Lead Independent Director

Proxy disclosure rules require public companies combining the offices of CEO and chair of the board to disclose whether they have a lead independent director and, if so, what specific role the lead independent director plays in the leadership of the board. Sixty-one of the 65 Top 100 Companies that have combined the offices of the CEO and chair of the board disclosed that they have a lead independent director.

### Of the 35 Top 100 Companies that separate these offices:

19<sup>\*</sup>

companies disclosed that they have a lead independent director

15<sup>\*†</sup>

companies disclosed that the chair is independent

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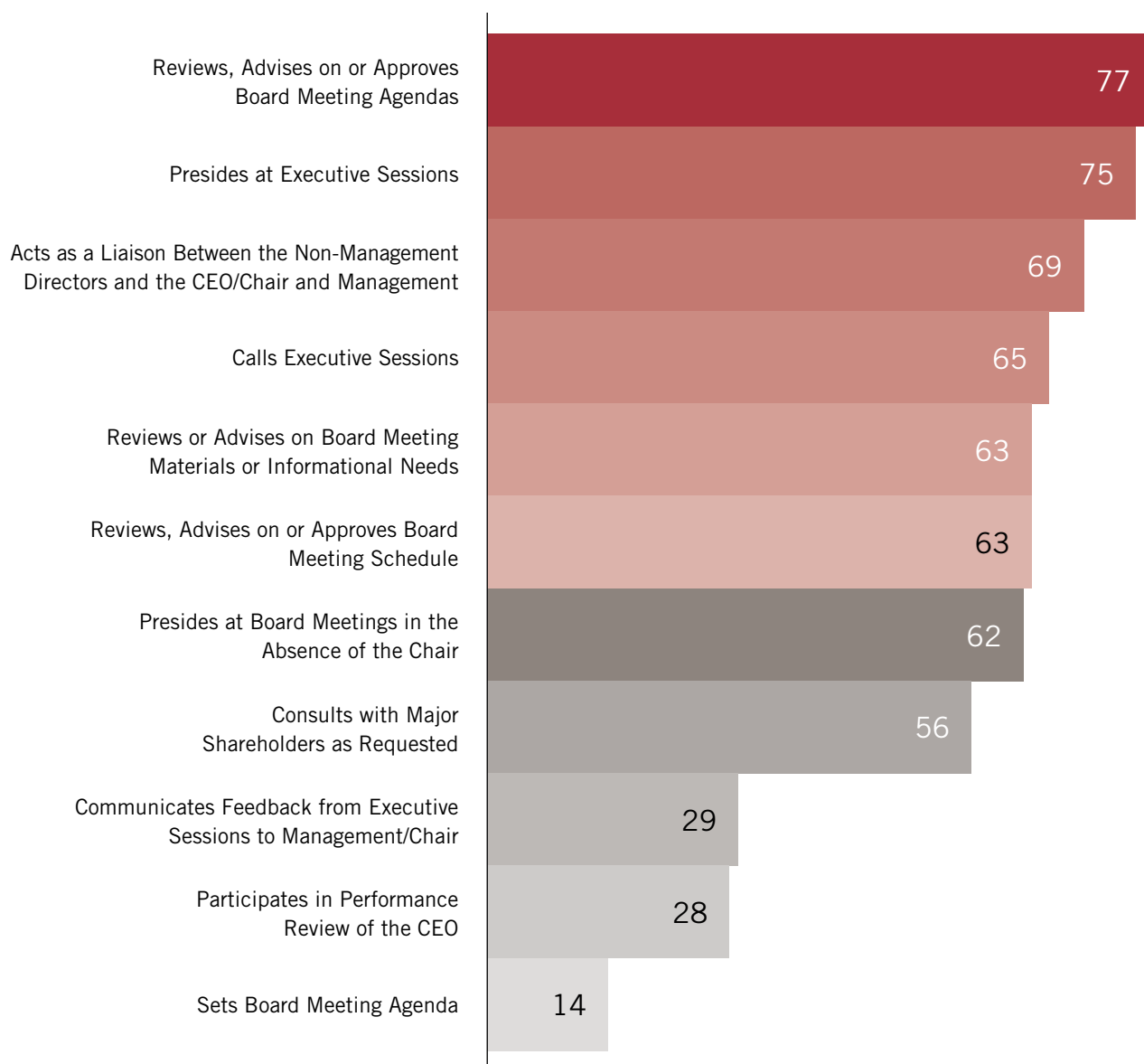
companies disclosed that the company did not have an independent chair or lead independent director

<sup>\*</sup>One company has an interim chair that is independent and a lead independent director.

<sup>†</sup>Three companies disclosed that if the chair is not independent, then a director serves in the role of lead independent director or presiding director.

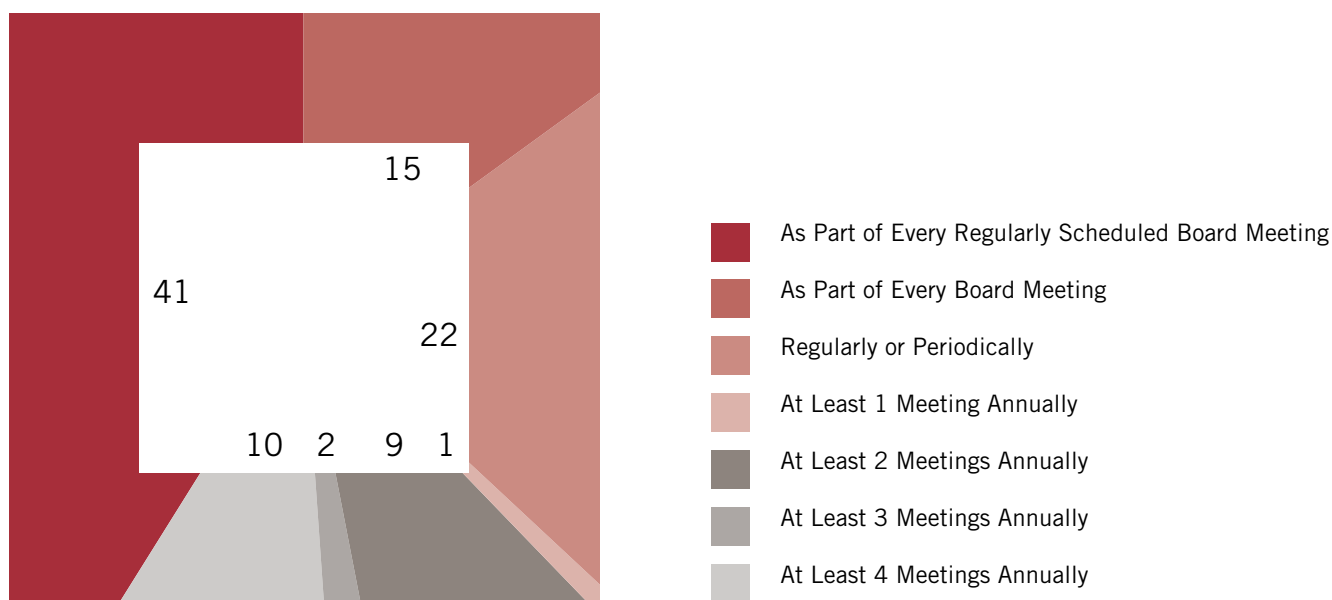
## Duties of Lead Independent Directors

Seventy-nine of the Top 100 Companies have or provide for the role of a lead independent director\* and described specific responsibilities for these directors. The principal responsibilities given to lead independent directors at these companies are detailed below.



## Frequency of Executive Sessions

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



## Selection of Director to Preside Over Executive Sessions

The NYSE listing standards require that the name of the director presiding over executive sessions of non-management or independent directors be disclosed. If the same person is not the director presiding at every meeting, companies must disclose the procedure used to select a presiding director for each executive session. Of the Top 100 Companies, 79 have or provide for the role of a lead independent director or presiding director. In nearly all these companies, that director presides over executive sessions. For the substantial majority of the remaining companies, either the chair of the board presides or the presiding director is rotated among the company's committee chairs.

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# Board Structure and Practices

## Size of Board

The size of the boards of directors of the Top 100 Companies ranged from eight to 17 members, with an average of 12 members. The board size of 76 of the Top 100 Companies ranged from 10 to 13 members.



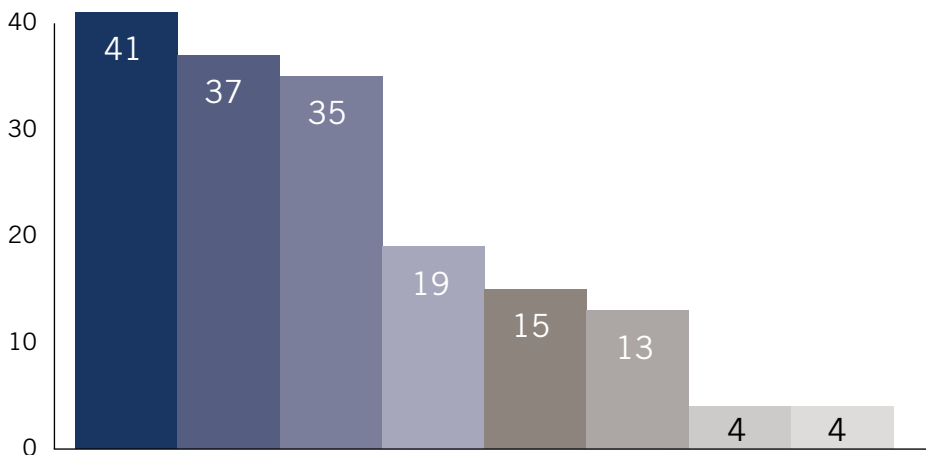
## Committees of the Board

Eighty-four of the Top 100 Companies have established committees of the board of directors in addition to the audit, compensation and nominating/governance committees.

The three most common additional committees are finance, executive and public policy committees.


**84** companies have additional committees

**16** companies do not have additional committees



Ten of the 13 Top 100 Companies with a Risk Committee are financial institutions (including insurance companies).

- Finance Committee\*
- Executive Committee
- Public Policy Committee
- Strategic/M&A Committee
- Technology Committee
- Risk Committee
- Compliance Committee
- Environmental, Health & Safety Committee

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



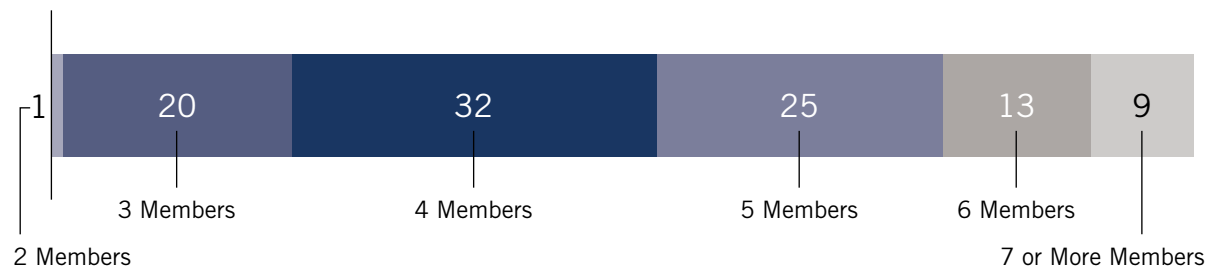
## Size of Audit Committee

The number of members of the audit committees of the Top 100 Companies ranged from three to ten members. The number of financial experts on the audit committees of the Top 100 Companies ranged from one to six. The median number of financial experts was three.



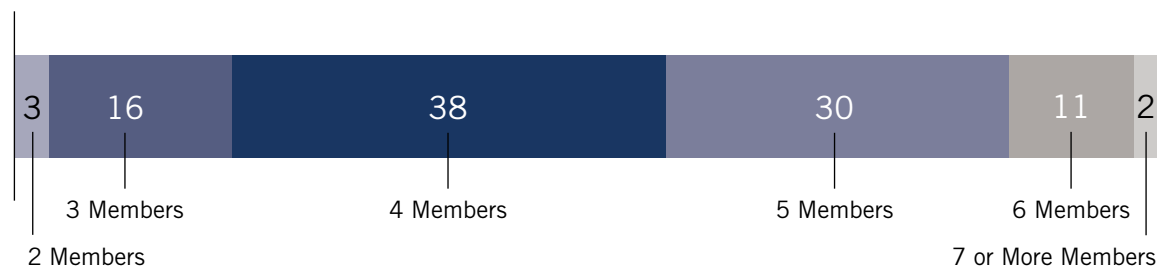
## Size of Nominating/Governance Committee

The size of the nominating/governance committees of the Top 100 Companies ranged from two to 13 members.



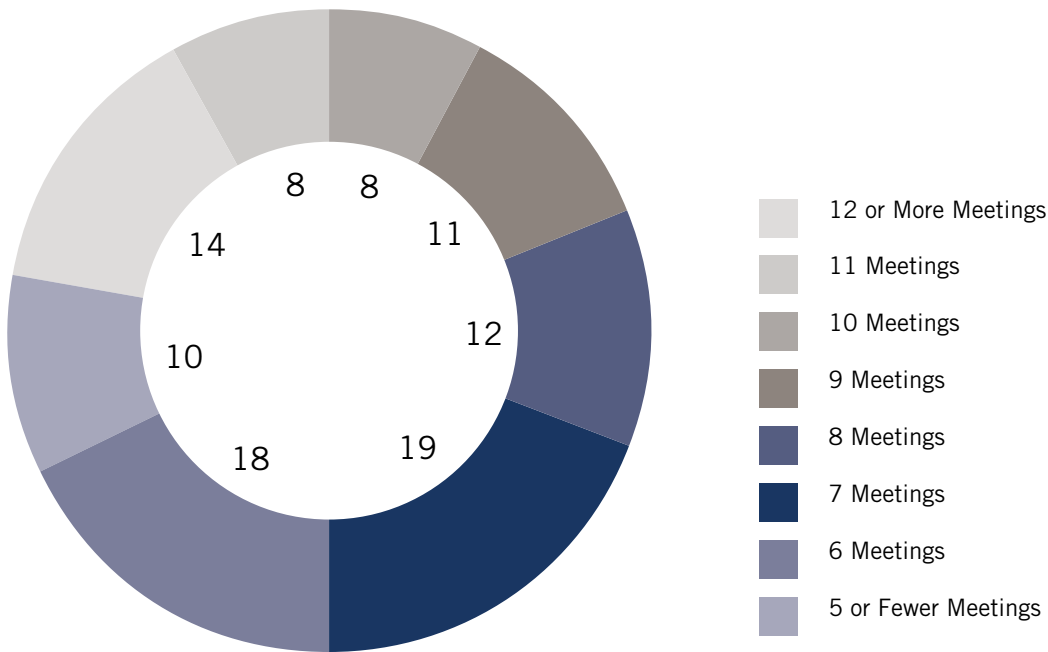
## Size of Compensation Committee

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



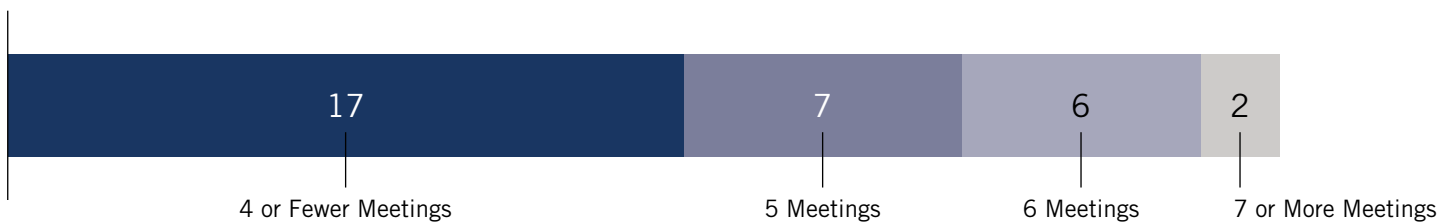
## Number of Board Meetings

The Top 100 Companies held an average of nine board meetings.



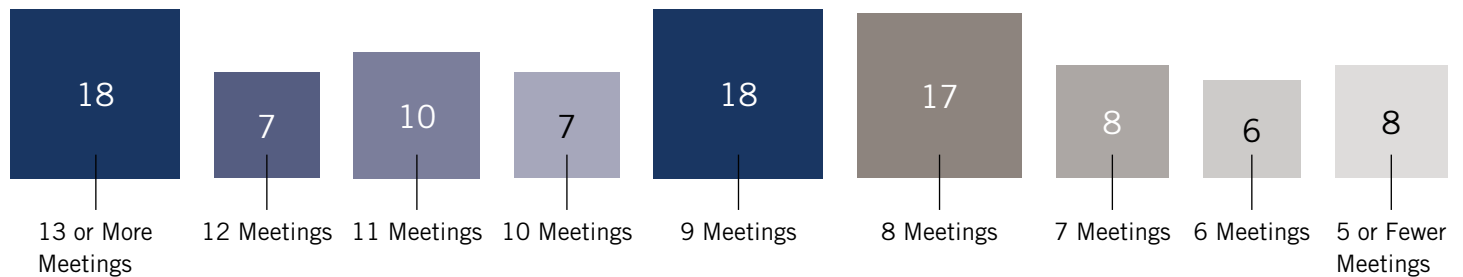
## Minimum Number of Board Meetings

Of the Top 100 Companies, 32 set a minimum number of board meetings each year. The minimum number of meetings ranges from one to thirteen. A number of the other Top 100 Companies, while not setting an actual minimum, have guidelines concerning the number of meetings the board should hold each year. Sixty-eight of the Top 100 Companies do not require a minimum number of meetings.



## Number of Audit Committee Meetings

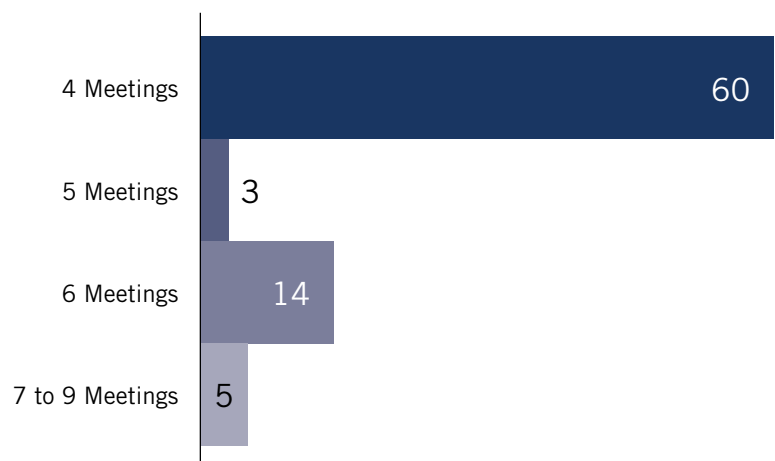
The Top 100 Companies held an average of ten audit committee meetings.\*



\*One company did not disclose the number of audit committee meetings that it held.

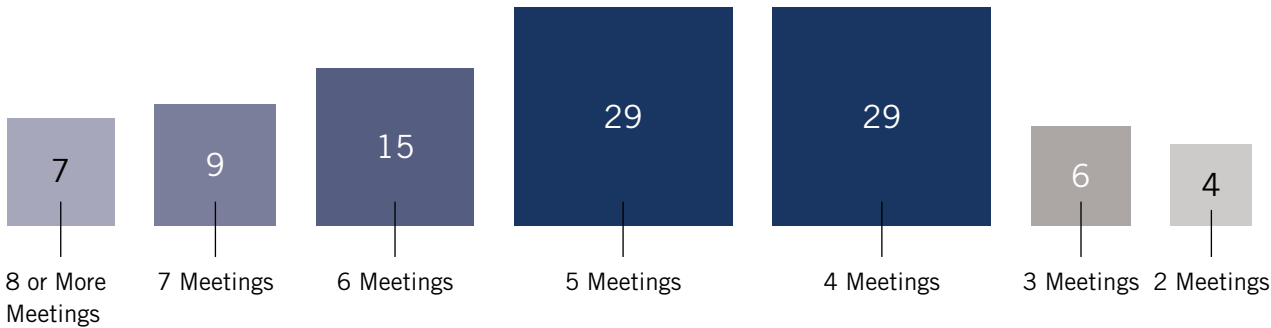
## Minimum Number of Audit Committee Meetings

Of the Top 100 Companies, 82 explicitly require a minimum number of audit committee meetings each year. The minimum number of meetings ranges from four to nine. A number of the other Top 100 Companies, while not setting an actual minimum, have guidance on the number of audit committee meetings that should be held each year.



## Number of Nominating/Governance Committee Meetings

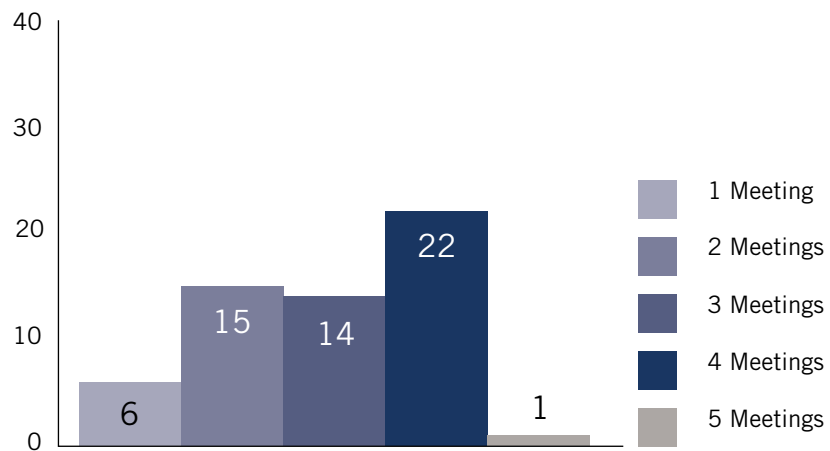
The Top 100 Companies held an average of five nominating/governance committee meetings.\*



\*One company did not disclose the number of nominating/governance committee meetings that it held.

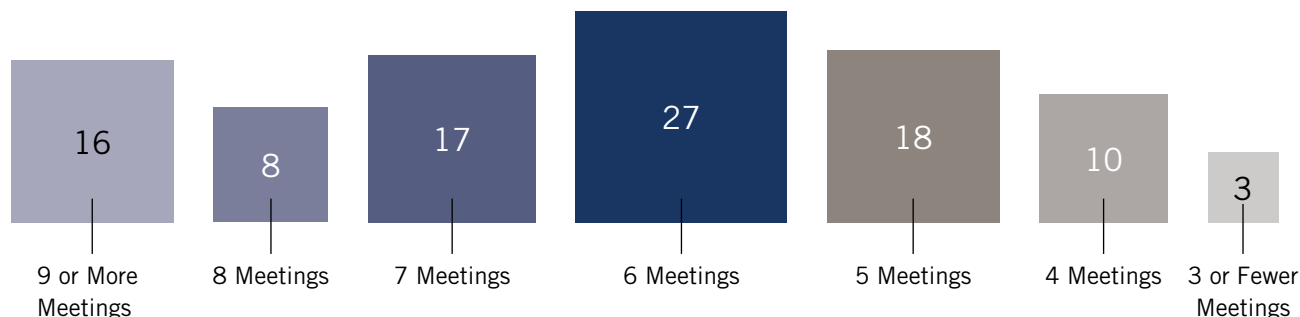
## Minimum Number of Nominating/Governance Committee Meetings

Of the Top 100 Companies, 58 require a minimum number of nominating/governance committee meetings each year. The minimum number of meetings ranges from one to five. A number of the other Top 100 Companies, while not setting an actual minimum, have guidance on the number of nominating/governance committee meetings that should be held each year. Forty-two of the Top 100 Companies do not require a minimum number of meetings.



## Number of Compensation Committee Meetings

The Top 100 Companies held an average of seven compensation committee meetings.\*

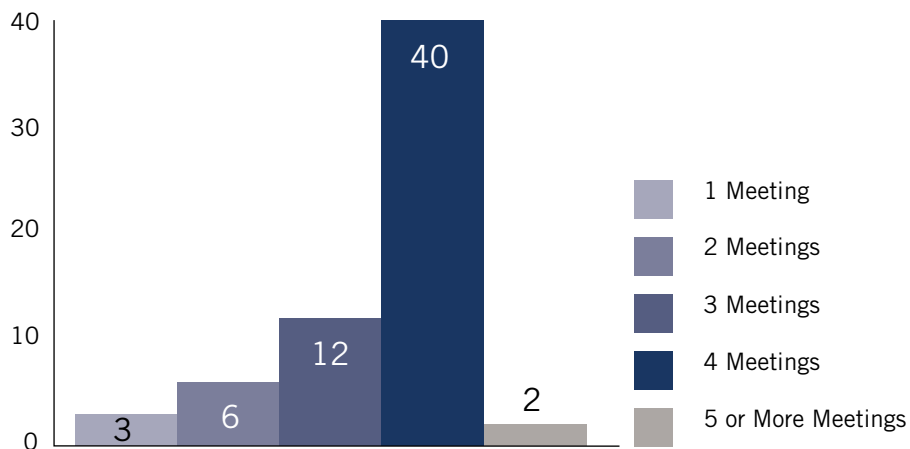


\*One company did not disclose the number of compensation committee meetings that it held.

## Minimum Number of Compensation Committee Meetings

Of the Top 100 Companies, 63 require a minimum number of compensation committee meetings each year.

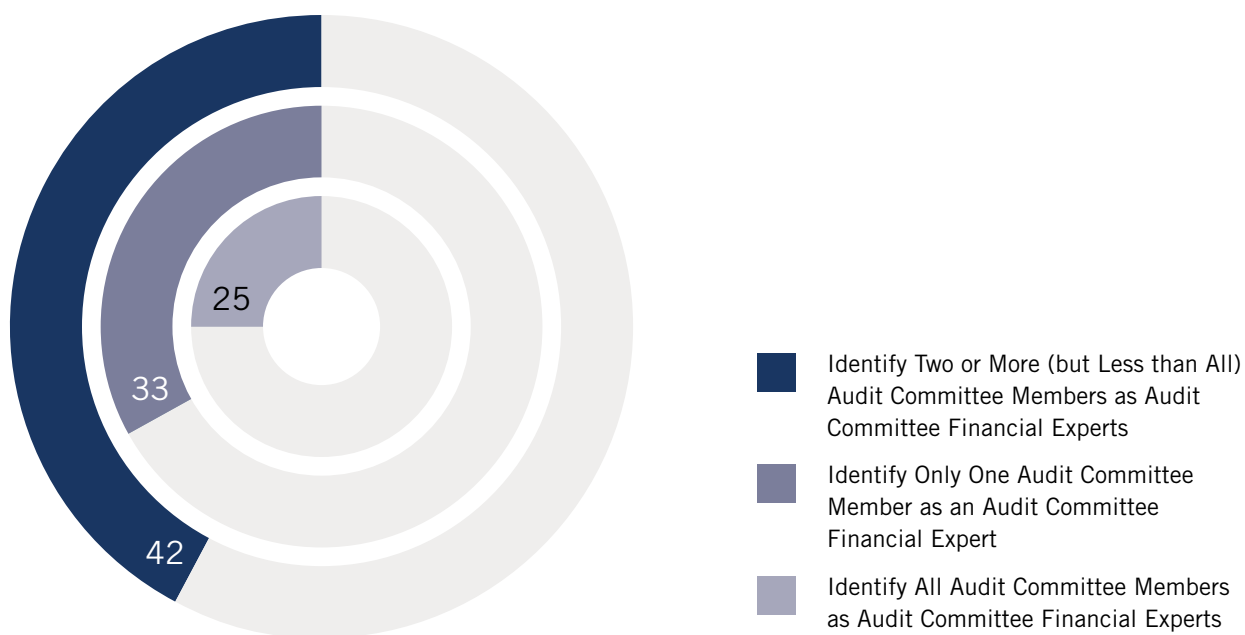
The minimum number of meetings ranges from one to eight. A number of the other Top 100 Companies, while not setting an actual minimum, have guidance on the number of compensation committee meetings that should be held each year. Of the Top 100 Companies, 37 do not require a minimum number of meetings.



Of the 25 companies that identify all audit committee members as financial experts, five of the companies are financial institutions (including insurance companies).

## Audit Committee Financial Experts

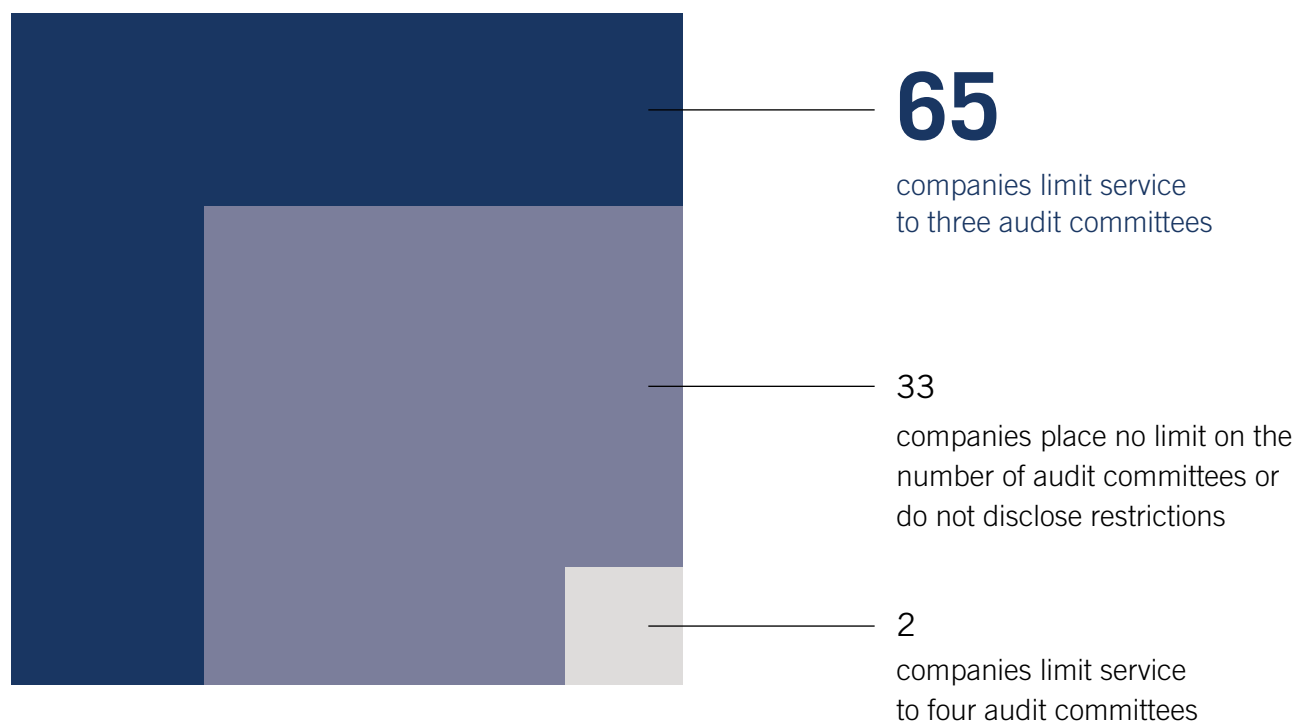
Listed companies must disclose whether at least one member of the audit committee is an audit committee financial expert and, if not, why not. Although SEC rules require companies with an audit committee financial expert to disclose the identity of only one such expert, 67 of the Top 100 Companies voluntarily disclosed the identity of more than one audit committee financial expert.



## Service on Multiple Audit Committees

The NYSE listing standards require boards to determine whether a director's simultaneous service on the audit committees of more than three public companies would impair the ability of the director to effectively serve on the company's audit committee. As a result,

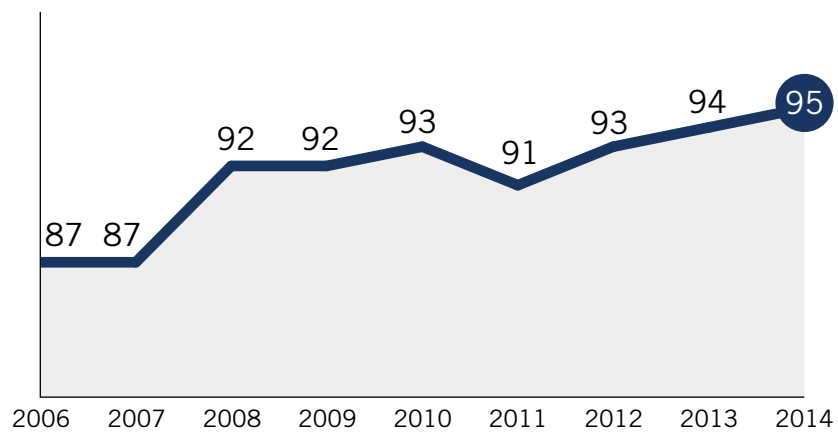
many companies have adopted limits on the number of audit committees on which their audit committee members may serve. Of the Top 100 Companies, 65 limit the number of audit committees on which their audit committee members may serve to three.



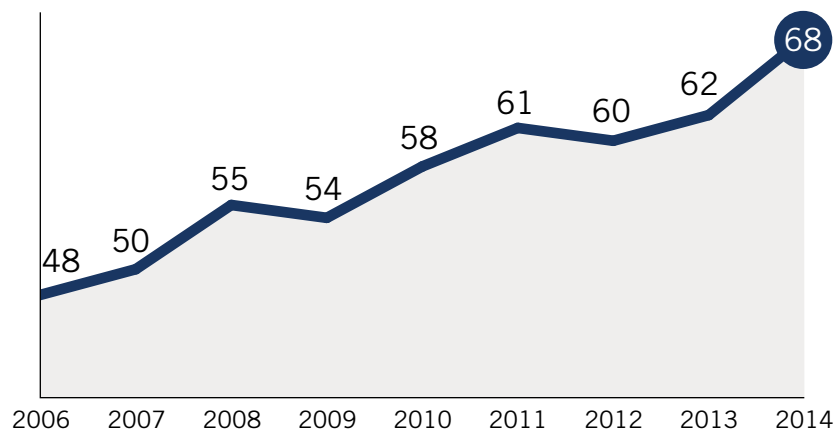
## Director Eligibility Criteria: Service on Other Public Company Boards

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

**Number of companies that address the issue of service by directors on other public company boards**



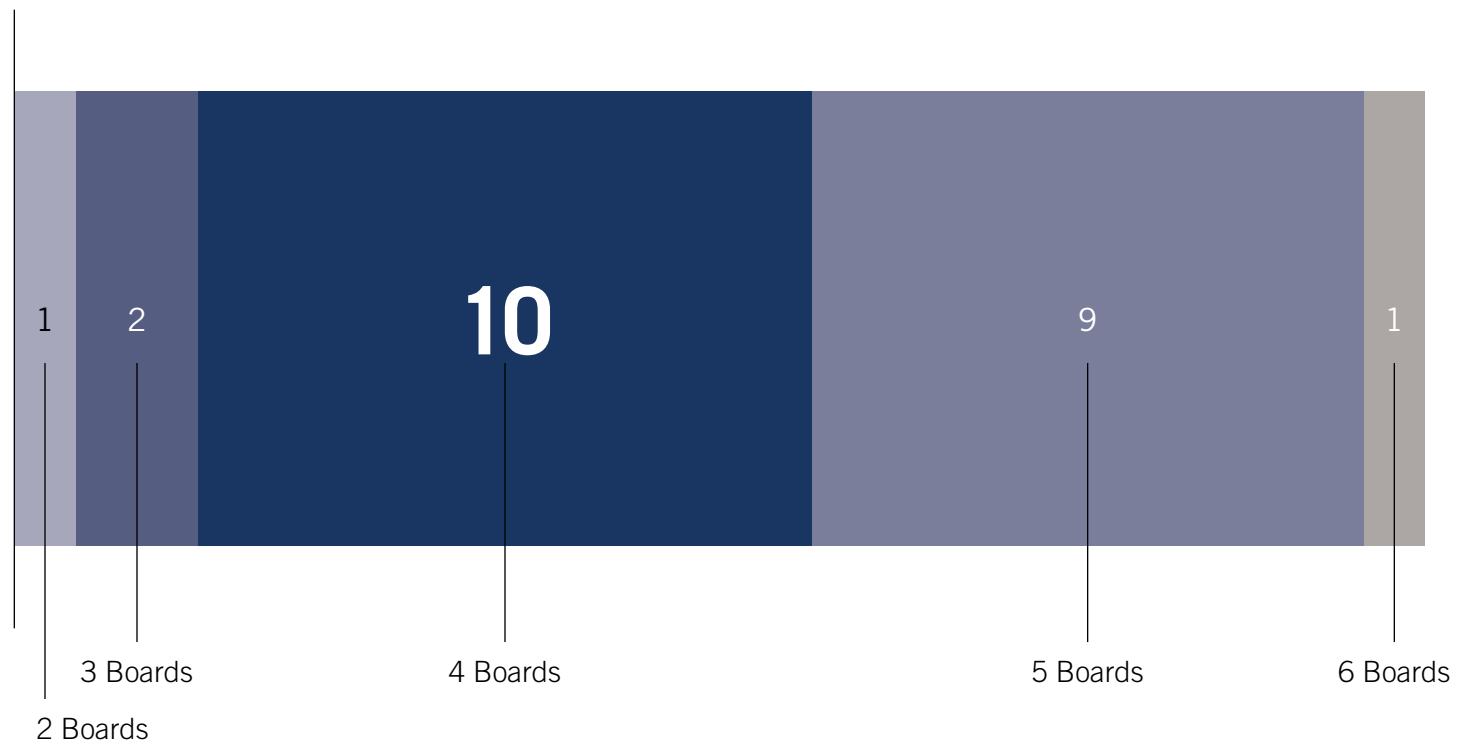
**Number of companies that place a numerical limit on the number of public company boards on which a director may serve**





## Total Number of Boards on Which a Director May Serve

Of the 68 Top 100 Companies that impose a numerical limit on the number of public company boards on which their directors may serve, 23 impose a numerical limit that applies to all directors (described below), and the remaining 45 impose limits based upon various factors, such as the employment or independence status of a director.



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# Corporate Policies

Corporate policies are an important tool used by companies to implement, manage and monitor governance practices. While several of the general corporate governance policies and guidelines of the Top 100 Companies are reported on throughout our Survey, two policies that our Survey focuses on in particular are those that relate to political contributions and to related person transactions. Political contributions policies have received increased attention in recent years, in part due to heightened public interest in political spending generally. Related person transaction policies are a vital tool used by boards to appropriately and efficiently evaluate subject transactions.

## Political Contributions Policies

Political contributions policies set forth guidelines for the political activities of a company and its employees. Corporate political spending has been a topic of increased shareholder interest since the Supreme Court's decision in *Citizens United vs. Federal Election Commission* (2010).

# 98

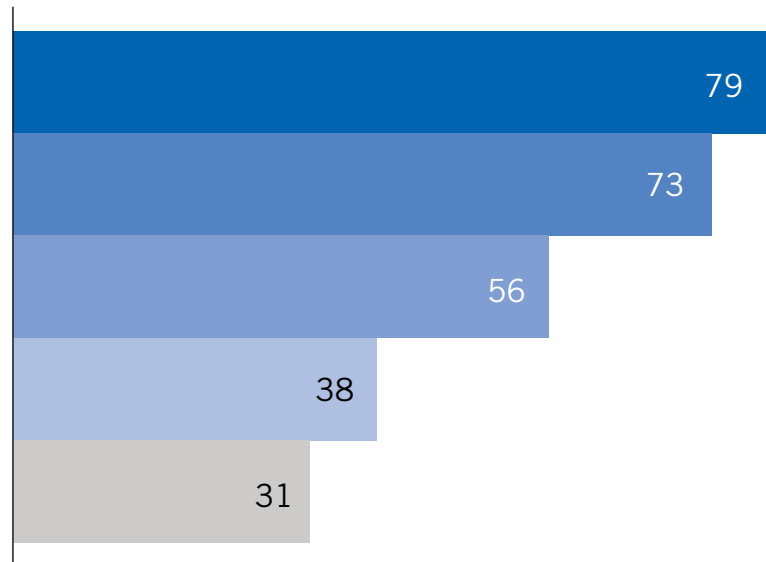
of the Top  
100 Companies  
disclosed political  
contributions policies

# 77

of the Top 100  
Companies disclosed  
information about the  
company's political  
contributions or  
lobbying efforts

## Certain Issues Addressed by Political Contributions Policies

- Policies that Provide Restrictions on Political Activities of Employees\*
- Policies that Address Political Action Committees (PACs)
- Policies that Expressly State that the Company Makes (or May Make) Political Contributions to Advance Certain Business Initiatives
- Policies that Expressly State that the Company Does Not (or Does Not Intend to) Use Corporate Funds to Make “Independent Political Expenditures”\*\*
- Policies that Apply Broadly to Agents, Affiliates and Others, in Addition to Employees†



\* Often companies state that, although employees may participate in the political process, they must not do so in the name of or as a representative of the company.

\*\*“Independent political expenditures,” in the context of federal campaign finance law, refers to expenditures for a communication expressly advocating for the election or defeat of a particular candidate that is not made in coordination with a candidate or a candidate’s representatives or political party.

† The codes of conduct of many companies contain policies regarding political contributions that apply broadly to employees, directors, officers, subsidiaries, business partners, affiliates and contractors.

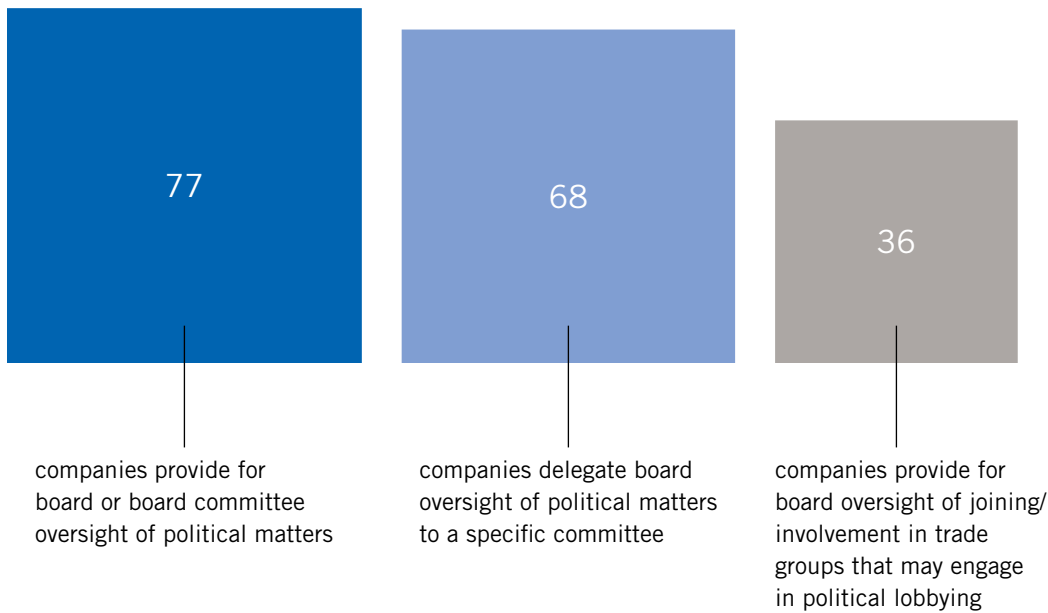
Investors have been vocal about the need for more disclosure on public company political spending, despite the information that many companies voluntarily provide. In 2011, the Committee on Disclosure of Corporate Political Spending (which is comprised of ten law school professors) submitted a petition to the SEC urging the SEC to adopt rules requiring public companies to disclose the use of corporate

resources for political activities. In April 2014, Citizens for Responsibility and Ethics submitted a similar rulemaking petition to the SEC after the SEC dropped political spending from its rulemaking agenda in 2014. This issue has garnered significant attention in political, academic, legal and media circles and the SEC has received over 900,000 public comment letters related to political spending.

## Board Oversight of Political Activities

Of the 98 companies that publicly disclose their political contributions policies, most expressly provide for some degree of board or board committee oversight of political matters. In addition, some companies expressly provide for board or board committee oversight of the company's involvement in trade groups that may engage in political lobbying.

## Approach to Oversight of Political Matters



## Related Person Transactions

### Companies Disclosing Related Person Transactions

Of the Top 100 Companies, 69 disclosed transactions in which the company was a participant and in which a related person had a direct or indirect material interest. While a small number of companies disclosed a larger number of related person transactions, 44 of the 69 companies disclosed only one, two or three transactions. Several companies disclosed related person transactions without disclosing all of the specifics of the transactions.

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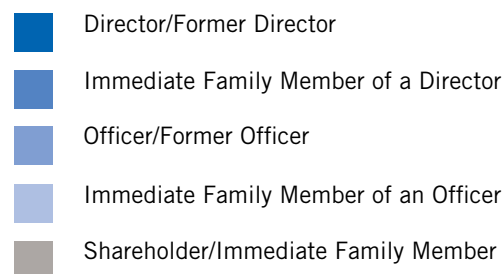
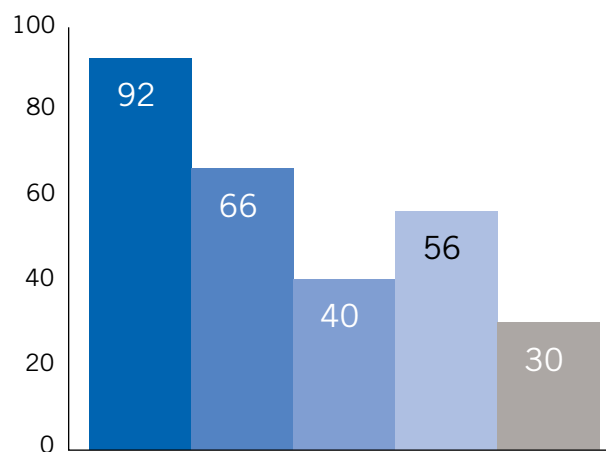
**69** companies disclosed transactions with related persons

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**31** did not disclose transactions with related persons

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### Basis on Which the Participant Constitutes a Related Person\*



\*If a related person's relationship arises on more than one basis, the transaction for that person is only counted in one category (e.g., a person who is both a director and an officer is only counted as a director).

## Q & A on Related Person Transactions

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

**Q:** What are the most common types of related person transactions?

**A:** Forty-one of the Top 100 Companies engage in business transactions with a related person. Forty-one of the Top 100 Companies employ a relative of an officer, director or shareholder.

**Q:** Who is responsible for evaluating related person transactions?

**A:** The nominating/governance committee and/or audit committee are responsible (solely or in combination with each other or with another committee or management) for evaluating related person transactions in 83 of the Top 100 Companies.

**Q:** Does the body responsible for evaluating related person transactions delegate such responsibility?

**A:** Most of the Top 100 Companies permit the committee of the board responsible for evaluating related person transactions to delegate the responsibility to the chair of the committee (or, in some cases, a member of management) if it is impracticable or inadvisable to wait until the next committee meeting to approve the transaction.

**Q:** What factors are typically considered to determine whether a transaction with a related person will be approved?

**A:** The Top 100 Companies generally use a similar set of standards, with the most commonly cited (by 52 companies) being whether the transaction is at arm's length and no less favorable than if made with an unaffiliated party. The other most frequently cited factors include the extent of the related person's interest in the transaction, whether there is a real or apparent conflict of interest and any impact on the related person's independence. See page 38 for details.

**Q:** What level of detail do the Top 100 Companies provide on their related person transaction policies?

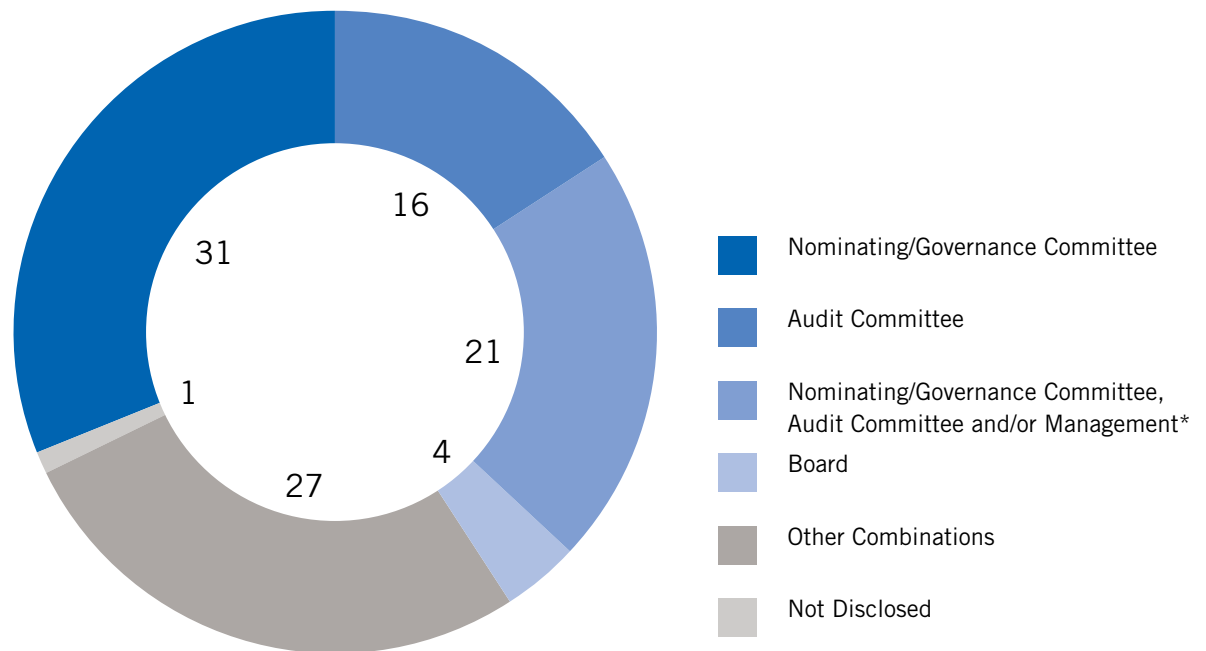
**A:** Proxy statements generally include a brief summary of the related person transaction policy, although in some cases the entire policy is reprinted in the proxy statement. Many of the Top 100 Companies provide their policies on their websites, including within a broader code of ethics or as a stand-alone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

**Q:** Does it appear that any category of "related person" is most commonly involved in related person transactions?

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

## Related Person Transaction Policies

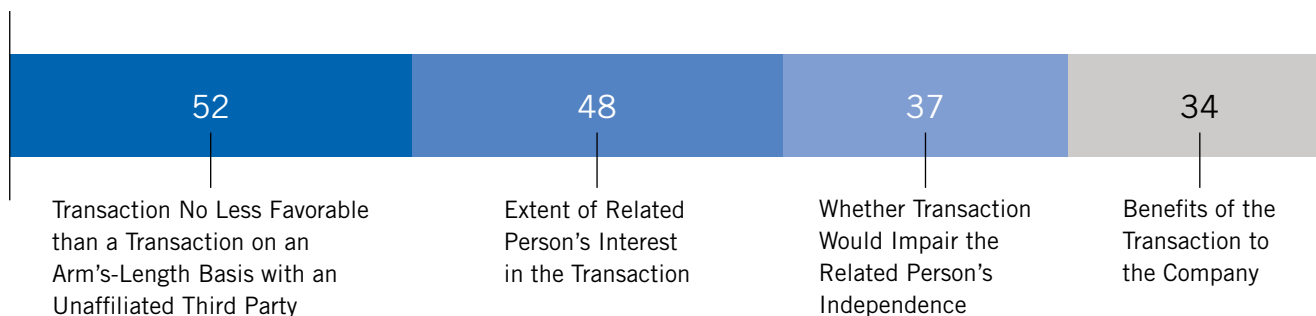
Public companies must disclose a summary of the policies and procedures they use to review, approve or ratify related person transactions. The nominating/governance committee and/or audit committee at 54 of the Top 100 Companies are solely responsible for approving related person transactions. Many of the Top 100 Companies utilize various information collection and review procedures involving a wide array of departments, employees and committees to analyze transactions before they are presented to the committee ultimately responsible for approving or ratifying the transaction. Management has some responsibility for approving related person transactions at 15 of the Top 100 Companies.



\*Of these 21 companies, 14 companies include management in the review of related person transactions.

## Factors Considered when Reviewing a Related Party Transaction

Of the Top 100 Companies, 78 disclose detailed standards to be applied or factors to be considered when reviewing a transaction. The factors most frequently cited by such companies are detailed below.



Other factors considered include: the terms/size of the transaction, the commercial reasonableness of the transaction, whether the transaction would create an actual or apparent conflict of interest, the purpose/business reasons for the transaction, the availability of alternative transactions and an assessment of the materiality of the transaction to the company.



## Transactions Expressly Pre-Approved

Of the Top 100 Companies, 68 specify certain transactions that are deemed pre-approved or presumed not to involve a material interest or conflict. The most common types of pre-approved transactions are detailed below.

**30**

ordinary course  
compensation for officers

**30**

ordinary course  
compensation for directors

**26**

related person's interest arises solely because the person is a shareholder and all shareholders received the same benefit on a pro rata basis

**26**

transactions in which related person's sole interest in the transaction is as a director, officer or a beneficial owner of less than a specified percentage

**25**

charitable contributions if the aggregate amount does not exceed specified value or percentage of charitable organization's gross revenues

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

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# Anti-Corruption/ FCPA Enforcement

A governance topic that has and will continue to garner the attention of companies is anti-corruption practices and compliance.

In 1977, the US enacted the Foreign Corrupt Practices Act (“FCPA”), which contains two types of substantive provisions: (i) a prohibition against foreign bribery and (ii) a requirement applicable to issuers of US registered securities only that they maintain accurate financial records and effective internal controls to prevent concealed payments and the establishment of suspect and undercover accounts used to finance illegal payments. Due to the magnitude of the penalties, including fines and disgorgement, that can be imposed against a company for violation of the FCPA, a company’s FCPA compliance practices is vital in avoiding being the target of enforcement actions or investigations by the SEC or the Department of Justice (“DOJ”).



2

companies were subject to an enforcement action since May 31, 2013

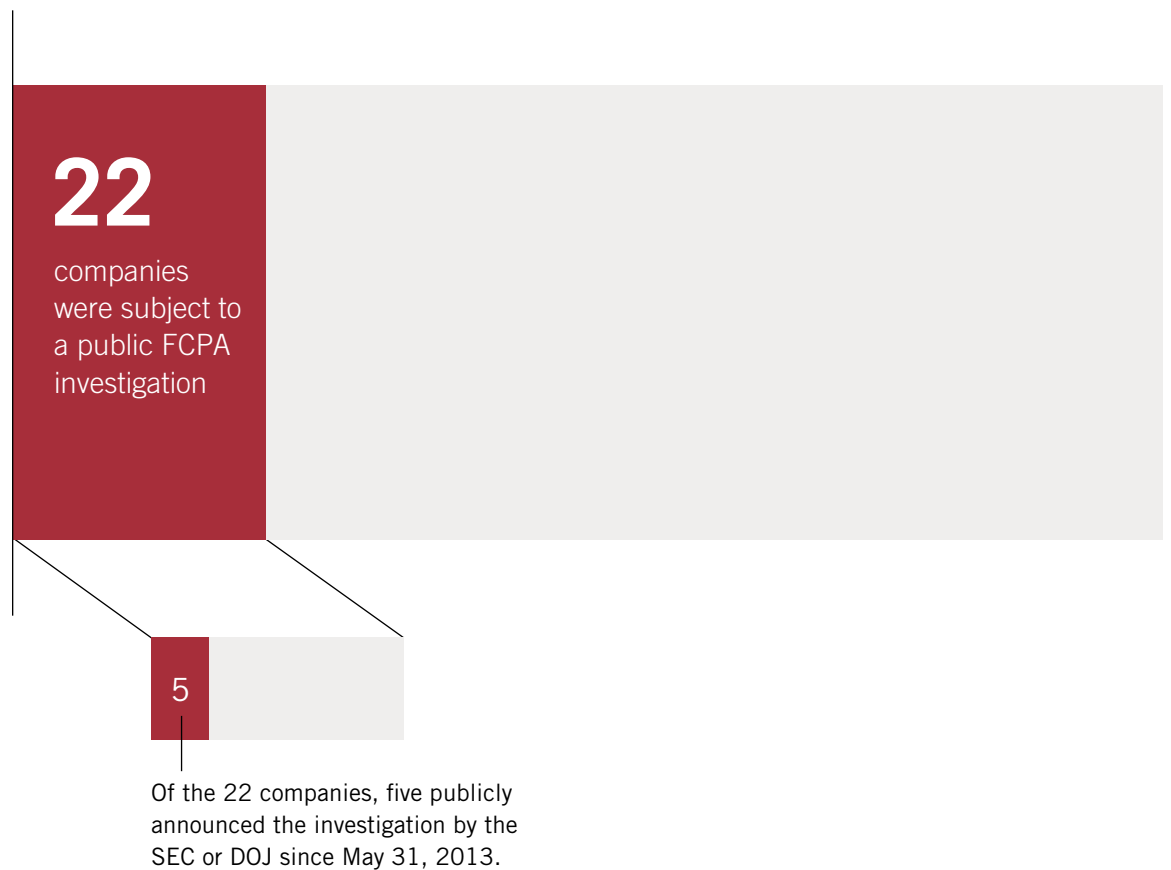


For additional information on recent developments and trends in FCPA enforcement, visit [FCPA.shearman.com](http://FCPA.shearman.com)

Amidst slightly declining prosecutions but higher penalties, the costs of investigations, and the consequences of disclosure and collateral litigation, may be even more significant.

## FCPA Investigations

When a company becomes the subject of an FCPA investigation by the SEC or DOJ, a company will need to analyze whether or not it needs to disclose the investigation publicly, and if a disclosure is required, the timing of the disclosure. Twenty-two of the Top 100 Companies have disclosed in an SEC filing that the company is currently the target of an ongoing FCPA investigation by the SEC or the DOJ.



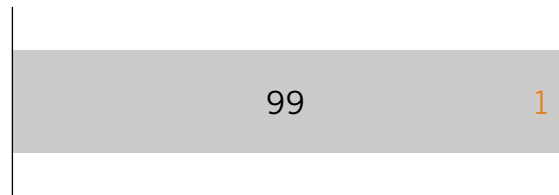
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# By-Law Developments

Recent years have seen the development and implementation by US-listed companies of new by-law provisions. Some, such as advance notice by-laws and director compensation by-laws, have been, at least in part, a reaction to increased levels of shareholder activism. US-listed companies are also giving consideration to forum selection by-laws, intended to facilitate the management of shareholder litigation, and to proxy access by-laws, intended to facilitate the nomination of director candidates by large shareholders.

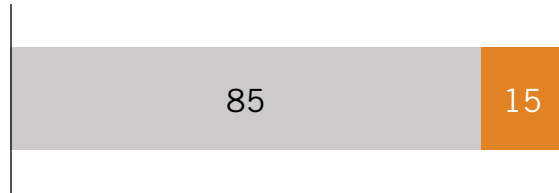
**1** company announced plans to submit a proxy access by-law to shareholders in 2015

## Certain By-Law Trends



### Proxy Access By-Laws

A proxy access by-law permits shareholders satisfying certain ownership criteria to include board nominees in the company's proxy statement.



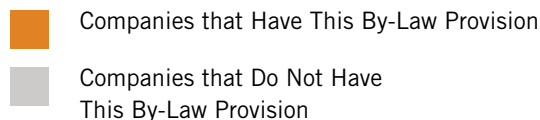
### Forum Selection By-Laws\*

A forum selection by-law generally requires that litigation commenced by shareholders against the company be adjudicated in courts located in the company's state of incorporation. More companies have adopted this type of by-law since the Delaware Chancery Court upheld their validity in 2013.

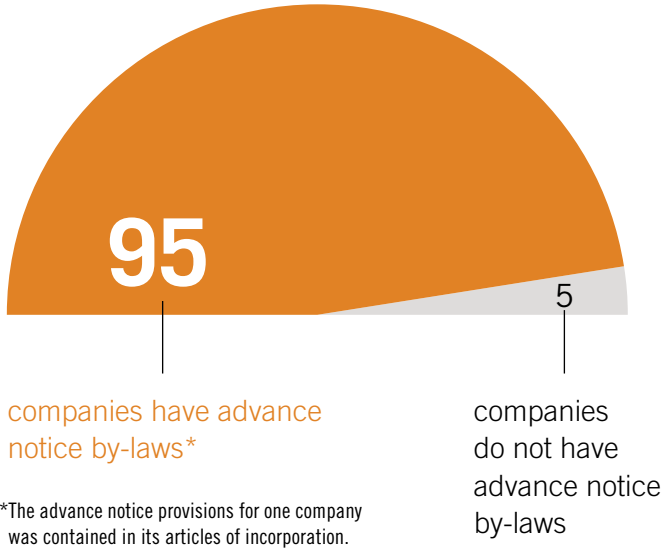


### Director Compensation By-Laws

A director compensation by-law either requires the disclosure of compensation arrangements between director nominees and third-parties or prohibits those arrangements.



\*Of the 15 companies, four companies included the provision in their articles of incorporation.

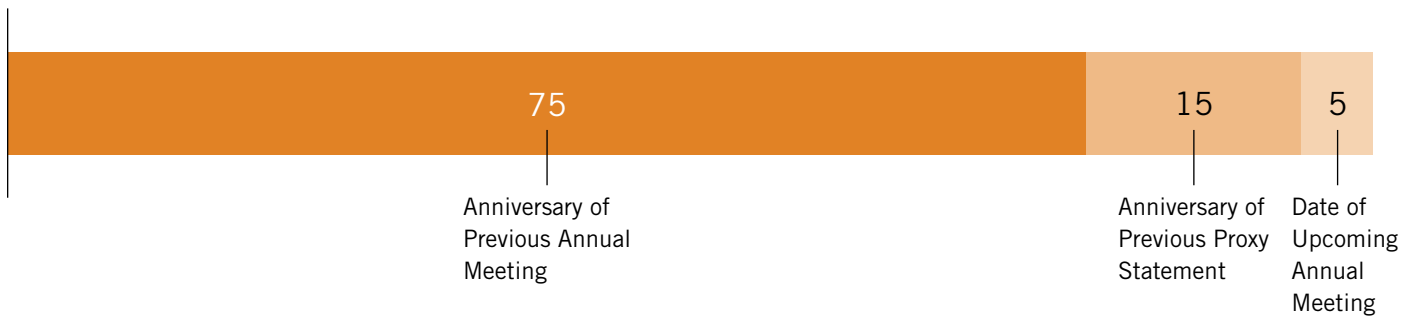


## Advance Notice By-Laws

Over the last several years, as the number of shareholder proposals and shareholder director nominations has increased, a significant number of public companies have incorporated advance notice provisions into their by-laws. These by-law provisions ensure that companies and boards have sufficient information about the proposal and the parties introducing them and adequate time to consider the proposals by requiring shareholders to give advance notice of their intention to bring business before an annual shareholders meeting.

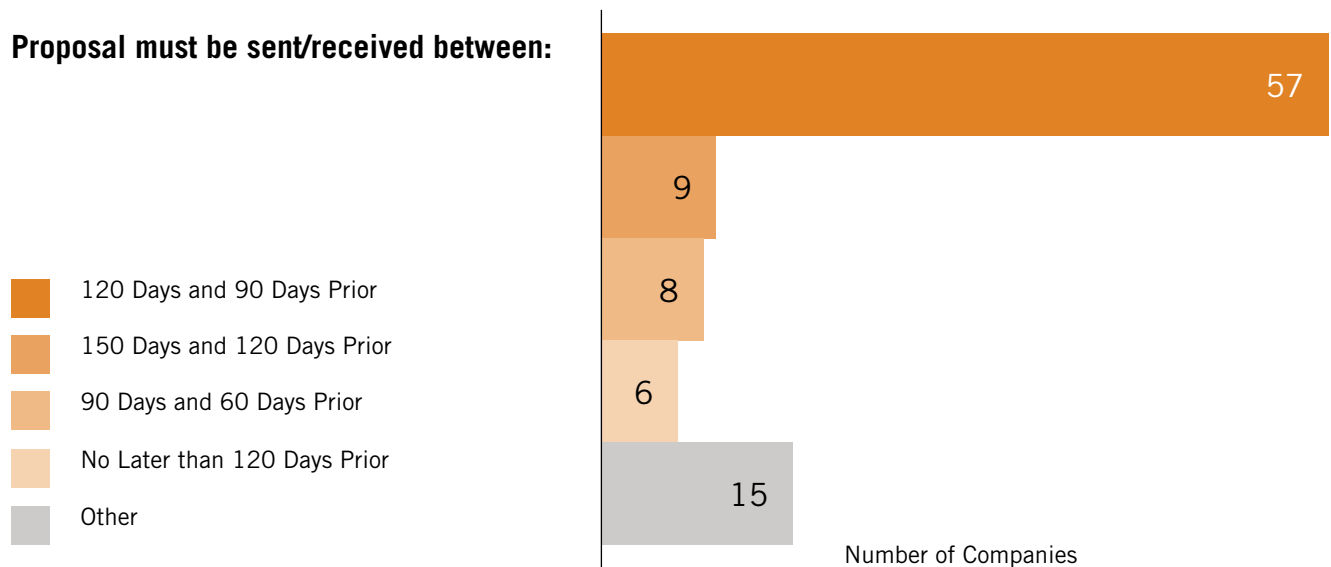
## Reference Date for Advance Notice Period

The notice period mandated by advance notice by-laws for the submission of shareholder proposals at an annual meeting are set by reference to the date of a particular event. For the 95 Top 100 Companies that have adopted advance notice by-laws, the most commonly used reference dates are as follows:



## Advance Notice Period

The notice period mandated by advance notice by-laws is defined as a certain minimum and/or maximum number of days prior to the applicable reference date used. For the 95 Top 100 Companies that have adopted advance notice by-laws, the most frequently used advance notice periods are as follows:



Six companies have included a different advance notice period for director nominations for election of the directors at the annual meeting.

A majority of the Top 100 Companies have expanded the scope of information that must be included in a proposing shareholder's notice in order to better gauge the extent of the proposing shareholder's interest in the company's stock. As an example, 68 of the Top 100 Companies have adopted advance notice by-laws that require proposing shareholders to disclose various indirect ownership interests in the company's stock, such as through derivatives.

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# Anti-Takeover Defenses

When we introduced the Survey, anti-takeover defenses were not uncommon at US-listed companies. Since that time, shareholder activists and other proponents of corporate governance reform have caused a shift in the landscape of practices in this regard and the prevalence

of certain anti-takeover defenses steadily declined over the ensuing years. As a result, the declassification of boards of directors and the removal of shareholder rights plans have been widely adopted as “best” corporate governance practices.

## Poison Pills

2006

17

3

2014

## Classified Boards

2006

37

11

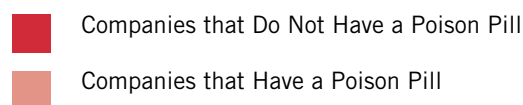
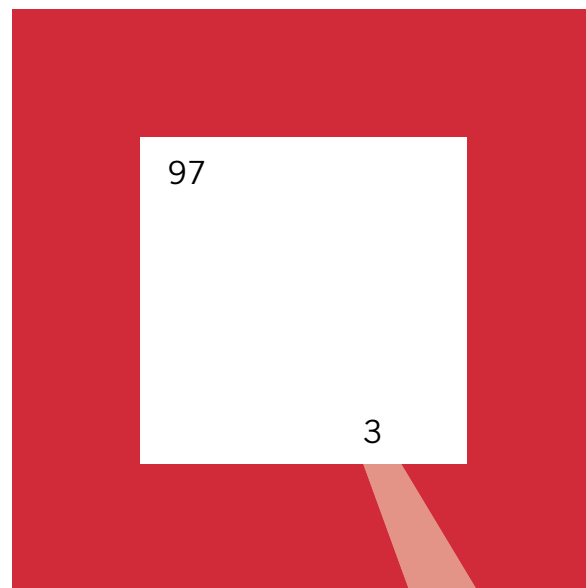
2014



## Poison Pills

Of the Top 100 Companies, only three have a shareholder rights plan, or “poison pill.” Of the three companies that have poison pills, one has a standard poison pill for defensive purposes and two have implemented an “NOL poison pill,” or a shareholder rights plan adopted by a company to protect its net operating loss assets.

The two NOL poison pills have a term of three years and the standard poison pill has a term of ten years, which expires in 2015. The two NOL poison pills have been approved by shareholders.

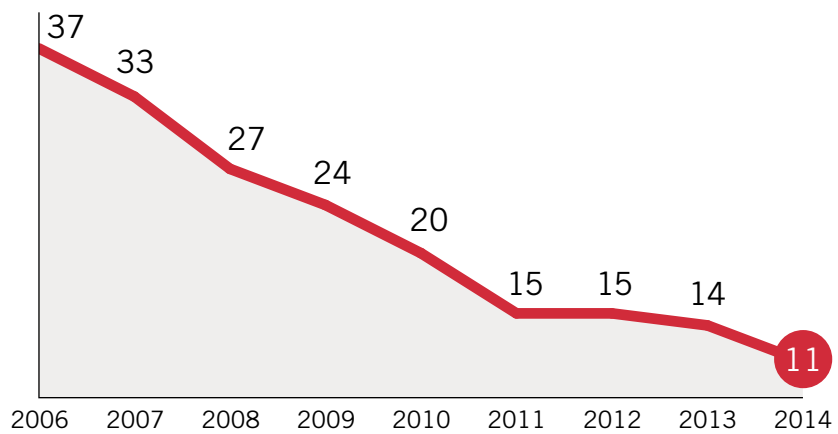


The steady decline over the last several years in the number of the Top 100 Companies (and US-listed companies more broadly) that have poison pills in place can be explained, at least in part, by opposition to their use from certain institutional investors and proxy advisory firms. For example, ISS, a proxy advisory firm, will recommend “withhold” or “against” votes for directors if the board adopts a poison pill with a term of more than 12 months, renews any existing poison pill or makes a “material adverse change” to an existing poison pill without shareholder approval.

As a result, and as a general matter, the practice among US-listed companies has shifted from having a poison pill in place as a matter of course to maintaining a poison pill “on the shelf” that can be implemented quickly to defend the company against specific threats.

## Classified Boards

Of the Top 100 Companies, 11 have a classified or staggered board of directors. In 2014, one management proposal to declassify the board was not approved because it did not receive the required approval of at least 75% of the outstanding shares entitled to vote.

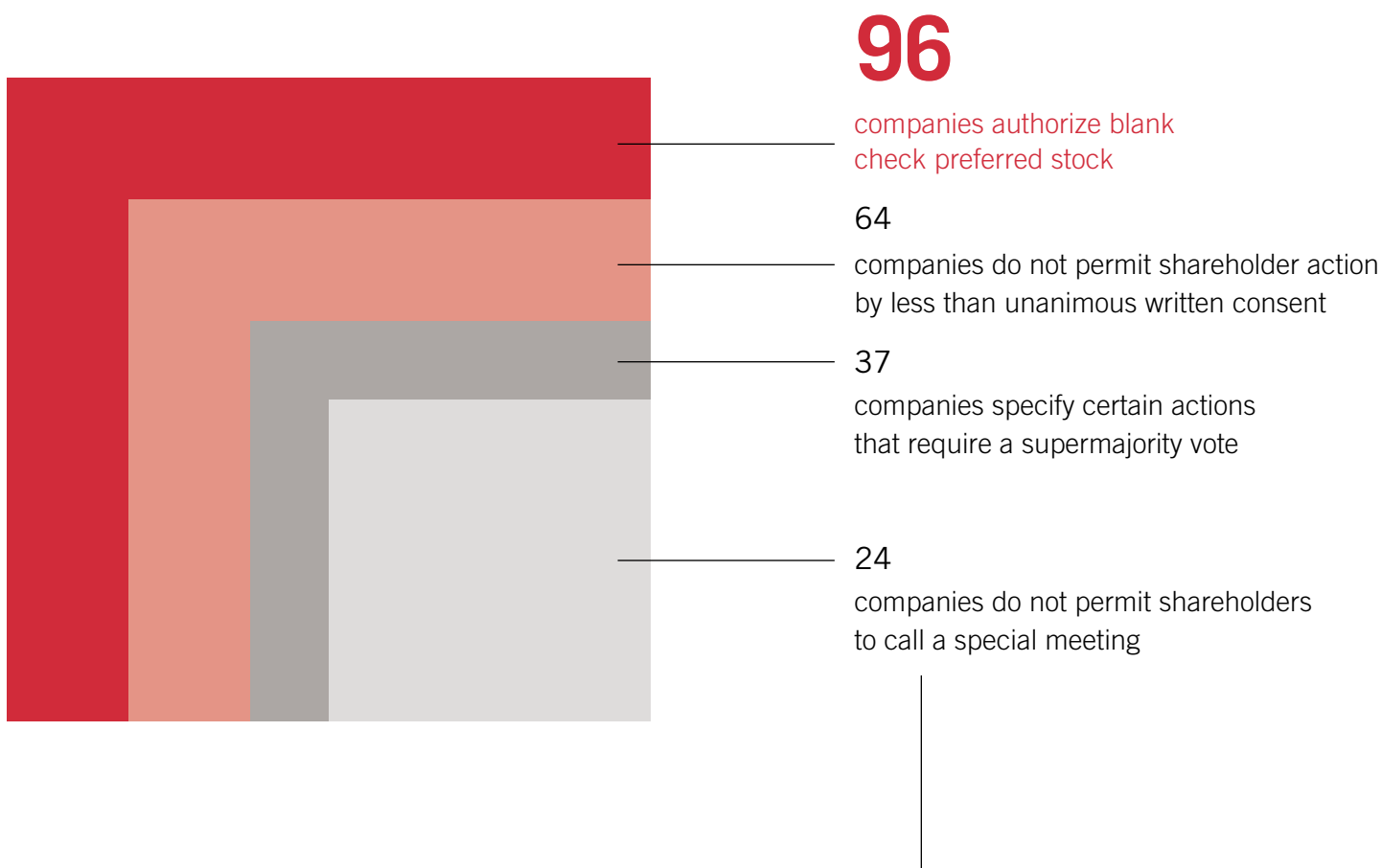


Of the 11 companies with classified boards, two of the companies are in the process of declassifying their respective boards.

 Read more on our website: [corp.gov.shearman.com](http://corp.gov.shearman.com)

## Other Structural Defenses

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



Of the Top 100 Companies, 15 had a shareholder proposal to permit shareholder action by less than unanimous written consent. This was the most frequently submitted structural defense-related shareholder proposal. See page 51 for details.

Of the 76 Top 100 Companies that permit shareholders to call special meetings, 25% is the most common voting threshold required to call a meeting (34 companies). The second most common voting threshold is 10% (12 companies), followed by 20% (11 companies). This does not include companies that have different thresholds for a single shareholder and group of shareholders.

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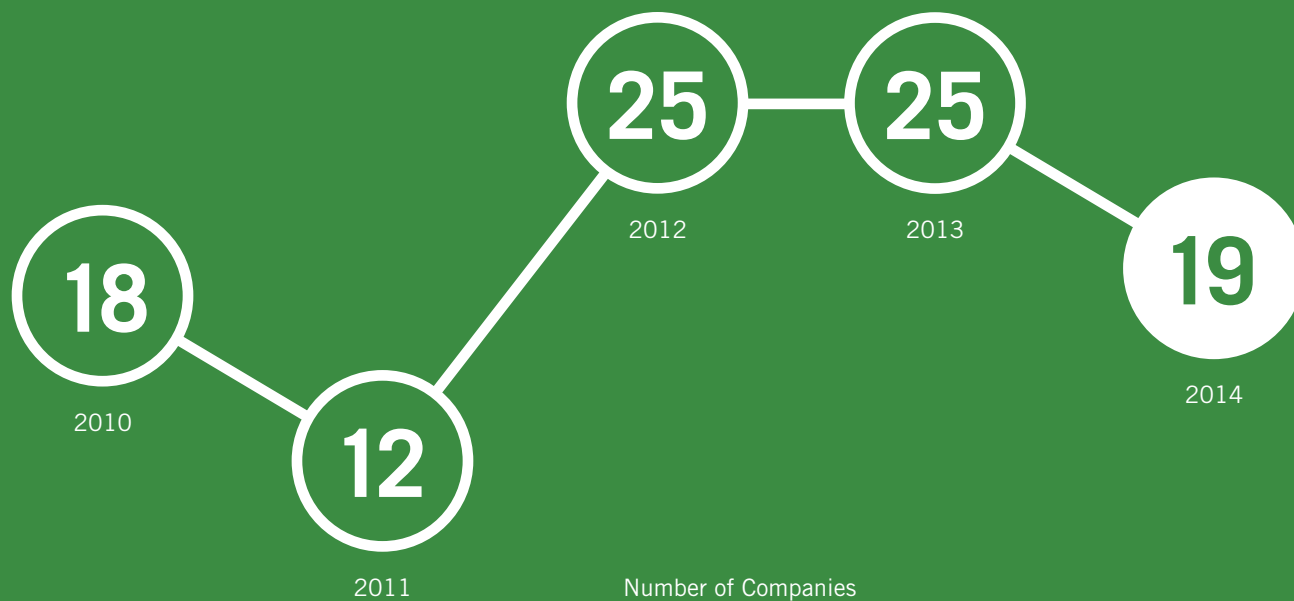
# Shareholder Proposals

## Governance Related Shareholder Proposals

The proxy statements of 48 of the Top 100 Companies included corporate governance related proposals submitted by shareholders. The following four proposals submitted by shareholders were included most frequently.

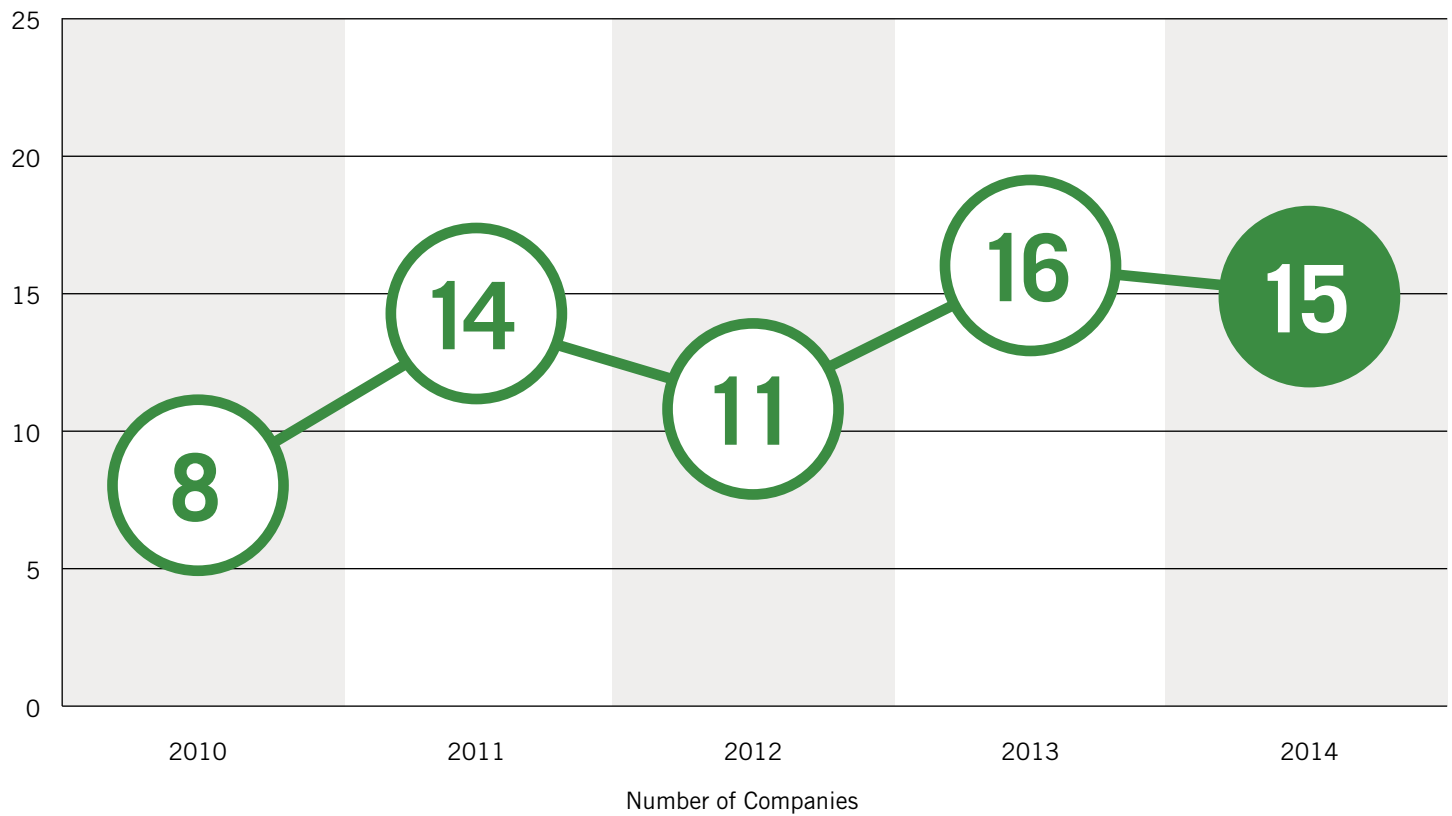
### Independent Board Chair

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



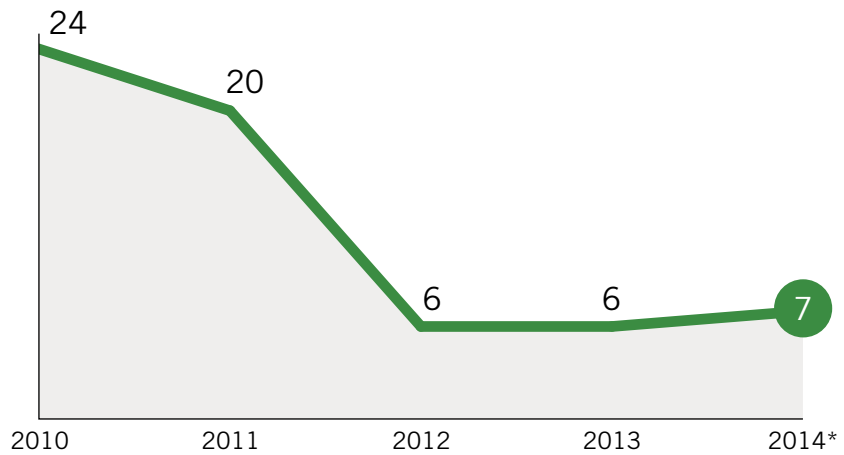
## Shareholder Action by Written Consent

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



## Shareholders Can Call Special Meetings

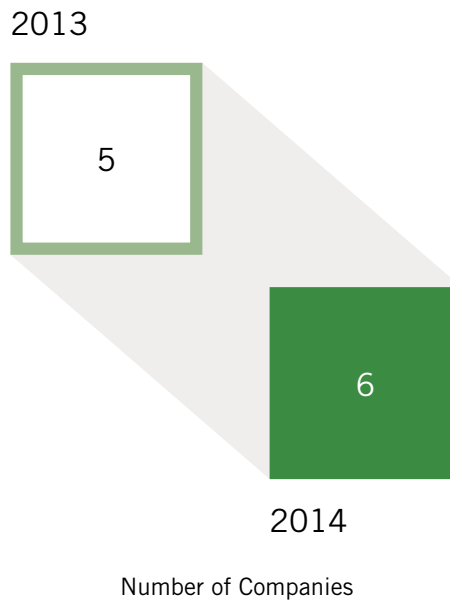
Calls for the board to take steps necessary to amend the company's governing documents to give shareholders holding a certain percentage of the company's outstanding shares the power to call special shareholder meetings.



\*Includes six proposals to amend existing right of shareholders to call special meetings.

## Proxy Access

Calls for the board to take steps necessary to amend the company's governing documents to permit shareholders satisfying certain ownership criteria to include director nominees in the company's proxy materials.



In 2014, 17 of the Top 100 Companies included a shareholder proposal related to environmental initiatives in their proxy statements.

## Other Notable Shareholder Proposals

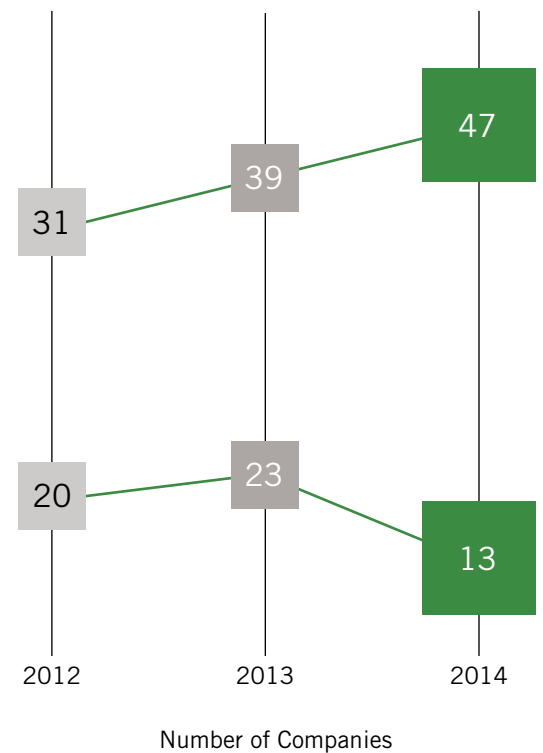
In addition to corporate governance proposals, shareholders also submit proposals addressing a wide range of other topics. The following are two proposals that were frequently submitted in 2014:

### Political Contributions

Calls for the board to disclose information related to the company's political contributions and/or lobbying activities.

### Share Retention

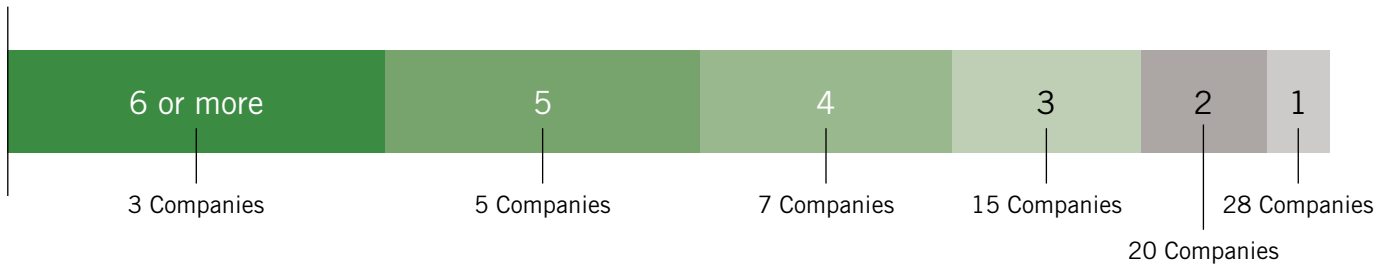
Calls for the board to adopt policies requiring executive officers to retain a certain amount of the company's shares.



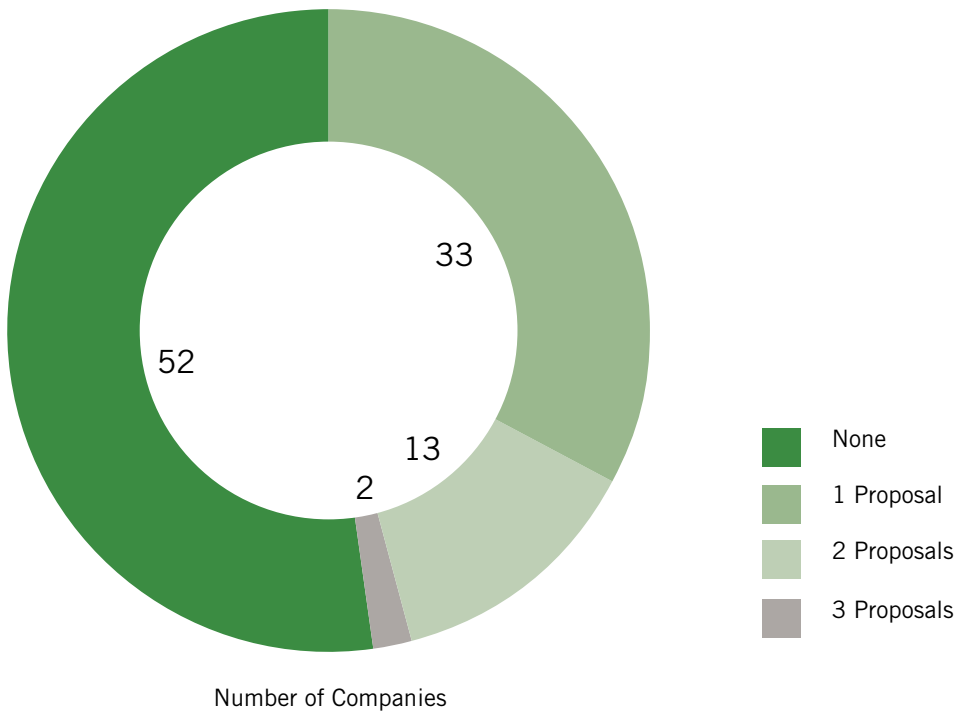
## Number of Shareholder Proposals

Seventy-eight of the Top 100 Companies had at least one shareholder proposal and those proposals cover a variety of topics ranging from environmental matters to human rights.

### Total Number of Shareholder Proposals



### Shareholder Proposals Related to Corporate Governance



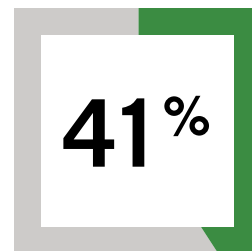


## Average Level of Support for Shareholder Proposals

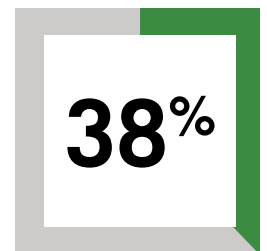
The results for shareholder proposals have been calculated as a percentage of votes cast.\*



Director Elections  
by Majority Vote  
(3 Proposals)



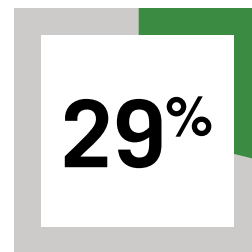
Shareholder Can Call  
Special Meetings  
(7 Proposals)



Shareholder Action  
by Written Consent  
(15 Proposals)



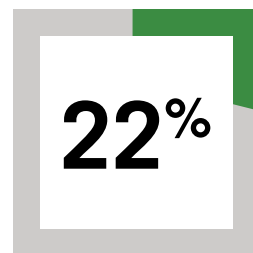
Independent Board Chair  
(19 Proposals)



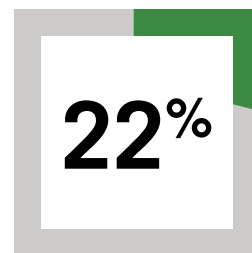
Cumulative Voting  
(5 Proposals)



One Vote Per Share  
(4 Proposals)



Political Contributions  
(47 Proposals)



Share Retention  
(13 Proposals)



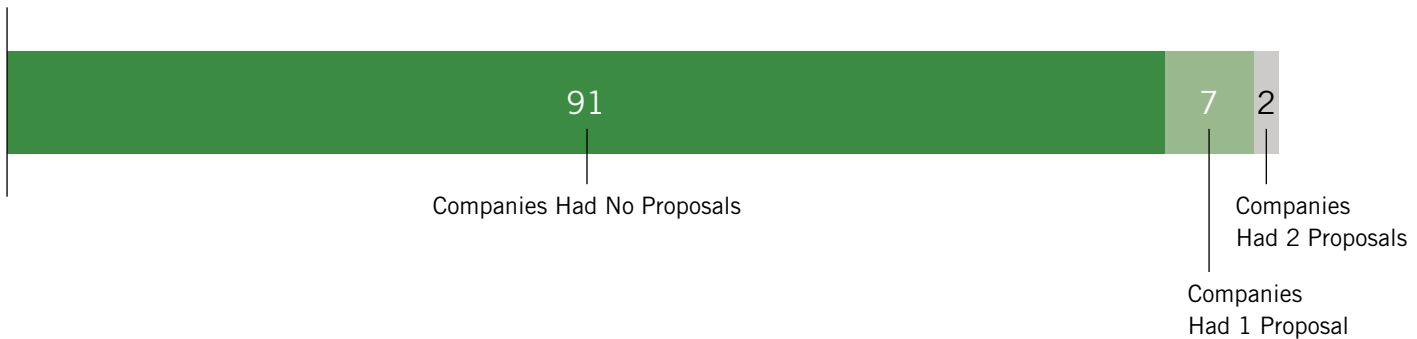
Proxy Access  
(6 Proposals)

\*Rounded to the nearest percentage

## Number of Corporate Governance Related Management Proposals

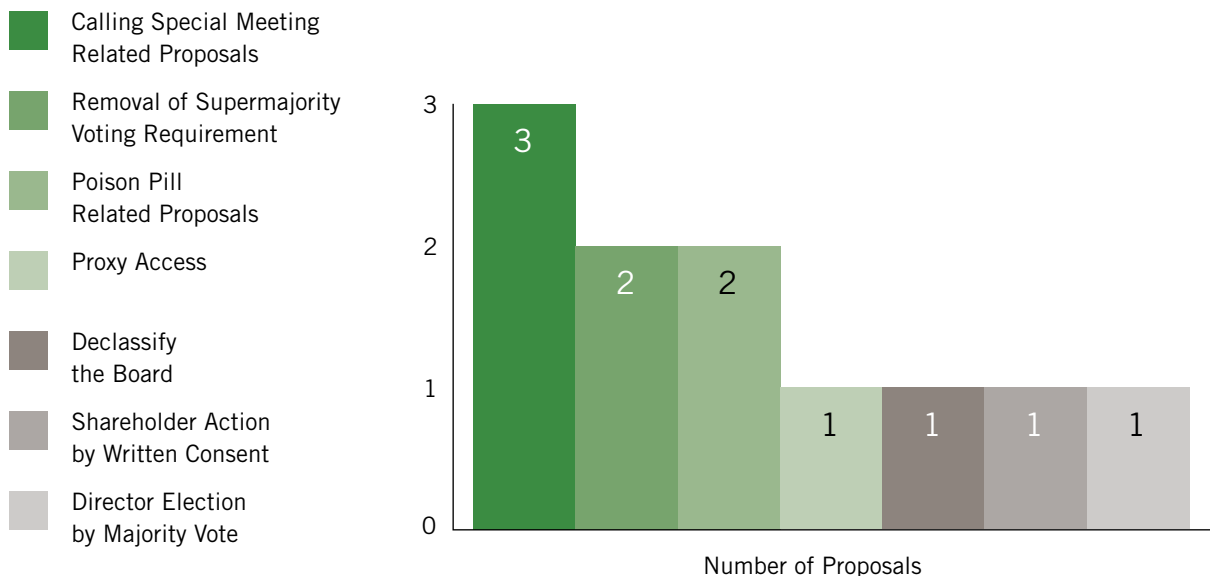
Nine of the Top 100 Companies had at least one management proposal related to corporate governance and two of those companies had more than one proposal. The proxy statements of 91 of the Top 100 Companies did not contain any management proposals related to corporate governance.

### Number of Management Proposals Related to Corporate Governance Submitted to Shareholders



## Details of Corporate Governance Related Management Proposals

The Top 100 Companies included a total of 11 corporate governance related management proposals in their proxy statements.





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# 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 derived the data in this survey from the annual proxy statements, compensation committee charters and corporate governance guidelines posted on the companies’ websites available as of June 1, 2014 for the companies listed below.

3M Company	Costco Wholesale Corporation	JPMorgan Chase & Co.	The Boeing Company
Abbott Laboratories	CVS Caremark Corporation	Las Vegas Sands Corp.*	The Coca-Cola Company
AbbVie Inc.*	Danaher Corporation	Lockheed Martin Corporation	The Dow Chemical Company
Aetna Inc.*	Deere & Company	Lowe’s Companies, Inc.	The Goldman Sachs Group, Inc.
Altria Group, Inc.	Duke Energy Corporation	Marathon Petroleum Corporation	The Home Depot, Inc.
Amazon.com, Inc.	E. I. du Pont de Nemours and Company	MasterCard Incorporated	The Kroger Co.
American Express Company	eBay Inc.	McDonald’s Corporation	The Procter & Gamble Company
American International Group, Inc.	Eli Lilly and Company	McKesson Corporation	The TJX Companies, Inc.
AmerisourceBergen Corporation	EMC Corporation	Medtronic, Inc.	The Walt Disney Company
Amgen Inc.	Emerson Electric Co.	Merck & Co., Inc.	Time Warner Inc.
Apple Inc.	Express Scripts Holding Company	MetLife, Inc.	Twenty-First Century Fox, Inc.*
Archer-Daniels-Midland Company	Exxon Mobil Corporation	Microsoft Corporation	U.S. Bancorp
AT&T Inc.	Facebook, Inc.	Mondelēz International, Inc.	Union Pacific Corporation
Bank of America Corporation	FedEx Corporation	Monsanto Company	UnitedHealth Group Incorporated
Berkshire Hathaway Inc.	Ford Motor Company	Morgan Stanley	United Parcel Service, Inc.
Biogen Idec Inc.*	General Electric Company	NIKE, Inc.	United Technologies Corporation
Bristol-Myers Squibb Company	General Motors Company	Occidental Petroleum Corporation	Valero Energy Corporation
Cardinal Health, Inc.	Google Inc.	Oracle Corporation	Verizon Communications Inc.
Caterpillar Inc.	Halliburton Company	PepsiCo, Inc.	Visa Inc.
Celgene Corporation*	Hewlett-Packard Company	Pfizer Inc.	Walgreen Co.
Chevron Corporation	Honeywell International Inc.	Philip Morris International Inc.	Wal-Mart Stores, Inc.
Cisco Systems, Inc.	Intel Corporation	Phillips 66*	WellPoint, Inc.
Citigroup Inc.	International Business Machines Corporation	Prudential Financial, Inc.	Wells Fargo & Company
Colgate-Palmolive Company	Johnson & Johnson	QUALCOMM Incorporated	
Comcast Corporation	Johnson Controls, Inc.	Starbucks Corporation	
ConocoPhillips		Target Corporation	

\*New to the 2014 Survey

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Eighty-one of the Top 100 Companies are listed on the NYSE and twenty-one are listed on NASDAQ. Two of the Top 100 Companies are listed on both the NYSE and NASDAQ.

This Survey and our companion Survey on executive and director compensation governance practices are available on the Shearman & Sterling LLP website at [corpgov.shearman.com](http://corpgov.shearman.com). Our website also includes information about our annual corporate governance symposium and contact information for the lawyers in our corporate governance advisory group.

We are publishing the surveys in an App available for download from the iTunes Store® and Google Play®. You can find details at [corpgov.shearman.com](http://corpgov.shearman.com).

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Kenji Amma	Ali Hassanali	Alan Sun
Jacob Bitton	Ganaraj S. Hegde	Chris Tomlinson
Terry Bokosha	Brittany Jackson	Leah Trzcinski
Diego Bunster	Ted Lamm	Julia Twarog
Davide Cavazzana	Monica Li	Elizabeth Vinci
Filipe Carneiro	Derrick M. Lott	Isabel Wolleter
Vivian Choi	Maria Mercado	

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