

At-the-market distributions – Flexible public financing tool for volatile markets and market rebound positioning

APRIL 15, 2020 3 MIN READ



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Authors: [François Paradis](#), [Jeremy Brisset](#)

During these uncertain times, at-the-market (ATM) distributions can be one of the best ways for both Canadian and U.S. public issuers to raise additional public equity capital quickly and at a lower cost than traditional offerings. Historically, ATM distributions have been much more prevalent in U.S. markets. However, some features of ATM distributions make them uniquely suited to help Canadian issuers navigate financial markets, which were greatly impacted by COVID-19.

What is an ATM distribution?

An ATM distribution is an offering of equity securities made under "shelf procedures,"^[1] allowing an issuer to issue securities at market prices prevailing at the time of sale and directly into the stock exchange(s) in which securities of the same class are traded.

Why is an ATM distribution program well suited to current market conditions?

An ATM distribution program offers many benefits in current market conditions:

- It can be set up on relatively short notice, without the need for much time and effort on the part of management, at a reasonable cost and allows the issuer the flexibility to subsequently issue securities directly on the market at the right times and prices. Roadshows and/or one-on-one meetings with investors are not required to market ATM distributions.
- It is scalable, as it can be used to raise relatively small or larger amounts depending on market conditions, without the risk of a perceived "failed offering" by the market.
- It allows continued access to markets over extended periods of time, instantaneously and with little work involved beyond the initial set up.
- Key market drivers for success of ATM distributions are strong trading volumes – which volatility can bring even in unstable markets – and upward movement in stock prices,

which should come from a post-crisis market rebound and can otherwise occur from day-to-day as a result of market volatility.

It allows an issuer to raise capital with less impact on the trading price of their equity securities than a typical public offering. Securities of the issuer are sold into the market slowly over time and at unpredictable times, and typically sales are publicly reported only on a quarterly basis, so there is no significant dilution and less opportunity for investors to short sell in anticipation of a drop in trading price.

What are the key ATM distribution requirements?

An ATM distribution program must be set up through a shelf prospectus and prospectus supplement. Issuers listed in both Canada and the United States can rely on the Multijurisdictional Disclosure System (MJDS) to effect a program in both Canada and the U.S., or even just in the U.S. Issuers that have an existing shelf prospectus with available space can usually use it to set up their program.

Canadian ATM sales are limited to 10% of the aggregate market value of the issuer's outstanding securities of the same class. Canadian securities regulators can in certain circumstances provide discretionary relief from such limitation.

ATM distributions are usually effected through sale agreements whereby a sales agent will, at the issuer's discretion and instruction, use its commercially reasonable efforts to sell the issuer's equity securities. In this instance, securities will be distributed at market prices prevailing at the time of sale of such securities or at prices to be negotiated with the applicable purchaser.

Conclusion

ATM distributions are becoming more popular in Canada, and we expect to see their continued use in response to current market conditions in order to facilitate an issuer's access to public financing when other traditional forms of financing may not be available, or the proposed terms otherwise unacceptable. Osler has significant and recent experience in both Canada and the United States in setting up successful ATM programs. For more information, please contact [François Paradis](#), [Jeremy Brisset](#) or [Erick Lauzière](#).

[1] "shelf procedures" means the requirements set out in Regulation 44-102 respecting Shelf Distributions for the distribution of securities under a base shelf prospectus and a shelf prospectus supplement.