

**Weil**

A LOOK AT  
**Sponsor-Backed  
PIPEs**

# Table of Contents

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- Introduction and Research Methodology..... 1
- Summary of Key Findings ..... 2
- Key Findings ..... 3
  - Industries & Reason for Financing ..... 3
  - Instruments Offered..... 3
  - Conversion Mechanisms ..... 4
  - Governance Rights ..... 5
  - Sponsor Protections..... 5
  - Issuer Protections..... 6

# Introduction and Research Methodology

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Welcome to Weil, Gotshal & Manges LLP's survey of private investments in public equity transactions ("PIPEs") in the United States. In preparing this survey, we reviewed and analyzed the material terms of 11 PIPEs consummated between January 1, 2015 and December 31, 2015 involving private equity sponsors making investments of at least \$250 million and providing the sponsor with board representation or observer rights. Specifically, the 11 surveyed transactions included the following issuers:

Avon Products, Inc.

BreitBurn Energy Partners L.P.

Cheniere Energy, Inc.

EnLink Midstream Partners, LP

Motorola Solutions, Inc.

MRC Global Inc.

NCR Corporation

Sanchez Production Partners LP

Semiconductor Manufacturing International Corporation

Tuniu Corporation

Univar Inc.

2015 saw an increase in the number of PIPEs consummated with issuers in distressed situations, many in the oil and gas industry. As such, the frequency of sponsor-favorable provisions in PIPEs, including contractual consent and veto rights over certain corporate actions and pre-emptive rights over the issuance of new securities, has increased. This survey highlights and examines these and other legal technology relevant to sponsors. We hope that you will find it useful and informative.

We want to offer special thanks to the many attorneys at Weil who contributed to this survey, including Luke Ashworth, Kevin Kitson, Kelly Wagner and Evan Miller.

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

**Doug Warner**

Founding Editor

**Peter Milligan**

Editor

**Phillip Wolf**

Deputy Editor

## Summary of Key Findings

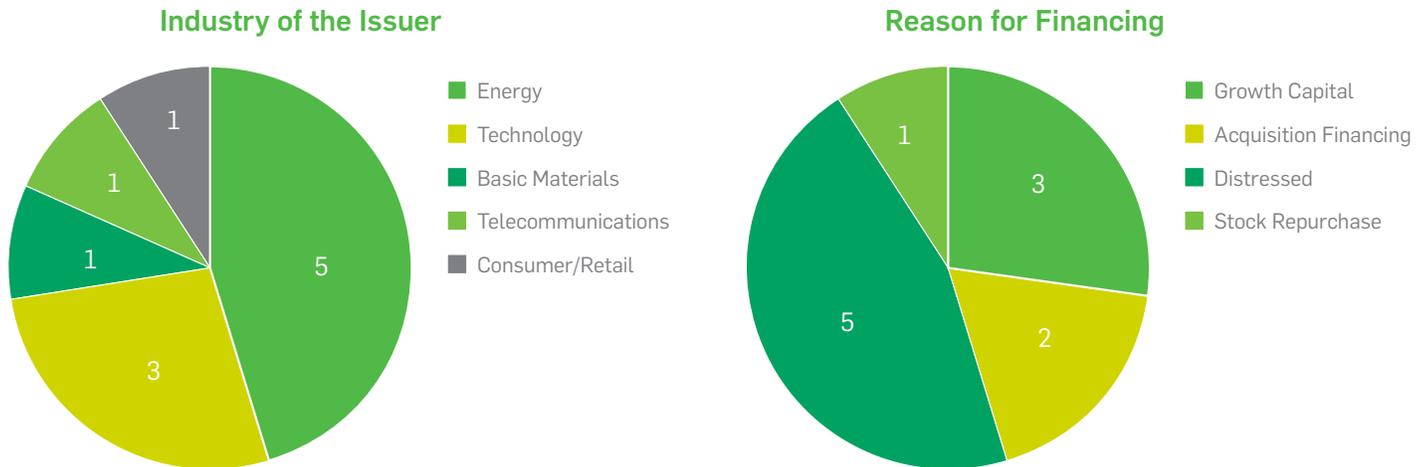
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- The majority of the PIPEs surveyed (8 of 11) were structured with a convertible security which gives the sponsor some downside protection in the investment. Six of those eight PIPEs were structured as convertible preferred stock and two were structured as convertible debt. Another three of the eleven PIPEs surveyed were structured with common stock.
- The sponsor received limited contractual consent and veto rights over board decisions in a majority of the PIPEs (6 of 11). While these rights were largely limited to consent rights over adverse changes to organizational documents or to the terms or seniority of the securities issued to the sponsor, two PIPEs surveyed provided the sponsor with a consent right over amendments to the credit agreement or the incurrence of debt over a prescribed debt ratio and two PIPEs surveyed provided the sponsor with a consent right over discretionary dividends.
- Automatic or forced conversion triggers remain very common among PIPEs issuing convertible preferred stock and debt. Under such provisions, the security will convert into the common stock of the issuer either automatically or at the issuer's discretion if the common stock trades above a specified price for a specified period of time. Of the eight PIPEs surveyed involving convertible preferred stock or debt, six had such automatic/forced conversion provisions.
- Anti-dilution rights for stock splits, PIK dividends, or similar distributions to existing equityholders remain common. Five of the eight PIPEs surveyed that issued convertible preferred stock or debt gave investors this form of anti-dilution protection. One PIPE provided for full weighted-average adjustment anti-dilution protection in the event the issuer subsequently issued equity below a specified conversion or purchase price.
- Both the frequency and length of lock-up provisions has increased in PIPEs. Of the eight PIPEs surveyed with lock-up provisions, the sponsor was prevented from transferring the equity for a median and mean period of 2 years and 2.2 years, respectively.
- Contractual standstill provisions were found in a majority of the surveyed PIPEs. Four of the PIPEs surveyed contained standstill provisions whereby the investor was prevented from acquiring more equity in the issuer until the investor's aggregate ownership fell below a specified level, two of the PIPEs surveyed contained a fixed standstill period, and one PIPE had both ownership threshold and fixed standstill provisions.

# Key Findings

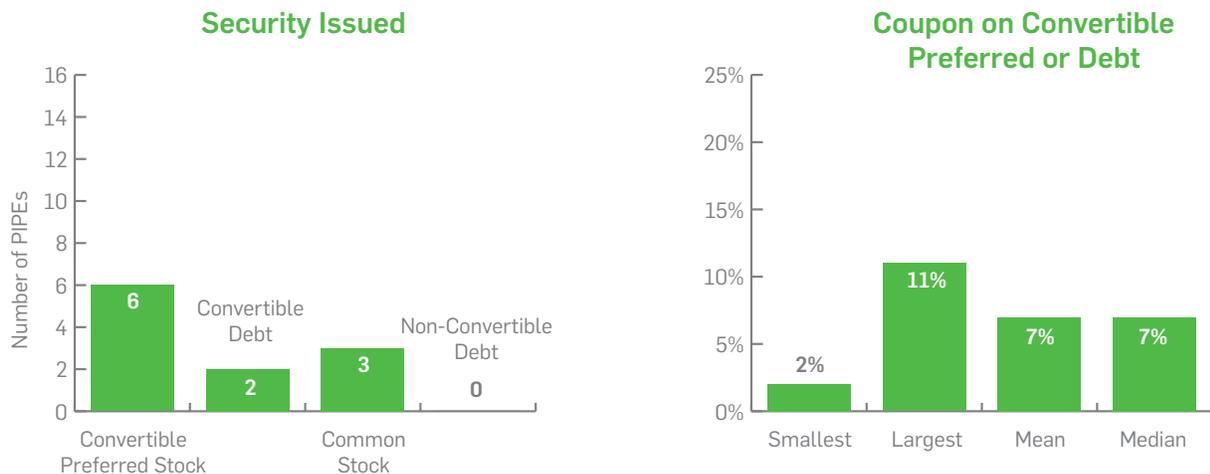
## Industries & Reason for Financing

2015 saw a swell in energy sector PIPEs as public companies in the oil and gas industry required new equity. In addition to using the funds raised for their issuer’s own balance sheets, some energy sector PIPEs were used to finance acquisitions as depressed valuations for oil and gas assets fueled consolidation in that industry. In addition to the energy sector, four PIPEs in the technology and basic materials sectors were consummated under distressed circumstances.



## Instruments Offered

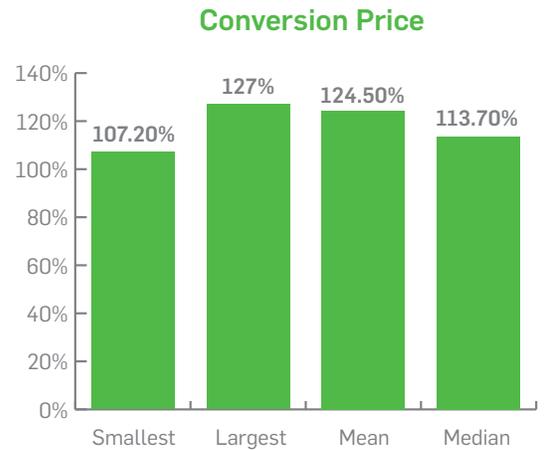
Most sponsor-backed PIPEs are being structured as either convertible preferred stock or convertible debt, which gives the sponsor some downside protection in the investment. The median and mean coupons on the convertible preferred stock and convertible debt PIPEs surveyed was 7.0% per annum.



# Key Findings

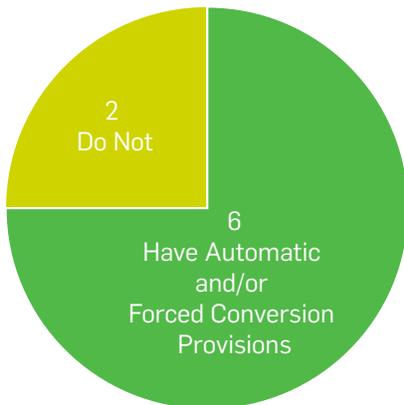
## Conversion Mechanisms

**Most sponsor-backed convertible PIPEs are structured using a fixed price conversion mechanism.** Of the eight convertible preferred stock and convertible debt PIPEs surveyed, seven employed a fixed price conversion mechanism. Interestingly, one provided for a variable conversion price dependent on the volume weighted average price of the issuer's common stock at the time of conversion. The median and mean conversion price of the seven fixed conversion convertible preferred stock and convertible debt PIPEs surveyed was 113.7% and 124.5% of the pre-announcement trading price of the common stock of the target company.



Conversion Price (as a % of the trading price of the issuer's stock on the day the PIPE was announced) of 10 Non-Distressed PIPEs with Fixed Conversion Prices

### Automatic/Forced Conversions



6 of 8 Convertible Preferred PIPEs Surveyed Have Automatic and/or Forced Conversion Provisions

### Forced conversion triggers remain very common among PIPEs issuing convertible preferred stock and debt.

Under such provisions, the security will convert into the common stock of the issuer at the issuer's discretion if the common stock trades above a specified price for a specified period of time. Of the eight PIPEs surveyed involving convertible preferred stock or debt, six provided for conversion at the issuer's discretion once the common stock trades above a specified price for a specified period of time.

### Automatic/Forced Conversions Triggers

Of the six PIPEs with forced conversion mechanisms, the mean of the triggers was an average trading price exceeding 168% of the conversion price.

**150%**

**Smallest Trigger:**  
average trading price exceeds 150% of conversion price

**200%**

**Largest Trigger:**  
average trading price exceeds 200% of conversion price

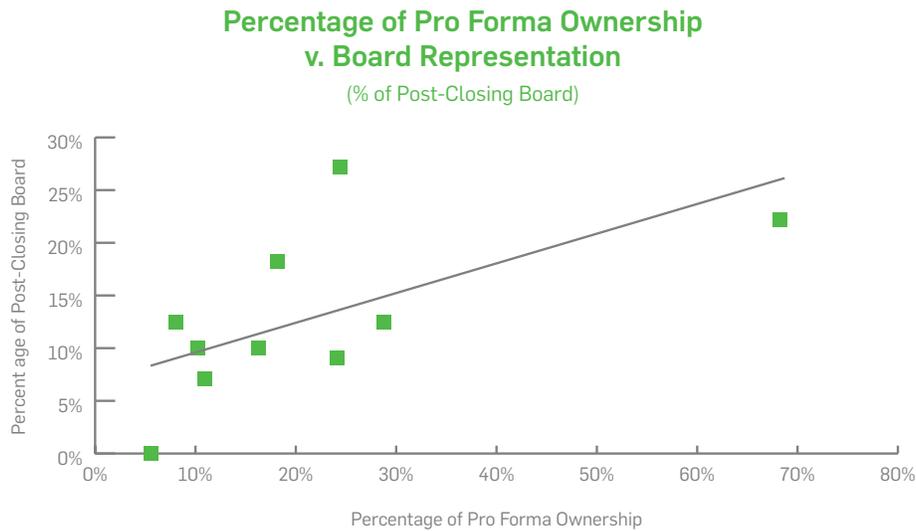
**168%**

**Mean:**  
average trading price exceeds 168% of conversion price

# Key Findings

## Governance Rights

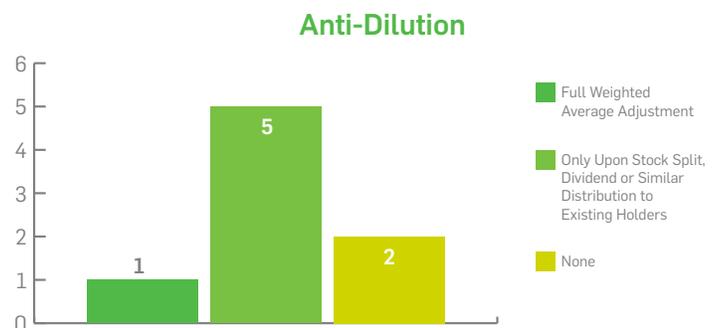
**Board representation negotiated by the sponsor is generally proportional to pro forma ownership.** Investments of less than 10% of the pro forma ownership often only receive board observation rights.



**A majority of PIPEs surveyed had limited contractual consent and veto rights over board decisions.** While these rights were largely limited to consent rights over adverse changes to organizational documents or to the terms or seniority of the securities issued to the sponsor, two PIPEs surveyed provided the sponsor with a consent right over amendments to the credit agreement or the incurrence of debt over a prescribed debt ratio and two PIPEs surveyed provided the sponsor with a consent right over discretionary dividends.

## Sponsor Protections

**Anti-dilution rights for stock splits, PIK dividends, or similar distributions to existing equityholders remain common.** Five of the eight PIPEs surveyed that issued convertible preferred stock or debt gave investors this form of anti-dilution protection. One PIPE provided for full weighted-average adjustment anti-dilution protection in the event the issuer subsequently issued equity below a specified conversion or purchase price.

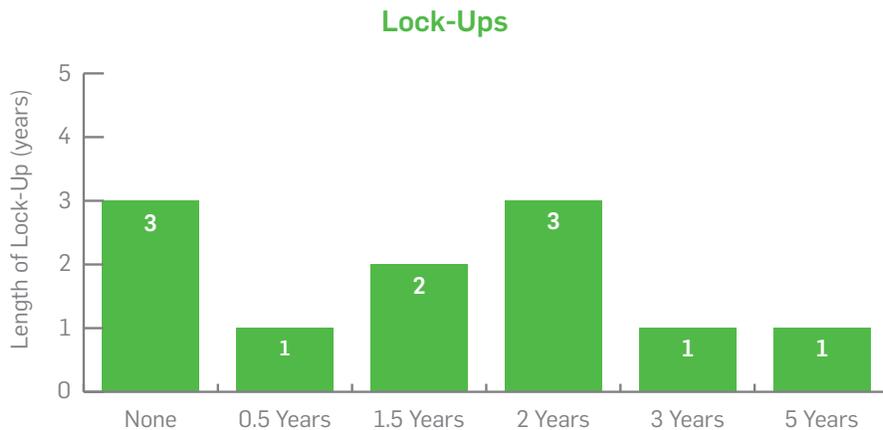


**A minority of PIPEs surveyed provided the sponsor with pre-emptive rights over new security issuances.** In three of the eleven PIPEs surveyed, the sponsor received pre-emptive rights.

# Key Findings

## Issuer Protections

**A majority of PIPEs have lock-up provisions.** Of the eight PIPEs surveyed with lock-up provisions, the sponsor was prevented from transferring the equity for a median and mean period of 2 years and 2.2 years, respectively.



**A majority of PIPEs have contractual standstill provisions.** Four of the PIPEs surveyed contained standstill provisions whereby the investor was prevented from acquiring more equity in the issuer until the investor's aggregate ownership fell below a specified level, two of the PIPEs surveyed contained a fixed standstill period, and one PIPE had standstill provisions based on both ownership threshold and fixed period of time.



# Weil's Global Private Equity Practice

**20** offices worldwide, of which **16** are recognized as top tier for Private Equity by Chambers and Legal 500

Ranked **Band 1** for Global Private Equity by Chambers

The global private equity team acts for more than 200 private equity clients worldwide, including more than **80%** of the world's top 10 funds and **70%** of the top 25, as ranked by PEI 300 2015

Ranked **Top 5** for Global Private Equity for the last 5 years — Bloomberg; mergermarket

**33** Chambers-ranked private equity lawyers worldwide, including **10** ranked Band 1

## Market Recognition

Private Equity Practice Group of the Year  
— *Law360 2012 and 2014*

**Band 1** for Private Equity Global-wide, Asia-Pacific-wide, and Across Europe  
— *Chambers Global, Chambers Asia-Pacific, Chambers Europe, Chambers UK*

**Tier 1** for Private Equity in the U.S., U.K. and Asia  
— *IFLR1000 2016*

**Band 1** for Private Equity – U.K.  
— *The Legal 500 UK 2015*

**Band 1** for Private Equity – Hong Kong  
— *Legal 500 Asia Pacific 2015*

Shortlisted for Business of Law Category for Developing the Global Private Equity Watch  
— *Financial Times' North America Innovative Lawyers Report 2015*

Recipient of "**Private Equity Deal of the Year**" Award  
— *China Law & Practice 2015*

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