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Weil Private Equity Sponsor Sync

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FROM THE EDITORS

Welcome to 2026: where interest rates are looking better, everyone's back in the market, pipelines are refilling, and the question isn't just "can we do the deal?" but "what's the smartest way to do this deal?" This quarter's Sponsor Sync keeps our core PE market overview, but with a little extra shelf space dedicated to the consumer and consumer services sector. An arena where the brand is often the asset, the customer is the variable, and the plaintiffs' bar definitely reads the packaging.

In our Consumer Special Issue, we bring together proprietary DealVision360 data and practical execution insights on what's driving consumer deal dynamics right now. We cover rising greenwashing scrutiny (because "sustainable" is not a magic word), antitrust trends that can turn into the toughest execution risk in larger consumer transactions, and a consumer-focused look at liability management (yes, including "drop down" strategies where IP and brand value can do a lot of work). We also feature insights in our "Partner Perspectives" from Barclays' Global Head of M&A and the team, and because no quarter is complete without a cautionary tale, Glenn West heads into the mud (Hunter Boots) to remind us how successor liability can surprise you when you least want it.

Elsewhere in the issue: our regular Leveraged Finance Update, a look at how alternative assets may find their way into 401(k)s, takeaways from Weil's weil.build hackathons, a practical guide to the New York Transparency Act, and a global tour of asset-based finance and hybrid capital structures.

Consider this your Q1 "receipt": market context, consumer-focused insight, and a few reminders to read the fine print, all before you check out. ***Stay informed. Stay ahead.***

LETTER FROM THE SPECIAL EDITOR

Welcome to our Consumer Special Issue, which we are excited to premiere in-print at the ICR Conference at Grande Lakes in Orlando, Florida where we are lead sponsor. We're pleased to create and print this issue before publishing more broadly via our usual digital channels later in January. If ICR is the "Super Bowl of consumer conferences," consider this section our game plan for the quarter: what's moving in consumer and consumer services deals, what's quietly raising risk, and where deal teams can get ahead.

Inside, we cover market practice trends in consumer transactions, the growing real-world exposure behind green marketing claims, and antitrust issues that can turn into closing friction fast. We also take a consumer-specific look at liability management strategies (including drop-down structures where the brand is the asset), anchor it all with a DealVision360 sector snapshot, and close with a muddy - but practical - successor liability lesson via Hunter Boots.

If you're here talking consumer, this is built to be skimmable between your 1:1 meetings – and useful long after the last coffee run.

The Consumer Special Issue

P17 When Brand Meets Data: Reimagining Consumer in Private Equity
Private equity has adapted to create value in nearly every area of the economy. Read more about the unique ways private equity interacts with consumer-facing businesses.

P19 Navigating Greenwashing Risks in Consumer Products
Governments and the plaintiffs' bar are looking closely at claims about environmental impact. We identify the key risk areas.

P21 Drop It Like It's Hot (or Not)?
"Drop Down" transactions are a strategic liability management tool that is often deployed for companies with valuable brands, but this is only the beginning of an LME strategy. Learn more in the first of many "LME Lab" articles.

P23 Consumer Deals: When Antitrust Can Be The Toughest Execution Risk
In large consumer transactions, antitrust can now be the most significant execution risk, ahead of financing and documentation. We look through the headlines and spot the relevant antitrust trends.

P26 Capitalizing on Content: The Private Equity Playbook in Entertainment and Media
Resilient consumer demand and expanding digital monetization channels are fueling confidence in E&M investment.

P29 Weil DealVision360 Sector Snapshot
Review key deal data in the consumer sector, fresh from Weil's proprietary database.

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WEIL LOAN TRACKER

Q4'25

Average First-Lien Broadly Syndicated Spread for Single B Rated Borrowers:	Average First-Lien Broadly Syndicated Spread for B-Minus Rated Borrowers	**2025** Volume of Refinancings of U.S. Private Credit Loans into Syndicated Loan Market:	**2025** Volume of Repricings of U.S. Leveraged Loans:
S+318 (up 1 bps from Q3)	**S+355** (down 11 bps from Q3)	**34.1 billion**	**503.6 billion**

LEVERAGED FINANCE MARKET UPDATE


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SMART SUMMARY

- Q4'25 leveraged loan markets were quiet and cautious, with limited new-money issuance, selective investor demand and activity concentrated in refinancings rather than growth or buyouts. As we enter the new year, refinancing deals are likely to remain the primary source of loan issuance while LBO and M&A activity is expected to increase in 2026 on lower borrowing costs. Dividend recapitalizations should moderate as sponsors pivot toward acquisitions and exits.
- The Q4'25 high-yield bond market saw a mix of highs and lows correlated to the AI and data center boom. While issuances slowed in the middle of the quarter, Q4'25 capped a strong overall year for high-yield bond issuances. 2026 is expected to exceed this success, with anticipation for continued AI funding needs and additional issuances for M&A.

Q3'25 RECAP

Contrary to typical seasonal trends, Q3'2025 demonstrated significant activity, with elevated investor demand and tight supply dominating the quarter and encouraging borrowers to pursue repricings, refinancings, dividend recapitalizations and M&A-related financings.

After a subdued start to the year, leveraged loan market activity rebounded swiftly, with Q3'25 recording the highest quarterly total for syndicated loan issuance. The high-yield bond market saw similar momentum: following April's 17-year low for issuance, high-yield bonds rallied to a 17-quarter high in Q3'25.[1] Despite ongoing political volatility and uncertainty, robust loan activity – driven by steady new-money issuance and opportunistic financings – demonstrated market participants' ability to adapt to challenging conditions and capitalize on emerging opportunities.

U.S. LEVERAGED LOAN MARKET AND HIGH-YIELD BOND MARKET

Q4'25 Leveraged Loan Market and High-Yield Bond Market

Although primary broadly syndicated leveraged loan issuance declined 24% from the 2024 record, it still surpassed $1 trillion by mid-December 2025, representing the second-highest annual volume on record.[2] Challenging secondary market conditions in early October resulted in a cautious start to the quarter, with primary market activity reaching its lowest level since the 'Liberation Day' tariff announcement in April.[3] This lull continued throughout Q4'25, which, as of December 15, 2025, had seen a total of $156 billion in total syndicated loan market activity, a steep decline from the record $404 billion in Q3'25.

Despite the slowdown in the leveraged loan market, the high-yield bond market saw more success, with a four-year high for November issuance at $24.9 billion.[4] Overcoming October's slowdown, where the government shutdown and fears about the AI bubble gave issuers pause, investors rallied in November into a late-year sprint. December had a similar trajectory: high-yield issuers had logged $23.1 billion as of December 19, 2025, bringing December's monthly total to the highest since 2020, with over 10 days left to go.[5] The first week of December saw nearly $14 billion in issuance but had slipped to under $4 billion for the week ending December 19th as the market looked to wrap the year up.[6]

Repricings, Refinancings & Dividend Recaps

Despite notable declines in certain transaction types in Q4'25, the leveraged finance market demonstrated resilience throughout the year. Opportunistic financings experienced the sharpest declines at the end of this year, as quarter-over-quarter repricing and refinancing volumes fell by 73% and 69%, respectively.[7] Nonetheless, speculative-grade borrowers still reduced spreads on nearly $504 billion in term loans over the course of 2025 – second only to the prior year's record – while annual refinancing activity reached approximately $192 billion as of December 19, the second-highest in the past decade.[8] Additionally, strong private equity demand for cash extraction amid limited exit opportunities resulted in dividend recapitalizations totaling $43.6 billion, marking a post-GFC peak.[9]

"The past year's loan financings suggest the early stages of a broader recovery in M&A and buyout activity, supported by declining interest rates and pent-up private equity demand."

The high-yield bond market showed similar resilience, with refinancings serving as the primary market engine in 2025 – making up 70% of issuance.[10]

M&A/LBO Related Activity

While M&A and LBO activity showed some growth in 2025, the anticipated sharp rebound ultimately did not transpire. Q4 marked the slowest quarter for M&A-related loan issuance this year, totaling only $26.7 billion, primarily due to a significant drop in LBO activity, which declined to $5.4 billion, its lowest level in the past two years.[11] In the high-yield bond market, M&A/LBO financings made up approximately 18% of total issuance.[12]

The past year's loan financings, however, suggest the early stages of a broader recovery in M&A and buyout activity, supported by declining interest rates and pent-up private equity demand. Loan issuance for buyouts and other M&A transactions rose to $142 billion – up 9% from 2024 and just below 2022 levels.[13] This trend reflects private equity firms' efforts to deploy record levels of capital and investors' pursuit of returns, with deal activity expected to rise even further in 2026, as valuation gaps between buyers and sellers continue to narrow.[14]

Competitive Dynamic Between Broadly Syndicated Market and Direct Lending

The competitive dynamic between the broadly syndicated loan market and direct lending is expected to intensify in 2026, driven by anticipated rate cuts and increased refinancing activity.

"In Q4 alone, Oracle, Meta and Alphabet issued bonds, including the biggest corporate bond deal since 2023 with Meta's $30 billion issuance at the end of October, echoing the need for companies to have cash on hand as the AI data center boom continues to grow."

Although the maturity wall has declined by 32% since the end of 2024, $353 billion in debt is still expected to mature by the end of 2028, nearly 52% of which consists of borrowers rated B-minus or lower.[15] The maturity wall continues to present a significant risk, with return and underwriting criteria presenting potential hurdles to future direct lending and the broadly syndicated market remaining contingent on overall market sentiment.

High-Yield Bond Issuances Continue to be part of the AI Boom

Q4 saw the AI and technology spending spree continue, with new high-yield bonds for business expansion at 11% of quarter-to-date issuance, the highest ever and surpassing the previous all-time peak of 10% in Q4'21.[16] In Q4 alone, Oracle, Meta and Alphabet issued bonds, including the biggest corporate bond deal since 2023 with Meta's $30 billion issuance at the end of October, echoing the need for companies to have cash on hand as the AI data center boom continues to grow.[17] Despite the tech heavyweights recent activity in the bond market, investors have begun to have jitters.[18] The Markit CDX North America High Yield Index, which declines as risk increases, fell to its lowest level in November since June.[19]

2026 OUTLOOK

The leveraged finance market enters 2026 with positive momentum, as lower borrowing costs, improved market confidence, and ample deployable capital are expected to drive a rebound in M&A and buyout activity. Private credit stands to benefit from increased refinancing needs and a surge in maturing debt, offering new opportunities for both borrowers and sponsors. However, challenges remain, as the significant maturity wall and potential shifts in market sentiment could limit access to financing for riskier issuers.

An uptick in issuances is also expected in the high-yield bond market, driven by rising AI needs, a positive M&A landscape and the need for refinancings.[20] Despite the fact that 2025 saw the highest refinancing amounts since 2009, the same is expected to continue in the next few years.[21] $762 billion in high-yield bonds remain due to mature in 2026-2029 and most overall projections expect issuances next year to be 10-15% higher.[22]

weil.build

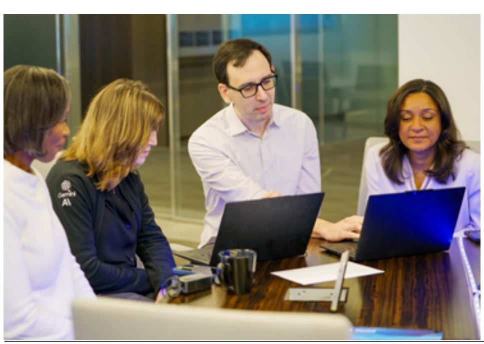
RAPID INNOVATION, REAL OUTCOMES:
INSIDE THE WEIL.BUILD PROGRAM

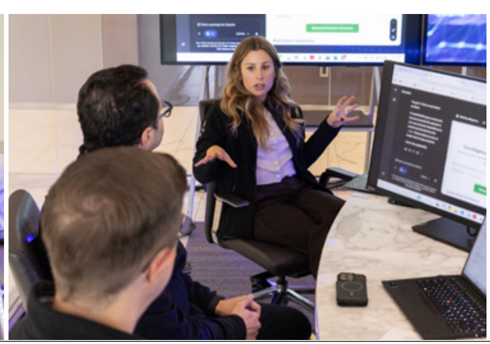
Weil is proud to congratulate its AI Leadership team for hosting weil.build hack-a-thon events in Q4 2025 with lawyers from Weil's Private Equity Group and its Washington D.C. based Antitrust and Complex Commercial Litigation groups.

A vision of Private Equity Partner and DealVision360 Global Head, Arnie Fridhandler and Private Equity Attorney, Sam Mendelson, the program brought together practicing attorneys and internal software developers for a day of high-intensity building. In just one session, cross-functional teams designed and launched 18 functioning AI-enabled applications, showing how quickly ideas can become tools that change how we do deals and support clients.

weil.build is part innovation lab, part leadership offsite, and part team sport. It gives teams a way to pressure-test AI in their own deal context, upskill key people, and create a shared language around what "good" looks like in an AI-enabled legal environment. Since its debut, the format has spread to other offices and practice groups and is becoming a cornerstone of Weil's innovation agenda.

We are now accepting applications for firm-client weil.build sessions in 2026. To explore a weil.build designed for your team, please email weil.build@weil.com. Events begin at $250,000 and are geared to organizations that view AI, innovation, and talent development as strategic assets. weil.build events are concentrated sprints that leave teams with working tools, strong cross-functional teams, and a blueprint to keep running long after the day is over. W





AVOIDING MISSTEPS IN INTERNALIZING PORTFOLIO SUPPORT FUNCTIONS

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SMART SUMMARY

- Private equity sponsors increasingly internalize operating and functional experts to drive portfolio value and efficiency.
- In-house services require clear fund authority, disclosures, and compliance guardrails amid heightened SEC scrutiny.

Operating Partners have been a key strategic component to private equity sponsors for many years, assisting with value creation and efficiency over the life cycle of portfolio companies. Traditional Operating Partners are industry experts most commonly positioned as third-party consultants or advisors and paid through fees and incentives by the applicable portfolio companies. However, there are many other individuals in addition to traditional Operating Partners and investment professionals that sponsors utilize to assist in value creation: human resource professionals, talent recruiters, AI experts, capital market and debt placement professionals, auditors and legal advisors, to name a few. When these experts are hired as outside advisors, it is typical for the costs of their services to be borne by the portfolio companies utilizing their expertise or, in certain circumstances, the funds (e.g., in the case of an expert retained to assist with diligence for a transaction that is not ultimately consummated). If, however, such individuals are employees of the fund sponsor, without a shift in the traditional legal documentation and disclosure, their compensation would typically be borne by the sponsor itself.

With the fight for exceptional talent ever-increasing and the clear need for these services at the portfolio company level, there has been a marked shift to bring certain of these individuals in-house as employees of the fund sponsor or an affiliated entity. For the sponsor, bringing such experts in-house seeks to ensure exclusivity of their services, seamless integration with the investment teams and efficiency and familiarity with a sponsor's methodologies. Many sponsors also believe that for some of these services, the cost of such individuals compensation and benefits is less expensive for their portfolio companies and funds collectively than the cost of hiring third parties to perform the same services. For the experts, full-time employment seeks to establish stable compensation, healthcare and other benefits they might not receive as third-party consultants.

When moving these experts in-house, it is important to discuss with counsel what authority (or lack thereof) there is in the relevant fund documents so that the sponsor can determine whether and what consents, amendments and disclosures are prudent if the sponsor would like these costs covered by existing portfolio companies and/or funds. Additionally, the SEC's scrutiny of private fund sponsor expense allocation practices continues to be high, so full and fair disclosure of the types of services and the method by which the sponsor intends to allocate the cost and expense of these in-house experts (in addition to authorization) is imperative. Charging funds for inhouse services can face particular scrutiny when operating agreements and disclosure documents differ across applicable funds or when advisers utilize "dormant" existing authority to change practices without new authorization or investor disclosure. Other considerations include bringing these individuals under the sponsor's compliance program and potentially adjusting the sponsor's existing compliance program for any new risks or conflicts. While investor reactions to the internalization of these functions have been understandably mixed, many investors recognize the commercial benefits to establishing these in-house portfolio servicing groups. Introducing guardrails such as limiting the world of services, caps and general transparency on the suite of services and compensation can, in our experience, help to alleviate this tension.

NAVIGATING THE INCLUSION OF ALTERNATIVE ASSETS IN 401(k)s


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SMART SUMMARY

- Even though the recent executive order did not substantively change the law, the policy shift is causing asset managers to position themselves to capitalize on the future opportunity.
- Once they receive legal comfort, plan fiduciaries are more likely to include alternative assets that provide liquidity and diversification.

The landscape of retirement planning may be on the cusp of a significant shift. Driven by governmental policy initiatives and persistent investor demand, there is a growing momentum to democratize access to alternative assets (alts) – traditionally the domain of large institutional investors – by including them in ordinary 401(k) plans. For employers, plan fiduciaries, and asset managers, understanding the regulatory hurdles and market dynamics is crucial to navigating this transition.

Given that many Americans do not have sufficient savings for retirement, policymakers are looking to alternatives like private equity, infrastructure, and hedge funds – assets that have long bolstered the returns of defined benefit pension plans – to provide 401(k) participants with higher, diversified returns over the long term. The policy path in pursuit of this goal is less straightforward.

The Fiduciary Wall: Current Regulatory Headwinds

Despite the enthusiasm from some corners of the industry, the inclusion of alternatives is currently checked by a significant legal barrier: the fiduciary duty placed upon the employer (the plan sponsor) under the Employee Retirement Income Security Act (ERISA).

The key difference between an old-school pension (a defined benefit pension plan) and a 401(k) plan (a defined contribution plan) is that, in the vast majority of circumstances, a 401(k) plan participant bears the investment risk and reward. However, the employer as plan sponsor is still responsible for designing and selecting the investment lineup. As a plan fiduciary, the employer is obligated to choose appropriate options. Employers concerned with meeting their burdens as plan fiduciaries have historically chosen low-risk investments. Fiduciary breaches are a fertile ground for class-action lawsuits. If a non-conservative investment is included in the plan lineup and subsequently underperforms, a plaintiff's attorney may argue that the plan sponsor violated their duty, potentially leading to costly and time-consuming litigation.

Compounding this issue is the fact that most employers are not investment professionals. They rely on advisors who often recommend to steer clear of non-traditional options to avoid legal exposure. Consequently, in many cases, the prevailing institutional incentive is to prioritize prudence and loss-avoidance over maximizing return potential. In short, no employer receives a bonus for having an innovative 401(k) plan; the incentive is to stay out of trouble with conservative investment options.

Policy Signals and Technical Roadblocks

While the law itself has not changed, even under the "Democratizing Access to Alternative Assets For 401(k) Investors" executive order, the policy direction has notably shifted. In 2020, guidance from the Trump Administration indicated that private equity was not an "illegitimate" option for 401(k)s, suggesting a relaxation of regulatory thinking. However, the Biden Administration followed in 2021 with a more cautious tone, essentially urging plan fiduciaries to proceed only if they were sophisticated enough to handle the complexity and risk.

The Trump Administration is now actively seeking to relax the regulatory landscape and provide a clearer path for plan fiduciaries to include alternative assets as an investment option in 401(k) plans. However, even with regulatory easing, not all alternative assets will be well suited for inclusion in 401(k) plans. For example, significant technical roadblocks remain for illiquid assets. Most 401(k) plans offer participants the ability to change investments daily, which is seemingly mismatched with private funds that lock up capital for years. 401(k) contributions also come in on a defined schedule as employees are paid. 401(k) investment vehicles must be able to steadily absorb and deploy this capital; it is often not efficient to accumulate the cash until the right deal presents itself.

"The Trump Administration is now actively seeking to relax the regulatory landscape and provide a clearer path for plan fiduciaries to include alternative assets as an investment option in 401(k) plans."

To date, the asset management industry has some limited exposure to alternative assets indirectly, primarily via target-date funds and managed accounts. These investment options are, in general, managed by an outside fiduciary who then allocates a portion of the portfolio to alternative assets, mitigating direct fiduciary responsibility for the plan sponsor.

The Asset Manager Response and the Scale Advantage

The prospect of tapping into the trillions of dollars held in 401(k) accounts has excited asset managers, but some are better positioned to capitalize on the opportunity than others.

The First-Mover Advantage Belongs to Scale

The asset managers best positioned to capitalize on this shift are those with the largest scale. Their advantage is twofold:

- Distribution and Relationships: The largest asset managers already possess vast, established distribution networks, dedicated wealth management teams, and existing relationships with the key gatekeepers that interface directly with 401(k) plans.
- Compliance Infrastructure: Running a product suitable for the 401(k) market is highly complex, requiring robust compliance, administration, and reporting capabilities. Only the largest firms have the necessary compliance infrastructure.
- Perceived Brand Quality: Plan sponsors, concerned about compliance with their fiduciary obligations, will overwhelmingly select products from large, familiar brand names with long, successful track records and perceived quality.

Winning Investment Strategies

The most likely alternative products to find success in the 401(k) market will likely not be traditional, illiquid buyout funds. Instead, we expect they will be strategies that are more diversified and offer a degree of liquidity, such as private credit, secondaries and infrastructure.

What the Future Holds

Mainstream adoption of alternative assets in 401(k)s hinges on the introduction of a safe harbor for 401(k) plan fiduciaries. If plan fiduciaries are insulated from litigation risk by following a clearly defined set of rules (e.g., limiting the allocation percentage), we expect they will be much more inclined to add alternative investment options to their plans. If the DOL creates a safe harbor, fiduciary concern could substantially diminish.

Even before a safe harbor is announced, we expect 401(k) managers and alternative asset managers to enter into strategic relationships to leverage investment expertise and employer level relationships. Well-connected asset managers will position themselves to deliver 401(k)-compliant products at scale when plan fiduciaries become comfortable with these options. We also expect a continued focus on structuring alternative investments into funds registered under the Investment Company Act or other registered fund structures that can handle daily valuation, frequent subscriptions, and quarterly/daily liquidity, regardless of the underlying asset's natural life cycle.

Ultimately, the drive to expand 401(k) investment options is fueled by genuine participant demand and the successful, decades-long track record of defined benefit pension funds using alternatives. While the law has yet to be rewritten, the strong policy signal has created a fertile environment where scale, compliance, and product innovation will determine who captures this vast, new pool of capital. Asset managers and plan sponsors who embrace product adaptation and regulatory vigilance will lead the way in redefining retirement savings for the average American employee.

WEIL PRIVATE EQUITY BOOTCAMP 2025

Private Equity is a marathon, not a sprint – but we're all running faster after Weil's PE Bootcamp event.

Thank you to everyone that joined us in October (even if only for the burgers and wine from Burgers & Brunello), and next year's event is primed to be even better. Weil's PE Bootcamp is designed to provide a high-level overview of key topics necessary for private equity professionals, from juniors to partners. Led by seasoned industry experts, the Weil PE Bootcamp combines interactive discussions, case studies and real-world insights to provide a unique practical understanding of the private equity landscape.

Last year's event focused on conversations surrounding acquisition agreements, management incentive plans, AI in PE, post-election HSR and SEC outlooks, Liability Management, and the implications of fund structure and tax in deals. We're looking forward to the 2026 event in what is shaping up to be an incredibly busy year.

WHAT YOU NEED TO KNOW ABOUT NEW YORK'S LLC TRANSPARENCY ACT


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SMART SUMMARY

- Effective January 1, 2026, the Act requires NY-organized (or NY-authorized) LLCs to report beneficial ownership info, unless exempt.
- Reporting generally covers individuals who own/control 25%+ of ownership interests or exercise "substantial control."

Doing business in New York through a limited liability company is about to become a little more difficult. On January 1, 2026, the New York LLC Transparency Act took effect, requiring all LLCs that are either organized or authorized to do business in New York to report certain beneficial ownership information to the New York Department of State, unless an exemption applies.

Applicable LLCs are required to file beneficial ownership reports for individuals who either own or control 25% or more of the LLC's "ownership interests" or exercise "substantial control" over the LLC. Reported information will not be publicly accessible and generally will be used solely by government authorities for law enforcement and regulatory purposes. Exemptions are available for, among others, public companies, large operating companies, certain regulated entities (including SEC-registered investment advisers) and wholly-owned subsidiaries of exempt entities.

LLCs that were formed or authorized to do business in New York prior to January 1, 2026 must file their initial reports by January 1, 2027. Any LLC formed or authorized to do business in New York on or after January 1, 2026 is required to submit its report within 30 days of filing its articles of organization or its application for authority to do business in New York. LLCs relying on a reporting exemption must file to claim the exemption by the same deadlines. Once a report or exemption has been filed, LLCs must confirm or update such filings annually. Learn more about the reporting requirements and possible exemptions of the New York LLC Transparency Act in our full Private Funds Alert here.

ASSET BACKED FINANCE: THE LATEST ARROW IN PRIVATE EQUITY'S QUIVER

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David Jackson
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SMART SUMMARY

- ABF has surged back as a core private credit tool, with outstanding privately issued ABF debt exceeding $6.1T and projected to reach $9.8T by 2028, fueled by insurers' demand for highly rated yield.
- Sponsors use ABF to access cheaper, non-recourse leverage, as SPV structures often earn higher ratings than the OpCo and can significantly reduce borrowing costs.
- With ABF's structural efficiencies and ratings-driven appeal, its role in private equity financing and investment will only continue to grow.

Asset-backed finance, or "ABF," is playing an increasingly important role in the tsunami of private credit that has flowed into nearly every sector of the U.S. economy, as insurance companies look to deploy nearly $9 trillion of cash and investable assets.[1] Because insurers and similar investors are subject to evolving risk-based-capital requirements that increasingly hinge on credit ratings and credit quality, ABF's investment-grade profile – where senior tranches routinely obtain "AAA" ratings – has become too compelling to ignore. Private equity firms are participating both as asset managers investing in ABF and as sponsors utilizing ABF to finance portfolio companies. This note offers a primer on the typical ABF structure and the benefits it can provide, and the expanding set of asset classes most relevant to sponsors.

The Rebound and Rise of ABF

After a significant retreat following the global financial crisis, privately issued ABF debt outstanding has come roaring back to top $6.1 trillion – almost double the pre-crisis peak[2] – with forecasts projecting as much as $9.8 trillion by 2028.[3] The rebound reflects growing comfort with structural protections and rating agency methodologies, and a broadened universe of assets amenable to securitization.

ABF's Secret Sauce

ABF monetizes a pool of assets by transferring them from an operating company (the "OpCo") to a bankruptcy-remote special purpose vehicle (the "SPV") that is prohibited from having material liabilities outside of the asset-backed debt. The SPV funds the purchase of assets from the OpCo by issuing securities or borrowing under a credit facility, and investors or lenders look solely to the cash flows generated by the SPV-owned assets for repayment, with no recourse to the

OpCo. The structure decouples asset credit risk from the OpCo's enterprise risk, allowing underwriting of the asset class or asset pool rather than the corporate profile.

The Investor's Viewpoint

A securitization is typically conditioned on obtaining investment-grade ratings, allowing investors subject to risk-based-capital rules (e.g., insurers) to avoid punitive and inefficient capital treatment associated with unrated or junk-rated instruments. In exchange for accepting greater complexity and lesser liquidity, ABF investors can earn enhanced yield/return relative to traditional, more liquid instruments of the same rating, a tradeoff that hold-to-maturity capital increasingly seeks. ABF also broadens the pool of highly rated opportunities when "AAA" corporate paper is scarce, offering diversification beyond government securities.

The Issuer's Viewpoint

On the flip side, SPV issuers/borrowers often achieve ABF ratings higher than their sponsor's corporate ratings, owing to asset quality, structural protections, and risk isolation, which can broaden the potential investor base and lower the overall cost of funds, sometimes by hundreds of basis points versus traditional corporate debt. Because the ABF debt is nonrecourse to the OpCo and proceeds are up-streamed on day 1, the OpCo gets the benefit of increased operating leverage while de-risking its shareholders and debtholders alike. Many sponsor-backed OpCos can issue asset-backed debt at the SPV level pursuant to a "securitization basket" in their corporate facilities, though deal-by-deal attention to transfer parameters, capacity, and covenant treatment is essential.

No Asset Left Behind

While the ABF market was once dominated by self-liquidating financial assets (loans, leases, receivables) and readily saleable vehicles/equipment, non-traditional assets now account for more than one-third of ABF issuance.[4] Dramatic improvements in quantitative and qualitative performance data have enabled rating agencies and investors to model cash flows even where there are no contractually mandated payments, opening the door across sectors[5]:

- Whole-business securitizations have expanded beyond restaurant franchisors to franchise-heavy models in other industries, transferring royalties, IP, and related revenues into an SPV.
- Intellectual property securitizations now extend from music catalogs to film, television, literature, and pharmaceuticals, and include performance and management fee streams.
- Energy ABF includes securitizations of proved developed producing oil and gas assets and a growing array of "green" assets such as solar and C-PACE/R-PACE loans.
- Digital infrastructure has embraced ABF since the first rated data center securitization in 2018, with AI-driven demand accelerating reliance on structured finance to fund capacity.
- Essential PP&E ABF transactions finance cell towers, fiber networks, industrial equipment, and even manufacturing plants, with a growing opportunity to scale structures for mid-market assets.
- Inventory and receivables, including diamond inventory and related receivables, show how ABF can unlock liquidity where value is readily determinable and collateralizable.
- Net asset value financing allows private equity managers to monetize portfolio appreciation at the fund level, providing liquidity to reinvest or support holdings when exits are limited.

From the Periphery to the Fore

Once viewed as a niche form of specialty lending fraught with idiosyncrasy, ABF's structural efficiencies and ratings-driven appeal have catalyzed participation across industries and investor types. For sponsors, it delivers cheap, non-recourse operating leverage; for investors and capital allocators, it provides efficient capital treatment and enhanced risk-adjusted returns. As experience deepens and structuring techniques evolve, ABF's role in private equity financing and investment will only continue to grow.

PARTNER PERSPECTIVES:
BARCLAYS ON KEY VALUATION DRIVERS IN 2026

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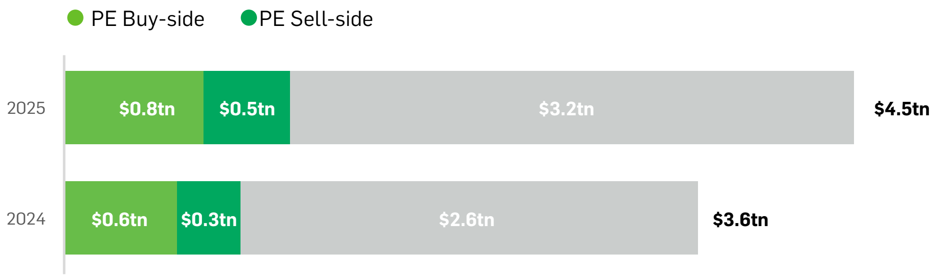
M&A

Despite pockets of turbulence, 2025 saw a strong re-opening of the IPO markets and global M&A volumes rising to their highest levels since 2021 ($4.5tn). Announced private equity M&A accounted for nearly 30% of the overall volume, with PE sell-side activity growing 50% from the prior year and buy-side activity showing a substantial uptick as well. We expect this momentum to continue into 2026 as the growing number of dual-track M&A / IPO processes will provide a robust environment for financial sponsors to exit long-held assets and strategic buyers to emerge. Projecting which companies will command a premium valuation and which metrics the market will focus on in this environment will be critical for all investors to understand.

Announced Global M&A Volume



Growth Is Still King

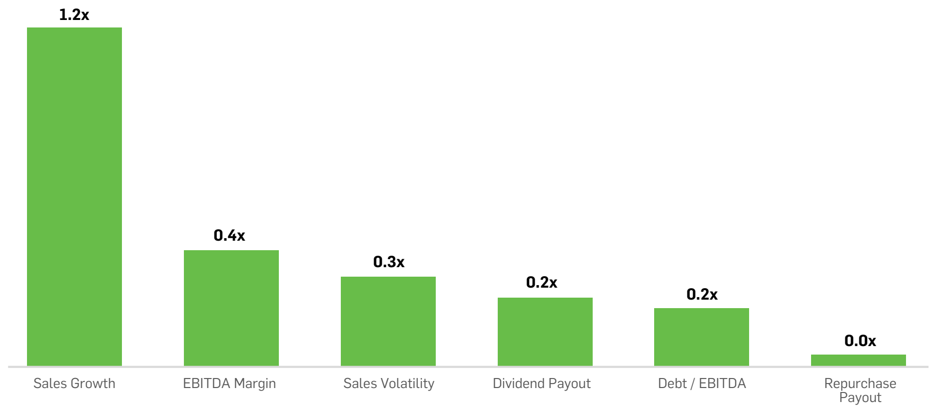
In the current market, projected growth is the key differentiator of valuation. Other traditional metrics such as higher margins, lower volatility, financial leverage, and shareholder distributions also play a supporting role, but it is the ability to grow that is key to separating best-in-class companies.

This connection between growth and valuation has fluctuated during different market environments. For example, profitability and margin came into greater focus during 2022 and 2023 as interest rates rose to multi-decade highs and diminished the expected value of future cash flows.

However, over the past six months we have seen an ongoing shift in investor sentiment from caution to conviction creating a risk-on market with projected growth reemerging as the dominant differentiator of multiples. Assuming interest rates move lower and volatility remains manageable in 2026, we expect the impact of margin and other defensive factors such as volatility, leverage, and dividend payout to remain important but secondary to growth in the valuation

Regression Analysis: Valuation Impact by Metric

NTM EV/EBITDA Impact for 1/2 StDev Move



narrative. It is worth noting, of course, that value drivers do differ depending on sector and company profile. For example, in some mature sectors, dividends are consistently important and excessive leverage is penalized by investors.

Key growth thresholds associated with outsized step-up in multiple

As companies are setting growth objectives, weighing the trade-off between margin and growth, or considering transformative acquisitions, achieving certain growth thresholds is valuable. Reaching revenue growth levels of at least 3% (above inflation), 5% and 10% sales growth is associated with outsized multiple re-rating.

Growth investor ownership is associated with significantly higher valuations

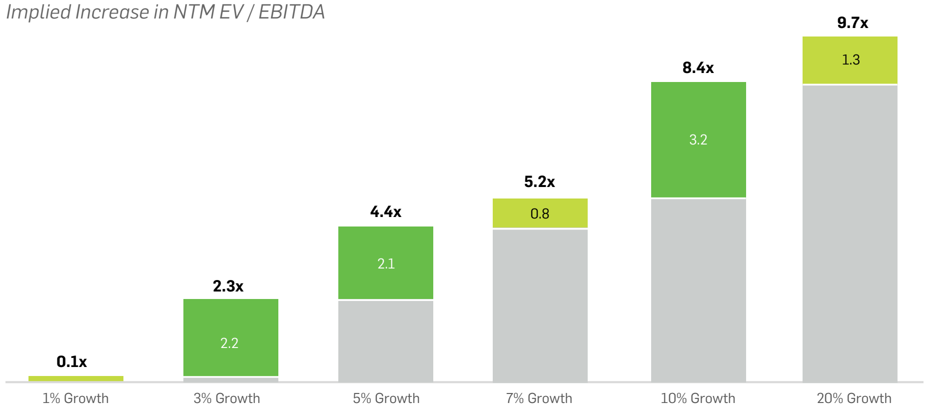
Analysis of investor bases also provides corroborating evidence into the impact that growth and ability to attract growth investors can have on valuation. Companies that have top quartile growth investor ownership have multiples that are an average of 7.3x higher than companies with bottom quartile growth investor ownership.

Takeaway: Focus on Growth To Continue Into 2026

The favorable macro backdrop and growing momentum in investor sentiment suggests that the focus on growth will continue to strengthen as we head deeper into 2026, and the ability to project and deliver on growth targets will be key to commanding a premium multiple.

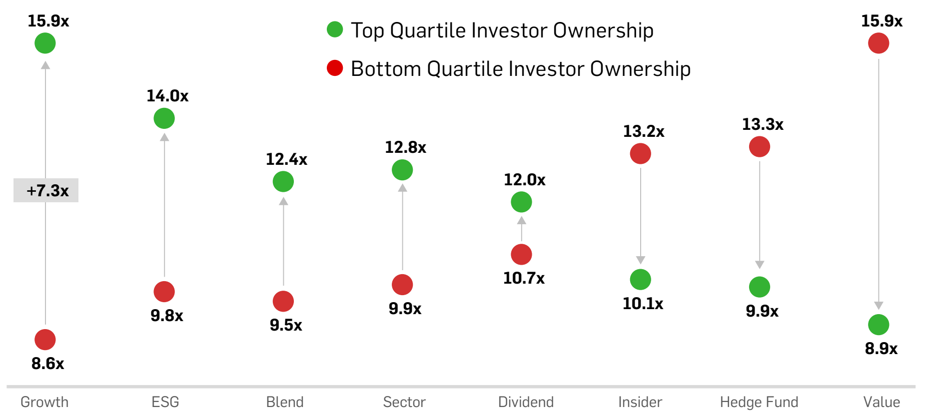
Multiple Impact: Key Forward Revenue Growth Thresholds

Implied Increase in NTM EV / EBITDA



Multiple Differential by Investor Type

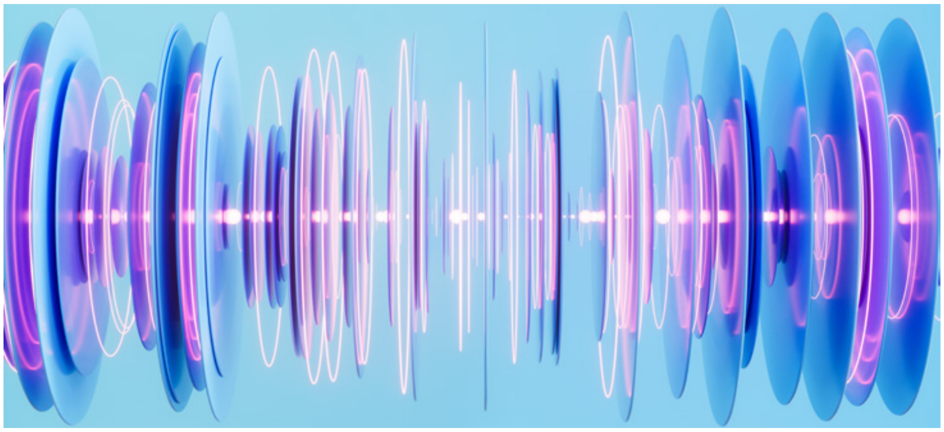
NTM EV / EBITDA (S&P 1500 Median NTM EV / EBITDA: 11.2x)



> **"The favorable macro backdrop and growing momentum in investor sentiment suggests that the focus on growth will continue to strengthen as we head deeper into 2026."**

External data is sourced from FactSet and Dealogic

CARVE-OUTS: A RISING ENGINE OF PRIVATE EQUITY DEAL ACTIVITY



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SMART SUMMARY

- Carve-outs were one of 2025's most active PE deal types, with mid-2025 global carve-out activity up year-over-year.
- Execution risk is the differentiator: carve-outs often underperform when buyers underestimate separation complexity (systems, people, contracts, IP).

Private equity carve-outs – transactions in which a non-core business unit is separated from its parent company to become a standalone business[1] – emerged as one of 2025's most active PE deal types. As corporations confront shifting tariff policies and increased regulatory scrutiny, many are accelerating efforts to sell divisions that no longer fit their long-term strategy. At the same time, private equity firms are seizing these carve-out opportunities as a path to primary deal exposure and outsized value creation.

By mid-2025, global PE carve-out activity had reached **$23.7 billion across 145 deals**, a **22% increase** from $19.37 billion and 127 deals during the same period in 2024.[2] The U.S. and Canada led the market with **$20.5 billion** across 83 transactions,[3] though tariff-driven public-market volatility has also pushed U.S. multinationals to re-evaluate non-U.S. assets, creating additional carve-out opportunities in Europe.[4] Mid-year data further confirms the momentum: carve-outs accounted for **10.6% of all PE buyouts,** the highest level since 2020 and well above the five-year average of 8.7%.[5]

Executing a carve-out transaction, however, remains complex. Many deals fall short of value expectations when buyers underestimate operational risk. Roughly one-third of carve-outs fail to deliver initial value targets due to the difficulty of separating systems, personnel, contracts, and IP into a standalone company.[6] Sponsors that integrate considerations of deal structure, stand-up costs, transition service agreements, working capital, and purchase-price mechanics are better positioned to capture the alpha that carve-outs can offer.[7] In the end, careful execution, combined with the right expertise, separates successful carve-outs from the rest.

MID-YEAR MOMENTUM (2025)

CARVE-OUT ACTIVITY BY MID 2025

22% ↑

$23.7 billion
Across 145 deals

DURING SAME PERIOD 2024

$19.37 billion
Across 127 deals

U.S. AND CANADA LED MARKET

$20.5 billion

Across 83 transactions[3]

DATA CONFIRMED
Carve-outs accounting for

10.6%

of all PE buyouts

highest level since 2020 and well above the five-year average of 8.7%.[5]

The Consumer Special Issue

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When Brand Meets Data: Reimagining Consumer in Private Equity

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SMART SUMMARY

- Private equity returns in the consumer space now depend on operational execution, data, and technology – not leverage or multiple expansion alone.
- Sponsors must treat consumer brands as scalable platforms, prioritizing digital infrastructure, governance, and brand-driven loyalty to sustain value.

As consumer deal flow rebounds amid a higher for longer interest rate environment, private equity sponsors are finding that the traditional playbook of leverage and multiple expansion are no longer enough, on their own, to deliver outsized returns. Augmenting these familiar tools, a new model of value creation is taking hold – one rooted in operational transformation, digital enablement, and brand driven loyalty. Across consumer, the most resilient and profitable investments increasingly sit at the intersection of brand and platform: businesses that convert consumer affinity and behavior into scalable, data driven ecosystems, driving revenue and EBITDA and justifying ever increasing multiples.

This shift is visible across subsectors-from beauty and apparel to consumer services and digital commerce enablers for traditional brick and mortar retailers. Sponsors are backing companies that blur the lines between consumer, technology, and content, and in doing so are reshaping not only value creation strategies but also deal structures, diligence priorities, and post close governance. As with other favored private equity sectors, such as technology and healthcare, the traditional consumer toolbox is no longer enough to generate returns LPs demand. Sponsors – and their advisors – are being forced to think more like builders than financiers.

Market Context: When Leverage Is No Longer Enough

Uncertain consumer spending, persistent inflationary pressures, rising input costs, and higher financing rates have combined to compress margins and strain exit multiples. While consumer deals continue to command premium valuations, sponsors can no longer rely on financial engineering alone to bridge the gap between entry and exit valuation and related returns. Instead, sponsors are looking to grow the top line and EBITDA through operational enhancements and the intelligent integration of brand and technology.

In this environment, value creation is increasingly driven by hands on execution: modernizing supply chains, investing in digital infrastructure, using data to improve pricing and retention, and creating content and leveraging people (influencers, celebrities and athletes) to capture the affinity and loyalty of customers. The emphasis has shifted from optimizing balance sheets to re thinking and re-engineering operating models.

The Shift from "Consumer Brand" to "Consumer Platform"

Recent consumer transactions illustrate a consistent theme. Beyond a strong product or recognizable brand, sponsors are prioritizing businesses positioned to scale through technology, data, content creation, and sustained consumer engagement. In this context, a "platform" is not merely a collection of SKUs – it is an operating system for growth.

In practice, this means owning customer data, fostering recurring interaction with consumers (and capturing more customer data), and building scalable digital infrastructure that supports personalization, rapid iteration, and margin expansion. These attributes enable brands to deepen loyalty while positioning the business to expand beyond a single product or channel.

This evolution has meaningful legal and diligence implications. Sponsors and counsel are increasingly focused on intellectual property ownership, data governance frameworks, and privacy compliance. The use of artificial intelligence – whether as a personalization tool or an operational lever – raises additional diligence considerations. Equally important are contractual structures with influencers or content creators, and the risks associated with dependence on third party platforms such as Amazon, TikTok, or Shopify.

Operational Value Creation as the Core Investment Thesis

As financial arbitrage wanes, operational value creation has moved to the center of the consumer investment thesis. Sponsors are embedding operating partners, digital experts, and data specialists into deal teams and encouraging traditional management teams to adopt new approaches to customer acquisition and retention – particularly among younger consumers.

"Looking ahead, the most successful consumer exits in the next cycle are likely to resemble consumer infrastructure platforms – businesses that blend product, technology, identity, and brand into a cohesive whole."

The modern playbook includes pricing analytics, supply chain digitalization, CRM integration, and AI driven personalization. From a governance perspective, these initiatives require structures that support transformation rather than constrain it. Enhanced budget rights, operational consent rights, robust reporting covenants, and KPI linked management incentives are increasingly common as sponsors seek to align governance with execution.

Structuring for the New Consumer Model

Deal structures are evolving alongside investment theses. Minority and growth equity investments – long familiar in technology transactions – have crept into consumer deals. Founder, celebrity, or influencer rollovers, performance based earn outs, and tailored retention mechanisms reflect the reality that the "founder as brand" is often integral to ongoing value creation.

Board composition and governance rights are likewise being recalibrated to balance sponsor oversight with the need to preserve authenticity and brand voice. At the same time, capital structures are being aligned to prioritize reinvestment in technology and infrastructure over near term liquidity, signaling a longer term view of value creation.

The Blurring Line Between Consumer and Tech

Looking ahead, the most successful consumer exits in the next cycle are likely to resemble consumer infrastructure platforms – businesses that blend product, technology, identity, and brand into a cohesive whole. Sponsors are increasingly re rating consumer multiples based on data quality, digital maturity, and platform scalability rather than brand awareness alone.

For advisors, this convergence carries a clear implication: consumer deals now demand a hybrid approach to diligence, structuring, and governance. Treating consumer businesses as partially brand driven and partially tech enabled is no longer optional – it is essential to unlocking durable, long term value in the modern consumer economy.

Navigating Greenwashing Risks in Consumer Products


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SMART SUMMARY

Consumer products companies face escalating litigation and regulatory exposure for environmental-related statements. For sponsors, the playbook is commercial: substantiate statements, align marketing with packaging and supply-chain realities, and perform pre-signing diligence in M&A. Below are four focal areas shaping current risk and practical responses.

1. Product attributes and disclosure

Courts and enforcers are scrutinising "green" or "sustainable" product claims. Plastic packaging is a particular focus, with challenges to "recyclable" and "plastic-neutral" labels where production may outpace practical recycling. For instance, U.S. lawsuits have attacked "100% recyclable" labels where local facilities do not accept the product format, mixed materials frustrate recyclability, or contamination rates render the claim aspirational rather than achievable.[1] Plastic bags, including "recycling" bags, are also a regular target of litigation and enforcement activity.[2]

Risk mitigation is operational and legal. First, qualify statements if needed based on acceptance and actual recovery rates (by market). Second, avoid broad "100%" language unless the entire item – including labels, closures, and multi-layer components – is accepted and recoverable at scale. Third, understand relevant regulation or guidelines, and require suppliers to warrant material composition and recycling compatibility, building audit rights into packaging procurements.

2. Third-party certification

Third-party certifications can support sustainability claims, but courts and plaintiffs are alert for company representations that exceed what a certification guarantees. For example, a court found a plaintiff sufficiently pleaded that Walmart's Marine Stewardship Council certification did not entitle it to make broader "100% sustainably sourced" statements about its frozen seafood.[3]

To mitigate certification risk, align messaging with the certifier's scope and audit cadence, and disclose limitations where appropriate. For sponsors, include certification governance in diligence questionnaires and supplier contracts, including termination rights for audit failures and change-of-standard triggers.

"Courts and regulators are policing aspirational claims – such as "a world without waste" or "net-zero by 2040" – that may be read as concrete promises."

3. Substantiating goals

Courts and regulators are policing aspirational claims – such as "a world without waste" or "net-zero by 2040" – that may be read as concrete promises. Earth Island Institute's litigation against Coca-Cola challenging its plastic ambitions highlights that goals must be substantiated by action and resources.[4] The New York Attorney General also sued JBS over its "net-zero by 2040" claim, alleging the company lacked a credible pathway commensurate with its footprint.[5]

Key takeaways are that goals are not immune from consumer protection rules, and a roadmap matters. If you publish climate or circularity goals, maintain contemporaneous substantiation and credible methodologies (science-based where applicable). Avoid absolute claims and use qualified, time-bound disclosures with progress metrics and independent assurance where feasible. In transactions, diligence sustainability roadmaps and governance and assess litigation exposure where goals outrun delivery.

4. UK/EU enforcement trends

In the UK, the Digital Markets, Competition and Consumers Act (DMCC) 2024 gives the Competition Markets Authority (CMA) direct powers to fine companies for consumer law breaches, including misleading environmental claims, with penalties up to 10% of global turnover.[6] The CMA has already investigated the fashion sector for misleading environmental claims, specifically considering ASOS, Boohoo and George at Asda[7] and probing their generic "sustainable" ranges, vague "eco" collections, and insufficient substantiation. The CMA also continues to promote its "Green Claims Code" and guidance to help businesses understand and meet their existing obligations under UK consumer protection law when making environmental claims.[8] Under the Code, claims must be truthful, clear, substantiated, and consider a product's whole lifecycle. As of November 2025, the CMA has launched its first investigations using its new powers under the DMCC 2024 and more enforcement action is likely.

In the EU, the Empowering Consumers for the Green Transition Directive (which has a March 2026 transposition deadline and a September 2026 application date) tightens rules on generic environmental claims: fines could reach 4% of annual turnover per Member State or €2 million, creating material financial exposure for multinational clients.[9]

Deal implications

Although the Trump Administration has been less motivated by environmental concerns than the prior administration, U.S. state-level and international activity in the UK and EU show that sponsors should generally be prepared for continued aggressive enforcement of ESG policies. Commercial responses include centralising green claims governance and substantiation; harmonising copy across relevant jurisdictions; restricting unverified umbrella terms; engaging in mindful communication (internally and with third parties); monitoring progress towards goals; and coordinating with lawyers where necessary.

In terms of diligence, the goal is to understand areas that may present the most risk and strategies to provide clear and accurate information and to examine complaint histories from regulators, plaintiffs' counsel, and NGOs. In M&A, diligence packaging and marketing copy against local acceptance databases and recent litigation; quantify remediation costs as necessary (pack changes, relabelling, media takedowns), and – if appropriate – reflect enforcement risk in pricing and covenant packages. Done well, companies can reduce litigation exposure, avoid regulatory penalties, and protect brand equity while preserving value creation.

Drop It Like It's Hot (or Not)?


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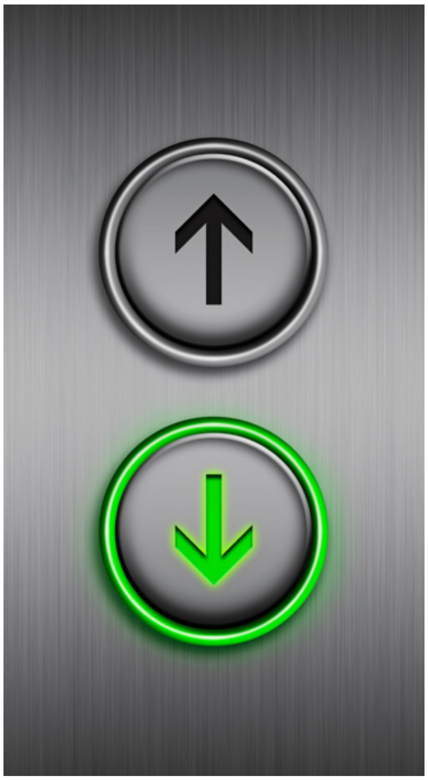

SMART SUMMARY

- "Drop down" transactions as strategic liability management tools that can unlock liquidity or increase leverage in lender negotiations.
- Business structure and loan documents (specifically basket sizes) affect the viability of a drop down transaction.

One of the more common liability management tactics that borrowers employ (whether as a primary strategy to raise financing or as a threat to force their existing lenders to the table) is to a "J. Crew" or "drop down" transaction, whereby valuable assets are moved outside of the credit group, typically to facilitate a new financing (which could be provided by new or existing lenders) secured by those assets. While this popular maneuver is often a worthwhile option, the devil is in the details when it comes to what is possible for your circumstances, organizational structure and business. Below are some important high-level points to keep in mind when considering whether to, when your lenders try to get at you (or your existing lenders ignore you), drop it like it's hot:

KEY OBJECTIVES

Set goals for the liability management exercise to assess whether a Drop Down achieves all or some of these goals. For example, a Drop Down commonly is used as a solution for a need for additional liquidity; however, it may not address an impending maturity issue. Even if a Drop Down does not achieve all (or any) of the set goals, it may still be useful as a coercive Plan B, bearing in mind that having a strong Plan B allows you to pursue Plan A with added vigor, e.g., by incentivizing existing (and perhaps recalcitrant) lenders to work with you on a solution for the existing debt.

DOCUMENT FLEXIBILITY

Consider what baskets are available under your existing loan documentation and whether there's meaningful capacity to effectuate the transfer of assets (whether to an Unrestricted Subsidiary or a non-Loan Party Restricted Subsidiary). Also, evaluate the method of implementation (e.g., whether as (i) an asset sale or contribution on account of equity to an Unrestricted Subsidiary or non-Loan Party Restricted Subsidiary or (ii) a transfer to a Loan Party followed by a designation of such Loan Party as an Unrestricted Subsidiary) and whether there are any relevant "blockers" in your existing loan documentation that restrict, for example, the transfer of material intellectual property or other assets, or the transfer of all or substantially all assets outside the guarantor or credit group. Lastly, confirm that your existing loan documentation provides for (i) if the assets are transferred to a non-Loan Party Restricted Subsidiary, sufficient debt capacity to maximize the utility of the transferred assets and (ii) sufficient capacity to achieve any other of the set goals (e.g., paydown of existing debt).

SEPARABILITY

Assess whether the business has readily available assets, or a division, product and/or business, that is easily separable and quantifiable. For example, a recent add-on acquisition that has not yet been fully integrated and that maintains separate IP, contracts, leases and employees, may be a great candidate for a Drop Down. It may be harder and more time-consuming to drop down individual assets from a fully integrated business, as third party consents (e.g., from landlords and/or contract counterparties) may be required. The more the assets appear as "crown jewels", the better for a financing prospect (and certainly the more attention-grabbing from existing lenders), but "shiny" is not required – what is most important is value.

"At the end of the day, the best defense is a good offense, and a Drop Down may be a valuable option to have at your disposal if it can help achieve the goals of the LME and fits the circumstances and the business..."

SHARED SERVICES

Evaluate the interrelations between the remaining credit group (**"RemainCo"**) and the recipient of the transferred assets (**"DropCo"**) to ascertain whether there are services (e.g., joint customers, employees, intellectual property / IT, systems, cash management, material contracts) that will continue to be shared post-transfer. Together with the documentation for the transfer, this probably will feel like a carve-out transaction, but with some continued ownership. Note that a DropCo financing may require a separate financial reporting system (including a separate audit function) at DropCo.

VALUATION

Discuss whether a third-party valuation is required and/or desirable to support the transaction and related analysis, particularly if you expect scrutiny over whether there is sufficient basket capacity under your existing loan documentation to make the transfer in the first place.

STANDALONE BUSINESS

Consider whether third party debt providers will be interested in financing DropCo as a standalone business and whether there are any impediments to their doing so in a down-side scenario.

REMAINCO SECURITY

Determine whether the DropCo financing would be secured only by DropCo assets, or if there is a strategy (and sufficient basket capacity under your existing loan documentation) for the DropCo lenders to receive value from RemainCo as well (i.e., **"Double Dip"** or **"Pari Plus"**) through a combination of on-lending and guarantees. Giving the DropCo lenders claims against RemainCo has the dual effect of making the DropCo financing more attractive to new financing sources and quickly drawing attention from RemainCo lenders.

HOW FAR?

Consider how far you need to pursue the Drop Down and/or any DropCo financing to achieve your goal – whether soliciting initial term sheets, drafting commitment papers, or entering into a fully baked deal. Some circumstances may require you to fully flesh out all the documentation and terms of a Drop Down, or even actually drop-down assets, proactively to show other parties (such as existing lenders that are not being constructive on terms for an all-lender transaction) that you are serious about the Drop Down.

At the end of the day, the best defense is a good offense, and a Drop Down may be a valuable option to have at your disposal if it can help achieve the goals of the LME and fits the circumstances and the business and within your existing loan documentation (or at least looks like a credible alternative). Planning with advisors helps not only to ease the overall burden of the considerations and steps required for a Drop Down, but also to troubleshoot any roadblocks early in the process.

Consumer Deals: When Antitrust Can Be The Toughest Execution Risk


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SMART SUMMARY

- In large consumer transactions, antitrust can now be the most significant execution risk, ahead of financing and documentation.
- Regulators are no longer focused solely on whether the buyer and target sell the same products and thus compete directly. They are also scrutinising broader brand portfolios, control over customer traffic, and local pricing dynamics – even where brands or activities operate in formally distinct markets.
- Recent acquisitions discussed in this article demonstrate how quickly European deals can move from being "challenging" to "unworkable" if these issues are not addressed early.

Introduction

In consumer transactions, antitrust is often front and centre, because these transactions directly affect end consumers and are therefore a natural enforcement priority for regulators.

In so-called "pocketbook" industries such as food, travel and grocery, regulators have increasingly

- pushed overlap analysis into highly local catchment areas;
- assessed competition on narrow consumer channel bases (segmented by where and how consumers purchase products); and
- focused closely on portfolio effects across brands, including how ownership of multiple brands can strengthen a buyer's overall position.

Accordingly, sponsors must ensure that risk is assessed not only by reference to direct market overlaps (*e.g.*, regarding the same kind of products/services offered), but also by considering neighboring markets and broader structural effects. Failure to do so can have serious consequences.

The evolution in the approach of the European and UK regulators is illustrated by three key cases – Mars/Kellanova, Booking/eTraveli, and Sainsbury's/Asda.

1. Mars / Kellanova and the assessment of portfolio power

Mars' acquisition of Kellanova (owner of Pringles and Kellogg's cereals) became one of the most closely watched European transactions of 2025 after the European Commission opened a Phase II antitrust investigation.

"From a sponsor perspective, the takeaway is that antitrust risk in consumer platforms is no longer confined to traditional horizontal, or even vertical, overlaps."

The review was driven as much by political sensitivity as by competition law, with the newly-appointed Competition Commissioner warning: "*As inflation-hit food prices remain high across Europe, it is essential to ensure that this acquisition does not further drive up the cost of shopping baskets*."

In practical terms, the Commission examined whether bringing Mars' and Kellanova's 'must-have' brands under common ownership would weaken retailers' ability to resist price increases and promotional demands, resulting in shoppers facing higher prices.

Although the deal was ultimately cleared (some 16 months after its initial announcement), the lesson for sponsors is clear: antitrust risk in large consumer deals may arise not only from direct overlaps, but also from the combination or aggregation of neighbouring brands across a portfolio and resulting impact on customers and consumers.

2. Booking / eTraveli: when control of the customer journey breaks the deal

In the travel sector, the European Commission drew a firm line by blocking Booking.com's proposed acquisition of eTraveli in 2023 (a decision currently under appeal before the EU General Court). Booking.com is Europe's largest hotel booking platform, while eTraveli operates a number of flight booking websites.

The Commission was concerned that the transaction would combine Booking's dominant position in hotel booking with eTraveli's adjacent role in flight search. By expanding Booking's travel service 'ecosystem' and allowing it to acquire a customer acquisition channel, the Commission found that Booking's dominant position would have been strengthened (even though eTraveli itself was not a leading player in the flight search market), making it harder for rival platforms to compete and thus potentially reducing the overall level of competition in the market.

From a sponsor perspective, the takeaway is that antitrust risk in consumer platforms is no longer confined to traditional horizontal, or even vertical, overlaps. Deals that combine control of customer acquisition with an already dominant platform may, on that basis alone, be vulnerable to being blocked.

3. Supermarkets – consider local overlaps, and trust divestiture remedies carefully

In the grocery sector, the clearest early warning sign for sponsors emerged in the UK, where the CMA blocked the proposed merger of Sainsbury's and Asda, the country's second- and third-largest supermarket chains. The transaction would have created the UK's largest grocer by a wide margin. The CMA concluded that the merger would result in higher prices, weaker competition between stores, and reduced pressure to pass efficiencies on to consumers.

The CMA assessed competitive overlaps on a highly local, store-by-store basis. In many towns, Sainsbury's and Asda were each other's closest competitors. The authority rejected an extensive divestiture package, notwithstanding its structural nature, finding that the sale of a patchwork of stores to a third party would not recreate a sufficiently strong competitor capable of constraining prices on a sustained basis.

Importantly, and indicative of a broader enforcement pattern, this reasoning closely mirrors the FTC's approach in Kroger / Albertsons in the US. That deal was blocked in December 2024.

For sponsors, the lesson is twofold. First, antitrust risk in supermarket transactions must be assessed not only at a national level but as narrowly as on a local, store-by-store basis. Second, structural divestitures should not be assumed to provide a reliable path to clearance. Where the proposed purchaser cannot credibly replicate the competitive constraint exerted by the merging parties, regulators may conclude that divestitures are insufficient, particularly in consumer-facing sectors.

> **"The implication is clear: antitrust risk must be assessed at the earliest stages of deal selection and cannot be treated as a downstream workstream or remedial exercise."**

Conclusion for sponsors

The cases mentioned above show that antitrust is now frequently a decisive execution risk in large consumer transactions. Regulators are increasingly willing to intervene not only where there are clear horizontal overlaps, but also where a deal strengthens portfolio power, concentrates control over customer acquisition, or reduces competition at a highly local level, even in circumstances where individual assets or brands are not dominant on a standalone basis.

The implication is clear: antitrust risk must be assessed at the earliest stages of deal selection and cannot be treated as a downstream workstream or remedial exercise. If competition concerns crystallise, particularly in the later stages of transactions or in consumer-facing sectors, divestitures or other structural fixes may be insufficient to preserve deal viability.

Capitalizing on Content: The Private Equity Playbook in Entertainment and Media


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SMART SUMMARY

The entertainment and media (E&M) industry is in a period of profound transformation, creating compelling opportunities for private equity investment. After a turbulent few years marked by the streaming boom and pandemic and strike-related disruptions, the sector appears to be entering a more disciplined phase, and with global E&M revenues projected to surpass $3.5 trillion by 2029,[1] the combination of resilient consumer demand and expanding digital monetization channels is fueling confidence in E&M investment.

Why Capital Is Being Deployed Now

Several forces are converging to make E&M ripe for private investment:

- **A Shift in the Cycle:** General trends in the broader economic cycle have left a tremendous amount of capital on the sidelines over the past few years, and sponsors now have a mandate to deploy it.
- **Normalization of Valuations:** Following years of ballooning valuations driven by the streaming "arms race," public and private market multiples are correcting, allowing for E&M assets to be acquired at more attractive pricing.
- **Room for Consolidation:** Fragmentation has left numerous sectors of the E&M industry struggling to compete for audience attention and advertiser dollars. Scale brings negotiating leverage with distributors and platforms, cost efficiency in content production, and the ability to diversify revenue streams across multiple formats and geographies.

What Private Equity Is Buying

Private equity's recent investments in the E&M sector are taking shape through a few main deal types:

Corporate Acquisitions and Investments

Sponsors are putting capital to work acquiring or investing in companies at all levels of the E&M business, including production companies, talent agencies and even creator-led ventures. In addition to these more traditional entertainment industry investments, sponsors are increasingly supporting newer technology – and AI-driven platforms – such as digital production tools, creator-economy infrastructure, audience analytics firms, and AI-enabled content businesses. These investments in operating companies most closely resemble the traditional PE portfolio company model in other sectors and can take many different forms, including control buyouts, minority growth investments and consortium deals involving major public companies.

Film and TV Backend Participations

Another strategy involves purchasing

“The entertainment industry operates on longstanding customs that differ in significant ways from conventional commercial sectors, and which can materially affect deal economics.”

or financing backend participations – passive profit shares and contingent compensation linked to successful franchises or talent deals, which provide predictable income streams and access to and association with high-performing titles without taking on any of their inherent production risk. Moreover, the number of platforms in the market for licensed content has increased dramatically in recent years and with it, the heightened demand for established content to attract and retain subscribers, which has a corresponding effect on the potential income to be realized from the backend participations in such programs.

IP Assets

Similar to the backend participations discussed above, film and television library assets are increasingly sought after as predictable, annuity-like income streams, but with the added benefit of providing full or partial copyright ownership of the acquired assets, which allows for additional potential avenues of revenue. Investors are acquiring film and television catalogs, music publishing rights, and other IP that can be exploited through streaming, syndication, and emerging digital channels, but instead of simply acquiring contractual rights to profits, these investments allow PE investors to take an active role in the distribution and monetization of the acquired assets and can also open additional income streams through the ownership of the right to produce sequels/reboots of popular IP titles.

Private Credit, Securitizations, and Other Financial Instruments

In addition to traditional buyouts and asset acquisitions, private equity firms – and their affiliated credit platforms – are more actively providing financing solutions tailored to the E&M industry, with private credit becoming increasingly involved in the securitization of entertainment cash flows, where future royalties, licensing fees, music publishing income, or backend participations are packaged into structured financial products. These transactions offer sponsors attractive, collateralized yield opportunities and give borrowers access to flexible capital without diluting ownership of their creative assets. Private credit has also become an important tool for funding content slates, bridge financings tied to distribution agreements, and refinancing legacy studio debt. Collectively, these instruments have broadened the ways PE firms engage in the sector – allowing them not only to acquire entertainment assets, but also to finance and capitalize the companies and creators who produce them.

Key Considerations for Private Equity Investors in Entertainment & Media

Before deploying capital into the E&M sector, it is important for PE sponsors to consider the unique legal, structural, and commercial considerations that set the industry apart from other industries. Understanding these dynamics upfront can significantly improve structural decisions, diligence outcomes, pricing accuracy, and long-term returns. Some industry specific factors for sponsors and their advisors to keep in mind include:

Industry Custom and Practice

The entertainment industry operates

on longstanding customs that differ in significant ways from conventional commercial sectors, and which can materially affect deal economics. Revenue flows are often governed by negotiated distribution waterfalls, recoupment structures, and legacy contractual terms that may date back decades. Cost and revenue allocations, cross-collateralization practices, and "charged" definitions on which contingent participations are based (*e.g.*, adjusted gross revenue, net or gross profits) can meaningfully alter expected returns. In addition, talent agreements frequently include approval rights, residual obligations, and other creative controls that influence both operations and profitability.

Copyright and Chain of Title

Copyright ownership is a core value driver for most entertainment assets, making chain-of-title verification essential. PE buyers must ensure that all rights were properly assigned, no encumbrances limit exploitation, and no reversion or termination-right risks undermine long-term value. Because successful monetization of these assets often depends on global, multi-platform licensing, clean rights documentation is critical to valuation and deal durability.

Guilds, Unions, and Collective Bargaining Obligations

The entertainment industry is governed by robust guild and union regimes that impose non-negotiable compensation, working-condition, and residual-payment requirements, which directly affect budgets, cash flows, and long-term participation opportunities. PE investors engaging the sector must understand how collective bargaining agreements materially shape project economics across film, TV, and new media.

International Production Incentives

Many productions rely on tax credits, rebates, and subsidies from jurisdictions around the world, making incentive eligibility and compliance central to project economics. These incentives can be valuable but introduce regulatory, timing, and audit risks. PE buyers must assess whether incentive structures are transferable, securitizable, and sustainable post-closing.

As the E&M industry continues its evolution, private equity's role will only expand, but success will require a continued appreciation for the industry's unique legal, commercial, and operational frameworks. With the right sector-specific expertise, PE firms can position themselves at the forefront of the E&M industry's next phase of monetization.

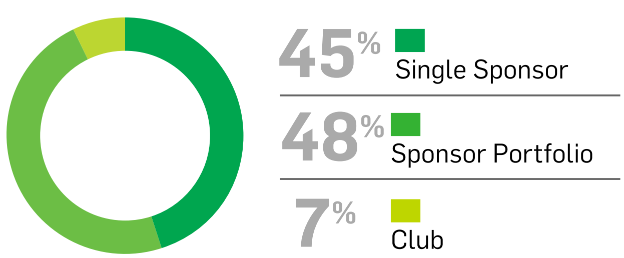
"As the E&M industry continues its evolution, private equity's role will only expand, but success will require a continued appreciation for the industry's unique legal, commercial, and operational frameworks."

SECTOR SNAPSHOT

CONSUMER DEALS

Brittany Butwin
Head of Product, DealVision360
Counsel, Private Equity

WEIL DealVision 360

	2024-2025 DATA	WEIL COMMENTARY
Deal Volume and Size	Roughly 25% of sponsor-to-sponsor deals involved consumer businesses (consumer goods +consumer services). Within consumer, activity clustered in Food/Beverage/Tobacco, Media, Personal & Household, Auto & Parts, and General Retail.	Consumer and other non-tech sectors (industrials, healthcare, etc.) have ceded relative volume as compared to tech deals (which comprised 40% of sponsor to sponsor deals, roughly 10 percentage points higher than the prior-year period). Tech/industrials show up more frequently than consumer in sponsor-to-sponsor exits. EV medians among consumer deals are slightly larger than non-consumer medians, but with wider dispersion. Media assets were the largest, F&B and Personal & Household sat in the middle, and General Retail trended smaller.
Signing → Closing	5-6 weeks	75% of all deals (not limited to consumer) closed within 60 days of signing (with about half closing within 30 days and half closing between 30 and 60 days). Longer timelines are still concentrated in heavily regulated sectors (industrials, healthcare) and larger-cap deals that require antitrust or CFIUS review. Among consumer deals, most sign-and-close same day or wrap within about a month, slightly faster than non-consumer.
Buyer Profile	Buyers in consumer deals are largely single sponsor platforms (45%) or sponsor portfolio companies (add-on deals) (48%); club deals are rare.	

	2024-2025 DATA	WEIL COMMENTARY
Earnouts	5% of deals	Earn-outs remain uncommon overall (despite a slight peak in 2023), and generally less common in consumer than non-consumer. When earn-outs appear they almost always key off EBITDA, with typical periods of 18–24 months and caps below 20% of EV.
RWI	35% of deals	RWI is obtained on roughly a third of consumer deals – somewhat lower than other sectors. Where used, limits commonly cluster around ~10% of EV, retentions about 0.50%–1.0% EV (typically with a 12-month drop-down). Note that deal size – not industry – is the main driver. Consumer policies more frequently exclude wage/hour, product recalls/environmental, forward-looking metrics, TCPA/marketing – more likely to surface in retail/DTC. Claims activity and payouts have trended up.
Seller Indemnity (beyond RWI)	45% of deals	Post-closing recourse remains mixed in consumer deals – just over 50% of consumer deals were “walk-away” deals (no seller indemnification), with the remainder involving a seller indemnity. Where seller indemnities exist, they typically cover general and fundamental reps and a set of stand-alone/specific matters. General reps survival skews to ~18 months in consumer (vs. ~12 months in non-consumer). Baskets (usually deductible) typically sit around ~0.5–1.0% of EV. Caps ~10-15% of EV.

SECTOR SNAPSHOT

CONSUMER DEALS

DealVision360 uniquely delivers instant, AI-powered reports that extract and analyze key economic and legal terms from deal documents. This Consumer Sector Snapshot is just one example of DealVision360’s ability to segment insights by industry/sector.

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Glenn's Corner

SATURDAY MORNING MUSINGS: ON THE NEED TO METAPHORICALLY "PUT YOUR WELLIES ON" BEFORE TRAVERSING THE MUDDY BOG THAT IS SUCCESSOR LIABILITY IN THE US

Glenn D. West
Retired Partner
Private Equity

The Dubious Connection Between the "Mere Continuation" Doctrine and the Muddy Wellingtons I Left in the London Office – The Risk of Successor Liability in Distressed Asset Purchase Transactions

My Muddy Wellies that I Abandoned in the London Office

On November 14, 2009, I was shooting at the Downton Estate (this was a year before they started filming the "Downton Abbey" series that made Highclere Castle and its estate famous worldwide). At the end of a great day, I changed out of my shooting clothes and put my muddy Wellies in a plastic bag, which I then brought back with me to London. I was dropped off at the London office because I needed to pick up some work stuff before heading back to my hotel to pack for my trip home to the U.S. As I thought about how I would clean those muddy Wellies and pack them with my clothes, I decided that, as much as I loved my Wellingtons, it was simply too much trouble. So, I left them at the office with instructions for anyone who wanted my muddy, but otherwise perfectly good, Wellies to take them. And a few years ago, I was told by the London partner who claimed them that they were still in use. Wellies are apparently very durable (although I am confident that the London partner has not put the same wear and tear on them that a farmer would).

The Company Responsible for Creating My Wellingtons is No More

Despite the durability of Wellington boots, the company that created them, Hunter Boots Limited, was not as resilient. Supply chain issues, inflation, and dryer weather conditions all contributed to a deteriorating financial condition at the company. But the pandemic may have been the final nail in the coffin. It seems that Wellingtons serve as both a fashion statement and a necessity in the muddy conditions at outdoor events (and concertgoers tend to impulse buy Wellies to attend such events). When the pandemic hit and all outdoor concerts were canceled (including the famous Glastonbury Festival for both 2020 and 2021), this may have worsened Hunter Boots Limited's financial situation. Hunter Boots Limited went into administration on June 5, 2023, and sold all its assets to pay off its £112 million of debt. In other words, the iconic, 167-year-old British company, which held two Royal Warrants from Queen Elizabeth II, no longer exists. However, because you can still purchase Hunter Boots-branded Wellies, you might not have realized that the company itself is no longer in business.

The Assets Sold through the Administration

Among the assets sold through Hunter Boots Limited's administration were the assets of its U.S. subsidiary,

“The purchase of Hunter Boot USA LLC’s assets was structured as a typical asset deal, with two separate buyers collectively acquiring substantially all its assets. Neither buyer, however, assumed the 57 West 57th Street lease.”

Hunter Boot USA LLC. Importantly, it was the assets of Hunter Boot USA LLC that were sold, by Hunter Boot USA LLC, not the equity of Hunter Boot USA LLC, by its owner Hunter Boots Limited, even though Hunter Boot USA LLC did not itself file a bankruptcy petition under US bankruptcy law.

Hunter Boot USA LLC leased part of the 17th floor and the entire 19th and 20th floors of a well-known office building in New York City at 57 West 57th Street. The purchase of Hunter Boot USA LLC’s assets was structured as a typical asset deal, with two separate buyers collectively acquiring substantially all its assets. Neither buyer, however, assumed the 57 West 57th Street lease.

One of the buyers was Marc Fisher LLC, which purchased all of Hunter Boot USA LLC’s footwear inventory, removable fixtures from 57 West 57th Street, and a piece of equipment. The other buyer was Authentic Brands Group LLC, which acquired Hunter Boot USA LLC’s trademarks and domain names, along with certain non-footwear apparel and accessories. Additionally, Authentic Brands had separately acquired all of Hunter Boots Limited’s intellectual property, including the brand, directly from Hunter Boots Limited on June 2, 2023, a few days before the formal administration. Marc Fisher LLC reportedly now manages the operational side of the Hunter footwear category for Authentic Brands in the U.S.

The Asset Buyers are Alleged to Have Successor Liability for the 57 West 57th Street Lease

Within a few months after Marc Fisher LLC and Authentic Brands acquired its assets, Hunter Boot USA stopped paying rent to the landlord of 57 West 57th Street. The landlord then sued Marc Fisher LLC and Authentic Brands, as “successors” to Hunter Boot USA LLC, for all unpaid rent through the end of the lease term. The trial court dismissed the landlord’s complaint on the simple basis that the buyers had bought assets and did not assume the tenant’s obligations under the lease. But in a recent New York case, *Avamer 57 Fee LLC v. Hunter Boot USA LLC*, 2025 WL 2247582 (N.Y.A.D. 1st Dept. Aug. 7, 2025), the appellate court overruled the trial court’s dismissal of the landlord’s complaint, holding that the landlord had plead sufficient facts for the case to proceed to trial based on the “mere continuation” theory of successor liability.

The General Rule – No Successor Liability for Buyers of Assets – And Its Exceptions

Buyers purchase assets *from* a company rather than acquiring the equity *of* the company so they can leave unassumed liabilities with the selling company. For the most part, unless the buyer explicitly assumes the selling company's liabilities, an asset purchase accomplishes that goal. However, like most general rules, the law has long recognized several ways that liabilities of a company selling its assets can be imposed on the buyer, even when the buyer has not explicitly assumed those liabilities.

The means by which a buyer of assets can be held liable for the liabilities of the selling company are generally described as being based on any one of four exceptions:

(1) the [buyer] expressly or impliedly assumes the liability of the [selling company], (2) the transaction is a *de facto* merger or consolidation, (3) the [buyer] is a mere continuation of the [selling company], or (4) the transaction is a fraudulent effort to avoid liabilities of the [selling company].[1]

Given the vagaries of the standards used to impose liabilities under the "mere continuation" and the "*de facto* merger" exceptions, particularly with respect to tort liabilities, Texas has eliminated those two exceptions by statute.[2] But most states, including Delaware and New York, continue to recognize all four exceptions. And contrary to popular belief, these exceptions are not limited to imposing successor liability upon a buyer for product liability claims; they can also be used to impose ordinary contractual liabilities of the selling company on the buyer(s) who only purchased assets.

While New York recognizes all four exceptions to the general rule against successor liability for asset buyers, the court found three of them inapplicable in *Avamer 57*. First, there was no claim by the landlord that the asset purchase agreements included any assumption of Hunter Boot USA's liabilities under the lease or otherwise by the buyers, which effectively ruled out the express or implied assumption theory of successor liability (exception 1). Likewise, there was no continuity of ownership between the selling company, Hunter Boot USA, and the buyers, Authentic and Fisher. As a result, the landlord apparently conceded that the *de facto* merger theory (exception 2) was unavailable as a basis to hold the buyers liable under the lease as Hunter Boot USA's successors.[3] There was also no indication that the consideration paid by the buyers to Hunter Boot USA was less than the fair market value of the assets purchased, nor that the sale had been concealed, nor that there was any other indicators of fraud, so the court did not believe the fraudulent avoidance theory of successor liability (exception 4) was available.[4] That left the mere continuation theory (exception 3) as a possible exception to the general rule that a purchaser of assets does not have successor liability.

Digging into the "Mere Continuation" Doctrine

When you understand the factors that New York courts consider in applying the "mere continuation" theory, you may better appreciate why the Texas Business Law Foundation, a nonprofit group formed by large Texas law firms to "help create a favorable business climate in the State of Texas,"[5] pushed for the elimination of the mere continuation theory (as well as the *de facto* merger theory) as exceptions to the general rule that buyers of assets do not have successor liability.

In *Avamer 57*, the court noted that in New York, "courts determining whether a [buying entity] is a 'mere continuation' of [the selling entity] have considered [a number of factors, including] whether: (1) all or substantially all assets are transferred to the successor corporation; (2) the predecessor corporation has been effectively extinguished following the transaction; (3) the successor has assumed an identical or nearly identical name; (4) the successor has retained one or more of the same corporate officers,

> **"Had this transaction been governed by Texas law, the dismissal of the complaint based on the pleadings presumably would have been upheld... "**

directors, and/or employees; and (5) the successor has continued the same business."

Obviously, all of those factors are present in nearly any asset sale of an entire business. Regarding the first factor, the court noted that the landlord had plead that the buyers in fact purchased substantially all of Hunter Boot USA's assets and even sought to lease from the landlord the same premises Hunter Boot USA had leased (though I struggled to see how that was relevant since they had not explicitly assumed the lease). Concerning the second factor, Hunter Boot USA had informed the landlord that they "would 'imminently dissolve and wind up their affairs' and that [they] did 'not have sufficient funds to make any further payments, including rent'" (though I can't quite follow why that is relevant if the buyers paid fair value for the assets). Regarding the third factor, the buyers had actually "purchased the Hunter Boot brand, goodwill, intellectual property, and the ability to use the Hunter Boot name" (though the main brand was purchased directly from Hunter Boots Limited). As for the fourth factor, the court noted that the buyers had apparently announced that, in connection with the purchase of Hunter Boot USA's assets, they did not plan any leadership changes, suggesting they would retain at least some key Hunter Boot USA employees (though rehiring employees of the selling company in an acquisition of a business through an asset transaction is common). Finally, regarding the fifth factor, the court indicated that the fact that the buyers continued to use the leased premises at 57 West 57th Street, while Hunter Boot USA continued paying rent for a few months after the transaction closed, and while Fischer was trying to negotiate a new lease with the landlord, constituted continued operations of Hunter Boot USA's business at the same location by the buyers. (Huh?).

While the *Avamer 57* court was only overruling the trial court's dismissal on the pleadings, and there will now be a full fact-finding trial, it still raises a host of concerns as to the reliability of using an asset sale to avoid the liabilities of a selling entity where the mere continuation theory is an available exception. Presumably, a UK administration does not provide the same protections to a buyer as a US bankruptcy proceeding with a 363 sale might have and a 363 sale would have seemingly avoided this issue – but as we all know that is not always a practical answer.[6]

Concluding Thoughts

Had this transaction been governed by Texas law, the dismissal of the complaint based on the pleadings presumably would have been upheld because the concepts of mere continuation and *de facto* merger have been removed as exceptions to the general rule that protects asset buyers from successor liability. While there are certainly some actions that the buyers here could have taken to reduce the potential applicability of the mere continuation theory under New York law, it is hard to see how one could fully eliminate its potential relevance. However, I am open to ideas.

In other words, I haven't figured out what the simple fix would be in this case. But, if successor liability theories can be likened to a muddy field after a rain, you are well advised to carefully consider how to metaphorically "put on your Wellies" before traversing through it.

ENDNOTES

LEVERAGED FINANCE MARKET UPDATE

1 US Credit Markets Quarterly Wrap (PITCHBOOK; September 30, 2025)

2 Q4 US Loan Market Wrap: Asset Class Expands to $1.5T; Spreads at Multiyear Lows (PITCHBOOK; December 22, 2025)

3 October Wrap: Loan Market Softens on Retail Outflows, Sector Headwinds (PITCHBOOK; November 3, 2025); November Wrap: Risk-Off Dynamics Weigh on Loans Despite Strong CLO Demand (PITCHBOOK; December 1, 2025)

4 High-Yield Monthly: Hot December start builds on busy November; rate cut eyed (PITCHBOOK; Decemeber 8, 2025)

5 US High-Yield Bond Weekly Wrap (PITCHBOOK; December 18, 2025)

6 US High-Yield Bond Weekly Wrap (PITCHBOOK; December 18, 2025)

7 Q4 US Loan Market Wrap: Asset Class Expands to $1.5T; Spreads at Multiyear Lows (PITCHBOOK; December 22, 2025)

8 Q4 US Loan Market Wrap: Asset Class Expands to $1.5T; Spreads at Multiyear Lows (PITCHBOOK; December 22, 2025)

9 Q4 US Loan Market Wrap: Asset Class Expands to $1.5T; Spreads at Multiyear Lows (PITCHBOOK; December 22, 2025)

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13 Q4 US Loan Market Wrap: Asset Class Expands to $1.5T; Spreads at Multiyear Lows (PITCHBOOK; December 22, 2025)

14 2026 Outlook - Issuance, Competition to Grow Amid Rising Credit Vulnerabilities (MOODY'S RATINGS; November 20, 2025)

15 Q4 US Loan Market Wrap: Asset Class Expands to $1.5T; Spreads at Multiyear Lows (PITCHBOOK; December 22, 2025)

16 US High-Yield Bond Weekly Wrap (PITCHBOOK; November 26, 2025)

17 The bond market crashes the AI party (FINANCIAL TIMES; November 14, 2025)

18 AI Bubble and Growth Fears are Creeping into US Credit Markets (BLOOMBERG; November 18, 2025)

19 AI Bubble and Growth Fears are Creeping into US Credit Markets (BLOOMBERG; November 18, 2025)

20 US High-Yield Bond Weekly Wrap (PITCHBOOK; November 26, 2025)

21 US High-Yield Bond Weekly Wrap (PITCHBOOK; December 11, 2025)

22 US High-Yield Bond Weekly Wrap (PITCHBOOK; December 11, 2025)

ASSET BACKED FINANCE: THE LATEST ARROW IN PRIVATE EQUITY'S QUIVER

1 https://content.naic.org/sites/default/files/capital-markets-special-reports-asset-mix-ye2024.pdf

2 https://www.kkr.com/insights/asset-based-finance

3 https://www.alliancebernstein.com/americas/en/institutions/insights/investment-insights/asset-based-finance-private-credits-key-diversifier.html

4 SIFMA Research and analysts estimates.

5 In addition to a widening scope of asset classes, the contexts in which ABF is being utilized has also expanded in recent years, with ABF debt issued as a source of "acquisition financing" for targets in industries ranging from fast-food to fleet leasing.

CARVE-OUTS: A RISING ENGINE OF PRIVATE EQUITY DEAL ACTIVITY

1 Private Equity Carve-Out Lessons 101, 10xEBITA, https://www.10xebitda.com/private-equity-carve-out-101/

2 PE Carve-Out Deal Value Rises as Companies Refocus on Core Operations. S&P Global, https://www.spglobal.com/market-intelligence/en/news-insights/articles/2025/6/pe-carveout-deal-value-rises-as-companies-refocus-on-core-operations-90541554

3 Id.

4 Private Equity Carve-Outs Are on the Rise, Private Equity International, https://www.privateequityinternational.com/private-equity-carve-outs-are-on-the-rise/

5 First Half of 2025 Demonstrates Strategic Shifts and Surging Opportunities for Private Equity, Cherry Bekaert, https://www.cbh.com/insights/reports/private-equity-mid-year-trends-in-2025/

6 Operations: The Alpha Factor in Private Equity Carve-Out Deals, McKinsey & Company, https://www.mckinsey.com/industries/private-capital/our-insights/operations-the-alpha-factor-in-private-equity-carve-out-deals.

7 Id.

ENDNOTES

NAVIGATING GREENWASHING RISKS IN CONSUMER PRODUCTS

1 E.g., Swartz v. Coca-Cola Co. et al. (N.D. Cal 2021); People of the State of California v. PepsiCo, Inc. et al. (Cal. Sup. Ct. 2024); Plastic Pollution Coalition v. Danone Waters of America (D.C. Sup. 2024); In the Matter of Keurig Dr. Pepper, Inc. (2024).

2 E.g. City of Philadelphia v. S.C. Johnson & Son, Inc., and Bimbo Bakeries USA, Inc. (Pa. Ct. Com. Pl., Phila. Cnty. 2025); State of Arizona v. Reynolds Consumer Products, Inc. et al (Ariz. Super. Ct. Maricopa Cnty. 2025); State of Connecticut v. Reynolds Consumer Products, Inc. (Conn. Super. Ct. Hartford, 2022); State of Minnesota v. Reynolds Consumer Products, Inc. and Walmart, Inc. (Minn. Dist. Ct., Ramsey Cnty, 2023).

3 Sanchez v. Walmart, Inc. (N.D. Ill. 2024)

4 Earth Island Institute v. Coca-Cola Co. (2024), (D.C. Superior Court).

5 Mighty Earth v. JBS USA Food Company (2025), (D.C. Superior Court).

6 Digital Markets, Competition and Consumers Act 2024.

7 Fashion greenwashing: investigation into ASOS, Boohoo and Asda (27 Mar. 2024), https://www.gov.uk/government/news/green-claims-cma-secures-landmark-changes-from-asos-boohoo-and-asda.

8 Fashion retail: consumer law when making green claims (18 Sep. 2024), https://www.gov.uk/government/publications/complying-with-consumer-law-when-making-environmental-claims-in-the-fashion-retail-sector.

9 Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, https://eur-lex.europa.eu/eli/dir/2024/825/oj/eng.

CAPITALIZING ON CONTENT: THE PRIVATE EQUITY PLAYBOOK IN ENTERTAINMENT AND MEDIA

1 https://www.pwc.com/gx/en/issues/business-model-reinvention/outlook/insights-and-perspectives.html

GLENN'S CORNER

1 Gary Matsko, *De Facto Merger: The Threat of Unexpected Successor Liability*, Bus. Law Today (March 14, 2018), *quoting Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 556, 887 N.E.2d 244, 254 (2008) (*quoting Guzman v. MRM/Elgin*, 409 Mass. 563, 566, 567 N.E.2d 929, 931 (1991)), https://businesslawtoday.org/2018/03/de-facto-merger-the-threat-of-unexpected-successor-liability/

2 Tex. Bus. Orgs. Code § 10.254(b). Indeed, "only express assumption is grounds for successor liability under Texas law." *In re* 1701 Com., LLC, 511 B.R. 812, 824 (Bankr. N.D. Tex. 2014). While fraudulent transfer may invalidate the sale, it is apparently not a separate basis under Texas law for imposing successor liability on the buyer. *Id.*

3 I have previously written about the *de facto* merger doctrine. See Glenn D. West, *An Asset Purchase That Wasn't – Beware the De Facto Merger Doctrine in Distressed M&A*, Weil Global Private Equity Watch, May 4, 2020, https://privateequity.weil.com/insights/an-asset-purchase-that-wasnt-beware-the-de-facto-merger-doctrine/ But note that the holding of the court I discuss there has been subsequently reversed, although the discussion remains valid. *See* New Nello Co., LLC v. CompressAir, 168 N.E.3d 238 (Ind. 2021).

4 There is some confusion as to how the purchase price paid by the buyers for the assets was used. Apparently, rather than Hunter Boots USA retaining the purchase price, it may have been used to repay Hunter Boots Limited's UK secured creditors in the administration. It is not clear whether the assets of Hunter Boot USA were pledged to secure Hunter Boots Limited's UK debt, nor how much was actually paid for the limited assets being purchased from Hunter Boot USA. The bulk of the value appears to have been in the brand itself, which was separately purchased directly from Hunter Boots Limited. The court appears to acknowledge that fair value was paid to Hunter Boot USA for its assets, but whether there was a claim that could have been filed to avoid the transfer of the consideration for Hunter Boot USA's assets to Hunter Boots Limited's creditors on some fraudulent transfer basis is unclear. Regardless, a fraudulent transfer does not necessarily create successor liability – it typically only creates an opportunity for the transferor's creditor (here, the landlord) to claw back the transfer.

5 The Texas Business Law Foundation is also responsible for legislation that severely limits the alter ego theory in contract-based cases, the recent establishment of the Texas Business Courts, and several business-friendly revisions to Texas corporate law.

6 And if you don't know what a 363 sale is, for goodness sakes please speak to a bankruptcy colleague.

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RECENT HIGHLIGHTS

Weil Private Equity is proud of our broad representations and the successes of our clients. Below is a small sampling of our recent work:

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- American Securities in the merger of FleetPride with TruckPro
- Brookfield in its $900 million acquisition of Fosber
- Silver Lake and its portfolio company Cegid in their acquisition of Shine
- Convex Group Limited and PSP Investments, as existing investor in Convex, on a new, long term ownership structure led by Onex Corporation, with AIG becoming a strategic minority equity investor in Convex
- Cook Media Global in its acquisition of Fair Trade Services
- Cove Hill Partners in its over $300 million investment in Vantaca
- CPP Investments in its strategic growth investment, together with General Atlantic, in Boats Group
- CPP Investments in its definitive agreement to invest $1 billion for a strategic minority position in AlphaGen
- FirstTracks Sports Ventures in its investment in Austin F.C.
- Goldman Sachs in acquisition of Industry Ventures
- Lee Equity Partners in the closing of a $1.6 billion recapitalization of McLarens Global Limited
- Motive Partners in its strategic investment in Electric Mind
- OMERS and its portfolio company Epiq in the sale of Epiq's Global Business Transformation Solutions division to K2 Services
- PSG in numerous transactions, including its sale of Vault Verify to Equifax
- TCV in its strategic investment in onX Maps
- Warburg Pincus in its $300 million strategic investment partnership with Madison International Realty

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