

# Alert

## SEC Disclosure and Corporate Governance

### NYSE Resets Material News Alarm Clock to 7 A.M. Eastern Time

Beginning September 28, 2015, companies listed on the New York Stock Exchange (“NYSE”) must notify the exchange at least 10 minutes prior to releasing material news between 7:00 a.m. (previously 9:30 a.m.) and 4:00 p.m. Eastern Time. This will require a change in process for listed companies because previously no notice to the NYSE was required when announcing material news between 7:00 a.m. and the start of trading at 9:30 a.m. The NYSE also changed other aspects of its timely alert policy, including the circumstances where trading may be halted in connection with material news events.

This Alert provides a summary of the NYSE amendment to Section 202.06 of the NYSE Listed Company Manual that became effective on September 28, 2015, and for informational purposes, compares in Appendix A the NYSE amended rule to the current Nasdaq Stock Market (“Nasdaq”) rules.

Section 202.06, as amended, is [available here](#), and the notice filed by the NYSE with the Securities and Exchange Commission (the “SEC”) proposing the amendments is [available here](#).

#### Key Amendments to NYSE Rule 202.06:

- Extends (earlier by an hour and a half) the requirement to notify the NYSE at least 10 minutes in advance of the dissemination of material news from the beginning of the trading session at 9:30 a.m., to 7:00 a.m. Eastern Time.
- Permits a trading halt between 7:00 a.m. and 9:30 a.m., at the request of the listed company pending public announcement of material news, and if the NYSE agrees that news qualifies as “material.”
- Requests listed companies intending to release material news after the close of trading to delay doing so until after the earlier of the publication of their security’s official closing price on the NYSE or 15 minutes after the close of trading on the NYSE.
- Permits the NYSE to halt trading if it needs to gather and evaluate information from the company relating to material news, compliance with listing standards, etc.
- Formalizes NYSE ability to halt trading in a company’s NYSE-listed ADR or other security when the NYSE-listed security (or the security underlying the ADR) is listed on and halted by another national or foreign exchange for a regulatory reason.
- Updates methods for immediate news releases by the company.

## 1. Material News Policy Begins at 7:00 a.m. Eastern Time (Not 9:30 a.m.)

NYSE-listed companies must now notify the exchange at least 10 minutes prior to announcing news of a material event or a statement dealing with a rumor between 7:00 a.m. ET and the end of the NYSE trading session (generally 4:00 p.m. ET). Previously, companies only needed to notify the exchange if the announcement or statement was to be made shortly before or during market hours. In extending the requirement earlier by an hour and a half, the exchange reasoned that material news released between 7:00 a.m. and 9:30 a.m. ET has the potential to cause price and volume volatility during pre-market trading that occurs on other market centers, as well as once trading opens on the NYSE at 9:30 a.m. However, because there is a lower volume of trading in such pre-market hours, the exchange believes that a listed company is most well positioned to determine whether a trading halt is appropriate given the news it intends to release. Therefore, to facilitate an orderly opening and ensure thorough dissemination of material news, the exchange believes it is beneficial to require companies to comply with the material news policy beginning at 7 a.m. ET and advise whether a trading halt is appropriate during pre-market hours (see discussion below). Nasdaq also has a 10 minute prior notice requirement for material public announcements after 7:00 a.m. ET.

The NYSE considers “material” news to be any information that is reasonably likely to have a material impact on the price or trading volume of a listed security. Notice must be provided to the NYSE by calling the Market Watch Group at (212) 656-5414 or (877) 699-2578. At the same time, the company must send any written releases by email to [nysealert@nyse.com](mailto:nysealert@nyse.com).

In the specific instance of earnings information released between 7:00 a.m. and 9:30 a.m. ET (which the NYSE considers to be “material” news), if the earnings are “in-line” with market expectations, analyst expectations, and/or previously provided guidance, NYSE’s Market Watch team advises that earnings releases only require an email notification to the Market Watch team. The email should include an explanation that the earnings release does not contain unexpected “market moving” information that would require a trading halt. However, if the earnings are “out-of-line” with these expectations, the company should notify the NYSE Market Watch team by phone.

Investor relations personnel should modify their protocols because previously no notice to the NYSE was required when announcing material news between 7:00 a.m. and the start of trading at 9:30 a.m. ET. Most listed companies will be affected by this rule change because companies typically have released news related to corporate actions and other material events during this time period. Of course, companies may choose to release material news prior to 7:00 a.m., which would not trigger the 10-minute notice requirement.

## 2. Pre-Market Trading Halt Permitted At Company’s Request Pending Material News

Between 7:00 a.m. ET and the opening of trading on the NYSE, the exchange may now implement a regulatory halt where the listed company (i) has informed exchange that it intends to make a public announcement of material news, (ii) requests that trading in its listed securities be halted pending dissemination of the public announcement, and (iii) the NYSE agrees, after discussion with the company, that such news qualifies as “material.” While trading on the NYSE does not begin until 9:30 a.m. ET, trading (including trading in NYSE listed securities) begins on NYSE Arca Equities, Nasdaq 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 security until the NYSE lifts the halt. Nasdaq has a comparable rule with respect to pre-market trading halts.

The decision to halt trading during the NYSE trading session (9:30 a.m. to 4:00 p.m.) continues to be made by NYSE and will not be at the company’s discretion. Moreover, consistent with current practice, if it appears that the dissemination of material news will not be complete prior to the opening of trading on the exchange at 9:30 a.m., the NYSE may temporarily halt trading solely in its own discretion in order to facilitate an orderly opening process.

### 3. Announcing Material News Right After the Close – Please Wait a Little Bit

The NYSE asks listed companies intending to release material news after the close of trading to delay doing so until after the earlier of (i) the publication of their security's official closing price on the NYSE or (ii) 15 minutes after the close of trading on the NYSE. Trading on the exchange typically closes at 4:00 p.m. ET, except for certain days where trading closes early at 1:00 p.m. ET.

The NYSE explains that although trading on the exchange officially stops at 4:00 p.m. ET, the order book for each listed security is manually closed by a designated market maker (DMM) – a process that can take several minutes before the closing is completed. Since trading may continue on other exchanges, material news released immediately after 4:00 p.m. ET may cause significant price movements in other markets. This can result with the DMM executing trades at the NYSE closing price, while the same security is simultaneously traded on other exchanges at a different price, which can cause investor confusion.

The NYSE's request is an "advisory," and therefore the amended rule does not preclude the release of material news just after the close of trading. As a result, listed companies are still able to release time-critical material news (like the launch of a block trade or shelf-takedown) at or within a few minutes of market close. In most block trades, the issuer and the underwriter will agree on a price within a few minutes of the close of trading. The underwriter will then want to begin reselling the acquired securities almost immediately and have the deal fully sold prior to the next day's market open. To facilitate the selling process, issuers typically issue a press release announcing the proposed offering immediately after the issuer accepts an underwriter's bid, which can be at or a few minutes after 4:00 p.m. ET. Given the short time available to sell the acquired securities, the timing of the press release announcing the block trade is critical to the underwriter.

Nasdaq has subsequently issued similar guidance, which is [available here](#). Nasdaq recommends that companies releasing material information after 4:00 p.m. ET wait at least until 4:01 p.m. ET (after the Nasdaq closing cross has been calculated), and preferably until 4:05 p.m. ET. Similar to the NYSE, the Nasdaq request is advisory, and the guidance does not reflect an amendment to Nasdaq's rules.

### 4. Trading Halts During Information Requests

The NYSE expanded the circumstances under which it may halt trading. When the exchange believes it is necessary to request information from a listed company relating to (i) material news, (ii) compliance with continued listing requirements, or (iii) other information necessary to protect investors and public interest, the NYSE may halt trading until it has received and evaluated such information.

Section 202.06 previously limited the exchange's authority to halt trading to situations when a listed company intended to release material news during market hours. However, in the exchange's experience there were other scenarios when it may have been advisable to halt trading for the protection of investors. For example, if there was uncertainty surrounding material news issued by a company or a company's compliance with the exchange's continued listing standards, the exchange believes it may be appropriate to halt trading while it gathers information to resolve such ambiguity. The change mirrors Nasdaq Rule 4120(a)(5).

### 5. Trading Halt On Account of a Trading Halt On Another Exchange

The NYSE amended Section 202.06(B) to articulate its longstanding policy that the exchange may halt trading in an American Depositary Receipt (ADR) or other security listed on the exchange, when (i) the exchange-listed security (or the security underlying the ADR) is listed on or registered with another national securities exchange or foreign exchange or market, and (ii) such national securities exchange or foreign exchange or market, or regulatory authority overseeing such exchange or market halts trading in such security for regulatory reasons. Nasdaq has also adopted this practice.

## 6. Updates Methods for News Releases

Section 202.06(C) requires companies to release material news by the fastest available means. The NYSE amended this Section to eliminate some outdated methods. It now concisely states that “by fastest available means” typically requires the company to (i) include the news in a Form 8-K or other SEC filing, or (ii) issue the news in a press release to major news wire services, including at a minimum, Dow Jones & Company, Reuters Economic Services and Bloomberg Business News.

## 7. Other Reminders Regarding Timely Alert Policy

At the same time that NYSE listed companies are incorporating this new amendment to their processes, they should take the opportunity to remind themselves of the 2014 guidance given by the NYSE. In it, the NYSE highlighted and two common situations in which the NYSE Timely Alert Policy in Section 202.06 is frequently implicated: (i) the verbal release of material news during the course of a management presentation, investor call or investor conference, and (ii) the pricing of secondary offerings of securities in overnight transactions. It is [available here](#). When reviewing this guidance, companies should adapt it for the new amendment to Section 202.06 (e.g., 7 a.m. instead of 9:30 a.m.).

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If you have any questions on these matters, please do not hesitate to speak to your regular contact at Weil, Gotshal & Manges LLP or to any member of Weil’s Public Company Advisory Group:

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## APPENDIX A

Requirement	NYSE	NASDAQ
<b>Definition of “material” news</b>	<p><b>Section 202.05</b></p> <p>Any news or information reasonably expected to materially affect the market for the company’s securities.</p>	<p><b>Rule 5250(b)(1)</b></p> <p>Material information reasonably expected to affect the value of a company’s securities or influence investors’ decisions.</p>
<b>Notification hours</b>	<p><b>Amended Section 202.06(B)</b></p> <p>Notify exchange of material event or statement dealing with a rumor between 7:00 a.m. and 4:00 p.m. ET. Must notify exchange by telephone at least 10 minutes prior to release of announcement.</p>	<p><b>Rule 5250(b)(1)</b></p> <p>Notify exchange of material information between 7:00 a.m. and 8:00 p.m. ET. Must notify exchange at least 10 minutes prior to public announcement.</p> <p>If release is made outside of 7:00 a.m. to 8:00 p.m. ET, notify exchange of material information prior to 6:50 a.m. ET.</p>
<b>Announcements at market close</b>	<p><b>Amended Section 202.06(C)</b></p> <p><i>Advisory:</i> Companies intending to release material news after market close are requested to delay so until the earlier of (i) official closing price publication or (ii) 15 minutes after market close.</p>	<p><b>Issuer Alert 2015-001</b></p> <p><i>Advisory:</i> Nasdaq recommends waiting until at least 4:01 p.m. ET, after the Nasdaq closing cross has been calculated, and preferably until 4:05 p.m. ET.</p>
<b>Pre-market trading halts</b>	<p><b>Amended Section 202.06(B)</b></p> <p>At the request of an issuer, the NYSE will institute a regulatory trading halt on NYSE-listed securities for dissemination of material news during the period prior to opening of trading on the exchange (7:00 a.m. to 9:30 a.m. ET).</p> <p>Although trading on the NYSE does not begin until 9:30 a.m. ET, NYSE Arca Equities, Nasdaq and other national securities exchanges will halt trading of NYSE-listed securities during such regulatory trading halt.</p>	<p><b>Rule 4120(a)(1)-(2)</b></p> <p>At the request of an issuer, Nasdaq will halt trading on Nasdaq-listed securities for dissemination of material news during the pre-market session (4:00 a.m. to 9:30 a.m. ET).</p> <p>Nasdaq may halt trading of a security listed on another national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news.</p>

Requirement	NYSE	NASDAQ
<b>Trading halts for requested information</b>	<p><b>Amended Section 202.06(B)</b></p> <p>When the exchange believes it is necessary to request from an issuer information relating to:</p> <ul style="list-style-type: none"> <li>(i) material news;</li> <li>(ii) the issuer's compliance with exchange continued listing requirements; or</li> <li>(iii) any other information necessary to protect investors and public interest,</li> </ul> <p>the exchange may halt trading until it has received and evaluated such information.</p>	<p><b>Rule 4120(a)(5)</b></p> <p>Nasdaq may halt trading when Nasdaq requests from the issuer information relating to:</p> <ul style="list-style-type: none"> <li>(i) material news;</li> <li>(ii) the issuer's ability to meet Nasdaq listing qualification requirements; or</li> <li>(iii) any other information necessary to protect investors and public interest.</li> </ul>
<b>Trading halts on other exchanges</b>	<p><b>Amended Section 202.06(B)</b></p> <p>Exchange may halt trading in an ADR or other security listed on the exchange, when the exchange-listed security or security underlying the ADR is listed on or registered with another national securities exchange or foreign exchange or market, and such national or foreign exchange halts trading in such security for regulatory reasons.</p>	<p><b>Rule 4120(a)(4)</b></p> <p>Nasdaq may halt trading in an ADR or other security listed on Nasdaq when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and such national or foreign exchange halts trading in such security for regulatory reasons.</p>
<b>Methods for immediate news releases</b>	<p><b>Amended Section 202.06 (C)</b></p> <p>News which ought to be the subject of immediate publicity must be released by the fastest available means. The fastest available means may vary in individual cases and according to the time of day. Typically, this requires that issuers either</p> <ul style="list-style-type: none"> <li>(i) include the news in a Form 8-K or other SEC filing, or</li> <li>(ii) issue the news in a press release to the major news wire services, including, at a minimum, Dow Jones &amp; Company, Inc., Reuters Economic Services and Bloomberg Business News.</li> </ul>	<p><b>Rule 5250(b)(1)</b></p> <p>Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods).</p>