



Delaware Governor Relaxes Annual Meeting Changes Notice Requirements in Emergency Order

APRIL 7, 2020

In an effort to decrease the transmittal of COVID-19 by reducing person-to-person contact, and in recognition of the travel bans in place in several states, Delaware's Governor John Carney issued an [emergency order](#) (the Order) on April 6, 2020, relaxing notice requirements for changes in locations and dates of annual meetings in response to the threat of COVID-19. Prior to the Order, Delaware law required companies to mail notices of changes to annual meetings at least 10 days before such meetings. On March 13, 2020, the SEC issued [guidance](#) explicitly eliminating any additional mailing requirements for companies that have already mailed and filed their definitive proxy materials, so long as they notify shareholders of any changes to the annual meeting, including switching to a virtual or hybrid meeting, by: (i) issuing a press release announcing such change, (ii) filing the announcement as definitive additional soliciting material, and (iii) taking all reasonable steps necessary to inform intermediaries and other relevant market participants of such change. The Order attempts to reconcile the state's strict mailing requirements with the SEC guidance to reduce the burden on companies in light of the difficulties arising from the COVID-19 pandemic.

Under the Order, if a board of directors wishes to change the company's annual meeting from a physical location previously disclosed in its proxy materials to a virtual meeting "as a result of the public health threat caused by the COVID-19 Pandemic or the COVID-19 outbreak in the United States," it may notify stockholders of the change solely by issuing a press release disclosing this change, which should be filed with the SEC as definitive additional soliciting materials and promptly posted to the issuer's website after its release.

Alternatively, if a company is unable to convene a currently noticed annual meeting at the physical location because of public health concerns arising from COVID-19, the company may adjourn the meeting to another date or time, to be held by remote communication, by providing notice of the date and time and the means of remote communication in a document filed with the SEC and a press release, which is required to be promptly posted on the issuer's website after its release. The Order is set to take effect at 8:00 p.m. Eastern on April 7, 2020, but the validity of the Order may be challenged in the near future. Those companies with contingency language in their proxy statements will likely still be in the best position with the most flexibility in this rapidly changing regulatory environment.

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