COVID-19 Update: Q&A for Public Companies

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Introduction

This First Analysis article addresses some of the most frequently asked questions of public companies on how to navigate the challenges posed by COVID-19. The Securities and Exchange Commission (SEC) has provided conditional regulatory relief regarding filing deadlines and has issued guidance regarding annual meetings to assist public companies impacted by COVID-19. All recent SEC guidance can be found on SEC Coronavirus (COVID-19) website.

Companies should review and update, if appropriate, their 10-K or 10-Q disclosures to address material impacts of COVID-19, including with respect to risk factors, forward-looking statements, MD&A (including known trends and uncertainties), liquidity and capital resources, and subsequent events, and be mindful that actions taken in response to COVID-19 may also trigger disclosure requirements on Form 8-K. Companies should also refer to Disclosure Guidance Topic No. 9, issued by the Division of Corporation Finance on March 25, 2020, providing the staff's current views regarding disclosure and securities law obligations with respect to the impact of COVID-19.

Companies should also consider disclosure approaches and obligations under different scenarios in light of the risks posed by COVID-19 (including, for example, the potential impact of COVID-19 on business operations and key management).

The SEC has provided, subject to certain conditions, public companies with an additional 45 days to file certain disclosure reports, schedules and forms that would otherwise have been due between March 1 and July 1, 2020, as well as guidance to public companies contemplating changes to date, location, or format of annual meetings in response to COVID-19.

For more information on disclosure and other securities law obligations that public companies should consider, see Public Company Periodic Reporting and Disclosure Obligations and Duties to Disclose and Update Disclosure. For additional practical guidance on public company reporting, see Periodic and Current Reporting Resource Kit. For further information on SEC's response to COVID-19, see COVID-19 Update: SEC and Nasdaq Response and Updated SEC C&DIs, SEC's Conditional Reporting Relief and COVID-19 Disclosure Guidance: First Analysis, SEC Reporting Companies: Considering the Impact of the Coronavirus on Public Disclosure and Other Obligations: First Analysis, and COVID-19 Ramifications for Public Companies—SEC Disclosures, SEC Filings and Shareholder Meeting Logistics: First Analysis. For an overview of practical guidance on COVID-19 covering various practice areas, including capital markets, see Coronavirus (COVID-19) Resource Kit.

Initial Guidance

Does a company need to update its disclosure to disclose the impact of COVID-19 on its business or in light of new information affecting the company related to COVID-19?

There is no general disclosure obligation. However, there may be specific situations where a company is obligated to update its disclosure or where a company may wish to update its disclosure. See below for examples and possible disclosure approaches.

What should a company disclose in its 10-K or 10-Q regarding COVID-19?

A company should consider any material impacts of COVID-19 on its business and financial condition. Areas where disclosure will likely be needed or updated include:

Risk Factors

Many companies often do not update risk factors after the 10-K, particularly in the first 10-Q, as there may not be any material updates needed from the risk factors discussed in the 10-K. However, particularly for calendar year-end companies, we expect that most if not all companies will add or expand their risk factor disclosures in light of COVID-19.

Risk factor updates may include the impact of COVID-19 on the company's business and its customers and suppliers, the ability of to pay and receive payments, the impact on business relationships due to restrictions on travel and otherwise, liquidity, compliance with financial and operating covenants, the impact on key management, the impact of the invocation of the Defense Production Act, and the impact on employees and operations (including any requirement by federal or state governments to close operations to the extent not considered essential).

Keep in mind that risks should be accurate and not hypothetical if the risk has in fact occurred. For example, if a company has experienced significant delays in customer payments or in its supply chain, the risk should disclose that this has happened and could happen in the future, and should not be phrased as a hypothetical risk.

Forward-Looking Statements

As with risk factors, consider whether specific COVID-19 effects should be added to the cautionary statements accompanying forward-looking statements.

MD&A

Consider the impact of COVID-19 on historical results as well as known trends and uncertainties.

Liquidity and Capital Resources

Consider the impact on liquidity and capital resources, including the impact of COVID-19 on customers and timing of payments, the sufficiency of credit facilities, including compliance with lender covenants such as liquidity ratios, any impairment charges, and any need to increase drawdowns of credit facilities. In addition, if a company incurs additional indebtedness or has liquidity issues as a result of COVID-19, consider whether the company is in compliance with lender financial or operating covenants and whether there is risk of non-compliance or default or if notice requirements are triggered. Companies should continue to monitor compliance with covenants in lending agreements, particularly for any impact as a result of actions taken in response to COVID-19. Also see below regarding disclosure obligations which may be triggered as a result of actions taken in response to COVID-19.

Subsequent Events

Disclose any material events subsequent to the period covered by the financial statements in the relevant report.

Should a company update or withdraw earnings guidance?

Whether a company should update or withdraw guidance depends on the facts and what the company's business is experiencing. A company may want to wait until it has more information or visibility.

Future guidance: If the company has not previously given guidance, consider not issuing guidance due to the ongoing uncertainty and rapidly changing situation. If the company has given guidance in the past, consider not providing new guidance for upcoming quarters or annual guidance until the company has sufficient visibility.

Existing guidance: While there is no affirmative obligation to update guidance, many companies will update if they have sufficient visibility to do so, for obvious reasons. If a company believes that guidance will change, or is likely to change, the company should consider whether to update or withdraw. In the current environment, it may be better to withdraw guidance rather than issue new guidance, particularly as the situation is fluid and the company may not have sufficient visibility to update. Keep in mind that if a company discloses any information, it should be materially complete and accurate, and the company does not need to provide information that it does not know.

Are there disclosure requirements under Form 8-K because of COVID-19?

There is no general 8-K disclosure obligation triggered by COVID-19. However, if a company takes actions in response to the impact of COVID-19, the company should consider the triggering events under Form 8-K. For example, if the company enters into a material loan agreement or drawdown on a credit facility due to the need for additional liquidity as a result of COVID-19, the company may trigger a disclosure obligation under Item 2.03: Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement. Similarly, other actions taken in response to COVID-19 may trigger reportable events, such as under Item 2.04: Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement, Item 2.05: Costs Associated with Exit or Disposal Activities, or Item 2.06: Material Impairments. In short, the analysis of whether there is a reporting obligation is the same as it would be for any of the 8-K disclosure items, but companies should be particularly mindful if they are taking actions outside the ordinary course in response to COVID-19. A company may also wish to provide material information via Item 7.01 or 8.01. A company should also ensure that its disclosure controls and procedures are robust and that the disclosure committee is well-positioned to evaluate disclosure obligations and triggering events to ensure the company can meet its disclosure obligations in a timely manner.

What other situations may require a company to update disclosure due to COVID-19?

In addition to the matters discussed above, if a company has a pending transaction, such as a capital raise, the company will likely need to update disclosures regarding the impact and risk to the company due to COVID-19. In the context of a merger or acquisition, a company should consider whether any of the representations, covenants, or other deal terms should be amended in light of COVID-19. In addition, if there are specific events due to COVID-19 impacting the company, it may wish to disclose those events and impacts even if there is no specific obligation or disclosure requirement. For example, if key members of management test positive for COVID-19 or are quarantined, a company generally does not have any obligation to disclose that fact. However, for market and optics reasons, the company may wish to disclose and, in general, to have a contingency plan in place for these types of developments. If the company takes action in response to the impact of COVID-19, as noted above, this action may also trigger specific disclosure obligations. Further, if the company is speaking publicly, it should be sure it is providing current, complete, and accurate information. In addition, if the trading window is open and the company becomes aware of material non-public information, whether due to COVID-19 or otherwise, the company should update its public disclosures or close the trading window.

What if members of key management test positive for COVID-19 and/or must be quarantined or take a leave of absence?

As noted above, a company does not have a specific obligation to disclose if a member of management tests positive for COVID-19, but we expect that many companies will opt to provide disclosure for market, optics and investor relations reasons. In addition, as discussed below, if certain individuals must be quarantined or take a leave of absence, or any individual is appointed to take on certain responsibilities, even if on a temporary basis, a company should review the disclosure requirements under Item 5.02 of Form 8-K.

If a company elects to disclose, it should do so in a manner compliant with Regulation FD. Some disclosure approaches may include:

- Issuing a press release
- Issuing a letter to employees and posting it on the company's website
- Furnishing the information under Item 7.01 of Form 8-K
- Posting the information on the company's website –or–
- Some combination of the above

Note that posting to the website alone may not satisfy the requirements of Regulation FD. Whether a website posting alone is sufficient depends on whether the company routinely posts information to the website and publicizes the website to investors so that investors are aware that the company uses the website as a means of disseminating material information. Some companies will provide disclosure in their Forms 10-K or press releases to indicate that they intend to use the company website as a means of disclosing material non-public information and for complying with Regulation FD and will note where the information may be found on the website (e.g., under the Investor Relations tab), and advise investors to check the website in addition to the company's SEC filings, press releases, and public conference calls/webcasts.

As highlighted above, if any of the enumerated officers under Item 5.02 of Form 8-K takes a leave of absence due to COVID-19 or other reasons, or is otherwise unable to perform the functions of their position, or an individual is appointed to fill such function, even if on a temporary basis, an Item 5.02 disclosure may be triggered. For example, Item 5.02(b) applies to a principal executive officer, president, principal financial officer, principal accounting officer,

principal operating officer, or persons performing similar functions, or any named executive officer or director, and Item 5.02(c) applies to a principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or persons performing similar functions.

As discussed above, a similar disclosure analysis would apply to any significant development in the company's business and operations due to the impact of COVID-19, even if a specific disclosure obligation is not initially triggered.

Should a company close its trading window?

As discussed above, the same analysis normally taken in considering whether to close a trading window would apply here. If there is material non-public information regarding the company, the trading window should be closed or the company should update its public disclosures, and there should no trading until such disclosure is made. If a company is aware of a risk related to COVID-19 that would be material to investors, it should refrain from engaging in securities transactions with the public and take steps to prevent directors, officers and other company insiders who are aware of the risk from trading until the company has made adequate public disclosure of the risk.

Can a company answer questions from investors and others about how it is responding to COVID-19?

Yes, but a company must avoid selective disclosure prohibited by Regulation FD and instead appropriately communicate any material information through press releases and not in one-off discussions. See below regarding general communications principles to keep in mind.

Are there general principles a company should keep in mind regarding disclosures?

The same principles apply to any external communications made by the company. Keep in mind:

- A company does not need to disclose what it doesn't know.
- Anything disclosed must be materially complete, accurate and not misleading.
- If a company discloses material information about the impact of COVID-19, it should be broadly disseminated and in compliance with Regulation FD and any applicable SEC or stock exchange requirements as per standard practice.
- Consider whether a company needs to revisit, refresh, or update previous disclosure that may have become materially inaccurate.
- A company may wish to disclose material events via press release and/or Item 7.01 or 8.01 of Form 8-K.
- Any forward-looking disclosures should also be specifically identified to take advantage of the forward-looking statement safe harbor.

As the situation is fluid, are there additional guidelines public companies should keep in mind as they continue to assess the impact of COVID-19?

The Division of Corporation Finance issued guidance on March 25, 2020 regarding disclosure and other securities law obligations of public companies in light of COVID-19, including insider trading and Regulation G.

Disclosure Considerations

The guidance discusses the following possible disclosure considerations, many of which are also discussed above, including:

1. How COVID-19 has impacted a company's:

   (a) Financial condition and results of operations, including expectations regarding the impact on future operating results and financial condition, both near-term and long-term, in light of the overall economic outlook and changing trends, and whether COVID-19 will impact future operations differently than the current period

   (b) Capital and financial resources, including a company's overall liquidity position and outlook, any changes, or reasonably expected changes, to the company's cost of, or access to, capital and funding sources, and any material impact to its sources or uses of cash–and–

   (c) Ongoing ability to meet the covenants of a company's credit agreements, including any material liquidity deficiency and a company's current or proposed course of action to remedy any such deficiency

2. Known trends and uncertainties as to a company's ability to service its debt or other financial obligations or access debt markets

3. Whether the company expects to disclose or incur any material COVID-19-related contingencies

4. Expectations as to the impact of COVID-19 on a company's assets on the balance sheet and a company's ability to timely account for those assets (e.g., any significant changes in judgments in determining the fair-value of assets measured in accordance with U.S. GAAP)

5. Material impairments (e.g., with respect to goodwill, intangible assets, long-lived assets, etc.), increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had, or are reasonably likely to have, a material impact on a company's financial statements

6. Whether COVID-19-related circumstances such as remote work arrangements have adversely affected a company's ability to maintain operations, including: (a) financial reporting systems, internal controls, and disclosure controls and procedures; (b) changes, if any, in a company's controls during the current period that materially affect, or are reasonably likely to materially affect, its internal control over financial reporting; and (c) any challenges COVID-19 will have on a company's ability to maintain these systems and controls

7. Challenges in implementing a company's business continuity plans, any anticipated material expenditures required to do so, and expectations regarding any material resource constraints in implementing these plans

8. Expectations as to any material impact of COVID-19 on demand for a company's products or services, supply chain, or distribution of products or services

9. Expectations as to whether COVID-19 will materially change the relationship between a company's costs and its revenue

10. Material impact on a company's operations due to constraints or other impacts on human capital resources and productivity–and–

11. Whether travel restrictions and border closures are expected to have a material impact on a company's ability to operate and achieve its business goals

The guidance encourages each company to assess the impact of COVID-19 on its specific business, tailor material disclosure obligations, and provide disclosures that allow investors to evaluate the current and expected impact of COVID-19 through the eyes of management. The guidance further encourages companies to proactively revise and update their disclosures as facts and circumstances change, taking into account the safe harbor for forward-looking statements.

Insider Trading

In addition to disclosure obligations, the guidance reminds companies and related persons of the need to refrain from trading prior to the dissemination of material non-public information, including where COVID-19 has impacted the company in a material way or the company becomes aware of a material risk related to COVID-19. The guidance also reminds companies of the need to avoid selective disclosure issues and that, depending on a company's particular circumstances, it may need to revisit, refresh, or update previous disclosure to the extent such information becomes materially inaccurate.

Regulation G

The guidance also reminds companies of their obligations under Regulation G. For example, where a company presents a non-GAAP financial measure or performance metric to adjust for the impact of COVID-19, management should highlight why it finds such measure or metric useful and how it helps investors assess the impact of COVID-19 on the company's financial position and results of operations. The guidance also notes that where a GAAP financial measure is not available at the time of an earnings release because the measure may be impacted by COVID-19-related adjustments that may require additional information and analysis, the staff would not object if a company reconciles a non-GAAP financial measure to preliminary GAAP results that either include provisional amount(s) based on a reasonable estimate, or a range of reasonably estimable GAAP results. The provisional amount or range should reflect a reasonable estimate of COVID-19 related charges not yet finalized. The company should also explain, to the extent practicable, why the line item or accounting is not yet complete and what additional information or analysis is needed. Further, if a company presents non-GAAP financial measures that are reconciled to provisional amount(s) or an estimated range of GAAP financial measures in reliance on the guidance, it should limit the measures in its presentation to those non-GAAP financial measures it is using to report financial results to the company's board of directors. The guidance notes that non-GAAP financial measures and performance metrics should be used for the purpose of indicating how management and the board are analyzing the current and potential impact of COVID-19 on the company's financial condition and operating results (and not for the sole purpose of presenting a more favorable view of the company). In addition, in filings where GAAP financial statements are required (e.g., Form 10-K or 10-Q), companies should reconcile to GAAP results and not include provisional amounts or a range of estimated results. As is currently the case, non-GAAP financial measure should not be disclosed more prominently than the most directly comparable GAAP financial measure or range of GAAP measures.

What if a company cannot file its SEC reports on time due to COVID-19?

The SEC issued an exemptive order on March 4, 2020, that, subject to certain conditions, provided public companies with a 45-day extension to file certain SEC reports, schedules, and forms that would otherwise have been due between March 1 and April 30, 2020. On March 25, 2020, the SEC extended the relief period to July 1, 2020. Among other things, the SEC order provides that if a company cannot meet a filing deadline:

1. The company must furnish a Form 8-K by the later of March 16 or the original filing deadline for the report, schedule, or form.

2. The Form 8-K must include:

- A statement that the company is relying on the SEC order
- The reasons why the company could not file the report, schedule or form on a timely basis
- The estimated date by which it expects to file the report, schedule or form
- If appropriate, a risk factor explaining, if material, the impact of COVID-19 on its business–and–
- If the reason the filing cannot be made on a timely basis relates to the inability of any person (other than the company) to furnish any required opinion, report or certification, an exhibit consisting of a statement signed by that person stating the specific reasons why that person is unable to furnish the required opinion, report or certification on or before the required filing date

3. If a company furnishes the Form 8-K by the applicable deadline, the new filing deadline will be 45 days after the original due date.

4. The company must disclose in the filing made after the original filing deadline that it is relying on the SEC order and state the reasons why it could not file the report, schedule or form on a timely basis.

5. If a company furnishes the Form 8-K by the applicable deadline, it is not required to file a Form 12b-25 with respect to a late filing if the report, schedule, or form is filed within the time period prescribed by the order.

6. However, if the company is still unable to file by the 45-day extended deadline, the company may then file a Form 12b-25 and further extend its filing deadline.

7. Risk factor disclosure explaining material impacts of COVID-19 on a company's business, to the extent they contain "forward-looking statements," will be subject to the safe harbor for forward-looking statements under Section 21E of the Securities Exchange Act of 1934.

8. If a company relies on the exemptive order and furnishes the Form 8-K on time, the company will be deemed "current" for purposes of WKSI status and eligibility under Form S-3, Form S-8, and Rule 144 (if the company was current as of the first day of the relief period under the SEC order and it files the required reports by the applicable deadlines).

9. The current exemptive order **does not** apply to Schedule 13D and Section 16 filers/filings.

Can a company contact the SEC if needed?

Yes, the SEC is open, with the staff working remotely.

Are there any issues relating to COVID-19 that a company should address with its auditor?

Yes. Issues that should be discussed include the matters noted above, including regarding liquidity, impairments, known trends and uncertainties, subsequent events, and any potential delays in completion of the audit or quarterly review which would impact the ability of the company to meet its filing deadlines. In addition, a company may wish to discuss the practical implications of COVID-19 on the conduct of the audit, such as management interviews and other audit processes and assessments which are typically otherwise done in person.

Does a company need to notify its lender of a change in circumstances due to COVID-19?

Possibly. As discussed above in connection with disclosure obligations, a company should confirm compliance with existing covenants, such as required liquidity ratios, and any notice requirements which may be triggered.

What are a company's options for holding the annual meeting?

A company should check applicable state law (including recent pronouncements by state officials) and its bylaw provisions and any current local, state, or federal restrictions regarding types of meetings, accessibility and voting, size of gatherings, and social distancing. Subject to compliance with these requirements, a company's annual meeting alternatives include:

- **A physical meeting**, but strongly encourage shareholders to vote early and to not attend in person and provide for a webcast or other means of listening in remotely (note

that a webcast or listen-only accommodation may not meet state law or other requirements including recent pronouncements by state officials for an annual meeting, depending on whether it provides shareholders a means to participate in the meeting and vote, as would be the case in a virtual-only or hybrid meeting)

- **A virtual-only meeting** (entirely remote and providing shareholders the means to attend, raise proposals in accordance with proper procedures, and vote remotely)–or–
- **A hybrid meeting** (i.e. a "bare bones" physical meeting/location and a virtual component which allows shareholders to attend, raise proposals in accordance with proper procedures, and vote remotely)

If a company holds a virtual-only or hybrid meeting, it must comply with the applicable rules and requirements, including those discussed below, and work with its proxy intermediaries to coordinate all technical and logistical matters well in advance.

A company's proxy materials should also provide sufficient notice, information and flexibility to change annual meeting logistics, including on short notice (subject to notice requirements). For example, if a company is holding a physical meeting, it may wish to include disclosure that: (a) it is subject to local, state, and federal restrictions on size of gatherings and social distancing; (b) it may switch to a virtual-only or hybrid annual meeting; and (c) if it does so, it will disclose the change and provide information regarding how to access the meeting in a press release and by filing the information as additional soliciting material. The company should also include a deadline by which it would announce any such change, in compliance with applicable notice requirements under state law (including recent pronouncements by state officials) and the company's bylaws. If a company chooses to hold a virtual-only or hybrid meeting due to COVID-19 or otherwise, but may hold physical meetings in the future, the company should consider disclosing whether the company intends to do so for this proxy season only or, more practicably, that the company has not decided what it will do for future meetings and may hold a virtual-only or hybrid meeting in the future as circumstances warrant.

What if the company already filed its proxy materials and needs to change to a virtual-only or hybrid meeting?

The SEC has issued guidance providing that companies who have filed their proxy materials may notify shareholders of a change in date, time, and location of the annual meeting without mailing additional soliciting materials or amending proxy materials.

1. Under the guidance, the company must:

   - Issue a press release announcing such change
   - File the announcement as definitive additional soliciting material on EDGAR; –and–
   - Take all reasonable steps to inform other intermediaries (such as a proxy service provider) and other relevant market participants (such as the appropriate stock exchange) of such change

2. The company should also, to extent feasible under state law, provide shareholder proponents or their representatives the ability to present their proposals via alternate means, such as via telephone.

3. Companies should keep in mind applicable notice requirements under state law and their bylaws.

If a company has already mailed its proxy materials and wishes to change to a virtual-only or hybrid meeting, it should also check for any limitations or requirements under state law and bylaw provisions, in addition to complying with SEC guidance.

What are the SEC requirements regarding virtual-only or hybrid meetings?

The SEC permits virtual-only or hybrid meetings if the company provides:

1. Advance notice to shareholders, proxy service providers, and other interested parties

2. Adequate means for shareholders to participate to same extent as if they were physically present–and–

3. Full disclosure regarding logistics, including:

   - How to access the meeting remotely
   - How shareholders can listen, participate, and vote
   - How shareholder identity will be verified
   - How shareholder proposals can be presented
   - What rules of procedure will apply to the conduct of the meeting–and–
   - How the company plans to address technical difficulties

What other considerations are there with respect to holding virtual-only or hybrid meetings?

A company should confirm such meetings are permitted under state law and its bylaws and what the applicable requirements are under those provisions.

What type of meeting should a company hold in light of the SEC guidance and COVID-19?

While the type of annual meeting a company should hold depends in part on the company and its shareholder base, in general, we expect that some companies that have already mailed their proxy materials for a physical meeting may wish to: (1) continue to hold it at a physical location (subject to complying with applicable restrictions on gatherings and social distancing) but with minimal representatives at the meeting; (2) discourage shareholder attendance and encourage the return of proxy cards in advance; and (3) provide streaming or telephonic coverage (note that streaming or telephonic coverage alone may not provide for full shareholder participation as it would in a virtual-only or hybrid model, unless the company provides a means by which shareholders can participate and vote remotely). If taking this approach, a company should: (a) make a public announcement to this effect and note that these measures are being taken in response to COVID-19 restrictions and the need to protect shareholders, employees, and the community; and (b) clearly describe how shareholders are able to cast or change their votes or otherwise participate in the meeting (e.g., even if the company arranges for audio call-in or similar means to permit a Q&A session, it should clarify how shareholders may vote if they do not attend the meeting in person). Alternatively, a company may elect to switch to a virtual-only or hybrid meeting and, if it elects to do so, it should follow the SEC guidance summarized above. In either case, the announcement should be issued in accordance with the SEC guidance, including via press release and filing the announcement as additional soliciting materials. If a company has already mailed its proxy materials and wishes to change to a virtual-only or hybrid meeting, it should also check for any restrictions or requirements under state law and bylaw provisions, in addition to complying with SEC guidance.

For companies that have not yet mailed their proxy materials, we expect that a virtual-only meeting, if permitted by state law and the company's bylaws, will be preferable, or a hybrid meeting in which a physical location is provided but attendance is discouraged, the chair and secretary attend but the rest of management and board members attend remotely, and all remote participants are able to participate fully (including with the ability to vote) as they would in a virtual-only meeting. For cost and logistics reasons, we expect most companies, to the extent permitted, to elect to hold a virtual-only meeting. As discussed above, companies that elect to hold a virtual-only or hybrid meeting due to COVID-19 concerns should: (a) disclose that the decision was made in response to COVID-19 and the need to protect shareholders, employees, and the community; (b) note, if true, that the company has not decided whether it will hold virtual-only or hybrid meetings in the future; and (c) clearly describe how shareholders may participate and vote. In addition, companies that initially elected to hold a hybrid meeting (or physical meeting) may, subject to state law and bylaw restrictions, switch to a virtual-only meeting in accordance with the SEC guidance discussed above.

What practical steps should a company take for the annual meeting?

In addition to confirming bylaw and state law requirements for annual meetings and local, state and federal restrictions in light of COVID-19:

1. Contact vendors to start the planning process and obtain quotes.

2. Draft proxy disclosure to provide flexibility and instruction if conducting virtual-only or hybrid meetings and for the ability to change annual meeting logistics on short notice.

3. Establish a contingency plan:

- Delegate authority to a board committee to approve changes and/or designate an alternate chair and secretary to conduct the meeting if needed.

- If holding a physical meeting, consider alternative or backup locations.

- Plan a communications strategy.

- Be aware of notice requirements in the event of a change. Delaware law requires at least 10 days, and companies also need to consider requirements for notice and access.

- Consider alternative approaches, such as a pre-recorded CEO presentation, locations permitting greater social distancing (including outdoor venues to the extent not subject to restrictions in light of COVID-19), and a CEO letter encouraging virtual-only participation.

- Consider an adjournment or postponement if needed. Note that an adjournment under Delaware law generally does not require a company to re-send the notice or reset the record date, but a postponement of greater than 60 days after the record date may require the company to set a new record date.

- Keep in mind minimum annual meeting requirements. A company is required to hold a meeting at which shareholders may attend, raise proposals, and vote. A company is not required to have the board and management attend, have a management/CEO presentation, or conduct a Q&A session.

Are a company's directors and officers required to attend the annual meeting if the company decides to have an in-person meeting?

Generally no, but the company's bylaws and state law should be checked to determine who is required to be present (e.g., chair and secretary).

Can a shareholder be excused from presenting at this year's annual meeting due to the inability to travel or other hardships related to COVID-19?

Generally yes. The staff of the SEC would consider this to be "good cause" under Rule 14a-8(h), but the company's bylaws and state law should be checked. The SEC staff is encouraging companies to be flexible this proxy season, to the extent feasible under state law and the company's bylaws, by facilitating the ability of shareholder proponents to present their proposals by phone or through other alternative means.

Should a company's compensation committee reassess bonus plan targets in light of COVID-19?

Possibly. If a compensation committee determines it is appropriate to reassess bonus targets in light of COVID-19, consider 8-K and proxy disclosure implications.

Are there other matters not directly related to disclosure obligations and SEC matters a company should be considering?

Yes. The issues raised by COVID-19 and the rapidly changing responses thereto encompass a wide range of issues. These include workplace and HR matters, business continuity, strategic planning, insurance, privacy, data protection, cybersecurity, commercial and operational matters, access to capital, and many other aspects affected or implicated by COVID-19. Public companies should also consider planning for remote board, committee, management, and employee meetings and assess the sufficiency of their contingency planning, backup systems, the infrastructure to support a fully remote workforce and operations, internal controls, and disclosure controls and procedures, as well as employee communications and related matters, communications protocol, insider trading policy, HR policies, compensation policies (including performance targets), and other policies and procedures implicated by the impact of COVID-19.

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Based in Pillsbury's Silicon Valley office, Corporate partner Davina K. Kaile has guided financial services, technology and retail clients in many high-profile, multimillion-dollar deals.

Davina provides guidance on securities, corporate finance and general corporate matters. She represents underwriters, issuers, investment banks, public and private companies, sellers and acquirers in IPOs; M&As; shelf, debt, registered direct, follow-on and confidentially marketed offerings; PIPEs; tender offers; divestitures; private placements; and other transactions. Davina also has extensive experience advising on stock exchange governance initiatives, compliance with the Securities, Securities Exchange, Sarbanes-Oxley, Dodd-Frank and JOBS acts, and corporate governance, reporting and proxy matters.

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Gabriella Lombardi advises clients on multimillion- and billion-dollar mergers, acquisitions, securities matters, IPOs and other corporate finance transactions.

Working with public and private companies in the technology, life sciences, and other industries, Gabriella provides skilled counsel on complex M&As, public offerings, private placements, divestitures and capital markets transactions. She also represents underwriters, placement agents, investment banks and initial purchasers in capital markets transactions.

Christina F. Pearson, Partner, Pillsbury Winthrop Shaw Pittman LLP

Christina Pearson represents companies in every stage of their life cycle, from start-up to maturity, and counsels her clients through liquidity transactions such as venture capital financings, mergers and acquisitions, and initial public offerings.

Christina works extensively with private companies, providing guidance on incorporation, corporate governance, capital raising, securities laws and transactional matters. She also assists public companies in their public and other equity offerings, corporate governance and periodic reporting matters. She also regularly counsels a wide range of public and private companies in their strategic acquisitions and exit events and has been recognized for her role in mergers and acquisitions by *Global M&A Network* and *M&A Advisor*.

Stanton D. Wong, Partner, Pillsbury Winthrop Shaw Pittman LLP

Stan Wong is co-leader of the firm's Securities group. His practice focuses on securities and general corporate law matters.

This includes public offerings, private placements, mergers and acquisitions, securities law compliance, corporate governance, and general corporate representation. Stan works with public and private companies, investment banks, and venture capital funds in industries including technology and life sciences. He has represented issuers ranging from startup companies to Fortune 100 companies on a wide variety of corporate and securities law matters, including corporate governance, periodic reporting and disclosure matters, takeover defensive measures, and corporate partnering and technology licensing transactions.