

Looking Back and Looking Forward

Corporate Governance and M&A 2020 Year in Review and Outlook for 2021

George A. Casey, Global Managing Partner, Shearman & Sterling LLP

As 2020, one of the most challenging, erratic and uncertain years in recent history, flipped the calendar to 2021, it is a good time to reflect on lessons learned from the turbulent and unique conditions of this past year and shift focus onto the future as the world continues on the track to recovery—physically, socially, and economically.

Key Corporate Governance and M&A Developments in 2020

- During the early days of Covid-19 (March-April) as the economy came to a grinding halt and markets experienced large-scale volatility, companies and industries were impacted in unprecedented ways that presented significant risks to all, upended business models and forced bankruptcies for some and highlighted material weaknesses for others, while allowing those well positioned for the remote, technology driven, economy prosper.
- M&A activity stalled early in the pandemic as the ability to assess whether changes that businesses experienced were temporary or long-lasting—and how these changes impact valuation.
- Market volatility in the early days of the pandemic forced activists to review their strategies, with some activist funds pausing their campaigns and others trying to take advantage of the significant drop of stock prices in March, which led to a significant uptick in adoption of poison pills. Some companies implemented traditional poison pills to deter opportunistic stock sweeps, while others considered implementing poison pills to preserve valuable tax assets.
- Certain industries' business models and growth strategies were disrupted more than others due to Covid-19. Industries such as Hospitality, Transportation, Retail, Media & Entertainment, Mining & Metals, Oil & Gas, Real Estate and Construction, all showed the highest degrees of disruption and volatility throughout the crisis.
- Environmental, social and governance (ESG) considerations continued to remain a focal point for Boards of Directors as they have been dealing with major impacts of the pandemic on their employees, customers and communities in which they operate. ESG becoming even more part of the fabric of companies' day-to-day activities, meant that ESG considerations became much more prominent in evaluating M&A transactions and overall corporate responsibility.
- 2020 became "the Year of the SPAC" as dubbed by numerous media outlets, with these "blank check companies" seeing a significant reemergence as billions of dollars of proceeds flooded into SPACs in a way that shifted the IPO market and increased the demand for M&A bankers and lawyers to guide sponsors and companies through the process.

ADDITIONAL RESOURCES



[Shearman & Sterling's 18th Annual Corporate Governance & Executive Compensation Survey](#)

[Effects of Covid-19 on Shareholder Activism and M&A: Views from Corporate Boards and the Market](#)

[ESG Considerations in M&A](#)

[Current Issues related to Spin Offs](#)

[Picking the Right Poison Pill: Strategies for Preventing Opportunistic Stock Sweeps and Preserving Value](#)

[Reverse Morris Trust Transactions for the C-Suite](#)

[Proposed HSR Rules Affect Investment Firms/Master Limited Partnerships and Minority Acquisitions](#)



George Casey
Global Managing Partner
george.casey@shearman.com
+1 212 848 8787
New York

Looking Ahead to 2021 and the Future

VIRTUAL DEALMAKING IS HERE TO STAY

While there is no true substitute to face-to-face interactions, the pandemic has compelled the dealmaking world to adapt to the new environment and innovate to drive deals regardless of inability to travel and develop an in-person “chemistry.” Dealmakers have embraced, willingly or not, the art of virtual communication and negotiation throughout the deal lifecycle. As some deals were negotiated by phone even before the pandemic, deal professionals have discovered that video meetings are a much better substitute to the old-style conference calls and can be the closest to an in-person interaction while providing a significant benefit of not having to be on the road for the deal. The “new norm” offers opportunity for deal teams to apply the “pandemic techniques” through different phases of the deal previously deemed exotic or atypical, and those who have adapted to this way of operating will be able to drive efficiencies and develop relationships in ways that create long-term value.

Boards and shareholders have also been deeply impacted by the shift to the virtual environment in conducting video meetings and in getting comfortable with interacting with each other without the need for in-person presence.

ESG IN M&A

The ESG landscape is evolving rapidly. ESG adoption into companies’ culture is continuing to evolve, but its importance is undeniable. Stakeholders are requiring greater transparency and accountability from companies on ESG factors, and this unprecedented level of engagement is creating both risks and opportunities that boards and management cannot ignore. While ESG disclosure and reporting is still taking shape, mitigating ESG risks and maximizing ESG integration in M&A transactions will be an important consideration for M&A practitioners. Buyers are paying increasing attention to ESG issues in the context of an M&A transaction, including conducting ESG-focused due diligence, allocating ESG-type risks in transaction documents, and implementing post-closing ESG integration. Even if it may take time for ESG to become mainstream in corporate decision making, it is clear that ESG factors now represent important risk and value components in M&A.

CORPORATE GOVERNANCE CONTINUES TO EVOLVE AND BE REDEFINED

ISS and Glass Lewis announced in November 2020 updates to the 2021 ISS Benchmark Policies and the U.S. Proxy Voting Policy Guidelines for 2021, respectively, which reflect the overarching trends of the past year. Updates from the ISS included racial/ethnic board diversity, board independence and material environmental and social risk oversight failures. The updates from Glass Lewis included board gender diversity, disclosure of director diversity and skills, board refreshment, environmental and social risk oversight, short-term incentives, SPACs and virtual-only shareholder meetings.

The distinct overlap and focus on these themes in the updates from proxy advisory services along with enhanced regulatory requirements and market best practices provides guidance for companies’ boards and management in structuring a plan towards the future. Shareholders will differentiate companies based on adherence to these guidelines.

US ADMINISTRATION CHANGE WILL IMPACT POLICY

Along with the continued pandemic response and vaccine dissemination and the expected economic recovery, the United States’ transition to a new administration in 2021 could have a significant effect on US policies and the global economy. Potential policy changes will likely impact international trade, corporate and individual taxation, data protection, and financial services, among others, and would affect businesses and deal making. The energy industry has the potential to see a seismic shift and dealmakers will be closely watching the new administration’s 10-year, \$1.7 trillion clean energy and environmental justice plan.

Cross-border M&A deals, particularly involving critical infrastructure, critical technology and data collection, will land more and more under governmental microscopes in the US and in Europe as much more strict regulations came into effect both in individual countries and the EU as a whole.

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