

## Top Takeover Defense Changes of 2019

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Deal Point Data continuously tracks changes to corporate charters and bylaws for key governance and takeover defense changes. With much of the conversation surrounding corporate governance shifting away from shareholder rights to social and environmental issues, the volume of defense changes and updates to governing documents in general declined for companies of all sizes for a second year in a row. In this note, we will highlight a few observations of Deal Point Data's takeover defense change and disclosure data for S&P 1500 companies in 2019.

### 2019 S&P 1500 Charter and Bylaw Filing Activity

	2019 Filings	2019 Companies	Stockholder Approved	% Approved	2018 Filings	2018 Companies
All Charter Filings	358	195	N/A	N/A	407	235
Change	188	159	111	59%	197	180
Initial (e.g. IPO/Spinoff)	7	7	N/A	N/A	10	10
Restated Only	42	41	N/A	N/A	50	47
Refiling	121	47	N/A	N/A	150	63
All Bylaw Filings	478	353	N/A	N/A	536	396
Change	393	336	20	5%	448	374
Initial (e.g. IPO/Spinoff)	7	7	N/A	N/A	10	10
Restated Only	33	33	N/A	N/A	36	33
Refiling	45	31	N/A	N/A	42	32

Based on filing date. Companies in index on December 31 of each year.

**Heightened Focus on the "ES" of ESG:** Asset managers, investors, and other proponents of ESG issues increasingly called on companies to focus on issues related to board and management diversity, the gender pay gap, company culture, climate change and sustainability, and other social issues, resulting in less pressure related to shareholder rights and thereby removing a key impetus for defense change. The number of S&P 1500 companies that received a defense related shareholder proposal declined by 19% versus 2018. This is not a case of "mission accomplished" as numerous companies including large caps whose corporate governance is typically the most scrutinized by investors still have practices in place that governance activists generally oppose. For example, among S&P 500 companies, 10% still maintain classified boards, 32% do not allow shareholders to call special meetings, 71% do not allow shareholders to take action by non-unanimous written consent, and 52% have one or more supermajority vote requirements.

For large-cap companies, adopting proxy access was once again the top defense change but the rate of adoptions continued to decline as three-quarters of S&P 500 companies have now implemented proxy access. Adopting proxy access was also the top defense change for mid-cap companies and a top five defense change for small-cap companies, however, the numbers remain relatively small and the overall percentage of these companies that allow proxy access

barely budged (from 22% of the S&P 400 at the end of 2018 to 26% currently and 7% of S&P 600 in 2018 to 10% currently). Overall, the total number of S&P 1500 companies that made at least one defense change during the year declined from 263 in 2018 to 218 in 2019.

**Threat Levels at Historical Levels:** On the other side of the equation, threat levels remained at historical levels and with it the need to maintain "state of the art" governing documents to defend against them. The number of unfriendly acquisition offers and the number of companies targeted by activist investors in 2019 were both in line with multi-year average levels. A recent Lazard research report also stated that the ranks of investors willing to go activist was on the rise with 2019 representing a record year for the number of "first time" activists. Despite these threats, the number of companies making at least one bylaw change during the year declined for large, mid, and small-cap companies for the second straight year. The percent of companies making at least one bylaw change in 2019 declined by 14%, 24%, and 27% for the S&P 500, S&P 400, and S&P 600 when comparing to 2017 filing levels.

#### Top Defense Changes - S&P 500

Defense	2019 Total	Stockholder Approved	% Approved	2018 Total	YoY % Change
Add Proxy Access	26	2	8%	42	-61.5%
Add/Modify Advance Notice Disclosure/Eligibility Requirements	24	0	0%	29	-20.8%
Add/Modify Advance Notice Timing	16	1	6%	14	12.5%
Add Exclusive Forum Provision	12	0	0%	13	-8.3%
Eliminate Supermajority: Charter Amendments	11	11	100%	6	45.5%
Decrease % Requirement to Call Special Meetings	8	2	25%	12	-50.0%
Adopt Majority Standard in Director Elections	8	3	38%	3	62.5%
Eliminate Supermajority: Bylaws Amendments	8	6	75%	11	-37.5%
Eliminate Classified Board	5	5	100%	5	0.0%
Eliminate Supermajority: Mergers	5	5	100%	3	40.0%
	<b>123</b>	<b>35</b>	<b>28%</b>	<b>138</b>	<b>-12.2%</b>

#### Top Defense Changes - S&P 400

Defense	2019 Total	Stockholder Approved	% Approved	2018 Total	YoY % Change
Add Proxy Access	20	0	0%	12	40.0%
Add/Modify Advance Notice Disclosure/Eligibility Requirements	11	0	0%	9	18.2%
Add Exclusive Forum Provision	8	1	13%	11	-37.5%
Eliminate Classified Board	5	4	80%	10	-100.0%
Eliminate Supermajority: Bylaws Amendments	5	5	100%	4	20.0%
Opt-out State Anti-Takeover Statute	5	1	20%	2	60.0%
Add/Modify Advance Notice Timing	4	0	0%	8	-100.0%
Adopt Majority Standard in Director Elections	4	1	25%	8	-100.0%
Eliminate Supermajority: Charter Amendments	4	4	100%	8	-100.0%
Eliminate Cause Requirement to Remove Directors	3	2	67%	7	-133.3%
	<b>69</b>	<b>18</b>	<b>26%</b>	<b>79</b>	<b>-14.5%</b>

### Top Defense Changes - S&P 600

Defense	2019 Total	Stockholder Approved	% Approved	2018 Total	YoY % Change
Add/Modify Advance Notice Disclosure/Eligibility Requirements	20	0	0%	12	40.0%
Adopt Majority Standard in Director Elections	18	5	28%	21	-16.7%
Add Exclusive Forum Provision	16	0	0%	19	-18.8%
Add/Modify Advance Notice Timing	14	0	0%	14	0.0%
Add Proxy Access	11	1	9%	10	9.1%
Eliminate Classified Board	10	9	90%	12	-20.0%
Eliminate Supermajority: Charter Amendments	10	10	100%	5	50.0%
Eliminate Supermajority: Bylaws Amendments	9	9	100%	5	44.4%
Add Shareholder Ability to Amend the Bylaws	4	1	25%	10	-150.0%
Decrease % Requirement to Call Special Meetings	4	0	0%	3	25.0%
Eliminate Supermajority: Mergers	4	4	100%	1	75.0%
	<b>120</b>	<b>39</b>	<b>33%</b>	<b>112</b>	<b>6.7%</b>

Based on effective date of defense change. Companies in index on December 31 of each year.

#### About Deal Point Data

Deal Point Data is transforming the way M&A, securities and corporate governance research is done.

Deal Point Data streamlines the process of identifying precedents and analyzing market trends.

Our data-driven applications enable the world's leading law firms and investment banks to save countless hours of manual research while getting answers faster than ever.