

Nasdaq Issues Guidance on Post-Market Close Release of Material News

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Nasdaq recently published [guidance](#) about when Nasdaq-listed issuers should issue material news releases around the regular market close at 4:00 p.m. Eastern Time (ET). ¹ The guidance also included a reminder that a change to any of a listed issuer's earnings release dates, earnings announcement dates, dividend record dates and dividend payment dates may be material news that should be promptly publicly disclosed in accordance with Nasdaq rules.

Nasdaq-listed issuers should familiarize themselves with the guidance to ensure that releases of material news after the regular market close and public announcements of the specified date changes comply with the guidance and Nasdaq rules.

Nasdaq's Material News Policy

[Nasdaq Listing Rule 5250\(b\)](#) requires that, except in limited unusual circumstances, listed issuers make prompt public disclosure, through any Regulation FD-compliant method or combination of methods, of any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Listed issuers must notify Nasdaq's MarketWatch Department (MarketWatch) at least 10 minutes before the public release of material information involving any of the events set forth in [Nasdaq IM-5250-1](#) (for example, earnings releases, other financial-related disclosures, acquisitions and changes in senior management) when the release is made between 7:00 a.m. and 8:00 p.m. ET. Listed issuers must notify MarketWatch prior to 6:50 a.m. ET when the release of material information is to be made outside the hours of 7:00 a.m. to 8:00 p.m. ET. Except in emergency situations, such notifications must be made through the electronic disclosure submission system available at www.nasdaq.net.

Material News Releases Around Market Close

In its new guidance, Nasdaq recommends that listed issuers wanting to issue material news after the regular market close at 4:00 p.m. ET wait until at least 4:01 p.m. ET, and preferably until 4:05 p.m. ET, to disclose that news, unless there are specific circumstances where the issuer needs to act immediately. Nasdaq has issued the new guidance because of its concerns with the effects of releases of material news during the one-minute period after the regular market close. Nasdaq commences calculating the closing cross² for a closed market session starting at 4:00 p.m. ET with

the resulting closing price generally being published before 4:01 p.m. ET. Nasdaq notes that it is concerned that the release of material news during that one-minute period:

- increases the potential for a sudden change in the issuer's closing price;
- may contribute to price dislocation between different market venues; and
- may cause investor confusion.

Nasdaq's recommendation that Nasdaq-listed issuers wait until 4:05 p.m. ET to release material news is intended to provide the maximum opportunity for the closing price to be fully disseminated before an issuer's news release.

Reminder About Prompt Disclosure of Certain Date Changes

Nasdaq also reminded its listed issuers that changes to their earnings release dates, earnings announcement dates, dividend record dates and dividend payment dates may be material news due to their potential impact on the price of the issuer's security and on options and other derivative securities based on the price of the listed security. As a result, listed issuers should promptly publicly disclose any such change through a Regulation FD-compliant method (or combination of methods) and notify MarketWatch in advance of the announcement of the changed date in accordance with Nasdaq's material news policy discussed above.

Practical Considerations

To avoid excessive pricing volatility in connection with the release of material news and violations of Nasdaq's material news policy, Nasdaq-listed issuers should:

- consider updating their controls and procedures relating to the release of material news (1) to take into account Nasdaq's guidance on post-market releases of material news, including earnings releases, and (2) to ensure that any changes to their earnings release dates, earnings announcement dates, dividend record dates and dividend payment dates are treated in the same manner as other material news and disclosed in accordance with Nasdaq's material news policy;
- recall that MarketWatch may impose a trading halt during an after-hours trading session³ and, depending on the anticipated effect on the Nasdaq-listed issuer's stock price and trading volume of material news to be released after 4:00 p.m. ET, may wish to discuss with MarketWatch whether the issuer can expect a trading halt to be imposed in connection with the release of such material news or whether such a trading halt would be prudent under the circumstances; and
- familiarize their investor relations group with Nasdaq's guidance to ensure that group takes the guidance into account in planning releases of material news.

1. See Nasdaq Issuer Alert 2015-001 (Oct. 15, 2015), *available at* <http://nasdaq.cchwallstreet.com/nasdaq/pdf/nasdaq-issalerts/2015/2015-001.pdf>.

2. The closing cross on any Nasdaq market is the process (i) by which Nasdaq determines the price at which orders are to be executed at the close of regular market hours and (ii) for executing those orders. Post-market hours trading commences once the closing cross is concluded.

3. If material news will be released during a pre-market trading session, which is from 4:00 a.m. through 9:30 a.m. ET, Nasdaq may halt trading only at the request of the listed issuer or if trading in a Nasdaq-listed security that is also listed on another national securities exchange has been halted on the other exchange to permit the dissemination of materials news.

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