

Alternative Equity Offerings for Volatile Markets

Summary overview of certain alternative equity offering types that public companies may consider in addressing their funding and liquidity needs in light of volatile markets.

For additional information, read our alert [here](#).

Equity Offering Type	Key Advantages	Potential Limitations
At-the-Market (ATM) Offering Program	<ul style="list-style-type: none"> • Less impact on stock price and lower agent commissions as compared to underwritten offerings • Sales made quickly and discretely into market over time • Management or investor presentations not required 	<ul style="list-style-type: none"> • Not ideal for large capital raises • Requires quarterly “bring-downs” of diligence, comfort letters and opinions to keep ATM active • No sales when issuer is in possession of material non-public information, except pursuant to a 10b5-1 program
Private Investment in Public Equity (PIPE)	<ul style="list-style-type: none"> • Confidential until signing of transaction • Deal terms negotiated directly between issuer and investors, providing structuring flexibility • Does not require effective registration statement at time of transaction 	<ul style="list-style-type: none"> • Limited to private placement transactions • Securities are not immediately registered and subject to resale restrictions • Stock exchange shareholder approval rules potentially limit offering size
Registered Direct Offering (RDO)	<ul style="list-style-type: none"> • Confidential until signing of transaction • Deal terms negotiated directly between issuer and investors, providing greater flexibility than a marketed follow-on transaction • Offers registered securities that generally have no restrictions on resale by unaffiliated investors 	<ul style="list-style-type: none"> • Not widely marketed • Stock exchange shareholder approval rules potentially limit offering size • Small cap issuers limited by “baby shelf” rules
Equity Line Financing	<ul style="list-style-type: none"> • Generally lower transaction costs than underwritten offerings • Sales can be made quickly and discretely to investor counterparty over time • Firm commitment by investor to purchase securities when requested by issuer 	<ul style="list-style-type: none"> • Because the investor must be irrevocably bound to purchase the securities at the issuer’s election, price may be at a higher discount than other structures • Requires limited “bring down” diligence and program maintenance

Equity Offering Type	Typical Documentation
At-the-Market (ATM) Offering Program	<ul style="list-style-type: none"> • Effective shelf registration statement • Prospectus or prospectus supplement • Sales agreement or equity distribution agreement • Legal opinions (upon establishment of the program and following each annual and quarterly report) • Comfort letter (upon establishment of the program and following each annual and quarterly report) • Customary closing certificates and deliverables <p><i>*In addition to on a quarterly basis, due diligence and documentation may be refreshed upon the occurrence of certain significant corporate events.</i></p>
Private Investment in Public Equity (PIPE)	<ul style="list-style-type: none"> • Engagement letter between the issuer and the placement agent • Term sheet or private placement memorandum • Purchase agreement • Registration rights agreement • Legal opinions • Comfort letter (if requested by the placement agent or investors) • Customary closing certificates and deliverables • Following closing of the transaction, a resale registration statement <p><i>*Particularly where the prospective investors are already familiar with the sector and/or the issuer, only a term sheet may be provided, with investors otherwise relying upon the information available in the issuer's Exchange Act filings.</i></p> <p><i>** Depending on the securities offered, additional documentation may be required. For example, convertible debt PIPEs would require, among other things, an indenture and note, and preferred stock PIPEs would also require, among other things, a certificate of designations (or equivalent).</i></p>
Registered Direct Offering (RDO)	<ul style="list-style-type: none"> • Effective shelf registration statement • Prospectus or prospectus supplement • Purchase agreement • Placement agent agreement • Legal opinions • Comfort letter • Customary closing certificates and deliverables

Equity Offering Type	Typical Documentation
Equity Line Financing	<ul style="list-style-type: none">• Effective shelf registration statement (for public equity line) or a resale registration statement (for private equity line), following execution of equity line agreement• Equity line agreement• Legal opinions (may be requested by investor upon establishment and periodically during term of financing)• Comfort letter (may be requested by investor upon establishment and periodically during term of financing)• Customary closing certificates and deliverables