

US - COVID-19: DELAWARE GOVERNOR MODIFIES EMERGENCY DECLARATION TO ADDRESS VIRTUAL MEETING MATTERS

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The Delaware Governor modified the state's existing emergency declaration on April 6, 2020 to, among other things, allow stockholder meetings currently noticed for a physical meeting to pivot to virtual meetings to the extent permitted by law during the state of emergency, as well provide a method of adjournment of a meeting noticed for a physical location to a virtual meeting in case of public health threats and restrictions on personal travel.

The declaration provides that if, because of COVID-19 pandemic public health threats, the board of directors wishes to change from a physical meeting location to a meeting conducted solely by remote communication, it may notify stockholders of the change solely by filing a document with the SEC and issuing a press release, which is then promptly posted on the corporation's website. This addresses any potential uncertainty under the Delaware statute as to valid means of giving notice to stockholders.

In addition, if it is impracticable to convene a currently noticed stockholder meeting at the physical location because of COVID-19 public health threats, the corporation may adjourn the meeting to another date or time, to be held by remote communication, by providing notice of the date, time and means of remote communication by filing a document with the SEC and issuing a press release, which is then promptly posted on the corporation's website. This addresses any potential uncertainty under the Delaware statute, which doesn't address the method of adjournment under these circumstances.

While the guidance above is welcome news for companies struggling over whether to move to a virtual meeting, companies should note that the declaration also states that if the changes above are held to be invalid under the Constitution of the State of Delaware, to violate Delaware law or to be unenforceable in any respect, such invalidity, violation or unenforceability will not impact enforceability of any other provision and will be construed as if the offending provision had never been included.

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