GameStop’s $3.5 Billion Windfall Shows Power of SEC Rule Mastery

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More retail investors are entering the capital markets, and “influencer” investing—where individual investors are drawn to particular trades based on hype generated by celebrities and social media influencers—continues to rise.

Because of these two trends, public companies can raise money on the heels of viral news, provided they have the securities law infrastructure in place to move quickly. A prime example of how a public company can strategically position itself for growth is GameStop Corp., which raised aggregate gross proceeds of approximately $3.5 billion through three at-the-market offerings this year.

Before a company takes this route, it’s important to first understand the legal requirements that allow public companies to access equity capital quickly and efficiently.

To raise money in the public markets, companies must have an effective registration statement on file with the Securities and Exchange Commission. Companies are required to use a registration statement on Form S-3 to conduct an at-the-market offering, since it involves sales of securities on a continuous basis. An at-the-market offering is when a public company offers and sells its securities to the open market through a sales agent at prevailing market prices.

The requirements to use Form S-3 registration statements generally include a public float of at least $75 million, though companies with a public float of less than $75 million can use the statement under limited circumstances. Companies also must be timely with their required periodic filings and certain current filings with the SEC for at least 12 calendar months. Form S-3 registration statements are subject to review and comment by the SEC, which can take a few weeks.

A registration statement can be used for sales of securities only after the SEC declares it effective. However, a company with a public float of at least $700 million, known as a well-known seasoned issuer, or WKSI, can file a Form S-3 shelf registration statement that’s automatically effective without an SEC review.

As a result, WKSIs, more so than other companies, can respond to changing market conditions and access public capital markets more promptly.

Even if a company isn’t a WKSI, it can file a Form S-3 shelf registration statement without an immediate plan to sell securities. Doing so means that, when the opportunity arises, an effective registration statement will be in place for sales of securities—without an SEC review process potentially delaying the company’s ability to sell.

Once a shelf registration statement is effective, a company must file prospectus supplements under Rule 424 of the Securities Act of 1933 to describe the securities being offered and sold. These prospectus supplements generally take far less time to prepare and file with the SEC than the registration statement itself, because most of the required disclosures can be taken from, or incorporated by reference to, the company’s existing filings.

Shares of GameStop soared on May 13 after Keith Gill, known by his YouTube and Twitter handle Roaring Kitty, returned to social media after a three-year hiatus with a post on X that swiftly went viral. Gill was tied closely to the meme stock frenzy of January 2021 and became known for posting YouTube and other social media content regarding GameStop. Trading in GameStop’s stock was highly volatile in the days after Gill’s post, but the stock price remained at an elevated level compared with prior months.

Four days later, GameStop, which is a WKSI, filed a Form S-3 shelf registration statement and announced a new at-the-market offering to sell up to 45 million shares. The company completed sales under this at-the-market offering quickly, given the trading volume, announcing a week later that it had sold all the shares for aggregate gross proceeds of about $933 million.

Gill made additional social media posts two weeks later and announced an upcoming YouTube livestream—his first in three years—driving another surge in GameStop’s stock price. In a matter of days, GameStop filed another prospectus supplement to launch a second at-the-market offering of up to 75 million shares.

With record-high trading volumes, GameStop sold all 75 million shares within a matter of days, raising $2.1 billion in gross proceeds, which gave the company more flexibility to execute its strategic plan. In mid-September, GameStop raised another $400 million in a third at-the-market offering, collectively raising about $3.5 billion in total gross proceeds.

With securities law tools ready, GameStop was able to leverage viral memes and social media buzz into an opportunity to bolster its cash position. Being a WKSI, GameStop's shelf registration statement was automatically effective, giving it immediate access to the public capital markets and allowing it to launch successive at-the-market offerings to raise increasing amounts of cash through the filing of successive prospectus supplements.

All of this could only have occurred with deft coordination among the company's financial, accounting, and legal teams.

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