



COMMONWEALTH OF MASSACHUSETTS

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January 21, 2021

Updated Industry Guidance Regarding Annual Meetings for Massachusetts Chartered Credit Unions

On March 10, 2020, the Governor declared a state of emergency due to the outbreak of a novel coronavirus (COVID-19). The Governor subsequently issued a series of orders in response to the pandemic, several of which limited the size of public and private gatherings. On June 12, 2020, the Massachusetts Division of Banks (Division) issued industry guidance (June 2020 Guidance) regarding credit union annual meetings. The June 2020 Guidance only addressed annual meetings that were scheduled to be held in 2020. The Division is now providing further guidance to regulated credit unions regarding the annual meeting requirement for 2021.

In light of the statutory language of Massachusetts General Laws chapter 171, section 11 and the COVID-19 pandemic, the Division's June 2020 Guidance offered the option for credit unions to either postpone their 2020 annual meetings into 2021 if necessary, or conduct a virtual or hybrid annual meeting in accordance with the June 2020 Guidance.¹ The June 2020 Guidance established that any credit union that opted to postpone holding an in-person annual meeting or conduct a virtual or hybrid annual meeting would not be subject to any adverse regulatory finding by the Division as a result of proceeding with either of those options. The Division is providing the following further guidance both to supplement the June 2020 Guidance for any credit unions that have not yet held their 2020 annual meeting, and to clarify the Division's expectations for 2021 annual meetings.

2021 Annual Meeting

As noted, the Division's June 2020 Guidance provided scheduling flexibility for credit unions in light of the COVID-19 pandemic and permitted credit unions to postpone their 2020 annual meetings until 2021. While the Division recognizes the ongoing nature of the pandemic, it is the Division's position that credit unions should not postpone their annual meetings indefinitely. As such, credit unions should plan to

¹ Massachusetts General Laws chapter 171, section 11 states that the annual meeting shall be held at such "place" as the by-laws provide, but does not expressly address whether a credit union is permitted to conduct the annual meeting either solely by remote communication or through a combination of remote communication in conjunction with limited in-person attendance of members. As also noted in the June 2020 Guidance, section 11 further provides that the voting methods of the credit union "shall be subject to conditions and limitations as the commissioner may establish."

hold their 2021 annual meetings either as an in-person meeting held in accordance with the then-applicable public health guidance on in-person gatherings, or as virtual or hybrid meetings, in accordance with the Division's June 2020 Guidance. Consistent with the June 2020 Guidance, any credit union that opts to conduct a virtual or hybrid annual meeting will not be subject to any adverse regulatory finding by the Division as a result of proceeding with that option. To the extent possible, each credit union should hold its 2021 annual meeting (or its combined 2020/2021 meeting, as described below) by April 30, 2021, consistent with G. L. chapter 171, section 11.

Waiver of Separate 2020 Annual Meeting

Credit unions that have not yet held their 2020 annual meeting are not required to hold separate 2020 and 2021 annual meetings. Rather, at its 2021 annual meeting, the credit union should consider and vote on any matters that would have been considered at the 2020 annual meeting. The annual meeting minutes should reflect such considerations. Further, the Division anticipates that there may be questions regarding director elections and director terms expiring in 2020. For credit unions that did not hold a 2020 annual meeting and have directors whose terms were set to expire in 2020, the credit union should treat such terms as extending until elections are held and their successors are chosen in 2021.

If you have any questions on this updated guidance or the June 2020 Guidance, please contact Gregory Short, Deputy General Counsel, at (617) 956-1547 or gregory.short@mass.gov.

Sincerely,

Mary L. Gallagher
Commissioner of Banks

PRIOR INDUSTRY GUIDANCE ISSUED ON JUNE 12, 2020:

**Industry Guidance Regarding Annual Meetings for Massachusetts Chartered
Credit Unions**

The Massachusetts Division of Banks (Division) is issuing this industry guidance in response to requests for clarification of supervisory expectations during the 2019 novel Coronavirus (COVID-19) emergency and anticipated continuing social distancing protocols relative to the annual meeting requirement set forth in Massachusetts General Laws chapter 171, section 11.

The Division recognizes that the Governor's March 10, 2020 Executive Order declaring a State of Emergency² and subsequent order (Order)³ prohibiting gatherings of 10 or more individuals directly

² Executive Order No. 591, *Declaration of a State of Emergency to Respond to COVID-19* (March 10, 2020).

³ COVID-19 Order No. 13, *Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People*, (March 23, 2020) and COVID-19

impacts the ability of Massachusetts-chartered credit unions (credit union or credit unions) to hold their annual membership meetings as they normally would. In the time since Governor Baker issued Executive Order 591 declaring a state of emergency in the Commonwealth and the release of subsequent social distancing guidelines to confront the COVID-19 pandemic, the Division has received inquiries from credit unions about whether the Division could provide additional clarification regarding the annual meeting requirement during this declared emergency. With respect to credit unions that have not yet held their annual meeting, the Division is issuing the following industry guidance in an effort to provide further scheduling flexibility for credit unions with respect to holding their annual meetings. In addition, the Division is providing this guidance to express its non-objection to the use of remote communications to conduct the annual meeting either as a virtual meeting or as a hybrid meeting that includes the limited in-person attendance of members in which social distancing and related guidelines on larger gatherings would be followed to protect the health and safety of members and credit union personnel.

Postponement of Annual Meeting

A Massachusetts credit union that has not yet held its 2020 annual membership meeting may postpone its annual meeting until the State of Emergency is lifted, the Order has expired or is rescinded, or such time as the credit union believes it may safely hold its annual meeting. The Division recognizes that even after the State of Emergency is lifted and the Order expires or is otherwise no longer in effect, that adhering to recommended social distancing protocols or guidance may nonetheless counsel against holding an in-person annual meeting of the membership. Through this industry guidance, the Division is confirming that credit unions will not be subject to any adverse regulatory finding by the Division for such delay if the timing of the postponed meeting were to be held on a date beyond the statutory deadline. The Division further recognizes that such postponement(s) may continue through 2020. If a credit union chooses to hold a postponed in-person annual meeting, the meeting should be held in accordance with any social distancing or public health guidelines for larger in-person gatherings that may be recommended at that time. Credit Unions should ensure that notice of the annual meeting postponement(s) are communicated to members in accordance with the credit union's by-laws.

Virtual/Hybrid Annual Meeting with Voting by Mail

The Division has considered whether credit unions may hold their annual meetings by utilizing remote communication (virtual meeting) or through a combination of remote communication in conjunction with limited in-person attendance of members (hybrid meeting). A credit union may also utilize mail voting with either option. For credit unions that do not wish to postpone their annual meeting for an indefinite or extended period of time, the Division has determined that in light of the COVID-19 pandemic and its continuing risks, such credit unions may conduct virtual or hybrid annual meetings.⁴ The Division has determined that a virtual meeting convened via telephonic means may satisfy the requirements for the annual meeting. This option may also be combined with voting by mail if the credit union chooses. Credit

Order No. 30, *Order Further Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People* (April 28, 2020).

⁴ Massachusetts General Laws chapter 171, section 11 provides that the voting methods of the credit union "shall be subject to conditions and limitations as the commissioner may establish."

unions that wish to offer the *additional* option of accessing the meeting remotely via a synchronous, real-time videoconference may do so as long as participation by telephone is also available. The notice of the annual meeting must include clear instructions describing how to access the meeting by remote communication and procedures for how members will be able to participate in the meeting, including how they will be able to present questions either prior to or during the annual meeting.

Credit Unions wishing to exercise a virtual meeting option should adhere to the following:

- Credit Union members must be notified of the virtual or hybrid annual meeting in accordance with the credit union's by-laws, and provide all necessary information for accessing the meeting.
- Notice of the annual meeting must also include an agenda for the meeting with a brief explanation of the items to be addressed. If the credit union is utilizing mail voting, it should also include a mail ballot for credit union members to vote on the proposals presented during the annual meeting.
- The procedures governing the virtual or hybrid meeting must include reasonable provisions that will allow the credit unions to verify the identity of the members that join through a remote communication method.
- Technical support should be available during the annual meeting to assist any members that experience difficulties accessing the meeting or participating through remote communications to ensure individuals do not miss the opportunity to ask questions or engage in discussions.
- If the credit union chooses to also utilize voting by mail, the annual meeting should be held open for an extended period of time so that mail ballots may be received by the credit union and tallied by credit union officials. Extended hours for the annual meeting would permit the credit union to receive completed ballots by mail or allow an individual to deliver their completed ballot in-person at one of the credit union's office locations. The notice of the meeting must also specify the date by which such ballots must be received in order for the vote of each member to be counted. The meeting will be closed following the deadline specified for return of the mail ballots. In addition to complying with the notice requirement(s) adopted in the credit union's by-laws, the credit union should take all other reasonable steps to ensure members are notified of the virtual or hybrid annual meeting.

If the credit union's board of directors elects to postpone the 2020 annual meeting due to COVID-19 considerations, the board meeting minutes should record the decision by the board to postpone the annual meeting to a date following the termination of the declared emergency. Likewise, if the board decides to conduct the 2020 annual meeting by remote communication through a virtual or hybrid meeting, the board meeting minutes should also record this board decision.

A credit union may also wish to review and ratify all actions taken during the 2020 virtual or hybrid annual meeting at its next annual or special meeting.

Recognizing the significant governance considerations and challenges that have been presented by the COVID-19 pandemic, credit unions may also wish to review their bylaws in the weeks and months

ahead to identify opportunities for possible amendments that would provide additional discretion and flexibility, where permissible, to respond to any similar emergency circumstances in the future.

The guidance provided above on postponing the annual meeting and conducting the annual meeting by remote communication applies solely to the 2020 annual meeting.

If you have any questions, please contact Merrily Gerrish, General Counsel, at (617) 956-1514 or merrily.gerrish@mass.gov.

Sincerely,

Mary L. Gallagher
Commissioner of Banks