

Practice Update

Staff Guidance for Conducting Annual Meetings in Light of COVID-19 Concerns

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In connection with the spread of the coronavirus disease 2019 (COVID-19) and the impact on health, transportation and other logistical issues, the staff of the Division of Corporation Finance and the Division of Investment Management provided guidance to assist issuers, shareholders, and other market participants with meeting their obligations under the federal proxy rules for upcoming annual meetings. The guidance does not alter or amend applicable law and is not a rule, regulation or statement of the Securities and Exchange Commission. The guidance also does not address requirements under applicable state law, the issuer's governing documents or exchange listing standards.

The guidance addresses:

1. changing the date, time, or location of an annual meeting,
2. an issuer deciding to conduct a "virtual" shareholder meeting in lieu of an in-person meeting, and
3. shareholder proponents presenting shareholder proposals at annual meetings.

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

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If an issuer has already mailed and filed its definitive proxy materials, the staff indicated that the issuer can notify shareholders of a change in the date, time, or location of the 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 materials on EDGAR; and
- takes all reasonable steps necessary to inform other intermediaries in the proxy process and other relevant market participants of the change.

If an issuer has not mailed and filed its definitive proxy materials, the staff encouraged issuers to consider whether to include disclosure in the proxy materials that the issuer may change the date, time, or location of the annual meeting due to COVID-19.

“Virtual” Shareholder Meetings

Each issuer’s state law governs the ability to conduct a “virtual” meeting. The staff expects the issuer to notify its shareholders, intermediaries in the proxy process, and other market participants of a plan to conduct a “virtual” or “hybrid” meeting including how shareholders can remotely access, participate in, and vote at such meeting.

If an issuer has not filed and delivered their definitive proxy materials, the disclosure regarding remotely accessing, participating in and voting at a “virtual” or “hybrid” meeting should be included in the definitive proxy statement and other soliciting materials.

The staff indicated that if an issuer has already filed and mailed the definitive proxy materials, the issuer would not need to mail additional soliciting materials and proxy card solely for the purpose of switching to a “virtual” or “hybrid” meeting if the issuer follows the steps for announcing a change in the meeting date, time, or location.

Presentation of Shareholder Proposals

In light of the difficulties that COVID-19 is posing, the staff is encouraging companies to provide shareholder proponents with alternative means of presenting their proposals (i.e., telephonically) to the extent feasible under state law. The staff has indicated that if a shareholder proponent is unable to appear and present their proposals at an annual meeting due to COVID-19 related health, transportation and other logistical issues, the staff would consider that as “good cause” under Rule 14a-8(h) of the Securities Exchange Act of 1934 if an issuer asserted Rule 14a-8(h)(3) as a basis to exclude a proposal submitted by the shareholder proponent for any meetings held in the following two calendar years.

The staff urged parties involved in the proxy voting process to work together to help issuers meet their obligations to hold annual meetings, disseminate timely, accurate and clear proxy disclosures under the federal securities laws as well as to allow shareholders to exercise their voting rights under state law. The staff indicated that issuers or other parties that need additional assistance with deadlines, delivery obligations or their public filings should contact the Division of Corporation Finance at +1 202 551 3500 or at

https://www.sec.gov/forms/corp_fin_interpretive.

Investment companies registered under the Investment Company Act of 1940 and business development companies, or their shareholders, in need of additional assistance should contact the staff of the Division of Investment Management at IMOCC@sec.gov or +1 202 551 6825.

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