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NYSE Amends Rule on Material News Notification and Trading Halts

NYSE Extends the Pre-Market Notification Period During Which Listed Companies Are Required to Notify the NYSE Prior to Disseminating Material News, Expands the NYSE's Authority to Halt Trading and Revises Guidance on News Dissemination Methods

SUMMARY

The New York Stock Exchange (the "NYSE") recently amended its rule governing the procedures that NYSE listed companies must follow when releasing information that might reasonably be expected to materially affect the market for their securities ("material news"). The amendment to Section 202.06 of the NYSE Listed Company Manual:

- extends to 7:00 a.m. Eastern Time, the hours during which NYSE listed companies are required to notify the NYSE prior to releasing material news;
- expands the NYSE's authority to halt trading, including at the request of a NYSE listed company during pre-market hours;
- provides guidance on disseminating material news after the market closes; and
- revises the methods by which to achieve immediate and widespread dissemination of material news.

The amendment became effective on September 28, 2015 and is available on the NYSE's website at <http://nysemanual.nyse.com/lcm/>.

AMENDED RULE

A. Extended Material News Notification Requirement to 7:00 a.m. Eastern Time

Section 202.06 previously required NYSE listed companies to notify the NYSE at least ten minutes in advance of releasing material news if such release would take place shortly before the opening of trading on the NYSE or during NYSE market hours (9:30 a.m. to 4:00 p.m. Eastern Time). As a result of the amendment, NYSE listed companies must now comply with this policy between 7:00 a.m. and 4:00 p.m. Eastern Time. In expanding the policy, the NYSE reasoned that most listed companies release material news between the hours of 7:00 a.m. and 9:30 a.m. and that such releases have the potential to cause volatility in both price and volume during pre-market trading occurring on other markets as well as on the NYSE once trading opens.¹ NYSE listed companies are still required to notify the NYSE's Market Watch Group by telephone at least ten minutes in advance of the release of material news and, if the release will be in written form, provide the NYSE with the text of such release through the NYSE's web portal.

B. Expanded Authority to Declare Trading Halts

Section 202.06 previously limited the NYSE's authority to halt trading in a listed company's securities to when the listed company intends to release material news during market hours. The amendment provides the NYSE with additional authority to institute a trading halt:

- before the opening of trading for the release of material news if the listed company affirmatively requests a trading halt;
- before the opening of trading for the release of material news if the NYSE believes that the release of material news will not be completed prior to the opening of trading;
- at any time if the NYSE believes it is necessary to request further information from the listed company regarding a news release or the listed company's compliance with NYSE listing requirements; and
- in the case of American Depositary Receipts (ADR) or other securities listed on the NYSE, when another national securities exchange or foreign exchange on which the security or the security underlying the ADR is listed halts trading in such security for regulatory reasons.

1. Pre-Market Trading Halts Initiated by a Listed Company

The amendment allows the NYSE to halt trading in a listed company's securities prior to market open if the listed company has informed the NYSE that it intends to release material news and requests that trading in its securities be halted pending dissemination of the material news. While the NYSE noted that the release of material news in pre-market hours may cause price volatility, it reasoned that a listed company is better positioned than the NYSE to determine whether a trading halt is appropriate given the material news it intends to release and the lower volume of trading in such pre-market hours.

¹ This change is consistent with the provisions of Nasdaq Stock Market Rule 4120(a)(1).

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2. Trading Halts Initiated by the NYSE

The amendment expanded the circumstances in which the NYSE has sole discretion to initiate a trading halt. During pre-market hours, the NYSE now has authority to halt trading to facilitate an orderly opening if it believes that dissemination of material news will not be completed prior to the opening of trading. The NYSE also has authority at all times to halt trading in situations where it believes it is necessary to request information from a listed company relating to:

- material news;
- the listed company's compliance with NYSE continued listing requirements; or
- any other information which is necessary to protect investors and the public interest.

The NYSE may keep the trading halt in place until it has received and evaluated the additional information requested from the listed company.

Furthermore, the NYSE may halt trading in ADRs or other securities listed on the NYSE when such security or the security underlying an ADR is listed on or registered with another national securities exchange or foreign exchange and is subject to a trading halt on such other national securities exchange or foreign exchange for regulatory reasons.²

C. Recommended Procedures for Dissemination of Material News After Market Close

The amendment added advisory text addressing the release of material news immediately after market hours. Listed companies are requested to delay the release of material news until the earlier of:

- publication of the listed company's official closing price on the NYSE; and
- 15 minutes after the close of trading on the NYSE.³

While such procedures are preferred by the NYSE, the advisory text does not preclude listed companies from releasing material news at or immediately after market close.

D. Clarified "Fastest Available Means" for Disseminating Material News

Section 202.06(C) requires listed companies to disseminate material news to the public by the fastest available means. Pursuant to Section 202.06(A), listed companies can disclose such material news via any Regulation FD compliant method. Section 202.06(C) previously contained advisory text indicating that release by telephone, facsimile, hand delivery or press release to Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News ensured immediate and widespread coverage. The amendment removes outdated references to delivery by telephone, facsimile and hand, and clarifies that listed companies releasing material news should either:

² This change is consistent with the provisions of Nasdaq Stock Market Rule 4120(a)(4).

³ While the NYSE usually closes at 4:00 p.m. Eastern Time, on certain days each year it closes at 1:00 p.m. Eastern Time.

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- include the news in a Form 8-K or other public filing with the Securities and Exchange Commission; or
- issue a press release to the major news wire services, including, at a minimum, Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News.

PRACTICAL IMPLICATIONS

NYSE listed companies should familiarize their investor relations groups with the expanded pre-market material news policy and modify their procedures for dissemination of material news occurring between the hours of 7:00 a.m. and 9:30 a.m. to account for the NYSE's notification and submission requirements. It is important to note that earnings releases qualify as material news and are therefore subject to the amended rule. Listed companies disseminating material news during pre-market hours should also consider whether a trading halt request should accompany such dissemination.

Listed companies planning to disseminate material news concurrently with, or immediately following, the close of NYSE market hours should consider updating their procedures for dissemination of material news to adhere to the NYSE's recommended timeframe when practicable. We would not expect issuers to delay the announcement of after-market securities offerings, which are ideally launched immediately following the close of trading. Furthermore, procedures for dissemination of material news should be updated to reflect the NYSE's revised guidance on methods by which to achieve immediate and widespread dissemination.

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