HAPPY MEALS

144A CONVERTS

LAWYERS WHO work with derivatives traders and product structurers understand immediate gratification. That's what our clients almost always need. It's not that they're unreasonable, it's just that their clients are often in a hurry and they live in a very competitive world.

Working with one of our investment banking clients, we structured a transaction that has come to be known as the happy meal. The happy meal involves an issuer issuing and selling a convertible security, usually a debt security, to the investment bank or dealer as the initial purchaser, in a private, or 144A, offering. The transaction can be completed as rapidly as overnight. Depending on market conditions, the pricing may be very favorable. From the issuer's perspective, it can raise funds quickly, at potentially favorable rates, and the interest on the debt security will be deductible. From the banker's perspective, the investment bank can resell the 144A security for a spread to qualified institutional buyers, or QIBs. The QIBs are buying a 144A convertible security, which contains an embedded call option on the underlying stock, so they may want to hedge their bets. How do they do this? They sell issuer stock to the investment bank. By offering a convertible security, the issuer may subject itself to dilution. How can it control the dilutive effect? By buying back some of its stock, directly or indirectly (through a forward contract, a call spread, or a collar) from the investment bank (that has some issuer stock that it bought from the QIBs). Everyone participating in the transaction gets something and is happy.

Once our clients get to happy, they want to know how to get to very happy. One possibility is to tinker with the features of the debt security. What if the interest on the debt security were payable only under certain limited circumstances (a contingent interest feature)? What if the debt security were convertible only if the underlying shares trade above a specified trigger level (a contingent conversion feature)? Then, you've got yourself a CoCo—and the issuer may have a tax benefit.

Working with derivatives desks is not for all lawyers, or for all law firms. But for those lawyers who like to solve puzzles, work carefully and deliberately under pressure, have committed years of regulation and market practice to memory, and take great satisfaction in seeing their clients set new standards of excellence, it's fascinating work.