

# Client Alert

March 2020

## Coronavirus/COVID-19: Considerations for Shareholder Meetings

### UPDATE #1: SEC Staff Issues Guidance for Virtual Meetings

In light of the outbreak of COVID-19, caused by the novel coronavirus, and the related public health concerns, many public companies are considering whether, or making plans, to transition from an in-person shareholder meeting to a hybrid or virtual-only shareholder meeting. In our recent [client alert](#), we addressed a number of issues for those companies to consider. This update to our previous client alert addresses [guidance](#) issued on March 13, 2020, by the staff of the Securities and Exchange Commission regarding virtual shareholder meetings.

#### Staff Guidance on Virtual Meetings

The Securities and Exchange Commission staff confirmed that, if an issuer decides after filing and mailing its proxy statement to change to a hybrid or virtual-only shareholder meeting, it will not need to mail additional soliciting materials or send a new proxy card. Rather, the issuer can satisfy its obligations under federal securities laws if it:

- 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.

In addition, the staff stated that companies must promptly communicate any such change 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.”

The staff’s guidance notes, however, that the ability to conduct a “virtual” meeting is governed by applicable state law and the issuer’s governing documents. In particular, notwithstanding the staff’s guidance with respect to federal securities laws, companies will need to determine whether a new notice of the meeting is required under applicable state law.

#### Staff Guidance on Postponement or Relocation of Meetings

For an issuer that, after filing and mailing its proxy statement, is considering postponing or relocating its annual meeting due to COVID-19, the staff’s guidance indicates that the issuer can satisfy its obligations under federal securities laws if it communicates the change of the date, time, or location of the annual meeting in the same manner described above for a change to a hybrid or virtual meeting.

## Staff Guidance on Shareholder Proposals

The staff's guidance also encourages companies to provide shareholder proponents with alternative means, such as by telephone, to present their proposals at the annual meetings in light of the difficulties that shareholder proponents face due to COVID-19. In the context of hybrid or virtual-only meetings, issuers have several options, including (1) providing a separate dial-in number to a shareholder proponent to allow him or her to present the proposal, (2) pre-recording the shareholder proponent's message so that it can be played during the meeting, or (3) with the shareholder proponent's consent, having a representative of the issuer read the proponent's script.

To prepare for various contingencies (e.g., a network outage), some issuers may want to combine these approaches so that, for example, the issuer has a script that can be read in the event that the shareholder proponent is disconnected and unable to present the proposal. The staff's guidance notes that, if a shareholder proponent does not attend a meeting due to the inability to travel or other hardships related to COVID-19, the staff will consider it a "good cause" under Rule 14a-8(h) so that the proponent would not be barred from making additional proposals in future years.

## Emerging Practices

We continue to advise that issuers include statements in their proxy materials regarding the possibility of changing the format of the annual meeting to a hybrid or virtual-only meeting and the method by which the issuer intends to make such an announcement. The staff's guidance likewise encourages companies to disclose "the possibility that the date, time, or location of the annual meeting will change due to COVID-19." Here is one example:

We intend to hold our annual meeting in person. However, we are actively monitoring the coronavirus (COVID-19); we are sensitive to the public health and travel concerns our shareholders may have and the protocols that federal, state, and local governments may impose. In the event it is not possible or advisable to hold our annual meeting in person, we will announce alternative arrangements for the meeting as promptly as practicable, which may include holding the meeting solely by means of remote communication. Please monitor our annual meeting website at [website] for updated information. If you are planning to attend our meeting, please check the website one week prior to the meeting date. As always, we encourage you to vote your shares prior to the annual meeting.

Some issuers have already made the decision to transition from a physical meeting to a virtual meeting. As noted in the staff's guidance, such a decision must be communicated promptly. Here is an example taken from a supplemental notice issued by a company:

Due to the emerging public health impact of the coronavirus outbreak (COVID-19) and to support the health and well-being of our partners and shareholders, NOTICE IS HEREBY GIVEN that the location of the Annual Meeting of Shareholders of [the Company] has been changed. As previously announced, the Annual Meeting will be held on [date and time]. In light of public health concerns regarding the coronavirus outbreak, the Annual Meeting will be held in a virtual meeting format only. You will not be able to attend the Annual Meeting physically.

There are two pressing, practical issues for public companies considering whether to move to a hybrid or virtual-only meeting format. First, they should contact virtual meeting platform providers as soon as possible. Based on our conversations with certain platform providers, they appear able to meet the current demand for virtual meetings, but that may change and there may be scheduling difficulties.

Second, a transition to a hybrid or virtual-only meeting raises various logistical issues that require planning. As discussed above, state law may require the issuer to give a new notice to its shareholders. Additionally,

the company will have to decide how to provide log-in credentials to shareholders, how to allow shareholders to participate (e.g., Q&A), and how to announce such method of participation.

In addition to these two known, practical issues, companies also should consider other potential obstacles that may result from COVID-19, including the possibility that postal services become delayed or even temporarily unavailable. While this and other issues would be outside a company's control, companies should consider this possibility in setting annual meeting schedules and in deciding the latest practicable date on which they might convert to a virtual-only meeting without having to postpone the meeting.

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