



IHS Markit Perspectives – March 25, 2020

All Focus on Flattening the AGM and COVID Curve

Market's input on General Meetings, New Technology, Dividends and Communication Needs

IHS Markit's M&A and Corporate Governance Advisory team engages in in-depth discussions with investors, analysts and third parties daily. In a recent IHS Markit survey of Investor Relations Officers, 97% stated that the emergence of COVID-19 has changed their IR plans for the next 12 months and 94% show an emerging interest in implementing a virtual investor activity generally. At the same time, many stakeholders on the investor side, as well as intermediaries as proxy advisors, voting platforms as well as issuers are concerned of governance and legal risks, each from their perspective. Given recent market developments in relation to general meetings, the postponement of hundreds of general meetings globally, and an ongoing discussion of virtual/hybrid meetings, we reached out to major market participants to get some clarity on the upcoming voting season.

What We Heard

Several countries and regulators in Europe have reacted quickly to adjust local laws in order to enable remote general meetings and use technology. At the same time, many stakeholders are concerned about delayed timing, health risks as well as important topics as dividend payments and governance risks, which are feared if meetings are held virtually or in a very concentrated fashion.

IHS Markit will be speaking to the market and its stakeholders on a regular basis over the next few weeks to assess how the current situation with COVID-19 is impacting their engagement with corporate issuers, as well as their concerns in light of AGMs, governance and legal frameworks. In this edition, our team wants to give a snapshot on some of the market's opinion and statements.

Recommendations

- Watch the market's activity in terms of meeting rescheduling and / or conversion to virtual meetings closely
- Communicate and disclose information in regards re-scheduling, dividends, strategy early, proactively and in an easy to find fashion
- Engage with investors as you normally do – but be prepared for more questions on strategy and risk through the crisis
- Changes to governance standards may stick out as "red flags" in this market – be clear about your reasoning for any adjustments that were determined pre-COVID and make sure they come across correctly in a COVID environment

There is a clear concern to run into a very concentrated AGM-season, which could lead to pressure on the system. Companies should consider not only their own AGM, but also assess overall AGM schedules. There is a need to flatten both the COVID and the AGM curve

Asset Manager Viewpoints

- “In terms of engagement, the current situation does not change our availability and policies as we actively reach out to our investees e.g. with our annual investee letter and our updated Corporate Governance & Proxy Voting Policy. Vice-versa, companies can and are still reaching out and engage with us –and they should continue to do so as especially in this situation, dialogue is absolutely necessary. We expect further postponements of general meetings across Europe and other markets and while topics as dividend payments and virtual/hybrid AGMs will be discussed or are reflected in current legislation, there is a high focus on COVID-19 and the health situation, which we understand. We expect many general meetings to take place from June onwards, and we hope to avoid too much concentration of meetings which would be more difficult to handle by the governance and stewardship teams, as well as the intermediaries.

Governance is in these unprecedented times even more important than ever, as topics as board resilience will be closely watched, to understand how the board members react and act in light of the current situation. Especially for management members with additional board mandates it will be interesting to see whether their activities across numerous companies can actually be tracked. While the discussion on virtual AGMs might lead to more innovation, with many countries (incl. Germany) now adapting AGM regulation, it is important to ensure and protect shareholder rights and closely watch the measures to avoid potential activism and legal risks. From issuers, ***we expect a one-voice policy, led by board and management, as well as proactive communication and rationale on postponement and dividend.*** Hendrik Schmidt, Corporate Governance Center, DWS Investment GmbH (>\$700B AUM)

- “As an active manager, engagement to us is important and part and parcel of our strategy. Thus, the current COVID situation would not disrupt our engagement plans. If we were to engage with a company pre-AGM, we will continue to do so either via emails or calls. However, if companies were to all postpone their meetings, there could be an issue of overcrowded AGM months. If there is no leeway given to companies to have it at a much later date, this would reduce the effectiveness of the AGMs as we would need time in advance to not only analyse the AGM meeting minutes but to also contact management. At times, we contact management before giving our recommendations on our votes as we may need further clarifications or would like to open a dialogue with them on certain issues. Also, technological advances have indeed made it convenient for companies to have virtual/hybrid meetings. This of course benefits shareholders who are unable to travel to attend these meetings. ***However, my concern here is that virtual meetings may not be very effective to address shareholder concerns or questions.***

How certain are we that management would address all important/pertinent questions that are being asked? This could allow management to pick and choose questions that fit their purpose. Lastly, in many countries such as in Germany, shareholder approval is needed for dividend allocation. However, many companies have already suspended their AGMs due to the federal governments rule to ban large gatherings. However, I understand the government is now considering allowing virtual meetings. We have seen some unclear messaging of companies about postponing, or not. We would hope for better guidance that helps us prepare in advance, especially on our engagement. Rupini Deepa Rajagopalan, Head of ESG Office, Berenberg Wealth and Asset Management (>\$40B EAUM)

- “Our engagement policies do not change at all. But **we also expect issuers to proactively communicate in light of COVID-19 and not forget about governance.** We will work through these difficult times with them and hope that they do not forget that they need to treat their minority holders well. For our clients, good corporate governance and dividends are part of our lifeline.” *Governance Analyst, EU pension fund manager (>\$10B EAUM)*
- “The COVID situation has not impacted our engagement schedule, other than we all work from home across the globe. **What is not always clear though is to understand the situation of companies in regards their AGM, is it happening or postponed, as many do not communicate or wait until the very last minute.** As a global fund manager we struggle with this, as we also need to prioritise our efforts and continue to vote as per schedule. **We recommend to put information on your website early enough, don’t necessarily contact us as we have our hands full, but put the info on your website and inform the market via Broadridge, ISS as well as proxy solicitors as yourselves, the IHS Markit team, who ensure we get this information.**” *Governance Analyst, UK & US investment manager (>\$500B EAUM)*

The discussion on virtual AGMs might lead to more innovation, with many countries now adapting AGM regulation, but many investors consider it of the utmost importance to ensure and protect shareholder rights while closely watching the measures put in place to avoid potential activism and legal risks.

- “Currently we prefer engagements through emails based on our disclosed detailed voting criteria. We may hold telephone meetings or direct engagements, if necessary. We have no particular concerns, as we are used to vote in a market with very concentrated AGM-schedule **We expect from companies to proactively disclose material in advance, so that we can prepare.** Brief virtual sessions are also good. As we are based in Asia, **early disclosure will help.**” *Corporate Governance Manager, Japanese investment manager (>\$10B EAUM)*
- “During this turbulent time, should companies be changing board chairs or even directors? I think investors need to take into account the need for stability although I am sure in certain instances when the conditions are right, if directors are not adding value to the company then a vote against is warranted. Investors should prioritise understanding the resilience of balance sheet and cash generation capabilities of companies, their responsible supply chain practices.e.g some big companies have extended their credit facilities to suppliers using blockchain technology, lowering suppliers borrowing costs. Will this change in the current environment and how stretched would the companies become? Is it a responsible practice? Pushing for a sensible and affordable dividend policy would be a responsible thing to do. **I would engage with companies on liquidity management – cash reserve, credit lines from banks, some banks have COVID loans and even bonds offering.**” *Stewardship manager, UK investment manager (>\$450B EAUM)*
- “When a company holds virtual general meetings, disclosure and earliest notifications are required. When postponing them, more transparent disclosure (such as terms of postponing, rationale, reason) on the postponing of meetings and/or of submission of annual reports are something we ask for. We like to prepare, hence **we recommend to disclose early, and comment on dividend**

policies in order to eradicate anxiety and concerns amid heightened uncertainty.
Stewardship manager, US investment manager (>\$100B EAUM)

- “It is not only about the company. We are in this together. ***It is also about all the owners and the minority shareholders who have a right to debate, discuss and ask questions as part of the AGM to form a final opinion. Together, we decide on the discharge of management, the appropriate distribution of profits and other items.*** If we cannot ensure this can happen as part of an orderly AGM or form of hybrid meeting, we have to find another solution. This is part of the shareholder rights, we own the company, and these rights need to be maintained.” *Portfolio Manager, French investment manager (>\$50B EAUM)*
- “Digital, virtual or hybrid AGM is an absolute “No-Go” for me. ***The open discussion, our right to challenge management and ask questions require an on-site general meeting. It is our shareholder right and I don’t see any reason why we should give this up.*** We are all in this together, as private or institutional investors, same as the companies, so we need to be treated fairly. *Retail Investor, Germany*

The market sees a need for proactive communication and disclosure, so both the operational impact and governance status can be assessed. Items to engage might include liquidity management, cash reserves as well as credit facilities including bonds or even COVID linked loans.

- “Our willingness to engage has not changed. We have all the procedures in place, despite working from home. ***We urge companies to inform the market early if they postpone or adjourn their general meetings, to allow us to prepare and engage early.*** Otherwise, we have limited concerns, we believe we are set up well, also our custodian and ISS as our proxy advisor.” *Governance Analyst, D/A/CH focused investment manager (>\$50B EAUM)*
- “***Online general meetings must continue to guarantee the right to ask questions.*** However, it seems to already have happened in the past at physical meetings that the buffet was opened accidentally, before the debate with some critical questions. Such tricks can be prevented online with more legal certainty.” *Portfolio Manager, Swiss investment manager (>\$10B EAUM)*
- “***I would go even one step further: Let us hold the AGM now in virtual form, with focus on “technical” items as dividends, continuance of operations, capital. Everything else could be delayed to the next upcoming AGM, where we then again should have the right to physical participation, shareholder proposals and debate,*** if this is waived if live transmission on the internet. Relief is sometimes postponed otherwise, you can also decide next year. Just like everything else.” *Portfolio Manager, German investment manager (>\$5B EAUM)*
- “***Maybe it all comes down to a desirable compromise. It is important to tie the hands of the activist shareholders who might bombard the companies with hundreds of questions prepared in advance to provoke legal errors.*** One might also watch the technical possibility to record everything and then “dissect” any misleading answers afterwards in court. This type of legal certainty similar to the regular AGM should be created. There are ways to give shareholders also

their rights by joining remotely, it works in other countries and regions, I believe this is possible.
Governance Analyst, EU investment manager (>20B EAUM)

Proxy Advisor Viewpoints

- “What we do not need is a pandemic of AGMs in the summer; ***similar to the need to flatten the COVID curve, we need to flatten the AGM curve in terms of concentration. If everyone leaves it to the last minute, there will be too much stress on the system on all ends***, from investors, to intermediaries like us or the voting platforms or to companies and advisors like IHS Markit. What we also need to address is the lack of clarity on wording when we talk about general meetings. Are companies postponing, cancelling, adjourning, delaying or suspending, as these mean different things and can have different legal implications. We also encourage everyone to disclose information as early as possible. Do not hold back anything, including the annual reports, in order to prepare and work through a crowded AGM period. We need an orderly market in general meetings. Doing a virtual AGM is perfectly fine, but in some markets it is a legal minefield. Also information on dividends, and ways to pay them to the market is key, especially in that environment, as they are a lifeline to the funds and their clients – they pay pensions. So when companies work on their AGM, they should be not only focusing on their meeting, but also the overall landscape when scheduling. We are all in the same boat. Let’s work together. Communication is key, and early disclosure so we all can uphold the corporate governance standards.” *Sarah Wilson, Minerva Analytics (Manifest) Proxy Advisor*

In order to ensure an orderly AGM season, proxy advisers and other intermediaries require early, easy-to find and clear disclosure and details on rationale. While everyone is in the same boat through this crisis, protection of shareholder rights and governance standards must not be forgotten. Communication is key.

- “While Glass Lewis acknowledges concerns regarding virtual-only meetings, given the current situation, we believe that such meetings provide compelling advantages for both companies and shareholders to preserve the timing, certainty, agendas and voting of shareholder meetings. We do not believe discouraging virtual-only meetings during this time serves the interests of shareholders or companies. Shareholders and representative bodies have previously expressed concerns regarding companies’ use of this meeting format, as it holds the potential of silencing dissenting shareholders and could act as a shield to insulate management and the board from subpar performance or significant controversies. However, given the ramifications of the ongoing pandemic, even groups and shareholders who have argued ardently against the practice of holding virtual-only meetings, such as the *Council of Institutional Investors*, are considering whether the current circumstances warrant an exception – and how companies can effectively use this tool in a manner that both ensures the health and safety of participants and respects shareholder rights.

Glass Lewis is generally neutral on the use of virtual-only meetings, so long as they are structured to ensure meaningful shareholder participation. Glass Lewis’s standard policies provide that ***we will generally recommend against the chair of the nominating and governance committee if companies do not provide adequate disclosure concerning the protections afforded to shareholders when conducting a virtual-only meeting.*** Examples of effective disclosure can be viewed [here](#).” *Glass Lewis, Global Proxy Advisor*

- “I believe that the market is generally very adaptive and everyone wants to make this work. At the same time, there is a risk that through higher concentration of meetings, and restricted access to physical meetings, there are increased legal and governance risks. We have adjusted our policies to support companies and our clients, and at the same time we ask companies to disclose information very early. Same as our clients, ***we will watch and monitor disclosure and a drop in governance standards closely. While we want to work together through this crisis, we need to also make sure we protect shareholder rights and governance standards for the future.*** We do not anticipate that many problems around dividends, as many countries have measures in place to address the payment. Also, we understand that regulators and market leaders are working hard to enable hybrid events that still ensure shareholder rights. My advice, communicate early, explain your rationale and be proactive.” *Research Analyst, Leading Global Proxy Advisor*
- “We will continue to speak to issuers as usual outside our blackout period. If a serious issue arises regarding the AGM/ EGM as a result of COVID, and the company has an urgent need to talk as result, this can be done. We do not see a conflict of interest because a COVID related topic was not to be foreseen. ***What we ask companies is to communicate early and disclose information on your website, and keep it updated, so the market can track these. Put them on a place where info can be easily found. Even if the AGM is not postponed, please put on your perspective and rationale on the website, it helps.*** Our concern is that there will be a very high concentration of AGMs in the summer, which will make it very hard to handle. Let’s communicate as we are all in the same boat.” *Head of Research, Proxy Advisor Germany*
- “The implications of this crisis on companies and their directors are profound. We believe that the business community must demonstrate its recognition of the challenges many employees face. PIRC urges all companies to review their approach to pay, and amounts to be paid to their executives, in the light of current events. ***Few if any executive pay schemes are likely to be appropriate for a company in current market circumstances and the health emergency.*** PIRC therefore calls on companies to suspend all payments to executives other than basic salary from the 1st April, until the end of your financial year.” *PIRC – Pensions & Investments Research Consultants, Global Proxy Advisor*

Source: Market Research & Interviews by the IHS Markit M&A and Governance Advisory team.

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