

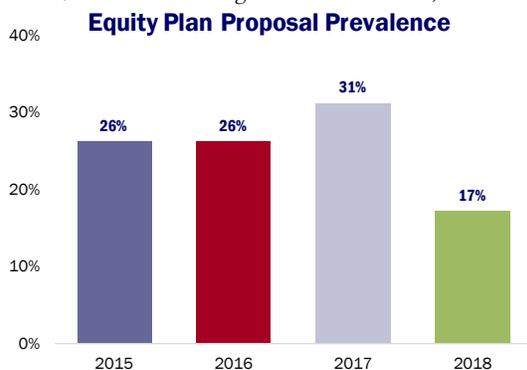
# Stock Plan Proposals at the Tech 150

This Thoughtful Pay Alert summarizes our review of the employee stock plan proposals filed with the Securities and Exchange Commission among 150 representative publicly-traded technology companies over the past year, approximately 60% of which are headquartered in the San Francisco Bay Area (the “Tech 150”).

## Prevalence of Employee Stock Plan Proposals Declined in 2018

In 2018, the number of employee stock plans proposals in the technology sector declined from prior years. Only 17% (26 of 150 companies) of the Tech 150 submitted employee stock plan proposals to their shareholders in the past 12 months (based on a review of definitive proxy statements filed for companies with fiscal years ending during the period from June 1, 2017 through May 31, 2018). This number is significantly lower than the practices of representative publicly-traded technology companies that we reviewed in each of the prior three years (26% in our Bay Area Tech 120 reviews in both 2015 and 2016 and 31% in our Tech 150 review in 2017).

Increased from prior years, 37% (55 of 150 companies) of the Tech 150 have an active “evergreen” feature in their plan that provides for the annual replenishment of shares to the plan share reserve without the need for shareholder approval (typically for up to 10 years following IPO). As expected, none of these companies submitted employee stock plan proposals to their shareholders in 2018. Excluding these companies, 27% of the remaining Tech 150 (26 of 95 companies) submitted employee stock plan proposals to their shareholders in the past 12 months (down from 46% of the Tech 150 without an evergreen feature in 2017).



This pattern reflects the typical life cycle for many employee stock plans where mature public companies generally seek to replenish their plan share reserve every one to three years. Because a relatively high number of companies had stock plan proposals in 2017, prevalence is lower in 2018 (many companies space their proposals out as long as they can).

This pattern also reflects the continued impact of the policies of the major proxy advisory firms, particularly Institutional Shareholder Services (“ISS”), and certain influential institutional shareholders, which can limit the number of employee stock plan shares that they will approve for issuance.

As part of its annual policy updates for 2018, ISS continued to refine and tighten its policies for issuing a favorable stock plan approval recommendation, thereby compelling companies to consider making changes to their plan provisions and/or equity award grant practices to obtain ISS support. We frequently see Tech 150 companies add one-year minimum vesting provisions for awards and restrictions on paying dividends (if applicable) on unvested/unearned plan awards to their plan to conform to ISS’ guidelines.

## Size of Share Reserve Requests in 2018

Among the 26 companies in the Tech 150 that sought shareholder approval of a new or amended employee stock plan in 2018, the size of the share requests (as a percentage of the company’s outstanding shares) ranged as follows:

|                    | Fungible Only (n=15) |                 |                     | Non-Fungible Only (n=11) |                 |                     |                   |
|--------------------|----------------------|-----------------|---------------------|--------------------------|-----------------|---------------------|-------------------|
|                    | Fungible             | New Shares as % | Current Shares as % | Total Shares as %        | New Shares as % | Current Shares as % | Total Shares as % |
| <b>Market 75th</b> | 2.09                 | 7.86%           | 6.50%               | 13.11%                   | 4.27%           | 4.54%               | 7.67%             |
| <b>Market 50th</b> | 1.75                 | 5.39%           | 4.83%               | 10.19%                   | 2.72%           | 3.61%               | 5.92%             |
| <b>Average</b>     | 1.85                 | 6.35%           | 4.79%               | 11.15%                   | 3.06%           | 3.54%               | 6.60%             |
| <b>Market 25th</b> | 1.54                 | 4.72%           | 2.92%               | 8.36%                    | 1.47%           | 2.27%               | 5.36%             |

At the median, the size of the new share request was approximately 1% lower than the share requests in 2017 Tech 150 proposals; the overall share pool, post-request, was also smaller but more consistent.

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## Stock Plan Proposals at the Tech 150 (continued)

### Prevalence of Fungible Share Provisions

Nearly 58% (15 of 26 companies) of the Tech 150 with employee stock plan proposals during the past 12 months included a “fungible share” provision in the plan. This provision limits the amount of full-value equity awards (such as restricted stock unit and performance share awards) that may be granted from the share pool. The prevalence of fungible share provisions remained relatively consistent with 2017 and 2016 (51% and 45%, respectively) and down from 2015 (65%) and 2014 (83%), likely due to a continued shift from the use of stock options to full-value equity awards at Tech 150 companies. For these companies, fungible share ratios ranged between 1.40:1 to 2.50:1, with a median of 1.75:1.

### All Proposals Approved

As was the case in each of the prior five years, each of the Tech 150 companies with an employee stock plan proposal during the past 12 months saw its proposal approved by its shareholders. The average level of support was 88% of the votes cast, and 69% of the shares outstanding (versus 86% and 69%, respectively, in 2017).

### Employee Stock Purchase Plan (“ESPP”) Proposals

We also note that 12% (18 of 150 companies) of the Tech 150 submitted ESPP proposals to their shareholders for approval during the past 12 months (consistent with prior years). Investor guidelines relating to ESPPs are more lenient than those for omnibus stock plans and, typically, companies reserve a share pool that can last four or more years when seeking shareholder approval. As a result, we see a lower relative frequency for ESPP proposals.

### Explicit Director Pay Limits Remain Common

Approximately 60% (15 of 26 companies) of the Tech 150 with employee stock plan proposals during the past 12 months include explicit limits on the annual compensation of their non-employee directors in their plans. These limits break down as follows:

- 53% of the limits apply to annual equity only (down from 58% in 2017), while 44% apply to annual cash and equity compensation (up from 42% in 2017).
- All of the limits are denominated as a dollar value (in 2017, 15% of annual limits were denominated as a number of shares).
- The amount of these limits is \$750,000 at both the 50th and 75th percentiles, reflecting a narrowly developed market range.

While most of the time the addition of a director pay limit is included with other proposed amendments to a plan, several Tech 150 companies (GoPro, ServiceNow, and Workday) submitted proposals to shareholders solely to gain approval of an annual pay limit for their non-employee directors.

### 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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## Stock Plan Proposals at the Tech 150 (continued)

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