

# Podcast: Virtual shareholder meetings

The following is a transcript of an episode of the Freshfields podcast looking at virtual shareholder meetings, which forms part of our corporate governance capsule collection.

**| Elizabeth K. Bieber:** Hi listeners. Welcome to episode 2 of the corporate governance capsule collection with Pam Marcogliese and Leza Bieber. Today we're going to talk about a topic that is apropos for 2020 and looking ahead to 2021: virtual shareholder meetings. Pam and I have been talking about virtual shareholder meetings for a few years now while watching the trends change on the topic, and one thing is for certain: nobody predicted 2020 would be the year that virtual shareholder meetings exploded, and, even for those who were waiting for the tipping point to occur, it likely would not have been on the rapid timeline we saw. What we *did* see really evidences the fact that, coming into 2020, we weren't ready to really adopt virtual shareholder meetings in the middle of proxy season, and with the scale we saw. But Pam, now that we've been through it, what do you think some of the big takeaways are?

**| Pamela L. Marcogliese:** Well, I think the first big takeaway is that it worked, or at least it mostly worked. Companies were able to pull off their shareholder meetings virtually, largely all the right proposals got voted on, most of the people who were supposed to present them were able to present them, and so the construct of it works.

I think the other big takeaway is that people realized that it could also be a very effective way of running a shareholder meeting. There are a number of companies out there for whom attendance at shareholder meetings is pretty low, and this can be a much more efficient way of running the shareholder meeting and of communicating with shareholders.

But I think the other big takeaway is that there are still some logistical issues that need to be tended to. It wasn't perfect. There were some bound with platform issues which I think can much more easily be resolved, but there were also some process issues in terms of understanding how shareholder proposals get presented and understanding whether and how shareholders can ask questions live at the meeting, understanding the process around answering those questions and whether all questions get answered live, whether some questions get answered after the meeting in writing. So, understanding all of that process is really important.

And then the final piece which I think was most challenging and which highlighted just how complicated it is to understand how shares are held and then voted in this country is the process of control numbers. You and I talk to a lot of clients about trying to understand what the access mechanic would be to get into the shareholder meeting and whether you had, as beneficial owner of shares, the right control number that not only let you into the meeting but also allowed you to then talk at the meeting or vote at the meeting, and I think folks are going to need to some time trying to streamline that process because I think we heard a number of stories of shareholders not having been able to access the meeting because of those control number issues.

And so that was a layer of complexity which, done on a very short timeframe because this sort of happened all very quickly and caught people by surprise, was a little bit unfortunate.

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## Speakers

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| **EKB:** And how much of that do you think is in the company's control and how much do you think they'll have to press on their vendors in that respect?

| **PLM:** Now that they've gone through this I think companies (a) have learned a lot but I also think that the transfer agent and the virtual meeting platform providers have also learned a lot and so I think this is naturally going to be improved for future proxy seasons just because of all the hard work that was done this year. But I think that the one big lesson from that is to start early on this next year and to make sure that it is all lined up so for companies that will continue the virtual meeting trend I think putting this sort of higher on the to-do list will serve people well.

| **EKB:** You hit upon a really interesting point and that is, you know, are we going back to this? Do you think that there's been a groundswell, now that we know it works, now that we've worked out some of the kinks, now that I think in some ways companies have found that they are really able to show their culture and their company personalities, even through a virtual platform, and it comes across. Do you think we're ever going back?

| **PLM:** I think that there are some companies that are planning to go back to in-person meetings and in fact some companies even announced that intention as part of their announcement to switching to a virtual shareholder meeting for 2020. Assuming, however, that it is possible to do in-person shareholder meetings by the next proxy season, I suspect that there's nonetheless going to be a large number of companies who will press on with virtual meeting route. I think the focus will be, for those companies, on how to improve the process. I think, going back to what I started talking about at the outset, I think there were a number of issues that made the process less than ideal from the investors' perspective and I suspect that companies have been receiving feedback from their shareholders on how to make the process better, and so I think that if some of those more logistical issues are addressed, I suspect that both companies and investors will be very happy to continue having shareholder meetings going forward.

So, I can't tell whether it will be a complete shift overnight, but I think that just in increasing numbers we will continue to see more and more companies do virtual shareholder meetings.

| **EKB:** I think that's right and I think that there are probably some companies that are in a little bit of a sticky situation in some ways because they liked the virtual shareholder meeting format, they'd be willing to continue, but, as we've discussed, there are a number of investors who don't like the format and have been pretty vocal in the past about their feelings and in fact as companies were switching to a virtual format for this year said, you're really only getting a one year pass from us on this and we're only going to give you the pass if you commit publicly that you're going to go back next year. So what do companies do about, the investors, well first I guess the investors who have really dug in and said we don't like this and haven't reversed course even as we've found the proof that it works and then, a company who has already said well, we got the pass because we said we'd go back to in-person, but really like the virtual meeting. What can they do, and can they credibly move forward on a virtual platform next year?

| **PLM:** I think this one is going to come down to communication. I think that companies should really just take to heart the feedback they will continue to get from their shareholders in terms of how the annual meeting went, and that will give them a good steer. I think for those shareholders that expressed the view that they were not in favor of it, I guess the question that I have in my mind is whether they reverse themselves depending on how their experience went. That may have been to a certain extent a reflection of historical views and historical policies but having lived through it I wouldn't be surprised if some of them relaxed those views as well. I mean we certainly saw some of that relaxation with the proxy advisory firms who, some of them were not particularly in favor of this and certainly allowed it for this year, having seen that there weren't any catastrophic failures on this front they may be inclined to just continue with those views going forward.

So, I think it was just a great experiment for everybody to see how this plays out and have concrete data on which to ground their views and I don't think it's inconceivable that some of the shareholders will actually change how they view virtual shareholder meetings.

| **EKB:** I think that's right, I think it'll be really interesting to see whether we get kind of a begrudging acceptance at the beginning of proxy season so companies can feel comfortable with their planning or whether they're just going to have to go along with it if there's a significant ground swell next year where they're not really in a position to criticize companies that are continuing on with virtual shareholder meetings. The companies are making a choice that works for them and works for their stakeholders and, there's an element that it might be difficult to oppose that. So, that'll be an interesting "wait and see" moment for us.

But, speaking of next year, if you had just a couple of key things to talk to companies about, you mentioned planning early, what does that look like, what are like the number one things that, counsel and companies should be doing this fall in order to prepare for a virtual spring?

| **PLM:** I think actually the first decision is to decide whether or not the spring will be virtual for any given company and part of the difficulty in making that decision is that none of us really know whether travel will be permitted and what will happen with the pandemic and so for companies that committed to doing it in person in their disclosure and would like to follow through on that, I think that's perfectly fine. But making sure that there is a plan B that is worked out in advance so that in case they need to pivot quickly some of the issues that arose just because of how quickly decisions had to be made in 2020, that those hardships are avoided this time.

And then I think working out, based on the feedback that companies have been receiving, what some of their processes will be, so if there need to be some changes to how shareholders present their proposals or how shareholders are able to address the meeting, I think they need to think about those issues. And then I think the final really big one is thinking about the control number process and making sure that with their vendors they really do have a good process there to make sure that all shareholders who want to participate can participate.

So I think those would be my top three immediate recommendations. I think much of the rest of it will flow from there and frankly in due course, but that's where I'd be focused in the fall.

| **EKB:** I think that's spot on, and with that I think there's nothing more that we could really do or say for a company on that topic right now and so, it's been a joy as always to talk to you about governance issues and we thank everyone for listening today.

| **PLM:** Thank you Leza.

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