Proof of concept: an Intelligize report on virtual annual shareholder meetings

May 19, 2020

Alyson Clabaugh
Erin Connors
Rob Peters

Table of contents

Executive summary

Once a toddler puts her head underwater, it's never that scary again.

Once a child rides a bike, a teenager learns to drive, or an adult signs-up for TikTok, those activities never again hold the power to intimidate that they once did.

But what about public companies and virtual meetings?

This proxy season, an unprecedented number of public companies adopted a virtual format for their annual shareholder meetings. They had no choice. The pandemic made it irresponsible, if not illegal, to contemplate in-person meetings after a certain point in 2020.

That singular event upset the long-held balance between advocates for, and opponents of, virtual meetings. Advocates could point to any number of benefits: cost savings for both the company and shareholders, reduced environmental impact, shareholder convenience, broader shareholder attendance, and greater shareholder participation in the voting process. It all sounds great. But until 2019, when just 8% of the Russell 3000 held their meetings online, opponents had the best of the argument. In opposing virtual meetings, shareholder advocates often pointed to the fact that investors would lose the cherished opportunity to confront management face to face. They also often raised the possibility that companies could game the Q&A portion of the meeting. As a Hewlett Packard Enterprise shareholder proposal once put it: "Investor relations can screen out the difficult questions and can spoon-feed vague answers to our CEO."

And for the most part, public companies have refrained from going virtual. They held their collective breath, like a child in goggles with dry hair and a nervous stomach. But now, they've been dunked in.

We produced this report to offer insights on the impact that COVID-19 has had on public companies' choice of annual shareholder meeting formats—and in particular the adoption of virtual meetings. The report offers an assessment of the 2020 proxy season and recommendations going forward in response to three specific questions:

- How did COVID-19 change the 2020 proxy season landscape for S&P 500 companies?
- How did state laws and location of headquarters impact virtual meetings in the 2020 proxy season?
- Is your industry ready for virtual annual meetings?

Behind each of these questions is a larger one: was the shift to virtual meetings, like the pandemic itself, a one-time event with limited relevance for the future? Or will the fears of holding a virtual meeting never loom as large again, now that so many companies have done it?

Our analysis suggests the latter.

Intelligize®
a LexisNexis® company

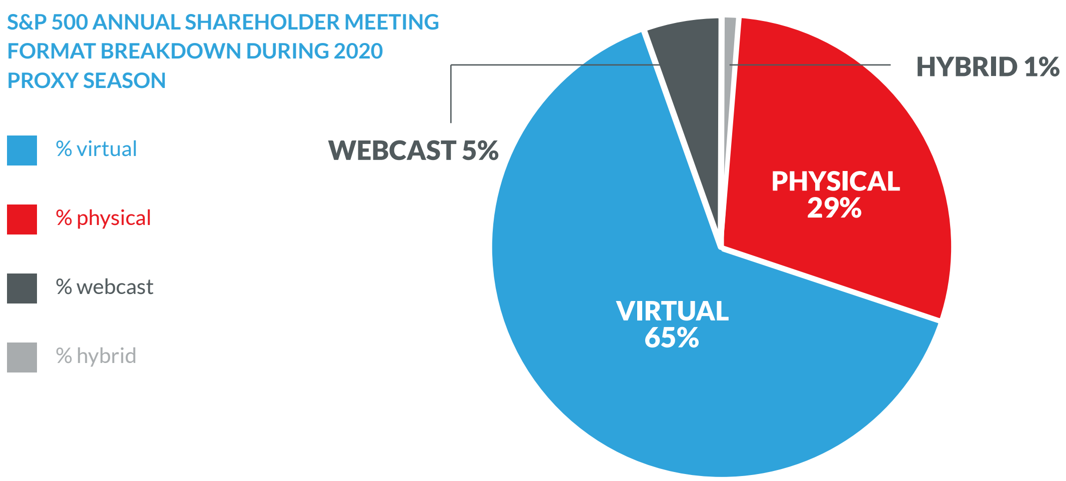
How did COVID-19 change the 2020 proxy season annual shareholder meeting landscape for S&P 500 companies?

May 19, 2020

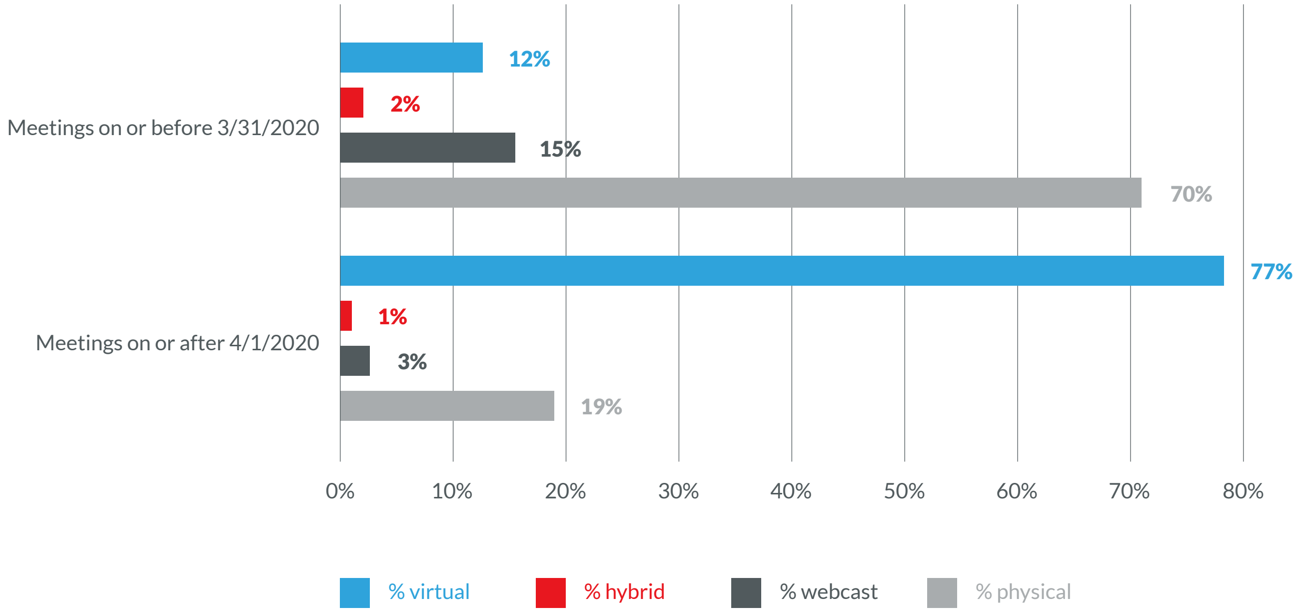
1

The numbers leave no doubt: the pandemic forced a sudden change in the annual shareholder meeting format used by S&P 500 companies. In the 2019 proxy season—and even into 2020—physical meetings remained the clear preference. After the reality of the pandemic descended in late March, however, public health concerns (and, in some cases, government orders) demanded the switch.

S&P 500 ANNUAL SHAREHOLDER MEETING FORMAT BREAKDOWN DURING 2020 PROXY SEASON



PANDEMIC IMPACT ON S&P 500 PROXY SEASON ANNUAL SHAREHOLDER MEETING FORMATS



Note: Shows meeting formats by original meeting date (regardless of any postponements).

By May 1, 2020, 65% of S&P 500 companies had held or announced plans to hold virtual meetings. That's a huge shift, though not an unexpected one, given the unprecedented public health crisis. Only 11% of the S&P 500 companies holding virtual meetings in 2020 have historically held virtual or hybrid meetings. Absent the pandemic, that pattern would have held again in 2020. Of the companies using a virtual format in 2020, 88% pointed to COVID-19 as the reason in their initial (DEF 14A) or amended (DEFA14A) filings.

Meanwhile, the number of companies going virtual in 2020 could still grow. Among the S&P 500, 73 companies have in-person meetings (physical, webcast, or hybrid) yet to take place, while stay-at-home orders are still operative in many states. Any companies that switch to a virtual meeting will only add to the momentum in favor of that format.

The only question—and it's a big one—is whether it will be a permanent shift. A considerable number of companies have already declared their plans to return to an in-person format next year:

- Akamai
- Ball
- Church & Dwight
- Cigna
- ConocoPhillips
- Hess
- Hilton Worldwide
- HollyFrontier
- Home Depot
- Kinder Morgan
- MarketAxess
- Occidental Petroleum
- Pioneer Natural Resources
- SBA Communications
- Sempra Energy
- Skyworks Solutions
- Southern Company
- Thermo Fisher
- UDR
- Ulta Beauty
- WEC Energy
- Vulcan Materials

A smaller group—Alphabet, AMETEK, AES, Philip Morris, and Zions Bancorporation—gave themselves more latitude. These companies did not cite the pandemic when disclosing their election of a virtual meeting, which leaves them room to make it a permanent choice. In fact, any company that did not commit itself to an in-person meeting next year could stick with the virtual meeting format going forward.

Recommendation: We suggest they do. Experience from this year's virtual meetings may show increased attendance, as well as an increase in shareholder engagement. Companies should also begin planning a response to future shareholder pushback.

Any company that successfully holds a virtual meeting this year will have overcome the most powerful argument against it: the fear of the unknown. Of course, more legitimate concerns have been raised against virtual meetings, including that management could use the format to cherry-pick questions, thereby weakening the voices of their shareholders. Companies that negated such concerns through their procedures—making the questioning process transparent, for instance—have put themselves in the very best position (and reduced the chance of any shareholder objection in the first place).

Regardless, companies that went virtual this year now have experience and data—on shareholder attendance, cost savings, and more—that can be used in responding to criticisms. For instance, in its 2020 proxy materials, GM used its experience holding a virtual meeting to address a shareholder proposal calling for the right to act by written consent (which was driven by the company's virtual meeting format). In response to the shareholder's implication that the ability to hold the board accountable had been compromised by the virtual format, GM offered a persuasive response grounded in experience:

> *In fact, the virtual meeting format resulted in attendance increasing to approximately 125 from an average of fewer than 35 over the last five years. In addition, GM's 2019 virtual annual meeting featured a live video stream of the meeting and an opportunity for shareholders to ask live questions during the meeting (via telephone and in writing), resulting in a better and more productive experience for our shareholders.*

But the biggest impact of this proxy season is clear. It has transformed virtual meetings into a known quantity. The mass adoption of virtual meetings—without tragic consequences—has de-risked the choice to the point that it should no longer scare issuers (or their shareholders). There is now even a consensus safe choice of vendors to host a virtual meeting: Broadridge Financial Solutions, Inc., which hosted at least 78% of virtual meetings per S&P 500 proxy filings. That's just one example of hundreds of previously scary questions that have been answered calmly by this year's forced venture into the unknown.

Intelligize®
a LexisNexis® company

How did state laws and location of headquarters impact virtual annual shareholder meetings in the 2020 proxy season?

May 19, 2020

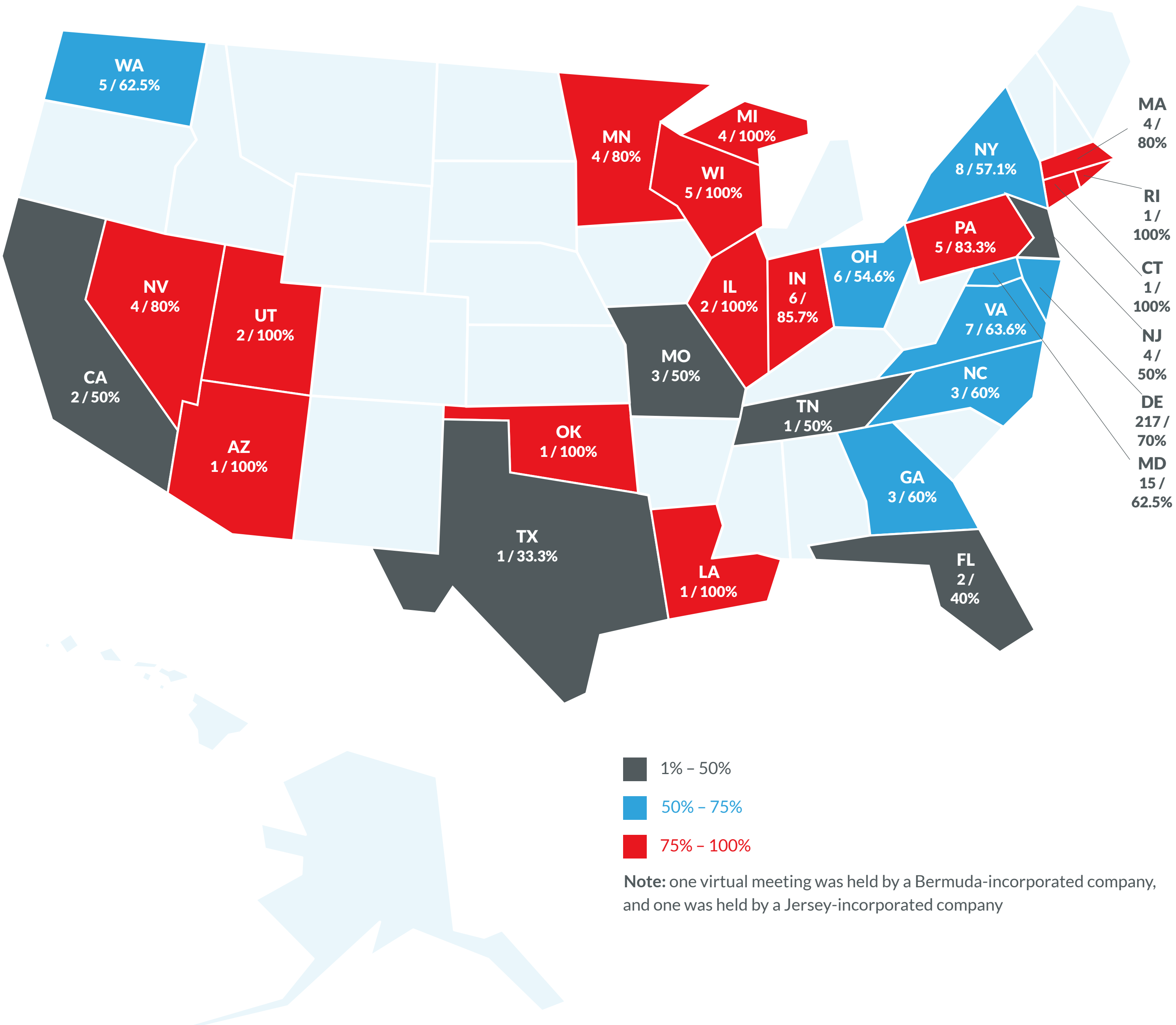
2

Under ordinary circumstances, the decision to hold a virtual annual meeting results from a calculus that considers company-specific factors (e.g., governing documents and stakeholder sentiment), applicable law (e.g., state corporation law and SEC regulations), and societal issues (e.g., cybersecurity threats). Our present circumstances, of course, are not ordinary. With the public health crisis of COVID-19, the latter suddenly overrode other considerations, all but demanding a virtual format. For companies incorporated in certain states—including the early hot-spots of New York and California—existing state laws would have prohibited virtual meetings or made them impracticable. Governors in those states and others solved the dilemma by issuing executive orders that allowed for unprecedented flexibility.

No such problem exists in Delaware, the state where the majority of S&P 500 companies are incorporated. Delaware began allowing virtual meetings as early as the year 2000, and as of 2018, more than 30 states had joined Delaware in blessing virtual meetings. For companies in California and New York, which had effectively been prohibited from holding virtual meetings by state law, the gubernatorial orders are only a temporary relief. Influential pension funds such as CalPERS and those overseen by the NYC Comptroller vigorously oppose virtual meetings and are unlikely to give their blessing to a permanent statutory change.

S&P 500 VIRTUAL ANNUAL SHAREHOLDER MEETINGS (BY STATE OF INCORPORATION)

virtual meetings held / % virtual meetings held

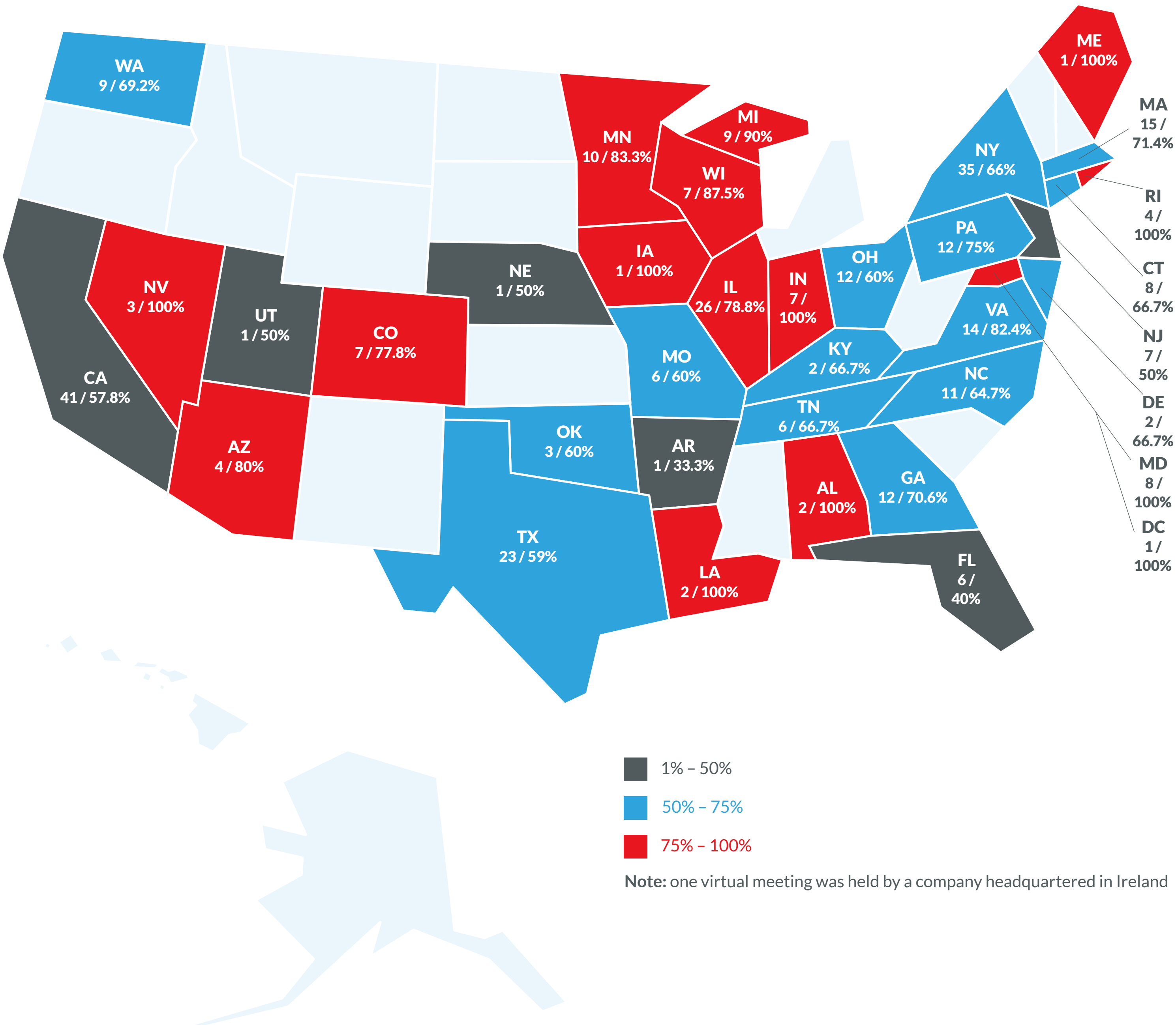


Note: one virtual meeting was held by a Bermuda-incorporated company, and one was held by a Jersey-incorporated company

Intelligize® a LexisNexis® company

S&P 500 VIRTUAL ANNUAL SHAREHOLDER MEETINGS HELD (BY HEADQUARTERS LOCATION)

virtual meetings held / % virtual meetings held



Note: one virtual meeting was held by a company headquartered in Ireland

Recommendation: At least some state prohibitions on virtual meetings will remain in place in the near term. But while we hope this pandemic is a one-time event, companies incorporated in states that prohibit virtual meetings (or create high barriers to them), should use their experience this year to develop contingency plans for making a switch to a virtual meeting in the future. Such plans would give them a good "break glass" option should they need it for any reason—or are allowed to go virtual in the future.

The contingency planning should begin with an assessment of this year's experience, including answers to questions such as:

- Did management have the appropriate technology and bandwidth?
- How well did your rules of conduct work?
- How did key stakeholders respond to the format?
- Did your Q&A format draw criticism?
- What questions did your technical support team field?

Another obvious step is to establish a relationship with an online host now, so that it can be called on in a crisis.

Companies would also be wise to get clever in their planning. They can take inspiration from Pepsico, which improvised effectively in the face of the pandemic. Facing a North Carolina ban on virtual meetings (later lifted by the governor), Pepsico urged shareholders to vote ahead and attend its live webcast, which would achieve many of the benefits of holding a virtual meeting. Berkshire Hathaway made changes at the eleventh hour too, allowing employees to deliver proxy votes and arranging for Yahoo to stream its meeting.

With time to plan, public companies should be able to craft equally inventive approaches.

Is your industry ready for virtual annual shareholder meetings?

May 19, 2020

3

Historically, IT and communications companies have outpaced other industries in adopting virtual meetings. But this year's experience has shown they hardly have a monopoly on the format. In fact, among the S&P 500, which includes representation from many sectors, the industries with 100% adoption rates include several—commercial banking, air transportation, health care, oil—that are not perceived as being at the cutting edge of tech adoption. Equally surprising is the fact that the semiconductor industry, which facilitates so much tech activity, places last on the chart below.

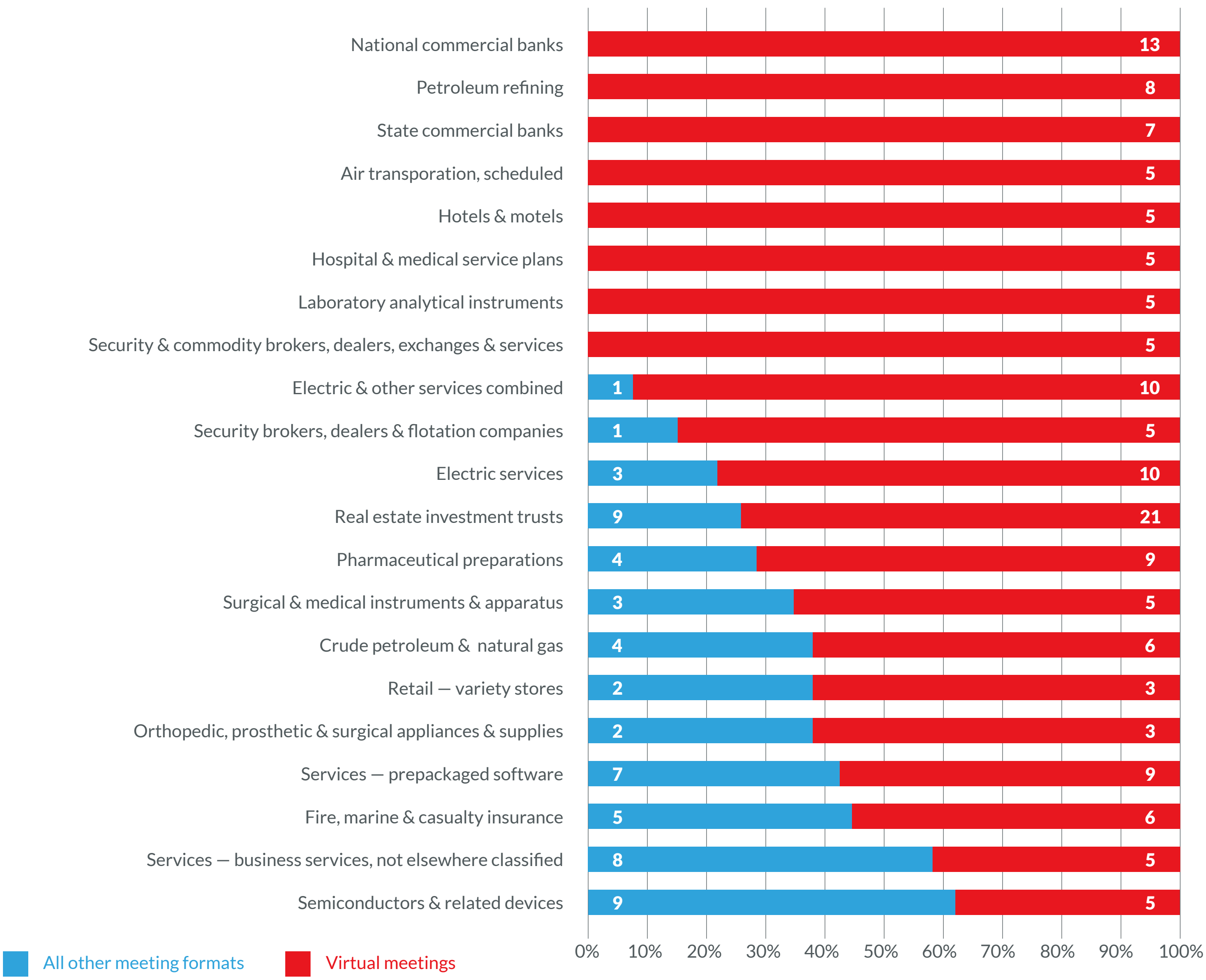
The companies adopting virtual meetings of course identified COVID-19 concerns as a driving force behind their decisions. In addition, companies in industries with 100% adoption rates cited increased shareholder attendance and participation, ESG principles, and cost savings as compelling reasons to go virtual. Here are what three S&P 500 members disclosed about their reasoning:

- Cboe Global Markets (Security and commodity brokers, dealers, exchanges & services)
  The virtual format "may facilitate stockholder attendance, dialogue and participation by enabling stockholders to participate fully, and equally, from any location around the world,

at no cost. We will be able to engage with all stockholders as opposed to just those who can afford to travel to an in-person meeting."

- Marriott International (Hotels & motels)
  The virtual format "will also reduce the costs to the Company and stockholders of planning, holding, and attending the Annual Meeting, while still allowing for the same participation opportunities as were available at an in-person meeting."
- MGM Resorts (Hotels & motels)
  The virtual format "is consistent with our goal to be an environmental leader and our core belief that a greener business is a better business."

VIRTUAL MEETING ADOPTION RATES BY TOP TEN S&P 500 STANDARD INDUSTRIAL CLASSIFICATION



Intelligize
a LexisNexis company

Recommendation: The "Overton window" is a useful political concept, referring to the range of policy outcomes acceptable to the mainstream population. For public companies, the idea of holding a virtual meeting may have, until recently, been at the edge of the Overton window defined by their shareholders' thinking. But now it is a standard—possibly popular—choice. With the choice to go virtual sitting in the middle of their Overton windows, companies may now feel free to elect it.

They should, however, take care to talk about their decision authentically. When airlines cite the fact that shareholders don't have to travel as justification to hold a virtual meeting, it rings false. Instead, companies should feel free to discuss cost or other factors truly driving their decision—as long as one of those factors isn't a desire to control shareholder questions, in which case, they should reexamine their choices.

Methodology

This report is based on information contained in the Intelligize platform as of 5/1/2020.

For the purposes of this report, we evaluated:

- Definitive annual meeting proxy statements pursuant to Section 14(a) of the Securities Exchange Act of 1934 (as amended)
- Filed between 5/1/2019 and 5/1/2020
- From companies on the S&P 500 index as of 5/1/2020

Our analysis includes 495 companies that filed relevant documents in the above time frame.

We define the annual shareholder meeting formats as follows:

- **Physical Meetings** — At physical meetings shareholders register votes and attend the meeting by going to the physical location of the meeting. (For all meeting types, companies also typically offer early voting by mail, phone and internet.)
- **Webcast Meetings** — At webcast meetings shareholders register votes and attend the meeting by going to the physical location of the meeting. Shareholders may also watch the meeting remotely via webcast or listen via audio conference. Remote attendees, however, are not able to participate (by submitting questions or shareholder proposals, for instance) on equal terms with those attending the meeting in person.
- **Hybrid Meetings** — At hybrid meetings shareholders can vote and attend the meeting at either a physical or virtual location. Both physical and virtual attendees may participate equally.
- **Virtual Meetings** — At virtual meetings shareholders register votes and attend the meeting online through a virtual meeting platform. In-person attendance is not allowed.

About Intelligize

Intelligize is the leading provider of best-in-class content, exclusive news collections, regulatory insights, and powerful analytical tools for compliance and transactional professionals.

Intelligize offers a web-based research platform that ensures law firms, accounting firms, corporations, and other organizations stay compliant with government regulations, build stronger deals and agreements, and deliver value to their shareholders and clients.

Headquartered in the Washington, DC metro area, Intelligize serves Fortune 500 companies, including Starbucks, IBM, Microsoft, Verizon, and Walmart, as well as many of the top global law and accounting firms.

In 2016, Intelligize became a wholly-owned subsidiary of LexisNexis®, a leading global provider of content-enabled workflow solutions designed specifically for professionals in the legal, risk management, corporate, government, law enforcement, accounting, and academic markets.

For more information, visit www.intelligize.com

The Intelligize platform includes:

- SEC Filings
- Section Analysis & Trends
- Agreements & Other Exhibits
- Comment Letters
- No-Action Letters
- Regulatory Materials
- Securities Drafting & Compliance
- Accounting Standards & Guidance
- Registered Offerings
- Mergers & Acquisitions
- Exempt Offerings
- Corporate Governance
- Firm Memos
- Earnings Call Transcripts