



Publicity/Gun-Jumping

February 13, 2017

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“Gun-Jumping”

- **No offers can be made other than through the SEC-filed Prospectus**
- **Two Focuses:**
 - Formal Offers
 - Inadvertent Offers
- **“Offer” is broadly defined**
 - Any communication (press releases, e-mails, Company website, news articles, etc.) may inadvertently be an “offer”
 - Any publicity may be seen as **“Conditioning the Market”** or **“Hyping the Stock”**
- **The SEC’s technical term is “Gun-Jumping”**



“Formal” Offers

- “Offers” can be oral or in writing
- Any reference to the Offering can be seen as an “Offer”
 - Announcement of the Offering in the press (except in limited SEC-permitted form)
 - Announcement of intention to do the Offering
 - Inquiries of customers/suppliers/business partners as to whether they might like to participate in the Offering
 - ▶ Emails are considered “written communications” so are prohibited when only oral offers are permitted
 - Internal employee communications if not careful



Publicity Restrictions

- **Three Overall Periods:**
 - **“Pre-Filing Period”**: Prior to first public filing of Registration Statement with SEC
 - ▶ **“Safe Harbor Period”**: Prior to 30 days prior to first public filing
 - ▶ **“Quiet Period”**: 30 day period ending on first public filing
 - **“Waiting Period”**: Between first public filing and pricing
 - ▶ **“Pre-Red Herring Period”**: Between first public filing and filing of Red Herring Prospectus containing a price range for the offering
 - ▶ **“Roadshow Period”**: Between filing of Red Herring Prospectus and pricing
 - **“Post-Effective Period”**: 25 day period after pricing (may be extended to 90 days)



Accuracy and Completeness in All Things

- **One Overall Anti-Fraud Rule:**
 - It is illegal to make a material misstatement or omit a material fact in connection with selling stock.
- **Corollary:**
 - We must speak with only one voice.
 - The Prospectus is that voice.



Risks and Penalties

- **Consequences of Gun-Jumping:**
 - “Cooling off” period of up to 6 months
 - Embarrassing disavowals and risk factor disclosures in press and Prospectus
 - SEC investigation
 - Fines and sanctions
 - Exclusion of particular underwriters from deal
 - Termination of the Offering
 - Refund of IPO sales
- **SEC will review Company website and search the Internet for recent articles and press releases**



Practical Advice – Procedural

- **So, how do we play within the rules without “going dark” to the mainstream media?**
 - First, establish PR rules and practices that comply with law
 - ▶ Review scheduled, planned and hoped for PR activities for the next 9 months
 - ▶ Designate a PR point person or team at the Company who will be in charge of all communications
 - Run all communications and other PR activities past Legal, Company counsel (and often Underwriters’ Counsel) in advance
 - Review PR plans and marketing issues with Company counsel regularly
 - Scrub website and control any social media



Practical Advice

- **Things to be careful about:**
 - Press releases:
 - ▶ Product focus for trade press consistent with past practice
 - ▶ No mention of Offering or related matters
 - ▶ All must be approved by legal
 - Articles and interviews with business or financial press:
 - ▶ Careful on content and timing
 - Can't control timing of publication
 - ▶ Early interviews can come out at crucial times much later
 - Can't prevent quotes being taken out of context
 - Simple fact-checking may be OK
 - ▶ Company should not be seen as participating or initiating articles on the IPO or the Company's outlook
 - ▶ All must be approved by legal



Practical Advice

- **More things to be careful about:**
 - Presentations and speeches
 - ▶ General industry/technology may be OK
 - ▶ No Company-specific or market-specific materials
 - ▶ Are they really crucial?
 - Conferences and trade shows
 - ▶ Probably OK, if really trade and not investor focused
 - ▶ But materials should be reviewed by Legal/Company counsel
 - General advertising and marketing activities, especially new campaigns
 - ▶ Not a good time to start big, new campaigns



Practical Advice

- **Additional things to be careful about:**
 - Company and related websites:
 - ▶ Scrub for puffery, projections and anything inconsistent with or beyond the Prospectus
 - ▶ The SEC will review
 - Social media
 - ▶ Law and practice still evolving to catch up with reality
 - In everything, we should tell one story, and that story should be the one in the Prospectus
- **Employee Communications**
 - The IPO is Company confidential information, and employees should not discuss it with outsiders, including no discussion through:
 - ▶ Social media
 - ▶ Emails, web postings and chat rooms
 - ▶ Conversations with friends



Practical Advice – Summary

- **General Guidance for All Publicity:**
 - Be consistent with past practices
 - ▶ Stick to customary timing and form
 - ▶ Avoid starting new practices
 - Avoid content, manner, timing or targeted audience that would suggest a stock selling effort
 - ▶ Stick to factual matters and avoid “puffing”
 - Avoid off-limits topics
 - ▶ IPO itself or any financing plans
 - ▶ Projections, forecasts or valuations for Company or market.
 - Is this communications really crucial?
 - In everything, there should be just one story, and that story should be the one in the Prospectus



Thank you!

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