



COVID-19 Annual Meeting and SEC Disclosure Checklist and Best Practices Reference Guide

April 7, 2020

The situation for corporate and securities lawyers has evolved rapidly in just the past few weeks. For most of corporate America, the realization that the COVID-19 pandemic would impact proxy season did not come until the season was in full swing. As compensation committees met in February, there were no inklings of an impending economic collapse that would make the stock option strike prices and performance goals they were approving completely meaningless. As proxy statements went to print in early March, few realized that within the next two weeks, all companies would be scrambling to see what their alternatives were to holding their annual meetings in person as most had since inception.

During this time, we have received countless questions about changes being contemplated to annual shareholders meetings and SEC disclosures specifically related to COVID-19. **We created this document to (1) walk you through key decision points, logistical concerns, and shareholder communications for your 2020 annual meetings, and (2) provide guidance for SEC disclosures you may wish to consider in a proxy season that has run up against the COVID-19 crisis and all that comes with it.**

As fellow professionals, we know that the situation is stressful and fluid, many demands are being made of you, both at work and on the home front, and the unknowns are infinite. As former practitioners, we know that no matter what the crisis around you may be, your annual meetings are not optional and your SEC disclosures must be carefully considered. This year, all of us are facing a situation for which there are no precedents. Our directors, executives and clients are relying on us to get it done, even if it means we have to be creative, but still get it done right. We hope this document will serve as a useful resource as you carry out your duties in the face of these challenges.

How to use this document

We have designed this document to work both as an annual meeting and SEC disclosure checklist and a content guide. The document is divided into several sections that are based on the questions we have most frequently been asked and types of disclosures related to COVID-19 that we have seen in recent proxy filings. The first and longest section of this report relates to logistical considerations for your annual meetings, including options for disclosure depending on the format of the meeting you are preparing for, and how best to incorporate COVID-19 into proxy materials. Thereafter, we provide commentary on what we believe are emerging best practices around COVID-19 and how disclosures may be best incorporated into other sections of the proxy statement.

There are many other important COVID-19-related disclosure considerations for SEC filings under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. This document mainly addresses practices and disclosures that relate to shareholders meetings and related proxy materials. For guidance on types of SEC disclosures not addressed in this document, we encourage you to review guidance from the [SEC](#) and the [Division of Corporation Finance](#), as well as the many other excellent resources that are being provided by law firms, industry organizations, and other service providers.

Additional information

For more information about the information contained herein, please contact Steven Pantina, Co-Founder and Chief Executive Officer of [Proxy Analytics](#) at steve@proxy-analytics.com or Douglas K. Chia, President, [Soundboard Governance](#) at dougchia@soundboardgovernance.com.

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SECTION 1. Mentioning COVID-19 in Proxy Materials

Not unexpectedly, the percentage of proxy statements making mention of COVID-19 has increased considerably over the weeks. While the form and nature of mentions tends varies by company, we are finding that between 70% and 80% filed during the week of March 23 included at least one mention of COVID-19 in the proxy statement.

SECTION 2. Logistical Considerations for Annual Meetings

The vast majority of COVID-19 proxy disclosures relate to the logistical considerations of the meeting itself. Although most companies are still disclosing an intention to hold an in-person meeting, many are including language that the logistics or platform for the meeting may change. Moreover, the proportion of companies electing to hold a virtual-only or a hybrid (*i.e.*, in-person/virtual) meeting is growing. Regardless of the route that a company is considering, it is important to include language as to what the Company's intentions may be. Below are some suggestions of the types of disclosures that a company should consider when including logistical language:

1. Types of Disclosures; Virtual vs. In-Person Meeting Platforms

We have categorized logistics-related disclosures into four primary categories: (a) [Monitoring/Contingency Planning](#); (b) [Utilizing a Virtual Meeting Platform](#); (c) [Transitioning to Virtual Meeting after Previously Disclosing an In-Person Meeting](#); and (d) [Planning or Transitioning to a Hybrid Meeting](#). Note that Monitoring and Contingency Planning disclosures have two subcategories of disclosures, depending on the type of language included. They are identified as (i) [Active Monitoring Disclosure](#) and (ii) [Virtual Meeting Contingency Planning](#) disclosures.

- a) **Monitoring/Contingency Planning Disclosures.** Monitoring and Contingency planning disclosures are used by companies who have disclosed an intent to hold an in-person meeting but may also be planning to consider alternatives. There are two general types of disclosures that have emerged as most common when making Monitoring/Contingency Planning Disclosures: **Active Monitoring** disclosures and **Virtual Meeting Contingency Planning** disclosures. Though not required, the two types of disclosures tend to provide different information about what may drive their decision-making process when determining whether to hold an in-person meeting or transition to an alternative platform. Detail on each is provided below:
- i. **Active Monitoring.** Active Monitoring disclosures generally state the company is intending on holding the annual meeting in person but they are actively monitoring the COVID-19 situation. There are many examples to choose from and the exact language differs by company. However, better examples include sensitivities to employee, shareholder and public health concerns, language about following protocols imposed by federal, state and local governments and following guidance from the Center for Disease Control and Prevention (CDC) and/or the World Health Organization (WHO). Better disclosure also includes language about how shareholders should expect to receive updated information. Good examples (with links) include:
- o [RLJ Lodging Trust](#)- Includes language about being sensitive to public health and travel concerns; monitoring of protocols that federal, state and local governments may impose; includes information about where shareholders can find more information.

- [FreightCar America, Inc.](#)- Includes language about taking guidance from the Centers for Disease Control and Prevention and the World Health Organization; addresses concerns about the health and well-being of our employees and stockholders as a top priority.
- [Six Flags Entertainment Corporation](#)- mentions monitoring recommendations and protocols of public health and federal, state and local government; mentions the health and well-being of stockholders as a top priority; provides guidance on where shareholders can find more information, including via press release and on website.

ii. Virtual Meeting Contingency Planning. Virtual Meeting Contingency Planning disclosures tend to more directly state that the company is planning for the possibility that the shareholder meeting may be held using a remote platform. These disclosures tend to be shorter and rely less on taking direction from governmental agencies and organizations as a reason they may opt for a change. Some versions also include monitoring language and where shareholders can find more information as part of the disclosure. Good examples include:

- [CONSOL Energy Inc](#) States that the Company is preparing for the possibility that the meeting may need to be held in a different location or by means of remote communication; specifically mentions virtual meeting as a possibility; includes information where shareholders can find more information.
- [Republic First Bancorp, Inc.](#) Mentions safety of employees, customers, communities and shareholders as first priority; mentions preparing in the event any changes are necessary or appropriate; includes information about where shareholders can find more information, including on the Company website.

b) Utilizing a Virtual Meeting Platform. There has been a considerable increase in companies opting to use a virtual meeting platform for their 2020 shareholder meetings. Virtual meeting disclosures also vary in length and specificity with better disclosures tending to include three key points: (1) the rationale for the Company’s deciding to transition to a virtual meeting; (2) information about how shareholders can remotely attend the meeting; and (3) assurances that Company will be able to participate in a similar fashion to how they would normally participate if the meeting were to be held in-person. Some better examples include:

- [MBIA Inc.](#) Specifically mentions the executive order by the Connecticut governor as the reason for hosting a virtual meeting; provides information about where shareholders can access a live webcast; includes commentary in General Information section about “How it Works”
- [Hertz Global Holdings, Inc.](#) Concise statement about why the company opted to hold a virtual meeting and provide assurance that shareholders will have the same rights and opportunities to participate as they would have at an in-person meeting.
- [Xylem Inc.](#) Cites COVID-19 pandemic and government protocols as rationale for utilizing a virtual meeting format; states shareholders will be permitted to attend, vote electronically, submit questions and view the list of shareholders; provides directions as to how to attend the meeting, including needing control number; states that shareholders will be afforded the same opportunities to participate; cross references other sections in the proxy.

c) Transitioning to Holding a Virtual Meeting after Previously Disclosing an In-Person Meeting (“Transition”). Transition disclosure is generally included in supplemental filings (DEFA14A) as opposed to the definitive proxy statements (DEF 14A). However, there are a few examples where Transition language is included in the proxy if the decision to change to a virtual platform occurred after certain parts of the proxy had already been sent to print (e.g., [Dominion Energy, Inc.](#), which includes language in the proxy about why the Notice included a physical location for the Annual Meeting). The better Transition-related disclosures include specific information about: (1) rationale for the Transition; (2) how shareholders can access the meeting; (3) assurance that shareholders can participate in the same manner as they would if the meeting were in-person. We also suggest presenting the information in a reader-friendly manner, such as being

presented as a separate paragraph or included in Q&A form. A few examples:

- [Baxter International Inc.](#) press release format. Includes information about the rationale for the change, how to attend the meeting, how to ask questions, how to vote shares at the meeting and attending the meeting as a guest
- [Cleveland-Cliffs Inc.](#) supplemental filing format. Cites COVID-19 as rationale for transition; includes supplemental notice of meeting and summary section with additional information; summary section includes information about how to attend the meeting, ask questions and technical difficulties.
- [Crown Holdings, Inc.](#) Supplemental filing format. Includes letter to shareholders explaining rationale for transitioning the meeting; includes supplemental notice of meeting and summary section; provides clear information about how different populations of shareholders can participate at the meeting; includes disclosure about how to ask questions and technical difficulties.
- [MGIC Investment Corporation](#) Letter to shareholders format. Includes letter to shareholder with information about the rationale for the change, how different populations of shareholders can vote; includes information about participating at the meeting.

Note on Glass Lewis Revised Guidelines on Virtual Meetings: Proxy advisory firms have historically disfavored virtual meetings and, in the case of Glass Lewis & Co. (GLC), have guidelines in place that may result in WITHHOLD/AGAINST recommendations against governance committee members unless virtual meetings include certain safeguard procedures to assure that shareholders have the same rights and opportunities to participate at the meeting. Recognizing the immediacy of the issue, GLC recently issued a [revision to its Guideline](#) that states that they will “generally refrain from recommending to vote against members of the governance committee on this basis, provided that the company discloses, at a minimum, its rationale for doing so, including citing COVID-19.” The revised Guideline will remain in effect for the entirety of the 2020 proxy season, ending on June 30, 2020. GLC expects companies to make a disclosure to shareholders that provide a rationale for transitioning to a virtual meeting. In the [press release](#) accompanying the revised Guideline, GLC cited the disclosure provided by Starbucks in its DEFA 14A [filing](#) on March 4, 2020 as “an illustration of what Glass Lewis will support through June 30, 2020.”

- d) **Planning or Transitioning to a Hybrid Meeting.** We’ve seen far fewer companies announcing plans or transitioning to a hybrid meeting thus far. To the extent applicable, hybrid meeting disclosure should somewhat mirror virtual meeting disclosure in terms of information, including (1) rationale for the hybrid meeting option; and (2) how shareholders can participate at the meeting. Examples include:
- [Agree Realty Corporation](#) Using hybrid platform. Cites COVID-19 as a reason; includes language in the Q&A about why; Q&A also incorporates virtual meeting portion into questions about how to participate, how shareholders can vote and changing votes.
 - [Hasbro, Inc.](#) Using a hybrid platform. Cites precautions around COVID-19 as reason; Q&A includes commentary on how to attend and vote if participating remotely; includes commentary on anticipated attendance at the annual meeting by board members.

2. Where to Include

Information about logistical considerations are generally included one of five sections of the proxy statement: (a) [Notice of Meeting](#); (b) [Summary and General Information](#); (c) [Question and Answer or Frequently Asked Questions](#); (d) [Letter to Shareholders](#); and/or (e) [as part of the Proxy Card/Admission Ticket](#). In many cases, companies have decided to use similar language in multiple sections of the proxy. Good examples include:

- a) **Notice of Meeting.** Language about logistics is most commonly incorporated into the Notice of Meeting section. Disclosures included in this section oftentimes cross reference to other sections of the proxy, such

as the Summary or General Information section. Better disclosures have incorporated dedicated language and/or design effects to help make information stand out. Examples include:

- [American Water Works Company, Inc.](#) Bolded disclosure in Notice of Meeting, cross references to other sections of the proxy where more information can be found.
- [Arrow Electronics, Inc.](#) Virtual Meeting Contingency Planning language included in a footnote.
- [Corning Incorporated](#) Includes Active Monitoring disclosure in “call out” box as part of proxy design.
- [GlobalSCAPE, Inc.](#) Included as its own item in the section below Notice of Meeting.
- [Nielsen Holdings plc](#) Dedicated COVID-19 section in Notice after Items of Business.
- [Old Republic International Corporation](#) Incorporated in Time and Place disclosure.
- [Primerica, Inc.](#) Question about “Possible Meeting by Remote Communication” included in Notice.
- [Workiva Inc.](#) Active Monitoring disclosure included in a simple “call out” box in the proxy statement.

b) Summary/General Information. In addition to the Notice of Meeting section, many companies also include language in the Summary and/or General Information section of the proxy. Companies will often use similar or the same language in the Notice and/or Letter to Shareholders. Ideally, disclosures should be included near the beginning of the proxy and easily seen by shareholders. Better disclosures incorporate dedicated language and/or design effects to help make information stand out. Examples include:

- [American Express Company](#) Information included in a “call out” box in “Other Information” section; includes directions on how to access the Virtual Meeting.
- [AbbVie Inc.](#) Brief disclosure included at the beginning of Proxy Statement Summary.
- [CareTrust REIT Inc.](#) General Information section includes disclosure about Contingent Virtual Meeting.
- [Church & Dwight Co., Inc.](#) Simple “call out” box with limited design used to highlight Active Monitoring disclosure at the beginning of the Proxy Statement Summary section.
- [E*TRADE Financial Corporation](#) Virtual Meeting and Admission to Meeting language included at the beginning of Proxy Summary.
- [Papa John’s International, Inc.](#) Virtual Stockholder Meeting disclosure included as a separate item at the beginning of the General Information section; Included as separate item in hyperlinked Table of Contents.
- [LPL Financial Holdings Inc.](#) Stand-Alone Paragraph included in Location of Meeting section of Summary.
- [South Jersey Industries, Inc.](#) Included in disclosure about Online Admission to Meeting, specifically mentions that shareholders will have the ability to submit questions.

c) Question and Answer or Frequently Asked Questions. Logistical disclosures are often repeated in Q&A sections of proxy statements. They appear in such common questions as: When or Where is the Meeting, Who Can Attend the Meeting, How Can I Vote, and the like. Please refer to the section below entitled **Best Practices for Logistical Q&A Disclosures** for commentary on the better sample questions that go beyond the traditional ones mentioned above.

d) Letter to Shareholders. Although not as common as the sections noted above, some companies also choose to include disclosure language in the Company’s Letter to Shareholders. Most of the information included in the Letter to Shareholder is fairly basic, simply making mention of what actions the Company might take. The disclosure language is generally incorporated into the letter itself but can also be provided as a footnote to the letter. Examples include:

- [Ameriprise Financial, Inc.](#) Virtual Meeting Contingency Planning language incorporated into Letter to Shareholders, including where shareholders can find more information
- [Hanesbrands Inc.](#) Active Monitoring language incorporated into Letter to Shareholders.
- [Macy’s Inc.](#) Decision to use a virtual platform incorporated into Letter to Shareholders.
- [Ritchie Bros. Auctioneers Incorporated](#) Disclosure of using a Hybrid meeting incorporated into Letter to Shareholders.

- [United Rentals, Inc.](#) Virtual Meeting Contingency Planning language included in a footnote to Letter to Shareholders.
- e) **Proxy Card and/or Admission Ticket.** Disclosures on logistics have been included on proxy cards or admission tickets, but not on a widespread basis. The disclosures included on proxy cards often mirror disclosures included in the Notice, but better disclosures will consider design and layout in order to ensure that information is more easily found. Examples include:
- [Accel Entertainment, Inc](#) Disclosure language included with proxy appointment disclosure on proxy card.
 - [Citigroup Inc.](#) Virtual Meeting Contingency Planning disclosure included as separate paragraph in the Notice.
 - [McCormick & Company](#) Supplemental Proxy Card disclosing transition to virtual meeting.
 - [The Hackett Group, Inc.](#) Disclosure language included as a bolded paragraph on the Admission Ticket.
 - [W. R. Grace & Co.](#) Active Monitoring included in “call out” box on Proxy Card.

3. Best Practices for Logistics and Virtual Meeting Q&A Disclosures

Most disclosures about logistics questions tend to be included in Q&A such as When or Where is the Meeting, Who Can Attend the Meeting, How Can I Vote, and the like. However, over the course of the weeks companies have included more specific questions about COVID-19 and how it may impact the meeting.

Examples include:

- [Agree Realty Corporation](#) Q: *Why are you holding a virtual annual meeting in addition to an in-person meeting?*
- [ALLETE, Inc.](#) Q: *How might the COVID-19 outbreak impact the Annual Meeting?*
- [KKR Real Estate Finance Trust Inc](#) Q: *What happens if a change to the Annual Meeting is necessary due to exigent circumstances?*
- [Lincoln Electric Holdings, Inc.](#) Q: *Why is the Annual Meeting a virtual, online meeting?*
- [Lydall, Inc.](#) Q: *Could COVID-19 have an impact on the date, location or format of the Annual Meeting?*
- [Teradata Corporation](#) Q: *Could emerging developments regarding the coronavirus — or COVID-19 — affect our ability to hold an in-person annual meeting?*
- [Gates Industrial Corp plc](#) Q: *Will I be able to participate in the virtual Meeting on the same basis I would be able to participate in a live annual general meeting?*
- [Xylem Inc.](#) Q: *How do I attend and participate in the online Annual Meeting?*

4. Other Types of Related Disclosures

A minority of companies include additional language in their proxy materials that go beyond the issues discussed above. Some examples of unique issues addressed in proxy materials include:

- a) **Statement on Director Attendance at Meeting.** Director attendance at a shareholder meeting is considered a best practice and, to the extent possible, should continue to be encouraged under these circumstances, including as part of a virtual meeting. Disclosure is generally included in Summary/General information or as part of Q&A. Examples of disclosures of director attendance include:
- [International Paper Company](#) Included in Q&A, expects directors to attend virtual meetings.
 - [United Community Banks, Inc.](#) Included in Q&A, directors expected to attend telephonically.
 - [Hanger, Inc.](#) Included in corporate governance guidelines, discloses policy on director attendance, including expectation that directors will attend telephonically.

- b) **Availability to Inspect List of Stockholders.** Notifying shareholders of the ability to inspect the list of stockholders either at or before a shareholder meeting is usually required under state law. Examples of this type of disclosure include:
- [Berry Corporation](#) Provides information about how shareholders should contact the company if they wish to inspect the list of stockholders if the headquarters is closed.
 - [Office Depot, Inc.](#) Includes disclosure that shareholders will be permitted to inspect the list of shareholders online at virtual meetings.
- c) **Contact Company/Consider Risks Before Attending In-Person Meeting.** Among the various options to communicate concerns over shareholders actually attending a physical meeting, language that urges shareholders to consider the risks appears to be the better approach. Example of this include:
- [Bryn Mawr Bank Corporation](#) Requests that shareholders contact the Company before deciding to attend the meeting in person. Also requests individuals who may be showing coronavirus-like symptoms refrain from attending in person.
 - [Telaria, Inc.](#) Requests shareholders consider the personal and community health risks associated with attending in person in light of COVID-19.
 - [Unitil Corporation](#) States their belief that having large groups of people would not be prudent or socially responsible. Asks shareholders to consider risks before attending in person.
 - [Urstadt Biddle Properties Inc.](#) Requests shareholders contact the company before choosing to attend the meeting in person.
- d) **Changing Votes/Revoking Proxies** Though not a topic consistently covered, we have seen language about how to revoke proxies in light of COVID-19, including [The Goldman Sachs Group, Inc.](#)
- e) **Notice of Changes to What Will Take Place at the In-Person Meeting.** Changes to the way an in-person annual meeting will be conducted, as compared to past meetings, relate to activities that traditionally happen or were anticipated to happen at the meeting, such as refreshments. Some adjustments, such as no longer offering refreshments, would not diminish the quality of the meeting. However, cancelling business presentations would not be considered a best practice. An alternative to cancelling presentations would be hosting a virtual meeting. Examples include:
- [Farmers & Merchants Bancorp, Inc.](#) Supplemental filing to announce that a shareholder dinner was cancelled, refreshments will not be served and they have cancelled all presentations.
 - [Prudential Financial, Inc.](#) Notice that refreshments and business updates will not be provided at the meeting.
- f) **Notice of Change to Physical Meeting Location.** Changes to meeting location have been disclosed for a few reasons, some related to facilities not being available, some to transition to smaller or larger spaces. It is important to explain why the change is taking place. Examples include:
- [Bryn Mawr Bank Corporation](#) Transition to Hybrid Meeting. Disclosure mentions stay-at-home order as the reason to move the physical meeting location to corporate headquarters and provide an option to participate remotely.
 - [Strongbridge Biopharma plc](#) Transition to Hybrid meeting format. Provides considerable information about how the in-person meeting will be conducted (in accordance with CDC guidance) and discourages physical attendance.
- g) **Disclosing Intent to Resume In-Person Meeting Format Next Year.** For some shareholders, attending the annual meeting is a highly-anticipated event, and a transition toward a virtual meeting may not be a welcome development. Therefore, some companies have included disclosures about their intent to resume an in-person format at next year's meeting. See examples:

- [ConocoPhillips](#) In letter to shareholders, the Company's uses bolded language to highlight intent to return to in-person format the following year. Additional language also included in Q&A on virtual meeting.
- [Skyworks Solutions, Inc.](#) In a letter to shareholders with plans to use a virtual meeting platform, includes language about the company's intent to resume in-person meetings the following year.

h) Discourage Physical Meeting Attendance. Discouraging shareholders from attending an annual meeting would not be considered a best practice, as it may raise concerns about shareholder disenfranchisement and signal a board's unwillingness to engage with or receive feedback from shareholders. Nevertheless, some companies have included disclosures in the proxy materials. Companies should alternatively consider "Consider Risk" disclosures, discussed above. If you do choose to include this type of language;

- [The First of Long Island Corporation](#) Specifically asks shareholders to not attend the meeting.
- [Citizens Financial Services, Inc.](#) In supplemental filing in Notice of Change of Time of Meeting, includes Special Notice Regarding In Person Attendance at Annual Meeting that discourages meeting attendance.
- [Ritchie Bros. Auctioneers Incorporated](#) In Q&A on hybrid meeting, discourages physical meeting attendance.

If you do wish to discourage attendance, we suggest you use language along these lines:

"In light of the COVID-19 pandemic, and to protect the health and safety of all attendees, we request that anyone, including shareholders, who have been exposed to, were at risk for exposure to, or are exhibiting symptoms commonly associated with the coronavirus, on the day of the meeting not attempt to attend the event."

Note on Best Practices for Virtual Meetings: Companies moving their shareholders meetings to virtual-only platforms has been a very controversial topic, particularly among the shareholder community. We encourage companies choosing to use virtual platforms to consider [industry-recognized best practices](#) for how to hold a virtual shareholders meeting and to highlight these practices in their proxy materials.

5. Suggested Other Disclosures Not Currently Included in Logistical Disclosures

The disclosures discussed above generally focus on disclosure currently being included in proxy materials. However, there are other topics that we think make sense but have not yet been included. Such examples include:

a) Limitation of Liability in In-Person Attendance Disclosures. As noted above, some companies have included "Consider Risks" disclosure in proxy materials and we think that is advisable. In addition, companies may be advised to consider disclosures that specifically mention limiting liability for any harm a shareholder may incur, including potentially being exposed to COVID-19. Examples of such disclosure may include:

- *You should carefully consider the risks of attending or attempting to attend this year's annual meeting of shareholders in person in light of the COVID-19 pandemic and related guidance from governmental authorities. The Company shall not be liable to any harm you may incur, including contracting the COVID-19 virus, from attending this year's annual meeting.*
- *The Company is taking precautionary measures, including those recommended by governmental authorities, at this year's annual meeting to protect the health and safety of attendees and prevent the*

spread of the COVID-19 virus. However, the Company cannot assure that you will not contract the virus as a result of your attendance or attempt to attend this year's annual meeting.

- *Shareholders who attend or attempt to attend this year's annual meeting will be deemed to have understood, accepted, and assumed all physical, physiological, and psychological risks associated with attending any public or private event during the COVID-19 pandemic. The Company shall not be held liable for harm to any attendee, including a shareholder or guest, due to any of the foregoing.*

b) Social Distancing at In-Person Meeting. Along the same line as considering risks of attending in person, companies should consider incorporating additional language about the necessary limitations on in-person interaction with management or board members at the meeting. Here is an example of such disclosure:

- *In light of the COVID-19 pandemic, and consistent with the guidelines set forth by the Center for Disease Control and Prevention, we will require all attendees, including all shareholders, to practice "social distancing" at this year's annual meeting. Moreover, face-to face interaction with members of management or the board of directors before and/or after the meeting will be necessarily limited by social distancing requirements and may be further restricted, or prohibited, out of an abundance of caution in the judgement of management and/or the board. Instructions on how to communicate with the board of directors are provided in the Corporate Governance section of the Company's website.*
- *In light of the COVID-19 pandemic, and to protect the health and safety of all attendees, the Company reserves the right to refuse entry of any person, including a shareholder, to the premises or meeting area should that person exhibit cold or flu-like symptoms, or symptoms commonly associated with the coronavirus. We request that anyone who exhibits these types of symptoms on the day of the meeting not attempt to attend the event.*

c. Availability of Personal Protective Equipment (PPE) at Meeting. For the avoidance of confusion, we suggest companies include commentary that makes clear that certain PPE materials, such as protective masks, will not be made available by the company at the meeting. Here is an example of such disclosure:

- *While the Company is taking precautionary measures, including certain of those recommended by governmental authorities, at this year's annual meeting to protect the health and safety of attendees and prevent the spread of the COVID-19 virus, the Company will not be able to provide attendees, including shareholders, with personal protective equipment (PPE), such as respirators, surgical or other face masks, or patient examination gloves or other physical hand protection.*
- *If you would like to use any type of personal protective equipment (PPE), such as face masks and gloves, at the meeting, we encourage you to bring your own. Should you bring any personal protective equipment, we will require you to remove them from the premises when you leave and not dispose of them anywhere on the premises, including in restrooms or trash receptacles.*

d. Transportation To and From Meeting. Some companies provide transportation services to shareholders as part of the meeting. Under current circumstances such accommodations may not be advisable. If your Company had previously provided transportation services but will not at the current meeting, consider the following disclosure

- *In light of the COVID-19 pandemic, and to protect the health and safety of all attendees, the Company will not be providing transportation to or from this year's annual meeting from designated parking areas, public transportation stops or otherwise. All attendees, including shareholders, wishing to attend this year's annual meeting must provide their own means of transportation. We sincerely apologize for not being able to accommodate this for this year's event.*

SECTION 3. Acknowledging COVID-19 As Part of Shareholder Communication

Given the magnitude of the issue, it is important that companies acknowledge COVID-19 as a matter of concern for the Company. Below we set forth examples of the manners in which companies have addressed the issue to date:

1. Types of Acknowledgements

Companies can acknowledge the impacts of COVID-19 in a number of ways. We have found that acknowledgements of the ongoing coronavirus pandemic can generally be aggregated into three categories: (a) [impact on stakeholder groups \(employees, families, customers and communities\)](#); (b) [impact on business/operations](#); and (c) [impact on the financial condition of the company](#). Examples include:

a. Acknowledging Impact on Stakeholders Groups. Acknowledging the impact of COVID-19 on the Company's multiple stakeholder is important and should be considered among best practices for a Company. Such an acknowledgment may be particularly important for companies whose CEOs are signatories to the Business Roundtable's recently-revised Statement of Purpose of a Corporation. Examples of stakeholder acknowledgement include:

- [Alexion Pharmaceuticals, Inc.](#) Acknowledges operating in unique time and establishing priorities to guide corporate response, including safeguarding various stakeholder groups.
- [Alaska Air Group](#) Acknowledges the impact on the communities they serve and reaffirms safety as its top priority; provides thoughts and prayers to those who have or will be affected.
- [Bristol-Myers Squibb Company](#) Acknowledges the "human toll" of the pandemic with thoughts going out to all impacted. Further mentions the company role as a global citizen.
- [The Goldman Sachs Group, Inc.](#) Acknowledges challenges and uncertainty posed by the spread of coronavirus, or COVID-19, for the firm, employees, shareholders, clients and other stakeholders.
- [Uber Technologies, Inc.](#) Acknowledges COVID-19 as the greatest challenge; mentions focus of the company is to help "flatten the curve" and act as a vital resource by providing network and logistical expertise.
- [USANA Health Sciences, Inc.](#) Acknowledges impact on employees, customers and others. Includes note on philanthropic giving on behalf of the company in response.

b. Acknowledging Impact on Business/Operations. Given the newness of the issue, it is difficult to fully assess the impacts that COVID-19 has had, or will have, on the Company's business or operations. Nevertheless, best practices would suggest some acknowledgement of the pandemic's impact on the business. Some examples include:

General Statements

- [Invesco Ltd.](#) Company is monitoring developments with the goal of ensuring the health and safety of employees and meeting client needs.
- [Molson Coors Beverage Company](#) Implementation of pandemic action plan with crisis management and business continuity planning teams to ensure employee safety and safeguard supply chain.

Specific Actions

- [BorgWarner Inc.](#) In supplemental filing, announcement of suspension of operations.

- [Citigroup Inc.](#) Notes impact on TSR for Company and peer companies due to market declines.
- [Diamond Hill Investment Group, Inc.](#) Includes note in Letter to Shareholders on Current Market Environment and efforts by the company to minimize risks to the firm and clients.
- [Macy's, Inc.](#) Noted suspension of operations along with other corporate changes.
- [TravelCenters of America Inc.](#) Mention designation as “essential service” by public authorities because of service provided to other essential services, like trucking.

Forward-Looking

- [Citigroup Inc.](#) Looking forward to continued progress toward achieving company goals to recognizing challenges of lowered interest rates and lower global growth.
- [Six Flags Entertainment Corporation](#) Current shut down of operations at parks likely will delay capital expenditure projects.

- c. **Acknowledging Impact on the Financial Condition of the Company.** One area in which shareholders have a particular interest this year is the company’s balance sheet, liquidity, and access to capital in a revenue-constrained environment and when corporate debt is a major concern for the economy in general. Examples of disclosures addressing this include:

Current Impacts

- [Macquarie Infrastructure Corp](#) Draw on credit facilities, increase total cash available, conducting review of operational capex to identify means of preserving financial flexibility.
- [Ovintiv Inc.](#) Mentions balance sheet flexibility and liquidity; mark-to-market value hedge book.

Forward Looking

- [Berry Corp](#) Re-evaluating 2020 capital plans and planning for a challenging couple of years; focus on protecting reserves and production declines while operating as a good corporate citizen in a safe and environmentally friendly manner.

Government Aid

- Companies that anticipate receiving funding from the government pursuant to the recently adopted Coronavirus Aid, Relief, and Economic Security (**CARES**) Act or otherwise may want to address this in their proxy materials. In addition to its relation to the company’s financial condition, it has become a highly controversial reputational issue for companies in certain industries. The proxy statement is one tool the company can use to shape its messaging to shareholders. We have not yet encountered examples of this.

- d. **Other.** While we have not yet seen examples of this, companies may want to discuss current **philanthropic activities directly related to the COVID-19 crisis**, such as cash or in-kind contributions or repurposing operations to deliver needed goods and services, such as repurposing infrastructure to produce ventilators or making and distributing N95 face masks.

2. From Whom, and Where to Include

Acknowledgement commentary in the proxy statement is best suited for inclusion with management narratives, such as the Chairman, Lead Director, or CEO’s Letter to Shareholders that some companies include prior to the Notice of Meeting section. Some companies may also choose to include a separate or additional Letter to Shareholders. Good examples include:

- [BlackRock, Inc.](#) In DEFA14A filing, extended letter to shareholders from Chairman and CEO on impact of COVID-19 and corporate response.
- [Cardtronics plc](#) Chairman Letter to Shareholders acknowledging impact of COVID-19 and mentioning board engagement with management on the issue. Also includes a Letter from the Compensation

Committee that acknowledges the potential impact of COVID-19 and provides notice that the committee might exercise discretion in modifying the compensation program.

- [Nasdaq, Inc.](#) Foreword to Letter to Shareholder written by CEO.
- [Cardtronics plc](#) Chairman's Letter to Shareholders acknowledging impact of COVID-19 and mentioning board engagement with management.
- [International Business Machines Corporation \(IBM\)](#) Joint letter by Lead Director and the chairs of the executive compensation and governance committee that highlights certain business practices and notes that holding an in-person meeting is unlikely. In a DEFA14A filing.
- [The New York Times Company](#) Mentions COVID-19 in a CEO letter to employees on the availability of proxy materials. Also mentions internal resources where employees can find additional information.
- [The Goldman Sachs Group, Inc.](#) Letter from Lead Director acknowledging impact on stakeholder groups.

3. Earnings Guidance

For companies that provide sell-side analysts with quarterly or full-year guidance on earnings, free cash-flow, and other financial metrics, you should **consult with your Chief Investor Relations Officer** on how to handle communications about revisions or retractions and related messaging to the investment community.

SECTION 4. Impacts on Compensation Practices

After logistics, compensation-related disclosures are the second most common type of disclosure to include COVID-19 as part of the narrative. Making adjustments to the executive compensation program may be considered a best practice, depending on the facts and circumstances of a particular company. Changes to the program may be particularly important for those companies that have been forced to furlough, lay off or cut salaries for portions of their workforce to show that executives and senior management are not isolated from feeling the impacts of the pandemic. For many, the timing of filings may not allow them to include language about how the pandemic may impact executive compensation. However, as the weeks move on, we expect compensation-related disclosures to increase, both in volume and in specificity. To date, we have been able to categorize the types of disclosures being made into categories: (1) [Cautionary Statement on the Timing of Information Included in Proxy Materials](#); (2) [Current Impacts or Changes to Compensation Practices](#); and (3) [Forward-Looking Statements on Potential Impacts on Compensation Practices](#). In addition to executive compensation, there have also been disclosures of changes or amendments to director compensation.

1. Cautionary Statement on the Timing of Information Included in Proxy Materials

Because stock prices have been so significantly impacted by the COVID-19 pandemic, some companies have opted to include language in their proxy materials that the compensation decisions and outcomes being discussed in the proxy materials predate the recent outbreak. Examples of this include:

- [Cardtronics plc](#) Mentions that disclosures have not been edited to provide updates on the impact of COVID-19.
- [Chart Industries, Inc.](#) Provided commentary on the performance period for which the CD&A covers and that disclosures do not address the impact of COVID-19.
- [Dominion Energy, Inc.](#) Brief language that mentions performance period. Also includes language about ongoing monitoring of the design of the compensation program in light of COVID-19.
- [Oil States International, Inc.](#) Includes language about a measurement period that predates COVID-19 and recent volatility in the sector as a result of depressed commodity prices.

2. Current Impacts or Changes to Compensation Practices

Despite the newness of the issue, some companies have begun including language about any present changes they have made to their compensation program. The types of changes companies are making vary greatly but generally fall into two categories: (a) [reductions to the cash components of the compensation program](#) in order to preserve capital, which is most common; or (b) [reductions to the overall compensation program](#). The list provided below is by no means exhaustive but represents the types of changes companies are making. For more complete information, please refer to the Proxy Analytics COVID-19 Proxy Disclosure Spreadsheet, which is available for free in the Research & Reports section of the firm's website.

- a. Reductions/Alterations to Cash Components of Compensation Program.** Decisions to reduce the cash component of executive compensation in order to preserve capital is the most common type of change disclosed to date. Decisions on how to make this change varies greatly by company. Some examples include:

Reduction or Elimination of CEO/NEO Base Salary

- [Alaska Air Group Inc.](#) Waiver of CEO base salary, reduction in other NEO base salary.
- [Chatham Lodging Trust](#) Reduction in NEO base salary.
- [Simon Property Group, Inc.](#) Waiver of CEO base salary, reduction of NEO base salary.

Deferral of CEO/NEO bonus

- [Ashford Inc.](#) Deferral of previously earned CEO cash bonus into future.
- [Gogo Inc.](#) Deferral of CEO/NEO cash bonus.
- [Simon Property Group, Inc.](#) Deferral CEO bonus until time determined by Board in future.

Conversion of Cash Awards to Equity Awards

- [Stratus Properties, Inc.](#) Conversion of cash award to restricted stock
- [Pebblebrook Hotel Trust](#) Conversion of cash award to common stock.

Deferral of Separation Payment to Outgoing Executives

- [Apple Hospitality REIT, Inc.](#) Payments made to two outgoing executives deferred to date in the future.

- b. Reductions to Overall Compensation Program**

- [Apple Hospitality REIT, Inc](#) CEO voluntarily reduced target compensation for 2020 by 60%
- [Urban Outfitters, Inc.](#) disclosed 20% reduction in executive compensation during the length of the furlough

3. Forward-Looking Statements on Potential Impacts to Compensation Practices

Considering timing, there are likely a number of companies that have not yet finalized their compensation program for the current year and many more than may have finalized their program but have not yet determined what they may do to the program in light of the COVID-19 outbreak. Due to the fluidity of the situation, a handful of companies have begun to include statements about the status of their future compensation program or provide note that either components of the programs, or the program generally, may be subject to change. Many are highlighting the board's ability and/or intent to use discretion. The statements that we have tracked to date have all been included in the proxy statement but similar disclosures to be included in additional splicing materials and other filings as well. Examples include:

- [Boston Properties, Inc.](#) Includes notice of board discretion to review/modify performance targets/metrics in light of coronavirus.
- [Dominion Energy, Inc.](#) Includes brief statements on the compensation committee monitoring the impact of coronavirus on the design of executive compensation.

- [International Flavors & Fragrances Inc.](#) Includes section on 2020 Compensation Actions; includes notice of board discretion to review/modify performance targets.
- [Retail Opportunity Investments Corp](#) Notice of board discretion to review/modify performance metrics.
- [The Hackett Group, Inc.](#) Notice of board discretion to review/modify performance targets.
- [Uber Technologies, Inc](#) Includes brief statement that the compensation committee may reevaluate performance goals and disclose at a later time in accordance with disclosure obligations.

4. Changes or Amendments to Director Compensation

Most disclosures to date about director compensation have reported on reductions or deferrals of director retainer fees to preserve capital. Examples include:

- [Alaska Air Group, Inc.](#) Rescinded increases in director fees and waiver of director retainer fee until September 2020.
- [Cohu, Inc.](#) Discloses fee reduction for non-employee directors by 20%.
- [Foundation Building Materials, Inc.](#) Discloses reduction in cash component for non-employee directors by 50%.

5. Other

Although we have not seen examples of this thus far, companies may want to address the status of **employer matching of employee 401(k) savings plan contributions** and any further restrictions on **transactions in the company's stock by insiders** during the COVID-19 pandemic, as both issues have been prominently highlighted in the national financial media. Specific companies have been called out in some news articles.

SECTION 5. Impacts on Corporate Governance Practices

An additional area where COVID-19 disclosures have been included in proxy materials is in the corporate governance and ESG disclosures provided by companies. Including COVID-19 disclosures in corporate governance sections should be considered a best practice, particularly as it relates to board and executive management oversight. Shareholders have consistently shown a desire to want greater clarity from companies about how the firm manages and oversees risks. For an issue with as great a magnitude as COVID-19, shareholders will want to be sure that the board is fully informed and engaged on the issue.

1. Board/Executive Risk Oversight

Although the issue is new, a few companies included COVID-19 as part of their risk oversight process. The amount of disclosure provided varies by a company varies, but generally includes how and where oversight is being provided. Examples include:

- [American Water Works Company, Inc.](#) Discloses establishment of Emergency Executive Committee to provide board action in the event of an emergency on any matter except those matters delegated to a specific committee. Further discloses that the board has determined that COVID-19 constitutes an emergency under the Emergency Executive Committee Charter.
- [Ashford Inc.](#) Discloses risk oversight as a function for both the board and board committees. Notes that the full board has received updates on the impact of COVID-19 on the business.
- [CBRE Group, Inc.](#) Discloses the establishment of a crisis management team for monitoring events related to coronavirus and implementing measures to support operations. Further discloses that the full board has been in regular contact with the crisis management team about assessments of risks and impacts on business.

- [Macy's, Inc.](#) Discloses the establishment of a cross-functional team of executives to monitor the impact of COVID-19 on business and operations. Further discloses the board's role in overseeing risk management strategies and initiatives.
- [Precision BioSciences, Inc.](#) General statement on board/risk oversight being managed through the Audit Committee.
- [RIGEL PHARMACEUTICALS, INC.](#) Mentions oversight of COVID-19 as part of the full board's risk oversight.

2. ESG Consideration

Although limited to date, some companies have included mentions of COVID-19 as part of their ESG considerations and strategy. Examples include:

- [BlackRock Inc.](#) Letter to shareholders entitled, "Embracing Our Purpose During the Global COVID-19 Crisis."
- [Transocean Ltd.](#) Includes COVID-19 in a statement on ESG entrenchment in core values.
- [United States Lime and Minerals, Inc.](#) Reaffirms commitment to ESG and mentions the implementation of proper COVID-19 protocols as part of the Company's social responsibility.

SECTION 6: Other Disclosure Considerations

There are a number of other areas for consideration that may implicate COVID-19 in proxy disclosure, but have not yet been heavily included in proxy materials to date. Below we provide some suggestions with current examples where available:

1. Bylaw Amendments in Response to COVID-1

Amendments to bylaws in response to COVID-19 may be an issue for some companies, particularly as it relates to allowing for virtual meetings. According to Deal Point Data, the percentage of companies opting to make amendments to bylaws in March 2020 jumped 60% in comparison to the same time last year. Boards typically have the authority to unilaterally amend most bylaws, so the issue is very rarely included in proxy materials. (Keep in mind, however, the Form 8-K (Item 5.03) filing requirements to report amendments to the company's bylaws.) One example of bylaw-related proxy disclosure:

- [The PNC Financial Services Group, Inc.](#) Notes Bylaws already allow Company to hold virtual meeting.

2. Impact on Equity Incentive Plans

Equity incentive plans may become a greater issue at some point in the future, but has not been an issue for companies to date. We have found a small handful of incentive plan disclosures that include mentions of COVID-19:

- [Accelerate Diagnostics, Inc](#) Cites COVID-19 as part of rationale for potentially higher burn rate and need for additional shares in reserve.
- [Altra Industrial Motion Corp.](#) Disclosed that because of market conditions and depressed stock price, the board found it advisable to increase share reserves.
- [Transocean Ltd.](#) Notes potential impact on burn rate, but not as a reason to ask for additional shares.

3. Option Exchange Programs

Option exchange programs may also become an issue of greater concern over time, but not one that has been addressed with great frequency to date. The few examples of option exchange programs citing COVID-19 to date include:

- [Gogo Inc.](#) Option exchange program included on the ballot with COVID-19 listed only as a partial reason.
- [Macrogenetics Inc.](#) Option exchange program on the ballot, but proposal notes that options were already underwater prior to COVID-19 outbreak.

4. Reverse Stock Splits

Reverse stock splits have become more common recently and may become even more common in the future. For companies that have reverse stock split proposals included on the ballot this year, some have included additional disclosure about the potential impact of COVID-19 market volatility on the post-split market value of shares. One example:

- [Nabors Industries Ltd.](#) Notes reverse stock split on ballot may be negatively impacted by COVID-19.

5. Impact on Stock Ownership Requirements

Some companies have executive and/or director stock ownership guidelines that require certain executives and all directors to own stock with a value in excess of a certain percentage of salary or retainer fees. Due to the recent market volatility, some executives and directors may not currently be in compliance with the guidelines. Some examples of disclosure for this issue include:

- [Ashford Inc.](#) Noncompliance with non-employee director guideline due to market volatility.
- [Braemar Hotels & Resorts Inc.](#) Noncompliance with executive guidelines due to market volatility.

6. Poison Pills / NOL Pills

With depressed stock prices, the need for companies to adopt poison pills in response may grow in need. According to Deal Point Data, more than 20 companies have implemented some form of poison pill since the beginning of March 2020, including a handful of net operating loss (or “NOL” pills). To date, we have found no shareholder rights plans citing COVID-19 included in proxy materials.

7. Impact on Dividends and Share Buyback Programs

The ongoing ability to pay dividends and repurchase shares is certainly an issue of concern for companies, but not one that is traditionally covered in great detail in proxy materials. We can envision scenarios whereby these topics are included in the Acknowledging Impact on the Financial Condition of the Company section of proxy materials discussed above. However, no such instances have been tracked to date.

8. Adjournments/Postponements

Postponements and adjournments of shareholders meetings may be a concern for companies, particularly those that plan to hold an in-person meeting. Of the companies that have changed their annual meetings this year due to COVID-19 concerns, most have opted to transition to a virtual meeting instead of postponing the meeting. However, one example of a postponement is:

- [TransDigm Group Inc.](#) Postponed meeting, citing restrictions on non-essential business as the reason.

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We hope to update this reference guide as proxy season progresses and we see new developments in annual meeting practices and SEC disclosures related to the COVID-19 pandemic. Stay well and stay safe!