

Delayed 2020 Annual Meetings Impact Key 2021 Advance Notice Deadlines

February 2021

The challenges created by the COVID-19 pandemic on the 2020 proxy season have been well documented. With limited time, companies had to solve the logistical and legal issues associated with shifting from traditional in-person to virtual annual shareholder meetings. As a result, numerous companies held their annual meetings later in the year than usual. Approximately 5% of the companies in Deal Point Data's coverage universe (i.e., companies included in major indices) held their 2020 annual meeting at least 30 days later than the date of the 2019 annual meeting. For contrast, only about 2% of companies held their 2019 annual meeting at least 30 days later than the 2018 annual meeting date. A change in the month and day a company schedules the annual meeting may seem immaterial but is important to monitor as it can have a significant impact on advance notice deadlines. This takes on added importance since we have started to observe increased activity by activist investors. So far in 2021, Deal Point Data has tracked 20 annual meeting board seat proxy fight announcements for U.S. reporting companies. That is a 67% increase over the 12 announcements in the same period in 2020 (i.e., January 1 to February 22).

Advance Notice Provisions

SEC rules and state corporation laws do not prohibit a shareholder from bringing unexpected business including director nominations directly from the floor of the meeting. Most public companies include advance notice provisions in their bylaws (and to a much lesser extent in the charter) so that the company is not surprised by a proposal or nomination from the floor of the meeting (these requirements are completely separate from and unrelated to SEC Rule 14a-8 which allows qualifying shareholder proposals to be included in company proxy materials). Approximately 95% of the companies in Deal Point Data's coverage universe have adopted advance notice timeliness requirements for nominations. The most common requirement is a submission "window" of 90 to 120 days prior to the first anniversary of the preceding year's annual meeting. However, advance notice provisions also typically include a feature providing for a resetting of the deadline/window under certain circumstances. This alternate timing provision typically mandates that a resetting is required if the upcoming annual meeting is being held outside of a specified range based on the date the preceding year's annual meeting (usually 30 days earlier or 60 days later). As a result, shareholders will have additional time to submit proposals and nominations for annual meetings being held later than usual. However, the opposite is true for annual meetings scheduled to be held earlier and often results in the notice deadline accelerating to within 10 days of the announcement of the new meeting date. Any shareholder relying on the deadlines previously set forth in the company's previous year's proxy statement would miss the new deadline. As companies that delayed the holding of the 2020 annual meeting return to their traditional annual meeting schedule, the potential for an accelerated deadline arises.

S&P 1500 Advance Notice Timeliness Provisions

Most Common Timeliness Requirements	No. of Companies	% of Index
90 / 120 Preceding AGM	721	48.1%
120 / 150 Previous Proxy Date	117	7.8%
60 / 90 Preceding AGM	85	5.7%
120 / 150 Preceding AGM	60	4.0%
90 / 120 Previous Proxy Date	54	3.6%
Alternate Timing Provisions	No. of Companies	% of Index
Advance Notice Includes Alternate Timing	1240	82.7%
Most Common Trigger (Meeting Date Outside of)		
30 / 60 Preceding AGM	465	31.0%
30 / 30 Preceding AGM	449	29.9%
30 / 70 Preceding AGM	161	10.7%

Source: Deal Point Data

Intra-Year Deadline Changes Disclosure

Monitoring for this scenario presents a few challenges. Surprisingly, there is no single standardized place for a company to disclose an upcoming annual meeting date. A company may announce a shareholder meeting date in a press release, 8-K, 10-Q, 10-K or even just the investor relations section of their website. The same holds true for companies announcing intra-year proposal and nomination deadline changes. There is no specific 8-K item number that would make identifying these updates easy. Companies disclosing updates to advance notice deadlines most commonly include them in 8-K filings, but they are also disclosed in press releases, 10-Q, and 10-K filings.