

VIRTUAL ANNUAL MEETINGS

Virtual Shareholder Meetings: Beyond the Pandemic

By David Martin and Will Mastrianna

With the COVID-19 pandemic showing few signs of abating, shareholder meeting trends and practices that have emerged since the onset of the pandemic continue to be relevant for the 2022 annual meeting proxy season and may even be likely to remain in place post-pandemic. Chief among these practices is the shift to virtual-only shareholder meetings (VSMs). Health and safety concerns may have necessitated the shift to VSMs at first, but the overall response to VSMs from both companies and shareholders seems likely to drive a long-term prevalence of VSMs beyond the COVID-19 pandemic.

Evolving Views of VSMs

Companies and shareholders have historically been skeptical of VSMs, often for different reasons, but the views of both groups have evolved over the past two proxy seasons. Although shareholders have traditionally expressed a strong preference for in-person meetings and have resisted changes to this format, the abrupt shift to VSMs as a result of the COVID-19 pandemic has spurred an evolution in shareholder expectations regarding meetings and the role of VSMs.

The ability of VSMs over the past two proxy seasons to replicate most elements of in-person meetings appears to have allayed many of the traditional shareholder objections to VSMs. Frictionless remote communications coupled with companies' increased willingness to communicate directly with

shareholders through forums such as investor days and town-halls mean that the in-person shareholder meeting is no longer the preferred venue for shareholders to communicate with company management.

Companies have also grown more comfortable with the experience of managing VSMs over the past two proxy seasons and interacting with shareholders in a purely virtual context. Broadridge data show that companies continued to shift to VSMs in 2021 with the number of VSMs increasing by approximately 15 percent over the 2020 proxy season, which itself saw six times as many VSMs versus the average number of VSMs pre-pandemic.

Other factors also point to VSMs becoming a standard format for annual shareholder meetings. The experience of two proxy seasons has confirmed that companies can efficiently conduct VSMs and the virtual-only format alleviates the logistical and travel expenses of in-person and hybrid meetings. Operators of VSM platforms, transfer agents and other third parties have also solved many of the early technical challenges associated with VSMs.

These factors are likely to be supplemented by increased calls for companies to utilize VSMs as sustainable and more environmentally-conscious alternatives to in-person meetings. All of these factors will enhance the staying power of VSMs beyond the present pandemic.

VSM Shareholder Proposals

The evolution in shareholder expectations regarding VSMs will likely lead to increased pressure on companies that have not adopted a VSM, or at least a

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hybrid meeting format. Pressure on these companies may come in the form of shareholder proposals. One such proposal, requesting a VSM or hybrid meeting format, received 58 percent support at an annual meeting in November 2021.

A recent shift in the Securities and Exchange Commission's (SEC) position on similar shareholder proposals suggests that it will be harder to exclude VSM-related shareholder proposals. The SEC Staff had long held that shareholder proposals requesting that meetings be held *in-person* were excludable under Rule 14a-8, the SEC's shareholder proposal rule. In September 2021, the SEC Staff held that shareholder proposals requesting that meetings be held *virtually* or with a virtual component were not excludable under Rule 14a-8.

The SEC Staff noted that "technological progress and public health guidance in light of the COVID-19 pandemic" meant that "the issue of shareholders' virtual access to annual and special shareholder meetings" did not relate to a company's ordinary business operations, which is one basis for exclusion under Rule 14a-8.

This change in position may indicate the SEC Staff's willingness to deny exclusion of shareholder proposals that generally address the format of a shareholder meeting. We anticipate that some shareholder proponents may use the shareholder proposal process to request more detailed changes to the conduct of

VSMs by focusing on topics such as live video or the manner of asking questions through VSMs.

Shareholder Questions at Meetings

One area of continuing shareholder focus is likely to be the Q&A format at VSMs. At a typical VSM, shareholders submit questions through the VSM platform, and the ease of submission has led to a general increase in the number of questions submitted at meetings. Given the reduced barriers to submitting questions, companies should review and update as necessary their meeting rules of conduct to address shareholder questions and the order in which questions will be addressed.

These rules should also establish parameters giving management the discretion not to answer certain questions and note that time constraints mean management will not be able to address all questions. The rules should also address whether a company will publicly post answers to shareholder questions that were submitted but unanswered at the meeting and how long the Q&As will remain posted.

There is no requirement to do so, but posting these materials to the company's website may be regarded as a helpful governance practice. An increase in shareholder questions and scrutiny mean that companies will give meeting rules of conduct a detailed review before their VSM.

Virtual Annual Meetings: Don't Waste the Opportunity!

By Doug Chia

We've seen the dramatic rise of virtual annual shareholder meetings in 2020 and 2021—almost solely as a result of the restrictions on travel and in-person

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gatherings related to the COVID-19 pandemic. All of us continue to experience it, and companies would be wise to either commit now to using a virtual platform for their spring 2022 annual meeting or signal that their planned in-person annual meeting may shift to a virtual format due to changing circumstances from COVID variants as the date of the meeting gets closer.