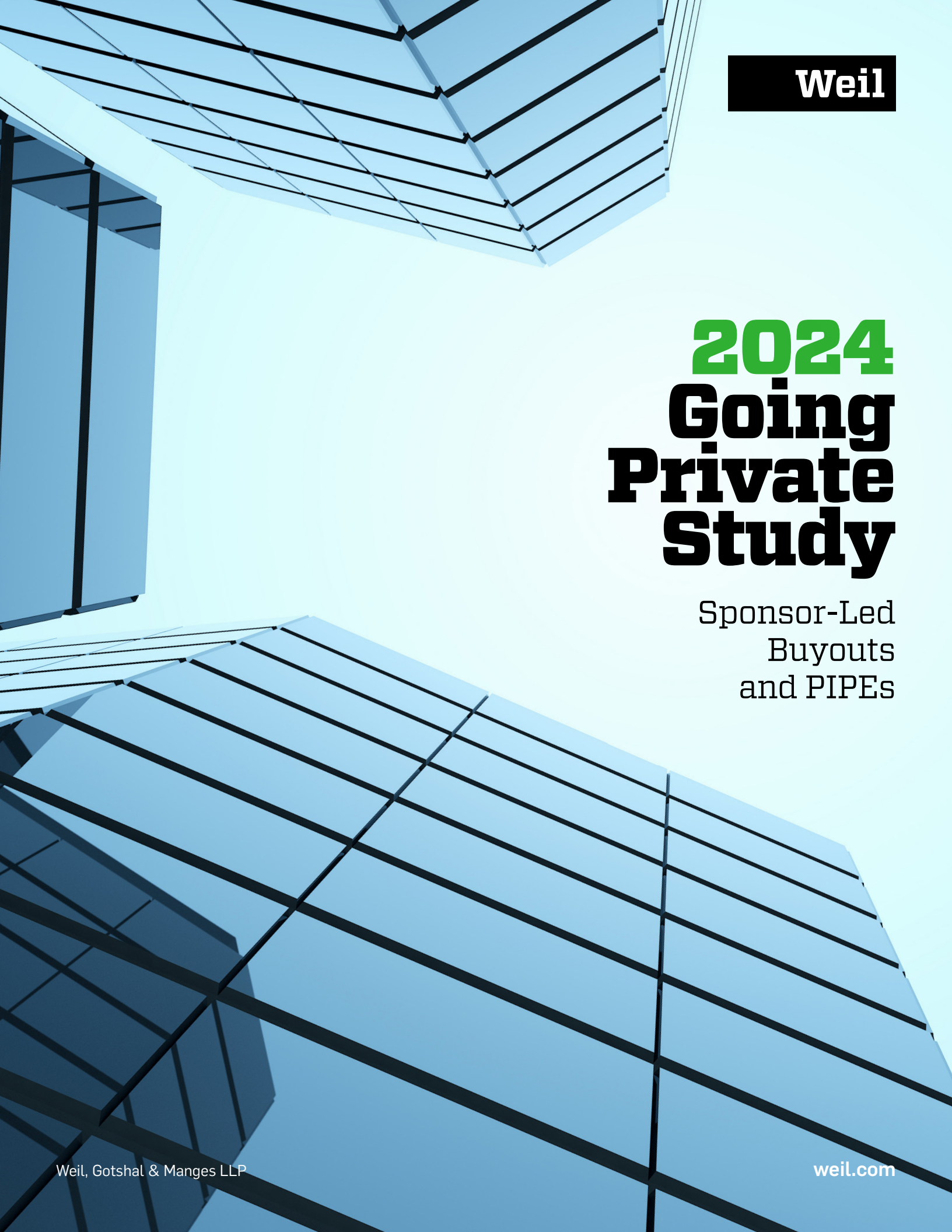


Weil

2024 Going Private Study

Sponsor-Led Buyouts and PIPEs

Weil, Gotshal & Manges LLP

weil.com

INTRODUCTION

Welcome to the 18th survey of U.S. sponsor-backed going private transactions and PIPE transactions, prepared by Weil, Gotshal & Manges LLP. The first portion of this survey analyzes certain key transaction terms and trends (and expected future trends) of sponsor-backed going private transactions of U.S. targets that signed in 2024 and that had an equity value of at least $100 million. In the second half of this year's study, we address other sponsor-backed activity in public markets, namely PIPE transactions involving preferred or debt securities that signed in 2024 and that had an aggregate placement value of at least $100 million[1] (and not the PIPE market generally).

In prior years, we prepared separate reports covering sponsor-backed going private transactions and PIPEs, respectively. However, sponsors' allocations to public markets and transactions – often driven by the availability of a diverse target company base, and willing sellers – have made it clear that these two transaction types share important strategic synergies. This year, we elected to combine the separate reports into this single, comprehensive report for 2024 to provide deeper insights into how sponsors leverage both pathways to invest capital and unlock value in the public arena.

RESEARCH METHODOLOGY

We surveyed 35 sponsor-backed going private transactions involving the following U.S. target companies:

Going Private Targets

ADTHEORENT A Cadent Company, agiliti, AIR COMMUNITIES, ALLETE, ASSETMARK, ATSG Air Transport Services Group, Inc., AVID BIOSERVICES, BARNES, THE DUCKHORN PORTFOLIO, ENDEAVOR, ENVESTNET, everbridge, evergreen packaging, INSTRUCTURE, KAMAN AEROSPACE, Model N, PATTERSON COMPANIES, INC., PERFICIENT, PETIQ Smarter Pet Health, ags, PowerSchool, R1, REVANCE, ROIC, Secureworks, sharecare, smartsheet, SOCIETAL CDMO, SQUARESPACE, Starrett, SURMODICS, thoughtworks, US SILICA, ZEROFOX, ZUORA

We surveyed 10 sponsor-backed PIPE transactions involving the following U.S. issuers[2]:

PIPE Issuers

blend, CIDARA THERAPEUTICS, EOS, First Foundation, HUT 8, ORGANOGENESIS, resideo, SPYRE THERAPEUTICS, VIAVI Solutions

All dollar amounts and percentages referenced in this survey are approximate amounts and percentages. Unless otherwise noted, such amounts and percentages are based on the surveyed transactions involving the targets/issuers listed above.

1 One transaction was less, but close to $100 million.

2 While there were a total of 9 PIPE issuers, we included 10 PIPE transactions (one issuer issued two different types of PIPE securities, which we have counted separately for purposes of this study).

NOTE FROM THE EDITORS

Sponsor-backed activity in public markets has evolved significantly from 2023 to 2024, revealing distinct yet complementary trends in sponsor-backed going private deals and PIPE transactions. In 2023, many observers were struck by the paradox that sponsor-led going private activity remained resilient despite a broader slowdown in M&A, driven in part by a pronounced valuation gap between buyers and sellers. Sponsor-backed PIPE investments also felt the effects of tightening financing conditions and less compelling public market valuations.

Fast-forward to 2024 and the story has shifted. As broader market conditions improved and debt financing became more readily available, sponsors seized opportunities to take public companies private – in many cases at higher values and in greater volumes than the previous year. Notably, a surge in "mega deals" underscores that sponsors have been able to deploy substantial amounts of dry powder, capitalizing on willing sellers and favorable valuations in key sectors like technology and healthcare.

This same abundance of capital and an overarching mandate to invest has also impacted the sponsor-backed PIPE market. The fewer, larger sponsor-backed PIPE investments we observed in 2023 have given way to a broader range of sponsor-backed PIPE transactions in 2024, with some sponsors opting for PIPE deals when they identify unique value opportunities or strategic footholds in public companies.

Taken together, these developments paint a picture of sponsors exploring parallel paths – privatizing high-potential targets while also injecting capital into public companies. We look forward to watching how these intertwined strategies continue to shape the deal landscape well into 2025 and beyond.

Editors


Craig Adas


Brittany Butwin


Arnie Fridhandler


James R. Griffin


Sachin Kohli


Luke Laumann


Jenna McBain


Robert Rizzo


Robert Sevalrud


Jakub Wronski

Deputy Editors


Christopher Machera

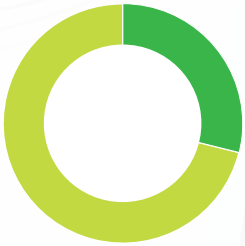

Douglas Warner

BEHIND THE SCENES WITH WEIL:
A CLOSER LOOK AT THE PACTIV EVERGREEN GOING PRIVATE TRANSACTION

On December 9, 2024, Apollo agreed to acquire Pactiv Evergreen. Closing of the transaction (as of the date of this report) is still pending. In connection with this going private transaction, CPPIB will contribute approximately $1 billion in cash and will become a significant minority shareholder in the post-merger company, and Weil led investor-side negotiations on this venture along with the participation in the going private. This transaction is one of ten surveyed going private transactions (out of a total of 35 surveyed transactions) that involved more than one sponsor (a so called "club deal"). Club deals are extraordinarily complex, and involve multiple transactions within a transaction, both to execute the going private and to organize the business effective as of closing.

Below we include a few key deal points relating to this transaction, each of which is further discussed for all of the going private surveyed transactions in the first part of this study.

2024 Club Deals vs. Single-Sponsor Deals



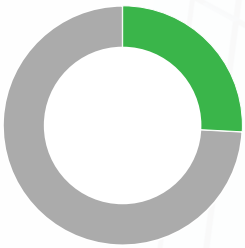
Club Deals:
29%
Single Sponsor Deals:
71%

CPP Investments APOLLO pactiv evergreen

TARGET COMPANY RECENTLY DE-SPACED OR IPOED

This transaction was one of the surveyed transactions where the target company recently deSPACed or IPOed (Pactiv Evergreen IPOed in 2020) (there were nine deals in this category, out of 35 total, in our 2024 survey)

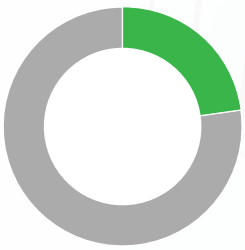
Recently De-SPACed or IPOed
26%
Non De-SPACed/ recently IPOed
74%



SHAREHOLDER WRITTEN CONSENT

This transaction was one of the surveyed transactions where there was a shareholder written consent (a "Sign and Consent" deal) (there were eight deals in this category, out of 35 total, in our 2024 survey)

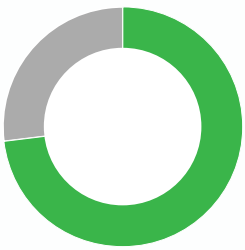
Had Shareholder Written Consent
23%
Did Not Have Shareholder Written Consent
77%



SPECIFIC PERFORMANCE

This transaction was one of the surveyed transactions that contemplated specific performance lite / conditional specific performance (as compared to full specific performance) (there were 25 deals in this category, out of 35 total, in our 2024 survey)

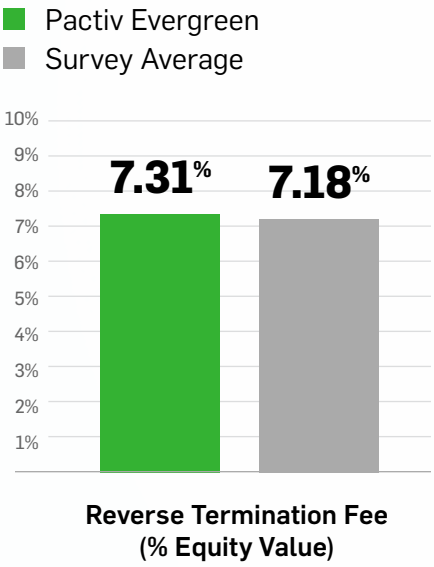
Specific Performance Lite / Conditional Specific Performance
71%
Full Specific Performance
26%



BEHIND THE SCENES WITH WEIL:
A CLOSER LOOK AT THE PACTIV EVERGREEN GOING PRIVATE TRANSACTION

REVERSE TERMINATION FEE AMOUNT (AS A PERCENTAGE OF EQUITY VALUE)

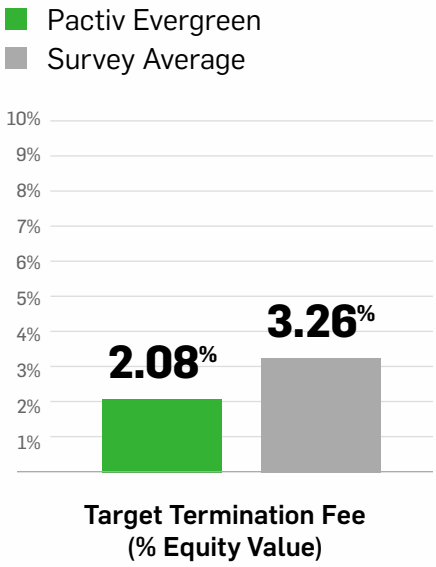
The reverse termination fee amount (as a percentage of equity value) was 7.31% (compared to the average for all surveyed transactions with a reverse termination fee of 7.18%)



Reverse Termination Fee (% Equity Value)

TARGET TERMINATION FEE AMOUNT (AS A PERCENTAGE OF EQUITY VALUE)

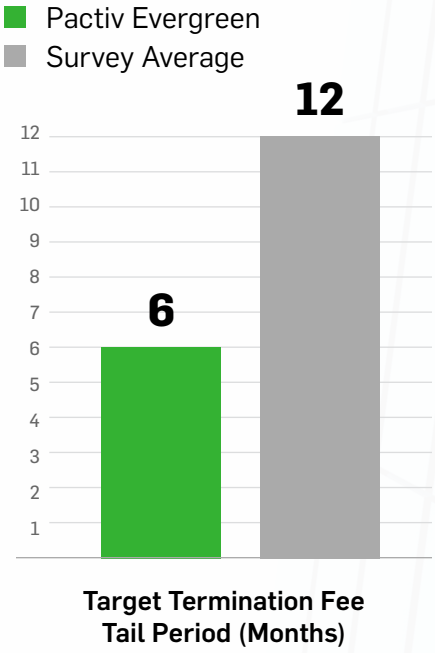
The target termination fee amount (as a percentage of equity value) was 2.08% (compared to the average for all surveyed transactions with a target termination fee of 3.26%)



Target Termination Fee (% Equity Value)

TARGET TERMINATION FEE TAIL PERIOD

The TTF tail period was 6 months (compared to an average of 12 months for all but one of the other surveyed transactions)



Target Termination Fee Tail Period (Months)

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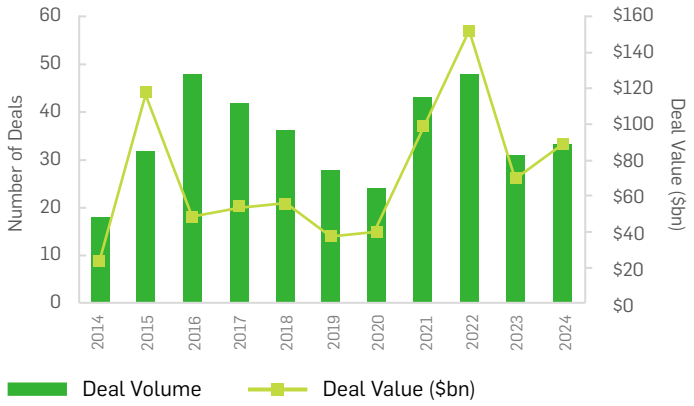
GOING PRIVATE TRANSACTIONS:
GENERAL MARKET OBSERVATIONS

On the heels of 2023, which was a surprisingly active year for going private deal making (considering the broader M&A deal market languished), going private activity in 2024 was even stronger. Aided by improved market conditions, which created strong tailwinds for all M&A market participants[1], private equity sponsors in 2024 continued to look to the public markets for attractive transaction opportunities.

U.S. Sponsor-Backed Going Private Activity (Total Annual)

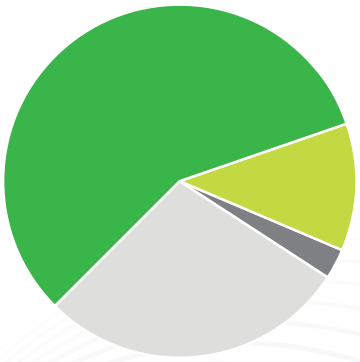


Source: Deal Point Data | Note: Deal value based on target equity value

By the Numbers. **While this year's survey includes slightly more surveyed transactions than last year (35 in 2024 and 31 in 2023), aggregate deal value of U.S. sponsor-backed going private transactions rose by approximately 25% - due, at least in part, to a rise in "mega deals" (deals of at least $1 billion).** Notably, among the surveyed transactions, approximately 60% (21 of 35 transactions) had an equity value of over $1 billion but less than $5 billion, approximately 11% (4 of 35 transactions) had an equity value of over $5 billion but less than $10 billion and one transaction had an equity value of over $10 billion. The surge in going private mega deals is related, in part, to record high levels of private equity "dry powder," together with the availability and cost of debt financing (discussed further below). Moreover, the current fund vintage at most sponsors is larger and there are more opportunities to deploy a large amount of capital in a going-private transaction.

On the heels of 2023, which was a surprisingly active year for going private deal making (considering the broader M&A deal market languished), going private activity in 2024 was even stronger.

Sector Concentration. **Consistent with prior recent years, U.S. sponsor-backed going private targets continued to be heavily concentrated in the Technology sector, particularly in the area of software.** In fact, approximately 37% of the surveyed transactions involved tech company targets. The second highest concentration of deals was in the Healthcare / Pharmaceutical / Medical sector, representing 14% of the surveyed transactions, a notable percentage considering the regulatory challenges and public scrutiny associated with public companies and

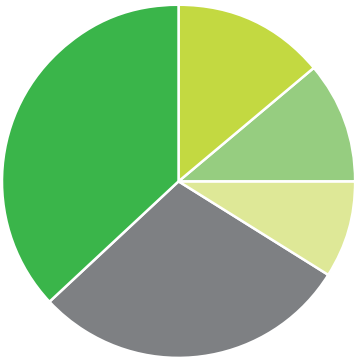


2024 Sponsor-Backed Going Privates, by Deal Value

- >$1 billion < $5 billion
- ≥$5 <$10 billion
- ≥$10 billion
- ≤$1 billion

Source: Deal Point Data

Note: Deal value based on target equity value



2024 Sponsor-Backed Going Privates, by Sector

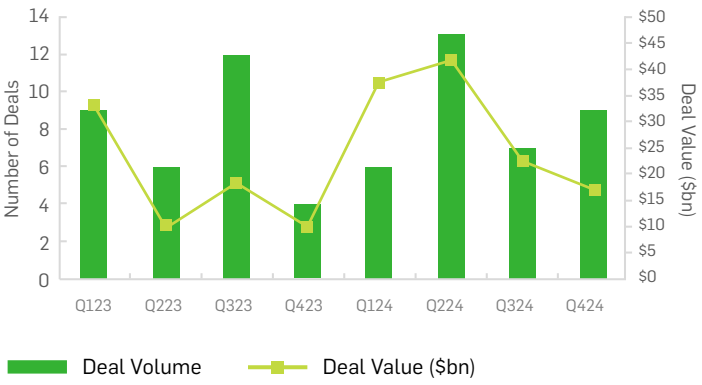
- Technology
- Healthcare / Pharmaceutical / Medical
- Consumer Goods
- Business Services
- Other

Source:Deal Point Data

possible equity ownership in this sector. The third highest concentration at approximately 11% of surveyed transactions was in the Consumer Goods sector, including Food and Beverage and Household Products.

Timing. **In terms of timing, Q2 significantly outpaced the other quarters in 2024, with approximately 37% of all surveyed transactions signed in this quarter.** Sponsor-backed going private deal making was slower, but largely constant, across the rest of 2024, with 17% of surveyed transactions signed in Q1, 20% of surveyed transactions signed in Q3 and 26% of surveyed transactions signed in Q4.

U.S. Sponsor-Backed Going Private Activity (Quarterly)



Source: Deal Point Data | Note: Deal value based on target equity value

Drivers. What drove sponsor-backed going private activity in 2024?

Sponsor-backed going private activity in 2024 continued to face the headwinds discussed in our prior recent surveys, from high inflation and elevated interest rates (relative to the historically low rates for much of the past decade) to macroeconomic and political uncertainty. Fortunately, we saw many of these restraints ease over the course of 2024, with the first interest rate cut in four years, inflation falling to its lowest level in over three years and a hotly contested election ending with a clear winner widely expected to usher in a regulatory environment more conducive to M&A deal making.

Along with more favorable market conditions and a general uptick in overall M&A activity in 2024, sponsors participating in going private transactions continued to benefit from less active strategic competition (which was also the case in 2023). According to Ernst & Young, strategic buyers remained largely inactive in 2024[2]. In fact, through September 2024, the value of sales to corporate acquirers declined 17% from the same period in 2023.

S&P 500 (2024)

Source: Yahoo Finance

Moreover, and as discussed further below, the improved availability and cost of debt acquisition financing was a primary driver in deal-making activity in 2024.

Deep Dive: Debt Financing Markets. Following significant improvement in the debt financing markets in 2023, syndicated, high yield and private credit debt financing solutions continued to be available in 2024 to finance going private transactions on favorable terms.

Over the course of 2024, syndicated and high yield market activity rose, initially through increased opportunistic repricing and refinancing transactions and ultimately through a greater number of acquisition and recapitalization financings. By the end of September 2024, syndicated leveraged loan volume totaled more than $1.045 trillion – an increase of 93% from the same period in 2023[3], and in Q3, event-driven financings were more prevalent than opportunistic refinancings for the first time in almost two years[4]. Indeed, in July alone, M&A loan volume totaled approximately $16 billion, compared to $21 billion during the entire first quarter of 2024[5].

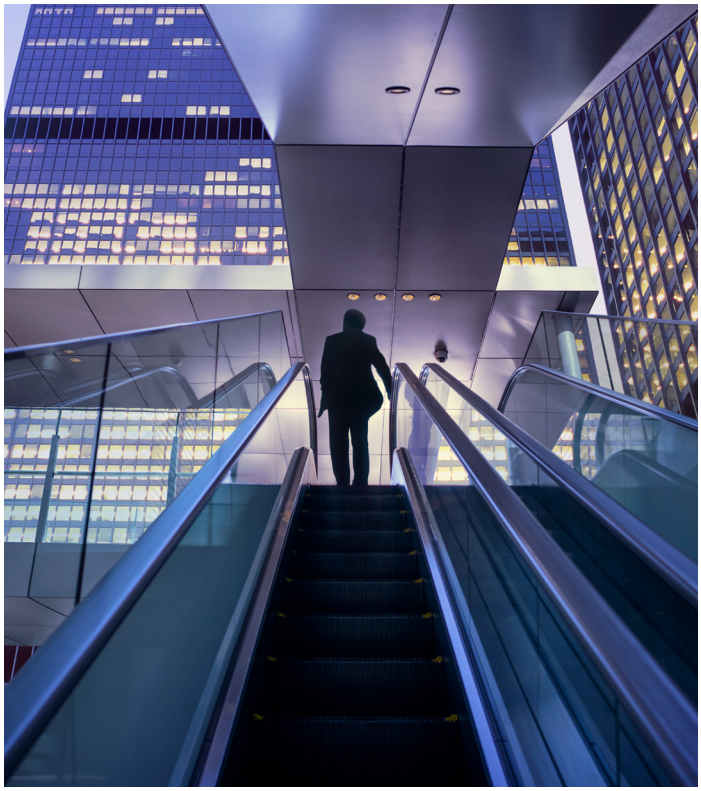
GOING PRIVATE TRANSACTIONS:
GENERAL MARKET OBSERVATIONS

The flurry of market activity, driven more by investor demand than issuer supply, yielded competitive interest rate margins and flexible documentary terms for borrowers, and a number of going private transactions consummated in 2024 cleared the market inside indicative pricing talk. In 2024, Stonepeak's pending acquisition of Air Transport Services, GTCR's acquisition of AssetMark, Bain Capital's acquisition of Envestnet, EQT's acquisition of Perficient, KKR's acquisition of Instructure, Arcline's acquisition of Kaman, Apollo's acquisition of Barnes Group and Thoma Bravo's acquisition of SecureWorks were all financed with the proceeds of syndicated financings.

The strength of the syndicated and high yield markets in 2024, however, did not seem to impair the "golden age" of private credit; direct lenders have continued to offer viable financing solutions for all but the largest M&A transactions. The record amounts raised by private credit firms, along with growing competition for deployment opportunities with the syndicated market, have required direct lenders to offer increasingly favorable terms. Consequently, private credit remains an attractive financing alternative for many borrowers, especially where direct lenders are able to offer terms that are not widely available in the syndicated market, such as PIK interest and recurring revenue-based financial covenants.

According to Bloomberg, HPS, Blackstone, Blue Owl, Sixth Street and Golub provided roughly $3 billion of debt financing to Bain Capital in connection with its acquisition of PowerSchool Holdings in a deal that banks also sought to arrange in the syndicated market. Other going private transactions that involved debt financing provided by direct lenders in 2024 included Vista's and Blackstone's acquisition of Smartsheet and GTCR's pending acquisition of Surmodics.

We expect the underlying factors impacting private equity deal making (e.g., interest rates, debt financing markets, general economic and M&A outlook, among others) to sustain their positive trajectory into 2025. This is likely to continue to contribute to going private activity in 2025.



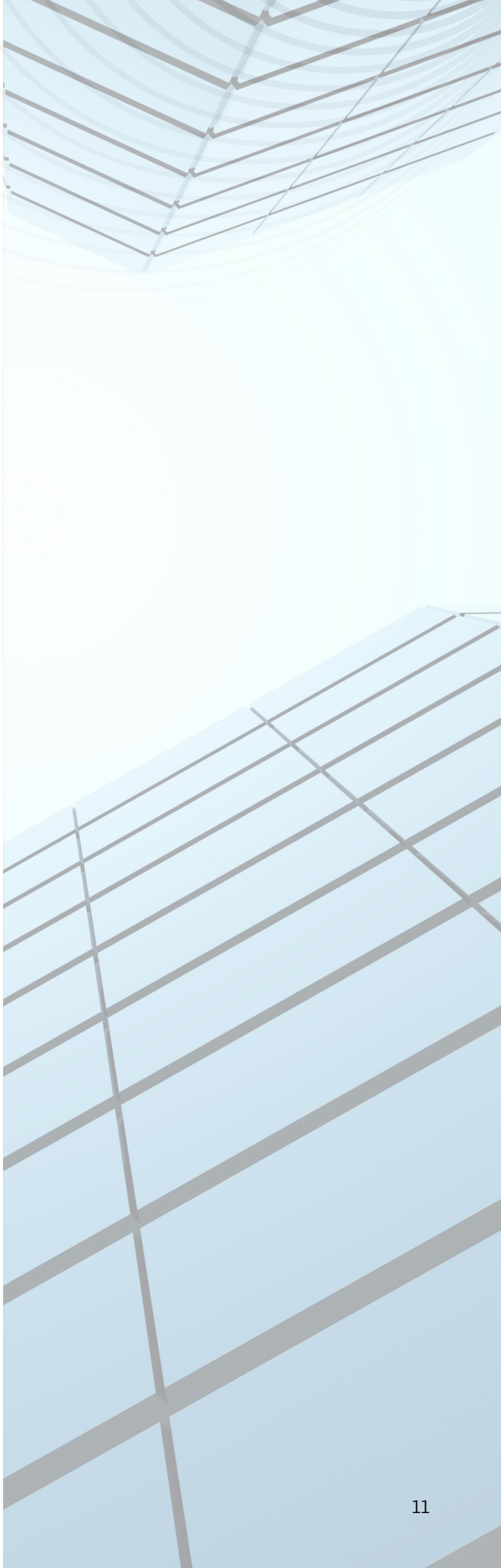
On top of the decline in interest rate margins driven by competition among lenders, the Federal Reserve's interest rate cuts over the course of 2024 have resulted in further reductions in borrowing costs. Syndicated loans are floating rate instruments, the pricing applicable to which consists of (i) a benchmark rate *plus* (ii) an interest rate margin. At the beginning of 2024, Term SOFR for 1 month and 3 months – the benchmark interest rate most commonly referenced in both syndicated and private credit loans – was 5.35% and 5.36% per annum, respectively. By December 2, 2024, the same benchmarks had fallen to 4.64% and 4.89% per annum, respectively[6]. In spite of these favorable developments, debt financing remains relatively pricey when compared to the

GOING PRIVATE TRANSACTIONS:
GENERAL MARKET OBSERVATIONS

"Zero Interest Rate Policy" environment of 2020, 2021 and early 2022, with first lien debt often still yielding more than 8.00% per annum. As a result, some M&A transactions remain too expensive to finance at the leverage levels necessary for sponsors to generate required investment returns.

2025 Forecast. We expect the underlying factors impacting private equity deal making (e.g., interest rates, debt financing markets, general economic and M&A outlook, among others) to sustain their positive trajectory into 2025. This is likely to continue an uptick in going private activity in 2025.

Relatedly, we expect to see an increase in (i) private M&A and exit activity by private equity sponsors and (ii) sponsor-backed IPOs and de-SPAC transactions. Collectively, these shifts should impact sponsor-backed going private activity in 2025 (the idea being that sponsors may be more focused on these transactions in 2025).



GOING PRIVATE TRANSACTIONS:
TRANSACTIONS INVOLVING RECENTLY DE-SPACed OR IPOed TARGETS

As predicted in last year's survey, and consistent with the past two years, recent de-SPACed or recently IPOed targets continued to be desirable candidates for sponsor-backed going private transactions in 2024. While we saw a slight decrease from last year (where 35% of surveyed transactions involved these targets), 26% of surveyed transactions in 2024 involved either a de-SPACed target or a target that went public via a traditional IPO within the past five years.

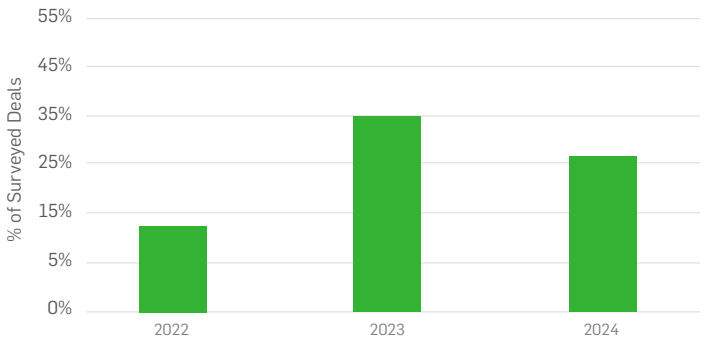
The continued prevelance of these transactions has many explanations, as we've discussed previously. We continue to surmise that, in some cases, companies that went public in the height of the SPAC boom in 2021 may not have been fully prepared for the demands of being a public company or the challenges posed by the tough market conditions impacting financial performance. In addition, their more concentrated stockholder base oftentimes facilitates deal-making.

The decrease in these transactions in 2024 as compared to last year is not surprising, especially given the overall decrease in the number of completed de-SPAC mergers and sponsor-backed IPOs since 2021. That is to say that the "supply" of available de-SPACed targets is decreasing as we get further away from the 2021 SPAC boom.

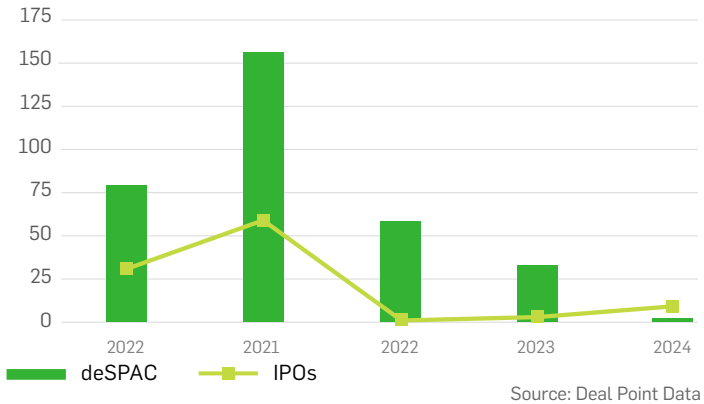
However, following the lows in both sponsor-backed IPOs and de-SPAC mergers in 2022 and 2023, we have started to see an uptick in such activity in 2024. In fact, and despite the new SEC rules governing SPAC IPOs and deSPAC transactions that went into effect in July 2024, Q3 2024 saw the highest quarterly proceeds from SPAC IPOs since 2022. Given the uptick in such activity, we may continue to see recently de-SPACed or recently IPOed targets become desirable candidates for going private transactions in the future.

Recently de-SPACed or recently IPOed targets continued to be desirable candidates for sponsor-backed going private transactions in 2024.

Transactions Involving Recent De-SPACed or Recently IPOed Targets



Completed de-SPAC Mergers and Sponsor-Backed IPOs



Source: Deal Point Data

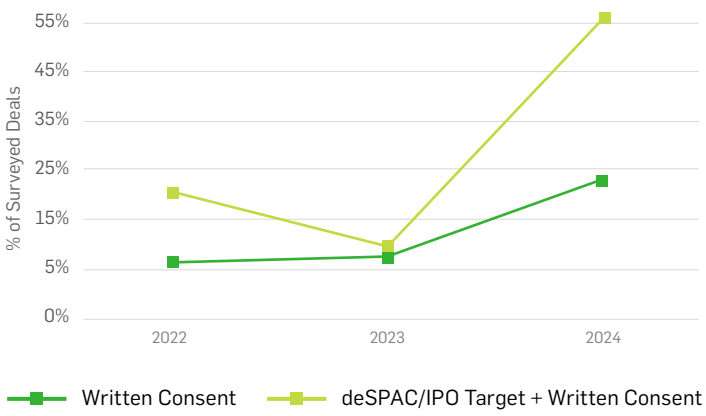
GOING PRIVATE TRANSACTIONS:
TRANSACTIONS INVOLVING RECENTLY DE-SPACed OR IPOed TARGETS

As we noted in prior years' studies, **going private transactions that involve recently IPOed or de-SPACed companies raise some interesting deal considerations due to the fact that these companies often have a concentrated stockholder base** arising from their days as a private company (and especially if they were sponsor-backed), together with the potential for a larger stockholder on the target-side of the deSPAC transaction (whether that is a large anchor investor in the SPAC or the SPAC's sponsor).

One such consideration raised by these transactions where the target has a concentrated stockholder base is whether to use a sign-and-consent structure (also sometimes referred to as the "Openlane" structure after the Delaware decision blessing the structure). The sign-and-consent structure requires a target to obtain stockholder approval through a written consent, generally to be delivered shortly following signing, thereby foreclosing the risk of topping bids after signing the merger agreement. This has the effect of increasing deal certainty (as compared to a typical public target structure that allows for topping bids to be entertained by the target company until a tender offer (in a two-step deal) or a stockholder vote (in a one-step deal) has been completed). **Among the surveyed transactions involving a recently IPOed or de-SPACed target, approximately 56% utilized a sign-and-consent structure – a significant increase as compared to 9% and 20% in 2023 and 2022, respectively. Among all of the surveyed transactions (not just those involving a recently IPOed or de-SPACed target), 23% used the sign-and-consent structure – again, a significant increase from 6% and 7% in 2023 and 2022, respectively.**

In any case, the sign-and-consent structure can only be used when the target company has a concentrated stockholder base, which is more likely in a recently de-SPACed or IPOed company than a traditional public company.

Sponsor-Backed Going Privates with Sign-and-Consent Structures

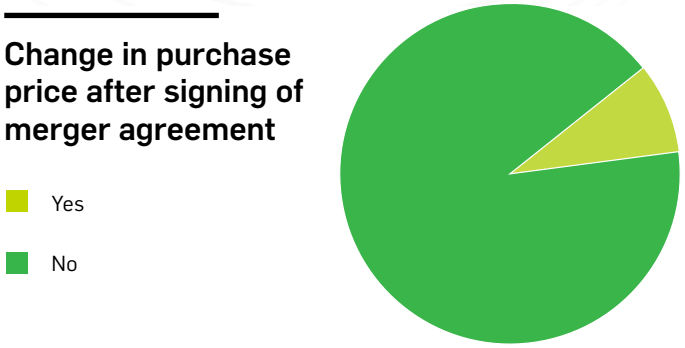


The sign-and-consent structure can only be used when the target company has a concentrated stockholder base, which is more likely in a recent de-SPACed or recently IPOed company than a traditional public company.

GOING PRIVATE TRANSACTIONS:
REPRICED TRANSACTIONS

In this year's survey, three deals were repriced after the signing of the definitive transaction agreement: (i) Thoma Bravo's[1] acquisition of software firm Everbridge, (ii) Permira's acquisition of website builder and hosting platform Squarespace and (iii) Hildred Capital's, through its portfolio company Crown Laboratories, pending acquisition of Revance Therapeutics. The circumstances surrounding the changes in cash consideration of each of these transactions is discussed below.

Change in purchase price after signing of merger agreement



Similar to the one transaction repriced in last year's deal study (KKR's acquisition of CIRCOR), the repricing in the Thoma Bravo-Everbridge transaction stemmed from competing acquisition proposals received by Everbridge during the go-shop period. Ultimately, pursuant to an amendment to the merger agreement, the parties agreed to increase the cash consideration payable to Everbridge's stockholders from $28.60 per share to $35.00 (a 22% increase).

The repricing of the Permira-Squarespace transaction was largely driven by the opposition of a major stockholder to the original cash consideration of $44.00 per share (for both the Class A and Class B common stock of Squarespace). Prior to the stockholder vote to approve the transaction, which required approval by a majority of the stockholders unaffiliated with Permira, Glazer Capital, which at the time managed funds owning 5.4% of the shares owned by Squarespace's minority stockholders, disclosed in an open letter to Squarespace's board of directors its opposition and intent to vote against the transaction, stating that the cash consideration was inadequate. Within a month after Glazer Capital sent its open letter, shareholder advisory firm ISS published a report recommending that stockholders vote against the proposal to approve the transaction. On the same day ISS published its report, Permira sent a revised proposal to Squarespace, (i) increasing the cash consideration paid from $44.00 per share to $46.50 per share (a 6% increase) and (ii) restructuring the transaction from a one-step merger to a two-step tender offer, which represented Permira's "best and final" offer. The Special Committee of the board of directors of Squarespace unanimously approved and recommended the revised terms, which the board of directors of Squarespace unanimously approved, allowing the parties to consummate the transaction on the revised terms.

The repricing in the third deal (the Crown Laboratories-Revance transaction) appeared to be driven by a series of commercial setbacks for Revance's business. After the execution of the merger agreement, but prior to the launch of a tender offer for all of Revance's outstanding shares by Crown Laboratories, Revance received notice alleging it breached a key commercial agreement by the counterparty, Teoxane. In response to that notice, Revance entered into a settlement with Teoxane which included, among other things, amending the financial terms of previously entered into agreements between the two parties. Shortly thereafter, Crown Laboratories notified Revance that it would no longer go through with the tender offer at the previously agreed upon price of $6.66 per share. Rather than terminate the merger agreement, the parties extended the deadline for Crown Laboratories to launch its tender offer, and renegotiated the terms of the tender offer, which resulted in a revised cash offer of $3.10 per share, down from $6.66 per share (a 53.5% decrease).

Notably, despite the different circumstances surrounding each of the surveyed repriced transactions, the repriced transactions covered in this year's survey (two of three of which involved price increases) may suggest a more competitive pricing landscape, particularly when compared to the repriced transactions prior to 2021 (which for several years only involved repriced deals where cash consideration was lowered). While the Everbridge, Squarespace and Revance Therapeutics transactions do not together represent an emerging trend by any means, sponsors should be aware that both internal and external pressures continue to impact deal pricing for going privates.

GOING PRIVATE TRANSACTIONS:
TRANSACTION STRUCTURES

One-Step Merger vs. Tender Offer

Consistent with prior years, sponsors continue to favor the one-step merger structure over the two-step tender offer / back-end merger structure (i.e., a tender offer followed by a squeeze-out merger) in going private transactions. Where only one transaction in last year's survey used a tender offer structure, in 2024 two transactions opted for a tender offer structure and a third transaction, the Squarespace transaction discussed above, was transitioned from a one-step merger to a two-step tender offer structure in connection with the repricing of the deal. As shown in the chart above, the use of the tender offer structure was at its peak in 2020 (40% of surveyed transactions), and 2024's results remain similar to the levels we observed over the past three years.

As mentioned in past surveys, a one-step merger may be more advantageous compared to a two-step tender offer structure in a sponsor-backed going private transaction. Given the need for debt financing in most public company acquisitions by sponsors, the tender offer structure presents unique challenges for sponsors due to, among other things, the shorter time period between signing and closing.

We anticipate sponsors will continue to disfavor the tender offer structure going forward in transactions that require debt financing or that have regulatory concerns that cannot be addressed in a short timetable. However, for transactions involving all equity (i.e., no debt financing), we may see two-step structures being more prevalent due to the faster time period between signing and closing.

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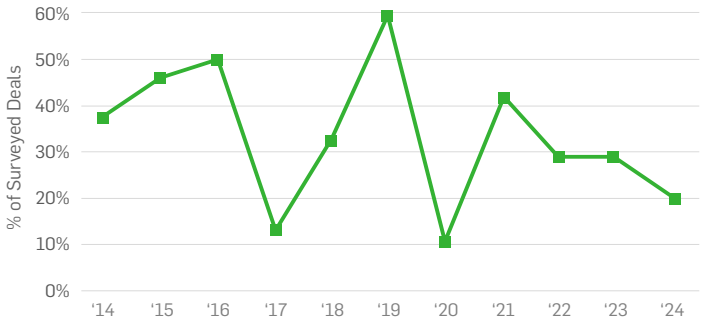
GOING PRIVATE TRANSACTIONS:
GO-SHOP PROVISIONS

The use of go-shop provisions in going private transactions continues to fluctuate. This variability reflects the fact-specific nature of whether a target company's board feels compelled to include a go-shop provision, which is often driven by the extent to which the company has engaged in a pre-signing market check.

Interestingly, 20% of the 2024 surveyed transactions used a go-shop provision - a notable decrease compared to 29% in 2023 and 2022. In fact, 2024 evidenced among the lowest use of go-shops in the past decade (with only 2017 and 2020 being lower).

Transactions with Go-Shop Provisions



This decrease could reflect the fact that the overall M&A market was slower in 2023 and slower to start the year in 2024 than expected, allowing time for more robust pre-signing market checks. In fact, 69% of all of the 2024 surveyed transactions conducted a pre-signing market check. Relatedly, only 20% of the transactions that contained a go-shop provision conducted a pre-signing market check (i.e., most of the transactions that used a go-shop provision did not conduct a pre-signing market check)[3].

As the name implies, a "go-shop" provision allows a target to actively solicit superior bids from other potential acquirers for a predetermined window of time (which in the surveyed deals ranged from 25-45 days, with a mean and median of 37 days and 37.5 days, respectively) following entry into a merger agreement with the initial acquirer. If the target and its advisors are successful in sourcing an alternative acquirer (the "interloper") willing to pay a higher price than the price contemplated by the merger agreement (i.e., a "superior proposal" comes to fruition) prior to expiration of the go-shop period, the target is entitled to terminate the merger agreement to enter into an alternative merger agreement with the interloper and pay a reduced break-fee to the initial acquirer. The merger agreement with the initial acquirer typically provides the initial acquirer with the ability to match the "superior proposal." The termination fee payable in a scenario where the merger agreement is terminated during the go-shop period is typically about 50% of the termination fee that would be payable to the initial acquirer under other termination scenarios.

The target company's process (mainly, the extent of a pre-signing market check) is the primary driver of whether a "go-shop" provision is included.

Interestingly, while we did not find a meaningful difference in instances of price increases from initial to final bids (prior to signing the merger agreements) across the go-shop transactions compared to the surveyed transactions that did not contain go-shops, deals with go-shops generally had larger price increases (with respect to pre-signing bids) than deals without go-shops. In fact, instances of such price increases were substantially similar across the go-shop transactions as compared to those transactions without go-shops – while 80% of go-shop transactions exerienced a price increase from initial to final bid (with the average price increase across such transactions equal to 14.26% and median price increase equal to 14.81%), 75% of transactions without go-shops experienced a price increase from initial to final bid (with the average price increase across all such transactions equal to 9.11% and median price increase equal to 9.94%).

In sum, and as noted in the past two years' surveys, we have not identified any correlations or predictable variations in the use of go-shop provisions in sponsor-backed going private transactions. The target company's process (mainly, the extent of a pre-signing market check) is the primary driver of whether a "go-shop" provision is included. Further, we did not identify a meaningful correlation between use of go-shop provisions and occurrence of, and size of, pre-signing price increases from initial to final bid.

Specific Performance

A target company's ability to force a closing (i.e., a target's right to specific performance) is not unique to going private transactions, but is a key deal term that we have historically tracked in this survey.

In 2024, the "specific performance lite" construct reemerged as the preferred market remedy to address an acquirer's financing failure and a target's closing risk in sponsor-backed going private transactions. The more frequent use of this construct (as compared to the "full specific performance" construct) among the surveyed transactions is consistent with the surveyed transactions analyzed in prior years (other than in 2023, when full specific performance surpassed, for the first time in a decade, specific performance lite among the surveyed transactions).

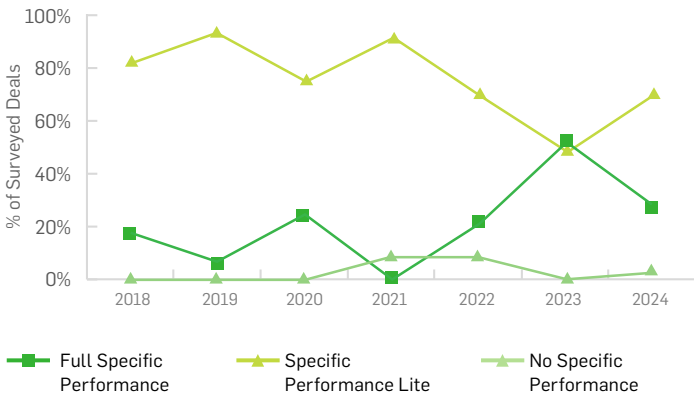
As a reminder, specific performance lite (whereby the target can only force the acquirer to close if the acquirer's debt financing is available) was first introduced after the financial crisis and was steadily adopted over the ensuing years.

As shown in the chart above to the right, specific performance lite was used in 71% of the surveyed transactions in 2024 (compared to 48% in 2023, and generally slightly below recent historical levels (other than 2023)). Notably, specific performance lite was used in 78% of the surveyed transactions that used debt financing.

Relatedly, the use of full specific performance (whereby the target can force a closing upon satisfaction or waiver of the applicable closing conditions, regardless of whether an acquirer's debt financing is available) declined significantly in 2024, decreasing to 26% of the surveyed transactions (compared to 52% of surveyed transactions in 2023). However, as shown in the chart above, the use of full specific performance among surveyed transactions is still above recent historical levels. **Interestingly, from 2021 through 2023, we saw a steady decline in the use of specific performance lite and a commensurate increase in the use of full specific performance. This year, both trends reversed course.**

Two-thirds of the surveyed transactions that used the full specific performance construct in 2024 also contemplated

Specific Performance Type



As debt markets continue to improve for sponsors and a larger number of transactions utilize debt financing, we expect the resurgence of "specific performance lite" to continue through 2025 as the dominant construct for addressing acquirer financing risk in sponsor-backed deals.

debt financing. This is notable because the target in these particular transactions can force the acquirer to close, even if the acquirer's debt financing is not available (i.e., the acquirer bears the full closing risk of obtaining debt financing). This is not surprising, as we continue to see acquirers agree to full specific performance, especially in competitive processes, notwithstanding the fact that acquirers seek to obtain debt financing for closing.

The increase in the use of the specific performance lite construct in the surveyed transactions in 2024 compared to 2023 was likely attributable to the increase in the number of surveyed transactions that used debt financing in 2024 compared to 2023 (91% compared to 71%). We have also seen an overall narrowing in the gap between the use of specific

performance lite and full specific performance since 2021. We expect this is due, in part, to headwinds in the debt financing markets and sluggish M&A activity in recent years. This is also due to the increased use of fund level revolving credit facilities. As described earlier in this survey, after a challenging few years, we are finally starting to see more favorable lending conditions and a resulting increase in M&A financing activity.

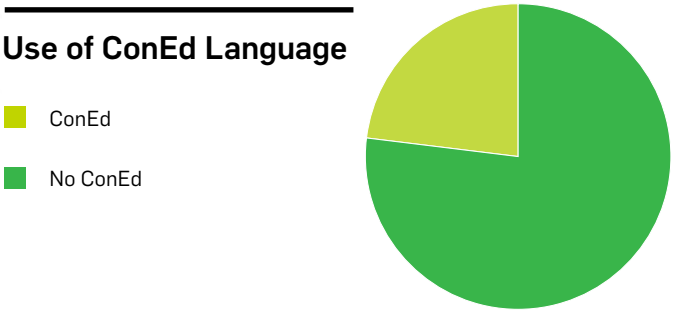
As debt markets continue to improve for sponsors and a larger number of transactions utilize debt financing, we expect the resurgence of "specific performance lite" to continue through 2025 as the dominant construct for addressing acquirer financing risk in sponsor-backed deals.

ConEd Language

Ever since the Second Circuit's decision in Consolidated Edison, Inc. v. Northeast Utilities, 426 F.3d 524 (2d Cir. 2005) ("ConEd"), which held that a target company's stockholders were not entitled to any lost merger consideration premium as a result of an acquirer's wrongful termination of a merger agreement, target companies in merger transactions (which, as noted above, almost all going privates are) have sought to address the Court's decision in *ConEd* by (i) defining damages to include the lost stockholder merger consideration premium and/or (ii) providing target stockholders with third-party beneficiary rights (or third-party beneficiary rights enforceable solely by the target company), and such protective language has been referred to as "ConEd language".

However, in 2023, the Delaware Court of Chancery weighed in on the questions posed in the *ConEd* decision (which was based on the Second Circuit's interpretation of New York law). In Crispo v. Musk, 304 A.3d 567 (Del. Ch. 2023). ("Crispo"), Chancellor McCormick commented, in ruling on a mootness fee, that a provision in a merger agreement designed to include the lost merger consideration premium as damages of a target company (prong (i) of the *ConEd* language mentioned above) cannot be validly enforced as the target company has no expectation to the lost merger consideration premium, only its stockholders do. With respect to the other approaches commonly utilized to address *ConEd*, the Chancellor noted that the idea that a target company could appoint itself as an agent for its stockholders without their consent to recover the lost merger consideration premium as a result of a wrongfully terminated merger agreement would also likely be found invalid, but did not dismiss the idea that third-party beneficiary rights could be given directly to a target's stockholders.

The Court of Chancery's comments in Crispo may have resulted in an overall decrease in the use of ConEd language in 2024; however, the passage of the DGCL amendments into law (which occurred on July 17, 2024) did not result in an increase in the use of ConEd langage.

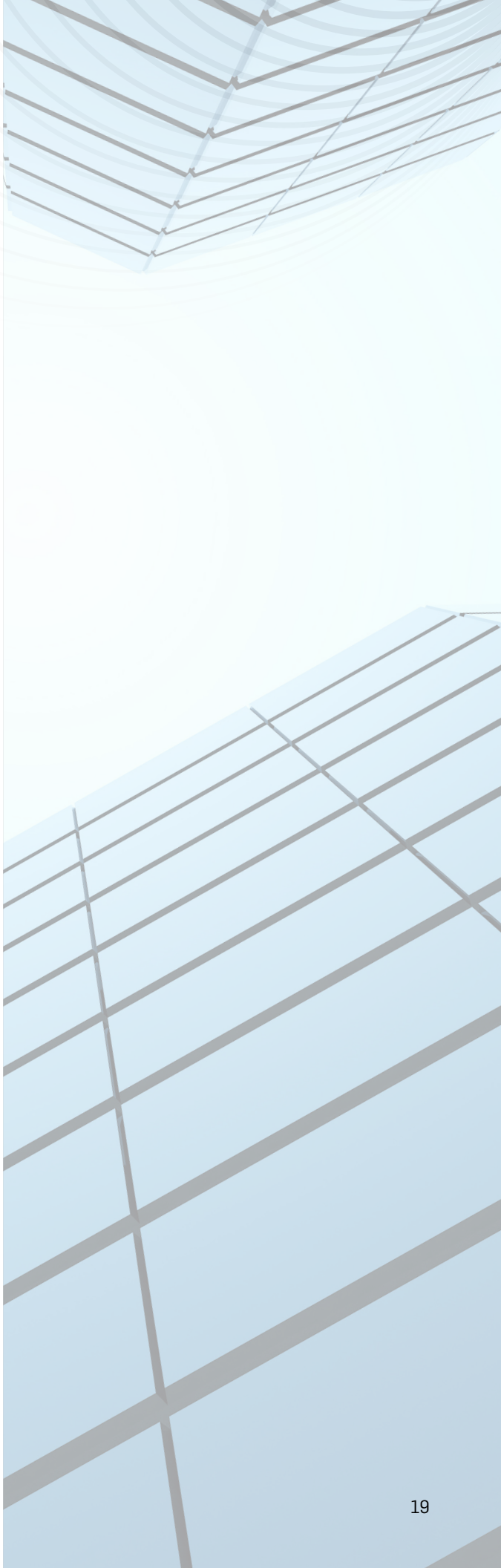


In an effort to align the statutory requirements under the Delaware General Corporation Law (the "DGCL") with market practice, including the use of *ConEd* language, the Delaware legislature passed amendments to amend the DGCL, which became effective on August 1, 2024 (which apply retroactively with limited exceptions). The amendments to the DGCL included the addition of Section 261(a), which permits a merger agreement to provide that the target company may recover damages or penalties for a breach of the merger agreement, including the loss of any premium that the target's stockholders may have been entitled to absent such breach. The amendment also allows for the appointment of stockholder representatives (including the target company) to enforce stockholders' rights under a merger agreement.

GOING PRIVATE TRANSACTIONS: REMEDIES

In 2024, 23% of the surveyed transactions contained *ConEd* language, which was a decrease in the use of *ConEd* language compared to 2023 (which was found in 35% of the surveyed transactions).

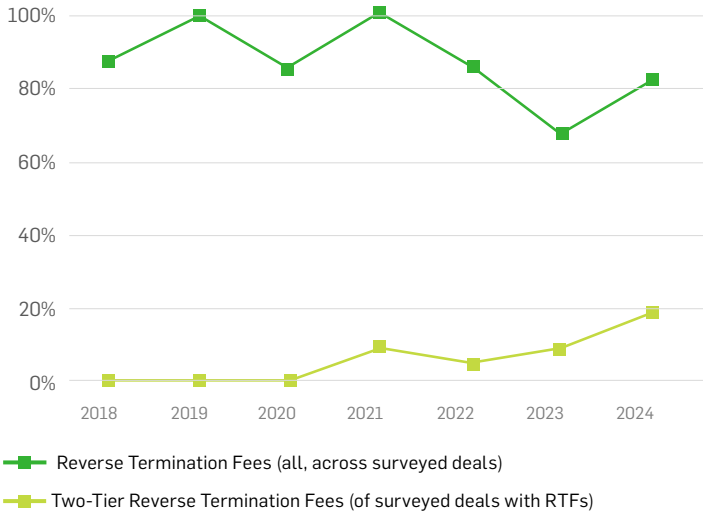
The Court of Chancery's comments in Crispo may have resulted in an overall decrease in the use of *ConEd* language in 2024; however, the passage of the DGCL amendments into law (which occurred on July 17, 2024) did not result in an increase in the use of *ConEd* langage. 6 of the 20 (30%) surveyed transactions annouced prior to July 17, 2024 contained *ConEd* language, and only 2 of the 15 (13%) surveyed transactions annouced after July 17, 2024 contained *ConEd* language. Now that the dust has settled and Delaware has codified market practice with respect to *ConEd* lanugage, it will be interesting to see whether there is an uptick in the use of *ConEd* language in 2025 and beyond.



GOING PRIVATE TRANSACTIONS: TERMINATION FEES

Clients often ask us about the frequency of use and magnitude of termination fees (both reverse termination fees payable by sponsor-acquirers and regular termination fees payable by target companies). Below we address trends in reverse termination fees and target termination fees in U.S. sponsor-backed going private transactions.

Use of Reverse Termination Fees



Reverse Termination Fees. **Since 2021, we have seen an overall decline in the use of reverse termination fees, although they remain widely used in sponsor-backed going private transactions. It remains to be seen whether this trend will continue, as we saw a significant increase in the use of such fees in 2024 (83% of the surveyed transactions in 2024 had a reverse termination fee, compared to 68% in 2023)**. The increase in the use of reverse termination fees in 2024 is primarily attributable to the increase in the use of "specific performance lite" (discussed above), as target companies seek to be compensated for forfeiting their ability to force a sponsor to close under all circumstances (including if the sponsor's debt financing is not available). It is interesting to note that 11% of the surveyed transactions in 2024 featured both full specific performance and a reverse termination fee (which give target boards maximum optionality and which we sometimes refer to as

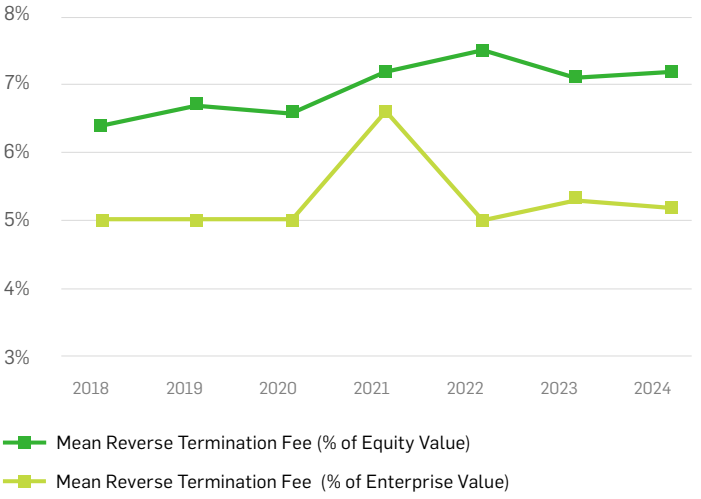
Since 2021, we have seen an overall decline in the use of reverse termination fees, although they remain widely used in sponsor-backed going private transactions.

"specific performance plus"), compared to 19% of the surveyed transactions in 2023. This decrease is likely due to more favorable financing markets for sponsors and more certainty regarding the ability of sponsors to obtain financing.

In an increase from 2023 (and prior recent years), 17% of the surveyed transactions that contained a reverse termination fee had a two-tier reverse termination fee (compared to 10% in 2023 and 5% in 2022). The average amount of the lower reverse termination fee was 62% of the higher fee. A two-tier reverse termination fee is typically structured so that a lower fee is payable by the sponsor under certain circumstances that are not within the full control of the sponsor (usually in the event of a financing failure or failure to obtain certain regulatory approvals) and a higher fee is payable by the sponsor in all other situations in which the sponsor fails to close the transaction due to significant or avoidable breaches by the sponsor (i.e. a willful breach or refusal to close). Despite an improvement in lending conditions, the use of two-tier termination fees increased in 2024 from 2023, which is likely due in part to regulatory uncertainty (including with respect to antitrust enforcement and the 2024 US presidential election). It will be interesting to see if the use of two-tier termination fees will decrease in 2025 in response to more favorable debt markets and the expected pro-business policies of the new administration.

GOING PRIVATE TRANSACTIONS: TERMINATION FEES

Reverse Termination Fee Amounts

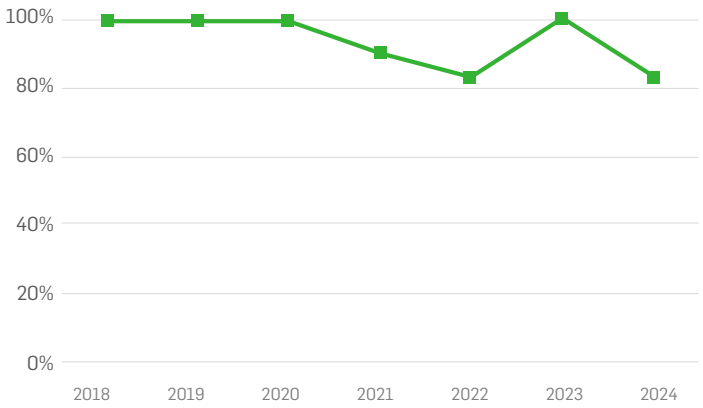


While the mean amount of the reverse termination fee as a percentage of target equity value slightly increased year-over-year (in 2024, it was 7.2% compared to 7.1% in 2023), the mean reverse termination fee as a percentage of target enterprise value slightly decreased (5.1% in 2024 compared to 5.3% in 2023). The mean reverse termination fee of 5.1% of target equity value is on the lower end of the market in private company deals, which we attribute to the fact that going private transactions tend to involve larger target companies.

Company Termination Fees. As expected, 100% of the surveyed transactions contained company termination fees. The mean fee as a percentage of target equity value and enterprise value did not deviate significantly from prior years, only slightly decreasing from 2023. The mean amount of the fee as a percentage of equity value was 3.3% (compared to the 3.4% in 2023) and as a percentage of enterprise value, only slightly decreased to 2.5% (from 2.6% in 2023). The overall consistency in the magnitude of the company termination fees through the years is unsurprising, as the size of the fee is largely informed by Delaware law (i.e., too high of a fee may be deemed coercive to the target's stockholders and invalidated by the courts).

All but one of the surveyed transactions that contained go-shop provisions (discussed above) included a termination fee structure where a lower fee is payable by the target in the event the target accepts a superior offer from an interloper during the go-shop period, and a higher fee is payable by the target following the expiration of the go-shop period and in all other situations in which the target fails to close the transaction (i.e., willful breach or refusal to close). This represents a decrease from 2023 (where all of the transactions that contained go-shop provisions had a bifurcated termination fee structure), but is consistent with what was seen in 2021 and 2022 (which had transactions that contained go-shop provisions, but that did not contemplate a bifurcated termination fee structure in all cases).

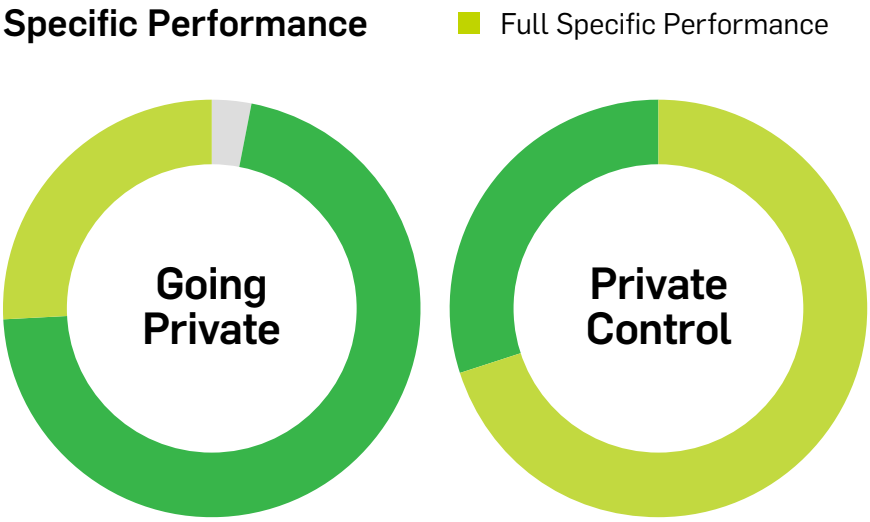
Use of Bifurcated Company Termination Fees in Going Privates with Go-Shop Provisions



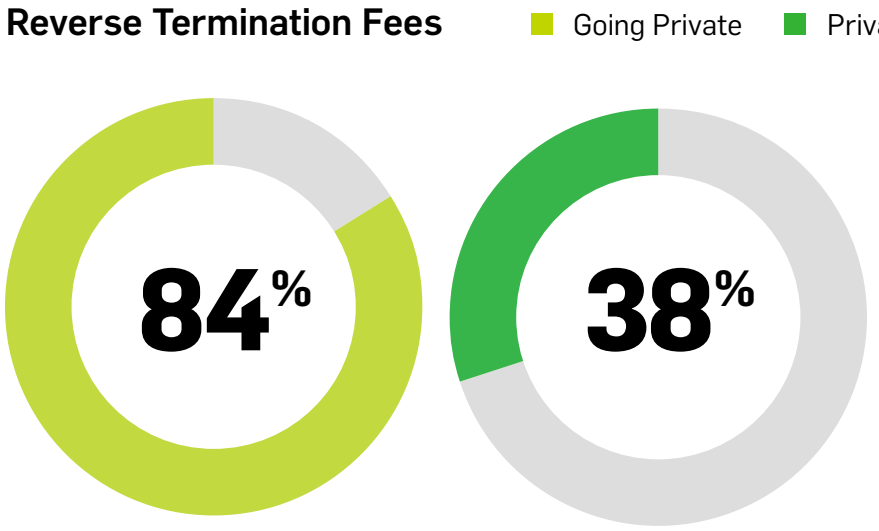
GOING PRIVATE TRANSACTIONS: GOING PRIVATES VS. PRIVATE CONTROL DEALS (2024)

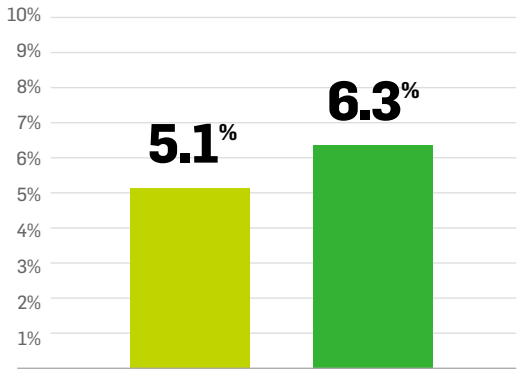
Using our recently launched proprietary platform DealVision 360, below we compare specific performance and reverse termination fees in sponsor-backed going private transactions (the subject of this study) and private control deals (whereby an acquirer acquires a control position in a private target company, which is not the subject of this study).

Specific Performance



Reverse Termination Fees





Mean RTF in all Going Private and Private Control Transactions (% EV)

GOING PRIVATE TRANSACTIONS: TRANSACTIONS INVOLVING ACTUAL OR POTENTIAL CONFLICTS

In lawsuits challenging a going private transaction with actual or perceived conflicts, a Delaware court may apply the most exacting standard of judicial review (entire fairness) when the transaction involves a controlling stockholder or when the target board of directors does not consist of a majority of independent and disinterested directors. However, by employing certain procedural safeguards, the use of special committees or approval of the underlying transaction by a majority of unaffiliated stockholders, parties can shift the burden of proof to the plaintiff stockholders or, by utilizing both, can restore the business judgment rule, the lower standard of review applied by Delaware courts.

In many cases, conflicts of interest – or perceived conflicts of interest – can arise in going private transactions, including where the buyer is an existing stockholder of the target company or has representation on the target board, or the sponsor of the target has relationships with the buyer or otherwise participates in the transaction. Conflicts may also arise in going private transactions in the context of equity rollovers, new compensation or incentive packages granted to existing directors or officers or in the event of disparate treatment of public stockholders.

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Mitigation of Conflicts – Special Committees and Majority-of-the-Minority Voting Standards

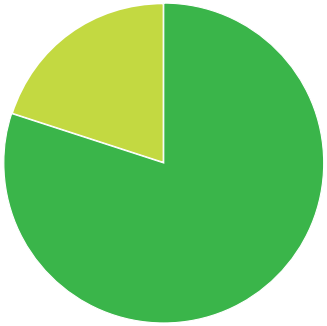
In some going private transactions that involve an actual or perceived conflict of interest, the board of the target company may appoint a special committee comprised solely of disinterested and independent directors to review, evaluate and negotiate a transaction on behalf of the board. A special committee that is properly constituted and mandated to negotiate a conflicted transaction with the assistance of independent legal and financial advisors can help ensure that the process approximates an arm's-length, third party negotiation. A special committee can also be useful if investors or others perceive that the target board, though consisting of a majority of nominally independent and disinterested directors, is dominated or unduly influenced by a controlling or significant stockholder.

Further, going private transaction parties may agree to also seek the approval of the transaction by a majority of the target's unaffiliated stockholders (also known as a "majority-of-the-minority" vote), in addition to approval by a majority of the target's stockholders (the statutory requirement under Delaware law).

Under Delaware law, the use of a special committee or a majority-of-the-minority closing condition can shift the burden of proving the merger was "entirely fair" to the party challenging the merger. In addition, the use of both a special committee and majority-of-the-minority vote construct has the potential of shifting the standard of review to the business judgment rule (the so-called "MFW" construct (discussed further below

GOING PRIVATE TRANSACTIONS: TRANSACTIONS INVOLVING ACTUAL OR POTENTIAL CONFLICTS

under Litigation Landscape)). However, while approval of a majority-of-the-minority may increase certainty in the litigation context with respect to an entire fairness review, the inclusion of such a requirement also raises increased deal uncertainty and closing risk (given that receipt of such stockholder approval imposes an additional condition to closing and places that condition in the hands of the target's non-conflicted stockholders).



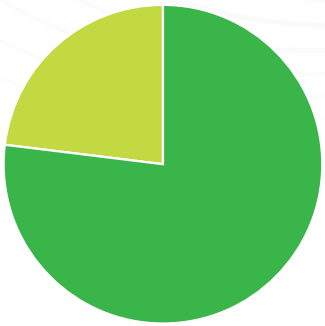
2024 Conflicted Transactions

- Special Committee Only
- Special Committee + M-of-M (MFW)

In this year's data set, 29% of the surveyed transactions featured the use of a special committee to negotiate the transaction on behalf of the target's board of directors, potentially to address a conflict or perceived conflict. Notably, the vast majority (80%) of these transactions featured solely the use of a special committee, with only 20% employing the MFW construct - both the use of a special committee and a required majority-of-the-minority vote.[1] This bifurcation is consistent with our experience and trends in previous years, as many sponsors and dealmakers are comfortable employing the use of a special committee to address potential conflict situations, but are hesitant to also subject a conflicted going private transaction to a majority-of-the-minority vote given the aforementioned heightened closing risk and deal uncertainty.

Rule 13e-3 Transactions

In addition to the considerations regarding actual or perceived conflicts of interest discussed above, going private transactions may be subject to enhanced disclosure requirements under SEC Rule 13e-3 if they involve "affiliates" of the target. Rule 13e-3 and the resulting disclosure requirements are most



13e-3 Transactions

- 13e-3 Transactions
- Non-13e-3 Transactions

commonly triggered when an acquisition of a publicly traded company involves the purchase of equity securities by the target's "affiliates" – for example, a buyer/sponsor who is an existing stockholder of the target. In addition, transactions that do not involve a buyer who is an affiliate may still be subject to Rule 13e-3 if the issuer's existing stockholders and/or management is determined to be engaged in the transaction (and thus essentially present "on both sides" of the transaction), whether pursuant to a significant rollover, significant new compensation or incentive equity grants and/or other significant benefits.

Application of Rule 13e-3 to a going private transaction entails a need for the parties to file a Schedule 13E-3 and

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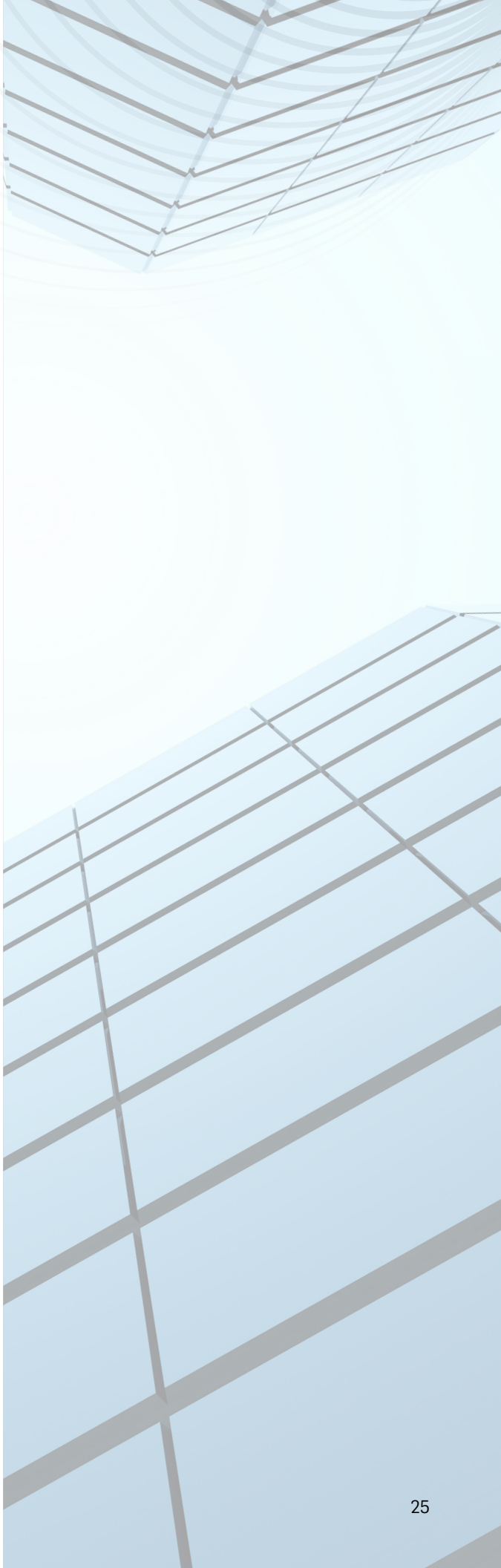
comply with certain enhanced disclosure requirements. These requirements address such items as pricing history, past transactions involving the buyer and the issuer, recent history of any acquisition negotiations with unaffiliated third parties, the buyer making an affirmative statement regarding the fairness of the transaction as well as a disclosure of any

GOING PRIVATE TRANSACTIONS: TRANSACTIONS INVOLVING ACTUAL OR POTENTIAL CONFLICTS

third-party appraisals, reports and opinions provided to the acquiring party that are material to the transaction.

23% of the surveyed transactions filed the additional disclosures required by Rule 13e-3. In each of those transactions, Rule 13e-3 was triggered because of the involvement of an "affiliate," as defined in Rule 13e-3. Rule 13e-3 "affiliates" in the surveyed transactions included:

- a majority stockholder who was also the buyer (Thomas H. Lee's acquisition of Agiliti);
- a majority stockholder who was also the buyer, along with certain officers of the target who rolled over equity in the transaction (Apax's acquisition of Thoughtworks);
- a significant minority stockholder who was also the buyer, along with certain directors and officers of the target who rolled over equity in the transaction (Silver Lake's pending acquisition of Endeavor);
- a significant minority stockholder who rolled over equity in the transaction (Bain Capital's acquisition of PowerSchool);
- a significant minority stockholder who was also part of the buyer consortium (TowerBrook and Clayton, Dubilier & Rice's acquisition of R1 RCM);
- certain directors and officers of the target who rolled over equity in the transaction (Altaris' acquisition of Sharecare);
- significant minority stockholders as well as a director and officer of the target who rolled over equity in the transaction (Permira's acquisition of Squarespace); and
- significant minority stockholders who rolled over equity in the transaction[2] (Silver Lake's and GIC's pending acquisition of Zuora).



GOING PRIVATE TRANSACTIONS: LITIGATION LANDSCAPE

Going private transactions, like all public M&A transactions, are highly likely to draw "strike suit" litigation or stockholder demands, whereby stockholders of the target allege that a transaction proxy statement contains misstatements or omissions in violation of the federal securities laws or state fiduciary duty law and seek additional disclosures in a transaction proxy statement before the stockholder vote. Going private transactions also draw litigation on the merits by public stockholders of the target, alleging that the transaction is unfair, that the target's board of directors breached its fiduciary duties in agreeing to the transaction, and that the acquirer aided and abetted those alleged breaches.

Developments in Delaware law over the past several years have provided greater clarity for deal makers seeking to minimize litigation risk and obtain more favorable standards of judicial review in any potential stockholder litigation arising out of going private transactions, depending upon whether or not the target has a controlling stockholder with unique interests in the transaction. These developments led to an increase in books and records inspection demands, under 8 *Del*. C. § 220, by stockholders and plaintiffs' counsel seeking to circumvent the more favorable standards of judicial review generally available to boards of directors. Recent developments in Delaware law have also highlighted additional considerations for private equity sponsors in going private transactions.

Developments in Delaware law over the past several years have provided greater clarity for deal makers seeking to minimize litigation risk and obtain more favorable standards of judicial review in any potential stockholder litigation arising out of going private transactions, depending upon whether or not the target has a controlling stockholder with unique interests in the transaction.

No Controlling Stockholder. If, prior to the going private transaction, the target did not have a controlling stockholder, and the transaction proxy statement provided target stockholders with all material information regarding their decision whether to vote in favor of the transaction, stockholder breach of fiduciary duty claims concerning the transaction are often subject to dismissal on a motion to dismiss. Under the "*Corwin*" doctrine, "the long-standing policy of [Delaware] law has been to avoid the uncertainties and costs of judicial second-guessing when the disinterested stockholders have had the free and informed chance to decide on the economic merits of a transaction for themselves."[1] Thus, transaction disclosures are often critical to the success of a pleading stage motion to dismiss, and transaction parties should ensure that the proxy statement contains robust and complete disclosure.

Controlling Stockholder. If, prior to a going private transaction, the target did have a controlling stockholder, a challenge to the going private transaction will likely be subject to entire fairness review if the controlling stockholder is the one taking the target private or "the controller competes with the common stockholders for consideration" in the going private transaction.[2] Entire fairness is the most stringent standard of review under Delaware law and requires the defendants to prove that the transaction was the product of "fair dealing" and resulted in a "fair price" to the minority stockholders. Where entire fairness applies, a complaint is not subject to dismissal at the pleading stage. However, deal makers can potentially shift the standard of review from entire fairness to business judgment—and thereby potentially obtain dismissal on a motion to dismiss—where, from the outset of the transaction negotiations, the transaction is conditioned "upon both the approval of an independent, adequately-empowered Special Committee that fulfills its duty of care; and the uncoerced, informed vote of a majority of the minority stockholders."[3] The *MFW* "standard ...

recognize[es] the utility to stockholders of replicating the two key protections that exist in a third-party merger: an independent negotiating agent whose work is subject to stockholder approval."[4]

Earlier this year, the Delaware Supreme Court in *In re Match Group, Inc. Derivative Litigation* confirmed that adhering to the *MFW* framework is necessary to obtain business judgement review in any action where "a controlling stockholder [stands] on both sides of a transaction with the controlled corporation and receive[s] a non-ratable benefit," regardless of whether the transaction "involves a freeze out merger."[5] The Court further held that, to obtain the benefits of *MFW*, "all" members of a special committee appointed to negotiate the transaction "must be independent of the controlling stockholder."[6] Thus, when considering a potential going private transaction with a target that has a true majority stockholder (greater than 50%) or a significant stockholder (less than 50%) that nevertheless may be characterized as a controlling stockholder, it is important to consider and discuss with counsel whether to implement the *MFW* framework before there are any substantive price discussions or negotiations with the target.[7]

Transaction planners must balance the potential litigation benefits that may be realized from implementing the *MFW* framework (i.e., a more favorable standard of review in a post-closing lawsuit) against the transaction costs, and potential uncertainties, of requiring approval of the proposed transaction by an independent committee and a minority stockholder vote. Transaction planners can (and many do) opt for deal certainty over litigation protections, recognizing that they will defend any challenge to the transaction under the entire fairness standard. Regardless of which path is chosen, however, it is important to work closely with counsel to ensure that a robust record is created to best position the proposed transaction to withstand even the most exacting judicial review.

Books and Records. In an effort to allege that the stockholder vote on a going private transaction was not fully informed (which is relevant to both the *Corwin* and *MFW* doctrines) and/or that any special committee was not properly functioning (which is relevant to the *MFW* doctrine), stockholder plaintiffs have increasingly been making books and records demands under 8 *Del.* C. § 220. Section 220 provides stockholders with a right to inspect a corporation's books and records for a "proper purpose," including investigating potential mismanagement and wrongdoing in connection with a merger transaction. Delaware courts have interpreted the "proper purpose" standard to be a low bar and, thus, a stockholder who seeks books and records in connection with a going private transaction will often be entitled, at a minimum, to the formal board minutes and materials concerning the transaction. **Some books and records inspections also reach emails, and potentially even text or other chat communications, to the extent that the formal board records contain gaps or insufficient information to enable the stockholder to investigate her claims**. It is therefore important, even as the buyer, to proactively consider and potentially discuss with the transaction target's counsel what record the target is creating in relation to the transaction. Detailed minutes and materials can be a first line of defense in any stockholder litigation, and can often be considered on a motion to dismiss, which can foreclose a plaintiff from taking liberties in making allegations that misrepresent the documented factual record. Finally, buyers also should be cognizant that key deal and negotiating points will often be reflected in the record of any target board

Transaction planners must balance the potential litigation benefits that may be realized from implementing the MFW framework (i.e., a more favorable standard of review in a post-closing lawsuit) against the transaction costs, and potential uncertainties, of requiring approval of the proposed transaction by an independent committee and a minority stockholder vote.

minutes where such issues are discussed, and that aggressive positions (or perceived aggressive positions) can sometimes be recorded in ways that might be exploited by stockholder plaintiffs in any transaction litigation. Thus, it is important to consider both intended and unintended consequences of all actions during the course of negotiating a transaction, particularly where a transaction is likely to draw stockholder litigation challenging the fairness of the deal.

Recent Developments. Three significant decisions handed down by the Delaware courts in 2024 also should be on private equity sponsors' radar. Although the first two decisions did not arise in the going private context, they could have implications for going private transactions, and the third provides a helpful reminder of the issues that can arise when a sponsor engages with a potential new operating partner who is still a fiduciary for an existing operating company.

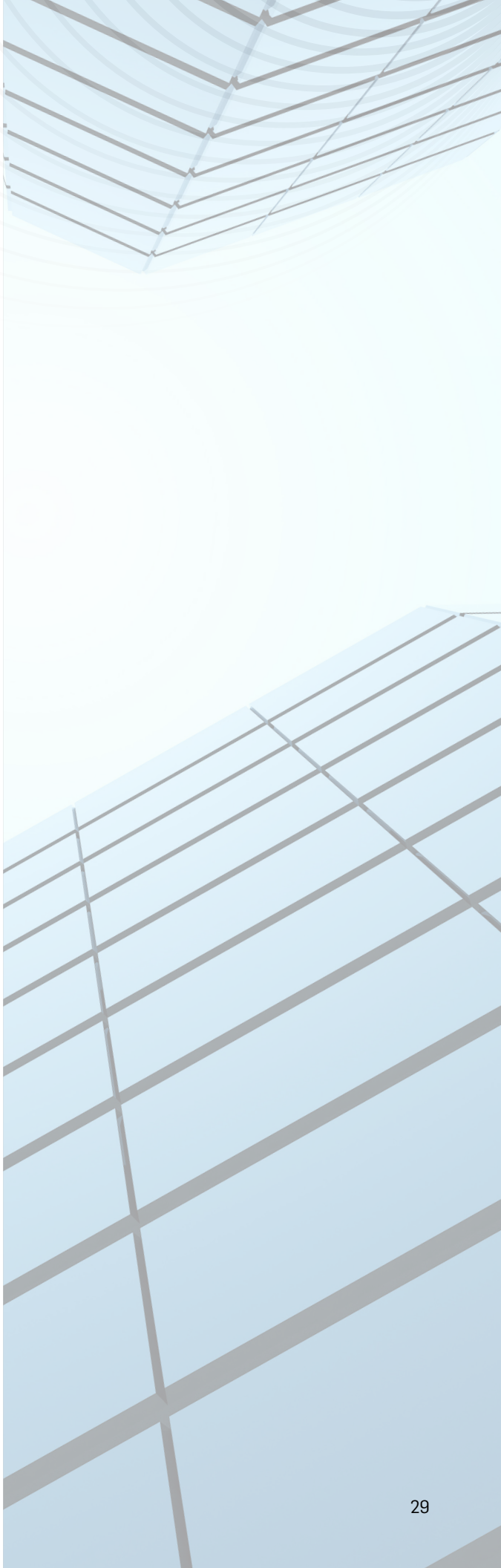
First, in *West Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, the Delaware Court of Chancery struck down a stockholder agreement that required a board of directors to obtain a stockholder's prior written consent before taking "virtually any action the directors might want to take" (including: "any incurrence of indebtedness"; "any issuance . . . of equity"; any investment over $20 million; "any amendment to the Certificate of Incorporation or By-Laws"; "the adoption of the Company's annual budget and business plans"; "the declaration and payment of any dividend"; "the entry into any merger"; "voluntarily initiating any liquidation"; and "the entry into or material amendment of any Material Contract").[8] In response to the *Moelis* decision, the Delaware legislature amended the DGCL to expressly permit the kinds of stockholder agreements struck down in *Moelis*.[9] Specifically, new 8 *Del.* C. § 122(18), which became effective on August 1, 2024, provides that a corporation may "make contracts with one or more current or prospective stockholders (or one or more beneficial owners of stock), in its or their capacity as such, in exchange for such minimum consideration as determined by the board of directors (which may include inducing stockholders or beneficial owners of stock to take, or refrain from taking, one or more actions)," so long as such contract would not violate the corporation's certification of incorporation or Delaware law, and then provides a non-exclusive list of the types of contracts that it permits. In the senate bill introducing Section 122(18), the drafters explained that the new statute "provides bright-line authorization for [such] provisions," explicitly overruling "the portion of the *Moelis* decision in which the Court held that contract provisions of this nature must be included in the certificate of incorporation to be valid."[10] Importantly, however, the new statutory authorization for stockholder agreements does not mean that such agreements are immune from litigation risk. Stockholders still could seek to challenge, on fiduciary duty grounds, board decisions to enter into such stockholder agreements, as well as subsequent decisions to abide by the terms of those agreements in later, "as applied" circumstances.

Three significant decisions handed down by the Delaware courts in 2024 also should be on private equity sponsors' radar.

Second, in *In re Sears Hometown & Outlet Stores, Inc. Stockholder Litigation*, the Delaware Court of Chancery held that controllers "exercising stockholder-level voting power" owe fiduciary duties when "exercising stockholder-level voting rights."[11] The Court further held that the "duty of good faith ...

demands the controller not harm the corporation or its minority stockholders intentionally" and that the "duty of care … demands the controller not harm the corporation or its minority stockholders through grossly negligent action."[12] Thus, "[a] controller can refuse to vote in favor of, or affirmatively vote against, a transaction that would alter the status quo, even if a board of directors might conclude that the transaction was in the best interests of all stockholders."[13] But, "when exercising voting power affirmatively to change the status quo," the controller owes fiduciary duties of good faith and care.[14] Sponsors should keep in mind the potential risks of litigation when exercising their stockholder-level voting power or when engaging in a transaction with a controlling stockholder exercising stockholder-level voting power.

Finally, in *Enhabit, Inc. v. Nautic Partners IX, L.P.*, the Delaware Court of Chancery found two private equity firms liable for aiding and abetting corporate officers' breach of their fiduciary duty of loyalty to their company after the company's board rebuffed a going private offer from the private equity firms (and one of the officers, the founder and CEO) and subsequently the officers, with the help of the private equity firms, created a new portfolio company and diverted corporate opportunities to the new portfolio company.[15] After trial, the court found that the private equity firms' liability for aiding and abetting was an "easy call": "Persons who knowingly join a fiduciary in an enterprise which constitutes a breach of his fiduciary duty of trust are jointly and severally liable for any injury which results."[16] *Enhabit* provides a helpful reminder of the need for sponsors to work closely with counsel to navigate the potential issues that may arise when a sponsor is considering engaging with a potential new operating partner who is still a fiduciary for an existing operation company—including fashioning a process that will put the sponsor in the best position to avoid claims that it participated in any alleged breaches of fiduciary duty.



Sponsor-Backed PIPE Transactions

PIPE TRANSACTIONS:
GENERAL MARKET OBSERVATIONS

In 2024, the U.S. sponsor-backed PIPE market witnessed a continued decrease in activity compared to the heights experienced during the 2020/2021 SPAC boom. The 2022 drop-off, and later stabilization, of PIPE transactions is reflected most notably in a sharp decline in deal volume and a recent decline in average placement size as compared to the 12-month period from 2023 to 2024.

This 2024 study includes two more deals than were surveyed in 2023 (ten total deals in 2024[11] vs. eight in 2023); however, the average placement amount fell by over 60% year-over-year to just under $200 million per deal (falling to $197.8 million in 2024 down from $535.5 million in 2023). This led to a nearly 55% decline in aggregate dollars raised (falling to $1.94 billion in 2024 down from $4.28 billion in 2023) by transactions within the scope of the survey. Even with the decline in SPAC activity, we would not otherwise expect to see such a drop-off in a vacuum. We attribute the lackluster 2024 figures to several factors.

The abundance of private credit solutions and follow-on offerings coming to the fore provide public company management teams with alternative paths to raise capital. Private credit provides a lower cost financing option than PIPES. In addition, historically high stock market valuations and the relative simplicity of follow-on offerings allow public companies to raise capital with less dilution to existing shareholders, a less complex capital structure and without the rigmarole of negotiating special governance and liquidity rights.

We saw other headwinds for the PIPE market in 2024 – namely, persistent inflationary pressures and uncertainty around the Fed's interest rate policies in response thereto, a less business-friendly regulatory environment (e.g., prohibitive regulatory scrutiny with respect to SPAC deals) and continued geopolitical uncertainty. We discuss each key driver of PIPE activity in greater detail herein.

PIPEs - Recent Historical Lookback

Strategic Financing Opportunities. When deciding between a number of financing options, public company management teams weigh a range of factors. Not least of which are timeliness of execution, cost of capital, ability to leverage a strategic partnership opportunity and availability of alternative sources of capital. When traditional financing methods become scarce, public companies often look to PIPE transactions to backstop their near- and long-term capital planning strategies. On the sponsor side, PIPE deals give sponsors the ability to deploy capital opportunistically, which can play to their advantage when mounting dry powder levels combine with the closure of more favored financing pathways. Although PIPE transactions generally involve some back-and-forth between capital providers and the recipient companies, PIPEs allow public companies to not only make immediate use of the capital they receive, but to leverage the targeted expertise financial investors are known to provide. In exchange for this, PIPE investors tend to receive bespoke packages of rights.

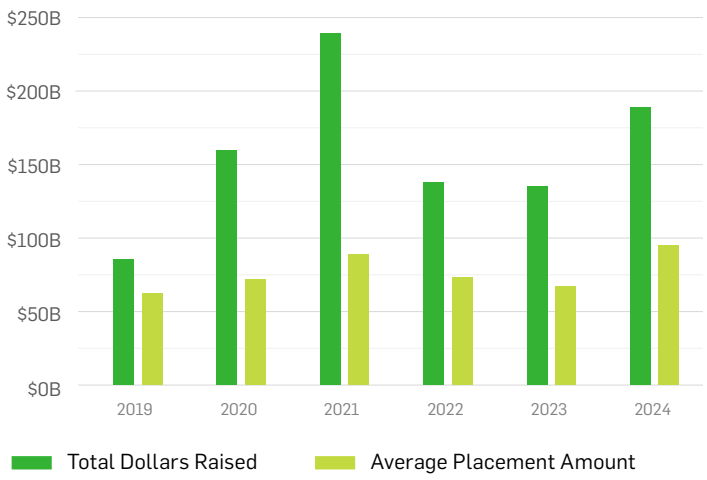
As previously noted, this study focuses on sponsor-backed PIPEs involving U.S. issuers, wherein private equity sponsors negotiate for governance, liquidity and conversion rights for the securities acquired through strategic investments. As we discuss in subsequent sections, the transactions we analyze frequently resemble platform ventures, co-investments, and minority investments in private companies. It is important to note that overall PIPE activity beyond the scope of this survey does not necessarily correlate with U.S. sponsor-backed PIPE activity, as sponsors and their investment committees must be both willing and able to deploy capital. A clear trend has emerged over the past few years indicating that financial sponsors find PIPE investments less appealing.

Macroeconomic Trends. As we noted in the previous year's study, setting aside sustained moderation in general market activity, PIPE transactions remain significantly elevated from pre-COVID levels in terms of both total volume and average placement amount.

From 2019 to 2024, overall PIPE volume, including those transactions outside the scope of our study, has increased by 48%, total dollars raised has increased by 115% and average deal size has increased by 45%.[3] From a capital markets standpoint, public companies have been proficient in using PIPE offerings during this time period.

PIPE TRANSACTIONS:
GENERAL MARKET OBSERVATIONS

Overall PIPE Market Activity[2]



Below we explore some of the key factors dictating PIPE activity over the past decade. For there to be a dramatic uptick in sponsor-backed PIPEs, we would look for a significant reversal in the popularity of private credit and moderation of valuations of public companies, along with interest rates being unlikely to rise again in the near term, or even remain at their current level for a sustained period.

- *The Rise and Fall of SPACs:* Since SPAC transactions necessarily involve PIPE deals (i.e., to complete de-SPACs), SPACs have emerged in recent years as a primary driver of PIPEs. However, the market dynamics affecting SPAC volume have undergone extreme changes. De-SPAC transactions propelled the volume of U.S. sponsor-backed PIPE deals during 2020 and 2021 with over 250 PIPE transactions linked to de-SPAC deals in those years.[4] By mid-2022, the SPAC PIPE market was facing significant headwinds, notably that there had been a considerable amount of capital already allocated to either announced or completed de-SPAC transactions and SPAC redemptions had increased dramatically in addition to the above-mentioned regulatory challenges. By the end of 2023, the SPAC boom was long gone, with transaction volumes plummeting by more than 95%.[5]
- *Excess Dry Powder and Stalled Fundraising:* Immediately following the COVID-19 pandemic, sponsors saw record fundraising, resulting in a never-before-seen level of dry-powder, which is still high today. However, in the current market and due to factors outside of the scope of this study, limited partners are growing impatient for liquidity in their private investment portfolios.[6] Consequently, feeling these pressures and their impact on future fundraising efforts, general partners are turning away from PIPE transactions, doubling down on their efforts to find creative ways to return capital to their LPs.
- *Private Credit Boom:* Private credit's precipitous rise in popularity, along with follow-on offerings as we discuss below, as a financing source has reshaped (and continues to reshape) the financing landscape for public companies, offering an attractive alternative to traditional funding sources such as bank loans or PIPE transactions.[7] The private credit market has seen exponential growth the last decade, with assets under management rising from $272 billion in 2007 to $1.6 trillion in 2023, and are projected to reach $2.8 trillion by the end of 2028.[8] This surge in private credit has been fueled by increasing demand for flexible and customized financing solutions, especially in an elevated yet dynamic interest rate environment. As private credit providers become more prevalent, public companies are increasingly turning to them for capital, which has led to a marked decline in PIPE transaction activity. We believe this decline to be driven in large part by cost of capital considerations and the flexibility private lenders provide as opposed to more traditional forms of lending and capital raises. Among other aspects, the appeal of private credit lies in its ability to provide public companies with tailored financing solutions that can address specific company needs, often with low regulatory scrutiny and a relatively quick execution timeline. It follows that as public companies opt for private credit arrangements to secure necessary funds, the overall volume of PIPE transactions has fallen, reflecting a significant shift in the capital-raising preferences of public firms.

- *Public Company Valuations and Follow-On Offerings:* We have historically seen that as public company valuations tick higher, public companies are provided with different avenues for raising capital with less dilution to existing shareholders. This is certainly the case with follow-on offerings. Given soaring valuations during the post-COVID recovery through today, public companies have been particularly keen on leveraging their impressive valuations through follow-on offerings which has, similar to private credit, also come at the expense of PIPE activity.[9] It is understandable why follow-ons would be preferred to PIPEs as follow-ons do not come with the special rights (including governance terms) that PIPE investors demand. In conjunction with increasingly targeted private credit products, the public company financing market may well be saturated. We believe this saturation is reflected in the anemic PIPE activity we've seen since the SPAC boom. As an additional headwind, it is widely recognized that private companies are delaying going public, opting to stay private longer due to the favorable private market conditions and the availability of alternative financing, thus reducing the pool of potential PIPE investment targets.
- *Interest Rate Activity and PIPE Transactions:* Over the years, interest rates have been all over the map, with the current cycle being primarily influenced by post-COVID economic recovery efforts, unprecedented inflationary pressures and consequent shifts in monetary policy. Following a period of historically low rates amid the COVID-19 pandemic, central banks rapidly raised rates to combat aggressive inflation, creating a challenging borrowing environment for public companies. With the government's cautious approach to interest rate cuts and inflationary pressures persisting, many businesses are re-evaluating their financing options, leading some to seek alternative sources of capital. This new market landscape has encouraged companies to explore traditional debt offerings and private credit options, which often present a lower cost of capital than PIPE transactions. This pivot away from PIPE deals reflects a broader trend as public companies adapt to the changing financial layout and prioritize financing options that align with their strategic goals amid a transitional period in the interest rate environment.

Sector Trends, Use of Proceeds. Of the surveyed transactions, the technology and healthcare sectors accounted for 70%, which aligns with our 2023 study. This concentration of PIPE activity reflects broader industry trends such as rapid innovation and opportunity in both sectors, however, given the need to balance a continuing call for innovation with increased scrutiny in the healthcare sector and macroeconomic headwinds in the tech sector, management teams have chosen to partner with sponsors to meet the competitive demands of these industries, albeit to a lesser degree than in 2023 as far as aggregate placement amount.

Generally, proceeds from the U.S. sponsor-backed PIPE financings surveyed were used for (i) working capital and other general corporate purposes, (ii) acquisition finance and transaction expenses, (iii) repayment or refinancing of debt, (iv) capital expenditures, (v) product development, (vi) redemption of common stock and (vii) the reacquisition of development and commercial rights, with more than half of the deals using the financing obtained for a combination of these purposes. It follows that public companies will, in the absence of a preferred financing alternative, lean on PIPE transactions to support their long-term capital needs and strategic growth initiatives.

2025 PIPE Market Outlook

As the sponsor-backed PIPE market heads into 2025, the landscape is continually subject to ongoing shifts in macroeconomic conditions. Given the anticipated moderation in interest rates and the continued development of the private credit market, sponsor-backed PIPE activity is likely to continue at a slower pace relative to the highs of 2020-2021. However, we are confident that PIPE transactions are in a relatively stable place as PIPE numbers remain significantly elevated from pre-COVID figures. This stability is even more encouraging considering the positive sentiments about the markets heading into 2025.

Looking ahead, as economic conditions shift, we expect the PIPE market to remain stable in terms of transaction volume, with the potential for deal activity to gradually increase as sponsors look to deploy the still-impressive

levels of available LP commitments, which they are under continued pressure to deploy.[10] However, we also expect average placement size to remain subject to fluctuation as financing conditions in other, competitive markets develop.

Finally, we expect the upcoming change in federal administration to create a significant shift in the current regulatory environment impacting dealmaking. If nothing else, we would expect the resolution of the election to reverse an appreciable amount of hesitancy we have seen from financial sponsors waiting for the election results. We would also anticipate that the likely onset of a more business friendly environment, from possible corporate tax cuts to a less involved regulatory scheme, would introduce a wider array of liquidity opportunities, potentially further sparking sponsor-backed M&A. That said, it remains to be seen whether the 2024 presidential election will be a headwind or a tailwind on PIPE activity in 2025.

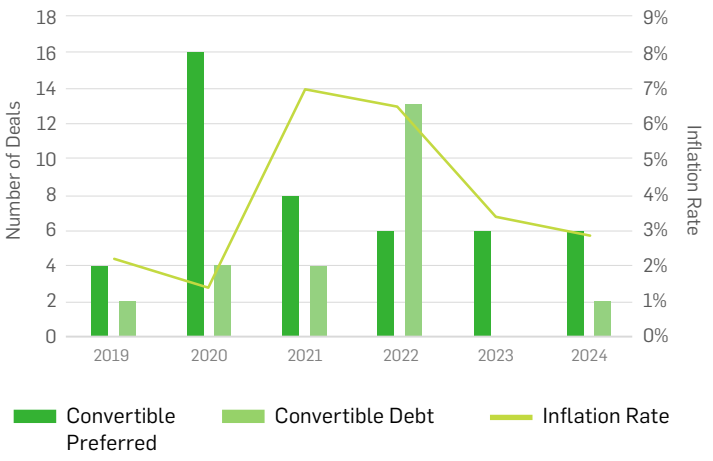
Security Type

Of the PIPEs surveyed, 80% were structured as a convertible security (60% structured as a convertible preferred security and 20% structured as a convertible debt security[1]) and 20% were structured as a non-convertible security (10% as a non-convertible preferred and 10% as non-convertible debt). In addition, 20% of the PIPEs surveyed also included the issuance of warrants. **The relative popularity of convertible securities (both convertible equity and convertible debt) as compared to non-convertible securities for sponsor-backed PIPEs has remained consistent over recent years despite the shifting macroeconomic landscape, reflecting sponsors' sustained interest in hybrid investment structures that combine potential upside and downside protection.**

The prevalent use of convertible preferred PIPE securities in 2024 is a continuation from 2023 (when 75% of the surveyed PIPEs were structured with convertible preferred) and is consistent with historical trends. As reflected in the chart to the right, the unusual prevalence of convertible debt securities in 2022 (when 65% of the surveyed PIPEs were structured with convertible debt) coincided with a period of high inflation and uncertainty. We surmise that the continued prevalence of convertible preferred PIPE securities among the surveyed transactions in 2024 may reflect sponsor optimism and faith in the recovery of equity capital markets as a source of high upside exit opportunities. Convertible preferred securities provide sponsors with the benefit of a fixed income stream (either in the form of a cash or PIK dividend), and allow issuers greater flexibility to deploy capital over a longer time horizon in response to favorable market conditions.

So why did we also see an uptick in sponsor-backed PIPEs involving the issuance of convertible debt securities and non-convertible preferred or debt securities in 2024? On the sponsor side, there has been mounting pressure to return capital to investors, and such securities typically offer a high return over shorter time horizons. While all of the surveyed transactions with convertible preferred PIPE securities involved perpetual preferred (i.e., no maturity), all of the surveyed transactions with convertible debt securities and non-convertible preferred or debt securities had fixed terms (ranging from five to eight years). On the issuer side, falling interest rates and borrowing costs have made debt and debt-like financing more attractive as an alternative source of liquidity and capital. We surmise that 2025 will offer sponsors a similar, and potentially more favorable, opportunity to deploy capital and track down growth and diversification across the broad private equity spectrum.

Security Type



Source (*Inflation Rate only*): Bureau of Labor Statistics

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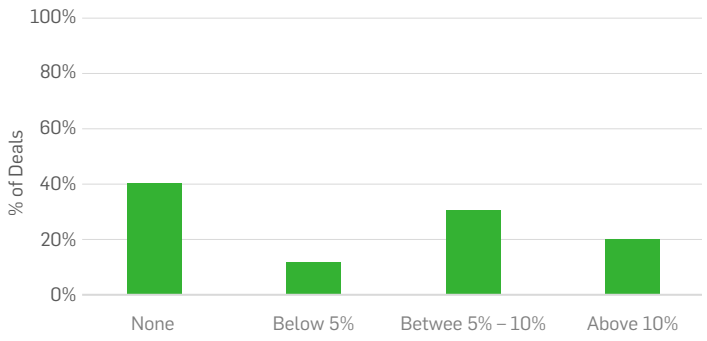
PIPE TRANSACTIONS:
KEY FINANCIAL TERMS

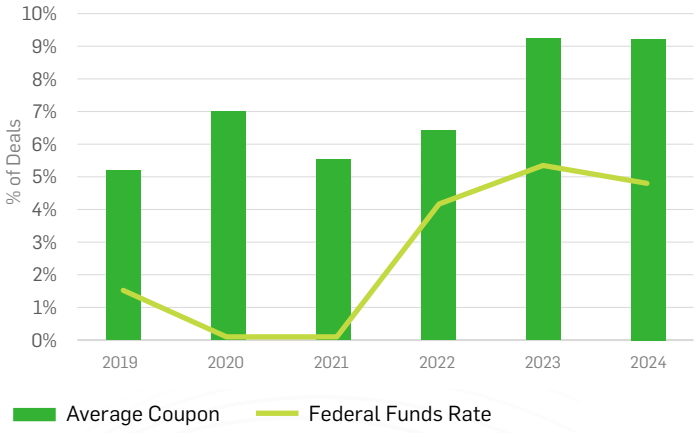
Coupons

Of the PIPEs surveyed, 60% were structured with securities that provide for scheduled payments of coupons. The coupons for such PIPEs average at 9.2% – the same as in 2023. As noted in last year's survey, and as reflected in the chart below, coupon rates tend to track the direction of the Federal Reserve and the prevailing interest rate environment. While the Federal Reserve implemented several rate cuts in 2024, the overall interest rate is still relatively high compared to the zero interest rate policy era – as such, coupons have predictably remained high.

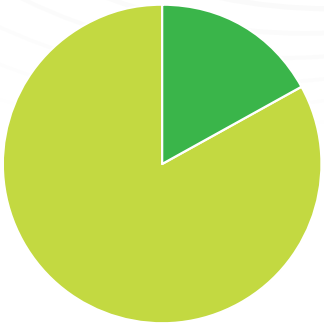
Coupon



Average Coupon



Source (*Federal Funds Rate only*): Federal Reserve Bank of St. Louis



Coupon Payment Type

- Cash Only
- Cash or PIK

In 2024, sponsors continued to negotiate coupon adjustments (by increasing the rate by 0.5-5%) upon the occurrence of certain events of non-compliance or default, such as issuer's violation of restrictions on distributions to holders of common stock, failure to pay dividends or effect the conversion of shares, or bankruptcy, insolvency or reorganization. We expect deals in 2025 will present similar coupon rates as compared to 2024 or otherwise yield a modest decrease in PIPE coupons as the market reacts to the Federal Reserve's potential rate cuts and a new economic regime.

With respect to coupon payment type, in 2024 we saw the continued prevalence of issuer optionality to pay in cash or in-kind. In fact, all except one of the surveyed transactions involved coupons that were payable in cash or payment-in-kind (PIK) at the issuer's option (one transaction contemplated cash-only payments). The mutually beneficial nature of such securities that we identified in last year's survey continues to be attractive to both sponsors and issuers – with PIK optionality, issuers can adapt to changing market conditions by paying cash during periods of financial strength and conserving cash during periods of tight liquidity, and sponsors can earn higher returns (due to the cumulative and often compounding nature of PIK coupons) and mitigate the risk of default or financial distress that an issuer may face from mandatory cash coupons.

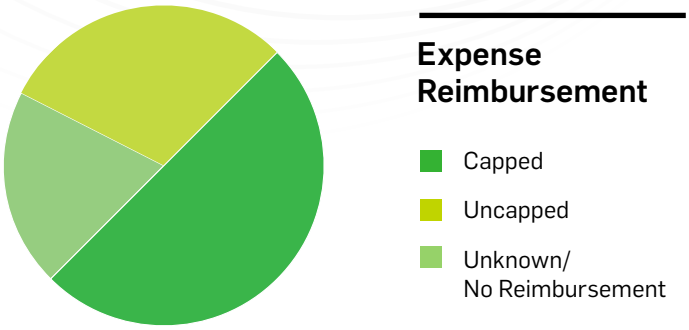
The four remaining PIPEs (three convertible preferred and one non-convertible preferred) do not provide for accrual of dividends, but are rather participating preferred securities (i.e., sponsors can participate pari passu with common dividends (on an as-converted basis), if and when such dividends are distributed). When such PIPEs are taken into account, the

average coupon is 5.5%, a 40% decrease from last year's average coupon but largely consistent with prior years. The existence of convertible preferred securities without fixed coupons, viewed in conjunction with the rise of convertible debt securities and non-convertible preferred securities, suggests a bifurcation in the sponsor-backed PIPE market – some sponsors are investing in companies that they believe will deliver a high return via IPO or sale and are willing to forgo the coupon that in previous years was a standard component of convertible preferred securities, while others continue to seek fixed returns that can be used to return capital to investors.

Conversion Price

Among the surveyed transactions involving convertible securities, all contemplate a fixed conversion price (subject to adjustment[2]). In a majority of the surveyed PIPE transactions involving convertible securities, the conversion price reflects a premium to the closing stock price as of the signing of the definitive investment agreement. In the remaining transactions, the conversion price reflects a discount to the closing stock price as of the signing of the definitive investment agreement. Taken as a whole, the mean conversion premium is approximately 13% (a 32% decrease from the 2023 mean conversion premium of 19%) and the median conversion premium is approximately 19% (largely unchanged from the 2023 median conversion premium of 20%).

In 2024, conversion premiums ranged from 10% to 44% and conversion discounts ranged from 7% to 38%, in each case, representing a wider range compared to 2023. The greater dispersion in conversion prices in 2024 suggests that sponsors may be investing in both growth and value opportunities via PIPE transactions. In growth transactions, sponsors may be bullish on the future prospects of a company and agree to a high conversion premium, while in value transactions, sponsors may be capitalizing on opportunities to invest in companies that are currently undervalued by the market with the expectation that the investment will bear positive returns if the company stays the course.



Sponsor Expense Reimbursement; Other Sponsor Fees

Sponsor expense reimbursement remained common, and in a slight decrease from last year, sponsors received expense reimbursement by the issuer in 80% of the surveyed PIPEs (compared to 88% in 2023, 70% in 2022, 50% in 2021 and 80% in 2020). The value of these sponsor expense reimbursements ranged from $400,000 to 100% of sponsor's expenses (i.e., uncapped). Where a capped amount was contemplated, the mean expense reimbursement amount was approximately $940,000 (representing a mean of 0.5% of the aggregate investment amount across the surveyed transaction, which is a moderate decrease from the mean percentage last year). We expect sponsors to continue to receive expense reimbursement in PIPE transactions in 2025.

Redemptions

A redemption of securities is when the issuer buys back or repurchases its own securities at a certain time or under certain conditions and for a predetermined price. Redemption rights generally allow sponsors to force a redemption of their PIPE securities upon certain trigger events, at their option, or require an issuer to mandatorily redeem such securities. In this way, redemption rights or triggers can help provide liquidity for a sponsor's investment.

Sponsor Redemption

Redemption Triggers. All except two of the surveyed transactions included sponsor redemption rights facilitating liquidity through issuer repurchase of PIPE securities. 2024 marked a slight departure from prior years, in which all surveyed transactions included sponsor redemption rights. We also note, that although sponsors seemed to have leverage on negotiating better conversion rights (as discussed below), that may have been a trade for worse redemption rights (at least in a couple instances).

Change of Control. The most important and frequently included trigger for redemption rights is a change of control of the issuer. This is a constant theme year to year, and also tracks private market practices. **Here, all of the surveyed transactions that contained triggers for redemption included such a trigger upon a change of control of the issuer.**

- *Mandatory:* In a majority of the transactions that included a redemption trigger upon a change of control of issuer, such a change of control results in automatic redemption of all of the outstanding PIPE securities (i.e., no election by sponsor or issuer required, and partial redemption is not permitted). In three of those transactions, a change of control is the only trigger for mandatory redemption.
- *Optional:* In the remaining transactions that included a change of control redemption trigger, upon a change of control, the sponsor may elect for the issuer to redeem all or part of its PIPE securities. We note there is little substantive difference between mandatory redemptions and optional redemptions, other than some sponsors may prefer optionality to remain invested under a new governance structure and owner, and preserve the potential to roll-over into a potential take-private (though in practice, that rarely happens). Some sponsors also believe the mere optionality is a helpful bargaining chip in the context of navigating a take private of a subject issuer.

A change of control redemption trigger protects an investor from fundamental changes that are generally tied to new ownership or management of a business – in other words, the underwriting of a business could dramatically change under new governance – and almost universally – market practice is to give an investor the right to liquidity in those scenarios.

Lapse of Time. The next most common trigger of redemption rights (whether optional or mandatory) is a time-based trigger, sometimes referred to as a "maturity". That said, time-based redemption rights are not necessarily the norm, and as we discuss further below, maturities were only included in a minority of PIPE transactions in 2024. Time-based redemption rights offer investors leverage to prompt action from the issuer, such as a sale or refinancing, within a defined period (within an investor's fund hold period). When present, this structure fosters accountability and ensures the issuer remains motivated to deliver on goals, protect the investor's interests, and manage capital efficiently to a reasonable IRR.

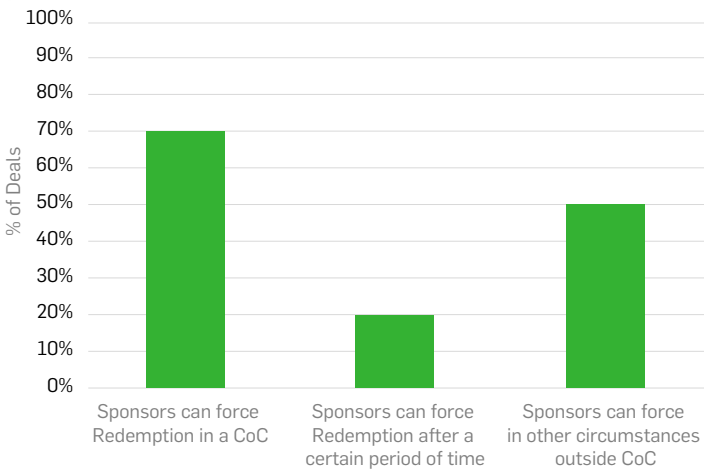
- *Mandatory:* A minority of the surveyed transactions involved PIPE securities with a fixed term (ranging from five to seven and a half years following the original date of issuance), where the PIPE securities will be automatically redeemable

by the issuer when the applicable term expires. If the issuer is unable to use the capital to create the return or meet the financial obligation for which the capital was raised before the term for a fixed-term PIPE security expires, the issuer may need to refinance or otherwise obtain alternate financing (potentially on less favorable terms). This increased exposure to greater risks in the credit market may have driven sponsors' negotiating for the flexiblilty of longer-standing capital raised through perpetual PIPE securities in 2024. Furthermore, some investors may have considered optional redemption rights, discussed below, as nearly equivalent from a liquidity perspective given they likely assumed the rights would be exercised.

- *Optional:* While a majority of the surveyed transactions involved perpetual preferred securities, only one of those perpetual preferred transactions (and 22% of all surveyed transactions) provided sponsors with the option to redeem their PIPE securities following the lapse of a certain period of time (five years post-issuance). The other transactions involving perpetual preferred securities did not include any time-based redemption triggers. Sponsors less commonly had the right to redeem PIPE securities after the passage of time as compared with 2023 and 2021 (where sponsors had such rights in 38% and 70% of the surveyed transactions, respectively), which is somewhat more consistent with 2022 (where only 10% of the surveyed granted sponsors such rights). It is possible that this is in part due to the decline in long-term lock-up restrictions, and the prevelance of permitted-transfer exceptions to lock-up restrictions (discussed below), which provide other long-term exit opportunities other than through a redemption or repurchase by the issuer.

Other Trigger Events. The three surveyed transactions involving debt, "debt-like" convertible or non-convertible securities provided for redemption upon certain other events, which in most cases, were unique to the circumstances of the applicable transaction and had characterisics similar to a credit arrangement, including mandatory redemption obligations upon (1) certain insolvency events relating to bankruptcy, liquidation or dissolution (as was common in previous years), (2) any event of default under the terms of other debt issuance and (3) certain non-ordinary course asset sales and casualty events.

Sponsor Redemption Rights



Redemption Price. Negotiated redemption price and mechanics are a critical component in a sponsor's PIPE investment, and directly impact the economic viability of the investment and potential returns. A well-structured redemption price mechanic balances a sponsor's need for downside protection with the issuer's capacity to meet obligations, ensuring both parties remain aligned on the financial terms and the path to value creation and liquidity. **Upon redemption (whether mandatory or optional), as is customary, sponsors in all of the applicable surveyed transactions can choose to receive, in addition to any accrued and unpaid dividends, the greater of (1) the fair market value of their PIPE securities on an as-converted basis (determined immediately prior to the time of the trigger event and based on the applicable trading price of the issuer's common stock over a specified period prior to the applicable trigger event) or (2) a multiple of their liquidation preference, ranging from 100% to 200%.** This "standard" mechanism for the calculation of the redemption price and the multiple range is consistent year-over-year and

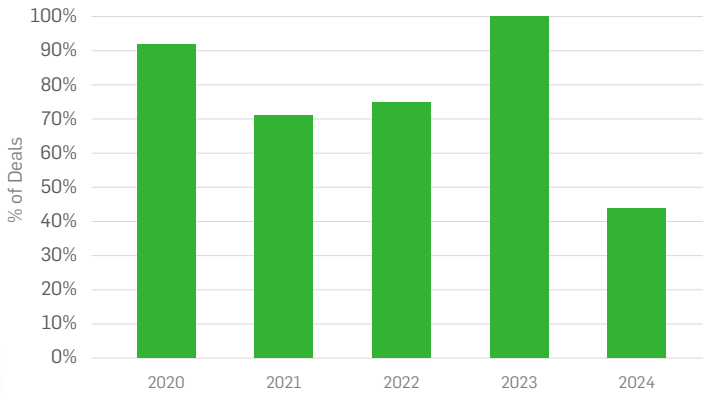
to past years. In all of the surveyed transactions affording sponsor a redemption right, the liquidation preference multiple used to calculate the redemption price did not vary based on the trigger event (however, in one surveyed transaction, the liquidation preference multiple varied between 150% and 200% depending on the timing of the triggering event).

Issuer Redemption

2024 marked a drastic shift compared to previous years on the ability for issuers to force redemption or call PIPE securities. Whereas in previous years, most issuers had flexibility to take out PIPE securityholders, in 2024, only 44% of the surveyed PIPEs allowed the PIPE issuer to force a redemption of sponsor's securities. The circumstances whereby these issuers could force redemptions included the following:

- One of the surveyed transactions permitted redemption at the issuer's option in the event of a sale or other change of control of issuer (sometimes at a multiple of issue price); and/or
- 44% of the surveyed transactions (and all of the surveyed PIPEs with issuer redemption rights) permitted redemption at the issuer's option following a certain period of time (most commonly two to seven years), often at a redemption premium.

Issuer Redemption Rights



The latter issuer redemption right is not uncommon in private structured equity or convertible debt financings, though we were surprised with the lack of frequency this year at which issuers had rights to repurchase. Similar with conversion rights discussed below, the trend of fewer issuers having redemption rights in 2024 suggests that sponsors achieved more favorable liquidity rights in PIPE transactions, and perhaps had more leverage overall, and reflects the perspective that sponsors are focused on preserving their ability to capture the upside of their investment over longer periods of time and keep dollars at work (after all, committing to invest in a company for that investment to be quickly convertible or redeemable is less than appealing to sponsors). Where issuers successfully negotiated redemption rights this year, sponsors were able to mitigate against such issuer-forced redemptions with redemption premium payments in most cases.

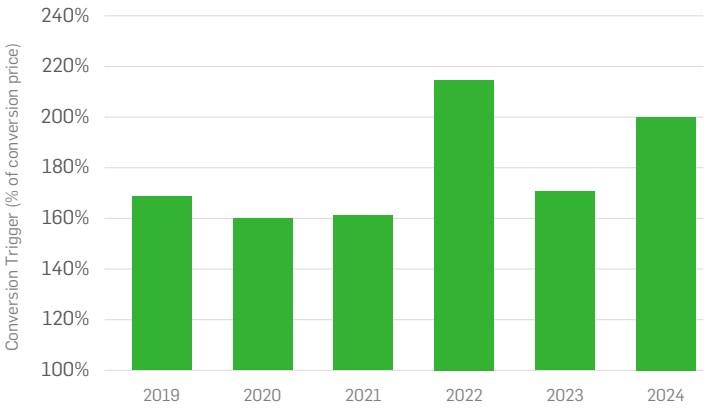
Conversion

Issuer Rights to Convert. Of the surveyed PIPE transactions involving convertible securities, only two (25%) provide for conversion at the issuer's option upon certain triggering events. This is a notable departure as compared to previous years, in which a larger number of issuers were able to negotiate optional conversion rights (50% in 2023, 42% in 2022 and 67% in 2021). While such issuer-forced conversion triggers may provide increased liquidity for sponsors upon certain milestone events, they can also cap upside. This downward trend in optional issuer conversion rights signal a PIPE market in which sponsors have more leverage, and that sponsors are increasingly focused on preserving the ability to capture investment upside over longer periods of time (perhaps even into continuation funds and other vehicles).

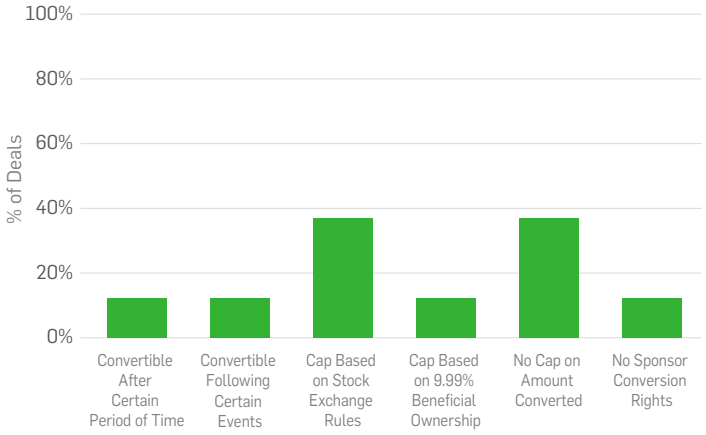
Both transactions that contemplated optional conversion by the issuer used the same triggering event – if issuer's common stock traded above a specified price (expressed as a percentage of the conversion price) for a specified period of time. Furthermore, in both of these transactions, the trading price trigger was 200% of the conversion price, which is slightly higher than the mean amounts we have observed over the last six years (which have generally been around

PIPE TRANSACTIONS:
LIQUIDITY

Issuer Conversion



Sponsor Conversion



170%). This data point bolsters our view that sponsors are increasingly focused on their ability to maintain their investment in convertible securities for longer periods.

Sponsor Rights to Convert. In 2024, we saw a slight uptick in sponsor-initiated conversion rights and generally less restrictions than were imposed in the previous year.

In all except one of the surveyed PIPEs with convertible securities, sponsors were permitted to convert their PIPE securities, in most cases subject to conversion restrictions. One transaction involving convertible PIPE securities did not allow for sponsor-initiated conversion.

With respect to conversion triggers: 25% of the surveyed transactions involving convertible securities imposed a time-based restriction on sponsor initiated conversion (the third anniversary of the issue date) or required the completion of certain deal specific corporate actions (the expiration of the HSR waiting period applicable to the conversion, if any). This is a decrease from 2023, in which 50% of the transactions imposed time or corporate action restrictions on the right of sponsors to force a conversion of the PIPE securities. Taken together, fewer restrictions on sponsor conversion rights in 2024 again signaled that leverage, in most cases, tilted in favor of investors.

50% of our surveyed transactions with convertible securities imposed a cap on the amount of preferred securities that a sponsor may convert, where all except one of such transactions capped conversion in accordance with NASDAQ and NYSE beneficial owner limitations, and one imposed a cap at 9.99% of the outstanding common stock. The remaining transactions which contemplated sponsor-optional conversion did not include a cap, although one such transaction required the sponsor to convert a minimum amount of the PIPE securities, while the other PIPE transactions imposed no minimum or maximum.

Lock-ups

Lock-up provisions provide issuers with greater certainty that holders of the PIPE investment security remain committed to the issuer and its strategy for deploying newly invested capital for a greater period of time. The scope of our survey intentionally to looks at sizable PIPEs led by typical private equity and financial sponsors (and we purposefully omit transactions where hedge funds or other public market investors participate in at-the-market offerings and proceed to trade).

2023 was an interesting year for lock-ups and similar provisions, as market uncertainty yielded a spike in our lock-up related data around prevalence and duration. In 2024, we expected the trend to continue with widespread use of lock-ups, and long lock-up periods. We suspected

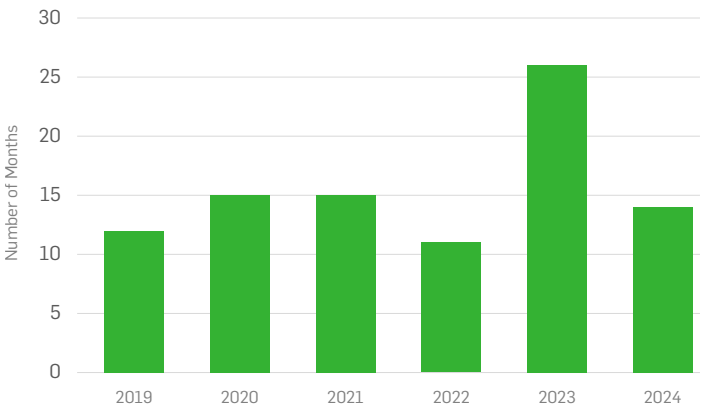
that both sponsors and issuers became more comfortable structuring longer term investment relationships (and in many cases, sponsors had the "upper hand" at negotiating flexible arrangements to be invested for longer, as described above in the redemption and conversion analysis).

Surprisingly to us, the prevalence of lock-ups decreased in 2024 and data started to normalize to earlier years. Only 70% of the surveyed PIPEs contained provisions restricting the sponsor's ability to transfer the PIPE securities (as compared to 100% in 2023 and 70% in 2022). Further, in 50% of the surveyed transactions this year, the PIPE securities were subject to the lock-up for a specified period of time (as compared to 63% in 2023 and 60% in 2022). Only in 20% of this year's surveyed transactions were the PIPE securities subject to the lock-up for an indefinite duration (compared to 37% in 2023 and 5% in 2022). After our careful analysis, it seems like 2024 was more like 2022 than 2023 as it related to lock ups.

Notably, 30% of the 2024 surveyed transactions did not have any lock-up restrictions on PIPE securities (other than restrictions imposed by applicable securities laws). This is a significant departure from 2023 (a bumper year), in which all of the surveyed transactions had lock-up restrictions. This signals a potential return to the 2022 market, in which 30% of the surveyed PIPEs had no transfer restrictions. Further, in 2024, even the transactions that imposed indefinite lock-ups allowed for certain categories of permitted transfers, including transfers to affiliates (greater awareness of and planning for continuation funds, we suspect), pro rata distributions to equity holders and transfers pursuant to a tender or exchange offer or pursuant to a merger, consolidation or similar transactions by the issuer. These trends indicate that sponsors appear to be increasingly focused on their long-term exit opportunities and flexibility, whether to a third-party buyer or to an affiliated continuation fund, and have the negotiating power required to protect those interests.

With respect to lock-ups for a specified period, 2023 saw a significant increase in the average length of the lock-up periods, which was likely a result of issuers responding to the increased market uncertainty. However, in 2024 we saw an almost 50% decrease in the average length of the lock-up period (from 26 months in 2023 to 14 months in 2024) and a general return to pre-2023 trends. As PIPE investors begin to regain the leverage they had in 2021 and 2022, it is perhaps not surprising that they will seek to negotiate shorter lock-up periods. In addition, as markets stabilize, public issuers are likely to be more flexible when it comes to lock-up periods and transfer restrictions.

Average Lockup Duration



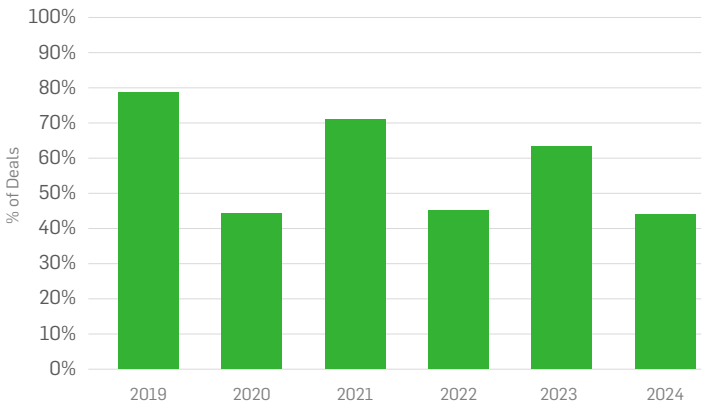
Standstills

Standstills can be relevant in PIPEs because they limit an investor's ability to acquire additional shares or initiate a change of control, protecting the issuer from potential takeover threats or undue influence following completion of the PIPE if the investor is unhappy with the issuer's direction or otherwise has plans for a broader acquisition. For issuers, standstills provide stability and safeguard against disruptions to governance or strategic direction. In some cases, sponsors may support standstills if they align with a longer-term partnership strategy. On the other hand, sponsors may resist them if they seek greater control or flexibility in increasing their stake. Balancing these considerations ensures both parties remain aligned.

PIPE TRANSACTIONS: LIQUIDITY

In 2024, 44% of the surveyed transactions contained standstill provisions restricting the sponsor from purchasing additional securities of issuer for a fixed period of time, with the longest standstill lasting three years from issuance. Where present, the median standstill was two years (compared to three years, one year, three years and two years in 2023, 2022, 2021 and 2020, respectively). Unsurprisingly, in all of the surveyed PIPEs, the standstill provision would fall away upon a change of control or similar merger, tender offer, spin-off or other similar acquisition transaction approved by the board of the issuer.

Standstills



Unsurprisingly, sponsors making PIPE investments continued to negotiate and obtain governance rights with respect to board representation and investor consent rights.

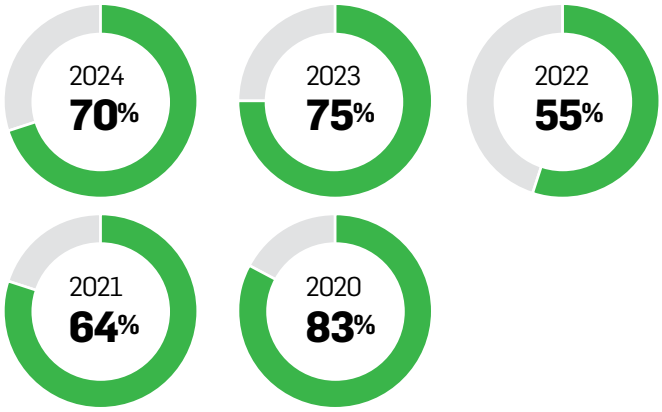
Board Representation

In 70% of the surveyed PIPEs, sponsors obtained board designation rights, which is consistent with prior recent years where sponsors obtained board designation rights in a majority of the surveyed transactions. We expect this to continue in sponsor-backed PIPE investments in the future.

In all except two of the surveyed transactions where sponsors had board designation rights, the PIPE securities held by sponsors were convertible preferred stock – with the sponsor holding non-convertible preferred stock in one surveyed transaction, and convertible debt in the other.[1]

Generally, while it is typical for sponsor-backed convertible PIPE investments of at least 10% of issuer's outstanding common stock (on an as-converted basis) to include board designation rights, and for the number of board seats to be roughly proportionate to investment size, that was not the case across all of the surveyed transactions – in fact, we observed deviations across transactions this year in that respect. For example, CD&R obtained the right to appoint two directors in connection with its convertible preferred investment in Resideo Technologies (where its investment represented an approximate 11% ownership stake). In comparison, (i) Avista obtained the right to designate only one director for its convertible preferred investment in Organogenesis (representing an approximate 21% ownership stake) and (ii) Coatue did not obtain a board seat in connection with its convertible debt investment in Hut 8 (representing an approximate 10% ownership stake). Additionally, in one of the surveyed PIPEs (Cidara Therapeutics) where two investors (Bain and RA Capital) made significant investments of equal size (together, comprising 83% of the total issuance

Board Designation Rights



Approximate Investor Percentage Ownership & Board Designation Rights

10%
No Board Designation Rights

11%
Board Designation Rights

12%
No Board Designation Rights

15%
Board Designation Rights

16%
Board Designation Rights

20%
Board Designation Rights in one PIPE (non-convertible preferred); No Board Designation Rights in another PIPE (non-convertible debt)

21%
Board Designation Rights

35%
Board Designation Rights

79%
No Board Designation Rights

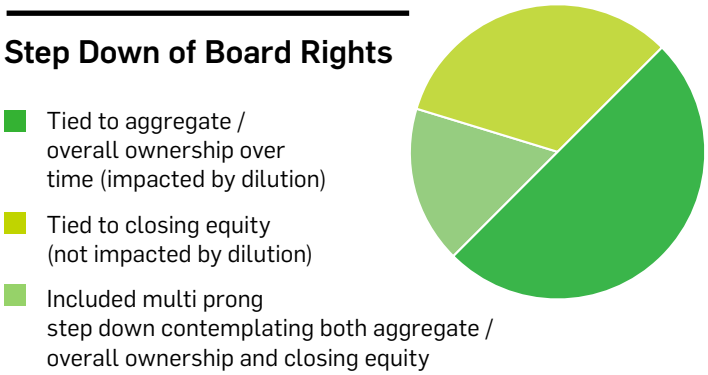
amount), only one investor (RA Capital) was provided board designation rights.

Of note, among the surveyed transactions:

- In all of the transactions where the sponsor obtained board designation rights, the sponsor's investment represented at least 10% of issuer's outstanding common stock (on an as-converted basis);
- Among the four transactions where sponsor ownership was between 10% and 15%: in two transactions, the sponsor was not entitled to designate any directors[2], in one transaction, the sponsor was entitled to designate one director, and in one transaction, the sponsor was entitled to designate two directors;
- Among the three transactions where sponsor ownership was between 15% and 20%: in two transactions, the sponsor had the right to designate one director and in one transaction, the sponsor had the right to designate two directors; and
- Of the two transactions where sponsor ownership was over 20%: in one transaction (where sponsor ownership was 35%), the sponsor was entitled to designate two directors and in the other (where sponsor ownership was 79%), the sponsor was entitled to designate one director.

In addition, consistent with prior years, the sponsors' board designation rights were generally subject to step-down – that is, sponsors were required to maintain a minimum ownership percentage of the applicable security or number of PIPE securities acquired at the original issuance or based on total outstanding common stock in order to maintain their board designation rights; a failure to meet such continued ownership requirement would generally result in a reduction in the number of board seats a sponsor is entitled to. In fact, this was the case in all except one of the surveyed PIPEs, where issuer had a staggered board.[3]

As shown in the chart above, we saw somewhat of an even split in terms of whether dilution impacted sponsors' board designation rights (i.e., whether the step down was tied to closing ownership or aggregate ownership at any given point in time). This is not surprising, as sponsors tend to prefer their board designation rights to be based on the PIPE securities issued at closing (i.e., not impacted by dilution), while issuers tend to prefer step-downs impacted by dilution.



In sum, as discussed above, while sponsors continued to obtain board designation rights (typically subject to step-down), investment size was not neatly correlated with board designation rights in a handful of the surveyed PIPEs this year. This is somewhat surprising, though sponsors do not always want board representation notwithstanding making a significant investment.

Investor Consent Rights

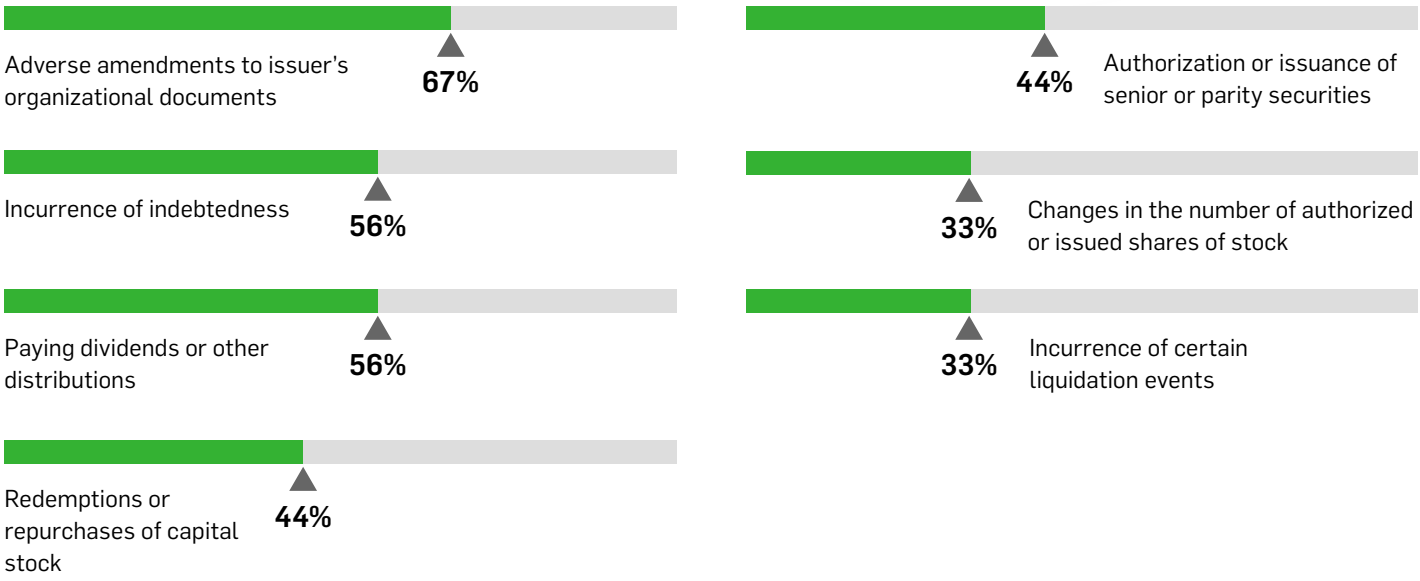
Consistent with recent years where sponsors have had robust investor consent rights in connection with PIPE investments, all except one[4] of the surveyed PIPEs in 2024 provided sponsors with consent rights over certain corporate actions.

Depending on the nature of the corporate action under approval, some actions required majority or supermajority (i.e., 65% approval, in the case of just one surveyed transaction) consent from the PIPE security class and others required unanimous consent by each individual sponsor/investor within the PIPE security class[5].

Among the surveyed transactions, more robust consent rights were generally granted to sponsors making larger investments – while expected, this is somewhat of a deviation from last year where we did not observe a strong correlation

PIPE TRANSACTIONS:
GOVERNANCE

Investor Consent Rights



between the number and type of investor consent rights granted to a sponsor and investment size. There was, however, one exception - in that transaction, the sponsor's investment size (an approximate 35% ownership stake) was not strongly correlated to its investor consent rights, which were quite limited in scope (i.e., investor consent rights only over (i) adverse amendments to organization documents and (ii) amendments affecting conversion rate/price, dividend rate or liquidation amount). Unexpectedly, in the three surveyed PIPE transactions where debt was issued, investor consent rights were not limited to consent over actions related to the credit documents or notes, but also included general consent rights akin to those granted in the preferred stock PIPE transactions.

While, similar to past years, we continued to observe certain common issuer actions that required either majority or supermajority or individual sponsor/investor consent (within the PIPE security class), including those shown in the chart above, we generally observed a more mixed set of consent rights that were broader in scope (but more infrequent across all of the surveyed transactions), as compared to prior recent years.

PIPE TRANSACTIONS: STRUCTURAL CONSIDERATIONS RELATING TO THE ISSUANCE OF CONVERTIBLE PREFERRED PIPES

Shareholder Approval

Both NASDAQ and the NYSE require, subject to certain exceptions, 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"). Shareholder approval is also required where the issuance of securities may result in a "change of control" of the issuer.[1]

Given the potential delay that obtaining shareholder approvals can create, investors and issuers commonly structure PIPE transactions 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. Any such share cap must apply for the life of the transaction unless shareholder approval is obtained.[2] A majority of the surveyed transactions (those involving convertible PIPE securities) expressly restrict the sponsor's ability to convert the PIPE securities in excess of the 20% threshold to obtaining shareholder approval.

Transaction terms for convertible PIPE securities may also contain "penalties" or "sweeteners" that are triggered if the requisite shareholder approval is or is not obtained (e.g., changes to the conversion ratio or coupon or other monetary consequences). Among the 2024 surveyed transactions with conversion restrictions linked to the 20% rule, only one included a sweetener – in that transaction, if requisite shareholder approval is not obtained within seven months of the closing date, then the issuer will be required to issue cash-settled warrants that are exercisable two months after their issuance giving the sponsor the right, until the tenth anniversary of the date of issuance, to receive cash in an amount equal to a specified percentage (ranging from 120% to 180%, depending on when required shareholder approval is ultimately received) of such sponsor's investment.

HSR Filings in PIPE Transactions Involving Convertible Preferred

- Filed
- Unknown

Antitrust Filings

A PIPE transaction involving the issuance of convertible debt or preferred equity can trigger an HSR filing at the time of the initial issuance if the transaction provides the sponsor with board designation (as opposed to nomination) rights (which, as discussed above is quite common). In addition, a filing could be triggered in the future (following the closing of the issuance) if and when convertible debt or preferred equity will be converted into voting securities. In these scenarios, a filing may be triggered if the total fair market value of the securities acquired (or converted), combined with any securities already held by the sponsor, exceed $119.5M (this threshold is adjusted annually). Among the surveyed transactions involving convertible preferred securities, 50% expressly refer to HSR approval, all of which exceed the $119.5M threshold, while the remainder were silent on HSR approval.

Even though PIPE transactions typically involve the acquisition of minority and largely passive ownership interests, they can still raise substantive questions or concerns from the FTC or DOJ (the "Agencies") if the sponsor has investments in, board seats or information rights relating to other companies that compete with or operate in closely adjacent product areas to the issuer. Sponsors should carefully consider whether any board designation right obtained as part of a PIPE transaction raises interlocking directorate concerns under Section 8 of the Clayton Act, which prohibits a "person" from simultaneously serving as an officer or director of two competing corporations.

Notably, the Agencies have pursued an exceedingly aggressive enforcement agenda over the last few years, which has included a focus on and close scrutiny of private equity firms. A substantive inquiry by the Agencies could delay the closing of a transaction. This risk is reduced if a PIPE transaction does not require an HSR filing, but Agencies can investigate and bring enforcement actions against non-reportable transactions (pre- or post-closing), so sponsors should still conduct a thorough risk assessment to identify and evaluate any potential horizontal or vertical overlaps with the issuer.

ENDNOTES

Going Private Transactions: General Market Observations

1 According to Pitchbook, by the end of Q3 2024, deal value was up 23% from the same period last year, and deal count increased 13%.

2 Pete Witte, *Private Equity Pulse: Key Takeaways from Q3 2024* (October 24, 2024)

3 Gold Sheets, LSEG LPC, September 30, 2024.

4 Marina Lukatsky, Q3 US Leveraged Loan Market Wrap: Focus shifts to M&A, dividends as Fed pivots (September 30, 2024).

5 Justin Forlenza, U.S. Loans July 2024 Wrap-Up: A Surprisingly Busy Summer, Covenant Review (August 9, 2024).

6 Federal Reserve Bank of New York, SOFR Averages and Index Data (January 9 – December 4, 2024). https://www.newyorkfed.org/markets/reference-rates/sofr-averages-and-index

Going Private Transactions: Transactions Involving Recently De-SPACed or IPOed Targets

1 Will New SEC Disclosure Rules Impact SPAC and DeSPAC Deal Volume?, DEAL POINT DATA (July 9, 2024), https://www.dealpointdata.com/res/dealpointdata_new_spac_rules_20240710.pdf; Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend Section 102.06 of the NYSE Listed Company Manual to Provide that a Special Purpose Acquisition Company Can Remain Listed Until Forty-Two Months from its Original Listing Date if it Has Entered into a Definitive Agreement with Respect to a Business Combination Within Three Years of Listing, SEC. & EXEC. COMM'N (July 9, 2024).

2 18 SPAC IPOs were priced, raising $3.3 billion, approximatley 50% of which comrpised serial SPAC issuers riaising $1.5 billion. October 2024 SPAC Market Update & Outlook, ICR (Oct. 2, 2024), https://icrinc.com/news-resources/q3-2024-spac-market-update-outlook/#:~:text=As%20reported%20in%20our%20October,SPAC%20issuers%20raising%20%241.5%20billion.

Going Private Transactions: Repriced Transactions

1 Thoma Bravo was also involved in another repriced going-private transaction (its 2022 acquisition of Anaplan).

2 As part of this amendment, the parties also agreed to increase the target termination fee from $40,400,000 to $50,000,000 and the parent reverse termination fee from $101,000,000 to $124,000,000 (a 23% and 22% increase, respectively).

3 Similar to the Thoma Bravo-Everbridge transaction, this repriced deal also featured increased termination fees, with the target termination fee increasing from $198,700,000 to $210,493,094.39 and the parent termination fee increasing from $231,816,666.67 to $245,575,276.79 (each, a 6% increase).

Going Private Transactions: Go-Shop Provisions

1 This is reflective of the transactions with filed proxy statements (some of the transactions are still pending, and have not filed proxy statements as of the date this report was prepared.).

2 Same as above - reflective of the transactions with filed proxy statements (some of the transactions are still pending, and have not filed proxy statements as of the date this report was prepared.).

3 Percentages relating to pre-market checks are based on the surveyed transactions that have filed proxy statements disclosing this information.

Going Private Transactions: Remedies

1 Glenn West, S*urprise: Target Company May Not Be Entitled to Expectancy Damages Based Upon the Lost Premium for an Acquirer's Wrongful Failure to Close a Merger*, Weil's Global Private Equity Watch, November 14, 2023, https://privateequity.weil.com/glenn-west-musings/surprise-target-company-may-not-be-entitled-to-expectancy-damages-based-upon-the-lost-premium-for-an-acquirers-wrongful-failure-to-close-a-merger/

Going Private Transactions: Termination Fees

1 All but two of the surveyed transactions with a target termination tail fee contained a termination tail period of 12 months (with one surveyed transaction having a termination tail period of 9 months and one 6 months).

Going Private Transactions: Transactions Involving Actual or Potential Conflicts

1 Zero surveyed transactions featured the use of a majority-of-the-minority voting standard alone without the use of a special committee.

Going Private Transactions: Litigation Landscape

1 *Corwin v. KKR Fin. Hldgs. LLC*, 125 A.3d 304, 312-13 (Del. 2015).

2 *In re MultiPlan Corp. S'holders Litig.*, 268 A.3d 784, 809 (Del. Ch. 2022).

3 *Kahn v. M&F Worldwide*, 88 A.3d 635 (Del. 2014) ("*MFW*").

4 *Flood v. Synutra Int'l, Inc.*, 195 A.3d 754, 766-67 (Del. 2018).

5 315 A.3d 446, 451 (Del. 2024).

6 *Id.* at 452.

7 *Flood*, 195 A.3d at 763.

8 311 A.3d 809, 825-26 (Del. Ch. 2024).

9 8 *Del.* C. § 122(18); see 84 *Del.* Laws, c. 309, § 1.

10 S.B. 313, 152nd Gen. Assemb. (Del. 2024).

11 309 A.3d 474, 483-84 (Del. Ch. 2024).

12 *Id.*

13 *Id.* at 511-12.

14 *Id.* at 512.

15 2024 WL 4929729.

16 *Id.* at *28, n.426 (citation omitted).

ENDNOTES

PIPE Transactions: General Market Observations

1 Source: Weil 2023 and 2024 PIPE Studies.

2 PrivateRaise.

3 PrivateRaise.

4 Houlihan Lokey SPAC Pipe Study.

5 PrivateRaise.

6 S&P Global.

7 Private Debt Investor.

8 Barclays.

9 Pitchbook.

10 S&P Global.

11 There were a total of 9 issuers - one transaction involved the issuance of two different PIPE securities, which we have counted as separate deals for purposes of this study.

PIPE Transactions: Key Financial Terms

1 One security is convertible into common stock and the other is convertible into cash or a combination of cash and shares of common stock (at the issuer's option).

2 In addition to customary anti-dilution provisions (providing for automatic adjustment upon the payment of dividends or distributions to common stock, the splitting or combination of common stock, etc.), several of the surveyed transactions included additional conditions upon the satisfaction of which the conversion price may be adjusted. For example, in one transaction involving convertible debt securities, the conversion price was subject to downward adjustment (i) upon the occurrence of certain make-whole fundamental change transactions (subject to a floor), or (ii) at the discretion of the issuer's board of directors. In one transaction involving convertible preferred securities, the conversion price was subject to equitable adjustment by the issuer's board of directors upon any issuer action that would materially adversely affect the conversion rights of the investor.

PIPE Transactions: Liquidity

1 In that transaction, a majority of the preferred holders had to elect to exercise their redemption right for such right to be available.

PIPE Transactions: Governanvce

1 In one of the three transactions where there were no board designation rights, the PIPE security was convertible preferred but the investment was made by a large group of investors, one of which included a sponsor (Blackstone), though Blackstone was not the lead investor. The other two transactions involved non-convertible debt and convertible debt.

2 One of the surveyed PIPEs (Spyre Therapeutics) involved a large group of investors with no significant lead investor or sponsor-lead investor, which likely contributed to the lack of investor board designation rights.

3 In the one transaction without such a step-down, issuer (Cidara Therapeutics) had a staggered board with three classes, and investor's board seat was for a Class II director with an initial term expiring at issuer's 2026 annual meeting of stockholders.

4 One of the surveyed PIPEs (Spyre Therapeutics) involved a large group of investors with no significant lead investor or sponsor-lead investor, which likely contributed the lack of investor consent rights.

5 In one surveyed PIPE involving non-convertible debt, the consent of the administrative agent and requisite lenders was required.

PIPE Transactions: Structural Considerations Relating to the Issuance of Convertible Preferred PIPEs

1 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.

2 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.

3 In the remaining transactions (including transactions involving convertible debt securities or non-convertible securities), the transaction documentation did not expressly refer to HSR approval even though the investment amounts exceeded the $119.5M threshold.

EDITORS

Craig Adas
Partner
Silicon Valley

Brittany Butwin
Counsel
New York

Arnie Fridhandler
Partner
New York

James Griffin
Partner
Dallas

Sachin Kohli
Partner
New York

Luke Laumann
Partner
New York

Jenna McBain
Partner
New York

Robert Rizzo
Partner
New York

Jakub Wronski
Partner
Boston

DEPUTY EDITORS

Christopher Machera
Co-Head of
U.S Private Equity
New York

Douglas Warner
Co-Head of
U.S Private Equity
New York

CONTRIBUTORS

Evert Christensen
Partner
New York

Dorothy Coco
Associate
New York

Anthony Collins
Associate
New York

Parker Collins
Associate
Dallas

Matthew Connors
Partner
New York

Zane Elsisi
Associate
New York

Jeffrey Fu
Associate
New York

Geoff Greenspoon
Associate
Boston

Dylan Hans
Associate
New York

Zack Hawkins
Associate
New York

Jason Klig
Associate
New York

Jace Krakovitz
Associate
New York

Niko Lane
Associate
Dallas

Michelle Le
Associate
Silicon Valley

Benton Lewis
Partner
New York

Christian Lobello
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New York

Courtney Marcus
Partner
Dallas

James Pierre-Louis
Counsel
New York

Melinda Root
Associate
New York

Robert Sevalrud
Counsel
New York

Gracy Wang
Associate
New York

Honghu Wang
Associate
New York

U.S. KEY CONTACTS

Douglas P. Warner
Co-Head of Global Private Equity
New York
doug.warner@weil.com
+1 212 310 8751

Kyle C. Krpata
Co-Head of U.S. Private Equity
Silicon Valley
kyle.krpata@weil.com
+1 650 802 3093

Christopher R. Machera
Co-Head of U.S. Private Equity
New York
chris.machera@weil.com
+1 212 310 8080

Ramona Y. Nee
Co-Head of U.S. Private Equity
Boston
ramona.nee@weil.com
+1 617 772 8337

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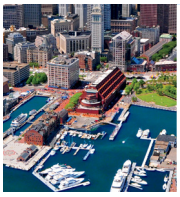
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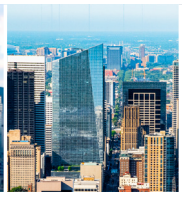
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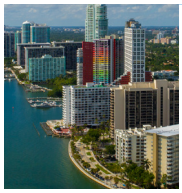
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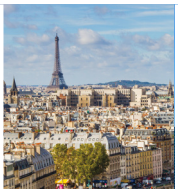
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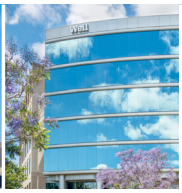
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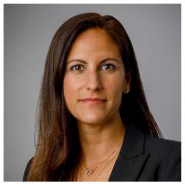
Ramona Nee
Co-Head of U.S. Private Equity