



## LEGAL ALERT

March 21, 2020

### VIRTUAL AND HYBRID SHAREHOLDER MEETINGS IN EXTRAORDINARY TIMES

#### **In-Person, Virtual, and Hybrid Shareholder Meetings**

In a traditional in-person shareholder meeting, the board, management, and shareholders gather in a pre-determined location to conduct corporate business. A virtual meeting allows shareholders and company representatives to gather using virtual shareholder meeting services. No in-person attendance is available, but all the opportunities afforded to shareholder at a physical meeting are accessible virtually. A hybrid meeting involves a mixture of the traditional physical meeting and the new virtual meeting: shareholders and company representatives have the opportunity to attend either a physical meeting or a virtual one. A company must choose a virtual or hybrid meeting format that meets the respective exchange requirements, allows shareholders to exercise all the rights granted under the state of incorporation, and meets the requirements set forth by the company's articles and bylaws.

#### **Federal Law**

On March 13, 2020 the United States Securities and Exchange Commission ("the SEC") issued staff guidance regarding annual meetings in light of coronavirus concerns. The guidance provides for changing the date and time of shareholder meetings as well as for conducting "virtual" shareholder meetings.

The SEC understands that many companies are considering changes in the date, time, or location of their annual shareholder meetings due to difficulties arising from COVID-19. The SEC has taken the position that an issuer that has already mailed and filed its definitive proxy materials can notify shareholders of a change in the date, time, or location of its annual meeting without mailing additional soliciting materials or amending its proxy materials if it 1) issues a press release announcing such change, 2) files the announcement as definitive additional soliciting material on EDGAR and 3) takes all reasonable steps necessary to inform other intermediaries in the proxy process (such as any proxy service provider) and other relevant market participants (such as appropriate national securities exchanges) of such change.

For those issuers that have not yet mailed and filed their definitive proxy materials, they should consider whether to include disclosures regarding the possibility that the date, time, or location of the annual meeting will change due to COVID-19. Such determination should be made based on each issuer's particular facts and circumstances and the reasonable likelihood of such a change.

Issuers must be aware that in addition to federal obligations under the Securities Exchange Act of 1934, they also have legal obligations under state law and under their

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respective articles of incorporation and bylaws in connection with all aspects of the annual shareholder meetings.

### **Pennsylvania Law**

The ability to conduct a “virtual” or “hybrid” meeting through the Internet or other electronic means in lieu of an in-person meeting is governed by state law and the issuer’s governing documents. Robust disclosures that facilitate informed shareholder voting are just as important for a “virtual” meeting or “hybrid” meeting (an in-person meeting that also permits shareholder participation through electronic means) as they are for an “in-person” meeting. The Pennsylvania Business Corporation Law of 1988 (“the BCL”) contains provisions that addresses “virtual” or “hybrid” meetings.

Section 1708(b) provides that the presence or participation (including voting) at the annual meeting by a shareholder via conference telephone or other electronic means (including the Internet) shall constitute the presence of, or vote or action by, the shareholder for the purposes of the BCL. Furthermore, Section 1704(a) provides that “if a meeting of the shareholders is held by means the Internet or other electronic communications technology in a fashion pursuant to which the shareholders have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the shareholders, pose questions to the directors, make appropriate motions and comment on the business of the meeting, the meeting need not be held at a particular geographic location.”

These statutes permit “virtual” or “hybrid” meetings as acceptable substitutes for in-person meetings under Pennsylvania corporate law if proper procedures are followed. As noted above, annual meetings can be conducted via telephone or the Internet provided that the shareholders or their proxies 1) have the opportunity to read or hear the proceedings as they occur, 2) to cast their votes on matters submitted to the shareholders, 3) to pose questions to the directors, and 4) to make appropriate motions and comments.

The procedures of these “virtual” and “hybrid” meetings must mirror as closely as possible the procedures of an “in-person” meeting.

### **Corporate Articles and Bylaws**

With respect to the articles and bylaws of individual issuers, the ability to conduct these alternative meetings must be evaluated on a case-by-case basis in concert with the advice of corporate counsel.

Under Section 1704(a) of the BCL, annual shareholder meetings may be held at any geographic location as provided in the bylaws and Section 1755(a) requires that at least one meeting of the shareholders be held each calendar year at such time as fixed pursuant to authority granted by the bylaws. Many corporate bylaws specify the location of the annual meeting but confer authority on the Board of Directors to change it as needed. The time of the annual meeting is typically fixed by the Board, but some articles and bylaws require that the annual meeting to be held before a particular date. Directors must be aware of these deadlines before postponing the annual meeting due to concerns about COVID-19.

Furthermore, articles and bylaws often enumerate the corporate officers who must be present at the annual meeting. These officers often include the Chairman or President, the corporate secretary, proxy holder(s), and judge (s) of election. Such officers must be present at any potential “virtual” or “hybrid” meetings for it to be valid and in compliance with the articles and bylaws.

State law and most articles and bylaws require a majority of shareholders to be present in person or by proxy for there to be a valid quorum to conduct business at the annual meeting. For any “virtual” or “hybrid” meeting there must also be a majority of shareholders or their proxyholders present through telephone, Internet or other electronic means of communication.

If you have any questions, the following members of our office are available to discuss these matters with you at your earliest convenience:

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