

Proxy season alert – Broker search shortened from 20 business days; 10 calendar days now reasonable

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Companies should generally provide 10-calendar-day advance notification of the record date to allow for sufficient time to conduct broker searches.

Due to recent guidance by the SEC, companies no longer need to conduct their broker search a full 20 business days before the record date for their shareholder meetings. According to a compliance and disclosure interpretation (C&DI) issued by the SEC on January 23, 2026, the SEC staff will “not object if a registrant conducts its “broker search” less than 20 business days before the record date, *provided that the registrant reasonably believes that its proxy materials will be timely disseminated to beneficial owners* and otherwise complies with Rule 14a-13.” Conversations with custodian banks, broker-dealers, institutional investors and their representatives indicate that a 10-calendar-day advance notification of a record date would provide reasonable grounds for a company to form such a belief under normal circumstances.

Background

The vast amount of voting shares of most U.S. companies are held by banks, brokers and other intermediaries of the beneficial owners of their securities, and they are essential in any proxy solicitation process. A broker search is necessary for companies, working through agents, to notify those intermediaries of the record date for the meeting of stockholders, and to inquire and receive information such as the number of copies of proxy materials to be distributed to the beneficial owners. The parameters for setting record dates are governed by state law, and SEC rules state that broker search inquiries should be made 20 business days before the record date.

New SEC interpretation

Given that the process for conducting a “broker search” is highly automated and generally completed within three days, the new C&DI affords companies greater flexibility in meeting the notification requirement. We understand that while the search process itself is automated, it is advisable for companies to provide notice at least 10 calendar days before a record date to ensure that all beneficial shares can be represented with proper entitlement for voting and quorum purposes, including cases where institutional investors may evaluate whether to recall shares on loan for voting purposes. Some of the considerations that could affect the notification time period include, among others: the number of copies of physical proxy materials that companies choose (or need) to requisition from their financial printers; whether there is sufficient time to receive estimates of materials in advance of the deadline to use Notice & Access; the retail vs. institutional composition of the shareholder base; and whether a significant number of stockholders have shares out on loan that they intend to recall in order to vote those shares.

Practical implication

This change will provide companies with meaningful flexibility during a compressed time period to prepare their proxy materials, including board and committee review and authorizations. We continue to strongly encourage companies to plan ahead and work closely with their external client services teams on the appropriate annual meeting timeline for their specific circumstances. We also note that the C&DI is only an SEC interpretation, and there may be rulemaking in the future.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908
ning.chiu@davispolk.com

David (Wei Fu) Li

+1 212 450 3861
david.li@davispolk.com

Hamna Ahmad

+1 212 450 4006
hamna.ahmad@davispolk.com

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