

# Client Alert

May 2020

## Investor Views on Virtual Shareholder Meetings During the COVID-19 Pandemic

On May 3, 2020, the Council of Institutional Investors (the CII) sent a [letter](#) to the US Security and Exchange Commission's Investor Advisory Committee regarding virtual shareholder meetings in the context of the COVID-19 pandemic. The CII acknowledged that virtual-only shareholder meetings have become imperative as a result of the pandemic, but it noted several problems its members have experienced and proposed potential solutions for companies to consider.

The CII believes that virtual shareholder meetings should “facilitate the opportunity for remote attendees to participate in the meeting to the same degree as in-person attendees,” but that some public companies are failing to achieve that standard.<sup>1</sup> Although the CII noted that some issues likely are attributable to the short time periods in which companies were forced to implement virtual-only meetings, the CII identified several problems its members have encountered while attempting to participate in annual meetings held early in the 2020 proxy season, including:

- an inability to ask questions during the meeting, including because one virtual meeting platform provider was requiring beneficial owners to obtain a legal proxy in order to ask questions;
- difficulties logging in to the virtual meeting platform, including because control numbers provided by companies were not working correctly;
- a lack of transparency regarding how the company selected questions to answer (i.e., a concern that the company was “cherry-picking” questions); and
- requirements to preregister in order to attend the meeting that were not clearly communicated.

The CII also noted that some companies may not be allocating sufficient time to answer shareholder questions. Although that criticism can apply to in-person meetings as well, in-person meetings generally do not allow companies to select which shareholder questions to answer. As a result, a short question-and-answer period (particularly if combined with a lack of transparency into how questions are selected) may cause companies to appear to be dodging questions that would have been answered at an in-person meeting.

In a separate publication,<sup>2</sup> the CII noted some concerns relating to Rule 14-8 proposals. It reported instances when:

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<sup>1</sup> The CII has recognized that companies may need to hold virtual-only shareholder meetings in light of the COVID-19 pandemic, but it generally believes that companies should hold “hybrid” in-person/virtual shareholder meetings rather than virtual-only shareholder meetings.

<sup>2</sup> CII, Weekly Governance Alert Vol. 25, Issue 17, April 30, 2020, available at <https://www.corpgov.net/2020/05/virtual-meeting-problems-highlighted-by-cii/>.

- a Rule 14a-8 proponent was required to submit a prerecorded supporting statement rather than having the option to address the meeting contemporaneously via telephone; and
- separate dial-in numbers for Rule 14a-8 proponents and other shareholders prevented the Rule 14a-8 proponent from asking questions during the general shareholder question-and-answer period.

As potential solutions to the problems it identified, the CII made recommendations for public companies holding virtual-only shareholder meetings, including to:

- make meetings publicly accessible (i.e., without a login requiring shareholder credentials);
- use a video rather than audio-only format; and
- provide in their annual proxy statement an email address for corporate governance and/or board contacts.

In general, the CII also urged companies to follow the best practices identified in its “Build a Better Meeting” [publication](#) and a [white paper](#) by the Best Practice Committee for Shareowner Participation in Virtual Shareholder Meetings.

As we have previously [discussed](#), there are numerous considerations for public companies in deciding whether to hold a virtual-only shareholder meeting and how certain matters—most notably shareholder questions—will be handled. Companies may reasonably reach different conclusions regarding the appropriate format for their respective virtual-only shareholder meetings, but we believe it is important to remain mindful of the views of institutional investors.

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