

Alert

NYSE Changes Its Immediate Release Policy

Listed Companies May Need To Implement New Compliance Procedures

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Effective today, the NYSE has changed its immediate release policy. As discussed below, the changes cut both ways, providing for more flexibility when publicly disclosing material information, while also imposing new mandatory procedural requirements.

Listed companies may now make public disclosures of material information by any means allowed under Regulation FD. Previously, NYSE-listed companies were required to disclose material information quickly, typically by issuing a press release. In contrast, Regulation FD allows a public company to disclose material information by any means reasonably designed to result in broad non-exclusionary public disclosure, which can include a press release, Form 8-K filing, conference call, press conference, webcast or, in certain circumstances, disclosure on the company website. The new NYSE rule harmonizes the immediate release policy with both Regulation FD and Nasdaq rules. NYSE-listed companies still are encouraged to issue press releases when disclosing material information, but are not required to do so.

In light of these new disclosure options, the NYSE, in order to effectively monitor disclosure of material information, has introduced new mandatory procedural requirements under its immediate release policy. Previously, the NYSE recommended, but did not require, that listed companies notify it prior to the announcement of a material event. Under today's changes to the immediate release policy, listed companies are *required* to call the NYSE ten minutes prior to a public disclosure, indicating the substance of the announcement, the method of distribution and the location where the information will appear. NYSE-listed companies also are required to email the NYSE, ten minutes prior to public disclosure, any written materials that will be part of the announcement. Therefore, even if a listed company continues to make disclosures by press release, it will now also need to incorporate these new procedural requirements into its legal or IR compliance function to the extent that it is not already voluntarily following these procedures.

Although the NYSE rule change harmonizes the public disclosure of material information with Regulation FD, it does not alleviate the need to consider interpretative issues arising under Regulation FD. For example, posting information on a company website does not always suffice for purposes of Regulation FD, as we discussed in our Alert, ["SEC Provides New Guidance on the Use of Company Websites"](#) (SRZ Alert, Sep. 26, 2008).

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