

April 9, 2020

SEC Staff Updates COVID-19 Shareholder Meeting Guidance

Updated Guidance Relaxes Notice and Access Timing Requirements When Delays Are Unavoidable

SUMMARY

On April 7, the SEC Division of Corporation Finance and the Division of Investment Management staff updated and expanded guidance (as updated, the “Shareholder Meeting Guidance”) on conducting shareholder meetings in light of COVID-19 concerns.¹ The April 7 updates include a new section on difficulties in timely printing and mailing proxy materials; clarifies that the guidance on changes in the date, time or location of a shareholder meeting applies to both annual and special meetings; and updated guidance on changes in the date, time or location of a shareholder meeting held by an investment company in connection with a business combination or certain other transactions. The guidance originally was [issued](#) on March 13, 2020.

The Shareholder Meeting Guidance, while recognizing that shareholder meeting requirements are governed by state law, reflects that COVID-19 will continue to affect issuers’ ability to comply with SEC proxy rules in connection with such shareholder meetings. Through the Shareholder Meeting Guidance, the SEC staff provides guidance with respect to (1) how issuers can notify shareholders of a change in date, time or location of a shareholder meeting, (2) considerations for timely disclosure of the logistical details of a “virtual” shareholder meeting, (3) the presentation of shareholder proposals, and (4) difficulties in timely printing and mailing proxy materials. In addition to this specific guidance, the SEC staff recommends that all parties involved in the proxy process should remain flexible and work collaboratively in order to facilitate and fulfill issuers’ obligations under federal securities laws.

DATE, TIME AND LOCATION OF SHAREHOLDER MEETINGS

The Shareholder Meeting Guidance provides direction for companies that wish to change the date, time or location of their annual or special shareholder meetings due to concerns related to COVID-19. The SEC staff will allow a company that has already mailed and filed its definitive proxy materials to notify shareholders of a change in the date, time or location of a shareholder meeting without having to mail additional soliciting materials or to amend its proxy materials so long as the company:

- 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.

The guidance specifies that companies should take these steps promptly after deciding to change the date, time or location of a shareholder meeting and sufficiently in advance of the meeting in order to timely alert the market to the change. For issuers that have not yet mailed definitive proxy materials, the SEC staff recommends including a disclosure that the date, time or location of the meeting may change due to COVID-19. However, such a disclosure should be made in consideration of each issuer's particular facts and circumstances and the reasonable likelihood that such a change may occur.

The Shareholder Meeting Guidance also specified that an investment company may change the date, time or location of a shareholder meeting held in connection with a business combination or other transaction described in a registration statement on Form N-14 pursuant to the above process. However, the SEC staff noted that it would expect the announcement of the change to be filed as a prospectus supplement under Securities Act Rule 497 rather than as additional definitive soliciting material.

VIRTUAL SHAREHOLDER MEETINGS

The SEC staff discusses in the Shareholder Meeting Guidance the possibility of companies holding "virtual" shareholder meetings in order to avoid large in-person gatherings. Although the ability to hold shareholder meetings via the internet or other electronic means is governed by state law and each issuer's governing documents, the Shareholder Meeting Guidance provides direction with respect to disclosure of an issuer's decision to hold a virtual meeting. The SEC staff expects that, to the extent an issuer plans to conduct a "virtual" or "hybrid" (*i.e.*, an in-person meeting that also permits shareholder participation through electronic means), the issuer will properly 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. Such disclosures should be included in the definitive proxy statement and other soliciting materials. Issuers that have already filed and mailed their definitive proxy materials would not need to mail additional soliciting materials solely for the purpose of switching to a "virtual" or "hybrid" meeting if they follow the steps described above for announcing a change in the meeting date, time or location.

PRESENTATION OF SHAREHOLDER PROPOSALS

Although Exchange Act Rule 14a-8(h) requires shareholder proponents or their representatives, to appear and present their proposal at an annual meeting, the Shareholder Meeting Guidance encourages issuers (to the extent permitted under applicable state law) to allow shareholder proponents the ability to present proposals through alternative means (e.g., by phone) during the 2020 proxy season. The SEC staff also specifies in the Shareholder Meeting Guidance that to the extent a shareholder proponent or representative is not able to attend the annual meeting and present the proposal due to the inability to travel or other COVID-19-related hardships, such difficulties will be considered by the staff to be “good cause” under Exchange Act Rule 14a-8(h) in the event an issuer attempts to exclude a proposal from any meetings held in the following two calendar years pursuant to Exchange Act Rule 14a-8(h)(3).

DELAYS IN PRINTING AND MAILING PROXY MATERIALS

The Shareholder Meeting Guidance recognizes the difficulties that some companies may face in printing and mailing the “full set” of proxy materials due to COVID-19’s impact on the operations of proxy service providers and transfer agents. A “full set” of proxy materials would contain (1) a proxy statement or information statement, (2) an annual report if one is required by Exchange Act Rule 14a-3(b) or 14c-3(a), and (3) a proxy card or, in the case of a beneficial owner holding in “street name,” a request for voting instructions, if proxies are being solicited. Although issuers are permitted to furnish their proxy materials through the “notice only” delivery option under Exchange Act Rule 14a-16, the SEC recognizes the potential difficulties in complying with certain provisions of that rule under current circumstances. Specifically, an issuer may not be able to send the required notice of the electronic availability of the proxy materials at least 40 calendar days before the meeting, provide intermediaries (such as a broker, dealer or bank) with the information needed so the intermediaries can send the notice to beneficial owners within the required 40 calendar day-time frame, or respond to a shareholder’s request for paper copies of proxy materials in a timely manner.

The Shareholder Meeting Guidance provides that in certain circumstances when delays are unavoidable the SEC staff would not object to an issuer using the “notice-only” delivery option even if the issuer does not meet all aspects of the notice and timing requirements of Exchange Act Rule 14a-16, so long as the issuer provides shareholders with proxy materials sufficiently in advance of a meeting so the shareholders may review the materials and exercise their voting rights under state law and in an informed manner. Issuers must also announce the change in the delivery method by following the steps described above for announcing a change in the meeting date, time or location. The Shareholder Meeting Guidance further emphasizes that the primary goal of the proxy process is to allow shareholders to receive material information in a timely manner so they can make informed voting decisions, and the SEC staff encourages issuers to use all reasonable efforts to achieve this goal without jeopardizing the health and safety of the

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parties involved. The guidance notes that such reasonable efforts may involve delaying a shareholder meeting in order to provide materials in a timely manner.

Finally, the SEC staff urges affected issuers and intermediaries to continue to use best efforts to send paper copies of proxy materials and annual reports, even if such materials would be delayed. Issuers and other affected parties are also encouraged to reach out to the SEC staff to discuss any concerns resulting from late filings caused by printing and mailing delays.

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ENDNOTES

¹ The full text of the Shareholder Meeting Guidance is available [here](#).

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CONTACTING SULLIVAN & CROMWELL LLP

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CONTACTS

New York

Werner F. Ahlers	+1-212-558-1623	ahlersw@sullcrom.com
Francis J. Aquila	+1-212-558-4048	aquilaf@sullcrom.com
Nicolas Bourtin	+1-212-558-3920	bourtinn@sullcrom.com
Catherine M. Clarkin	+1-212-558-4175	clarkinc@sullcrom.com
Audra D. Cohen	+1-212-558-3275	cohenad@sullcrom.com
H. Rodgin Cohen	+1-212-558-3534	cohenhr@sullcrom.com
Scott B. Crofton	+1-212-558-4682	croftons@sullcrom.com
Robert W. Downes	+1-212-558-4312	downesr@sullcrom.com
Mitchell S. Eitel	+1-212-558-4960	eitelm@sullcrom.com
John Evangelakos	+1-212-558-4260	evangelakosi@sullcrom.com
Jared M. Fishman	+1-212-558-1689	fishmanj@sullcrom.com
Sergio J. Galvis	+1-212-558-4740	galviss@sullcrom.com
C. Andrew Gerlach	+1-212-558-4789	gerlacha@sullcrom.com
Matthew B. Goodman	+1-212-558-4995	goodmanm@sullcrom.com
Brian E. Hamilton	+1-212-558-4801	hamiltonb@sullcrom.com
Matthew G. Hurd	+1-212-558-3122	hurdm@sullcrom.com
Stephen M. Kotran	+1-212-558-4963	kotrans@sullcrom.com
Mark J. Menting	+1-212-558-4859	mentingm@sullcrom.com
Scott D. Miller	+1-212-558-3109	millersc@sullcrom.com
Keith A. Pagnani	+1-212-558-4397	pagnanik@sullcrom.com
Richard A. Pollack	+212-558-3497	pollackr@sullcrom.com

SULLIVAN & CROMWELL LLP

David M.J. Rein	+1-212-558-3035	reind@sullcrom.com
Alison S. Ressler	+1-212-558-3098	resslera@sullcrom.com
Robert S. Risoleo	+1-212-558-4813	risoleor@sullcrom.com
George J. Sampas	+1-212-558-4945	sampasg@sullcrom.com
Melissa Sawyer	+1-212-558-4243	sawyerem@sullcrom.com
Alan J. Sinsheimer	+1-212-558-3738	sinsheimera@sullcrom.com
Marc Trevino	+1-212-558-4239	trevinom@sullcrom.com
Krishna Veeraraghavan	+1-212-558-7931	veeraraghavank@sullcrom.com
Benjamin H. Weiner	+1-212-558-7861	weinerb@sullcrom.com

Washington, D.C.

Julia M. Jordan	+1-202-956-7535	jordanjm@sullcrom.com
Robert S. Risoleo	+1-202-956-7510	risoleor@sullcrom.com

Los Angeles

Patrick S. Brown	+1-310-712-6603	brownp@sullcrom.com
Eric M. Krautheimer	+1-310-712-6678	krautheimere@sullcrom.com
Rita-Anne O'Neill	+1-310-712-6698	oneillr@sullcrom.com
Alison S. Ressler	+1-310-712-6630	resslera@sullcrom.com

Palo Alto

Scott D. Miller	+1-650-461-5620	millersc@sullcrom.com
Sarah P. Payne	+1-650-461-5669	paynesa@sullcrom.com
John L. Savva	+1-650-461-5610	savvaj@sullcrom.com

London

John Horsfield-Bradbury	+44-20-7959-8491	horsfieldbradburyj@sullcrom.com
Jeremy B. Kutner	+44-20-7959-8484	kutnerj@sullcrom.com
Ben Perry	+44-20-7959-8477	perryb@sullcrom.com
Richard A. Pollack	+44-20-7959-8404	pollackr@sullcrom.com
Evan S. Simpson	+44-20-7959-8426	simpsons@sullcrom.com

Paris

Olivier de Vilmorin	+33-1-7304-5895	devilmorino@sullcrom.com
---------------------	-----------------	--

Frankfurt

Carsten Berrar	+49-69-4272-5506	berrarc@sullcrom.com
Krystian Czerniecki	+49-69-4272-5525	czernieckik@sullcrom.com
York Schnorbus	+49-69-4272-5517	schnorbusy@sullcrom.com

Brussels

Michael Rosenthal	+32-2896-8001	rosenthalm@sullcrom.com
-------------------	---------------	--

Melbourne

Waldo D. Jones Jr.	+61-3-9635-1508	jonesw@sullcrom.com
--------------------	-----------------	--

SULLIVAN & CROMWELL LLP

Sydney

Waldo D. Jones Jr.	+61-2-8227-6702	jonew@sullcrom.com
--------------------	-----------------	--

Tokyo

Keiji Hatano	+81-3-3213-6171	hatanok@sullcrom.com
--------------	-----------------	--

Hong Kong

Garth W. Bray	+852-2826-8691	brayg@sullcrom.com
---------------	----------------	--

Kay Ian Ng	+852-2826-8601	ngki@sullcrom.com
------------	----------------	--

Beijing

Gwen Wong	+86-10-5923-5967	wonggw@sullcrom.com
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