



NEW YORK
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**COMMITTEE ON
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David Martin
Chair, Corporate Laws Committee, ABA Business Law Section
Covington & Burling LLP
One City Center, 850 Tenth Street, NW
Washington, DC 20001

Re: Proposed Amendments to Chapters 7 and 10 of the Model Business Corporation Act

Dear Mr. Martin:

This letter is submitted on behalf of the Committee on Corporation Law and the Committee on Mergers, Acquisitions and Corporate Control Contests of the New York City Bar Association (the “Committees”) in response to the changes to Chapters 7 and 10 of the Model Business Corporation Act (the “Proposed Changes”) proposed by the Corporate Laws Committee of the ABA Business Law Section (the “Corporate Laws Committee”), which would permit a board of directors to specify that the corporation’s shareholders’ meetings may occur solely by means of remote participation (as used herein, a “remote-only” meeting).

The Committees are composed of experienced attorneys whose practices focus on merger and acquisition transactions and related corporate law, corporate governance and securities regulation matters. The Committees include lawyers with diverse perspectives on corporate and securities law issues, including partners at law firms and in-house counsel to issuers, investors and financial advisors.

The Committees have discussed the Proposed Changes at recent meetings and believe that they would be beneficial.

The Committees acknowledge that corporations are increasingly utilizing technology to make annual and special meetings more accessible to shareholders by permitting or encouraging remote participation. It is, therefore, unsurprising that corporations may wish to hold remote-only shareholder meetings. While not all corporations may wish to implement remote-only meetings, the Committees agree that it would be helpful for the Model Business Corporation Act to provide that corporations may hold entirely virtual meetings.

A corporation's board of directors, or a subset thereof, is typically authorized to determine the mechanics of shareholder meetings, including setting the time and place for shareholder meetings called by the corporation or, where applicable, by shareholders. The Committees therefore believe that, as provided in the Proposed Changes, it is appropriate for the corporation's board of directors to determine whether and when to hold shareholder meetings solely by remote participation. The Committees note that the Proposed Changes provide that this authority may be precluded by the corporation's bylaws; the Committees are of the view that this strikes the correct balance by permitting a majority of shareholders to require in-person meetings if they determine that remote-only meetings are not appropriate or beneficial for a particular corporation.

The Committees also believe it is important that, as provided in the Proposed Changes, the requirements that apply when a corporation permits remote participation in an in-person meeting – verification that each person participating as a shareholder is a shareholder and provision of a reasonable opportunity to participate in the meeting and to vote on matters submitted to shareholders – should also apply to remote-only meetings. These requirements will help to ensure that, no matter the means of participation, the shareholder meeting remains an opportunity for shareholders to participate in the corporation's governance process.

For the reasons discussed above, the Committees encourage the Corporate Laws Committee to adopt the Proposed Changes. If you have any questions regarding the foregoing, please do not hesitate to contact Trevor Norwitz, Chair of the Committee on Mergers, Acquisitions and Corporate Control Contests, at (212) 403-1333 or TSNorwitz@wlrk.com, or Robert Miller, Chair of the Committee on Corporation Law, at (319) 335-9001 or robert-t-miller@uiowa.edu.

Respectfully submitted,

Committee on Corporation Law
Robert T. Miller, Chair

Committee on Mergers, Acquisitions
and Corporate Control Contests
Trevor S. Norwitz, Chair