



A Virtual Meeting Playbook

COVINGTON



Broadridge®

A Virtual Meeting Playbook

This is a playbook for a virtual meeting of shareholders of a public company, with a particular focus on the unique situation facing companies due to the global coronavirus (COVID-19) pandemic. It includes answers to questions that companies may have in deciding upon and planning for such a meeting.¹

Contents:

1. [Getting Started](#)
2. [VSM Services](#)
3. [Attendance and Access to VSMS](#)
4. [Conduct of the Meeting](#)
5. [SEC Disclosure Implications](#)
6. [Other Considerations](#)
7. [Key Contacts](#)

1

Getting Started

Q: What is a virtual meeting of shareholders?

A. Companies incorporated in the United States are required by state corporation laws to hold annual shareholder meetings. State corporation laws and a company's governing instruments generally have required these meetings to be at a physical location, sometimes with the option for shareholders to participate remotely, i.e. through electronic forms of communication. In recent years, however, many state laws have permitted, and some public companies have adopted, virtual-only annual shareholder meetings, or VSMS. These are meetings where all shareholders attend via online broadcast or telephone, and there is no physical location for in-person participation. By contrast, a shareholder meeting with both a physical location for in-person attendance and arrangements for shareholders to attend using electronic forms of communications, including through an online broadcast, is referred to as a hybrid meeting.

Due to concerns around the COVID-19 pandemic, many companies will be using the VSM format for their annual shareholder meetings. Before the outbreak of COVID-19, 29 states, including Delaware, permitted VSMS, 13 states allowed hybrid meetings and eight states required meetings to be held in person. Since the outbreak, a number of states previously requiring meetings to be held in person have temporarily cleared the way for VSMS.

Q: What are the advantages and disadvantages of a VSM?

A. The primary advantage of a VSM this year is that it will allow attendance that is safe for all participants. Other advantages of a VSM for shareholders are the elimination of costs and time to attend the meeting and alignment with a company's corporate

¹ This material is being jointly produced by Covington & Burling LLP and Broadridge Financial Solutions, Inc. Most answers relate to the virtual shareholder meeting platform that Broadridge provides.

environmental, social and governance objectives. For a company, the advantages of a VSM can be convenience for management and the board, broader engagement with shareholders, greater security and, after the first year, reduced planning and, in many instances, costs.

Possible disadvantages of a VSM for shareholders are loss of in-person engagement with the board and management and the risk that shareholders will not be able to access the meeting through electronic means due to technical difficulties. For the company, disadvantages may include, in the first year, start-up stress and change in procedures, and loss of face-time and give-and-take with shareholders on a personal level. Additionally, VSMs historically have been disfavored by proxy advisors and some institutional investors due to the potential for reduced levels of in-person engagement.²

Q: If a company convenes an annual meeting but then adjourns the meeting and reschedules it, does the company have to set a new record date?

A. This is a matter of state corporation law. In certain states, such as Delaware, if the company's original date was properly noticed, the original record date stands, and the re-convened meeting is considered to be a continuation of the original meeting. A new notice may be required in connection with an adjournment. For example, under Delaware law, there is an obligation to notify shareholders if the re-convened meeting is held more than 30 days after the originally scheduled meeting or if the time, place, or means of remote communication were not announced at the original meeting.³



This year more companies than ever before will be using the VSM format for their annual shareholder meetings.

Q: If a company schedules an annual meeting, but that meeting is never convened and is rescheduled to a date that is outside the record date period, does the company need to set a new record date?

A. If the date of a shareholders' meeting is moved, the company will need to consult state corporation law and its organizational documents to determine whether a new record date is required. Under certain state corporation laws, including the Delaware General Corporation Law, the company will need to set and publish a new record date and send an updated notice to shareholders if the meeting is moved to a date that is more than 60 days after the initial record date. Also, approval of the new meeting date by the board of directors will be required, and this new date must be a date that is on or after the date the board approval was given. Additionally, the New York Stock Exchange requires at least 10 days' notice prior to the new record date.

² [See our question below for more information.](#)

³ [See our question below for more information.](#)

Q: Are any board approvals required for a company to transition from an in-person meeting to a VSM?

A. Under state law, boards generally need to approve a transition to a VSM, unless prior resolutions have delegated authority for that decision to management, provided that the delegation is permitted under state law.

Q: Can a company host a VSM on its own?

A. Yes, as long as it can comply with the relevant state law conditions for a VSM. Generally, state laws which permit virtual meetings require a company to do the following:

- implement reasonable measures to verify that each person deemed present and permitted to vote by means of remote communication is a shareholder or proxyholder;
- implement reasonable measures to provide shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted for a vote, including an opportunity to read or hear the proceedings concurrently with such proceedings;
- make the registered shareholder list available for shareholder inspection during the entirety of the VSM.⁴
- maintain a record of votes or actions taken by any shareholder or proxyholder by remote communication at the meeting.

As a practical matter, most public companies will choose to outsource the electronic functions of the virtual meeting.

Q: Who can a company hire to help with a VSM?

A. There are a number of service providers, including Broadridge Financial Solutions, the largest provider of VSM services in North America.

Q: Are there different kinds of VSMs?

A. Yes. A VSM can be presented in an audio-only format or an audio/video format.

Audio: In an audio-only VSM format, sound is streamed live over the internet and the meeting is conducted via telephone. This is the easiest type of meeting to conduct because no special equipment is required, and there is no need for any of the participants to meet in person. The large majority of VSMs are audio-only.

Video: In a video format, the meeting is live video-streamed. This format requires production capabilities including cameras and additional personnel which will add to the overall cost. Typically, the company representatives participating in the meeting and the production crew are physically present in the same location – often a professional studio for the best quality production. Less than 10% of the 326 VSMs conducted by Broadridge in 2019 were in video format.

⁴ [See our question below for more information.](#)

VSM Services

Q: May a company work with both Broadridge and its existing annual meeting agent?

A: Yes. This year, Broadridge has a number of accommodations it can make so as to work hand-in-hand with a company's current annual meeting agent.

Q: With many companies switching to VSMs, will there be enough time in the calendar to fit the demand in April and May?

A: Yes, but Broadridge estimates that it will be supporting over 1,500 VSMs during the peak of the 2020 proxy season, many of which are scheduled in April and May. Broadridge has additional capacity and intends to scale to support companies that ask for such support, but flexibility in the date and time of the meeting may be needed to accommodate all requests. If a company desires to switch to a VSM or a hybrid annual meeting, it is advisable to communicate with annual meeting vendors as soon as possible to discuss the potential options.



Broadridge has made a number of changes to its VSM service, including adding network and client service capacity to handle increased demand.

Q: What controls does Broadridge provide with its service?

A: The success of the annual meeting and the protection of client data is an important consideration for a company holding its meeting online. Mitigating security risks in a constantly changing environment is something Broadridge takes seriously, and Broadridge includes significant security protocols from both an infrastructure and an application standpoint. On the day of the meeting, Broadridge technology and security teams monitor each meeting for denial of service and other cyberattacks, as well as for technology interruptions. Broadridge also puts contingency plans in place for every VSM it supports to address potential technology interruptions.

Q: Can a VSM handle a proxy contest?

A: Broadridge can handle a proxy contest at a VSM on a case-by-case basis and encourages its clients to contact their Broadridge representatives for more information.

Attendance and Access to VSMs

Q: May directors, management and the independent auditor remotely attend the VSM?

A: Yes. For a VSM, there is no place at which anyone is required to be present in person. However, it is advisable for companies to take steps to permit directors, management and their independent auditors to be able to access the VSM and to answer questions during the meeting.

Q: Does the Inspector of Election need to be present in person at the meeting?

A: No. For a VSM, no one is required to be present in person at the meeting, but the inspector will need to attend the meeting remotely.

Q: Should a company expect to see an increase in attendance during a VSM?

A: Generally, yes. It is expected that a company may see the same or slightly increased level of participation during VSMs in comparison to in-person meetings.

Q: May institutional shareholders attend a VSM?

A: Yes. All shareholders as of the record date for the meeting may attend a VSM.

Q: What technology does a shareholder need to access a VSM?

A: If a shareholder is accessing an audio-only VSM, only a telephone is required. To access a VSM on Broadridge's online platform, all a shareholder needs is an internet connection and a common media player (e.g., Windows, Flash, Real).

Q: Is there anything else the shareholder will need to enter the meeting?

A: Yes. A shareholder may not enter a VSM without a unique identifier number.

Q: What is a unique identifier number?

A: A unique identifier number is issued to a shareholder by the company's meeting agent with the company's proxy materials so that the shareholder can access, vote and ask questions at the VSM. Broadridge's unique identifier number is called a "unique control number." Broadridge's unique control number for a VSM serves the same function as for an in-person meeting. Once a shareholder has successfully presented its unique control number, the shareholder will be authenticated and admitted to the meeting.

Q: What happens if a shareholder loses its unique control number?

A: If a shareholder loses its unique control number, it cannot access, vote in, or participate in the VSM. There are ways, however, to have the unique control number reissued, depending on how the shareholder received the company's proxy materials. A company should be prepared to address inquiries from shareholders that have not retained the unique control number and to work with their annual meeting agent regarding possible solutions.

Q: If Broadridge is providing the VSM service, will it share unique control numbers with the company or other third parties?

A: No. Broadridge will not release unique control numbers to third parties, including the company.

Q: Will Broadridge accept other agent control numbers for a shareholder to gain access to a VSM?

A: No. To ensure the integrity of voting results, Broadridge does not accept third party control numbers to facilitate a VSM. Broadridge is unable to authenticate third party control numbers and is therefore unable to validate the shareholder and any votes or questions submitted by that shareholder during the meeting using third-party control numbers.

Q: How would a shareholder vote its shares at a VSM if its shares are held in street name?

A: Beneficial shareholder voting procedures for a VSM are substantially similar to those for an in-person meeting. If shares are held by a broker, bank or other nominee, the underlying owner is considered the "beneficial owner" of those shares, which are said to be held in "street name." The beneficial owner of shares held in street name will either direct its broker, bank or other nominee to vote shares pursuant to its instructions or obtain the right to vote the shares directly from the street name holder and vote the shares themselves at the VSM.

Q: May non-shareholders access a VSM?

A: It depends. As with an in-person meeting, a company may invite non-shareholder guests to attend the meeting.

Q: Do companies typically allow non-shareholder guests to attend VSMs?

A: Commonly, companies will allow non-shareholders to attend as an option for employees who are not shareholders or for shareholders who may have misplaced their control number but would still like the option to watch and/or listen to the meeting. Broadridge indicates that more than 90% of the companies that hosted VSMs on the Broadridge platform in 2019 allowed non-shareholder guests to attend.

4

Conduct of the Meeting

Meeting Script and Rules of Conduct

Q: Will a company need to make significant updates to its annual meeting script if it is hosting a VSM rather than an in-person annual meeting?

A: Generally, no. The script for a VSM should be largely the same as for an in-person meeting. One primary update that a company should consider for a VSM script, however, relates to its description of the rules of conduct governing the meeting, in particular, how shareholder questions will be administered.

Q: Should the company provide rules of conduct for a VSM?

A: Yes. A company should provide rules of conduct for participation in shareholder meetings and make the rules of conduct available to all attendees before and during the meeting. The rules of conduct should address the shareholder question and answer period, the order in which questions will be addressed and the voting period.

Shareholder Voting

Q: If a shareholder has already voted by proxy, will the "Vote Here!" button be grayed-out on the VSM website?

A: No. As with an in-person meeting, a shareholder may vote multiple times until the vote on a matter is called and the polls are closed. The Inspector of Election will only count the last shareholder vote in the final tabulation report.

Q: Does shareholder voting happen immediately at a VSM ?

A: Yes. Shareholder voting at a VSM occurs in real-time. All votes received at the meeting are available to the company immediately when the polls close.

Shareholder Lists

Q: Must shareholders have access to the registered shareholder list during a VSM, and if so, how?

A: Depending on the state of incorporation, such as Delaware, the company may be required to have the list available for shareholder viewing on the VSM site during the entirety of the meeting. When an authenticated shareholder logs into the VSM platform, the shareholder can click on the link in the lower right labelled “Registered Shareholder List.” A window then appears where the shareholder would complete an attestation form. The shareholder will then be presented with a protected PDF of the shareholder list that cannot be printed or downloaded.

Q: Can non-shareholders view the registered shareholder list during a VSM ?

A: No. The registered shareholder list is only available to authenticated shareholders; non-shareholder attendees cannot view this information on the VSM platform.

Q: How does a company comply with a state law requirement, such as in Delaware, that the shareholder list be available for inspection at a set place for a set time before the VSM ?

A: Broadridge does not host the registered list prior to the VSM. As is the case with an in-person meeting, a company should continue to make its shareholder list available for inspection before its annual meeting, for example by keeping a physical copy of the list at its headquarters.

Shareholder Participation and Questions

Q: If the company allows non-shareholder attendees to a VSM , may those guests ask questions or otherwise participate?

A: No. Unless the company specifically allows non-shareholder guests to speak, non-shareholder attendees will attend the VSM in a watch and/or listen-only mode.

Q: How are questions handled at a VSM ?

A: There are three main ways that a company holding a VSM on the Broadridge platform can accept questions from shareholders.

Option 1: Via the text box on the VSM meeting page, available during the meeting. Shareholders enter questions into the text box and hit submit. The question is transmitted to a secure website that only the company can see.

Option 2: Via an operator assisted phone line (similar to an earnings call).

Option 3: Via pre-meeting questions enabled on www.Proxyvote.com, which is an online voting platform provided by Broadridge that coordinates transmission of proxy materials, voting instructions, and questions between shareholders and companies. A shareholder can submit pre-meeting questions by signing up for “Questions for Management,” and then interacting with the module that will appear on the webpage. The questions are sent to the company through the VSM Admin tool.

In Broadridge's experience, the most common way that companies receive questions at a VSM is via the text box on the meeting page (Option 1).

Q: May all three of these options be offered at a VSM ?

A: Yes.

Q: When can shareholders ask questions at a VSM ?

A: The company, typically through its meeting conduct rules, will make this determination. With Option 1 above, shareholders will be able to submit questions as soon as they enter the VSM platform. The questions will appear in the same queue as the text box questions. With Option 2, the company generally has the line open after the business portion of the meeting is concluded. With Option 3, questions may be submitted anytime during the solicitation period, until 11:59 p.m. ET the night before the meeting.

Q: Can meeting attendees see the shareholder questions?

A: No. Only the company sees the shareholder questions once they are submitted.

Q: In Broadridge's experience, will a company receive more questions at a VSM than at an in-person meeting?

A: It depends, including on the options used for shareholders to submit questions; however, a company should generally expect to receive slightly more questions from shareholders at a VSM than at its most recent in-person meetings.

Q: Do most companies use the pre-meeting question capability (Option 3 above)?

A: No. Most companies rely only on Option 1, the text box that is available live during the meeting.

Q: Can the company post the questions and answers after the meeting?

A: Yes. After the meeting, Broadridge will provide to the company all of the questions received from shareholders related to the meeting. The company can then decide whether and where to post the materials, and for how long. There is no requirement to do so, but posting these materials to the company's website may be regarded as a good governance practice. Note that some advisory firms, including Glass Lewis, recommend disclosure on how, if at all, the questions will be posted to the company's website.

Shareholder Proposals

Q: May shareholder proponents present shareholder proposals at the VSM?

A: Yes. Although Rule 14a-8(h) requires shareholder proponents, or their representatives, to appear and present their proposals at the annual meeting, SEC staff guidance encourages companies, to the extent feasible under state law, to provide shareholder proponents or their representatives with the ability to present their proposals through alternative means, such as by phone, during the 2020 proxy season. A shareholder proponent, or its representative, may be given the opportunity to present a shareholder proposal via virtual means, including via the phone line operated by the virtual meeting provider or through a prerecorded audio or video presentation. Open video, web lines and telephone lines should be in place before the meeting to allow a shareholder proponent, or its representative, to test its access to the VSM and be sure the proponent or representative will be able to participate in the meeting.

Q. If a company hosts a VSM in response to COVID-19, and a shareholder proponent, or its representative, cannot attend the VSM and present a proposal due to technical difficulties, and the company does not present the proposal on behalf of the proponent, could the company assert this as a basis for excluding future proposals from that proponent under Rule 14a-8(h)(3) under the Securities Exchange Act of 1934?

A. Not necessarily. SEC staff guidance provides that a shareholder proponent's or its representative's inability to attend a VSM and present a proposal would be considered "good cause" for not presenting the proposal under Rule 14a-8(h) if the inability to travel or other hardships is related to COVID-19. This could include the inability to present the proposal due to technical difficulties at the VSM. Accordingly, depending on the facts and circumstances, the shareholder likely would not be precluded under Rule 14a-8(h)(3) from presenting the proposal at a subsequent meeting held in the following two calendar years.

The Shareholder Experience

Q: What formats are supported for a slide presentation on the VSM platform?

A: Broadridge supports PowerPoint for slides to be presented at a VSM. Other presentation tools, such as Keynote or PDFs, are not supported on the Broadridge platform.

Q: Does the shareholder's view of a video meeting change depending the type of device through which the shareholder is participating?

A: Yes. While the shareholder sees the same content and has the same options on all devices, depending on the device used to participate in the meeting, the screens may be stacked in different ways to accommodate screen resolution.

Q: Does Broadridge provide closed captioning?

A: Yes, Broadridge can provide closed captioning if the company wishes to provide that service.

Q: May a company record and post the VSM on the company website?

A: Yes, if a company chooses to do so, it can post the VSM on Broadridge's virtual meeting website located at: www.virtualshareholdermeeting.com and on the company's website. If hosted on Broadridge's website, the VSM would be available for shareholders to access for up to 12 months.

5

SEC Disclosure Implications

Q: How is remote director attendance treated for SEC proxy disclosure purposes?

A: Under SEC rules, a company must describe in its proxy statement the company's policy, if any, regarding director attendance at annual meetings of shareholders. In addition, a company must state in its proxy statement the number of directors who attended the prior year's annual meeting. The SEC's rules do not define what constitutes "attendance" for purposes of its rules. However, by analogy, under most state corporation laws in the U.S., a director participating remotely (e.g., by telephone) at a board meeting is considered present at that meeting provided the director has the ability to hear and speak to the other directors and ask questions. Accordingly, we think it

would be reasonable to conclude that a director attends a VSM if he or she is able to hear the meeting and answer questions.

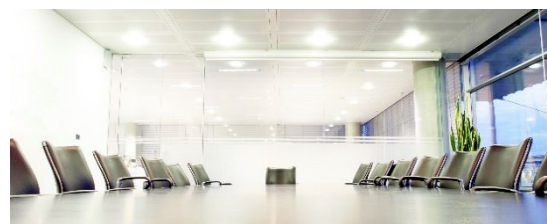
If desired, companies could consider revising their corporate governance guidelines or policies around director attendance at annual meetings to clarify how a director “attends” a VSM.

Q: What steps must a company take to disclose a change to its meeting format to notify shareholders?

A: The SEC staff has recently issued guidance to give flexibility to a company seeking to change the date, time or location of its shareholder meeting for the purpose of conducting a VSM. This guidance provides some relief from the mailing requirements of the SEC’s proxy rules but does not address state law notice requirements. Under the guidance:

- A company may notify shareholders of a change in the date, time or location of its annual meeting without mailing additional soliciting materials or amending its proxy materials, if it:
 - issues a press release announcing such change, if it has already filed a definitive proxy statement;
 - files the announcement as additional soliciting material on EDGAR; and
 - takes all reasonable steps necessary to inform other intermediaries in the proxy process (such as any proxy service provider) and other relevant market participants (such as the appropriate national securities exchange) of such change.

A company must also be mindful of state notice requirements. For example, Delaware law governing notices to shareholders contains its own requirements, and notice must be given not less than 10 nor more than 60 days before the date of the meeting. On April 6th, 2020, Delaware Governor John Carney issued an executive order providing that a public company’s press release announcing a change from an in-person meeting to a VSM due to the COVID-19 pandemic that is issued in compliance with the SEC’s guidance will constitute effective notice under Delaware law, provided it is promptly posted on the company’s website after issuance. Other states have provided similar relief.



A company may notify shareholders of a change in the date, time or location of its annual meeting without mailing additional soliciting materials.

Q. What should a company include in a shareholder meeting notification if it intends to conduct a virtual-only or hybrid meeting?

A. A company should disclose logistical details of the meeting, including how shareholders can remotely access, participate in, and vote at such meeting.

Q. Where should a company include the information about its virtual-only or hybrid meeting?

A. The location of the information depends on where the company is in its annual meeting process:

- **Not yet filed and sent (or posted) definitive proxy materials.** For a company that has not yet filed and sent (or posted) its definitive proxy materials, such disclosures should be included in the definitive proxy statement and other soliciting materials.
- **Already filed and sent (or posted) definitive proxy materials.** A company that has already filed and sent (or posted) its definitive proxy materials may include this information in the press release described above. Under the SEC staff's recent guidance, the federal proxy rules do not require additional soliciting materials (including new proxy cards) solely for the purpose of switching to a virtual-only or hybrid meeting if it follows these steps.
- **Including contingency language in definitive proxy materials.** A company that is considering holding a virtual-only or hybrid meeting but has not made a decision by the time it files its definitive proxy materials may consider disclosing this possibility in its definitive proxy statement. If the company subsequently elects to move to a virtual-only or hybrid meeting it may follow the steps described above and will need to evaluate whether, under applicable state law, an updated notice needs to be provided and whether such notice must be sent by mail or may be transmitted electronically.

6

Other Considerations

Q: What policies do Glass Lewis and ISS and other institutional investors have in place regarding VSMs?

A: Glass Lewis has historically recommended a vote against governance committee members when a company intends to hold a VSM and does not provide robust disclosure in their proxy statement, which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting. For the 2020 proxy season, Glass Lewis updated its policy regarding VSMs via a communication that reads: "For companies opting to hold a virtual-only shareholder meeting due to COVID-19 between March 1, 2020 and June 30, 2020, we will generally refrain from recommending to vote against members of the governance committee on this basis, provided that the company discloses, at a minimum, its rationale for doing so, including citing COVID-19." You can read the full policy update [here](#).

Under most ISS benchmark policies, ISS does not have a policy to recommend votes against the directors of a company that holds a VSM. ISS recently issued policy guidance affirming that approach and stating that, in the limited number of markets where the ISS benchmark policy discourages VSMs and where the use of such an approach is already allowed by law without requiring any amendment of bylaws, ISS will be altering the application of that policy so as not to be making adverse vote recommendations related a company holding a VSM until such time that it is safe to hold in-person meetings again. If a board opts to hold a VSM, ISS encourages clear disclosure of the reason for the decisions. You can read the full policy update [here](#).

Finally, the Council of Institutional Investors (CII) released a statement that it believes VSMs should be “one-off, tailored for current circumstances.” CII also urged companies to follow best practices “for making virtual meetings participatory, replicating as much as possible the experience of an in-person meeting.”

7

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Annex
Resources*

- [Broadridge Best Practices Guide](#)
- [Sample script for VSM adoptees: “Broadridge VSM Reference Guide Audio” and “Broadridge VSM Reference Guide Video”](#)
- [ISS Guidance](#)
- [Glass Lewis Guidance](#)
- [Managing COVID-19: Virtual Annual Shareholder Meetings](#)

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