

Electronic Transmission by or to the Corporation

Members and directors may receive notice of, and participate in, meetings by “electronic transmission.” Corp C §§5211(a)(6), 5510(a), (f), 5511, 7211(a)(6), 7510(a), (f), 7511, 9211(a)(6), 9411(a). “Electronic transmission” refers to (Corp C §§20–21)

- Fax or e-mail delivered to a fax number or e-mail address that the corporation and the member have provided to each other to receive notices or to communicate at the meeting;
- A posting on an electronic message board or network similarly designated (and if directed by the corporation to the member, together with a separate notice of the posting); or
- “Other means of electronic communication.” (The reference to “other means” in the statute is apparently intended to capture subsequent advances in communication technology.)

Requirements. Any electronic transmission must create a record that is capable of retention, retrieval, and review for later rendering into a tangible form. Corp C §§20–21. Electronic transmission by the corporation is effective only if the director or member has provided an unrevoked consent to communicate in such a fashion. In addition, if the recipient is a natural person receiving the communication in his or her capacity as a member (as opposed to receiving the communication in the role of a director or officer), the consent to electronic transmission must be preceded by or include (Corp C §20)

a clear written statement to the recipient as to (a) any right of the recipient to have the record provided or made available on paper or in nonelectronic form, (b) whether the consent applies only to that transmission, to specified categories of communications, or to all communications from the corporation, and (c) the procedures the recipient must use to withdraw consent.

Electronic transmission to the corporation is effective only if the corporation has placed in effect reasonable measures to verify that the sender is the member or director purporting to send the communication. Corp C §21.

Use at member and board meetings. When electronic communication is used for member meetings, the corporation must implement reasonable measures to provide participants the opportunity to vote, read, or hear the proceedings on a substantially concurrent basis with other participants, and a record of votes must be kept. Corp C §§5510(f), 7510(f), 9411(f). When electronic communication is used for board meetings, all participants must be able to communicate concurrently and propose or interpose objections to actions. Corp C §§5211(a)(6), 7211(a)(6), 9211(a)(6).