

Memorandum

NYSE Amends its Material News Policy and Expands its Authority to Halt Trading

October 2, 2015

Effective September 28, 2015, the New York Stock Exchange (“NYSE” or “the Exchange”) amended Section 202.06 of its Listed Company Manual (the “Manual”) to:

1. expand the pre-market hours during which NYSE-listed companies must notify the Exchange prior to disseminating “material news”;
2. expand the timeframe and circumstances in which the NYSE has the authority to halt trading in a listed company’s security;
3. provide guidance with respect to the release of material news after the close of trading on the Exchange; and
4. update the methods by which companies should release material news.¹

Change to the NYSE’s Pre-Market Material News Policy

Previously, Section 202.06 of the Manual required 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 Exchange or during Exchange market hours.” The amended policy mandates that companies comply with this “Material News Policy” from 7:00 a.m. to 4:00 p.m. Eastern Time. Accordingly, companies listed on the NYSE must call the NYSE’s Market Watch Group at (212) 656-5414 or (877) 699-2578 at least ten minutes prior to disseminating “material news” any time between 7:00 a.m. Eastern Time and the end of the NYSE trading session (typically 4:00 p.m. Eastern Time) and must “provide a copy of any written form of

¹ See “[Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 202.06 of the NYSE Listed Company Manual](#),” Release No. 34-75809; File No. SR-NYSE-2015-38 (Sept. 2, 2015) (hereinafter “Release”).

that announcement at the same time via e-mail to nysealert@nyse.com.”²

According to the NYSE, releasing material news between 7:00 a.m. and the start of the NYSE’s trading day at 9:30 a.m., which is common among listed companies, “has the potential to cause volatility in both price and volume during pre-market trading that occurs on other market centers as well as once trading opens on the Exchange.”³ The expansion of the NYSE’s Material News Policy is intended “to facilitate an orderly opening and ensure thorough dissemination of material news.”

Expansion of the NYSE’s Authority to Halt Trading

As noted by the NYSE, “when a listed company releases material news during the course of the trading day, the Exchange will typically halt trading temporarily to ensure full dissemination of the news.” Under the amended Section 202.06, the NYSE may also implement a regulatory trading halt:

1. between 7:00 a.m. and the opening of trading on the NYSE where a company informed the NYSE of its intent to release material news and requested that the NYSE halt trading pending the dissemination of the announcement
2. if such a halt is necessary to request information from a listed company with respect to (a) material news, (b) the company’s compliance with the NYSE’s listing requirements, or (c) “any other information which is necessary to protect investors and the public interest”; and
3. when a security listed on the NYSE (or a security underlying an American Depositary Receipt listed on the NYSE) is also listed on another national or foreign securities exchange and such other exchange halts trading in the security for regulatory reasons.

With regard to pre-market trading halts, the NYSE explains that although trading on the NYSE does not begin until 9:30 a.m. Eastern Time, trading (including trading in NYSE-listed securities) begins on Nasdaq and other national securities exchanges at 4:00 a.m.; a pre-market trading halt by the NYSE would halt trading in the security on other exchanges, as well, until the NYSE allows trading to resume.

While the NYSE will implement pre-market trading halts only at the request of the company, “the decision to halt trading during the NYE trading session will continue to be made by Exchange staff and will not be at the discretion of the listed company.”⁴

² [E-mail from NYSE Regulation, Inc. to NYSE Listed Company Executives regarding Amendments to the NYSE’s Timely Alert Policy](#) (Sept. 22, 2015) (hereinafter “E-mail”).

³ Release at 3.

⁴ E-mail, *supra* note 2.

Guidance Regarding Material News Released After Market Close

The NYSE also added advisory text to Section 202.06 of the Manual, requesting (but not mandating) that listed companies intending to release material news after the close of trading on the NYSE wait until the earlier of:

1. the publication of the official closing price of the company's security on the NYSE; or
2. fifteen minutes after the NYSE's scheduled closing time (which is typically 4:00 p.m. Eastern Time, except on certain days when the market closes at 1:00 p.m. Eastern Time).

The NYSE reasons that because it takes several minutes following the market's scheduled closing time for the security's Designated Market Maker ("DMM") to manually close the order book for that security, the release of material news immediately after market close can cause significant price movement on other markets; this, in turn, may lead to a discrepancy between the trading price on the other exchanges and the NYSE closing price at which the DMM is executing trades, potentially causing investor confusion.

Updates to Methods by Which Companies Should Release Material News

Even prior to the current amendments, Section 202.06 required companies to release material news via the fastest available means. The advisory text to Section 202.06, which listed the optimal methods for release of material news to ensure its immediate and widespread dissemination, previously included release of the news by telephone, facsimile or hand delivery. Recognizing that these methods are obsolete, the NYSE amended the advisory text to provide that listed companies should typically release material news through (a) a Form 8-K or other filing with the Securities and Exchange Commission, or (b) a press release to "the major news wire services, including, at a minimum, Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News."⁵ The NYSE believes that "distribution by either of these methods is consistent with current disclosure practices and ensures adequate dissemination."

Implications of the Amendments

The most significant of the NYSE's recent changes is the requirement that listed companies provide advance notice to the Exchange of "material news" they intend to disseminate not only during trading hours, but between 7:00 a.m. and 9:30 a.m., as well. As a practical matter, companies that are unable to call the NYSE during those hours, such as companies based on the west coast, may call the Market Watch desk the evening before their expected release of "material" information.

Our understanding is that, in the context of this amended policy, the NYSE uses the term "material" to mean information that is likely to cause volatility in the company's stock price. It is our understanding that the

⁵ Release at 7.

NYSE does not require advance notice of an earnings release that is in line with market expectations. Accordingly, while some companies may decide to notify the NYSE prior to issuing any earnings release between 7:00 a.m. and 9:30 a.m. Eastern Time, others will only notify the NYSE before disseminating an earnings release that departs from market expectations. We expect that the NYSE will defer to listed companies' own materiality assessments; that said, listed companies with questions regarding the materiality of their anticipated release may call the NYSE's Market Watch desk for guidance.

The change in the NYSE's Material News Policy may drive some companies to issue their earnings releases between 4:15 p.m. and 7:00 a.m. Eastern Time, so as to obviate the need to engage in a materiality analysis each quarter. We believe that the NYSE's amended policy is unlikely to cause most companies to change the time of their earnings call. Companies that hold their earnings calls between 7:00 a.m. and market close should consider whether they expect to disclose any material information on the call that is not also included in the earnings release. Companies that expect to release material information for the first time on an earnings call to take place between 7:00 a.m. and market close must call the NYSE's Market Watch desk pursuant to the amended Material News Policy.

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at +1 (212) 455-3815 or yafit.cohn@stblaw.com, or any other member of the Firm's Public Company Advisory Practice.

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