



Securities Law ADVISORY ■

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SEC Provides Guidance on the Possible Impacts of COVID-19 on Annual Meetings

On March 13, 2020, the staff of the Division of Corporation Finance and the Division of Investment Management of the U.S. Securities and Exchange Commission (SEC) released [Staff Guidance](#) to assist issuers' compliance with federal proxy and annual meeting rules given the public health and economic effects of the coronavirus (COVID-19).

Specifically, this guidance covers the procedure for changing the date, time, or location of an annual meeting; the process for holding virtual shareholder meetings; and guidance for shareholders that are unable to attend annual meetings to present proposals.

This guidance applies to all issuers registered under Section 12 of the Securities Exchange Act of 1934, as amended. The SEC recognizes that the questions and issues during this time are unique and will vary across issuers and urges all parties involved in the proxy process to work together in ensuring that all federal proxy requirements are met.

Changing the Date, Time, or Location of an Annual Meeting

Not surprisingly, the SEC has received questions from issuers that wish to or are contemplating changing the date, time, or location of their annual meeting because of COVID-19 and the social distancing associated with slowing its spread.

Proxy statements that have already been filed and mailed

The SEC advised issuers that have *already* filed and mailed their definitive proxy statements to inform their shareholders of a change in date, time, or location by filing additional information with the SEC without requiring them to mail additional materials or amend their proxy materials.

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Issuers in this situation must do the following if they desire to change the date, time, or location of an annual meeting:

- Issue a press release announcing the change.
- File the announcement as definitive additional soliciting material on EDGAR.
- Take all reasonable steps necessary to inform other intermediaries in the proxy process, including any proxy service provider, national securities exchange, and other relevant market participants.

The SEC requests that applicable issuers take these steps promptly after making the decision to change the date, time, or location of their annual meeting in order to keep the market sufficiently informed.

Proxy statements that have not been filed and mailed

Issuers that have *not* yet mailed or filed their definitive proxy statements should consider whether to include disclosures in their upcoming filings that their current plans for the date, time, or location of their annual meeting may be altered due to the COVID-19 pandemic. The SEC reiterated that such decisions will vary depending on the individual issuer, but all issuers should be reviewing their existing plans.

State-law requirements for changing the date, time, or location of an annual meeting

Issuers should also keep in mind any state-law requirements for changing the date, time, or location of an annual meeting. For a proper notice of an annual meeting, state law generally requires the meeting notice to be mailed between 10 to 60 days before the annual meeting. Although the SEC is not requiring issuers to mail any additional materials, issuers should carefully consider any state notice requirements, the nature of items at the annual meeting, and the associated risks of not mailing a new notice if they are changing their annual meeting.

Holding Virtual or Hybrid Meetings

The SEC also offered guidance for issuers that are considering holding a virtual shareholder meeting, either online or through other electronic means, instead of or in addition to an in-person meeting. Issuers should be aware that whether virtual or hybrid meetings are permissible is primarily governed by state law and internal company governing documents. If an issuer is permitted to hold a virtual or hybrid meeting, it should make detailed disclosures to shareholders informing them of its plans and emphasizing that voting in a virtual meeting is just as important as at an in-person meeting.

Once a decision to hold a virtual or hybrid meeting had been made, issuers should promptly notify their shareholders and other relevant parties in the proxy process and inform them of the logistical details, including how to virtually access and vote in the meeting. Additionally, to address potential concerns related to virtual meetings expressed by ISS and Glass Lewis, issuers should clearly indicate that shareholders are able to participate fully in the virtual or hybrid meeting.

As noted above, the SEC will not require issuers that have already filed and mailed their proxy materials to mail additional materials, but they should follow the requirements for changing the date, time, or location. Issuers that have not yet filed their definitive proxy materials should include the details and disclosures regarding the virtual or hybrid meeting in their definitive proxy statement. Issuers should still carefully consider the state-law issues involved in mailing a notice when changing to a hybrid meeting.

Presentation of Shareholder Proposals

The SEC recognizes that shareholders who wish to make proposals at an annual meeting may have difficulties attending in person. Rule 14a-8(h) of the Exchange Act currently requires shareholder proponents to appear and present their proposals at the annual meeting. Accordingly, the SEC is encouraging issuers to, in accordance with state law, allow shareholders or their representatives to present their proposals through alternative means for the 2020 proxy season. The SEC suggested presenting proposals telephonically could be a viable alternative method.

If shareholders or their representatives are unable to attend an annual meeting due to COVID-19, the SEC would deem this to be “good cause” under Rule 14a-8(h). Thus, issuers would not be permitted in these cases to exclude a shareholder proposal under Rule 14a-8(h)(3).

Going Forward

This guidance is part of the SEC’s ongoing focus on COVID-19. The SEC has previously made two statements on COVID-19 and issued an order to give relief to issuers affected by COVID-19, which we covered [here](#).

The SEC is continuing to monitor COVID-19 and its effects on issuers and shareholders. The SEC encourages all issuers with additional questions or concerns about their proxy requirements or annual meeting to contact the Division of Corporation Finance.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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