

# Employee Stock Plan Proposals at the Bay Area Tech 120

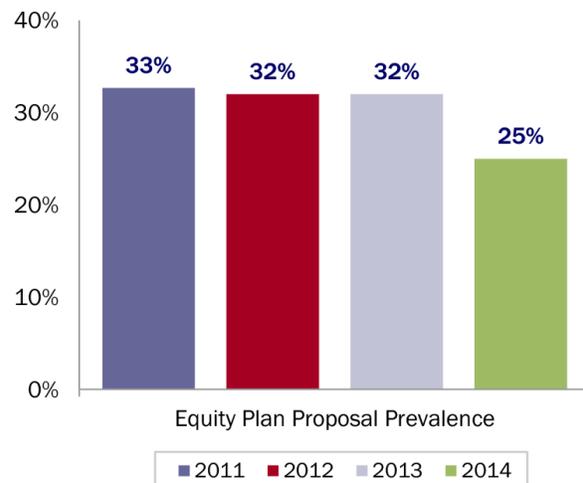
As we wind down on the 2014 proxy season, we can confirm that it was another busy year for employee stock plan proposals among the 120 largest publicly-traded technology companies headquartered in the San Francisco Bay Area (“the Bay Area Tech 120”). As in prior years, we have compiled the voting results and related information from the 2014 proxy season of proposals to either adopt a new employee stock plan or increase the share reserve for an existing plan.

This Thoughtful Pay Alert summarizes these results, based on the information disclosed in the companies’ proxy statement filings with the SEC.

## Number of Employee Stock Plan Proposals Remained Constant in 2014

One-quarter of the Bay Area Tech 120 (30 companies) submitted proposals to their shareholders to either adopt a new employee stock plan or increase the share reserve for an existing plan during the past 12 months (based on a review of proxy statements filed for companies with fiscal year ends during the period from June 1, 2013 through May 31, 2014). This number is slightly lower than in prior years, due to the inclusion of more newly-public companies with “evergreen” provisions in their employee stock plans in the Bay Area Tech 120 compared to our previous Bay Area 150 analyses. Specifically, 34 of the Bay Area Tech 120 companies have an active “evergreen” feature that provides for the annual replenishment of shares to the plan share reserve without shareholder approval (with such provisions generally to continue for a period of up to 10 years following the initial public offering).

This pattern reflects the typical life cycle for many employee stock plans. Mature public companies generally seek to replenish their employee stock plan share reserve, or adopt a new plan, approximately every two to three years. The data suggests that, in any given year, approximately one-quarter to one-third of the Bay Area Tech 120 is going through the process – and attendant scrutiny – of seeking shareholder approval for an employee stock plan.



NOTE: For the years 2011 through 2013, the percentages shown reflect the employee stock plan prevalence among the Bay Area 150 companies, while for 2014, the percentage shown is based on the smaller number of companies included in the Bay Area Tech 120.

This pattern also reflects, in part, the dilution policies of the major proxy advisory firms, such as Institutional Shareholder Services (“ISS”), and certain institutional investors, which typically limit the number of shares that they will approve for issuance at any given time for purposes of making equity awards.

Notable exceptions do exist, however. These include companies that have an “evergreen” provision in their employee stock plan that provides for annual share replenishments without shareholder approval for up to 10 years. One-quarter of the public companies in the Bay Area Tech 120 (28%) have such a provision in their stock plans. In addition, some companies (such as Intel Corporation and Maxim Integrated Products), for corporate governance or consistency purposes, seek approval of an employee stock plan share reserve increase on an annual basis. Other companies have favorable shareholder bases that permit more aggressive, longer-term share requests.

We also note that 21 companies in the Bay Area Tech 120 (18%) submitted employee stock purchase plan proposals to their shareholders during the past 12 months.

Employee Stock Plan Proposals at the Bay Area Tech 120 (continued)

All Employee Stock Plan Proposals Approved in 2014

As was the case in 2012 and 2013, each of the 30 Bay Area Tech 120 companies with an employee stock plan proposal in 2014 saw its proposal approved by its shareholders. The average level of support was 81.0% of the votes cast, and 63.0% of the shares outstanding. The lower shares outstanding number reflects the effect of the Dodd-Frank Act provision which prohibits companies from taking broker non-votes into consideration when calculating the votes cast on an employee stock plan proposal.

Size of Share Reserve Requests in 2014

Among the 30 companies that sought shareholder approval of a new or amended employee stock plan in 2014, the share reserve request (as a percentage of the company's outstanding shares) ranged as follows:

June 2013 to May 2014 (n=30)				
	New Shares as %	Current Shares as %	Total Shares as %	Plan Fungible Ratio
Market 75th	8.16%	5.59%	10.93%	2.00
Market 50th	4.18%	4.00%	8.39%	1.78
Average	4.94%	4.04%	8.99%	1.74
Market 25th	1.93%	2.45%	6.86%	1.50

High Prevalence of Fungible Share Provisions

Echoing a trend that we first noted last year, the overwhelming majority of the employee stock plans submitted for shareholder approval included a “fungible share” provision that limits the amount of full-value equity awards (such as restricted stock unit and performance share awards) that may be granted from the share reserve.

Under a fungible share provision, full-value awards are counted at a higher rate for share reserve depletion purposes to effectively neutralize their impact on a plan's share reserve relative to appreciation-based equity awards (such as stock options or stock appreciation rights). For example,

if the employee stock plan provides that, for share reserve depletion purposes, full-value awards count as two shares for every one share granted, then one restricted share granted will count the same as two option shares granted under the plan.

In 2014, 83% (25 of 30) of the Bay Area Tech 120 companies that submitted proposals for new or amended employee stock plans had a fungible share provision in their plan. The fungible share ratios ranged between 1.26:1 to 2.37:1 (with a median of 2.00:1) and, in most cases, were specifically derived for each company from the relative fair value of a full-value award compared to the fair value of an appreciation-based award (based, in many cases, on ISS' notion of “fair value”).

Interestingly, one of the Bay Area Tech 120 companies, eBay, uses an “inverse” fungible ratio where full value awards count against the share pool on a 1:1 basis and option shares count 0.56:1 for share reserve purposes.

Scope of Proposal Disclosure

The specter of potential litigation that has arisen in the past two years concerning employee stock plan proposals has contributed to noticeable variations in the disclosure about these proposals in proxy statements. Overall, we note that, generally, most companies are now disclosing that the share request (either on a stand-alone basis or combined with the existing share pool) is intended to satisfy the company's award needs for a period of one to three years, with a two-year award period the most common projection. Beyond this, however, the quality of these disclosures is quite mixed – some companies are providing very detailed forward-looking “overhang” projections, while other companies continue to provide a more limited narrative description.

Need Assistance?

Compensia has extensive experience in assisting companies in formulating employee stock plan proposals and developing effective strategies for obtaining shareholder approval of such proposals. If you would like assistance in analyzing your equity compensation strategy or negotiating the various pressure points in implementing an employee stock plan or a share reserve increase, or if you have any questions on the subjects addressed in this Thoughtful Pay Alert, please feel free to contact Jason Borrevik at 408.876.4035 or Mark A. Borges at 415.462.2995. ■

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## Employee Stock Plan Proposals at the Bay Area Tech 120 (continued)

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