The current bear market represents one of the most powerful declines in history.

**DJIA During The Worst Bear Markets**

- **Crash of 1929**: 9/3/29 - 7/8/32, (89.2)%
- **1937 Recession**: 3/10/37 - 4/28/42, (52.2)%
- **1973 Oil Crisis**: 1/11/73 - 10/3/74, (53.9)%
- **Tech Crash**: 1/14/00 - 10/9/02, (44.1)%
- **Global Financial Crisis**: 10/9/07 - ???, (52.2)%

Source: Bloomberg as of April 28, 2009. Number of days based on calendar days from peak of previous bull market to low of bear market.
Credit Spreads Have Collapsed Since Historical Highs

Credit Spreads

(Spread in bps)

Source: Bloomberg as of June 12, 2009.
Note: Moody’s AAA Corporate Bond Index comprised of a constantly changing universe of 20+ year corporate bonds rated AAA by Mood’s. Index shown above spread to 30-year U.S. Treasuries.
Macro Trends Driving the Equity Markets

S&P 500 EPS vs. Daily Close

U.S. Deficit as a % of GDP

S&P 500 / Case-Schiller Home Price Index

U.S. Unemployment Rate

Source: Bloomberg and FactSet as of May 5, 2009.
(a) Based on a 20-city composite using the change from a year earlier.
Increased Volatility is the Enemy of Raising Capital

CBOE VIX Index vs. Quarterly Follow-On Volume

VIX Close as of (06/12/09): 28.15

Source: ECM Analytics and FactSet as of May 5, 2009.
Equity and Equity-Linked Financing is Down Across the Board

**U.S. IPO, Follow-On and Convertible Volumes**

<table>
<thead>
<tr>
<th>Year</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
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</thead>
<tbody>
<tr>
<td>2005</td>
<td>138</td>
<td>172</td>
<td>70</td>
<td>203</td>
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<td>2006</td>
<td>Q1</td>
<td>Q2</td>
<td>Q3</td>
<td>Q4</td>
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<tr>
<td>2007</td>
<td>203</td>
<td>245</td>
<td>87</td>
<td>231</td>
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<tr>
<td>2008</td>
<td>82</td>
<td>147</td>
<td>51</td>
<td>45</td>
</tr>
<tr>
<td>2009</td>
<td>178</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**Source:** ECM analytics. Excludes closed-end funds, REITs, units, best efforts offerings, non-U.S. offerings and offerings less than $10 million. Proceeds include overallotment amount.

**Orange shading** represents Visa’s $19.7 billion IPO on March 18, 2008.

(a) As of June 12, 2009.
The Financial Sector Has Been Particularly Active

Reeling from major losses on credit instruments, banks seeking to shore up equity capital have turned to the equity follow-on and convertible markets

**U.S. IPO, Follow-On and Convertible Volumes**

<table>
<thead>
<tr>
<th>Year</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
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<td>2006</td>
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<tr>
<td>2007</td>
<td>70</td>
<td>203</td>
<td>302</td>
<td>87</td>
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<td>2008</td>
<td>30</td>
<td>245</td>
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<td>231</td>
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<tr>
<td>2009</td>
<td>45</td>
<td>29.0</td>
<td>147</td>
<td>52</td>
</tr>
</tbody>
</table>

(US$ in billions)

Source: ECM analytics. Excludes closed-end funds, REITs, units, best efforts offerings, non-U.S. offerings and offerings less than $10 million. Proceeds include overallotment amount.

(a) As of June 12, 2009.
Deteriorating Pricing Conditions

Discounts on secondary equity offerings have widened, yet investors have still lost money on many deals

**Average File-to-Offer Follow-On Discounts**

(Average % Change)

<table>
<thead>
<tr>
<th></th>
<th>Q1</th>
<th>Q2</th>
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<th>Q4</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Q1</th>
<th>Q2</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>(2.7)%</td>
<td>(3.7)%</td>
<td>(7.9)%</td>
<td>(6.6)%</td>
<td>(10.5)%</td>
<td>(7.0)%</td>
<td>(10.9)%</td>
<td>(13.3)%</td>
<td>(10.4)%</td>
<td>(11.7)%</td>
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<td></td>
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<tr>
<td></td>
<td>(11.7)%</td>
<td>(2.7)%</td>
<td>(7.9)%</td>
<td>(6.6)%</td>
<td>(10.5)%</td>
<td>(7.0)%</td>
<td>(10.9)%</td>
<td>(13.3)%</td>
<td>(10.4)%</td>
<td>(11.7)%</td>
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<td>2008</td>
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**Follow-On Aftermarket Performance**

(Average % Change)

<table>
<thead>
<tr>
<th></th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
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<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Q1</th>
<th>Q2</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>2.9%</td>
<td>4.7%</td>
<td>1.8%</td>
<td>3.1%</td>
<td>1.2%</td>
<td>1.1%</td>
<td>2.3%</td>
<td>1.5%</td>
<td>2.0%</td>
<td>2.9%</td>
<td>(0.7)%</td>
<td>5.5%</td>
<td>1.5%</td>
<td>4.0%</td>
</tr>
<tr>
<td></td>
<td>(41.2)%</td>
<td>(42.9)%</td>
<td>(42.2)%</td>
<td>(44.9)%</td>
<td>(26.2)%</td>
<td>(41.2)%</td>
<td>(36.3)%</td>
<td>(2.2)%</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2008</td>
<td>2.5%</td>
<td>33.4%</td>
<td>5.3%</td>
<td>4.0%</td>
<td>2.9%</td>
<td>5.5%</td>
<td>1.5%</td>
<td>4.0%</td>
<td>2.5%</td>
<td>5.3%</td>
<td>8.9%</td>
<td>6.4%</td>
<td>16.1%</td>
<td>13.2%</td>
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<td>2009</td>
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</table>

Source: ECM analytics, FactSet. Excludes closed-end funds, REITs, units, best efforts offerings, non-U.S. offerings and offerings less than $10 million. Proceeds include overallotment amount.

(a) As of June 12, 2009.
Small Cap Growth Companies Have Been Shut Out of the Public Capital Markets

- The equity financing environment has been challenging for some time
  - Elevated market volatility is the enemy of capital raising
    - Caused by an historic financial crisis and global economic contraction of unprecedented magnitude
  - Investor uncertainty resulted in dramatic reduction in appetite for risk
    - Just recently risk-taking has begun to re-emerge
  - Publicly marketed transactions have been dominated by financial sector or large cap household names
    - Small cap growth companies have largely been shut out of the public marketplace, or faced punitive ("expensive") pricing terms on new capital raises
Innovative Financing Vehicles Come Into Favor

- At Market Offerings ("AMO’s") allow companies to incrementally issue primary shares into the market through their broker dealer at market prices
  - “Reverse buyback”
  - Flexible product
    - Only sell stock if cash needed, no issuance required
    - Opportunistic price limits may be set for sales based on market movements

- Hybrid “quasi-public” structures have been utilized to minimize market risk and maximize potential demand for secondary offerings
  - “Wall-cross” follow-ons
  - Several days of private marketing to institutional investors
  - Public launch of deal on night of pricing to allow other investors opportunity to invest

- PIPEs and Registered Directs ("RDs") have come into favor due to their discreet nature
  - Confidential marketing to targeted institutional accounts
Innovative Financing Vehicles Come Into Favor

- More recently, existing investors and boards of directors have been discussing more “fair” and “democratic” forms of financing
  - One such alternative takes a page from the European capital markets playbook, in the form of the rights offering
    - Gives all shareholders equal rights to participate and shield themselves from dilution
    - Offering size not subject to 20% of pre-offering market cap
    - Avoid diluting existing shareholders – terms equitable to all parties
    - Opportunity for backstop provider to signal confidence in Company and average-down on cost basis of position
    - Large existing shareholders generally prefer one-on-one negotiations, and to avoid market risk through a backstop
Rights Offerings
Rights Offerings

• A rights offering provides an issuer’s existing shareholders the opportunity (right) to purchase a *pro rata* portion of additional shares (also referred to as “subscription warrants”) at a specific price per share (the “subscription price”).

• The subscription price typically is set at a discount to the recent trading price of the issuer’s stock.

• All shareholders are given the right to purchase shares based on the number of shares they own on a specified record date.

• The rights offering typically remains open for a period of 16 to 30 days, usually starting from the day that the issuer’s registration statement becomes effective.

• There are no federal securities laws requiring the rights offering to be open for a specified period of time.
From an issuer’s perspective:

- A rights offering provides a capital raising opportunity.
- An issuer may be able to complete a rights offering without an investment bank (cheaper).
- The commission or spread in a standby rights offering is lower than the spread in an underwritten offering or the agency fee in a PIPE transaction.
From a shareholder’s perspective

• A rights offering provides an opportunity to make an additional investment, usually at a discount to market.

• A rights offering enables a shareholder to avoid being diluted by the issuance of the new equity.
Structuring a Rights Offering
Transferable versus non-transferable rights

- Rights may be non-transferable or transferable.
  
  - Non-transferable: shareholders cannot transfer their rights to third parties. Non-transferable rights are more popular.
  
  - Transferable: shareholders can trade their rights in the secondary market during the offering period. Trading of rights takes place on the exchange where the issuer’s common stock is listed, or over the counter if the issuer’s stock is not listed on an exchange.
Considerations

• By making rights transferable, the issuer can provide compensation to shareholders who do not wish to participate in the rights offering (i.e., the shareholder offsets dilution by earning a profit trading the rights).

• With transferable rights, a market may develop for the rights and this may create arbitrage opportunities (between the issuer’s common stock and the rights) or volatility in the issuer’s common stock.

• Under certain circumstances, transferable rights may need to be separately registered.
“Uninsured” versus “Insured”

Rights offerings may be “uninsured” or “insured.”

- In “uninsured” rights offerings, the issuer receives no guarantee that the number of shares or subscription warrants offered will actually be exercised by existing shareholders, which could leave the issuer undercapitalized.

- In “insured” rights offerings, a third party (usually an underwriting syndicate, an investment bank, an affiliate of the investment bank or an affiliate of the issuer) agrees, prior to the commencement of the rights offering, to purchase any shares or subscription warrants that are not exercised in the rights offering.

- This arrangement is commonly known as a “backstop commitment,” and provides the issuer with a guarantee that it will raise the necessary capital.
• The provider of the backstop also is referred to as the standby purchaser (or standby underwriter) and the offering is referred to as a standby rights offering.

• A standby purchaser need not be a broker-dealer.
Direct Rights Offering versus Standby Offering

- An issuer may be able to complete a rights offering on its own without a standby purchaser.
  - This is particularly true for larger, well capitalized companies.
  - It is also possible for issuers that have identified interest from an existing shareholder.
Standby Commitment

- The standby purchaser (underwriter) will receive a fee.

- The standby commitment may be structured as a firm commitment or as a best efforts arrangement.

- The standby purchaser may want to put a cap on the number of shares that it may acquire in order to avoid being deemed a “control person.”

- Rights purchased by an underwriter (acting as a standby purchaser) or by an affiliate (acting as a standby purchaser) must be resold pursuant to a current registration statement.
• Step-up Privilege

• A “step-up privilege” may be offered to shareholders when the rights or subscription warrants are not easily divisible by the subscription ratio.

• If a shareholder fully exercises the rights evidenced by the subscription warrant, the shareholder will be permitted to subscribe for one additional full share in lieu of the fractional share that would have been granted.
• Over-subscription Privilege*

  • An “over-subscription privilege” provides a shareholder who fully exercises the rights evidenced by the subscription warrant, including any “step-up privilege,” if applicable, to subscribe for an additional number of shares, usually not more than the aggregate number of shares subscribed for pursuant to the basic rights and the “step-up privilege.”

  • The “over-subscription privilege” is subject to allotment and shares will be distributed on a pro rata basis if an allotment does not exist to fulfill all requests.

* Also referred to as primary rights and secondary rights
• The pro rata distribution can be handled in one of the following two ways:

  • as nearly as practicable in proportion to the shares requested; or

  • as a ratio, in that the rights exercised by each shareholder exercising the “over-subscription privilege” bears to the total number of rights exercised by all shareholders exercising the “over-subscription privilege.”
Advantages
Advantages

- There is no shareholder approval necessary even if the rights offering results in an issuance of common stock representing 20% or more of the voting power outstanding prior to the issuance.

- Rights offerings can be completed more quickly than other forms of financing. As a result, these are useful for issuers wanting to take advantage of a market window or needing a quick cash infusion.

- Rights offerings can be a cheaper source of pre-filing and post-filing capital raising for issuers contemplating, or emerging from, Chapter 11 bankruptcies. Unlike post-petition debt financing, there are no financial covenants or similar restrictions attached to the capital.
Advantages (cont’d)

• Because the offering is made to existing shareholders and not to the general public, the marketing effort is less time intensive.

• The announcement of a rights offering can trigger market interest in the issuer’s common stock with prospective investors interested in purchasing shares prior to the record date in order to take advantage of the offering.

• There is no dilutive effect to shareholders who exercise the rights issued to them.
Disadvantages
Disadvantages

• The sale of shares in a rights offering can result in more concentrated investor positions.

• The sale of shares to outside investors as part of a standby underwriting arrangement can give effective control to outsiders without existing shareholders receiving a control premium for their shares.

• Rights offerings that are part of a broader capital raising effort can trigger additional securities law or stock exchange requirements, and, in some cases, may require shareholder approval.
Rights Offering Timeline
<table>
<thead>
<tr>
<th>Activity</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial draft of registration statement circulated to all parties</td>
<td>Issuer (I); Issuer’s Counsel (IC)</td>
</tr>
<tr>
<td>Preliminary due diligence</td>
<td>Standby Purchaser (SP); Standby Purchaser’s Counsel (SPC)</td>
</tr>
<tr>
<td>Org meeting/drafting session/diligence session</td>
<td>I; IC; SP; SPC</td>
</tr>
<tr>
<td>Work commences on:</td>
<td>SP; SPC</td>
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<tr>
<td>Standby Purchase Agreement</td>
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<tr>
<td>Discuss Comfort Letter</td>
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<tr>
<td>Rights Offering Terms</td>
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<tr>
<td>Second draft of registration statement circulated to all parties</td>
<td>I; IC</td>
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<tr>
<td>and rights offering terms set</td>
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<tr>
<td>Drafting session</td>
<td>I; IC; SP; SPC</td>
</tr>
<tr>
<td>Work commences on:</td>
<td>I</td>
</tr>
<tr>
<td>Choosing rights agent</td>
<td></td>
</tr>
<tr>
<td>Conducting broker search with transfer agent/ADP</td>
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</tbody>
</table>
### Timeline (cont’d)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Choosing record date</td>
<td>I; SP</td>
</tr>
<tr>
<td>Notifying NYSE or NASDAQ of record date</td>
<td>I; IC</td>
</tr>
<tr>
<td>Press release announcing record date for rights offering</td>
<td>I; IC</td>
</tr>
<tr>
<td>File registration statement with the SEC</td>
<td>I; IC</td>
</tr>
<tr>
<td>Work commences on:</td>
<td></td>
</tr>
<tr>
<td>Obtaining Draft Comfort Letter</td>
<td>SP; SPC</td>
</tr>
<tr>
<td>Finishing due diligence</td>
<td>SP; SPC</td>
</tr>
<tr>
<td>Finalizing standby purchase agreement</td>
<td>IC; SPC</td>
</tr>
<tr>
<td>Listing for underlying shares</td>
<td>I; IC</td>
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<tr>
<td>Receive SEC comments on registration statement (if reviewed)</td>
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</tr>
<tr>
<td>Responding to SEC comments</td>
<td>IC; SPC</td>
</tr>
<tr>
<td>Mailing of rights offering prospectus</td>
<td>I</td>
</tr>
<tr>
<td>Activity</td>
<td>Responsibility</td>
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<tr>
<td>------------------------------------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Subscription period [20-30 days]</td>
<td>SP</td>
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<tr>
<td>Standby purchase commitment (for any unsubscribed amounts)</td>
<td>SP, SPC</td>
</tr>
<tr>
<td>Closing of rights offering</td>
<td>I; IC; SP; SPC</td>
</tr>
</tbody>
</table>
Considerations for Issuers
Considerations

- **Authorized shares**: the issuer must determine if it has sufficient authorized and unissued shares.

- **Board approvals**: the issuer will have to hold a board of directors meeting to: (1) authorize the rights offering; (2) set the record date; (3) set an offer date; and (4) set an expiration date.

- **Record date considerations**: the issuer must determine if other events or activities requiring a record date will be approaching, such as a record date for an annual shareholders meeting, or dividend distribution. This is to ensure that there are not conflicting shareholders of record for two different events or activities occurring around the same time period. Once the record date is set for the rights offering, no other record date for any other purpose should be set by the issuer for at least seven business days after the expiration of the offering period.
Required SEC Filings
Required filings:

- Because the subscription warrants are rights granted to existing shareholders for no consideration, the subscription warrants do not need to be registered with the SEC; however, transferable rights may be required to be registered. The issuer must register the shares that will be allocated to the shareholders who elect to participate in the rights offering.

- The issuer must file a registration statement on Form S-1 or Form S-3, if eligible. Or, if an issuer has an effective existing shelf registration statement, the issuer can review it to determine if it provides sufficient authority to conduct a rights offering.

- The issuer must also file a prospectus or prospectus supplement.

- If the issuer is a foreign private issuer at the time the securities are first offered to U.S. holders, with limited U.S. ownership, the rights offering is exempt from registration provided certain conditions provided in Rule 801 of the Securities Act are met. Rule 801 limits transferability of the rights by U.S. shareholders unless in accordance with Regulation S, and requires certain documentation be provided to U.S. shareholders.
Stock Exchange Rules and Listing Requirements
Stock Exchange Rules and Listing Requirements

- The exchanges require all known terms and details of a proposed rights offering be publicly released immediately after the issuer’s board of directors has taken action. [NYSE Rule 703.03(B); NASDAQ Rules 4310(c)(16) and 4320(e)(14)]

- The exchanges require at least ten days advance notice of any record date fixed in connection with an offering of listed securities to shareholders. [NYSE Rule 703.03(B) NASDAQ Rules 4310(c)(25) and 4320(e)(21)]

- The NYSE requires issuers to send written notice to shareholders at least ten days in advance of the proposed record date. The notice should state that the issuer intends to make a rights offering. The notice should also include to the extent finally determined: (1) the title of the security to be offered; (2) the proposed subscription ratio; (3) the proposed subscription price; (4) the proposed record date for determination of those entitled to subscribe; (5) the proposed expiration date of the right to subscribe; and (6) the expected date on which the subscription certificates will be mailed. [NYSE Rule 703.03(C)]

- The issuer should confer with its exchange representative well in advance of the offering date to ensure coordination of actions and arrangement of a time schedule. [NYSE Rule 703.03(A)]

- The NYSE requires that the issuer notify it by telephone immediately upon receiving notice that the registration of the offered securities has become effective. [NYSE Rule 703.03(M)]

- The NYSE requires issuers to list subscription warrants, if they are transferable, in addition to listing the new shares on the exchange. [NYSE Rule 703.03(N)]
The effective date should be set for at least six business days in advance of the record date in order to prevent confusion if there is a delay in the effectiveness of the registration statement, unless the issuer already has an effective shelf registration statement. [NYSE Rule 703.03(D)]

Once the record date is set for the rights offering, no other record date for any other purpose should be set by the issuer for at least seven business days after the expiration of the offering period. [NYSE Rule 703.03(D)]

The issuer’s board of directors should establish the record date as a specified date “or such later date as registration under the Securities Act of 1933 shall become effective.” [NYSE Rule 703.03(D)]

The subscription certificates should be issued to stockholders as soon as practicable after the record date. [NYSE Rule 703.03(E)]

The NYSE requires that shareholders of listed securities be allowed at least sixteen days after the subscription warrants have been mailed to subscribe to the offering, although it could be reduced to fourteen days if certain mailing conditions are met. [NYSE Rule 703.03(E)]
Other Legal Considerations
• In certain circumstances, subscription warrants may need to be registered. In a transferable rights offering, if a controlling shareholder chooses to trade rights rather than exercise them, the requisite number of rights would need to be registered and a statement would need to be included in the prospectus stating that the prospectus may be used to cover the sales of rights by such controlling shareholder.

• With the adoption of Regulation M, there is no longer a separate rule covering market manipulation during rights offerings under the Exchange Act. Therefore, if a rights offering involves a distribution as defined in Rule 100, the applicable restricted period of Rules 101 and 102 applies to bids for or purchases of the security being distributed and any reference security. Transactions involving the rights themselves are not subject to Rules 101 or 102. However, Rule 104 applies to stabilization transactions in any security, including the rights. Contractual provisions should be included in subscription warrants and standby purchase agreements to ensure purchasers do not violate this rule, and to protect the issuer from liability.