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Got News? Wait Five Minutes...SEC Approves NYSE Delay on Release of Material After-Market News

As we begin 2018, companies listed on the New York Stock Exchange should take note of the new mandatory delay when announcing material news at the end of the day. In early December 2017, the Securities and Exchange Commission (SEC) approved a NYSE proposed rule change to prevent companies from releasing material end-of-day news for up to five minutes after the markets close. The rule change is intended to prevent investor confusion and price discrepancies that can occur in the minutes after the official market close each day.

While the NYSE market close generally is at 4:00 p.m. Eastern Time (other than on certain days, when trading closes early at 1:00 p.m.), it typically takes up to five minutes to complete closing auctions on the exchange. The closing auctions determine the official daily closing price for a NYSE-listed company's shares. In the meantime, trading on other exchange and non-exchange venues ("away markets") occurs after the NYSE market close. The release of material news immediately after 4:00 p.m. but before the closing auctions on NYSE are completed could lead to significant price differences between the prices at which trades are executed on away markets and the NYSE official closing price, despite those trades occurring nearly contemporaneously.

In approving the rule change, the SEC noted that while it is important for listed companies to release material news to the public as quickly as possible, the mandatory delay is consistent with investor protection and would reduce the likelihood of confusion. The amendment is

reasonably designed to ensure that "participants in the closing auction on the Exchange do not have their trades executed at a price that is different from essentially contemporaneous trades being executed on away markets."

The rule change, which is now effective, amends Section 202.06 of the NYSE Listed Company Manual to prevent listed companies from releasing after-market material news until the earlier of (i) the publication of such company's official closing price on the NYSE or (ii) five minutes after the NYSE official closing time (i.e., 4:05 p.m. on most trading days). This rule does not apply to public disclosures of material information made by a company following a non-intentional disclosure in order to comply with Regulation FD under the Securities Act of 1933, as amended. A company is never expected to withhold material information in violation of Regulation FD, even if the closing auction on the NYSE has not yet been completed. Irrespective of the up-to-five-minute required delay, the NYSE continues its advisory that companies wait to release material after-market news until the earlier of (i) publication of its official closing price or (ii) fifteen minutes after market close (i.e., 4:15 p.m. on most trading days), to prevent investor confusion.

The [SEC Release](#) is available here and the [NYSE blast email](#) can be found here.

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