

CORONAVIRUS

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Considerations for Companies Considering Holding a Virtual Annual Shareholder Meeting in Light of the COVID-19 Pandemic

In light of the coronavirus (“COVID-19”) pandemic and the resulting national emergency declared by President Trump, many companies are considering the advisability of holding a virtual-only annual shareholder meeting (a meeting that **solely** occurs via remote communication) instead of an in-person meeting. There are various considerations that a company must examine in deciding to change to a virtual-only meeting, including state law requirements, the company’s charter documents, stock exchange requirements, investor and shareholder advocacy groups, and the federal proxy rules.

The location of shareholder meetings and the ability to hold a shareholder meeting utilizing remote communication is a matter of state law. In addition, a company’s charter documents may impose certain restrictions on the ability of a company to hold a shareholder meeting via remote communication. Assuming that a company’s jurisdiction of incorporation and charter documents allow for a virtual-only meeting, the company must also ensure that it complies with all necessary notice requirements under state law and its bylaws. Companies that are considering changing the location of their annual meeting or holding a virtual-only meeting should confirm with counsel as to the

requirements of state law and their charter documents. Further, while Nasdaq and the New York Stock Exchange require that listed issuers hold annual shareholder meetings neither specifies a particular format for such meetings. Nasdaq expressly permits virtual-only meetings so long as companies afford shareholders an opportunity to discuss company affairs with management.

There has historically been investor and shareholder advocacy group resistance to virtual-only meetings. However, we expect less resistance to the use of virtual meetings during the 2020 proxy season. If an issuer determines to switch to a virtual-only meeting due to COVID-19, it will be important to communicate the reason for the change in meeting logistics and provide shareholders with clear instructions as to how to access and participate in the meeting.

Switching from an in-person meeting to a virtual-only meeting will also require companies to comply with the federal proxy rules. On March 13, 2020, the Securities and Exchange Commission issued guidance which provides that “the staff will take 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:

- issues a press release announcing such change;
- files the announcement as definitive additional soliciting material on EDGAR; and
- 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 the appropriate national securities exchanges) of such change.

In addition, the SEC stated that “to the extent that issuers 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.”

Blank Rome’s [Coronavirus \(“COVID-19”\) Task Force](#) is continuing to monitor the COVID-19 crisis and will provide further updates for shareholders as they become available.

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