Communications Do’s and Don’ts

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Navigating the IPO Communications Rules

SECURITIES ACT OF 1933

- **Section 2(a)(3)**: Defines "offer" broadly as any attempt to sell or solicit a security for value.
- **Section 5**: Before filing, offers are restricted (subject to limited exceptions). After filing, written offers generally must be made through a Securities Act-compliant prospectus (and certain other permitted written communications, such as FWPs, if conditions are satisfied). Sales cannot occur until the SEC declares the registration statement effective.
- **Waiting period**: After filing, oral offers are permitted, and written offers are limited to a compliant prospectus (and other permitted writings, as applicable).

GUN-JUMPING

- Unauthorized offers before permitted periods.
- Risks: Strict liability for unvetted statements, SEC-imposed cooling-off delays, and purchaser rescission rights.

TESTING-THE-WATERS

- Rule 163B permits communications with QIBs and IAIs; EGCs also have TTW flexibility under Section 5(d).
- Supports cost-effective market evaluation and investor engagement.

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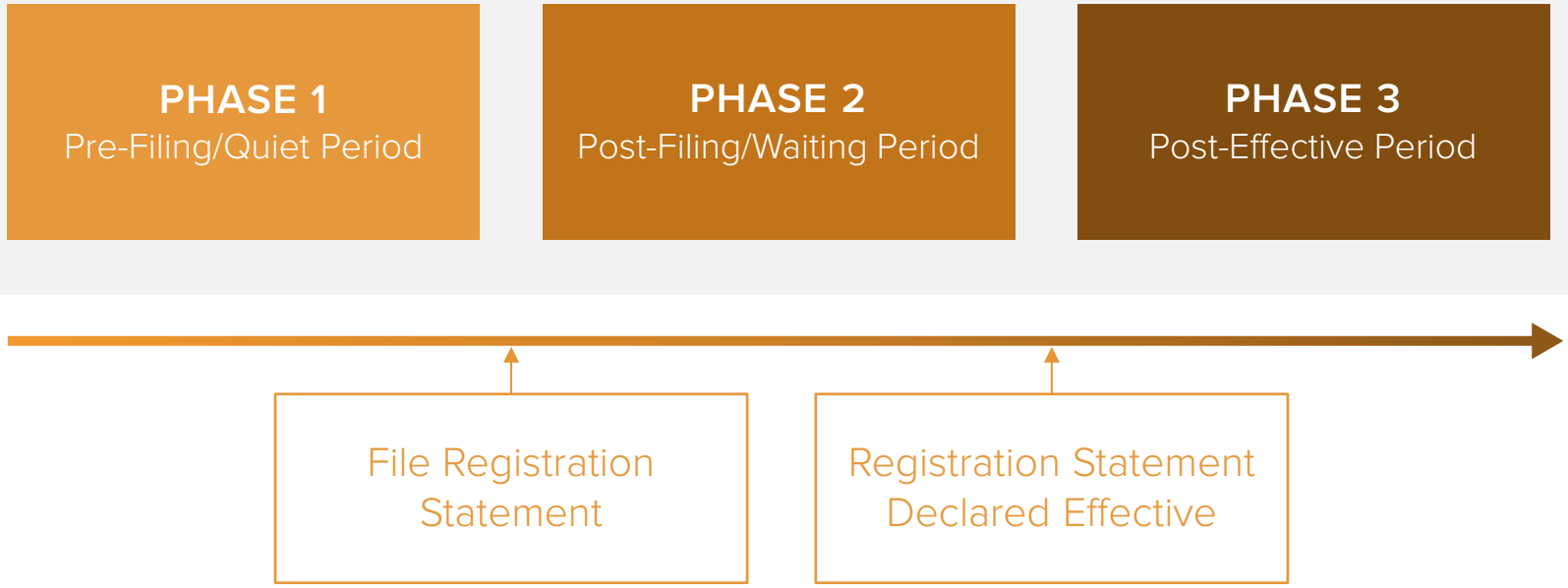
IPO Communications – Phases and Publicity



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IPO Communications: Phases and Publicity

PRE-FILING (QUIET PERIOD):

- Most restrictive. Sales are prohibited, and offers are heavily constrained, subject to limited safe harbors/permits (e.g., Rule 163A (30+ days pre-filing), Rule 169 (factual business information), Rule 163B (TTW), and Rule 241 ("generic" solicitation of interest)).
- "Offer": Any attempt to sell or solicit a security, via any medium, that encourages IPO interest.
- Companies often treat the "quiet period" as beginning once IPO planning becomes active (often by or before underwriter engagement) because publicity can be viewed as conditioning the market. From that point on, "in registration".

POST-FILING (WAITING PERIOD):

- Starts with public filing of the registration statement with the SEC.
- Oral offers permitted; written offers limited to a Securities Act-compliant prospectus.
- Ends when the SEC declares the registration statement effective.

POST-EFFECTIVENESS PERIOD:

- Begins once the SEC declares the registration statement effective.

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IPO Communications: Do's and Don'ts

PERMITTED COMMUNICATIONS

(if consistent with past practices)

- Product/service advertising.
- Factual business/financial updates unrelated to the IPO.
- Trade show and industry meeting participation.
- Trade press articles (but issuer-initiated or issuer-scripted publicity can create gun-jumping risk—coordinate with counsel).
- Responses to factual inquiries unrelated to the IPO.
- Media announcements on non-IPO business/financial developments.

PROHIBITED COMMUNICATIONS

- Actions conditioning the market (e.g., new/expanded corporate branding campaigns).
- Revenue, income, or growth forecasts for the company or industry.
- Media discussions or public announcements about the IPO, business strategy, or financial prospects.
- Discussions with securities analysts about the company/IPO (with exceptions).
- Investor/analyst conferences require careful planning; participation may be permissible if consistent with past practice and not conditioning the market, with counsel-approved messaging.
- Securities advertisements.

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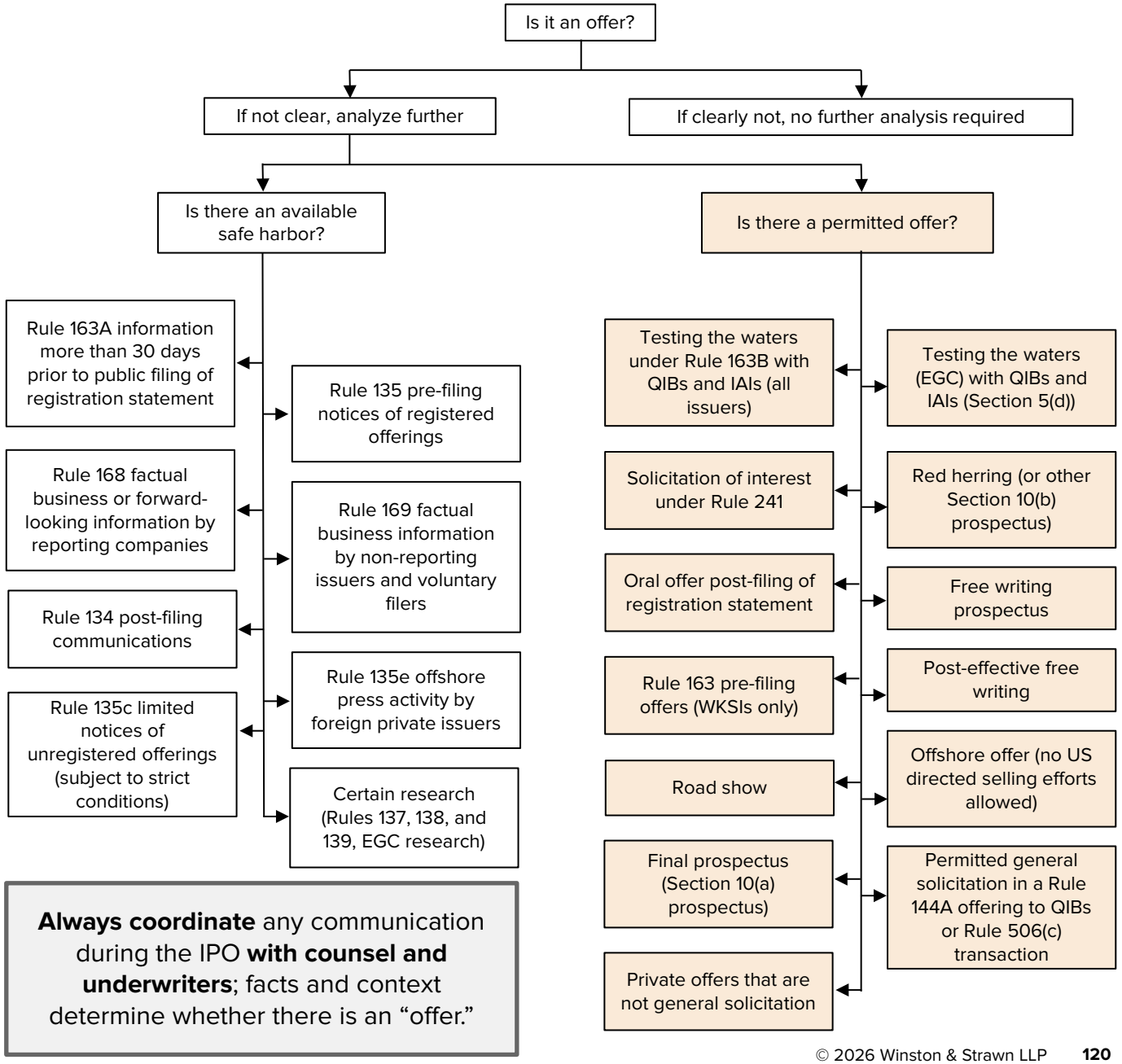
IPO Communications: Safe Harbors and Permitted Offers



Always coordinate any communication during the IPO **with counsel and underwriters**; facts and context determine whether there is an "offer."

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Strong Communications: Setting the Foundation

- Establish strong communications protocols early in IPO preparation.
- Ensure all activities follow legal team guidance strictly.
- Align company, bankers, lawyers, investor relations, and communications teams on goals, objectives, metrics, and key messages.
- Develop an event calendar targeting priority audiences.
- Coordinate messaging across documents and filings (including investor decks, press releases) for consistency.
- Prioritize message uniformity amid volatile markets and heightened IPO scrutiny.

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Communications for A Successful IPO and Beyond

- An IPO marks a pivotal milestone, demanding flawless execution on your terms.
- Position the company and leadership, setting foundations for public life.
- Drive valuation through **planned, counsel-vetted** investor and media engagement consistent with securities law communications rules.
- Build robust communications and IR functions, orchestrate listing events, and equip teams for quarterly reporting.
- Manage the public transition with precision and innovation to capitalize on opportunities.

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Strategic Communication Imperatives

Focus messaging on management strengths, business strategy, growth prospects, and competitive edge.

Develop a robust plan to counter potential criticisms through targeted earned media in investor-focused outlets.

Ensure strong message alignment and media coverage to bolster stock price stability.

Post-listing, sustain investor awareness with growth communications and reputation management counsel.

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IPO Communications: Plan Early for Impact

ADVANCED COMMUNICATIONS PLANNING IS ESSENTIAL

- Avoid the common pitfall: Delaying strategy until just before public filing, when quiet period restrictions limit outreach.
- Start shaping your narrative well before listing day to ensure accurate media coverage.
- Manage your IPO and growth story proactively and early to build awareness and correct misperceptions.
- Allocate ample time—ideally six months to a year—for initiatives like rebranding or strategic announcements to maximize effectiveness pre-quiet period (major branding campaigns right before filing can look like market conditioning).

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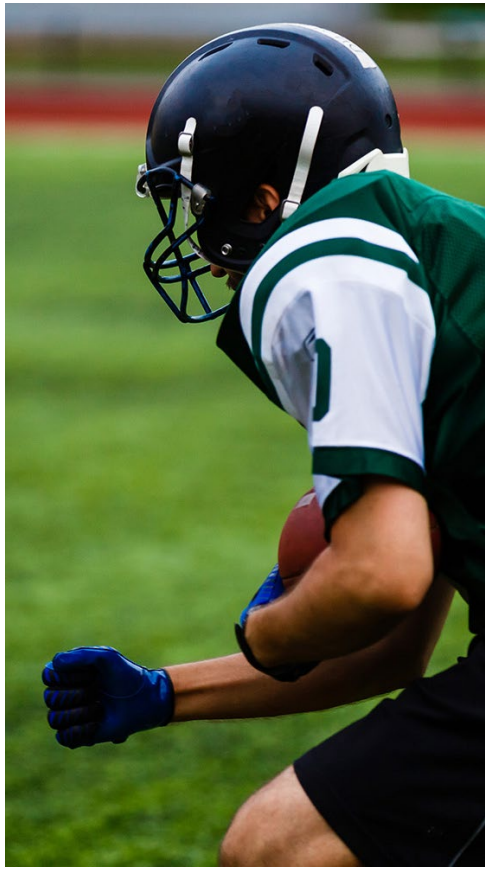
Pre-IPO Communications Challenges: Overcoming Hurdles

- Common challenges for pre-IPO companies:
  - Limited media presence.
  - Sector media coverage, often overlooked or misread by financial press.
  - High-profile attention risking overhyping.
  - Weak connections with key journalists.
- Benefit from early, proactive message management of IPO and growth narrative.
- Seed key story elements with media and cultivate relationships with critical journalists well before IPO announcement.



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