FREDERIC W. COOK & CO., INC.

2005

CHANGE-IN-CONTROL REPORT

Prevalence and Design of Executive Change-In-Control Arrangements at Each of the Top 50 NYSE and NASDAQ Companies

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The premise behind change-in-control ("CIC") arrangements is to motivate executives to continue to work in the best interests of the company and its shareholders and to mitigate potential anxiety executives may have regarding their future employment with the company due to a CIC. Companies enter into these arrangements to ensure continuity of management during mergers and acquisitions and as a way to attract and retain highly valued executives.

Recent high profile mergers have drawn attention to CIC arrangements and the costs associated with providing executives with these protections. In addition, shareholder activist groups have brought forth proposals in annual proxy statements seeking to limit payments under CIC severance programs. It is with this background that we analyzed CIC arrangements presently in place at the 50 largest companies listed on each of the New York Stock Exchange ("NYSE") and NASDAQ stock markets, measured by market capitalization.

We observed the following:

- Eighty-five percent of the companies provide some type of CIC protection
- Protection is typically provided through a combination of individual agreements and equity incentive plans
- Individual CIC severance agreements generally have three-year terms at NYSE companies, while agreements at NASDAQ companies are generally silent as to the term
- Change-in-control definitions differ between NASDAQ and NYSE companies. The acquisition percentage trigger is higher at NASDAQ companies (50 percent) than at NYSE companies (20 percent). In other words, NASDAQ companies employ a more stringent standard. However, both groups generally use a 50 percent merger exception percentage
- Double-trigger termination is found at 74 percent of the companies with cash severance payments relating to a CIC (66 percent NYSE and 84 percent NASDAQ, respectively). Also, NYSE companies use a modified single-trigger termination to a greater extent than NASDAQ companies (26 percent versus 12 percent, respectively)
- Cash severance payments for CEOs and other executives tend to be higher at NYSE companies. Specifically, NYSE CEOs generally have cash severance multiples of 3X and other executives' multiples range from 2-3X, while NASDAQ CEOs generally have multiples of 2-3X and other executives' multiples range from 1-2X
- Eighty percent of the companies define compensation for applying cash severance multiples as the sum of base salary and bonus
- In general, health and welfare benefit continuation periods parallel the cash severance multiple (e.g., two years for a 2X multiple). Mitigation of these benefits is less prevalent for CEOs than for other executives, and less prevalent at NYSE companies than at NASDAQ companies
- Sixty-four percent of equity incentive plans with CIC protection are single-trigger, and an additional 16 percent allow committee discretion to immediately accelerate vesting of equity awards; the remainder are double-trigger
- Full excise tax gross-ups for executive severance are more prevalent at NYSE companies than at NASDAQ companies. Specifically, full excise tax gross-ups are provided to 72 percent of the CEOs at NYSE companies versus 29 percent of the CEOs at NASDAQ companies. Similar percentages apply to other executives at both groups
- Coverage for the cost of legal fees associated with enforcement of the arrangements is more commonly found at NYSE companies than at NASDAQ companies

The following pages of this report discuss these key findings, along with additional findings and analyses, in greater detail.

INTRODUCTION

BACKGROUND & OVERVIEW

This report presents information on CIC protection for executives of the 50 largest U.S.-based companies listed on each of the NYSE and the NASDAQ stock markets. Selection of these companies was based on their total market capitalization (i.e., share price multiplied by total common shares outstanding) as of March 31, 2005. Note that the NASDAQ group is made up of the top 50 U.S.-based companies in the NASDAQ-100 Index, with additional companies inserted based on market capitalization to replace the foreign companies that were removed. A complete list of the companies and summary financial data can be found on pages 19-20.

SURVEY SCOPE

The following topics are covered in this report:

- Prevalence of CIC agreements, policies and equity incentive plan protections
- Term length and protection period of CIC arrangements
- Definition of CIC
- CIC termination trigger for cash severance
- Cash severance multiple and definition of cash severance
- Benefit continuation period
- Equity acceleration treatment
- Excise tax treatment
- Payment of legal fees

OTHER SURVEY PARAMETERS

The information in this report is based on disclosure in company proxy statements, 10-Ks and other SEC filings through March 31, 2005. In general, data are shown separately for NYSE and NASDAQ companies and in total for all companies reporting information. In select instances, data are separated based on the "CEO" and "Others", which are defined as other named executive officers in the company's proxy statement or other employees covered under broader company policies. In cases where other named executives officers have different terms or provisions, we have used the most prevalent data among the executives.

Since companies may have several equity plans in place, all equity incentive plan data are taken from the company's most recently approved shareholder plan. This report does not cover general severance arrangements or severance arrangements that do not specifically mention severance related to a CIC situation.

Because this is our Firm's first report on CIC arrangements, trend data specific to the companies analyzed are unavailable for comparison purposes. However, based on our experience, we have added some general industry trends and best practices information to the report where deemed appropriate. All information in this report is presented in summary form. Note that in some circumstances totals may not add to 100 percent due to rounding.

Companies can take various approaches to providing CIC protection for employees, including through individual employment agreements, company policies and/or equity incentive plan protections. Depending on the particular goals of the company, it may choose to use one or more of the approaches mentioned above to protect its employees.

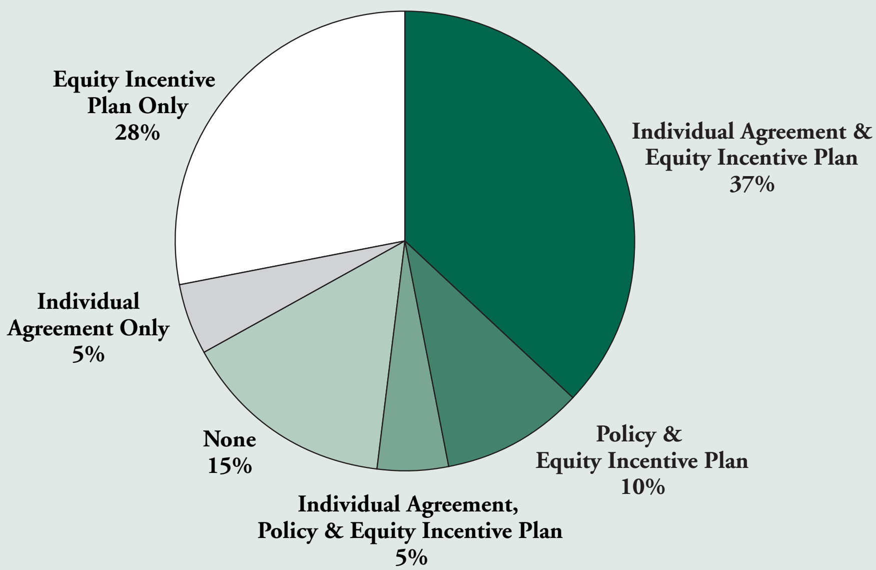
Individual Agreements (commonly referred to as "golden parachute" agreements) are generally limited to the top executives within a company.

Policies typically cover a greater number of employees than agreements and reach farther down into an organization. They are more commonly found in general severance circumstances rather than being limited to a CIC.

Equity Incentive Plans can also contain CIC protections. Because equity incentive plans are broader in scope, CIC protections written into such plans typically cover a large number of employees in an organization.

The pie chart below and the table on the next page show prevalence data for the three types of CIC arrangements.

Prevalence of CIC Arrangements



Eighty-five percent of the companies provide some type of CIC protection. The most common form of protection is a combination of individual agreements and equity incentive plan protections (37 percent).

	CEO			Others		
	NYSE	**NASDAQ**	**Total**	**NYSE**	**NASDAQ**	**Total**
Individual Agreements	18	20	38	24	17	41
Percentage	*36%*	*40%*	*38%*	*48%*	*34%*	*41%*
Policies	7	5	12	7	8	15
Percentage	*14%*	*10%*	*12%*	*14%*	*16%*	*15%*
Equity Incentive Plans	37	43	80	37	43	80
Percentage	*74%*	*86%*	*80%*	*74%*	*86%*	*80%*
None	12	5	17	10	5	15
Percentage	*24%*	*10%*	*17%*	*20%*	*10%*	*15%*

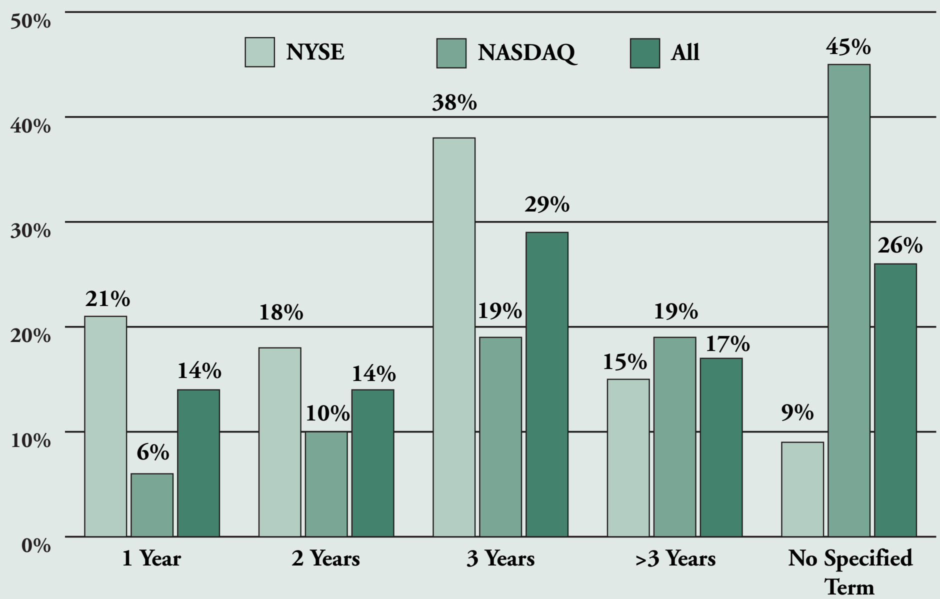
**Note that some companies may provide an individual agreement or policy protection for the CEO and no other employees and vice versa.*

Equity incentive plan protections are more prevalent at NASDAQ companies than at NYSE companies (86 percent versus 74 percent, respectively). In addition, a higher percentage of NYSE companies provide no CIC protection compared to NASDAQ companies (20 percent versus 10 percent, respectively). This may be due to the fact that NYSE companies generally have much larger market capitalizations and therefore several of the largest companies may not consider themselves potential acquisition targets in need of CIC protection.

Individual agreements have various lengths of time in which they are effective, no specified term or an initial term length with automatic renewals subject to notice of non-renewal by either party within a specified period of time before the automatic renewal date. This automatic renewal feature is commonly referred to an "evergreen" provision.

Policies are usually in effect until the policy is amended or revoked and therefore commonly do not have a fixed term. Incentive plans are bound by the term of the plan which is typically ten years for equity incentive plans.

The table below summarizes *individual agreement* term lengths only.



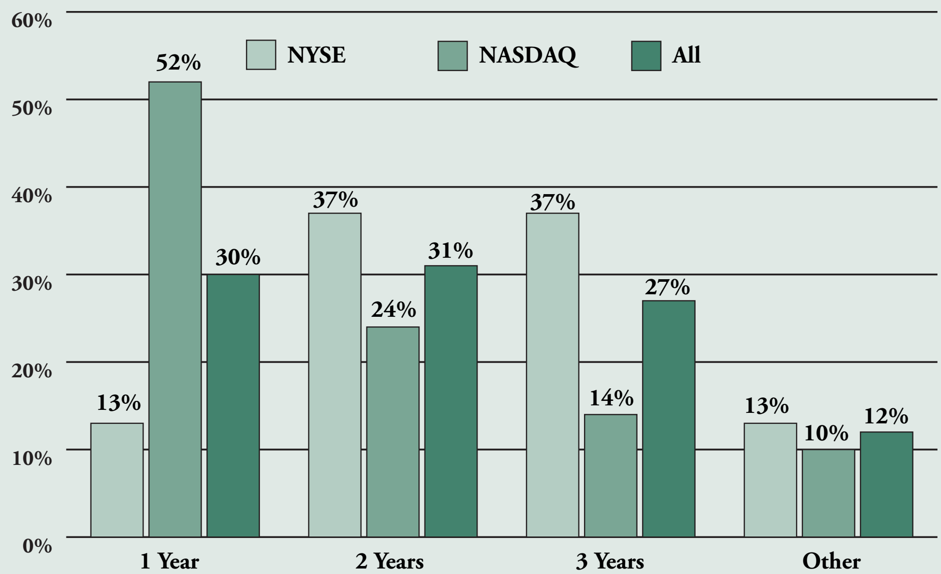
Term lengths for individual agreements at NYSE companies generally are three years. In stark contrast, NASDAQ companies favor the use of arrangements with no specified term and, to a lesser extent, arrangements with terms equal to three years or more. In general, these distinctions were consistent in both CEO arrangements and other executive arrangements.

For individual agreements with specified term lengths, evergreen provisions were found in over 90 percent of NYSE companies, but only 50 percent of NASDAQ companies.

PROTECTION PERIOD

With regard to individual CIC severance agreements and policies, the protection period is the period following the CIC in which the individual is entitled to receive special severance payments if employment is terminated under certain circumstances.

The table below illustrates protection period prevalence:



NYSE companies generally have protection periods for executives ranging from two to three years after the occurrence of a CIC. The majority of NASDAQ companies have shorter protection periods, with one year being the most common (52 percent).

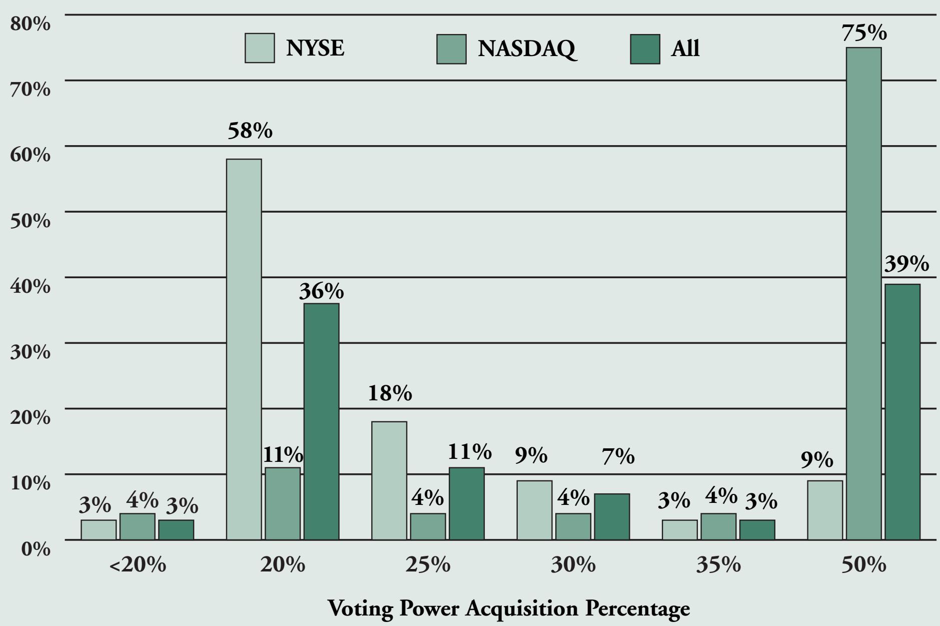
The following are the most common triggers used to define a CIC:

1. Voting power acquisition (i.e., acquisition of a certain percentage of shares by one entity)
2. Merger, consolidation or reorganization
3. Change in the majority of members of the Board of Directors
4. Sale of all or substantially all of the company's assets
5. Liquidation or dissolution of the company

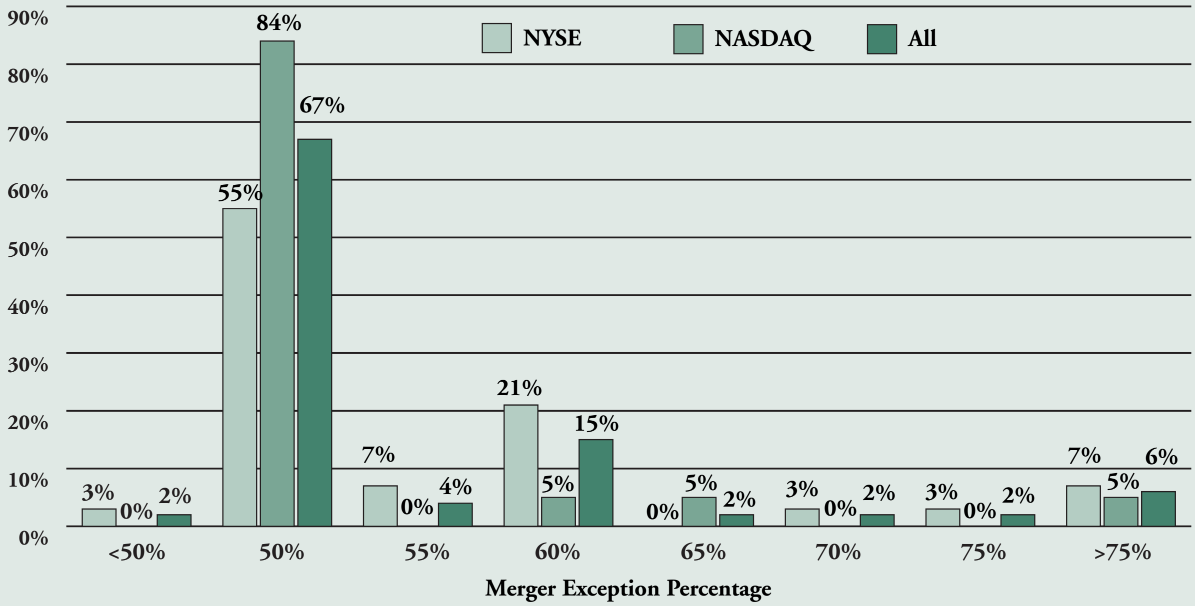
The last three criteria are generally standard definitions in all CIC arrangements. However, the first two criteria have specified percentages in their definitions that can vary significantly from one company to another.

Note that companies can have CIC definitions in individual agreements, policies and equity incentive plans. In some cases, companies may have definitions that differ between equity incentive plans and the individual agreements or policies.

For our purposes, we looked at CIC definitions under equity incentive plans only. The table below and on the next page illustrate the most common percentages found in the sample for the first two triggering events discussed above:



NYSE companies predominately use a CIC definition that has a 20 percent voting power acquisition percentage. In contrast, NASDAQ companies utilize a higher threshold with CIC triggers based on 50 percent or more of the voting securities of the company being acquired by another entity.



An increasing number of companies are including an additional provision as it relates to CIC triggers for mergers, consolidations or reorganizations. The provision specifies that a CIC occurs only if the company's former shareholders continue to own less than a certain percentage of voting securities in the new entity (i.e., "the merger exception" percentage). Both NYSE and NASDAQ companies use 50 percent as the most common merger exception percentage.

Note however, that NYSE companies make more use of higher percentages (e.g., 60 percent) in regard to the merger exception. The higher the ownership percentage, the more likely that the transaction will trigger a CIC since potential merger partners can hold smaller stakes in the new company (e.g., 40 percent) and still trigger a CIC.

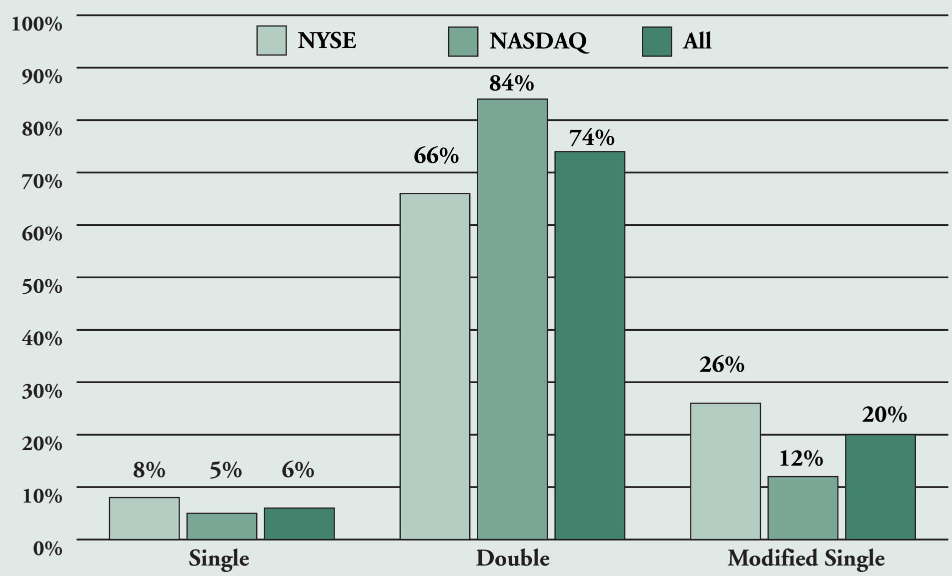
Change-in-control arrangements can be classified as either:

Single-Trigger – cash severance payments are paid to the individual upon his or her voluntary termination of employment following the occurrence of a CIC (as defined in the agreement).

Double-Trigger – cash severance payments are paid to the individual upon both the occurrence of a CIC ("first trigger") and the involuntary or constructive (i.e., termination for good reason[1]) termination of the individual's employment with the company ("second trigger") within the protection period.

Modified Single-Trigger – similar to a single-trigger except for the addition of a "walk-away window" that allows the individual to terminate employment voluntarily during a specified period following a CIC (e.g., in the 13th month following the date of the change of control).

The following table illustrates the prevalence of cash severance triggers. Double-triggers are the more commonly used approach at both NYSE and NASDAQ companies (66 percent and 84 percent, respectively). The modified single-trigger approach is in the minority but is utilized more among NYSE companies than NASDAQ companies (26 percent versus 12 percent, respectively).



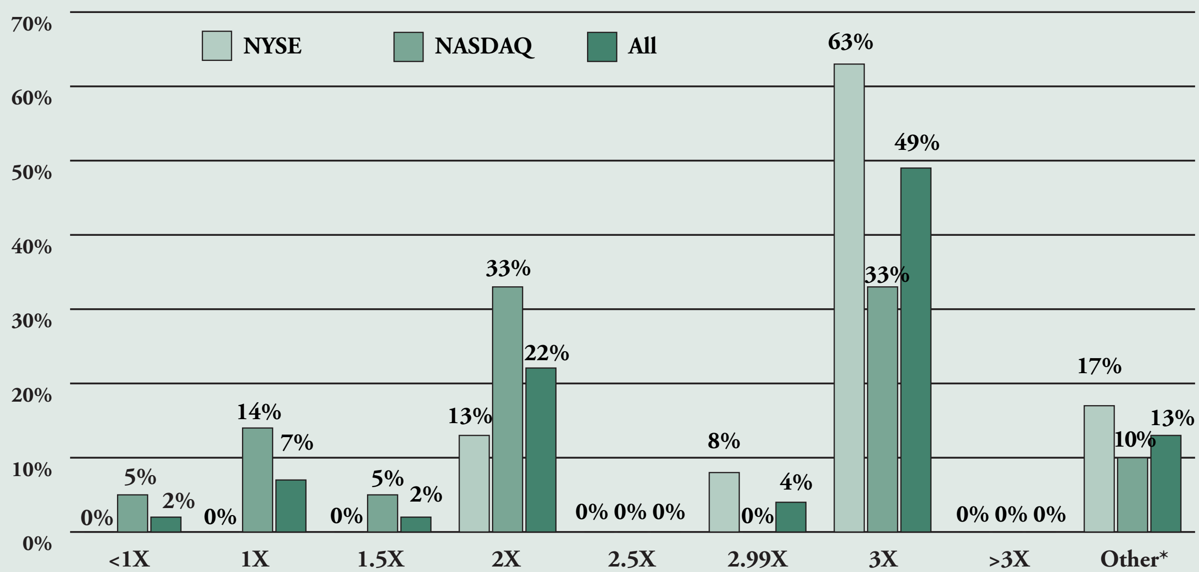
[1]Good reason is commonly defined as 1) a reduction in compensation or benefits, 2) a material change or diminution in duties or responsibilities, 3) a material relocation in workplace (typically 50 miles or more from current place of employment) and 4) a failure of the successor to the company to assume or guarantee the CIC agreement.

CASH SEVERANCE MULTIPLE

Most CIC arrangements express cash severance as a multiple of pay that can be paid in a lump sum or in installments over a specified period of time. Within a company, the cash severance multiple may vary by title or grade level with the CEO receiving the highest multiple (i.e., tiering approach).

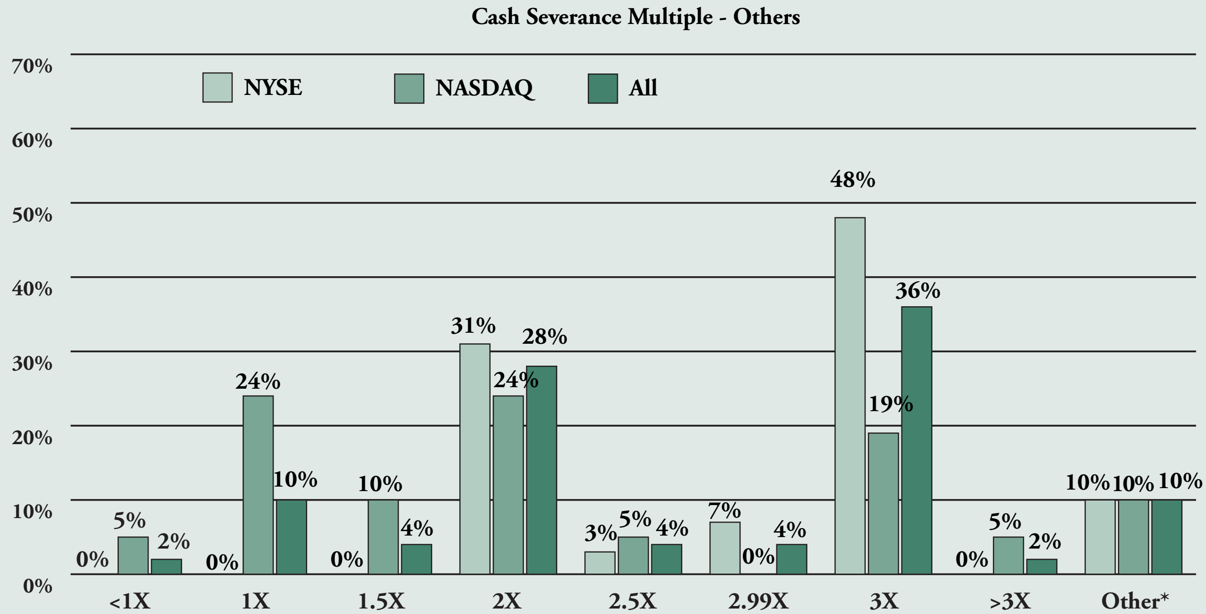
The table below and on the following page illustrate cash severance multiples for the CEO and for other executives. Note that in some instances, a company may use different cash severance multiples for particular executives. In these instances, we used the most prevalent multiple among the "other" executives for our summary statistics.

Cash Severance Multiple - CEO



**The "Other" category generally consists of companies that expressed the cash severance multiple as equal to the remaining term of the contract (some of which were capped at 3X maximum). In addition, one company used a specified dollar severance amount rather than a multiple.*

Sixty-three percent of NYSE companies use a 3X multiple for the CEO, while NASDAQ companies use either 2X or 3X multiples for CEOs. A few companies set the severance multiple equal to 2.99X which is similar to the tax law safe harbor for avoiding excise tax liability.

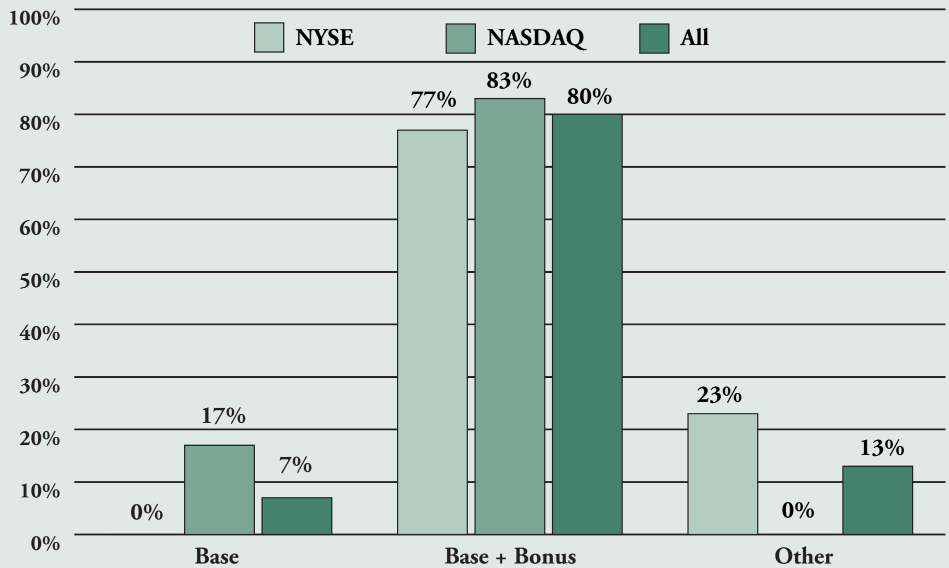


**The "Other" category generally consists of companies that expressed the cash severance multiple as equal to the remaining term of the contract (some of which were capped at 3X maximum). In addition, one company used a specified dollar severance amount rather than a multiple.*

NYSE companies commonly use a 3X multiple for other executives although 2X-2.99X multiples are almost as prevalent (48 percent vs. 40 percent). NASDAQ companies predominately use a range of multiples between 1X and 2X.

CASH SEVERANCE DEFINITION

The cash severance definition may also vary between companies; however, the most common cash severance definition is the sum of the executive's base salary and bonus (80 percent). Although a clear minority, a select number of NYSE companies also include long-term incentives in addition to base and bonus in the severance definition (part of the "Other" column below).

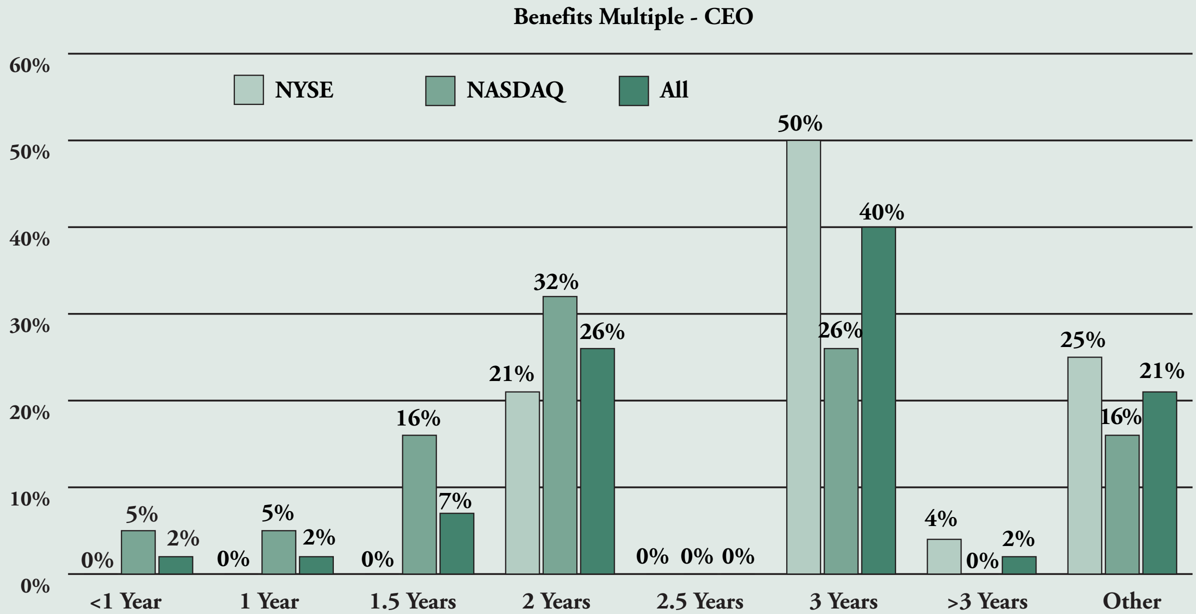


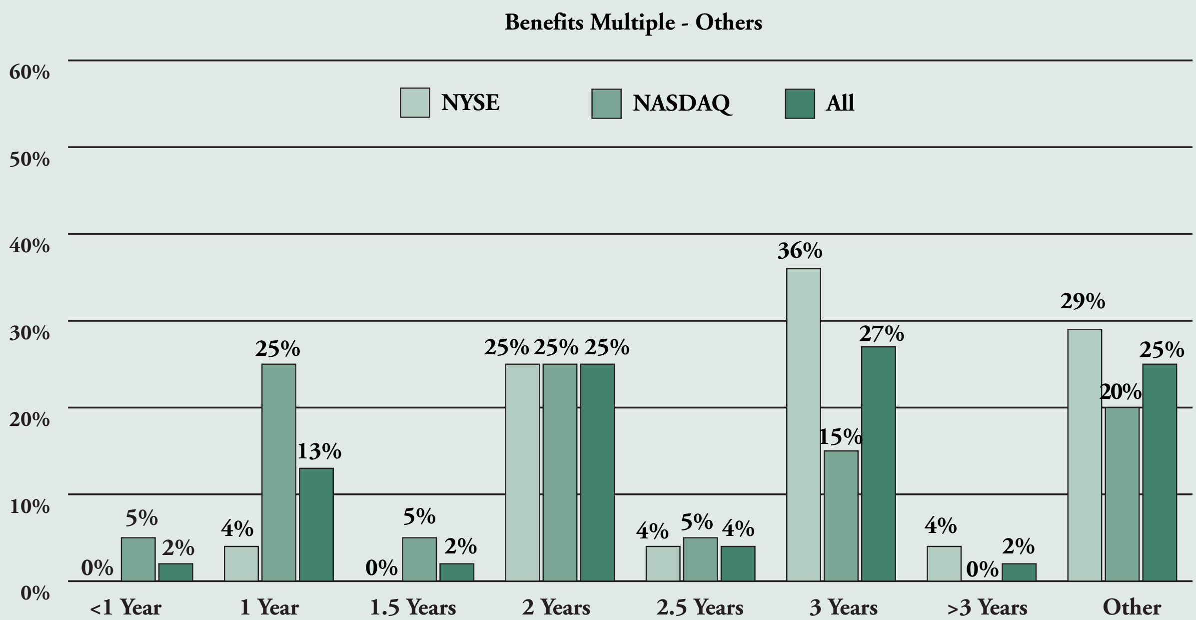
Typically, base salary is defined as the executive's current salary in place at the time of the CIC. However, bonus is defined in a number of different ways, including but not limited to, the following:

1. **Higher of** – the greater of two or more criteria, usually the target bonus in the year of termination or the average bonus over a prior number of years
2. **Average** – the average bonus paid over a prior number of years
3. **Target** – the target bonus for the year of termination

In addition to cash severance payments, companies provide continued health and welfare benefits (i.e., medical, life, disability insurance, etc.) for a specified period of years which generally matches the cash severance multiple. Some companies may add a provision which requires mitigation of the benefits if the individual obtains similar benefits from a new employer.

The tables below illustrate the prevalence of health and welfare benefits for CEOs and other executives. The data closely parallel the cash severance data.





The table below illustrates mitigation prevalence. NYSE companies are less likely to have mitigation provisions on health and welfare benefits than NASDAQ companies. In general, benefit mitigation is less common for CEOs than other executives.

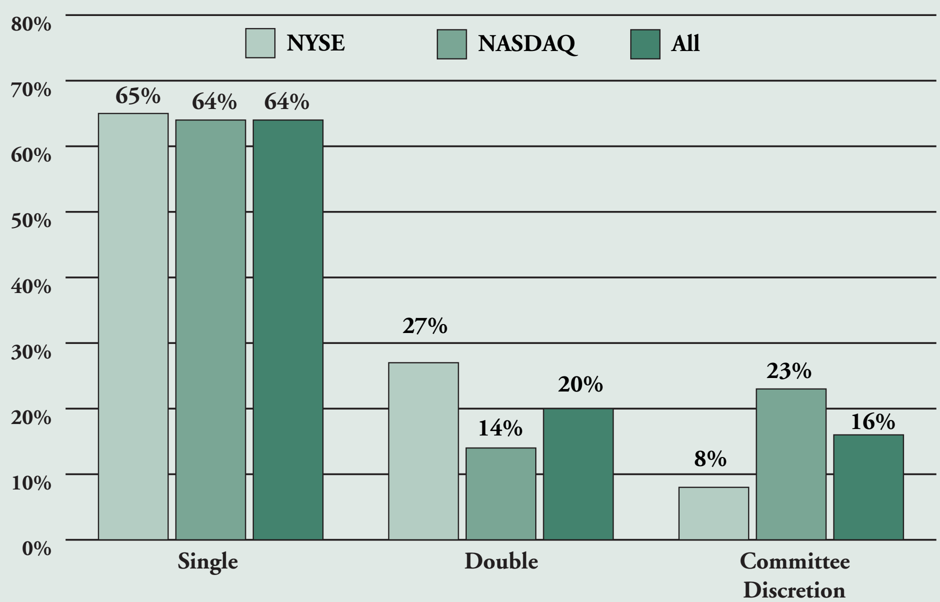
	CEO		Others	
	Yes	**No**	**Yes**	**No**
NYSE	42%	58%	45%	55%
NASDAQ	63%	38%	75%	25%
All	51%	49%	58%	42%

The treatment of equity awards upon the occurrence of a CIC is typically covered either in the equity incentive plan (or award agreements) or in the individual CIC agreement. Most companies provide protection for equity awards through the acceleration of vesting on stock options and/or the removal of forfeiture restrictions on restricted stock. Equity acceleration can be designed as either a single-trigger event (i.e., automatic vesting at CIC) or a double-trigger event (i.e., CIC followed by involuntary termination).

We note that the triggering event for equity acceleration is typically the consummation of a change of control rather than shareholder approval of a change of control. This language ensures that equity awards do not accelerate unless the change of control actually is completed.

For our purposes, we looked at equity acceleration language in the equity incentive plans. Note that we observed instances were the individual CIC agreements treated awards differently than the equity incentive plans. In these cases, the individual agreements generally called for double-trigger treatment of stock options while the equity incentive plans contained single-trigger language.

The table below illustrates equity acceleration treatment as disclosed in equity incentive plans *only*. Note that single-trigger treatment is the most prevalent approach although double-trigger approaches are increasing in popularity and are considered "best practice" from a governance standpoint.



EXCISE TAX TREATMENT

Under Section 4999 of the Internal Revenue Code, an excise tax must be paid by an individual if total payments made in connection with a CIC exceed the safe-harbor limit, which is 2.99X the individual's “base amount[2].” The excise tax to the individual is equal to 20 percent of all amounts paid in excess of 1X the “base amount”, and the company loses the corresponding tax deduction for this “excess parachute payment”, under Section 280G of the Code.

Companies address the issue in one of the following ways:

Provide tax gross-up – company pays the individual’s excise and related income taxes in an effort to offset the excise tax and keep the individual whole. Note that these payments are deemed “excess parachute payments” as well, which requires the company to gross up the tax payment. In so doing, the company provides the individual with payments such that the individual receives on an after-tax basis an amount equal to the amount the individual would have received in the absence of the imposition of the excise taxes.

Limit payments to the 2.99X safe harbor – company cuts back all payments to the safe-harbor limit so that no excise tax is imposed on the individual under any circumstance.

Valley provision – company cuts back payments to the safe-harbor limit only if the individual would receive a greater after-tax benefit than if the excise tax were paid by the individual on the excess parachute payments.

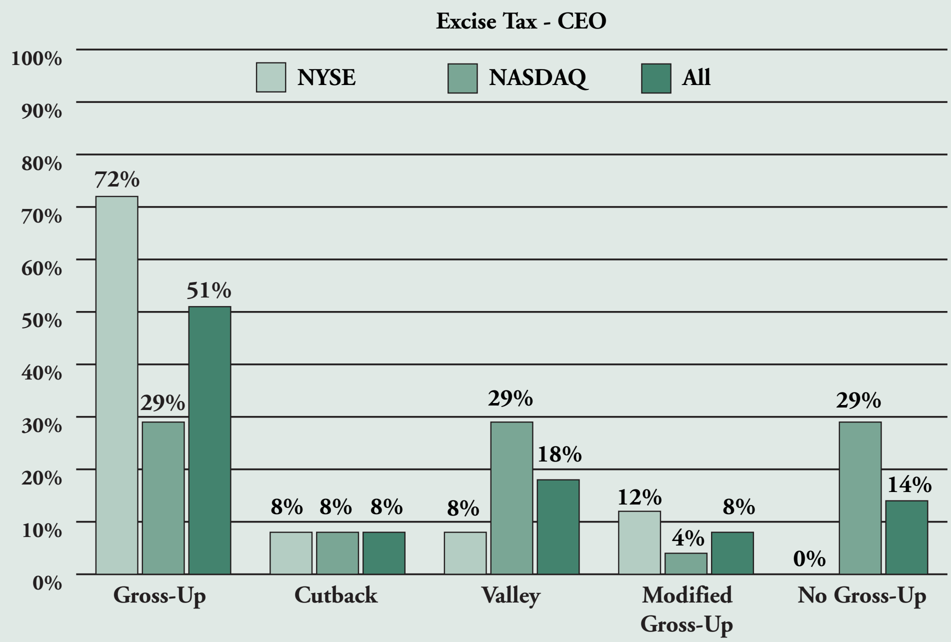
Modified gross-up – company pays the excise tax only if the payments exceed the safe harbor by a certain amount (e.g., 110 percent or $50,000). If not, payments are cut back to the safe harbor.

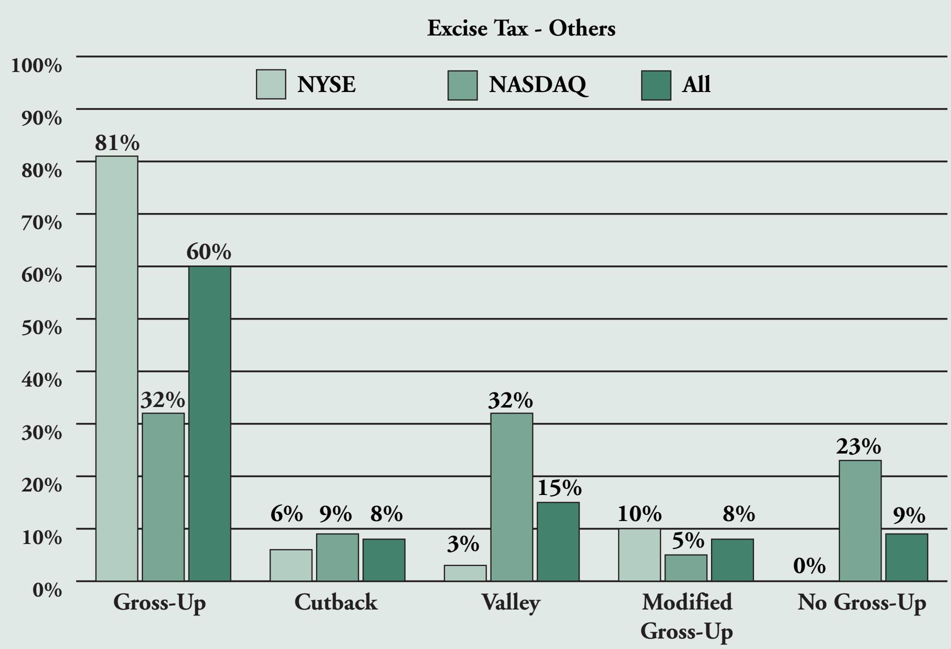
Provide no tax gross-up – company requires executive to pay excise tax if payments exceed the safe harbor.

The tables on page 17 show excise tax gross-up prevalence data for the CEO and other executives. NYSE companies provide full excise tax gross-up to CEOs and other executives to a greater extent than NASDAQ companies. The data indicate that CEOs are slightly less likely to get a full gross-up than other executives. We believe this is an anomaly in the data.[3] Typically, we would expect the CEO to have more generous provisions in his/her agreement.

NASDAQ companies limit the use of excise tax gross-ups and, in many cases, do not provide a gross-up at all.

[2]Base amount is defined as the average W-2 compensation for the five years preceding the year in which the CIC occurs.
[3]In cases where a company provided CIC agreements for both the CEO and other executives, 93% of the companies provided the same tax gross-up treatment for both executive groups. In eight instances, companies provided CIC agreements for other executives and not the CEO. These one-off agreements generally provided full gross-up provisions which may have caused the full gross-up data to be slightly higher for the “Others” group.

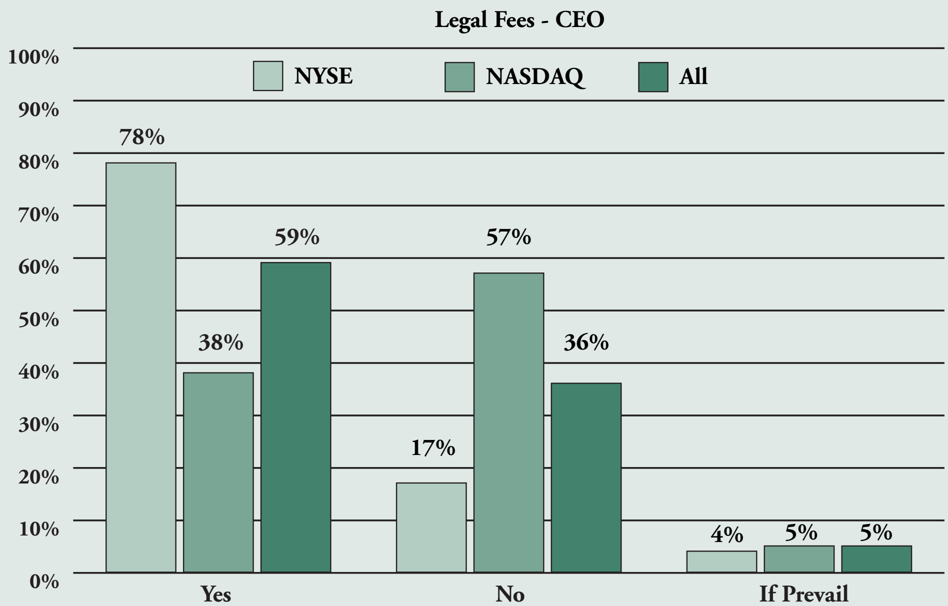

Excise Tax - CEO
NYSE
NASDAQ
All
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
72%
29%
51%
8%
8%
8%
8%
29%
18%
12%
4%
8%
0%
29%
14%
Gross-Up
Cutback
Valley
Modified Gross-Up
No Gross-Up

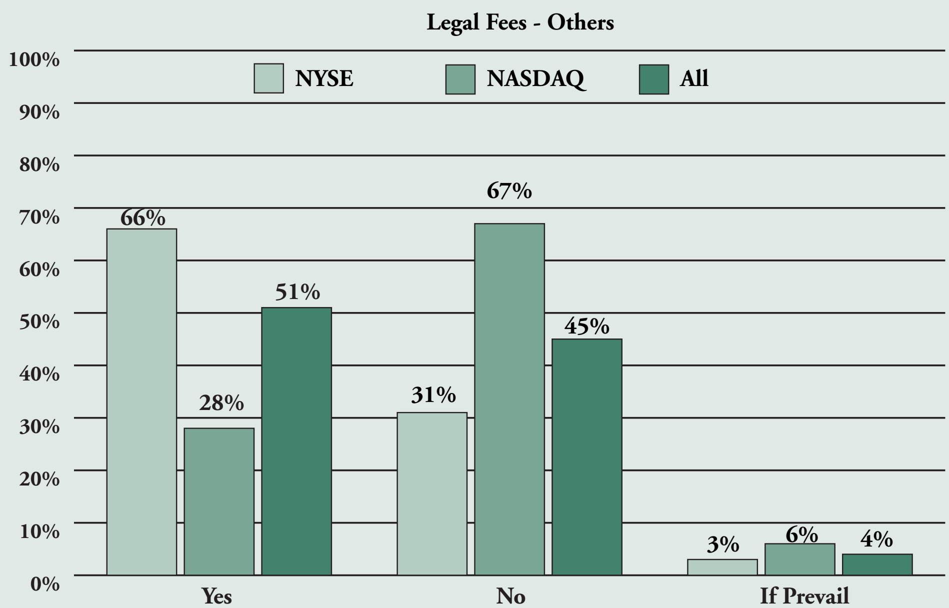

Excise Tax - Others
NYSE
NASDAQ
All
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
81%
32%
60%
6%
9%
8%
3%
32%
15%
10%
5%
8%
0%
23%
9%
Gross-Up
Cutback
Valley
Modified Gross-Up
No Gross-Up

LEGAL FEES

In some instances, legal proceedings are necessary to resolve disputes that arise between the company and an individual relating to CIC severance payments. Individual agreements may include provisions for the payment of legal fees by the company.

Our analysis found that coverage of legal fees is more common at NYSE companies than NASDAQ companies. Note that a limited number of companies stipulated that legal fees would be covered only if the executive prevailed in the dispute.





50 LARGEST NYSE COMPANIES

3M
ABBOTT LABORATORIES
ALTRIA GROUP
AMERICAN EXPRESS
AMERICAN INT'L GRP
BANK OF AMERICA
BELLSOUTH
BERKSHIRE HATHAWAY
BOEING
BRISTOL-MYERS SQUIBB
CHEVRONTEXACO
CITIGROUP
COCA-COLA
CONOCOPHILLIPS
DISNEY (WALT)
DOW CHEMICAL
DU PONT (E I) DE NEMOURS
EXXON MOBIL
FANNIE MAE
GENENTECH
GENERAL ELECTRIC
GILLETTE
GOLDMAN SACHS GROUP
HEWLETT-PACKARD
HOME DEPOT
INT'L BUSINESS MACHINES
JOHNSON & JOHNSON
JPMORGAN CHASE
LILLY (ELI)
MEDTRONIC
MERCK
MERRILL LYNCH
MORGAN STANLEY
PEPSICO
PFIZER
PROCTER & GAMBLE
SBC COMMUNICATIONS
TARGET
TIME WARNER
U S BANCORP
UNITED PARCEL SERVICE
UNITED TECHNOLOGIES
UNITEDHEALTH GROUP
VERIZON COMMUNICATIONS
VIACOM
WACHOVIA
WALGREEN
WAL-MART STORES
WELLS FARGO
WYETH

SUMMARY FINANCIAL DATA

	Revenues *($ Millions)*	**Market Capitalization as of 3/31/05** *($ Millions)*	**Net Income** *($ Millions)*
75th Percentile	$123,000	$65,076	$7,617
Average	101,042	56,500	5,503
Median	72,111	38,529	4,451
25th Percentile	54,231	24,445	2,637

50 LARGEST NASDAQ COMPANIES

ADOBE SYSTEMS
ALTERA
AMAZON.COM
AMGEN
APOLLO GROUP
APPLE COMPUTER
APPLIED MATERIALS
BED BATH & BEYOND
BIOGEN IDEC
BIOMET
BROADCOM
CISCO SYSTEMS
COMCAST
COSTCO WHOLESALE
DELL
EBAY
ECHOSTAR COMMUNICATIONS
ELECTRONIC ARTS
FISERV
GENZYME
GILEAD SCIENCES
GOOGLE
IAC/INTERACTIVE
INTEL
INTUIT
JUNIPER NETWORKS
KLA-TENCOR
LIBERTY MEDIA INT'L
LINEAR TECHNOLOGY
MARVELL TECHNOLOGY
MAXIM INTEGRATED PRODUCTS
MCI
MICROSOFT
NETWORK APPLIANCE
NEXTEL COMMUNICATIONS
ORACLE
PACCAR
PAYCHEX
QUALCOMM
SEARS HOLDINGS
SIRIUS SATELLITE RADIO
STAPLES
STARBUCKS
SUN MICROSYSTEMS
SYMANTEC
UNITEDGLOBALCOM
VERISIGN
VERITAS SOFTWARE
XILINX
YAHOO

SUMMARY FINANCIAL DATA

	Revenues *($ Millions)*	**Market Capitalization as of 3/31/05** *($ Millions)*	**Net Income** *($ Millions)*
75th Percentile	$31,089	$10,452	$872
Average	31,633	8,669	894
Median	13,844	3,418	397
25th Percentile	10,301	1,628	216

Frederic W. Cook & Co., Inc. is an independent consulting firm specializing in executive and director compensation and related corporate governance matters. Formed in 1973, our firm has served more than 1,700 corporations, including 40 percent of the current Fortune 200 during the past two years, in a wide variety of industries from our offices in New York, Chicago, and Los Angeles. Our primary focus is on performance-based compensation programs that help companies attract and retain business leaders, motivate and reward them for improved performance, and align their interests with shareholders. Our range of consulting services includes:

- Annual Incentive Plans
- Change-in-Control and Severance
- Compensation Committee Advisor
- Competitive Assessment
- Corporate Governance Matters
- Corporate Transactions
- Directors' Remuneration
- Incentive Grants and Guidelines
- Long-term Incentive Design
- Ownership Programs
- Performance Measurement
- Recruitment/Retention Incentives
- Regulatory Services
- Restructuring Incentives
- Shareholder Voting Matters
- Specific Plan Reviews
- Strategic Incentives
- Total Compensation Reviews

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