VIRTUAL ANNUAL MEETINGS: A PATH TOWARD SHAREHOLDER DEMOCRACY AND STAKEHOLDER ENGAGEMENT

YARON NILI
MEGAN WISCHMEIER SHANER

VIRTUAL ANNUAL MEETINGS: A PATH TOWARD SHAREHOLDER DEMOCRACY AND STAKEHOLDER ENGAGEMENT

YARON NILI*
MEGAN WISCHMEIER SHANER**

Abstract: From demanding greater executive accountability to lobbying for social and environmental policies, shareholders influence how managers run modern companies. In corporate doctrine, the principal venue reserved for shareholders to influence and engage with management and each other is the annual shareholders meeting. Historically, the annual meeting was a vibrant forum for shareholder democracy and occasionally even a platform for debating pressing social issues. For decades, however, the role of the annual meeting in corporate governance has been in decline, resulting in today's largely pro forma annual meetings. This Article explores how technological integration can resurrect the annual meeting as the deliberative touchstone of shareholder democracy it once was and open new avenues for engagement. The widespread use of virtual annual meetings in response to COVID-19 provides an opportunity to re-envision the practice and purpose of the annual meeting. If structured properly, virtual meetings can re-engage historically absent shareholder demographics while maintaining the efficiencies of proxy voting. Additionally, virtual meetings can serve as a vehicle through which companies can begin to address environmental, social, and governance (ESG) issues and heightened public expectations that companies will meaningfully engage with their varied stakeholders. This Article makes three key contributions to the existing literature. First, it provides a detailed account of state reactions to COVID-19 and of the impact that the transition to virtual meet-

---

NOTE: Because not all platforms support tables and graphics, the figures in this Article are archived online at: https://www.bc.edu/content/dam/bc1/schools/law/pdf/law-review-content/BCLR/63-1/Nili_Shaner_graphics.pdf [https://perma.cc/9KL2-W9AW].

* Associate Professor of Law and Smith-Rowe Faculty Fellow in Business Law, University of Wisconsin Law School.

** President's Associates Presidential Professor of Law, University of Oklahoma College of Law.

For helpful comments and discussions, sincere thanks go to Douglas Chia, Jessica Erickson, Sarah Haan, Claire Hill, Vice Chancellor J. Travis Laster, Tom Lin, Ann Lipton, Elizabeth Pollman, and Andrew Verstein. We would also like to thank the participants in the AALS Annual Meeting: Section on Business Associations and the National Business Law Scholars Conference, as well as the faculties of the University of Wisconsin Law School and University of Oklahoma College of Law whose thoughtful comments and questions contributed to the completion of this paper. Many thanks to Katie Gresham and Gretchen Winkel for their excellent research support. All errors and omissions are our own.

ings had on shareholder voting. Second, it describes how annual meetings have drifted away from their democratic function. Finally, this Article argues that technology can revive shareholder democracy and bolster ESG efforts by facilitating retail shareholder and corporate stakeholder engagement, and underscores how virtual meetings can meet these important goals.

INTRODUCTION

The COVID-19 pandemic and recent social movements have brought corporations' roles in improving societal wellbeing to the forefront of investor, labor, academic, political, and public discussions.[1] Already, we see a shifting focus of corporate governance in significant and lasting ways, questioning whether current corporate governance systems are working well for *all* stakeholders.[2] For example, COVID-19 and social movements have broadened environmental, social, and governance (ESG)[3] efforts to include previously overlooked issues such as human resource policies (such as sick leave and parental leave), workplace health and safety, supply chain management, continuity and emergency planning, and diversity and inclusion training.[4] Additionally, the

---

[1] *See* Maitane Sardon, *Sustainability Investors Shift Their Focus to Social Issues*, WALL ST. J. (Oct. 10, 2020), https://www.wsj.com/articles/sustainability-investors-shift-their-focus-to-social-issues-1160 2342000 [https://perma.cc/NQG6-S3L9] ("The global pandemic and social movements are accelerating change in the way investors, workers and the public view the role of companies in society.").

[2] *See* Leo E. Strine, Jr., Kirby M. Smith & Reilly S. Steel, Caremark *and ESG, Perfect Together: A Practical Approach to Implementing an Integrated, Efficient, and Effective* Caremark *and EESG Strategy*, 106 IOWA L. REV. 1885, 1886 (2021) ("The profound human and economic harm caused by the COVID-19 pandemic, and its harmful effects on ordinary workers, will only sharpen the societal focus about whether our corporate governance system is working well for the many or instead subordinating the interests of employees and society to please the stock market.").

[3] ESG is generally described as "a taxonomy that divides this universe of factors into environmental, social, and governance factors"; however, many scholars point out that ESG concerns are constantly evolving and expanding such that it is difficult to articulate a consistent definition. E. Christopher Johnson, Jr., John H. Stout & Ashley C. Walter, *Profound Change: The Evolution of ESG*, 75 BUS. LAW. 2567, 2568 (2020); *see* Stavros Gadinis & Amelia Miazad, *Corporate Law and Social Risk*, 73 VAND. L. REV. 1401, 1414–15 (2020) (describing the constantly evolving definition of ESG); *see also* Leo E. Strine Jr., *Towards Fair and Sustainable Capitalism: A Comprehensive Proposal to Help American Workers, Restore Fair Gainsharing Between Employees and Shareholders, and Increase American Competitiveness by Reorienting Our Corporate Governance System Toward Sustainable Long-Term Growth and Encouraging Investments in America's Future* 8 (Univ. Pa. Inst. for L. & Econ. Rsch., Paper No. 19-39, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id= 3461924 [https://perma.cc/VL69-TGXQ] (asserting that the phenomenon should be "'EESG' with an extra 'E' for employees," a crucial but frequently missing component in the ESG discussion).

[4] *See* Johnson et al., *supra* note 3, at 2570 ("Clearly, the pandemic is placing a spotlight on corners of the sustainability room that have, up to this point, not received much attention . . . . The result will be an increased focus on ESG, sustainability, and related concepts and their meaning for commerce and society generally."); Sardon, *supra* note 1; David A. Katz & Laura A. McIntosh, *Corporate Governance Update: EESG and the COVID-19 Crisis*, HARV. L. SCH. F. ON CORP. GOVERNANCE (May 31, 2020), https://corpgov.law.harvard.edu/2020/05/31/corporate-governance-update-eesg-and-

use of technology to facilitate remote operations of corporations at every level—board, officer, and employee—has increased at exponential rates and changed the way we think about conducting business.

This Article focuses on a specific change in corporate practice that results from the use of technology to navigate the challenges created by COVID-19: the virtual annual shareholders meeting. Although virtual annual meetings can be characterized as merely a short-term response to the pandemic, this Article discusses how the widespread adoption of virtual meetings may in fact promote enduring change in corporate procedures with the potential to impact meaningfully matters such as shareholder democracy, ESG, and stakeholder-oriented governance.

In Delaware, where most public companies are incorporated, the annual meeting is one of the few mandatory provisions the state imposes upon companies, and courts have acknowledged "the central role of annual meetings in the scheme of corporate governance."[5] Most other state corporate codes, the New York Stock Exchange (NYSE), and NASDAQ also mandate that companies hold an annual meeting.[6]

In theory, the annual meeting and the election of directors—one of the marquee components of the meeting—are meant to serve both as a check on director power and an opportunity to assess corporate performance, direction, and vision. This, in turn, helps curb the agency costs inherent in the corporate structure and serves as a "mechanism[] of corporate democracy."[7] Annual

---

the-covid-19-crisis/ [https://perma.cc/T2D8-GFQR] (explaining the shifting priorities of EESG advocates after the start of the COVID-19 pandemic).

[5] Hoschett v. TSI Int'l Software, Ltd., 683 A.2d 43, 44 (Del. Ch. 1996); *see* William K. Sjostrom, Jr., *The Case Against Mandatory Annual Director Elections and Shareholders' Meetings*, 74 TENN. L. REV. 199, 208–09 (2007) (quoting *Hoschett*, 683 A.2d at 44).

[6] *See Listed Company Manual § 302.00 Annual Meetings*, N.Y. STOCK EXCH., https://nyse.wolterskluwer.cloud/listed-company-manual/document?treeNodeId=csh-da-filter!WKUS-TAL-DOCS-PHC-%7B0588BF4A-D3B5-4B91-94EA-BE9F17057DF0%7D--WKUS_TAL_5667%23teid-67 [https://perma.cc/P5SJ-UDRE] (requiring listed companies "to hold an annual shareholders' meeting . . . during each fiscal year").

[7] *Hoschett*, 683 A.2d at 44–46; *see* Paul Rose, *Common Agency and the Public Corporation*, 63 VAND. L. REV. 1353, 1359 (2010) (arguing that increasing shareholder's ability to monitor management decreases agency costs); Sjostrom, *supra* note 5, at 218 (explaining that "[t]he phrase 'corporate democracy' relates to the governance structure of a corporation"). Agency costs are the collective sum of costs incurred by the principal in ensuring the agent acts in their best interest and include monitoring costs, bonding costs, and residual loss. Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 308–09 (1976). Monitoring costs are expenses by the principal "to limit the aberrant activities of the agent." *Id.* at 308. Bonding costs allow the agent "to expend resources . . . to guarantee that [they] will not take certain actions which would harm the principal." *Id.* Residual loss is the reduction in the principal's welfare attributable to the "divergence between the agent's decisions and those decisions which would maximize the welfare of the principal." *Id.* (footnote omitted). It is "generally impossible" for the principal "to ensure that the agent will make optimal decisions" with no cost. *Id.*

meetings offer shareholders the chance to raise issues in front of the shareholder body.[8] Thus, the annual meeting is envisioned in corporate theory as a primary space for authentic and organic shareholder interaction with directors, management, and each other.[9] As Securities and Exchange Commission (SEC) Commissioner Robert H. O'Brien outlined:

> In earlier days the actuality followed the theory rather closely. . . . Annually the management reported to its shareholders. The shareholders met and elected their management from among themselves. They expressed their views on the conduct of the business and made suggestions, all of which were fully discussed and voted on at the meeting.[10]

Historically, shareholders frequently took advantage of their rights to appear at meetings, make and discuss proposals, and have their fellow shareholders vote these proposals.[11] Annual meetings were not limited to just the business and operations of the company; they also served as a forum for debating pressing social issues such as women's rights and the Vietnam War.[12]

Yet, the reality of today's annual meeting has, in many cases, fallen woefully short. In the same speech where Commissioner O'Brien recalled the days of import of the annual meeting, he recognized that:

> [T]he character of the corporate meeting [has] changed. Instead of a congregation of the owners of a corporation, the corporate meeting became a collection of proxies. The actual meeting lost its deliberative character and the approval of proposals became a mere formality. Policy was no longer made by the shareholders.[13]

---

[8] *Hoschett*, 683 A.2d at 45.

[9] Lisa M. Fairfax, *Mandating Board-Shareholder Engagement?*, 2013 U. ILL. L. REV. 821, 843.

[10] Robert H. O'Brien, Comm'r, Sec. & Exch. Comm'n, Address Before the Conference Board: Stockholders and Corporate Management 1 (Jan. 21, 1943) (transcript available from the Securities and Exchange Commission), https://www.sec.gov/news/speech/1943/012143obrien.pdf [https://perma.cc/3CCY-G54Y].

[11] *Security and Exchange Commission Proxy Rules: Hearing on H.R. 1493, H.R. 1821, & H.R. 2019 Before the H. Comm. on Interstate & Foreign Com.*, 78th Cong. 16 (1943) (statement of Hon. Ganson Purcell, Comm'r, Sec. & Exch. Comm'n).

[12] *See* Karen Blumenthal, *New Respect for an Old Ritual*, WALL ST. J., Oct. 9, 2006, at R7 ("During the late 1960s and early 1970s, protestors saw annual meetings as a forum for highlighting a company's role in the Vietnam War."); Sarah C. Haan, Corporate Governance and the Feminization of Capital 27 (Dec. 1, 2020) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3740608 [https://perma.cc/JEB9-N8E3] (describing the shareholder campaigns of the 1940s and 1950s to elect women to boards of directors).

[13] O'Brien, *supra* note 10, at 2; *see* Dale A. Oesterle & Alan R. Palmiter, *Judicial Schizophrenia in Shareholder Voting Cases*, 79 IOWA L. REV. 485, 509–10 (1994) ("The usual annual meeting is not

In fact, in 2015, during the annual meeting of WESCO International, Inc. (WESCO), an assembly full of shareholder-owners eager to hear corporate updates, voice their ideas on improving corporate performance, and vote their shares was nowhere to be found.[14] Instead, in a nondescript small conference room, the board, corporate secretary, and management team were joined by a handful of investors easily counted with two hands. The meeting consisted of a simple recitation of the voting results that the management team already knew ahead of the meeting and lasted less than ten minutes—about as long as the now infamous Teldar Paper speech in the movie *Wall Street*. WESCO is not alone. The vast majority of shareholders do not attend the annual meeting and instead vote by a written proxy, if at all.[15] As the shareholder base for public companies became more geographically dispersed and the proxy system for shareholder voting emerged, the annual meeting became a shell of the deliberative convocation it once was, disenfranchising certain shareholders and limiting substantive engagement.[16] As a result, although large investors can often engage with companies and each other outside the annual meeting, "Main Street" investors' voices are often not present.[17]

With the explosion of the COVID-19 pandemic, however, 2020 would bring about dramatic change in how corporations conduct their annual meetings. Traditionally, March through May served as the annual meeting season

legislative; the shareholders rarely do more than ratify through proxies the board's slate of directors and any actions presented for shareholder approval.").

[14] One of the authors personally attended WESCO's 2015 annual meeting. WESCO is a publicly traded Fortune 500 corporation headquartered in Pittsburgh. *See WESCO International Company Profile*, FORTUNE, https://fortune.com/fortune500/2019/wesco-international/ [https://perma.cc/XHE4-FVEA].

[15] *See* Kobi Kastiel & Yaron Nili, *In Search of the "Absent" Shareholders: A New Solution to Retail Investors' Apathy*, 41 DEL. J. CORP. L. 55, 66 n.25 (2016) (remarking that "institutional investors vote in rates of over 90% while retail investors only vote approximately 30%" of the time); *see also* Elizabeth Boros, *Virtual Shareholder Meetings*, DUKE L. & TECH. REV., Sept. 1, 2004, at 3, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1112&context=dltr [https://perma.cc/H4DZ-HWKU] (noting that annual meetings "are poorly attended by institutional shareholders" who utilize more effective ways of engaging management, including the proxy).

[16] *See* Fairfax, *supra* note 9, at 844; Jill E. Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 VAND. L. REV. 1129, 1138 (1993) (describing how geographic dispersion and the adoption of the proxy eroded shareholder franchise and engagement); Carol Goforth, *Proxy Reform as a Means of Increasing Shareholder Participation in Corporate Governance: Too Little, but Not Too Late*, 43 AM. U. L. REV. 379, 387 (1994) (explaining how the introduction of the proxy to cure shareholder dispersion has not increased engagement as intended.).

[17] *See* Kastiel & Nili, *supra* note 15, at 66 n.25 (calling attention to the vastly higher participation rate of institutional investors than retail investors). The phrase "Main Street" often describes retail investors, or anyone that is not a large institutional investor, as opposed to "Wall Street." *See* Andrew Ross Sorkin, *What's Behind a Pitch for the Little-Guy Investor? Big Money Interests*, N.Y. TIMES (July 24, 2018), https://www.nytimes.com/2018/07/24/business/dealbook/main-street-investors-coalition.html [https://perma.cc/7P5B-S842].

for thousands of corporations—the time when these entities hold their statutorily-required yearly gathering of shareholders. During the 2020 proxy season, however, forty-four states issued mandatory stay-at-home orders[18] and most major companies enacted corporate travel restrictions in response to the COVID-19 pandemic.[19] This forced companies to rethink their annual in-person meetings. Most corporations turned to virtual meetings as the safest alternative.[20] This represented a striking departure from customary in-person meetings to primarily virtual meetings.[21]

2020 was a watershed moment for virtual meetings.[22] Prior to 2020, many corporations and large investors disfavored virtual meetings and viewed them as an inadequate alternative to in-person meetings.[23] The COVID-19 pandemic, however, presented a natural experiment for the use of virtual meetings across all corporate demographics, and pushed corporate practice down a tech-

[18] *See infra* notes 227–230 and accompanying text.

[19] Eric Rosen, *How COVID-19 Will Change Business Travel*, CONDÉ NAST TRAVELER (May 28, 2020), https://www.cntraveler.com/story/how-covid-19-will-change-business-travel [https://perma.cc/8XH8-4K6X] ("An April poll from the Global Business Travel Association (GBTA) found that 98 percent of its member companies had canceled international business trips, and 92 percent axed all or most domestic travel.").

[20] For purposes of this article, a "virtual" meeting is defined as a shareholder meeting that includes any type of virtual component—audio, teleconference, video, webcast, or internet. "Virtual-only" meetings are shareholder meetings that companies hold completely via the internet (audio-only or video with audio) with no in-person, physical component. "In-person" meetings are shareholder meetings that companies hold at a physical location and only allow for in-person participation; no remote attendance or participation is available. Some in-person meetings allow for live internet streaming (audio-only or video); however, shareholders accessing the web streaming are not counted as present for purposes of a quorum nor are they able to participate at the meeting. They cannot, for example, ask questions. "Hybrid" meetings are shareholder meetings that allow for participation in-person or virtually (via phone or the internet). Shareholders, whether present in person or virtually, are counted for quorum purposes and able to participate in the meeting.

[21] Marc S. Gerber, Richard J. Grossman & Khadija Lalani, *Virtual Shareholder Meetings in the 2021 Proxy Season*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Oct. 13, 2020), https://corpgov.law.harvard.edu/2020/10/13/virtual-shareholder-meetings-in-the-2021-proxy-season/ [https://perma.cc/7R5R-NLSP].

[22] *See* Douglas K. Chia, *Key Takeaways and Best Practices from Virtual Shareholders Meetings in 2020*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 2, 2020), https://corpgov.law.harvard.edu/2020/07/02/key-takeaways-and-best-practices-from-virtual-shareholders-meetings-in-2020/ [https://perma.cc/R4AJ-R8SJ] ("By May 1st, 65 percent of S&P 500 companies had held or announced plans to hold [virtual-only shareholders meetings], with almost 90 percent of those companies adopting it for the first time."); *infra* footnotes 216–220 and accompanying text.

[23] *See* Lisa A. Fontenot, *Public Company Virtual-Only Annual Meetings*, 73 BUS. LAW. 35, 35 (2017) (acknowledging that virtual meetings represent a minority of annual meetings even after the 2000 Delaware amendment allowing for virtual shareholder meetings); *see also* Lisa M. Fairfax, *Virtual Shareholder Meetings Reconsidered*, 40 SETON HALL L. REV. 1367, 1383–85 (2010) (describing the early adoption of virtual meetings by some companies). Over the last twenty years, beginning with Delaware in 2000, most states have enacted statutes that enable virtual shareholder meetings. *See* Fairfax, *supra*, at 1368 n.5, 1383 (discussing Delaware's adoption of provisions allowing for virtual annual meetings and listing the states that have at least partially followed suit).

nological path much faster than it was developing organically. The results and reactions were mixed.[24] For instance, when Amazon decided to move its annual meeting online in May 2020, it experienced a nearly tenfold increase in participation.[25] More than one thousand participants attended Amazon's meeting, significantly more than the 150 average attendees at previous in-person annual meetings.[26] Conversely, when Allegiant Travel Company required an in-person meeting during the pandemic, it faced criticism and speculation about its goals of undermining attendance by well-known gadfly investors[27] James McRitchie and John Chevedden.[28]

As the COVID-19 pandemic stretched into 2021, so too did the virtual annual meeting trend. Although most states had lifted their stay-at-home or emergency orders by the end of 2020, the rise of the COVID-19 Delta variant led to the continuation of remote working, restricted travel, and limitations on large public gatherings.[29] Accordingly, most corporations refrained from holding their annual meetings in person for the second year in a row, and instead opted for virtual meetings.[30] With more time to prepare, 2021 virtual meetings were purportedly successful in correcting some shortcomings from 2020, but still fell short of some proxy advisory firms' and investor groups' expectations.

The pandemic has highlighted a bedrock, yet marginalized, aspect of corporate governance. It has given us the opportunity to reassess the purpose and practice of the annual meeting in today's corporation and, more broadly, the role of the corporation in society. "Since the rise of the proxy in shareholder

---

[24] *See* Lisa Fontenot, Roger Bivans & Jamie Nix, *Public Company Virtual Annual Meetings: The 2020 Watershed and Path Forward*, 76 BUS. LAW. 927, 936–38 (2021) (recounting both positive and negative reactions from shareholders and management).

[25] Daniela Sirtori-Cortina, *Online Shareholder Meetings Are Packing in the Virtual Crowds*, BLOOMBERG (July 15, 2020), https://www.bloomberg.com/news/articles/2020-07-15/once-staid-annual-meetings-become-online-mega-events-in-pandemic [https://perma.cc/3UWF-BGJH].

[26] *Id.*

[27] *See generally* Kobi Kastiel & Yaron Nili, *The Giant Shadow of Corporate Gadflies*, 94 S. CAL. L. REV. 569 (2021) (describing how gadfly investors wield an inordinate amount of influence over corporate policy compared to their ownership stakes).

[28] James McRitchie, *Allegiant Travel Company (ALGT): Shareholder Alert*, CORP. GOVERNANCE (Aug. 1, 2020), https://www.corpgov.net/2020/08/allegiant-travel-company-algt-shareholder-alert/ [https://perma.cc/X3N7-9L3T].

[29] *See COVID-19 Restrictions*, USA TODAY, https://www.usatoday.com/storytelling/coronavirus-reopening-america-map/ [https://perma.cc/ATB9-F6JJ] (Nov. 23, 2021) (detailing state-by-state trends, restrictions, and mobility); *see also* Victor Manuel Ramos, *The Delta Variant Is Detected in 99% of U.S. Cases, According to C.D.C.*, N.Y. TIMES, https://www.nytimes.com/2021/09/18/health/delta-covid-us-cases-cdc.html [https://perma.cc/22UV-7MPC] (Sept. 20, 2021) (reporting on the surge in Delta variant outbreaks in the United States); Alison Sider & Chip Cutter, *Covid-19 Resurgence Clouds Business Travel Rebound*, WALL ST. J. (Sept. 6, 2021), https://www.wsj.com/articles/covid-19-resurgence-clouds-business-travel-rebound-11630920600 [https://perma.cc/2LAP-HSQD] (describing the slow return of business travel amid the surge in COVID-19).

[30] *See infra* note 220 and accompanying text.

voting, corporate law has undergone a metamorphosis from a uniquely democratic system to one in which there is a strong tension between the interests of corporate directors and shareholders."[31] In no area is this change more evident than the annual meeting. Even though the modern proxy voting system has negatively impacted particular aspects of the annual meeting, one cannot ignore its benefits and added efficiency. Thus, the challenge for corporate governance is to find a proper balance between efficiency and engagement.

Virtual meetings may be the solution. If companies are to engage with shareholders and stakeholders effectively, for which many have and continue to advocate,[32] one avenue is revisiting the town hall-style annual meeting by allowing for substantive engagement virtually. This Article identifies the tension that the modern public company annual meeting presents and contends that the pandemic-driven transition to virtual meetings is an opportunity to reexamine the lost role and function of the annual meeting as a key pillar of shareholder democracy, and address how the annual meeting can serve as a platform to advance corporate social responsibility and ESG issues.

This Article makes several contributions to the existing literature. First, it highlights what we term as the "fallacy of the annual meeting." It spotlights the sharp dissonance between the courts' or popular opinion's perceived notion of annual meetings and the way these meetings work in practice. Second, it provides comprehensive data on COVID-19's impact on annual meetings. We provide a full survey of state laws' adaptations to COVID-19 and companies' adoption of virtual meetings as a legitimate, widely-used means for safely conducting the annual meeting. We also utilize novel data on shareholder voting and participation at annual meetings occurring between: (1) March 11, 2020 and June 30, 2020; and (2) March 22, 2021 and June 30, 2021, to identify the (lack of) impact that the move to virtual meetings had on key voting metrics.[33] Finally, this Article uses the forced move to virtual meetings as an op-

---

[31] George Ponds Kobler, *Shareholder Voting Over the Internet: A Proposal for Increasing Shareholder Participation in Corporate Governance*, 49 ALA. L. REV. 673, 673 (1998).

[32] James D.C. Barrall, *Building Relationships with Your Shareholders Through Effective Communication*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Nov. 13, 2012), https://corpgov.law.harvard.edu/2012/11/13/building-relationships-with-your-shareholders-through-effective-communication/ [https://perma.cc/8EWL-NNNS]; *see* Deloitte, *Shareholder Engagement: A New Era in Corporate Governance*, WALL ST. J. (Oct. 1, 2013), https://www.wsj.com/articles/shareholder-engagement-a-new-era-in-corporate-governance-1380600179 [https://perma.cc/6TCY-QTWF] (advising management on best practices for increasing shareholder engagement).

[33] For papers examining other aspects of virtual annual meetings, see generally Fontenot et al., *supra* note 24 (examining the legal landscape of virtual-only meetings); Francois Brochet, Roman Chychyla & Fabrizio Ferri, *Virtual Shareholder Meetings*, (Eur. Corp. Governance Inst., Finance Working Paper No. 777/2021), http://ssrn.com/abstract_id=3743064 [https://perma.cc/5YEP-Q4U6] (examining the determinants of virtual shareholder meetings and the consequences of such meetings on information content); Miriam Schwartz-Ziv, *How Shifting from In-Person to Virtual-Only Share-*

portunity to rethink and re-envision critically the annual meeting of public companies. Not only do virtual meetings have the potential to revive the original democratic ethos of the annual meeting, but they can serve as a vehicle fulfilling "heightened public expectations that companies will work toward meaningful engagement with employees, customers, investors, supply chain partners, and the broader community."[34]

This Article proceeds as follows. Part I provides a rich historical and doctrinal overview of the in-person annual meeting as a key pillar of corporate governance.[35] Part I also provides a critical comparison and analysis of the normative depictions of the annual meeting and its role in our corporate governance ecosystem to the realities of the modern public company meeting.[36] Part II outlines the emergence of technology in corporate governance and, in particular, the introduction of virtual annual meetings. Part II then offers a detailed account of many American corporations' forced move to virtual meetings and the impact this had on state law and shareholder voting.[37] Finally, Part III explores the benefits and concerns associated with a more permanent move to virtual meetings.[38] This Article details a framework that is critical to adopting the virtual meeting successfully as common practice, as well as key ramifications for courts, investors, and companies themselves. It also aims to reframe the current discourse by academics, investors, and regulators regarding the proper role of annual meetings within the greater evolving technological and corporate governance landscape. Although some regulators and companies are focusing on restricting the ability of individual investors to engage with companies, this Article offers a more pragmatic approach to shareholder and stakeholder engagement that has the potential to spark a new line of inquiry into the role of the annual meeting.

I. SHAREHOLDER MEETINGS

> The requirement of a forum for discussion, deliberation, reception of comments from all sides, and exchange of ideas—in a word, the

---

holder Meetings Affects Shareholders' Voice, (Eur. Corp. Governance Inst., Finance Working Paper No. 748/2021), http://ssrn.com/abstract_id=3674998 [https://perma.cc/E3RH-5QZF] (studying the content of shareholder meetings and how the shift to virtual meetings affects shareholders' capacity to attend and participate meaningfully).

[34] Katz & McIntosh, *supra* note 4; *see* Strine et al., *supra* note 2, at 1900 (noting corporations' pursuit of engagement with shareholders at the expense of non-shareholder constituents such as employees).

[35] *See infra* notes 39–110 and accompanying text.

[36] *See infra* notes 111–168 and accompanying text.

[37] *See infra* notes 169–249 and accompanying text.

[38] *See infra* notes 250–334 and accompanying text.

proposition that the shareholders' meeting must be a forum for free communication—is fundamental to Anglo-American jurisprudence.[39]

These words epitomize a central mission of the shareholder annual meeting—that of shareholder democracy. This Part explores a puzzling contradiction: the growing influence of shareholders over corporate governance despite the demise of the annual meeting, the forum where they would typically wield that influence. This Part will further explain the key drivers of this inconsistency. Section A of this Part provides an illustrative history of the development of the modern annual meeting, explaining both its role in corporate governance and its intimate relationship with the shareholder franchise.[40] Section B explores the paradoxical rise of the importance of the shareholder franchise and contrasts it with the perfunctory nature of most modern annual meetings.[41] Finally, Section C discusses the dissonance between the theoretical vision of the annual meeting and how it has been applied in practice.[42]

A. The Importance of Shareholder Meetings

1. Shareholders and the Corporation

Today, economic endeavors are largely conducted via corporations.[43] Scholars have even posited that corporations have assumed the state's position as the predominant institution in American society.[44] As corporations took center stage, shareholders increasingly asserted their power as owners to reshape their role within these entities. Within the corporation, separate ownership and control mechanisms create a natural push and pull between shareholder-owners and management.[45] For many years, corporate management was viewed as the dominant force in steering the direction of the corporation.[46] Recently, howev-

---

[39] David C. Bayne, S.J., Mortimer M. Caplin, Frank D. Emerson & Franklin C. Latcham, *Proxy Regulation and the Rule-Making Process: The 1954 Amendments*, 40 VA. L. REV. 387, 390 (1954).

[40] *See infra* notes 43–110 and accompanying text.

[41] *See infra* notes 111–128 and accompanying text.

[42] *See infra* notes 129–168 and accompanying text.

[43] Gabriel Rauterberg, *The Corporation's Place in Society*, 114 MICH. L. REV. 913, 913 (2016).

[44] *Id.*

[45] ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 4 (Transaction Publishers 1991) (1932). In a modern corporation, the shareholders own the corporation and delegate their control to professional management, bifurcating the mechanisms of ownership and control. *See* Andrew C. Spieler & Andrew S. Murray, *Management Controlled Firms v. Owner Controlled Firms: A Historical Perspective of Ownership Concentration in the U.S., East Asia, and the E.U.*, 7 J. INT'L BUS. & L. 49, 52 (2008) (quoting ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932)) (discussing the "interests of control" as being distinct from "those of ownership").

[46] *See* Kobler, *supra* note 31, at 685 ("Some commentators argue that since the proxy system for shareholder participation emerged, corporate directors have enjoyed virtually unfettered control of the

er, corporate governance has experienced a resurgence in shareholder power vis-à-vis management.[47] Further, there has been a parallel shift in corporate governance goals as corporations prioritize shareholder interests and "max-imiz[ing] shareholder value."[48]

Recent years have seen an even stronger push towards shareholder empowerment.[49] Shareholders increasingly are challenging boards of directors and influencing corporate decision-making through proxy fights, shareholder proposals, withhold campaigns, say-on-pay votes, and bylaw amendments.[50] In turn, companies have responded in ways that empower shareholders and reinforce these democratizing efforts, such as adopting majority voting standards, eliminating classified boards, and often capitulating to shareholder proposals even when they failed to receive a majority vote.[51] Moreover, through the "market for corporate control," shareholders continue to create additional power for themselves by threatening—and often acting on—corporate takeovers and through shareholder activism.[52]

company domain."); Mark J. Loewenstein, *The SEC & the Future of Corporate Governance*, 45 ALA. L. REV. 783, 785 (1994) (remarking on management's dominant position as a board of directors); Megan W. Shaner, *The (Un)Enforcement of Corporate Officers' Duties*, 48 U.C. DAVIS L. REV. 271, 273 (2014) (arguing that corporate officers are some "of the most influential . . . individuals in the corporate enterprise").

[47] *See generally* Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833 (2005) (arguing for increased shareholder power resulting in increased management accountability); Geeyoung Min, *Shareholder Voice in Corporate Charter Amendments*, 43 J. CORP. L. 289 (2018) (analyzing shareholder power to vote on charter amendments as a method of curbing management authority).

[48] Harwell Wells, *A Long View of Shareholder Power: From the Antebellum Corporation to the Twenty-First Century*, 67 FLA. L. REV. 1033, 1087 (2015); *see* Lucian A. Bebchuk, *The Myth of the Shareholder Franchise*, 93 VA. L. REV. 675, 688–93 (2007) [hereinafter Bebchuk, *Shareholder Franchise*] (discussing the cost-benefit analysis that shareholders undertake in determining whether to challenge to an incumbent director). *See generally* Lucian Arye Bebchuk, *The Case for Shareholder Access to the Ballot*, 59 BUS. LAW. 43 (2003) [hereinafter Bebchuk, *Shareholder Access*] (supporting SEC rules requiring companies to include shareholder-nominated board candidates in their proxy materials); Melvin Aron Eisenberg, *Access to the Corporate Proxy Machinery*, 83 HARV. L. REV. 1489 (1970) (analyzing the extent to which both shareholders and management have wider access than assumed through the use of proxy machinery); William K. Sjostrom, Jr. & Young Sang Kim, *Majority Voting for the Election of Directors*, 40 CONN. L. REV. 459 (2007) (evaluating the changes in corporate governance brought about by the shift from plurality to majority voting). This rise in shareholder power has, however, created tension and sparked vivid debate, with notable Harvard and UCLA professors Lucian Bebchuk and Stephen Bainbridge, respectively, as prominent advocates on either side of the issue. Lisa M. Fairfax, *Making the Corporation Safe for Shareholder Democracy*, 69 OHIO ST. L.J. 53, 55–56 (2008).

[49] *See* Fairfax, *supra* note 48, at 55 (describing a recent effort by shareholders to amplify their power).

[50] *See id.*; Kastiel & Nili, *supra* note 15, at 68.

[51] Fairfax, *supra* note 48, at 55, 67–69, 71.

[52] Wells, *supra* note 48, at 1089. The concept of the market for corporate control theorizes that "control of corporations [is] a valuable asset[,]" that a "market for corporate control exists[,]" and that

Many factors have contributed to this growing "shareholder franchise movement." These factors include public outcry regarding excessive executive compensation in the late 1990s, corporate scandals of the early 2000s, and the aftermath of the 2008 financial crisis.[53] The regulatory responses that followed each of these events were largely aimed at providing shareholders with additional monitoring rights and information.[54] These regulatory changes enhanced disclosure requirements and subjected more issues to a shareholder vote, thereby increasing shareholder input in corporate affairs.[55] As a result, shareholders have become more involved in the governance of public firms. An increase in the volume of contested elections, through the emergence of activist hedge funds, and the large number of proposals submitted at annual meetings further evidence this shareholder activism.[56]

As shareholders have seized more power, the makeup of the public company shareholder base has changed. The percentage of retail shareholders has dropped significantly in the last twenty years from 32% of the S&P 500 holdings in 2006 to 16% in 2018.[57] In contrast, the percentage of index fund-shareholders jumped from 14% of the S&P 500 holdings to 26% during the same period.[58] No longer is the corporate shareholder population comprised of

---

market is "independent of any interest in either economies of scale or monopoly profits." Henry G. Manne, *Mergers and the Market for Corporate Control*, 73 J. POL. ECON. 110, 112 (1965).

[53] *See* Stephen M. Bainbridge, *Dodd-Frank: Quack Federal Corporate Governance Round II*, 95 MINN. L. REV. 1779, 1782 (2011) (describing some of the consequences of the 2008 financial crisis); Randall S. Thomas & Kenneth J. Martin, *The Determinants of Shareholder Voting on Stock Option Plans*, 35 WAKE FOREST L. REV. 31, 32 (2000) (describing shareholder outrage over "the size and composition of executive pay packages"); David T. Welsh, Lisa D. Ordóñez, Deirdre G. Snyder & Michael S. Christian, *The Slippery Slope: How Small Ethical Transgressions Pave the Way for Larger Future Transgressions*, 100 J. APPLIED PSYCH. 114, 114 (2015) (describing various corporate scandals in the early millennium, including the Enron and Bernie Madoff scandals).

[54] Michael D. Guttentag, *An Argument for Imposing Disclosure Requirements on Public Companies*, 32 FLA. ST. U. L. REV. 123, 124–25 (2004) (describing the voluminous information that public companies in the United States produce to abide by disclosure requirements); *see also* Bainbridge, *supra* note 53, at 1820–21 (arguing that reactionary corporate regulation, including disclosure requirements, are more harmful than helpful).

[55] *See, e.g.*, Bainbridge, *supra* note 53, at 1797–98 (discussing disclosure requirements imposed by the Dodd-Frank Act, including executive pay and board structure).

[56] *See generally* Thomas W. Briggs, *Corporate Governance and the New Hedge Fund Activism: An Empirical Analysis*, 32 J. CORP. L. 681 (2007) (discussing the use of proxy fights as a method to gain control by shareholder activists); Kastiel & Nili, *supra* note 27 (discussing the prevalence of gadfly investors and their impact on corporate governance).

[57] RAMA VARIANKAVAL, DAVID FREEDMAN, EVAN JUNEK & ANCA SAPERIA, J.P. MORGAN, THE GREAT SHAREHOLDER SHIFT: DEVELOPING FINANCIAL POLICES FOR AN EVOLVING SHAREHOLDER BASE 1 fig.1 (2018), https://www.jpmorgan.com/content/dam/jpm/corporate/investment-bank/cfa/pub/The_great_shareholder_shift.pdf [https://perma.cc/V3VE-VDXH]. "Retail investors" are often characterized as "the little guy" or "mom-and-pop investors," compared to institutional investors such as "pension funds and large 401(k) plans" that manage considerably more assets. Sorkin, *supra* note 17.

[58] VARIANKAVAL ET AL., *supra* note 57, at 1 fig.1.

individual mom-and-pop holders or company employees. Rather, large institutional investors now dominate the shareholder activist scene, arguably furthering an agenda that does not always reflect the same concerns as the general shareholder base.[59]

Although shareholder populations are changing in composition, both retail and institutional investors alike have started to push corporations beyond traditional governance and performance issues.[60] Lately, firms are focusing on ESG activism and investing, as investors are placing their collective billions in funds that concentrate on pressing social and environmental matters.[61] Investment managers also report a growing demand by their clients for sustainable investing.[62] To that end, shareholders have leveraged their investment and voting power by initiating shareholder proposals at increasing rates, and with increasing success, to influence corporate activities.[63] Over the past two decades, corporate America has seen a renaissance in the shareholder franchise as a mechanism for influencing the governance of the corporation.[64]

---

[59] *See* Jayne W. Barnard, *Institutional Investors and the New Corporate Governance*, 69 N.C. L. REV. 1135, 1137 (1991) (explaining the shift in the role of institutional shareholders from one of passivity to activism and involvement); Goforth, *supra* note 16, at 409–10 (noting that a rise in shareholder proposals, particularly in opposition to management, evidence a new class of activist shareholders); John H. Matheson & Brent A. Olson, *Shareholder Rights and Legislative Wrongs: Toward Balanced Takeover Legislation*, 59 GEO. WASH. L. REV. 1425, 1479 (1990) (describing how the increase in institutional investor activism acts as a check on management).

[60] *See* Gadinis & Miazad, *supra* note 3, at 1404 (noting that "over a quarter of global assets under management are now invested based on [a] company's [ESG] profile [as opposed to] its earnings"); Goforth, *supra* note 16, at 402 (commenting on the change in stock ownership in recent years culminating in institutional investors controlling a significant percentage of ownership).

[61] Corrie Driebusch, *The Next Wave in Shareholder Activism: Socially Responsible Investing*, WALL ST. J., https://www.wsj.com/articles/the-next-wave-in-shareholder-activism-socially-responsible-investing-11582892251 [https://perma.cc/Y2DE-8YS7] (Mar. 8, 2020); *see* Robert G. Eccles & Svetlana Klimenko, *The Investor Revolution*, HARV. BUS. REV., May–June 2019, https://hbr.org/2019/05/the-investor-revolution [https://perma.cc/CJK3-5AYX] (discussing the elevation of ESG issues from a secondary concern of institutional investors to a primary one); Caitlin McCabe, *ESG Investing Shines in Market Turmoil, with Help from Big Tech*, WALL ST. J., https://www.wsj.com/articles/esg-investing-shines-in-market-turmoil-with-help-from-big-tech-11589275801 [https://perma.cc/D6YX-SMDV] (May 12, 2020) ("In the first four months of 2020, investors poured a record of at least $12.2 billion into funds that say they invest in environmental, social and governance practices . . . .").

[62] Eccles & Klimenko, *supra* note 61 (quoting Michael Baldinger, UBS Asset Management).

[63] "During the 2019 proxy season [alone], more than half of the shareholder proposals brought involved ESG issues . . . ." Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2615 (2021); *see* Snorre Gjerde, Wilhelm Mohn & Carine Smith Ihenacho, *Asset Manager Perspective: Shareholder Proposals on Sustainability*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 27, 2020), https://corpgov.law.harvard.edu/2020/06/27/asset-manager-perspective-shareholder-proposals-on-sustainability/ [https://perma.cc/72AS-38UJ] (noting that "[t]he past decade has seen a substantial increase in shareholder proposals").

[64] Even Delaware courts have recognized the renaissance of shareholder voting and recently expanded their reliance on voting, allowing shareholder votes to negate the need for enhanced judicial review. *See* Jill E. Fisch, *Standing Voting Instructions: Empowering the Excluded Retail Investor*, 102

2. The Shareholder Franchise

Despite the rise in activist investing and rhetoric, shareholders' *formal* power within the corporation is limited to the rights to "vote, sell, and sue."[65] Of these three rights, the right to vote is the most essential to corporate theory and governance.[66] The shareholder franchise serves as the "ideological underpinning" that validates the authority a director or officer has over shared company property in which they themselves do not possess an ownership stake.[67] In comparison to the right to sell and sue, the right to vote is largely viewed as the most effective method for holding management accountable and influencing corporate governance.[68] Indeed, the rhetoric surrounding the shareholder franchise, in addition to the intensity with which courts and lawmakers protect shareholders' right to vote, reflects the importance of voting in corporate law.[69]

Shareholders have the opportunity to vote on a variety of matters for which their approval may be either mandatory or merely advisory. Under state corporate codes, shareholders have the right to vote on: (1) the election of directors; (2) amendments to the corporation's governing documents; (3) fundamental corporate changes, such as mergers, certain asset sales, and dissolution; and (4) the ratification of self-dealing transactions.[70] The NYSE and NASDAQ

MINN. L. REV. 11, 14 & n.21 (2017) ("Recent developments in Delaware corporate law provide that director decisions that have been approved by an informed shareholder vote are largely insulated from judicial oversight.").

[65] CHARLES R.T. O'KELLEY & ROBERT B. THOMPSON, CORPORATIONS AND OTHER BUSINESS ASSOCIATIONS 157 (6th ed. 2010).

[66] *See* Colleen A. Dunlavy, *Social Conceptions of the Corporation: Insights from the History of Shareholder Voting Rights*, 63 WASH. & LEE L. REV. 1347, 1354 (2006) (describing voting rights as the "foundation stone" of corporate governance); Andrei Shleifer & Robert W. Vishny, *A Survey of Corporate Governance*, 52 J. FIN. 737, 750 (1997) (describing the ability "to vote on important corporate matters" as the most essential shareholder right).

[67] Blasius Indus., Inc. v. Atlas Corp., 564 A.2d 651, 659 (Del. Ch. 1988); *see* Hoschett v. TSI Int'l Software, Ltd., 683 A.2d 43, 44–45 (Del. Ch. 1996) (invoking the criticality of shareholder voting to validate the annual meeting requirement); Paul H. Edelman, Randall S. Thomas & Robert B. Thompson, *Shareholder Voting in an Age of Intermediary Capitalism*, 87 S. CAL. L. REV. 1359, 1367 (2014) (quoting *Blasius*, 564 A.2d at 659) (describing how the shareholder franchise legitimates management's authority).

[68] *See* Edelman et al., *supra* note 67, at 1366, 1377 (describing how the rights to sell and sue have "significant limitations" for monitoring and disciplining management and concluding "that voting, when applicable, is the most desirable form of monitoring"); *see also* Kobler, *supra* note 31, at 684 ("Voting at the meeting is the only means the shareholder has available to protect his status as residual owner of the corporation.").

[69] *See, e.g.*, Paramount Commc'ns, Inc. v. QVC Network, Inc., 637 A.2d 34, 42 (Del. 1993) ("Because of the overriding importance of voting rights, this Court and the Court of Chancery have consistently acted to protect stockholders from unwarranted interference with such rights."); Lawrence A. Hamermesh, *Director Nominations*, 39 DEL. J. CORP. L. 117, 118–19 (2014) (noting how federal regulations and courts alike emphasize protection of the shareholder franchise).

[70] *See, e.g.*, DEL. CODE ANN. tit. 8, §§ 109, 211, 242, 251, 252, 271 (2021); *see also* Robert B. Thompson, *Preemption and Federalism in Corporate Governance: Protecting Shareholder Rights to*

require listed companies to seek approval from their shareholders for certain stock issuances.[71] Federal securities laws authorize advisory shareholder voting on certain issues—such as say-on-pay for executive compensation—and facilitate voting through both SEC Rule 14a-8 and the use of precatory shareholder proposals.[72] Furthermore, tax laws incentivize voting by providing companies who obtain shareholder approval with preferential federal tax treatment for stock options.[73] In each of these instances, the shareholder vote functions as a monitoring and accountability mechanism, and a check on the board's management of the corporate enterprise.[74]

As shareholder votes in director elections have become more significant due to proxy access and majority voting, the right to elect directors in particular has been imbued with an exalted status.[75] State corporate statutes extensively define the ability to vote in the election of directors and promote expedient

---

Vote, Sell, and Sue, 62 LAW & CONTEMP. PROBS., Summer 1999, at 215, 216–18 (outlining key decisions for which statutes require a shareholder vote).

[71] *See Listed Company Manual § 312.03 Shareholder Approval*, N.Y. STOCK EXCH., https://nyse.wolterskluwer.cloud/listed-company-manual/document?treeNodeId=csh-da-filter!WKUS-TAL-DOCS-PHC-%7B0588BF4A-D3B5-4B91-94EA-BE9F17057DF0%7D--WKUS_TAL_5667%23teid-94 [https://perma.cc/4F4R-M6H7] (requiring shareholder approval for certain issuances of 20% or more of a company's stock); *Nasdaq 5600 Series: Corporate Governance Requirements*, NASDAQ, https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%205600%20Series [https://perma.cc/B2GP-GYQA] (same).

[72] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 951, 124 Stat. 1376, 1899 (2010) (amending the Securities and Exchange Act to require a shareholder vote on executive compensation); 2 JAMES D. COX & THOMAS LEE HAZEN, THE LAW OF CORPORATIONS § 13:32 (3d ed. 2010) (discussing the role of Rule 14a-8 in shareholder voting). For examples of how Rule 14a-8 shareholder proposals and advisory votes have led to important governance changes, see generally Randall S. Thomas, Alan R. Palmiter & James F. Cotter, *Dodd-Frank's Say on Pay: Will It Lead to a Greater Role for Shareholders in Corporate Governance?*, 97 CORNELL L. REV. 1213 (2012) (analyzing "say-on-pay" voting); Lucian Bebchuk, Scott Hirst & June Rhee, *Toward Board Declassification in 100 S&P 500 and Fortune 500 Companies: The SRP's Report for the 2012 and 2013 Proxy Seasons*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Feb. 25, 2014), http://blogs.law.harvard.edu/corpgov/2014/02/25/toward-board-declassification-in-100-sp-500-and-fortune-500-companies-the-srps-report-for-the-2012-and-2013-proxy-seasons/ [https://perma.cc/C66S-VECE] (describing the Shareholder Rights Project's board declassification proposals).

[73] *See* Thomas & Martin, *supra* note 53, at 47–48 (describing tax advantages for specific shareholder-approved stock option plans).

[74] *See* FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 68–72 (1991); *see also* Hamermesh, *supra* note 69, at 118 (explaining the role of the shareholder franchise in board oversight); Jensen & Meckling, *supra* note 7, at 312–13 (describing how "monitoring activities by . . . outside stockholders" polices the divergent interests between them and management).

[75] *See* Stephen J. Choi, Jill E. Fisch, Marcel Kahan & Edward B. Rock, *Does Majority Voting Improve Board Accountability?*, 83 U. CHI. L. REV. 1119, 1124–29 (2016) (describing the shift from plurality to majority voting).

resolution of any disputes related thereto.[76] Federal proxy rules similarly detail the process surrounding director elections, "closely regulat[ing] the form and content" of disclosures as well as the proxies themselves.[77] As the Delaware Supreme Court explained in 2003 in *MM Cos. v. Liquid Audio, Inc.*: "This Court and the Court of Chancery have remained assiduous in carefully reviewing any board actions designed to interfere with or impede the effective exercise of corporate democracy by shareholders, especially in an election of directors."[78]

This is not to say, however, that voting on matters beyond director elections is somehow diminished in value. Quite the opposite is true. Delaware courts, for example, have placed increased weight on informed shareholder votes in business transactions.[79] For instance, courts eliminate any claims for breach of fiduciary duty where, absent any controlling shareholder, an informed shareholder vote approved the business transaction.[80] And even when a conflicted controller is present, an informed disinterested shareholder vote will result in the courts applying the deferential business judgment rule.[81]

The rise of activist and institutional investor engagement,[82] coupled with the concentrated voting power of institutional investors, illustrates the emphasis on, and impact of, shareholder voting more broadly.[83] This is apparent in

---

[76] *See, e.g.*, DEL. CODE ANN. tit. 8, §§ 211, 212, 213, 225 (2021) (stating requisite procedures for shareholder voting); *see also* CORP. L. COMM. & CORP. GOVERNANCE COMM., AM. BAR ASS'N BUS. L. SECTION, HANDBOOK FOR THE CONDUCT OF SHAREHOLDERS' MEETINGS 71 (2d ed. 2011) ("The Model [Business Corporation] Act and the corporate law of all 50 states provide that, unless otherwise set forth in a corporation's charter and except for [certain] categories of shares . . . each outstanding share is entitled to one vote on each matter presented for shareholder action.").

[77] *See* Hamermesh, *supra* note 69, at 118 & n.5 (describing the different federal proxy rules that apply in the election of directors).

[78] 813 A.2d 1118, 1127 (Del. 2003).

[79] Corwin v. KKR Fin. Holdings, L.L.C., 125 A.3d 304, 308 (Del. 2015); Kahn v. M & F Worldwide Corp., 88 A.3d 635, 644 (Del. 2014), *overruled by* Flood v. Synutra Int'l, Inc., 195 A.3d 754 (Del. 2018) (overruling *M&F Worldwide* with respect to the timing of the introduction of a shareholder vote condition in a transaction but not the effect of such a vote).

[80] *Corwin*, 125 A.3d at 310 n.19 (quoting Sample v. Morgan, 914 A.2d 647, 663 (Del. Ch. 2007)).

[81] *M & F Worldwide*, 88 A.3d at 645–46; *see* Matteo Gatti, *Reconsidering the Merger Process: Approval Patterns, Timeline, and Shareholders' Role*, 69 HASTINGS L.J. 835, 850 (2018) ("The Delaware judiciary is essentially suggesting that shareholder voting does a much better job than litigation in protecting dispersed shareholders against director abuses in the M&A context . . . .").

[82] *See* Choi et al., *supra* note 75, at 1139–72 (providing data on shareholder engagement in the voting process and its increasing impact); *see also* Kosmas Papadopoulos, *The Long View: US Proxy Voting Trends on E&S Issues from 2000 to 2018*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 31, 2019), https://corpgov.law.harvard.edu/2019/01/31/the-long-view-us-proxy-voting-trends-on-es-issues-from-2000-to-2018/ [https://perma.cc/3EPE-5LCD] (noting changes to proxy voting policies as investors begin to emphasize factors such as diversity, shareholder rights, and environmental and social issues).

[83] *See* Ryan Bubb & Emiliano Catan, *The Party Structure of Mutual Funds* 43 (Eur. Corp. Governance Inst., Working Paper No. 560/2020) (analyzing voting by mutual funds by breaking it down into three major groups: managerial, shareholder intervention, and shareholder veto).

the ESG movement.[84] It is widely believed that public company shareholders, through voting and Rule 14a-8 proposals, are responsible for effecting meaningful corporate change in this space.[85] Investor-driven ESG, "which leans into, rather than resist[s], shareholder power," explains the success of ESG efforts where prior corporate social responsibility interventions failed.[86] Today, the traditional notion of shareholder apathy causing passivity in the market is being undermined,[87] and as some prominent scholars have observed, "[n]ever has voting been more important in corporate law."[88]

3. The Role of the Annual Meeting

The shareholder franchise and the annual meeting are inexorably intertwined in corporate practice and theory. The annual meeting is the principal venue during which shareholders exercise their right to vote.[89] At the annual meeting, the shareholder body hears, debates, and votes on an assortment of matters, including the election of directors, ratification of auditors, advisory votes on executive compensation, amendments to organizational documents, and various shareholder proposals.[90] In addition, management and its advisors provide reports regarding the corporation's performance and strategy,[91] and shareholders may ask management questions during a Q&A session.[92]

---

[84] *See* Gadinis & Miazad, *supra* note 3, at 1404 (noting that "funds invested according to . . . [ESG] performance grew . . . $30 trillion at the end of 2018").

[85] *See* Cathy Hwang & Yaron Nili, *Shareholder-Driven Stakeholderism*, U. CHI. L. REV. ONLINE (Apr. 15, 2020), https://lawreviewblog.uchicago.edu/2020/04/15/shareholder-driven-stakeholderism-hwang-nili/ [https://perma.cc/H5N9-VXEW] (finding that shareholders are responsible for the adoption of ESG corporate policies, not management).

[86] Ann M. Lipton, *ESG Investing, or, if You Can't Beat 'Em, Join 'Em*, *in* RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD 130, 131 (Elizabeth Pollman & Robert B. Thompson eds., 2021).

[87] *See* Bernard S. Black, *Shareholder Passivity Reexamined*, 89 MICH. L. REV. 520, 608 (1990) (explaining that "[s]hareholder passivity is not inevitable" but rather is a construct of legal rules and barriers that, if amended, would increase shareholder participation).

[88] Marcel Kahan & Edward Rock, *The Hanging Chads of Corporate Voting*, 96 GEO. L.J. 1227, 1227 (2008).

[89] Many public corporations have limited or eliminated shareholders' right to act by written consent and right to call a special meeting. As a result, the annual meeting is the one guaranteed occasion where shareholders can make proposals and exercise their voting rights.

[90] Robert B. Thompson & Paul H. Edelman, *Corporate Voting*, 62 VAND. L. REV. 127, 138–44 (2009). The topics of shareholder proposals range from declassifying boards of directors to environmental or social issues. *Id.*

[91] *See* CRAIG M. GARNER, CHRIS G. GEISSINGER & JEFFREY T. WOODLEY, LATHAM & WATKINS, ANNUAL MEETING HANDBOOK 63 (2019), https://www.lw.com/thoughtLeadership/LW-annual-meeting-handbook [https://perma.cc/2HEN-XQYJ].

[92] *See* Donald E. Pease, *Preparing for the Annual Meeting: The Pressures and Problems*, 1 DEL. J. CORP. L. 302, app. at 334–39 (1976) (providing examples of public company agendas with discussion items allowing for management Q&A).

Given the centrality of shareholder voting to corporate theory, it is unsurprising that the annual meeting is one of the few mandatory requirements in corporate law.[93] With limited exceptions, state corporate codes require that companies hold a shareholder meeting for the election of directors each year.[94] Similarly, NYSE and NASDAQ require their listed companies to hold an annual meeting of shareholders.[95] In interpreting and enforcing the annual meeting requirement, courts have also consistently inferred a strong statutory policy in favor of the shareholder franchise.[96]

Under Delaware law—the leading jurisdiction for corporate law—any director or shareholder has the right to petition a court to order a company to call and convene a meeting if one has not been held.[97] Emphasizing the importance of the annual meeting to the corporate machinery, courts have strictly construed the statute's requirements.[98] For example, courts have held that it was not sufficient for a corporation to set its meeting date within the thirteen-month

---

[93] Hoschett v. TSI Int'l Software, Ltd., 683 A.2d 43, 44 (Del. Ch. 1996) (citing Blasius Indus., Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988)) ("The critical importance of shareholder voting both to the theory and to the reality of corporate governance may be thought to justify the mandatory nature of the obligation to call and hold an annual meeting." (citation omitted)).

[94] *See, e.g.*, DEL. CODE ANN. tit. 8, § 211(b) (2021) (requiring an annual meeting to be held for the election of directors); 1 R. FRANKLIN BALOTTI & JESSE A. FINKELSTEIN, THE DELAWARE LAW OF CORPORATIONS & BUSINESS ORGANIZATIONS § 7.1 (2021). *But see* MODEL BUS. CORP. ACT § 7.04 (2017) (AM. BAR ASS'N, amended 2021) (allowing for written consent in lieu of an annual meeting).

[95] *See, e.g.*, *Listed Company Manual § 302.00 Annual Meetings*, *supra* note 6. The SEC has also recognized the importance of the annual meeting in state corporate law, granting no-action relief to corporations who had received shareholder proposals to change the schedule of director elections from annual to triennial. *See, e.g.*, El Paso Energy Corp., SEC No-Action Letter, 2000 WL 14160 (Jan. 4, 2000) (endorsing the exclusion of a shareholder proposal that would prolong the time between director elections from one year to three years); Dow Chem. Co., SEC No-Action Letter, 2000 WL 217923 (Feb. 7, 2000) (same).

[96] *See, e.g.*, *Hoschett*, 683 A.2d at 44–45 (remarking that the shareholder franchise validates the annual meeting requirement); *Blasius*, 564 A.2d at 659 (same); Saxon Indus., Inc. v. NFKW Partners, 488 A.2d 1298, 1302–03 (Del. 1984) (holding that the annual meeting requirement is not forgone in insolvency due to the sanctity of the shareholder franchise).

[97] *See, e.g.*, tit. 8, § 211(c) (allowing the Delaware Court of Chancery to order an annual meeting on a petition from an officer or shareholder); Coaxial Commc'ns, Inc. v. CNA Fin. Corp., 367 A.2d 994, 998 (Del. 1976) (noting there is no minimum stock ownership requirement to petition for judicial intervention regarding annual meetings); Prickett v. Am. Steel & Pump Corp., 251 A.2d 576, 578 (Del. Ch. 1969) (ordering an annual meeting be held on a petition of a court-appointed receivership). A director or shareholder may also seek judicial relief if a corporation fails to hold an annual meeting within thirty days after the meeting's designated date. tit. 8, § 211(c).

[98] *See* MFC Bancorp Ltd. v. Equidyne Corp., 844 A.2d 1015, 1016 (Del. Ch. 2003) ("Delaware law takes the annual election process seriously."); *Saxon Indus.*, 488 A.2d at 1300 ("[A]bsent other compelling legal or equitable factors, insolvency alone, irrespective of degree, does not divest the stockholders of a Delaware corporation of their right to exercise the powers of corporate democracy."); Algeran, Inc. v. Connolly, C.A. No. 6557, 1981 WL 15073, at *1 (Del. Ch. Oct. 5, 1981) (holding that financial stress is not a valid excuse for forgoing an annual meeting).

window as opposed to actually conducting the meeting; insolvency or a failure to comply with federal securities laws were also not valid reasons to delay the meeting.[99] In 1981, in *Algeran, Inc. v. Connolly*, the Delaware Chancery Court pointed out that "[t]he annual meeting of stockholders for the purpose of electing directors is one of the few avenues available to a corporate stockholder to enable him to have a say in the destiny of his corporation."[100] Moreover, the Delaware courts have made clear that the right to an annual meeting is "virtually absolute."[101]

Although the election of directors and the right to vote are frequently used to justify the mandatory nature of the annual meeting,[102] the normative value of the annual meeting is much broader. To be sure, the yearly election of directors legitimates the separation of ownership and control in the corporation.[103] But it also serves a larger monitoring and accountability function. Even in uncontested director elections where the outcome is a forgone conclusion, the annual meeting allows shareholders to police management, as the meeting essentially functions as an "audit of management's stewardship of the business."[104] As explained by the Delaware Court of Chancery in 1996 in *Hoschett v. TSI International Software, Ltd.*: "The annual election of directors is a structured occasion that necessarily focuses attention on corporate performance. Knowing that

---

[99] *Saxon Indus.*, 488 A.2d at 1300; *MFC Bancorp*, 844 A.2d at 1016; *Algeran*, 1981 WL 15073, at *1–2.

[100] *Algeran*, 1981 WL 15073, at *1.

[101] *Saxon Indus.*, 488 A.2d at 1301 (first citing *Coaxial Commc'ns*, 367 A.2d at 994; and then citing *Prickett*, 251 A.2d at 576); *see MFC Bancorp*, 844 A.2d at 1016 ("Delaware law takes the annual election process seriously."); Aprahamian v. HBO & Co., 531 A.2d 1204, 1206–07 (Del. Ch. 1987) ("In the interests of corporate democracy, those in charge of the election machinery of a corporation must be held to the highest standards in providing for and conducting corporate elections."); Standard Power & Light Corp. v. Inv. Assocs., Inc., 51 A.2d 572, 577 (Del. 1947) (noting that depriving shareholders of an annual meeting is "inequitable, unusual and such as reasonable men would not likely intend"). Similarly, courts are incredibly skeptical of a board's alteration of the timing of an annual meeting, whether it be accelerating or postponing a meeting. *See* Airgas, Inc. v. Air Prods. & Chems., Inc., 8 A.3d 1182, 1185 (Del. 2010) (holding that a bylaw accelerating the timing of the annual meeting in order to facilitate a board takeover contradicted the charter and was void); Schnell v. Chris-Craft Indus., Inc., 285 A.2d 437, 439–40 (Del. 1971) (holding that advancing the annual meeting and concealing the change from shareholders violated Delaware law). *But see* Goggin v. Vermillion, Inc., No. 6465, 2011 WL 2347704, at *3 (Del. Ch. June 3, 2011) (holding that a corporation's decision to hold an annual meeting six months after the previous meeting is not contrary to Delaware law).

[102] *See* Hoschett v. TSI Int'l Software, Ltd., 683 A.2d 43, 44–45 (Del. Ch. 1996) (validating the annual meeting requirement by invoking the shareholder franchise); Blasius Indus., Inc. v. Atlas Corp., 564 A.2d 651, 659 (Del. Ch. 1988) (employing a stricter standard of review where the shareholder franchise is at issue).

[103] *See Blasius*, 564 A.2d at 659 (describing how, due to separate ownership and control mechanisms, the votes of the ownership legitimate management's control); Hamermesh, *supra* note 69, at 118 (noting that the shareholder franchise is imperative "to limit agency costs and to facilitate beneficial changes" in the best interests of the ownership).

[104] Pease, *supra* note 92, at 304.

such an occasion is necessarily to be faced annually may itself have a marginally beneficial effect on managerial attention and performance."[105] Shareholders have the opportunity to look management in the eye and ask tough questions about corporate affairs and performance. And for retail investors, the annual meeting is the only opportunity to garner an audience with management and personally voice their opinions and concerns.

In addition to serving as a referendum on corporate management, annual meetings act as a forum for broader corporate dialogue among the relevant constituents. The annual meeting promotes communication among individual shareholders and between the shareholder body and management. Individual shareholders can bring matters on a diverse array of subjects before management and the shareholder body.[106] Shareholders can also use this time to persuade their fellow investors to support certain ideas, and the meeting offers management and shareholders an opportunity to exchange ideas. These interactions allow shareholders to understand better corporate management's perspectives and goals while also giving management the chance to endear themselves to shareholders.[107] Moreover, in protecting the right to an annual meeting, the *Hoschett* court noted that the meetings were worth preserving in part because of their deliberative character.[108]

The aforementioned benefits reinforce the notion that a core pillar of the annual meeting is facilitating shareholder democracy. The annual meeting can—and was imagined to—serve as an opportunity for corporate discourse that furthers both horizontal (shareholder-shareholder) and vertical (sharehold-

[105] *Hoschett*, 683 A.2d at 44–45.

[106] *See* DEL. CODE ANN. tit. 8, § 211(b) (2021) ("Any other proper business may be transacted at the annual meeting."); *see also* 2 EDWARD P. WELCH, ROBERT S. SAUNDERS & JENNIFER C. VOSS, FOLK ON THE DELAWARE GENERAL CORPORATION LAW § 211.04 (6th ed. 2020) (noting the Delaware Supreme Court has found "no support for the claim that stockholders at an annual meeting have a right to ask questions independent of their right to full disclosure").

[107] In 1966, John Brooks, reporting for the *New Yorker*, wrote on his experiences attending annual meetings. Lawrence A. Cunningham & Stephanie Cuba, *Annual Shareholder Meetings: From Populist to Virtual*, FIN. HIST., Fall 2018, at 14, 16. He indicated that "he also heard [about] substantial dialogue that put a human face on corporate executives and shareholders. His chief takeaway: professional shareholders helped reveal executive personalities, as the Q&A 'brought the companies to life.'" *Id.*

[108] *See Hoschett*, 683 A.2d at 44–45 (emphasizing the importance of maintaining the annual meetings because they allow for shareholders to converse meaningfully). In *Hoschett*, the court reasoned that "[t]he theory of the annual meeting includes the idea that a deliberative component of the meeting may occur." *Id.* at 46. The statute orders these shareholder meetings to occur because "[the court] assume[s] that at such meetings something said may matter." *Id.* The court also acknowledges that "[o]bviously these meetings are very far from deliberative convocations, but a keen realization of the reality of the degree of deliberation that is possible, should make the preservation of residual mechanisms of corporate democracy more, not less, important." *Id.*

er-management) democratic ideals.[109] Yet, as discussed in Section B, that notion of shareholder democracy, although still exhibited by regulators' and courts' approach to the annual meeting, holds little truth in practice.[110]

B. The Fallacy of the Annual Meeting

The annual meeting is a structured event that allows the mechanisms of corporate and shareholder democracy to transpire. Indeed, in response to calls for its repeal, this purpose is often cited as justification for the annual meeting mandate, and for the zeal with which courts have enforced it.[111]

There are, however, stark disconnects between the normative purposes underpinning the annual meeting requirement and reality. Since the 1990s, scholars and regulators have largely viewed the perspective of the annual meeting as a forum for corporate discourse as an archaic portrayal of corporate governance and shareholder engagement.[112] As two prominent corporate commentators have observed, with only a few exceptions, "[U]ncontested shareholder meetings are poorly attended and almost always perfunctory rather than substantive."[113]

---

[109] Cunningham & Cuba, *supra* note 107, at 15 (describing the annual meeting as a "meaningful forum to present shareholder opinion and influence managerial action") As described by then-NYSE Chairman James J. Needham, "the annual meeting is 'the basic forum of shareholder democracy and an important stimulus to candid corporate self-analysis.'" *Id.* at 17; Pease, *supra* note 92, at 303–04 (quoting same).

[110] *See infra* notes 111–128 and accompanying text (comparing the aspirations of the annual meeting as facilitating shareholder democracy with the reality of a largely pro forma gathering).

[111] *See supra* notes 93–96 and accompanying text (describing justifications for the annual meeting requirement).

[112] *See* Keir D. Gumbs & Andrew Brady, *Electronic Stockholders' Meetings*, *in* A PRACTICAL GUIDE TO SEC PROXY AND COMPENSATION RULES § 13.05 n.105 (Amy L. Goodman, John F. Olson & Lisa A. Fontenot eds., 6th ed. 2021) ("The idea that physical stockholders' meetings are antiquated is not new. In 1994, an editorial co-authored by former SEC Commissioner Philip Lochner and then CalPERS General Counsel Richard Koppes raised the awareness of this issue in *Stop Us Before We Meet Again*, WALL ST. J. (Mar. 18, 1994)."); Cunningham & Cuba, *supra* note 107, at 19 (recognizing the "[p]oor turnout and banality" of the modern annual shareholders meeting).

[113] Steven M. Haas & Charles L. Brewer, *A Practical Guide to Virtual-Only Shareholder Meetings*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Nov. 17, 2017), https://corpgov.law.harvard.edu/2017/11/17/a-practical-guide-to-virtual-only-shareholder-meetings/ [https://perma.cc/ZYE9-AUBW]; *see* Fairfax, *supra* note 23, at 1391 n.157 ("Of course, it is a recognized criticism of shareholder meetings that such meetings are rarely attended, and hence rarely can serve as a platform for active discourse."); Oesterle & Palmiter, *supra* note 13, at 509–10 ("At worst, the annual meeting is a charade to foster the illusion of shareholder democracy."). A reflection of changing attitudes towards the annual meeting, especially considering poor attendance rates, the American Bar Association amended the Model Business Corporation Act to allow for election of directors by written consent in lieu of the annual meeting, resulting in corporations being able to eliminate the annual shareholders meeting altogether. MODEL BUS. CORP. ACT § 7.04 (2017) (AM. BAR ASS'N, amended 2021).

Meaningful participation at the yearly gathering of corporate shareholders has become a relic of the mid-twentieth century. It is well-documented that voting rates at the modern annual meeting are disproportionately mediocre and physical attendance is abysmal.[114] In recent years, retail investors rarely vote.[115] Whereas institutional investors vote at rates of over 90%, as their votes are often mandatory,[116] retail investor voting rates have hovered around only 30%.[117] This is significant because these non-voting shareholders own approximately 15% to 20% of the equity in public companies, and can often serve as the deciding votes on many matters.[118] But despite technological progress, growth in shareholder activism, and companies' increasing requests for shareholder input, retail investors' voting participation rates have declined.[119] With such low voting rates, the physical absence of retail investors at the annual meetings is no surprise.[120] Institutional investors similarly skip the annual

[114] *See* Kastiel & Nili, *supra* note 15, at 61 (finding that "[s]ince 2008 the percentage of non-voting shares [at S&P 500 companies] has jumped by 42% from 15.2% in 2008 to 21.7% in 2015"). There are, of course, some annual meetings that are exceptions. Berkshire Hathaway, Wal-Mart, Exxon Mobil, and Ben & Jerry's, among others, are well-known for drawing thousands of shareholders. These examples are, however, extreme outliers.

[115] *See id.* at 66 n.25 (explaining "that institutional investors vote in rates of over 90% while retail investors only vote approximately 30%); *see also* Fisch, *supra* note 64, at 14 (same).

[116] *See, e.g.*, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 73 Fed. Reg. 61,731, 61,733 (Oct. 17, 2008) (to be codified at 29 C.F.R. pt. 2509) ("The fiduciary obligations of prudence and loyalty to plan participants and beneficiaries require the responsible fiduciary to vote proxies on issues that may affect the economic value of the plan's investment."); Brian D. Stewart, *Disclosure of the Irrelevant?—Impact of the SEC's Final Proxy Voting Disclosure Rules*, 9 FORDHAM J. CORP. & FIN. L. 233, 235–36 (2003) (quoting former SEC Chairman Harvey L. Pitt) ("[A]n investment adviser must exercise its responsibility to vote shares of its clients in a manner that is consistent with . . . the best interests of its clients."); Letter from Douglas Scheidt, Assoc. Dir. & Chief Couns., Sec. & Exch. Comm'n, to Kent S. Hughes, Managing Dir., Egan-Jones Proxy Servs. (May 27, 2004), http://www.sec.gov/divisions/investment/noaction/egan052704.htm [https://perma.cc/HRX4-ZRQF] ("Rule 206(4)-6 under the Advisers Act requires an investment adviser to adopt and implement written policies and procedures that are designed to ensure that its clients' proxies are voted in the clients' best interests, [and] to describe these policies and procedures to their clients . . . upon request.").

[117] *See supra* note 115 and accompanying text; *see also* Black, *supra* note 87, at 584–91 (discussing the "incentives of [non-voting] shareholders"); Christopher Gulinello, *The Retail-Investor Vote: Mobilizing Rationally Apathetic Shareholders to Preserve or Challenge the Board's Presumption of Authority*, 2010 UTAH L. REV. 547, 573–74 ("The retail investors who automatically vote in favor of management's slate contribute to a presumption of board authority.").

[118] *Roundtable on Proxy Voting Mechanics*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/spotlight/proxyprocess/proxyvotingbrief.htm [https://perma.cc/H73R-Q9SY] (May 23, 2007) ("Approximately 85% of exchange-traded securities are held by securities intermediaries . . . ."); Kastiel & Nili, *supra* note 15, at 61, 66; *see* VARIANKAVAL ET AL., *supra* note 57, at 2 (describing the recent shift from active to passive investment).

[119] *See* Kastiel & Nili, *supra* note 15, at 60–64 (finding that retail investor apathy is continuous and significant).

[120] Corporate gadflies would be the exception to poor attendance at annual meetings. *See* Kastiel & Nili, *supra* note 27.

meeting as they have lodged their proxy votes well in advance and have alternate means of obtaining information and influencing management.[121] As a result, the overwhelming majority of annual meetings are sparsely attended with the number of management, attorneys, and other advisors easily outnumbering the shareholders present.[122]

Moreover, any information sharing at the annual meeting is merely redundant of companies' quarterly reports and other disclosures required under federal securities laws.[123] The more easily-accessible quarterly earning calls have begun to overshadow annual meetings. Investors closely follow these quarterly earnings releases, and "stock price[s] can plummet" if a corporation does not achieve its expected quarterly metrics.[124] Though criticized as encouraging short-termism, the Securities and Exchange Commission (SEC) mandates these quarterly earnings calls.[125] Institutional investors in particular focus on quarterly performance for trading purposes, often to the exclusion of annual meeting attendance.[126]

The lack of attendance by shareholders, both large and small, reduced the annual meeting to a shell of its former self. No longer does the annual meeting serve as a platform for sharing information and exchanging ideas. The proliferation of proxy voting makes voting outcomes a forgone conclusion well before the meeting, thereby eliminating any meaningful debate.[127] The absence of

---

[121] *See* Fisch, *supra* note 16, at 1135.

[122] *See* Boros, *supra* note 15, at 1, 7 n.30 (discussing the Ciber CEO's statement that "[our meetings] have never been attended by more than 10 people who were not either employees or accounting or legal advisors to us").

[123] *See* Sheldon E. Bernstein & Henry G. Fischer, *The Regulation of the Solicitation of Proxies: Some Reflections on Corporate Democracy*, 7 U. CHI. L. REV. 226, 227 (1940) (explaining how federal disclosure requirements became necessary to empower shareholders in the face of the proxy machinery); Frank D. Emerson & Franklin C. Latcham, *SEC Proxy Regulation: Steps Toward More Effective Stockholder Participation*, 59 YALE L.J. 635, 636–37 (1950) (same); Pease, *supra* note 92, at 325 ("Almost all proxies are examined and tabulated prior to the meeting, and the votes for the nominees and 'For' and 'Against' proposals in the proxy material are known by meeting time.").

[124] James J. Park, *Do the Securities Laws Promote Short-Termism?*, 10 U.C. IRVINE L. REV. 991, 992–93 (2020).

[125] *See, e.g.*, Rachel G. Miller, *A Practice Worth Ending: EPS Guidance Harming Long-Term Growth*, 95 NOTRE DAME L. REV. 445, 447 (2019) (arguing that short-termism is caused by companies providing earnings per share guidance); Park, *supra* note 124, at 996 (arguing that companies' release of quarterly projections is fueling short-termism); Martin Lipton, *Legal & General Calls for End to Quarterly Reporting*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 19, 2015), https://corpgov.law.harvard.edu/2015/08/19/legal-general-calls-for-end-to-quarterly-reporting/ [https://perma.cc/4FUN-2RQ9] (reporting the U.K. Government dispensed with the quarterly reporting requirement citing "excessively short-term focus" by stakeholders).

[126] Kevin Eckerle, Brian Tomlinson & Tensie Whelan, *ESG and the Earnings Call*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 17, 2020), https://corpgov.law.harvard.edu/2020/06/17/esg-and-the-earnings-call [https://perma.cc/8PZW-WW2N].

[127] Fisch, *supra* note 16, at 1143. Proxy voting is a system in which a shareholder can vote in elections through an agency relationship with a "proxy." Emerson & Latcham, *supra* note 123, at 635–37.

shareholders who can cast their votes in favor of an unscheduled vote further eliminates, as a practical matter, shareholders' ability to make a business proposal from the floor.

Importantly, it is imperative to underscore the paradox of the rise of the shareholder franchise on the one hand and the decline of the annual meeting on the other. Though retail and small investors have suffered a disenfranchisement of sorts—due to the evolution of the annual meeting and proxy voting—large shareholders may be wielding more power than ever before through individual actions and private engagement. This dichotomy highlights the need for more involved annual shareholder meetings, especially if one values a transparent and inclusive governance ecosystem.

In sum, the annual meeting has become a marginalized aspect of modern corporate governance. As Professors Oesterle and Palmiter acutely describe, "At most, the usual meeting is informational. . . . More realistically, the meeting is a grand public relations event. . . . At worst, the annual meeting is a charade to foster the illusion of shareholder democracy."[128]

C. Rhetoric Versus Reality: Explaining the Dissonance Through Historical Developments

Rooted in a longstanding tradition that can be traced back as far as the Middle Ages, the annual meeting is a quintessential feature of hierarchical governing bodies.[129] During the annual meeting heyday in the mid-twentieth century, engaged managers and shareholders made the event a robust exchange of ideas that shaped the governance of the corporation.[130] The annual meetings and activist shareholders during this time period are credited with "forg[ing] a shareholder-centric orientation across corporate America."[131]

Given its deep roots, what transformed the annual meeting from a forum of discourse and dialogue to the perfunctory gathering it is today? A brief look

---

The proxy was proposed as a solution to the dispersal of shareholders of American companies, most of whom could not travel to an annual meeting. Bernstein & Fischer, *supra* note 123, at 226–27. Shareholders voting by proxy are counted in determining if a quorum is present. Oesterle & Palmiter, *supra* note 13, at 508.

[128] Oesterle & Palmiter, *supra* note 13, at 509–10.

[129] Franklin A. Gevurtz, *The Historical and Political Origins of the Corporate Board of Directors*, 33 HOFSTRA L. REV. 89, 158–59 (2004).

[130] Cunningham & Cuba, *supra* note 107, at 19 ("As history suggests, engaged managers and shareholders have made the meetings productive."); *see* Blumenthal, *supra* note 12 ("After the 1929 stock-market crash, though, shareholders began to ask more questions again, and the first gadflies began to show up regularly at the annual affairs."). Shareholder activists such as John and Lewis Gilbert were credited with "making the annual meeting a meaningful forum to present shareholder opinion and influence managerial action." Cunningham & Cuba, *supra* note 107, at 15.

[131] Cunningham & Cuba, *supra* note 107, at 15.

at the origins and historical function of the annual meeting explains how it became a sacred tradition of corporate governance.[132] A further examination of the shift in the shareholder base illustrates the discrepancy between the rhetoric surrounding the annual meeting and today's reality that falls far short.

1. A Sacred Tradition

The custom of annual meetings dates back centuries.[133] The governance structure of early medieval guilds vested decision-making authority in executive officers and the guild's participants.[134] Annual *morgensprаches* allowed for the members to gather and decide important matters of guild business, such as election of officers, "admission of new members[,] and the adoption of [regulatory] ordinances . . . ."[135] Fast-forward four hundred years, when English trading companies of the late sixteenth and seventeenth centuries—credited with playing a central role in instituting boards as the main instrument used to control a corporation—had an established norm of annual meetings, particularly as the platform to elect a governing body.[136] Notably, the Bank of England, which set a clear precedent on American corporate practice, conducted annual shareholder meetings to elect directors per its charter.[137]

Prior to the first general incorporation acts, early American corporations, which were granted charters on an individual basis by legislators, expressly provided for the practice of holding annual meetings in their charters.[138] In

---

[132] *See* Pease, *supra* note 92, at 303–04 & n.7 (quoting then-AT&T Chairman John D. deButts) (arguing that it would be "downright dangerous" to dispense with annual meetings as it advances "the charge that the management of big business . . . [is] beyond accountability").

[133] *See* Gevurtz, *supra* note 129, at 110, 157, 159 (describing a traditional of annual meetings in corporate governance structure going back centuries and providing examples).

[134] *See id.* at 158.

[135] *See id.* at 158–59; *see also* J. Travis Laster & Michelle D. Morris, *How to Avoid a Collision Between the Delaware Annual Meeting Requirement and the Federal Proxy Rules*, 10 DEL. L. REV. 213, 214 (2008). A *morgensprache*, translating to "morning speech," was essentially an early form of a shareholder's meeting where members carried out guild business. Gevurtz, *supra* note 129, at 159.

[136] *See* Gevurtz, *supra* note 129, at 117–18. The charters of prominent trading companies such as the Eastland Company (1579), Levant Company (1592), and Hudson Bay Company (1670) evidence the consistent practice of convening annually to elect a governing board. *See id.* at 116–18.

[137] *See id.* at 110 (analyzing the structural and governance similarities between English antecedents and early American corporations that evidence the English influence).

[138] *See* Zephaniah Swift, 1 A SYSTEM OF THE LAWS OF THE STATE OF CONNECTICUT 225–26 (1795) ("Corporations can be created only by act of assembly. . . . In all private corporations, of course they have the power of electing new members. . . ."). In 1791, for example, the charter of First Bank of the United States authorized annual shareholder meetings for the election of directors. *See* An Act to Incorporate the Subscribers to the Bank of the United States (Bank Bill of 1791), Pub. L. No. 1-10, ch. 10, § 4, 1 Stat. 191, 192 (1791) ("[T]here shall be twenty-five directors; of whom there shall be an election on the first Monday of January in each year . . . ."). At the state level, The Society for Establishing Useful Manufactures, also chartered in 1791 but by the New Jersey legislature, stated that annual meetings would be held on "the first Monday of October in each year" so as to elect the com-

contrast, initial corporate statutes referred to meetings of shareholders but remained silent as to timing. New York's 1811 Act Relative to Incorporations for Manufacturing Purposes, commonly viewed as the first general incorporation law, provided that the election of the board take place at a meeting as specified in the corporation's governing documents.[139] New Jersey, an "early leader" in corporate law, similarly failed to specify in its corporate code the frequency with which shareholder meetings should occur.[140] Despite the flexibility allowed in state corporate codes, charter provisions specifying annual meeting requirements were commonplace.[141]

By 1910, the corporate laws of at least thirty-five states contained a requirement that corporations hold annual meetings for the election of directors.[142] Strikingly, Delaware—by this time the leading jurisdiction for corporate law—was much slower to adopt an explicit annual meeting requirement.[143]

---

pany's directors. *See American Manufactures*, GAZETTE OF THE UNITED STATES (Phila.), Sept. 10, 1791, at 153; Gevurtz, *supra* note 129, at 109.

[139] 1811 N.Y. Laws 151.

[140] *See* Laster & Morris, *supra* note 135, at 228 (describing how Delaware implemented most of New Jersey's general incorporation law, including forgoing the annual meeting requirement).

[141] *See, e.g.*, An Act to Incorporate the Subscribers to Certain Banks in the District of Columbia, and to Prevent the Circulation of the Notes of Unincorporated Associations Within the Said District, Pub. L. No. 14-93, ch. 93, § 5, 3 Stat. 383, 384 (1817) ("That a general meeting of stockholders of the said bank shall be holden on the first Monday of July, in the year eighteen hundred and seventeen, and on the first Monday of July in every year thereafter . . . ."); An Act to Establish the Western Rail Road Corporation, 1833 Mass. Acts 666 ("That the annual meeting of the members of said corporation shall be holden on the second Monday of June . . . ."); *see also* Taylor v. Griswold, 14 N.J.L. 222, 224 (1834) (describing the incorporating act of the bridge company as providing for annual meetings); Dunlavy, *supra* note 66, at 1375, 1377–78 (providing examples of early corporate charters providing for required annual meetings).

[142] *See* Laster & Morris, *supra* note 135, at 214–15, 215 n.6 (reporting the state-by-state breakdown regarding annual meeting statutes). In 1909, the NYSE added the requirement for annual shareholder meetings in their listing standards pertinent to all listed companies. *See* Robert Todd Lang, Brandon C. Becker, Roger D. Blanc, Peter C. Clapman, Roberta S. Karmel, John M. Liftin, Jonathan R. Macey, Hugh H. Makens & John F. Olson, *Special Study on Market Structure, Listing Standards and Corporate Governance*, 57 BUS. LAW. 1487, 1498 (2002); *see also* Douglas C. Michael, *Untenable Status of Corporate Governance Listing Standards Under the Securities Exchange Act*, 47 BUS. LAW. 1461, 1467 n.29 (1992) ("The NYSE Listed Company Manual itself has referred to [the annual shareholder meeting] only as a 'long standing policy.'"). Prior to this, NYSE contracts were individually-negotiated and contained a standard provision requiring annual reports to be distributed to the shareholders. Lang et al., *supra*, at 1497.

[143] *See* Comment, *Law for Sale: A Study of the Delaware Corporation Law of 1967*, 117 U. PA. L. REV. 861, 877 n.117 (1969) (describing how Delaware law granted a large degree of autonomy to management in allowing them to outline many characteristics of corporate governance including shareholders rights and voting procedures in the charter). Carrying on in the footsteps of New Jersey's statutory scheme, early versions of Delaware's corporate statute provided that corporate governing documents, not the statute, would control when annual shareholder meetings would be held. *See* DEL. CODE ANN. tit. 9, §§ 1944, 1945 (1915) (leaving the specifics of annual meetings to be outlined in corporate charters).

Whereas the Delaware General Corporation Law did not explicitly require annual meetings until 1967, Delaware courts and treatises on corporate law expressed the view that it was a mandatory obligation.[144] Because the ritual had become so embedded in corporate culture and practice, the eventual codification of the requirement in statute was of little practical consequence.[145]

Overall, from its beginnings, an annual gathering of shareholders was viewed as a bedrock component of sound governance practices. As Professor Ernest Folk III, the reporter for the 1967 Delaware amendments, observed in his 1972 treatise, "From this mandate to hold annual meetings, both the old and new law imply such a strong statutory policy that courts often 'have brushed aside all strictness and technicality of view in the interest of securing a statutorily commanded election' or 'sustaining its results.'"[146] The dedication with which the annual meeting requirement has carried through centuries of corporate law and practice is undeniable.

Over the past fifty years, the annual meeting mandate has faced several challenges, including proposals either to abolish or limit it. Once described as a useless "crushing bore" and, more recently, as an inefficient use of resources given the lack of shareholder engagement at the meeting, many prominent businesspeople, practitioners, and jurists have advocated for a change.[147] Nev-

---

[144] *See, e.g.*, Standard Power & Light Corp v. Inv. Assocs., Inc., 51 A.2d 572, 577 (Del. 1947) (recounting how the duty to hold annual shareholder elections is so important that courts have been known to order them); Duffy v. Loft, Inc., 151 A. 223, 227 (Del. Ch.), *aff'd*, 152 A. 849 (Del. 1930) ("The statute of this state under which the corporation was created provides that directors shall be elected at an annual meeting of stockholders. The duty to hold such a meeting and to elect directors thereat is one that is laid by the statute."); Hexter v. Columbia Baking Co., 145 A. 115, 116 (Del. Ch. 1929) (holding that the statute imposes a duty to conduct annual meetings); *see also* Laster & Morris, *supra* note 135, at 216 ("Meetings needed to be held . . . so stockholders could exercise [the] right [to vote]."). Section 211 of the Delaware General Corporation Law provides that "[a]n annual meeting of stockholders shall be held for the election of directors" and "[i]f there be a failure to hold the annual meeting for a period of thirty days after the date designated therefor, or if no date has been designated for a period of thirteen months after the organization of the corporation or after its last annual meeting, the Court of Chancery may summarily order a meeting to be held upon the application of any stockholder." 56 Del. Laws 185–86 (1967–68) (codfied at DEL. CODE ANN. tit. 8, § 211 (1967) (no longer in force)); *see also* WELCH ET AL., *supra* note 106, § 211.12 (noting that the 1967 amendments to Delaware corporate law "enlarge[ed] the judicial power" to ensure the holding of annual meetings).

[145] *See* ERNEST L. FOLK III, THE DELAWARE GENERAL CORPORATION LAW: A COMMENTARY AND ANALYSIS 204 (1972) (writing that section 211 was intended to merely codify existing law); S. Samuel Arsht & Walter K. Stapleton, *Delaware's New General Corporation Law: Substantive Changes*, 23 BUS. LAW. 75, 83–84 (1967) (explaining that anyone who "wishes to dispense with stockholders meetings may now do so" by amending their charter).

[146] FOLK, *supra* note 145, at 204.

[147] *See* Laster & Morris, *supra* note 135, at 258–59 (describing attacks on the annual meeting in the late 1990s); Cunningham & Cuba, *supra* note 107, at 16–17 (discussing similar efforts in the 1970s); *see also* Charles S. Crompton, Jr., *Shareholder Meetings, Voting Rights and Proxy Solicitation*, 4 DEL. J. CORP. L. 698, 700 (1979) (describing efforts to get rid of the annual meeting requirement); Martin Lipton & Steven A. Rosenblum, *A New System of Corporate Governance: The Quin-*

ertheless, each of these efforts quickly failed, with the annual shareholder meeting remaining "a staple of corporate life."[148]

2. The Decline of the Annual Meeting

Although the annual meeting has remained a constant in corporate law over the years, the demographics of the public company shareholder have not.[149] As described below, the evolution of the corporate shareholder base coupled with the use of proxy voting has marginalized the relevance of the annual meeting as a component of corporate governance.

At early common law, "[t]he voting model for business corporations was based on municipal corporations," thus requiring shareholders to appear in person at the meeting to vote.[150] Voting was viewed as a matter of individual privilege, unique to the shareholder and not delegable.[151] Without express legal authority, early shareholders could not vote by proxy.[152] Two developments changed this dynamic.[153]

The first change was the ability to use proxies to participate in a shareholder meeting. Although some of the first corporate codes allowed shareholders to vote "in person or by proxy,"[154] widespread statutory adoption and use of

quennial Election of Directors, 58 U. CHI. L. REV. 187, 190 (1991) (criticizing the annual meeting and suggesting shareholder meetings be held every five years).

[148] *See* Cunningham & Cuba, *supra* note 107, at 17 ("[B]y 1975, *The New York Times* called [J.B. Fuqua's effort to abolish the annual meeting] 'notably unsuccessful.'"); Laster & Morris, *supra* note 135, at 258–59 (describing the SEC's rejection of shareholder proposals aimed at changing director elections).

[149] *See* VARIANKAVAL ET AL., *supra* note 57, at 1 (describing the shift in shareholder base from individual investors to institutional investors).

[150] Tanya Mohn, *Shareholder Meetings: Unearthing the History*, DIRS. & BDS., Aug. 21, 2017, at 22, 22.

[151] *See* Walker v. Johnson, 17 App. D.C. 144, 162 (D.C. Cir. 1900) ("The common law rule in respect of voting by proxy had its origin in reasons peculiarly applicable to the earlier forms of corporations, namely, municipal and charitable corporations. Membership in these was coupled with no pecuniary interest. The voting privilege was of the nature of a personal trust, committed to the discretion of the member as an individual, and hence not susceptible of exercise through delegation."); State *ex rel.* Green v. Holzmueller, 5 A.2d 251, 253 (Del. 1939) ("At the common law the right of franchise conferred upon a member of a municipal corporation was considered as one in the nature of a personal trust committed to the judgment and discretion of the member as an individual, and was not delegable.").

[152] *See Holzmueller*, 5 A.2d at 254 ("[V]oting by proxy [is] not a general right . . . the party who claims it must show a special authority for that purpose.").

[153] *See* VARIANKAVAL ET AL., *supra* note 57, at 1 (noting how the growing segment of institutional investors in the shareholder base has led to heavily-concentrated shareholder registers); *see also* Fisch, *supra* note 16, at 1135 ("Under modern practice most shareholders vote by proxy, and personal attendance at the annual meeting is a rare and primarily symbolic gesture.").

[154] 1811 N.Y. Laws 151. New Jersey's early corporate code also authorized proxy voting. *See* Warren v. Pim, 59 A. 773, 775 (N.J. 1904) ("In 1841 the [New Jersey] Legislature authorized stockholders in all incorporated companies whose charters did not otherwise provide to vote by proxy

the proxy did not take hold until after the Civil War.[155] Even then, however, shareholder meetings in the 1920s were still well-attended events.[156] The shareholder bases of business corporations were "mainly . . . founding partners and strategic investors"—parties who "tended to be [actively] engaged" in corporate affairs.[157]

It was not until the dispersion and diversification of corporate ownership following the stock market crash of 1929 that the use of proxies truly impacted annual meeting attendance and participation.[158] The 1930s gave rise to "[t]he first modern public corporations in the United States."[159] As described in Berle and Means's 1932 book, the industrialization of America and increased regulation caused the dispersion of holdings in corporations among many shareholders all over the country.[160] By the 1950s, the size and geographical dispersion of the modern corporate shareholder base made physical meetings more challenging for corporations.[161] More importantly, it drastically impacted shareholder attendance and participation at the meetings. Rational apathy coupled with the travel expenses of attending annual meetings in person far exceeded the costs associated with proxies.[162] It became simply more economically rational for the individual shareholder to stay home and participate by proxy, as

. . . ."); Leonard H. Axe, *Corporate Proxies*, 41 MICH. L. REV. 38, 48 (1942) (quoting *Warren*, 59 A. at 775) (same).

155 Mohn, *supra* note 150, at 22.

156 Dunlavy, *supra* note 66, at 1362–64.

157 Mohn, *supra* note 150, at 23. "Only the largest railroad companies had [comparatively] diverse shareholder bases." *Id.*

158 Haan, *supra* note 12, at 9.

159 Mohn, *supra* note 150, at 23.

160 BERLE & MEANS, *supra* note 45, at 4; *see* Cunningham & Cuba, *supra* note 107, at 14 ("But as the Great Depression stoked suspicions of concentrated corporate power, Congress passed banking, securities and tax laws that fostered diffuse share ownership.").

161 *See* Mohn, *supra* note 150, at 23 (recounting the "proxy fight movement" of the 1950s on account of the "shareholder base of public companies [being] rapidly diffused"); *see also* Atterbury v. Consol. Coppermines Corp., 20 A.2d 743, 749 (Del. Ch. 1941) ("Waldo H. Logan arrived at the meeting . . . after the inspectors had reported that no quorum was present . . . .").

162 *See* Eisenberg, *supra* note 48, at 1490–91 (characterizing physical attendance at an annual meeting as "uneconomical" when proxy voting is an option). In 1966, John Books "detailed his experiences attending a number of annual meetings" in a column in *The New Yorker*. Mohn, *supra* note 150, at 28. Brooks observed that "many companies were beginning to hold the yearly gatherings away from headquarters, officially, they claimed, to make it easier for stockholders from other areas of the country to attend. But the real reason, Brooks surmised, was so management could avoid 'most of the nosiest dissident stockholders.'" *Id.*; *see also* Boros, *supra* note 15, at 7 ("The few meetings held in Delaware . . . do not appear to have involved real time participation by large numbers of widely-dispersed shareholders.").

opposed to attending the meeting or not voting at all.[163] Eventually, in-person attendance at annual meetings gave way to proxy solicitations.[164]

From 1980 to 2010, the demographic of shareholders in public corporations once again evolved, this time from individual holders to large institutional investors.[165] Commensurate with the change in the public corporation's shareholder base was a shift in the "shareholder-manager power dynamic"; due in part to securities laws, "companies increasingly communicated to shareholders throughout the year, always at regular quarterly intervals and often more frequently, approaching a continuous disclosure model."[166] As a result, annual shareholder meetings rarely provided any new substantive information to investors. Further, institutional investors, given their large holdings, can more easily garner an audience with management and need not wait for the annual meeting to address them.[167] Thus, institutional shareholders, who typically participate in voting at a high percentage (albeit by proxy), lack incentives to attend the annual meeting for reasons different from their rationally apathetic retail counterparts.

The overall lack of in-person participation has negatively impacted the utility of the annual meeting. Although the corporate shareholder profile has evolved, the annual meeting has largely remained stagnant. Annual meetings failed to respond to such changes and maintain the salience of the meeting in corporate governance. History reveals that the in-person annual meeting was once a "meaningful forum to present shareholder opinion and influence managerial action."[168] The development of virtual annual meetings reinvigorates the

---

[163] *See* Kastiel & Nili, *supra* note 15, at 60–61; *see also* Black, *supra* note 87, at 584–91; Gulinello, *supra* note 117, at 573.

[164] Bernstein & Fischer, *supra* note 123, at 227 ("[W]ithin limitations, realistically the solicitation of proxies is today the stockholders' meeting."); Emerson & Latcham, *supra* note 123, at 637 ("[I]n order for the stockholder to express adequately his desires as a legal owner, the proxy machinery must more nearly approximate the individually attended stockholders' meeting.").

[165] *See* Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863, 863 (2013) ("Equity ownership in the United States no longer reflects the dispersed share ownership of the canonical Berle-Means firm."); *see also* Black, *supra* note 87, at 570–75 (describing the beginning of changes in 1990 in institutional equity ownership and stockholder activism).

[166] Cunningham & Cuba, *supra* note 107, at 17.

[167] *See* Boros, *supra* note 15, at 3–4 (remarking that meetings "are poorly attended by institutional shareholders," who typically have "direct contact with management" outside the annual meeting); Fontenot, *supra* note 23, at 42 (characterizing the annual meeting as "the only meaningful opportunity for retail investors to address management directly," unlike institutional investors, who engage with management "throughout the year").

[168] *See* Cunningham & Cuba, *supra* note 107, at 15 (citing Covington Hardee, general counsel of Union Pacific Railroad and CEO of Lincoln Savings Bank) (describing annual meetings from 1940–1979); *see also* Hoschett v. TSI Int'l Software, Ltd., 683 A.2d 43, 44 (Del. Ch. 1996) ("Delaware courts have long recognized the central role of annual meetings in the scheme of corporate governance.").

debate surrounding the purpose and value of shareholder meetings, including whether technological platforms can revive shareholder engagement.

II. THE VIRTUAL ANNUAL MEETING

The expansion of the Internet has dramatically changed how corporations communicate and interact with their shareholders. One needs to look no further than the annual shareholders meeting to see technology's impact on corporate governance. In the mid- to late 1990s, corporations began integrating technological tools to augment in-person meetings.[169] Simultaneous satellite broadcasts of annual meetings gave way to online "webcast" meetings.[170] Remotely participating shareholders were also permitted "to email questions to management during the meeting."[171]

Today, nearly every aspect of the annual meeting can be accomplished electronically. Corporate statutes allow for electronic notices to shareholders via facsimile, e-mail, and "posting on an electronic network," as well as via any future technological developments.[172] Relatedly, in 2007, the SEC revised its proxy solicitation rules to permit e-proxies, allowing satisfaction of companies' obligation to furnish proxy materials to shareholders by posting them on their websites in lieu of hard copies.[173] Shareholder participation and presence at an annual meeting can also occur remotely. Shareholders and proxyholders who are not physically present, but participating remotely, may still be counted for quorum and voting purposes.[174] Further, electronic proxy voting via telephone or Internet and remote direct voting at a meeting are possible at most major public corporations.[175] Despite the integration of this technology into

---

[169] Fairfax, *supra* note 23, at 1382.

[170] *Id.* at 1382–83.

[171] *Id.* at 1382.

[172] *See, e.g.*, DEL. CODE ANN. tit. 8, § 232 (2021) (allowing corporations to provide notice of the annual meeting through "electronic mail," "posting on an electronic network," or "by any other form of electronic transmission").

[173] Amendments to Rules Requiring Internet Availability of Proxy Materials, 75 Fed. Reg. 9074, 9075 (Feb. 26, 2010) (to be codified at 17 C.F.R. pts. 230, 240); Shareholder Choice Regarding Proxy Materials, 72 Fed. Reg. 42,222, 42,222 (Aug. 1, 2007) (to be codified at 17 C.F.R. pt. 240); Internet Availability of Proxy Materials, 72 Fed. Reg. 4148, 4149 (Jan. 29, 2007) (to be codified at 17 C.F.R. pts. 240, 249, 274). In 2008, the SEC amended the proxy rules to allow for the creation and operation of electronic shareholder forums so shareholders could "discuss among themselves the very subjects that most concern them[.]" *Briefing Paper: Roundtable on the Federal Proxy Rules and State Corporation Law*, U.S. SEC. & EXCH. COMM'N (May 7, 2007), https://www.sec.gov/spotlight/proxyprocess/proxy-briefing050707.htm [https://perma.cc/EVG4-XAXU]; *see* Electronic Shareholder Forums, 73 Fed. Reg. 4450, 4450 (Jan. 25, 2008) (to be codified at 17 C.F.R. pt. 240).

[174] *See, e.g.*, tit. 8, § 211(a)(2)(b).

[175] *See* BALOTTI & FINKELSTEIN, *supra* note 94, at § 8.15. "[E]lectronic proxy voting relates both to the *authentication* of the appointment . . . and to the *submission* of that appointment to the corporation . . . ." Boros, *supra* note 15, at 2. Market intermediaries like Broadridge, ISS, and Glass Lewis

state corporate law and federal regulations, many corporations were, until recently, still required to maintain an in-person component to their annual meeting or declined to utilize these tools in their meetings.

This Part describes the origination of technology use in corporate governance, particularly the advent of the virtual annual meeting, as well as the impact this technological revolution has had on state law and shareholder voting.[176] Section A traces the emergence of these new technologies in corporate governance and walks the reader through the dawn of the virtual annual meeting.[177] Using hand-collected data, Section B analyzes the impact of an involuntary move to virtual meetings during the COVID-19 pandemic and explains the methodology employed to arrive at these conclusions.[178]

A. The Birth of the Virtual Meeting

Cognizant of the increasing role technology was playing in corporate governance and shareholder communications, states started amending their statutes to allow for either hybrid meetings or virtual-only meetings. Hybrid meetings primarily take place at a physical location but allow for remote shareholder attendance and participation over phone or virtual platform.[179] Virtual-only meetings do not offer in-person attendance; shareholders and company representatives gather solely through virtual means.

In 2000, the Delaware legislature was the first state to amend its statute to permit virtual shareholder meetings "if authorized by the board of directors."[180] Thus, boards of Delaware corporations, which account for sixty-eight percent of all Fortune 500 companies,[181] are able to hold shareholder meetings: (1) in-

---

provide "[i]nternet-based system[s] that allow[] institutional investors to '[m]anage, track, reconcile and report [their] proxy voting through electronic delivery of ballots.'" *See* Fisch, *supra* note 64, at 22 (quoting *Proxy Management Solutions*, BROADRIDGE FIN. SOLS., INC., https://www.broadridge.com/resource/proxy-management-solutions [https://perma.cc/4HY6-NPXX]). "[Intermediaries also] allow their subscribers to provide standing voting instructions or SVI. . . . SVI enable investors to coordinate votes for all the securities in their portfolios on a single platform . . . ." *Id.* at 23. In contrast, "[r]etail investors do not have access to an analogous mechanism for voting their shares"; instead, they have access to Internet voting through proxyvote.com, which has been broadly criticized for its inefficiencies. *Id.* at 23–24.

[176] *See infra* notes 179–249 and accompanying text.

[177] *See infra* notes 179–215 and accompanying text.

[178] *See infra* notes 216–249 and accompanying text.

[179] *Virtual Shareholder Meetings 2019 Facts and Figures*, BROADRIDGE FIN. SOLS., INC. 3 (2020), https://www.broadridge.com/_assets/pdf/broadridge-virtual-shareholder-meetings-2019-facts-and-figures.pdf [https://perma.cc/R5KQ-2JM3].

[180] DEL. CODE ANN. tit. 8, §§ 211(a)(1)–(2) (2021); *see* WELCH ET AL., *supra* note 106, § 211.12 (noting section 211(a) of the Delaware General Corporation Law was amended "to expand the use companies may make of new technologies" in the conduct of stockholder meetings).

[181] *2020 Annual Report Statistics*, DEL. DIV. OF CORPS., https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2020-Annual-Report.pdf [https://perma.cc/S4Y4-6J4T].

person at a physical location; (2) on virtual audio and/or video platforms only, where in-person attendance is unavailable; or (3) in a "hybrid" form where shareholders can attend either in person or virtually.[182] Several states followed Delaware's lead in adopting statutory provisions allowing for varying forms of remote participation in shareholder meetings. In 2016, the American Bar Association added Section 7.09 to the Model Business Corporation Act that permits shareholders to engage via remote communication in shareholder meetings in a similar, but not identical, fashion to Delaware's statute.[183]

As of January 1, 2020, forty-four states and the District of Columbia authorized some form of remote participation at shareholder meetings.[184] Of those, thirty states allowed for completely virtual shareholder meetings.[185] Only six states still precluded remote participation and required in-person shareholder meetings only.[186] The degree to which states allow for virtual meetings and the types of procedures states require for their implementation varies significantly.[187] Most states look to corporate codes to determine whether and how a corporation may hold a virtual meeting.[188] Some corporate codes leave the authorization of electronic meetings to the sole discretion of the company's board, whereas other corporate codes provide that such authorization must come from the corporation's charter or bylaws.[189] Outside of state legislation, federal securities laws do not specifically address virtual meetings, and instead defer to states' rulemaking.[190] Finally, although the NYSE and NASDAQ each

---

[182] tit. 8, § 211(a).

[183] MODEL BUS. CORP. ACT § 7.09 (2017) (AM. BAR ASS'N, amended 2021). *See generally* Comm. on Corp. L., Am. Bar Ass'n Section of Bus. L., *Changes in the Model Business Corporation Act—Proposed Amendments to Shareholder Voting Provisions Authorizing Remote Participation in Shareholder Meetings and Bifurcated Record Dates*, 65 BUS. LAW. 153 (2009) (recommending amendments to the Model Business Corporation Act to allow for remote participation in shareholder meetings). Following the Model Business Corporation Act's 2016 revision, several states adopted amendments to their corporate codes, the most recent of which became effective January 1, 2020.

[184] *See infra* App. A.

[185] *Id.*

[186] *See id.* (showing states that did not adopt virtual meeting provisions, including Alaska, Arkansas, Georgia, New Mexico, South Carolina, and South Dakota).

[187] *See id.*; Fairfax, *supra* note 23, at 1370–82 (comparing the procedures used by different states to facilitate virtual shareholder meetings).

[188] *See* Fairfax, *supra* note 23, at 1380 (noting that state statutes will generally defer to the corporation's judgment on whether to hold a virtual meeting provided that "such meetings are permitted by the corporation's governing documents").

[189] *See id.* at 1380–82 (describing the different variations).

[190] In response to shareholder proposals seeking to require in-person annual meetings, the SEC granted no-action relief on the ground that the format of annual meetings falls within the company's "ordinary business operations" and thus the decision of whether to hold a virtual, hybrid, or in-person meeting rests with the board of directors. *See, e.g.*, Frontier Commc'ns Corp., SEC No-Action Letter, 2018 WL 6705660, at *1 (Feb. 19, 2019) (allowing the company to exclude proposals seeking to mandate in-person shareholder meetings); HP, Inc., SEC No-Action Letter, 2016 WL 6819133, at *1

have annual meeting requirements for listed companies, virtual-only meetings seemingly satisfy such requirements.[191]

In 2001, Inforte Corporation, an information technology management company, held the first reported virtual-only annual meeting.[192] During the first decade in which virtual-only annual meetings were available, only smaller companies—including "Ciber, ICU Medical, . . . Adaptec, Herman Miller, and UAP Holding"—decided to try hosting such meetings to limited success.[193] Facing negative reactions from shareholders and advocacy groups, several companies abandoned virtual meetings, some even before holding them.[194] Along similar lines, other companies adopted provisions in their governing documents that permitted virtual shareholder meetings but did not pursue that option in light of investor pushback.[195]

Over the course of the second decade, corporations' use of virtual annual meetings grew exponentially.[196] In 2009, Broadridge Financial Solutions, an investor communications and virtual meeting services provider, hosted only four virtual shareholder meetings on its newly launched virtual meeting platform.[197] By 2019, the number of virtual meetings Broadridge hosted in a year

---

(Dec. 28, 2016) (same); *see also* Lori Zyskowski, Elizabeth Ising & Ronald Mueller, *SEC Staff Grants No-Action Request Concurring with Exclusion of Shareholder Proposal on Virtual-Only Annual Meetings*, GIBSON DUNN SEC. REGUL. & CORP. GOVERNANCE MONITOR (Jan. 4, 2017), http://securities regulationmonitor.com/Lists/Posts/Post.aspx?ID=283 [https://perma.cc/B3DJ-C8BQ] (reporting on SEC No-Action Letters regarding shareholder proposals challenging virtual-only meetings).

[191] *See* Fairfax, *supra* note 23, at 1382 (finding "no apparent provisions" in listing agreements explicitly disallowing virtual shareholder meetings). In 2012, NASDAQ's Frequently Asked Questions stated that "Nasdaq permits the use of webcasts instead of, or in addition to, a physical meeting, provided such [technology is] permissible under the relevant state law" and that "shareholders have the opportunity to ask questions of management." *See Reference Library*, NASDAQ LISTING CTR., https://listingcenter.nasdaq.com/Material_Search.aspx?materials=84&mcd=LQ&criteria=2 [https://perma.cc/AVX5-8DMW] (search for "Material with this Identification Number(s)" and input "84").

[192] *See* Inforte Corp., Definitive Proxy Statement (Schedule 14A) (Mar. 21, 2001) ("All stockholders are cordially invited to attend the Annual Meeting which will be held on an electronic basis only.").

[193] *See* Cunningham & Cuba, *supra* note 107, at 18 (listing companies that were early to adopt virtual-only annual meetings); *see also* ICU Med., Inc., Definitive Proxy Statement (Schedule 14A) (Apr. 3, 2002) (notifying shareholders that the annual meeting will be held virtually); Ciber, Inc., Definitive Proxy Statement (Schedule 14A) (Mar. 25, 2002) (same).

[194] *See* Cunningham & Cuba, *supra* note 107, at 18–19 (noting that some well-known companies such as Conoco Philips and Symantec intended to hold virtual meetings before pulling the plug in the face of shareholder backlash); Fairfax, *supra* note 23, at 1386 (reporting that companies including Adaptec and Ciber have returned to in-person meetings, at least temporarily, after experimenting with virtual meetings).

[195] *See* Fontenot, *supra* note 23, at 40–41 (describing companies that adopted bylaw amendments to allow for virtual meeting but did not hold them).

[196] *Virtual Shareholder Meetings 2019 Facts and Figures*, *supra* note 179.

[197] *Id.* at 2. Notably, only one of these four meetings was virtual-only. *Id.*

grew to over three hundred.[198] A separate study of Russell 3000 firms by Institutional Shareholder Services (ISS) found similar growth in virtual meetings.[199] The study reported that the number of companies hosting virtual-only meetings had jumped from 2.4% between July 2014 and June 2015 to 7.7% between July 2018 and June 2019.[200]

Interestingly, companies that choose to hold virtual meetings do not appear to share any uniform characteristics.[201] Rather, they represent a diverse array of industries and individual characteristics, including "size, market capitalization, and historical shareholder meeting attendance."[202] For example, the ISS report found "no significant difference" in virtual meeting adoption rates when comparing the companies on the S&P 500 with those on the Russell 3000.[203] Additionally, at least one study found "governance structures and practices [to be] comparable" between companies hosting virtual versus in-person annual meetings.[204]

Despite the vast majority of states condoning a corporation's use of virtual technology in lieu of in-person gatherings, in-person annual meetings remain the norm.[205] And even though most corporations use technology to aug-

---

[198] *See id.* (reporting that 97% of the virtual-only meetings used audio technology and 3% used video technology).

[199] Marie Clara Buellingen, *Virtual Shareholder Meetings in the U.S.*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Oct. 10, 2019), https://corpgov.law.harvard.edu/2019/10/10/virtual-shareholder-meetings-in-the-u-s/ [https://perma.cc/LAS8-77N8].

[200] *Id.* The report makes clear, however, that the rate of new adopters of virtual meetings has decreased, concluding that the previous increase is likely due to companies who adopted virtual meetings continuing with the practice as opposed to broader use of virtual meetings. *See id.* (reporting forty-eight new adopters between July 2016 and June 2017 and only twenty-two new adopters from July 2018 to June 2019). Interestingly, the research revealed that "hybrid meetings . . . account for less than 1% of [the Russell 3000] annual meetings" in that same time period and "their year-over-year growth lags considerably behind virtual meetings." *Id.* One explanation for the slow growth in hybrid meetings is the added costs attendant with hosting simultaneous physical and virtual annual meetings as opposed to a meeting in a singular format. *Id.*

[201] *See id.* ("[O]ur analysis showed no significant difference between S&P 500 companies and the rest of the Russell 3000."); Fontenot, *supra* note 23, at 36 (noting that "companies holding virtual meetings . . . [differed] in their size, market capitalization, historical shareholder meeting attendance, and longevity as a public company").

[202] *See* Fontenot, *supra* note 23, at 36 (summarizing the diverse features of virtual meeting adopters); Buellingen, *supra* note 199 (same).

[203] Buellingen, *supra* note 199.

[204] *See id.* (comparing Russell 3000 companies that adopted virtual meetings to those that held in-person meeting across the following governance structures: "Controlling Shareholder; Unequal Voting Rights; Classified Board; Supermajority Vote Requirement to Amend Bylaws; No Independent Board Leadership; [and] Less Than Two Women on the Board"). The study did point out that while companies with virtual meetings "appear to have a slightly higher share of controlling shareholders and unequal voting rights[,]" these governance attributes are common in "IT and Communication Services" companies, sectors that are the leaders in virtual meeting adoption. *Id.*

[205] *See* Brochet et al., *supra* note 33, at 9 & n.8 (noting the vast majority of states have permitted virtual shareholder meetings).

ment their physical meetings, only a fraction have moved entirely online.[206] Several factors have impeded the widespread adoption of virtual annual meetings, including state law restrictions, shareholder opposition, and technological obstructions.[207]

The reaction to virtual meetings has been mixed. Many large institutional shareholders and activist groups have lobbied against the elimination of in-person meetings. Prominent investors such as the Council of Institutional Investors, California Public Employees' Retirement System (CalPERS), California State Teachers' Retirement System, and the New York City Pension Funds have been vehement in their disapproval of virtual-only shareholders meetings.[208] Investors advocating for the use of technology as a complement, but not as a replacement, for in-person meetings have threatened to rebuff directors whose companies have embraced virtual-only meetings.[209]

Other investors, such as Walden Asset Management and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), have taken a more targeted approach, expressing concerns about virtual annual meetings to specific companies considering such practices.[210] Proxy advisor ISS has indicated that it may make adverse recommendations for companies holding virtual-only meetings.[211] On the other hand, Glass Lewis has adopted a

---

[206] *See* Fairfax, *supra* note 23, at 1383 (explaining that even though many corporations rely on technology to complement their annual meetings, "very few" have made the transition to a completely virtual annual meeting platform).

[207] *See id.* at 1381–82, 1390 n.150, 1392 (listing the various factors that have hampered the move to completely virtual meetings); Fontenot, *supra* note 23, at 44, 48 (same).

[208] *See* Fontenot, *supra* note 23, at 44–45 (describing investor pushback).

[209] *See* CAL. PUB. EMPS.' RET. SYS., GLOBAL GOVERNANCE PRINCIPLES 63 (2015), https://www.calpers.ca.gov/docs/forms-publications/global-principles-corporate-governance.pdf [https://perma.cc/J8W7-DH89] (suggesting remote communications be used "only as a supplement" and "not as a substitute" for customary in-person shareholder meetings); COUNCIL OF INSTITUTIONAL INVS., CORPORATE GOVERNANCE POLICIES 13–14 (2021), https://www.cii.org/files/09_22_21_corp_gov_policies.pdf [https://perma.cc/45VK-3J88] (same); OFF. OF THE N.Y.C. COMPTROLLER, CORPORATE GOVERNANCE PRINCIPLES AND PROXY VOTING GUIDELINES 20 (2019), https://comptroller.nyc.gov/wp-content/uploads/documents/NYCRS-Corporate-Governance-Principles-and-Proxy-Voting-Guidelines_2019-Revised-February-2019.pdf [https://perma.cc/DU2Y-B2VD] (same); *see also* Haas & Brewer, *supra* note 113 ("Some shareholders . . . have indicated they will vote against directors whose corporations held virtual-only meetings in the prior year.").

[210] Gumbs & Brady, *supra* note 112, § 13.05.

[211] INSTITUTIONAL S'HOLDER SERVS., UNITED STATES PROXY VOTING GUIDELINES AND BENCHMARK POLICY RECOMMENDATIONS 30 (2020), https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf [https://perma.cc/T3PS-RRE8]. Institutional investors look to proxy firms or proxy advisors to "determine how to vote their clients' shares on . . . thousands of proxy questions . . . each . . . year." Asaf Eckstein, *Great Expectations: The Peril of an Expectations Gap in Proxy Advisory Firm Regulation*, 40 DEL. J. CORP. L. 77, 79–80 (2015) (quoting *Examining the Market Power and Impact of Proxy Advisory Firms: Hearing Before the Subcomm. on Cap. Mkts. & Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.*, 113th Cong. 2 (2013), *available at* https://www.govinfo.gov/content/pkg/CHRG-113hhrg81762/html/CHRG-113hhrg81762.htm [https://

more definitive policy for meetings held after January 1, 2019: it "will generally recommend voting against members of the governance committee" where companies fail to provide shareholders with the same participatory rights and opportunities at the virtual meeting.[212]

In 2012, a coalition of "retail and institutional investors, public company representatives, and proxy and legal service providers" put together a publication laying out best practices and safeguards for virtual shareholder meetings: *Guidelines for Protecting and Enhancing Online Shareholder Participation in Annual Meetings*.[213] Not all members of the committee agreed regarding the appropriateness of virtual meetings. Nevertheless, the *Guidelines* signal recognition of the increasing role of technology in governance matters and a greater acceptance of virtual meetings.[214] Legal and academic writings have highlighted the pros and cons of virtual meetings, recommending a cautionary approach to their adoption as well as providing legal and practical considerations for implementing such meetings.[215]

---

perma.cc/BCP7-MDPQ]). Institutional Shareholder Services is one such proxy advisory firm. *About ISS*, INSTITUTIONAL S'HOLDER SERVS., https://www.issgovernance.com/about/about-iss/ [https://perma.cc/897B-2ACD].

[212] GLASS LEWIS & CO., 2020 PROXY PAPER GUIDELINES: AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE UNITED STATES 49 (2020), https://www.glasslewis.com/wp-content/uploads/2016/11/Guidelines_US.pdf [https://perma.cc/NP3G-B6SX]. Glass Lewis is another prominent proxy advisory firm. *Company Overview*, GLASS LEWIS & CO., https://www.glasslewis.com/company-overview/ [https://perma.cc/ZMF6-ZXXJ].

[213] BROADRIDGE FIN. SOLS., INC., GUIDELINES FOR PROTECTING AND ENHANCING ONLINE SHAREHOLDER PARTICIPATION IN ANNUAL MEETINGS 2 (2012), https://www.broadridge.com/_assets/pdf/broadridge-guidelines-for-protecting-and-enhancing-online-shareholder-participation-in-annual-meetings.pdf [https://perma.cc/X6G8-ANVM]. A committee of largely the same members updated the *Guidelines* in a superseding 2018 publication. BROADRIDGE FIN. SOLS., INC., PRINCIPLES AND BEST PRACTICES FOR VIRTUAL ANNUAL SHAREOWNER MEETINGS 2 (2018), https://www.broadridge.com/_assets/pdf/broadridge-vasm-guide.pdf [https://perma.cc/8N63-BE9E]. As discussed in Part III, a similar multi-stakeholder working group assembled in August 2020 to evaluate and revise the 2018 report in light of the events of 2020. *See* RUTGERS CTR. FOR CORP. L. & GOVERNANCE, COUNCIL OF INSTITUTIONAL INVS. & SOC'Y FOR CORP. GOVERNANCE, REPORT OF THE 2020 MULTI-STAKEHOLDER WORKING GROUP ON PRACTICES FOR VIRTUAL SHAREHOLDER MEETINGS 2–3, (2020) [hereinafter REPORT OF THE 2020 WORKING GROUP], https://cclg.rutgers.edu/wp-content/uploads/VSM-Working-Group-Report-12_10_2020.pdf [https://perma.cc/DRD2-3QV4].

[214] *See* Gumbs & Brady, *supra* note 112, § 13.05 ("The VSM Best Practices Guidelines marked the first general agreement among industry participants regarding online participation in stockholder meetings and the rules of engagement that should apply to such participation.").

[215] *See, e.g.*, Fairfax, *supra* note 23, at 1389–96; Fontenot, *supra* note 23, at 42–51; Haas & Brewer, *supra* note 113; Anne Sheehan & Darla C. Stuckey, *Principles and Best Practices for Virtual Annual Shareowner Meetings*, HARV. L. SCH. F. ON CORP. GOVERNANCE (May 31, 2018), https://corpgov.law.harvard.edu/2018/05/31/principles-and-best-practices-for-virtual-annual-shareowner-meetings/ [https://perma.cc/EH82-J8EM].

B. Virtual Meetings in the Time of COVID-19

Despite varied positions on virtual meetings prior to 2020, many corporations were thrust into a world where virtual meetings were unavoidable after COVID-19 precipitated mandatory shutdowns and limits on social gatherings during the annual meeting season.[216] In response, the SEC published guidance for delaying a meeting or conducting a virtual meeting,[217] and many companies opted for virtual-only or hybrid meetings. Warren Buffet, for example, spoke out early, announcing in spring 2020, "It is now clear, however, that large gatherings can pose a health threat to the participants and the greater community. We won't ask this of our employees and we won't expose Omaha to the possibility of becoming a 'hot spot' in the current pandemic."[218] Although many companies had hoped to return to in-person annual meetings in 2021, the COVID-19 pandemic has continued to disrupt economic activities around the world.[219] As a result, for a second annual meeting season, most companies turned to virtual meetings as a safe alternative.[220]

To study the impact of this transition to virtual meetings, we collected data analyzing both state- and company-level responses to annual meetings, revealing important trends in shareholder voting and submission of proposals in 2020 and 2021. These trends suggest that virtual meetings could promote increased shareholder engagement through easier access and heighted involve-

---

[216] *See COVID-19 Restrictions*, *supra* note 29. Most corporations' annual meetings take place between March and May. *See* Doug Chia, *Notes from the Broadridge Financial Solutions 2020 Virtual Annual Meeting*, SOUNDBOARD GOVERNANCE, https://www.soundboardgovernance.com/post/notes-from-the-broadridge-financial-solutions-2020-virtual-annual-meeting [https://perma.cc/VYM5-958B] (Nov. 20, 2020).

[217] *Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns [https://perma.cc/CQ4C-RTQ2] (Apr. 9, 2021); *see* Steven M. Haas, *Considerations for Shareholder Meetings During the COVID-19 Crisis*, MBCA NEWSLETTER (Corp. L. Comm., Am. Bar Ass'n Bus. L. Section, Chi, Ill.), Winter 2020, at 2–3, https://www.americanbar.org/content/dam/aba/administrative/business_law/newsletters/CL270000/full-issue-202009.pdf [https://perma.cc/LU2R-4MZZ].

[218] Letter from Warren E. Buffet, Chairman & CEO, Berkshire Hathaway, Inc., to S'holders of Berkshire Hathaway, Inc. (Mar. 13, 2020), https://www.berkshirehathaway.com/news/mar1320.pdf [https://perma.cc/PVT6-NPMT]; *see also* Beth Braverman, *Meeting Safely, Legally*, DIRS. & BDS., Second Quarter 2020, at 45, 45 (reporting on Berkshire Hathaway's decision to hold a virtual annual meeting and quoting same).

[219] *See* Fontenot et al., *supra* note 24, at 928 (stating that "several large-cap companies, such as Cigna, Home Depot, [and] ConocoPhillips . . . announced plans to return to an in-person format for their annual shareholder meetings in 2021"); Sider & Cutter, *supra* note 29 (reporting on the COVID-19 Delta variant continuing to disrupt business operations into 2021).

[220] *See* BROADRIDGE FIN. SOLS., INC., 2021 PROXY SEASON KEY STATISTICS AND PERFORMANCE RATING 5 (2021), https://www.broadridge.com/_assets/pdf/broadridge-proxy-season-stats-2021.pdf [https://perma.cc/P5HA-FKCH] ("1,929 meetings were held online using our virtual shareholder meeting solution ('VSM'), an increase of 29% over the same period last year.").

ment in annual meetings, while offering little downside in reducing actual voting, support rates for items up for a vote, or shareholder-initiated proposals.

1. State Law

State law largely governs annual meetings, including the manner in which they take place.[221] Conducting a meeting entirely online, despite being allowed in many states, was the exception to the rule in corporate America. This Subsection reviews and documents the changes that states made to their annual meeting requirements to facilitate the emergency use of virtual meetings during the pandemic. As we detail below, COVID-19 had a dramatic impact on state law requirements with respect to the format of the annual meeting.

a. Methodology

This section utilizes a hand-collected dataset to analyze the procedural changes that COVID-19 has had on annual shareholder meetings. First, all state statutes were collected and reviewed for any provisions related to annual shareholder meeting details. The information collected from these statutes included current methods available for shareholder attendance and any restrictions in place for holding virtual meetings. States were coded as "In-Person Only," "Virtual," or "Hybrid" based on the statutes and applicable restrictions. States coded as "In-Person Only" prohibit virtual alternatives and require that all shareholders attend (in person or by proxy) each annual meeting at the stated place. "Hybrid" states allow for certain shareholders or groups of shareholders to attend remotely, but they still require a physical, in-person component to the meeting. Lastly, states coded as "Virtual" allow for remote-only attendance by shareholders and company representatives with no in-person component at all.[222]

Additionally, executive orders issued between March 11, 2020, and April 7, 2020 regarding stay-at-home orders and conduct of shareholder meetings were collected from each state legislature's website. Some stay-at-home executive orders included information about nonessential business and in-person shareholder meetings, while other states issued separate executive orders specifically to address shareholder meetings and changes to existing statutes. All executive orders were reviewed, and any exemptions related to the meeting

---

[221] *See supra* notes 89–128 and accompanying text (providing a detailed discussion on the role state law plays in administering annual shareholder meetings).

[222] To the extent a state allows for hybrid or virtual meeting formats, even if severely restricting companies' abilities to use such a format, it is classified as such. For example, California, which permits virtual-only meetings but with a shareholder consent requirement that is incredibly difficult, if not impossible, to satisfy in practice, is nonetheless classified as "virtual."

format or the requirements for shareholder attendance were documented and analyzed to assess the overall procedural impact and options available.

b. COVID-19 as an Agent of Change

As Appendix A details,[223] before COVID-19, six states maintained strict rules prescribing in-person only shareholder meetings.[224] Fourteen states had corporate statutes that allowed for annual meetings to be held in a hybrid format. Thirty states allowed for completely virtual annual shareholders meetings, subject to a variety of different procedural requirements, such as the board authorizing a virtual meeting or the certificate of incorporation or bylaws specifically allowing for virtual meetings. Delaware, largely considered the leader in corporate law,[225] was among these states. California, by contrast, allows for virtual shareholders meetings but also requires shareholder consent of each shareholder participating remotely, thus effectively rendering the ability to hold a virtual meeting nearly impossible.[226]

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a global pandemic,[227] forcing elected officials and business leaders to evaluate the value of in-person gatherings and domestic and foreign travel. By late March, COVID-19 cases surpassed five hundred thousand globally.[228] In response, beginning with California's declaration on March 19, forty-four states ultimately issued stay-at-home orders,[229] disrupting the typical spring annual meeting season between March and June. Of the six states that did not issue stay-at-home orders, four states later issued executive orders that either modified existing requirements for in-person annual shareholder meetings or created exceptions to allow for virtual meetings. This signaled to corporations

[223] With respect to each state's laws regarding annual format, this chart describes such law as of March 1, 2020, for the 2020 annual meeting season, and any statutory amendments that would impact the 2021 annual meeting season.

[224] *See infra* App. A. In addition, Massachusetts requires in-person meetings for most, but not all, companies. *See* MASS. GEN. LAWS ch. 156D, § 7.08 (2021) (requiring in-person meetings for public companies).

[225] LEWIS S. BLACK, JR., DEL. DEP'T OF STATE DIV. OF CORPS., WHY CORPORATIONS CHOOSE DELAWARE 1 (2007), https://corpfiles.delaware.gov/pdfs/whycorporations_english.pdf [https://perma.cc/KG8C-BZPT].

[226] CAL. CORP. CODE §§ 600(a), (e) (West 2021).

[227] *Coronavirus Disease 2019 (COVID-19) Situation Report—67*, WORLD HEALTH ORG. (2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200327-sitrep-67-covid-19.pdf?sfvrsn=b65f68eb_4 [https://perma.cc/9P8L-F495].

[228] *Id.*

[229] These six states include Arkansas, Iowa, Nebraska, North Dakota, Oklahoma, and Utah. *See infra* App. A.

that virtual, as opposed to in-person, meetings during this time were preferred and encouraged.[230]

Addressing the public health crisis by issuing stay-at-home executive orders meant that state legislatures also had to assess and address how these orders conflicted with existing law, such as requirements for annual shareholder meetings. Table 1 below shows the adoption rate for stay-at-home orders and exceptions to existing annual shareholder meeting statutes, starting March 19.[231] Among the forty-four states that issued say-at-home orders, eighteen included a section for annual meetings. These provisions either changed the existing rules governing shareholder meetings, lifted existing notice requirements, or temporarily allowed annual meetings to be postponed or held virtually. For example, Delaware, California, and New York temporarily removed existing procedural barriers for noticing and/or holding virtual shareholder meetings. At the other end of the spectrum, South Carolina and South Dakota, both of which require in-person shareholder meetings, did not issue an executive order addressing shareholder meetings or otherwise provide an exemption for the in-person requirement. Thus, corporations in these two states were left to struggle with competing directives in the stay-at-home orders and state annual meeting statutes.[232]

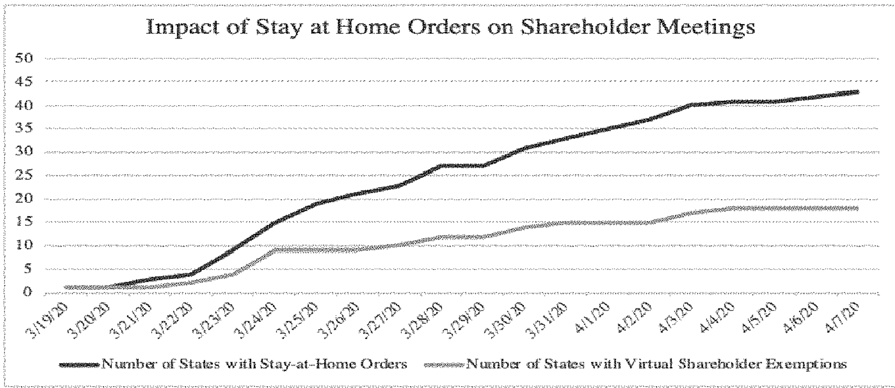
---

[230] The remaining two states were Oklahoma and Utah. *See infra* App. A.

[231] Some optimistic states initially included definitive expiration dates within the executive stay-at-home orders ranging from two weeks to sixty days. *See, e.g.*, La. Proclamation No. 37 JBE 2020, § 8 (Mar. 26, 2020), https://gov.louisiana.gov/assets/Proclamations/2020/37-JBE-2020-Provision-for-First-Responder-Rulemaking.pdf [https://perma.cc/E8YW-4ZBV] (expiring on April 13, 2020 unless otherwise extended or revoked); N.C. Exec. Order No. 125, § 3 (Apr. 1, 2020), https://files.nc.gov/governor/documents/files/EO125-Authorizing-Encouraging-Remote-Shareholder-Meetings.pdf [https://perma.cc/Z45X-RX6Q] (expiring after sixty days unless otherwise extended or revoked). Upon realizing the seriousness and longevity of the COVID-19 pandemic, however, several states switched to a phased approach where restrictions vary based on achieved milestones like downward trajectory in cases or capacity of hospitals. *See, e.g.*, La. Proclamation No. 74 JBE 2020, §§ 2, 3 (June 4, 2020), https://gov.louisiana.gov/assets/Proclamations/2020/74-JBE-2020-State-of-Emergency-COVID-19-Resilient-Louisiana-Phase-2.pdf [https://perma.cc/3GLH-29PX]. At the other end of the spectrum, some states have issued countless reiterations of the stay-at-home orders. For example, New York first issued a stay-at-home executive order on April 6 and, in the nine months that followed, issued over ninety modifications to those initial restrictions.

[232] Four states with statutes requiring in-person shareholder meetings—Alaska, Arkansas, Georgia, and New Mexico—issued executive orders allowing for fully virtual annual meetings for at least some portion of the 2020 annual meeting season.

Table 1: Impact of Executive Orders on Shareholder Meetings



During and following the 2020 annual meeting season, several states reconsidered and ultimately amended their annual meeting statutes to allow for hybrid or virtual meetings. For the 2021 annual meeting season, the number of states requiring in-person shareholder meetings dropped from six to three.[233] Arkansas, Georgia, and South Dakota—all states that had statutes requiring in-person shareholder meetings in 2020—amended their statutes to allow for virtual-only meetings in 2021. In addition, the number of states permitting hybrid, but not virtual-only, shareholder meetings declined from fourteen to eleven, with three previously hybrid states now allowing virtual-only meetings.[234] As a result, the number of states allowing for virtual-only shareholder meetings in 2021 increased from thirty to thirty-six, with two additional states in the process of moving to allow virtual-only meetings.[235] The movement away from requiring in-person attendance for annual meetings shows the lasting impact that COVID-19 and the 2020 annual meeting season had on the format of these meetings. The evolution of the stay-at-home orders and the relevant restrictions for both the 2020 and 2021 proxy seasons are summarized in Appendix A.

[233] These three states are Alaska, New Mexico, and South Carolina.

[234] *See infra* App. A.

[235] As of the final editing of this article, two additional states that currently allow for hybrid meetings—Illinois and Massachusetts—have pending legislation to permit virtual-only meetings also. Following the 2021 annual meeting season, Montana and North Carolina each amended their corporate codes to allow for virtual-only meetings. *See* MONT. CODE ANN. § 35-14-709 (2021); 2021 N.C. Sess. Laws 162.

2. Shareholder Voting in Virtual Meetings

a. Methodology

This Section examines annual and special meetings held in 2020 and 2021 and the impact that COVID-19 had on shareholder voting and approval rates in light of the shift to virtual meetings. The FactSet database provided the source for the collected data, augmented with hand-collected data from companies' proxy statements.[236] The data collected includes information regarding every annual meeting that was held from March 11, 2020—the date the WHO declared a global pandemic—to June 30, 2020. The information gathered for each meeting from FactSet included: (1) the date of the meeting; (2) the subject of each proxy proposal presented; (3) whether management or shareholders brought each proposal; (4) the number of proxy votes cast; (5) the number of proxy votes for and against each proposal; (6) total shares outstanding for each corporation; and (7) the market capitalization for each corporation. For every corporation that held an annual meeting during this period in 2020, we also collected the same data from the corporation's 2018, 2019, and 2021 annual meetings. Additionally, we pulled this information for all special meetings held in 2018, 2019, 2021, and the period between March 11, 2020, to June 30, 2020.

For each annual meeting held from March 11, 2020 to the end of June 2020, we identified how shareholders attended the meeting. The meeting type was collected from the corporation's investor relations page, 8-K filings, or the ISS website. For each corporation that held an annual meeting during this period in 2020, the same process was used to identify how shareholders attended the corporation's 2021 annual meeting. Companies were coded as having an in-person meeting, hybrid meeting, or virtual meeting. "In-person" meetings had no option of remote attendance. Companies coded as "hybrid" allowed for both in-person and virtual attendance by shareholders. Companies that held "virtual" meetings did not allow for in-person attendance. "Virtual" meetings took on one of two forms: "virtual-video" meetings utilized a video conferencing platform, while companies that held "teleconference" meetings utilized audio capabilities without a video component.

The annual meetings data collected from the FactSet database was standardized to put all companies on the same scale regardless of the number of proposals presented at each meeting. The average for all proposals presented at a given meeting was aggregated by corporation, and then the average for all companies was calculated based on that standardized data.

---

[236] *See* FACTSET, https://www.factset.com/ [https://perma.cc/5HWC-VF44].

b. Overview

As shown in Table 2, from March 11, 2020 to June 30, 2020, 1,874 companies incorporated in forty-eight states held annual shareholder meetings.[237] Participants presented over 18,000 proposals during this period, compared to 17,700 in 2019 and 17,400 in 2018 for the same timeframe. According to Rule 14a-8 of the Securities Exchange Act, a company must receive proposals "120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting."[238] Given this timing requirement, COVID-19 likely did not impact the ability of management or shareholders to submit proposals in 2020. Regardless, companies had to deal with a higher volume of proposals presented during the pandemic than in prior years. In contrast to 2020, COVID-19's effects were felt well before the Securities Exchange Act's 120-day window for shareholder proposals submitted for a vote at 2021 annual meetings. Thus, to the extent the pandemic was impacting proposals brought before the annual meeting, one would expect to see a change in the number of proposals for 2021. As Table 2 shows, there was a slight decline in the number of proposals from 2020 to 2021. This number, however, still surpassed the number of proposals at annual meetings in each of 2018 and 2019.

Table 2: Shareholder Meetings and Proposals by Year

Annual Shareholder Meeting	**2018**	**2019**	**2020**	**2021**
Number of Companies	1,874	1,874	1,874	1,800
Number of Proposals	17,362	17,722	18,019	17,795
Special Meeting	**2018**	**2019**	**2020**	**2021**
Number of Companies	344	325	111	365
Number of Proposals	1,062	978	319	2,625

The overall shareholder vote turnout and approval rates for these companies did decrease in 2020 when compared to 2018 and 2019. From 2019 to 2020, average votes for as a percent of shares outstanding decreased by 3%, average votes for as a percent of votes cast decreased by 2%, and average votes cast as a percent of shares outstanding decreased by 2%.[239] Shareholder vote turnout and approval rates, however, both recovered in 2021 to match pre-pandemic levels. The average percent of votes cast as a percent of shares outstanding increased by 2% from 2020 to 2021, as shown in Table 3 below.

[237] Of these 1,874 companies, 1,800 of the same companies had annual shareholder meetings during the same timeframe in 2021.

[238] 17 C.F.R. § 240.14a-8 (2021).

[239] Changes referenced throughout this paper reflect a percent change rather than a denominal change.

Table 3: Annual Meeting Shareholder Turnout and Approval by Year

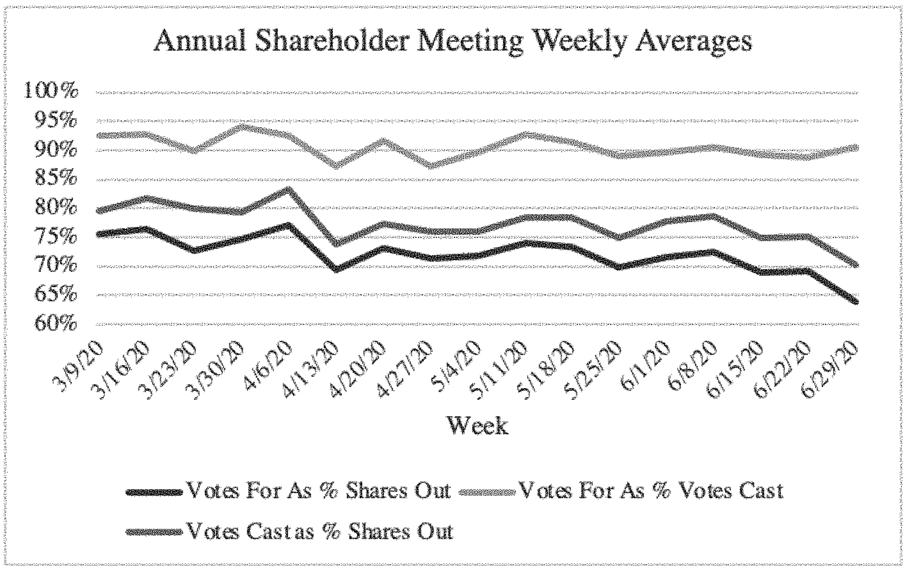
Annual Meeting Proposals Brought By	Number of Companies (2020)	Average Votes For As % Votes Cast*				Average Votes Cast as % Shares Out			
		2018	2019	2020	2021	2018	2019	2020	2021
Management	1,874	93%	93%	92%	93%	79%	79%	78%	79%
Shareholder	309	25%	26%	23%	26%	53%	57%	55%	61%
Total		84%	84%	82%	84%	75%	76%	74%	77%

Annual Meeting Proposals Brought By	Number of Companies (2020)	Average Votes For As % Votes Cast*			Average Votes Cast as % Shares Out		
		% Change '18 - '19	% Change '19-'20	% Change '20-'21	% Change '18 - '19	% Change '19-'20	% Change '20-'21
Management	1,874	-1%	-1%	0%	0%	-2%	2%
Shareholder	309	4%	-9%	13%	6%	-3%	37%
Total		-1%	-2%	0%	1%	-2%	2%

*We also collected the annual data for average votes for as a percent of shares outstanding. Since this information easily deduced from the other columns presented, we have removed it for presentation purposes.

By mid-April 2020, most states had stay-at-home orders in place and many of those same states also had executive orders facilitating virtual annual meetings. A total of 353 companies held annual meetings in April, compared to twenty-two companies that held meetings in March following the WHO's global pandemic declaration. In March only 23% of annual shareholder meetings held were virtually by audio or video. By April, 90% of annual meetings were held over the phone or using a virtual platform. As shown in Table 4 below, the largest decrease in votes cast and percentage of proposals approved during the 2020 observation period occurred during the week of April 13. Votes cast and votes for as a percent of shares outstanding both decreased by about 10% that week compared to the previous week. As more companies transitioned to remote shareholder meetings, and adapted to the technology available, voter turnout and approval both appear to have normalized throughout May and mid-June. Importantly, though the voting turnout may be only loosely connected to the annual meeting itself—as the vast majority of votes are often cast prior to the meeting via proxy—tracking voter turnout and approval rates can still shed light on the move to virtual meetings. This is because shareholders can vote at the annual meeting, and they are allowed to revoke their proxy and cast a new vote if attending. The ability to vote at the annual meeting adds another layer of significance to virtual meetings, by allowing for a low cost of voting or changing votes. In addition, shareholder voting can reflect dissatisfaction with management actions more broadly, including the way the annual meeting is conducted, rather than merely a view regarding the topic at hand. Therefore, tracking these metrics can at least *rule out* significant investor dissatisfaction with the annual meeting method, or dramatic shifts in voting trends.

Table 4: Annual Shareholder Meeting Turnout and Approval Weekly Averages



c. Meeting Method

In response to COVID-19, 159 U.S. companies decided to postpone or cancel their 2020 annual shareholder meeting.[240] Of the 1,874 companies that held shareholder meetings between March 11, 2020 and June 20, 2020, eighty percent (1,512 companies) hosted these meetings virtually by video or audio, taking advantage of the relaxed guidelines regarding meeting requirement contained in COVID-19 executive orders. As shown in Table 5 below, 291 companies still held meetings in-person during this time, and an additional sixty-five meetings were hybrid with both in-person and virtual components. Despite the physical meetings, in-person attendance was highly discouraged given public health concerns.[241]

Anecdotally, companies such as General Motors reported greater attendance at their remote-only meetings than in-person meetings, pointing to time

[240] *COVID-19 Resource Center*, INSTITUTIONAL S'HOLDER SERVS., https://www.issgovernance.com/covid19-resource-center/ [https://perma.cc/L28S-6KGE] (May 13, 2020).

[241] *See, e.g.*, Press Release, Benefytt Techs., Inc., Benefytt Technologies, Inc. to Include Telephone Access for 2020 Annual Meeting of Stockholders (May 11, 2020), https://www.globenewswire.com/en/news-release/2020/05/11/2031259/23618/en/Benefytt-Technologies-Inc-to-Include-Telephone-Access-for-2020-Annual-Meeting-of-Stockholders.html [https://perma.cc/3VQT-8N3X] ("[T]o minimize the risk to the Company's stockholders and employees, the Company encourages all stockholders to access the 2020 Annual Meeting of Stockholders via telephone, rather than attending the meeting in person.").

and cost reductions when meetings are moved online.[242] Virtual meetings—those having just a virtual component—had one of the highest shareholder turnout and approval rates when compared to other methods of holding annual shareholder meetings in 2020, second only to in-person meetings. Despite being the easiest format to use in terms of time commitment and accessibility, teleconference meetings without a video or in-person component had the lowest shareholder turnout and approval.

In-person meetings and virtual-only meetings had about the same shareholder turnout and approval rates for meetings held in 2020. This signifies that virtual shareholder meetings were just as effective in ensuring shareholder voting as in-person meetings during this time. Indicative of their growing popularity, shareholders had already started inquiring about the possibility of continued virtual meetings in the future before the 2020 annual meetings had concluded.[243]

---

[242] *See* ALYSON CLABAUGH, ERIN CONNORS & ROB PETERS, INTELLIGIZE, PROOF OF CONCEPT: AN INTELLIGIZE REPORT ON VIRTUAL ANNUAL SHAREHOLDERS MEETINGS 2, 5 (2020), https://www.intelligize.com/form-proof-of-concept-an-intelligize-report-on-virtual-annual-shareholder-meetings/ [https://perma.cc/BT57-U8A6] ("Experience from this year's virtual meetings may show increased attendance, as well as an increase in shareholder engagement."); Doug Chia, *Notes from the General Motors 2020 (Virtual) Annual Meeting*, SOUNDBOARD GOVERNANCE, https://www.soundboardgovernance.com/post/notes-from-the-general-motors-2020-virtual-annual-meeting [https://perma.cc/6G2H-W5JS] (June 18, 2020) (reporting that GM averaged about thirty-five in-person attendees at its annual meeting but in 2019, approximately 125 individuals attended the virtual annual meeting, and approximately 180 individuals attended the 2020 virtual annual meeting).

[243] *See, e.g.*, *2020 Annual Meeting of Stockholders—Additional Questions & Answers*, ALCOA CORP., https://s29.q4cdn.com/945634774/files/doc_events/2020/2020-annual-meeting-qa.pdf [https://perma.cc/A9JU-GSGE].

Table 5: Annual Meeting Shareholder Turnout and Approval by Meeting Method (2020)

Annual Meeting Method	Number of Companies	2020 Avg. Votes For As % Shares Out	2020 Avg. Votes For As % Votes Cast	2020 Avg. Votes Cast as % Shares Out
Hybrid	65	72%	94%	76%
In-Person	291	73%	90%	78%
Teleconference	31	70%	87%	74%
Virtual - Video	1,481	72%	90%	77%
N/A	6	70%	81%	72%
Total	1,874	72%	90%	77%

Annual Meeting Method	Number of Companies by Month (2020)				
	March	April	May	June	Total
Hybrid	3	20	32	10	65
In-Person	14	15	165	97	291
Teleconference	-	7	24	-	31
Virtual - Video	5	306	783	387	1481
N/A	-	5	1	-	6
Total	22	353	1005	494	1874

Many companies continued to utilize the technological changes made in 2020 to their annual meeting format in 2021. As shown in Table 6, although the number of in-person meetings increased in 2021, the overwhelming majority (about eighty percent) of companies continued to host virtual-only meetings. Almost all of these companies employed Broadridge's Virtual Shareholder Meeting platform in holding their meeting. Notably, none of the companies that held a teleconference annual meeting did so again in 2021.

Both corporations and shareholders had more time to adjust to and prepare for a virtual annual meeting in 2021. Likely a product of a more deliberate—as opposed to 2020's crisis-induced—use of the virtual meeting, there was an increase in shareholder turnout and approval for all meeting methods in 2021 compared to 2020.[244] The further development and rollout of technology to host virtual meetings easily in 2021 helped facilitate shareholder engagement and participation during these annual meetings. Virtual meetings and in-person meetings both had a 7% increase in the average votes cast as a percent of shares outstanding, but the average votes for as a percentage of shares outstanding increased by 8% from 2020 to 2021 for virtual meetings, compared to

[244] The only place this was not observed was in the average votes for as a percentage of votes cast for hybrid meetings, which had a 1% decline.

only 6% for in-person meetings. Hybrid meetings had a slightly larger increase in the average number of votes cast as a percentage of shares outstanding, with a 7% increase in participation from 2020 to 2021.

Table 6: Annual Meeting Shareholder Turnout and Approval by Meeting Method (2021)

Annual Meeting Method	Number of Companies	2021		
		Avg. Votes For As % Shares Out	Avg. Votes For As % Votes Cast	Avg. Votes Cast as % Shares Out
Hybrid	32	77%	93%	83%
In-Person	335	77%	92%	83%
Teleconference	-	-	-	-
Virtual - Video	1,433	78%	94%	83%
Total	1,800	77%	94%	82%

d. Market Capitalization

The companies included in our dataset make up part of the S&P 500, S&P 400, S&P 600, Russell 1000, and Russell 2000, as shown in Table 7 below. This dataset also includes small, less visible public companies that are not traded as part of an index. Overall, the results show that companies with smaller market capitalizations had lower shareholder turnout and approval when moving to virtual settings in 2020. Of the companies included in an index, businesses that were part of the S&P 500 had the lowest turnout and approval out of any other index classification. The 386 companies that make up the S&P 500 in this analysis represent the largest companies in the dataset. As a general matter, these companies may have more passive retail shareholders compared to smaller companies, which could explain the lower voting turnout.

Apart from the S&P 500, small companies not included in an index had the lowest turnout of all other indices or market cap classifications in this analysis, as indicated in Table 7 below. Notably, these small companies were more susceptible to volatility during the transition compared to the aforementioned S&P and Russell indices that decreased by, on average, two percent from 2019 to 2020—perhaps explaining this significant decrease in part.

One year after the pandemic began, all companies had an average 1% increase in the average votes for as a percent of votes cast, and a 2% increase in the average votes cast as a percent of shares outstanding. Most companies saw an increase in shareholder approval from 2020 to 2021 with the exception of the S&P 500, which had a 1% decrease in the average number of votes for as a percent of votes cast.

In 2021, companies in the S&P 400 saw an average increase of 5% in the average number of votes cast as a percent of shares outstanding. Compare this to only 3% for S&P 500 and S&P 600 companies, or 2% for companies that are not traded as part of an index. In 2020, companies were quick to adopt technology to administer virtual meetings. As companies became more familiar with these technological capabilities over the past year, it has allowed for a higher shareholder vote turnout. Companies with a larger market capitalization have more resources to invest in different platforms that can accommodate more individuals. This may explain the larger increase in shareholder voter turnout for those companies.

Table 7: Annual Meeting Shareholder Turnout and Approval by Market Capitalization

Index	Number of Companies (2021)	Average Votes For As % Votes Cast*				Average Votes Cast as % Shares Out			
		2018	2019	2020	2021	2018	2019	2020	2021
S&P 500	386	90%	90%	90%	89%	78%	79%	78%	80%
Russell 1000	386	90%	90%	90%	89%	78%	79%	78%	80%
S&P 400	298	94%	94%	92%	94%	83%	83%	81%	85%
Russell 1000	193	94%	94%	92%	94%	82%	82%	81%	84%
Russell 2000	105	95%	95%	93%	95%	84%	85%	81%	85%
S&P 600	436	93%	93%	92%	93%	81%	81%	80%	82%
Not included in a Russell Index	10	93%	91%	80%	86%	75%	75%	60%	46%
Russell 1000	2	86%	95%	95%	99%	91%	89%	93%	94%
Russell 2000	424	93%	93%	92%	93%	81%	81%	80%	82%
Not Included in a S&P Index	754	91%	90%	89%	90%	75%	75%	74%	75%
Not included in a Russell Index	56	90%	90%	87%	86%	70%	71%	64%	68%
Russell 1000	133	92%	92%	92%	91%	82%	85%	84%	84%
Russell 2000	565	91%	89%	88%	90%	74%	73%	72%	75%
Total	1874	92%	91%	90%	91%	78%	79%	77%	79%

*We also collected the annual data for average votes for as a percent of shares outstanding. Since this information easily deduced from the other columns presented, we have removed it for presentation purposes.

e. Proposal Topic

The average overall number of shareholder proposals presented did not change from 2019 to 2020. In 2020, over 80% of the companies included within this analysis presented proposals to their shareholders relating to electing directors, ratifying auditors, and casting advisory votes on compensation. The average number of votes cast as a percent of shares outstanding for these three proposals was 81% for 2020. This represents approximately a 3% decline when compared to the same metric for 2019, shown in Table 8 below. As companies became more comfortable with the technology facilitating virtual meetings over the last year, this metric for 2021 proposals largely returned to pre-pandemic levels of 2019.

Interestingly, in contrast to shareholder approval for other proposal topics, approval for proposals related to health issues significantly increased from

2019 to 2020. Due to SEC reporting requirements,[245] proposals for the 2020 proxy season were submitted prior to the breakout of the COVID-19 pandemic. Therefore, these proposals do not specifically relate to COVID-19, but they include topics such as public health concerns and chemical exposures. Nine of the fourteen companies that submitted health-related proposals in 2021, however, submitted proposals that specifically address the COVID-19 pandemic. These proposal topics include asking companies to implement COVID-19 health and safety measures or revise paid sick leave policies. These proposals were generally not popular with shareholders as the average number of votes for as a percent of votes cast was only twenty-two percent for these proposals.

Finally, the number of management and shareholder proposals that allow for or relax the requirement to act by written consent almost doubled from 2019 to 2020, but the overall rate of shareholder approval slightly decreased. While the number of written consent proposals declined noticeably from 2020 to 2021, votes cast for such proposals marginally increased. Both written consent and virtual meetings provide alternatives to holding in-person meetings. With the rise of hybrid and virtual meetings, the need for shareholder voting by written consent as a means of ameliorating in-person participation is diminished. As a result, the number of written consent proposals may continue to decline in future years.

---

[245] *See supra* note 217.

Table 8: Annual Meeting Shareholder Turnout and Approval by Proposal Topic

Annual Meeting Proposal Topic	Number of Companies				Average Votes For As % Votes Cast*				Average Votes Cast as % Shares Out			
	2018	2019	2020	2021	2018	2019	2020	2021	2018	2019	2020	2021
Elect Management's Director Nominee	1,873	1,873	1,873	1,766	95%	95%	94%	95%	78%	79%	78%	79%
Ratify Auditors	1,839	1,841	1,845	1,744	98%	98%	97%	98%	89%	90%	87%	87%
Management Proposed Advisory Vote on Compensation (say on pay)	1,538	1,625	1,764	1,606	90%	90%	89%	90%	79%	79%	77%	79%
Management Proposed Executive Compensation	405	438	488	476	90%	91%	90%	91%	78%	79%	78%	77%
Management Proposed Advisory Vote on the Frequency of Compensation Vote (say on pay frequency)	135	163	108	77	0%	0%	1%	0%	0%	0%	1%	0%
Allow for or Decrease Requirement to Act by Written Consent	44	37	67	42	43%	42%	39%	40%	69%	69%	68%	77%
Declassify Board	53	38	62	37	90%	82%	80%	93%	72%	68%	66%	78%
Allow for or Decrease Requirement to Call Special Meetings	70	32	52	40	45%	58%	55%	50%	65%	70%	75%	80%
Change Vote Requirement to Elect Directors to Majority from Plurality	13	31	25	17	76%	64%	58%	51%	68%	83%	75%	82%
Health Issues	18	11	11	14	10%	11%	24%	15%	41%	50%	64%	71%

*We also collected the annual data for average votes for as a percent of shares outstanding. Since this information easily deduced from the other columns presented, we have removed it for presentation purposes.

f. Special Meetings

As shown in Table 2 above, more companies held special meetings from March 11, 2020 to June 30, 2020, compared to the number of special meetings held during the same time period in 2018 and 2019. A total of 111 companies held special meetings during this time in 2020, compared to eighty-three companies in 2019, and ninety-six companies in 2018. Shareholder turnout and approval was lower in 2020 as compared to 2019 and 2018. The average votes cast as a percent of shares outstanding decreased by 5% from 2019 to 2020, and the average votes for as a percent of shares outstanding decreased by 16%. Although shareholder turnout and approval for special meetings is historically lower when compared to annual meetings, special meetings fared worse during the COVID-19 pandemic than annual meetings as evidenced by a larger decline in these metrics.

2021 saw an uptick in companies holding special meetings, with 159 companies holding special meetings between March and June of that year. Shareholder vote turnout, however, decreased again in 2021 compared to 2020 with the average number of votes cast as a percentage of shares outstanding shrinking by eight percent. Approval rates, however, significantly increased with a thirty-five percent rise in the average number of votes for as a percent of votes cast. Nevertheless, shareholder approval is largely dependent on the type of shareholder proposals presented at each meeting rather than comfort with virtual settings.

Table 9: Special Meeting Shareholder Turnout and Approval by Year

Special Meetings Proposal Brought By	Average Votes For As % Votes Cast*				Average Votes Cast as % Shares Out			
	2018	2019	2020	2021	2018	2019	2020	2021
Management	75%	71%	63%	84%	75%	76%	72%	67%
Shareholder	-	0%	26%	83%	-	-	80%	72%
Total	75%	71%	63%	84%	75%	76%	72%	67%

Special Meetings Proposal Brought By	Average Votes For As % Votes Cast			Average Votes Cast as % Shares Out		
	% Change '18 - '19	% Change '19-'20	% Change '20-'21	% Change '18 - '19	% Change '19-'20	% Change '20-'21
Management	-5%	-11%	33%	2%	-5%	-8%
Shareholder	-	-	225%	-	-	-9%
Total	-5%	-11%	35%	2%	-5%	-8%

*We also collected the annual data for average votes for as a percent of shares outstanding. Since this information easily deduced from the other columns presented, we have removed it for presentation purposes.

Table 10 below breaks down special meeting shareholder turnout and approval by proposal topic. The number of proposals related to approving mergers and related stock issuances sharply declined in 2020 but rebounded in 2021. The increase in both the number of proposals submitted and the average number of votes for as a percent of votes cast for merger-related proposals in 2021 compared to 2020 reflects an increase in market activity as market actors adjusted to the impact of COVID-19. Relatedly, 2021 saw a dramatic increase in the number of proposals related to increasing the authorized number of shares of common stock and other non-takeover defense-related charter/bylaw amendments. The financial toll the pandemic took on corporations made some of them more vulnerable to hostile takeover activity.

Overall, approval for special meeting proposals declined from 2019 to 2020.[246] The decline in shareholder approval for many of these topics likely reflects the financial uncertainty that shareholders are experiencing during this time due to the COVID-19 pandemic. By 2021, however, shareholder approval ratings mostly rebounded to pre-pandemic levels.

[246] The outliers in this trend were: acquirer approval of mergers; management-proposed executive compensation proposals; approving stock issuances for a private placement; and name change proposals, all of which saw an increase in the average votes for as a percent of the votes cast.

Table 10: Special Meeting Shareholder Turnout and Approval by Proposal Topic

Special Meeting Proposals	Number of Companies				Average Votes For As % Votes Cast*				Average Votes Cast as % Shares Out			
	2018	2019	2020	2021	2018	2019	2020	2021	2018	2019	2020	2021
Approve Adjournment of Meeting	276	265	79	333	45%	44%	41%	46%	77%	78%	75%	71%
Approve Merger (Target)	158	162	41	124	79%	83%	76%	85%	79%	78%	76%	75%
Management Proposed Advisory Vote on Golden Parachute Compensation (say on parachutes)	127	131	33	117	75%	75%	72%	78%	78%	76%	76%	74%
Approve Stock Issuance for Merger/Acquisition	53	31	21	164	95%	90%	88%	94%	77%	75%	73%	70%
Approve Merger (Acquirer)	42	49	15	152	95%	77%	84%	93%	77%	76%	72%	70%
Approve Stock Split	32	39	13	21	79%	82%	78%	79%	74%	76%	73%	63%
Management Proposed Executive Compensation	45	28	11	21	85%	73%	75%	88%	69%	62%	71%	68%
Approve Investment Advisory Agreement	3	5	8	9	93%	94%	5%	80%	62%	62%	60%	64%
Increase Authorized Number of Shares of Common Stock	47	34	8	135	88%	75%	71%	88%	80%	82%	81%	70%
Other Non-Takeover Defense Related Charter/Bylaw Amendment	19	22	8	163	96%	87%	63%	88%	83%	80%	77%	70%
Approve Stock/Warrant Issuance	16	12	7	3	89%	78%	69%	92%	53%	65%	41%	64%
Approve Stock Issuance for a Private Placement	14	7	6	9	96%	81%	96%	85%	67%	74%	55%	67%
Name Change	18	10	5	73	89%	85%	98%	93%	81%	74%	79%	70%

*We also collected the annual data for average votes for as a percent of shares outstanding. Since this information easily deduced from the other columns presented, we have removed it for presentation purposes.

g. Key Lessons from the Findings

COVID-19 forced a dramatic shift in the annual meeting practices of corporate America. For comparison, in the first half of 2020 alone, there were more than five times the number of virtual or hybrid annual shareholder meetings than in all of 2019.[247] Of note, many of these companies had neither originally planned for nor previously tried virtual or hybrid meetings. Rather, with little warning, boards, officers, and their counsel had to pivot quickly from their pre-scheduled annual meeting plans to a new, virtual platform. As reported by Broadridge Financial Solutions, eighty-four percent of companies "hosting a [virtual-only or hybrid meeting] on [their] platform [between January 1,

[247] *See* REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 1 (reporting that nearly 2,500 U.S. company annual meetings were conducted via a virtual platform between January 1, 2020 and June 30, 2020).

2020 and June 30, 2020] were first-time adopters."[248] Shareholders also had to adapt quickly to a new virtual format, resulting in unanticipated challenges to meeting attendance and participation.

Yet, despite the often-hurried changes, companies that moved to virtual annual meetings in 2020 generally expressed good results.[249] Virtual shareholder meetings in our 2020 sample did not experience a significant impact on shareholder vote turnout as compared to 2019. The overall shareholder turnout and proposal approval rates decreased only by about two percent from 2019 to 2020, amid a global pandemic that effected financial markets and individual households alike. As companies had time to plan for the 2021 proxy season and master the new technology facilitating virtual meetings, shareholder turnout and proposal approval rates recovered to pre-pandemic levels.

With the largest drop occurring during the week of April 13, 2020, this slight decrease in shareholder turnout and approval during the early part of April may be attributed to the shift from in-person meetings to a virtual platform. Alternatively, it could also be explained by the pandemic itself. Concerns related to safety and wellbeing likely overshadowed participation at meetings despite the new virtual format.

Annual meetings held over the phone without an interactive video component had the lowest shareholder turnout and approval of any meeting method. Teleconferences are liable to curtail discussion due to decreased level of engagement and human interaction on a phone call compared to a video call or in-person meeting, which may explain the decline in shareholder turnout and approval. The advancement of technology and availability of various virtual meeting platforms in 2021 as well as some relaxation in restrictions on in-person gatherings, however, resulted in those companies that had used teleconferences in 2020 abandoning it for other meeting methods.

The size of each corporation also influenced the impact of this procedural change on annual meetings for 2020. Companies included in the S&P 500 had the overall lowest shareholder turnout and approval compared to any other market capitalization classification. Outside of the S&P 500, smaller compa-

---

[248] BROADRIDGE FIN. SOLS., INC., VIRTUAL SHAREHOLDER MEETINGS 2020 FACTS AND FIGURES 2 (2021), https://www.broadridge.com/_assets/pdf/vsm-facts-and-figures-2020-brochure-april-2021.pdf [https://perma.cc/M75C-QQXT].

[249] Douglas K. Chia & Ann S. Lee, *Report on Practices for Virtual Shareholder Meetings*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 11, 2021), https://corpgov.law.harvard.edu/2021/01/11/report-on-practices-for-virtual-shareholder-meetings/ [https://perma.cc/AD77-GLGN]; *see* Matteo Tonello, *2021 Proxy Season Preview and Shareholder Voting Trends (2017–2020)*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Feb. 11, 2021), https://corpgov.law.harvard.edu/2021/02/11/2021-proxy-season-preview-and-shareholder-voting-trends-2017-2020/ [https://perma.cc/ADF7-ZNYT] ("Despite the logistical and technological challenges posed by this monumental shift, the proxy season was successfully executed.").

nies typically had lower shareholder turnout and approval. Companies that were too small to be included in an index had the greatest decrease in shareholder turnout and approval from 2019 to 2020. The technological advancements that took place over the past year, coupled with more time to plan and prepare for a virtual meeting, likely contributed to companies of all sizes seeing an increase in shareholder vote turnout from 2020 to 2021. This increase was noticeably larger in higher market capitalization companies that typically have more resources to commit to new technology and are less susceptible to volatility caused by such a transition.

Although the 2021 proxy season was likely the first time that shareholders submitted COVID-19-related proposals to a vote, only nine companies specifically referenced the COVID-19 pandemic and related health concerns. These shareholder proposals requesting management to implement various health protocols and programs were largely rejected and had very low shareholder approval.

Finally, based on the data collected for all special meetings held in 2018, 2019, and the period between March 11, 2020 and June 30, 2020, special meetings were more unpredictable in 2020 than annual meetings held during this same time. The average votes cast as a percent of shares outstanding decreased 2% from 2019 to 2020 for annual meetings, but 5% for special meetings. Similarly, the average votes for as a percent of votes cast decreased by 2% from 2019 to 2020 for annual meetings, and 11% for special meetings during the same time. This is particularly interesting because many special meetings are convened to vote on major corporate decisions. These include charter amendments and approval of major corporate transactions—the types of key issues that ordinarily garner robust participation of shareholders. Nevertheless, as the market recovered following the start of the pandemic, companies were faced with around ten times more shareholder proposals related to merger approval and common stock authorization in 2021 compared to 2020. Not only did companies face more proposals, but the overall shareholder approval rates for these proposals increased. This is illustrated by a 16% rise in the average number of votes for as a percent of votes cast.

III. Reimagining the Annual Meeting

Corporations have been carefully dipping their toes in the virtual meeting pool with increasing frequency. Despite modest, steady growth in the use of technology in corporate governance during the past twenty years, the COVID-19 shutdown forced companies big and small to turn quickly to virtual meetings as a safe alternative for holding their required annual gatherings. Unsurprisingly, the 2020 annual meeting season saw unprecedented use of virtual meetings. This phenomenon, which continued in 2021, pushed corporate practice down a technological path much faster than it was organically developing.[250]

It is unclear whether virtual meetings will persist at such high rates moving forward. Some corporations, like Berkshire Hathaway, Ben & Jerry's, Starbucks, Wal-Mart, and Exxon Mobil, are likely to revert back to convening their large, traditional, in-person annual shareholder meeting as soon as they can do so safely.[251] For many other companies, however, the recent move to virtual meetings may become a permanent change.[252] A third group of corporations will fall somewhere in between, opting for a hybrid format that would offer shareholders the choice to attend the annual meeting in person or virtually.

State legislatures began a movement toward permanently enabling hybrid and virtual meetings across 2020 and 2021. As of the end of 2021, the number of states allowing virtual meetings increased from thirty to thirty-eight, with two additional states considering amendments that would allow virtual meetings.[253] Notably, three of the states that amended their annual meeting statutes went from requiring in-person meetings in 2020 to allowing virtual-only meetings in 2021.[254] An additional nine states allow for hybrid meetings.

In the short term, so long as the COVID-19 pandemic creates public health and safety concerns, companies will have to utilize virtual meetings. Indeed, in 2021, the spread of the Delta variant forced most companies to host another annual meeting season remotely whether they wanted to or not.[255] The

[250] *See* CLABAUGH ET AL., *supra* note 242, at 3–4 (reporting that about 65% of S&P 500 index companies "had held or announced plans to hold virtual meetings" with only 11% having previously done so); Sirtori-Cortina, *supra* note 25 (reporting estimations that "70% of the annual meetings in the U.S. will be virtual [in 2020], compared to 7% in 2019").

[251] *See* Sirtori-Cortina, *supra* note 25 (reporting that Home Depot and ConocoPhillips "expect to revert [to in-person meetings] in 2021").

[252] *See* Betty Moy Huber, Joseph A. Hall & Paula H. Simpkins, *Top 10 Key Trends at 2020 Proxy Mid-Season*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 8, 2020), https://corpgov.law.harvard.edu/2020/06/08/top-10-key-trends-at-2020-proxy-mid-season/ [https://perma.cc/Z5BL-ZQS5] ("We expect issuers to continue to host virtual meetings in 2021 and thereafter."); Bruce Goldfarb, *Are Virtual Annual Meetings Good for Shareholder Democracy?*, FORBES (May 5, 2020), https://www.forbes.com/sites/brucegoldfarb/2020/05/05/are-virtual-annual-meetings-good-for-shareholder-democracy [https://perma.cc/A89S-W2K8] ("[T]he trend toward virtual annual meetings is likely to continue and even accelerate.").

[253] *See infra* App. A; *see also supra* note 235 and accompanying text.

[254] *See supra* note 233 and accompanying text.

[255] *See* Ramos, *supra* note 29 (reporting on the spread of the COVID-19 Delta variant). For example, by May 2020, companies such as Home Depot and ConocoPhillips had announced plans to return to an in-person annual shareholder meeting in 2021. Sirtori-Cortina, *supra* note 25. Both of these companies ultimately held virtual meetings in 2021. *See, e.g.*, ConocoPhillips, Definitive Proxy Statement, (Schedule 14A) (Mar. 29, 2021) ("We planned to return to an in-person meeting this year; however, the health and well-being of our employees, stockholders and partners remain of the utmost importance to us, and due to the ongoing coronavirus (COVID-19) pandemic and to be consistent with our SPIRIT Values and public health guidelines, this year's Annual Meeting will be virtual only.").

longer the practice of virtual meeting persists, the more comfortable corporations and their shareholders will become with this meeting format moving forward. Indeed, there are already indications that certain shareholder groups prefer a virtual option, having submitted shareholder proposals in 2021 that demand a remote attendance option for annual meetings, effectively banning in-person only meetings.[256] Likewise many corporate commentators agree that even after the pandemic subsides, some form of virtual shareholder meetings are here to stay.[257] Virtual meetings are thus poised to play an influential role in corporate practice.

As corporate America considers the best practices for virtual and hybrid meetings, the long-standing debates about the purpose and value of annual shareholder meetings are reinvigorated.[258] Annual meeting practices and the judicial rhetoric surrounding them offer insight into the democratic and "social conceptions of the corporation."[259] An effective annual meeting should achieve several goals, including: (1) legitimating the current corporate form of separation of power; (2) offering shareholders the opportunity to elect directors and

---

[256] *See* Doug Chia, *The Virtual Annual Meeting Shareholder Proposals!*, SOUNDBOARD GOVERNANCE, https://www.soundboardgovernance.com/post/the-virtual-annual-meeting-shareholder-proposals [https://perma.cc/R43T-98HD] (Nov. 19, 2021) (describing The Humane Society's proposals submitted to Brinker International, Cracker Barrel Old Country Store, Inc., and Campbell Soup Company requesting that these companies adopt procedures to safeguard participation by virtual means at all shareholder meetings). Interestingly, prior to 2021 several corporations had received shareholder proposals requiring that corporations ensure annual meetings always have an in-person component; that is, a ban on virtual-only meetings. *Id.* (describing proposals submitted to companies like EMC Corporation, Alaska Air, HP, Comcast, Frontier Communications, and American Outdoor Brands that sought to sustain the practice of in-person annual meetings).

[257] *See, e.g.*, Maria Aspan, *'Intentionally Boring' Virtual Shareholder Meetings Are Here to Stay—and That Could Be Bad News for Small Investors*, FORTUNE (June 1, 2021), https://fortune.com/2021/06/01/virtual-shareholder-annual-meetings-small-investors/ [https://perma.cc/4YUW-GHP5] ("[S]ome corporate-governance experts are betting that many annual meetings will never return to the real world."). Board meetings experienced a similar sudden shift to the virtual setting in 2020. Although surveys of directors on the effectiveness of virtual board meetings yielded some mixed results, most respondents agreed that at least some percentage of board meetings would remain virtual post-pandemic. Andrew Lepczyk & Barton Edgerton, *The Future of the Virtual Board Room*, HARV. L. SCH. F. ON CORP. GOVERNANCE, (Feb. 8, 2021), https://corpgov.law.harvard.edu/2021/02/08/the-future-of-the-virtual-board-room/ [https://perma.cc/D3UF-UW39]. Taken together, then, virtual board meetings and virtual annual shareholder meetings evidence a new virtual corporate governance ecosystem that has emerged from the pandemic.

[258] Virtual annual meetings are not the only topic spurring this debate. Voting power, voting standards, record dates, nomination rights, and notice rules have also trigged an examination of the underlying purposes of the annual shareholder meeting. *See, e.g.*, Dunlavy, *supra* note 66, at 1359–62 (analyzing the utility of shareholder democracy and the one-vote-per-share model); Hamermesh, *supra* note 69, at 133–36 (discussing the concept of shareholder-nominated and -elected directors as a valuable tool in corporate governance).

[259] *See* Dunlavy, *supra* note 66, at 1363–68; *cf.* Cunningham & Cuba, *supra* note 107, at 17 ("But if the prior era's annual meetings stressed individual shareholders and associated 'democratic' rights, this one increasingly brought out corporate identity and culture.").

evaluate management's performance; (3) achieving vertical democracy by allowing shareholders to communicate directly with management; and (4) achieving horizontal democracy by facilitating discourse and debate among shareholders. Depending on their structure, virtual meetings can facilitate or hinder the various purposes underlying the annual meeting.

Beyond the traditional annual meeting purposes, virtual meetings can also address the growing public call for corporate governance reform, specifically greater stakeholder engagement and corporate social responsibility. "In an era where companies and shareholders are making concerted efforts to engage with each other[,]" the annual meeting is the ideal venue to foster such discussions.[260] As the rules and procedures for virtual annual meetings become engrained in corporate practice, they will serve as a reflection of current views on the purpose of the annual meeting as well as conceptions of the firm, shareholder democracy, and the role of stakeholders in corporate governance. This is particularly the case in smaller public corporations, where the traditional engagement tools of shareholders are utilized less.[261] The virtual annual meeting can serve as a low-cost equalizing force in the context of smaller corporations, providing a substitute to more traditional forms of engagement such as institutional investors' engagement, proxy fights, and shareholder proposals.[262]

This Part analyzes the benefits and drawbacks associated with a more permanent shift to virtual annual meetings and details a critical framework for their successful adoption in corporate practice.[263] Section A contemplates the opportunity virtual annual meetings present by encouraging corporate democracy and broadening shareholder engagement.[264] Section B grapples with some of the potential disadvantages that might result from a higher prevalence of virtual shareholder meetings.[265] Finally, Section C concludes that the upsides of more commonplace virtual shareholder meetings outweigh the potential downsides and provides a foundation for a more widespread implementation.[266]

---

[260] *See* REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 19.

[261] *See* Kobi Kastiel & Yaron Nili, *The Corporate Governance Gap*, 131 YALE L.J. (forthcoming 2022) (manuscript at 59), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3824857 [https://perma.cc/K5WU-G88F] (finding that smaller companies are slow to adopt governance provisions that are deemed desirable by shareholders due to less engagement by shareholders).

[262] *Id.* (manuscript at 58–59).

[263] *See infra* notes 267–334 and accompanying text.

[264] *See infra* notes 267–296 and accompanying text.

[265] *See infra* notes 297–317 and accompanying text.

[266] *See infra* notes 318–334 and accompanying text.

A. The Promise of the Virtual Meeting

1. Complementary Goals: Shareholder Democracy and Stakeholder Governance

The significance of the democratic nature of the annual meeting to corporate theory and legitimacy cannot be understated. The shift from "plutocratic governance [of U.S. corporations] to the technocratic governance of [professional] managers" left the annual shareholder meeting as the only true vestige of the democratic flavor originally envisioned in American corporate law.[267] Over time, the concept of shareholder democracy expanded from focusing on "horizontal as well as vertical relations of power in the corporation."[268] More recently, however, the proliferation of proxies as the favored method of participation—a natural development of diffuse corporate ownership—resulted in a sharp decline in substantive shareholder engagement and eroded the democratic facet of the annual meeting.

It would be disingenuous to assert that the annual meeting has ever truly exemplified the democratic ideals espoused by jurists and scholars. But to focus on such shortcomings overlooks the larger purpose of the annual meeting: to preserve one, if not the only, forum in which such democratic deliberation is achievable.[269] In an era of growing public mistrust of managerial capitalism and scrutiny of corporations' role in society, the annual meeting, and its underpinning democratic principles, is a key aspect to the resiliency of the corporate form and governance.

The import of the annual meeting extends beyond the rights and opportunities it affords a corporation's shareholders. The annual meeting is a crucial element in the continuing success of stakeholderism, corporate social responsibility, and ESG efforts. ESG investing attempts to wield power over corporate activity from the investor side, as opposed to the managerial side.[270] This approach has been effective to date, with studies finding that corporations largely adopt ESG policies at the request of shareholders.[271] The continuing

---

[267] Dunlavy, *supra* note 66, at 1362–66.

[268] *See id.* (describing the history of shareholder rights and conceptions of "democracy" in the corporation). Vertical relations are those "between managers and shareholders"; horizontal relations are those among shareholders themselves. *Id.* at 1365.

[269] Hoschett v. TSI Int'l Software, Ltd., 683 A.2d 43, 46 (Del. Ch. 1996) ("[A] keen realization of the reality of the degree of deliberation that is possible [at the annual meeting] should make the preservation of residual mechanisms of corporate democracy more, not less, important.").

[270] Lipton, *supra* note 86, at 130–32; *see* Haan, *supra* note 12, at 46 ("[T]his new stakeholderism expresses power through corporate governance.").

[271] Gadinis & Miazad, *supra* note 3, at 1408; *see* Yaron Nili & Cathy Hwang, *Shadow Governance*, 108 CALIF. L. REV. 1097, 1128 (2020) (describing the pressure proxy advisors exert by "rating companies along various [ESG] metrics"); Hwang & Nili, *supra* note 85 (finding that management implements ESG policies and principles "at the behest of shareholder activists, powerful institutional

success of ESG, however, hangs precariously on: (1) the advocacy and participation of ESG-minded stockholders; and (2) enabling and galvanizing non-shareholder groups to participate in corporate discourse.[272] In both respects, it is the annual meeting that serves as the primary and most visible venue for these actions to take place.[273]

Over the past year, COVID-19 and social justice movements have underscored the corporation's role in societal well-being. This "has accelerated the [move] toward [ESG and] stakeholder-oriented governance" and "heightened public expectations that companies will work toward meaningful engagement with employees, customers, investors, supply chain partners, and the broader community."[274] It is likely that this trend will not only intensify once the current health and economic crises subside, but also result in lasting governance reform.

Furthering stakeholder-versus-shareholder interests is not, however, a "zero-sum game"; rather, "the interests of [these two groups] are often aligned in the long run."[275] Leveraging the annual meeting as a mechanism to strength-

---

investors, and influential proxy advisory firms"); *see also* Lund & Pollman, *supra* note 63, at 2615 (noting that "not only [are ESG proposals] being brought more regularly, they are also more likely to result in favorable results for shareholder proponents").

[272] *See* Gadinis & Miazad, *supra* note 3, at 1404 (emphasizing the exponential growth in ESG investors' abilities to influence corporate policy); Lipton, *supra* note 86, at 146–47 (asserting that ESG success "*depends* on an empowered nonshareholder constituency"); Lund & Pollman, *supra* note 63, at 2563 ("[A]bsent a major paradigm shift . . . pushing corporations to consider the interests of employees, communities, and the environment will likely fail unless such effort is framed as advancing shareholder interests.").

[273] *See* Boros, *supra* note 15, at 5 (describing the "face-to-face accountability" of an in-person meeting as "particularly valuable" to ESG shareholders and stakeholder constituents alike). The rise in frequency and support for Rule 14a-8 shareholder proposals that address ESG issues are a classic example of the central role of annual meetings in ESG efforts. *See* Gadinis & Miazad, *supra* note 3, at 1404, 1408 (noting that "in annual meetings, ESG shareholder proposals gain support not only from [large] pension funds . . . but also from [proxy] advisory firms" (footnote omitted)); Lipton, *supra* note 86, at 143 ("Supporters of ESG investing and engagement often use Rule 14a-8 proposals to request that companies either improve, or provide more information about, their social performance, but they also use them to force adoption of preferred governance arrangements, like the ability of shareholders to nominate directors.").

[274] Katz & McIntosh, *supra* note 4; *see* Johnson et al., *supra* note 3, at 2570 (noting that the pandemic has drawn attention to a myriad of ESG issues including sick leave, remote work, and disaster preparedness); Sardon, *supra* note 1; (reporting that institutional investors are "call[ing] on companies in their portfolios to support [their employees] and [broader] communities").

[275] *See* Eleazer Klein, *Shareholders' Rights & Shareholder Activism 2020*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Nov. 15, 2020), https://corpgov.law.harvard.edu/2020/11/15/shareholders-rights-shareholder-activism-2020/#more-134412 [https://perma.cc/KV29-JHU8] (asserting that corporate and shareholder responses to corporate actions taken during the pandemic support the conclusion that shareholder and stakeholder interests often align); *see also* Holly J. Gregory, *Board Considerations for an Uncertain 2021*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Dec. 11, 2020), https://corpgov.law.harvard.edu/2020/12/11/board-considerations-for-an-uncertain-2021/ [https://perma.cc/

en *both* shareholder democracy *and* stakeholderism and ESG efforts has the potential to enhance long-term value as well as identify and manage business risk. Public corporations are widely considered the most powerful institutions in setting the social, economic, and political agenda for the country. Therefore, fostering a more inclusive discussion surrounding corporate governance and policy is imperative to instill confidence in these entities.[276]

2. Virtual Meetings: An Opportunity to Broaden Corporate Engagement

The novelty of virtual meetings provides companies and shareholders with a largely blank slate for reimagining the parameters of shareholder participation and expanding opportunities for stakeholder participation. Unconstrained by the geographic, financial, and temporal limitations of physical meetings, virtual meetings can facilitate broader participation.[277] Indeed, "the most often cited benefit" of virtual meetings is their capacity to re-engage shareholders both quantitatively and qualitatively in the governance of the corporation.[278]

One constituency that virtual meetings can reengage are retail shareholders. Low retail investor attendance and participation is a well-documented problem in public corporations.[279] And even when retail investors attempt to engage with a company, companies often dismiss them in favor of larger institutional investors. Moreover, shareholders do not enjoy equal access to the

96WR-SYYQ] (noting the "shifting emphasis from shareholder primacy to the interests of . . . stakeholders").

[276] *See* Tom C.W. Lin, *Incorporating Social Activism*, 98 B.U. L. REV. 1535, 1537–39 (2018) (discussing the corporation as a "new powerful player" in modern social activism); Rauterberg, *supra* note 43, at 913 ("The vast majority of economic activity is now organized through corporations. The public corporation is usurping the state's role as the most important institution of wealthy capitalist societies."). Interestingly, at different points in history, annual meetings have served as a forum for raising and debating pressing social issues such as women's rights and the Vietnam War. *See supra* note 12 and accompanying text.

[277] Boros, *supra* note 15, at 9. For example, Broadridge Financial Solutions reported that "a large international healthcare company . . . hosted 2,899 attendees across 44 countries and territories." BROADRIDGE FIN. SOLS., INC., *supra* note 248, at 2.

[278] *See* Fairfax, *supra* note 23, at 1389–91 (listing the benefits of remote shareholder meetings); Fontenot, *supra* note 23 at 42–43 (citing greater attendance and engagement by retail investors as a benefit of virtual annual meetings).

[279] *See* Fisch, *supra* note 64, at 15 ("Low retail turnout allows institutional investors to dominate election results . . . ."); Kastiel & Nili, *supra* note 15, at 57 (theorizing that low retail investor engagement "distorts the optimal decision-making process" because institutional investors are overrepresented). The SEC has acknowledged in several different contexts that the low voting rates by retail investors was "a source of concern." *Concept Release on the U.S. Proxy System*, 75 Fed. Reg. 42,982, 43,002 (July 22, 2010) (to be codified at 17 C.F.R. pts. 240, 270, 274, 275); *see* Obligation of Registered Brokers and Dealers in Connection with the Prompt Forwarding of Certain Communications to Beneficial Owners, 17 C.F.R. § 240.14b-1 (2021).

company outside the annual meeting. Whereas large institutional investors and activist hedge funds can engage with management outside the annual meeting,[280] Main Street investors often lack such access. Thus, the annual meeting is the only real opportunity for retail investors to influence corporate policy. And make no mistake, showing up and speaking up at an annual meeting can make a difference. McDonald's provides a poignant example. In 2013, a nine-year-old girl criticized Don Thompson, then-CEO of McDonald's, at the company's annual shareholders' meeting. The girl, whose mother was a shareholder, "stood and lectured the CEO of one of the world's biggest brands. . . . [She said he] unfairly target[ed] kids with advertisements for food that isn't good for them"; garnering public attention, her statements contributed to the company selling more healthy children's options.[281] Unfortunately, given the considerable costs associated with traveling to and voting at an annual meeting, few stockholders can similarly personally attend these events to impact corporate policy. Moreover, often such in-person meetings are deprived of the attention, attendance, and public and media exposure that virtual formats can provide.

Although several different proposals have been put forth over the years to increase retail investor attendance and voting, the problem persists.[282] Virtual meetings provide retail shareholders with a more accessible and affordable means of participating in the meeting.[283] Further, the ability to vote electronically at the meeting makes it easier for retail investors to vote their shares.[284] For example, one of the early adopters of virtual meetings, UAP, noted in their 2006 proxy statement that remote-only meetings enabled greater participation for "stockholders who do not live near [corporate] headquarters."[285] Similarly, General Motors found that by holding a virtual-only meeting in 2019, average shareholder attendance increased from around thirty-five individuals between 2014 and 2018 to roughly 125 in 2019.[286] At the conclusion of its 2020 virtual

---

[280] Kiran Vasantham & David Shammai, *Institutional Investor Survey 2020*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 25, 2020), https://corpgov.law.harvard.edu/2020/03/25/institutional-investor-survey-2020/ [https://perma.cc/99AQ-SKRP].

[281] Bruce Horovitz, *McDonald's CEO Bawled-Out by 9-Year-Old*, USA TODAY, https://www.usatoday.com/story/money/2013/05/23/mcdonalds-ceo-don-thompson-childhood-nutrition/2355129/ [https://perma.cc/7DN3-HA5Q] (May 23, 2013).

[282] *See* Fisch, *supra* note 64, at 17 (proposing the use of standard voting instructions); Kastiel & Nili, *supra* note 15, at 104 (proposing "nudging" in the form of "voting default arrangements").

[283] *See* Pamela Park, *Companies Look to Virtual Annual Meetings to Cut Costs, Increase Turnout*, WESTLAW CORP. GOVERNANCE DAILY BRIEFING, 2015 WL 406043 (Feb. 2, 2015) (pointing out that online meetings may enhance retail investor attendance and engagement by permitting them to participate at low cost).

[284] *Id.*; *see* Fisch, *supra* note 64, at 16 (discussing how institutional investors, but not retail investors, have access to internet-based voting software).

[285] UAP Holding Corp., Definitive Proxy Statement (Schedule 14A) (June 9, 2006).

[286] CLABAUGH ET AL., *supra* note 242, at 5 (quoting Gen. Motors Co., Definitive Proxy Statement (Schedule 14A) (Apr. 27, 2020)).

shareholder meeting, GM announced that approximately 180 shareholders attended the meeting.[287]

A virtual format may also be particularly attractive to the next generation of corporate investors and activists: millennials. With their tech-savvy reputation and propensity for online discourse, this rapidly growing investor base has been using the traditional powers of stock ownership to advance ESG issues.[288] Virtual meetings may promise a more engaged shareholder meeting led by this next generation of investors.[289]

Finally, virtual meetings enable large institutional holders, as well as individuals with investments in multiple companies, to attend all their annual meetings, many of which occur within the same timeframe. In 2021, for example, new virtual meeting platforms allowed shareholders to simultaneously attend one company's annual meeting and vote their shares at other ongoing meetings without having to leave and re-enter the virtual meeting room.[290] Providing investors of all stripes "with a meaningful opportunity [to participate in the annual meeting] preserve[s] the legitimacy of shareholder voting in reducing managerial agency costs and maintaining director accountability."[291] Further, it ensures that corporate action reflects the views of all shareholders and not just those of large, institutional investors.[292]

---

[287] Chia, *supra* note 242.

[288] *See* Michal Barzuza, Quinn Curtis & David H. Webber, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243, 1244 (2020) (discussing how millennials "place a significant premium on social issues in their economic lives"). The role of millennials in corporate America cannot be understated, as it is estimated that over "the next two decades, somewhere between $12 trillion and $30 trillion will pass" to millennials from the baby boomer generation. *Id.* at 1249. Retail investors have similarly been documented as supporting ESG issues. *See* Susan N. Gary, *Best Interests in the Long Term: Fiduciary Duties and ESG Integration*, 90 U. COLO. L. REV. 731, 780 (2019) ("A 2016 survey conducted by State Street Bank reported that a majority of retail investors view the ability to obtain long-term gains [such as ESG factors] as more important than short-term outperformance."); Ben Maiden, *Retail Investors Eye ESG Factors, Survey Finds*, CORP. SEC'Y. (Apr. 26, 2019), https://www.corporatesecretary.com/articles/esg/31589/retail-investors-eye-esg-factors-survey-finds [https://perma.cc/38EJ-4R3A] (discussing retail investors' concerns with corporate social performance).

[289] *See* Donna Fuscaldo, *Say Gives Retail Investors a Voice and Tesla Listens*, FORBES (Feb. 19, 2019), https://www.forbes.com/sites/donnafuscaldo/2019/02/19/say-gives-retail-investors-a-voice-and-tesla-listens/ [https://perma.cc/4BAL-Z9U8] (describing millennials as being "fed up with the traditional way of doing things").

[290] *See* Doug Chia, *Snapshots from the Carrier 2021 VSM*, SOUNDBOARD GOVERNANCE (Apr. 21, 2021), https://www.soundboardgovernance.com/post/snapshots-from-the-carrier-2021-vsm [https://perma.cc/87S2-QLJP] ("Once a shareholder has voted, they can hop over to vote at other companies they own shares of where voting is open. I like this feature as it's a good reminder to vote your shares at all annual meetings where you are eligible to do so, and it saves you a few clicks to get to those pages.").

[291] Fisch, *supra* note 64, at 14.

[292] *See id.* at 15 ("[B]ut there are reasons to believe that retail investor voting preferences differ systemically from those of institutional investors. . . . These differences matter.").

Technological platforms can improve not only attendance and voting at an annual meeting but also the quality of the discourse. Auxiliary services illustrate the potential for technological tools to enhance meaningful interactions at a virtual meeting. These services include "interactive online for[a]" before, during, and after the meeting; "dashboard tools displaying key statistics . . . including votes, shares, and attendance"; and "pre- and post-meeting reports."[293] Virtual meetings can also increase transparency and participation more broadly. Some corporations broadcast full videos of their meetings and make recordings available on their website for later viewing.[294] Other corporations have made their virtual meetings accessible to non-shareholder constituents, thereby engaging a broader range of interested parties.[295] This results in a more informed and thorough consideration and discussion of risks and other issues facing the corporation.

Arguably most importantly, virtual and hybrid meetings in 2020 and 2021 suggest that the costs of these meetings are not as significant as once feared. Shareholder turnout and voting did not significantly change despite the wide-ranging disruptions caused by COVID-19.[296] Virtual meetings, if designed correctly, can improve shareholder democracy without sacrificing the efficiencies of the current proxy system. Investors can still vote by proxy, and private engagement by large investors and proxy advisers is sure to continue. Nevertheless, a virtual meeting levels the playing field among shareholders for at least one fundamental aspect of the corporation. The annual meeting can become the

---

[293] *See* Fontenot, *supra* note 23, at 41 (describing the tools Broadridge offers for virtual annual meeting facilitation); *see also* Fairfax, *supra* note 23, at 1390 (describing how electronically-submitted questions "had a tendency [to be] more pointed" and "potentially broaden the scope of the issues . . . discussed at the meeting").

[294] *See* Doug Chia, *Microsoft Corporation 2020 Virtual Annual Meeting*, SOUNDBOARD GOVERNANCE (Dec. 16, 2020), https://www.soundboardgovernance.com/post/microsoft-corporation-2020-virtual-annual-meeting [https://perma.cc/5NQ4-D8FN] (describing the practices employed at the Microsoft annual meeting); Letter from Amy Borrus, Council of Institutional Invs., Josh Zinner, Interfaith Ctr. on Corp. Resp., Lisa Wall, U.S. SIF: The F. for Sustainable & Responsibly Inv., Sanford Lewis, S'holder Rts. Grp. & Mindy Lubber, Ceres Inv. Network on Climate Risk, to Jay Clayton, Chairman, & William Hinman, Dir., Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, at 5 (July 6, 2020), https://www.cii.org/files/issues_and_advocacy/correspondence/2020/Virtual%20Meetings%20Letter%20_%20Corrected%20Copy_.pdf [https://perma.cc/K2JU-R6RQ] (supporting the practice of webcasting annual meetings to the public and "recommend[ing] that the SEC require or encourage all companies" to continue to do so).

[295] *See* Fontenot, *supra* note 23, at 43 (noting Pfizer Inc., S&T Bancorp Inc., AmeriServ Financial Inc., and Johnson & Johnson as examples of companies that have made their meetings available not just to shareholders, but to anyone interested in attending); Gadinis & Miazad, *supra* note 3, at 1411 ("Stakeholders such as employees, citizens' groups and NGOs, scientific experts, and government authorities are uniquely sensitive to the implications of board choices on their constituencies and ideally placed to register potential concerns.").

[296] *See supra* notes 236–249 and accompanying text (relaying data on shareholder turnout and voting).

one event where all shareholders are treated equally, engage with their management, and, if they so wish, feel included in the corporation in which they are invested. Establishing a sentiment of inclusion among shareholders can then carry over into stakeholder outreach and engagement both at the annual meeting and beyond.

B. The Fallacy of the Virtual Meeting?

Granted, virtual meetings can and have gone wrong. Instead of empowering all shareholders, they may disenfranchise some. Indeed, in today's era of shareholder engagement and activism, the governance repercussions associated with moving from in-person to virtual annual meetings are palatable. Postmortem analysis of the 2020 annual meeting season flagged issues with access, format, and participation at virtual-only meetings. These problems left many believing that "shareholder participation . . . had been either inadvertently overlooked or intentionally marginalized.[297] SEC letters reveal institutional investors and shareholder rights groups expressed the concerns "that too often, virtual meeting practices may be falling short."[298] The groups further contended that the 2020 season would set a "poor precedent" for the conduct of shareholder meetings going forward.[299]

Some of the shortcomings of virtual meetings are a byproduct of a swift move to the virtual model and the growing pains that accompany any sudden, large-scale change. Indeed, the pandemic exposed that many companies were technologically unprepared.[300] Throughout 2020, there was widespread uncertainty and confusion from managers and shareholders alike as to how to navigate a virtual platform.[301] Fortunately, some of these problems can be—and are being—easily addressed through proper planning and communication to participants.[302] Other issues, however, deserve more attention as they implicate core facets of the annual meeting: access, voting rights, and discourse.[303]

---

[297] REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 7.

[298] Letter from Kenneth A. Bertsch, Exec. Dir., & Jeffrey P. Mahoney, Gen. Couns., Council of Institutional Invs., to Anne Sheehan, Chair, Inv. Advisory Comm., U.S. Sec. & Exch. Comm'n, at 4 (May 3, 2020) [https://www.cii.org/files/issues_and_advocacy/correspondence/2020/2020%2005%2003%20IAC%20letter.pdf [https://perma.cc/8RJN-L8QL].

[299] Letter from Amy Borrus et al., *supra* note 294, at 4.

[300] *See* Lepczyk & Edgerton, *supra* note 257 (describing "technological preparedness [as] a weakness of many organizations").

[301] *See* Chia, *supra* note 22 (summarizing the "uneven experience[s]" shareholders had gaining access to virtual meetings). Similar technology-related challenges were cited in connection with the sudden shift to virtual board meetings. *See* Fontenot, *supra* note 23, at 48 (describing the technical difficulties that may occur during a remote annual meeting).

[302] *See, e.g.*, Chia, *supra* note 22 (providing best practices for companies seeking to hold a virtual-only shareholder meeting). Two examples of successful virtual annual meetings are P&G and Microsoft. Holding their meetings at the end of 2020 provided these companies the ability to learn from

The two most salient concerns impacting corporate governance and shareholder democracy arising from 2020's virtual meetings relate to: (1) shareholders gaining access to the meeting and voting; and (2) shareholder-management engagement, in particular during the Q&A portions of meetings. With respect to access and voting, a key challenge for virtual meetings was, and continues to be, how to navigate "the complex system by which equity securities are held and voted in the U.S.—commonly referred to as 'proxy plumbing.'"[304] With a huge number of shares in the United States being held in street name, ensuring easy access for all shareholders is vital to the integrity of the meeting and corporate governance.[305]

One of the biggest concerns with virtual meetings—especially acute in audio-only meetings—is the lack of face-to-face accountability.[306] Shareholders lack the opportunity to confront management in person and ask them tough questions. For retail shareholders, this is particularly problematic as the annual

---

issues during the regular proxy season and sufficient time to engage in the planning and communication necessary to host a robust meeting. *See* Doug Chia, *The Procter & Gamble Company 2020 (Virtual) Annual Meeting*, SOUNDBOARD GOVERNANCE, https://www.soundboardgovernance.com/post/the-procter-gamble-company-2020-virtual-annual-meeting [https://perma.cc/N22B-5KS2] (Oct. 14, 2021) (characterizing the Procter & Gamble virtual shareholder meeting as "one of the best . . . this year"); Chia, *supra* note 294 (noting Microsoft adopted many of the best practices for virtual meetings learned earlier in the year); *see also* REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 17–19 (reporting on improvements that virtual shareholder meeting service providers will have for virtual meetings going forward).

[303] *See* Goldfarb, *supra* note 252 (discussing concerns about alienating shareholders and "the mechanics of conducting a proxy vote" via virtual meetings); Letter from Kenneth Bertsch & Jeffrey Mahoney, *supra* note 298, at 3–4 (emphasizing suspicion of virtual shareholder meetings).

[304] REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 3; *see* Letter from Amy Borrus et al., *supra* note 294, at 2–4 (recounting the failure of virtual meetings to allow shareholders adequate participation and engagement with management). Notably, this issue is not unique to virtual meetings; the problems stemming from "proxy plumbing" pervade many facets of corporate governance and securities regulation. Adding virtual meeting access and voting for beneficial owners to the list of issues may, however, renew and reinvigorate discussion regarding overhauling the system. *See* REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 3 (arguing "proxy plumbing" reform is necessary for successful shareholder voting during virtual annual meetings).

[305] *See* REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 10 (advocating for companies to "clearly distinguish . . . the different procedures for shareholders of record [from those] holding shares in 'street name' (*i.e.*, beneficial shareholders)"); *see also* Letter from Amy Borrus et al., *supra* note 294, at 4 (arguing rules regarding beneficial holders hamper their ability to participate in virtual shareholder meetings).

[306] *See, e.g.*, Fontenot, *supra* note 23, at 45 ("One central criticism raised against virtual meetings by institutional investors is that the elimination of shareholders' abilities to meet with directors and express their concerns face-to-face reduces the effectiveness of their participation."); Haas & Brewer, *supra* note 113 (citing shareholder's desire to "look [management] in the eye"). Soundboard Governance reported that "almost all [virtual-only shareholder meetings during the spring 2020 season] were audio-only." Chia, *supra* note 22; *see also* *Virtual Shareholder Meetings 2019 Facts and Figures*, *supra* note 179 (reporting that 97% of the virtual-only meetings it hosted included audio and only 3% included video).

meeting is the only chance to engage openly with the board and officers.[307] Moreover, a virtual format provides management near complete control over interactions at the meeting in a way that is not possible in person. Fears of management manipulation range from "cherry-pick[ing]" questions to rephrasing shareholder questions to be more management-friendly.[308] Some of these concerns came to fruition during the 2020 annual meeting season. As Soundboard Governance reported based on its observations of virtual meetings: "[a]sking questions was easy; getting answers was not."[309] Perhaps even more concerning, however, was the phenomenon of pre-recorded virtual shareholder meetings observed during the 2021 annual meeting season. In contrast to an in-person meeting, at a virtual meeting a company can play an audio or video recording of people who appear to be speaking in real-time, but who are actually not, without shareholders being aware. This practice raises several concerns, not the least of which is whether a pre-recorded meeting even satisfies state law's annual meeting requirement.[310]

Critics have also argued that the lack of interpersonal interactions at virtual meetings is of particular significance in cases of contested meetings where dissident shareholders seek to replace members of the board and activist investors present shareholder proposals. These types of interactions become far less impactful in a virtual setting.[311] Indeed, engaged managers and shareholder activists squaring off face-to-face at the annual meeting is credited as "giv[ing] true vitality to the concept of corporate democracy."[312] The virtual meetings of 2020, however, where "almost no companies have shown the whole board of directors on the screen" and shareholders were not visible, came across as "impersonal" and "sterilized."[313]

Moreover, the lack of shareholder-to-shareholder interaction has been flagged as a shortcoming of the recent spate of virtual meetings,[314] precluding

[307] Fontenot, *supra* note 23, at 42.

[308] Haas & Brewer, *supra* note 113; *see* Braverman, *supra* note 218, at 48 (noting that "[s]ome shareholder activists . . . have opposed virtual-only meetings, arguing that they reduce the visibility of shareholder proposals" and often screen questions).

[309] Chia, *supra* note 22.

[310] Doug Chia, *If an Annual Meeting Takes Place in the Woods . . .*, SOUNDBOARD GOVERNANCE, https://www.soundboardgovernance.com/post/if-an-annual-meeting-takes-place-in-the-woods [https://perma.cc/3EBR-98MN] (June 22, 2021).

[311] *See* Fairfax, *supra* note 23, at 1393–94 ("Shareholder activists also contend that remote-only meetings reduce their ability to sway voters and management.").

[312] Cunningham & Cuba, *supra* note 107, at 16 (quoting notable corporate gadflies John and Lewis Gilbert).

[313] Chia, *supra* note 216; *see* Klein, *supra* note 275 ("[T]his virtual text format effectively sterilised shareholder participation in meetings . . . .").

[314] *See, e.g.*, Letter from Kenneth Bertsch & Jeffrey Mahoney, *supra* note 298, at 3–5 (expressing opposition to virtual meetings, citing a lack of engagement by shareholders); *see also* Fairfax, *supra*

the type of horizontal democracy that is so important for the annual meeting. Additionally, the inability to see the questions being asked in real time or who was asking them contributed to a lack of transparency and undermined the collective discourse element of the meeting. In sum, fears that virtual meetings will become one-sided webinars where shareholders watch talking heads with little opportunity for audience input are very real and require deliberate attention.

Finally, though not present during the 2020 or 2021 annual meeting seasons, cybersecurity concerns are clearly implicated any time a corporation seeks to move its operations online.[315] Not only are virtual meetings vulnerable to cyber-attacks and data security concerns, corporate and social activists can more readily hijack them.[316] In the areas of both administrative and constitutional law, concerns about hijacked meetings and undermined institutions have been raised in response to calls for increasing access and participation.[317] Although in those contexts such concerns may be particularly salient, we believe that in the corporate context active participation in shareholder meetings poses less risk of these same pitfalls occurring.

C. Virtual Meeting 2.0

Despite these criticisms, we believe that the promise of virtual meetings cannot be understated. One cannot view the virtual meeting as the saving grace of a corporation's governance nor as the only channel for engagement and discourse. Shareholder meetings, annual and special, are part of an ecosystem of governance. Corporate directors and managers engage with large investors and proxy advisors on a regular basis. Activist shareholders mount proxy fights and continue to submit shareholder proposals regardless of the format of a meeting.

In recent years, we have seen the integration of technology enhance these traditional channels of governance as well as open new avenues for engage-

---

note 23, at 1393–94 (discussing the possibility that virtual-only meetings will decrease shareholder interaction among themselves and with management).

[315] *See* Karl John Ege, *The Business Lawyer: 75 Years of Serving the Profession—Reflections*, 75 BUS. LAW. 2373, 2408 (2020) ("The new, technology dependent, business environment found itself vulnerable to cyber-attack, with data breaches exposing to the public critical information about businesses and their customers.").

[316] *See* Lin, *supra* note 276, at 1558–73 (discussing rising social engagement and activism in the modern corporation).

[317] *See, e.g.*, Richard H. Pildes, *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government*, 124 YALE L.J. 804, 827 (2014) ("Unless we attend to the ways in which political power is actually mobilized . . . then policy proposals based on . . . non-grounded abstract democratic ideals such as 'participation' or 'equality,' can perversely contribute to undermining our institutional capacity to govern.").

ment.[318] Harnessing technology to further meaningful shareholder democracy and stakeholder engagement goals is a benefit we cannot ignore. Reviving the annual meeting may reduce the rational apathy that retail investors currently exhibit, making them more invested in, and willing to voice their opinions regarding, the companies in which they own shares. Similarly, mutual fund and pension fund investors may be more willing to engage with their funds regarding key social and governance topics, allowing these changes to cascade to the companies themselves. From an ESG perspective, these would all be positive developments that would bolster efforts to generate socially responsible corporate practices, policies, and decision-making. Moreover, virtual annual meetings can serve as a foundation from which companies can use technology to build out other means of engagement. For this reason, focused attention on the virtual meeting and how to facilitate optimal types of interaction is a valuable endeavor.

Before proceeding, it is important to acknowledge that technology alone cannot fix the perceived—and real—shortcomings of corporate governance. One hurdle to achieving the aspired reform discussed in this Article is the well-documented "path dependency" of corporate practice.[319] Absent an acute and sustained shock to the system, corporate actors are heavily entrenched in their roles, and rituals such as those surrounding the annual meeting are difficult to change. By all accounts, COVID-19 has been a sufficient shock to effectuate enduring changes to corporate behavior.[320] In response to the pandemic, corporate America has seen widespread and sustained use of technology to hold annual meetings. In contrast to the 2020 annual meeting season, shareholder and

---

[318] *See* Lin, *supra* note 276, at 1544 (citing advances in technology as "both amplify[ying] traditional methods, and introduce[ing] new methods, of [shareholder] activism"). Two examples illustrate the desire for broader engagement by companies and shareholders as well the ability of technology to facilitate such engagement. First is the story of Say, a New York fintech startup. Recently, Say unveiled a digital platform to provide retail shareholders the ability to connect with companies in a variety of contexts, such as "on an earnings conference call, during a product launch or at an analyst meeting." Fuscaldo, *supra* note 289. In explaining the motivation for Say, founder Alex Lebow explained, "If you look at the system there's a huge opportunity to bring democracy back to capitalism and bring people back in the process the way it was intended." *Id.* The second example involves calls for investment management behemoth BlackRock to provide pass-through voting to its investors. John Foley, *Breakingviews—BlackRock Stretch Goal: Real Shareholder Democracy*, REUTERS (Dec. 29, 2020), https://www.reuters.com/article/amp/idUSKBN2931C7 [https://perma.cc/6ZPG-G4ED] Noting that prior efforts for pass-through voting were found "unworkable," developments in technology—especially in light of BlackRock's software and technology acquisitions—have made "connecting investors more directly to the companies they own" a real possibility. *Id.* Such an achievement, some maintain, would "introduce[e] real shareholder democracy" to investing. *Id.*

[319] *See generally* Claire A. Hill, *Why Contracts Are Written in "Legalese,"* 77 CHI.-KENT L. REV. 59 (2001) (discussing the corporate lawyer's reliance on the "form" as resulting in a resistance to improvement and ultimately, an inferior work product).

[320] *See* Gregory, *supra* note 275.

advisory firm expectations for meaningful, engaging virtual meetings in 2021 were high.[321] In response, virtual meeting platforms and companies were, and still are, investing in technological infrastructure.[322] And corporate boards, advisors, and shareholders are engaged in more thoughtful, purposeful planning of their meetings.[323] Although the 2021 annual meetings did not incorporate as much innovative use of technology as hoped, there were noticeable improvements to the virtual platforms including for meeting access and voting capabilities.[324] Thus, virtual meetings appear positioned to emerge from the pandemic as part of lasting corporate change.

In addition, whether virtual meetings become the saving grace of shareholder democracy and stakeholder governance on the one hand, or sink like the Titanic on the other, will depend on the details. As explained by the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings: "technology alone will not reinvent annual meetings in ways that companies and shareholders find valuable. The value will be realized only if companies are willing to allocate resources to make their VSMs substantive and mutually beneficial experiences."[325] Although it may be unfair to judge the future of virtual meetings based solely on problems that arose during the 2020 season given that those meetings were the result of corporations in crisis mode,[326] the

[321] *See* REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 2 ("The aspiration of the 2020 Working Group is for companies . . . to conduct VSMs in ways that replicate the in-person annual meeting experience for the shareholder as closely as possible in order to foster effective corporate governance."); GLASS LEWIS & CO., 2021 PROXY PAPER GUIDELINES: AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE UNITED STATES 4 (2021), https://www.glasslewis.com/wp-content/uploads/2020/11/US-Voting-Guidelines-GL.pdf [https://perma.cc/J4W3-9Q3F] (announcing the removal of its "temporary exception to [its] policy on virtual shareholder meeting disclosure" for 2020, and requiring "companies choosing to hold their meeting in a virtual-only format, [to make] robust disclosure in the company's proxy statement addressing the ability of shareholders to participate in the meeting"); INSTITUTIONAL S'HOLDER SERVS., AMERICAS PROXY VOTING GUIDELINES UPDATES FOR 2021, at 22 (2020), https://www.issgovernance.com/file/policy/active/updates/Americas-Policy-Updates.pdf [https://perma.cc/PU7X-VPPZ] (generally recommending a "vote for management proposals allowing for [virtual meetings] so long as they do not preclude in-person meetings").

[322] *See* Gerber et al., *supra* note 21 (reporting that virtual meeting platforms are advancing to address investor and company feedback and needs); Chia, *supra* note 216 (reporting that Broadridge "will continue to invest in developing [its] VSM platform . . . [to] enhance the functionality of the product for users during the meetings").

[323] *See, e.g.*, Chia, *supra* note 294 (noting proper planning led to a successful virtual shareholder meeting for Microsoft); Chia, *supra* note 302 (same for P&G).

[324] *See* Doug Chia, *The Question I Asked at This Year's Virtual Shareholder Meetings*, SOUNDBOARD GOVERNANCE (June 23, 2021), https://www.soundboardgovernance.com/post/the-question-i-asked-at-this-year-s-virtual-shareholder-meetings [https://perma.cc/67KP-SJGC] (noting little had changed in terms of virtual annual meetings between 2020 and 2021).

[325] REPORT OF THE 2020 WORKING GROUP, *supra* note 213, at 19.

[326] *See* Chia, *supra* note 22 (noting the "very short time [companies] had to [address] . . . the legal . . . regulatory . . . technology . . . and logistical requirements" to switch to virtual meetings).

concerns raised in the wake of 2020 and 2021 are real and must be thoughtfully addressed. Discussions among management, shareholders, and other stakeholder groups coupled with a deliberate design of the virtual meeting are necessary to unlock the potential of annual meetings.

So, what should virtual meetings aspire to look like? Even though the exact recipe for a successful virtual model should be company-dependent and will need to be perfected over time, it is clear that some key ingredients are necessary.[327] First, virtual meetings must allow for meaningful participation. This means that a video feed should be the default method of interface, thereby allowing shareholders to see and hear the management team. It is also clear that hybrid formats may allow companies and shareholders to have their cake and eat it too by providing physical interaction to those interested while also allowing for virtual engagement.

Second, these meetings must be structured in a manner that makes participation seamless and easy. Requiring shareholders to go through red tape or limiting their opportunity to engage with management and each other without good reason is counterproductive. Relatedly, clear directions to shareholders well in advance of the meeting regarding how to access and use the virtual meeting platform are imperative.

Third, technology can allow for virtual meetings to incorporate social media tools like live chat, hand raising, and instant polling to make the meetings less mundane and more interactive. These features embrace the nature of annual meetings rather that fight it. It would allow for various fora for engagement and could lure in many shareholders who would otherwise refrain from participating. In addition, companies should incorporate several forms of participation at the meeting when possible. For example, at both its 2020 and 2021 annual meetings, Visa "allowed shareholders to call in with questions by phone."[328]

Fourth, companies should make voting results and the meeting itself available for later review. Recently, Microsoft Corporation posted the voting results, Q&A, replay, and transcript of its annual meeting on its investor webpage.[329] Allowing public viewing of annual meeting proceedings provides needed transparency to corporate operations.

---

[327] *See, e.g.*, *id.* (providing recommended best practices for virtual shareholder meetings); Sheehan & Stuckey, *supra* note 215 (same). For more granular-level recommendations on virtual meeting operations, see generally REPORT OF THE 2020 WORKING GROUP, *supra* note 213.

[328] Doug Chia, *Virtual Annual Meetings: 2021 Pre-Season Special!*, SOUNDBOARD GOVERNANCE, https://www.soundboardgovernance.com/post/virtual-annual-meetings-2021-pre-season-special [https://perma.cc/BD5J-J3X2] (Mar. 27, 2021).

[329] *See Microsoft Corporation 2020 Final Proxy Voting Results*, MICROSOFT (Nov. 30, 2021), https://www.microsoft.com/en-us/Investor/corporate-governance/votingresults.aspx [https://perma.cc/5YAU-3N4S] (providing several metrics and information from the annual meeting).

Keeping in mind these recommendations, the closing question we address is whether there can be the type of management, shareholder, and market buy-in necessary to transform the annual meeting experience. The momentum behind virtual meetings makes investing in virtual meeting infrastructure a worthwhile proposition. Better technological platforms and tools to host virtual meetings are already in demand and in development.[330] In contrast to spring 2020, management and their counsel have more time to plan and structure the process for a virtual meeting. Likewise, shareholders have more time to plan their method and level of participation, obtain any necessary documentation for virtual participation, and take care of any registration requirements.

Importantly, companies themselves should have an interest in improved engagement of shareholders and other stakeholders, one that a more meaningful (and dare we say fun) annual meeting can spark. For example, previous research has shown that some changes to corporate policies fail due to insufficient participation rates, a phenomenon Professor Scott Hirst has termed as "frozen charters."[331] Increasing retail investor voting through virtual meetings has the possibility of "defrosting" some of these charters—making changes that are beneficial to all. Moreover, the inclusion of non-shareholder constituents in annual meeting deliberations opens important channels of communication with a largely untapped group of participants who are intimately involved with the enterprise.[332] Facilitating a broad discussion of issues that involve a diverse array of perspectives can help companies identify and manage risks to the business.

Finally, we believe that courts and proxy advisors can play an important role moving forward through favorable treatment of virtual and hybrid meetings that are structured to improve engagement rather than detract from it. Courts should provide more latitude to companies that conduct meetings in a manner that enhances shareholder participation and renders shareholder voting as more informed.[333] On the other hand, meetings that are designed to suppress shareholder input or voice should be subject to stricter judicial scrutiny, along

---

[330] *See* Igor Kirman, Sabastian Niles & Natalie Wong, *Lessons from the Future—The First Contested Virtual Annual Meeting*, HARV. L. SCH. F. ON CORP. GOVERNANCE (May 9, 2020), https://corpgov.law.harvard.edu/2020/05/09/lessons-from-the-future-the-first-contested-virtual-annual-meeting/ [https://perma.cc/9LJC-B83B] (suggesting technological improvements that may add to the success of virtual annual meetings).

[331] Scott Hirst, *Frozen Charters*, 34 YALE J. ON REGUL. 91, 93 (2017).

[332] *See* Gadinis & Miazad, *supra* note 3, at 1465 (noting that "outreach to stakeholders is an essential step of the ESG information-gathering process").

[333] Kristin Davis & Michael Bergmann, *2020 Compensation Committee Handbook*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Feb. 3, 2020), https://corpgov.law.harvard.edu/2020/02/03/2020-compensation-committee-handbook/ [https://perma.cc/E6NN-CC2V] (explaining that courts apply the deferential business judgment rule where directors act "on an informed basis [and] in good-faith").

the lines Delaware courts established in the famous case *Blasius Industries, Inc. v. Atlas Corp.*[334]

Proxy advisors, too, should incentivize companies to improve their shareholder democracy with clear policies rewarding boards that creatively enrich their annual meetings and make them more accessible, and penalizing boards who utilize the virtual meeting as a shield. In addition, experimentation with emerging technologies, when done with an eye toward enhancing discourse, should be encouraged and afforded deference by focusing on long-term gains as opposed to short-term failures. Similarly, large institutional investors should encourage companies to have meaningful discussions not only behind closed doors, but rather in the open forum of the annual meeting. This would provide their beneficiaries a closer look at the companies in which they have a financial and social stake.

CONCLUSION

Annual meetings are a relic of an age where we conducted business face-to-face and voted in person, and corporations' shareholders were often confined to small geographic areas. But we no longer conduct our business, corporate or personal, in person. Technology is already omnipresent in corporate America. From trading to voting, the last two decades demonstrate the advantages that improved technology can have for corporate law.

It is time for annual meetings to catch up with the transformation of our society and technology, reclaiming their important traditional goals while at the same time addressing new developments in governance such as stakeholderism and ESG. Through proxy voting and e-proxies, the outcome-based portion of the annual meeting—voting results—has caught up with the changing times, at least to a certain extent. But the shareholder democracy aspect of annual meetings has been left behind. Virtual meetings offer an opportunity to recouple the voting side of the annual meeting with the engagement aspect of these events. Like many activities that we used to do in person but were forced to adapt due to COVID-19, annual meetings have also transformed to a virtual setting. In all of these cases, we have now seen that it is possible not only to utilize technology but also to embrace it. Virtual meetings are a perfect example of the prospects of embracing it.

---

334 564 A.2d 651, 668 (Del. Ch. 1988).

APPENDIX

Appendix A : Impact of State Executive Order on Annual Shareholder Meetings

State	Options available for shareholder meetings under state law before COVID-19	Restrictions on virtual meetings?	Effective date of mandatory stay-at-home order	Did the stay-at-home order or later executive order have an exemption for shareholder meetings?	If yes, what is the exemption?	Adopted permanent legislation to allow for virtual or hybrid meetings after the 2020 Annual Meeting Season	Options available for shareholder meetings for the 2021 Annual Meeting Season
Alabama	Virtual	C	04/04/20	Yes	H		Virtual
Alaska	In-Person only	A	03/28/20	Yes	H, M		In-Person only
Arizona	Virtual	C	03/31/20	No	N/A		Virtual
Arkansas	In-Person only	A	N/A	Yes	H	X	Virtual
California	Virtual	C	03/19/20	Yes	H, I		Virtual
Colorado	Virtual	C	03/26/20	No	N/A		Virtual
Connecticut	Hybrid	G	03/23/20	Yes	H, I	X	Virtual
Delaware	Virtual	C	03/24/20	Yes	H, I, J		Virtual
Florida	Virtual	C	04/03/20	No	N/A		Virtual
Georgia	In-Person only	A	04/03/20	Yes	H	X	Virtual
Hawaii	Virtual	C	03/25/20	No	N/A		Virtual
Idaho	Hybrid	G	03/25/20	No	N/A		Hybrid
Illinois	Hybrid	E	03/21/20	No	N/A	Pending	Hybrid
Indiana	Virtual	C	03/24/20	Yes	H, J		Virtual
Iowa	Hybrid	F	N/A	Yes	H		Hybrid
Kansas	Virtual	C	03/30/20	No	N/A		Virtual
Kentucky	Virtual	C	03/26/20	No	N/A		Virtual
Louisiana	Hybrid	G	03/23/20	Yes	H	X	Virtual
Maine	Hybrid	G	04/02/20	No	N/A		Hybrid
Maryland	Virtual	C	03/30/20	Yes	H, I, J		Virtual
Massachusetts	Hybrid	C, D	03/24/20	Yes	H, J	Pending	Hybrid
Michigan	Virtual	E	03/24/20	Yes	L		Virtual
Minnesota	Virtual	C, M	03/27/20	Yes	H, I, J		Virtual
Mississippi	Hybrid	G	04/03/20	Yes	H		Hybrid
Missouri	Virtual	C	04/06/20	No	N/A		Virtual
Montana	Hybrid	G	03/28/20	No	N/A	X	Hybrid
Nebraska	Hybrid	G	N/A	Yes	L		Hybrid
Nevada	Virtual	E	04/01/20	No	N/A		Virtual
New Hampshire	Hybrid	G	03/27/20	No	N/A		Hybrid
New Jersey	Hybrid	G	03/21/20	No	H	X	Virtual
New Mexico	In-Person only	A	03/24/20	Yes	H, K		In-Person only
New York	Hybrid	G	03/22/20	Yes	H		Hybrid
North Carolina	Hybrid	G	03/30/20	Yes	H		Hybrid
North Dakota	Virtual	B, C, M	N/A	Yes	I		Virtual
Ohio	Virtual	C, M	03/23/20	No	N/A		Virtual
Oklahoma	Virtual	C	N/A	N/A	N/A		Virtual
Oregon	Virtual	C	03/23/20	No	N/A		Virtual
Pennsylvania	Virtual	B	04/01/20	No	N/A		Virtual
Rhode Island	Virtual	C	03/28/20	Yes	I		Virtual
South Carolina	In-Person only	A	04/07/20	No	N/A		In-Person only
South Dakota	In-Person only	A	N/A	N/A	N/A	X	Virtual
Tennessee	Virtual	B, E	03/31/20	Yes	I		Virtual
Texas	Virtual	B	04/02/20	No	N/A		Virtual
Utah	Virtual	B	N/A	N/A	N/A		Virtual
Vermont	Virtual	B	03/25/20	No	N/A		Virtual
Virginia	Virtual	C, E	03/30/20	No	N/A		Virtual
Washington	Virtual	C	03/23/20	No	N/A		Virtual
West Virginia	Virtual	M	03/24/20	No	N/A		Virtual
Wisconsin	Virtual	C, M	03/25/20	No	N/A		Virtual
Wyoming	Virtual	C	03/28/20	No	N/A		Virtual

Key	
A	Only in-person shareholder meetings are allowed under state law.
B	No restrictions for virtual shareholder meetings.
C	Director approval is required to hold virtual only shareholder meetings.
D	Virtual meetings are allowed for private companies only under state law.
E	Virtual meetings are allowed if they are not specifically prohibited by the articles of incorporation.
F	Select virtual participation is allowed for individuals who cannot attend in-person.
G	Shareholders may participate in remote communication to the extent the board authorizes participation for that series or class.
H	Virtual shareholder meetings were temporarily allowed during the 2020 Proxy Season.
I	Existing notice requirements or barriers for virtual meetings have been temporarily lifted or changed during the 2020 Proxy Season.
J	Previously scheduled meetings may be postponed to another date or time.
K	In-Person meetings are limited to 5 people maximum.
L	Insurance companies are encouraged to reschedule shareholder meetings or have them virtually.
M	Virtual meetings must be authorized in the articles of incorporation or bylaws