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ATMs: Increasing financial flexibility of public companies

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Added flexibility in uncertain times

- The current economic environment creates significant vulnerability for many public companies.
- Most public companies have credit facilities, but their borrowing bases have been eroded.
- Many public companies have universal shelf registration statements to provide access to public debt and equity markets, but it's more difficult to complete full traditional offering in the current environment.
- Companies could use extra capital to weather the down-turn, but likely want to avoid a large-scale equity offering at depressed prices.
- Adding an "At-The Market" component to a shelf registration statement allows issuers to raise quick and targeted amounts of capital strategically without driving down stock prices.
- Equity ATM offerings have spiked dramatically since the outbreak of COVID-19, as companies look to add flexibility and liquidity.

What is an ATM?

- An “At-The Market” offering (or ATM) is an offering of securities, typically common stock, by a public company into its existing trading market from time to time at a price that is not fixed or negotiated.
- The shares are sold using a distribution agent (usually an investment bank) based on a commission of 3% or less, and sold at times and prices that are controlled by the public company.
- Since the sales are into the existing trading market, the sales price of the shares floats with the company’s share price.
- Sales are made quietly and should not have a material impact on the share price.

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Process to put an ATM in place

1. An ATM requires that the company have an effective shelf registration statement in place.
2. The company uses a portion of the capacity under its universal shelf registration statement (unless it is a WKSI (Well Known Seasoned Issuer) and has unlimited capacity) to file a prospectus supplement for an equity distribution program enabling it to sell shares from time to time at the market price.
3. The distribution agent performs diligence when putting the ATM in place, and the issuer's accountants and counsel deliver a comfort letter and opinion, respectively.
4. The company enters into an equity distribution agreement with the distribution agent.
5. The agent performs streamlined due diligence periodically and issuer's accountants and counsel deliver bring-down comfort letters and opinions periodically.

<u>Note</u>: Process can often be completed in a week or two.

Benefits of ATM

- Timing of sales is flexible, allowing ability to take advantage of up markets or to raise some equity capital on short notice.
- Minimal management involvement. No need for investor road shows or other management disruptions at a time when management needs to be focused on the business.
- Much lower banker fees and transaction expenses than traditional underwritten offering.
- Minimal cost means that even if you do not need capital immediately, you can put the ATM program in place and have it ready when needed.
- Little or no share price impact.
- No risk of failed or “bottom of range” offerings like traditional underwritten offerings.

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Considerations

- Shares are sold at market prices, so proceeds fluctuate, but issuer can set collars on prices if it isn’t desperate for capital.
- Trickle out of shares means smaller size than normal offerings, and selling a material amount of shares may take time and depends on trading volumes.
- Company restricted from sales during normal blackout periods and while in possession of material non-public information.
- Issuer will have incremental quarterly costs to keep an ATM active and available.
- Issuer must be S-3 eligible and have a universal shelf registration statement on file.
- Additional limitations if the issuer has less than $75M of public float.

Key takeaways

ATMs offerings:

- provide maximum flexibility at minimum cost
- allow quick access to capital on go-forward basis
- are easy to put in place, with an existing shelf registration statement
- don’t require roadshows or other management distractions
- are a great strategic tool during volatile markets

Contact us if you have questions

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