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# 23x5 Trading Is Almost Here: Practical Considerations for Public Companies

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As a reminder, US equity markets are moving toward 23-hour, five-day-a-week trading, beginning in early December. The Securities and Exchange Commission (SEC) has approved rule changes permitting several national securities exchanges – including Nasdaq, NYSE Arca, Cboe EDGX – to expand their trading hours, adding overnight trading from 9:00 pm to 4:00 am ET. Because these venues can trade public company equities regardless of the company's primary listing exchange, this change will affect all public companies with securities listed on a national securities exchange. A public company's shares may trade overnight even if its primary listing exchange is closed.

The change is significant from a market structure perspective, but the exchanges have designed their frameworks to preserve many familiar market conventions and protections. Based on what we are hearing generally from major investment banks, exchanges and public companies, the launch of 23x5 trading is best viewed as one step in a longer evolution toward increasingly continuous US equity trading, rather than a cliff that requires an immediate reset of customary public company practices. Those practices are more likely to evolve if and when overnight trading develops meaningful volume, liquidity and institutional participation. For now, most companies are adopting an approach of careful observation, rather than making significant substantive changes to practices or policies.

## What 'overnight trading' means

Beginning Sunday, December 6, at 9:00 pm ET, Nasdaq plans to add a new "Night Session" from 9:00 pm to 4:00 am ET. Certain other exchanges are scheduled to operate substantially similar overnight sessions. This means that market participants will be able to trade equities from 9:00 pm through 8:00 pm the following day, with a one-hour operational pause from 8:00 pm to 9:00 pm.

Based on the Nasdaq model and definitions, which are similar to those of the other participating exchanges, the Night Session extends the exchange's existing pre-market session from 4:00 am to 9:30 am, and post-market session from 4:00 pm to 8:00 pm. The existing pre- and after-market hours, together with the new Night Session, will comprise what Nasdaq calls its Extended Hours. Importantly, the existing 9:30 am to 4:00 pm period will remain Nasdaq's regular market hours. The one-hour pause from 8:00 pm to 9:00 pm will allow for system maintenance, corporate-action processing, clearing and settlement functions, and transition to the next trade date.

Overnight trading will not affect:

- The "regular" or "core" market hours/trading session, which remains 9:30 am to 4:00 pm ET.
- For Nasdaq-listed securities, Nasdaq's opening and closing crosses remain at 9:30 am and 4:00 pm, respectively. More broadly, extended trading does not change the role of the primary listing market in establishing a security's official closing price.
- The T+1 settlement cycle, which remains in effect and runs from the assigned trade date. Trades executed from 9:00 pm through 11:59 pm are assigned the next calendar day's trade date, while trades from midnight through 8:00 pm receive the current calendar day's trade date.

As noted above, overnight sessions are not limited to securities listed on the participating exchanges: National Market System (NMS) stocks may trade on exchanges other than their primary listing market. For example, the New York Stock Exchange (NYSE) is not currently scheduled to add an overnight session, but NYSE-listed stocks may trade overnight on other exchanges, and NYSE-listed companies must comply with rules that NYSE is implementing to accommodate 23x5 trading.

The launch of 23x5 trading also does not itself change public companies' disclosure or reporting obligations. Regulation FD, Form 8-K requirements and other existing disclosure requirements continue to apply.

# Watch the market

We expect market behavior, rather than the technical availability of overnight trading, to drive changes in public company practice over time. For most companies, overnight trading is unlikely to immediately become a meaningful market. SEC staff data indicate that existing overnight trading accounts for less than 1% of total NMS stock volume and is highly concentrated in a relatively small number of securities. Market participants also have identified thinner order books, wider spreads and potentially greater volatility as considerations as exchange-based overnight trading develops. Institutional participation, in particular, is expected to develop over time, rather than creating significant volume in the near term.

If significant volume and institutional liquidity migrate overnight, either for the market as a whole or for a particular company, companies and their advisors may eventually reconsider when material information is released, how confidentially marketed and overnight offerings are executed, how insider-trading controls operate and how documents define concepts such as a "Trading Day," VWAP (volume-weighted average price) or regular trading hours. At least initially, however, we do not expect most customary practices to change solely because overnight exchange trading becomes available.

# What should public companies do now?

Some companies are making minor changes to insider trading policies, employee communications or trading plans to introduce "for avoidance of doubt" language around regular trading hours. More broadly, companies should review policies, documents and procedures that use trading-day or market-hour concepts and confirm that escalation and exchange-coordination processes continue to work as intended. There are a few areas to monitor for potential changes to practice:

1. **Material announcements and procedures**

Information released later in the evening may now encounter a live exchange market. For the reasons discussed above, we expect most companies to continue following established practices while overnight trading patterns develop. Companies should, however, confirm that internal escalation procedures remain workable, and that appropriate legal, investor relations and primary listing exchange contacts are current for significant developments that may arise outside regular business hours. This may be particularly relevant when a major marketwide or company-specific development is expected to affect overnight trading volume, or if the company begins to experience heightened trading volume domestically or from international investors.

2. **Corporate actions**

National exchanges – even those that are not operating overnight – are building procedures to ensure the market remains orderly during extended hours. Under Nasdaq Rule 4120 and similar rules at other exchanges, companies contemplating corporate actions – including trading symbol changes, CUSIP changes, certain dividends with an aggregate per-share value equal to at least 25% of the security's official closing price, forward and reverse stock splits, de-SPACs, mergers and other changes – should be aware that specified actions will trigger a mandatory overnight trading halt. Companies should continue to coordinate with their primary listing exchange on notifications, but also recognize that the timing and mechanics now need to accommodate an overnight market and related procedures.

When a halt is triggered, the primary listing market will initiate it before overnight trading begins, and exchanges that otherwise could trade the stock overnight honor the halt until trading resumes on the primary listing market. The halt framework is designed to ensure adequate time to process the changes before trading begins the next day.

3. **Capital markets documents and practices**

We expect investment banks to continue evaluating whether – and how – extended trading hours affect execution practices for block trades, confidentially marketed offerings and other transactions. Based on current discussions, we do not expect 23x5 trading – by itself – to displace customary transaction-execution practices.

That assessment could change if overnight liquidity becomes sufficiently deep to matter to pricing and bookbuilding.

Overnight marketed offerings have historically been structured around a period when the underlying stock is not trading on US exchanges. A meaningful overnight market could eventually affect assumptions around confidentiality, pricing and transaction execution. At launch, however, the existence of exchange trading at 2:00 am will not necessarily make the overnight market a useful reference point for an institutional bookbuild. Extended trading hours also do not change T+1 settlement; settlement continues to run from the assigned trade date.

4. **Equity incentive plan administration**

For many public-company equity incentive plans, the principal issue is likely to be the effect, if any, on a plan's definition or use of "fair market value." Many plans define fair market value by reference to a security's closing price on the applicable trading date, or the most recently preceding trading date if the relevant date is not itself a trading day. Because official closing prices remain tied to the regular-hours close, the move to 23x5 trading may have little practical effect on definitions drafted that way.

A definition tied expressly to the applicable exchange's official closing price may continue to work as intended, while language referring more generically to the "close of trading," "end of the trading day" or similar concepts deserves a closer look. Depending on the plan language, no action may be necessary; where clarification is warranted, a formal interpretation by the plan administrator may be sufficient in many cases, rather than a plan amendment. Whether any ambiguity can be addressed through an administrator interpretation or instead warrants an amendment will depend on the plan language, delegated authority and other applicable considerations and should be evaluated with counsel.

# Questions for the longer term

The SEC's September 2026 Roundtable on Preparations for 24-Hour Trading highlighted a number of issues that may become more important if overnight trading develops meaningful volume and liquidity. Several of the questions were raised by individual commissioners and do not represent SEC positions or new issuer requirements. Among them:

- **Issuer disclosure practices.** Commissioner Hester Peirce asked whether issuers that traditionally make filings and announce earnings or other material developments before or after core hours may ultimately need to change that behavior as overnight trading develops.
- **EDGAR hours.** EDGAR accepts transmissions from 6:00 am to 10:00 pm ET on business days, but most live submissions after 5:30 pm receive the next business day's filing date and are not disseminated until the next business day, subject to specified exceptions. Chairman Paul Atkins invited feedback on how expanded trading may affect public companies' execution of corporate actions and their obligations to disseminate material information and make SEC filings. No change to EDGAR hours or issuer filing obligations has been announced.
- **Potential issuer guidance or relief.** Commissioner Peirce asked whether the SEC should provide guidance or relief to address burdens that extended trading hours may create for issuers, particularly smaller companies.
- **Overnight monitoring.** Commissioner Peirce also raised the practical question of whether issuers should monitor overnight trading in their securities in the event of extreme price movements, which would implicate staffing, escalation and surveillance practices. The SEC has not prescribed a new issuer obligation.
- **Market quality and investor protection.** Commissioners and roundtable participants raised questions about liquidity, spreads, volatility, best execution, resiliency, staffing and surveillance in an overnight market, and whether additional SEC or Financial Industry Regulatory Authority (FINRA) guidance would be appropriate.
- **Liquidity and capital formation.** Market participants and regulators identified impacts on liquidity and capital formation as potential "day 2" issues as trading expands, which reinforces that the December 6 launch of 23x5 trading marks an evolution of market structure rather than an end-state.

# The near-term takeaway

We think 23x5 is best viewed as part of an ongoing market evolution. Absent meaningful changes in overnight

volume, liquidity and institutional participation, established practices around disclosure, insider trading and capital markets transactions are likely to continue largely as they do today in the near term. The immediate task is more targeted: Companies should understand that their shares may trade overnight, and confirm that policies, documents and procedures continue to work as intended.

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