

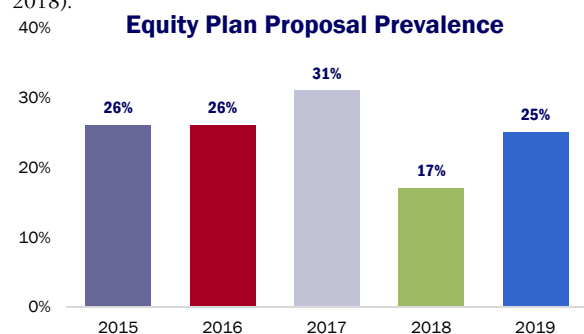
Stock Plan Proposals at the Tech 150

In 2019, the number of employee stock plan proposals in the technology sector increased from the prior year. 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 50% of which are headquartered in the San Francisco Bay Area (the “Tech 150”).

Prevalence of Employee Stock Plan Proposals Increased in 2019

In 2019, the number of employee stock plans proposals in the technology sector increased from 2018 to be more consistent with the years prior to 2018. Twenty-five percent (37 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, 2018 through May 31, 2019). This number is higher than the practices of the representative publicly-traded technology companies that we reviewed in 2018 where only 17% had employee stock plan proposals but is consistent with the three years prior to 2018 (26% in our Bay Area Tech 120 reviews in both 2015 and 2016 and 31% in our Tech 150 review in 2017).

Thirty-two percent (48 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 their IPO). As expected, none of these companies submitted employee stock plan proposals to their shareholders in 2019 (consistent with 2018). Excluding these companies, 36% of the remaining Tech 150 (37 of 102 companies) submitted employee stock plan proposals to their shareholders in the past 12 months (up from 27% of the Tech 150 without an evergreen feature in 2018).



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 low number of companies had employee stock plan proposals in 2018, prevalence is higher in 2019 (many companies space their proposals out as long as reasonably possible).

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 2019, 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 authorized) on unvested/unearned plan awards to their plan to conform to the applicable ISS’ guidelines.

Size of Share Reserve Requests in 2019 Marginally Down

Among the 37 companies in the Tech 150 that sought shareholder approval of a new or amended employee stock plan in 2019, the size of the share requests (as a percentage of the company’s outstanding shares) ranged as follows:

	Fungible Only (n=12)			Non-Fungible Only (n=25)			
	New Shares as % Fungible	Current Shares as %	Total Shares as %	New Shares as %	Current Shares as %	Total Shares as %	
Market 75th	2.04	5.72%	8.24%	12.69%	5.06%	4.51%	7.59%
Market 50th	1.97	4.71%	5.71%	10.88%	3.14%	3.04%	6.30%
Average	1.89	5.02%	6.40%	11.42%	3.59%	3.69%	7.29%
Market 25th	1.65	3.97%	5.12%	10.07%	1.83%	1.90%	5.06%

At the median, the size of the new share requests was approximately 0.65% lower than the share requests in the 2018 Tech 150 proposals; the overall share pool, post-request, was also smaller to a similar degree.

Stock Plan Proposals at the Tech 150 (continued)

Prevalence of Fungible Share Provisions Down Significantly

Only 32% (12 of 37 companies) of the Tech 150 with employee stock plan proposals during the past 12 months included a “fungible share” provision in the plan. This is down significantly from 2018 where 58% of companies with proposals included a fungible share provision. Several companies explicitly removed fungible share provisions as part of their proposal to amend their existing plan this year, including 8x8, Citrix Systems, Cohu, Harmonic and Juniper Networks.

This provision limits the number 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 (32% in 2019) is down significantly from prior years (58%, 51%, 45%, 65% and 83% in 2018-2014, respectively), 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 1.33:1 to 2.76:1, with a median of 1.94:1.

All Proposals Approved

As was the case in each of the prior six 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 91% of the votes cast, and 71% of the shares outstanding (versus 88% and 69%, respectively, in 2018).

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). Proxy advisory firm and institutional shareholder 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 65% (24 of 37 companies) of the Tech 150 with employee stock plan proposals during the past 12 months included an explicit limit on the annual compensation of their non-employee directors in their plan. This is up from 60% of

Tech 150 companies with employee stock plan proposals in 2018. These limits break down as follows:

- 42% of the limits apply to annual equity awards only (down from 53% in 2018 and 58% in 2017), while 58% apply to both annual cash and equity compensation (up from 44% in 2018 and 42% in 2017).
- 92% of the limits are denominated as a dollar value versus a fixed share approach.
- The amount of these limits is \$750,000 to \$798,000 at the 50th and 75th percentiles, reflecting a narrowly developed market range.

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. ■

Stock Plan Proposals at the Tech 150 (continued)

About Compensia

Compensia, Inc. is a management consulting firm that provides executive compensation advisory services to Compensation Committees and senior management.

Silicon Valley

125 S. Market Street
Suite 1000
San Jose, California 95113
408.876.4025

Thomas G. Brown, Chairman &
Managing Principal
tbrown@compensia.com
408.876.4023

Susan Gellen
sgellen@compensia.com
408.907.4302

Tom LaWer, Managing Principal
tlawer@compensia.com
408.907.4309

Timothy Sparks
tsparks@compensia.com
408.876.4024

Greg Loehmann
gloehmann@compensia.com
408.907.4319

San Francisco

One Embarcadero Center
Suite 2830
San Francisco, California 94111
415.462.2990

Mark A. Borges
mborges@compensia.com
415.462.2995

Erik Beucler
ebeucler@compensia.com
408.907.4314

Amanda Feyerabend
afeyerabend@compensia.com
415.462.2988

Southern California

Ralph Barry
rbarry@compensia.com
858.603.2288

Pacific Northwest

Jason Borrevik
jborrevik@compensia.com
408.876.4035