Debevoise & Plimpton

The Private Equity Report Quarterly

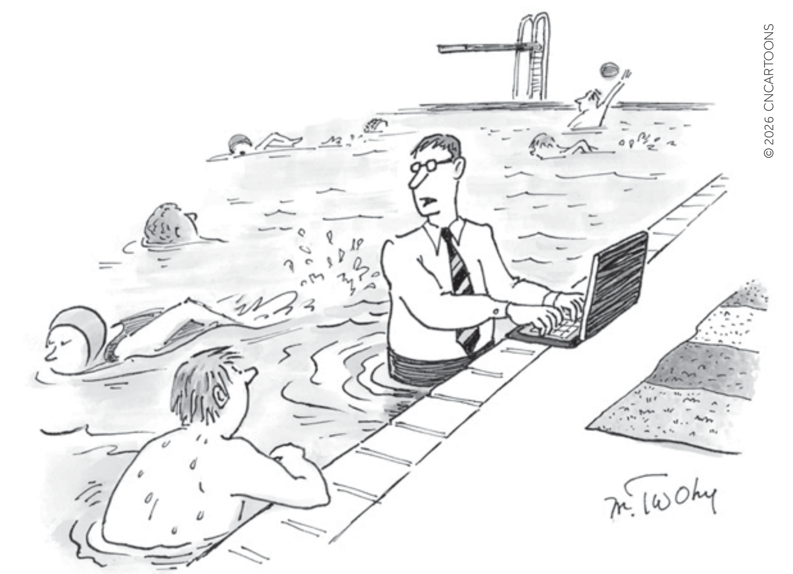
2026 Midyear Outlook | Volume 26, Issue 2

From the Editors

The first half of 2026 unfolded differently than many had expected but in ways that underscored the ability of private equity to find opportunity even under sub-optimal conditions. At the start of the year, ample dry powder, improving financing markets and hopes for narrowing valuation gaps pointed toward the possibility of more transformational deal activity. Instead, a series of shocks, including the AI-driven repricing of software businesses, stress in evergreen private credit vehicles, renewed geopolitical volatility and persistent uncertainty over the path of interest rates, forced market participants to recalibrate. The result has been a market in which capital is being deployed with greater selectivity and sharper conviction.

That selectivity is visible across the industry. Fundraising remains concentrated among larger managers with established track records, even as secondaries and continuation vehicles continue to provide important liquidity tools in a constrained exit environment. On the M&A front, sponsors are focusing on add-ons, smaller transactions and opportunities

continued on page 2



"It's synch or swim."

CELEBRATING 25 YEARS THE PRIVATE EQUITY REPORT

What's Inside

03	Fundraising
05	Private Funds Transactions
06	M&A (U.S.)
07	Tax (UK)
09	People Solutions
11	SEC Enforcement
12	U.S. Funds Regulatory
13	European Funds Regulatory
16	Real Estate
17	Restructuring
18	Data Strategy and Security
20	Intellectual Property
21	Insurance

where conviction around valuation and long-term value creation is strongest. In real estate, investors have moved past waiting for rate relief, but underwriting to the environment that exists, with demographic demand, structural undersupply and durable income growth separating stronger sectors from weaker ones.

While investors are adjusting to the macroeconomic environment, there are also regulatory changes to digest. In the United States and Europe, regulators are seeking to expand access to private markets while also raising expectations around governance, disclosure and investor protection. Tax developments in the UK, EU private funds reforms, non-compete enforcement and SEC whistleblower agreement cases all point to an environment in which operational discipline and documentation remain critical. AI is also reshaping both opportunity and risk, from the defensibility of software assets to cyber preparedness and the ownership, infringement and diligence issues raised by generative AI content.

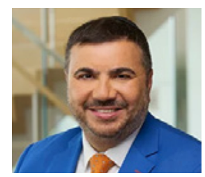
We hope you find the *2026 Private Equity Midyear Review and Outlook* to be a useful guide to the forces shaping sponsor activity as the industry works through a demanding but opportunity-rich market.

This report is a publication of **Debevoise & Plimpton LLP**

Chambers CONTRIBUTOR
Global Practice Guides
2025
Private Equity

Issue Editors

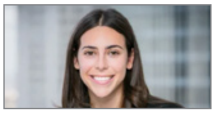
Dominic Blaxill
dblaxill@debevoise.com



Rafael Kariyevt
rkariyev@debevoise.com

Editorial Board

Fundraising



Ali Nierenberg
Partner—New York
anierenberg@debevoise.com

Danielle R. Eiger
Associate—New York
dreiger@debevoise.com

Zach Ferguson
Associate—New York
zferguso@debevoise.com

Private equity fundraising in the first half of 2026 faced three market shocks in rapid succession that weighed heavily on investor confidence: the AI-driven "SaaSpocalypse" in software, redemption stress in evergreen private credit vehicles and the war in Iran (with its attendant spike in oil prices). The private credit disruption was particularly notable: among the evergreen credit managers that reported Q1 flows, most posted net outflows, a sharp reversal from the $25.6 billion in net inflows that U.S. interval and tender offer private credit vehicles recorded throughout 2025—a figure that nearly matched the combined net inflows of every other evergreen alternative asset class last year.

These shocks fueled the challenging headwinds currently impacting fundraising. Despite an 11% increase in total private equity capital raised in Q1 2026 as compared to the prior quarter, this figure remains 10% below Q1 2025 levels and marks the eighth consecutive quarter in which the rolling 12-month private equity fundraising total has decreased. While the pace of fundraising improved modestly in Q2, assisted by the approximately $23 billion final close of KKR's North America Fund XIV, H1 2026's aggregate fundraising of $250 billion still lagged H1 2025 by 13%.

Capital concentration remains the defining structural feature of today's fundraising ecosystem. Over half of the private equity capital raised in Q1 2026 was attributable to the ten largest funds, compared to an average over the past decade of 26.8%. Just four fund closings—Triton Partners Fund VI, Blackstone Life Sciences VI, Greenbriar Equity Fund VII and Inflexion Buyout Fund VII—accounted for a quarter of Q1 capital raised. This capital concentration is also reflected in the total fund count: only 245 funds closed in Q1 2026, about half the quarterly average for 2021–2025.

However, beneath the challenging headline figures, several bright spots emerged. Although fewer funds reported their final close during Q1, those that did exhibited successful fundraises, with 91.7% closing at a larger size than their predecessor funds, and the average time to final close compressing to 15.6 months in 2025 from 18.1 months in 2024. Investors are more selective but are acting with conviction when they commit. We expect this dynamic to persist, resulting in an increasingly concentrated fundraising landscape in which scale, track record and established investor relationships become even more decisive, competitive advantages.

Secondaries strategies continued their ascent, representing 19% of total private equity fundraising in Q1 2026, the highest share for this strategy on record, with nearly 78% of secondaries funds closing above target. Coller International Partners IX ($12.5 billion) and Ares Credit Secondaries I ($4 billion) were among the largest Q1 closes. Private debt secondaries were a standout sub-strategy: the $12.2 billion raised in Q1 already constituting more than 75% of the aggregate amount raised in that category in all of 2025, reflecting the maturation of private credit portfolios and the rising need for liquidity tools across an increasingly large asset class.

While the SaaSpocalypse may have disrupted the software sector (with a nearly 30% public market valuation decline in February), other sectors are reaping the benefits of **the AI build-out** and have emerged as attractive areas for private capital deployment. In Q1 2026, for example, Digital Realty held a final close on its Hyperscale-Focused Data Center Fund

Continued on page 4

Fundraising

Continued from page 3

with $3.25 billion of commitments, with at least four other digital infrastructure-focused funds closing during the quarter. In Q2, KKR launched Helix Digital Infrastructure, a digital infrastructure platform backed by $10 billion of commitments. **Critical minerals** also emerged as a strategic allocation theme: two of the five largest Q1 real assets funds, Orion Mine Finance Fund IV ($2.2 billion) and Kinterra Critical Materials ($950 million), invest in the critical minerals supply chain underpinning AI hardware and energy security. We expect the AI build-out to remain a significant driver of capital formation across adjacent sectors, supporting continued fundraising and investment activity in the infrastructure and resources required to power the technology. Although the broader geopolitical outlook remains uncertain, we expect the effects of the private credit and software shocks earlier in the year to prove transitory, with investors increasingly refocusing on value opportunities across private equity.

As **continuation funds** continued to solidify their place in the private equity landscape in the first half of 2026, GP-LP alignment tensions escalated meaningfully, driven by a convergence of structural liquidity pressures and institutional activism. In May 2026, the Institutional Limited Partners Association (ILPA) publicly recommended that continuation funds be referred to as "conflict vehicles," signaling the depth of institutional concern over GP-led liquidity solutions and a deliberate rhetorical escalation by the industry's principal investor advocacy body. An April 2026 ILPA webcast poll found that a majority of investors begin to lose confidence in a manager when the exit price falls more than 5% below the most recent quarterly mark, a thin margin of tolerance that creates a perverse incentive for manager to hold rather than risk a realized markdown.

Investor concerns regarding continuation vehicles recently found concrete expression before the Delaware courts. On December 3, 2025, Abu Dhabi Investment Council (ADIC) filed a Verified Complaint for Preliminary Injunction in Aid of Arbitration in the Court of Chancery (C.A. No. 2025-1389-NAC) against affiliates of Energy & Minerals Group (EMG), a Houston-based energy-focused private equity sponsor. ADIC's complaint specifically challenged: (i) the adequacy of notice and information provided to LPAC members before they were asked to vote (EMG provided only five business days' notice and delivered its FAQ one day before the scheduled vote); (ii) EMG's refusal to permit an in-camera session among LPAC members or to delay the vote despite requests from eight of 43 members; (iii) material information asymmetry between LPAC members and prospective continuation vehicle investors, with confidential information memoranda prepared for new investors allegedly containing valuations and strategic alternatives that contradicted the "bleak commentary" provided to existing LPs; and (iv) the absence of any meaningful market check for alternative exits, such as an IPO or third-party sale, despite EMG having recently engaged in such discussions.

The arbitration has since concluded, with the arbitrator ruling in favor of EMG in a nonpublic proceeding and the parties stipulating to dismiss the action with prejudice. Nevertheless, the dispute stands as one of the most visible examples to date of the tensions that can arise between sponsors and investors in continuation vehicle transactions and, beyond prompting LPAC process reforms across the industry, is likely to influence sponsor conduct and governance practices in the lead-up to future continuation vehicle launches.

Private Funds Transactions

Gavin Anderson
Partner—London, Hong Kong
ganderson@debevoise.com

Kevin M. Schmidt
Partner—New York
kmschmidt@debevoise.com

Krishna Skandakumar
Partner—New York
kskandakumar@debevoise.com

Shawn Xiao Yang
Partner—Hong Kong
sxyang@debevoise.com

Stanislav Shishkin
Counsel—London
sshishkin@debevoise.com

The authors would like to thank Summer Associate **Robbie Werdiger** for their valuable research and editorial contributions.

Mid-Year Secondaries Market Report 2026

At the midpoint of 2026, the secondaries market remains active but increasingly selective. Continuation vehicle transactions are becoming an institutionalized part of sponsor-led liquidity planning in a subdued exit environment, even as broader secondaries activity moderates.

According to data reported by *Secondaries Investor*, citing PJT's Q1 2026 Secondary Market Insight, the global secondaries market recorded approximately $40 billion of transaction volume in Q1 2026, down around 11% from the same period in 2025. GP-led transactions accounted for a majority of that volume, with continuation vehicle activity proving notably resilient, given that contraction: 27 CVs closed in Q1 2026, compared with 11 from the same quarter a year earlier. Most were single-asset transactions, underscoring continued sponsor demand for structures that allow managers to hold high-conviction assets for longer while offering existing LPs a liquidity option. However, multi-asset CVs also appear to be regaining attention as sponsors seek portfolio-level liquidity solutions.

That resilience should not be mistaken for indiscriminate appetite. Buyers are underwriting more rigorously, and software assets have become a particular pressure point. AI-related uncertainty, weaker public comparables and uncertainty around long-term defensibility have widened pricing gaps. As a result, premium continuation fund pricing is increasingly reserved for assets with demonstrable organic momentum, clear value-creation plans and credible evidence of price discovery. Where a recent M&A process cannot validate valuation, sponsors should expect secondaries leads to focus more heavily on fundamental underwriting.

At the same time, the market keeps broadening beyond traditional private equity. While private equity remained the largest category of CV activity during the first half of the year, transactions also included private debt, infrastructure and real estate assets. Infrastructure CVs are a natural fit for long-duration assets where the original fund term may not match the full value-creation profile. Credit CVs raise a different set of considerations, including loan transfer restrictions, borrower consent, confidentiality and valuation of diversified loan portfolios.

A further H1 2026 development is the continued institutionalization of process standards. In January 2026, ILPA released a continuation fund disclosure template, a standardized framework designed to improve transparency and consistency in GP-led continuation fund transactions. ILPA also partnered with Coller Capital to complete the template using mock single- and multi-asset continuation fund transactions with the aim of demonstrating the level of transparency and depth that GPs and LPs can expect when applying the template to real-world transactions. Finally, in June 2026, ILPA updated its guidance around how GPs should run CV transactions and how LPs should develop their capabilities to assess them. These developments put additional focus on complete disclosure, realistic LP decision timelines, conflicts analysis and LPAC engagement.

For sponsors and investors, the takeaway is clear: in a market where traditional exit routes remain constrained and buyers are increasingly selective, continuation funds

Continued on page 6

Private Funds Transactions

Continued from page 5

can still provide valuable liquidity and additional time for value creation, including outside traditional private equity assets. However, successful execution increasingly turns on process quality: credible valuation support, early transparent engagement with LPACs and lead investors, clear disclosure of conflicts, realistic LP election timelines and carefully documented governance. As the market institutionalizes, these features are likely to distinguish transactions that clear successfully from those that struggle to bridge valuation and alignment gaps.

M&A (U.S.)

Erik J. Andrén
Partner—New York
ejandren@debevoise.com

Christopher Anthony
Partner—New York
canthony@debevoise.com

The first half of 2026 did not deliver the sustained recovery in U.S. private equity M&A that many market participants anticipated when the year began. Sponsors entered the year with considerable optimism following the increased activity seen late in 2025, but renewed geopolitical uncertainty, persistent questions surrounding interest rates and a persistent valuation gap between buyers and sellers once again tempered the market's momentum. In addition to these factors, the "SaaSpocalypse" in February brought capital deployment into software businesses to a near halt, as investors reassessed how AI could reshape growth, margins and long-term defensibility in a sector that had long been a private equity favorite.

Against this backdrop, capital remained abundant, but investment activity became increasingly selective as sponsors focused on opportunities offering the greatest conviction around valuation and long-term value creation. Overall deal value for the period was down notably, particularly in the second quarter, in part fueled by a sharp reduction in large-cap deals and a pivot towards smaller, often less debt-dependent transactions.

Consistent with the shift towards smaller deal size, take-privates have experienced a notable slowdown so far in 2026. While there has still been some activity, the continued climb of public markets and a more sober outlook on the price of debt have made many sponsors hesitant to pursue the larger take-private transactions that were a hallmark of 2025. Even if not immune to the slowdown seen in the second quarter, add-on acquisitions remained a key area of capital deployment by sponsors as they sought to build scale within existing portfolio companies while taking advantage of established management teams, industry expertise and known operating platforms. Many sponsors also turned to transformational add-ons as a path to set up longer-held portfolio companies for the ultimate exit and pursued creative structures and partnerships to reduce reliance on leverage as third-party debt has become more expensive.

The exit environment continues to present a challenge. While we saw some positives with respect to IPO exits, the lack of an overall uptick in sponsor exits means a continued build-up of portfolio companies held notably longer than originally planned—and the lack of liquidity for LPs is becoming a bigger headache by the day for sponsors seeking to raise new funds. The lack of "real" exits has kept continuation fund activity at healthy levels (even if not as high as the peak in 2025), and we continue to be of the view that they are here to stay as a meaningful part of the sponsor ecosystem. However, as we are getting

Continued on page 7

M&A (U.S.)

Continued from page 6

closer to the maturity of much of the cheap debt incurred by sponsors coming out of the pandemic, we expect sellers to become more pragmatic on value, given the alternative of having to refinance those capital structures in today's higher-rate environment.

That said, despite another slower-than-expected start to the year, we remain cautiously optimistic regarding the outlook for the second half of 2026, given the encouraging level of early-stage activity we are seeing among our clients. Sponsors continue to hold significant undeployed capital, financing remains available for attractive opportunities, and valuation expectations appear to be on a path toward greater alignment.

Tax (UK)

Paul Eastham
Counsel—London
peastham@debevoise.com

Nicole Bieber
Associate—London
nbieber@debevoise.com

Anna Chirniciuc
Associate—London
achirniciuc@debevoise.com

Christopher Gossage
Associate—London
cgossage@debevoise.com

Samuel Lewis
Associate—London
slewis@debevoise.com

Many asset managers with a UK presence will have spent time during the first half of 2026 dealing with the coming into force of the United Kingdom's new carried interest tax regime. However, the second half of the year is likely to feature its fair share of other UK tax matters, given the tax simplification measures announced by the government in June and the legislation proposed on the annual "Legislation Day" ("L-Day") in July. We discuss some of the highlights of these developments below.

Carried Interest Reform Meets a Mobile Workforce

Asset managers are now contending with the United Kingdom's new carried interest regime, which has been in force since April. Under this regime, carry is treated as deemed trading income subject to income tax and Class 4 National Insurance Contributions taxed at an overall rate of up to 47%, with "qualifying" carried interest (i.e., carry distributions arising from a fund that holds investments for an average of more than 40 months) benefiting from a reduced effective rate of just over 34%. The new regime presents significant uncertainties for internationally mobile fund professionals, as it opens the door to the United Kingdom taxing non-resident carry holders where investment management services have been performed in the United Kingdom, raising the prospect of double UK and non-UK taxation. Sponsors may need to revisit policies for internationally mobile employees, including assessing eligibility for treaty benefits or tracking UK workdays for individuals who may qualify for an exemption if they have spent less than 60 days in the United Kingdom. The new regime sits uneasily with an increasingly global private equity workforce and may necessitate complex cross-border analyses for a relatively small population of mobile carry holders. (For more detail on the new regime and other potential issues it poses for asset managers, see our article.)

L-Day: Replacing Stamp Duties with STS

The UK government published long-awaited draft legislation for a new securities transfer tax (STS), expected to take effect in April 2027. The new tax is intended to replace the stamp duty on shares and stamp-duty reserve tax regimes, which currently apply to certain transfers of shares and other securities, typically at a rate of 0.5%. While the STS rate will effectively remain unchanged at a flat 0.5%, the draft legislation includes features that are helpful to asset managers and those involved in UK M&A.

Continued on page 8

Tax UK

Continued from page 7

In particular, transfers of partnership interests and transfers of shares in UK-resident, non-UK-incorporated companies should fall outside the scope of the tax, and it should no longer matter whether transfer agreements are executed in the United Kingdom or offshore. The draft STS legislation represents a comprehensive rewriting of legislation that has developed in piecemeal fashion over more than 100 years, so stakeholders may yet identify issues with the draft legislation once they have had time to review it in detail. (For a broader discussion of the current stamp-duty regimes and the prospective STS regime, see our article.)

L-Day and Tax Simplification: Other publications

Additionally, the UK government published materials concerning the following issues, which many financial institutions operating in the United Kingdom will find relevant:

- **Pillar Two "side-by-side" regime.** Following the OECD's January guidance largely eliminating the application of Pillar Two's top-up taxes to U.S.-parented multinational groups, the United Kingdom has published draft legislation to incorporate that guidance into the UK's existing Pillar Two rules. The changes are expected to apply to periods beginning 1 January 2026 and later. (For further background on these measures, see our article.)
- **Taxation of UK members of LLCs.** HMRC has begun a consultation on simplifying the UK tax treatment of interests in limited liability companies (LLCs) incorporated in the United States, or similar entities. The primary goal is to address double-taxation issues that can arise when an LLC is treated as transparent for U.S. tax purposes but opaque for UK tax purposes, including where that misalignment prevents taxpayers from claiming treaty benefits. This worthy aim may, however, prove difficult to achieve without disturbing the tax treatment of the many existing LLCs in which UK taxpayers already participate.
- **UK tax rules relating to company distributions.** In a wide-ranging paper, HMRC is consulting on changes to modernize the taxation of company distributions and repayments of capital made to UK taxpayers. The consultation includes aligning the tax treatment of payments from UK and non-UK companies, extending the "loans to participators" regime (which taxes certain loans as dividends) to certain loans from *non-UK* companies and extending the "transactions in securities" regime (which taxes certain capital proceeds from close companies as income) to non-close companies. These changes may have significant implications for the taxation of profit repatriations to UK taxpayers from numerous trading and investment structures, and financial institutions should monitor this consultation as it develops.

People Solutions

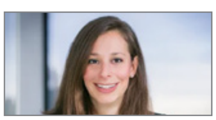

Jyotin Hamid
Partner—New York
jhamid@debevoise.com

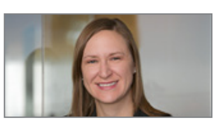

Simone S. Hicks
Partner—Washington, D.C.
sshicks@debevoise.com


Jonathan F. Lewis
Partner—New York
jflewis@debevoise.com


Frank Mitchell
Partner—New York
flmitchell@debevoise.com


J. Michael Snypes, Jr.
Partner—New York
jmsnypes@debevoise.com


Wendy D. Widman
Partner—New York
wdwidman@debevoise.com


Tricia Bozyk Sherno
Counsel—New York
tbsherno@debevoise.com

PE sponsors and portfolio companies continue to face a shifting noncompete landscape. The FTC has stopped defending its federal noncompete rule but continues to pursue targeted enforcement actions and warning letters, while states continue to adopt their own restrictions. Below, we summarize developments on both fronts.

FTC Noncompete Enforcement

After the FTC's 2024 noncompete rule was vacated in *Ryan LLC v. FTC*, the Commission voted in 2025 to dismiss its appeals and accede to the vacatur. However, Chairman Ferguson made clear that the FTC would continue to pursue noncompetes on a case-by-case basis.

In April 2026, the FTC announced a proposed consent order requiring Rollins, Inc., one of the largest pest-control companies in the United States, to stop enforcing noncompetes against more than 18,000 employees nationwide. The order focuses on rank-and-file and other covered employees, while preserving restrictions for senior leaders with significant policymaking authority who are eligible for equity grants. The order also preserves noncompetes entered into in connection with an acquisition where the restricted individual has a preexisting equity interest in the business being acquired.

Rollins follows the FTC's September 2025 action against Gateway Services, Inc., the nation's largest pet cremation business. The FTC alleged that Gateway required almost all employees to sign one-year noncompetes barring them from working in the pet cremation services industry anywhere in the United States. The final order requires Gateway to stop enforcing specified existing noncompetes with nearly 1,800 employees and prohibits similar future agreements. The order excludes certain restrictions with directors, officers or senior employees in connection with equity grants and permits noncompetes in connection with the sale of a business where the restricted individual has a preexisting equity interest.

The FTC has also used warning letters to signal enforcement priorities, including sending letters in 2025 to large healthcare employers and staffing companies and in 2026 to 13 other pest-control companies and to Mortgage Connect after the company sought to enforce a noncompete in litigation. These letters urge employers to review their agreements, assess whether less restrictive alternatives would protect legitimate business interests, discontinue noncompetes that may be unfair or anticompetitive and, where appropriate, notify affected employees that those provisions will not be enforced.

These actions point to several areas of FTC concern: the broad use of noncompetes across an employee population; restrictions on hourly, lower-wage or non-senior workers; nationwide or industry-wide restrictions; agreements that may impede competitors' ability to hire experienced workers; and noncompetes imposed where narrower protections—such as confidentiality, trade secret, nonsolicitation or invention assignment provisions—would suffice.

State Noncompete Law

In addition to remaining mindful of federal priorities, employers must also monitor a persistently evolving state-law landscape. Recent developments in Washington and Virginia

Continued on page 10

People Solutions

Continued from page 9

illustrate two different paths states are taking: broad prohibitions on worker noncompetes and targeted restrictions tied to industry, worker status or termination circumstances.

Washington enacted a broad noncompete ban in 2026, effective June 30, 2027. The new law makes noncompetition covenants void and unenforceable for Washington-based workers, regardless of when entered into, and extends to forfeiture-for-competition provisions and agreements prohibiting the acceptance or transaction of business with a customer. It preserves certain specified protections for nonsolicitation, confidentiality, trade secrets, inventions and certain sale-of-business covenants. Employers must make reasonable efforts by October 1, 2027, to notify affected current and former employees and independent contractors that those covenants are void.

Virginia's new restrictions, effective July 1, 2026, are more targeted. One new law provides that a noncompete entered into, amended or renewed on or after July 1, 2026, is unenforceable if an employer discharges an employee without cause, unless severance benefits or other monetary payment were disclosed to the employee when the noncompete was signed. Another adds health care professionals to the categories of workers with whom employers may not enter into noncompetes, building an increasingly common policy—freedom to select one's health care providers—on Virginia's existing prohibition of noncompetes for low-wage employees.

Sale-of-business noncompetes continue to be an area of special focus, as each development in state noncompete law provides state legislatures with an opportunity to codify policy in this area in ways that may disrupt common market practices and/or decrease companies' flexibility. Washington's new law, for example, preserves sale-of-business covenants only where the restricted person acquires or disposes of at least a 1% ownership interest.

Practical Implications

PE sponsors should continue to expect to encounter changes in the scope of permitted use of restrictive covenants by portfolio companies throughout the life cycle of an investment, including in acquisitions, carveouts, add-ons, management incentive grants, reductions in force and executive separations. Each transaction presents an opportunity to review legacy forms against current federal enforcement expectations and state law.

Sponsors and portfolio companies should review covenants by employee location, role and compensation level; distinguish among rank-and-file employees, senior executives and equityholders; and consider whether related provisions—such as broad nonsolicits, forfeiture-for-competition clauses or repayment obligations—could be viewed as noncompetes. They should also consider whether narrower protections, including confidentiality, trade secret, invention assignment and appropriately tailored customer nonsolicit and retention arrangements can achieve the same business objectives with less legal risk.

SEC Enforcement

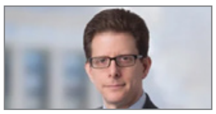
On May 22, 2026, the U.S. Securities and Exchange Commission announced a settled enforcement action against Foot Locker, Inc. for impeding protected whistleblower activity by using separation agreements that required departing employees to waive their ability to recover whistleblower awards for reporting alleged misconduct to the SEC. According to the SEC's settlement order, these separation agreements violated Section 21F of the Dodd-Frank Act and Exchange Act Rule 21F-17(a) thereunder because they impeded participation in the Commission's whistleblower program. To settle the matter, Foot Locker agreed to pay a penalty of $148,000, which amounts to $1,000 for each of the 148 separation agreements that the SEC found to have included a violative award waiver provision.

The SEC's action against Foot Locker marks the first settlement relating to whistleblower violations since January 2025 and the first of its kind under the Atkins Commission. The settlement also serves as a reminder that while the current Commission may be less active in bringing cases involving violations of Rule 21F-17(a), the enforcement staff will continue to pursue instances in which companies include language in their agreements that the staff views as clearly violative.

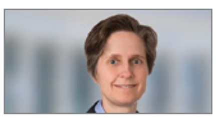
Notably, the settlement order with Foot Locker is also void of any indication that the company agreed to refrain from publicly denying the SEC's findings—reflected by the order noting that Foot Locker settled "without admitting the findings herein"—an obvious contrast from the qualification used for decades in SEC settlements that the respondent is settling "without admitting or denying the findings herein." This change is consistent with the SEC's May 18, 2026, recission of the so-called "no admit, no deny" or "gag" rule.

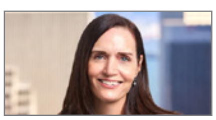
For a closer look at the Commission's findings, see here.


Jyotin Hamid
Partner—New York
jhamid@debevoise.com


Robert B. Kaplan
Partner—Washington, D.C.
rbkaplan@debevoise.com

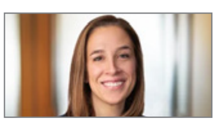

Jonathan F. Lewis
Partner—New York
jflewis@debevoise.com


Julie M. Riewe
Partner—Washington, D.C.
jriewe@debevoise.com

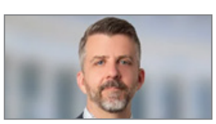

Kristin A. Snyder
Partner—San Francisco
kasnyder@debevoise.com


Philip A. Fortino
Counsel—New York
pafortino@debevoise.com


Jonathan R. Tuttle
Partner—Washington, D.C.
jrtuttle@debevoise.com


Anna Moody
Counsel—Washington, D.C.
amoody@debevoise.com


Mark D. Flinn
Counsel—Washington, D.C.
mflinn@debevoise.com


Stephan J. Schlegelmilch
Counsel—Washington, D.C.
sjschleg@debevoise.com

U.S. Funds Regulatory

Vadim Avdeychik
Partner—New York
vavdeychik@debevoise.com

Sheena Paul
Partner—Washington, D.C.
spaul@debevoise.com

Marc Ponchione
Partner—Washington, D.C.
mponchione@debevoise.com

Andrew Friedman
Associate—New York
amfriedm@debevoise.com

The first half of 2026 saw the Securities and Exchange Commission (SEC) and U.S. Department of Labor (DOL) continue efforts to expand access to private markets for non-institutional investors. Below, we discuss two notable developments that took place in April: the DOL's release of a proposed rule that seeks to clarify how ERISA fiduciaries can satisfy their duty of prudence when selecting alternative investments for inclusion on 401k platforms, and the SEC Staff's granting no-action relief to allow open-end registered investment companies to participate in co-investment transactions.

Proposed Rule for ERISA Fiduciaries

On April 6, 2026, the DOL proposed a rule (Proposed Rule) under the Employee Retirement Income Security Act of 1974 (ERISA) that would address the application of ERISA's fiduciary duty of prudence to the selection of designated investment alternatives (DIAs) in defined contribution plans (DC plans). The Proposed Rule responds to the 2025 Order directing the DOL to evaluate its guidance with the goal of modernizing retirement plan investment options by encouraging the availability of alternative assets in participant-directed DC plans and discouraging meritless litigation against plan fiduciaries.

The Proposed Rule establishes a safe harbor for plan fiduciaries that select alternative assets as DIAs. To qualify for the safe harbor, fiduciaries would need to apply an analytical framework focused on six factors: performance, fees, liquidity, valuation, benchmarking and complexity. This framework would supplement and expand on the DOL's 1979 Investment Duties Regulation in the context of selecting designated investment alternatives. Under the proposed safe harbor, a plan fiduciary that objectively, thoroughly and analytically considers and makes a determination based on each applicable factor is entitled to a presumption of prudence and significant deference with respect to its investment selection decision.

While the Proposed Rule's safe harbor is not specifically tailored for investment in alternative assets, it could have significant implications for managers of alternative asset classes and investment products. If successful, the safe harbor could help mitigate the litigation concerns that have discouraged efforts to modernize investment options available to defined contribution plan participants. (See our detailed analysis of the Proposed Rule here.)

No-Action Letter

On April 27, 2026, the Staff of the SEC's Division of Investment Management issued a No-Action Letter to J.P. Morgan Investment Management, Inc. (JPMIM) that, among other things, grants relief to allow open-end registered investment companies to participate in co-investment transactions under JPM's co-investment exemptive order (JPM Order).

The JPM Order permits BDCs and closed-end management investment companies to participate in co-investment transactions with affiliated entities that would otherwise be prohibited by Sections 17(d) and 57(a)(4) of the Investment Company Act of 1940, as amended, and Rule 17d-1 thereunder. The JPM Order follows the template relief granted by the SEC to FS Credit Opportunities Corp. in April 2025 (FS Order), which modernized

Continued on page 13

U.S. Funds Regulatory

Continued from page 12

the co-investment landscape by, among other things, updating allocation procedures, board approval mechanics and affiliate eligibility. Notably, under the modernized FS Order, the definition of "regulated fund" did not extend to open-end registered investment companies. The JPMIM No-Action Letter extends the co-investment relief granted by the JPM Order to open-end registered investment companies.

The JPMIM No-Action Letter takes on greater significance when viewed against the backdrop of the DOL's proposed safe harbor for DIA's that include alternative assets in DC plans. If the DOL proposal is adopted in substantially its current form, plan fiduciaries should gain a clearer pathway to including private market exposure on 401(k) menus.

We believe the JPMIM No-Action Letter should improve the position of registered open-end funds as a delivery vehicle for private market exposure in DC plans. By allowing open-end funds to participate in co-investment transactions alongside affiliated BDCs, registered closed-end funds and private funds, the relief removes a structural barrier that has historically limited the ability of open-end fund sponsors to source private market investments at scale. (See our detailed analysis of the JPMIM No-Action Letter here.)

European Funds Regulatory

Patricia Volhard
Partner—Paris, London, Frankfurt
pvolhard@debevoise.com

Veronica Aroutiunian
Partner D&P Europe S.à r.l.—Luxembourg
varoutiunian@debevoise.com

The first half of 2026 was a landmark period for European private funds regulation. The April 16 deadline for European Union Member States to transpose AIFMD 2—the second Alternative Investment Fund Managers Directive—into national law has passed, marking the most significant overhaul of the EU alternative investment fund framework in over a decade. Alongside it, regulators advanced reforms to sustainability disclosure, retail investment access and capital market integration, producing a dense and consequential six months for European alternative investment fund managers (AIFMs).

AIFMD 2: Transposition and Immediate Impact

Germany, Luxembourg and Ireland transposed AIFMD 2 (Directive (EU) 2024/927) on or before the April 16 deadline; Luxembourg and Germany, like many other jurisdictions, closely mirror the EU text without gold plating. France, Italy and Spain had not fully enacted implementing legislation by the deadline, though their regulators have signaled supervisory expectations consistent with the Directive. Managers in jurisdictions that have yet to complete transposition should proceed as if the rules are already in force.

Substantively, AIFMD 2 introduces several important changes. First, it creates a harmonized regime for loan-originating AIFs, with requirements that generally include concentration and leverage limits, a 5% risk retention requirement and a ban on originate-to-distribute strategies. Certain interpretive questions remain open, including with respect to inter-fund transfers and warehousing arrangements. Grandfathering or transitional rules may also apply to pre-existing loan originating funds that raise new capital after April 15, 2024.

Second, AIFMD 2 imposes new liquidity management requirements for open-ended AIFs. AIFMs generally must select at least two liquidity management tools from the Annex V list following the Commission Delegated Regulation (EU) 2026/465 (February

Continued on page 14

European Funds Regulatory

Continued from page 13

27). Existing funds have until April 16, 2027, to comply with the Commission Delegated Regulation with regard to regulatory technical standards specifying the characteristics of liquidity management tools, and the CSSF has flagged liquidity management tools as a 2026 supervisory priority.

AIFMD 2 also strengthens delegation oversight and expands investor disclosure and reporting obligations. XML-formatted Annex IV submissions are required from June 30, 2026, and enhanced data fields apply from April 2027. Non-EU AIFMs should also note that marketing under national private placement regimes is now barred for AIFs or AIFMs established in jurisdictions on the EU's AML high-risk or tax non-cooperation lists—including, for example, BVI structures—while the FCA has confirmed it will not implement AIFMD 2 in the United Kingdom.

Within European's broader governance agenda, the CSSF issued a significant supervisory signal relevant to all private asset fund managers with Luxembourg-domiciled AIFs. In its Feedback Report on valuation frameworks for illiquid assets published on June 4, the CSSF identified recurring gaps in pre-investment checks, NAV-date currency, model governance and escalation procedures, and called on all Luxembourg AIFMs to benchmark against its findings.

ESG: Sustainability Framework in Transition

The Omnibus Amending Directive, in force since March 18, substantially narrows the scope and timing of the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), with transposition due by March 2027 (reporting) and July 2028 (due diligence). The related Taxonomy Amending Delegated Act (TADA), effective January 1, 2026, simplifies reporting templates by reducing the reporting fields for non-financial undertakings by 64% and those for financial undertakings by 89%. TADA also introduces a 10% materiality threshold and a two-year Taxonomy opt-out, available until December 31, 2027, for financial undertakings such as asset managers who do not claim that their activities are Taxonomy-aligned.

Most significant for fund managers are developments around the second iteration of the Sustainable Finance Disclosure Regulation (SFDR 2.0). The draft proposal of SFDR 2.0 would create a labelling regime for funds that make environmental or social claims. Funds would be required to satisfy new criteria under three new sustainability categories, currently proposed as Article 7 ("Transition"), Article 8 ("ESG Basics") and Article 9 ("Sustainable"), with some further variations for funds of funds. To qualify for those categories, funds need to comply with new minimum requirements, including various excluded investment categories. Under the current proposal, uncategorized products are limited in the disclosure of sustainability-related information they can make and are required to include a disclaimer that they do not meet EU standards for sustainable financial products or for protection against greenwashing.

The legislative process remains ongoing. The May 4 draft report of the European Parliament's Committee on Economic and Monetary Affairs (ECON) and the Council's

Continued on page 15

European Funds Regulatory

Continued from page 14

negotiating position of June 24 both largely preserve the Commission's three-category architecture outlined above. Notably, the Council proposes allowing AIFs marketed only to professional investors to opt out of categorization entirely, although that outcome remains uncertain ahead of the trilogue negotiations, expected in Q4 2026. Application is currently anticipated around 2028, with grandfathering for pre-effective closed-ended funds established before the effective date.

Retail Investment Strategy (RIS)

Following the political agreement between the European Parliament and the EU Council in December 2025, technical work continued on RIS, which would amend several key EU financial services regimes, including AIFMD, MiFID II, PRIIPs, IDD, UCITS and Solvency II—including a value-for-money assessment for AIFMs distributing to retail investors and a lowered MiFID II threshold for elective professional clients of €250,000 (down from €500,000). Publication is expected in mid-2026, with transposition targeted for 2028.

The Council's approval has not quelled industry unease. Market players and industry associations criticize the package as adding compliance burdens without genuinely simplifying retail access to EU capital markets, warning of a narrower product shelf, more concentrated (and thus costlier and riskier) retail portfolios, reduced financing for small and medium-sized enterprises (SMEs) and greater market fragmentation—all outcomes at odds with the Savings and Investments Union's stated goals. The criticism reflects concern that RIS could repeat the experience of MiFID II's research-unbundling rules, which are widely viewed as having weakened SME research coverage despite their investor-protection objectives.

Market Integration and Supervision Package (MISP)

The Commission's MISP, published December 4, 2025, has continued to advance further with ECON's June 12 draft reports and a committee vote scheduled for December 1, 2026. The most welcome amendments for private fund managers would streamline cross-border passporting, allowing AIFMs to market in host Member States immediately upon notification, without review periods by national competent authorities. The proposal would also promote greater harmonization through European Securities and Markets Authority (ESMA) technical standards and common templates and would remove national discretions that have resulted in divergent AIFMD implementation across Member States. Less welcome, and the biggest flashpoint, is a proposed direct ESMA review power over cross-border groups with more than €300 billion in assets. Some local regulators worry this centralization could add complexity, reduce agility and diminish national authorities' role in fund oversight. Application is not expected before 2028–2029.

Looking Ahead

The second half of 2026 will bring continued intensity: with AIFMD 2, as regulators move from implementation to supervision; the SFDR 2.0 trilogue (with the professional-investor opt-out a key question); RIS publication; and MISP's ongoing legislative path. The message is clear—Europe's private funds framework is being fundamentally reshaped, raising the compliance bar while broadening investor access and market integration.

Real Estate

Peter J. Irwin
Partner—New York
pjirwin@debevoise.com

Justin Chaljub
Associate—New York
jpchalju@debevoise.com

The authors would like to thank Summer Associate **Ivanna Druzhinsky** for their valuable research and editorial contributions.

Since the onset of the current cycle of rate hikes, the commercial real estate industry has largely been waiting for interest rate relief. As the first half of 2026 comes to a close, however, market participants appear to be moving from anticipation to adaptation, increasingly treating the current rate environment as the operative baseline rather than a temporary obstacle. The Federal Reserve has held its benchmark rate steady, and recent commentary from policymakers suggests that rates may not only remain elevated for longer but could even move higher if inflationary pressures persist.

Despite lingering interest-rate uncertainty, transaction volume has continued to improve from last year, and market forecasts suggest full-year investment activity could approach pre-pandemic norms. The capital now moving through the market, however, is doing so with a much greater degree of selectivity. Investors appear most willing to pursue sectors supported by demographic demand, structural undersupply or durable income growth, while assets dependent on near-term rate cuts or broad-based leasing recovery remain under closer scrutiny. We explore how these trends have materialized across different industry sectors below.

Within the **multifamily sector**, senior housing continues to stand out, with occupancy extending its multi-quarter recovery while new construction remains limited due to capital constraints. Self-storage supply has also tightened, with new deliveries slowing even as tenant retention has strengthened. Student housing, by contrast, is facing the headwinds that were forecast earlier in the year. Rent growth has turned negative, international student visa trends have weakened, and the number of U.S. high school graduates is projected to have peaked in 2025, creating a more challenging demand backdrop for the sector.

Within the **industrial sector**, data centers continue to outpace every other asset class. While global inventory continues to grow, grid interconnection timelines and equipment backlogs remain meaningful obstacles to bringing new capacity online. Capacity needs are expected to continue to expand over the next several years, underscoring the scale of future real estate demand. With vacancy still exceptionally low, demand continues to outpace the physical infrastructure supply required to serve it.

Meanwhile, the bifurcation of the **office market** has deepened further. Overall availability has now declined for seven consecutive quarters, and industry experts expect the shortage of high-quality space to intensify by year-end. Yet office loan delinquency in the commercial mortgage-backed securities market remains elevated, underscoring that the recovery belongs largely to high-amenity Class A buildings while older, less competitive properties face mounting distress. At the same time, office-to-residential conversions have accelerated, with the number of apartments in the conversion pipeline up 28% year-over-year, although the fact that the most viable candidates are being absorbed first suggests this strategy has a natural ceiling.

Finally, **healthcare** real estate sales activity has accelerated significantly thus far in 2026, supported by resilient tenant demand and supply constraints caused by slowing development activity. Average medical office rents are projected to reach a record high

Continued on page 17

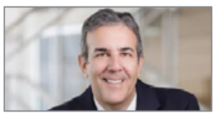
Real Estate

Continued from page 16

this year, although the widening rent gap between top-tier and mid-quality buildings suggests that tenants are increasingly gravitating toward newer, higher-quality spaces.

The first half of 2026 has confirmed that the current cycle rewards precision over patience. Sectors anchored by demographic demand and structural undersupply have outperformed those waiting for rate relief that has not arrived. As the second half unfolds, the key variables remain the Federal Reserve's rate path and the trajectory of private credit as deferral strategies reach their limits. For many investors, the throughline is clear: underwrite for the environment that exists, not the one the market hoped for.

Restructuring



Samuel A. Newman
Partner—San Francisco
snewman@debevoise.com

Michael C. Godbe
Counsel—New York
mcgodbe@debevoise.com

Flora Li
Law Clerk—New York
ffli@debevoise.com

The greater market stability and lower interest rates seen in 2025 created expectations for a calmer macroeconomic environment in 2026. Such expectations, however, were largely undermined by the events of the first half of the year. Technological disruption and geopolitical tensions roiled markets, and inflation not only returned but hit three-year highs, reversing forecasts from a rate cut to a rate hike by the end of the year.

So while the frequency of large in-court restructurings involving liabilities of $500 million or more slowed relative to 2025, other evidence suggests increasing market distress. The pace of total chapter 11 filings involving liabilities of at least $10 million is at a five-year high, and U.S. private credit default rates are elevated compared to 2025. These data points reflect heightened operating stress and parties' continued preference for out-of-court solutions to preserve optionality and avoid the significant expenses associated with in-court-restructurings.

Accordingly, liability management exercise (LME) activity remains high. LME transactions are increasingly bespoke and less readily sorted into the familiar "drop-down" and "uptier" categories. Recent examples include the use of "joint venture" and "subsidiary" definitions to circumvent J. Crew blockers and the issuance of preferred equity at unrestricted subsidiaries. On the whole, however, recent LMEs have generally been less economically aggressive toward holdouts than previous iterations. LME structures have sought to reduce litigation risk by offering broader or pro rata participation, incremental participation economics and transaction designs that account for LME blockers, such as anti-Serta provisions.

As we anticipated in the 2026 Outlook, the use of cooperation agreements continues to expand. We have also observed increasingly aggressive remedies tactics employed by private credit lenders, including exercise of proxy rights. These developments, combined with ever-earlier formation of creditor groups, have brought restructuring professionals into the process sooner. While this development improves coordination and bargaining discipline, it also hardens negotiating positions, accelerates scrutiny of liquidity and makes distress self-reinforcing.

The desire to avoid chapter 11 proceedings has also led to the reversal of a longstanding trend whereby foreign debtors sought to avail themselves of chapter 11 protections. Instead, U.S.-based or U.S.-connected companies are now using foreign restructuring tools, often after re-domiciling or otherwise establishing a sufficient connection to the foreign jurisdiction

Continued on page 18

Restructuring

Continued from page 17

and then seeking chapter 15 recognition of such proceedings to give the restructurings effect in the United States. For example, New Fortress Energy, Argo Blockchain and Fossil Group availed themselves of UK law. The Cannabist Company, a Canadian holding company for U.S.-based cannabis cultivation, manufacturing and distribution businesses, leaned on Canadian restructuring law. As foreign jurisdictions implement new and progressively more flexible restructuring regimes, this trend bears monitoring.

Looking ahead, we expect continued fallout from the sharp repricing of software-as-a-service companies in early 2026. While the industry has recovered somewhat since the "SaaSpocalypse" produced an estimated $300 billion decline in market capitalization earlier this year, that recovery has been uneven. Further, reminiscent of the industries that secured long-term financing in the COVID-era low-interest-rate environment, software companies may have difficulty navigating the approaching 2027–2028 maturity wall. This challenge is particularly acute for software companies that were originally underwritten on theories of margin expansion and valuation multiples that may no longer be applicable in an AI-native software environment. Even well-positioned companies in the space may find financing more difficult to secure. While we expect the impact of AI development to continue to be felt most acutely in the SaaS sector, adjacent industries may come to face similar pressures.

We also expect to see continuing fallout from the extended closure of the Strait of Hormuz. Previous global supply-chain disruptions have caused long restructuring tails, and there may be similar knock-on effects here. Sponsors with portfolio companies that have long-term exposure to the price of oil, fertilizer or natural gas may wish to consider their ability to hedge exposure or tap the capital markets while they are still available.

Data Strategy and Security

Luke Dembosky
Partner—Washington, D.C.
ldembosky@debevoise.com

Avi Gesser
Partner—New York
agesser@debevoise.com

Erez Liebermann
Partner—New York
eliebermann@debevoise.com

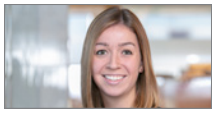
The emergence of Mythos-class “frontier” AI models at the leading edge of current AI capabilities has sharpened a question that private equity firms and portfolio companies were already confronting: How quickly must cyber governance, vulnerability management and incident response evolve when AI can materially accelerate both defensive and offensive cybersecurity capabilities? As AI compresses the timeline for identifying and exploiting vulnerabilities, as well as for detecting and responding to them, the governance and resilience expectations on companies are shifting across numerous fronts.

Regulators and other authorities are already framing frontier AI-enabled cyber risk as an operational resilience and governance issue. In the United Kingdom, for example, the Financial Conduct Authority, the Bank of England, and HM Treasury recently issued a joint statement calling on regulated financial services firms to address the cyber resilience risks posed by frontier AI models. Notably, the statement does not create new requirements but sets the supervisory expectation that existing obligations around systems and controls, operational resilience, third-party risk management, and senior management oversight must be interpreted to include the expanding threat landscape. Similar considerations are likely to affect reassessments of “reasonable security” under other regimes, including U.S. federal and state laws, European Union and UK data protection regimes, and financial services sector rules.

Continued on page 19

Data Strategy and Security

Continued from page 18



Stephanie D. Thomas
Associate—New York
sdthomas@debevoise.com

Firms and portfolio companies should therefore treat AI-enabled cyber risk as a **board- and management-level issue**. Boards and senior management should evaluate how frontier AI affects the organization's threat response model, including the need for faster vulnerability discovery, more scalable exploitation, and shorter detection and containment windows. Those evaluations should identify the business services, critical systems, legacy technology, third-party dependencies and data stores most exposed to these risks. The same analysis should inform cyber diligence on potential acquisitions. As with other cyber governance processes, companies should document the discussion, decisions, accountable owners and follow-up timelines.

At the operational level, there is renewed pressure to be faster and more nimble. Traditional patch cycles may become harder to defend where vulnerabilities can be found and weaponized more quickly. Companies should consider whether their **vulnerability management programs** can triage, prioritize, risk-assess and remediate issues at sufficient speed and scale. Addressing those issues may require better asset inventories, enhanced mapping of system interdependencies, clearer authority for emergency patching decisions (with corresponding risk acceptance where testing is not possible) and additional staffing or automation.

Companies should prepare for scenarios where vulnerabilities are exploited before they are remediated. This reinforces the importance of **access controls, network segmentation and monitoring** to reduce potential impact. Data minimization is equally important. Reducing or isolating stale data can materially lower the cost and consequences of a cyber incident. Companies should revisit retention practices, legacy repositories and data stores that are no longer needed for business or legal purposes, and consider whether older data can be deleted, segregated or air gapped. In an environment where AI may increase the speed of compromise and exfiltration, minimizing the data available to attackers is a practical resilience measure.

Refreshing **incident response and communications plans** is also important. As AI-enabled tools increase the frequency of vulnerability disclosures, exploitation attempts or emergency patches, companies may need to escalate decisions faster and communicate more often with management, customers, regulators, insurers and counterparties. Operational resilience plans should be tested against scenarios involving simultaneous exploitation of multiple vulnerabilities, disruption caused by emergency patching, and vulnerabilities in third-party software or open-source components.

These updates are relevant across a company's **supply chain and vendor ecosystem**. Regulators and recent incidents have highlighted third parties, supply chains and open-source software as areas of heightened concern. Companies should consider how they are incorporating AI-enabled cyber risk into risk assessments, audit plans, tabletop exercises and vendor management. Key service-provider contracts and operating procedures should be reviewed for timely vulnerability notification, patching support, incident updates and disaster-recovery testing. Vendor diligence questionnaires should also be updated to ask whether and how vendors are using AI defensively.

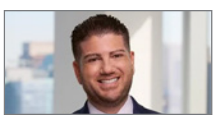
Without any change in the law, frontier AI developments will influence what regulators, investors, counterparties and plaintiffs view as reasonable cyber preparedness. Private equity firms and their portfolio companies should commit to a documented, risk-based response to this changed threat environment to stay ahead of shifting standards and be better positioned to defend those decisions if an incident occurs.

Intellectual Property

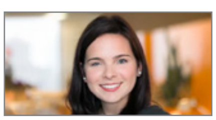
Megan K. Bannigan
Partner—New York
mkbannigan@debevoise.com

David H. Bernstein
Partner—New York
dhbernstein@debevoise.com

Christopher S. Ford
Counsel—New York
csford@debevoise.com



Jared I. Kagan
Counsel—New York
jikagan@debevoise.com



Kate Saba
Counsel—New York
ksaba@debevoise.com

Generative AI has quickly become part of ordinary content creation, software development, marketing and communications workflows across portfolio companies. That adoption creates a practical challenge for private equity sponsors: ensuring that portfolio companies can capture the efficiencies and creative benefits of AI-generated content while preserving intellectual property value, reducing infringement risk and minimizing diligence issues at exit. This challenge needs to be considered from multiple perspectives:

- **Protectability and Ownership**. Under current U.S. law, works or inventions generated solely by AI generally are not eligible for copyright or patent protection. Companies may claim copyright only in elements that reflect meaningful human authorship, such as substantive editing, selection, arrangement or creative modification of AI-generated material. The Supreme Court recently declined to review an appeals court decision upholding this principle, making near-term change unlikely. Similarly, utility and design patents require a human inventor. For portfolio companies, the risks are most acute where AI is used to generate assets that are expected to support enterprise value, including software code, product designs, brand assets, marketing materials and other "crown jewel" intellectual property. Reliance on unmodified AI outputs may undermine exclusivity and leave competitors free to copy materials that the company cannot easily protect.

  Even where AI-generated output is not itself protectable, however, companies can protect the human-authored elements of the final asset. For that reason, portfolio companies should consider ways of documenting human and AI contributions, including prompts, edits, approvals and the extent to which AI-generated material was modified or incorporated into final works. Where copyright or patent protection is uncertain, trademark and trade dress rights may provide alternative paths to protection, particularly for brand assets that function as source identifiers.

- **Vicarious Liability Risk.** Generative AI also presents a risk of third-party infringement claims. Copyright holders continue to challenge the use of protected works in the development and operation of AI models. Courts have recognized that companies can face vicarious liability for a vendor's infringing conduct where the company benefits from the infringement and has the right to supervise it, as illustrated by the Ninth Circuit's 2025 decision holding Disney liable for a contractor's infringement in the production of *Beauty and the Beast*. AI provider agreements therefore warrant close attention, particularly because indemnification terms vary significantly and often include exclusions for modified outputs, policy violations or high-risk uses. These risks can surface in diligence through questions about training data provenance, model selection, vendor indemnities and the review process for public-facing outputs.

- **Infringement Risks.** AI-generated content can also create trademark, trade dress, false advertising, consumer protection and right-of-publicity exposure. Generative tools may inadvertently introduce brand names, logos, slogans, distinctive design elements, recognizable likenesses or realistic depictions of products, endorsements, or features that do not exist. These risks are especially relevant for portfolio companies in media, entertainment, consumer products, e-commerce and other customer-facing sectors.

Continued on page 21

Intellectual Property

Continued from page 20

They have also increased following developments such as New York's AI-focused right-of-publicity law, which expanded protections against unauthorized digital replicas. Portfolio companies should consider documented processes for reviewing public-facing AI outputs for third-party IP, misleading depictions, celebrity likenesses and inadvertent references to recognizable individuals or brands. In addition, regulators are actively scrutinizing AI claims in advertising, making this another potential diligence issue.

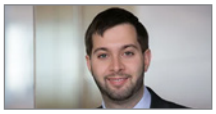
- **Governance and Diligence.** Sponsors should treat AI-generated content as a governance and diligence issue, not merely a creative or operational tool. Portfolio companies should establish guardrails across the content life cycle, including rules on permitted uses, prompt discipline, human review, approval workflows, vendor management and post-publication monitoring. Employees should be instructed not to prompt AI tools to reproduce specific copyrighted works, recognizable characters or distinctive creative styles. Legal or compliance review should be required where AI-generated content relates to core IP, brand identity, regulated claims or public-facing campaigns.

As use of generative AI becomes routine, buyers, investors, regulators and counterparties are likely to focus less on whether companies use AI and more on whether they can demonstrate a disciplined, risk-based approach to that use. Private equity firms and portfolio companies that document human involvement, maintain appropriate review workflows and understand their vendor protections will be better positioned to preserve asset value and defend their decisions in diligence or disputes.

Insurance

Alexander R. Cochran
Partner—New York
arcochran@debevoise.com

Marilyn A. Lion
Partner—New York
malion@debevoise.com



Matthew B. Parelman
Partner—New York
mbparelman@debevoise.com

Private credit is a governance topic of increasing importance for insurers as regulators intensify their scrutiny of this asset class. While regulators recognize the business rationale behind investing in private credit and have so far taken a nuanced approach to private credit investments, regulatory focus on private credit is sharpening.

On May 7, 2026, representatives from the National Association of Insurance Commissioners (NAIC), including 20 state insurance regulators, met with U.S. Treasury Secretary Scott Bessent to discuss their perspectives on recent developments in private credit markets. Following the meeting, the U.S. Department of the Treasury confirmed that it is continuing to monitor the intersection of insurance and private credit, a topic also addressed in its Federal Insurance Office's most recent annual report published in September 2025. In a post-meeting statement, Secretary Bessent emphasized the Trump administration's support for state-based regulation and supervision of insurers, suggesting that, at least for now, the federal government is not inclined to take action beyond engaging with the NAIC to understand state regulatory oversight in this area.

For its part, the NAIC is focused on right-sized regulation that encourages innovation while appropriately protecting policyholders. Given that insurers have been investing in private assets for decades, and the advantages of private credit investments in the prolonged low interest rate environment that followed the financial crisis, state

Continued on page 22

Insurance

Continued from page 21

insurance regulators have generally taken a targeted approach rather than treating private credit as inherently inappropriate for insurance company investment portfolios. The NAIC's workstreams on the subject have focused on addressing concerns about complexity, illiquidity and transparency to ensure that private credit assets are properly classified, valued, rated and reported, with capital charges that reflect a reasonable assessment of the underlying investment risk of the asset. These initiatives include projects to classify assets based on the substance of the investment rather than form and with more granularity in the classification of risk-based capital factors for certain asset classes.

In light of insurers' increased use of private letter ratings from credit rating providers, the NAIC has also proposed a due diligence framework to provide oversight of the NAIC's reliance on those ratings, including potential loss of accepted credit rating provider status in cases of persistent inconsistencies in rating methodologies or outcomes. The NAIC has also implemented a process for its Securities Valuation Office to challenge and override NAIC designations derived from credit rating provider ratings, although no such challenges have been publicized.

Given the regulatory developments regarding capital charges, enhanced financial reporting and transparency, ratings documentation and review of complex or affiliated structures, insurers that can demonstrate disciplined oversight and robust documentation of investments in private assets will be better positioned to respond to questions from regulators and other constituencies. Companies should also consider developing contingency plans for changes in capital charges or ratings that adversely affect or require more capital to support assets on their balance sheets, particularly where assets may be difficult to sell or could create liquidity or capital strain.

About the Debevoise Private Equity Group

Debevoise is a trusted partner and legal advisor to a majority of the world's largest private equity firms, and has been a market leader in the Private Equity industry for nearly 50 years. The firm's Private Equity Group brings together the diverse skills and capabilities of more than 500 lawyers around the world from a multitude of practice areas, working together to advise our clients across the entire private equity life cycle. The Group's strong track record, leading-edge insights, deep bench and commitment to unified, agile teams are why, year after year, clients quoted in *Chambers Global, Chambers USA, The Legal 500* and *PEI* cite Debevoise for our close-knit partnership, breadth of resources and relentless focus on results.

Debevoise & Plimpton LLP is a premier law firm with market-leading practices, a global perspective and strong New York roots. We deliver effective solutions to our clients' most important legal challenges, applying clear commercial judgment and a distinctively collaborative approach.

Law 360

GROUPS of the YEAR

Capital Markets, Healthcare & Life Sciences, Private Equity, Sports

Law 360

GROUPS of the YEAR

Fund Formation, International Arbitration, IP, M&A, White Collar

British Legal Awards

BANKING AND FINANCE TEAM OF THE YEAR

Private Equity International Awards Hall of Fame

20 PEI AWARDS

across North America, EMEA & Asia since 2001

Chambers USA Awards for Excellence

Law Firm of the Year

International Arbitration

Chambers Global, Chambers USA, The Legal 500 US

Ranked as a leading private equity-focused law firm

Benchmark Litigation

Private Equity lawyers recognized among Top 250 Women in Litigation

Private Equity Report

Circulated to more than 24,000 private equity professionals worldwide