



Another Year of Virtual Shareholder Meetings

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During the first half of 2020, the number of public companies holding virtual annual meetings sky rocketed due to the COVID-19 pandemic, increasing almost fivefold compared to the 2019 calendar year, with Broadridge Financial Solutions, a public corporate services company (Broadridge), alone hosting nearly 1,500 virtual shareholder meetings.¹ Looking ahead, due to the uncertainty relating to the COVID-19 pandemic, companies should prepare for the possibility of needing to hold virtual annual meetings during the 2021 proxy season.²

Lessons From 2020 Virtual Meetings

Despite how quickly many companies had to shift their annual meetings from an in-person to a virtual format during the 2020 proxy season, companies were generally able to successfully hold virtual annual meetings and allow investors to participate. Some companies experienced technical issues or had difficulty scheduling their virtual meetings, however, due to the influx of companies relying on the same technology to hold such meetings. To prevent these issues from occurring this upcoming season, companies should engage early with virtual meeting service providers to schedule their meetings, discuss how best to handle technical difficulties, and learn how virtual meeting platforms have evolved in response to company and investor feedback during the 2020 proxy season. In addition, companies should consider investor feedback regarding their 2020 shareholder meetings when drafting related proxy statement disclosure and planning for their next meeting.

Proxy Advisory Firm and Investor Group Perspectives

During the 2020 proxy season, both ISS³ and Glass Lewis⁴ issued guidance supportive of virtual meetings during the COVID-19 pandemic. Glass Lewis, however, stated that for virtual meetings in future years, it expects companies to provide “robust” proxy disclosures regarding shareholders’ ability to participate in the meetings.⁵ In addition, in its 2021 proxy voting

¹ See Broadridge’s “Virtual Shareholder Meetings—2020 Mid-Year Facts and Figures” (2020).

² See our client alert “Planning Ahead: Virtual Shareholder Meetings in the 2021 Proxy Season” (September 30, 2020).

³ See ISS’ “Impacts of the COVID-19 Pandemic — ISS Policy Guidance” (April 8, 2020).

⁴ See Glass Lewis’ “Immediate Glass Lewis Guidelines Update on Virtual-Only Meetings Due to COVID-19 (Coronavirus)” (March 19, 2020).

⁵ In its 2021 guidelines, Glass Lewis removed its temporary exception regarding holding virtual annual meetings due to the COVID-19 pandemic, which had applied to meetings from March 1, 2020, to June 30, 2020. For more

guidelines, ISS adopted a new policy of generally recommending voting in favor of management proposals to allow virtual shareholder meetings, as long as the proposal does not preclude in-person meetings.⁶

Despite proxy advisory firm support for virtual shareholder meetings, some investors remain concerned about a lack of transparency surrounding those meetings, particularly because during the 2020 proxy season, typically only companies were able to see the questions shareholders asked during question and answer sessions. As a result, in a July 2020 letter to the SEC, the CII, the Interfaith Center on Corporate Responsibility and others called the virtual meetings held in 2020 a “poor substitute” for in-person meetings and stated that companies should provide shareholders a more straightforward means of accessing, participating in and voting at the meetings.⁷ More recently, a multi-stakeholder working group, led by the Rutgers Center for Corporate Law and Governance, the CII and the Society for Corporate Governance, published a report on recommended practices in conducting virtual shareholder meetings and providing related disclosures.⁸ This report is intended to assist companies in conducting their virtual meetings so that the shareholder meeting experience is as close as possible to the in-person meeting experience.

SEC Staff Guidance

The SEC’s Division of Corporation Finance issued guidance in April 2020 concerning virtual meetings, in light of COVID-19.⁹ The guidance noted that companies should clearly disclose logistical details, such as how shareholders can remotely access, participate in and vote at the meeting, and how companies should disclose changes to an annual meeting, such as switching from an in-person to a virtual meeting.

Shareholder Participation

According to Broadridge, during the 2020 proxy season, 97% of companies hosting a virtual annual meeting on Broadridge’s platform allowed live questions from shareholders, and 11% of companies allowed shareholders to submit questions before the meeting. In addition, of companies with shareholder proposals, 25% of companies allowed shareholders to submit questions before the virtual meeting.¹⁰ Companies should consider the manner in which they will provide for shareholder participation in the event of a virtual annual meeting and include related disclosure in their proxy statements.

State Law Requirements

Companies considering holding a virtual annual meeting in 2021 should review their state corporate laws covering the ability to, and permissible methods of, holding virtual annual

information, see the section titled “Assess Impact of Proxy Advisory Voting Guidelines by ISS and Glass Lewis” in the [complete publication](#).

⁶ See ISS’ [“United States Proxy Voting Guidelines”](#) (November 19, 2020).

⁷ See the CII, et al.’s [“Virtual and Hybrid Meetings: Concerns From 2020 Proxy Season”](#) (July 6, 2020).

⁸ See the Rutgers Center for Corporate Law and Governance, et al.’s [“Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings”](#) (December 10, 2020).

⁹ See the SEC’s [“Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns”](#) (April 7, 2020).

¹⁰ See Broadridge’s [“Virtual Shareholder Meetings: 2020 Mid-Year Facts and Figures”](#) (2020).

meetings or switching from an in-person to a virtual annual meeting. The majority of states, including Delaware, permit companies to hold virtual-only shareholder meetings. However, for the states that do not permit such meetings, such as New York (which provided emergency relief due to the COVID-19 pandemic), the availability of any relief is uncertain for 2021 annual meetings. Companies should therefore monitor developments in their state of incorporation concerning relevant statutory changes or new executive orders and should review their governing documents to ensure they allow for virtual meetings.

The complete publication, including footnotes, is available [here](#).