
NYSE Eliminates Press Release Requirement

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The New York Stock Exchange has amended its timely alert policy to permit companies to comply with the policy by using any method that is compliant with Regulation FD.¹ Issuance of press releases is no longer mandatory. The amended rule will become operative on May 7, 2009.

The NYSE requires listed companies to quickly release to the public any news or information that might reasonably be expected to materially affect the market for its securities.² Under the previous rule, listed companies were required to satisfy this requirement by issuing a press release. In addition, if the material news was released shortly before or during market hours, the previous rule recommended that the company notify its NYSE representative by telephone ten minutes prior to distributing the press release.

The amended rule instead permits listed companies, including foreign private issuers, to use any Regulation FD-compliant method to comply with the NYSE's timely alert policy. The amended rule also requires, rather than merely recommends, that a company provide ten minutes advance notice by telephone to its NYSE representative of material information issued shortly before or during market hours. When a listed company gives the required advance notification, it is required to tell the NYSE the substance of the announcement, to identify the Regulation FD-compliant method it intends to use for dissemination and to provide the NYSE with the information necessary to locate the information upon publication. When the announcement is in written form, the amended rule also requires the listed company to provide the text of the announcement to the NYSE by email at the time of the advance notification. Lastly, the amended rule provides that public disclosures which may significantly affect trading should be sent to the NYSE by email rather than by facsimile.

The amendments to the NYSE's timely alert policy are primarily intended to harmonize the NYSE disclosure rules with those of the SEC and NASDAQ.

Under Regulation FD, when a company discloses material information, it must do so publicly by filing or furnishing a Form 8-K or by using an alternative method (or combination of methods) that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public. Accepted alternative methods of disclosure include broadly disseminated press releases and

conference calls or webcasts where the public is provided adequate notice and granted access. In addition, the SEC indicated recently that for some companies in certain circumstances, posting material on a corporate website may, in and of itself, be a sufficient method of public disclosure under Regulation FD.³

In 2002, the NASDAQ Stock Market amended its rules to require NASDAQ listed companies to make prompt disclosure to the public, except in unusual circumstances, of any material information that would reasonably be expected to affect the value of the company's securities or influence investors' decisions through any Regulation FD-compliant method rather than solely through the news media, as previously required.⁴ NASDAQ also requires advance notice to NASDAQ's MarketWatch Department (generally through www.nasdaq.net) of public disclosures relating to certain material news announcements.

While companies are no longer required to issue press releases, the NYSE continues to encourage companies to disseminate material information through press releases.

¹ The NYSE filed the proposed rule change with the SEC on April 8, 2009. The amended rule was effective immediately upon filing.

² NYSE Listed Company Manual § 202.05 and § 202.06.

³ Commission Guidance on the Use of Company Web Sites, Release No. 34-58288 (Aug. 1, 2008). For a full discussion of the SEC's guidance on the use of company websites, please see our [September 23, 2008, Email Alert](#).

⁴ NASDAQ Stock Market Rule 5250(b)(1).

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