

LEGAL UPDATES

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SEC Responds to the COVID-19 Pandemic: Filing Extensions, "Virtual" / "Hybrid" Annual Meetings & Suspended Mail Delivery

Recently, the Securities and Exchange Commission ("SEC") issued guidance to assist public companies in navigating the challenging times brought on by the coronavirus (COVID-19) pandemic.

45-Day Filing Extension for Registrants and Other Persons

The SEC issued a conditional exemptive order to extend the due date for certain filings, including Forms 10-K and 10-Q, which would otherwise be due between March 1 and April 30, 2020, by forty-five (45) days if:

circumstances related to COVID-19 cause the company to be unable to meet the original filing deadline;

the company furnishes a Form 8-K (Item 7.01) (or if eligible, a Form 6-K) by the original filing deadline stating (i) that it is relying on the exemptive order, (ii) a brief description of why it could not timely file the report, (iii) the estimated date by which the report is expected to be filed, (iv) if appropriate, a risk factor explaining, if material, the impact of COVID-19 on its business and (v) if the reason the report cannot be filed is due to the inability to obtain any required opinion, report or certification, the Form 8-K contains as an exhibit a statement signed by the person stating the specific reasons why it is unable to deliver the required opinion, report or certification; and

in the report or form filed by the applicable deadline, the company discloses that it is relying on the exemptive order and states the reasons why it could not file such report or form.

The relief does not apply to filings required under Section 13(d) or Section 14(a), so all Schedule 13Ds and applicable amendments and all Form 4s will still need to be timely made. The SEC's full order can be found [here](#).

Companies that rely on the exemptive order will be considered current and timely in their Exchange Act filings requirements for the purposes of eligibility to use Form S-3 and Form S-8 and the purposes of Rule 144 if they file any report due during the relief period within 45 days of the filing deadline for the report. In addition, a company will be permitted to rely on Rule 12b-25 if it is unable to file the required reports before the extended due date.

Disclosure Guidance

As part of its release announcing the exemptive order, the SEC also reminded companies of their disclosure obligations. For example, companies and their officers and directors should not be engaging in securities transactions with the public unless all material information has been disclosed, particularly if there are new risks related to COVID-19 that would be material to investors. In addition, when companies do disclose material information, it should be accurate and complete in all material respects and should be broadly disseminated. Companies may want to consider if they need to reconsider or update any previous disclosure to the extent it is now materially inaccurate. The SEC also encouraged companies to reach out to the staff with any other issues that may arise with respect to their ability to comply with the requirements of the federal securities laws during the ongoing pandemic. The SEC's full announcement can be found [here](#).

Annual Meeting Change in Date, Time or Location

The SEC also recognized that some companies may be changing the date, time or location of their annual stockholders' meeting in response to growing concerns about the spread of the COVID-19 virus. As a result, the SEC has taken the position that if a company has already mailed and filed its definitive proxy materials, it can notify shareholders of a change in the date, time or location of its annual meeting without mailing additional soliciting materials or amending its proxy materials:

if it issues a press release announcing the change;

files the announcement as definitive additional soliciting material; and

it takes all reasonable steps necessary to inform other intermediaries and relevant market participants of such change. The SEC expects that companies will make announcements of any changes to the annual meeting sufficiently in advance of the meeting so that the market is properly alerted.

If companies have not mailed or filed their proxy materials, the SEC suggested companies should consider including disclosures regarding the possibility that the date, time and place of the stockholders' meeting may be changed in response to COVID-19. The SEC's full announcement can be found [here](#).

“Virtual” and “Hybrid” Annual Shareholder Meetings

Whether a company can hold a virtual shareholder meeting (i.e., where all shareholders participate through electronic means) or a hybrid shareholder meeting (i.e., an in-person meeting that also permits shareholder participation through electronic means) is governed by applicable state law. To the extent a company plans to conduct a virtual or hybrid meeting, it must (1) notify its shareholders, intermediaries, and other market participants of such plans in a timely manner and (2) provide clear directions as to the logistical details of the meeting, including how shareholders can remotely access, participate in and vote at such meeting. If a company has not yet filed and delivered its definitive proxy materials, those directions should be included in the definitive materials. If a company has already filed and mailed its definite proxy materials and switches to a virtual or hybrid meeting, it does not need to mail additional soliciting materials (including new proxy cards) if it follows the requirements listed above regarding changing the date, time or location of the annual meeting. The SEC's full announcement can be found [here](#).

Relief for Furnishing of Proxy and Other Solicitation and Information Material When Mail Delivery is Not Possible

The SEC will exempt a company from the requirements to furnish proxy statements, annual reports, information statements and other soliciting materials where (1) the common carrier has suspended delivery services in the security holder's area, and (2) the company has made a good faith effort to furnish the materials to the security holder in accordance with the rules applicable to the respective types of materials. The SEC's full Order can be found [here](#).

Contact Us

Husch Blackwell's securities law team continues to monitor the evolving situation and its implications for our clients. Should you have any questions, please do not hesitate to contact Kirstin Salzman, Shari Wright, Rebecca Taylor or Kenyon Briggs.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others.