

# NYSE Expands Pre-Market Material News Policy and Trading Halt Authority Effective September 28

September 25, 2015

The New York Stock Exchange has amended its rules regarding the public release of material information, which will become operative on September 28. Most significantly, the **amendments** to Section 202.06 of the NYSE Listed Company Manual extend to 7:00 a.m. ET the pre-market hours during which listed companies are required to notify the NYSE prior to disseminating material news. The amendments also provide advisory guidance related to the release of material news after the 4:00 p.m. ET close of trading, permit the NYSE to halt trading in certain additional circumstances, and update the recommended methods for the public dissemination of material news. The SEC release announcing the amendments is available [here](#), and the NYSE email alert is available [here](#).

## Expanded Pre-Market Material News Policy

Currently, listed companies are required to notify NYSE at least ten minutes in advance of releasing material news if the release will take place shortly before the opening of trading on the NYSE at 9:30 a.m. ET or during NYSE trading hours, which are typically between 9:30 a.m. and 4:00 p.m. ET. Beginning on September 28, companies will need to notify NYSE at least ten minutes in advance of any announcement between 7:00 a.m. and 4:00 p.m. ET. The NYSE believes that material news released between 7:00 a.m. and 9:30 a.m. ET has the potential to cause volatility in both price and volume during pre-market trading that occurs on other markets as well as once trading opens on the NYSE. Accordingly, the NYSE believes extending the material news policy to pre-market hours will facilitate an orderly opening process and ensure thorough dissemination of material news to investors.

Consistent with existing 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](mailto:nysealert@nyse.com).

## Release of Material News Post-Market Close

The amendments add advisory language requesting that listed companies intending to release material news after the close of trading on the NYSE wait until the earlier of the publication of their security's official closing price on the NYSE and 15 minutes after the scheduled closing time on the NYSE. The NYSE believes this change will reduce the potential for discrepancies between the NYSE closing price of a listed security and the trading prices for the same security on other exchanges (which it notes can cause investor confusion) and will facilitate an orderly closing process.

The advisory does not require that listed companies delay the release of material news after market close, so listed companies are not prohibited from releasing material news (such as the launch of a securities offering) promptly at 4:00 p.m. and may wish to continue to do so in certain circumstances, particularly where time is of critical importance. Widely followed block trade guidelines, for example, advise issuers to publish a press release announcing the transaction as soon as practicable after the issuer accepts an underwriter's bid. In most cases, the issuer and the underwriter will agree on a price immediately after the close of trading. The underwriter typically will expect to begin reselling the bought securities immediately and will hope to have the entire deal sold prior to the opening of trading on the next day, so this time period can be crucial to the underwriter's marketing efforts and ability to bid aggressively on the block.

## Expanded Trading Halt Authority

Currently, the NYSE is permitted to implement regulatory trading halts only for the dissemination of material news during market hours. Beginning on September 28, the NYSE will have additional authority to halt trading:

- during pre-market hours at the request of a listed company;
- at any time when the NYSE believes it is necessary to request certain information from listed companies; and
- in ADRs, as further described below.

The NYSE's authority to halt trading in connection with the dissemination of a material news announcement is currently limited to NYSE trading hours. Beginning on September 28, the NYSE will have the authority to halt trading pending dissemination of a material news announcement that is issued during the pre-market hours of 7:00 a.m. to 9:30 a.m. ET, provided that the listed company itself requests a halt in trading. Although trading on the NYSE does not begin until 9:30 a.m. ET, trading (including trading in NYSE-listed securities) begins on the Nasdaq Stock Market and other national securities exchanges at 4:00 a.m. ET. When the NYSE implements 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 securities until the NYSE lifts the halt.

Because there is a lower volume of trading during pre-market hours, the NYSE believes that a listed company is best positioned to determine whether a trading halt is appropriate given the news it intends to release. However, consistent with the NYSE's current practice, if it appears that the dissemination of material news will not be complete prior to the opening of trading on the NYSE at 9:30 a.m. ET, the NYSE may temporarily halt trading solely in its own discretion in order to facilitate an orderly opening process. In addition, the decision to halt trading during the NYSE trading session will continue to be made by NYSE staff and will not be at the discretion of the listed company.

In addition to the authority it currently has to halt trading in situations where a listed company intends to release material news during market hours, the NYSE believes there are other scenarios when it may be advisable to halt trading for the protection of investors. Accordingly, the amendments permit the NYSE to halt trading at any time in situations where the NYSE believes it is necessary to request information from a listed company relating to material news, the listed company's compliance with continued listing requirements or any other information which is necessary to protect investors and the public interest. If the NYSE halts trading under these circumstances, it may continue the trading halt until it has received and evaluated the requested information.

The amendments also codify the NYSE's longstanding policy that the NYSE may halt trading in an ADR or other NYSE-listed security when the NYSE-listed security (or the security underlying the ADR) is listed on or registered with another national or foreign securities exchange and such other exchange (or regulatory authority overseeing such exchange) halts trading in such security.

## Updated Methods of Public Dissemination

Currently, listed companies are required to release material news "by the fastest available means." The amendments add a concise statement, in lieu of existing advisory text that references outdated methods of public dissemination of material news such as telephone, facsimile and hand delivery, that listed companies releasing material news should either (1) include the news in a Form 8-K or other SEC filing or (2) 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. The NYSE believes that distribution by either of these methods is consistent with current disclosure practices and ensures adequate dissemination.

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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