

THE SLOW ADOPTION OF THE VIRTUAL AGM

By Charles-Antoine Soulière and Lauren Bélanger-Dibblee

Virtual annual general meetings (AGMs) have been discussed and considered by several issuers in Canada over the past few years, but, so far, only a few Canadian companies have actually held virtual-only meetings.

In the United States, the virtual meeting trend began in the early 2000s when Delaware corporate law was amended to allow companies to hold virtual-only as well as hybrid AGMs. As the name implies, virtual-only meetings are held entirely virtually, without any in-person interaction between the management and directors of a company and its shareholders. Hybrid meetings, on the other hand, are held in-person with concurrent online broadcast or the participation of shareholders via electronic means.

In recent years, several high-profile U.S. companies, such as Hewlett-Packard, General Motors and Sprint, have opted for virtual-only meetings. Further, Broadridge Financial Solutions, Inc., a provider of online shareholder meeting technology, reported that during the first six months of 2018, 212 virtual meetings were held (compared to 180 over the same period in 2017) in the U.S.

Meanwhile in Canada, the first virtual AGM took place in July 2017 and, since then, only a handful of virtual-only meetings have been held. The *Canada Business Corporations Act* is not a hurdle in this context, as it allows shareholder participation in meetings through electronic means. However, as the provincial corporate legislation is not uniform, issuers governed by provincial legislation should review their corporate statutes and by-laws before considering a virtual AGM.

Proponents of the virtual-only approach assert that such meetings increase accessibility for shareholders who are geographically dispersed while reducing costs for renting equipment, space and travel. In addition, since shareholder questions are usually sent ahead of time in the context of virtual meetings, management can be better prepared to fully answer its shareholders. Finally, shareholders may also be more at ease to ask questions, since the forum is less intimidating.

However, critics argue that the absence of physical contact between the directors and shareholders has a negative impact on the quality of the dialogue, discussion and debate. The lack of transparency is also denounced, as some say the questions are filtered by issuers and answers are provided to only the easiest and most convenient ones. Finally, the ability for the chair to mute people who wish to speak is contested.

Important to note is that leading proxy advisory services firm Glass Lewis generally recommends voting against members of the board's governance committee at issuers that plan on holding virtual-only AGMs if they do not provide robust proxy disclosure assuring shareholders that they will have the same rights and opportunities to participate as they would at an in-person meeting. ISS, another prominent proxy advisory services firm, has yet to take a formal position on virtual meetings.

Therefore, before deciding to hold a virtual-only meeting, companies should be mindful that shareholders taking part in the meeting virtually have the same opportunities as those in traditional shareholder meetings. Clear procedures and processes as well as sufficient technological means should be put in place to promote transparency and participation.

While legislation and technology in Canada allow for AGMs to be held virtually, our view is that the adoption of virtual-only meetings will remain slow in Canada in the coming years, as companies remain cautious about the reaction of their shareholders. However, we expect the number of hybrid meetings to increase, as technology enables more virtual interaction and participation with the in-person portion of the meeting. ■



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