

ICGN Viewpoint

How different markets are handling shareholder meetings during the COVID-19 coronavirus health emergency

March 2020

GNIA member updates

Overview

In addition to being a humanitarian crisis, the COVID-19 emergency has brought huge economic cost and has created vast disruption to normal business and business processes globally. For investors and companies, a very practical form of disruption relates to timing and holding of annual general meetings (AGM) and to the disclosure of financial statements and regulatory filings. The global nature of the COVID-19 crisis means that markets around the world are affected by these complications—in ways that have some similarities – but some differences as well.

The Global Network of Investor Associations (GNIA)¹ convened recently to provide comparative updates on how the COVID-19 Crisis is affecting individual markets. These updates demonstrate the diverse impacts and how these relate to local legal and regulatory frameworks. Among other things, the lockdowns in some jurisdictions and more generally restrictions on physical gatherings are giving rise to delays in some markets or the use of technology for hybrid or virtual AGMs.

ICGN has not formalised a policy position on virtual AGMs, but we recognise that many investor members oppose virtual meetings and that in some jurisdictions these are either rare or prohibited. In part this reflects concerns that the absence of a physical meeting may serve to minimise management and board direct accountability to shareholders. In the context of the current COVID-19, however, we are not dealing with a business-as-usual environment. It is therefore important, and in some cases unavoidable, that investors demonstrate some flexibility over the foreseeable future with regard to how AGMs happen and within what timeframe.

¹ The Global Network of Investor Associations (GNIA) was convened by ICGN in 2013, as an international collaboration of investor-led organisations with a common interest in promoting shareholder rights and investor responsibilities. The network enhances the capacity of national associations to share governance related priorities beyond local jurisdictions to an international audience thereby contributing to global governance reform efforts. Members are drawn from Australia, Brazil, Canada, France, Germany, Hong Kong, Italy, Malaysia, Netherlands, UK and the USA. The group is currently co-chaired by the Council of Institutional Investors in the US and ICGN.

1. ASIA

Australia (Kate Griffiths, ACSI)

The Australian Securities and Investments Commission (ASIC) recently released guidance to companies in relation to holding their AGMs in light of the current restrictions on gatherings over 100 people.

ASIC confirms that:

- It will take no action if AGMs are postponed for two months (that is until end of July 2020). ASIC notes that the situation remains under review - suggesting that ASIC is prepared to extend this date if required. The “no-action” position means that ASIC will not take action against an entity with a financial year end of 31 December 2019 who fails to comply with the requirement to hold its AGM within five months of the end of its financial year (provided the entity holds the AGM by 31 July 2020 or such later date as ASIC advises).
- Where companies wish to proceed with their AGM, ASIC will support the use of appropriate technology, including a hybrid AGM (i.e. physical location and online facilities) or a virtual AGM. ASIC confirms it considers hybrid meetings to be permitted under the Corporations Act, but that hybrid meetings must also be allowed under each company's constitution. ASIC notes there is some doubt whether a virtual AGM meets the requirements of the Corporations Act and has therefore confirmed that it will take no action in relation to virtual AGMs, subject to the technology providing shareholders a reasonable opportunity to participate - which includes the ability to ask questions and vote by poll. However, as for hybrid meetings, entities will need to consider whether virtual meetings are allowable under their constitutions.

ASIC notes that companies with a 31 December balance date have the most immediate concerns, though it will continue to monitor the situation and update appropriately for those with a 31 March or 30 June balance date. An ASIC “no-action” letter does not necessarily preclude third parties (including the Office of Director of Public Prosecutions) from taking legal action.

ASIC also comments on financial reporting obligations, observing that at present, there does not appear to be widespread indications of significant issues in meeting reporting deadlines. As we progress through the year into reporting season, this may well change, given a significant amount of audit work is conducted on site.

While ASIC has confirmed its position, practice will evolve on a company by company basis, as not all company constitutions allow hybrid or virtual meetings.

ACSI's view is that the temporary measures proposed by ASIC are sensible adjustments in the circumstances to allow companies to take the current environment into account while providing a forum for corporate accountability

China (Nana Li, Asian Corporate Governance Association)

Annual Reports disclosure: The annual reports for Chinese companies listed in China and Hong Kong are due on 31 March, while for those listed in the US the due date is 30 April. However, since most Chinese companies only reopened in early March, it will be difficult for them to meet these deadlines. For this reason, the Shanghai and Shenzhen Stock Exchanges have already extended the due date of filings under their jurisdiction by one month, to April 30. The US Securities and Exchange Commission has also issued an order granting an additional 45 days to those companies that were significantly affected by the coronavirus outbreak.

AGMs: The virus situation in China is mostly (hopefully) under control now, so the stock exchanges have not granted any particular extension for the holding of AGMs in China (mostly in March-June). However, they are encouraging shareholders to vote online. It is worth noting that AGMs in China are not well attended with only an average of 40% attendance historically.

Hong Kong (Nana Li, Asian Corporate Governance Association)

The Hong Kong Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong (HKEX) issued a joint statement to grant an extension to May 15 for the publication of annual reports by Hong Kong-listed companies. However, companies are only eligible for this extension if they have published their preliminary results or Material Financial Information on or before 31 March 2020. The HKEX will also consider applications for a further extension on a case-by-case basis.

AGMs: In Hong Kong, the SFC and HKEX will grant extensions on a case-by-case basis.

Japan (Financial Services Agency)

At a time when many Japanese companies deal with accounts settlement work in March and auditing work, there are increased possibilities that these works will be significantly delayed due to impact of the COVID-19 spread.

If related parties adhere to conduct these works formally complying with originally planned schedule, the purpose of related laws and regulations could be disregarded. In addition, the risk that related persons lose their health and safety would increase if they do not properly comply with governments' requests to stay home.

Bearing that in mind, we expect related parties to correspond flexibly and appropriately considering following points.

- A. Given the recent announcement of the revision of the Cabinet Office Order on Disclosure of Corporate Affairs which will extend the filing deadline of an annual and quarterly securities report, etc. to the end of September this year, companies and auditing firms need to prepare financial results and implement audits while considering

to ensure safety of employees and those who engage in audit, as well as assuming the irregular schedule of these operations.

In this regard, companies with a fiscal year ended in March are required to take the following points into account to operate an annual general meeting of shareholders (AGM) which is usually held at the end of June:

- Companies are expected to consider appropriate measures to prevent COVID-19 spread based on the `Questions and answers regarding operation of shareholders meetings (Ministry of Economy, Trade and Industry and Ministry of Justice, April 2, 2020);
 - It is not required to hold an AGM at the end of June under the current law and regulations, and therefore, it is possible to defer the timing of the meeting; and
 - If a company holds an AGM as originally planned in order to do financing or make business decisions in a timely manner, the company may consider, for instance, executing following procedures:
 - i. The company will hold an AGM as originally scheduled and request a resolution for the adjournment of it (Article 317, Companies Act). At the meeting, other issues such as election of directors may be resolved and the company is required to explain that financial statements and audit report will be provided at the “following meeting”.
 - ii. The company and the financial auditor will continue to prepare financial statements and perform audit while giving due consideration to ensure the safety of employees and those who perform the audit as mentioned above. The company is required to provide the financial statements and audit report with shareholders as soon as they are prepared, in order to ensure the sufficient time for shareholders to review them. The company is also required to hold the “following meeting” within a reasonable period after the AGM.
 - iii. At the “following meeting”, the company is required to provide sufficient explanation on financial statements and audit report. When holding the “following meeting”, it is necessary to fully inform shareholders, for instance, by dispatching a notice of the “following meeting” as needed.
- B. Investors are expected to pay more attention than usual to the necessity of ensuring financial soundness from a long-term perspective in order to contribute to the sustainable growth of investee companies. Investors are also expected to understand the handling of the above-mentioned AGMs and the “following meetings”, given the current plight of companies in year-end closing of accounts and audit.

Malaysia (Lya Rahman, Institutional Investors Council Malaysia)

The new Prime Minister, Tan Sri Muhyiddin declared a semi lockdown a.k.a. Movement Control Order (MCO) effective 18 March till 31 March 2020 and had recently announced the extension

of the MCO to 14 April 2020 as the number of Covid-19 cases have increased to 1,796 with 19 reported deaths as of 27 March. In view of the Covid-19 situation and the MCO imposed by the Government, companies have either postponed their AGMs or defer the announcement of their AGMs.

On the holding of AGMs by listed companies, even before the implementation of the MCO, most of the companies with financial year end 31 December 2019 have not issued any notice of meeting due to COVID-19 where mass gatherings are not encouraged. Under the Listing Requirements issued by the Stock Exchange of Malaysia (Bursa Malaysia), companies are required to publish their Annual Report within 4 months from the financial year end and under Section 340 of the Companies Act 2016, companies are required to hold their AGMs within 6 months from their financial year end.

However, in view of the Covid-19 situation, the Companies Commission of Malaysia (CCM) had announced that companies may apply to extend the holding of their AGMs beyond the 6 months, i.e. for companies with financial year end December 2019 may seek extension of time to hold their AGMs beyond June 2020.

Bursa Malaysia has also issued a circular on 17 March 2020 informing the companies that have yet to issue the AGM notice that they may issue the AGM notice separately from the Annual Report. In this context, the companies must ensure that the information contained in their Annual Report is made up to a date not earlier than six weeks from the date of issuance of the Annual Report.

As for companies that have issued the AGM notice together with the Annual Report before the issuance of the circular, if the AGM is adjourned for 30 days or more, the companies need to issue the AGM notice again in the same manner as in the case of the original AGM.

As regards the submission of the quarterly and annual reports, companies are also given an automatic one-month extension to submit their quarterly and annual reports.

2. EU (Michael Herskovich, Association Française de la Gestion financière)

Article 8 of the 2007 Shareholder Rights Directive [2007/36/EC] requires member states to permit companies to offer participation in general meetings by electronic means and without the need to appoint a proxy that is physically present at the meeting.

Austria (Michael Herskovich, Association Française de la Gestion financière)

AGMs are physical meetings only, but companies have eight months to hold the meeting from the start of the financial year. A number of Austrian companies have already postponed the AGM including Unternehmens Invest and Palfinger. Dividend approval depends on the meetings going ahead.

Belgium (Michael Herskovich, Association Française de la Gestion financière)

In Belgium, the AGM should still be a physical meeting within six months after the closure of the fiscal year. Companies are pushing shareholders not to attend the meetings physically.

Belgian law allows for the board to distribute an interim dividend without reference to a shareholder vote (if supported by the articles).

France (Michael Herskovich, Association Française de la Gestion financière))

Remote attendance at French AGMs is already possible at companies where regulations allow this. An amendment is currently being presented to the French Parliament allowing all companies to hold digital meetings regardless of existing arrangements. AGMs will take place with no public attendees and all voting will be by proxy. There will be no hybrid meetings, but most AGMs in France will be broadcast live, which was the previous practice. French companies will be allowed to hold a meeting beyond the legal requirement of six months after the start of the year (3 months as extra-delay). But there is no expectation that blue chip companies will delays holding AGMS

Measures to ensure meetings proceeds will mean dividend approval is unaffected.

Germany (Michael Herskovich, Association Française de la Gestion financière)

The company law is national and requires that an AGM must be held as a physical event and eight months after the start of the financial year (six months for companies with a Societas Europaea structure). However, we understand that the German government is now considering a move to enable digital only meetings.

Many companies have suspended the AGM. With the suspension of the AGM is the suspension of dividends, which in Germany depends on a shareholder approval.

Germany (Alexander Juschus, Deutsche Vereinigung für Finanzanalyse und Asset Management)

The government has decided to introduce some emergency laws which contain some drastic measures:

- The record date will be moved to 12 days prior to the meeting (instead of 21)
- Meetings can be called 21 days ahead (instead of 30)
- Interim reports can be streamed in
- The supervisory board will probably receive additional compensation (dividend payout without approval by AGM, extension of audit contracts without approval)

- The AGM can be held online (even if the statutes say otherwise)
- It is down to the management board to what extent questions from shareholders are allowed (For example, the board could decide that questions have to be filed two days prior to the meeting.
- The right to file a suit (e.g. because of technical problems) will be restricted to deliberateness
- Notifications to shareholders (e.g. ballot, AR) can be sent 12 days before the meeting (instead of 21)
- Aktiengesellschaften – AG (joint stock corporations) do not need to hold their meetings within the first 8 months after the end of the business year
- Societas Europaeas firms have to hold their meetings within the first six months after the end of the business year. This may be a challenge for Allianz or Puma.

During the period of these emergency laws shareholder rights will be limited considerably. Our concern is that some issuers might exploit the situation to introduce some critical items. Furthermore, we are concerned that numerous shareholder meetings will be held on the same day or in the same week. Given the short deadlines the situation could become difficult for asset managers in Germany.

Italy (Massimo Menchini, Assogestioni)

Summary: Usually, Italian companies hold AGMs within 120 days of the year-end, but the Italian Government decree—Law n. 18 of Tuesday 17th March 2020 allows AGMs to be delayed 60 days more and consequently to be held within 180 days of the year-end, instead of 120 days. The decree also permits and encourages the use of remote voting systems for both private and state-owned companies and allows meetings to be held 100% remotely. A postponement could impact the date of allocation of the profit as well as of the appointment of new boards of directors and audit committees. Nevertheless, many Italian listed companies maintained the current dates to the end of April and kept scheduled dividend payments from the end of April to the end of May.

Some of the new rules regarding AGMs envisaged in the Decree-Law n. 18 of Tuesday 17th March 2020 derogate from several articles of the legislative decree 24 February 1998, n. 58 ("Consolidated Law on Finance"), from the Civil Code and also from many companies' bylaws.

Details: The new dispositions on the holding of AGMs are enshrined in art. 106. The main provisions of the article are:

- Companies can hold the AGM and approve the balance sheet within 180 days (instead of 120 days) from the start of the financial year.
- The permission of the use of remote voting systems and the validity of the vote casted electronically or by correspondence. Even if it is contrary to bylaws rules, videoconference meetings are allowed. Companies can also decide to hold a virtual-only

AGM, as long as the identification of shareholders, their participation and the possibility to vote are assured. The President, the Secretary or the Notary do not have the duty to be together at the same venue.

- Even if it is contrary to bylaws rules, listed companies pursuant to Section 135-undecies of Legislative Decree no. 58/98 can appoint a Company-Designated Proxy Holder to vote in ordinary or extraordinary meetings. The companies can decide also to authorize the participation to the AGM only through company-designated proxy holder. Voting rights holders may grant a proxy inclusive of voting instructions regarding all, or some of, the items on the agenda. Such proxies are valid only for the items for which voting instructions have been given by signing a proxy form, which may be downloaded and printed from the Company's website, the content of which is provided for pursuant to CONSOB regulations. No expenses are incurred by shareholders in granting proxies of this nature. Proxies and voting instructions sent to the Designated Proxy Holder are always revocable prior to the above-stated deadline.
- Mutual banks, cooperative banks, cooperative societies and mutual insurance companies can also appoint the Company-Designated Proxy Holder pursuant to art. 106 derogating also from the maximum number of proxies provided by law that the Company-Designated Proxy Holder is usually entitled to receive.
- All the provisions above-mentioned will be in effect for the AGMs hold within the 31st July 2020 or in any case until the emergency state continues.
- For State-controlled companies, the application of the aforementioned provisions enshrined in art. 106 occurs to the extent of financial resources that are already available to enforced legislation and however without new or further burdens for the public finance.

The Netherlands (Rients Abma, Eumedion)

Eumedion's starting position is that companies should do everything they can to keep their board members, shareholders, employees and other stakeholders healthy and safe.

Until today, three – smaller – Dutch listed companies have postponed their shareholder meetings: Sligro Food Group, Esperite and Arcona Property Fund.

In the Netherlands it is legally not allowed to hold “virtual only” AGMs.

Most Dutch companies intend to proceed with their AGM as scheduled (we have not a complete lockdown in the Netherlands), but have taken precautionary measures to limit the risk of infection for all involved:

1. Almost all companies that already convened their AGM discourage their shareholders to attend the meeting in person and encourage shareholders to make use of the option to exercise their voting rights by way of electronic or written proxy. These companies further invite their

shareholders to submit per email questions they would have otherwise raised during the meeting in person. These questions will be dealt with and discussed during the AGM.

2. Many companies will livestream their AGM (audio broadcast or webcast), so that all shareholders can follow the meeting. Ahead of the 2020 AGM season, Eumedion already encouraged Dutch listed companies to do that.

3. Some companies ((e.g. large caps KPN, AkzoNobel, ABN AMRO and probably ASML) will conduct a so-called hybrid AGM (a combination of a physical and electronic meeting). These companies offer their shareholders to vote electronically using their smartphone, tablet, laptop or PC during the AGM (“live voting”). However, shareholders who attend the AGM virtually will not be able to address the meeting or ask questions during the meeting. We are a bit disappointed by that as shareholders should also have the opportunity to make a ‘live statement’ on such issues as executive remuneration or environmental or social or other controversies and to further explain their positions.

4. Until so far, only one company (small cap Kendrion) offers a functionality for shareholders attending the AGM virtually to raise questions during the meeting. We very much encourage other companies to follow Kendrion’s example.

5. Many companies that not all board members will be present at the AGM because of travel restrictions and safety procedures. We expect that at several AGMs only the chairman, the company secretary and the person casting the proxy votes will be physically present. It is expected that contribution to the meeting by other directors and by the auditor will be broadcasted as part of the livestream (either via pre-recorded messages or by direct participation to the livestream).

Please be reminded that the situation can change quickly. If the Government decides that our country goes on lockdown, many companies may cancel their AGMs.

We expect that the Covid-19 AGM measures and experiences will spark a debate to allow ‘virtual only’ AGMs by changing Dutch company law. Currently, Eumedion is in favour of conducting ‘real’ hybrid AGMs (with the possibility for shareholders attending the AGM virtually to vote and to speak during the AGM). Shareholders should have the choice of whether to attend the general meeting in person or virtually.

Norway (Michael Herskovich, Association Française de la Gestion financière)

As a default, Norwegian law requires the physical presence of shareholders or their authorised representatives in order to vote. Although digital participation is technically an option in practical terms, it might not be possible for the upcoming 2020 meetings.

Some companies have announced a postponement of AGMs via regulatory news and dividend payments are therefore delayed at these companies. One option being used by companies

where meetings go ahead is to seek power of attorney over dividend payment, giving open-ended discretion to the board over the timing and the amounts.

Spain (Michael Herskovich, Association Française de la Gestion financière)

Remote/digital meetings are possible in Spain under Spanish regulations if allowed by company by-laws and rules and regulations for the AGM. A few Spanish companies, Santander for example, already guarantee shareholders the right to participate in the meetings remotely, and to vote at AGMs without having to attend the meetings in person.

Spain has allowed meetings to be held 10 months after the end of fiscal year as long as the annual report is published.

Sweden (Michael Herskovich, Association Française de la Gestion financière)

There is no current prohibition for private meetings that prevents general meetings from taking place and - to date - physical meetings are still going ahead, although with some adjustments.

At the Ericsson AGM, the CEO will attend remotely and shareholders can vote remotely via Euroclear. The Annual General Meeting must be held within six months of the close of the financial year. Only a shareholder meeting can authorise the payment of a dividend.

Switzerland (Michael Herskovich, Association Française de la Gestion financière)

On 16 March, the Swiss government banned all public and private events but we understand this leaves AGMs at companies' discretion.

The Swiss law provides only for presence-AGMs, where the shareholders must either be present in person or represented by a permitted third-party individual. AGMs via internet, paper/written AGMs (with circular resolutions) and delegate meetings are not permitted under Swiss law. Digital AGMs seem to be provided for in the future Swiss law, but it is too late to be useful for the current coronavirus situation.

So far, in Switzerland, the Board of Directors has to decide, with three variants available: the regular implementation of the AGM (perhaps by adding some obstacles to limit attendance - "AGM light"), the temporary postponement (maximum six months after the end of the FY) and the definitive cancellation of the AGM.

Shareholder approval is required for the dividend.

3. UK (Michael Herskovich, Association Française de la Gestion financière)

The law allows companies to hold a virtual-only AGM, however very few companies do this – the company is bound by its articles of association. Any proposed article changes enabling virtual-only meetings are probably already too late for 2020 AGMs but a delay may be possible for companies that have not already published their notice of meeting.

The law permits AGMs to be held up to six months after the start of the financial year. Many UK companies were due to seek binding shareholder approval for the remuneration policy for the next three years at the 2020 AGM – if no such approval is possible the current policy remains in place.

UK Company Law default is to seek shareholder approval for the payment of a dividend. The law requires shareholder approval if a “final” dividend is proposed. However, many companies propose rolling quarterly dividends and do not declare a “final” dividend, which avoids shareholder approval of the distribution.

UK (Andrew Ninian, Investment Association)

The UK Company law has so far not been changed in relation to AGMs and they are progressing under existing law and company Articles of Association.

The IA supported the guidance published by the Chartered Governance Institute (ICSA) and Slaughter and May on AGMs and the impact of COVID-19. This was followed supplementary guidance on AGMs following the Government’s restrictions on large gatherings, which focus on how the AGMs can continue to progress under the Stay at Home Measures.

Members are taking a pragmatic approach and reminding companies to follow the principles of accountability and shareholder voice whilst recognising the flexibility needed in these exceptional times.

The Government announced on 28 March that it was considering how to provide additional flexibility to companies. On 17 April, BEIS and the FRC provided a Q&A with additional information regarding flexibility for company filings and other general meetings during COVID-19.

The measures, which will assist companies in meeting their statutory obligations to hold meetings and to file documentation on the Companies Register, are still being developed. There are a number of key points for listed companies to note in the meantime:

- BEIS envisages companies being able to hold 'closed' meetings with a number of people by way of, for example, a telephone. Such meetings will be considered quorate. In some cases, companies will have the ability to override their Articles of Association for a short period.
- The flexibility does not extend to virtual-only meetings. BEIS expects mandating virtual meetings would create significant further issues.
- Companies should continue to engage with shareholders prior to, during and following meetings and should consider holding shareholder days later in the year. Shareholders will have the ability to vote by proxy.
- BEIS intends to temporarily give companies the flexibility to restrict the communication of notices and other meeting documentations to electronic means.

- While BEIS may provide the option of an extension, it expects the vast majority of companies to hold meetings in their normal time-frame

On Financial Report, the Financial Conduct Authority (FCA), Financial Reporting Council (FRC) and Prudential Regulation Authority (PRA) announced a series of actions which aim to "ensure information continues to flow to investors and support the continued functioning of the UK's capital markets". This included:

- The FCA stated that it will allow listed companies an extra two months to published their audited financial reports.
- Guidance from the FRC on preparing financial statements in this environment and from the PRA on the approach to be taken by banks, building societies and PRA-designated investment firms in assessing expected loss provisions under IFRS9.
- Guidance from the FRC for audit firms

On Capital Raisings, the Pre-Emption Group released a statement on 1 April recommending that investors consider supporting, on a case-by-case basis, non-pre-emptive issuances of up to 20% of the issued share. Companies should still consider the views of shareholders and offer shares on a soft pre-emptive basis.

The IA supported the Pre-Emption Group's statement and will be monitoring how companies use the additional flexibility.

The FCA published a support package for companies looking to recapitalise in light of COVID-19 on 8 April.

The package includes:

- Support for the Pre-Emption Group statement recommending investors support large share placings than in normal circumstances.
- Encouragement for companies to use the shorter form prospectuses introduced in July 2019 for secondary issuances.
- A new allowance for companies to provide a clean (or unqualified) working capital statement alongside specific modelling assumptions to take into account the impact of coronavirus - these assumptions may only be coronavirus related.
- Modified listing rules on request to allow issuers to undertake class 1 and related party transactions without the need to convene a General Meeting, providing they have provided a sufficient number of written undertakings from their shareholders.
- Market Abuse Regulations remain in force and individuals privy to inside information will need to be vigilant as to what information is material to a business's prospects and in relation to market capitalisations.

The FCA has published a technical supplement setting out the detail of the new rules.

4. NORTH AMERICA

Canada (Catherine McCall, Canadian Coalition for Good Governance)

In Canada, corporations must deal with both corporate and securities law requirements when deciding to hold a meeting virtually.

Corporate law

- Most corporate statutes authorize virtual meetings if provided for in the by-laws of the corporation.
- Corporations governed by the *Canada Business Corporation Act* and other provincial corporations such as Ontario allow for virtual meetings as long as all participants are able to participate in the meeting and communicate adequately with each other.
- Hybrid meetings (i.e., an in-person AGM that also permits securityholder participation through electronic means), can be conducted under most corporate laws, subject to any restrictions contained in the corporation's articles or by-laws.
- If the articles and by-laws allow the company to hold virtual meetings, details regarding the meeting must be communicated in the proxy materials and delivered to shareholders as usual, with the caveat that disclosure relating to the new format must be added with a specific indication as to how and why holding the meeting by virtual means will not limit shareholders' rights to participate.
- Some large Canadian issuers in the current context (e.g., Rogers Communications, Canadian National Railway, Canadian Pacific Railway, EnWave, Fortis and Yamana Gold), have taken the fully virtual route.
- Many Canadian issuers (e.g., including Teck Resources, TFI International, Fairfax Financial Holdings, Logistec and BluMetric Environmental), have instead decided to keep their in-person meeting with a simultaneous webcast while strongly encouraging shareholders not to physically attend the meeting and to vote in advance by proxy.
- No Canadian issuer that we are aware of has yet adopted a hybrid format (which allows for both online and in-person voting) in response to the COVID-19 crisis.
- In the current context, certain issuers are considering postponing their meeting altogether to a later date while they assess available options (e.g., Osisko Gold Royalties)

In addition, as boards often have the ability to unilaterally amend the corporation's by-laws under most corporate statutes (other than in Québec), to the extent the by-laws impose significant restrictions on alternatives to in-person meetings, directors may amend the by-laws as needed, either permanently or on a "one-off" emergency basis, subject to ratification by

shareholders at the next meeting. However, if the amendment is not later approved by the shareholders at the annual meeting or quorum is not met, such amendment would cease to be effective and the meeting would be held in breach of the corporation's constating documents.

Securities regulation

No matter the meeting format used, securities laws impose additional requirements on public issuers.

- In response to COVID-19, the Canadian Securities Administrators have taken the relaxed position that an issuer that has already mailed and filed its proxy materials can notify shareholders of a change in the date, time, or location of its annual meeting without mailing additional proxy materials if:
 - (i) a press release announcing such change is issued,
 - (ii) the announcement is filed as definitive additional soliciting material, as the case may be, and
 - (iii) the issuer takes all reasonable steps necessary to inform other intermediaries in the proxy process of the change.
- If a reporting issuer plans to conduct a virtual AGM or hybrid AGM and has not yet mailed its materials, they are expected to notify their securityholders, the parties involved in the proxy voting infrastructure, and other market participants of such plans in a timely manner and to disclose clear directions on the logistical details of the virtual or hybrid AGM, including how securityholders can remotely access, participate in, and vote at such AGM.

Court Orders

Alternatively, a court order may be sought. If a corporation is not permitted to hold a virtual or a hybrid meeting based on its constating documents, or if it is unclear whether the corporation is permitted to do so, for precautionary purposes it may decide to apply for a court order to ensure that the meeting is validly held. Canadian corporate statutes generally provide that a court of competent jurisdiction may order a meeting to be called, held, and conducted in the manner that the court directs.

In light of concerns over COVID-19, it is expected that the chances of success in obtaining a court order will be relatively high given that the health and safety measures would be prescribed by the authorities as extraordinary circumstances allowing courts to interfere in internal corporate affairs. On March 20, 2020, some of Canada's biggest financial institutions and insurers (Royal Bank of Canada, Toronto-Dominion Bank, Bank of Nova Scotia, Bank of Montreal, Canadian Imperial Bank of Commerce, National Bank of Canada, Canadian Western Bank, Laurentian Bank of Canada, Manulife Financial, Great-West Lifeco, Canada Life Assurance and Sun Life Financial), obtained a joint court order to hold virtual-only annual meetings in light of the COVID-19 pandemic. This creates a favorable precedent.

US (Amy Borrus, Council of Institutional Investors)

The rush to hold virtual AGMs is on. The service provider Broadridge, whose platform is used by nearly all U.S. companies that have held virtual shareholder meetings in the past, expects a big

increase in virtual meetings this proxy season. Broadridge is anticipating more than 700 U.S. virtual AGMs this year, up from up from about 300 in 2019. Most U.S. companies with spring meetings are switching to virtual (no physical component) and going audio-only (no video link).

CII issued a statement March 16 that suggests that companies hold virtual-only annual meetings only when extenuating circumstances (such as the Covid-19 pandemic) warrant it. The statement also offers guidance on creating shareholder-oriented meetings under all circumstances, culled from CII's 2017 Build a Better Meeting guide.

Separately, the SEC on March 13 issued guidance for companies on holding annual meetings in view of Covid-19 concerns. The SEC said companies that change the date, time or location of their meetings after they have mailed and filed definitive proxy materials will not have to refile or amend them so long as they announce the change in a press release, file the announcement on EDGAR (SEC electronic filing platform) and take "all reasonable steps necessary" to inform other proxy intermediaries and market participants, including the exchanges. That goes for switching to a virtual meeting, too. The SEC on March 25 gave relief to companies on requirements around physical delivery of proxy materials in areas where carrier service has been suspended due to Covid-19.

The guidance also encourages companies that go virtual to provide shareholder proponents or their representatives with the ability to present proposals via phone or other means. And, if a proponent is unable to attend the annual meeting and present the proposal because of travel or other restrictions related to the coronavirus, SEC staff will not allow a company to exclude the proposal for meetings held in the next two years, which would normally be the case under Rule 14a-h(8).

U.S. stock exchanges operate electronically. CII believes that operations have been largely smooth over the last two weeks, despite volatility and large volume, and very temporary suspensions of trading through circuit breakers (which CII does not oppose). Closing floor trading at the NYSE was a non-event, as there really is very little floor trading - the NYSE trading floor (which has closed) really functions now largely as a television studio.

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.

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