# Top Ten Things To Remember When Considering Virtual Shareholder Meetings

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### Overview

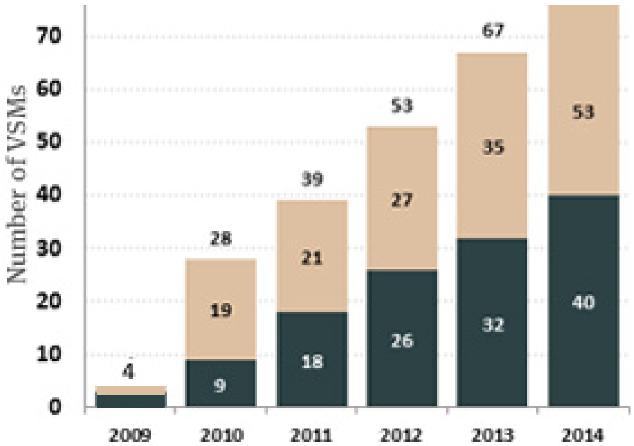
In recent years, a small but growing number of companies have held annual shareholder meetings exclusively online or provided for online participation. Some of the early-adopting companies that decided to switch to an annual shareholder meeting held exclusively in cyberspace (without a physical meeting of shareholders happening simultaneously) received objections from investors and negative publicity, and this topic continues to be debated in corporate governance circles. However, the fact that demand for virtual shareholder meetings continues to increase suggests that companies are recognizing the benefits of holding an online-only shareholder meeting or offering an online component. For companies thinking about making the move to a virtual shareholder meeting, the benefits of taking the shareholder meeting online must be balanced with potential concerns of shareholders.

### 1. What is meant by a "virtual shareholder meeting"?

Virtual shareholder meetings are generally conducted in two formats: (1) the *virtual-only meeting* which is held exclusively online, replacing the traditional in-person meeting, and (2) the *hybrid* shareholder meeting which is held in-person at a physical location and is open to online participation by shareholders remotely. In both formats, shareholders are validated and able to cast their votes at the meeting in real time, rather than just watching the proceedings through a supplemental webcast of the live meeting over the internet. Broadridge Financial Solutions has developed a platform that most companies use for their virtual shareholder meetings.

### 2. What are the recent trends?

Although only a fraction of all public companies are currently using the new virtual shareholder meeting technology, statistics provided by Broadridge illustrate an uptick in adoption in recent years.




Since 2009, when 4 companies held virtual shareholder meetings, each year the number of virtual shareholder meetings has steadily increased to more than 90 in 2014. More than half of the meetings have been virtual-only.

### 3. Which companies have been using virtual meetings—only tech companies?

Early demand in 2009 and 2010 for virtual shareholder meetings—either virtual-only or in a hybrid format—came from technology companies, such as Intel, Conexant and NVIDIA, as well as the electronics retailer Best Buy, online brokerage Charles Schwab and music company Warner Music Group. In the last few years, a broad variety of industries have been represented by companies such as JetBlue Airways, NYSE Euronex, Ameriprise Financial, Sprint and Martha Stewart Living Omnimedia.

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### 4. What are the benefits?

The primary benefit from a governance perspective is the ability to improve access and increase participation levels at shareholder meetings. Shareholders would be able to dial in to a conference call or login to a website to attend and vote at the virtual shareholder meeting, with the same ease as listening to a quarterly earnings call, rather than incurring costs to travel to an in-person meeting.

Companies that switch to virtual-only shareholder meetings also realize efficiencies in the meeting process. A company that abandons the traditional in-person meeting is able to eliminate the cost, time and effort involved with organizing and holding a shareholder meeting at a physical location. The virtual-only shareholder meeting also adds flexibility for busy directors who can participate from anywhere. Some companies believe that it provides a better forum for the shareholder Q&A portion of the meeting because questions furnished by shareholders in advance can be considered and addressed more fully.

### 5. What are the reasons why more companies haven't held virtual shareholder meetings?

Most objections from a governance perspective have been in response to a company moving to a virtual-only shareholder meeting, based on the perception that the format will reduce effective participation by shareholders and may be used by management to deprive shareholders of the opportunity to meet, ask questions and express views face-to-face. In particular, attention has been given to the ability of management to abuse the handling of shareholder questions at a virtual meeting. Shareholder advocates fear that questions received by email could be prioritized, filtered out or rephrased or simply ignored.

A potential concern for management with all virtual shareholder meetings is an increase in the unpredictability of voting results because shareholders are able to wait until the meeting to either submit or change their proxies. The risk of last-minute voting, particularly for matters that are contested or close to the threshold for approval, is new for companies who are used to receiving proxies and being assured that their proposals will pass well before the meeting.

### 6. How have companies responded to the governance concerns?

Not every company that makes the change to a virtual shareholder meeting continues the same format after its initial meeting. After holding its first hybrid shareholder meeting in 2009, Intel reversed its announced decision to hold a virtual-only shareholder meeting in 2010 because of shareholder objections to the proposed cancellation of the in-person meeting. Instead, Intel has continued to hold a hybrid shareholder meeting since 2009. Symantec held a virtual-only shareholder meeting in 2010 but discontinued the virtual meeting format entirely after receiving objections from institutional investors and a shareholder rights groups. In addition, in 2010 Procter & Gamble announced an amendment to its Code of Regulations to permit a virtual shareholder meeting, but cancelled its plans after shareholder objections.

Before switching to a virtual-only meeting, it is advisable that companies make investor outreach efforts to ensure that key shareholders are aware of the proposed change and the reasons for it. In addition, companies should consider adopting policies and procedures that give shareholders assurances that the virtual-only meeting will offer a similar level of transparency as the traditional meeting format which is being replaced, including, for example, how shareholder questions will be addressed and whether shareholders attending remotely will be able to communicate with each other.

### 7. Are there any "best practices"?

In 2012, a group of interested constituencies, including institutional investors, governance groups and Broadridge, issued a white paper entitled "Guidelines for Protecting and Enhancing Online Shareholder Participation in Annual Meetings". The group recommends a set of best practices for companies conducting virtual-only and hybrid shareholder meetings, including adoption of principles for online participation and practical safeguards, which are generally intended to ensure virtual shareholder meetings are accessible, increase shareholder participation and engagement, and protect the interests of shareholders.

### 8. What format fits my company's needs?

The decision to implement a virtual shareholder meeting may begin with the Corporate Secretary and Investor Relations department, but members of senior management and directors will also be interested in evaluating whether the virtual shareholder meeting alternatives could be a good fit for the company. If a physical shareholder meeting is important to the company and its shareholders (like Berkshire Hathaway, Wal-Mart or Starbucks) or there is a risk of shareholder activism, the team could consider whether it is desirable to add remote access to increase participation by shareholders. For smaller public companies, the risk of shareholder activism is lower and a virtual-only shareholder meeting would yield the greatest efficiencies, but currently may not be viewed as the best governance practice.

### 9. What are the key legal considerations?

A company's in-house counsel and corporate secretary should confirm whether the company is permitted to hold a virtual shareholder meeting under applicable state law and whether any changes to the company's governing documents are required.

#### a. Review applicable state law

The corporate law of a corporation's state of incorporation governs the conduct of its shareholder meeting. State corporate statutes differ with respect to the permissible format of virtual shareholder meetings. In addition to not being uniform, to the extent that virtual-only shareholder meetings or online participation is permitted by statute, in many cases it is unclear how virtual shareholder meetings should work in practice.

Nearly half of the states, including Delaware, California, Maryland and Texas, have statutes that permit virtual-only or hybrid shareholder meetings. However, some of these statutes impose conditions that may make virtual-only shareholder meetings impractical or unrealistic. For example, the California corporation statute requires that corporations obtain shareholders' consent to a virtual-only shareholder meeting, and Maryland law provides that a corporation must provide a place for an in-person meeting of the shareholders if requested by a shareholder, effectively giving each shareholder a veto for any proposed virtual-only shareholder meeting.

In the remainder of the states, the corporation statutes either permit online participation in shareholder meetings while requiring the company to hold an in-person meeting (i.e., enabling the company to hold a hybrid shareholder meeting) or preclude public companies from hosting any virtual-only or hybrid meetings of shareholders. Interestingly, New York's corporation statute currently precludes companies from holding any form of virtual shareholder meeting, but legislation is pending that would require public companies to enable online participation in a shareholder meeting upon request by shareholders, which would be unique among the states.

### b. Review charter documents

In general, virtual shareholder meetings are only permitted under state corporation statutes if authorized under the company's certificate of incorporation or bylaws. Bylaws that are old or have not been amended in many years may need to be amended by the Board of Directors before a company can hold its first virtual shareholder meeting.

### c. Consider conditions to remote participation

Applicable state law may include specific requirements for virtual shareholder meetings. For example, Section 211 of the Delaware General Corporation Law, which many other states have copied, permits the company to hold virtual-only shareholder meetings if the company (i) adopts measures to verify voter identity and to enable shareholders to participate in the meeting and (ii) maintains certain records.

Commercial platforms for virtual shareholder meetings will generally help companies meet these basic statutory requirements. Companies should also be aware of any special statutory issues (such as a shareholder consent requirement or shareholder objection right) or conditions concerning a shareholder's remote participation at the meeting.

## 10. What are the key technical and procedural considerations?

Companies implementing a virtual shareholder meeting will need to consider various technical and procedural matters, including whether the meeting will use video streaming or only an audio link, how shareholder votes will be addressed, whether shareholders will be able to hear other shareholders attending remotely, whether a shareholder forum will be offered, and so on. The online platform can be customized based on the company's preferred approach. If the shareholder experience in a virtual meeting is as close as practicable to attendance at a physical meeting, including the ability for shareholders to ask and listen to others' questions and receive answers from management, investors may be more comfortable without a face-to-face meeting.

The company will need to develop new policies and procedures for the conduct of the meeting, which ideally should be made available to shareholders before the meeting. The script for the procedural portion of the traditional annual meeting will also need to be revised to reflect the online component.

## Conclusion

Both sides of the debate on virtual shareholder meetings will continue to be heard, particularly if more "brand name" companies hold or consider holding virtual-only shareholder meetings. Recognizing the current low levels of retail investor participation at annual shareholder meetings (particularly after the adoption of "notice and access" rules for proxy materials), if hybrid shareholder meetings are successful in increasing shareholder engagement in the annual meeting process, they could be viewed as a "best practices" solution. As conferencing technology continues to develop and enable meaningful interaction between directors and shareholders, and if companies are able to address the concerns of shareholders and activists by adopting acceptable standards and practical safeguards for virtual-only meetings, we may see more companies looking to dispense with the costs and time associated with organizing and holding their physical annual meetings, which traditionally have had very low attendance by shareholders.