



March 16, 2020

# SEC Provides Guidance on Proxy Rules Related to Annual Meetings in Light of Coronavirus

Public companies are in the midst of the 2020 proxy season with many annual meetings coming up during spring and early summer. The coronavirus (COVID-19) outbreak recently reached pandemic status and health experts predict that the pandemic peak may not be reached for several months. The pandemic is likely to impact proxy materials and the conduct of annual meetings, for example, as a result of health concerns or travel restrictions. Public companies should consider whether it is advisable to make changes to plans for 2020 annual meetings and whether such changes require any updates or changes in proxy materials or the proxy process.

On March 13, 2020, the U.S. Securities and Exchange Commission (SEC) issued guidance (available [here](#)) regarding compliance with federal proxy rules for upcoming annual meetings in light of health, transportation and other logistical issues raised by the pandemic.

## **Changing the Date, Time or Location of an Annual Meeting**

Under the guidance, a public company that has already mailed and filed its definitive proxy materials for its 2020 annual meeting can notify security holders of a change in the date, time or location of the meeting without mailing additional proxy materials or amending its proxy materials if it promptly after making a decision and sufficiently in advance of the meeting:

- 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 in the proxy process (such as any proxy service provider) and other relevant market participants (such as the appropriate national securities exchanges) of such change.

A public company that has not yet mailed and filed definitive proxy materials should consider whether to include disclosure regarding the possibility of such changes.

### **Conducting Virtual Annual Meetings**

If permitted by state law, a public company may conduct a “virtual” or “hybrid” (an in-person meeting that also permits participation by “virtual” means) meeting through the internet or other electronic means instead of an in-person meeting. Under the guidance, the SEC expects public companies who plan to conduct a “virtual” or “hybrid” meeting 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 . . . meeting, including how shareholders can remotely access, participate in and vote at such meeting.” A public company that has not yet filed and delivered definitive proxy materials must include such disclosure therein. A public company that has already filed and mailed definitive proxy materials and now desires to hold a “virtual” or “hybrid” meeting does not need to mail additional proxy materials if it follows the steps above regarding announcing a change in the date, time or location of its annual meeting.

### **Presentation of Shareholder Proposals**

A shareholder who has submitted a proposal that is included in the proxy materials for an annual meeting is required to appear and present its proposal at the annual meeting under Exchange Act Rule 14a-8(h) or send a representative. The coronavirus pandemic may make in-person attendance difficult. In its guidance, the SEC encouraged public companies to provide shareholder proponents or their representatives with the ability to present proposals through alternative means, such as by phone, during the 2020 proxy season, if feasible under state law. The guidance also stated that failure to appear due to the inability to travel or other hardships related to COVID-19 would be considered “good cause” under Rule 14a-8(h) if an issuer asserts 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.

***[Click here to read more Brownstein alerts on the legal issues the coronavirus threat raises for businesses.](#)***

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*This document is intended to provide you with general information regarding SEC guidance on compliance with proxy rules related to annual meetings during the coronavirus pandemic. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*