

NYSE Expands Material News Notification Policy and Trading Halt Authority Effective September 28, 2015

Article By:

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The New York Stock Exchange (NYSE) recently [proposed amendments to Section 202.06 of the NYSE Listed Company Manual](#) (Listed Company Manual) that will take effect on September 28, 2015.¹ Section 202.06 sets forth the requirement that listed companies notify the NYSE prior to announcing material news² or releasing a statement addressing an unfounded rumor shortly before the market's opening or during an NYSE trading session and the NYSE's policies regarding imposing a trading halt when a listed company is to make such an announcement or release at any such time.

The amendments expand the hours during which a listed company's intended announcement or release would trigger the prior notification requirement and circumstances under which the NYSE may declare a trading halt by:

- requiring NYSE-listed companies to give the NYSE at least ten minutes prior notice³ of the listed company's intended announcement of material news or release of a rumor-related statement during the period between 7:00 a.m. and 4:00 p.m. Eastern Time (ET) and making listed companies solely responsible during pre-market hours for advising the NYSE whether a trading halt is appropriate pending such an announcement or release during pre-market hours;
- providing guidance related to the timing of the release of material news after the close of NYSE trading; and
- allowing the NYSE to halt trading in additional circumstances, including when it needs to obtain more information about a material news release or a listed company's compliance with continued listing requirements.

NYSE-listed companies should familiarize themselves with the amendments to ensure that releases of material news or rumor-related statements made on and after September 28, 2015 comply with amended Section 202.06. Failure to comply with the expanded material news notification requirements could result in a possible formal notice of non-compliance with NYSE rules.

Expanded Pre-Market Material News Policy

Section 202.06(B) of the Listed Company Manual currently requires listed companies to notify the NYSE at least ten minutes before announcing material news or releasing a statement addressing an unfounded rumor that could result in unusual market activity or price variations and calls for immediate release (Material News Policy) if such announcement or release will take place shortly before the opening of NYSE trading at 9:30 a.m. New York time or at any time during a trading session, which is typically between 9:30 a.m. to 4:00 p.m. New York time.⁴ Under the amendments, listed companies will have to comply with the Material News Policy as to announcements of material news and releases of rumor-related statements intended to be made in the period between 7:00 a.m. ET and the end of the NYSE trading session (generally at 4:00 p.m. ET). To comply with the Material News Policy's notification requirements, listed companies must call the NYSE's Market Watch Group at 212-656-5414 or 877-699-2578 and provide a copy of any written form of the material news announcement at the same time via email to nysealert@nyse.com.

Moreover, under amended Section 202.06(B), during the pre-market hours of 7:00 a.m. to 9:30 a.m. ET, listed companies will be solely responsible for advising the NYSE whether a trading halt is appropriate pending dissemination of material news. Thus, during pre-market hours, the NYSE will only institute a trading halt for the dissemination of material news upon a listed company's request.⁵ The NYSE believes this policy is appropriate because a listed company is best positioned to determine the appropriateness of a trading halt given the news being released. However, consistent with its current rules and practice, under the amended rules, the NYSE may temporarily halt trading solely in its own discretion in order to facilitate an orderly opening process if it appears that the release of material news will not be complete prior to the opening of trading.

Post-Market Close Release of Material News

The amendments add advisory text requesting that listed companies intending to release material news after the close of NYSE trading do so only after the earlier of:

- the publication of their listed security's official closing price on the NYSE; and
- 15 minutes after the close of NYSE trading.⁶

Expanded Trading Halt Authority

Section 202.06(B) currently limits the NYSE's trading halt authority to situations when a listed company intends to release material news shortly before the market opens or during market hours. In addition to the previously discussed new authority to impose a pre-market trading halt upon a listed company's request, the amendments will permit the NYSE to halt trading in situations where the NYSE believes it is necessary to request, receive and evaluate information from a listed company relating to:

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

The amended rule will also state the NYSE's long-standing policy that the NYSE may also halt trading in an American Depositary Receipt (ADR) or other NYSE-listed security when another national securities exchange or foreign exchange or market (or regulatory authority overseeing such exchange or market) on which the security or the security underlying the ADR is listed or registered halts trading in such security for regulatory reasons.

Updated Procedures for Disseminating Material News

Section 202.06(C) requires the release of news that is subject to immediate release to be made by the fastest available means. That section indicates the best way to disseminate material news shortly before the market opens or to ensure immediate and broad coverage. The amendments remove from the section outdated methods of public dissemination of material news (for example, telephone, facsimile and hand delivery) in favor of a new, concise statement that listed companies releasing material news should typically either:

- 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 & Company, Inc., Reuters Economic Services and Bloomberg Business News (Wires).

Practical Considerations

To avoid trading halts, excessive trading volatility in connection with the release of material news and violations of the Material News Policy, NYSE-listed companies should:

- consider updating their controls and procedures around the release of material news to (1) consider whether notice should be provided to the NYSE in situations where the information is preliminary in nature or the market impact of the news is uncertain to avoid any second guessing by the NYSE, (2) take into account the expanded pre-market hours during which the Material News Policy applies and the NYSE's guidance on post-market releases of material news and (3) determine whether the release of material news during the period between 7:00 a.m. and 9:30 a.m. ET necessitates a trading halt pending dissemination of the news and, when it does, to ensure that a request for a trading halt is provided to the NYSE;
- familiarize their investor relations group with the amended Material News Policy to ensure that group takes the amendments to the policy into account in planning releases of material news or statements addressing rumors;
- remember that because earnings releases are not excepted from the Material News Policy, listed companies must follow the amended policy regarding prior notification to the NYSE with respect to their earnings releases or issue their earnings releases at a time outside the period between 7:00 a.m. and 4:15 p.m. ET (for example, companies should consider submitting their earnings releases to the SEC under Item 2.02 of a Current Report on Form 8-K and releasing the actual earnings release to the Wires at a time well enough in advance of 7:00 a.m. ET so that the Form 8-K is posted and available on EDGAR and the earnings releases are available to the public over the Wires prior to 7:00 a.m. ET); and

- take into consideration the NYSE's 2014 guidance about compliance with the Material News Policy, especially during the period between 7:00 a.m. and 9:30 a.m. ET, in connection with (1) the verbal release of material news during the course of a management presentation, earnings call, investor call or investor conference and (2) the pricing of secondary offerings of securities in overnight transactions.⁷

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 (Sep. 2, 2015), 80 Fed. Reg. 54362 (Sep. 9, 2015), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-09-09/pdf/2015-22603.pdf> (Notice). The text of the amendments is included in Exhibit 5 to [this NYSE rule filing](#). See also Amendments to the NYSE's Timely Alert Policy Memo (Sep. 22, 2015), *available at* https://www.nyse.com/publicdocs/nyse/regulation/nyse/timelyalertmemo_amendment.pdf.

2. Section 202.05 of the Listed Company Manual sets a standard of materiality for the immediate release policy in Section 202.06 by requiring a listed company to quickly release any news or information which might reasonably be expected to materially affect the market for the listed company's

security. The NYSE interprets that standard to mean that any news reasonably likely to have a material impact on the price or trading volume of a listed

security is "material news." See Notice at 54362 n.3.

3. Recent experience suggests that giving the NYSE such prior notice at least 15 minutes or more in advance of such an announcement or release is advisable.

4. Although Section 202.06 of the Listed Company Manual currently speaks of trading as occurring between 9:30 a.m. and 5:00 p.m. New York time, the hour between 4:00 p.m. and 5:00 p.m. was included in that period to address the after-hours trading session on the NYSE that no longer exists. On

certain days each year, trading on the NYSE closes at 1:00 p.m. ET.

5. Where the NYSE institutes a regulatory trading halt to allow for the release of material news, other national securities exchanges that trade NYSE-listed securities also halt trading in such security until the NYSE lifts the halt.

6. Although the NYSE typically closes at 4:00 p.m. ET, as noted above, on certain days each year it closes at 1:00 p.m. ET. The phrase "fifteen minutes after the close of trading on the [NYSE]" in the new advisory language to amended Section 202.06 will apply to these early closings as well as the 4:00

p.m. ET closings.

7. See NYSE Timely Alert Policy Reminder Memo (Nov. 18, 2014), *available at* <https://www.nyse.com/publicdocs/nyse/regulation/nyse/timelyalertmemo.pdf>.

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