The latest flashpoint in the governance wars: Virtual shareholder meetings

Board perspectives

Virtual-only annual meetings—shareholder meetings held solely online, rather than at a physical location—have become the latest flashpoint in the governance wars.

The move from a physical to an electronic meeting seems natural. Few stockholders attend uncontested annual meetings, such meetings are typically brief and pro forma, and corporate America is undergoing a digital transformation.

From the company perspective, virtual-only meetings may be an attractive option since they are less expensive (a company need not rent a space, or incur security and similar costs), allow a greater number of retail and institutional investors to attend, and permit such investors to participate without incurring travel expenses.

Since shareholders participating remotely can vote during the meeting until the polls close, one downside for companies is the potential for greater unpredictability of outcomes—which is relevant when contested issues, approval of a major transaction, or contentious shareholder proposals are on the ballot. Thus, virtual-only meetings may not be well suited for certain situations.

Investor concerns

Opponents of virtual-only meetings have raised concerns that such meetings eliminate face-to-face interaction with the board and management and could be structured to limit shareholder participation—for example, by allowing a corporation to avoid answering difficult questions. The New York City Comptroller announced that the NYC Pension Funds would vote against directors on the governance committee at companies holding virtual-only meetings during 2018.[1] Evidencing the pressure brought to bear on companies holding virtual-only meetings, both ConocoPhillips and Union Pacific announced that they would no longer hold virtual-only meetings after investors objected to the virtual-only format used in 2017.[2]

The Council of Institutional Investors (CII) maintains that virtual meetings should only be used to "supplement" traditional in-person meetings, and not as a "substitute".[3] The combination of a virtual and physical meeting is often referred to as a "hybrid" meeting. For issuers, a downside of hybrid meetings is that they do not offer the cost saving of a virtual meeting, effectively requiring double-track logistics. Moreover, some companies that experimented with hybrid meetings subsequently moved to virtual-only meetings when few shareholders attended the physical meeting. According to Broadridge, of 24 companies that held a hybrid meeting in 2016, 50 percent switched to virtual-only meetings in 2017.[4]

1 New York City Retirement Systems, Corporate Governance Principles and Proxy Voting Guidelines, amended April 2017, p. 20.

2 Emily Chasan, "Investors Opposing Virtual Shareholder Meetings Notch Wins," Bloomberg, January 9, 2018.

3 Council of Institutional Investors, Policies on Corporate Governance, updated September 15, 2017.

4 Broadridge, Virtual Shareholder Meetings: 2017 Facts and Figures.

While some investors have strong reservations about virtual-only meetings, views vary widely. Institutional Shareholder Services (ISS), the proxy advisor, received the following feedback from investors when updating its voting policies for 2018:[5]

— 19 percent found both hybrid and virtual-only meetings acceptable, while 8 percent did not support either alternative format

— 32 percent found hybrid meetings and virtual-only meetings acceptable, provided the virtual meetings offer the same shareholder rights as a physical meeting and

— 36 percent of investors found hybrid meetings, but not virtual-only meetings, acceptable.

ISS has not yet adopted a formal policy on virtual-only meetings in the U.S., although in Europe, it will support hybrid meetings and oppose virtual-only meetings.

Proxy advisor Glass Lewis argues that virtual-only meetings may curb the ability of a company's shareholders "to meaningfully communicate with the company's management." As a result, beginning in 2019, it will recommend voting against the governance committee at companies planning to hold virtual-only meetings, unless the company provides robust disclosure assuring the same participation rights and opportunities as at an in-person meeting.[6]

Statistics

Delaware, the home of over 60 percent of the Fortune 500, changed its corporate law in 2000 to permit virtual meetings and many other states followed suit.[7] The number of companies employing virtual meetings has been small, but has been increasing. According to Broadridge, 187 companies held meetings in 2016 allowing stockholders to participate electronically, of which 155 (83 percent) were virtual-only; the remainder were hybrid. Of the 155 virtual-only meetings, 149 (96 percent) used live audio and six used live video. In 2017, 236 companies held virtual meetings, of which 212 were virtual-only— representing a 37 percent increase. Similar to 2016, 205 (97 percent) were audio-only. Audio-only meetings are much like analyst calls and pose fewer technological and logistical challenges than video meetings. Broadridge estimates that it will host an aggregate of approximately 300 virtual-only and hybrid meetings in 2018.[8]

Ongoing developments

Key questions are whether there are transparent virtual-only meeting practices that will satisfy the concerns of opponents, and whether investors will get more comfortable with virtual-only meetings as usage increases and technology improves (and becomes less expensive).

In 2012, a group of investors, public companies, and proxy and legal service providers formed a working group to explore best practices for online participation in annual meetings. While the group was not able to agree on when virtual-only and hybrid meetings should be used, it outlined general principles.[9] The Working Group emphasized that companies should not use technology to avoid opportunities for dialogue, and recommended that companies adopt and publish principles for online participation, including guidelines for questions from shareholders. The Working Group is planning to issue updated guidance for the 2018 proxy season.

CII published its own tips for companies "looking to convene a shareholder-oriented shareholder meeting."[10] No company is known to have utilized all of the recommendations, but they provide useful insights, including on the sensitive issue of "cherry picking" questions.

In view of the sensitivity surrounding the treatment of stockholder questions, requiring that all questions be submitted in advance is likely to raise concerns about a company's motivations. Reflecting that potential pitfall, Broadridge noted that 98 percent of companies using virtual technology allow questions to be submitted online during the live meeting, approximately 10 percent permit questions to be presented live by phone, and approximately 11 percent allow questions to be submitted online in advance of the meeting. Additionally, if time does not allow all questions to be answered, some companies will post all remaining questions together with answers to underscore their commitment to transparency.

Given the controversy surrounding virtual-only meetings, companies considering virtual meetings should gauge the sentiment and voting policies of their stockholders, understand the potential negative votes that may be cast (and related negative publicity), analyze whether a hybrid meeting is an attractive middle ground, and continue to monitor developments.

5 ISS, 2017-2018 ISS Global Policy Survey, Summary of Results, September 25, 2017.

6 Glass Lewis, 2018 Proxy Paper Guidelines at 43.

7 Thirty states allow virtual-only meetings, while 12 permit hybrid (but not virtual) meetings. Companies contemplating virtual meetings should examine the law of the state where they are incorporated, and whether such meetings are permitted by their organizational documents (or whether amendments would be required).

8 Broadridge, Virtual Shareholder Meetings: 2017 Facts and Figures.

9 Guidelines for Protecting and Enhancing Online Shareholder Participation in Annual Meetings, June 2012.

10 CII, Build a Better Meeting, October 2017.

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