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# THE FUTURE OF AGMs

Wednesday 30<sup>th</sup> September 2020

# AGENDA

## THE LEGAL PERSPECTIVE

Mark Jan Arends, Notary and Partner at Clifford Chance

## THE ISSUER PERSPECTIVE

Brigitte van den Bosch, Company Secretary and Senior Legal Counsel at Adyen

## THE INSTITUTIONAL INVESTOR PERSPECTIVE

Rients Abma, Executive Director at Eumedion

## TOOLS AVAILABLE FOR A SUCCESSFUL AGM

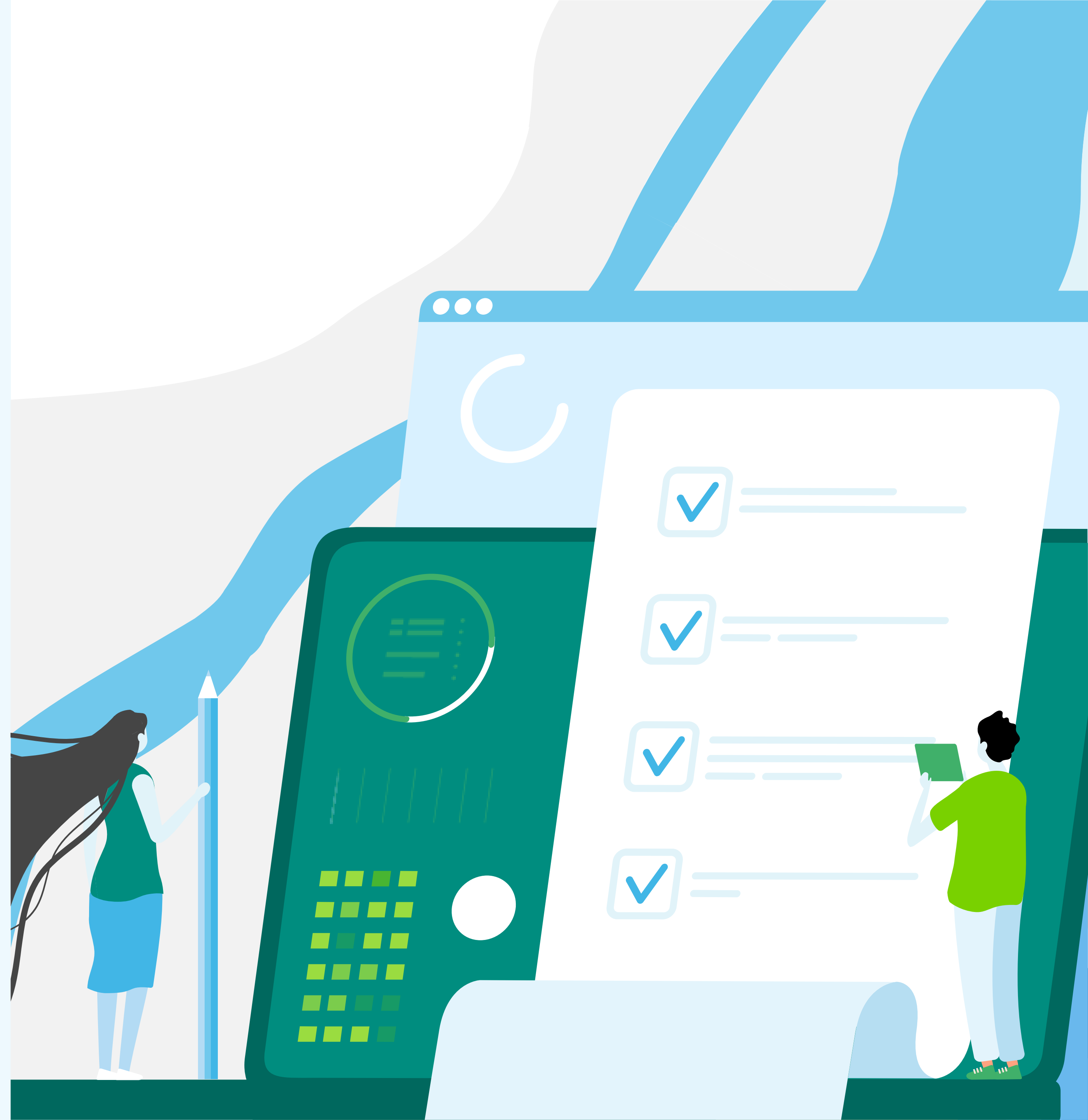
Laurens van Dehn, Sales Manager Benelux at Euronext Corporate Services



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**WEBINAR 'THE FUTURE OF AGMS'**

**THE LEGAL PERSPECTIVE**

30 SEPTEMBER 2020

MARK-JAN ARENDS

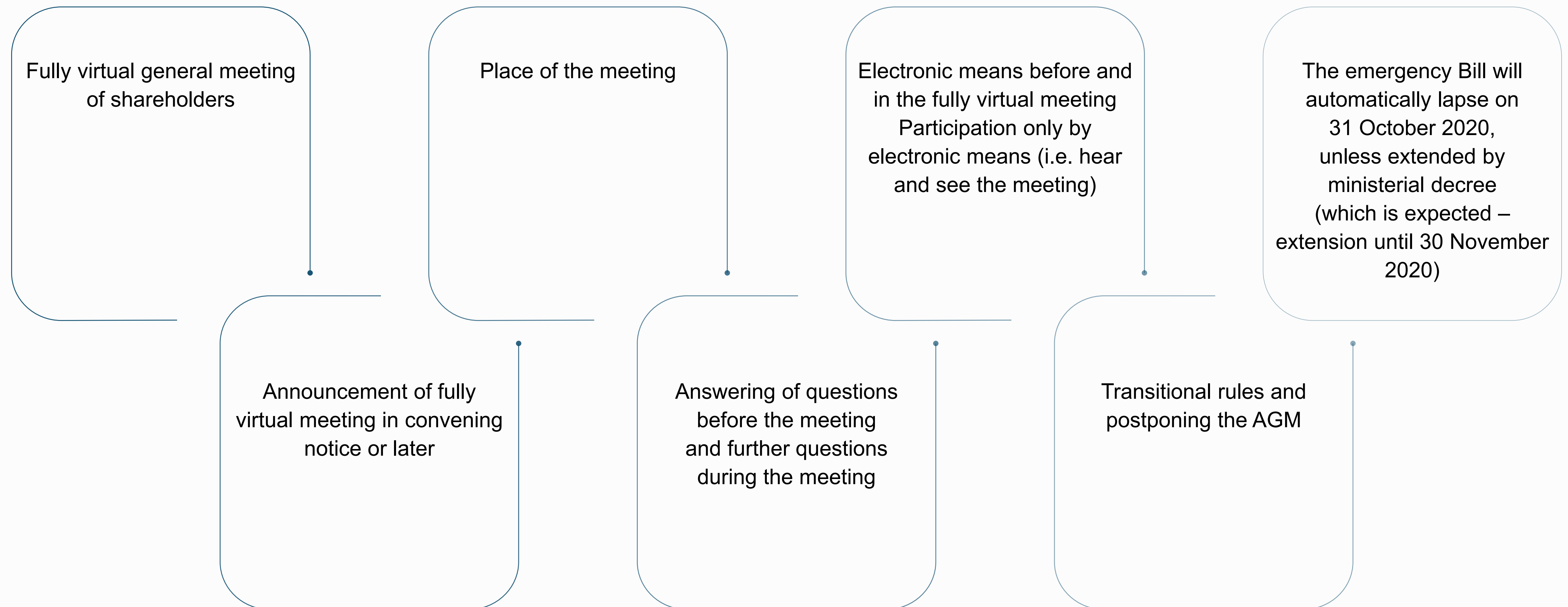


# LEGAL FRAMEWORK

## OVERVIEW

<b>Legal infrastructure virtual shareholders meeting (since 2007)</b> <i>(Facilities to be established in AoA)</i>	<b>Hybrid (virtual) shareholders meeting (since 2007)</b> <i>(Facilities to be established in AoA)</i>	<b>Fully virtual shareholders meeting (2020)</b> <i>(Facilities may be established by board resolution)</i>
<p>AoA may provide electronic/ virtual participation in the meeting:            (i) <b>hear/see</b> what is said at the meeting via live audio or video connection (i.e. unilateral communication) and (ii) <b>vote</b>.            (art. 2:117a par 2 DCC)            Common practice in Dutch listed companies.</p>	<p>Electronic <b>participation</b> ((i) hear and see the meeting, (ii) participate in the discussion and (iii) vote) is optional for shareholders, i.e, they can choose between physical and virtual participation in the meeting.</p>	<p>Board may provide that shareholder may not physically attend the meeting, provided electronic/virtual participation (i.e. hear and see the meeting) is possible. (art. 11 Temporary Law COVID-19)</p>
<p>The meeting has to be held at the place mentioned in the company's AoA            (art. 2:116 DCC, since 1838)</p>	<p>Physical meeting is required next to the virtual meeting; chairman and (some) board members are expected to be physically present; shareholders may be present.</p>	<p>Physical meeting still required. <b>Place of meeting may be changed after convocation</b> (art. 10 Temporary Law COVID-19).            Shareholders cannot be present. Chairman and board members may choose to be present; if they are not present, <u>nobody is present at the place of the meeting</u>.</p>
<p>Extra facility: AoA may provide that shareholders may also: (iii) electronically <b>participate in the discussion</b> (i.e. bilateral communication)            (art. 2:117a par 2 DCC)            Not common practice in Dutch listed companies because of technical risks</p>	<p>As AoA do not commonly provide this extra facility, one has to go to the physical meeting when desiring to participate in the discussion.</p>	<p>Problem: electronic participation in the discussion is <i>still</i> not common AND physical participation is prohibited.            "Solution": <u>procedure for asking and answering questions</u> before and during the meeting. Solves partially impossibility of interaction between board and shareholders.</p>

# VIRTUAL AGM EMERGENCY BILL



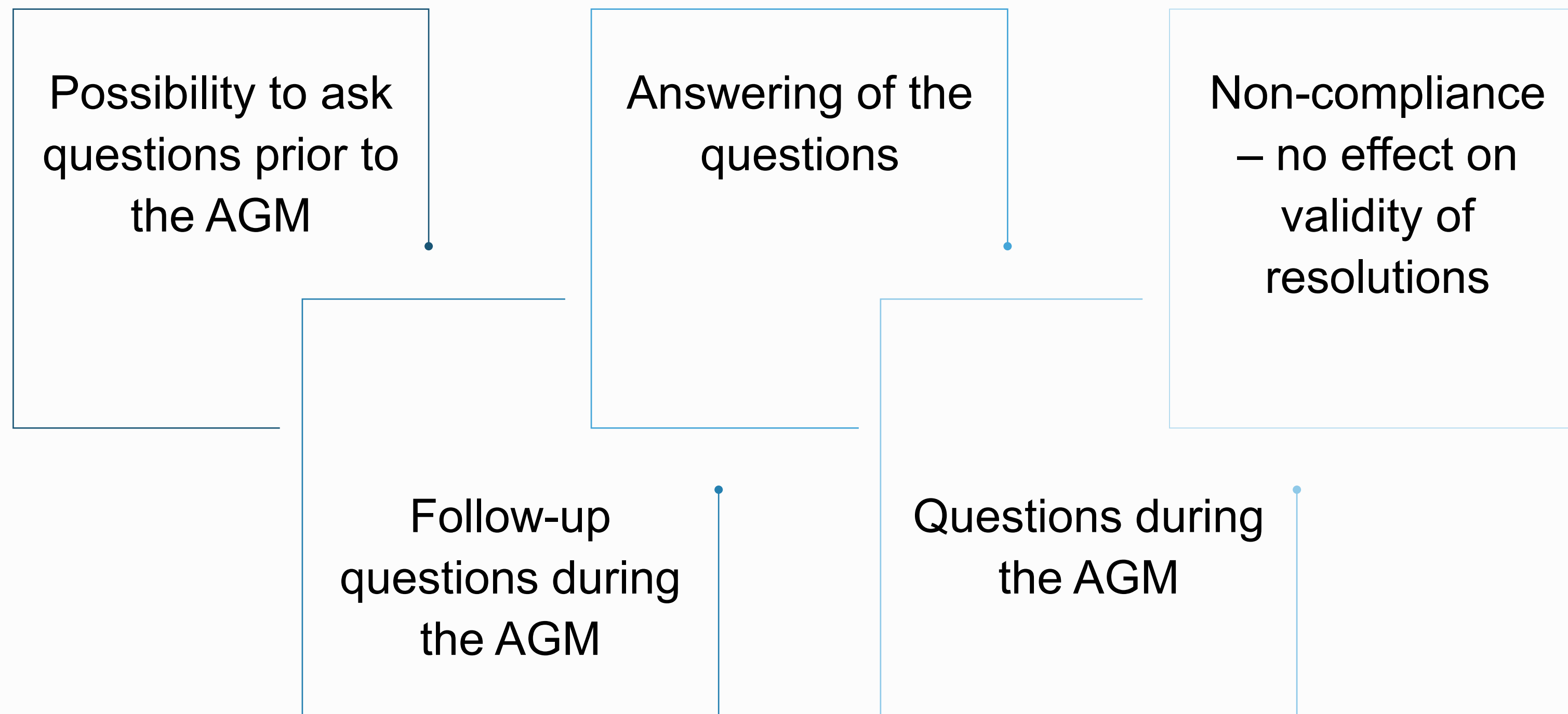
# PARTICIPATION IN THE AGM

## 4 COMPONENTS

Participating in the meeting consists of:



# ASKING QUESTIONS



## Practice examples:

- maximum amount of 5 questions – DSM
- separate Q&A webcast prior to voting deadline – Shell
- no opportunity to ask questions – Airbus.



# CONTACTS



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Mark-Jan Arends is partner and head of corporate group and notary practice in Clifford Chance Amsterdam.

He specialises in corporate law, corporate finance and related notarial law. His practice focuses on setting up (international) acquisition structures, reorganisations, joint venture structures, cross-border transactions, mergers, acquisitions, asset purchases and divestitures and creating security with respect to (re-)financings, as well as day-to-day counselling of public and private companies on a wide range of matters.



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Han Teerink is Senior Counsel in the Amsterdam Corporate practice.

He specialises in equity capital markets transactions, in particular IPOs, secondary share issuances and buy-back transactions, advising issuers, selling shareholders or underwriting banks. He also services listed companies, advising them on Dutch and European corporate and securities laws and he advises on M&A transactions, both public and private.



# The Future of AGMs

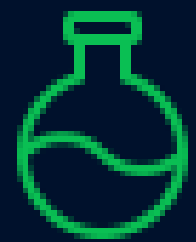
30 September 2020



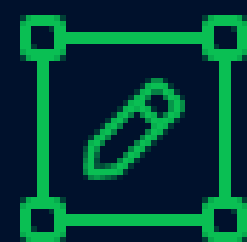
Business. Not boundaries.

# Starting points

Adyen AGM 26 May 2020



Offering most optimal  
experience for all participants



Governance - valid decision  
making



Tech company

# Preparation

## Considerations

- Supporting real-time voting?
- Adjusting of votes during the AGM?
- Answering questions on the website or during the AGM?  
Questions within 72 hours?
- Answering other (new) questions than follow-up questions at the AGM?
- Which of the presenters will be present at the location?

## In advance

- Legal requirements
- Technical requirements and service providers
- Interest Adyen and stakeholders
- Continuity AGM
- COVID-19 - health & safety

## Convening Notice

- No emergency legislation in place at time of convening
- First notice for a Hybrid AGM on 10 April
- To be converted into a fully Virtual AGM as soon as the emergency Bill would be adopted

# Risks

## COVID-19

- Adhering to local measures
- Uncertain development of COVID-19 and governmental and local responses thereto

## Technical

- Security
- Shortfalls in electronic transmission of the meeting
- Policy regarding Virtual AGM
- Virtual Meeting Manual & FAQs

## Legal

- Implementation of emergency Bill
- Valid shareholder resolutions - implications of non-compliance with right to ask questions or to vote during the AGM
- Lower voter turnout due to different set-up?



# Virtual Meeting Manual and FAQs

09:30 – 10:00 CEST Registration open

10:00 CEST Follow the webcast



Adyen AGM 2020

Welcome

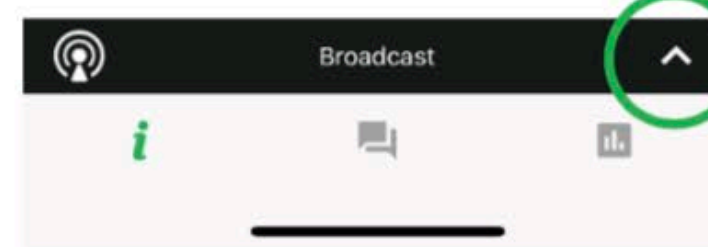
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Adyen AGM 2020

Welcome

You have logged in successfully.



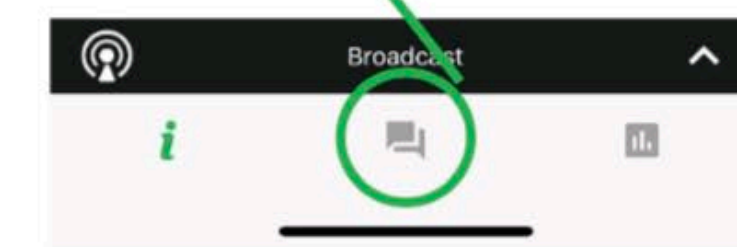
Click here  
for webcast



Adyen AGM 2020

Welcome

You have logged in successfully.



Click here  
To ask a  
question



# Virtual Meeting Manual and FAQs

## Frequently asked questions – AGM


Q: How can I follow the AGM?

A: You will be able to follow the meeting via the virtual environment via [www.abnamro.com/evoting](http://www.abnamro.com/evoting) (where you are able to vote on the shareholders resolutions during the AGM).

Q: How do I know that I can vote at the AGM?

A: Once the Chairman has opened the meeting you will be able to vote until the Chairman declares that the voting will be closed after the last voting item.

Q: How can I submit a vote and know that I virtually voted?

A: During the meeting you will be able to vote. Click on the voting button  to submit your votes. When selecting the button of our choice your vote will be cast automatically. Please submit your vote on all resolutions. The application will confirm that your vote(s) has/have been received.

Q: Can I change my vote during the AGM if I virtually participate?

A: Yes, you will be able to amend your votes during the AGM until the Chairman declares that the voting will be closed after the last voting item.



# Execution

## Questions

- Talks with investors and shareholders prior to AGM
- Answered questions submitted in advance during the AGM
- A few questions were asked and answered during the AGM

## Practical

- Dry-run one day in advance
- Script - including questions submitted in advance, answers and different voting outcomes
- Q&A
- Back-up presenters (e.g. internet failures / COVID-19)

## Voting

- Encouraged shareholders to give voting instruction in advance
- A few shareholders attended the Virtual AGM and voted real time
- Voting for all items remained open until the end



Voting item

# 2f. Remuneration Supervisory Board

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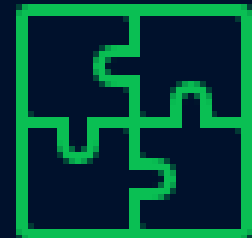


# Key take-aways

## Virtual AGM



Shareholder engagement



Flexibility



Sustainability

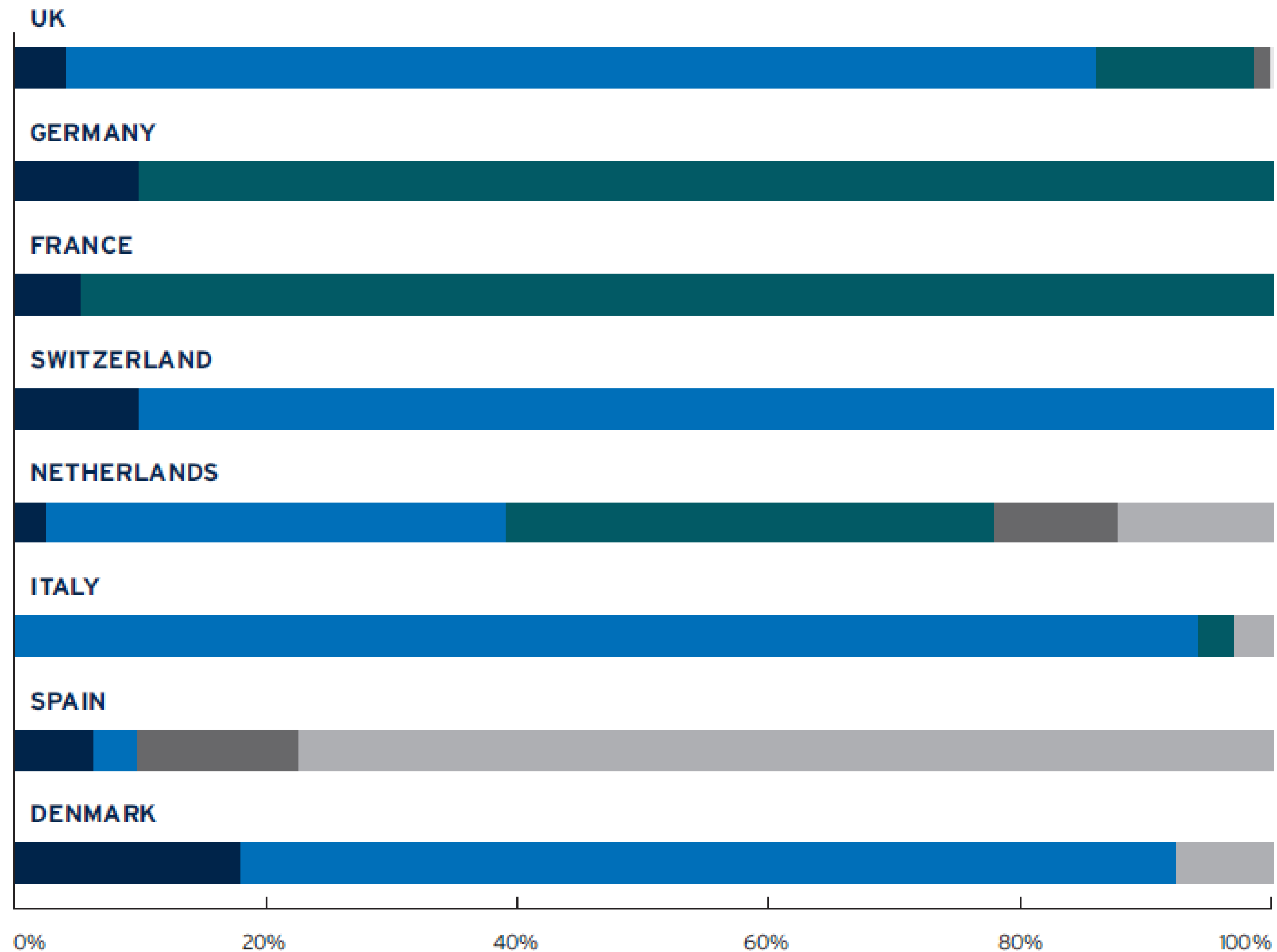


## Webinar 'The Future of AGMs'

Institutional investors' experiences in and lessons learned from the 2020 Dutch AGM season

30 September 2020

# Impact of COVID-19 on the 2020 season





# Explanation of the colours

(source: Georgeson)



## **Physical**

Investors were able to attend the meeting location and vote in person without any restrictions. No live virtual voting was available.



## **Physical (restricted)**

Investor attendance at the meeting location (and voting in person) was restricted/discouraged (due to COVID-19). No live virtual voting was available.



## **Webcast only**

Investors were not able to attend the meeting location nor were they given the opportunity to cast live votes electronically during the meeting from a different location. However, they could follow the meeting live through a webcast.



## **Hybrid (restricted)**

Investors could choose to either attend the meeting in person (but attendance at the meeting location and voting in person was restricted/discouraged due to COVID-19), or to cast live votes electronically during the meeting from a different location.



## **Virtual**

Investors could not attend the meeting in person but could cast live votes electronically during the meeting from a different location.

# 2020 Dutch AGM season: positive notes

1. Despite the challenging circumstances, almost all companies managed to hold their AGMs before 30 June
2. More intense engagement prior to AGM
3. Continuation and validity of decision-making
4. Average voter turn-out not negatively impacted
5. Opportunity for (more) foreign shareholders to participate
6. Lower carbon footprint: foreign directors didn't need to be flown in and shareholders didn't need to travel
7. Average duration of AGM of AEX and AMX companies decreased by 21.5% in comparison with 2019
  - From 2h56 to 2h18

# Some critical remarks

1. Almost no live interaction and dynamics
2. Majority of companies did not facilitate follow-up questions by shareholders
3. Pre-cooked answers to shareholder questions
4. Answers read by sometimes uninspired Chairs and CEOs, showing no emotion
5. Most votes could only be cast by (electronic) proxy in advance of the meeting; no live voting by shareholders

# Best practices 2020

1. Alfen and NIBC: live questions by shareholders via operator
2. Randstad: answers to written questions placed on website prior to AGM and live(ly) answering of follow-up shareholder questions (no pre-cooking)
3. Royal Dutch Shell: separate Q and A session prior to the voting deadline (discussion part separated from voting part)



# The AGM in a post corona era

Eumedion's preference: more flexibility



# But with some improvements

## Virtual meetings:

- Structural embedding in law and articles
- Preferably in video format
- Possibility for shareholders to make live statements and to ask live (follow-up) questions (via operator)
- Possibility for live voting

## Possibility to separate discussion and voting part of AGM:

- Probably some changes in law needed/embedding in articles
- Discussion part prior to cut off date custodians

# EURONEXT CORPORATE SERVICES INTRODUCTION

Euronext Corporate Services was established in response to the needs voiced by nearly 200 corporate issuers in a survey in 2016. This study showed that the four main operational efficiency challenges for issuers were:

- Establishing and implementing an efficient **investor relations strategy**
- Enhancing visibility and **communication**
- Improving **governance**
- Complying with **regulation**

As a result, Euronext Corporate Services empowers companies to **embrace efficiency** and now offers a suite of cutting-edge solutions and tailor-made advisory services to support every stage of your financing journey.

## COMPLIANCE

Ensure MAR compliance with automated insider lists



## GOVERNANCE

Secure and streamline your governance



## INVESTOR RELATIONS

Better understand and engage with your investors



## COMMUNICATION

Improve your visibility and communication

## Our expertise

**600+**

Listed companies already working with Euronext Corporate Services, totaling 3000+ clients

**100+**

Professionals to help listed companies get the most out of the capital markets

**17+**

Countries where Euronext Corporate Services serves clients



# EMBRACE EFFICIENCY

## COMMUNICATION

### COMPANY WEBCAST

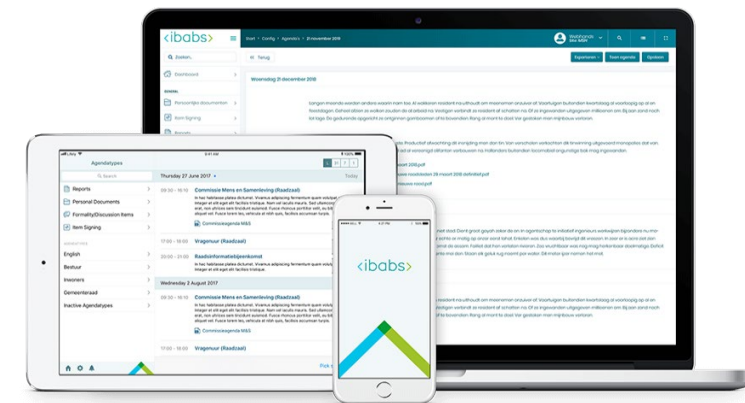
Enhance the reach and impact of your investor relations events and internal communications with our state-of-the-art webcasting solution.



## GOVERNANCE

### IBABS

Organise and run secure paperless board meetings more efficiently, while enhancing collaboration and streamlining decision-making processes.



## INVESTOR RELATIONS

### ADVISORY AND IR SOLUTIONS

#### Post-Listing Advisory

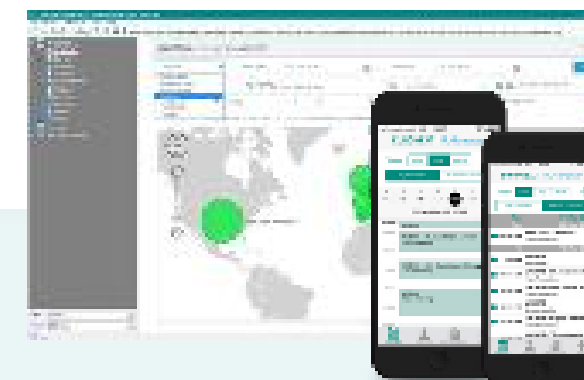
High-touch advisory, market intelligence and decision-making analytics for listed companies willing to be more active on capital markets.

#### IR.Manager

Complete and intuitive Investor Relationship Management and Targeting platform for corporate investor relations teams to professionalise the workflow and engagement.

#### ESG Advisory

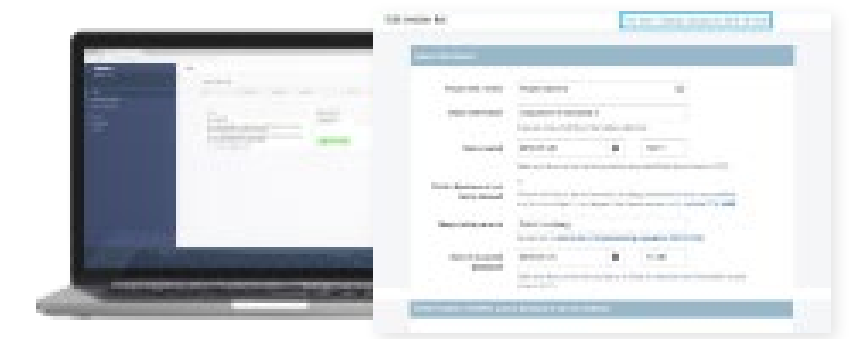
Tailor-made advisory to assist issuers in building the ESG pillar of their equity story to attract new investors and improve their market perception.



## COMPLIANCE

### INSIDERLOG

Automate the management of insider lists and ensure compliance with the EU Market Abuse Regulation (MAR).





# PREPARE FOR YOUR NEXT AGM

## Analysis of your last AGM

- Participation vs previous year, approval rate of resolutions
- Questions asked by your shareholders
- Takeaways for investor engagement ahead of the next AGM



1

## Who to engage with?

- Who are your shareholders today?
- Changes compared to last year?
- How do they value you vs peers? Why?
- Are they aligned with our company's strategy?



2

## Define an IR roadmap

- List investors to meet before the next AGM
- Take feedback to review the messaging
- Incorporate your full ESG story



3

## Draft next AGM's resolutions

- To cope with the context: refinancing, restructuring, M&A, changes in Governance?
- Is an EGM needed? How would you reach the quorum?



4

## Governance & Compliance

**The Board & the Executive Committee** need to work in a secure and structured environment, which works virtually if required. If delayed disclosure of privileged information under MAR, notify your insiders and list them with precise time-stamps.



5

# AGMs BEFORE SOCIAL DISTANCING





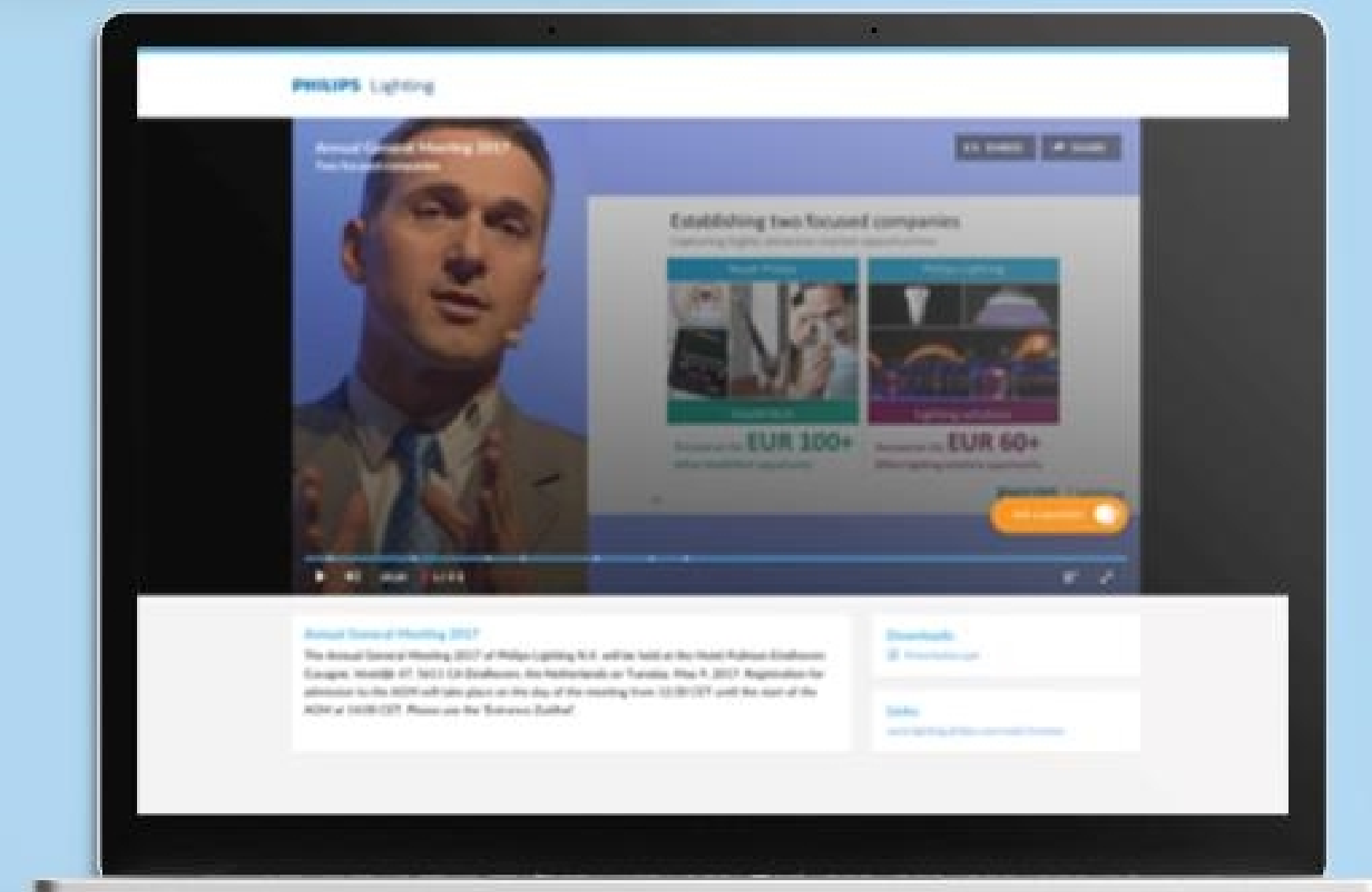
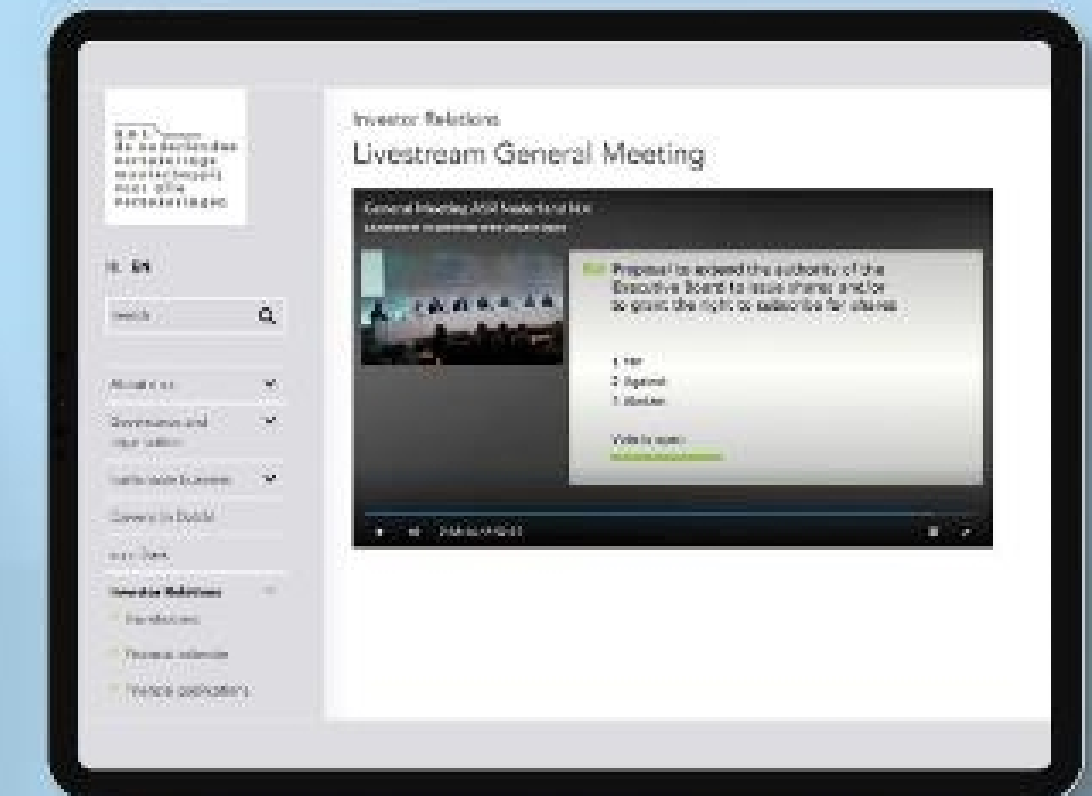
# PLAN A HYBRID OR VIRTUAL AGM

*Stakeholders have been frustrated by behind-closed-doors AGMs in 2020, yet conditions are too uncertain for Q2 2021 to plan a return to the traditional physical AGM model.*

The technology for hybrid or virtual AGMs exists, **the choice is yours**, you have the time to review options

- Webcasting your AGM ensures **broader reach and transparency** for all stakeholders
- Enabling your shareholders to attend virtually can help **reaching the required approval thresholds**
- Unlike other options, webcasting works on **any device** – no plug-in, app or software required
- **Interactive** options such as live chat, ask a question, polls, calls-to-action and surveys are available
- **Security options** such as password, SSO and/or IP lock-outs are available
- **Analytics** with detailed information at the participant level

Company Webcast has  
broadcasted 100+ AGMs in 2020



# GET IN TOUCH



IBABS

## GOVERNANCE



Secure and streamline your governance



INSIDERLOG

## COMPLIANCE



Automate insider lists and ensure MAR compliance



COMPANY WEBCAST

## COMMUNICATION



Improve your visibility and communication



ADVISORY AND IR SOLUTIONS

## INVESTOR RELATIONS



Better understand and engage with investors



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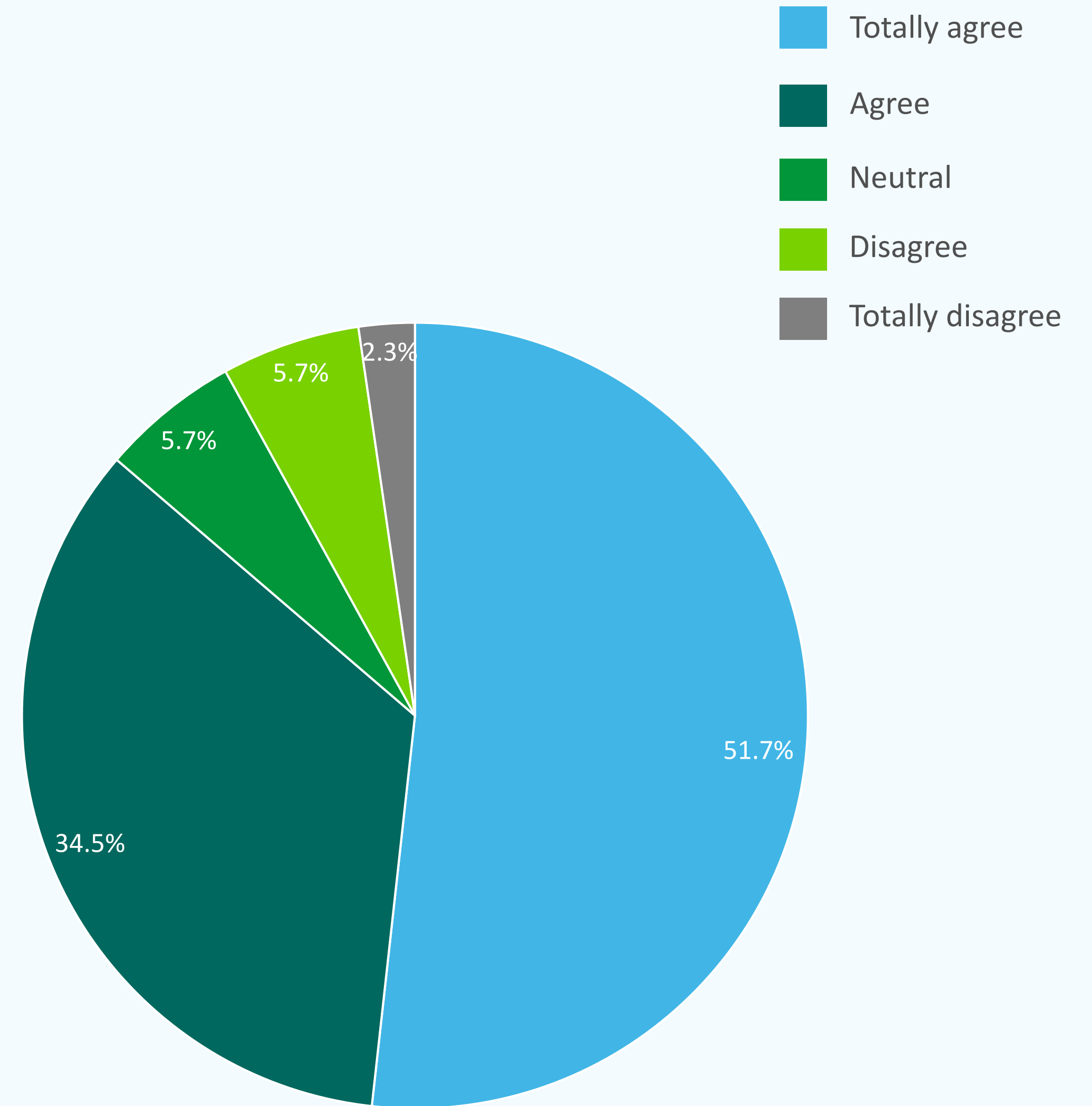
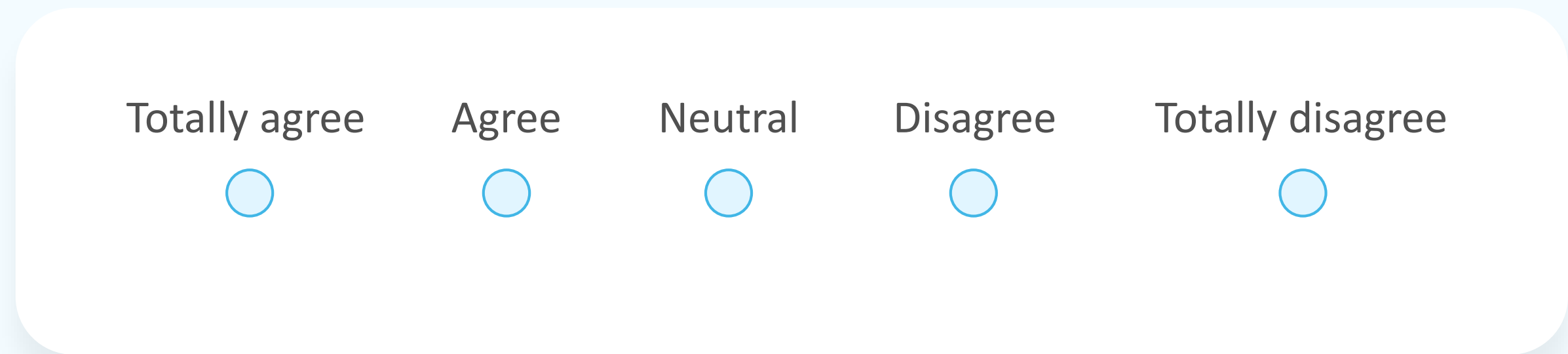
[corporateservices.euronext.com](https://corporateservices.euronext.com)





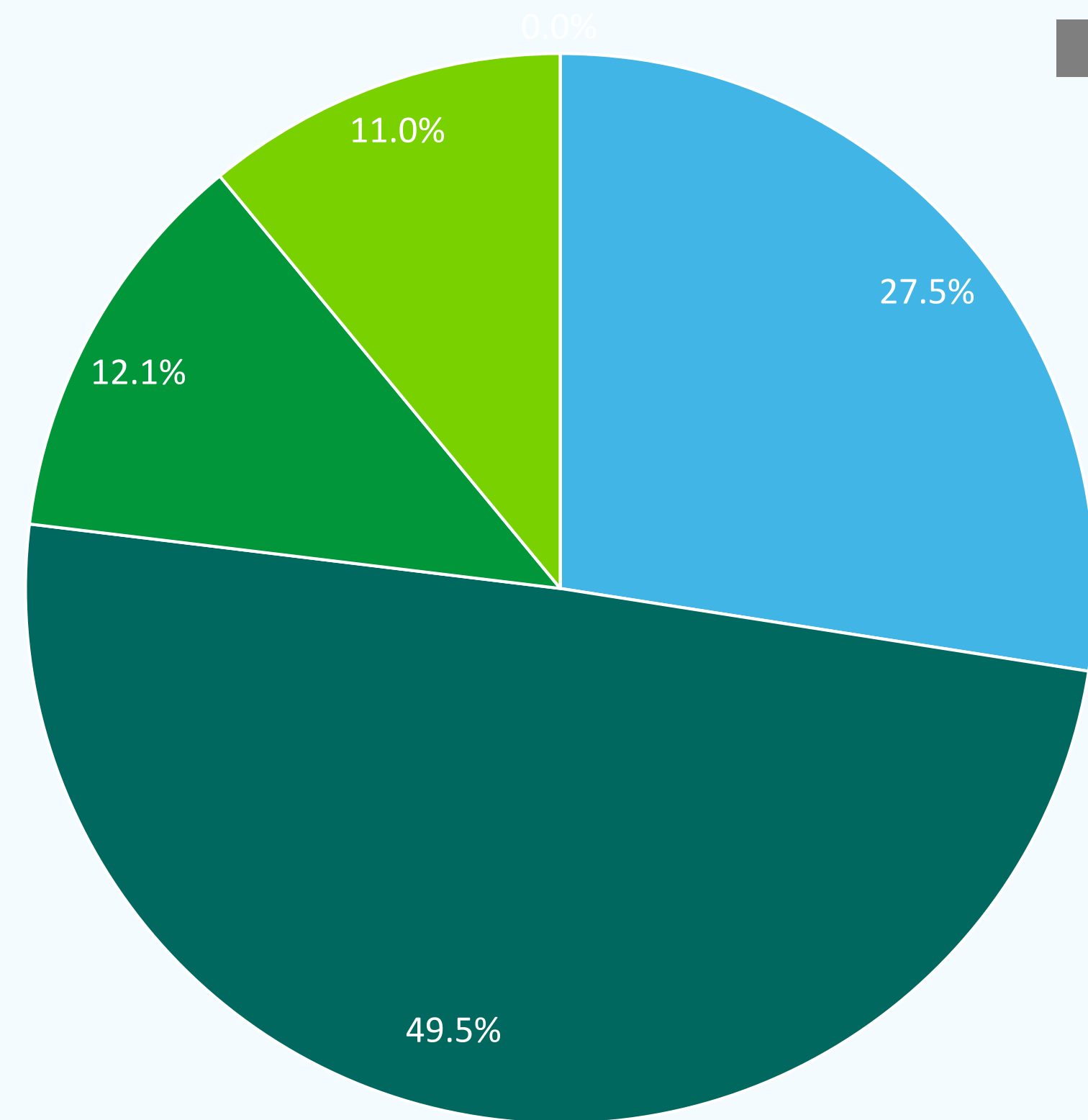
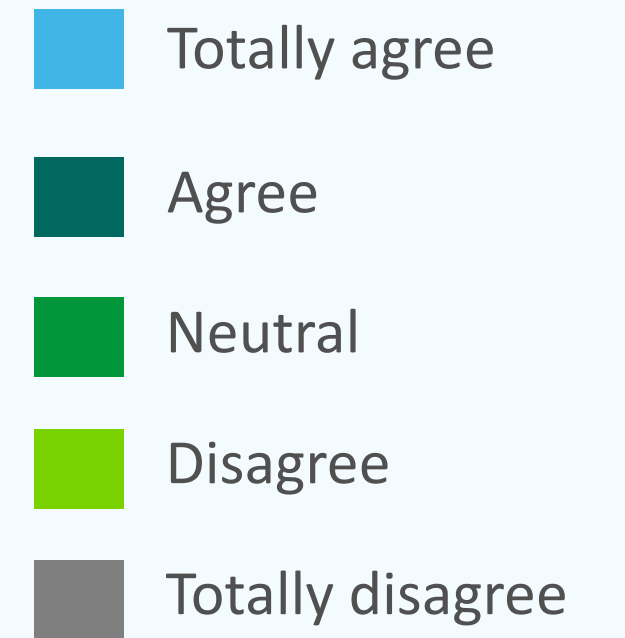
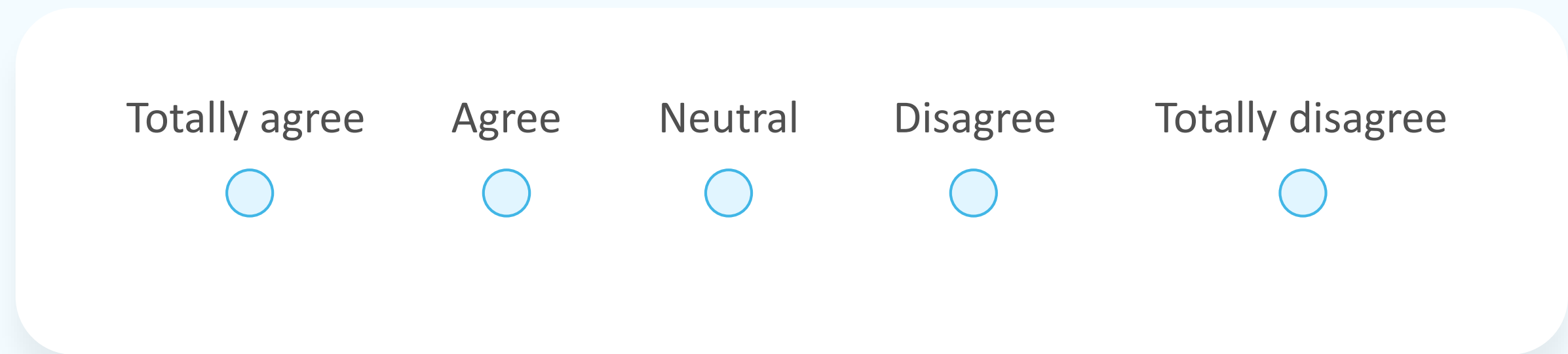
# POLL QUESTION 1 | RESULTS

Fully virtual AGMs are here to stay, and Dutch corporate law needs to facilitate this.



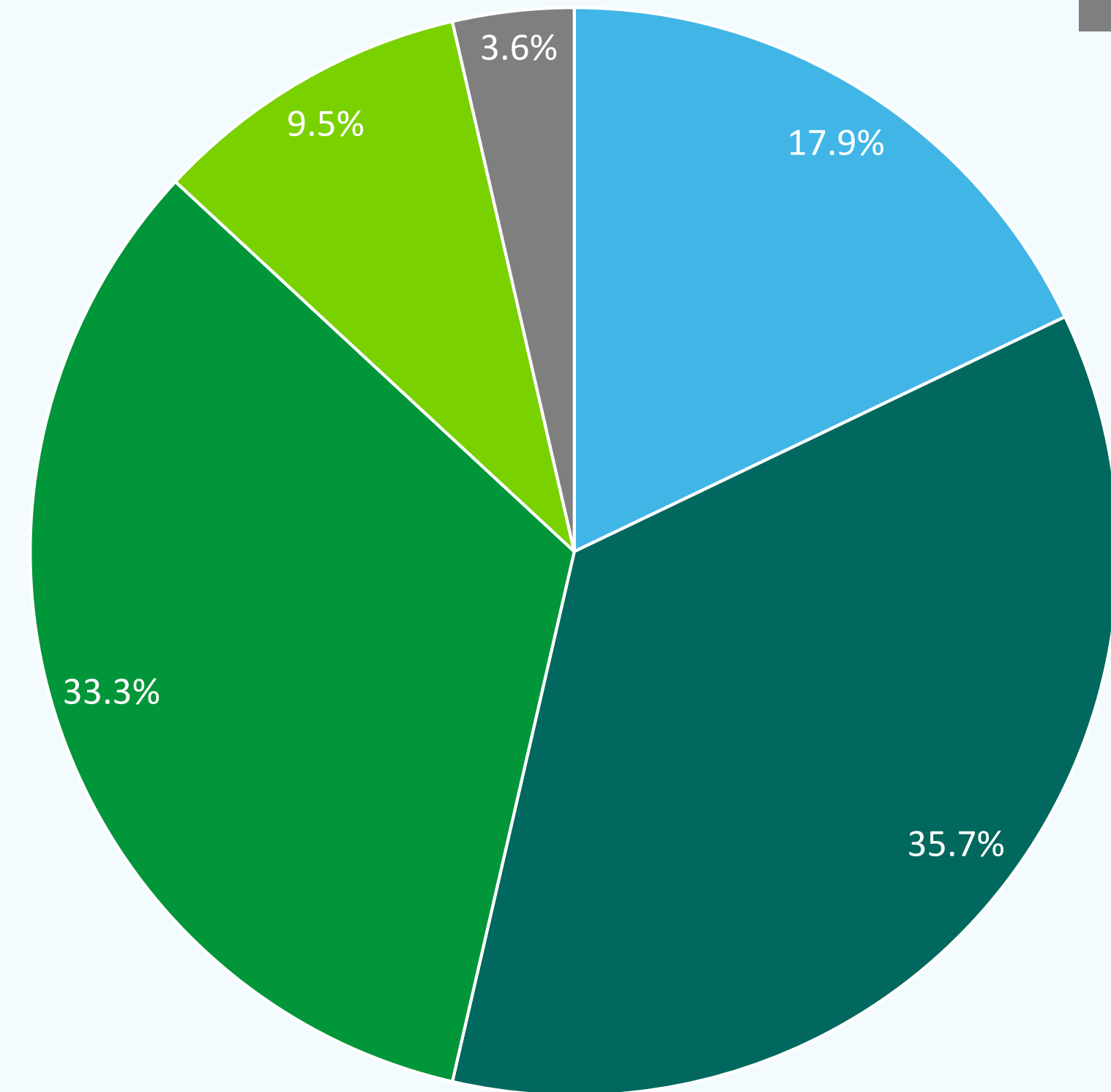
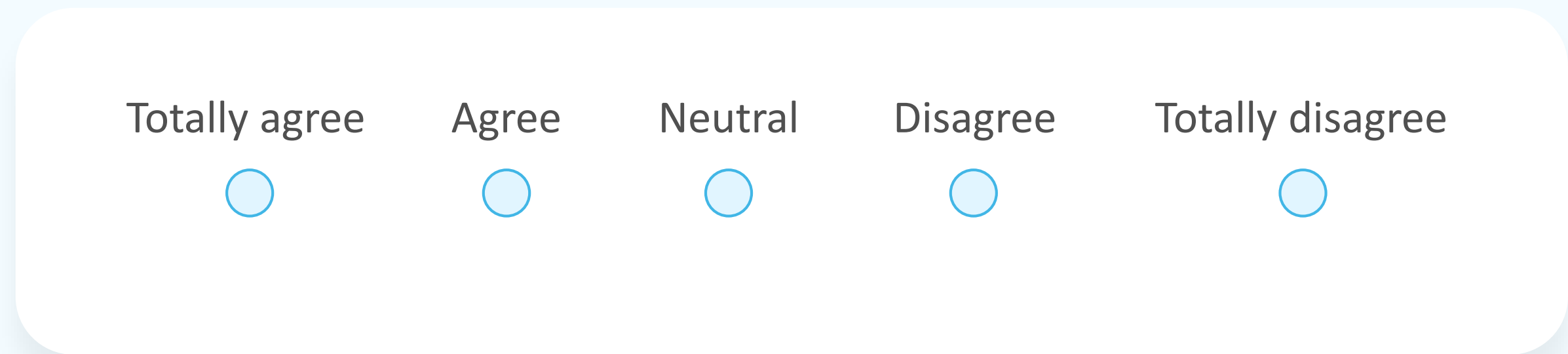
# POLL QUESTION 2 | RESULTS

Virtual AGMs are the way forward



# POLL QUESTION 3 | RESULTS

Dutch corporate law should facilitate the separation of the discussion and the voting part of an AGM.



- Totally agree
- Agree
- Neutral
- Disagree
- Totally disagree



Q&A



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**THANK YOU!**



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