

NYSE Rule Changes on Announcements Outside Market Hours

NYSE Expands Notice Requirements Regarding Dividend Announcements and Proposes to Limit the Release of Material News by Listed Companies Immediately After Market Close

SUMMARY

The New York Stock Exchange is amending its rules regarding public announcements by listed companies outside of market hours, as follows:

- to require listed companies to provide notice to the NYSE at least ten minutes before making any public announcement with respect to dividends irrespective of the time of day or day of the week; and
- a proposal to prohibit listed companies from releasing material news for up to five minutes after market close.

The amendment regarding dividend announcements was approved by the Securities and Exchange Commission on August 14, 2017, but the NYSE has proposed to extend the implementation date to no later than February 1, 2018. The proposed amendment regarding the issuance of material news was published by the SEC on August 29, 2017 but has not yet been approved. The relevant NYSE filings are available on the SEC's website at <https://www.sec.gov/rules/sro/nyse.htm>.

DISCUSSION OF RULE CHANGES

A. NOTICE REQUIREMENT REGARDING OFF-HOURS DIVIDEND ANNOUNCEMENTS

The NYSE's "immediate release policy" (set forth in Section 202.06 of the NYSE Listed Company Manual) requires listed companies to notify the NYSE at least ten minutes before releasing material news if such release would take place between 7:00 a.m. Eastern Time and the NYSE's official closing time of 4:00 p.m. Eastern Time. Listed companies were previously required to comply with this immediate release policy in connection with announcements relating to dividends or stock distributions during these hours only.

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The NYSE has now amended Sections 204.12 and 204.21 of the Listed Company Manual to specify that notice of any dividend or stock distribution, or the fixing of a record date with respect to a dividend or stock distribution, must be provided to the NYSE at least ten minutes before its public announcement, regardless of the time of day or day of the week. The amendment does not affect the separate requirements in Sections 204.12 and 204.21 to give prompt notice to the NYSE of the taking of any dividend action or the setting of a record date, each of which generally must be made at least ten calendar days before the relevant record date.

The NYSE stated that this amendment will enable the NYSE staff to resolve any rule compliance issues with a listed company's dividend or stock distribution action prior to its public announcement, consistent with investor protection and the public interest, and provide transparency and clarity to listed companies on the application of the immediate news release policy to dividend or stock distribution announcements. The NYSE indicated that it intends to have staff available at all times to review notifications, and that staff will contact the company immediately if there is a problem.

The SEC approved this rule change on August 14, 2017. However, on September 5, 2017, the SEC published a proposal by the NYSE to delay effectiveness of the requirement in order to give companies and the NYSE time to put in place appropriate procedures. The NYSE will give listed companies at least 30 days' notice via email of the new effective date, which will be no later than February 1, 2018.

B. PROPOSED LIMITATION ON ISSUANCE OF MATERIAL NEWS IMMEDIATELY AFTER MARKET CLOSE

The NYSE has also proposed to amend Section 202.06 of the Listed Company Manual to prohibit listed companies from releasing material news after the NYSE closing time (generally, 4:00 p.m. Eastern Time) until the earlier of (i) publication of the listed company's official closing price on the NYSE or (ii) five minutes after the NYSE closing time. Section 202.06 already includes advisory text requesting listed companies to delay the release of material news until the earlier of (a) publication of the listed company's official closing price on the NYSE or (b) 15 minutes after the NYSE closing time. The advisory text does not, however, preclude listed companies from doing so.

Notwithstanding the advisory text, the NYSE states that it has continued to experience situations where material news released shortly after the NYSE closing time caused significant investor confusion. Specifically, when a listed company releases material news shortly after the NYSE closing time but before the NYSE has been able to publish the listed company's official closing price, the news release can cause the company's stock to trade on other markets that remain open at materially different prices than the NYSE's official closing price. The NYSE filing indicates that 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, the amended rule would continue to include advisory text asking

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companies to avoid issuing material news until the earlier of publication of the official closing price or 15 minutes after the NYSE closing time.

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