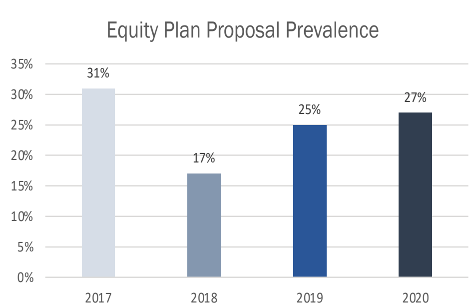
Equity Plan Proposals at the Tech 200

This Thoughtful Pay Alert summarizes our review of the equity plan proposals filed with the Securities and Exchange Commission among 200 representative public technology companies over the past year, approximately 50% of which are headquartered in the San Francisco Bay Area (the "Tech 200").

Prevalence of Equity Plan Proposals Remained Flat in 2020

In 2020, the prevalence of equity plan proposals in the technology sector remained static from 2019. 27% (53 of 200 companies) of the Tech 200 submitted equity 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, 2019 through May 31, 2020). This compares to 25% of 150 representative public technology companies in 2019 (the "Tech 150").



32% (63 of 200 companies) of the Tech 200 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 equity plan proposals to their shareholders in 2020 (consistent with 2019).

Excluding these companies, 39% (53 of 137 companies) of the remaining Tech 200 submitted equity plan proposals to their shareholders in the past 12 months (up from 36% of the Tech 150 without an evergreen feature in 2019).

This pattern reflects the typical life cycle for many equity plans where mature public companies generally seek to replenish their plan share reserve every one to three years and try to space their proposals out as long as reasonably possible.

This pattern also reflects the continuing 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 equity plan shares that they will approve for issuance in a given year.

ISS continues to periodically refine and tighten its policies for issuing a favorable equity plan approval recommendation, thereby compelling companies to consider making changes to their plan provisions and/or equity award grant practices to obtain ISS support. Frequently, we see Tech 200 companies add one-year minimum vesting provisions for awards and restrictions on paying dividends (if authorized) on unvested/unearned awards to their plan to increase the size of ISS-compliant share pools under applicable ISS' guidelines.

Size of Share Reserve Requests in 2020 Down for Plans with Fungible Ratios but Up for Plans without Fungible Ratios

Among the 53 companies in the Tech 200 that sought shareholder approval of a new or amended equity plan in 2020, the size of the share requests (as a percentage of the company's outstanding shares) ranged as follows:

		Fungible Only (n=23)			Non-Fungible Only (n=30)		
	Fungible	New Shares	Current Shares	Total Shares	New Shares	Current Shares	Total Shares
P75	2.08	6.6%	6.4%	11.9%	5.0%	4.7%	8.8%
P50	1.72	5.5%	4.9%	10.4%	3.6%	3.1%	6.8%
Average	1.82	5.3%	5.0%	10.3%	3.8%	3.8%	7.6%
P25	1.50	4.1%	3.0%	9.0%	2.5%	2.3%	5.2%

Equity Plan Proposals at the Tech 200 (continued)

For those companies with fungible share provisions, at the median, the size of the new share request was ~0.8% lower than the share requests in the 2019 Tech 150 proposals; the overall share pool, post-request, was also smaller by ~0.5%.

For those companies without fungible share provisions, at the median, the size of the new share request was ~0.4% higher than the share requests in the 2019 Tech 150 proposals; the overall share pool, post-request, was also higher by ~0.5%.

Prevalence of Fungible Share Provisions Increased Year-Over-Year But Long-Term Trend is Still Down

43% (23 of 53 companies) of the Tech 200 with equity plan proposals during the past 12 months included a “fungible share” provision in the plan. This is up from our 2019 Tech 150 review (32% fungible provision prevalence) but still down significantly from 2018 where 58% of the companies with equity plan proposals included a fungible share provision. Only two companies explicitly removed or reduced fungible share provisions as part of their proposal to amend their existing equity plan this year – NETGEAR and Netscout Systems.

A fungible share 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 (43% in 2020) is down from years prior to 2019 (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 200 companies. For these companies, fungible share ratios ranged between 1.31:1 to 2.39:1, with a median of 1.72:1.

All Proposals Approved

As was the case in each of the prior six years, each of the Tech 200 companies with an equity plan proposal during the past 12 months received shareholder approval of its proposal. The average level of support was 88% of the votes cast, and 70% of the shares outstanding (versus 91% and 71%, respectively, in 2019).

Note that ISS recommended FOR the approval of 79% (42 of 53 companies) of the Tech 200 equity plan proposals. At those companies with ISS support, the average level of shareholder support was 92% of the votes cast (the median was 91%). At those companies without ISS support, the average level of shareholder support was 73% of the votes cast (the median was 75%). ISS’ average impact on vote results was 19%.

Employee Stock Purchase Plan ("ESPP") Proposals

We also note that 9% (17 of 200 companies) of the Tech 200 submitted ESPP proposals to their shareholders for approval during the past 12 months (relatively consistent with prior years). Proxy advisory firm and 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 66% (35 of 53 companies) of the Tech 200 with equity 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 consistent with the 65% of Tech 150 companies with such limits in their equity plan proposals in 2019. These limits break down as follows:

- 31% of the limits apply to annual equity awards only (down from 42% in 2019, 53% in 2018 and 58% in 2017), while 69% apply to both annual cash and equity compensation (up from 58% in 2019, 44% in 2018 and 42% in 2017).
- 97% of the limits are denominated as a dollar value versus a fixed share approach.
- The amount of these limits is $750,000 to $775,000 at the 50th and 75th percentiles, reflecting a narrowly developed market range.

Need Assistance?

Compensia has extensive experience in assisting companies in formulating equity 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 equity 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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