



Mutual Alert

Mass Division of Banking Annual Meeting Pandemic Adjustments Guidance

With annual meeting season upon us, it is important to note that some states have issued guidance to stock companies this summer as to how to handle annual meetings during the COVID-19 pandemic. Indeed, there is a great deal of experience with respect to virtual meetings and electronic voting for public companies now that the proxy season is over. However, most states as well as the FRB, and OCC in their capacity as governance regulator for federal associations and mutual holding companies have not offered any guidance to mutual institutions. We have summarized the guidance issued last June by the Massachusetts Division of Banks to Massachusetts-chartered mutual savings banks, mutual co-operative banks, and mutual holding companies on postponement of their annual meetings and alternative approaches including virtual or hybrid meetings by means of remote communication. We believe this guidance while of no legal authority outside Massachusetts is illustrative and persuasive.

Postponement

The Division's guidance issued on June 12 confirms that any mutual institution that has not yet held its 2020 annual meeting may postpone the annual meeting until after the state of emergency has ended. According to the Division, any mutual institution that postpones its annual meeting during the COVID-19 state of emergency will not be subject to any adverse supervisory finding by the Division even if the postponed annual meeting is held on a date after the time period for conducting the annual meeting established by the institution's organizational documents.

If a meeting is postponed, the expectation is that the institution will either conduct an in-person annual meeting within 60 days of the end of the state of emergency or at a minimum issue the notice of its annual meeting within those 60 days even if the meeting may not be taking place until after the 60 days. Per the guidance, institutions must communicate the postponement of the annual meeting to incorporators or depositors, as applicable and explain the reason for the postponement. The postponement should also be recorded in the board's minutes.

Virtual or Hybrid Meeting Option

The guidance states that the Division has determined that a mutual institution may, subject to certain conditions, conduct the annual meeting this year as a virtual meeting (participation through remote communication) or as a hybrid meeting (a meeting in which some participants attend in-person and some participate through means of remote communication). According to

the guidance, any annual meeting conducted as a virtual or hybrid meeting must allow any participant to join the meeting by telephone, including virtual and hybrid meetings conducted by videoconference.

If choosing a virtual or hybrid meeting option, there must be clear instructions provided to participants on how to access the meeting and how they will participate during the meeting. The institution must be able to verify the identity of the participants. The appropriate technical support must be available throughout the duration of the meeting.

The guidance suggests that mutual institutions consider holding virtual or hybrid meetings open for an extended time period to allow corporators or depositors, as applicable, sufficient time to submit written ballots on any matter presented for a vote at the meeting. A mutual institution also may allow participants to deliver completed ballots in-person at one of the institution's office locations this year, according to the guidance. However, the guidance emphasizes that, if a mutual institution's organizational documents specifically require that the annual meeting be conducted in-person, the institution's charter or by-laws must first be amended to remove the requirement that the annual meeting must be conducted in-person.

Click [here](#) for a copy of the Division's new guidance.

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