

# SONFIELD & SONFIELD

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## QUIET PERIOD

### Summary

During a Quiet Period, a publicly-listed company cannot make any announcements about anything that could cause a normal investor to change their position on the company's stock. The SEC interprets this rule broadly, even including board members, management, and employees talking about the company. Normally, that means the company does not discuss any of the following:

- New deals or wins signed in that current quarter. Announcements about previously-sold implementations going live are allowed, but must be explicitly described as such
- Management changes
- Progress against company goals
- Major product or service announcements
- Major partnership announcements

### Why it Matters

The quiet period precedes the introduction of a company into the capital market. During that time, the amount of public exposure and hype must be minimized to hinder any potential interference with SEC efforts to evaluate its filings and the release of any information which may cause investors to "jump the gun" on valuations and expectations for the company. The SEC's intention is to create a level playing field for all investors in the capital market, ensuring that all have the same information about the company when it goes out for sale on the market.

### Activities During the Quiet Period

The federal securities laws do not define the term "quiet period," which is also referred to as the "waiting period." However, a quiet period extends from the time a company files a registration statement with the SEC until SEC staff declare the registration statement "effective." During that period, the federal securities laws limit what information a company and related parties can release to the public. The failure to comply with these restrictions generally is referred to as "gun-jumping."

On June 29, 2005, the Commission voted to adopt modifications to the registration, communications, and offering processes under the Securities Act of 1933. Among many other provisions, the rules update and liberalize permitted offering activity and communications to allow more information to reach investors by revising the "gun-jumping" provisions under the Securities Act. The cumulative effects of these rules are as follows:

- Well-known seasoned issuers are permitted to engage at any time in oral and written communications, including use at any time of a new type of written communication called a "free writing prospectus," subject to enumerated conditions (including, in some cases, filing with the Commission).

- All reporting issuers are, at any time, permitted to continue to publish regularly released factual business information and forward-looking information.
- Non-reporting issuers are, at any time, permitted to continue to publish factual business information that is regularly released and intended for use by persons other than in their capacity as investors or potential investors.
- Communications by issuers more than 30 days before filing a registration statement will be permitted so long as they do not reference a securities offering that is the subject of a registration statement.
- All issuers and other offering participants will be permitted to use a free writing prospectus after the filing of the registration statement, subject to enumerated conditions (including, in some cases, filing with the Commission). Offering participants, other than the issuer, will be liable for a free writing prospectus only if they use, refer to, or participate in the planning and use of the free writing prospectus by another offering participant who uses it. Issuers will have liability for any issuer information contained in any other offering participant's free writing prospectus as well as any free writing prospectus they prepare, use, or refer to.
- The exclusions from the definition of prospectus are expanded to allow a broader category of routine communications regarding issuers, offerings, and procedural matters, such as communications about the schedule for an offering or about account-opening procedures.
- The exemptions for research reports are expanded.

A number of these rules include conditions of eligibility. Most of the rules, for example, are not available to blank check companies, penny stock issuers, or shell companies.

The rules address the treatment under the Securities Act of electronic communications, including electronic road shows and information located on or hyperlinked to an issuer's website. The rules define written communication as any communication that is written, printed, a radio or television broadcast, or a graphic communication. The definition of graphic communication and, thus, electronic road show excludes communications that are carried live and in real-time to a live audience, regardless of the means of transmission. Electronic road shows for initial public offerings of common equity or convertible equity securities will have to make a bona fide electronic road show readily available to an unrestricted audience to avoid filing the electronic road show with the Commission. No other road shows will be subject to filing.

### **Research Reports**

The newly public company is subject to a “quiet period,” of 40 days after the registration becomes effective, which restricts insiders and affiliated underwriters from issuing earnings forecasts and research reports regarding the firm for a specified period following the initial public offering (IPO). As soon as this quiet period ends, the analysts of managing underwriters typically initiate research coverage with favorable recommendations, and the market responds positively even though this information is predictable.

The general purpose behind the quiet period is to give investors enough time to do their due diligence and allow market forces to establish a fair value without influence from the firm's management or affiliated analysts who may try to hype the stock. In other words, everything that is relevant should be included in the written prospectus.

Immediately upon expiration of the quiet period, analysts affiliated with investment banks that participated as the lead underwriter or as a co-manager in the deal typically initiate favorable research coverage.

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