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Securities Regulation & Corporate Governance Update

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What 23/5 Trading Means for Public Company Disclosure and Trading Practices

23/5 trading is a good occasion for companies to confirm that their policies, plans, broker arrangements and documents operate as intended, and companies should continue to monitor how overnight trading develops.

Introduction

In less than one month, on Sunday, December 6, 2026, at 9:00 p.m. ET, the Nasdaq Stock Market (Nasdaq) and NYSE Arca are scheduled to begin trading U.S. equities 23 hours a day, five days a week (23/5). This change impacts all Nasdaq- and NYSE-listed companies. NYSE Arca is a fully electronic exchange that is separate from, but under common ownership with, the New York Stock Exchange (NYSE), and it trades stocks listed on the NYSE and other U.S. exchanges. The NYSE itself is not extending its hours. For an NYSE-listed company, this means that the NYSE's listing rules and its 9:30 a.m. and 4:00 p.m. ET opening and closing auctions are unchanged, but the company's stock will be able to trade overnight on NYSE Arca and the other exchanges that offer 23/5 trading. The change has prompted questions from public companies about whether they need to change when they release earnings and other material information, how they administer insider trading policies, and whether their equity plans and transaction documents still work as intended.

In our view, 23/5 trading should not require most companies to make immediate or significant changes to their disclosure or trading practices. Trading in U.S. stocks outside regular hours is not new. Companies already release earnings and other material news while their stock trades in pre-market and post-market sessions, and investors can already trade U.S. stocks at any hour through alternative trading systems and foreign exchanges. The legal framework that governs when and how companies disclose information does not change as a result of 23/5 trading.

That said, 23/5 trading is a good occasion for companies to confirm that their policies, plans, broker arrangements and documents operate as intended, and companies should continue to monitor how overnight trading develops.

Background: The New Trading Schedule

Trading hours. Beginning December 6, trading on the participating exchanges will run from 9:00 p.m. ET Sunday through 8:00 p.m. ET Friday. The trading day will have three parts (using different names as summarized below):

- **Existing hours, 4:00 a.m. to 8:00 p.m. ET.** Today's pre-market (4:00 a.m.–9:30 a.m.), regular (9:30 a.m.–4:00 p.m.) and post-market (4:00 p.m.–8:00 p.m.) hours continue with the same rules and functionality. The official opening and closing prices will continue to be set by the listing exchange's opening and closing auctions at 9:30 a.m. and 4:00 p.m. ET (on Nasdaq, the Opening Cross and the Closing Cross).
- **Pause, 8:00 p.m. to 9:00 p.m. ET, Monday through Thursday.** The exchanges will use this hour for system maintenance and corporate action processing.
- **New overnight session, 9:00 p.m. to 4:00 a.m. ET, Sunday through Thursday.** Functionality is limited and varies by exchange. For example, Nasdaq will accept only limit orders in its overnight session and requires a separate connection port, and NYSE Arca's overnight session will not begin with an opening auction.

Trades executed between 9:00 p.m. and midnight ET carry the next calendar day's trade date. Trades executed between midnight and 8:00 p.m. carry that day's trade date.

Participating exchanges. Nasdaq, NYSE Arca, Cboe EDGX, MEMX and 24X each have rules in place to offer 23/5 trading, either approved by the SEC or filed for immediate effectiveness, in each case conditioned on the readiness of the consolidated market data feeds. The NYSE is not extending its own hours, but NYSE-listed stocks are expected to be able to trade overnight on NYSE Arca and the other exchanges that offer 23/5 trading.[1]

Certain other exchanges, including the Texas Stock Exchange (TXSE), Nasdaq Texas, Nasdaq PSX, NYSE Texas, and NYSE American, will not implement 23/5 trading. But companies listed on these exchanges (including stocks dual listed) will still have their shares traded overnight. Because U.S. equities can trade across any active national exchange, these stocks will trade during the overnight session on the participating 23/5 exchanges.

Session names. The exchanges use different names for the same hours. Nasdaq is combining its pre-market, regular and post-market hours (each of which is referred to in multiple ways) into a single "Day Session" and calling the overnight period the "Night Session." Nasdaq's Day Session will refer to the time between 4:00 a.m. and 8:00 p.m. ET and will continue to be divided into three distinct time periods (Pre-Market Hours, Regular Market Hours and Post-Market Hours), as

slightly different rules will continue to apply for each of those three sessions. NYSE Arca is keeping its Early, Core and Late Sessions and adding an “Overnight Session.” The NYSE’s session names do not change. The table below compares the names Nasdaq and NYSE Arca use now with the names they will use beginning December 6.

	Nasdaq			**NYSE Arca**	
Hours (ET)	**Current**	**Beginning 12/6**		**Current**	**Beginning 12/6**
9:00 p.m.–4:00 a.m. (Sun.–Thurs.)	No trading	Night Session		No trading	Overnight Session
4:00 a.m.–9:30 a.m.	Pre-Market Session / Pre-Market Hours/ Early Market Hours	Day Session	Pre-Market Hours	Early Session	Early Session
9:30 a.m.–4:00 p.m.	Market Hours		Regular Market Hours	Core Session	Core Session
4:00 p.m.–8:00 p.m.	Post-Market Session / Post-Market Hours/ Extended Market Hours		Post-Market Hours	Late Session	Late Session
8:00 p.m.–9:00 p.m. (Mon.–Thurs.)	No trading	Maintenance pause (no trading)		No trading	Maintenance pause (no trading)

Overnight price protections. The Limit Up-Limit Down Plan, which applies to all NMS stocks on every exchange, has been amended to add static price bands for the overnight session, set 20% above and below certain reference prices.[2] There is no automatic trading pause if a band is reached. The traditional Limit Up-Limit Down bands will continue to apply during regular hours only. The primary listing exchange may impose a regulatory halt if the overnight bands are interfering with price discovery, and a stock halted overnight will not resume trading during that overnight session.

Mandatory halts for corporate actions. Today, U.S. exchanges are closed to trading from 8:00 p.m. to 4:00 a.m. ET. Listing exchanges, clearing agencies, broker-dealers and market data vendors use those eight hours to process corporate actions that take effect the next trading day, such as updating a trading symbol or CUSIP number, adjusting prices for a stock split or large dividend, or replacing one security with another after a merger. Under 23/5 trading, the only break will be the one-hour pause from 8:00 p.m. to 9:00 p.m. ET, which may not be long enough to process complex corporate actions across all of these systems.

To address this, the listing exchanges are adopting uniform rules[3] that require the primary listing exchange to halt trading in a security the night before certain corporate actions take effect.[4] The halt is imposed on the trading day before the market effective date, after post-market trading ends at 8:00 p.m. ET and before overnight trading begins at 9:00 p.m. ET. It continues through the overnight session and ends when trading reopens at 8:00 a.m. ET on the effective date through the listing exchange's reopening process (the Halt Cross on Nasdaq and a Trading Halt Auction on the NYSE Group exchanges).

In practice, these rules preserve the overnight processing period that exists today. Because trading resumes at 8:00 a.m. ET, the security also will not trade from 4:00 a.m. to 8:00 a.m. ET on the effective date. Companies planning any of the nine covered categories of corporate actions should reflect the halt in their timetables and coordinate with their listing exchange well in advance. The ninth category gives the listing exchange discretion, so companies with an unusual transaction should ask the exchange early whether it expects to impose a halt.

Opening and closing prices unaffected. The official opening and closing prices will continue to be set at 9:30 a.m. and 4:00 p.m. ET, through the Opening Cross and Closing Cross for Nasdaq-listed companies and the opening and closing auctions for NYSE-listed companies.

No changes to disclosure deadlines. EDGAR filing hours are unchanged. In general, filings (other than Section 16 reports) submitted between 6:00 a.m. and 5:30 p.m. ET are deemed filed and disseminated that day, and filings submitted between 5:30 p.m. and 10:00 p.m. ET are not deemed filed and disseminated until the next business day. The listing exchanges' requirements for advance notice of material news (Nasdaq Listing Rule 5250(b)(1) and IM-5250-1 and Section 202.06 of the NYSE Listed Company Manual) are also unchanged.

Differences between Nasdaq-listed and NYSE-listed companies. For the most part, 23/5 trading affects companies in the same way regardless of where they are listed. The primary differences are summarized below.

	Nasdaq-listed company	**NYSE-listed company**
Overnight trading on the main listing exchange	Yes; overnight trading will occur through The Nasdaq Stock Market (which is fully electronic with no physical trading floor)	No; overnight trading will occur through the fully electronic exchange NYSE Arca only (i.e., no overnight trading on physical trading floor)
Session names	Conforming changes and slight restructuring (see table above)	Unchanged
Risk that existing policies and documents include outdated references	Moderate risk due to conforming changes and slight restructuring in names of the trading sessions	Low risk; terminology largely unchanged

The SEC Roundtable

On September 17, 2026, the SEC held a Roundtable on Preparations for 24-Hour Trading. In their opening statements, the Commissioners raised a few questions directly relevant to public companies. For example, Commissioner Peirce asked whether companies will need to change the timing of earnings releases and other material announcements, whether EDGAR should be modified so that information filed in the evening is disseminated during the overnight session, and whether the SEC should provide guidance or relief, particularly for smaller companies.

The panels focused on market structure and were made up almost entirely of representatives from exchanges, broker-dealers, market makers, asset managers and market infrastructure participants, but several points relevant to public companies came out of the discussion. SEC staff from the Division of Trading and Markets said they saw no reason for companies to change practices such as releasing earnings shortly after the traditional 4:00 p.m. ET close, although one panelist suggested that companies may want to revisit their after-hours disclosure practices if overnight volatility becomes a problem. Overnight trading accounted for less than 1% of NMS share volume in August 2026, mainly from foreign and retail investors, and panelists did not expect a large increase or quick participation by institutional investors after December 6. Panelists identified volatility as the main concern. For example, a small number of overnight trades could set a price that carries into the pre-market session. No change to EDGAR hours has been proposed. SEC staff also said that the framework will continue to be monitored and adjusted after December 6, including changes with respect to dynamic price bands and reopening procedures, and that 24/7 trading remains possible.

Analysis

Disclosure obligations do not change. Regulation FD, the antifraud provisions, the definition of material nonpublic information, and Form 8-K and other disclosure requirements apply the same way whether the market is open 16 hours or 23 hours a day. The listing exchanges' rules and procedures for the periods companies typically use to release information, before the 9:30 a.m. open and shortly after the 4:00 p.m. close, are also unchanged. None of these requirements ties the timing of disclosure to a particular trading session, and investors who trade overnight do so in a market they know has less liquidity and wider spreads. Companies therefore do not need to restructure their disclosure timing on account of overnight trading.

Companies already disclose material information while their stock is trading. Most companies release quarterly results and other material news shortly before the 9:30 a.m. open or shortly after the 4:00 p.m. close, and the stock often moves significantly in pre-market or post-market trading as a result. Companies time releases this way so that the market can absorb the information before the regular session, when liquidity and price discovery are greatest, and they accept that their stock will trade in the lower-volume pre-market and post-market sessions in the meantime. The new overnight session extends the period in which this can occur, but it does not create a new kind of risk.

Litigation considerations. Courts generally treat price movements in extended-hours trading as relevant evidence of materiality and price impact. Defendants can argue, however, that these movements are a less reliable measure of the market's view because volume is lower and spreads are wider. Under *Basic Inc. v. Levinson*, the fraud-on-the-market presumption depends

on an efficient market, which courts assess using factors such as trading volume, bid-ask spreads and price reaction to new information. Those factors are weaker in thin extended-hours and overnight sessions. If overnight trading becomes deep and liquid over time, this distinction will become less meaningful, and companies and their counsel should monitor for those potential developments.

Around-the-clock trading is already happening. Investors can already trade many U.S. stocks, or an economic equivalent, at any hour through alternative trading systems, on an unsponsored basis on certain foreign exchanges, and through tokenized products. Companies have not changed their disclosure timing in response to that trading, and exchange-based overnight trading does not mandate a different approach.

Capital markets transactions. A common way for public companies to conduct registered equity offerings is through so-called "overnight" offerings and block trades. These offerings have been launched and priced after market close and entirely outside regular trading hours (although some trading continues during portions of that period). This avoids exposure to any volatility in the trading price while the shares are priced and sold in the offering. The additional 9:00 p.m. to 4:00 a.m. ET session resulting from 23/5 will leave fewer hours in which an offering can be executed without concurrent exchange trading. We do not expect this alone to displace customary offering practices, particularly while overnight liquidity remains limited. But issuers and underwriters should consider:

- **Confidentiality and execution.** Offering rumors, leaks or the public launch could affect overnight trading and complicate bookbuilding. Depending on the stock's overnight liquidity, deal teams may want to reduce the interval between investor wall-crossing, public launch and pricing.
- **Pricing benchmarks.** The issuer and underwriters should agree on the reference trading price used to describe or negotiate the offering discount. The official 4:00 p.m. ET closing price will remain available, but subsequent overnight trading could influence investors' pricing expectations (even when volume is limited).
- **Settlement.** Longer exchange trading hours do not change the rules governing offering settlement. Rule 15c6-1(c) permits settlement within two business days after the contract date for covered registered firm commitment offerings priced after 4:30 p.m. ET, unless the parties expressly agree otherwise.

The implications for straight debt offerings are generally less direct because their pricing does not ordinarily depend on the issuer's stock price. Convertible bond offerings and related hedging warrant separate consideration, similar to equity offerings.

Recommendations on Disclosure Timing

Because the requirements and considerations that drive disclosure timing are substantively unchanged, we generally recommend that companies keep their current practices.

- **Quarterly earnings.** Continue to release earnings results shortly before the 9:30 a.m. ET open or shortly after the 4:00 p.m. ET close. Those periods offer more liquidity and full exchange functionality compared with the overnight session.

- **Planned material announcements.** Continue to issue press releases and file Forms 8-K, as applicable, between 4:00 a.m. and 8:00 p.m. ET but outside regular hours (9:30 a.m. to 4:00 p.m. ET). In the case of Forms 8-K, such filings should be made between 6:00 a.m. and 5:30 p.m. ET to receive a same-day filing date on EDGAR.
- **Unplanned overnight developments.** If a material development occurs overnight and disclosure during the overnight session is determined to be appropriate, filing a Form 8-K will not be an option unless the SEC were to change the EDGAR hours. (While material developments can already occur overnight now, the introduction of 23/5 trading may encourage management to want to act more quickly.) A company in that position could disclose the information and distribute a press release through a widely disseminated news or wire service, which is a recognized method of broad, non-exclusionary dissemination in accordance with Regulation FD. If posting on the company website or social media accounts, companies will want to confirm such mediums can serve as Regulation FD-compliant channels of distribution.[5] Companies should also confirm that their IR team and wire service can issue a release outside normal business hours, and that their disclosure controls address who makes that decision.
- **Monitoring.** Companies should monitor overnight volume and volatility in their own stock after December 6. If overnight trading in a company's stock becomes significant, or if large overnight price moves follow after-close releases, the company may want to reconsider the timing of its releases. Announcements made shortly before the 9:30 a.m. ET open will allow for quicker price discovery in a liquid market once regular trading begins, but will allow less time for analysts to assess and report on any material information than announcements made after the close.

Items Companies Should Confirm

We expect most of the following items will require no action, but each should be confirmed before December 6.

- **Trading window announcements.** We do not see a need to change when trading windows open or close. However, because the 23/5 terminology could make phrases such as "market close" or "trading day" less clear, it could be helpful for internal trading window announcements to refer to the 9:30 a.m. ET opening and 4:00 p.m. ET close of regular trading when addressing when the trading window opens and closes.
- **Trading outside regular hours.** Most insider trading policies do not prohibit trading in pre-market and post-market sessions, and we do not see a reason to begin requiring employees to trade only during regular hours. Companies should ask their equity plan brokers whether employees will be able to trade during the overnight session. If they can, companies may receive more questions outside normal U.S. business hours.
- **Rule 10b5-1 trading plans and stock repurchase programs.** Companies should confirm with brokers whether trades under employee and director Rule 10b5-1 plans and stock repurchase programs will continue to execute only during regular hours, and that references to closing prices and timing in plan instructions continue to operate as intended.
- **Equity compensation.** Companies should confirm that RSU settlement, sales to cover tax withholding, and references in equity plans and award agreements to "trading day" or "market day" (including for Section 409A purposes) continue to operate as intended. For example, a fair market value definition based on the high and low prices for a "trading

day" could be ambiguous in some circumstances. Depending on the plan's terms, the compensation committee or plan administrator may be able to resolve any uncertainty by interpreting the plan rather than amending it. Companies should also confirm with their accounting team that the method for determining grant date fair value does not change.

- **Transaction and offering documents.** Many documents define "trading day," "scheduled trading day," "market disruption event," "closing sale price" or volume-weighted average price (VWAP) by reference to exchange sessions. Examples include convertible notes, warrants, forward contracts, at-the-market offering agreements, and merger and acquisition agreements. Many existing definitions refer to the regular trading session or the 4:00 p.m. ET close and should continue to work, but companies should confirm this for their own documents, particularly in the context of Nasdaq's revised terminology for its Day Session. For documents being drafted now, we recommend defining trading days, closing prices and VWAP by reference to regular trading hours. If a document is intended to take overnight trades into account, it should state which day those trades are attributed to.
- **External communications policies.** Companies should confirm that policies on the timing of press releases refer to regular trading hours, or are general enough that no change is needed.

Gibson Dunn has advised a number of public companies on the effect of 23/5 trading on their disclosure practices, insider trading policies, equity plans and transaction documents. We would be pleased to help companies review their specific policies and documents.

[1] NYSE Arca's rules permit it to extend unlisted trading privileges to any National Market System (NMS) stock, including stocks listed on the New York Stock Exchange. As a result, NYSE-listed stocks are expected to be eligible for trading on NYSE Arca, including in its new Overnight Session, even though the New York Stock Exchange itself is not extending its hours.

[2] During traditional daytime trading hours, the Limit Up-Limit Down Plan sets a price band above and below each NMS stock's recent average price, and trades outside that band are not permitted. If the stock's price reaches a band limit and does not return inside the band, trading in that stock pauses for five minutes.

[3] The rules are Nasdaq Rule 4120(a)(15) for Nasdaq-listed companies and parallel rules of the NYSE Group exchanges (for example, NYSE Arca Rule 7.18-E) for NYSE-listed companies.

[4] The halt applies to nine categories of corporate actions and issuer events: changes in trading symbol; changes in CUSIP number; large dividends (at least 25% of the prior closing price); stock splits, including forward and reverse splits; de-SPAC transactions; spin-offs; changes in security type (for example, preferred stock to common stock); mergers and other mandatory exchanges of shares; and any other corporate action or issuer event for which the primary listing exchange determines that a halt is appropriate to maintain fair and orderly markets, to protect investors, or otherwise in the public interest.

[5] See *Commission Guidance on the Use of Company Web Sites*, SEC Release No. 34-58288 (Aug. 1, 2008) and *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: Netflix, Inc., and Reed Hastings*, SEC Release No. 34-69279 (Apr. 2, 2013) for additional guidance on the factors companies should consider in evaluating whether such mediums are recognized channels of distribution for purposes of Regulation FD.

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