2021 Governance Outlook

PROJECTIONS ON EMERGING BOARD MATTERS

NACD

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ABOUT THIS REPORT

The *2021 Governance Outlook: Projections on Emerging Board Matters* is designed to give corporate directors and senior executives a comprehensive overview of major business and governance issues that are likely to demand board focus over the coming year. The report begins with an introduction from NACD that highlights survey findings about leading board priorities for 2021 and follows with five partner contributions that provide distinct insights and projections on the following themes: strategic business risks, legal risks, data privacy, M&A oversight, and virtual shareholder engagement.

Each partner contribution provides (1) an overview of key trends in a particular area of governance, (2) an outlook for how those trends will play out in 2021, and (3) relevant implications and questions for boards to consider. The *2021 Governance Outlook: Projections on Emerging Board Matters* is designed as a collection of observations to help corporate boards to prioritize their focus in 2021 and increase their awareness of emerging issues through both detailed topical analysis and coverage of broader governance implications.

National Association of Corporate Directors

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Shareholder Engagement in a Virtual World

By Dorothy Flynn, Broadridge Financial Solutions

INTRODUCTION

New technologies continue to change the corporate governance landscape for directors, especially when it comes to shareholder engagement. Even before COVID-19 forced annual shareholder meetings online, retail investors were increasingly participating in them[1] and voting their shares on their mobile phones, on their brokers' websites, and through new apps.[2] The pandemic is accelerating these trends, and innovation is ushering in an era of broader and deeper shareholder engagement.

Directors will welcome the opportunity to deepen their engagement with new and long-term retail investors who, as a group, own nearly 30 percent of the shares of listed companies.[3] Companies are using digital technologies to engage investors, including the next generation of shareholders. The retail shareholders are learning that their votes matter and that companies want them to participate. Boards need to ensure that their company is using emerging technology to improve transparency and drive investor engagement with a broader set of shareholders. It's time for directors to think outside the institutional shareholder box.

KEY PROJECTIONS

1. New brokerage business models will continue to create new shareholders.

New brokerage models will continue to create millions of new shareowners for issuers and investment funds in 2021. Together with a rising stock market, there is record growth in the number of new stockholder "positions" held by investors.[4] Many of the new owners are millennials and first-time shareholders, where digital communication from the company and the board is expected.

Robo-advisers—digital platforms that provide automated, algorithm-driven financial planning services with little to no human supervision—will continue to attract new customers in 2021 because they make investing accessible and easy. These automated platforms often allow first-time investors to purchase listed stocks and exchange-traded funds with zero commission.[5] The intergenerational transfer of wealth, which will see tens of trillions of dollars[6] change hands between various genera-

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[1] Broadridge Financial Solutions, *Virtual shareholder meetings: 2020 mid-year facts and figures*, p. 1.

[2] Broadridge Financial Solutions, "Be Counted. Be Heard." on broadridge.com.

[3] Broadridge Financial Solutions, "2019 Proxy Season Review," *ProxyPulse*, p. 4.

[4] Kate Rooney, "Fintech app Robinhood is driving a retail trading renaissance during the stock market's wild ride," cnbc.com, June 17, 2020.

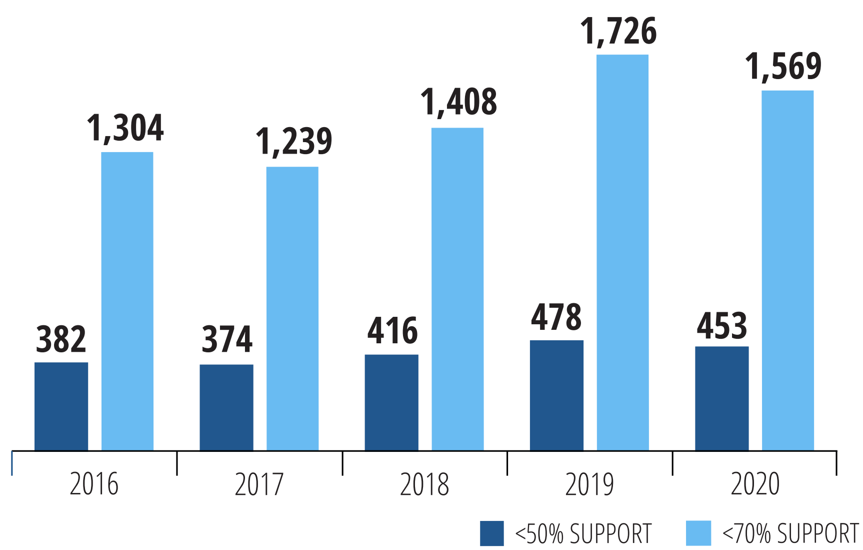
[5] Bailey McCann, "Robo Advisers Keep Adding On Services," the *Wall Street Journal*, March 8, 2020.

[6] Roubini Thought Lab in conjunction with Bank of Montreal, Broadridge, CFA Institute, Cisco, eToro, Schroders, SEI, and State Street, *Wealth and Asset Management 2021: Preparing for Transformative Change*, p. 3.

tions in the next 25 years, is also spurring stock ownership by millennials. This demographic needs to be educated on the importance of their participation in the governance process.

Companies can foster long-term holding by engaging these individuals and letting them know that their votes matter. Typically, retail investors own 30 percent of outstanding shares in public companies, while institutional investors own 70 percent.[7] However, retail investors only vote 29 percent of their shares, while institutional investors vote 91 percent of their shares. The balance of un-voted shares (comprising 20% of all shares outstanding) can make a difference, including when it comes to surpassing thresholds set by proxy advisers. For example, in proxy season 2020, 453 directors failed to attain majority support.[8] Engaging the support of retail shareholders who are often supportive of management may have changed the outcome in some of these instances.

Number of Directors Failing to Receive Support



Source: *ProxyPulse*, a Broadridge and PwC Initiative, 2020 Edition. Used with permission.

New investors appreciate knowing that directors want to understand their sentiment and that of all their shareholders, yet many retail investors find proxies daunting. Companies can use microsites to present information extracted from the proxy filings in a more attractive and inviting manner. Microsites enable shareholders to find the information they are looking for more easily and allow them to navigate quickly to voting mechanisms.

[7] Broadridge and PwC, "2019 Proxy Season Review," *ProxyPulse*, p. 4.
[8] PR Newswire, "Most Active Shareholder Participation and Voting in 14 Years, According to ProxyPulse Report," press release, November 10, 2020.

Digital platforms will continue to have a positive impact on shareholder engagement and voting.

In 2021, issuers and brokers will also drive engagement by continuing to adopt mobile apps that make it easier for investors to vote their shares. They will leverage broker Application Program Interface (API) software, which allows computer programs to interact with each other to integrate shareowner proxy information and voting into broker-dealers' websites and mobile apps. One-click authentication and access will continue to boost the number of positions voted from enhanced emails, which are more appealing than static emails.[9]

Digital platforms will continue to have a positive impact on shareholder engagement and voting. The 2020 proxy season saw the highest voting levels in 14 years as a record 97 percent of the voted shares were cast electronically; over 3 million retail positions were voted by mobile phones, which was up from 2.7 million in the 2019 season.[10]

Digital voting platforms are helping issuers to save millions of dollars on reductions in paper and postage costs. With 81 percent of the paper taken out of the system this season (as a result of investors consolidating accounts, e-delivery, and reducing duplicative mailings to households), issuers and fund companies saved an estimated $1.8 billion on printing and postage costs in comparison to mailing full proxy packages.[11] This is up from 55 percent with savings of $445 million in 2010. Issuers will increasingly make use of Quick Response (QR) codes on proxy notices that are replacing full packages for the dwindling percentage of proxies that are still mailed.[12]

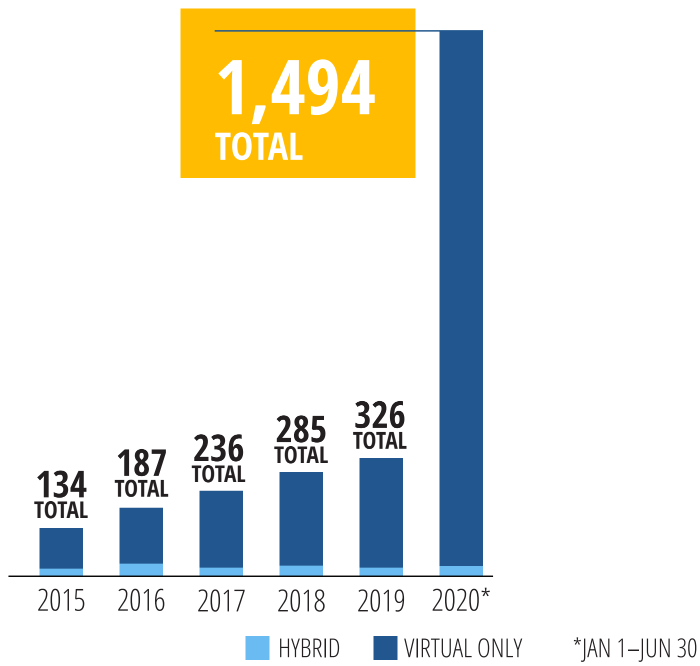
2. Virtual shareholder meetings will continue to drive engagement. In 2021 and beyond, companies and shareholders will continue to evolve their use of technology to meet their needs and circumstances. Technology continues to make shareholder meetings more accessible. Ongoing concerns about COVID-19 will result in the continued use and evolution of virtual shareholder meeting (VSM) technologies. These web-based meetings fulfill the regulatory obligations of enabling validated shareholders to attend and vote. Beyond boosting accessibility and engagement, a VSM offers boards substantial cost savings in comparison to an in-person event.

The number of VSMs ballooned in 2020 as a result of social-distancing measures required by states in response to the COVID-19 pandemic. Approximately 75,000 people attended 1,494 VSMs hosted by Broadridge

[9] Broadridge, *2019 Proxy Season Key Statistics and Performance Rating* (2019), p. 1.
[10] Ibid.
[11] The estimated savings is based on information from the National Investor Relations Institute (Biennial Report Survey, December 2010) and USPS rates. NIRI estimates a median unit cost of $4.82 for printing. Postage is calculated at $2.04 and is based on USPS rates from Broadridge. Estimates are based on a comparison to full set delivery.
[12] Broadridge, *2019 Proxy Season Key Statistics and Performance Rating* (2019), p. 1.

during the first half of 2020.[13] This compares with 326 VSMs for all of 2019. More than 80 percent of the companies holding meetings using an online-only format this year did so for the first time.[14] Attendance at each online meeting was three times greater on average this year than it was last year and greater than what has been typically seen at in-person meetings in recent years.[15]

Total Virtual Shareholder Meetings Conducted by Broadridge.



Source: *ProxyPulse*, a Broadridge and PwC Initiative, 2020 Edition. Used with permission.

Attendees also stayed longer, voted more often, and submitted more questions than they did at last year's VSMs. Average voting participation at companies that utilized a VSM was 71 percent, exceeding participation at companies that did not provide a VSM (63.6%).[16]

VSMs involving shareholder proposals were nearly twice the length of VSMs without shareholder proposals and had an average of 14 shareholders casting 'live' votes during the meeting. Shareholders asked an

[13] Broadridge, *Virtual shareholder meetings: 2020 mid-year facts and figures*, p. 3.
[14] Ibid., p. 2.
[15] Average attendance at online meetings was 20 in 2018, 18 in 2019, and 50 January 1 through June 30 in 2020. Source: unpublished Broadridge data.
[16] Broadridge Financial Solutions, *2020 Proxy Season Key Statistics and Performance Rating*, p. 2.

average of 19 questions at VSMs with shareholder proposals and some of these VSMs had more than 1,000 participants logging in. Meetings without shareholder proposals in the first half of 2020 drew 37 attendees on average and lasted 18 minutes; they had two live votes and an average of two questions from shareholders.[17]

Virtual Only Shareholder Meeting Key Statistics

	VSMs with Proposals	VSMs without Proposals
Number of VSMs	193	1,301
Average number of attendees	146	37
Average number of votes	14	2
Average number of questions	19	2
Pre-meeting questions	25% (48 meetings)	8% (106 meetings)
Average duration	34 minutes	18 minutes

Source: *ProxyPulse*, a Broadridge and PwC Initiative, 2020 Edition. Used with permission.

Issuers and shareholders saw significant advantages to holding their meetings online—and many are not going back to in-person meetings. Although this year's growth in the number of VSMs is historic, the trend before the pandemic was already in view. The number of companies hosting annual meetings through Broadridge had grown at a 17.5 percent annual rate over the previous two years as the technologies gained appeal among issuers.[18] The use of VSMs has also come to reflect corporate governance standards that are on par with in-person meetings. A 2019 study by the Harvard Law School Forum on Corporate Governance reported comparable governance standards between Russell 3000 companies across both formats, with similar dissent levels on important voting matters.[19]

[17] Dorothy Flynn, "Opinion: Virtual AGMs bringing increased engagement," corporatesecretary.com, September 24, 2020.
[18] Broadridge, *Virtual shareholder meetings 2020: mid-year facts and figures* (2020), p. 1. The report shows that there were 236 meetings hosted through Broadridge in 2017, 285 meetings in 2018 (an increase of 21 percent over 2017), and 326 meetings in 2019 (an increase of 14 percent over 2018), yielding an average increase of 17.5 percent.
[19] Marie Clara Buellingen, "Virtual Shareholder Meetings in the US," *The Harvard Law School Forum on Corporate Governance* (blog), October 10, 2019.

Looking forward, many companies, having learned from their rapid introduction to VSMs, will have centralized, intuitive tools for administering meetings and both management and board members should expect enhanced participation. The process for shareholder questions will offer more transparency.

3. Support for ESG proposals will continue to increase.
Shareholders will continue to focus on environmental, social, and governance (ESG) disclosures, and on the standardized frameworks some companies use to evaluate their risks and practices. BlackRock's engagement priorities related to environmental risks now specifically state that they will hold members of the relevant committee or the most senior nonexecutive director accountable for inadequate disclosures and the business practices underlying them.[20] In January 2020, CalSTRS approved new ESG guidelines aimed at picking companies for engagement where CalSTRS can make a difference by influencing change and driving the stock price up.[21] In October 2019, the New York City Comptroller's office launched the Boardroom Accountability Project 3.0, aimed at encouraging diversity at both the board and executive-leadership level. The office sent letters to 56 S&P 500 companies, calling on them to adopt a search policy that requires the initial list of director candidates to include female and racially/ethnic diverse candidates.[22]

Shareholder support for social and environmental proposals increased from 25 percent in 2019 to 27 percent in 2020.

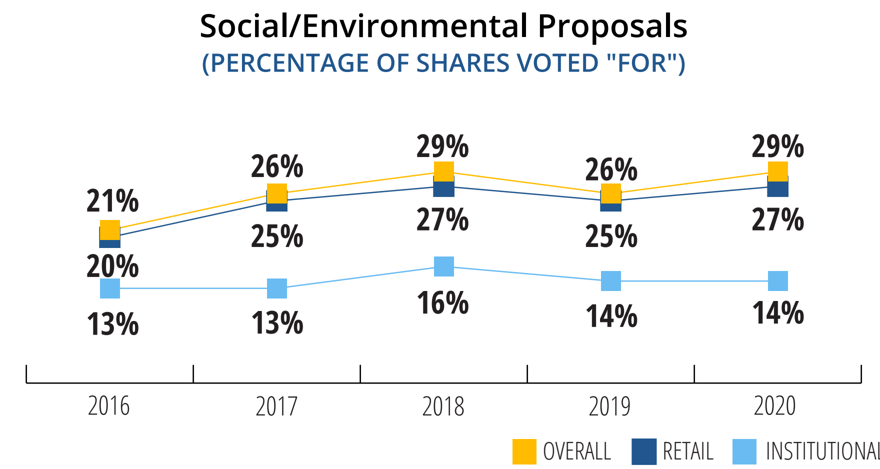
We believe directors will gain additional insight on their investors through voting analytics platforms. Newer data management and software tools will provide early indications of voting trends leading up to a general meeting and utilize the latest API- and blockchain-based technologies to address shareholder disclosure requirements.

The average level of support for all 440 shareholder proposals submitted to a vote overall in 2020 was up slightly—from 29 percent of shares voted in favor of the proposal in 2019 to 30 percent in 2020. The number of environmental and social proposals put to a vote remained flat at 114 in 2020 (vs. 115 in 2019). However, shareholder support for social and environmental proposals increased from 25 percent in 2019 to 27 percent in 2020. This was a result of an increase in support from institutional owners—from 26 percent in 2019 to 29 percent in 2020.

Third Economy CEO Chad Spitler believes that support for ESG proposals will continue to rise because a "growing body of research indicates that ESG factors have the potential for financial relevance. For example,

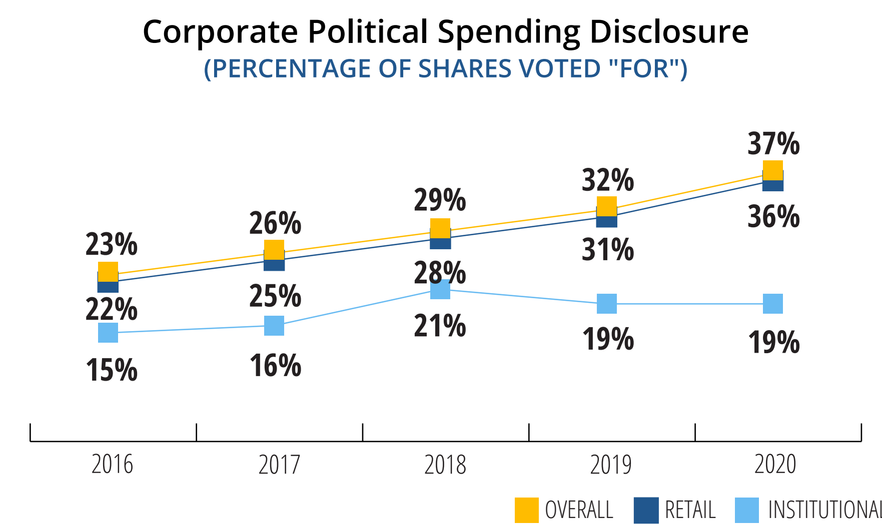
[20] Peter A. Tomasi and Michael B. Kirwan, "In the Shadows of the COVID-19 Pandemic–BlackRock's ESG Expectations," posted on Foley & Lardner LLP's blog on May 1, 2020.
[21] "CalSTRS Revamps ESG Guidelines," posted on *Chief Investment Officer*, February 10, 2020.
[22] New York City Comptroller's Office, "Comptroller Stringer Launches Boardroom Accountability Project 3.0, a First-in-the-Nation Initiative to Bring Diversity to Board and CEO Recruitment."

large institutional investors may be supportive of increased transparency in areas such as human capital management as a result."[23]



Source: *ProxyPulse*, a Broadridge and PwC Initiative, 2020 Edition. Used with permission.

Breaking it down further, certain types of proposals saw larger support increases than others—signaling potential areas of focus for 2021. For example, regarding proposals on disclosure of corporate political spending, shareholder support increased from 31 percent in 2019 to 36 percent in 2020—the largest increase seen in the last five seasons. This was driven largely by an increase in support from institutional owners—from 32 percent in 2019 to 37 percent in 2020. [24]



Source: *ProxyPulse*, a Broadridge and PwC Initiative, 2020 Edition. Used with permission.

[23] Chad Spitler, in an email interview with Broadridge conducted on October 27, 2020.

[24] Broadridge and PwC, "2020 Proxy Season Review," *ProxyPulse* (2020), p. 6.

Directors should expect growing support for ESG proposals in 2021 and beyond.

BOARD IMPLICATIONS

In light of these trends, some boards are making time on their agendas to draw up strategies for engaging all of their shareholders, including retail investors whose voice and votes are important on governance matters. A survey by Broadridge and the National Association of Corporate Directors found that 39 percent of boards communicated with the company's top five shareholders, 39 percent communicated with institutional investors, and 4 percent communicated with retail investors.[25] Board members should consider participating in greater engagement with investors. Stronger efforts at outreach could foster a more lasting connection with shareholders and provide better information to investors about both company operations and the roles that directors fulfill.

The virtual annual general meeting will become business as usual for many firms, and not just because of travel restrictions and social distancing requirements due to the COVID-19 pandemic. This makes it incumbent on directors to build on the opportunities within the platform to spur greater engagement. The increase in the numbers of attendees, questions posed, votes cast, and overall engagement that occurred in the VSMs that were held during the 2020 proxy season is evidence that this digital experience provided more shareholders with a meaningful way to engage with the companies in which they are invested. To solidify these developments, messages via text, social media, or other channels encouraging attendance and participation in the governance process will contribute to a culture of owner voting and other engagement.

Before a board starts engaging investors on ESG matters, Spitler advises that they "make sure to educate themselves on the leading frameworks" and that they "be able to speak the language that investors speak." Spitler also cautions boards that "the field has many important nuances that can confuse directors and negatively affect how they are perceived by investors if they are not careful. It's also important to take control of your ESG narrative and move from reactive to proactive."[26]

Directors should expect growing support for ESG proposals in 2021 and beyond. The Broadridge/NACD survey found that 32 percent of respondents strongly agree and 47 percent agree somewhat that ESG policies will result in greater action by companies to address ESG issues.[27] Newer shareholders will need to be engaged to have their voices and votes heard. Boards should ensure management provides a range of online tools that allow shareowners to evaluate proposals and vote accordingly. ■

[25] These statistics are drawn from unpublished data from a survey that was in the field in November 2019.

[26] Chad Spitler, in an email interview with Broadridge conducted on October 27, 2020.

[27] These statistics are drawn from unpublished data from a survey that was in the field in November 2019.

QUESTIONS FOR THE BOARD

Board members should ask themselves or management these questions throughout the year:

- Do we understand how technology can help us to better engage all shareholders in the governance process?
- Do we have a strategy for engaging both new and existing shareholders?
- Do we track the kinds of outreach to shareholders that strengthens their long-term relationship with the company?
- Can we make better use of technology so that communications about important company developments and company performance reach shareholders in a way that leads to greater engagement?
- How does our use of technology for engagement and governance compare to that of our peer group?

Dorothy Flynn

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Contributing Partners

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