

SEC Updates Guidance on Shareholder Meetings Affected by COVID-19

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On April 7, 2020, the SEC updated its prior guidance for conducting shareholder meetings in light of COVID-19 concerns to address delays in printing and mailing of proxy materials and clarify that its guidance applies for special meetings of shareholders, as well as annual meetings. Previously, the SEC had advised issuers of its view that an issuer that has already mailed and filed its definitive proxy materials may notify shareholders of a change in the date, time, or location of its annual shareholder meeting without mailing additional soliciting materials or amending its proxy materials if it:

1. Issues a press release announcing the change;
2. Files the announcement as definitive additional soliciting material on EDGAR; and
3. Takes all reasonable steps necessary to inform intermediaries in the proxy process, and other relevant market participants, of the change.

Issuers must still be mindful of applicable notice provisions under state law. For example, on April 6, 2020, the Governor of Delaware issued an order providing, in effect, that a Delaware corporation switching from a physical meeting to a virtual meeting would be deemed in compliance with Delaware notice requirements if they comply with the SEC's guidance on making such a change.

The SEC's updated guidance would allow issuers experiencing COVID-19-related delays in printing and mailing the "full set" of proxy materials to use the "notice only" delivery option, even if the issuer does not meet all of the notice and timing requirements of Rule 14a-16. To rely on the Staff's position, the issuer must provide shareholders with proxy materials sufficiently in advance of the meeting to review those materials and exercise their voting rights under state law in an informed manner, and announce the change in delivery method using the three steps described above. Affected issuers should also continue to use best efforts to send paper copies of proxy materials and annual reports to requesting shareholders, even if delayed.

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