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CORPORATE GOVERNANCE VIRTUAL ROUNDTABLE SERIES

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Virtual Meetings and Remote Engagement

During the COVID-19 Crisis

Materials

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Annual General Meetings & COVID-19

Posted by Michael Laff, Institutional Shareholder Services, Inc., on Thursday, April 9, 2020

Editor's note: Michael Laff is a Senior Associate at Institutional Shareholder Services, Inc. This post is based on his ISS memorandum.

In response to the COVID-19 pandemic, securities regulators in several countries have published guidance that affords publicly listed companies greater flexibility regarding the type of annual general meeting (AGM) they can hold as well as when it can be held.

As of March 31, the total number of meetings postponed or cancelled globally because of COVID-19 was approximately 557 while the number of meetings that will be virtual-only or proxy-only stood at 560. By comparison, that number stood at 286 for all of calendar 2019. These figures, as tracked by ISS and as illustrated below, are changing by the day as the pandemic is pushing into the traditional AGM season for many markets in the northern hemisphere.

Figure 1: Count of Virtual Meetings by Market as a Result of the Pandemic



Source: Institutional Shareholder Services; as of March 31, 2020; data is compiled based on alerts issued due to COVID-19 as disclosed by companies after the meetings had entered the ISS Global Meeting Services queue.; includes extraordinary and non-equity meetings. Does not necessarily include all meetings that have been announced as virtual in a market.

Similarly, regulatory agencies across varied jurisdictions are providing frequent updates to their policies on meetings and public reporting. Given the rapid pace of change, there is considerable disruption to the typical corporate reporting period and the AGM calendar.

Figure 2: Count of Adjourned/Cancelled Meetings by Market as a Result of the Pandemic



Source: Institutional Shareholder Services; as of March 31, 2020; data is compiled based on alerts issued due to COVID-19 as disclosed by companies after the meetings had entered the ISS Global Meeting Services queue.; includes extraordinary and non-equity meetings. Does not necessarily include all meetings that have been announced as postponed in a market.

This is a fast-changing area with new regulatory and other guidance coming out frequently at present regarding the hosting of AGMs and public reporting requirements. In most U.S. states, companies are generally able to hold either hybrid or virtual-only meetings without seeking shareholder approval. The SEC issued **guidance** on March 13, providing regulatory flexibility to companies that wish to change the date or location of their shareholder meeting or switch from an in-person meeting to a virtual meeting because of COVID-19.

Some companies may choose to take measures such as postponing their AGM, changing the format from a physical (in person) to a virtual meeting, or simply changing to another physical location to minimize public health concerns. Many companies shifted to online-only meetings after the SEC **offered exemptions** following a shareholder **request**.

The SEC staff is also encouraging companies to allow shareholder proponents or their representatives to present their proposals by telephone and not insist that they attend in person.

Companies that seek to make the change after their proxy materials have already been filed and mailed will not be required to amend their proxy statement or mail additional material to shareholders, provided that such companies issue a press release announcing the change, file it

on EDGAR, and “take all reasonable steps necessary to inform other intermediaries in the proxy process and other relevant market participants of such change.”

Separately, the SEC has also provided publicly traded companies with a 45-day **extension** to file certain disclosure documents, including annual and quarterly reports. Such reports would otherwise have been due between March 1 and July 1, 2020. Companies must, among other conditions, explain through a current filing why the relief is needed in their particular circumstances.

Additionally, publicly traded companies may be exempt from providing hard copies of proxy statements and annual reports if the shareholder has a mailing address located in an area where mail delivery has been suspended as a result of COVID-19.

On March 23 the SEC **announced** temporary flexibility for registered funds affected by recent market events to borrow funds from certain affiliates and to enter into certain other lending arrangements. The relief is designed to provide funds with additional tools to manage their portfolios for the benefit of all shareholders as investors may seek to rebalance their investments.

The SEC also issued **orders** that would provide certain investment funds and investment advisers with additional time with respect to holding in-person board meetings and meeting particular filing and delivery requirements, as applicable.

Access an overview of regulatory updates in select countries regarding the hosting of AGMs and public reporting requirements as of March 31, 2020, **[here](#)**.



Glass Lewis Guidelines Update on Virtual-Only Meetings Due to COVID-19

Posted by Aaron Bertinetti, Glass, Lewis & Co., on Monday, March 23, 2020

Editor's note: Aaron Bertinetti is Senior Vice President of Research and Engagement at Glass, Lewis & Co. This post is based on his Glass Lewis memorandum.

The COVID-19 pandemic has caused significant disruption to people and companies around the world. In order to ensure the health and safety of employees and shareholders, and to comply with government-issued orders and guidelines, a number of North American companies are breaking with convention to hold their shareholder meetings on a virtual-only basis, including when a proxy statement has already been filed.

While Glass Lewis acknowledges concerns regarding virtual-only meetings, given the current situation, we believe that such meetings provide compelling advantages for both companies and shareholders to preserve the timing, certainty, agendas and voting of shareholder meetings. We do not believe discouraging virtual-only meetings during this time serves the interests of shareholders or companies.

Immediate Policy Update

For the duration of the 2020 proxy season (March 1, 2020 through June 30, 2020), we will take into account the extenuating circumstance of the COVID-19 pandemic when applying our policy on virtual-only shareholder meetings. We will review these on a case-by-case basis and will also note whether companies state their intention to resume holding in-person or hybrid meetings under normal circumstances.

For companies opting to hold a virtual-only shareholder meeting due to COVID-19 between March 1, 2020 and June 30, 2020, we will generally refrain from recommending to vote against members of the governance committee on this basis, provided that the company discloses, at a minimum, its rationale for doing so, including citing COVID-19.

Additionally, should these companies opt to continue holding virtual-only shareholder meetings in subsequent years, we expect future proxy statements to include the robust disclosure concerning shareholder participation described below. Our standard policy on virtual shareholder meetings will apply in those future years.

Finally, for all shareholder meetings occurring after June 30, 2020, our standard policy on virtual shareholder meetings will apply, and we expect robust disclosure in the proxy statement concerning shareholder participation. Even if the pandemic continues well beyond this date, companies have been given sufficient time to address shareholder concerns as outlined in our standard policy.

For an illustration of what Glass Lewis will support through June 30, 2020, please refer to the example set by [Starbucks on March 4](#). A complete copy of our updated guidelines for the United States and Canada can be [accessed here](#).

Policy Background and Shareholder Concerns

Shareholders and **representative bodies** have previously expressed concerns regarding companies' use of this meeting format, as it holds the potential of silencing dissenting shareholders and could act as a shield to insulate management and the board from subpar performance or significant controversies. However, given the ramifications of the ongoing pandemic, even groups and shareholders who have argued ardently against the practice of holding virtual-only meetings, such as the Council of Institutional Investors, are considering whether the current circumstances **warrant an exception** – and how companies can effectively use this tool in a manner that both ensures the health and safety of participants and respects shareholder rights.

Glass Lewis is generally neutral on the use of virtual-only meetings, so long as they are structured to ensure meaningful shareholder participation. Glass Lewis's standard policies provide that we will generally recommend against the chair of the nominating and governance committee if companies do not provide adequate disclosure concerning the protections afforded to shareholders when conducting a virtual-only meeting. Examples of effective disclosure include:

- addressing the ability of shareholders to ask questions during the meeting, including time guidelines for shareholder questions, rules around what types of questions are allowed, and rules for how questions and comments will be recognized and disclosed to meeting participants;
- procedures, if any, for posting appropriate questions received during the meeting and the company's answers, on the investor page of their website as soon as is practical after the meeting;
- addressing technical and logistical issues related to accessing the virtual meeting platform; and
- procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.

As discussed above, given the COVID-19 pandemic and the changing expectations and restrictions on the number of people who can safely congregate, Glass Lewis has revised its policies concerning the use of virtual-only meetings through June 30, 2020.



Virtual Annual Meetings and Coronavirus

Posted by Michael Albano, Sandra Flow, and Francesca Odell, Cleary Gottlieb Steen & Hamilton LLP, on Thursday, March 19, 2020

Editor's note: Michael Albano, Sandra Flow, and Francesca L. Odell are partners at Cleary Gottlieb Steen & Hamilton LLP. This post is based on a Cleary memorandum by Mr. Albano, Ms. FLOW, Ms. Odell, Mary Alcock and Jina Davidovich.

With rising concerns around the spread of COVID-19 (“coronavirus”) in the United States and globally, many public companies may consider adding a virtual component to the format of their annual shareholder meetings in order to mitigate health risks. In the United States, state law generally governs the availability of a virtual meeting format, and while the SEC has provided conditional regulatory relief and assistance for companies impacted by the coronavirus by allowing such companies to delay filings,¹ no direct guidance has been issued with respect to hosting annual meetings in light of the coronavirus threat. Furthermore, the Centers for Disease Control and Prevention (“CDC”) has not yet determined that all large gatherings in the United States should be avoided in order to contain infection. As a result, planning for upcoming annual meetings in this uncertain environment has been left primarily up to companies. Set forth below are various considerations that a company should take into account when determining whether to move from an in-person to a virtual or hybrid² annual meeting.

Key Considerations

In determining whether to move to a virtual or hybrid meeting in response to a situation like the coronavirus threat, a company should carefully consider each of the following questions:

1. Is a virtual meeting permitted under the company's state law of incorporation and its bylaws?
2. In the event of a change from an in-person to virtual or hybrid meeting, what steps must a company take to properly notify its shareholders in compliance with SEC requirements and state law?
3. What are the practical considerations associated with holding a virtual or hybrid meeting?

State Law and Bylaws

The SEC has affirmed its position through no-action letters that the decision of whether to host an annual meeting in-person or virtually rests with management, subject to state law requirements.

¹ SEC Release No.34-88318 (March 4, 2020), available at: <https://www.sec.gov/rules/other/2020/34-88318.pdf>. The SEC's order also provides relief for the furnishing of proxy soliciting materials when mail delivery is unavailable because the company's shareholder has a mailing address located in an area where the common mail carrier has suspended delivery service as a result of the coronavirus.

² A “hybrid” meeting refers to an annual meeting in which shareholders can choose to either attend in-person or join remotely.

Neither NYSE nor NASDAQ rules are prescriptive with respect to the format of annual shareholder meetings; rather, they require only that companies listed on their exchange hold such meetings, and in addition, NASDAQ specifies that the meeting must permit shareholders to address company affairs with management.

As such, a company should first look to the law of its state of incorporation relating to virtual shareholder meetings. States have taken a variety of approaches on the issue. Delaware law generally permits companies to hold virtual-only as well as hybrid annual meetings provided that certain conditions are met. Other states, such as New York (following an October 2019 rule change), permit a virtual component (again subject to certain conditions) while still requiring an in-person meeting be held. Some states allow virtual meetings but impose more onerous conditions. For example, California permits virtual meetings provided that prior consent from shareholders is obtained. Still other states, such as Georgia, do not currently permit meetings to be held virtually, with or without an in-person meeting.

Assuming that a virtual meeting is permitted under state law, a company should then examine its bylaws to determine whether they would permit holding a virtual or hybrid meeting. In most cases, management and/or the board of directors will have discretion in determining the proper venue and format for the annual meeting.

Notice and Filing Requirements

Moving from an in-person annual meeting to a virtual or hybrid meeting, assuming such a change is permitted by state law and the company's bylaws, requires the company to take a few additional steps to properly notify shareholders and comply with SEC filing and state law obligations.

- Proxy Statement Has Already Been Filed.
 - If a company has already filed its proxy statement and has therefore notified shareholders of the location and timing for its annual meeting, any change needs to be communicated. The company should issue a press release disclosing the change in format, file the release with the SEC as supplemental proxy materials and add it to posted proxy materials. Generally, there should be no need to re-mail the proxy statement or amend the proxy card to reflect the change in venue or format of the meeting.
 - While practice is mixed, most companies that change the location of their annual meetings do not take the position that filing a Form 8-K with the updated information is necessary; however, a company may wish to do so out of an abundance of caution.
 - The company should ensure that it is complying with all necessary notice requirements under its bylaws and relevant state law. Some states (such as Delaware, New York and California) require that companies notify their shareholders of any changes to annual meetings within a certain number of days prior to such meeting.³ Compliance with these laws should not require the company to send all shareholders the full proxy statement with the new meeting

³ Delaware, New York and California require that the notice of the annual meeting be given no less than 10 and no more than 60 days before the date of the meeting. In addition, New York requires that if the notice is sent by third-class mail, it must be given at least 24 days prior to the meeting date, and certain California corporations may be permitted to give notice by third-class mail, but such notice must be sent at least 30 days before the meeting.

information; rather, the company should only need to send notice of the change of venue or format.

- Proxy Statement Has Not Been Filed. If a company has yet to file its proxy statement and is considering the possibility of moving to a virtual or hybrid meeting (but has not yet decided), disclosure indicating the possibility of a change should be included in the proxy statement, both in the meeting notice (which may help avoid a need to send a subsequent notice of the change) and in the meeting logistical information. Companies should consider specifically highlighting the importance of shareholders retaining the control numbers set forth on the proxy card or voting instruction form in order to verify their identity when accessing a meeting virtually.

Practical Considerations in Moving to a Virtual or Hybrid Shareholder Meeting

In addition to the legal considerations noted above, there are several practical considerations that companies should consider in determining whether to move to a virtual or hybrid shareholder meeting:

- Differences Between Physical and Virtual Meetings. Companies should assess the overall benefits and costs of moving to a virtual or hybrid meeting. Virtual annual meetings allow shareholders to attend and actively participate in the meeting where they may otherwise have been unable to do so and often result in reduced costs for both the company and shareholders. However, companies will need to consider the fact that certain meeting elements, such as the presentation of shareholder proposals, may be more cumbersome. Virtual meetings may also create more uncertainty in shareholder vote counts because shareholders can more easily attend and change their vote at the last minute and may diminish companies' ability to resolve hostile or otherwise challenging questions as effectively as in physical meetings. While some companies may opt for a middle ground with a hybrid meeting, a hybrid meeting may be less desirable in light of the risks posed by the coronavirus.
- Ongoing Assessment of Risks. Companies that determine to move forward with an in-person or hybrid meeting should be conscious of ongoing public health developments, including any local regulations on holding gatherings given the risks posed by the coronavirus. They should also have a plan in place in the event that board members or seniors executives are unable to attend a physical meeting. If an in-person meeting is necessary, it is also possible that a company may need to consider whether the meeting could be postponed.
- Logistical Considerations. Companies should consider whether they have the necessary infrastructure, procedures and conduct rules in place to host a virtual annual meeting. Most likely, they will need to rely upon outside vendors, though they should remain cognizant of potential issues and work with vendors to make sure they are addressed. For example, how will the company allow for shareholder participation in the meeting? What remote technologies are necessary in order to successfully hold the meeting and do those technologies provide sufficient security for participants? Further, companies should ensure that the virtual forum permits shareholders to exercise all rights and privileges guaranteed to them under both federal and state securities laws. Companies should also consider how shareholders will be able to ask questions, make comments that can be heard by others and receive answers during the virtual meeting and ensure that shareholders are aware of the procedures with which they must comply to access

any information and participate fully in such meetings. A technical support line should be available for shareholders who experience technical difficulties prior to or during the virtual meeting.

- Logistics Relating to Eligibility to Attend. To the extent that participation in a virtual meeting requires shareholders to enter the control number set forth on their proxy or voter instruction form, a company should be prepared to address the reaction of shareholders who have not retained this information and to work with their virtual meeting vendors regarding possible solutions.
- Timing Considerations. As companies move closer to the scheduled time of their annual meetings, and if more risks arise from the current coronavirus outbreak, it may be more difficult to secure vendors and ensure that the proper logistics are in place to hold a virtual meeting. Companies should remain in constant communication with vendors and any relevant contacts at the location at which any in-person meeting will (or may) be held in order to ensure they have the latest information as circumstances change.
- Shareholder Engagement. Virtual meetings may also impact the extent to which management and the board are able to engage meaningfully with shareholders. In light of this consideration, companies may wish to increase their shareholder engagement efforts prior to and following the annual meeting to ensure that shareholders have had a genuine opportunity to connect with, and express any concerns or questions to, management and the board. When engaging with shareholders on these topics, companies should be prepared for the possibility that shareholders will want to engage more broadly on the coronavirus and its potential impact, not only on the logistics of the shareholder meeting but on the company's business more generally. When having those conversations, company representatives must be aware of their obligations under Regulation FD.
- Response from Proxy Advisory Firms. Recently, there have been published reports of conversations with Glass Lewis and ISS where the proxy advisory firms have reportedly provided additional color as to how they will receive virtual shareholder meetings in 2020 in light of coronavirus.⁴
 - *Glass Lewis*: Consistent with its current 2020 proxy voting guidelines, Glass Lewis has recently indicated that it will continue to review an issuer's proxy materials regarding virtual shareholder meetings. Pursuant to its 2020 guidelines, Glass Lewis will generally recommend voting against governance committee members where the board is planning to hold a virtual-only shareholder meeting and the company does not provide robust disclosure in their proxy statement assuring shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.⁵ Glass Lewis notes that examples of effective disclosure include: (i) addressing shareholders' ability to ask questions during the meeting, as well as time guidelines for shareholder questions and rules around which questions will be permitted and how they will be disclosed to participants, (ii) procedures for posting appropriate questions received during the meeting and the company's answers to such questions on the company's website as soon as practical after the meeting, (iii) addressing technological and logistical issues related to accessing the virtual meeting platform and (iv) procedures for accessing technical support during the virtual meeting. In light of Glass Lewis's policy, companies should provide

⁴ Kingsdale Advisors, Proxy Advisors Views on Virtual Meetings, available at: <https://mailchi.mp/kingsdaleadvisors/hlibt2xqzu-1071635?e=5bbb8b827b>.

⁵ The Glass Lewis 2020 proxy voting guidelines are available at https://www.glasslewis.com/wp-content/uploads/2016/11/Guidelines_US.pdf.

adequate disclosure in any supplemental proxy materials regarding policies and procedures they are planning to implement in connection with the virtual meeting. In addition, Glass Lewis has recently stated that, in the context of coronavirus, companies that have already filed their proxy statements and provided information for an in-person meeting but are now moving to a virtual-only meeting should provide public disclosure explaining the reason for the change. Such disclosure should specifically state that the change is due to the coronavirus outbreak, include complete information about access to the meeting and confirm that shareholders will have the same opportunities to participate in the virtual meeting—as they would have at an in-person meeting.

- /ISS: Though it has not previously adopted a formal policy on virtual shareholder meetings, ISS recently stated that, although many of its institutional clients have not had a favorable view of virtual shareholder meetings, in light of the coronavirus outbreak and the rapidly changing environment, ISS expects that institutional investors will likely be more accommodating of virtual meetings this year. Like Glass Lewis, ISS has stated that it will require companies to provide comprehensive disclosure affirming that a virtual meeting will provide full opportunities for shareholders to participate, ask questions, provide feedback to the company and present shareholder proposals. ISS also indicated that it anticipates that the way in which companies manage virtual meetings this year will impact its position on virtual shareholder meetings in the future.

If you have any questions or would like to discuss this, or other topics relating to the coronavirus outbreak, further, please do not hesitate to reach out to your regular contacts at the firm or contact our COVID-19 task force directly by [clicking here](#).



Lessons From the Future—The First Contested Virtual Annual Meeting

Posted by Igor Kirman, Sebastian Niles, and Natalie Wong, Wachtell, Lipton, Rosen & Katz, on Saturday, May 9, 2020

Editor’s note: Igor Kirman and Sebastian V. Niles are partners and Natalie S.Y. Wong is an associate at Wachtell, Lipton, Rosen & Katz. This post is based on a Wachtell Lipton memorandum by Mr. Kirman, Mr. Niles, Ms. Wong, Oliver J. Board and Loren Oumarova.

The 2020 proxy season has been anything but routine, with the COVID-19 pandemic and the resulting state shelter-in-place orders requiring many companies to make the shift from physical to virtual annual meetings, and state corporate laws being amended to allow these virtual meetings to occur. Yet we had not seen a virtual annual meeting used in a proxy contest until April 30, 2020, when shareholders of TEGNA Inc. participated in the first election contest conducted at a virtual, rather than physical, annual meeting (all of the company’s twelve nominees were re-elected).

While the concept and technology have existed for several years, virtual annual meetings were slow to become widespread. The trickle that began after Delaware amended its business corporation laws to permit such meetings in 2000 gained steam after 2009, when Intel Corporation hosted the first virtual annual meeting using technology pioneered by Broadridge Financial Solutions. According to Broadridge, the number of virtual annual meetings more than doubled from 93 meetings in 2014 to 187 meetings in 2016, and there have been over 200 virtual annual meetings every year since 2017. This year, in light of the COVID-19 pandemic and lockdown requirements, most public companies are using virtual annual meetings, with a large majority doing so for the first time. Yet companies have been reluctant to use virtual meetings for contested situations, due to the extra complexity of such meetings and the unavailability of a commercial platform to do so.

Some key considerations to take into account when navigating a contested virtual meeting are set forth below:

Design and Technical Considerations. Since Broadridge and other virtual meeting platform providers have yet to develop contested virtual meeting platforms, companies may need to design and customize their own platforms with the help of third-party vendors. Key features of the virtual meeting platform should include the registration of shareholders and permitted guests of the company and the dissident in advance of the virtual meeting (including the ability to submit evidence needed to establish the identity of the foregoing), as well as the ability of shareholders to inspect the company’s shareholder list online and vote by ballot and for the dissident to ask questions during the meeting itself. In this regard, Delaware companies may rely on DGCL § 211(a), which provides that a company may conduct a virtual shareholder meeting “subject to such guidelines and procedures as the board of directors may adopt.” Due consideration must

also be given to technical difficulties that may interrupt the virtual meeting or prevent it from starting, and the company should adopt a contingency plan and be able to communicate this plan in advance. In addition, it is possible that hackers may attempt to hijack or disrupt a virtual meeting, as has occurred in other contexts.

Cross-Functional Planning and Support. Planning and implementing an effective contested virtual meeting requires the cooperation of a multi-disciplinary task force, including in-house information-technology and legal personnel and third-party experts and advisors such as outside counsel, proxy solicitors and public-relations advisors. The critical importance of conducting dry runs, testing the platform and making any necessary adjustments prior to the virtual meeting webcast cannot be overstated. Without sufficient trial and error, companies run the risk of technological failures or human error derailing the virtual meeting, which is a significant risk to run in a contested election.

Physical Contested Meeting Parallels. Veterans of proxy fights and activism campaigns will be familiar with dynamics unique to proxy fights, such as “war rooms,” in-person delivery of voted proxies to the inspector of elections by each side’s proxy solicitor, “snake pits” and real-time, high-pressure communication and consultation by representatives of the two sides with each other.

Many of these concepts remain relevant in the virtual realm but require adaption—for example, since the inspector is not physically present to receive proxies from the two sides in the contest (or attending shareholders), advance coordination with the inspector is needed to determine the process for submitting all proxies and ballots before the polls close. Since there are not separate “war rooms” set up alongside in-person presence for both parties to observe the contested meeting and communicate with the inspector in real time, alternative means of communications for both parties are needed. If a dissident wishes to have the opportunity to address shareholders at the meeting, a separate phone line may be made available to enable this, to be activated during the period when such remarks are scheduled. If each side’s team members are not physically together for a contested virtual meeting and related webcast, they will need to use phone lines (or other means, such as Zoom conferences, text messaging or other communication platforms) to communicate amongst themselves during the meeting and discuss various questions or issues that may arise.

Communication Between the Company and the Dissident. As with a physical meeting, representatives of the company and the dissident should communicate prior to the virtual meeting, including as to how the virtual meeting will be conducted and the handling of requested accommodations that may be sought by the dissident. It is prudent to begin such discussions a little earlier than for physical meetings, given the novelty (for now) and complexity of the issues to be discussed. It also may make sense to involve the inspector of elections in some of these discussions, so that both parties understand the rules and mechanisms (including, while not legally required, prudent backup plans) for submitting votes.

Is Virtual Meeting Voting a Step Toward a “Universal Ballot”? One significant benefit of virtual meetings is that they make it easier to attend the meeting by allowing shareholders to do so from their homes, without the need to travel to what is often an out-of-state location. For example, the TEGNA virtual meeting had over 100 attendees.

The SEC's "bona fide nominee" rule effectively means that shareholders largely vote on either the company's or the dissident's proxy card, but cannot "mix and match" votes unless they vote on a ballot that is provided at the meeting (which includes all nominees) and have the legal authority to do so. Under the corporate laws of most states, including Delaware, for a meeting held solely in a physical location, voting by ballot at the meeting requires in-person attendance by the shareholder of record or a proxy holder for such shareholder. Since it is easier to attend virtual meetings, a question that naturally arises is whether virtual meetings provide more opportunities than physical meetings to vote by ballot, and therefore allow shareholders to "split the ballot." The answer, for now, is a maybe. Voting by ballot at the meeting under current SEC and state law frameworks, regardless of whether the meeting is physical or virtual, is still more cumbersome than voting by proxy due to the administrative burden and execution risks of obtaining legal proxies, especially when ownership is split across multiple accounts.

Advance registration requirements for a virtual meeting setting may also add a timing consideration. That said, if virtual contested meetings become the norm, we may see more shareholders decide to vote by ballot.

* * *

As with physical meetings, most contests are won or lost through advance proxy voting before the meeting starts. Given the stakes involved and the risk of challenges and litigation if technological or voting issues arise, contested virtual meetings require extra planning, including a high degree of customization, testing and coordination with the dissident and the inspector of elections. It remains to be seen whether we will have more contested virtual meetings once the COVID-19 pandemic restrictions are lifted and they become optional. TEGNA's recent successful contested virtual meeting demonstrates that this is a practical option and not just a theoretical possibility.