

Conducting Shareholder Annual Meetings Virtually in Reaction to the COVID-19 Coronavirus

Alert

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There are several growing concerns associated with the COVID-19 Coronavirus pandemic and how companies can maintain “social distancing” while also continuing business as usual. As companies evaluate these concerns several different approaches are being discussed, including the process to holding annual shareholder meetings virtually or remotely. As annual shareholder meetings draw closer, it is essential to consider the legal requirements under federal regulations, state laws and company governing documents.

CHECK SEC PROXY MATERIALS

The biggest issue a company will find is with its notices in its proxy statements. State corporation statutes require companies to provide shareholders written notice of annual meetings which generally must state the place of the meeting, and the means of remote communications by which shareholders may participate in the meetings. The SEC announced [new guidance](#) on March 13, 2020, to clarify notice requirements and changes to annual meetings in regards to virtual meetings for purposes of the federal proxy rules under the Securities Exchange Act.

HAVE FILED PROXY MATERIALS

If a company has already mailed and filed its proxy materials, but would like to change to a virtual meeting, the company can notify its shareholders of a change in the date, time or location of the annual meeting without mailing additional materials or amending proxy materials. To be in compliance with legal requirements however, the company must issue public disclosure of the changes and then file the announcement as additional proxy material on EDGAR. The company should also take steps 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 the change. The announcement and other actions should be taken promptly after the decision to switch to a virtual meeting is made and

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sufficiently in advance of the meeting so that interested parties are able to adjust to the change.

After announcing a switch to a virtual meeting, the company must also provide logistical information such as whether shareholders will be able to ask questions and instructions on how to attend and/or vote at the meeting.

HAVE NOT FILED PROXY MATERIALS

If a company has not yet mailed the proxy materials and has not made a decision to hold a virtual meeting, the SEC advises the company to consider whether to include disclosures regarding the possibility of a change to a virtual meeting after the mailing of the proxy materials. Such disclosures should include the amount of advance notice of the change that the company intends to provide to shareholders.

If a company knows, prior to mailing its proxy materials, that it will hold a virtual meeting, the proxy materials should include logistical details, including how shareholders can remotely access, participate in, and vote at such meeting.

CHECK STATE LAWS AND ORGANIZATIONAL DOCUMENTS

In addition to SEC rules, a company should check whether the laws of the state in which it is incorporated and its organizational documents allow virtual shareholder meets and, if so, whether there are any parameters. For example, Section 211 of the Delaware General Corporation Law provides that in regards to annual shareholder meetings, "the board of directors may in its sole discretion, determine that the meetings shall not be held at any place, but may instead be held solely by means of remote communication," unless the organizational documents specifically provide for the place or manner for holding the meeting. However, state laws will vary in this regard and each company should check the applicable state law and its organizational documents before making a decision to hold a virtual meeting. Companies should also check whether state law and organizational documents give officers the authority to change the meeting location or whether the board must act before filing proxy materials or supplemental materials.

ADDRESS SHAREHOLDER ENGAGEMENT CONCERNS

In the past, the proxy advisory firms and some institutional shareholders have criticized virtual meetings as hindering shareholder engagement at an important time. Therefore, recently filed proxy statements have emphasized the company's intention of ensuring shareholder participation by implementing procedural safeguards, including providing technical support prior to and during the meeting, adopting formal rules of conduct for use at the meeting (such as how shareholders may see/hear management and board members), and undertaking to post on its website shareholder questions and the company's answers after the meeting.

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As annual shareholder's meetings are planned, guidance from the Center for Disease Control and Prevention and the World Health Organization should be followed in regards to limiting the size of social gatherings. Due to the uncertain nature of the COVID-19 pandemic, it is important that companies begin to plan annual shareholder meetings early, as there are legal requirements to follow but also practical logistics that must be figured out as well.

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