TIME AND TIME AGAIN

AN INNOVATIVE USE OF AN ATM

AN AT THE MARKET OFFERING, or ATM, is a public offering of securities into an existing trading market at varying prices, rather than at a fixed or negotiated price, through, among other things, exchange transactions. ATMs permit an issuer to "dribble out" securities into the market over a period of time at prices based on the market price of the issuer's common stock at the time of sale.

We worked on our first ATM in 1993. For a time, only issuers in certain industry sectors, such as REITs, which needed to access the capital markets regularly, turned to ATMs. However, by 2009, there were new capital-raising needs and ATMs became an important means of meeting these needs. Immediately following the U.S. government's stress tests for financial institutions, it became clear that a number of financial institutions needed to boost their regulatory capital levels. However, financial institution stocks were volatile and investors were fickle. As a result, it was not clear in mid-2009 that a financial institution would be able to complete a significant capital raise in a traditional underwritten public offering without taking the risks of increased volatility of their common stock and public relations and reputational damage.

To respond to the stress test results, our client took an innovative approach and relied, in large measure, on an ATM offering. The amount of securities sold in any single ATM issuance usually is insignificant compared to the issuer's public float or the daily trading volume of the issuer's stock. Unlike underwritten offerings with which investors are familiar, ATMs do not involve special selling efforts or broad-based marketing. Perhaps the best way to think about an ATM is as a continuous offering in which securities are dribbled out into the market by an issuer that is able to control the timing and the amount of shares offered. In that regard, it is somewhat like the other kind of ATM—the cash machine. If the issuer doesn't like the available price on a particular day, it can refrain from offering. If the issuer likes the price and the quantity of shares that the market is willing to accept, it can proceed to offer. Because the issuer controls the timing of issuances, an ATM eliminates the possibility of investor front-running and shorting activity. This ATM offering provided a very significant capital infusion and demonstrated the broad utility of this offering methodology.