

Guidelines for Protecting and Enhancing Online Shareholder Participation in Annual Meetings

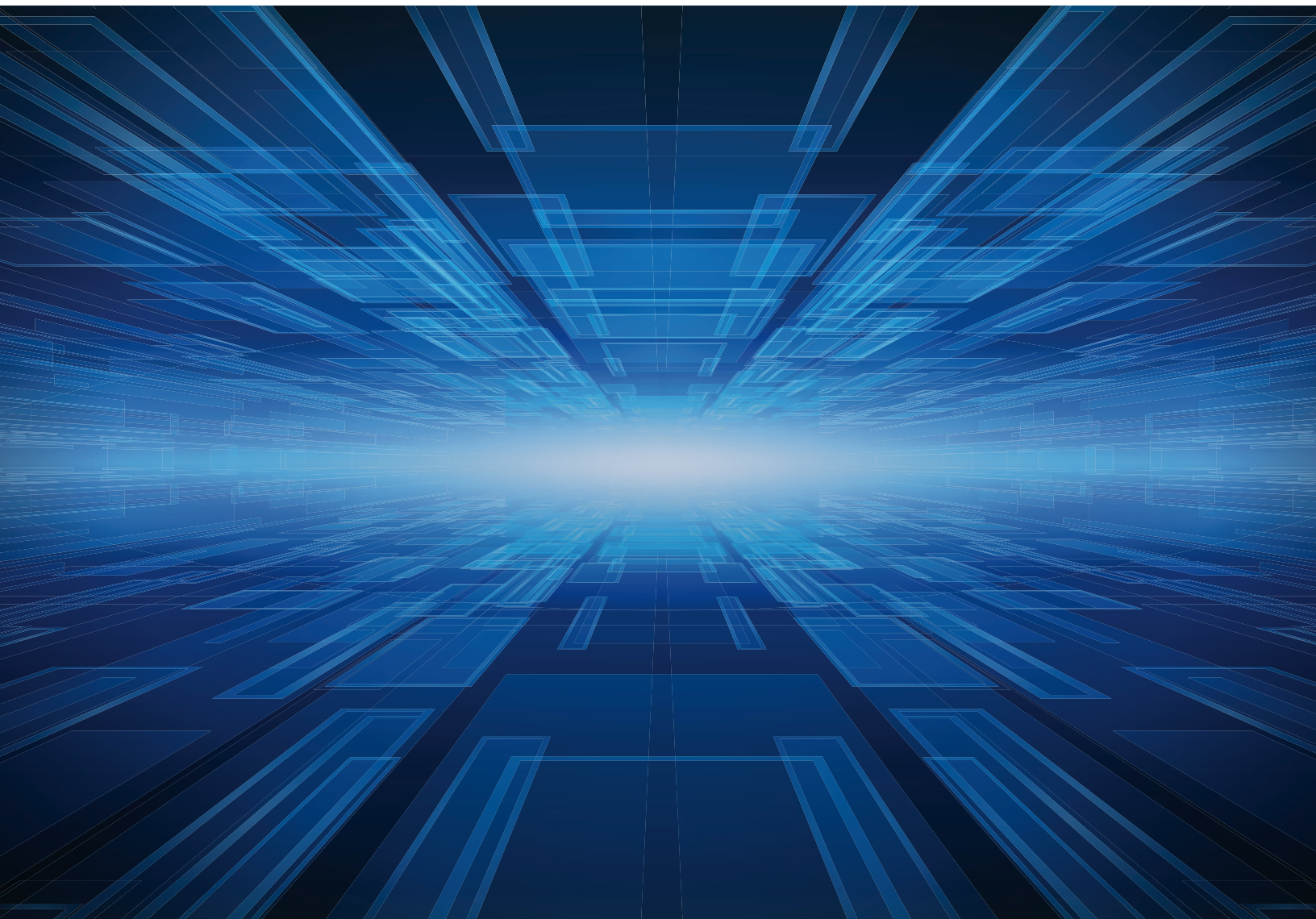


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(Covington & Burling LLP and Broadridge Financial Solutions, Inc.)	

The Best Practices Working Group for Online Shareholder Participation in Annual Meetings

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Introduction

It is a generally accepted cornerstone of sound corporate governance that shareholder participation is a key component of a successful annual meeting of shareholders. State laws require companies to hold annual meetings of their shareholders to elect directors and act upon other matters properly brought before the meeting. From a governance perspective, the annual meeting often serves as an opportunity for management to update shareholders on company developments, for shareholders to ask questions of management and directors, to consider shareholder proposals and to review the company's performance.

In recent years, there has been ongoing dialogue regarding best practices, or safeguards, to ensure that annual meetings are accessible, transparent, efficient and meet the corporate governance needs of shareholders, boards and management.

To that end, a group of interested constituencies, comprised of retail and institutional investors, public company representatives, as well as proxy and legal service providers, has been discussing best practices and safeguards for annual shareholder meetings, online shareholder participation in annual shareholder meetings and rules of engagement for such meetings.

For the purposes of these discussions, the phrase “virtual-only shareholder meeting” refers to a meeting of shareholders that is held exclusively through the use of online technology without a corresponding in-person meeting. The term “hybrid shareholder meeting” refers to an in-person, or physical, meeting in which shareholders are permitted to participate online.

Advocates of virtual-only and hybrid meetings of shareholders believe, in general: (i) that they are a highly efficient way to enable shareholders to actively participate in shareholder meetings without incurring the expense and inconvenience of traveling to the meeting site, (ii) that new technologies assure effective communication and, importantly, (iii) that virtual meetings of shareholders result in higher levels of shareholder participation.

Critics of virtual-only and hybrid meetings of shareholders, on the other hand, generally assert (i) that virtual-only participation is a poor substitute for “looking the board in the eye,” (ii) that the opportunity to address corporate management and directors in person is an important shareholder right and (iii) that the current Internet communication technology is not a good replacement for a physical meeting.

As a result of these discussions, and with members of the group unable to agree on when virtual-only and hybrid meetings of shareholders may be used, the group decided to focus on safeguards that should apply when shareholders are allowed to participate in shareholder meetings online, and to leave questions regarding when virtual meetings of shareholders are appropriate to applicable state law and the individual circumstances of companies and their shareholders.

Following is a brief background on Delaware and other states' statutory provisions for online participation in shareholder meetings, as well as the proposed best practices—or shareholder safeguards—for such meetings.

Background

Delaware Law

Delaware General Corporation Law (DGCL) governs corporations incorporated in the state of Delaware, representing over 50% of U.S. publicly-traded corporations and 60% of the Fortune 500. In 2000, in an effort to keep Delaware law current with emerging technological advances and realizing the importance of annual meetings in the corporate governance process, the Delaware legislature adopted amendments to Section 211 of the DGCL to allow companies to hold virtual-only and hybrid shareholder meetings.

Specifically, under Section 211, a board, if authorized by its charter or bylaws, may determine the place of a meeting of shareholders, or, in its sole discretion, determine that the meeting should be held solely by means of remote communication. In addition, Section 211 provides that shareholders can use the Internet or another form of “remote communication” to (1) participate, (2) be deemed present, and (3) vote at an annual shareholder meeting if the following three conditions are met:

- The company takes reasonable measures to verify that each person deemed present and permitted to vote at the meeting is a shareholder or the holder of a valid proxy from a company shareholder;
- The company takes reasonable measures to provide such shareholders and proxy holders a reasonable opportunity to participate in the meeting—including an opportunity to read or hear the proceedings as they happen substantially and concurrently with such proceedings—and to vote on matters submitted to the shareholders; and
- The company maintains a record of votes and other actions taken at the meeting.

Other States

As noted above, some states, such as Delaware, permit virtual-only and hybrid meetings. Additionally, other states allow the practice in theory, but restrictions make it difficult, if not unrealistic, to conduct a virtual-only meeting. Lastly, some states do not permit companies incorporated in those states to hold annual shareholder meetings exclusively online. Specifically, the laws of:

- **22** states, such as Delaware, Minnesota, Ohio, Pennsylvania and Texas, allow virtual-only meetings of shareholders. Most recently, Missouri has allowed virtual-only meetings of shareholders. However, some states, such as California and Maryland, while allowing virtual-only meetings, impose conditions that make them impractical or unrealistic (e.g., California requires unrevoked shareholder consent to hold a virtual-only meeting). *Please see the attached list regarding states’ restrictions.*
- **18** states, such as Georgia, Massachusetts, New Jersey, New York and Wisconsin, preclude corporations incorporated in those states from hosting virtual-only or hybrid meetings of shareholders.
- **11** states require a physical location for shareholder meetings, but permit remote participation in such meetings via the Internet (i.e., a hybrid meeting).

Most states that allow online participation in shareholder meetings impose conditions on such participation. Generally, most such states require that a shareholder participating in a shareholder meeting online be able to:

- Vote during the meeting;
- See and hear the proceedings contemporaneously;
- Ask questions; and
- Have their remarks heard by other shareholders.

In addition to these conditions, a company that intends to host a virtual-only meeting of shareholders generally must make its shareholder list available to the examination of any shareholder during the meeting on a reasonably accessible electronic network.

Federal Law and Listing Standards

Federal securities laws are largely silent on the conduct of the annual meeting, other than through the proxy solicitation rules. The NYSE and NASDAQ require listed companies to hold annual meetings, with NASDAQ requiring companies to afford shareholders an opportunity to discuss company affairs with management. The corporate codes of each state and the corporate instruments of each company also provide guidelines for the conduct of annual meetings of shareholders.

Corporate Governance Practices

The group noted that although there is great latitude regarding the conduct of an annual meeting, shareholder meetings should permit the exercise of all of the rights granted to shareholders under state law, as well as comply with stock exchange listing standards and a company's governing instruments. Further, members of the group agreed that all parties involved in the annual meeting process should acknowledge and reach consensus on what constitutes procedural fairness and decorum in the conduct of an annual meeting—regardless of the medium by which the meeting takes place.

The Principles, or Guidelines, Offer No Position on Hybrid vs. Virtual-only Meetings

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. Other group members believe that online participation in shareholder meetings should supplement, but not replace, physical meetings.

In discussing and recommending best practices for online meetings, the group noted the Council of Institutional Investors (CII) 2010 policy regarding online shareholder meetings (see below). Further, the group is mindful of the needs of shareholders and companies as they seek opportunities offered by emerging and social technologies.

“CII Shareowner Meetings Policy, 4.7 Electronic Meetings: Companies 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.

Companies incorporating virtual technology into their shareowner meeting should use it as a tool for broadening, not limiting, shareowner meeting participation. With this objective in mind, a virtual option, if used, should facilitate the opportunity for remote attendees to participate in the meeting to the same degree as in-person attendees.”

During the discussions regarding safeguards for on-line participation in shareholder meetings, the group discussed the following factors in evaluating whether to have a physical, hybrid or virtual-only meeting:

- Whether a matter to be considered at the meeting is the subject of a counter-solicitation or a “vote no” campaign
- Whether a controversial management or shareholder proposal will be considered at the meeting
- Whether a business transaction, such as a merger, will be considered at the meeting
- Whether the company is the subject of significant shareholder dissent (e.g., significant governance, operational or performance issues)
- Whether the meeting will be limited to the consideration of routine or non-controversial proposals (e.g., the uncontested election of directors and the ratification of auditors)

- o Whether shareholders usually attend the company's annual meeting, or whether annual meetings of the company are generally attended solely by management of the company

Benefits of Online Shareholder Participation in Shareholder Meetings

Online participation in shareholder meetings presents an opportunity, through the use of technology, to improve corporate governance by allowing shareholders to attend and participate in shareholder meetings, regardless of their location, and to increase communications among shareholders, management and directors.

Online shareholder participation in a shareholder meeting allows a company to:

- Take advantage of emerging and social technologies,
- Reach shareholders wherever they are located,
- Give shareholders (including shareholders that might not be physically able to attend a shareholder meeting in person) the opportunity to access and participate in the annual meeting process,
- Achieve potential cost savings for companies and shareholders alike,
- Reduce the environmental impact of the annual meeting (i.e., lower the carbon footprint of annual meetings by reducing travel by management, the board and shareholders), and
- Enhance retail participation in meetings by allowing such shareholders to vote directly online during the meeting.

Principles

The following are principles, or guidelines, that the group generally agrees should be followed to the extent

that a company decides to allow online participation in shareholder meetings. The principles outlined below are not intended to simply reproduce in-person meetings through technology. Instead, they are intended to leverage technology in a way that will increase shareholder participation, engagement, and voting at annual meetings. These principles do not create a higher standard than currently accepted best practices for in-person shareholder meetings.

- *Safeguards for Online Participation in Shareholder Meetings* – Generally, members of the group agreed that companies electing to allow online participation in meetings of shareholders should employ safeguards and mechanisms to protect the interests of shareholders and to ensure that such companies are not using technology to avoid opportunities for dialogue that would otherwise be available at an in-person shareholder meeting.
- *Online Participation in Shareholder Meetings Should Maximize the Use of Technology* – The purpose of online participation in shareholder meetings is to allow companies and shareholders to maximize the use of technology. Given a company's wide array of shareholders and their varying levels of sophistication, access to technology and interest in participating in shareholder meetings, companies should ensure that the shareholder meeting is accessible to all of a company's shareholders, to the extent practicable. A company should consider:
 - o Offering telephone access so that shareholders can call in to ask questions during the meeting; and, in the future, companies should consider videoconferencing access as technological advances are made and costs decline;

- Ensuring accessible technology for web-casting that offers options to accommodate different platform configurations (i.e., make best efforts so that shareholders can participate in the online meeting by utilizing a platform that accommodates most, if not all, shareholders);
- Providing a technical support line for shareholders; and
- Opening web lines and telephone lines in advance of the meeting to allow shareholders to test their access and be sure they will be able to participate in the meeting.
- *Cost Benefit Analysis* – In considering whether to permit online participation in shareholder meetings, issuers should weigh the cost and benefits of a physical meeting, a virtual-only meeting, a hybrid meeting and the rights of shareholders.
- Adopt principles for online participation in shareholder meetings, just as they would for an in-person meeting
- Publish those principles for online participation in shareholder meetings in a reasonable period of time in advance of, and during, the meeting
- Establish procedures to validate online meeting participants as shareholders
- Establish reasonable procedures to allow anyone to attend an online annual meeting and to determine whether non-shareholders may be permitted to participate on a view/listen-only basis
- Establish procedures for shareholders to vote remotely and to have such votes properly recorded

The following Best Practices may be amended, as needed, to accommodate companies and shareholders as they seek to enhance the annual meeting experience, increase shareholder participation at meetings and as corporate governance practices evolve and technological advances are made.

Best Practices

In order to ensure that online participation in shareholder meetings provides the same opportunity for dialogue among shareholders, management and directors that is possible at an exclusively in-person shareholder meeting, the group recommends that companies adopt best practices. The group acknowledges a company has the right to establish rules of conduct for a meeting and suggests that companies:

- Procedures to post all questions received in advance of the meeting and to allow investors to communicate before the meeting to indicate they wish to ask a question or make a statement
- Specific and reasonable time guidelines for questions asked of management (e.g., five minutes for shareholders presenting proposals and two minutes for general questions)

- Specific and reasonable guidelines for the display of questions and answers. Some shareholders have expressed concerns regarding the potential for manipulation by companies with respect to the way they might filter, organize, group and display questions and answers. Acceptable practices for addressing these concerns could include:
 - ✓ Displaying all reasonable questions asked during a meeting (i.e., questions that are malicious or frivolous in nature can be excluded at the discretion of the company, as can duplicative questions)
 - ✓ Organizing and answering questions based on groupings of related questions
 - ✓ Organizing and answering questions based on the time each question is submitted — questions to be displayed and taken in order, as they are received
 - ✓ In a hybrid meeting, alternating questions between in-person, telephone and Internet attendees
 - ✓ Establishing reasonable procedures for shareholders to ask questions via telephone; and, in the future, companies should consider videoconferencing access as technological advances are made and costs decline
 - ✓ Establishing procedures for questions received during the meeting, but not answered during the meeting
 - ✓ Establishing procedures to allow a shareholder to revoke a question
 - ✓ Establishing procedures for posting all questions and answers after the meeting, including the specifics related to each question (e.g., how many questions were received on a specific matter)
- Arrange for a shareholder to present his/her shareholder proposal in-person or through telephone or video connection
 - Requiring a reasonable amount of time for a shareholder to make such a request in advance of the meeting (e.g., 15 – 20 days notice to the company)
- Add disclosure in the proxy materials that provides notice for the type of meeting to be used for the next year’s meeting
- Archive the meeting on a publicly available website for a specific and reasonable period of time

APPENDIX: States' Requirements Matrix

(Covington & Burling LLP and Broadridge Financial Solutions, Inc.)

State	Abbrev.	Virtual Only Allowed?	Hybrid Allowed?*	Restrictions?	Electronic Shareholder List Required?
Alabama	AL	N	N		
Alaska	AK	N	N		
Arizona	AZ	Y	Y		Y
Arkansas	AR	N	N		
California	CA	Y	Y	Shareholder consent, etc.	
Colorado	CO	Y	Y		Y
Connecticut	CT	N	N		
Delaware	DE	Y	Y		Y
District of Columbia	DC	N	N		
Florida	FL	N	Y		
Georgia	GA	N	N		
Hawaii	HI	Y	Y		Y
Idaho	IDN	N			
Illinois	IL	N	Y	Participants must hear each other	Y
Indiana	IN	N	Y		
Iowa	IA	N	N		
Kansas	KS	Y	Y		Y
Kentucky	KY	Y	Y		Y
Louisiana	LA	N	N		
Maine	ME	N	N		
Maryland	MD	Y	Y	Shareholder veto, etc.	
Massachusetts	MA	N	Y		
Michigan	MI	Y	Y	Participants must be able to communicate with each other	Y
Minnesota	MN	Y	Y		
Mississippi	MS	N	N		
Missouri	MO	Y	Y		
Montana	MT	N	Y	Participants must hear each other	Y

*Note that almost every company has the option of hosting a webcast of their meeting, even if virtual meetings are prohibited

APPENDIX: States' Requirements Matrix (Continued)

(Covington & Burling LLP and Broadridge Financial Solutions, Inc.)

State	Abbrev.	Virtual Only Allowed?	Hybrid Allowed?*	Restrictions?	Electronic Shareholder List Required?
Nebraska	NE	N	Y	Participants must hear each other	Y
Nevada	NV	N	Y		
New Hampshire	NH	N	N		
New Jersey	NJ	N	N		
New Mexico	NM	N	N		
New York	NY	N	N		
North Carolina	NC	N	Y	Participants must hear each other	
North Dakota	ND	Y	Y		Y
Ohio	OH	Y	Y		Y
Oklahoma	OK	Y	Y		Y
Oregon	OR	Y	Y	Participants must hear each other	Y
Pennsylvania	PA	Y	Y	Corporations with fewer than 5,000 stockholders must have physical location	
Rhode Island	RI	N**	Y		Y
South Carolina	SC	N	N		
South Dakota	SD	N	N		
Tennessee	TN	Y	Y	Participants must hear each other	Y
Texas	TX	Y	Y		Y
Utah	UT	Y	Y	Participants must hear each other	Y
Vermont	VT	Y	Y		Y
Virginia	VA	N	Y	Participants must hear each other	Y
Washington	WA	N	Y	Participants must hear each other	
West Virginia	WV	Y	Y	Participants must hear each other	Y
Wisconsin	WI	N	N		
Wyoming	WY	Y	Y		Y

*Note that almost every company has the option of hosting a webcast of their meeting, even if virtual meetings are prohibited

**Statutory language seems to indicate solely remote meetings are acceptable

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Download the report at: http://www.calstrs.com/CorporateGovernance/shareholder_participation_annual_meetings.pdf