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September 30, 2015

Via Email rule-comments@sec.gov

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number SR-NYSE- 2015-38

Dear Honorable Secretary:

My Firm, Dermott W. Clancy Corp. (DWC) is a licensed FINRA broker dealer trading equities on behalf of institutional customers on the Floor of the New York Stock Exchange (NYSE). Although I founded DWC in 1994, I have traded on the NYSE since 1987 as an agent for institutional customers. On behalf of all investors, I respectfully submit comments and objections to the proposed rule change, Section 202.06 of the NYSE Listed Company Manual, (Rule).

History, Purpose, Benefits and Protections of Original NYSE Rule

In 1991, the Rule was written to address scenarios where a listed company's news release created volatility and uncertainty for investors in the market. One of the precipitating events involved a particular oil company that released news in the middle of the night triggering its company's stock to trade erratically and causing disadvantage to investors. Practitioners, regulation and market watch determined that a rule was necessary to protect investors against this type of activity as it pertained to company's news releases.

After the Rule had been implemented, various studies were conducted in the late 1990s on the effects of trading halts. Studies by William G. Christie, Shane A. Corwin and Jeffrey H. Harris¹ in 1998 found that the NYSE's auction model compared to a quoting process that simply allows the stock to trade after the release of material news was significantly more beneficial to the investor and specifically, that investors benefit far greater from a 90 minute halt versus a 5 minute halt.

Nearly 25 years later, the Rule has proven to be absolutely necessary in today's market structure and must remain in effect. Pre and post market trading, both during material news events and regular trading, amount to less than 1% of the total consolidated volume. The enforcement of this Rule is not sought as a volume grab but is simply for the protection of the investor. The NYSE should not be permitted to effectuate a rule change that circumvents its duties surrounding material news during the trading day as well as pre and post market hours.

NYSE Proposed Rule Change

The NYSE's primary objective of the proposed rule change is to effectuate a shift of responsibility to the Company to decide whether to halt its own stock.

However, the Rule's plain language provides that the duty to report news is the duty of the listed company *while the duty to determine whether news is material and to halt the stock is the duty of the NYSE*. Contrary to the proposed rule's filing, it is the NYSE that has a broader duty to ALL investors and is the "most well positioned" to determine whether one of its listed stocks should be halted. The Rule provides specific examples of what news is material, for example, secondaries, earnings, major management changes and does not place discretion on the company to determine if the news release is market moving to be classified as material.

Listed companies have fiduciary duties to their investors to provide material information surrounding their stock. However, the company's duty to disclose information may present an inherent conflict of interest as to whether it should halt its own stock. In addition, the company may not be qualified to determine whether, based upon the news, the stock should be halted. This determination has been and should remain the jurisdiction and expertise of the Exchange upon which the stock is listed.

¹Christie W., & Harris, J. (n.d). Nasdaq Trading Halts: Market Mechanisms on Prices, Trading Activity, and Executive Costs. *Journal of Finance*.

For the reasons addressed herein, the Rule should not be amended to relieve the NYSE from fulfilling its duty to halt stock when it determines that material news is intended to be released. Should such Rule be amended as proposed, (transferring the decision-making to the company without the NYSE's regulatory oversight), there is a substantial probability that listed companies would not fulfill their proposed tri-fold duties:

- (1) Call the NYSE to report material news,
- (2) Decide whether the news is material and if so,
- (3) Demand that their stock be halted.

Should the NYSE be relieved of its duty to ensure its Rule is followed, the Rule's purpose to achieve fair disclosure, a period of calm and proceeding to the opening to achieve a maximum liquidity event will be defeated if the company fails to fulfill each of its duties under the proposed rule change.

Evolution and Lack of Enforcement of the Rule

Over the last 25 years, if a company called the Exchange, anytime day or night, (other than Sunday and/or Monday a.m.), the Exchange would contact the Floor Governor to ask his permission to halt a stock. However, due to the ongoing changes in market structure, extending pre and post market trading hours and the NYSE having undergone three Management changes in the last ten years, the Rule had been overlooked.

For the last two or three years, the Rule has been outright ignored. At least a dozen meetings were held at 11 Wall where Floor Members gathered with NYSE Regulation and Management to discuss the importance of the Rule and why it should be enforced by the NYSE, especially in today's market structure.

Companies have systematically released material news without calling and the Exchange has not halted stocks pursuant to the Rule's requirements, most notably, during pre and post market trading.

Under the Telephone Alert to the Exchange, section (B) of Rule 202.06, it states that shortly before or during market hours, the Exchange requests the company to call ten minutes prior to the release so that the Exchange can determine if the news is material and if so, halt the stock. The only exception to this procedure is for a regulatory halt from Sunday night carried through to Monday a.m. because of the volume of material news. Outside of regular market hours, it can be halted quicker because it does not require an On Floor Governor to walk to the post to alert the Specialist.

Specific Examples to Follow the Rule

Below are a few examples of NYSE listed companies that released material news between market hours without calling, and the NYSE did not halt their stocks:

Lumbar Liquidators— During a 10:30 a.m. conference call, the CEO spoke about a negative 60 Minutes Article regarding potential criminal charges against the company and its executives. In the next hour, the stock went from \$70 to \$50. Had the Rule been followed, the stock would have been halted for fair disclosure, period of calm and a maximum liquidity event.

Hewlett-Packard—It released earnings intraday repeatedly without calling and without the NYSE halting its stock.

Ford —At a 3p.m. Florida conference, the CEO reported a substantial miss anticipated in its next quarter, which caused its stock to tank. No call and no halt. Again, investors could have been spared devastating losses if the stock had been halted. The Street could have disseminated the news, reset the value at a lower price instead of news reading algorithms selling stock to long term investors based on the new valuation after the release of material news.

NYSE Must Retain Duty to Halt and Enforce Company Duty to Call

The NYSE has a duty to enforce its Rules by ensuring its listed companies call before releasing news. On a practical level, the NYSE argues that there is no mechanism to “force” the companies to call. However, companies enter into legally binding listing agreements that require them to abide by a SRO's rules that are enforceable by the SEC.

If the companies are held in breach of their NYSE listing agreements for their failure to follow the Rules designed to protect investors (and uniformly enforced by the NYSE), the companies would be at risk of potential liability for their breach of fiduciary duty to their shareholders.

In 2015, NYSE halted stocks less than 200 times despite having 3,000 plus listings that released material news releases throughout the year. With the advancement of computers into trading, we have news reading algorithms. News reading algorithms read the headline and then pick off the small investor, whether such investor is in the market place on a retail basis or through a mutual fund.

Recently, the SEC charged a group of individuals with securities violations for hacking news wire websites and stealing over \$100 million. Had the companies whose information was hacked and traded upon called the NYSE to report their material news, there would have been no benefit to hacking since the stocks would have already been halted and there would have been no advantage over investors to having the information.

The NYSE adapted its interpretation of the Rule by recommending that companies release material news outside of market hours. In our age of technology, rules favoring investor protection should not be dictated by a clock that is limited to NYSE market hours. To argue that investors deserve the Rule's protection at 9:31am and not at 9:29am is ludicrous.

The NYSE's proposed rule to the extent that it retains discretion to halt under certain circumstances, (those being in cases of extreme volatility, no call by the company and the NYSE cannot reach the company), is more consistent with the spirit of the original Rule.

Conclusion of Objections to the Proposed NYSE Rule Change

In sum, the SEC should deny the NYSE's proposed change to NYSE Rule 202.06. The duty to determine whether news is material, and whether NYSE listed stocks should be halted should remain the NYSE's duty during all market hours.

The NYSE must be required to follow its Rule as written and companies must be required to call before any material news release at all times, except for Sunday and Monday a.m. due to an existing regulatory halt based upon the volume of material news releases as stated in the Rule.

For the reasons addressed, it is respectfully submitted that the proposed Rule change be rejected as not being in the best interest of investors, which the Rule was designed to protect.

Respectfully Submitted,



Dermott W. Clancy
Member NYSE