



Securities Law ALERT ■

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Changes to the NYSE's Material News Policy

On August 27, 2015, the New York Stock Exchange (NYSE) filed a proposed rule change with the U.S. Securities and Exchange Commission (SEC) to amend Section 202.06 of the NYSE Listed Company Manual to expand the time periods during which listed companies are required to notify the NYSE prior to announcing material news, to expand the circumstances under which trading can be halted, and to provide guidance related to the release of material news after the close of trading and the methods of releasing material news. The amendments will become operative on September 28, 2015.¹

Changes to NYSE Notification Requirements

Companies listed on the NYSE are currently required to notify the exchange at least 10 minutes in advance of a material news release that will occur shortly before the opening of trading on the NYSE or during NYSE market hours.

With the amended rule, the NYSE will advance the time for notification and compliance with the material news policy to 7:00 a.m. (all times are Eastern time) to incorporate material news releases issued between 7:00 a.m. and 9:30 a.m. Although trading on the exchange does not begin until 9:30 a.m., the NYSE stated that it believes that material news released between 7:00 a.m. and 9:30 a.m. has the potential to cause volatility in both price and volume during pre-market trading.

Changes to Trading Halts

Currently, the Listed Company Manual limits the NYSE's authority to halt trading to situations when a listed company intends to release material news during market hours (9:30 a.m. to 4:00 p.m.) or shortly before market opening. In such an event, the NYSE halts trading to ensure full dissemination of the news to investors.

Trading halts during pre-market hours

As amended, a regulatory halt may be implemented between 7:00 a.m. and 9:30 a.m. when the listed company notifies the NYSE of the intended material news release and requests that trading be halted pending

¹ The SEC release announcing the proposed amendments is available at <http://www.sec.gov/rules/sro/nyse/2015/34-75809.pdf>. The NYSE e-mail alert to the listed company executives is available at https://www.nyse.com/publicdocs/nyse/regulation/nyse/timelyalertmemo_amendment.pdf.

dissemination of the public announcement. Other national securities exchanges that trade NYSE-listed securities will also halt trading in that security until the NYSE lifts the halt. Because there is generally a lower volume of trading in the pre-market hours, the NYSE believes that the listed company is best positioned to determine whether a trading halt is appropriate given the news it intends to release. However, if the news is not fully disseminated prior to 9:30 a.m., the NYSE may impose a halt based on its own discretion.

Trading halts during market hours

The amendments also provide that if the NYSE needs to request information from a listed company relating to material news, the listed company's compliance with NYSE's continued listing requirements, or any other information that is necessary to protect investors and the public interest, the NYSE may halt trading in the listed company's security until it has received the requested information. These changes are comparable with Nasdaq's Rule 4120(a)(5).

Trading halts for ADRs

The amendment will also allow the NYSE to halt trading in an American depositary receipt (ADR) or other listed security when the NYSE-listed security (or the security underlying the ADR) is listed on another exchange and that exchange halts trading in that security for regulatory reasons.

Change to Release of Material News After Market Close

Since trading continues after 4:00 p.m. on other exchanges, the NYSE included advisory text in the amendments to the Listed Company Manual requesting that listed companies intending to release material news after the NYSE market close wait until the earlier of the publication of their security's official closing price on the NYSE or 15 minutes after the scheduled closing time of the NYSE.

Changes to Methods to Release Material News

The Listed Company Manual currently states that companies can disclose material news using any Regulation FD-compliant method and includes advisory text on the best way to release material news to ensure immediate and widespread coverage. However, due to the outdated nature of this text, the amended rule states that NYSE listed companies releasing material news should include the news in a Form 8-K or other SEC filing or issue the news in a press release to the major news wire services, including, at a minimum, Dow Jones & Co. Inc., Reuters Economic Services and Bloomberg Business News.

Looking Forward

Although the SEC is soliciting comments, the amendments were declared immediately effective pursuant to 15 U.S.C. 78s(b)(3)(A) and are scheduled to become operative on September 28, 2015. Companies listed on the NYSE will need to be mindful of these amendments when releasing material news, both prior to the opening and after the close of trading on the NYSE as well as during trading hours.

If you have any questions or would like additional information on how to best prepare for these new standards, please contact your Alston & Bird attorney.

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