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Understanding New SEC Guidance for Virtual Meetings and Filing Delays Due to COVID-19

In light of the ongoing COVID-19 pandemic, many issuers are holding virtual shareholder meetings for the first time. New SEC guidance addresses how firms should approach this change and also offers some filing relief related to the virus.

As the COVID-19 pandemic continues to unfold globally and across the United States (U.S.), many public companies listed in the U.S. are moving to virtual-only shareholder meetings for the first time or taking a hybrid approach to meetings with a mix of in-person and online attendance. While this is a sudden change for many organizations, if companies follow Securities and Exchange Commission (SEC) rules and guidance, they can easily conduct a virtual or hybrid meeting even if they have already distributed their proxy materials to shareholders. Furthermore, proxy advisors Institutional Shareholder Services (ISS) and Glass Lewis have announced that while they generally do not favor virtual shareholder meetings due to the inability of shareholders to engage directly with company leaders, they understand the necessity of virtual meetings during the current environment. These firms have one caveat however — they want to see disclosure of why the change was made in the proxy statement.

In this article, we summarize key guidance from the SEC about virtual meetings and additional disclosure related to COVID-19 so that public companies can navigate the nuances of this proxy season.

SEC Guidance for Shareholder Meetings

In the U.S., the ability to conduct a virtual shareholder meeting is governed by the laws of the state where the company is incorporated and the company's governing documents. At the federal level, the SEC regulates the filing and mailing of proxy solicitation materials for the shareholder meeting. In late March, the SEC issued the following [guidance](#) on disclosure of virtual shareholder meetings:

- **Companies that have already filed a proxy statement:** For companies that have already mailed and filed their proxy statement, the SEC will allow them to notify shareholders of a change in date, time or location (to virtual-only or hybrid meetings) without mailing additional soliciting materials or amending its proxy materials if they:
 - Issue a press release announcing this change
 - File the announcement as definitive additional soliciting material on EDGAR
 - Take all reasonable steps necessary to inform relevant stakeholders in the proxy process (e.g., proxy service providers and national securities exchanges)

- Remain in compliance with necessary notice requirements under its bylaws and relevant state law
- **Companies that have not filed a proxy statement:** Companies that have not yet mailed and filed their proxy statement should disclose in their proxy statement the possibility that their annual meeting date, time or location may change due to the pandemic and the reasonable likelihood of such a change. Companies that already plan to conduct virtual or hybrid meetings are expected to disclose, in both their forthcoming proxy statement and other soliciting materials, instructions as to how shareholders can remotely access, participate in and vote at the meeting.

SEC Provides Filing Relief

The SEC issued an updated [Order](#) on March 25, providing conditional filing relief for companies that are affected by COVID-19. The relief provides issuers an additional 45 days from the original due date to file their annual and quarterly reports (e.g., Form 10-K, 10-Q, 8-K and for foreign private issuers 20-F and 6-K) that are otherwise due between March 1 and July 1. Among other conditions, companies must file a summary of why relief is needed and the estimated filing date on a Form 8-K (or 6-K for foreign private issuers) by the original due date of the required report.

Additionally, the SEC stated that a company may file a Rule 12b-25 report if it is unable to file an SEC report by the extended due date, provided that it had previously filed an 8-K under the Order. Also, if a company is still unable to file timely, it should contact the SEC staff to discuss collateral consequences of late filings.

The Order also exempts companies from furnishing by mail proxy statements and other soliciting materials to stockholders to when mail delivery is not feasible.

Disclosure Considerations for Executives that Contract COVID-19

While the SEC does not specifically require companies to disclose if their senior executives become ill, it is required if the information is material to a company and the company has a duty to disclose it (which is often not the case). Due to the nature of COVID-19, companies must consider whether the diagnosis of an executive who has tested positive may become public other than through SEC disclosure, as many individuals are self-reporting if they contract the virus. If that is the case, the company may decide to make a voluntary disclosure on Form 8-K.

More generally, if COVID-19 has affected a company or poses a risk to the business in a way that would be material to investors, then the company, its directors, officers, and employees who are aware of these matters should refrain from trading in the company's securities until such information is disclosed to the public.

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If you want to speak with one of our corporate governance experts about the SEC guidance or related topics, please contact the author or write to rewards-solutions@aon.com.

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