

Top 10 Practice Tips: At-the-Market Offerings

A Practical Guidance® Practice Note by Brian Hirshberg and Ana Estrada, Mayer Brown LLP



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along with the representations and warranties that may be included. Ongoing due diligence and reporting practices are also referenced, highlighting the operational aspects of maintaining an ATM program. Additionally, the document considers scenarios in which ATM offerings may be used in connection with selling stockholders.

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This practice note provides an overview of various procedural and contextual elements associated with at-the-market (ATM) offerings. It introduces the concept of ATM offerings and outlines the general framework within which they are conducted. The important roles of internal legal teams and external counsel in managing the documentation and regulatory aspects of these offerings are discussed. The document references eligibility considerations and regulatory classifications that may influence how an issuer approaches an ATM program. It also discusses the types of filings and disclosures that may be required in connection with such offerings. The involvement of sales agents is addressed, including how they may be engaged and the nature of their participation. The document touches on timing considerations, including how frequently an issuer may access the market and how that may affect procedural requirements. It also notes the importance of coordinating ATM offerings with other corporate activities. The types of agreements typically used in these offerings are mentioned,

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Brian Hirshberg represents US and foreign private issuers, sponsors, and investment banks in registered and unregistered securities offerings, including:

- Initial public offerings
- Follow-on offerings
- Private placements (including Rule 144A and PIPE transactions)
- At-the-market offerings
- Registered direct offerings
- Liability management transactions
- Preferred stock and debt offerings
- Secondary offerings on behalf of issuers in a variety of industries

Brian serves clients on specialty finance, real estate and real estate investment trusts (REITs), business development companies (BDCs), and life sciences company deals. He also assists public company clients with ongoing securities law compliance requirements, listing standards of the major US stock exchanges, SEC public reporting obligations, shareholder-related disputes, and governance matters.

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Ana Estrada is an associate at Mayer Brown Houston's office and a member of the Corporate & Securities practice. Her practice focuses on capital markets, mergers and acquisitions, commercial transactions and corporate governance matters.

Ana represents issuers, investment banks/financial intermediaries and investors in financing transactions, including, follow-on offerings, private placements (including PIPE transactions), at-the-market offerings, preferred stock and debt offerings. She also represents sellers and purchasers in mergers and stock and asset acquisitions throughout the United States and Latin America. Ana has experience advising public and private companies and private equity portfolio companies in multi-state and cross-border transactions.

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