



Corporate & Business Alert: Extension of SEC Filing Requirements; Annual Meetings

March 27, 2020

Extension of SEC Filing Deadlines. On March 25, 2020, the Securities and Exchange Commission (SEC) issued an order (the "March 25 Order") providing a 45-day extension of the filing deadlines for certain reporting obligations of SEC-registered issuers, including definitive proxy statements required by Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and periodic reports, such as Forms 10-K, 10-Q and 8-K required under Sections 13(a) or 15(d) of the Exchange Act.[1] The March 25 Order applies to filings that are due on or before July 1, 2020, expanding the application of the available extensions granted in the SEC's previous order of March 4, 2020, which applied to filings due between March 1 and April 30, 2020.

The relief offered by the March 25 Order is available to issuers subject to the reporting requirements of Exchange Act Sections 13(a) or 15(d), subject to satisfaction of the following conditions:

1. The inability to meet the original filing deadline is due to circumstances relating to COVID-19;
2. The issuer files, no later than the original filing deadline, a Current Report on Form 8-K stating:
 1. That the issuer is relying on the March 25 Order,
 2. A brief description of the reason for the delay in filing the required report,
 3. The estimated date the required report will be filed,
 4. Any company-specific risk factors explaining material impacts of COVID-19 on the issuer's business, and
 5. A statement signed by any third party whose failure to provide a required report, opinion or certification is the reason the issuer cannot meet the original filing deadline for the required report; and
3. The issuer must disclose in the required report, when filed, that such report was filed in reliance on the March 25 Order and the reason why the report was not able to be filed on the original filing deadline.

The March 25 Order further exempts issuers from the requirement to deliver proxy solicitation statements and annual reports to stockholders located in areas where the issuer's customary means of delivery service has been suspended due to COVID-19-related circumstances.



The entire March 25 Order is available at <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>

Annual Meetings. While the SEC's recognition of the potential difficulties of compliance with proxy filing and other deadline and delivery requirements is welcome, it is important to note that the March 25 Order applies only to the requirements to *file and deliver* proxy solicitation materials, and has no bearing on the requirement to hold an annual meeting of stockholders, which is governed by the rules of the stock exchanges and the laws of the state in which a company is incorporated.

Stock Exchange and State Requirements. Companies listed on Nasdaq and NYSE are required to hold annual stockholder meetings. In addition, many states and corporation bylaws require that a corporation, whether public or private, hold an annual meeting of its stockholders for the election of directors and other appropriate business. Our current social distancing protocols (or in many areas, mandates) have obviously impacted the advisability and even possibility of holding meetings of any size. Companies approaching designated annual meeting dates (typically in the spring for companies with 12/31 year-ends) may wish to consider alternatives to in-person annual meetings.

Remote Meetings. Many states, including Delaware, Kansas, Missouri and Minnesota, permit stockholder meetings to be held via remote communication means; certain states, however, require that the bylaws or articles of incorporation authorize such action. In general, with some variation by state, remote meetings must have a mechanism for the company to confirm that each remote participant is in fact a stockholder of the company, and provide stockholders the opportunity to:

- Vote;
- Reasonably participate in the meeting; and
- See, hear or read the meeting proceedings "substantially concurrently" with such proceedings.

Some states, including Minnesota, impose the additional requirement that stockholder questions and remarks can be heard or read "substantially concurrently" at the time when made, but the requirement for "reasonable participation" arguably includes this right even where not expressly provided in the applicable statute.

Companies considering remote meetings should take the following steps:

1. Confirm that remote meetings are permitted under both the applicable state corporate statute and the company's charter documents;
2. Determine the appropriate technology for the conduct of the remote meeting (e.g., by telephone access, live-streaming, video-conferencing or webcast), taking into account the number of participants, ease of accessibility for stockholders, technical support that may be required, matters to be considered at the meeting, voting procedures, means for stockholders to ask questions and otherwise participate and, not least of all, cost;



3. Establish procedures to verify stock ownership of meeting participants;
4. Provide in proxy solicitation and other meeting notice materials the logistical details and procedures for the remote meeting^[2];
5. Establish procedures for stockholders to vote remotely; and
6. Establish procedures for recording of votes taken at the remote meeting.

Postponement of Meeting. Most state corporate statutes, including Delaware and Kansas, effectively provide for an annual meeting to be postponed beyond the designated date and held "as soon thereafter as is convenient." Delaware and Kansas companies not wishing to hold an in-person or remote meeting at this time could consider deferring the date of the annual meeting without consequence for up to 30 days, after which a stockholder has the right to petition the applicable district court to order a meeting. Missouri permits an annual meeting to be postponed up to 90 days by the company's board of directors. Although Minnesota does not generally require that an annual stockholder meeting be held, a scheduled meeting can be adjourned for up to 120 days without further notice.

Action by Written Consent. All state corporate statutes permit action to be taken by written consent of a company's stockholders, but requirements vary. In Missouri and Minnesota, written consents must be signed by *all* stockholders in order to approve a proposed action; in Kansas and Delaware action may be approved by written consent of the number of stockholders that would be required to approve such action at a duly held meeting. Written consents in lieu of an annual meeting are an attractive option for closely held companies, but may be impractical for companies with a large stockholder base.

Lathrop GPM attorneys are ready to advise and assist you with any of the matters described in this alert. If you have questions about your company's proxy filings or annual meetings, please contact Patricia Garringer-Strickland, J.C. Anderson, Dale Werts, or your regular Lathrop GPM contact.

[1] The March 25 Order extends the filing requirements for certain other filings, including Form 20-F and ownership reports on Schedule 13G. The SEC has also issued orders dated March 13 and March 23, 2020, providing regulatory requirement relief for investment advisor and registered funds, which are not addressed in this Alert.

[2] The SEC stated in guidance published March 13, 2020, that for issuers required to file definitive proxy statements, such disclosures should be included in the definitive proxy materials.