

2015
PROXY SEASON

Results of the 2015 Proxy Season in Silicon Valley

A Comparison of Silicon Valley Public Companies
and Other Large Bay Area Public Companies

Fenwick
FENWICK & WEST LLP

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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 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 a Fenwick survey titled *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*¹, this report summarizes significant developments relating to stockholder voting at annual meetings in the 2015 proxy season among the high technology and life sciences companies included in the Silicon Valley 150 Index (SV 150), as well as the public companies in other industries included in the Bay Area 25 Index (BA 25). These include a variety of statistics regarding director elections, “say-on-pay,” and a variety of other compensation, governance and policy matters.

Annual Meeting Proposals and Voting

In the 2015 proxy season², 144 of the SV 150 companies, and 24 of the BA 25 companies, held annual meetings.³ 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”).

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

- ¹ A copy of the 2015 edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, covering the data through the 2015 proxy season, is available at <http://fenwick.com/CorporateGovernance>.
- ² See “Methodology—Proxy Season / Proxy Statements” below for a discussion of the definition of the proxy season for purposes of this report.
- ³ See footnote 64 and associated text for a discussion of the companies that did not hold annual meetings.

Overview *(continued)*

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.⁴ 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

In 2015, there were approximately 250 public technology and life sciences companies in “Silicon Valley,”⁵ of which the SV 150 captures those that are the largest by one measure — revenue.⁶ The 2015 constituent companies of the SV 150 range from Apple and Hewlett-Packard (HP), with revenue of approximately \$200B and \$110B, respectively, to Ultratech and Marketo with revenue of approximately \$151M and \$150M, respectively, in each case for the four quarters ended on or about December 31, 2014. HP went public in 1957, Apple in 1980, Ultratech in 1993 and Marketo in 2013. Apple and HP’s peers clearly include companies in the Standard & Poor’s 100 Index (S&P 100)⁷, of which they are also constituent members (nine companies were constituents of both indices for the survey in the 2015 proxy season), where market capitalization averages approximately \$118B.⁸ Ultratech and Marketo’s peers are smaller technology companies that have market capitalizations well under \$5B, many of which went public relatively recently. In terms of number of employees, the SV 150 averages 9,115 employees, ranging from HP, with 302,000 employees spread around the world in dozens of countries, to companies such as Aemetis, with 131 employees in two countries, as of the end of their respective fiscal years 2014.

- 4 See the “Methodology—Taxonomy of Proposals” section for a discussion of the topics included in each subject area category.
- 5 The number fluctuates constantly as some companies complete initial public offerings and others are acquired. As of November 20, 2015, Hoover’s included 328 public companies in Silicon Valley (defined by the *San Jose Mercury News* as Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara counties). Of the 328 public companies in Silicon Valley, we consider more than 250 of them technology or life sciences companies based on their “Line of Business” descriptions from Hoover’s as well as their initial sources of funding. The number of Silicon Valley public companies is down from a high of 417 reached in 2000 during the dot com era. See “Vanishing Public Companies Lead To The Incredible Shrinking Silicon Valley” (*SiliconBeat*, February 17, 2010) and “Outside Silicon Valley, IPO Market Still in Drought” (*Seeking Alpha*, May 14, 2011).
- 6 See 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 57.
- 7 By comparison, the companies of the S&P 100 average 133,000 employees and include Wal-Mart, with 2.2 million employees in more than two dozen countries at its most recent fiscal year end. Compared to the S&P 100 (or the broader S&P 500), SV 150 companies are on average much smaller and younger, have lower revenue and are concentrated in the high technology and life sciences industries. 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). See the graphs on pages 4 through 7 of the 2015 edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies* referenced in footnote 1.
- 8 The average market capitalization of the SV 150 at the time of announcement of the current index list (see footnote 57) was approximately \$19.8B, ranging from Aemetis at approximately \$80M to Apple at approximately \$744B, with a median of \$2.5B. The median revenue of the SV 150 for the four quarters ended on or about December 31, 2014 was approximately \$602M. It is also worth noting that for the 2015 proxy season year 30 SV 150 companies were also constituents of the S&P 500. In November 2015, Hewlett Packard Company (HP) split into two companies, HP, Inc. (HPQ) and Hewlett Packard Enterprise Company (HPE). As a result, HP’s revenues, market capitalization and employee base will be split between HPQ and HPE going forward (for example, approximately 252,000 of HP’s employees became employees of HPE). Thus far, HPQ has been included in the S&P 100 since the split, but not HPE.

Overview *(continued)*

Rather than a traditional comparison to large public companies (such as the S&P 100), for which a wealth of information regarding proxy season results is already publicly available, for some subjects we have included a comparison to the BA 25, the 25 largest public companies in the San Francisco Bay Area outside of the high technology and life sciences industries.⁹ The 2015 constituent companies of the BA 25 range from Chevron (which is more than a century old and has been publicly traded for decades), with revenue of approximately \$192B, market capitalization of approximately \$197B and approximately 64,700 employees, to Diamond Foods (which, in 2005, was formed from a farming cooperative and went public), with revenue of approximately \$886M, market capitalization of approximately \$1B and 1,696 employees.¹⁰ The industries included in the BA 25 range from financial services to apparel, food products, air transport and more. In terms of the range of company sizes, the SV 150 is more similar to the BA 25 than the S&P 100 (though the BA 25 still skews toward the larger SV 150 companies.¹¹

While not specifically studied in this report, it is worth noting that the broad range of companies in the SV 150 (whether measured in terms of size, age or revenue) is associated with a corresponding range of governance practices. Comparison of governance practice statistics and trends for the top 15,¹² top 50,¹³ middle 50¹⁴ and bottom 50¹⁵ companies of the SV 150 (in terms of revenue) bears this out.¹⁶ 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 report¹⁷) may be obtained by consulting your Fenwick & West Securities Partner.

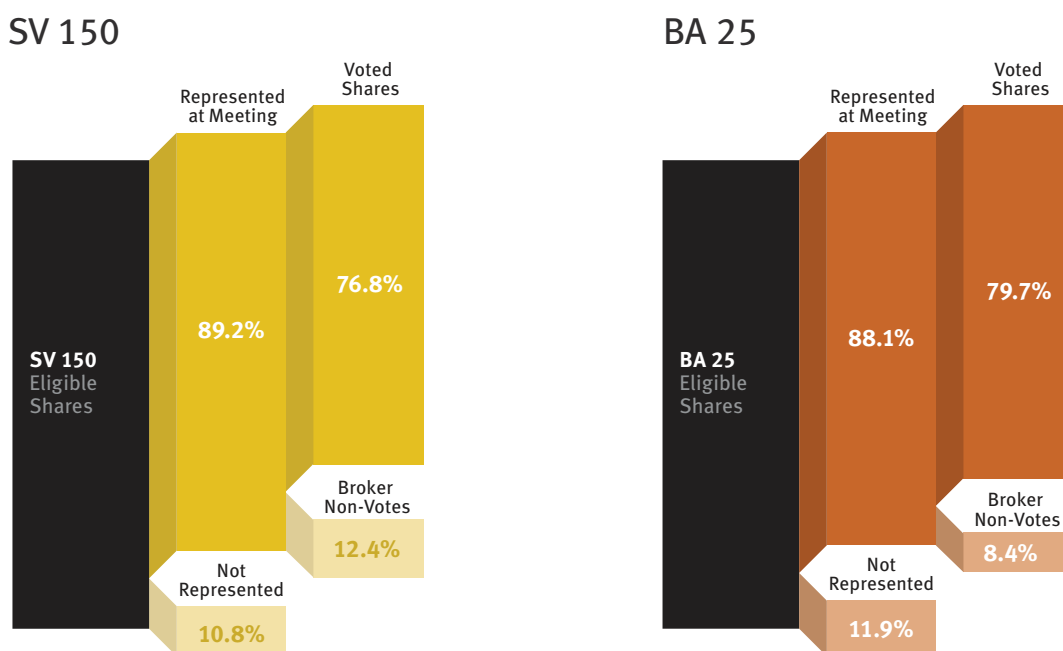
- 9 There are approximately 75 public companies in the Silicon Valley region (defined by the *San Jose Mercury News* as Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara counties) that are outside of the technology or life sciences industries (see footnote 5).
- 10 The average market capitalization of the BA 25 at the time of announcement of the current index list (see footnote 57) was approximately \$34.5B, ranging from Yasheng Group at approximately \$90M to Wells Fargo at approximately \$280B, with a median of \$9.1B. The median revenue of the BA 25 for the four quarters ended on or about December 31, 2014 was approximately \$4.7B. Three of the BA 25 companies are constituents of the S&P 100 (Chevron, Wells Fargo and Visa). It is also worth noting that for the 2015 proxy season 16 BA 25 companies were also constituents of the S&P 500.
- 11 In terms of revenues, the BA 25 is most comparable to the top 50 companies of the SV 150 (see footnote 13).
- 12 The top 15 includes companies, nine of which are included in the S&P 100, with revenue of approximately \$6.3B or more and market capitalizations averaging \$147B, ranging from Sanmina-SCI at approximately \$2.1B to Apple at approximately \$744B at the time of announcement of the current index list (see footnote 57).
- 13 The top 50 includes companies with revenue of approximately \$1.4B or more and market capitalizations averaging \$54.4B, ranging from Omnivision Technologies at approximately \$1.5B to Apple at approximately \$744B at the time of announcement of the current index list (footnote 57).
- 14 The middle 50 includes companies with revenue of at least approximately \$373M but less than approximately \$1.4B and market capitalizations averaging \$4.0B, ranging from Ultra Clean at approximately \$269M to Pharmacyclics at approximately \$19.6B at the time of announcement of the current index list (footnote 57).
- 15 The bottom 50 includes companies with revenue of at least approximately \$150M but less than \$369M and market capitalizations averaging \$1.1B, ranging from Aemetis at approximately \$80M to SolarCity at \$4.8B at the time of announcement of the current index list (footnote 57).
- 16 Contrasting the top 15 or top 20 SV 150 companies (in the latter case, companies with revenue of approximately \$5.4B or more and market capitalizations averaging \$116.3B at the time of announcement of the current index list) against the remaining SV 150 companies is similarly enlightening (footnote 57). In 2015, the SV 150 included 21 life sciences companies (broadly defined) and 129 high technology companies. There are also some differences between high technology and life sciences companies as groups within the SV 150.
- 17 Such as comparisons of the top 15 or top 20 SV 150 companies against the remaining SV 150 companies, comparisons of high 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 2015 proxy season, an average of approximately 89% of shares of SV 150 companies were represented in person or by proxy at company annual meetings. However, in addition to the approximately 11% that were not represented, an additional 12% 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”).¹⁸ This compares to 12% not represented and 8% broker non-votes in the BA 25 in the same period. However, the ranges of representation and voting were substantially broader in the SV 150 than the BA 25 (e.g., 42% – 99% voting in the SV 150, compared to 58% – 90% voting in the BA 25).

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 BA 25 in the 2015 proxy season.

VOTING SHARES — BRANCHING AVERAGE PERCENTAGE — 2015 PROXY SEASON



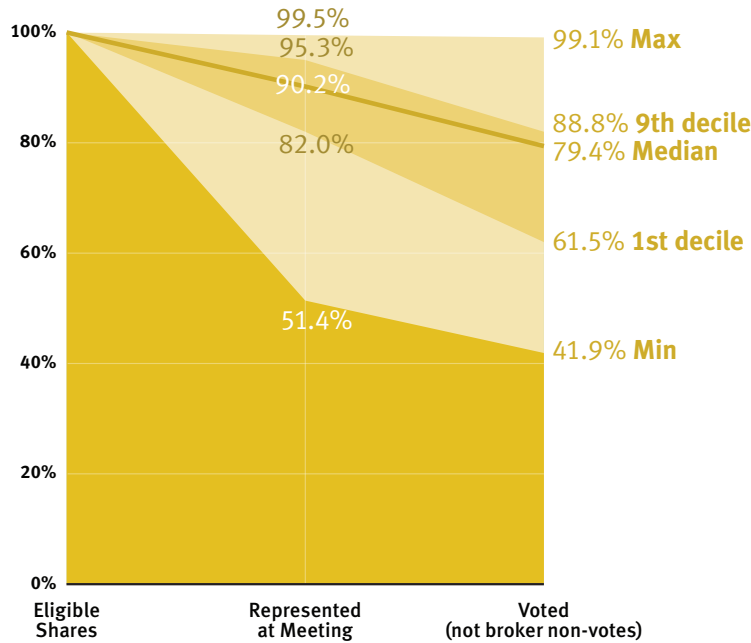
¹⁸ New York Stock Exchange Rule 452 governing brokers (which consequently applies to shares listed on other stock exchanges) significantly limits discretionary voting by brokers when they have not received voting instructions from the beneficial owners of the shares. As a practical matter, discretionary 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)

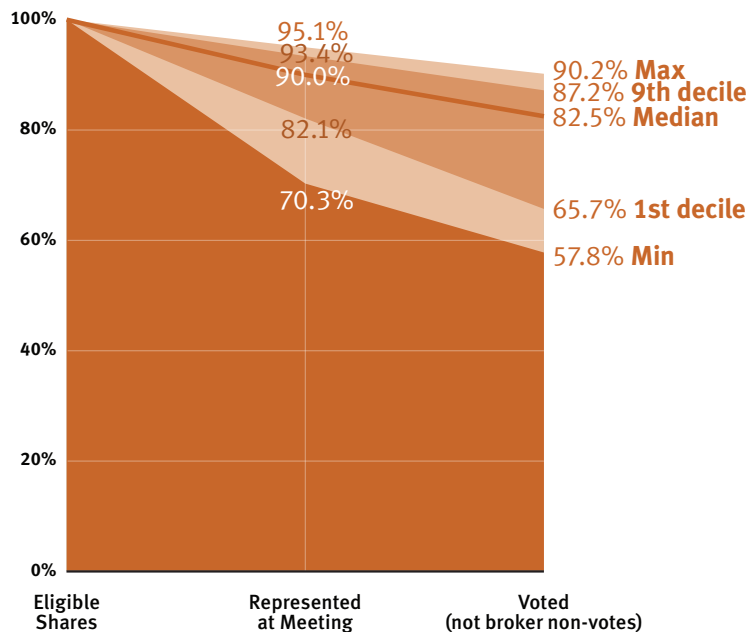
The following graphs show the distribution by percentage of shares eligible of the shares that were represented and shares that voted at the annual meetings of the companies in the SV 150 and BA 25 in the 2015 proxy season (showing the median percentage, maximum and minimum percentages for the group, and the cutoffs for the deciles with the lowest and greatest percentage of shares represented or voting).

DISTRIBUTION OF REPRESENTED AND VOTED SHARES — 2015 PROXY SEASON

SV 150



BA 25

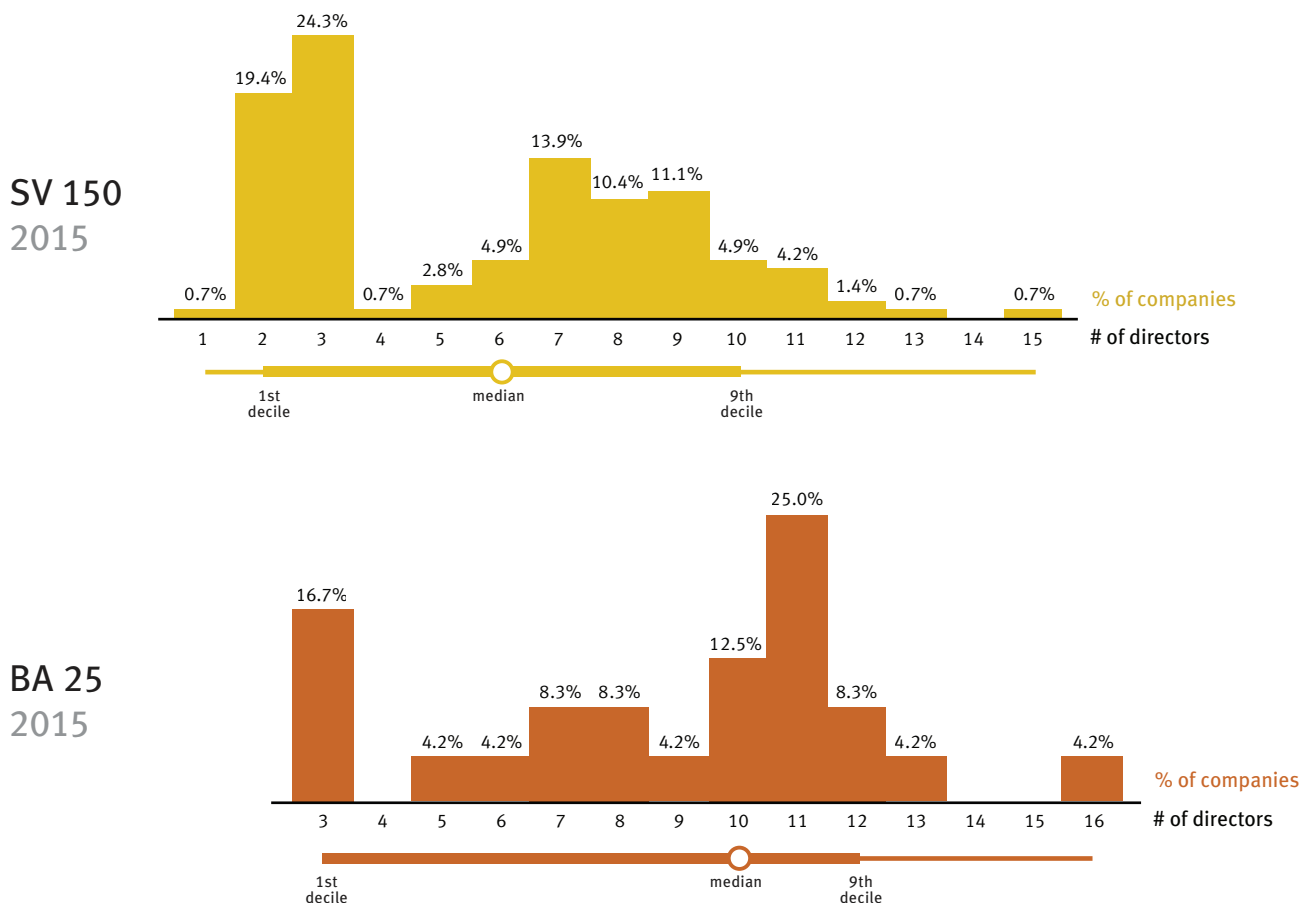


Director Elections

The average size of the board slate actually up for election among the SV 150 was 5.7 directors (median = 6), compared to 8.8 directors among the BA 25 (median = 10). The most common number of directors being elected (mode) was 3 directors, with the number ranging from 1 to 15 directors being elected in the SV 150 (compared to a mode of 11 and range of 3 to 16 directors among the BA 25). This is largely driven by classified boards, which were present in 45% of SV 150 companies in 2015¹⁹ (compared to only 20% among the BA 25).

The following graphs show the distribution by number of director nominees for election at the annual meeting among the SV 150 companies and BA 25 companies during the 2015 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



¹⁹ 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 2015 edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, available at <http://fenwick.com/CorporateGovernance>.

Director Elections *(continued)***Contested Elections**

In the vast majority of cases, the elections of directors were uncontested.²⁰ However, two SV 150 companies had contested elections in the 2015 proxy season (none of the BA 25 companies had a contested election). Shutterfly and Rovi had slates of 3 and 7 board-nominated candidates, respectively. In each case, the board slate was competing with an investor-nominated slate of 3 candidates, two of which were ultimately elected in lieu of board-nominated candidates. Shutterfly's board-nominated slate received an average of 39% of votes cast or withheld, while Rovi's board-nominated slate received an average of 68%.

Uncontested Elections

There were 142 uncontested elections of directors in the SV 150 (and 24 in the BA 25). Since they were uncontested, election of the board-nominated candidates was generally not in doubt, subject only to any applicable majority voting policy.²¹ Of those companies, only one company had a director that did not receive more votes "for" than "against" or "withheld," and that company does not have a majority voting requirement for election.²²

In the SV 150, the median of the average percentage of votes for (as opposed to votes against or withheld)²³ each company's nominees was 97.7%, ranging from 72.8% on average up to 100% voted for the board-sponsored nominees (compared to a median of 99.0% and range of 97.9% to 99.9% in the BA 25).²⁴ Approximately 14.8% of the SV 150 that had uncontested elections (or 21 companies) had an average of 10% or more of the vote against or withheld from their board-nominated candidates (compared to none in the BA 25). That percentage falls to 3.5% (or 5 companies) that had 20% or more of the vote against or withheld from their nominees.

20 See "Methodology—Contested / Uncontested Elections of Directors" for a discussion of which elections were treated as contested or uncontested and related matters.

21 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 2015 edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, available at <http://fenwick.com/CorporateGovernance>.

22 Netflix had a single director (of the three nominees on the board slate) who did not receive a majority (approximately 52% of the votes were withheld, excluding broker non-votes).

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

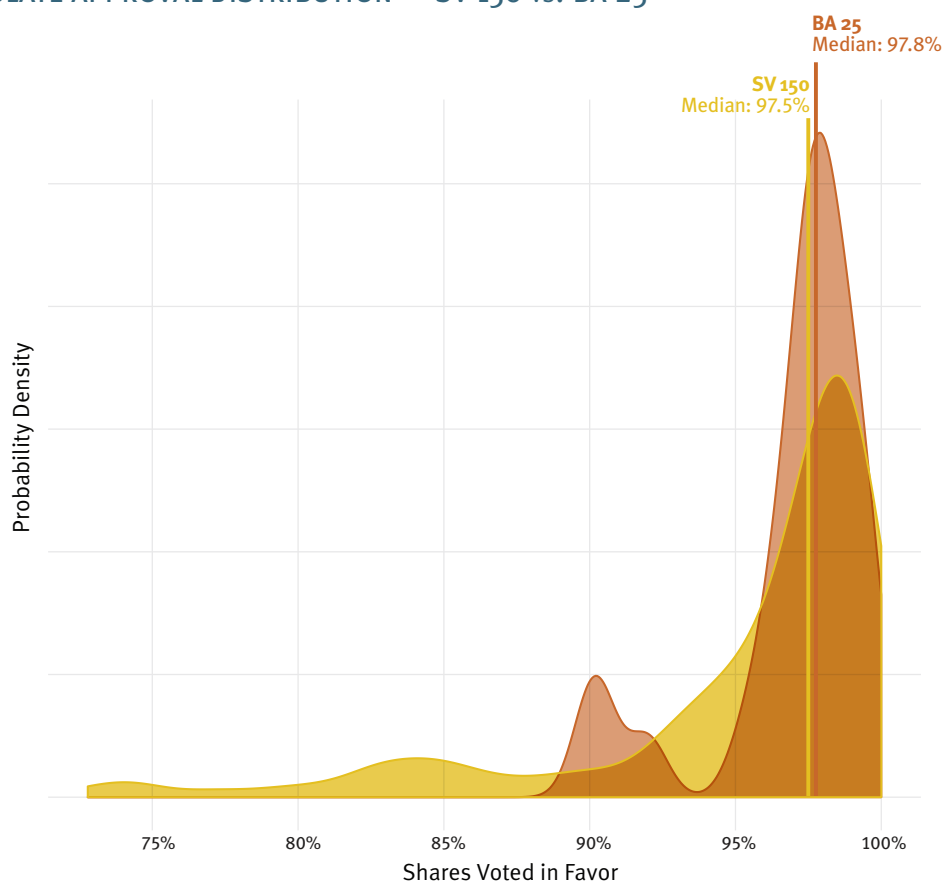
24 If a controlled company is excluded, the maximum average vote received would still be 99.8% (and there were twelve other companies with an average of 99.5% or more).

Director Elections (continued)

Uncontested Director Elections	Number of Companies Holding Director Elections	Average of Average %age of Shares For (of Votes Cast or Withheld)	Average of Average %age of Shares For (of Shares Represented)	Average of Average %age of Shares For (of Shares Eligible)
All SV 150 Companies	144	95.2%	82.4%	72.9%
Top 15 Companies	15	96.0%	84.8%	73.3%
Top 50 Companies	50	95.4%	84.3%	74.5%
Middle 50 Companies	44	97.0%	84.7%	76.2%
Bottom 50 Companies	48	93.4%	78.3%	68.1%
All BA 25 Companies	24	97.0%	90.3%	75.5%

The following graph shows the distribution by average percentage approval for board-nominated director candidates among the SV 150 companies and BA 25 companies during the 2015 proxy season (showing the median for each group).²⁵

BOARD SLATE APPROVAL DISTRIBUTION — SV 150 vs. BA 25

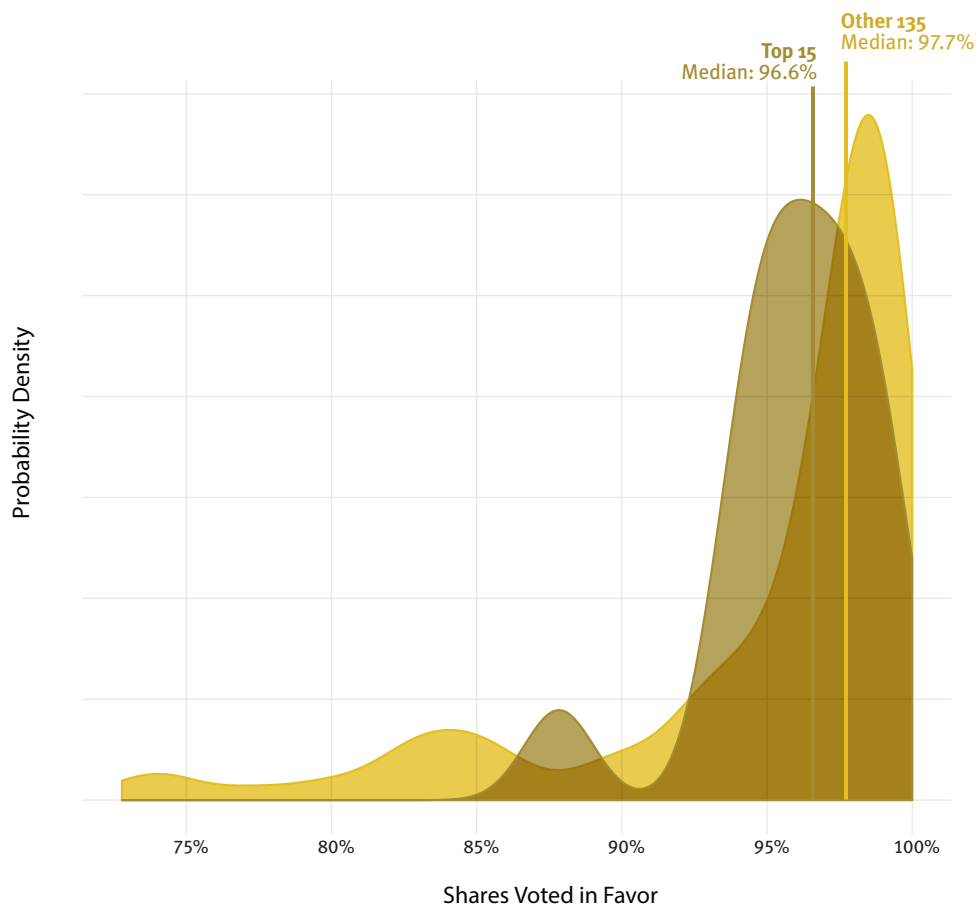


²⁵ See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

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 2015 proxy season (showing the median for each subgroup).²⁶

SV 150 BOARD SLATE APPROVAL DISTRIBUTION BREAKDOWN — TOP 15

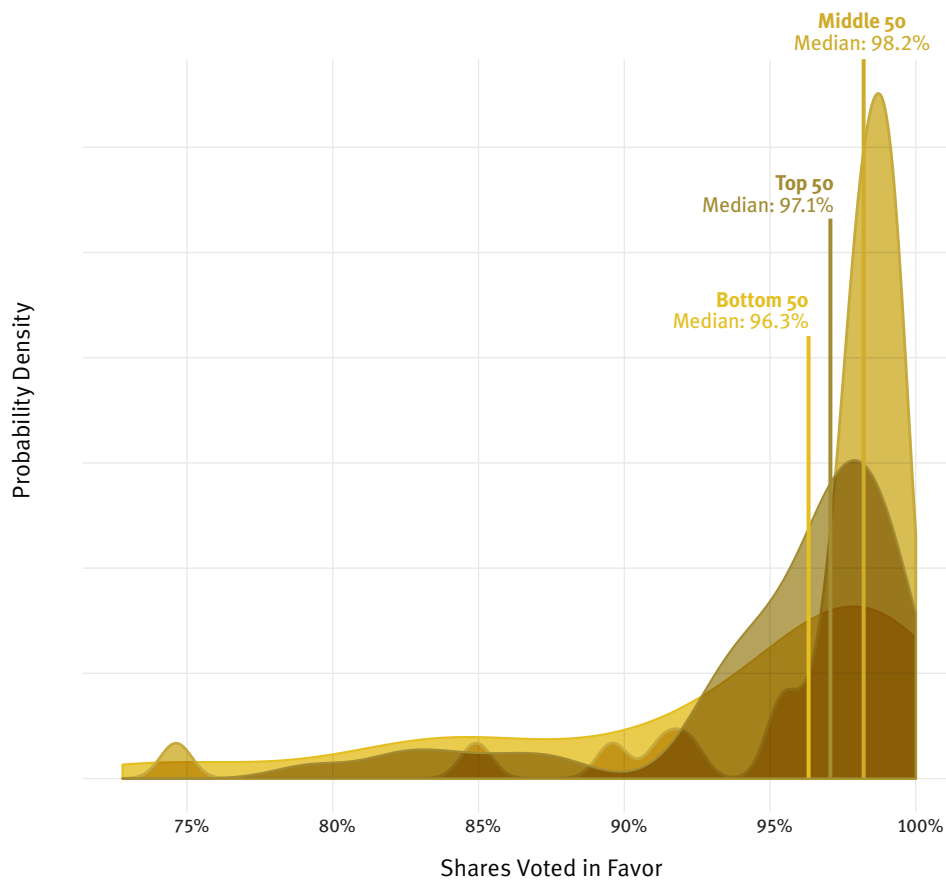


²⁶ See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

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 2015 proxy season (showing the median for each subgroup).²⁷

SV 150 BOARD SLATE APPROVAL DISTRIBUTION BREAKDOWN BY 50s



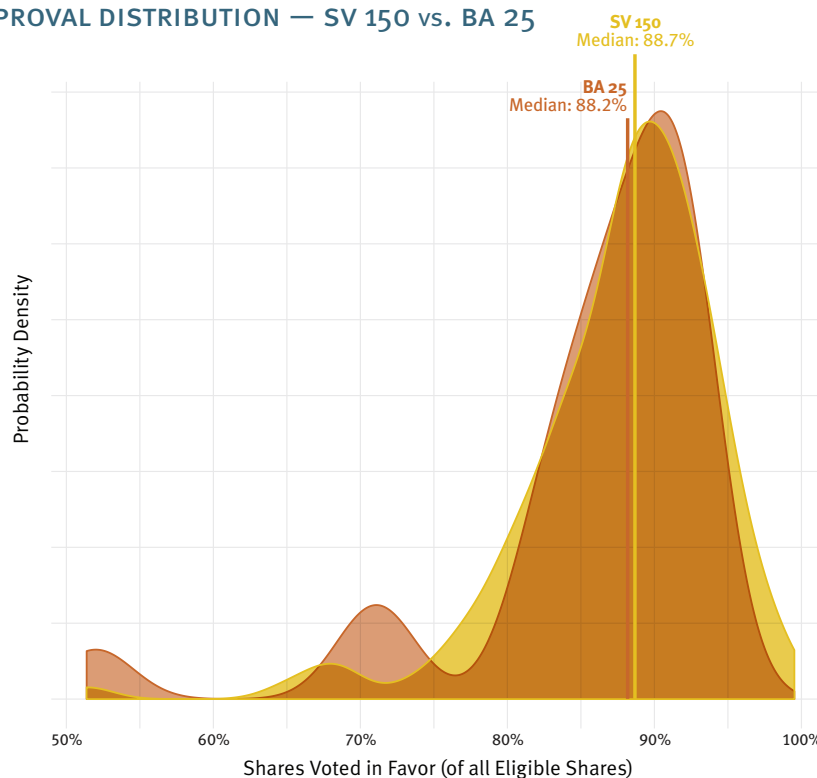
²⁷ See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

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.²⁸ All of the 144 companies in the SV 150 and the 24 companies of the BA 25 that held annual meetings in the 2015 proxy season included auditor ratification among the matters being voted upon by stockholders. Generally these votes are uncontroversial. Unsurprisingly, the selection of auditors was ratified at 100% of companies. In the SV 150, the median percentage approval was 98.9% with a range of 72.8% to 100% (compared to a median of 99.0% and range of 97.9% to 99.9% in the BA 25).²⁹ Among SV 150 companies, only 5.6% had 5% or more that voted against or abstained with respect to auditor ratification (only one company 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 BA 25 companies during the 2015 proxy season (showing the median for each group).³⁰

AUDITOR APPROVAL DISTRIBUTION — SV 150 vs. BA 25



²⁸ 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.

²⁹ The average approval in the SV 150 was 98.2% of shares voting or abstaining (compared to 99.0% in the BA 25).

³⁰ 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 (generally referred to as a "say-on-pay" vote).³¹ In the 2015 proxy season, 116 companies in the SV 150 held say-on-pay votes at their annual meetings (as did 21 companies in the BA 25).³² Of those, five companies in the SV 150 lost the say-on-pay vote (none in the BA 25).³³

In the SV 150, the average support was 89.2% of votes cast (ignoring abstentions and broker non-votes), with a median of 95.9% and range of 15.2% to 100% (compared to an average of 94.6% in the BA 25, with a median of 97.0% and a range of 67.2% to 99.7%). If abstentions are included (effectively treated as non-support), average support in the SV 150 drops to 88.6%, with a median of 95.4% and range of 12.8% to 99.0% (compared to an average of 94.0% in the BA 25, with a median of 96.5% and a range of 66.9% to 99.7%).

Opposition to named executive officer compensation reached 15% or more of votes cast (ignoring abstentions and broker non-votes) at 23% of SV 150 companies (compared to 10% of BA 25 companies). Within those SV 150 companies with relatively lower levels of support, opposition reached 30% or more at 10 companies (of which eight had opposition of 40% or more, including the aforementioned five companies where opposition exceeded 50%).³⁴

Say-on-Pay Proposals	Number of Companies Holding Say-on-Pay Votes	Number of Say-on-Pay Proposals that 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)
All SV 150 Companies	116	111	89.2%	88.6%	77.4%	69.2%
Top 15 Companies	13	12	82.6%	82.0%	71.2%	61.8%
Top 50 Companies	44	43	87.8%	87.4%	77.3%	68.5%
Middle 50 Companies	41	39	91.6%	90.9%	80.2%	72.7%
Bottom 50 Companies	31	29	87.8%	87.0%	74.0%	65.6%
All BA 25 Companies	21	21	94.6%	94.0%	84.5%	73.8%

³¹ 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.

³² 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.

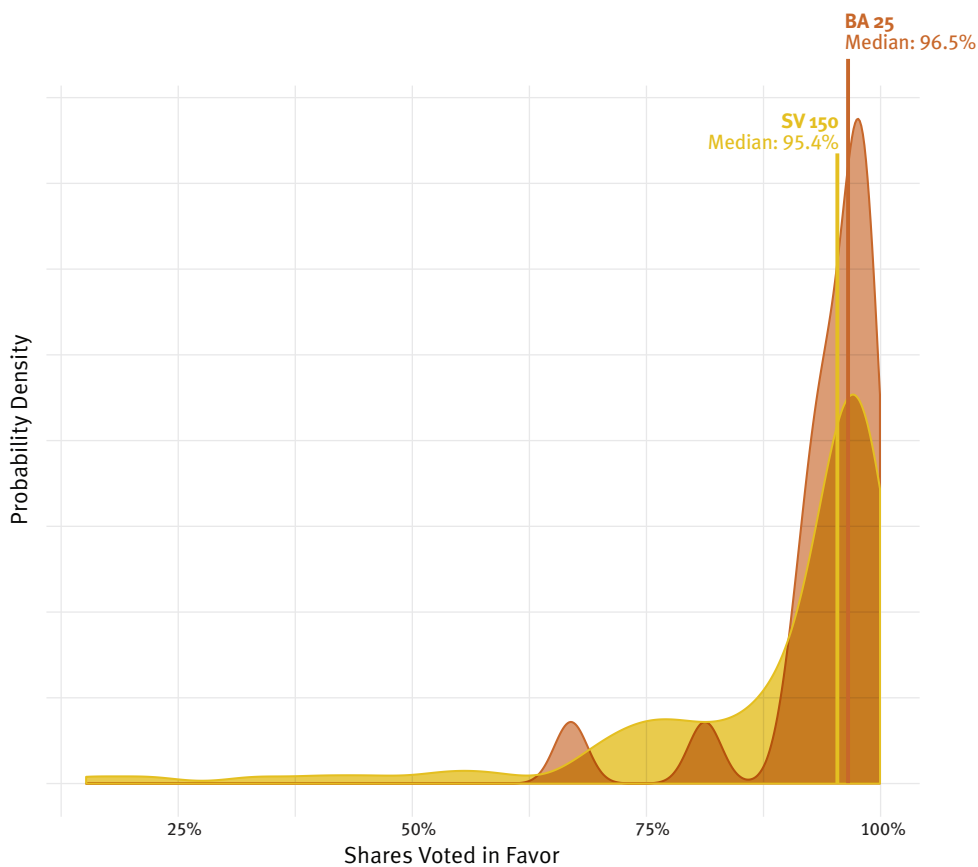
³³ Those companies (in order of SV 150 rank) are Oracle, Shutterfly (which also had a contested director election), TiVo, Applied Micro Circuits and Ultratech. That equates to a 95.7% passage rate for the SV 150.

³⁴ Within the BA 25, one company had opposition above 15% or more (in fact, above 30%).

Say-on-Pay (continued)

The following graph shows the distribution by percentage approval of executive officer compensation among the SV 150 companies and BA 25 companies during the 2015 proxy season (showing the median for each group).³⁵

SAY-ON-PAY APPROVAL DISTRIBUTION — SV 150 vs. BA 25

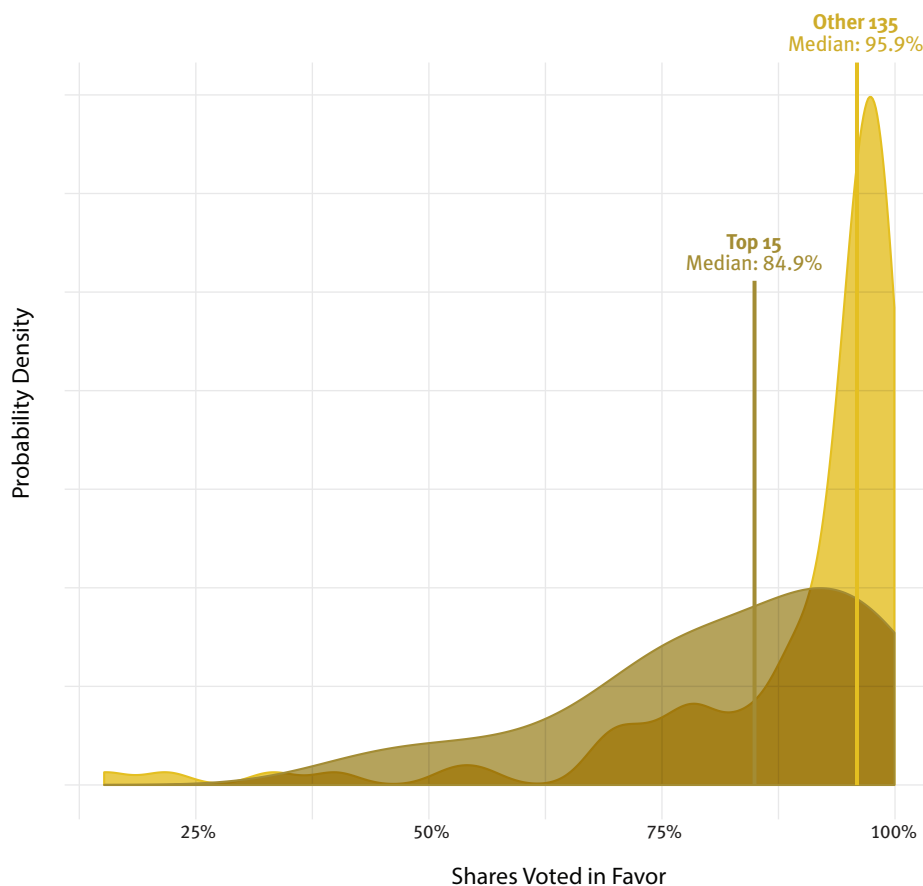


³⁵ See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

Say-on-Pay (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 2015 proxy season (showing the median for each subgroup).³⁶

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

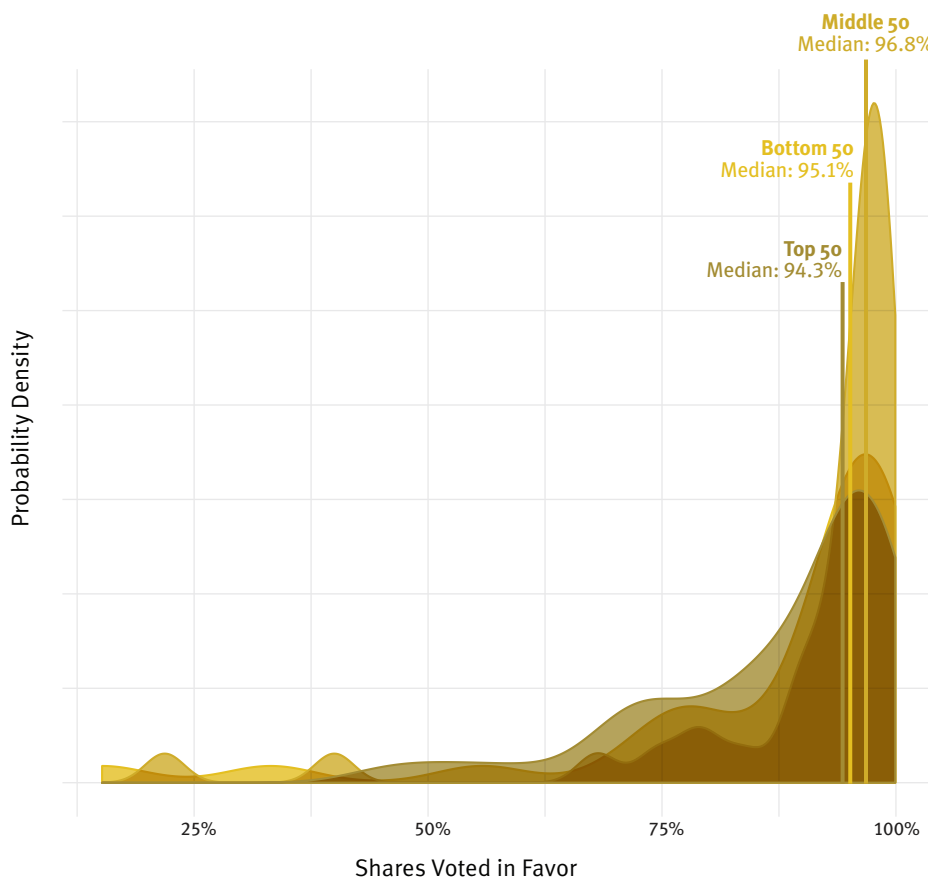


³⁶ See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

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 2015 proxy season (showing the median for each subgroup).³⁷

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



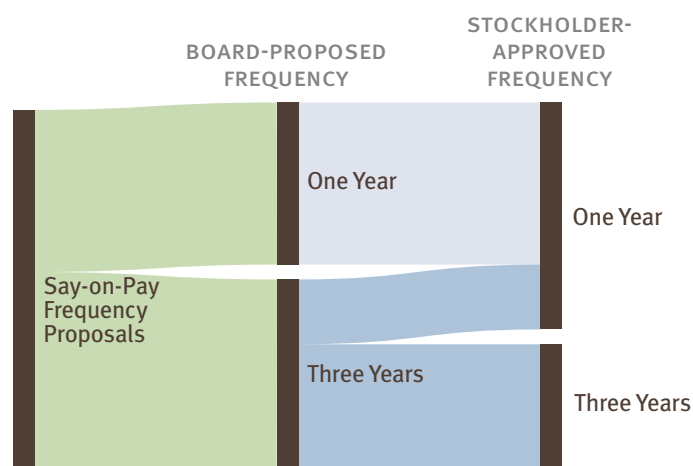
³⁷ See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

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.³⁸ Among the SV 150 companies, 11 companies held say-on-pay frequency votes (sometimes referred to as a "say-on-frequency" vote) during the 2015 proxy season.³⁹ Of those, the board recommended annual frequency at five companies and triennial frequency at six companies. Where annual frequency was recommended, it was approved by stockholders. Where triennial frequency was recommended, it was approved by stockholders at two-thirds of the companies (with annual frequency winning the most votes at the other companies⁴⁰).

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 2015 proxy season (showing the breakdown of the result by frequency recommended).

SV 150 SAY-ON-PAY FREQUENCY VOTING



³⁸ See Section 14A(a)(2) of the Securities Exchange Act of 1934, as amended, and Rule 14a-21(b).

³⁹ Only two BA 25 companies held say-on-frequency votes in the 2015 proxy season, with both boards recommending annual frequency that stockholders approved by large majorities (though certainly not unanimously).

⁴⁰ In each case, only about 70% of the vote favored annual frequency.

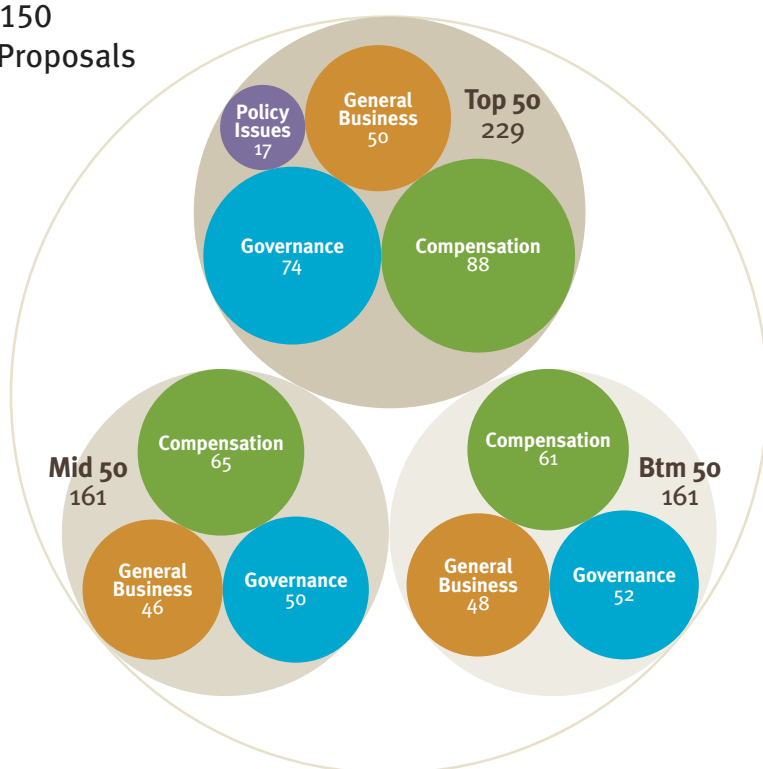
Other Proposals Voted On

Stockholders voted on 551 matters at the 144 annual meetings held by SV 150 companies (compared to 95 matters at 24 annual meetings of BA 25 companies).⁴¹ 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 136 proposals (compared to 41 such proposals voted on by stockholders of BA 25 companies).⁴²

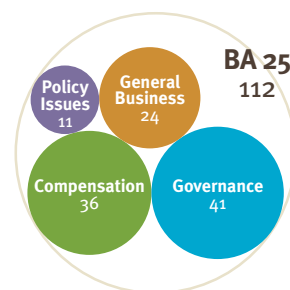
The following graph illustrates the number of proposals during the 2015 proxy season in the SV 150 broken down by subject area category and by top 50, middle 50 and bottom 50 companies, as well as the BA 25 broken down by subject area category.

PROPOSALS BREAKDOWN BY PROPONENT AND SUBJECT AREA CATEGORY — SV150 vs. BA 25

SV 150 All Proposals



BA 25 All Proposals



⁴¹ Director elections at each company were treated as a single matter, irrespective of the number of directors being elected.

⁴² There would have been 137 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 no representative of the stockholder attended the company's annual meeting and presented the proposal as required by [Rule 14a-8\(h\)](#). 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). The table on page 18 indicates the number for each topic (within each subject area) included in the diagram on this page and page 19.

Other Proposals Voted On *(continued)*

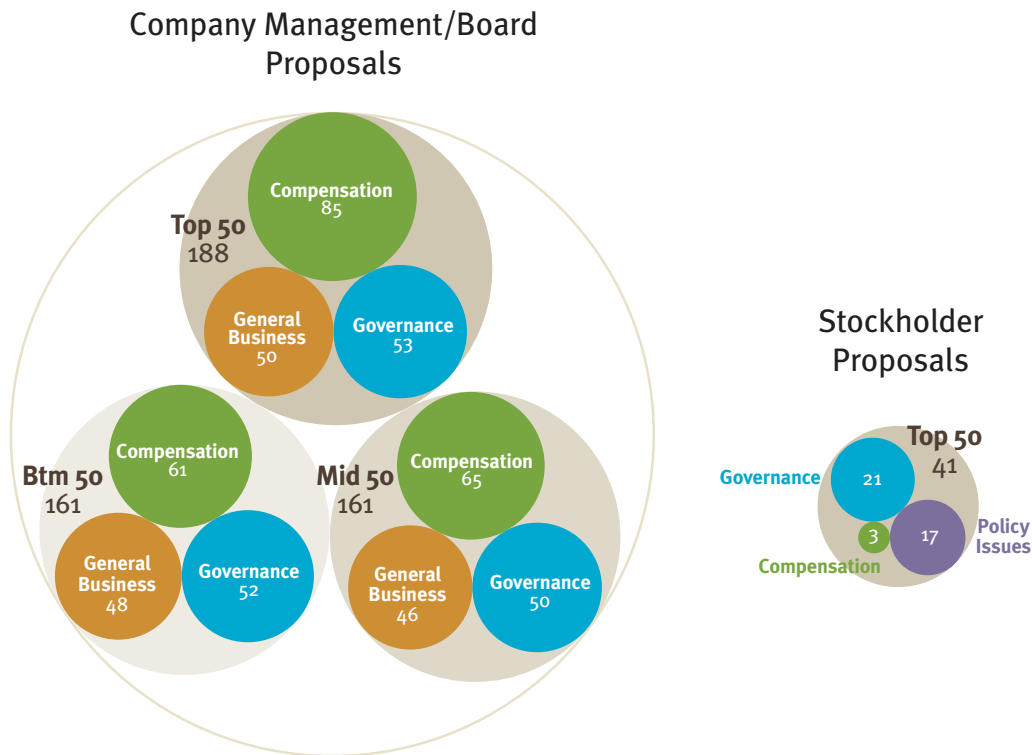
Generally, stockholders at larger companies were asked to vote on more matters than at smaller companies. These proposals, which were either advanced by the companies' boards of directors or by stockholders, generally can be grouped into categories of compensation, governance, policy issues or other general business. The increased number of proposals considered by stockholders at larger companies was a function of the fact that no stockholder-sponsored proposals were voted on 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 Bay Area 25 Total Number of Proposals Voted Upon	SV 150	Top 50	Middle 50	Bottom 50	Top 15	Other 135	BA 25
Number of Companies Holding Annual Meetings	144	50	46	48	15	129	24
ALL PROPOSALS:	551	229	161	161	82	467	112
Compensation:	214	88	65	61	25	189	36
Change-in-Control Payouts/Vesting (Golden Parachutes)	0	0	0	0	0	0	2
Clawbacks	1	1	0	0	0	1	0
Option/Equity Plan Change/Approval	78	36	19	23	9	69	9
Performance Metrics/Pay Performance	6	5	1	0	3	3	1
Say-on-Pay	116	44	41	31	13	103	21
Say-on-Pay Frequency	11	1	3	7	0	11	2
Other Compensation-Related Matters	2	1	1	0	0	2	1
Governance:	176	74	50	52	30	144	41
Board Declassification	3	2	0	1	1	2	0
Board Slate Approval or Competing Director Slate	144	50	46	48	15	127	24
Certificate/Bylaws Change	5	1	2	2	0	5	4
Cumulative Voting – Repeal	1	1	0	0	0	1	0
Elimination of Supermajority	1	0	1	0	0	1	5
Independent Chair	3	3	0	0	2	1	3
Majority Voting Standard	5	5	0	0	3	2	1
Proxy Access	6	6	0	0	4	2	2
Recapitalization	2	2	0	0	2	0	0
Stockholder Ability to Act by Written Consent	5	4	0	1	3	2	0
Stockholder Ability to Call Special Meetings	0	0	0	0	0	0	1
Stockholder Rights Plan/Poison Pill	1	0	1	0	0	1	0
Other Governance Issues	0	0	0	0	0	0	1
Policy Issues:	17	17	0	0	12	5	11
Animal Testing/Welfare	2	2	0	0	0	2	0
Anti-Discrimination/Diversity	2	2	0	0	1	1	1
Environmental/Sustainability	5	5	0	0	5	0	2
Human Rights	2	2	0	0	1	1	0
Political/Lobbying Activities	2	2	0	0	2	0	6
Other Policy Issues	4	4	0	0	3	1	2
General Business:	144	50	46	48	15	129	24
Auditor Approval	144	50	46	48	15	129	24

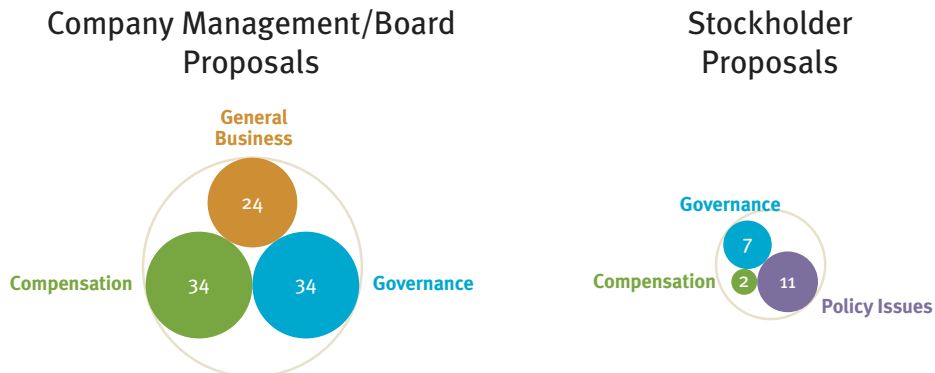
Other Proposals Voted On (continued)

The following graphs illustrate the number of proposals put forth by companies and those put forth by stockholders during the 2015 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 BA 25 broken down by proponent and subject area category.⁴³

SV 150 PROPOSALS BREAKDOWN BY PROPONENT AND CATEGORY — 2015 PROXY SEASON



BA 25 PROPOSALS BREAKDOWN BY PROPONENT AND CATEGORY — 2015 PROXY SEASON



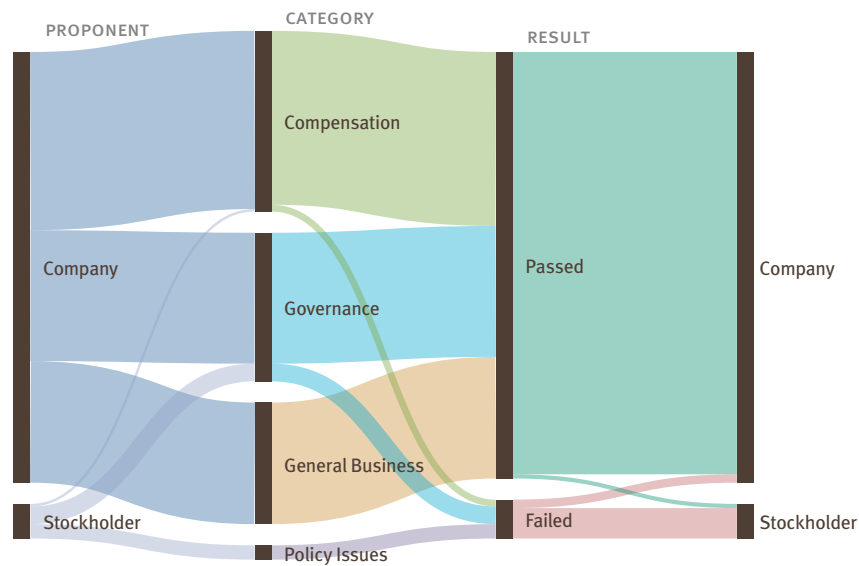
⁴³ See footnote 42 for a discussion of the company-sponsored proposals represented in these graphs for the SV 150. The stockholder proposals do not include competing board slates. In the BA 25, director elections, say-on-pay (plus say-on-frequency) and auditor approval represented 24, 23 and 24, respectively, of the governance, compensation and other general business company-sponsored proposals.

Other Proposals Voted On (continued)

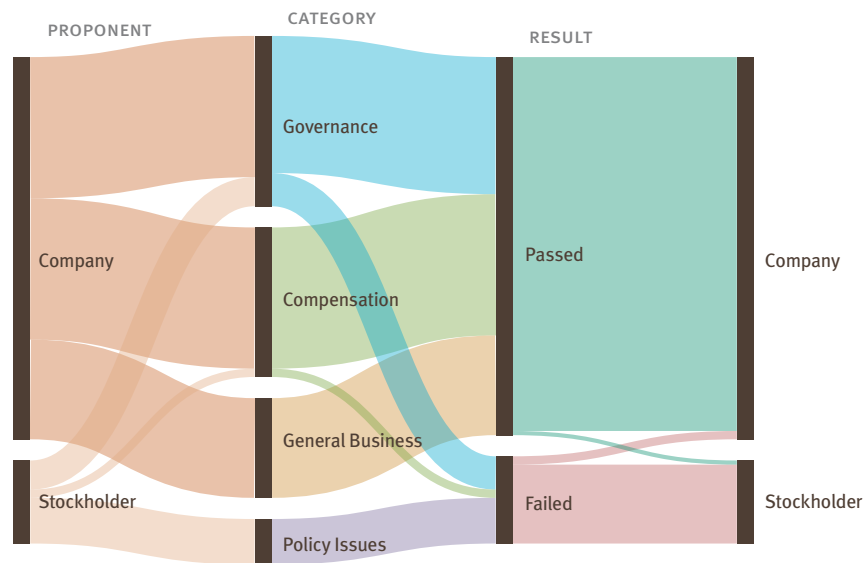
Company-sponsored proposals are spread across compensation (primarily say-on-pay and equity plan proposals), governance (primarily director elections) and other general business (primarily auditor approval), while stockholder-sponsored proposals are more frequently focused on policy issues or governance matters. 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 BA 25 companies.

The following graphs show proposals voted on by stockholders at SV 150 companies and BA 25 companies broken down by proponent, subject area category and whether the proposal passed or failed.⁴⁴

SV 150 PROPOSAL BREAKDOWN BY PROPONENT, SUBJECT AREA CATEGORY & RESULT



BA 25 PROPOSAL BREAKDOWN BY PROPONENT, SUBJECT AREA CATEGORY & RESULT



44 See footnote 42 for a discussion of the proposals represented in these graphs.

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 95 company-sponsored proposals in the 2015 proxy season, primarily in compensation-related subjects, as well as some governance matters (compared to 21 such proposals at BA 25 companies, which were more evenly split between compensation-related and governance matters).

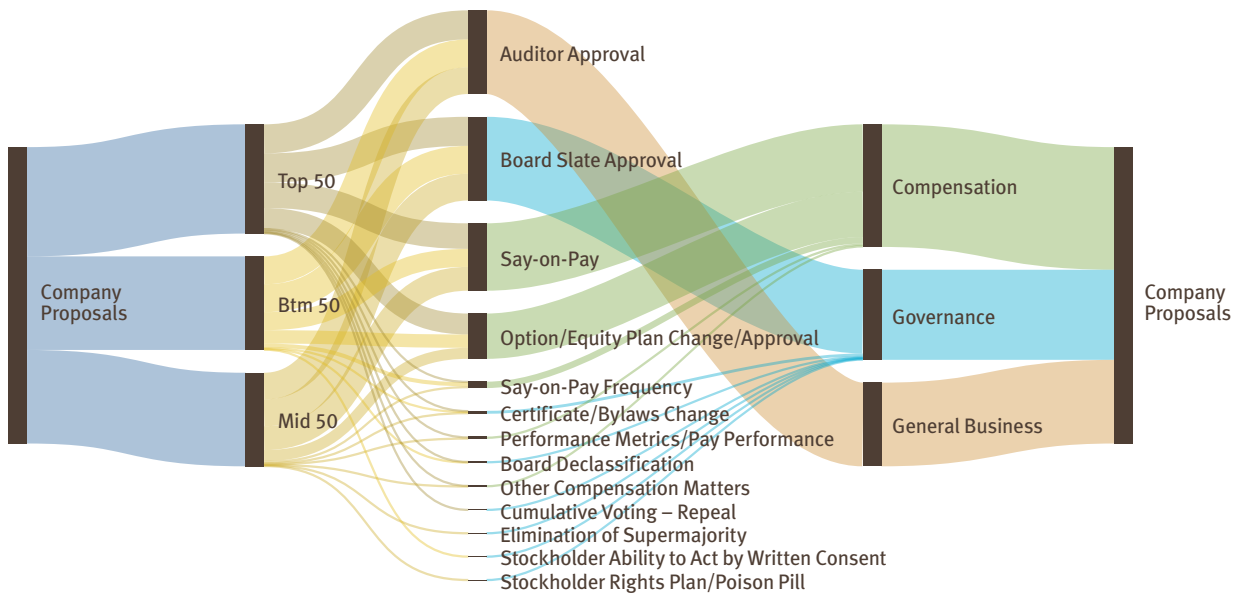
Silicon Valley 150 Company-Sponsored Proposals ⁴⁵	Total	Passed	Average %age of Shares For (of Votes Cast)	Average %age of Shares For (of Votes Cast or Abstained)	Average %age of Shares For (of Shares Represented)	Average %age of Shares For (of Shares Eligible)
ALL COMPANY PROPOSALS:	95	92	89.8%	89.2%	77.4%	67.4%
Compensation:	84	84	90.5%	90.0%	77.4%	68.1%
Option/Equity Plan Change/Approval	78	78	90.1%	89.6%	76.7%	67.3%
Performance Metrics/Pay for Performance	4	4	93.4%	93.2%	84.9%	77.1%
Other Compensation-Related Matters	2	2	99.0%	98.8%	88.2%	79.8%
Governance:	11	8	84.5%	83.7%	77.8%	62.0%
Board Declassification	2	1	99.9%	99.8%	91.6%	77.4%
Certificate/Bylaws Change	5	4	78.1%	77.5%	74.2%	58.2%
Cumulative Voting – Repeal	1	1	57.8%	57.8%	53.6%	49.7%
Elimination of Supermajority	1	1	99.9%	99.9%	94.3%	85.9%
Stockholder Action by Written Consent	1	0	94.4%	94.3%	94.3%	48.5%
Stockholder Rights Plan/Poison Pill	1	1	86.5%	81.9%	60.0%	52.8%

⁴⁵ Table excludes director elections, say-on-pay (and say-on-frequency) and auditor approvals. There were a variety of topics for which no company-sponsored proposal was presented to stockholders. See the “Methodology—Taxonomy of Proposals” section for a list of the topics considered (organized by subject area category).

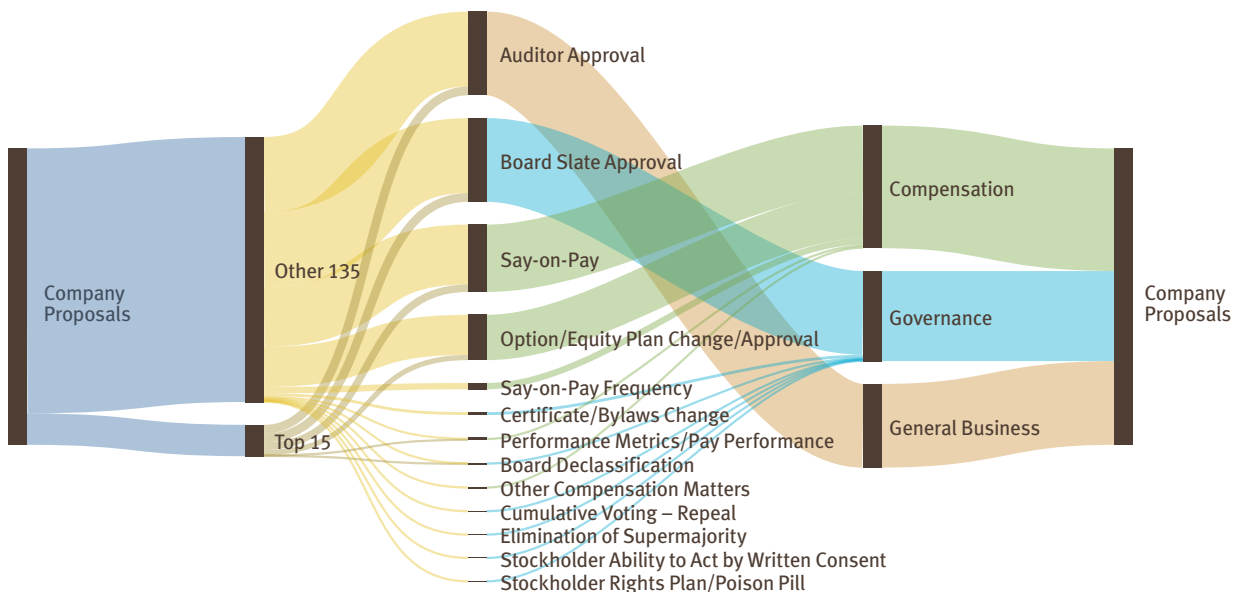
Company Proposals (continued)

The following graph shows company-sponsored proposals voted on by stockholders at SV 150 companies broken down by the top 50, middle 50 and bottom 50 companies, as well as broken down by the top 15 and the remaining 135 companies, in addition to being broken down by subject area category and topic.

COMPANY PROPOSALS — BREAKDOWN BY TOPIC AND SUBJECT AREA CATEGORY



COMPANY PROPOSALS — TOP 15 AND OTHER 135 BREAKDOWN BY TOPIC AND SUBJECT AREA CATEGORY

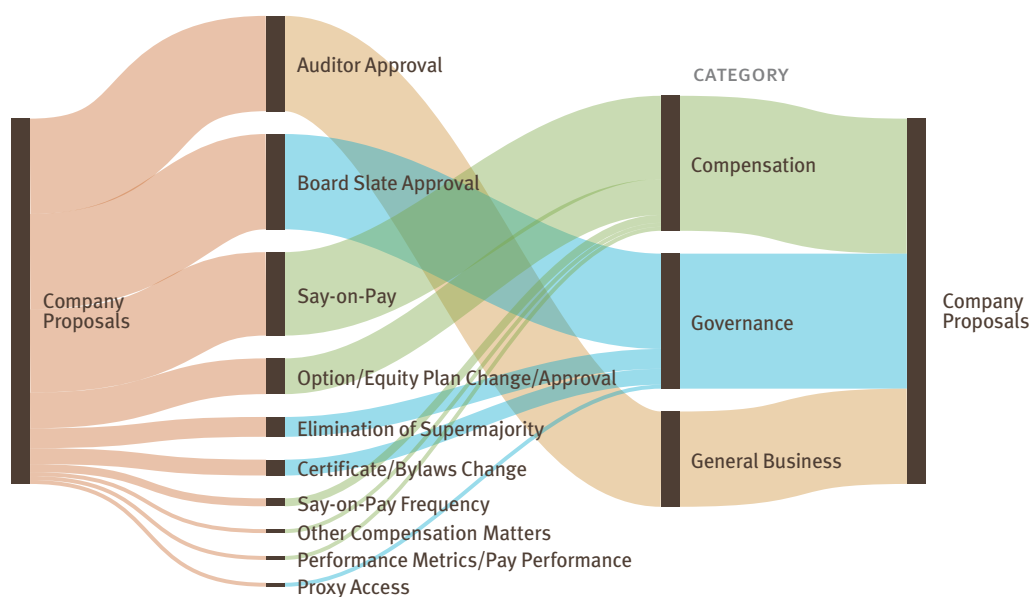


Company Proposals (continued)

Bay Area 25 Company-Sponsored Proposals ⁴⁶	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)
ALL COMPANY PROPOSALS:	21	19	94.3%	93.6%	87.0%	70.4%
Compensation:	11	11	95.3%	94.9%	87.2%	75.0%
Option/Equity Plan Change/Approval	9	9	94.5%	94.1%	86.2%	73.6%
Performance Metrics/Pay Performance	1	1	98.8%	98.5%	92.5%	78.1%
Other Compensation-Related Matters	1	1	98.5%	98.2%	91.1%	84.4%
Governance:	10	8	93.3%	92.2%	86.8%	65.4%
Certificate/Bylaws Change	4	4	87.3%	86.9%	84.6%	74.1%
Elimination of Supermajority	5	3	99.1%	97.3%	89.8%	57.3%
Proxy Access	1	1	88.0%	87.7%	80.4%	71.0%

The following graph shows company-sponsored proposals voted on by stockholders at BA 25 companies broken down by topic and subject area category.

BA 25 COMPANY PROPOSALS — BREAKDOWN BY TOPIC AND SUBJECT AREA CATEGORY



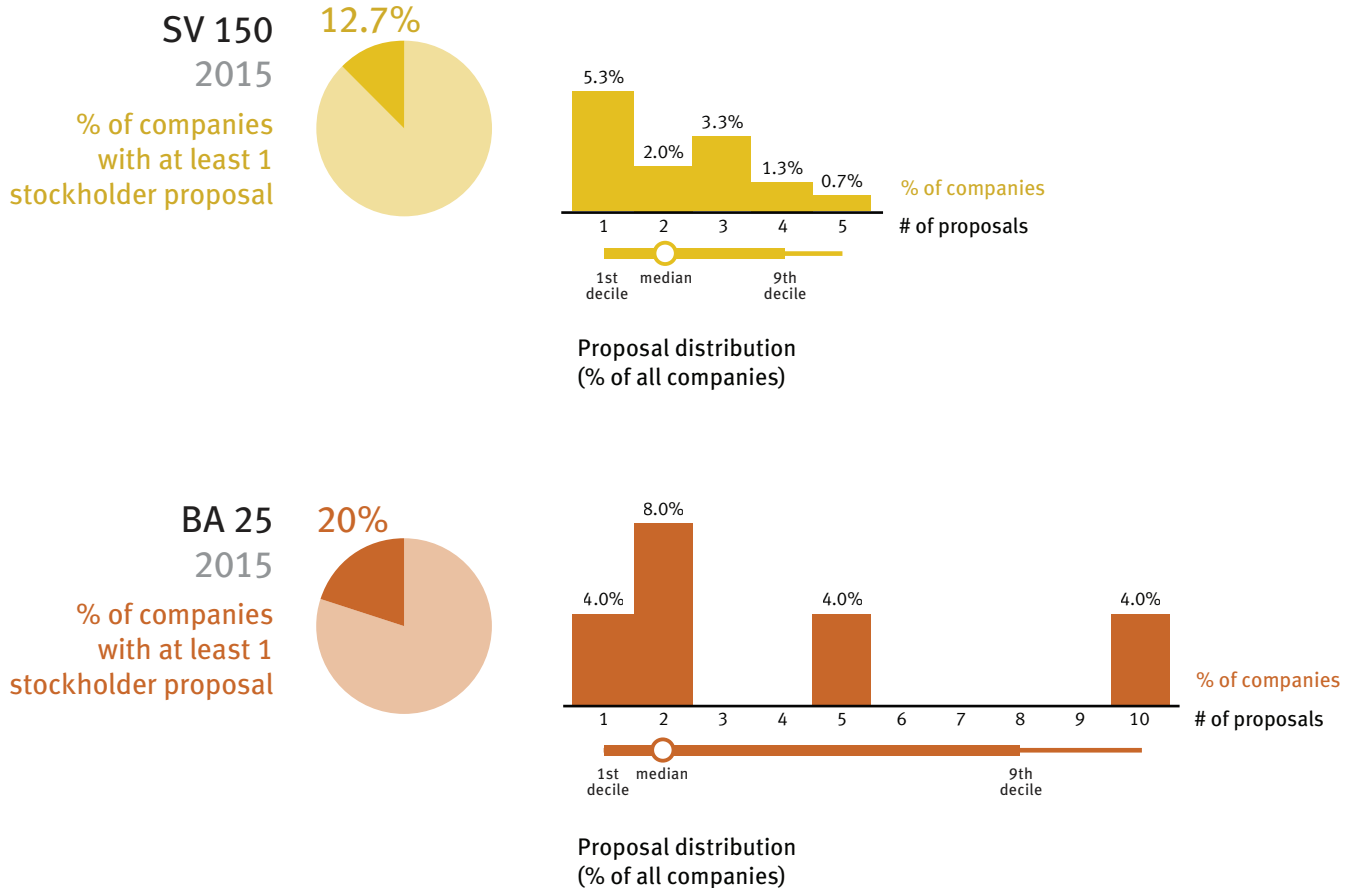
⁴⁶ Table excludes director elections, say-on-pay (and say-on-frequency) and auditor approvals. There were a variety of topics for which no company-sponsored proposal was presented to stockholders. See the “Methodology—Taxonomy of Proposals” section for a list of the topics considered (organized by subject area category).

Stockholder Proposals

Excluding competing director slates,⁴⁷ SV 150 company stockholders were asked to vote on 41 stockholder-sponsored proposals at annual meetings during the 2015 proxy season (compared to 21 such proposals voted on by stockholders of BA 25 companies).⁴⁸ Within the SV 150, more than two-thirds of stockholder-sponsored proposals were voted on at the top 15 companies. None were voted on outside of the top 50 companies.⁴⁹

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 BA 25 during the 2015 proxy season (including the median and cutoffs for the decile with the most and fewest such proposals).

STOCKHOLDER PROPOSALS — DISTRIBUTION BY NUMBER OF PROPOSALS



⁴⁷ See “Director Elections—Contested Elections” above for a discussion of competing director slates.

⁴⁸ There would have been 42 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 no representative of the stockholder attended the company’s annual meeting and presented the proposal as required by Rule 14a-8(h).

⁴⁹ The stockholder-sponsored proposal that is discussed in the preceding footnote was in the bottom 50 companies. The two competing director slates that were also voted on during the 2015 proxy season were at middle 50 companies.

Stockholder Proposals (continued)

The stockholder-sponsored proposals voted on in the SV 150 generally focused on policy issues or governance matters (this was also true in the BA 25). They were also generally unsuccessful (only five succeeded). The average support for stockholder-sponsored proposals was approximately 27% at the SV 150 companies (compared to approximately 22% at BA 25 companies). The most common topic for stockholder-sponsored proposals in the SV 150 were proxy access (6 proposals, half of which succeeded)⁵⁰ and environmental/sustainability (5 proposals, none of which were successful). The most common such topic in the BA 25 was regarding requiring companies to have an independent chair of the board (3 proposals, none of which succeeded).

Silicon Valley 150 Stockholder-Sponsored Proposals ⁵¹	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)
ALL STOCKHOLDER PROPOSALS:	41	5	27.7%	27.0%	23.8%	20.9%
Compensation:	3	0	32.0%	31.9%	28.3%	25.5%
Clawbacks	1	0	45.1%	44.7%	39.1%	36.1%
Performance Metrics/Pay Performance	2	0	25.5%	25.5%	22.8%	20.3%
Governance:	21	5	41.2%	41.0%	36.1%	31.7%
Board Declassification	1	1	79.8%	79.6%	69.2%	63.3%
Independent Chair	3	0	39.7%	39.6%	34.7%	30.4%
Majority Voting Standard	5	1	34.7%	34.6%	30.7%	27.8%
Proxy Access	6	3	45.8%	45.4%	39.7%	34.7%
Recapitalization	2	0	22.4%	22.4%	21.2%	18.7%
Stockholder Action by Written Consent	4	0	43.4%	43.0%	37.5%	31.3%
Policy Issues:	17	0	10.3%	8.9%	7.8%	6.7%
Animal Testing/Welfare	2	0	0.8%	0.7%	0.5%	0.5%
Anti-Discrimination/Diversity	2	0	16.2%	14.5%	13.8%	12.7%
Environmental/Sustainability	5	0	8.4%	6.7%	6.0%	5.1%
Human Rights	2	0	3.1%	2.8%	2.4%	1.9%
Political/Lobbying Activities	2	0	28.7%	26.1%	22.2%	18.5%
Other Policy Issues	4	0	8.8%	7.4%	6.3%	5.4%

⁵⁰ Two of the companies where proxy access failed held subsequent annual meetings in November 2015 at which proxy access proposals were passed. See “Methodology—Proxy Season / Proxy Statements” below.

⁵¹ Table excludes competing director slates and a proposal that was not voted upon.

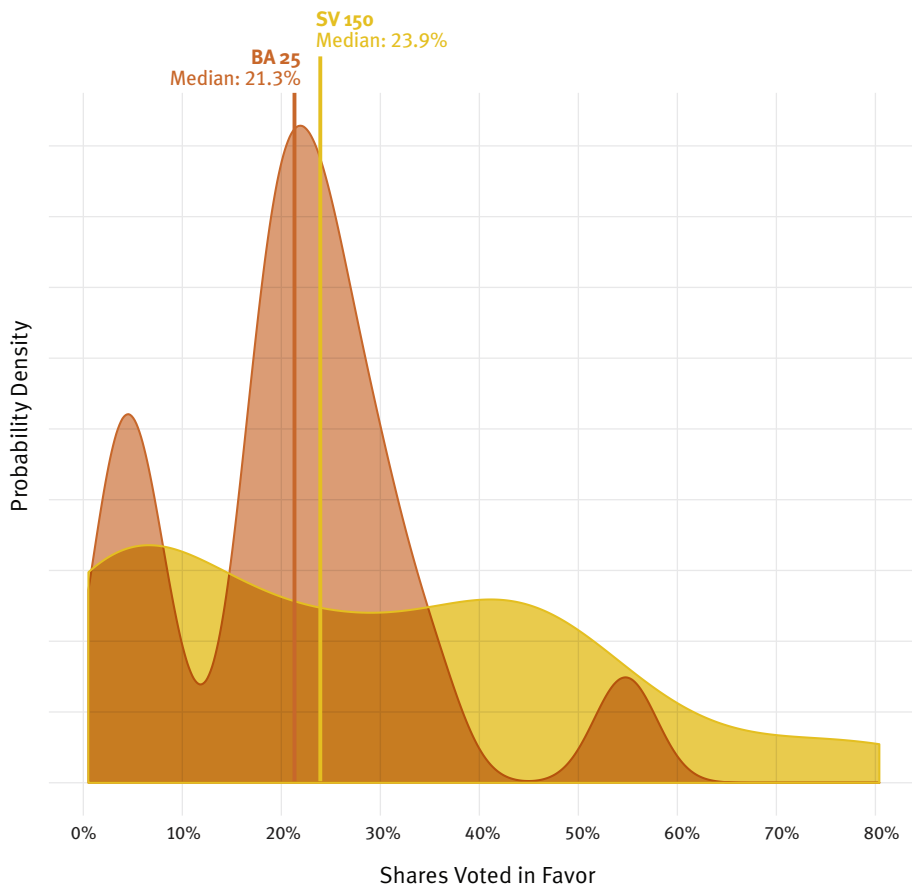
Stockholder Proposals *(continued)*

Bay Area 25 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)
STOCKHOLDER PROPOSALS:	20	1	23.1%	21.5%	18.6%	16.3%
Compensation:	2	0	27.8%	27.7%	25.6%	23.2%
Change-in-Control Payouts/Vesting	2	0	27.8%	27.7%	25.6%	23.2%
Governance:	7	1	27.7%	27.3%	22.8%	19.5%
Independent Chair	3	0	27.8%	27.7%	24.2%	20.6%
Majority Voting Standard	1	0	4.9%	4.9%	4.5%	4.2%
Proxy Access	1	1	55.3%	54.8%	43.8%	37.7%
Recapitalization	0	0	0.0%	0.0%	0.0%	0.0%
Stockholder Action by Written Consent	0	0	0.0%	0.0%	0.0%	0.0%
Stockholders Calling Special Meetings	1	0	30.3%	30.0%	24.0%	20.6%
Other Governance Issues	1	0	19.9%	18.2%	14.6%	12.5%
Policy Issues:	11	0	19.3%	16.8%	14.7%	13.0%
Anti-Discrimination/Diversity	1	0	21.1%	17.8%	16.5%	15.3%
Environmental/Sustainability	2	0	17.5%	16.0%	12.8%	11.0%
Political/Lobbying Activities	6	0	24.8%	21.2%	18.9%	16.8%
Other Policy Issues	2	0	3.8%	3.6%	2.9%	2.5%

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 and BA 25 companies during the 2015 proxy season (showing the median for each group).⁵²

STOCKHOLDER PROPOSAL APPROVAL DISTRIBUTION — SV 150 vs. BA 25

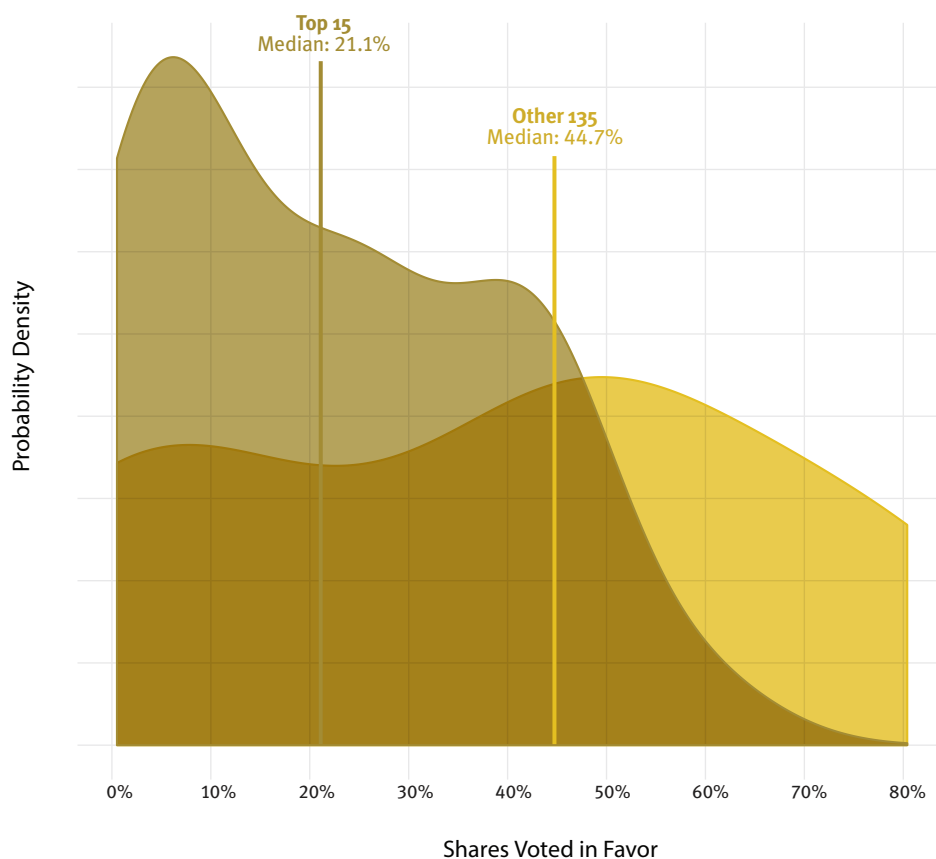


⁵² See “Methodology—Results (including Tables and Graphics)” below for a discussion of the basis used in this graph and the representation of distribution as a probability density.

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 2015 proxy season (showing the median for each subgroup).⁵³

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

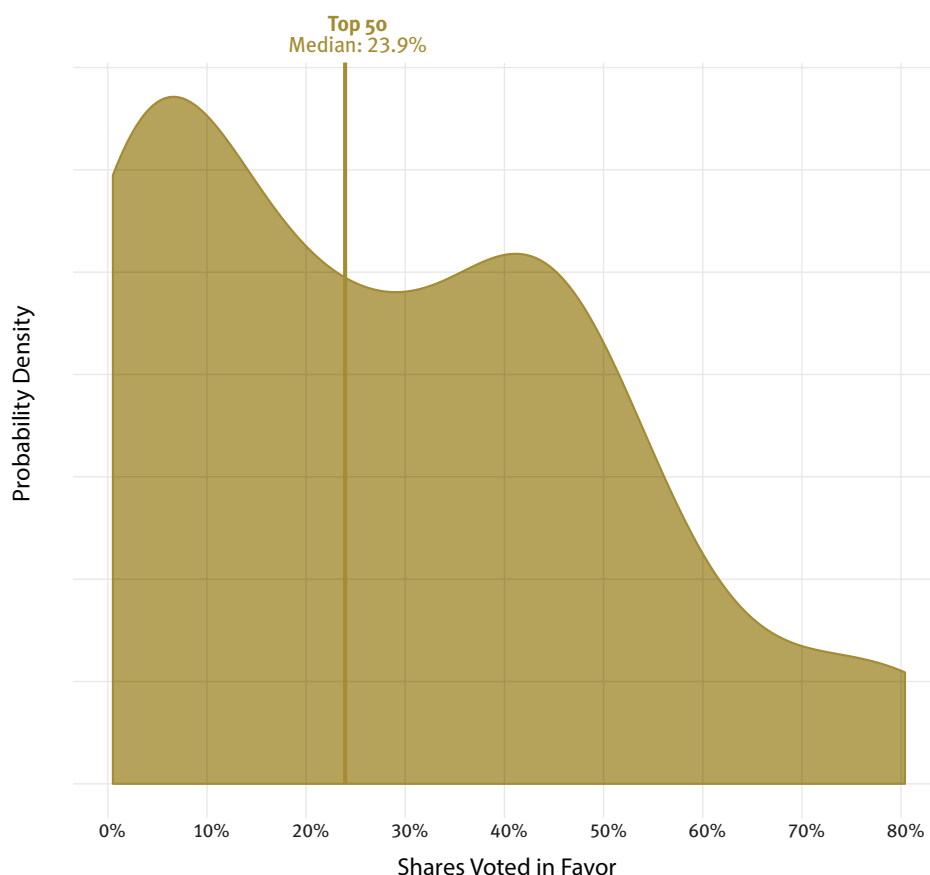


53 There were no stockholder proposals (other than nomination of a competing board slate) voted on by stockholders at the middle 50 or bottom 50 companies of the SV 150. Consequently, there are no distribution plots for those groups in the graph below, and the distribution plot for the other 135 companies compared with the top 15 actually represents the other top 50 companies with stockholder proposals. There would have been one such proposal in the bottom 50, 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 no representative of the stockholder attended the company’s annual meeting and presented the proposal as required by Rule 14a-8(h). 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 companies during the 2015 proxy season (showing the median for the subgroup). There were no stockholder proposals (other than nomination of a competing board slate) voted on by stockholders at the middle 50 or bottom 50 companies of the SV 150.⁵⁴

SV 150 STOCKHOLDER PROPOSAL DISTRIBUTION BREAKDOWN BY 50s

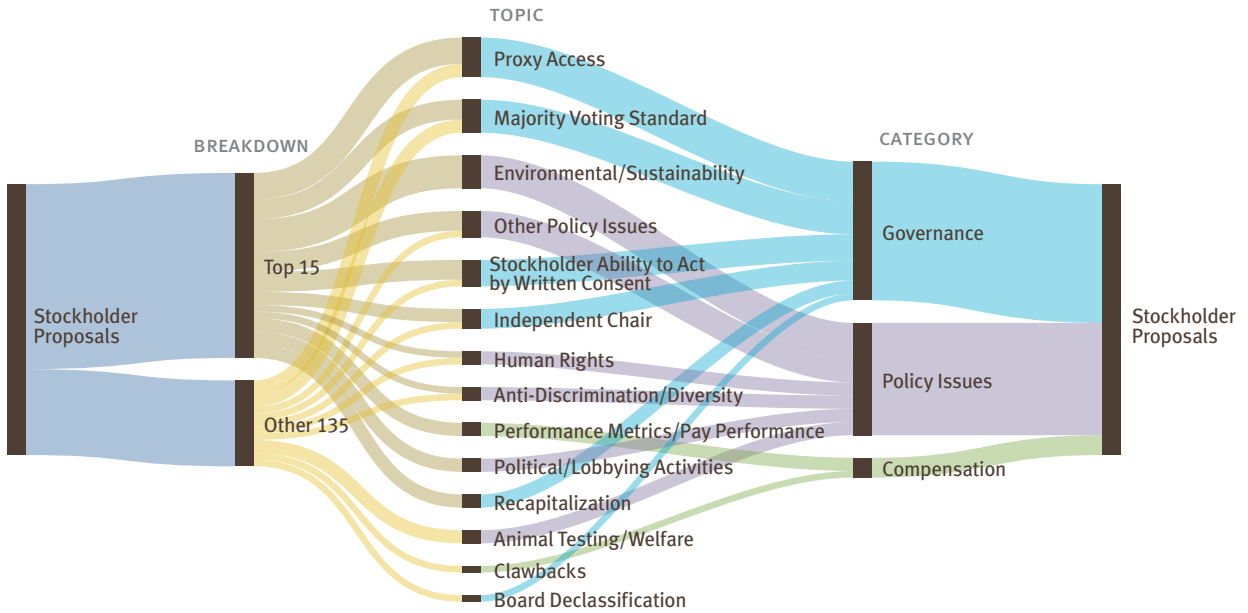


54 Consequently, there are no distribution plots for those groups in the graph on this page. There would have been one such proposals in the bottom 50, but one company’s stockholders did not vote on one stockholder proposal that had been included by a stockholder in the proxy statement for the annual meeting, because no representative of the stockholder attended the company’s annual meeting and presented the proposal as required by [Rule 14a-8\(h\)](#). 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.

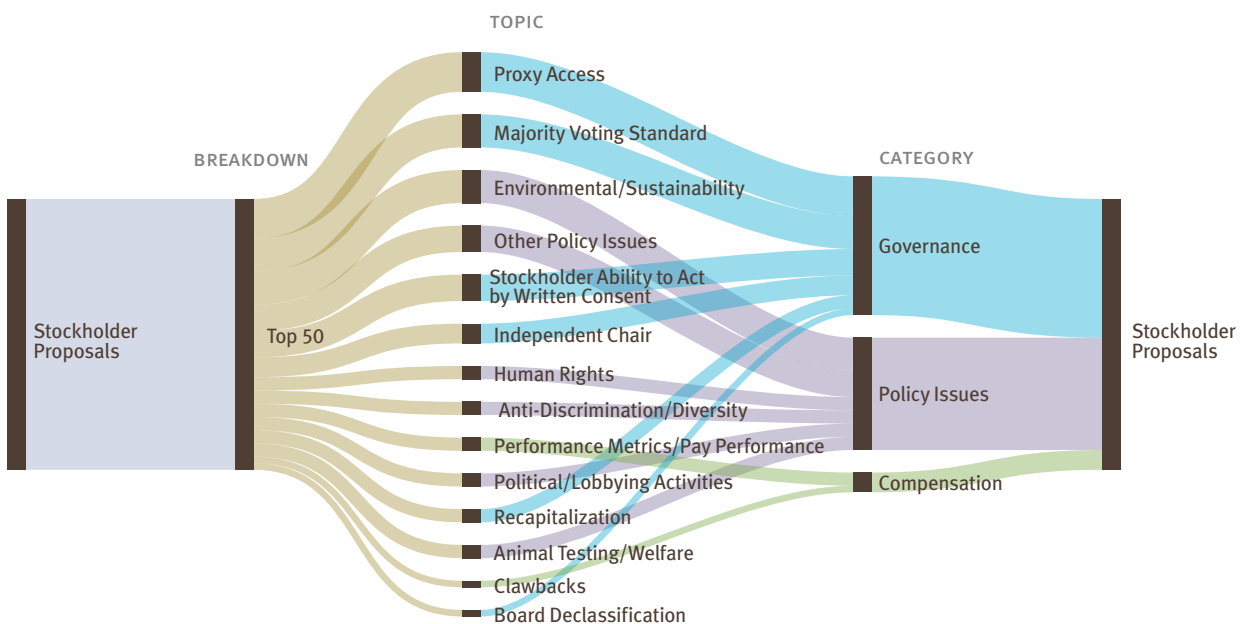
Stockholder Proposals (continued)

The following graphs show the stockholder-sponsored proposals voted on by stockholders at SV 150 companies during the 2015 proxy season broken down by the top 15 and the remaining 135 companies, as well as broken down by the top 50, middle 50 and bottom 50 companies, in addition to being broken down by subject area category and topic.⁵⁵

SV 150 STOCKHOLDER PROPOSALS — TOP 15 AND OTHER 35 BREAKDOWN BY TOPIC AND CATEGORY



SV 150 STOCKHOLDER PROPOSALS — BREAKDOWN BY TOPIC AND CATEGORY

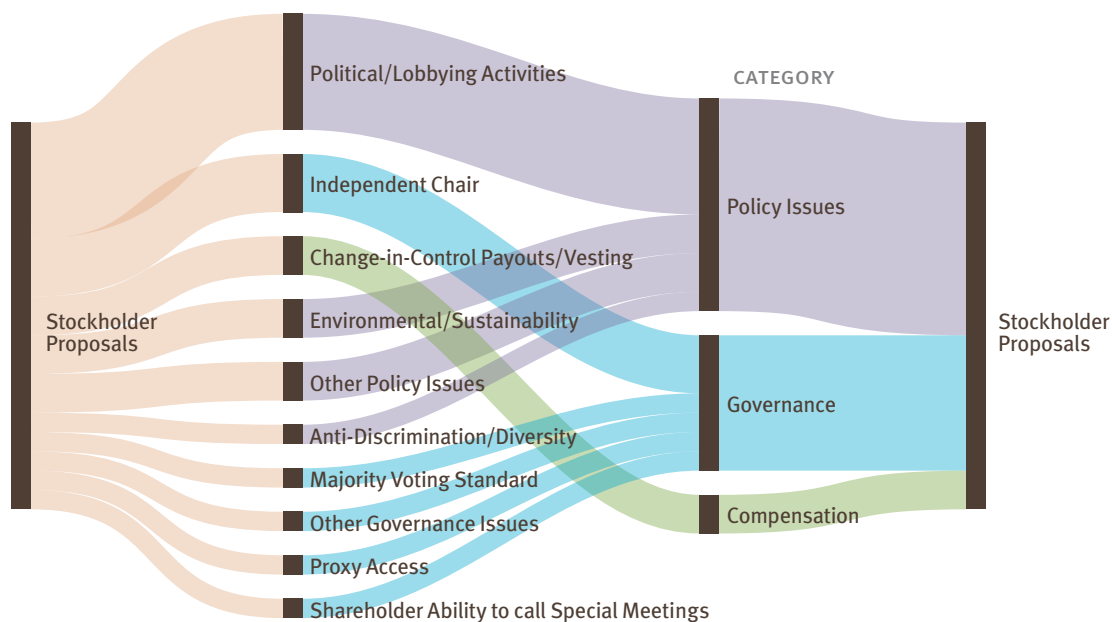


55 There were no stockholder proposals (other than nomination of a competing board slate) voted on by stockholders at the middle 50 or bottom 50 companies of the SV 150. Consequently, there is no breakdown for those groups in the bottom graphic on this page. See footnote 54.

Stockholder Proposals (continued)

The following graphs show the stockholder-sponsored proposals voted on by stockholders at BA 25 companies during the 2015 proxy season broken down by subject area category and topic.

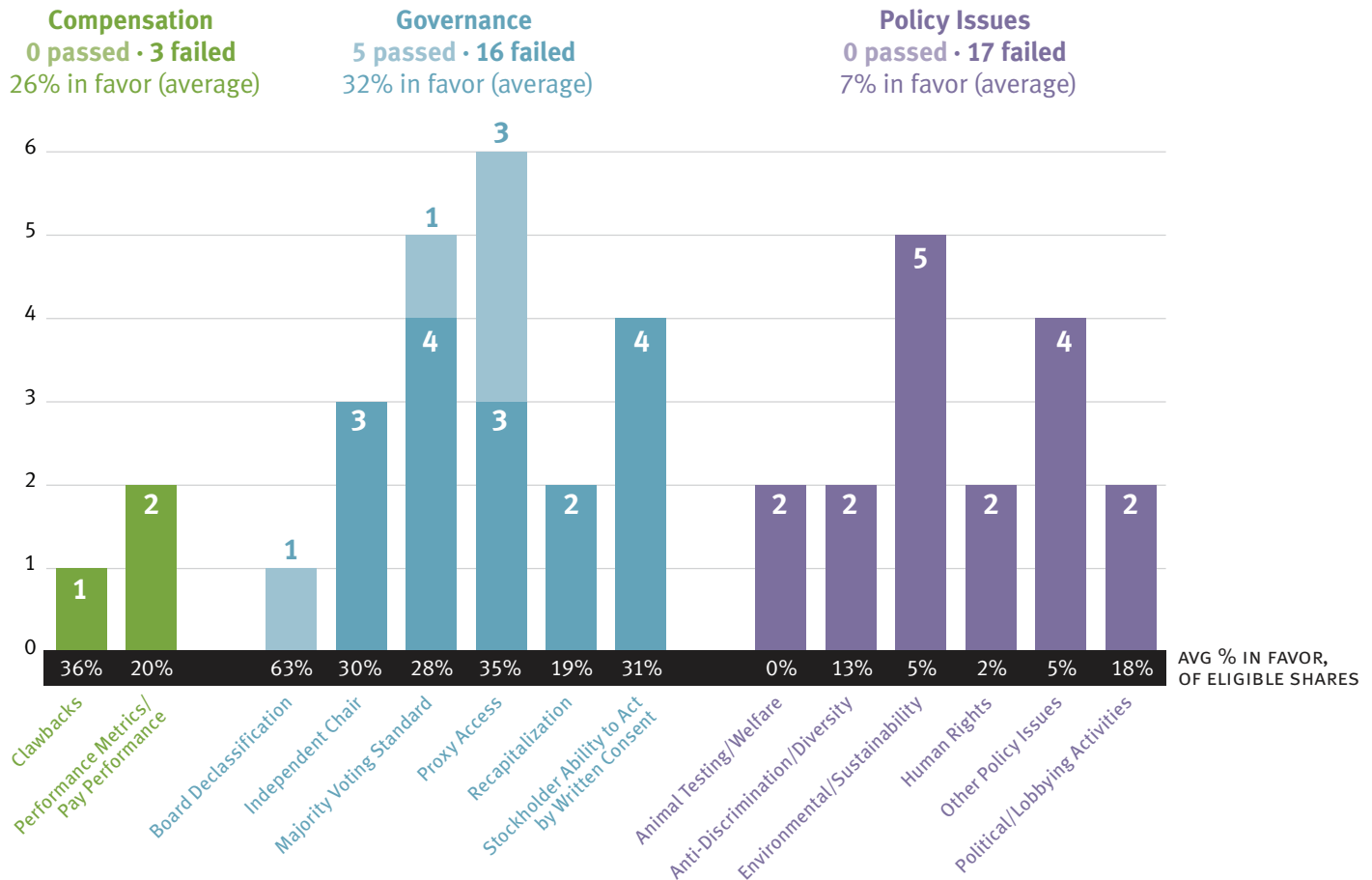
BA 25 STOCKHOLDER PROPOSALS — BREAKDOWN BY TOPIC AND CATEGORY



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 2015 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).

STOCKHOLDER PROPOSALS BY CATEGORY — 2015 PROXY SEASON



Methodology

Group Makeup

We reviewed the proxy statements, and current reports on Form 8-K disclosing the results,⁵⁶ for the annual meetings of the high technology and life sciences companies included in the Silicon Valley 150 Index (SV 150)⁵⁷ and the Bay Area 25 (BA 25).⁵⁸ The makeup of the indices has changed over time as determined by their publisher.⁵⁹ 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.⁶⁰ 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 2015 proxy season, one such company was not included in the SV 150 data set for all subjects.

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 Securities and Exchange Commission (SEC) by June 30 of that year, irrespective of when the annual meeting was actually held.⁶¹ 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.⁶² 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

- ⁵⁶ 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.
- ⁵⁷ In the past, the *San Jose Mercury News* had stated that “[t]he Silicon Valley 150 ranks [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 high technology and life sciences companies beyond the traditional Silicon Valley area, beginning in the 2012 proxy season, the *San Jose 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 *San Jose Mercury News* (April 22, 2012). The most recent determination of the makeup of the SV 150, based on the revenues of public companies in Silicon Valley for the most recent available four quarters ended on or near December 31, 2014, was announced by the *San Jose Mercury News* in April 2015. That group was used for purposes of the 2015 proxy season in this report.
- ⁵⁸ Beginning with the 2012 proxy season, the *San Jose Mercury News* removed all of the non-high technology/life sciences companies from the SV 150 and created a parallel Bay Area 25 (BA 25) index, made up of the 25 largest such companies ranked by revenue.
- ⁵⁹ The constituents of the Silicon Valley 150 Index (SV 150) and the Bay Area 25 (BA 25) are determined by the *San Jose Mercury News* (part of the Bay Area News Group, a MediaNews Group company).
- ⁶⁰ I.e., the Fenwick & West survey for the 2015 proxy season included companies constituent in the SV 150 and BA 25 as published on April 19, 2015, based on “the most recent available four quarters ended on or near December 31, 2014.”
- ⁶¹ I.e., the proxy statements included in the 2015 proxy season survey were generally filed with the SEC from July 1, 2014 through June 30, 2015 (the annual meetings were usually held about two months following the filing of the proxy statement).
- ⁶² 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.

Methodology *(continued)*

was filed beyond the normal cutoff).⁶³ In some instances, a company may not have filed an annual meeting proxy statement during a year at all (or held any annual meeting).⁶⁴ 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).

Compensation:	Governance:	Policy Issues:	General Business:
<ul style="list-style-type: none"> ▪ Change-in-Control Payouts/Vesting/Golden Parachutes ▪ Clawbacks ▪ Death Benefits ▪ 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 ▪ Other Compensation-Related Matters 	<ul style="list-style-type: none"> ▪ Board Declassification ▪ Board Diversity ▪ Board Slate Approval ▪ Certificate/Bylaws Change ▪ Cumulative Voting (Add or Repeal) ▪ Dissident Director Nominee ▪ Elimination of Supermajority ▪ Independent Chair ▪ Majority Voting Standard ▪ Proxy Access ▪ Recapitalization ▪ Stockholder Ability to Act by Written Consent ▪ Stockholder Ability to Call Special Meetings ▪ Stockholder Rights Plan/Poison Pill ▪ Other Governance Issues 	<ul style="list-style-type: none"> ▪ Animal Testing/Welfare ▪ Anti-Discrimination/Diversity ▪ Environmental/Sustainability ▪ Health & Food Safety ▪ Human Rights ▪ Political/Lobbying Activities ▪ Privacy and Data Security ▪ Other Policy Issues 	<ul style="list-style-type: none"> ▪ Auditor Approval ▪ Reincorporation ▪ Stock Repurchase ▪ Other General Business

⁶³ 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.

⁶⁴ This can occur for a variety of reasons, including (among others instances) where: (a) a company failed to timely file its periodic reports 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,⁶⁵ 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).⁶⁶ 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 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

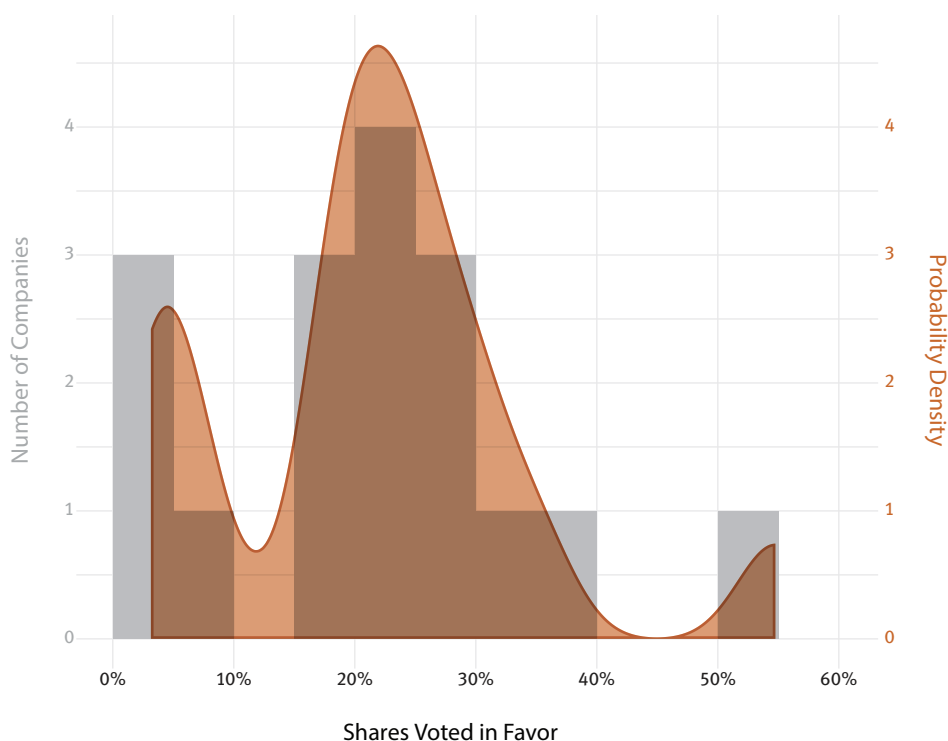
⁶⁵ In some instances, voting “against” a board-nominated candidate is also made available by the company to stockholders as a choice on the proxy card (which serves effectively as a ballot in proxy voting). This is more common among larger companies. For purposes of calculating voting percentages and 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.

⁶⁶ Where shares have more than one vote per share, they are treated effectively as additional 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 2015 edition of *Corporate Governance Practices and Trends: A Comparison of Large Public Companies and Silicon Valley Companies*, available at <http://fenwick.com/CorporateGovernance>.

Methodology *(continued)*

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 8) 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).



Unless otherwise noted, the values on the x-axis are based on the amount of support expressed as a percentage of votes in favor or 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.

About the Author



David A. Bell's practice includes advising start-up companies, venture capital financings, mergers and acquisitions, initial public offerings and intellectual property licensing, as well as counseling public companies in corporate, securities, governance and compliance matters. 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 SV 150 or the BA 25 indices.

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