

Growth Capital Investor

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Market Spasms Put ATM Issuers on Alert

by Joe Gose

The stock market's sizable swings over the last several weeks portend a slow down in deal making in what traditionally has been the strong quarter for emerging growth company private placements.

From Sept. 15 to Oct. 15, the Volatility S&P 500 index skyrocketed nearly 100% and in mid-October was just a couple of points shy of its 52-week high of 31. That coincided with a 6.8% drop in the S&P 500 and a 7% decline in the Russell 2000 index.

Several emerging growth companies have postponed initial public offerings because of the uncertain conditions, including **Dance Biopharm**, **Neuro-Sigma**, **Vantage Energy** and **Good Technology**, and issuers that managed to complete deals over the last 30 days in many cases accepted a lower price than expected or scaled back the number of shares offered.

Growth companies issuing equity private placements (EPPs) – generally stock or equity-linked debt sold by companies that have market capitalizations from \$10 million to \$1 billion – executed only 15 deals to raise a total of \$172 million in the first half of October, according to PlacementTracker, a service of Sagient Research. That portends a substantial deceleration in deals as the end of the year approaches: Issuers completed roughly 55 EPPs a month, on average, over the first three quarters of 2014, which generated a total of \$9.3 billion in proceeds.

See *ATM* on page 12

Growth Equity Private Placement Activity



Source: PlacementTracker, a service of Sagient Research.
 *October data thru 10/17/14.

Accredited Investor Status: Will the Sparks to Redefine It Finally Ignite?

by Judy Radler Cohen

If you're an accredited investor or an advisor to that community take note – the Securities and Exchange Commission's demarcation of your status is poised change very soon.

On Oct. 9, the Securities and Exchange Commission convened a meeting of the Investor Advisory Committee, and topics included what could signal a radical shift for the accredited investor community.

On the buy side, on the investment advisory front and in the private placement universe, the income and net-worth threshold definition of an accredited investor qualified to invest in unregistered Reg D offerings has stood since 1982.

But the IAC's recent report recommends fundamentally alter that

See *Accredited* on page 13

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Investors Battle Healthcare Equipment Issuer to Convert Debt

by Teri Buhl

A company that sells medical equipment is refusing to honor a contract with a group of investors who are trying to exercise their cashless warrants for unrestricted stock.

New York based **Millennium Healthcare (MHCC)** borrowed over \$600,000 dollars in a series of convertible debt offerings. But when the loans came due this summer the company refused to convert the shares to free trading stock or pay the quarterly cash dividend.

Emails show on July 30, lawyers for **Aquafina Design LLC**, **LMark Holding**, and **Cypress Drive** tried to negotiate a settlement with the company's outside counsel Michael Finkelstein of **Finkelstein & Feil PC**. After the investors warned the company they were going to sue a sudden surge in trading occurred; flooding the market and driving the price down by 33%, according to a lawsuit filed in New York State Supreme Court.

Legal filings show LMark and Cypress are investors in Aquafina which was the original LLC to loan Millennium money. Business records show all three companies have the same Florida address. On March 30, 2012, Millennium issued to Aquafina 110,000 shares of series D preferred shares, a quarterly dividend payment at 12 percent, and 110,000 detachable cashless warrants. Each warrant gave Aquafina the right to purchase 30 common shares (for a total of 3,300,000 common shares) on a cashless basis at \$.50 per preferred share expiring on April 1, 2014.

But Millennium quickly negotiated a change to the loan terms for a lower dividend payment in return for a much higher shares conversion rate. On June 1, 2013, Aquafina agreed to a deal that exposed the investors to the potential for significant share dilution and price deflation. The Series D preferred shares were retired and Series E preferred shares were issued with an 8% quarterly dividend rate and the conversion rate for the preferred shares changed from 30:1 to 65:1. The lawsuit, filed by Aquafina, claims the detachable cashless warrants were not part of the new deal and thus was never retired in the Series D to E share exchange.

In a response to the Aquafina lawsuit the company claims the cashless warrants were retired and thus can't be converted to unrestricted shares. But in SEC documents filed on July 25th, 2013 the company states the warrants are issued and outstanding and doesn't say in any follow on SEC filings that the warrants in the D series were retired.

The New York state court litigation is not the only lawsuit filed by investors. On August 11, 2014, LMark Holding and Cypress Drive filed a complaint in the U.S. District Court Eastern District of New York against Millennium Healthcare for breach of contract. The federal lawsuit alleges that LMark and Cypress sought to convert their respective Series E Preferred Shares and the company refused to honor their requests. The complaint asks that the court order the company to issue 1,950,000 unrestricted shares of its common stock to LMark and Cypress; the investors are seeking an additional \$1,000,000 or more in damages.

The investors' attorney Martin Russo, of **Gusrae Kaplan Nusbaum PLLC**, told *Growth Capital Investor* since the lawsuits have been filed the company did make a cash dividend payment to LMark and Cypress. But the millions of shares at the center of the litigation are still restricted.

Millennium would not respond to phone calls and emails from *Growth Capital Investor*. The company's SEC filing denies these allegations and says the company intends to vigorously defend itself against the lawsuits.

At its peak Millennium traded at \$1.65 on November 30, 2012. When the Series D deal was completed, in March 2013, the shares traded near \$.80. Millennium stated in its annual SEC filing, the amount of stock given to "consultants" rose from 2011 to 2012 by over 1,200%. An unregistered investment professional named Joe Salvani, who Forbes Magazine once called "The Master Tout", is one of the paid consultants for Millennium, according to investors who spoke to *Growth Capital Investor*.

Salvani told another emerging growth stock CEO, Robert Ladd, he was given shares by Millennium to help raise capital and promote the stock but Millennium has since "frozen" his stock. This usually means the company is not allowing restricted shares granted to the consultant to become free

trading shares. Contracts and emails seen by *Growth Capital Investor* show Salvani was given 2,506,667 million shares in May 2013 in a small cap stock called **CodeSmart (ITEN)** for similar consulting services. CodeSmart was called a pump and dump stock scheme by the Department of Justice when officials arrested the company's CEO on criminal charges this summer.

Salvani has settled past securities violations with the Securities and Exchange Commission for his alleged role in misleading investors in an internet stock. He currently is not registered with any regulatory agency.

On October 6, 2014, Millennium was trading for 48 cents; at press time the stock has slide to 25 cents. Aquafina's attorney Martin Russo told *Growth Capital Investor* his clients are anxious to move litigation along. When asked if he thought company insiders were selling the stock since the lawsuit started he said, "The only thing that was transparent was the volume and the price decline since litigation started. One may assume that the decline in price was the result of greater supply than demand. But we didn't see any specific trading. The important fact from our perspective was that there was increased liquidity and the price might continue go down making the shares which should have been issued less valuable. For this reason we want to move the case along." **X**

Growth Capital News in Brief

FINRA Halts OTC Trading for the Third Time in a Year

OTC Markets experienced technical issues that forced Finra to halt trading of OTC securities on Oct. 17, the third time in 12 months that the over-the-counter market has been shut down by the regulator over quotation system issues.

Trading was halted for almost two hours beginning at 11:05 am Eastern time, and resuming at 1:00 pm. OTC Markets said the halt was ordered after the system "began experiencing delays in its ability to update quotes." Several penny stock traders posted messages on Internet chat boards confirming the outage and noting that preceding the halt OTC stock quotes had become erratic and volatile.

The halt was the third in 12 months for OTC Group, which operates three over-the-counter quotation markets: OTCPink, the former "Pink Sheets" of non-listed, non-reporting companies; OTCQB, a "venture-stage" market of reporting companies, and OTCQX, a market of higher-quality reporting companies and foreign issuers.



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Last November, the OTC market was halted for five hours due to “system connectivity” issues. A month later the market experienced another brief technical outage that halted trading. OTC Markets said it was investigating the cause of the recent technical issues and was looking to improve and diversify its infrastructure to avoid additional outages.

After Merger, Former Keating Pre-IPO Fund Drops Equity Strategy

Just months after merging with another business development company in an attempt to lower its expense ratio, **BDCA Venture (BDCV)**, the former pre-IPO business development company known as Keating Capital, has dropped its all-equity late-stage venture investment strategy in favor of a more traditional venture debt focus.

Thus ends an experiment in “public venture capital” that had seen some success with stakes in **LifeLock (LOCK)**, **TrueCar (TRUE)**, and **Millennial Media (MM)** but came under attack from analysts who criticized the fund manager’s

fees and incentive structure, claiming that they were both too high and were tied to book values rather than realized gains.

Going forward, BDCA Venture will “maximize total return by generating current income and, to a lesser extent, capital appreciation” by primarily lending with warrants to emerging growth companies that are backed by venture capital firms. In other words, it will act like every other BDC.

The company will continue to sell off its \$50 million portfolio of pre-IPO company holdings, including such companies as **Livescribe**, **Suniva**, **MBA Polymers**, **Zoosk**, **SilkRoad**, and **Centrify Corp.** In August, BDCA sold its stake in **Kabam** to the **SharesPost 100 Fund**, another public pre-IPO investment fund.

Growth Capital Deals of Note

Northwest Biotherapeutics Gets \$11.5 Million From Existing Investor

Northwest Biotherapeutics (NWBO) will proceed with an existing institutional shareholder for the purchase and sale of approximately \$11.5 million of new common stock at \$5.05/share.

The company will modify specific existing contractual over-allotment rights held by the investor for the purchase of up to \$17 million of common stock for an exercise period of one year. The existing contractual purchase rights will be put into the form of a warrant for such stock purchases, with a reduction of the existing purchase rights from approximately \$17 million to approximately \$14.1 million, with six months of the existing exercise period changed to a restricted period when the warrant cannot be exercised, followed by a two and a half year exercise period, and with a warrant exercise price of \$5.15 per share. The placement was expected to close on or before October 10. H.C. Wainwright & Co. acted as the exclusive agent on the transaction.

Recently, an experimental Northwest Biotherapeutics drug for brain tumors was the first medicine selected for fast-track designation under a new early access scheme in Britain. There was a report that Northwest Biotherapeutics misrepresented clinical trial data - that the survival benefit of DCVax-L shown in Phase I trials was overstated by NWBO. Key findings from DCVax-L Phase I trials are ignored in company presentations, according to the report.

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Anacor Pharmaceuticals Raises \$12M in Conv Debt from Venrock Partners

Anacor Pharmaceuticals Inc. (ANAC) announced that it has raised \$12,000,000 in a Convertible Debentures transaction. The fixed conversion price of the Convertible Debentures is per share, an approximate to the market price (\$22.56) of ANAC at deal announcement. The investor was Venrock Partners, L.P.

This Placement is part of a \$82 million financing. The other \$70 million was funded in the form of Convertible Senior Notes sold pursuant to Rule 144-A on similar terms.

Synthetic Biologics Raises \$20.7M In RDO from Great Point Partners

Synthetic Biologics (SYN) announced that it has raised \$20,727,000 in a Registered Direct transaction. The common stock was sold at \$1.47 per share, an approximate 4% premium to the market price (\$1.41) of SYN at deal announcement. A series of 7,050,000 60-Month Warrants with an exercise price of \$1.75 per share (24.11% premium) was issued to the investors in this transaction. William Blair & Company, LLC acted as the exclusive agent on the transaction. The lead investor was Great Point Partners, LLC. The Placement is subject to customary closing conditions and was expected to close by Oct. 15.

Broadway Financial Raises \$9.7M from BlackTorch Capital

Broadway Financial Corporation (BYFC) announced that it has raised \$9,712,504 in a Common Stock transaction. The common stock was sold at \$1.10 per share, an approximate to the market price (\$1.65) of BYFC at deal announcement. BlackTorch Capital, LLC acted as financial advisor on the transaction. The Investors include officers of the Company and members of the board of directors and Gapstow Capital Partners. Issuer counsel was Arnold & Porter. The transaction closed on October 16.

EPIRUS Biopharmaceuticals Raises \$7.5M in Equity-linked Notes from Hercules Tech Growth

EPIRUS Biopharmaceuticals, Inc. (EPRS) announced that it has raised \$7,500,000 in a Non-Convertible Term Notes transaction. The securities accrue interest at a rate of 7.95%. A series of 62,194 60-Month Warrants with an exercise price of \$7.01 per share (8.2% premium) was issued

to the investors in this transaction. The investor was Hercules Technology Growth Capital, Inc. (NASDAQ: HTGC). Issuer counsel was Latham & Watkins, LLP.

Note that this Placement will fund in tranches. The first tranche of \$7.5 million funded on Oct. 1 and the second tranche of \$7.5 million may fund at any time between September 30 and May 30, 2015. on Oct. 1 and the second tranche of \$7.5 million may fund at any time between September 30 and May 30, 2015.

BioTime Raises \$29.4M in RDO at 5% Discount from Broadwood Partners

BioTime, Inc. (BTX) announced that it has raised \$29,425,961 in a Registered Direct transaction. The common stock was sold at \$3.12 per share, an approximate 5% discount to the market price (\$3.29) of BTX at deal announcement. The lead investor was Broadwood Partners, L.P. Issuer counsel was Thompson, Welch, Soroko & Gilbert LLP.

New Source Energy Partners Announces \$50M ATM Program via BMO Capital Markets

New Source Energy Partners LP (NSLP) announced that it has secured up to \$50,000,000 in an ATM (At the Market) transaction. The purchase price is the prevailing market price at the time of the Draw Down Notice. BMO Capital Markets Corp. acted as the exclusive agent on the transaction. Placement Agent counsel was Latham & Watkins issuer counsel was Vinson & Elkins. The agreement was reached on October 3.

Solar Power Raises \$43.8M at 9% Discount From Smart Range and Signet Worldwide

On October 07, Solar Power, Inc. (SOPW) announced that it has raised \$43,800,510 in a Common Stock transaction. The common stock was sold at \$1.38 per share, an approximate 9% discount to the market price (\$1.52) of SOPW at deal announcement. The investors were Smart Range Investments Limited and Signet Worldwide.

KCAP Financial Raises \$25.77M Overnight via JMP Securities

On October 06, KCAP Financial, Inc. (KCAP) announced that it has raised \$25,770,000 in a CMPO/Overnight transaction. The common stock was sold at \$8.59 per share, the market price (\$8.59) of KCAP at deal announcement. JMP Securities LLC acted as the Sole Book-Runner on the

transaction. Underwriter counsel was Fried, Frank, Harris, Shriver & Jacobson and issuer counsel was Sutherland Asbill & Brennan, LLP.

Investview Raises \$1M Common Stock at 13% Premium

Investview, Inc. (INVU) announced that it has raised \$1,000,000 in a Common Stock transaction. The common stock was sold at \$1.00 per share, an approximate 13% premium to the market price (\$0.89) of INVU at deal announcement. A series of 1,000,000 60-Month Warrants with an exercise price of \$1.50 per share (69.3% premium) was issued to the investors in this transaction. The transaction will fund in tranches. The first tranche of \$1 million funded on 09/30 and the second tranche of \$475,000 was expected to fund shortly.

Cytori Therapeutics Raises \$13.5M in Conv Preferred at 9.89% Discount

Cytori Therapeutics, Inc. (CYTX) announced that it has raised \$13,500,000 in a Convertible Preferred Stock transaction. The fixed conversion price of the Convertible Preferred Stock is \$0.52 per share, an approximate 9.89% discount to the market price (\$0.58) of CYTX at deal announcement. A series of 25,961,540 60-Month Warrants with an exercise price of \$0.58 per share (0% premium) was issued to the investors in this transaction. Roth Capital Partners acted as Lead Agent and Maxim Group acted as Co-Agent on the transaction. Placement Agent counsel was Goodwin Procter and issuer counsel was DLA Piper. The transaction was expected to close by Oct. 13.

InterCloud Systems Raises \$4.3M at 28% Premium from 31 Group

InterCloud Systems (ICLD) announced that it has raised \$4,300,000 in a Common Stock transaction. The common stock was sold at \$5.00 per share, an approximate 28% premium to the market price (\$3.90) of ICLD at deal announcement. A series of 300,000 3-Month Warrants with an exercise price of \$5.00 per share (28.21% premium) was issued to the investors in this transaction. Aegis Capital Corporation acted as the exclusive agent on the transaction. The investor was 31 Group LLC. Issuer counsel was Pryor Cashman Sherman & Flynn and investor counsel was Greenberg Traurig. The agreement was reached on October 8.

DT Asia Investments SPAC Raises \$3.2M Concurrent with IPO from DeTiger Holdings, EarlyBird Capital

DT Asia Investments Limited (CADTU) announced that it has raised \$3,200,000 in a Common Stock transaction. The common stock was sold at \$10.00 per share. A series of 32,000 Warrants with an exercise price of \$12.00 per share was issued to the investors in this transaction. The investors were DeTiger Holdings Limited and EarlyBirdCapital. The Placement was conducted concurrently with the Company's Initial Public Offering.

Marathon Patent Group Raises \$5.5M in Conv Debt at 13.64% Premium

Marathon Patent Group, Inc. (MARA) announced that it has raised \$5,500,000 in a Convertible Notes transaction. The fixed conversion price of the Convertible Notes is \$15.00 per share, an approximate 13.64% premium to the market price (\$13.20) of MARA at deal announcement. A series of 128,333 Warrants with an exercise price of \$16.50 per share (25% premium) was issued to the investors in this transaction.

Next Fuel Raises \$1M Common Stock at 24% Premium

Next Fuel Inc. (NXFI) announced that it has raised \$1,000,800 in a Common Stock transaction. The common stock was sold at \$0.56 per share, an approximate 24% premium to the market price (\$0.45) of NXFI at deal announcement. The investors were individuals. The transaction closed on September 19.

Mopals Raises \$15M via Amarok Financial and Cabrillo Broker

Mopals.com, Inc. (PALS) announced that it has raised \$15,000,000 in a Common Stock transaction. Amarok Financial and Cabrillo Broker acted as agents on the transaction. Further details have yet to be disclosed.

Perpetual Industries Raises \$3.6M Common Stock

Perpetual Industries (PRPI) announced that it intends to raise \$3,600,000 in a Common Stock transaction. The common stock will be sold at \$0.75 per share.

ContraVir Pharmaceuticals Raises \$9M at 26% Discount

ContraVir Pharmaceuticals (CTRV) announced that it has raised \$9,000,000 in a Convertible Preferred Stock transaction. The fixed conversion price of the Convertible Preferred Stock is \$0.48 per share, an approximate 26.15% discount to the market price (\$0.65) of CTRV at deal announcement. The transaction closed on October 15.

Portage Biotech Raises \$2M at 29% Discount

Portage Biotech (PTGEF) announced that it has raised \$2,000,000 in a Common Stock transaction. The common stock was sold at \$0.10 per share, an approximate 29% discount to the market price (\$0.14) of PTGEF at deal announcement.

InSite Vision Raises \$2.4M at 6.45% Premium via Riverbank Capital Securities

InSite Vision (INSV) announced that it has raised \$2,381,667 in a Non-Convertible Senior Secured Notes

transaction. The securities accrue interest at a rate of 12%. A series of 2,053,169 60-Month Warrants with an exercise price of \$0.33 per share (6.45% premium) was issued to the investors in this transaction. Riverbank Capital Securities, Inc. acted as the exclusive agent on the transaction. This Placement funds in tranches. The first tranche of \$2.4 million funded on Oct. 9 and further tranches totaling \$12.6 million may fund by Oct. 9, 2016.

Towerstream Raises \$35M From Melody Capital Partners

Towerstream Corporation (TWER) announced that it has raised \$35,000,000 in a Non-Convertible Debentures transaction. The securities accrue interest at a rate of 12%. A series of 1,200,000 with an exercise price of \$0.01 per share (99.1% discount) were issued to the investors in this transaction. An additional series of 2,400,000 Warrants with an exercise price of \$1.26 per share (12.5% premium) were issued to the investors in this transaction. The investor was Melody Capital Partners, LP. via [PlacementTracker](#)

Empire Global Raises \$2.7M at 54% Premium

Empire Global Corporation (EMGL) announced that it has raised \$2,699,000 in a Common Stock transaction. The common stock was sold at \$1.00 per share, an approximate 54% premium to the market price (\$0.65) of EMGL at deal announcement. The transaction closed on October 16.

Agenus Secures \$150M ATM via MLV & Co.

Agenus (NASDAQ CM:AGEN) announced that it has secured up to \$150,000,000 in an ATM (At the Market) transaction. The purchase price is the prevailing market price at the time of the Draw Down Notice. MLV & Co. LLC acted as the exclusive agent on the transaction.

Ubiquity Raises \$11M at 76% Discount

Ubiquity (OTC BB:UBIQ) announced that it has raised \$11,115,064 in a Common Stock transaction. The common stock was sold at \$0.65 per share, an approximate 76% discount to the market price (\$2.73) of UBIQ at deal announcement. **X**



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Aggregate Market Activity - Year to Date through October 17

Unregistered Equity Private Placements - PIPEs and Reg S

Structure Type	Deals	\$ Raised
Common Stock	291	\$12,083,250,798
Convertible - Fixed	133	\$4,105,677,121
Non-Convertible Debt/Preferred Stock	60	\$1,498,731,641
Convertible - Floating	23	\$736,342,944
Convertible - Company Installment (Self-Amortizing)	12	\$60,059,801
Unknown Structure	8	\$130,099,609
Convertible - Reset	4	\$48,550,000
Convertible	3	\$13,650,000
Totals	534	\$18,676,361,914

Top Growth Equity Deals Past 30 Days	Industry	\$ Raised
Aerie Pharmaceuticals, Inc.	Biotechnology	\$125,000,000
Solar Power, Inc.	Electronic Equipment	\$48,250,800
Towerstream Corporation	Internet	\$35,000,000
Solar Power, Inc.	Electronic Equipment	\$25,007,400
Oncothyreon Inc.	Biotechnology	\$20,000,000
Ikanos Communications	Semiconductors	\$16,250,000
Mopals.com, Inc.	Media	\$15,000,000
NeoStem, Inc.	Healthcare Services	\$15,000,000
Cytori Therapeutics, Inc.	Pharmaceuticals	\$13,500,000
Argos Therapeutics, Inc.	Biotechnology	\$12,500,000

Registered Equity Private Placements - Registered Directs, CMPOs, ATMs, and Follow-Ons

Structure Type	Deals	\$ Raised
Common Stock - CMPO/Overnight Offering	102	\$4,079,289,466
ATM (At the Market) Offering	96	\$2,083,118,399
Common Stock - Shelf Sale (Registered Direct)	86	\$1,602,178,399
Structured Equity Line	59	\$435,190,872
Public Offering/Follow-On	36	\$3,098,470,321
Common Stock - Rights Offering	19	\$3,041,087,956
Totals	364	\$13,880,904,500

Top Growth Equity Deals Past 30 Days	Industry	\$ Raised
Ikanos Communications	Semiconductors	\$59,419,284
Aratana Therapeutics Inc.	Pharmaceuticals	\$47,868,750
Aastrom Biosciences, Inc.	Healthcare Products	\$40,249,998
Fidus Investment Corporation	Venture Capital	\$34,000,000
BioTime, Inc.	Biotechnology	\$29,425,962
KCAP Financial, Inc.	Investment Companies	\$25,770,000
Synthetic Biologics, Inc.	Biotechnology	\$20,727,000
Oncothyreon Inc.	Biotechnology	\$20,000,000
Quest Resource Holding Corporation	Environmental Control	\$18,000,000
Assembly Biosciences Inc.	Biotechnology	\$15,750,360

International Growth Equity Private Placements

Structure Type	Deals	\$ Raised
Common Stock Count	467	\$7,819,767,976
Common Stock - CMPO/Overnight Offering Count	1	\$6,073,205
Common Stock - Rights Offering Count	88	\$4,214,334,169
Convertible Count	3	\$39,286,178
Convertible - Fixed Count	34	\$819,062,242
Convertible - Floating Count	1	\$8,874,511
Convertible - Reset Count	2	\$3,697,820
Non-Convertible Debt/Preferred Stock Count	2	\$22,836,589
Public Offering/Follow-On Count	1	\$3,842,572
Total	599	\$12,937,775,261

Top Growth Equity Deals Past 30 Days	Industry	\$ Raised
Buru Energy Limited	Oil & Gas Services	\$25,266,536
Elders Limited	Agriculture	\$9,313,388
OTOC Limited	Engineering & Const.	\$8,957,610
DuSolo Fertilizers Inc.	Food	\$6,093,222
Columbus Gold Corporation	Metals & Mining	\$4,841,109
Bulletproof Group Limited	Metals & Mining	\$3,888,638
Jericho Oil Corp	Metals & Mining	\$3,790,683
Mission Ready Services Inc.	Metals & Mining	\$3,586,816
UEX Corporation	Metals & Mining	\$2,778,510
Mosman Oil and Gas Limited	Oil & Gas	\$2,132,718

Source: PlacementTracker, a service of Sagient Research, Inc. EPP market activity data excludes all placements of less than \$1 million, placements via 144-A Offerings or Equity Lines of Credit, and transactions conducted by foreign issuers that trade in the U.S. on the Pink Sheets. Data is for closed and definitive agreement transactions reported as of 10/17/14.

Growth Capital Investor

Best Deal Performance YTD - Unregistered Growth Capital EPPs

Company	Symbol	Closing Date	Gross Proceeds	Stock Price Change Post Announce	3-day Perf. Post-Announce	1-week Perf. Post-Announce	Placement Agent
MYOS Corp.	MYOS	1/28	\$4,735,002	5395%	-5%	10%	Brean Capital
Midwest Energy Emissions	MEEC	8/15	\$10,000,000	2340%	N/A	N/A	Drexel Hamilton
Ascent Solar Technologies	ASTI	7/31	\$3,960,000	511%	-6%	-6%	None
Solar Power	SOPW	5/6	\$21,750,000	467%	-2%	0%	None
Aly Energy Services	ALYE	1/3	\$2,361,750	291%	0%	0%	Not Disclosed
Ascent Solar Technologies	ASTI	4/2	\$6,000,000	279%	-5%	-5%	None
AntriaBio	ANTB	4/1	\$8,900,000	257%	4%	4%	Paulson Investment Company
MELA Sciences	MELA	1/31	\$12,300,000	248%	-4%	-2%	Craig-Hallum Capital Group
Copsync	COYN	5/22	\$2,100,000	238%	-5%	11%	Not Disclosed
AntriaBio	ANTB	1/16	\$2,703,000	208%	0%	0%	Paulson Investment Company
Solar Power	SOPW	7/29	\$25,007,400	175%	1%	9%	None
Cardinal Energy Group	CEGX	3/7	\$4,500,000	147%	19%	25%	Syndicated Capital
Vuzix Corp.	VUZI	6/2	\$3,000,000	132%	-2%	-6%	None
Digital Ally	DGLY	3/25	\$6,000,000	132%	-21%	-24%	WestPark Capital
Aura Systems	AUSI	6/27	\$1,100,000	125%	0%	0%	Not Disclosed
One Horizon Group	OHGI	7/25	\$1,000,000	119%	-1%	-1%	TriPoint Global Equities
Manhattan Scientifics	MHTX	2/12	\$1,368,750	111%	0%	0%	Not Disclosed
Marathon Patent Group	MARA	5/5	\$6,503,263	107%	11%	11%	Laidlaw & Company Ltd.
Metabolix	MBLX	8/4	\$25,000,000	102%	0%	0%	None
Pernix Group	PRXG	12/23	\$5,000,000	90%	0%	0%	None

Worst Deal Performance YTD - Unregistered Growth Capital EPPs

Company	Symbol	Closing Date	Gross Proceeds	Stock Price Change Post Announce	3-day Perf. Post-Announce	1-week Perf. Post-Announce	Placement Agent
Endeavour International Corp	END	3/5	\$12,488,330	-99%	-30%	-31%	None
Endeavour International Corp	END	3/5	\$17,500,000	-99%	-30%	-31%	None
Healthcare Corp. of America	HCCA	6/3	\$2,200,000	-95%	0%	0%	Chardan Capital Markets
Be Active Holdings	JALA	2/20	\$1,000,000	-93%	-11%	-14%	Palladium Capital Advisors
Xenetic Biosciences	GAIFD	1/30	\$10,000,000	-92%	0%	0%	Not Disclosed
Lexaria Corp.	LXRP	3/21	\$1,272,000	-91%	-24%	-48%	Canaccord Genuity , Leede Financial Markets, PI Financial Corp., Wolverton Securities
First Liberty Power Corp	FLPC	2/27	\$1,100,000	-91%	58%	42%	Not Disclosed
Baxano Surgical	BAXS	3/11	\$9,993,680	-89%	-10%	-13%	Piper Jaffray & Co., Stifel Nicolaus Weisel
KIOR	KIOR	4/1	\$10,000,000	-88%	0%	0%	None
IMD Companies	ICBU	3/20	\$1,000,000	-87%	55%	18%	Not Disclosed
Medijane Holdings	MJMD	7/16	\$1,000,000	-87%	4%	4%	None
Vapor Group	VPOR	5/6	\$1,235,000	-87%	-25%	-14%	None
Regado Bioscience	RGDO	1/31	\$20,000,000	-82%	0%	0%	Cowen and Co., BMO Capital Markets
Saleen Automotive	SLNN	4/3	\$2,500,000	-81%	0%	2%	Not Disclosed
dELIA*s	DLIA	2/18	\$44,100,000	-79%	0%	0%	Janney Montgomery Scott
SANUWAVE Health	SNWV	3/18	\$6,175,000	-78%	18%	3%	Newport Coast Securities
SANUWAVE Health	SNWV	3/18	\$3,105,000	-78%	18%	3%	Newport Coast Securities
Oak Ridge Micro-Energy	OKME	8/7	\$5,200,000	-78%	0%	0%	None
Advanced Cannabis Solutions	CANN	1/22	\$9,105,000	-78%	0%	0%	None
Crailar Technologies	CRLRF	3/14	\$3,143,750	-77%	3%	3%	Not Disclosed

Source: PlacementTracker, a service of Sagient Research, Inc. EPP market activity data excludes all placements of less than \$1 million, placements via 144-A Offerings or Equity Lines of Credit, and transactions conducted by foreign issuers that trade in the U.S. on the Pink Sheets. Growth Capital EPPs include offerings of at least \$1 million of stock or equity-linked debt under SEC Regulations D and S at fixed purchase, conversion and warrant exercise price terms by U.S. publicly traded emerging growth companies from \$10 million to \$1 billion in market capitalization at the time of offering. Data is for closed and definitive agreement transactions reported as of 10/17/14.

Growth Capital Investor

Best Deal Performance YTD - Registered Growth Capital EPPs

Company	Symbol	Closing Date	Gross Proceeds	Stock Price Change Post Announce	3-day Perf. Post-Announce	1-week Perf. Post-Announce	Placement Agent
Oxford City Football Club	OXFC	9/30	N/A	855%	0%	0%	None
ZaZa Energy Corp.	ZAZA	7/21	\$5,000,000	744%	-4%	-5%	None
Intellicheck Mobilisa	IDN	4/3	\$2,093,600	534%	-5%	-4%	Aegis Capital Corp.
iBio	IBIO	8/26	\$499,996	385%	11%	7%	None
Elite Pharmaceuticals	ELTP	4/22	\$10,000,000	303%	6%	11%	None
Idenix Pharmaceuticals	IDIX	1/28	\$106,731,567	257%	0%	0%	None
Receptos	RCPT	1/6	\$117,403,500	123%	0%	0%	BMO Capital Markets Corp., Credit Suisse Securities , Leerink Swann, Wedbush PacGrow Life Sciences
BioDelivery Sciences Intl	BDSI	2/10	\$60,000,000	103%	7%	6%	Roth Capital Partners
Cytosorbents Corp.	CTSO	12/23	\$10,200,000	94%	-5%	-5%	Brean Capital
IGI Laboratories	IG	6/26	\$26,737,500	71%	0%	8%	Craig-Hallum Capital Group, Oppenheimer & Co. 50%, Roth Capital Partners 50%
Receptos	RCPT	6/17	\$178,428,250	69%	0%	0%	BMO Capital Markets Corp., Credit Suisse Securities , Leerink Swann, Nomura Securities International, Wedbush PacGrow Life Sciences
Accelerate Diagnostics	AXDX	3/10	\$44,999,993	54%	2%	3%	Not Disclosed
TG Therapeutics	TGTX	3/11	\$18,135,848	51%	0%	0%	Brean Capital, Roth Capital Partners, Ladenburg Thalmann & Co.
Advanced Cell Technology	ACTC	7/3	N/A	41%	9%	10%	None
Hudson Technologies	HDSN	6/5	\$15,000,000	39%	-1%	-2%	William Blair & Co. 70%, Craig-Hallum Capital Group 15%, Roth Capital Partners 15%
Omagine	OMAG	4/28	N/A	38%	-1%	-5%	None
OvaScience	OVAS	3/3	\$55,186,300	37%	-11%	-12%	Leerink Swann 70%, Cantor Fitzgerald & Co. 6%, H.C. Wainwright & Co. 6%, JMP Securities 6%, Ladenburg Thalmann & Co. 6%, Roth Capital Partners 6%
Plug Power	PLUG	1/10	\$30,000,000	34%	8%	7%	Cowen and Co.
SWK Holdings Corp.	SWKH	2/14	\$12,500,000	28%	4%	4%	Not Disclosed
Iridium Communications	IRDM	5/5	\$50,000,002	18%	0%	0%	None

Worst Deal Performance YTD - Registered Growth Capital EPPs

Company	Symbol	Closing Date	Gross Proceeds	Stock Price Change Post Announce	3-day Perf. Post-Announce	1-week Perf. Post-Announce	Placement Agent
GEI Global Energy Corp.	GEIG	4/14	N/A	-100%	N/A	N/A	None
Kleangas Energy Technologies	KGET	3/6	N/A	-98%	0%	0%	Not Disclosed
Be Active Holdings	JALA	1/31	N/A	-89%	56%	33%	Not Disclosed
Cytori Therapeutics	CYTX	5/30	\$10,000,002	-80%	-9%	-6%	WBB Securities
Endocyte	ECYT	3/25	\$108,675,000	-79%	0%	0%	Citigroup Global Markets, Credit Suisse Securities , Cowen and Co., RBC Capital Markets, Robert W. Baird & Co. , Roth Capital Partners, Wedbush PacGrow Life Sciences
TapImmune	TPIV	8/11	\$2,000,001	-77%	-16%	-19%	H.C. Wainwright & Co.
Plandai Biotechnology	PLPL	2/10	\$300,000	-77%	-9%	0%	None
BG Medicine	BGMD	4/2	\$10,000,600	-77%	0%	0%	Lazard
Sunesis Pharmaceuticals	SNSS	2/26	\$43,012,500	-77%	0%	9%	Cantor Fitzgerald & Co. 45%, Cowen and Co. 55%
Ocean Power Technologies	OPTT	4/3	\$11,780,000	-75%	-24%	-23%	Roth Capital Partners
Kips Bay Medical	KIPS	1/23	\$4,224,500	-75%	0%	0%	Aegis Capital Corp.
ZBB Energy Corp.	ZBB	3/13	\$13,750,000	-75%	-30%	-27%	National Securities Corp.
Cache	CACH	4/25	\$15,000,000	-74%	4%	8%	Not Disclosed
Alkaline Water Co.	WTER	4/29	\$2,599,999	-73%	0%	0%	H.C. Wainwright & Co.
BioLife Solutions	BLFS	12/16	\$15,480,000	-73%	-92%	-92%	Ladenburg Thalmann & Co.
Collectar BioSciences	CLRB	5/19	\$13,437,499	-71%	-95%	-95%	Aegis Capital Corp.
Rubicon Technology	RBCN	3/18	\$37,375,000	-70%	0%	0%	D.A. Davidson & Co. 15%, Canaccord Genuity 85%
Oncolytics Biotech	ONCY	2/27	\$1,000,000	-69%	-1%	4%	Bayridge Securities
Cleveland BioLabs	CBLI	1/14	\$7,000,000	-69%	0%	0%	H.C. Wainwright & Co., Cantor Fitzgerald & Co.
Atossa Genetics	ATOS	1/23	\$14,002,162	-68%	0%	0%	Dawson James Securities

Source: PlacementTracker, a service of Sagient Research, Inc. EPP market activity data excludes all placements of less than \$1 million, placements via 144-A Offerings or Equity Lines of Credit, and transactions conducted by foreign issuers that trade in the U.S. on the Pink Sheets. Growth Capital EPPs include offerings of at least \$1 million of stock or equity-linked debt under SEC Regulations D and S at fixed purchase, conversion and warrant exercise price terms by U.S. publicly traded emerging growth companies from \$10 million to \$1 billion in market capitalization. Data is for closed and definitive agreement transactions reported as of 10/17/14.

Growth Capital Investor

Growth Capital EPP Candidates < \$500M Market Cap

Company	Current Symbol	Industry	Cash Burn Rate (\$)	Last Placement	Last EPP Gross Proceeds	Current Market Price	Volume (3-Mo. Avg)	Market Cap (\$)	Est. Future EPP Size	Shelf Filing Date
First Pctrust Bancorp	BANC	Banks	-\$460,062,500	12/10/13	\$20,000,213	\$11.40	26,186	\$308,170,090	\$30,817,009	11/22/13
Americold Realty Trust	ACRE	REITS	-\$193,619,250	12/19/12	\$60,500,000	\$11.95	51,914	\$341,827,336	\$34,182,734	5/9/13
Express-1 Expedited Solutions	XPO	Transportation	-\$175,311,500	9/17/14	\$700,000,000	\$11.11	77,426	\$366,758,443	\$36,675,844	1/27/14
Opteum	BMNM	REITS	-\$136,283,379			\$1.49	14,446	\$18,347,499	\$1,834,750	
JMP Group	JMP	Financial Services	-\$103,043,000	4/21/11	\$23,730,000	\$6.49	37,773	\$140,770,677	\$14,077,068	7/23/14
Vantage Energy Services	VTG	Oil & Gas Services	-\$87,464,500	7/16/13	\$100,000,000	\$1.00	1,703,181	\$306,161,000	\$30,616,100	8/3/11
Walker & Dunlop	WD	Financial Services	-\$78,065,000			\$15.38	36,967	\$488,672,170	\$48,867,217	
Rex Energy	REXX	Oil & Gas	-\$66,844,250			\$13.51	979,037	\$497,408,640	\$49,740,864	6/9/14
Bioscrip	BIOS	Insurance	-\$59,498,750	4/24/13	\$124,875,000	\$5.72	306,460	\$392,362,250	\$39,236,225	3/18/13
American Eagle Energy	AMZG	Metals & Mining	-\$48,349,561	10/7/13	\$26,801,850	\$1.76	34,296	\$31,173,386	\$3,117,339	12/16/13
H2Diesel Holdings	HTWO	Chemical	-\$46,316,919	3/27/13	\$14,148,750	\$10.34	31,394	\$73,644,168	\$7,364,417	
BRT Realty Trust	BRT	REITS	-\$46,204,250			\$7.28	7,565	\$99,408,400	\$9,940,840	8/16/13
Goodrich Petroleum	GDP	Oil & Gas	-\$45,649,250	12/6/06	\$175,000,000	\$11.19	954,859	\$497,145,627	\$49,714,563	1/22/13
Allied Nevada Gold	ANV	Metals & Mining	-\$45,141,750	7/17/07	\$16,300,838	\$2.50	941,498	\$260,830,215	\$26,083,022	5/2/13
Internap Network Services	INAP	Software	-\$45,127,750	8/25/03	\$10,117,500	\$6.93	244,313	\$376,888,050	\$37,688,805	
Petroquest Energy	PQ	Oil & Gas	-\$43,974,500	7/20/00	\$12,225,000	\$4.26	1,002,680	\$273,402,540	\$27,340,254	8/15/13
Rentech	RTK	Chemical	-\$42,652,000	4/9/14	\$50,000,000	\$1.53	2,071,286	\$348,887,430	\$34,888,743	7/9/13
Baltic Trading Ltd	BALT	Transportation	-\$42,259,750	5/28/13	\$23,109,181	\$3.49	126,757	\$178,706,291	\$17,870,629	5/11/12
Alamo Group	ALG	Machinery-Diversified	-\$42,051,000			\$39.20	19,982	\$475,604,388	\$47,560,439	
Campus Crest Communities	CCG	Real Estate	-\$39,458,000	10/9/13	\$100,000,000	\$6.60	145,798	\$427,333,289	\$42,733,329	4/26/13
Regeneration Technologies	RTIX	Healthcare Products	-\$36,557,500	6/12/13	\$50,000,000	\$3.61	341,368	\$205,101,406	\$20,510,141	
Vanda Pharmaceuticals	VNDA	Pharmaceuticals	-\$34,485,000	8/12/13	\$52,135,200	\$10.56	211,242	\$357,750,001	\$35,775,000	9/27/13
Gladstone Commercial	GOOD	Real Estate	-\$34,050,250	9/2/14	\$100,000,000	\$17.12	36,073	\$303,297,201	\$30,329,720	8/30/13
China Recycling Energy	CREG	Commercial Services	-\$29,424,289	8/27/14	\$18,945,831	\$1.28	13,137	\$78,011,113	\$7,801,111	5/25/11
American Midstream Partners	AMID	Gas	-\$28,952,500	8/20/14	\$119,291,349	\$27.26	15,325	\$303,676,400	\$30,367,640	9/11/12
Pennantpark Floating Rate Cap.	PFLT	Unknown/Inactive	-\$28,807,743			\$13.76	35,263	\$204,997,251	\$20,499,725	
General Finance	GFN	Holding Companies	-\$28,009,250	12/18/09	\$6,285,970	\$8.33	9,877	\$213,724,951	\$21,372,495	
Shiloh Industries	SHLO	Metal Fabricate	-\$26,463,250			\$16.55	13,385	\$284,530,562	\$28,453,056	
One Liberty Properties	OLP	REITS	-\$25,365,500	8/9/12	\$50,000,000	\$21.49	36,655	\$335,115,060	\$33,511,506	11/13/13
Universal Display	PANL	Electronics	-\$24,756,092	8/22/03	\$16,100,000	\$30.05	1,410,185	\$105,581,336	\$10,558,134	3/21/11
Approach Resources	AREX	Oil & Gas	-\$24,640,750			\$10.83	678,719	\$426,349,863	\$42,634,986	5/12/14
Preferred Apartment Comm.	APTS	REITS	-\$23,673,727	2/28/14	\$100,000,000	\$8.30	9,533	\$138,081,780	\$13,808,178	5/17/13
Gladstone Commercial	GOODP	Real Estate	-\$21,016,809			\$25.15	1,326	\$445,556,344	\$44,555,634	
Corinthian Colleges	COCO	Schools	-\$20,904,000			\$0.13	1,822,857	\$11,393,590	\$1,139,359	
Supertel Hospitality	SPPRP	REITS	-\$20,784,250			\$7.10	6,798	\$33,258,289	\$3,325,829	
Stanley	SXE	Engineering & Const.	-\$20,126,000			\$20.71	220,800	\$444,541,103	\$44,454,110	11/5/13
Verso Paper	VRS	Forest Products	-\$20,124,250			\$2.47	105,885	\$131,718,779	\$13,171,878	
Cross Country Healthcare	CCRN	Commercial Services	-\$19,935,833			\$9.24	115,895	\$288,699,411	\$28,869,941	
Allied Motion Technologies	AMOT	Electronics	-\$19,825,000			\$13.12	9,580	\$120,979,520	\$12,097,952	
Almost Family	AFAM	Commercial Services	-\$19,719,750			\$27.60	43,516	\$263,911,200	\$26,391,120	11/5/08

Source: PlacementTracker, a service of Sagient Research, Inc. Growth Capital EPP candidates include U.S. publicly traded emerging growth companies from \$10 million to \$500 million in market capitalization, with less than one quarter of cash liquidity, which have previously closed an EPP financing, ranked by quarterly cash burn rate. Estimated EPP amounts based upon 10% market cap dilution at 10% of daily trading volume. Data as of 10/17/14.

ATM continued from front page

Yet bouts of accelerating volume that frequently accompany volatility could provide issuers with at-the-market (ATM) offering agreements opportunistic windows to gather cash, even as the eagerness to tap the dribble-out method of capital formation appears to be waning.

Adam Epstein, an institutional investor and founder of Danville, Calif.-based small cap consultancy **Third Creek Advisors**, suggested that ATMs provide companies with better capital raising opportunities in seesawing markets versus registered direct offerings or CMPOs.

“Some of the benefits of ATMs are expressly on display in volatile, choppy markets,” he said. “That is, the efficacy of ATMs is principally reliant upon trading volume and price, as opposed to macro market gyrations.”

Slowing Deals

Issuers through Oct. 17 this year have arranged to raise up to \$2.5 billion in 49 ATM transactions for an average of \$52 million per deal. What's more, companies that have inked deals in 2014 have already pocketed \$170 million for an average of \$3.4 million per agreement, according to financial disclosures tracked by PlacementTracker.

In terms of commitments, companies a little more than three-quarters of the way through 2014 have already matched what ATM issuers signed up to raise in all of 2013. Companies agreed to 67 ATM programs last year, which worked out to an average of \$38 million a deal. So far, those issuers have raised \$503 million for an average of \$7.5 million an issuer.

Meanwhile, up until the recent swoon, smaller companies continued to pursue ATMs with more frequency. Issuers that have signed arrangements this year have an average market capitalization of \$243 million, some \$45 million below the average in all of 2013. The average cost to issuers has remained steady at roughly 2.8% over the last 21 months.

However, interest in establishing new ATM offerings has plunged recently. Only three companies signed agreements during the first half of October, including **New Source Energy Partners (NSLP)**, which is seeking as much as \$50 million, and **Pizza Inn Holdings (PZZI)**, which signed up for \$5 million.

Nevertheless, observers point out that companies that already have ATMs in place – or that even seek to make agreements in a down market – can position themselves for future upswings without igniting investor angst.

Typically, an issuer's stock price drops a few percentage points after an ATM is announced, but that doesn't amount to much more than “noise” in the overall market, said Greg Curhan, a former investment banker who specialized in ATM deals and who is now business development officer for San Francisco-based wealth management firm **Brighton Jones**.

In 2013 and throughout the first nine months of this year, for example, the average price stock change was negligible three days after a company announced an ATM.

“Companies should have ATMs in place,” Curhan said. “If your stock is going down because the market's going down, then it's down anyway. But if you put one in place when you're clearly not going to use it, and then get to a period of three months, six months or nine months down the road where the stock is really moving on volume, you can take advantage of it without announcing it to the market and raise a good amount of money.”

Active ATM Users

Real estate investment trusts (REITs) appear to be one of the few if not only business segments well positioned for the current market volatility. While the broad market returned nearly all of its 2014 gains between Sept. 15 and Oct. 15 equity REITs climbed 3.6% over the same period, according to the National Association of Real Estate Investment Trusts.

REITs have established 11 ATMs this year – the most of any industry – that could provide as much as \$1.2 billion to company coffers. Reported to date, **Chatham Lodging Trust (CLDT)**, **Arbor Realty Trust (ABR)** and **Preferred Apartment Communities (APTS)** have tapped the vehicles to raise an aggregate of more than \$27 million.

Biotech and pharmaceutical companies have maintained their active pursuit of ATMs, as well. The industries have each signed up for nine programs this year, with biotech issuers seeking to raise \$270 million while pharmaceutical firms could raise as much as \$357 million. Biotech companies have captured nearly \$33 million so far, and pharmaceutical issuers have raised \$77.6 million.

Several issuers have already maxed out their ATM commitments. Lexington, Mass.-based **Synta Pharmaceuticals Corp. (SNTA)** in July said that it had pocketed \$40 million in an ATM agreement with agent **MLV & Co.**, the most proceeds gathered to date among ATM programs established this year.

The company, which is focused on developing small molecule drugs for cancer and inflammatory diseases, sold some 9.4 million shares for an estimated average price of \$4.24 through the program, and MLV earned a 3% fee. When the deal was first announced in May, the issuer's stock was trading around \$4 a share.

Synta Pharmaceuticals in July also arranged for a separate \$50 million ATM with MLV. The issuer so far has raised \$6.7 million by selling more than 1.6 million shares for an estimated average price of \$4.04 a share.

In both deals Synta said it would use the proceeds to

fund research and clinical trial expenditures, the manufacture and supply of products, acquisitions, and working capital.

In a twist on the typical common stock structure of ATM offerings, in June Tustin, Calif.-based Peregrine Pharmaceuticals (PPHM), a biopharmaceutical developer of cancer antibodies, announced a program with MLV to issue up to \$30 million in convertible preferred stock. In the days immediately afterward, it sold 400,000 shares for \$25 a share to raise \$10 million. The preferred shares pay a dividend of 10.5%, but no conversion price details were provided. Peregrine said it would use the proceeds for working capital. MLV is charging a 5% commission in the program.

The issuer also entered into a separate ATM with the investment bank at the same time to sell up to \$25 million in common shares. MLV is charging a commission of 2.5% for that program. The company's common shares were trading around \$1.78 when it announced the deals, and recently they were trading around \$1.50.

Meanwhile, the handful of companies in the technology and communications sectors that have tapped their entire ATM commitments this year have had mixed pricing results.

Lee, Mass.-based **Wave System Corp. (WAVX)**, a maker

of hardware digital security, for example, signed a \$15 million ATM with MLV in January when its shares were trading at \$2.26. It closed the agreement in June after raising \$17.3 million by selling more than 17 million shares at an estimated average price of \$1.12 a share. Its shares were recently trading around \$1.

On the other hand, Las Vegas-based **LiveDeal (LIVE)**, a publisher of real-time restaurant offers on mobile devices of nearby customers, established a \$10 million ATM with **Chardan Capital Markets** in January and maxed it out soon after. The company's shares were trading around \$3.11 a share on a three-for-one split-adjusted basis when the deal was announced, and the company sold more than 2.2 million shares for an estimated average price of \$4.52 a share in the first quarter.

The company in May signed another ATM agreement with Chardan Capital to raise as much as \$29.9 million. Its shares were trading around \$3 when the deal was announced, and so far it has sold more than 790,000 shares for \$4.56 a share. The company in both cases said it was using the proceeds for general corporate purposes, including research and the potential acquisition of new technologies. Its shares were recently trading around \$2.41. Chardan Capital is receiving agent fees of 3% for effecting transactions. **X**

Accredited continued from front page

definition to one that incorporates an investor's level of financial sophistication, not merely his net worth and income. "The current definition's financial thresholds serve as an imperfect proxy for sophistication, access to information, and ability to withstand losses," the committee wrote in its report, released Oct. 9.

The SEC already somewhat recognizes an investor's level of sophistication as a fitting criterion for participating in a private offering if that investor fails to meet the income and net worth hurdles. In the IAC's **11-page recommendation** on revamping the definition, it points out, "Today, the private securities markets rival the public markets in size, and the vast majority of private offerings are conducted in reliance on Rule 506 of Regulation D [which] allows for sales to an unlimited number of 'accredited investors' and, for offerings that do not involve general solicitation, to a limited number of sophisticated non-accredited investors."

Therefore, the IAC, maintains, "the accredited investor definition has come to play a central role in

determining whether an offering qualifies for the private offering exemption."

The IAC's report offers five recommendations for changing the qualifications for the accredited investor exemption that

seem to be more restrictive in some areas, while being more liberal in others. The report recommends that other "non-financial assets" be disallowed from consideration toward a net worth threshold, including retirement account assets, family farms and sole-proprietorship businesses. Elsewhere, the report suggests that any income threshold, by itself, is insufficient to determine an investor's ability to "withstand the risks of private offerings," and recommends adopting a percentage of income standard, similar to the standard proposed for public equity crowdfunding offerings.

Industry experts generally agree that any changes that would disqualify personal retirement or business assets from applying to the current net worth threshold would dramatically reduce the pool of accredited investors.

The report also recommends using education, professional accreditation, and investment experience as qualifying factors, which could potentially allow some investors with strong financial backgrounds but more modest assets and incomes to qualify as accredited. However, the report authors again suggest that the amount of investment activity allowed be limited to a small percentage, perhaps 10%, of their income or assets.

Somewhat surprisingly, the committee report also

recommends discarding the “self-certification” approach currently used entirely, in favor of third-party verification services. This seems to conflict with the other recommendations which call for a subjective, principles-based determination of investor qualifications, which third-party credit agencies are notoriously poor at providing, preferring a metrics-based, check-box approach to financial scoring.

Finally, the AIC report takes aim at Rule 506’s exemption allowing less than 35 non-accredited investors to participate in Reg D offerings, suggesting that any “purchaser representatives” in a position to recommend Reg D offerings should not benefit financially from the offering itself, either through fees, commissions or investment gains.

Topic of Upcoming Forum

One proponent of revisiting the current accredited investor definition, D.J. Paul, chief strategy officer of New York-based **Propellr**, a real estate crowd finance platform, posited, “It seems likely that in the next year and a half we are going to see some sort of modification,” to the classification of accredited investor.

Paul told *Growth Capital Investor*, “There is clearly a lot of traction around this issue.” He pointed out the SEC’s

annual small business forum, scheduled for November 20 in Washington, D.C., will take up discussion of the accredited investor definition. (Growth Capital Investor will be holding a **pre-forum event** at the National Press Club on Nov. 19 to discuss the accredited investor recommendations as well as other topics to be taken up at the Small Business Capital Forum the following day.)

Paul disagrees that the SEC should do a wholesale reboot of the definition of accredited investor. “I don’t disagree with the IAC that the definition of accredited investor needs to be modified. I do disagree that the whole thing needs to be thrown out.”

Paul concurred with the IAC about adding an investor sophistication test to the already in-place income and net worth barometer for defining an accredited investor. But, he noted, “Where we differ is keep current system but augment it with the sophistication test.”

Additionally, he said, “If you’re going to adjust [the definition], you have to do it regionally.” The east and west coasts of the United States house a disproportionate number of accredited investors. “If the IAC were successful at adjusting current threshold, the coast dichotomy would be exacerbated,” Paul observed. **X**

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