

Securities Regulation Daily Wrap Up, TOP STORY—SEC relaxes shareholder meeting requirements in light of COVID-19, (Mar. 16, 2020)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

Staff guidance addresses the rescheduling of annual meetings and remote participation, including by shareholder proponents.

SEC staff published guidance on the upcoming proxy season given coronavirus-related issues that may make in-person meetings impracticable and preclude travel by participants, including shareholder proponents. The [guidance](#) allows public companies and investment companies more flexibility to reschedule their upcoming meetings and to conduct virtual or part-virtual meetings. It also encourages issuers to allow shareholder proponents to present their proposals by phone or other remote means.

SEC Chairman Jay Clayton [encouraged](#) market participants to reach out to the agency with requests for guidance or relief. He added that the SEC itself remains fully operational after having moved to teleworking and virtual meetings.

Rescheduling or relocating the annual meeting. An issuer that has already mailed and filed its definitive proxy materials may reschedule or relocate its annual meeting without amending its proxy materials or conducting another mailing. The issuer must announce the change of date, time, or location in a press release; file the announcement on EDGAR as definitive additional soliciting material; and take reasonable steps to inform other intermediaries and relevant market participants, such as proxy service providers and the appropriate national securities exchanges. Staff expects issuers to take these actions promptly after deciding to move or reschedule the meeting.

Issuers that have not yet mailed and filed their proxy materials should consider whether to note in those materials that the meeting may be subject to change due to COVID-19. According to the guidance, this determination "should be made based on each issuer's particular facts and circumstances and the reasonable likelihood of such a change."

Virtual meetings. The guidance notes that state law and the issuer's governing documents dictate whether shareholder meetings may take place online or by other electronic means. The staff expects issuers to timely notify shareholders, intermediaries, and other market participants of any plans to hold a meeting virtually (or to meet in person but allow shareholders to participate remotely) and to give clear instructions on how to participate. Issuers should include these disclosures in their definitive proxy materials. If they have already filed and mailed those materials, however, they can avoid an amendment and additional mailing by following the same procedure as for rescheduling or relocating a meeting—issue a press release, file the announcement on EDGAR, and take reasonable steps to inform interested persons.

Shareholder proposals. Finally, SEC staff acknowledges that it may be difficult for shareholder proponents to appear in person and present their proposals at the annual meeting. The guidance encourages issuers to allow proponents or their representatives to appear by alternative means, such as by phone, if allowed under state law.

SEC staff will also consider travel difficulties or other hardships owing to COVID-19 to be "good cause" for failing to appear in person for purposes of Rule 14a-8(h). Under that rule, a proponent's failure to appear, without good cause, to present the proposal allows the issuer to exclude all of the proponent's proposals for the next two years.

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