

# Considerations for VIRTUAL SHAREHOLDER MEETINGS IN 2021

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The COVID-19 pandemic led to an unprecedented number of virtual annual shareholder meetings during the 2020 proxy season.

Following sudden government-mandated restrictions on travel and indoor gatherings, many issuers were frustrated by a lack of sufficient time to pivot from in-person annual meetings to virtual ones. Despite this, over 2,000 virtual shareholder meetings were conducted last year, which have helped to lay the framework for best practices on conducting virtual meetings going forward.

One year later, COVID-19 precautions remain in place in much of the world, causing many issuers to begin preparing for another virtual annual meeting. According to a proprietary issuer survey by AST®, 79% of respondents will consider a virtual meeting in 2021. As we head into another pandemic-affected proxy season, here are some quick insights for those considering a virtual annual meeting this year:

## Company Perspective

For companies, there are a number of reasons that make holding a virtual annual meeting attractive—annual meeting costs are generally lower when compared to in-person meetings that typically require reserving a venue and hiring security and catering services. In addition, holding a virtual annual meeting is typically more convenient for board members and shareholders who often need to travel to attend in-person annual meetings, and can provide for a decreased environmental footprint.

However, companies should also take into account the increased coordination required to manage platform logistics, Q&A sessions, and the potential for impaired ability to communicate with each other during the annual meeting.

## Shareholder Concerns

Though there is a general consensus amongst investors that the mass shift toward virtual meetings has been a necessary and successful one, a number of shareholder concerns surrounding virtual shareholder meetings emerged following the 2020 proxy season—with general themes encompassing transparency and logistics.

In a letter to the SEC, the Council of Institutional Investors (“CII”) detailed a number of situations where they felt virtual meetings fell short in 2020, including:<sup>1</sup>

- Shareholders struggling to log in for meetings
- Inability to ask questions in some cases if the shareholder has voted in advance by proxy

<sup>1</sup>Kenneth A. Bertsch and Jeffrey P. Mahoney, Letter from Council of Institutional Investors to Anne Sheehan, Chair of the Investor Advisory Committee, U.S. Securities and Exchange Commission, “Comments on Public Company Disclosure Considerations and Shareholder Engagement/Virtual Shareholder Meetings in the COVID-19 Pandemic Context,” [Comments on Public Company Disclosure Considerations and Shareholder Engagement/Virtual Shareholder Meetings in the COVID-19 Pandemic Context.](#), May 3, 2020.

## Shareholder Concerns (Continued)

- Shareholders unable to ask questions during the meetings
- Lack of transparency on questions asked by shareholders.
- Conflicting channels for shareholder participation (shareholder resolution proponents required to be on a line that is different than that used for general Q&A)
- Prohibiting a shareholder proponent from speaking on behalf of their proposal
- Control numbers not working to permit shareholders to log into a meeting

Although shareholder engagement is the most direct way to ascertain whether there were any potential concerns to address when planning this year's annual meeting, this list represents a good launching point for those hoping to address any issues.

Proxy advisory firms have also created policies to address transparency pitfalls of virtual shareholder meetings—Glass Lewis, for example, will recommend against director nominees who serve on the governance committee of any company that chooses to hold a virtual meeting without sufficient disclosure on shareholder participation rights.<sup>2</sup> Although ISS does not have a policy that results in recommendations against directors at companies holding virtual shareholder meetings, in April 2020 they issued guidance that encouraged companies to commit to returning to in-person or hybrid meetings once possible.<sup>3</sup>

## Best Practices

Following the general shift toward virtual meetings, a 2020 working group on practices for virtual shareholder meetings (the “Working Group”) was created and spearheaded by the Society for Corporate Governance, CII and Rutgers Center for Corporate Law and Governance to review, assess and identify ways to improve the virtual shareholder meeting landscape. The Working Group has outlined a number of ‘best practices’ for virtual shareholder meetings, which include the following suggestions:<sup>4</sup>

- Disclosure
  - Companies must provide shareholders with detailed instructions on how they can attend the meeting and vote prior to and at the meeting, placed in a prominent location in the proxy statement. Companies must also explain the different procedures for shareholders of record and beneficial holders if applicable, and highlight whether/why a shareholder must provide additional information in advance of the meeting and how to do so. Companies should indicate whether attendance is limited to shareholders.

## DID YOU KNOW?

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- Over 2,000 virtual shareholder meetings were conducted last year.
- According to a proprietary issuer survey by AST®, 79% of respondents will consider a virtual meeting in 2021.

<sup>2</sup>Glass Lewis & Co., [2020 Proxy Paper Guidelines](#), November 24, 2020.

<sup>3</sup>Institutional Shareholder Services, [“Proxy Voting Guidelines Benchmark Policy Recommendations.”](#) November 12, 2020.

<sup>4</sup>Rutgers Center for Corporate Law and Governance, Council of Institutional Investors and Society for Corporate Governance, [Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings](#), December 10, 2020.

## Best Practices (Continued)

- Companies should explain in the proxy materials why the company has elected to hold the meeting using a virtual format instead of in-person.
- Q&A Session
  - Prior to the meeting, companies should provide instructions on how and when shareholders will be able to ask questions at the meeting, make it clear that a shareholder must attend as a verified shareholder to be eligible to ask questions at the meeting, explain any requirements or limitations on asking questions at the meeting, explain whether the company will respond to any questions after the meeting, and if the company chooses to solicit questions in advance, provide instructions on how shareholders can ask questions ahead of the meeting.
  - Companies should clearly instruct shareholders that when submitting questions, they must identify themselves and provide contact information in case the company needs to address their question after the meeting, request the virtual meeting provider make all questions visible to the company verbatim and in real time, and that the provider authenticate the identity of the shareholder asking the question.
  - Companies should explain how much time will be dedicated to the Q&A session and how the company will handle questions it may not be able to get to before time expires, as well as detailing in what order the company will be reciting and answering questions submitted.
- Preparation
  - Companies should ensure adequate training on the meeting platform is available for any board members or company representatives who will be actively participating in the meeting.
  - Companies should provide a simple way for attendees to check the online system compatibility requirements.
- Shareholder Proposals
  - With regard to shareholder proposal proponents, companies should coordinate with proponents in advance of the meeting to discuss logistics of presenting their proposals. Proponents should receive a dedicated phone or video connection to present their proposals in real time, as well as the option to provide a pre-recorded statement that the company will play in lieu of virtual attendance. Contingency plans should be discussed in the event the proponent faces technical difficulties.
- Voting
  - Companies must provide a prominently visible and simple mechanism for shareholders to vote their shares during the time the polls are open, and confirm that the virtual shareholder meeting provider is able to maintain the integrity of, and the inspector of election is able to certify, the votes cast at the meeting.

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## State Mandates in 2021

Yet another example of the pandemic's influence on the proxy season landscape, many states that would have required a physical annual meeting issued emergency executive orders in 2020 to allow for virtual meeting attendance. For some, the status for this allowance remains unclear for the 2021 proxy season. For example, in New York, virtual shareholder meetings are allowed as long as the current state of emergency is in place.<sup>5</sup>

As of December 2020, only five states require in-person meetings, and 45 states and the District of Columbia permit hybrid meetings. Notably, only 33 of these states (including Delaware, which incorporates a majority of U.S. issuers) permit virtual-only meetings.<sup>6</sup>

Although most states now permit virtual-only or hybrid shareholder meetings, it may be worth verifying whether yours will continue to do so in 2021.

## Are You Considering a Virtual Shareholder Meeting?

2020 was a landmark year for virtual shareholder meetings—though largely impacted by the haste and lack of planning with which this switch was made. As we approach the 2021 proxy season, companies considering a virtual meeting now have a number of factors to consider, including an emerging set of best market practices, updated proxy advisory firm policies, updated offerings from virtual shareholder meeting providers and feedback from shareholder engagement.

## ABOUT THE AUTHOR



Zally Ahmadi SVP oversees the Corporate Governance & Executive Compensation advisory services for D.F. King. Zally advises clients on topics such as institutional investor/proxy advisory firm voting policies and investor outreach strategy, best practice and trends regarding corporate governance and ESG-related structure and disclosure, and both quantitative and qualitative aspects of executive compensation programs.

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<sup>5</sup>Skadden, Arps, Slate, Meagher & Flom LLP [Planning Ahead: Virtual Shareholder Meetings in the 2021 Proxy Season](#) (September 30, 2020).

<sup>6</sup>Rutgers Center for Corporate Law and Governance, Council of Institutional Investors and Society for Corporate Governance, [Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings](#), December 10, 2020.