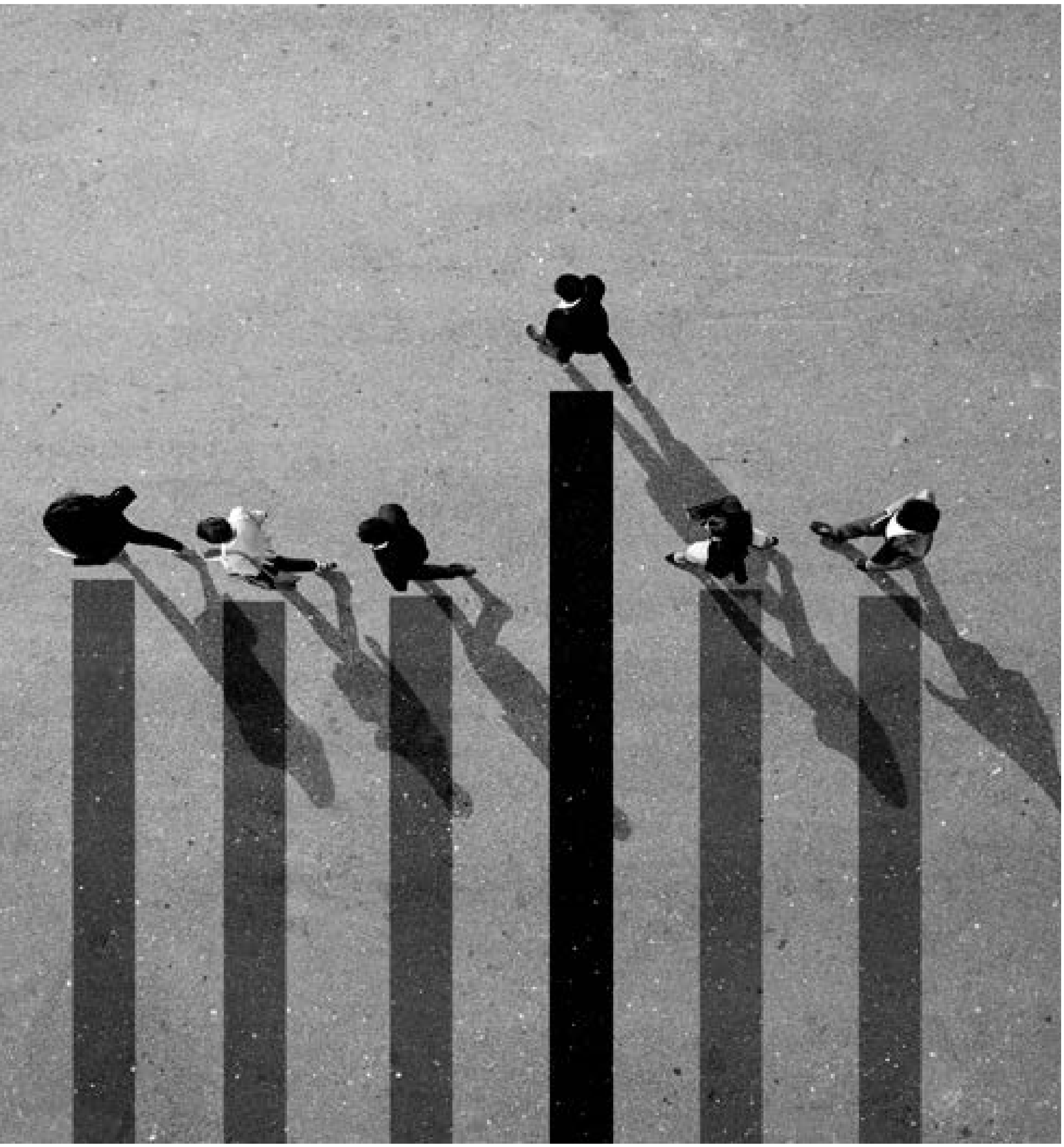
Corporate Governance & Executive Compensation Survey

2025

A&O SHEARMAN



Survey data provided in collaboration with:

ESGAUGE

INTANGIBLES AI

Contents

Survey data

Top 100, S&P 500, and Russell 3000 companies

FPI survey data

The 100 largest listed foreign private issuers

Introduction

Welcome to our 2025 Corporate Governance & Executive Compensation Survey, our 23rd annual edition, in which we provide insights into current developments in corporate governance and executive compensation matters and identify related trends across public companies in the United States. This year, we have expanded our survey to include a review of key corporate governance and executive compensation practices of the companies included in the S&P 500 and the Russell 3000, along with the 100 largest companies listed on the NYSE and Nasdaq, measured by market capitalization and annual revenue, which we call the Top 100 Companies. We have also expanded our coverage of foreign private issuers (FPIs) in this year's survey to include the 100 largest FPIs listed on the NYSE and Nasdaq, based on annual revenue. We believe providing a view into the practices of a broader cross-section of public companies will be instructive for all companies.

Our 2025 Corporate Governance & Executive Compensation Survey comes at a time when public companies are responding to an array of regulatory changes, with more on the horizon. The impact of the new administration's objectives has also been felt in the boardrooms and executive offices of public companies in the United States and around the world. From the executive orders issued in the first days of the new administration to the clear shift we have seen in the approach to regulatory and enforcement policy, 2025 has been a year of change for public companies. The appointment of Paul Atkins as Chair of the Securities and Exchange Commission (SEC) has initiated a series of changes that are having a direct and immediate impact on what it is like to be a U.S. public company.

While it is typical for incoming SEC leadership to announce new enforcement priorities, under Chair Atkins, we have seen a significant reorientation of the posture of the Enforcement Division. SEC leadership has signaled a shift away from enforcement of more technical or process-only violations that do not result in investor harm and a move away from corporate penalties. This has resulted, at least in this first year, in a meaningful reduction in the number of SEC enforcement actions brought against public companies.

The SEC also has launched a process of identifying changes to its rules and processes to "make IPOs great again," with the objective of reducing the disclosure burdens faced by public companies. In addition, the SEC has begun a process that appears to be designed to reset how investors engage with public companies. For example, in the first weeks of the new administration, the SEC revised its guidance related to shareholder proposals and announced a new interpretive position that immediately impacted how institutional investors engage with public companies, both of which had a meaningful impact on the 2025 proxy season. Chair Atkins also has started a robust discussion of, and solicited feedback on potentially meaningful revisions to, the existing executive compensation disclosure rules and the SEC's approach to regulating foreign private issuers. These items were prominent in the SEC's September 2025 rulemaking agenda, along with a host of other items that would impact public companies, including enhancing accommodations for newly public companies, disclosure and shelf registration modernization, and a rethinking of the entire shareholder proposal framework under Rule 14a-8. Additionally, at the President's urging, Chair Atkins also signaled that a rulemaking to consider the elimination of quarterly reporting was being fast-tracked by the SEC. This is just a sampling of the ambitious agenda that the current SEC has for public companies. Although designed to ease public company burdens, these initiatives will present both a learning curve and implementation challenges for all public companies.

In addition to these significant policy initiatives, the Division of Corporation Finance announced in November 2025, at the end of the lengthy government shutdown (and, in part, because of it), that the Division of Corporation Finance would not review no-action letters that sought to exclude shareholder proposals for the 2026 proxy season.

This announcement, dropped just as the 2026 proxy season is getting underway, leaves companies and those submitting shareholder proposals to navigate this new process, and its broader implications, in real time as the season unfolds.

In this survey, we start the conversation about some of these developments, from what will happen to the shareholder proposal process and executive compensation disclosures to observations about changing diversity disclosures. We also include a discussion about how public companies should think about digital assets, given the administration's efforts to change the legal landscape for cryptocurrency. We endeavor to synthesize the debate related to whether Delaware should or will remain the "first state" when it comes to public company incorporation or whether Nevada and Texas present realistic alternatives. Finally, we examine what changes could be coming for non-U.S. companies that are listed on stock exchanges in the United States.

Our survey contains extensive data reporting that we hope will serve as benchmarks for public companies to assess their own governance practices, recognizing that each company faces unique considerations and challenges. We hope that our survey continues to be a useful tool for companies and governance professionals.

The 2025 survey was produced under the leadership of the following A&O Shearman attorneys:

Richard B. Alsop

Melisa Brower

John J. Cannon

Erika Kent

Doreen E. Lilienfeld

Ilya Mamin

Lona Nallengara

The data we have used throughout this survey, including the extensive comparative corporate governance and executive compensation data covering the Top 100 Companies and the S&P 500 and Russell 3000 companies, has been compiled in collaboration with ESGAUGE®. For more information on the data collected in this survey, please see the "Survey Methodology" section.

Evolving trends in human capital practices and disclosures

By Doreen E. Lilienfeld, Melisa Brower, and Alexandra Kasper

INTRODUCTION

Over the past decade, we have seen a steady rise in the use of environmental, social and governance (ESG) and, specifically, diversity, equity and inclusion (DEI)-related performance metrics in incentive plans, as well as disclosures regarding DEI initiatives in disclosures of human capital management policies. As we observed in our 2024 survey, data on DEI-related metrics in incentive plans receded in prevalence compared to 2023. This year, that trend has accelerated significantly. This article examines how a confluence of factors—recent litigation, a shift in policy objectives that followed the 2024 Presidential election, voting policy updates from the proxy advisory firms and institutional shareholders and shifting public perception around DEI—have contributed to these trends.

LEGAL DEVELOPMENTS

A key inflection point was the 2023 U.S. Supreme Court decision striking down the use of affirmative action in the college admission process in *Students for Fair Admissions v. Harvard*.[1] The *Harvard* case reversed the longstanding Supreme Court position that race can be considered as a "plus factor" in college admissions. While this decision did not address private sector employment practices, it brought aspects of corporate DEI policies and compensation programs under greater scrutiny.

At the same time, measures to increase board diversity through the imposition of quotas, or "comply or disclose" requirements, came under judicial scrutiny. In 2022, a court ruled that a California law requiring the boards of corporations whose principal executive offices were located in California to include women violated the California constitution's Equal Protection Clause.[2] Similarly, Nasdaq (with the approval of the SEC) had implemented amendments to its listing standards, which were aimed at increasing board diversity for its listed companies, that required statistical disclosure of board diversity characteristics, as well as mandating certain minimum director diversity requirements or an explanation of why Nasdaq's diversity requirements were not attained. These rules were challenged, and in December 2024 the U.S. Court of Appeals for the Fifth Circuit struck down the Nasdaq board diversity rule on the grounds that the SEC lacked statutory authority under the Exchange Act to approve a Nasdaq rule that would compel disclosure of board diversity information or to impose diversity objectives on listed companies.[3]

[1] See *Students for Fair Admissions v. Harvard*, 600 U.S. 181, 186 (2023).
[2] *Crest v. Padilla*, Case No. 19 STCV 27561 (Cal. Super. Ct. L.A. Cnty. May 13, 2022). Discussed in further detail in our prior article, A&O Sheaman, *California Superior Court Strikes Down Director Diversity Mandate* (May 24, 2022) available at https://www.lit-ma.aoshearman.com/california-superior-court-strikes-down-director-diversity-mandate. The law in question, enacted in 2018, required public corporations whose principal executive offices are located in California to appoint at least one woman on boards of four or fewer directors, two women on boards of five directors, and three women on boards of six or more directors.
[3] This decision is discussed in further detail in our prior article, A&O Shearman, *Nasdaq's board diversity rules struck down by Fifth Circuit* (Dec. 16, 2024) available at https://www.aoshearman.com/en/insights/nasdaqs-board-diversity-rules-struck-down-by-fifth-circuit.

As a result, Nasdaq-listed companies were no longer required to disclose board diversity matrices and no longer required to meet, or publicly explain non-compliance with, diversity targets. Unsurprisingly, the Fifth Circuit's ruling led to a dramatic decrease in the number of Nasdaq-listed companies that included a board diversity matrix from 2024 to 2025.

Immediately following the inauguration in January 2025, President Trump issued successive executive orders seeking to eliminate DEI programs in the public and private sectors.[4] These executive orders were followed by a Justice Department directive for its Civil Rights Division to "investigate, eliminate and penalize illegal DEI and DEIA preferences, mandates, policies, programs and activities in the private sector and in education institutions that receive federal funds."[5] These actions forced companies to revisit their and the related disclosures DEI programs, goals and targets included in SEC-filed reports, corporate websites and board governance documents. Many companies reviewed their workforce policies and corporate governance practices in an effort to reconcile their practices with the new administration's stated enforcement posture, resulting in many companies changing or eliminating long-standing policies or at least rebranding them or "softening" the language used to describe them. At the end of this article, we present data illustrating the use of DEI as a factor in incentive compensation and DEI references in public disclosure documents.

[4] Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 20, 2025); Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025); Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025).
[5] *Ending Illegal DEI and DEIA Discrimination and Preferences*, Dep't of Just. (Feb. 5, 2025).

VOTING POLICY CHANGES

Another significant shift occurred when proxy advisory firms and institutional investors revised their voting guidelines relating to DEI matters. In February 2025, Institutional Shareholder Services (ISS) announced that it would no longer consider the gender, racial and/or ethnic diversity of a company's board when issuing voting recommendations on director elections.[6] One month later, Glass Lewis reaffirmed its view that diversity of board member composition remains an important consideration and delivers shareholder value. Glass Lewis, however, also indicated that going forward it would flag all director election proposals at U.S. companies where diversity considerations influenced its recommendation on board candidates. Glass Lewis clients in those cases would then receive two recommendations: one which reflects those diversity considerations and one that does not.

In October 2025, Glass Lewis announced a further policy shift: over the next two years, it would revise its prior posture of singularly-focused research and voting recommendations based on its policy and instead offer clients a choice of customized voting policies tailored to their specific stewardship priorities, such as governance, sustainability or other factors.[7] This approach allows its clients to choose thematic voting perspectives—such as pro or anti-ESG investment policies—rather than relying on a single benchmark.

In advance of proxy season, many institutional investors also revised their own proxy voting guidelines. The following chart summarizes key changes to the proxy voting guidelines of some of the U.S.'s largest institutional investors.

[6] Institutional Shareholder Services, *Statement Regarding Consideration of Diversity Factors in U.S. Director Election Assessments* (Feb. 11, 2025), available at https://insights.issgovernance.com/posts/statement-regarding-consideration-of-diversity-factors-in-u-s-director-election-assessments/.
[7] Glass Lewis, *Glass Lewis Leads Change in Proxy Voting Practices*, (Oct. 15, 2025), https://www.glasslewis.com/news-release/glass-lewis-leads-change-in-proxy-voting-practices.

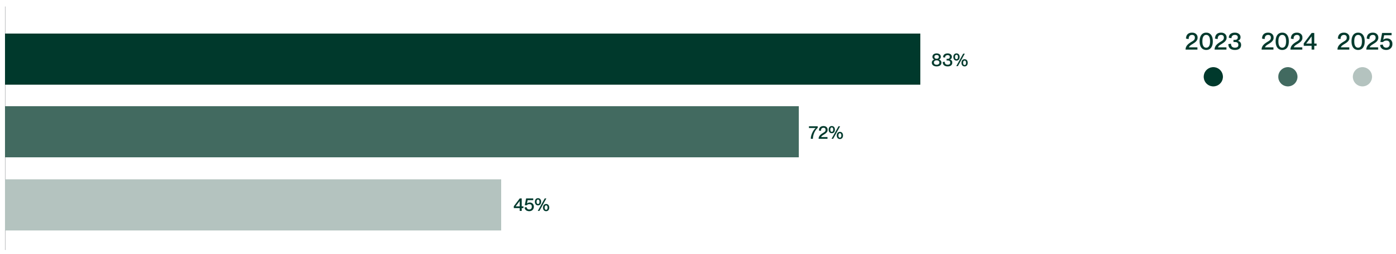
INSTITUTIONAL INVESTOR	CHANGES FROM 2024 PROXY VOTING GUIDELINES
BlackRock	• Removed the explicit 30% board diversity target for S&P 500 companies. • Removed the expectation, and related voting consequence, that boards disclose whether a diverse slate of nominees was considered for all board vacancies.
Capital Group	• Removed language on race and ethnicity as considerations for voting for or against an incumbent board.
Cohen & Steers	• Removed the categorical "no female director in the past 12 months without a stated plan" criterion as a voting consideration and the explicit requirement to assess whether a board "lacks diversity, including but not limited to gender, ethnicity, race and background."
Fidelity	• Removed language to generally oppose the election of certain or all directors when there is no gender, racial or ethnic diversity on a board.
Goldman Sachs Asset Management	• Removed language that "diversity of ethnicity, gender and experience" are important considerations when evaluating board composition. • Discontinued the policy of categorically recommending that boards within the S&P 500 have at least one diverse director from a minority ethnic group.
J.P. Morgan Asset Management	• Removed the expectation for boards to adopt a strategy to improve female representation. • Discontinued the practice of using voting power to bring about change at companies lagging in female representation or lacking inclusivity more generally.
Morgan Stanley Investment Management	• Removed language withholding support or voting against director nominees for failing to consider diversity in board composition. • Removed characterization of board diversity as a financially material issue and general support for shareholder proposals urging greater diversity where boards had not accounted for it. • Removed expectation that a board comprises one-third female directors and maintained ethnic diversity with the related risk of votes against the incumbent board.
State Street	• Removed the expectation that all listed companies have at least one female director, along with the related risk of votes against all incumbent nominating committee members. • Removed the expectation that boards in the Russell 3000, TSX, FTSE 350, STOXX 600 and ASX 300 be at least 30% female, and the related risk of votes against the nominating committee chair. • Discontinued the policy of withholding support from the nominating committee chair at S&P 500 or FTSE 100 companies lacking at least one underrepresented racial/ethnic director.
Vanguard	• Shifted from providing clear-cut guidance that a board reflect diversity in age, gender and race/ethnicity to a more general approach of treating demographic diversity as a "consideration."

DEI references

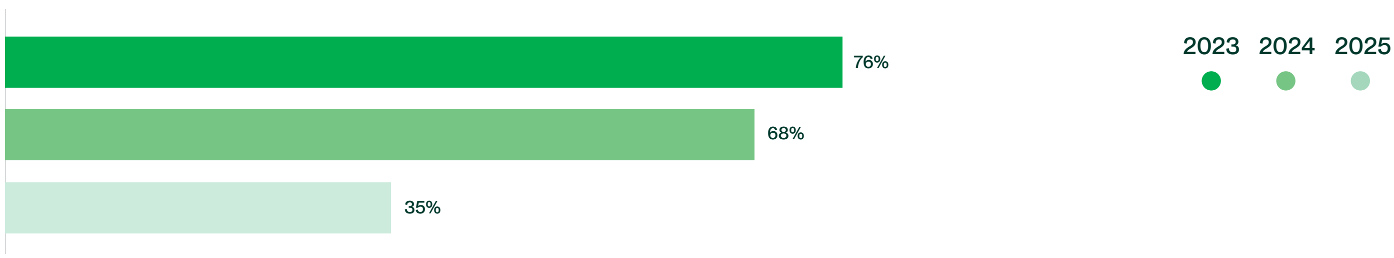
For the past several years, we have tracked and reported on trends relating to the use and disclosure of non-financial performance factors in public company incentive plans. Through the early 2020s, DEI-related measures became a popular feature of public company incentive compensation programs. In 2025, we observed a marked decrease in the disclosure of these measures.

INCENTIVE PLANS THAT REFERENCED A FOCUS ON DIVERSITY/INCLUSION

TOP 100 COMPANIES



S&P 500



RUSSELL 3000

References to DEI in public disclosures

With the advent of the SEC's requirement of human capital management disclosure in 2020, there was an increased prevalence of discussions of DEI programs and policies in annual reports. This year, we saw a decline in that practice. We analyzed year-over-year changes in the prevalence of DEI terms in annual reports and proxy disclosures. Here are our annual report findings:

ANNUAL REPORTS

Between 2024 and 2025, use of the term "diversity" in human capital management disclosures dropped by 63% among the Top 100 Companies, by 60% among S&P 500 companies and by 51% among Russell 3000 companies.

TOP 100 COMPANIES

S&P 500

RUSSELL 3000

PROXY STATEMENTS

TOP 100 COMPANIES

S&P 500

RUSSELL 3000

This data reflects a meaningful drop in the use and prevalence of diversity or similar terms and, in particular, a decline in the use of the term “diversity” throughout annual public disclosures.

We also reviewed the prevalence of risk factors in annual reports relating to DEI. Recently, we have seen companies include general risk factor disclosure relating to a company’s ability to attract, hire and retain qualified and diverse workforces. This year was no different. We observed, however, that approximately 20% of the Top 100 Companies removed or revised references to DEI terms within risk factors in annual reports. In addition, some of the Top 100 Companies appeared to be grappling with the degree to which honoring or overhauling DEI policies creates material risks to their businesses.

Of the minority of companies that revised their risk factor disclosure, a few highlighted the risk of failing to achieve publicly disclosed ESG goals, while others highlighted the risk of negative perception of DEI initiatives, both of which were perceived to potentially create reputational harm and subject companies to litigation or enforcement actions.

TAKEAWAYS

The policy changes related to DEI announced by the new administration came rather late in the SEC reporting cycle for most calendar year companies, which comprise approximately two-thirds of all public companies. As a result, many calendar year reporting companies were scrambling to understand the impact of these changes as they faced a looming deadline for filing their annual disclosures.

As we prepare for the next reporting season, it will be important for public companies to comprehensively review the underlying goals, policies and practices that are reflected in their disclosures. Companies should look to ensure that their disclosure accurately reflects their practices, but also that their practices align with the many stakeholders that have staked out positions on these types of disclosures, and the underlying issues represented by these disclosures, which may not all be uniform. The newest players in this discussion are governments at the federal and state level that have raised questions as to the legality of the programs that many public companies were previously trumpeting and stand ready to enforce their perspective. All of this means that public companies should carefully consider these constituencies and their respective interests as they review the programs that they will ultimately describe in their annual disclosures.

Is “DExit” real?

Recent developments in Delaware, Texas, and Nevada corporate law and business courts

By Mallory Tosch Hoggatt, Daniel Litowitz, Billy Marsh, Sean Skiffington, and Samantha Peppers

INTRODUCTION

For more than a century, Delaware has reigned as the favored domicile for U.S. companies, celebrated for its deep body of corporate law and its specialized Court of Chancery that resolves corporate disputes between sophisticated parties and brings some element of predictability to the application of its corporate law. In recent years, however, a series of high-profile decisions from the Court of Chancery have coincided with (and some might say caused) notable re-domiciliations out of Delaware by Tesla, SpaceX, Dropbox, Tripadvisor, Andreessen Horowitz, and others. Talk of a flight from Delaware, or a “DExit,” followed. Although the absolute number of exits remains modest against Delaware’s vast roster of companies, the directional shift is real and underscores that domicile is no longer a one-size-fits-all decision.

At the same time, two rivals are ascendant. Texas, having launched its statewide Business Court in September 2024, is refining its Business Organizations Code (TBOC) to make it more attractive to companies and laying the groundwork for a Texas-based stock exchange. Nevada, long marketed as management-friendly, has expanded statutory protections for directors and officers and is moving toward a single, statewide business court.

Today, the choice of domicile influences everything from deal timing to litigation exposure and governance risk, and many companies are assessing whether Delaware—which for years was always a given—is the best place to incorporate when going public and some are even contemplating reincorporating to a new state.

KEY TAKEAWAYS

This article compares the shifting jurisdictional landscape, evaluates the comparative strengths and vulnerabilities of Delaware, Texas, and Nevada, and offers practical guidance to boards, investors, and litigators weighing whether to remain in Delaware or to migrate elsewhere. The key practical takeaways are as follows:

- **Delaware** remains the market standard, backed by unparalleled precedent and recent statutory refinements that heighten predictability.
- **Texas** offers accelerated procedures, robust board autonomy, and no state corporate income tax, offering issuers swift, contract-based dispute resolution.
- **Nevada** provides the broadest statutory liability shield and the lowest recurring costs; despite lacking a dedicated business court and facing questions about shareholder safeguards, it is presently the leading destination for companies exiting Delaware.
- **Reincorporation is highly fact-specific.** Boards should carefully evaluate ownership concentration, transaction pipeline, litigation profile, tax impacts, and the strength of existing charter and bylaw provisions before pursuing a change in domicile.
- **Reincorporation requires both board and shareholder approval and invites scrutiny.** Early and targeted engagement with key institutional investors is essential to ensure the benefits to stockholders are clearly articulated, which can increase approval odds and can mitigate litigation risk.
- **Statutes and case law evolve rapidly.** Routine jurisdictional audits are essential to stay ahead of developments in Delaware, Texas, and Nevada.

DELAWARE IN DEFENSE MODE

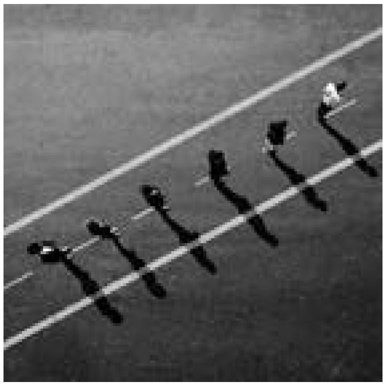
Delaware's long-standing position as the *de facto* default domicile for U.S. public companies is no longer a foregone conclusion. A series of closely watched rulings from the Court of Chancery[1]—including two recent high-profile fiduciary duty disputes discussed below—amplified concerns about whether the state's vaunted reputation for predictable, expert, and business-minded adjudication is beginning to erode.

The Tornetta decisions. On January 30, 2024, Chancellor McCormick issued a post-trial opinion in *Tornetta v. Musk*, holding that the defendant CEO—a 21.9% holder of company stock—exercised "transaction-specific" control over the negotiation of his 2018 compensation plan, triggering an entire fairness review despite holding a less than controlling stake in the company.[2] Chancellor McCormick rescinded the USD56 billion, stockholder-approved option grant, prompting the company to quickly reincorporate in Texas and the CEO to publicly urge companies on X (formerly known as Twitter) to "never incorporate your company in the state of Delaware."

In December 2024, Chancellor McCormick rejected the company's attempt to ratify the award retroactively—despite the overwhelming approval in a second stockholder vote—and awarded USD345 million in attorneys fees to plaintiff's counsel.[3] The company, now a Texas corporation, has since proposed a 2025 interim award that is expressly contingent on the outcome of the CEO's pending appeal to the Delaware Supreme Court.[4] On November 6, 2025, stockholders approved the package,[5] but its effectiveness remains subject to the outcome of that appeal.

The Nevada reincorporation fight. On February 4, 2025, the Delaware Supreme Court reversed the Court of Chancery's decision in *Maffei v. Palkon*, ruling that a board's decision to change the company's corporate domicile from Delaware to Nevada should be reviewed under the business judgment rule, not the entire fairness standard.[6] While acknowledging that Nevada may be more favorable to boards and controllers, the Supreme Court found that any theoretical reduction in fiduciary exposure derived from reincorporating in Nevada was too speculative to constitute a material, non-ratable controller benefit. Absent a concrete conflict (e.g., pending litigation), an informed stockholder vote was sufficient to invoke business judgment protection. The Supreme Court concluded by reaffirming that "Delaware policy has long recognized the values of flexibility and private ordering. Allowing directors flexibility in determining an entity's state of incorporation is consistent with this Delaware policy. Declining to second-guess directors' decisions to redomesticate where there are no concrete, material, non-ratable benefits flowing to the directors or controllers furthers this important policy."[7]

[1] *See, e.g., W. Palm Beach Firefighters' Pension Fund v. Moelis & Co., 311 A.3d 809 (Del. Ch. 2024); Sjunde AP-Fonden v. Activision Blizzard, Inc.*, No. 2022- 1001-KSJM, 2024 WL 863290 (Del. Ch. Feb. 29, 2024 (as corrected Mar. 19, 2024)); *Crispo v. Musk*, 304 A.3d 567, 584 (Del. Ch. 2023).
[2] 310 A.3d 430, 520 (Del. Ch. 2024).
[3] *Tornetta v. Musk*, 326 A.3d 1203, 1264 (Del. Ch. 2024).
[4] Tesla, Inc., Current Report (Form 8-K) (Aug. 4, 2025), available at https://www.sec.gov/ix?doc=/Archives/edgar/data/0001318605/000110465925073263/tm2522385d1_8k.htm
[5] Tesla, Inc., Current Report (Form 8-K) (Nov. 7, 2025), available at https://www.sec.gov/Archives/edgar/data/1318605/000110465925108507/tm2530590d1_8k.htm
[6] *Maffei v. Palkon*, 339 A.3d 705, 742 (Del. 2025) (reversing 311 A.3d 255 (Del. Ch. 2024)).
[7] *Id.* at 744 (citing *Salzberg v. Sciabacucchi*, 227 A.3d 102, 116 (Del. 2020) ("[T]he DGCL allows immense freedom for businesses to adopt the most appropriate terms for the organization, finance, and governance of their enterprise.")).



Legislative reforms. In response to mounting concerns from market participants, and undoubtedly aware that the franchise-tax revenue constitutes roughly 30% of Delaware's operating budget,[8] the Delaware General Assembly moved swiftly to enact a series of amendments to the Delaware General Corporation Law (DGCL) in 2024 and 2025.

The 2024 amendments: affirmed that the allocation by a board of directors of certain corporate decision-making authority to stockholders in stockholder agreements is permissible in Delaware; authorized boards to approve draft merger agreements where non-material terms have not yet been finalized; and expressly allowed parties to incorporate a "lost premium damages" provision in a merger agreement.[9] The 2025 amendments made significant changes with respect to "controlling stockholder" law in Delaware—setting a floor of at least 33% ownership, plus the practical ability to exercise effective control—created bright-line safe harbors for conflicted transactions, narrowed and codified the scope of books-and-records inspection rights, and tightened derivative-pleading standards.[10]

Potential conflict with mandatory arbitration provisions. In September 2025, the SEC announced a significant policy shift, stating that the presence of mandatory arbitration provisions for federal securities law claims will not impact decisions whether to accelerate the effectiveness of securities act registration statements. In so doing, the SEC noted that the recent amendment to DGCL § 115(c)—which requires forum selection provisions in Delaware company charters or bylaws to preserve access to at least one court in the State of Delaware—may conflict with the SEC's position. Other states, like Texas and Nevada, do not have comparable statutory requirements.[11]

Ultimately, whether "DExit" is real, and, if so, whether amendments to the DGCL resolve companies' concerns, remains unclear. What is clear is that Texas and Nevada are attempting to capitalize on this perception of volatility and inflexibility, positioning themselves as havens of certainty and managerial discretion even as Delaware strives to recalibrate.

[8] Del. Off. of Mgmt. & Budget, Comprehensive Annual Financial Report (2024), at 30 (reporting franchise-tax receipts constituting approximately 30% of General Fund revenue).

[9] S.B. 313, 152nd Gen. Assemb. (Del. 2024) (clarifying contractual enforcement rights under merger agreements, permitting board approval of agreements lacking immaterial terms, and authorizing pre-closing remedies). For further discussion of these amendments and additional cases that prompted them, see Romain Dambre, Mallory Tosch Hoggatt and Samantha Peppers, *The Evolution of Delaware Corporate Law: Finding Certainty in Uncertain Times*, 42 RTDG No. 3: Doctrine (2024), edge.sitecorecloud.io/allenoveryllp1-aoshearmanwe0db-production-ecf3/media/project/aoshearman/pdf-downloads/insights/2024/10/rtdf-article.pdf.

[10] S.B. 21, 152nd Gen. Assemb. (Del. 2025) (amending DGCL §§ 102, 109, 141, 147, 220, 261, 327 et al.); S.B. 95, 153rd Gen. Assemb. (Del. 2025); see also Press Release, Matt Meyer, Governor, Delaware, Governor Meyer Signs SB21 Strengthening Delaware Corporate Law (Mar. 26, 2025) (declaring that "Delaware is the best place in the world to incorporate your business, and Senate Bill 21 will help keep it that way, ensuring clarity and predictability, balancing the interests of stockholders and corporate boards"), available at https://news.delaware.gov/2025/03/26/governor-meyer-signs-sb21-strengthening-delaware-corporate-law/. The amendments are currently subject to constitutional challenges in *Plumbers & Fitters Local 295 Pension Fund v. Dropbox, Inc.*, C.A. No. 2025-0354-KSJM (Del. Ch. June 9, 2025) and *Rutledge v. Clearway Energy Group LLC*, C.A. No. 2025-0499-LWW (Del. Ch. June 6, 2025).

[11] U.S. Sec. & Exch. Comm'n, *Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions* (Sept. 17, 2025), available at https://www.sec.gov/files/rules/policy/33-11389.pdf; see also A&O Shearman, "SEC Will No Longer Object to Provisions Requiring Investors to Arbitrate Securities Law Claims," (Sept. 24, 2025), available at https://www.aoshearman.com/en/insights/sec-will-no-longer-object-to-provisions-requiring-investors-to-arbitrate-securities-law-claims.

TEXAS: THE LONE STAR OFFENSIVE

Texas has moved rapidly to position itself as an attractive alternative to Delaware. Driven by pro-business legislature, the creation of the Texas Business Court, and targeted amendments to the TBOC, Texas now offers corporate stakeholders a forum that is intended to be commercially sophisticated and procedurally efficient.

Texas Business Court. Texas House Bill 19 established the Texas Business Court, an 11-division trial court with subject-matter jurisdiction over internal governance, fiduciary duty, derivative, and certain securities claims. Five divisions began operations on September 1, 2024, each led by an appointed judge with at least ten years of complex business-law experience.[12] In its first year, 192 cases were filed, 42 written opinions were issued, and 25 appeals had reached the new business docket of the Fifteenth Court of Appeals.[13]

Early jurisprudence. The Business Court's most instructive case to date—*Primexx Energy Opportunity Fund, LP v. Primexx Energy Corporation*—illustrates the court's style and efficiency. Filed in October 2024, the suit alleged that Blackstone-affiliated general partners orchestrated a squeeze-out that forced minority unitholders to redeem their interests at an unfairly discounted price. In only nine months, Judge Bill Whitehill convened eight hearings, issued five substantive opinions comprising a total of 172 written pages, ultimately held that TBOC Chapter 152 replaces common law fiduciary duties,[14] and enforced the partnership agreement's drag-along and exculpatory clauses exactly as written,[15] reflecting a Delaware-style emphasis on freedom of contract—albeit on a more expedited timetable.

[12] Tex. Gov't code § 25A.009. The remaining divisions of the Business Court will not have an appointed judge until at least July 1, 2026. The divisions are located in Dallas, Travis, Bexar, Tarrant, and Harris counties.
[13] *See Business Court*: *Opinions*, TEX. JUD. BRANCH, https://www.txcourts.gov/businesscourt/opinions.
[14] *Primexx Energy Opportunity Fund, LP v. Primexx Energy Corp.*, 709 S.W.3d 619 (Tex. Bus. Ct. Mar. 10, 2025), *reconsideration denied*, 713 S.W.3d 416 (Tex. Bus. Ct. Apr. 15, 2025).
[15] *Primexx Energy Opportunity Fund, LP v. Primexx Energy Corp.*, 24-BC01B-0010, 2025 WL 1479394 (Tex. Bus. Ct. May 22, 2025).

Legislative reinforcement. The 2025 legislature enacted several targeted amendments to complement its new court, including, without limitation, the following:

- Senate Bill 29 codifies the business judgment rule for all entity types, supplying a uniform, statutory standard that indisputably applies to all Texas entities, permits corporations to set ownership thresholds (up to 3%) for derivative actions, and expressly authorizes jury trial waivers in internal affairs disputes.[16] Under the amended Section 21.218 of the TBOC, a shareholder's right to make records demands no longer includes access to emails, texts, social media posts or similar electronic communication unless those communications effectuate an official corporate action. In addition, 21.218(b-2) provides a mechanism to object to books and records demands made in connection with litigation.
- Senate Bill 1057 imposes stricter requirements for shareholder proposals at Texas-incorporated, publicly traded issuers.[17]
- Senate Bill 2411 extends officer exculpation for monetary damages (except for breaches of the duty of loyalty) and permits boards to approve merger agreements in "financially final form."[18]
- House Bill 40 broadens Business Court jurisdiction, lowers monetary thresholds for jurisdiction of a broader set of claims, and streamlines establishing jurisdiction in the Texas Business Court.[19]

Outlook. Recent developments, viewed alongside the absence of a state corporate income tax, a streamlined regulatory environment, and other pro-business incentives, position Texas as an increasingly credible domicile. It is too soon to predict a broad re-domiciliation trend, but an increasing number of companies that are considering going public—particularly in light of the Texas Stock Exchange's recent SEC approval to operate as a national securities exchange[20]—are seriously considering Texas as a possible alternative.

[16] S.B. 29, 89th Leg., Reg. Sess. (Tex. 2025) (amending Tex. Bus. Orgs. Code §§ 21.401–563).
[17] S.B. 1057, 89th Leg., Reg. Sess. (Tex. 2025) (adding Tex. Bus. Orgs. Code § 21.711).
[18] S.B. 2411, 89th Leg., Reg. Sess. (Tex. 2025) (amending Tex. Bus. Orgs. Code §§ 21.053, 21.056).
[19] H.B. 40, 89th Leg., Reg. Sess. (Tex. 2025) (amending Tex. Gov't code § 25A.002).
[20] Press Release, TXSE Group Inc., TXSE Group Inc Announces SEC Approval of Texas Stock Exchange (Sept. 30, 2025), https://www.txse.com/press-releases/txse-group-inc-announces-sec-approval-of-texas-stock-exchange.

NEVADA: THE MANAGER'S ALTERNATIVE

For over two decades, Nevada has cultivated a reputation as a management-friendly forum, marketing modest franchise taxes, comparatively low annual fees, specialized business court divisions, and statutory protections for directors and officers that are among the most expansive in the country. Recent legislative and judicial activity has sharpened that pitch, resulting in another credible alternative to Delaware.

Nevada's judicial business divisions. Nevada's business-specific dockets, operating since 2000 in Las Vegas and Reno, already offer expedited handling of complex commercial disputes overseen by elected judges. In 2025, the Nevada Legislature approved Assembly Joint Resolution 8, which, if approved during the 2027 legislative session by voters, would establish a dedicated business court with appointed judges and exclusive original jurisdiction over complex business disputes.[21] The Nevada Supreme Court would serve as the exclusive appellate forum, and a commission has already been convened to draft uniform procedural rules.[22]

Legislative reforms. Nevada accelerated its management-friendly trajectory with the enactment of Assembly Bill 239 (AB 239) in May 2025, delivering targeted amendments to the Nevada Revised Statutes (NRS) that directly impact M&A litigation and internal governance disputes.[23] AB 239 codifies a broad business judgment rule, insulating directors and officers from liability except in cases of intentional misconduct, fraud, or knowing violation of law—protections that exceed those available under Delaware or Texas law.[24] It also declares that stockholders, absent control status, owe no fiduciary duties to the corporation or to one another, and even controlling stockholders enjoy a presumption of fairness if conflicted transactions are approved by disinterested directors.[25] AB 239 further authorizes corporations to require bench trials in internal affairs disputes[26] and, absent extraordinary circumstances, confines post-closing merger challenges to statutory appraisal.[27]

Early jurisprudence. In *Silva v. Clay*, the Nevada court extended AB 239's business judgment liability shield to limited liability company managers whose operating agreements impose fiduciary duties and strictly enforced the agreement's narrower, party-crafted exculpation clause to the letter, illustrating a contract-centric, pro-management approach.[28]

Outlook. Nevada's effort to rival Delaware will ultimately turn on the depth, coherence, and predictability of the case law that emerges under AB 239 and its future business court, as well as on whether investors embrace a governance regime that places greater faith in managerial business judgment.

[21] A.J.R. 8, 83rd Leg., Work Sess. (Nev. 2025), leg.state.nv.us/Session/83rd2025/Bills/AJR/AJR8_EN.pdf.
[22] Press Release, Nevada Supreme Court, Commission to Enhance Nevada Business Court (Mar. 7, 2025), nvcourts.gov/aoc/aoc_news/nevada_supreme_court_to_create_commission_to_enhance_nevada_business_court.
[23] A.B. 239, 83rd Leg., Work Sess. (Nev. 2025).
[24] NRS § 78.138(7) (amended 2025).
[25] *Id.* at § 4 (amending NRS § 78.240); see also NRS § 78.423 (definition of "controlling stockholder").
[26] A.B. 239 § 2, 83rd Leg., Work Sess. (Nev. 2025) (amending NRS § 78.046(4)).
[27] A.B. 239 § 2, 83rd Leg., Work Sess. (Nev. 2025) (amending NRS § 79A.380(2)).
[28] No. A-25-909767-B (Nev. Dist. Ct. Dep't IX July 3, 2025).

JURISDICTIONAL MOVEMENT: CURRENT TRENDS

Notwithstanding the noise around a so-called "DExit," the available data reveals a more nuanced reality. During the 2025 proxy season, boards and shareholders exhibited heightened—though hardly runaway—interest in revisiting the choice of Delaware as a corporate domicile. By mid-2025, at least 29 companies had proposals involving Delaware: 18 proposals to leave, 11 to enter.[29] The outbound proposals are concentrated among issuers with controlling or highly concentrated ownership structures, a group particularly attuned to shifts in Delaware's corporate jurisprudence.

Nevada is so far the chief beneficiary of DExit-motivated moves. Between 2024 and mid-2025, a wave of high-profile names—including Tripadvisor, Dropbox, Roblox, Andreessen Horowitz, AMC Networks, MSG Sports, MSG Entertainment, Neuralink, Sphere Entertainment, The Trade Desk, Pershing Square, Jade Biosciences, Tempus AI, XOMA Royalty, Fidelity National Financial, and Affirm Holdings—opted to reincorporate in Nevada. The July 2025 announcement by Andreessen Horowitz proved especially influential: the firm not only announced its own shift but publicly urged its portfolio companies to follow suit, citing: (a) a perceived rise in subjectivity within the Delaware Court of Chancery; (b) the costs and delays inherent in Delaware litigation; (c) heightened personal exposure for directors; and (d) the relative clarity and breadth of Nevada's codified business judgment rule.[30]

Texas, while attracting fewer departures than Nevada, is gaining momentum. By September 2025, Tesla, SpaceX, Zion Oil & Gas, and Dillard's, Inc. had completed reincorporations from Delaware to Texas.[31] On November 12, 2025, Coinbase disclosed in a regulatory filing that it will reincorporate from Delaware to Texas, citing Texas's increasingly code-based corporate law, a more predictable and less litigious forum, strong statewide support for blockchain and crypto, and cost savings from avoiding Delaware franchise tax.[32] Coinbase acknowledged the comparative uncertainties—most notably that key amendments to the TBOC are new and still being interpreted, that business-court precedent is nascent, and that proxy advisors or shareholders may scrutinize the change—but concluded that Texas better aligns with the company's mission and long-term strategy.

Other large-cap issuers, including Walmart and Meta, are reportedly evaluating similar options.[33]

Across jurisdictions, the principal catalysts for reincorporation remain consistent: greater predictability in corporate governance standards,[34] reduced exposure to shareholder litigation, particularly derivative suits and M&A challenges,[35] and lower franchise taxes and annual fees.[36]

Despite these headlines, Delaware still hosts over 2.1 million active business entities, including approximately 67% of Fortune 500 companies, and more than 80% of 2024 IPOs chose Delaware as their place of incorporation.[37] Outbound transactions, while more visible than in prior years, constitute only a tiny fraction of the state's corporate base.

[29] ISS Governance, *The U.S. Reincorporation Race: Who's in the Lead?*, ISS: Insights (July 16, 2025), insights.issgovernance.com/posts/the-u-s-reincorporation-race-whos-in-the-lead/; *See also* FuboTV Inc., Schedule 14A (Aug. 7, 2025) (proposal to move from Florida to Delaware), available at https://www.sec.gov/Archives/edgar/data/1484769/000114036125029625/ny20044463x2_defm14a.htm; Algorhythm Holdings, Schedule 14A (Oct. 16, 2025), available at https://www.sec.gov/ix?doc=/Archives/edgar/data/0000923601/000149315225018323/formdef14a.htm and Capstone Holding Corp., Schedule 14A (Oct. 1, 2025), available at https://www.sec.gov/ix?doc=/Archives/edgar/data/0000887151/000121390025094745/ea0257860-02.htm (proposals to move from Delaware to Nevada).

[30] Jai Ramaswamy, Andy Hill and Kevin McKinley, Andreessen Horowitz, *We're Leaving Delaware, and We Think You Should Consider Leaving Too* (July 9, 2025), available at https://a16z.com/were-leaving-delaware-and-we-think-you-should-consider-leaving-too/.

[31] See Zion Oil & Gas Inc., Current Report on Form 8-K (June 4, 2025), available at https://www.sec.gov/ix?doc=/Archives/edgar/data/0001131312/000143774925019405/znog20250604_8k.htm; Tesla, Inc., Current Report on Form 8-K (June 13, 2024), available at https://www.sec.gov/ix?doc=/Archives/edgar/data/0001318605/000110465924071439/tm2413800d31_8k.htm; Dillard's, Inc., Current Report on Form 8-K (Aug. 19, 2025), available at https://www.sec.gov/ix?doc=/Archives/edgar/data/0000028917/000110465925080914/tm2524002d1_8k.htm; Michelle Chapman, *Musk Pushes Forward on Transfer of Legal Home for SpaceX from Delaware*, *to Texas*, AP News (Feb. 15, 2024), available at https://apnews.com/article/musk-spacex-neurolink-delawaretesla-a562219a7b2bd8217f5d7a7c834e6d0d.

[32] Coinbase Global, Inc., Information Statement (Schedule 14C) (Nov. 24, 2025), available at https://www.sec.gov/Archives/edgar/data/1679788/000167978825000227/coin-def14cinformationstat.htm.

[33] Ewan Palmer, *Delaware Faces Exodus of Tech Companies*, Newsweek (Feb. 1, 2025), https://www.newsweek.com/delaware-exodus-tech-meta-dropbox-elon-musk-2024596.

[34] Stephen M. Bainbridge, *DExit Drivers: Is Delaware's Dominance Threatened?*, Harv. L. Sch. F. on Corp. Governance (Sept. 6, 2024), https://corpgov.law.harvard.edu/2024/09/06/dexit-drivers-is-delawares-dominance-threatened/; *See also*, *e.g.*, Dropbox, Inc., Schedule 14C (Feb. 10, 2025), at p. 5 ("After considering various alternatives, the evaluation committee concluded that Nevada's statute-focused approach would likely foster more predictability than Delaware's less predictable common law approach…"), available at https://www.sec.gov/Archives/edgar/data/1467623/000114036125003654/ny20042422x2_def14c.htm.

[35] Jon Bosworth, *Could the Mighty Fall? Why Companies Are Considering Reincorporating Out of Delaware and Delaware's Response*, U.C. Berkeley CTR. for L. & Bus.: Blog (Apr. 14, 2025), available at https://sites.law.berkeley.edu/thenetwork/2025/04/14/could-the-mighty-fall-why-companies-are-considering-reincorporating-out-of-delaware-and-delawares-response/; *See also, e.g.*, Madison Square Garden Sports Corp., Schedule 14A (Apr. 23, 2025), at p. 15 ("The increasing frequency of claims and litigation in Delaware brought against corporations and their directors and officers creates unnecessary distraction and cost for businesses"), available at https://www.sec.gov/Archives/edgar/data/1636519/000163651925000014/msgsdef14a-specialproxysta.htm.

[36] *See* Mingson Lau, *Texas*, *Oklahoma and Nevada Make Changes to Lure Business amid Delaware's 'Dexit' Concern*, AP News (June 23, 2025), apnews.com/article/business-incorporationdelaware-texas-nevada-dexit-oklahoma-7aa1f738096dec9498f0e8139e6fc7aa; See also, e.g., TripAdvisor, Inc., Schedule 14A (Apr. 25, 2023), at p. 29 (explaining its move from Delaware to Nevada will result in "substantial savings to us over the long term" as it "paid approximately US250,725 in Delaware" compared to Nevada's annual fee of USD500), available at https://www.sec.gov/ix?doc=/Archives/edgar/data/0001526520/000095017023014532/trip-20230426.htm.

[37] *See* Charuni Patibanda-Sanchez and Kris Knight, Annual Report Statistics, Del. Div. of Corps. (2024), available at https://corp.delaware.gov/stats.

Why public company boards need a digital asset strategy

By F. Dario de Martino

While headlines focus on Bitcoin's price swings and crypto market boom-bust cycles, a profound transformation is reshaping how businesses operate. Treasurers of S&P 500 companies are increasingly moving billions through blockchain-enabled networks. Supply chain executives are achieving transparency through blockchain-enabled platforms that seemed impossible just years ago. Financial institutions are reimagining capital markets infrastructure that has remained essentially unchanged since the 1970s.

This is no longer speculation or experimentation.

In 2024, stablecoin transaction volumes alone exceeded USD14 trillion, nearly matching Visa's USD15.7tn in global payment volume. This surge was spurred, in part, by the GENIUS Act, the first U.S. federal statute governing payment stablecoins. It establishes a dual federal-state licensing regime (including OCC supervised non-bank issuers and certified-state issuers), mandates one-to-one high-quality liquid reserves with par-value redemption, and requires segregated, bankruptcy-remote custody. Monthly reserve disclosures with CEO/CFO certifications and full Bank Secrecy Act and anti-money laundering obligations are moving these rails toward bank-like oversight, while interest payments are barred and marketing cannot imply government backing.

We are seeing blockchain technology and digital assets permeate all parts of our economy.

Using IBM Food Trust's Hyperledger-based blockchain, Walmart can now trace contaminated produce to its source in 2.2 seconds instead of seven days.

Major banks are tokenizing traditional assets, creating 24/7 markets for instruments that previously traded only during business hours or when traditional markets were open.

These are not pilot programs. They are production systems processing real value and solving actual business problems.

Yet many corporate boards remain on the sidelines, viewing digital assets through lenses of speculation and risk often fostered by a lack of understanding of the underlying technology, the breadth of its uses, and, most importantly, how it can be applied to their companies. This perspective is outdated. Ignoring this technological shift may soon become a liability. The question facing directors is not whether digital assets will impact their business, but whether they are ready when they do.

This article challenges conventional thinking about digital assets. We will reveal how companies are quietly building competitive advantages through blockchain technology, why the window for strategic positioning is narrowing, and what informed governance looks like in the digital asset era. The goal is not to make every director a crypto enthusiast but to ensure that companies do not find themselves blindsided by competitors that anticipated the strategic landscape with greater prescience because their directors are unable or unwilling to understand the technology.

THE STRATEGIC REALITY: DIGITAL ASSETS AS BUSINESS INFRASTRUCTURE

Every year, corporations worldwide spend an estimated USD120bn on cross-border payment fees, which includes transaction costs and foreign exchange spreads. Settlement delays lock up trillions in working capital. This is the hidden tax on global commerce that we all accept.

Stablecoins are attempting to change this calculus. When a multinational corporation can move USD10m from Singapore to São Paulo in 30 seconds for under USD100 instead of three days for USD50–200 plus FX spreads, it is not just an incremental improvement. We are witnessing the replacement of financial infrastructure that has not fundamentally changed since the telegraph era.

The early adopters are not just crypto startups but include established enterprises. Payment companies report that stablecoins can reduce settlement times from days to minutes, freeing up significant working capital for businesses with high-volume supplier payments.

The strategic implications extend beyond cost reduction. Companies using programmable money can implement dynamic pricing, instant rebates, and automated escrow without intermediaries.

They can operate true 24/7 global treasuries, moving capital to optimal locations in real time rather than waiting for banking hours. Every three-day wire transfer is a three-day loan to your bank. Every FX spread is tantamount to a tax on your competitiveness. The question is not whether to adopt digital payment infrastructure, it is whether you can afford not to.

CUSTOMER ENGAGEMENT

Nike reimagined what customer relationships could be through its Swoosh platform, which does not just distribute digital collectibles, but it makes customers co-creators who earn royalties on virtual products they help design. When the winning designers' digital shoes generate sales, they receive actual payments through blockchain-enabled revenue sharing. This is not a loyalty program; it is a business partnership enabled by blockchain's ability to track and automate complex revenue sharing.

The lesson for directors is profound. Digital assets do not enhance existing business models—they enable entirely new ones. Companies that recognize blockchain as infrastructure for reimagining customer relationships will create the next generation of engagement. The question boards should ask is not "how can we use NFTs and other digital assets and blockchain technology to strengthen customer engagement?" but instead "what new customer relationships become possible when every interaction can be tokenized, traded, and programmed?"

THE TOKENIZATION TSUNAMI

In 2017, Delaware amended Title 8, Section 224 of the Delaware General Corporation Law to explicitly authorize corporations to maintain their stock ledgers and related records through distributed ledger technology, including blockchain networks, provided that such systems can prepare a clear record of stockholder information required under Delaware law.

This was not a technical update but legal recognition that 400-year-old concepts of ownership and transfer were changing.

Today, the infrastructure built on that foundation is rewriting capital markets.

BlackRock, managing USD11.6tn in assets, did not launch tokenized funds as an experiment. Institutional investors have been seeking 24/7 liquidity, instant settlement, and programmable compliance. When bonds that traditionally settle in two days can settle in seconds, when compliance rules are executed automatically rather than through a team of compliance lawyers, and when fractional ownership makes million-dollar investments accessible at a fraction of the cost, we are not improving capital markets, we are fundamentally transforming them.

The implications cascade beyond simply improving efficiency. Tokenization enables business models that were previously impossible under traditional infrastructure. Consider a commercial real estate fund that automatically distributes rental income to token holders monthly, rather than quarterly, or a supply chain finance platform where accounts receivable invoices become tradeable through tokenization, creating instant liquidity for suppliers that are no longer waiting for 30-day payment terms.

Forward-thinking boards should recognize tokenization not as a trend, but as an evolution of infrastructure comparable to the shift from paper to electronic trading. Companies that build on programmable, always-on, globally accessible capital markets infrastructure will be able to access liquidity efficiently, fueling innovation that traditional-only competitors cannot match.

SUPPLY CHAIN TRUTH

For decades, supply chain management operated on the principle of trust-but-verify. Companies trusted partners' data but verified through audits, inspections, and reconciliations. This model is breaking down under the weight of complexity, speed, and consumer demands for transparency. Blockchain does not only improve this model, it fundamentally transforms it.

When Walmart was able to reduce food tracing time from seven days to 2.2 seconds for an initial group of products, it fundamentally changed what is possible in, for example, a contamination crisis. The difference between instant tracing and week-long investigations is not just operational, it can save lives. Walmart is scaling the same blockchain-enabled system across additional product lines.

However, focusing only on crisis response potentially misses the larger transformation. When every product's movement, transformation, and transaction is immutably recorded and instantly accessible, new business models emerge. Luxury brands can guarantee authenticity without certificates. Sustainability claims become verifiable facts rather than marketing messages. A single defective component that could trigger millions in recalls can now be traced by Blockchain-enabled companies in minutes.

The EU's Digital Product Passport (DPP) deadlines beginning in 2027 are creating an unexpected opportunity. The DPP is a mandatory regulatory framework requiring product information to be recorded digitally, including information related to product sustainability, origin, repairability, and recyclability. Blockchain technology, which offers a secure and transparent system to store this type of information, aligns with the DPP requirements and will enhance trust and traceability in its supply chain.

The early movers are not waiting for 2027. They can prove their sustainability claims, which may allow them to generate sustainability premiums. They can use the data they are collecting to enhance their insurability profile, which can result in better insurance rates. Banks are also beginning to recognize that transparency can equal lower risk.

WHY BOARDS SHOULD ACT NOW

Regulators worldwide, including, now, in the United States, are building frameworks for a digital asset economy. The European Union's MiCA regulation created comprehensive rules covering stablecoins and crypto-assets, while clarifying that tokenized securities remain under existing securities regulations. Singapore, Switzerland, and Japan established clear frameworks that attracted billions in digital asset investment. China, which banned cryptocurrency trading, now promotes blockchain for business applications.

In the United States, the regulatory fog is finally lifting. Following enactment of the GENIUS Act, the first U.S. federal statute governing payment stablecoins, the CLARITY Act, which clarifies which digital assets are regulated as commodities versus securities and delineates agency jurisdictions, has been approved by the House. The bill divides assets into (i) digital commodities, (ii) investment contract assets during capital raising, and (iii) permitted payment stablecoins, assigning Commodity Futures Trading Commission (CFTC) oversight to commodities and SEC oversight to issuances, with defined handoffs as networks mature. It also opens clearer paths to trade and custody digital commodities on CFTC registered venues (often via dually registered intermediaries) while preserving both agencies' anti-fraud and anti-manipulation powers.

The new administration has appointed a White House digital asset czar, signaling institutional acceptance at the highest levels. The regulatory agenda of the SEC, which will prove to be a key regulatory body in the expansion and adoption of digital assets in our economy, is cryptocurrency-focused. Just months ago, the agency, under the prior two administrations, had been under intense criticism for its intransigency with providing clarity on digital asset regulation. Now, the SEC is moving at an accelerated pace, providing interpretive guidance and no-action letters, engaging with market participants, and establishing a task force to accelerate its actions.

Companies looking for regulatory certainty should be seeing that clearly now.

The strategic risk has inverted. Five years ago, adopting digital assets meant regulatory risk. Today, not having a digital asset strategy could mean competitive risk. Leaders in the space are building experience, relationships, and infrastructure that they expect to create lasting advantages.

Boards that recognize this inversion will position their companies to be part of the group that gets the advantages that are becoming apparent.

Instead of "what are the risks of digital assets?" boards should ask "what are the risks of not having a digital asset strategy while our competitors do?"

Rather than "how do we comply with regulations?" they should ask "how do we help shape regulations that enable our own innovation while protecting shareholders?"

These reframed questions shift boards from defensive to offensive postures, from risk mitigation to opportunity capture, from technology evaluation to strategic transformation.

THE BOARD'S DIGITAL ASSET CHALLENGE

We are standing at an inflection point. Digital assets are transitioning from speculative experiments to operational infrastructure. Early adopters are quietly building advantages as regulators are providing clarity. The window for strategic positioning is open but the first mover advantages are narrowing.

For boards, this creates both opportunity and obligation. The opportunity is to position companies at the forefront of a technological transformation that will reshape commerce for decades. The obligation is to ensure that directors understand the opportunity available and how a company can take advantage of it.

Boards that have not focused on how digital assets and blockchain could impact their businesses should look past the early fraud headlines and recognize that this is no longer speculation—it's infrastructure. They should direct management teams not to react defensively but to think strategically: understand how peer companies and competitors are implementing blockchain technology and digital assets, and how it can be integrated effectively, and ensure that risks are appropriately managed. The use case for each company will differ, but forward-looking boards will distinguish themselves through the courage to lead through uncertainty and the discipline to build strategically amid change.

The digital asset revolution is here. Hidden behind speculative headlines, it is quietly reshaping global markets. The question is not whether your company will be affected, but whether your board will lead the response.

Shareholder proposals: A surprise SEC announcement impacting the 2026 proxy season foreshadows sweeping changes to come

By Richard Alsop and Danish Hyder

INTRODUCTION

On November 17, 2025, the SEC's Division of Corporation Finance announced an unprecedented policy that it will not be responding to requests submitted by companies seeking SEC staff concurrence of their basis to exclude shareholder proposals under Rule 14a-8 during the 2026 proxy season, other than requests seeking concurrence to exclude a shareholder proposal on the basis that it violates the law (under Rule 14a-8(i)(1)). Although the Division of Corporation Finance cited resource and timing considerations caused by the lengthy government shutdown in the fall of 2025 as the reason for the policy change and directed companies and shareholder proponents to the available extensive body of guidance, the coming proxy season feels like a trial run for possibly bigger and more permanent changes.

This announcement is the latest in a series of actions by the SEC under the current administration that reinforce statements by the new SEC Chair Atkins that the shareholder proposal system that has been in place for decades is expected to be subject to a major overhaul. Even before current SEC Chair Atkins was confirmed, the SEC, under interim leadership appointed by President Trump, published new guidance (Staff Legal Bulletin 14M, or SLB 14M) in the midst of the 2025 proxy season relating to the "ordinary business" exclusion under Rule 14a-8(i)(7) and the "economic relevance" exclusion under Rule 14a-8(i)(5), the most common bases used by companies to exclude environmental and social proposals. As discussed in more detail below, the new guidance rescinded Biden era guidance which limited the usefulness of these exclusions, leading to a perceivable increase in no-action letters submitted on these grounds in the 2025 season.

While new leadership at the SEC often means new and different policy objectives and a change in priorities, it is perhaps no surprise that the increasing politicization of the shareholder proposal space, with the continuing prevalence of social and environmental proposals being matched more recently with a wave of anti-ESG proposals, has become both a key theme and a headache for the current SEC. Chair Atkins has a long history of questioning the longstanding shareholder proposal framework, having warned as an SEC commissioner in 2008 that the process could result in the "tyranny of the minority" allowing small shareholders to force companies to spend time and resources not in the best interests of all shareholders.[1] These concerns also align with his stated focus on removing disincentives for companies to go public.[2]

[1] Paul S. Atkins, *Shareholder Rights, the 2008 Proxy Season, and the Impact of Shareholder Activism* U.S. Sec. & Exch. Comm'n (July 22, 2008), available at https://www.sec.gov/news/speech/2008/spch072208psa.htm.

[2] Paul S. Atkins, *Revitalizing America's Markets* at 250 U.S. Sec. & Exch. Comm'n (Dec. 2, 2025), available at https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250.

In September 2025, Chair Atkins released a rulemaking agenda that listed among its objectives a rule proposal entitled "Shareholder Proposal Modernization," which is described as amendments to Rule 14a-8 to "reduce compliance burdens for registrants and account for developments since the rule was last amended."[3] While the description is perhaps purposely vague, the rulemaking process has the potential to substantially limit, or perhaps even eliminate, the Rule 14a-8 shareholder proposal process as we know it. Indeed, in public remarks in October 2025[4], Chair Atkins raised questions as to whether precatory[5] shareholder proposals are valid under state law. He seemingly encouraged Delaware companies receiving precatory shareholder proposals to consider whether they might violate Delaware law in a way that would support an opinion that could be used as the basis for exclusion under Rule 14a-8(i)(1). As noted above, the decision to not respond to requests for SEC staff concurrence on exclusion of shareholder proposals did not apply to exclusions based on a violation of law under Rule 14a-8(i)(1).

All of this suggests an openness by the current SEC to changing the shareholder proposal process in ways that could make it unrecognizable and that may fundamentally alter the relationship between shareholders and companies. This effort will unfold through a rulemaking process that Chair Atkins characterized as designed to "evaluate whether the Commission's original rationale for adopting Rule 14a-8 in 1942 still applies today".[6] As a practical matter, these potentially momentous changes are unlikely to have an impact even for the 2027 proxy season, given the time required to prepare and issue a rule proposal, a comment period and the development of a final rule, as well as the possibility of legal challenges. For the current proxy season, however, the SEC's announced posture leaves companies who face environmental and social proposals with the unenviable task of navigating potential exclusion on ordinary business or economic relevance grounds without the comfort of SEC staff confirmation.

[3] U.S. Office of Mgmt. & Budget, Office of Info. & Regulatory Affairs, *Agency Rule List—Spring 2025: Securities and Exchange Commission* (Spring 2025), available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode&showStage=active&agencyCd=3235.

[4] Paul S. Atkins, *Keynote Address at the John L. Weinberg Ctr. for Corp. Governance's 25th Anniversary Gala*, U.S. Sec. & Exch. Comm'n (Oct. 9, 2025), available at https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala.

[5] A precatory shareholder proposal that presents a non-binding resolution for shareholders to vote on at a company's annual meeting. The shareholder proposal is phrased as a recommendation to the board of directors of the company to take certain actions as outlined in the shareholder proposal. Majority shareholder approval of a precatory shareholder proposal does not legally compel a board of directors to take the action referenced in the shareholder proposal, support for a precatory shareholder is hard for a company to ignore and may trigger negative reaction from institutional shareholders and proxy advisory firms.

[6] See Note 4, *supra*.

NAVIGATING THE EXCLUSION OF ENVIRONMENTAL AND SOCIAL PROPOSALS IN 2026: DOES NO REFEREE MEAN NO RULES?

As mentioned above, the change in policy announced by the Division of Corporation Finance means it will not be making substantive determinations related to the exclusion of shareholder proposals in the 2026 proxy season, except in the context where the assertion is that the shareholder proposal conflicts with state law under Rule 14a-8(i)(1). The statement announcing the policy change reminds companies that they must send a notice to the shareholder proponent and the SEC of the intention to exclude the proposal and the statement goes on to say that if a company wishes to receive a response to any such notice, the company or its counsel must include, as part of its required notification to the SEC, an unqualified representation that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance and/or judicial decisions. In that case, the company will receive a response from the Division of Corporation Finance indicating that, based solely on the company's or counsel's representation, it will not object if the company omits the proposal from its proxy materials. The statement announcing the new policy also notes that the existence of a prior SEC staff response agreeing or disagreeing that there was a basis to exclude a particular type of proposal is not dispositive, and does not mean that a company cannot conclude that, on the basis of its specific facts and circumstances, there is a reasonable basis to exclude the same or a similar proposal.

Clearly, this approach places significant discretion in the hands of a company making an exclusion determination. It is unclear whether this will have a chilling effect, because companies are reluctant to take positions that are not clearly supported by SEC staff guidance or direct no-action letter precedent, or if companies will be emboldened, and there will be a flood of exclusions because companies, in light of an absentee shareholder proposal referee, take very aggressive positions under the rules, perhaps even contrary to long established precedent.

We do believe there is merit to companies making the effort to obtain the no-objection confirmation to an excluded shareholder proposal. In supporting the unqualified representation, we believe companies should perform and document a rigorous analysis based on Rule 14a-8, SEC staff guidance, precedent no-action letters and court decisions, where applicable, and carefully document the relevant arguments. While companies may have been more willing to articulate all possibly relevant arguments when the SEC was going to adjudicate the question, we believe weak arguments that stretch the bounds of reasonableness should be avoided. We expect companies that submit exclusion notices that outline unreasonable or unsupportable arguments as the basis to exclude a shareholder proposal will be at risk of criticism by proponents and other shareholder advocates and, possibly, institutional investors and proxy advisory firms. The documented analysis should reflect an approach of due care and good faith that can deflect any future challenge.

Naturally, these unqualified representations will be especially challenging when relying on the ordinary business exclusion in 14a-8(i)(7) or the economic relevance exclusion in Rule 14a-8(i)(5), given the varied interpretive approaches the SEC has taken in the past and the fact-specific nature of the analysis under those interpretive approaches. We believe companies can and should give the most weight to the current staff guidance in SLB 14M and no-action letter outcomes in the 2025 season, while giving appropriate consideration to past precedents or contradictory outcomes.

The following discussion provides a high-level overview of the 2025 season with a focus on application of the ordinary business and economic relevance exclusions under the SEC's most recent guidance in SLB 14M. We examine the 2025 season to see how SLB 14M may have impacted no-action letter request submissions and outcomes, and provide some practical conclusions for companies to consider going forward as they make their own independent determinations on whether to exclude shareholder proposals in the 2026 season without the benefit of the SEC staff's substantive review.

THE 2025 PROXY SEASON—ORDINARY BUSINESS AND ECONOMIC RELEVANCE UNDER SLB 14M

On February 12, 2025, in the middle of the 2025 proxy season, the SEC Division of Corporation Finance published SLB 14M, which addressed, among other things, the SEC staff's approach to no-action letters relating to the exclusion of shareholder proposals under the ordinary business exception (Rule 14a-8(i)(7)) and the economic relevance exception (Rule 14-8(i)(5)). For those who follow the SEC staff's efforts to establish the circumstances under which a company may exclude a shareholder proposal on these grounds, SLB 14M is just the latest edition in a stream of SEC guidance on the subject over the past decade. The evolution of SEC guidance in SLBs 14I, 14J, 14K, 14L and 14M, all of which, other than SLB 14M, have been rescinded in significant part, has required significant changes to how companies, practitioners, and investors evaluate shareholder proposals. A summary of the history of this guidance is included at the end of this article.

This lurching progression of guidance reflects the SEC staff's efforts, directed by SEC leadership installed in different political administrations, to implement the important balancing considerations embedded in the rules, namely the recognition, articulated in the introduction to SLB 14M, that certain matters are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight, but, in some cases, certain matters that focus on significant social policy issues may transcend day-to-day business matters and raise policy issues so significant that they are appropriate for shareholder consideration. Similarly, with respect to the economic relevance exception, the rule is motivated by the idea that shareholders should not be able to have direct oversight of matters that are not economically significant to the company unless they are otherwise related to significant social or ethical policy issues. The unifying theme in the guidance appears to be a recognition by the SEC staff of the difficult judgment calls that arise when deciding whether something is a significant social or ethical policy issue, along with a corresponding series of efforts to simplify how the SEC staff applies the rules.

SLB 14M essentially returned the SEC staff's approach to where it was prior to SLB 14L. This means the SEC staff considers whether a significant social policy issue transcends ordinary business, in the case of the ordinary business exception, or is otherwise significantly related to the company's business, in the case of the economic relevance exception, *based on the particular facts and circumstances of the company receiving the proposal*, and not solely based on whether the proposal implicates a universally important social or ethical policy issue.

SLB 14M also reflected a commitment to evaluate ordinary business and economic relevance arguments independently. SLB 14M does not, however, bring back the emphasis on the analysis by a company's board of directors of the significance of a policy issue to the company, which was a prominent feature of SLB 14I. SLB 14M also restores the micromanagement guidance the SEC staff provided in SLB 14J and SLB 14K, making exclusion on micromanagement grounds somewhat more likely if the proposal seeks to establish specific time frames or methods to be implemented without allowing for appropriate board and management flexibility.

2025 SEASON OVERVIEW[7]

Overall, total shareholder proposals were down significantly in the 2025 season, with 841 submitted compared to 988 in 2024. There were significant reductions in both social proposals (220 in 2025 compared with 276 in 2024) and environmental proposals (122 in 2025 compared with 158 in 2024). Despite the reduction in overall proposals and in social and environmental proposals, both of which often result in no-action letter requests based on the ordinary business exception, no-action letter requests surged in 2025 with 353 compared with 251 in 2024, and no-action letter requests submitted in response to social proposals more than doubled to 115 in 2025 from 53 in 2024. No-action letter requests that included Rule 14a-8(i)(7) ordinary business exception arguments nearly doubled in 2025 to 186, compared with 92 in 2024. An increasing proportion of these were aimed at social proposals, representing 44% in 2025 compared with 30% in 2024. The overall success rate was somewhat lower in 2025, at 50%, compared with 60% in 2024, but in over a quarter of the no-action letter requests submitted in the 2025 season, the proposal in question was withdrawn, up from only 10% in 2024.

No-action letter requests that included Rule 14a-8(i)(5) economic relevance arguments increased from just two in 2024 to 22 in 2025, almost all of which related to social proposals. The increase is hardly surprising as the economic relevance exclusion was essentially a dead letter under the interpretation of Rule 14a-8(i)(5) applied under SLB 14L, and SLB 14M returned it to viability by restoring the need for the proponent to demonstrate that the social or ethical issue raised by the proposal is significant to the particular company in question. Only four of the submitted letters succeeded based on the economic relevance exception, which continues to be a more challenging road to proposal exclusion. In the case of seven no-action letter requests that included Rule 14a-8(i)(5) arguments, the proposals were withdrawn.

It is hard to draw meaningful conclusions about the 2025 season based on the numbers alone because SLB 14M was a curveball that was dropped late in the shareholder proposal season after companies had already decided not to challenge the shareholder proposals they had received, or had already submitted no-action letter requests without reliance on the new positions. It does seem, however, that the substantial increase in no-action letter requests making ordinary business or economic relevance arguments must have been driven in part by the perception by companies that the interpretations in SLB 14M provide a more productive environment for potential exclusion or negotiated withdrawal.

OBSERVATIONS ON 2025 ORDINARY BUSINESS NO-ACTION LETTERS

As noted in SLB 14M, the SEC has stated that the policy underlying the ordinary business exception rests on two central considerations, the first relating to the subject matter of the proposal, namely the extent to which the proposal implicates a significant policy matter that transcends ordinary business matters, and the second relating to the degree to which the proposal micromanages the company.

Subject matter no-action letters

Under SLB 14M, the SEC staff indicates that the availability of the significant policy exception will be applied using a company-specific approach and that a policy issue that is significant to one company may not be significant to another. In practice, the 2025 proxy season results under this theory turned out to be a mixed bag, with companies having a relatively easy time arguing for exclusion of some proposals but finding more difficulty where the policy issue was more amorphous and it was therefore harder to make a company-specific case for why the policy issue was not significant, as in *McDonald's Corporation* (March 28, 2025), where the SEC staff did not permit exclusion of a proposal requesting a report evaluating how McDonald's oversees risks related to discrimination against ad buyers and sellers based on their political or religious status or views. It also appears that, where a proposal makes a connection between a policy issue and a company's business, the burden shifted to the company to explain why the policy issue is not significant to the specific company by including a detailed discussion of the company's operations or policies, as relevant, that allegedly implicate the policy issue, and it was not enough for the company to simply make arguments based on the SEC staff's responses to letters from other companies or precedent treatment by the SEC staff of certain activities as ordinary business.

[7] Shareholder proposal data is drawn from ESGAUGE for companies with annual meetings that occurred between July 1, 2024 and June 20, 2025. No-action letter request data is drawn from ESGAUGE and Intelligize® for no-action letter requests submitted between October 1, 2024 and June 1, 2025.

In no-action letter requests making Rule 14a-8(i)(7) ordinary business arguments submitted after SLB 14M during the 2025 season, companies successfully obtained SEC staff concurrence where the business functions in question were routine and the significant policy implications raised by the proposal could be characterized as fairly limited as it relates to the subject company, such as a proposal requesting an assessment of the use of Bitcoin in a company's investment strategy (*Dell Technologies Inc*., May 8, 2025), or a report on worker rights and safety issues (*The Kroger Co*., May 7, 2025, *Amazon Inc.*, April 4, 2025). Where there was a relatively clear link between a significant policy issue and the particular company's business, such as adopting a smoke-free policy on casino floors (*Wynn Resorts, Limited*, March 17, 2025, *Boyd Gaming Corporation*, March 20, 2025), no-action letter requests were more likely to be turned down.

The SEC staff did not grant relief on a proposal requesting an analysis of how a company's charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise, despite arguments that the proposal related to ordinary business (namely, the company's political and charitable contributions to specific types of organizations) and that despite being facially neutral the proposal was actually focused on partnerships advocating for social justice and racial equity (*lululemon athletica inc*., April 22, 2025). The SEC staff also declined to grant relief on ordinary business grounds for a proposal requesting a report describing and quantifying the effectiveness and outcomes of efforts to prevent harassment and discrimination against a company's protected classes of employees (*Wells Fargo & Company*, March 5, 2025). The SEC staff further declined to grant relief on micromanagement grounds to Tesla, which received a similar proposal regarding protected classes of employees, but only made a micromanagement argument in its no-action letter request (*Tesla, Inc*., May 2, 2025).

The most surprising results under the ordinary business exception stemmed from proposals with vaguely asserted policy issues that intuitively seemed to have little to do with the company's business. For example, in *McDonald's*, the SEC staff did not grant relief in the case of a proposal requesting a report evaluating how McDonald's oversees risks related to discrimination against ad buyers and sellers based on their political or religious status or views. The proposal seems to have been based on the membership of McDonald's in a defunct organization focused on identifying disinformation sources. However, the proposal did not allege a specific connection to McDonald's other than a brief, vague reference to potential legal liability under anti-trust and anti-discrimination laws. In its no-action letter request, McDonald's noted that it was an ad buyer, not an ad seller, and clearly differentiated its situation from Disney which had failed in its bid to exclude a similar proposal under the guidance in SLB 14L (*The Walt Disney Company*, January 22, 2025). Nevertheless, the SEC staff did not grant relief, and the proposal was included in the McDonald's proxy statement.

In another example, State Street challenged a proposal requesting a report disclosing whether and how the company addresses the transition of workers and fairness to communities in its transition finance strategy (*State Street Corporation*, April 1, 2025). The proposal seems to have been based in part on remarks made by State Street's CEO at the World Economic Forum about the importance of transition finance to a sustainable economy. State Street pointed out in its request, however, that it does not actually have a sustainable finance business and that, even if the proposal were read to draw in the stewardship efforts of its asset management business, the asserted policy issue would not transcend ordinary business, arguing that its sustainable investment strategies and asset stewardship, which it characterized as squarely within its ordinary business operations, are not fundamentally related to transition finance. The SEC staff did not grant relief.

The SEC staff response denying no-action relief to both the McDonald's and State Street no-action letters noted "the Company has not explained whether the policy issue raised by the Proposal is significant to the Company." Unfortunately, for companies faced with broadly articulated assertions of vague policy issues, outcomes like the ones in these two no-action letter requests demonstrate the difficulty of proving a negative to assert the lack of connection to the company's business to the satisfaction of the SEC staff. It also suggests that more work will be required to articulate how the underlying policy issue, as the proponent sees it, is not a relevant issue for the company. All of this will obviously be easier in an environment where the company, rather than the SEC, is making the final determination.

Micromanagement no-action letters

When considering exclusion based on micromanagement grounds, the SEC staff, with the reestablishment of guidance in SLB 14J and SLB 14K, ostensibly looks at whether a proposal probes too deeply into matters of a complex nature by seeking to impose specific time frames or methods for implementing complex policies, even when the proposal calls for a study or report, noting that a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds. However, the guidance notes that two proposals focusing on the same subject matter may warrant different outcomes based solely on the level of prescriptiveness involved and the extent to which they supplant the judgment of management and the board.

A number of climate change proposals led to successful no-action letter requests on micromanagement grounds in the 2025 season. A request for a report disclosing how a company intends to reduce its full value chain greenhouse gas emissions in alignment with the goals of the Paris Agreement was considered too prescriptive (*Constellation Brands, Inc.*, May 22, 2025), as was a report disclosing how a company intends to measure, disclose, and reduce the greenhouse gas emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's 1.5°C goal (*The Allstate Corporation*, April 11, 2025) and a report disclosing short- and medium-term targets to reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's goals (*The Hartford Insurance Group, Inc.*, April 3, 2025).

In contrast, in the Tesla and Wells Fargo proposals referred to above relating to a report on the effectiveness of efforts to prevent harassment and discrimination against a company's protected classes of employees, the proposals included numerous proposed items for disclosure, but introduced the list with "in it's discretion, the Board may wish to consider disclosures such as…," thereby successfully retaining enough board and management discretion to avoid exclusion on micromanagement grounds. This is something companies should look for in the coming season as they consider excluding micromanagement proposals.

OBSERVATIONS ON 2025 ECONOMIC RELEVANCE NO-ACTION LETTERS

SLB 14M says the SEC staff's analysis under the economic relevance exception will focus on the proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings, and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be excludable depending on the circumstances of the particular company. This is a meaningful departure from the analysis under SLB 14L which did not allow for exclusion if the proposal related to a socially significant policy and the company conducted any amount of business that was related to the policy in question. The result was an uptick in economic relevance no-action letter requests in 2025, although not as significant as the increase in ordinary business no-action letter requests, presumably because of the 5% limiter.

Of the 22 no-action letter requests submitted in 2025 on Rule 14a-8(i)(5) economic relevance grounds, only four were granted. CVS Health submitted two economic relevance letters relating to proposals relating to its dispensing of the drug mifepristone (one requesting a report on risk oversight and the other requesting that the board of directors adopt a policy), an activity it stated represented less than 5% of assets, earnings, and sales (*CVS Health Corporation*, May 22, 2025). The letters included detailed responses to the asserted legal, economic, and reputational risks, including specific facts about the company and its business, and the SEC staff concurred with exclusion under economic relevance in both cases.

Pepsi submitted a successful request responding to a proposal requesting a report detailing the effectiveness of its efforts to uphold its human rights standards throughout its sugar supply chain in India (*PepsiCo, Inc.*, March 17, 2025). In addition to stating it purchased no cane sugar in India in 2025, it also indicated that all business in India amounted to less than 5% under the relevant tests and included supplemental factual information refuting a relationship between the proposal and its business.

AbbVie submitted a no-action letter request relating to a proposal that requested a report assessing how its advertising and promotion of puberty blockers would impact its legal and reputational risks (*AbbVie Inc.*, March 18, 2025). AbbVie successfully argued that not only did the single drug it sold in the category not come close to any of the 5% tests, but that it did not have a significant impact on any of the other segments of its business or expose it to significant contingent liabilities.

The common theme in the successful letters appears to be a discrete commercial area or product coupled with a factual refutation of assertions of the significance of the proposal to the business. In the larger number of economic relevance no-action letter requests that were rejected, the proposals generally related to business activities that were not commercial in nature and arguably had more significance to the business than could be demonstrated by a pure financial test, such as amounts spent on charitable partnerships or contributions (*lululemon athletica inc.*, April 22, 2025, *PayPal Holdings, Inc.*, April 15, 2025), advertising (*McDonald's Corporation*, March 28, 2025), application of human rights policies in specific geographies or to specific persons (*Mondelēz International, Inc.*, March 25, 2025, *Wells Fargo & Company*, March 5, 2025), and political contributions and lobbying (*Mondelēz International, Inc.*, March 25, 2025, *Wells Fargo & Company*, March 5, 2025). This suggests the SEC staff may struggle to find a path to concurring with a request on economic relevance grounds if there is ambiguity as to the overall significance of the activity to the business and whether it can be properly measured by the 5% test. While it may be tempting for companies to expand the avenues to exclusion under economic relevance in the absence of SEC review in 2026, it may be prudent to see whether the ordinary business exemption provides a more certain path.

TAKEAWAYS

A proxy season without the SEC staff serving in its traditional role as arbiter of shareholder proposals will be challenging for proponents and companies to navigate. All parties have relied upon, even grown dependent on, the SEC staff to moderate this process. The SEC staff's involvement has likely prevented the escalation of shareholder-company engagement from the relatively uncomplicated script of the no-action letter process and Rule 14a-8 to something more aggressive.

For this coming season, companies should not take the SEC staff's decision to not issue no-action letters as a free pass to exclude environmental, social and other proposals. Companies should not dispense with the rigor that they brought to analyzing the available bases of exclusion in the past. If anything, this assessment is more critical now than before. Although a no-action letter that contains the detailed analysis of SEC staff precedents and guidance is not required, companies should continue to document for their records the underlying analysis with a comparable level of comprehensiveness and support. Companies should also think twice as to whether they take overly aggressive positions to exclude shareholder proposals that in any other year would either be included in a proxy statement without even seeking a no-action letter or where a no-action letter request would be assuredly denied.

Companies should of course be mindful of the other constituencies that will be watching how this unique process unfolds, including serial shareholder proposal proponents, shareholder advocates, the financial media, institutional investors and proxy advisory firms. Proponents that disagree with an exclusion may, of course, challenge an exclusion in court where it does not appear there is reasonable basis to exclude a shareholder proposal. We expect, however, that very few of these will result in a legal challenge and for the few that do, a successful court challenge to an exclusion would be unlikely and certainly expensive. We expect most disgruntled shareholder proponents will be able to find more effective ways to discourage overreach. A proponent could make public that its shareholder proposal was excluded with an analysis of why the exclusion is not supportable. Proxy advisory firms could address an "unreasonable" exclusion through voting recommendations. Institutional investors could press companies to explain the basis for an exclusion in engagement meetings. All of this means that companies should continue to do their homework and be mindful of how exclusions will be perceived. A desire to show these constituencies that a company has been reasonable in its determination to exclude a shareholder proposal, strongly suggests that the advisable path for an exclusion is to include the exclusion analysis in the notice provided to the shareholder proponent and the SEC.

Doing the "homework" means, in the case of exclusions under the ordinary business exception and the economic relevance exception, understanding the SEC staff's approach under SLB 14M, which provides companies with more opportunities and additional arguments for exclusion. In addition to considering relevant precedents, companies should ensure their assessment includes a company-specific factual analysis with a thorough consideration of the company's operations or policies, and, most importantly, that addresses the connection or lack thereof between the social policy issue raised by the proponent and the company's business activities.

Companies should focus micromanagement arguments on both the level of detail in the proposal, such as whether it refers to specific time frames and methods, and the extent to which it inappropriately limits board and management discretion. Economic relevance arguments may be best suited for proposals targeted at specific commercial activities, rather than other activities adjacent to the business.

Although much has changed already with shareholder proposals in 2025, we may be at the beginning of a complete resetting of the relationship between shareholders and companies that is being initiated by the reexamination of the shareholder proposal process. For decades, shareholders have relied on the relatively inexpensive and "friendly" shareholder proposal process, rather than far more aggressive and intrusive tactics such as "vote no" campaigns, advance notice proposals, universal proxy, proxy contests and even proxy access as a means to force engagement with companies. If the ultimate outcome of the current reassessment leads to the wholesale recalibration or even elimination of the shareholder proposal process, it would not be surprising to see shareholder activists look to these and other tools that are available to them.

Shareholder proposals[8]

	2025	2024
Total proposals submitted	841	988
Total social proposals submitted	220	276
Total environmental proposals submitted	122	158
NO-ACTION LETTER REQUESTS[9]		
Total proposals submitted	353	251
Requests for exclusion of social proposals	115	53
Requests for exclusion of environmental proposals	53	35
Granted	192	138
Denied	88	60
Proposal withdrawn	72	53
ORDINARY BUSINESS NO-ACTION LETTER REQUESTS (RULE 14A-8(I)(7))[10]		
Total proposals submitted	186	92
Requests for exclusion of social proposals	81	28
Requests for exclusion of environmental proposals	44	24
Granted on (i)(7) basis	67	50
Granted on basis other than (i)(7)	18	10
Denied	54	23
Proposal withdrawn	53	9
ECONOMIC RELEVANCE NO ACTION LETTER REQUESTS (RULE 14A-8(I)(5))[11]		
Total proposals submitted	22	2
Requests for exclusion of social proposals	17	0
Requests for exclusion of environmental proposals	3	0
Granted on (i)(5) basis	4	0
Granted on basis other than (i)(5)	1	2
Denied	10	0
Proposal withdrawn	7	0

[8] For companies with annual meetings held between July 1, 2024—June 20, 2025.
[9] Submitted between October 1, 2024—June 1, 2025.
[10] Submitted between October 1, 2024—June 1, 2025.
[11] Submitted between October 1, 2024 — June 1, 2025.

A history of the ordinary business and economic relevance guidance from SLB 14I to 14M

SLB 14I (November 2017)

- Whether the significant policy exemption applies to ordinary business matters depends in part on the connection between the specific policy issue and the company's business operations.
- These company-specific significance determinations often raise difficult judgment calls that the company's board of directors is in a better position to determine.
- Created an expectation that future no-action requests would include a discussion of the board's analysis of the policy issue raised and its significance and the processes employed by the board to ensure its conclusion was well informed and well reasoned.
- Noted that the Staff had only infrequently agreed with exclusion under Rule 14a-8(i)(5) grounds as it had simply considered whether a company conducted any business related to the issue in the proposal and whether the issue was of broad social or ethical concern.
- Reinvigorated the economic relevance exception by requiring the policy issue to be tied to the business of the particular company, once again emphasizing that the board's analysis of significance would be relevant to its determination.
- Going forward the Staff would separately analyze the availability of the ordinary business and economic relevance exclusions to ensure each basis for exclusion served its intended purpose.

SLB 14J (October 2018)

- Detailed Staff's experience with board analyses giving guidance on what it considered more and less helpful, citing some examples.
- Stated that submission of board analysis is voluntary, not dispositive to the outcome.
- Stated that the micromanagement prong of the ordinary business test would be considered independently of the subject matter prong, and could provide a basis for exclusion even if there was no basis for exclusion under the significant social policy prong.
- Provided some objective guidance for what types of proposals might be excluded on micromanagement grounds, focusing on whether a proposal or requested report related to specific timeframes or methods for implementing complex policies.

SLB 14K (October 2019)

- Provided additional guidance on board analyses, including going into some detail on the benefit of a "delta analysis" between what the proposal requests and what policies the company has already implemented, as well as suggesting a discussion of prior voting results, if applicable, and how they impacted the board's significance analysis, including subsequent shareholder engagement.
- With respect to the micromanagement prong of the ordinary business exemption, the Staff clarified that micromanagement might not serve as a basis for exclusion where the requested action or report defers to management's discretion, allowing it to flexibly manage complex matters.

SLB 14L (November 2021)

- Rescinded SLB 14I, J and K, reasoning that undue emphasis was placed on evaluating the significance of a social policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy, complicating application of Commission policy to proposals and drawing the Staff into factual considerations that do not advance the policy objectives behind the ordinary business exemption.
- Board analysis would no longer be necessary in the absence of company-specific analysis.
- Adopted a measured approach to evaluating company micromanagement arguments, indicating that proposals seeking detail or promoting timeframes or methods are not necessarily micromanagement, instead focusing on the level of granularity sought and the extent to which it limits board or management discretion.
- Reverted to pre-SLB 14I approach to economic relevance such that proposals that raise issues of broad social or ethical concern to the company's business may not be excluded regardless of the economic impact.

SLB 14M (February 2025)

- Rescinded SLB 14L and reinstated the company-specific analysis in SLB 14I but eliminated the emphasis on board analysis, making it entirely optional.
- Reinstated the micromanagement guidance in SLBs 14J and K, along with a corresponding series of efforts to simplify how the Staff applies the rules.

Executive security: The perk to watch

By Melisa Brower, K.J. Salameh, and Elizabeth Edel

The murder of a healthcare senior executive in midtown Manhattan in December 2024 prompted many companies to re-evaluate the measures in place to secure the physical safety of their executives.[1] More recently, a mass shooting occurred in an office tower in Manhattan, calling further attention to the enhanced need for executive security. While many companies that are household names, especially in the technology and media sectors, have for years reported large security benefits for their founders and corporate leaders, many more companies are accepting the reality of the need for security for their key executives and considering how to integrate security into their executive compensation frameworks.

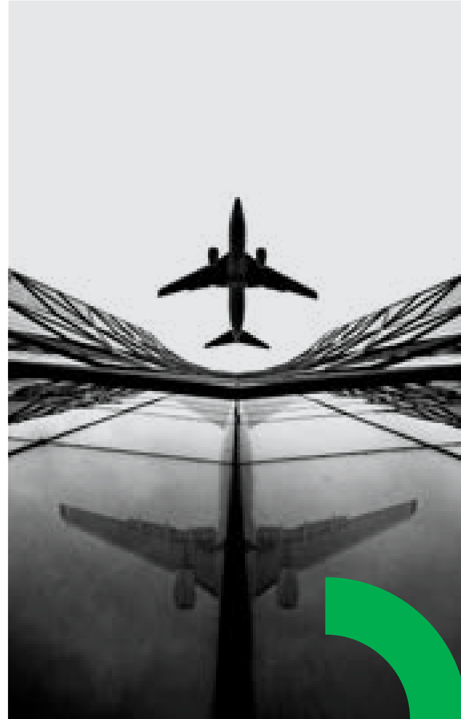
This article examines current executive perquisite disclosure trends and the influence of proxy advisory firms with a focus on executive security and makes predictions on related trends in the 2026 proxy season. We anticipate many companies this year have provided executive security for the first time or have enhanced existing levels of security, which will trigger additional perquisites disclosure under the current disclosure rules. The executive compensation disclosure rules are presently under review by the SEC and these rules are among the requirements that are likely to be subject to disclosure reforms.

[1] We discussed these considerations in A&O Shearman *Personal Protection: Perk or Necessity?* (Dec. 12, 2024), available at https://www.aoshearman.com/en/insights/personal-protection-perk-or-necessity.

BACKGROUND

Executive perquisites, or "perks," have historically been closely scrutinized by shareholders and generally disfavored by proxy advisory firms when they are deemed "excessive." Originally introduced as part of the SEC's 2006 overhaul of executive compensation rules, the current SEC disclosure rules define a "perk" by what it is not—namely, items that are not "integrally and directly related to the performance of the executive's duties." If an item is not integrally and directly related to the executive's duties, it is generally a reportable perk if it confers a direct or indirect benefit with a personal aspect on the executive. Under this framework, amounts that would be considered immaterial in most financial reporting contexts must be disclosed once an aggregate of a USD10,000 perk threshold is crossed. This requires public companies to carefully review and disclose the value of any benefits that could be characterized as perks and that are not available to all employees on a non-discriminatory basis. Additionally, the "integrally and directly" related standard raises questions about benefits that have a clear business purpose but also confer a personal benefit, like private plane travel.

Perks disclosure has historically been an area of regular SEC enforcement action. The SEC has continued to bring standalone actions against both companies and individual executives for failure to report—and more seriously egregious mischaracterization or improper valuation of—executive perks.[2]



SHAREHOLDER ADVISORY FIRMS' VIEWS ON EXECUTIVE SECURITY

In 2025, both ISS and Glass Lewis addressed executive security perks leading up to the 2025 proxy season. In January 2025, during its annual discussion on ISS Policy Updates and Key Issues, ISS noted that it expects companies will allocate materially higher amounts to executive security.[3] Since security arrangements often pose unique sensitivities, ISS' position is that the narrative disclosure on a company's decision to provide a perk need not detail the specific threats faced by executives, but should instead highlight a disciplined, arm's-length process for determining what security services are warranted (rather than merely accepting executive preferences). This could include disclosure on whether an independent security consultant was retained, whether decision makers followed the recommendations of the security consultant, and how the perk would safeguard both personnel and corporate assets.

Glass Lewis' June 2025 special report also highlighted a recent upswing in personal security perks for executives.[4] Glass Lewis recommends that boards of directors have third-party risk assessments conducted to corroborate the necessity and scope of any proposed executive security programs. Glass Lewis cautions companies to consider whether other board-sanctioned practices serve to increase executive security threats in a manner that would then necessitate further enhancements. For example, the report references so-called "super commuting" arrangements for executives who do not reside near company headquarters, observing that these arrangements may themselves heighten executive security risks by creating security gaps during frequent travel and thus require additional protective spending.

[2] Such actions include a December 2024 charge against Express, Inc., focused specifically on the failure to adequately disclose perks provided to the company's former CEO in its proxy statements filed for fiscal years 2019, 2020 and 2021. The undisclosed perks amounted to an aggregate value of USD979,269. *In the Matter of Express, Inc.*, Exchange Act Release No. 101934 (Dec. 17, 2024), available at https://www.sec.gov/files/litigation/admin/2024/34-101934.pdf.

[3] Institutional Shareholder Services, ISS Policy Updates and Proxy Season Trends 2025, TheCorporateCounsel.net (Webcast Transcript and Course Materials) (Jan. 22, 2025).

[4] Glass Lewis, *The Resurgence of Executive Perquisites* (Apr. 24, 2025), available at https://www.glasslewis.com/article/the-resurgence-of-executive-perquisites-overview-aircraft-costs.

DISCLOSURE OF EXECUTIVE SECURITY PERKS IN 2025 PROXIES

We compared 2025 proxy statement disclosures of the companies in the Top 100 Companies, the S&P 500 and the Russell 3000 Index filed through September 5, 2025 against the 2024 filings. The 2025 proxy data reflects a year-over-year increase in the prevalence of executive security as a perk, most significantly among the Top 100 Companies, and the amount of the disclosed aggregate incremental cost to the company for providing executive security. We suspect those numbers will continue to increase in the 2026 proxy season, reflecting updates to executive security offerings throughout the full fiscal year since the catalyzing events described above.

	2024	2025	YEAR-OVER-YEAR DIFFERENCE
COMPANIES DISCLOSING ANY EXECUTIVE SECURITY BENEFIT			
Top 100	54%	64%	10%
S&P 500	31%	35%	5%
Russell 3000	8%	10%	2%
COMPANIES QUANTIFYING INCREMENTAL COST (FOR COMPANIES DISCLOSING PERKS)			
Top 100	96%	98%	2%
S&P 500	94%	95%	1%
Russell 3000	90%	93%	3%
MEDIAN DISCLOSED SECURITY COST (FOR COMPANIES THAT QUANTIFIED COSTS)			
Top 100	USD47,685	USD102,779	116%
S&P 500	USD26,215	USD36,507	40%
Russell 3000	USD29,990	USD35,284	18%

Who benefits from executive security perks?

Listed below are selected metrics and trends for the Top 100 Companies that disclosed executive perks, and to whom those perks were offered.

- **CEO only.** In 2025, approximately **54%** of disclosing companies limit personal security to the CEO, matching **54%** in 2024.
- **Broader NEO coverage. 44%** of disclosing companies extended benefits to the CEO and some or all other named executive officers in 2025, again matching **44%** in 2024.
- **Family coverage. 4%** explicitly cover spouses or dependent children, which was down modestly from 6% last year.
- **Security perks compared to company revenue.** According to the data surveyed, we noted a correlation between a markedly higher percentage of companies disclosing executive security perks and the size of the company's annual revenue.
- **Cost trajectory.** Among the Top 100 Companies that quantified the aggregate incremental cost to the executive for personal security as compared to their 2024 proxy disclosures:
  - **61%** reported an increase
  - Representing a median year-over-year increase of **116%**.

DESCRIPTION OF EXECUTIVE SECURITY PERKS

Companies across the Top 100 Companies, the S&P 500 and the Russell 3000 Index that have included narrative descriptions of the executive security perks in proxy statements filed in 2025 predominantly framed personal security as a risk-based, business-driven benefit authorized by boards or compensation committees and often informed by independent third-party assessments.

Narratives emphasize that the safety and well-being of key leaders is a corporate priority and, given verified or credible threats and the publicity around executives in certain industries, security measures are necessary to help executives safely and efficiently perform their duties. Common security elements include:

- personal and residential protection (home security system installation, monitoring, maintenance, and security consulting for primary and secondary residences)
- digital threat prevention and monitoring (including identity theft protection and cybersecurity at home)
- provision of certified protection officers
- secure ground transportation to and from offices and events
- secure lodging
- security support during domestic and international travel for executives and, when warranted, their families.

The narrative disclosures note that executive security programs are typically developed by corporate security teams as part of enterprise risk management, updated based on ongoing assessments, and may be elective or mandatory depending on levels of risk.

Boards and compensation committees that are considering implementing or enhancing executive security should ensure a robust, well documented process, including identification of specific threat scenarios, a detailed methodology used to assess those risks, and analyzing reasonable steps taken to mitigate them. This process often involves commissioning independent threat assessments and engaging specialist third-party security consultants to provide evaluations of the security concerns applicable to company executives and to provide potential options for strengthening the security offerings available.

RECENT SEC ATTENTION ON EXECUTIVE PERKS

The focus on perks is not limited to shareholders and shareholder advisory groups, but extends to the SEC. At the June 2025 SEC Executive Compensation Roundtable, SEC Commissioner Hester Peirce published a statement questioning whether the current requirements for detailed disclosures about individual executive perks serve the purpose of providing investors with material information needed to guide their investment decisions.[5] Instead, Commissioner Peirce notes that these requirements end up producing a "laundry list" of perks that may contravene the purpose of providing helpful information to company shareholders, and instead fuel public speculation and magnify attention on the lives of executives.[6]

The possibility that the SEC will revisit disclosure requirements for executive perquisites as part of its broader review of executive compensation disclosures demands a broader reconsideration of what constitutes a "perk," including whether expenditures for personal security belong in that category. Rather than classifying security arrangements as discretionary fringe benefits, the SEC could recognize security arrangements are in fact integrally and directly related to the performance of an executive's duties—measures without which senior officers could not effectively and safely discharge their responsibilities. Such an approach would align with the perspective of many companies, which view executive security not as an optional add-on, but as a fundamental element of the overall remuneration package necessary to recruit, retain, and protect key leadership.[7]

Increasingly, public safety concerns are catalyzing companies to reconsider the status of their corporate security measures. Until the SEC amends the perk disclosure rules or provides interpretative guidance that reflects a different perspective on how security arrangements should be reflected, companies should continue to consider appropriate disclosure regarding the rationale for executive personal security benefits, especially when increased expenditures are expected.

[5] Hester M. Peirce, Spare the Trees So Investors Can See the Forest: Remarks Before the Executive Compensation Roundtable (U.S. Sec. & Exch. Comm'n June 26, 2025).
[6] Hester M. Peirce, *Spare the Trees So Investors Can See the Forest*: *Remarks Before the Executive Compensation Roundtable* U.S. Sec. & Exch. Comm'n (June 26, 2025) available at https://www.sec.gov/newsroom/speeches-statements/remarks-peirce-executive-compensation-roundtable-062625.
[7] *Id.*
[8] For further insight into potential modifications to perks disclosure, see A&O Shearman's comment letter to the U.S. Sec. & Exch. Comm'n's Executive Compensation Roundtable (Aug. 6, 2025), available at https://www.sec.gov/comments/4-855/4855-636607-1893054.pdf.

SEC floats big changes to foreign company regulation

By Harald Halbhuber and Erika Kent

Foreign private issuers (FPIs)[1] are back on the SEC's agenda, and in a much bigger way than we could have anticipated when we last looked at FPI regulation in our 2023 Corporate Governance Survey.[2] Our 2023 article observed that the SEC was increasingly applying its new company disclosure mandates to FPIs that in the past would have exempted them. This suggested to us that the SEC was considering a move away from the historical deference to home country practice when setting disclosure and, ultimately, stock exchange-dictated corporate governance requirements for FPIs that could lead, over time, to a reassessment of the FPI regulatory framework.

CONCEPT RELEASE ON FOREIGN PRIVATE ISSUER ELIGIBILITY

In June 2025, the SEC published its Concept Release on Foreign Private Issuer Eligibility[3] to solicit feedback on the foreign private issuer definition in light of current market conditions and practices. The proposals being considered in the Concept Release accelerate the discussion regarding the appropriate reporting regime for FPIs at a much quicker pace than we expected and suggest a potential leap past simply extending incremental disclosure mandates to FPIs in favor of a more thorough overhaul of the entire FPI disclosure and corporate governance regime. These changes could impact whether foreign companies continue to choose to list or, for some, remain listed, on U.S. stock exchanges.

The Concept Release identified significant changes in the composition of home country jurisdictions of FPIs and a growing number of FPIs which have their equity securities traded almost exclusively in the United States.[4] The Concept Release notes that a majority of the current FPI

[1] A "foreign private issuer" is currently defined as a corporation or other organization incorporated or organized under the laws of a non-U.S. jurisdiction, unless it meets the following conditions as of the last business day of its most recently completed second fiscal quarter:

- More than 50% of its outstanding voting securities are directly or indirectly owned of record by U.S. residents; and
- Any one or more of the following:
  - The majority of its executive officers or directors are U.S. citizens or residents; or
  - More than 50% of its assets are located in the United States; or
  - Its business is administered principally in the United States.

17 C.F.R. § 230.405 (2025); 17 C.F.R. § 240.3b-4(c) (2025).

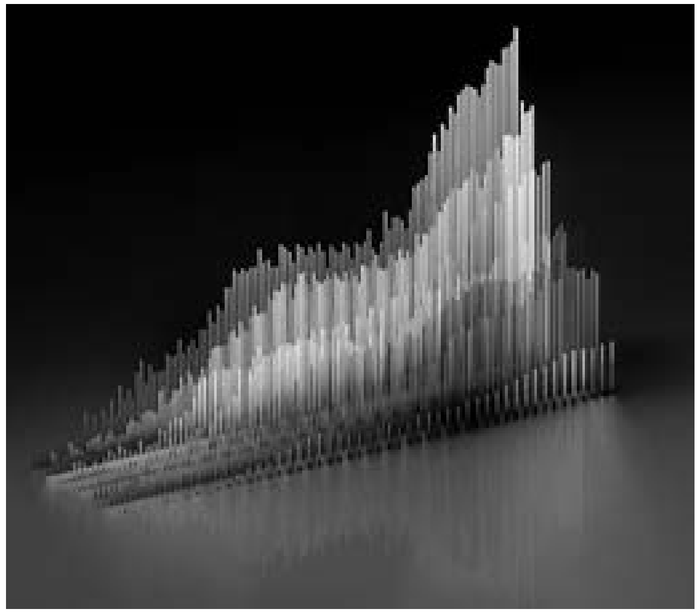
[2] Richard Alsop, Erika Kent and Ryan Robski, *The SEC's Regulation of Foreign Private Issuers*, in Corporate Governance & Executive Compensation Survey 2023 (Shearman & Sterling LLP ed., 21st ed. 2023).

[3] U.S. Sec. & Exch. Comm'n, *Concept Release on Foreign Private Issuer Eligibility*, Securities Act Release No. 33-11376, Exchange Act Release No. 34-103176 (June 4, 2025), available at https://www.sec.gov/files/rulesconcept ("FPI Concept Release").

[4] The Concept Release notes that, for FPIs that file Annual Reports on Form 20-F, which are referred to as 20-F FPIs in the Concept Release, in fiscal year 2003, Canada (not including companies that file under the U.S.-Canada Multi-Jurisdictional Disclosure System, see Note 9, below) and the United Kingdom were the most common jurisdictions for incorporation and headquarters, whereas in fiscal year 2023, the Cayman Islands was the most common jurisdiction of incorporation (accounting for more than 30% of FPIs that file 20-Fs) and mainland China was the most common jurisdiction of headquarters (accounting for more than 20% of FPIs that file 20-Fs). The Concept Release also notes that FPIs whose equity securities are traded almost exclusively in the United States, which are referred to as "U.S. Exclusive FPIs" in the Concept Release, have increased to almost 55% of all FPIs in fiscal year 2023 from approximately 44% in fiscal year 2014.

population is not subject to the same level of home country disclosure requirements and other regulatory requirements that were envisaged when the FPI accommodations were introduced, because these FPIs are organized in a jurisdiction that has limited or no reporting or corporate governance requirements and they are not listed on a non-U.S. stock exchange that imposes comparable (or any) reporting or corporate governance requirements. The SEC, in the Concept Release and in statements issued by certain Commissioners,[5] pointed to the five-fold increase in the proportion of China-based issuers in the FPI population in the 20 years leading up to 2023, with almost all organized in a non-China jurisdiction (most commonly the Cayman Islands followed by the British Virgin Islands).[6] The SEC and the SEC Staff under the leadership of various SEC Chairs appointed by Presidents from both political parties have taken a tough regulatory approach to these China-based issuers because of the unique risks they are perceived to present for U.S. investors.[7]

In the Concept Release, the SEC expresses concerns that this development in the FPI population may have undermined investor protection and may also have put U.S. domestic companies at a competitive disadvantage because the U.S. domestic companies are subject to more burdensome reporting and corporate governance requirements. In a statement, SEC Chair Paul Atkins acknowledged, however, that such concerns must be balanced with the continued objective of "[a]ttracting foreign companies to U.S. markets and providing U.S. investors with the opportunity to trade in those companies under U.S. laws and regulations."[8]



In the Concept Release, the SEC outlined the following possible approaches to addressing these concerns:

- Revise the current eligibility criteria for FPIs to make it harder to qualify as an FPI for those companies that are not subject to meaningful disclosure and other regulatory requirements in other jurisdictions.
- Add a foreign trading volume requirement, which would impose a new test requiring a certain percentage of an FPI's worldwide trading volume to be outside the United States.
- Add a "major foreign exchange" listing requirement, with qualifying foreign stock exchanges meeting specific criteria related to total market size, corporate governance, reporting and other public disclosure requirements and enforcement power, among others.
- Add a minimum foreign regulatory requirement, which would require that a company be subject to foreign regulatory requirements and oversight in a jurisdiction of organization or headquarters that the SEC has determined to be robust.
- Create a broader system of mutual regulatory recognition similar to the one in place between the United States and Canada that allows companies from both countries to conduct cross-border securities offerings using home country securities laws and procedures.[9]
- Impose an international cooperation arrangement requirement that would require FPIs to certify they are subject to the oversight of a jurisdiction that has signed IOSCO's International Organization of Securities Commissions Multilateral Memorandum of Understanding or Enhanced Multilateral Memorandum of Understanding.[10]

[5] Hester M. Peirce (Commissioner), *From Canada to the Caymans: Statement on Concept Release on Foreign Private Issuer Eligibility* U.S. Sec. & Exch. Comm'n (June 4, 2025), available at sec.gov/newsroom/speeches-statements/peirce-remarks-foreign-private-issuer-eligibility-060425; Paul S. Atkins (Chairman), *Statement on Concept Release on Foreign Private Issuer Eligibility* U.S. Sec. & Exch. Comm'n (June 4, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-foreign-private-is suer-060425.

[6] The SEC, in the Concept Release, defines a "China-based issuer" as either incorporated or headquartered in (i) mainland China, (ii) Hong Kong, SAR or (iii) Macau, SAR.

[7] The SEC has identified that "[t]hese China-based Issuer variable interest entity structures pose risks to U.S. investors that are not present in other organizational structures." See U.S. Sec. & Exch. Comm'n, Div. of Corp. Fin., *CF Disclosure Guidance: Topic No. 10, Disclosure Considerations for China-Based Issuers* (Nov. 23, 2020), available at www.sec.gov/rules-regulations/staff-guidance/disclosureguidance/disclosure-considerations-china-based-issuers.

[8] U.S. Sec. & Exch. Comm'n, Press Release No. 2025-82, *SEC Solicits Public Comment on the Foreign Private Issuer Definition* (June 4, 2025), available at https://www.sec.gov/newsroom/press-releases/2025-82-sec-solicits-public-comment-foreign-private-issuer-definition.

[9] *See* 17 C.F.R. §§ 239.37–.38, 239.40–.41; 249.240f.

[10] The International Organization of Securities Commissions (IOSCO) is an association of the world's securities regulators, with membership that regulates more than 95% of the world's securities markets. The SEC is an IOSCO member. The Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) and the Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (EMMoU) are voluntary, non-binding and do not supersede domestic laws. The MMoU and EMMoU do not require members to have a specific level of disclosure requirements applicable to public companies in their jurisdictions, but rather members that sign on are expressing their intent and legal authority to assist other members in enforcement matters. IOSCO evaluation of whether to admit a member is largely based on whether the jurisdiction can assist with enforcement matters, particularly relating to providing bank, brokerage and beneficial ownership records. As a result, this possible approach as a FPI framework would not address the concerns raised by the SEC in the changing FPI population.

REACTIONS TO THE CONCEPT RELEASE

Numerous comment letters were submitted in response to the Concept Release, reflecting the views of a variety of stakeholders, ranging from accounting and law firms to FPIs that are part of the cohort of FPIs that would be most impacted by changes to the FPI definition and FPIs that may not be affected.

Commenters broadly agreed that the FPI regulatory framework is a valuable component of the U.S. capital markets. Most commenters supported preserving flexibility and predictability in the FPI definition. Comments also reflected concerns that a narrowed definition or one that relied on factors that could more easily shift on an annual basis would deter U.S. listings and result in a flight from U.S. markets, driving liquidity offshore.

One view shared by several commenters, and as expressed in our firm's comment letter,[11] is that the concerns raised by the SEC are substantially alleviated by the existence of other significant influences, such as stock exchange rules and market discipline driven by institutional investor and analyst expectations regarding governance best practices and the content and cadence of reporting that promotes transparency. Moreover, the concerns raised by the SEC appear targeted at companies that actually make up a fairly small sliver of the U.S. capital markets. While FPIs that are only listed on a U.S. stock exchange may not be subject to strong home country regulation and now comprise a majority of FPIs that file 20-Fs, most of these FPIs are quite small by market capitalization. In the aggregate, they comprise less than 10% of the entire FPI aggregate global market capitalization. Further, we estimate they comprise only 1.4% of the combined Nasdaq and NYSE market capitalization using the 2023 data included in the Concept Release. To further illustrate the relatively small size of many of these FPIs that are only listed on a U.S. stock exchange, the combined market capitalization of all such FPIs in the bottom half by market capitalization amounts to less than 0.25% of the total FPI market capitalization and less than 0.04% of the total U.S. listed stock market capitalization.

In light of the lack of an observable market failure in the current application of the FPI definition and the relatively small size of the population of FPIs that seem to be the focus of the concerns expressed in the Concept Release, we and many others suggested an alternative to revising the current FPI regulatory framework may be for the SEC to take targeted measures directed at the companies, or types of companies, that the SEC identifies as having taken advantage of, or even abused, the current FPI regulatory framework in a manner that harms, or could harm, U.S. investors.[12]

[11] A&O Shearman, *Comment Letter Regarding the Concept Release on Foreign Private Issuer Eligibility*, to U.S. Sec. & Exch. Comm'n, File No. S7-2025-01 (Sept. 8, 2025), available at www.sec.gov/comments/s7-2025-01/s7202501-652607-1951754.pdf.

[12] For example, the Nasdaq Stock Market, as part of a September 2025 rule proposal to enhance initial and continued listing standards, proposed to require a USD25m minimum public offering gross proceeds requirement for a firm commitment offering in the United States to public holders of companies headquartered, incorporated or whose business is principally administered in (i) mainland China, (ii) Hong Kong, SAR or (iii) Macau, SAR. In its rule filing, Nasdaq identified concerns with the trading activity of such companies. Nasdaq asserted that the low liquidity for the securities of these companies is a function of the small offering size or a low public float percentage for some of these companies, which may result in trading at a price that may not reflect a true market value and be more susceptible to manipulation by bad actors. See The Nasdaq Stock Market LLC, Notice of Filing of Proposed Rule Change, File No. SR-NASDAQ-2025-069 (Form 19b-4) (Sept. 3, 2025), available at https://listingcenter.nasdaq.com/assets/rulebook/nasdaq/filings/SR-NASDAQ-2025-069.pdf.

Other themes raised by the more than 70 comment letters that were submitted included a number of comments that provided recommendations regarding how the SEC could address this population of FPIs that are only listed on a U.S. exchange and not subject to robust home country regulatory requirements and oversight, such as the following:

- Recommendations to broaden the requirements of current reporting under Form 6-K to move closer to Form 8-K reporting, move up the deadline for annual reporting on Form 20-F and impose a Regulation FD requirement on FPIs.
- Proposals to add to the FPI definition to require incorporation or headquarters in a jurisdiction with, and being subject to, robust regulatory requirements and oversight.
- Proposals to require some meaningful amount of non-U.S. trading on a foreign stock exchange that has a certain level of disclosure and governance requirements and oversight.
- Proposals for the SEC to identify jurisdictions that are known to not have securities regulation and oversight sufficient to protect U.S. investors, so companies incorporated or headquartered in these jurisdictions, absent some other regulatory oversight, would not be considered FPIs.

The challenge with many of these recommendations is that they would require the SEC to engage in an exercise of evaluating (and re-evaluating) the quality of the regulatory requirements and oversight of a number of foreign jurisdictions or foreign stock exchanges. The SEC would have to develop assessment criteria and then engage in a lengthy evaluation process. There are existing structures that some commenters indicated that the SEC could rely on, but some of these structures, like IOSCO's MMoU and EMMoU and the concept of a "designated offshore securities market" in Regulation S of the U.S. securities laws, do not in a substantive way replicate or serve as a substitute for the requirements to which an FPI is subject.

Other commenters, likely sensing an inevitability in the direction that the SEC is heading with respect to changing the FPI definition to restrict the availability of accommodations to FPIs, proposed recommendations and expressed concerns relating to how the SEC might implement change, including:

- Ensuring there is thoughtful consideration of how and how quickly an FPI that loses its status has to transition to become a domestic filer, particularly as it relates to the complexity of a change from IFRS to U.S. GAAP, which would be the outcome of a loss of FPI status unless the SEC were to create a separate category of non-FPI issuers that are permitted to report under IFRS.
- Providing a definitional structure for the assessment of FPI status that does not result in companies falling in and out of status from period to period.
- Concern that any change to the FPI definition could have unintended consequences for the Regulation S safe harbors for offshore securities offerings or the availability of other reporting exemptions.

WHAT WILL THE SEC DO NEXT?

A significant number of comments from market participants, law firms, accounting firms and others agreed that the FPI regulatory regime is not broken. The risk to investors from investing in securities of foreign companies, these commenters asserted, was not a function of the existing regulatory regime, but of particular circumstances relating to a narrow set of companies. Commenters pointed out that broad changes to FPI eligibility requirements will likely result in the departure from U.S. listed equity markets of some foreign companies that actually do maintain rigorous disclosure and governance standards that are comparable to those applicable to domestic listed companies.

In addition to publishing the Concept Release, in September 2025, Chair Atkins released his first rulemaking agenda, listing Foreign Private Issuer Eligibility as an agenda item.[13] Interestingly, the agenda lists this possible rulemaking in the "prerule stage," which means it is not yet slated for a rule proposal. Any proposed rulemaking would include a notice and comment period, giving interested parties the opportunity to provide feedback on the proposed rule prior to the adoption of a final rule.

Chair Atkins has often lamented the decline in the number of listed companies in the United States over the last 30 years.[14] He also recently announced that he wants to "make I.P.O.s great again,"[15] which, by extension, means he also wants to make being a public company great again. Chair Atkins has fast tracked a rulemaking that would potentially eliminate quarterly reporting,[16] indicated that he wants to reform the shareholder proposal process[17] (and, indeed, the Division of Corporation Finance has significantly removed itself from the process this proxy season[18])

[13] U.S. Office of Mgmt. & Budget, Office of Info. & Regulatory Affairs, *Agency Rule List—Spring 2025: Securities and Exchange Commission* (Spring 2025), availanble at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode&showStage=active&agencyCd=3235.
[14] Stephanie Samsel, '*Make IPOs great again*': *SEC Chair Paul Atkins Explains New IPO Rule During Government Shutdown*, Fox Business (Nov. 3, 2025), available at https://www.foxbusiness.com/media/makeipos-great-again-sec-chair-explains-new-rule-ipos-during-shutdown.
[15] Paul S. Atkins (Chair), *Statement at Open Meeting*: *Policy Statement Concerning Mandatory Arbitration*; *Amendments to Rule 431*, U.S. Sec. & Exch. Comm'n (Sept. 17, 2025), available at www.sec.gov/newsroom/speeches-statements/atkins-091725-open-meeting-statement-policy-statement-concerning -mandatory-arbitration-amendments-rule-431.
[16] Stefania Palma, Wall Street regulator vows light touch and end to quarterly reporting, Financial Times (Sept. 29, 2025), available at https://www.ft.com/content/f9f9e796-b967-45f0-9d8d-78cd8c880073.
[17] Paul S. Atkins (Chair), *Keynote Address at the John L. Weinberg Ctr. for Corp. Governance's 25th Anniversary Gala*, U.S. Sec. & Exch. Comm'n (Oct. 9, 2025), available at www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporategovernances-25th-anniversary-gala.
[18] *See* U.S. Sec. & Exch.Comm'n, Div. of Corp. Fin., Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season (Nov. 17, 2025), available at https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season.

and has taken aim at securities class actions[19]—all in an effort to make being a public company more attractive and increase the number of listed companies. Changing the regulatory framework for a wide cross-section of FPIs could do the opposite. Doing so where there are significant questions as to whether many of the companies that would be impacted by these changes actually pose a threat to U.S. investors is not consistent with a regulatory agenda designed to reduce the burdens of being a public company.

Taking into account this context, the next steps the SEC could take include the following:

- The SEC could do nothing, though this seems least likely. In the face of the significant reaction against revising the FPI definition, the SEC could focus on different priorities. The "make I.P.O.s great again" agenda and implementing President's Trump's plan to make the United States the "crypto capital of the world"[20] could easily take up most of the rulemaking bandwidth.
- The SEC could, through its rulemaking authority, implement changes to reporting obligations for all FPIs to increase alignment with the requirements of domestic listed companies in key areas, such as a more expansive Form 6-K reporting obligation and an accelerated Form 20-F reporting timetable. For years, leadership of the SEC has discussed whether the disclosure requirements for FPIs should be more closely aligned with those of domestic companies.[21]
  This would be a change in direction from the Concept Release, but it would address a concern that U.S. investors may not have all the information they need to make an investment decision and address the concern that FPIs are provided with advantages that are not available to U.S. companies.
- The SEC could, through its rulemaking authority, essentially do what the Concept Release suggests—impose domestic reporting obligations on a broad cross-section of FPIs that are only listed on a U.S. stock exchange (including those FPIs that are nominally listed on a foreign stock exchange where almost all trading takes place in the United States) and not subject to another jurisdiction's reporting and corporate governance obligations.

The direction of the Concept Release and the statements from Chair Atkins all lead to the conclusion that some change to the FPI regulatory framework is inevitable. We hope the SEC will consider the themes expressed in a large number of comment letters and focus on the identifiable risks posed by the securities of foreign companies trading in U.S. markets by taking a more targeted approach to specific companies, specific practices or even specific jurisdictions rather than making broad changes to a regulatory regime that has largely struck the right balance between ensuring U.S. investors are protected and encouraging foreign companies to list in the United States.

[19] Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions, Securities Act Release No. 33-11389, Exchange Act Release No. 34-103988 (Sept. 17, 2025), www.sec.gov/files/rules/policy/33-11389.pdf; Paul S. Atkins, *Statement at Open Meeting: Policy Statement Concerning Mandatory Arbitration; Amendments to Rule 431*, U.S. Sec. & Exch. Comm'n (Sept. 17, 2025), www.sec.gov/newsroom/speeches-statements/atkins-091725-open-meeting-statement-policy-statement-concerning-mandatory-arbitration-amendments-rule-431.
[20] The White House, Issues: Technology & Innovation, www.whitehouse.gov/issues/tech-innovation/ (last visited Nov. 26, 2025).
[21] Meredith Cross, *Keynote Address at PLI – Eleventh Annual Institute on Securities Regulation in Europe*, U.S. Sec. & Exch. Comm'n (Mar. 8, 2012), https://www.sec.gov/newsroom/speeches-statements/2012-spch030812mchtm; Mark T. Uyeda, *Remarks at the Harvard Law School Program on International Financial Systems, 2024 U.S.-China Symposium*, U.S. Sec. & Exch. Comm'n (June 6, 2024), https://www.sec.gov/newsroom/speeches-statements/uyeda-harvard-law-060624.

Survey data

Top 100 Companies
S&P 500
Russell 3000

On the following pages, we have presented comprehensive corporate governance and executive compensation data for the Top 100 Companies and companies included in the S&P 500 and the Russell 3000 indices.

The data, using the key below, is presented to allow you to compare the critical corporate governance and executive compensation practices of companies included in these three different indices, identifying and highlighting trends in cohorts of public companies.

At the end of the survey, in the "Survey methodology" section, we provide additional information on the data collection and the companies included in each of the indices.

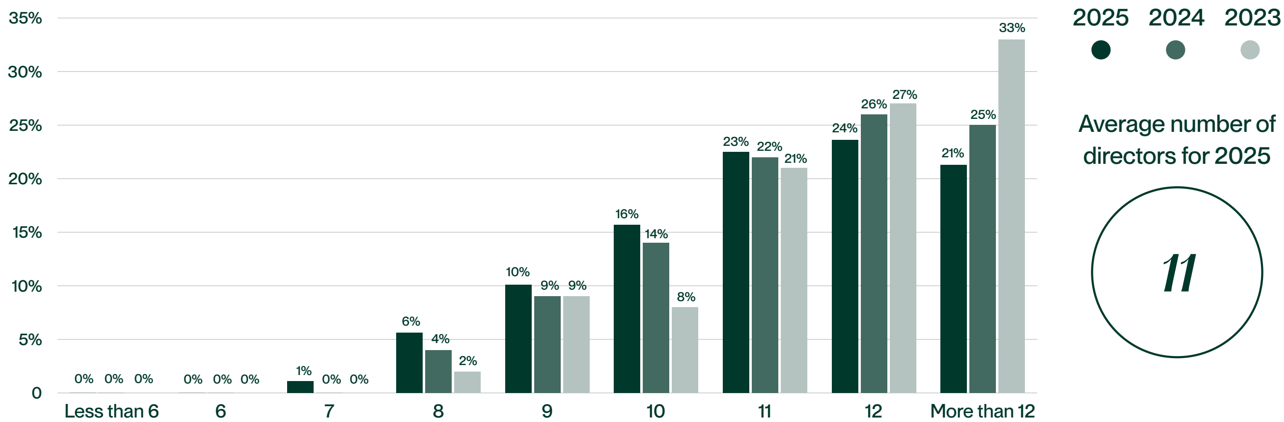
Key

- Top 100 Companies
- S&P 500
- Russell 3000

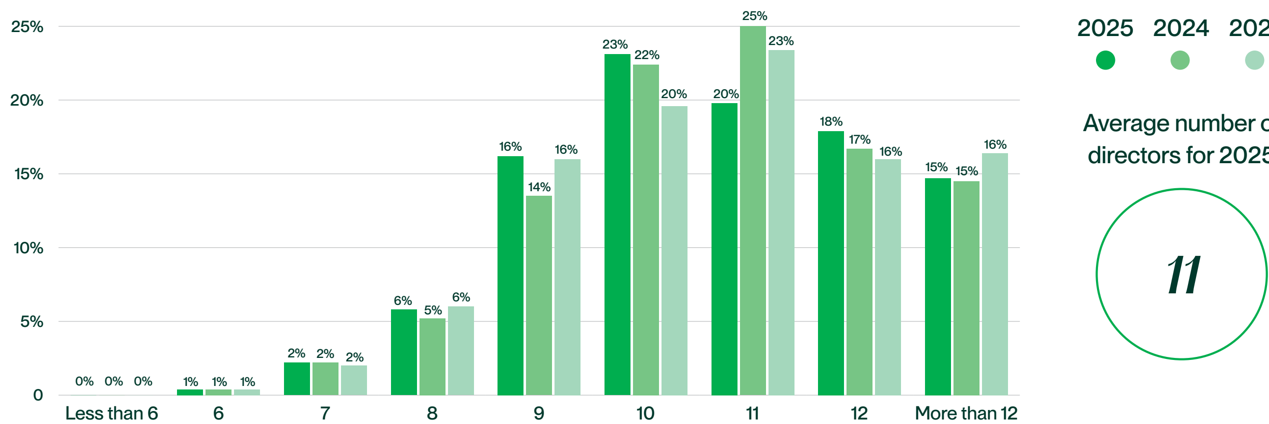
Board organization

BOARD SIZE (NUMBER OF DIRECTORS)

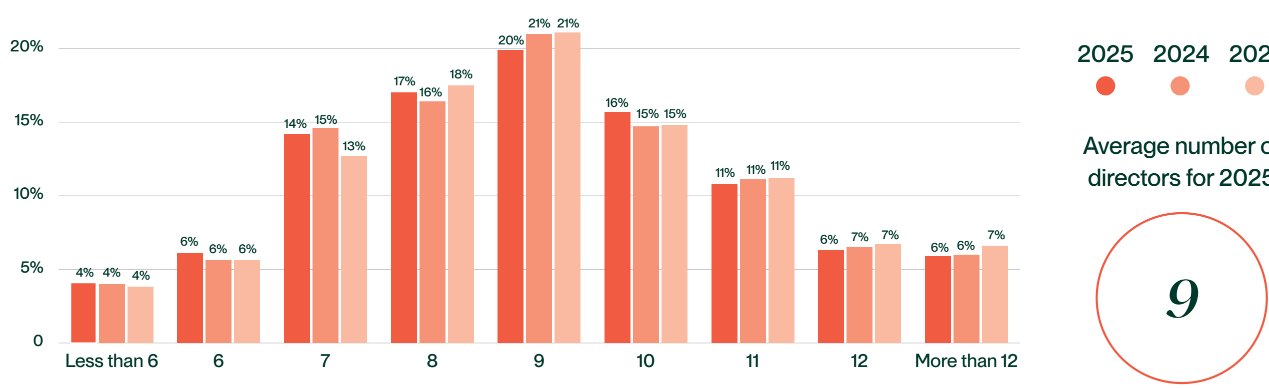
TOP 100 COMPANIES



S&P 500

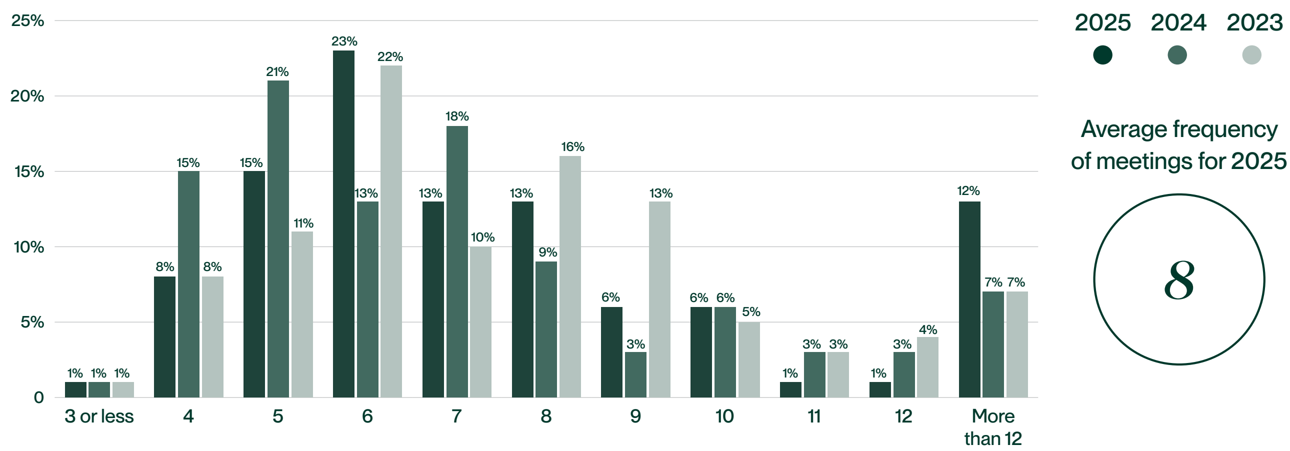


RUSSELL 3000

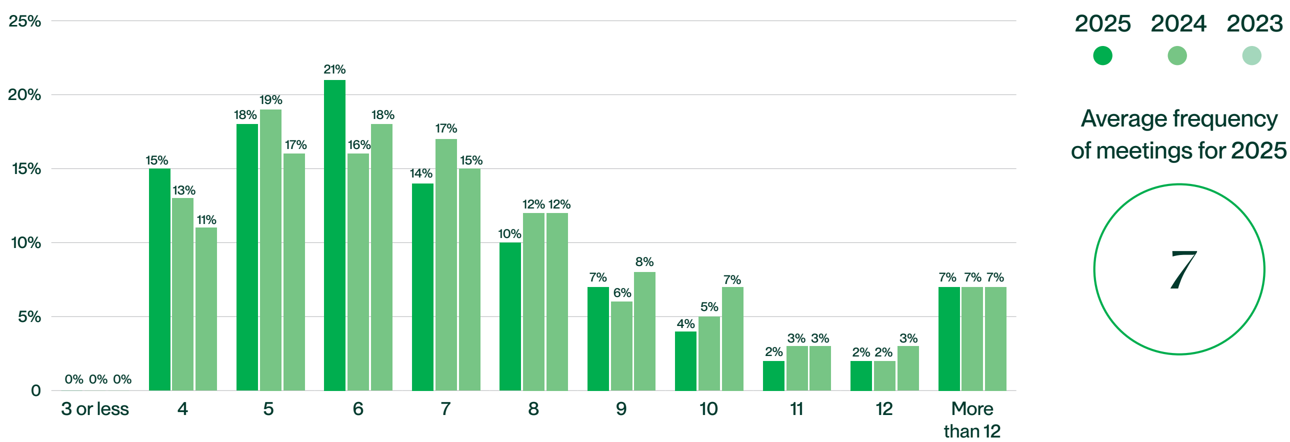


FREQUENCY OF BOARD MEETINGS

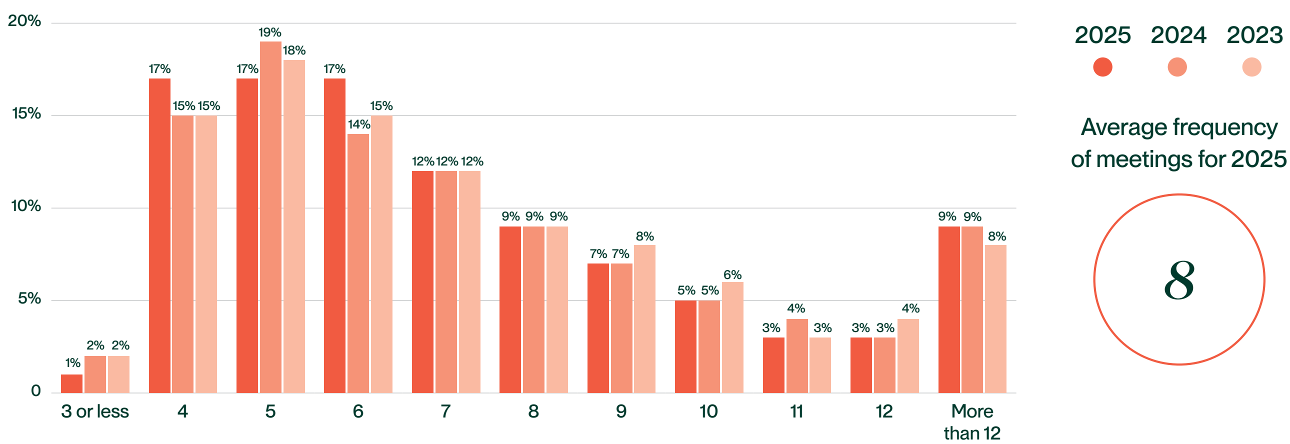
TOP 100 COMPANIES



S&P 500

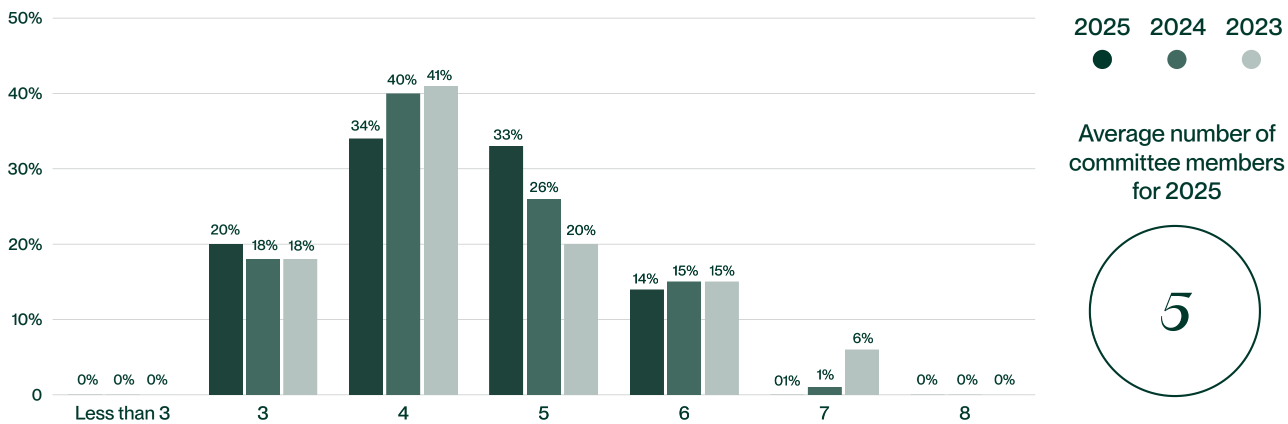


RUSSELL 3000

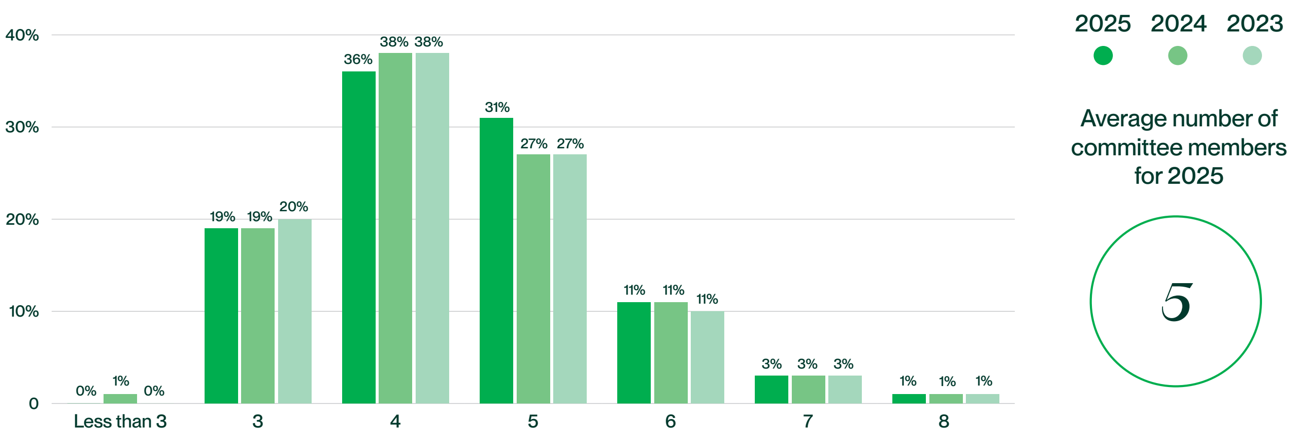


AUDIT COMMITTEE SIZE (NUMBER OF COMMITTEE MEMBERS)

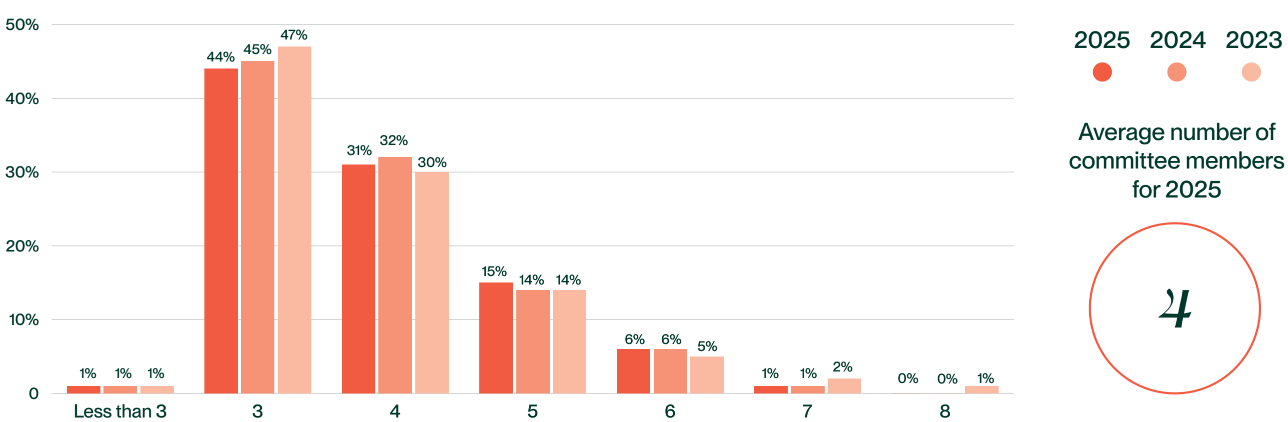
TOP 100 COMPANIES



S&P 500

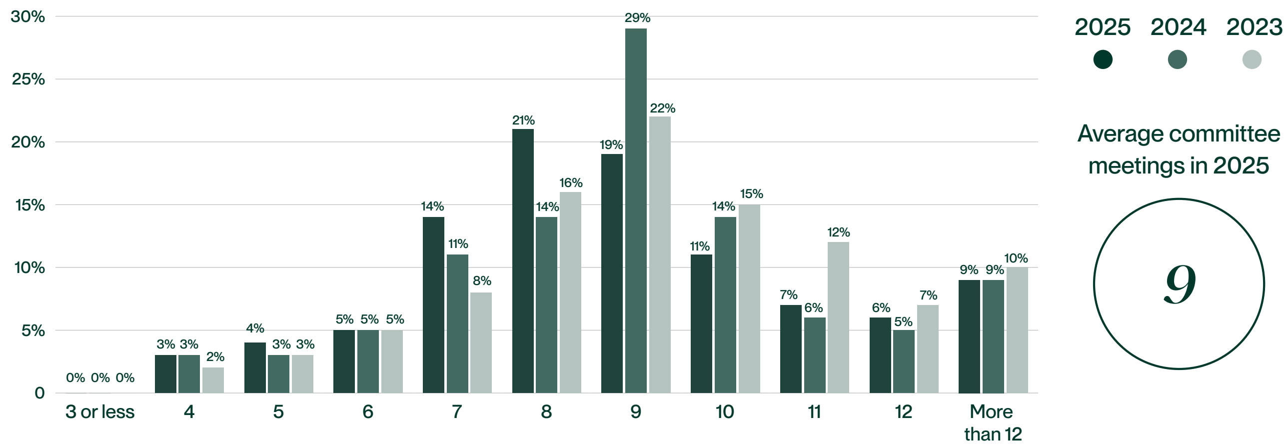


RUSSELL 3000

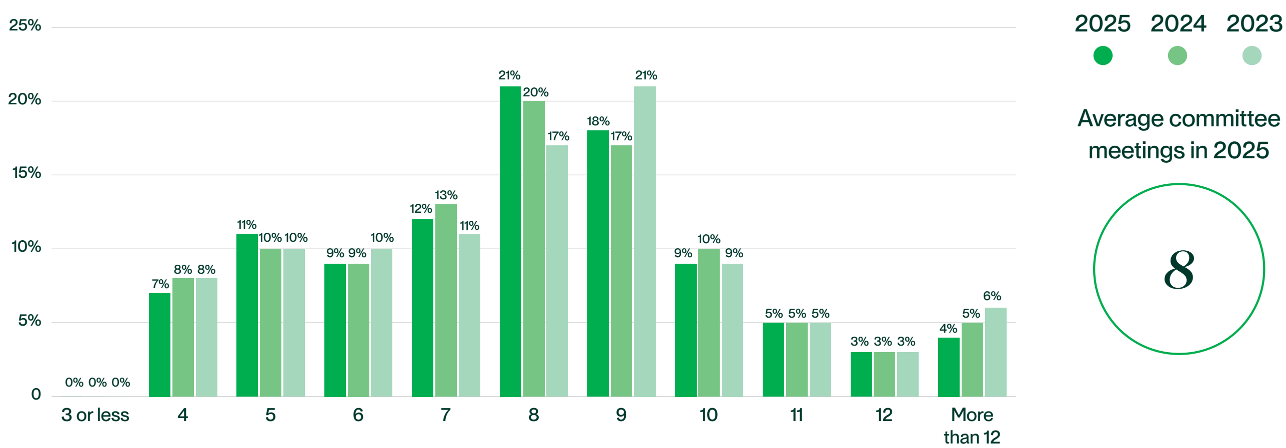


FREQUENCY OF AUDIT COMMITTEE MEETINGS

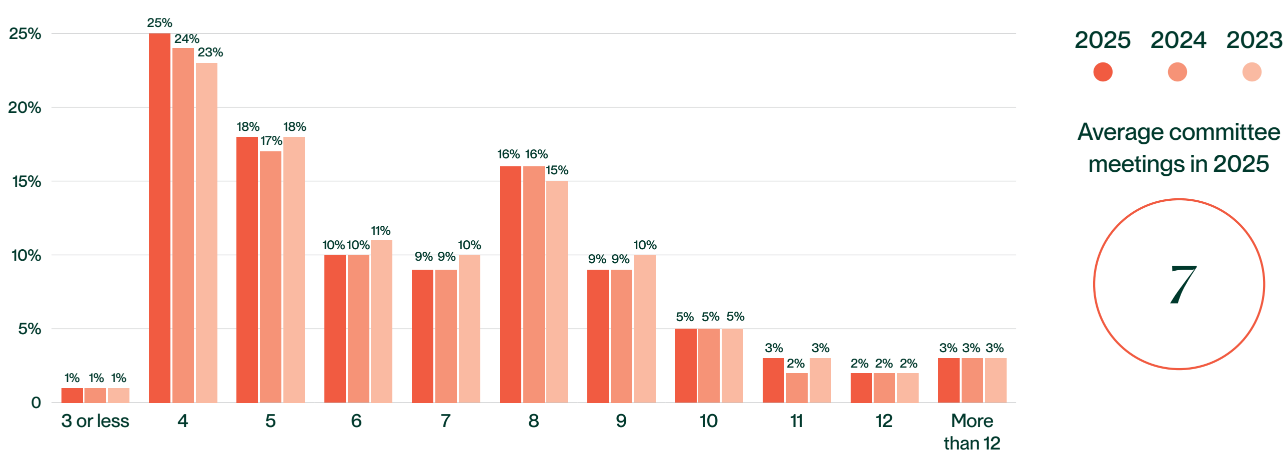
TOP 100 COMPANIES



S&P 500

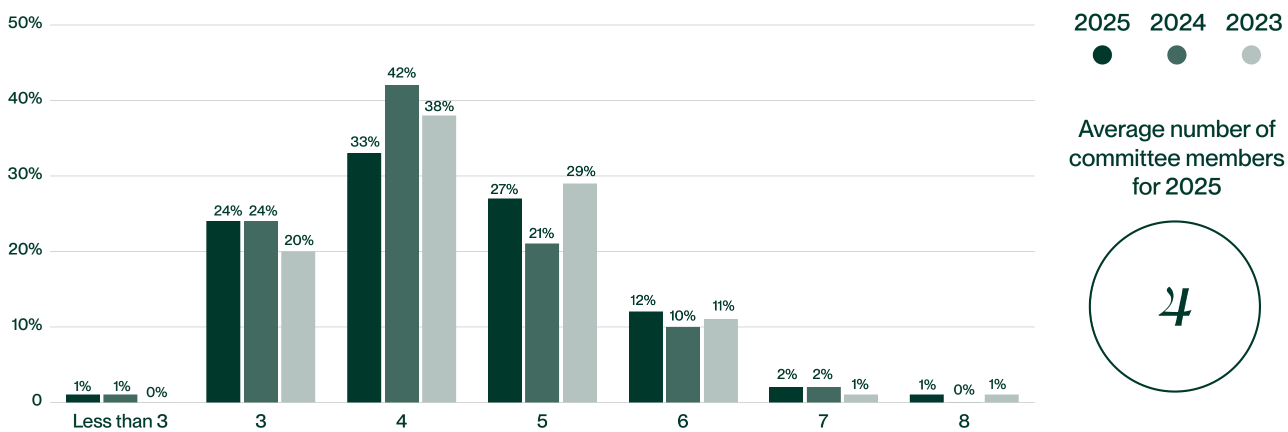


RUSSELL 3000

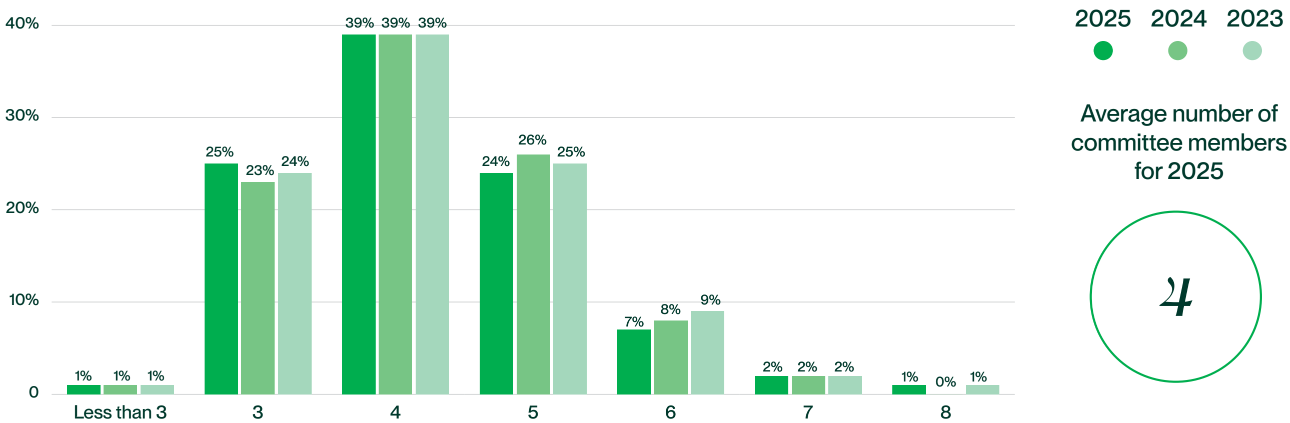


COMPENSATION COMMITTEE SIZE (NUMBER OF COMMITTEE MEMBERS)

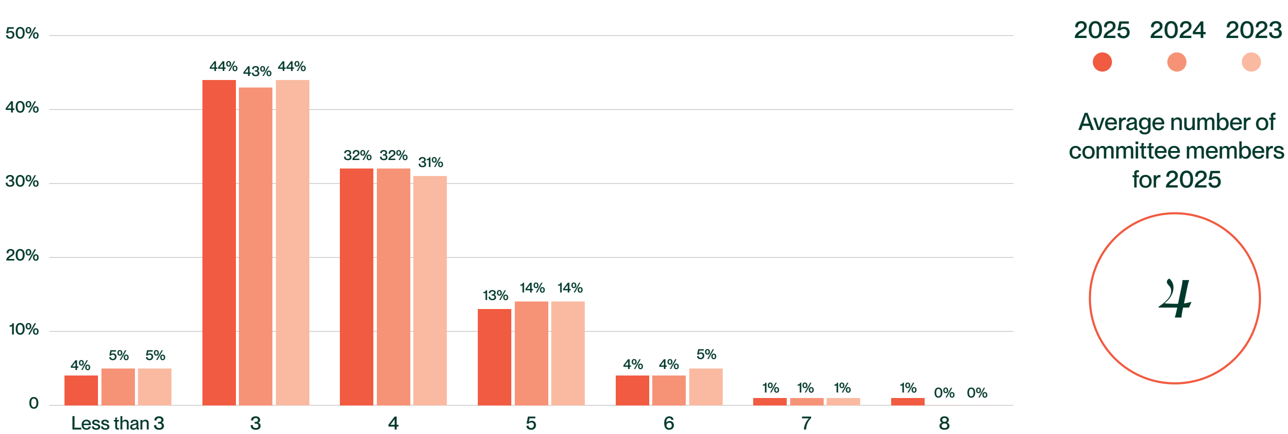
TOP 100 COMPANIES



S&P 500

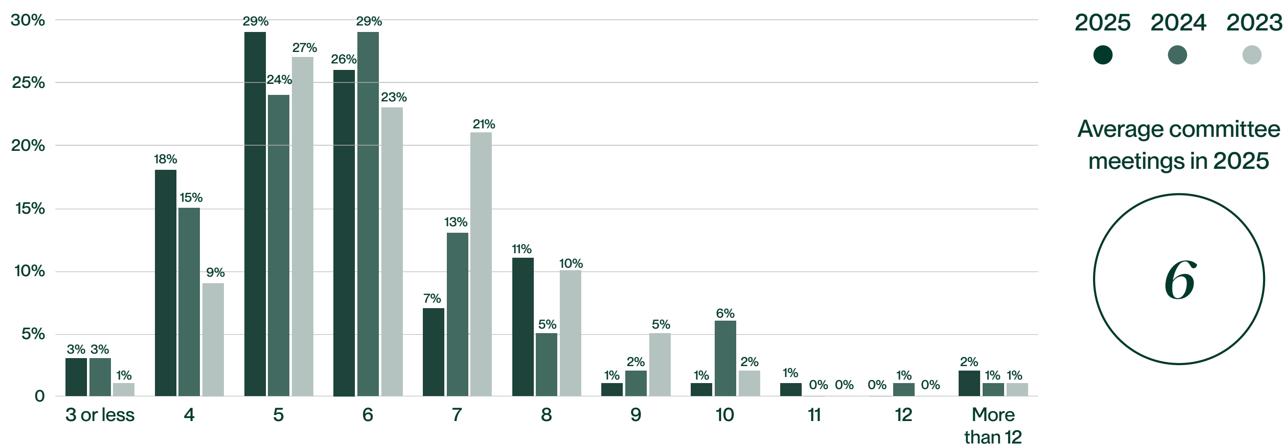


RUSSELL 3000

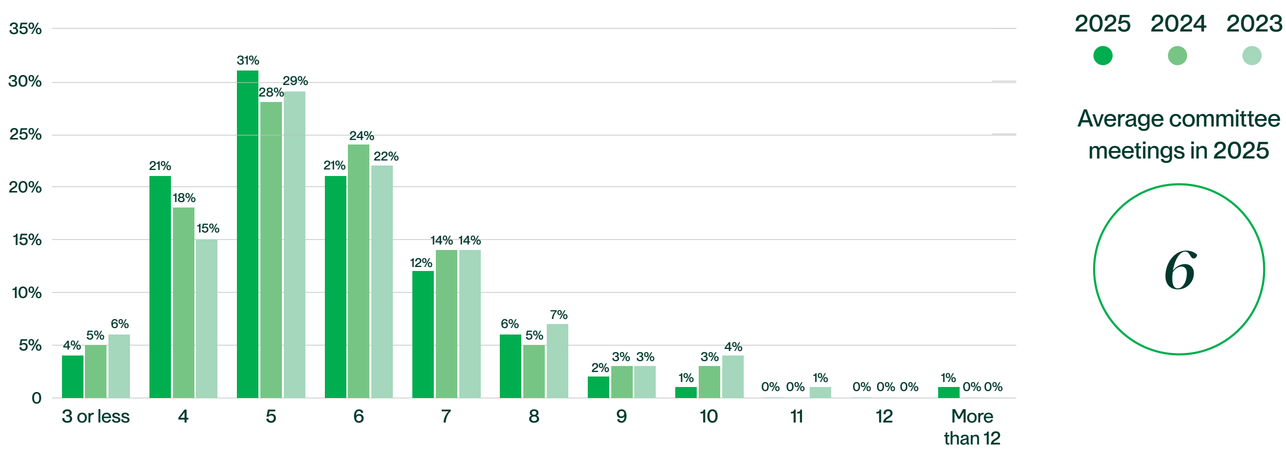


FREQUENCY OF COMPENSATION COMMITTEE MEETINGS

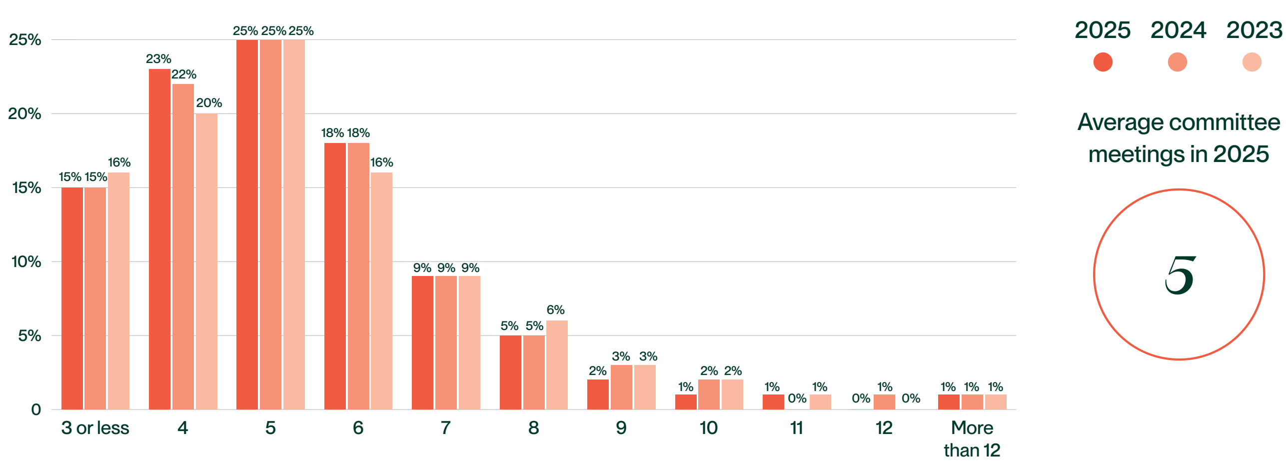
TOP 100 COMPANIES



S&P 500

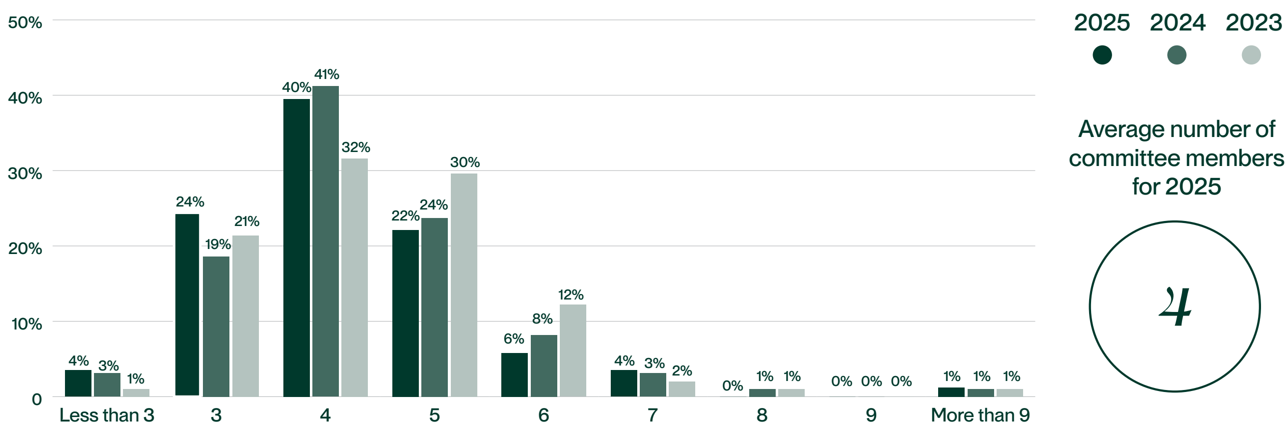


RUSSELL 3000

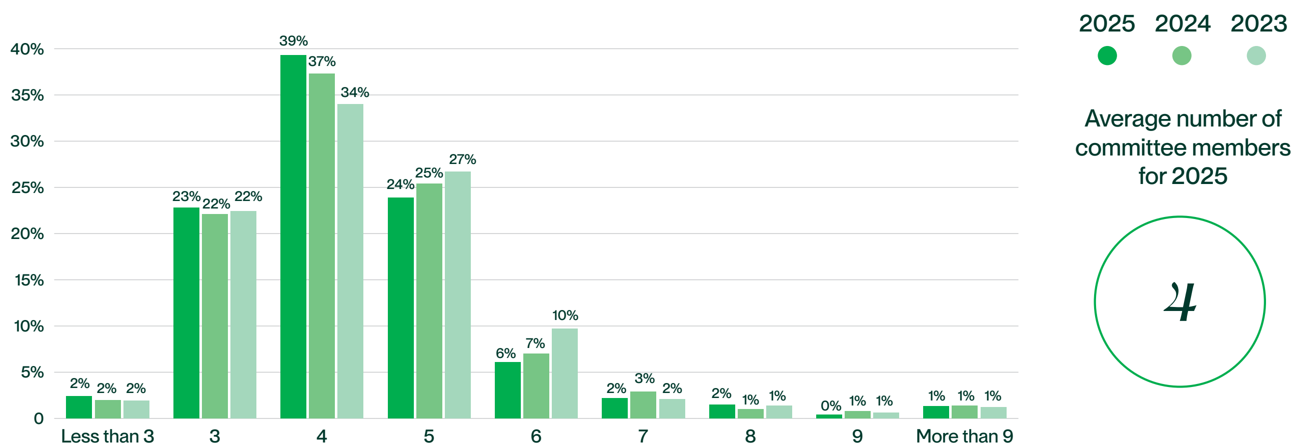


NOMINATING GOVERNANCE COMMITTEE SIZE (NUMBER OF COMMITTEE MEMBERS)

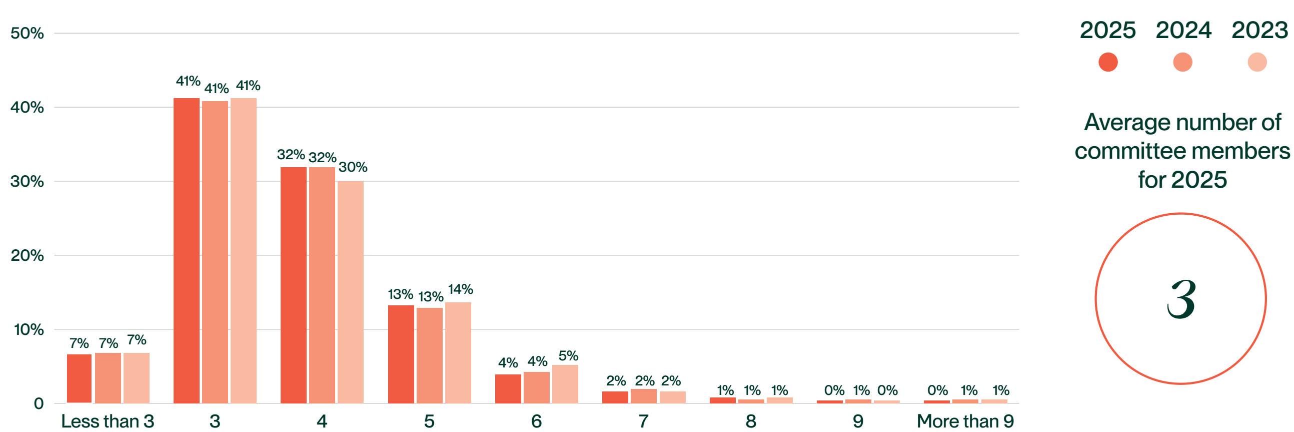
TOP 100 COMPANIES



S&P 500

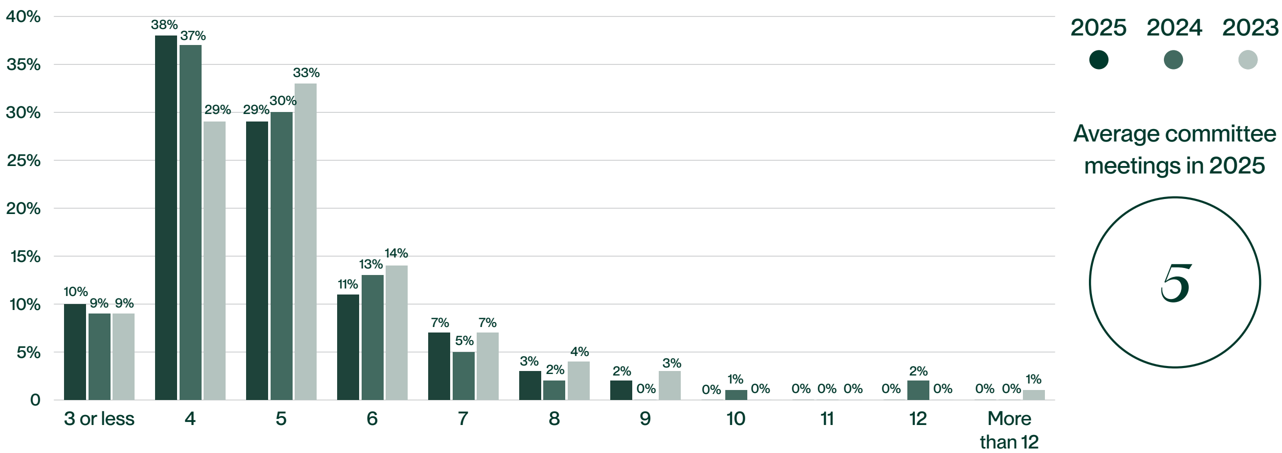


RUSSELL 3000

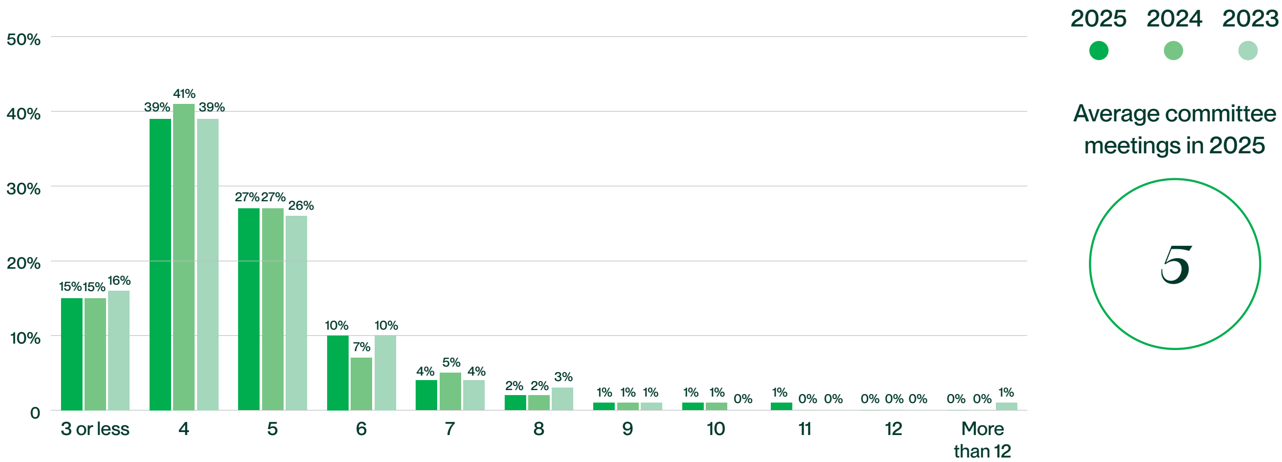


FREQUENCY OF NOMINATING GOVERNANCE COMMITTEE MEETINGS

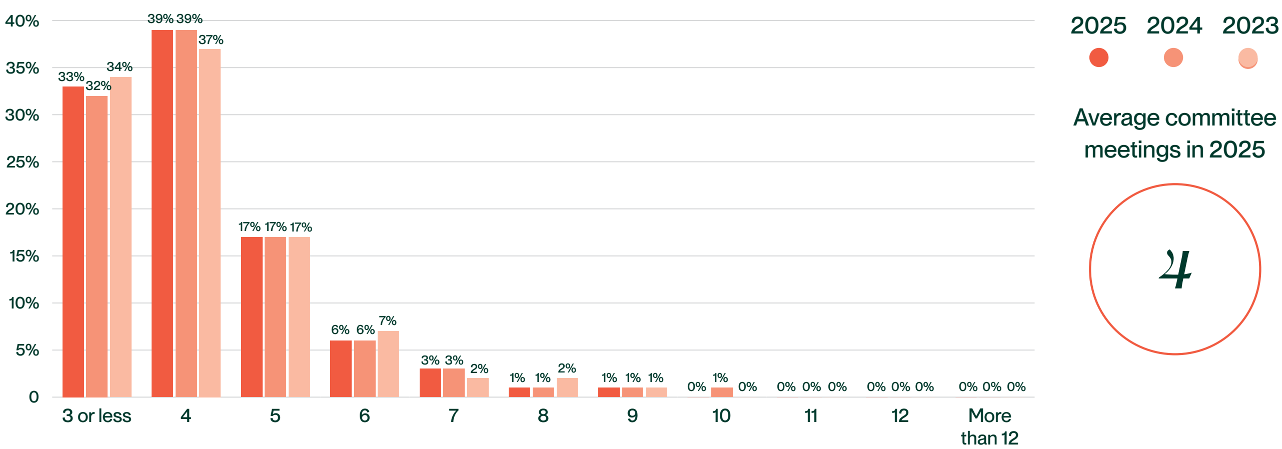
TOP 100 COMPANIES



S&P 500

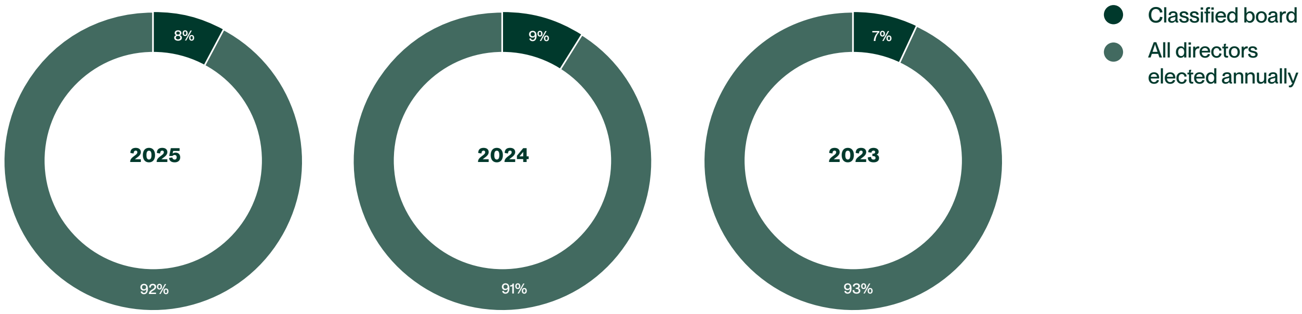


RUSSELL 3000

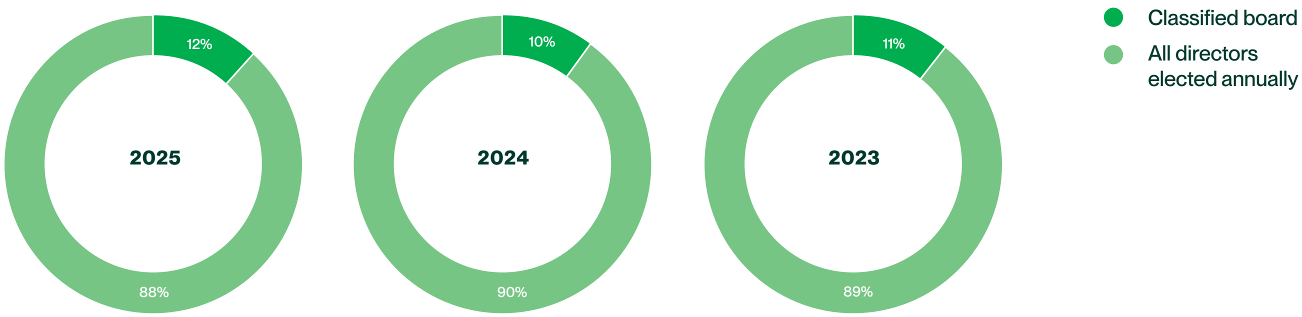


CLASSIFIED BOARD STRUCTURE

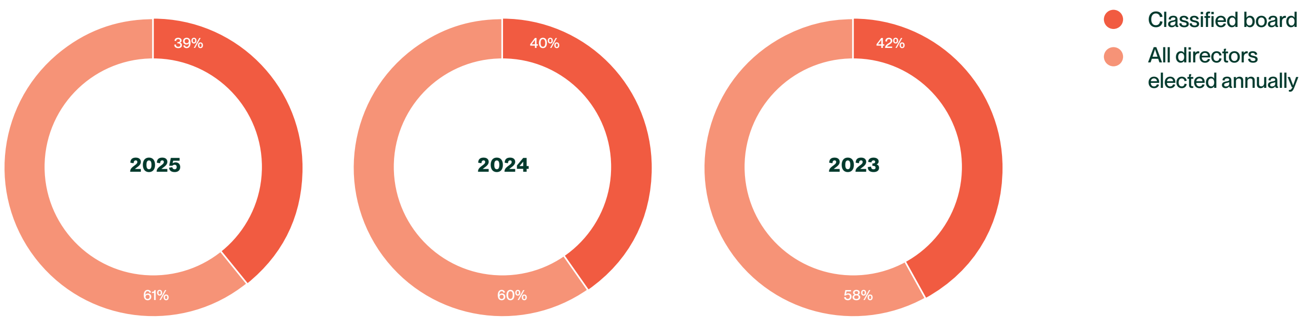
TOP 100 COMPANIES



S&P 500



RUSSELL 3000



Board leadership

COMPANIES THAT HAVE THE CURRENT CEO SERVE AS CHAIR

	TOP 100 COMPANIES	S&P 500	RUSSELL 3000
2025	55%	43%	34%
2023	53%	41%	34%
2024	56%	41%	34%

COMPANIES THAT HAVE AN INDEPENDENT BOARD CHAIR

	TOP 100 COMPANIES	S&P 500	RUSSELL 3000
2025	28%	40%	48%
2023	30%	37%	45%
2024	30%	40%	47%

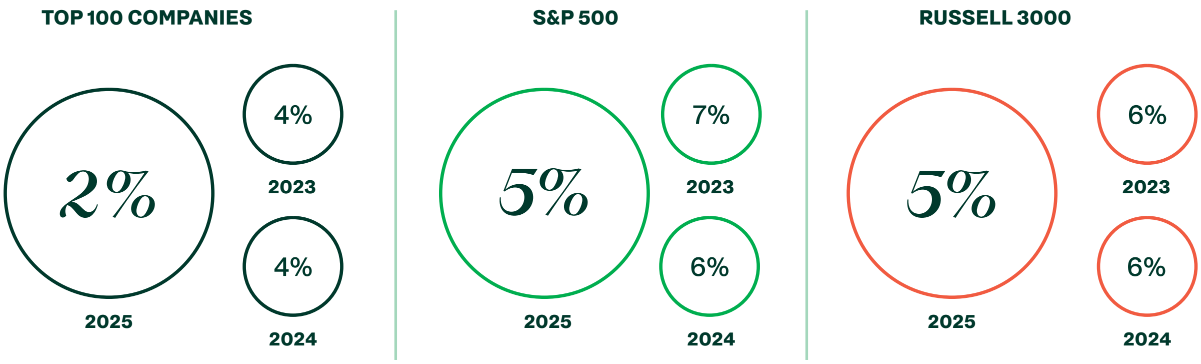
COMPANIES THAT HAVE A LEAD (OR PRESIDING) DIRECTOR

Indicates whether the company has appointed a Lead or Presiding Director to provide independent board leadership when the roles of CEO and Chair are combined

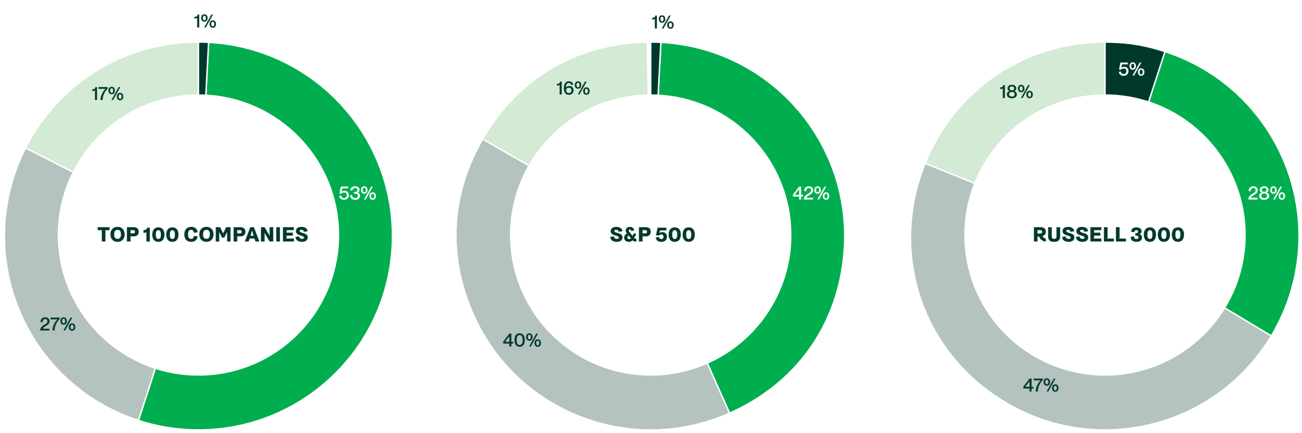
	TOP 100 COMPANIES	S&P 500	RUSSELL 3000
2025	73%	60%	44%
2023	68%	60%	42%
2024	69%	61%	43%

COMPANIES THAT HAVE A FORMER EXECUTIVE SERVING AS BOARD CHAIR (NON-CEO)

Indicates whether the current Board Chair previously served as an executive officer of the company



CEO AND CHAIR VARIATIONS (2025)



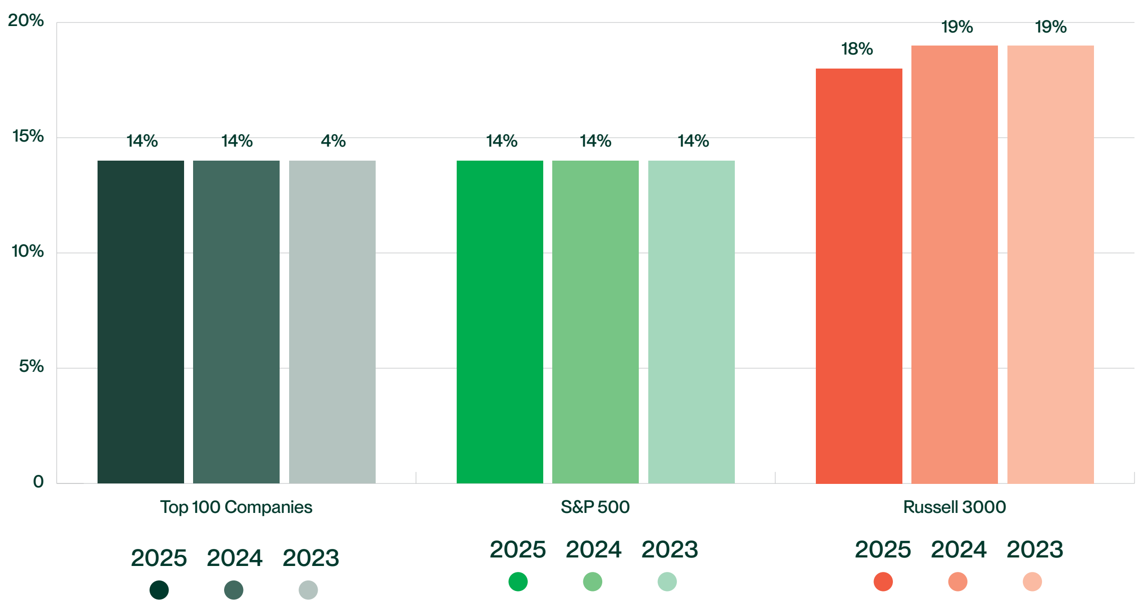
- Combined CEO and chair with no lead independent director
- Combined CEO and chair with lead independent director
- Separate CEO and chair (chair independent)
- Separate CEO and chair (chair not independent)

Director independence

AVERAGE NUMBER OF INDEPENDENT DIRECTORS ON THE BOARD

	TOP 100 COMPANIES	S&P 500	RUSSELL 3000
2025	86%	86%	82%
2024	86%	86%	81%
2023	87%	86%	81%

COMPANIES THAT HAVE MEMBERS OF MANAGEMENT ON THE BOARD (OTHER THAN THE CEO)

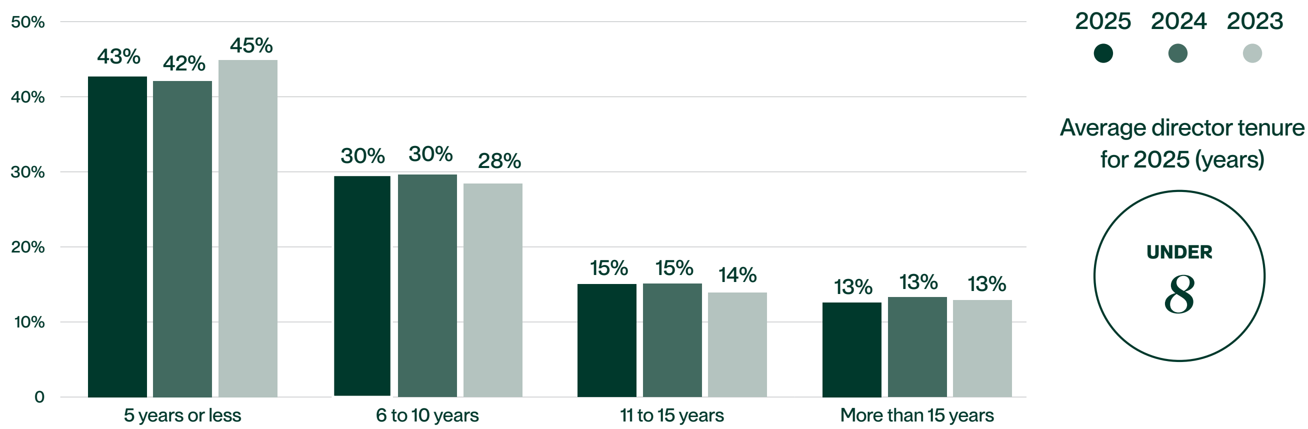


Board refreshment

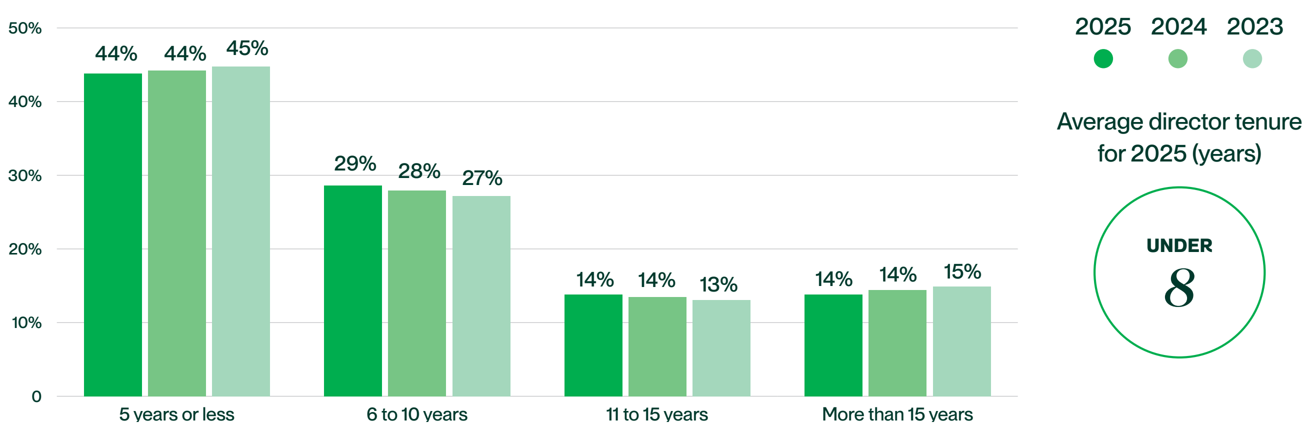
AVERAGE DIRECTOR TENURE

Refers to the average number of years that current board members have served on the board

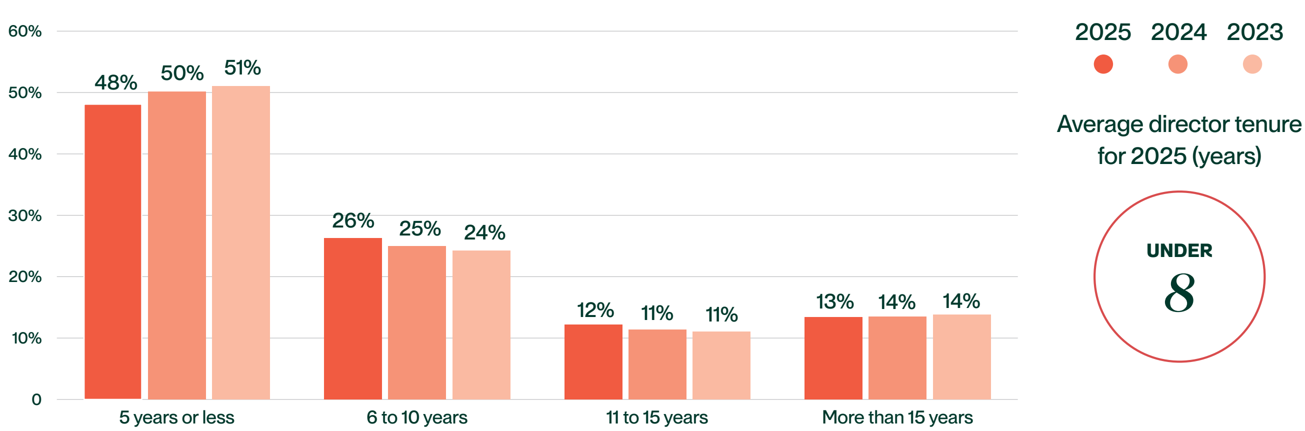
TOP 100 COMPANIES



S&P 500

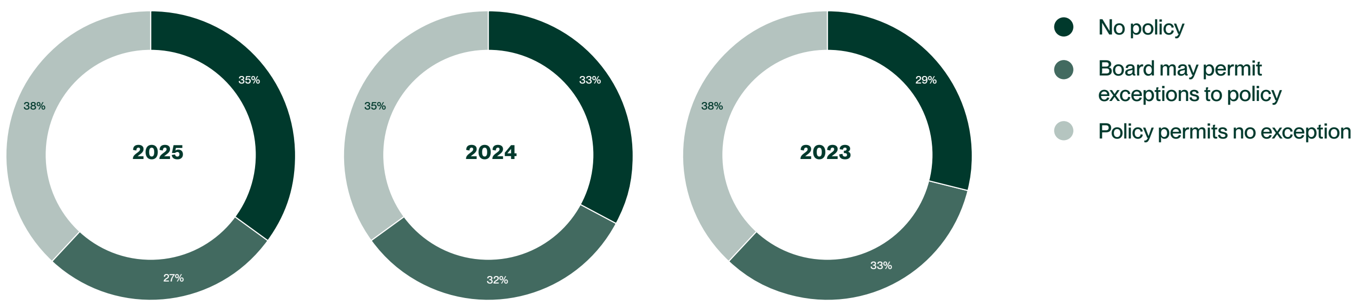


RUSSELL 3000

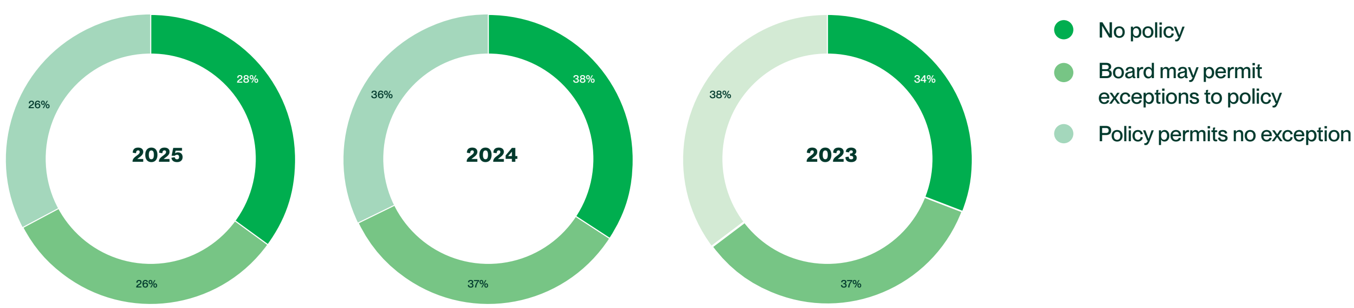


MANDATORY DIRECTOR RETIREMENT AGE POLICY

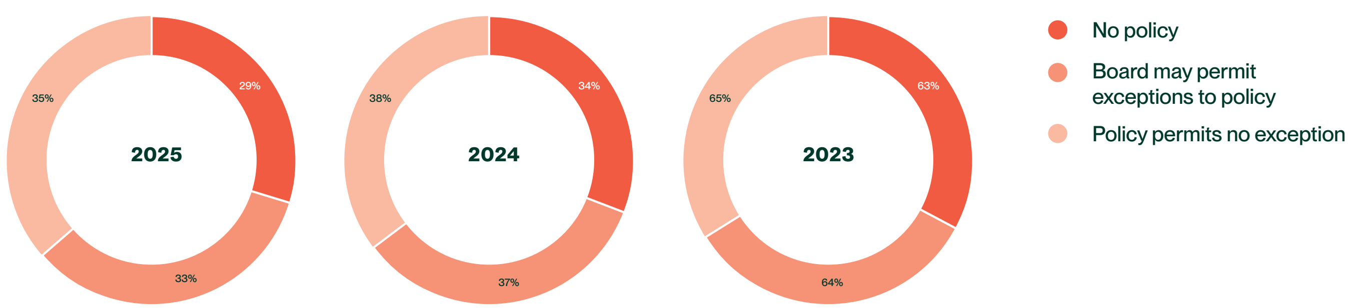
TOP 100 COMPANIES



S&P 500

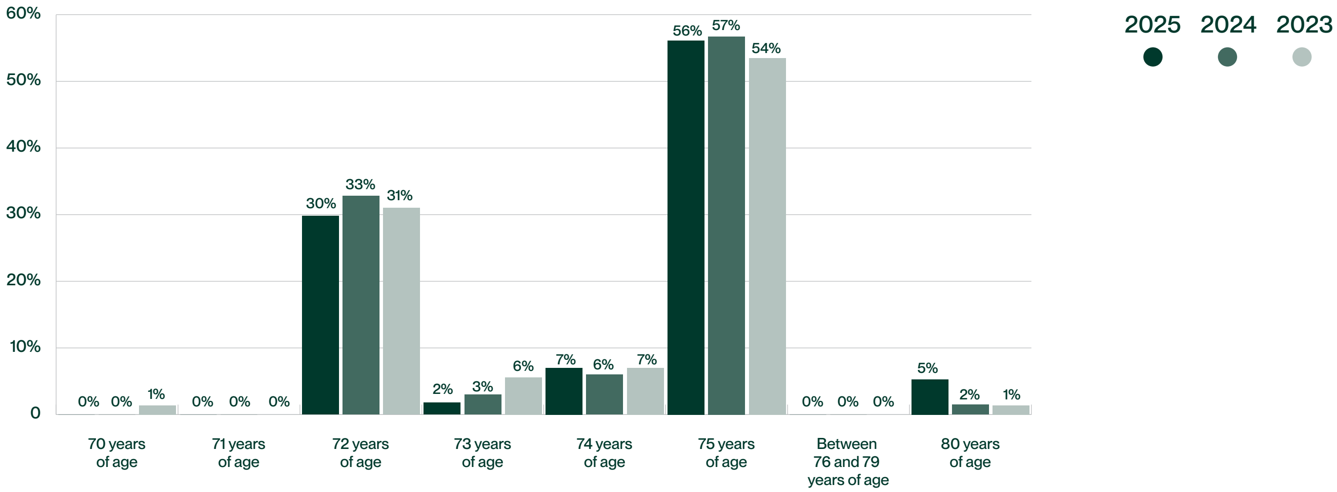


RUSSELL 3000

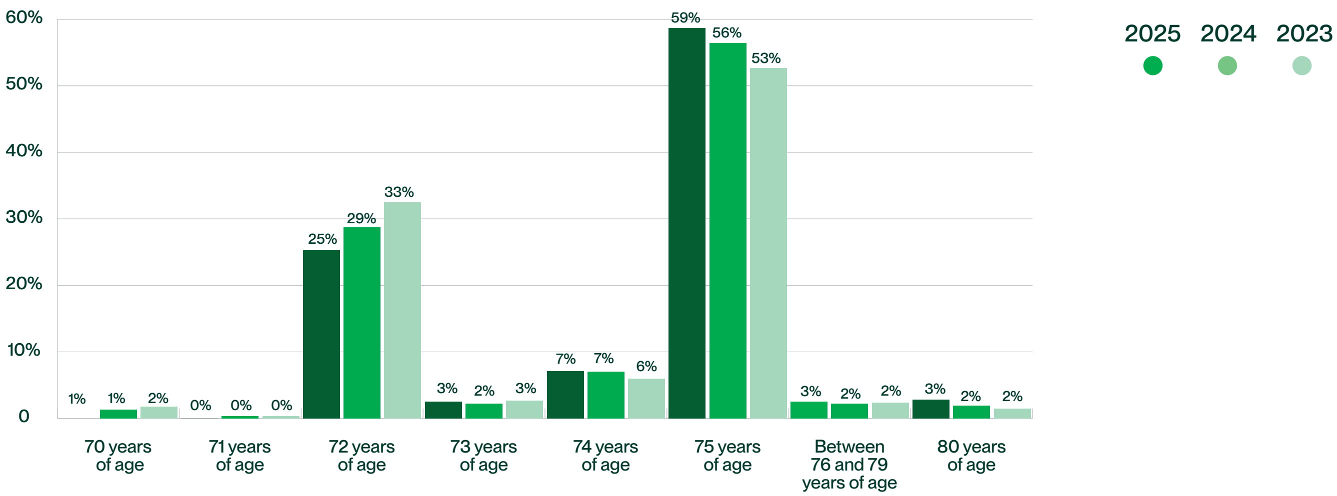


MANDATORY RETIREMENT AGE FOR COMPANIES THAT HAVE A MANDATORY RETIREMENT AGE POLICY

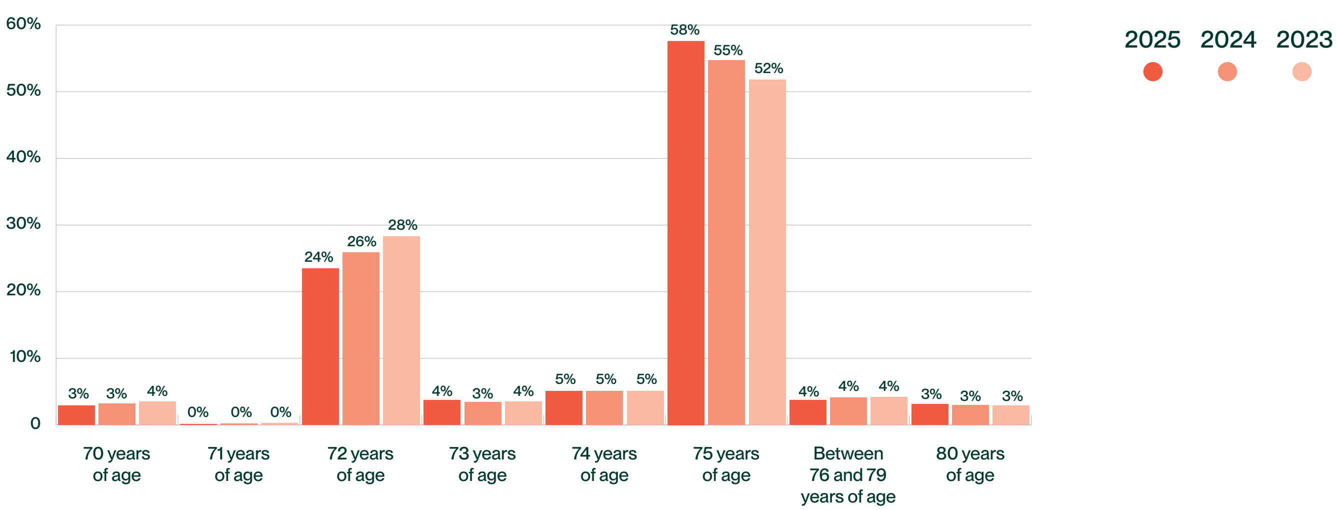
TOP 100 COMPANIES



S&P 500

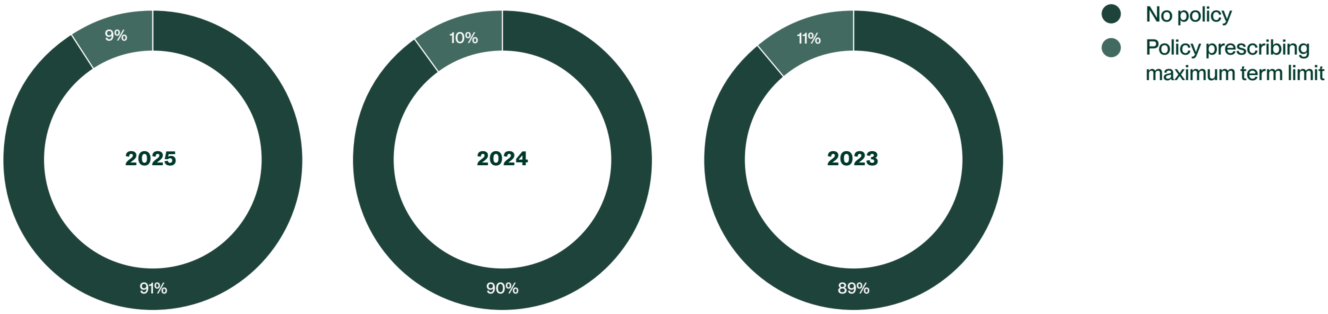


RUSSELL 3000

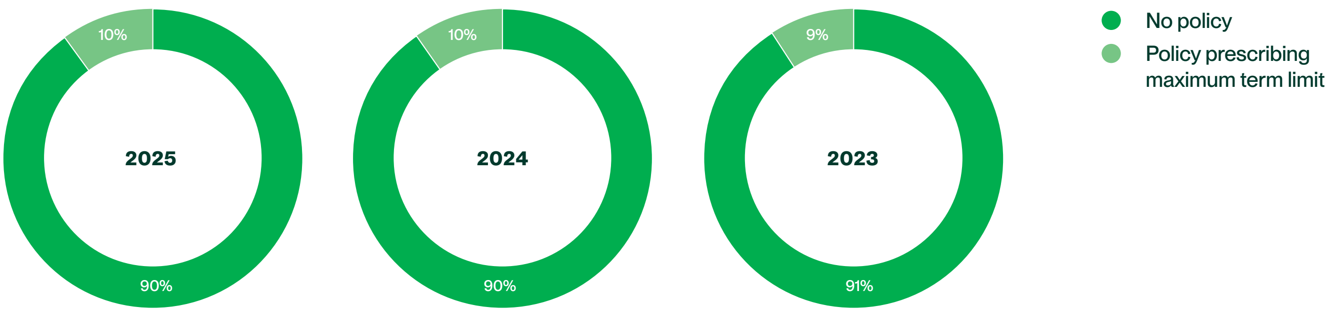


MANDATORY DIRECTOR TENURE POLICY

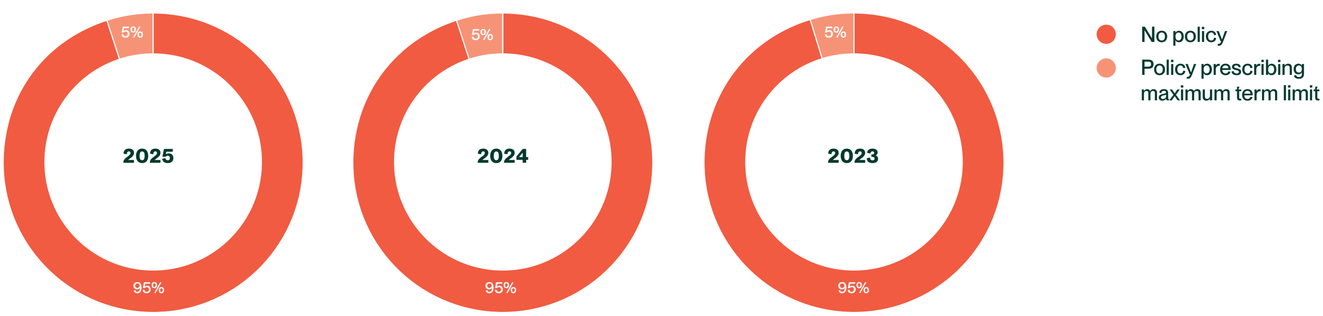
TOP 100 COMPANIES



S&P 500

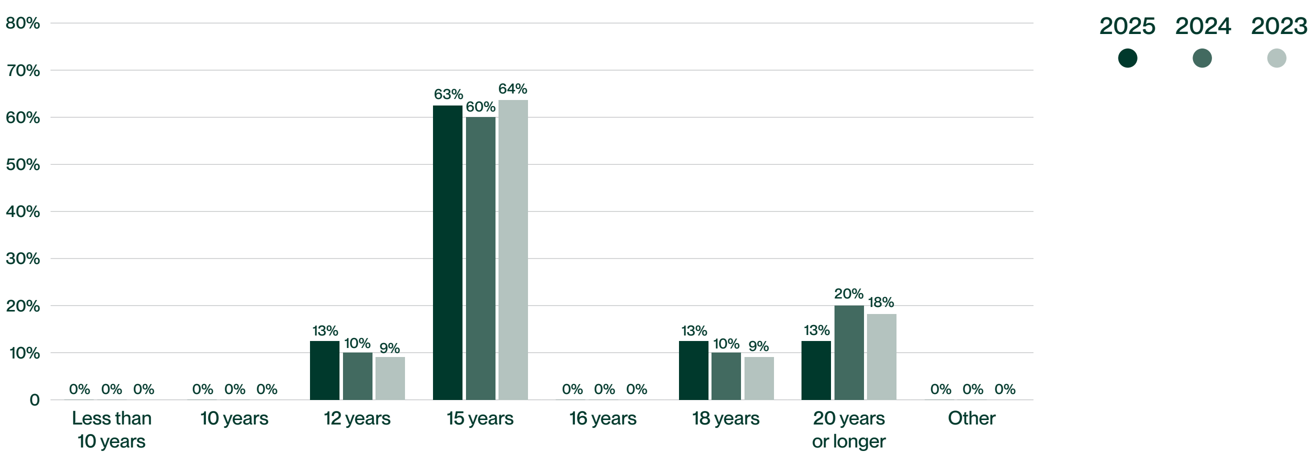


RUSSELL 3000

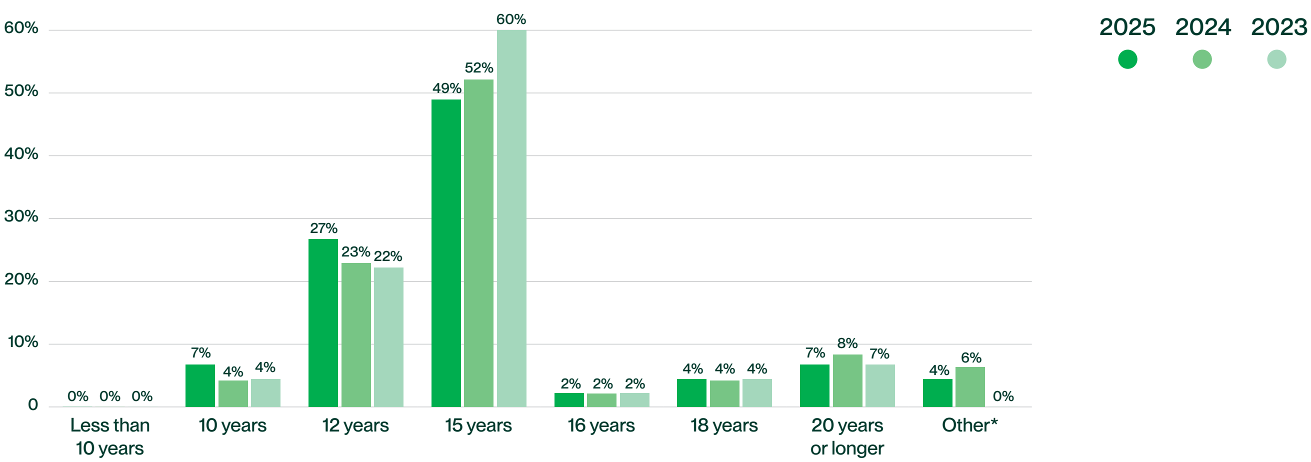


TENURE LIMIT FOR COMPANIES THAT HAVE A MANDATORY DIRECTOR TENURE POLICY

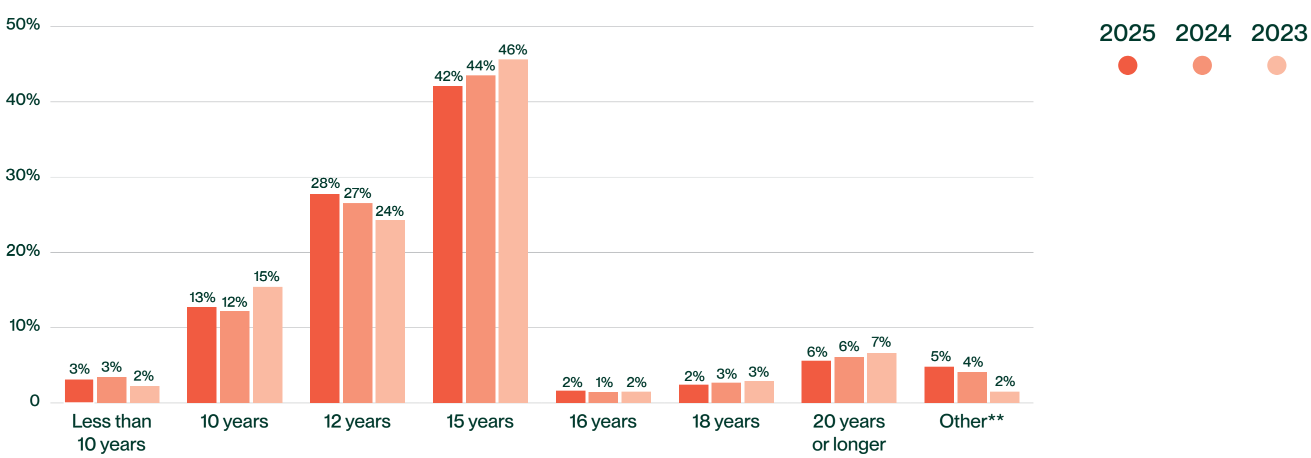
TOP 100 COMPANIES



S&P 500



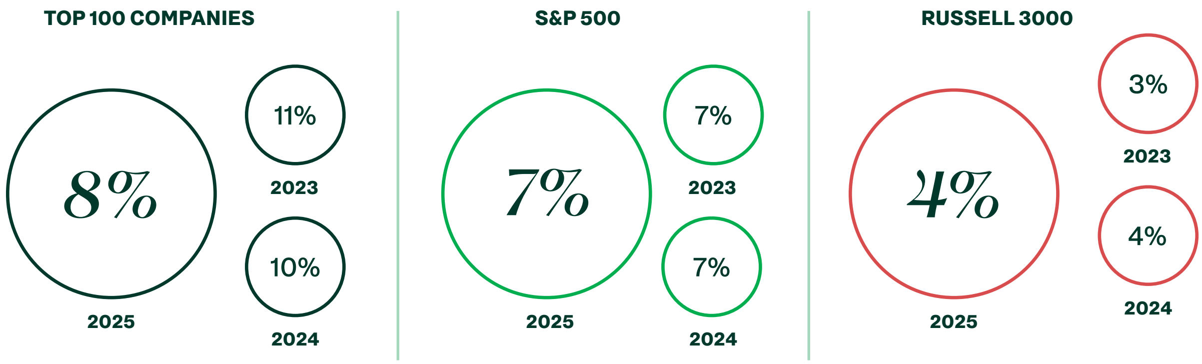
RUSSELL 3000



* Other category includes 11-year and 14-year term limits.
** Other category includes 13-year and 17-year term limits.

COMPANIES WITH BOTH MANDATORY DIRECTOR TENURE AND RETIREMENT AGE POLICY

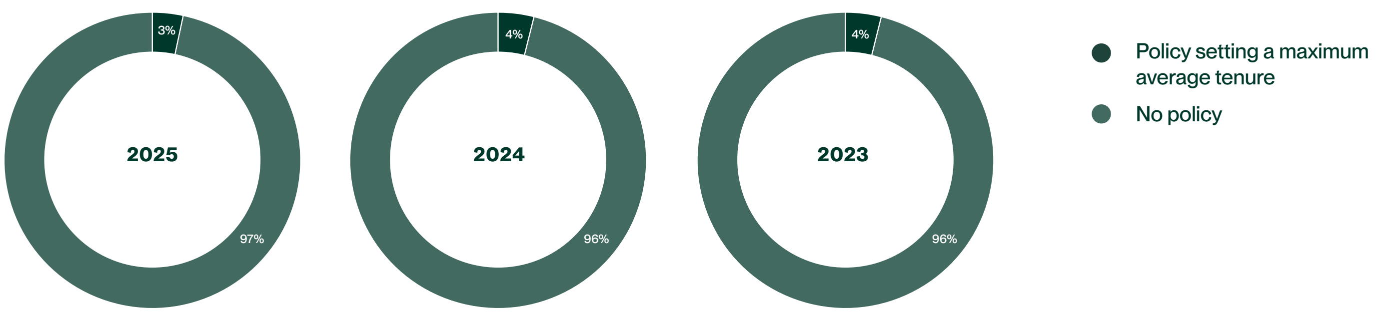
Indicates the companies that have term limits and a mandatory retirement age policy



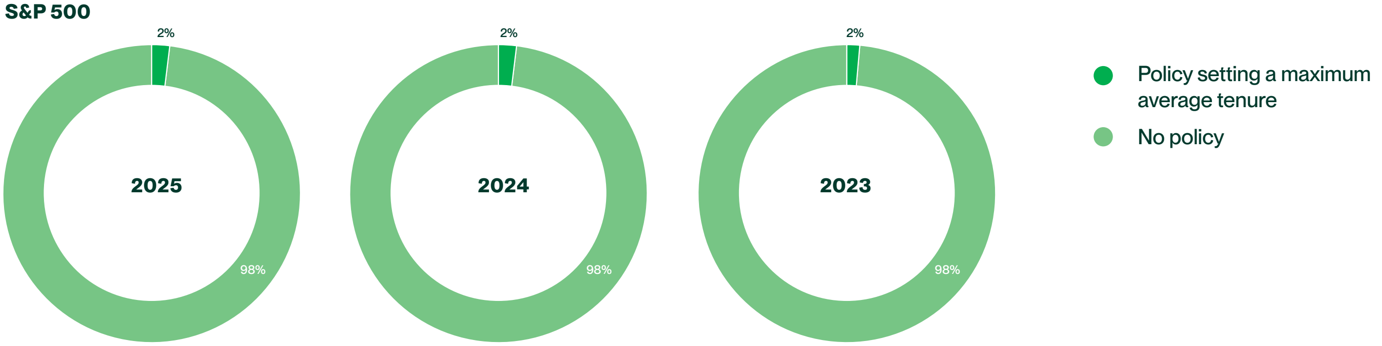
COMPANIES THAT HAVE MANDATORY MAXIMUM AVERAGE TENURE LIMITS

Indicates whether the company has a policy setting a maximum average tenure for its board members

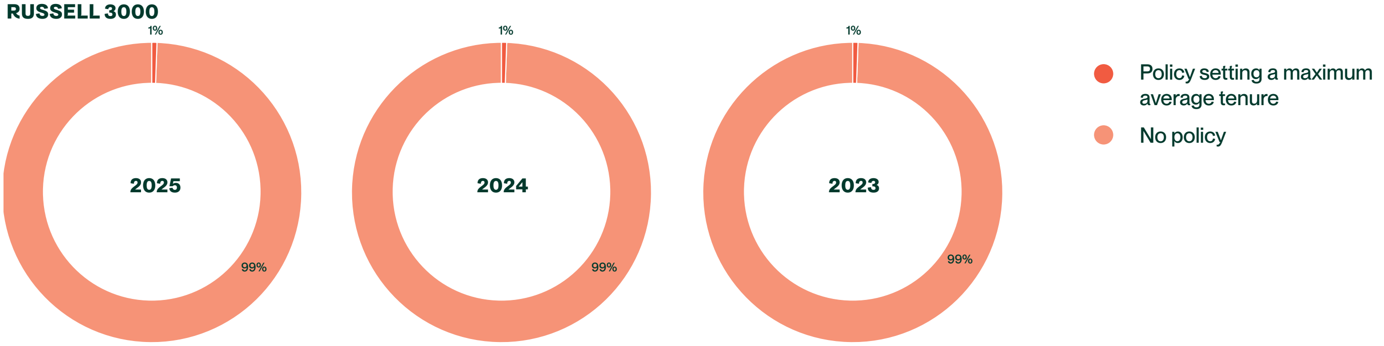
TOP 100 COMPANIES



S&P 500

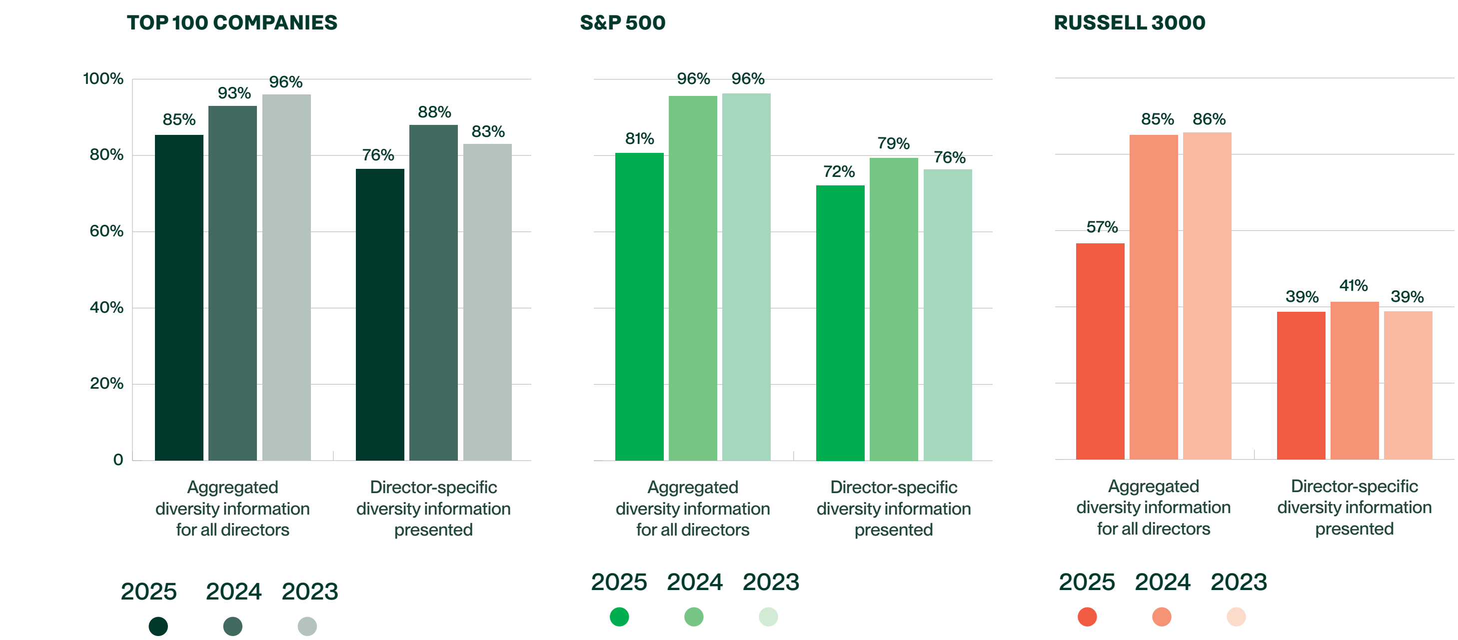


RUSSELL 3000

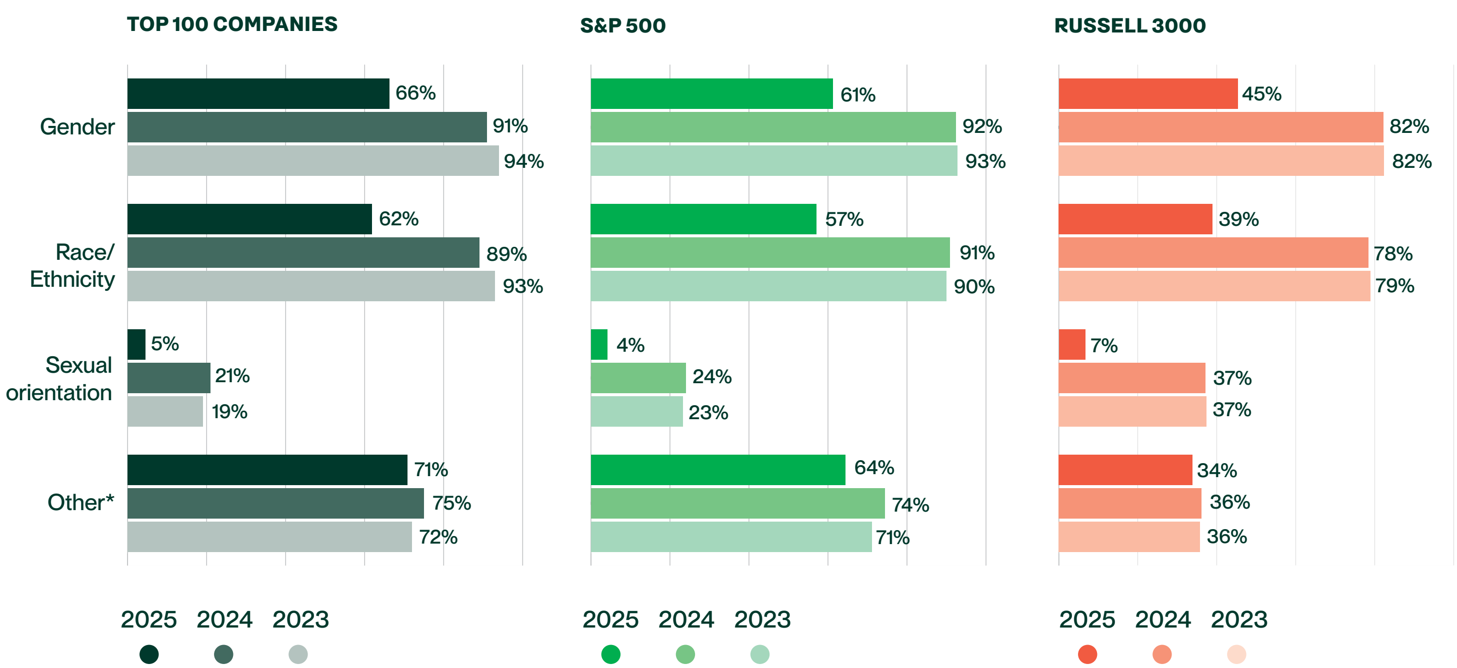


Board diversity

BOARD DIVERSITY DISCLOSURES

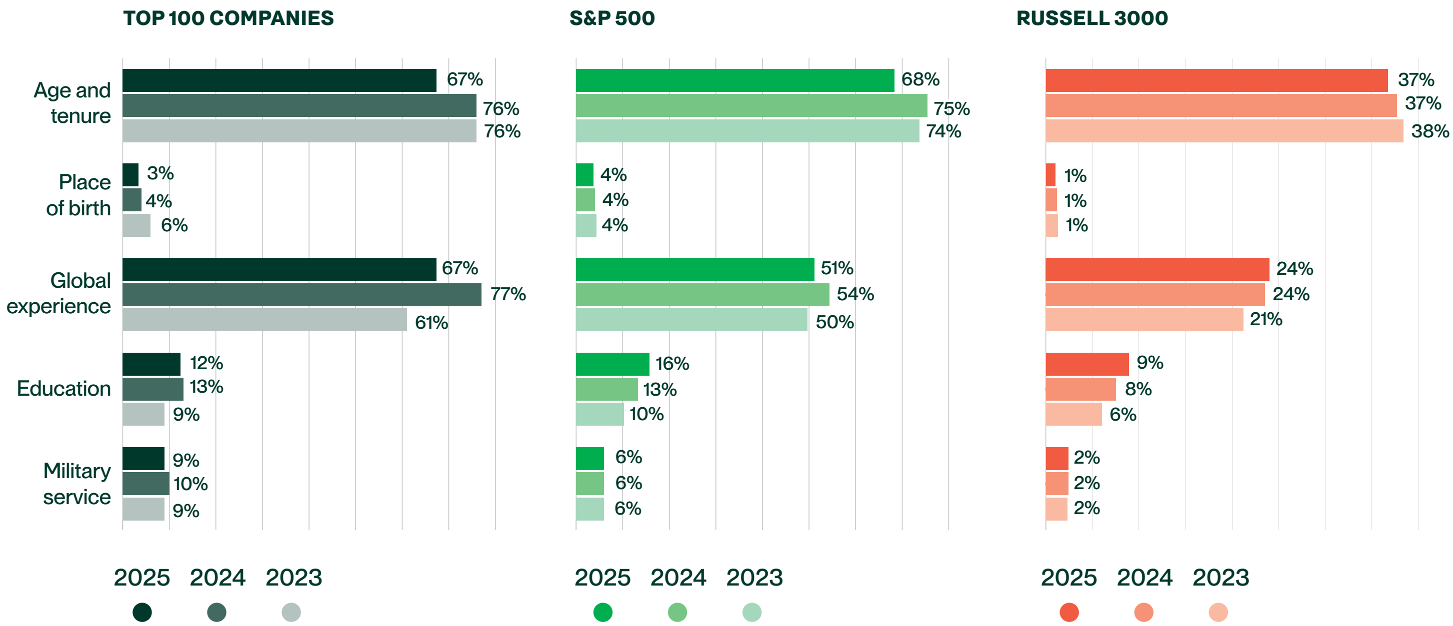


CATEGORIES OF AGGREGATED BOARD DIVERSITY INFORMATION PRESENTED

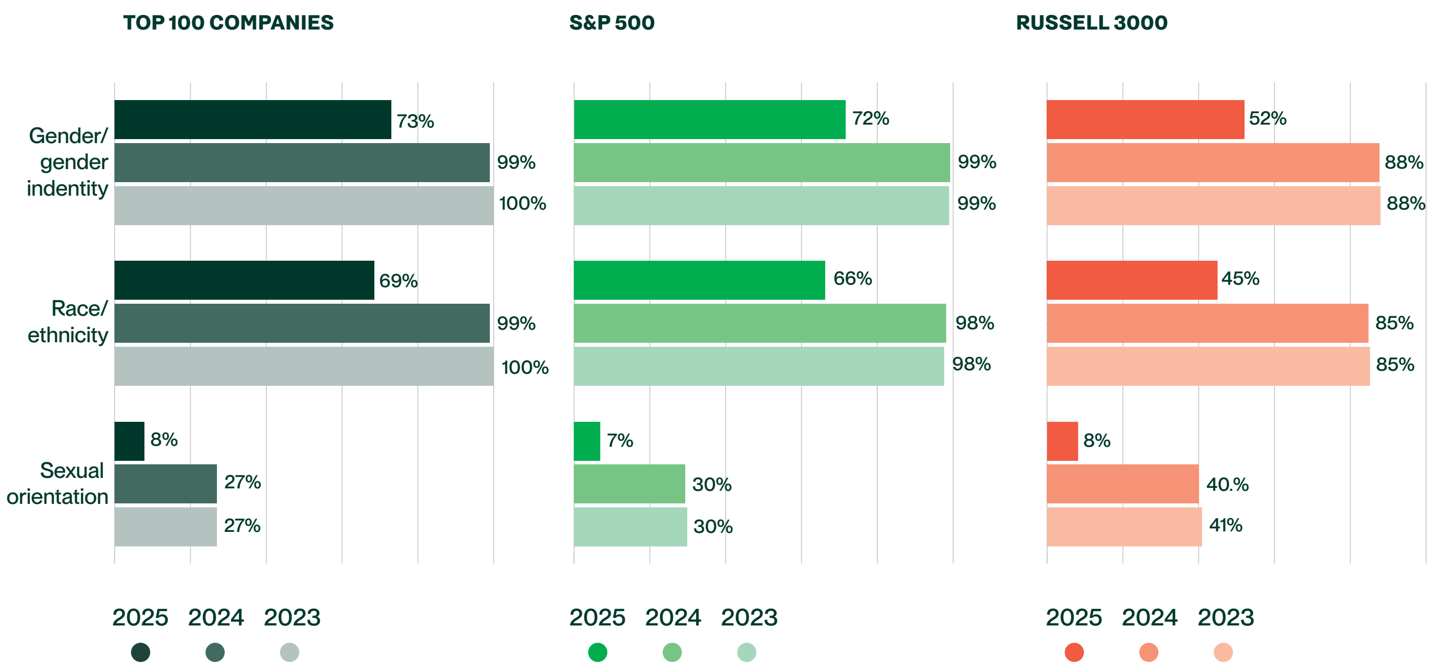


* Other category includes age, tenure, military service, and national origin/place of birth.

OTHER CATEGORIES OF AGGREGATED BOARD DIVERSITY INFORMATION PRESENTED



WHICH CATEGORIES OF DIVERSITY DID COMPANIES PRESENT IN THE PROXY?

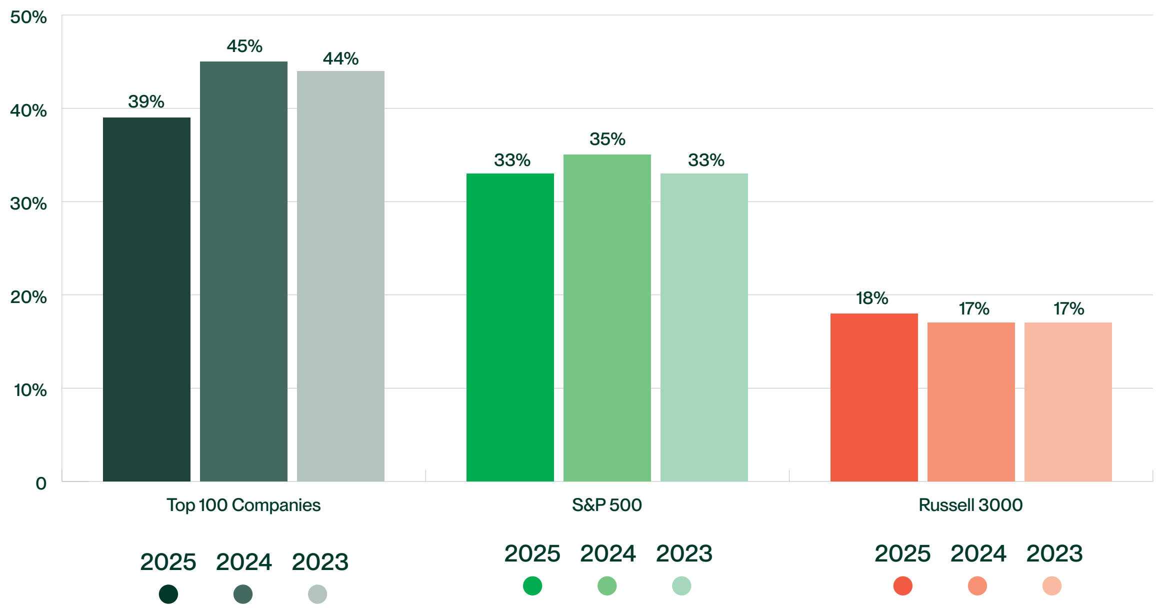


Director skillset

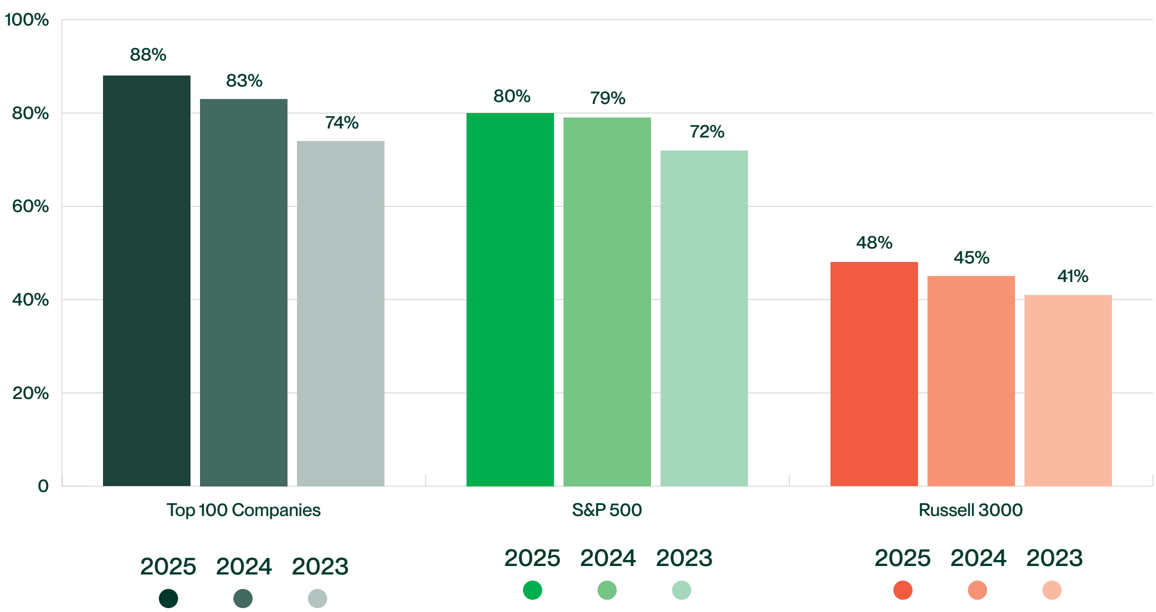
DIRECTOR SKILLS DISCLOSURE

The following presents the information related to disclosures of aggregated and director-specific skills disclosure. Certain companies present both.

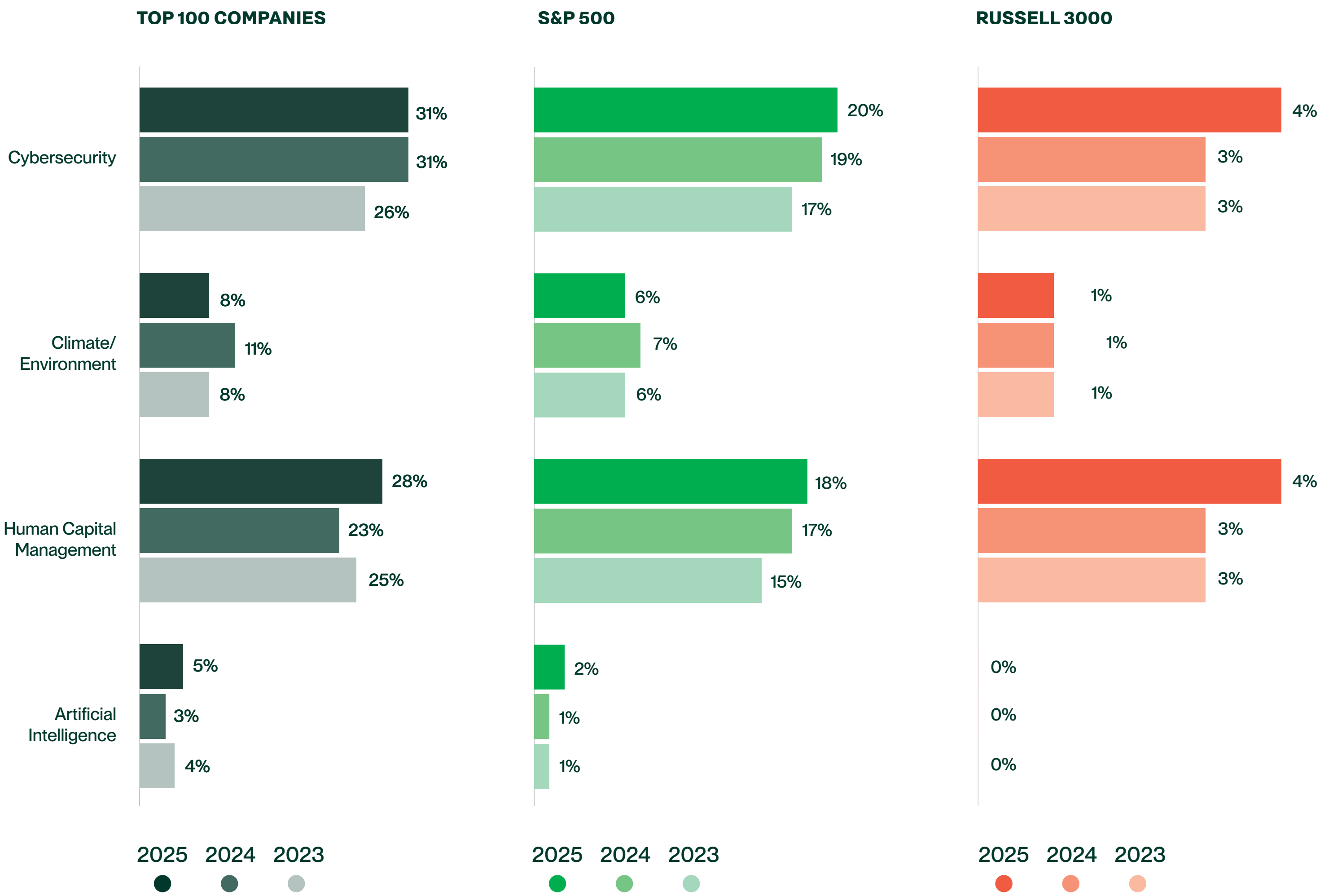
PRESENTED AGGREGATED DIRECTOR INFORMATION



PRESENTED INDIVIDUAL DIRECTOR INFORMATION



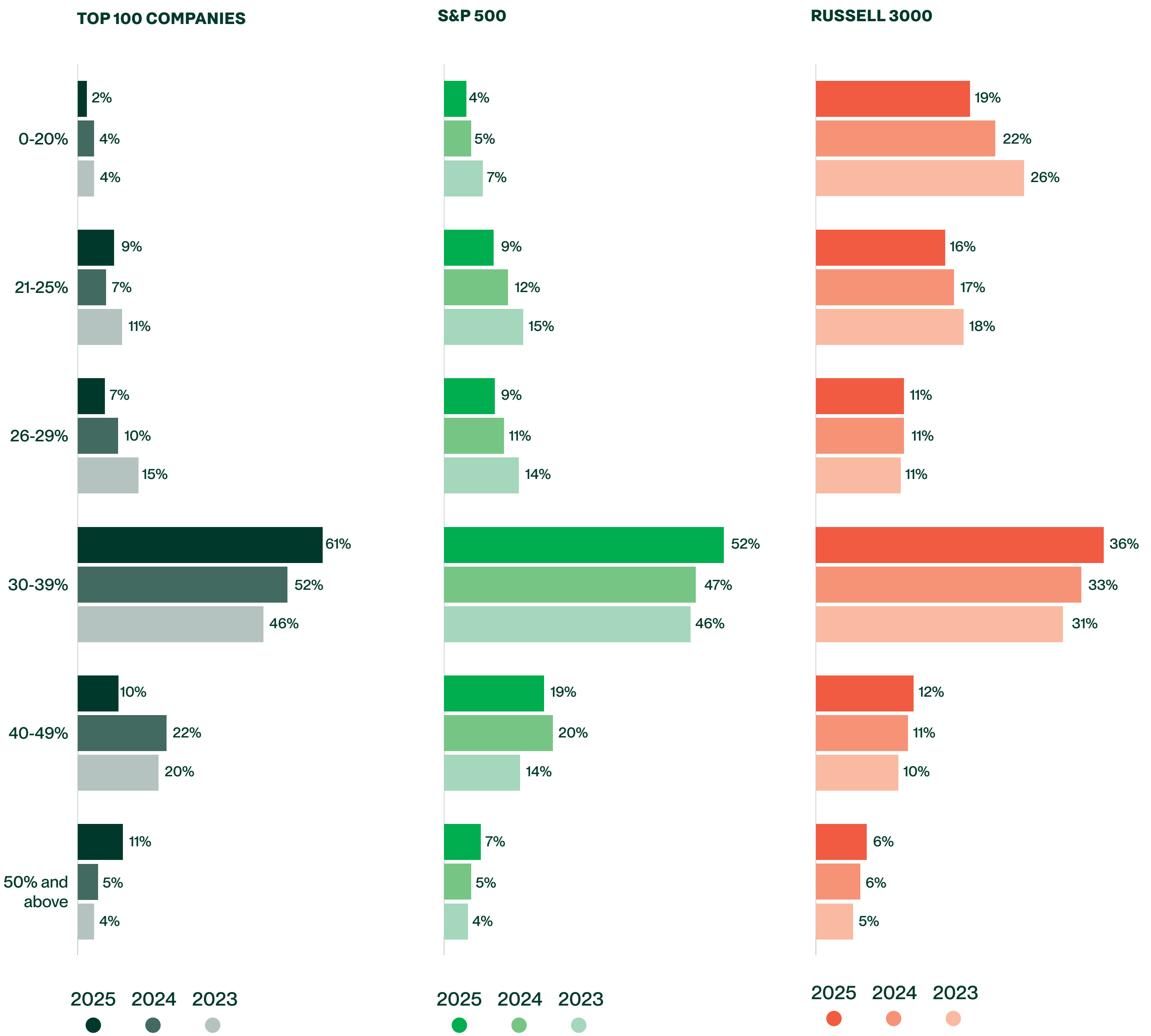
SELECTED SKILLS, EXPERIENCE AND CHARACTERISTICS IDENTIFIED AS IMPORTANT IN SELECTION OF DIRECTORS



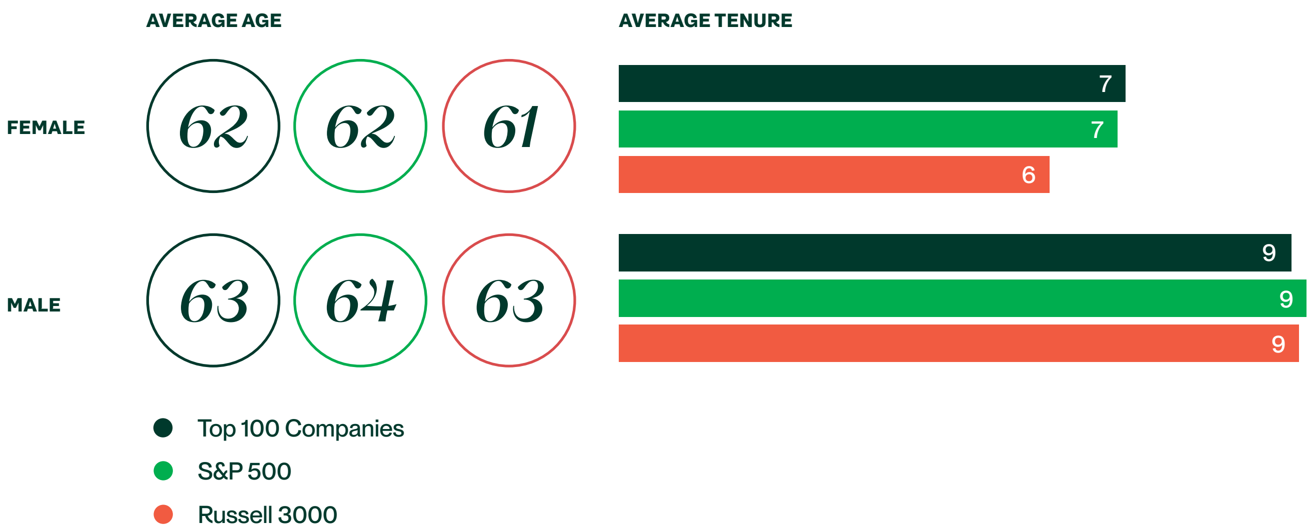
Women in leadership

	Index	2025	2024	2023
FEMALE CEO	TOP 100 COMPANIES	8%	10%	10%
FEMALE CEO	S&P 500	9%	8%	8%
FEMALE CEO	RUSSELL 3000	8%	7%	7%
FEMALE BOARD CHAIR	TOP 100 COMPANIES	8%	9%	12%
FEMALE BOARD CHAIR	S&P 500	11%	11%	8%
FEMALE BOARD CHAIR	RUSSELL 3000	9%	8%	7%
LEAD INDEPENDENT DIRECTOR	TOP 100 COMPANIES	32%	25%	23%
LEAD INDEPENDENT DIRECTOR	S&P 500	23%	19%	16%
LEAD INDEPENDENT DIRECTOR	RUSSELL 3000	18%	16%	14%
FEMALE CFO	TOP 100 COMPANIES	16%	16%	20%
FEMALE CFO	S&P 500	18%	18%	18%
FEMALE CFO	RUSSELL 3000	17%	17%	16%
CHIEF LEGAL OFFICER OR GENERAL COUNSEL	TOP 100 COMPANIES	38%	37%	42%
CHIEF LEGAL OFFICER OR GENERAL COUNSEL	S&P 500	38%	37%	40%
CHIEF LEGAL OFFICER OR GENERAL COUNSEL	RUSSELL 3000	34%	33%	32%

WOMEN ON THE BOARD

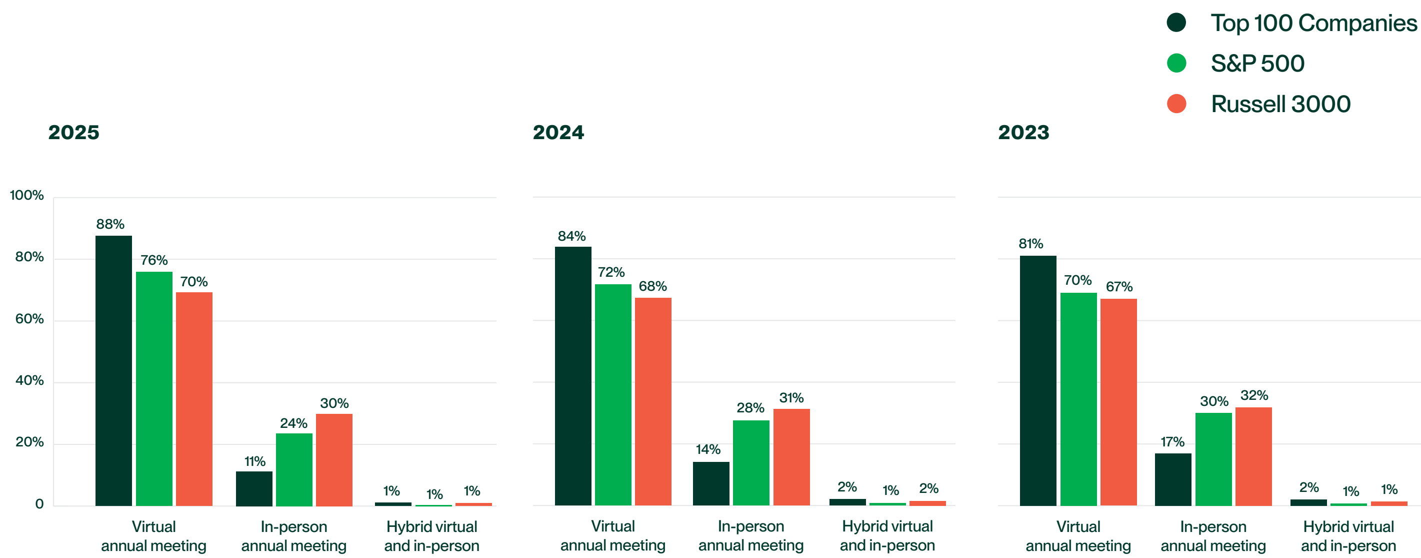


AVERAGE AGE AND TENURE

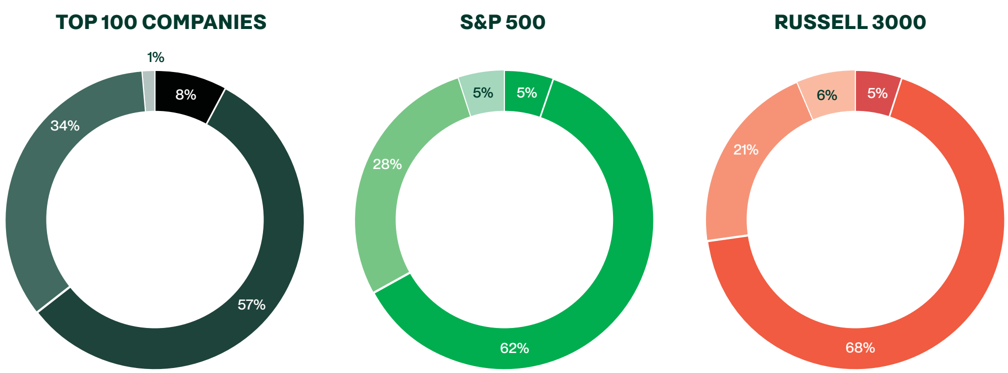


Format of annual shareholder meetings

VIRTUAL, IN-PERSON OR HYBRID ANNUAL MEETING



HOW SHAREHOLDERS CAN ASK QUESTIONS AT VIRTUAL MEETINGS



Submit questions in portal/meeting platform **only before meeting**

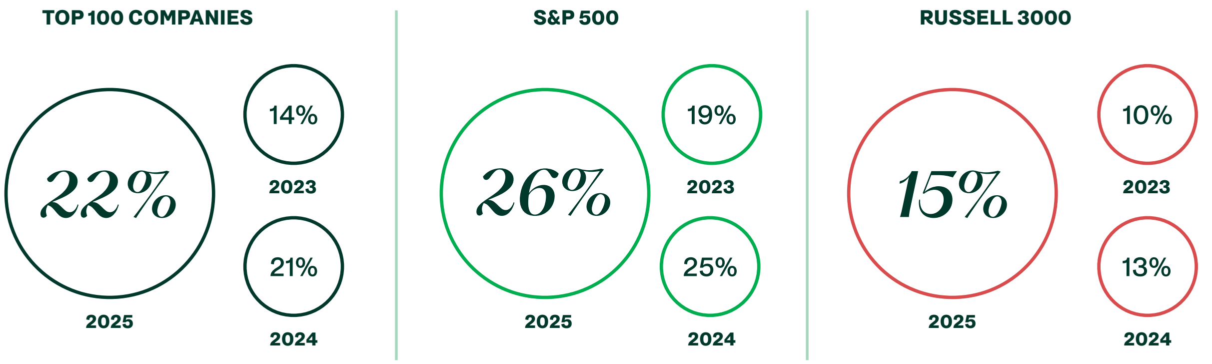
Submit questions in portal/meeting platform **only during the meeting**

Submit questions in portal/meeting platform **before or during meeting**

Can ask **live** during meeting

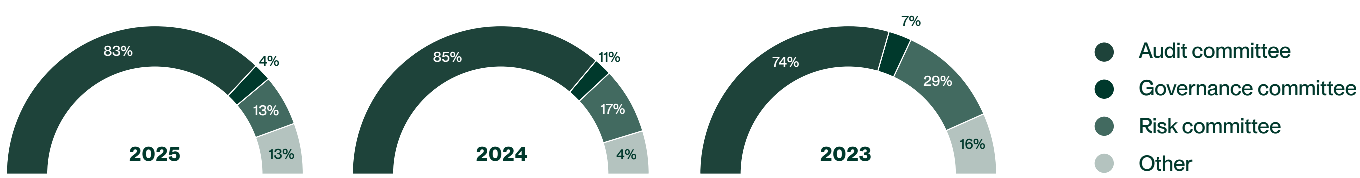
Cybersecurity

DIRECTORS WITH CYBERSECURITY EXPERIENCE

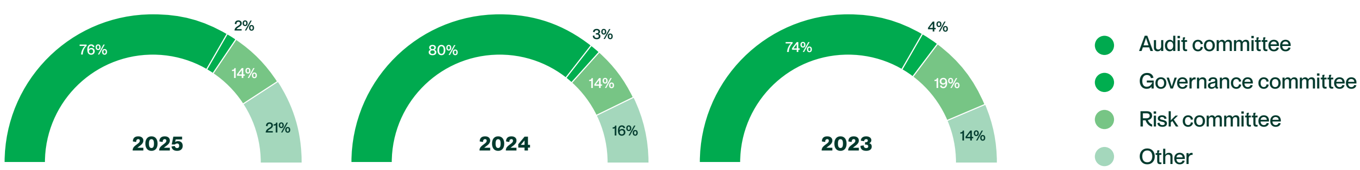


COMMITTEE(S) RESPONSIBLE FOR OVERSEEING CYBERSECURITY AND/OR DATA SECURITY/PRIVACY MATTERS*

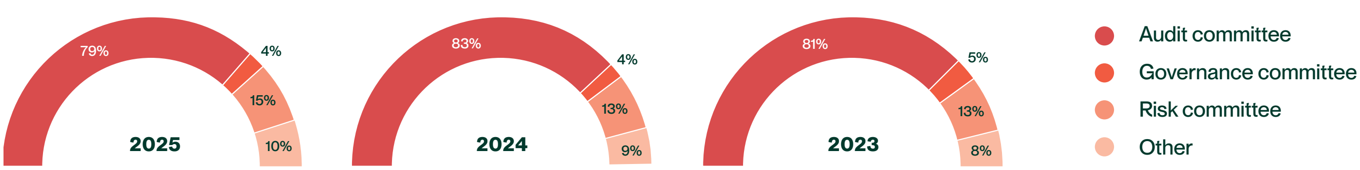
TOP 100 COMPANIES



S&P 500



RUSSELL 3000



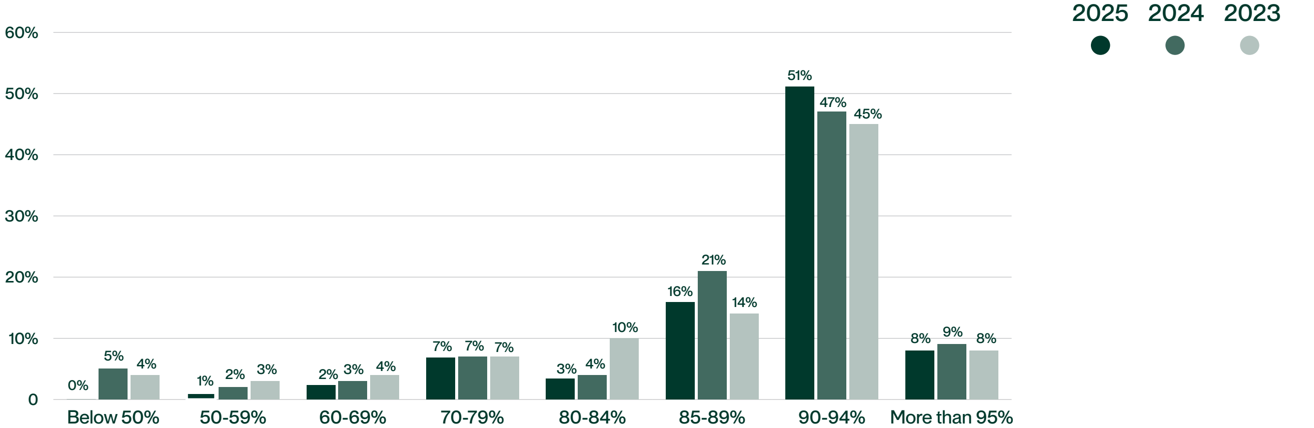
* For several companies, responsibilty for cybersecurity and/or data security/privacy is shared by two or more committees.

Other include the Aerospace Safety Committee, Business and Security Committee, Compliance Committee, Executive Cybersecurity Oversight Governance Committee, Finance Committee, Information Security Risk Committee, Operations and Technology Committee, Privacy Committee, Public Policy Committee, Regulatory Compliance and Sustainability Committee, and the Special Activities Committee.

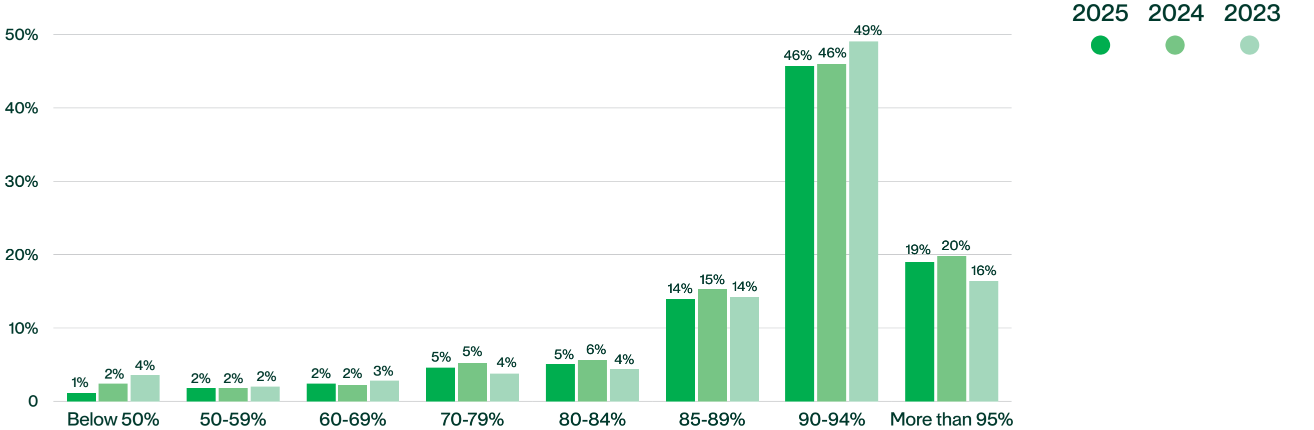
Say-on-pay

SAY-ON-PAY APPROVAL RATES

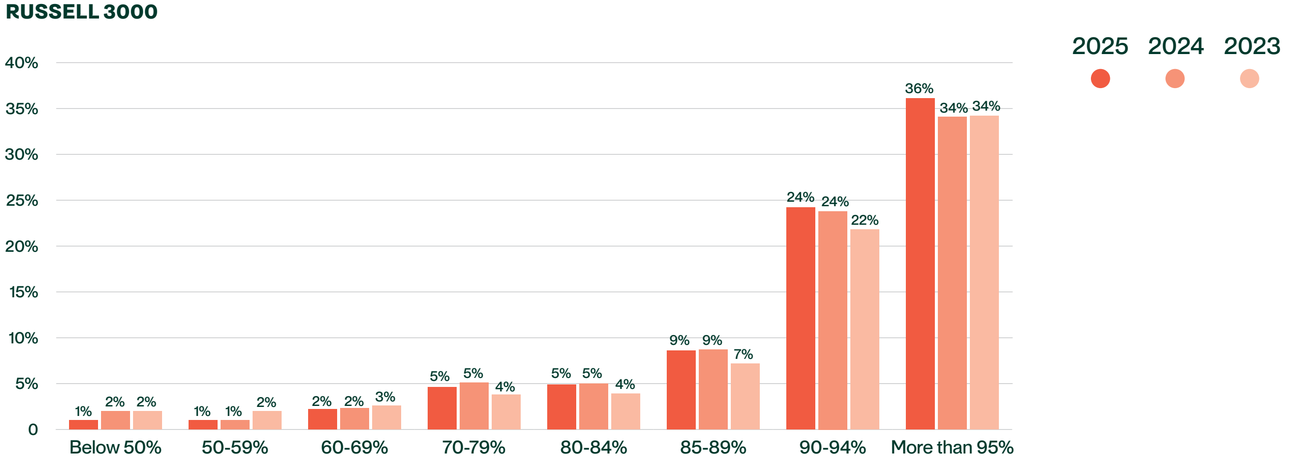
TOP 100 COMPANIES



S&P 500

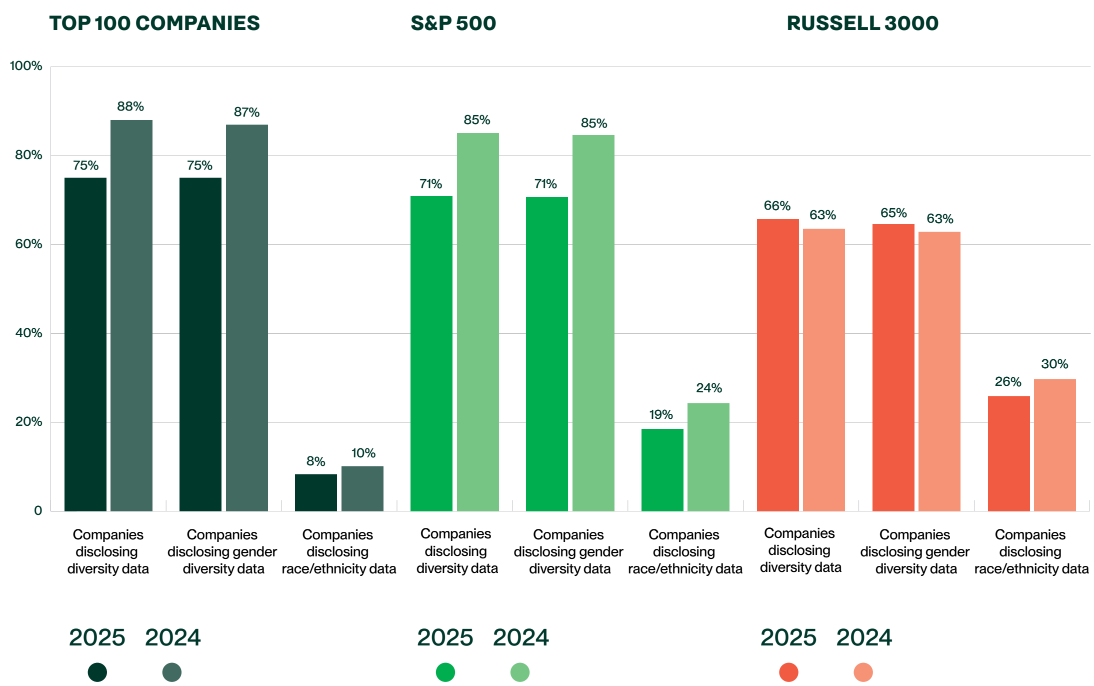


RUSSELL 3000

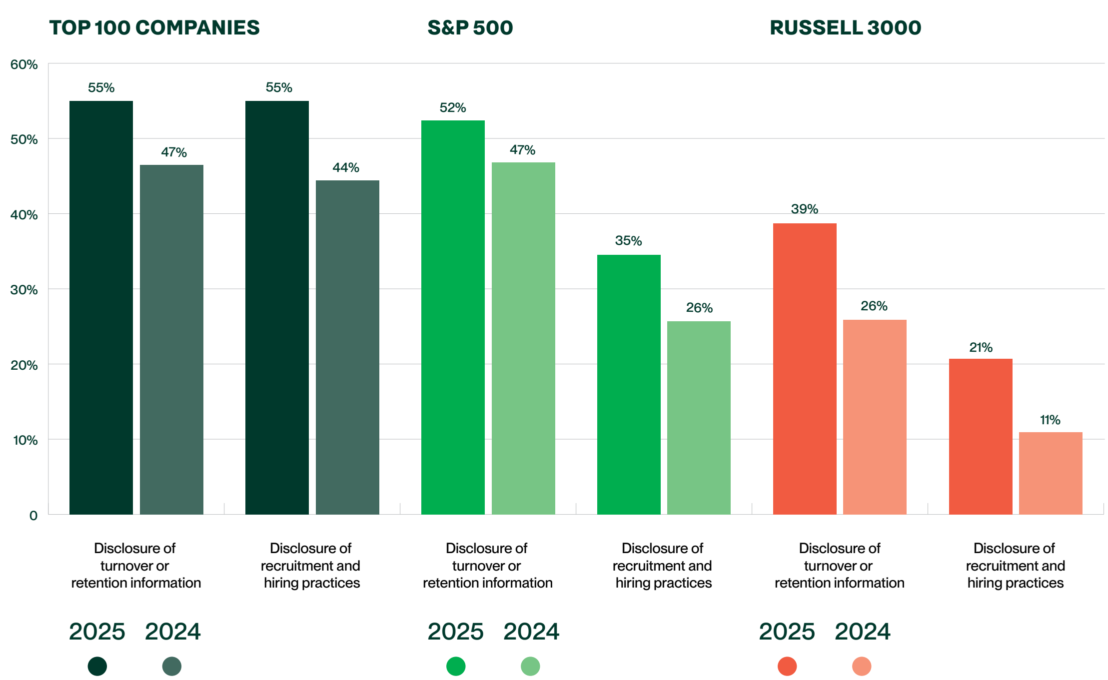


Human capital management

WORKFORCE DIVERSITY DISCLOSURE

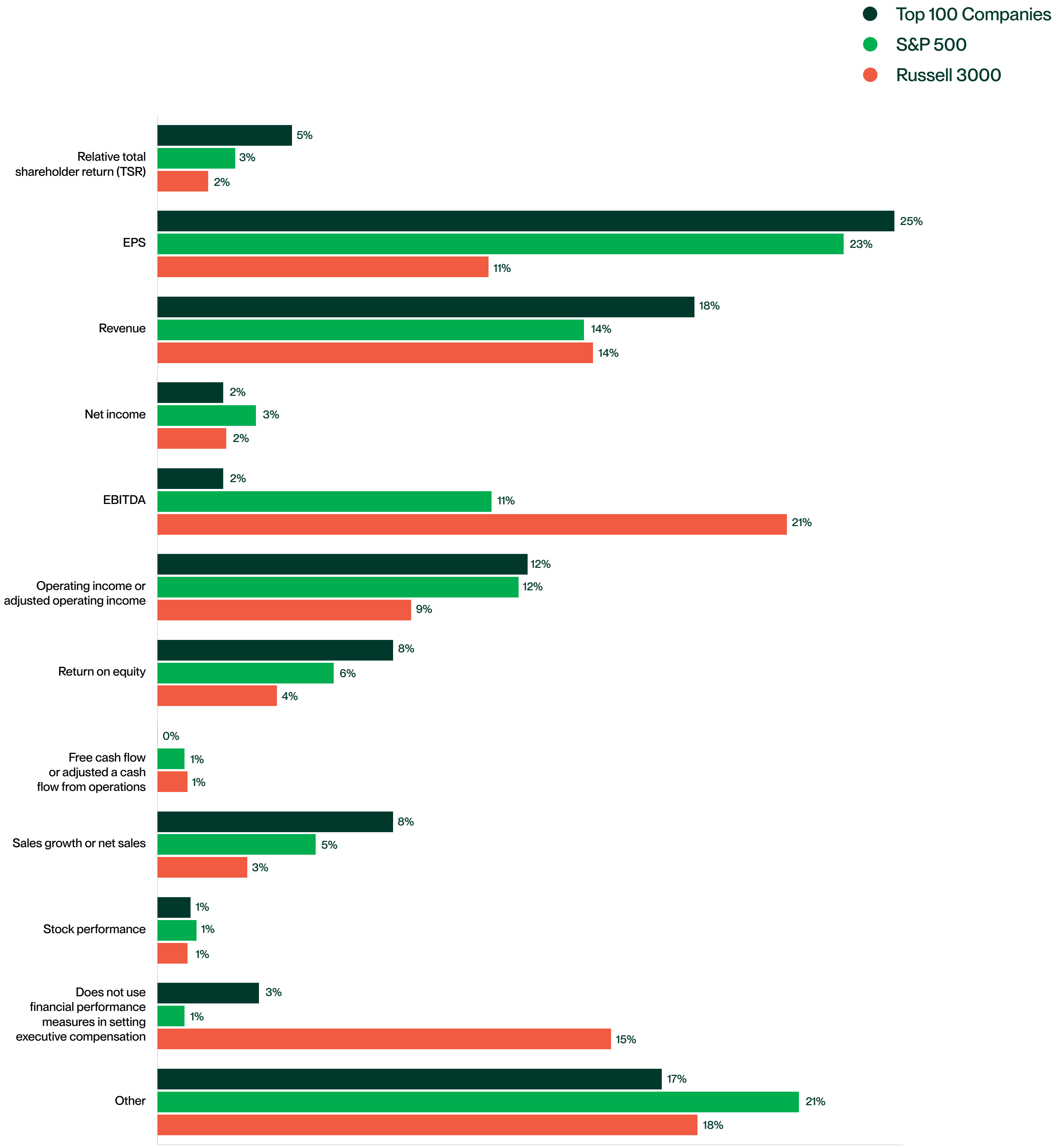


EMPLOYMENT DISCLOSURE



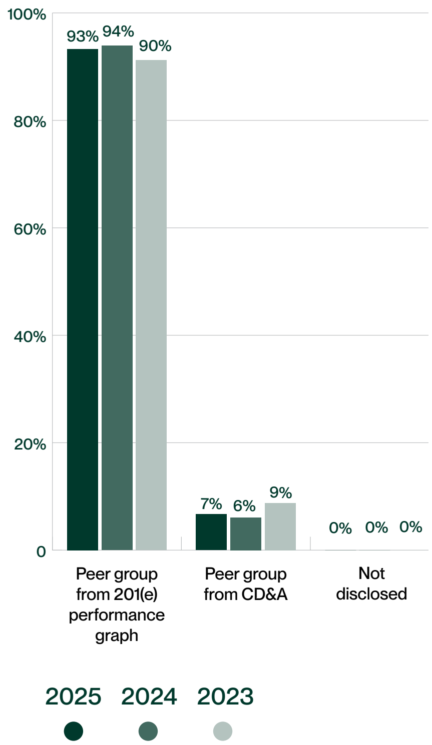
Pay versus performance

MOST COMMON COMPANY-SELECTED MEASURES IN 2025

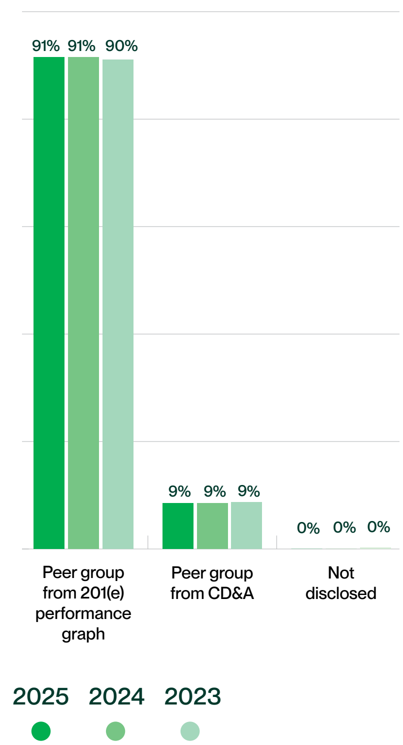


PEER GROUP SELECTED FOR TSR PERFORMANCE GRAPH IN PvP DISCLOSURE

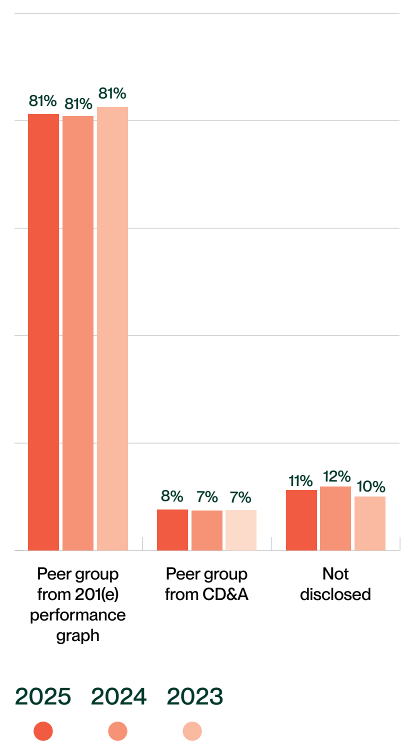
TOP 100 COMPANIES



S&P 500

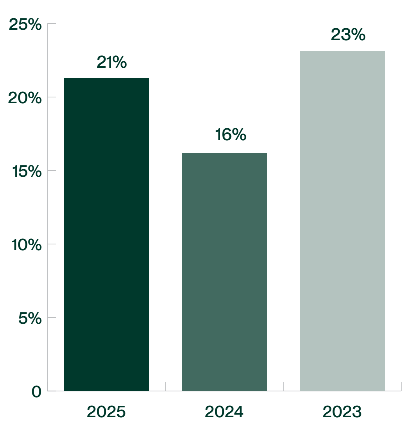


RUSSELL 3000

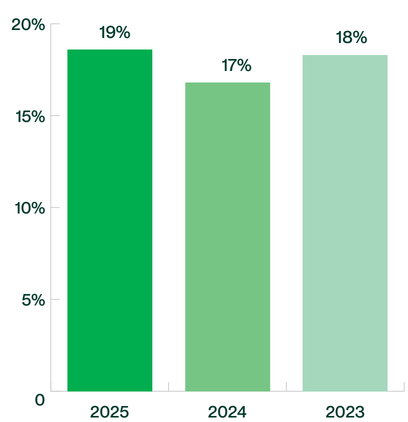


COMPANIES THAT INCLUDE NON-FINANCIAL METRICS IN THEIR LIST OF MOST IMPORTANT FINANCIAL PERFORMANCE MEASURES

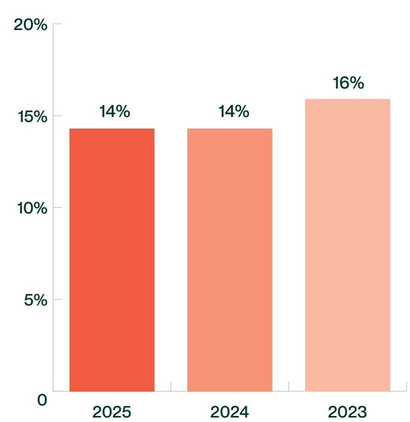
TOP 100 COMPANIES



S&P 500

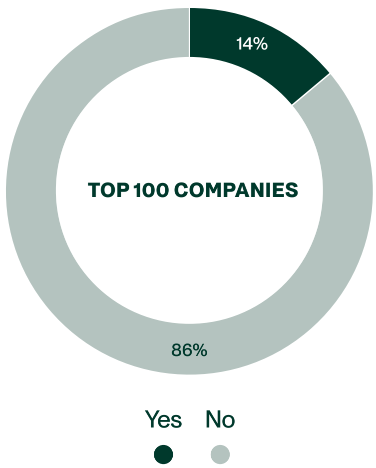


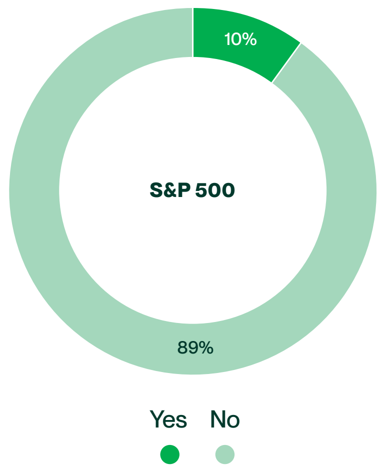
RUSSELL 3000

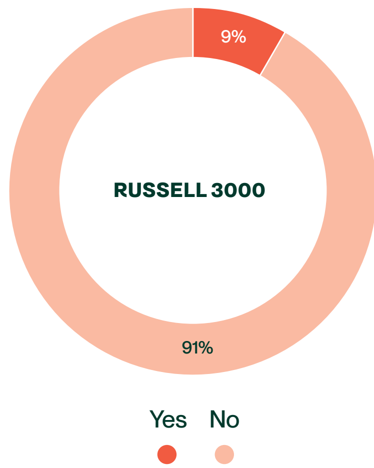


Equity award table disclosures

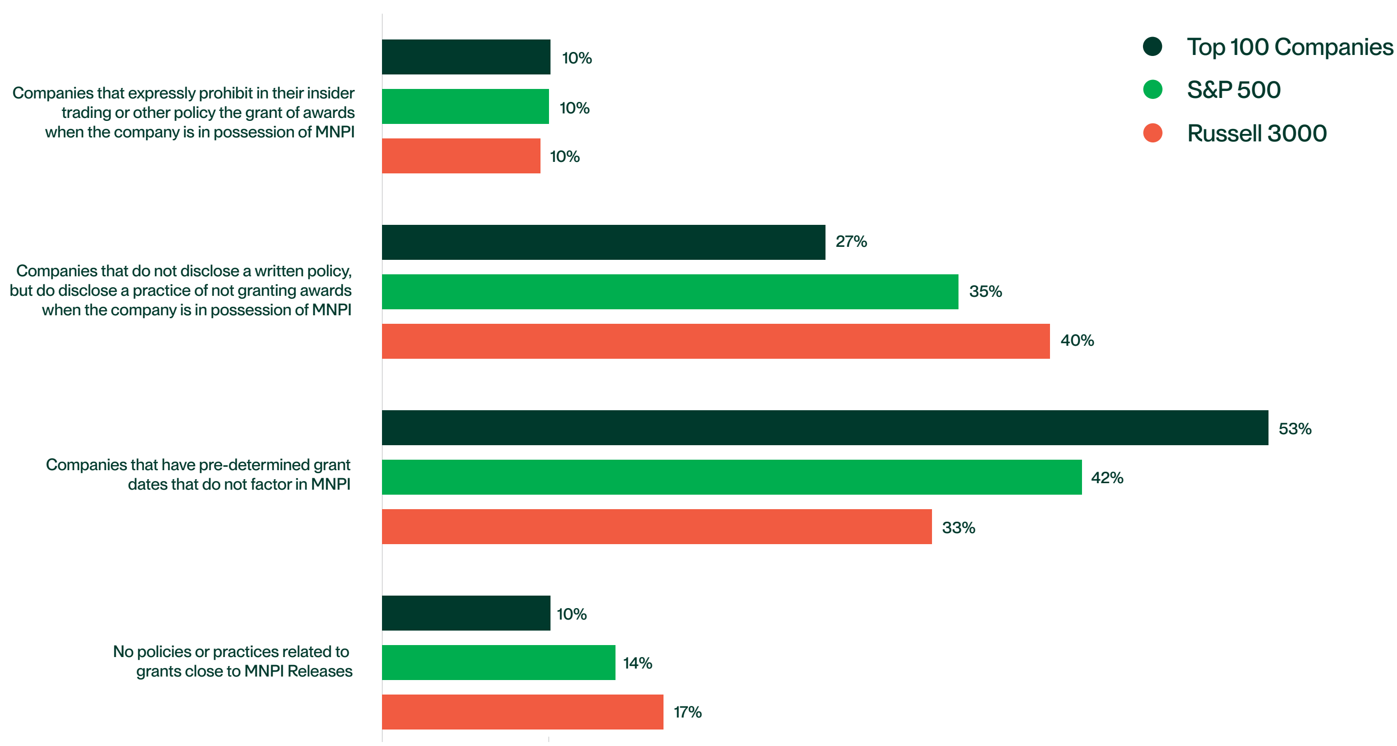
COMPANIES THAT DISCLOSED AN EQUITY GRANT PROXIMATE TO THE RELEASE OF MATERIAL NON-PUBLIC INFORMATION (MNPI) PURSUANT TO ITEM 402(x) OF REGULATION S-K







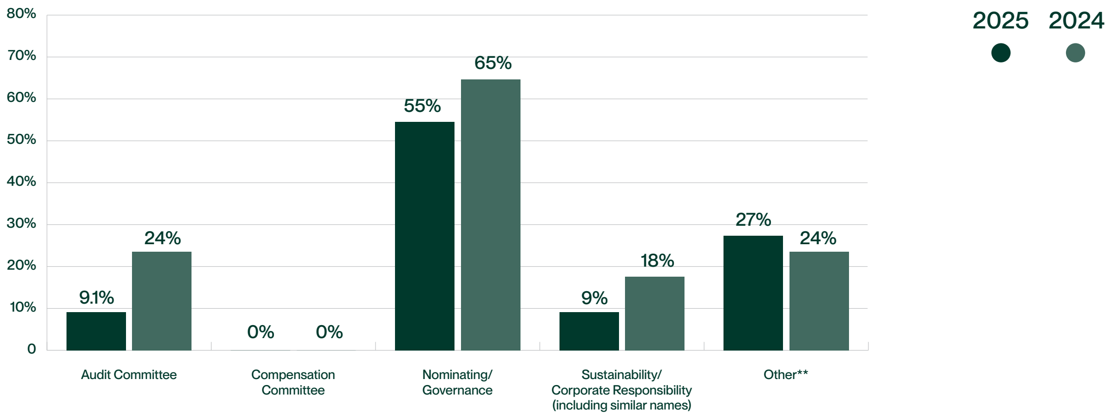
COMPANIES THAT DISCLOSED A PROHIBITION OR PRACTICE OF NOT ISSUING GRANTS WHEN IN POSSESSION OF MNPI



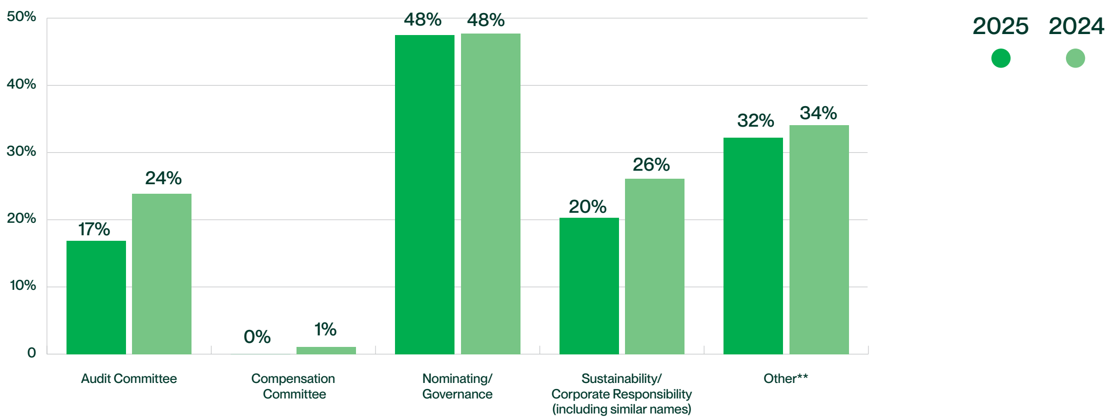
Environmental governance

COMMITTEE(S) RESPONSIBLE FOR OVERSEEING ENVIRONMENTAL MATTERS*

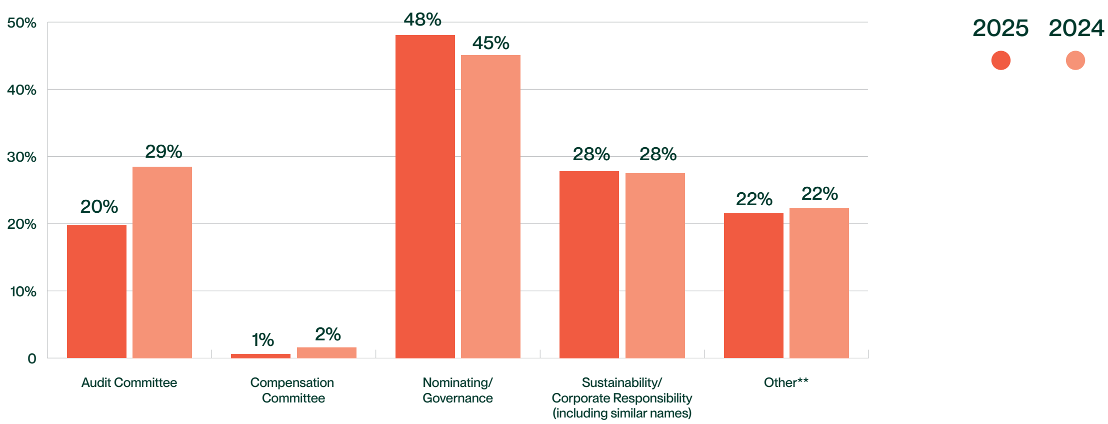
TOP 100 COMPANIES



S&P 500



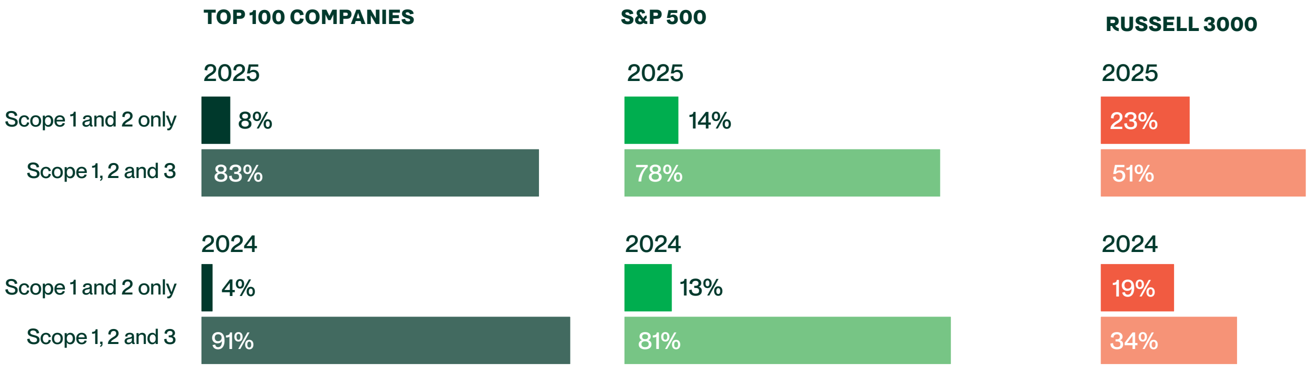
RUSSELL 3000



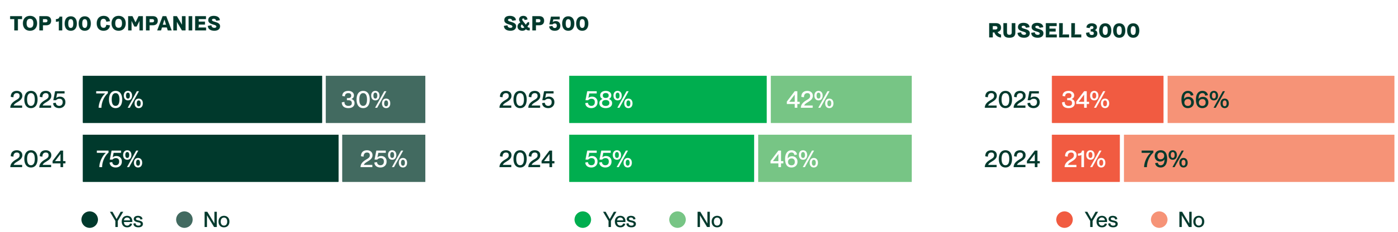
* Certain companies disclosed which board committee(s) had responsibility for ESG oversight.

** Other includes Finance Committee, Risk Committee, Public Policy Committee.

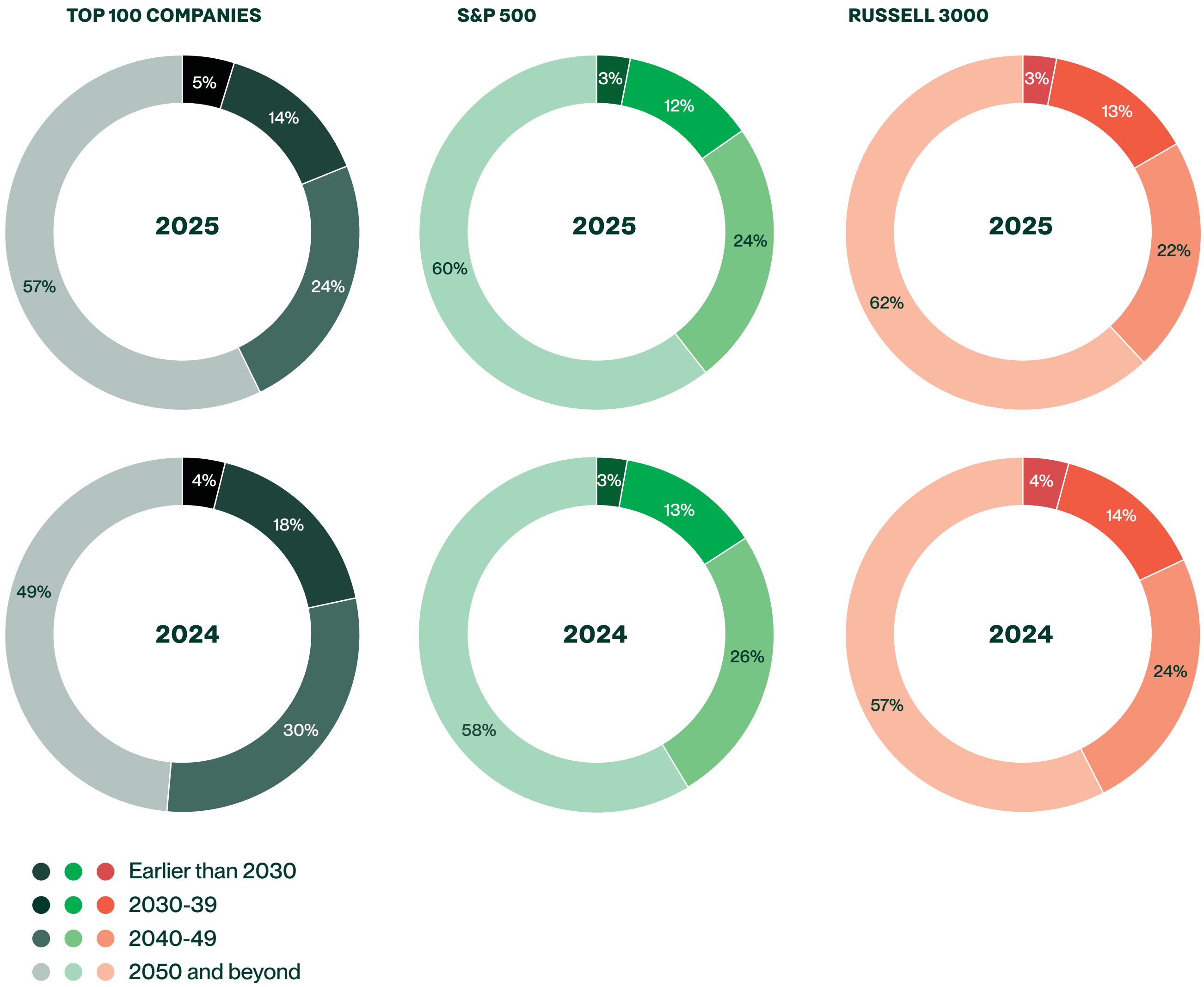
COMPANIES THAT HAVE DISCLOSED GHG EMISSION METRICS



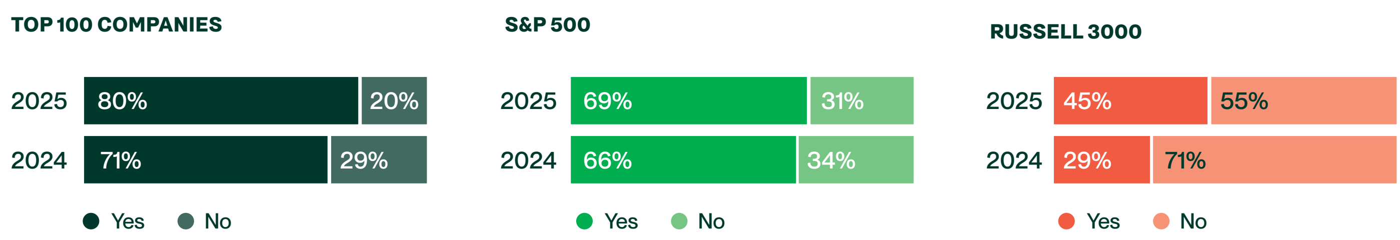
NET ZERO CARBON/GHG EMISSIONS TARGET SET



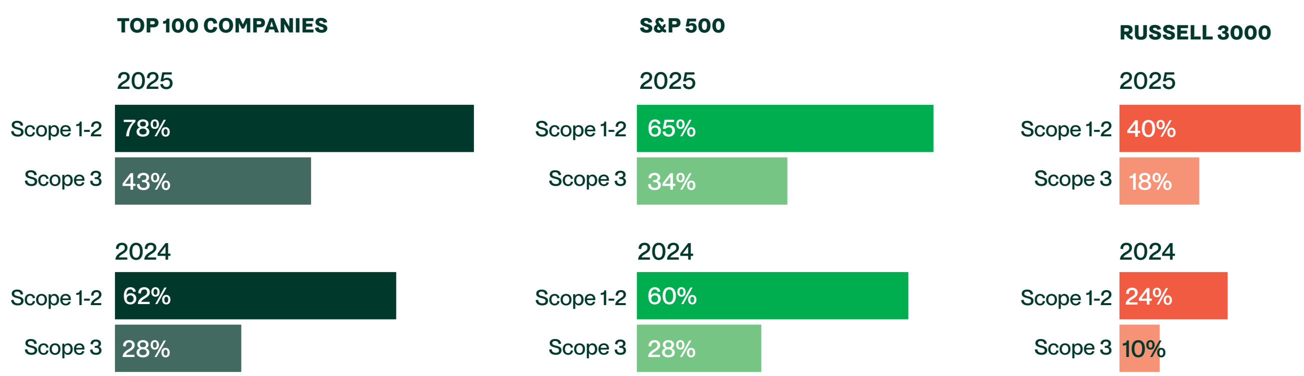
WHERE COMPANIES HAVE SET NET ZERO EMISSIONS TARGETS, TIMEFRAME SPECIFIED



A REDUCTION TARGET THAT IS DIFFERENT FROM NET ZERO TARGET SET

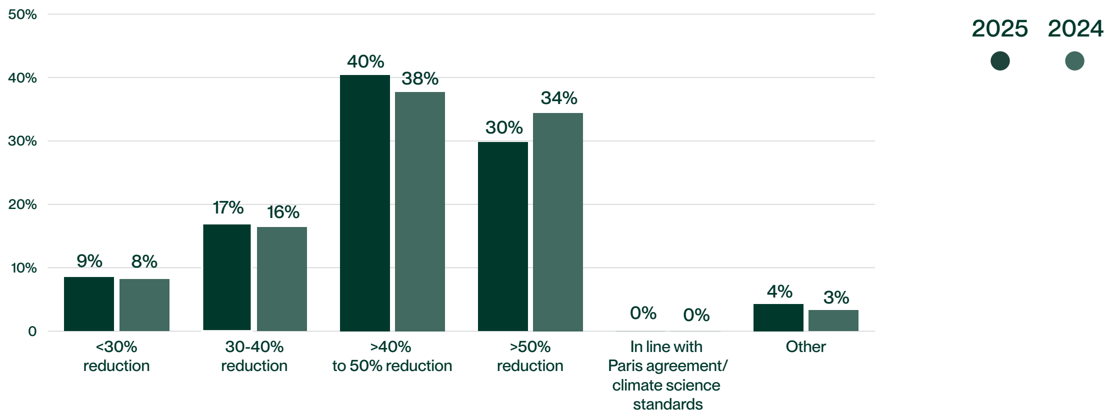


CATEGORIES OF EMISSIONS COVERED UNDER REDUCTION TARGET

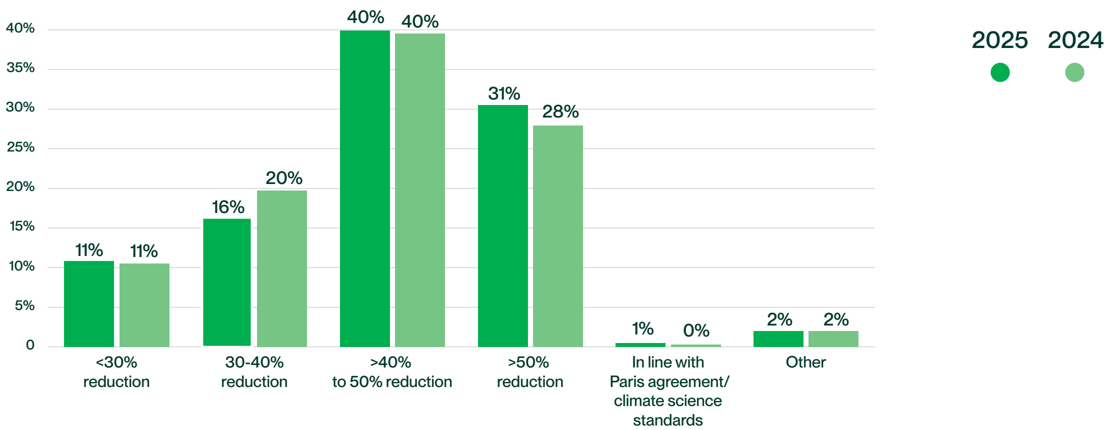


SCOPE 1-2 EMISSION REDUCTION TARGET LEVEL

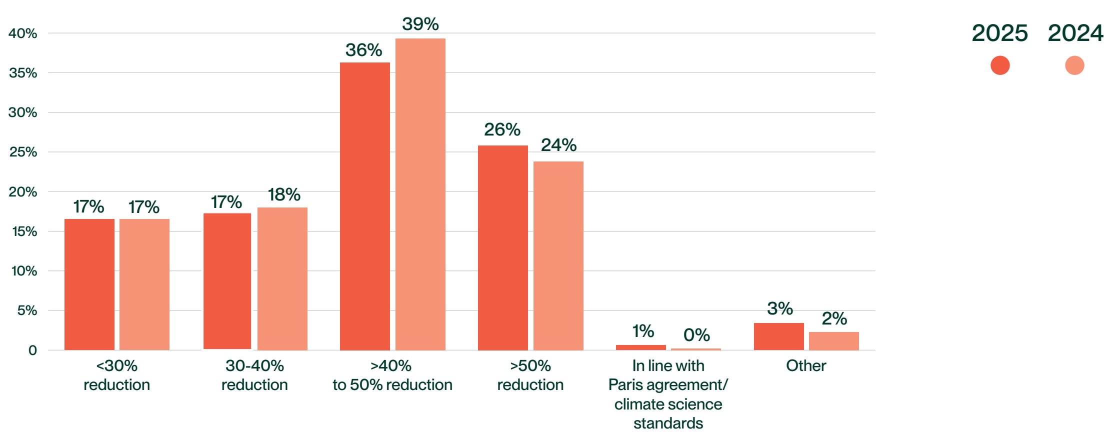
TOP 100 COMPANIES



S&P 500



RUSSELL 3000

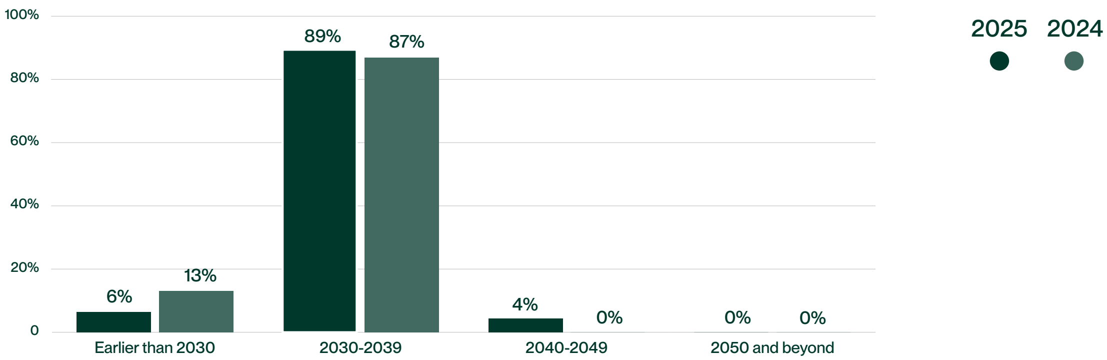


* Some companies set multiple target date ranges, and some companies have set incremental reduction targets in addition to net zero targets.

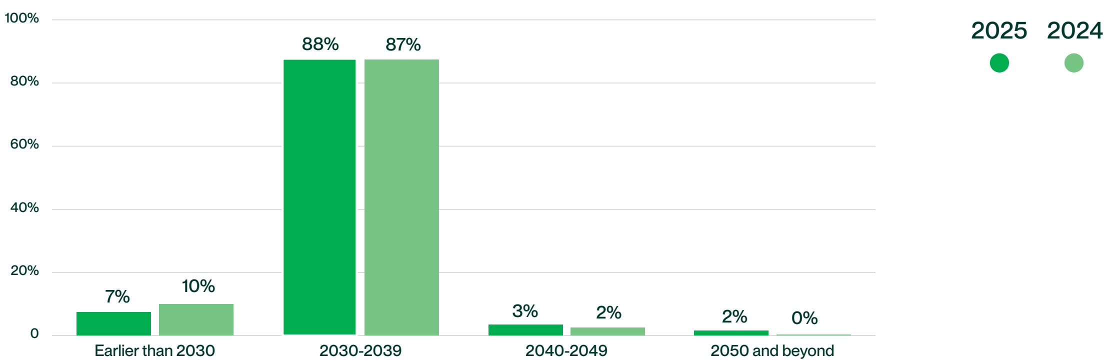
** Other includes companies where a reduction target is mentioned, but the percentage is not disclosed, as well as those aligned with science-based GHG reduction targets.

TIMEFRAME FOR SCOPE 1-2 EMISSION REDUCTION TARGET

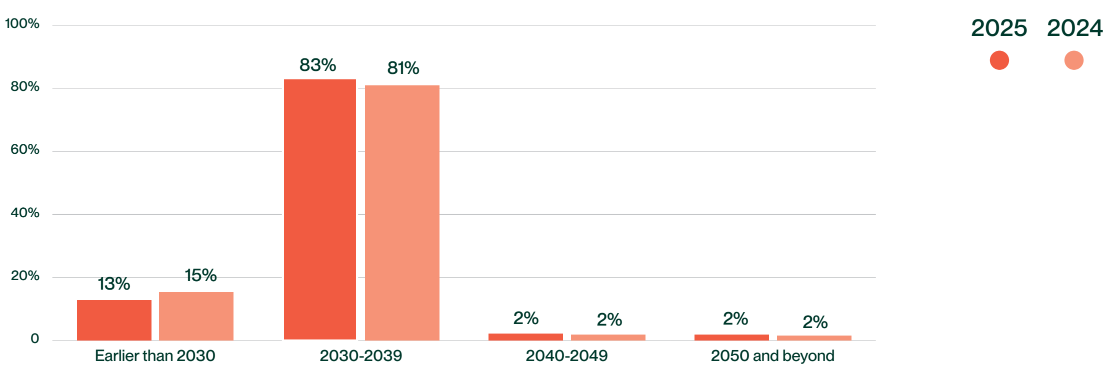
TOP 100 COMPANIES



S&P 500



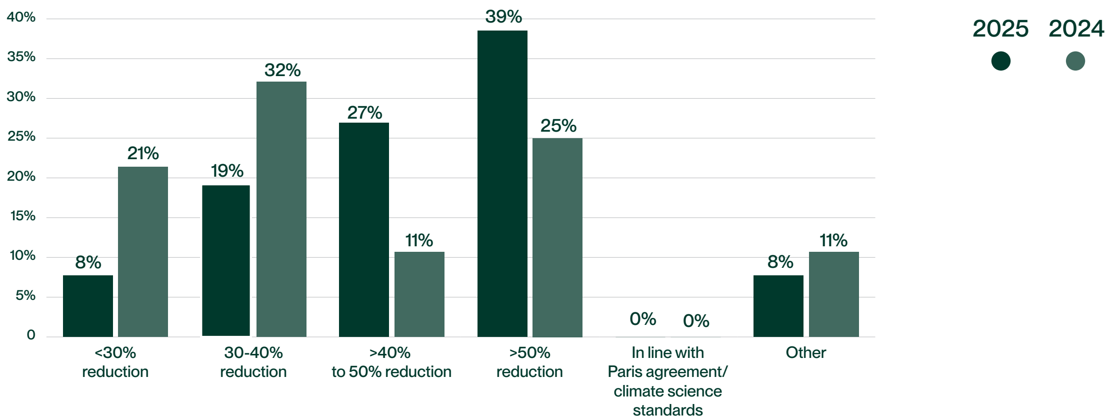
RUSSELL 3000



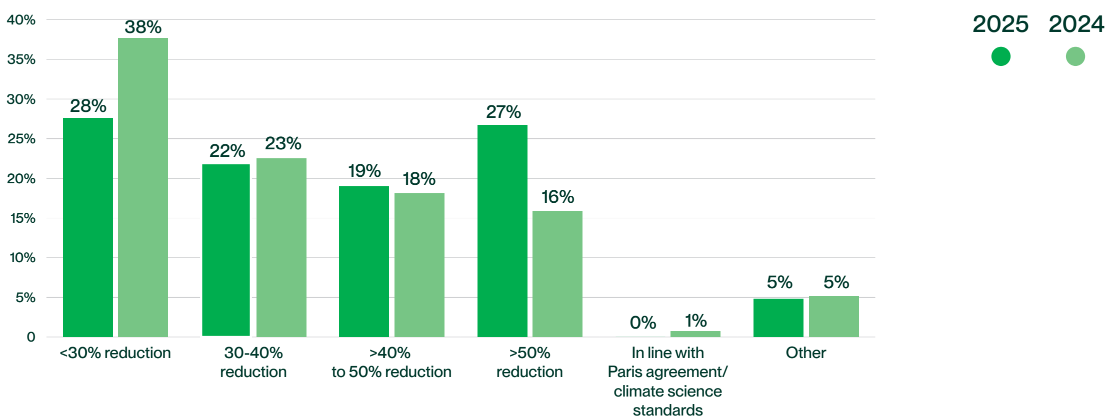
* Other includes companies where a reduction target is mentioned, but the percentage is not disclosed, Cases aligned with Science-Based GHG Reduction Targets and Cases with different reduction targets provided for different Scope 3 categories.

SCOPE 3 EMISSION REDUCTION TARGET LEVEL

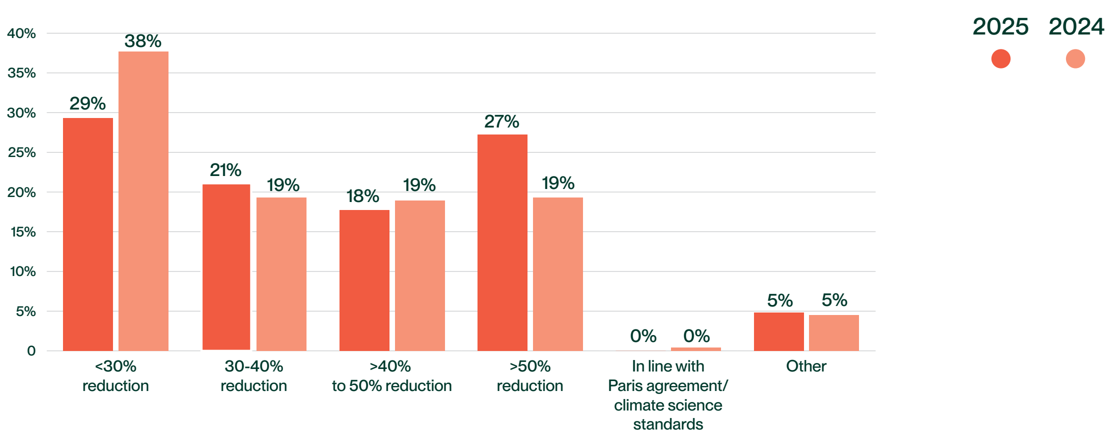
TOP 100 COMPANIES



S&P 500

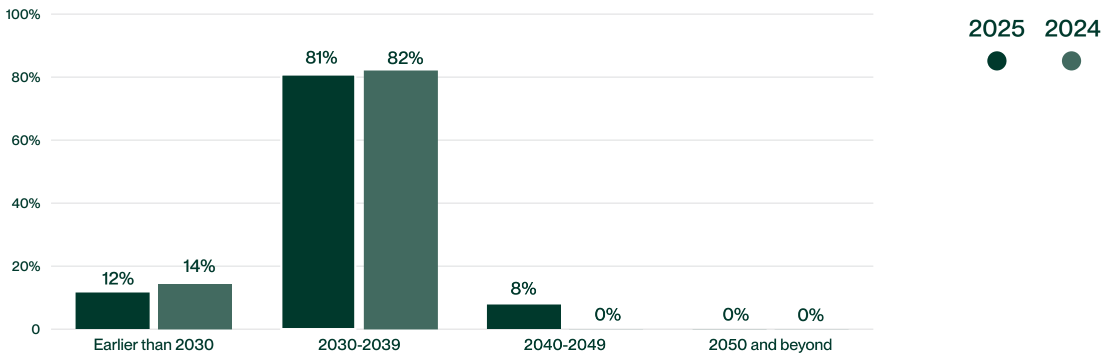


RUSSELL 3000

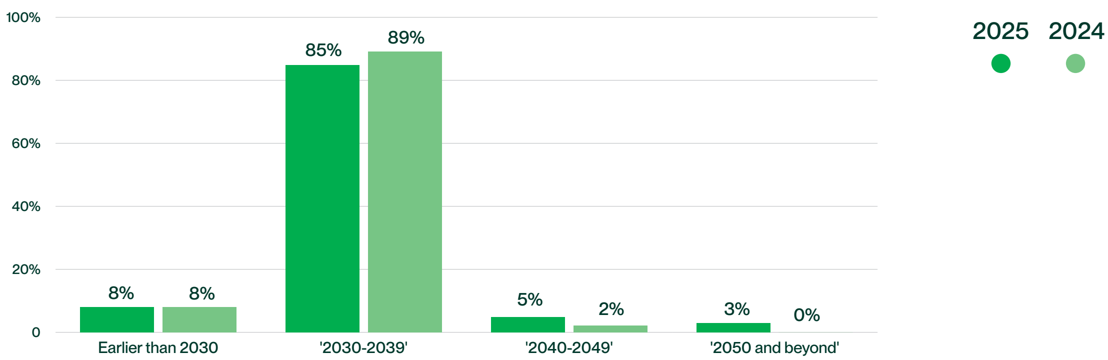


TIMEFRAME FOR SCOPE 3 EMISSION REDUCTION TARGET

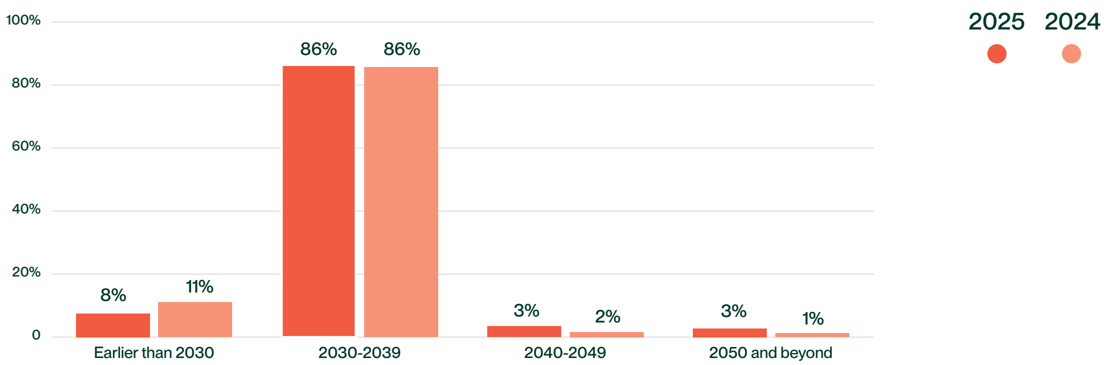
TOP 100 COMPANIES



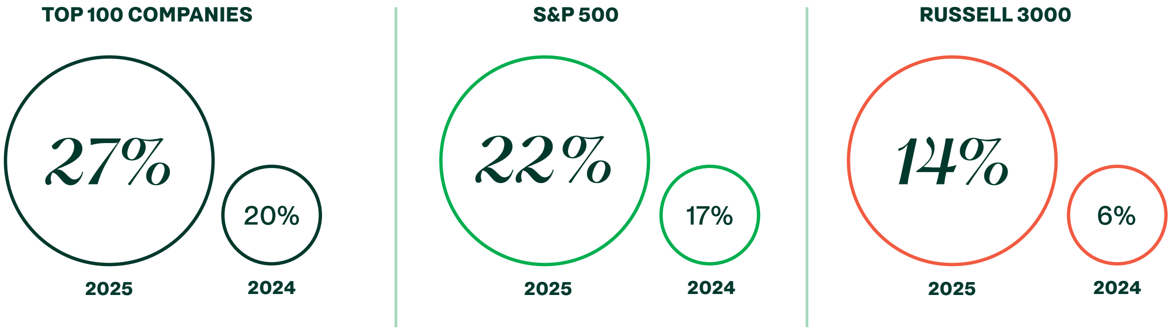
S&P 500



RUSSELL 3000



COMPANIES STATING THEY WILL USE CARBON CREDITS, OFFSETS OR RENEWABLE ENERGY CERTIFICATES TO HELP ACHIEVE EMISSIONS REDUCTION OR NET ZERO TARGETS



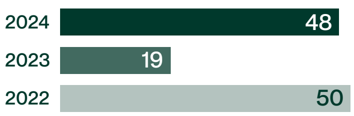
COMPANY'S CORPORATE GOVERNANCE GUIDELINES STATE A "SOCIAL PURPOSE" AS BEING IMPORTANT TO THE COMPANY*

* Some companies included more than one description of social purpose.

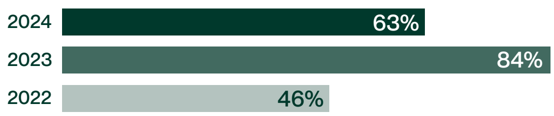
IPO governance practices

IPO companies continue to adopt certain corporate governance practices that are disfavored by proxy advisory firms.

NUMBER OF IPOs SURVEYED



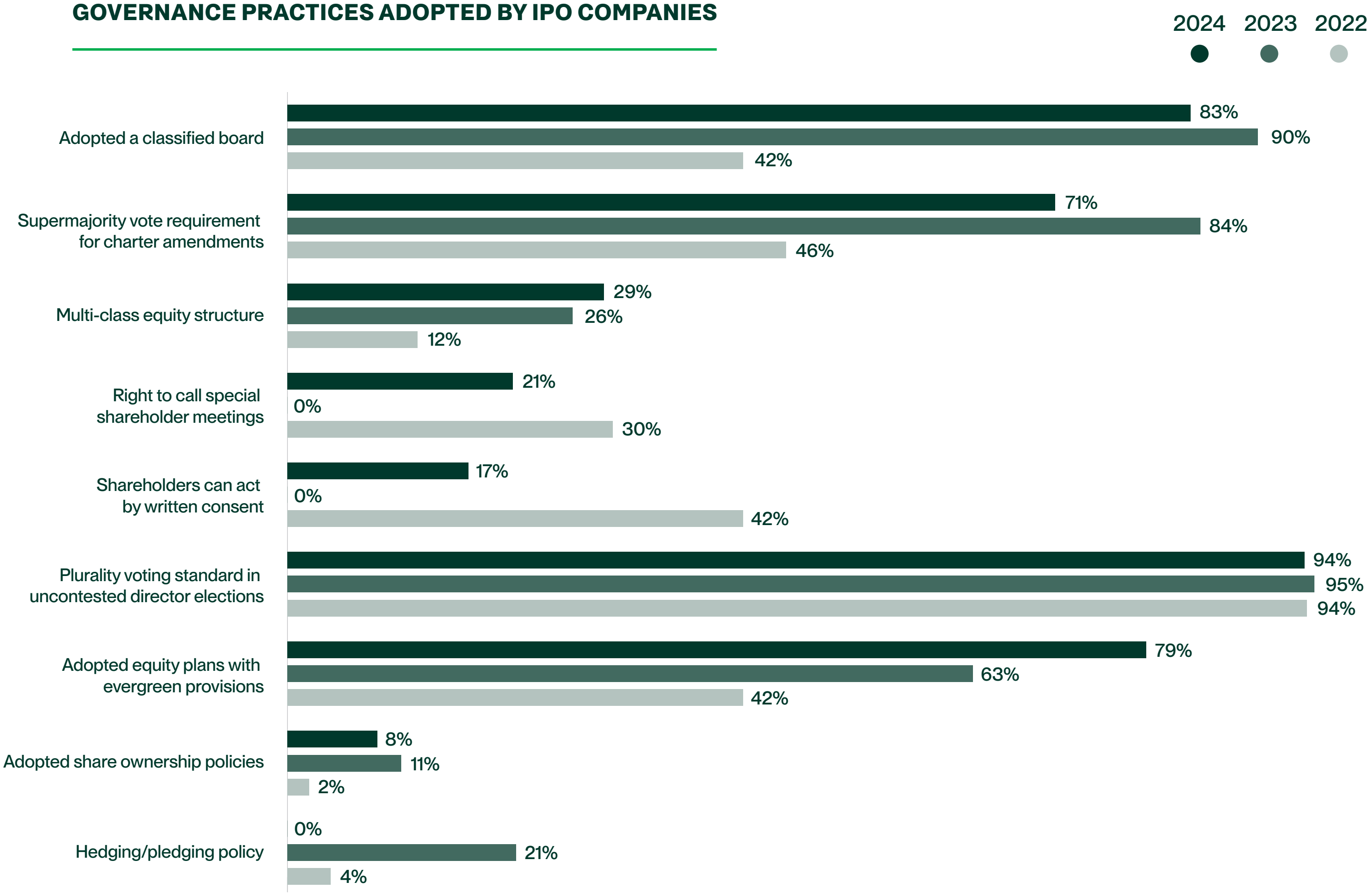
COMPANIES WITH SEPARATE CEO AND CHAIRMAN ROLES



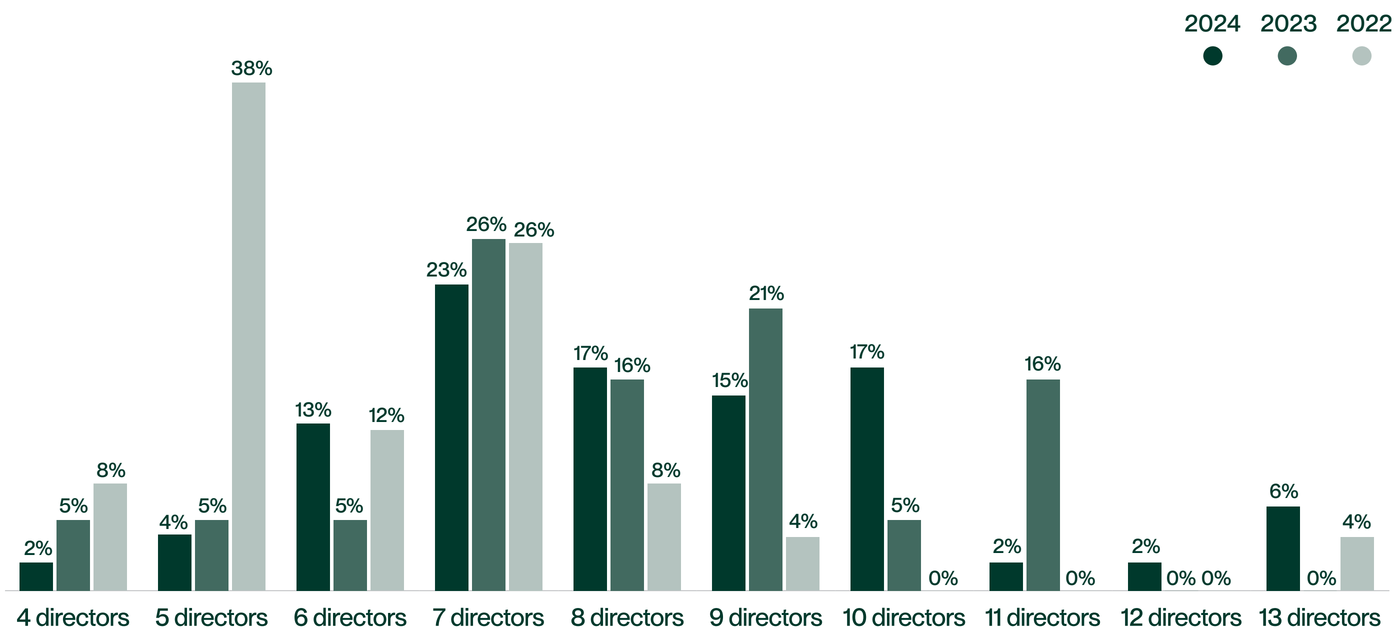
COMPANIES THAT IPOed AND KEPT THEIR FOUNDERS IN EXECUTIVE OR BOARD POSITIONS

Data for each year reflects IPOs that occured in the calendar year.

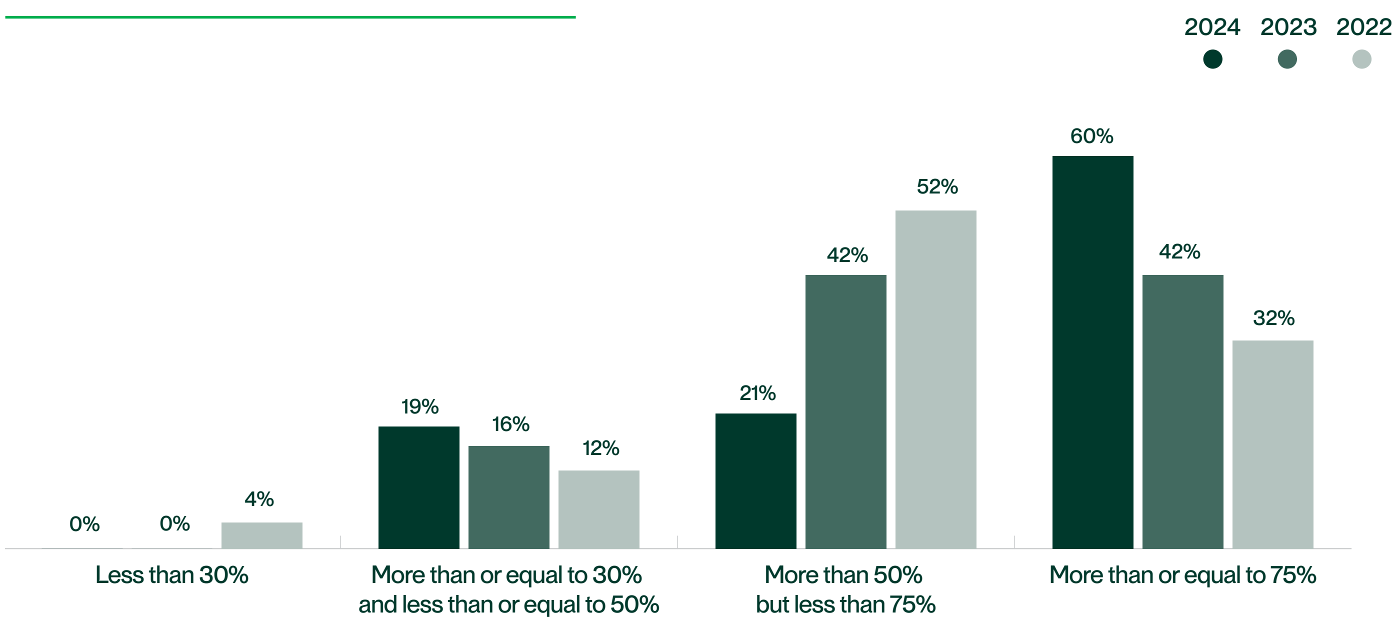
GOVERNANCE PRACTICES ADOPTED BY IPO COMPANIES



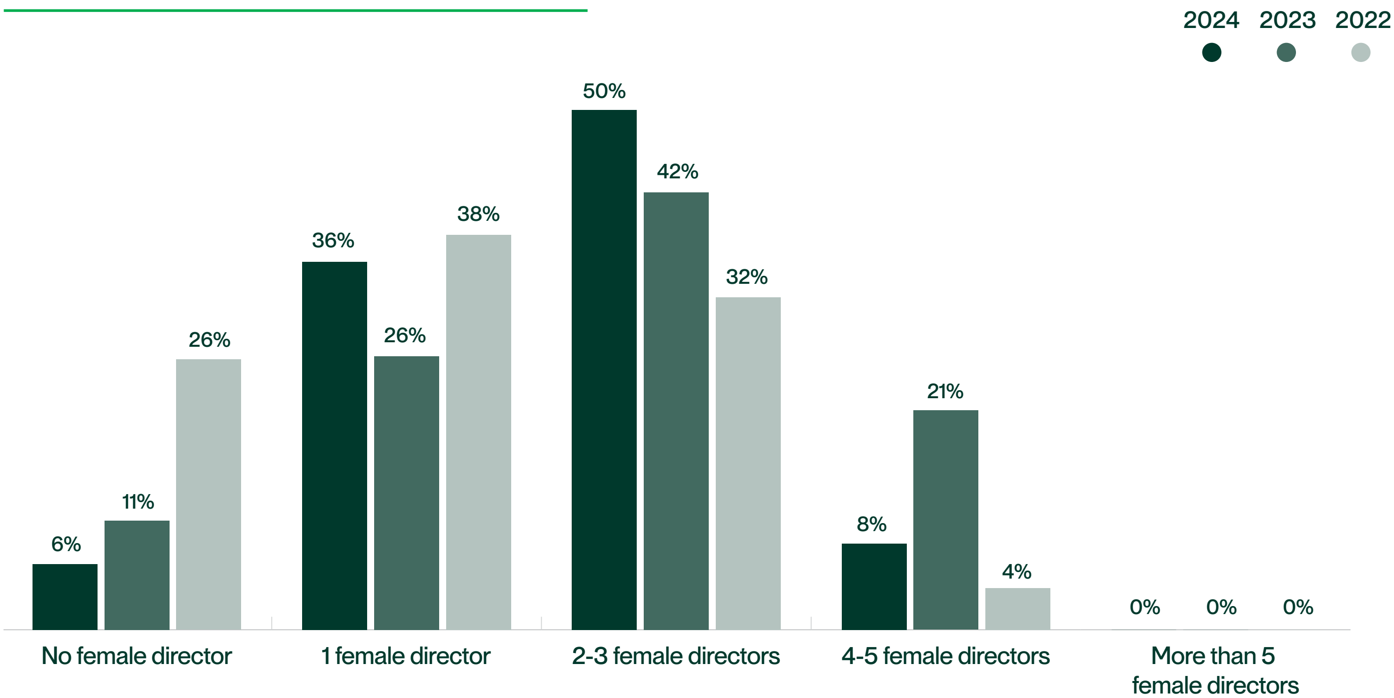
NUMBER OF DIRECTORS ON THE BOARD AT THE TIME OF IPO



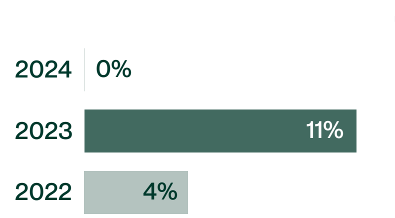
INDEPENDENT DIRECTORS AT THE TIME OF IPO



NUMBER OF FEMALE DIRECTORS AT TIME OF IPO



IPO COMPANIES THAT PROVIDED DIVERSITY CHARACTERISTICS OF DIRECTORS



FPI survey data

Corporate Governance practices of 100 of the largest listed foreign private issuers

This year, we also surveyed corporate governance practices of the largest 100 foreign private issuers (FPIs), based on 2024 annual revenue, that file Annual Reports on Form 20-F with the SEC and that are listed on the NYSE or Nasdaq. A list of the FPIs included in the survey is provided in the "Survey methodology" section.

NYSE and Nasdaq governance exemptions

FPIs are permitted under NYSE and Nasdaq rules to follow home country practices rather than corporate governance requirements for U.S. listed companies, in certain circumstances, as long as those differences are disclosed.

Did the FPIs take advantage of the NYSE/Nasdaq governance exemptions?

WHAT GOVERNANCE EXEMPTIONS DID FPIs TAKE?*

In 2025, FPIs took advantage of the following governance exemptions:

- **71%** Majority of independent directors
- **31%** Size of audit committee
- **53%** Audit committee (NYSE or Nasdaq only requirements)
- **67%** Fully independent nominating and corporate governance committee
- **65%** Fully independent compensation committe
- **39%** Executive sessions of directors
- **8%** Quorum
- **6%** Proxy solicitation
- **63%** Shareholder approval for equity compensation plans
- **16%** Shareholder approval for security issuances
- **33%** Adoption of corporate governance guidelines
- **3%** Annual shareholders' meetings
- **8%** Internal audit function
- **5%** Review of related party transactions
- **41%** Code of Ethics

DID THE FPIS INCLUDE RULE 402(x)** DISCLOSURE?

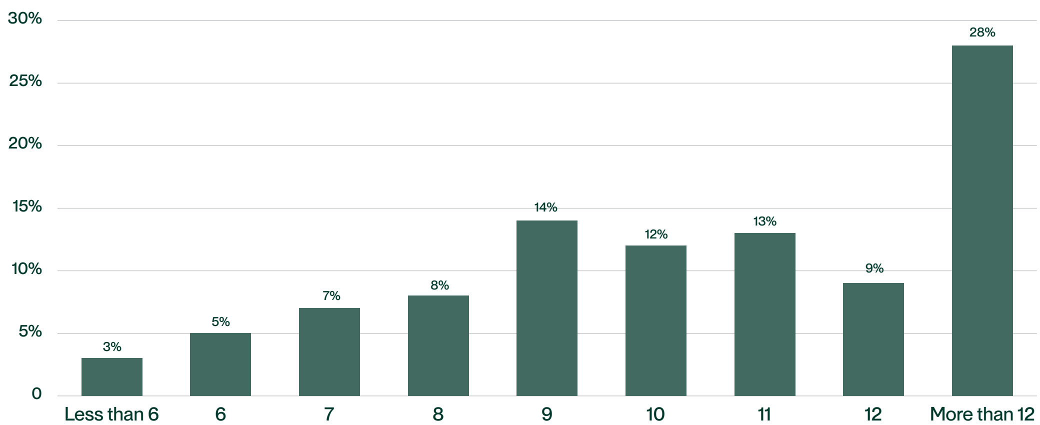
100%
NO

* Includes FPIs listed on Nasdaq which do not require director nominees to be selected by either a fully independent nominating committee or a majority of all of the independent directors.

** Rule 402(x) is a new disclosure requirement related to the timing of executive equity grants

Board organization

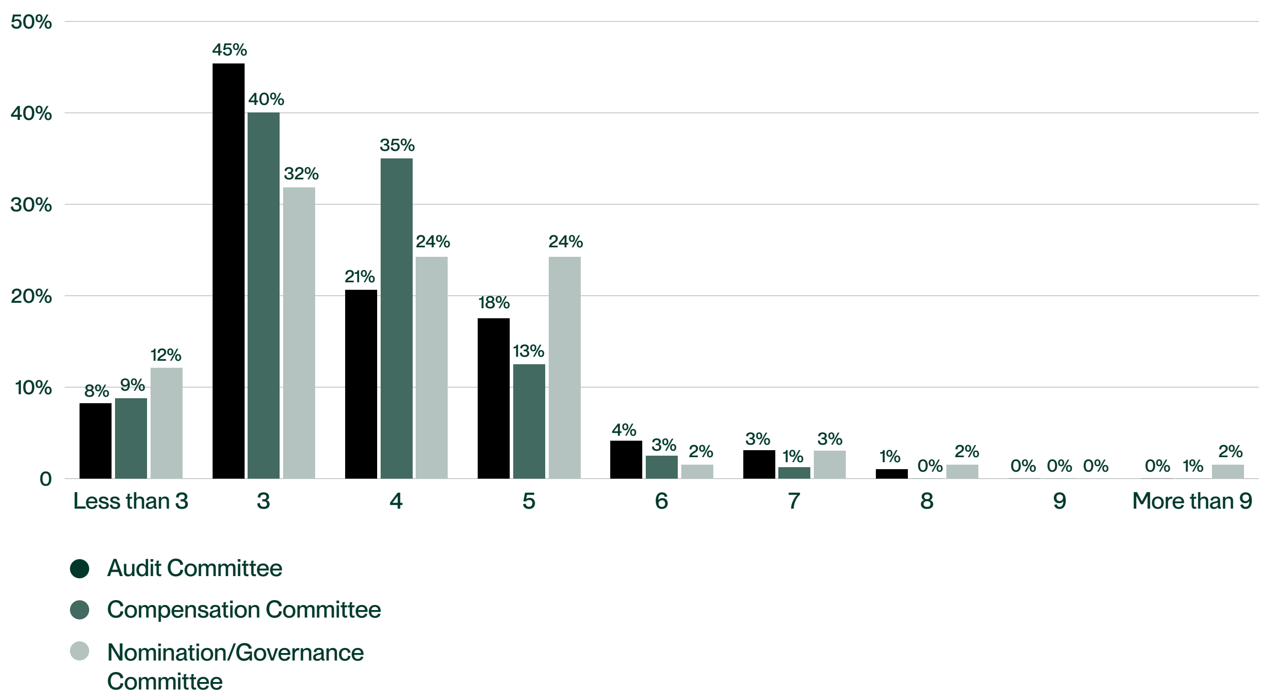
BOARD SIZE (NUMBER OF DIRECTORS)



Average number of directors for 2025

11

COMMITTEE SIZE (NUMBER OF COMMITTEE MEMBERS)



Board leadership

COMPANIES THAT HAVE THE CURRENT CEO SERVE AS CHAIR

24%

COMPANIES THAT HAVE AN INDEPENDENT BOARD CHAIR

35%

COMPANIES WITH A LEAD (OR PRESIDING) DIRECTOR WHEN THE ROLES OF CEO AND CHAIR ARE COMBINED

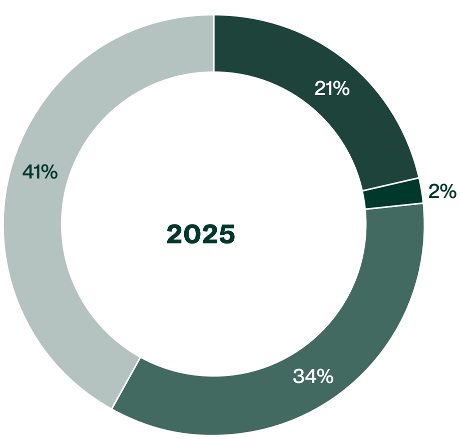
30%

COMPANIES THAT HAVE A FORMER EXECUTIVE BOARD CHAIR (NON-CEO)

Indicates whether the current Board Chair previously served as an executive officer of the company (excluding CEO)

10%

CEO AND CHAIR VARIATIONS



- Combined CEO and chair with no lead independent director
- Combined CEO and chair with lead independent director
- Separate CEO and chair (chair independent)
- Separate CEO and chair (chair not independent)

Director independence

Independent directors: 63%

Non-independent directors: 37%

Women in leadership

FEMALE CEO	FEMALE BOARD CHAIR	LEAD INDEPENDENT DIRECTOR
4%	4%	32%

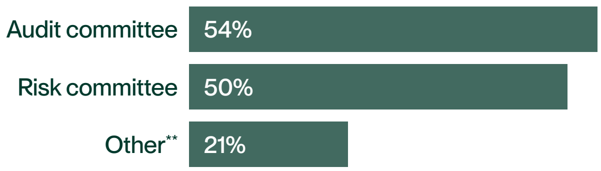
FEMALE CFO	CHIEF LEGAL OFFICER OR GENERAL COUNSEL	WOMEN ON THE BOARD
20%	28%	30%

Cybersecurity

DIRECTORS WITH CYBERSECURITY EXPERIENCE

4%

COMMITTEE(S) RESPONSIBLE FOR OVERSEEING CYBERSECURITY AND/OR DATA SECURITY/PRIVACY MATTERS*



* For several companies, responsibility for cybersecurity and/or data security/privacy is shared by two or more committees.

** Other committees include the Aerospace Safety Committee, Business and Security Committee, Compliance Committee, Executive Cybersecurity Oversight Governance Committee, Finance Committee, Information Security Risk Committee, Operations and Technology Committee, Privacy Committee, Public Policy Committee, Regulatory Compliance and Sustainability Committee, and the Special Activities Committee.

Survey methodology

Survey methodology

In collaboration with ESGAUGE®, a data mining and analytics corporate advisory company, the survey presents the corporate governance and executive compensation practices of the Top 100 Companies and the S&P 500® and Russell 3000® companies.

The Top 100 Companies are the 100 of the largest U.S. public, non-controlled companies that have equity securities listed on the NYSE or Nasdaq. These companies were selected based on a combination of their latest annual revenues and market capitalizations, as of July 1, 2025. A list of the companies included as part of the Top 100 Companies is included on the next page.

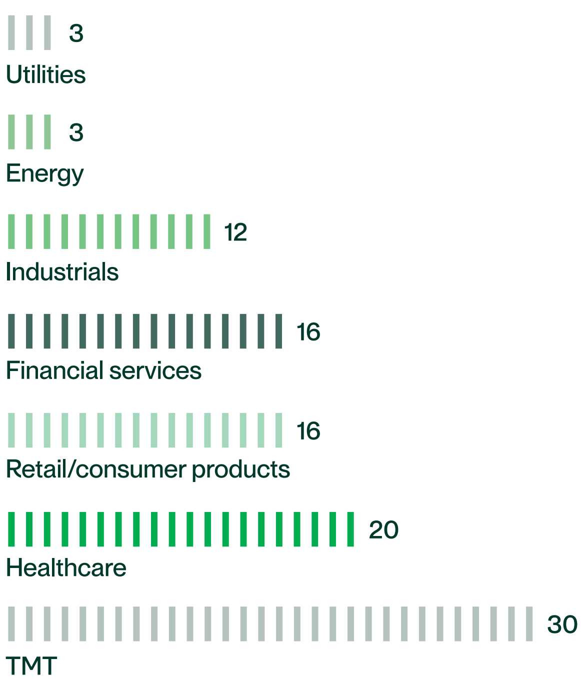
The S&P 500® index includes 500 of the leading U.S. companies and represents approximately 80% of the available U.S. market capitalization. The membership of the S&P 500 used for the survey was determined as of June 2025.

The Russell 3000® Index includes the largest 3,000 U.S. companies designed to represent approximately 98% of the available U.S. market capitalization. The membership of the Russell 3000 used for the survey was determined as of June 2025.

A&O SHEARMAN WOULD LIKE TO ACKNOWLEDGE THE FOLLOWING INDIVIDUALS FOR THEIR CONTRIBUTIONS TO THIS SURVEY:

Max Brown	Rachel Coogan	Christina Karkafi	Eric Shea	Matthew Whittaker
Alison Conwell	Jonathan Gibson	Anika Pemmaraju	Hunter Steitle	Andrew Woodle
Liam Cullen	Laura Humphries	Sequoia Powell	Emma Sweeney	Maya Zuckerman

INDUSTRIES OF TOP 100 COMPANIES



SURVEYED DOCUMENTS

- Annual Proxy Statements
- Exchange Act Reports
- Charters and Bylaws
- Board Committee Charters
- Corporate Governance Guidelines
- Corporate Social Responsibility Reports and Websites

TOP 100 COMPANIES INCLUDED IN THE 2025 SURVEY:

Abbott Laboratories
AbbVie Inc.
Accenture plc
Adobe Inc.
Advanced Micro Devices, Inc.
Airbnb, Inc.
Alphabet Inc.
Altria Group, Inc.*
Amazon.com, Inc.
American Express Company
Amgen Inc.
Amphenol Corporation*
Analog Devices, Inc.
Apple Inc.
Applied Materials, Inc.
AppLovin Corporation*
Arista Networks, Inc.*
AT&T Inc.
Automatic Data Processing, Inc.
Bank of America Corporation
Berkshire Hathaway Inc.
BlackRock, Inc.
Blackstone Inc.
Booking Holdings Inc.
Boston Scientific Corporation
Broadcom Inc.
Capital One Financial Corporation*
Caterpillar Inc.
Chevron Corporation
Cisco Systems, Inc.
Citigroup Inc.
Comcast Corporation
ConocoPhillips
Constellation Energy Corporation*
Costco Wholesale Corporation
CrowdStrike Holdings, Inc*
Danaher Corporation
Deere & Company
Eaton Corporation plc
Elevance Health, Inc.
Eli Lilly and Company
Exxon Mobil Corporation
General Electric Company
Honeywell International Inc.
Intel Corporation
International Business Machines Corporation
Intuit Inc.
Intuitive Surgical, Inc.
Johnson & Johnson
JPMorgan Chase & Co.
KLA Corporation
Lam Research Corporation
Linde plc
Lockheed Martin Corporation
Lowe's Companies, Inc.
Marsh & McLennan Companies, Inc.
Mastercard Incorporated
McDonald's Corporation
Medtronic plc
Merck & Co., Inc.
Meta Platforms, Inc.
Micron Technology, Inc.
Microsoft Corporation
MicroStrategy Incorporated*
Mondelēz International, Inc.
Morgan Stanley
Netflix, Inc.
NextEra Energy, Inc.
NIKE, Inc.
NVIDIA Corporation
Oracle Corporation
Palantir Technologies, Inc*
Palo Alto Networks, Inc.*
PepsiCo, Inc.
Pfizer Inc.
Philip Morris International Inc.
Prologis, Inc.
QUALCOMM Incorporated
Regeneron Pharmaceuticals, Inc.
RTX Corporation
S&P Global Inc.
Salesforce, Inc.
ServiceNow, Inc.
Stryker Corporation
Tesla, Inc.
Texas Instruments Incorporated
The Boeing Company
The Charles Schwab Corporation
The Chubb Corporation
The Cigna Group
The Coca-Cola Company
The Goldman Sachs Group, Inc.
The Home Depot, Inc.
The Procter & Gamble Company
The Progressive Corporation
The TJX Companies, Inc.
The Walt Disney Company
Thermo Fisher Scientific Inc.
T-Mobile U.S., Inc.
Uber Technologies, Inc.
Union Pacific Corporation
United Parcel Service, Inc.
UnitedHealth Group Incorporated
Verizon Communications Inc.
Vertex Pharmaceuticals Incorporated
Visa Inc.
Walmart Inc.
Wells Fargo & Company

*Companies new to the 2025 Survey.
61 of the Top 100 Companies are listed on the NYSE, and 39 of the Top 100 Companies are listed on Nasdaq.

100 FPIs INCLUDED IN THE 2025 SURVEY:

Aegon Ltd.
Alibaba Group Holding Limited
Amer Sports Inc.
América Móvil, S.A.B. de C.V.
Anheuser-Busch InBev SA/NV
ArcelorMittal
ASML Holding N.V.
AstraZeneca PLC
Azul S.A.
Baidu, Inc.
Banco Bilbao Vizcaya Argentaria, S.A.
Banco Bradesco S.A.
Banco Santander-Chile
Banco Santander, S.A.
Barclays PLC
BHP Group Limited
Bilibili Inc.
BP p.l.c.
British American Tobacco p.l.c.
Cemex, S.A.B. de C.V.
Coca-Cola FEMSA, S.A.B. de C.V.
Companhia de Saneamento Básico do Estado de São Paulo - (SABESP)
Companhia Siderurgica Nacional
Deutsche Bank AG
DIAGEO plc
DiDi Global Inc.
Dr. Reddy's Laboratories Limited
ENDAVA PLC
Eni S.p.A.
Equinor ASA
Telefonaktiebolaget LM Ericsson
Ferrari N.V.
Full Truck Alliance Co. Ltd.
Gerdau S.A.
GLOBANT S.A.
Grab Holdings Limited
Grifols, S.A.
Grupo Televisa, S.A.B.
GSK plc
Haleon plc
Harmony Gold Mining Company Limited
HDFC Bank Limited
Honda Motor Co., Ltd.
HSBC Holdings plc
ICICI Bank Limited
Infosys Limited
ING Groep N.V.
iQIYI, Inc.
Itaú Unibanco Holding S.A.
JD.com, Inc.
KANZHUN LIMITED
Koninklijke Philips N.V.
Li Auto Inc.
Lloyds Banking Group plc
Banco Macro S.A.
MakeMyTrip Limited
Melco Resorts & Entertainment Limited
Mitsubishi UFJ Financial Group, Inc.
Mizuho Financial Group, Inc.
Mynd.ai, Inc.
NetEase, Inc.
NIO Inc.
Nokia Corporation
Nomura Holdings, Inc.
Novartis AG
Novo Nordisk A/S
PDD Holdings Inc.
Petroleo Brasileiro S.A. Petrobras
Prudential Public Limited Company
RELX PLC
Sanofi
SAP SE
Sea Limited
Shell plc
Sify Technologies Limited
Similarweb Ltd.
Sony Group Corporation
Spotify Technology S.A.
Stellantis N.V.
STMicroelectronics N.V.
Sumitomo Mitsui Financial Group, Inc.
Taiwan Semiconductor Manufacturing Company Limited
Telecom Argentina S.A.
Telefônica Brasil S.A.
Telefónica, S.A.
Tenaris S.A.
Tencent Music Entertainment Group
Ternium S.A.
TotalEnergies SE
Toyota Motor Corporation
UBS Group AG
Unilever PLC
Vale S.A.
Viking Holdings Ltd
Vipshop Holdings Limited
Vodafone Group Public Limited Company
Weibo Corporation
Wipro Limited
XPeng Inc.
YPF Sociedad Anónima

The 100 largest FPIs included 79 companies listed on the NYSE, and 21 companies listed on Nasdaq.

For more information, please contact:

NEW YORK

Allen Overy Shearman Sterling LLP
599 Lexington Avenue
NY 10022
New York
United States

Tel +1 212 848 4000

Global presence

A&O Shearman is an international legal practice with nearly 4,000 lawyers, including some 800 partners, working in 28 countries worldwide. A current list of A&O Shearman offices is available at aoshearman.com/en/global-coverage.