

## **KINGSDALE MEMO:**

### **TSX/TSX-V Extension: Should you Delay Your AGM?**

March 24, 2020

On Monday afternoon, the Toronto Stock Exchange and TSX Venture Exchange announced a number of temporary relief measures to lessen the administrative burden on its issuers in response to the COVID-19 pandemic, including extensions for holding annual shareholder meetings.

Specifically, both the TSX and TSX-V are permitting issuers that must hold an annual meeting of security holders during 2020 to hold their meetings on any date in 2020 up to and including December 31, 2020, regardless of your fiscal year end.

Issuers should review their corporate statutes to ensure they permit the company to pursue these temporary relief measures given that the TSX is not the only body that regulates annual shareholder meetings. For example, the Canada Business Corporations Act requires a shareholder meeting be held no later than 15 months after holding the last preceding annual meeting, but no later than six months after the end of its preceding financial year.

For issuers thinking about delaying, here are a few other strategic considerations:

**How ready to go are you today?** Have you already set a meeting date? Finalized or even filed your circular? For those companies that have their ‘ducks in a row’, a postponement may only add cost and uncertainty. Going forward with your original meeting date may reassure shareholders that your board and management have things under control during a challenging time. If you choose to keep the same meeting date, ensure you provide shareholders with web access at minimum and if it’s not too late, a full virtual meeting.

**Can delaying your meeting spur on the activists?** Do you have an activist in your stock or does your share price make you an attractive target? The current market volatility could prompt opportunist buying which could expose you to disruptions later in the year. Notably during the 2009 proxy season, following the 2008 financial crisis—the last time we saw this level of market volatility—we experienced one of the busiest years on record for activism in Canada.

**Can your board and company adequately prepare for an AGM and associated materials like a management information circular?** Depending on your company's circumstances and size of your team, your time might be better spent focusing on leading the business through these chaotic times rather than preparing for an AGM.

**Do I know who will be voting at my meeting or do I need more time?** With the market turmoil many companies have seen a significant turnover in their shareholders. A large investor who may have been counted on as an ally may have halved its position or sold out entirely. A reminder that record dates are typically set 35-40 days in advance of a meeting. While only shareholders of record may vote, shareholder turnover may reduce voter turnout as those who have sold out will not be voting. A postponement might buy you some time to better understand the composition of your new shareholder base. If you do postpone, depending on for how long, consideration should be given to moving your record date as well as not changing it can appear defensive.

**Will a delay help your shareholders?** Remember that your shareholders themselves may be too distracted by the chaos caused by the COVID-19 pandemic. Even in an extraordinary year, shareholder turnout matters as it sets the bar for turnout in subsequent years.

**Are there other strategic alternatives you would like to explore and possibly take to shareholders?** Some industries like gold and cannabis were primed for consolidation before the market collapse. If a transaction or strategic alternative is imminent, it may make more sense for you to pause in order to combine meetings where possible and to reduce expenses.

**Outside of COVID-19 what else will be impacting your share price and do you expect that to get better or worse?** From railway blockades to Saudi Arabia's decision to increase oil production, many Canadian companies have a number of factors that will make business difficult even after the pandemic subsides. Gaming the market may have more risks given that shareholders may be more empathetic in the short term. This empathy, however, may dissipate as the year goes on.

## **NEXT STEPS**

The TSX and TSX-V do not require issuers who choose to postpone their AGM to apply for a timeframe extension.

If you have already announced a meeting date and distributed your proxy materials, the Canadian Securities Administrators' [view](#) is that you do not need to send out additional soliciting materials or updated proxy-related materials to change the date, time, or location of your meeting. You must, however, issue a news release, file the release on SEDAR, and take all reasonable steps to inform all parties involved in your proxy voting infrastructure, including intermediaries, transfer agents, and proxy service providers, of the new information.

If your board has not yet set a date for your AGM, then the details regarding your meeting must be communicated in your proxy materials and delivered to shareholders in the ordinary course.

Companies involved in proxy contests, holding special meetings for merger and acquisition transactions, or obtaining shareholder approval for transactions, should contact their principal regulator for instructions.

Kingsdale remains committed to providing you with the highest level of service and advice when, where, and how you need it during the COVID-19 crisis. If you have any questions, we are here to help 24/7. [Contact us today.](#)