Debevoise & Plimpton

The Private Equity Report Quarterly

2025 Midyear Outlook | Volume 25, Issue 2

From the Editors

If there is a single theme dominating the private equity industry in 2025, it is uncertainty, much of which is emanating from unsettled and erratic U.S. economic and trade policy, along with continued geopolitical volatility. In such an environment, it is difficult to make projections, determine value or assess risk. So it is that deal volume is down around the world. Sponsors are finding that fundraising continues to be challenging, while investment managers must contend with ongoing investor demand for distributions amidst challenging exit conditions. The debt market is tepid. The regulatory front is similarly in flux, with the SEC pivoting toward deregulation, federal ESG-related initiatives and regulations being rolled back, and the White House taking a more assertive position toward the nexus of foreign investment and national security.

But if there is uncertainty, it has a positive tone, as if there is a collective waiting for the dust to settle before shifting the engine into higher gear. Dry powder remains ample. There is notable activity in add-ons and carve-

continued on page 2

"Do you swear to calm the jittery financial markets, all the jittery financial markets and nothing but the jittery financial markets, so help you God?"

CELEBRATING 25 YEARS THE PRIVATE EQUITY REPORT

What's Inside

outs, and take-privates appear to be on the rise. The fund finance market is strong, with an expanding lender base offering innovative solutions. Further, the private equity investor pool is poised to expand: in the EU, regulatory developments are underway that will give individual investors substantially increased access to private fund products, and there are signs that the United States may be moving in a similar direction. So, while the immediate path forward may not be entirely clear, there is broad confidence that the industry and the market are pointed in the right direction.

We hope you find the *2025 Private Equity Midyear Outlook* to be a useful summary of where the market stands during these very interesting times and how things might unfold in the months ahead.

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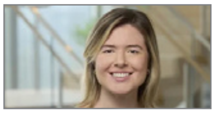
Fundraising



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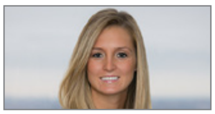

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After a difficult 2024, many were optimistic that 2025 would bring a boost to private equity exits and fundraising. Instead, geopolitical uncertainty has stalled those rebounds. Traditional exit opportunities remain challenging, with the resulting lag in distributions creating an obstacle to fundraising. U.S. economic and trade policies and global conflicts are also affecting investor sentiment, with investors even more cautious about allocating capital. We are seeing institutional investors engaging in increasingly robust due diligence processes prior to committing to a fund, as well as increasingly extensive internal procedures for approving allocations. As a result, and consistent with 2024, fundraising periods continue to average approximately 18 months.

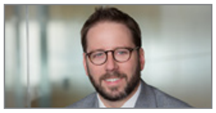
On the bright side, more private equity funds are hitting and exceeding their targets, showcasing the resiliency of alternatives. In the first half of 2025, approximately 34% of funds exceeded their targets—the highest percentage of the last five years—and the percentage of funds failing to hit their targets reached a five-year low of 29%. Similarly, exits that have made it to the finish line have done so at strong pricing. Compared to the first half of 2024, exit values over the first half of 2025 were up over 69% (even excluding the massive public listing of Venture Global LNG, which was valued at $58.7 billion).

In terms of fundraising totals, buyout funds led the pack with over $190 billion raised in the first half of 2025. Private credit funds raised over $146 billion, exceeding H1 totals in 2023 and 2024. While last year's credit fundraising was heavily skewed toward senior-debt strategies, in 2025, we have seen an uptick in distressed and mezzanine debt, as well as dedicated credit secondaries funds. Infrastructure funds saw a huge surge in the first half, raising over $134 billion—already exceeding the 2024 full-year total for infrastructure funds. Core plus and value add infrastructure strategies have been particularly attractive to investors. Secondaries funds also continue to defy gravity, raising over $80 billion in the first half, a new H1 record that is more than double the amount raised by secondaries funds in the first half of 2024.

The current climate has also spurred many private equity sponsors to develop new and innovative product offerings that may not be reflected in the closed-end private fund totals noted above. In particular, more managers are engineering retail-oriented vehicles that temper illiquidity and lower entry hurdles. These vehicles typically take the form of registered fund products or permanent capital private fund structures with some limited periodic redemption mechanic. In either case, such hybrid funds are designed to be a scalable, partially liquid bridge between private market returns and retail liquidity expectations. (For additional discussion of recent developments positively affecting retail-focused products, see this issue's "U.S. Funds Regulatory" section.)

Even as market noise persists and sponsors explore creative new structures, we see enduring strength in private equity funds. The structural advantages of substantial dry powder, longer investment horizons and operational flexibility position private equity to thrive where others asset classes may falter. With close to $1 trillion in equity capital and another $500 billion in private debt at the ready, the industry is not short on resources. While public markets seek direction, private equity sponsors will continue to differentiate themselves by leaning into their convictions and thoughtfully allocating capital into areas disrupted by volatility. When macroeconomic conditions ultimately improve, we anticipate an uptick in realizations that will quickly translate to a jump in fundraising.

Fund Finance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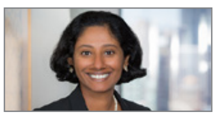
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The current fund finance market can be described in three words: maturity, growth and innovation.

While fund finance products and structures continue to evolve in response to market demands, the commercial and legal terms around more traditional fund finance transactions and structures are beginning to normalize as the market matures. We're generally seeing more competitive pricing and fee structures, standardization of core terms, such as borrowing base inclusion criteria and cash flow sweep constructs, and a healthy balance of traditional bank lenders and nonbank credit providers offering an ever-increasing array of fund finance solutions.

The fund finance market continued to experience remarkably strong growth through the first half of 2025, driven by the ability of alternative lending sources with innovative financing products and structures to fill liquidity gaps of fund sponsors, while traditional fund finance lenders continue to grapple with interest rate increases, regulatory changes in capital treatment and other macroeconomic events. At the same time, the appetite of sponsors for debt financing continues to be insatiable. The resulting competition for the limited bank balance sheet capacity available to the fund finance market continues to fuel substantial demand for alternative liquidity providers and bespoke financing solutions. With this demand comes opportunity, and the growth and expansion of the fund finance lender base and product offerings witnessed in recent years continued to proliferate through the first half of 2025.

Subscription facilities remain a staple for many fund sponsors, and demand for capital call-backed credit continues its year-on-year growth. The use of asset-based leverage continued to expand beyond credit and secondaries funds and across a broader range of fund investment strategies, particularly private equity funds. We're also seeing fund sponsors deploy NAV solutions up and down the capital structure of their fund platforms. Sponsors increasingly turned to these asset-based financing products to consummate acquisitions, to purchase portfolio company debt and, with growing scrutiny, to make distributions to limited partners.

The proliferation of NAV facilities, particularly when used to fund distributions or to support a struggling portfolio, continues to draw the attention of the investor community and the Institutional Limited Partners Association (ILPA). While ILPA has not publicly criticized NAV facilities as fervently as it had initially criticized subscription credit facilities a few years ago, the group has strongly urged fund sponsors to disclose the rationale and key terms of NAV facilities and to engage investors for consent to use NAV facilities when clear authorization is lacking. Not surprisingly, we've seen an increasing number of side letter requests around the utilization of NAVs, including a number of investors requesting LPAC approval of NAVs that will be used to fund distributions to investors.

The strong demand for novel fund finance solutions combined with the continued expansion of the fund finance lender base is driving unprecedented innovation in the fund finance market. We've seen a resurgence of hybrid-type facilities for mid-lifecycle funds or to support higher LTVs in NAV financings. Traditional bank lenders are

Continued on page 5

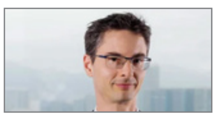
Fund Finance

Continued from page 4

actively pursuing securitization structures and other risk transfer strategies to relieve balance sheet constraints. Rated feeders, CFOs and similar products targeting insurance company capital have been resurgent given the general rate environment and the greater clarity in the regulatory landscape. These products have become popular as a fundraising tool not only for credit funds but also for secondaries funds. We also expect to see increasing use of these CFO structures as a liquidity tool in the current market.

It is indeed an exciting time in the fund finance market. The positive developments and trends of recent years continued in earnest through the first half of 2025 and show no signs of relenting.

Private Funds Transactions



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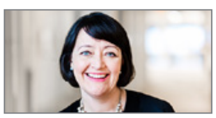

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The secondaries market has continued its year-on-year growth, driven by low DPI, subdued capital markets activity and increased liquidity demands. According to Evercore, last year saw $160 billion in secondaries transactions (a 40% increase from 2023), with GP-led deals accounting for $71 billion of that figure (up from $51 billion in 2023). Although the GP-led market remains dominated by buyout strategies, asset managers have increasingly embraced continuation vehicles as a liquidity solution in other asset classes, including private credit.

Credit Continuation Vehicles

The last 12 months has seen significant growth in credit CV activity, with the closing of several significant transactions, including Abry's $1.6 billion credit CV led by Coller Capital, Antares' $1.2 billion credit CV led by Ares and Vista's $460 million credit CV led by Pantheon. Sellers have embraced the CV as a means of returning capital more quickly to fund investors relative to selling individual loans or having loans go into runoff. We have seen several trends emerge:

Pricing. Loan portfolios concentrated in senior credit are consistently priced with mid- to low-single-digit discounts. With the growth in the number of asset managers raising dedicated private credit platforms and of new entrants (including retail evergreen funds and LPs interested in co-investing in credit CVs), the bid-ask spread has narrowed. Recent competitive processes have seen bidding with no discount or a slight premium to gross asset value. As the period between the reference date and the closing date can extend upwards of six months, buyers can benefit from a pricing difference due to a purchase-price reduction for interest payments during the pre-closing period.

Deferred Consideration. Over the last year, there has been a dramatic uptick in the use of deferred consideration to bridge pricing gaps. In credit CVs, where there is pressure from sellers to maintain the par headline price, investors may be willing to pay a higher percentage of the gross asset value of the loan portfolio if there is deferred consideration or leverage on a portfolio. Some investors have negotiated for a deferral of 50% or more of the purchase price, with the up-front purchase price funded with a NAV facility.

Continued on page 6

Private Funds Transactions

Continued from page 5

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Leverage. As private credit typically has a lower return profile than private equity, using leverage to boost returns is often part of the economics of a credit CV. NAV facilities have been deployed to fund part of the purchase price, as well as partnership expenses and follow-on investments.

Purchase Price Adjustments. With recent macroeconomic volatility, buyers have increased their focus on closing conditions and, in some instances, have pushed for downward purchase-price adjustments due to a material decline in the value of the portfolio—a departure from the market standard of locking the purchase price as of an agreed reference date and only adjusting for pre-closing cash inflows and outflows. This approach may be more palatable in the credit CV context given the more readily available objective measures of performance (e.g., credit ratings and contractual defaults). A price adjustment mechanism—although less than ideal—may be acceptable to a seller if the alternative is a buyer closing condition tied to portfolio deterioration.

Leveraged Finance

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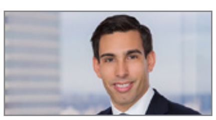

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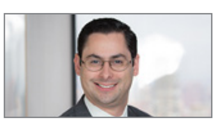

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Financing market participants, hoping to build off of 2024's record-setting issuance, were optimistic coming into this year, but debt markets were tepid in the first half of 2025. Loan market issuances for the first half of the year were down 20% compared to the first half of last year, according to PitchBook LCD; this decreased activity was most clearly seen in Q2 2025, which featured just $105 billion of loan issuances compared to $354 billion in Q1 2025 and $404 billion in Q2 2024.

This year's slowdown can be attributed to three interwoven factors. First, macroeconomic uncertainty from recent political events, particularly the tariffs imposed by the Trump administration, contributed to the lull in overall deal activity. Many debt investors chose to patiently remain on the sidelines, waiting for trade agreements to be finalized and for the market to digest the related implications, before making new debt investments. Second, while the Federal Reserve signaled at the end of 2024 that at least two additional rate cuts were expected in 2025, these rate cuts have not yet materialized. The Fed has maintained rates and taken a more cautious approach toward additional cuts, given the possibility of inflation rising again as the impact of tariffs makes its way through the economy. Third, the increase in M&A-driven debt issuance that was expected in 2025 has been slow to materialize. For example, according to PitchBook LCD, private equity sponsors issued only $38.2 billion of loans in the first half of 2025 to finance new M&A transactions; while this was higher than the first half of 2024 (which was a year characterized by opportunistic financing transactions, such as refinancing, repricing and dividend recap transactions not tied to M&A activity), it's less than the 10-year average of $43 billion for this period. Notably, sponsors have cited the macroeconomic uncertainty and higher interest rates as constraining the number of active M&A processes so far this year.

As we look to the second half of 2025, there remains positive sentiment that debt market activity will rebound with a strong second half. While few trade agreements have been

Continued on page 7

Leveraged Finance

Continued from page 6

finalized to date between the United States and other governments, tariffs should have a reduced impact on both debt issuance and M&A activity. In particular, the administration's decision to postpone the implementation of most proposed tariffs, together with news reports that trade discussions will lead to new trade agreements, may lead debt investors to view tariff risk as less of a threat going forward. In addition, the negotiations over and passage of the One Big Beautiful Bill Act, which raised the debt ceiling and implemented certain tax and policy changes, do not appear to have resulted in any meaningful impact on overall market activity. Moreover, the Fed has signaled it will consider a rate cut in its upcoming FOMC meetings; in fact, Wall Street banks are generally bullish on rate cuts, having published reports that they predict multiple rate cuts by the Fed in the remainder of 2025.

Assuming these trends for minimal impact from political events and potential Fed rate cuts hold, M&A activity should continue to increase throughout the remainder of the year, with attractive business valuations permitting sponsors to more aggressively pursue potential new transactions. In addition, private credit funds continue to sit on substantial dry powder that they've raised over the last two years, and we expect they will be primed to provide debt financing at competitive rates and terms to deploy this capital to fund new M&A deals.

M&A (U.S.)

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U.S. private equity M&A began the year poised to extend the strong recovery seen in 2024. Sponsors continued to hold significant dry powder, credit conditions were improving, there were hopes for a new administration's more favorable regulatory environment, and there were a large number of portfolio companies held for five-plus years and ripe for sale. But 2025 got off to a slower start than expected, with U.S. private equity M&A deal volume down approximately 15% compared to the first half of 2024 and 17% compared to the second half of 2024. At the same time, however, total deal value was up 16% and 6% compared to those two periods, respectively. Further, we have seen a recent increase in activity levels, which we expect will continue as we move into late summer and early fall. We thus remain cautiously optimistic for the year's second half.

The announcement in April by the Trump administration regarding tariffs led to significant volatility in public markets and uncertainty regarding future trade policy, leading to valuation gaps between buyers and sellers. Nonetheless, the first half of 2025 saw some significant transactions, including Sycamore Partners' $10 billion take-private of Walgreens Boots Alliance, and sponsors' pursuit of take-private transactions now appears to be on the rise. Although the market as a whole is trading near all-time highs following a quick bounce-back from April's lows, not all stocks have participated as vigorously in the rebound—or the gains of 2023 and 2024—providing selective opportunities for sponsors.

This spring also brought about changes to the Delaware General Corporation Law relevant to our U.S. private equity clients considering a take private, addressing conflicted and controller transactions. (See "DGCL Amendments' Impact on Going Private Transactions" in the Spring 2025 Debevoise MarketCheck for a more detailed discussion.) These changes provide sponsors with greater clarity on whether they will be subject to the more stringent "entire fairness review" in connection with a take-private transaction when the sponsor

Continued on page 8

M&A (U.S.)

Continued from page 7

already owns a stake in the public company (and creates a safe harbor from being deemed a "controller" for anyone holding less than a third of the voting stock).

The normalization and renewed optimism in take-privates have also been carrying over to the private side as we pass the mid-year mark. Add-ons and carve-outs continue to represent a substantial portion of activity, with growth in new platform investments trailing expectations somewhat despite improved credit conditions and a need of sponsors to realize vintage investments. However, a lower frequency of sponsor-to-sponsor exits (and other traditional exits) have cemented the importance of continuation fund transactions as a core liquidity path for sponsors, and with capital allocation increasing for continuation fund specific strategies, we expect this transaction type to continue to grow and mature.

Macro risks are ever-present, but we expect the U.S. private equity M&A market to be well positioned for the remainder of the year, with sponsors having ample capital to deploy opportunistically and to support existing portfolio companies in add-on transactions. Credit markets have also shown resilience in the face of recent geopolitical events, remaining active without significant worsening of terms for sponsors.

Overall, we expect activity to remain strong through the summer, picking up further as we move past Labor Day and into the fall.

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Despite the rebound in deal activity during the second half of 2024, the first half of 2025 has been characterized by renewed uncertainty due to significant and erratic shifts in U.S. economic and trade policy, international tensions and regulatory changes. While private equity firms may have entered the year intending to deploy significant amounts of capital, uncertainty on so many fronts made valuation challenging and kept sponsors on the sidelines. The statistics tell the story: Compared with Q4 2024, Q1 2025 saw deal value drop by 24.6% and deal count by 17.7%. After President Donald Trump's announcement of a wave of new tariffs on April 2, the first quarter's slide continued, with April's deal value down 24% and deal count down 22% from Q1's already depressed monthly averages. The market for exits has also remained challenging, with exit value declining 18% from Q4 2024 to Q1 2025. The median holding time for a European sponsor-backed company rose to 3.4 years in Q1 2025, compared to 2.4 years in 2019.

In addition to the slowing of deal flow that has already occurred, trade tariffs may also end up jeopardizing Europe's recovery from the extended period of high inflation brought about by COVID-19 and the war in Ukraine, with the decline in inflation rates in the United Kingdom and European Union slowing in 2025 compared to 2024. Related to this, IPO activity remains slow, with numerous companies, such as airBaltic and Europastry, postponing their initial offerings.

While the 2024 European M&A environment was marked by an increased appetite for megadeals, 2025 has seen a focus on smaller transactions, particularly bolt-ons to grow existing businesses. In Q1, 38.7% of deal value comprised bolt-ons, representing an increase of 8% compared to the end of 2024. Medium-sized deals, in the range of €25 million to €100 million, made up 30.7% of the total number of deals in Q1. A notable

Continued on page 9

M&A (Europe)

Continued from page 8

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exception to the decline in megadeals is the acquisition by Rosebank Industries, a UK-listed SPAC, of Electrical Components International, a portfolio company of Cerberus Capital Management advised by Debevoise, in a transaction valued at approximately $1.9 billion.

Another notable trend has been the resilience of deal activity in the Nordic region and the DACH countries (Germany, Austria and Switzerland), resulting from these areas' relative insulation from recent market volatility. Indeed, these two regions accounted for the top three deals in Europe during Q1 2025, including the acquisition of Danish ventilation specialist Airteam by Swedish PE firm Nalka Invest for €1.6 billion. In contrast, the DACH region's deal performance was below the European average in 2024.

Despite fewer deals, the broader appetite for financial services transactions has remained strong in 2025, with more than €8.3 billion in deal value in this sector in Q1. Cross-border transactions remain favorable, such as Swiss private bank J. Safra Sarasin's majority takeover bid of Saxo Bank in Denmark for €1.1 billion and Franklin Templeton's acquisition of a majority interest in Apera Asset Management, a European private credit firm advised by Debevoise. The so-called "Danish Compromise," forming part of the reforms of the Capital Regulatory Requirements III and formally embedded into EU law as of January 1, 2025, is expected to be a significant catalyst for further M&A activity in this sector. The Danish Compromise will enable financial conglomerates to receive more favorable capital treatment for their participation in insurance and asset management firms by allowing them to hold their insurance participations on a risk-weighted basis instead of fully deducting such participations from their equity. One potential effect of the Danish Compromise is to increase the exit prices sponsors can command when selling insurance businesses to banks.

Given the first half of the year, the outlook for 2025 will no doubt be highly dependent on the stabilization of the macroeconomic environment and, in turn, a return of confidence to market participants. Significant changes to the situation in Ukraine—positive or negative—are also likely to affect the European M&A market.

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The first half of 2025 witnessed transformative changes in global trade dynamics, propelled by the Trump administration's expansive tariffs. The constant drumbeat of new announcements, coupled with retaliatory measures from trading partners and ongoing legal battles, have created an environment of sustained uncertainty across Asian markets. While this volatility initially caused many dealmakers to pause M&A activity as they worked to understand the full implications of the changes, Asian transactions have since gradually regained momentum as bilateral trade negotiations advance and corporations implement adaptive supply chain strategies—though now operating within an altered risk framework where tariff considerations permeate deal calculations.

This new reality has elevated tariffs to a central element in the evaluation of transactions, even for targets not directly exposed to tariffs. Buyers and representation & warranty (R&W) insurers now routinely conduct deeper due diligence to ensure that the

Continued on page 10

M&A (Asia)

Continued from page 9

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impact of potential tariffs is properly accounted for in financial models and valuations. Such heightened scrutiny reflects broader market caution, as parties work to avoid post-deal surprises stemming from sudden policy shifts.

These developments have naturally brought material adverse effect (MAE) clauses back into focus as a tool for allocating tariff-related risks, mirroring their critical role during the COVID-19 pandemic. Negotiations have grown increasingly complex as sellers push to narrow MAE definitions by excluding broad economic disruptions or policy changes beyond their control, while buyers resist such carve-outs to preserve their ability to walk away if tariffs erode a target's value between signing and closing. Where tariffs are specifically called out in MAE definitions, we have also seen parties argue whether all tariffs should be captured or the reference should be limited to imports into or exports from certain countries, depending on the nature of the target's business.

Beyond MAE clauses, sophisticated buyers are also actively exploring other contractual terms to mitigate tariff risks. Warranties tied to closing conditions, for instance, may allow buyers to abandon deals if post-signing tariff shocks render those warranties inaccurate. Force majeure or change-of-law provisions are also being tested in the light of changing tariffs, though their effectiveness varies significantly by jurisdiction.

For businesses particularly prone to tariff risks, buyers now routinely demand bespoke warranty packages. These tailored warranties may cover supply chain resilience, the absence of customer or supplier termination rights triggered by tariffs, or enhanced compliance with customs regulations. While R&W insurance traditionally helped bridge gaps in risk allocation, insurers are responding to the new environment by imposing broad exclusions for tariff-related risks. This market shift effectively pushes more liability onto sellers, who might need to provide additional indemnifications or accept deferred or contingent consideration payments to move deals forward.

As the landscape evolves, the Asia M&A market will need to adapt to a growing array of risks, including shifting geopolitical alliances, new regulatory frameworks and the unpredictable nature of global economic cycles. In response, legal structures will need to become more flexible to enable businesses to navigate the multifaceted risks in an increasingly volatile market.

Capital Markets

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U.S. capital markets activity was strong in the first quarter of 2025 amidst Federal Reserve interest rate cuts and increased M&A deal flow. On the regulatory front, the confirmation of Paul Atkins as Chair of the Securities and Exchange Commission signals a pivot toward deregulation. While traditional private equity-backed IPOs largely remain on the sidelines, developing market and deregulatory tailwinds could produce a strong second half of 2025 and 2026.

Recent Market Activity

Historically, **IPO activity** has increased following U.S. presidential elections, and the first quarter of 2025 followed that trend, further fueled by the 100 basis points the Federal Reserve cut from interest rates in the period from September to December 2024. The first quarter of 2025 saw 48 initial public offerings raising approximately $8.7 billion, compared to 44 IPOs raising approximately $5.5 billion in the fourth quarter of 2024.[1] The **special purpose acquisition company** (SPAC) IPO market remained strong, raising approximately $3.4 billion, with serial SPAC sponsors comprising most first-quarter activity. The follow-on market continued momentum from late 2024 before slowing in March of this year, with 89 offerings totaling approximately $35.3 billion in the first quarter of 2025, compared to 129 offerings totaling approximately $57.6 billion in the fourth quarter of 2024.

However, while market conditions may be more favorable overall, investor optimism is selective. As IPO pricing in early 2025 showed, investors rewarded those issuers with proven cash flow and sector resilience while high-growth or speculative issuers faced valuation pressure. While real estate and industrials delivered stronger average returns, mid-year standout debuts in crypto, fintech, and health tech challenged earlier trends, contrasting with modest performance across technology and healthcare IPOs more generally.

Debt markets were also active in the first quarter of 2025. High-yield bond issuances totaled approximately $76.4 billion across 96 issuances, compared to 70 issuances, raising approximately $48.7 billion, in the fourth quarter of 2024. Investment-grade bond issuances raised approximately $557 billion from 364 issuances, compared to approximately $244.9 billion from 200 issuances in the fourth quarter of 2024, corresponding with increased M&A activity and supported by lower interest rates. Convertible bonds continued to be a popular capital-raising tool, with 29 issuances totaling approximately $16.5 billion in the first quarter of 2025. Though falling short of the 32 issuances totaling approximately $27.4 billion in the fourth quarter of 2024, this is still a marked increase over historical levels.

Private investment in public equity (PIPE) activity rebounded in 2024 and continued momentum into early 2025, with activity rising approximately 21% from 2023, offering capital access to companies unable or unwilling to tap traditional public markets. Corporate spin-offs and dual-track IPO/M&A processes gained traction as companies sought to maximize value and strategic flexibility. The rise in dual-track processes may also reflect issuers hedging valuation uncertainty, preparing for exits amid the possibility of fragile investor confidence.

Continued on page 12

1. All statistical and market data referenced are sourced from the London Stock Exchange Group and Private Raise.

Capital Markets

Continued from page 11

Activity in the first quarter of 2025 evidenced continued improvement in equity markets and strength in debt markets. However, the pause on interest rate cuts since December, along with inflation and tariff uncertainties, could challenge market momentum. Increased market volatility could, however, bolster the convertible bond market, which provides the downside protection of coupon payments alongside the upside potential provided by equity conversion. Convertible bonds may offer attractive debt refinancing possibilities given higher borrowing costs for traditional high-yield and investment-grade debt.

Regulatory Developments

As markets recalibrated in early 2025, the SEC pivoted toward deregulation and capital formation, rolling back several Gensler-era policies—especially those on ESG and shareholder access. On March 27, 2025, the SEC voted to stop defending its climate disclosure rules, though litigation continues and the rules remain in effect unless formally rescinded. Disclosure and governance requirements are expected to ease further, and with the prior administration's aggressive rulemaking and enforcement initiatives now set aside, the SEC's focus has shifted to capital formation. Measures under consideration to ease restraints on capital raising include the possible repeal of Dodd-Frank disclosure rules, preemption of Blue Sky laws in certain private placements, changes to the "accredited investor" definition and easing resale restrictions.

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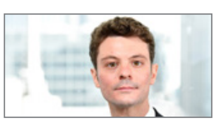

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The first half of 2025 saw a large number of UK tax developments that will affect investment fund sponsors and their portfolio companies. The most substantial recent announcements relate to carried interest and stamp duty. We have summarized these, together with a selection of other recent UK tax changes, below.

Carried interest reform

In Autumn 2024, the UK government initially announced that a wide-ranging reform of the UK taxation of carried interest would come into effect beginning in April 2026. In June of this year, it published further details of this significant reform:

- In a typical fund, carried interest is currently treated as arising from *investment* activity, with profits taxed based on their underlying form—i.e., gains, dividends, or interest income—at rates of up to 28%, 39.35% or 45%, respectively. Beginning in 2026, carried interest will be taxed as *arising* from trading activity, ostensibly at a rate of up to 47% (comprising 45% income tax plus 2% self-employed national insurance contributions).
- Under the new regime, *qualifying* carried interest will benefit from a lower tax rate of up to approximately 34.1%. In order to qualify for this rate, a carry recipient must determine that their carried interest falls outside the "income based carried interest" (IBCI) rules—which will now apply to all carry recipients, rather than to the small subset of carry recipients who were not employees. Broadly, carried interest will fall outside of income-based carried interest if the relevant investment fund holds its investments, on average, for more than 40 months. While the government had previously considered using additional qualifying criteria, it is now confirmed that IBCI will be the only qualifying criterion used.

Continued on page 13

Tax (UK)

Continued from page 12

- The characterization of carried interest as arising from *trading* activity led to concerns that non-UK resident carry recipients may be brought within the UK tax net in relation to their carried interest if they spend some working days in the UK. However, the government has announced narrow parameters for this extra-territorial effect, meaning that it should only apply in a fairly limited number of cases.

We expect that the UK government will publish draft legislation in relation to the carried interest reform in the coming weeks.

UK Stamp Duty Reform

In April of this year, HMRC announced that for transfers of securities, a new, simplified Stamp Tax on Securities (STS) will replace stamp duty and Stamp Duty Reserve Tax (SDRT), beginning in 2027. The details of this reform are set out in our separate client alert.

The key takeaway for secondaries funds (in particular) is that STS should not apply to the transfer of partnership interests. Currently, many secondaries transactions are exposed to a possible liability—however remote— to UK stamp duty, which often results in the negotiation of extensive risk allocation provisions in transaction agreements and can complicate the signing process. More broadly, sponsors and their portfolio companies can also look forward to a significantly more straightforward application and administration of STS in regular UK M&A transactions.

Other recent noteworthy UK tax developments

The following UK tax changes and UK tax rate increases were also announced, or came into effect, in the first half of this year:

New Guidance on UK Tax Reporting. In February, HMRC published new guidance concerning the “tax packs” provided by some investment fund sponsors to assist executives in completing their tax returns (particularly regarding co-investment and carried interest). In the new guidance, HMRC cautions executives against simply “relying on tax reporting tailored for other jurisdictions (for example, a U.S. tax form) to complete a UK tax return”; HMRC’s expectation is that executives should “use reasonable efforts” to obtain further information [that is relevant to UK tax reporting], including requesting this from their firm.” This guidance is likely to be enforced by HMRC beginning with UK tax returns for the 2024/2025 tax year.

New FIG Regime. As discussed in detail in previous issues of the Debevoise *Private Equity Report*, the UK’s “non-dom” tax regimes for income, capital gains and inheritance tax, which gave non-UK *domiciled* individuals preferential tax treatment on their non-UK source wealth, was replaced, beginning in April 2025 with new regimes—including the “foreign income and gains” or “FIG” regime for income and capital gains—that will give individuals preferential tax treatment in the initial years of UK residence after relocating from abroad.

These UK tax developments may have a material impact on many investment executives’ UK tax reporting this year and going forward. And yet, these represent only the more significant changes in a year that has seen, and will continue to see, other updates in HMRC guidance, consequential tax decisions in the UK courts of appeal and other legislative changes.

U.S. Funds Regulatory

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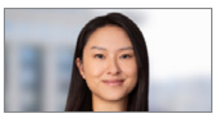

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The first half of 2025 brought significant—and largely positive—change to the U.S. regulatory landscape affecting investment advisers and funds, primarily due to a recalibrated SEC. Following the 2024 election, the highly active and arguably confrontational regulatory posture under former SEC Chair Gary Gensler has given way to a more measured approach under new Chair Paul Atkins. While it remains early, the SEC under Atkins' leadership has consistently demonstrated a markedly more measured approach to its core mandates of protecting investors, ensuring market integrity and promoting capital formation relative to both private fund and 1940 Act-registered fund regulation, through a combination of rulemaking and both interpretive and exemptive actions.

Shift in SEC Priorities and Tone

Private Funds

The new administration has signaled a departure from the earlier aggressive, often punitive approach to rulemaking and interpretive issues. In March, the SEC's Division of Corporation Finance issued an interpretive letter effectively providing private markets issuers with more flexibility to raise capital from accredited investors in offerings through the use of general solicitation and advertising. The letter acknowledges that investment minimums and specific verifications could satisfy the issuer's obligation to take "reasonable steps" to verify an investor's status as an "accredited investor." While this approach does not allow for full "retailization" of private funds, it provides fund sponsors with an additional path to raise capital.

In June, the SEC formally withdrew a number of rule proposals—many of which reflected Chair Gensler's skepticism towards the investment management industry—that affected investment advisers to private funds. These proposals include:

Cybersecurity Risk Management: This proposal would have required advisers and funds to adopt and implement cybersecurity program and incident reporting.

Enhanced Disclosures by Investment Advisers About Environmental, Social, and Governance Investment Practices: This proposal would have required advisers and 1940 Act funds to provide detailed disclosures regarding their ESG practices.

Safeguarding Advisory Client Assets: This proposal represented a comprehensive overhaul of the Custody Rule, including eliminating the trading exemption and imposing significant new obligations on advisers and custodians.

Outsourcing by Investment Advisers: This proposal would have required advisers to perform extensive due diligence and monitoring of third-party service providers.

Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker Dealers and Investment Advisers: This proposal would have required advisers to eliminate conflicts resulting from any manner of technology affecting advisory clients.

Registered Funds

In the 1940 Act fund space, the SEC has unfrozen an effective moratorium on exemptive relief and now permits private business development companies (BDCs) to issue securities in multiple share classes, a move that should enable privately offered BDCs to create a greater number of direct distribution channels to a broader set of investors. Furthermore,

Continued on page 15

U.S. Funds Regulatory

Continued from page 14

we believe the multi-share class relief for private BDCs should enable sponsors to achieve broader distribution with reduced regulatory friction, as it allows them to bypass the overly burdensome Blue Sky registration process that is required for publicly offered non-traded BDCs. The SEC has also begun to consistently modernize BDC exemptive relief for co-investment transactions to permit BDCs, among other things, to engage in certain transactions without board approval and to engage in transactions in which a related party has a pre-existing interest. And on the interpretive side, the Division of Investment Management announced in May its elimination of a longstanding informal practice of prohibiting 1940 Act closed-end funds from investing more than 15% of their assets in private funds absent the requirement that all investors be "accredited investors." This represents a significant shift in policy after decades of adherence to an informal, unpublished staff requirement.

401(k) Market Access

Perhaps the most headline-grabbing regulatory theme this summer is the growing support for expanding access to private market investments through U.S. retirement plans, including 401(k)s. As we go to publication, President Trump appears poised to issue an executive order to "investigate and explore avenues for increasing access to asset allocation funds containing investments in alternative assets for applicable retirement plans." Such an order is expected to return to plan fiduciaries—as contemplated by ERISA—plenary authority to decide what investments are to be made available for selection by plan participants, subject to their obligation to follow a prudent process in making that decision and acting in the best interests of plan participants in doing so.

Looking Ahead

As we move into the second half of 2025, private fund sponsors face a regulatory landscape that appears more stable and constructive. A principles-based approach to innovation, increased openness to retail access, and a focus on practical reforms may all support product development and capital formation.

We will continue to monitor these developments closely and work with clients to navigate the evolving landscape—balancing opportunity with thoughtful risk management as the regulatory agenda takes clearer shape under the SEC's new leadership.

European Funds Regulatory

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Private equity sponsors have been looking to expand their investor base by providing retail investors and high-net-worth individuals access to private equity markets. While the European Union has recognized the argument for allowing retail investors to benefit from the historically high returns that are often generated by the private equity markets, it is also conscious that retail investors need greater protection. In its recent program aimed to encourage retail investment, the EU has sought to build a framework integrating investor protection, transparency, suitability tests and enhanced disclosure requirements.

But just as investing in private equity brings risks for the individual investor, tapping this investor base brings challenges for sponsors. Unlike with professional investors, retail

Continued on page 16

European Funds Regulatory

Continued from page 15

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investors may cause the fund to be exposed to capital call risks; sponsors must also take into consideration consumer protection rules. Finally, onboarding retail investors can require extensive infrastructure. One practical solution is for fund managers to set up a retail investor sleeve managed by a bank or third-party service provider. Banks and service providers have the required licenses and, more importantly, the infrastructure required to manage a large retail investor base with low commitment amounts. Of course, such services come at a cost, and sponsors should consider engaging with a service provider only where there is likely to be considerable interest and a large network of retail or professional investors.

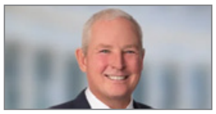
Sponsors pursuing retail investors should also recognize that "retail investor" is a broad category. Any investor not qualifying under EU legislation as a professional investor is technically a retail investor and triggers enhanced disclosure, for example, under the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation. However, "retail investor" also includes investors with a certain level of sophistication and a high net worth, and the national laws of some Member States designate those investors as "semi-professional investors." Finland, Germany, Italy and Sweden allow funds to treat such semi-professional investors as professional investors or else provide relief from some of their national requirements regarding marketing to retail investors.

Marketing to true retail investors—that is, investors who are neither professional nor semi-professional—brings its own challenges. Not all EU Member States permit marketing to such investors and, if they do, will have their own unharmonized marketing requirements. For example, France only permits French fund managers to market to retail investors, while Finland, Iceland and Luxembourg permit marketing to retail investors by managers from other EU Member States. Germany, Ireland, Norway and Sweden open the aperture further, permitting both EU and non-EU managers to access retail investors in their jurisdictions under national private placement rules (although it may prove very difficult for non-EU managers to meet the AIFMD requirements necessary for such marketing activities).

The EU has addressed these divergences by introducing the European Long Term Investment Fund (ELTIF) Regulation, which includes the establishment of a marketing passport permitting authorized EU managers to market such products to retail investors. However, the ELTIF carries numerous restrictions, such as eligibility requirements for the assets in which the fund is investing, and a cap on borrowing by a fund marketing to retail investors equal to 50% of NAV. Further, such restrictions often conflict with certain investment strategies, such as globally investing secondaries or fund of funds, an asset class particularly popular among retail investors and which cannot make use of the ELTIF regime due to the stringent requirements for target funds.

Without doubt, retail investors in the EU remain an untapped investor pool for private equity; however, the practical challenges when marketing to a broad retail investor base should be carefully considered. It is advisable to determine the retail investor base and target jurisdictions in advance. Such parameters will have an impact on the choice of the fund structure and the use of service providers.

National Security



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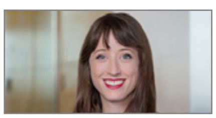

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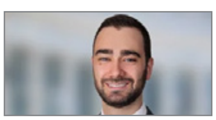

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Private equity faces both opportunities and obstacles as the second Trump administration continues to implement its national security policy agenda. The administration's *America First Investment Policy*, in the early stages of implementation, has drawn sharp lines against adversarial influence for both inbound and outbound U.S. investment. In addition, the administration has become highly active in other national security-related areas, and federal programs continue to evolve to address emerging national security threats.

Enforcement Under the America First Investment Policy

Under the *America First Investment Policy*, the Committee on Foreign Investment in the United States (CFIUS) is to take a more accommodating posture toward inbound investment from U.S. allies and partners and passive investment from other foreign persons. However, certain investments directly or indirectly tied to "foreign adversary" sources, primarily the People's Republic of China (PRC), will likely be more closely examined by CFIUS. Under new rules effective in December 2024, CFIUS possesses expanded compliance and enforcement capabilities that help enable it to heavily scrutinize inbound U.S. investment to determine the extent and nature of PRC or other concerning foreign investor involvement. If CFIUS identifies national security risk, it may require mitigation measures, up to and including blocking or unwinding a transaction. Private equity firms should remain mindful of how any foreign investors—whether a fund's limited partners or co-investors—can affect CFIUS's view of national security risk.

Another pillar of the *America First Investment Policy* (and of the *America First Trade Policy* memorandum signed on Trump's first day in office) is the administration's review of the Biden-era Outbound Investment Security Program (OISP). The OISP imposes either a notification requirement or an outright prohibition on U.S. persons' investments involving China-related entities that are engaged in certain quantum information technology, artificial intelligence, and semiconductor and microelectronics activities. The Trump administration is considering expanding the scope of the OISP's outbound investment restrictions and limiting the exceptions available. In addition, Deputy Treasury Secretary Michael Faulkender recently confirmed that the Treasury Department is receiving required notifications, monitoring the outbound investment market and reviewing public feedback on the OISP, all of which may inform future modifications to the program. Because any changes will affect U.S. persons' investments in China and beyond, private equity should closely monitor policy developments.

Presidential Involvement in National Security-Related Deals

Under President Trump, the White House has been more deeply involved in national security-related transactions than ever before. In a reversal of his first-term stance, Trump began his second term by staving off a federal TikTok ban with an executive order to delay enforcement of the Protecting Americans from Foreign Adversary Controlled

Continued on page 18

National Security

Continued from page 17

Applications Act (PAFACA). The recently enacted law requires that TikTok be barred from operating in the United States unless its Chinese parent, ByteDance, divests the social media platform—which it has not done. In April and June, the president issued two further executive orders, delaying PAFACA enforcement until September 2025.

The White House also ordered CFIUS to reexamine the proposed acquisition of U.S. Steel by the Japanese company Nippon Steel, after former President Joe Biden blocked the deal in January following a CFIUS review. In June, the Trump White House allowed the transaction to move forward in exchange for a "golden share" permitting the federal government to veto certain management decisions.

Updates to the FOCI Mitigation Process

Even without overt direction from the Trump administration, U.S. government agencies that manage national security risk are enhancing their processes. In particular, the Defense Counterintelligence and Security Agency (DCSA) in May 2025 approved a revised version of Standard Form 328 (SF-328), the Certificate Pertaining to Foreign Interests. SF-328s are a core element of the Foreign Ownership, Control, or Influence (FOCI) review process, through which DCSA mitigates foreign interests in contractors that undertake classified government work.

The revised SF-328 expands disclosure requirements across several key areas, many of which can implicate information on owners, including private equity sponsors. While, thus far, SF-328s have only been relevant to classified government work, the revised SF-328 will be used to implement Section 847 of the FY 2020 National Defense Authorization Act, which mandates FOCI reviews for certain unclassified contracts valued above $5 million. Private equity sponsors whose funds have interests in government contractor portfolio companies should proactively assess how the revised SF-328 may alter their disclosure obligations.

Conclusion

While the president has historically been granted broad discretion to address national security concerns, President Trump has demonstrated an unprecedented level of engagement with national-security related transactions and the willingness to use national security regulatory tools in novel ways. Private equity sponsors should be mindful that any high-profile foreign investment in the United States may attract the attention of the White House and complicate regulatory processes, even if the transaction is ultimately approved.

People Solutions

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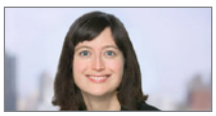

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Unlike defined benefit plans, which commonly allocate a portion of their assets to private market investments, 401(k) and other defined contribution plans historically have not offered investment options that included private equity and other alternative assets. Defined contribution plan sponsors, mindful of their fiduciary duties under the Employee Retirement Income Security Act (ERISA), have been reluctant to offer complex, illiquid and potentially volatile investments to ordinary retirement plan participants. As a result, the default menu of 401(k) investment options has generally remained confined to traditional public market investments, such as mutual funds holding stocks and bonds. Developments over the past few years, however, have begun to introduce the possibility that alternative assets, including private equity, could become more readily available to 401(k) plan participants. Multiple sources now report that President Trump is finalizing an executive order instructing the Department of Labor (DOL) to develop a safe harbor clarifying fiduciary responsibilities and reducing litigation risk for 401(k) fiduciaries offering investment options that include private equity and other alternative assets.

Momentum in this area began with an information letter issued by the DOL in June 2020. The letter explained how a private equity allocation might be incorporated into a professionally managed fund offered to 401(k) plan participants in compliance with ERISA's fiduciary duties, and it offered practical solutions for managing the tension between the liquidity constraints inherent in private equity and the inevitable need for plan participants to rebalance their portfolio or withdraw money from the plan. Concerned that the 2020 information letter amounted to a broad endorsement of private equity, the DOL followed with a supplemental statement in December 2021, clarifying that its first letter was in fact not an endorsement and noting that plan-level fiduciaries of small, individual account plans are unlikely to meet the necessary prudence standard without professional, sophisticated help. (For more information, see our Debevoise Updates on the 2020 information letter here and the 2021 supplemental guidance here.)

A recent appellate decision could provide additional comfort to plan fiduciaries contemplating alternative assets like private equity. In *Anderson v. Intel Corp. Investment Policy Committee et al.*, plan participants had alleged that the inclusion of private equity and hedge funds in Intel's custom funds was imprudent. The Ninth Circuit's holding confirms that there is no one-size-fits-all approach to asset allocation or investment options. Echoing the DOL's 2020 information letter, the court found that private funds are not per se off limits; private equity and hedge fund investments may be part of a diversified, participant-directed investment portfolio.

Despite the favorable outcome in *Intel*, the six-plus years of litigation necessary for the courts to conclude that the claims were meritless illustrate why many fiduciaries have remained cautious. In the wake of *Intel*, private equity sponsors and their advisers renewed calls for an express statutory or regulatory safe harbor that would allow professionally managed, diversified funds containing private market investments to be included as 401(k) plan investment options. An executive order launching a DOL rulemaking process aimed at formalizing a safe harbor framework would align with developments elsewhere, such as the flurry of recent exemptive orders and announcements from the Securities and Exchange Commission (SEC) designed to ease regulatory impediments associated with retail investment into private investment strategies. SEC Chairman Paul Atkins has also stated that the SEC will work closely with its counterparts at the DOL to ensure there

Continued on page 20

People Solutions

Continued from page 19

are appropriate guidelines, including proper disclosure, for products containing private market investments to be included as 401(k) plan investment options.

Under the Administrative Procedure Act, the Department of Labor must publish a notice of proposed rulemaking and invite public comment before issuing any final regulation. While caution among private equity firms and plan sponsors may persist after an executive order is issued and until any regulatory guidance and accompanying legal protection is finalized, the momentum is clearly toward expanding what a "well-diversified" 401(k) lineup can look like. Any eventual safe harbor would likely mirror the elements already set forth in the DOL's 2020 letter, and some private-equity sponsors and large asset managers have already begun to create products that satisfy this existing guidance.

As these developments continue to unfold, the next generation of 401(k) plan menus could finally mirror the diversification and ability to target the less-volatile returns that have long been enjoyed by defined-benefit plans—offering ordinary retirement savers a measured share of the private equity engine that drives so much modern growth.

ESG

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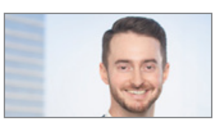

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In the first half of 2025, the ESG legal, regulatory and policy landscape in the United States and Europe has continued to evolve significantly. Below, we highlight several important developments with potential implications for private equity sponsors.

United States

Federal-Level Developments

Executive Orders

Since taking office, President Trump has used executive authority to reshape dramatically the federal government's approach to ESG-related issues. Among the executive orders and memoranda he signed in his first two days in office are those that:

- paused disbursements under the energy and infrastructure provisions of the Inflation Reduction Act of 2022;
- ceased approval of new wind-energy projects;
- withdrew the United States from the Paris Climate Agreement; and
- called for federal agencies to identify and challenge "illegal private-sector DEI preferences, mandates, policies, programs, and activities."

Such executive actions already are influencing private-sector DEI and climate-related practices and could lead to civil compliance investigations. At the same time, several of these orders are currently being challenged in court, with some degree of success. For example, in February 2025, a federal court granted the National Association of Diversity Officers' request for a preliminary injunction to protect programs that support DEI, which now is under appeal before the Fourth Circuit. Additionally, a coalition of 18 state attorneys general sued the Trump administration over its suspension of permits and issuance of stop-work orders for wind-energy projects.

Rollback of Biden-Era ESG Policies

The Trump administration is also actively rolling back several Biden-era executive actions pertaining to ESG. The U.S. Securities and Exchange Commission, for example, indicated

Continued on page 21

ESG

Continued from page 20

that it will not defend in court its previously issued climate disclosure rules. Similarly, the U.S. Department of Labor will not defend challenges to its rule permitting ERISA fiduciaries to consider ESG factors when making investment decisions. In addition, federal banking regulators have rolled back climate-related policies by withdrawing from coalitions aimed at developing climate-related risk management strategies.

Targeting State Laws

Besides altering the ESG environment at the federal level, the Trump administration is also targeting state climate laws. In an April 2025 executive order, President Trump instructed U.S. Attorney General Pam Bondi to work with federal agencies to identify and challenge state and local climate-related laws that may obstruct domestic energy development. On May 1, 2025, the U.S. Department of Justice sued New York and Vermont over their respective climate-related "Superfund" laws. Separately, a coalition of state attorneys general and industry groups filed suit challenging climate laws in New York and Vermont on constitutional and preemption grounds.

State-Level Developments

California's principal climate-disclosure laws—SB 253 (Climate Corporate Data Accountability Act) and SB 261 (Climate-Related Financial Risk Act)—take effect in 2026 and are poised to significantly affect companies conducting business in the state. Under SB 253, reporting for Scope 1 and 2 greenhouse gas emissions will be required in 2026, with Scope 3 reporting to follow in 2027. The first SB 261 reports are due on January 1, 2026. The California Air Resources Board recently confirmed these statutory deadlines and expects to issue implementing regulations later this year. (For further details, please see our Debevoise Update.)

Legal challenges to the California laws are ongoing. In February 2025, the U.S. District Court for the Central District of California partially dismissed a lawsuit challenging the constitutionality of both laws.

In New York, two climate-disclosure bills (S3456 and S3697A) similar to the California laws progressed within the state senate; however, the legislative session came to a close before voting could occur. The bills are expected to be reintroduced in next year's legislative session, potentially with extended compliance timelines. New Jersey, Illinois and Colorado have also proposed similar emissions disclosure mandates, with varying timelines and enforcement provisions. While California remains the only state thus far to have enacted such rules, momentum continues to build among "blue" states in favor of state-level climate disclosure legislation.

Europe

As foreshadowed in late 2024, the European Commission earlier this year published a proposal aimed at increasing competitiveness in Europe by curtailing ESG regulation. The proposal, known as the "Omnibus Package," seeks to revise several sustainability-related EU laws, including the Corporate Sustainability Reporting Directive (the CSRD), Corporate Sustainability Due Diligence Directive (the CSDDD), and Taxonomy Regulation. In April 2025, the "Stop-the-Clock" Directive entered into force, postponing the start of reporting under the CSRD for certain large companies and listed SMEs to 2027 and 2028, respectively, and of the CSDDD for the first wave of companies in scope to July 2028.

Further Omnibus Package proposals are expected in the second half of 2025 as EU legislators continue efforts to reform the sustainability legal framework. (For additional details on the Omnibus Package, please see this Debevoise Update.)

Real Estate

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Thus far, uncertainty is the one consistent theme we have seen in 2025. Geopolitical and economic volatility, coupled with lingering inflation, higher interest rates and the introduction of tariffs, have left the real estate industry reluctant to transact, choosing instead to wait this period out. However, analyzing the key factors that drive real estate transactions in different sectors can help us to make sense of this uncertainty and to draw conclusions about what might unfold over the coming months.

Interest rates have remained stubbornly high, contrary to investors' hopes. Further, the situation may not improve anytime soon; with tariffs hindering efforts to tame inflation, the Federal Reserve has indicated that the contemplated end-of-year rate cuts might not come to fruition. Higher interest rates have slowed the pace of **home sales**, keeping aspiring homeowners in the rental market. Tariffs have amplified this trend, driving up the cost of construction by 9.7% in Q1 alone. The volatility surrounding the implementation of tariffs, moreover, has caused developers to pause projects (absent workarounds such as stockpiles of steel purchased before the tariffs went into effect). Should interest rates remain high and the construction pipeline continue to decline, we anticipate further downward pressure on the supply of homes. Though these conditions pose a challenge to new construction, they could foretell a boon to the rental market.

High interest rates and the elevated cost of construction have also affected the **industrial sector**, with the new construction pipeline contracting by 50% or more in several major markets. And while warehouse leasing activity in Q1 was strong, vacancy rates ticked up as new properties came online. To be sure, while interest rates and tariffs are likely motivating industrial developers to pull back a bit, some of the slowdown may simply be a return to equilibrium following the sector's multiyear expansion. Experts predict that coastal industrial markets will feel these headwinds more acutely, as port-related activity is anticipated to decrease as a result of tariffs. The hesitancy we are seeing in today's market suggests that rents for certain industrial space may fall over the coming months.

Data centers are caught in between two forces. While demand for computing power is skyrocketing and projected to increase by 165% by 2030, this sector has proven very reactive to tariffs, with the beginning of Q1 seeing a 79.6% surge in the import of goods required for data center construction. While the current administration is eager to bring data center construction stateside, previously established constraints of power availability and geographic limitations have now been joined by the challenges of interest rates, construction costs and tariffs. However, the unique appetite for this asset class may insulate the sector from the effects of rising costs and supply chain disruptions, thereby providing opportunities for investors.

The **office market** must contend not only with high interest rates and construction costs but also with diminished demand for Class B and Class C office space. Though this sector, as a whole, was able to find some stability over the past year, as demonstrated by net absorption, vacancies are unlikely to decrease meaningfully over the coming months. Office owners are responding with an alternative course of action: Across the 58 largest office markets, 23 million square feet of office space is slated for residential

Continued on page 23

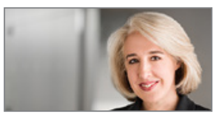
Real Estate

Continued from page 22

conversion. This robust conversion pipeline is unlikely to be a long-standing trend, however, as the most viable properties are, naturally, being put forth as the sea test for this new development strategy.

Savvy real estate investors always find ways to leverage uncertain times. The challenges we are seeing today may yet prove to be the breeding ground for attractive investment opportunities. Ultimately, real estate fundamentals, including cost of construction, interest rates, inflation, tariffs and a strong understanding of the relevant sector should guide decision makers as they chart the course forward.

Restructuring



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On a macroeconomic level, uncertainty has been the headline for 2025. Between global market and geopolitical tensions, open conflict in Europe and the Middle East, and a U.S. tariff landscape that remains in flux and has been compounded by retaliatory trade policies, supply chains are at significant risk and access to commodities such as oil and rare earth metals has been and continues to be threatened. The resulting uncertainty from these is reflected in the uptick we have seen in restructurings so far this year, and presages more such activity in the second half of the year.

Regardless of how these developments unfold, the current lack of certainty places significant pressure on a wide range of companies. Designing or redesigning complex supply chains, for example, requires significant expenditures of time and capital even in predictable conditions. When conditions are volatile, it is difficult for companies to plan—let alone implement—business strategies. Accordingly, we expect to see increased in- and out-of-court restructuring as sponsors and their portfolio companies navigating these challenges attempt to secure the capital necessary to weather geopolitical uncertainty. We expect this trend to be particularly acute in the automotive and retail sectors, which face the combination of significant supply chain exposure and high leverage.

Looking ahead, we note that businesses are beginning to feel the disruptive impact of generative AI. While thoughtful implementation of this new capability may result in increased efficiencies for many businesses, we expect that as the capabilities and deployment of AI models progress, we will see a corresponding uptick in restructuring activity particularly in content creation-related business sectors.

The overall uncertain environment has already manifested in both workouts and defaults. We see this both quantitatively (in, for example, the year-to-date increase of the total number of in-court restructurings compared with the same period last year) and qualitatively (such as the recent *At Home Group Inc.* bankruptcy, which attributed the need for bankruptcy relief, at least in part, to "the volatility of the current tariff environment"). Notwithstanding the increase in in-court activity, most restructuring activity continues to occur out of court, as distressed borrowers work with their stakeholders to avoid the increasingly prohibitive costs associated with in-court proceedings. Liability management exercises (LMEs) and, interestingly, certain LME blockers, such as anti-Serta provisions, continue to prove useful to borrowers engaging in creditor negotiation by providing leverage to help address and resolve holdout concerns.

Continued on page 24

Restructuring

Continued from page 23

Meanwhile, borrowers and lenders continue to engage in a structural arms race to strengthen their respective hands should the borrower become distressed. In a number of recent transactions, lenders have sought the inclusion of "omni-blocker" provisions which, purportedly, block *all* LME transactions. Additionally, creditors have been proactive in entering into "cooperation agreements" among themselves, nominally as a defense to borrower efforts to create a prisoner's dilemma for creditors in negotiations. In response, some borrower-friendly commentators have publicly argued that cooperation agreements violate antitrust laws, and some borrowers have sought to include provisions in credit agreements restricting the use of cooperation agreements.

Borrowers have also increasingly sought to control the identity of their lender counterparties through aggressively expanding the number of lenders included on "DQ lists" which disqualify those lenders from participating in the financing. For example, in recent refinancings, the NEP Group included more than 30 investment firms on its DQ list, and Pretium Packaging included more than 100. In addition, as we've discussed previously here, some DQ lists now also allow borrowers to add lenders post-finance closing, granting them ability to restrict lenders from increasing their holdings or taking other actions adverse to the borrower. Expansive DQ lists may have the effect of reducing liquidity for lenders seeking to exit their position as there are fewer available purchasers for their interests. Accordingly, if DQ lists continue to expand, lenders may seek concessions on loan terms and pricing to counterbalance the reduction in available liquidity. This is a price borrowers may be willing to bear at some level in exchange for avoiding potentially disruptive counterparties in future negotiations.

On the legal front, we expect courts to continue to clarify the questions raised by the Supreme Court's *Purdue* decision, including whether opt-out or opt-in plan provisions constitute a "consensual" release, exculpation provisions and whether a plan provides for the "full satisfaction of claims" against a third-party non-debtor.

Data Strategy and Security

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As AI adoption accelerates, private equity firms are looking for established risk management frameworks to apply to AI governance, both for firm operations and for their portfolio companies. Cybersecurity provides an obvious model because, like AI, cybersecurity requires governance and compliance programs that can be adapted to ongoing and complex technology-driven organizational changes.

Key lessons from cybersecurity risk management that can be readily applied to AI include pursuing risk mitigation rather than risk elimination, the need to engage both technical and non-technical stakeholders in risk management decisions, prioritizing operational risks ahead of regulatory risks, and the value of documenting governance efforts to demonstrate effort and compliance. However, AI differs from cybersecurity in several important ways that must be considered when looking to cyber risk management frameworks when creating a framework to guide AI adoption:

Continued on page 25

Data Strategy and Security

Continued from page 24

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AI presents more significant upside.

Cybersecurity sits squarely on the cost side of the ledger. Important as it is, the primary benefit of good cybersecurity is avoiding harm, not generating revenue. By contrast, AI offers substantial upside potential for businesses through enhanced efficiencies and new business opportunities, which makes balancing risk and reward more complicated than with cyber. For that reason, while good cybersecurity will often look very similar among businesses that are roughly the same size, in the same sector and in the same jurisdiction, good AI governance may vary dramatically among peer firms depending on risk appetite, the level of AI adoption and the potential upside for that business.

AI risks are more varied than cybersecurity risks (and AI vendor risk management is complicated).

For any two comparable enterprises, there will be a much wider range of AI use cases than of cybersecurity concerns, thus requiring a wider range of risk mitigation strategies. Managing the risks of an AI-enabled customer service chatbot, for example, involves very different considerations than those for an AI resume screening tool or an AI image generator for marketing materials. AI also introduces distinct challenges such as privacy, IP, bias, transparency, conflicts, quality control and loss of skills. Effectively managing these diverse risks often demands engagement from stakeholders with a broader range of perspectives and expertise than does managing the risks of cybersecurity.

The greater breadth of AI risk compared to cyber risk also has implications for third-party/vendor risk management. Managing the cybersecurity risk of vendors with access to a business's systems or data can be standardized to some extent—even if doing so can be difficult. On the other hand, identifying high-risk AI vendors (whether AI solution providers or vendors that use AI tools in conjunction with the business's confidential data) and effectively mitigating the associated risks requires a more bespoke approach because of the greater variability of risks associated with AI tools, use cases, data and users.

Accountability for AI can be harder than for cybersecurity.

Many firms have dedicated teams focused on cybersecurity risk management led by a clearly designated individual, usually the CISO, who reports directly to senior management. In contrast, few firms have a single individual responsible for overseeing AI risk. While the cybersecurity components of AI risk naturally fall to the CISO, other elements of AI risk management may involve the General Counsel, Head of Risk, CCO, COO, CFO or Head of HR. Consequently, firms should consider establishing a cross-functional AI Governance Committee with collective accountability for managing AI risk and with clear reporting lines.

"Bad" AI can go undetected for long periods.

Most businesses—including private equity firms and their portfolio companies—are under constant cyberattack, with the result that poor controls quickly become evident as incidents occur, resulting in swift corrective action and the allocation of additional resources to enhance defenses.

Continued on page 26

Data Strategy and Security

Continued from page 25

However, poorly designed or implemented AI solutions can go unnoticed for a long time. For example, a poorly designed AI resume screening tool might devalue candidates with gaps on their resume in a way that unfairly screens out women who took time off for childcare or veterans recovering from injuries. Such a deficiency could persist for months before detection. This potential for delayed identification of AI risks underscores the importance of establishing robust AI governance practices, including thorough risk assessments, pilot programs and ongoing monitoring of AI use cases in production.

By adapting lessons from cybersecurity, while recognizing the unique risk characteristics of AI, private equity firms can build effective governance programs tailored specifically to manage and leverage AI's potential for themselves and their portfolio companies.

Intellectual Property

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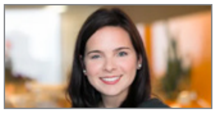

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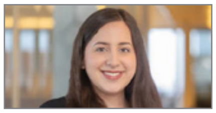

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As the e-commerce market continues to expand, consumers have nearly infinite buying choices at every price point. For consumers shopping on a budget, the search for a "dupe," or duplicate of a more expensive coveted product, has never been easier. Dupes have become more popular than ever due to a number of factors, including affordability, the influence of social media (such as TikTok trends) and the rise of "dupe culture." The normalization of dupes in the marketplace poses major challenges for brands looking to protect their intellectual property—and opportunities for companies other than the IP rights holder to capitalize on this trend. Below, we discuss potential implications of dupes and key IP legal considerations for investors in markets where dupes are common, particularly those in the beauty and fashion industries.

What Is a dupe?

A dupe is a product similar in appearance, functionality or design to a higher-end, often more expensive, branded item but sold at a much lower price. Unlike counterfeit products, dupes do not copy brand names or logos. For instance, a company may offer a pair of shoes that look like Gucci's loafers but are not sold under the Gucci name. Or shoppers may seek out beauty products from brands like e.l.f. Cosmetics that are known for offering products that provide similar results (and come in similar packaging) to more expensive, high-end makeup or skincare items.

Litigation over "Dupes" Is Ongoing

The growing presence of dupes in the marketplace has spurred many brand owners to enforce their intellectual property rights in court. However, prevailing in litigation against a dupe manufacturer is no easy feat. Many dupes walk right up to, but do not actually cross, the line between inspiration and infringement. Dupe manufacturers deliberately avoid copying key, protectable elements of intellectual property like trade dress and trademarks. Moreover, they cater to a "dupe culture" perpetuated by Gen Z and Millennials, who buy dupes not with the intent of passing them off as genuine but as a way of proudly partaking of more affordable alternatives.

As an illustration, in February of 2023, cosmetics company Benefit filed a lawsuit against competitor e.l.f., alleging that e.l.f.'s lower-priced mascara product "Lash 'N Roll" was a

Continued on page 27

Intellectual Property

Continued from page 26

dupe of Benefit's "Roller Lash" and infringed Benefit's trademark and trade dress rights. By e.l.f.'s own admission, Lash 'N Roll was inspired by Roller Lash, and its name and design were intended to inform consumers that e.l.f.'s dupe was an affordable alternative to Benefit's Roller Lash. The two products are depicted below.

Benefit's Roller Lash

e.l.f.'s Lash 'N Roll

In December 2024, following a bench trial, the Northern District of California ruled that Benefit had failed to establish infringement. The court found that while Benefit successfully established the protectability of its trademark and trade dress, it failed to show a likelihood of consumer confusion as to source. The court acknowledged that some dupes could potentially cross the line and engender confusion, but such risk was not present in this case. Specifically, the court found persuasive that even after "two years of coexistence and more than 2.1 million units of Lash 'N Roll sold, Benefit ha[d] produced no evidence of actual confusion."[1] The court also highlighted the products' different price points—$6 vs. $29—as a clear distinction that would "likely raise a consumer's eyebrow."

Other brand owners like Sol de Janeiro, Birkenstock, Coach, and Williams-Sonoma have filed similar lawsuits against their respective dupes, which are currently pending in courts around the country. It will be informative to see how these brands deal with hurdles like the absence of evidence of actual consumer confusion and distinguishing factors such as different price points and channels of trade.

Key Considerations for Investors

Investors in dupe-heavy markets, such as the beauty and fashion industries, should keep in mind the following considerations:

- **Trade Dress Design and Innovation:** To assess the risk of affordable dupes diverting sales and diluting a product's distinctiveness or reputation, consider whether a target company produces products that are sufficiently innovative to avoid being easily duped. Products with packaging, ingredients or features that are unique and hard to replicate are more likely to be subject to stronger intellectual property rights and less likely to fall prey to dupes. On the flip side, more common and less protectible features will be more ripe to copy.
- **Consider Protecting Different Forms of IP:** Consider whether target companies (or potential competitors) have diverse IP portfolios. Rather than rely on a single form of intellectual property—like a trademark or trade dress—a more diverse approach,

Continued on page 28

1. *Benefit Cosmetics LLC v. E.L.F. Cosmetics, Inc.*, 2024 WL 5135604 at *6, *17 (N.D. Cal. 2024).

Intellectual Property

Continued from page 27

incorporating alternative forms of IP protection, such as design patents, and, where applicable, copyrights can prove more effective against copycats.

- **Consider Consumer Base:** Identifying and promoting dupes is of particular interest to younger consumers, who use social media platforms to share discoveries of new dupes of out-of-budget products. Investors seeking to avoid risks associated with litigation around dupes should engage in due diligence when reviewing a target company's consumer demographics and target audience.
- **Examine Existing IP Monitoring Practices:** Understand how target companies are monitoring and enforcing their IP. Companies seeking to preserve the value of their IP should carefully monitor relevant marketplaces and social media platforms like TikTok and Instagram to identify and act against any potentially infringing or dilutive additions to the market.

Conclusion

As dupes continue to pervade popular culture, investors should heed these considerations in strategizing how to best limit risk of disputes over alleged infringement and costly litigation.

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Within weeks of the start of the Trump administration, the Staff of the SEC's Division of Corporation Finance issued new guidance affecting stockholder engagement and activism. The guidance—relating to Schedule 13G eligibility, Rule 14a-8 proposals and PX14A6G filings—was described as a "course-correction" by SEC Commissioner (then-acting Chair) Mark Uyeda. It has already had an observable impact.

These developments may also serve as a preview of what we can expect from the SEC under the leadership of Chair Paul Atkins. Chair Atkins, testifying before the Senate Committee on Banking, Housing and Urban Affairs in March, criticized "[u]nclear, overly politicized, complicated, and burdensome regulations" under the prior administration as "stifling capital formation" and leaving investors "flooded" with counterproductive disclosure information.

Highlights of the new guidance include:

Schedule 13G Eligibility. On February 11, 2025, the Staff revised a Compliance and Disclosure Interpretation (C&DI) addressing the circumstances in which a stockholder's engagement with an issuer's management would cause the stockholder to be deemed to hold the subject securities with the "purpose or effect of changing or influencing control of the issuer"—thereby losing its eligibility to report on short-form Schedule 13G. While prior SEC guidance provided that engagement, in and of itself, was not disqualifying, the revised C&DI indicates that engagement that involves exerting pressure on an issuer—such as, for example, conditioning support of issuer-nominated directors on the adoption of the shareholder's recommendations—would be disqualifying.

The revised C&DI is significant for large asset managers and other institutional investors that rely on Exchange Act Rules 13d-1(b) or 13d-1(c) to report beneficial ownership

Continued on page 29

Public Company Advisory

Continued from page 28

on Schedule 13G. Following the publication of the C&DI, some investors paused their stockholder engagement while they assessed their ability to do so without being disqualified from reporting on Schedule 13G. A number of issuers reported a chilling effect on stockholder engagement during the proxy season.

Going forward, we may see institutional investors modifying their issuer engagement practices with a view to maintaining Schedule 13G eligibility. Some may be reluctant to request meetings with issuers, and discussions initiated by issuers may be less pointed than in prior years. Other investors may abandon some of their previous engagement practices altogether and instead rely on publicly available policy statements describing their positions on shareholder issues and their process for voting. Some investors have softened their publicly available voting policies to avoid direct linkages between voting decisions and specific policy views, thereby reducing Section 13 reporting risk but also providing less guidance to issuers.

Rule 14a-8 Proposals. On February 12, 2025, the Staff issued Staff Legal Bulletin No. 14M, reinstating prior SEC guidance and rescinding Staff Legal Bulletin No. 14L, issued in 2021, which was viewed as increasing the number of environmental and social proposals proceeding to a vote. SLB 14M expands an issuer's ability to exclude Rule 14a-8 shareholder proposals on the grounds of "economic relevance" and "ordinary business." It is expected to be particularly useful for issuers seeking to exclude ESG-related Rule 14a-8 proposals from their proxy statements.

The SEC issued SLB 14M in the middle of this year's Rule 14a-8 proposal period, with the result that many proposals submitted to issuers were not tailored to the reinstated guidance and related precedent. We will therefore need to wait until next proxy season to more fully assess how the new guidance has affected the success rate of issuers' no-action requests. However, it is already clear that while SLB 14M may be useful to issuers, it does not guarantee exclusion—many no-action requests relying on SLB 14M have already been denied by the SEC.

PX14A6G Filings for Shareholder Letters. On January 27, 2025, the Staff released two updated and three new C&DIs relating to the use of PX14A6G filings for exempt solicitations pursuant to Exchange Act Rule 14a-6(g). The guidance was issued to address the increase in exempt solicitation filings submitted by proponents and other activists who do not have a shareholder proposal on the proxy card.

The new and updated C&DIs go some way to addressing the concerns of issuers that PX14A6G filings are confusing for investors and often contain false or misleading statements; however, the C&DIs are unlikely to meaningfully curb the number of PX14A6G filings. In its annual stakeholders meeting with stockholder proponents and issuers, the Staff has confirmed that it will take appropriate action when informed of problematic PX14A6G filings.

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