

## Securities Law Updates

# SEC Reacts to COVID-19 Crisis and Issues Relief Relevant to Public Companies and Regulated Entities



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On Friday, March 13, 2020, and over the subsequent weekend, the Securities and Exchange Commission (SEC) and its staff made announcements with guidance and/or relief for public companies and firms experiencing challenges because of the coronavirus (COVID-19). The SEC and its staff appear to have calibrated the guidance and relief to balance investors' need for information with the practical realities of an unprecedented public health event. The SEC also [emphasized](#) that it is continuing to "assess impacts relating to the coronavirus on investors and market participants, and will consider additional relief from other regulatory requirements."

### SEC Staff Guidance for Conducting Annual Meetings

On Friday afternoon, the SEC staff of the Division of Corporation Finance and the Division of Investment Management [published guidance](#) relating to shareholder meetings to assist public companies, shareholders and other market participants affected by COVID-19 with meeting their obligations under the federal proxy rules. In its announcement, the SEC staff "strongly encourage[d] all parties and intermediaries involved in the proxy voting process – including broker-dealers, transfer agents and proxy service providers – to be flexible and work collaboratively with one another" and noted that it expects "all market participants to cooperate with one another to facilitate issuers' obligations to hold annual meetings . . . as well as to allow shareholders to exercise their voting rights under state law." The SEC staff also noted that its announced guidance is not a binding rule of the SEC and has no legal force and effect.

The guidance explains that the SEC staff will take the position that an issuer that has already mailed and filed its definitive proxy materials can notify shareholders of changes to the time, date or location of its annual meeting without mailing additional soliciting materials or amending its proxy materials if it takes three steps "promptly after making a decision to change the date, time or location of the meeting and sufficiently in advance of the meeting so the market is alerted to the change in a timely manner." These three steps would involve: (a) issuing a press release announcing such change; (b) filing the announcement as definitive additional soliciting material on EDGAR; and (c) taking 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 also notes that, to the extent that an issuer has not yet mailed and filed its definitive proxy materials, the issuer should consider whether to include disclosures regarding the possibility that the date, time or location of the meeting could change due to COVID-19.

The guidance also reminded issuers that, to the extent they plan to conduct a "virtual" or "hybrid" meeting, the SEC staff expects the issuer to 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 'virtual' or 'hybrid' meeting, including how shareholders can remotely access, participate in, and vote at such meeting." The SEC staff further noted that, for an issuer that has not yet filed and delivered its definitive proxy materials, those disclosures should be in its definitive proxy

statement and other soliciting materials. The SEC staff guidance also indicates that an issuer that has already filed and mailed its definitive proxy materials would not need to mail additional soliciting materials (including new proxy cards) solely for the purpose of switching to a “virtual” or “hybrid” meeting if it follows the steps described above for announcing a change in the meeting date, time or location.

Finally, the SEC staff guidance notes that Exchange Act Rule 14a-8(h) requires shareholder proponents, or their representatives, to appear and present their proposals at the annual meeting. Since shareholder proponents may face possible difficulties in attending annual meetings in person to present their proposals, the SEC staff “encourage[d] issuers, to the extent feasible under state law, to provide shareholder proponents or their representatives with the ability to present their proposals through alternative means, such as by phone, during the 2020 proxy season.”

## **SEC Grants Regulatory Relief for Investment Advisers and Investment Companies**

[On Friday evening](#), the SEC “announced regulatory relief for funds and investment advisers whose operations may be affected by the coronavirus” relating to “in-person board meetings and certain filing and delivery requirements for certain investment funds and investment advisers.” In an [order](#) related to investment advisers, the SEC granted a temporary exemption from filing Form ADV, Form ADV part 2, Form PF and other documents to firms meeting a series of conditions. To qualify for the temporary exemption, the investment adviser must: (a) be unable to meet the applicable deadline “due to circumstances related to current or potential effects of COVID-19”; (b) “promptly provide[] the Commission via email” and “disclose[] on its public website” certain required information; and (c) file the form “as soon as practicable, but not later than 45 days after the original due date for filing or delivery, as applicable.”

The Friday evening announcement also included an [order](#) that provided investment companies impacted by COVID-19 events relief in specified circumstances. First, the order provides that investment companies may be exempt from in-person board meeting requirements for registered investment companies and business development companies if:

- an exemption is needed because of the current or potential effects of COVID-19;
- the required votes can be taken “by any means of communication that allows all directors participating to hear each other simultaneously during the meeting;” and
- any action taken under the exemption is ratified by a majority of disinterested directors at the next in-person board meeting.

The order also provides investment companies affected by COVID-19 an exemption from certain filing requirements. To rely on the filing exemption, an investment company must, among other things, notify the SEC by email, post information on its website or notifying customers directly, and provide an explanation and expected date on which the filing will be made.

## **SEC Allows Cboe to Temporarily Shift to Fully Electronic Trading**

On Saturday evening, the SEC continued to take targeted action to enable regulated entities to appropriately respond to the pandemic, noticing an immediately effective rule to facilitate Cboe’s temporary shift to fully electronic trading. In a [press release](#), the SEC explained that it was making three modifications to trading rules “to more fully replicate in an electronic trading environment the trading that occurs on the Cboe’s physical trading floor.” These modifications are: (a) permitting market makers with an appointment in an options class to be solicited for orders submitted into Cboe’s price improvement auction in order to more closely replicate the sourcing of liquidity that occurs on the floor today and to ensure minimal disruption to the existing liquidity sources available via floor-based trading; (b) excluding market makers that would not be subject to certain continuous quoting obligations in the trading floor environment from being subject to those requirements as a result of their participation in the all-electronic trading environment; and (c) permitting Cboe to better enable certain

complex strategies with multiple option components to function in an all-electronic trading environment.

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*Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.*

*For additional information and materials, please visit our COVID-19 / Coronavirus Resource Center.*

[Click here to visit our COVID-19 / Coronavirus Resource Center](#)

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