Q3 2026 | Weil, Gotshal & Manges LLP | weil.com

Weil

Weil Private Equity Sponsor Sync

STAY INFORMED.
STAY AHEAD.

EDITORS **Arnie Fridhandler** Partner, New York Global Head, DealVision360
David Gail, Partner, Dallas
Larissa Lucas, Partner, New York
Carson Parks, Associate, Dallas

DEPUTY EDITOR **Christopher Machera** Co-Head of U.S. Private Equity

SPECIAL EDITORS **Brian Parness,** Partner, New York
Corey Dietrich, Partner, New York
Trey Muldrow, Partner, New York

FROM THE EDITORS

Summer 2026 has no shortage of headlines: the USA turned 250, the World Cup came to North America for the first time since 1994, and a historic heat wave fell on much of Europe. In the business world, markets struggled to make sense of fitful geopolitical conflicts and reconcile a potential "SaaSpocalypse" with AI valuations soaring into space. But no fear – the Sponsor Sync team prepared the summer reading list you need after your favorite team misses the last PK. In this issue, we cover universal issues for private equity sponsors – protecting confidential information in busted transactions, winding up end of fund liabilities, and most importantly, finding the best way to increase returns to investors. The Secondaries Special Issue gives you the data, trends and ideas you want to know about one of the most important innovations in today's market. ***As always, stay informed and stay ahead.***

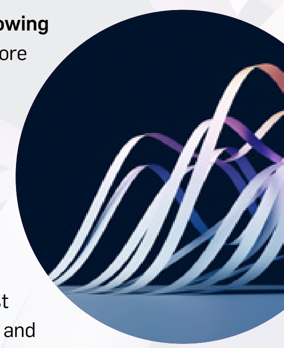
LETTER FROM THE SPECIAL EDITORS

Over the past decade, the secondaries market has emerged as one of the most consequential developments in private capital - providing a practical and increasingly scaled solution to the liquidity and distribution challenges that have defined the post-2015 era of longer hold periods, muted exit markets and investor demand for realized returns. Today, secondaries strategies inform how sponsors manage portfolios, retain high-quality assets, provide optionality to investors and respond to the realities of a dealmaking environment in which portfolio company exit timelines have extended materially.

This Special Issue is intended to help sponsors evaluate that evolution with discipline. We examine continuation funds, private credit secondaries, GP stakes, regulatory filing considerations and the increasingly important role of transaction insurance. As secondaries transactions continue to scale, successful execution will depend on more than market appetite. It will require thoughtful structuring, credible price discovery, robust conflict mitigation and careful coordination across legal, tax, regulatory and commercial workstreams. We hope this issue offers a practical framework for navigating these opportunities with confidence and judgment.

SEE THE FULL TABLE OF CONTENTS ON BACK PAGE →

The Secondaries Special Issue



WEIL LOAN TRACKER Q2'26	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+320 (up 6 bps from Q1'26)	S+409 (up 6 bps from Q1'26)	$43.4 billion	$42.0 billion	$81.2 billion

LEVERAGED FINANCE MARKET UPDATE


Benton Lewis
Partner
Banking & Finance


Heather L. Emmel
Partner
Capital Markets


Danielle Cepelewicz
Associate
Banking & Finance


Cedric Kim
Associate
Banking & Finance

SMART SUMMARY

- The U.S. leveraged loan market demonstrated greater durability than the macroeconomic environment might have suggested in Q2'2026, with total activity reaching $224 billion – only 7% below Q1'2026 and 17% above the five-year quarterly average. The composition of that activity, however, remained heavily weighted toward repricings, refinancings and maturity extensions rather than new acquisitions. Corporate issuers increasingly filled the void as sponsor-backed deal flow contracted sharply.
- Against that backdrop, M&A and LBO-related loan issuance remained solid on a year-to-date basis, reaching approximately $144.8 billion through June, while the high-yield bond market posted approximately $181 billion of issuance – propelled by a wave of AI-related capital expenditure financing and acquisition-related bond volume at a five-year high.
- The software sector's historically dominant share of the U.S. loan market has diminished sharply; year-to-date issuance stands at roughly 9%, a fraction of the nearly 18% recorded over the comparable 2025 period.
- Attention is now firmly fixed on 2028, when an estimated $208.5 billion of institutional term loans come due – three-quarters of which is attributable to PE-backed borrowers. The software sector's $40 billion share has barely shrunk, underscoring continued challenges for that sector.

Q1'2026 RECAP

The first quarter of 2026 unfolded in two distinct phases. January produced $176 billion in primary market activity against a backdrop of near-decade-low spreads, but that pace proved unsustainable.[1] AI-related disruption concerns in the software sector, the outbreak of conflict in Iran and broader macroeconomic uncertainty combined to produce a marked deceleration in leveraged loans in February and March.[2] For the quarter as a whole, primary loan market activity reached approximately $241 billion – 32% below the comparable 2025 period, with the shortfall concentrated in refinancings and repricings.[3] The high-yield bond market saw a strong start in the first quarter, but slowed in March due to geopolitical volatility, resulting in $80 billion of issuance in the first quarter of 2026 versus $68.6 billion in the first quarter of 2025.[4]

M&A-related loan issuance was a notable counterpoint, reaching $51.2 billion – the strongest opening quarter since 2022, and $19.8 billion in the high-yield bond market, which was the second highest output for any comparable time period.[5] By quarter-end, however, the loan market had grown more cautious as repricing activity ceased entirely in March, dividend recapitalizations decelerated, and issuers confronted mounting questions about ongoing market access.[6]

Q2'2026 U.S. LEVERAGED LOAN AND BOND MARKET

Carrying that cautious posture into the second quarter, the U.S. leveraged loan market contended with a convergence of pressures including elevated borrowing costs, an inflation shock linked to the Middle East conflict, and intensifying apprehension over AI disruption within the software sector.[7]

The primary loan market nonetheless produced $224 billion of activity in Q2 – a 7% quarter-over-quarter decline, but 17% above the five-year average and approximately twice the volume recorded during the disruption-affected Q2'2025 period when tariff-related volatility brought the market to a near standstill.[8] The headline, however, obscured a market in which maintenance-oriented transactions continued to dominate.[9]

Repricings, refinancings and extensions – rather than new originations – constituted the majority of quarterly loan volume.[10] Just 27% of Q2'2026 loan issuance supported purposes other than refinancing or spread compression, a marked departure from the pre-2022 environment in which at least half of activity funded new transactions such as LBOs, acquisitions and recapitalizations.[11]

Repricings, Refinancings & Dividend Recaps

Repricing activity ground to a standstill in March and remained inactive through April – the first consecutive months (excluding April 2025) without a single completed repricing since June 2023 – before borrowers returned in force once conditions stabilized in May.[12] Extension amendments totaled $29.5 billion across the quarter, an unprecedented volume that underscores the priority sponsors are placing on rolling forward 2028 maturities.[13] Across all categories, loan repricing volume totaled $81.2 billion for the quarter.[14] Refinancing transactions accounted for 60% of high-yield issuance volume for the quarter, compared to 70% in Q2'2025 and 82% in Q2-2024.[15] Bond for loan takeouts also saw a sharp decline, at $27 billion, a four-year low.[16]

Dividend recapitalizations continued at a restrained pace. Q2'2026 loan volume reached approximately $13.7 billion, bringing the year-to-date total to $28.4 billion – a 24% decline relative to 2025.[17] In the bond market, dividend-driven issuance has been negligible. Year-to-date volume of $2.7 billion amounts to barely 1.5% of total high-yield supply, a share not seen since 2020.[18] The pattern underscores a clear strategic shift – sponsors are channeling resources toward refinancing and maturity management rather than extracting distributions from portfolio companies.

M&A and High-Yield Activity

M&A financing remained accessible in Q2'2026, though it increasingly skewed toward larger, higher-quality borrowers. Despite year-to-date M&A and LBO loan volume reaching $144.8 billion, a 31% increase against the comparable 2025 pace, the $55.8 billion of Q2'2026 loan volume represented a 37% decline from Q1'2026.[19] LBO-specific loan volume was $16.9 billion, representing a 56% quarter-over-quarter contraction, while non-LBO M&A issuance proved comparatively resilient.[20]

Credit quality emerged as the defining characteristic of this quarter's M&A landscape. The $13 billion term loan arranged for Warner Bros. Discovery – the largest institutional loan facility since the global financial crisis, positioning the company as the single largest borrower in the U.S. leveraged loan market – exemplified that lender appetite was most concentrated in scaled, investment-grade-proximate credits with established business models.[21] Higher-rated borrowers – those at BB-minus or above – represented two-fifths of Q2'2026 M&A loan volume, a concentration at the upper end of the credit spectrum not observed since the financial crisis.[22]

The high-yield bond market exhibited comparable strength, underpinned by AI-related capital expenditure issuance and robust M&A-driven demand. Aggregate issuance reached $181 billion through June 30, outpacing the prior year by 25%.[23] A record 44% of all high-yield issuances in Q2 had double-B ratings, up from 42% last year, while issuers rated CCC accounted for only 3% of year to date high-yield volume.[24]

Sponsor Activity and the 2028 Maturity Wall

While the bond market offered an alternative funding channel, the loan market's amendment-heavy quarter was shaped overwhelmingly by a pronounced retreat in private equity transaction activity.

Private equity transaction volume shrank by more than a third in Q2, settling at $177 billion – a level the market had not touched since early 2024.[25] Sponsor-backed loan volume, excluding amendment-related activity, contracted by a third to $49.5 billion, a quarterly level not recorded since the final months of 2023.[26]

Non-sponsored issuers stepped into the vacuum, contributing $53.6 billion to the syndicated loan market – a five-year high, materially bolstered by the record Warner Bros. Discovery financing.[27] Notably, even excluding that landmark transaction, corporate M&A-related loan volume increased on a quarter-over-quarter basis.[28] This uptick in corporate M&A-related lending is consistent with a broader market shift toward strategic acquirers (who accounted for 81% of transaction volume during H1'2026) rather than private equity sponsors as the dominant force in North American dealmaking during the first half of 2026.[29]

With limited avenues for portfolio exits, sponsors oriented Q2 activity around liability management – extending maturities, tightening borrowing costs and restructuring existing obligations – rather than pursuing new deployments.[30] PE-backed borrowers accounted for just 45% of new deal issuance in Q2'2026, well below the roughly 70% share they have held over the past five years. This posture was broadly anticipated, given that many sponsors entered the quarter carrying unrefinanced exposure and confronting few viable paths to monetize existing investments. Year-to-date progress on the 2027 maturity overhang has been uneven as sponsored borrowers have addressed roughly a third of their outstanding exposure, while investment-grade-proximate corporates have retired nearly 70% of comparable obligations – a disparity that reflects the different levels of market access available to each cohort.[31] PE-backed companies account for 73% of the $208.5 billion due in 2028, and much of that exposure sits at B-minus or below, where lender appetite has contracted most sharply. [32]

Software borrowers face an especially narrow path. Of the $40 billion in sector-specific loans coming due in 2028, almost none has been refinanced or extended, a 5% reduction that pales beside the 42% shrinkage achieved across other sectors.[33] For more vulnerable sponsor-backed borrowers, addressing 2028 maturities has become a pressing priority – one that may catalyze further liability management and restructuring activity in the near term.[34]

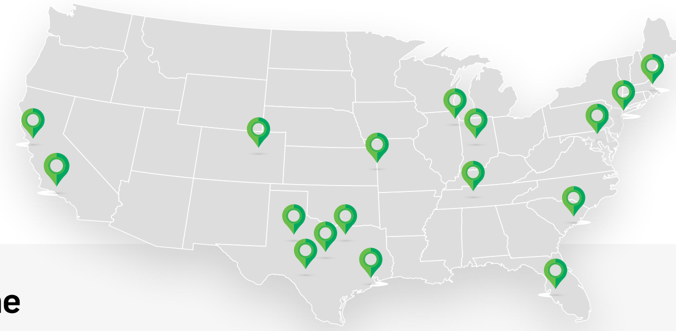
2026 OUTLOOK

Despite the first half of 2026 being characterized by turbulence, the leveraged finance market showed a remarkable sense of resilience. Sponsors navigated a tumultuous macro environment by leaning on refinancings and extensions; corporate borrowers seized openings that PE firms left on the table; and the high-yield bond market absorbed record AI-related issuance.

That same resourcefulness will be tested in the months ahead. The liability-management window that borrowers relied on throughout the first half remains open, and market participants have shown they can move quickly to capitalize on it – but renewed geopolitical instability or fresh economic stress could compress the timeline. Software credits and lower-rated sponsor-backed borrowers facing near-term pressure will need to address balance-sheet vulnerabilities proactively before year-end – and those that delay may find the window less forgiving.

The broader picture, however, is one of a market that has repeatedly found its footing when conditions demanded it. Inflation now tops the worry list – four out of five survey respondents expect rates at 3% or above through December – and AI-driven disruption and geopolitical risk remain persistent headwinds. Yet borrowers with scale, sound fundamentals and a clear credit narrative have continued to find willing capital even against that backdrop – a dynamic that appears likely to persist absent a material deterioration in conditions. For credits carrying weaker ratings or heavy software exposure, the path is steeper – but the first half of 2026 demonstrated that proactive sponsors who move early and creatively can still get deals done. The quarters ahead will reward that same instinct as the market remains open to those prepared to meet it on its terms.

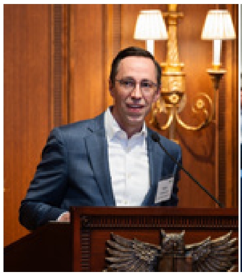
WEIL FAMILY OFFICE FORUM 2026



In May, more than 70 family offices from across the country gathered in Dallas for Weil's inaugural Family Office Forum.



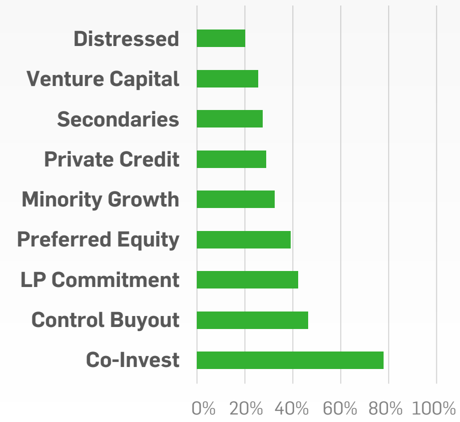
The day combined intentional relationship building and insights from leading family offices and private market innovators, including Align Collaborate, Apollo, Arctos, Braemont Capital, Crestline, Dobbs Management, Goldman Sachs, Highmount Capital, Hilltop Opportunity Partners, Houlihan Lokey, NGP Energy, and Stephens Inc.



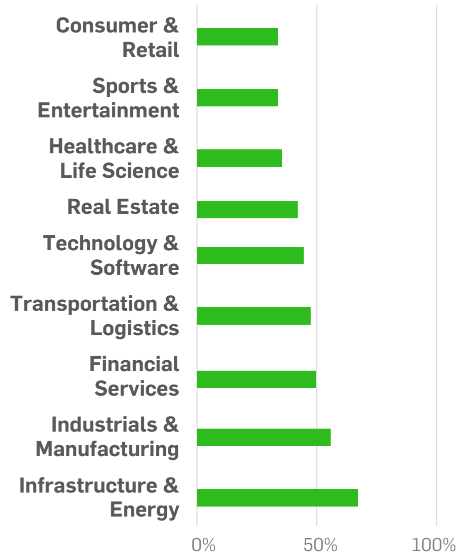
Our survey of family office participants reflected the larger trend we see in the market – the increasingly competitive hunt for direct investments and the varied sector preference of family office investors.

The conversations continued over a memorable happy hour and tuna carving. **Stay tuned for details on our 2027 conference!**


Our Survey of **Transaction Interest**



Our Survey of **Sector Interest**



DEFENCE AS AN EMERGING ASSET CLASS IN EUROPE AND GERMANY

The case for a structural growth market, and the regulatory architecture that governs access to it.


Konstantin Hoppe


Christian Tappeiner

SMART SUMMARY

- Defence is becoming a structural European growth market, with sponsor capital targeting long-term, state-backed demand and fast-scaling innovative technologies.
- Germany offers strong defence-tech opportunities, but FDI, export-control and clearance issues must be addressed early in deal structuring.

The Big Picture

Until recently, defence was outside the investable universe for many institutional investors: allocations attracted stakeholder scrutiny, affected ESG scores and conflicted with mandates that excluded armaments on principle. That has changed quickly, and the shift looks structural. The war in Ukraine produced a fundamental change in demand; the U.S. government's stance on NATO has prompted Europe to reassess its military-industrial base; and at the Hague summit in June 2025 NATO members committed to five per cent of GDP on defence and security-related infrastructure by 2035.[1] The result is a demand horizon extending beyond a decade, and that visibility has drawn sponsors in. The argument here is that defence is therefore emerging as an asset class in its own right, though being subject to a specific body of regulation.

The capital is already flowing into the sector. M&A activity in European defence has risen sharply; a market once served by a few strategic acquirers now attracts major international sponsors. Germany is central to that shift, as its defence budget is set to expand sharply by the decade's end. Strategic buyers tend to pursue classic M&A, often to buy in expertise or as an add-on, while financial investors, for now, more often enter through capital increases at still fast-growing companies which at the moment dominate the investment landscape. Exits remain rare, with few trade sales and almost no flotations, which suggests the market is still at an early stage.

Investment Activities

The pattern is reflected in recent transactions. In April 2026 Warburg Pincus established a European defence platform anchored by MEAG, Munich Re's asset manager, according to media reports targeting a reported EUR 1.5 billion, to build and consolidate businesses across the sector.[2] Tikehau Capital is raising a reported EUR 800 million aerospace and defence fund

Munich is driving Europe's race to catch up with the USA in DefenceTech

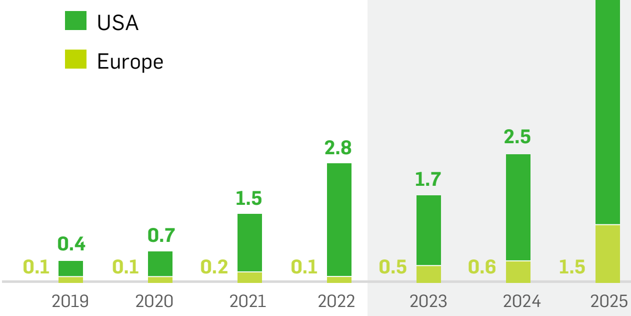
Until 2023, the **DefenceTech** sector played virtually **no role** in the European startup ecosystem.

Munich is the **hotspot** for **DefenceTech** in Europe and is clearly ahead of other locations.

However, in the USA, significantly higher sums are still being invested in startups and scaleups in this field.

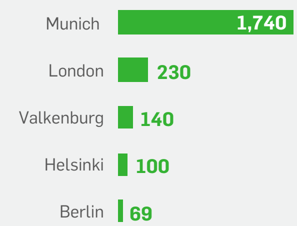
DefenceTech investments in Europe and USA

Compared in € billions



Top 5 Defence locations in Europe 2023-2025

By investments in € millions



Source: Bayern Startup und Scaleup Monitor 2026

backed by Airbus, Safran and Thales;[3] Public capital is also backing the trend: the InvestEU Defence Equity Facility commits EUR 175 million at fund-of-funds level, aiming to mobilise up to EUR 500 million over the coming years and close a financing gap banks long avoided.[4] Drones are among the most active segments, with leading companies having emerged in Germany such as Quantum Systems, Helsing and Stark Defence.[5]

Rather than a clean split between civilian and military goods, the sector is better understood as a spectrum: at one end purely civilian products, at the other armaments designed for no other purpose, and in between a dual-use zone where the same item, a sensor, a drone, a material or an engine component, can serve both worlds. It is precisely this middle ground that an increasing number of civilian manufacturers are now entering, in particular automotive suppliers and OEMs, which are moving into the dual-use space to keep their capacity utilised and sustain productivity amid weak automotive demand, drawing on Germany's deep engineering and manufacturing expertise that translates readily into defence applications.

Current Shift

The politics are only the trigger; the factors that made the sector investable are more structural. ESG frameworks that once excluded defence have been revisited, and SFDR practice no longer generally treats it as incompatible with sustainable investment. Lenders and limited partners have followed, so financing and fundraising that once stalled deals come readily; under-investment has left capacity scarce and pricing firm. A similar shift can be seen in corporate constitutional documents and fund documentation: objects clauses and fund mandates that once kept defence out are now frequently construed more broadly, particularly where the business is defence equipment, or amended outright. The economics suit private equity: the customer is the state, paying over long contracts at sovereign credit quality, providing the steady through-cycle cash flow that leveraged structures need.

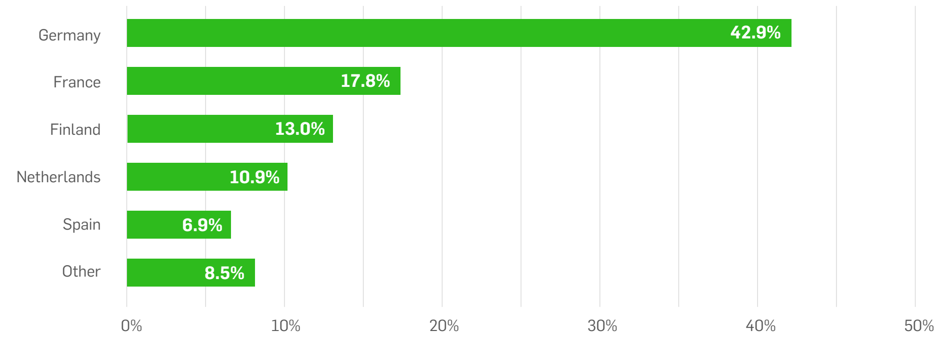
Regulatory Hurdles

From a deal-making perspective, the gating factor in Germany is regulatory acquisition control. The principal hurdle is foreign direct investment control, or FDI screening under the applicable statutes (*AWG/AWV*), which subjects foreign acquisitions to government review where a target develops, produces or handles sensitive goods. The intensity of that review varies. Classic defence and war weapons targets face the strictest, sector specific scrutiny, while a broader category of dual-use items and other critical technologies may trigger review under the cross sectoral regime. What makes this regime particularly far reaching is that comparatively modest stakes, indirect holdings and even EU investors can be brought within the scope of review in sensitive sectors. The 2026 reform of the EU FDI Screening Regulation will set new standards at the European level and likely trigger a reform of German FDI laws. Adopted by the Council on 8 June 2026, it shifts the EU framework from cooperation toward binding minimum harmonization, requiring every Member State to maintain a screening mechanism covering, among other sensitive sectors, dual-use items and goods on the EU Common Military List. In practice all Member States already screen foreign investment, so the change lies less in closing gaps than in setting common minimum standards.

For investors, regulatory clearance is not an afterthought but a threefold constraint on the deal process: (i) it drives due diligence from the outset (product classification, export-licence pipeline, compliance posture); (ii) it shapes transactional documents through clearance conditions, and allocation of regulatory risks, and (iii) it sets the timeline, with foreign investment review running on a separate timeline. These issues are key for exit, because an exit may be subject to further screening, disclosure and timing constraints.

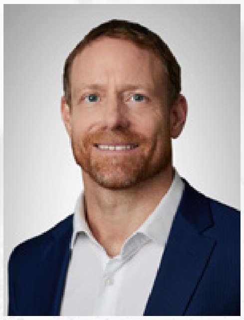
Germany leads EU DefenceTech VC investment

Share of EU DSR venture capital investment in 2025 (in percent)



In Germany, the attention in defence investing is for now concentrated less in classic buyouts than in venture capital and growth equity, where a wave of capital is flowing into fast-scaling technology companies. This is driven above all by the new strategic importance of drones and Germany's strong focus on autonomous and unmanned systems, which has produced some of Europe's most prominent defence-tech players. The outlook for the next decade is becoming clear: demand is large, long-term and politically backed, while the regulatory regime is dense and, if anything, tightening. The practical lesson is that the legal analysis belongs at the structuring stage, not at closing. Investors who address screening, export and merger clearance issues effectively will be well placed in one of the European markets offering credible long-term growth, subject to careful regulatory structuring.

WEIL'S GERMAN EXPANSION CONTINUES



Sebastian Pauls

Co-Managing Partner of Weil's German offices and Co-Head of Weil's German Private Equity practice.

Kamyar Abrar

Co-Head of Weil's German Private Equity practice.

Christian Tappeiner

Head of Weil's Energy & Infrastructure practice in Germany.

Konstantin Hoppe

Counsel in Weil's Munich office advising on defence and infrastructure.

SLAYING ZOMBIES AND BUSTING GHOSTS – END OF FUND LIFE INSURANCE

Chris Le Neve Foster
Managing Director
Howden Private Capital

HOWDEN

SMART SUMMARY

- End of fund insurance addresses the lingering risks of a fund in wind-down and allows sponsors to accelerate distributions.

Private equity funds are slow to die. Once they have offloaded their last remaining portfolio company they are economically "dead", but legally "undead" – continuing as cash boxes under the stewardship of fund lawyers, risk managers, tax and legal compliance officers. They delay liquidation and hold back full distributions until a myriad of unlikely but possible contractual, regulatory or tax claims have been given time to run their course – the risks may be remote, but the consequences of getting it wrong are serious. So the fund sits in its zombie phase: no operating assets, no investment strategy, just cash held back against ghosts.

That is extremely inefficient. The fund is essentially self-insuring for long-tail contingent liabilities by trapping LP capital in an idle cash reserve while continuing to incur fund-level administrative, audit, tax and legal costs. It also strains investor patience at precisely the wrong moment. Investors may have already been made to wait longer than expected for the fund to sell off its last holdings. Now they are being told that cash cannot be fully released because of vague, unlikely and hard-to-quantify contingencies. Carried Interest is delayed and DPI suffers, and the sponsor risks looking over-conservative with investor money.

Until recently, there has been no efficient solution for this. But now, a "zombie killer" has emerged that all fund lawyers and risk managers should understand and evaluate alongside continuation vehicles and liquidating trusts.

The fix is to obtain cover from A-rated insurers for future claims against the fund under a comprehensive "End of Fund Life Insurance" policy. Properly structured, the policy can remove the barriers to distribution and dissolution.

The policy addresses an economic and reputational question for fund managers: "will we be able to pay creditors without going out of pocket or resorting to an LP clawback?" More importantly, it overcomes a threshold legal question ("are we breaching our duties by making an unlawful distribution?"). For a Delaware-organized fund, the statute restricts distribution of assets to equity owners before creditors and contingent creditors have been paid or otherwise provided for. A properly structured policy acts as that reasonable provision: because it responds to future claims as they arise, it functions as a synthetic reserve – enabling the liquidation/dissolution step to take place years ahead of schedule.

Key structuring points required to ensure it serves that purpose will include:

- Appropriate sizing and term
- Appropriately limited exclusions
- Ensuring all relevant parties involved are covered and it survives the dissolution of the fund
- A clear and responsive trigger for coverage for defense costs and ultimate liability

It matters that fund lawyers, CFOs, and risk managers focus on this now.

As more post-financial crisis vintage funds reach the end of their lives, sponsors are confronting a growing population of "dead but not dissolved" fund vehicles, trapping cash and retaining risk with reluctant investors.

End of Fund Life Insurance gives sponsors and their advisors another option. Hundreds of millions of dollars of limits have already been placed with first movers, enabling funds across jurisdictions to liquidate years ahead of schedule. This is not just an insurance product: it is a capital efficiency, fund governance and investor relations tool, and it is likely to become a standard part of mature fund wind-down planning – the end-of-life equivalent of representations and warranties insurance in private M&A.

WHEN DEALS DIE: TRADE SECRET RISK IN BUSTED TRANSACTIONS


Chris Henry
Partner
IP, Technology & Science Litigation


Jeff Homrig
Partner
IP, Technology & Science Litigation


Gaby LaHatte
Partner
IP, Technology & Science Litigation

What sophisticated parties should know when a transaction collapses after diligence:

Diligence is key, but not every deal closes. A busted transaction may leave one party with the other's trade secrets and sensitive information – often a competitor in the same market.

Not every busted deal will (or should) yield a massive judgment, but all carry risk. In one case, a buyer reviewed a target's confidential information during diligence on a modest deal, then released products in the same market after the deal fell through – it was hit with a trade secret judgment many times the deal's value. In another recent case, a seller alleged a passed-over buyer built a competing product on stolen technology – but the seller waited too long to sue and its case was dismissed.

Bottom line:

Busted deals are fraught with trade secret risk; but you can best protect yourself by closing them out deliberately and carefully (while documenting your efforts). And when issues arise, engage litigation counsel early – risks/rewards in this space can be massive.

THE RISK IS GROWING:

Over 80%	$800M+	$1.8B	$2.04B
of trade secret plaintiffs win at trial in federal court	for misuse of secrets learned during M&A diligence	settlement for theft involving poached employees	largest single trade secret verdict

Sophisticated parties need to know how to best protect themselves and their rights.

BUY-SIDE

Know your NDAs cold.
Understand the definitions, oral-disclosure coverage, use restrictions, and the survival and residuals clauses – build a post-deal plan around these.

Inventory and purge.
Track what you received and who received it in real time and throughout diligence. On a busted deal, run a documented return and/or destruction process with certifications.

Use a clean team.
Keep diligence personnel away from competing product lines, and institute and document a protective plan where overlap is unavoidable.

Mind the optics.
Press releases, town halls, job posts, and social media are evidence – review disclosures about busted deals and would-be sellers with litigation risks in mind.

SELL-SIDE

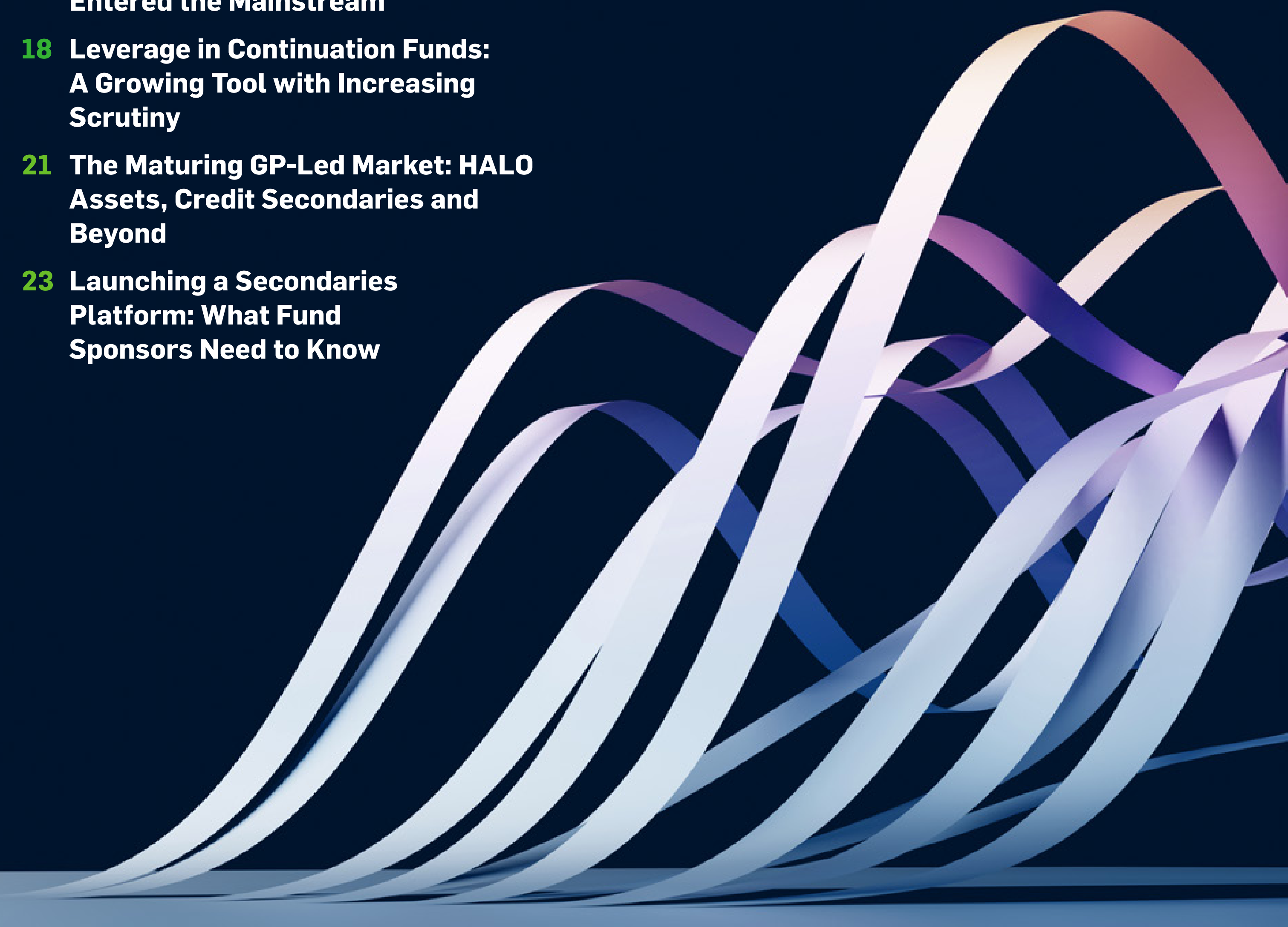
Document what you shared.
Especially oral disclosures and presentations, site visits, and whiteboard sessions – you cannot prove what was stolen when you cannot show what was disclosed.

Assert your NDA rights.
Return or destruction of documents is often not automatic; demand it, follow up, and get certifications.

Watch closely.
Watch the counterparty's launches, patents, and hiring. The federal Defend Trade Secrets Act gives you three years to sue, and your clock starts running at the first red flag you should have noticed, not when you decide to investigate.

Value the claim.
Misappropriation claims can enjoin a competing launch and support massive judgments – involve litigation counsel early and move promptly to protect your rights.

The Secondaries Special Issue



SECONDARIES SNAPSHOT:
Key LP Protections + Conflict Mitigation


Trey Muldrow
Partner
Private Equity


Brittany Butwin
Head of Product, DealVision360
Counsel, Private Equity


Dylan J. Hans
Counsel
Private Equity


Katie Dziedzic
Knowledge Management Attorney
Private Funds

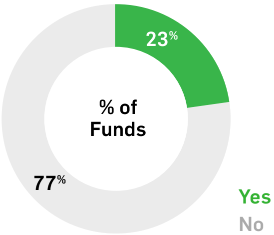

Tamar O'Halloran
Senior Presentation Specialist
Private Funds

WEIL DealVision 360

2025 DATA | WEIL COMMENTARY

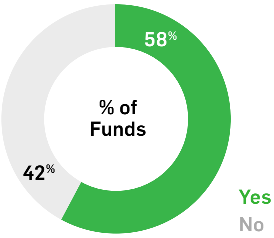
Continuation Fund Termination

Compared to 2024, in 2025 LPs generally negotiated stronger protections in respect of their ability to terminate the applicable continuation fund.



No Fault Termination

More continuation funds (+10%) provided LPs the right to no fault termination of the continuation fund.

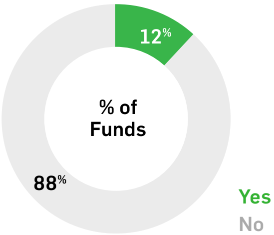


For Cause Termination

More continuation funds (+11%) provided LPs the right to termination for cause of the continuation fund.

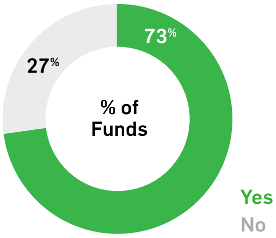
GP Removal

In 2025, LPs generally experienced a decline in their ability to remove general partners.



No Fault

The limited ability for LPs to remove a general partner of a continuation fund without fault remained constant.



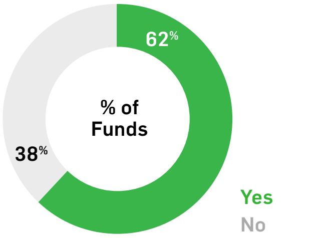
For Cause

Fewer continuation funds (-20%) provided LPs the right to remove a general partner for cause.

2025 DATA

WEIL COMMENTARY

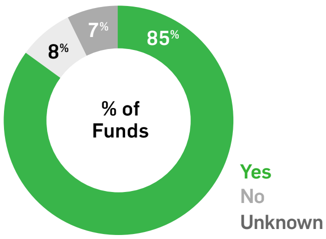
Key Person Protection



While the form of Key Person Protection varied, most continuation funds provided for some form of protection, consistent with 2024.

The form of protection ranged from a simple undertaking for certain Key Persons to devote time to the affairs of the continuation fund to a suspension of follow-on investments for the duration of a Key Person event.

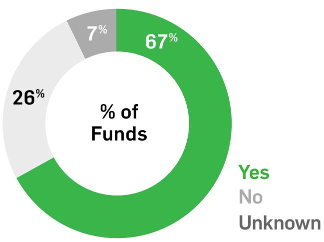
Selling Fund LPAC Approval



Compared to 2024, in 2025 there was a significant increase (+18%) in continuation fund transactions which required the selling fund(s) to obtain LPAC approval.

Even when LPAC approval is not mandated, GPs frequently seek LPAC approval to mitigate potential post-closing claims, particularly in transactions involving trophy assets.

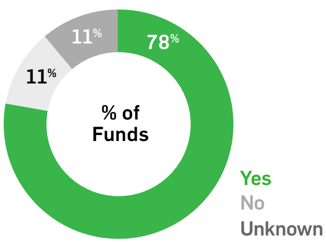
Fairness Opinion



Compared to 2024, there was no material change in the proportion of continuation fund transactions in which parties obtained fairness opinions.

This is not surprising, given that obtaining a fairness opinion is a customary aspect of continuation fund transactions.

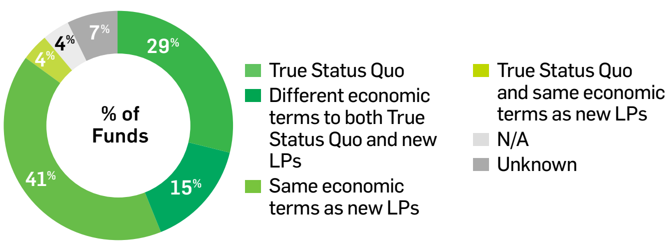
Lead Investor direct enforcement rights



Compared to 2024, there was no material change in the proportion of continuation fund transactions which granted Lead Investors enforcement rights under the SPA.

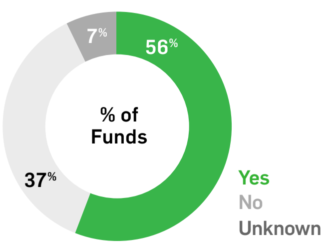
Rolling LPs

Generally, there was no material change as compared to the 2024 survey with respect to the various options offered to LPs.



Option for Rolling LPs?

LPs were only offered a true status quo option in 29% of the continuation fund transactions surveyed.



Rolling LPs required to participate in follow-ons?

GPs only provided rolling LPs the opportunity to participate in follow-ons alongside new money investors in 50% of such transactions.

The Rise of Private Credit Secondaries: What Every Sponsor Needs to Know

Corey Dietrich
Partner
Private Funds

SMART SUMMARY

- Private credit secondaries are now an established market. They execute more cleanly than PE deals – predictable cash flows, finite maturities, less crystallized carry.
- Continuation vehicles fit private credit well. Self-liquidating portfolios mean orderly, predictable liquidity without "home run" exit pressure.
- PE sponsors should take note even as non-sellers. Where portfolio companies are borrowers, check permitted-assignment and "approved fund" status, watch voting dynamics, and recognize that a well-capitalized CV may be a better long-term lender than a wind-down fund.

Many of you have worked closely with Weil on GP-led solutions and secondary transactions over the years – it has been one of the defining areas of our practice, and one where we have been proud to lead as the market has matured and grown in complexity. Today we want to share two things: an introduction to a new addition to our team, and our thoughts on what we believe is the most rapidly evolving segment of the secondary market right now.

Private credit secondaries are no longer an emerging trend – they are an established market. Continuation vehicles, portfolio transfers, and LP-led liquidity transactions in private credit are occurring at a pace and scale that few anticipated even a few years ago. The structural characteristics of private credit – predictable cash flows, finite maturities, lower embedded gains – make these transactions in many respects cleaner and more efficient than their private equity counterparts. And for our private equity clients, whose portfolio companies are frequently borrowers under the very credit agreements now changing hands, understanding this market is not optional.

Here is where to start:

1 Structural and Tax Advantages Facilitate Liquidity.

An interesting differentiator from private equity secondaries lies in the relative structural simplicity of private credit secondary transactions. Private credit investments typically have fewer impediments to transfer and generate a smaller quantum of "crystallized carry". Unlike private equity secondaries, which can be complicated by significant built-in gain and "crystallized carry" considerations and necessitate complex disguised sale structures, private credit secondaries generally carry less embedded tax and conflict friction. While these sensitivities are never absent, their diminished characteristics in private credit secondaries reduce the risk of triggering unintended tax consequences and prolonged negotiation timelines. This simplicity can help to make secondary transactions in private credit more straightforward,

"As the private credit secondary market continues its rapid expansion, the implications for LPs and Sponsors will only deepen."

faster to execute, and less encumbered by legal, structural and consent hurdles.

2 Continuation Vehicles as a Pragmatic Solution.

Private credit portfolios should generally be self-liquidating. Loans amortize, interest payments accrue predictably, and maturities are finite. In contrast, private equity portfolios often require a sale or exit event to realize value. This structural distinction has practical implications for secondary markets. Investors in private credit funds may be more willing to consider continuation vehicles as an end-of-fund solution, with no expectation of, or reliance on, a "home run" exit. Continuation vehicles in private credit can provide orderly, predictable liquidity and offer sponsors a mechanism to meet LP objectives without forcing premature sales. This contrasts with private equity secondaries, where continuation vehicles can face questions from LPs who prefer to remain invested at the status quo for any potential upside or ultimate exit event, or who have an aversion to the idea of remaining invested but with reset economics and new dry powder requirements.

3 Implications for Private Equity Sponsors.

Private equity sponsors whose portfolio companies are borrowers from private credit sponsors should understand how private credit secondary transactions may affect portfolio company operations and applicable governance rights. In most cases, these transactions are structured as affiliate transfers that do not require a borrower's consent. However, sponsors should review their credit agreements to confirm whether the transfer qualifies as a permitted assignment, whether the continuation vehicle satisfies any "approved fund" or affiliate definitions, and whether the transfer could impact voting dynamics if the secondary buyer consolidates positions or brings in co-investors with different risk appetites. Additionally, sponsors should be aware that if a portfolio company's loans are sold as part of a broader private credit secondary portfolio at a discount, this may send unintended signals to the market about that company's performance – even if the discount reflects portfolio-level pricing dynamics rather than company-specific credit concerns.

4 Additional Runway for Private Equity Portfolio Companies.

Private equity sponsors should also recognize that private credit continuation vehicles may provide better lending partners for their portfolio companies than their predecessors. Continuation vehicles, by design, have longer timelines to liquidation and substantial dry powder, positioning them as a potentially more accommodating long-term lender. In contrast, tail-end funds nearing termination face structural pressures to wind down portfolios and often lack the capital or timeline to permit an additional "amend and extend" cycle. For private equity sponsors, this could mean that private credit secondary transactions can improve lending relationships by replacing a capital-constrained, time-limited lender with one that has both the resources and the runway to support the portfolio company through periods of diminished capital markets activity.

As the private credit secondary market continues its rapid expansion, the implications for LPs and sponsors will only deepen. We welcome the opportunity to engage with you on any aspect of this evolving landscape, whether for a market check, a specific transaction, or a broader conversation about how the growth of private credit secondaries may affect your portfolio companies and your fund. Rest assured, Weil is at the forefront of the private credit secondary market, and we intend to remain there.

Secondaries at Scale: Why Continuation Funds Have Entered the Mainstream

Brian Parness
Partner
Private Equity

SMART SUMMARY

- Continuation funds are not new, but they have moved from niche to mainstream as a core liquidity and value-creation tool for sponsors.
- Because the sponsor sits on both sides of the transaction, process and conflict management are paramount: socialization with LPAC, price discovery and information parity are key.
- Done right, a continuation fund is a win-win-win – cash for LPs looking for liquidity, continued participation for LPs who wish to maintain exposure, and runway for the sponsor to continue the value creation journey.

From niche to mainstream

The core fact pattern is familiar. A sponsor has owned a high-quality asset for some time, the original fund is approaching the end of its life, and the sponsor still believes there is meaningful value left to create. A continuation fund transaction moves that asset into a new vehicle (the "continuation vehicle" or "CV") and allows existing investors to sell and take liquidity now, or roll into the CV and continue to participate in the upside.

"Done right, a continuation fund is a win-win-win – cash for LPs looking for liquidity, continued participation for LPs who wish to maintain exposure, and runway for the sponsor to continue the value creation journey."

Not simply a response to a tough exit market

Prior to 2020, continuation funds were oftentimes characterized as a way to delay an exit for a troubled asset. That story is not true anymore. While exit conditions can be part of the decision and there continues to be a robust market for assets that have not performed well, oftentimes the more relevant driver is many continuation fund assets are high-quality businesses the sponsor would rather keep than sell.

The traditional model – buy, improve, and sell on a fixed timetable – does not always fit, especially where a sponsor sees continued growth potential. In that way, a continuation fund is a tool: appropriate where a company needs more time, where some investors want liquidity, and where other LPs and new investors want access to the next phase of growth. It is not right for every company or every fund, but for the right asset, it can be very effective.

The conflict question – and why process is everything

None of this works without taking the conflicts seriously. By definition, the sponsor sits on both sides of the transaction: selling the asset out of one fund and buying it into another. Investors are right to ask how the price and terms can be trusted.

The answer is process. A credible continuation fund transaction is thoroughly disclosed, socialized with LPs and the limited partner advisory committee, supported by independent advice, and grounded in real price discovery. Existing LPs need to understand the options in front of them, including the economics of the new vehicle, well enough to make an informed decision as to whether to take money off the table or to continue to participate in the asset.

What's in it for the sponsor

From the sponsor's perspective, a continuation fund transaction can simultaneously serve many objectives: provide existing investors with DPI and an opportunity to continue to own the asset, crystallize carry (although that carry is generally rolled into the CV) and bring in a new stable of investors (the buy-side LPs) in the CV as new relationships to the sponsor.

Additionally, a sponsor that rolls a meaningful investment into the CV makes a statement of confidence in the underlying asset. Increasingly, we are seeing the sponsor's current investing vehicle making a commitment to the asset alongside the CV, further enhancing alignment.

Increasing LP experience

LPs, for their part, have become more sophisticated. Continuation fund investors, like the rest of private equity, are increasingly becoming specialized by asset class and industry. Gone are the days where the novelty of the structure consumed attention that would otherwise be devoted to the fundamentals of the business. Today's continuation fund investors are familiar with market terms and recognize when process shortcuts or off-market deal terms may be signs of more fundamental issues with a process or underlying business. Deal counsel with experience in CV transactions becomes even more important now that an established playbook exists and deviations from it should be paired with thoughtful explanations.

What to watch

Secondaries will continue to be important tools in maintaining liquidity and setting prices across private markets. A key to success will be an emphasis on liquidity, price discovery and the power dynamics among sponsors, selling LPs and incoming capital as a core part of the process.

THE CONTINUATION FUND EVOLUTION

From end-of-life tool to mainstream portfolio management

THREE STAGES OF MARKET ADOPTION

1. PAST
END-OF-LIFE TOOL
Fund maturity pressure. Assets needing more time. Early GP-led skepticism.

2. PRESENT
LIQUIDITY ALTERNATIVE
Slow exit windows. Valuation gaps. LP demand for distributions.

3. NEXT
PORTFOLIO MANAGEMENT TOOL
Retain quality assets. Give LPs optionality. Underwrite the next plan.

MARKET DRIVERS

- **EXIT MARKET DISLOCATION** — Slower M&A / IPO windows and valuation gaps.
- **LP LIQUIDITY NEEDS** — Distributions, rebalancing and portfolio pacing.
- **HIGH-QUALITY ASSET RETENTION** — More runway for proven businesses.
- **DEDICATED SECONDARY CAPITAL** — Specialist buyers fund the next phase.

PROCESS GUARDRAILS
Process is the transaction:

Price Discovery | LP Election | LPAC Review | Disclosure

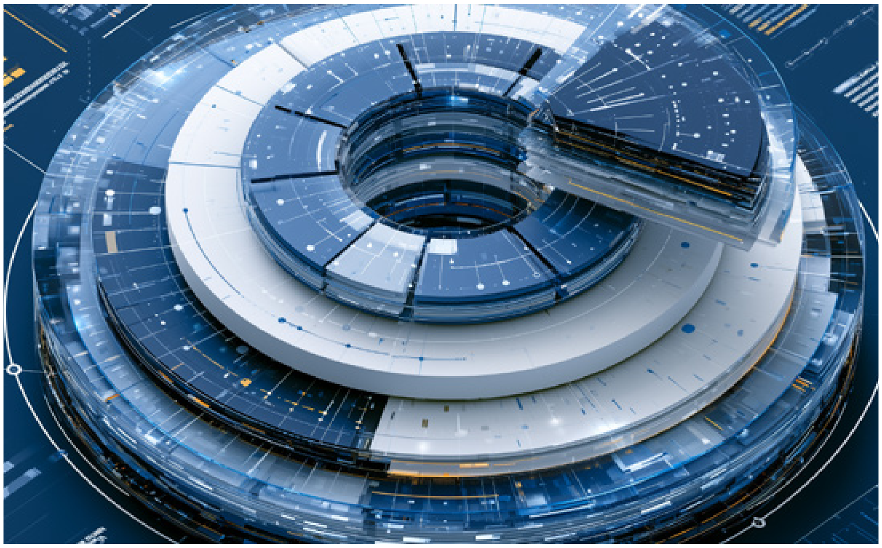
Conflicted transaction | Liquidity solution | New underwriting

Leverage in Continuation Funds: A Growing Tool with Increasing Scrutiny

Simon Saitowitz
Partner
Private Equity

SMART SUMMARY

- Leverage has become a core feature of modern continuation fund transactions.
- While debt can improve returns and capital efficiency it can also reshape GP economics and LP risk.
- Understanding leverage is now central to continuation fund structuring, underwriting and due diligence.



As continuation funds become an increasingly important feature of the private equity landscape, leverage is emerging as one of the market's most powerful tools. However, whilst debt can enhance returns and improve capital efficiency, it also raises fundamental questions about alignment, risk and transparency. For sponsors and investors alike, understanding the implications of leverage has become a critical component of continuation fund investing.

Continuation funds have evolved from a niche liquidity solution into one of the defining developments in modern private markets. Once viewed primarily as a mechanism for extending ownership of assets beyond the life of a traditional fund, continuation vehicles are now firmly established as a strategic portfolio management tool. They enable sponsors to retain ownership of high performing companies, provide liquidity to existing investors and attract new capital into assets that have already demonstrated significant value creation potential.

As the market has matured, so too have the financing techniques used to support these transactions. Leverage, particularly in the form of NAV facilities and other fund level borrowing arrangements, has become increasingly common. What was once an exception is rapidly becoming a standard feature of many continuation fund structures.

For sponsors, the appeal is obvious. Leverage can increase purchasing power, reduce the amount of equity capital required from investors and improve transaction flexibility. In a fundraising environment where capital efficiency remains a priority, these benefits can be compelling. Yet the growing use of debt has also prompted a more fundamental debate: does leverage simply enhance returns, or does it materially alter the economics and risk profile of continuation fund investing?

The Expanding Role of Leverage

At its simplest, leverage enables a continuation fund to acquire assets using a combination of debt and equity rather than relying entirely on investor capital. Financing may be used to fund a portion of the purchase price, support follow on investments, provide working capital or create reserves for future opportunities.

The most common forms of financing include subscription facilities, which are secured against investor commitments and NAV facilities, which are secured against the value of the continuation fund's underlying investments. The growth of the NAV financing market has been particularly striking. Lenders have become increasingly comfortable underwriting concentrated portfolios and even single asset continuation vehicles where the quality and cash generating characteristics of the underlying asset support the credit.

The result has been the emergence of a sophisticated financing market capable of supporting larger and more complex transactions than ever before.

For many sponsors, leverage is no longer merely a financing tool. It has become an integral part of transaction structuring and portfolio management strategy.

How Leverage Influences GP Economics

Much of the discussion surrounding leverage focuses on its ability to enhance investor returns. Less attention is often paid to its impact on GP economics.

The most obvious effect is on carried interest. Because leverage reduces the amount of equity required to acquire an asset, any increase in enterprise value is magnified when measured against the equity invested. This can materially increase the returns on which carried interest is calculated.

Consider a continuation fund acquiring a business for $1 billion. If the transaction is funded entirely with equity and the asset subsequently appreciates by 20%, investors realise a 20% gain. If, however, the acquisition is financed using $300 million of debt and $700 million of equity, the same increase in enterprise value generates a significantly higher return on the equity invested. The business has created exactly the same amount of value, but leverage has amplified the equity outcome.

For the GP, this can mean higher carried interest and, in some cases, earlier achievement of preferred return hurdles. The result is that leverage may accelerate both the timing and magnitude of carry distributions.

This dynamic has become an increasing focus of investor scrutiny. Many LPs accept that leverage has always been a feature of private equity investing. However, they are increasingly asking whether additional carry generated through financial structuring should be treated in the same way as carry generated through operational improvement, strategic repositioning or revenue growth.

Management fees are also attracting attention. Depending on the structure of the continuation fund, fees may be calculated based on acquisition cost, gross asset value, invested capital or net asset value. Where fees are based on gross asset value or acquisition cost, leverage can allow a GP to maintain fee income on a larger asset base while requiring less equity from investors.

While these arrangements are often fully disclosed, investors are increasingly focused on whether fee structures accurately reflect the economic exposure they are assuming.

More broadly, leverage has the potential to alter incentives. Increased borrowing may enhance expected GP economics through higher carry, accelerated distributions and preserved management fees. Yet the additional risk associated with debt is borne primarily by investors. Ensuring that this balance remains appropriate is becoming an increasingly important aspect of continuation fund governance.

When Leverage Changes the Investment Thesis

Continuation funds are frequently marketed as vehicles providing exposure to mature, high quality businesses with established operating histories and relatively predictable cash flows.

The introduction of leverage can materially change that proposition.

A portfolio company that may appear relatively defensive in an unlevered continuation vehicle can become significantly more sensitive to interest rates, refinancing conditions and valuation fluctuations once fund level debt is introduced. While leverage can increase upside potential, it also increases downside exposure.

For rollover investors, this distinction is particularly important. The continuation vehicle may hold the same underlying asset as the original fund, but the economic exposure may be very different.

As a result, sophisticated LPs increasingly view leverage not simply as a financing decision but as a fundamental component of the investment thesis itself.

The Rise of Layered Leverage

One of the most significant recent developments in continuation funds is the emergence of leverage at multiple levels of the investment structure.

Historically, debt was concentrated at the portfolio company level. Today, leverage can exist throughout the ownership chain.

At the lowest level sits the portfolio company, which may itself be financed through acquisition debt, revolving credit facilities or other forms of corporate borrowing.

Above that sits the continuation fund, which may employ NAV financing or subscription facilities to support the acquisition and management of the asset.

Increasingly, investors themselves are also using leverage. Pension funds, insurance companies, sovereign wealth funds, fund of funds and secondary investors are all making use of so called "back leverage" facilities to manage liquidity, maintain portfolio allocations and improve capital efficiency.

The result is a three tier leverage structure comprising asset level debt, fund level debt and investor level debt.

Viewed individually, each layer may appear prudent. Viewed collectively, however, the cumulative leverage embedded within the investment can become substantial.

This has given rise to a growing focus on "look through leverage"—the total amount of leverage present across the entire investment chain.

Five Key Risks LPs Should Consider

The growing use of leverage has prompted investors to adopt a more sophisticated approach to risk assessment.

1 The first area of focus is carry acceleration risk.

Leverage can increase the GP's carried interest entitlement without necessarily increasing underlying value creation. LPs therefore need to understand the extent to which projected returns are being driven by operational performance as opposed to financial engineering.

2 Second is refinancing risk.

Most NAV facilities and fund level borrowing arrangements have finite maturities. If credit markets deteriorate, refinancing may become more expensive or unavailable, potentially forcing asset sales at unattractive valuations.

3 Third is valuation sensitivity risk.

Because many financing facilities are linked directly to portfolio valuations, a decline in value can trigger borrowing base reductions, mandatory repayments or restrictions on distributions. In stressed market environments, these effects can amplify pressure on investor returns.

4 Fourth is conflict and governance risk.

Continuation fund transactions already involve inherent conflicts because the sponsor effectively controls both the selling vehicle and the acquiring vehicle. The introduction of leverage may further complicate those dynamics, particularly where higher leverage improves projected GP economics.

5 Finally, investors must consider liquidity cascade risk.

The interaction between asset level debt, fund level debt and LP back leverage can create vulnerabilities that are difficult to identify when each layer is analysed in isolation. A deterioration in asset performance may affect valuations, trigger covenant pressure, reduce borrowing capacity and create liquidity demands throughout the structure simultaneously.

This is one reason why investors are increasingly stress testing continuation fund structures under a range of downside scenarios.

Looking Ahead

The debate surrounding leverage in continuation funds is no longer about whether debt should be used. Rather, it is about how much leverage is appropriate, how it should be disclosed and how its risks should be managed.

As continuation funds continue to grow in size and sophistication, leverage is likely to become a permanent feature of the market. Used prudently, it can enhance flexibility, improve capital efficiency and support attractive investment opportunities. Used aggressively, it has the potential to alter incentives, amplify risks and undermine alignment between sponsors and investors.

The most sophisticated market participants are therefore moving beyond a simple analysis of fund level borrowing and focusing instead on total look through leverage across the entire investment chain.

In today's continuation fund market, the key question is no longer whether leverage exists. It is how much leverage exists, where it sits and how it behaves when markets come under pressure.

The Maturing GP-Led Market: HALO Assets, Credit Secondaries and Beyond


Trey Muldrow
Partner
Private Equity


Jeff Hammer
Managing Director
Moelis & Company


Kyle Reidy
Managing Director
Moelis & Company

Q&A | Moelis

Jeff Hammer and Kyle Reidy of Moelis' Private Capital Advisory Group sit down with Weil partner Trey Muldrow during the 2026 SuperReturn Conference to discuss the latest trends in the maturing GP-led transaction market and their predictions for the future.

Q: The GP-led transaction market has expanded rapidly in recent years. What distinguishes today's market from the pre-2020 environment?

Jeff: There is now significantly deeper participation across the market. LPs are more engaged and informed, advisors play a more structured role, and the universe of dedicated secondary investors, in particular the single asset GP-led investors, has expanded meaningfully.

This growth has been reflected in increased transaction volume, with GP-led private equity transactions increasing from approximately $37 bn in 2020 to roughly $110 bn in 2026. It is estimated that GP-led private equity transactions increased from 4% of all PE exits in 2020 to 14% in 2025. There is a growing cohort of large scale secondary investors – estimated at more than 15 sponsors – capable of writing equity checks in excess of $250 million for single asset continuation vehicles (CVs). While the number of $1 bn plus CV transactions increased considerably in 2025, approximately 50% of single asset CVs were $500 million or smaller, demonstrating increased participation by middle market sponsors.

Kyle: Further supplementing the growth in the broader secondaries market is the surge in credit secondaries. Credit secondaries are defined by highly visible, contracted cash flows, rather than upside from growth or multiple expansion. Similar to the GP-led private equity market, there are a number of new, well-capitalized buyside entrants in the credit secondaries market. These new entrants employ personnel with deep underwriting experience who are keenly focused on risk mitigation, the reliability and frequency of valuation marks and stress-testing defaults and recovery rates.

The credit secondaries market has, in our view, crossed a structural tipping point. Two forces are reinforcing each other: the formation of dedicated credit secondaries capital and a broadening recognition among credit GPs of the secondary market's use cases, from active portfolio management to LP liquidity and fund life solutions. Together, these dynamics are transforming credit secondaries into an established and durable segment of the secondaries landscape.

Market volume for credit secondaries transactions has scaled rapidly, growing from less than $10bn in

2024 to an estimated $30+ bn in 2026. In the GP-led continuation vehicle market, portfolios are primarily comprised of senior direct lending loans (approx. 65%), with mezzanine, distressed and asset backed loans constituting the remainder. In addition, within the past 6 months, there has been enhanced interest in the credit secondaries market by Business Development Companies and interval funds in an effort to manage investor liquidity needs and conduct portfolio management exercises.

Q: Where have you seen CVs unlock the most economic value for a sponsor?

Jeff: One of the most compelling use cases for CVs is their ability to facilitate transformational transactions. For example, CVs have been used to support mergers or take-private transactions that may not have been achievable within the constraints of a traditional fund lifecycle. In such cases, the CV provides a framework for resetting the value creation plan, bringing in new capital, and extending the investment horizon. This can act as a catalyst for accelerating growth initiatives or strategic repositioning, ultimately unlocking incremental value that would otherwise have been difficult to realize.

Q: What sectors are currently generating the most interest for CV transactions?

> **"The secondary market will also play an increasingly important role in shaping outcomes across private equity sponsors."**

Jeff: During the past 12 months, there has been a notable rotation away from traditional high-growth sectors such as software and technology and toward "HALO" – heavy asset, low obsolescence – businesses. These include capital-intensive industries like energy infrastructure, rail, manufacturing, and utilities – businesses grounded in tangible assets with enduring economic relevance. In an environment where technological disruption introduces valuation uncertainty, investors are increasingly gravitating toward assets with predictable cash flows.

Q: How do you expect the CV market to evolve over the next three to five years?

Jeff and Kyle: The CV market is likely to continue expanding, both in breadth and depth. More sponsors – including mid-market and smaller firms – are expected to adopt CVs as a core portfolio management tool. It is estimated 78 of the top 100 private equity funds have used a continuation fund and it is expected that the number of CVs per fund will increase, reflecting greater integration into fund lifecycle planning. There is the expanded use of third party leverage to finance CV transactions, increasing from approximately 7% in 2024 to 14% in 2025, which will further facilitate market growth.

The secondary market will also play an increasingly important role in shaping outcomes across private equity sponsors. The private equity industry is in the fourth year of the "hangover" from its 2009-2022 growth period. As liquidity pressures persist, CVs and other liquidity tools will serve as a key mechanism for portfolio "cleansing," helping to differentiate stronger sponsors from weaker firms. Moreover, many acquisitions by funds during the period from 2020 to 2022 may result in the rise of Zombie Fund 2.0 where deep discounts to NAV will facilitate future portfolio company disposition activity.

Launching a Secondaries Platform: What Fund Sponsors Need to Know


David J. Greene
Partner
Private Funds


Sara Allawi
Partner
Private Funds

The private equity secondaries market has grown from a niche liquidity solution into a dynamic segment of alternative investing. We are frequently approached by established sponsors or emerging managers looking to launch a dedicated secondaries platform. Before doing so, sponsors should understand the meaningful differences between traditional primary and secondaries private investment funds.

Terms and Fund Architecture

As compared to private investment funds making direct investments ("primary funds"), secondaries funds (i.e., funds investing in LP interests or GP-led continuation vehicles) are often characterized by a compressed deployment timeline and an accelerated return of capital, flattening the "J-curve" effect. This structural difference often drives differing economic terms and fund structuring:

Economics.

As with primary funds, management fees during the investment period are typically charged on commitments, though often at a lower rate than primary funds (e.g., between 1.0% to 1.5%). After the investment period, the management fee is typically calculated on net invested capital, often including capital committed but not yet called by underlying investments.[1] Carried interest rates are in the range of 12.5% to 15% with a 7% to 8% preferred return. Some secondaries managers offer tiered waterfall structures with carry rate increases as certain financial metrics are met (e.g., a MOIC threshold). Like primary funds, creative co-investment arrangements can help bring down blended fee rates, as described below.

Investment Allocation.

Many established secondaries sponsors operate blind-pool funds alongside a variety of co-investment arrangements and customized accounts, requiring a more flexible investment allocation covenant as compared to primary funds (e.g., on a fair and equitable basis among relevant funds).[2] These arrangements can augment capital from a blind-pool fund, allowing the fund to access competitive deals for which it otherwise may not qualify. As with primary funds, many sponsors also use co-investment vehicles to drive larger commitments to the blind-pool fund.

Fund of Funds Attributes.

Various traditional primary fund attributes are often modified in the context of a secondaries strategy.

- Secondaries funds do not control underlying capital calls and funding deadlines. Accordingly, secondaries funds may require investors to fund on a shorter

"The nuances of secondaries demand thoughtful fund design from the outset. Sponsors who appreciate these differences will be best positioned to capitalize on one of the most compelling opportunities in today's private markets landscape."

timeframe than primary funds, unless the fund utilizes a subscription-based capital call line. Secondaries funds also require broad authority to call capital to fulfill underlying commitments, during and after the investment period.

- LPs pay two layers of fees.
- Diversification and other investment limitations require thoughtful consideration, looking through to the underlying assets, sponsors and/or strategies to appropriately cap exposures.
- Recycling and LP givebacks must permit recalling amounts equal to those recalled for recycling or liabilities by the underlying investments.
- The rights of investors to remove the general partner should be limited to cause scenarios. Given the interests in underlying funds could be held directly by an investor, unlike a portfolio company interest (which is much harder to manage without a sponsor), a no-fault removal right is inappropriate.

Borrowings.
Historically, secondaries funds were prohibited from directly incurring debt, but the market eventually moved to permit subscription facilities, subject to clean-down and other limitations. Today, sponsors often have broad flexibility to use borrowings, and are increasingly using leverage creatively, in secondaries funds. Borrowing provisions often look like those in traditional buyout funds, with a few strategy-specific nuances such as carving out financings provided by issuers of underlying investments for purposes of debt limits.

Underwriting Complexity

The underwriting process for a secondaries fund is fundamentally different from that of a primary fund. Rather than evaluating individual companies through traditional due diligence, a secondaries buyer must assess assets managed by third-party general partners. If assessing entire portfolios, this requires the ability to price hundreds of underlying companies across multiple vintages, geographies, and strategies, often on compressed timelines and with limited information access.

GP-led continuation vehicles added another layer of complexity. In a GP-led transaction, the secondaries buyer is not simply purchasing an LP interest but is underwriting a single concentrated asset or small portfolio that the original sponsor believes warrants an extended hold. These transactions require direct asset-level diligence that more closely resembles traditional private equity underwriting (though often with more limited information).

We expect data infrastructure and artificial intelligence to revolutionize the underwriting process in the secondaries market, particularly for large packages of diverse LP interests.

Conclusion

Launching a secondaries fund is not simply a matter of repurposing a traditional private equity fund template. The compressed deployment cycle, distinct underwriting requirements, differentiated investor expectations, and nuanced economic and fund terms all demand thoughtful fund design from the outset. Sponsors who appreciate these differences will be best positioned to capitalize on one of the most compelling opportunities in today's private markets landscape.

GP Stakes for Sponsors: What the Product Is and How to Assess Fit


Andrew Nichol
Partner
Private Equity and Private Funds


Brian Parness
Partner
Private Equity


Zahraa Hadi
Counsel
Private Equity and Private Funds

SMART SUMMARY

- A GP stake is not a change of control transaction. Buyers take passive, minority positions and avoid significant governance rights, producing a transaction anchored around an alignment of economics rather than a transfer of control.
- The product set has widened beyond a single offering – from anchor and seed investments and fund finance solutions to permanent capital and JVs – and the buyer universe has diversified accordingly, with buyers spanning dedicated firms, bank platforms, large asset managers, sovereign wealth funds and institutional investors. This breadth reframes the decision from "should I sell a stake?" to "which structure fits my firm's lifecycle?"
- Fit, valuation, and timing drive outcomes. Valuation anchors on net fee-related earnings with carried interest heavily discounted, and sponsors who start with a clear thesis, prepare early, and time the process to their own business rather than to the market's enthusiasm consistently fare best.

For all the attention GP stakes have drawn in recent years, questions persist among sponsors about what these products actually are, why sponsors use them, and how governance works once a deal closes. Established firms across private equity, credit, secondaries, real estate, and infrastructure increasingly field inbound interest from stake buyers and investment banks, and a growing number have transacted, but visibility into security structure, terms, and valuation remains opaque. For any sponsor evaluating a GP stake transaction, an assessment of fit should remain the paramount consideration in determining whether the strategy is right for you.

Not a Control Deal

The right starting point is to dispel the most common misconception. A GP stake is not a change of control transaction. Established stake buyers are structured to avoid significant governance rights, and they do so for sound reasons. Holding meaningful control across a portfolio of asset managers would likely result in adverse selection of partner managers, create potential conflicts of interest, raise Investment Advisers Act considerations, and run against the historical preferences of the sponsors who sell these stakes in the first place. Sellers, understandably, want capital and partnership without surrendering the autonomy that made the franchise successful. The result is a purpose-built product anchored around passive, minority participation – an alignment of economics rather than a transfer of control or investment decision-making.

A Widening Menu of Structures

One of the most consequential developments of recent years is that the market has moved well beyond a single, one-size-fits-all product. Security design and product offerings have become broader and more flexible, allowing capital to be matched to a sponsor's specific needs and motivations. The major categories include:

- **Anchor and seed investments**, where a buyer commits early capital to a fund – anchoring a flagship raise, seeding a first-time strategy, or providing catalytic capital to an emerging manager – and contributes working capital in the form of debt or preferred equity in exchange for economic participation in the sponsor. These economics increasingly trend toward a right to participate in gross fee income, with a sunset upon the satisfaction of certain return targets or a step-down into a net deal.
- **Fund finance solutions**, including debt and preferred equity financing for GP commitments, NAV-based facilities, and preferred structures, which address liquidity and commitment-funding needs without selling permanent equity.
- **Permanent and semi-permanent capital solutions**, spanning preferred instruments and common equity stakes, the latter of which may or may not be redeemable.
- **Joint ventures**, where a sponsor and a large institutional investor (frequently a sovereign wealth fund or insurance company) establish a framework for the investor to make a multibillion-dollar commitment to the sponsor's fund in exchange for an interest in the sponsor's upper-tier economics and increased influence over investment strategy and capital allocation. Such investments are frequently designed to be fee-accretive to the institutional investor and are viewed as a means to strengthen alignment and acquire derivative exposure to the growth and profitability of the sponsor as a going concern.

This range matters because it reframes the decision. The question is no longer simply "should I sell a stake?" but "which structure, if any, fits where my firm sits in its lifecycle?" A debt or preferred equity solution timed to a fundraise solves a very different problem than a permanent common equity partnership, and the choice will significantly influence a sponsor's go-to-market strategy and selection among potential buyers.

A More Diverse Set of Buyers

The buyer universe has diversified in step with the product set. Where the field was once dominated by a small handful of pioneers, sponsors now encounter a far wider range of counterparties. Independent, dedicated GP stakes firms such as Hunter Point Capital and PACT Capital have entered alongside established players including Goldman Sachs' Petershill, Blue Owl, Blackstone, and Wafra. Large asset managers have built out dedicated staking products, including TPG NEXT, Arctos, and Ares. Beyond the specialists, sovereign wealth funds, insurance companies, and large family offices are increasingly exploring direct investments into asset management firms.

For a seller, this diversity is a practical advantage: more competition for high-quality franchises, and more variation in what each buyer brings to the table. Each potential buyer offers distinct attributes, ranging from the ability to allocate significant capital from an existing balance sheet or a network of institutional investors backing the investment, to value-add capabilities such as capital formation support, strategic introductions, operational guidance, and assistance building out new product lines. When selecting a buyer, the calculus should be informed both by immediate valuation considerations and by the buyer's ability to accelerate growth or capitalize on existing synergies over the near and medium term.

When the Fit Is Right and When It Isn't

A GP stake can be an excellent outcome, but it is not the right answer for every sponsor. A decision to explore a GP stake should be grounded in the sponsor's contemplated business lifecycle, capital requirements, and liquidity thesis: why the firm wants liquidity now, what it intends to do with the proceeds, and how that fits the trajectory of the business over the next decade. A stake sold to fund founder liquidity, to capitalize GP commitments, to seed a new strategy, or to facilitate intergenerational succession each implies a different structure, a different counterparty, and a different sense of timing.

How These Deals Are Valued

Valuation in the GP stakes market is anchored on net fee-related earnings ("NFRE"), with heavy discounts applied to carried interest. From there, valuation is highly sensitive to two levers: the discount rate applied and the assumptions made about future growth. These are precisely the areas where buyers concentrate their diligence, scrutinizing fundraising pipelines, fee durability, team stability, and the credibility of growth projections. A seller who understands how these inputs drive value, and can substantiate its growth assumptions, is well positioned in diligence.

Timing and Process

A sponsor's go-to-market strategy and timing can be a significant valuation driver. For equity-based transactions, sponsors often target the final closing of a flagship product, when NFRE is at its highest and the economics are most attractive to a buyer. These processes typically run for four to twelve months, depending on whether the sponsor runs a proprietary process or broad auction, prevailing market conditions, and the motivation of both parties. One point bears emphasis: structuring and legal discussions should commence well before any approach to potential buyers. A sponsor with an appropriately structured upper-tier can drive significant tax efficiencies and retain greater control over the narrative around succession planning, product development, and other medium-term plans than a sponsor who has not worked through these eventualities in advance.

Financing transactions follow a different rhythm. They are generally launched to coincide with fundraising, and they move considerably faster, often closing in six weeks to three months. The compressed timeline reflects both the more standardized nature of the structures and their tight connection to a live capital-raising calendar.

A Broadening Geographic Footprint

The geography of the market is shifting. The United States has historically been the most active market for GP stakes, and it remains the deepest. But interest is expanding, with growing activity around Canadian, European, and East Asian asset managers. For non-U.S. sponsors, the option set is wider than it was even a few years ago, and for the market as a whole, the trend signals continued maturation and globalization. With expanded geographic scope, however, come additional tax complexities, and sponsors considering a GP stake should engage proactively to identify structures that can accommodate an investment from a U.S.-based GP stakes fund.

The Bottom Line

GP stakes have drawn their share of attention because, for the right sponsor at the right moment, they solve real problems – liquidity, capitalization, succession, growth – without surrendering control. The sponsors who fare best are those who begin with a clear thesis, understand how their economics will be valued, prepare early, and time their process to their own business rather than to the market's enthusiasm. Where that discipline is present, a GP stake is a powerful tool; where the thesis is still forming, the work lies in sharpening it before going to market.

Buyer Beware: Secondaries May Trigger Unexpected Regulatory Filings


Michael C. Naughton
Partner
Antitrust


Neil Rigby
Partner
Antitrust


Kristin Sanford
Partner
Antitrust


Lucy Peckham
Associate
Antitrust

SMART SUMMARY

- Private equity investors need to be aware that continuation vehicles and secondary acquisitions can trigger regulatory filings in unexpected scenarios.
- Even where there is no change of control or third-party sale, sponsors should build in sufficient lead time for HSR, merger control and FDI analysis to avoid unexpected timing issues.

Private equity investors need to be aware that continuation vehicles and secondary acquisitions can trigger regulatory filings in unexpected scenarios.

A significant proportion of PE transactions now involve sponsors maintaining investments in portfolio companies through continuation vehicles or the introduction of new limited partners, enabling sponsors to attract new investment into underlying assets without sale to a third party. While these transactions generally do not result in a change of control, there are a number of scenarios in which merger control or foreign direct investment ("FDI") filings can be triggered. The practical takeaway is to build sufficient lead time into the transaction timeline for filing analysis. Early engagement with antitrust counsel can help avoid unexpected timing issues.

HSR Considerations

In the U.S., the Hart-Scott-Rodino ("HSR") Act requires filing notifications with the Federal Trade Commission ("FTC") and Department of Justice ("DOJ") and a statutory waiting period (typically 30 days) be observed for transactions that meet certain size thresholds. A common misconception is that HSR is unlikely to be relevant when the sponsor is involved on both sides of a transaction. However, continuation vehicles can trigger HSR, even where the transaction is structured as an internal fund-level process rather than a conventional third-party sale.

For HSR purposes, separate funds managed by the same sponsor are often treated as separate "persons" and may not be considered under common control. As a result, an acquisition by one fund from another may be analyzed in the same way as an arm's-length transaction between unrelated parties. If the relevant size-of-transaction and size-of-person thresholds are met, the parties may be required to file HSR and delay closing until the waiting period expires or is terminated.

Importantly, a cash purchase price is not required to create a potentially reportable event. Fund formations,

“[T]he ultimate HSR analysis may turn on which existing limited partners elect to roll into the new vehicle and which elect to sell. In many cases, the filing analysis cannot be confirmed until those elections are determined.”

reorganizations, recapitalizations and secondary transactions can all require HSR analysis depending on how economic ownership shifts as part of the transaction. This is particularly relevant for continuation funds, where the ultimate HSR analysis may turn on which existing limited partners elect to roll into the new vehicle and which elect to sell. In many cases, the filing analysis cannot be confirmed until those elections are determined.

Global Merger Control and FDI Considerations

Outside the U.S., merger control typically focuses on whether there is a change of control, so continuation vehicles and secondary acquisitions usually do not trigger merger filings as the general partner or investment adviser generally remains unchanged. However, there are three scenarios in which merger control or FDI filings are often triggered.

First, the introduction of new co-investors, particularly those investing through vehicles that are not managed by the primary sponsor, can potentially trigger merger filings in jurisdictions where the filing threshold is less than control – for example a number of jurisdictions can trigger filings where a non-controlling interest of 20% or 25% is acquired. If a co-investor acquires joint control, many more filings can potentially be triggered as the turnover of both parent investors is taken into account and filing thresholds can be met even where the underlying portfolio company is not active. FDI filings can also potentially be triggered by co-investors, as many jurisdictions have fairly low thresholds at which filings are triggered (sometimes as low as 5-10%).

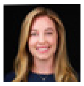
Second, changes to the ownership structure, such as the introduction of a new fund, or the addition or removal of entities within the ownership stack, can potentially trigger FDI filings. Many jurisdictions apply FDI filing thresholds even to transactions where there is no change of control, including internal reorganizations, and do not apply any de minimis safe harbor. The widening scope of FDI regimes also means that a broad range of economic activities outside of traditionally sensitive sectors is now caught under FDI control.

Third, while the introduction of new limited partners typically does not trigger merger control or FDI filings, there are some jurisdictions which do not differentiate between legal and economic interests, particularly under FDI rules, with the potential to trigger filings even when only LP interests are being acquired.

Given that ex-U.S. filings typically involve review periods of 2-3 months (and sometimes longer, even for non-problematic deals), and that the consequences for failing to file often include provisional invalidity or potential criminal sanctions, it is important for sponsors to carefully consider ex-U.S. filings particularly FDI, and to build in sufficient time in the deal timeline.

Partner Perspectives:
The Role of RWI in Secondaries Transactions

Matthew Heinz
Partner, Transaction Liability
Lockton

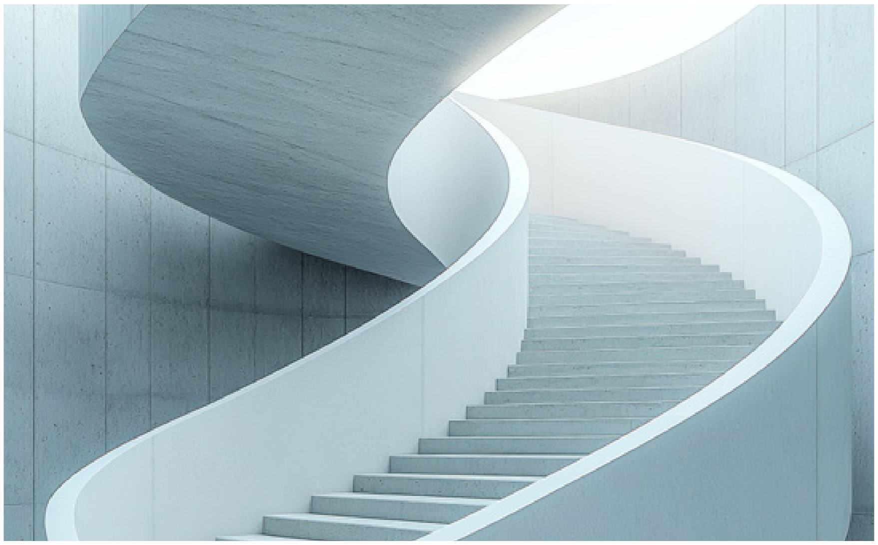


Emily Rosen
Senior Vice President, Transaction Liability
Lockton

Ariel Fliman
Partner
Corporate

SMART SUMMARY

- RWI is an increasingly competitive and cost-efficient tool for executing secondaries transactions, with lower premiums and retentions than traditional M&A policies.
- Evolving structures require tailored underwriting, especially for flat coverage, credit secondaries, and GP stakes.



Introduction

As the private capital secondaries market continues to expand as a liquidity tool for investors and general partners, market participants are increasingly turning to representations and warranties insurance ("RWI") to facilitate transaction execution.

In the secondaries context, RWI is typically issued to a buyer in continuation vehicle transactions or GP stakes investments. Under the policy, an insurer agrees to indemnify the buyer for losses arising from breaches of representations and warranties ("R&Ws") or excluded obligations set forth in the transaction agreement.

While RWI is now well established in traditional M&A transactions, its use in secondaries transactions presents distinct considerations. Most notably, operational representations relating to portfolio companies are typically qualified by the knowledge of the general partner. While these knowledge qualifiers reduce the scope and depth of diligence required as compared to a typical buyout transaction, the increasingly complex and bespoke transaction structures require carriers to adopt more tailored underwriting approaches. Increased insurer participation and claims experience have contributed to a more mature and competitive RWI market for secondaries transactions.

Economics: Premiums and Retentions

The economics of RWI in secondaries transactions generally reflect the narrower risk profile associated with knowledge-qualified representations. Accordingly, RWI policies issued in connection with secondaries transactions tend to be more cost-efficient than those seen in traditional M&A.

At present, primary premium rates fall within a range of approximately 1.7% to 2.5% of the limit of liability, though this range can vary depending on deal size, transaction structure, and complexity. For context, typical premiums for traditional M&A policies equal about 3.5% of the limit of liability.

Coverage under an RWI policy is subject to exhaustion of a self-insured retention, which is similar to a deductible under other kinds of insurance. For RWI policies in secondaries transactions, retentions are lower than in buyout transactions. For operational and tax representations, initial retentions are typically 25 basis points of net asset value ("NAV") and step down to 10 basis points after the first anniversary of closing. For context, RWI policies in buyout transactions often carry retentions closer to 70 basis points, dropping to about 50 basis points after the first year. In addition, insurers may offer "zero retention" policies for breaches of fundamental representations and excluded obligations or, for an additional premium, across all representations and obligations.

Coverage Considerations: Fundamental Representations and Excluded Obligations

Given the prevalence of knowledge qualifiers on operational representations, Lockton views secondaries RWI policies as operating primarily as protection against general partner fraud or knowledge-based misrepresentations, supplemented by coverage for fundamental representations and excluded obligations.

In this context, the scope of fundamental representations is typically broader than in traditional M&A. In addition to core "true" fundamental representations, such representations often include matters such as litigation and solvency at the fund level. Buyers commonly procure coverage equal to approximately 10% of NAV for all representations and excluded obligations, together with an additional 10% to 40% of NAV specifically for fundamental representations and excluded obligations.

If a breach of a fundamental representation or excluded obligation occurs, policies should typically respond with no retention (allowing the insured to access coverage immediately) for a seven-year coverage period.

Market Developments and Emerging Trends

A notable development in the secondaries RWI market is the increasing use of hybrid coverage structures that blend features of traditional secondaries and buyout-style insurance. In certain transactions, insurers are willing to provide coverage for selected operational representations on a non-knowledge-qualified, or "flat," basis. In particular, buyers are often seeking this hybrid coverage for higher-risk areas such as financial statements or tax. This approach requires more robust third-party diligence and is accompanied by higher premiums and retentions.

Another important area of development is the growth of RWI solutions for credit secondaries. As this segment of the market has expanded, insurers have adapted their underwriting approaches to address the distinct characteristics of credit portfolios. In particular, underwriters focus on issues such as asset transferability, leverage at both the selling fund level and CV, and the challenges associated with underwriting large portfolios comprising numerous underlying positions. RWI in credit secondaries is not intended to insure underlying asset performance, but rather the structural and administrative risks reflected in the transaction's negotiated representations and warranties.

Claims activity in this space has so far been limited, resulting in a relatively low-frequency, high-severity risk profile largely centered around general partner knowledge. There have, however, been instances of successful recovery under these policies. Claims experience will likely play an increasingly important role as the market continues to develop.

Use Case outside of GP-Leds: GP Stakes Transactions

Besides continuation vehicle transactions, sponsors and investors are also exploring the use of RWI for GP stakes deals. While only a handful of such policies have been placed to date, interest in this area is increasing.

It is worth noting that a RWI policy on a stake deal would look like and be priced more like a buyout policy than a GP-led policy, due to the absence of knowledge-qualified R&Ws. Carriers may be willing to cover areas such as regulatory compliance, financial statements, employment matters, litigation, and carried interest and fee arrangements, assuming adequate third-party diligence has been performed by the buyer.

Glenn's Corner

THE LIABILITY SHIELD AS APPLIED TO THE FIDUCIARY DUTIES OF THE ENTITY MANAGERS AND GENERAL PARTNERS OF ALTERNATIVE ENTITIES

Glenn D. West
Retired Partner
Private Equity

The limited liability afforded by forming an entity through which individuals may conduct a business enterprise has long been regarded as one of the most important inventions of modernity.

In a 1929 Yale Law Journal article, a future member of the United States Supreme Court declared that:

> Limited liability is now accepted in theory and in practice. It is ingrained in our economic and legal systems. The social and economic order is arranged accordingly. Our philosophy accepts it. It is legitimate for [an individual or group of individuals] to stake only a part of their fortune on an enterprise.[1]

More recently, the United States Supreme Court has echoed that acknowledgment, noting that "[i]t is a general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries."[2] And forming an entity for the sole purpose of shielding its owners from liability incurred by that entity to third parties "is a legitimate purpose for forming" that entity.[3]

Practitioners form limited liability entities every day to shield their owners from the entity's potential liabilities. While there are limited exceptions to the liability shield's inviolability, in most cases, forming a limited liability entity through which a business is conducted achieves its intended purpose – protecting the entity's owners, officers, and directors from third-party liabilities arising from the entity's actions.

But does the liability shield operate the same way when the general partner of a limited partnership or the manager of a limited liability company is an entity and the limited partners or members seek to hold the officers, directors, or controlling owners of that entity liable for alleged breaches of fiduciary duty? We assume, for these purposes, that fiduciary duties have not otherwise been eliminated contractually pursuant to the applicable statute.[4]

Given the recent interest in differences between Texas and Delaware law on several corporate law issues, and a recent Texas Business Court decision addressing this specific question, it seemed appropriate to compare the answers provided by Delaware and Texas law.

"In Delaware, individual directors or controlling owners of an entity manager or general partner may be exposed to direct liability for breaches of fiduciary duty..."

Delaware's Approach

The answer in Delaware was provided almost 35 years ago in *In re USACafes, L.P. Litigation*, 600 A.2d 43 (Del. Ch. 1991). A subsequent Delaware Court of Chancery decision summarized the ruling in *USACafes* and its progeny as follows:

> In *In re USACafes, L.P. Litigation*, Chancellor Allen considered whether limited partners of USACafes, L.P., could sue the individuals who served as directors of USACafes General Partner, Inc., its corporate general partner, for breach of fiduciary duty related to the disposition of the Limited Partnership's property. The Chancellor held that "[t]he theory underlying fiduciary duties is consistent with recognition that a director of a corporate general partner bears such a duty towards the limited partnership." In later cases involving limited partnerships, "this Court has followed *USACafes* consistently, holding that the individuals and entities who control the general partner owe to the limited partners at a minimum the duty of loyalty identified in *USACafes*." This Court's decisions also have extended the doctrine to other alternative entities, such as LLCs and statutory trusts, while noting the tension the doctrine reflects between corporate separateness and the application of fiduciary principles.[5]

In other words, in Delaware, individual directors or controlling owners of an entity manager or general partner may be exposed to direct liability for breaches of fiduciary duty, even when there is no basis for avoiding the entity form of the general partner or manager.

A more recent Delaware decision reaffirmed the holding of *USACafes*, but noted that "*USACafes, L.P.* does not fully define the scope of the common law fiduciary duty of a director of a corporate general partner to a limited partnership and its limited partners[,]"[6] but "it is well established that, at a minimum, the individuals and entities that own and control the general partner owe the limited partners 'the duty not to use control over the partnership's property to advantage the corporate director at the expense of the partnership.'"[7]

According to Vice Chancellor Fioravanti, "[c]orporate practitioners and drafters of alternative entity agreements are [or should be] well advised of this precedent [*USACafes*] and the importance of it when drafting alternative entity agreements."[8] Consequently, "[c]ontrollers may avoid or at least minimize the duty *USACafes* recognized by structuring their limited partnership agreements to eliminate fiduciary duties."[9]

But, as I previously warned, "if you fail to take advantage of Delaware's liberal ability to eliminate (or limit) fiduciary duties in alternative entity agreements, don't rely upon the general statutory liability shield otherwise available to protect individual directors or controlling owners of a limited liability entity from other types of liabilities to protect those individual directors and controlling owners from breach of fiduciary duty claims."[10]

Texas' Approach

In 1992, a federal court described Texas' approach to this issue as follows:

> Under Texas law, a fiduciary relationship generally exists only between the general partner and the limited partners. This fiduciary relationship creates a right for a limited partner to bring an action only against the general partner, not the officers and directors of the general partner. The one exception to this general rule arises when the actions of a shareholder of the general partner are such that it is appropriate to "pierce the partnership

> veil" to hold him personally liable to the limited partners.[11]

Earlier this year, the Texas Business Court had an opportunity to address this issue directly in *Enosis Investments, LLC v. Jensen*, 2026 WL 1104315 (Tex. Bus. Ct. 3rd Div. April 23, 2026).

In *Enosis Investments*, the plaintiffs attempted to impose fiduciary duties on the owner/president of a corporation that managed several limited liability companies (the "Shared LLCs"). The defendants did not dispute that the corporate manager owed fiduciary duties to the Shared LLCs, but disputed whether those duties applied to the corporate manager's individual owner/president.

Judge Melissa Andrews ruled, in a Joint Advisory on Early Legal Issues (pursuant to a rule used by the Texas Business Court to streamline proceedings by deciding certain issues early), that "without grounds for piercing the veil, the Court cannot disregard corporate separateness to impose [the corporation's] fiduciary duty on its president, Jensen."[12] In so ruling, Judge Andrews noted that:

> Jensen is neither a manager nor a member of the Shared LLCs. The basis Plaintiffs identify for Jensen's purported fiduciary duty to the Shared LLCs is his role as president and "controlling member" of [the corporate manager]. … These sophisticated parties structured their dealings and created their business entities mindfully, and ignoring those choices after the fact is contrary to Texas policy. If the parties had wanted Jensen, individually, to serve as a manager for the Shared LLCs, they could have chosen that option.
>
> To create the kind of pass-through fiduciary duty proposed by Plaintiffs would hold Jensen individually liable for [the corporate manager's] alleged breach of its fiduciary duties to the Shared LLCs. But Plaintiffs have not pleaded or argued any basis for piercing the corporate veil. Without a viable theory for piercing the corporate veil, the Court must abide by the "longstanding" rule under Texas common law that "corporate shareholders, officers, and directors are generally shielded from liability for corporate obligations." As [the corporate manager's] president, Jensen has duties to [the corporate manager], and if he caused [the corporate manager] to breach its fiduciary duties [to] the Shared LLCs, he could be liable to [the corporate manager] for that conduct. But absent a basis for piercing the corporate veil, Jensen's liability is to the corporation, not those to whom the corporation in turn has an obligation.[13]

"Under Texas law, a fiduciary relationship generally exists only between the general partner and the limited partners."

But while the direct pass-through fiduciary duties may not be viable in Texas as they are in Delaware, other theories may yield a similar result. Thus, Judge Andrews noted that:

> There is also a tort – knowing participation in a breach of fiduciary duty – under which an individual may, under certain circumstances, be personally liable for his own conduct in connection with another party's breach of its fiduciary duty. The viability of such a claim here is beyond the scope of this order, which addresses only whether the alleged fiduciary duties are recognized under Texas law.[14]

Thus, under certain circumstances, individual officers, directors, or controlling owners of corporate managers or general partners can be held liable for breaches of fiduciary duty committed by those managers or general partners if they cause such breaches. But, as in Delaware, the parties could have eliminated all fiduciary duties in the Shared LLC agreements, and there would then have been no breach of fiduciary duty by the corporate manager that Jensen could knowingly have participated in.

ENDNOTES

LEVERAGED FINANCE MARKET UPDATE

1 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

2 William Blair, As a Strong Start Turns Sour, What's Next for the Leveraged Finance Market? (April 22, 2026)

3 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026); William Blair, As a Strong Start Turns Sour, What's Next for the Leveraged Finance Market? (April 22, 2026)

4 US Credit Markets Quarterly Wrap (Pitchbook; April 1, 2026)

5 William Blair, As a Strong Start Turns Sour, What's Next for the Leveraged Finance Market? (April 22, 2026); US Credit Markets Quarterly Wrap (Pitchbook; April 1, 2026)

6 William Blair, As a Strong Start Turns Sour, What's Next for the Leveraged Finance Market? (April 22, 2026)

7 April Wrap: Loan Recovery Masks a Deepening AI-Driven Pricing Divide (Pitchbook; May 1, 2026)

8 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

9 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

10 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

11 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

12 May Wrap: Steady Returns Mask a Loan Market Pulling in Two Directions (Pitchbook; June 1, 2026)

13 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

14 May Wrap: Steady Returns Mask a Loan Market Pulling in Two Directions (Pitchbook; June 1, 2026); US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

15 US Credit Markets Quarterly Wrap (Pitchbook; June 30, 2026)

16 US Credit Markets Quarterly Wrap (Pitchbook; June 30, 2026)

17 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

18 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

19 May Wrap: Steady Returns Mask a Loan Market Pulling in Two Directions (Pitchbook; June 1, 2026); US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

20 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

21 Steve Kuppenheimer, 2026 Midyear Investment Outlook: Private Credit's Lender-Friendly Reset (Lord Abbett; June 4, 2026)

22 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

23 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

24 US Credit Markets Quarterly Wrap (Pitchbook; June 30, 2026)

25 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

26 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

27 May Wrap: Steady Returns Mask a Loan Market Pulling in Two Directions (Pitchbook; June 1, 2026)

28 May Wrap: Steady Returns Mask a Loan Market Pulling in Two Directions (Pitchbook; June 1, 2026)

29 Strategics Dominated N. America Dealmaking in 1st Half of '26 (Law360; July 13, 2026)

30 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

31 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

32 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

33 US Credit Markets Quarterly Wrap (PITCHBOOK; June 30, 2026)

34 Leveraged Finance Survey: Software, inflation remain in the crosshairs (Pitchbook; June 30, 2026)

DEFENCE AS AN EMERGING ASSET CLASS IN EUROPE AND GERMANY

1 NATO Summit, The Hague, declaration of 25 June 2025: 5% of GDP by 2035, comprising 3.5% for core defence and 1.5% for security-related infrastructure and resilience.

2 Warburg Pincus, press release of 10 April 2026 ("European Defence Investment Platform"), anchored by MEAG, the asset-management arm of Munich Re. The reported target of up to EUR 1.5bn has not been confirmed by the sponsor (Bloomberg/Reuters, 10 April 2026).

3 Ace Aéro Partenaires II the second vintage of their aerospace and defence strategy being raised is reported to target around EUR 800m (anchors include Airbus, Safran, Thales).

4 InvestEU Defence Equity Facility, launched January 2024, EUR 175m (EUR 100m from the European Defence Fund, EUR 75m from the EIF), managed by the European Investment Fund; targeted mobilisation of around EUR 500m at fund level.

5 According to the Bavarian Chamber of Industry and Commerce, more than EUR 1bn was invested in Munich defence tech start-ups and scale-ups since 2023.

LAUNCHING A SECONDARIES PLATFORM: WHAT FUND SPONSORS NEED TO KNOW

1 Like primary funds, secondaries funds may also offer large-commitment or early-bird management fee discounts.

2 These arrangements can include discretionary overflow vehicles, dedicated sidecar vehicles or customized single-investor accounts.

THE LIABILITY SHIELD AS APPLIED TO THE FIDUCIARY DUTIES OF THE ENTITY MANAGERS AND GENERAL PARTNERS OF ALTERNATIVE ENTITIES

1 William O. Douglas and Carol M. Shanks, *Insulation From Liability Through Subsidiary Corporations*, 39 Yale L.J. 193, 193-94 (1929).

2 United States v. Bestfoods, 524 U.S. 51, 61 (1998), *quoting* Douglas & Shanks, *Insulation from Liability Through Subsidiary Corporations*, 39 Yale L. J. 193 (1929).

3 SSP Partners v. Gladstrong Investments (USA) Corp., 275 S.W.3d 444, 455 (Tex. 2009).

4 *See e.g.*, 6 Del. Code § 18-1101(e); 6 Del. Code § 17-1101(d); Tex. Bus. Org. Code § 101-401; Tex. Bus. Org. Code § 152.002(e).

5 Lewis v. AimCo Props., L.P., No. CV 9934-VCP, 2015 WL 557995, at *5 (Del. Ch. Feb. 10, 2015) (citations omitted).

6 Fannin v. UMTH Land Dev., L.P., No. CV 12541-VCF, 2020 WL 4384230, at *18 (Del. Ch. July 31, 2020), *quoting* Martin I. Lubaroff *et al., Lubaroff & Altman on Delaware Limited Partnerships* § 14.01[C], at 14-19 (2d ed. 2020).

7 *Fannin*, 2020 WL 4384230, at *18 (citations omitted).

8 *Id.*

9 *Id.*

10 Glenn D. West, *The Limits of Interposing a Limited Liability Entity as the General Partner of a Limited Partnership*, Weil Global Private Equity Watch, Aug. 11, 2020, https://privateequity.weil.com/glenn-west-musings/the-limits-of-interposing-a-limited-liability-entity-as-the-general-partner-of-a-limited-partnership/

11 Maywalt v. Parker & Parsley Petroleum Co., 808 F. Supp. 1037, 1059 (S.D.N.Y. 1992).

12 Enosis Investments, LLC v. Jensen, 2026 WL 1104315, at *2 (Tex. Bus. Ct. Apr. 23, 2026) (¶ 4).

13 *Id.* at *5 (¶13-¶14).

14 *Id.* at *6 (¶ 15).

Weil Private Equity Sponsor Sync

Q3 2026

TABLE OF CONTENTS

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 $2.1 billion sale of CPM Holdings and $950 million sale of MW Components to Rosebank Industries
- Ares Management Corporation in the successful closing of a continuation vehicle established by Baird Capital to support its portfolio company Blue Matter Consulting LLC
- Brookfield as a co-lead investor in a joint venture with OpenAI known as The OpenAI Deployment Company, a new company designed to help organizations build and deploy AI systems
- A group of investors led by professional golfer Bryson DeChambeau in its acquisition of Sportsbox AI
- CPP Investments in its $1.2 billion financing for Caturus LLC's $13 billion Commonwealth LNG project
- CVC Catalyst III in its acquisition of a majority stake in WillowWood Holdings Inc.
- Georgian in a strategic investment from Navigator Global Investments
- The Hartford in the $1.9 billion sale of Hartford Funds to Wellington Management
- IMC in the formation of Compound Creative Holdings, a $250 million holding company designed to acquire and scale creator-led businesses
- Kainos Capital in its acquisition of Super-Sod
- Paceline Equity Partners, LLC in its $240 million recapitalization and strategic investment in Diverzify
- Pacific Avenue Capital Partners in its $1.1 billion acquisition of Oldcastle Lawn & Garden, Inc.
- Providence Equity Partners and its portfolio company 365 Retail Markets in the acquisition of Cantaloupe
- Quad-C in its investment in Armstrong Transport Group
- PSG in its strategic growth investment in Dockwa
- Sumeru Equity Partners in its strategic growth investment in K1x

KEY CONTACTS

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

Marco Compagnoni
Co-Head of Global Private Equity
London
marco.compagnoni@weil.com
+44 20 7903 1547

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

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

EDITORS

Arnie Fridhandler
Partner
New York
arnold.fridhandler@weil.com
+1 212 310 8004

David Gail
Partner
Dallas
david.gail@weil.com
+1 214 746 7786

Larissa Lucas
Partner
New York
larissa.lucas@weil.com
+1 212 310-8404

Carson Parks
Associate
Dallas
carson.parks@weil.com
+1 214 746 7824

THE EDITORS WOULD LIKE TO THANK THE EFFORTS OF ASSOCIATE EDITORS ZANE ELSISI, ERICA (XINHUI) CHEN, AND ELIZABETH DOSKI.