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SEC Staff Makes Life a Little Easier for Reporting Companies by Permitting Annual Reports to Shareholders to be posted on Company Websites

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by Jason Brenkert

On November 3, 2016, in a new C&DI, the SEC Staff stated they will not object if a company posts an electronic version of its annual report to shareholders on its corporate web site by the dates specified in Rule 14a-3(c), Rule 14c-3(b) and Form 10-K, respectively, in lieu of mailing paper copies or submitting it on EDGAR. The report must remain accessible for at least one year after posting. This new C&DI provides some relief as previously companies had to mail seven hard copies of their annual report to shareholders to the SEC or submit it on EDGAR. Prior to this new staff interpretation, the annual report to shareholders was one of the few documents still filed in hard copy with the SEC.

The NYSE still requires three hard copies of the proxy materials (including the proxy card) to be filed no later than the date on which the materials are released to shareholders. However, the NYSE does not expect hard copies of the annual report to shareholders. NASDAQ companies are not subject to a similar requirement to provide hard copies of proxy materials or the annual report.

Reporting companies should consider updating their annual meeting and proxy season procedures and checklists to take advantage of the new interpretation.

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