

MEMO# 32284

March 14, 2020

06 SEC Staff Issues Guidance on Shareholder Meetings in Light of COVID-19 Concerns

[32284]

March 14, 2020 TO: ICI Members

Investment Company Directors SUBJECTS: Closed-End Funds

Compliance

Disclosure

Fund Governance

Intermediary Oversight

Investment Advisers

Operations

Transfer Agency RE: SEC Staff Issues Guidance on Shareholder Meetings in Light of COVID-19 Concerns

On March 13, the SEC's staff of the Divisions of Corporation Finance and Investment Management provided guidance to issuers (i.e., operating companies and investment companies) and their shareholders on upcoming shareholder meetings in light of COVID-19 concerns.[\[1\]](#) The guidance is particularly helpful to those issuers that have mailed their definitive proxy statements and now are considering alternative arrangements due to COVID-19. While not expressly stated in the guidance, we understand from the staff that this guidance also applies to special shareholder meetings.

Background

Operating companies (and some registered funds[\[2\]](#)) hold annual shareholder meetings, and those with securities registered under the Exchange Act must comply with the federal proxy rules when soliciting proxies. These rules require the delivery of proxy materials (such as definitive proxy statements and proxy cards). Many of these annual meetings and their related proxy solicitations occur in the spring.

Summary of Staff Guidance

A. Changing the Meeting Date, Time, or Location

Because some issuers are contemplating changes in the date, time, or location of their annual meetings, the staff is taking the position that an issuer that has already mailed and

filed its definitive proxy materials can notify shareholders of a change in the date, time, or location of its annual meeting without mailing additional soliciting materials or amending its proxy materials if it:

- issues a press release announcing such change;
- files the announcement as definitive additional soliciting material on EDGAR; and
- takes all reasonable steps necessary to inform other intermediaries in the proxy process (e.g., any proxy service provider) and other relevant market participants (e.g., the appropriate national securities exchanges) of such change.

The staff expects issuers to take these actions promptly following such a change.

If an issuer has not yet mailed and filed its definitive proxy materials, it should consider including disclosures regarding the possibility of date, time, or location changes due to COVID-19.

B. “Virtual” Meetings

The staff also provides guidance to those issuers contemplating a “virtual” (or “hybrid”^[3]) shareholder meeting through the internet or other electronic means in lieu of an in-person meeting, consistent with state law and their governing documents. These meetings still require the issuer to timely notify its shareholders, intermediaries, and other market participants of such plans and clearly disclose the logistical details, including how shareholders can remotely access, participate in, and vote. Issuers that have not yet filed and delivered their definitive proxy materials should include these disclosures in their proxy materials; those that have already filed and mailed their definitive proxy materials need not mail additional materials solely to switch to a “virtual” or “hybrid” meeting, provided they satisfy the steps described above with respect to changing the meeting date, time, or location.

C. Presentation of Shareholder Proposals

Exchange Act Rule 14a-8 requires shareholder proponents to appear and present their proposals at the annual meeting. In light of current travel difficulties, however, the staff encourages issuers to permit shareholder proponents to present their proposals through alternative means (e.g., by phone) during the 2020 proxy season.^[4]

D. Miscellaneous Guidance

The staff encourages all parties and intermediaries involved in the proxy voting process—including broker-dealers, transfer agents, and proxy service providers—to be flexible and work collaboratively with one another.

The staff further states that operating companies needing additional assistance contact the Division of Corporation Finance at (202) 551-3500 or at https://www.sec.gov/forms/corp_fin_interpretive, and that registered funds and business development companies contact the Division of Investment Management at IMOCC@sec.gov, or (202) 551-6825.

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

endnotes

[1] *Staff Guidance for Conducting Annual Meetings in Light of COVID-19 Concerns*, available at www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns?auHаш=zrsDVFen7QmUL6Xou7EIHYov4Y6IfRTjW3KPSVukQs.

[2] Annual shareholder meetings are much more common for closed-end funds than for mutual funds and ETFs.

[3] A “hybrid” meeting is an in-person meeting that also permits shareholder participation through electronic means.

[4] If a shareholder proponent is not able to attend the meeting and present due to difficulties related to COVID-19, the staff states that this would be “good cause,” and issuers could not subsequently assert Rule 14a-8(h)(3) as a basis to exclude a proposal submitted by the shareholder proponent.