PIPE TRANSACTIONS

PROBLEM. CREATIVITY. SOLUTION.

FOR COMPANIES that need to raise capital on a regular basis, downturns in the public equity markets can be problematic. In difficult market environments, such companies may find the public equity markets closed to them. Raising needed capital during these times may even be a matter of survival. To help companies requiring capital when the public equity markets were unavailable, an elegant solution was devised: PIPE (private investment in public equity) transactions. PIPEs, created in 1985, have become a key financing alternative. Regional banks, REITs, and technology-based companies have all used PIPEs to raise capital in tough markets Recently, PIPEs have become an important part of biotech financing.

PIPEs are a specific form of private placement to selected accredited investors that irrevocably commit to purchase securities at a fixed price, not subject to market price adjustments or fluctuating ratios. A PIPE differs from a conventional private placement in one basic way: Investors who have agreed contractually to purchase shares, actually pay for the shares, and the transaction closes, only upon the issuer being advised by the Securities and Exchange Commission that it is prepared to declare effective a resale registration statement covering possible future sales of such shares by the investors. The resale registration statement is kept effective until shares may be sold under Rule 144(k).

The advantages of the PIPE financing technique over conventional private placements are obvious: Issuers prefer it because they are not burdened with significant post-closing requirements, like stringent operating covenants; they are able to obtain financing quickly; and their securities may be sold at a smaller discount to market than in a conventional private placement. Institutional investors which are unable to purchase restricted securities are almost always able to purchase securities sold in a PIPE. Investors prefer PIPEs over conventional private placements because of the certainty of prompt liquidity.