
Hughes Hubbard & Reed

Virtual Shareholder Meetings: What to Know in the Era of COVID-19

Client Advisories

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April 2, 2020 – As businesses worldwide adjust their operations to account for COVID-19, many public companies may choose—or may be forced—to host virtual, rather than in-person, shareholder meetings.

Whether and how a company may conduct a virtual shareholder meeting generally depends on state corporation law, the company’s organizing documents, federal rules and recent SEC guidance related to the delivery of proxy materials,¹ among other requirements.

This bulletin provides guidance on how boards of directors may transition upcoming shareholder meetings to virtual settings to protect the health and safety of participants and to comply with local health directives.

Considerations for Holding a Virtual Shareholder Meeting

When planning a virtual shareholder meeting, companies should consider:

State Law Requirements for Virtual Meetings

For Delaware corporations, Section 211 of the Delaware General Corporation Law (DGCL) specifically provides that shareholders may use a form of “remote communication” to attend and vote at an annual shareholder meeting so long as the company meets certain conditions. These conditions include that the company:

- takes “reasonable measures” to ensure that remote participants are shareholders or valid proxyholders;
- provides participants a “reasonable opportunity to participate in the meeting;” and
- maintains an adequate record of votes and other actions taken at the meeting.²

Once a company determines that state corporation law permits holding virtual shareholder meetings, the company should also verify that its organizing documents, including its bylaws, similarly do not prohibit virtual meetings.

Recent SEC Guidance on Changing the Date, Time, or Location of Meeting

The Staff of the U.S. Securities and Exchange Commission (“SEC”) issued guidance on March 13, 2020 describing how issuers may comply with their obligations under the federal securities laws while navigating the unprecedented logistical challenges posed by the current health crisis.³ Under the guidance, a company that has already mailed and filed with the SEC its definitive proxy materials may change the date, time, or location of the previously-scheduled meeting without mailing updated materials or amending its proxy filings so long as it:

- “issues a press release announcing [the] change;”
- “files the announcement as definitive additional soliciting material on [the SEC’s] EDGAR” system; and
- “takes all reasonable steps necessary to inform” proxy intermediaries, such as service providers, and “other relevant market participants,” such as national security exchanges, of the changes to the previously-scheduled meeting.⁴

The SEC’s guidance also advises companies that have not already mailed and filed their definitive proxy materials to assess potentially disclosing in their forthcoming materials that the date, time, or location of the company’s upcoming annual meeting may change because of COVID-19.⁵

- In weighing whether to make such a disclosure, companies should consider “[their] particular facts and circumstances and the reasonable likelihood of such a change.”⁶

Recent SEC Guidance on Virtual Meetings

The SEC’s recent guidance also provides that issuers must inform “shareholders, intermediaries in the proxy process, and other market participants” of plans to hold virtual meetings, “including how shareholders can remotely access, participate in, and vote at such [a] meeting.”⁷

- Companies that have not already mailed and filed their definitive proxy materials should include such information in their forthcoming materials as appropriate.
- Companies that have mailed and filed their definitive proxy materials may “follow the steps described above”—including issuing a press release, filing an announcement on EDGAR, and taking all reasonable steps to inform necessary participants—should the company subsequently decide to convene a virtual, rather than in-person, meeting.

Recent SEC Guidance on Shareholder Proposals in Light of COVID-19

Companies should also plan for the unique challenges associated with receiving and voting on shareholder proposals in virtual meetings in light of the issues posed by COVID-19.

- Exchange Act Rule 14a-8 generally requires shareholders or qualified representatives to “attend” shareholder meetings if they want to present shareholder proposals.⁸
 - However, under the SEC’s recent guidance, companies are encouraged to allow shareholders to present proposals through “alternative means, such as by phone,” during the current proxy season, to the extent permitted by state law.⁹
 - Companies considering allowing shareholders to present proposals through alternative means should also consult their organizing documents to ensure adherence with all applicable requirements.

- Additionally, under the Exchange Act rules, a company may refuse to submit a shareholder proposal for a vote at a meeting if the proponent shareholder or its representative fails to attend the meeting. If the proponent shareholder’s absence was without “good cause,” the company could exclude proposals from that shareholder for two calendar years.¹⁰
 - The SEC’s recent guidance clarifies that a proponent shareholder who does not attend a meeting due to coronavirus-related concerns will be deemed to have “good cause” for not attending the meeting, and accordingly should not be excluded from advancing shareholder proposals in future years.

Practical Considerations for Virtual Meetings

Companies seeking to hold virtual shareholder meetings must, of course, plan for the practical and logistical realities of such meetings. As a prerequisite, companies must ensure that they have the proper infrastructure in place to support a virtual meeting and remote participation by all meeting participants. In doing so, companies may rely heavily on third party vendors to support the technological aspects of setting up virtual meetings.

Companies should also consider establishing or amending existing rules of conduct to address virtual participation in meetings. The rules should address how remote participants may submit questions in writing before or after the meeting and to whom participants can look for technological support.

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As COVID-19 creates unpredictability for companies, investors and citizens, Hughes Hubbard’s attorneys are monitoring developments and advising general counsel, executives and boards responding to and maintaining operations during the pandemic. Please contact us if you require assistance in any corporate governance matters.

[Click here to go to our COVID-19 Resource Center for more advisories, articles and other content related to the coronavirus pandemic.](#)

¹ See 17 C.F.R. § 240.14a.

² See DGCL § 211.

³ Announcement, U.S. Sec. & Exch. Comm’n, Staff Guidance for Conducting Annual Meetings in Light of COVID-19 Concerns (Mar. 13, 2020), <https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See 17 C.F.R. § 240.14a-8(h)(1).

⁹ See *supra*, n.3.

¹⁰ See 17 C.F.R. § 240.14a-8(h)(3).

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