

# DRIBBLING IT OUT

## EQUITY DISTRIBUTION PROGRAMS

WE ARE NOT bakers. Nevertheless, our job descriptions include helping our issuer clients have their cake and eat it too. For instance, what if an issuer wanted to sell its securities anytime—regardless of whether market conditions were conducive to an offering? What if an issuer needed to raise small amounts of money from time to time? What if an issuer did not want to go on a road show but still wanted its securities placed? What if an issuer did not want to tip the market regarding the timing of offerings?

After exchanging views concerning these particular questions with one of our investment banking clients, we fashioned an offering methodology that allows an issuer that's bullish about its own stock to access the public markets opportunistically and periodically to raise funds at low cost, without ever hitting the road. Think of it as the equity analogue to medium-term debt programs.

Equity distribution programs allow an issuer eligible to use a shelf registration statement on a primary basis to register shares of its common equity for sale from time to time in at-the-market offerings. The issuer can tailor its disclosure, either providing more information regarding possible transactions upfront in the shelf, or at the time of issuance in a prospectus supplement. The issuer enters into an agreement with an investment bank providing that on any day the issuer may sell its shares to or through the investment bank at prices that relate to the current market price of its stock, or VWAP. Unlike traditional underwritten offerings, shares are not sold at a discount to the market price. The issuer can control its dilution by raising only as much money as it wants or needs at the time, or by designating a minimum or floor price. If the issuer's stock price rises during the life of the program, it will benefit from the upside. The timing and the size of each issuance is unknown to the market, making it difficult for market observers to speculate on when securities may come to market.

We have a number of clients, and we also have clients that have a number of clients, that are satisfied participants in equity shelf programs that MoFo lawyers helped design. You could say that they are pleased to be eating their own cake.