

Webcast: Raising Capital in the Current Environment V: ATM Programs and Rights Offerings

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In the current equity capital markets environment, innovative offerings that avoid massive dilution can be advantageous. ATM offering programs provide public companies an efficient means of raising capital over time by allowing a company to tap into the existing trading market for its shares on an as-and-when-needed basis. Rights offerings allow public companies to raise capital while offering all current shareholders the opportunity to participate equally, thereby allowing each shareholder to avoid objectionable dilution when trading prices are relatively low.

In this presentation, we will discuss the mechanics of and recent developments in the uses and structures of ATM programs and rights offerings, including:

- advantages and disadvantages of each type of offering;
- an overview of the basic mechanics of each type of offering;
- securities laws and stock exchange rules in each type of offering;
- managing conflicts of interest and affiliate purchasers in both types of offerings;
- disclosure requirements and guidelines;
- considerations during insider trading blackout periods;
- timing of reporting significant ATM issuances;
- effecting block trades and bought deals under ATM programs;
- the role and compensation of banks in each type of offering;
- challenges in the economics of warrants issued in rights offerings; and
- recent SEC Staff guidance on how and when a company may register the securities issued in rights offerings

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PANELISTS:

Hillary H. Holmes is a partner in the Houston office of Gibson, Dunn & Crutcher, Co-Chair of the firm's Capital Markets practice group, and a member of the firm's SRCG, Oil and Gas, M&A and Private Equity practice groups. Ms. Holmes advises companies in all sectors of the energy industry on long-term and strategic capital planning, disclosure and reporting obligations under U.S. federal securities laws and corporate governance issues. She has deep experience with all kinds of equity and debt capital markets transactions, including ATM programs and rights offerings. Ms. Holmes is *Chambers* Band 1 ranked for Capital Markets Central U.S. and ranked for Energy Transactional Nationwide. Ms.

Related People

[Hillary H. Holmes](#)

[Brian J. Lane](#)

[Ryan A. Murr](#)

[Robyn Zolman](#)

[Branden C. Berns](#)

Holmes also advises boards of directors, special committees and financial advisors in transactions and situations involving complex issues and conflicts of interest.

Brian Lane, a partner with Gibson, Dunn & Crutcher, is a corporate securities lawyer with extensive expertise in a wide range of SEC issues. He counsels companies on the most sophisticated corporate governance and regulatory issues under the federal securities laws. He is a nationally recognized expert in his field as an author, media commentator, and conference speaker. BTI Consulting Group named Mr. Lane as a 2019 and 2018 BTI Client Service All-Star among the lawyers “who truly stand out as delivering the absolute best client service”, and a 2014 BTI Client Service All-Star for delivering “outstanding legal skills enveloped in a rare combination of practical business knowledge, extraordinary attention to client needs and noteworthy responsiveness.” Mr. Lane ended a 16 year career with the Securities and Exchange Commission (“SEC”) as the Director of the Division of Corporation Finance where he supervised over 300 attorneys and accountants in all matters related to disclosure and accounting by public companies (e.g. M&A, capital raising, disclosure in periodic reports and proxy statements). In his practice, Mr. Lane advises a number of companies undergoing investigations relating to accounting and disclosure issues.

Ryan Murr is a partner in the San Francisco office of Gibson, Dunn & Crutcher, where he serves as a member of the firm’s Corporate Transactions Department, with a practice focused on representing leading companies and investors in the life sciences and technology space. Mr. Murr currently serves as a Co-Chair of the firm’s Life Sciences Practice Group and previously served as a member of the firm’s Executive Committee and Management Committee. Mr. Murr represents public and private companies and investors in the biotechnology, pharmaceutical, technology, medical device and diagnostics industries in connection with securities offerings and business combination transactions. In addition, Mr. Murr regularly serves as principal outside counsel for publicly traded companies and private venture-backed companies, advising management teams and boards of directors on corporate law matters, SEC reporting, corporate governance, licensing transactions, and mergers & acquisitions. Recognized by Chambers USA in the area of Life Sciences, clients describe Mr. Murr as “creative and smart” and someone who “gets the better of the other side.” Legal Media Group (Euromoney) has ranked Mr. Murr nationally as a “Star” in Life Sciences in the areas of Corporate, Licensing & Collaboration, Mergers & Acquisitions and Venture Capital. Mr. Murr has twice been nominated by Legal Media Group as “Finance & Transactional Attorney of the Year.”

Robyn E. Zolman is a partner in the Denver office of Gibson, Dunn & Crutcher and a member of the firm’s Capital Markets, Securities Regulation & Corporate Governance and Energy Practice Groups. Her practice is concentrated in securities regulation and capital markets transactions. Ms. Zolman represents clients in connection with public and private offerings of equity and debt securities, tender offers, exchange offers, consent solicitations and corporate restructurings. She also advises clients regarding securities regulation and disclosure issues and corporate governance matters, including Securities and Exchange Commission reporting requirements, stock exchange listing standards, director independence, board practices and operations, and insider trading compliance. She provides disclosure counsel to clients in a number of industries, including energy, telecommunications, homebuilding, consumer products, life sciences and biotechnology. In 2015, *Law360* selected Ms. Zolman as one of eight “Rising Star” capital markets attorneys under 40 to watch nationwide. She was named a Top Woman in Energy by the *Denver Business Journal* in 2015 and 2017-2020 and to its Who’s Who in Energy list in 2019, and was one of the *Denver Business Journal’s* 40 under 40 in 2017. Ms. Zolman was selected as a “Next Generation Lawyer in Capital Markets: Debt Offerings” by *The Legal 500 U.S.* in 2018-2020 and as a Top Lawyer: Securities by *5280 Magazine* in 2018-2020. Ms. Zolman was named a 2021 Lawyer of the Year for Securities/Capital Markets Law, Denver by *Best Lawyers in America®*.

Branden Berns is an associate in the San Francisco office of Gibson, Dunn & Crutcher, where he practices in the firm’s Corporate Transactions Practice Group. Mr. Berns advises

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clients in connection with a variety of financing transactions, including initial public and secondary equity offerings and investment grade, high yield and convertible debt offerings, as well as companies, private equity firms, boards of directors and special committees in connection with a wide variety of complex corporate transactions, including mergers and acquisitions, asset sales, spin-offs, joint ventures, private placements and leveraged buyouts. Mr. Berns also advises clients regarding securities regulation, SEC reporting requirements and corporate governance matters.

Related Capabilities

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