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Corporations moving to virtual AGMs

Augmented reality avatars can put attendees in cyber boardroom

By **Jeremy Hainsworth** | **March 25, 2020, 4:10pm**



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With the COVID-19 situation making corporate annual general meetings almost impossible, many companies are working to meet that requirement in the virtual realm.

Indeed, Telus has already received permission to do exactly that with B.C. Supreme Court confirming such a course of action March 11.

“As a technology company, connecting people for good is what we do,” spokesperson Richard Gilhooley said. “We’ve been leveraging the power of our network and encouraging more and more of our shareholders to be a part of our digital annual general meeting since 2018.

“So, this year, Telus will hold a fully virtual and interactive AGM for our shareholders, allowing all shareholders to attend and participate equally no matter where they live.”

This, Gilhooley said, “will ensure the health and safety of our shareholders and team members while complying with any restrictions there may be at that time on public gatherings.”

The change is part of a wider corporate shift made necessary in unusual times, said lawyer Rod Talaifar, a partner with Sangra Moller LLP and UBC adjunct professor of advanced corporate law

What is key, he said, is ensuring corporate governing documents allow for such a change, or finding out if documents can be amended as companies are already in the AGM-planning season. The amendment possibility is one some companies are missing, he said.

Talaifar said companies have a choice between a physical meeting which may not be possible currently, a virtual meeting or a hybrid of the two.

A pitfall of a virtual meeting could be the inability of some shareholders not to attend for whatever reason, leaving AGM decisions open to shareholder challenges.

What’s key, Talaifar said, is, “move fast, figure out if you can do it and find a provider.”

Another roadblock, he said, is traditional opposition to such changes from proxy advisors.

Further, he said, with current physical distancing and regulatory demands for meetings, there is the chance companies could find themselves in noncompliance.

“There’s a lot of moving parts,” Talaifar said. “A lot of companies are quite confused about it.”

That needn’t be the case, he said, advising companies to keep reaching out to find out what they can do.

On March 23, the TSX and TSX-V announced relief measures including time-frame extensions for holding annual shareholder meetings and approvals of stock option plans. The TSX also made allowances for filing of financial statements and adjustments to share buybacks and delisting criteria.

Talaifar said it remains possible that the government could allow regulatory exemptions in the current circumstances.

“I could see them following the lead of the stock exchanges,” he said.

The virtual idea is the Business Council of B.C. has already taken to heart, not only for its AGM but also for strategy sessions, said president Greg D’Avignon.

For the AGM, he said the council has the capacity for 250 people to attend via videoconferencing.

For strategy sessions, D’Avignon said, the council is using augmented reality software allowing meeting attendees to use avatars. “It’s as though you’re actually in the meeting.”

The Canadian Securities Administrators (CSA) has issued guidance (<https://bit.ly/2QLL3CQ>) on the holding of AGMs with COVID-19 in mind.

If a virtual AGM is planned, the following should be considered:

- the reporting issuer should notify its security holders, the parties involved in the proxy voting infrastructure, and other market participants of such plans in a timely manner;
- the issuer should disclose clear directions on the logistical details of the virtual or hybrid AGM, including how security holders can remotely access, participate in, and vote at such AGM;
- If a reporting issuer has not yet sent and filed its proxy-related materials, these disclosures should be included in the reporting issuer’s proxy-related materials, and;
- if the reporting issuer has already sent and filed its proxy-related materials, the reporting issuer does not need to send additional soliciting materials or to update its proxy-related materials solely for the purpose of switching to a virtual or hybrid AGM.

The CSA also specifically noted application of section 2.15 of National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer.

The CSA said a reporting issuer that sends a notice of adjournment or other change related to an AGM to registered holders of its securities is required to concurrently send the notice to its beneficial owners.

“It is our view that no exemptive relief from section 2.15 is required by reporting issuers that are considering changes or alternatives to their AGMs as long as their registered holders and beneficial owners are treated equally and receive the same information,” the CSA guidance said.

jhainsworth@glaciermedia.ca

@jhainswo

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