

## Checklist for Virtual or Delayed Annual Meetings Due to the Coronavirus

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The coronavirus has companies scrambling to determine whether to hold their Annual Meetings in-person as usual, switch to a virtual-only meeting that is broadcast online or postpone or adjourn the meeting to a later date as the shelter in place mandates continue. The following checklist outlines the primary actions to be considered under such alternatives.

### Virtual-Only Meeting

#### Is It Permitted?

**State Corporate Law:** Many state corporate laws expressly permit virtual meetings, but not all do. The states that permit them often require approval by the board of directors, if the company's organizational documents do not prohibit them, and require that certain procedures are followed.

**Certificate of Incorporation:** Confirm that there are no prohibitions of, or restrictions on, virtual meetings.

**Bylaws:** Check for prohibitions or restrictions to such meetings. Provisions related to the place, date, and time of the meeting generally should not override state corporate law permitting such meetings.

#### Proxy Advisory Firms and Institutional Investors

ISS has affirmed the use of virtual meetings this year due to the coronavirus if companies provide a full opportunity for shareholders to participate, ask questions, present shareholder proposals, and provide feedback to the company.

Glass Lewis has also relaxed its position this year, but expects a robust disclosure including an explanation for the switch to a virtual meeting, the inclusion of complete information about accessing the meeting and a confirmation that shareholders will have the same opportunity to participate as at an in-person meeting.

Institutional investors such as CII and the New York City Comptroller have also relaxed their positions on virtual meetings this year due to the coronavirus. They expect companies to affirm their commitment to holding in-person meetings in the future and use best practices for making the virtual meeting participatory.

## Notice of Change

**SEC Guidance:** The SEC has issued [guidance](#) that a switch to a virtual meeting may be accomplished after the proxy statement has already been mailed by the issuance of a press release announcing the change and how shareholders can participate and vote at the meeting and file the press release as definitive additional soliciting material with the SEC. This would not require mailing any additional soliciting materials or amending the proxy statement or proxy card if this is the only change to the Annual Meeting. The SEC expects companies to provide clear directions as to the logistical details, including how shareholders can remotely access the meeting and participate at such a meeting, including vote.

**Other Considerations:** Companies should take all reasonable steps necessary to inform others of the change, such as the company's proxy service provider or platform provider, transfer agent, proxy solicitor, inspector of elections, and applicable stock exchange. Companies should make a decision as soon as possible to give itself time to arrange the virtual meeting and alert the market and shareholders. If the company has not mailed its proxy statement yet, but has not decided whether or not to switch to a virtual meeting or postpone or adjourn the meeting to a later date, the company should add disclosure in the proxy statement of the possibility of the change to a virtual meeting due to the coronavirus.

## Meeting Logistics

**Access:** As mentioned above, the company should provide clear instructions on how to access the meeting, including how to ask questions or vote. In a virtual meeting, shareholders may be given the opportunity to submit their questions either before or during the meeting. If not all questions can be addressed, it is a good idea to post answers to those questions shortly after the meeting. Update the website used for the meeting, if applicable.

**Medium:** Determine whether the meeting will be only audio or a live webcast. Engage a platform provider as soon as possible and confirm that it will have the capacity to handle the crush of new business due to the coronavirus with the possibility of working remotely with a short staff.

**Shareholder List:** The company must still provide access to the shareholder list before and during the meeting as with an in-person meeting.

**Meeting Hotline:** Set up a hotline for shareholders who have technical difficulties in accessing the meeting.

**Retention of Control Number:** Highlight to shareholders the need to keep the control number on the proxy card in order to participate or vote at the meeting. Work with the company's platform provider to develop a work around in case this should happen.

**Rules of Conduct and Script:** Develop revised rules of conduct and script to address the differences in a virtual meeting to a meeting in-person.

**Regulation FD:** Be sure to post presentation materials on the company's website prior to the start of the meeting and monitor statements made during the meeting. Consider issuing an 8-K in the event that material information is provided during the meeting that had not been disclosed before.

## **Delay the Meeting**

### **Postponement**

**New Record Date and Notice May Be Required:** If a company delays the Annual Meeting prior to the meeting, the company will either delay mailing of the proxy statement or notify shareholders of the delay by a press release that is filed as definitive additional soliciting material with the SEC. If the company has filed the proxy statement, under Delaware law it may need to set a new record date if the meeting would be more than 60 days after the original record date, which would require formal notice of the new record date to be provided to the shareholders. The exchange on which the company's stock is listed may also require notice of the new record date.

**Slight Risk of a Court Ordered Meeting:** Under Delaware law, if the Annual Meeting is not held within 13 months following its last Annual Meeting, a shareholder or a director may apply to the Court of Chancery to request that the meeting be held and prescribe the time and place and notice requirements for the meeting. Under the current circumstances, we believe that this is very unlikely.

### **Adjournment**

**Procedure:** To adjourn the Annual Meeting at the meeting itself, typically the meeting is formally opened at the location for the meeting and a quorum is confirmed before announcing the date, time and place of the adjourned meeting. Advance notice to advise shareholders not to travel to the meeting is desirable, if possible.

**Risk of Convening Meeting:** Shelter in place mandates due to the coronavirus may make it difficult to open or convene a meeting, which may not be known in advance.

**Notice:** As discussed under a switch to a virtual meeting, a delay of the meeting to a later date after the proxy statement has been mailed does not require formal notice if the new date, time, and place are disclosed at the meeting and the meeting is held within 30 days of the originally scheduled meeting (under Delaware law). A press release that is filed as definitive additional soliciting material is recommended to inform the shareholders.

**New Record Date:** In an adjournment, a new record date may not be required, even if the new date is more than 30 days from the original date of the meeting. Consult with company counsel to determine what is required for the company in question. Even if a new record date is not required, a board of directors may decide to set a new record date due to a long delay if the board believes that the shareholders as of the original record date are not representative of the current shareholders.

**Stock Exchanges:** Confirm whether the exchange on which the company's stock is listed requires notice of the adjourned meeting or new record date, if applicable.

For questions regarding virtual annual meetings, postponements, adjournments or any of the recent guidance, please contact your GableGotwals attorney or a member of our [Corporate & Securities team](#).



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