

Delaware Governor Issues Order Regarding Notice of Change to Virtual Stockholders' Meeting for Public Companies Due to COVID-19

Skadden

April 7, 2020



If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Marc S. Gerber

Partner / Washington, D.C.
202.371.7233
marc.gerber@skadden.com

Allison L. Land

Partner / Wilmington
302.651.3180
allison.land@skadden.com

Edward B. Micheletti

Partner / Wilmington
302.651.3220
edward.micheletti@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

On April 6, 2020, the governor of Delaware, John Carney, issued an executive order addressing the notice requirement for public companies that switch their stockholders' meetings from a physical location to a "virtual" meeting by means of remote communications, as a result of the public health threat caused by the COVID-19 pandemic. The order provides that companies subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the 1934 Act), may give stockholders notice of such change by means of a filing with the Securities and Exchange Commission (SEC) and a press release posted on the corporation's website, which alleviates the requirement to mail a new notice to stockholders under these circumstances.

While Delaware law already permits corporations to hold their stockholders' meetings by means of remote communications, many public companies already have delivered notice to stockholders of their 2020 annual stockholders' meetings, specifying that such meeting will be in-person, held at a physical location. Recognizing that holding an in-person meeting could present a serious health threat, many companies are now considering switching this year's meeting to be held by remote communications. The governor's executive order permits a public company that has already delivered notice of an in-person stockholders' meeting, and that either (i) changes the meeting so that it will occur solely by means of remote communications or (ii) adjourns the meeting to occur solely by means of remote communications on a different date or time, to notify stockholders of such change by means of a filing with the SEC and issuing a press release to be posted on the corporation's website promptly thereafter.

The executive order relieves public companies of the burden and cost of mailing a new notice of meeting to stockholders in these circumstances so long as the SEC filing and press release requirements are met. In addition, any such adjournment would not require the company to call the meeting to order in order to adjourn, but would permit such adjournment to be announced solely by means of the SEC filing and press release.¹

Notably, the order does not apply to corporations not subject to the reporting requirements of the 1934 Act, nor is it applicable to any corporations who have not yet delivered notice of their stockholders' meetings. For reporting companies under the 1934 Act, the executive order is consistent with the prior SEC guidance² issued in light of the difficulties arising from COVID-19 that permits 1934 Act reporting companies to

¹ See Section 4(a) of the [governor's executive order](#).

² See [SEC Guidance](#).

Delaware Governor Issues Order Regarding Notice of Change to Virtual Stockholders' Meeting for Public Companies Due to COVID-19

change the date, time or location of their annual stockholders' meetings, without mailing additional materials to stockholders, by issuing a press release announcing the change and filing such announcement as supplemental proxy materials on EDGAR, and taking reasonable steps to notify intermediaries and other meeting participants.

While many corporations already have delivered notice of their 2020 annual meeting of stockholders, those that have not yet done so should consider specifying in their notice of meeting to stockholders that this year's annual stockholders' meeting will be held by remote communications only, in light of the public health threat of COVID-19.