

## [Securities Regulation Daily Wrap Up, CORPORATE GOVERNANCE— Investor groups voice concerns over virtual shareholder meetings, \(Jul. 8, 2020\)](#)

Securities Regulation Daily Wrap Up

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CII and other investor groups wrote to the SEC with concerns over how shareholders were unable to ask questions or present proposals in remote shareholder meetings held during the pandemic.

Five investor groups, including the Council of Institutional Investors and the Shareholder Rights Group, wrote the SEC to ask for more oversight of companies' disclosures regarding virtual meetings. The groups listed examples of recent annual meetings during the COVID pandemic where shareholders were not allowed to ask questions, introduce their shareholder proposals, or even vote. While acknowledging that increased demand for virtual meetings led to technical issues in some cases, the groups maintained that the practices must not become the norm.

The other signatories to the [letter](#) are the Interfaith Center on Corporate Responsibility, the Forum for Sustainable and Responsible Investment, and the Investor Network on Climate Risk.

**Problematic meeting practices.** Most of the signatories had earlier called out AT&T for failing to allow shareholders to present proposals at its April 24 virtual annual meeting. The investor groups [told](#) the company that by asking proponents for a 100-word statement for AT&T representatives to read, it may have violated SEC regulations and the Delaware General Corporation Law. In the letter to the SEC, the groups reiterate this concern, among others. For example, the letter cites a corporate governance professor who identified 15 firms that made a "dishonest or misleading" statement about the Q&A period at a virtual meeting, such as stating that no additional questions had been asked when, in fact, many questions were sitting in the queue unanswered. The investor groups say that this may be a material misrepresentation, especially if the unanswered questions raised material concerns.

The letter questions whether some companies' meetings even constituted a legal "shareholder meeting" at all. Berkshire Hathaway decided that it could not host shareholders, but rather than convert to a virtual meeting, it allowed shareholders to watch a webcast with no ability to vote. Section 211 of the Delaware General Corporation Law requires a corporation holding a virtual or hybrid meeting to "implement reasonable measures to provide stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote," the industry groups note. A proxy may be inaccurate if it says the company will hold a "shareholder meeting" that does not allow for participation and voting, and it sets a poor precedent regardless, the groups write.

**Room for SEC action.** The letter acknowledges that companies had to scramble to convert to virtual meetings and that the predominant meeting platform, Broadridge, was unable to fully meet the sudden surge in demand. It also thanks the SEC for its April 7 [guidance](#) on shareholder meetings. Given the problems they saw, however, the signatories believe that when the pandemic subsides, companies should return to hybrid meetings that allow for in-person participation. They also call on the SEC to take action in the following ways:

- Engage with industry participants to work out a standard protocol to mitigate issues with revoking proxy votes and obtaining legal proxies while guarding personal identifying information.
- Require clear disclosure about how shareholders can participate in virtual meetings, especially if the meeting will limit shareholder questions and comments.
- Require or encourage all companies to webcast their meetings in real time, while making clear that such a webcast does not constitute a legal shareholder meeting.

The groups told the SEC they are happy to discuss the issues further at the agency's annual Rule 14a-8 stakeholder meeting, which usually occurs in late June.

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