

## COVID-19 and the 2020 Proxy Season

First and foremost, we hope this message finds you well. The past few weeks have illustrated, in a uniquely poignant way, just how interconnected our society truly is. Our thoughts are with everyone affected by the COVID-19 pandemic, and we have full confidence in the resiliency of the global community. While the health, safety, and well-being of our people is our top priority, we will continue to diligently support our clients as they operate their businesses during these challenging times.

For most public companies, the Spring months necessitate planning for and holding annual shareholder meetings. However, COVID-19 has dramatically impacted daily life for the vast majority of the country. Many companies have instituted mandatory or recommended work-from-home policies, and the [White House advised people to avoid groups of 10 or more](#). For smaller gatherings, people are practicing “social distancing,” limiting close, in-person contact. Many states and municipalities have ordered that restaurants, bars, theaters and other places for social gathering close temporarily.

Companies should be prepared to adapt to the new business reality precipitated by COVID-19, which will have a significant effect on the 2020 Proxy Season. For companies that are planning investor outreach regarding a proxy contest, transaction, governance engagement, or other corporate event, this will have to be done via teleconference. We would also expect that, as a consequence of most investors working remotely, along with the demand on their attention of increased market volatility, some investors may be less inclined to spend time engaging with companies on corporate governance issues in the near-term. And for the many companies that ordinarily hold their annual shareholder meetings between April 15 and June 30, most, if not all, should consider whether to convert that meeting to a “virtual-only” format. Travel restrictions as well as the practical realities of the current situation suggest that attendance at in-person annual meetings will be significantly constrained for the foreseeable future.

Virtual shareholder meetings (VSMs) have [steadily been gaining acceptance](#) over the past several years, with more than 300 VSMs held in 2019. And over 90% of these were “virtual-only,” meaning that they lacked a corresponding in-person component. Although the majority of companies hosting VSMs were small-cap and mid companies, the global COVID-19 pandemic could see VSMs become widely adopted by companies across the market cap spectrum, at least temporarily. For example, [Starbucks recently announced](#) that it was cancelling the in-person component of its annual shareholder meeting, instead utilizing a virtual-only meeting.

Each situation should be evaluated on a case-by-case basis, and companies should determine whether virtual meetings are permissible under state law and their own governance documents prior to any switch being made. We understand that some states do not currently permit virtual meetings, while others only allow for “hybrid” meetings where there is also a contemporaneous in-person meeting. That said, we are advising many of our clients to at least consider holding a virtual-only meeting in 2020, particularly for meetings currently scheduled for March and April. The SEC likewise is anticipating that many companies will opt to hold virtual-only meetings this year, and recently [released guidance clarifying the Commission’s position](#) regarding notifying shareholders of a change in meeting venue and procedures. And [Broadridge](#) is able to accommodate issuers seeking VSM support even if they have already started a process for a regular in-person meeting with using their VSMs services. Issuers should know that [EQ](#), [Mediant](#) and [Computershare](#), among others, also offer virtual meeting services. Whatever vendor you choose, we would encourage companies to reach out soon, as those vendors are almost certainly experiencing higher-than-normal demand for these services.

With that in mind, we would like to take this opportunity to remind our clients of some of the “best practices” regarding VSMs. Companies should ensure that disclosure regarding the VSM in the proxy statement is robust. Investors and proxy advisory firms will closely examine the proxy statement to ensure that shareholder rights are not diminished by the fact that a meeting is virtual-only. In particular, proxy statement disclosure should:

- Address the issue of shareholder questions during the meeting. Companies should have mechanisms in place whereby shareholders can submit questions during the meeting, and shareholders should be informed of any guidelines regarding what types of questions are allowed, how much time shareholders are allotted to ask those questions, and how those questions will be disclosed to other participants.
- Contain the procedures for posting questions received from shareholders on the company’s investor relations page as soon as practicable after the meeting.
- Provide detailed information regarding technical and logistical requirements of the VSM, including a link to the website that will host the meeting or any telephonic dial-in information, as well as the existence of any pre-meeting forum. The company should also provide a link to a replay of the meeting, which should be made publicly available for at least 30 days after the meeting concludes.
- Provide contact information for technical support, which should be available to assist if shareholders encounter any difficulties accessing the VSM.

These guidelines are consistent with those [published by Glass Lewis](#), which has taken a fairly firm stance on VSMs over the past several years, requiring that certain protections be put in place to ensure adequate shareholder participation. ISS, on the other hand, does not have a policy on the use of virtual meetings in the United States at the time of writing. However, ISS too has suggested that companies utilizing virtual meetings should ensure that they have the technical and security capabilities necessary to ensure adequate participant verification and record-keeping, and that, fundamentally, shareholders should have a comparable opportunity to participate in a virtual-only meeting.

Given the exceptional circumstances of the 2020 proxy season, Glass Lewis has advised us that issuers holding virtual-only meetings will not be penalized, and that Glass Lewis will continue to focus on overall disclosure and whether or not shareholders have the ability to participate and ask questions during the meeting. For companies that switch to virtual-only meetings after the proxy statement is filed, Glass Lewis will look for disclosure as to why the meeting is now virtual-only (i.e., that the change in meeting type is due to COVID-19), and logistical instructions, as well as reassurance that shareholders will have the ability to ask questions during the meeting. Should issuers opt to retain a virtual-only meeting beyond 2020, Glass Lewis would then expect more fulsome disclosures, in-line with its standard policies, in the next proxy statement.

ISS likewise has advised us that although they ordinarily prefer a hybrid meeting approach, they have never taken action against a U.S. company board for holding a virtual-only meeting; they would only do so if it turned out that the format had been used by the company to block or diminish shareholder participation, the presentation of shareholder proposals, or similar abuses. We are advising our clients to be mindful of these guidelines as they plan their own VSMs.

For companies that have not mailed their proxy materials, some legal practitioners are advising that they include cautionary language in their proxy statements, emphasizing that the date and location of the annual meeting is subject to change due to COVID-19 concerns. Again, for companies that have commenced mailing of their proxy materials, it is possible for a traditional in-person meeting to be converted to a virtual-only meeting. For VSMs, as with traditional meetings, shareholders who own their shares in street name are able to participate with their voting instruction form (VIF) or Notice and Access Form, which contains their unique control number. Shareholders then access the VSM using that same control number; based on the recent SEC guidance, provided that sufficient notice is given to shareholders (the requirements for which may vary from state to state), no additional mailing would be necessary under the federal proxy rules in order to convert to a VSM and enable shareholder participation.

Should you have any questions regarding VSM best practices, logistical concerns regarding the process of converting to a virtual-only meeting, or any other corporate governance or proxy voting issue, we invite you to contact your usual MacKenzie contact, or you can reach any of our officers at [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com).

We have devoted significant resources these past several years to ensure our staff remains operational in times of unexpected disruption, and we remain committed to providing you with the level of client service that you have come to expect from us. We hope you, your colleagues, and your families stay healthy in the coming weeks as we work through these challenging circumstances together. Together we will weather these uncertain times and we look forward to a return to normalcy.

Sincerely,

Dan Burch	Bob Marese
CEO & Chairman	President