A Virtual Meeting Playbook

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This is a playbook for a virtual meeting of shareholders of a public company. This playbook answers questions that companies may have about planning and holding such a meeting.[1]

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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 physical locations, 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. In addition, more recently and after the outbreak of COVID-19, a number of other states amended their corporate laws to allow for shareholder meetings to be held through means of remote communication, including virtual-only meetings. These are meetings where all shareholders attend by online broadcast and/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.

Q: What are the advantages of a virtual meeting?

A. For shareholders, advantages are the convenience of being able to attend the shareholder meeting from any location and avoiding the time and travel expense of in-person attendance. For a company, the advantages of a virtual meeting 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,

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[1] Covington & Burling LLP ("Covington") wishes to thank Broadridge Financial Solutions, Inc. ("Broadridge") for its assistance with portions of this material. Many answers relate to the virtual shareholder meeting platform that Broadridge provides. This is an update, dated October 22, 2020, to the material previously released in April 2020.

reduced costs. In addition, the elimination of travel for its shareholders may align with a company's corporate sustainability objectives.

Q. What are some concerns around virtual meetings?

A. With its first virtual meeting, a company may find that the planning process is more complicated than it expected. There are also concerns about potential technology glitches. Further, some shareholders may be concerned about what they see as a reduced level of engagement with the board and management. In deciding whether to switch to a virtual meeting format, a company should be mindful of its shareholders' preferences and potential contentious matters on the meeting agenda. In any event, a company will want to have appropriate disclosure regarding its virtual meeting procedures, including procedures that satisfy any state law requirements and the guidelines of relevant proxy advisors to ensure that shareholders have the same rights as in a physical meeting.

This year, more companies than ever before have been using the virtual format for their annual shareholder meetings.

Q: Are any board approvals required for a company to conduct a virtual meeting?

A. Under state law, a board generally needs to approve (or delegate management to approve) the location for the annual meeting or, if state law permits there to be no physical location, the format of the meeting. A board may also need to amend the company's bylaws to permit a virtual meeting.

Q: What is required for a company to host a virtual meeting?

A. A company must comply with the relevant state law. Generally, state laws that 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 meeting.[2]

[2] See our question below and linked here for more information.

- 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 their virtual meeting to a commercial provider, such as Broadridge, a transfer agent or another company that offers virtual annual meeting services.

Q: What are the different types of virtual meetings?

A. When a company decides to hold a virtual meeting, there are two important decisions to make. First, what meeting format will be used – audio-only or video. Second, what meeting type will be offered – virtual-only or hybrid.

Formats: Audio-only or video

Audio: In an audio-only format, sound is streamed to shareholders and guests live over the internet, and the meeting is conducted by the company through a telephone bridge call. This is the easiest type of meeting to conduct because little special equipment is required for the company, and there is no need for any of the participants to meet in person. During the period from January 1 to June 30, 2020, approximately 97% of the 1,494 virtual annual meetings on the Broadridge virtual meeting platform, called VSM, were audio-only.

Video: In a video format, the meeting is live video-streamed. There are multiple ways to facilitate a video meeting. It can be as simple as using the camera on a phone or laptop or a more involved and larger production including a camera crew, additional personnel and potentially increased cost.

Meeting types: **Virtual-only or hybrid**

Virtual-only**:** A virtual-only meeting means that shareholders may attend only online. There is no physical meeting component. As a convenience, the board of directors and management may gather in one place, but the meeting itself is not legally convened at any particular location.

Hybrid**:** A hybrid meeting refers to a physical meeting in which shareholders are able to attend either in-person or virtually through an online audio or video format. This type of meeting adds to the cost of the meeting but offers shareholders an opportunity to select their preferred means of participation -- in person or remotely. If a company designates a physical meeting location in conjunction with its virtual meeting, the meeting type is considered hybrid.[3]

[3] See our question below and linked here for information regarding proxy advisory firms' views on virtual-only and hybrid meetings.

2 Virtual Meeting Services

Q: When should a company book its virtual meeting?

A: In view of the growing demand for virtual meetings, it is recommended that a company book a time and date for its virtual meeting with plenty of time to spare. Often, during peak meeting seasons, many meetings are scheduled for the same days and flexibility in the date and time of the meeting may be needed to accommodate all requests submitted.

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

A: Yes. Broadridge has made a number of accommodations so that a company can work with both Broadridge and the company's current annual meeting agent to host a virtual meeting.

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

Q: What security measures are provided with virtual meeting services?

A: The success of the meeting and the protection of client data is an important consideration for a company holding its meeting online.

Broadridge includes significant security protocols from the standpoints of both infrastructure and application. 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 virtual meeting it supports to address potential technology interruptions. Companies may consider also adopting their own contingency plans to address any internal technology glitches.

Q: Can a company that is going through a proxy contest hold a meeting in a virtual format?

A: Yes. There have been some annual meeting director election contests at virtual meetings, although they have required special layers of planning and coordination.

3 Attendance and Access

Q: What shareholders may attend a virtual meeting?

A: All shareholders, including institutional holders, as of the record date for the meeting may attend a virtual meeting.

Q: Should a company expect to see an increase in attendance at a virtual meeting?

A: Anecdotally, companies have reported that there have been the same or slightly increased levels of shareholder attendance at virtual meetings when compared to in-person meetings.

Q: May directors, management and the independent auditor attend the virtual meeting?

A: Yes. It is advisable for a company to take steps to permit directors, management and independent auditors to be able to access the virtual meeting. At most virtual meetings, directors, management and auditors are in attendance and available to answer questions during the meeting. Additionally, as is the case for all annual meetings, the election inspectors are required to attend.

Q: May other non-shareholders access a virtual meeting?

A: It depends. As with an in-person meeting, a company may invite non-shareholder guests to attend the meeting. Commonly, companies will allow employees who are not shareholders or shareholders who may have misplaced their unique identifier numbers to attend their meetings. More than 90% of the companies that hosted virtual meetings on VSM during the first six months of 2020 allowed non-shareholder guests to attend.

Q: What technology does a shareholder need to access a virtual meeting?

A: Generally, a shareholder needs only an internet connection and a compatible web browser (e.g., Chrome, Safari or Edge) to attend a virtual meeting, depending on the requirements of the meeting platform.

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

A: Yes, a shareholder will need a unique identifier number to enter the meeting.

Q: What is a unique identifier number?

A: A unique identifier number is issued to a shareholder by the company's meeting agent so that the shareholder can access, vote and ask questions at an annual meeting. Once a shareholder has successfully presented its unique identifier number, the shareholder will be authenticated and admitted to the virtual meeting. Broadridge's unique identifier number is called a "control number."

Q: What happens if a shareholder loses the unique identifier number?

A: Depending on the service provider and the options a company has selected, the shareholder may be able to have the unique identifier number reissued through the company, a broker agent or the call center support. The shareholder may also be able to attend as a guest, however, not with the ability to vote and ask questions during the virtual meeting.

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 virtual rather than an in-person annual meeting?

A: Generally, no. The script for a virtual annual meeting should be largely the same as for an in-person meeting. The description of the rules of conduct governing the meeting,

however, will vary to the extent that the virtual meeting format will have procedures for accessing and viewing the meeting and how shareholder questions will be administered that are different from a solely in-person meeting.

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

A: Yes. Just as with an in-person meeting, a company should provide rules of conduct for participation in a virtual meeting and make the rules of conduct available to all attendees before and during the meeting. In particular, 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 option to vote still be available during the virtual meeting?

A: Yes. As with an in-person meeting, a shareholder may vote more than once until the vote on a matter is called and the polls are closed. If a shareholder votes more than once, the last vote properly cast is the one counted.

Q: How long does it take to receive the results of shareholder voting at a virtual meeting?

A: Shareholder voting occurs in real-time. All votes received at the meeting hosted on VSM are validated and reconciled after the meeting. The updated tabulation report will be provided to the company and/or the election inspector within 24 hours after the meeting is completed.

Shareholder Lists

Q: Must companies provide shareholders with access to the registered shareholder list during a virtual meeting, and if so, how?

A: It depends on the state of incorporation. Some states, such as Delaware, require that companies make lists available to shareholders during the entirety of the meetings. In the virtual meeting context, this requirement is that the list be made available on the virtual meeting website during the entirety of the meeting.

If the company is using VSM, when an authenticated shareholder logs in to the meeting, the shareholder may click on the link in the lower right labelled “Registered Shareholder List.” A window will appear prompting the shareholder to complete an attestation form. The shareholder will then be presented with a protected PDF of the shareholder list that cannot be printed or downloaded.

During a hybrid meeting for a Delaware company, the registered shareholder list must be made available at the physical meeting location, but the company may also request to have the registered shareholder list made available on the virtual meeting platform.

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

A: No. The registered shareholder list is only available to authenticated shareholders. The link for the registered shareholder list will not be visible to non-shareholders during the meeting.

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 virtual meeting?

A: As is the case with an in-person meeting, a company should continue to make its shareholder list available for inspection before its virtual meeting, for example by keeping a physical copy of the list at its headquarters or by using a secure online environment such as a virtual data room.

Shareholder Participation and Questions

Q: How are shareholder questions handled at a virtual meeting?

A: On VSM, there are three main ways that a company holding a virtual meeting can accept questions from shareholders.

Option 1: Via the text box on the 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), if the company is allowing telephone participation.

Option 3: As a pre-meeting question submitted via a platform such as www.Proxyvote.com, the online voting platform provided by Broadridge. The questions are sent to the company through the virtual meeting admin tool.

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

Q: May all three of these options be offered at the same meeting?

A: Yes.

Q: When can shareholders ask questions at a virtual meeting?

A: This varies by company and will be outlined in the meeting conduct rules. With Option 1 above, shareholders will be able to submit questions as soon as they enter VSM. With Option 2, the company generally has the line open after the business portion of the meeting is concluded. With Option 3, submitted questions will be accepted 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: While this capability was not commonly available during the 2020 proxy season, it is expected that it will be available on VSM for the 2021 proxy season.

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

A: It depends. A company should generally expect to receive slightly more questions from shareholders at a virtual meeting than at its in-person meetings. So far, in 2020, there have been, on average, five questions received during meetings hosted on VSM. The average number of questions increased to 19 for meetings that included a shareholder proposal.

Q: If the company allows non-shareholders to attend a virtual meeting, 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 virtual meeting in a watch and/or listen-only mode.

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

A: Yes. After the meeting, the virtual meeting agent will provide to the company all of the shareholders' questions 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 helpful governance practice. Note that Glass Lewis recommends disclosure on how, if at all, the questions received during the meeting and the company's answers will be posted to the company's website.

Shareholder Proposals

Q: How should a company provide shareholder proponents a means to present their proposals at the virtual meeting?

A: Rule 14a-8(h) requires shareholder proponents, or their representatives, to appear and present their proposals at the annual meeting. For virtual meetings, SEC staff guidance encourages companies, to the extent feasible under state law, to provide shareholder proponents or their representatives alternative means to present their proposals, such as by phone 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 virtual meeting and confirm that the proponent or representative will be able to participate in the meeting. In the first six months of 2020, Broadridge supported 193 virtual meetings with shareholder proposals. Over 80% of these meetings had proposals presented by the proponent live over the telephone line.

The Shareholder Experience and Virtual Meeting Content

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

A: Yes. Although the same content and options are visible on all devices, depending on the type of device being used, the screens may be stacked in different ways to accommodate screen resolution.

Q: Can closed captioning be provided at a virtual meeting?

A: Closed captioning can be made available if the company wishes to provide that service. This should be discussed with the company's virtual meeting representative during the planning process.

Q. May a company pre-record its meeting video or audio content?

A: Yes, a company may pre-record the entire meeting or specific portions of the meeting and provide this to its virtual meeting provider.

VSM can accommodate multiple video and audio roll-ins.

Q: May a company record and post the virtual meeting online?

A: Yes. If a company's virtual meeting is hosted on VSM, the company may elect to have the virtual meeting available online for shareholders and guests to access for up to 12 months. This is optional, however, and it is not a requirement to have the replay available after the meeting. A company may also request a recording of its meeting through its virtual meeting provider for an additional fee and may make it available for whatever duration it chooses.

5 SEC Disclosure Implications

Q: How is director attendance at a virtual meeting 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 these purposes. However, by analogy, under most state corporation laws, 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 answer questions. Accordingly, we think it would be reasonable to conclude that a director attends a virtual shareholder meeting if he or she is able to hear the meeting and answer questions.

If desired and not otherwise prohibited by state law, companies could consider revising their corporate governance guidelines or policies around director attendance at annual shareholder meetings to clarify how a director "attends" a virtual meeting.

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.

Under its COVID-19 guidance, the SEC will permit a company to notify shareholders of a change in the date, time or location of its annual meeting without mailing additional soliciting materials.

6 Other Considerations

Q: What policies do Glass Lewis, ISS and CII have regarding virtual meetings?

A: Glass Lewis has historically recommended a vote against governance committee members when a company intends to hold a virtual meeting and does not provide disclosure in its proxy statement that assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting. Glass Lewis suspended this policy through June

30, 2020, and it is unclear how Glass Lewis will apply the policy going forward, including whether or not it will amend its policy in light of the COVID-19 pandemic.

ISS does not have a policy to recommend votes against the directors of a company that holds a virtual meeting. In fact, ISS has issued policy guidance stating that in limited markets (those where the ISS benchmark policy discourages virtual meetings and where the use of such an approach is already allowed by law without requiring any amendment of bylaws), ISS will not make adverse vote recommendations related to a company holding a virtual meeting until such time that it is safe to hold in-person meetings again. If a board opts to hold a virtual meeting, ISS encourages clear disclosure of the reason for the decisions. The full policy update is here.

Finally, the Council of Institutional Investors (CII) initially released a statement that it believes virtual meetings should be "one-off, tailored for current circumstances." In its annual corporate governance policy handbook released in September 2020, CII reiterated that view, stating that "companies should hold shareholder meetings by remote communication…only as a supplement to traditional shareholder meetings, not as a substitute." At the same time, the CII policy encourages those companies holding virtual meetings to use virtual meeting technology to "facilitate the opportunity for remote attendees to participate in the meeting to the same degree as in-person attendees" to aid in "broadening" meeting participation.

Q: What steps must a company take to disclose a change to its meeting format after it has filed its definitive proxy materials to notify shareholders?

A: In light of the COVID-19 pandemic, the SEC staff issued guidance to give flexibility to a company seeking to change the date, time or location of its shareholder meeting after it has filed its definitive proxy materials for the purpose of conducting a virtual meeting. 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;
  - 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.

As of the date of this publication, October 22, 2020, this guidance is still in effect and does not have a stated expiration date. However, the guidance was issued in response to challenges arising from the COVID-19 pandemic, and the SEC staff could withdraw it at any time.

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 6, 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 virtual meeting 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.

Q. If a company hosts a virtual meeting in response to COVID-19, and a shareholder proponent, or its representative, cannot attend the virtual meeting 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 virtual meeting and present a proposal would be considered "good cause" for not presenting the proposal under Rule 14a-8(h)(3) if the inability to travel or other hardship is related to COVID-19. This could include the inability to present the proposal due to technical difficulties at the virtual meeting. 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.

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Annex

Resources*

- Broadridge Best Practices Guide
- Sample script for virtual meeting adoptees: “Broadridge Virtual Meeting Reference Guide Audio” and “Broadridge Virtual Meeting Reference Guide Video"
- ISS Guidance
- Glass Lewis Guidance
- Managing COVID-19: Virtual Annual Shareholder Meetings