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Can We Postpone Our Annual Shareholders Meeting?



Sometimes new information comes to light ahead of an annual shareholders meeting, some new disclosure that shareholders need an opportunity to digest before they cast their votes. Sometimes there could be a situation that is more drastic — think pandemic. In those cases, can a company – or should a company — postpone their annual meeting?

It's pretty clear that companies have the authority to postpone their annual meeting. That authority often is set forth in a company's bylaws. The bigger question is "for how long can you postpone the meeting?" The laws of the state in which your company is incorporated likely restricts the length.

Delaware law allows shareholders to bring an action against a company in the event the company fails to hold a postponed meeting within 30 days from the date of its originally scheduled meeting – so for Delaware companies, 30 days is the outside parameter.

If it's a situation where there is new information for shareholders to digest — a new material development, a new proposal on the ballot, or maybe the company needed to fix something big it had disclosed in the proxy — you probably want to give shareholders a week or two to consider that new information. So you would want a minimum of a week or two for that rescheduled meeting date if this is this case.

The big sticking point with postponing a meeting is a record date issue. You don't want a new record date if you can avoid it. But under Delaware law, the record date for an annual meeting must not be more than sixty days or less than ten days prior to the annual meeting.

So if a Delaware company postpones its annual meeting to a date that would result in its record date being more than 60 days before the annual meeting, the board must change the record date. Then you would have to provide notice to shareholders of a change in the record date (NYSE companies have to let the exchange know of a change in the record date; Nasdaq companies don't have to tell Nasdaq).

But even worse, a new record date means that the proxies you already received from shareholders will need to be solicited all over again. You're starting from scratch, as all those proxies you've obtained from shareholders as of the previous record date are now useless.

Then you have to consider the SEC's Rule 14a-13, under which broker search cards must be sent at least twenty business days prior to the record date for an annual meeting — so the postponement with a new record date is going to take some time and a lot of work. This is all a big bummer.

That's why some companies choose to convene the meeting as originally scheduled and then adjourn it (see my [recent blog](#) about meeting adjournments). That allows the company to in essence postpone the meeting without having a new record date, without having to start all over again to solicit proxies. So companies convene a meeting and then quickly adjourn it if they can pull that off.

Of course, from a disclosure perspective, you'll probably want to file a proxy supplement — including issuing one or more press releases — to let shareholders know what is going on as things change.

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