

“Conduct of the Annual Meeting”

Thursday, April 11, 2024

Course Materials

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2 to 3 p.m. Eastern [archive and transcript to follow]

Some companies that have historically flown “under the radar” for shareholder proposals have received one for the first time this year — and will have to navigate the presentation of those proposals at their annual meetings. For all companies, technology, global conflicts and politics may make for an especially chaotic annual meeting season. It’s more important than ever to be prepared.

Join our panelists as they provide practice pointers and discuss trends in meeting format and logistics, rules of conduct and other matters companies will confront at their annual meetings.

- **Peter Farah**, Deputy General Counsel and Assistant Secretary, The J.M. Smucker Company
- **Carl Hagberg**, Independent Inspector of Elections and Editor of *The Shareholder Service Optimizer*
- **William Kennedy**, VP – Product, Broadridge Corporate Issuer Solutions
- **Erick Rivero**, Senior Assistant General Counsel, Intuit

Topics include:

- Technology Improvements & Logistics for Virtual Meetings
- Best Practices for In-Person & Virtual Meetings (Handling Q&A, Posting Recording)
- Managing Meeting Attendees and Participants (Including Security Considerations and Disruptive Shareholders)
- Proxy Voting Disclosures & Mechanics, Plus Getting Out the Vote
- Communicating with Proponents & Presenting Shareholder Proposals
- Freshening Up Your “Rules of Conduct”
- Tabulation Issues & Monitoring the Vote Pre-Meeting
- Post-Mortems & Preparing for Next Year

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Course Outline/Notes

1. Technology Improvements & Logistics for Virtual Meetings
2. Best Practices for In-Person & Virtual Meetings (Handling Q&A, Posting Recording)
3. Managing Meeting Attendees and Participants (Including Security Considerations and Disruptive Shareholders)
4. Proxy Voting Disclosures & Mechanics, Plus Getting Out the Vote
5. Communicating with Proponents & Presenting Shareholder Proposals
6. Freshening Up Your “Rules of Conduct”
7. Tabulation Issues & Monitoring the Vote Pre-Meeting
8. Post-Mortems & Preparing for Next Year

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Table of Contents — Course Materials

“2024 Annual Meeting Handbook” — Broadridge (2024)	1
“Planning for Annual Meeting Q&A? Check Social Media” — TheCorporateCounsel.net Proxy Season Blog (1/24)	15
“A Last-Minute-Checklist To Assure Your Meeting Security” — <i>The Shareholder Service Optimizer</i> (4/23).....	16
“Checklist: In-Person Annual Meetings – Locations & Venues” — TheCorporateCounsel.net (10/23).....	18
“Annual Meetings: More on ‘Voting Cutoffs’” — TheCorporateCounsel.net Proxy Season Blog (11/23)	21
“Mastering the Basics: Proxy Season Reminders for 2024” — TheCorporateCounsel.net Proxy Season Blog (3/24).....	23
“Sell Your Proxy Votes? Good Idea, We Say, But Lots Of Practical Problems” — <i>The Shareholder Service Optimizer</i> (2/24)	24
“Revised Rules of Conduct For In-Person, Virtual-Only and Hybrid Meetings of Shareholders” — <i>The Shareholder Service Optimizer</i> (4/22)	26
“Checklist: Annual Meetings – Rules of Conduct & Procedure” — TheCorporateCounsel.net.....	29
“Checklist: Voting Results – Tabulation” — TheCorporateCounsel.net	32
“Checklist: Annual Meetings – Post-Mortem Activities” — TheCorporateCounsel.net.....	35

2024 Annual Meeting Handbook

A step-by-step guide to requirements.



Executing a successful annual meeting of shareholders requires the careful planning and coordination of many parts. It can be particularly challenging for those who are new to the process and may not always have a clear direction about what is included in an annual meeting and what to do specifically as the meeting day approaches.

Whether you are a seasoned professional or managing your first meeting, this handbook is intended to be a resource and practical guide so you can simplify the planning process and identify annual shareholder meeting requirements with the steps and processes needed to have a well-run annual meeting.

Follow this step-by-step comprehensive strategy for planning and running an effective annual meeting of your own:

CONTENTS

- Reasons for Annual Meetings
- 12 Steps for Planning and Preparation

12 Steps for Planning and Preparation

- 01 Review Requirements**
- 02 Create a Time and Responsibility Checklist**
- 03 Choose What Type of Meeting Your Company Will Conduct**
- 04 Determine the Meeting Venue**
- 05 Meeting Logistics**
- 06 Preparing for the Meeting Day**
- 07 Review the Shareholder Base and Voting Procedures**
- 08 Monitor the Daily Vote Report**
- 09 Design the Ballots**
- 10 Final Preparations**
- 11 The Day of the Meeting**
- 12 After the Meeting**

REASONS FOR ANNUAL MEETINGS

Before getting into the necessary preparations just prior to the annual meeting, it is important to briefly cover some fundamentals.

The main purpose of annual meetings is to allow shareholders to elect the directors who are responsible for the oversight of the company and its strategic direction. In addition, shareholders may be asked to vote on matters proposed by management or by other shareholders. These proposals will be included in the company's proxy statement.

Legal requirements

Corporate annual meetings are required under state law,¹ and also under stock exchange listing requirements for public companies.² State law also governs many of the procedural requirements of an annual meeting including such topics as the required quorum, the meeting location, whether the meeting can be held virtually and the notice of the meeting.

Annual meeting requirements will also be contained in the company's own articles of incorporation and bylaws which are governed by state law.

For public companies registered under §12 of the Securities Exchange Act of 1934, federal rules address the requirements of producing and distributing a proxy statement to shareholders.³

Planning and Preparation—A checklist to prepare for the annual shareholder meeting.

STEP ONE - REVIEW REQUIREMENTS

Most often the company's corporate secretary or their designee manages and oversees activities related to the annual meeting. Each year, well in advance of the annual meeting, it is a good idea to review both the legal and regulatory requirements as well as the company's corporate documents relating to the annual meeting.

Review requirements

- Securities and Exchange Commission (SEC) requirements – Check for any changes or updates
- State Law – Verify procedural requirements
- Articles of Incorporation/Bylaws – Review corporate governance provisions

STEP TWO - CREATE A TIME AND RESPONSIBILITY CHECKLIST

The best and often most efficient practice for managing annual meeting preparation is to use a detailed time and responsibility checklist that covers the entire proxy process, including the events leading up to and just following the annual meeting. This chronological list details every important milestone, every necessary action, and every document to be produced and delivered. It also includes the completion date and identifies the responsible individual.

Pro Tip: Consider using a checklist that is annotated to reference state law, SEC, and stock exchange requirements and your company's articles of incorporation and bylaws. This helps to clarify why certain steps in the process are necessary.

Some companies don't have this internal document and may rely on a version from outside counsel to handle many of the details. Taking the effort to create a complete schedule that is tailored to your company, its calendar, and its processes well in advance of the meeting date is a very useful exercise. When you have this schedule, it serves as the starting point for the upcoming annual meeting each year.

Some of the important dates, tasks, and notices may include the following:

- Develop and distribute director and officer questionnaires
- Draft and review the annual report on Form 10-K and the proxy statement
- Coordinate with the board's meeting schedule for reviews/approvals
- Determine type of meeting, whether in-person or virtual, suggested date, record date, and location
- Prepare annual meeting resolutions for board approval
- Coordinate with external service providers, including:
 - Proxy solicitor
 - Transfer agent
 - Tabulator
 - Printer/Distribution facility
 - Inspector of Election
 - External auditors
- Notices provided to transfer agents/stock exchanges
- Broker search
- Register with the Depository Trust Company (DTC)
- Meeting logistics
- Obtain required documentation:
 - List of registered holders as of the record date⁴
 - Affidavit of distribution
 - Omnibus Proxy and position listing from DTC
 - Oath of Inspector of Election
- Draft the script, ballots, and Rules of Conduct
- Prepare Q&As for the chair
- Rehearse the meeting

STEP THREE - CHOOSE WHAT TYPE OF MEETING YOUR COMPANY WILL CONDUCT

One of the first tasks related to the annual meeting process is to consider the type of meeting that will be the most appropriate for the company at that time. This can be a significant decision with important considerations and should be finalized approximately six months in advance of the meeting date. Company culture, tradition, company performance, investor concerns, and public health concerns are just a few of the factors that guide the decision. The company's board of directors should be involved in the final decision.

The meeting type will determine the level of planning and preparation required. No matter which type of meeting you decide to hold, the ability of the company's shareholders to fully participate in the annual shareholder meeting is a primary consideration. To facilitate shareholder participation in the annual meeting, the proxy statement should clearly disclose the type of meeting to be held, the location, whether physical or online, and who may attend.

Annual meeting types

There are generally three types of meetings a company could choose to hold: in-person, virtual, or a hybrid of the two. Traditionally, annual shareholder meetings were always conducted in-person. With the advent of virtual meeting technology, increasingly companies have been moving to virtual shareholder meetings, or in some cases, a hybrid meeting that combines an in-person meeting with a virtual meeting to allow for greater shareholder participation.

Given the trends in technologies and shareholder preferences, some companies are reconsidering the form their annual meeting should take going forward. Some newer companies only know virtual meetings, never having held an in-person meeting.

Virtual meetings

The number of companies holding virtual meetings has continuously risen over recent years. Virtual shareholder meetings are typically held online at a secure website, and shareholders attend remotely via the internet. It is expected that shareholders will have the ability to pose questions related to the proposals online, as they do at an in-person meeting. Shareholder proponents typically call in on a dedicated telephone number or video connection to present their proposals. Shareholders may also pose questions about the company's business online following the formal portion of the meeting. Shareholders should also be able to cast their votes online in a secure manner while the polls are open and the meeting is in progress. The same formalities of an in-person meeting will be met, and in some cases, the meeting may also be video-streamed over the internet so that shareholders can see the presenters (although this adds to the costs). The more common format has been an audio webcast. Clarity in the proxy statement about the virtual location of the meeting and how to access it is required, along with instructions in the event of any technical difficulties.

The benefits of virtual meetings are many. They allow a wider group of shareholders to participate in the annual meeting regardless of their location, the costs to the company are typically considerably less than an in-person annual meeting, and environmental impacts are significantly reduced. Virtual meetings eliminate the need for a large physical space, security, refreshments, or support staff. They can be run by a small group of people in a room or remotely with good audio and/or video connections if the event is going to be video-broadcast. Replays are also available. Directors may attend via the phone, video or in person, along with the outside auditors and the Inspector of Election.

Many investors have recognized the benefits of holding virtual-only meetings when in-person meetings are not feasible. Some companies choose to post all questions asked during the meeting along with the company's responses on their Investor Relations page after the meeting. The company should include in their official Rules of Conduct its policy for how they will respond to all legitimate shareholder questions.

In-Person meetings

Historically, the in-person annual meeting has been the most common form of annual meeting — particularly among established companies. It provides a physical location where shareholders can attend and hear how the company is doing directly from the company's leadership. They typically see and hear directly from the company's chairman of the board and management and have the ability to ask questions in person about any proposals during the formal part of the meeting within limits set forth in the company's Rules of Conduct. Shareholder proponents typically present their proposals in person at an in-person meeting. Shareholders may also elect to vote in person at the meeting by ballot, although most vote in advance of the meeting by proxy. After the formal part of the meeting, shareholders may have the opportunity to personally interact with members of the board and senior managers. While these meetings require significant preparation and are tightly managed, shareholders are welcomed to attend in recognition of their role.

At the other end of the spectrum, for many younger companies or companies where few if any shareholders attend, the meetings are short, simple affairs held in the company's conference room or at the offices of outside counsel. Outside auditors, the inspector of election and outside counsel are typically the only non-company participants present. There is no management presentation, and there may or may not be refreshments. Directors may not be present unless there is a board meeting immediately preceding or following the shareholder meeting.

One disadvantage of in-person meetings is that shareholders who are not able to travel to the meeting are prevented from participating. Some companies will add a webcast feature to the meeting to allow shareholders to watch the proceedings online or after the fact, but those shareholders are not able to vote or pose questions during the meeting. Expense is another consideration; costs of an in-person meeting can be substantial.



Hybrid meetings

A hybrid meeting combines a physical meeting with the features of a virtual meeting, offering shareholders the option to attend either in person or remotely. Shareholders who attend remotely are able to participate online and cast their votes online while the polls are officially open. With a hybrid meeting, a wider group of shareholders will have access to the meeting. Some companies have switched to hybrid meetings because while many shareholders still want to be able to come to their meetings, the company also wants to increase participation by other shareholders who are not able to attend in person.

One drawback to the hybrid meeting is the expense and duplicative effort. The company incurs the costs of both an in-person meeting as well as the additional costs of a virtual meeting. Furthermore, managing questions from in-person shareholders as well as those participating remotely in a way that treats both groups equally can be logistically challenging; some shareholders may feel left out despite a company's best efforts.

Annual meeting resolutions

Several weeks or months prior to the annual meeting, the board of directors will adopt resolutions to set the date and location of the annual meeting; the record date that determines which shareholders will be able to vote; decide whether the meeting will be virtual, in-person or a hybrid meeting; and designate who the proxyholders will be for the company. The resolutions will also appoint the Inspector of Election and authorize the corporate secretary to distribute the notice and proxy statement.

Much work will have already occurred to get to this point to develop the necessary information for the board's approval, and these resolutions will be part of the overall framework for the meeting.

STEP FOUR - DETERMINE THE MEETING VENUE

The location and the type of meeting you decide to hold will depend on your company, the matters to be voted on, investor expectations, and company resources. Many smaller companies may hold in-person meetings in a company conference room or at their outside counsel's office. The meeting may last only as long as it takes for the chair to read the script and comply with legal requirements. Such meetings can be completely uneventful, and shareholders rarely attend.

These same companies may decide to conduct a virtual shareholder meeting, in which the logistics will include knowing where the chair, the corporate secretary, the director of investor relations, and any technical support will be located. They may all be together with access to the virtual meeting site or remote but still be able to monitor attendance and respond to any shareholder questions. Anyone with a speaking role should have access to a phone line — preferably a landline. Others, such as other board members, the Inspector of Election and outside auditors may all be attending remotely. If an in-person board meeting follows the annual meeting, board members may be physically present for the virtual meeting. Just as with in-person meetings, a process for responding to shareholder questions and comments must be built into the meeting at designated times.

As companies start to mature, some of their shareholders will attend an in-person annual meeting — primarily to meet the management and board and hear firsthand about the company. In other situations, the same handful of dedicated shareholders, who may have bought their stock in an IPO, will attend year after year just to show their support for the company. At some point, the company may decide to move the in-person meeting to an auditorium or hotel facility to accommodate the growing number of shareholders coming to their meetings.

Some smaller companies prefer using a hotel meeting room and its facilities because there are more resources available to support them, and it is more convenient than using company facilities.

STEP FIVE - MEETING LOGISTICS

The type and location of the meeting help determine some of the logistical considerations. For example, if the meeting will be on company premises, company resources will be used for the most part, although additional security or parking attendants may be hired. If the meeting will be held at a hotel or auditorium, you will need to determine what resources are available from that location, what your needs are, and then arrange for them. If you hold a hybrid meeting, the location must have reliable high-speed internet access and adequate technical support. These logistics have to be scaled to your company and your meeting.

Security

It is important to plan for the security and safety of attendees at in-person annual meetings, as well as the corporate officers and directors who will be there. Security can range from adding traffic control and setting aside parking for shareholders to inspecting bags of attendees or having an onsite police presence at your meeting.

Security is a sensitive topic. Be sure to inform shareholders in the proxy statement of any security screenings and let them know if they will be asked to surrender electronic devices or other personal possessions.

If there are contentious proposals or if your company, officers, or directors are in the limelight, you may need to increase security. Some companies will have uniformed officers outside of the meeting and plainclothes officers inside — sometimes less noticeable, other times more obvious. If your meeting is at a hotel, you work with their security and you may have your own security people on hand as well.

There are times when metal detectors may be required for your meeting. Each year, you should explore well in advance of the meeting what level of security will be appropriate for the upcoming meeting based on the current situation. Your needs may change from year to year.

STEP SIX - PREPARING FOR THE MEETING DAY

As the annual meeting day gets closer, there are a number of required documents that need to be prepared:

- Agenda
- Ballots
- Rules of Conduct
- Oath of Inspector of Election
- Script
- Final Report of the Inspector of Election

Prepare the agenda

Some companies will provide an agenda for the meeting so that shareholders know what to expect. Simple, short meetings do not require an agenda.

Agendas typically cover the following:

- Calling the meeting to order
- Welcome and introductions
- Proposals and related Q&As
- Voting
- Announcement of preliminary results
- Adjournment
- Business presentation
- Q&As

Draft the Rules of Conduct

Companies will often have Rules of Conduct for attendees. It is a good practice to hand them out to shareholders as they walk into the meeting. These rules let shareholders know what is expected and often address:

- Who may attend
- Who may speak
- Time limits for questions/comments
- Nature of questions
- Use of cellphones or other devices, cameras, video and audio recordings
- Prohibited behavior

Typically, questions/comments about the proposals in the proxy statement are allowed after they have been presented during the meeting. Only shareholders may ask questions at this time. Shareholders are typically given two to four minutes to speak, offer their comments, or ask their questions. They may be limited to one question or comment.

If questions come up that are not related to the proposals, the chair will state that there will be time after the formal part of the meeting for questions/comments of a more general nature. Tact and good judgment are required to manage the process, particularly if there are many shareholders who wish to speak.

Draft the meeting script

The purpose of a script is to organize the flow of the meeting and to make sure the chair or the corporate secretary of the meeting covers all required points. The chair typically begins by calling the meeting to order and then introduces board members, company executives, the external auditors, and the Inspector of Election. Then the chair may cover the Rules of Conduct and announce that a quorum is present so that the meeting can go forward. The chair presents each of the matters to be voted on, announces the voting procedures, the date, and time of the opening and closing of the polls. Finally, after conferring with the Inspector of Election, the chair or the inspector announces the preliminary results before the chair adjourns the meeting. A good practice is to allow a reasonable pause in the script following the presentation of the proposals before closing the polls to allow shareholders the right to vote or change their vote.



Begin drafting the script a couple of weeks before the meeting so that it can be reviewed and finalized well before the meeting. Allow your Inspector of Election an opportunity to review the script so that they know what is expected, whether they will be asked to present the results and in what form or if the chair will report on the results.

Keep your script simple and avoid repetitive language. While some procedures such as establishing a quorum before proceeding are important — Robert’s Rules of Order don’t really apply. Unless your bylaws require it, the chair need not ask for a motion and a second to present matters that are in the proxy statement or to adjourn the meeting.

Pro Tip: Both the drafter and the chair should practice reading the script before the meeting to make sure the language sounds natural and isn’t overly formal.

Expect the unexpected. Prepare an emergency script so that the chair has the appropriate language for any situation that may arise.

An emergency script ensures that the chair knows what to say and do in case of an emergency or other unplanned event. For example, if someone wants to nominate a director from the floor at the meeting, the emergency script will provide language that notes the company’s advance notice bylaw provision on how that applies to the nomination. If there is an emergency and the meeting must be adjourned, a prepared script allows the chair to quickly declare that a quorum exists and that the matters have been approved or not before adjourning the meeting. In the event of a disruption, you want to have language to cover that situation.

As soon as the formal business of the meeting is over, the chair adjourns the meeting. If there is a business presentation and a Q&A session, they typically occur after the formal meeting has been adjourned.

Admission to the meeting

The location and the type of meeting you decide to hold will depend on your company, the matters to be voted on, investor expectations, and company resources. As noted previously, many smaller companies may hold in-person meetings in a company conference room or at their outside counsel’s office. The meeting may last only as long as it takes for the chair to read the script and comply with legal requirements. Such meetings can be completely uneventful, and shareholders rarely attend.



Place in the admissions area a list of everyone who will be attending the meeting in an official capacity, such as the Inspector of Election, the outside auditors, outside counsel, the directors, officers, and any shareholder proponents, so they can be greeted and allowed into the meeting room without fuss. Name tags are a simple way to ensure that your official attendees can easily be identified.

Coordinate in advance with any shareholder proponents as to whether they will attend the meeting to present their proposal in-person or have a representative do so. When a shareholder proponent or representative arrives, have a company representative greet the person to explain when and how they will present the proposal. Seat the proponent near a microphone to facilitate the presentation and keep the meeting moving forward.

Select a registration system

Increasingly, companies are using an advance registration system for both beneficial and registered shareholders who plan to attend the annual shareholder meeting, either in-person or virtual. Each individual's status as a shareholder can be verified in advance, and for in-person meetings, shareholders can print out or bring a bar-coded ticket that the company scans before permitting entry to the meeting. This process provides a secure and convenient way to expedite entry into a well-attended shareholder meeting. It also enables companies to better plan for attendance, seating, parking, and refreshments. For virtual meetings, the advance registration allows the company to better plan for the overall meeting with information about shareholder attendance.

BEST PRACTICES

Develop a media strategy

- Know which shareholders plan to attend
- Streamline verification
- Expedite the admission process
- Ensure adequate event planning
- Achieve better control
- Enhance security

Develop a media strategy

Have a plan for media representatives if they come to your meeting. What sort of identification will you require, for example. Often media representatives will be met by a company representative and accompanied into the meeting. If there are Rules of Conduct applicable to the press, have the printed rules on hand, and make sure they receive a copy. Typically, members of the press are not allowed to ask questions during the formal part of the shareholder meeting.

BEST PRACTICES

A well-designed ballot reduces the amount of time needed to research whether the shares can be included in the total. The ballot should:

- Identify each matter to be voted on
- Ask for the actual vote
- Have a place for the shareholder to both print and sign their name
- Ask how many shares are being voted
- Ask how those shares are held

STEP SEVEN - REVIEW THE SHAREHOLDER BASE AND VOTING PROCEDURES

It is always important to understand the company's shareholder base, as different rules apply to the voting procedures for different types of shareholders.

Registered holders

Registered holders own and vote their shares directly through the company. They are listed with the company's transfer agent and tend to be individual holders. Each registered shareholder receives a proxy statement from the company along with a proxy card so that they can vote their shares. The completed proxy card is returned to the tabulator, who scans it and tallies the votes. By signing and returning the proxy card, the shareholder authorizes the board's proxyholders to vote as instructed on the shareholder's behalf. Instructions may also be given by telephone or via the internet if this service is available.

Beneficial holders

Beneficial holders, sometimes referred to as "street name" holders, are shareholders who hold shares in book entry form through another entity, such as a bank or brokerage firm. Beneficial holders must instruct their bank or broker on how to vote their shares on company matters that require shareholder approval. Beneficial shareholders receive a voter instruction form (VIF) from their broker to indicate how their shares should be voted.⁵

Under stock exchange rules, brokers may vote without instruction from the beneficial owner on any "routine matter" as defined by the New York Stock Exchange (such as ratification of the independent auditing firm the company uses to audit its financial statements), but they are prohibited from voting without instruction from the beneficial owner on "non-routine" matters (such as the election of directors or approving an increase in the number of equity plan shares). If the beneficial holder does not instruct the broker on a matter, those uninstructed shares become "broker nonvotes."⁶ If the beneficial holder wants to come to the annual meeting and vote, they can request a legal proxy that allows them to vote their shares directly.

In the case of virtual meetings, beneficial shareholders have the ability to attend and vote at meetings without attaining a legal proxy.

In some cases brokers have decided not to vote uninstructed shares on "routine" matters, such as the ratification of the auditor, which has the potential to affect a company's ability to achieve a quorum for its annual meeting.⁷

Additionally, many companies have more beneficial holders than previously as a result of increased interest in investing by individuals, which can present communications challenges if these holders are new to investing or don't bother to vote.

The vast majority of banks and brokerage firms use DTC as a custodian to hold beneficially owned shares on their behalf. The names of the beneficial owners of shares are not listed in the company's stock records. Instead, these shares are shown as owned by Cede & Co., the name used by DTC when holding shares on behalf of its participant banks and brokerages. Upon request, DTC can produce a list showing the shares held by individual banks and brokers.

Because the names of beneficial holders are not listed in the company's stock records, the company does not know who they are, although it is possible to obtain their names if a beneficial holder consents. Beneficial holders who allow their names and contact information to be disclosed to the company are commonly known as "non-objecting beneficial owners" (NOBOs). Shareholders who object to the company being given their name and contact information are referred to as "objecting beneficial owners" (OBOs).

Beneficial holders have the right to instruct their bank or broker on how to vote their shares on company matters.

Both registered and beneficial holders may be individuals or legal entities such as trusts or corporations. Employees may be significant owners of the company, and they may be both registered and beneficial holders through equity grants, company stock purchased through employee stock purchase plans, 401(k)s, and other benefit plans which are administered by trustees.

Institutional investors are organizations in the business of investing for others, such as pension funds and mutual funds (or for themselves as their major line of business). Institutional investors often use investment managers and brokers to manage their holdings and are therefore usually beneficial holders rather than registered holders.

STEP EIGHT - MONITOR THE DAILY VOTE REPORT

Starting 15 days prior to the annual meeting, Broadridge will send out a daily vote report to the people designated by the company to receive a copy. It is important to monitor this report carefully, as it provides valuable information that can impact the success of your meeting.

Reaching quorum

At some point prior to the meeting, enough shares should have been voted to reach the required quorum of the shares outstanding. Once a quorum has been reached, the meeting can go forward. Be sure to know the quorum requirements stated in the company's bylaws — typically a majority of the shares outstanding. If you do not have a quorum by the time of the meeting, the meeting will have to be postponed until a quorum can be reached.

Status of proposals

The daily vote report can also advise how the vote is going on each matter. In some cases, it isn't known until the votes start coming in that a matter is not doing well, in which case you may need to make a concerted effort with investors. Often large investors don't vote until quite late in the process. Some companies engage proxy solicitors to help them with the vote, typically months before the annual meeting, but this can also occur later in the process.

As noted, monitoring the composition of the company's shareholder base throughout the year is essential, as it can change. Shareholder outreach throughout the year in various ways may be required. Some companies have developed multi-pronged approaches to reach the various segments of their shareholder bases.⁸

Pro Tip: Gentle reminders to officers and directors to be sure to vote their shares can be very helpful as they often hold significant amounts of stock. Broadridge or your proxy solicitor, if you have one, may be able to tell you which of your large investors have not yet voted.

STEP NINE - DESIGN THE BALLOTS

There are two kinds of ballots for the annual meeting: the shareholder ballot for an in-person annual meeting and the proxy committee or proxyholder ballot.

Proxy holder ballot

The board will have named one or more people as the proxyholders for the company when adopting the annual meeting resolutions. These are the people who are authorized to actually vote the shares represented by proxy and may be each of the company's general counsel and the chief executive officer. The proxy holders' names appear on the proxy card.

The proxyholder ballot lists the matters to be voted on and then provides a space for the number of shares represented by proxy to be filled in. Broker nonvotes are not included here. The final report of the tabulator will very often have the numbers for this report, although valid proxy cards may be turned in at the meeting, in which case those shares should be included in the total shares represented by proxy.

Once completed, the signed proxyholder ballot is typically kept in the company annual meeting file by the corporate secretary. It serves as evidence that the shares were actually voted and how many shares were represented by proxy.

It is a good practice to have the proxy-holder ballot signed by the proxyholders before the meeting begins and then have the ballot completed before the polls close during the meeting.



Shareholder ballot

Any shareholder who wishes to vote at an in-person annual meeting is provided with a ballot. These may include:

- A shareholder who sent in a proxy card but now wishes to revoke it and vote directly
- A registered shareholder who has not yet voted
- A beneficial holder who comes with a legal proxy and is therefore authorized to vote their shares at the meeting

Some shareholders may not be aware that if their shares are held with a broker, they are not able to vote their shares unless they have received a legal proxy from the broker or in some cases, Broadridge. The best way to handle this issue is to politely collect all ballots and allow the Inspector of Elections to determine which shares will be included in the total vote count.

Shareholders who wish to vote during a virtual meeting are able to do so while the polls are open, but their status as a shareholder must be validated before their shares can be included in the vote total. The Inspector of Election will include any shares that have been validated before issuing their final report.

STEP TEN - FINAL PREPARATIONS

Prepare the chairman

Some companies help the chairman get ready for the meeting by drawing up a list of questions that may come up at the annual meeting so that responses can be prepared in advance.

The process may gather input from investor relations, human resources, and others. Questions include those that may have arisen during analyst calls and meetings, questions or issues that the corporate secretary's office is aware of, questions on the benefit plans if relevant, company dividends, uses of cash, and more. The point is to consider what is going on with the company, anticipate what shareholders may want to learn, and make sure the chair is comfortable responding to the questions.

Keep in mind that the chair may direct questions to particular officers and directors, so they also need to be prepared. Give some advance thought as to what might come up and make sure that any suggested responses are in line with existing company disclosures.

Assemble the corporate secretary's binder

The corporate secretary is responsible for bringing any required documents and reference materials to the meeting. In addition to the script, the documents will usually include:

- The Affidavit of Distribution
- A copy of the Omnibus Proxy provided by DTC
- The certified list of registered shareholders as of the record date
- Copies of the company's bylaws
- The certificate of incorporation
- Applicable state laws
- Proxy materials (the proxy statement, proxy card, Form 10-K, and the annual report)
- Anything else that could be helpful

STEP ELEVEN - THE DAY OF THE MEETING

Who attends

Many companies ask their board members to attend the meeting in-person or to participate in a virtual shareholder meeting. If shareholders are going to be present, it is good practice to have the board members present, as well as the executives. It is common for board and committee meetings to be held on the same day as shareholder meetings. In some cases, board members will be available by telephone or video at the annual meeting if not there in-person. Public companies must disclose in the proxy statement whether they have a policy about board member attendance at the annual meeting and whether any directors were unable to attend.

Some shareholders care whether board members show up for the annual meeting and may make voting decisions based on director attendance. In the case of a virtual shareholder meeting, directors may be "attending" the meeting but not be physically present — in which case it will be important for the chair to notify investors of their presence in the meeting script.

The outside auditors will send a representative to the meeting either in-person or virtually to be available for questions. The name of the person(s) in attendance is included in the script and the individual is introduced at the meeting.

The Inspector of Election will attend both an in-person meeting as well as a virtual meeting, and will be introduced at either meeting. Sometimes outside counsel is present and is introduced as well, as are any executives in attendance.

Some companies encourage employees to attend in-person annual meetings — perhaps to fill empty chairs. However, for the most part unless they have a role at the meeting, employees are usually not encouraged to take time away from their work to attend.

Role of Inspector of Election

The Inspector’s role, as determined by state law⁹ for an annual shareholder meeting, either an in-person or virtual meeting, is to:

- Ascertain the number of shares entitled to vote on each matter
- Determine whether a quorum is present
- Tabulate or oversee the tabulation of voting on each matter
- Rule on the validity of any ballot or proxy present at the meeting
- Certify the final results of voting

The Inspector of Election takes an oath to act with impartiality and to the best of their ability when fulfilling the duties as the Inspector of Election.

Final report of Inspector of Election

The Inspector of Election will come to the meeting with a preliminary report of the votes. If there are no changes at the meeting, that report becomes the Final Report of the Inspector. If there is voting at the meeting, the Inspector will determine the final numbers, include them in their report, and provide it to the company. The company uses that Final Report as the basis for the numbers in the Current Report on Form 10-K that must be filed with the SEC within four business days of the meeting, if the company is subject to those rules.

STEP TWELVE - AFTER THE MEETING

The corporate secretary will draft the minutes for the annual meeting. They may prepare a draft in advance of the meeting based on what is expected to occur, and then revise it following the meeting to reflect actual events. The minutes capture the formal business portion of the meeting. After review by the chairman and others such as the general counsel, the minutes will be filed in the minute books, and a copy included in the annual meeting file as well. The Final Report of the Inspector of Election may also be attached to the minutes.

Annual meeting files

Each year the corporate secretary will create files for the annual meeting. Many have physical files in addition to electronic files. Everything related to the annual meeting will be preserved in these files except the original minutes for the meeting, which will be filed in the company’s minute books. Documents may include:

- The Time and Responsibility checklist
- Copies of correspondence with brokers, the transfer agent, plan trustees, Broadridge, and others
- Information about the meeting location
- Information about security
- Contacts (both internal and external)
- The meeting script

After the annual meeting the additional documents may be filed in the annual meeting files or in some cases the minutes book, including:

- The oath of Inspector of Election
- The completed and signed master or proxy committee ballot
- The Omnibus Proxy from DTC
- The certified list of registered shareholders as of the record date
- The Affidavit of Distribution of the proxy materials
- A copy of the blank ballots used at an in-person meeting.

This file may be a shared one, with input from those who worked on the annual meeting. The point is to have a centralized file with evidence of everything related to the meeting so that each year there is a reference point, and no one has to start the process from scratch.

The proxy statement will typically have its own file and backup materials, including information related to management and shareholder proposals.

Debriefing session

Following the meeting, the corporate secretary often holds a debriefing session with those involved to review what went well and note where improvements can be made going forward. Going through this review process is a valuable step that should not be overlooked, as it may begin the planning process for the next annual meeting.

ABOUT THE ANNUAL MEETING HANDBOOK

Broadridge has partnered with Kristina Veaco to publish this invaluable resource for those responsible for the planning and execution of an annual shareholder meeting.

About the author

Kristina Veaco is a corporate governance lawyer and the founder of Veaco Group, a corporate governance advisory firm. The firm specializes in board evaluations and assessments leading to more effective boards. www.veacogroup.com. Prior to forming Veaco Group, Ms. Veaco was responsible for the Corporate Secretary's Office for McKesson Corporation, and previously headed the corporate securities group at AirTouch Communications. Ms. Veaco is a long-time member of the Society for Corporate Governance, a fellow at the ESG Center of the Conference Board and a member of the International Women's Forum. She is a frequent speaker and author on corporate governance topics. Ms. Veaco is the co-author with Cherie Sorokin of a Bloomberg BNA portfolio on the Role of the Corporate Secretary: Facilitating Corporate Governance and the Work of Corporate Boards, 96 Corporate Practice Series. Ms. Veaco also acts as an independent Inspector of Election through CHagberg LLC.

- 1 Del. General Corporation Law § 211; California Corporations Code § 600.
- 2 Nasdaq Listing Rule 5920; New York Stock Exchange Listed Company Manual § 302.
- 3 Regulation S-K, Items 401–407; 17 C.F.R. §§ 229.401–407.
- 4 DGCL § 219 [T]he list of shareholders entitled to vote at the meeting shall be available for inspection at the company's offices for at least 10 days prior to the meeting. This list should also be at the meeting site to verify registered holders.
- 5 As noted, DTC is the custodian for the shares held by most of the banks and brokers. In order to vote the shares in a particular company, DTC issues an Omnibus Proxy assigning its voting rights as custodian of those shares to its bank and broker clients. The Omnibus Proxy, which is sent to the company, also lists the number of company shares held by each of its bank and broker clients. The banks and brokers who are clients of Broadridge, in turn, assign their voting rights in the company shares to Broadridge who tabulates the VIFs as instructed by the beneficial holders. Broadridge then appoints the company's proxyholders to vote the shares according to the instructions on the VIFs.
- 6 Broker nonvotes are included in the vote for purposes of the quorum when there is a "routine" matter in the proxy statement, but not towards any matter in the proxy statement that is not "routine." See footnote 9 below.
- 7 TD Ameritrade and Schwab both have eliminated the practice of voting uninstructed shares proportionately to those shares for which they have received instructions.
- 8 Be mindful of the current proxy rules around solicitations starting with Rule 14a-1 under the Securities Exchange Act of 1934, as amended and related provisions.
- 9 See, e.g., DGCL, § 231; Cal. Corp. Code § 707.

Broadridge Financial Solutions (NYSE: BR), a global Fintech leader with over \$6 billion in revenues, provides the critical infrastructure that powers investing, corporate governance, and communications to enable better financial lives. We deliver technology-driven solutions that drive business transformation for banks, broker-dealers, asset and wealth managers and public companies. Broadridge's infrastructure serves as a global communications hub enabling corporate governance by linking thousands of public companies and mutual funds to tens of millions of individual and institutional investors around the world. Our technology and operations platforms underpin the daily trading of more than \$10 trillion of equities, fixed income and other securities globally. A certified Great Place to Work®, Broadridge is part of the S&P 500® Index, employing over 14,000 associates in 21 countries. For more information about us, please visit broadridge.com.

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[← Shareholder Proposals: “AI Transparency” on the Ballot | Main | ISS Expands Cyber Risk Score to Russell 3000 →](#)

January 29, 2024

Planning for Annual Meeting Q&A? Check Social Media

This [Fortune article](#) tells us we should all buckle up for some chaotic annual meetings this year spurred by technology, global conflicts and politics. The article has this warning regarding digital tactics:

Despite many AGM rehearsals, management and staff often overlook the new digital strategies deployed by advocacy groups. Having a skilled team is crucial to monitor these movements and be able to respond — before, during, and after the AGM — to adversary groups, who often capture audio or video clips and share them along with alternative commentary. Additionally, pre-prepared clips serve as a megaphone for these crews offering unconventional observations against company positions and capitalizing on the AGM spotlight. In this emerging era of artificial intelligence (AI), anyone can now deploy deepfake audio or video clips, further posing a threat to the AGM, business operations, or causing potentially severe consequences.

That is scary! But the article highlights a silver lining to the increasingly complex and digital world of investor relations — that social media use by shareholders may help companies prepare for annual meeting Q&A and avoid surprises.

[Since] crusades against corporations are no longer limited to a few weeks before the AGM [...] most questions and issues raised are posted for months on social media and other platforms by various advocacy or constituency groups. There is little doubt about which issues will prompt investors to pursue more detail [...] AGM questions should not be a surprise. They are not hard to predict. You just need to know where to look.

– **Meredith Ervine**

Posted by Meredith Ervine

Permalink: <https://www.thecorporatecounsel.net/member/blogs/proxy/2024/01/planning-for-annual-meeting-qa-check-social-media.html>



A Last-Minute-Checklist To Assure Your Meeting Security

APR 27, 2023 | 2023, 2023 Q1, ANNUAL MEETINGS, FEATURED, ISSUES

Your editor-in-chief was pleased to be part of an all-star panel put together by CCR in late March on Conduct of the Annual Meeting, where he offered his Top-Tips to Assure Security at the Annual Meeting, freshly revised in light of the devilishly well-planned and truly frightening [sneak attack at the Walgreens meeting](#), reported in our last issue. A transcript of the CCR webinar is available at their website, but our message here – late as it may seem is this...

IT'S NEVER TOO LATE TO ASSESS YOUR MEETING SECURITY ARRANGEMENTS – RIGHT UP TO THE VERY MINUTE BEFORE YOUR MEETING BEGINS - WHERE, IN FACT, YOU ARE PROBABLY MOST VULNERABLE TO BEING TAKEN BY SURPRISE...

HERE ARE OUR TOP TIPS:

NEVER MAKE THE FATAL MISTAKE OF ASSUMING THAT THIS YEAR'S MEETING WILL BE JUST LIKE LAST YEAR'S: Keep reassessing the Meeting environment, paying careful attention to potentially inflammatory issues in your industry and on the meeting scene as a whole – and making needed enhancements in your run-of-show and script – and beefing-up security measures if warranted – right down to the wire.

REMEMBER THAT “SECURITY IS FOR EVERYONE”: While yes, most of your gameplan is properly focused on the folks on the dais – and on the Directors and Senior Officers in attendance – be sure you have a carefully written “emergency script” – and sufficient staff on hand – to clear the room quickly - and safely - if any unusual situation should arise.

RELIGIOUSLY OBSERVE THE “FIRST COMMANDMENT” OF ANNUAL MEETING SECURITY: “THE CHAIR MUST ALWAYS BE IN CHARGE.” All questions must be directed to the Chair; Wait to be recognized, then identify yourself and confirm your status as a shareholder before being permitted to address the audience; Be sure to follow the official Rules of Conduct or face prompt removal from the room. If, somehow, “the crowd” – or a threatening band of disrupters takes control - bad things will always ensue.

YOUR OFFICIAL RULES OF CONDUCT ARE THE BEST MEETING-SECURITY PROVISIONS OF ALL: Tweak them right down to the wire, we say, and be sure they have provisions like “no demonstrations, no signs, no shouting-out, no rude or derogatory comments about people” – and this year, we are advising, NO GUNS. Hand the RULES directly to



each attendee once they clear your registration process, we advise – and ask each person to read them carefully before the meeting begins.

ESTABLISH FOUR DISTINCT BUT ADJOINING “SECURITY ZONES”: A Registration Area, where shareholder credentials can be checked before they can enter a separate Assembly Area - and where the doors to the Meeting Room itself will not be opened until, say, five minutes before the Meeting comes to order – and establish a safe and secure area, close to the meeting room, where Directors and Senior Managers can gather before the Meeting begins, and where they will be able to exit quickly and safely, “according to plan” if trouble should arise.

A NEW SUGGESTION THIS YEAR, IN LIGHT OF THE BAND OF HOODLUMS THAT HID OVERNIGHT IN A CLOSET AT THE WALGREENS VENUE - BUT ALSO IN LIGHT OF TODAY’S “OPEN CARRY RULES”: CONSIDER USING SNIFFER-DOGS AT THE CHECK-IN STATION, AND ALSO TO THOROUGHLY SNIFF THE FOUR SECURITY ZONES BEFORE ADMITTING ANYONE.

LAST BUT FAR FROM LEAST, BE SURE THAT AT LEAST ONE OF YOUR DESIGNATED PROXIES HAS SIGNED A BALLOT TO OFFICIALLY CAST THE VOTES THAT RUN TO THEM, AUTHORIZING THE INSPECTOR(S) OF ELECTION TO “RECORD THEM IN ACCORDANCE WITH THE INSTRUCTIONS ON FILE.” THIS ALLOWS YOU TO LEGALLY CONCLUDE (and not, please note, to “adjourn”) THE MEETING THEN AND THERE.



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Checklist: In-Person Annual Meetings — Locations & Venues

By TheCorporateCounsel.net

The following considerations are not prioritized, may not apply to all companies and are not exhaustive:

1. Ensure compliance with governance documents, particularly the company's bylaws (*e.g.*, procedures, limitations as to meeting location/venue)
2. Convenience for board, management, corporate secretary, auditors, inspector of election/transfer agent and other company administrative and other staff who participate in the process (*e.g.*, security, IR, IT or other staff that address sound and other technology requirements)
3. Costs and convenience to shareholders
4. Costs to company — while holding the meeting at company facilities may be the least expensive option, ensuring a pristine and controlled environment with adequate security at company facilities may be a challenge depending on the company's circumstances.
5. Adequacy of parking (ideally, free parking); access and transportation; and ability to post adequate signage
6. Adequacy of lighting, seating arrangements, and accessible and ADA-compliant facilities
7. Ensure room conditions are otherwise acceptable or can be adjusted (*e.g.*, climate control, room dividers, furnishings)
8. Security issues (if security is a potential issue, perhaps a location outside of the company's property should be considered.)
9. Ensure space can accommodate:
 - a. Desired equipment and technology, especially if the meeting is hybrid (*e.g.*, mics, projectors, videoconferencing facilities, PCs, internet access, fax, electrical outlets, phones, etc.)
 - b. Expected number of shareholders — with potential for overflow or no-shows (consider desire to minimize appearance of empty space)

- c. Chairs, tables, podium, desired furnishings
 - d. Separate registration/admissions area and refreshment area
 - e. Security
10. Holding meeting locally within community may provide an opportunity to showcase the company's significant presence and role within the community
 11. Negative activity occurring locally may warrant locating the meeting elsewhere
 12. If the meeting is expected to be completely routine (nothing controversial on the agenda), but the meeting costs have been higher than anticipated or desired, consider scaling back, moving the meeting to a less expensive location or going completely virtual.
 13. If there is a controversial issue, holding the meeting away from the company's property (and perhaps more remotely than would otherwise be considered) may help control the potential for disruption at the meeting and to the company, and mitigate security risks.
 14. Meeting objectives (*e.g.*, satisfaction of legal requirements or huge public relations opportunity) may influence venue selection
 15. Advance booking and cancellation provisions for hotels and other public venues
 16. Emergency facilities and accommodations
 17. Moving the meeting to other parts of the country routinely or periodically has potential upsides (provides opportunity for attendance by different shareholders) and downsides (uncertainty with regard to potential issues that may arise in new location with different and potentially larger or smaller audience).
 18. Coat check — and personal belongings — facilities
 19. Press facilities (see our separate [“Checklist: Annual Meetings — Dealing with the Press”](#))
 20. Adequacy of restroom facilities

21. Privacy for preparation and also the meeting itself. If in a hotel or other public venue with thin walls or sliding barriers, everyone around you may be privy to the meeting discussions, side-bar conversations, disruptions, etc.
22. Noise from rooms adjacent, above, below or outside (*e.g.*, outside construction)

[← 14a-8 No-Actions: Corp Fin Requiring All Submissions to Use New Online Form](#) | [Main](#) | [The End of Staff Legal Bulletins?](#) →

November 8, 2023

Annual Meetings: More on “Voting Cutoffs”

I recently [flagged](#) a member Q&A about the logistics of collecting proxies before the meeting. Afterwards, a member correctly pointed out that the cutoff for receiving voting instruction forms is a different issue than the cutoff for receiving actual votes. Here is the original question again:

Is there a rule that allows Companies to set their vote cutoff to the day(s) prior to the meeting? I know it's done in practice but was wondering if you could point me to a specific rule that backs up that practice.

And here's the follow-up:

It could be helpful here to distinguish between voting, which occurs at the meeting, and solicitation of proxies or voting instruction forms, which occurs in advance. I don't think Delaware or other state law would place any limit on the ability to establish an early cut off for the receipt of proxies and voting instruction forms, and likewise SEC rules do not address it, so I think whoever is soliciting the proxy or voting instruction could place whatever reasonable deadline they want in advance of the meeting, as long as it is clearly disclosed.

This means that for beneficial owners who are sending in VIFs in accordance with the process provided by their brokers in advance of the meeting, the company can establish a reasonable cutoff for them to submit instructions. For example, companies often make telephone and internet “voting” available to all shareholders in advance of the meeting – including shareholders who own their stock through brokers – and could close those lines earlier than the customary “11:59 p.m. on the night before the meeting.”

That said, it's important to keep in mind that under state law, registered holders have a right to vote that continues through the meeting and until the polls close. So even though companies can close phone and internet voting options at some chosen time before the meeting, they must also provide the record holders with a way to vote after that time. Your proxy statement should distinguish between record holders and beneficial owners when it's describing the voting processes.

This issue is not quite the same as the “time to vote” pause at the meeting that [shareholders & others have been urging](#). On that topic, Broadridge includes this tip in its [annual meeting handbook](#):

Pro Tip: Build in a reasonable pause in the script following the presentation of the proposals before closing the polls to allow shareholders to vote or change their vote (up to 10 minutes depending on the number and complexity of the proposals).

This phrasing reinforces that the length of the pause depends on the circumstances – it's not one-size-fits-all. Several folks I've talked to agree that for most run-of-the-mill meetings, companies may be able to create a sufficient pause by just keeping the polls open during the CEO presentation.

– Liz Dunshee

Posted by Liz Dunshee

Permalink: <https://www.thecorporatecounsel.net/member/blogs/proxy/2023/11/annual-meetings-more-on-voting-cutoffs.html>

[← Shareholder Proposals: NYC Comptroller Seeks Board Skills Matrix](#) | [Main](#) | [Board Oversight of Artificial Intelligence](#) →

March 21, 2024

Mastering the Basics: Proxy Season Reminders for 2024

There's a lot to keep up with for your proxy disclosures, shareholder engagements, and annual meeting. But even if you're keeping up like a pro all year long, it can be easy to overlook the basics when you're immersed in the demands of proxy season. And for most securities lawyers, your worst nightmare is not getting second-guessed on a super nuanced judgment call, but rather dropping the ball on something completely simple & obvious.

This [Skadden memo](#) is here to save the day. It shares reminders to help you with "blocking & tackling" as you finalize your 2024 proxy materials and hold your annual meeting. It covers:

- SEC Proxy Filing Requirements
- Proxy Statement Disclosures and Tagging Requirements
- Website and Submission Requirements
- Post-Meeting Requirements

The alert urges everyone to double check their descriptions of voting standards since plaintiffs have been issuing shareholder demand letters on this topic. And here's a reminder on submitting your "Annual Report" on EDGAR:

Annual reports distributed to shareholders in connection with the annual meeting must be furnished electronically on EDGAR as an "ARS" submission. The ARS submission should be in PDF format and is due no later than the date on which the report is first sent or given to shareholders. Notably, the ARS must be submitted on EDGAR regardless of whether the annual report is also posted on the company's website. In addition, the requirement applies regardless of whether the company is filing a "glossy" annual report or using the shorter "10-K wrap" method of complying with Exchange Act Rule 14a-3.

Absent guidance from the SEC staff, we recommend that all public companies submit their annual reports on EDGAR, even where a copy of the company's Form 10-K is used to satisfy Rule 14a-3, as we note the SEC's guidance in the adopting release indicating that EDGAR is intended to serve as a "repository for electronic copies of the 'glossy' annual reports."¹

Unless a company specifically chooses otherwise, an annual report is not deemed to be "soliciting materials" or "filed" with the SEC, or subject to Regulation 14A or the liabilities under Section 18 of the Exchange Act.

– **Liz Dunshee**

Posted by Liz Dunshee

Permalink: <https://www.thecorporatecounsel.net/member/blogs/proxy/2024/03/mastering-the-basics-proxy-season-reminders-for-2024.html>



Sell Your Proxy Votes? Good Idea, We Say, But Lots Of Practical Problems

FEB 9, 2024 | 2023, 2023 Q4, FEATURED, ISSUES, PROXY






Shareholder Vote Exchange, which was featured in a January 22 *WSJ* article, was started in 2021 by **Preston Yadegar**, 25 years old, a 2020 BU graduate whose venture has been funded so far by friends and family but who says that talks are underway with potential investors. **Andrew Shapiro**, the activist investor founder and managing member of **Lawndale Capital Management** is an advisor to the Vote Exchange board.

The “auction market” – where rates are currently at one-cent per vote and where 200,000 votes have been sold to date – is clearly legal in Delaware – and not illegal in any state we know about – but *“The catch is that the buyers could run into trouble, especially if they are the company itself”* the article opines.

But *we’d say* – after noting that vote-buying has gone on since there first were publicly owned companies - and has been going on ever since – is that neither the current “Vote Exchange System” (which relies entirely on an ‘attestation’ from the seller that he or she has a “net long position” of “x shares” on the record date) - nor the current “proxy plumbing system” - have any reliable ways to assure that the votes being “sold” are legally valid. Nor can the existing “systems” ensure that the votes will actually get into the final vote count.

The article fails to note that votes are currently being bought by buyers who “borrow the shares” from brokers – usually for a cash fee that depends on supply and demand – and that almost all of these shares actually belong to individual investors with margin accounts, where the terms allow the broker to lend the shares out (for cash) but do not require the broker to share the proceeds with the unwitting owners. This is a HUGE moneymaking business for brokers – and for many institutional investor owners too, although we would also opine that if an ERISA fiduciary does not recall stocks loaned over a record date, and earns a fee instead of voting, they are likely in serious breach of their fiduciary duties. A January 23 *WSJ* story, reporting on a hack of **Equi-Lend Holdings** “handled transactions \$2.44 trillion in December alone.”

Then, to add insult to injury, most broker lenders automatically issue voting credentials to the borrowers – as well as to the legal owners – a MAJOR flaw in the proxy plumbing process – so that many duplicate votes can cancel each other out! The only time an alarm bell rings is if the broker votes more than 100% of its record date position – which rarely

happens because individual investor voting is so low (usually around 10% on average, and NOT the 30% cited in the WSJ article,) But if it DOES happen – no one really knows whose votes are cast out: the buyers? - or the borrowers'??? The “over-votes” are simply withdrawn, without any real account-by-account reconciliation to enfranchise the *owners*.

Bottom line - the only truly legal – and truly effective way to sell one’s votes at present is to have the shares transferred to registered form – and then to execute an “Irrevocable Proxy” to the buyer – for transmission, while the polls are still open - to the proxy tabulator.

We are 100% in favor of a system that would let share owners sell their votes to the highest bidder – AND to receive the proceeds, which, in a proxy fight or tender offer, can be worth MUCH MORE than a penny a vote. **Allen Media Group** is currently offering \$28.58 per voting share of **Paramount Global** - a premium of \$7.05 per share over the \$21.53 bid for non-voting shares - a 32.7% premium!

We would also argue that such an auction is precisely the right way to determine the real economic value of a vote when the fate of the company is on the line.

As to potential problems for issuers who may decide to buy votes against a potential plunderer – or to simply assure that its own agenda will be pursued – the fears here are bogus: The risk of being sued by disaffected parties is no greater or no less than it always is. And directors clearly have the right to act as they decide, and strong legal protections for doing so - as long as they have exercised due care.

Good luck with this, we say to the Shareholder Vote Exchange – but recognize that you are going up against a Wall Street cartel that is making billions of dollars a year from “Securities Lending Programs.”



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Revised Rules of Conduct For In-Person, Virtual-Only and Hybrid Meetings of Shareholders

APR 13, 2022 | 2021, 2021 Q3, ANNUAL MEETINGS, ISSUES, VIRTUAL MEETINGS



XYZ Corporation welcomes you to its __th Annual Meeting of Stockholders. In fairness to all stockholders in attendance, and in order to provide stockholders an opportunity to be heard - and in the interest of conducting an orderly meeting, within a reasonable time period - we require you to honor the following rules of conduct:

1. All stockholders and proxy holders attending in person must register at the reception desk and show valid identification as a stockholder or as a proxy holder and proof of Covid vaccination before entering the meeting room. Shareholders attending virtually will be required to enter the control number that appears on their proxy card when they sign in to the Meeting in order to ask a question or to vote, or change their vote online.
2. The taking of photographs and the use of audio or video recording equipment in the Meeting room is prohibited without the express consent of XYZ Co. Also, please be sure to silence all cell phones and electronic devices. Please note that the meeting is being recorded, and the recording will be posted to our Investor Website within a few days and available for review through [X date]
3. Subject to the discretion of the Chairman of the Meeting, the meeting will follow the Agenda that was provided as you entered the meeting room in-person, or available on the Meeting app when you signed in.
4. Only stockholders of record on [enter date] the record date for the Meeting, or their proxy holders, may address the meeting.

5. All questions and comments should be directed to the Chairman of the Meeting, who will either respond directly, or invite another officer or director of XYZ to respond.

6. If you wish to address the Meeting, please raise your hand, or line up at a microphone if you are here in person - or type your question into the box that is available on the Meeting screen. *(Optional, but a best practice to consider: We have provided a toll-free number for shareholders to call if they wish to ask a question by phone while the meeting is in progress. The toll-free number is _____. Your call will be placed in a queue until the operator calls on you, on a first-come first-served basis.)* Upon being recognized, please state your name, affirm your status as a stockholder or as a proxy holder, and present your question. Please try to do so as concisely as you can.

7. In order to use the time of all attendees as effectively as possible, we will handle the official business of the meeting first, as outlined on the Agenda. We ask you to confine questions or comments strictly to the matter that is then under consideration. There will be a separate question and answer period to cover other matters that may be of concern to attendees after the voting on proposals is concluded. We plan to conclude the Meeting by [].

8. There are [X] management proposals and [Y] shareholder proposals to be voted on. Each shareholder proponent will have [three - or four] minutes to introduce their proposal, or make a statement in support of it. The management position is already stated in the proxy materials you received.

9. Other shareholders who may wish to comment on a proposal will have up to [three] minutes each. Please permit each speaker the courtesy of concluding his or her remarks without interruption. We have allotted a maximum of [Y] minutes for discussion of each matter to be voted on.

10. To allow as many shareholders to be heard from as possible, we ask attendees who have already asked a question to understand that other shareholders who raise their hands [or queue up for the microphone - or submit a question online] will be heard before prior speakers will be called on again – and we ask you to limit their own questions and or comments during the Meeting as a whole to a maximum of three.

11. The views and concerns of all shareholders are welcome; however, the business purpose of the meeting will be strictly observed, and the Chairman or Secretary may rule the following kinds of questions or comments as out of order: questions that are not related to the business at hand during the business portion of the Meeting; questions



that are irrelevant to the business of the company; questions relating to pending or threatened litigation; comments or questions that are derogatory in nature, or related to personal matters or personal grievances. Your strict adherence to these rules will be greatly appreciated.

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Recent

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Checklist: Annual Meetings - Rules of Conduct & Procedure

By TheCorporateCounsel.net

A. Drafting Guidelines

1. Create Rules of Conduct: Decide what types of rules to use at the annual shareholder meeting. Some companies use Robert's Rules of Order – even though no federal or state laws require the use of them. Most practitioners recommend against their use due to their complexity and inflexibility. The meeting isn't a parliamentary proceeding, and the formality and rigidity associated with those rules inhibits questions and discussion.

Most companies develop their own rules of conduct. If the company has not adopted Robert's Rules of Order or some variation, decide whether to prepare a more tailored set of rules for the meeting. Rules are strongly advised, as they provide a basis for fair and orderly conduct. We have posted sample rules of conduct in our “Annual Shareholders' Meetings” Practice Area on TheCorporateCounsel.net.

2. Create Meeting Agenda: It's a good idea to also hand out a meeting agenda with the rules - ideally, with the agenda on one side and the rules on the other.

3. Short & Sweet: Keep the rules - and the agenda - clear and simple such that they are easily understood (not loaded with legalize). Keep each limited to a single page if possible.

4. Items Commonly Covered in Rules: Rules typically cover:

- Meeting room admission procedures
- Prohibiting use of AV equipment or taking of photos without the company's express permission
- Order of business to be addressed at the meeting (typically as set forth on printed agenda, subject to the meeting chair's discretion)
- Limiting speakers to shareholders of record and their duly authorized proxies
- Limiting speakers to those recognized by the meeting chair, explaining the procedures for seeking recognition (e.g., raising hand, submitting paper request) and requiring that all questions and comments be directed to the chair

- Limiting the number of questions any one meeting participant may raise to allow opportunity for all shareholders to be heard, and requesting that meeting participants refrain from interrupting other speakers
- Limiting meeting participants' speaking time
- Identifying certain question topics and discussion as "per se" out of order

These two items are not common but Carl Hagberg has recommended them:

- Prohibiting firearms or other items that are believed to be dangerous
- Prohibiting distribution of materials by anyone other than the company in the meeting or vicinity

5. Number the Rules: Number the rules so that the meeting chair can easily refer to a specific rule if someone is out of order.

6. “Easy to Follow” Formatting: Format the rules so that they are easy to read and follow.

7. Ensure Rules Are Reasonable: As Carl Hagberg has noted in this article, the key to keeping control of a meeting is being reasonable – starting with how the rules are drafted and enforced. For example, here is an excerpt: “A company is acting very much at its own peril if it tries to cut short questions, comments or debate on matters that are important to shareholders. And if the meeting is being broadcast online, the damage to corporate reputation can be severe, and long-lasting. So at every turn, the question should be, “Will the time limits be perceived as ‘reasonable’ ones under the circumstances – by proponents, by other shareholders and by the company’s important stakeholders?”

8. Board Should Adopt Rules: Have the board adopt the rules and procedures by resolution, and reflect the same in the board minutes.

B. Guidelines for Use of Rules at the Meeting

1. How to Hand Out at Meeting: Decide whether to distribute the rules to meeting participants by hand or place a copy on each chair. Alternatively (or in addition), the meeting chair or designated secretary of the meeting may recite the rules at the beginning of the meeting.

2. Chair Needs Copy at Meeting (and Before): Ensure that the meeting chair has a copy of the rules that have been provided to meeting participants and brief the chair about the rules again before the meeting.

3. Prepare Script: Prepare a script for the meeting chair and other company representatives who will speak at the meeting. Scripts typically include proposed responses to particular rule violations (e.g., exceeding time limit, disruptive conduct, matters or proposals raised outside scope of agenda or otherwise improperly), which the chair should be familiar with well in advance of the meeting. See our separate “Checklist: Annual Meetings - Scripts.”

4. Address Rule Enforcement in Advance: Decide with the meeting chair, legal counsel, meeting secretary, security, etc., how strictly the rules will be enforced before the meeting begins. Depending on company-particular circumstances, affording the chair some discretion and flexibility to respond to unforeseen or atypical situations typically is preferable.

As Carl Hagberg has noted in this article, safe, sane, sensible and scrupulously fair rules of conduct – with the meeting chair firmly in charge and ready to enforce the rules with fair warning - are the #1 tip for annual meeting security. See our separate “Checklist: Annual Meetings – Security.”

5. Decide In Advance Who Will Enforce Rules: Particularly if the company has adopted Robert's Rules of Order, appoint an experienced parliamentarian to rule on the finer points of the rules. In any event, legal counsel, the secretary of the meeting or other company representative should be familiar with company's rules to assist the meeting chair as necessary.

Checklist: Voting Results - Tabulation

Carl Hagberg, Shareholder Service Optimizer

1. The first commandment when it comes to tabulating and reporting Meeting results is this: “Always prove every item to the Quorum” (Doing this would immediately have uncovered the tens of millions of votes that went missing in the 2008 election of directors at Yahoo. We must also admit that we have broken this commandment ourselves...to our most grievous dismay.)
2. What does this mean in practice? Add up (and ideally, have your tabulating system automatically add up) the For, Withheld, Against, Abstain and any “non-votes” and “no-votes” (in the case of offsetting split-votes by co-fiduciaries) for each director and each item on the ballot – to be sure that each of the totals you’re reporting are the same as the total you’re reporting as the Quorum.
3. What is the Quorum? It is the sum-total of all the shares (or voting power, if there are classes of stock with more or less than one vote per share that are entitled to be part of the quorum) that are “present at the meeting in person or by proxy”. (Thus, there may be a different quorum, please note, for different agenda items).
4. Please note too that simply being present in the meeting hall – even if one does not cast one’s vote on a single matter – is normally considered as being “present” for the purposes of determining whether or not there IS a quorum. But this is only important to consider where there is the possibility that some voters may try to postpone or prevent a meeting by preventing a quorum from being present. If this may be a potential issue, have every attendee sign in, and verify the shares they have.
5. The second commandment of tabulating and reporting is to always know – and to always disclose in the proxy statement – exactly what it takes for a proposal to “pass”. These facts should always be findable in a company’s Articles of Incorporation or Bylaws. Typically they arise from the corporate code of the company’s state of incorporation, but very often, the company, or its shareholders, have adopted special provisions (like a super-majority provision, for e.g.) that supersede the “standard” state law provisions.
6. A very important corollary to the second commandment - let’s call it the third commandment – is to pay particular attention to all the “classes” of stock

your company may have outstanding, since shareowners of such classes may or may not have a vote on particular matters, and often, the voting power is more, or less, than one vote per share. (Every single year we encounter dozens of cases where this critical information – on exactly what it takes to pass a proposal – is not disclosed, or in some cases is disclosed on one page, but contradicted on another...or is contradicted by an “explanation” – like the wacky explanations of the effect of abstentions and of “broker non-votes” that are being gratuitously inserted like mad these days by eager-beaver lawyers).

7. The most common standard for “passing” a proposal – and generally the easiest to meet - is “a majority of the shares present at the meeting in person or by proxy” ...or, in other words, one-half the Quorum (once there IS a quorum of course) plus one vote.
8. Thus, many proposals can “pass” with as little as 25% of the outstanding shares plus one vote.
9. The next most common standard for passing a proposal is “a majority of the votes cast”: Here is where it becomes important to recognize that “abstentions” – and so-called “broker-non-votes” are generally NOT “votes cast” ...and thus, such votes and “non-votes” make it harder for the proponent to get the needed Yes votes. Only the ‘For’ and ‘Against’ votes count – and they are the only votes to be included in the denominator if you feel obliged to report percentages. Note that NYSE previously considered abstentions as votes cast, but it has filed for an amended proposal with the SEC in September 2021 for companies to calculate votes cast in accordance with their governing documents and applicable state laws.
10. Many proposals – and typically, the most important ones to shareholders in terms of the economic implications – require “a majority of the shares outstanding” – and often of “the total voting power” to be cast in favor of the proposal if there are additional classes of stock outstanding.
11. Some proposals – like proposals to change the Bylaws, oust directors or to merge the company – require a “super-majority” – often two-thirds or even more of the shares outstanding to be cast in favor, in order to pass.
12. Several “standards” currently exist for electing directors, so it is critically important to know exactly what standard applies: Many public companies still have a “plurality standard”, where votes may be “Withheld” from a director, but where there is no opportunity to cast an “Against” vote. Thus, as long as a director gets even one vote “For”, he or she will be elected, unless there is a

“proxy fight” with a competing slate.

But, a significant number of companies have adopted a “majority voting standard” where shareholders get to vote “For”, “Against” or to “Abstain” on the election of each director candidate. (We have been amazed to see how many companies say they had majority voting but fail to give shareholders the For, Against and Abstain choices!) While most such companies simply require more “For” votes than “Against” votes to get elected, some require directors to attain a majority of the Quorum, or even a majority of the shares outstanding.

Checklist: Annual Meetings – Post-Mortem Activities

By TheCorporateCounsel.net

1. Follow-On Board/Committee Meetings: Many companies hold a regular board meeting or board committee meetings immediately following their annual shareholder meeting. In connection with the annual meeting in particular, board meetings are more frequently becoming one day affairs, with committee meetings often held on the day before or day after, so the annual meeting may be paired with either a regular board meeting or the full scope of committee meetings (or neither one for companies that make their annual meetings a full day affair) - but usually not both because there is not enough time.

Meeting topics may include:

- Ordinary business
- Discussion of the immediately preceding annual meeting, including any shareholder questions or concerns raised
- Annual election of officers
- Designating executive officers who are also subject to Section 16 (see our "D&O Biographical/Director Qualifications & Skills Disclosure Handbook" for more)
- Annual meeting tasks (e.g., election of directors & officers) associated with wholly-owned subsidiaries

If board or committee meetings will be held after the annual meeting at another location, arrange and remind directors of the related transportation arrangements and other logistics.

2. Annual Meeting Minutes: The minutes of the annual meeting serve as the official, permanent record of actions taken at the meeting. Based on the company's bylaws or state law, the responsibility for the annual meeting minutes typically falls to the corporate secretary or another designated secretary of the meeting (often the assistant secretary).

Unlike most board meeting minutes, the annual meeting minutes can be largely drafted in advance based on the meeting agenda and script and include:

- Date, time and location of meeting
- Attendance of officers, directors, independent auditors and others
- Appointment of Inspector of Elections
- Record date
- Proxy materials distributed
- Relevant attendance numbers constituting a quorum
- Nominees and matters presented and voted upon
- When polls open and closed
- Preliminary voting report
- Meeting adjournment

Generally, the considerations applicable to board and committee meeting minutes apply. See our “Annual Shareholders’ Meetings” Practice Area and our “Board Minutes” Practice Area for separate checklists & other resources.

Once approved by the board, the final minutes, along with, e.g., the Affidavit of Mailing, Oath of the Inspector of Election, Inspector of Election Report and voting results (which are typically identified, attached and incorporated into the minutes by reference), should be filed in the minute books.

3. Post-Mortem Meeting Review: Schedule a date and time soon after the annual meeting for the key company participants to review the meeting and potential changes for next year. Topics for review may include:

- Time & Responsibility schedule changes
- Meeting agenda
- Rules of Order/Conduct (see our separate checklist on this topic)

- Meeting script
- Proxy solicitation materials & campaign strategy
- Meeting venue, registration, security & related matters (see our separate checklists on these topics)
- Satisfaction with proxy solicitor
- Satisfaction with Inspector of Elections and transfer agent
- Adequacy of preparation
- Shareholder attendance and participation

4. Follow-Up Tasks: Follow up on anything that requires further action such as:

- Providing information to a particular shareholder (or journalist) per the meeting chair's commitment at the meeting
- Including a placeholder on a future committee/board meeting agenda to consider a shareholder resolution that passed or came close to passing
- Including a placeholder on a future compensation committee meeting agenda to consider the "say-on-pay" and "say-on-frequency" voting results
- Marking up the meeting script for the following year based on the post-mortem review and while the recollections are still fresh

5. Disclose Final Voting Results: Item 5.07 of Form 8-K requires that a Form 8-K disclosing the voting results be filed within 4 business days after the meeting, including:

- Name of each director elected at the meeting
- Brief description of each other matter voted on at the meeting
- Number of votes cast for, against or withheld - as well as the number of

abstentions and broker non-votes

- Separate tabulation for each director nominee

Companies are also required, at least once every six years, to provide for a separate shareholder advisory vote on whether their say-on-pay vote will occur every 1, 2 or 3 years. For this say-on-frequency vote, the company must disclose the number of votes cast for each of the choices and the number of abstentions. Item 5.07(d) requires the company to disclose its decision as to how frequently it will conduct say-on-pay votes following each say-on-frequency vote by filing an amendment to its prior Form 8-K (generally due within 150 calendar days after the date of the end of the annual meeting) that disclosed the say-on-frequency voting results.

Alternatively, the company can disclose its decision in the Form 8-K filed right after the meeting that discloses the voting results. Learn more in our "Disclosure Deadlines Handbook" on TheCorporateCounsel.net.