ICGN Viewpoint

Shareholder Meetings and Investor Dialogue: The New Normal

September 2020

The purpose of this ICGN Viewpoint is to provide insight and guidance on what annual general meetings (AGMs) and other shareholder meetings (e.g. special meetings) might look like in future, following major changes enabled by emergency legislation in many jurisdictions in the midst of COVID-19 pandemic.[1] This Viewpoint also takes into consideration the greater flexibility demonstrated by both issuers and shareholders to ensure shareholder meetings could go ahead in 2020. Regulators, companies and investors in many markets see COVID-19 related emergency regulations as an opportunity to drive permanent changes to the format and conduct of shareholder meetings. This Viewpoint seeks to explore the impact of such changes on shareholder rights and to identify basic "ground rules" that should be in place to protect fundamental shareholder rights. This ICGN Viewpoint seeks to serve as guidance to steer and stimulate discussions in individual markets between investors, companies and regulators.

Future format of AGMs

The appetite for virtual or hybrid shareholder meetings has been growing among some issuers and institutional investors even prior to COVID-19 pandemic. This was mainly driven by the fact that institutional investors vote at hundreds, and often thousands, of shareholder meetings every year, and may have to vote at multiple meetings every day during the peak shareholder meeting season of April to June. Furthermore, with global portfolios, institutional investors find it impossible to attend physical shareholder meetings in Europe, North America and Asia on the same date. As a result, AGMs are generally attended by retail shareholders, with institutional investors typically voting electronically/by proxy and turning up at AGMs only when they have a large shareholding, if there is a particularly contentious issue on the agenda, or if they intend to use the meeting to deliver a message to the company's Board and other shareholders.

Virtual and hybrid AGMs, enabled by new technologies, offer the potential for making shareholder meetings more accessible for both retail and institutional investors alike by removing the geographical barriers, travel requirements and reducing other attendance costs. Some companies, predominantly in North America, have moved to a virtual only AGM format over the past few years. However, this proved to be controversial for many investors on the grounds of the diminished opportunity for investors to challenge the Board and management robustly when compared to that offered by a physical meeting.

As physical attendance of shareholder meetings was discouraged in almost all jurisdictions during the COVID-19 pandemic[2], different types of remote formats have been explored by companies in many markets to avoid major disruptions to their business and investors. This necessity has in turn given a significant push to the use of remote/virtual shareholder

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[1] The focus here is on AGMs and shareholder meetings initiated by companies, as distinct from meetings called by shareholders.

2 ICGN Viewpoint: How different markets are handling shareholder meetings during the COVID-19 coronavirus health emergency, March 2020: https://www.icgn.org/how-different-markets-are-handling-shareholder-meetings-during-covid-19-coronavirus-health-emergency

meeting. As an example, in Canada virtual meetings have become the new norm with over 160 TSX and TSX-V issuers using virtual technology for 2020 AGMs (e.g. fully virtual, hybrid or webcasting). Over 145 issuers opted for fully virtual or hybrid formats that allowed for remote shareholder participation and voting – an increase of almost 25 times compared to 2019 levels[3]. In Japan, according to Investor Communications Japan[4], 111 companies implemented hybrid-type virtual shareholder meetings or provided a similar environment by live broadcast of AGMs through the internet, including 10 companies that enabled shareholders to vote in the meetings via internet. There is a strong interest in Japan and other jurisdictions in adding further virtual meetings next year. The Asian Corporate Governance Association also concluded in a recent study that the number of virtual meetings has increased significantly in Asia, including among other countries, India, Malaysia, Singapore and Philippines[5].

We have looked at the formats used around the world during the 2020 proxy season and considered the experiences of institutional investors with hybrid and virtual meetings in various markets. We are also identifying emerging best practices. Shareholder meetings, and AGMs in particular, are important fora for shareholders to hold the Board and management accountable for their work and performance. To ensure the integrity of the shareholder meeting process—including the ability of shareholders to hold the Board to account-- it is essential to ensure that certain minimum shareholder rights are guaranteed. Our objective is to indicate what could be a winning format going forward and issues of which companies and investors should be mindful. In so doing, we will also implicitly identify elements of a “losing format”.

Firstly, we must be clear on definitions. During 2020 AGM season, the term “virtual” seems to have encompassed a number of remote meeting formats, each offering a different level of interaction between company Boards and shareholders. Below we look at physical, virtual and hybrid meetings, including positive and negative features of each, as well as how their best features can be combined to create an optimal format that offers flexibility to issuers and greater access to shareholders-- and facilitates robust discussion during the meeting and enhanced accountability by directors to their investors.

Physical shareholder meetings

Prior to the COVID-19 pandemic many jurisdictions, including most European markets, only allowed for physical meetings, at which shareholders may participate by attending the meeting in person or by appointing a proxy. In a traditional physical meeting format, the board, management, and shareholders gather in a pre-arranged location. The location and shareholder base may influence how many shareholders can easily attend (numbers vary from a handful to several thousand attendees). It is not uncommon that the proceedings are made available to shareholders via webcast or teleconference. Opportunities to ask questions and, in some markets, even raise shareholder proposals from the floor are available to physical attendees.

On the positive side, physical shareholder meetings offer established procedures and processes for shareholder identification, ensuring that only genuine shareholders get access to the meeting venue. They also afford a high level of interaction between directors and shareholders via live Q&A, comments from the floor, including physical/vocal expression of

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[3] Guillaume Saliah, Alexandra Freedman & Tristan Lalumière-Roberge, 2020 Virtual AGM Proxy Season : Key Takeaways to Date, Fasken, 20 April 2020: https://www.timelydisclosure.com/2020/04/20/2020-virtual-agm-proxy-season-key-takeaways-to-date/
[4] Survey by Investor Communications Japan, Inc. as of 20 July 2020.
[5] Asian Corporate Governance Association, The rise of electronic meetings in Asia-Pacific, presentation by Jamie Allen, 25-26 August 2020

shareholder support or displeasure. Physical meetings are currently the only forum where retail shareholders and smaller institutional investors can interact directly with the Board and management and hold them accountable for the actions and performance during the year. Furthermore, physical meetings provide a secure and familiar environment for both shareholders and directors in situations that require discussions between the Board and shareholders – such as contentious votes, shareholder proposals or proxy contests. Where contentious items are on the agenda or in companies with a large retail shareholder base, it is not uncommon to see a large proportion of votes cast live at the meeting following the discussion.

On the negative side, institutional investors with larger diversified portfolios find it impractical and expensive to attend physical meetings, and hiring large venues for physical meetings combined with live webcasts can be expensive for companies. However, perhaps the biggest disadvantage of physical only meetings is the lack of flexibility in dealing with extraordinary events, such as pandemics, natural disasters, terrorism threats and other circumstances that could prevent gathering of a large number of attendees under one roof.

As experienced during the 2020 COVID-19 pandemic, without a robust remote/virtual alternative, companies' options would be limited to either physical attendance by a limited small number of people only combined with advance voting either electronically or by mail, or postponing shareholder meetings. The former would negatively impact shareholder rights by severely restricting shareholder ability to raise questions and ensure appropriate level of interaction between Boards and investors, while the latter brings significant complications and potential interruptions to a company's business, given that dividend proposals, share issuance authorisations, director and auditor appointments and other essential business matters must be approved by shareholders.

Virtual shareholder meetings

In light of increased interest in and discussions by companies and investors of potentially adopting virtual formats for shareholder meetings going forward, we look back on what actually happened during the 2020 proxy voting season.

The COVID-19 pandemic led to emergency legislation in many markets, allowing companies more flexibility in the conduct of their shareholder meetings and, in turn, companies experimented with a number of different remote/virtual formats, with differing degree of success. Some examples are below:

1. A pre-recorded AGM video was published on the company's website with pre-submitted questions answered during the recording by the Board/management.
2. The meeting proceedings were streamed live (with the link accessible via company website), but investors had to submit questions in writing in advance. The questions were either answered during the live meeting or via a website publication.
3. The meeting was streamed live, and investors were able to raise questions during the meeting either via a chat function or an operator (similar to the format used during analyst calls) and received answers either live or in writing afterwards.
4. A Q&A session with the Board organised several days before the AGM with live interactions during the session, and a transcript published on the website to help other shareholders make voting decisions. Access was by registration only to ensure that only shareholders participated in the discussion. The meeting took place by electronic/remote voting.

5. AGMs conducted behind closed doors without physical participation of shareholders will have an interactive Q&A session with the Board planned for later in the year.

It was clear that those issuers that had included a virtual/remote component with their annual meetings in the past were much better positioned to switch to a virtual/remote-only platform in 2020. One obstacle observed during the 2020 proxy season was limited platform availability for those companies that had to scramble to make these arrangements, particularly on popular meeting dates.

It became evident, however, that the above formats, implemented by companies across markets under the unprecedented circumstances of the pandemic, can be considered as forms of hybrid/remote meetings that fall short of the virtual experience that would effectively replicate the main characteristics and features of a physical meeting.

In its pure form, a virtual shareholder meeting would be held entirely by electronic means without any in-person participation. In markets where virtual-only meetings are allowed (for example, Canada and the USA), it is required by law that companies establish adequate procedures to enable verification of participants' identity and shareholding, and ensure that all participants in a virtual meeting are able to communicate adequately with each other and vote on matters submitted to shareholders during the meeting.

The greatest advantage of a virtual meeting is access to the proceedings for an unlimited number of shareholders located all over the world, thus dismantling geographic barriers and reducing participation costs for investors. For companies with a large global shareholder base, virtual format offers an opportunity to hear from retail and institutional investors alike and to increase direct shareholder participation in AGMs (rather than by proxy). Indeed, ICGN investor members have already heard from their investee companies that without geographic constraints, shareholder participation in meetings has been greater than for physical meetings.

Another feature of the virtual format that is generally appreciated by shareholders is that voting is necessarily conducted by poll rather than a "show of hands" that is still common in some jurisdictions. Poll results provide a more accurate reflection of the views of the company's shareholder base, and many investors find such information useful for stewardship purposes.

Finally, the virtual format offers the ultimate flexibility to companies when it comes to responding to emergency situations as demonstrated during COVID-19. As an example, following the quick approval of relief for U.S. issuers to hold virtual annual meetings by the SEC at the outset of the AGM season, the U.S. proxy season remained on schedule with a very minimal number of postponements.

At the same time, there are many challenges that need to be overcome before virtual-only meetings can truly replace physical formats:

- Firstly, we understand that verification that each remote participate is a shareholder or a proxyholder in the company, and tracking/reconciling their pre-meeting and live votes (where different), remains a challenge and requires advance planning and, most likely, the use of third-party providers.

- Secondly, despite technological advancements enabling large-scale interactive live virtual meetings, the possibility of experiencing technical issues during the meeting is significant, which forces companies to resort to less advanced, but more reliable, technologies (e.g. telephony vs live video webcasts).

- It should also be noted that virtual meetings can prove significantly more expensive than organising physical gatherings, particularly for smaller companies or companies using advanced technologies. In the event of a hybrid meeting, these costs are in addition to the cost of a physical meeting, although it is possible that these costs will come down in future as the technology becomes more widespread.

- Any restrictions on live voting during the meeting will effectively give issuers a preview of the voting results before the meeting takes place, thus allowing them more control of the meeting conduct and messaging to reduce negative impact in sensitive cases (e.g. proxy contest, shareholder proposals).

- A shorter duration of virtual meetings may reduce opportunities for active interaction between directors and shareholders, even in cases where live Q&A is available.

- From a shareholder perspective, the format of a Q&A session – e.g. direct questions by participants, via an operator, public chat function, private chat function, pre-submitted questions, etc. – are the key determinant of the effectiveness of the virtual meeting. Any non-transparent/mediated approach to selecting questions is likely to reduce quality of interaction between directors and investors.

While modern technologies should be able to offer solutions to these challenges, when looking at virtual-only shareholder meetings that took place prior to and during 2020, we note that most have failed to deliver a shareholder experience equivalent to that of an in-person meeting. For example, most of the virtual-only meetings have been, and are being, held by a conference call in an audio-only format, with shareholder experience resembling that of joining an analyst call. Our understanding is that this is due to cost, logistics, as well as reliability of technology.

Furthermore, perhaps the greatest criticism of remote/virtual formats so far is the frequent absence of transparent unmoderated Q&A sessions, whereby any investor can hold directors accountable via robust interactive questioning and dialogue during the meeting. As evidenced during the 2020 proxy season, a remote/virtual format can, and has led to, lower quality interactions between investors and directors, mainly due to: i) prepared high-level boiler plate responses to pre-submitted questions; ii) non-public question boards, potentially allowing directors to select more favorable questions and avoid more negative or hard-hitting questions; iii) a lack of opportunity to expand/follow up on the given answer to ensure the matter raised was properly addressed.

While this may be considered “adequate” from a regulatory perspective, it is considered sub-optimal by most investors and no substitute for a direct “eye-to-eye” candid interactions with the Board during the physical meeting.

Hybrid shareholder meetings – an optimal solution?

Long before COVID-19 many companies, particularly large issuers with a diversified shareholder base, have used available technologies to allow shareholders to view AGM proceedings remotely and to cast votes electronically. These are called hybrid meetings because they combine a physical meeting with remote access. Many of the remote meeting formats used by companies under the COVID-19 emergency circumstances were based on remote participation tools used during hybrid meetings.

It is clear that, as a direct consequence of the COVID-19 pandemic, companies, investors and regulators have largely accepted the need for a virtual alternative or supplement to physical AGM participation. However, whether the virtual format ends up being an alternative in emergency situations, an established feature of hybrid meetings or a preferred shareholder meeting format will likely vary from market to market. In all cases, the key stakeholders have already started looking at ways to enhance virtual participation options in order to replicate, to the extent possible, the in-person shareholder meeting environment.

In general, investors clearly prefer hybrid meetings to virtual-only, as the hybrid format carries many of the benefits of virtual-only meetings while avoiding many the shortcomings. This is understandable as it gives retail and institutional shareholders the possibility of attending meetings in person, particularly in their local markets, including the ability to present shareholder proposals or to address contentious issues.

Additional support for hybrid option comes from a rather limited experience so far of dealing with Special Meetings, Contested Proxy Contests, Contentious Shareholder Proposals and other exceptional situations in virtual-only environment. In the case of shareholder proposals, a number of options have been used so far to allow the proponent to present the proposal at the shareholder meeting, ranging from a dedicated dial-in facility, to an audio/video recording of the proponent's speech, to a written submission by the proponent to be read at the meeting by a third-party. Once again, these options may be adequate in straightforward cases, but would likely fail to offer shareholders a fair opportunity to consider a more controversial proposal if the Q&A session and interactive discussion between the proponents, company representatives and other shareholders are in any way restricted by the virtual format.

The clear benefit, should virtual settings allow for active interaction with the directors and the auditor, would be the likely increase in direct participation in AGMs by institutional shareholders and increased public questioning of boards and management by professional investors. This benefit, however, comes at an additional cost which can be significant based on the quotes for hybrid/virtual meetings received during 2020 proxy season. These costs could be justifiable if a reasonable number of shareholders take advantage of the virtual provision. For this reason, ICGN recommends that investors should discuss with issuers how they deal with hybrid and virtual meetings in their stewardship policy—and should generally advocate a hybrid meeting as the preferred option.

While we believe that it is important for companies to introduce a virtual component of shareholder meetings and make the necessary arrangements to enable investors to watch live streams and cast live votes, these investments are only worthwhile if investors actually utilise these facilities. Companies' decisions on the format of their shareholder meeting, the technology used, the language in which a shareholder meeting is conducted, and the expenses spared on adding virtual or physical components would be dictated by their shareholder base and indications from investors of their preferences. However convenient it may be for some shareholders, the low usage compared with the costs could make offering a virtual component a poor use of shareholder funds.

At the same time, we note that the past few years have seen a considerable increase in the number of institutional investors willing to go public with their views on strategy, quality of leadership, and business/sustainability practices of investee companies. These views are increasingly expressed through public announcements, letters, written questions to companies and shareholder proposals. We hope that the growing emphasis on ESG and stewardship among institutional investors, and the drive for greater transparency of stewardship activities should help make attending interactive virtual AGMs more attractive for institutional and retail investors alike. The hybrid format of shareholder meetings is very well aligned with this evolution in investor stewardship.

Key features of high-quality virtual shareholder meeting environment

As stated above, when it comes to creating positive shareholder experience in the virtual format, the key to success is to replicate, as best as possible, an in-person shareholder meeting. ICGN sees the following key features as critical to high-quality interactive virtual shareholder meetings:

- Virtual meetings should be in video format, audio-only is inadequate and should be discontinued. While video format is undoubtedly more complicated logistically and more expensive, an audio-only meeting does not allow participants to observe company representatives as they make their statements and answer shareholder questions, as well as see the reaction of the audience. The ability of meet directors face-to-face and question them directly is the main attraction of attending an AGM, and is best replaced by video format.

- Any participant should be able to address the shareholder meeting on request – advance requests as well as "open microphone" approaches should be accommodated. Shareholder statements, whether supportive or critical of the Board and management, represent an important part of shareholder meeting proceedings and are an important tool for exercising effective stewardship for investors.

- Companies should ensure that all shareholder proposals on the agenda are voted on, including making contingency provisions in the event the proponent may have difficulty in joining and presenting the proposal at the virtual meeting.

- Any participant should have a possibility to ask questions of the board, as well as the ability to follow up on their question if they found the answer unsatisfactory – for virtual participants this should be similar to holding a microphone in a physical meeting.

- All questions raised to the Board/management in advance of and during the meeting should be made public. There should be ultimate transparency around all the questions asked. Ideally, this should be done in real time in the same way as it would happen in a physical meeting. Questions should come from named shareholders, in an audio/video format, and follow up opportunity should be provided. Availability of a public chat function can increase the number and diversity of questions, while technology that allows participants to "like" or "support" questions they would like to have answered can help companies prioritise written questions during the meeting.

- Virtual participants should be able to cast live votes during the meeting. The ability to cast live votes would enable investors to take the explanation from Board members for a particular agenda item into account when exercising their voting rights.

- Using a universal proxy card should facilitate dealing with contested director elections in a virtual environment.

- In hybrid meetings, all matters on the ballot should be voted by poll, and the proxy materials should make it clear that no "show of hands" voting will be allowed.

- Companies should publish procedures for shareholder participation in hybrid/virtual shareholder meetings, including information on the format of the meeting, registration procedures and location of meeting access information, participant identity/shareholding verification procedure, voting options and procedure, and the Q&A approach. A meeting protocol available publicly in advance will help to avoid surprises and enable investors to assess their ability to fully exercise shareholder rights in such a meeting.

Companies that expect their shareholder meetings to be lengthy and difficult to handle in a virtual format could consider splitting the proceedings into the “discussion part” that includes management/Board presentations and the Q&A session, and the “voting part” where the proposals would be put to a shareholder vote and results announced. We have seen a significant added value for both companies and shareholders in holding the “discussion part” sufficiently in advance of the voting deadline so that it could contribute to a more informed vote by shareholders.

We also see the need for the regulators and market participants in each country to develop and endorse a set of best practices for virtual or hybrid meetings, and to ensure that these are harmonised across countries. From an investor perspective, it is important to have as much uniformity in shareholding validation and meeting participation requirements as possible. Variations of rules and requirements among platforms, custodians and issuers can create unnecessary complexity and discourage virtual participation by investors.

In order to avoid abuses of technology and disadvantaging shareholders, an argument could be made for an independent monitoring of virtual meetings to ensure meeting protocols are observed and shareholder rights are protected. We feel, however, that it may be too early to advocate such measures at this stage.

Finally, ICGN believes that issuers, regulators and investors in all jurisdictions should comprehensively review existing AGM regulations in their respective markets to remove archaic rules, create an appropriate regulatory environment and legal basis for enabling virtual options, and to further enhance shareholder rights.

Impact on shareholder meetings and investor dialogue

While creating challenges for the conduct of shareholder meetings, the lockdown conditions and social distancing rules caused by COVID-19 have proven that investors are very keen to meet with companies virtually, ahead of formal shareholder meetings. These one-on-one or group meetings offer an excellent opportunity for investors to raise questions and have them answered in a satisfactory way, and for companies to understand investor views. In 2020, such pre-AGM Q&A sessions were restricted to institutional investors, but they could be a good way for companies to manage their shareholder and stakeholder engagement, leading to shorter, easier-to-manage AGMs.

The practice of shareholders submitting questions in advance and companies offering written answers prior to the AGM could also offer an opportunity to make live Q&A more meaningful and insightful. This can be regarded as an opportunity for companies to better understand investor concerns, and as a way for companies to provide direct responses to these concerns. To be successful, however, written responses should avoid overly legalistic, sterile or boiler-plate language and serve to provide genuine insights into the matters raised by investors.

AGM season aside, interactions between companies and investors during the pandemic have demonstrated that Boards and management are generally very willing to meet their investors, while the use of virtual tools has enabled more timely and frequent communications. Investor members of ICGN have generally not experienced any reduction in the number or quality of engagements with companies. This positive experience offers a good opportunity to re-think the approach to company/shareholder dialogue going forward, perhaps reducing the time spent by directors and executives on travel for large conferences and lengthy roadshows, and investing in virtual technologies offering greater and more timely access to a larger number of investors.

Of course, face-to-face meetings will remain important going forward, but could be approached more strategically. For example, the Strategy & Stewardship Forums promoted by the UK Investor Forum[6] could become common practice, offering buy-side investors an annual opportunity to directly hear from the Board/management and ask questions on strategy, performance, governance, environmental and social issues. Attended by buy-side analysts, portfolio managers, ESG analysts as well as retail investors, such forums could become an annual event as a part of a Capital Markets Day or on a separate occasion. Importantly, such an event could provide smaller institutional investors with access to Boards and reduce the need for one-on-one meetings and roadshows.

Conclusion

The response by regulators, listed issuers and investors to the COVID-19 pandemic all over the world has prompted an unanticipated experiment around the efficacy of virtual meetings.

There have been both benefits and concerns arising from this development, but the primary issues that came up were related to shortened timeframes for setting up virtual platforms, inherent “proxy plumbing” problems that created challenges for shareholder identification and obstacles for participation, reliability and appropriateness of technology used, and providing reasonable access for shareholders to ask questions and receive quality responses.

Based on the experience of our members, ICGN finds concerns around shareholder access to directors, ability to provide robust challenge to management as well as hold a meaningful discussion on a contentious proposal to be well founded. At the same time, we acknowledge the significant opportunity for much broader shareholder participation in the shareholder meeting process that a virtual, preferably hybrid, option presents. We hope that the practical suggestions offered in this Viewpoint will help interested parties to leverage technology to enfranchise shareholders while determining the best controls to prevent exclusion of unpopular views or undermining shareholder rights.

About ICGN Viewpoints

While not defining a formal ICGN position on the subject, ICGN Viewpoints provide opinion on emerging corporate governance issues and are intended to inform and generate debate.

This ICGN Viewpoint was written by Eugenia Jackson and Bram Hendriks, Co-Chairs of ICGN’s Shareholder Rights Committee. Many other Committee members shared their own experiences and provided helpful comments and suggestions.

[6] https://www.investorforum.org.uk/activities/stewardship-strategy-forums/