STATE OF MINNESOTA
Executive Department

Governor Tim Walz

Emergency Executive Order 20-43

Allowing Shareholders Flexibility to Hold Remote Meetings and Avoid Gatherings During the COVID-19 Peacetime Emergency

I, Tim Walz, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

The COVID-19 pandemic presents an unprecedented challenge to our State. Minnesota has taken proactive steps to ensure that we are ahead of the curve on COVID-19 prevention and response. On March 13, 2020, I issued Executive Order 20-01 and declared a peacetime emergency because this pandemic, an act of nature, threatens the lives of Minnesotans, and local resources are inadequate to address the threat. On April 13, 2020, after notifying the Legislature, I issued Executive Order 20-35, extending the peacetime emergency declared in Executive Order 20-01.

In Minnesota Statutes 2019, section 12.02, the Minnesota Legislature recognized the "existing and increasing possibility of the occurrence of natural and other disasters of major size and destructiveness" and conferred upon the Governor the emergency and disaster powers provided in Chapter 12 to "ensure the preparations of this state will be adequate to deal with disasters," to "generally protect the public peace, health, and safety," and to "preserve the lives and property of the people of the state."

Pursuant to Minnesota Statutes 2019, section 12.21, subdivision 1, the Governor has general authority to control the State's emergency management. Minnesota Statutes 2019, section 12.21, subdivision 3(7), authorizes the Governor to cooperate with federal and state agencies in "matters pertaining to the emergency management of the state and nation." This includes "the direction or control of . . . public meetings or gatherings." Pursuant to subdivision 3 of that same section, the Governor may "make, amend, and rescind the necessary orders and rules to carry out the provisions" of Minnesota Statutes 2019, Chapter 12. When approved by the Executive Council and filed in the Office of the Secretary of State, such orders and rules have the force and effect of law during the pendency of a peacetime emergency.

Annual shareholder meetings are an integral part of corporate governance, allowing shareholders to elect corporate directors, ratify independent auditors, advise on executive compensation, and exercise other important oversight functions. These meetings are often held in person, but during

the COVID-19 pandemic, in-person meetings conflict with established guidance from the Centers for Disease Control and Prevention and the Minnesota Department of Health. This public health guidance encourages businesses to avoid in-person gatherings.

On April 7, 2020, the United States Securities and Exchange Commission ("SEC") published guidance for conducting shareholder meetings in light of concerns related to the COVID-19 pandemic. To encourage appropriate public health practices, including social distancing and avoidance of large gatherings, the SEC has provided relief from certain regulations regarding the provision of notice for virtual meetings or remote communication. Corporations may announce in filings made with the SEC changes in the meeting date, location, or form (*e.g.*, the use of "virtual" meetings) without incurring the cost of an additional physical mailing. Due to difficulties that shareholders may face as a result of COVID-19, the guidance also encourages companies to provide alternative means, such as telephone, for shareholders to present their proposals at annual meetings. The SEC has also allowed companies to provide certain notices to shareholders through required public filings and press releases. In response to this guidance, other states have already provided regulatory flexibility to encourage virtual meetings.

Minnesota Statutes 2019, section 302A.436, allows for shareholder meetings to be held by remote means. Minnesota Statutes 2019, section 302A.435, requires that corporations provide shareholders notice of a meeting at least ten days before the meeting and specifies acceptable methods of providing notice, including notice by mail. Waiving physical notice requirements will encourage corporations to hold remote shareholder meetings, ensuring adherence to public health best practices and maximizing shareholder participation during the COVID-19 pandemic.

For these reasons, I order as follows:

1. Consistent with federal guidance, during the peacetime emergency declared in Executive Order 20-01 (including any extensions to that peacetime emergency), and to protect Minnesota businesses and shareholders, with respect to a corporation subject to the reporting requirements of sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations promulgated under the Act:

    a. If, as a result of the public health threat caused by the COVID-19 pandemic, a board of directors wishes to change a meeting currently noticed for a physical location to a meeting conducted solely by remote communication, it may notify shareholders of the change at least ten days before the meeting by both identifying the change in a document publicly filed by the corporation with the SEC pursuant to sections 13, 14, or 15(d) of the Act and by issuing a press release that identifies the change. The press release must promptly be posted on the corporation's website after release. In addition, notification must simultaneously be provided to shareholders by email, if those email addresses are known to the corporation.

    b. If it is impracticable for a corporation to convene a currently noticed meeting of shareholders at the physical location for which it has been noticed due to the public health threat caused by the COVID-19 pandemic, such corporation

may adjourn such meeting to another date or time, to be held by remote communication, by providing notice of the date and time and the means of remote communication in a document filed by the corporation with the SEC pursuant to sections 13, 14, or 15(d) of the Act and by issuing a press release, which must promptly be posted on the corporation's website after release. In addition, notification must simultaneously be provided to shareholders by email, if those email addresses are known to the corporation.

Pursuant to Minnesota Statutes 2019, section 4.035, subdivision 2, and section 12.32, this Executive Order is effective immediately upon approval by the Executive Council.

A determination that any provision of this Executive Order is invalid will not affect the enforceability of any other provision of this Executive Order. Rather, the invalid provision will be modified to the extent necessary so that it is enforceable.

Signed on April 24, 2020.

Tim Walz
Governor

Filed According to Law:

Steve Simon
Secretary of State

Approved by the Executive Council on April 24, 2020:

Alice Roberts-Davis
Secretary, Executive Council