THE WALL STREET JOURNAL.

WEDNESDAY, DECEMBER 27, 2006 - VOL. CCXLVIII NO. 150 - ★★★★ $1.00

SEC Slows Flow of PIPE Deals to a Trickle

By Judith Burns

Washington

PIPES ARE GETTING clogged in the nation's capital.

Staffers at the Securities and Exchange Commission are increasingly reluctant to sign off on transactions involving "private investments in public equity," or PIPEs, a popular way for public companies to raise cash quickly. The reason: the deals are getting so big and complex that it is causing concern that shareholders aren't aware of the potential risks.

Offerings like these have boomed because they let companies quickly access cash from sophisticated investors, such as hedge funds. This year, a record $27.7 billion of PIPE deals were placed through Dec. 22, according to PlacementTracker, up about 38% from 2005. Buyers in these private transactions receive unregistered securities (typically stock, or debt that can be converted into stock) with the expectation that the issuing company will later obtain SEC approval to register them—allowing the securities to be resold to the public. In recent months, however, the SEC has blocked scores of companies from registering shares sold in PIPE deals.

Proponents of PIPEs concede that abuses—including SEC allegations of insider trading by some hedge funds that invested in PIPE deals—have tarnished the sector. Issuing a large number of shares through a private offering can also flood the market, diluting the value of shares held by stockholders and hurting the stock price.

Of particular concern to the SEC are frequent users of PIPE transactions, and large PIPE offerings by smaller companies. In the wake of the SEC crackdown, the number of deals has declined, particularly since midyear, according to Sagient Research Systems Inc., whose PlacementTracker monitors PIPEs.

Supporters of PIPEs worry the crackdown will close off funding for small companies. Indeed, it can be tough for tiny companies to raise money through bank loans or traditional financing from Wall Street firms—either they are too small and unproven, or already heavily in debt. PIPEs, by contrast, let companies tap financing by going straight to investors with minimal regulatory fuss.

"There is no alternative for these companies; the only way they can finance themselves is through PIPEs," says David Feldman, a managing partner at New York law firm Feldman Weinstein & Smith LLP.

In the past, regulators would let companies register large numbers of shares issued in PIPE

Please Turn to Page C4, Column 1

SEC Is Slowing Flow of PIPE Deals to a Trickle

Continued From Page C1

deals—equal to many times the value of the company's current shares outstanding. Now, securities lawyers say the agency's staff is less tolerant, and frowns on attempts to register shares that amount to more than 33% of the "public float," or the number of shares held by investors not affiliated with the company.

SEC officials say that the issuance of large numbers of new shares in PIPE transactions should be viewed as "primary" offerings of stock (in which proceeds of the sale flow to the company), rather than less closely scrutinized "secondary" offering (in which proceeds go to shareholders).

The stricter view would be much costlier for issuers, and also could expose investors to liabilities they might not otherwise face.

Companies say such a change would be less flexible. "It's really changed everything," said Gregory Sichenzia, a partner at New York law firm Sichenzia Ross Friedman Ference LLP, which advises issuers and investors.

Mr. Sichenzia said the get-tough stance has caused hedge funds to pull back from investing until the landscape is clearer.

Martin Dunn, deputy director of the SEC's corporation finance division, which reviews registration applications, said: "We have not told anyone that they cannot do these deals, we've just told them that they have to register them appropriately."

Mr. Dunn says SEC staffers hope to provide clarification early next year on when registrations for shares issued in connection with PIPE transactions may be done in a secondary offering, and when a primary offering would be needed.

PIPE issuers say they are eagerly awaiting the guidance. "We have been on the phone and the SEC has refused to give us any direct guidance," says Denis O'Connor, chief executive of **Advanced BioPhotonics** Inc., a Bohemia, N.Y., biotechnology company that is awaiting SEC approval tied to one of its PIPE deals. "I know dozens and dozens of companies that are in the same boat."

Advanced BioPhotonics has been waiting nearly a year for the SEC to approve the registration of shares in a $4 million convertible debt deal, which follows two PIPE transactions in 2003 and 2004, says Mr. O'Connor. The company got half the cash last year, but won't receive the rest until the shares are registered.

Mr. O'Connor says the delay has been "catastrophic" for the company, which has yet to turn a profit and needed the money for clinical trials of a cancer-detection device.

Recently, the company refiled its application for the seventh time, seeking to register six million shares instead of the roughly 17 million it sought to register in 2005. Mr. O'Connor says the scaled-back approach will amount to about 33% of the company's public float, which he hopes will fly with the SEC staff.

Dow Jones Hedge Benchmarks

	CLOSE	NET CHG	% CHG	YTD % CHG	52-WK CHG
Convertible Arbitrage	130.95	-0.09	-0.07	10.3	10.4
Merger Arbitrage	123.83	-0.16	-0.13	9.0	9.1
Event Driven	141.39	0.06	0.04	12.4	12.5
Distressed Securities	174.89	-0.01	-0.01	14.8	15.5
Equity Market Neutral	108.77	-0.06	-0.06	7.1	7.2
Equity Long/Short	113.80	-0.21	-0.18	7.7	7.2

estimates as of 12/22/06, after fees; www.djhedgefundindexes.com