Disclosure committee report

Practices and trends

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Contents

1 Introduction

In 2014, the Financial Education and Research Foundation (FERF) and Ernst & Young LLP (EY US) issued a report about disclosure committees titled *Unlocking the potential of disclosure committees: leading practices and trends* (2014 Report). Since its publication, the 2014 Report has been widely described as a leading reference on disclosure committees, including their purpose, composition, operations, and how they can simultaneously mitigate risk and deliver real value to public company investors, stakeholders, management and boards. That publication remains relevant today, even as public company disclosure requirements and practices have significantly evolved.

With this background, we set out to learn whether and how public companies have been leveraging their disclosure committees to address evolving disclosure requirements and practices. In particular, we sought to find answers to the following:

- How has disclosure committee governance (e.g., committee responsibilities, composition, structure, practices) changed since 2014?
- How have committee practices evolved with disclosure requirements and trends?
- How are disclosure committees being used strategically to facilitate more effective disclosure both within and outside of SEC filings in ways that enhance not only investor and broader stakeholder trust but also corporate value?

> “Disclosure committees can facilitate effective public company disclosures and communications in the face of continually evolving regulations and market demands, enhance the confidence of the CEO and CFO in executing their quarterly SOX certifications, and support the audit committee and board in overseeing financial reporting and other public disclosures.
>
> Rani Doyle, Managing Director, Ernst & Young LLP, Center for Board Matters

To answer these questions, the Society for Corporate Governance (Society), Financial Executives International (FEI) and EY professionals worked together, beginning in the fall of 2020, to update the 2014 Report by developing and disseminating a refreshed, governance-focused disclosure committee practices survey. The 14-question survey, which was distributed to members of the Society and FEI, garnered responses from representatives of 175 public companies across industries and company sizes, mostly ranging from $2 billion to $300 billion in market capitalization.

We learned that companies continue to see great value in using a disclosure committee that includes cross-functional management and business units participation to centralize thinking and decision-making around public disclosures. We also found that disclosure committees are expanding their purview beyond conventional SEC filings and disclosures.

We hope you find the information in this report useful and informative as you consider the structure, composition and activities of your disclosure committee.

> “Today, as our survey shows, disclosure committee members have key roles across a range of critical corporate functions. Disclosure committees are reviewing not only SEC reports and filings, but also other types of corporate communications and disclosures that are viewed as significant components of a company’s overall story and value proposition, such as annual letters to shareholders, corporate website disclosures and investor presentations, as well as cybersecurity, climate and sustainability disclosures, wherever they appear.
>
> Randi Morrison, Senior Vice President — Communications, Member Engagement and General Counsel, Society for Corporate Governance

Background

The Sarbanes-Oxley Act of 2002 (SOX) was passed to better protect investors by improving corporate disclosures' accuracy and reliability and preventing fraudulent financial reporting by public companies. It did this, in part, by mandating significant changes in public company governance and requiring corporate management to maintain a sound control environment for financial reporting and other disclosures. Among its many critical provisions, Section 302, *Corporate Responsibility for Financial Reports*, directed the SEC to adopt rules requiring CEOs and CFOs to individually certify the contents of quarterly and annual reports filed with the SEC.[1] More specifically, the certifications require CEOs and CFOs to certify that:

- The SEC filing does not contain any untrue or misleading statement of material fact.
- The financial statements and other financial information included in the report should fairly present in all material respects the company's financial condition, results of operations and cash flows.
- They are responsible for establishing and maintaining "disclosure controls and procedures" and "internal control over financial reporting."

CEOs and CFOs should further certify that (1) the disclosure controls and procedures have been designed to help confirm that material corporate information is made known to them by others in the organization, (2) they have evaluated the effectiveness of those disclosure controls and procedures, and (3) they have presented in the report their conclusions about such effectiveness. CEOs and CFOs must make similar certifications about internal control over financial reporting.

These certifications are intended to promote the CEO's and CFO's active involvement in and accountability for the disclosures and enhance investor confidence in companies' public disclosures. However, the related SEC rules do not require companies to have disclosure committees, although the SEC recommends them. In its adopting release on final rules implementing Section 302, the SEC stated:

> [W]e are not requiring any particular procedures for conducting the required review and evaluation. Instead, we expect each issuer to develop a process that is consistent with its business and internal management and supervisory practices. We do recommend, however, that, if it has not already done so, an issuer create a committee with responsibility for considering the materiality of information and determining disclosure obligations on a timely basis. As is implicit in Section 302(a)(4) [of SOX], such a committee would report to senior management, including the principal executive and financial officers, who bear express responsibility for designing, establishing, maintaining, reviewing and evaluating the issuer's disclosure controls and procedures.

The accompanying footnote elaborated:

> Officers and employees of an issuer who have an interest in, and the expertise to serve on, the committee could include the principal accounting officer (or the controller), the general counsel or other senior legal official with responsibility for disclosure matters who reports to the general counsel, the principal risk management officer, the chief investor relations officer (or an officer with equivalent responsibilities) and such other officers or employees, including individuals associated with the issuer's business units, as the issuer deems appropriate.

Outside of the SEC's stated expectations and suggested composition, there are no regulatory requirements on disclosure committee composition, administration, operations or documentation. As a result, even as practices have coalesced around certain fundamentals, disclosure committee structure and practices vary widely.

In the 2014 Report, we reported that disclosure committee practices were "still very much a work-in-progress." This finding reflected the regulatory flexibility afforded to disclosure committees and the absence of readily available benchmarking data, as well as their relatively nascent state.

Given the certification rule's focus on quarterly and annual financial reporting, most companies initially limited their committees' purview to such periodic reports. Over time, many disclosure committees have expanded their scope to include earnings releases, proxy statements (or portions thereof), current reports on Form 8-K, and other public disclosures. As disclosure committee scopes expand, their composition has been evolving as well. Disclosure committees provide value by bringing together relevant management perspectives from various function areas, including finance, internal audit, investor relations (IR), legal, corporate governance/corporate secretary's office and other key functions, within a discrete governance framework designed to facilitate effective disclosure.

> "Disclosure committees allow companies to better manage and more efficiently address in a consistent manner the broadening range and complexity of disclosure issues and demands they face from multiple sources, including the SEC and other regulators, investors, and other stakeholders, under planned and unplanned scenarios — and to make well-informed determinations about the materiality of such issues. Their work not only underpins compliance with SEC disclosure requirements but also serves to enhance disclosure quality, reliability and effectiveness — the linchpin of investor trust.
>
> Neri Bukspan, Partner, Ernst & Young LLP, and EY Americas Accounting, Reporting and Governance Leader

[1] See Regulation S-K Item 601(b)(31) and Exchange Act Rules 13a-14 and 15d-14. Also note that an additional certification is required of CEOs and CFOs under Section 906 of SOX (see Regulation S-K Item 601(b)(32)). There are important differences between the two certifications, including that the Section 906 certification does not refer to disclosure controls and procedures or internal controls over financial reporting but rather broadly refers to compliance with the federal securities laws and provides for criminal penalties for a knowingly or willingly false certification.

2 Key findings

Formal disclosure committees are a corporate norm

Nearly all respondents have a formal disclosure committee or a comparable body with similar responsibilities. This makes sense, as all public companies have significant legal and regulatory obligations and risk relating to their periodic and other reports filed with the SEC, as well as other disclosures (whether mandatory or voluntary) made via other channels. Accordingly, disclosure committees serve a key role in a company's disclosure control and oversight process.

Disclosure committee members generally are appointed by senior executive leadership

Those most frequently identified as appointing disclosure committee members were the CFO, general counsel or other in-house securities counsel, chief accounting officer, the disclosure committee itself, and the CEO. About 13% of respondents overall reported that there was no defined or consistent process for appointing committee members.

Disclosure committee members represent a broad cross-functional group

Almost all respondents reported that their disclosure committees generally are composed of a subset of their executive officers. The executive officers that were most frequently noted as standing members include chief accounting officer or controller, head of SEC reporting or equivalent, chief investor relations officer or equivalent, chief legal officer/general counsel or equivalent, chief audit executive/head of internal audit, in-house securities counsel or equivalent, corporate secretary, CFO, and treasurer.

Disclosure committees are generally chaired and coordinated by different roles

Most respondents reported that their disclosure committees are chaired by the controller or chief accounting officer and coordinated by another person, most commonly the head of financial/SEC reporting.

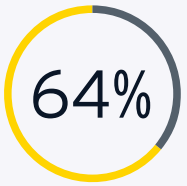
Disclosure committees regularly review a variety of disclosure channels

Respondents' disclosure committees regularly review SEC periodic reports and earnings releases, and more than 40% also review proxy statements and Form 8-Ks. A smaller minority of respondents reported regular review by their disclosure committee of the company's website disclosures, credit rating presentations, and corporate social responsibility or sustainability reports.

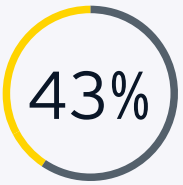
Disclosure committees continue to focus on financial and technical disclosures but increasingly review other types of disclosures

Aside from the more traditional and commonly provided accounting and financial reporting information, which is nearly universally within the committee's scope, disclosure committees commonly review non-GAAP financial metrics, litigation disclosure and M&A-related disclosures. More than one-third of respondents regularly review business unit/regional reports; executive compensation/compensation discussion and analysis (CD&A); and cybersecurity risk, cybersecurity risk processes and cybersecurity events.

Disclosure committees generally have documented processes and procedures

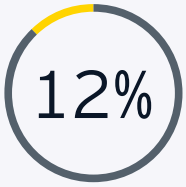


reported that their disclosure committees have a formal charter



have written disclosure controls and procedures

provide formal training to committee members



conduct an annual or other periodic self-evaluation

CFOs and CEOs regularly approve disclosure committee charters

For those that have them, disclosure committee charters are most commonly approved by the disclosure committee itself, followed by the CFO or CEO.

Disclosure committees meet at least quarterly

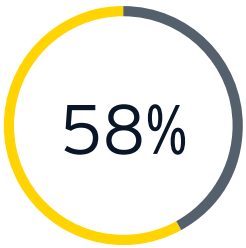
Most respondents noted that their committees meet quarterly to review SEC periodic reports and earnings releases. More disclosure committees review SEC periodic reports together with earnings releases than those that review them separately.

Record-keeping of disclosure committee meetings is the norm

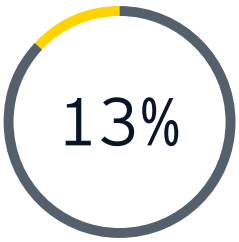
Over 70% of the respondents indicated that their disclosure committees maintain meeting minutes. While most keep formal notes, 13% reported that they prepare and maintain informal notes of the meetings.

Management commonly reports to the audit committee about the disclosure committee's activities

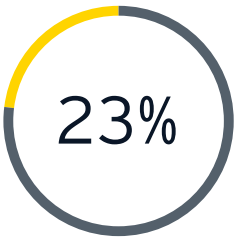
Over half (54%) of respondents reported that management reports orally to the audit committee about the disclosure committee's meetings and activities. About one-third reported that the disclosure committee (or committee lead/designated member) provides a written or oral report summarizing its meetings to the audit committee.



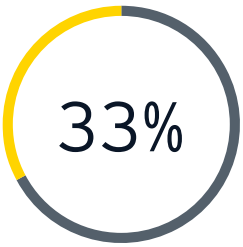
maintain formal minutes



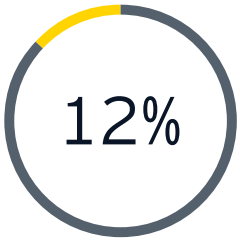
keep informal notes of their meetings that document meeting particulars, including member attendance and other participation and coverage of agenda topics



simply document that a meeting has taken place



share such records with the external auditor



distribute minutes or informal meeting notes with the audit committee

3 Detailed survey results

In our engagement with corporate management, particularly from legal, IR and the chief accounting officer functions, we regularly hear views on how disclosure committees can add value and effectiveness to public company disclosure operations. Formal committees and documentation of committee functions and structure promote the appropriate sizing, composition and definition of member roles and responsibilities. Most committees are designed to consider regulatory and other key company disclosures and provide an "early warning" on potential disclosure issues, whether on a Form 8-K disclosure item, cybersecurity issue or other topics. Providing a regular forum for assessing and deliberating potential disclosure issues enables consistency in determining materiality and implementing new disclosure requirements or demands, thus facilitating effective public company disclosures.

Can a disclosure committee have subcommittees?

The answer is yes, and many do. Throughout the survey, the questions contemplated whether a disclosure committee would have subcommittees to review discrete matters. For example, expanded responses to the survey noted that their companies had subcommittees that addressed Form 8-K disclosures, earnings scripts and supplemental earnings material, investor conference presentations, and rating agency disclosures.

Can a company have two disclosure committees?

A couple of respondents noted that they had two disclosure committees — one comprising a broad range of senior management that commonly serves on disclosure committees (see page 7) and another represented by management in discrete function areas, such as the chief information security officer, select business unit heads and additional members of the company's legal team.

Can a disclosure committee have multilayered structures?

Yes, as we observed from this survey, from market practices generally and from the 2014 Report. In fact, the 2014 Report described in some detail a committee with three levels: (1) a subcommittee that prepared first drafts of disclosure documents to be reviewed by the disclosure committee; (2) the full disclosure committee, which met to discuss the drafts prepared by the subcommittee and any other relevant matters; and (3) an executive-level disclosure committee that included the CEO, CFO, general counsel, investor relations and certain other members of management. The executive-level disclosure committee held "formal" meetings intended to support the CEO and CFO certifications.

Any company may decide whether such an approach could work for its facts and circumstances — or that a different formulation would work better. Both surveys clearly show there is no one-size-fits-all approach evidenced in this current survey, or the past survey, highlighting that a company's management and oversight functions and preferences are important considerations, allowing for different approaches to achieve similar objectives.

In the absence of prescriptive rules, disclosure committees have flexibility in designing their structure and operations to best suit their particular facts and circumstances. Corporate management should consider what would work best for them to establish and administer effective disclosures, support the CEO and CFO certifications, enhance disclosure effectiveness and provide comfort to the audit committee and the board of directors on the controls and procedures management has implemented around the company's required and material disclosures.

The survey specifically focused on issues related to committee composition, scope, operations, and associated processes and practices.

Do you have a formal* "disclosure committee" or a comparable body with similar responsibilities?

94%

have a formal disclosure committee

4%

have another committee or group performing that role; the balance reported not having a formal committee

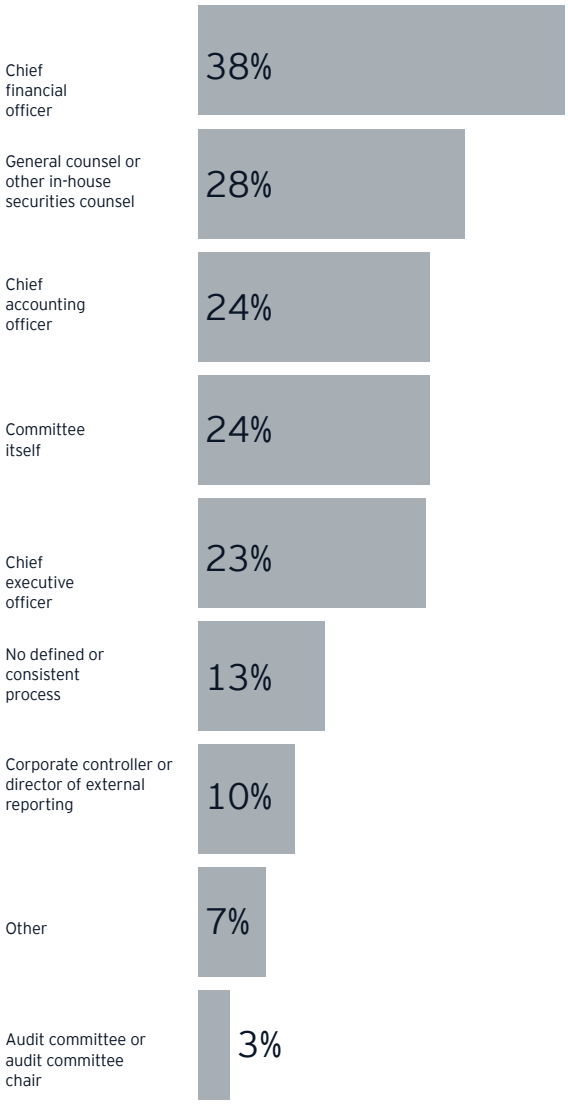
*Defined with reference to SEC's Final Rule 33-8124, *Certification of Disclosure in Companies' Quarterly and Annual Reports*

Who appoints the members of your company's disclosure committee?

The responses to the question below reflect the cross-functional oversight and input required of an effective disclosure committee. Given the significance of financial reporting, it also makes sense that the CFO might be a leading function to appoint committee members. Yet, as public company disclosures continue to expand in scope well beyond traditional financial reporting, it makes sense that other functional areas would be directly or indirectly involved in determining the optimal committee composition, as it may evolve over time.

Whatever approach to appointing members works best for the company, it can be helpful to document that approach in a charter for the disclosure committee to help facilitate consistent and effective appointment processes.

Who appoints the members of your company's disclosure committee?*



* Adds to more than 100% due to joint accountability
Total responses: 146

Who are the members of your disclosure committee or any subcommittee and observers/periodic attendees of your meetings?

This question first asked respondents to identify all the roles and functions that serve on their company's disclosure committee, and then to determine which of those roles were permanent or standing, and which were more ad hoc roles, i.e., roles and functions that are not formal. We asked this question to see whether disclosure committees are taking advantage of the flexibility afforded to their composition and operations. It seems efficient for disclosure committees to formally identify as standing members the core set of roles and functions consistently needed to address disclosure matters effectively and to have other roles and functions observe or participate as deemed appropriate for the circumstances.

Our survey noted 30 specific categories and multiple catchalls. The top 10 standing participants are chief accounting officer/controller (98%), SEC reporting head (80%), head of investor relations (80%), chief legal officer (80%), head of internal audit (74%), in-house SEC counsel (68%), corporate secretary (67%), CFO (62%), treasury (60%) and tax (50%). These results generally correspond to our 2014 Report, in that each of these functions was identified among the top 10 functions represented on disclosure committees.

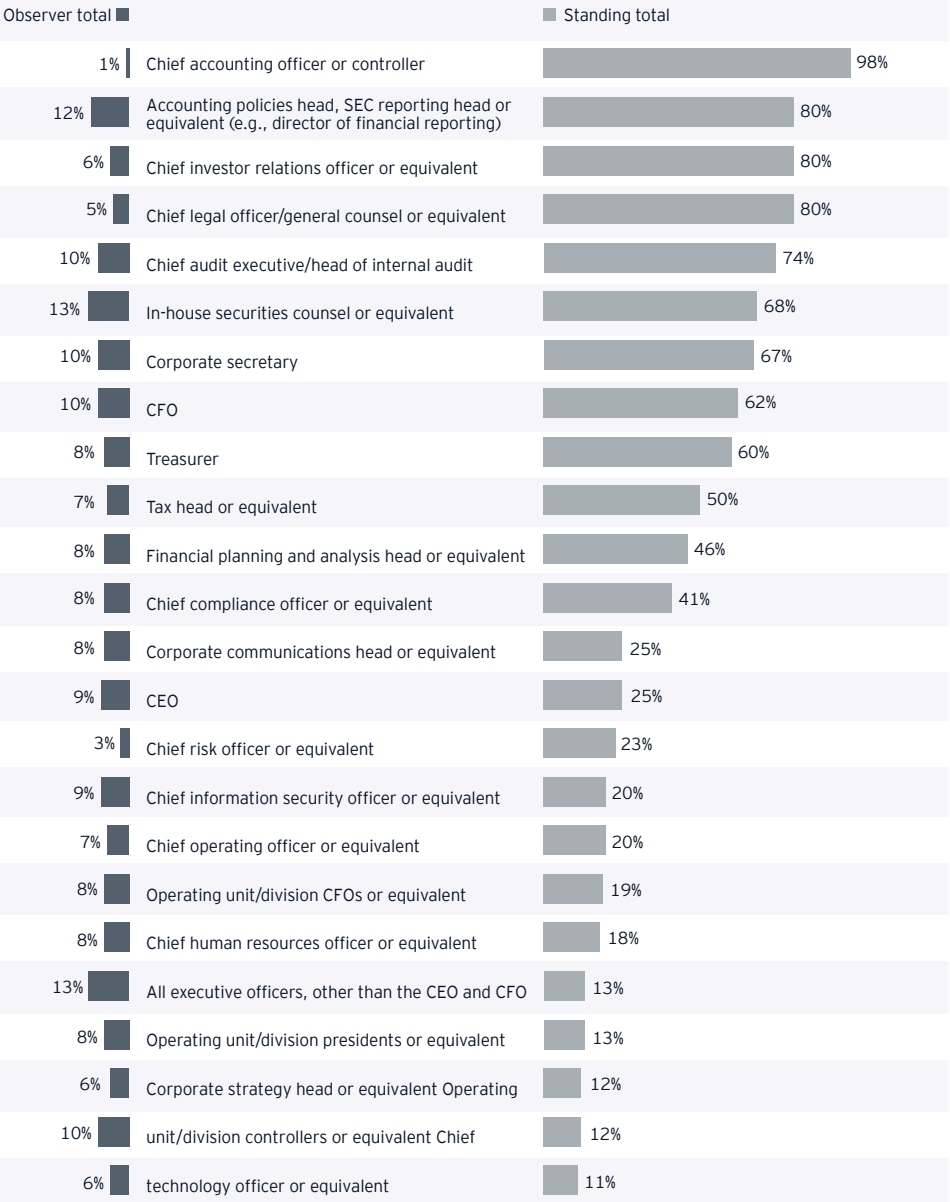
As companies, investors and other corporate stakeholders direct significant focus to risk, technology and information security, which can include enterprise risk management, cybersecurity and data security, and human capital management, our survey shows that these functions are making their way into disclosure committees. Chief risk officers, chief information security officers, chief human resource officers and chief technology officers were reported as standing committee members by respondents.

Although the chief sustainability officer or equivalent was identified as a standing member by only 3% of respondents, we expect representation of this function to increase going forward as companies increasingly report on a broad scope of sustainability matters.

Respondents identified additional functions represented on their committees, including actuary, risk, government affairs, compensation, sustainability/supply chain and tax. The most common function participating on an ad hoc basis, either as an observer or periodic member, was the external auditor, according to 22% of respondents. (Seven percent of respondents reported that the external auditor was a standing member of a disclosure committee.)

After external audit, the most common observer or periodic members are executive officers other than the CEO, CFO and in-house SEC counsel (all at 13% individually); SEC reporting head (12%); corporate secretary, head of internal audit, CFO, and operating/business unit heads or controllers (each at 10%); and CEO and chief information securities officer (each at 9%).

Who are the members of your disclosure committee or any subcommittee and who are the observers/periodic attendees?*



Total responses: 112
***Chart represents standing members with responses of 10% or more.**

In addition, some companies allow more junior management or a delegate to observe or periodically participate in committee meetings, including members of the legal, regulatory and financial reporting teams. Respondents said these members often reported committee matters to their supervisors.

The responses to this question may indicate an expectation or desire of greater CEO involvement than was the case historically, as evidenced by the 9% of respondents who indicated that the CEO is a regular observer of or periodically attends committee meetings. In the 2014 Report, the CEO did not appear among the top 10 functions included in disclosure committee membership ranks.

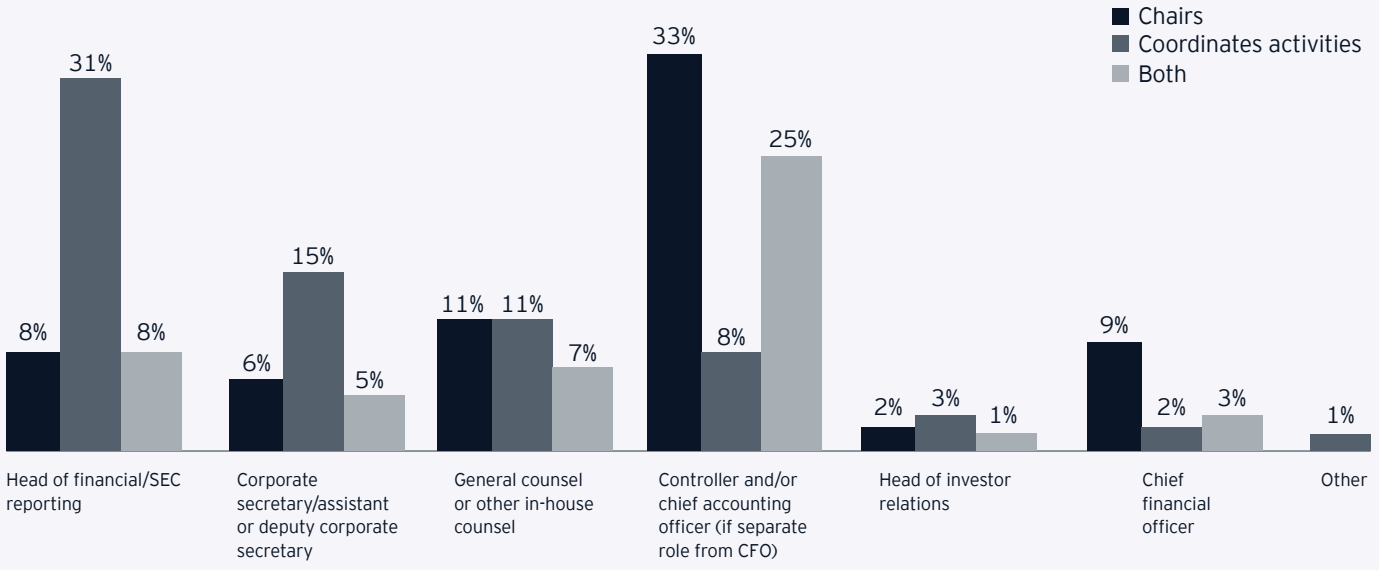
Determinations around disclosure committee size and composition call for careful consideration. Having the right mix of individuals who play an active role in preparing or approving the disclosure and those in key function areas where material disclosure issues may arise is critical. The committee should not be so large as to be inefficient but not so small or function-focused as to be ineffective. Once this team is brought together, committee members should learn to understand and appreciate all the management functions represented on the committee and engage in constructive and effective deliberation on disclosure issues.

For example, the head of investor relations may have legitimate issues with being asked to include complicated legal disclaimers in all investor presentations, but the general counsel (GC) may have a legitimate basis for requesting such disclaimers. In this simple example, the IR head and the GC would work to verify that both objectives are effectively achieved.

More complicated disclosure matters may warrant rigorous deliberation, such as whether a company should issue a Form 8-K if it suffers an unusual cybersecurity breach or whether a new contract or amendment is "material."

Coordination of the disclosure committee

Who chairs or coordinates the activities (for administrative purposes) of the disclosure committee?



Total responses: 146

We asked another question to understand whether the disclosure committee chair always, usually or only sometimes also coordinates the committee's activities.

We found that the head of financial/SEC reporting, corporate secretary/assistant or deputy corporate secretary, and general counsel or other in-house counsel were the top three functions performing that role. But there was not a direct correlation between coordinating and chairing the disclosure committee activities.

While the head of SEC reporting most often coordinates disclosure committee activities, that function far less frequently chairs the committee - similar to corporate secretaries.

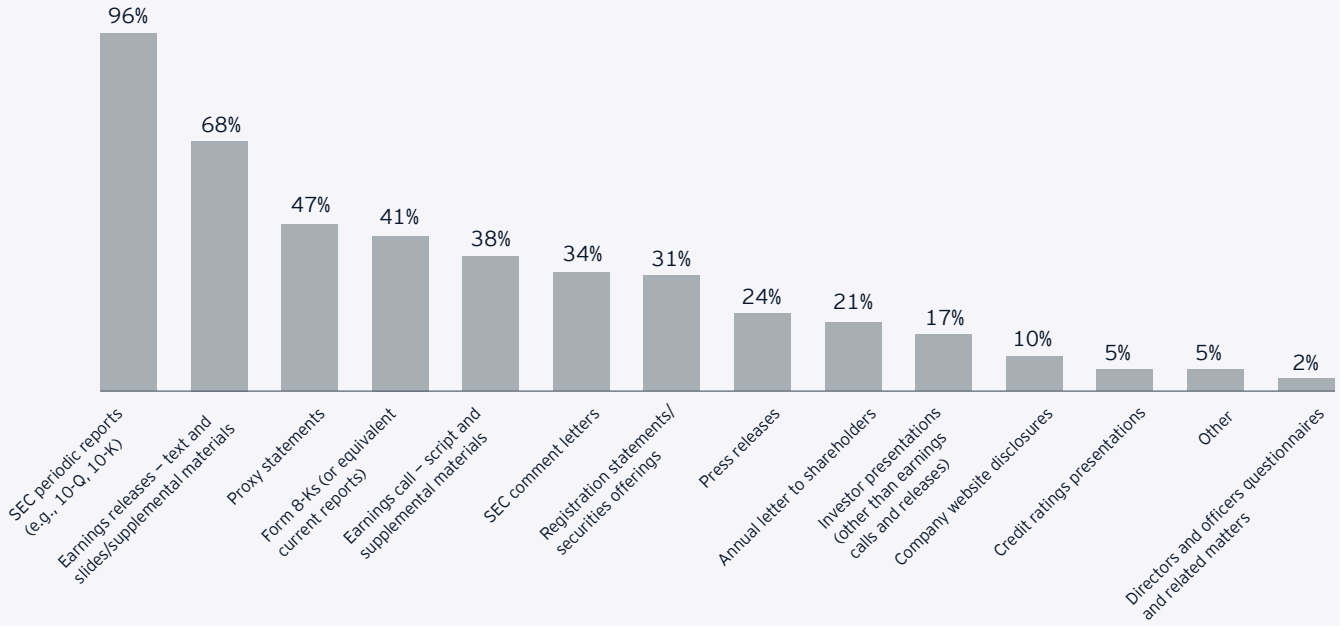
It seems logical to assume that a corporate secretary would be effective in coordinating committee meetings because that person would be well-positioned to create efficient disclosure committee agendas and run efficient meetings with appropriate member or "guest" participation. Corporate secretaries also are well-versed in drafting minutes and reporting to CEOs, CFOs, and the board and its committees.

The top three functions reported as both chairing and coordinating disclosure committees are controllers/CAOs (25%), head of SEC reporting (8%) and general counsel (7%). The corporate secretary function came in fourth at 5%. All other functions were below 4%. CEOs and CFOs chaired their company's disclosure committee only 1% and 9% of the time, respectively, and coordinated only 1% and 2% of the time.

Beyond the enumerated choices in the chart above, a small number of respondents told us that their head of internal audit, chief risk office or head of accounting led the disclosure committee. Even if the percentages are small, these selections generally seem appropriate and, we assume, are effective choices under the company's specific facts and circumstances.

Documents reviewed by the disclosure committee

Which of these does your company's disclosure committee or subcommittee regularly review as part of its scope?

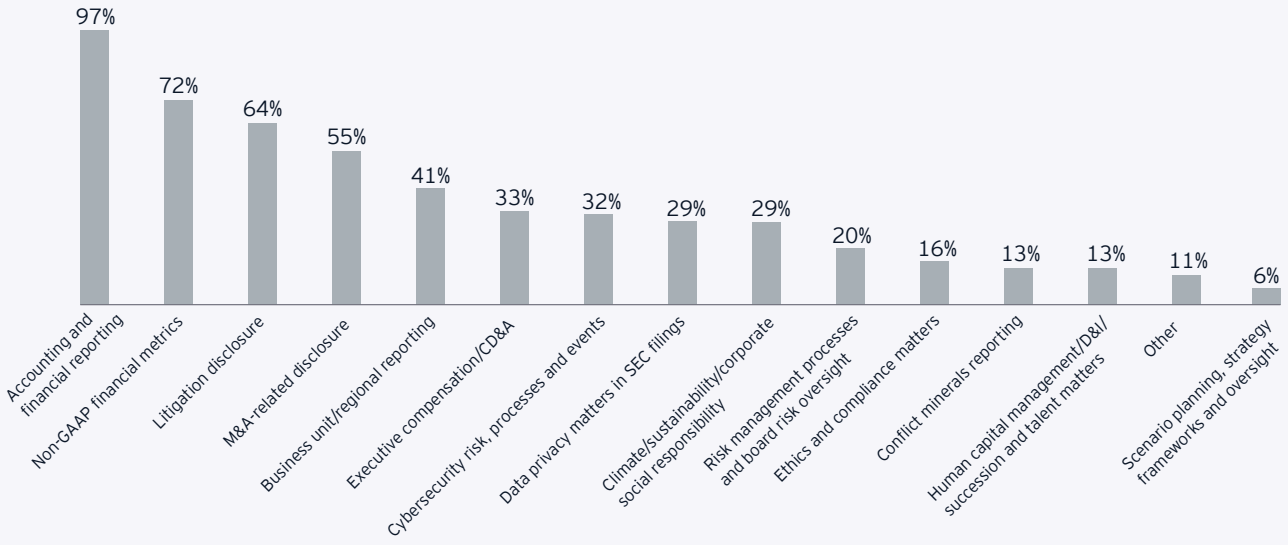


Total responses: 143

In open-ended responses, a few respondents told us that sustainability or similar reports also were regularly reviewed by the disclosure committee. We expect this practice to increase going forward due to increased regulatory expectations and as companies continue to expand the scope of their public disclosures to include sustainability and other nonfinancial information. Furthermore, as noted below, sustainability topics, including climate and corporate social responsibility, were in the top 10 disclosure topics reviewed by respondent disclosure committees.

Topics reviewed by the disclosure committee

Which topics does your company's disclosure committee regularly review as part of its scope?



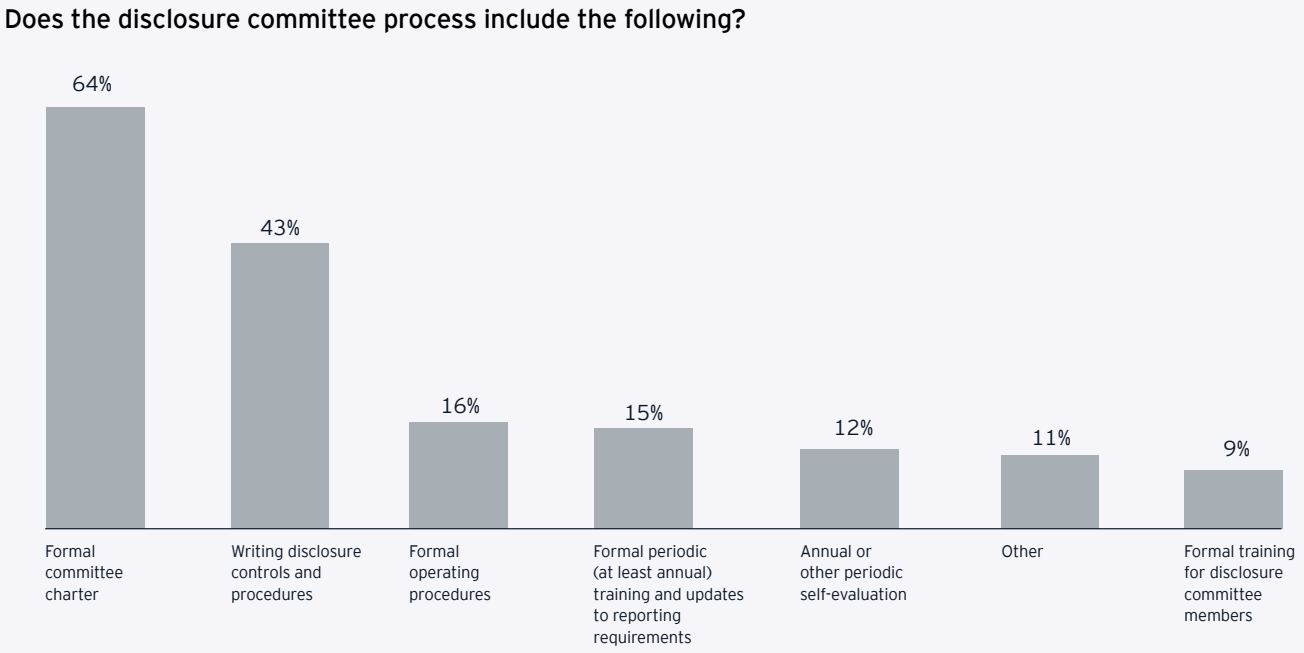
Total responses: 143

This question focused on specific topics that might be disclosed in public company disclosure documents — whether that disclosure is in a regulatory filing, press release or other voluntary communication, or on the corporate website. The top 10 topics noted were accounting and financial reporting; non-GAAP financial metrics; litigation; M&A disclosures; business unit/regional reporting; executive compensation/CD&A (compensation discussion and analysis); cybersecurity risk, processes and events; data privacy matters in SEC filings; climate, sustainability and corporate social responsibility; and risk management processes and board risk oversight.

Starting in 2021, public companies are required to disclose "human capital resources and any human capital measures or objectives that the company focuses on in managing the business" — to the extent such disclosures are material to an understanding of the business — in their Form 10-Ks, Form 10-Qs, and registration statements. Notwithstanding the recent adoption of this requirement, our survey revealed that 13% of respondents' disclosure committees already were regularly reviewing their companies' disclosures relating to human capital management, diversity and inclusion (D&I), succession planning, and other talent matters. See *How to approach the SEC's new human capital disclosures.*

In the "other" category, respondents told us their disclosure committees looked at SOX testing or internal control over financial reporting, related-party transactions, management discussion and analysis (MD&A) trends, newly issued accounting disclosures, and regulatory capital/stress testing results. Respondents also noted that they may look at other pertinent topics, including new ones, on an ad hoc basis as appropriate.

Documentation and processes to support the disclosure committee



Total responses: 143

This question sought to identify practices used to support disclosure committees. We learned that disclosure committees are becoming more formalized. For example, 64% of respondents noted their disclosure committees had a formal committee charter, and a combined 59% said they had written disclosure controls and procedures (43%) or formal operating procedures (16%).

The survey data shows that many companies use formal disclosure controls and procedures, resulting in varying degrees of detail of how a disclosure committee allocates and addresses specified roles and responsibilities around specific disclosure documents and topics.

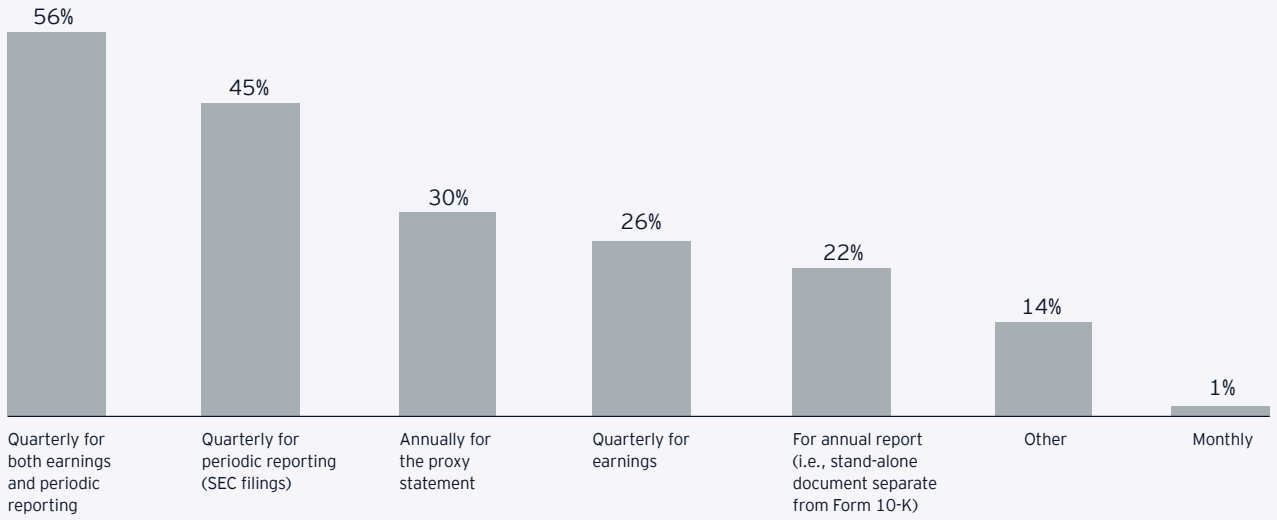
Formalizing the functions of the disclosure committee in some form, whether in a charter or disclosure controls and procedures, serves to facilitate a shared understanding of the committee's role, responsibilities and composition.

For those disclosure committees not already using disclosure controls and procedures or seeking a refresh, we have included in the appendices sample disclosure controls and procedures content and a sample charter that companies can review for information or consider as a starting point to develop their own. As reiterated in this report and the 2014 Report, disclosure committees' composition structure and operations should be tailored to meet the needs and circumstances of their companies; their charters and controls and procedures should also be appropriately tailored accordingly.

In addition, some disclosure committees support their ongoing effectiveness by regular (at least annual) training on updates to reporting requirements (15%), conducting periodic (at least annual) self-evaluations (12%) and formal training for all members (9%). Disclosure committees, like boards, may benefit from periodic training from external advisors or other members of management. Education on industry disclosure trends, emerging and evolving disclosure topics, new and proposed requirements, SEC comment letters and enforcement trends, particularly as they relate to the relevant industry, are useful instructional topics and can help inform materiality decisions and drive improvements in disclosure practices.

Disclosure committee meetings

How often does the disclosure committee formally meet?



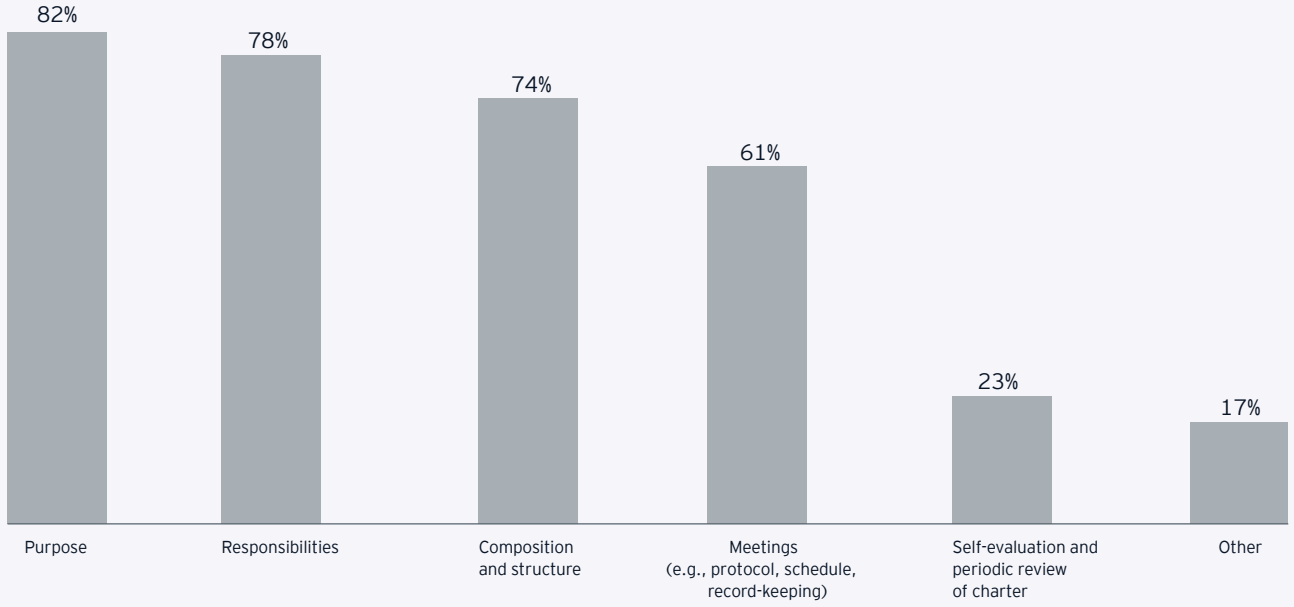
Total responses: 143

We asked about meeting frequency and whether disclosure committees meet quarterly to address both earnings and quarterly reports, just quarterly for periodic filings, or just earnings releases (this may happen when the date of a company's earnings release predates that of its quarterly report). The responses tell us that quarterly reports and earnings drive quarterly disclosure committee meetings — and 56% of respondents' disclosure committees will meet once each quarter around those disclosures collectively. Others will meet either once or twice each quarter, depending on whether their disclosure committees review both the periodic report and related earnings release concurrently (at the same meeting), which most do. This also may be driven by company practice to issue both concurrently or provide an earlier earnings release.

The survey showed that in addition to the quarterly cadence, 30% of committees meet at least annually to address the proxy statement. It also showed that 22% of committees meet annually to review the "glossy" annual report. Additionally, 14% of respondents meet for other disclosure events, including for current reports on Form 8-K, sustainability reports, SEC registration statement filings or otherwise as needed.

Committee charter, disclosure controls and procedures

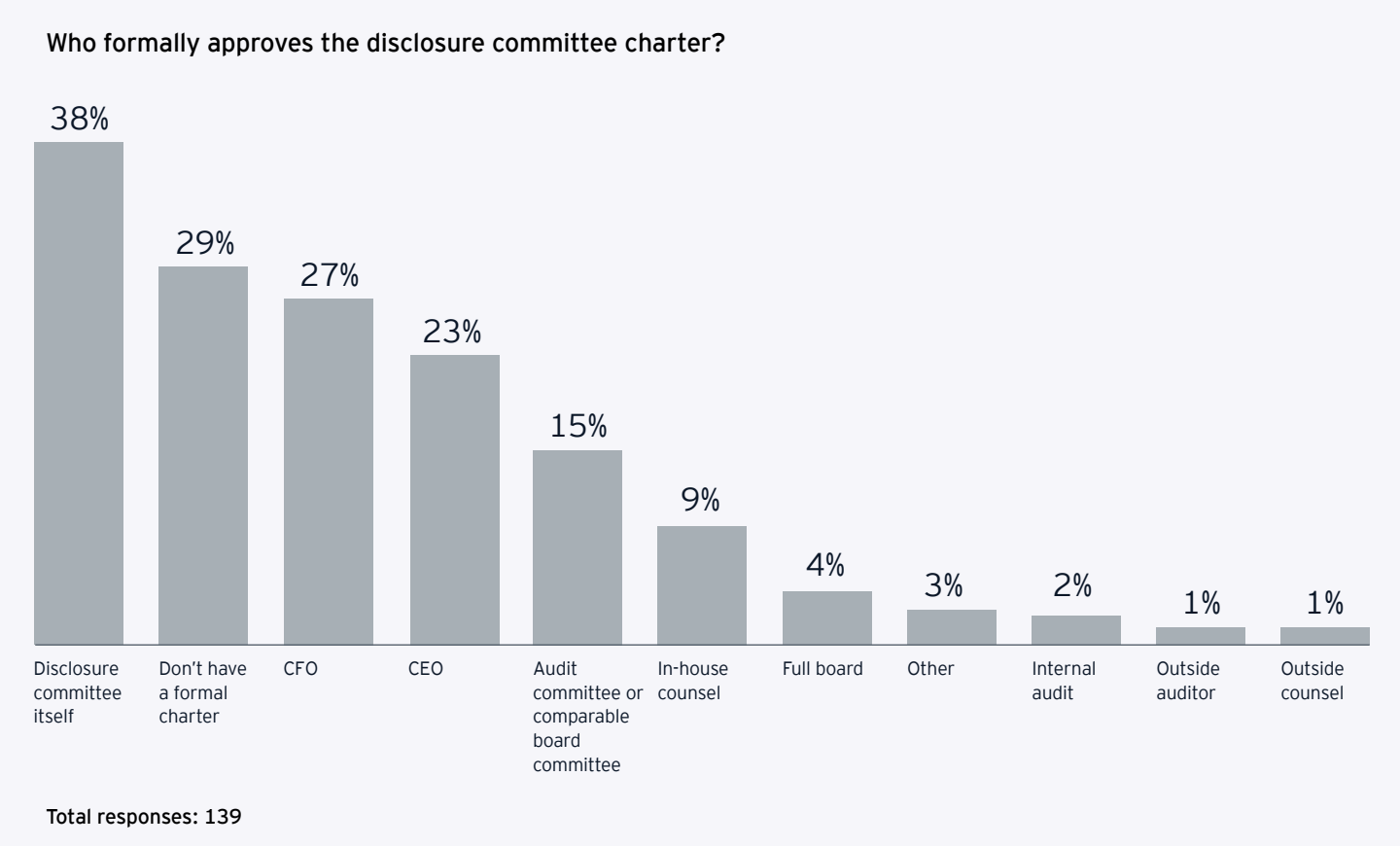
What areas are addressed in the charter, disclosure controls and procedures, or other organizational documents for the disclosure committee and any of its subcommittees?



Total responses: 146

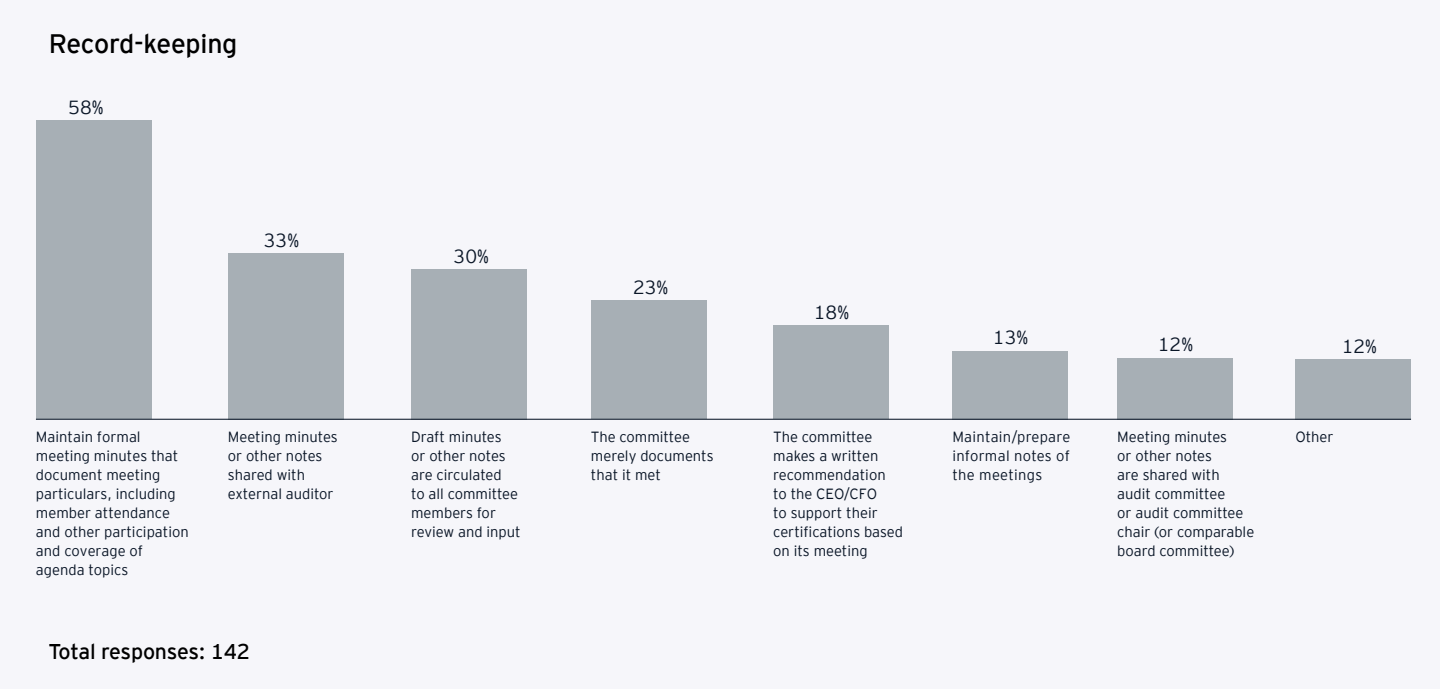
We asked this question to learn, on a big-picture level, the topics that companies address in their disclosure committee governance documents. Other responses included committee membership, decision-making protocols, periodic review of the disclosure controls and procedures or charter as applicable, subcertifications to support the CEO and CFO certifications, and policies related to Regulation FD and the use of social media. In our view, these "other" items seem highly relevant for all disclosure committees to periodically consider and thus are appropriate for inclusion in disclosure committee governance documents.

Disclosure committee charter approval



The highest number of respondents indicated that the disclosure committee itself approved its charter, followed by the CFO and CEO. Audit committees and in-house counsel also approve some companies' disclosure committee charters. Few respondents indicated that their full board reviewed their company's disclosure committee charter.

Disclosure committee record-keeping



Almost 60% of respondents indicated that their disclosure committees maintain formal meeting minutes that document meeting particulars, including member attendance and other participation coverage of agenda topics. Another 13% reported that they prepare and maintain informal notes of the meetings.

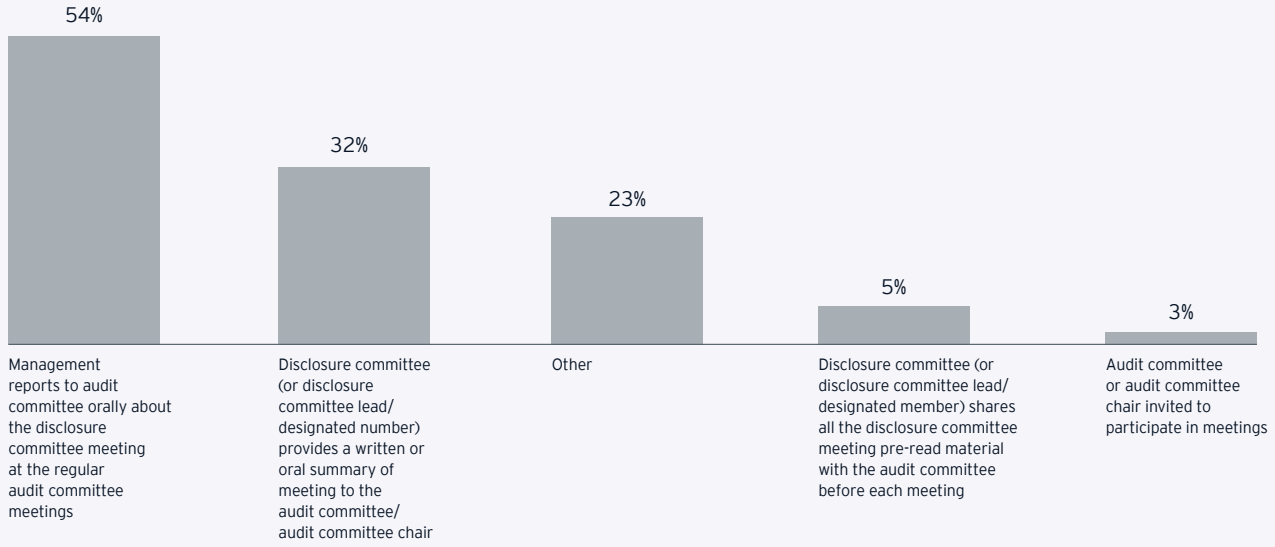
As to content, 18% of respondents said their committee makes a written recommendation to the CEO/CFO to support their SOX certifications based on its meeting, with 23% reporting that meeting records simply reflect the fact that the committee met. Regarding finalizing meeting records, 30% told us that draft minutes or notes are shared with all committee members for review and input.

Some disclosure committees share their meeting minutes or notes with their companies' external auditor (33%) or audit committees or audit committee chairs (12%).

A few respondents reported that disclosure committee minutes or notes included documentation around the subcertifications provided by disclosure committee meetings. Based on survey results, it is common for disclosure committee members to provide subcertifications.[2] Generally, subcertifications track relevant excerpts of the SOX certification required of CEOs and CFOs but are limited in scope to the area(s) of responsibility of the person providing the subcertification.

Disclosure committee interaction with the audit committee

Disclosure committee interaction with/reporting to audit committee (or comparable board committee)



Total responses: 133

The survey revealed that a disclosure committee's interaction with the audit committee is primarily indirect, with management reporting orally to the audit committee each quarter at the regular audit committee meetings about the disclosure committee's activities (54%). Nearly one-third of respondents (32%) indicated that their disclosure committee (or disclosure committee lead/designated member) provides a written or oral summary about its meetings to the audit committee or audit committee chair.

This data shows that most disclosure committee members in their capacity as committee members (as opposed to members of management outside the disclosure committee context) do not closely or directly interact with audit committees. This makes sense given that CEOs and CFOs are directly responsible for a company's disclosure controls and procedures and generally have direct oversight over disclosure committees, which makes them logical candidates for reporting to the audit committee on the disclosure committee's activities, including whether the committee recommended that they sign the SOX certifications and/or provided its own supporting subcertifications[2].

Regardless of the level of interaction, in our view, the audit committee should have the authority under its charter or other governance documents to communicate with the disclosure committee chair and/or other members of management at any time to better understand the disclosure-related decision-making process and management's disclosure determinations.

[2]BENCHMARKING: SOX 302 SUB-CERTIFICATIONS, Society for Corporate Governance 3 January 2018.

4 Survey methodology

The 125 Society respondents consisted primarily of corporate secretaries, in-house counsel and other in-house governance professionals. The 50 FEI respondents consisted of finance professionals. The survey was conducted in the latter part of 2020.

The findings reflected in the charts throughout the report pertain to both FEI and Society respondents collectively. All responses were voluntary, and not all 175 respondents answered each survey question.

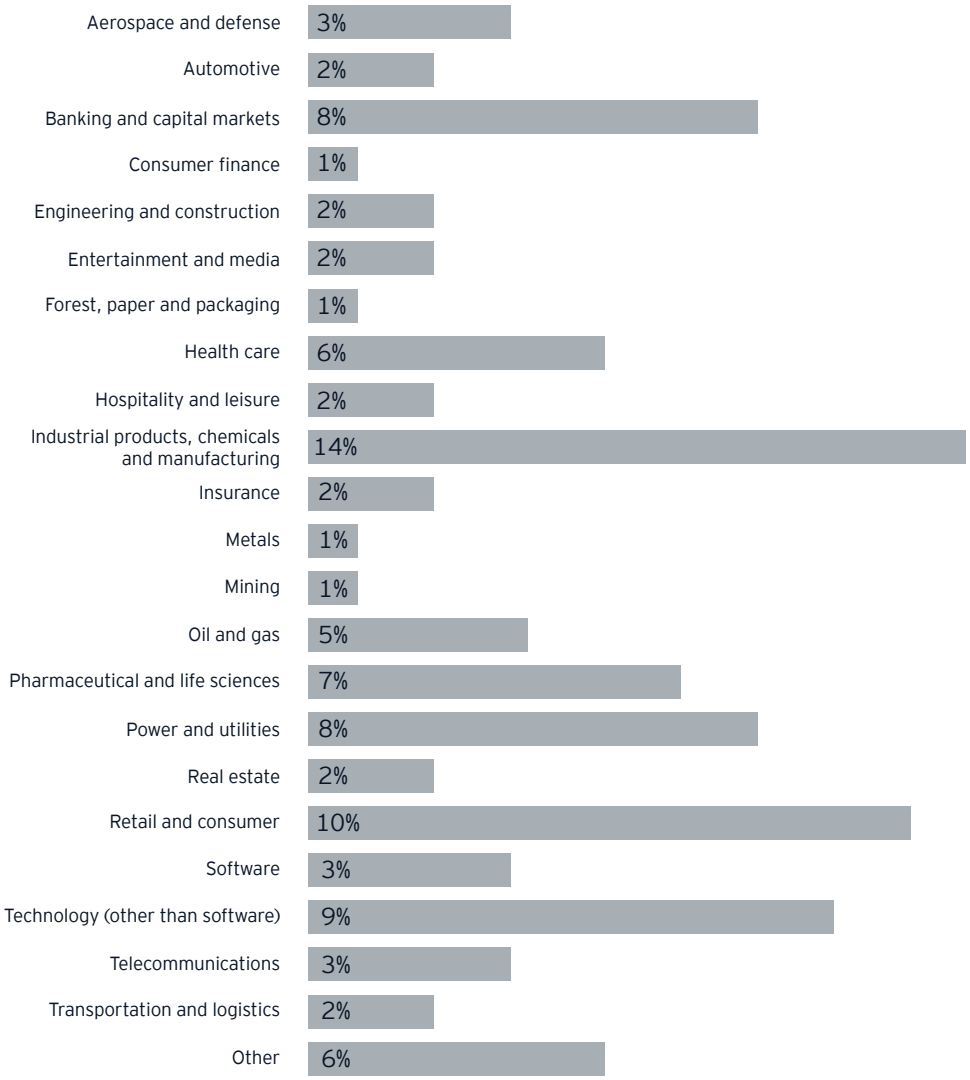
Characteristics of respondents

59%
were associated with large- or mega-capitalization (caps) companies

29%
mid-caps

12%
small- or micro-caps

Responses by industry



Appendices

Appendix A: A seven-step road map to success for disclosure committees

How do you design and implement an effective and efficient disclosure committee? And once it is up and running, how do you keep it in top working order? These seven steps will help you get started — and keep you focused:

1. Develop a formal charter and policy, and include room for flexibility. Meetings should not be restricted to official members of the committee — the doors should be open to other managers within the firm.

2. Establish a cross-functional team, including non-standing members, for insight into other areas of your organization. Don't forget to involve the enterprise risk management group and corporate sustainability/responsibility.

3. Confirm that committee members have a clear understanding of their roles and responsibilities. Consider an orientation meeting for new members as well as periodic training.

4. To make meetings as efficient as possible, establish a subcommittee or subcommittees by topic or type of filings (e.g., proxy statement, Form 8-K) with appropriate composition to take the first pass at the material to be discussed.

5. Prepare for all meetings by compiling a list of issues to focus on for the reporting period and crafting alternative options for discussion. In doing so, and to stay abreast of changing disclosure requirements, consider reviewing relevant disclosure checklists and questionnaires, including from your external auditor.

6. Allow audit committee members to have input into the process. This may help with future decision-making by the disclosure committee.

7. To keep things running smoothly, committees should periodically perform a self-evaluation. Areas of concern will often surface, prompting reassessments and improvements.

Appendix B: Sample disclosure committee charter

Please note: This is for illustrative purposes, and each committee should tailor its own charter.

Charter of the disclosure committee

This disclosure committee (the "Committee") Charter (the "Charter") has been adopted by [the Chief Executive Officer and Chief Financial Officer (the "Certifying Officers") of [XYZ Inc.] (the "Company")].

1. **Objective**

   It is the Committee's and Company's objective that all public disclosures made by the Company to its security holders or the investment community, including those in its Securities and Exchange Commission ("SEC") filings, (i) be accurate, complete and timely; (ii) fairly present the Company's financial condition, results of operations and cash flows in all material respects; and (iii) meet other applicable laws and stock exchange requirements.

2. **Organization**

   The Committee will consist of individuals in the following positions within the Company: [this may include Chief Financial Officer, General Counsel, Corporate Controller, Chief Accounting Officer, Head of Internal Audit, Head of Investor Relations, Head of SEC Reporting, and [specify other members, as applicable]]. Committee members may be appointed or removed by the Certifying Officers at any time.

   One member of the Committee will be designated the chairperson by the Certifying Officers. The chairperson schedules and presides over meetings and helps verify the timely preparation of agendas and written minutes from meetings. Any interpretation of the Charter or the Committee's procedures shall be made by the Committee chair. The chair or the Certifying Officers may include outside advisors as appropriate.

3. **Responsibilities**

   The Committee, under the oversight and supervision of the Certifying Officers, will facilitate the objectives by:

   - Establishing and maintaining policies and procedures designed to help confirm that information required to be disclosed by the Company in its filings with the SEC and certain other information that the Company publicly discloses (as determined by the Committee or as specified in any policies and procedures documented by the Committee) is recorded, processed, summarized and reported accurately and timely ("Disclosure Controls Policies and Procedures"). Disclosure Controls Policies and Procedures will include policies and procedures to maintain and assess the effectiveness of the Company's Disclosure Controls.

   - Evaluating the integrity and effectiveness of the Company's Disclosure Controls during and as of the end

of the period covered by each SEC Periodic Report filed by the Company and amendments to those reports.

- Reviewing all relevant information with respect to the Committee's proceedings and the preparation of SEC Periodic and Current Reports.

- Providing a subcertification to the Certifying Officers before filing each SEC Periodic Report as to (i) the Committee's compliance with the Company's Disclosure Policy and this Charter and (ii) the Committee's conclusions resulting from its evaluation of the effectiveness of the Disclosure Controls.

In order to execute its responsibilities, the Committee shall have full access to all Company books, records, facilities and employees, including independent auditors.

4. **Process**
   The Committee will meet and establish a process in accordance with the Disclosure Policy.

5. **Charter evaluation**
   The Committee will evaluate and assess this Charter and its performance annually or upon certain material events. Any changes to the Charter must be approved by the Certifying Officers.

Appendix C: Sample disclosure controls and procedures content

In addition to or in lieu of a charter, a disclosure committee may choose to articulate written policies and procedures. More formal policies should outline the regulatory requirements and how they are to be met, specify disclosure controls and procedures and the related SEC certification requirements, and set forth procedures for the disclosure committee to take prior to the public disclosure of an SEC filing or other communication. For example, formal disclosure controls and procedures could provide a summary of the items required to be disclosed in a current report on Form 8-K and articulate procedures and protocols for company personnel to follow to help ensure that the company does not miss or untimely file a Form 8-K.

Disclosure controls and procedures could also articulate, as relevant, how voluntary disclosures such as corporate sustainability reports are addressed by management prior to publication. Disclosure controls and procedures might track the form and level of detail contained in other documented corporate controls or "standard operating procedures." Thus, written disclosure controls and procedures can vary significantly from company to company.

A more detailed documentation of disclosure controls and procedures might state the company's policy around and reasons for having a disclosure committee. Other sections would address committee composition, governance and operations; the process and calendar for a quarterly evaluation of disclosure controls and procedures to support the CEO and CFO certifications; the content of and process for execution of the CEO and CFO certifications; and, as appropriate for the company, processes and procedures for the disclosure committee to follow in addressing various public disclosures being made by the company. Disclosure controls and procedures could be limited to quarterly and annual reports filed with the SEC or could include other SEC filings such as proxy statements, current reports on Form 8-K (or a specified subset of required filings on Form 8-K) and even non-regulatory disclosures, such as company website disclosures and key press and other media publications.

Here is an illustrative table of contents for a more detailed documentation of disclosure controls and procedures. Disclosure committees can choose to follow this table of contents in whole or in part, as appropriate for their specific needs and goals.

1. Statement of Policy
2. Disclosure Committee:
   - Membership
   - Purpose and Responsibilities
   - Meetings
   - Organizational and Other Matters
3. Quarterly Evaluation of Disclosure Controls and Procedures
4. Certifications
5. Procedures for the Preparation, Review and Filing of Earnings Releases:
   - Preparation
   - Review of Earnings Releases by Outside Auditors
   - Audit Committee Review of Earnings Release
   - Final Sign-off on Earnings Release
6. Procedures for the Preparation, Review and Filing of Periodic Reports:
   - Preparation
   - Review and Finalization
   - Board and Audit Committee Review of Periodic Report; Coordination with the Outside Auditors
   - Final Sign-off on Periodic Report
   - EDGAR Filing Matters
   - Additional Procedures if SEC Comments Are Issued on a Periodic Report
7. Procedures for the Preparation, Review and Filing of Current Reports on Form 8-K
8. Procedures for Preparation, Review and Filing of Proxy Materials:
   - Preparation
   - Review
   - Filing
9. Procedures for Other Types of Disclosure Statements

Appendix D: Sample self-assessment questionnaire

This questionnaire can be used as a survey of all disclosure committee members. Most often the chair will then collate the responses and facilitate a discussion on areas for improvement.

	Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	
Alignment with questionnaire	1	2	3	4	5	N/A comments
(1) Charter accurately describes the committee duties and responsibilities						
(2) Committee executes on its charter effectively						
(3) Committee considers forward/emerging issues to review						

Committee operations	1	2	3	4	5	N/A comments
(4) Committee meeting scheduling is appropriate						
(5) Length of committee meetings is appropriate						
(6) Committee agendas focus on the important topics						
(7) Committee spends appropriate time on questions and discussion						
(8) Management and internal resources effectively support committee functions						

Member participation	1	2	3	4	5	N/A comments
(9) Committee composition is appropriate						
(10) Members understand their roles and responsibilities						
(11) Members are appropriately assigned to specific tasks and committee projects as necessary						
(12) Members make regular and valuable contributions to committee work						

Overall	1	2	3	4	5	N/A comments
(13) Committee uses its time efficiently						
(14) Committee functions effectively						

Other comments and observations

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Society for Corporate Governance

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