

WILL VIRTUAL MEETINGS BECOME A REALITY IN CANADA?

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An emerging trend among public companies in the United States is to conduct their annual general meetings ("AGMs") virtually through the use of remote meeting technologies, which enable some or all of the participants to attend electronically. With high-profile companies such as Comcast, Intel, Starbucks, Paypal, and Hewlett Packard having recently held virtual-only AGMs, we may soon see a similar acceptance of the online forum among Canadian companies. Recently, Lululemon (NASDAQ: LULU), a Delaware company based in Vancouver, conducted its AGM completely virtually, leading to local media coverage and a debate over the use of virtual AGMs.

Virtual Meetings – What's Involved?

Teleconference, videoconference, messaging systems, chat rooms, and specialized virtual meeting software now allow for hundreds of participants to attend AGMs remotely. If a corporation is in the process of transitioning from traditional, in-person AGMs, it may first opt for a semi-virtual meeting – this involves the directors, and perhaps a few shareholders, being present in the same physical location, with other shareholders who are unable to attend in person virtually checking into the meeting. A slow approach to adopting virtual AGMs is recommended as it can be a good primer on the potential challenges of virtual meetings, which become more complicated logistically when there is no physical location of the meeting.

Virtual AGMs can be conducted in a variety of ways. While many companies choose to broadcast virtual meetings through both video and audio mediums, the Lululemon meeting was conducted via voice-only webcast. Comcast's virtual AGM allowed shareholders to log in and ask questions through their computers, access an audio feed, view presentation slides online, and vote their shares electronically during the meeting. Hewlett Packard's virtual AGM was accessed online via video webcast, which featured the CEO and management sitting in a boardroom.

The Benefits

AGMs are legally required by both federal and provincial corporate laws in Canada, and are considered to be a foundational aspect of corporate governance. As companies develop a more expansive reach and their shareholders are increasingly widespread across the globe, physical AGMs become difficult to attend.

Traditionally, this has been handled by way of proxies, but stakeholder engagement through proxy is not the same as actual presence, even if this presence is virtual. In contrast, the ease of attending virtual AGMs could help attract participation by shareholders, as some of the practical barriers to active participation are eliminated. Increased attendance would allow corporations to receive input from a larger and more representative pool of its shareholders. The use of virtual AGMs could also prove useful to private companies, who frequently look for ways to make their meetings, if not held by consent resolution, as easy as possible for the participants.

The Drawbacks

In-person meetings are important for allowing group decision making and forcing directors to face shareholders. With the advent of virtual meetings, and the lack of a physical meeting location, there can be a deficiency of personal interconnection, and subtle factors such as body language (or, in the case of chat rooms, vocal tonality) cannot be taken into account. Furthermore, in a virtual meeting the chairperson would typically be able to simply mute individuals who are not meant to be speaking, or designate interactivity slots outside of which participation is limited. This differs from in-person meetings, where if someone is being unruly or attempting to be heard, they will be noticed even if they are told to stop speaking or are ignored by the chairperson. Because virtual-only AGMs allow the company to vet and pre-select questions, this can result in censorship of shareholders, whether intentional or not.

Many of these issues have been voiced by frustrated shareholders. Chip Wilson, founder of Lululemon, has publicly stated that he feels shareholders were denied the opportunity to speak at the company's virtual AGM. Wilson further noted that the meeting lasted only 20 minutes and required shareholders to submit questions by e-mail prior to the meeting. Intel's 2015 AGM allowed only 12 minutes for questions and answers, and according to critics questions were clearly handpicked by the company. Critiques were similarly voiced with regards to Hewlett Packard's 2015 virtual AGM, which limited communication by asking participants to submit questions online before the meeting.

The logistical issues with virtual AGMs do not stop there, as even a chairperson acting in good faith will have problems facilitating overlapping discussions in a seamless manner, particularly as the group of participants becomes larger. As previously mentioned, the group dynamics of a large meeting are different in person than they are online; the societal norms that guide the conduct of meetings do not as easily apply in a virtual AGM. This places a disproportionate amount of power in the hands of the meeting's chairperson, or at least appears to, particularly because shareholders are not even able to see or fully appreciate who wants to ask a question or how their comments are received. Although real-time virtual voting has become possible through a platform introduced by Broadridge Financial Solutions, there are some traditional rules of procedure that will need to be rethought in the context of virtual-only meetings.

Problems may also arise with regards to the quality of dialogue at virtual AGMs. As the social media era has become more prevalent, we have seen much of online communication devolve into unsophisticated commentary – one only needs to look at the average Twitter page or YouTube comments section to see evidence of this. Because the sense of anonymity created by virtual communication causes individuals to act differently than they would in person, companies opting for a virtual AGM are taking a risk that the quality of discussion at their meetings will diminish.

Virtually Inevitable?

Although virtual AGMs have not been widely adopted in Canada, there do not appear to be any Canadian corporate laws precluding their use. The *Canada Business Corporations Act*, the *Business Corporations Act* (Alberta), and the *Business Corporations Act* (Ontario) each clearly state that shareholder and director meetings may be held either partially or entirely through electronic means. The *Business Corporations Act* (British Columbia) similarly permits participation at AGMs through telephone or other communications mediums as long as the company's articles permit it and the shareholders are "able to communicate with each other". However, the British Columbia requirement for communication between shareholders introduces the issue of whether or not virtual AGM technologies must include private shareholder-to-shareholder communications as well. If these communications are recorded or logged, this could give rise to further complications.

It should also be noted that in general, companies have a high degree of flexibility with regards to how their meetings can be run, although some corporate statutes, including British Columbia, do require a meeting to be held in the province of incorporation absent regulator permission. This requires extra scrutiny of the measures used to hold the virtual AGM, including the designation of a deemed location in the minutes.

Even if virtual meetings are permitted under Canadian law, whether they are a recommended course of action is an entirely different matter. Based on the experiences of companies that have been using virtual-only AGMs, it would be wise for Canadian companies intending to switch to electronic meetings to ease their way into these processes instead of making any abrupt changes, so as to help avoid potential shareholder unrest.

For now, we likely won't see many Canadian companies conducting virtual AGMs. As it currently stands, the practical issues with holding a virtual meeting seem to outweigh any perceived benefits. While the practice of holding virtual AGMs is likely to develop over time, in the short term we are more likely to see companies continue to hold regular AGMs and to provide investors and shareholders with the opportunity to ask questions through investor conference calls.

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A Cautionary Note

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