

SEC Issues Guidance for Public Companies Holding Annual Meetings in Light of COVID-19 Impact

March 17, 2020

KEY POINTS

In the wake of the Coronavirus Disease 2019 (COVID-19) and its impact on conducting in-person meetings, the Securities and Exchange Commission (SEC) has issued guidance for issuers on how to conduct annual meetings. The SEC clarified matters related to:

- Changing the date, time or location of previously announced annual meetings without mailing additional proxy materials or amending existing proxy materials.
 - Conducting “virtual” or “hybrid” annual shareholder meetings.
 - Shareholder proposals pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.
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On March 13, the staff of the Division of Corporation Finance and the Division of Investment Management of the SEC (the Staff) issued guidance for issuers conducting annual shareholder meetings given the impact of the COVID-19 on the conduct of in-person meetings.

The Staff has also advised issuers in need of additional assistance relating to deadlines, delivery obligations or public filings to contact the Division of Corporation Finance directly with requests for guidance or relief.

Changes to Date, Time or Location of Annual Meeting

The Staff’s guidance provides that an issuer may change the date, time or location of a previously announced annual meeting without mailing additional proxy materials or amending its existing proxy materials, if the issuer (1) issues a press release announcing the change, (2) files the announcement with the SEC on EDGAR as definitive additional soliciting material and (3) takes all reasonable steps necessary to inform other intermediaries in the proxy process and other relevant market participants of the change.

Issuers changing the date, time or location of previously announced annual meetings should take the outlined actions promptly after making the decision, so that the market is alerted to the change in a timely manner. Issuers that have not yet mailed and filed their definitive proxy materials should consider disclosing in their proxy materials the possibility that the date, time or location of the meeting may need to be changed due to the impact of COVID-19.

Virtual Shareholder Meetings

The Staff's guidance provides that issuers planning to conduct a "virtual" annual meeting or a "hybrid" annual meeting (allowing both in-person and electronic participation), to the extent permitted by state law, must disclose the meeting plans with clear directions as to the logistical details for the virtual or hybrid meeting. Issuers that have not yet filed and mailed their definitive proxy materials should include such disclosures in their proxy materials. Issuers that have already filed and mailed their proxy materials do not need to mail additional materials solely to disclose a switch to a virtual or hybrid meeting but must disclose the change in accordance with the steps described above for a change in the date, time or location of an annual meeting.

Proxy advisory firms, including ISS and Glass Lewis, and the Council of Institutional Investors have also indicated a receptiveness to virtual meetings for this proxy season, in light of the impact of COVID-19.

Given the foregoing, and considering, among other factors, the recommendations for social distancing during this pandemic (as reflected in the latest federal recommendation that Americans avoid gatherings of more than 10 people and steps being taken by state and local governments to close schools, restaurants, bars and other locations) and the uncertainties associated with the pandemic's trajectory in the United States, any issuer organized in a jurisdiction (such as Delaware) that permits annual shareholder meetings to be held virtually, and having bylaws that permit virtual shareholder meetings, is well advised to consider taking that approach this proxy season. This is the case even if the issuer originally intended to hold an in-person meeting, as disclosed in a previously filed proxy statement, or if the issuer does not expect a large number of in-person attendees at its annual meeting.

Shareholder Proposals

The Staff's guidance also addresses the impact of COVID-19 on shareholder proposals. Under Rule 14a-8(h) under the Securities Exchange Act of 1934, as amended (the Exchange Act), a shareholder proponent of a shareholder proposal or their representative must personally appear at the meeting where the proposal will be presented, if the meeting is held in physical form. The Staff has encouraged issuers, to the extent feasible under state law, to provide shareholder proponents or their representatives flexibility to present their proposals at the annual meeting through alternative means, including allowing participation by phone.

Furthermore, Exchange Act Rule 14a-8(h)(3) provides that if a shareholder proponent or its representative fails to appear in person at the meeting in which the proposal will be presented, without "good cause," the issuer is permitted to exclude proposals from such proponent for meetings held during the following two calendar years. The Staff's guidance provides that failure to appear due to the inability to travel or resulting from other hardships relating to COVID-19 would be considered "good cause" for purposes of this rule.

Other Regulatory Relief

The Staff's new guidance for annual meetings follows conditional regulatory relief that the SEC issued on March 4, providing a publicly traded company with an additional 45 days to file certain reports, including most periodic or current reports, that would have been due during the period of March 1-April 30, if the company is unable to meet a filing deadline due to circumstances related to COVID-19. In order to take advantage of the relief, an issuer must issue a current report on Form 8-K or Form 6-K, as applicable, with a summary of why the relief is necessary in the particular circumstances.

The full text of the Staff's guidance for annual meetings is available [here](#).

The full text of the SEC's regulatory relief is available [here](#).

CONTACTS

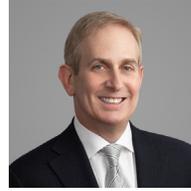
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