

Memorandum

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

March 16, 2020

On March 13, 2020, the staff of the SEC's Division of Corporation Finance ("Corp Fin") provided guidance to assist issuers, shareholders and other market participants affected by COVID-19 with meeting their obligations under federal securities laws relating to annual meetings of shareholders.

Changing the Date, Time or Location of an Annual Meeting

To the extent a company wants to change the date, time or location of its annual meeting after mailing its definitive proxy materials due to the difficulties arising from COVID-19, Corp Fin has indicated that the company can notify its shareholders of such change without mailing additional soliciting materials or amending its proxy materials by taking the following actions:

- Issuing a press release announcing the change;
- Filing the announcement as definitive additional soliciting material on EDGAR; and
- Taking all reasonable steps necessary to inform other intermediaries in the proxy solicitation process (such as Broadridge, Computershare and similar providers) and other relevant market participants (such as the NYSE or Nasdaq) of such change.

The SEC expects companies to take these actions promptly after making a change and sufficiently in advance of the meeting so the market is alerted to the change in a timely manner. To the extent that companies have not yet mailed and filed their definitive proxy materials, they should additionally consider whether to include disclosures regarding the possibility that the date, time or location of the meeting may change due to COVID-19.

Despite the SEC's guidance, companies should consult with counsel to ensure that they comply with any procedural, notice or other requirements under applicable state law prior to making such a change. For example, Delaware corporations are required to provide notice of the place (if any), date and time of any shareholder meeting to record holders (but not beneficial owners who hold their shares in "street name") at least 10 days before the meeting. As a result, except in the case of certain adjournments, changing the date, time or location of

the annual meeting after mailing definitive proxy materials would require the company to mail record holders a new notice of meeting, notwithstanding the guidance issued by Corp Fin.¹

“Virtual” Shareholder Meetings

The ability to conduct a “virtual” meeting is governed by state law, where permitted, and the company’s governing documents. To the extent a company plans to conduct a “virtual” or “hybrid” meeting (i.e., an in-person meeting that also permits shareholder participation through electronic means), Corp Fin expects the company to notify its shareholders, intermediaries in the proxy process and other market participants of such plans in a timely manner and disclose clear directions as to the logistical details of the “virtual” or “hybrid” meeting, including how shareholders can remotely access, participate in and vote at such meeting. For companies that have not yet filed and delivered their definitive proxy materials, such disclosures should be contained in the definitive proxy statement and other soliciting materials. Companies 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 so long as they follow the steps described above for publicly announcing a change in the meeting date, time, or location.

Presentation of Shareholder Proposals

Rule 14a-8(h) under Securities Exchange Act of 1934, as amended (the “Exchange Act”), requires shareholder proponents, or their representatives, to appear and present their proposals at a company’s annual meeting. In light of the possible difficulties for shareholder proponents to attend annual meetings in person to present their proposals, Corp Fin has encouraged companies, to the extent feasible under state law, to provide shareholder proponents or their representatives with the ability to present their proposals through alternative means, such as by phone, during the upcoming proxy season.

Furthermore, to the extent a shareholder proponent or representative is not able to attend the annual meeting and present the proposal due to the inability to travel or other hardships related to COVID-19, Corp Fin would consider this to be “good cause” under Rule 14a-8(h) should issuers assert 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.

¹ A Delaware corporation can avoid the need to mail a new notice by calling the originally scheduled annual meeting to order for the sole purpose of adjourning the meeting and announcing the date, time and place (or means of remote communication) of the adjourned meeting. In that case, the adjournment may not be for more than 30 days.

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