State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2020-024

ORDER CLARIFYING THAT IN-PERSON SHAREHOLDERS' AND MEMBERS' MEETINGS ARE TEMPORARILY UNLAWFUL AND DIRECTING THAT SUCH MEETINGS MAY BE HELD VIRTUALLY

On March 11, 2020, Executive Order 2020-004 declared a statewide public health emergency pursuant to the Public Health Emergency Response Act and invoked gubernatorial powers under the All Hazard Emergency Management Act due to the COVID-19 pandemic. On April 6, 2020, the statewide public health emergency declared in that Order was renewed until April 30, 2020, along with all other orders and directives issued in response to the public health emergency, through Executive Order 2020-022. Those Orders are incorporated by reference herein.

Consistent with the powers provided to her during a public health emergency under the Public Health Emergency Response Act, the Secretary of Health has issued a series of Public Health Emergency Orders ("PHEO") designed to severely restrict public gatherings as a necessary measure to slow the spread of COVID-19 and to mitigate its potentially devastating impacts on public health. The most recent PHEO, issued on April 6, 2020, prohibits nearly all public or private "mass gatherings" of five (5) or more individuals in a single room or connected space, permits only certain essential businesses and services to operate under certain conditions, and prohibits many other businesses, services, and activities that would cause additional person-to-person contact and increase the risk of spreading COVID-19. It also advises against any out-

of-state travel and against leaving home for any reason other than "those outings absolutely necessary" for "health, safety, or welfare."

While they are vital tools for corporate governance and accountability, in-person components of annual and special shareholders' meetings have not been identified as "essential" and have not been exempted from the PHEO's prohibition on "mass gatherings." There are good reasons not to exempt this kind of meeting, which could require a large group of individuals to travel from different parts of New Mexico and from out-of-state, and to gather together indoors in close proximity for a lengthy meeting. At the conclusion of the meeting, those individuals would then disperse back home and potentially spread COVID-19 in their home communities. That is why in-person shareholders' meetings that could bring five (5) or more individuals together in a single enclosed space are temporarily unlawful under the PHEO.

There are other practical constraints on shareholders' meetings that are unique to this public health crisis. For instance, Executive Order 2020-013 requires all out-of-state travelers to New Mexico who have traveled through an airport to self-quarantine or self-isolate for no less than fourteen (14) days after arriving in the State and the narrow exceptions to that requirement would not include out-of-state shareholders traveling to attend a shareholders' meeting. This would render any in-person attendance by an out-of-state shareholder highly inconvenient.

Although in-person shareholders' meetings and other in-person forms of collective corporate governance are both impractical and unwise during the COVID-19 pandemic, it is important that corporate governance and accountability continue in the most normal manner that is possible during this time. Recognizing this fact, on March 13, 2020, the United States Securities and Exchange Commission ("SEC") issued "Staff Guidance for Conducting Annual Meetings in Light of COVID-19 Concerns" ("SEC Guidance") which relaxes certain

State Capitol • Room 400 • Santa Fe, New Mexico 87501 • 505-476-2200

requirements and explains how virtual or hybrid meetings can be lawfully conducted under federal law during the COVID-19 pandemic.

It is important that entities that are required to hold shareholders' meetings and similar meetings receive clear guidance as to how such meetings can be held in compliance with temporary PHEOs and other orders necessitated by COVID-19 and to provide such guidance for a period of several months so that such entities can plan accordingly.

The All Hazards Emergency Management Act authorizes me to "provide those resources and services necessary to minimize economic or physical harm until a situation becomes stabilized" and to take any "action necessary to protect the public health, safety and welfare." NMSA 1978, § 12-10-4(B)(3). That Act also authorizes me to issue necessary orders to carry out the State's emergency response. NMSA 1978, § 12-10-4(B)(2).

Now, for the reasons set forth above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby order and direct as follows:

1. I hereby order that any entity with a shareholders' meeting scheduled in April, May, or June of this year space are to be conducted by audiovisual means. Any statutory provisions that could be read to require in-person attendance at a shareholders' meeting, including but not limited to NMSA 1978, Sections 53-11-28 and 53-11-29, is preempted by any and all PHEOs issued by the Department of Health. Moreover, any corporate bylaw requiring in-person shareholders' meetings is temporarily invalid and unenforceable to the extent that it would require violating a PHEO. See NMSA 1978, § 53-11-27 (stating that corporate bylaws "may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law").

State Capitol • Room 400 • Santa Fe, New Mexico 87501 • 505-476-2200

2. I direct that any entity required to hold an in-person shareholders' meeting shall permit shareholder attendance and/or participation through a "virtual" meeting. A "virtual" meeting utilizes audio-visual technology to ensure shareholder attendance of the meeting and participation in the meeting to the same extent as would be allowed through an in-person meeting. The entity shall provide notice of the meeting and conduct the meeting according to the requirements and recommendations set forth in the SEC Guidance. The entity shall take any additional steps it deems necessary to inform shareholders of virtual attendance and participation options.

3. I further order that any nonprofit entity with a members' meeting scheduled in April, May, or June of this year may not convene an in-person members' meeting during those months, because such a meeting would violate lawful orders from the Department of Health and would also constitute an unacceptable public health risk. Any statutory provisions that could be read to require in-person attendance at a members' meeting, including but not limited to NMSA 1978, Sections 53-8-13 and 53-8-14, is preempted by any and all PHEOs issued by the Department of Health. Moreover, any corporate bylaw of a nonprofit requiring in-person members' meetings is temporarily invalid and unenforceable to the extent that it would require violating a PHEO. See NMSA 1978, § 53-8-12(A) (stating that corporate bylaws of nonprofits "may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law").

4. I direct any nonprofit entity that is prohibited from holding an in-person members' meeting to allow for member attendance and/or participation through a "virtual" meeting. A "virtual" meeting utilizes audio-visual technology to ensure member attendance of the meeting and participation in the meeting to the same extent as would be allowed through an

in-person meeting. The nonprofit entity shall provide notice of the meeting and conduct the meeting according to any requirements and recommendations under federal law. The entity shall take any additional steps it deems necessary to inform members of virtual attendance and participation options.

5. This Order is limited to those shareholder meetings or non-profit members' meetings that bring together five (5) or more people.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until the Governor rescinds it.

ATTEST:

Maggie Toulouse Oliver

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 9TH DAY OF APRIL 2020

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

Michelle Lujan Grisham

MICHELLE LUJAN GRISHAM
GOVERNOR

State Capitol • Room 400 • Santa Fe, New Mexico 87501 • 505-476-2200