

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81494; File No. SR-NYSE-2017-32)

August 29, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Section 202.06 of the NYSE Listed Company Manual to Prohibit Listed Companies From Issuing Material News After the Official Closing Time for the Exchange's Trading Session Until the Earlier of Publication of Such Company's Official Closing Price on the Exchange or Five Minutes After the Official Closing Time

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 17, 2017, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 202.06 of the NYSE Listed Company Manual (the "Manual") to limit the issuance of material news by listed companies in the period immediately after the official closing time for the Exchange's trading session. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 202.06 of the Manual to limit the issuance of material news by listed companies in the period immediately after the official closing time for the Exchange’s trading session.

Continuous trading on the Exchange ends at the Exchange’s official closing time of 4:00 p.m. Eastern Time (except that on certain days the official closing time occurs early at 1:00 p.m. Eastern Time), which is when the Exchange stops accepting new orders, including orders designated for the closing auction, and requests to cancel orders.⁴ The Designated Market Maker (“DMM”) registered in a security facilitates the close of trading after continuous trading ends at the official closing time of 4:00 p.m.⁵ Up to 4:00 p.m., the Exchange publishes Order Imbalance Information, which includes real-time order imbalance information and information indicating the price at which closing interest may be executed in full and the price at which Exchange Book and closing-only interest may be executed in full.⁶

⁴ Pursuant to NYSE Rule 123C(2), orders designated for the close, including Market on Close (“MOC”) and Limit on Close (“LOC”) Orders can be entered after 3:45 p.m. to offset a published Mandatory MOC/LOC Imbalance Publication. Closing Offset (“CO”) Orders can be entered on both sides of the market up to 4:00 p.m. regardless of whether there is a published imbalance.

⁵ Pursuant to NYSE Rule 104(a)(3), a DMM has a responsibility and duty to facilitate the close of trading for each of the securities in which the DMM is registered as required by Exchange rules, which may include supplying liquidity as needed.

⁶ See NYSE Rule 123C(6) (describing the Order Imbalance Information Data Feed).

The DMM-facilitated closing process is manual, however, a DMM can choose to automate the process.⁷ Because of the manual nature of how the close is facilitated, the DMM cannot begin the process until order entry acceptance has ended, i.e., after 4:00 p.m. A DMM therefore facilitates a closing auction based on an order imbalance established before 4:00 p.m., and on orders entered with information available before 4:00 p.m.

Because there is trading after 4:00 p.m. Eastern Time on other exchange and non-exchange venues, if a listed company releases material news immediately after 4:00 p.m., but before the closing auction on the NYSE is completed, there can be a significant price difference in nearly contemporaneous trades on other markets and the closing price on the Exchange.⁸ As the discrepancy between the NYSE closing price and trading prices on other markets can cause confusion to investors, the Exchange previously added advisory text in Section 202.06 of the Manual requesting that listed companies intending to release material news after the close of trading on the Exchange wait until the earlier of the publication of their security's official closing price on the Exchange or 15 minutes after the scheduled closing time on the Exchange.

Notwithstanding this advisory text, the Exchange has continued to experience situations where material news released shortly after 4:00 p.m. has caused significant investor confusion. Specifically, when a listed company releases material news shortly after 4.00 p.m., but before the

⁷ See NYSE Rule 123C, which establishes the Exchange's Closing Procedures, including that closings may be effectuated manually or electronically by the DMM (Supplementary Material .10 to Rule 123C). In particular, see Rule 123C(7) for the order of execution on the close, including which orders are guaranteed to participate in the closing transaction, and in which order and Rule 123C(8) for how closing transactions are to be effectuated if there is an imbalance of shares to buy over shares to sell in MOC and/or marketable LOC orders, or vice versa.

⁸ The price of the closing auction is based in large part on the order imbalance established before 4:00 p.m.; if material news is issued after 4:00 p.m., but before the closing auction, market participants can neither enter nor cancel orders intended for the close on the NYSE.

DMM has been able to complete the closing auction, the news release can cause the company's stock to trade on other markets at materially different prices than the price of the NYSE's closing auction.

The Exchange now proposes to amend Section 202.06 to prohibit listed companies from issuing material news after the official closing time for the Exchange's trading session until the earlier of publication of such company's official closing price on the Exchange or five minutes after the official closing time. In the Exchange's experience, DMMs are able to complete the closing auctions for the securities assigned to a DMM in almost all cases within five minutes of the Exchange's official closing time, so the proposed amendment utilizes that timeframe as it would make it unlikely that a listed company would ever issue material news between the official closing time and the completion of the closing auction.⁹ This prohibition would mitigate the risk of market disruption and investor confusion associated with the occurrence of significant news-related price volatility on other markets during the brief period between the NYSE's official closing time and the completion of the closing auction. While the Exchange notes the importance of the requirement of Section 202.05 of the Manual that listed companies issue material news as quickly as possible, it believes that the brief delay mandated by the proposed amendment is desirable in light of the benefit of the reduced likelihood of the occurrence investor confusion associated with the issuance of material news prior to the completion of the closing auction.

⁹ To avoid market disruptions when the closing auction is delayed more than five minutes, the amended rule will continue to include advisory text asking companies to avoid issuing material news until the earlier of publication of the official closing price or 15 minutes after the NYSE's official closing time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹⁰ of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed amendment is designed to promote just and equitable principles of trade by ensuring that participants in the closing auction at the Exchange do not have their trades executed at a price that is inconsistent with contemporaneous trading prices on other markets that reflect material news that was released after the NYSE's official closing time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The purpose of the proposed amendment is not to affect competition, but rather to ensure that participants in the closing auction at the Exchange do not have their trades executed at a price that is inconsistent with contemporaneous trading prices on other markets that reflect material news that was released after the NYSE's official closing time. Therefore, the proposed rule change will not impose any burden on competition.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-32 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-32. This file number should be included on the subject line if e-mail is used. To help the Commission process and

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSE-2017-32 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

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¹² 17 CFR 200.30-3(a)(12).