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DC Area Public Company Local Trends Review

2023 Proxy Season

Fall Report 2023

Welcome to the

DC Area Public Company Local Trends Review for the 2023 Proxy Season

As a public company, keeping up with the Securities and Exchange Commission (the "SEC"), stock exchange and governing state laws, rules and other requirements is an important element of the design and maintenance of an effective governance platform and in crafting public disclosures. In addition to technical compliance with applicable laws, rules and requirements, a public company's governance platform and public disclosures are tailored to take into account its business, operations and industry sector as well as its stockholders, potential investors and, in some cases, proxy advisory firms. To support these efforts, public companies also evaluate market and industry data of other similarly situated companies (i.e., "peers"), including their approach to governance and disclosure. Notably, identifying your peers—often in a myriad of contexts such as by industry, revenue, geography, and compensation—and being aware of their disclosure provides important context of existing and emerging market trends evolving from investor and business needs. In my 20 years of practice as a corporate and securities lawyer in the DC area, every public company with which I have worked has benchmarked against what its peers are doing and disclosing. This common practice of reviewing peer data and information is becoming increasingly important, particularly as governance challenges and requirements grow in both volume and complexity. For example, currently, public companies are grappling with, among other items, environmental, social and governance (ESG) and diversity, equity and inclusion (DEI) disclosures, compensation disclosures sliced and diced in a variety of ways to now include pay versus performance, and heightened board of directors' elements surrounding their composition, organization and process, and additional governance issues.

Accordingly, in conjunction with client projects, we frequently pull statistical data and other information on the companies within the Fortune 500, S&P 500, Russell 3000, and other national surveys as available, as well as conduct issue-specific peer reviews of company-identified peer sets. While this benchmarking of data on a national basis has and continues to prove helpful, a lingering sense has remained that the DC-area public company market, while robust in number, likely differs at least in some respects from governance and disclosure perspectives compared to other markets, including from the national public company statistics. To address these differences, we have prepared this report to set forth data and information specific to DC-area public companies that we thought would be helpful to our local clients and colleagues.

Notably, considering the 18 Fortune 500 companies[1] headquartered locally, if the greater DC area qualified as a "municipality" it would rank third—behind only New York City (40 companies) and Houston (22 companies), and just before Atlanta (15 companies)—for the number of 2023 Fortune 500 companies headquartered locally.[2]

In this report, we reviewed the most recent proxy statements filed with the SEC of the approximately 100 largest, by 2022 annual revenue, public companies in the DC area (the "DC 100" as further defined on page three of this report), resulting in a revenue parameter of those local companies exceeding $40M in annual revenues last year. We set out to assess high-level trends regarding our local public company market, as well as how the DC market aligns and contrasts with the trends and data of public companies nationally. The DC-area public company information and data set forth in this report includes: company demographic information; information and data regarding proxy statement proposals; data regarding board composition, organization and diversity; and compensation information. Some of our findings are as we expected and in line with data and information with a national focus, and others you may find surprising. Regardless, we hope that you find this report interesting and its locally focused insights helpful information for your corporate governance platform and related disclosures as you plan for 2024.

Regards,

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Defining the DC 100

The DC 100 is defined in this report as the approximately 100 largest, by 2022 annual revenue, public companies in the DC metropolitan area, which includes DC, Northern Virginia and the Maryland suburbs of DC. The annual revenue of the DC 100 all exceeded $40M last year.

The analysis presented in this report for 2023:

- draws on the latest proxy statements from 93 companies filed between September 8, 2022 and September 1, 2023 and corresponding Forms 8-K reporting annual meeting results;
- excludes certain companies that did not file 2023 proxy statements with the SEC due to either being
  - a new public company in 2023, or
  - currently held in conservatorship; and
- excludes certain other companies that did not have a recent publicly-available proxy statement filed with the SEC at the time of this report.

Therefore, the "DC 100" as used in this report generally refers to 93 DC area public companies, unless otherwise noted.

The DC 100 industries are assigned based on each company's SIC code, as designated with the SEC. **Exhibit A** details the SIC codes that relate to each industry classification used within this report and the corresponding number of companies for each.

Statistical Comparisons

Throughout this report, we reference national statistics as points of comparison to the DC 100 for broader national context. Those statistical comparisons are primarily to the companies within the S&P 500 Index, the Fortune 500 and Russell 3000 Index. Of the DC 100, 16 companies are included in the Fortune 500 (two additional Fortune 500 companies are headquartered locally but not included in the DC 100 because they did not file proxy statements with the SEC),[3] 18 companies are included in the S&P 500,[4] and 73 companies are included in the Russell 3000.[5]

S&P 500 and Fortune 500 data is referenced for comparisons to the largest US companies, although the criteria for the two listings are different. Where information is available, we have preferred to rely on S&P 500 data since it is comprised entirely of public companies versus the Fortune 500, which includes privately-held companies, but as there is overlap between the two of approximately 330 companies,[6] Fortune 500 data is a helpful reference in instances where S&P 500 data may not be readily available.

Russell 3000 statistics are provided for broader comparison to the entirety of the national public company market. In representing the 3000 largest US public companies, it comprises 97% of the US equity market.[7]

For the sole purpose of comparing pay v. performance company-selected measures, we incorporated Equilar 500 data, defined as the largest 500 public companies by reported revenue, with headquarters in the US that trade on one or more of the major US stock exchanges (NASDAQ Stock Market, NYSE or NYSE American).

Contents

Key Report Takeaways

The Companies Comprising the DC 100

- One of three DC 100 companies are government contractors and collectively these entities represent nearly 70.2% of the DC 100's overall revenue.
- Within specific industry sectors, the DC 100 aligns with the S&P 500 with over 25% of its companies within the technology sector and approximately 10% of its companies within the financial services sector, and both with important contingencies of healthcare and pharma/biotechnology-related companies.
- The DC 100 however has a greater industry presence in the real estate / REIT sector and the aerospace & defense sector than the S&P 500, whereas the S&P 500 has a greater industry focus in consumer discretionary companies and consumer staples.

The 2023 Annual Meeting Proposals of the DC 100

- The DC 100 had 94.3% support for its director nominees, trending a bit below national averages with the S&P 500 showing 95.9% support for director nominees and the Russell 3000 showing 94.9% support for director nominees.
- Approximately 2/3 of the DC 100 have annual director elections, with the remaining 31.2% of the DC 100 maintaining a staggered board in comparison to only 13.7% of the S&P 500 with staggered boards.
- More than 80% of the DC 100 had a Say-on-Pay proposal this year, with only one failing as of the time of this report.
- The DC 100 trendlines for Say-on-Pay success/failure rates, as well as thresholds of vote support (90+% and above support, 70% to 90% support, and 50%-70% support) are generally in line with those of the Russell 3000.
- 11 of the DC 100 Delaware-incorporated companies (or 17.7%) chose to put forward an officer exculpation proposal, with 9 of the 11 passing with an average passage rate of approximately 70.6%.

The 2023 Stockholder Proposals of the DC 100

- 18 of the DC 100 companies (19.4%) voted on between one and four stockholder proposals each. Most of the proposals were governance-related, with slightly over half of the governance proposals related to an independent board chair, which was in line with the Russell 3000. The DC 100 saw only 4 environmental proposals, and none of the "anti-ESG" proposals that have been cropping up on a national level.
- Slightly over 60% of the DC 100 companies voting on stockholder proposals during the 2023 proxy season are from the aerospace & defense and technology industries—contributing 6 and 5 companies, respectively.
- DC 100 ESG disclosures lag behind the S&P 500—74% of the DC 100 had a specific section of their proxy statement devoted to ESG disclosures, compared to 97% of the S&P 500.

DC 100 Board Composition

- DC 100 companies average 9.4 directors on their boards of directors—consistent with the 2021 Russell 3000's average of 9.2 directors and 1.4 directors lower than the 2022 S&P 500's average of 10.8 directors.
- The average age of a director serving on a DC 100 company board of directors is 63.7 years old, which is slightly higher than the 2021 national averages of the Russell 3000 and S&P 500 of 63 and 62 years old, respectively.
- 98% of the DC 100 companies have a board of directors with 50% or more directors who are reported as being "independent" under applicable standards.
- 41.9% of the DC 100 report an independent board chair, which is higher than the S&P 500 reporting 36.0% with an independent board chair.
- 85+% of DC 100 companies without an independent Board chair report having a lead independent director.
- The DC 100 companies have an average of 47% director diversity in each of their boardrooms.
- The DC 100 is behind the S&P 500 with a lower percentage of female and underrepresented minorities on its boards.
- Almost 60% of the DC 100 companies reported diverse board leadership, defined to include chairs, lead independent directors or board committee chairs.
- Approximately 49.5% of the DC 100 reports cybersecurity expertise on its board, which is ahead of the 34% of the S&P 500 companies indicating cybersecurity expertise on their boards.
- 62.4% of the DC 100 have at least one director with legal expertise.

DC 100 Compensation

- DC 100 directors averaged $246K in total 2022 compensation for their boardroom work with the construction sector topping the industry averages, behind the average total S&P 500 director compensation of $316K.
- DC 100 average 2022 CEO total compensation equaled $8.7M, and CFO total compensation averaged $3.2M.
- 24 of the DC 100 companies pay CFO total compensation packages that are at least 50% of the size of the CEO's total compensation package.
- DC 100 companies included the new Pay vs. Performance disclosure for the first time in their proxy statements for the 2023 proxy season with adjusted EBITDA (14 companies) and revenue (11 companies) most frequently selected by the DC 100 as their "company selected measure".

DC 100 Company Demographics

States of Incorporation & Corporate Headquarters

Two out of three of the DC 100 companies are incorporated in Delaware, and 87.1% are headquartered in Virginia or Maryland.

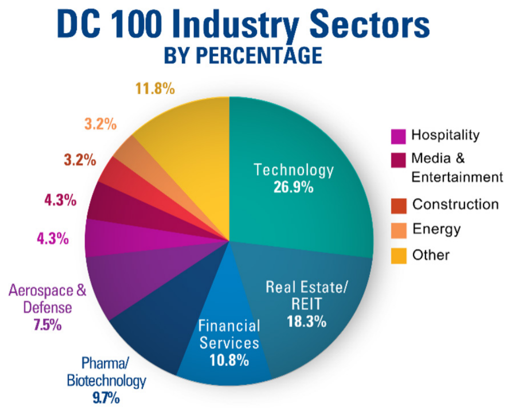
Two-thirds (66.7%) of the DC 100 are incorporated in Delaware—almost perfectly in line with the national proportion of Delaware corporations comprising 68.2% of the Fortune 500 companies.[8] Maryland is the second most popular state of incorporation with 22.6% of the DC 100, and Virginia rounds out the top three jurisdictions of incorporation with 6.5%.

Over half of the DC 100 (52.7%) are Northern Virginia-headquartered companies. Another 34.4% hail from a headquarters in the Maryland suburbs of DC, and only a few companies choose to be headquartered within DC.

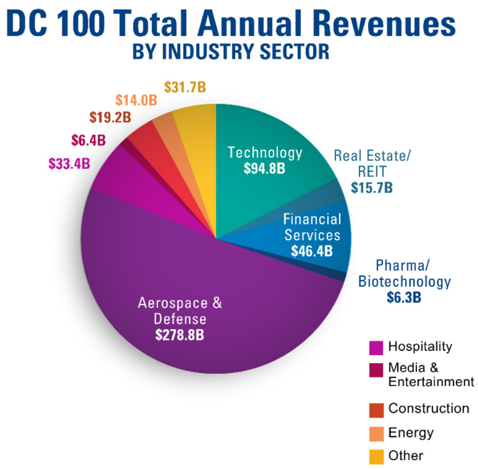
Industries & Revenue

The DC 100 companies span several industry sectors, with the largest percentage of 2022 revenue share disproportionately generated by a relatively small number of companies in the aerospace & defense industry sector.

A comparison of the number of DC 100 companies within each industry sector indicates that the technology sector totals more than one-quarter of companies with real estate / REIT, financial services, pharma / biotechnology and aerospace & defense rounding out the other leading sectors in the DC 100.



Pursuant to a 2020 analysis, the S&P 500 uses a different methodology, but general comparisons can still be drawn to the DC 100 sector composition. Technology companies lead both the S&P 500 and the DC 100 and with similar percentages of over 25% of all companies. Further, both the S&P 500 and DC 100 financial services sectors represent approximately 10% of all companies. Beyond technology and financial services though, the DC 100 and S&P 500 sector focuses diverge. Generally, both the DC 100 and the S&P 500 have important contingents of healthcare and pharma/biotechnology-related companies, but the S&P 500 has a larger market share in this space with 14.6% of its companies in the healthcare space, while the DC 100 has 9.7% in pharma/biotechnology. The DC 100 companies have a much greater emphasis in the real estate/REIT space, representing 18.3% of its companies, while the S&P 500 has only 2.8% of its companies in this industry space. Notably, within the DC 100 after the pharma/biotechnology industry sector is the aerospace & defense sector with 7.5% of the DC 100 companies. The aerospace & defense industry sector represents only 1.6% of the S&P 500, comprising 20.4% of the industrials sector (7.9% of the S&P 500). S&P 500 consumer discretionary companies is its third largest industry sector (11.2% of the S&P 500) led by internet and direct marketing retail (comprising almost half of consumer discretionary companies), and otherwise are mostly home improvement retail, restaurants, general merchandise stores, footwear, apparel retail and automotive retail companies. The few similar DC 100 companies are those in the hospitality sector (4.3% of the DC 100). The S&P 500 also contains a large consumer staples industry sector (7.1% of the S&P 500) comprised largely of household products, soft drinks, markets and supercenters, packaged foods and meats and tobacco companies, and the DC 100 does not have companies in this space.[9]

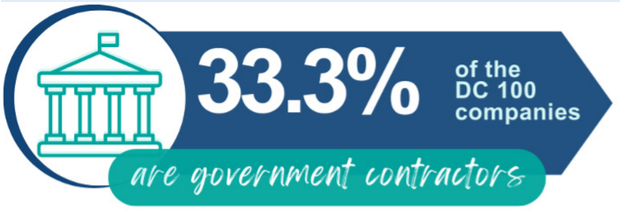


The DC 100 in the aggregate had annual revenue of approximately $546B in 2022.[10] When analyzed by 2022 annual revenues, the aerospace & defense sector leads the DC area market with seven companies totaling $278.8B in annual revenues – an average of approximately $39.8B in annual revenue per entity – that comprise 51.0% of the aggregate annual revenue of the DC 100. At $94.8B in combined annual revenues (roughly one-third of the aerospace & defense industry), the technology sector ranks second with 17.3% of the aggregate annual revenues of the DC 100; however, it is comprised of 25 public companies with an average of $3.8B in annual revenue per entity. Following the aerospace & defense and technology sectors, the financial services sector with 10 public companies ranks third with 8.5% of the aggregate annual revenues of the DC 100, slightly less than half of the technology sector.

By the Numbers

Government Contractors

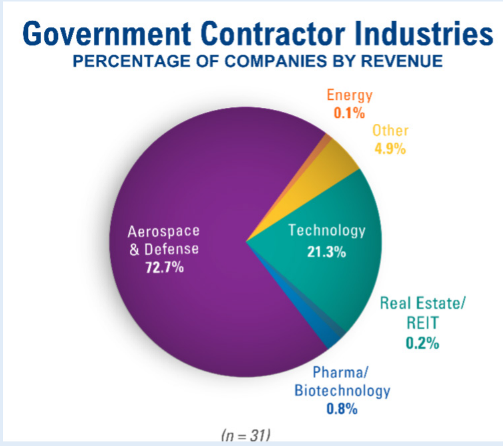
One of three DC 100 companies are government contractors,[11] and collectively, these entities represent $383.6B in annual revenue – or nearly 70.2% of the DC 100's overall revenue.



Overwhelmingly, 83.9% of the DC 100 that identify themselves as government contractors are incorporated in Delaware. At 67.7%, the majority of DC 100 government contractors are headquartered in Virginia, with another 22.6% calling Maryland home.

With respect to revenue, aerospace & defense companies contribute more than two-thirds (72.7%) of the DC 100 government contractor market share, with technology companies contributing 21.3% of the government contractor market share and four additional sectors generating the remaining 6.0% of collective government contracting revenue.

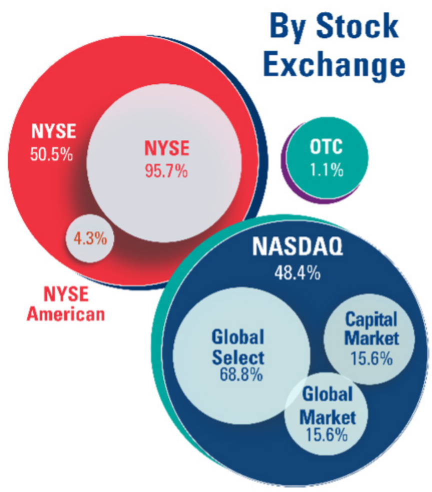
83.9% of the DC 100 government contractors engage a Big Four[12] ccounting firm to serve as their independent public accounting firm that performs their audit. Ernst & Young and Deloitte & Touche audit ten and nine companies, respectively, of the 31 government contractors in the DC 100.



Stock Exchanges

Approximately half of the companies in the DC 100 are listed with each of the two US stock exchanges, with distinctive industry concentrations and a wide variation in total revenue sizes.

The DC 100 are fairly evenly split with 47 companies listed on the New York Stock Exchange ("NYSE")/NYSE American and 45 companies listed on the NASDAQ Stock Market ("NASDAQ"). Of the DC 100 companies listed on each of these two exchanges, a significant disparity exists between the 2022 annual revenues of the two groups of companies with NASDAQ-listed companies representing approximately $65.8B in aggregate annual revenue and the NYSE-listed companies totaling $480.6B in aggregate annual revenue—more than 7x higher. This difference in annual revenue is largely attributable to five of the seven aerospace & defense companies, which comprise slightly over half of the DC 100's annual revenues, being listed on the NYSE and the majority of the NASDAQ-listed companies comprised of smaller technology and pharma/biotechnology companies.



Auditors

Four out of every five DC 100 companies are audited by a Big Four accounting firm. The 17 companies selecting auditors from outside of the Big Four utilized eight different firms.

The largest companies nationally use the Big Four accounting firms almost exclusively, as the Big Four audits 497 of the S&P 500 companies.[13]

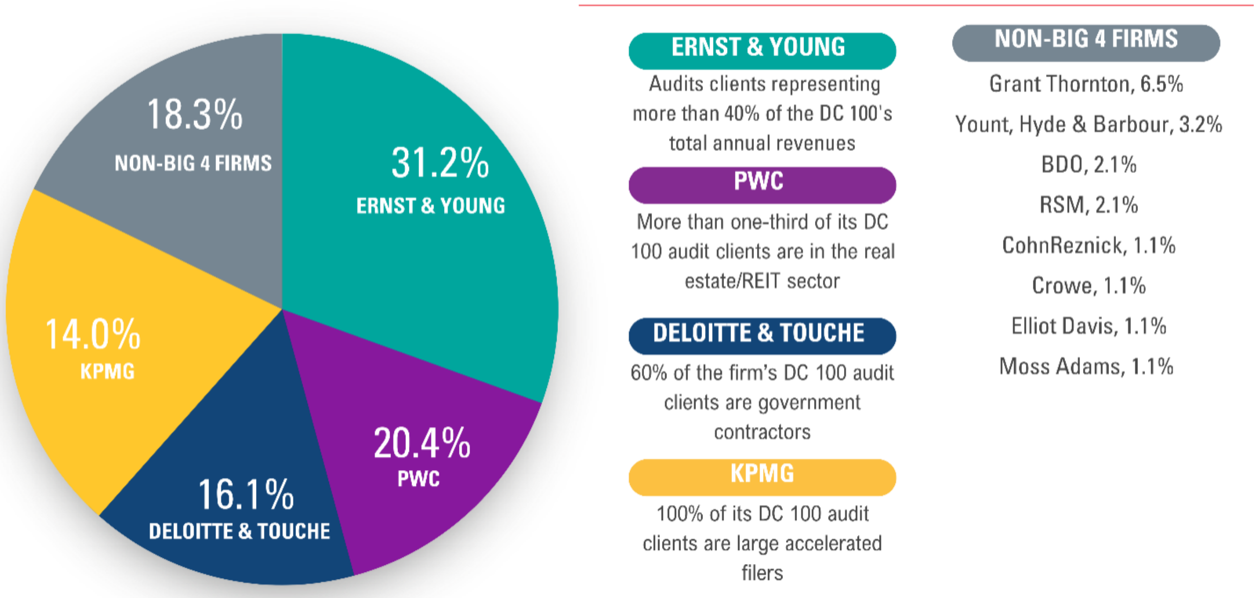
> According to the [2023 Who Audits Public Companies Report by Audit Analytics](), the Big Four accounting firms audit 55% of all US SEC registrants and 89% of all large, accelerated filers.

Correspondingly, the Big Four audit 17 of the 18 S&P 500 companies that are also in the DC 100 companies. The DC 100 engaged a total of 12 audit firms in 2023, with the Big Four accounting firms auditing the financial statements of 76 of the DC 100 companies, or 81.7%. Those 76 Big Four audited companies represent 92.4% of the DC 100's large accelerated filers (a classification under SEC rules applicable to a public company)[14] and 97.5% of the DC 100's combined 2022 annual revenues. Clients across all DC 100 industry sectors are audited by the Big Four accounting firms, including: all seven aerospace and defense firms (100%), all three energy companies (100%), 16 of 17 real estate/ REIT entities (94.1%), and 21 of 25 technology companies (84.0%).

Eight auditors outside of the Big Four accounting firms represent at least one DC 100 client. Grant Thornton leads the way with six clients across industries including real estate/REIT, construction, media and entertainment, technology, and other. Also of note, Virginia-based Yount, Hyde & Barbour audits three clients included in the DC 100, all of which are in the financial services industry. Meanwhile, RSM's two clients are government contractors.

Financial Auditor Market Share

BY PERCENTAGE OF DC 100 COMPANIES



Additional details

Additional Related Metrics

As expected, the majority (71.0%) of the DC 100 are classified as large accelerated filers under the SEC rules.

Most DC 100 companies (86.0%) have aligned their fiscal years with the calendar year. A small percentage of the DC 100 selected one of the other three quarter-end dates as their business entity's fiscal year-end: March 31 (4.3%), June 30 (2.2%), and September 30 (3.2%). A final 4.3% chose various non-quarter-end dates.

DC 100 Annual Proxy Statement Proposals

Director Elections

Of the 646 directors on the boards of the DC 100, the average support for such directors was collectively 94.3%. The S&P 500 companies and Russell 3000 companies in the DC 100 had average support for directors of 95.9% and 95.1%, respectively.

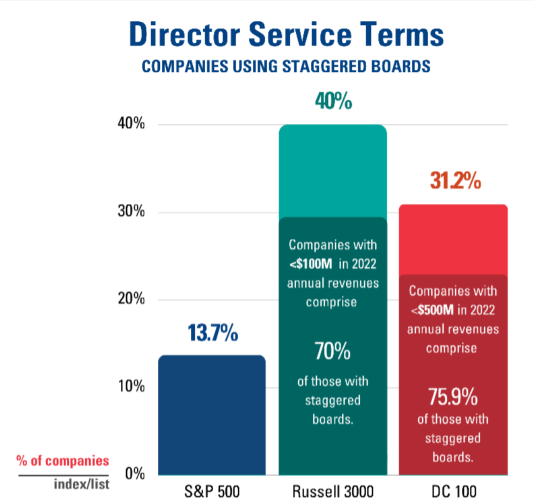
By comparison, the S&P 500 had 95.8% support for its director nominations across the 2023 proxy season, consistent with its 2022 results. The Russell 3000 also continued to show strong support for director nominations, averaging 94.9% for the 2023 proxy year, similar to the 2022 proxy year that reflected 94.7% support.[15]

Approximately two out of every three DC 100 companies have annual elections for all directors serving on their board.

All directors serving on the board of directors for 64 companies of the DC 100, or 68.8%, are subject to nomination and election by their respective stockholders annually, with 29 companies of the DC 100, or 31.2%, instead maintaining a classified or staggered board of directors. Such staggered boards of directors generally provide for directors to serve in separate classes on the board for multiple year terms (usually three years) and the nomination and election of directors by their respective stockholders being staggered such that separate classes of directors are up for election in different years.

Data from The Conference Board and ESGAUGE's Corporate Board Practices Live Dashboard in November 2022 showed that only 13.7% of companies in the S&P 500 continued to stagger their directors' terms.[16] Classified boards were more common in the Russell 3000 companies in 2022, with approximately 40.0% having staggered board terms.[17] Collectively, the DC 100 falls between the 2022 S&P 500 and Russell 3000 companies with 33.3% maintaining a staggered board of directors. None of the 18 S&P 500 companies in the DC 100 have a staggered board and only 23.0% of the 74 Russell 3000 companies in the DC 100 have a staggered board. While the largest companies have been moving markedly away from classified boards in recent history, the smallest companies in the Russell 3000 have been slower to adjust–40.8% of the Russell 3000 companies had staggered boards in 2021 reflecting only a 1.7% decrease from 2016 to 2021,[18] and only a 0.8% decrease to 40.0% during 2022. Outside the S&P 100 largest companies, the bulk of the progress toward repealing classified board structures has come from the S&P MidCap 400 companies, where staggered boards declined by almost 10% (from 40% to 31%) from 2016 to 2021.[19]

The national trend indicating smaller companies are more likely to utilize staggered boards holds true for the DC 100, but with the DC 100 having a higher annual revenue threshold amount for those staggered boards than the Russell 3000. When correlating the public companies with staggered boards and their respective annual company revenues, the Russell 3000 data in 2021 indicates that 70% of its public companies with staggered boards (three-year director terms) reported less than $100M in annual revenue.[20] The DC 100 data shows approximately two-thirds of DC 100 companies with staggered boards reported more than $100M in 2022 annual revenue with only approximately one-third (31.0%) of the DC 100 with staggered boards below $100M of 2022 annual revenue. 75.9% of companies in the DC 100 that continue to utilize staggered board terms reported less than $500M in 2022 annual revenues.



Collectively, the 29 companies in the DC 100 with staggered boards range in 2022 annual revenue from $44.3M to $4.2B, with an average annual revenue of $600.1M and a median annual revenue of $245.9M. By comparison, in 2021, classified boards were present in 62.6% of smaller companies (annual revenue under $100 million) and in 54.0% of companies with revenue between $100M and $999M.[21]

DC 100 companies not holding annual elections for all directors are concentrated by industry.

Of the 29 companies in the DC 100 that currently have a staggered board, the pharma/biotechnology and technology sectors each contribute eight companies, or collectively 55.2% of the DC 100 with staggered boards, followed closely by the real estate/REIT industry with five companies, or 17.2% of the same group. The remaining eight companies in the DC 100 with staggered boards include two financial services companies, two media & entertainment companies, one aerospace & defense company and three "other" companies.

Is your company currently utilizing a staggered Board and contemplating destaggering your Board to provide for annual election of all directors?

If so, keep in mind that you have the option to either gradually de-stagger your director classes over a period of years or to do so all at once. Regardless of which approach is selected, a close review of your governing documents is essential, including to determine whether a stockholder vote is necessary to adopt any amendment to your governing documents that specifically provide for a staggered Board.

Say-on-Pay (SoP) Proposals

More than two-thirds of the DC 100 that had SoP proposals in 2023 received 90+% support.

At least every three years, the SEC requires registrants to include a SoP proposal whereby stockholders can vote on a non-binding, advisory proposal approving the compensation of a company's top executives (i.e., its named executive officers) (a "SoP proposal").[22] Proxy advisory firms recommend annual SoP proposals (as opposed to such proposals being biennial or triennial).[23] More than 80% of the DC 100 – a total of 77 companies – had a SoP proposal this year.[24] Of the 75 companies that have reported results of their respective SoP proposals, only 22 SoP proposals (or 29.3%) received less than 90% support from stockholders, of which only one proposal failed.[25] The S&P 500 companies for the 2023 proxy season and the Russell 3000 companies for the 2023 proxy season received approximately 88.5% and 90.3%, respectively, of votes cast in favor of SoP;[26] comparatively, the 18 S&P 500 companies in the DC 100 and the 74 Russell 3000 companies in the DC 100 received 91.8% and 91.6%, respectively, of votes cast in favor of SoP proposals. The DC 100 trendlines for SoP proposal success/failure rates, as well as the vote thresholds of support (90+% and above support, 70% to 90% support, and 50% to 70% support), are generally in line with those of the Russell 3000 companies for the 2023 proxy season, as reflected in the chart below.

2023 Say-on-Pay Stockholder Vote Results	DC 100[27]	Russell 3000[28]
Number of SoP proposals	75	2,169
% of successful proposals	98.7%	97.9%
% of proposals with 90+% support	70.7%	71%
% of proposals with 70% - 90% support	24.0%	22%
% of proposals 50% – 70% support	4.0%	5%
% of failed proposals (less than 50% support)	1.3%	2.1%

The results of eight DC 100 company SoP proposal stockholder votes fell below the stated support thresholds for ISS or Glass Lewis (70% and 80%, respectively) (with only four of such eight companies falling below the lower 70% threshold),[29] making those companies potentially subject to a more intensive review by proxy advisors during the 2024 proxy season. The average support of these eight compensation committee chairs was also correspondingly slightly lower at 91.0% (with two of such compensation committee chairs receiving less than 90% approval at 74.0% and 78.2%).

> For S&P 500 companies receiving less than 70% support for their say-on-pay proposals, compensation committee chairs averaged 78% support for re-election, down from 82% last year."
>
> **E&Y Board Matters**
> What directors need to know about the 2023 proxy season

Did your company's 2023 SoP stockholder support meet expectations?

If your company's 2023 SoP proposal results are below 80% support, we recommend reviewing the vote on the proposal to determine the group or type of investor(s) (e.g., institutional investors) who did not support the proposal, and then begin discussing compensation matters with such investors now for next year, as waiting until proxy season is often too late. Additionally, we recommend evaluating how to improve practices and/or disclosures for 2024.

Officer Exculpation Proposals

Only a small percentage of the DC 100 companies incorporated in Delaware put forward officer exculpation proposals in 2023.

Two-thirds of the DC 100 are incorporated in Delaware. Section 102(b)(7) of the Delaware General Corporation Law ("DGCL") was amended in August 2022 to permit Delaware corporations to, similar to the protections long afforded to directors, limit the personal liability of specified officers for breaches of their fiduciary duties of care. The DGCL requires a Delaware corporation to amend its certificate of incorporation in order to provide for this exculpation to be available to its officers. Accordingly, stockholder approval by at least a majority of the outstanding shares entitled to vote on the matter is required (though a company's governing documents may require a higher stockholder vote threshold).

Eleven of the Delaware-incorporated companies in the DC 100, or 17.7% of the DC 100, chose to put forward an officer exculpation proposal during the 2023 proxy season. Nine of the 11 proposals (81.8%) passed, with an average passage rate of approximately 70.6%. Of the two proposals that failed, one required a supermajority vote of stockholders—which was the most common thread of failed proposals according to national statistics.[30]

As of July 2023, on a national basis, 279 of the companies incorporated in Delaware had proposed adopting an exculpatory provision for officers, with 263 having held their stockholder vote. Of the 263 stockholder votes, approximately 84.0% of these proposals received the required stockholder approval. Of the 42 proposals that failed, 42.9% of the failed proposals were subject to a supermajority vote requirement. Notably, if all failed proposals had only required a majority threshold of the outstanding votes similar to the DGCL, almost one-third of the failing proposals would have passed—and decreased the national 2023 officer exculpation provision failure rate from approximately 15% to 11%.[31]

Is your company planning to propose officer exculpation in 2024?

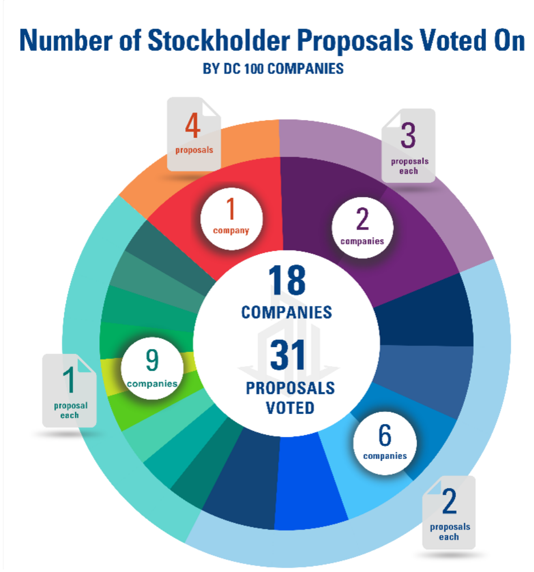
For Delaware companies planning to put forward an officer exculpation proposal in the 2024 proxy season, we recommend considering several steps.

- Companies should plan for enough lead time to file a preliminary proxy statement with the SEC, as required by SEC rules[32] when there is a proposal for stockholder approval involving a charter amendment.
- Proactively check your company's certificate of incorporation and bylaws – which might require a supermajority vote – and the DGCL[33] – which generally requires an affirmative vote of a majority of the outstanding stock entitled to vote on the proposal – to determine your company's adoption process and evaluate whether your proposal is likely to pass given your company's recent voting participation rates.
- If your company has a significant number of institutional investors, consider discussing the officer exculpation proposal with proxy advisors and major investors to ascertain support levels. ISS and Glass Lewis both provide published guidelines for their support of this proposal on their respective websites.

Stockholder Proposals

Eighteen of the DC 100 companies (19.4%) voted on between one and four stockholder proposals for the 2023 proxy season, averaging 1.7 proposals voted on per each of those companies.

Slightly over 60% of the DC 100 companies voting on stockholder proposals during the 2023 proxy season are from the aerospace & defense and technology industries—contributing six and five companies, respectively. All but one of the 18 DC 100 companies voting on stockholder proposals during the 2023 proxy season are included in the Russell 3000, and 12 of the 18 DC 100 companies voting on stockholder proposals are also included in the S&P 500, consistent with large-capitalization S&P 500 companies accounting for approximately 90% of stockholder proposals in the first five months of 2023.[34]



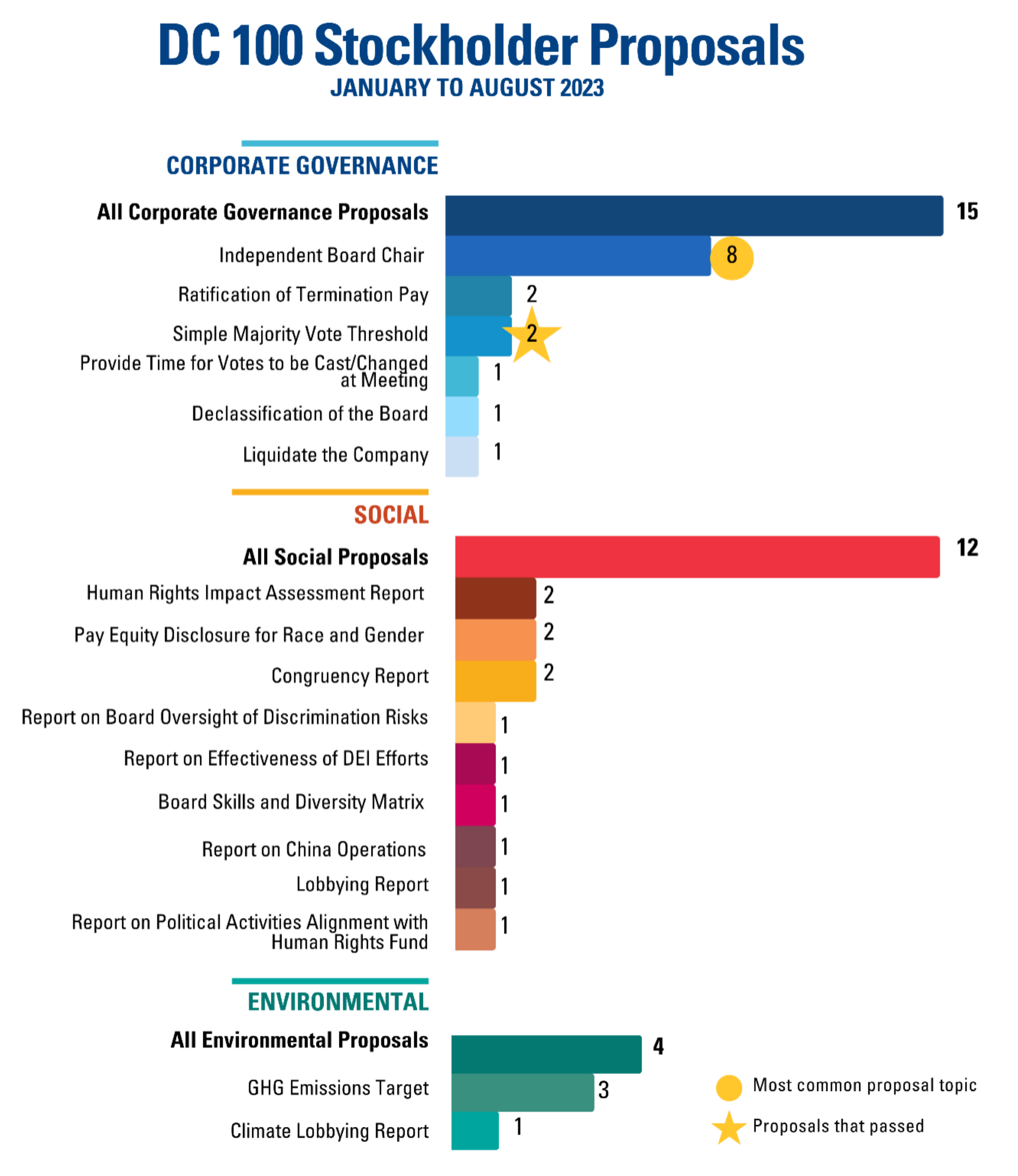
During the 2023 proxy season, DC 100 companies voted on more stockholder proposals related to corporate governance (15 proposals) than social matters (12 proposals) or environmental topics (four proposals) and were specifically most likely to vote on proposals related to an independent board chair.

The Russell 3000 companies similarly voted on stockholder proposals corresponding by topic popularity to the DC 100 companies, with governance proposals leading (269), followed by social proposals (253) and environmental proposals (90) during the 2023 proxy season.[35] Further, within their governance proposals, the Russell 3000 companies, like the DC 100 companies, also saw proposals related to an independent board chair most frequently, with 91 of such proposals received (but not necessarily voted on) during the 2023 proxy season, or approximately 27% of governance proposals received.[36] In terms of social proposals nationally received during the 2023 proxy season, proposals related to political lobbying (46), DEI (42), human rights (41) and political contributions (38) almost evenly split the top spot.[37] Similarly, the DC 100 social proposals were distributed across several topics including human rights impact assessment report proposals and pay equity disclosure for race and gender proposals, with all topics receiving only one or two proposals each. Among environmental topics that made it to the ballot for the national 2023 proxy season, climate change-related proposals were the most popular—specifically, proposals tied to greenhouse gas ("GHG") reports and targets to reduce emissions aligning with the Paris Agreement's goals.[38] While GHG emissions target proposals topped the environmental submissions list for the DC 100 this year, it comprised only three proposals.

On the national front, there has recently been a small "anti-ESG" movement in which proponents ask companies to stop taking actions related to ESG. The percentage of anti-ESG proposals increased nationally during the 2023 proxy season to 9% of all proposals from 5% of all proposals during 2022.[39] The DC 100, however, did not have any anti-ESG proposals during the 2023 proxy season.

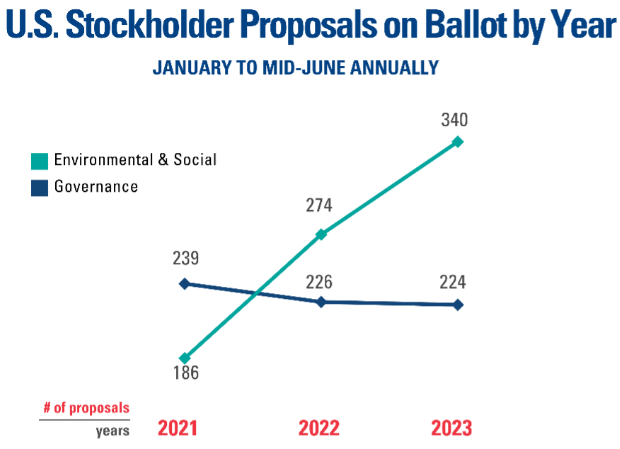
John Chevedden was the top proponent of both DC 100 and all national stockholder proposals during 2023.

Prolific activist investor John Chevedden was the leader in stockholder proposals voted on by the DC 100 during the 2023 proxy season and was involved in 12 of the 31 proposals received by the DC 100 — 11 of which were in the corporate governance area, with eight specifically related to an independent board chair. Correspondingly, on the national level, Mr. Chevedden was responsible for submitting 189 stockholder proposals, exceeding the second most prolific activist investor (As You Sow Foundation) by 86 proposals. Of the 189 stockholder proposals he submitted, 165 of them were governance proposals.[40]



Nationally, the volume of social-focused stockholder proposals both submitted and voted on by stockholders increased in 2023 from 2022, whereas environmentally focused stockholder proposals saw a smaller uptick and the volume of governance stockholder proposals decreased.

ISS reports that the stockholder proposals on ballots filed as of June 15, 2023 reflected a higher number of environmental & social proposals as compared to proposals received relating to governance matters – an 82.8% increase in environmental & social proposals from 2021 to 2023 compared to a 6.3% decrease in governance proposals during the same period.[41] Three-year trendlines for both environmental & social proposals and governance proposals illustrate stockholder submission priorities around governance remain stable, while there has been an increase over the past three years in environmental & social proposals.[42]



Data from *ISS Report, In Focus: Shareholder Proposals in the 2023 U.S. Proxy Season*

An interesting story emerges when environmental and social proposals are separated and one considers stockholder proposal activity generally (i.e., all proposals submitted) versus the proposals actually voted on. Within the Russell 3000, there were fewer governance proposals submitted in 2023 (340) than 2022 (355), while both environmental and social proposals show incremental increases with the Russell 3000 seeing an uptick in environmental proposals submitted in 2022 from 177 to 186 in 2023 (including six anti-ESG proposals) and an uptick in social proposals in 2022 from 409 to 421 in 2023.[43] However, submitted proposals may be withdrawn, omitted or otherwise not presented in the proxy statement, and the ultimate number of stockholder proposals voted on during 2023 by the Russell 3000 included the most governance proposals (269), followed by social proposals (253) and environmental proposals (90).[44] Similarly, the DC 100 reflected a higher number of governance proposals voted on compared to environmental and social proposals voted on during 2023.

Notably, less than half of the environmental stockholder proposals seen by the Russell 3000 were actually voted on during the 2023 proxy season. That statistic does not necessarily mean those environmental proposals that did not make it to a stockholder vote did not have an impact. By way of example, sustainability-focused nonprofit organization Ceres tracked 256 climate-related stockholder proposals nationally this proxy season. As Ceres executive Rob Berridge wrote for Reuters,[45] after negotiating corporate commitments with management of 70 companies, investors withdrew 79 of these proposals—resulting in Ceres ranking this year's season as the second most successful for corporate commitments to climate action, even if those results are not directly available from the proxy season vote data.

ESG Disclosures

Seventy-four percent of the DC 100 had a specific section devoted to ESG disclosures (which varied in robustness).

According to Deloitte's Center for Board Effectiveness, 97% of the S&P 500 disclosed information in 2022 about their overall ESG governance approach,[46] consistent with all 18 of the DC 100 S&P 500 companies (100%) providing ESG disclosure.

> In their proxy statements, **84%** of Fortune 100 companies this year voluntarily included a section on corporate sustainability initiatives, and **95%** disclosed which committees are tasked with ESG oversight responsibilities (most often the nominating/governance committee or a stand-alone sustainability committee having primary oversight, with other committees overseeing areas related to their purview)."
>
> **E&Y Board Matters**
> What directors need to know about the 2023 proxy season

Is your company planning to add or expand its ESG disclosures in its 2024 proxy statement?

If so, keep in mind that disclosures in proxy statements have a higher associated liability for false or misleading information/omissions (i.e., SEC Rule 14a-9 liability) than websites or ESG reports. Therefore, you should ensure to have tight controls and procedures for ESG disclosures in the proxy statement, including any reference/inclusion of an ESG report. Further, to the extent your company includes forward-looking ESG disclosures, you should ensure that appropriate forward-looking statements safe harbor language is included within your proxy statement.

Proxy Solicitors

Most DC 100 companies did not employ proxy solicitors for their 2023 annual meeting.

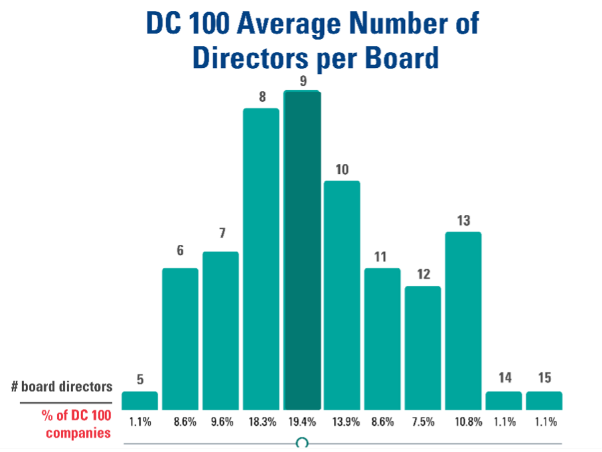
Forty DC 100 companies (or 43.0% of the DC 100) reported utilizing a proxy solicitor. However, their chosen proxy solicitors were concentrated with the top five firms representing 33 of the 40 (82.5%) companies.

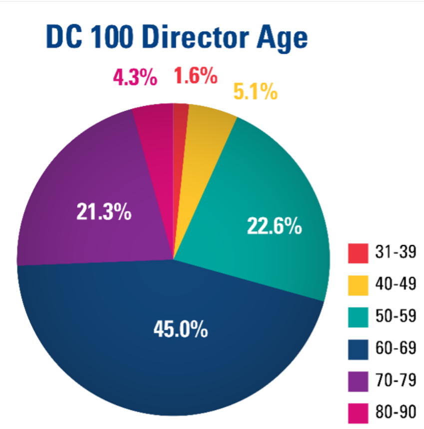
DC 100 Board Composition

The DC 100 average 9.4 directors on their boards with an average age of 63.7 years old.

The DC 100's board size averages 9.4 directors, consistent with the Russell 3000's average of 9.2 directors in 2021;[47] however, it is 1.4 directors lower than the S&P 500's average of 10.8 directors in 2022.[48] Of the DC 100, 12 companies have boards with 13 or more directors, five of which are aerospace & defense companies, and three of which are financial services companies—likely reflecting the highly regulated nature of these industries and expansive role and responsibilities of boards as a result. At the other end of the board size spectrum, 35 boards of DC 100 companies have eight or fewer directors with technology and real estate/ REIT companies comprising the majority of these smaller- sized boards with 12 and 11 companies, respectively.

> 7.8 years is the average tenure of an S&P 500 independent director."
>
> **2023 S&P 500 New Director and Diversity Snapshot**
> Harvard Law School Forum on Corporate Governance





The average age of a director serving on a board of directors in the DC 100 is 63.7 years old with director age ranging from 31 years old to 90 years old. In 2021, the average age of S&P 500 directors and Russell 3000 directors was 63 years old and 62 years old, respectively.[49] Policies on mandatory retirement age declined slightly in 2022, with 67% of S&P 500 companies (down from 70% of S&P 500 companies in 2018) and 36% of Russell 3000 companies (down from 40% of Russell 3000 companies in 2018) disclosing such a mandatory retirement policy. The number of S&P 500 companies with mandatory retirement policies went up slightly in 2023 to 69%.[50] Of S&P 500 companies that had mandatory retirement policies in 2022, approximately 35% and 49% of such companies set the age at 72 and 75, respectively; compared to approximately 29% and 52% of Russell 3000 companies that had mandatory retirement policies setting the age at 72 and 75, respectively.[51] For 2023, 57% of the S&P 500 with mandatory retirement policies set the age at 75 or older.[52]

> The Harvard Law School Forum on Corporate Governance 2023 survey of S&P 500 nominating/governance committee chairs reveals that board composition is the main focus for 56% of respondents in coming years."
>
> **2023 S&P 500 New Director and Diversity Snapshot**
> Harvard Law School Forum on Corporate Governance

Industry Expertise for Board Members

Nearly half of DC 100 boards include one or more directors with cybersecurity expertise.

Approximately 49.5% of the DC 100 noted cybersecurity expertise on their board. It is likely this percentage will continue to climb given the concentration of government contractors in the DC area and continued market focus on cybersecurity. The proportion of the DC 100 boards with cybersecurity expertise is ahead of national trends. By comparison, 34% of the S&P 500 companies in 2022 indicated that their boards included a cybersecurity expert.[53]

Looking to the future, approximately 19% of the S&P 500 and MidCap 400 boards are specifically prioritizing cybersecurity skillsets in their board recruitment activities. Further, 21% of the S&P 500 have recently reported prioritizing technology expertise and 20% prioritizing digital expertise in their board recruitment activities.[54]

Interestingly, financial expertise is the top 2023 board expertise recruiting priority disclosed by the S&P 500. 27% of the new directors appointed to the S&P 500 in 2023 have financial expertise from experience as finance executives, CFOs, accounting executives, bankers and investors. The Harvard Law School Forum on Corporate Governance believes this focus is less a reflection on boardroom gaps and more a result of it being 20 years since the financial expert rules were finalized via the Sarbanes-Oxley Act of 2002. As a result, the second generation of financial experts are reaching the end of their board tenure.[55]

> 70% of the S&P 500 boards have an average tenure of six to 10 years."
>
> **2023 S&P 500 New Director and Diversity Snapshot**
> Harvard Law School Forum on Corporate Governance

Other In-Demand Board Skills

In addition to industry expertise, other specific skills are in-demand by DC 100 boards of directors with nearly one-third including a director with general counsel experience.

Fifty-eight of the DC 100 companies (or 62.4%) have at least one director with legal expertise serving on their boards of directors, with 29 of those 58 boards including at least one director with general counsel experience (current or former). The number of directors with legal expertise is not a common statistic when looking for comparables (probably as only we lawyers really care about it), but in 2017, only 11% of the directors serving on Fortune 500 boards held a J.D.[56] That was a few years ago, but it is probably safe to say that the number of boards of directors having legal expertise in the DC 100 is ahead of the national market with 62.4% of DC 100 companies having at least one director with legal expertise serving on the board.

Five industries within the DC 100 stand out regarding the percentage of companies with director legal expertise, as detailed in the chart below. Also of note, 21 of the DC 100's government contractors (67.7%) have one or more directors with legal expertise—regardless of industry.

DC 100 Top 5 Industries with Board Member Legal Expertise	
1. Technology	13 of 25 companies, **52.0%**
2. Real Estate / REIT	9 of 17 companies, **52.9%**
3. Aerospace & Defense	6 of 7 companies, **85.7%**
4. Financial Services	6 of 10 companies, **60.0 %**
5. Pharmaceutical / Biotechnology	6 of 9 companies, **66.7%**
Total	40 of 58 DC 100 companies, **69.0%**

For a bit of context – and an example of how the DC market differs from the national market,[57] the S&P 500's three industries with the highest percentage of directors with legal expertise were the following in 2021: financial institutions (12.7%), real estate (11.9%), and utilities (11.8%).

Breaking Down the DC 100 Board Legal Expertise Statistics

29 companies
1 or more directors with GC experience (current or former)

28 additional companies
1 or more directors with JD but without GC experience

62.4% of companies
incorporate legal expertise on their boards

79 total attorneys
serve as directors on DC 100 boards

Nationally, 25% of S&P 500 companies have recently indicated that they are focused on adding an active or retired CEO or COO to their boards. In 2023, 30% of the new directors appointed to the S&P 500 were active or retired CEOs. Such appointments are returning to 2018 levels after several years of decline.[58]

DC 100 Board Organization

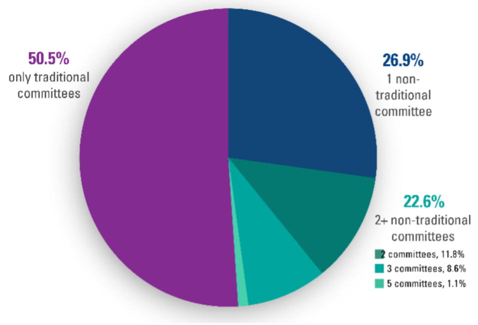
44.1% of the DC 100 disclosed non-traditional board committees, outside of executive committees and the primary three traditional committees of audit committee, compensation committee and governance and nominating committee (or equivalent).[59]

While all 93 of the DC 100 had the traditional audit, compensation and governance & nominating committees (or equivalent), combined, 41 of these companies also disclosed a total of 63 non-traditional board committees.[60]

The analyzed non-traditional board committees of the DC 100 reflect ESG committees as the most popular.

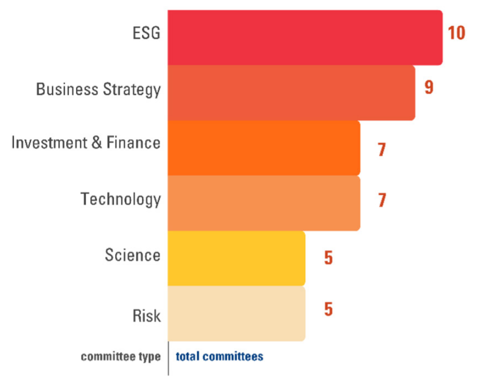
Ten of the DC 100 companies disclose ESG committees in their 2023 proxy statements, with one specific to DEI, and span several of the industry sectors. This is a lower percentage than the S&P 500, where 15% of its companies reported a dedicated ESG/sustainability committee in 2022.[61] As might be expected, a few of the non-traditional board committees of the DC 100 companies other than ESG committees correlate with the industries in which they conduct their business, specifically: (a) four of five risk committees were disclosed by financial services companies, and (b) four of five science committees were disclosed by pharma/ biotechnology companies. Additionally, over half (51.6%) of the DC 100 government contractors have at least one non-traditional board committee—aligning with aerospace & defense and technology ranking as two of the top three industries (real estate/REIT is the other top three sector) for the highest percentage of DC 100 companies disclosing non-traditional committees.

DC 100 Boards with Disclosed Non-Traditional Committees



DC 100 Non-Traditional Board Committees

BY TOPIC AND PREVALENCE



Is your company's board contemplating adding a new non-traditional committee?

If so, keep in mind that adding a new committee is more than a board establishing such committee and approving a corresponding charter as it involves harmonizing the roles and responsibilities of all of the company's committees. For example, if an ESG committee is established, this may require the roles and responsibilities of other committees that have ESG-related responsibilities, including the traditional committees, to evolve so that committees do not have overlapping responsibilities.

Board chairs of the DC 100 are divided fairly equally between independent and non-independent individuals, with 87.0% of those DC 100 companies without an independent chair electing a lead independent director.

At 54 of the DC 100 companies (or 58.1%), the board chair role is filled by either an executive (typically the CEO) or another individual who is not independent (as determined by a company's board based on applicable SEC and stock exchange definitions and rules). The other non-independent board chairs outside of CEOs in the DC 100 are largely due to familial relationships (six companies), and to a lesser degree, founders filling this role or additional stockholder relationships (four companies each). Of Russell 3000 companies and S&P 500 companies in the DC 100, 60.8% and 77.8%, respectively, fill the board chair role with an executive or other non-independent individual. Comparatively, in 2020, 55.6% of the Russell 3000 and 66.8% of the S&P 500 filled the board chair role by either an executive or another non-independent individual.[62]

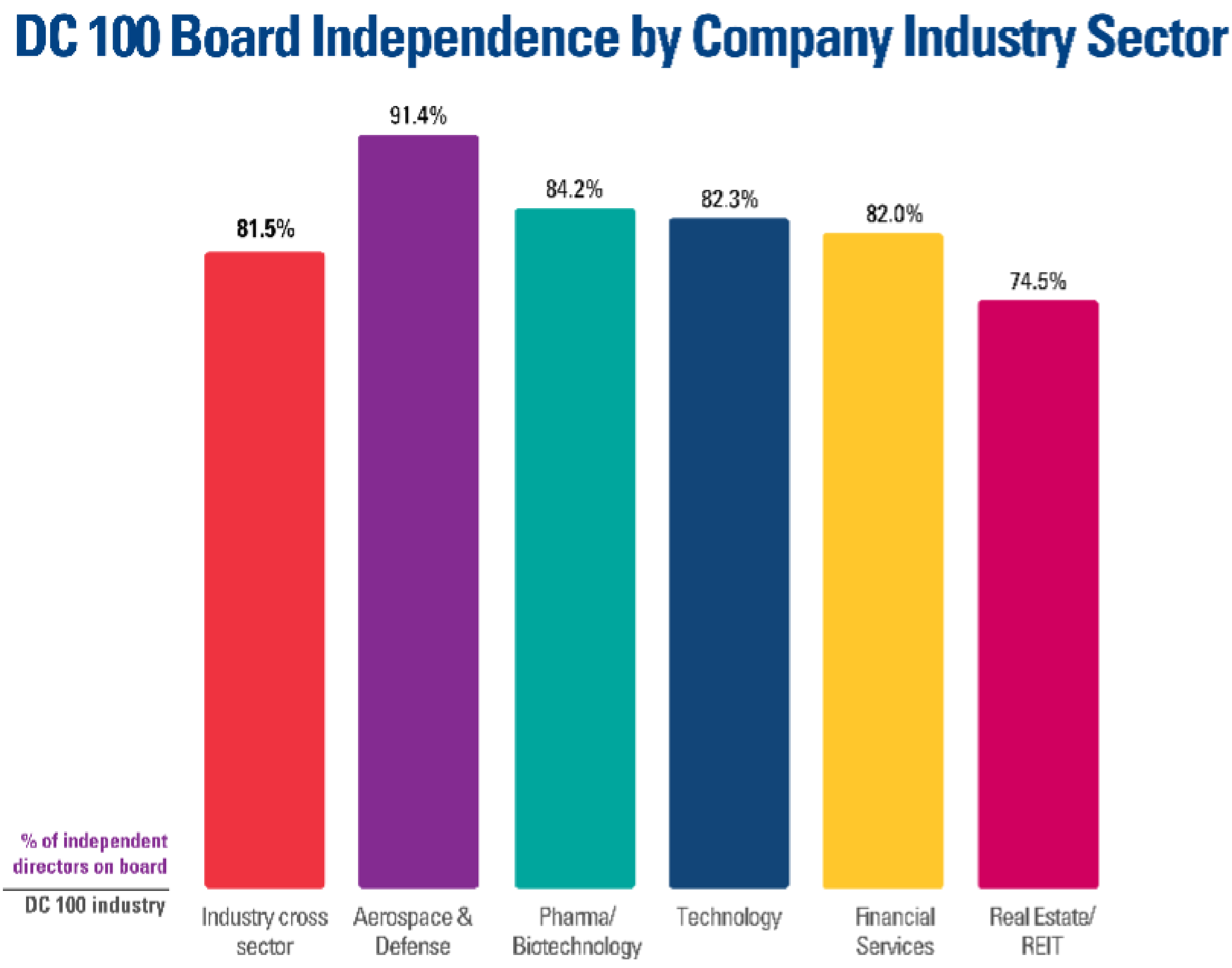
41.9% of the DC 100 companies report an independent board chair in 2023, which is a higher percentage than the S&P 500 that reported 36% of its companies with an independent board chair in 2022 Only 22.2% of the S&P 500 companies in the DC 100 report having an independent chair.[63]

Of the 54 DC 100 companies that have a board without an independent chair, 47 of those companies (or 87.0%) have designated a lead independent director who generally presides at meetings of non-management directors and performs certain other functions as designated by the board. Regarding the remaining seven companies with neither an independent board chair nor a lead independent director, their boards also fell below the 81.5% independent director average of the DC 100, with such boards averaging only 63.6% director independence.

Boards of all but one of the DC 100 have 50% or more of their directors qualifying as independent directors.

An analysis of several key industries indicates that the seven aerospace & defense sector's boards average approximately 10% higher independence than the cross-industry average of the DC 100. In contrast, real estate/REIT's collective average of board independence indicated only 74.5% of the members of their boards of directors are independent.

List/Index[64]	Independent Directors
Fortune 100	86%
S&P 500	86%
S&P MidCap 400	84%
S&P SmallCap 600	83%
S&P 1500	84%
DC 100	82%

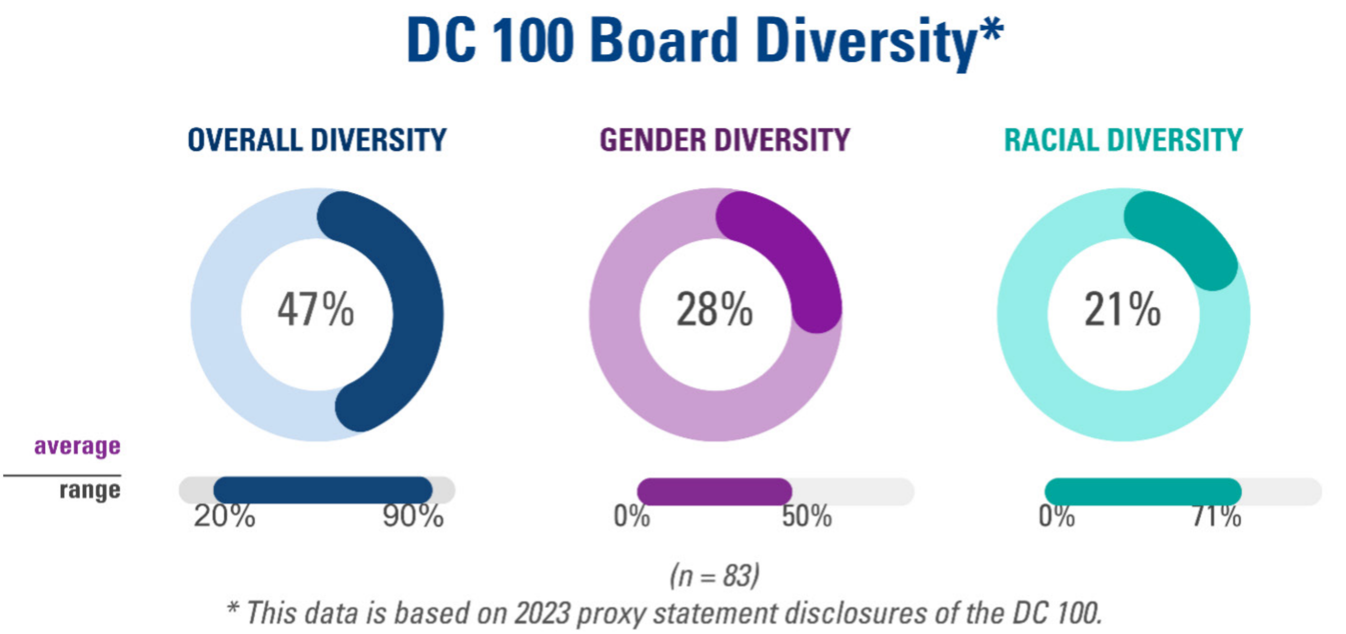


DC 100 Board Diversity

The DC 100 have an average of 47% director diversity in their boardrooms.

The board of directors of each DC 100 company is comprised of diverse directors, with 90% director diversity at the high end of the range and 20% director diversity at the low end of the range, based on the disclosures in their respective 2023 proxy statements filed with the SEC.[65] As a whole, the boardrooms of the DC 100 averaged 47% overall diversity. This is in line with the S&P 500, where its board of directors are 48% diverse.[66] By comparison, the share of board seats held by women and minorities at Fortune 500 companies increased from 38.0% in 2020 to 44.7% in 2023 but still remains below the DC 100 average of 47.4%.[67] With respect to the S&P 500 companies, 22% of the S&P 500 board directors are from underrepresented racial and ethnic groups.[68] While all of the DC 100 self-report a directorship that includes director diversity to some degree, not all of them report racial and/or gender diversity as reflected in the table below.

> Among 2023 first-time directors of the S&P 500, females comprised 56% of the appointments, which is up 12% from 2022."
>
> **2023 S&P 500 New Director and Diversity Snapshot**
> Harvard Law School Forum on Corporate Governance



The DC 100 boards of directors are comprised of 28% women, behind the S&P 500 boards of directors, which are comprised of 33% women.[69] The DC 100 boards of directors reflect 21% racial diversity, also behind the S&P 500 boards of directors that are comprised of 24% underrepresented minorities ("underrepresented minorities" is comprised predominately of black or African American, Asian, Hispanic or Latinx minorities).[70]

In analyzing the board diversity disclosures in the 2023 proxy statements of the DC 100, six additional diversity groups were identified, which are referenced in 27 DC 100 boards. Notably, the 29 military veterans serving on 18.3% of the DC 100 boards is markedly higher than the 6.0% military veteran members of the S&P 500 boards of directors.[71] Among the DC 100 directors, five self-identify as LGBTQ+, compared to 4.0% of the S&P 500 directors so identifying.[72]

> For S&P 500 new director appointments, underrepresented minorities dropped from 61% in 2022 to 36% in 2023."
>
> **2023 S&P 500 New Director and Diversity Snapshot**
> Harvard Law School Forum on Corporate Governance

Additional board diversity groups disclosed by the DC 100	
Military Veteran	17 boards
Middle East and North African Origin	5 boards
LGBTQ+	5 boards
Person of International/Non-US Origin	7 boards
US Geographic (by State of Origin)	1 board
Age	1 board

> 56% of the S&P 500 disclosed a Rooney Rule-type commitment to include diverse candidates in their searches for board members."
>
> **2023 S&P 500 New Director and Diversity Snapshot**
> Harvard Law School Forum on Corporate Governance

There is empirical evidence showing further movement towards more diverse directors; Spencer Stuart's S&P 500 Board Diversity Snapshot indicates that, as of 2022, 72% of all new independent directors are from historically underrepresented groups. While relatively low board turnover trends continue with S&P 500 companies only welcoming 395 new directors in 2022, it is worth noting that 72% of those newly-appointed directors were diverse. Similarly, in 2023, the S&P 500 companies welcomed 388 directors, with 67% of those newly-appointed directors being diverse.[73] As another comparative data point, ISS Corporate Solutions in February 2023 reported that 20% of Russell 3000 board seats are now held by racial and ethnic minorities.[74]

Almost 60% of the DC 100 companies reported diverse board leadership.

Almost 60% of the DC 100 companies reported diverse leadership, defined to include chairs, lead independent directors or committee chairs. A March 2023 publication by The Conference Board[75] highlighted that women hold 33.6% of all S&P 500 committee chair positions. In 2023, women held 39% of the S&P 500's nominating/governance committee chair positions, 36% of compensation committee chair positions, and 34% of audit committee chair positions. Underrepresented minorities held 19% of the S&P 500's nominating/governance committee chair positions, 17% of compensation committee chair positions, and 14% of audit committee chair positions. The number of independent board chair and lead director positions held by women and underrepresented minorities were significantly lower in S&P 500 companies in 2023 with women holding only 15% of lead director positions and 18% of independent board chair positions, while underrepresented minorities hold only 12% of lead director positions and 8% of independent board chair positions.[76]

2023 Diversity Disclosure by S&P 500 Boards[77]	
Boards disclosing the gender of directors by name	50%
Boards disclosing gender diversity stats at board level	48%
Boards disclosing their racial or ethnic composition	97%
Boards identifying directors from these groups by name	47%
Boards making general LGBTQ+ statements	19%
Boards identifying LGBTQ+ directors by name	7%

DC 100 Compensation

Board Compensation

DC 100 directors averaged $246K in total 2022 compensation for their boardroom work with the construction sector topping the industry averages.

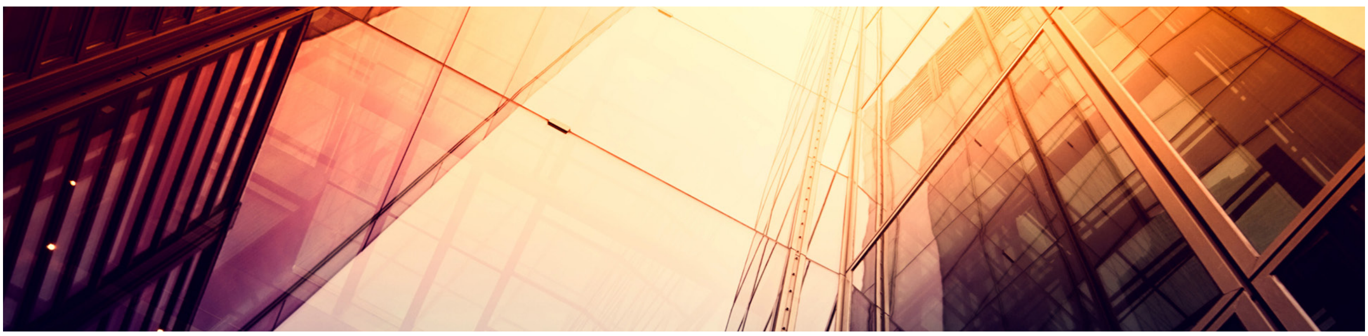
The DC 100's average total compensation (including cash and equity) for directors equaled approximately $246K for 2022, with a range of approximately $41K to more than $1M. The three companies in the construction-related sector secured the top spot for industry-specific averages of all DC 100 companies, with an average director 2022 total compensation of $337K, followed by the hospitality sector, which paid an average of $312K in total compensation to its directors.

For comparison, the average total S&P 500 director's compensation (including cash and stock) increased 3% in 2022 over the prior year to $316K according to Spencer Stuart's 2023 S&P 500 Compensation Snapshot, substantially higher than the DC 100 average director compensation, indicating that, on average, DC 100 companies are more conservative on board compensation than the large cap benchmark. However, the average director compensation among the DC 100 companies in the S&P 500 (18 companies) in 2022 was $315,982.86, almost precisely the average director compensation for all S&P 500 companies in 2022. The average compensation for directors of DC 100 companies in 2022 that are not included in the S&P 500 was $228,654.

DC 100 By Industry	Average Annual Director Total Compensation
Construction Related	$337,342
Hospitality	$312,313
Pharma / Biotechnology	$306,323
Aerospace and Defense	$286,325
Technology	$273,884
Energy	$271,695
Other	$229,620
Media & Entertainment	$212,493
Financial Services	$186,329
Real Estate / REIT	$167,770
Cross-Industry Average	**$245,739**

DC 100 directors received an average of $166K in annual equity grants in 2022.

In 2022, DC 100 companies, on average, awarded annual equity grants to directors serving on their boards of directors of $166K in value each, with the highest award topping $800K in value and the lowest award equaling just under $10K in value. Meanwhile, Spencer Stuart's S&P 500 Compensation Snapshot reported $181,372 as the average value of annual equity awards to members of its boards in 2022, with the national average again higher than the DC 100's average equity compensation to directors. The highest average equity awards among the DC 100 were again in the construction sector ($471K), followed by the pharma/biotechnology sector in a distant second place ($216K). The lowest average equity awards to members of the boards in the DC 100 were in the energy sector ($130K) and in the real estate / REIT sector ($110K).



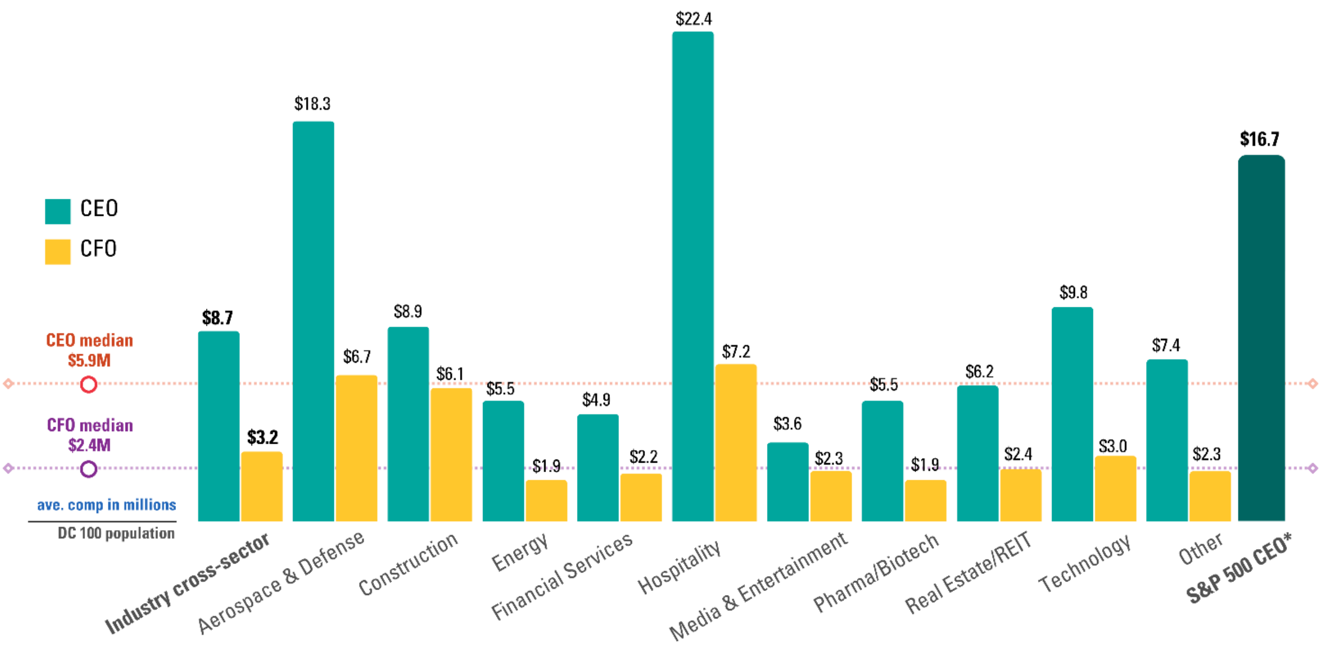
CEO & CFO Compensation

For 2022, average CEO total compensation for the DC 100 equaled $8.7M, and average CFO total compensation equaled $3.2M.

For the DC 100, 2022 CEO base pay averaged $853K compared to a median base salary of $1.3M for the S&P 500.[78] Total CEO compensation averaged $8.7M for the DC 100, approximately half of the S&P 500's average 2022 CEO total compensation of $16.7M. S&P 500-constituent DC 100 companies paid an average of $17.8M to their CEOs, indicating DC-based S&P 500 CEOs enjoy higher compensation on average than their S&P 500 CEO peers in other regions. The range of total CEO compensation in 2022 for the DC 100 spanned from $293K to $38M. Hospitality led all industries of the DC 100 in 2022 CEO total compensation with a $22.4M average compensation, with the DC 100 aerospace & defense companies in second place, posting an average industry CEO total compensation of $18.3M (18% lower than the hospitality industry).

In comparison, for the DC 100, 2022 CFO base pay averaged $543K with a range of $122K to $1.0M, with total CFO compensation averaging $3.2M, ranging from $421K to $14.6M. The hospitality industry also ranked first in the 2022 highest industry CFO total compensation package for the DC 100, with an average of $7.2M, 7% higher than the second place $6.7M average of the aerospace & defense industry.

Average 2022 CEO & CFO Total Compensation of the DC 100[79]



On average, the DC 100 CFO 2022 base pay was approximately 63.7% of the DC 100 CEO 2022 base pay, while average DC 100 CFO total compensation over the same period was only 36.5% of the DC 100 CEO average total compensation. Only nine of the S&P 500 companies paid their CFO more than 60% of their CEO total compensation in 2022 (Baxter, IBM, Goldman Sachs, Citigroup, CVS Health, Kraft Heinz, United Health, Walt Disney and Gen Digital). A recent study following CEO and CFO pay at 10 Fortune 20 companies over the past decade found that CFO pay at those companies had risen from an average of 34% of the CEO's pay in 2012 to 44% of the CEO's pay in 2022.[80] Among the DC 100, 24 companies pay CFO total compensation packages that are at least 50% of the size of the CEO's package, a much higher share than the national average. Only two of the DC 100 companies that pay their CFOs more than half of total CEO compensation are also in the S&P 500, with an additional two in the Fortune 500. The remaining 20 companies that pay CFO total compensation that is at least 50% of CEO total compensation had an average revenue of $1.0B. Eight, or one-third, of these companies are within the technology industry – indicating CFOs at smaller DC 100 technology companies enjoy the highest level of compensation relative to their respective CEOs.

Car allowances, financial/tax preparation, aircraft use and SERPs are among the most popular perks DC 100 companies offered named executive officers ("NEOs") in 2022.

Twenty-nine of the DC 100 companies reported no perks given to their NEOs in 2022.[81] Of the 60 companies with perks given to NEOs, car allowances and financial/tax preparation secured the top two slots for the most companies offering them, with aircraft use and SERPs tying for third place.

2022 Perks and Number of DC 100 Companies for Each Perk

Car Allowance	Financial/Tax Preparation	Aircraft Use	SERP/ Similar	Security	Club Dues	Housing
24	16	14	14	9	8	6

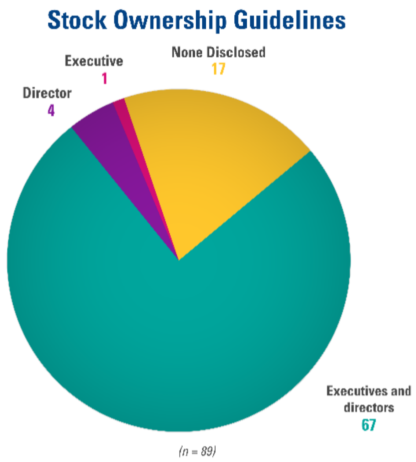
Several of the DC 100 companies that provided perks in 2022 provided some less common perks that included:

- matching contributions (up to a set limit and sometimes quite large) to charities of the executive's choice
- reimbursements for country club/golf club fees
- complimentary/upgraded/discounted hotel rooms (typically provided by hospitality companies) with complimentary food, beverage and service at company properties
- set annual budgets/fixed perquisite accounts/executive allowance programs ($25K annually, for example) for business and personal expenses for certain officers
- fixed annual budget for personal aircraft use (e.g., $125,000 cap on CEO personal aircraft use per year)
- study and training budgets
- patent award programs

Stock Ownership

Requirements that directors and/or executives of the company abide by stock ownership guidelines were disclosed by 81% of the DC 100 companies.

In comparison, according to Spencer Stuart's S&P 500 Compensation Snapshot, 93% of the S&P 500 disclosed 2022 director stock ownership guidelines. Nearly all (93%) of the DC 100 companies that disclose such guidelines describe ownership requirements for both directors and executives.



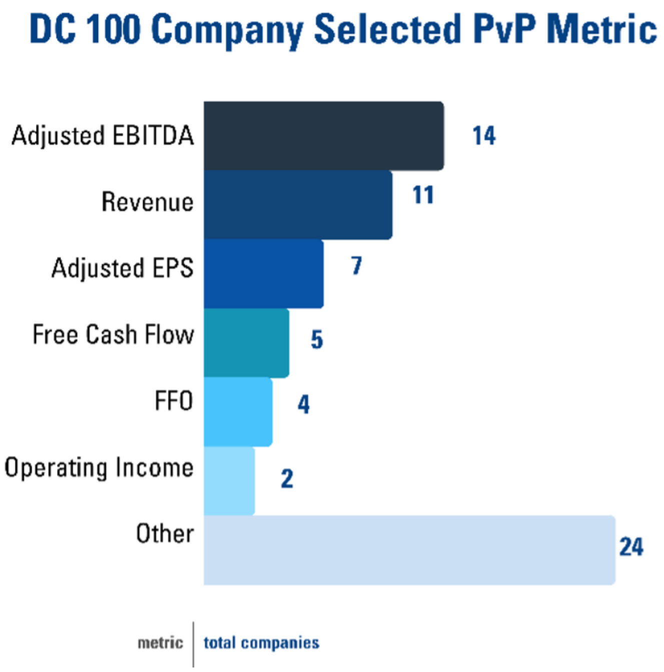
Is your company planning to adopt or examine its stock ownership guidelines?

If so, we recommend considering:

- Value of the stock ownership requirement, including as compared to peers.
- Types of equity counted for purposes of stock ownership under the guidelines, including based on recommendations of proxy advisors and/or institutional investors. E.g., ISS does not provide credit in its QualityScore analysis for guidelines that count unearned performance awards or unexercised options.[82]
- The period of time post-appointment that officers and/or directors have to comply with such ownership requirements.
- Any practice requiring officers and/or directors to hold company-granted equity until such ownership requirement

Pay v. Performance ("PvP")

In August 2022, the SEC adopted a final rule requiring covered companies to disclose in tabular and narrative or graphical form the relationship between compensation actually paid to NEOs versus the company's performance over time. One critical component of this new disclosure requirement is the company selected measure ("CSM"). Companies are directed to disclose the financial metric most important to evaluating company performance against compensation, aside from total shareholder return and net income (which are already required to be disclosed). The DC 100 chose a number of metrics as the CSM, but the two metrics selected with the most frequency were adjusted EBITDA (14 companies) and revenue (11 companies). Cash flow, adjusted EPS, operating income, and several other metrics were utilized as well, in addition to a handful of industry or company-specific operational metrics. Some of the less common metrics included SaaS and license revenue, ending cash equivalents and marketable securities, and hotel EBITDA per key.



Equilar conducted a study of its Equilar 500 regarding their CSMs and found that more than 60% disclosed income-related metrics[83] with additional metrics in the revenue and return categories following with approximately 12% of companies each. Revenue metrics were twice as popular among DC 100 companies as compared to the Equilar 500 group; income metrics predominated by a larger margin among the Equilar companies. Frequency of return and cash flow metrics as the CSM was approximately in line for the two sets of companies in their pay versus performance disclosures.

Most Common CSM[84]		
	Equilar 500	**DC 100**
Income	62.1%	48.5%
Revenue	11.6%	20.6%
Return	12.6%	10.3%
Cash Flow	7.0%	10.3%
Other	6.8%	2.9%

Compensation Consultants

Seventy-eight companies in the DC 100 reported working with compensation consultants in their most recent proxy statement. The concentration of selected consultants was fairly high, with 56% of the companies choosing the top five consultants.

DC 100 Cybersecurity Disclosures

More than half of the DC 100 companies made cybersecurity-related disclosures in their most recent proxy statements. Among these, 25 companies included a standalone section dedicated to cybersecurity issues, and 40 companies referenced cybersecurity matters as part of their risk oversight discussion. In their experience and biography sections, 32 companies discussed the cybersecurity experience of its board and nominees, while 7 companies referenced the cybersecurity experience of their management teams. Cybersecurity is also discussed in DC 100 proxy statements in several other sections, including in those dealing with the responsibilities of board committees, particularly with respect to the audit, nominating, and technology committees of several DC 100 companies. Cybersecurity is also sometimes discussed in DC 100 ESG and corporate governance sections.

Preparing for the Upcoming 2024 Proxy Season

We trust that the information in this report will provide some useful information, trends and insights with respect to the DC 100 and other public companies. While the proxy season will not start until the Spring 2024, our clients, as well as other public companies, are already beginning their preparation this Fall. To the extent that your public company is considering making changes to its existing corporate governance platform or disclosure involving any of the topics discussed in this report, we are happy to provide you with additional information and our further insights relating to such matters.

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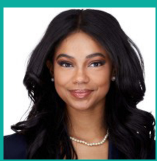

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About the Firm

We provide invaluable connections, established networks and seamless legal services to our clients, whether they do business in the capital region, across the country or around the globe. We offer clients more than 200 lawyers based in the Washington DC region, among more than 1,500 lawyers in over 40 offices across four continents. We are recognized as one of the world's top 20 leading law firms by Law360 and are nationally ranked in Tier 1 in Corporate Law, Securities/Capital Markets, Commercial Litigation and nine other categories in the 2023 U.S. News & World Report "Best Law Firms."

Editor's Note

This data draws on the latest proxy statements filed between September 8, 2022 and September 1, 2023 from 93 of the largest 100 US publicly-traded companies headquartered in the greater DC metropolitan area. Interrelated REITs, foreign private issuers, controlled companies and non-traditional holding companies are excluded from certain statistics herein as appropriate. Benchmarking data used herein was compiled from a variety of sources, and we believe is depicted accurately. We have presented this information in good faith and in accordance with applicable laws; however, we do not warrant the accuracy of such information.

Additionally, this data and analysis is meant to share broad trends and should not be considered legal counsel. We recommend consideration of each entity's specific circumstances, including board composition and interpersonal dynamics, financial position, management skillsets, industry changes, investor relationships, regulatory and stock exchange requirements, and engaging appropriate legal counsel as needed, prior to making governance and disclosure decisions.

Exhibit A: SIC Codes of DC 100

Technology (25)		
3669	Communications Equipment, NEC	1
3823	Industrial Instruments For Measurement, Display, and Control	1
4812	Radiotelephone Communications	1
4899	Communications Services, NEC	1
5045	Wholesale-Computers & Peripheral Equipment & Software	1
7370	Services-Computer Programming, Data Processing, Etc.	2
7371	Services-Computer Programming Services	1
7372	Services-Prepackaged Software	4
7373	Services-Computer Integrated Systems Design	6
7374	Services-Computer Processing & Data Preparation	1
7389	Services-Business Services, NEC	6

Real Estate/REIT (17)		
6519	Lessors of Real Property, NEC	1
6798	Real Estate Investment Trusts	14
No SIC assigned with the SEC, but affiliates of the above SICs		2

Financial Services (10)		
6021	National Commercial Banks	3
6022	State Commercial Banks	4
6111	Federal & Federally Sponsored Credit Agencies	1
6199	Finance Services	1
6282	Investment Advice	1

Pharmaceutical/BioTechnology (9)		
2834	Pharmaceutical Preparations	5
2836	Biological Products (No Diagnostic Substances)	3
8731	Services-Commercial Physical & Biological Research	1

Aerospace and Defense Companies (7)		
3721	Aircraft	2
3724	Aircraft Engines & Engine Parts	1
3730	Ship & Boat Building & Repairing	1
3760	Guided Missiles & Space Vehicles & Parts	1
3812	Search, Detection, Navigation, Guidance, Aeronautical Systems	2

Hospitality (4)		
7011	Hotels & Motels	4

Media & Entertainment (4)		
2711	Newspapers: Publishing or Publishing & Printing	1
3663	Radio & TV Broadcasting & Communications Equipment	1
4833	Television Broadcasting Stations	1
7812	Services-Motion Picture & Video Tape Production	1

Construction (3)		
1531	Operative Builders	1
1700	Construction - Special Trade Contractors	1
5030	Wholesale-Lumber & Other Construction Materials	1

Energy (3)		
1400	Mining & Quarrying of Nonmetallic Minerals (No Fuels)	1
2400	Lumber & Wood Products (No Furniture)	1
4991	Cogeneration Services & Small Power Producers	1

Other (11)		
3561	Pumps & Pumping Equipment	1
8200	Services-Educational Services	3
8711	Services-Engineering Services	1
8741	Services-Management Services	1
8742	Services-Management Consulting Services	4
8744	Services-Facilities Support Management Services	1

1 *Fortune* includes #2 company Amazon.com Inc. in the 2023 DC statistics due to its second headquarters location now being in Arlington, VA. Amazon is excluded from this number of Fortune 500 companies and all calculations in this report referencing Fortune 500 statistics for DC companies.

2 *50PROS*, List of Fortune 500 companies, updated September 7, 2023, https://www.50pros.com/fortune500.

3 See *50PROS* List of Fortune 500 companies.

4 *Disfold*, "Top S&P 500 Companies by Market Cap and Stocks in 2023" (as of July 1, 2023), https://disfold.com/stock-index/sp-500/companies/?page=1.

5 *Disfold*, "Top Russell 3000 Companies by Market Cap and Stocks in 2023" (as of July 1, 2023), https://disfold.com/stock-index/russell-3000/companies/.

6 *Fortune*, "Why Investors Should Care More About the Fortune 500 Than the S&P 500," May 17, 2019, https://fortune.com/2019/05/17/fortune-500-s-and-p-500/.

7 *The Balance*, "*What Is the Russell 3000 Index?*", May 15, 2022, https://www.thebalancemoney.com/what-is-the-russell-3000-index-5212494.

8 *State of Delaware Division of Corporation*, "Delaware Division of Corporations: 2022 Annual Report", https://corp.delaware.gov/stats/.

9 *Visual Capitalist*, All S&P 500 Sectors and Industries, by Size, August 6, 2020, https://advisor.visualcapitalist.com/sp-500-sectors-and-industries/.

10 All DC 100 annual revenue data references and calculations in this report are based on published 2022 financials.

11 Government contractor designation is based on the DC 100 company identifying itself as a government contractor in the company's most recent Annual Report on Form 10-K. This report's references to the DC 100 government contractors refer to the 31 companies meeting these criteria (which include all of the aerospace & defense sector companies as well as companies across other industry sectors meeting these criteria), utilizing n=31 unless otherwise noted.

12 The "Big Four" is the nickname for the four largest accounting firms in the United States, as measured by revenue.

13 *BPC Partners*, "Small Big 4," https://bpc-partners.com/services_bpc/small-big-4/#:~:text=All%20of%20the%20Big%204,collective%20market%20share%20of%2099%25.

14 The designation of "large accelerated filer" is based on each company's designation in its most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q. SEC Rule 12b-2 of the Securities Exchange Act of 1934, as amended, defines a "large, accelerated filer" as a reporting company with an aggregate worldwide market value of voting and non-voting common equity held by non-affiliates of $700 million or more.

15 *Georgeson*, "A Look Back at the 2023 Proxy Season," June 2023, https://images.info.computershare.com/Web/CMPTSHR1/%7b28c0c0c9-296b-4434-8f19-c5b3b5465125%7d_A_Look_Back_at_2023_Proxy_Season_(2).pdf.

16 *Harvard Law School Forum on Corporate Governance*, "Shareholder Voting Trends (2018 – 2022)" (Nov. 5, 2022), https://corpgov.law.harvard.edu/2022/11/05/shareholder-voting-trends-2018-2022/.

17 *Id.*

18 *The Conference Board, "Corporate Board Practices In the Russell 3000, S&P 500, and S&P Midcap 400," 2021*, https://mss-p-053-delivery.stylelabs.cloud/api/public/content/rra-corporate-board-practices-2021-edition?v=459d94dd.

19 *Id.*

20 *Id.*

21 *Id.*

22 See SEC Rule 14a-21.

23 *Meridian Compensation Partners*, "Navigating the Frequency of Say-on-Pay Voting," September/October 2016, https://www.meridiancp.com/wp-content/uploads/NACD-Directorship_Sept-Oct-2016_Director-Advisory_Meridian.pdf.

24 The data in this section excludes two DC 100 companies with SoP proposals that had not held their annual stockholder meeting prior to September 1, 2023 from these stockholder vote calculations and results.

25 DC 100 SoP vote calculations were based on a voting standard of majority of votes cast (i.e., FOR / FOR + AGAINST) (which excludes any abstentions) and assume a proposal failed if it received less than 50% support.

26 *See Georgeson*, "A Look Back at the 2023 Proxy Season."

27 DC 100 SoP vote calculations were based on a voting standard of majority of votes cast (i.e., FOR / FOR + AGAINST) (which excludes any abstentions) and assume a proposal failed if it received less than 50% support. Only includes companies for which the proposal had been voted prior to September 1, 2023.

28 *Semler & Brossy*, "2023 Say on Pay & Proxy Results," August 17, 2023, https://semlerbrossy.com/insights/2023-say-on-pay-reports/.

29 *Harvard Law School Forum on Corporate Governance*, "Bouncing Back from a Low Say-On-Pay Vote," November 4, 2018, https://corpgov.law.harvard.edu/2018/11/05/bouncing-back-from-a-low-say-on-pay-vote/#:~:text=The%20two%20major%20proxy%20advisory%20firms%2C%20Institutional%20Shareholder,the%20pay%20at%20issue%20and%2For%20the%20full%20board.

30 *Weil, Gotshal & Manges LLP*, "Officer Exculpation Charter Amendments: A 2023 Proxy Season Review," July 5, 2023, https://www.weil.com/-/media/mailings/2023/q2/officer-exculpation-charter-amendments__a-2023-proxy-season-review.pdf.

31 *Id.*

32 SEC Rule 14a-6(a).

33 DGCL § 242(b).

34 *ISS*, "U.S. Shareholder Proposals Jump to a New Record in 2023" (May 24, 2023), https://www.isscorporatesolutions.com/library/us-shareholder-proposals-jump-to-a-new-record-in-2023/.

35 *See Georgeson*, "A Look Back at the 2023 Proxy Season."

36 *Id.*

37 *Id.*

38 *See ISS*, "U.S. Shareholder Proposals Jump to a New Record in 2023."

39 *See Georgeson*, "A Look Back at the 2023 Proxy Season."

40 *Id.*

41 *ISS Insights*, "In Focus: Shareholder Proposals in the 2023 U.S. Proxy Season," July 20, 2023, https://insights.issgovernance.com/posts/in-focus-shareholder-proposal-in-the-2023-us-proxy-season/.

42 *Id.*

43 *See Georgeson*, "A Look Back at the 2023 Proxy Season."

44 *Id.*

45 *Reuters*, "Comment: Why climate agreements are the untold story of the 2023 proxy season," June 28, 2023, https://www.reuters.com/sustainability/boards-policy-regulation/comment-why-climate-agreements-are-untold-story-2023-proxy-season-2023-06-28/.

46 *Deloitte*, "Emerging trends in ESG governance for 2023," https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/emerging-trends-in-esg-governance-for-2023.html.

47 *The Conference Board*, "Board Composition: Diversity, Experience and Effectiveness," May 19, 2022, https://www.conference-board.org/topics/board-practices-compensation/diversity-experience-and-effectiveness.

48 *Spencer Stuart*, "2022 Spencer Stuart Board Index," https://www.spencerstuart.com/research-and-insight/us-board-index.

49 *See The Conference Board*, "Board Composition: Diversity, Experience and Effectiveness," May 19, 2022.

50 *Harvard Law School Forum on Corporate Governance*, "2023 S&P 500 New Director and Diversity Snapshot," August 22, 2023, https://corpgov.law.harvard.edu/2023/08/22/2023-sp-500-new-director-and-diversity-snapshot/.

51 *Harvard Law School Forum on Corporate Governance*, "Board Refreshment and Evaluations," August 25, 2022, https://corpgov.law.harvard.edu/2022/08/25/board-refreshment-and-evaluations/#:~:text=While%20the%20share%20of%20companies,at%20either%2072%20or%2075.

52 *Id.*

53 *Harvard Law School Forum on Corporate Governance*, "Overseeing Cyber Risk," February 24, 2022, https://corpgov.law.harvard.edu/2022/02/24/overseeing-cyber-risk-2/.

54 *See Harvard Law School Forum on Corporate Governance*, "2023 S&P 500 New Director and Diversity Snapshot," August 22, 2023.

55 *Id.*

56 *Best Lawyers*, "Wanted: More Women on Corporate Boards. Legal Experience Desired," February 21, 2017, https://www.bestlawyers.com/article/women-corporate-boards/1198.

57 *See The Conference Board*, "Board Composition: Diversity, Experience and Effectiveness."

58 *See Harvard Law School Forum on Corporate Governance*, "2023 S&P 500 New Director and Diversity Snapshot."

59 This report defines traditional committees as those required by the stock exchange: audit, compensation, and nominating (or equivalent). Non-traditional committees are defined as those outside of the traditional committee definition. Executive committees were excluded from the non-traditional board committee statistics as these will frequently include members of management and are not consistently disclosed.

60 Non-traditional committee data only reflects information voluntarily disclosed in 2023 proxy statements as companies are not required to make this disclosure. Therefore, for purposes of this report, the DC 100 non-traditional committee statistics utilize a population of n = 63 unless otherwise stated.

61 *Sustainability Next*, "Most S&P 500 Companies are Disclosing ESG Board Governance Approach," April 6, 2023, https://sustainabilitynext.in/most-sp-500-companies-are-disclosing-esg-board-governance-approach/.

62 *See Harvard Law School Forum on Corporate Governance*, "Corporate Board Practices in the Russell 3000, S&P 500, and S&P Mid-Cap 400."

63 *Spencer Stuart*, 2022 U.S. Spencer Stuart Board Index Highlights, October 2022, https://www.spencerstuart.com/-/media/2022/october/ssbi2022/highlights/2022_us_spencerstuart_board_index_highlights_final.pdf.

64 All index data represented in this chart, with the exception of the DC 100 and except as separately cited, is sourced from: *EY*, "EY Center for Board Matters", https://assets.ey.com/content/dam/ey-sites/ey-com/en_us/topics/board-matters/ey-corporate-governance-by-the-numbers-march-2023.pdf.

65 Diversity is broadly defined herein to include women and any self-reported identification with a minority group.

66 *See Harvard Law School Forum on Corporate Governance*, "2023 S&P 500 New Director and Diversity Snapshot," August 22, 2023.

67 *Forbes*, "Fortune 500 Board Seats for Women and People of Color Surge – But There's Still Progress Needed, Report Says," June 15, 2023, https://www.forbes.com/sites/mollybohannon/2023/06/15/fortune-500-board-seats-for-women-and-people-of-color-surge-but-theres-still-progress-needed-report-says/?sh=429860511ea6.

68 *See Spencer Stuart*, "2022 U.S. Spencer Stuart Board Index Highlights."

69 *See Harvard Law School Forum on Corporate Governance*, "2023 S&P 500 New Director and Diversity Snapshot," August 22, 2023.

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 *ISS Insights*, "Russell 3000 Boards Becoming More Diverse," February 22, 2023, https://insights.issgovernance.com/posts/russell-3000-boards-becoming-more-diverse/.

75 *The Conference Board*, "Corporate Board Practices," March 22, 2023, https://www.conference-board.org/topics/board-practices-compensation/women-lead-boards.

76 *See Harvard Law School Forum on Corporate Governance*, "2023 S&P 500 New Director and Diversity Snapshot."

77 *See Harvard Law School Forum on Corporate Governance*, "2023 S&P 500 New Director and Diversity Snapshot."

78 *ISS Insights*, "2023 Filings Show U.S. CEO Pay Increases Tapering, ICS Analysis Finds," April 24, 2023, https://insights.issgovernance.com/posts/2023-filings-show-u-s-ceo-pay-increases-tapering-ics-analysis-finds/#:~:text=Analyzing%20the%20components%20of%20pay,compared%20with%20the%20previous%20year.

79 *The 2022 S&P 500 CEO compensation data utilized in this chart is from the annual "Executive Paywatch" study released by the AFL-CIO.*

80 *Fortune*, "There's less and less financial incentive to be CEO as other C-suite roles earn more and more money," August 2, 2023, https://fortune.com/2023/08/02/c-suite-pay-increasing-compared-ceo-less-financial-incentive-job-cfo-chro-general-counsel/.

81 Companies only offering medical, life, disability and liability insurance or defined contribution plans with match, and/or one-time relocation expenses and similar routine benefits not counted as companies offering "perks."

82 *ISS*, "Procedures & Policies (Non-Compensation Frequently Asked Questions" (July 25, 2023), https://www.issgovernance.com/file/policy/active/americas/US-Procedures-and-Policies-FAQ.pdf.

83 https://www.equilar.com/blogs/555-first-look-at-pvp-disclosure-trends-from-the-2023-proxy-season.

84 Chart data from https://www.equilar.com/blogs/555-first-look-at-pvp-disclosure-trends-from-the-2023-proxy-season.

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