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CSA Provides Guidance on Conducting Shareholder Meetings During COVID-19 Pandemic

As discussed in our bulletin entitled "[COVID-19 Pandemic Prompts Canadian Companies to Consider Virtual Shareholder Meetings](#)", an increasing number of companies are considering holding virtual shareholder meetings in response to the concerns raised by COVID-19. On March 18, 2020, the Canadian Securities Administrators (the "**CSA**") announced its broad support for these measures.

On March 20, 2020, the CSA published guidance (the "**CSA Guidance**") for companies conducting annual general meetings of shareholders ("**AGMs**") during the COVID-19 outbreak. The CSA Guidance provides direction as to the conduct of a virtual AGM and to companies that have decided to make changes to a previously announced in-person AGM. The CSA Guidance does not replace or supersede any provisions related to the conduct of shareholder meetings in companies' constating documents or governing corporate statutes. Companies must review their constating documents and governing corporate statutes when determining how their shareholder meetings will be conducted in light of COVID-19 related concerns.

The CSA Guidance applies only to the extent that a shareholder meeting is being held in connection with business that would generally be transacted at an AGM (e.g., the election of directors and approval of amendments to equity incentive plans). Shareholder meetings being held in connection with other matters, including proxy contests, obtaining approval of mergers or acquisitions and

obtaining approval for transactions under Multilateral Instrument 61-101 - *Protection of Minority Securityholders in Special Transactions* ("**Non-AGM Meetings**") may be subject to additional or different requirements. Companies that are considering holding a Non-AGM Meeting virtually or changing a Non-AGM Meeting's date, time or location should contact their principal regulators to discuss what steps would be appropriate in their circumstances.

Virtual AGMs

The CSA Guidance provides that companies conducting virtual-only AGMs (i.e., AGMs with no physical component that are held entirely online) or hybrid AGMs (i.e., AGMs that are held at a physical location in which technology is used to allow shareholders to participate remotely) are expected to do the following:

- Notify securityholders, all parties involved in the proxy-voting infrastructure (including intermediaries, transfer agents and proxy service providers) and other market participants of their intention to hold a virtual-only or hybrid AGM in a timely manner; and
- Provide clear disclosure on relevant logistical considerations, including how securityholders can remotely access, participate in and vote at the virtual-only or hybrid AGM. Companies are expected to include this disclosure in their proxy materials.

Companies that have already filed and mailed proxy materials and intend to change their AGMs to virtual meetings will be permitted to do so without filing or mailing revised proxy materials, provided that they comply with the CSA Guidance on changing an AGM's date, time or location, as discussed below.

Changes to Previously Announced AGMs

Companies that have already filed and mailed proxy materials in connection with an in-person AGM may change that meeting's date, time or location without being required to file or mail revised proxy materials, by doing the following:

- Issuing and filing a news release announcing the change to the date, time or location of the meeting; and

- Taking all reasonable steps necessary to inform all parties involved in the proxy-voting infrastructure (including intermediaries, transfer agents and proxy service providers) of the relevant change.

Companies that decide to change the date, time or location of their AGMs are expected to take the above steps promptly and sufficiently in advance of the meeting date to alert the market of the change in a timely manner.

To the extent that companies have not yet sent out proxy materials, they should consider including disclosure stating that the date, time or location of the meeting may be changed in response to concerns related to COVID-19.

Additionally, the CSA Guidance provides clarification on the application of section 2.15 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* in these circumstances. Under this provision, companies that adjourn or otherwise change an AGM are required to send notice of that adjournment or change to both registered and beneficial shareholders. The CSA Guidance confirms that no exemptive relief is required for companies considering changes or alternatives to their AGMs, provided that registered and beneficial shareholders are treated equally and receive the same information.

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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