

PROSPECTS DIM FOR IN-PERSON MEETINGS IN 2021: GLASS LEWIS PROVIDES UPDATED HYBRID/VIRTUAL APPROACH

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As we approach our 11th month of COVID-19 restrictions, the pandemic continues to evolve with new variants, while vaccination efforts move forward at a snail's pace because of limited supplies in many states. Many hoped for a return to normalcy in 2021, yet the prospects for in-person meetings in the spring seem unclear, if not dim.

Companies and boards grapple with whether it is still feasible to plan for an in-person only meeting or whether they should instead plan in advance for a hybrid or virtual-only meeting. For many, the prudent course may be to plan in the ordinary course for a hybrid or virtual stockholder meeting, rather than making a last-minute change based on outdated SEC guidance issued during the 2020 proxy season.

While the SEC has not yet provided new guidance for the 2021 proxy season, Glass Lewis on January 14, 2021, issued updated [guidance](#) for hybrid/virtual stockholder meetings. Glass Lewis stated that it would provide reasonable deference to companies that are incorporated in jurisdictions with current restrictions on in-person gatherings and where no established legal framework exists for a virtual-only meeting at this time. However, Glass Lewis firmly stated its belief that completely “closed-door” meetings without any form of virtual transmission or the formal ability for stockholders to ask questions and receive transparent answers before, during, and/or after the meeting should be avoided at all costs.

Expectations Regarding Meeting Format

Glass Lewis highlighted two benefits for holding hybrid/virtual meetings – namely cost savings to the company and stockholders’ increased ability to attend and participate when they could not have done so physically because of the pandemic or for other reasons. Glass Lewis also expressed its concern that notwithstanding these benefits, virtual meetings can substantially restrict stockholder rights if companies fail to (1) include safeguards to protect those rights, (2) ensure director accountability to stockholders and (3) adequately communicate meeting procedures to stockholders.

Yet, Glass Lewis also shared its belief that the risks of reducing stockholder rights can be largely mitigated by transparently addressing the following points, in the proxy meeting invitation and/or on the company's website:

- When, where, and how stockholders will have an **opportunity to ask questions** related to the subjects normally discussed at the annual meeting, including a timeline for submitting questions, types of appropriate questions, and rules for how questions and comments will be recognized and disclosed to stockholders.
- In particular where there are restrictions on the ability of stockholders to question the board during the meeting – **the manner in which appropriate questions received prior to or during the meeting will be addressed by the board**; this should include a commitment that questions which meet the board's guidelines are answered in a format that is accessible by all stockholders, such as on the company's annual meeting or investor relations website.
- The **procedure and requirements to participate** in the meeting and/or access the meeting platform.

Technical support that is available to stockholders prior to and during the meeting.

Glass Lewis further noted that in the “most egregious” circumstances where a company fails to adequately address and disclose the four matters listed above, Glass Lewis will generally recommend that stockholders hold the board or the relevant director(s) accountable, and that the stockholders vote against:

- Governance committee members who are up for re-election;
- The board chairperson if he or she is up for re-election; and/or
- Other agenda items regarding board composition and performance.

Hybrid Meetings. Glass Lewis views hybrid meetings (i.e., meetings having both in-person and virtual components) positively because they allow some stockholders who could not participate in-person to participate virtually. Glass Lewis emphasizes that all participants at these meetings – whether attending in-person or virtually – should have an equal opportunity to ask questions of the board. Glass Lewis also notes that, with respect to the virtual component of hybrid meetings, companies should satisfy the four requirements noted above with respect to virtual-only meetings.

In-Person Meetings. Glass Lewis, which has traditionally favored in-person meetings, believes that at least while COVID-19 travel restrictions are in place, a company planning to hold an in-person-only meeting should consider ways to increase stockholder involvement, such as by providing a live webcast of the meeting and establishing a process by which stockholders who do not attend in person may submit questions to the board.

Proposals to Amend Organizational Documents to Authorize Virtual Meetings

Glass Lewis' views and expectations regarding certain types of company proposals include:

- **Amendments to Allow Virtual-Only Meetings.** Glass Lewis expects companies, at a minimum, to include in the proposed amendment or related proxy materials commitments to (1) disclose the procedure and requirements for participation in the meeting, (2) establish and communicate a process for the submission of questions by stockholders and for answering questions in a format that is accessible to all stockholders and (3) if the company proposes to use the format only under exceptional circumstances, disclose such exceptional circumstances to stockholders.
- **Amendments to Allow Hybrid Meetings.** Glass Lewis will generally support amendments to allow for hybrid meetings. Glass Lewis notes that stockholders will benefit from the inclusion of the commitments in the immediately preceding bullet point regarding virtual attendees (i.e., commitments (1) and (2)).
- **Amendments to Allow Virtual Participation of Directors and Officers.** Glass Lewis will generally recommend against amendments that would allow directors and officers to participate in stockholder meetings virtually, unless participation is limited to virtual-only meetings and is allowed in hybrid or traditional in-person meetings only under exceptional circumstances and subject to prior approval by the board or meeting chair.

General

For more details, as reported in our [December 11, 2020 post](#), see [Glass Lewis' 2021 Policy Updates](#), including its policies regarding virtual stockholder meetings. In addition to Glass Lewis guidance, the decision of whether to hold a virtual/hybrid meeting requires consideration of public health and employee safety concerns, government recommendations and restrictions on public gatherings – as well as state corporate law, corporate governance documents, SEC rules and guidance, and proxy advisory firm and investor viewpoints and policies.

RELATED PRACTICE AREAS

- Securities & Corporate Governance

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