MONETIZATIONS

CASHING IN WITHOUT CASHING OUT

IN THE MONETIZATION area, we work with our investment bank clients to structure transactions for corporate counterparties holding large, non-strategic stakes in other companies. In some cases, the issuer has a public float, while in others the issuer is yet to go public. Though the counterparty's holdings frequently are regarded as non-strategic, they often are of sufficient magnitude, and associated with significant ancillary rights, so as to make it likely that the counterparty would be considered an affiliate of the issuer. As a result, we structure transactions that achieve the desired results within the parameters of Rule 144 of the 1933 Act and Sections 13 and 16 of the 1934 Act.

We have collaborated with our investment bank clients in developing structures that allow a large stakeholder to pursue a partial monetization strategy, while retaining an enhanced share of the upside of a holding currently regarded as undervalued. In contrast to more conventional collar and pre- or post-paid forward structures, these arrangements provide greater opportunity to enjoy the appreciated value of the holdings, while receiving some, but comparably less, monetization or downside protection. Although these structures typically are comprised of option transactions, the number of options used, their relative strike levels, the share quantities covered and their expiration dates, together with certain asymmetries in these attributes not found in the standard collar or forward, have permitted our clients to offer the customized risk return profiles sought by their counterparties. The resulting hedging and settlement features invariably call for an intensive analysis of an array of securities law issues.

We also have structured transactions for corporate insiders who wish to monetize a portion of their long-held option positions. We advise our clients regarding how to apply the SEC's relevant interpretative guidance, including the use of registered borrow to hedge our client's exposure under these transactions. We also have documented and structured these transactions as at-risk block purchases executed under Rule 144.