

Virtual Shareholder Meetings Reconsidered

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In 2000 Delaware enacted a statute enabling corporations to host meetings solely by electronic means of communication rather than in a physical location.¹ Since that time, several states have followed Delaware's lead, and the American Bar Association has proposed changing the Model Business Corporation Act to provide for some form of virtual shareholder meetings.² Many states believed that such meetings would prove to be an important device for shareholders who desire to increase their voice within the corporation. Instead, very few companies have taken advantage of the ability to host such meetings. This Article provides some data on state statutes covering electronic shareholder meetings as well as data regarding corporations that have conducted such meetings. This Article then discusses some of the benefits and drawbacks of conducting an electronic shareholder meeting, concluding that while such meetings may prove beneficial for some corporations, they pose risks that have led to their relatively tepid use almost a decade after such meetings were officially sanctioned.

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¹ See DEL. CODE ANN. tit. 8, § 211(2)(b) (2010).

² See generally Committee on Corporate Laws, *Changes in the Model Business Corporation Act—Proposed Amendments to Shareholder Voting Provisions Authorizing Remote Participation in Shareholder Meetings and Bifurcated Record Dates*, 65 BUS. LAW. 153 (2009).

I. STATE PROVISIONS FOR ELECTRONIC SHAREHOLDER MEETINGS

A. Overview

As a general matter, states address the issue of electronic shareholder meetings in one of two ways. First, states enable shareholders to participate in a shareholder meeting by means of electronic or remote communications, which this Article will refer to as “remote shareholder participation.”³ Second, states enable corporations to hold shareholder meetings solely by means of electronic or remote communications in lieu of holding the meeting at a physical place, which this Article will refer to as a “remote-only shareholder meeting.”⁴ This Article will refer to remote-only shareholder meetings and remote shareholder participation collectively as “electronic shareholder meetings.”

Currently, thirty-two states have addressed the issue of electronic shareholder meetings in some manner.⁵ This means that eighteen states and the District of Columbia have not addressed the issue. Appendix A provides an overview of the manner in which each state and the District of Columbia address electronic shareholder meetings, if at all, as well as data regarding the primary characteristics of the relevant state statutes. Appendix B sets forth the pertinent provisions of state statutes encompassing electronic shareholder meetings.

Of the thirty-two states that have addressed the issue of electronic shareholder meetings, twenty-three states, including Delaware, explicitly or implicitly have provisions that allow for both remote shareholder participation as well as remote-only shareholder meetings.⁶ In addition, one state, Massachusetts, allows private corporations to hold remote-only meetings and allows for remote shareholder participation.⁷ Public corporations in Massachusetts, however, may not hold

³ See, e.g., 805 ILL. COMP. STAT. ANN. 5/7.05 (West 2010).

⁴ See, e.g., § 211(2)(b).

⁵ These states include Arizona, California, Colorado, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. See *infra* Appendix A.

⁶ These states include Arizona, California, Colorado, Delaware, Florida, Hawaii, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming. See *infra* Appendix A. As set forth in Part I.B.2, several states have provisions that do not include explicit language enabling shareholders to host remote-only meetings in lieu of physical meetings. These state statutes, however, can fairly be interpreted to allow for such meetings.

⁷ MASS. GEN. LAWS ANN. ch. 156D § 7.08 (West 2010).

remote-only shareholder meetings; instead, public corporations in Massachusetts are restricted to allowing remote shareholder participation.⁸ Taking this nuance into account, there are twenty-four states that appear to allow both remote shareholder participation and remote-only shareholder meetings. In other words, approximately seventy-five percent of states (24 out of 32) that have addressed the issue of electronic shareholder meetings have opted to enable corporations to conduct remote-only shareholder meetings as well as provide methods for remote participation in shareholder meetings.

Other states have provisions allowing for electronic participation by shareholders but do not allow remote-only shareholder meetings.⁹ Hence, seven states allow corporations to provide some mechanism to ensure remote participation by shareholders.¹⁰ In addition, Montana provides for remote participation by shareholders, but restricts such participation to corporations with fifty or fewer shareholders.¹¹ Notably, New York does not currently allow for any form of electronic shareholder meeting.¹² New York legislators, however, have proposed an amendment to their corporate code that would require corporations whose shares are traded on a stock exchange or in the over-the-counter market to implement procedures for remote participation.¹³ The proposed statute does not allow remote-only shareholder meetings for any corporation.¹⁴

States differ with respect to the type of procedures they require corporations to implement in connection with hosting an electronic shareholder meeting. Thus, most states follow Delaware and require that corporations institute three specific procedures in order to conduct an electronic shareholder meeting.¹⁵ These procedures include adopting measures for (1) verifying the identity of stockholders or proxy holders able to vote, (2) enabling shareholders to participate and vote during the meeting, and (3) maintaining a record of the vote or other actions taken at the meeting.¹⁶ Other states do not mandate any minimum procedures beyond the requirement that

⁸ *See id.*

⁹ *See infra* Appendix B.

¹⁰ These states include Illinois, Indiana, Nevada, North Carolina, Oregon, Virginia, and Washington. *See infra* Appendix A.

¹¹ MONT. CODE ANN. § 35-1-516(4) (2010).

¹² *See* N.Y. BUS. CORP. LAW § 602 (McKinney 2010).

¹³ *See* S 5793, 2009 State Assemb., Reg. Sess. (NY 2009).

¹⁴ *Id.*

¹⁵ DEL. CODE ANN. tit. 8, § 211(2)(b) (2010).

¹⁶ *Id.*

corporations institute measures to reasonably ensure that shareholders can hear one another.¹⁷

States also differ with respect to whether they make electronic shareholder meetings contingent on director discretion. Mimicking Delaware, most states grant directors the discretion to determine whether the corporation will host a remote-only meeting or otherwise allow remote shareholder participation.¹⁸ Some states, however, do not make remote participation or remote-only meetings contingent on director approval; instead those states allow shareholders to participate in electronic shareholder meetings as long as their corporation's governing documents provide for such meetings.¹⁹

B. *Statutory Models*

This section sets forth some examples of statutory provisions for electronic shareholder meetings, which reflect the primary forms of statutes in this area.

1. The Delaware Model: Electronic Shareholder Meetings with Specific Procedures

The Delaware provision for shareholder meetings reads, in pertinent part, as follows:

(a)(1) Meetings of stockholders may be held at such place, either within or without this State as may be designated by or in the manner provided in the certificate of incorporation or bylaws, or if not so designated, as determined by the board of directors. If, pursuant to this paragraph or the certificate of incorporation or the bylaws of the corporation, the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (a)(2) of this section.

(2) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxyholders not physi-

¹⁷ See, e.g., COLO. REV. STAT. § 7-107-108 (2010) (providing for electronic shareholder meetings by any means by which participants "may hear each other"); 805 ILL. COMP. STAT. ANN. 5/7.05 (West 2010) (providing that corporations may allow remote participation by any means that enables participants to "communicate with" each other).

¹⁸ See *infra* Part I.B.7.a.

¹⁹ See *id.*

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cally present at a meeting of stockholders may, by means of remote communication:

a. Participate in a meeting of stockholders; and

b. Be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.²⁰

As this statute indicates, Delaware provides not only for remote shareholder participation but also for remote-only shareholder meetings pursuant to which corporations elect to hold a meeting solely by electronic means in lieu of holding the meeting at a physical location. Delaware also requires corporations to follow three particular procedures when conducting a remote-only shareholder meeting or otherwise allowing remote shareholder participation.²¹ Importantly, these procedures are designed to be general and to provide flexibility to corporations that choose to host electronic shareholder meetings.²²

First, Delaware corporations must create reasonable measures for verifying those able to vote.²³ Second, Delaware corporations must ensure that reasonable measures are instituted to ensure that all shareholders have the opportunity to participate.²⁴ This provision does not require corporations to guarantee that all shareholders can participate.²⁵ The provision aims to approximate a physical meeting

²⁰ DEL. CODE ANN. tit. 8 § 211 (2010).

²¹ § 211(a)(2)(b).

²² Cf. Gregory V. Varallo & Richard P. Rollo, *Developments in Shareholders' Meetings: New Delaware Legislation and the ABA Handbook*, INSIGHTS, Jan. 2001, at 9 (noting that remote-only shareholder meetings provide flexibility).

²³ § 211(a)(2)(b)(i).

²⁴ § 211(a)(2)(b)(ii).

²⁵ See Varallo & Rollo, *supra* note 22, at 9.

as much as possible, including enabling shareholders to interact with management during the meeting. Such a provision may respond, at least in part, to shareholder concerns regarding effective interaction at remote-only meetings. Third, Delaware corporations must provide a record of the meeting.²⁶ Such a provision supports the integrity of the meeting by ensuring that there will be a record of votes and actions taken at the meeting, particularly those that are submitted electronically.²⁷ Overall, the Delaware model is one that embraces both forms of electronic shareholder meetings while requiring that corporations implement specific safeguards.

Delaware also provides that directors shall have the “sole discretion” to determine whether shareholders can participate by means of remote communications as well as whether the corporation will conduct a remote-only shareholder meeting.²⁸ Delaware’s use of the phrase “sole discretion” was deliberate and meant to ensure that the decision regarding whether to host an electronic shareholder meeting rested completely in the hands of directors.²⁹ Thus, such language ensures that shareholder activists could not force the corporation to hold such meetings either through amending the bylaws, shareholder resolution, or otherwise.³⁰ The language also discourages courts from interfering in board decisions on this issue absent extraordinary circumstances.³¹

In Delaware, electronic shareholder meetings appear to be the default rule.³² Hence, if a corporation’s bylaws or certificate of incorporation grants directors the ability to determine the place of a shareholder meeting, then directors automatically have the ability to elect to host a meeting solely by means of remote communication or otherwise allow remote shareholder participation in the meeting.³³ This default rule suggests that while directors have the discretion to determine if such meetings occur, the only way to prohibit such meetings altogether would be to designate a specific physical meeting

²⁶ § 211(a)(2)(b)(iii).

²⁷ See Dan Birnhak, *Online Shareholder Meetings: Corporate Law Anomalies or the Future of Governance*, 29 RUTGERS COMPUTER & TECH. L.J. 423, 427–28 (2003).

²⁸ § 211(a)(1).

²⁹ See Varallo & Rollo, *supra* note 22, at 9; Jesse A. Finkelstein, *Shareholder Meetings in Cyberspace: Will Your Next Meeting Location Be a Web Site?*, INSIGHTS, June 2000, at 14.

³⁰ See Finkelstein, *supra* note 29, at 14.

³¹ See Varallo & Rollo, *supra* note 22, at 10.

³² § 211(a)(1) (granting board authority to determine if virtual shareholder meetings will occur so long as board can authorize meeting place).

³³ *Id.*

location in the certificate of incorporation or bylaws and thereby take the discretion out of directors' hands.

2. The Colorado Model: Electronic Shareholder Meetings Without Specific Procedures

Section 7-107-108 of the Colorado Code reads as follows:

Unless otherwise provided in the bylaws, any or all of the shareholders may participate in an annual or special shareholders' meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons in the meeting may hear each other during the meeting. A shareholder participating by this means is deemed to be present in person at a meeting.³⁴

While this statute clearly allows remote participation by shareholders, it may be viewed as ambiguous with regard to remote-only shareholder meetings. This is because section 7-107-101 of the Colorado Code provides that meetings be held "at the place stated in or fixed in accordance with the bylaws."³⁵ Such a provision appears to require a physical meeting place and hence could be construed as inconsistent with a provision enabling a remote-only meeting. Moreover, the Colorado Code does not include the affirmative language found in Delaware's statutes providing that a remote-only meeting may be held *in lieu of* a meeting held at a particular location. But the fact that the statutory language in section 7-107-108 provides both for remote participation by shareholders and for meetings "*conducted through* the use of any communications" indicates that Colorado allows remote-only shareholder meetings because any other interpretation may render the two provisions duplicative.³⁶ Additionally, some practitioners' guides interpret similar statutory language providing for the ability to "conduct" remote meetings to mean that shareholders can hold a remote-only meeting in lieu of a physical meeting.³⁷ Hence, it seems likely that the Colorado statute similarly would be interpreted as allowing for remote-only shareholder meetings.

Interestingly, unlike Delaware, the Colorado statute does not pinpoint any procedures that must be implemented in order for a corporation to engage in such meetings beyond ensuring that participants can hear one another. Presumably this means that while Colorado permits meetings by teleconference, it would not permit meet-

³⁴ COLO. REV. STAT. ANN. § 7-107-108 (West 2010).

³⁵ § 7-107-101.

³⁶ § 7-107-108 (emphasis added).

³⁷ See 9 B. E. WITKIN, SUMMARY OF CALIFORNIA LAW 930 (10th ed. 2005).

ings via the Internet because such internet-based meetings would not enable shareholders to hear one another.

As a general matter, statutes in this area are either (a) patterned after the Delaware statute and thus include language that explicitly allows electronic shareholder meetings, but require corporations to implement the three specific procedures when conducting those meetings or (b) resemble the Colorado statute, and thus appear to allow electronic shareholder meetings, but do not require corporations to implement any procedures beyond ensuring that shareholders have the ability to hear one another.

Thus, with some variation discussed below and set forth in the attached Appendices, seventeen states embrace statutory language similar to the Delaware model.³⁸ The remaining states more closely resemble the Colorado model.

³⁸ Those states include California, Florida, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, and Wyoming. *See infra* Appendix B. Currently, the Texas statute only has two requirements, verification and recordkeeping. Prior to January 1, 2010, Texas had a statute, TEX. BUS. CORP. ACT. ANN. art. 2.24 (West 2010) (expired as of Jan. 1, 2010), similar to Delaware, which provided as follows:

A. Meetings of shareholders may be held at such place within or without this State as may be stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, the board of directors of the corporation is not authorized to designate a place, or the board of directors chooses not to designate a place, meetings shall be held at the registered office of the corporation.

(1) If, under the articles of incorporation or the bylaws, the board of directors is authorized to determine the place of a meeting of shareholders, the board of directors may, in its discretion, determine that the meeting may be held solely by means of remote communication as provided by Subsection (2) of this section.

(2) If authorized by the board of directors, and subject to any guidelines and procedures adopted by the board of directors, shareholders not physically present at a meeting of shareholders, by means of remote communication:

(a) may participate in a meeting of shareholders; and

(b) may be considered present in person and may vote at a meeting of shareholders held at a designated place or held solely by means of remote communication if: (i) the corporation implements reasonable measures to verify that each person considered present and permitted to vote at the meeting by means of remote communication is a shareholder; (ii) the corporation implements reasonable measures to provide the shareholders at the meeting by means of remote communication a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportu-

3. The Massachusetts/Montana Model: Restrictions on Public Corporations

Massachusetts draws a distinction between private and public corporations.³⁹ While corporations with a class of publicly held shares are permitted to allow remote participation by shareholders, such corporations may not conduct remote-only shareholder meetings.⁴⁰ In contrast, private corporations in Massachusetts may conduct both remote-only shareholder meetings and enable remote shareholder participation.⁴¹

In terms of format, the Massachusetts statute is patterned after Delaware section 211, except that it carves out an exception for public corporations.⁴² Thus, the first portion of the Massachusetts statute reads as follows:

Unless otherwise provided in the articles of incorporation or by-laws, if authorized by the board of directors: any annual or special meeting of shareholders need not be held at any place but may instead be held solely by means of remote communication, unless the corporation is a public corporation . . .⁴³

The remainder of the Massachusetts statute tracks the Delaware section 211(a)(2) virtually verbatim.⁴⁴

Montana similarly draws a distinction between types of corporations.⁴⁵ Hence, the Montana statute section 35-1-516 reads, in pertinent part:

If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in an annual meeting of the shareholders through a conference telephone or similar communication equipment by means of which all persons in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.⁴⁶

nity to read or hear the proceedings of a meeting substantially concurrently with the proceedings; and (iii) the corporation maintains a record of any shareholder vote or other action taken at the meeting by means of remote communication.

Id.

³⁹ MASS. GEN. LAWS ANN. ch. 156D, § 7.08 (West 2010).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *See id.*; DEL. CODE ANN. Tit. 8 § 211 (a)(2) (2010).

⁴⁵ MONT. CODE ANN. § 35-1-516(4) (2010).

⁴⁶ *See id.*

As this language suggests, the Montana statute resembles the Colorado statute's format but restricts remote shareholder participation to corporations with fifty or fewer shareholders; larger corporations may not allow such participation. Moreover, Montana does not allow any corporation to conduct remote-only shareholder meetings.⁴⁷ In this regard, while both Massachusetts and Montana draw distinctions between types of corporations, the Montana statute provides more limited coverage.⁴⁸ Currently no other state restricts electronic shareholder meetings to particular corporations.⁴⁹

4. The New York Model: Mandatory Shareholder Participation

New York proposed legislation that would require certain corporations to permit remote participation.⁵⁰ Thus, New York's proposed statute reads, in pertinent part, as follows:

(b)(i) Every corporation whose shares are traded on a stock exchange or in the over-the-counter market shall: (1) implement reasonable measures to provide shareholders not physically present at a shareholders' meeting a reasonable opportunity to witness the proceedings of the meeting substantially concurrently with such proceedings; and (2) provide reasonable means to enable shareholders to vote or cast proxies with respect to matters submitted to the shareholders at a shareholders' meeting by means of electronic communication.

(ii) This paragraph may also apply to other corporations if the board of directors has elected to be subject to this paragraph.

(iii) Nothing required in subparagraphs (i) and (ii) of this paragraph shall limit, restrict or supersede other forms of voting and participation.

(iv) For purposes of this paragraph, "reasonable measures" with respect to witnessing proceedings shall include, but not be limited to audio webcast or other broadcast of the meeting and for voting shall include⁵¹ but not be limited to telephonic and internet voting.

Because the proposed statute is not subject to restrictions in a corporation's bylaws or charter, the statute would require corpora-

⁴⁷ *Cf. id.* (allowing for a telephone conference exception for smaller corporations, suggesting the inability to utilize remote-only shareholder meetings).

⁴⁸ *See id.* § 35-1-516; MASS. GEN. LAWS ANN. ch. 156D, § 7.08 (West 2010).

⁴⁹ Apparently, Delaware does not distinguish between types of corporations because of the notion that its statute is a general corporation statute and hence is not intended to create a separate regime for public and private corporations.

⁵⁰ S 5793, 2009 State Assemb., Reg. Sess. (NY 2009).

⁵¹ *Id.*

tions with shares traded on a stock exchange or in the over-the-counter market to permit remote participation whenever shareholders so request. Other corporations may choose whether or not they will permit remote participation.⁵² No other state has such a mandatory rule. As set forth in Part I.B.7.b, however, several states seem to require that corporations permit shareholders to participate in an electronic shareholder meeting as long as such meetings are authorized by the bylaws or articles of incorporation.

5. The Maryland/California Model: Shareholder Input

Both California and Maryland enable shareholders to play a role in determining whether a corporation can conduct an electronic shareholder meeting. Thus, sections 2-503(b)(1) and 2-503(b)(2) of the Maryland Code read:

(b)(1) Subject to paragraph (2) of this subsection, if the board of directors is authorized to determine the place of a meeting of the stockholders, the board may determine that the meeting not be held at any place, but instead may be held solely by means of remote communication as authorized by subsection (c) of this section.

(b)(2) At the request of a stockholder, the board of directors shall provide a place for a meeting of the stockholders.⁵³

While Maryland enables the board to determine whether the corporation will hold a remote-only shareholder meeting, Maryland ensures that a corporation will not conduct such a meeting over the objection of any shareholder.⁵⁴ In all other respects, the Maryland Code closely mimics Delaware section 211.⁵⁵ Thus, Maryland allows both remote shareholder participation and remote-only shareholder meetings.⁵⁶ Maryland also requires that corporations implement specific procedures when such meetings occur.⁵⁷

Like Maryland, California's statute is patterned after Delaware section 211, except that in addition to requiring director authorization, California also requires that corporations obtain shareholders' consent to a remote-only shareholder meeting. California's statute provides in pertinent part:

⁵² *Id.*

⁵³ MD. CODE ANN. CORPS. & ASS'NS, § 2-503(b)(1)–(2) (West 2010).

⁵⁴ § 2-503(b)(2).

⁵⁵ *See* § 2-503(c); DEL. CODE ANN. Tit. 8 § 211 (a)(2) (2010).

⁵⁶ *See* § 2-503(a)–(b).

⁵⁷ § 2-503(c).

(a) Meetings of shareholders may be held at any place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, shareholder meetings shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, shareholders not physically present in person or by proxy at a meeting of shareholders may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of shareholders, be deemed present in person or by proxy, and vote at a meeting of shareholders whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (e). . . .

(e) A meeting of the shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide shareholders (in person or by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any shareholder votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a shareholder pursuant to clause (b) of Section 20 for consent to conduct a meeting of shareholders by electronic transmission by and to the corporation shall include a notice that, absent consent of the shareholder pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).⁵⁸

While no other state conditions the holding of an electronic shareholder meeting on shareholders' consent or lack of rejection, Minnesota does require that shareholders be provided notice of the corporation's intent to host a remote-only meeting.⁵⁹

⁵⁸ CAL. CORP. CODE § 600 (West 2010).

⁵⁹ MINN. STAT. ANN. § 302A.436(2) (West 2010).

6. The Illinois Model: No Remote-only Meetings

Illinois only provides for shareholder participation by remote communication.⁶⁰ Hence, it does not allow corporations to hold a remote-only shareholder meeting in lieu of a meeting at a physical location. Seven other states (Indiana, Montana, Nevada, North Carolina, Oregon, Virginia, and Washington) similarly only allow corporations to provide for remote shareholder participation, and do not enable them to host remote-only shareholder meetings.⁶¹ Such states, however, differ with respect to the extent to which they require corporations to implement specific procedures in connection with remote shareholder participation. Of those seven states, as indicated above, Montana further restricts such meetings to corporations with fifty or fewer shareholders.⁶² Also, New York's proposed legislation would require certain corporations to provide for remote shareholder participation, but would not give corporations the option of hosting a remote-only meeting.⁶³

7. Some Critical Distinctions Among Statutes

a. Procedures

As pinpointed above, Delaware requires that corporations implement three procedures when conducting an electronic shareholder meeting.⁶⁴ Sixteen states follow the Delaware model and hence also require that these procedures be implemented.⁶⁵ By contrast, some states only require corporations to ensure that shareholders can hear each other during an electronic shareholder meeting.⁶⁶ Fourteen states embrace this more limited requirement with regard to procedures.⁶⁷

⁶⁰ 805 ILL. COMP. STAT. ANN. 5/7.05 (West 2010).

⁶¹ See *infra* Appendix B.

⁶² See *id.*

⁶³ See *supra* notes 50–52.

⁶⁴ See *supra* notes 20–26 and accompanying text.

⁶⁵ These states include California, Florida, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, and Wyoming. See *infra* Appendix B. As noted previously, Texas only has two requirements, but is best characterized as a statute that resembles Delaware. See *supra* note 37.

⁶⁶ See *infra* Appendix B.

⁶⁷ Those states include Arizona, Colorado, Illinois, Indiana, Montana, Nevada, North Carolina, Oregon, Tennessee, Utah, Vermont, Virginia, Washington, and West Virginia. See *id.*

b. Board Discretion?

Most states grant directors the discretion to determine whether or not a corporation holds an electronic shareholder meeting. Following Delaware's lead, nine other states require that directors have the "sole" discretion to determine whether to hold an electronic shareholder meeting.⁶⁸ Eight states make electronic shareholder meetings contingent on directors' discretion or authorization but do not include language requiring that determinations are made in directors' "sole" discretion.⁶⁹

Twelve states do not contain a provision requiring that directors authorize an electronic shareholders' meeting.⁷⁰ Thus, a few states provide that the "corporation may" conduct electronic shareholder meetings so long as such meetings are permitted by the corporation's governing documents.⁷¹ Other states indicate that "shareholders may participate" in such meetings so long as the corporation's governing documents permit such meetings to occur.⁷² These statutory provisions suggest that so long as the articles of incorporation or bylaws authorize or do not prohibit such meetings, corporations have the discretion to host them, and shareholders have the right to participate in them. Indeed, in light of Delaware's rationale for deliberately including the "sole discretion" language in its statute,⁷³ the lack of such language in these other statutes may be interpreted to mean that shareholders in those states can require corporations to host electronic shareholder meetings by, for example, altering the corporation's bylaws. Only New York's proposed rule requires corporations to allow shareholders to participate by remote control regardless of any authorization in the governing documents.⁷⁴

⁶⁸ These states include Arizona, California, Hawaii, Kansas, Kentucky, Missouri, Oklahoma, Rhode Island, and Wyoming. *See infra* Appendix B.

⁶⁹ These states include Florida, Maryland, Michigan, Minnesota, North Carolina, North Dakota, Ohio, and Oregon. *See id.* The Oregon statute provides that the bylaws or the board may authorize an electronic shareholder meeting. *See* OR. REV. STAT. ANN. § 60.222 (West 2010).

⁷⁰ Such states are Colorado, Illinois, Indiana, Montana, Nevada, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, and West Virginia. These states simply make electronic shareholder meetings contingent upon some form of authorization within the bylaws or articles of incorporation. *See infra* Appendix B.

⁷¹ *See id.*

⁷² *See id.*

⁷³ DEL. CODE ANN. tit. 8, § 211(2)(b) (West 2010).

⁷⁴ A1567, 2009 N.Y. Sess. Laws 5793 (McKinney).

Finally, as noted above, Maryland provides that electronic shareholder meetings must receive shareholder consent in addition to being subject to directors' authorization.⁷⁵

c. Impact on Governing Documents

Corporations seeking to host an electronic shareholder meeting not only should examine their governing documents to ensure that those documents allow for such meetings, but also should make any necessary changes to comply with the relevant governing statute. The type of changes that are necessary will depend upon the state statute at issue. Logically, if New York's rule is enacted, the covered corporations need make no alterations to their governing documents. All other statutes currently adopted, however, make the use of electronic shareholder meetings contingent on the corporation's governing documents. Some states give the board of directors' discretion to hold electronic shareholder meetings as a default rule.⁷⁶ These state statutes provide that unless the articles of incorporation or bylaws prohibit electronic shareholder meetings, corporations will be allowed to host them.⁷⁷ States that give boards of directors discretion to hold an electronic shareholder meeting as the default rule include Arizona, California, Colorado, Delaware, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nevada, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, Vermont, and Wyoming.⁷⁸ Therefore, to the extent a corporation's bylaws or charter are silent, corporations incorporated in these states do not need to change their governing documents in order to hold electronic shareholder meetings. To be sure, many bylaws include language requiring a specific physical location for a shareholder meeting and hence those bylaws must be amended if a corporation desires to hold a remote-only meeting.⁷⁹ Nevertheless, corporations need only delete any requirements for a physical location in order to ensure that such a meeting can be held.

Several states require specific authorization for electronic shareholders meetings in the bylaw or charter.⁸⁰ As a result, any corporation seeking to take advantage of the electronic shareholder meeting

⁷⁵ See MD. CODE ANN. CORPS. & ASS'NS, § 2-503(b)(2) (West 2010).

⁷⁶ See, e.g., ARIZ. REV. STAT. ANN. § 10-708 (2010); CAL. CORP. CODE § 600 (2010); COLO. REV. STAT. ANN. § 7-107-108 (2010); see also *infra* Appendix B.

⁷⁷ See, e.g., *id.*

⁷⁸ See *infra* Appendix B.

⁷⁹ See *id.*

⁸⁰ See *id.*

statute must amend its governing documents to specifically include language enabling electronic shareholder meetings or the corporation will not be allowed to hold them. States requiring this kind of opt-in provision include Hawaii, Indiana, North Carolina, Minnesota, Montana, North Dakota, Ohio, Virginia, and West Virginia.⁸¹

There are no apparent provisions of the applicable listing agencies that would prevent corporations from hosting electronic shareholder meetings. For example, while the NYSE and NASDAQ both require listed companies to hold an annual meeting, neither agency specifies where such meetings must be held.⁸² Because these agencies do not address the issue of meeting location, they should not create any impediments for corporations seeking to host remote-only meetings or otherwise allow remote participation by shareholders.

II. ELECTRONIC SHAREHOLDER MEETINGS

A. *Corporate Use of Electronic Shareholder Meetings*

Beginning in the 1990s, several companies began relying on technology to supplement their shareholder meetings, employing such techniques as satellite broadcasts of shareholder meetings and broadcasts over the Internet, so-called web-broadcast. In 1996, Bell & Howell Co. reportedly became the first company to supplement its physical meeting with a webcast version.⁸³ The webcast enabled 230 individuals to listen to the meeting online.⁸⁴ Bell & Howell allowed visitors to email questions to management during the meeting, and in its first meeting, about fifteen people submitted questions through email.⁸⁵ Since this initial meeting, over 100 companies have conducted supplemental webcasts of their shareholder meetings.⁸⁶ While technology companies were the first to engage in such broadcasts,

⁸¹ See *id.*

⁸² See NEW YORK STOCK EXCHANGE LISTED COMPANY MANUAL 302.00 (2010), available at <http://nysemanual.nyse.com/LCMTTools/PlatformViewer.asp?selectednode=chp%5F1%5F4&manual=%2F1cm%2Fsections%2F1cm%2Dsections%2F>.

⁸³ See Gavin A. Beske, *Shareholder Meetings Online*, in SECURITIES IN THE ELECTRONIC AGE: A PRACTICAL GUIDE TO THE LAW AND REGULATION 8–12 (John F. Olson & Carmen J. Lawrence, eds., 3d ed., 2002); Michelle Weigelt, *Remote Communications Laws Provide Alternative Format for Shareholder Meetings*, CORP. COUNS. WKLY., June 20, 2007, at 188. That same year, the Tribune Company also first broadcast its annual meeting via satellite. See Beske, *supra*, at 8–10.

⁸⁴ See Birnhak, *supra* note 27, at 439.; David Young, *Web Meetings; Bell & Howell Tries E-Mail*, CHI. TRIB., June 10, 1996, at C3.

⁸⁵ See Young, *supra* note 84.

⁸⁶ See Beske, *supra* note 83, at 8–12.

other companies are increasingly using similar devices.⁸⁷ Thus, many corporations allow shareholders to attend an annual or special shareholder meeting remotely in addition to participation at a physical location.⁸⁸

In 2000 Delaware became the first state to enact a statute specifically authorizing remote-only shareholder meetings.⁸⁹ The push for such a law came from technology-based companies.⁹⁰ But despite corporate reliance on technology to supplement shareholder meetings, very few corporations have taken advantage of the ability to eliminate physical meetings entirely.⁹¹ Thus, as of June 1, 2010, my research revealed twelve corporations that have conducted remote-only meetings.⁹² In April 2001 Inforte Corp. (“Inforte”) held the nation’s first remote-only shareholders meeting.⁹³ In 2002, ICU Medical, Inc. (“ICU”) and Ciber, Inc. (“Ciber”) each held their first remote-only annual shareholders meeting.⁹⁴ In 2006 both UAP Holding

⁸⁷ See Weigelt, *supra* note 83.

⁸⁸ In 2010, corporations that hosted a physical meeting while allowing remote participation included Best Buy Co., Intel Corp., Charles Schwab Corp., and American Water Works Company, Inc. See Best Buy Co., Proxy Statement (Schedule 14A) (May 11, 2010), available at <http://www.sec.gov/Archives/edgar/data/764478/000104746910005112/a2198535zdef14a.htm>; Intel Corp., Proxy Statement (Schedule 14A) (Apr. 2, 2010), available at <http://www.sec.gov/Archives/edgar/data/50863/000095012310026466/f53675prpre14a.htm>; Charles Schwab Corp., Proxy Statement (Schedule 14A) (Mar. 30, 2010), available at http://www.aboutschwab.com/media/pdf/schwab_proxy2010.pdf; American Water Works Company, Inc., Proxy Statement (Schedule 14A) (Mar. 26, 2010), available at <http://www.sec.gov/Archives/edgar/data/1410636/000119312510068342/ddef14a.htm>.

⁸⁹ DEL. CODE ANN. tit. 8, § 211(a)(1) (West 2010).

⁹⁰ See generally Weigelt, *supra* note 83.

⁹¹ As of June 1, 2010, my research revealed twelve corporations that have conducted remote-only meetings. See *id.* (pinpointing five companies that had hosted such meetings as of June 20, 2007); see also Dominic Jones, *Real Time Voting by Broadridge and Wells Fargo*, IR WEB REPORT, Mar. 31, 2010, available at <http://www.irwebreport.com/daily/2010/03/31/virtual-annual-shareholder-meetings> (pinpointing seven companies that have had or plan to host remote only shareholder meetings as of March 31, 2010).

⁹³ See Inforte Corp., Proxy Statement (Schedule 14A) (Mar. 22, 2001), available at [http://esignal.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?SessionID=S18KWY3vGQyCJo0&ID=1149009&AnchorName=HH_&AnchorDistance=0&BeginHTML=%3Cb%3E%3Cfont+color%3D%22%23cc0000%22%3E&EndHTML=%3C%2Ffont%3E%3C%2Fb%3E&SearchText=%3CNEAR%2F4%3E\(%22RONALD+G%22%2C%22MEYER%22\)](http://esignal.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?SessionID=S18KWY3vGQyCJo0&ID=1149009&AnchorName=HH_&AnchorDistance=0&BeginHTML=%3Cb%3E%3Cfont+color%3D%22%23cc0000%22%3E&EndHTML=%3C%2Ffont%3E%3C%2Fb%3E&SearchText=%3CNEAR%2F4%3E(%22RONALD+G%22%2C%22MEYER%22)) [hereinafter Inforte, Proxy Statement, 2001].

⁹⁴ See ICU Medical, Inc., Proxy Statement (Schedule 14A) (Apr. 1, 2002), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=86695&p=irol-SECText&TEXT=aHR0cDovL2lyLmludC53ZXN0bGF3YnVzaW5lc3MuY29tL2RvY3VtZW50L3YxLzAwMDEwMTk2ODctMDItMDAwNTQzL3htbA%3d%3d> [hereinafter ICU Medical, Proxy

Corp. (“UAP”)⁹⁵ and Adaptec, Inc. (“Adaptec”)⁹⁶ held remote-only shareholder meetings, and Herman Miller, Inc. (“Herman Miller”)⁹⁷ held its first remote-only shareholder meeting in 2007. In 2009, Broadridge Financial Solutions, Inc. (“Broadridge”) hosted its first remote-only shareholder meeting.⁹⁸ In 2010 Artio Global Investors, Inc. (“Artio”),⁹⁹ Conexant Systems, Inc. (“Conexant”),¹⁰⁰ Illumina, Inc. (“Illumina”),¹⁰¹ Pico Holdings, Inc. (“Pico”),¹⁰² Warner Music Group Corp. (“Warner”),¹⁰³ and Winland Electronics, Inc. (“Winland”)¹⁰⁴ all

Statement, 2002]; Ciber, Inc., Proxy Statement (Schedule 14A) (Apr. 1, 2002), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=62543&p=irol-SECText&TEXT=aHR0cDovL2lyLmludC53ZXN0bGF3YnVzaW5lc3MuY29tL2RvY3VlZW50L3YxLzAwMDA5MTIwNTctMDItMDExMzczL3htbC9zdWJkb2N1bWVudC8xL3BhZ2UvMQ%3d%3d> [hereinafter Ciber, Proxy Statement, 2002].

⁹⁵ See UAP Holdings Corp., Proxy Statement (Schedule 14A) (June 9, 2006), *available at* [http://signal.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?SessionID=qZe2HdLDYMLasIB&ID=4475554&AnchorName=HH_&AnchorDistance=0&BeginHTML=%3Cb%3E%3Cfont+color%3D%22%23cc000%22%3E&EndHTML=%3C%2Ffont%3E%3C%2Fb%3E&SearchText=%3CNEAR%2F4%3E\(%22BRYAN+S%22%2C%22WILSON%22\)](http://signal.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?SessionID=qZe2HdLDYMLasIB&ID=4475554&AnchorName=HH_&AnchorDistance=0&BeginHTML=%3Cb%3E%3Cfont+color%3D%22%23cc000%22%3E&EndHTML=%3C%2Ffont%3E%3C%2Fb%3E&SearchText=%3CNEAR%2F4%3E(%22BRYAN+S%22%2C%22WILSON%22)) [hereinafter UAP, Proxy Statement, 2006].

⁹⁶ See Adaptec, Inc., Proxy Statement (Schedule 14A) (July 28, 2006), *available at* <http://sec.gov/Archives/edgar/data/709804/000104746906010085/a2172149zdef14a.htm> [hereinafter Adaptec, Proxy Statement, 2006].

⁹⁷ See *The Return of Virtual-Only Shareholder Meetings? Herman Miller's Third Year in a Row*, THECORPORATECOUNCIL.NET (Sept. 10, 2009), <http://www.thecorporatecounsel.net/Blog/2009/09/in-fact-the-string-of.html>; see also Herman Miller, Inc., Proxy Statement (Schedule 14A) (Aug. 22, 2007), <http://investor.shareholder.com/mlhr/secfiling.cfm?filingID=926044-07-333> [hereinafter Herman Miller, Proxy Statement, 2007].

⁹⁸ See Broadridge Financial Solutions, Inc., Proxy Statement (Schedule 14A) (Oct. 9, 2009), *available at* <http://www.broadridge-ir.com/fin/proxy/brx09.htm>.

⁹⁹ See Artio Global Investors, Inc., Proxy Statement (Schedule 14A) (Mar. 26, 2010), *available at* <http://sec.gov/Archives/edgar/data/1419178/000095012310028520/y83455def14a.htm> [hereinafter Artio Global Investors, Proxy Statement, 2010]. Artio's remote-only meeting was also its first shareholder meeting as a public company. See *id.*

¹⁰⁰ See Conexant Systems, Inc., Proxy Statement (Schedule 14A) (Feb. 1, 2010), *available at* <http://sec.gov/Archives/edgar/data/1069353/000095012310006985/a54958def14a.htm> [hereinafter Conexant Systems, Proxy Statement, 2010].

¹⁰¹ See Illumina, Inc., Proxy Statement (Schedule 14) (Mar. 26, 2010), *available at* <http://sec.gov/Archives/edgar/data/1110803/000095012310028839/a55569ddefa14a.htm> [hereinafter Illumina, Proxy Statement, 2010].

¹⁰² See Pico Holdings, Inc., Proxy Statement (Schedule 14A) (Mar. 26, 2010), *available at* <http://sec.gov/Archives/edgar/data/830122/000083012210000008/noticecardcover.htm> [hereinafter Pico, Proxy Statement, 2010].

¹⁰³ See Warner Music Group Corp., Proxy Statement (Schedule 14A) (Jan. 11, 2010), *available at* <http://sec.gov/Archives/edgar/data/1319161/000119312510003939/ddefa14a.htm> [hereinafter Warner, Proxy Statement, 2010]. Although Warner hosted its first remote-only shareholders meeting in 2010, the meeting was its 2009 annual shareholders' meeting. *Id.*

held remote-only shareholder meetings for the first time. Interestingly, all but two of these companies are incorporated in Delaware; Winland is incorporated in Minnesota, while Pico is a California corporation.¹⁰⁵

Not every corporation continued to hold remote-only meetings after their initial meeting. On the one hand, Inforte, ICU, Herman Miller, and UAP all held remote-only meetings in the years after their first such meeting. Inforte has hosted such a meeting for seven years,¹⁰⁶ ICU has held remote-only meetings for the past eight years,¹⁰⁷ Herman Miller has hosted four consecutive remote-only meetings,¹⁰⁸

¹⁰⁴ See Winland Electronics, Inc., Proxy Statement (Schedule 14A) (Mar. 25, 2010), available at <http://sec.gov/Archives/edgar/data/1319161/000119312510003939/ddefa14a.htm>.

¹⁰⁵ See *id.*; 2010 Pico, Proxy Statement, *supra* note 102.

¹⁰⁶ See Inforte Corp., Proxy Statement (Schedule 14A) (Apr. 26, 2007), http://www.sec.gov/Archives/edgar/data/1099944/000120677407000853/inforte_nps.htm; Inforte Corp. Proxy Statement (Schedule 14A) (Apr. 27, 2006), <http://www.sec.gov/Archives/edgar/data/1099944/000120677406000625/in120978.htm>; Inforte Corp., Proxy Statement (Schedule 14A) (Apr. 27, 2005), <http://www.sec.gov/Archives/edgar/data/1099944/000120677405000495/ic910195.htm>; Inforte Corp., Proxy Statement (Schedule 14A) (Apr. 28, 2004), <http://www.sec.gov/Archives/edgar/data/1099944/000120677404000239/d14206.htm>; Inforte Corp., Proxy Statement (Schedule 14A) (Apr. 30, 2003), <http://www.sec.gov/Archives/edgar/data/1099944/000120677403000224/e903174.htm>; Inforte Proxy Statement, 2001, *supra* note 86; Inforte Corp., Proxy Statement (Schedule 14A) (Apr. 25, 2002), <http://www.sec.gov/Archives/edgar/data/1099944/000094018002000628/ddef14a.txt>; Inforte Corp., Proxy Statement, 2001, *supra* note 93.

¹⁰⁷ See ICU Medical, Proxy Statement (Schedule 14A) (Apr. 12, 2010), http://www.sec.gov/Archives/edgar/data/883984/000110465910019287/a10-7682_1def14a.htm [hereinafter ICU Medical, Proxy Statement, 2010]; ICU Medical, Proxy Statement (Schedule 14A) (Apr. 13, 2009), http://www.sec.gov/Archives/edgar/data/883984/000120677409000758/icumedical_def14a.htm; ICU Medical, Proxy Statement (Schedule 14A) (Apr. 16, 2008), http://www.sec.gov/Archives/edgar/data/883984/000110465908023610/a08-10243_1def14a.htm; ICU Medical, Proxy Statement (Schedule 14A) (Apr. 9, 2007), http://www.sec.gov/Archives/edgar/data/883984/000101968707001138/icumedical_def14a-051107.txt; ICU Medical, Proxy Statement (Schedule 14A) (Apr. 10, 2006), <http://www.sec.gov/Archives/edgar/data/883984/000114544306001129/d18927.htm>; ICU Medical, Proxy Statement (Schedule 14A) (Apr. 11, 2005), <http://www.sec.gov/Archives/edgar/data/883984/000114544305000837/d16779.htm>; ICU Medical, Proxy Statement (Schedule 14A) (Apr. 12, 2004), http://www.sec.gov/Archives/edgar/data/883984/000101968704002331/icu_def14a-2004.txt; ICU Proxy Statement (Schedule 14A) (May 2, 2003), http://www.sec.gov/Archives/edgar/data/883984/000101968703000829/icu_def14a-061303.txt; ICU Medical, Proxy Statement, 2002 *supra* note 94.

¹⁰⁸ See Herman Miller, Inc., Proxy Statement (Schedule 14A) (Aug. 31, 2010), <http://investor.shareholder.com/mlhr/secfiling.cfm?filingID=926044-10-318>; Herman Miller, Inc., Proxy Statement (Schedule 14A) (Sept. 3, 2009), <http://investor.shareholder.com/mlhr/secfiling.cfm?filingID=926044-09-480>; Her-

and UAP has hosted two consecutive remote-only meetings.¹⁰⁹ On the other hand, after its initial remote-only meeting in 2006, Adaptec's 2007 meeting was held at a physical location.¹¹⁰ Similarly, after its initial remote-only meeting in 2002, Ciber held its next two annual meetings at a physical location.¹¹¹ In 2005, Ciber resumed conducting remote-only meetings and to date has held seven consecutive remote-only meetings.¹¹² Thus, even among those corporations that have hosted remote-only meetings, their use has been sporadic.

While demand for the law came from technology companies,¹¹³ the corporations that have conducted remote-only meetings are not exclusively in the technology sector. For example, ICU is in the health care industry,¹¹⁴ UAP is in the agriculture industry,¹¹⁵ and Warner is in the music industry¹¹⁶.

man Miller, Inc., Proxy Statement (Schedule 14A) (Aug. 21, 2008), <http://investor.shareholder.com/mlhr/secfiling.cfm?filingID=926044-08-410>; Herman Miller, Inc., Proxy Statement, 2007, *supra* note 97.

¹⁰⁹ See UAP Holdings Corp., Proxy Statement (Schedule 14A) (June 26, 2007), <http://yahoo.brand.edgar-online.com/displayfilinginfo.aspx?FilingID=5265006-904-259070&type=sect&TabIndex=2&companyId=625929&ppu=%252fdefault.aspx%253fcik%253d1279529>; UAP Proxy Statement, 2006, *supra* note 95.

¹¹⁰ See Adaptec, Inc., Proxy Statement (Schedule 14A) (Nov. 5, 2007), <http://www.sec.gov/Archives/edgar/data/709804/000119312507235141/ddef14a.htm>.

¹¹¹ See Ciber, Inc., Proxy Statement (Schedule 14A) (Mar. 27, 2003), <http://www.sec.gov/Archives/edgar/data/918581/000104746903010597/a2105925zdef14a.htm>; Ciber, Inc., Proxy Statement (Schedule 14A) (Mar. 25, 2004), <http://www.sec.gov/Archives/edgar/data/918581/000104746904009529/a2131194zdef14a.htm>.

¹¹² See Ciber, Inc., Proxy Statement (Schedule 14A) (Apr. 1, 2005), <http://www.sec.gov/Archives/edgar/data/918581/000104746905008753/a2153307zdef14a.htm>; Ciber, Inc., Proxy Statement (Schedule 14A) (Mar. 31, 2006), <http://www.sec.gov/Archives/edgar/data/918581/000104746906004273/a2168194zdef14a.htm>; Ciber, Inc., Proxy Statement (Schedule 14A) (Apr. 3, 2007), <http://www.sec.gov/Archives/edgar/data/918581/000104746907002504/a2176712zdef14a.htm>; Ciber Inc., Proxy Statement (Schedule 14A) (Mar. 28, 2008), <http://www.sec.gov/Archives/edgar/data/918581/000104746908003589/a2183806zdef14a.htm>; Ciber Inc., Proxy Statement (Schedule 14A) (Apr. 1, 2009), <http://www.sec.gov/Archives/edgar/data/918581/000104746909003626/a2191757zdef14a.htm>; Ciber, Inc., Proxy Statement (Schedule 14A) (Apr. 23, 2010), <http://www.sec.gov/Archives/edgar/data/918581/000104746910004085/a2197711zdef14a.htm>.

¹¹³ See generally Weigelt, *supra* note 83.

¹¹⁴ ICU Medical, ICU MEDICAL, INC., <http://www.icumed.com/about.asp>.

¹¹⁵ UAP Holding Corp., BUSINESSWEEK, <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=9263158>.

¹¹⁶ Warner Music Group Overview, WARNER MUSIC GROUP, <http://www.wmg.com>; see generally ICU Medical, Proxy Statement, 2002, *supra* note 94; Adaptec, Proxy Statement, 2006, *supra* note 96; Warner, Proxy Statement, 2010, *supra* note 103.

B. Procedures Employed at Remote-only Meetings

1. Forms of Communication

Corporations differ in the manner in which they provide for participation in a remote-only meeting. Adaptec and ICU allowed shareholders to participate through the Internet as well as through a telephone conference call.¹¹⁷ Other corporations limited the meeting to participation over the Internet, generally via a live webcast of the meeting. Most companies use a service developed by Broadridge to conduct their web meetings.¹¹⁸

2. Electronic Voting

In addition to conducting a remote-only meeting, most corporations allow shareholders to submit a proxy electronically,¹¹⁹ and some permit shareholders to both submit and revoke a proxy electronically.¹²⁰ Of those corporations that held remote-only meetings, only UAP did not provide an electronic voting mechanism.¹²¹ All the other companies allowed shareholders to submit their proxies electronically over the Internet or by phone.¹²² In addition, several companies, including Adaptec, Inforte, ICU, and Herman Miller, allowed shareholders to fax their proxies into the corporation during the shareholder meeting.¹²³ As a general matter, corporations provide that proxies submitted over the Internet or by telephone must be received by 11:59 p.m. on the day prior to the annual meeting date, while proxies submitted by mail must be received prior to the start of the annual meeting.¹²⁴ Shareholders, however, are allowed to change or revoke their proxies by fax during the meeting or through the Inter-

¹¹⁷ See ICU Medical, Proxy Statement, 2010, *supra* note 107, at 3; Adaptec, Proxy Statement, 2006, *supra* note 96, at 4.

¹¹⁸ See Jones, *supra* note 91.

¹¹⁹ See, e.g., Pico, Proxy Statement, 2010, *supra* note 102; Herman Miller, Proxy Statement, 2007, *supra* note 97, at 2; Adaptec, Proxy Statement, 2006, *supra* note 96, at 2; ICU Medical, Proxy Statement, 2002, *supra* note 94, at 1.

¹²⁰ See, e.g., Artio Global Investors, Proxy Statement, 2010, *supra* note 99, at 5; Inforte Proxy Statement, 2001, *supra* note 93, at 1.

¹²¹ See UAP, Proxy Statement, *supra* note 97.

¹²² See, e.g., Illumina, Proxy Statement, 2010, *supra* note 101 (describing procedures for submitting votes before and during the meeting).

¹²³ See Herman Miller, Proxy Statement, *supra* note 97, at 4.

¹²⁴ See ICU Medical, Proxy Statement, 2002, *supra* note 94, at 4; Adaptec Proxy Statement, 2006, *supra* note 96, at 8; Herman Miller, Proxy Statement, 2007, *supra* note 97, at 4,

net or telephone prior to the close of voting.¹²⁵ Any proxy submitted during the meeting supersedes a previously submitted proxy.¹²⁶

A more recent trend is to enable shareholders to vote over the Internet during the meeting.¹²⁷ Such “live” shareholder voting also enables shareholders to change or revoke previously submitted proxies.¹²⁸ Prior to 2009, some corporations—such as Inforte and ICU—enabled shareholders to submit their proxy by fax during the meeting.¹²⁹ Moreover, at least one corporation, Ciber, also allowed shareholders to record or revoke their vote online during the meeting.¹³⁰ The new trend of online voting enables shareholders to actually cast a vote, as opposed to executing a proxy.

It is not clear that shareholders took advantage of this flexibility in voting. For example, no proxies were submitted during Inforte’s meeting.¹³¹ Instead, shareholders submitted ninety-seven percent of their proxies by fax prior to the meeting.¹³²

3. Q&A

Corporations conducting remote-only meetings also allowed shareholders to ask questions both before and during the shareholders meeting. For example, Ciber’s 2007 proxy statement instructed shareholders that they could email questions beginning three days before the meeting until the close of the meeting.¹³³ UAP’s proxy statement similarly indicated that shareholders could email questions during the meeting or fax questions up until the day before the meeting.¹³⁴ UAP’s proxy statement, however, did include a caution that the corporation may limit the number of shareholder questions addressed.¹³⁵ While their proxy statements did not specify procedures for submitting questions, some articles indicate that both Adaptec

¹²⁵ See Adaptec, Proxy Statement, 2006, *supra* note 96, at 3.

¹²⁶ See *id.*

¹²⁷ See Jones, *supra* note 91 (indicating that Intel Corp. was the first company to offer such live voting online during its 2009 meeting, which provided for remote participation to compliment its physical shareholder meeting).

¹²⁸ See sources cited *supra* note 120.

¹²⁹ See Inforte, Proxy Statement, 2001, *supra* note 93, at 1; ICU Medical, Proxy Statement, 2002, *supra* note 94, at 1.

¹³⁰ See Ciber, Proxy Statement, 2002, *supra* note 94.

¹³¹ See Elizabeth Boros, *Virtual Shareholder Meetings: Who Decides How Companies Make Decisions*, 28 MELB. U. L. REV. 265, 274 (2004) [hereinafter Boros, *Who Decides*].

¹³² See Boros, *Who Decides*, *supra* note 131, at 274 n.53.

¹³³ Ciber, Inc., Proxy Statement, 2007, *supra* note 111.

¹³⁴ See UAP Holding Corp., Proxy Statement, 2006, *supra* note 95, at 3.

¹³⁵ See *id.*

and Inforte allowed shareholders to email questions before and during the meeting.¹³⁶ Indeed, Inforte's registration page for its remote-only meetings offered shareholders the ability to ask questions by email before and during the meeting.¹³⁷ More recent proxy statements direct shareholders to a website with instructions regarding the submission of questions via the Internet during the meeting.¹³⁸

4. Archives

Several corporations archived their remote meetings for some period of time. For example, UAP's proxy statement indicated that its remote-only meeting could be viewed for one week after the meeting date,¹³⁹ and Conexant retained its webcast for one month.¹⁴⁰ Other companies archived their meetings for longer periods of time.¹⁴¹ Both Artio and Pico indicated that their meeting would be archived for seven months,¹⁴² while Winland and Illumina indicated that their meeting would be available for a year.¹⁴³

III. BENEFITS AND DRAWBACKS OF REMOTE-ONLY MEETINGS

Although electronic shareholder meetings may take two forms—remote-only meetings and remote shareholder participation—this section focuses primarily on remote-only meetings because such meetings appear to be the more controversial of the two forms.

A. *Benefits*

The most often cited benefit of electronic shareholder meetings is their potential to increase participation for shareholders who would not otherwise attend an in-person meeting.¹⁴⁴ Such a benefit appears to be especially likely for corporations with widespread shareholders because it means that such shareholders can participate in a meeting without having to worry about travel time or travel

¹³⁶ See Weigelt, *supra* note 83.

¹³⁷ See Anatoli van der Krans, *The Virtual Shareholders Meeting: How to Make it Work*, 2 J. INT'L COMMERCIAL L. & TECH 32, 34 (2007); Birnhak, *supra* note 27, at 440.

¹³⁸ See, e.g., Illumina, Proxy Statement, 2010, *supra* note 101.

¹³⁹ See UAP Holding Corp., Proxy Statement, 2006, *supra* note 95, at 3.

¹⁴⁰ See Conexant Systems, Proxy Statement, 2010, *supra* note 100, at 4.

¹⁴¹ See *id.*

¹⁴² See Artio Global Investors, Inc., Proxy Statement, 2010, *supra* note 99, at 5; Pico Holdings, Inc., Proxy Statement, 2010, *supra* note 102, at 4.

¹⁴³ See Winland Electronics, Inc., Proxy Statement, 2010, *supra* note 104, at 4; Illumina, Proxy Statement, 2010, *supra* note 101.

¹⁴⁴ See Elizabeth Boros, *Virtual Shareholder Meetings*, 2004 DUKE L. & TECH. REV. 8, 21 (2004) [hereinafter Boros, *Virtual Shareholder Meetings*].

cost.¹⁴⁵ UAP's proxy statement provided that the company believed remote-only meetings enabled greater participation for stockholders who did not live near the corporate headquarters.¹⁴⁶ Adaptec found that more people attended their remote-only meeting or accessed the archives of the meeting afterwards, appearing to validate the presumption that such meetings augment shareholder participation.¹⁴⁷

Another potential benefit of a remote-only meeting is that it may enhance the extent and quality of shareholder participation. Typically, corporations that conducted remote-only meetings allowed shareholders to email questions to corporate managers before and during the meeting.¹⁴⁸ By enabling shareholders to submit such questions, remote-only meetings potentially broaden the scope of the issues that can be discussed at the meeting as well as the depth of the discussion. Corporations experienced mixed results with respect to this benefit. Along these lines, some corporations found that shareholders who emailed questions had a tendency to ask more pointed questions and to be blunt in asking them.¹⁴⁹ In this regard, by facilitating shareholders' ability to email questions in connection with the shareholders' meeting, remote-only meetings may help to enhance the quality and substance of shareholder participation.

Remote-only meetings also may provide cost savings for corporations, including rental and other costs to host a meeting in a physical location. The cost savings may not be as significant, however, for corporations that utilize their own offices to host the annual shareholders meetings. In addition, some analysts caution that there may be costs involved in establishing an appropriate remote communications system and implementing any necessary procedures to comply with statutory requirements.¹⁵⁰ An additional cost exists for corporations that restrict access to shareholder meetings. These additional costs may undermine the extent of any cost savings derived from re-

¹⁴⁵ See *id.*

¹⁴⁶ See UAP Holding Corp., Proxy Statement, 2006, *supra* note 95, at 3.

¹⁴⁷ See Weigelt, *supra* note 83.

¹⁴⁸ See *e.g.*, Artio Global Investors, Proxy Statement, 2010, *supra* note 99; UAP, Proxy Statement, 2006, *supra* note 95; Ciber, Proxy Statement, 2002, *supra* note 94.

¹⁴⁹ See Beske, *supra* note 83, at 8–16.

¹⁵⁰ See Birnhak, *supra* note 27, at 429–434; *see also* Beske, *supra* note 83, at 8–14. It also should be noted that the benefits of electronic meetings will be impacted by the extent to which shareholders have access to technology that allows them to participate in the meeting as well as the quality of that technology. See Birnhak, *supra* note 27, at 436; Beske, *supra* note 83, at 8–14. Indeed, corporations should consider the extent to which shareholders can access the Internet when determining whether to conduct a remote-only meeting. See Beske, *supra* note 83, at 8–14.

mote-only meetings. Nevertheless, at least one company has found remote-only meetings to be cost efficient. By hosting a remote-only meeting, Inforte spent \$2,000 rather than the estimated \$20,000 it expected to spend on its annual shareholder meeting.¹⁵¹

Some corporations maintain that hosting remote-only meetings enables them to position themselves as technology leaders.¹⁵² At first glance, this appears to be a benefit applicable solely for technology companies. But even for companies that are not in the technology sector, hosting such meetings may allow companies to project a tech-savvy image, which may prove beneficial.

Some scholars contend that hosting remote-only shareholder meetings may enable corporations to convey their sensitivity to shareholders.¹⁵³ Such meetings enhance the level of shareholder participation, the quality of that participation, or both.¹⁵⁴ Some corporations' shareholders are supportive of remote-only meetings.¹⁵⁵ But where shareholders view such meetings as mechanisms for undermining shareholder participation, hosting such meetings may prove counterproductive for corporations interested in projecting an image of shareholder sensitivity.

B. Drawbacks

The primary objection to remote-only meetings raised by shareholders and their advocates is that such meetings reduce shareholders ability to interact with management and are a mechanism for management to insulate themselves from shareholders.¹⁵⁶ Shareholder advocates argue that the benefit of the physical meeting is the face-to-face interaction and dialogue between management and shareholders.¹⁵⁷ Such face-to-face interaction facilitates deliberation and

¹⁵¹ Beske, *supra* note 83, at 8–17.

¹⁵² *See id.* at 8–12.

¹⁵³ *See id.* (noting the shareholder relations benefit to remote meetings).

¹⁵⁴ *See Weigelt, supra* note 83.

¹⁵⁵ *See id.* (noting that Adaptec and ICU found their shareholders supportive of remote-only meetings and have not experienced any complaints with regard to those meetings).

¹⁵⁶ *See Beske, supra* note 83, at 8–4.

¹⁵⁷ *See Hoschett v. TSI Int'l Software Ltd.*, 683 A.2d 43, 45–46 (Del. Ch. 1996) (noting that the shareholder meeting represents a forum for deliberation and confrontation); Birnhak, *supra* note 27, at 444 (noting activists view that online meetings represent a “backdoor effort to insulate company executives from unhappy shareholders”); Boros, *Who Decides, supra* note 131, at 268 (noting that shareholders in Australia and the United Kingdom prefer direct contact with management). Of course, it is a recognized criticism of shareholder meetings that such meetings are rarely attended, and hence rarely can serve as a platform for active discourse.

accountability.¹⁵⁸ It may be difficult to replicate this interaction in an electronic format, especially where the primary method for interaction at remote-only meetings is through emailed questions. Shareholder advocates fear that such a format will result in managerial abuse in a number of ways. First, such a format may enable management to ignore difficult issues raised by shareholders because management may be able to easily ignore emails altogether but would find it more difficult to ignore shareholder questions posed at the physical meeting.¹⁵⁹ Second, even if management responds to some email questions, advocates express concern that management will only respond to favorable questions.¹⁶⁰ To ameliorate this concern and maintain meeting integrity, some corporations have made the decision not to edit or censor questions that they receive.¹⁶¹ Third, because they receive the questions before the meeting, there is also the possibility that management will provide scripted responses, which may be less beneficial than the more spontaneous responses that occur at a physical meeting.

The overarching fear is that remote-only meetings will undermine genuine interaction between management and shareholders, thereby reducing effective participation by shareholders. This is a particular concern if corporations host such meetings when shareholders are likely to raise contentious issues at the meeting. This concern extends to elections. Recent amendments to the Model Business Corporation Act enable corporations to elect directors by written consent in lieu of an annual meeting and permit corporations to eliminate the annual shareholders' meeting.¹⁶² Therefore, to the extent such elections pose the same concerns regarding confrontation during remote-only meetings, the Act already contains a provision that shareholders may find objectionable. Moreover, elections by written consent occur without any process for shareholder participation beyond such consent. In this regard, remote-only meetings may be less objectionable than such elections.

It should be noted that concerns regarding the inability to confront directors during shareholder meetings have led many to oppose state efforts to implement remote-only statutes and corporate at-

¹⁵⁸ See Boros, *Who Decides*, *supra* note 131, at 274–75.

¹⁵⁹ See Birnhak, *supra* note 27, at 445. It should be noted that thus far, it appears that corporations have responded to all shareholder questions. See Krans, *supra* note 137, at 34 (noting that Inforte answered all questions emailed to it).

¹⁶⁰ Birnhak, *supra* note 27, at 445.

¹⁶¹ See Beske, *supra* note 83, at 8–15 (noting practice by Bell & Howell).

¹⁶² MODEL BUS. CORP. ACT § 7.04; *see also* Birnhak, *supra* note 27, at 441.

tempts to host remote-only meetings. In Massachusetts, negative publicity about the potential impact of such meetings on shareholders' ability to interact with managers led the state to abandon its effort to pass an electronic shareholder meeting statute.¹⁶³ Moreover, such publicity prompted Massachusetts to adopt a statute restricting remote-only meetings to non-public companies.¹⁶⁴ In Delaware, after the state enacted a statute allowing companies to host remote-only meetings, the Council of Institutional Investors urged CEOs of all companies incorporated in Delaware not to hold such meetings based on the concern that remote-only meetings would enable managers to avoid real interaction with shareholders.¹⁶⁵ Additionally, intense opposition from shareholders and advocacy groups led Siebel Systems, Inc., to abandon its efforts to host a remote-only meeting.¹⁶⁶ The meeting involved contentious issues, and shareholders viewed the attempt to conduct the meeting through remote communications as an effort to avoid shareholder confrontation on those issues.¹⁶⁷ Similar sharp disapproval led Intel to abandon its plans for a remote-only shareholder meeting in 2010.¹⁶⁸ Shareholder activists not only planned to organize a "withhold the vote" campaign against Intel and other corporations that hosted virtual meetings, but also submitted shareholder proposals seeking to ban such meetings.¹⁶⁹ As a result, Intel continued its pattern of hosting a physical meeting while allowing for remote participation.

In addition to the concerns about shareholder interaction with managers, some commentators note that remote-only meetings may

¹⁶³ See Boros, *Who Decides*, *supra* note 131, at 286; Krans, *supra* note 137, at 35. The Massachusetts statute was modeled after the Delaware statute. See Birnhak, *supra* note 27, at 441.

¹⁶⁴ See Birnhak, *supra* note 27, at 444.

¹⁶⁵ See Beske, *supra* note 83, at 8–18 (noting that remote-only meetings may enable management to circumvent the physical presence of shareholders that keep watch over the proceedings); see also Boros, *Who Decides*, *supra* note 131, at 268 (noting that shareholders criticized Delaware legislation based on the concern that it would not allow viable participation by retail shareholders).

¹⁶⁶ See Weigelt, *supra* note 83.

¹⁶⁷ See *id.*

¹⁶⁸ See James McRitchie, *Intel Virtual Meeting Out for 2010 but Exploring Future with USPX*, CORPORATE GOVERNANCE (Jan. 20, 2010), <http://corp.gov.net/wordpress/?p=639>.

¹⁶⁹ See *id.*; see also *Responsible Wealth: 2010 Shareholder Resolutions*, UNITED FOR A FAIR Economy, http://www.faireconomy.org/news/responsible_wealth_2010_shareholder_resolutions (last visited Oct. 1, 2010) ("We believe the tradition of in-person annual meetings plays an important role in holding management accountable to stockholders. By making all meetings purely virtual, executives and board members are able to manipulate the conditions of discourse to their advantage.")

decrease dialogue among shareholders.¹⁷⁰ Email questions, for example, are emailed to the board directly and do not go to the entire shareholder class.¹⁷¹ Such a format does not appear to facilitate interaction among shareholders. Some have suggested that corporations should utilize a bulletin board so that shareholders may post questions to which other shareholders may view and respond.¹⁷² Currently, no corporation has implemented such a system. Some corporations enable shareholders to participate in remote-only meetings by conference call.¹⁷³ This format, however, may also be inadequate given the difficulty in effectively communicating with a large group of people over the telephone.

Shareholder activists also contend that remote-only meetings reduce their ability to sway voters and management.¹⁷⁴ Such activists argue that physical meetings allow shareholders to better express their positions, while ensuring that other shareholders and management listen more attentively.¹⁷⁵ Advocates believe this benefit is reduced when corporations host a remote-only meeting.¹⁷⁶

Corporations also may find fault with remote-only meetings. First, such meetings may increase the likelihood of corporations and their executives being asked difficult and disruptive questions. In other contexts, scholars have recognized that people tend to be less inhibited and less civil over the Internet.¹⁷⁷ Conducting a meeting over the Internet may increase the risk that shareholders will ask disruptive questions that undermine the efficiency of the shareholder meeting.

Secondly, and perhaps most problematic for corporations, remote-only meetings may increase the unpredictability of vote results because companies tend to host such meetings in conjunction with

¹⁷⁰ See Birnhak, *supra* note 27, at 445.

¹⁷¹ Some corporations apparently read the questions to the shareholders. *See id.*

¹⁷² See Boros, *Virtual Shareholder Meetings*, *supra* note 144, at 17.

¹⁷³ See, e.g., ICU Medical, Proxy Statement, 2002, *supra* note 94; Adaptec, Proxy Statement, 2006, *supra* note 96.

¹⁷⁴ See Weigelt, *supra* note 83 (stating that Lynn Ehrhart of ICU Medical Inc. believes remote-only meetings are effective “[s]o long as a company doesn’t have any particularly contentious matters on their proxy”).

¹⁷⁵ See Boros, *Virtual Shareholder Meetings*, *supra* note 144, at 9 (noting that views expressed at meetings may change the course of corporate conduct even if there is no vote taken and the views are expressed by a minority of shareholders).

¹⁷⁶ Cf. Weigelt, *supra* note 83 (recommending remote-only meetings if no contentious issues are to be discussed during the meeting). If, however, a contentious issue is raised, a shareholder’s ability to persuade others may be diminished if the meeting is held remotely.

¹⁷⁷ See Danielle Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 83–84 (2009).

enabling shareholders to submit proxies electronically. In so doing, corporations also enable shareholders to revoke their proxies electronically. This format may increase the likelihood that shareholders can either submit or change their proxies at the last minute. In a contested election such last-minute voting may prove worrisome for management, enhancing the unpredictability of the votes.¹⁷⁸ Some have observed that this last-minute voting means that last-minute corporate announcements as well as events at the meeting may impact voting in a manner that does not occur with current shareholder meetings, further increasing the unpredictability of votes.¹⁷⁹ Under the current system where most voting occurs prior to the meeting via proxies, management has advance notice of the voting results and is provided the opportunity to assess the votes and analyze options in light of those votes. Electronic voting in connection with remote-only meetings raises the possibility that management could be surprised by the vote results and hence less prepared to evaluate alternative strategies or options.

IV. CONCLUDING ASSESSMENT

A majority of states have addressed electronic shareholder meetings in some manner, suggesting that those states believe such meetings to be an important part of the corporate landscape. Corporations differ, however, in the manner in which they address such meetings. The least controversial method appears to be one that enables some form of remote participation by shareholders. Given the relatively greater number of corporations that have used remote communications to supplement their annual meeting, provisions that allow such communications may be more applicable to current corporate practices. Yet even with respect to this method, some states include restrictions on remote participation, while others reject such participation altogether.

Remote-only meetings present more significant concerns. Shareholder advocacy groups appear to be skeptical regarding the benefits of remote-only meetings. To the extent increased shareholder participation represents the primary benefit of remote-only

¹⁷⁸ See Finkelstein, *supra* note 29, at 2–3 (noting that “real-time” voting may favor insurgent candidates and that the difficulty of knowing whether shareholders, particularly institutional investors, will revoke their proxies at the last minute, creates tremendous unpredictability); Varallo & Rollo, *supra* note 22, at 4 (noting that electronic voting that occurs in remote-only meetings create an element of surprise and lack of predictability, especially with regard to contested matters).

¹⁷⁹ See Finkelstein, *supra* note 29, at 4.

meetings, such benefit cannot be realized if shareholders perceive such meetings to be a means for reducing their participation. Until this and other concerns are adequately addressed, most corporations will be reluctant to host such meetings—in ten years only a dozen companies have actually conducted a remote-only meeting, and even those companies have not done so consistently.¹⁸⁰ In this regard, even if corporations are offered the option of remote-only meetings, existing evidence reveals that they may not be likely to exercise it.

To date, scholarship regarding electronic meetings has not been supportive of remote-only meetings. Some insist that corporations should not host them at all, instead favoring a format that only provides for remote shareholder participation without supplanting the physical meeting.¹⁸¹ Others, including some corporations that have hosted such meetings, argue that while remote-only meetings may be appropriate, they should never be used to supplant physical meetings if difficult issues will be raised.¹⁸²

The fact that the demand for remote-only meetings remains relatively low indicates that most corporations believe that the drawbacks of such meetings significantly outweigh any benefits. As a result, unless and until corporations can implement safeguards that can address the concerns of shareholders and activists, remote-only meetings may remain virtually obscure.

¹⁸⁰ See *supra* Part II.A.

¹⁸¹ See Boros, *Virtual Shareholder Meetings*, *supra* note 144, at 21–23.

¹⁸² See Weigelt, *supra* note 83.

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APPENDIX A

States	Remote-only meetings	Remote shareholder participation	Restrict to certain companies	Subject to director discretion	Shareholder consent and/or authorization	Specific procedures required	Does not address remote communication
Alabama ALA. CODE § 10-2b-7.01 (2010)							✓
Alaska ALASKA STAT. ANN. § 10.06.405 (West 2010)							✓
Arizona ARIZ. REV. STAT. ANN. §§ 10-701, - 708 (2010)	✓	✓		✓			
Arkansas ARK. CODE ANN. § 4-26- 701 (West 2010)							✓
California CAL. CORP. CODE § 600 (West 2010)	✓	✓		✓	✓	✓	
Colorado COLO. REV. STAT. ANN. § 7-107-101, -108 (West 2010)	✓	✓					
Connecticut CONN. GEN. STAT. ANN. § 33-695 (West 2010)							✓
Delaware DEL. CODE ANN. tit 8, § 211 (West 2010)	✓	✓		✓		✓	
District of Columbia D.C. CODE § 29-101.25 (2010)							✓
Florida FLA. STAT. ANN. § 607.0701 (West 2010)	✓	✓		✓		✓	

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States	Remote-only meetings	Remote shareholder participation	Restrict to certain companies	Subject to director discretion	Shareholder consent and/or authorization	Specific procedures required	Does not address remote communication
Georgia GA. CODE ANN. § 14-2-701 (West 2010)							✓
Hawaii HAW. REV. STAT. § 414-121 (West 2010)	✓	✓		✓		✓	
Idaho IDAHO CODE ANN. § 30-1-701 (West 2010)							✓
Illinois 32 ILL. COMP. STAT. ANN. 5/7.05 (West 2010)		✓					
Indiana IND. CODE ANN. § 23-1-29-1 (West 2010)		✓					
Iowa IOWA CODE ANN. § 409.701 (West 2010)							✓
Kansas KAN. STAT. ANN. § 17-6501 (West 2010)	✓	✓		✓		✓	
Kentucky KY. REV. STAT. ANN. § 271B.7-080 (West 2010)	✓	✓		✓		✓	
Louisiana LA. REV. STAT. ANN. § 12:73 (2010)							✓
Maine ME. REV. STAT. ANN. tit. 13-C, § 701 (2010)							✓

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States	Remote-only meetings	Remote shareholder participation	Restrict to certain companies	Subject to director discretion	Shareholder consent and/or authorization	Specific procedures required	Does not address remote communication
Maryland MD. CODE ANN., CORPS. & ASS'NS § 2-503 (West 2010)	✓	✓		✓	✓	✓	
Massachusetts MASS. GEN. LAWS ANN. ch. 156D, §§ 7.01, 7.08 (West 2010)	✓ (private company only)	✓	✓	✓		✓	
Michigan MICH. COMP. LAWS ANN. §§ 450.1401, .1405 (West 2010)	✓	✓				✓	
Minnesota MINN. STAT. ANN. § 302A.436 (West 2010)	✓	✓		✓		✓	
Mississippi MISS. CODE ANN. § 79-4-7.01 (West 2010)							✓
Missouri MO. ANN. STAT. § 351.225 (West 2010)	✓	✓		✓		✓	
Montana MONT. CODE ANN. § 35-1-516 (2010)		✓ (only companies with 50 or fewer shareholders)	✓				
Nebraska NEB. REV. STAT. § 21-2051 (2010)							✓
Nevada NEV. REV. STAT. ANN. § 78.320 (West 2010)		✓					

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States	Remote-only meetings	Remote shareholder participation	Restrict to certain companies	Subject to director discretion	Shareholder consent and/or authorization	Specific procedures required	Does not address remote communication
New Hampshire N.H. REV. STAT. ANN. § 293-A:7.01 (2010)							✓
New Jersey N.J. STAT. ANN. § 14A:5-1 (West 2010)							✓
New Mexico N.M. STAT. ANN. § 53-11-28 (West 2010)							✓
New York N.Y. BUS. CORP. LAW § 602 (McKinney 2010)							✓ (proposed rule for remote shareholder participation ¹⁸³)
North Carolina N.C. GEN. STAT. ANN. § 55-7-08 (West 2010)		✓		✓			
North Dakota N.D. CENT. CODE ANN. § 10-19.1-75.2 (West 2010)	✓	✓		✓		✓	
Ohio OHIO REV. CODE ANN. § 1701.40 (West 2010)	✓	✓		✓		✓	
Oklahoma OKLA. STAT. ANN. tit. 18, § 1056 (West 2010)	✓	✓		✓		✓	

¹⁸³ S 5793, 2009 State Assemb., Reg. Sess. (NY 2009).

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States	Remote-only meetings	Remote shareholder participation	Restrict to certain companies	Subject to director discretion	Shareholder consent and/or authorization	Specific procedures required	Does not address remote communication
Oregon OR. REV. STAT. ANN. §§ 60.201, .222 (West 2010)		✓					
Pennsylvania 15 PA. CONS. STAT. ANN. § 1704 (West 2010)	✓	✓				✓	
Rhode Island R.I. GEN. LAWS ANN. § 7-1.2-701 (West 2010)	✓	✓				✓	
South Carolina S.C. CODE ANN. § 33-7- 101 (2010)							✓
South Dakota S.D. CODIFIED LAWS § 47- 1A-701 (2010)							✓
Tennessee TENN. CODE ANN. §§ 48-17- 101, -109 (West 2010)	✓	✓					
Texas TEX. BUS. ORGS. CODE ANN. § 6.002 (West 2010)	✓	✓					
Utah UTAH CODE ANN. §§ 16- 10a-701, - 708 (West 2010)	✓	✓					
Vermont VT. STAT. ANN. tit. 11A, § 7.01 (West 2010)	✓	✓					

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States	Remote-only meetings	Remote shareholder participation	Restrict to certain companies	Subject to director discretion	Shareholder consent and/or authorization	Specific procedures required	Does not address remote communication
Virginia VA. CODE ANN. § 13.1-654 (West 2010)		✓					
Washington WASH. REV. CODE ANN. § 23B.07.080 (West 2010)		✓					
West Virginia W. VA. CODE ANN. §§ 31D-7-701, -708 (West 2010)	✓	✓					
Wisconsin Wis. STAT. ANN. § 180.0701 (West 2010)							✓
Wyoming WYO. STAT. ANN. § 17-16-701 (West 2010)	✓	✓		✓		✓	

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APPENDIX B

ARIZONA

ARIZ. REV. STAT. ANN. § 10-701 (2010). Annual Meeting

A. A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

B. Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's known place of business.

* * *

ARIZ. REV. STAT. ANN. § 10-708 (2010). Participation in Shareholders' Meetings

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all shareholders to participate in an annual or special shareholders' meeting by or conduct the meeting through use of any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. If the board of directors in its sole discretion elects to permit participation by such means of communication, the notice of the meeting shall specify how a shareholder may participate in the meeting by such means of communication. The participation may be limited by the board of directors in its sole discretion to specified locations or means of communications. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

CALIFORNIA

CAL. CORP. CODE § 600 (West 2010). Place of Meetings; Annual Meeting; Failure to Hold Annual Meeting; Summary Court order; Special Meetings; Conduct of Meetings by Electronic Transmissions or Electronic Video Screen Communications

(a) Meetings of shareholders may be held at any place within or without this state as may be stated in or fixed in accordance with the

bylaws. If no other place is stated or so fixed, shareholder meetings shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, shareholders not physically present in person or by proxy at a meeting of shareholders may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of shareholders, be deemed present in person or by proxy, and vote at a meeting of shareholders whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (e).

* * *

(e) A meeting of the shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide shareholders (in person or by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any shareholder votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a shareholder pursuant to clause (b) of Section 20 for consent to conduct a meeting of shareholders by electronic transmission by and to the corporation shall include a notice that, absent consent of the shareholder pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

CAL. CORP. CODE § 20 (West 2010). Electronic Transmission by the Corporation Defined

“Electronic transmission by the corporation” means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation,

(2) posting on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a corporation to an individual shareholder or member under this code is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

CAL. CORP. CODE § 21 (West 2010). Electronic Transmission to the Corporation Defined

“Electronic transmission to the corporation” means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the corporation has provided from time to time to shareholders or members and directors for sending communications to the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the corporation has placed in effect reasonable measures to verify that the sender is the shareholder or member (in person or by proxy) or director purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

COLORADO

COLO. REV. STAT. § 7-107-101 (West 2010). Annual Meeting

(1) A corporation shall hold a meeting of shareholders annually at a time and date stated in or fixed in accordance with the bylaws, or,

if not so stated or fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated in or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, annual meetings shall be held at the corporation's principal office.

* * *

COLO. REV. STAT. § 7-108-101 (West 2010). Meetings by Telecommunication

Unless otherwise provided in the bylaws, any or all of the shareholders may participate in an annual or special shareholders' meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

DELAWARE

DEL. CODE ANN. tit. 8, § 211 (West 2010). Meetings of Stockholders

(a)(1) Meetings of stockholders may be held at such place, either within or without this State as may be designated by or in the manner provided in the certificate of incorporation or bylaws, or if not so designated, as determined by the board of directors. If, pursuant to this paragraph or the certificate of incorporation or the bylaws of the corporation, the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (a)(2) of this section.

(2) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxyholders not physically present

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at a meeting of stockholders may, by means of remote communication:

a. Participate in a meeting of stockholders; and

b. Be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

FLORIDA

FLA. STAT. ANN. § 607.0701 (West 2010). Annual Meeting

(1) A corporation shall hold a meeting of shareholders annually, for the election of directors and for the transaction of any proper business, at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at a place stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws, stated in the notice of the annual meeting. If no place is stated in or fixed in accordance with the bylaws, or stated in the notice of the annual meeting, annual meetings shall be held at the corporation's principal office.

* * *

(4) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxy holders not physically present at an annual meeting of shareholders may, by means of remote communication:

(a) Participate in an annual meeting of shareholders.

(b) Be deemed present in person and vote at an annual meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: 1. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the annual meeting by means of remote communication is a shareholder or proxy holder; 2. The corporation shall implement reasonable measures to provide such shareholders or proxy holders a reasonable opportunity to participate in the annual meeting and to vote on matters submitted to the shareholders, including, without limitation, an opportunity to communicate and to read or hear the proceedings of the annual meeting substantially concurrently with such proceedings; and 3. If any shareholder or proxy holder votes or takes other action at the annual meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

HAWAII

HAW. REV. STAT. § 414-121 (West 2010). Annual Meeting

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office. Notwithstanding the foregoing, the bylaws may authorize the board of directors, in its sole discretion, to determine that the annual meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized under subsection (c).

(c) If authorized by the board of directors in its sole discretion, and subject to guidelines and procedures adopted by the board, shareholders and proxies of shareholders not physically present at a meeting of shareholders, by means of remote communication, may:

(1) Participate in a meeting of shareholders; and

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(2) Be deemed present in person and vote at a meeting of shareholders whether the meeting is held at a designated place or solely by means of remote communication; provided that the corporation shall:

(A) Implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxy of a shareholder;

(B) Implement reasonable measures to provide shareholders and proxies of shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with the proceedings; and

(C) Maintain a record of voting or action by any shareholder or proxy of a shareholder that votes or takes other action at the meeting by means of remote communication.

(d) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws shall not affect the validity of any corporate action.

ILLINOIS

805 ILL. COMP. STAT. ANN. 5/7.05 (West 2010). Meetings of Shareholders

Meetings of shareholders may be held either within or without this State, as may be provided in the by-laws or in a resolution of the board of directors pursuant to authority granted in the by-laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

* * *

Unless specifically prohibited by the articles of incorporation or by-laws, a corporation may allow shareholders to participate in and act at any meeting of the shareholders through the use of a confe-

rence telephone or interactive technology, including but not limited to electronic transmission, Internet usage, or remote communication, by means of which all persons participating in the meeting can communicate with each other. A shareholder entitled to vote at a meeting of the shareholders shall be permitted to attend the meeting where space permits, and subject to the corporation's by-laws and rules governing the conduct of the meeting and the power of the chairman to regulate the orderly conduct of the meeting. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

INDIANA

IND. CODE ANN. § 23-1-29-1 (West 2010). Annual Meeting

(a) A corporation must hold a meeting of the shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of Indiana at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

* * *

(d) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in an annual shareholders' meeting by, or through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

KANSAS

KAN. STAT. ANN. § 17-6501 (West 2010). Meetings of Stockholders; Remote Communication; Annual Meeting; Failure to Hold Annual Meeting or Elect Directors; Special Meetings; Election of Directors by Written Ballot.

(a) (1) Meetings of stockholders may be held at such place, either within or without this state, as may be designated by or in the

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manner provided in the articles of incorporation, bylaws or, if not so designated, as determined by the board of directors. If the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors, in its sole discretion, may determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (a)(2).

(2) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(A) Participate in a meeting of stockholders; and

(B) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder; (ii) the corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

KENTUCKY

KY. REV. STAT. ANN. § 271B.7-080 (West 2010). Remote Communication

(1) If the board of directors is authorized to determine the place of an annual or special meeting of shareholders, the board of directors, in its sole discretion, may determine that the meeting shall not be held at any place but shall instead be held solely by means of remote communication under subsection (2) of this section.

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(2) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may by means of remote communication:

(a) Participate in a meeting of shareholders; and

(b) Be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, if:

1. The corporation implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder;

2. The corporation implements reasonable measures to provide shareholders and proxyholders referred to in subparagraph 1. of this paragraph a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and

3. The corporation records any vote or other action taken at the meeting by a shareholder or proxyholder by means of remote communication. The corporation shall maintain as a record the recorded vote or other action taken.

MARYLAND

MD. CODE ANN., CORPS & ASS'NS § 2-503 (West 2010). Meeting Place

(a) Unless the charter provides otherwise, meetings of stockholders shall be held as is:

(1) Provided in the charter or bylaws; or

(2) Set by the board of directors under the provisions of the charter or bylaws.

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(b)(1) Subject to paragraph (2) of this subsection, if the board of directors is authorized to determine the place of a meeting of the stockholders, the board may determine that the meeting not be held at any place, but instead may be held solely by means of remote communication, as authorized by subsection (c) of this section.

(2) At the request of a stockholder, the board of directors shall provide a place for a meeting of the stockholders.

(c) If authorized by the board of directors and subject to any guidelines and procedures that the board adopts, stockholders and proxy holders not physically present at a meeting of the stockholders, by means of remote communication:

(1) May participate in the meeting of the stockholders; and

(2) May be considered present in person and may vote at the meeting of the stockholders, whether the meeting is held at a designated place or solely by means of remote communication, if:

(i) The corporation implements reasonable measures to verify that each person considered present and authorized to vote at the meeting by means of remote communication is a stockholder or proxy holder;

(ii) The corporation implements reasonable measures to provide the stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and

(iii) In the event any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of the vote or other action is maintained by the corporation.

MASSACHUSETTS

MASS. GEN. LAWS ANN. ch. 156D, § 7.01 (West 2010). Annual Meeting

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Except as otherwise permitted by section 7.08, annual shareholders' meetings may be held within or without the commonwealth at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

MASS. GEN. LAWS ANN. ch. 156D, § 7.08 (West 2010). Meetings by Remote Communications; Remote Participation in Meetings

Unless otherwise provided in the articles of organization or bylaws, if authorized by the board of directors: any annual or special meeting of shareholders need not be held at any place but may instead be held solely by means of remote communication, unless the corporation is a public corporation; and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communications:

(1) participate in a meeting of shareholders; and

(2) be deemed present in person and vote at a meeting of shareholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the corporation shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

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MICHIGAN

MICH. COMP. LAWS ANN. § 450.1401 (West 2010). Meetings of Shareholders; Place

Sec. 401. Meetings of shareholders may be held at a place within or without this state as provided in the bylaws. In the absence of such a provision, meetings shall be held at the registered office or such other place as may be determined by the board.

* * *

MICH. COMP. LAWS ANN. § 450.1405 (West 2010). Meetings of Shareholders; Conference Telephone or Other Means of Remote Communication

(1) Unless otherwise restricted by the articles of incorporation or bylaws, a shareholder may participate in a meeting of shareholders by a conference telephone or by other means of remote communication through which all persons participating in the meeting may communicate with the other participants. All participants shall be advised of the means of remote communication and the names of the participants in the meeting shall be divulged to all participants.

(2) Participation in a meeting pursuant to this section constitutes presence in person at the meeting.

(3) Unless otherwise restricted by the articles of incorporation or bylaws, the board of directors may hold a meeting of shareholders conducted solely by means of remote communication.

(4) Subject to any guidelines and procedures adopted by the board of directors, shareholders and proxy holders not physically present at a meeting of shareholders may participate in the meeting by means of remote communication and are considered present in person and may vote at the meeting if all of the following are met:

(a) The corporation implements reasonable measures to verify that each person considered present and permitted to vote at the meeting by means of remote communication is a shareholder or proxy holder.

(b) The corporation implements reasonable measures to provide each shareholder and proxy holder a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

(c) If any shareholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of the vote or other action is maintained by the corporation.

MINNESOTA

MINN. STAT. ANN. § 302A.436 (West 2010). Remote Communications for Shareholder Meetings

Subd. 1. Construction and application. This section shall be construed and applied to:

- (1) facilitate remote communication consistent with other applicable law; and
- (2) be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

Subd. 2. Shareholder meetings held solely by means of remote communication. To the extent authorized in the articles or bylaws and determined by the board, a regular or special meeting of shareholders may be held solely by any combination of means of remote communication through which the shareholders may participate in the meeting, if notice of the meeting is given to every holder of shares entitled to vote required by this chapter for a meeting, and if the number of shares held by the shareholders participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a shareholder by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 302A.449 are met.

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Subd. 3. Participation in shareholder meetings by means of remote communication. To the extent authorized in the articles or bylaws and determined by the board, a shareholder not physically present in person or by proxy at a regular or special meeting of shareholders may, by means of remote communication, participate in a meeting of shareholders held at a designated place. Participation by a shareholder by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 302A.449 are met.

Subd. 4. Requirements for meetings held solely by means of remote communication and for participation by means of remote communication. In any meeting of shareholders held solely by means of remote communication under subdivision 2 or in any meeting of shareholders held at a designated place in which one or more shareholders participate by means of remote communication under subdivision 3:

(1) the corporation shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and

(2) the corporation shall implement reasonable measures to provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to: (i) read or hear the proceedings of the meeting substantially concurrently with those proceedings; (ii) if allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and (iii) if otherwise entitled, vote on matters submitted to the shareholders.

MISSOURI

MO. ANN. STAT. § 351.225 (West 2010). Shareholders' Meeting Prescribed by Bylaws—Participation by Remote Communication

1. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the

absence of any such provisions, all meetings shall be held at the registered office of the corporation in this state.

(2) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication:

(a) Participate in a meeting of shareholders; and

(b) Be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

a. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder;

b. The corporation shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

c. If any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

MONTANA

MONT. CODE ANN. § 35-1-516 (2010). Annual Meeting

(1) A corporation shall hold an annual meeting of shareholders at a time stated in or fixed in accordance with the bylaws.

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(2) Annual shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual meetings must be held at the corporation's principal office.

* * *

(4) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in an annual meeting of the shareholders through a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

NEVADA

NEV. REV. STAT. ANN. § 78.320 (West 2010). Stockholders' Meetings: Quorum; Consent for Actions Taken Without Meeting; Participation by Telephone or Similar Method

* * *

4. Unless otherwise restricted by the articles of incorporation or bylaws, stockholders may participate in a meeting of stockholders by means of a telephone conference or similar methods of communication by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

NEW YORK (PROPOSED ACTION in Senate on June 5, 2009¹⁸⁴)

N.Y. BUS. CORP. LAW § 602. Meetings of Shareholders

AN ACT to amend the business corporation law, in relation to attendance of a meeting of shareholders by remote communication
The People of the State of New York, represented in Senate and Assembly, do enact as follows:

¹⁸⁴ S 5793, 2009 State Assemb., Reg. Sess. (NY 2009).

Section 1. Paragraphs (b), (c) and (d) of section 602 of the business corporation law are relettered paragraphs (c), (d) and (e) and a new paragraph (b) is added to read as follows:

(b)(i) Every corporation whose shares are traded on a stock exchange or in the over-the-counter market shall: (1) implement reasonable measures to provide shareholders not physically present at a shareholders' meeting a reasonable opportunity to witness the proceedings of the meeting substantially concurrently with such proceedings; and (2) provide reasonable means to enable shareholders to vote or cast proxies with respect to matters submitted to the shareholders at a shareholders' meeting by means of electronic communication.

(ii) This paragraph may also apply to other corporations if the board of directors has elected to be subject to this paragraph.

(iii) Nothing required in subparagraphs (i) and (ii) of this paragraph shall limit, restrict or supersede other forms of voting and participation.

(iv) For purposes of this paragraph, "reasonable measures" with respect to witnessing proceedings shall include, but not be limited to audio webcast or other broadcast of the meeting and for voting shall include but not be limited to telephonic and internet voting.

§ 2. Section 605 of the business corporation law, as amended by chapter 746 of the laws of 1963, paragraph (a) as amended by chapter 498 of the laws of 1998, is amended to read as follows:

N.Y. BUS. CORP. LAW § 605. Notice of meetings of shareholders.

(a) Whenever under the provisions of this chapter shareholders are required or permitted to take any action at a meeting, notice shall be given stating the place, date and hour of the meeting, the means of remote communications, if any, by which shareholders and proxyholders may witness the proceedings of the meeting and vote or cast proxies at such meeting and, unless it is the annual meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting.

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NORTH CAROLINA

N.C. GEN. STAT. § 55-7-08 (West 2010). Attendance

To the extent authorized by a corporation's board of directors, a shareholder or the shareholder's proxy not physically present at a meeting of shareholders may attend the meeting by electronic or other means of remote communication that allow the shareholder or proxy (i) to read or to hear the meeting proceedings substantially concurrently as the proceedings occur, (ii) to be read or to be heard substantially concurrently as the shareholder or proxy communicates, and (iii) to vote on matters to which the shareholder or proxy is entitled to vote.

NORTH DAKOTA

N.D. CENT. CODE § 10-19.1-75.2 (West 2010). Remote Communications for Shareholder Meetings

1. This section shall be construed and applied to:

a. Facilitate remote communication consistent with other applicable law; and

b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

2. To the extent authorized in the articles or the bylaws and determined by the board:

a. A meeting of the shareholders may be held solely by any combination of means of remote communication through which the participants may participate in the meeting: (1) If notice of the meeting is given to every holder of shares entitled to vote as would be required by this chapter for a meeting; and (2) If the number of shares held by the shareholders participating in the meeting would be sufficient to constitute a quorum at a meeting.

b. A shareholder not physically present in person or by proxy at a regular or special meeting of shareholders may participate by

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means of remote communication in a meeting of shareholders held at a designated place.

3. In any meeting of shareholders held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of shareholders held at a designated place in which one or more shareholders participate by means of remote communication under subdivision b of subsection 2:

a. The corporation shall implement reasonable measures to:

(1) Verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and

(2) Provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(b) If allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

(c) If otherwise entitled, vote on matters submitted to the shareholders.

b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy if all of the requirements of section 10-19.1-76.2 are met.

OHIO

OHIO REV. CODE ANN. § 1701.40 (West 2010). Who May Call Meeting; Location

* * *

(B) Meetings of shareholders may be held either within or without this state if so provided in the articles or the regulations. The articles or regulations may authorize the directors to determine that the meeting shall not be held at any physical place, but instead may be held solely by means of communications equipment as authorized by division (C) of this section. If the corporation is an issuing public corporation and the articles or regulations do not require that a meeting be held at a particular physical place and also authorize the directors to fix the place of the meeting, the directors may determine that the meeting shall not be held at any physical place, but instead may be held solely by means of communications equipment as authorized by division (C) of this section. In the absence of any such provision, all meetings shall be held at the principal office of the corporation in this state.

(C) If authorized by the directors, the shareholders and proxyholders who are not physically present at a meeting of shareholders may attend a meeting of shareholders by use of communications equipment that enables the shareholder or proxyholder an opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting and to speak or otherwise participate in the proceedings contemporaneously with those physically present. Any shareholder using communications equipment will be deemed present in person at the meeting whether the meeting is to be held at a designated place or solely by means of communications equipment. The directors may adopt guidelines and procedures for the use of communications equipment in connection with a meeting of shareholders to permit the corporation to verify that a person is a shareholder or proxyholder and to maintain a record of any vote or other action.

OKLAHOMA

OKLA. STAT. tit. 18, § 1056 (West 2010). Meetings of Shareholders

A. 1. Meetings of shareholders may be held at such place, either within or without this state, as may be designated by or in the manner provided in the certificate of incorporation or bylaws or, if not so designated, as determined by the board of directors. If, pursuant to this paragraph or the certificate of incorporation or the bylaws of the corporation, the board of directors is authorized to determine the

place of a meeting of shareholders, the board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph 2 of this subsection.

2. If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication:

a. participate in a meeting of shareholders, and

b. be deemed present in person and vote at a meeting of shareholders whether the meeting is to be held at a designated place or solely by means of remote communication, provided that:

(1) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder,

(2) the corporation shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings, and

(3) if any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of the vote or other action shall be maintained by the corporation.

OREGON

OR. REV. STAT. ANN. § 60.201 (West 2010). Annual Meeting

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(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

* * *

OR. REV. STAT. ANN. § 60.222 (West 2010). Shareholder Participation

(1) Unless the articles of incorporation or bylaws provide otherwise, the bylaws or the board of directors, by resolution adopted in advance either specifically with respect to a particular meeting or generally with respect to future meetings, may permit any or all shareholders to participate in an annual or special meeting by, or may permit the conduct of a meeting through, use of any means of communication by which all shareholders participating may simultaneously hear each other. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

(2) The notice of each annual or special meeting of shareholders at which participation in the manner referred to in subsection (1) of this section is permitted shall state that fact and shall describe how any shareholder desiring to participate may notify the corporation of the shareholder's desire to be included in the meeting.

PENNSYLVANIA

15 PA. CONS. STAT. ANN. § 1704 (West 2010). Place and Notice of Meetings of Shareholders

(a) Place.—Meetings of shareholders may be held at such geographic location within or without this Commonwealth as may be provided in or fixed pursuant to the bylaws. Unless otherwise provided in or pursuant to the bylaws, all meetings of the shareholders shall be held at the executive office of the corporation wherever situated. If a meeting of the shareholders is held by means of 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 and pose questions to the directors, the meeting need not be held at a particular geographic location.

RHODE ISLAND

R.I. GEN. LAWS § 7-1.2-701 (West 2010). Meetings of Shareholders

(a) Meetings of shareholders may be held at any place, either within or without this state, that may be stated in or fixed in accordance with the bylaws. If no other place is stated or fixed, all meetings will be held at the registered office of the corporation.

* * *

(g) If authorized by the board of directors in its sole discretion or by the bylaws, and subject to such guidelines and procedures as the board of directors may adopt or the bylaws may prescribe, shareholders and proxy holders not physically present at a meeting of shareholders may, by means of remote communication:

(1) Participate in a meeting of shareholders; and

(2) Be deemed present in person and vote at a meeting of shareholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

(i) The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxy holder;

(ii) The corporation shall implement reasonable measures to provide such shareholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

(iii) If any shareholder or proxy holder votes or takes other action at the meeting by means of remote communication, the corporation shall maintain a record of that vote or other action.

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TENNESSEE

TENN. CODE ANN. § 48-17-101 (West 2010). Shareholders Annual Meeting

(a) At a time stated in or fixed in accordance with the bylaws, a corporation shall hold annually a meeting of shareholders.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

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TENN. CODE ANN. § 48-17-109 (West 2010). Participation by Use of Means of Communication

Unless the charter or bylaws provide otherwise, the corporation may permit any or all shareholders to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder who participates in a meeting by this means is deemed to be present in person at the meeting.

TEXAS

TEX. BUS. ORGS. CODE ANN. § 6.002 (West 2010). Alternative Forms of Meetings

(a) Subject to this code and the governing documents of a domestic entity, the owners, members, or governing persons of the entity, or a committee of the owners, members, or governing persons, may hold meetings by using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting.

(b) If voting is to take place at the meeting, the entity must:

(1) implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and

(2) keep a record of any vote or other action taken.

UTAH

UTAH CODE ANN. § 16-10A-701 (West 2010). Annual Meeting

(1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

UTAH CODE ANN. § 16-10A-708 (West 2010). Meetings by Telecommunication

Unless otherwise provided in the bylaws, any or all of the shareholders may participate in an annual or special meeting of shareholders by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by this means is considered to be present in person at the meeting.

VERMONT

VT. STAT. ANN. tit. 11A, § 7.01 (West 2010). Annual Meeting

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings shall be held in this state, unless permitted in the bylaws of the corporation to be held out of this state. Annual meetings shall be held at the place stated in or fixed in

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accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office. An annual meeting may be conducted by means of any telecommunications mechanism, including video-conference telecommunication.

VIRGINIA

VA. CODE ANN. § 13.1-654 (West 2010). Annual Meeting

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B. Annual shareholders' meetings may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. If the articles of incorporation or bylaws so provide, shareholders may participate in an annual meeting by use of any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

WASHINGTON

WASH. REV. CODE ANN. § 23B.07.080 (West 2010). Shareholder Participation by Means of Communication Equipment

If the articles of incorporation or bylaws so provide, shareholders may participate in any meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

WEST VIRGINIA

W. VA. CODE ANN. § 31D-7-701 (West 2010). Annual Meeting

(a) A corporation must hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings are to be held at the corporation's principal office.

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W. VA. CODE ANN. § 31D-7-708 (West 2010). Conduct of the Meeting

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(e) If the articles of incorporation or bylaws authorize the use of electronic communication for shareholders' meetings, any or all of the shareholders may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all shareholders may simultaneously hear each other during the meeting.

WYOMING

WYO. STAT. ANN. § 17-16-701 (West 2010). Annual Meeting

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office. The board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held by means of remote communication. The board shall take into consideration stockholders' ability to participate by remote communication and provide an alternative means of participation for those stockholders unable to participate by remote communication. If authorized by the board of directors in its sole discretion, and subject to guidelines and procedures the board of directors may adopt, stockholders and proxies not physically present at a meeting of stockholders may, by means of remote communication:

(i) Participate in a meeting of stockholders; and

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(ii) Be deemed present in person and vote at a meeting of stockholders, whether the meeting is held at a designated place or solely by means of remote communication, provided that the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy. The corporations shall implement reasonable measures to provide the stockholders and proxies a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceeding. If any stockholder or proxy votes or takes other action at the meeting by means of remote communication, a record of the vote or other action shall be maintained by the corporation.