

SEC Reporting & Compliance Alert

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Four Times Square
New York, NY 10036
212.735.3000

1440 New York Ave., N.W.
Washington, D.C. 20005
202.371.7000

Reminders for Annual Meeting Proxy Materials

When finalizing proxy materials for upcoming annual shareholder meetings, we recommend that public companies consider the following requirements under the Securities and Exchange Commission (SEC) rules and stock exchange listing standards. In addition, we recommend public companies consider the SEC's recent interpretative guidance concerning cybersecurity disclosures.

Proxy Disclosures

Consider Recent SEC Cybersecurity Guidance. On February 21, 2018, the SEC issued an interpretive release providing guidance for public companies relating to disclosures of cybersecurity risks and incidents, which among other things reminds companies of their obligations to disclose the board's role in material risk oversight matters in their proxy statements.¹ The SEC noted that disclosures regarding how the board engages in cybersecurity risk oversight allow investors to assess a board's performance in this important area. Based on this guidance, as well as on investor calls for similar information, companies should consider whether their proxy statement disclosures regarding board oversight of material risk matters should be enhanced.

Ensure Clarity on the Proxy Card. The SEC rules require that the company's proxy card identify "clearly and impartially" each separate matter intended to be acted upon. In particular, companies should, as noted in the 2016 SEC staff guidance regarding the descriptions of proposals in proxy materials, ensure that proxy cards clearly identify and describe the specific action on which shareholders will be asked to vote, regardless of whether the matter is a management or shareholder proposal.²

SEC Filings

File the Proxy Card, Notice of Internet Availability of Proxy Materials and Other Proxy Soliciting Materials With the SEC. In addition to filing the proxy statement, companies should confirm that the proxy card, the Notice of Internet Availability of Proxy Materials (if applicable) and any other written communication materials used in connection with the annual meeting solicitation are filed with the SEC. The proxy card should be filed

¹ The SEC's interpretive release is [available here](#). For additional information, see [our related client alert](#).

² See Compliance and Disclosure Interpretations (Regarding Description Under Rule 14a-4(a)(3) of Rule 14a-8 Shareholder Proposals), March 22, 2016, [available here](#).

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together with the proxy statement, and the Notice of Internet Availability of Proxy Materials should be filed separately as additional proxy soliciting materials. Information included with the annual report, such as a letter to shareholders, is not considered soliciting materials or required to be filed with the SEC. Unless a company specifically chooses otherwise, an annual report is not deemed to be “soliciting materials” or “filed” with the SEC, or subject to Regulation 14A or the liabilities of Exchange Act Section 18.³

File Form 8-K to Announce Voting Results. Companies should announce the matters presented at the annual meeting for a shareholder vote, as well as the number of votes cast for, against or withheld for each matter, as required by Item 5.07 of Form 8-K, within four business days following the annual meeting. In addition, companies must disclose the results of the say-on-frequency vote in the Form 8-K filing. The disclosure must state the number of votes cast for each of “one year,” “two years” and “three years,” as well as the number of abstentions. Although the say-on-frequency vote is advisory in nature, companies also must disclose the decision of the board regarding the frequency of future say-on-pay votes in a Form 8-K filing. The SEC permits a company up to 150 calendar days after the annual shareholder meeting (but no later than 60 days prior to the deadline for shareholder proposals for the next year) to decide and disclose their decision on future say-on-pay votes.

Other Requirements

Post the Annual Report on the Company Website or Furnish Copies With the SEC. If a company elects to have its Form 10-K serve as its annual report, there are no other requirements to furnish copies with the SEC or stock exchanges. Companies that post the annual report on their corporate website are not required to mail hard copies of their annual report to the SEC or furnish it on EDGAR, provided that the annual report remains available on the website for a year.⁴ Otherwise, Exchange Act Rule 14a-3(c) requires that companies mail to the SEC seven copies of their annual reports to shareholders no later than the date on which such report is first sent or given to shareholders, which companies can also satisfy by furnishing the annual report

in electronic format via EDGAR or in paper form under Regulation S-T. Companies should confirm that the annual report has been mailed to the SEC, furnished on EDGAR or posted on the company website. If the annual report is mailed to the SEC, confirmation of the mailing should be retained in the company’s records. Companies should note that mailing the annual report to the SEC will not result in the report being available on EDGAR.

Post the Proxy Materials on a Publicly Available Website. In addition to the annual report, the proxy soliciting materials, including the proxy statement and proxy card, must be made publicly available and free of charge on a website other than the SEC’s EDGAR.⁵ Those materials must be posted on or before the time the notice is sent to the shareholders and must remain available online until the conclusion of the annual meeting.

Comply With Listing Standards. On March 1, 2018, the SEC approved the New York Stock Exchange’s (NYSE) proposal to eliminate the requirement for listed companies to provide to NYSE paper copies of definitive proxy materials.⁶ As a result, NYSE-listed companies are no longer required to submit hard copies of definitive proxy materials, provided that such proxy materials are included in an SEC filing available under Schedule 14A on EDGAR. Any NYSE-listed company whose proxy materials are not made on Schedule 14A but are available on EDGAR, such as foreign private issuers that file proxy materials under Form 6-K or 8-K, or U.S. issuers that file proxy materials on Form S-4, must inform the NYSE of the information needed to identify the filing as containing proxy materials. Any NYSE-listed company not required to file proxy materials on EDGAR or whose materials are not filed in their entirety on EDGAR will continue to be required to provide three physical copies to the NYSE. Nasdaq-listed companies are not obligated to mail proxy materials to Nasdaq.

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For additional information, see our December 4, 2017, client alert, [“Matters to Consider for the 2018 Annual Meeting and Reporting Season.”](#)

³ See Exchange Act Rule 14a-3(c).

⁴ See Compliance and Disclosure Interpretations (Regarding Submission of Annual Reports to SEC Under Rules 14a-3(c) and 14c-3(b)), November 2, 2016, [available here](#).

⁵ See Exchange Act Rule 14a-16(b).

⁶ See Order Granting Approval of Proposed Rule Change to Amend the NYSE Listed Company Manual to Modify Its Requirements With Respect to Physical Delivery of Proxy Materials to the Exchange, [available here](#).

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Contacts

Brian V. Breheny

Partner / Washington, D.C.
202.371.7180
brian.breheny@skadden.com

Andrew J. Brady

Of Counsel / Washington, D.C.
202.371.7513
andrew.brady@skadden.com

Josh LaGrange

Counsel / Palo Alto
650.470.4575
josh.lagrange@skadden.com

Ryan J. Adams

Associate / Washington, D.C.
202.371.7526
ryan.adams@skadden.com

Hagen J. Ganem

Associate / Washington, D.C.
202.371.7503
hagen.ganem@skadden.com

Caroline S. Kim

Associate / Washington, D.C.
202.371.7555
caroline.kim@skadden.com

Justin A. Kisner

Associate / Washington, D.C.
202.371.7367
justin.kisner@skadden.com

Drew L. Pollekoff

Associate / Washington, D.C.
202.371.7341
drew.pollekoff@skadden.com