GIBSON DUNN

PIPE Opportunities for Private Equity Firms

Numerous public companies are experiencing cash flow pressure and going concern issues as a result of COVID-19. Raising capital quickly and with certainty of execution is a priority. Many private equity clients are considering opportunities to invest substantial capital through PIPE (Private Investment in Public Equity) transactions.

Benefits of PIPE Transactions:

- ***Equity Upside.*** Generally structured with equity upside and return on capital.
- ***Execution.*** Fast and certain execution, particularly if no shareholder approval required. Parties know pricing and investment size up front.
- ***Flexibility.*** Investment structure and investor rights tailored to the interests of the issuer and investor (convertible preferred versus debt, board representation, control rights).
- ***Confidentiality.*** Transaction can be negotiated and signed prior to public disclosure. Issuer can provide detailed information and projections to investors without making the information available to the public.
- ***Anchor Investing.*** May act as a vote of confidence, reassuring current or prospective investors about a company's prospects and making subsequent financing easier.

Stock Exchange Rules

The rules of The New York Stock Exchange or Nasdaq can complicate the structure or timing of PIPEs. Finding creative solutions to comply with these rules is a key concern in most PIPEs. Note that both NYSE and Nasdaq have temporarily eased these rules in light of COVID-19.

The rules generally require shareholder approval prior to certain securities issuances:

- ***20% Issuances.*** Issuances that represent 20% or more of pre-transaction shares or voting power. Nasdaq allows transactions to exceed 20% if the effective price per share is at or above market value.
- ***Change of Control Transaction.*** Issuances that result in a change of control, which presumptively means a transaction in which a person owns 20% or more of an issuer.
- ***Related Party Issuances (NYSE).*** Certain issuances of securities to directors, officers, 5% stockholders or their affiliates.
- ***Equity Compensation (Nasdaq).*** Issuances to directors or officers below market value.

Gibson Dunn's Capital Markets and Private Equity groups are available and experienced in these transactions. We recently represented L Catterton in its $400 million investment in Norwegian Cruise Lines, one of the largest cruise lines in the world. For additional information, see Gibson Dunn's presentation on Drafting Preferred Stock Provisions or Gibson Dunn's June 18 webcast, Capital Markets PIPE Webinar.