Impact of COVID-19: SEC Issues Guidance on Conduct of Annual Meetings

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by Kimberley R. Anderson

I live and work in the Seattle area. As a result of COVID-19, school districts are now closed for 6 weeks, Seattle public libraries are closed for a month, a number of restaurants have closed for the time being and my beloved Mariners' baseball season has been postponed (along with most other sporting events). As we adjust to the current realities of dealing with COVID-19, the staff of the SEC has been providing timely, practical advice and assistance to issuers. On March 4th, they provided filing relief for companies affected by COVID-19, while simultaneously reminding them of their disclosure obligations relating to the rapidly evolving impact of COVID-19.

Today, the staff provided guidance to companies who wish to hold virtual annual meetings, or change the date, time or location of an annual meeting.

Changing the date, time or location of an annual meeting

If an issuer has already mailed and filed its definitive proxy materials but wants to change the date, time or location of the meeting, it need not mail additional soliciting materials or amend its proxy materials if the issuer promptly:

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

For issuers who have not yet mailed and filed their definitive proxy statement, it may be prudent to include disclosure regarding potential changes to the timing or location of the annual meeting.

Holding Virtual or Hybrid Meetings

For issuers who desire to hold a virtual meeting (no in-person meeting and participation solely through electronic means) or a hybrid meeting (consisting of both an in-person

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meeting and participation through electronic means), the staff expects issuers to provide clear and timely instructions regarding access, participation and voting at the meeting.

Shareholder Proponents

For shareholder proponents who are required to “appear and present” their proposal, the staff encourages issuers to provide shareholder proponents with the ability to present their proposal through alternative means, such as by phone. The inability of a proponent to present their proposal due to factors relating to COVID-19 will be considered by the staff to be “good reason” under Rule 14a-8 and so cannot form a basis to exclude future proposals by that proponent during the next two years.

State Law Considerations

Prior to changing the date, time or location of an annual meeting or changing to a virtual meeting, issuers should review state law and their articles and bylaws to ensure the issuer remains compliant with all notice and meeting requirements.