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Weil Private Equity Sponsor Sync

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FROM THE EDITORS

If the last several quarters have taught us anything, it is that private equity opportunity increasingly lies at the intersection of converging industries. Data centers are no longer a niche infrastructure story; they are now the crossroads where power meets computing, where real estate meets industrial policy, and where sponsor demand meets complex execution challenges.

In this Q2 2026 edition of Sponsor Sync, we take that convergence seriously. Our Special Issue on Data Centers examines the sector from the ground up. We also step back to consider the broader market context, with financing markets that remain open but selective and the growing importance of technology. Beyond our special issue, we explore key developments in portfolio company stress planning, sponsor-backed PIPE terms, liquidity strategies and debtholder communications.

Our objective remains the same: deliver actionable perspectives, with an eye toward what may lie ahead. We hope you enjoy the issue.
As always, stay informed and stay ahead.

LETTER FROM THE SPECIAL EDITORS

The multidimensional complexity of data centers, coupled with extraordinary capital demand, is drawing sophisticated sponsors deeper into the space, and at Weil, we are seeing it play out in real time. We are closely tracking how sponsors are underwriting, structuring and scaling their investments amid intensifying competition.

This special issue is designed to cut through the noise and unpack what is really driving the market. We examine the nuances of European and Asian market entry alongside the increasingly important diligence considerations around data privacy, cybersecurity and sustainability. As platforms mature, we also highlight how incentive structures are evolving to support long-term growth.

Our goal with this issue is to help you navigate the complexity with sharper insight, greater confidence and a clear view of where the market is heading next.

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The Data Center Special Issue

WEIL LOAN TRACKER

Q1'26

Average First-Lien Broadly Syndicated Spread for Single B Rated Borrowers:	Average First-Lien Broadly Syndicated Spread for B-Minus Rated Borrowers	Volume of U.S. M&A-Related Broadly Syndicated Loan Issuance	Volume of Refinancings of U.S. Leveraged Loans:	Volume of Repricings of U.S. Leveraged Loans:
S+314 down 4 bps from Q4'25	S+403 up 49 bps from Q4'25	51.2 billion	41.6 billion	114.0 billion

LEVERAGED FINANCE MARKET UPDATE


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SMART SUMMARY

- Q1'2026 opened with considerable momentum in the US leveraged loan market, as January produced $174 billion in issuance alongside decade-low spreads. That strength proved to be short-lived as concerns over AI-driven disruption in the software sector, the outbreak of war in Iran and its cascading effects, along with broader macroeconomic uncertainty combined to trigger a sharp contraction in February and March, with monthly issuance falling to approximately $30 billion.
- Total primary market activity in the leveraged loan market for the quarter reached approximately $241 billion, running 32% behind the comparable 2025 pace, with the shortfall concentrated in refinancings and repricings. Despite the notable decline in opportunistic financing loan issuance, M&A-related issuance in the syndicated market reached a four-year high of $51.2 billion.
- While the high-yield bond market has slowed down amid current geopolitical volatility, a strong start to FY'2026 has resulted in year-to-date high-yield issuance of approximately $80 billion through late March, running approximately 16% ahead of the comparable 2025 pace. In contrast to the year's strong start, March's total high-yield supply was the lightest monthly total since October 2025.
- The nearly $250 billion maturity wall, particularly in software and lower-rated credits, remains a focal point as 2028 maturities approach.

FY'2025 RECAP

The fourth quarter of 2025 presented a mixed picture for leveraged finance markets, capping off a year of overall strength despite overall activity moderating slightly by Q4'2025.[1] Further, improving interest rates and surrounding sentiment helped position 2025 as the second-strongest year for gross loan issuance since 2018, with total volume reaching $965 billion.[2] This robust annual performance was driven by a combination of M&A and LBO activity, significant repricing efforts, and dividend recapitalization transactions.[3]

Q4'2025 saw $65.9 billion in high-yield bond issuances, capping off a successful year for the high-yield bond market. FY'2025 ended with high-yield issuances of $328.9 billion: a 16% increase from 2024, 87% increase from 2023 and more than three times the 2022 amount.[4]

Despite the leveraged finance market's overall strength in 2025, the fourth quarter itself was comparatively subdued. Primary market activity moderated following the record-setting pace of Q3'2025, as challenging secondary market conditions in early October led to a more cautious tone.[5] M&A-related loan issuance reached only $26.7 billion for the quarter – the slowest of the year – while LBO activity declined to $5.4 billion, its weakest level in two years.[6] Despite the slower year-end in the leveraged finance market, the high-yield bond market finished the year strongly: Q4'2025 was the largest fourth-quarter output for high-yield bonds since the last quarter of 2021.[7]

In spite of any end-of-year slowdown, the broader market remained resilient. Lower-rated borrowers successfully tightened spreads on nearly $504 billion in term loans throughout 2025, ranking second only to the prior year's record.[8] The U.S. loan market grew by $131 billion during the year, representing a 9.2% expansion – the third-highest annual growth rate in the past decade.[9] Refinancing activity also remained strong in December 2025 with $8.8 billion in issuance, an increase from the previous month, but a marked decline from the levels seen in summer and early fall of 2025. And, private equity sponsors, facing limited exit opportunities, turned to dividend recapitalizations in 2025 as a source of liquidity.

U.S. LEVERAGED LOAN MARKET

From Risk-On to Risk-Off – How Geopolitical and AI Uncertainty Reshaped Q1'2026 Leveraged Finance

The leveraged finance market in early 2026 has experienced a notable divergence between a robust January and a more challenging February and March, driven primarily by tariff and trade policy uncertainty, emerging concerns about AI disruption in the software sector and geopolitical tensions triggered by the war in Iran.[10]

AI Disruption

AI disruption has emerged as a key risk for software companies, which have faced a dramatic shift in market conditions. Software loans, the largest segment of the loan market at approximately 13% of outstanding volume, fell 2.97% in January, their weakest performance since September 2022.[11] The perceived threat of AI disruption created a rapid selloff of software loans, with a record $25 billion of U.S. software loans falling into distress – representing nearly a third of all distressed loans in the market. [12]

Further, with new software loan issuance notably absent during the first quarter of 2026, the software sector faces significant maturity wall concerns. Approximately $59 billion in software loans comes due in 2028, with another $12.6 billion maturing in 2027.[13] These evolving dynamics could, however, generate opportunistic deal flow for direct lenders, who refinanced approximately $37 billion in syndicated loans in 2025, including those of several software companies.[14]

Despite AI-related disruption concerns in the leveraged loan market, issuers continue to look to high-yield bonds for funding, with over $20 billion of AI-adjacent high-yield issuance forecasted for 2026.[15]

Geopolitical Instability

The Iran war and its cascading consequences constituted the principal source of credit market volatility in the first quarter of 2026, with market participants identifying geopolitical turmoil as the single most significant headwind to the leveraged loan market over the subsequent six months.[16] These dynamics were evident across both primary and secondary markets, reflected in diminished leverage loan issuance volume and widening spreads across the credit spectrum.[17] Beyond these immediate disruptions, a disproportionately front-loaded maturity wall, limited refinancing opportunities, diminished risk appetite and rising inflation operate to constrain near-term relief.[18]

Q1'2026 Leveraged Loan Market and High-Yield Bond Market

Primary loan market activity surged to $176 billion in January – a six-month high and busier than the entire fourth quarter of 2025.[19] However, momentum slowed considerably in February and March, culminating in $241 billion of total primary market activity in Q1'26 – 32% behind last year's pace.[20]

While the high-yield bond market has slowed down amid the current geopolitical volatility, a strong start to FY'26 has resulted in year-to-date high-yield issuance of approximately $80 billion through late March.[21] Volume was up 40% over 2025 through February, though that lead narrowed to approximately 16% by the end of March.[22] March

saw deals clear on only 36% of available business days, in contrast to 70-71% in March 2024 and 2025, as war-driven oil shocks and volatility curtailed issuance activity.[23]

Repricings, Refinancings & Dividend Recaps

Repricing activity dominated January, reaching $111 billion – the highest volume since July 2025 and among the most active months in the current two-year repricing wave.[24] The composition of that activity shifted notably from the previous year. Technology companies accounted for just 8% of January repricings by deal count – roughly half their 2025 share – while oil & gas and transportation issuers roughly doubled their respective shares relative to the prior year.[25] This initial rotation was interpreted as reflecting growing investor caution toward AI-exposed sectors and increasing appetite for traditional economy credits.[26] As the first quarter of 2026 progressed, however, escalating conflict in the Middle East and volatile oil and gas prices had displaced earlier concerns over AI-sector disruption.[27] By March, repricing activity had ceased altogether, marking the first calendar month since June 2023 in which no repricing was completed, excluding the market dislocation triggered by "Liberation Day" in April 2025.

Refinancing activity in January reached a four-month high $19.2 billion, but experienced a stark reversal in the latter half of the quarter, with total year-to-date volume running approximately 40% below 2025 levels.[28] This moderation partly reflects the success of 2025's record repricing wave, in which speculative-grade borrowers reduced spreads on nearly $504 billion in term loans.[29] Accordingly, many borrowers have already addressed near-term maturities.[30] The high-yield bond market has emerged as a refinancing alternative for loan borrowers, with $9.6 billion of high-yield bond issuances earmarked for institutional loan takeouts through February 2026.[31]

Dividend recapitalization activity has moderated significantly in the loan and bond markets, with loan volumes running roughly 53% below the prior year's pace and bond volumes declining from 9% in Q1'2025 to 3% in Q1'2026. [32] This decline reflects a strategic shift among private equity sponsors, who are increasingly focused on anticipated exit opportunities rather than extracting cash from existing portfolio companies through dividend recaps.

M&A/LBO Related Activity

Following a subdued Q4'2025, M&A-related syndicated loan issuance rebounded sharply in the first quarter of 2026, reaching $51.2 billion – the strongest opening quarter for such issuance since 2022.[33] Similarly, M&A/LBO issuance surged in the bond market in the quarter, reaching 25%, with a volume of $19.8 billion, which is the second-highest output for any comparable time period.[34] Bonds also held sway over loans for M&A/LBO funding for most of Q1'2026, though there was a shift back toward loans in March.[35]

The recovery in M&A activity reflects improved deal-making conditions and continued sponsor appetite for new acquisitions.

2026 OUTLOOK

Looking ahead, several key themes are expected to shape the leveraged finance and high-yield bond market:

The first quarter of 2026 presented headwinds for the broadly syndicated loan market, including AI-driven disruption in the software sector, the outbreak of war in Iran and macroeconomic uncertainty that compressed issuance volumes and widened credit spreads. Still, a number of positive signals emerged beneath the surface, suggesting the market's resilience. M&A-driven loan issuance reached a multi-year high; private equity sponsors recorded their strongest quarter for buyout financing since 2022; and large transactions continued to clear even during March's volatility, evidencing the persistence of investor demand. Looking ahead, there is potential for significant dealmaking in sponsor-driven transactions, especially as market conditions begin to stabilize.

High-yield bond issuances are expected to remain robust in 2026. With more than $700 billion of maturities slated for 2027-2029, refinancing should continue to be a strong motivator for borrowers.[36] However, the issuance mix may be shifting, as M&A/LBO and AI-related capital expenditure issuance grow. Issuers are also locking in longer tenors, which may ease refinancing pressures over the coming decade. Borrowers will likely look to get ahead of upcoming maturities, especially with relatively stable coupon rates in play. That said, ongoing geopolitical volatility may continue to weigh on the pace and volume of issuance.

WHEN A PORTFOLIO COMPANY IS UNDER STRESS: PREPARING FOR A POTENTIAL LIABILITY MANAGEMENT EXERCISE

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SMART SUMMARY

- Sponsors should position stressed portfolio companies early – tightening governance, reducing conflicts, and preserving flexibility before a liability management exercise becomes urgent.
- Early diligence on tax leakage, fiduciary exposure, engagement structure, and credit document optionality can materially expand the menu of viable capital solutions.
- In LMEs, creditor dynamics, intercreditor leverage, communications discipline, and litigation readiness often matter as much as what the documents technically permit.

As liability management exercises ("**LMEs**") continue to evolve in both creativity and frequency, private equity sponsors and their advisers should be thinking well before a triggering event emerges about how to position a portfolio company – and the sponsor itself – for flexibility and optionality. If and when financial stress becomes acute, early missteps can significantly constrain available options or otherwise magnify risks.

Set out below are some practical considerations when a portfolio company begins to show signs of financial stress and an LME or other creative capital solution may be on the horizon.

1 Scrub Sponsor Involvement at the Portfolio Company Level

One of the first steps should be to assess whether sponsor professionals are serving as directors or officers of entities within the credit group. If they are, sponsors should consider stepping back from those roles and/or insulating themselves from conflicts by way of appointing independent directors and granting such directors some or all decision making authority.

LMEs can involve intra-creditor conflict, selective participation, and value transfers within the group. Sponsor representatives wearing fiduciary hats at the operating company level can create unnecessary exposure to claims for the sponsor and its employees and transaction execution risks – particularly where non-participating creditors later challenge the transaction. Thoughtful planning around management or governance roles in entities where creditors may have claims helps preserve deal flexibility and mitigate litigation risk.

2 Identify Flow-Through Structures and CODI Risk Early

Sponsors should promptly determine whether the portfolio company sits in a flow-through structure (e.g., partnerships or LLCs taxed as partnerships). If so, cancellation of debt income ("**CODI**") can flow directly to

equity holders in a recapitalization – both losing an asset and then getting hit with a tax bill can be a tough pill to swallow.

Early identification of this risk allows sponsors and advisers to explore mitigation strategies – such as timing considerations, structural and terms adjustments, or alternative transaction paths – before CODI becomes unavoidable or mitigation strategies are less effective or available.

3 Ensure Engagements Are Properly Structured Within the Credit Group

Outside counsel engagement letters – particularly for restructuring counsel – should be carefully structured to ensure they are entered into by the appropriate entities within the credit group. This is not merely a formality.

Proper engagement alignment helps preserve privilege, reduces challenges from creditors, reduces execution risks and ensures that professional fees are treated appropriately under the relevant credit documents. Getting this right at the outset avoids distractions and disputes later in the process while allowing the portfolio company to have proper legal guidance.

4 Revisit Fiduciary Duty Exposure and Organizational Structure

Sponsors and counsel should review formation and governing documents to assess the scope of any fiduciary duty waivers. In stressed situations, fiduciary claims often become a primary litigation tool for excluded or disadvantaged creditors and other stakeholders. Even if there are fiduciary duty waivers, sponsors should ensure that the Company undertakes good corporate governance measures.

Where appropriate, sponsors may consider whether converting corporate entities to LLCs (with a "check-the-box" tax election) could reduce fiduciary duty exposure by enabling broader contractual waivers. While such conversions must be carefully analyzed for tax, regulatory, and contractual implications, they can meaningfully reduce litigation risk in the right circumstances.

5 Curate the LME Playbook Under the Credit Documents

Sponsors should conduct a detailed review of the credit documents to understand what liability management tools are available taking into account the latest technology and creativity of the LME world. By calling Weil for a thorough assessment, you can get a full lay of the land including as to creative solutions, impediments, and considerations for any potential transaction. We can also work with other outside advisors with whom we have strong relationships to build a comprehensive toolkit of recommendations for debate and discussion.

In some cases, the documents may be highly restrictive, leaving limited room to maneuver. Identifying those constraints early allows sponsors to recalibrate expectations, assess refinancing alternatives, or engage constructively with creditors before leverage shifts. A full scrub of the documents allows for more thoughtful planning at the outset as you start your 3-D chess with creditors.

6 Map the Creditor Base Early

Understanding the holdings and concentration levels of creditors as well as the price they bought into the credit can be helpful in formulating groups with whom the portfolio company can work and identifying pressure points.

"Early and thoughtful planning around portfolio company capital structures particularly when stress may be looming is crucial to the sponsor positioning itself for a more seamless, coordinated and well thought-out process."

In most cases, the identity and incentives of creditors matter more than the literal wording of the documents and striking the right tone and strategy at the outset is of premier importance.

7 Analyze Intercreditor and Structural Subordination Dynamics

LMEs frequently test the boundaries of credit documentation including intercreditor arrangements, collateral waterfalls, and guarantee structures. A clear, early understanding of where value sits within the enterprise – and which creditors have enforceable claims to it – can mitigate execution risk and reduce the likelihood of post-transaction disputes while incentivizing company-friendly behavior with "sticks" and "carrots".

8 Develop a Thoughtful Disclosure and Communications Strategy

Selective liability management transactions invite scrutiny. Sponsors should work with counsel to assess what disclosures may be required to lenders, investors, and other stakeholders, and to structure communications in a way that preserves flexibility without creating waiver, estoppel, or implied covenant arguments. Importantly, the roll out of communication will be heavily scripted alongside of NDA's which encourage the kind of collaboration that will help the process while reducing the risk of leak and managing group dynamics.

9 Stress-Test Litigation Risk, Not Just Permittedness

Even transactions that are technically permitted under the credit documents may trigger threats of litigation. Sponsors should evaluate not only whether an LME can be executed, but whether it can be defended – based on the transaction process, disclosures, valuation support, and overall fairness – if challenged by excluded creditors. While many LME structures have been tested, a decent amount of litigation is settled leading to less jurisprudence in this area of law. As such, integrating litigators to assess and mitigate litigation risk is crucial to striking the right balance of objectives.

10 Consider Sponsor and Fund-Level Implications

Finally, sponsors should assess how a proposed LME affects fund-level considerations, including alignment across sponsor-controlled vehicles, co-investors, and continuation funds. LMEs can produce divergent outcomes across the capital structure, and sponsors should ensure that fiduciary and disclosure obligations at the fund level are carefully considered alongside portfolio company objectives.

In summation, early and thoughtful planning around portfolio company capital structures particularly when stress may be looming is crucial to the sponsor positioning itself for a more seamless, coordinated and well thought-out process. We look forward to hearing from you for all of your LME needs.

2025 SPONSOR-BACKED PIPEs: KEY TERMS AND YEAR-OVER-YEAR COMPARISON

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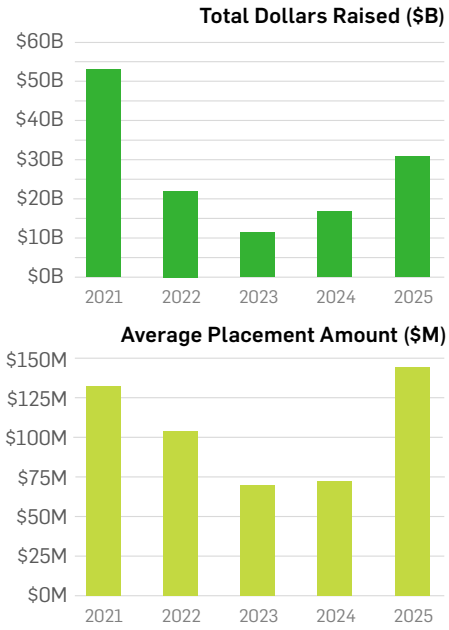
Given that the number of surveyable PIPE transactions has generally decreased over recent years, the Weil Private Equity Group has prepared this article in lieu of our typical fulsome PIPE study. In our survey of sponsor-backed PIPEs, the 2025 deals generally reflected a more customized, investor-protective term package than the 2024 cohort, even as core structural themes remained consistent. Convertible securities continued to dominate in both years, but 2025 showed a broader spread in deal size – driven largely by 2 outsized transactions – while most other deal sizes among the sampled deals remained broadly in line with 2024. On economics, 2025 transactions shifted to premium-only conversion pricing, with no surveyed discounts, and coupon rates on convertible instruments compressed meaningfully year-over-year. At the same time, 2025 deals more frequently included tailored mandatory redemption protections, more bespoke standstill and transfer restriction provisions, and, in some cases, enhanced downside protections. Governance rights, including investor consent protections, remained a consistent feature across both years, while board representation in 2025 showed mixed results indicating instrument type and fiduciary considerations also play a role (in addition to investor ownership). The 2021-2023 comparison suggests that the terms of sponsor-backed PIPE transactions have not materially changed over the past few years.

PIPE Market Activity



Source: PrivateRaise; limited to PIPE activity by PE and VC investors

KEY TERM	2025 DEALS	2024 DEALS	2021-2023 DEALS	TRENDS / OBSERVATIONS
Investment Amount	$100M-$3B	$75M-$150M	~$100M-$1.5B, with most clustering in the $150M-$500M range and several outsized deals at $900M-$1.5B.	2025 showed a wider range than 2024 (and prior recent years), but the increase was driven chiefly by 2 outsized transactions ($800M and $3B). The other 2025 deals – at $100M, $150M, $190M and $350M – were broadly in line with the 2024 range (and prior recent years). 2025's dispersion appears to be driven primarily by 2 outsized deals, rather than by a broad repricing of market norms.

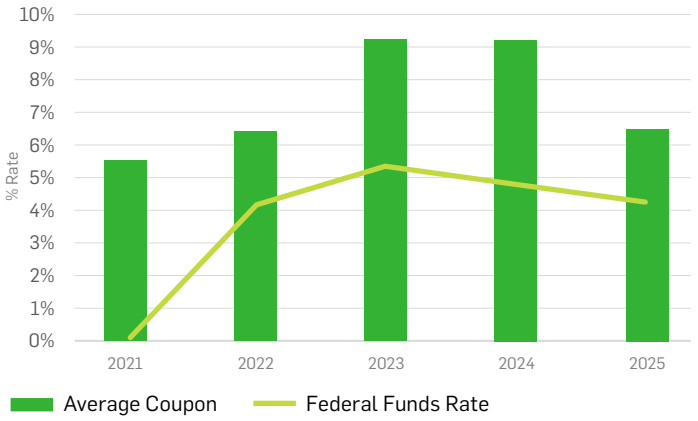
Continues on the following pages

This survey analyzes certain key transaction terms and trends of sponsor-backed PIPE transactions involving preferred or debt securities that signed in 2025 and that had an aggregate placement value of at least $100 million (and not the PIPE market generally).

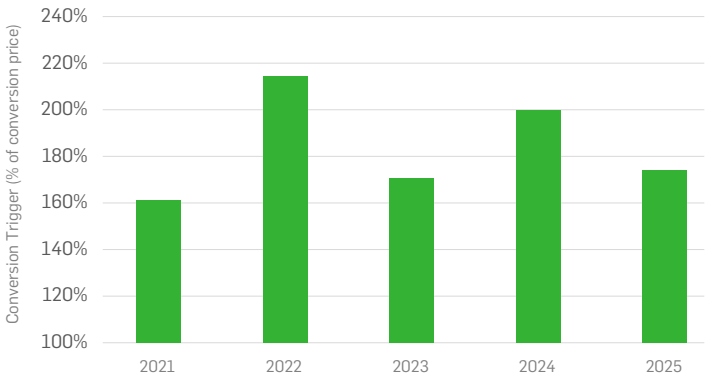
KEY TERM	2025 DEALS	2024 DEALS	2021-2023 DEALS	TRENDS / OBSERVATIONS
Security Type	6 deals comprised of 1 non-convertible preferred + warrants deal, 2 convertible preferred deals, and 3 convertible debt deals (1 of which included warrants).	5 deals comprised of 1 non-convertible preferred + warrants deal, 1 non-convertible debt deal, 1 convertible debt deal, and 2 convertible preferred deals (1 of which included warrants).	Predominantly convertible securities. 2021 was entirely convertible (preferred + debt); 2022 was mostly convertible (only 1 non-convertible preferred + warrants deal); 2023 also skewed toward convertible (mostly preferred), with 1 non-convertible debt deal and 1 non-convertible preferred + warrants deal.	Convertible securities continue to be the preferred security type in sponsor-backed PIPE transactions in recent years. This is not surprising, given the benefit convertible securities offer sponsors in preserving upside while providing downside protection.
Conversion Premium / Discount	Range: 6% to 37% premiums; no discounts. Aggregate Mean: 18.6%. Aggregate Median: 15%.	Range: 7.7% to 37.6% discounts; 9.9% to 32.8% premiums. Aggregate Mean: 26.8%. Aggregate Median: 32.8%.	Generally set at a premium, often in the teens to 30s and sometimes materially higher (up to 67% in 2021 and 62% in 2022); discounts were uncommon but did appear in isolated deals (1% in 2021, 16.7% in 2022, and 3% in 2023).	Compared with 2024's mix of premiums and discounts, 2025 reflected a shift towards more issuer-favorable conversion economics with premium-only conversion pricing. Since 2021, premiums have been increasingly more prevalent than discounts, culminating in 2025, which stands out as the first sampled year in which no sampled deal included a discount.
Dividend / Interest Rate	4%-14.5% per annum; the 5 convertible deals fell between 4% and 7%, while the sole non-convertible preferred deal had a 14.5% dividend.	8%-15% per annum across coupon-bearing deals including both convertible and non-convertible securities (with no dividend in 1 non-convertible preferred transaction).	0.25% to 13% per annum; some deals used floating-rate formulations (SOFR + 6%; SOFR + 12.5%).	Coupon levels on convertible instruments moved materially lower from 2024 to 2025. Coupon rates continued to generally track the direction of the Federal Reserve and the prevailing interest rate environment over the period. The 2021-2023 lookback likewise suggests that PIPE coupons remain sensitive to market conditions, issuer profile and deal structure. ❷
Payment Type	50% cash-or-PIK at issuer option; 50% cash only.	Mix of cash only, cash-or-PIK at issuer option, and 1 preferred that participated with common after stockholder approval.	Mix of cash only, PIK only, and issuer cash-or-PIK optionality.	The combined data shows that payment mechanics are often closely tied to issuer liquidity (fluctuating with broader market movement). Against that baseline, the 2025 50/50 split between cash-only and cash or PIK structures suggests somewhat more balanced negotiation dynamics than the more varied formulations seen in prior years, which may be a result of increased market stability permitting issuers to agree to cash only as opposed to times of market volatility where issuers may be strapped for cash and/or seeking to preserve cash, increasing issuer demand for PIK dividends.

② Average Coupon

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

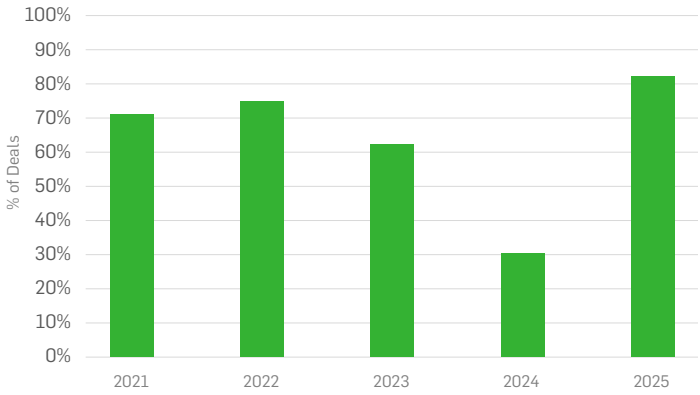


③ Issuer Conversion

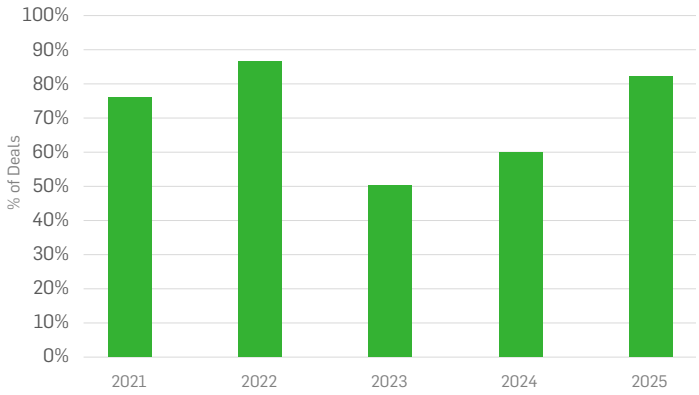


KEY TERM	2025 DEALS	2024 DEALS	2021-2023 DEALS	TRENDS / OBSERVATIONS
Term / Maturity	Preferred Securities: 100% perpetual. Debt Securities: fixed terms ranging from 3 years, 3 months to 7 years.	Preferred Securities: 100% perpetual. Debt Securities: 5-year fixed terms. Warrant: 5-year fixed terms.	Preferred Securities: 100% perpetual. Debt Securities: 3 to 10 year fixed terms.	The combined data shows that preferred securities continued to be perpetual, while debt securities continued to have fixed maturities. Debt securities' fixed terms have generally remained consistent over the past few years, with a slight overall shortening of term length.
Liquidation Preference	Debt deals generally provided principal plus accrued and unpaid interest; preferred deals generally provided issue price plus accrued and unpaid dividends, with 1 (of 2) convertible preferred deal using the greater of (i) the liquidation preference and (ii) the as-converted value.	Typically principal or issue price plus accrued and unpaid interest or dividends.	Typically principal or issue price plus accrued and unpaid interest or dividends; across 2022-2023 surveyed deals, a number of preferred deals had 'greater of liquidation preference or as-converted value' formulations.	The combined data shows liquidation preference to be driven primarily by security type and deal specifics. Debt instruments consistently tracked principal plus accrued amounts, while convertible preferred deals more often permitted investors to receive the greater of issue price + accrued dividends (down-side protection) and the as-converted value (upside protection).
Issuer Conversion ❸	Generally absent; 2 deals included issuer conversion rights at 150%-200% stock-price thresholds, with 1 right becoming available only after year 3.	Generally absent; 1 deal included issuer conversion rights after year 2 at a 200% stock-price threshold.	Present in a meaningful minority of deals, usually only after some period of time after issuance and only if issuer's stock traded materially above the conversion price (generally 130%-250% thresholds).	The right of an issuer to force conversion of the PIPE security has generally become less common across the surveyed deals over the past few years; however, when present, issuers typically have the right to force conversion after a period of time following issuance (2-3 years) if issuer's stock price meets the requisite performance threshold (130%-250%).

④ Mandatory Redemption (outside Change of Control)



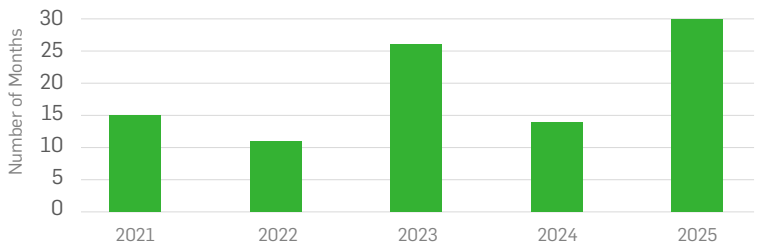
⑤ Investor Redemption



KEY TERM	2025 DEALS	2024 DEALS	2021-2023 DEALS	TRENDS / OBSERVATIONS
Mandatory Redemption (outside of Change of Control) ❹	Present in all but 1 of the 2025 deals. Triggers generally included liquidation or insolvency events, specified preferred defaults, non-ordinary-course asset sales, and bankruptcy-related events of default.	Uncommon in 2024: 1 debt deal required sweeps from asset sales, insurance / condemnation proceeds, debt issuances, extraordinary receipts, excess cash flow and amortization payments, and 1 convertible note accelerated upon specified events of default; the remaining deals had none.	Generally limited and deal-specific. Where present, triggers included bankruptcy or other events of default, failed transactions, asset-sale / casualty sweeps, scheduled maturity or mandatory redemption dates, and similar bespoke downside protections.	Mandatory redemption protections were markedly more prevalent in 2025 than in 2024, perhaps due to weaker public equity markets in recent years and the increasing cost of such capital leading issuers to turn to PIPE deals and thus more investor-favorable dynamics. Relative to the 2021-2023 baseline, which included more prevalent market instability, more commonly including bespoke and deal specific terms, 2025 reflected a more normalized, meaningful expansion of mandatory downside protections (via mandatory redemption).
Investor Redemption ❺	Present in all but 1 of the 2025 deals, typically upon a fundamental change (change of control), events of default, or after year 6-7.	Present in 6 of 10 deals, typically upon a fundamental change (change of control), events of default, or after year 5-7.	Typically present across 2021-2023 deals (4 of 8 in 2023, 7 of 8 in 2022 and 7 of 9 in 2021). This right most commonly triggered upon change-of control puts or event-of-default scenarios were included, with a subset of deals also giving holders put rights after a period of time (year 5-7).	Investor redemption rights remained a central feature in both 2024 and 2025, with no material year-over-year shift in the overall protection package. That remains broadly consistent with the 2021-2023 lookback, where investor puts were a common protection.

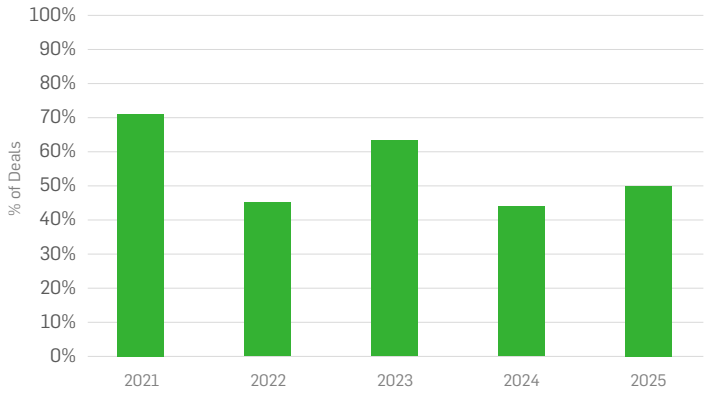
KEY TERM	2025 DEALS	2024 DEALS	2021-2023 DEALS	TRENDS / OBSERVATIONS
Board Seats	Only 2 of the 2025 deals granted board seats – 2 seats were granted in the non-convertible preferred deal and 3 seats were granted in a convertible preferred deal (43% ownership). The convertible debt deals (which had ~10%-13% ownership) and the 6%-ownership convertible preferred deals had no board representation.	Only 3 of the 2024 deals granted board seats – up to 4 seats were granted in the non-convertible preferred deal, 2 seats (stepping down to 1) in the convertible debt deal (34.5% ownership), and 1 seat was granted in the convertible preferred deal (20.6% ownership), plus 1 additional board observer right. The warrant-only deal and the non-convertible debt deal had no board seats.	Varied from no board seats to multiple board seats, often with observer rights. Where granted, board seat rights generally tracked ownership thresholds and were more common in larger or more control-oriented preferred investments.	The 2025 data supports the previously identified observation (from our prior surveys) that board representation tracks ownership stake and instrument type. While in prior years an approximate 5% ownership threshold was generally tied to a board seat, no board seats were granted in the 2025 convertible debt deals at approximately 10%-13% ownership or in the 6%-ownership convertible preferred deal. Despite the limited 2025 sample size, the data suggests that investor ownership alone does not determine board designation rights. While larger stakes are often associated with board representation, the mixed results indicate that other factors – such as instrument type and fiduciary considerations – also play a role.
Investor Consent Rights	Frequently included; protections centered on adverse charter amendments, senior or pari passu issuances, reorganizations, liquidation, debt incurrence, affiliate transactions, and amendments affecting payment, ranking, collateral, or conversion rights.	Frequently included; protections covered adverse charter amendments, senior or pari passu issuances, dividends or redemptions, debt incurrence, and other fundamental actions, with some deals requiring broader lender or unanimous-holder approvals for specified matters.	Frequently included across the 2021-2023 deals, covering adverse charter amendments, senior or pari passu issuances, dividends / redemptions, debt incurrence, M&A or other fundamental transactions, and affiliate transactions.	Across both 2024 and 2025, investor consent rights remained a core governance protection. The 2025 formulations appear especially detailed in debt deals, while preferred deals continued to focus on class-vote protections over capital structure and fundamental transactions.
Transfer Restrictions ❻	Transfer restrictions consisting of 2-3-year lock-ups, consent requirements for transfers to competitors, 5% holders, or activists.	6-12-month lock-ups or limited transfer restrictions.	Ranged from none or customary securities-law limitations to bespoke lock-ups of roughly 6 months to 3 years, often with restrictions on transfers to competitors, activists, large holders or other non-permitted transferees.	Transfer restrictions have generally become more prevalent over time. Compared to 2024, the 2025 surveyed deals generally included longer lock-up periods and more targeted restrictions on transfers.

⑥ Average Lockup Duration

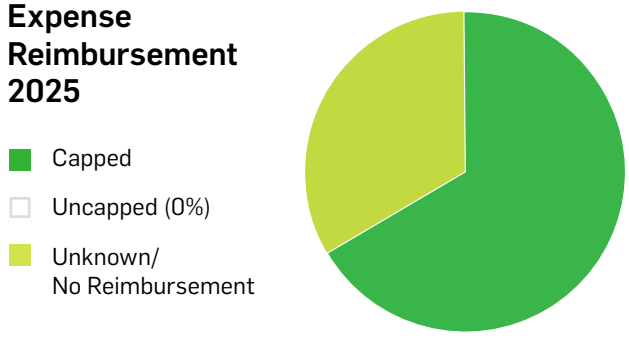


KEY TERM	2025 DEALS	2024 DEALS	2021-2023 DEALS	TRENDS / OBSERVATIONS
Standstill [7]	50% of deals included a standstill. In 1 deal, the restriction ran from 1 year after loss of board nomination rights; in the other, the restriction was deal specific and tied to a contemplated spin off transaction, running from 24 months post-spin or, absent a spin, 36 months after issuance.	Majority had no standstill; 1 deal included a maturity-linked standstill.	Mixed. Many deals had no standstill, but where included the restrictions were tailored to board rights, ownership thresholds, or transaction milestones and ranged from a few months to as long as 3 years.	The combined data shows no single market-standard standstill package; terms are often deal specific, although often tied to board seat designation rights and investor ownership. However, we suspect that the lower prevalence of standstills in 2024 may have been due to the issuers' capitalization (generally larger number of investors, who were more passive, decreasing the necessity behind such term's inclusion).
Investor Expense Reimbursement	Varied from none to capped up to $8M; 1 deal also included a 3% closing fee. [8]	Varied from none to uncapped; where capped, caps ranged from $400K to $750K.	Highly variable – from each side bearing its own costs to uncapped reimbursement, multi-million dollar caps, and occasional structuring, arrangement or similar transaction fees.	Expense reimbursement remained common in 2025, but highly negotiated and deal-specific. The 2021-2023 lookback underscores the same point: expense reimbursement has long been negotiated on a highly bespoke basis, with no durable market standard on caps or fees.

⑦ Standstills



⑧ Expense Reimbursement 2025



PARTNER PERSPECTIVES:
DEBTHOLDER COMMUNICATIONS STRATEGIES

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How debt market volatility is creating a new crisis communication scenario.

The recent rise of corporate distress, coupled with mounting refinancing pressures across leveraged sectors – has exposed a critical gap in traditional crisis planning: the absence of robust debtholder communications strategies. As the credit cycle turns, there have been numerous situations highlighting how creditors can move quickly at the first sign of distress to preserve value, pursue litigation or re-set terms. This often leaves boards with limited room to maneuver once a tipping point is reached. With normalizing interest rates and heightened economic uncertainty, debt stress has taken on a structural nature, and corporate stability now hinges as much on how an organization manages its lender relationships and capital structure as on its operating results.

Preparation can preempt panic

Avia Solutions Group's response to recent market pressures demonstrates the value of prepared crisis communications. When the aviation services conglomerate's 9.75% $300 million bond saw its price slide from the mid-90s to the mid-80s cents on the dollar following scrutiny of its SmartLynx Airlines Latvia transaction, the company moved quickly to regain control of the narrative.

Avia immediately characterized the negative coverage as a "smear campaign" built on "unsubstantiated and speculative accusations" and proactively scheduled a call with bondholders to address concerns directly. While controversy persisted around the €238 million in liabilities associated with the failed SmartLynx unit, Avia's swift communications response bought valuable time and space to address business challenges from a position of greater control. This case demonstrates how prepared communications strategies can help companies weather debt market volatility and maintain stakeholder confidence during periods of heightened scrutiny.

Recognizing the warning signs

Communications teams should monitor several key indicators that could be leading indicators of increased debt-related risks:

- **Trading signals:** Debt trading below 85 cents on the dollar, widening credit spreads compared to peers or unusual trading volumes.
- **Rating agency actions:** Negative outlooks, downgrades or placement on credit watch by rating agencies.
- **Covenant metrics:** Approaching or breaching financial maintenance covenants, particularly leverage or coverage ratios.
- **Market chatter:** Increased media speculation of liquidity issues, analyst questions about liquidity, refinancing timelines or capital structure during earnings calls.
- **Peer contagion:** Distress events at comparable companies that could trigger sector-wide scrutiny; and
- **Operational indicators:** Delayed supplier payments, executive departures or asset sale rumors.

The key is establishing monitoring systems that detect these signals early, before they cascade into broader market concerns.

Companies that wait for obvious distress signals have already lost control of the narrative.

How communicators experienced in distressed situations are fighting back

Given these evolving risks, communications professionals must expand their crisis planning to encompass debt-related scenarios.

Source: O'Dwyer's, Jan 2026

"The winners in this environment will be those who build integrated threat detection systems, invest in early warning capabilities and align their communications strategies with real-time risk intelligence."

To prepare for these emerging risks, management teams should:

- **Develop early warning systems:** Real-time monitoring of financial/operational flashpoints and activist signals. In our view, the most effective early warning system would extend visibility into the often opaque debt markets, identifying when opportunistic or distressed investors begin building positions in a company's debt, or when the debt trades at levels that indicate that there may be some financial stress or distress at the company.
- **Create debtholder-specific messaging frameworks:** Traditional stakeholder communications often overlook the unique concerns and motivations of debt investors. Develop messaging that addresses liquidity, covenant compliance, collateral protection and recovery scenarios in language that resonates with sophisticated credit investors.
- **Establish direct creditor communication channels:** Build relationships with key lenders and bondholders before a crisis strikes. Regular communication during stable periods creates trust and credibility that proves invaluable during periods of stress.
- **Integrate debt scenarios into crisis planning:** Expand scenario planning to include debt-related triggers such as covenant breaches, rating downgrades, refinancing challenges and peer company failures. Each scenario should include pre-drafted messaging, stakeholder mapping and communication timelines.
- **Assemble cross-functional crisis teams:** Ensure legal, finance, operations and communications teams operate as unified units with clear protocols for debt-related crises. Break down silos that can slow response times when markets are moving quickly.
- **Prepare for rapid response:** Debt markets can move faster than traditional media cycles. Develop capabilities for same-day response to trading volatility, rating actions or negative coverage that could impact debt valuations.

The strategic imperative

For communications professionals, this represents both a challenge and an opportunity to demonstrate strategic value by protecting enterprise value through effective stakeholder communications and engagement.

Companies with debt on their balance sheets must prepare for a new reality where debt market dynamics can determine corporate fate as quickly as any operational crisis.

Developing debtholder communications strategies that can be rapidly deployed when unusual trading activity emerges in publicly traded debt, rating agencies issue downgrades or even a peer company experiences debt issues.

The winners in this environment will be those who build integrated threat detection systems, invest in early warning capabilities and align their communications strategies with real-time risk intelligence. Companies that continue to treat debt communications as a technical funding detail rather than a core crisis risk will find themselves reacting to headlines instead of shaping them.

Source: O'Dwyer's, Jan 2026

2025 DEAL STRUCTURES AND SPONSOR DPI INSIGHTS

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DEAL STRUCTURE

	Leverage	Sponsor Upside Dilution	SUMMARY	MARKET EXAMPLES	TRENDS AND INSIGHTS
Price / Valuation Alignment	✗	✓	**Earn-out / milestone payments:** deferred purchase price paid based on post-close performance or regulatory/ sales milestones (contractual deferred consideration)	**Johnson & Johnson's Acquisition of Auris Health:** Former Auris stockholders receive contingent cash consideration upon receipt of certain administrative approvals	Earnouts are used in ~10% of Weil matters with the typical length ranging from 12-36 months. Metrics skew revenue first, EBITDA second; non-financial/ combination metrics appear but are a minority. We've seen a gentle shortening of earnout periods in 2025 versus 2023 – 2024.
	✗	✓	**Contingent value right ("CVR"):** CVRs have historically been utilized in certain public company lifesciences deals, and are typically used to address value uncertainty and resulting valuation gaps (generally around pending drug approvals)	**Hologic take-private (Blackstone + TPG):** $76/ share cash + a non-tradable CVR up to $3/share, paid based on revenue goals for the Breast Health business in FY 2026 and FY 2027.	2025 has seen a general uptick in CVRs with 27 completed or pending transactions that include a CVR, compared to 34 total in the prior 3 years, according to Deal Point Data. Largely a public/biotech tool to bridge clinical/regulatory risk; not common in PE buyouts.
	✓	✗	**Whole Business Securitizations ("WBS"):** a securitization-style financing where debt is issued against the operating business's core, recurring cashflows (often franchise royalties and related revenues)	**Roark's acquisition of Subway:** Subway's WBS to help fund Roark's acquisition of Subway announced in 2024 is widely considered the largest WBS on record.	Many large franchisors have shifted into WBS structures allowing for not only cheaper debt than many alternatives but also debt that is portable. A seller's ability to deliver cheap debt to a buyer allows a buyer to pay a larger multiple and the seller to capture the value of that spread. WBS structures had strong growth in 2024 and 2025 continued that trend.
Staged Ownership	✗	✓	**Staged control with option mechanics ("put/call-style" economics):** strategic acquires a portion of the equity at initial closing plus a future option to acquire remaining equity at a later date (reduces today's cash and sets a defined runway to control)	**AvidXchange take-private (TPG + Corpay):** TPG acquired a majority interest, while Corpay invested about $550M for a ~34% stake with an option to buy the remaining equity of the company in 2028.	Generally, "buy now, buy later" or put options are still not largely used in the market. Parties use "buy now, buy later" options in order to properly determine valuations and purchase price multiples by gathering more data and ensuring certain targets are achieved.
Financing	✓	✗	**Private credit unitranche + delayed draw term loan ("DDTL"):** one-stop execution; delayed-draw provides committed future liquidity for add-ons/ capex	**Berkshire Partners → Triumvirate Environmental:** financing included unitranche term loan + delayed draw term loan ("DDTL") + revolver arranged by OHA.	Roughly one third of Weil's debt financed deals included a DDTL type feature (proxied by a stated commitment period and/or ticking fee). That is slightly lower than the high 30% /low 40% we saw in 2023–2024, but meaningfully higher than pre 2023.

SPONSOR DRIVEN DPI

WEIL DealVision 360

	Leverage	Sponsor Upside Dilution	SUMMARY	MARKET EXAMPLES	TRENDS AND INSIGHTS
GP-led Secondaries (Continuation Vehicles / Single Asset or Multi-Asset CVs)	⊗	⊗	The sponsor moves one (or a package of) portfolio company interests from an older fund into a new vehicle managed by the same GP, funded by secondary buyers, GP rollover and LPs electing rollover. Existing LPs typically get an election: to cash out (driving DPI) or roll into the new vehicle.	**New Mountain Capital / Real Chemistry:** ~$3.1B single-asset continuation vehicle (asset moved out of New Mountain Partners V).	In 2025, secondary deals led by general partners jumped about 50% to $106 billion in total value ($71 billion in 2024), with continuation funds accounting for much of the volume of those deals (via Bloomberg). Total secondary market transaction value (both GP- and LP-led) reached $226 billion for the first time.
Strip Sales	⊗	⊗	The sponsor moves a partial interest in one or more portfolio companies from an existing fund into a new vehicle managed by the same GP, funded by secondary buyers.	**NEA** sold a strip of interests in 11 portcos to a continuation fund.[1]	Asset "strip" transactions rose meaningfully in 2024 versus 2021–2022 and remain elevated on a 2023–2025 look, even with partial-year 2025 moderation.
Dividend Recapitalizations (debt-funded dividends)	✓	⊗	The portfolio company raises new debt (loans and/or high-yield bonds) or issues debt-like preferred equity and uses proceeds to pay a dividend up to the sponsor/fund, enabling cash distributions without selling the company.	**Froneri (PAI Partners + Nestlé-owned ice cream JV; private):** ~€3.9B debt package to fund a ~€4.4B shareholder payout.	Weil saw a clear uptick in dividend recap activity starting late 2023 and continuing through 2024–2025, but it remains a minority tool versus GP led secondary transactions.
Minority stake sell-downs / minority recaps at the portfolio-company level	⊗	✓	The sponsor sells a minority stake in a portfolio company (often to a growth investor, another sponsor, or a strategic partner), generating cash proceeds while retaining control and continued upside proceeds can be used to distribute cash and/or de-risk.	**Blackstone / Liftoff:** Blackstone-sponsor funds agreed to sell a minority stake in Liftoff to General Atlantic while remaining majority owner.	Minority sell-downs/recaps are a potential alternative to single-asset continuation vehicles, particularly where the asset is still compounding and the sponsor wants liquidity without a full "reset" into a CV.
Preferred equity / "portfolio finance" (structured liquidity against PE holdings)	✓	⊗	Instead of selling assets (or borrowing via a NAV loan), an LP/fund (sometimes alongside the GP) raises preferred equity/structured capital secured by distributions/value in a portfolio. This can accelerate liquidity while preserving upside (with a negotiated return profile to the financing provider).	**Dawson / Thrivent:** reported $2B+ equity / portfolio financing transaction tied to a portfolio of private equity interests.	There was an increase in issuing preferred equity with PIK dividends to minimize the liquidity risk associated with cash dividend payments. As debt markets loosened and execution risk fell, the prevalence of cash dividends or hybrid solutions rose.

NAVIGATING AB 692: CALIFORNIA'S NEW RESTRICTIONS ON "STAY-OR-PAY" ARRANGEMENTS

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SMART SUMMARY

- AB 692 bans most "stay-or-pay" arrangements, voiding non-compliant agreements and exposing employers to financial penalties.
- AB 692 also complicates common repayment arrangements, such as sign-on or relocation bonuses.
- Delaying payment until after the retention period may satisfy the same commercial goals.

Overview

Effective January 1, 2026, California enacted AB 692, which prohibits employment contracts or provisions that:

- Require a worker to repay a debt if the work relationship terminates;
- Authorize debt collection or end forbearance if the work relationship terminates; or
- Impose any "penalty, fee, or cost" on a worker if the work relationship terminates.

Consequences of Non-Compliance

Non-compliant contracts are void and unenforceable, eliminating the employer's ability to seek repayment from the worker. Workers may also sue for the greater of actual damages or $5,000 per violation, plus injunctive relief, and attorney fees and costs.

Narrow Exceptions under AB 692

AB 692 provides for certain exceptions, the broadest of which is specified below. This exception wouldn't be satisfied in connection with a typical repayment arrangement, so specific structuring would be required.

Certain Discretionary Sign-On Bonus Payments

- Repayment obligation is set forth in an agreement separate from the employment contract;
- The worker is notified of their right to consult an attorney at least 5 business days before signing;
- Repayment obligation doesn't extend beyond 2 years from the payment date;
- Repayment is prorated based on the termination date and doesn't accrue interest;
- The worker may defer repayment until the end of the retention period; and
- Repayment is triggered only by voluntary resignation or termination for misconduct.

Harmonizing AB 692

Employers must navigate federal and state employment and tax laws when structuring repayment arrangements. While AB 692 requires offering an option to defer a sign-on bonus until the end of the retention period, doing so may run afoul of certain tax laws. Therefore, we recommend having employment and compensation counsel review repayment arrangements.

To side-step AB 692, employers may also consider structuring arrangements to defer the payment obligation until after the applicable retention period. Similarly, we recommend having compensation counsel review to confirm no tax or other issues.

Bottom Line

California's AB 692 reflects the latest trend of worker mobility. While AB 692 is the most restrictive, other states have also passed laws limiting "stay-or-pay" arrangements. With this broader shift against repayment obligations, employers should regularly monitor state laws and review employment contracts accordingly.

AN AI CHECKUP FOR 2026: BEST PRACTICES FOR THE NEXT STAGE

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SMART SUMMARY

- While AI adoption accelerates, corporate counsel are challenged with navigating a fast-moving regulatory environment and data governance underpins nearly every legal, operational, and commercial risk.
- Training data provenance, enterprise data use, and downstream rights allocation remain central questions.

Overview

ChatGPT's 2022 release to the public marked a cultural and commercial inflection point for artificial intelligence ("**AI**"). Generative AI ("**Gen AI**") became a mainstream tool for individuals and organizations almost overnight. In 2026, AI is an important tool and, increasingly, a strategic differentiator.

In parallel, the legal landscape surrounding AI shifted sharply. What had been a largely unregulated innovation space quickly evolved into a fragmented mix of hard-law requirements, soft-law frameworks, agency guidance, and caselaw worldwide. For corporate counsel, the challenge now lies in navigating a fast-moving regulatory environment while AI adoption accelerates.

The state of play in 2025

The release of ChatGPT triggered an industry-wide race to develop and commercialize increasingly capable Gen AI models. 2023 launched a development period defined largely by model scaling, benchmark performance, and the pursuit of general-purpose capability. This "model-size arms race" resulted in numerous frontier-model releases and an unexpected disruption from DeepSeek, whose DeepSeek-R1 model demonstrated that highly efficient architecture could compete with compute-intensive approaches.

In 2025, developments shifted focus toward the infrastructure required to sustain AI progress, including training data supply, synthetic-data strategies, energy-intensive data centers, and advanced-chip availability. Vertical integration has accelerated, with model developers, cloud providers, and governments aligning through long-term contracts, capital investment, and industrial policy.

At the same time, organizations increasingly embraced smaller, task-specific models and fine-tuned variants that offer more predictable performance, cost-efficiency, and governance control. Interest in agentic AI grew as well, particularly where autonomous systems can be deployed within controlled enterprise environments. The resulting ecosystem resembles a bifurcated market with a few global platform providers at the top, and a growing set of domain-specific AI firms offering vertically targeted solutions.

Beyond these technical developments, 2025 marked a rapid shift in organization attitudes. Initial resistance has given way to widespread deployment. This adoption curve has legal implications: new data flows, new diligence requirements, new vendor relationships, and an expanded risk surface that must be reflected in contracts, policies, and trainings.

Regulatory frameworks: A fragmented global landscape

In 2023 and into early 2024, regulators largely relied on guidance documents, voluntary commitments, and nonbinding risk frameworks. By mid-2024, however, numerous jurisdictions began moving toward formal regulatory architectures, most notably the EU AI Act, the world's first comprehensive horizontal AI regulation. The EU AI Act takes a risk-based approach, with stringent obligations for high-risk systems, transparency requirements for GenAI, and outright bans on certain uses. Its phased implementation will continue through 2026, with material compliance obligations taking effect during that period.

In the U.S., the Biden Administration's 2023 Executive Order on AI directed federal agencies to develop standards for safety testing, protections against bias, watermarking, cybersecurity, and procurement. The Trump Administration revoked the prior Executive Order and signaled a more deregulatory, innovation-focused federal posture. Further, the December 11, 2025, Executive Order Ensuring a National Policy Framework for Artificial Intelligence, has significantly restricted individual states' ability to regulate AI.

AI policy continues to be shaped by perceived tension between risk mitigation and innovation. The result is a fragmented global landscape with overlapping, and sometimes inconsistent, regulatory regimes.

Building an effective governance program

Practically, most organizations fall into one (or both) of two buckets: (1) organizations that build and develop AI systems; and (2) organizations that deploy third-party AI systems.

For organizations that build or develop AI systems, governance programs increasingly resemble formalized technology-risk frameworks. For organizations that deploy third-party

AI systems, effective governance centers on rigorous contractual and operational oversight of third-party providers rather than technical control. For both categories, data governance underpins nearly every legal, operational, and commercial risk. Training data provenance, enterprise data use, and downstream rights allocation remain central questions. In practice, governance often turns on what the relevant contracts permit or prohibit with respect to data.

What to expect in 2026

On the regulatory front, 2026 will bring key compliance deadlines. The EU AI Act will continue its phased rollout, imposing additional obligations on high-risk systems and general-purpose model providers. In the U.S., agencies are expected to clarify the status of rulemaking efforts initiated under the prior administration, while it remains to be seen whether states will continue advancing AI accountability and automated decision-making statutes. International commitments arising from multilateral AI safety dialogues are also slated for review, potentially leading to new testing standards or reporting expectations. Together, these developments point to a year of heightened enforcement readiness and compliance scrutiny.

AI-related litigation is also likely to intensify, as courts confront questions about data scraping, copyright, and model training practices. Ongoing cases will shape licensing markets, indemnity structures, and risk allocation between developers and enterprise customers.

Conclusion

AI regulation and risk governance have evolved from niche concerns to board-level priorities in under three years and the pace of change shows no signs of slowing. It is imperative for corporate attorneys to stay ahead of the evolving legal landscape, implement governance programs that can withstand scrutiny, and future-proof organizational practices and contracts. Organizations that succeed will be those that treat AI not only as an opportunity, but as a domain requiring disciplined legal, operational, and contractual stewardship.

On March 17, Weil announced a leadership succession plan as Executive Partner **Barry M. Wolf** prepares to retire at the end of 2027 after 16 years leading the firm. **Ramona Y. Nee**, currently Co-Managing Partner, Co-Head of U.S. Private Equity, and Co-Managing Partner of the Boston office, will succeed him as Executive Partner. In this role, she will oversee the firm's strategy, client relationships, financial performance, and core management functions. Barry will remain Chair of the Management Committee until his retirement, then pass that role to Ramona, while dedicating 2027 to ensuring a smooth transition.

Jonathon G. Soler, currently Co-Managing Partner, will become sole Managing Partner, responsible for firm operations and working with the Executive Director on administrative and strategic priorities, while continuing his private funds practice. Ramona and Jonathon will assume their new roles on January 1, 2027, with a year-long overlap with Barry to support a coordinated transition and allow Ramona to shift most of her client responsibilities.

READ THE FULL PRESS RELEASE ON WEIL.COM →

Inside the Deal

Managing Risk, Empowering Teams, and Navigating the AI Frontier

Inside the Deal:

Managing Risk, Empowering Teams, and Navigating the AI Frontier

Chris Machera

When Natasha Gopaul started her career in law, she found herself in the middle of one of the most significant financial events in modern history – the Lehman Brothers bankruptcy. From those intense early days, she built a foundational career at Weil before taking on a newly created role at Blackstone. Today, as a senior leader at the firm, she oversees a global team and navigates an increasingly complex geopolitical and macroeconomic landscape. We sat down with Natasha to discuss her journey, her approach to leadership, the evolving expectations for outside counsel, and the critical trends – from AI to the perpetuals world – shaping the industry in 2026.

Q: Your path into corporate law and private equity had some incredibly unique early milestones. How did you find your way into private equity?

A: I think I've always been drawn to solving complex problems and taking theoretical concepts to drive highly practical situations. My actual introduction to corporate America was certainly memorable; I did an internship at Lehman Brothers, which happened to be the summer they went bankrupt. During that program, I spent time working in both the investment banking division and regulatory group, which gave me an incredible first-hand look at the realities of the financial system.

Interestingly, that was also where I was first introduced to several Weil partners.

Q: What ultimately drew you to Weil and the fast-paced M&A and Private Equity space?

A: When I was interviewing with firms, I knew I wanted a global platform and the opportunity to work with high-caliber clients. But what truly made Weil stand out to me was its distinct culture. It wasn't a monolithic or cookie-cutter environment; I was drawn to the diverse and dynamic personalities across the firm.

As for choosing private equity, I originally thought I might pursue international arbitration. However, I soon realized my personality was much better suited to transactional work. I loved the concept that you could sit across a negotiating table, work through complex issues, and ultimately leave the room with both sides feeling like winners. It's a very motivating, solution-oriented way to practice law.

Q: You've been at Blackstone during a period of extraordinary expansion. What has that evolution looked like from the inside, and how did you find your voice in such a high-stakes environment?

A: When I first joined Blackstone to take on a newly created role, I was explicitly told that my job would likely look completely different in two to five years. They were absolutely right. The firm has grown from roughly $340 billion in assets under management when I started to $1.3 trillion today. Yet, despite that massive scaling, the core culture has remained consistent. The tone has been set clearly at the top by leaders like Steve Schwarzman, Jon Gray and John Finley. At Blackstone, the legal, compliance and risk functions aren't treated as an afterthought; they genuinely have a seat at the table from day one.

As for finding my voice, I give a lot of credit to my parents. Growing up, they actively encouraged debate in our house, but there was a strict condition: you had to know the facts, pay attention to the details, and formulate a clear point of view. You couldn't just argue for the sake of arguing. That upbringing was the perfect training ground for Blackstone's investment committees, where everyone is expected to bring a discerning perspective, contribute to the discussion, and advocate for their views while embracing intellectually rigorous debates.

Q: Managing teams across the globe requires a specific kind of leadership. How do you approach team building and ensure everyone operates at Blackstone's level of excellence?

A: Establishing a culture of excellence is foundational. I hold my team to incredibly high expectations, but I apply those exact same expectations to myself as a leader.

When you're managing teams globally – whether they sit in London, Mumbai, Tokyo, or New York – you quickly learn that unspoken communication is just as vital as what is communicated over a Zoom screen. I make it a priority to travel and see my teams in person, to understand them in their own element and grasp what they are dealing with on the ground. Creating a connected global network where information and best practices flow seamlessly across regions is critical. People need to feel empowered to do their jobs and know that they have a voice.

Q: From your vantage point as a client handling some of the market's most complex transactions, what separates an outstanding private equity lawyer from a merely "good" one? Are there common unforced errors you see?

A: The most outstanding lawyers do their homework long before the deal starts. They take the time to deeply understand our institution, our internal processes, the specific stakeholders involved, and, most importantly, the core investment thesis of the transaction.

A merely good lawyer might spot a risk and simply tell you "no" or focus entirely on the downside. An outstanding lawyer identifies that same risk, but then works creatively to offer a viable alternative avenue to get the deal done while appropriately protecting the firm.

In terms of unforced errors, the biggest one is not being up front. Trying to wash over a problem for short-term gain inevitably leads to long-term pain. Building trust means you have to be willing to deliver bad news clearly and early, and not just focus on one transaction but on the health of the long-term relationship.

Q: As 2026 has gotten underway, the macro environment remains incredibly dynamic. What are the major trends and focus areas you are watching most closely?

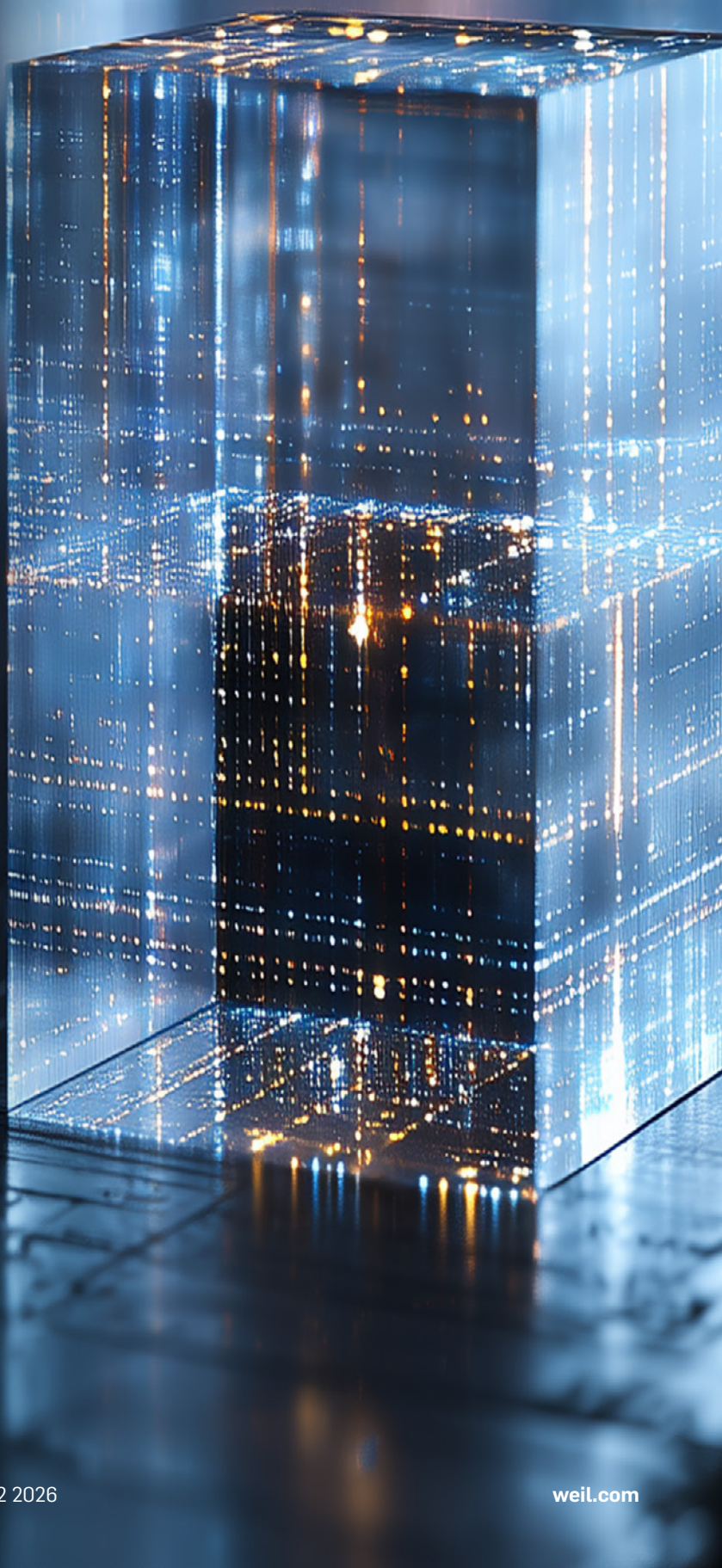
A: There are a few major themes dominating our focus. First, navigating the ongoing macroeconomic and geopolitical environment requires us to be incredibly nimble. We learned a lot during COVID about the importance of having robust processes in place. Today, we approach risk management as the flip side of opportunity management; if you have the right processes, you can actually seize opportunities when disruptions occur.

Second is the massive paradigm shift around AI. We are evaluating the AI ecosystem deeply, both to understand the disruption risks to various industries and to find ways to leverage the technology internally for productivity and efficiency.

Third, we are closely tracking the expansion of the "perpetuals world" and the ongoing shift of alternative assets becoming more accessible to individual investors, which opens up new opportunities.

Finally, within the legal industry itself, we are seeing fascinating shifts, such as law firms becoming increasingly interested in private capital. I also believe we could soon see the emergence of the "native AI law firm," which could fundamentally change how legal services are structured and delivered.

The Data Center Special Issue



From Dirt to Exit: A Roadmap Through the Data Center Lifecycle

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SMART SUMMARY

- Data centers are the defining infrastructure asset class of the decade, but the investment lifecycle from raw land to stabilized exit is longer, more capital-intensive, and more legally complex than the headline opportunity suggests.
- Power, not real estate, is the binding constraint. Interconnection queues now average 4–5 years nationally and 7+ in high-demand markets, and that timeline governs virtually every other decision in the development stack.
- Creative structuring matters at every stage: from site control and power procurement, through construction finance and downside protection, to pre-leased stabilization and eventual exit. Sponsors who treat this as a "build and lease" play will get outcompeted, or caught offside.
- A wave of stabilized data center assets is expected to reach the market beginning in 2027 as construction loans mature and early development platforms seek liquidity, creating opportunities for core and core-plus capital, and potential pricing dislocation for the unprepared.
- At every phase, the sponsors who build restructuring-aware protections into the deal, not as a distress signal, but as institutional-grade planning, are the ones best positioned to weather downside risks in a buildout cycle this large.

PRELUDE

Somewhere in central Texas, a rancher is sitting on 500 acres that were worth $30,000 an acre two years ago. Today, a broker has told him the land is worth north of $400,000 an acre, if the power gets there. That "if" is doing a lot of work.

The data center buildout is the largest single-asset-class capital deployment in the history of private equity. In 2025 alone, PE-backed transactions in the space exceeded $69 billion globally, with private equity accounting for roughly 84% of total deal value. Hyperscalers have announced approximately $710 billion in combined 2026 capital expenditures. North American vacancy stands at approximately 1%. Yet despite the influx of capital, investors who do not fully understand the investment lifecycle of a data center, from initial site selection to the moment a stabilized facility trades to a long-term holder, risk mispricing timelines and costs, leading to delayed deployments, stranded capital, or impaired returns.

This article is a field guide to that lifecycle. Not a textbook. Not a policy paper. A map of where the risk sits, where the value inflects, where the legal and structural decisions can make or break the investment, and, at each stage, what prudent sponsors are doing now to protect against the scenarios that nobody wants to talk about at the closing dinner.

FOLLOW THE MEGAWATT:
The Data Center Investment Lifecycle

PHASE 1
RAW LAND

INVESTOR PROFILE:
Opportunistic / Land speculators / Hyperscaler land-bankers

PRIMARY RISK:
Optionality risk – power may never arrive

TYPICAL HOLD: 6-18 months

23% – YoY land price increase for 50+ acre DC parcels

DOWNSIDE SCENARIO:
Moratorium risk: $100B in projects blocked or delayed by local opposition

PHASE 2
POWERED LAND

INVESTOR PROFILE:
Specialist brokers / Developer platforms / Infrastructure funds

PRIMARY RISK:
Queue risk – 70%+ of interconnection applications are withdrawn

TYPICAL HOLD: 12-36 months

5 YEARS – median U.S. interconnection queue wait time

DOWNSIDE SCENARIO:
PPA deposits can reach $800M+ in letters of credit

PHASE 3
CONSTRUCTION & FIT-OUT

INVESTOR PROFILE:
Developer platforms / PE development funds / Programmatic JVs

PRIMARY RISK:
Cost overruns, supply chain constraints, talent scarcity, timeline slippage

TYPICAL HOLD: 2-5 years

$987/SQ FT – construction costs up 50% YoY

DOWNSIDE SCENARIO:
Switchgear +50%, transformers +44%, generators +45% since 2021

PHASE 4
PRE-LEASING & STABILIZATION

INVESTOR PROFILE:
Developer/operator (hold or prepare for exit)

PRIMARY RISK:
Tenant concentration, technology obsolescence

TYPICAL HOLD: Concurrent with construction through stabilization

~1% – North American data center vacancy rate

DOWNSIDE SCENARIO:
Leases of 15-30 years may not survive a chip architecture shift

PHASE 5
EXIT / RECAPITALIZATION

INVESTOR PROFILE:
Core / Core-plus / SWFs / Pension / Infrastructure funds

PRIMARY RISK:
Pricing dislocation, cap rate volatility, forced-seller dynamics

TYPICAL HOLD: Long-term (10+ years for terminal buyers)

2027 – expected wave of stabilized assets reaching market

DOWNSIDE SCENARIO:
Bid-ask spread between development returns and core yields is unresolved

CAPITAL INTENSITY BAR
Total Capital Deployed per Megawatt

Land: minimal ($/acre)	Powered Land: moderate (land + queue + deposits)	$10-20M per MW (real estate only)	$25-30M per MW (including tenant computing infrastructure)	Exit: Full platform value

Source: Weil Private Equity DealVision360, CBRE, JLL, S&P, PitchBook, Turner & Townsend

PHASE 1:
DIRT AND DREAMS, LAND ORIGINATION AND SITE CONTROL

Every data center starts as a real estate bet, and most of those bets begin with two questions: is the land near enough to end users (or fiber infrastructure) to manage latency, and can you get power to it before 2030?

Latency, the time it takes data to travel, is the reason the D.C. metro area became the world's largest data center market. Established fiber networks and transatlantic undersea cable landings gave Northern Virginia a structural advantage that compounded over decades. But the AI training workloads that are driving the current surge are less latency-sensitive than traditional cloud computing; a model can train for months in West Texas as easily as in Ashburn. That distinction is reshaping the geographic map of data center development, pushing activity into frontier markets where land is cheap and power is (relatively) available.

What is not cheap anymore is the land itself, the moment a data center use case enters the picture. Average U.S. data center land prices for parcels of 50 acres or more rose 23% from 2023 to 2024 alone, and the average acquired parcel has ballooned to 224 acres, a 144% increase since 2022. In Salt Lake County, parcels that traded at $50,000 an acre are approaching $400,000. In San Antonio, ranchland has seen 10x increases when earmarked for data center use.

What's driving the repricing isn't just demand, it's information asymmetry collapsing. Real estate communities are tight-knit. One landowner sells a parcel to a data center developer at a premium, tells three friends at the country club, and suddenly every adjacent plot has a new price expectation. Sponsors entering the land market today are not buying into a secret; they are buying into a well-advertised arms race.

Structurally, site control at this stage is often accomplished through options, ground leases, or land-bank strategies. Hyperscalers, including AWS, Microsoft, Google, Meta, Apple, Oracle, are executing global land-banking campaigns to secure capacity years ahead of need, and they account for over 60% of data center land acquisitions worldwide. For sponsors, the question is whether to compete for land directly or back developers and operators who already have site control.

PHASE 1:
WHAT CAN GO WRONG
AND WHAT TO DO ABOUT IT

The land stage looks low-risk because the capital outlay is relatively modest. But the risk is real: you overpay for acreage on the assumption that power will materialize, and the interconnection timeline slips by three years, or a local government enacts a moratorium. As of mid-2025, roughly $100 billion of data center projects had been blocked or delayed by community opposition. Household electricity rates rose 13% nationally in 2025, and 70% of places with rising rates were within 50 miles of significant data center activity. That correlation is not lost on voters or local officials. In fact, Maine could become the first state in the U.S. to enact a moratorium on data center buildout (20 MW and above) until November 2027, to assess impact on environment and the grid.

Protective measures: Structure land acquisitions with option agreements that include milestone-based exercise triggers tied to power and entitlement milestones, so capital is not fully committed before the regulatory and utility picture clarifies. Build in assignment and transfer rights that allow the position to be flipped if the development thesis changes. Conduct zoning and community-sentiment diligence with the same rigor you'd apply to an environmental Phase I, talk to local officials, review pending legislation, attend a planning board meeting. And if you're aggregating parcels, stagger your commitments rather than going all-in on a single site before the power path is confirmed.

PHASE 2:
THE POWER PROBLEM

If Phase 1 is a real estate play, Phase 2 is an energy play, and it's where more data center investments stall, reprice, or die than at any other stage.

The numbers tell the story. Median interconnection wait times in the U.S. now approach five years, more than double what they were before 2008. In Virginia, the most active market, Dominion Energy has warned that new interconnections could take as long as 7 years. Of all capacity that applied for interconnection between 2000 and 2019, 77% was eventually withdrawn and only 13% had reached commercial operation by end of 2024. The system was designed for extending power lines to new subdivisions, not for processing dozens of 100+ MW service requests simultaneously.

Against this backdrop, a new asset class has emerged: powered land. Brokers secure a queue position, negotiate preliminary utility commitments, and flip the package, land plus queue position, at multiples of the original land cost, often before a power purchase agreement is signed and well-before the massive PPA deposits (think $800 million letters of credit) are posted. JLL now has roughly 100 people working on powered-land transactions. CBRE has deployed a meaningful share of its 6,000-person global data center team to the same asset type.

See *Powered Land 101* on page 38 for more perspective.

For sponsors, the power question creates a three-way decision tree. The first option is to buy powered land and pay the premium for an existing queue position or utility commitment – speed costs money, often a lot of it. The second is to take interconnection risk and wait in line, underwriting carrying costs. Most institutional tenants want grid power, making this the most commercially conventional path when it works. The third is to bridge with behind-the-meter generation and hybrid solutions – natural gas, solar, battery storage or hybrids – and treat interconnection as a future event rather than a precondition. Repurposed sites with legacy power infrastructure are particularly attractive here. In Texas, Senate Bill 6 (signed June 2025) has sharpened this calculus further: the Electric Reliability Council of Texas (ERCOT) can effectively curtail any new large load above 75 MW during grid emergencies, pushing operators toward permanent behind-the-meter capacity rather than a temporary fix.

At the hyperscale end, a fourth path is quickly emerging – purpose-built campuses designed to run entirely off-grid on dedicated natural gas supply. It is not a simple solution. Gas turbines ramp slowly and cannot absorb the millisecond-level power swings that AI training generates: as GPUs cycle through a training run, instantaneous draws can surge or collapse by 30 to 60 percent within milliseconds. Without a substantial battery buffer between the turbines and the load, the generators trip or sustain damage. That buffer, along with the switchgear and power conditioning it requires, runs into the hundreds of millions of dollars before a single rack is lit. When hyperscalers are nonetheless willing to bear that cost and complexity to escape the queue, the power problem has moved from inconvenient to structural.

Whoever gets power first, wins.

See *Powering Up: The Energy Constraint Reshaping Infrastructure Investment* on page 35 for a deeper dive on powering up data centers.

PHASE 3:
CONSTRUCTION AT SPEED AND SCALE

A data center shell can go up in 12–18 months. A fully fitted, powered, and connected facility, especially one with an on-site substation, is more like three to five years from shovel to handover, and for campus-scale developments, where buildings come online in phases over many years, the timeline stretches further still. The longer the buildout, the more exposure a sponsor carries to cost escalation, equipment lead times, tenant delivery risk and financing pressure, often simultaneously. That is where construction execution risk lives.

Cost has escalated sharply. The standard facility now builds at $10–12 million per MW of critical load, with AI-optimized facilities (higher power density, liquid cooling) pushing past $20 million per MW. Per-square-foot construction costs have risen nearly 50% over the past year, approaching $1,000 per square foot. Mechanical, electrical, and plumbing systems consume 40–50% of the budget, and equipment costs remain deeply inflated: switchgear prices are up 50% since late 2021, transformers 44%, generators 45%. Lead times for critical long-lead items, switchgear, transformers, uninterruptable power systems (UPS), can run 12 to 18 months or more, which means procurement decisions must be

made well before financing is closed and often before tenants are signed. Getting that timing wrong adds cost, delays, and capital commitment risk simultaneously.

The talent bottleneck is real and underappreciated. The market needs specialized electricians, MEP engineers, fire safety installers, and commissioning engineers at a scale the industry has never required before. Good data center developers, the ones with the staff, relationships, and track record to deliver on time and to spec, are hard to find, and the quality gap can show in economics if the facility does not function reliably. On a

PHASE 2:

WHAT CAN GO WRONG AND WHAT TO DO ABOUT IT

Power risk is the single largest kill-switch in the data center value chain, and for a sponsor connecting a data center as a load, the risks can be brutal.

The scenarios that keep deal teams up at night include:

- **The utility delays or walks back a preliminary commitment.** Early-stage capacity indications are informal until an interconnection agreement is executed. A sponsor can be deep into pre-development (capital deployed, land controlled, tenants in negotiation) before discovering the utility cannot deliver on the timeline or at the capacity it suggested.
- **Interconnection study costs come in far above underwriting.** Formal load studies may require the sponsor to fund substation builds, feeder upgrades, or transmission line extensions that were never scoped. These can run into the tens or hundreds of millions and reshape project economics entirely.
- **Power delays bust tenant arrangements.** Preleases carry outside delivery dates. If power slips – from utility delays, queue restudies, or behind-the-meter permitting – tenants can terminate or trigger liquidated damages against the developer.
- **Curtailment creates tenant lease exposure post-opening.** As grid operators enact new rules for large loads, a facility may come online but be chronically under-powered during stress events putting service level commitments at risk even after the doors are open.

Any of these can trigger a liquidity crunch. You've committed capital to land and pre-development, posted deposits, maybe broken ground, and the power isn't there. Lenders get nervous. Co-investors start asking questions. The project timeline, which was already measured in years, starts stretching further.

Protective measures start with sequencing: don't commit major capital on the basis of informal utility indications alone – secure the interconnection agreement first. When negotiating with the utility, push for delivery milestones with real consequences, whether liquidated damages or deposit clawbacks, if those benchmarks are missed. Size upgrade cost contingencies honestly at underwriting; interconnection studies routinely come back higher than expected, and underwriting the best case rather than the range is one of the most common ways these deals get into trouble. On the tenant side, tie outside delivery dates to power delivery rather than construction completion, so a utility delay doesn't automatically trigger LD exposure before the sponsor has any recourse. Where behind-the-meter generation is part of the plan, permit it, budget it, and timeline it as a parallel workstream – a real fallback, not a theoretical one. And build covenant flexibility into the credit facility from the start, with compliance milestones tied to actual power delivery and explicit carve-outs for utility-side delays outside the borrower's control. Getting this architecture right at the planning stage is orders of magnitude cheaper than sorting it out when the project is stressed.

recent tour in Dallas, the build was like open-heart surgery: state-of-the-art equipment, multiple layers of backup power, precision cooling, and every element of connectivity organized with an exactness that made the complexity feel controlled. That standard is not universal.

Sponsors consistently tell us that construction and interconnection execution is one of their key concerns and that finding a developer with a team genuinely experienced in power buildout is critical. A data center is not an office shell: it is a high-load facility with extensive electrical and mechanical infrastructure, and where behind-the-meter generation is part of the equation, ensuring the right expertise is involved during design and buildout is key. Get the design and build wrong, and you'll be reminded of it for 20 years.

The computing infrastructure a tenant installs on top of the real estate can add two to two-and-a-half times the real estate cost again on top, total capital deployment of $25–$30 million per MW once servers and chips are factored in, and approaching $40 million per MW for the most compute-intensive AI facilities. That is the number that explains both the staggering scale of the opportunity and the severity of the consequences when a project goes sideways.

PHASE 4:
PRE-LEASING AND STABILIZATION

Here is the good news: if you build it, the tenants are waiting. North American data center vacancy stands at roughly 1%, and an estimated 74–92% of capacity currently under construction is pre-leased – a figure that reflects just how far demand has outrun supply.

Hyperscale tenants, including the Microsofts, Googles, Apples, Metas and AWSs of the world, are the most sought-after lessees for obvious reasons. They are investment grade, they sign long-term contracts (often 15–30 years) on build to suit arrangements, and their credit enables favorable construction financing and, eventually, attractive permanent financing or securitization. They also have enormous leverage: hyperscalers know they are the most desirable tenant in the market, and they negotiate accordingly. Some are now offering to post interconnection deposits on behalf of developers in exchange for build-to-suit commitments and exclusivity – a sign of how acutely they feel the power constraint and how far they are willing to go to secure capacity.

Developers and landowners hold their own cards. In a market with sub-2% vacancy, whoever controls access to powered, entitled land controls access to the most scarce resource in the ecosystem. The leverage dynamic is genuinely bilateral, and the best sponsors are using it, commanding premium rents, securing longer lease terms, and in some cases dictating tenant mix.

For retail colocation providers, the model is different: shorter leases, more diverse tenant mixes, and a greater emphasis on location (urban proximity, fiber density) over raw power capacity. Colo facilities are also more amenable to adaptive reuse. The former Federal Reserve building in Dallas, for example, was converted into a retail colo data center, leveraging the building's existing structural reinforcement (bank-vault-grade slab floors) and power infrastructure, a reminder that not every data center opportunity starts with a greenfield site.

Stabilization in this market often happens before the facility is fully built. With pre-leasing rates this high, many projects are economically stabilized at or near construction completion, compressing the timeline to exit and supporting more aggressive permanent financing. That reality reshapes the exit calculus, but it doesn't eliminate risk, and the sponsors who treat a pre-lease as a guarantee rather than a head start may get caught when construction timelines slip.

"A data center investment is not one bet. It is a sequence of bets, on land, on power, on construction, on tenants, and on the exit market."

PHASE 4:

WHAT CAN GO WRONG AND WHAT TO DO ABOUT IT

A 1% vacancy rate can make leasing risk feel academic. It isn't. The scenarios worth stress-testing run deeper than a single tenant default. A hyperscale tenant exercises a termination right or renegotiates mid-term (investment-grade doesn't mean immovable). AI demand projections moderate and training workloads shift to a different architecture or geography, a trend already underway as inference is expected to overtake training as the dominant workload by 2027. A major tenant consolidates its footprint and doesn't renew. Or the retail colo market fragments as smaller tenants migrate to cloud-native solutions and reduce their on-premise presence. Each of these is a plausible scenario in a market that has moved very fast and could reprice just as quickly.

Layered on top is technology obsolescence risk that is unique to data centers. Cooling technology is evolving rapidly (from air-cooled to liquid-cooled) and power density requirements are climbing with each generation of chips. A facility built to 2025 specifications may not meet 2030 regulatory or tenant requirements without significant retrofit investment. The long-term lease that makes a data center look like a bond at stabilization can become a stranded asset risk if the underlying facility can't adapt.

And then there is the bubble question that everyone in the market acknowledges and nobody wants to be the first to answer: what if aggregate supply overshoots aggregate demand? Not every market will clear. Not every speculative build will lease. The 1% vacancy rate is a snapshot, not a guarantee.

The protective measures are structural. Negotiate leases with meaningful early termination penalties and re-leasing cost recovery provisions or residual value guarantees, and require tenant improvement allowances to be structured as landlord loans or investments with clawback mechanisms if the lease terminates early – not grants that walk out the door with the tenant. For colo assets, maintain portfolio diversification across tenant industries and contract durations to avoid cliff risk. Build capital reserve provisions into the operating structure for technology refresh and retrofit, a facility that can accommodate next-generation power density and cooling will command a premium at re-leasing or exit; one that can't will face a markdown. And stress-test the investment at a 5–10% vacancy assumption, not 1%. If the numbers only work at today's vacancy, the downside isn't priced in.

PHASE 5: EXIT AND THE 2027 QUESTION

The data center market is approaching an inflection point. Hundreds of projects that broke ground in 2023–2025, funded by construction facilities with three-to-five-year terms, will begin reaching stabilization and loan maturity around 2027. For long-term institutional capital, sovereign wealth funds, pension systems, infrastructure funds, this represents the first real opportunity to acquire cash-flowing, de-risked data center assets at scale.

The question is price. Development-stage investors have underwritten to ambitious returns, and the bid-ask spread between sellers seeking full development premium and buyers pricing to core-plus yields has not yet fully converged. Market participants expect that gap to narrow as the volume of stabilized supply increases and construction loan maturities force decisions. Some developers will refinance with permanent debt and hold. Others will exit, particularly if the capital can be recycled into the next wave of development. And a few, likely more than currently expected, will find creative structures to unlock partial liquidity without a full sale: ground lease monetizations, asset-backed financing against contracted revenue streams, or novel structures around interconnection rights and power entitlements that are still being tested by the market.

PHASE 5:

WHAT CAN GO WRONG AND WHAT TO DO ABOUT IT

The 2027 window is both an opportunity and a potential stress point. The risk scenario: too much stabilized supply hits the market simultaneously, construction loan maturities create forced sellers, and the bid-ask gap doesn't close as neatly as everyone assumes.

Not every development-stage project will reach stabilization smoothly. Construction delays, cost overruns, power delivery shortfalls, or tenant creditworthiness issues could produce distressed and stressed situations. For sponsors with a distressed playbook, these are potential entry points: capital structure negotiations, lender workout strategy, and operational turnarounds that reward precisely the kind of cross-disciplinary expertise that data center investing demands.

The protective measures differ depending on which side of the table you sit. For sellers, start exit planning 18–24 months before loan maturity, not six. Engage with potential permanent capital partners early and test the market quietly before construction financing comes due. Build extension options into construction and bridge facilities so maturity pressure doesn't force a fire sale. For buyers entering at stabilization, diligence the seller's capital stack as carefully as the asset itself, a motivated seller is a negotiating advantage, but a seller in default can create title, lien, and counterparty risks that complicate the acquisition. For financing parties, build in protections beyond taking a lien on the project's assets to address worst-case scenario where the project becomes distressed. And for everyone: model the exit at multiple cap rate scenarios, not just the base case. The difference between a 5.5% and a 6.5% exit cap rate on a $500 million asset is not a rounding error.

Those partial liquidity options are increasingly viable because the capital markets have caught up. The ABS market for data centers has deepened rapidly, creating permanent capital solutions that have scaled significantly over the past two years. Stabilized assets with long-term, investment-grade tenants are now financeable in ways that give sponsors meaningful optionality – hold, refinance, sell, or structure. You don't have to sell the whole thing to get liquidity anymore. The financial engineering around these assets is starting to match the sophistication of the physical engineering inside them.

THE THROUGH LINE

A data center investment is not one bet. It is a sequence of bets, on land, on power, on construction, on tenants, and on the exit market, and each phase has its own risk profile, its own capital structure requirements, and its own legal architecture. The sponsors building the strongest positions in this space are the ones who understand that this asset class is not just real estate, not just infrastructure, not just energy, and not just technology. It is all four, simultaneously, and the deal team needs to reflect that.

Those same sponsors are the ones who build for the downside at every stage, not because they expect things to go wrong, but because the capital at risk is too large and the development timelines are too long to rely on everything going right. In a market this hot, the sponsors who look most institutional in three years will be the ones who planned most carefully today.

"To put it more simply: the dirt is just the beginning. Everything after that is where the work, and the returns, happen."

Powering Up: The Energy Constraint Reshaping Infrastructure Investment


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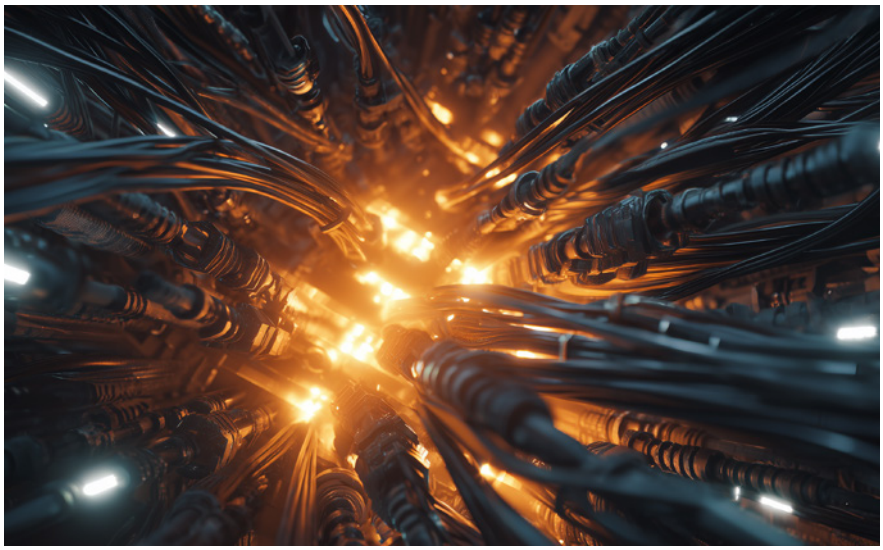
SMART SUMMARY

- Power demand is reaccelerating at a pace not seen in over 20 years. AI is a headline driver, but electrification, industrial reshoring and grid modernization make this a broader infrastructure cycle.
- "Speed-to-power" is now the differentiator in data center deals. Interconnection rights, transmission capacity, and long-lead equipment increasingly drive valuation and execution risk.
- Some sponsors see more durable risk-adjusted opportunities outside of the data center shell, in the infrastructure that moves and manages electrons.



Power Demand is Rising and Data Centers Are a Key Driver

Data centers could account for up to half of U.S. electricity demand growth this decade. EPRI estimates they could grow to represent 9%–17% of total U.S. electricity consumption by 2030, up from 4% in 2023. Goldman Sachs estimates global power demand from data centers growing 220% by 2030 vs. 2023 levels, a figure the firm has revised upward as AI investment has accelerated. While traditional enterprise and cloud facilities operate at lower power densities, hyperscale AI campuses can require several hundred megawatts to over a gigawatt, comparable to a mid-sized city. But this is not just an AI story: electrification, industrial reshoring, and grid modernization are adding further load, all competing for the same constrained infrastructure. Power is a structural theme spanning multiple end markets, not simply a data center trade, and some experts are going further, describing the transformation of U.S. power supply now underway as the early stages of a new industrial revolution.

Power Access is Now a Competitive Differentiator

Power availability has become the primary constraint on data center development in many markets. Two bottlenecks drive the problem: **generation interconnection** (securing queue position and funding grid upgrades) and **load interconnection** (accessing transmission capacity and substations to deliver power to a site). Both are increasingly constrained, with timelines in many regions stretching four to seven years, compounded by tight transformer and switchgear availability. At its core, this is a grid problem: the infrastructure required to connect new supply to new demand is congested, slow-moving, and increasingly expensive, which is why many developers are turning to behind-the-meter or hybrid approaches to bypass it entirely or reduce their dependence on it, as discussed further below. A "best site" on paper can quickly become a "stalled site" in practice. Power access should be diligenced like a core asset:

credible, contract-supported paths to energized capacity command meaningful premiums.

For Data Center Investors, Power Risk is Central to the Thesis

Power strategy can dictate three things that matter most to sponsors: speed to positive revenue, capex certainty, and exit valuation. Buyers pay premiums for de-risked, powered assets and penalize uncertainty. On valuation, discipline matters: multiples in the 12x–18x range imply low initial cash yields and assume durable growth; underwriting increasingly focuses on earnings growth and cash flow quality over multiple expansion. A practical power diligence checklist: What is the binding path to power? Who funds infrastructure upgrades if costs shift or timelines slip? What curtailment, interruption and standby charges apply, and do customer contracts allow load management without triggering default?

Power Generation and Sourcing Models: Opportunity Across the Stack

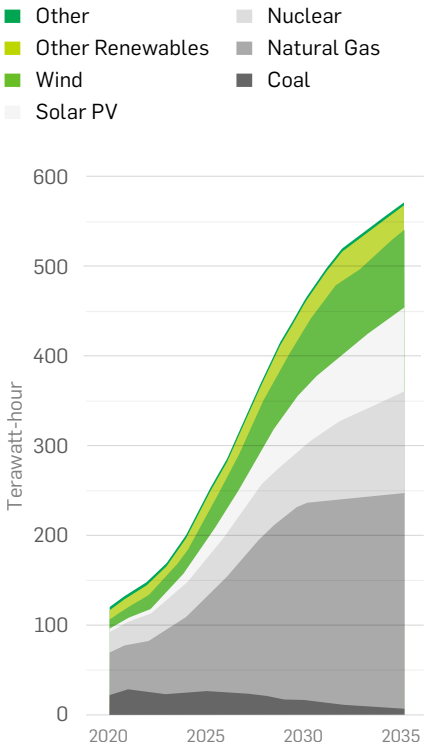
For sponsors seeking data center exposure without paying elevated entry multiples for real estate, power generation offers an alternative access point. Three sourcing models are in play: **front-of-meter solutions**, which deliver power through the grid and can offer a diversified offtaker base depending on the market (utilities, cooperatives, corporate/sleeved PPAs, and wholesale merchant markets); **behind-the-meter solutions**, which place generation directly on or adjacent to the data center site, bypassing or reducing grid reliance; and **hybrid approaches** combining grid supply with on-site generation or storage to optimize cost, resilience, and speed.

Renewables remain the dominant source of new U.S. capacity additions. In 2025, solar plus storage represented 79% of new capacity added to the grid. The policy backdrop, however, has shifted: the OBBBA, signed into law in July 2025, accelerated the sunset of wind and solar tax credits for projects beginning construction after July 4, 2026, creating a near-term rush to build but a potential gap in new development after the deadline passes.

Natural gas is widely projected to be the largest incremental source of new power supply in the U.S. and is being built both front-of-meter and behind-the-meter. Nuclear and geothermal are also attracting attention, albeit with longer development timelines (*see chart at right*). Behind-the-meter and hybrid natural gas solutions can improve time to power and provide operating control to a data center, but concentrate fuel, permitting, equipment, and operating risk on the developer. Regulatory trends are moving in the same direction: both ERCOT and PJM are introducing rules that encourage large data center loads to bring their own generation.

Across all three models, the central question is risk allocation: who bears fuel cost, equipment lead-time, schedule delay and utilization risk and how is it priced into the contract? Counterparty quality matters: contracting with an investment-grade hyperscaler is materially different from a development-stage operator with indirect tenant exposure. Sponsors should also be developing credible decarbonization pathways now, as hyperscale tenants face growing pressure on low-carbon commitments.

Electricity generation for data centers by fuel type,
United States – Base Case, 2020-2035



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Beyond Generation: The "Picks & Shovels" Opportunity

With data center real estate and generation assets commanding elevated valuations, some of the most compelling risk-adjusted opportunities may sit one step removed, in the infrastructure that moves and manages electrons. As some have remarked, the U.S. grid is the largest machine in the world and, in many places, over 100 years old.

"For sponsors seeking a different risk profile, businesses with meaningful but not dominant data center revenue, anchored by strong utility and industrial end markets, offer a compelling alternative. The same transformer, switchgear, or power services platform that serves a data center also serves a utility, a warehouse, or a manufacturing facility."

Capex on electrical infrastructure must continue for decades regardless of whether data center demand meets its most optimistic projections. The opportunity is often misunderstood as a volume story, the more important driver is load complexity. Even if total megawatts remain flat, the proliferation of EV chargers, rooftop solar, smart industrial systems, and electrified equipment is increasing the complexity of power delivery in ways that require substantial infrastructure investment regardless.

For sponsors seeking a different risk profile, businesses with meaningful but not dominant data center revenue, anchored by strong utility and industrial end markets, offer a compelling alternative. The same transformer, switchgear, or power services platform that serves a data center also serves a utility, a warehouse, or a manufacturing facility. That breadth is a structural feature, not a limitation.

Pricing power in this layer of the stack is real: transformer prices have risen dramatically over the past five years, and for hyperscalers, individual infrastructure components are a rounding error relative to the cost of delay. They prioritize speed, reliability, and execution quality over price. That willingness to pay has shifted pricing power structurally toward suppliers of critical components, and it is unlikely to reverse quickly given persistent labor and supply constraints.

Management quality deserves equal attention, and it is a theme sponsors raise consistently. In product-oriented businesses a strong operational layer can sustain value, but in labor- and service-intensive businesses (power procurement, optimization, reliability management) leadership is critical and culture-driven. The real bottleneck is often not capital, but talent.

When evaluating investments in power supply chain assets, diligence should focus on players with proven track records of consistency and quality who have demonstrated the ability to adapt. The NVIDIA 800V DC power architecture is a timely example: by consolidating AC-to-DC conversion at the facility perimeter and eliminating multiple intermediate conversion stages, it would disrupt some incumbent product manufacturers while creating demand for new DC-specific components, a credible near-term disruption risk that investors in electrical equipment supply chains should be stress-testing their product portfolios against today.

Key "picks & shovels" opportunity categories include: grid modernization and interconnection infrastructure (substations, transformers, transmission services); electrical equipment supply chains (medium- and low-voltage products, conversion equipment); power services (procurement, optimization, and reliability management); and cooling and efficiency platforms that improve data center economics.

Closing thoughts

Power demand is rising and data centers are accelerating the cycle, but they do not define it. The investment thesis is broader: power as infrastructure, with value concentrated not only in generation but in access, delivery, conversion, cooling, and control. The sponsors most likely to succeed will treat power as a commercial asset, diligenced, contracted, and financed with the same rigor as any core deal risk, and look across the full stack for opportunities where scarcity, complexity, quality, and execution create durable value.

Powered Land 101

Transwestern's Perspectives on the New Hot Commodity in Real Estate.

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Transwestern

What is "powered land"

Powered land has become a very hot commodity in commercial real estate, particularly for heavy users in the data center, robotics, and advanced manufacturing space. While many claim to have powered land, it usually only has a feasible path to power that includes significant effort and capital to secure and deliver the power. Truly powered land has significant power available for use with minimal additional effort, at least for the first tranche.

Why is it more valuable now

Electric grids throughout the world have become highly constrained with AI data center use being the main demand driver. Most major markets in the U.S. have interconnection backlogs ranging from 3-10+ years to bring on new projects that have not already secured grid approval.

Where we are seeing the most activity

With grid constraints creating multi-year backlogs in most major markets in the U.S., off-grid and behind-the-meter solutions have emerged out of necessity for organizations that cannot wait until 2029 and beyond. Natural gas generation (using aeroderivative turbines, combined cycle plants, and other equipment) has become a primary solution for heavy load users requiring near-term power certainty. Small modular reactors (SMRs) are attracting interest for longer-dated projects, but technology readiness, permitting timelines, and community acceptance make them an unlikely solution to near-term power constraints.

Key issues to underwrite

Power certainty, and the timing around it, remains the primary underwriting concern. State-level pushback is also intensifying: moratoriums on hyperscale data centers have emerged in several states, with some applying to facilities as small as 25 MW, and community opposition is growing. Land and power costs, while significant in absolute terms, represent a relatively modest share of total project economics, facility development and IT hardware, GPUs in particular, dominate the total cost of ownership over the life of a development.

Closing Remarks

Data centers and other heavy power users, primarily in the technology space, are here to stay. While efficiency gains in IT hardware continue, demand for data has proven insatiable. The complexity of solving for power, community acceptance, and regulatory headwinds means that the most valuable asset in this market is no longer just the land or the capital, it is the expertise to navigate all of the above. Sponsors, developers, and advisors who can credibly deliver on power certainty, community engagement, and regulatory strategy will find themselves at a significant and durable competitive advantage.

The Weil team, together with clients and the Transwestern team, recently toured two prominent data center facilities in Dallas.

The Data Center Economy: M&A Opportunities in the Infrastructure Behind the Infrastructure

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SMART SUMMARY

- The explosion in data center construction has created a rich ecosystem of M&A opportunities in the companies that *service and supply* those facilities – from power distribution and fire suppression to HVAC, connectivity, and land acquisition.
- These businesses often stand on their own as strong, durable platforms – with data center tailwinds providing a meaningful accelerant rather than being the whole thesis.

Beyond the Box: M&A Opportunities in the Data Center Supply Chain

Private equity interest in the data center sector continues to grow – and so does the range of entry points. While many sponsors have focused on core data center assets such as land, hyperscale campuses, and colocation facilities, others are finding equally compelling opportunities one step removed: in the companies that *build, power, cool, protect, and service* the data centers themselves.

For many of these companies, the data center construction wave is not the investment thesis – it is a meaningful tailwind layered on top of a business that would be attractive in any environment. Sponsors with different risk profiles and investment strategies are approaching the space from a variety of angles, and the deal activity of the past several years reflects the breadth of that interest.

Power and Energy Resilience

Reliable power is fundamental to data center operations. Suppliers of power distribution and management equipment tend to enjoy deeply embedded customer relationships and long service cycles – characteristics that translate well to the private equity model. Recent transactions involving Weil illustrate the range of entry points: Advent International's acquisition of Layerzero Power Systems, a provider of mission-critical power infrastructure for data centers, and the IPOs of Forgent Power Solutions, a designer and manufacturer of electrical distribution equipment, and SOLV Energy, a builder and operator of solar, storage and critical energy infrastructure.

As data center operators navigate grid constraints, permitting timelines, and sustainability commitments (for more on the latter **see** ***Data Center Sustainability: Key Questions to Consider*** **on page 45**), on-site and distributed energy solutions have become increasingly relevant. EQT's acquisition of Scale Microgrids reflects this opportunity. For sponsors, the attraction is a combination of contracted recurring revenue,

technical and regulatory complexity that limits the field of qualified operators, and structural tailwinds from both the energy transition and the power demands of AI-driven compute.

Cooling and HVAC: A Sector Heating Up

Thermal management is one of the most active areas of investment and innovation in data center infrastructure. As compute density increases, the challenge of keeping equipment within safe operating temperatures has grown significantly.

HVAC and cooling businesses serving data centers benefit from many of the same characteristics that make power infrastructure attractive: mandatory deployment, technical complexity, and recurring maintenance relationships.

Fire Protection, Connectivity, and Land: The Full Stack

Several additional sub-sectors round out the opportunity set. Fire suppression and life safety systems are designed into data centers from the outset and must meet rigorous regulatory and tenant standards. Cobepa's acquisition of Eagle Fire, a leading provider of fire protection and life safety services, exemplifies the thesis. Andrew Hollod of Cobepa described the investment this way:

"Eagle Fire is, first and foremost, a fundamentally strong business defined by deep technical expertise, recurring revenue visibility, and long-standing customer relationships in mission-critical environments. We underwrote the company on its standalone merits. What makes this moment distinctive is the scale and inevitability of data center development. Every new facility requires compliant fire and life safety systems, along with ongoing inspection and maintenance. In a sector where uptime is non-negotiable, that creates durable, non-discretionary demand."

Physical network infrastructure – land, fiber, structured cabling, and related installation and maintenance services – is also active.

Practical Considerations and Looking Ahead

Deals in the data center supply chain are attracting significant attention, but they are not without complexity. Perhaps most importantly, sponsors should evaluate the breadth of a target's end-market exposure: businesses that serve data centers alongside healthcare, industrial, and commercial customers tend to offer greater revenue diversification and resilience across different demand environments. For private equity, the most interesting question is not whether to play the data center theme, but *how* – and whether opportunities exist across the full spectrum of the supply chain, not just in the facilities themselves. In a sector this large, growing this fast, and with this level of capital committed behind it, the infrastructure behind the infrastructure deserves its own place in the sponsor's playbook.

"Perhaps most importantly, sponsors should evaluate the breadth of a target's end-market exposure: businesses that serve data centers alongside healthcare, industrial, and commercial customers tend to offer greater revenue diversification and resilience across different demand environments."

Getting into Asia's Data Center Boom: What Global Sponsors Need to Know


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SMART SUMMARY

- The Asia-Pacific data center market has seen approximately US$40 billion in private equity investment over the past two years, with demand expected to continue outstripping supply.
- Emerging markets like Malaysia, Vietnam, Indonesia and Thailand are offering attractive incentives to draw data center investment, including tax relief, import duty waivers and accelerated permitting.
- Sponsors should carefully navigate foreign investment controls and export restrictions, which vary significantly across the region and often require local partnership structures.

The Asia-Pacific data center market is booming. Like the US and Europe, the region has experienced a surge of private equity investment, with approximately US$40 billion deployed in the past two years. Major deals highlight this momentum: Bain Capital's US$3.16 billion take-private of Chindata Group in 2023; a Blackstone-CPPIB consortium's A$24 billion (approximately US$16 billion) acquisition of AirTrunk in 2024; and KKR and Singtel's S$13.8 billion (approximately US$10.9 billion) acquisition of ST Telemedia Global Data Centres this year.

These transactions underscore rising sponsor interest in this capital-intensive asset class across Asia-Pacific. But investors keen to participate should be aware of the unique opportunities and challenges the region presents. In this article, we highlight three key considerations that should inform any sponsor's Asia playbook: government incentives, foreign investment controls and export restrictions.

Investment Incentives in Growing Markets

The Asia-Pacific currently fields nearly 14GW of live data center capacity, expected to double over the next three years. According to CBRE, estimated regional demand in 2027/28 sits at 45-55GW, signaling a continued supply shortfall and significant growth opportunity for sponsors.

While China, Japan, Australia, India, Singapore, South Korea and Hong Kong currently dominate the market, other countries are catching up by increasing power and water availability and – importantly – offering attractive government-backed incentives.

Malaysia is the frontrunner for growth, claiming close to half of Southeast Asia's pipeline as of H2 2025. Most projects are concentrated in the joint Johor-Singapore Special Economic Zone ("**JS-SEZ**") established along the

"Local partnerships can provide strategic advantages – including on-the-ground insight for managing bureaucratic processes and stronger supplier relationships."

Malaysia-Singapore border. In addition to being a natural spillover market for land-constrained Singapore, the JS-SEZ draws outsized investment by offering: reduced corporate tax rates for AI supply chain businesses, data center operators and cloud services providers; tax allowances to offset capital expenditures against income; import duty relief for qualifying computing equipment; a fast-track program for accelerated electricity connection; and training programs developed with global hyperscalers to cultivate a strong local talent pool.

Vietnam is another active market, courting investors through its high-tech parks in Saigon, Da Nang and Hanoi. The country offers import duty exemptions, investment support programs, and training initiatives, along with cost coverage of up to 50% of initial investments for qualifying developers.

Indonesia, Thailand and the Philippines offer similar incentives – including tax offsets, import duty waivers and streamlined licensing support – in their special economic zones.

Foreign Investment Controls

Capturing incentives is only part of the picture. Successful deployment requires an understanding of Asia-Pacific's patchwork of foreign investment restrictions and regulations on land usage and ownership.

Hong Kong and Singapore – known for their free flow of capital and friendly foreign investment environment – are already home to many investors. Those looking for growth opportunities elsewhere, particularly multi-jurisdictional operators and investors, will need to navigate local laws. The best (and sometimes only) option is to work with local partners. For example:

- China has historically capped foreign ownership in data center operations at 50%, making a local partner essential for market entry, although it has begun to relax this requirement in pilot programs in Beijing, Shanghai and Shenzhen.
- India allows full foreign ownership of data centers, but state approval is required if the investment is made by investors from countries that share a border with India.
- Thailand enforces strict land ownership controls and generally restricts foreign entities from owning land or developing data centers without governmental approval.

Even in markets like Japan, which has no restrictions on data center investments, local partnerships can provide strategic advantages – including on-the-ground insight for managing bureaucratic processes and stronger supplier relationships.

Export Restrictions

Export restrictions add another layer of complexity, particularly for facilities offering high-end compute and AI-training operations.

Operators in the region are expected to verify end-user identities to ensure compliance with local and any other applicable laws. Lenders likewise expect rigorous supply chain transparency before committing capital. In a recent Singapore case, senior executives of a technology company were charged for fraudulently representing to its US suppliers the intended end use of servers containing top-of-the-line GPUs and forwarding them to a third country. The incident is a stark reminder that personal criminal liability is a real consequence for breach of export restrictions.

Looking Ahead

The Asia-Pacific region is a robust and growing market, notwithstanding (and, in some ways, because of) the region's patchwork of regulations which encourages competition among countries. Sponsors who understand and can navigate the disparate incentive and regulatory frameworks should be well positioned to capitalize on this dynamic market.

The Dealmaker's Guide to Data Center Privacy & Cyber Diligence

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SMART SUMMARY

- Data centers are subject to global privacy and data protection laws, with noncompliance carrying significant fines and penalties.
- Cyberattacks pose substantial financial, operational, and reputational risks, with breach costs averaging over $10 million in 2025 in the U.S.
- Thorough cyber and regulatory diligence is essential to mitigate risk and protect data center investments.

Introduction

Data centers currently serve as the backbone of global information infrastructure, storing immense volumes of personal and sensitive data. This makes them subject to complex privacy, data protection, and cybersecurity regulations – and highly attractive targets for cyberattacks. The consequences of a breach or significant operational disruption can be far-reaching, impacting not only the affected organization but also its customers, business partners, and, in some cases, broader societal infrastructure, given the central role data centers play in supporting critical services.

For dealmakers evaluating data center acquisitions or investments, rigorous scrutiny of cybersecurity practices and regulatory compliance is essential to mitigate legal, financial, reputational, and operational risks.

Compliance with Data Protection Laws

A data center's legal obligations depend on its role, including, for example, as a "controller" (determining processing purposes), "processor" (acting on behalf of third parties), or both. The applicable laws are largely determined by data provenance:

- U.S.-Origin Data: Federal laws include HIPAA (health data), GLBA (financial data), FISMA (federal government data) and DOJ restrictions on transfers of certain U.S. resident and government data. At the time of writing, 19 states have enacted comprehensive consumer privacy laws, with additional state laws targeting health, genetic, financial, and biometric data.
- EU/UK-Origin Data: The EU's General Data Protection Regulation ("**GDPR**") and UK GDPR apply broadly and (among other data protection obligations) place restrictions on certain cross-border data transfers, while sector-specific regulations like the

Digital Operational Resilience Act ("**DORA**") require financial entities to exercise oversight of certain service providers, including data center operators.

These laws mandate, among other things, transparency regarding personal data processing, consent for certain processing activities, and provision of certain rights to individuals with respect to their information, such as to access, delete, or opt out of specific uses of that information. They also require robust security measures and place restrictions on disclosures of personal data to third parties.

Given their key role in the economy and energy consumption, data center operators face an expanding body of regulation aimed at critical infrastructure sectors. In the EU, "data center service providers" that meet size thresholds are explicitly in scope under the second Network and Information Security Directive ("**NIS2**"), whereas in the UK, the proposed Cyber Security and Resilience Bill would amend existing UK NIS Regulations to designate data centers as essential services (bringing them into scope). In the U.S., the Cyber Incident Reporting for Critical Infrastructure Act ("**CIRCIA**"), expected May 2026, will require data centers to report major cyber incidents and ransomware payments.[1]

For dealmakers, this complicated legal scheme makes it critical to understand the nature of a data center's customer base, the types and geographic scope of data stored within the data center, the contractual commitments applicable to the processing of that data, and how and where that data is used and transferred. These factors directly influence the risk profile, valuation, and operational viability of a data center deal.

Cybersecurity

Data centers are prime cyberattack targets due to the sensitive and personal data they store. Privacy laws require specific cybersecurity measures and breach notification to regulators and affected individuals. *All* 50 U.S. states and many other jurisdictions have data breach notification laws, often with bespoke obligations vis-à-vis the timing of the notification and detail to be provided, and contractual obligations typically require immediate notification to business customers. Noncompliance can result in fines, investigations, enforcement actions, class action litigation, and other penalties.

Beyond legal exposure, cyberattacks cause significant operational disruption and reputational harm. IBM's 2025 Cost of a Data Breach Report found the global average breach cost was $4.44 million ($10+ million in the U.S.). Approximately 65% of costs stem from detection, forensic investigation, crisis management, and lost business-not legal expenses.

In light of the potential exposure in the event of a cyberattack, it is critical that dealmakers prioritize cyber diligence. At a minimum, data center operators must be able to demonstrate:

- Operational Resilience: Ability to anticipate, withstand, and recover from failures or attacks through redundant backups, failover capabilities, and geographically dispersed disaster recovery.
- Comprehensive Security Controls: Multi-faceted technical controls (firewalls, intrusion prevention/detection, encryption) and regularly updated written policies aligned with best practices and legal requirements.
- Incident Response Planning: Established, operationalized, and routinely tested incident response plans for rapid containment and recovery.
- Supply Chain Security: Documented and robust vendor management programs ensuring third-party providers maintain sufficient cyber controls.
- Continuous Monitoring, Testing and Auditing: Real-time monitoring and regular security testing to detect vulnerabilities and ensure compliance. Certifications under recognized frameworks (ISO 42001, NIST AI RMF, NIST CSF, SOC standards) demonstrate security maturity.

Conclusion

As data centers continue to power the digital economy, their allure for dealmakers is matched by the gravity of the risks they face. The responsibility of safeguarding sensitive information – and the consequences of operational failures – demand rigorous technical scrutiny and comprehensive understanding of privacy and cybersecurity obligations. Only through thorough evaluation can dealmakers ensure their data center investments are positioned for long-term success.

Data Center Sustainability: Key Questions to Consider


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Data center construction and operation involve a number of environmental, social and governance ("**ESG**") considerations, which may include comprehensive ESG risk assessment and legislative horizon scanning.

Below is a non-exhaustive list of common ESG issues and questions applicable to data center construction and operation, which data center developers and operators should consider in their applicable jurisdictions. The list below is jurisdiction-agnostic, but includes illustrative examples of laws in the US, EU and UK.*

Environmental construction and operating permits:

ARE THERE REQUIREMENTS TO:

- ☐ Conduct environmental surveys or impact assessments?
- ☐ Seek authorization or a permit from the environmental authority?

EXAMPLES INCLUDE:

US Executive Order 14318, "Accelerating Federal Permitting of Data Center Infrastructure"[1] (June 2025).

US Army Corp of Engineers' new nationwide 404 permits[2] (January 2026).

UK Infrastructure Planning (Business or Commercial Projects) (Amendment) Regulations 2026.[3] Also see, planning setbacks[4] for new UK data center sites over environmental matters (latest 2026).

Energy consumption:

- ☐ Are there requirements for measuring energy efficiency performance against specific indicators e.g., power usage effectiveness, energy reuse factor, and renewable energy factor?
- ☐ What are the relevant obligations for waste heat re-use?

EXAMPLES INCLUDE:

Energy Efficiency Directive[5] (2023).

California's proposed AB222[6].

Opponents have argued that data center electricity demands could raise prices for ratepayers and stress electricity grids. Energy efficiency programs and site specific generation can alleviate demand stress on the grid and ratepayers.

** While this checklist focuses on construction and operation, additional legal requirements could apply to data centers with respect to procurement, health and safety matters, and sustainability-focused reporting, due diligence, and governance.*

Climate change and emissions:

- Are data center owners subject to limits or restrictions on, or targets for reducing, greenhouse gas emissions? Are they required to prepare and/or publish a climate transition or net zero plan?
- Are there any restrictions on the use of specific refrigerants (hydrofluorocarbons) / fluorinated gases (F-gases) / ozone depleting substances?
- Are there any restrictions and/or targets for global warming potential of refrigerants?
- Are data center owners or operators obliged to implement pollution control or prevention measures (e.g., air emissions)?

EXAMPLES INCLUDE:

EU's F-gas Regulation[7] (2024); the EU's Energy Performance of Buildings Directive[8] (2024).

EPA's new guidance on New Source Performance Standards and New Source Review[9] (2025). Also note tech companies' exposure to toxic pollutant emission lawsuits (including via notice of intent to sue[10] (latest 2026)) for powering data centers with unpermitted methane gas turbines.

Water use:

- What are the requirements for the management of use of water resources (e.g., water use permits for data center cooling systems)?
- What are the requirements for wastewater and stormwater discharge permits / monitoring?

EXAMPLES INCLUDE:

Virginia's SB 1449.[11]

California's AB 93[12] (although vetoed, similar bills are expected in 2026).

Also see, the Taskforce on Nature-related Financial Disclosures case study[13] examining the financial risks associated with data centers' water-related dependencies Opponents have argued that data centers consume excessive volumes of water; however, data centers may employ closed-loop systems which minimize water consumption.

Waste:

ARE THERE OBLIGATIONS WITH RESPECT TO:

- Waste take-back and recycling of IT/electronic equipment?
- Waste management plans?
- Packaging and/or packaging waste?

EXAMPLES INCLUDE:

"Extended producer responsibility" rules under The Packaging and Packaging Waste Regulation[14] (which will apply from mid-2026), Batteries Regulation,[15] the Waste Electronic and Electrical Equipment Directive[16] ("WEEE") (as amended in 2024).

Also see US federal universal and hazardous waste management laws including the Resource Conservation and Recovery Act[17] and Toxic Substances Control Act.[18]

Biodiversity and ecosystem protection:

- Are there legal requirements / targets set concerning the ecosystem, biodiversity preservation, restoration, or net gain (general), or pollution control?
- What about requirements for the mandatory protection or restoration of specific land types or habitats (coastlines; wetlands; forests; marine, etc.)?

EXAMPLES INCLUDE:

UK's 2024 Biodiversity Net Gain provision[19] as a condition of planning permission.

EU's Nature Restoration Regulation.[20]

Powering the Future: Why European Data Centers Are Private Equity's Next Big Bet


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SMART SUMMARY

- Grid power scarcity is the defining constraint across European data center markets, making decentralized energy solutions – on-site generation, battery storage and direct renewable offtake – a baseline underwriting requirement rather than a contingency.
- Foreign direct investment screening regimes have tightened across France, Germany and the UK, and data centers increasingly fall within scope – early-stage analysis is essential to protect deal certainty and avoid conditionality or delay.
- ESG alignment, including water consumption, waste heat reuse and carbon-reduction pathways, has moved from a diligence checkbox to a core investment criterion, directly impacting access to capital and exit valuations.

The European data center sector offers attractive infrastructure-adjacent investment opportunities. Rapid growth in AI workloads, cloud adoption and enterprise digitization continue driving demand, while supply constraints – driven by power scarcity and planning bottlenecks – have kept yields enticing.

Across Europe's core markets, sponsors are competing aggressively for scaled platforms and development pipelines. Frankfurt benefits from DE-CIX, the world's largest internet exchange point and Germany's large industrial base. Paris continues to benefit from strong fiber density and data sovereignty-driven demand. The UK combines deep capital markets with hyperscaler-led commitments and "AI growth zones". While demand is structural, execution is increasingly shaped by energy access, regulatory scrutiny and permitting complexity.

Energy Demand as a Defining Constraint (and Opportunity)

Grid power availability has become a central operational challenge across Europe. Oversubscription of network connections and under-investment in transmission and distribution infrastructure are imminent. Grid reinforcement requirements and capacity allocation processes are becoming increasingly material underwriting assumptions.

For sponsors, grid access is no longer a technical detail; it is the gating item. Secured and bankable connection rights can materially enhance valuation. Decentralized power solutions – including on-site generation, battery storage, and direct renewable offtake – have emerged as the most practical and investment-grade response to this constraint. Long term renewable PPAs are now routinely embedded in underwriting models.

Regulatory and Sovereignty Overlay

Data centers now sit squarely within Europe's broader debate around critical infrastructure and digital sovereignty. Most major jurisdictions have tightened foreign direct investment ("**FDI**") screening regimes in recent years, and data hosting activities – particularly where linked to sensitive sectors – may trigger review.

France has adopted an increasingly proactive approach to digital sovereignty, particularly where non-EU investors are involved. Germany continues to refine its regulatory landscape alongside its National Data Centre Strategy. Both the UK's National Security and Investment regime and the Nationally Significant Infrastructure Projects ("**NSIP**") framework capture certain data infrastructure activities. At EU level, the Foreign Subsidies Regulation adds an additional complexity.

For international sponsors, these regimes are generally manageable, but early-stage analysis is essential. Regulatory clearance is not a procedural formality. It can influence deal certainty, auction dynamics, financing commitments and reputation. Risk allocation around remedies, conditionality and "efforts" standards is therefore increasingly negotiated.

Planning, Environmental and ESG Pressures

As reflected in our **Data Center Sustainability article on page 45**, environmental and planning frameworks vary across Europe but share a common trajectory: heightened scrutiny of land use, energy intensity and sustainability performance.

Large-scale facilities typically require environmental permits, building approvals and potentially public consultation processes. Germany demands energy efficiency standards. In France, environmental authorization requirement can lead to extended timelines. In the UK, NSIPs may face complex and sometimes contested planning applications.

WEIL INSIGHTS

"Grid power scarcity is the defining constraint across the European market – and sponsors need to act now. Decentralized energy – on-site generation, battery storage, and direct renewable offtake – is the investment-grade solution to power availability. A credible, long-term energy strategy is increasingly the difference between a fundable asset and a stranded one."

EU-level decarbonization objectives and sustainability reporting obligations are reshaping sponsor expectations. Measuring and reporting against water consumption for cooling, waste heat reuse and power usage effectiveness metrics, have become central diligence themes. Capital commitments on ESG are increasingly contingent on credible alignment with renewables sourcing and carbon reduction pathways.

Early integration of permitting, environmental compliance and ESG strategy is increasingly critical to execution certainty and valuation protection.

Structuring Considerations for Sponsors

Across Europe, sponsors should be alert to cross-cutting structuring considerations. Power procurement strategy is the most operationally urgent. Grid scarcity means that decentralized energy production – on-site generation, battery storage, and direct renewable offtake – is no longer a contingency plan but a baseline underwriting requirement. Strategic partnerships with utilities, connectivity providers and public authorities (public-private partnerships) materially enhance execution certainty. The ability to evidence a credible long-term energy strategy is now a prerequisite for ESG mandated capital and a key driver of exit valuation.

Early attention to FDI screening is the second critical consideration. European jurisdictions have tightened review regimes for critical digital infrastructure, and data centers increasingly fall within scope. For US-based sponsors, this is an entirely manageable process with routine notifications, quite predictable timelines and generally favorable outcomes. Nevertheless, early-stage analysis is essential to avoid unnecessary conditionality or delay.

Conclusion

The data center opportunity across Europe is structural, not cyclical. Sponsors who move decisively – and with the operational and legal infrastructure to navigate power, planning, ESG and FDI complexity – are best positioned to capture attractive risk adjusted returns across the investment cycle.

Data Centers and Management Incentive Plans

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Sponsors and their portfolio companies are well accustomed to using management incentive plans ("**MIPs**") to align management with equity value creation. In a typical private equity structure, key members of management hold equity instruments with the potential for significant upside on exit. The commercial objective is clear: management's return is driven by equity value growth, with the most efficient outcome typically achieved through a sale generating a capital gain.

Why Data Centers Require a Closer Look

We are increasingly seeing that traditional private equity MIP structures may not translate seamlessly to the data center space.

Data center investments can sit at the intersection of private equity and infrastructure, and the Sponsor's intended investment thesis materially affects how a MIP should be structured.

Key strategic questions include:

- Does the Sponsor expect to hold the asset over an extended period, generating value through recurring cash flows and periodic distributions (more akin to infrastructure investing)?
- Or, is this a classic private equity play, with the intention to exit within a typical 3–5 or 5–7 year horizon, realising value primarily through a capital gain on sale?
- Will the Sponsor sell individual assets or development phases and distribute proceeds up the structure rather than pursuing a single clean exit?

Implications for MIP Design

An equity-based MIP is generally most effective where management realise value through a sale of MIP interests. Where value is delivered primarily through regular or periodic distributions rather than on a sale at exit, traditional MIP models can be less efficient or less aligned with the Sponsor's strategy.

In long-hold or yield-focused models:

- Management may not receive a meaningful liquidity event for many years
- Returns may be driven more by income distributions than equity growth
- Hurdle structures tied to exit IRR may not reflect how value is actually created
- Tax efficiency may be less straightforward if returns are income-based rather than capital in nature

By contrast, where the Sponsor's thesis remains a defined-term hold with a clear exit event, conventional PE-style MIPs should remain appropriate and effective.

Recommended Approach

For Sponsors investing in data centers, we recommend that MIP design be considered in parallel with the investment model at the outset.

Early-stage analysis should focus on:

- expected hold period and value realisation strategy
- projected balance between income yield and capital appreciation
- funding structure and debt profile
- intended tax treatment of returns to management
- leaver, vesting and liquidity mechanics in the absence of a near-term exit

In our experience, the most successful management equity arrangements in this sector are those tailored to the Sponsor's genuine hold strategy rather than adopting a "standard" private equity template.

European Data Center Financing: Continuing Evolution in a Power-Constrained, Capital-Rich Market

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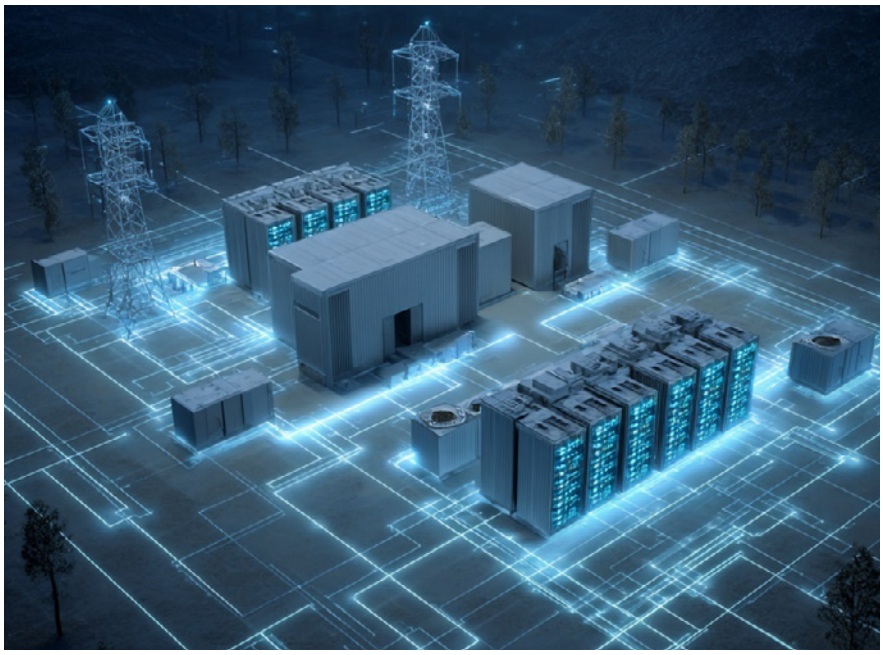
Co-Head of Private Equity Infrastructure and Head of Infrastructure Finance

SMART SUMMARY

- As a result of an exponential rise in demand, power certainty has replaced revenue certainty as the critical gating item in terms of data center deliverability and bankability.
- With the arrival of asset-backed securitisation to the European market and the expansion of private credit, the search for financing is becoming more diversified and complex, favoring sponsors who can navigate multi-source capital and infrastructure challenges.



Market Backdrop

The European data center market has matured. Just a few years ago, the principal debate for the financing of this asset class was whether it belonged in the infrastructure market or was more at home as a real estate play or project financing. This was primarily a distinction between development models and contracted vs uncontracted revenue sources. Consequently, during the nascent phase of data center investment, structuring a suitable financing package was a key gating item to development.

But the market has evolved rapidly with extraordinary demand growth. Key gating items are now largely technical, particularly with regard to power and planning constraints. By contrast, the historic concerns of the financing markets around certainty of revenue are less prevalent. The exponential rise in demand, particularly for cloud services and AI, shows no sign of abating with most observers forecasting that global data center capacity could triple by 2030. This implies a corresponding expansion in required capital which is anticipated to be in the region of $300bn over this period.

As demand continues to rise, two consequences follow for the financing markets:

- first, scale is increasing dramatically both at individual project level (hundreds of megawatts) and at platform level (multi-billion euro capital structures); and
- second, capital sources are diversifying as traditional bank financing alone is insufficient to support the projected demand.

All of which is to say that data centers are no longer a niche real estate sub-sector. For many investors, they are treated as core infrastructure assets as well as being integral to the continuing development of AI. As such, they are a highly sought after asset class attracting interest and investment from infrastructure funds as well as the wider private equity community.

Securitisation: From US import to European reality

Perhaps the most significant financing development in Europe over the past 18-24 months has been the arrival of asset-backed securitisation ("**ABS**") as a credible and scalable funding tool for data centers in Europe having previously been largely confined to the US market (which has seen over $20bn of data center ABS issued since 2018).

Vantage Data Centers effectively launched the European ABS market with two transactions:

- a £600m sterling-denominated ABS for its Cardiff campus in Wales in 2024; and
- a €640m euro-denominated ABS for its German hyperscale facilities in Berlin and Frankfurt in 2025.

These transactions demonstrate "proof of concept" for the deployment of US funding models, adopting insolvency-remote SPV structures and ring fenced assets backed by long-term hyperscale lease cashflows. Both issuances were reportedly multiple times oversubscribed and, as such, we can expect ABS to become part of the financing toolkit for mature data center assets in Europe.

Private credit in the development financing market

While securitisation may be reshaping the refinancing market, private credit is increasingly influential in development and expansion financings. EcoDataCenter, the Swedish data center provider, raised €600m of debt financing in 2025 from Deutsche Bank Private Credit and Infrastructure, specifically to support further growth capital expenditure.

The attraction is clear:

- private credit offers speed, flexibility and structuring creativity – all attributes that are critical in a market where timing (particularly grid connection) can determine value; and
- it is also comfortable underwriting construction and ramp-up risk, especially where supported by sponsor track record.

This combination of characteristics makes it an appealing source of development funding that is increasingly competitive with bank syndicates, particularly for sponsor-led development platforms.

The critical role of power as a financing determinant

As noted above, power supply is a key constraint in the development of sufficient data center capacity to meet demand growth. By extension, it is also therefore a primary driver of financing risk and value.

Bankability of projects is increasingly tied to power certainty with lenders placing significant emphasis on secured grid connections and contingency arrangements (backup generation, private wire etc). Given power and planning constraints in the European market, projects without credible power solutions face significant challenges regardless of demand.

Consequently, we are seeing significant capital flows into adjacent assets including generation, storage and grid infrastructure to support data center development. Essentially, there is an increasingly symbiotic relationship between digital infrastructure and energy infrastructure. Appetite and funding for emerging technologies such as SMRs and other on-site generating solutions is only likely to increase given the potential for these solutions to significantly mitigate the power constraints that might otherwise hold back data center development.

Other notable financing trends

Platform financing: At the platform level, European operators are accessing large-scale multi-billion euro platform financing structures that support both development and operational assets such as the €3.3bn debt package raised by

Brookfield's Data4. Lending on a portfolio basis allows development risks in one part of the portfolio to be diluted by operational performance in another. Lenders are underwriting a package of characteristics including operator capability, pipeline visibility, sponsor track record and customer relationships.

Sustainability-linked financing: European data center financings now routinely incorporate ESG-linked features reflecting both regulatory pressure and investor demand. The market has, however, moved on from mere "label-driven" financing with increasing scrutiny of KPIs (energy efficiency, carbon intensity, water usage etc) as well as integration of power sourcing strategies (renewables, PPAs, on-site generation etc), dovetailing with the focus on power supply noted above.

CONVERGENCE	DIVERGENCE
Adoption of US-style ABS and structured finance	Greater impact of grid constraints and planning regimes, particularly in FLAPD markets
Increasing role of institutional capital and private credit	Stronger emphasis on ESG compliance and substantive sustainability-linked financing
Recognition of data centers as a core infrastructure asset class	More complex regulatory overlay (including data sovereignty and energy policy)

Conclusions

Europe's data center financing market is converging in parts with global trends (particularly those in the US) but with some notable distinctions remaining.

The US remains ahead in terms of depth of capital markets but Europe is closing the gap, particularly as scale increases and transactions become more standardised. For experienced market participants, it is likely that several themes will shape the next phase of evolution in the market:

- **Capital structure innovation will continue**: ABS, hybrid structures and capital markets solutions are likely to become standard tools rather than exceptions.
- **Power will define value**: Access to power, and the ability to deliver it reliably and sustainably, will be the primary determinant of valuation and bankability.
- **Platform scale will matter**: Access to diversified capital sources (bank, private credit, capital markets) will increasingly differentiate leading operators.
- **Legal structuring complexity will increase**: Particularly in relation to securitisation structures, platform structures and integration of digital and energy infrastructure assets.

European data center financing is no longer defined by a single model but has evolved into a multi-layered ecosystem drawing what it can from different funding sources depending on the nature of the underlying asset and/or portfolio. The sector's underlying fundamentals, driven by AI and cloud services, are exceptionally strong but the constraints are equally real, particularly around power and deliverability.

For investors and lenders, the opportunity lies not simply in deploying capital but in understanding how technical, regulatory and financing considerations interact. Those who can navigate that intersection, structuring capital in a way that aligns with both infrastructure realities and market demand, will be best positioned to capture the next phase of growth.

At Weil, we are excited to help our clients on this journey and we have a multi-disciplinary team that is ideally placed to navigate the full spectrum of financing solutions this may entail.

AFFILIATES AND ACCIDENTAL AGENCY

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Associate
Private Equity

SMART SUMMARY

- Courts applying Delaware and New York law may enforce an agreement as written, even if it is drafted so broadly that traditional legal doctrines like privity of contract and legal personhood of entities would render it unenforceable.

Glenn West mused on the *Geier* and *Carlyle* decisions in 2016.[1] The *Geier* decision was concerning to corporate lawyers because Geier was personally bound to a contract that he had not signed in a personal capacity. In fact, he had not signed in any capacity. Geier's control of an entity and awareness of a contract entered into by that entity was enough for the court to determine that the entity could bind Geier to the contract.

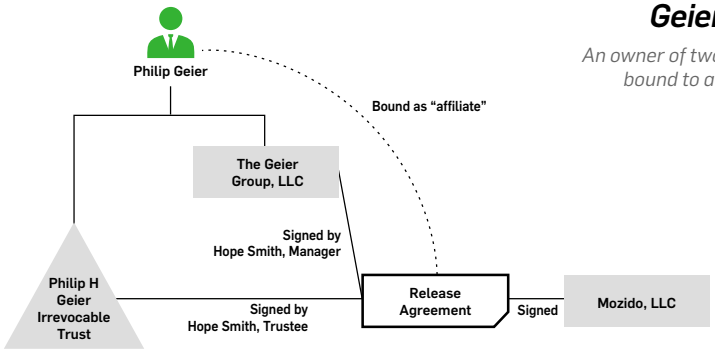
Formally, every entity bound by the contract should be either a direct party that has accepted the terms or a principal who is bound by an agent that has actual or apparent authority to act on behalf of the principal. The *Geier* opinion did not explicitly analyze the facts under agency law for actual or apparent authority, but an agency relationship seems to be the basis for binding Geier to the Release Agreement. Geier did not sign and there is no mention in the opinion of Geier agreeing to the contract directly. To the contrary, the drafting history revealed that Geier was originally a party to the contract and was removed as a signatory during negotiations. The Geier entities must have acted as agents with Geier as principal. How else could Geier have been bound by the release?

It seemed that a loose application of agency law could unravel the benefits of corporate separateness. The Musing identified other New York case law that was arguably inconsistent with *Geier*[2] and cautioned "[t]here is great danger in allowing a single sentence in a long contract to bind individually a person who signs only as a corporate officer." That danger expanded in *Windsor* under Delaware law.

In *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*,[3] Robert Stella clicked to accept the electronic "RealINSIGHT Marketplace Auction Sale Terms and Conditions/Bidder Confidentiality" agreement when registering FCS Lending, LLC ("**FCS**") to bid in an auction. The auction was for a note owed by another entity Stella partially owned – Windsor I, LLC ("**Windsor**"). The click-through terms contained a release that purported to bind FCS "together with its agents, principals and affiliates."

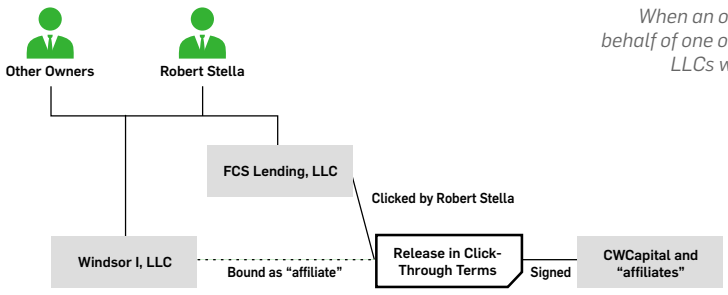
Geier v. Mozido, LLC

An owner of two entities was personally bound to a contract entered into by those entities.



Windsor I, LLC v. CWCapital Asset Mgmt. LLC

When an owner accepted terms on behalf of one of his LLCs, another of his LLCs was bound as an affiliate.



Windsor later sued the lender (an affiliate of the auctioneer) for quasi-contractual claims related to an email exchange that Windsor argued was an enforceable agreement for Windsor to purchase its loan back from the lender prior to the auction. The lender asserted in a motion to dismiss that Windsor's claims were released by the click-through terms. The Delaware Superior Court granted the motion to dismiss and held that the release contained in click-through terms was binding on Windsor because Stella owned Windsor and FCS and Stella agreed to the click through terms on behalf of FCS.[4] To those familiar with corporate law, this is a surprising and concerning result. One entity was bound to a contract entered into by another entity and the opinion offered no legal theory as to why. In the opinion, the court analyzed the language of the contract carefully but did not discuss the agency law or privity of contract concerns. The Supreme Court affirmed the Superior Court on other grounds and also did not address the agency law or privity of contract concerns.[5]

As in *Geier*, practitioners are left wondering how a non-signatory was bound. It is common for businesspeople to act as officers to bind various entities to distinct obligations in the same transaction. Stella seemed to be doing so here – acting on behalf of Windsor as borrower under the note and on behalf of FCS as potential buyer of the note. But broad language in terms Stella accepted on behalf of FCS may have tapped into his power as agent of Windsor while he thought he was only acting on behalf of FCS. Broad language agreed to by a dual role officer may mean an accidental agent action and an unwelcome surprise when contract terms are brought under a microscope in litigation.

Windsor goes even further than *Mozido* in eroding the separateness of legal persons. *Windsor* allowed an individual acting on behalf of one entity to bind a different entity partially owned by the individual.

The practical takeaway is to be very careful when agreeing to include overbroad language in a contract around "affiliates" – it is not safe to assume such language will be unenforcable against non-party affiliates. The straightforward solution is to edit the substantive provision of the contract to bind only the appropriate parties. A fallback approach may be to expressly state in the contract that the entity is signing solely on its own behalf and not as agent on behalf of any of any other person or entity. Neither of the cases directly addressed the issue of how non-signatories were bound to the contracts, so contracting parties are left to guess how careful they must be to avoid an outcome like *Windsor* and *Geier*.

This is a clear reminder that veil piercing is not the only way around the liability shield and separate legal personhood of an entity. Veil piercing is the classic path to impose the liabilities of an entity on its owners, but veil piercing is generally not a worry for good faith actors who keep proper records. The recent Pennsylvania Supreme Court decision in *Mortimer v. McCool*[6] flustered practitioners with the recognition of an "enterprise liability" theory in Pennsylvania, but the decision made clear that the bar to pierce the veil remains high. The case garnered amicus briefs, spanned twenty pages and repeatedly emphasized the rarity and severity of veil piercing – all with the ultimate result of not piercing the veil in the case itself. Legal personhood of the entities was insurmountable in *Mortimer*, but *Windsor* and *Geier* side-stepped legal personhood with very little discussion of the issue. Accidental agency is not veil piercing – they apply in different contexts and for different reasons – but both can burn the unwary.

"This is a clear reminder that veil piercing is not the only way around the liability shield and separate legal personhood of an entity."

ENDNOTES

LEVERAGED FINANCE MARKET UPDATE

1 Q4 2025: Navigating Shifting Tides (S&P GLOBAL RATINGS; January 29, 2026)
2 Q4 2025: Navigating Shifting Tides (S&P GLOBAL RATINGS; January 29, 2026)
3 Q4 2025: Navigating Shifting Tides (S&P GLOBAL RATINGS; January 29, 2026)
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19 January Wrap: Hot Primary Loan Market Meets Cold Secondary Amid Software Slump (PITCHBOOK; February 2, 2026)
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35 Q1 2026 US Credit Markets Quarterly Wrap (PITCHBOOK; April 1, 2026)
36 US Credit Markets Quarterly Wrap (PITCHBOOK; January 5, 2026)

2025 DEAL STRUCTURES AND SPONSOR DPI INSIGHTS

1 Jefferies LLC, Continuation Vehicles: Key Considerations (Mar. 2025)

THE DEALMAKER'S GUIDE TO DATA CENTER PRIVACY & CYBER DILIGENCE

1 North American Electric Reliability Corporation (NERC) is considering its potential authority to regulate data centers as their energy demands and operational risks impact grid reliability. While data centers are not classified as "registered entities" under NERC, future regulation could subject them to NERC's Critical Infrastructure Protection standards, which impose stringent cybersecurity requirements for assets critical to grid operation.

DATA CENTER SUSTAINABILITY: KEY QUESTIONS TO CONSIDER

1 https://www.whitehouse.gov/presidential-actions/2025/07/accelerating-federal-permitting-of-data-center-infrastructure/
2 https://public-inspection.federalregister.gov/2026-00121.pdf
3 https://www.legislation.gov.uk/uksi/2026/13/contents/made
4 https://www.ft.com/content/888c756f-4de1-4b71-a0cb-05db1098f976
5 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023L1791
6 https://legiscan.com/CA/text/AB222/id/3044103
7 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02024R0573-20240220
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9 https://www.epa.gov/nsr/construction-activities-allowed-obtaining-preconstruction-air-permit
10 https://naacp.org/articles/naacp-selc-earthjustice-threaten-lawsuit-over-xais-unpermitted-gas-turbines-mississippi
11 https://lis.virginia.gov/bill-details/20251/SB1449/text/SB1449HC1
12 https://legiscan.com/CA/text/AB93/id/3229422
13 https://tnfd.global/wp-content/uploads/2026/02/Case-study_Water-dependency-of-the-tech-sector_DIGITAL.pdf
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18 https://www.govinfo.gov/content/pkg/USCODE-2024-title15/pdf/USCODE-2024-title15-chap53.pdf
19 https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted
20 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401991

AFFILIATES AND ACCIDENTAL AGENCY

1 Glenn West, *You May be Bound by the Contractual Company You Keep– A Cautionary Tale About the Use of the Term "Affiliate" in an Entity's Release of Claims*, Weil's Global Private Equity Watch, Oct. 10, 2016 (discussing *Carlyle Inv. Mgmt. L.L.C. v. Moonmouth Co. S.A.*, 2015 WL 5278913 (Del. Ch. Sept. 10, 2015) and *Geier v. Mozido, LLC*, 2016 WL 5462437 (Del. Ch., 2016)) [hereinafter the Musing].
2 *Garriot v. O'Neill Condo. Ass'n*, 2015 WL 5728245 (N.Y. Sup. Ct. Sept. 23, 2015).
3 *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 2019 WL 4733430 (Del. Super. Ct. Sept. 27, 2019) ("*Windsor*").
4 "Factually, Mr. Stella is an owner of Windsor and FCS. Mr. Stella accepted the terms and conditions on behalf of FCS, the bidding entity in the online auction. Windsor is considered a Bidder because Windsor and FCS are affiliated entities as a result of their common ownership." Windsor at 4.
5 *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863 (Del. 2020).
6 *Mortimer v. McCool*, 255 A.3d 261 (Pa. 2021)

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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:

- American Securities in the $3.25 billion sale of CPM Holdings Inc. and ASP MWI Holdings Inc. to Rosebank Industries
- Bain Capital in its investment in Duravent Group
- Blackstone in its acquisition of Champions Group
- A group of investors led by professional golfer Bryson DeChambeau in its acquisition of Sportsbox AI
- Crow Holdings on the development of a 245MW flagship data center campus in central Dallas, Texas.
- GHK Capital Partners in the sale of ITS Logistics to Echo Global Logistics
- Georgian in a strategic investment from Navigator Global Investments
- Goldman Sachs Asset Management in its investment in GeoWealth
- Goldman Sachs Alternatives in its $280 million continuation vehicle for Point72 fintech assets
- Goldman Sachs Alternatives in a strategic investment by its Private Equity business in Schellman
- Leonard Green & Partners, as lead investor, in the closing by an Ares Private Equity fund of an $850 million single-asset continuation vehicle for Convergint Technologies, L.P.
- OMERS in the sale of Paradigm to Patient Square Capital
- OneSource Virtual in a strategic majority growth investment from TA Associates Management
- Pacific Avenue Capital Partners in the acquisition of Care.com, Inc.
- Pacific Avenue Capital Partners, alongside Cameron Ashley Building Products, in the acquisition of Therm-All
- Tidemark in connection with the $6.4 billion acquisition by Hg of OneStream, Inc.
- TPG in its long-term strategic partnership with Jackson Financial Inc.

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