



Post COVID-19: The benefits of virtual shareholder general meetings

Travel restrictions, social distancing protocols, and general disruptions to daily life have made it nearly impossible to hold in-person shareholder meetings in most jurisdictions.¹ Gathering thousands of shareholders from around the world in overcrowded convention centers is simply out of the question—leaving national regulators to consider alternative approaches.² Regulatory approaches around the world have varied, such as extending deadlines for holding such meetings, or allowing them to take place virtually. As such, there has been an unprecedented rise in the number of virtual shareholder meetings around the world. Most remarkably, this shift has been seen even in markets that had previously only allowed for in-person shareholder meetings. Given the length

of prolonged lockdowns across many countries, all of this may mean that practices may be permanently altered as a result of these changes. If so, it's important for boards of directors and management teams alike to weigh a number of considerations as they transition to virtual shareholder meetings.

Technology challenges.

Most technology providers have reported exponential growth in their client bases, including in countries that had previously allowed for virtual shareholder meetings. Organizations have largely understood that in this new environment, technology is the only way to convert traditionally closed-door meetings into virtual forums open

to all investors. Similarly, regulators from various regions have acted to temporarily enable virtual shareholders meetings, either expressly (France, Germany) or implicitly (Japan)³. Large institutional investors and leading proxy advisers have also signaled an openness to virtual meetings.⁴ For example, proxy adviser Glass Lewis recently updated its voting policy by noting that they will "...generally refrain from recommending to vote against members of the governance committee on this basis, provided that the company discloses, at a minimum, its rationale for doing so, including citing COVID-19."⁵

This drastic change, in such a short time, has itself brought about new governance challenges. Traditionally, the transition to tech-driven meetings had taken place gradually, through hybrid meetings – taking place both in person and over the internet - over a multi-year transition period. Today, virtual meeting providers have been overwhelmed by the number of organizations looking to make the transition, and to do so fast.

But the COVID-19-induced transition to virtual shareholder meetings has not been uniform. For instance, the format of e-meetings differs across companies: some are voice-only meetings, some are pre-recorded sessions; others are live and offer multi-site video broadcasting. There are also a number of difficulties that come with virtual meetings: there is always the chance of a poor connection and broadcasting interruptions that make the meeting difficult or impossible to follow; there can be cyber-security and data protection concerns, and there can be questions about the reliability of the technology platform servers. These technical issues can themselves lead to complex governance questions. How are votes counted should an e-voting platform run into technical difficulties mid-meeting? And what about the impact on quorum and majority requirements? It is as if companies and shareholders have stepped together into a laboratory, where numerous experiments in governance are being conducted within a very short period of time. It remains to be seen what new leading practices and technological

innovations will result from these experiments. We do know, however, that renewed standards are likely to emerge around:

- The functionalities offered by electronic voting platforms (e.g. attendee authentication, fielding live shareholder questions, audio and video meeting formats, etc.);
- The secure processing of personal data (compliance with GDPR and multiple data protection regulations during shareholder identification); or,
- The use of blockchain technologies for voting integrity⁶ and reliable vote counting (e.g. Nasdaq's eVoting solution based on distributed ledger technology).

New corporate governance practices.

In a virtual setting, shareholders and companies often find that they are not able to interact as easily as they can in person. Regulators, issuers, and investors alike have sought to replicate the in-person shareholders meeting experience in virtual form. New corporate governance leading practices have emerged, mostly following guidelines issued by regulators and local authorities. Some of these leading practices include:

Disclosure Improvements: Many companies' efforts have focused on improving the quality of information provided to shareholders. Organizations have informed investors of the structural changes to their shareholder meetings and voting methods through emails, press releases, or through their websites. Organizations have also added additional disclosures on COVID-19 and its impact on operations and profitability.

Enhancing Shareholders' Right to ask questions: Virtual meetings can impact shareholder rights, inasmuch as they can affect a shareholder's ability to ask questions before and during meetings. The Council of Institutional Investors (CII) in the US reports that some shareholders have already experienced issues in this respect.⁷ The ability to ask questions at Shareholder meetings is considered a fundamental shareholder right; however, shareholders may fear that their ability to ask questions may be weakened if management is able to pre-screen and filter them. A leading practice to address these concerns is the use of robust Q&A tools and continuously updated and refreshed lists of questions.

Enabling Voting rights: Many companies have enabled live voting through electronic voting platforms. Other companies, aware that some of their shareholders will be less comfortable with electronic voting, have encouraged shareholders to continue to send a physical proxy, which can still be counted at a virtual meeting alongside the electronic voting. Many organizations have also sought to increase the transparency of the entire voting process by:

- Ensuring live broadcast of the shareholder meeting, with a recording published on the organization's website;
- Promptly issuing a detailed summary of voting outcomes;
- Using a voting confirmation system, enabling shareholders to receive electronic confirmation of the receipt of their votes.

Final Thoughts

There is a large consensus among issuers, shareholders, and regulators that the shift to virtual shareholder meetings is a temporary reaction to the COVID-19 crisis. Going forward, it's easy to envision the following developments:

- improvement in e-voting technologies
- inclusion of e-voting capabilities in a growing number of shareholder meetings
- continuation of the 'temporary' regulations allowing virtual meetings
- decreased appetite for travel costs to attend and host in-person meetings

While most regulators across the globe stress the importance of shareholder voting rights, it's possible that corporate governance codes will be updated to take into account virtual shareholder general meetings. We believe now more than ever it is important for organizations to work together with shareholders to build trust and find common ground as these developments continue to play out.

FIVE QUESTIONS EVERY BOARD SHOULD ASK ABOUT VIRTUAL SHAREHOLDER MEETINGS:

- How comfortable are we with our virtual meeting technology platform? Are we confident in its reliability and security? How robust are its shareholder identification capabilities? The voting process?
- Have we ensured that all proxy materials and notices to shareholders are updated?
- What is our process for dealing with a larger volume of shareholder questions? How do we do so transparently?
- Have shareholders voiced any concerns with respect to how our dialogue with them has changed given the absence of an in-person meeting?
- How can we continue to build a sense of trust with our shareholders?

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1 Laff, Michael (2020). Annual General Meetings & COVID-19 [online] Harvard Law School Forum on Corporate Governance. Available at: <https://corpgov.law.harvard.edu/2020/04/09/annual-general-meetings-covid-19/>

2 SEC Press Release 2020-62, SEC Staff Provides Guidance to Promote Continued Shareholder Engagement, Including at Virtual Annual Meetings, for Companies and Funds Affected by the Coronavirus Disease 2019 (COVID-19) (March 13, 2020), press release available at <https://www.sec.gov/news/press-release/2020-62>

3 For an international overview: ISS Governance Research Team, Annual General Meeting & COVID-19: A Review of the Regulatory Landscape, April 2020

4 Taraporevala, Cyrus (2020). Stewardship Engagement Guidance to Companies in Response to COVID-19 [online] Harvard Law School Forum on Corporate Governance. Available at: <https://corpgov.law.harvard.edu/2020/04/06/stewardship-engagement-guidance-to-companies-in-response-to-covid-19/>

5 <https://www.glasslewis.com/immediate-glass-lewis-guidelines-update-on-virtual-only-meetings-due-to-covid-19-coronavirus/>

6 Cunningham, Lawrence (2019). Quality Shareholder Voting. Available at: <https://cisbluesky.law.columbia.edu/2019/11/21/quality-shareholder-voting/>

7 CII's Weekly Governance Alert Vol 25, Issue 17, April 30, 2020

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