

Texas Community Bank Holding Companies may Conduct "Virtual" Shareholder Meetings

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Texas community bank holding companies may want to reconsider plans for upcoming annual shareholder meetings in light of health, transportation and other logistical issues raised by the spread of coronavirus disease 2019 (COVID-19). Although Texas corporations are required to hold an annual shareholder meeting, Texas state law permits companies to hold “virtual” shareholder meetings in lieu of in-person meetings, subject to the company’s bylaws and satisfying several requirements set forth in the Texas Business Organizations Code (the “TBOC”).

Preparing for a Virtual Shareholder Meeting

The TBOC permits a company to hold a shareholder meeting by using “a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination,” subject to the company’s certificate of formation and bylaws.

Companies considering a virtual shareholder meeting should carefully review their bylaws to determine whether a shareholder meeting held by remote communication is permitted or whether bylaw amendments may be necessary. Many bylaws were initially adopted years ago and may not contemplate a shareholder meeting held by remote communication. Rather, bylaws often provide that shareholder meetings will be held at the principal office of the company or at such other place within or without the State of Texas as shall be specified in the notice of the meeting. Boards may decide to amend the bylaws to expressly permit virtual shareholder meetings, while some companies may take the view that their existing bylaws do not conflict with the authority provided in the TBOC and therefore virtual shareholder meetings are permitted without the need for an amendment.

A company holding a virtual shareholder meeting must ensure that whatever system used for the meeting permits each person participating in the meeting to communicate with all other persons participating in the meeting. Reasonable measures also must be implemented to verify that every person voting at the meeting by means of remote communications is sufficiently identified and, as always, companies must keep a record of any vote or other action taken.

Notice Requirements

Companies should follow the usual written notice requirements set forth in the company's governing documents and the TBOC. In addition, notice of a virtual shareholder meeting must include:

- the form of communications system to be used for the meeting;
- the means of accessing the communications system; and
- information on how to access the list of shareholders entitled to vote at the meeting.

Companies that have already mailed a notice for an in-person shareholder meeting may change to a virtual shareholder meeting. However, companies that make such change should provide shareholders with a revised notice of meeting that complies with the requirements for a virtual shareholder meeting described above. The revised notice should be provided in the manner and within the time periods required by a company's bylaws and the TBOC.

Shareholder Lists

In a virtual meeting, the shareholder list must be open to inspection by shareholders during the meeting on a reasonably accessible electronic network.

Although an electronic shareholder list is required to be made available, a corporation is not required to include any electronic contact information of shareholders on the list. Furthermore, a corporation that makes the list available on an electronic data system must take reasonable measures to ensure the information is available only to shareholders of the corporation.

Resources

Several commercial providers have virtual shareholder meeting solutions that allow companies to authenticate attending shareholders and enable shareholders to submit questions, review a shareholder list and vote shares online at the meeting.

The Securities and Exchange Commission ("SEC") regulates the filing and mailing of proxy solicitation materials for public companies. On March 13, 2020, the SEC staff issued guidance for conducting annual meetings in light of COVID-19. Public companies should refer to such guidance in addition to the Texas state law requirements discussed herein, which would also apply to a virtual meeting.

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