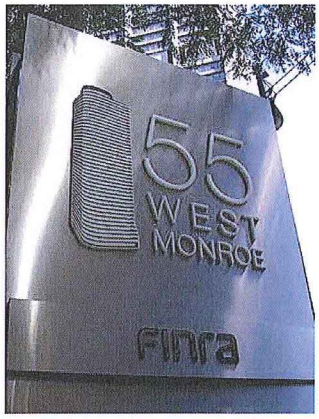
The Deal Pipeline

The DealFlow Report

NEWS, INFORMATION AND ANALYSIS OF SMALL CAP EQUITY FINANCE

TUESDAY
OCTOBER 8, 2013
VOLUME II, NO. 37

IN THIS EDITION



JOHN CARRIS INVESTMENTS, CEO ACCUSED OF MANIPULATING FIBROCELL STOCK

John Carris Investments LLC and its CEO George Carris are accused of manipulating the stock of Fibrocell Science Inc. while John Carris was acting as placement agent in private offerings by Fibrocell. The Financial Industry Regulatory Authority has also requested an immediate cease-and-desist order for John Carris to stop making solicitations of its customers to buy Fibrocell without making proper disclosures. The firm has helped arrange at least nine private placement financings for Fibrocell since 2009.

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Small-cap equity finance market surges

PIPEs, IPOs, follow-ons make double-digit gains in 3Q

BY DAN LONKEVICH

The small-cap equity financing market continued its resurgence in the third quarter with double-digit increases in the numbers of private investments in public equity, registered direct offerings and initial public offerings as the broader stock market rose.

Activity by special purpose acquisition companies also increased in the quarter, with four SPACs completing IPOs and three filing for IPOs. Even the number of reverse mergers increased, although from decidedly depressed levels.

The Standard & Poor's 500 gained 4.69% in the third quarter, while the Dow Jones Industrial Average gained 1.48%. This year, through Oct. 3, the S&P 500 is up 15.8% while the Dow is up 12.8%.

"There's been a rotation back into equities and out of cash and bonds," said Bryant Riley, chairman of **B. Riley & Co.** in Santa Monica, Calif., in an interview.

The resurgence "is probably going to continue for a while but feels like we are in the latter innings," he said. "You had a four-year rotation out of equities going back to 2008. That money has been coming back for a while and you are starting to see it get soaked up in the IPO market and in the secondary market."

Valuation may now be a concern in parts of the market but less so in small cap stocks, he said.

"There are some frothy valuations but we do see value in smaller companies," Riley said. "We as a firm have been very bullish for a long time and we are taking a more cautious view but still can find good companies trading at low multiples of cash flow. The larger companies seem more expensive and I could see a correction. The ETF market and the desire for liquidity have created outsized demand for larger companies."

Other market observers agreed with Riley's assessment.

"A rising tide lifts all boats," said Mitchell Littman, a partner with the New York law firm of **Littman Krooks LLP**. "We've had a consistent top of the market for a long time now. People are finally starting to come down the bank and dip their toes in the water again."

For his part, Littman said the strong showing in the third quarter may be a harbinger of good things to come in the fourth quarter.

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SEC reviewing investor definition

BY DAN LONKEVICH

The Securities and Exchange Commission has begun a long-awaited and much-anticipated study that could lead to changes in the rules determining who is allowed to invest in hedge funds, venture capital and private placements offerings.

The SEC announced in July that it has begun its review of its definition of "accredited investor," when it released a related proposal to change Regulation D of the Securities Act. The review of the "accredited investor" definition was mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. It gave the SEC a 2014 deadline to complete the study.

Private placement transactions conducted under Regulation D are mostly limited to those who the SEC defines as accredited investors. The restriction is meant to keep unsophisticated investors or those who can't afford losses out of risky investments such as hedge funds, startup companies and other securities that are not registered with the SEC.

Currently, an accredited investor is defined as a person with a net worth of more than $1 million excluding the value of his or her primary residence, or a person with annual income that exceeded $200,000 in each of

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Convertible debt was issued in 34 of the recent quarter's PIPEs worth $322.5 million, compared with 29 worth $374.2 million. Convertible preferred stock was issued in 22 PIPEs worth $588.1 million in the recent quarter, up from 18 worth $617.8 million.

At-the-market offering facilities were provided to companies in 37 transactions worth up to $5.68 billion, compared with 31 deals worth up to $3.64 billion.

The number of equity-line transactions totaled 14 deals worth as much as $503 million, down from 19 worth $255.2 million.

At least 10 PIPEs during the quarter raised at least $100 million. That does not include at-the-market offering facilities and equity lines, which the companies might not fully draw down. Another 14 PIPEs raised more than $50 million.

The third quarter's deals raised an average of $39.3 million each, down from $50.9 million, a year earlier.

American Realty Capital Properties Inc. announced the largest PIPE financings of the recent quarter. The real estate investment trust said on Sept. 15 that it agreed to sell $295.4 million in convertible preferred stock and $185.9 million in common stock to investors including **Luxor Capital Group LP**; **BHR Capital LLC**; **Morgan Stanley**; **Orange Capital LLC**; and **Senator Investment Group LP**.

Halcon Resources Corp., a Houston-based oil and gas producer, raised $222.9 million in a confidentially marketed public offering that closed Aug. 13 in the quarter's second largest PIPE. **Scorpio Tankers Inc.**, a Monaco-based oil-tanker operator, raised $218.5 million in its CMPO that closed on July 31.

Healthcare companies were the most active PIPE issuers, with 90 deals worth a total of $1.99 billion. Major transactions for the industry included a $125 million at-the-market offering facility that **Further Lane Securities LP** arranged for **Sarepta Therapeutics Inc.** in a deal that closed July 3; a $112.1 million private placement of stock by German-based **MorphoSys AG** that closed on Sept. 19; and **GlaxoSmithKline plc**'s $111.9 million investment in **Theravance Inc.** that closed July 30.

Technology companies were the second-most-active PIPE issuers, with 49 deals worth $443.4 million. Energy companies issued 31 deals worth $5.94 billion.

Roth Capital Partners LLC was the most active PIPE placement agent in the quarter, arranging 15 deals worth a total of $382.6 million. Representatives of the Newport beach, Calif.-based investment bank were not available to comment. PIPEs it arranged included a $70.05 million registered direct offering by Chinese solar product maker **ReneSola Ltd.** to investors including **Hudson Bay Capital Management LP**, that closed Sept. 17, and a $63.8 million CMPO by Cambridge, Mass., pharmaceutical company **Verastem Inc.** that closed July 22.

Piper Jaffray & Co. was the second-most active placement agent, with nine deals worth $420.4 million, followed by **Ladenburg Thalmann & Co.**, with nine worth $168.9 million.

"Investors seem enthusiastic for the first time in years," said Joseph Smith, a partner with the law firm of **Ellenoff Grossman & Schole LLP** in New York, which advises placement agents and PIPE investors. "Virtually all of our registered deals sold out overnight and they were oversubscribed. Even unregistered deals are getting done quickly. It's definitely risk-on because investors are assuming very substantial risk at this point."

Smith said his firm was unusually busy in August, which is typically one of the slowest months of the year. Ellenoff Grossman had its "best month ever in terms of revenue" in September, he said.

"It was insane from the day after Labor Day to September 30," Smith said. "Every one of our clients—funds and placement agents—has been assuring us they have a string of deals coming in the fourth quarter."

Sabby Management LLC was the most active investor in PIPEs. The Upper Saddle River, N.J.-based firm invested in eight private placements, putting in at least $21.6 million. In some transactions, the amount that Sabby invested was not publicly disclosed. All of its investments were in pharmaceutical, biotech or medical device companies. Sabby invested an average of $3.6 million in PIPEs where the amount it put in was disclosed.

"We're active is all we'll say," Sabby chief operating officer Rob Grundstein said in an interview. "The markets get hot and cold very quickly."

Crede Capital Group LLC, the family office of financier Terren Peizer, ranked No. 2 among PIPE investors with four investments totaling $43.3 million, followed by **Tisch Financial Management** with four worth $17 million.

The number of IPOs in the third quarter more than doubled to 58 from 28 a year ago, according to data from Dealogic. Third-quarter IPOs raised $12.6 billion, compared with $8.27 billion, a year ago.

The largest IPO of the quarter was **Envision Healthcare Holdings Inc.**'s $1.11 billion sale. **Premier Inc.**'s $874 million deal came in at No. 2, followed by **American Home 4 Rent**'s $812 million IPO.

Seventeen IPOs, just under a third of the total, raised $75 million or less during the quarter.

The number of follow-on offerings also increased in the latest quarter to 201 deals worth $41.4 billion from 154 worth $64.9 billion.

"There are multiple factors driving new-issue activity that have been in play for a few quarters now," said Steve Maletzky, director of equity capital markets at **William Blair & Co.** in Chicago.

William Blair helped arrange 15 follow-ons and six IPOs during the quarter.

Strong capital in-flows to equity funds, low relative volatility and continuing economic stimulus from the Federal Reserve are all supporting heightened valuations and the need to deploy capital to higher-growth opportunities, he said.

"Both corporate issuers and secondary sellers are capitalizing on broad demand for growth equities and new investors, those able to get allocations, are benefiting from strong after-market deal performance," Maletzky said.

While the life science sector has seen a major increase in number of deals and percentage of total deal volume this year, Maletzky said "we are seeing a very balanced market with significant investor demand for consumer, healthcare broadly, industrial growth, and technology offerings. The key theme remains growth."

"This is the first year since pre-financial-crisis that we have been able to string together multiple quarters of positive market momentum and uninterrupted deal flow," he said. "The backlog for both IPOs and FOs continues to grow and the quality of the issuers remains high so we expect heightened activity across growth sectors to persist through the start of 2014."

The improvement in the IPO picture also could have to do with the now distant memory of **Facebook Inc.**'s IPO, which raised $16 billion in the second quarter of 2012 before the shares plunged in the first week of trading and stayed

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below the offering price for months.

"There's been a fair amount of time since the Facebook IPO debacle and the stock is now trading at around $50 a share," Littman Krooks' Littman said.

Facebook "is waking up from its doldrums and it's been a wake-up call to the IPO market," he said.

In what is likely to be the next hot social-media offering, **Twitter Inc.** filed for its IPO on Thursday, Oct. 3.

The third quarter was the most active for IPOs by special purpose acquisition companies, or SPACs, since the fourth quarter of 2012.

SPACs are blank-check companies that raise money in IPOs for the purpose of acquiring operating businesses. SPACs typically have up to two years to make or announce an acquisition. They then make tender offers to shareholders who may choose to opt out of the acquisition and receive cash instead. If the SPAC fails to find an acquisition, it is required to give the money raised in its IPO back to shareholders.

Four SPACs completed IPOs in the third quarter, compared with only two in the year-ago period.

ROI Acquisition Corp. II raised $125 million in its Sept. 20 IPO. **Quinpario Acquisition Corp.** raised $150 million on Aug. 14. **Silver Eagle Acquisition Corp.** raised $300 million on July 30 and **MedWorth Acquisition Corp.** raised $52.8 million in its July 2 IPO.

"There were five SPAC IPOs greater than $100 million priced since March of this year, four of which were sponsored by repeat issuers," said Joseph De Perio, a portfolio manager at hedge fund **Clinton Group**, which sponsored ROI II. "It's a testament to the appeal of structure from the standpoint of both an IPO shareholder and a potential merger partner."

In addition to ROI II, two other SPACs filed for IPOs during the quarter, compared with only one in the same period a year ago.

Global Defense & National Securities Systems Inc., a SPAC sponsored by defense contractor **Global Strategies Group**, filed on Sept. 16 to raise $69 million in an IPO

Quartet Merger Corp., a SPAC sponsored by hedge fund **Crescendo Capital Partners LP**, said on Sept. 12 that it plans to raise $84 million. ROI II announced the filing of its IPO on Aug. 20.

Three other SPACs completed business combinations during the quarter, while one scuttled a planned acquisition.

Prime Acquisition Corp., which has been buying real estate in Southern Europe, said on Sept. 3 that it is investing $380 million to get into the renewable energy business in Romania. The SPAC, which is based in Shijiazhuang, China, signed a purchase agreement with Swiss electronics company **Radiomarelli SA** and Swiss investment company **Futurum Energy SA** to buy a 10% stake in 50 renewable energy plants and the right to all green certificates issued by the Romanian government in connection with the plants.

Andina Acquisition Corp. said Aug. 17 that it agreed to acquire **Tecnoglass SA** and **C.I. Energia SA ES**, twin privately-held Colombian manufacturers of architectural glass for residential and commercial construction, for about $243 million in stock and assumed debt.

BGS Acquisition Corp. said on Aug. 13 that it amended an agreement to acquire **Black Diamond Holdings LLC** to instead acquire the diversified holding company's majority stake in molecular diagnostics company **TransnetYX Holding Corp.** for $81.6 million in stock and up to $15 million in cash.

Blue Wolf Mongolia Holdings Corp. on July 12 scuttled a $15.8 million merger with South American lithium miner **Li3 Energy Inc.**, terminating a tender offer to buy up to $14.7 million of the company's shares.

The number of reverse merger transactions is also trending up, after the deal structure fell out of the favor in recent years.

The reputation of reverse mergers declined after a rash of fraud allegations against Chinese companies that used the structure to go public in the U.S., and the SEC issued a public warning to investors about the potential for fraud in such transactions.

Thirty-five reverse mergers were completed in the third quarter, up from 21 in the year-earlier period, according to PrivateRaise data.

"Things are definitely getting better," said Greg Sichenzia, a partner in the law firm of **Sichenzia Ross Friedman Ference LLP** in New York. "The market is doing a lot better. The IPO space is primarily about biotech companies right now, so reverse mergers and APOs are being considered by other companies, and even some biotech companies."

An APO, or alternative public offering, is a reverse merger and simultaneous PIPE transaction.

Twelve different companies raised a total of $157.9 million in APO transactions in the recent quarter, the largest total since the first quarter of 2010, which saw deals worth $163.7 million. The third-quarter total compares to only four APOs worth $4.1 million in the third quarter of 2012.

APO transactions in the recent quarter included those by **Intra-Cellular Therapies Inc.** and **Lipocine Inc.**

Intra-Cellular, a New York-based biotech company, raised $60 million in a deal that closed Sept. 3. It was arranged by Leerink Swann LLC with investors including **Deerfield Management** and **Broadfin Capital LLC**.

Lipocine, a Salt Lake City-based biotech company, raised $38 million from investors including **Visium Asset Management LP**, **Janus Capital Corp.** and Sabby Management in a deal that closed July 31. It was arranged by Ladenburg.

The average APO in the quarter raised $13.2 million.

It is fair to say that China is no longer a factor in the reverse merger market. There was not a single China-based company that went public through a reverse merger in the last quarter, the first time that has happened since 2002. Thirty-one of the recent quarter's reverse mergers involved U.S. companies and five involved foreign companies. ■ — *Bill Meagher contributed to this report.*

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The fourth quarter may also benefit by changes in market rules that are meant to help the private placement market. On Sept. 23, the Securities and Exchange Commission lifted the ban against general solicitation and advertising of private placement offerings.

"We have this brand new world of general solicitation that is not yet correlated with the small-cap equity financing market," Littman said. "There's more stuff out in the ether, all these new opportunities out there. People are more action oriented now. When the markets were in the doldrums, they were frozen."

The pickup in activity is being driven by a lot of pent-up demand from investors and a need for capital from companies, he said.

"When those two things meld together, that's usually when things come together," Littman said.

To be sure, one caveat remains. Littman noted that the overall market has been near a top for a number of years now and some skeptics are questioning how long it can continue.

And that's putting aside the potential effects of the government shutdown and the possibility of a government debt default.

But in the meantime, many small-cap companies, especially in the biotech industry, have decided to take advantage of the improvement in their stock prices to raise capital.

The shares of many companies doing PIPE deals are within 10% of their 52-week highs, said John Borer, the head of investment banking at **Benchmark Co.**

Companies "look for money when they need it or when they would look silly if they didn't go after it," he said. "When small-cap companies can get deals done, that's a positive thing."

The number of PIPE deals rose by 16.9% in the third quarter to 276 worth a total of $10.9 billion from 236 deals worth $12 billion, a year earlier. It was the second quarter in a row that the number of PIPEs rose.

The totals, which are provided by The Deal's PrivateRaise data service, exclude PIPEs that raised less than $1 million and PIPEs by foreign-based companies that trade over the counter in the U.S.

The number of unregistered PIPEs rose 16.7% to 182 deals worth $3.69 billion from 156 worth $7.07 billion, a year earlier.

The market for registered private placements expanded by 17.5% to 94 transactions worth $7.17 billion, from 80 deals worth $4.94 billion. That includes 27 confidentially marketed public offerings worth $1.1 billion, compared with 17 CMPOs in the year-earlier quarter worth $780 million.

Common stock was the security issued in 158 of the recent quarter's PIPE transactions worth a total of $3.67 billion. That compares with 122 worth $6.93 billion a year ago.

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