

What if you need to change your annual meeting location or date due to the COVID-19 coronavirus?

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Now is the season when many public companies are planning for and getting ready to finalize, print and mail a proxy statement for the annual meeting. What if, unfortunately, a company needs to change the location or date of the annual meeting (or change to a virtual meeting if state law permits) due to developments relating to the COVID-19 coronavirus?

Here is our current advice, based on our analysis of the SEC's proxy rules and Delaware law, and taking a practical view in light of the emergency and dynamic nature of this situation.

Do I need to re-mail the proxy statement?

No (except in special circumstances as noted below). To change a meeting location or date (or to change to a virtual meeting) after the proxy statement has been mailed, a company should issue a press release and file the release with the SEC as supplemental proxy materials. The change should be announced as early as possible ahead of the meeting in order to give shareholders and service providers like Broadridge time to adjust.

Delaware law requires notice of a meeting. However, unless there are special circumstances such as a particularly contentious item on the agenda, we believe that notice of the change as described above should be sufficient under Delaware law if the meeting is held within 60 days of the record date and in accordance with the bylaws. Companies incorporated outside of Delaware may wish to consult with local counsel.

Do I need to disclose now in the proxy statement the possibility of a change of location or date?

If you haven't already mailed your proxy statement and a change is already likely or is being considered (given the intended location of the meeting or center of gravity of directors and officers), then we think it a good idea to disclose the possibility of a change in the proxy statement.

Do I need to change the proxy card to provide for a possible change?

No. We believe that there is no need to change the proxy card to provide for the possibility of a change or to add a new voting item authorizing the change.

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

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