

## CORONAVIRUS RESOURCE CENTER

# SEC and ISS Issue New Guidance on Shareholder Meetings in Light of COVID-19 Pandemic

April 10, 2020

In response to issues raised by COVID-19, the SEC's Division of Corporation Finance issued updated guidance<sup>1</sup> on April 7, 2020 for conducting shareholder meetings and mailing proxy materials. On April 8, 2020, Institutional Shareholder Services also released guidance<sup>2</sup> regarding the application of its benchmark proxy voting policies in light of the pandemic.

**Updated SEC Guidance for Conducting Shareholder Meetings.** On April 7, 2020, the SEC's Division of Corporation Finance issued additional guidance regarding proxy rules related to shareholder meetings. Newly released guidance of note includes relief related to delays in the printing and physical mailing of an issuer's "full set" of proxy materials due to the impact of COVID-19 on the facilities and staffing of transfer agents and proxy service providers. Where delays are unavoidable due to COVID-19 related difficulties, the SEC "would not object to an issuer using the "notice-only" delivery option [permitted by Exchange Act Rule 14a-16] in a manner that, while not meeting all aspects of the notice and timing requirements of Rule 14a-16 [such as the 40-calendar day notice requirement], will nonetheless provide shareholders with proxy materials sufficiently in advance of the meeting to review these materials and exercise their voting rights under state law in an informed manner." Nonetheless, "affected issuers and intermediaries also should continue to use their best efforts to send paper copies of proxy materials and annual reports to requesting shareholders, even if such deliveries would be delayed."

Previously, on March 13, 2020 the SEC issued guidance making clear that an issuer that has already mailed and filed its definitive proxy materials to its shareholders can change

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<sup>1</sup> Available [here](#).

<sup>2</sup> Available [here](#).

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the date, time or location of the annual shareholder meeting (including changing the meeting to a virtual or hybrid one) without mailing additional materials or amending its proxy materials, subject to certain requirements. In its April 7<sup>th</sup> guidance, the SEC clarified that this relief applies to special meetings as well.

The SEC continues to encourage issuers and other affected parties to contact SEC staff to discuss any specific issues they are facing as a result of COVID-19.

**ISS Provides Specific Guidance on Certain Proxy Voting Policies.** On April 8, 2020, ISS released guidance on a number of voting policies that it believes are likely to be directly implicated over the coming months by the COVID-19 pandemic. In particular, the policy guidance grants relief with respect to shareholder meeting postponements and “virtual-only” meetings, provided that companies and boards make appropriate disclosures and maintain the ability for shareholders to participate meaningfully in such meetings. In addition, ISS will continue to consider the adoption of poison pills or other defensive measures on a case-by-case basis, and noted that “a severe stock price decline as a result of the COVID-19 pandemic is likely to be considered valid justification in most cases for adopting a pill of less than one year in duration.”<sup>3</sup>

The guidance also contains ISS’ policy statements relating to compensation issues (including changes to compensation metrics and option repricing), capital structure and payouts (including dividends, share repurchases and capital raisings) and changes to the board of directors or senior management.

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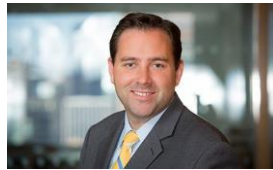
For more information regarding the coronavirus, please visit our [Coronavirus Resource Center](#).

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<sup>3</sup> See also <https://www.debevoise.com/insights/publications/2020/04/rethinking-poison-pills-again>.

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Please do not hesitate to contact us with any questions.



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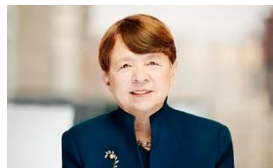
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