

December 11, 2017

NYSE Changes Rule on Issuance of Material News Immediately After Market Hours

NYSE Prohibits NYSE Listed Companies from Releasing Material News for up to Five Minutes After NYSE Official Closing Time

SUMMARY

Effective immediately, the New York Stock Exchange has changed its rules to require that listed companies issuing material news after the closing of trading on the NYSE wait until the earlier of (i) publication of the company's official closing price on the NYSE or (ii) five minutes after the NYSE's official closing time, except when publicly disclosing material information following an unintentional disclosure in order to comply with Regulation FD. The NYSE's rule change was approved by the Securities and Exchange Commission on December 4, 2017.¹

DISCUSSION OF RULE CHANGE

On August 29, 2017, the SEC published the NYSE's proposed rule change to limit the release of material news by listed companies immediately after market close. The NYSE's "immediate release policy" (set forth in Section 202.06 of the NYSE Listed Company Manual) includes advisory text requesting listed companies to delay the release of material news after the NYSE's official closing time (generally, 4:00 p.m. Eastern Time, except for certain days on which the official closing time occurs early at 1:00 p.m. Eastern Time) until the earlier of (i) publication of the company's official closing price on the NYSE or (ii) 15 minutes after the NYSE's official closing time.

The NYSE stated in the proposed rule change that, notwithstanding the advisory text included in the Listed Company Manual, it had been experiencing situations where material news released shortly after the NYSE's official closing time caused significant investor confusion. Specifically, when a listed company

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released material news shortly after the NYSE's official closing time but before the NYSE was able to publish the company's official closing price, the news release could cause the company's stock to trade on other markets remaining open at materially different prices than the NYSE's official closing price. The rule change is designed to alleviate those discrepancies between the NYSE closing price and trading prices on other markets. Although closing prices are almost always published within five minutes of the official closing time, to avoid market disruptions when the closing auction is delayed more than five minutes, Rule 202.06 of the Listed Company Manual continues to include advisory text asking listed companies to avoid issuing material news until the earlier of (i) publication of the company's official closing price on the NYSE or (ii) 15 minutes after the NYSE's official closing time.

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ENDNOTES

- ¹ Securities Exchange Act Release No. 34-82213 (Dec. 4, 2017), 82 FR 58032, at 58032 (Dec. 8, 2017), *available at* <https://www.sec.gov/rules/sro/nyse/2017/34-82213.pdf>. See NYSE Email Alert re: "Material News Issued Immediately After NYSE Closing Time" (Dec. 7, 2017), *available at* https://www.nyse.com/publicdocs/nyse/regulation/nyse/Material_News_Issued_Immediately_After_NYSE_Closing_Time_20171207.pdf.

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