

Considerations for Holding Virtual Annual Shareholder Meetings in Light of COVID-19



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In light of Coronavirus Disease 2019 (“COVID-19”), the Securities and Exchange Commission (“SEC”) recently released guidance to assist public companies with their upcoming annual shareholder meetings. As explained in the SEC’s press release announcing the guidance, “[t]he guidance is designed to facilitate the ability of companies to hold these important meetings, including through the use of technology, and engage with shareholders while complying with the federal securities laws.” Telecommunication mediums can be used in a manner that effectively facilitates annual shareholder meetings during the COVID-19 pandemic. However, public companies should conduct a brief examination of legal issues such as whether virtual shareholder meetings are permissible under state law and under the company’s governing documents before hosting such meetings. Issuers changing the date, time, or location of an annual meeting should also take care to properly notify its shareholders of such change.

Some state law expressly allows for virtual shareholder meetings. For example, Delaware law expressly permits shareholder meetings that are conducted by means of remote communication. Del. Code Ann. tit. 8, § 211. Other states permit a seemingly hybrid version of virtual shareholder meetings, which are regular in-person shareholder meetings with the option for shareholders to participate by means of electronic communication. See N.Y. Bus. Corp. Law § 602. Some states do not clearly speak to whether such meetings are permissible, but rather defer to what is allowed by an entity’s governing documents. Because such law does not expressly permit virtual meetings or electronic voting, some have suggested that virtual meetings are not lawful in these states. Even if legal analysis concluded that virtual shareholder meetings were nonetheless permissible in these states, conducting such a meeting could potentially draw criticism. Even though virtual meetings may create opportunity for greater shareholder participation than what might otherwise normally occur in person, proxy advisors, for example, may be opposed to virtual-only meetings, even in many states where it is legally allowed, without robust disclosures in a company’s proxy statement that assures shareholders they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

Companies should also evaluate their governing documents to assess whether virtual shareholder meetings are permitted. If the governing documents require that the annual meeting be held at a specific location, such as the company’s headquarters, then it is likely that the governing documents will need to be amended to allow for virtual-only meetings. If the governing documents do not expressly permit such meetings, companies will need to review the applicable state law to determine whether or not their governing documents will need to be amended prior to converting their annual meeting to a virtual-only meeting.

As explained in the SEC's guidance, an issuer who has already mailed its proxy materials for an upcoming shareholder meeting may notify shareholders of a change in the date, time, or location of the annual meeting without mailing additional proxy materials if it: (i) issues a press release announcing the change; (ii) files the announcements as definitive additional soliciting material on EDGAR; and (iii) take all reasonable steps necessary to inform other intermediaries in the proxy process and other relevant market participants of the change.

Read the SEC's press release regarding the guidance [here](#).

Read the SEC's guidance on Annual Meetings in Light of COVID-19 Concerns [here](#).