Weil

A Look at 2021 U.S. Sponsor-Backed PIPEs

March 2022

2022
Private Equity
SURVEYS

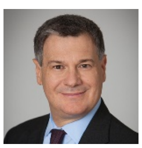
INTRODUCTION & RESEARCH METHODOLOGY

This survey reviews and analyzes the material financial and governance terms of 14 private investments in public equity transactions (PIPEs) announced in the United States in 2021, involving private equity sponsors or financial investors making investments of at least $100 million in convertible or non-convertible preferred equity or debt. The 14 surveyed transactions included the following issuers:

- II-VI Incorporated[1]
- Array Technologies, Inc.
- Box, Inc.
- CME Group, Inc.
- comScore, Inc.
- Comtech Telecommunications Corp.
- eHealth, Inc.
- GigCapital4, Inc. (d/b/a BigBear.ai Holdings, Inc.)
- Kaleyra, Inc.
- Pacific Biosciences of California, Inc.
- RingCentral, Inc.
- Splunk, Inc.
- TPI Composites Inc.

We are happy to discuss the detailed findings and analyses underlying this survey.

Doug Warner
Founding Editor



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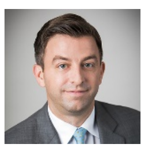

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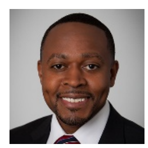

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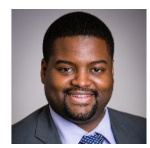

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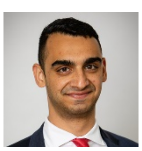

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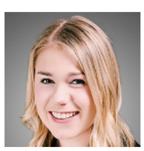

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[1] There were two PIPEs involving II-VI Incorporated that are summarized herein.

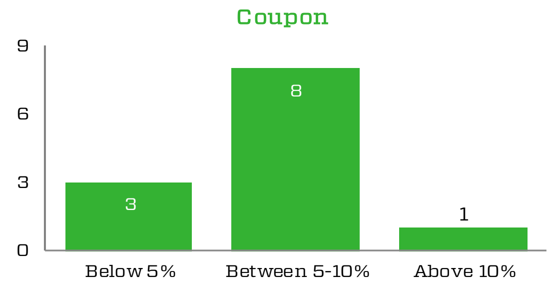
SUMMARY OF KEY FINDINGS

- General Market Observations.
  - Overall, 2021 witnessed a tightening of the PIPE market as compared to the more sponsor-friendly 2020 PIPE market. Since the second half of 2020, issuers have been able to negotiate more attractive terms consistent with pre-pandemic times.
  - While PIPE financing for de-SPAC transactions is not a topic of this survey, many PIPE transactions over the past few years have been related to such financings. PIPE financings for de-SPAC transactions significantly decreased in 2021 as compared to 2020, which is indicative of the challenging market for de-SPAC transactions in 2021 compared to 2020.
- **Security Type**. Of the PIPEs surveyed, all except 2 were structured with a convertible debt or equity security (8 as convertible preferred stock and 4 as convertible debt). The 2 that were structured with a non-convertible security involved non-convertible preferred stock and warrants. This is not surprising, as convertible securities give sponsors downside protection in the investment.
- **Coupons**. Coupons slightly decreased in 2021, with the average coupon being approximately 5.5% (down from an average of 7% in 2020). This decrease can be attributed to the tightening of the PIPE market and reversion to terms more consistent with pre-pandemic times (in 2019, the average coupon was 5.1%). It will be interesting to see what happens with coupons in 2022 in what looks to be a rising interest rate environment.
- Sponsor Governance Rights.
  - Sponsors continued to receive contractual consent rights over certain actions taken by issuer. Although largely limited to consent rights over adverse changes to organizational documents or to the terms or seniority of the securities issued to the sponsor, a handful of the surveyed PIPEs granted sponsors expanded veto rights, including consent rights relating to the incurrence additional indebtedness, payments of dividends, M&A transactions, liquidation events and affiliate transactions. The more sponsor-friendly consent right packages were more common in PIPEs negotiated in the first half of 2021.
  - Sponsors continued to receive board representation in a majority of the surveyed 2021 PIPE transactions, however in only 1 of the surveyed transactions sponsors received more than one board seat (multiple board seats were negotiated in many of the surveyed transactions in 2020).
- Issuer Protections.
  - Forced or automatic conversion triggers remain common among PIPEs involving convertible securities. Under such provisions, the security will convert into the common stock of the issuer at the issuer's discretion if the common stock trades above a specified price for a specified period.
  - Consistent with prior years, lock-up provisions remain commonplace. The average length of lock-ups—approximately 15 months—remained the same as in 2020.
  - Continuing last year's trend evidencing an increased use of contractual standstill provisions, standstill provisions were used in most of the surveyed PIPEs in 2021.

- Expense Reimbursement. In a decrease from last year, sponsors received expense reimbursement by the issuer in only 50% of the surveyed PIPEs (compared to 80% in 2020). This can be attributable to the tightening of the PIPE market evidencing more issuer-favorable terms as compared to last year's sponsor-friendly PIPE market. And while it's not clear from publicly available documents, we have seen many sponsors asking for expense reimbursement for these types of investments even when the transaction is not consummated, which typically leads to negotiation around materially deviating from terms negotiated in term sheets or other agreed terms.
- Stock Exchange Shareholder Approval Requirements. In April 2021, the NYSE amended certain of its shareholder approval requirements, which had the effect of making permanent the temporary relief provided to NYSE-listed issuers in response to the challenges issuers faced during the COVID-19 pandemic (the amendments exclude from the shareholder approval requirements (1) cash public offerings and (2) private placements complying with a minimum price requirement). The vast majority of the surveyed 2021 PIPEs involving convertible preferred stock (6 of 8) included prohibitions on sponsors from acquiring or converting preferred shares above a share cap.

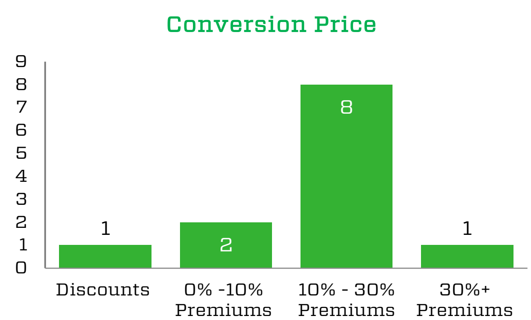
KEY FINDINGS

KEY FINANCIAL TERMS



Coupon. **Coupons slightly decreased in 2021 as compared to 2020, with the mean coupon in 2021 being approximately 5.5% (median of approximately 5.9%), as compared to a mean (and median) of 7% in 2020**. This can be attributable to the tightening of the PIPE market as compared to the sponsor-friendly 2020 market which evidenced a significant increase in the average coupon compared to pre-pandemic years (the median and mean coupon in 2019 was 4.2% and 5.1%, respectively).

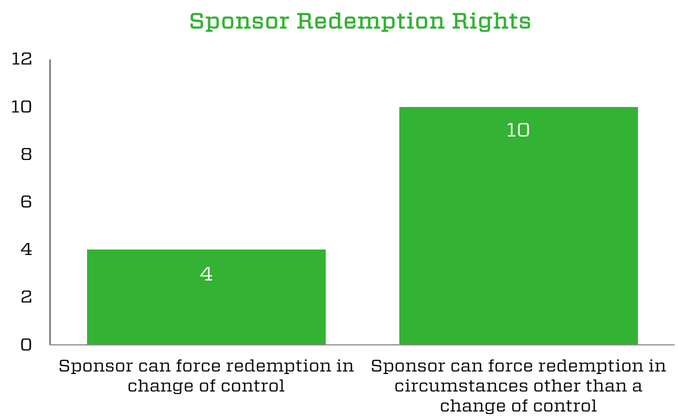
Of the 14 surveyed PIPEs, approximately 43% (6 of 14) involved coupons that were payable in cash, approximately 43% (6 of 14) involved coupons that were payable in cash and/or payment-in-kind (PIK) interest or dividends and the remaining 14% (2 of 14) did not contemplate any contractual interest or dividend payments.



Conversion Price. All of surveyed PIPEs involving convertible securities involved fixed conversion prices subject to customary anti-dilution adjustment for common stock splits, dividends, repurchases, re-classifications and combinations. Almost all conversion prices reflected a premium to the closing stock price as of signing (premiums ranged from 1% to 67%), with the exception of 1 transaction that involved a discount of approximately 1%. The mean conversion premium was approximately 19% and the median conversion premium was 15%.

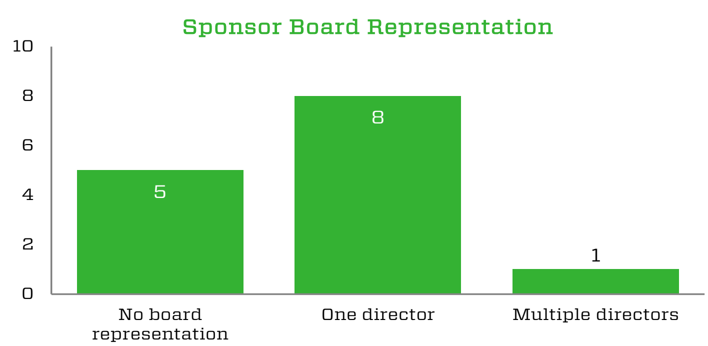
SPONSOR PROTECTIONS & GOVERNANCE RIGHTS

Mandatory Redemption. **In approximately 71% (10 of 14) of the surveyed PIPEs, sponsors had the right to force issuers to redeem their securities in situations other than just upon a change of control, which reflects a shift from 2020 where mandatory redemption was triggered only upon a change of control in a vast majority of surveyed PIPEs.** In 70% (7 of 10) of those transactions, sponsors could force a redemption of their securities after a certain time period (ranging from 3 years to 10 years). In some cases, the consent of investors holding at least 25% of the applicable security was required to effect such a redemption and in other cases sponsors could require redemption upon the occurrence of an event of default. In addition, as seen in prior years, sponsors continued to have the right to force a redemption upon a change of control – and in only a minority of the surveyed PIPEs (4 of 14) mandatory redemption was available to sponsors only upon a change of control (and not in other circumstances).



Upon a change of control, as in prior years, sponsors often can elect to receive the greater of (i) the fair market value such sponsor would be entitled to receive if the PIPE security was converted immediately prior to the closing of the change of control or (ii) a redemption amount equal based on a percentage of the liquidation preference. Redemption amounts in respect of investor-initiated redemptions upon a change of control for the 2021 surveyed PIPEs ranged from 100% - 150% of the liquidation preference.

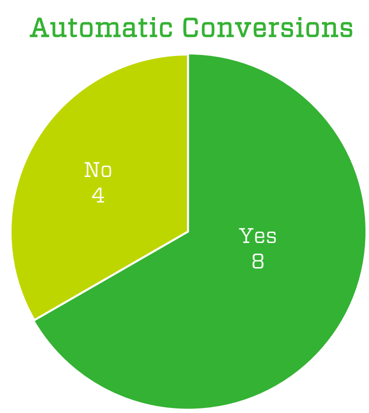
Board Representation. **In 2021, a majority of the PIPEs surveyed (9 of 14) provided the sponsor with board designation rights.** Notably, only 1 of those transactions involved multiple board seats (compared to approximately 28% of 2020 PIPEs). A majority of the surveyed PIPEs (8 of 14) conditioned sponsor's board designation rights upon the ownership of a requisite ownership percentage of the applicable security throughout the sponsor's investment.



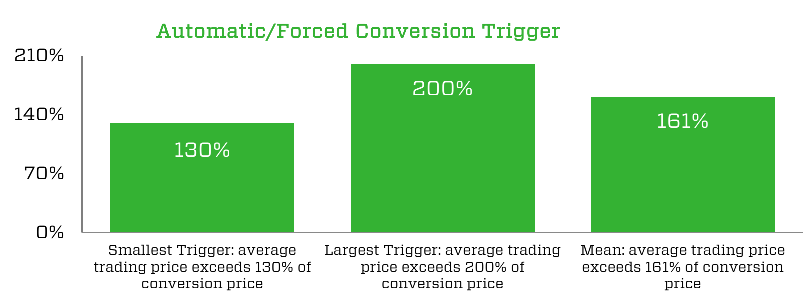
__Investor Consent Rights__. **As was the case in 2020, a vast majority (11 of 14) of the surveyed PIPEs involved investor consent rights.** Consent rights granted by issuers to sponsors were largely limited to consent rights over adverse amendments to organizational documents or to the terms or seniority of the securities issued to the sponsor. However, a handful of PIPEs provided for expanded veto rights – for example, (i) in 50% (7 of 14) of the surveyed PIPEs, sponsor had a consent right over certain additional indebtedness incurred by issuer, (ii) in approximately 43% (6 of 14) of the surveyed PIPEs, sponsor had a consent right over certain dividend payments or redemptions or repurchases of issuer's securities, (iii) in approximately 36% (5 of 14) of the surveyed PIPEs, sponsor had a consent right over certain M&A transactions, (iv) in approximately 21% (3 of 14) of the surveyed PIPEs, sponsor had a consent right over certain liquidation events (dissolution, liquidation, merger or change of control transaction), and (v) in approximately 29% (4 of 14) of the surveyed PIPEs, sponsor had a consent right over certain affiliate transactions. In only 1 of the surveyed PIPEs, sponsor had additional consent rights upon the breach by the issuer of certain financial covenants, over the hiring / firing of senior management, adoption of the annual budget and the incurrence of indebtedness (not subject to any threshold). Broader consent right packages were more common in PIPEs negotiated in the first half of 2021.

ISSUER PROTECTIONS

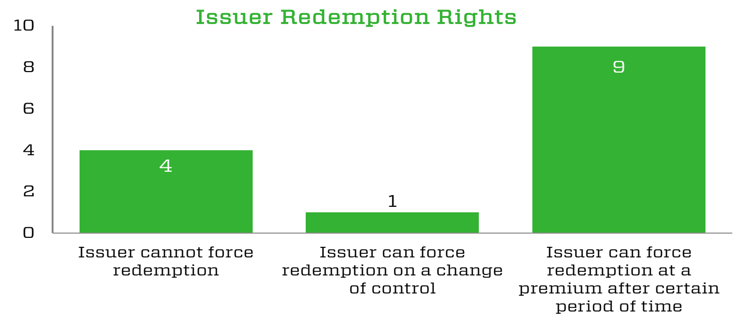
__Conversion__. **Automatic conversion triggers remain common among PIPEs involving convertible preferred stock and debt.** Under such provisions, the security will convert into common stock of the issuer at the issuer's discretion if the common stock trades above a specified price for a specified period of time, which provides a cap on a sponsor's upside. Of the 12 surveyed PIPEs involving convertible preferred stock or debt, approximately 67% (8 of 12) provided for conversion at the issuer's discretion in the event the common stock traded above a specified price for a specified period of time (as compared to 80% of the 2020 surveyed PIPEs).



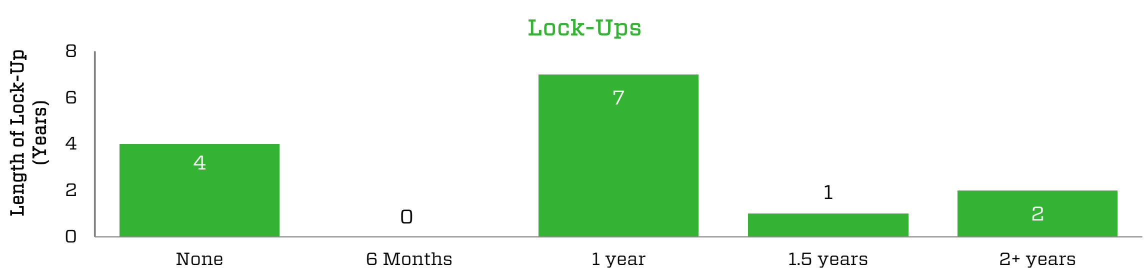
Of the 8 PIPEs with forced or automatic conversion mechanisms, the mean of the triggers was an average trading price for the relevant period exceeding approximately 161% of the conversion price (as compared to 160% in 2020).



<u>Redemption</u>. As was the case in 2020, the vast majority of surveyed PIPEs allowed issuer to force a redemption of sponsor's securities in certain circumstances. Approximately 71% (10 of 14) of the surveyed PIPEs (as compared to approximately 92% in 2020) provided issuer with redemption rights, exercisable at the option of the issuer, to force the redemption of sponsor's securities in the event of a sale or other change of control of issuer or, alternatively, at a redemption premium following a certain period of time. The most common structure for the latter was the right to force the redemption of the underlying security after a certain period of time (most commonly 5 to 7 years) at redemption premiums of up to 50% (as compared to 10% in 2020).



<u>Lock-ups; Standstills</u>. As was the case in 2020, lock-ups and standstill provisions remained prevalent. Approximately 71% (10 of 14) of the surveyed PIPEs contained lock-up provisions restricting sponsor's ability to transfer its securities for a certain period of time. 70% (7 of 10) of those PIPEs had lock-ups of 1 year, with the remaining PIPEs (3 of 10) having lock-ups of 1.5 years or more.



In addition, approximately 71% (10 of 14) of the surveyed PIPEs contained standstill provisions restricting sponsor from purchasing additional securities of issuer for a fixed period of time, with the longest standstill lasting until the earlier of the 7th anniversary of the issuance or a change of control of issuer. The median standstill was approximately 3 years (compared to 2 years in 2020), though that term was commonly extended for so long as sponsor retained a board seat.

EXPENSE REIMBURSEMENT

Sponsor expense reimbursement remained common, however the inclusion of such provisions decreased in 2021 as compared to 2020. Only 50% (7 of 14) the surveyed PIPEs contained expense reimbursement obligations payable to sponsor by issuer. The value of these sponsor expense reimbursements ranged from $175,000 to 100% of sponsor's expenses. Where a capped amount was contemplated, the mean expense reimbursement amount was approximately $1.4 million (and in percentage terms was equal to a mean of approximately 0.37% of the investment amount).

STOCK EXCHANGE SHAREHOLDER APPROVAL REQUIREMENTS

Both Nasdaq and the NYSE require listed companies to obtain shareholder approval for certain issuances of common stock or securities convertible or exchangeable into common stock in excess of 20% of the common stock or voting power outstanding prior to the issuance. The "20% rule," as these collective shareholder requirements are commonly referred to, contains certain exceptions including: (1) "public offerings" for cash and (2) private placements at a price above a minimum market price.[2] Thus, issuances of more than 20% of the common stock or voting power of an issuer would not require shareholder approval where the issuance is made for cash and where the minimum price condition is met. Note, however, that shareholder approval would be required if the proceeds of any such issuance are to be used to finance an acquisition of the stock or assets of another company, and the issued securities together with any other securities issued in connection with the acquisition would exceed 20% of issuer's outstanding common stock or voting power.

Shareholder approval is also required where the issuance of securities may result in a "change of control" of the issuer. Both Nasdaq and the NYSE will look at several factors in determining whether a "change of control" has occurred. Nasdaq generally considers a "change of control" as a transaction that results in an investor or group of affiliated investors owning, or having the right to acquire, 20% or more of an issuer's common stock or voting power, and such ownership or voting power would be the largest ownership in the issuer. The NYSE has indicated that even smaller amounts (i.e., less than 20%) may be deemed to be a "change of control" if the issuance carries certain governance rights (such as the right to appoint directors or veto or blocking rights).

Share Caps

Given the potential delay obtaining shareholder approvals can create, a common approach to addressing this is to structure the PIPE transaction in a manner that limits the issuance to less than 20% of the pre-transaction common stock, or with caps on the number of shares that may be issued upon conversion or exchange until the requisite shareholder approval is obtained. If an issuer determines to defer a shareholder vote in this manner, Nasdaq interpretations provide that shares issuable under the cap (in the first part of the transaction) would not be eligible to vote to approve the remainder of the transaction. In addition, a cap must apply for the life of the transaction unless shareholder approval is obtained (e.g., caps that only apply while the company is listed on Nasdaq are not permitted).

[2] These exceptions, which were first introduced to provide temporary relief to issuers during the COVID-19 pandemic, were made permanent in April 2021.

The vast majority of the surveyed 2021 PIPEs involving convertible preferred stock (6 of 8) included prohibitions on sponsors from acquiring or converting preferred shares above a share cap (often 19.99%).

“Sweetener” and “Penalty” Provisions

Transaction terms for convertible securities may contain “penalties” or “sweeteners” that are triggered if shareholder approval is not (or is) obtained (e.g., changes to the conversion ratio or interest rate, or monetary penalties). However, such “penalty” and “sweetener” provisions should be considered carefully, as the stock exchanges may consider them to be coercive to the shareholders’ vote. Nasdaq, for example, will not permit share caps to be used in connection with issuances that also include “penalty” or “sweetener” provisions triggered upon the outcome of the shareholder vote, as it views this combination as potentially preventing shareholders from freely exercising their vote on the transaction. Nonetheless, an issuance of convertible securities containing “penalties” or “sweeteners” may comply with Nasdaq requirements provided that no common shares are issued prior to the shareholder vote.

In one of the surveyed 2021 PIPEs that included share caps described above, sponsor was entitled to a "make-whole" cash payment in the event the shareholder vote was not obtained.

REPRESENTATIVE EXPERIENCE

Advent International
merger of
Clearent
TSG
$3,000,000,000
Pending

Advent International
acquisition of
encora
~$1,500,000,000
December 2021

Advent International
acquisition of a substantial minority stake in
iodine
Undisclosed
November 2021

Advent International
acquisition, via its AI Beauty Holdings affiliate, of
Orveon
Undisclosed
December 2021

Advent International
acquisition of a co-controlling stake in
planet
Undisclosed
Pending

Advent International
acquisition of an ~50% stake in
RxBenefits
Undisclosed
January 2021

Advent International
investment in
THRASIO
$1,075,000,000
October 2021

Advent International
sale of the Performance Materials Division of
Laird
$2,300,000,000
July 2021

Advent International
Culligan's sale to BDT Capital Partners
Culligan Water
$6,000,000,000
July 2021

Advent International
Cobham Limited's sale of
Cobham Mission Systems
$2,830,000,000
June 2021

Advent International
Distribution International's sale to TopBuild Corp.
Distribution International
$1,001,000,000
October 2021

Advent International
Culligan's pending business combination with
waterlogic
Undisclosed
Pending

Advent International and **CPP Investments**
consortium's pending take-private of
McAfee
$14,000,000,000
Pending

American Securities
acquisition of
FBM
$1,370,000,000
November 2021

American Securities
acquisition of the Interior Products Business of
BEACON
$850,000,000
February 2021

American Securities
acquisition of
CONAIR
Undisclosed
May 2021

American Securities
acquisition of
CS Energy
Undisclosed
May 2021

American Securities
acquisition of
FullBloom
Undisclosed
December 2021

American Securities
acquisition of
LaserShip
Undisclosed
April 2021

American Securities
acquisition of certain assets and liabilities of
SOLV Energy
Undisclosed
December 2021

American Securities
sale of
Henry
$1,575,000,000
September 2021

American Securities
LaserShip, Inc.'s acquisition of
OnTrac
Undisclosed
Pending

American Securities
Emerald's sale to LANXESS AG
Emerald Kalama Chemical
$1,075,000,000
August 2021

Ardian
acquisition of a majority stake in
FFP
$1,000,000,000
October 2021

Bain Capital
pending acquisition of
inetum
Undisclosed
Pending

Bain Capital
acquisition of
Valeo Foods
Undisclosed
Pending

Bain Capital
Kantar Group's acquisition of
Numerator
Undisclosed
July 2021

Bain Capital
Kantar Group's sale of
KANTAR HEALTH
$375,000,000
April 2021

Berkshire Partners
National Carwash Solutions Inc.'s acquisition of
Zep Vehicle Care
Undisclosed
November 2021

Berkshire Partners and **Permira Advisers**
consortium's pending sale of a majority stake in
TERACO
$3,500,000,000
Pending

Blackstone
acquisition of
DECA Dental Group
Undisclosed
August 2021

Blackstone
acquisition, alongside certain existing investors, of
Dynamo Software
Undisclosed
Pending

Blackstone
acquisition of
SUSTANA
Undisclosed
December 2021

Blackstone
acquisition of a majority stake in
Certified Collectibles Group
Undisclosed
July 2021

Blackstone
investment in
Epidemic Sound
Undisclosed
March 2021

Blackstone
investment in
Hotwire Communications
Undisclosed
April 2021

Blackstone
investment in
InCloudCounsel
$200,000,000
September 2021

Blackstone
minority investment in
mollie
$423,239,000
June 2021

Blackstone
investment in
VECTRA
Undisclosed
April 2021

Blackstone
pending sale of
Aqua Finance, Inc.
Undisclosed
Pending

Cornell Capital
acquisition of
INW
Undisclosed
March 2021

Cornell Capital
INW's acquisition of
Capstone Nutrition
Undisclosed
June 2021

CPP Investments
investment in
WAYMO
$2,500,000,000
June 2021

CVC Capital Partners
acquisition of a significant minority stake in
CFGI
$1,850,000,000
November 2021

CVC Capital Partners
acquisition of all of the interests of
FAIRFAX
up to $986,000,000
August 2021

EQT
Storytel's acquisition of
audiobooks.com
$135,000,000
February 2022

Genstar Capital
acquisition of
ARROWHEAD Engineered Products
Undisclosed
August 2021

Genstar Capital
acquisition of
marcone
Undisclosed
July 2021

Genstar Capital
Marcone's acquisition of
Munch's Supply
Undisclosed
December 2021

GI Partners
acquisition of
vast broadband
Undisclosed
February 2021

Goldman Sachs
sale of a majority stake in
Restaurant Technologies
Undisclosed
Pending

Goldman Sachs and **Eurazeo**
sale of a 49% stake in
Trader Interactive
$624,000,000
August 2021

Lee Equity Partners
acquisition of
Alliance Corporation
Undisclosed
September 2021

OMERS Private Equity
acquisition of
International Schools Partnership
$2,300,000,000
September 2021

OTPP
acquisition of a majority stake in
VANTAGE
Undisclosed
November 2021

OTPP
pending acquisition of a majority stake in
Logoplaste
Undisclosed
Pending

OTPP
pending sale of the assets of
Chisholm Energy
$604,000,000
Pending

Providence Equity Partners
sale of
ZeniMax Media Inc.
$7,500,000,000
March 2021

Providence Equity Partners
Topgolf's merger of equals with
Callaway
$2,500,000,000
March 2021

TPG
acquisition of
KETER
Undisclosed
November 2021

TPG Tech Adjacencies
investment in
KAJABI
$550,000,000
March 2021

Trive Capital
acquisition of
NCB Management Services Incorporated
Undisclosed
August 2021

Trive Capital
acquisition of
American Veterinary Group
Undisclosed
March 2021

WEIL'S ELITE GLOBAL PRIVATE EQUITY PRACTICE

An elite global platform with 30+ years of market knowledge

Deep experience across all of the major private equity asset classes

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Advisors to one of the broadest groups of financial sponsors and investors in the world on cutting-edge transactions in a seamless, commercial and results-focused manner

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- **Global and National Footprint.** Weil is a recognized leader in private equity transactions with more than 200 lawyers in the U.S., Europe and Asia representing the top global private equity players. Weil has Private Equity capabilities in New York, Silicon Valley, Boston and Texas in the U.S.
- **Depth of Experience.** Our attorneys have significant experience representing private equity firms and their portfolio companies on all aspects of their business and are regularly involved in some of the largest, most high-profile and complex private equity acquisitions and related financings.

By The Numbers

5
Years

1,100
Deals

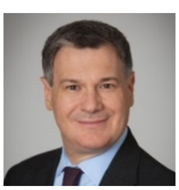
More Than
$1T
In Total Deal Value

Over
300
Sponsors

Ranked
Tier 1
Private Equity in the U.S., U.K, France, China and Hong Kong
— *IFLR1000*

Advises
80% of the **Top 25**
largest global private equity funds
— *PEI 300 2021*

KEY CONTACTS



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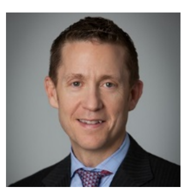

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