

# CORPORATE GOVERNANCE AND DISCLOSURE PRACTICES OF VENTURE-BACKED COMPANIES IN U.S. INITIAL PUBLIC OFFERINGS

**January 2010 through June 2011**

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## Background

Wilson Sonsini Goodrich & Rosati surveyed various corporate governance and disclosure practices of venture-backed companies incorporated in the United States and involved in U.S. initial public offerings (IPOs) from January 2010 through June 2011. We examined the 50 companies involved in the largest IPOs measured by deal size over those 18 months, and reviewed practices and trends in the following areas:

- Directors and independence
- Board committees
- Board policies
- Stock plans
- Key metrics and non-GAAP measures
- Defensive measures

## Key Findings

We noted the following key findings in our survey:

- Directors and Independence
  - Even though newly public companies have phase-in periods within which to comply with stock exchange requirements regarding majority board independence, each company surveyed had a majority of independent directors on its board, and most companies were substantially independent, at the time of the IPO.
  - Of the companies surveyed, slightly more companies separated the chairman and CEO roles than combined them.
- Board Committees
  - Even though newly public companies have phase-in periods within which to comply with stock exchange requirements regarding fully independent board committees, almost all of the companies surveyed had board committees that were substantially comprised of independent members at the time of the IPO.
  - Frequently, board committees of the companies surveyed included members who were venture capitalists affiliated with venture funds that had invested in the companies, and frequently the venture capitalists were determined to be independent directors, notwithstanding their share ownership.
- Board Policies
  - Nearly all the companies surveyed had adopted, or planned to adopt, key corporate governance board policies in connection with the IPO, such as corporate governance guidelines, codes of business conduct, and related party transactions policies or procedures.

- Stock Plans
  - Nearly all the companies surveyed adopted a new equity compensation plan in connection with the IPO, frequently with “evergreen” provisions, which allow shares automatically to be added to the available pool annually.
  - Less than a majority of the companies surveyed adopted an employee stock purchase plan in connection with the IPO, but those that adopted one frequently included an evergreen provision.
- Key Metrics and Non-GAAP Financial Measures
  - A significant minority of companies surveyed disclosed non-financial key metrics (e.g., subscribers or registered members for Internet companies) in addition to financial metrics.
  - Half of the companies surveyed disclosed non-GAAP financial measures (frequently, adjusted EBITDA).
- Defensive Measures
  - None of the companies surveyed adopted a shareholder rights plan, or “poison pill,” in connection with the IPO, although other defensive measures were liberally adopted.

## Companies

We looked at the following 50 companies<sup>1</sup>:

Accretive Health  
 The Active Network, Inc. †  
 Alimera Sciences, Inc.  
 Amyris, Inc. †  
 Anacor Pharmaceuticals, Inc.  
 AVEO Pharmaceuticals, Inc.  
 Body Central Corporation  
 Boingo Wireless, Inc.  
 BroadSoft, Inc.  
 Calix, Inc.  
 Codexis, Inc. †  
 Cornerstone OnDemand, Inc.\*  
 Demand Media, Inc.  
 Endocyte, Inc.\*  
 Envestnet, Inc.  
 Epocrates, Inc.  
 ExamWorks Group, Inc.  
 Financial Engines, Inc.  
 FleetCor Technologies, Inc.  
 Fluidigm Corporation\*  
 Fusion-io, Inc.\*  
 GAIN Capital Group LLC  
 Gevo, Inc.  
 Global Geophysical Services, Inc.  
 Green Dot Corporation  
 HomeAway, Inc.\*

<sup>1</sup>Source: National Venture Capital Association and Thomson Reuters. “Venture-backed” means that at least one U.S. VC firm had invested in the company prior to the IPO. Overall, WSGR provided representation to either the issuer or the lead underwriter in connection with the IPOs of 18 of the 50 companies listed, or 36%. The symbol “\*” indicates that WSGR represented that company in connection with its IPO, while the symbol “†” indicates that WSGR represented the lead underwriter in connection with the IPO of that company.

INPHI Corporation  
 Ironwood Pharmaceuticals, Inc.  
 KEYW Corporation  
 KiOR, Inc.  
 LinkedIn Corporation\*  
 MaxLinear, Inc.\*  
 MediaMind Technologies, Inc.  
 Meru Networks, Inc. †  
 Motricity, Inc.  
 NeoPhotonics Corporation  
 Pacific Biosciences of California, Inc.\*  
 Pandora Media, Inc. †  
 Qlik Technologies, Inc.  
 QuinStreet, Inc.  
 RealPage, Inc.\*  
 Responsys, Inc.  
 RigNet, Inc.  
 RPX Corporation  
 SciQuest, Inc.  
 SemiLEDs Corporation†  
 Solazyme, Inc. †  
 TeleNav, Inc.\*  
 Tesla Motors, Inc.\*  
 Zipcar, Inc.

By deal size, measured by gross proceeds, the IPOs ranged from \$56 million to \$352.8 million, with an average deal size of \$123.3 million and a median deal size of \$90.1 million.

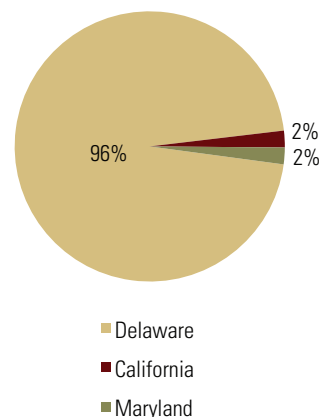
The companies are headquartered in the following locations, incorporated in the following states, and listed on the following exchanges:

### Headquarters

Bay Area, California: 19 companies  
 Southern California: 6 companies  
 Texas: 5 companies  
 Georgia: 3 companies  
 Massachusetts: 3 companies  
 Illinois: 2 companies  
 Maryland: 2 companies  
 Colorado: 1 company  
 Florida: 1 company  
 Indiana: 1 company  
 New Jersey: 1 company  
 New York: 1 company  
 North Carolina: 1 company  
 Pennsylvania: 1 company  
 Utah: 1 company  
 Washington: 1 company  
 Taiwan: 1 company

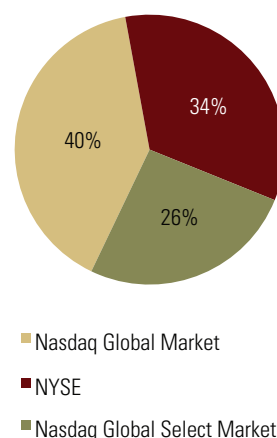
### State of Incorporation

- 48 companies, or 96%, are incorporated in Delaware
- 1 company, or 2%, is incorporated in California
- 1 company, or 2%, is incorporated in Maryland



### Listing Exchange

- 20 companies, or 40%, are listed on The Nasdaq Global Market<sup>2</sup>
- 17 companies, or 34%, are listed on the NYSE
- 13 companies, or 26%, are listed on The Nasdaq Global Select Market



### Directors and Independence

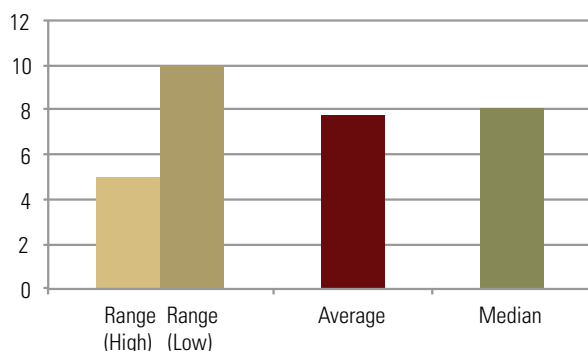
Using data obtained from final IPO prospectuses, we examined information regarding the size of the board of directors, director independence levels, identity of board chairman, existence of lead independent directors, and use of the controlled company exemption.

<sup>2</sup> The Nasdaq Global Market and The Nasdaq Global Select Market are both components of The Nasdaq Stock Market. The Nasdaq Global Select Market has somewhat more rigorous listing standards than The Nasdaq Global Market. Both have more rigorous listing standards than The Nasdaq Capital Market. For more information, see [http://www.nasdaq.com/about/nasdaq\\_listing\\_req\\_fees.pdf](http://www.nasdaq.com/about/nasdaq_listing_req_fees.pdf).

## Board Size

Of the companies examined:

- Board sizes ranged from 5 to 10 directors
- Average board size was 7.7
- Median board size was 8



## Director Independence

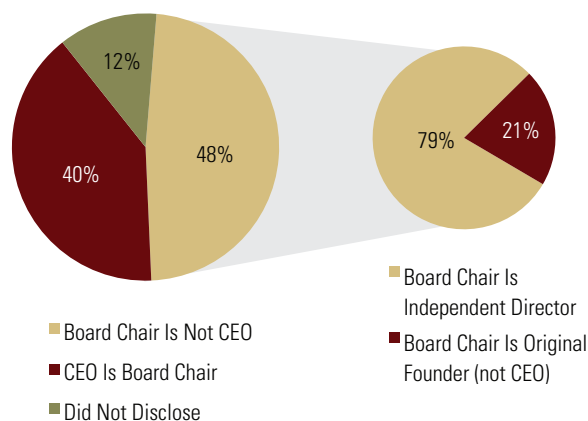
The listing standards of both the NYSE and Nasdaq require that, within one year of a listed company's IPO, a majority of the members of the board of directors be independent, as defined in the listing standards. At the time of the IPOs of the companies examined<sup>3</sup>:

- Average level of director independence was 77%
- Median level of director independence was 77.8%
- Levels of director independence ranged from 55.6% to 90%
- 20 companies, or 40%, disclosed that the CEO was the only non-independent director

## Board Chairs and Lead Directors

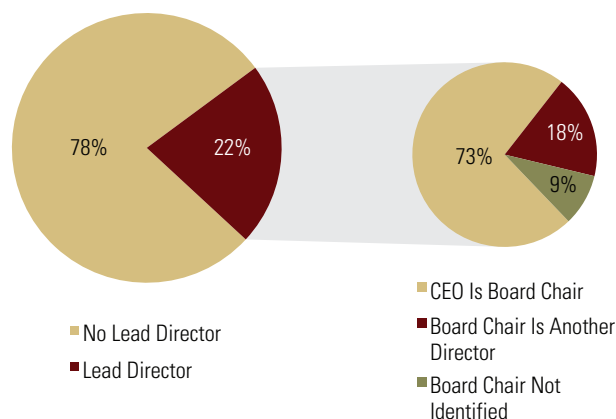
An IPO prospectus is not required to disclose whether the board chair and CEO positions are separated, but many companies provide such information. Of the companies examined:

- 20 companies, or 40%, disclosed that the CEO was also the board chair
- 24 companies, or 48%, disclosed that the board chair was another director
  - In 19 of these companies, or 79.2%, the board chair was an independent director
  - In 5 of these companies, or 20.8%, the board chair was an original founder of the company and was not the CEO; 3 of such persons were also independent directors
- 6 companies, or 12%, did not disclose a board chair



In addition, although not required, many companies provided information in their IPO prospectus regarding the existence of a lead independent director. Of the companies examined:

- 11 companies, or 22%, indicated that the board had a lead independent director
  - In 8 of these companies, or 72.7%, the CEO was board chair
  - In 2 of these companies, or 18.2%, another director who was not CEO was board chair
  - In 1 of these companies, or 9.1%, a board chair was not identified



Following a company's IPO, it is required to disclose information about its board leadership structure in its annual proxy statement, including whether or not, and why, the board chair and CEO positions are separated and whether the board has a lead independent director.

<sup>3</sup> Three companies did not disclose information about board independence; two others merely indicated that a majority were independent at the time of the IPO.

## Controlled Company Exemption

The listing standards of both the NYSE and Nasdaq exempt a "controlled company," or one in which more than 50% of the voting power for the election of directors is held by an individual, a group, or another company, from certain corporate governance requirements, including those relating to independence of the board of directors. Of the companies examined:

- 1 company stated that it would utilize the controlled company exemption
  - That company had a 62.5% level of director independence, as well as a 66.6% level of independence for each of the audit, compensation, and governance committees, at the time of the IPO

## Board Committees

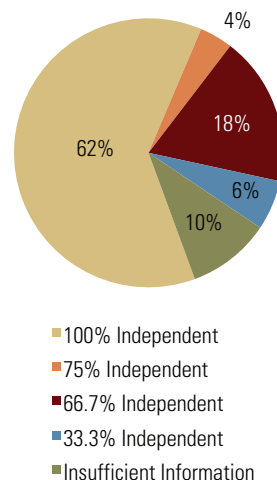
Using data obtained from final IPO prospectuses, we examined information regarding board committees, including independence.

### Audit Committee

#### Independence

The listing standards of both the NYSE and Nasdaq require that listed companies have an audit committee comprised of at least 1 independent director at the time of the IPO; that a majority of the committee be comprised of independent directors within 90 days of the IPO; and that each member of the committee be independent within 1 year of the IPO. Independence for audit committee purposes requires an individual to meet the NYSE and Nasdaq independence requirements as well as stricter independence requirements specified by Securities and Exchange Commission (SEC) rules. Of the companies examined:

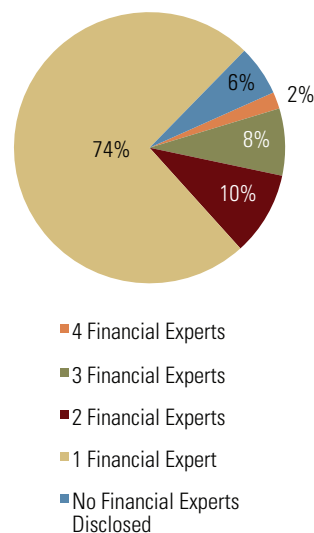
- 31 companies, or 62%, had a 100% independent audit committee
- 2 companies, or 4%, had a 75% independent audit committee
- 9 companies, or 18%, had a 66.7% independent audit committee
- 3 companies, or 6%, had a 33.3% independent audit committee
- 5 companies, or 10%, did not provide sufficient information to calculate audit committee independence



#### Audit Committee Financial Experts

Following a company's IPO, it is required to disclose in its annual proxy statement whether it has at least one "audit committee financial expert," as defined by SEC rules, serving on the audit committee. An IPO prospectus is not required to disclose such information, but many companies provided it. Of the companies examined:

- 1 company, or 2%, had 4 audit committee financial experts
- 4 companies, or 8%, had 3 audit committee financial experts
- 5 companies, or 10%, had 2 audit committee financial experts
- 37 companies, or 74%, had 1 audit committee financial expert
- 3 companies, or 6%, did not disclose the presence of an audit committee financial expert



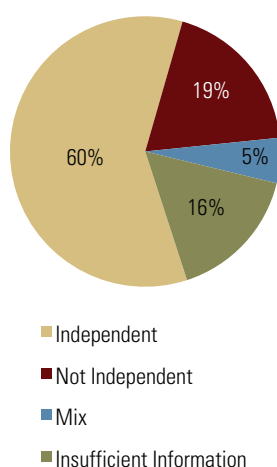


### *Venture Capitalists on Audit Committees*

Under the listing standards of both the NYSE and Nasdaq, stock ownership is one factor to be considered in determining independence, but even significant stock ownership, by itself, is not a bar to a finding of independence. Under the stricter audit committee independence rules of the SEC, however, one may not serve on a listed company's audit committee if one is an "affiliated person" of the company. Affiliate status is measured by control, including stock ownership, and the SEC rules provide a safe harbor from affiliate status for audit committee membership at and below 10% stock ownership, while not specifying at what level of ownership such affiliated person status would necessarily obtain.

We examined whether directors affiliated with venture capital funds that had invested in the IPO companies were members of audit committees, and if so, whether they were determined to be independent. We also examined the aggregate stock ownership of the director and all venture capital funds with which he or she was affiliated.<sup>4</sup> Of the companies examined:

- 37 companies included venture capitalists who had invested in the company on the audit committee
  - In 22 companies, or 59.5%, the venture capitalists were found to be independent
  - In 7 companies, or 18.9%, the venture capitalists were not found to be independent
  - In 2 companies, or 5.4%, some venture capitalists were found to be independent and some venture capitalists were not found to be independent
  - In 6 companies, or 16.2%, not enough information was provided to determine independence of the venture capitalists on the audit committee



- For independent venture capitalists on the audit committee:
  - Average shareholdings post-IPO were 10.5%
  - Median shareholdings post-IPO were 8.3%
  - Maximum shareholdings post-IPO were 27.7%
  - Minimum shareholdings post-IPO were less than 1%
- For non-independent venture capitalists on the audit committee:
  - Average shareholdings post-IPO were 18.4%
  - Median shareholdings post-IPO were 19.1%
  - Maximum shareholdings post-IPO were 30.4%
  - Minimum shareholdings post-IPO were 8.8%

### **Governance/Nominating Committee**

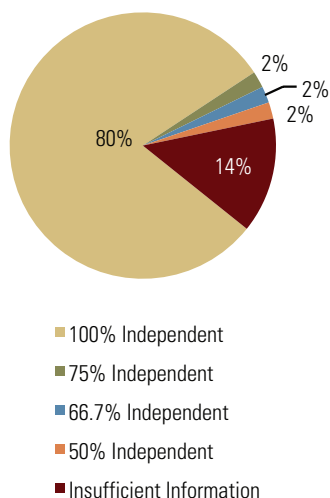
Under the NYSE listing standards, companies are required to have an independent nominating committee; under the Nasdaq listing standards, companies are required to have an independent nominating committee or have a majority of independent directors nominate directors annually. The listing standards of both the NYSE and Nasdaq permit independence phase-in periods similar to the audit committee phase-in period discussed above.

We examined independence matters, including independence and aggregate stock ownership of venture capitalists, for governance/nominating committees.

#### *Independence*

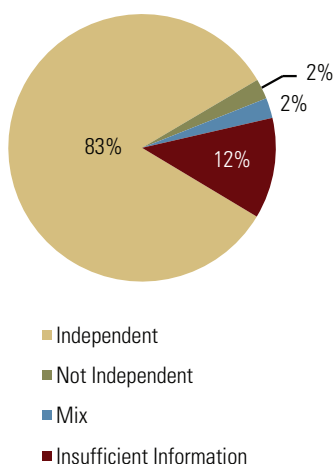
- 40 companies, or 80%, had a 100% independent governance/nominating committee
- 1 company, or 2%, had a 75% independent governance/nominating committee
- 1 company, or 2%, had a 66.7% independent governance/nominating committee
- 1 company, or 2%, had a 50% independent governance/nominating committee
- 7 companies, or 14%, did not provide sufficient information to calculate governance/nominating committee independence

<sup>4</sup> We did not examine other indicia of control or other relationships that would bear upon affiliate or independence status.



#### *Venture Capitalists on Governance/Nominating Committees*

- 41 companies included venture capitalists who had invested in the company on the governance/nominating committee
  - In 34 companies, or 82.9%, the venture capitalists were found to be independent
  - In 1 company, or 2.4%, the venture capitalists were not found to be independent
  - In 1 company, or 2.4%, some venture capitalists were found to be independent and some venture capitalists were not found to be independent
  - In 5 companies, or 12.2%, not enough information was provided to determine independence of the venture capitalists on the governance/nominating committee



- For independent venture capitalists on the governance/nominating committee:
  - Average shareholdings post-IPO were 13.8%
  - Median shareholdings post-IPO were 11.6%
  - Maximum shareholdings post-IPO were 35.9%
  - Minimum shareholdings post-IPO were less than 1%
- For non-independent venture capitalists on the governance/nominating committee:
  - Average and median shareholdings post-IPO were 45.5%
  - Maximum shareholdings post-IPO were 71.8%
  - Minimum shareholdings post-IPO were 19.1%

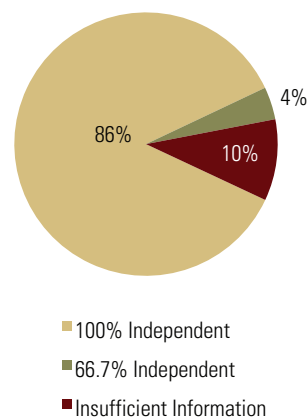
#### **Compensation Committee**

Under the NYSE listing standards, companies are required to have an independent compensation committee; under the Nasdaq listing standards, companies are required to have an independent compensation committee or have a majority of independent directors approve the compensation of the executive officers. The listing standards of both the NYSE and Nasdaq permit independence phase-in periods similar to the audit committee phase-in period discussed above.

We examined independence matters, including independence and aggregate stock ownership of venture capitalists, for compensation committees.

#### *Independence*

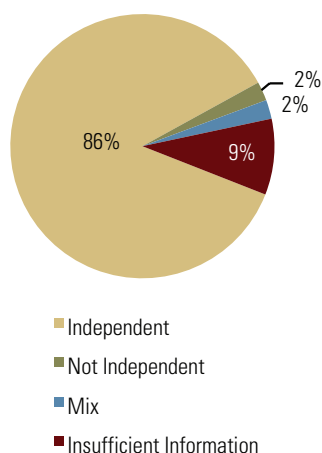
- 43 companies, or 86%, had a 100% independent compensation committee
- 2 companies, or 4%, had a 66.7% independent compensation committee
- 5 companies, or 10%, did not provide sufficient information to calculate compensation committee independence





### Venture Capitalists on Compensation Committees

- 43 companies included venture capitalists who had invested in the company on the compensation committee
  - In 37 companies, or 86%, the venture capitalists were found to be independent
  - In 1 company, or 2.3%, the venture capitalists were not found to be independent
  - In 1 company, or 2.3%, some venture capitalists were found to be independent and some venture capitalists were not found to be independent
  - In 4 companies, or 9.3%, not enough information was provided to determine independence of the venture capitalists on the compensation committee



- For independent venture capitalists on the compensation committee:
  - Average shareholdings post-IPO were 13%
  - Median shareholdings post-IPO were 12.7%
  - Maximum shareholdings post-IPO were 34.9%
  - Minimum shareholdings post-IPO were less than 1%
- For non-independent venture capitalists on the compensation committee:
  - Average and median shareholdings post-IPO were 45.5%
  - Maximum shareholdings post-IPO were 71.8%
  - Minimum shareholdings post-IPO were 19.1%

### Other Committees

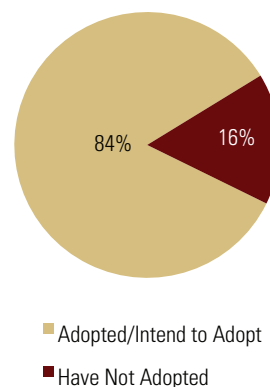
- 4 companies disclosed the existence of other committees
  - 2 companies disclosed an acquisition committee
  - 1 company disclosed an executive committee
  - 1 company disclosed an ethics committee
  - 1 company disclosed a risk committee

### Board Policies

An IPO prospectus is not required to disclose whether a company has adopted corporate governance guidelines or a code of business conduct, but many companies provide such information. An IPO prospectus is required, however, to disclose the existence of policies regarding related party transactions. Of the companies examined:

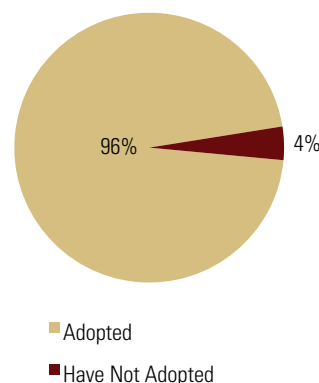
#### Corporate Governance Guidelines

- 42 companies, or 84%, had adopted or intended to adopt corporate governance guidelines



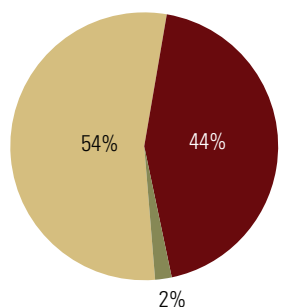
#### Code of Business Conduct

- 48 companies, or 96%, had adopted a code of business conduct



#### Related Party Transactions Policy

- 27 companies, or 54%, had adopted or intended to adopt a stand-alone related party transactions policy
- 22 companies, or 44%, disclosed that approval of related party transactions was governed by a board committee charter or code of business conduct
- 1 company, or 2%, did not disclose information regarding a related party transactions policy

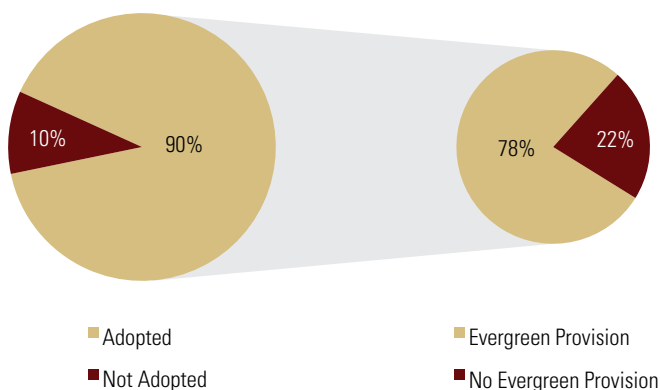


■ Adopted/Intend to Adopt Policy  
 ■ Approval Governed by a Board Committee Charter or Code of Business Conduct  
 ■ Did Not Disclose

## Stock Plans

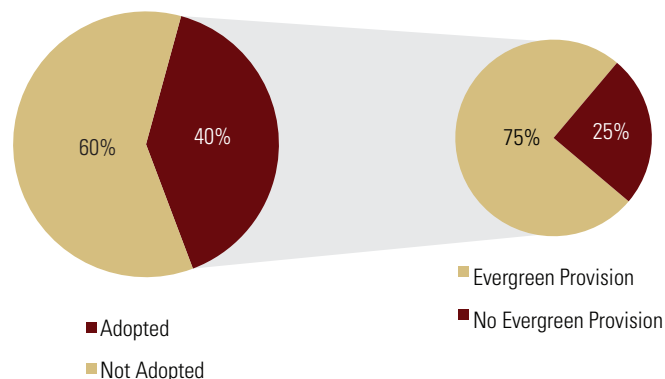
Many venture-backed companies will adopt a new equity compensation plan and employee stock purchase plan in connection with the IPO. Using data obtained from final IPO prospectuses, we examined whether companies were adopting such plans, whether such plans included an “evergreen” provision that would automatically increase the size of the available pool of equity available to be granted each year, and what was the size of the outstanding equity awards and available pool of equity under the plans at the time of the IPO. Of the companies examined:

- 45 companies, or 90%, adopted a new equity compensation plan in connection with the IPO
  - Plans at 35 of those companies, or 77.8%, included an evergreen provision



■ Adopted  
 ■ Not Adopted  
 ■ Evergreen Provision  
 ■ No Evergreen Provision

- 20 companies, or 40%, adopted a new employee stock purchase plan (ESPP) in connection with the IPO
  - ESPPs at 15 of those companies, or 75%, included an evergreen provision



- Outstanding equity awards at the time of the IPO as a percentage of fully diluted common stock immediately after the IPO<sup>5</sup>
  - Average was 12.6%
  - Median was 12.7%
  - Maximum was 25.6%
  - Minimum was 1.8%
- Outstanding equity awards at the time of the IPO, combined with shares reserved for issuance in new equity compensation plans, as a percentage of fully diluted common stock immediately after the IPO<sup>6</sup>
  - Average was 19.4%
  - Median was 17.8%
  - Maximum was 40%
  - Minimum was 8.1%
- Shares reserved for issuance in new ESPP as a percentage of fully diluted common stock immediately after the IPO<sup>7</sup>
  - Average was 1.8%
  - Median was 1.3%
  - Maximum was 8%
  - Minimum was 0.1%

## Key Metrics and Non-GAAP Financial Measures

In addition to financial results presented in accordance with generally accepted accounting principles (GAAP), many companies track non-financial statement “key metrics” as well as non-GAAP financial measures for their own internal purposes and for external disclosure. SEC rules govern the public disclosure of non-GAAP financial

<sup>5</sup> Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards.

<sup>6</sup> Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards and all shares reserved for issuance under the new equity compensation plans.

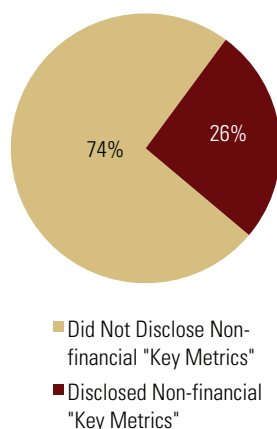
<sup>7</sup> Fully diluted common stock for this purpose includes common stock outstanding immediately after the closing of the IPO and assumes the issuance of all outstanding equity awards, all shares reserved for issuance under the new equity compensation plans, and shares reserved for issuance under the new ESPP.

measures, requiring presentation of the most directly comparable GAAP financial measure and a reconciliation between the two measures. In addition, SEC rules require that the presentation of key metrics and non-GAAP financial measures may not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the presentation not misleading in light of the circumstances under which it is presented.

Using data obtained from final IPO prospectuses, we looked at disclosure of key metrics and non-GAAP financial measures. Of the companies examined:

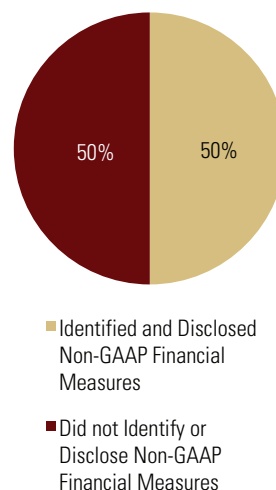
### Key Metrics

- 13 companies, or 26%, disclosed non-financial statement “key metrics”
- For example, non-financial statement key metrics disclosed by LinkedIn Corporation included number of registered members, number of unique visitors to website, and number of page views on website
- Please see Appendix A for the full list of key metrics disclosed by the 13 companies



### Non-GAAP Financial Measures

- 25 companies, or 50%, identified and disclosed non-GAAP financial measures, including:
  - Adjusted EBITDA (19 companies)
  - Adjusted or non-GAAP net income (loss) (9 companies)
  - Adjusted revenue (2 companies)
  - EBITDA (2 companies)
  - Free cash flow (2 companies)
  - Bookings (1 company)

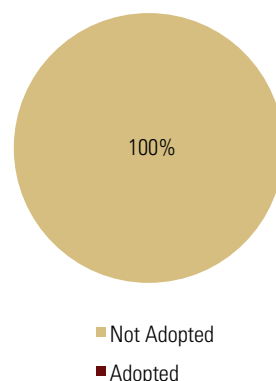


### Defensive Measures

Using data obtained from final IPO prospectuses, as well as bylaws, certificates of incorporation, and other documents filed with the SEC at the time of the IPO, we examined what measures companies took to protect themselves from hostile takeovers. Of the companies examined:

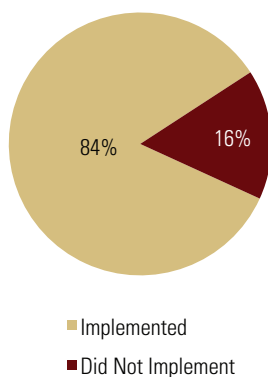
#### Shareholder Rights Plans (“Poison Pills”)

- No company had adopted a shareholder rights plan at the time of the IPO



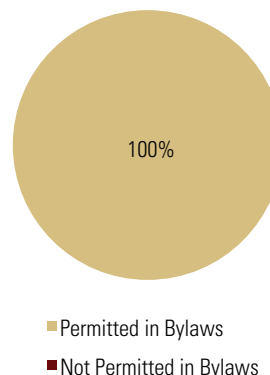
### Classified Boards

- 42 companies, or 84%, implemented a classified board in connection with the IPO, meaning that following the IPO, director elections will be staggered over a three-year period with approximately one-third of the directors subject to reelection each year



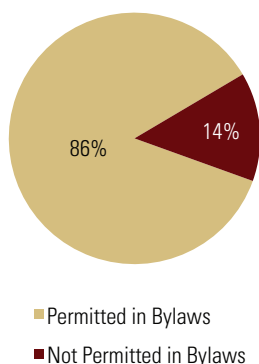
### Board Authority to Fill Vacancies on Board

- 50 companies, or 100%, had bylaws that permitted the board of directors to fill a vacancy on the board



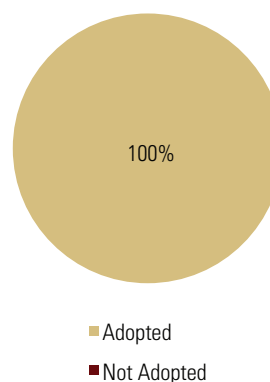
### Director Removal for Cause Only

- 43 companies, or 86%, had bylaws that permitted removal of a director for cause only (e.g., malfeasance in office, gross misconduct or neglect, false or fraudulent misrepresentation inducing the director's appointment, willful conversion of corporate funds, breach of the obligation of full disclosure, incompetency, gross inefficiency, or moral turpitude)



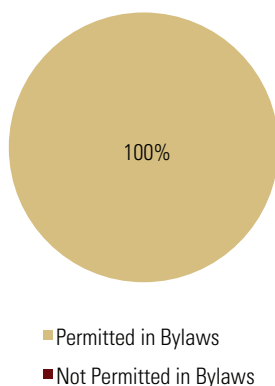
### Advance Notice Bylaws

- 50 companies, or 100%, had advance notice bylaws that set forth certain requirements that a stockholder must meet in order to bring a matter of business before a stockholder meeting or nominate a director for election



### Board Authority to Change Board Size

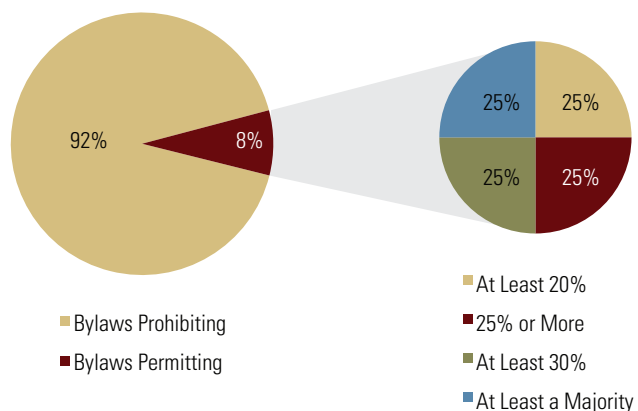
- 50 companies, or 100%, had bylaws that permitted the board of directors to change the size of the board



### Stockholder Ability to Call Special Meeting

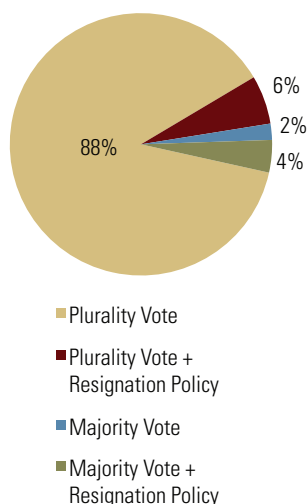
- 46 companies, or 92%, had bylaws that prohibited stockholders from calling a special meeting
- 4 companies, or 8%, had bylaws that permitted stockholders to call a special meeting
  - Of the 4 companies:
    - 1 company permitted stockholders comprising at least 20% of voting power to call a special meeting
    - 1 company permitted stockholders comprising 25% or more of voting power to call a special meeting, but only for so long as a specified stockholder held at least 25% of voting power
    - 1 company permitted stockholders comprising at least 30% of voting power to call a special meeting

- 1 company permitted stockholders comprising at least a majority of voting power to call a special meeting



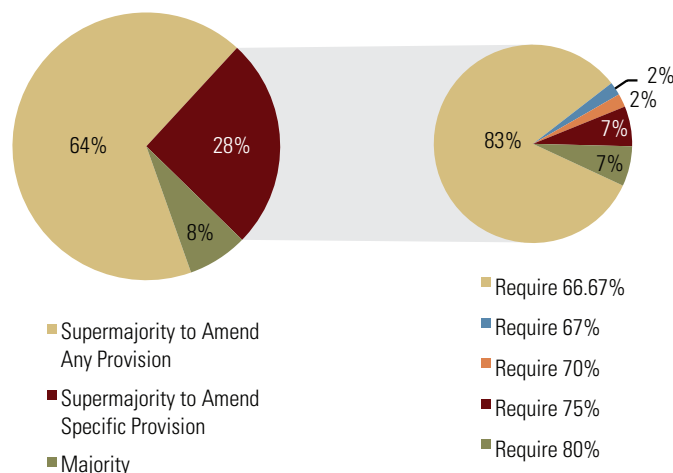
### Director Elections

- 44 companies, or 88%, had bylaws that provide director election by a plurality voting standard, meaning that the directors receiving the highest number of votes are elected, without a resignation policy (this is the default under Delaware law)
- 3 companies, or 6%, had bylaws that provide director elections by a plurality voting standard, but also had a resignation policy whereby directors who did not receive a majority vote were expected to resign subject to board approval of such resignation
- 1 company, or 2%, had bylaws that provide director elections by a majority voting standard, meaning that a director is only elected if the number of votes cast "for" exceed the number of votes cast "against" such director, without a resignation policy
- 2 companies, or 4%, had bylaws that provide director elections by a majority voting standard, but also had a resignation policy whereby directors who did not receive a majority vote were expected to resign subject to board approval of such resignation



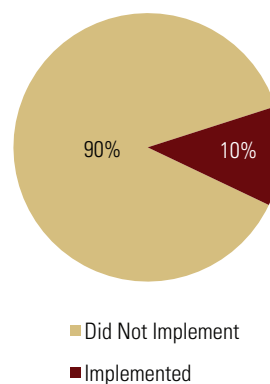
### Supermajority Stockholder Vote Required to Amend Bylaws

- 32 companies, or 64%, had a supermajority voting standard for stockholders to amend any provision of the bylaws
- 14 companies, or 28%, had a supermajority voting standard for stockholders to amend specified provisions of the bylaws
  - Of the 46 companies with some form of supermajority voting standards:
    - 38 companies, or 82.6%, require 66.67% approval
    - 1 company, or 2.2%, requires 67% approval
    - 1 company, or 2.2%, requires 70% approval
    - 3 companies, or 6.5%, require 75% approval
    - 3 companies, or 6.5%, require 80% approval
- 4 companies, or 8%, permitted a majority voting standard for stockholders to amend the bylaws



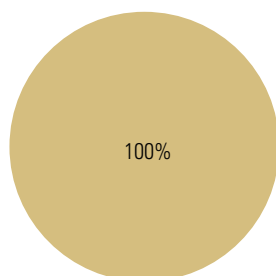
### Dual-Class Common Stock

- 5 companies, or 10%, implemented dual-class common stock



### Blank Check Preferred

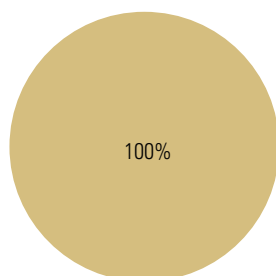
- 50 companies, or 100%, have a certificate of incorporation authorizing blank check preferred, which allows the board of directors, without further stockholder approval, to issue preferred stock in one or more series and to determine the rights, preferences, and privileges of the preferred stock (e.g., rights to voting, dividend, redemption, etc.)



■ Authorized  
■ Not Authorized

### Stockholder Ability to Act by Written Consent

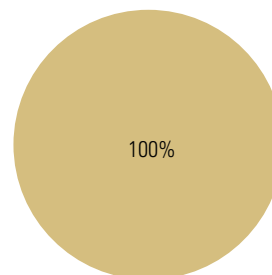
- 50 companies, or 100%, have a certificate of incorporation prohibiting stockholders from acting by written consent, meaning that any action requiring stockholder approval must occur at a stockholder meeting



■ Prohibited  
■ Not Prohibited

### Cumulative Voting

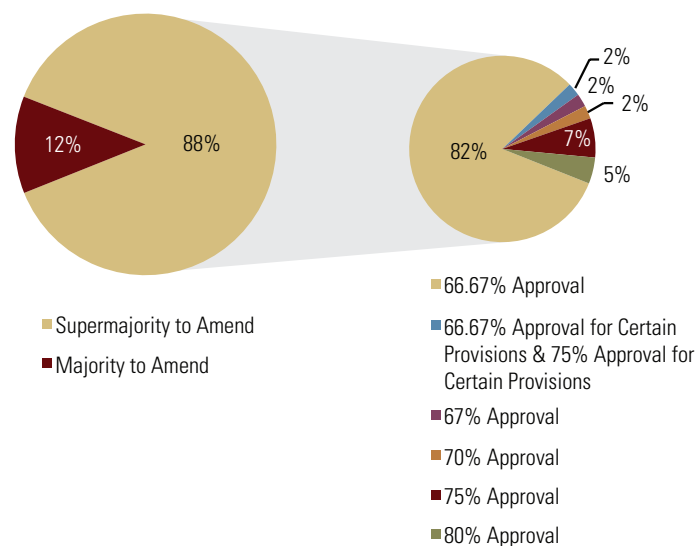
- 50 companies, or 100%, have a certificate of incorporation prohibiting cumulative voting



■ Prohibited  
■ Not Prohibited

### Supermajority Stockholder Vote Required to Amend Certificate of Incorporation

- 44 companies, or 88%, have a supermajority voting standard for stockholders to amend specified provisions of the certificate of incorporation
  - Of the 44 companies with supermajority voting standards:
    - 36 companies, or 81.8%, require 66.67% approval
    - 1 company, or 2.3%, requires 66.67% approval for certain provisions and 75% approval for certain provisions
    - 1 company, or 2.3%, requires 67% approval
    - 1 company, or 2.3%, requires 70% approval
    - 3 companies, or 6.8%, require 75% approval
    - 2 companies, or 4.5%, require 80% approval
- 6 companies, or 12%, have a majority voting standard for stockholders to amend the certificate of incorporation



## Law Firms and Underwriters

### Law Firms

The law firms representing venture-backed company IPOs included in the survey were:

Law Firm	Issuer Representations	Underwriter Representations	Total Number of Representations
Wilson Sonsini Goodrich & Rosati, P.C.	11	7	18
Davis Polk & Wardwell LLP	3	13	16
Latham & Watkins LLP	4	5	9
Cooley LLP	5	2	7
Fenwick & West LLP	3	2	5
Simpson Thacher & Bartlett LLP	0	5	5
Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP	4	0	4
Pillsbury Winthrop Shaw Pittman LLP	3	1	4
DLA Piper LLP (US)	2	1	3
Paul, Hastings, Janofsky & Walker LLP	2	1	3
Ropes & Gray LLP	1	2	3
Cleary Gottlieb Steen & Hamilton LLP	0	2	2
Cravath, Swaine & Moore LLP	0	2	2
Gibson, Dunn & Crutcher LLP	0	2	2
Kirkland & Ellis LLP	1	1	2
Skadden, Arps, Slate, Meagher & Flom LLP	0	2	2
Wilmer Cutler Pickering Hale and Dorr LLP	2	0	2
Baker Botts L.L.P.	1	0	1
Bingham McCutchen LLP	1	0	1
Choate, Hall & Stewart LLP	0	1	1
Fulbright & Jaworski LLP	1	0	1
Haynes and Boone, LLP	1	0	1
Hogan Lovells US LLP	1	0	1
King & Spalding LLP	1	0	1
Mayer Brown LLP	1	0	1
Morris, Manning & Martin, LLP	1	0	1
Orrick, Herrington & Sutcliffe LLP	1	0	1
White & Case LLP	0	1	1



## Underwriters

The underwriters most frequently appearing as “lead left” underwriter on venture-backed company IPOs included in the survey were:

Lead Underwriter	Total Number of Transactions
Goldman, Sachs & Co.	11
Morgan Stanley	11
J.P. Morgan	9
Credit Suisse	7
Bank of America Merrill Lynch	4
Deutsche Bank Securities	2
Citi	1
Piper Jaffray	1
RBC Capital Markets	1
Stifel Nicolaus Weisel	1
SunTrust Robinson Humphrey	1
UBS Investment Bank	1

## For More Information

For more information on the above survey findings or any related matters, please contact your regular Wilson Sonsini Goodrich & Rosati contact or any member of the firm’s corporate and securities practice.

## About Wilson Sonsini Goodrich & Rosati

Celebrating its 50th anniversary in 2011, Wilson Sonsini Goodrich & Rosati offers a broad range of services and legal disciplines focused on serving the principal challenges faced by the management and boards of directors of business enterprises. Consistently ranked among the top corporate law firms nationwide by *Corporate Board Member* and other trusted sources, we currently represent more than 300 public and 3,000 private companies across a diverse range of industries in the United States and abroad. For several consecutive years, we have advised more companies that receive venture financing than any other U.S. law firm, and we consistently rank No. 1 by Dow Jones VentureSource for the number of venture financing deals handled each year. In addition, we have represented more U.S. companies in connection with their IPOs than any other law firm since 1998 according to IPO Vital Signs.

## Acknowledgements

WSGR partner Richard Cameron Blake designed and oversaw this survey. Special thanks to CEO Steven E. Bochner; Vice Chairman Jeff D. Saper; partners Robert G. Day, Jose F. Macias, Katharine A. Martin, Rezwan D. Pavri, David J. Segre, Barry Taylor, and David S. Thomas; and associates Douglas K. Schnell, Tait O. Svenson, and Matthew M. Tolland, who provided invaluable insight in the design and reporting of the survey. Special thanks also to 2011 WSGR summer associates Joshua Kim, Ashley Romero, John Selgrath, Jessica Suttle, and Peter Zaffaroni for their invaluable assistance on the survey, as well as 2010 WSGR summer associates Courtney Armour, Susan Buckner, Christina Chan, Ryan Golden, Omar Haroun, Andrew Kozumplik, Jay Purcell, Brad Tennis, Eldon Wright, and Kathy Zhu for their invaluable assistance on a previous internal version of the survey.

## Disclaimer

This communication is provided for your information only and is not intended to constitute professional advice as to any particular situation.

## Appendix A

The below table provides information pertaining to the 13 companies, or 26%, that disclosed non-financial statement key metrics, including the specific metrics disclosed.

Company	Business Description	Key Metrics
The Active Network, Inc.	Provider of organization-based cloud-computing applications	Organizations (number of organization/customers who use company's registration services)  Net registrations revenue  Registrations
Boingo Wireless, Inc.	Provider of commercial mobile Wi-Fi Internet solutions	Subscribers  Monthly churn (number of subscribers who canceled their subscriptions in a given month)  Connects (how often individuals connect to Boingo Wi-Fi network in a given period)
Cornerstone OnDemand, Inc.	Provider of learning and talent management solution delivered as software-as-a-service	Annual dollar retention rate  Number of clients  Number of users
Demand Media, Inc.	Internet-based model for the professional creation of high-quality, commercially valuable content at scale	Content and media metrics (page views, revenue per 1,000 page views)  Registrar metrics (domain registrations, average revenue per domain)
Green Dot Corporation	Prepaid financial services company	Number of general purpose reloadable prepaid debit cards activated  Number of cash transfers  Number of active cards  Gross dollar volume
HomeAway, Inc.	Online marketplace for the vacation rental industry	Paid listings  Average revenue per listing  Renewal rate  Visits to website

Company	Business Description	Key Metrics
LinkedIn Corporation	Professional network on the Internet	Number of registered members Number of unique visitors to website Number of page views on website
Pandora Media, Inc.	Internet radio in the United States	Listener hours Registered users
Responsys, Inc.	Provider of on-demand software that enables companies to engage in relationship marketing across the interactive channels that consumers are embracing today—email, mobile, social, and the web	Subscription dollar retention rate Number of customers
RigNet, Inc.	Data network infrastructure provider serving the remote communications needs of the oil and gas industry	Impressions delivered Cost per 1,000 impressions
RPX Corporation	Subscription-based patent risk-management solutions	Number of clients Gross acquisition spending
TeleNav, Inc.	Provider of location-based services (LBS), including voice-guided navigation, on mobile phones	Average monthly revenue per user Average monthly paying end user
Zipcar, Inc.	Car-sharing network	Total revenue per member Usage revenue per vehicle per day Cost per new account Member retention Ending members Ending vehicles



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