

OPINION

Say no to virtual-only shareholder meetings – they let companies duck accountability

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The [Ontario](#) and federal governments recently introduced or proposed to introduce legislative amendments that would make the virtual-only annual general shareholder meetings permitted during the [COVID-19](#) pandemic a permanent option. These are worrying developments for shareholders.

While a welcome response to a life-threatening pandemic, virtual-only shareholder meetings are an unsatisfactory substitute for in-person shareholder meetings as they risk undermining the ability of shareholders to hold management and boards to account and threaten existing shareholder rights to be heard. Although a necessary accommodation under extraordinary circumstances, they should not become standard practice for AGMs in the absence of such circumstances.

The traditional in-person corporate AGM, while potentially disorderly, cumbersome and hard to manage, provides an essential opportunity for shareholders to directly interact with the management and board of the corporations whose capital they provide. For most shareholders, the AGM is their only opportunity to meet and communicate directly with the people running the company. The opportunity to freely ask unfiltered questions, hear unmediated responses, react when those responses are unsatisfactory, view the reactions of other shareholders and AGM participants – in other words, truly engage with management and the board – cannot be matched by the digital experience most of us have become familiar with over the past two years through Zoom calls and the like.

Admittedly, there are benefits to virtual meetings not offered by in-person AGMs. They can be less time-consuming and expensive to attend, potentially increasing shareholder participation. Because most public company meetings are held within a period of a few months during the annual proxy season, virtual meetings also enable investors with global holdings in a large number of companies to attend more AGMs than would

otherwise be the case. By strengthening the shareholder voice and increasing shareholder democracy, virtual meetings can enhance good governance.

So, what's the problem with virtual meetings? Simply, the person that controls the technology controls the experience. There is good evidence from virtual AGMs held during the global lockdown that technology can and will be used to limit shareholder voices: Questions submitted at virtual-only meetings are more likely to be ignored or curated; follow-up questions to inadequate boilerplate responses may not be allowed; shareholders cannot vocally challenge management and the board from the floor because their voices can be muted. Such actions negatively affect transparency and impede the ability of shareholders to hold management and the board to account.

Presumably to address such criticisms, the amendments proposed in Ontario's Business Corporations Act stipulate that virtual-only shareholder meetings must be held in such a manner that enables all persons entitled to attend the meeting to "reasonably participate." Unfortunately, what's considered reasonable will vary depending on your perspective, and at virtual-only meetings only the company has the tools to impose its perspective on the proceedings. Challenging a determination of reasonableness after the fact through the courts would not only be expensive and onerous, but likely too late to make a difference to the outcome of the issues under consideration.

The fact that most investors rarely go to AGMs in person is immaterial to the importance of their right to do so. Investors only infrequently vote against nominated directors, but their ability to do so is fundamental to our system of corporate governance and the functioning of our capital markets. Both the right to vote for directors and the ability to directly communicate with directors and management at least once a year are crucial for shareholder democracy.

Canadian legislators are not alone. To the consternation of investors, Hong Kong, Germany and Australia are among those countries that, since the pandemic, have passed legislation allowing virtual-only meetings in the absence of emergencies. It's not too cynical to view the move to virtual-only AGMs as an example of the adage of "never let a good crisis go to waste" to minimize shareholder input at AGMs, resulting in reduced board and management accountability and diminished shareholder rights.

The answer lies in hybrid meetings – meetings that enable both virtual and in-person attendance have the advantages of both forms and avoid the negative aspects inherent in virtual-only meetings. Hybrid meetings protect the rights of shareholders to attend in person and directly engage with and hold to account management and the board – to be heard, unmediated and without concerns of censorship – while keeping the benefits of increased shareholder participation that can come through virtual AGMs. Hybrid meetings are the best of both worlds. Virtual-only meetings provide necessary flexibility, but legislators should restrict their use to extraordinary circumstances.