

Raising Capital During Periods of Extreme Price Volatility

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On February 8, in light of recent market volatility in the options and equities markets, the Division of Corporation Finance (Division) of the U.S. Securities and Exchange Commission (Commission) published [guidance](#) for issuers seeking to raise capital during times of extreme price volatility. While recognizing the importance of capital formation, even during times when an issuer's own securities are experiencing extreme price volatility, the Division cautioned that such price volatility can create risks for both the issuer and its investors. The Division emphasized that these risks are particularly significant to the extent an issuer seeks to raise capital in an environment characterized by stock run-ups or atypical divergences in valuation ratios, high short interest or short squeezes, and/or strong and atypical retail investor interest, and especially when an issuer is in distress, facing "going concern" or liquidity challenges or has a relatively smaller public float.

In light of the increased risks in these circumstances, the Division highlighted the importance of specific, tailored disclosure about market events and conditions, an issuer's specific situation, and the potential impact on investors in order to adequately inform investors and ensure compliance with the issuer's disclosure obligations under the federal securities laws. To that end, the Division published an [illustrative letter](#) containing sample comments regarding potential disclosure topics that an issuer seeking to conduct a securities offering in the midst of market and price volatility should consider addressing in its offering documents, depending on the particular facts and circumstances. Proposed disclosure topics include:

Prospectus Cover Page

A prospectus cover page should describe the following:

- The recent price volatility in your stock and brief disclosure of any known risks of investing in your stock under these circumstances.
- For comparison purposes, the market price of your common stock prior to the recent price volatility in your stock (e.g., the price at which your stock was trading XX days prior to your filing).
- Any recent change in your financial condition or results of operations, such as your earnings, revenues, or other measure of company value that is consistent with the recent change in your stock price. If no such change to your financial condition or results of operations exists, disclose that fact.

Risk Factors

A prospectus should include risk factors describing each of the following, as applicable:

- The recent extreme volatility in your stock price, including:
 - An intraday stock price range covering a period of time sufficient to demonstrate the recent price volatility.
 - The impact on investors.
 - The potential for rapid and substantial decreases in your stock price, including decreases unrelated to your operating performance or prospects.
 - Significant inconsistencies between recent increases in your stock price and improvements in actual or expected operating performance, financial condition, or other indicators of value, as well as relevant quantifications of such inconsistencies.
- The effects of a potential “short squeeze” due to a sudden increase in demand for your stock, including:
 - What typically happens following a short squeeze.
 - The impact on investors that purchase shares during this time.
- The impact that an offering of a significant number of shares relative to the number currently outstanding could have on your stock price and on investors.
- The dilutive impact of future offerings to fund your operations or provide liquidity on investors that purchase shares in the offering at a significantly higher price.

Use of Proceeds

The Division urges issuers to disclose the unlikelihood an issuer can raise the maximum aggregate offering amount when the number of shares it may sell is fixed unless the sales price in the offering significantly exceeds the issuer’s historical average price per share. To the extent the net proceeds received in the offering are less than the maximum aggregate offering amount, an issuer is encouraged to discuss its priorities for the net proceeds.

The Division’s sample comments do not constitute an exhaustive list of the issues that companies should consider and, as always, disclosures in this context should be appropriately tailored to the facts and circumstances surrounding the issuer and the offering. The Division urged issuers to take these comments into consideration even in the context of offering documents not typically subject to review by the Division, such as automatically effective registration statements and prospectus supplements for takedowns from existing shelf registration statements. In this regard, the Division urged an issuer that finds itself experiencing extreme price volatility to proactively reach out to the industry office responsible for the issuer’s Commission filings with any questions regarding the issuer’s proposed disclosure.

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