

# REGISTERED DIRECTS

A PUBLIC PIPE

OUR CLIENTS ask the best questions. In the early 1990's, a corporate finance banker asked us whether there was any way to do a "public" PIPE. After pointing out that the first "P" in PIPEs stands for private, we agreed to think about it. More discussion made it clear that the banker was interested in finding a methodology for offering securities publicly in a way that replicated as closely as possible the marketing dynamics and procedures of a traditional PIPE. Several days later we advised the banker that the answer was yes, there was, in fact, a way. This way involved an approach that we designed and named a "registered direct offering." Since that time, the registered direct offering has become a well known and frequently used methodology. MoFo lawyers have been involved in over a hundred registered direct offerings.

A registered direct offering is a targeted agency transaction. The offering, although marketed like a PIPE, is completed using either a single purpose registration statement or a shelf-takedown. It is a hybrid transaction, coupling all of the targeted marketing appeal and the cost and time efficiencies usually associated with private transactions, with the flexibility and pricing advantages of an underwritten public offering. Since a registered direct is a "public offering" under the securities laws, it is possible to allocate shares to retail investors. When properly marketed, the exchanges and the FINRA will view registered directs as "public offerings" not subject to the limitations on issuance or requirement for shareholder approval associated with private placements completed at a discount to book or market. The increased popularity of universal shelf registration statements makes this offering methodology even more attractive at times when the public markets open and close with little predictability or warning.

If you were to ask our clients why they have become accustomed to asking us their best and most challenging questions, they are likely to say that they do so because they know we are sharply focused on understanding their businesses, helping them to establish market leadership and assisting them to become even more successful.