

NYSE RESTRICTS MATERIAL NEWS RELEASES SHORTLY AFTER OFFICIAL CLOSE

A recently approved rule change now restricts companies listed on the New York Stock Exchange (NYSE) from releasing material news for a period of up to five minutes after the exchange's official closing time. The order issued by the U.S. Securities and Exchange Commission (SEC) approving this rule change is available [here](#). The NYSE's notice of this rule change to executives of listed companies is available [here](#).

Maximum Five-Minute Delay For Material News Releases At Closing Time

The SEC has approved an amendment to Section 202.06 of the NYSE's Listed Company Manual that prohibits listed companies from publishing material news immediately after the official closing time for the NYSE's trading session until the earlier of:

- five minutes after the NYSE's official closing time; and
- publication of the official closing price of the listed company's security.

The NYSE's official closing time is 4:00 p.m. Eastern Time, except for certain days on which trading closes early at 1:00 p.m. Eastern Time. Listed companies may use the NYSE Connect service to access real-time information about the timing of completion of the closing auction for their security.

Exception To Facilitate Compliance With Regulation FD

In late November 2017, the NYSE amended its proposal for this rule change to clarify that the delay mandate would not restrict companies from promptly disclosing material information following a non-intentional disclosure to comply with Regulation FD. The purpose of this exception is to ensure that all market participants have equal access to information that is material to an investment in a listed company's securities. Even though Regulation FD does not apply to non-US companies that qualify as "foreign private issuers", these issuers often voluntarily comply to avoid the Rule 10b-5 liability risk that could arise from selective disclosures. In approving this rule change, the SEC noted that it expects listed

What constitutes "material news"?

The NYSE generally requires timely disclosure of material news developments, which includes any news or information that might reasonably be expected to materially affect the market for an NYSE-listed security.

companies to comply with their obligations under the federal securities laws, including Regulation FD, notwithstanding any listing rules that would require companies to provide advance notice of material news announcements to the NYSE.

Will The Delay Mandate Affect Securities Offering Announcements?

Many issuers publish announcements relating to their securities offerings immediately after the close of trading. An NYSE-listed issuer will need to consider whether a launch announcement, for example, would constitute material news for purposes of the new delay rule. When the announcement might reasonably be expected to materially affect the market for the company's NYSE-listed securities, the press release should be marked for publication at 4:05 p.m. Eastern Time – rather than the otherwise customary 4:01 p.m. Eastern Time.

What If An Official Closing Price Is Not Available Within Five Minutes Of The Closing Time?

While the NYSE reports that in almost all cases the closing auction process used to determine the closing price for each NYSE-listed security is completed within five minutes of the exchange's closing time, it is possible that an official closing price for a particular listed security is not published within that five-minute period. In those rare instances, an advisory provision that has been included in Section 202.06 of the Listed Company Manual since 2015 would apply. This provision requests listed companies to delay releasing material news until the earlier of the publication of the official closing price or 15 minutes after the NYSE's official closing time.

Why Restrict End-Of-Day News Releases?

The release of material news immediately after the NYSE's official closing time can interfere with the exchange's orderly closing process. Prior to the official closing time, three types of orders can be placed in a closing auction for a listed security:

- (1) "limit on close" orders, which help set the closing price as they are executed only if the closing price is better than the limit price specified;
- (2) "market on close" orders, which are matched at the closing price; and
- (3) "closing offset" orders, which participate in the closing trade on the opposite side of any imbalance and are executed at the closing price.

After the official closing time, the order book for each listed security is manually closed, and the closing price is determined. This closing process can take several minutes. Because trading continues on other exchange and non-exchange venues, if a listed company releases material news immediately after the NYSE's official closing time – but before the closing auction on the NYSE is completed – there can be a significant difference between the closing price on the Exchange and prices in nearly contemporaneous trades on other markets. These differences can cause significant confusion to investors. The maximum five-minute delay mandated by the NYSE's recent rule change is specifically designed to reduce instances of such price differences.

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