Teneo

The Global CEO Advisory Firm

# Teneo Insights

## Virtual Shareholder Meetings and Governance During the COVID-19 Crisis

By Martha Carter, Matt Filosa, Sean Quinn, Sydney Carlock and Jennifer Walmsley

March 2020

### Key Takeaways

- Many US companies are considering holding virtual-only shareholder meetings or adding a virtual component to create a hybrid meeting, in light of the COVID-19 crisis. Negative shareholder perception has previously made companies slow to adopt virtual annual meetings, but public health concerns may make them a necessity.

- The SEC recently provided guidance to US companies regarding announcing that they are changing to a virtual meeting online without having to mail new proxy materials.

- While some shareholders and proxy advisors have historically opposed virtual-only meetings, many have softened their views and policies due to the extraordinary circumstances, as long as companies do not restrict shareholder communication and embrace other best practices.

- The pandemic's effect on annual shareholder meetings is global, with some companies incorporating virtual elements to their annual meetings, where allowed. Some governments and international exchanges have extended the timelines for when annual results are filed and annual meetings held.

- Changing to a virtual meeting is just one of the governance issues raised by COVID-19. Employee and public safety and risk mitigation; the impact to ESG, including ratings and board responsiveness; executive compensation, retention awards, and pay for performance alignment during extreme market volatility; and activism defense in volatile markets are all factors that the board and management need to consider and be prepared to assess.

### Overview

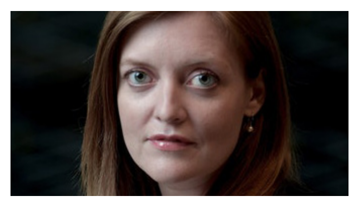
While virtual shareholder meetings have been in existence for several years, many companies have been hesitant to embrace them due to negative perceptions from shareholders and proxy advisors. While there are thousands of US public companies, corporate service provider Broadridge hosted over 300 virtual annual meetings in 2019. However, this number is expected to grow, due to the COVID-19 crisis, as many companies are considering holding "virtual-only" shareholder meetings or "hybrid" shareholder meetings (in-person meetings that allow for remote participation[1]). To date, approximately a dozen US companies have changed to a virtual-only shareholder meeting, with several more announcing that they are considering doing so or changing to hybrid meetings. This number

[1] While hybrid meetings have an in-person component, they are a means for companies incorporated in certain states that do not allow virtual-only meetings to allow remote participation or an attractive option for companies that are hesitant to move to a virtual-only meeting given prior investor sentiment.

**Martha Carter**
Vice Chairman & Head of Governance Advisory
martha.carter@teneo.com

**Matt Filosa**
Managing Director
matt.filosa@teneo.com

**Sean Quinn**
Managing Director
sean.quinn@teneo.com



**Sydney Carlock**
Senior Vice President
sydney.carlock@teneo.com

**Jennifer Walmsley**
Managing Director
Jennifer.Walmsley@teneo.com

will likely increase significantly as travel is restricted, meeting venues close, and local governments continue to place restrictions on large gatherings and encourage social distancing.

## Regulatory and Disclosure Considerations for US Companies

### Recent SEC Guidance

On March 13, 2020, the SEC staff issued guidance for US companies that are considering changing the time, date, or location of their meeting, or changing to a virtual shareholder meeting. Specifically, companies could take certain steps to announce changes to their annual meeting online, without mailing new proxy cards. These steps include issuing a press release announcing the change, filing the announcement, and taking necessary steps to inform relevant participants. If the proxy statement has yet to be filed, the SEC recommends issuers include information on virtual or hybrid meeting logistics in the proxy statement or include a statement that the meeting might change from in-person to virtual or hybrid, if the company has not yet confirmed details. Lastly, the SEC staff encourages companies to allow shareholder proponents to present their proposals through alternate means if they cannot attend in person.

### State Laws

US companies that are considering moving to a virtual-only or hybrid shareholder meeting should first check with counsel to see if they are permitted to do so under the laws of their state of incorporation. Many states, such as Delaware, permit virtual-only meetings, while others permit hybrid meetings but not virtual-only meetings. Other states, however, require in-person meetings or else have significant restrictions that make virtual meetings infeasible. States may be revisiting those restrictions (e.g. New York changed its law in 2019 to permit a virtual component).

### Governing Documents

Additionally, before changing to a virtual shareholder meeting, companies should review their governing documents to see if they permit, or place restrictions on, remote shareholder participation. In many cases, recent governing documents contemplate the prospect of virtual shareholder meetings.
While the above is a short summary, we encourage companies to work with their counsel to ensure compliance with all of the regulatory considerations.

## Institutional Investor Views

The Council of Institutional Investors (CII), a US-based institutional shareholder organization, has opposed virtual only shareholder meetings in the past, but the group has revised their view given the current circumstances. In a statement on March 16, 2020, Executive Director Ken Bertsch stated virtual-only meetings were “reasonable”. Bertsch expressed hope that companies that opt for virtual meetings make them participatory, accommodate shareholder proponents who may face travel restrictions, and make it clear that the decision is one-off.

Other investors that are typically opposed to virtual-only meetings are being more lenient towards those companies that have made the move amid virus concerns. Michael Garland, New York City assistant comptroller, said of companies holding virtual meetings due to COVID-19: “ we will evaluate our director votes on a case-by-case basis, and are unlikely to take action against those boards that disclose their rationale and affirm their commitment to holding in-person meetings in the future.” [2] He also expressed hope that companies holding in-person meetings “agree to present for a vote those proposals from proponents who are unable to attend the meeting due to any regulatory or employer-specific travel bans.”

[2] CII Weekly Governance Alert Vol 25, Issue 10, (March 5, 2020)

## Proxy Advisor Views

### ISS Policy and Approach

ISS does not have a voting policy on virtual meetings, although they are opposed by many investor clients. ISS indicates that they expect clients will be more accommodating in 2020, given the extraordinary circumstances caused by the COVID-19 pandemic. In communications with Teneo, ISS has indicated that they are aware of the public health and safety risks presented by large in-person meetings at this time, particularly for older and otherwise at-risk directors and shareholders.

For companies, the focus should be on not diminishing the participation of shareholders when switching to a virtual meeting - two-way communication, allowing shareholders to ask questions, ability to comment on a company's performance or governance, and present shareholder proposals.

### Glass Lewis Policy

While Glass Lewis has previously, at times, recommended against directors at US companies based on board decisions to hold virtual-only meetings, they have softened their policy in light of the COVID-19 crisis. Glass Lewis Senior Director Courteney Keatinge states, "This is a pretty unforeseen issue with a significant impact on public health and we will be looking at each instance separately." "However, I believe we will be fairly lenient about our current policy in instances when companies identify that they're holding a virtual-only meeting as a result of COVID-19."2

Similar to ISS, Glass Lewis will likely watch for two-way communication and the ability of shareholders to ask questions, as well as companies communicating appropriate technical and logistical details to access the virtual or hybrid meeting, including in the event of technical difficulties.

### Global Trends

Several countries and exchanges have put in place provisions specifically related to difficulties arising from the COVID-19 outbreak. These include encouraging remote participation and proxy voting, extending annual reporting and meeting deadlines, and waiving certain fees and penalties. International investment groups that have long been opposed to virtual annual meetings are reconsidering their positions. The current crisis could usher in a sea change in how the international issuer and investor communities view virtual shareholder meetings.

- **Canada.** Only a handful of virtual meetings have been held in Canada since the first one in 2017. As in the US, companies contemplating virtual meetings need to consider their own corporate documents along with the applicable Business Corporations Acts. Virtual meetings are allowed in several provinces, including under the Ontario Business Corporations Act.

- **China.** Chinese Shenzhen (SZSE) and Shanghai (SSE) Stock Exchanges allowed companies to request to extend their reporting deadlines and encouraged companies to allow remote shareholder participation at meetings.

- **Europe.** Dutch investors association Eumedion has previously expressed opposition to virtual-only meetings, but has recently indicated[3] that it may re-evaluate this perspective given the current developments. Some European companies, such as Swedish company Ericsson are holding in-person meetings, but including significant means for remote participation.

- **Japan.** Fuji Soft held Japan's first ever virtual shareholder meeting on March 13, 2020, with many more companies expected to follow suit.[4]

[3] From conversations between Teneo and Eumedion representatives.
[4] NHK World Japan (March 13, 2020). Firm Holds Japan's 1st Virtual Shareholder Meeting. https://www3.nhk.or.jp/nhkworld/en/news/20200314_14/

- **Singapore.** Singapore does not allow for remote participation or voting at annual meetings. However, the Singapore Exchange Regulation announced that it will allow two additional months for issuers to hold their annual meetings in response to investor feedback.

- **South Korea.** South Korea's Financial Services Commission announced that certain companies were allowed to delay submission of their audited financial statements and annual reports. Additionally, many of the largest Korean companies are moving to an online shareholder voting system and livestreaming their meetings.

- **UK.** The UK Investment Association supports guidance put forth by the Chartered Governance Institute, which states that virtual-only meetings are not viable as they do not constitute a valid meeting. The group supports and provides best practices for hybrid meetings, if they are permitted under a company's governing documents, as well as other measures to encourage remote participation.

**Other Governance and Board Considerations**

Changing to a virtual shareholder meeting is only one of the governance questions companies are facing due to COVID-19. Ensuring the safety of employees and the general public throughout the crisis is among the top concerns for boards and management. Identifying, mitigating, and addressing COVID-19 related risks is a high priority issue. Company preparedness and reactions will be judged by both investors and ESG ratings agencies, as the COVID-19 crisis is an ESG issue. Shareholders may hold directors and management accountable if there is evidence of poor risk management after the crisis subsides, and potentially redouble their focus on ESG issues as a result.

Companies should also prepare for potential activist activity, which could result from falling stock prices. While activists are just as, if not in some cases more, exposed to the market than any other investors, some may see opportunities in the extreme volatilities. While the primary focus is on the current crisis, strong market communication, board refreshment, and embracing good governance and environmental and social practices remain important as activism deterrents.

Compensation will likely be adversely affected by market volatility induced by the crisis, especially stock appreciation awards and other equity instruments. Boards may eventually need to evaluate potential changes or additional actions. Retention awards, incentive goal adjustments and other extraordinary measures may draw additional scrutiny if shareholders do not recover value, particularly if broad-based employee populations are negatively affected by layoffs, reduced hours, and furloughs.

IPO and M&A activity will also likely be affected. The typical period that it takes for a company to go public could be longer than usual while the IPO window is closed. As such, this is a good time for pre-IPO companies to get their governance structure and board in place, including considerations on new directors, the capital structure, compensation, shareholder rights, listing requirements, and ESG concerns.

[5] Byung-yeul, Baek. (March 16, 2020) The Korea Times. Samsung, Hyundai, SK to Hold Shareholders' Meeting Online. https://www.koreatimes.co.kr/www/tech/2020/03/133_286272.html

## Conclusion

As the COVID-19 crisis intensifies throughout the 2020 proxy season, virtual annual shareholder meetings will become increasingly prevalent around the world. As US companies contemplate moving to virtual-only or hybrid meetings, there are a number of factors to take into consideration: following SEC guidance and applicable regulatory requirements, providing clear instructions and allowances for shareholder participation and questions, and assuring investors that such a change will not diminish their ability to communicate with the board and management. Additional governance considerations, such as board responsiveness, ESG, and executive compensation, will continue to play out long after the pandemic runs its course.

Large institutional investors, such as BlackRock, have already signaled that they expect progress on governance issues despite the corona virus outbreak. We will continue to update our clients on the governance implications of the crisis and expectations of investors and proxy advisors, during the current proxy season, as well as looking forward to 2021.

Please reach out to us with any additional questions.

**BlackRock to target companies on governance despite coronavirus**

Michelle Edkins, global head of BlackRock's investment stewardship team, said the asset manager wanted to see progress from companies on these issues regardless of the coronavirus outbreak, which has put swaths of businesses under unprecedented pressure.

"We are looking at these [issues] long term. These are not new issues," she said.
"Companies can still demonstrate that they have effective leadership. In times of crisis that becomes more apparent, not less apparent."

Source: *Financial Times* March 18, 2020

Teneo

Teneo is the global CEO advisory firm.

Working exclusively with the CEOs and senior executives of the world's leading companies, Teneo provides strategic counsel across their full range of key objectives and issues. Our clients include a significant number of the Fortune 100 and FTSE 100, as well as other global corporations.

Integrating the disciplines of strategic communications, investor relations, digital advisory, diversity & inclusion, management consulting, physical & cyber risk advisory, financial advisory, corporate governance advisory, political risk advisory, and talent advisory, Teneo solves for the most complex business challenges and opportunities.

**teneo.com**