

Going public? What you need to know about corporate governance

> 2025 edition

With all the work involved in going public, sometimes companies give short shrift to corporate governance. But that can mean they get stuck with governance decisions and structures that might not serve them well over the long term. Our advice? Start early!

About PwC

PwC's Governance Insights Center

We support you with the governance knowledge to answer tough questions and tackle complex challenges. You can count on us to help you connect all the dots for a more complete perspective — and step ahead with confidence.

Find more information at www.pwc.com/us/GovernanceInsightsCenter

PwC's IPO team

If you're considering taking your company public, this decision will truly transform the way you are currently doing business. While a public company faces greater public scrutiny and regulations, it also secures access to more, and often deeper, sources of capital. How do you get there? And how do you know if it's the right path to capital for you?

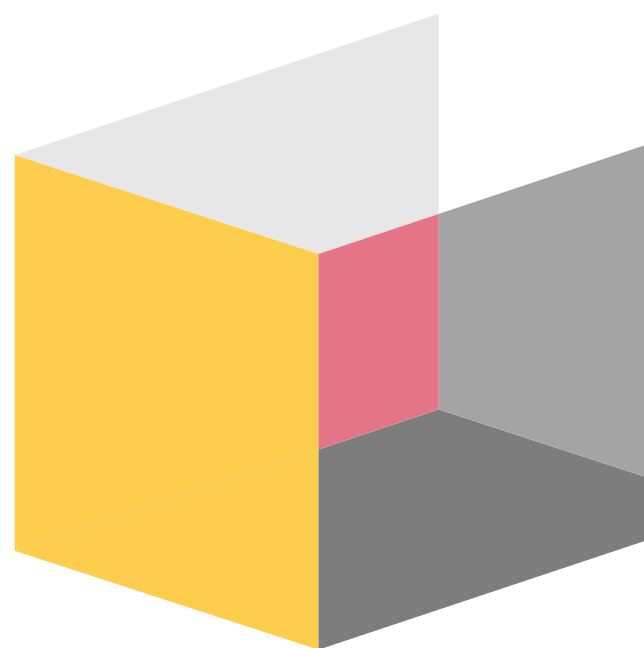
Our dedicated team of professionals specializing in IPOs can advise you as you begin to think through the additional requirements and continuing obligations, and can develop an appropriate plan to help ensure you're able to own success at every turn. PwC's framework for going public builds on your organization's strengths and looks beyond the complexity of the IPO itself to make certain that everyday execution moves in lockstep with your company's broader strategy.

Find more information at www.pwc.com/us/deals or reach out to one of the Deals partners or practice leaders listed at the end of this publication.



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Are you thinking of going public?

If your company is planning to go public, you're dealing with a lot of moving parts. One area you'll need to address at some point is corporate governance.

Both the SEC and the stock exchanges have rules that affect a public company's board structure and governance practices. In addition to deciding how to implement those rules, you'll have to make a number of other decisions. They range from board size and composition to which governance policies you want to adopt.

We believe you should tackle key governance decisions earlier rather than later in the IPO process. Why? For one thing, having your governance structure and processes established and operating by the time you go public can send an important message to potential investors. For another, it can take more time than you think to recruit the directors you really want. Finally, if you hurry some decisions and get them wrong, you'll find it more difficult to change after you go public.

This publication provides information on public company governance standards as well as benchmarking data to show what governance choices other companies have made. It also outlines the advantages and drawbacks of adopting different governance practices. And if you're curious about governance at individual public companies, you can find more information on their websites and by reading their proxy statements.

We hope this publication will help both executives and directors think through the many governance decisions you face as a company preparing to go public.

After a year of inconsistent recovery, US mergers and acquisitions activity is poised to gain momentum in 2025 due to declining interest rates, large amounts of dry powder, the need for business model reinvention and shifting regulatory priorities.

The overall IPO market continued a gradual comeback in 2024, with proceeds raised nearly 50% higher than in 2023 and nearly four times the amount raised in 2022. Stock prices of traditional IPOs in 2024 were up nearly 29%, outperforming the S&P 500.

Activity was broad-based, with notable participation from industries including technology, life sciences, consumer markets and financial services — further highlighting the strength and investor interest in new offerings.

Source: PwC, [US Deals 2025 outlook](#), December 2024.

For detailed information about the IPO process:

[> Roadmap for an IPO: A guide to going public](#)



1. Key questions to consider in setting up your board

This section covers:

- Options for how you go public and what type of public company you'll be
- Board size
- Director independence rules
- Board composition considerations
- Board diversity
- Director recruitment
- Director pay
- Board committee structure
- The timeline for compliance with governance rules

Public companies have to comply with numerous governance rules in addition to deciding on governance practices.

Governance practices at larger and more established public companies often differ from those at smaller, newly-public companies. In part, that's because institutional investors tend to pressure larger companies to adopt policies that the investors view as providing "better" governance.

You need to pick the practices that you think will work for you — ones that reflect your size, ownership and state of maturity. But as you do that, recognize the potential need to change them as your company grows and your shareholder base evolves.

How will you go public and what type of public company will you be?

This question has a few different elements. One relates to the mechanics of the transaction. Another relates to the category of filer you'll be — whether you'll make use of any special listing provisions. The third relates to which exchange you'll list on.

Companies thinking about a public listing usually take one of two paths. One is a traditional IPO, where the company teams up with an investment bank as underwriter, and goes on a roadshow to meet with potential investors and encourage interest. Then they set an IPO price, and finally list the stock.

The other common path is through a merger with a special purpose acquisition vehicle (SPAC). A SPAC is a public company that is created in order to buy a private company — essentially a shell company. By merging with the SPAC, you merge into the already-public entity. SPACs typically happen on a much faster timeline than traditional IPOs.

From a filer status perspective, some companies go public as emerging growth companies (EGCs) or foreign private issuers (FPIs). Why does filer type matter? Because the rules differ — sometimes significantly — depending on the category you fall into.

The stock exchange you'll list on is another element that will affect your governance decisions. The New York Stock Exchange (NYSE) and the NASDAQ Stock Market (NASDAQ) have different rules that impact which board committees are required as well as board-level responsibilities and processes. The NYSE rules tend to be more extensive and prescriptive (as you can see in Appendices A and C). Many NASDAQ companies adopt the standards that apply to NYSE companies, and that's fine. But it's good to do so deliberately. In other words, don't adopt responsibilities that extend beyond your listing requirements just because they're in the charter template that you are using.

This section, along with Appendices A, B and C cover the SEC and stock exchange rules that generally apply to public companies. You'll see we differentiate between the rules for NYSE and NASDAQ companies. Appendix D describes which of those rules apply to FPIs. Appendix E outlines a few governance considerations for EGCs. And the callout boxes, like the one shown below, outline how the rules differ for controlled companies.

How many directors should you have?

It's easy: not too many and not too few. A company's bylaws usually define an allowable range for the number of directors, instead of setting a single number. In practice, boards usually range in size from six to 12 directors.

Some IPO companies find that a smaller board helps them be efficient and keep costs down. If you start out with a smaller board, you can always add directors as the company grows or the board requires additional expertise.

Both the NYSE and NASDAQ mandate a minimum number of independent directors on certain board committees. For example, both say the audit committee has to have at least three independent directors. And so, while you may be aiming to keep your board small, it needs enough independent directors to fill the key committees. If it's too small, your independent directors will have a heavy workload.

Controlled companies

A company qualifies as a controlled company if an individual, a group or another company has the right to elect more than 50% of the directors on your board. You'll see throughout this section that we have broken out our benchmarking of IPO governance practices for controlled versus non-controlled companies.

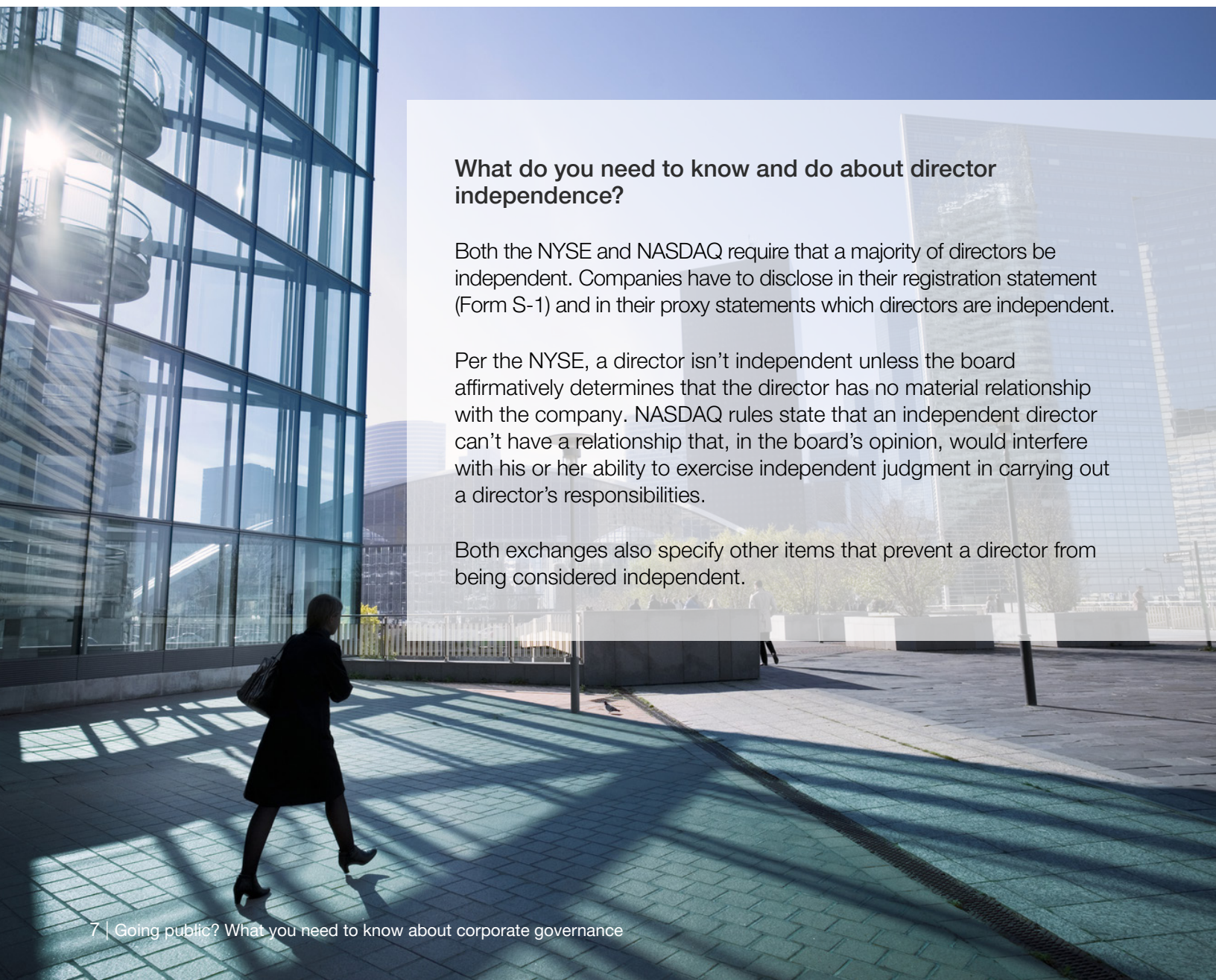




IPO company boards are comparable in size to established public companies

IPOs of non-controlled companies	IPOs of controlled companies	Russell 3000 companies	S&P 500 companies
7.0	9.0	9.0	10.8

Sources: Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024; MyLogIQ, a data and analytics firm (<https://www.mylogiq.com>); Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024.



What do you need to know and do about director independence?

Both the NYSE and NASDAQ require that a majority of directors be independent. Companies have to disclose in their registration statement (Form S-1) and in their proxy statements which directors are independent.

Per the NYSE, a director isn't independent unless the board affirmatively determines that the director has no material relationship with the company. NASDAQ rules state that an independent director can't have a relationship that, in the board's opinion, would interfere with his or her ability to exercise independent judgment in carrying out a director's responsibilities.

Both exchanges also specify other items that prevent a director from being considered independent.

A director isn't independent if:	NYSE	NASDAQ
The director was a company employee at some time during the last three years	X	X
The director has an immediate family member who is/was an executive officer of the company within the last three years	X	X
Either the director or an immediate family member received, during any 12-month period in the last three years, more than \$120,000 in direct compensation from the company (other than director and committee fees and pension or other deferred compensation for prior service)	X	
Either the director or an immediate family member accepted any compensation from the company in excess of \$120,000 during any period of 12 consecutive months within the last three years, other than (i) compensation for board or committee service, (ii) compensation to a family member who is an employee (other than an executive officer), or (iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation		X
The director is a current partner or employee of the company's internal or external audit firm; the director has an immediate family member who is a current partner of such a firm; the director has an immediate family member who is a current employee of such a firm and personally worked on the company's audit; or the director or an immediate family member was within the last three years a partner or employee of such a firm and personally worked on the company's audit during that time	X	
The director or an immediate family member is a current partner of the company's outside auditor, or was a partner or employee of the company's outside auditor at any time during the past three years		X
The director or an immediate family member, currently or in the last three years, is or had been an executive officer at another company where any of this company's executive officers at the same time serve or served on that company's compensation committee	X	X
The director is a current employee, or an immediate family member is a current executive employee, of a company that made payments to or received payments from the listed company for property or services in an amount that, in the last three fiscal years, exceeds the greater of:	\$1 million or 2% of the other company's consolidated gross revenues	\$200,000 or 5% of consolidated gross revenues

Both listing agencies also require that a majority of the directors on the board be independent. In practice, most public companies go well beyond having a simple majority of independent directors. The company's CEO is often its only non-independent director.

Both the NYSE and NASDAQ allow newly public companies a period of time (up to a year after going public — see page 17) to fully meet the independence rules. That said, companies typically try to meet their independence requirements at the time they go public. This can indicate to potential investors that the company is ready to be public, and indicates stability on the board.

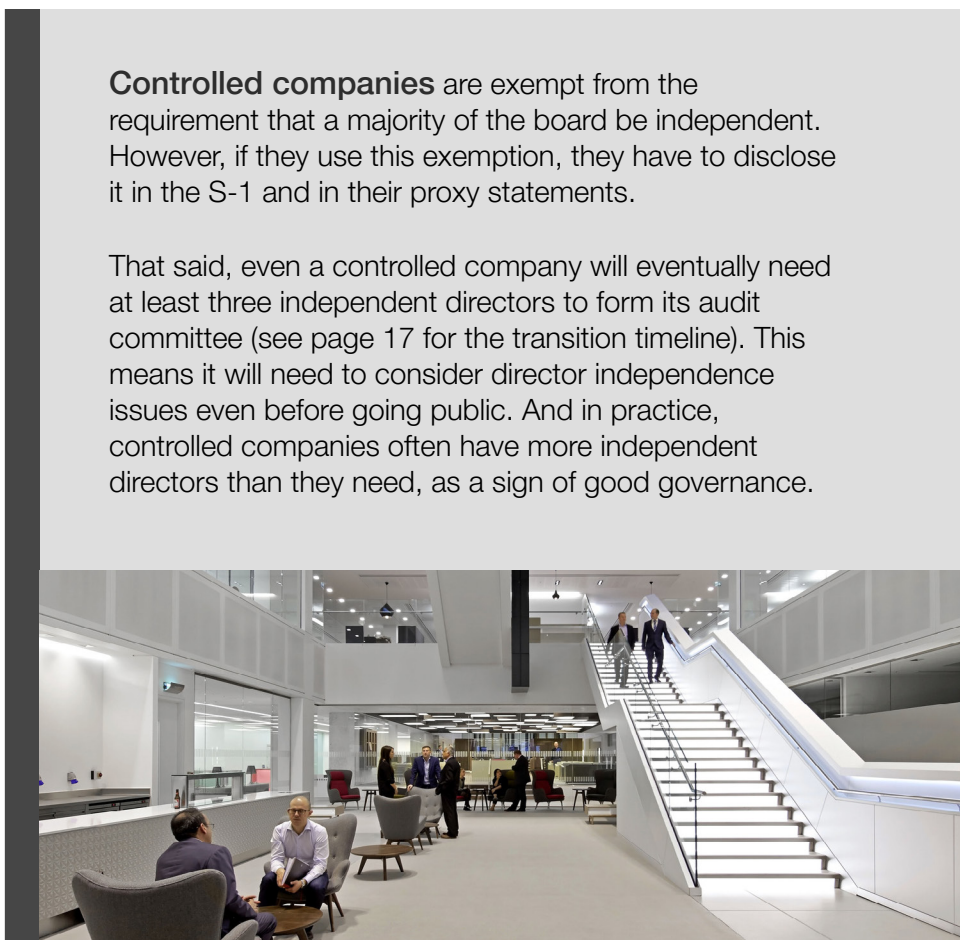
One other thing: the SEC has additional independence rules (Rule 10A-3) for audit committees. They say that directors who are on an audit committee cannot:

- Take any compensation from the company other than what they earn as a board director or
- Be an “affiliated person” of the company or any company subsidiary, apart from being a board member.

Both the NYSE and NASDAQ also have additional independence considerations for compensation committee members, as outlined in Appendix C.

Controlled companies are exempt from the requirement that a majority of the board be independent. However, if they use this exemption, they have to disclose it in the S-1 and in their proxy statements.

That said, even a controlled company will eventually need at least three independent directors to form its audit committee (see page 17 for the transition timeline). This means it will need to consider director independence issues even before going public. And in practice, controlled companies often have more independent directors than they need, as a sign of good governance.



Average level of director independence

Percentage of directors on the board who are independent

IPOs of non-controlled companies	IPOs of controlled companies	S&P 500 companies
78%	64%	85%

Sources: Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024; Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024.

What if you currently have major shareholders on your private company board?

If you have private equity (PE) or venture capital (VC) firms as major investors, they may have board seats. Some PE and VC firms prohibit their executives from serving on public company boards, so directors from those firms will likely resign once you go public.

For any PE/VC appointed directors who remain, your legal counsel will help you determine whether those directors can be considered independent. If they can't, they may have to step down from key board committees after the IPO.

Plus, if the PE/VC firms hold sizeable stakes, you might be a “controlled company.” Post-IPO, PE and VC firms often have a schedule to sell off their ownership — and to resign board seats as their ownership diminishes. That will impact your company in two ways:

- At some point your company will no longer be considered “controlled.” Once that happens, you’ll have to comply with the independence rules for non-controlled companies. You’ll have a transition period to do so.
- As PE/VC directors step off your board, you’ll need to fill those vacancies. That will give you an opportunity to add other directors. So you’ll need to think about recruiting new directors, which can take some time.

Figuring out independence issues often takes longer than pre-IPO companies anticipate. That means it's best to start addressing the situation early, so you've got enough lead time to make the changes you need. But independence isn't the only factor to consider as you review and evolve your board.

What skillsets should you consider as you recruit new directors?

How do you determine what skills and expertise you need on your board?

Partly, it's based on the rules. For example, you need a minimum of three independent directors for your audit committee. All of them need to be “financially literate” and at least one has to have “financial expertise.” The person with financial expertise will likely be the director who'll be named as an “audit committee financial expert” in the S-1 and proxy statements (see Appendix C for the criteria).

More strategically, you can look for directors who can add valuable insights on your company's industry, strategy and performance challenges. You might also want independent directors who can share advice based on your company's stage of development.

One approach is to compare the skills you would like to have with the skills that your current directors bring — those who will continue on the board post-IPO. Identifying skill gaps helps you prioritize what to look for in prospective director candidates. Many companies find a matrix is useful in identifying gaps, and some investors are even urging companies to publish it in their proxy statements.¹



A matrix can help identify gaps

Skills, experience, attributes	A	B	C	D	E	F	G	H	I
International expertise	X								
Technology/digital media expertise				X	X			X	
Risk management expertise			X			X		X	X
Financial expertise		X	X		X				
Climate/environmental expertise				X			X		
Cybersecurity expertise					X		X	X	
AI/GenAI expertise								X	
Marketing expertise									X
Legal expertise		X							
Operational expertise	X	X	X			X	X		
Industry expertise		X	X		X			X	X
Gender diversity				X			X		
Racial diversity				X					X
Regulatory expertise	X		X			X	X		
Board tenure (years)	15	15	10	8	7	7	4	1	8
Age (years old)	71	74	65	62	60	67	55	47	58

Also keep in mind that companies have to disclose certain details about their directors in both the S-1 and proxy statements. That includes each director's occupation, recent business experience, skills and qualifications, certain legal matters and any other public company boards each director serves on or has served on during the previous five years.

Given the time commitment required as a public company director (public company directors reported spending an average of 242 hours on board work in 2024²), many investors frown on a director being on too many boards. Institutional Shareholder Services (ISS), a major proxy advisory firm, recommends against voting for directors who sit on more than five public company boards. It sets the threshold lower for CEOs — limiting them to no more than two other public company boards. Some institutional investors set the levels at which they consider a director to be overboarded even lower than ISS.

How will we achieve diversity on our board?

Creating diversity is an important part of building your board. Many major investors believe that a diverse board positively impacts board performance and company performance. And they expect to see that diversity of thought.

Diversity can mean a lot of things: gender, race/ethnicity, age, area of expertise, industry and geographic location. Much of the focus in recent years has been on gender; however starting in late 2024 some investors and others have broadened their policies, backing way from expectations of specific numbers of diverse directors.



What can you do now to encourage future board refreshment?

It's far easier to recruit a new director than to ask an existing director to leave. Indeed, 49% of directors believe that one or more of their fellow directors should be replaced,[†] but the annual turnover rate of S&P 500 board seats has usually been around 8%.^{*} Refreshing your board membership can be a challenge.

This is a case where policies and practices put in place at the outset can help. They set expectations and let directors know from the start that their board seat is not a lifetime appointment. Mechanisms to consider include:

- **Age limits.** 63% of S&P 500 companies and 34% of Russell 3000 companies have a mandatory retirement age of 75 or under for directors[°]
- **Term limits.** Only 9% of S&P 500 companies set a maximum for number of years a non-executive director can serve.^{*}
- **Resignation policy on lack of shareholder support.** 89% of S&P 500 companies require a director who doesn't have the majority support of shareholders to submit a resignation for the board to consider.^{*}
- **Resignation policy on change of primary job function.** This gives the board a chance to rethink the ongoing service of someone who is retiring from their job or who even may have been fired for cause; 89% of S&P 500 boards require it.^{*}
- **Setting an understanding before a new director joins.** This clarifies that a board appointment is not indefinite, and directors won't be renominated if their skills are no longer relevant.
- **Rigorous evaluation process.** Led by the nominating committee, this looks at each director's contribution before recommending they be renominated.

[†] PwC, *2024 Annual Corporate Directors Survey*, September 2024.

^{*} Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024.

[°] MyLogIQ, a data and analytics firm (<https://www.mylogiq.com>).

How do you find the right directors?

Pre-IPO companies can find it difficult to recruit the kind of directors they want. You'll need to share information about your business with candidates, and they'll likely perform some type of due diligence review on the company, the executives and other directors. They'll want to understand your directors & officers (D&O) insurance policy coverage, for example. You'll also need to discuss director compensation during the search process.

Many companies rely on recommendations and connections from their current directors, financial sponsors and executives. More and more, they also use director search firms to identify candidates. Search firms can be especially helpful for boards focused on finding directors who bring diversity to the boardroom. Whichever approach you take, you'll need to check each candidate's background thoroughly so there are no surprises and you can be sure your director disclosures are accurate.

You'll also want to consider whether a candidate will be able to work well with the other directors and fit in with the company culture. The sooner you have your "post-IPO board" in place, the sooner directors can figure out how to work together effectively. And to the extent that your new directors have been through an IPO before, or have served on public company boards in the past, they can be great resources to turn to during the process.

How and how much should you pay directors?

Director compensation typically includes a cash retainer, meeting fees and stock awards/options, as well as additional pay for committee service and chair roles. Pre-IPO companies often lean more toward noncash compensation, especially if they're "pre-revenue."

The key factors in figuring out the amount are the expected time commitment and risk. Director compensation tends to rise as companies get larger. The good news is that you easily can find out how much other companies pay by looking at their proxy statements.

Average director compensation of S&P 500 directors



Average total compensation

\$327,096

Breakdown of compensation

Cash*

37%

Stock awards

58%

Stock option awards

3%

All other compensation**

2%

* Includes deferred compensation amounts

** "All other compensation" consists of insurance premiums, charitable award programs and incremental costs to the company of products provided

Source: Spencer Stuart, 2024 S&P 500 Compensation Snapshot, August 2024.

Don't forget: you'll need to onboard your new directors

Your new directors can't contribute effectively if they don't understand the company.

A good orientation program briefs new directors on the company's:

- Industry and competitors
- Strategy
- Operating structure
- Key risks
- Executive team
- Financial results and forecasts
- Governance practices — including board meeting schedule, committee charters, bylaws and other key policies

As part of this program, new directors will expect to meet with key executives and tour the company's facilities.

You can provide additional orientation based on committee service. For instance, new audit committee members could review financial reporting with the CFO, key finance team members and the external audit team. This orientation might also cover how the audit committee discharges its other core responsibilities over areas such as compliance.

Which board committees should you establish?

Again, the answer is partly based on the rules.

Both the NYSE and NASDAQ require companies to have independent audit committees and compensation committees. The NYSE also requires a nominating/governance committee. NASDAQ doesn't, although it does require that directors who handle director nominations be independent (see Appendix C for committee requirements).

Sometimes it also makes sense to form additional committees, depending on the issues the board is addressing. About two in 10 IPO companies have at least one additional board committee when they go public. Among the most common are executive committees, compliance committees and risk committees.³

What do these other committees do?

- Executive: Usually handles important issues that come up between regular board meetings. Members typically include the board chair, CEO, lead director and chairs of the other key committees.

- Compliance: Typically oversees the company's programs and policies designed to comply with industry and regulatory risks and requirements.
- Risk: Most common in financial services companies, used to oversee market, credit and liquidity risks.

You'll need to draft or review/update charters for each committee. They should describe membership requirements, responsibilities, processes and authority. They'll also need to align with specific stock exchange rules. You'll have to post the audit, compensation and nominating/governance committee charters on your website. And you'll have to describe every board committee in your proxy statement, including how often each met during the year and which directors are on each committee.

Controlled companies need to have independent audit committees, but can choose not to have independent compensation and nominating/governance committees. If they use this exemption, they have to disclose it in the S-1 and in their proxy statements.



One note of caution. There are lots of “best” practices that many companies have captured in charters. If your company is just figuring out how to form and run these committees, it may be best to stick to what's required at the start. You can always update the charters for other practices once both the management team and committees are ready to take on more.

You'll also need to select directors to serve as committee chairs. These are crucial roles. Chairs set meeting agendas, lead meeting discussions and ensure their committees are focusing on the right issues. The chair also reports back to the full board. The role takes more time, and chairs often get additional compensation.

How quickly do you need to comply with governance requirements?

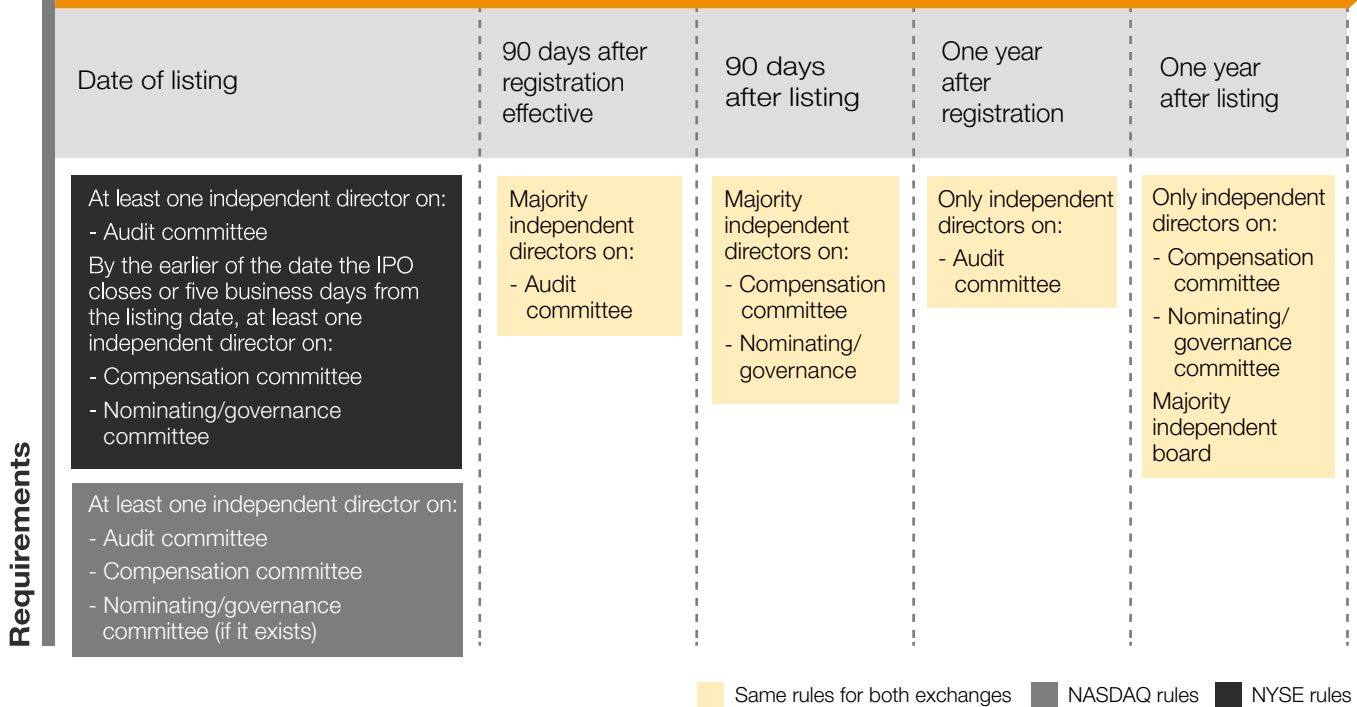
The good news is that you don't have to comply with all the committee and board independence requirements immediately. Both stock exchanges have transition rules.

That said, many companies don't use the full transition periods, perhaps wanting to show investors that they are committed to complying with the governance rules right from the start.

And for companies choosing to go public through a SPAC transaction, these transition periods are not available since the SPAC entity is already public.



Timeline for non-controlled companies



Many IPO companies have fully independent committees right from the start

Percentage of companies with fully independent committees

Committee	IPOs of non-controlled companies	IPOs of controlled companies	S&P 500 companies
Audit	72%	68%	100%
Compensation	95%	63%	100%
Nominating/governance	95%	59%	100%

Sources: Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024; MyLogIQ, a data and analytics firm (<https://www.mylogiq.com>).

2. Other key governance decisions you'll need to make

This section covers:

- Board leadership
- Director terms
- Voting standards
- Multi-class shares

Who should lead your board?

A good board chair ensures the board gets the information it needs and helps focus its efforts on the most important issues. The big question is whether the CEO should also be the chair. Companies have to explain their board leadership structure in both their S-1 and proxy statements. Institutional investors usually want the roles split, and for the chair to be independent. They believe it improves board oversight and CEO accountability.

Practically speaking, if the founder or CEO serves as the board chair, it's tough to strip them of that role. Instead, public company boards tend to rethink whether they should have a separate chair when they hire a new CEO. For companies that are going public, the IPO can be an opportunity to separate the board leadership structure as a signal to potential investors.

When the CEO is also the chair, the board often names a lead independent director. The lead director typically presides over executive (private) sessions of independent directors and communicates with the CEO. He or she also plays a vital role in coaching both individual directors and the CEO.

Of 41% of non-controlled IPO companies that had a board chair who wasn't independent, one-third (33%) appointed a lead director.⁴ Among controlled companies, 75% have a non-independent chair. Of those, 44% had an independent lead director.⁵

IPO companies are slightly more likely to have a board chair who isn't the CEO

	IPOs of non-controlled companies	IPOs of controlled companies	S&P 500 companies
Separate CEO and board chair roles	73%	60%	60%
Independent chair	59%	25%	39%

Sources: Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024; Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024.



Should all of your directors be up for election every year?

You can choose how often you want to elect directors. Often, companies use one-year terms. If you choose a longer term (say three years, with one-third of the board elected each year) it's referred to as a "classified" or "staggered" board. Extended director terms can be an anti-takeover defense. That's because it would take an activist at least two years to gain control of the board by putting up its own nominees. In a company where all directors are elected every year, an activist could take control of the majority of board seats in just one year.

For their part, institutional investors don't like classified boards. They want the right to vote on each director every year. That way, if a director is unsatisfactory, they can vote against that person at the very next meeting, rather than waiting for a three-year term to be up. As you might expect, companies with classified boards often receive shareholder proposals to declassify the board.

If you want a classified board, you need to put the policy in place before you go public. Understand you may get pressure to change as your company matures and perhaps is added to a stock index.

IPO companies are much more likely to have a classified board when they go public

Percentage of companies with classified boards

IPOs of non-controlled companies	IPOs of controlled companies	S&P 500 companies
95%	69%	9%

Sources: Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024; Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024.

What voting standard should you adopt?

You can choose between majority voting and plurality voting for director elections.

First some background. In director elections, shareholders who are unhappy with the board or its actions can withhold votes from one or more directors. Sometimes they launch campaigns to encourage other shareholders to withhold votes as well. (Their other option is to launch a proxy contest, which may be expensive and time consuming. We describe this more in a later section.)

Unless there's a shareholder-sponsored proxy contest, director elections are typically uncontested. For example, if a board has 10 seats, there would be 10 director nominees. Under a plurality voting standard, the directors with the most votes are elected. So with no other choices in an uncontested election, a director really needs only one vote "for" to be elected. Plurality voting is the default standard under Delaware state law, where many companies are incorporated.

A majority voting standard is different. Under majority voting, a director is elected only if more votes are cast in favor than are cast against his or her election. A sitting director who doesn't receive enough votes for re-election generally will submit his or her resignation for the board to consider.

Shareholders have pushed companies to adopt majority voting over the past decade — starting with the largest companies, as indicated in the table below. So even if you go public with plurality voting, you may face pressure at some point to change. And this matters because we're seeing more "withhold vote" campaigns by investors, targeting certain directors. Withholding their votes is essentially how they vote against directors. So if your company has majority voting and one or more directors don't get a majority of votes they will have to submit their resignation.

Few IPO companies have majority voting for director elections

Percentage of companies with majority voting

IPOs of non-controlled companies	IPOs of controlled companies	S&P 500 companies
8%	8%	91%

Sources: Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024; Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024.

Should you consider multi-class shares?

Multi-class shares give different voting rights to different classes of shares. For example, the founder and pre-IPO investors may have a class of shares that gives them multiple (say 10) votes per share, while the class sold in the IPO gives investors one vote per share — or sometimes even no vote. These structures are more common among technology companies, although they also have been used in media companies and elsewhere.

Investors generally don't view multi-class share structures favorably because they separate voting power from economic interest. And their views have influence. Standard & Poor's announced in 2017 that going forward it will bar companies that have multi-class voting shares with unequal voting rights from being added to its S&P 500 index. FTSE/ Russell will only include companies in their indices where at least 5% of the voting rights are held by the public.

If you want a multi-class structure, you can make it somewhat more palatable to shareholders by building in a sunset clause. These can work in a few different ways. For example, the preferential voting rights might cease:

- After a certain period of time has elapsed post-IPO (e.g., five, seven or 10 years)
- When the founders retire or die
- When the holders' ownership percentage falls below a certain level (e.g., below 10% of the outstanding common shares)
- When share ownership changes (e.g., when sold or gifted to a foundation or passed on to heirs)

IPO companies using multi-class share structures*

Percentage of companies with multi-class share structure

IPOs of non-controlled companies	IPOs of controlled companies
2020 – 30%	2020 – 26%
2022 – 2%	2022 – 2%
2024 – 18%	2024 – 15%

*Using only multi-class with unequal voting rights

Sources: Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, September 2020; Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2022; Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024.





What other governance policies could you consider?

Once you're public you'll be subject to pressure from a range of outside organizations — from institutional investors, to activist funds, to plaintiffs' attorneys. As well as considering classified boards and multi-class stock, some companies use specific policies to protect themselves on the legal front.

One popular such policy is an exclusive forum provision. While nothing will prevent your company from being sued, this provision in your bylaws stipulates where shareholders can bring lawsuits. The policies usually specify the state in which the company is incorporated. Since the vast majority of new companies incorporate in Delaware, that means they point to those courts where judges have significant experience handling business cases.

These provisions are quite popular — all controlled and non-controlled companies have adopted them.⁶

3. Who will scrutinize your governance practices and what do they want?

This section covers:

- Types of investors
- Activists
- Common shareholder proposals
- Proxy advisory firms

After you go public, your governance practices will attract a lot more interest. Not only from investors, but also from the media and proxy advisory firms.

You need to make governance, compensation, strategic and operational decisions that are right for your company and will help it grow. But it's helpful to understand whether your policies and actions align or conflict with the policies of your major shareholders and the firms advising them. Understanding any gaps may prompt you to reconsider your approach. Or to at least explain your decisions better in your proxy disclosures and as you reach out to your major shareholders.

What do investors want with respect to governance?

First off, different investors want different things, so there is no pleasing everyone. Plus, some investors hold stock for only a short period of time, so your shareholder base will continually shift. By understanding the different types of investors that make up your company's shareholder base, you can better anticipate the pressures you may face.

- **Institutional investors.** These typically include pensions and mutual funds, as well as hedge funds that may fall into the "activist" category.

These are often your long-term shareholders — either because they follow a long-term investment strategy, or because your company is part of an index they invest in. If they're unhappy with corporate performance, they may turn to some type of activism to push for change to your governance structure or disclosures.

- **Retail investors.** Retail investors are individuals who own your stock directly. They tend to vote in line with what the board recommends. If they're unhappy with your company's performance, they often just sell their shares. Some might lodge shareholder proposals, but typically they don't have enough power to force change. That said, maintaining good relationships with retail investors can help defeat proposals if you get targeted by an activist hedge fund whose suggestions you oppose.

ESG: A special area of focus

Major investors are especially focused on environmental, social and governance (ESG) issues. They are looking for more disclosure from companies on their efforts to promote and ensure long-term growth and sustainability, mitigating risk while capitalizing on opportunities. While they don't always expect newly-public companies to have mature ESG programs, the IPO process is not too early to start thinking about the company's long-term sustainability story.

Once you're public, you'll want to track who owns your shares and understand who your largest shareholders are. There are companies that provide investor relations services if you don't have the resources in-house. But you can't outsource everything. You'll need to figure out how to build relationships with your largest investors.

There are a few basics:

- Many of the large institutional investors disclose their governance policies, showing how they expect to vote on various items. Before you connect with them, it helps to know how your practices align or differ.
- Schedule regular touch points with major investors to help them better understand the company strategy, executive team, performance, etc. These also help you understand their major concerns. Done well, these connections build trust. That said, if you're a small company and represent a minor holding of theirs, it may be difficult to get their attention.

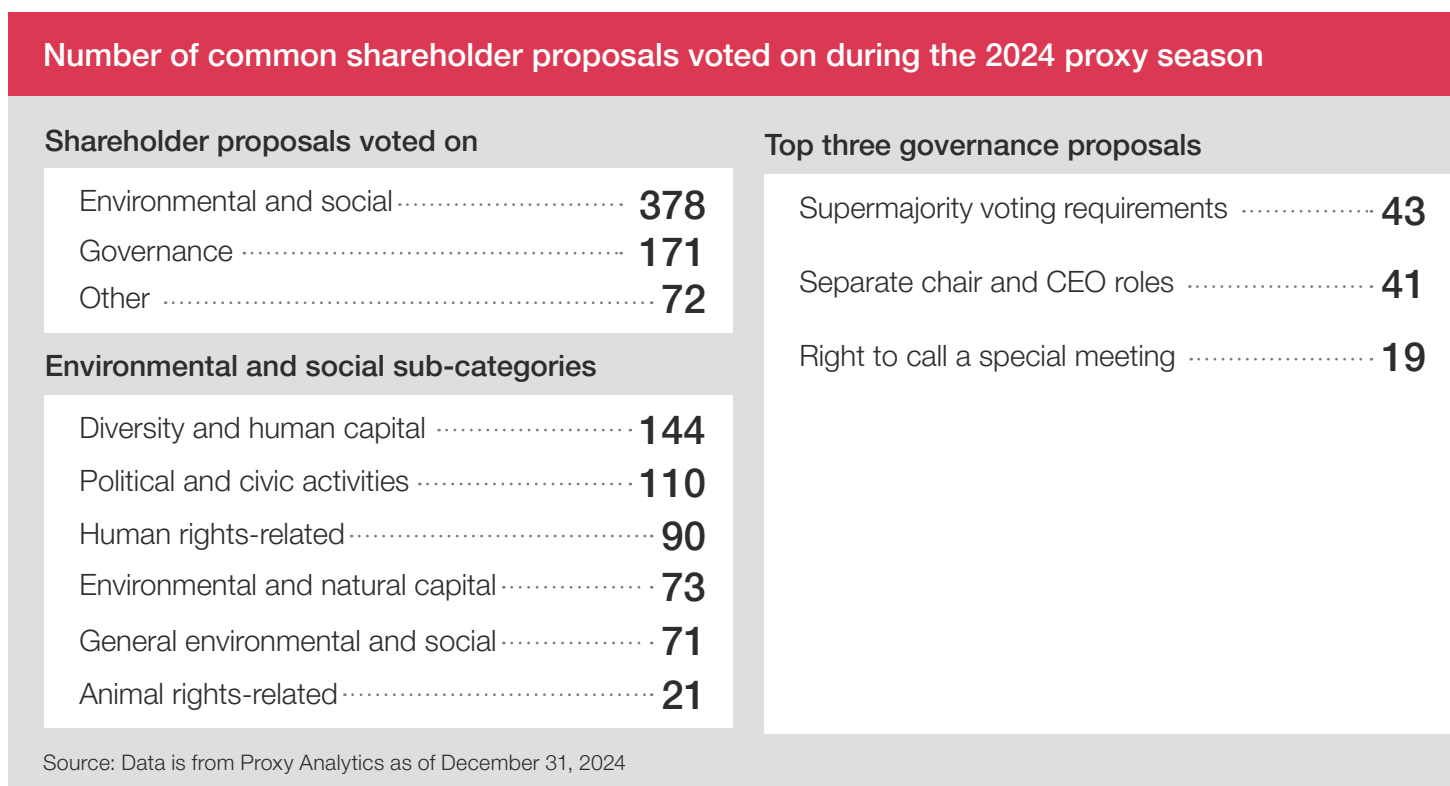
Controlled companies may have an easier job navigating shareholder relations, since ownership of their shares is so concentrated. But this can also mean that some of their governance decisions are dictated by the major shareholder(s).

Many controlled companies — especially those with private equity sponsors — stop being controlled at some point. When that happens, the company has to start answering to a broader shareholder base. As the company makes some of its bigger decisions, like director election standards and whether to have a classified board, it's worth keeping an eye on how those decisions will look down the road.



Some shareholders submit proposals to try to drive change. Most target large or high-profile companies. But even small companies can receive them. You may be able to omit certain proposals from your proxy statement based on SEC rules. You also may be able to negotiate with the shareholder to withdraw their proposal. For those that do go to a shareholder vote, you'll need to include in your proxy statement the board's recommendation on how shareholders should vote.

Shareholder proposals often fall into two categories: social policy and corporate governance.



There are two types of shareholder proposals:

- If a proposal is binding, then it will be implemented if it passes. For this reason, companies often require more than just a simple majority for such binding proposals to pass. It's not unusual to have a policy requiring two-thirds of shareholders to approve bylaw changes through a shareholder proposal.
- The other type of proposals are called "precatory." They ask the company to take an action, but they are not binding. If one of these passes, you aren't legally compelled to implement what it calls for. But you can't just ignore it. If you do, among other things, the proxy advisory firms could recommend against electing your directors next year. So you'll need a thoughtful response that may involve rethinking company practices or adjusting policies. Consider discussing the issue with your major shareholders and then outline how you have responded, or plan to respond, in the next year's proxy statement.

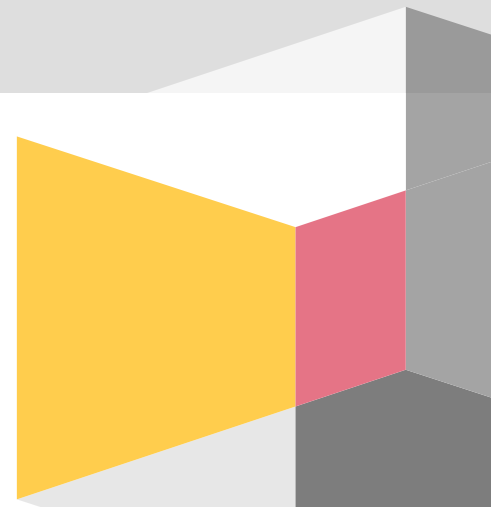
Activist hedge funds may buy your stock if they believe it's undervalued. They'll try to earn a return by asking the company to make changes — things like shifting strategy, selling off assets, buying back shares or replacing the CEO. They often engage in proxy contests to try to get seats on the board. Those fights can be costly and distracting. The threat of activists is another reason to ensure you have built relationships with your key institutional investors. Although they may ultimately side with the activists, hopefully they'll at least listen to your side of the story.

Should your directors meet with shareholders?



As well as receiving shareholder proposals, you may be targeted by an activist hedge fund. Or major long-term investors may have concerns and publicly criticize your company.

Of course, any directors who participate in such shareholder engagement need to be authorized to do so and fully prepared, including counselled in how to avoid disclosing material nonpublic information. This is an area where legal counsel is helpful.





Why do proxy advisory firms matter so much?

Proxy advisory firms make recommendations on how investors should vote. It's estimated that they directly influence between 15% and 25% of the shares voted. So if they recommend voting against one of your directors or your executive pay program,⁷ it can have a large impact.

ISS and Glass Lewis are the two main proxy advisory firms. You can find their policies on their websites.

After analyzing your proxy statement, proxy advisory firms will prepare a report that includes their analysis and voting recommendations. You should review a copy as soon as it's issued. You'll want to check that they've captured your policies and practices accurately.

You also need to think about how you'll respond if they issue a recommendation that opposes the board's recommendation. At a minimum, you'll want to reach out to major shareholders to discuss. You could also change your policies, or promise to make changes in the future. Or you could send additional proxy materials to shareholders to better explain your position.

In conclusion...our parting advice

There's a lot going on in the US public company governance landscape. A lot of it — like pressure for majority voting — likely won't impact your company in the first few years that it's public. That is, unless you're a particularly high-profile company or are added to a key index.

But we believe it still makes sense to monitor key governance developments. Doing so will allow you to be proactive and consider whether, or at what point, you should shift practices. As always, the goal is to improve your board's effectiveness — something that will benefit both your company and your shareholders.



Appendix A: General corporate governance requirements

The NYSE and NASDAQ have slightly different governance requirements for listed companies. Management and directors of companies planning an IPO should be aware of these requirements.

A comparison of governance requirements between the NYSE and NASDAQ

	NYSE	NASDAQ
Director independence	A majority of the board of directors must be independent.*	A majority of the board of directors must be independent.*
Board committees	A board must have audit, compensation, and nominating/governance committees. See Appendix C for committee requirements.	The board must have an audit committee and a compensation committee. It is not required to have a nominating/governance committee; however, if it doesn't, independent directors need to fulfill these responsibilities. See Appendix C for committee requirements.
Executive sessions	Non-management directors must meet at regularly scheduled executive sessions without management. Independent directors should meet alone in executive session at least once per year.	Independent directors must have regularly scheduled executive sessions at which only independent directors are present.
Corporate governance guidelines	Companies must disclose corporate governance guidelines that address: <ul style="list-style-type: none"> • Director qualification standards • Director responsibilities • Director access to management and independent advisors, as necessary and appropriate • Director compensation • Director orientation and continuing education • Management succession • Annual evaluation of board performance 	No requirement.
CEO certification	The CEO must certify annually that he or she is not aware of any violations of the NYSE corporate governance listing standards.	No requirement.

*There are exceptions for controlled companies. See page nine.

Appendix B: Board-related proxy statement disclosures

The SEC requires a number of proxy statement disclosures that provide information about directors and board activities. This appendix describes many, but not all of those disclosures.

Director-specific information

For each continuing director and nominee:

- Name and age
- Whether or not the individual is independent according to listing exchange requirements and what matters the board considered in determining that a director is independent
- Principal occupation and employment during the last five years. The name and principal business of any other company where the person had similar responsibilities. Whether any of the companies are/were a parent, subsidiary or other affiliate of the company filing the proxy statement.
- Specific experience, background, attributes or skills that qualify the person to be a director of the company
- Nature of any family relationship between directors, nominees and/or executive officers
- Any other directorships held during the past five years
- Involvement in certain legal proceedings during the past 10 years that are material to the evaluation of the ability and integrity of the director, such as bankruptcies, criminal proceedings, violations of securities laws or sanctions
- Current or past positions held with the company, and when held

Board-related information

- The number of regular and special board meetings during the year
- Whether directors attended at least 75% of board and committee meetings and names of any directors who did not
- A description of the company's policy (if there is one) on director attendance at the annual meeting
- The number of directors who attended the prior year's annual meeting
- The compensation provided to each director, by category (see the example on page 31)
- Transactions exceeding \$120,000 with a director when the company is a participant
- Whether the board has a process for shareholders to communicate with the board, and if not, why the board believes it's appropriate not to have such a process

Director compensation presentation template

Name	Fees earned or paid in cash (\$)	Stock awards (\$)	Option awards (\$)	Nonequity incentive plan compensation (\$)	Change in pension value and nonqualified deferred compensation earnings (\$)	All other compensation* (\$)	Total (\$)
A							
B							
Etc.							

*Includes perquisites, other personal benefits, tax gross-ups, discounted securities, consulting fees earned, director legacy programs and similar charitable award programs, life insurance premiums, dividends on stock option awards, etc.

Committee-related information

- Whether each of the three major committees (audit, compensation, nominating/governance) has a charter and if it's available on the company's website. If it's not available on the company's website, include a copy of the charter in an appendix to the proxy statement at least every three years or if it has been materially amended in the past year.
- Whether any member of the compensation or nominating/governance committee is not independent.
- The name of the audit committee financial expert (if there is one) and whether this person is independent in accordance with audit committee independence rules. (See page nine for the additional independence criteria the SEC has for audit committee members. See the definition of an audit committee financial expert in Appendix C.) Note that companies may name more than one director as an audit committee financial expert.
- If the board does not have nominating/governance or compensation committees (or committees performing similar functions), disclose why and identify any directors who participate in director nominations and executive compensation discussions.

Oversight of risk

The company must discuss how the board oversees risk — whether through the full board, the audit committee or another committee. Where relevant, companies may want to address whether individuals who supervise risks day to day report directly to the full board or a board committee.

Board leadership

The company must disclose whether the board has chosen to combine or separate the CEO and chair roles, and why it believes its leadership structure is the most appropriate one for the company at that time. The proxy statement should also discuss whether the board has a lead director and, if so, the role that person plays in board leadership.

Board diversity

The company must disclose whether, and how, the nominating/governance committee considers diversity in identifying board candidates. If there is a policy on board diversity, the company must discuss how the committee implements the policy and how it measures effectiveness.



Appendix C: Specific committee requirements

This appendix describes the SEC and stock exchange requirements for the three major board-level committees. It also provides benchmarking information on committee size and meetings.

Audit committee

The audit committee's key role is overseeing the reliability of financial reporting and related controls, including the relationship with the independent auditors. For more information, see PwC's [audit committee resources](#).

SEC requirements

- Be directly responsible for the appointment, compensation, retention and oversight of the independent audit firm, including resolution of disagreements between management and the auditor regarding financial reporting.
- Independent auditors report directly to the audit committee.
- Establish procedures for: (i) the receipt, retention and treatment of complaints received by the company regarding accounting, internal accounting controls or auditing matters; and (ii) the confidential, anonymous submission by company employees of concerns regarding questionable accounting or auditing matters.
- Have the authority to engage independent counsel and other advisors, as the committee determines necessary to carry out its duties.
- Receive appropriate funding, as determined by the audit committee, to pay: (i) compensation to any auditing firm engaged, (ii) compensation to any advisors employed by the audit committee and (iii) the committee's ordinary administrative expenses that are necessary for it to carry out its duties.
- Preapprove all audit and allowable non-audit services to be provided by the independent auditor.
- The independent auditor must report to the audit committee on a timely basis: (a) all critical accounting policies used by the company, (b) alternative accounting treatments that have been discussed with management along with the potential ramifications of using those alternatives and (c) other written communications provided by the auditor to management, including a schedule of unadjusted audit differences.
- Disclose the name of at least one member who meets the SEC's definition of an "audit committee financial expert;" if no one does, disclose why not.

- Include a report in the proxy statement outlining whether the audit committee has: (i) reviewed and discussed the company's audited financial statements with management, (ii) discussed with the independent auditors the matters required to be discussed under PCAOB AU 380, and (iii) received from the auditors disclosures regarding the auditors' independence required under PCAOB Ethics and Independence Rule 3526. Further, the report should include a statement by the audit committee whether, based on the review and discussions noted above, the audit committee recommends to the board of directors that the audited financial statements be included in the company's annual report on Form 10-K or 10-KSB (as applicable) for filing with the SEC.
- Include the audit committee charter in the proxy statement at least once every three years or if major changes are made to the charter.

Audit committee financial expert definition

The SEC defines an "audit committee financial expert" as a person who has the following attributes:

- An understanding of generally accepted accounting principles and financial statements;
- The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;
- Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the company's financial statements, or experience actively supervising one or more persons engaged in such activities;
- An understanding of internal controls and procedures for financial reporting; and
- An understanding of audit committee functions.

Under the SEC's rules, a person must have acquired such attributes through any one or more of the following:

- Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor, or experience in one or more positions that involve the performance of similar functions;
- Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;
- Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or
- Other relevant experience.

A note on audit committee reports

For years, the reports that audit committees submitted in proxy statements mostly covered the required items and little else. Then some investors began to ask for more insight into how audit committees were overseeing the external auditors. That led many companies to expand their audit committee reports and/or other proxy disclosures to better describe the audit committee's oversight. As with other trends in evolving governance practices, the change is much more evident at larger companies.

Larger companies are more likely to provide expanded disclosures about auditor oversight

	S&P 500	S&P MidCap	S&P SmallCap
Includes a discussion of audit committee considerations in appointing the external auditor	50%	35%	29%
States that the evaluation of the external auditor is at least an annual event	39%	22%	20%
States explicitly that the audit committee is involved in the selection of the audit engagement partner	53%	24%	14%

Source: Center for Audit Quality and Audit Analytics, *2024 Audit Committee Transparency Barometer*, November 2024.



Listing exchange requirements

Stock exchanges assign additional specific responsibilities to audit committees. Many NASDAQ companies voluntarily adopt many of the NYSE mandated committee responsibilities.

NYSE	NASDAQ
<ul style="list-style-type: none"> • At least annually, obtain and review a report by the independent auditor describing: the firm’s internal quality-control procedures; any material issues raised by the most recent internal quality control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor’s independence) all relationships between the auditor and the company • Meet to review and discuss the company’s annual audited financial statements and quarterly financial statements with management and the independent auditor, including reviewing the company’s specific disclosures under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” • Discuss the company’s earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies • Periodically, meet separately with management, with internal auditors (or others responsible for the internal audit function) and with the independent auditor • Set clear hiring policies for the employees or former employees of the independent audit firm • Review with the independent auditor any audit problems or difficulties and management’s response • Periodically discuss with management policies relating to risk assessment and risk management • Oversee the performance of the internal audit function (An internal audit function is required for companies listed on the NYSE. The function can be outsourced to a third party.) • Assist the board in oversight of the company’s compliance with legal and regulatory requirements • Conduct an annual performance evaluation • Report regularly to the board 	<ul style="list-style-type: none"> • Receive from the independent auditor a formal written statement delineating all relationships between the auditor and the company, actively engage in a dialogue with the auditor regarding any disclosed relationships or services that may impact the objectivity and independence of the auditor, and take, or recommend that the full board take, appropriate action to oversee the independence of the outside auditor • Oversee the company’s financial and accounting processes and the audits of the financial statements • Review related party transactions

Both exchanges also set other criteria, mostly dealing with membership.

	NYSE	NASDAQ
Number of members	At least three	At least three
Must be independent directors	Yes, under both the NYSE’s listing standards and SEC Rule 10A-3	Yes, under both NASDAQ’s listing standards and SEC Rule 10A-3; under exceptional and limited circumstances, may have one non-independent director
Requirements for financial knowledge	All members are financially literate (or become so within a reasonable period after joining the committee), and at least one member has accounting or related financial management expertise	All members must be able to read and understand fundamental financial statements, and at least one member has experience in finance/accounting or certification in accounting that results in the individual having financial sophistication
Other membership requirements	No audit committee member may serve on the audit committee of more than three public companies unless the board determines that such simultaneous service and related time commitments don’t impair the member’s ability to serve effectively on the company’s audit committee. If this exception is used, the board’s determination must be disclosed in the proxy statement.	None
Have a written charter	Yes, and it must be posted on the company’s website	Yes, and reviewed annually

Benchmarking the audit committee

Average number of meetings per year	S&P 500 – 8.1
Average committee size	Russell 3000 – 3.8 S&P 500 – 4.5

Sources: Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024; MyLogIQ, a data and analytics firm (<https://www.mylogiq.com>).

Compensation committee

The compensation committee's key role is to determine compensation for the CEO and other senior executives. There is widespread scrutiny of CEO compensation and, in particular, its link to company performance and risk taking. This puts compensation committees and the role compensation consultants play in the spotlight.

SEC requirements

The following SEC rules for compensation committees are actually put into effect by the stock exchanges' listing rules.

- Have sole discretion to retain or get advice from a compensation consultant, legal counsel or other advisor.
- Be directly responsible for appointing, compensating, and overseeing any compensation, legal or other advisors used.
- Receive appropriate funding from the company to pay reasonable compensation to the compensation consultant or other advisors retained by the committee.
- Consider the following independence criteria before retaining any compensation consultant (or other advisor or outside legal counsel):
 1. What other services the firm that employs the compensation consultant provides to the company
 2. How significant the fees the company paid to the compensation consulting firm are, as a percentage of the total revenue of that firm
 3. What policies and procedures the compensation consulting firm has to prevent conflicts of interest
 4. Whether the compensation consultant has any business or personal relationships with a member of the compensation committee
 5. Whether the compensation consultant owns any company stock
 6. Whether the compensation consultant has any business or personal relationship with an executive officer of the company

Note: A committee can retain a non-independent compensation consultant, as long as it has considered all six independence factors. Additionally, the SEC rule makes it clear a compensation committee is not bound to implement the recommendations it receives from any advisor.

The SEC also requires companies to disclose in the proxy statement the nature of any conflict of interest the compensation consultant has and how the conflict is being addressed.

Listing exchange requirements

The NYSE and NASDAQ require companies to have a compensation committee with the following responsibilities.

NYSE	NASDAQ
<ul style="list-style-type: none"> • Review and approve corporate goals and objectives relevant to CEO compensation, evaluate CEO performance and determine CEO compensation level based on this evaluation • Make recommendations to the board regarding the compensation of other executive officers, including any incentive and equity compensation plans that require board approval • Conduct an annual performance evaluation 	<ul style="list-style-type: none"> • Determine, or recommend to the board for determination, the compensation of the chief executive officer and all other executive officers in the company. Note that the CEO must not be present during any voting or deliberations on his or her compensation.

Both exchanges also set other criteria, mostly dealing with membership.

	NYSE	NASDAQ
Number of members	Not specified	At least two
Member independence	<p>Must be composed entirely of directors who are independent under the NYSE’s general board independence standards. The board also has to consider whether the following would impair a director’s ability to make independent judgments about executive compensation:</p> <ul style="list-style-type: none"> • The sources of compensation a director receives from a person or entity • Any affiliation a director has with the company, any of its subsidiaries, or any affiliate of a subsidiary that places a director under the direct or indirect control of the company or management, or creates a relationship with executives that would impair his or her judgment. 	<p>Must be composed of directors who are independent under NASDAQ’s definition of director independence. The board must consider the source of compensation a director receives, including any consulting, advisory or other compensatory fee paid by the company. The board also has to consider whether any affiliation a director has with the company, any of its subsidiaries or any affiliate of a subsidiary would impair his or her judgment as a member of the compensation committee.</p> <p>Under exceptional and limited circumstances, may have one non-independent director if there are at least three members on the committee.</p>
Have a written charter	Yes, and it must be posted on the company’s website	Yes, and reviewed annually



Benchmarking the compensation committee

Average number of meetings per year	S&P 500 – 5.7
Average committee size	Russell 3000 – 3.6
	S&P 500 – 4.3

Sources: Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024; MyLogIQ, a data and analytics firm (<https://www.mylogiq.com>).

Controlled companies are exempt from the requirement for an independent compensation committee. If they use this exemption, they have to disclose it in their S-1 and in proxy statements.

Nominating/governance committee

This committee takes the lead in identifying director candidates, recommending governance principles and practices, and organizing board and committee membership and evaluations. The lead or presiding director often chairs this committee.

Listing exchange requirements

The NYSE requires companies to have a nominating/governance committee. NASDAQ doesn't, although in practice, most NASDAQ companies have one.

NYSE
<ul style="list-style-type: none"> • Identify individuals qualified to become board members consistent with the criteria approved by the board • Take a leadership role in shaping the corporate governance of the corporation • Conduct an annual performance evaluation

Both exchanges set independence criteria for the directors who make nomination decisions.

	NYSE	NASDAQ
Number of members	Not specified	Not specified
Member independence	Must be composed entirely of directors who are independent	Either have a nominations committee comprised solely of independent directors or have those responsibilities performed by a majority of the independent directors in a vote in which only independent directors participate
Have a written charter	Yes, and it must be posted on the company's website	Yes, and reviewed annually

Benchmarking the nominating/governance committee

Average number of meetings per year	S&P 500 – 4.6
Average committee size	Russell 3000 – 3.8 S&P 500 – 4.4

Sources: Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024; MyLogIQ, a data and analytics firm (<https://www.mylogiq.com>).

Controlled companies are exempt from the requirement for an independent nominating/governance committee. If they use this exemption, they have to disclose it in their S-1 and in proxy statements.

Appendix D: Governance rules for foreign private issuers

Generally speaking, companies that qualify as foreign private issuers (FPIs, as defined by the SEC) that list on US exchanges can follow their home country governance practices, with some exceptions. The rules get very technical, so although we outline them here, the best advice is to consult with US legal counsel.

NYSE:

FPIs are permitted to follow home country practice in lieu of the majority of the provisions of Section 303A. Companies are still required to comply with the following provisions of Section 303A:

- 303A.06 – Having an audit committee that satisfies the SEC requirements under Rule 10A-3, which include:
 - Committee member independence, with some exemptions for FPIs
 - Direct responsibility to appoint, compensate, retain and oversee the external auditor
 - An established complaints process
 - Authority to engage advisors
 - Funds provided by the company to compensate the audit firm and any advisors, and to cover committee expenses
- 303A.11 – Disclose any significant ways in which their corporate governance practices differ from a US company listing on the NYSE
- 303A.12(b) – CEO to promptly notify the NYSE in writing if aware of non-compliance with governance listing standards
- 303A.12(c) – Company to submit a Written Affirmation annually to the NYSE

NASDAQ:

FPIs may follow home country practice in lieu of:

- The requirements of the Rule 5600 Series
- The requirement to disclose third-party director and nominee compensation set forth in Rule 5250(b)(3)
- The requirement to distribute annual and interim reports set forth in Rule 5250(d), provided, however, that such a Company shall:
 - comply with the Notification of Noncompliance requirement (Rule 5625) and the Voting Rights requirement (Rule 5640)
 - have an audit committee that satisfies Rule 5605(c)(3) concerning responsibilities relating to: (i) registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisors, and (iv) funding as determined by the audit committee
 - ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii)

Except as noted above a foreign private issuer must comply with the requirements of the Rule 5000 Series.

Appendix E: Governance and emerging growth companies

A smaller company that meets the size criteria can choose to go public as an emerging growth company (EGC). That allows the company to, among other things:

- Submit two years of audited financial statements with their IPO registration statement, compared with three years for companies that don't qualify as EGCs.
- Include only two years of selected financial information in their IPO registration filing, compared to the five years that non-EGCs must include.
- Comply with the SEC's alternative executive compensation disclosure requirements for smaller reporting companies. That means disclosing executive pay information for only three executives instead of five and covering two years instead of three. It also means they don't have to disclose CEO pay ratio information.
- Elect to adopt any new or revised accounting standards using the same time frame as private companies (if the standard also applies to private companies).

Companies can maintain the EGC designation for up to five years, or until their revenue exceeds \$1.235 billion,⁸ they become a "large accelerated filer" or they issue \$1 billion or more of non-convertible debt in a three-year period.

While a company is an EGC, it does not have to get an auditor's opinion on internal control over financial reporting under the Sarbanes-Oxley Act section 404(b). (Note: management will still have to report on its assessment of the adequacy of internal control over financial reporting).

From a governance perspective, EGCs don't have to hold say-on-pay or say-on-golden-parachute (approving compensation in the context of a change in control) votes.

Appendix F: Corporate governance resources

There are many sources of information for directors and management on going public. These range from organizations that supply benchmarking information to educational venues. Such information can support decision-making, help you understand regulatory requirements and provide insight into the IPO process.

The following resources may be useful as you focus on the governance aspects of your IPO.

Citations for benchmarking statistics provided throughout the publication

- Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024.
- Spencer Stuart, *2024 U.S. Spencer Stuart Board Index*, September 2024.
- MyLogIQ, a data and analytics firm (<https://www.mylogiq.com>)

PwC's thought leadership

Through our Deals group, our Governance Insights Center and our Private Company Services practice, we produce thought leadership to support directors and executives. Here is a partial list of resources that may be of interest.

- [Deals resources](#)
- [Governance Insights Center resources](#)
- [Private Company Services resources](#)
- [Elevating board performance: the critical role of director onboarding](#)



Governance influencers

- Institutional Shareholder Services (ISS)
- Glass Lewis
- CalPERS
- CalSTRS
- BlackRock
- Vanguard
- State Street Global Advisors
- Council of Institutional Investors

Regulations and rules

- NYSE—Listed Company Manual
- NASDAQ—Marketplace Rules
- SEC—especially the 1933 and 1934 Acts
- PCAOB—Standards that govern the audits of public companies

Director-focused media

- NACD Directorship
- Corporate Board Member
- Agenda
- The Corporate Board
- Directors & Boards
- Pensions & Investments

Educational venues

- National Association of Corporate Directors—Annual Conference, Director Professionalism courses, local chapter events
- Corporate Board Member—Boardroom Summit
- The Rock Center of Stanford Law School—Directors' College
- Ira M. Millstein Center for Global Markets and Corporate Ownership at Columbia Law School
- The Conference Board—The Governance Center
- Harvard Law School Law Forum on Corporate Governance and Financial Regulation

Endnotes

1. “Boardroom Accountability Project 2.0.” NYC Comptroller. <https://comptroller.nyc.gov/services/financial-matters/boardroom-accountability-project/overview/> (accessed July 12, 2024).
2. Spencer Stuart, *Spencer Stuart Director Pulse Survey: Time Commitment 2024*, July 2024.
3. Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2022.
4. Davis Polk, *IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings*, December 2024.
5. Ibid.
6. Ibid.
7. Emerging growth companies do not have to provide their shareholders with a say-on-pay vote.
8. This amount is indexed for inflation every five years, and so will change.

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