WIRELESS SHAREHOLDERS MEETINGS

SERGIO ALBERTO GRAMITTO RICCI*
CHRISTINA M. SAUTTER*

The new *agora* is online. Virtually everyone is accustomed to online communication. We are currently witnessing a shift to online venues for critical debates and decision-making. Online venues, by design, facilitate accessibility to debate and decision-making by reducing costs related to participation. Anyone, from anywhere, can participate in virtual debates and discussions. This can be a radical gamechanger in investors' ability to engage in corporate governance. However, such shift to online is not shielded from power dynamics that characterize the corporate governance mechanics.

As we discuss in *Corporate Governance Gaming: The Power of Retail Investors*, 22 NEV. L.J. (*forthcoming* 2021), technology has been playing a key role in empowering retail investors. Millennial and GenZ investors, who we call *wireless investors* because of their affinity for technology, have developed ways to overcome collective action issues through online communications. This has been clear in trading-related collective actions such as GameStop and AMC. More broadly the pandemic has been a catalyst to impose the use of technology on practically everyone. Shareholders and companies have seen shareholders meetings switch from in-person meetings to virtual meetings.

Traditional in-person shareholders meetings do not rely only on laws and regulations, but also on customs, etiquette, and company-specific practices. The shift to virtual shareholders meetings provides a unique opportunity to enhance the engagement of a much broader range of investors. However, such shift comes with a vacuum of customs and established etiquette along with the risk that the vacuum is filled with practices determined by those in a position of power. These players in a position of

---

* Jacobson Fellow, New York University School of Law.
* Cynthia Felder Fayard Professor of Law, Byron R. Kantrow Professor of Law, & Vinson & Elkins Professor of Law, Louisiana State University Paul M. Hebert Law Center.

power can bend the dynamics of virtual shareholder meetings in a fashion that advantages them, substantially trumping the engagement benefits that online participation could provide.

This Article analyzes opportunities and risks relating to virtual shareholders meetings. It proceeds in four parts. Part I discusses how technology and online communications facilitate direct shareholding, decrease transaction costs relating to corporate governance, and allow investors to overcome traditional collective action problems. It also examines the abrupt transition to virtual shareholders meetings due to the pandemic, highlighting advantages and disadvantages that the experience revealed. Part II explores key features of the traditional in-person shareholders meeting that are affected by the transition to virtual shareholders meetings. In particular, the section focuses on attendance, dynamics of shareholder questioning, and issues relating to voting. Parts III and IV tackle the issues relating to shareholder attendance, questioning, and voting in virtual shareholders meetings. These parts place emphasis on the necessity to develop technology, regulation, and private ordering practices that allow *real* participation in virtual shareholder meetings. These parts first analyze the obstacles in the current law, regulation, and practices that disincentivize retail investors' engagement in shareholders meetings. Then they discuss possible reforms as well as shifts in norms, mostly rooted in the use of technology, that would enhance shareholder voice.