

COVID-19 Update – SEC Staff Issues Guidance for Conducting Meetings

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On March 13, 2020, the staff of the SEC’s Division of Investment Management and Division of Corporation Finance issued guidance in response to various inquiries from issuers and shareholders regarding compliance with the federal proxy rules for upcoming annual meetings in light of health, transportation and other logistical issues raised by the spread of COVID-19. The staff’s guidance addressed the following:

Changing the Date, Time or Location of an Annual Meeting

An issuer that has already mailed and filed definitive proxy materials can notify shareholders of a change in the date, time or location of its annual meeting without mailing additional soliciting materials or amending its proxy materials if it:

- issues a press release announcing the change;
- files the announcement as definitive additional soliciting material on EDGAR; and
- takes all reasonable steps necessary to inform other intermediaries in the proxy process (such as any proxy service provider) and other relevant market participants (such as the appropriate national securities exchanges) of the change.

Issuers are expected to take the foregoing actions promptly after making a decision to change the date, time or location of the meeting and “sufficiently in advance” of the meeting so the market is alerted to the change in a timely manner.

Issuers that have not yet mailed or filed their definitive proxy materials should consider whether to include disclosures regarding the possibility that the date, time or location of an annual meeting will change due to COVID-19.

Conducting “Virtual” Shareholder Meetings.

An issuer’s ability to conduct a “virtual” meeting or a “hybrid” meeting (i.e., an in-person meeting that also permits shareholder participation through electronic means) is subject to applicable provisions of state law and the issuer’s governing documents. Issuers that plan to hold virtual or hybrid meetings must notify shareholders, intermediaries and other market participants of those plans in a timely manner, along with clear directions about the logistical details of the virtual or hybrid meeting, including how shareholders can remotely access, participate in and vote at the meeting. For issuers that have not yet filed and delivered their definitive proxy materials, the disclosures should be in the definitive proxy statement and other soliciting materials. Issuers that have already filed and mailed their definitive proxy materials would not need to mail additional soliciting materials (including new proxy cards) solely for the purpose of switching to a virtual or hybrid meeting if they follow the steps described above for announcing a change in the meeting’s date, time or location.

Presentation of Shareholder Proposals.

To the extent permitted by state law, issuers are encouraged to provide shareholder proponents or their representatives with the ability to present their proposals through alternative means, such as by phone, during the 2020 proxy season. If a shareholder proponent or representative is not able to attend the annual meeting and present the proposal due to COVID-19, the staff would consider this to be “good cause” as the basis for issuers to exclude a proposal submitted by the shareholder proponent for any meetings held in the following two calendar years.

The staff’s guidance is available [here](#). On April 7, 2020, the staff extended the guidance to special meetings, including in connection with business combinations, and provided some relief from the “notice and access” delivery requirements in Rule 14a-16. The staff’s updated guidance is available [here](#).

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