



INTERFAITH  
CENTER ON  
CORPORATE  
RESPONSIBILITY

**Shareholder  
Rights Group**

US|SIF

The Forum for Sustainable and Responsible Investment



Council of Institutional Investors®  
The voice of corporate governance



**Ceres**

*Sustainability is the bottom line.*

July 6, 2020

Jay Clayton  
Chairman

William Hinman, Director  
Division of Corporation Finance

U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Virtual and Hybrid Meetings: Concerns from 2020 Proxy Season**

Dear Chairman Clayton and Director Hinman,

We are writing on behalf of the investors, asset managers and asset owners represented by our members, who collectively represent hundreds of institutional investors with at least \$45 trillion in assets under management. Our organizations recognize the exceptional circumstance of this year's AGM season in the midst of the Covid-19 crisis. Due to this pandemic, shareholder meetings at most companies quickly went from being in-person to virtual. This led to considerable confusion and technical difficulties, in many cases inhibiting shareholder participation in meetings. We are concerned about the potential for poor precedents for conduct of shareholder meetings, and in some circumstances, deliberate actions that limited shareholder participation at various companies. Although we recognize that state law, individual companies and intermediaries must step up, we believe that there are appropriate steps that the SEC can take to help improve the situation.

Certainly there was substantial strain on many corporate secretaries this year given the late hour of the change from in person to virtual meetings for most companies, as well as the need to conduct meetings with management and board members in multiple locations due to travel and public health restrictions, relying on sometimes iffy technology and broadband connections. We understand that Broadridge, which had provided the platform for nearly all virtual meetings before the pandemic, did not have bandwidth to accommodate all companies to hold meetings

when they had planned. And we appreciate the April 7<sup>th</sup> guidance provided by the SEC, and that other providers became more active in offering virtual meeting platforms.<sup>1</sup>

However, as a generalization, the meetings as conducted were a poor substitute for in-person shareholder meetings, notwithstanding the potential for virtual technology to expand participation. In our experience, and from what we heard from a range of institutional and individual shareholders, many faced obstacles in getting into meetings, and in particular in asking questions and participating in a meaningful way. Our organizations feel that when the pandemic risk abates, companies should return to the face-to-face format, although the optimal format may be hybrid, since virtual participation does have some benefits.

### Suggestions for SEC Focus

The April 7 SEC staff guidance indicated, “To the extent an issuer plans to conduct a ‘virtual’ or ‘hybrid’ meeting, the staff expects the issuer to notify its shareholders, intermediaries in the proxy process, and other market participants of such plans in a timely manner and disclose clear directions as to the logistical details of the “virtual” or “hybrid” meeting, including how shareholders can remotely access, participate in, and vote at such meeting.” We believe shareholder participation in the meetings of companies whose shares they own should be easy, straightforward and reliable. Ideally, accessing meetings should follow a standard “plain English” protocol, so that shareholders do not have to decode how to participate at their company’s meeting. We believe that in practice, for too many shareholders, this did not happen this spring.

A key challenge appears to relate to how intermediaries work together. This seems particularly clear for shares held in street name, which includes the large majority of institutionally held shares. At some meetings, onerous steps were required to revoke proxy votes and obtain legal proxies. The chief problem appeared to be that control numbers were not shared between providers. We believe that there may be real problems sharing those numbers, as they may include personal identifying information (PII), but there should be an efficient means for intermediaries to share and protect PII at the same time. We believe that it may be necessary for the SEC to get industry participants to work out an efficient standard protocol, given competitive pressures, for example between Broadridge, which provides key utility functions, particularly for brokers and banks in dealing with beneficial ownership, and non-Broadridge transfer agents.

Beyond the role of intermediaries, it is incumbent on issuers to provide clear, comprehensible instructions for meeting access.

Another area for SEC action relates to the presentation of shareholder proposals. Rule 14a-8(h) provides that the shareholder must present the proposal at the meeting.<sup>2</sup> We are aware that at

---

<sup>1</sup> SEC, Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns, at <https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns>.

<sup>2</sup> (h) **Question 8:** Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic

least one company holding a virtual meeting that did not permit shareholder proponents to present their proposals at the meeting.<sup>3</sup> More generally, in some cases, we understand that participation of a shareholder proponent was limited, by, for example, limiting the proponent to a virtual “room” in which they could present their proposal, but from which they were not permitted to participate in general shareholder Q&A.

We are aware that at least one company that decided to hold an in-person meeting did not permit shareholder proponents to present their proposals virtually, despite the SEC’s April 7 guidance that companies should accommodate shareholder travel restrictions under the pandemic conditions.<sup>4</sup> Another company held a virtual meeting, but required a shareholder proponent to travel to a particular site to present the proposal if they wished to do so.<sup>5</sup>

Exacerbated by the virtual meeting format, we saw numerous instances this season in which shareholders were unable to ask questions on a live basis, submitted questions that were not shared with other attendees at the meeting, and sometimes saw company misrepresentations that no other questions had been asked. Company responsiveness and transparency relative to the question-and-answer period ranged from a transparent process of making the questions visible on a real-time basis, and attempting a good faith effort to answer them, to cherry picking of questions and the issuance of canned responses.

It has been reported that a number of companies stated during the meeting that no additional questions were received, when in fact it is documented that the company had received additional questions. A misleading statement of “no further questions” by the CEO or other company representative could be materially misleading, especially if the statement masks material concerns raised by share owners and go unanswered.<sup>6</sup>

---

media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

<sup>3</sup> AT&T only permitted presentation of proponents’ statements in writing, to be read by management. See, e.g., Ken Bertsch, Executive Director, Council of Institutional Investors et al. to Randall Stephenson, Chairman & CEO, Matthew Rose, Lead Independent Director, C/O Office of the Secretary, AT&T Inc. 1 (Apr. 21, 2020), [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2020/Investor%20letter%20to%20AT&T%20regarding%20shareholder%20proposals%20and%20virtual%20meetings.pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2020/Investor%20letter%20to%20AT&T%20regarding%20shareholder%20proposals%20and%20virtual%20meetings.pdf) (“It has come to our attention that AT&T is requiring that shareholders instead provide the company with a 100-word written statement that the company will read to introduce their proposal on their behalf.”).

<sup>4</sup> NextEra Energy did not allow virtual presentation of proposals, despite the health risks associated with face-to-face attendance at a meeting during the pandemic.

<sup>5</sup> Berkshire Hathaway.

<sup>6</sup> According to a corporate governance researcher, Professor Miriam Schwartz-Ziv of the Hebrew University of Jerusalem, review of the 2020 US proxy season finds a general lack of transparency regarding questions asked in the Q&A process, firms ignoring questions raised by shareholders, and in some instances stating that no additional questions were submitted, despite data from investors indicating that multiple questions were submitted to those firms. She identified 15 firms making a “dishonest or misleading” statement about the Q&A period – such as incorrectly stating that no additional questions were asked despite a queue of unanswered questions. Correspondence with Miriam Schwartz-Ziv and working paper in progress, “How Shifting from In-Person to Virtual Shareholder Meetings Affects Shareholders’ Voice”, accessed July 2, 2020. For the final paper, contact the author via [http://bschool.huji.ac.il/en/Faculty\\_%26amp%3B\\_Research/Faculty\\_Profiles/Miriam\\_Schwartz-Ziv](http://bschool.huji.ac.il/en/Faculty_%26amp%3B_Research/Faculty_Profiles/Miriam_Schwartz-Ziv).

Given the potential for material questions to surface during the question-and-answer period, misleading or inadequate corporate disclosures related to the Q&A merit SEC attention consistent with the goal of ensuring adequate and consistent information to the market.

We believe the issuer should make clear in proxy materials limitations on shareholders asking questions, including time limits, any requirements to receive questions in advance in writing, and the process for choosing questions. Our underlying concerns are with company practices, in that Q&A appeared very limited at some company meetings. We believe shareholders should be able to ask questions at meetings, and there should be transparency to all shareholders on the questions asked. Best practice is for company directors and/or management to respond to all non-trivial questions in a transparent manner, such as on the company's investor relations webpage, within a reasonable period such as three days following the meeting. We are aware that some companies were required to sharply limit the time for their meetings by the virtual meeting platform provider, which is understandable under the circumstances we experienced this year. However, that should not set the pattern for the virtual component of future meetings. To be clear, we realize that the SEC has a limited role at most in how meetings are run. But we believe the SEC should require clear disclosure about how shareholders can participate in meetings, particularly if shareholder questions and comments are to be limited.

In some extreme instances, the lack of bona fide shareholder participation opportunities in a meeting could raise questions as to whether a particular event even constituted a legal "shareholder meeting." When shareholders can only passively witness a meeting and lose the ability to actively participate or vote, this does not seem consistent with Delaware law requirements regarding participation in remote meetings. Section 211 of the Delaware General Corporation Law says that for virtual-only or hybrid annual meetings (emphasis added):

(i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Thus, proxy disclosures that a company will hold a "shareholder meeting" may be inaccurate if the event lacks legally mandated voting and participatory opportunities.

As an example of this issue, Berkshire Hathaway, like other companies, determined late that it could not host shareholders at a meeting.<sup>7</sup> Instead of converting to a virtual meeting, however, Berkshire simply said that shareholders were not permitted to attend, but they could watch on a webcast, with no facility to vote. This example creates a particularly poor precedent for other companies. To hold a shareholder meeting and prohibit shareholders from participating and

---

<sup>7</sup> Example from <https://www.soundboardgovernance.com/post/notes-from-the-berkshire-hathaway-2020-virtual-annual-meeting>

voting in real-time should not be an option, even in a pandemic, given the means available to host a valid virtual meeting.

Finally, we would add a note on the webcasting of shareholder meetings to the public. We believe that webcasting meetings is a good idea, to promote consistent information to the market. In fact, we recommend that the SEC require or encourage all companies to conduct real-time public webcasts of their shareholder meetings. This would make it easier for the market at large to be able to monitor company deliberations. Alongside this, there needs to be a clear understanding that a webcast does not constitute a shareholder meeting within the meaning of SEC and Delaware interpretations.

Thank you for your consideration of these issues. We would be glad to discuss these further at the annual Rule 14a-8 Stakeholder meeting, or other appropriate opportunity.

Sincerely,



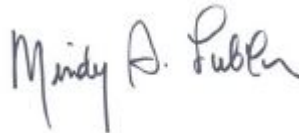
Amy Borrus  
Council of Institutional Investors



Sanford Lewis  
Shareholder Rights Group



Josh Zinner  
Interfaith Center on Corporate Responsibility



Mindy Lubber  
Ceres  
Investor Network on Climate Risk



Lisa Woll  
US SIF: The Forum for Sustainable and  
Responsible Investment

