

Client Alert

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Making the Switch: A Company's Guide to Virtual-Only Shareholder Meetings

Last year, a record number of public companies held virtual-only shareholder meetings, which are now permitted in Delaware, Virginia, and numerous other states. Despite some shareholder opposition, we believe this trend is likely to continue. This article provides a comprehensive overview of practical issues that a company must consider in deciding whether to switch to, and then how to implement, virtual-only shareholder meetings.

Whether to Hold a Virtual-Only Shareholder Meeting

Proponents of virtual-only shareholder meetings argue that they are more efficient and convenient for both corporations and shareholders, may result in higher levels of attendance by shareholders, and permit an equivalent level of engagement between shareholders and corporations' directors and officers as in-person meetings. Virtual-only meeting advocates also note that uncontested shareholder meetings are poorly attended and almost always perfunctory rather than substantive. Moreover, they argue that most corporations provide substantive performance updates to their investors through quarterly earnings calls, not annual shareholder meetings. In short, advocates believe that the time and costs of conducting an in-person meeting outweigh the benefits.

Critics of virtual-only shareholder meetings believe that nothing can replace the opportunity for shareholders to sit in the same room as a corporation's directors and officers and "look them in the eye." Critics also believe that corporations may use virtual-only meetings to "cherry pick" favorable questions at the expense of pointed or negative questions. These criticisms have led to unfavorable press for some companies holding virtual-only meetings. In addition, critics note that corporations interested in virtual-only meetings could instead hold hybrid meetings, which would result in many of the benefits of virtual-only meetings while avoiding the drawbacks.¹

¹ Hybrid meetings—in-person meetings that are broadcast simultaneously to shareholders as a virtual meeting—provide an opportunity for in-person shareholder engagement and the ability for shareholders to participate remotely in meetings which they might be unable to attend in person. From a corporation's perspective, however, holding a hybrid meeting essentially requires it to hold two meetings simultaneously. Hybrid meetings therefore require substantially more resources than either an in-person or virtual-only meeting would require on its own. Consequently, corporations hold hybrid meetings relatively rarely. See Broadridge Financial Solutions, Inc. ("Broadridge"), *Virtual Shareholder Meetings: Recent Facts and Figures 2* (2017) [hereinafter *Broadridge Facts and Figures*], available at <http://media.broadridge.com/documents/MKT-1956-17-VSM-Article4.pdf> (reporting that of 187 meetings with a virtual component in 2016, 83% were virtual only and 17% were hybrid).

A recent survey of 129 institutional investors conducted by Institutional Shareholder Services found that (i) 36% of investors surveyed were in favor of hybrid meetings but not virtual-only meetings, (ii) 32% would support hybrid meetings or virtual-only meetings if the virtual-only meetings "provided the same shareholder rights as a physical meeting," (iii) 19% would accept virtual-only meetings without reservation, and (iv) 8% would support only traditional, in-person meetings. Institutional Shareholder Services, *2017-2018 Global Policy Survey: Summary of Results* 5 (Sept. 25, 2017), available at <https://www.issgovernance.com/file/policy/2017-2018-iss-policy-survey-results-report.pdf>.

Corporations will need to consider how their shareholder base may react to a virtual-only meeting. Because of the potential for investor backlash,² corporations may want to engage privately with key institutional shareholders to gauge their reaction to a virtual-only meeting. Some shareholders—including the New York City Comptroller—have indicated they will vote against directors whose corporations held virtual-only meetings in the prior year.³ The Council of Institutional Investors has stated that corporations “should hold shareowner meetings by remote communication (so-called ‘virtual’ meetings) only as a supplement to traditional in-person shareowner meetings, not as a substitute.”⁴ Moreover, some companies have received shareholder proposals calling for them to hold only in-person shareholder meetings. Thus, the decision to hold a virtual-only meeting could have serious consequences in the form of negative media attention and votes “against” directors. On the other hand, it seems that some institutional shareholders do not view virtual-only meetings as a significant issue, at least in uncontested elections.

Because so many companies held virtual-only shareholder meetings in 2017, we believe 2018 could be a pivotal year for the future of virtual-only meetings since we will see how many investors register their displeasure by voting against directors who authorized virtual-only meetings. For that reason, many companies considering virtual-only meetings may defer their decision to 2019 in order to see how investors react this year.

As set forth in a report by the Best Practices Working Group for Online Shareholder Participation in Annual Meetings (the “Best Practices Working Group”), there is no one correct approach to holding shareholder meetings.⁵ We believe that corporations will need to determine on a case-by-case basis whether in-person, hybrid or virtual-only meetings are most appropriate under the circumstances.

Preliminary Considerations for Holding a Virtual-Only Shareholder Meeting

Statutory Requirements

Not all states permit corporations to hold virtual-only shareholder meetings.⁶ In states that do permit virtual-only meetings, corporations will need to review the applicable statutory requirements carefully before attempting to replace an in-person shareholder meeting with a virtual-only meeting. This article

² Consider, for example, Intel Corporation’s proposal to hold a virtual-only meeting in 2010. Shareholders voiced their opposition to that decision and Intel Corporation ultimately decided not to hold a virtual meeting that year. See James McRitchie, *Intel Yields on Virtual Meeting*, CorpGov.net (Jan. 20, 2010), <https://www.corpgov.net/2010/01/intel-yields-on-virtual-meeting/>. Intel Corporation held hybrid annual meetings until 2016, when the corporation began holding virtual-only meetings.

³ See, e.g., Press Release, New York City Comptroller, *Comptroller Stringer: Virtual Only Meetings Deprive Shareowners of Important Rights, Stifle Criticism* (Apr. 2, 2017), available at <https://comptroller.nyc.gov/newsroom/comptroller-stringer-virtual-only-meetings-deprive-shareowners-of-important-rights-stifle-criticism/> (“Comptroller Stringer said he will recommend that the New York City Pension Funds adopt a policy to vote against directors at companies that continue to hold ‘virtual-only’ meetings.”).

⁴ Council of Institutional Investors, *Policies on Corporate Governance* § 4.7 (Sept. 15, 2017), available at http://www.cii.org/corp_gov_policies.

⁵ See Best Practices Working Group, *Guidelines for Protecting and Enhancing Online Shareholder Participation in Annual Meetings* 5 (June 2012) [hereinafter *Best Practices Working Group Guidelines*], available at www.calstrs.com/sites/main/files/file-attachments/shareholder_participation_annual_meetings.pdf (“Most members of the group believe that each company must consider its own shareholder needs and costs in deciding what kind of annual meeting to conduct.”). The Best Practices Working Group consisted of representatives from, among other institutional investors, the California State Teachers’ Retirement System, Capital Research and Management Company, the AFL-CIO, the State of Wisconsin Investment Board and Northern Trust, as well as proxy and legal service providers.

⁶ The Best Practices Working Group surveyed state laws regarding virtual-only shareholder meetings in June 2012. See *Best Practices Working Group Guidelines*, *supra* note 5, at 9-10. Some states—including Virginia—have since amended their laws since then to permit virtual-only meetings, but a significant minority of states still prohibit virtual-only shareholder meetings.

focuses on Virginia and Delaware, but note that other states may have materially different or additional requirements for virtual-only meetings that this article does not address.⁷

The statutory requirements for holding shareholder meetings in Virginia and Delaware are substantially the same. In both states, corporations holding a virtual-only meeting must take reasonable measures to (i) verify that each shareholder participating remotely is in fact a shareholder or a shareholder's proxy and (ii) give each shareholder a reasonable opportunity to participate in the meeting and vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings.⁸

Organizational Documents and Board Authorization

In addition to reviewing the applicable statutory requirements, corporations must confirm that their certificates or articles of incorporation and bylaws permit virtual-only shareholder meetings. Many bylaws may require a physical location and would therefore need to be amended to allow for a virtual-only meeting. For example, a corporation's bylaws might be amended to provide that meetings shall be held "at such place *or no place, solely by means of remote communication*, as may be fixed by the Board of Directors."

Furthermore, both Virginia and Delaware require that boards "authorize" remote participation by a corporation's shareholders.⁹ Thus, the board should adopt a resolution authorizing remote participation in the meeting. A board-adopted bylaw that expressly authorizes virtual meetings may satisfy this requirement, but having the board adopt a specific authorizing resolution for each virtual-only meeting is usually prudent.

Federal Securities Laws and Stock Exchange Rules

Other than with respect to proxy solicitations and shareholder proposals made under Rule 14a-8 of the Securities Exchange Act of 1934 (discussed below), federal securities laws generally do not address how corporations should conduct shareholder meetings. Furthermore, the Securities and Exchange Commission has allowed at least two corporations to exclude from their proxy materials a shareholder proposal that the corporation hold in-person rather than virtual-only annual meetings. In each case, the corporation was permitted to exclude the proposal under Rule 14a-8(i)(7) as relating to the corporation's ordinary business operations.¹⁰

Both the New York Stock Exchange and Nasdaq require listed companies to hold annual meetings, but they generally do not prescribe how annual meetings must be conducted.¹¹ Nasdaq, however, does

⁷ For example, California requires unanimous, unrevoked consent from shareholders to hold a virtual-only shareholder meeting. See Cal. Corp. Code §§ 20 (defining "electronic transmission of the corporation" as a "communication ... to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code"), 600(a) (permitting "shareholders not physically present in person or by proxy at a meeting of shareholders [to participate in such meeting] by electronic transmission by and to the corporation," subject to the consent requirement in Cal. Corp. Code § 20(b)). Other states require shareholder lists to be posted online if a meeting will be held virtually. See *Best Practices Working Group Guidelines*, *supra* note 5, at 9-10.

⁸ Va. Code § 13.1-660.2(B); 8 Del. C. § 211(a)(2). Delaware also requires corporations to maintain a record of any vote or action taken by remote communication. 8 Del. C. § 211(a)(2)(b)(iii).

⁹ Va. Code § 13.1-660.2(A); 8 Del. C. § 211(a)(2).

¹⁰ See Shareholder Proposal from Steve Nieman and Harrington Investments, Inc., to Alaska Air Group, Inc. (Jan. 25, 2017), available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/niemanharrington012517-14a8.pdf>; Shareholder Proposal from John Chevedden and Bartlett Naylor to HP Inc. (Dec. 28, 2016), available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/cheveddennaylor122816-14a8.pdf>.

¹¹ New York Stock Exchange Listed Company Manual, Rule 302.00 ("Listed companies are required to hold an annual shareholders' meeting during each fiscal year."); Nasdaq Listing Rule 5620(a) ("Each Company listing

require that shareholders “must be afforded the opportunity to discuss Company affairs with management” at each annual meeting.¹² Depending on how the virtual meeting is to be conducted, a Nasdaq-listed corporation may want to contact Nasdaq to discuss compliance with this rule.

Proxy Contests and Other Contentious Votes

Shareholder meetings that involve a proxy contest or other contentious vote likely will be held in person rather than virtually. The greater complexity, need for discussion at the meeting, larger number of votes likely to be cast during the meeting, and increased chance that an adjournment could be necessary all weigh heavily in favor of holding an in-person meeting if the corporation expects a close or contested vote.¹³ Moreover, while many institutional investors may not object to a virtual-only format for a routine annual meeting, they could be quite opposed to this decision in a contested election, given the criticisms noted above. For these and other reasons, some providers of virtual meeting platforms will not host contested shareholder meetings.

Conducting a Virtual-Only Shareholder Meeting

After confirming that the laws of its state of incorporation and its organizational documents permit virtual-only shareholder meetings, a corporation interested in holding a virtual-only meeting must consider how to comply with the applicable statutory requirements. For essentially all public corporations, this will mean engaging an outside service provider.¹⁴ Because corporations must provide the ability for shareholders to vote securely, it is likely impractical, if not impossible, for most public corporations to hold a virtual-only meeting without third-party assistance. An experienced service provider like Broadridge or Computershare can provide a robust and usually cost effective platform to host a virtual-only meeting more easily than a corporation could develop the technology and related expertise necessary to host a virtual-only shareholder meeting on its own.¹⁵ For privately-held companies, whether a third-party service provider is necessary will depend on the circumstances.

Meeting Format: Audio-Only or Video

The most fundamental decision a corporation must make regarding a virtual-only shareholder meeting is whether it will be audio-only or include video. An audio-only meeting is substantially similar to an earnings call, with the key addition of shareholder authentication and voting through a secure website. Speakers are heard but not seen, although the corporation can supplement the audio-only meeting with a contemporaneous slide presentation. A meeting that includes video will involve a live video feed of the corporation’s participants. The proceedings will generally resemble an in-person shareholder meeting, with the obvious exception that no shareholders would be in physical attendance.

common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders no later than one year after the end of the Company’s fiscal year-end....”).

¹² Nasdaq Listing Rule IM-5620.

¹³ See, e.g., Sharon Terlep & David Benoit, *P&G Says Trian’s Nelson Peltz Has Lost Bid for Board Seat; He Disagrees*, Wall St. J., Oct. 10, 2017, available at <http://www.wsj.com/articles/macerich-settles-proxy-fight-with-two-activist-hedge-funds-1430756646> (noting that, following a vigorously contested proxy contest, more than 400 shareholders attended Proctor & Gamble Co.’s in-person shareholder meeting and that it could take days or weeks for final certification of the vote).

¹⁴ Broadridge and Computershare Limited (“*Computershare*”) are leading proxy solicitors that also offer platforms for corporations to hold virtual shareholder meetings. Such platforms include a secure login method, access to the meeting’s audio or video stream and slide presentation, a method for shareholders to submit questions via text in real time, and the ability for shareholders to vote their shares.

¹⁵ See *Virtual-Only Annual Meetings: Nuts & Bolts* (transcript), TheCorporateCounsel.net (Oct. 18, 2016), available at http://www.thecorporatecounsel.net/member/webcast/2016/10_18/transcript.htm (noting that the cost of holding a virtual-only meeting through a third-party service provider starts at just “several thousand dollars”).

Corporations holding virtual-only meetings have overwhelmingly chosen audio-only meetings.¹⁶ Holding an audio-only meeting is cheaper and technologically easier than also broadcasting live video.¹⁷ A live video feed requires, among other things, cameras and a larger production team. An audio-only meeting may also reduce the chance that the media would widely report any disruption of the meeting, since video can be more interesting and reportable than audio alone. On the other hand, broadcasting live video, which would allow shareholders to observe the corporation's representatives as they answer shareholder questions, could help assuage critics' fears that virtual-only meetings are intended to insulate a corporation's directors and officers from its shareholders. Thus, a live video feed could result in less criticism that a corporation is "hiding" from shareholders by holding a virtual-only meeting.¹⁸

Voting

Corporations must be able to verify that each remote participant is a shareholder or a proxyholder.¹⁹ As discussed above, most public corporations that hold virtual-only shareholder meetings delegate this process to a third-party service provider. Shareholder verification typically occurs by including a unique code in each shareholder's proxy materials that he or she can use to log in to the meeting website. If a shareholder casts a vote during the meeting, his or her unique code allows the proxy solicitor to ensure that the shareholder's proxy, if one was submitted, is replaced by the shareholder's vote cast during the meeting.²⁰

Safeguarding Against Technological Problems

Before holding a virtual-only shareholder meeting, each company will want to do a "dry run" of the meeting with its virtual meeting platform provider. The company should also have contingency plans to deal with a technological failure, such as a power or network outage. These contingency plans should include scenarios in which there is a brief outage where the meeting can be promptly reconvened, and a prolonged outage that requires the meeting to be reconvened on a later day. As discussed below, the corporation should also have a contingency plan in case a technological failure interferes with the ability of a shareholder to present his or her proposal.

To minimize the risk of a technological failure disrupting the meeting, corporations should structure the agenda of any virtual meeting to bring matters to a vote, close the polls, and adjourn the formal part of the meeting as quickly as possible.²¹ With the formal part of the meeting done, the corporation can then turn

¹⁶ See *Broadridge Facts and Figures*, *supra* note 1, at 1; Computershare, *The Future of Shareholder Meetings is Virtually Here* 8 (2017), available at <http://www.computershare.com/News/Virtual-Meetings.pdf>.

¹⁷ Among other reasons, if the chairman of the meeting calls into the meeting using an analog phone line, not even a power outage would prevent the chairman from conducting (and, if necessary, temporarily adjourning) the meeting.

¹⁸ John Chevedden, the prominent shareholder activist, has argued that virtual-only meetings are "a harmful way to insulate management from shareholder interaction." Shareholder Proposal from John Chevedden to Hewlett Packard Enterprise Company (Dec. 9, 2016), available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/cheveddennaylor120916-14a8.pdf>. Similarly, New York City Comptroller Scott M. Stringer has argued that some corporations adopt virtual-only meetings because "they want to avoid looking shareowners in the eye—they're treating face-to-face interaction as a nuisance instead of a duty.... [I]n some cases, companies are clearly using virtual-only meetings to avoid criticism." Press Release, New York City Comptroller, *Comptroller Stringer: Virtual Only Meetings Deprive Shareowners of Important Rights, Stifle Criticism* (Apr. 2, 2017), available at <https://comptroller.nyc.gov/newsroom/comptroller-stringer-virtual-only-meetings-deprive-shareowners-of-important-rights-stifle-criticism/>.

¹⁹ Va. Code § 13.1-660.2(B)(1); 8 Del. C. § 211(a)(2)(b)(i). Corporations do not need to verify the identities of non-shareholders who will watch—but not participate in—a meeting.

²⁰ See generally *Virtual-Only Annual Meetings: Nuts & Bolts* (transcript), TheCorporateCounsel.net (Oct. 18, 2016), available at http://www.thecorporatecounsel.net/member/webcast/2016/10_18/transcript.htm.

²¹ In Virginia, the polls open at the beginning of the meeting and close upon the final adjournment of the meeting unless the chairman announces different open and closing times. Va. Code § 13.1-660.1. Delaware

to shareholder questions or a management presentation which, if disrupted, would not prevent the shareholder vote from being effective or necessarily require that the meeting be reconvened. Similarly, corporations should consider having the chairman of the meeting announce at the start of the meeting that in the event of any disruption, the meeting will adjourn and reconvene automatically at a specified time and date, to be accessed via the same website.²² Whether the meeting will need to be reconvened will depend on whether the formal business was concluded or, as a matter of shareholder relations, the corporation should continue with the rest of the agenda (e.g., answering shareholder questions).

Shareholder Questions

Although not as fundamental to shareholder meetings as voting, question and answer sessions give most shareholders their only opportunity to engage directly with a corporation's directors and officers. At traditional, in-person shareholder meetings, corporations generally allow shareholders to pose questions directly to the directors and officers. The appropriate directors or officers then respond immediately to the questions asked. Some shareholders believe that this "live" format is the best way to ensure a candid (i.e., unscripted) response to shareholder questions. Along similar lines, the Best Practices Working Group noted that corporations should ensure that they are not "using technology to avoid opportunities for dialogue that would otherwise be available at an in-person shareholder meeting."²³

For virtual-only shareholder meetings, corporations have a number of options regarding how shareholder questions can be presented, including:

- Live Questions via Telephone. Corporations can structure the meeting similarly to an earnings call, with an operator managing a queue of shareholders who will ask questions via telephone using a dial-in number. This is the most similar to in-person meetings, and we expect that many shareholders—particularly activist retail shareholders—would prefer this option.
- Live Questions via Text. Virtual meeting platforms offered by third-party service providers allow shareholders to submit questions in text during the meeting. These questions typically are not seen by other shareholders. Compared to the telephone option, shareholders may view this as less effective for presenting potentially negative questions. It also gives the corporation some discretion in choosing which questions to answer.
- Pre-Submitted Questions. Corporations may require that shareholders submit all questions in advance, either through pre-recorded audio or video files or in writing. This option gives the corporation the most discretion regarding which questions to answer. In addition, some critics argue that it results in less candid answers because the corporation will prepare a scripted response in advance of the meeting. Corporations that require pre-submitted questions believe that a prepared response—which can be more substantive and complete than unprepared remarks—is more useful to shareholders without any loss of candor.²⁴

Unless a corporation chooses to permit live questions via telephone, it will usually need to engage in some editorial control over the questions its directors and officers answer. At a minimum, the corporation (and shareholders) would want to eliminate duplicate questions and questions that are off-topic or

requires that the date and time of the opening and closing of the polls be announced at the meeting. 8 Del. C. § 231(c).

²² In both Virginia and Delaware, unless otherwise required by a corporation's bylaws, no notice of an adjourned meeting is required to be given if the time, place, if any, and means of attendance are announced at the meeting from which the adjournment is taken before such meeting is adjourned. Va. Code § 13.1-658(E); 8 Del. C. § 222(c).

²³ *Best Practices Working Group Guidelines*, *supra* note 5, at 6.

²⁴ In 2016, Broadridge reported that 99% of corporations holding virtual meetings permitted live questions via text. Only 5% allowed live questions via telephone, and 15% accepted pre-submitted questions in addition to live text questions. *Broadridge Facts and Figures*, *supra* note 1, at 2.

inappropriate. But some shareholders believe that corporations will “cherry pick” favorable questions and downplay, rephrase, or ignore questions that are seen as overly negative or hostile. Corporations can take steps to alleviate this concern by providing transparency into how they select shareholder questions, including by committing to respond to all reasonable questions at the meeting or, if too many questions are received, to post all questions on a website available to shareholders and respond to them after the meeting.²⁵

To date, virtual-only shareholder meetings have not resulted in a marked increase in the number of shareholder questions as compared to in-person meetings. Because many more shareholders can attend virtual-only meetings than in-person meetings, however, this trend may change in the future. Furthermore, live questions via text and pre-submitted questions offer anonymity to shareholders that could result in more aggressive or confrontational shareholder questions.

Shareholder Proposals

Under Rule 14a-8 of the Securities Exchange Act of 1934, shareholders who have owned at least \$2,000 in market value, or 1 percent, of a corporation’s securities “entitled to be voted on the proposal at the meeting” for at least one year may submit proposals for inclusion in a corporation’s proxy statement.²⁶ Rule 14a-8 requires that either the proponent or his or her qualified representative present the proposal at the shareholder meeting.²⁷ If permitted by the corporation, proponents may appear through electronic media rather than in person.²⁸

Corporations that intend to hold a virtual-only shareholder meeting, therefore, must determine how shareholder proposals will be presented. Options include:

- providing a dedicated dial-in number for the shareholder or the shareholder’s designated representative to speak (similar to an earnings call);
- permitting proponents to provide an audio or video recording of their presentation, which the corporation would play during the meeting; or
- designating a representative of the corporation to read the proposal or an introduction to the proposal submitted in advance by the proponent.

Among virtual meetings held in 2016, Broadridge reported that most corporations preferred to provide a separate dial-in number for proponents.²⁹ The corporation should also have a backup plan to present the shareholder proposal on the proponent’s behalf if the proponent has a technical issue that prevents him or her from presenting the proposal personally. For example, the proponent can provide the corporation with a copy of his or her remarks that can be read by the corporation’s representative in the event the dedicated dial-in number does not work.

Pre-Meeting Communication

As explained above, many decisions need to be made in advance of a virtual-only shareholder meeting with regard to voting, shareholder questions, and shareholder proposals. Corporations will reach different decisions on these issues in light of their particular shareholder base and their historical practices for

²⁵ Corporations might also decide to provide responses to groups of related questions rather than all questions individually. Although this is likely a more efficient approach, some shareholders may view any “extra” editing by the corporation as an attempt to avoid answering certain questions.

²⁶ 17 C.F.R. 240.14a-8.

²⁷ 17 C.F.R. § 240.14a-8(h)(1).

²⁸ 17 C.F.R. § 240.14a-8(h)(2).

²⁹ *Broadridge Facts and Figures*, *supra* note 1, at 2.

holding shareholder meetings. Regardless of the result of any particular decision, however, corporations should publish their procedures for shareholder participation in virtual-only meetings just as they would for in-person meetings. Corporations should adhere to those procedures to ensure that all shareholders receive—and feel that they have received—a meaningful opportunity to participate in the shareholder meeting even though it occurred virtually rather than in-person. Thoughtful, specific procedures may help forestall any complaints shareholders have regarding a virtual-only meeting taking the place of an in-person meeting.

Recap of Key Issues

As explained above, there are numerous issues that need to be considered before holding a virtual-only meeting, including:

- whether to engage with institutional shareholders before deciding to hold a virtual-only meeting;
- whether holding a virtual-only meeting will result in significant “withhold” votes or votes “against” the directors;
- whether to permit non-shareholder attendees, such as analysts, employees, or the media, to view the meeting;³⁰
- how to structure the agenda of the meeting in order to conclude the formal business as soon as possible;
- what contingency plans to prepare to address a technological failure, including contingency plans for a short network outage, a prolonged network outage, and the inability of a shareholder proponent to present his or her proposal, as well as state law issues regarding whether notice of the reconvened meeting must be given;
- whether a recording or transcript of the meeting will be available after the meeting and, if so, for how long;
- how shareholders will present shareholder proposals, such as through a designated dial-in number or a pre-recorded audio or video statement;
- how shareholders can ask questions, including in advance, by text, or “live,” and if “live,” how to deal with disruptive or otherwise inappropriate behavior;³¹
- how to decide which shareholder questions will be answered, including how to deal with duplicate or inappropriate questions, how to respond to questions submitted by text or in advance if there is not enough time to answer them during the meeting, and the level of transparency to provide to explain how questions will be chosen;
- how to maintain the required record of any vote or action taken by remote communication;³²

³⁰ Eight out of ten corporations that held virtual-only shareholder meetings hosted by Broadridge in 2016 permitted non-shareholder attendees. *Id.* at 2.

³¹ Perhaps for this reason, most corporations do not permit live shareholder questions via telephone. See *supra* note 24. Corporations would have the ability to mute or disconnect a disruptive shareholder’s telephone line, but this could expose the corporation to accusations that it is censoring dissenting viewpoints.

³² See 8 Del. C. § 211(a)(2)(b)(iii) (requiring that “if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation”).

- how to ensure the inspector of elections is familiar with virtual meeting voting procedures and has access to the voting portal to confirm proper opening and closing of the polls; and
- what information to include in the corporation's proxy materials regarding its switch to a virtual-only shareholder meeting, and whether to publicize shareholders' ability to attend the meeting virtually in other locations (e.g., on the corporation's website).³³

Conclusion

We hope it is clear from the foregoing discussion that making the switch from an in-person to a virtual-only shareholder meeting can be a lengthy process, with many issues that must be considered and decided well in advance of the meeting date. Experienced legal counsel and third-party service providers can help corporations analyze the issues, but each corporation considering whether to hold a virtual-only meeting will need to take into account its historic practices with respect to shareholder meetings, its shareholders' previous level of engagement, and whether it expects shareholders to protest its adoption of virtual-only meetings.

In addition, as virtual-only meetings become more popular, particular practices may coalesce regarding how to address the issues described in this article. Corporations and their advisors will need to continue monitoring the best practices in corporate governance and adjust their meeting procedures accordingly.

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³³ Because many shareholders do not read proxy statements, corporations should expect more shareholders to attend a virtual-only meeting that is publicized in other locations as well.