

A LOOK AT

# SPONSOR-BACKED PIPES

July 2017

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# INTRODUCTION & RESEARCH METHODOLOGY

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 8 PIPEs consummated between January 1, 2016 and December 31, 2016 involving private equity sponsors making investments of at least \$250 million and providing the sponsor with board representation or observer rights. Specifically, the 8 surveyed transactions included the following issuers:

- Centennial Resources Development, Inc.
- Dominion Midstream Partners, LP
- Empire State Realty Trust, Inc.
- Groupon, Inc.
- MPLX LP
- Signet Jewelers Limited
- Targa Resources Corp.
- Western Gas Partners, LP

We want to offer special thanks to the many attorneys at Weil who contributed to this survey, including Jenny Liu, Andrew Jacob and Tariq Al Gargawi.

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

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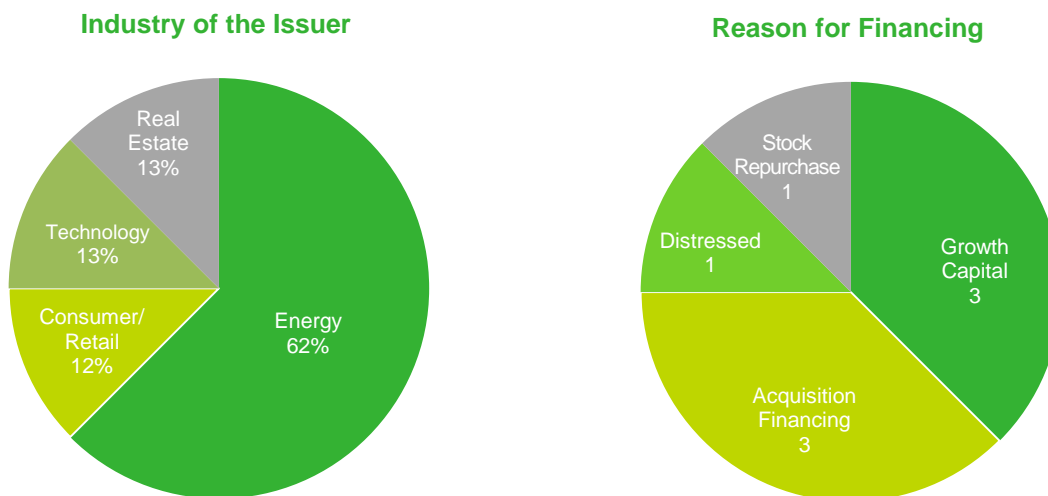
## KEY CONCLUSIONS

- The majority of the PIPEs surveyed (7 of 8) 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 one was structured as convertible debt. One of the eight PIPEs surveyed was structured with common stock.
- The sponsor received limited contractual consent and veto rights over board decisions in a minority of the PIPEs (2 of 8). 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.
- Forced conversion triggers remain 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 seven PIPEs surveyed involving convertible preferred stock or debt, five had such forced conversion provisions.
- Anti-dilution rights for stock splits, PIK dividends, or similar distributions to existing equityholders remain common. Five of the seven 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 majority (5 of 7) of PIPE issuers provided indemnification to investors for all representations and warranties made by such issuers under their respective securities purchase agreements.
- Both the frequency and length of lock-up provisions has decreased in PIPEs. Of the eight PIPEs surveyed, the sponsor was prevented from transferring the equity for a median and mean period of 1 years and 1.4 years, respectively.
- Contractual standstill provisions were found in a majority of the surveyed PIPEs. One of the PIPEs surveyed contained a standstill provision whereby the investor was prevented from acquiring more equity in the issuer until the investor's aggregate ownership fell below a specified level, three of the PIPEs surveyed contained a fixed standstill period, and two PIPEs had both ownership threshold and fixed standstill provisions.

# HIGHLIGHTS OF 2016

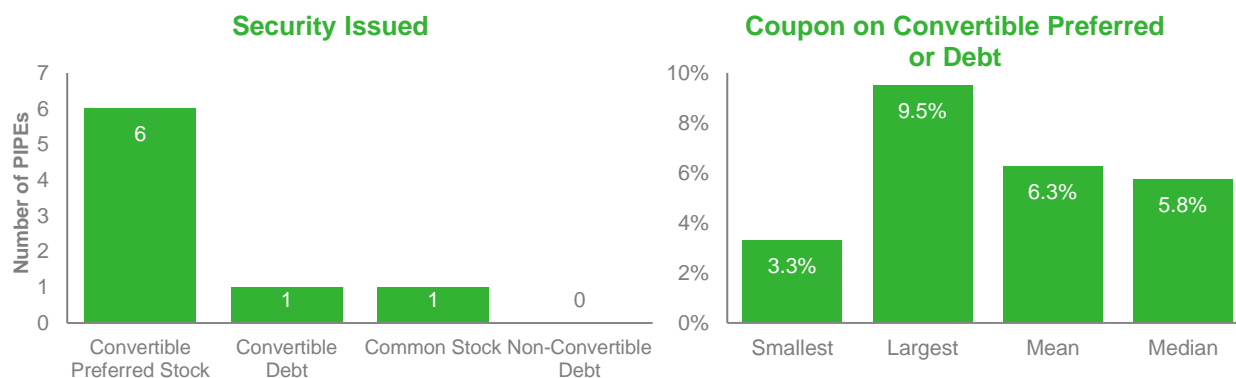
## INDUSTRIES & REASON FOR FINANCING

2016 saw a continued swell in energy sector PIPEs as public companies in the oil and gas industry required new equity. Most 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, two PIPEs in the real estate and technology sectors were consummated to grow equity and one PIPE in the retail estate sector was consummated to effect a common stock repurchase.



## INSTRUMENTS OFFERED

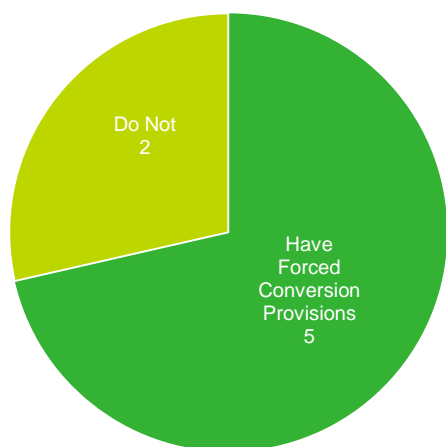
Most sponsor-backed PIPEs are being structured as either convertible preferred stock or convertible debt, which gives the sponsor some downside protection in the investment. The median and mean coupons on the convertible preferred stock and convertible debt PIPEs surveyed was 5.8% and 6.3% per annum.



## CONVERSION MECHANISMS

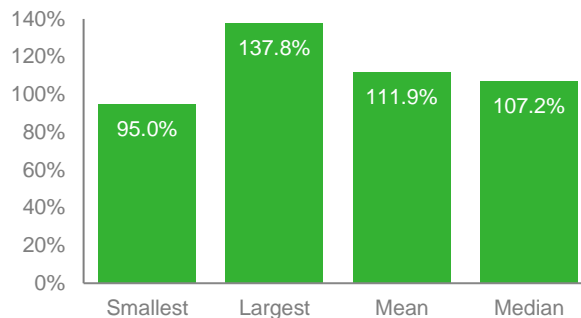
**Most sponsor-backed convertible PIPEs are structured using a fixed price conversion mechanism.** Of the seven convertible preferred stock and convertible debt PIPEs surveyed, six employed a fixed price conversion mechanism. The median and mean conversion price of the six fixed conversion convertible preferred stock and convertible debt PIPEs surveyed was 107.2% and 111.9% of the pre-announcement trading price of the common stock of the target company.

### Forced Conversions



Of the five PIPEs with forced conversion mechanisms, the mean of the triggers was an average trading price exceeding 146% of the conversion price.

### Conversion Price



Conversion Price (as a % of the trading price of the issuer's stock on the day the PIPE was announced) of 6 Non-Distressed PIPEs with Fixed Conversion Prices

**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 seven PIPEs surveyed involving convertible preferred stock or debt, five 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 Trigger



## GOVERNANCE RIGHTS

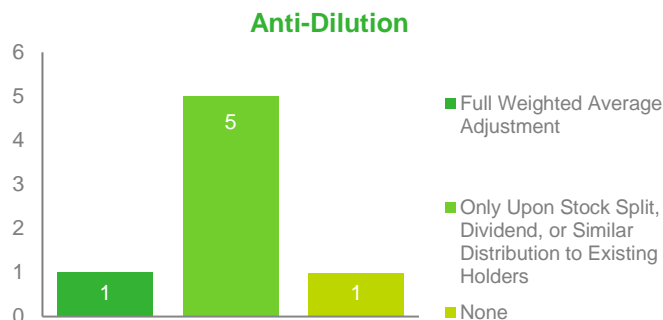
**A majority of PIPEs surveyed had limited contractual consent and veto rights over board decisions.**

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.

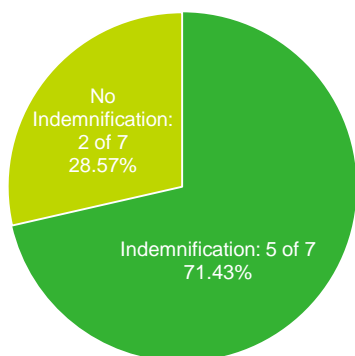
## SPONSOR PROTECTIONS

**Anti-dilution rights for stock splits, PIK dividends, or small distributions to existing equityholders remain common.**

Five of the preferred stock or debt PIPEs gave investors this form of protection, while only one provided for full weighted-average adjustment anti-dilution protection in the event the issuer subsequently issued equity below a specified conversion or purchase price.

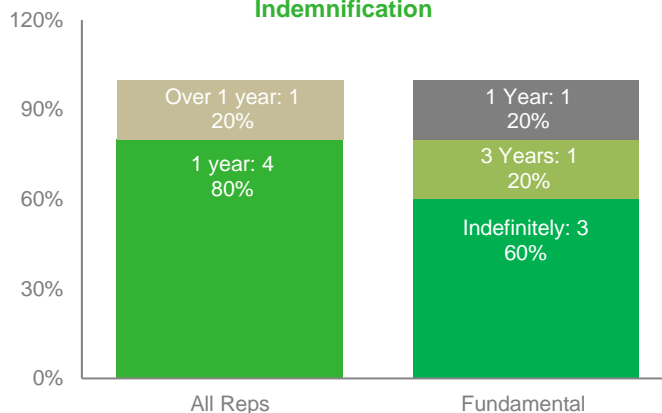


### 7 PIPEs Surveyed\*



\*Only 7 of the PIPEs surveyed filed purchase agreements with the SEC

### Survival Periods for the 5 PIPEs with Indemnification

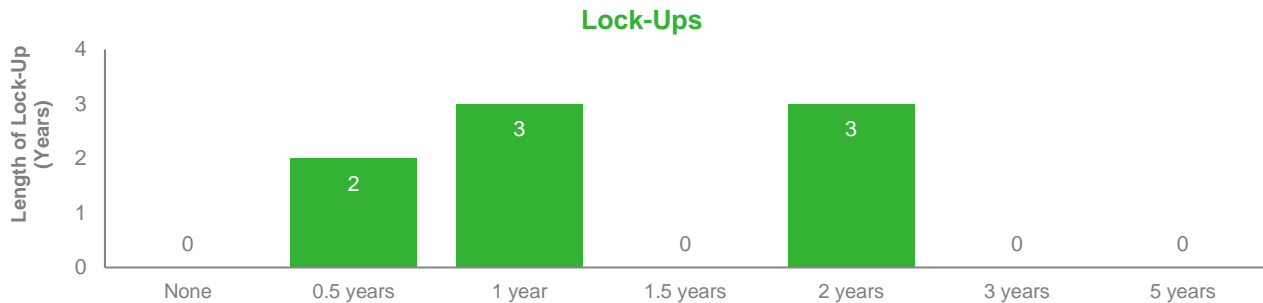


**A majority of PIPE issuers provided indemnification to investors for all representations and warranties made by such issuers under their respective securities purchase agreements.**

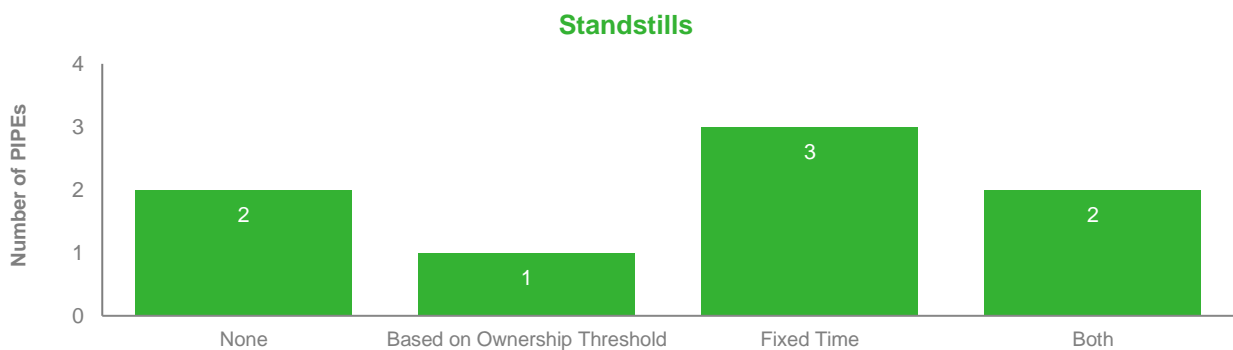
Of the 7 PIPEs surveyed, a majority of the issuers agreed to indemnify the investor for all representations and warranties of such issuer for one year following the closing, with one PIPE providing indemnification for 18 months. With respect to the PIPEs that provided indemnification, the survival period for fundamental representations and warranties (e.g. capitalization, ownership and authority) was indefinite in most cases.

## ISSUER PROTECTIONS

**Most PIPEs have lock-up provisions.** All eight PIPEs surveyed had lock-up provisions in which the sponsor was prevented from transferring the equity for a median and mean period of 1 year and 1.4 years, respectively.



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













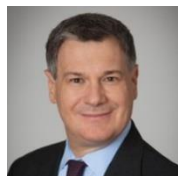
# WEIL'S GLOBAL PRIVATE EQUITY PRACTICE

|   |   |  |
|---|---|--|
| <p>25 Chambers-ranked private equity lawyers worldwide</p>   | <p>Ranked Band 1 for Global Private Equity</p>                                   | <p>Advise 200+ PE clients worldwide, including more than 80% of the top 25 funds</p>  |
| <p>Top 5 for global private equity for the last 6 years</p>  | <p>Tier 1 for Private Equity in the U.S., U.K., France, China and Hong Kong</p>  | <p>Private Equity "Practice Group of the Year" 2016, 2014, 2012</p>                   |

## REPRESENTATIVE TRANSACTIONS

|  |   |  |   |
|--|---|--|---|
| <p><b>ADVENT INTERNATIONAL AND THL PARTNERS</b></p> <p>inVentiv Health's \$4.6B merger of equals with INC Research Holdings</p>                           | <p><b>GORES HOLDINGS</b></p> <p>acquisition and public listing of Hostess Brands, a transaction valued at \$2.3B and related PIPE investment</p>                   | <p><b>OMERS PRIVATE EQUITY</b></p> <p>together with Harvest Partners, in the \$1B take-private of Epiq Systems and combination with DTI</p>  | <p><b>PUBLIC SECTOR PENSION INVESTMENT BOARD</b></p> <p>PIPE investment in Virtu Financial to finance in part Virtu's \$1.4B acquisition of KCG Holdings</p>                             |
| <p><b>SIGNET GROUP LIMITED</b></p> <p>\$625 million sale of convertible preferred shares to Leonard Green &amp; Partners and related PIPE investment</p>  | <p><b>SILVER RUN ACQUISITION CORP</b></p> <p>Acquisitions of a controlling stake in Centennial Resource Production and assets of Silverback Exploration in TX</p>  | <p><b>SOFTBANK GROUP</b></p> <p>\$3.3B take-private of Fortress Investment Group</p>   | <p><b>TPG GLOBAL</b></p> <p>Pace Holdings, a SPAC sponsored by TPG, in its combination with Playa Hotels &amp; Resorts, a transaction valued at \$1.75B and related PIPE investment</p>  |

## KEY CONTACTS



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The logo for Weil, consisting of the word "Weil" in white, bold, sans-serif font, centered within a solid green rectangular box.

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