Capital Markets
Alert

August 12, 2026

Equity Markets and Balance Sheet Management: Weighing ATM Offerings, Registered Direct Offerings and Debt-for-Equity Exchanges

Using Capital Markets Strategically to Manage Leverage, Liquidity and Optionality

By Michael Stein, Michael Hickey, Alex Lynch, Frank Adams and Michael Cremers

A wave of near-term debt maturities, persistent covenant pressure, and a financing market that rewards speed and certainty over marketed processes have pushed balance sheet management to the top of the agenda for management and boards of highly levered companies. For companies navigating this environment, the equity capital markets offer a variety of means of raising new capital, including some effective but less frequently used alternatives. Used deliberately, they are balance sheet management tools in their own right, capable of improving liquidity, reducing leverage and strengthening a company's position in creditor negotiations.

Three equity financing techniques are particularly well suited to these objectives, each addressing a different balance sheet need. At-the-market programs (ATMs) provide flexibility and low cost of capital, allowing companies to raise capital incrementally over time at prevailing market prices. Registered direct offerings trade some of that pricing efficiency for confidentiality and execution certainty, raising committed capital in a single negotiated transaction with terms that can be agreed upon before any public announcement. Debt-for-equity exchanges reduce leverage directly, retiring outstanding debt without requiring new cash. Together, these tools give public companies a range of options for managing liquidity, leverage and refinancing risk as financing needs evolve.

Although each technique carries distinct legal and commercial considerations, all three can provide more targeted alternatives to a traditional marketed equity offering. The companies that use them most effectively typically understand their advantages, and their limitations, before the need to use them arises, and that premium on preparation may soon apply to a much larger group of companies that are facing liquidity needs as debt maturities increase in the next 18-24 months. As discussed below, currently proposed SEC reforms would substantially expand Form S-3 shelf eligibility, extending access to ATMs, registered direct offerings and other registered financing alternatives to a broader range of companies.

At-the-Market Programs

An ATM program allows a company to sell shares through a sales agent into the open market over time, in amounts and at times determined by the company. Unlike a traditional follow-on offering, there is no single marketed transaction, no fixed offering price and no commitment to raise a specified amount of capital. Instead, the company can access the market opportunistically by selling shares at prevailing market prices.

The principal advantages of an ATM are flexibility and price. Because shares are sold at prevailing market prices, the company avoids the discount typically required to sell a large block of stock in a single transaction. For a company with time on its side weighing a sizable equity raise at a meaningful discount in a single day against the same raise at market prices over a period of weeks, the ATM economics can be compelling. Control is the other draw. Because the company determines when and how much stock to sell, it can suspend or slow sales during periods when the share price is depressed or when it possesses material nonpublic information, and resume selling when conditions improve. That flexibility distinguishes an ATM from a traditional marketed offering, where pricing and execution occur in a single public transaction, typically at a discount. Selling into the market through a sales agent also avoids the public marketing process that accompanies a traditional offering. With no roadshow or management presentation to prospective investors, the company can access capital without the extensive investor engagement and scrutiny typically associated with a marketed transaction.

Although setting up an ATM requires many of the same upfront workstreams, including negotiating the sales agency agreement, conducting due diligence and delivering legal opinions and comfort letters, those costs are incurred once when the program is established and refreshed periodically (typically quarterly) thereafter. In addition, sales agent commissions typically run 1% to 3% of gross proceeds, compared with 3% to 7% for underwritten and registered direct offerings (before taking into account any discount to the market price), making an ATM a cost-effective financing tool for companies that expect to access the capital markets on an ongoing basis.

For many companies, the case for an ATM is as much about optionality as about any particular financing need. An ATM program costs little to maintain relative to the flexibility it provides, so companies can put programs in place before a specific need arises, whether to catch favorable trading windows, prefund an acquisition, or help hitting leverage targets without announcing a new equity raise.

This flexibility and at-market pricing make an ATM an efficient way to raise capital incrementally. The principal tradeoff is speed. Because companies generally limit daily sales to a modest percentage of average daily trading volume, a significant capital raise may require weeks or months rather than an afternoon. That constraint has eased somewhat in recent years, with trading volumes and volatility up over the last couple of years, companies can often complete larger raises in less time than was historically the case. Another tradeoff is perception (so-called “overhang”). Disclosure of an active program or newly authorized ATM capacity can itself create an overhang that pressures the stock. That is, the market can pressure the price of the stock downwards in anticipation of the company’s sale and/or effectively “price in” the full amount of the dilution the ATM would cause. These dynamics can occur even during periods when the company is not actively selling, and are worth weighing against the benefits of standing access. A third tradeoff is allocation. A marketed offering gives the company control over where shares are placed, allowing it to direct allocations to long-term holders, and, for companies newer to the market, brings marketing and visibility benefits. A fourth tradeoff is market risk. A single sale transaction provides price certainty, whereas selling over time carries the risk the company could be selling at lower prices. Companies that prioritize price certainty or the allocation and marketing benefits may still prefer a marketed transaction; companies focused on proceeds increasingly do not.

Mechanically, an ATM is a continuous offering conducted under Rule 415(a)(4) of the Securities Act, which defines an “at-the-market offering” as an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price. Once established, shares are sold pursuant to an effective Form S-3 shelf registration statement and a prospectus supplement that remains in place for the life of the program, rather than through a separate registration statement or prospectus for each issuance. To establish the program, the company enters into a sales agency agreement with one or more broker-dealers and files a prospectus supplement and a Form 8-K attaching the agreement. Thereafter, the program is maintained through customary bring-down due diligence, legal opinions, comfort letters and officer's certificates, with aggregate sales disclosed in the company's periodic Exchange Act reports.

Although an ATM provides considerable flexibility, its use is subject to a number of securities law considerations. Blackout periods around earnings, material nonpublic information, and other strategic transactions can all constrain when an ATM can be used. An active program also demands ongoing compliance attention. Because the company may be considered to be engaged in a distribution whenever its sales agent is selling shares, Regulation M may impose restrictions on company repurchases and other activities that could be viewed as conditioning the market. As a result, press releases, investor presentations and other public communications often must be vetted and coordinated with active sales windows rather than managed independently.

For companies under stress, an ATM offers an inexpensive source of incremental runway and a way to monetize trading liquidity as a corporate asset. Practically, for these companies, the principal limitation is informational rather than structural. Companies engaged in restructuring negotiations or discussions with creditors frequently possess material nonpublic information, requiring sales under the program to be suspended until the information is publicly disclosed or otherwise ceases to be material. Companies can often sequence ATM sales around cleansing disclosures and negotiation milestones rather than assuming continuous access.

Registered Direct Offerings

A registered direct offering is a negotiated sale of registered shares to one or a small number of institutional investors, typically at a negotiated discount to the prevailing market price. Where an ATM "drips" shares into the market over time, a registered direct offering raises capital in a single negotiated financing. Investors agree to common terms, but each signs its own purchase agreement (or a common agreement signed by all) and closes its own portion of the offering concurrently with the others. Once investors have been identified and pricing agreed, the transaction can generally be priced and closed within days. Like an ATM, a registered direct offering generally requires an effective shelf registration statement (typically on Form S-3 for U.S. domestic companies) and the company's continued eligibility to use that shelf.

The principal advantages of a registered direct offering are confidentiality and certainty. Discussions with prospective investors can generally proceed confidentially, allowing the company to negotiate the transaction before publicly announcing it. Structured properly, the offering typically is not disclosed until pricing, reducing the risk that the market reacts negatively before the company has secured committed capital. That can be particularly valuable for companies facing a near-term financing need, an approaching debt maturity, or a compressed execution timeline. Confidentiality also protects against the risk of a failed offering. A company that is not confident an offering can be completed on acceptable terms can test investor appetite privately and, if commitments fall short, quietly abandon the process. By contrast, a publicly announced offering that is later pulled or downsized can damage market credibility and pressure the stock.

The principal tradeoff is pricing. Registered direct offerings are faster and more certain than ATMs, but investors expect compensation that reflects both the speed of execution and the concentrated nature of the investment. As a result, registered direct offerings typically are priced at a more significant discount to market than, for example, a marketed follow-on offering. Because investors receive freely tradable securities, however, that discount generally remains smaller than in a private investment in public equity (PIPE), where investors receive restricted securities. Moreover, that compensation is not always limited to a discount to market. In more stressed situations, investors may also expect equity-linked sweeteners, such as warrant coverage, which increase the effective cost of the financing and should be modeled as part of any comparison against a plain discount.

Investor composition presents another important consideration. Depending on the transaction, registered direct offerings may attract liquidity providers with short investment horizons. Post-closing sales or hedging activity by those investors can contribute to near-term trading pressure on the stock. Investors may also condition their participation on lock-up agreements from management and directors, restricting insider sales for a negotiated period following closing.

For large companies, the calculus often depends on the strategic context. A company addressing an upcoming debt maturity, heading into a blackout period or seeking to improve leverage ahead of a refinancing may find that certainty of execution outweighs the pricing concession. The ability to act quickly and without pre-pricing public disclosure can itself be a source of value.

Like an ATM, a registered direct offering is typically conducted off an effective Form S-3 shelf registration statement. Unlike a broadly marketed follow-on offering, however, the company sells registered shares to a limited number of identified institutional investors, typically involving a placement agent and pursuant to a securities purchase agreement rather than an underwriting agreement. Depending on the structure, a registered direct offering may involve customary due diligence, legal opinions and comfort letters, but where the transaction is negotiated directly with investors, particularly without a placement agent, a company can often forgo some or all of these deliverables, avoiding the costly and time-consuming diligence procedures required for a broadly marketed offering. Execution is also generally faster because pricing is negotiated directly with the participating investors rather than established through a broader marketing and bookbuilding process.

Shareholder approval thresholds also require careful planning. Under Nasdaq Listing Rule 5635(d) and the NYSE's comparable 20% rule, Section 312.03(c) of the NYSE Listed Company Manual, shareholder approval may be required for certain discounted issuances exceeding 20% of the company's outstanding common stock or voting power. Because obtaining shareholder approval can add weeks to the timetable (and may raise its own challenges in convincing existing equity to approve), these issues should be analyzed before negotiations begin rather than after pricing has been discussed.

From a cost perspective, a registered direct offering is generally more expensive than an ATM. Placement agent fees are typically higher than ATM sales commissions, and each transaction often requires a separate diligence process, securities purchase agreement, legal opinions, comfort letters and closing mechanics.

For companies under financial pressure, a registered direct offering can provide committed capital on a timeline that would be difficult to replicate through an ATM. Because pricing and investor commitments are typically secured before the transaction is publicly announced, the company can obtain financing certainty before the market reacts to the capital raise. With financing secured, the company is better positioned to evaluate subsequent balance sheet initiatives, including debt repurchases and debt-for-equity exchanges, from a position of greater certainty.

Debt-for-Equity Exchanges

A debt-for-equity exchange allows a company to retire outstanding debt in exchange for newly issued equity, reducing leverage without a cash outlay. Unlike an ATM or registered direct offering, a debt-for-equity exchange does not raise new capital; instead, it occupies a different place on the balance sheet management spectrum. A well-structured exchange can deliver immediate deleveraging while avoiding some of the dilution signaling concerns that can accompany a public equity raise (because the issuance of equity is accompanied by a reduction of debt, which is often significant for companies considering this alternative).

The principal advantages of a debt-for-equity exchange are confidentiality, execution flexibility and immediate deleveraging. Because the transaction is negotiated directly with existing creditors rather than marketed publicly, negotiations generally can occur on a confidential basis, provided the exchange remains a privately negotiated transaction with a limited number of holders. Although the completed transaction may require public disclosure, particularly where the size of the equity issuance or other aspects of the transaction give rise to disclosure obligations, those disclosures generally are not required until after the parties have reached agreement. Depending on the structure, the exchange may be completed without Securities Act registration, allowing the company to avoid the time, expense and public disclosure associated with a registered offering. In some cases, participating holders also may receive shares that are immediately eligible for resale without the need for a resale registration statement. Because the exchange retires outstanding debt rather than simply adding cash to the balance sheet, it can improve leverage in a single step.

The principal tradeoff is pricing. While creditors assume a greater credit risk in taking equity in exchange for a higher ranking debt claim, the equity is typically issued at a negotiated discount to the prevailing market price of the equity. That pricing concession may be partially offset by lower execution costs. For example, exchanges frequently can be conducted without engaging a dealer manager or other broker-dealer, eliminating the fees and commissions associated with an intermediated offering. Preserving the benefits of a privately negotiated exchange also requires careful attention to tender offer considerations: extending substantially the same offer broadly across a bondholder base may constitute a tender offer subject to Section 14(e) of the Exchange Act and Regulation 14E, triggering minimum offering periods and other procedural requirements. Another tradeoff is the impact on equity share price. Oftentimes holders of debt that exchange into equity elect to quickly sell to monetize the gain as a result of exchanging at a discount to the market price. This fact, together with the disclosure about dilution, can put downward pressure on the stock price.

A company’s existing debt covenants and any limitations therein will also need to be analyzed. Negative covenants restricting debt repurchases or exchanges, most-favored-nation or pro rata provisions running to non-participating holders, and consent solicitation requirements can all constrain the transaction and affect deal structure and timeline. These covenant limitations should be diligenced upfront alongside the securities law analysis.

For companies seeking to strengthen their balance sheets, a debt-for-equity exchange demonstrates a commitment to deleveraging rather than simply raising additional capital. Because the equity is issued to retire debt, the resulting dilution is directly linked to reducing leverage, which may be viewed more favorably than a cash equity issuance undertaken for general corporate purposes.

Shareholder approval presents a distinct challenge here as well. Because a debt-for-equity exchange is not a cash sale, the Minimum Price exception to the stock exchanges’ 20% shareholder approval rules generally is unavailable. As a result, a significant equitization may require shareholder approval unless the company can rely on the financial viability exception under Nasdaq Rule 5635(f) or Section 312.05 of the NYSE Listed Company Manual, which permits issuances without shareholder approval where delaying the transaction to obtain a vote would seriously jeopardize the company’s financial viability, subject to audit committee approval and advance notice to shareholders. Authorized share capacity raises a related issue. A company will need to confirm that it has a sufficient number of authorized but unissued shares to cover the equity issuance, a requirement that applies equally to ATM programs and registered direct offerings. Where existing authorized share capacity falls short, increasing the authorized share count generally requires a charter amendment approved by shareholders, which can add meaningful time to the transaction and may present its own challenges in obtaining shareholder support.

Comparing the Three Tools

Each technique occupies a distinct place on the balance sheet management spectrum. The table below summarizes the key tradeoffs at a glance.

	At-the-Market Program	Registered Direct Offering	Debt-for-Equity Exchange
New capital raised	Yes – incremental	Yes – single close	No – debt retired for stock
Speed to execution	Slow (weeks to months)	Fast (days)	Fast (days)
Confidentiality pre-announcement	No – announced publicly at launch of the program	Yes – can be structured to avoid public announcement pre-pricing	Yes – can be structured to avoid public announcement pre-pricing
Typical cost	Lowest – modest agent commissions ranging 1-3% of gross proceeds	Moderate to high – placement fees ranging 4-7% plus discount to market price	Low to moderate – often no intermediary fees; discount to market price
Key constraint	Market overhang; market risk; MNPI blackouts	Pricing discount; 20% shareholder-approval rules	Pricing discount; covenant limitations; 20% shareholder-approval rules; tender-offer rules
Best suited when	Ongoing, opportunistic capital needs	A defined near-term need (maturity, covenant step-down)	Leverage itself is the problem, not liquidity

Proposed SEC Reforms

The usefulness of ATM programs and registered direct offerings as balance sheet management tools depends heavily on access to an effective shelf registration statement. A shelf registration statement allows a company to register securities in advance and access the capital markets over time without filing a new registration statement for each financing. Form S-3 eligibility, however, must be maintained on an ongoing basis. Under the current rules, a company generally must remain current in its Exchange Act reporting, and certain material defaults on debt or long-term lease obligations can also result in the loss of Form S-3 eligibility. Because companies under financial stress are more likely to encounter these issues, maintaining shelf eligibility should itself be viewed as an important component of proactive balance sheet management.

On May 19, 2026, the SEC proposed a package of reforms, the Registered Offering Reform Proposal (Release Nos. 33-11418 and 34-105513), that would substantially expand Form S-3 eligibility by eliminating the current one-year seasoning requirement, the $75 million public float (“baby shelf”) threshold, and the existing eligibility restrictions relating to certain material debt and long-term lease defaults, while retaining core reporting-company and other qualitative eligibility requirements. The proposal would also replace the well-known seasoned issuer (WKSI) framework for domestic companies with a new tiered system under which registration and communication benefits currently reserved for well-known seasoned issuers would be extended to a broader range of issuers, with the scope of those benefits varying by tier. Under the proposed framework, Eligible Listed Issuers (ELIs) would receive expanded testing-the-waters and other communications accommodations. Seasoned Eligible Listed Issuers (SELIs) would receive those benefits plus automatically effective shelf registration statements, the ability to register unspecified amounts of securities with filing fees paid on a pay-as-you-go basis, and the other benefits currently associated with WKSI status. The practical effect would be substantial: the SEC estimates that approximately 74% of Exchange Act reporting companies would have qualified for automatic shelf registration in 2024 under the proposed framework, compared with approximately 36% under the current WKSI standard. The comment period remains open, and the timing and final content of any adopted rule remain uncertain, but if adopted substantially as proposed, the reforms would preserve access to the capital markets for many companies that today lose it precisely when liquidity becomes constrained.

For companies facing liquidity constraints, covenant pressure or upcoming debt maturities, the implications could be significant. Broader shelf access would expand the ability to raise capital through ATMs and registered direct offerings, while preserving the flexibility to combine those financings with debt-for-equity exchanges and other liability management transactions. In that respect, the proposed reforms are more than a modernization of the securities offering rules; they would also expand the balance sheet management toolkit available to public companies.

* * *

Capital Markets Alert is published by the Capital Markets practice of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1 212 310 8000, www.weil.com.

If you have questions concerning the contents of this alert, or would like more information about Weil's Capital Markets practice, please speak to your regular contact at Weil or to authors:

Authors

Michael Stein (NY)	View Bio	michael.stein@weil.com	+1 212 310 8135
Michael Hickey (NY)	View Bio	michael.hickey@weil.com	+1 212 310 8050
Alex Lynch (NY)	View Bio	alex.lynch@weil.com	+1 212 310 8971
Frank Adams (NY)	View Bio	frank.adams@weil.com	+1 212 310 8905
Michael Cremers (NY)	View Bio	michael.cremers@weil.com	+1 212 310 8798