

And the votes are in ... planning for an AGM during the COVID-19 pandemic

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Meet our presenters



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Options for hosting an AGM during COVID-19

1. Virtual (entirely virtual participation)
2. Hybrid (in-person and virtual participation)
3. Traditional (in-person with no virtual participation)

Virtual AGMs

- Rarely utilized in Canada prior to COVID-19 but has been utilized extensively during the 2020 proxy season
- Conducted entirely through electronic means without a corresponding physical in-person meeting location
- Accessing an online platform is the sole means available to attend, ask questions and vote at the meeting

Can any company hold a virtual AGM ... and should they?

- Need to ensure that a virtual AGM is permitted by an issuer's governing corporate statute and constating documents
- Requires technology services which are provided by a limited number of virtual technology service providers in Canada
- Not generally viewed as suitable for meetings where there is risk of a contested matter

Alternatives to holding a virtual AGM

Hybrid meeting

- Conducted at a physical in-person meeting location and also open to online participation
- Shareholders can choose to participate either in person or electronically (although issuers may choose to strongly discourage physical attendance)

Alternatives to holding a virtual AGM

Delaying a traditional AGM

- In-person AGMs do not comply with current public health directives in many jurisdictions
- If it is not possible for an issuer to hold a virtual or hybrid AGM it may be possible for an issuer to delay its AGM
- Relief has been granted by the TSX and TSXV (for listed issuers) and also under certain corporate statutes with respect to mandatory timeframes for holding an AGM
- Various companies have been granted court orders permitting them to delay their AGMs

CSA guidance

- Aims to assist Canadian public companies, while ensuring they fulfill their obligations under securities legislation
- Relates to all business transacted at AGMs
- Public companies involved in proxy contests, holding special meetings for M&A transactions or obtaining security holder approval for transactions governed by MI 61-101 should contact their principal regulator
- Public companies may change the date, time, or location of an in-person AGM
- If proxy materials have already been sent:
 - Issue and file news release announcing change
 - Take all reasonable steps necessary to inform all the parties involved of the change
- If proxy materials have not been sent, include details in such materials
- Does not address provisions related to the conduct of shareholder meetings in companies' articles and by-laws or governing corporate statute

Proxy advisory firm guidance

- Prior to COVID-19 pandemic, proxy advisory firms generally opposed virtual-only shareholder meetings
- Guidance, in light of COVID-19, reflects the recognition by proxy advisory firms of the challenges of the pandemic, and that virtual-only meetings may be necessary and desirable – “health and safety concerns are paramount”
- Glass Lewis
 - Disclosure in proxy materials should include the following items:
 - How shareholder questions will be handled (including time guidelines, types of questions allowed, and rules for how questions and comments will be recognized and disclosed to all participants)
 - Procedures for posting questions and answers on the investor page of the issuer’s website after the meeting
 - Logistics for accessing the meeting platform
 - Procedures for handling technical difficulties in connection with accessing the meeting platform

Proxy advisory firm guidance (continued)

- ISS

- Under most ISS benchmark policies globally, ISS does not have a policy to recommend votes against companies who hold “virtual-only” meetings
- Where the ISS benchmark policy discourages “virtual-only” meetings, ISS will not be making adverse vote recommendations related to companies holding “virtual-only” meetings until it is safe to hold in-person meetings
- Encourages companies holding virtual-only meetings to:
 - Clearly disclose the reason for such decision
 - Strive to provide shareholders with a meaningful opportunity (subject to local laws) to participate as fully as possible
- Boards are encouraged to commit to return to in-person or “hybrid” meetings as soon as practicable

Stock exchange relief

- TSX and TSXV – Temporary blanket relief issued on March 23, 2020
- Temporary blanket relief allows TSX and TSXV-listed issuers to hold AGMs any time in 2020, regardless of their fiscal year-end
- Efficacy is limited as a result of requirements that will continue to apply to issuers under corporate laws, securities laws, their constating documents and contracts to which they are a party

BCBCA – British Columbia companies

- The BC Corporate Registrar announced that companies may apply by email to the Registrar for an extension of 6 months to delay their AGMs due to COVID
- An April 21, 2020 temporary emergency order enables companies to hold virtual meetings regardless of restrictions in their constating documents
- Virtual meetings are deemed to be held “in BC” for purposes of location requirements in constating documents
- Notice of a virtual meeting pursuant to the emergency order must provide instructions for attending and participating in meetings (including how to vote and how to ask questions/communicate with other participants)

ABCA – Alberta companies

- An April 9, 2020 temporary emergency order suspended the requirement to hold an in-person shareholder meeting indefinitely, so companies may delay holding in person AGMs until emergency is over
- Companies may still hold virtual meetings if their constating documents expressly permit it (i.e. meetings may be conducted by electronic means)
- Companies may also consider changing their by-laws by board resolution to allow virtual meetings (at which point the change can be confirmed or rejected at the AGM)
- Companies could also pursue a court order to conduct a virtual meeting if the bylaws were silent and the company did not want to put a bylaws change to the shareholders at the meeting
- Further guidance regarding timeliness to hold delayed in person meetings following end of emergency likely to be released

OBCA – Ontario companies

- An April 24, 2020 emergency order permits both delay and virtual meetings, even in contradiction to a company's bylaws
- Companies may hold virtual meetings regardless of restrictions in their constating documents, and voting may be conducted by ballot, poll, or at the chair's direction
- Companies may delay AGMs but must hold them no later than 90 days after the end of the emergency

QBCA – Québec

- On April 26, 2020 emergency order permits electronic meetings if all the participants can communicate and vote
- The order specifically recognizes flexibility in the methods of conducting secret ballots by electronic means, enabling them if secrecy can be maintained
- The order will remain in effect for the duration of the public health crisis

CBCA – Federal companies

- No emergency order
- Companies may apply for court approval to delay a meeting (Eg. Glacier Media Inc. and GVIC Communications Corp.)
- Corporations Canada website statement confirms the CBCA provisions permitting companies to hold virtual meetings if their constating documents expressly contemplate such
- The platform used to hold the meeting must permit participants to communicate adequately with each other during the meeting (see/hear the meeting, ask questions, and see or hear questions of other participants)
- Companies may also consider changing their by-laws by board resolution to allow virtual meetings (at which point the change can be confirmed or rejected at the AGM)
- Companies could also pursue a court order to conduct a virtual meeting if the bylaws were silent and the company did not want to put a bylaws change to the shareholders at the meeting

Best practices for virtual and hybrid AGMs

- Consider the items to be voted on
- Evaluate technological needs and process
- Ensure equal access for all shareholders
- Create formal rules of conduct
- Establish rules to promote transparency
- Ensure shareholders have access to board members
- Have a technical support line available
- Archive virtual shareholder meetings for future viewings

Our experiences / Going forward

Questions?



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