Weil

A Look at 2020 U.S. Sponsor-Backed PIPEs

March 2021

2021 Private Equity SURVEYS

TABLE OF CONTENTS

INTRODUCTION & RESEARCH METHODOLOGY 2

SUMMARY OF KEY FINDINGS 3

KEY FINDINGS 5

A NOTE ON COVID-19 5

INSTRUMENTS OFFERED 5

COUPON 6

CONVERSION PRICE 6

SPONSOR PROTECTIONS 7

GOVERNANCE RIGHTS 7

ISSUER PROTECTIONS 8

EXPENSE REIMBURSEMENT 9

REPRESENTATIVE EXPERIENCE 10

WEIL'S ELITE GLOBAL PRIVATE EQUITY PRACTICE 11

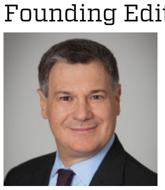
INTRODUCTION & RESEARCH METHODOLOGY

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 24 PIPEs announced in 2020 involving private equity sponsors or financial investors making investments of at least $100 million in convertible or non-convertible preferred equity or debt. Specifically, the 24 surveyed transactions included the following issuers:

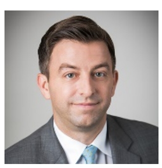
- 21 Vianet Group
- AgroFresh Solutions
- Cheesecake Factory
- Cimpress
- Consolidated Communications
- Coty
- Covetrus
- CryoPort
- Emerald Holding
- EVO Payments
- Expedia Group
- FireEye
- GFL Environmental
- KAR Auction Services
- Knoll
- Norwegian Cruise Line
- Novavax
- Nutanix
- OUTFRONT Media
- Superior Plus
- TPG RE Finance Trust
- US Foods
- Wayfair
- Workhorse Group

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

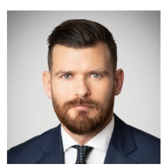
Doug Warner
Founding Editor



Christopher Machera
Editor

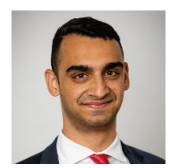


Joshua Whitford
Contributor



Dianna Robinson
Contributor

Stephen Jaber
Contributor



SUMMARY OF KEY FINDINGS

- Of the PIPEs surveyed (i) 20 were structured with a convertible debt or equity security, which gave the sponsor some downside protection in the investment (16 as convertible preferred stock and 4 as convertible debt), and (ii) 4 were structured with a non-convertible security (3 as non-convertible preferred stock and warrants and 1 as non-convertible debt and warrants).
- The onset of the COVID-19 pandemic had a significant impact on both the PIPE market and the terms of the PIPEs we surveyed in the first half of 2020. PIPEs negotiated by sponsors prior to July were far more sponsor-friendly than those negotiated in the remainder of 2020.
- That said, many clients were surprised by how tight the pricing was early on in the pandemic, given the extreme economic uncertainty at the time. Even where they were desperate for capital, issuers were able to negotiate attractive terms, and those on the buy-side who were expecting Financial Crisis type bargains were disappointed by the terms issuers were offering. Much of that can be attributed to the availability of capital, both dry powder sitting with alternative asset managers, as well as liquidity provided by global government stimulus, which continues to this day.
- Coupons increased in 2020 as compared to 2019, with the average coupon in 2020 being equal to 7%, up from an average of approximately 5% in 2019. Some of this variation can be attributed to the outsized coupons negotiated by sponsors in the early days of the pandemic.
- Forced or automatic conversion triggers remain common among PIPEs involving 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 the 20 PIPEs surveyed involving convertible preferred stock or debt, 16 had such forced or automatic conversion provisions. This gives issuers a way out of expensive capital and sponsors are willing to make this trade where the stock has traded up.
- In an increase from the previous year, sponsors received contractual consent and veto rights over the terms of the underlying security in nearly all of the PIPEs surveyed, and in some cases over board decisions. Although largely limited to consent rights over adverse changes to organizational documents or to the terms or seniority of the securities issued to the sponsor, a significant portion of PIPEs surveyed granted sponsors expanded veto rights, such as control over the issuer's ability to incur additional indebtedness in excess of an agreed leverage ratio. Certain "business-level" consent rights, such as over M&A activity and C-suite changes, that were rarely seen in prior years became more common, though were still rare (and more likely in PIPEs negotiated in the first half of the year).

- Board representation in 2020 PIPE transactions remained consistent with the previous year as a majority of the PIPE issuers granted the sponsor board designation rights (20 of 24). In an increase from the previous year, sponsors were able to negotiate multiple board seats in many of the surveyed PIPEs. This is an interesting trend given that there can be pros and cons for sponsors sitting on public company boards, particularly in (what had been and could again become) an uncertain economic and regulatory climate.
- The frequency of lock-up provisions remained consistent with prior years, with 21 of 24 PIPEs surveyed providing for a lock-up. The average length of lock-ups increased to approximately 15 months, up from an average of approximately 1 year in 2019.
- The use of contractual standstill provisions were present in a majority of the surveyed PIPEs, with 19 of 24 PIPEs surveyed having standstills. This is a new trend as a majority of the PIPEs we surveyed in 2019 did not have a standstill. This likely reflects the fact that many sponsors increasingly have multiple strategies and issuers therefore may increasingly be concerned that larger sponsors could have multiple arms that could be active within the issuer's stock.

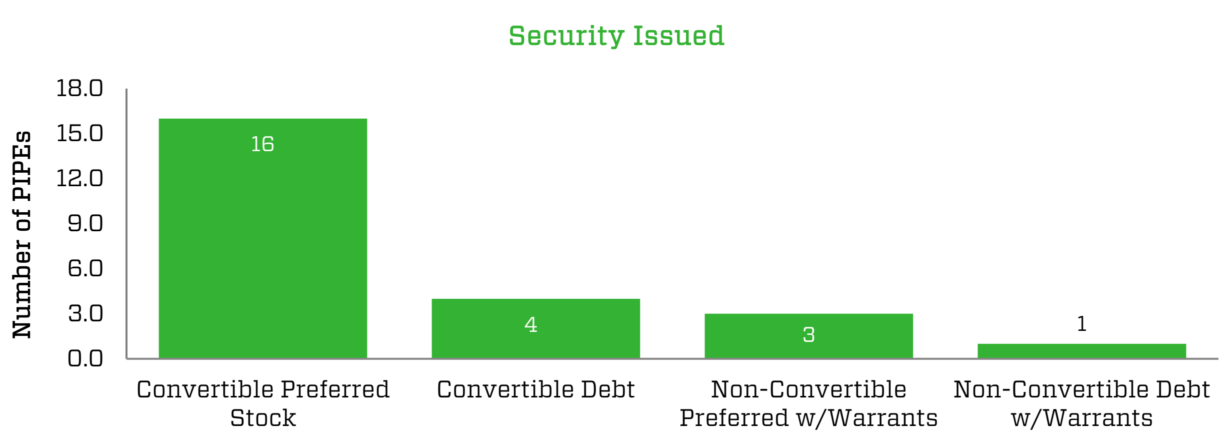
KEY FINDINGS

A NOTE ON COVID-19

With the onset of COVID-19 in early 2020, and the resulting decrease in economic activity and freezing of public debt markets, we witnessed an explosion of PIPE transactions as issuers sought emergency capital in an uncertain environment of falling revenues and increased capital expenditures. In the early days of the pandemic we saw sponsors receiving very favorable PIPE terms, including coupons well above those seen in prior years, increased board representation, broad packages of consent rights and diluted sponsor protections. In fact, as detailed further in certain sections of this article, much of the variation in the 2020 market for PIPEs as compared to 2019 can be attributed to the PIPE transactions that occurred between March and June, with the sponsor-favorable terms of those PIPE deals skewing the full-year results. However, beginning in late summer, as federal and state health guidelines on COVID-19 became more certain, economic activity resumed and traditional sources of capital again became available, the market for PIPEs returned to a level generally consistent with those seen in prior years, though we note that the market still seems to be slightly more favorable to sponsors than it was in the pre-pandemic environment. And as noted above, while terms were more favorable for sponsors at the outset of COVID-19, those terms were still much more advantageous for issuers than they were in the wake of past periods of economic dislocation. It will be interesting to see if sponsors are able to maintain that advantage in 2021, as well as if the market for PIPEs remains as robust as it was in 2020.

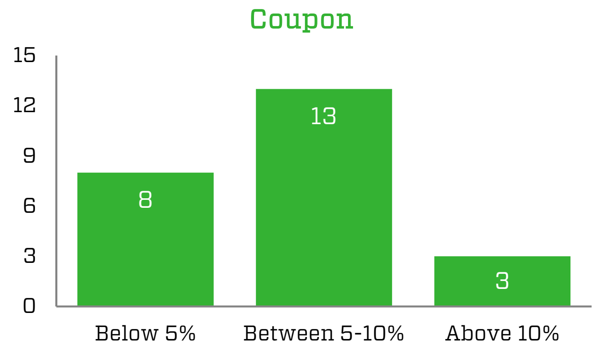
INSTRUMENTS OFFERED

Consistent with last year, PIPEs structured as either convertible preferred stock or debt (which gives the sponsor some downside protection in the investment and was particularly important given the environment in which many of these transactions were agreed), were common representing 20 of the 24 PIPE transactions that we reviewed. PIPEs structured as non-convertible preferred stock or debt with warrants were far less common, representing only 4 of the 24 PIPEs we surveyed.



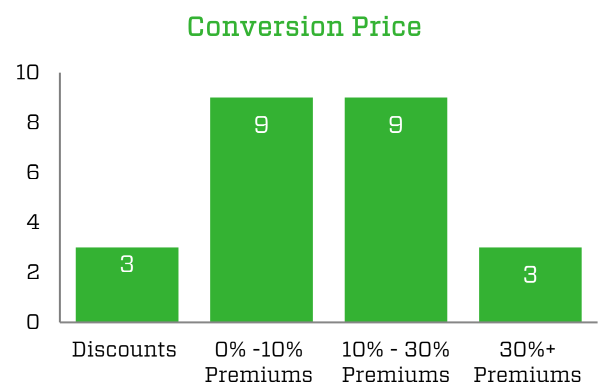
COUPON

The coupons on PIPE securities significantly increased in 2020 as compared to 2019, as the median and mean coupons on securities in PIPEs surveyed were each equal to approximately 7% per annum, which is up from a median and mean coupon in 2019 of 4.2% and 5.1% per annum, respectively. Much of this increase can be explained by the generally outsized coupons that sponsors received following the onset of COVID-19 in early 2020, which were commonly in the magnitude of 8% to 10%, and in some cases as high as 15%.



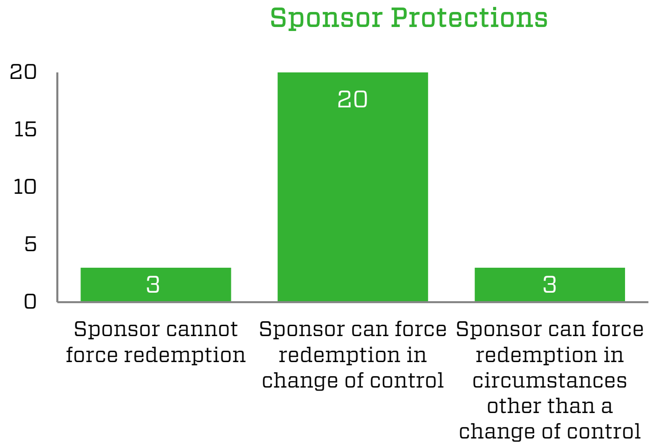
CONVERSION PRICE

Most sponsor-backed convertible PIPEs are structured using a fixed conversion price. All of the 20 convertible preferred stock and debt PIPEs surveyed employed a fixed conversion price. Conversion prices ranged from a discount of approximately 21% to a premium of approximately 65% to the closing common stock price as of the signing date, with a mean conversion premium of 18% and a median conversion premium of 25%.



SPONSOR PROTECTIONS

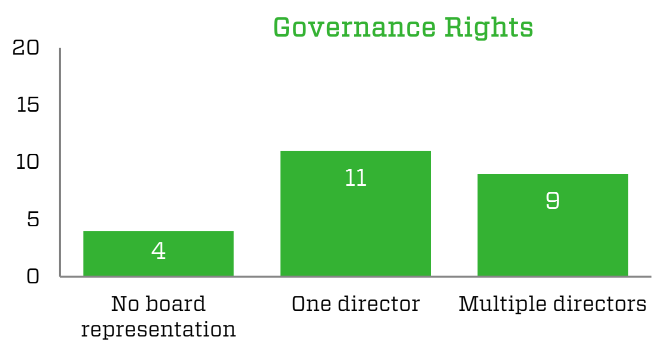
For the vast majority of the PIPEs surveyed, sponsors did not have the right to force issuers to redeem securities except in situations involving a change of control. Upon a change of control, sponsors typically have the option (i) to receive the amount of transaction consideration they would be entitled to if the structured equity was converted immediately prior to the closing of the change of control or (ii) to receive a redemption amount equal to a multiple of the liquidation preference. Most commonly redemption multiples were 101%-105% of the liquidation preference, though could be as high as 150% if the change of control occurred shortly after issuance of the security (e.g., before the third anniversary).



Anti-dilution rights for stock splits and stock dividends remain common. All of the convertible preferred stock or debt PIPEs gave investors some form of anti-dilution protection and 2020 saw an increase in the provision of full weighted-average adjustment anti-dilution protection. Nearly all of the convertible preferred stock or debt PIPEs surveyed provided this protection in the event the issuer subsequently issued equity below a specified conversion price.

GOVERNANCE RIGHTS

In 2020, the vast majority of the PIPEs surveyed (20 of 24) provided the sponsor with board designation rights, which have become customary in PIPEs in recent years. A significant portion of the PIPEs surveyed (9 of 24) involved sponsors receiving multiple board seats in connection with their investment.

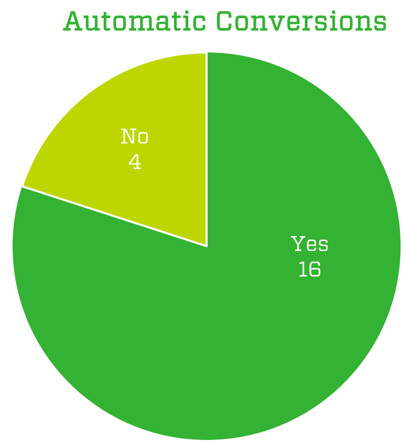


Most of the PIPEs surveyed had contractual consent and veto rights over changes to terms of the security, and in some cases, board decisions. Consent rights granted by issuers were largely limited to consent rights over adverse changes to organizational documents or to the terms or seniority of the securities issued to the sponsor, but a minority of PIPEs provided for expanded veto rights to the investor. Six PIPEs provided the sponsor with consent rights over additional indebtedness incurred by the issuer that would exceed an agreed leverage ratio, and a handful of other surveyed PIPEs granted the sponsor a consent right over M&A transactions and the hiring /

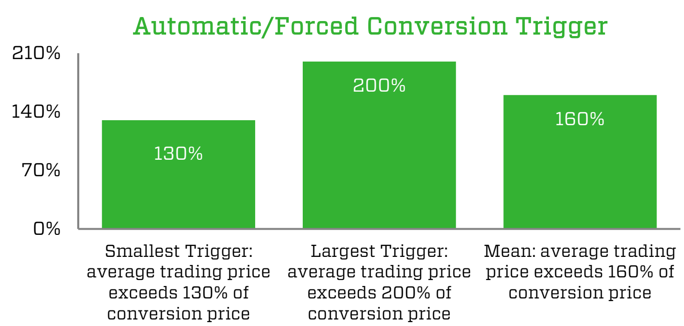
firing of senior management. Broader consent right packages were more common in PIPEs agreed in the first half of 2020, consistent with those transactions being more sponsor-favorable.

ISSUER PROTECTIONS

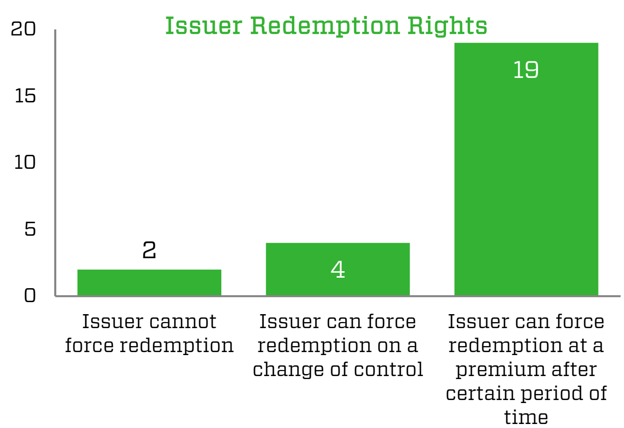
Automatic conversion triggers remain common among PIPEs involving convertible preferred stock and debt. Under such provisions, the security will convert into common stock of the issuer at the issuer's discretion if the common stock trades above a specified price for a specified period of time, which provides a cap on a sponsor's upside. Of the 20 PIPEs surveyed involving convertible preferred stock or debt, 16 provided for conversion at the issuer's discretion in the event the common stock traded above a specified price for a specified period of time.



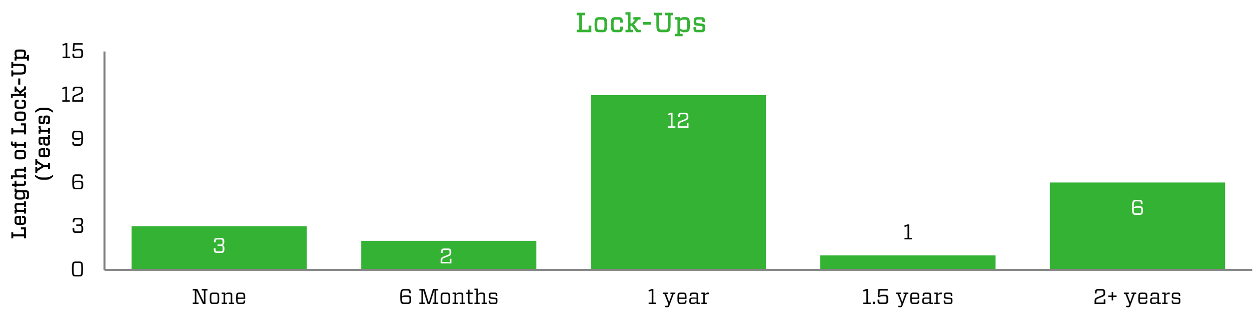
Of the 16 PIPEs with forced or automatic conversion mechanisms, the mean of the triggers was an average trading price for the relevant period exceeding approximately 160% of the conversion price.



A majority of PIPEs surveyed also included additional issuer protection allowing it to force a redemption of the sponsor's security in certain circumstances. 22 of the 24 PIPEs surveyed provided the issuer with redemption rights, exercisable at the option of the issuer, to force the redemption of the sponsor's security in the event of a sale or other change of control of the issuer (sometimes at a multiple) or, alternatively, at a redemption premium following a certain period of time. The most common structure for the latter was the right to force the redemption of the underlying security after 5 to 7 years at redemption premiums of up to 10%.



Lock-ups were very common in 2020, with the majority having a term of 1 year or less. 21 of the 24 PIPEs surveyed had lock-up provisions. 14 of those 21 PIPEs had lock-up terms of 1 year or less, with only 7 PIPEs having lock-up provisions restricting the sponsor from transferring the equity of the issuer for 1.5 years or more.



The frequency of contractual standstill provisions in PIPEs grew in 2020. 19 of the 24 PIPEs surveyed contained standstill provisions restricting the acquisition of any securities of the issuer for a fixed period of time, with the longest standstill lasting until the earlier of the third anniversary of the issuance or a change of control of the issuer. The median standstill term was approximately 2 years, though that term was commonly extended for so long as the investor retained a board seat.

EXPENSE REIMBURSEMENT

Expense reimbursement provisions were very common in 2020, and more common than in 2019. 19 of the 24 PIPEs surveyed had either a transaction fee or expense reimbursement (or both) payable to the sponsor by the issuer. The value of these reimbursements ranged from $100,000 to, in one case, 100% of the sponsor's uncapped transaction expenses. The mean expense reimbursement amount in 2020 was approximately $1.6 million, and in percentage terms was equal to a mean of approximately 0.75% of the investment amount.

REPRESENTATIVE EXPERIENCE

Advent International *merger of* Clearent TSG $3,000,000,000 Pending	**Advent International** *stake acquisition of* RxBenefits Undisclosed January 2021	**American Securities** *pending acquisition of* CONAIR Undisclosed Pending	**American Securities** *take-private of* FBM $1,370,000,000 January 2021	**American Securities** *Emerald's pending sale to LANXESS AG* Emerald Kalama Chemical $1,100,000,000 Pending	**American Securities** *acquisition of the Interior Products Business of* BEACON $850,000,000 February 2021	**American Securities** *acquisition of* NN Life Sciences $825,000,000 October 2020
Apollo Global Management *acquisition of* **Lendlease (US) Telecom Holdings LLC (n/k/a Parallel Infrastructure)** Undisclosed October 2020	**Aterian Investment Partners** *Pioneer's acquisition of* IPI Undisclosed December 2020	**Aterian Investment Partners** *Vander-Bend's acquisition of* SPM Undisclosed November 2020	**Aterian Investment Partners** *Vander-Bend's acquisition of* TMK Undisclosed March 2020	**Bain Capital** *Kantar Health, LLC's sale by The Kantar Group Limited* KANTAR HEALTH $375,000,000 Pending	**Berkshire Partners** *acquisition of* CrossFit Undisclosed August 2020	**Berkshire Partners** *acquisition of* VET STRATEGY Undisclosed July 2020
Berkshire Partners *majority recapitalization of* NCS Undisclosed December 2020	**The Blackstone Group** *sale of* vivint.Solar $3,200,000,000 October 2020	**The Blackstone Group** *stake acquisition of* ZO Skin Centre Undisclosed October 2020	**Blackstone Growth** *investment in* ISN Undisclosed December 2020	**Centerbridge Partners** *KIK Custom Products' sale of* **KIK Personal Care Business** Undisclosed August 2020	**Charlesbank Capital** *Bridges Consumer Healthcare's acquisition of* **ThermaCare® HeatWraps** Undisclosed November 2020	**Charlesbank Capital** *Bridges Consumer Healthcare's acquisition of* Clarion Undisclosed January 2021
Cornell Capital ***KDC/ONE's*** *acquisition of* Zobele Undisclosed April 2020	**CPP Investments** *majority acquisition of* lytx Undisclosed January 2020	**CPP Investments** *consortium's sale of* REFINITIV $27,000,000,000 January 2021	**CPP Investments** *merger of* Ultimate Software Kronos $22,000,000,000 April 2020	**CVC Capital Partners** *acquisition of all of the interests of* FAIRFAX up to $986,000,000 Pending	**EQT Infrastructure** *sale of* SYNAGRO Undisclosed December 2020	**EQT Partners** *sale of* DORNER $485,000,000 Pending
Genstar Capital *acquisition of* ORION Undisclosed September 2020	**Genstar Capital** *sale of* INFINITE Electronics, Inc. Undisclosed March 2021	**GHK Capital Partners** *sale of a substantial interest in* S Undisclosed March 2021	**GI Partners** *acquisition of* vast broadband Undisclosed February 2021	**Goldman Sachs Merchant Banking Division** *significant stake acquisition of* ZAXBY'S Undisclosed Pending	**GreyLion Capital** *majority stake sale of* HYPHEN Solutions Undisclosed October 2020	**J.C. Flowers** *acquisition of* Ariel Re Undisclosed November 2020
J.C. Flowers *Jefferson's acquisition of* **Canastream Holdings Ltd.** Undisclosed March 2020	**J.C. Flowers** *majority stake acquisition in* iLendingDIRECT Undisclosed Pending	**Lee Equity Partners** *stake acquisition of* SIMPLICITY GROUP Undisclosed December 2020	**Montagu Private Equity** *acquisition of the OEM and tissue processing businesses of* rti surgical $490,000,000 July 2020	**Oak Hill Capital Partners** *sale of* TriPlus Undisclosed September 2020	**Oak Hill Capital, Galaway** and **JenCap** *together with The Carlyle Group majority stake sale of* GALWAY INSURANCE HOLDINGS, LLC Undisclosed December 2020	**OMERS** *acquisition of* TURNPOINT Undisclosed November 2020
Ontario Teachers' Pension Plan Board and **TA Associates** *majority stake sale of* Flexera Undisclosed March 2021	**Ontario Teachers' Pension Plan Board** *stake acquisition of* NVISION Eye Centers Undisclosed November 2020	**Providence Equity** *acquisition of* NODE4 Undisclosed Pending	**Providence Equity** *majority stake acquisition of* 365 Undisclosed December 2020	**Providence Equity** *Topgolf's merger of equals with Callaway Golf Company* Topgolf $2,000,000,000 March 2021	**Providence Equity** *sale of* ZeniMax Media Inc. $7,500,000,000 Pending	**Providence Equity** *consortium's pending take-private of* MASMOVIL $3,300,000,000 November 2020
Providence Strategic Growth *acquisition of a majority interest of* NOFRAUD Undisclosed November 2020	**Providence Strategic Growth** *together with Vista Equity Partners minority stake sale of* inhabit Undisclosed December 2020	**Providence Strategic Growth** *controlling interest sale of* TRIBUTE TECHNOLOGY Undisclosed October 2020	**PSP Investments** *pending combination of* TELESAT LORAL Undisclosed Pending	**PSP Investments** *consortium's acquisition of the Northwest operations and assets of* Frontier $1,400,000,000 May 2020	**Silver Lake Sumeru** *sale of* Velocity Undisclosed January 2021	**Snow Phipps Group** *sale of* Kele Undisclosed February 2020
Snow Phipps Group *Brook & Whittle's acquisition of* Label Impressions Inc. Undisclosed June 2020	**Snow Phipps Group** *Brook & Whittle's acquisition of substantially all of the assets of* **Tri Print LLC** Undisclosed October 2020	**SoftBank Vison Fund** *sale of the Advanced Technologies Group of* Uber $4,000,000,000 Pending	**Sumeru Equity Partners** *acquisition of* socialchorus $100,000,000 July 2020	**TCV** *sale of* tastytrade $1,000,000,000 Pending	**Thomas H. Lee Partners** *stake sale of* JUVARE Undisclosed July 2020	**Trive Capital** *acquisition of* Valor Healthcare Undisclosed September 2020

WEIL'S ELITE GLOBAL PRIVATE EQUITY PRACTICE

An elite global platform with 30+ years of market knowledge

Deep experience across all of the major private equity asset classes

---

Advisors to one of the broadest groups of financial sponsors and investors in the world on cutting-edge transactions in a seamless, commercial and results-focused manner

WEIL'S ELITE GLOBAL PRIVATE EQUITY PRACTICE

- **Global and National Footprint.** Weil is a recognized leader in private equity transactions with more than 200 lawyers in the U.S., Europe and Asia representing the top global private equity players. Weil has Private Equity capabilities in New York, Silicon Valley, Boston, and Texas in the U.S.
- **Depth of Experience.** Our attorneys have significant experience representing private equity firms and their portfolio companies on all aspects of their business and are regularly involved in some of the largest, most high-profile and complex private equity acquisitions and related financings.
- **Range of High Profile Transactions.** Over the last 18 months, we have advised on nearly 50 deals valued at $1 billion+—representing a wide range of our PE clients on their investments and exits from investments across many sectors.

BY THE NUMBERS

5
Years

1k+
Deals

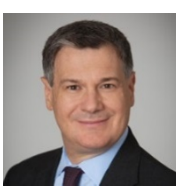
More Than
$700B
In Total Deal Value

Over
300
Sponsors

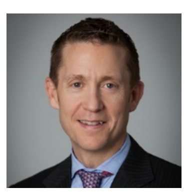
Ranked
Tier 1
Private Equity in the U.S., U.K, France, China and Hong Kong
— *IFLR1000*

Advises
9 of the **10**
largest global private equity funds
— *PEI 300 2020*

KEY CONTACTS



Douglas Warner
Co-Head of Global Private Equity
doug.warner@weil.com
+1 (212) 310-8751



Kevin J. Sullivan
Co-Head of U.S. Private Equity
kevin.sullivan@weil.com
+1 (617) 772-8348