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SEC Approves NYSE Rule Delaying Companies from Issuing Material News After Exchange Closes, Except to Meet FD Compliance

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The SEC has approved a rule change to the NYSE Listed Company Manual Section 202.06 from a proposal it made back in August, which it initially delayed in October until the Exchange later filed an amendment.

A listed company must not issue material news after the NYSE closes trading until the earlier of (a) publication of the company's official closing price on the Exchange or (b) five minutes after the Exchange's official closing time. The NYSE amended its initial rule filing to make clear that the one exception to this revised requirement would be to permit companies to still publicly disclose material information following a nonintentional disclosure, if needed to comply with Regulation FD.

Trading on the Exchange ends at the Exchange's official closing time of 4pm Eastern, or 1pm Eastern on certain days. The designated market maker, after close, facilitates the close of trading in an auction. Because there is trading of company securities on other exchanges and non-exchange venues even after the Exchange closes, there can be a significant price difference if a company issues news immediately after 4pm Eastern but before the closing auction on the Exchange is completed, leading to investor confusion.

In approving the rule change, the SEC noted that the price difference could increase market disruption and reduce investor confidence in trading on the Exchange, given that orders cannot be cancelled or modified to take into account the material news though the Exchange closing price may not yet have been established by the closing auction process. At the same time, however, the Commission recognizes that Section 202.05 of the Listed Company Manual requires a company to release quickly any news or information that might be expected to materially affect the market for its securities.

The Commission determined that the maximum five minute delay would be consistent with investor protection, and that the new exception for FD compliance would ensure that companies do not withhold material information in violation of the regulation.

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

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