

February 19, 2025

IPO and Public Company Readiness: Advance Planning for 2025 and 2026 IPOs

Considerations for Private Equity Sponsor-Backed Portfolio Company IPOs

GIBSON DUNN

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About this Webcast Series

IPO & Public Company Readiness: Advance Planning for 2025 & 2026

Date and Time	Program	Registration Link
Tuesday, October 15, 2024	Navigating Executive Compensation and Employee Benefits	Replay
Tuesday, November 12, 2024	Corporate Governance and ESG Considerations	Replay
Wednesday, January 15, 2025	Regulatory Considerations for Public Companies and Their Key Stakeholders	Replay
Wednesday, February 6, 2025	Cybersecurity and Privacy Considerations	Replay Coming Soon
Wednesday, February 19, 2025	Considerations for Private Equity Sponsor-Backed Portfolio Company IPOs	Today's Programming
Wednesday, March 26, 2025	Structuring and Tax Issues	Event Details
Wednesday, April 16, 2025	Risk Management and Financial Systems	Event Details
Wednesday, May 14, 2025	Key Developments in the UK and Middle East	Event Details
Wednesday, June 11, 2025	Navigating Liability Exposure for Companies and Boards	Event Details



TABLE OF CONTENTS

- 01** Market Trends and the Dual Track Process
- 02** Preparing for a Portfolio Company IPO
- 03** Select Governance Issues in PE Backed IPOs
- 04** Attorney Bios

Market Trends and the Dual Track Process

01

Current Market Outlook

- After a very slow year in 2022 based on number of IPOs and proceeds, there were increases in 2023 and again in 2024.
- In 2024, there was a small year-over-year increase in PE-backed IPOs, but the overall percentage of IPOs backed by PE sponsors was still below historical levels. Recent stock performance of PE-backed IPOs has been strong.
- Over 50 private equity-backed companies are rumored to be IPO-ready, anticipating favorable valuations.
- Macro risks (e.g., global interest rates, geopolitical tensions) could affect valuations and timing.

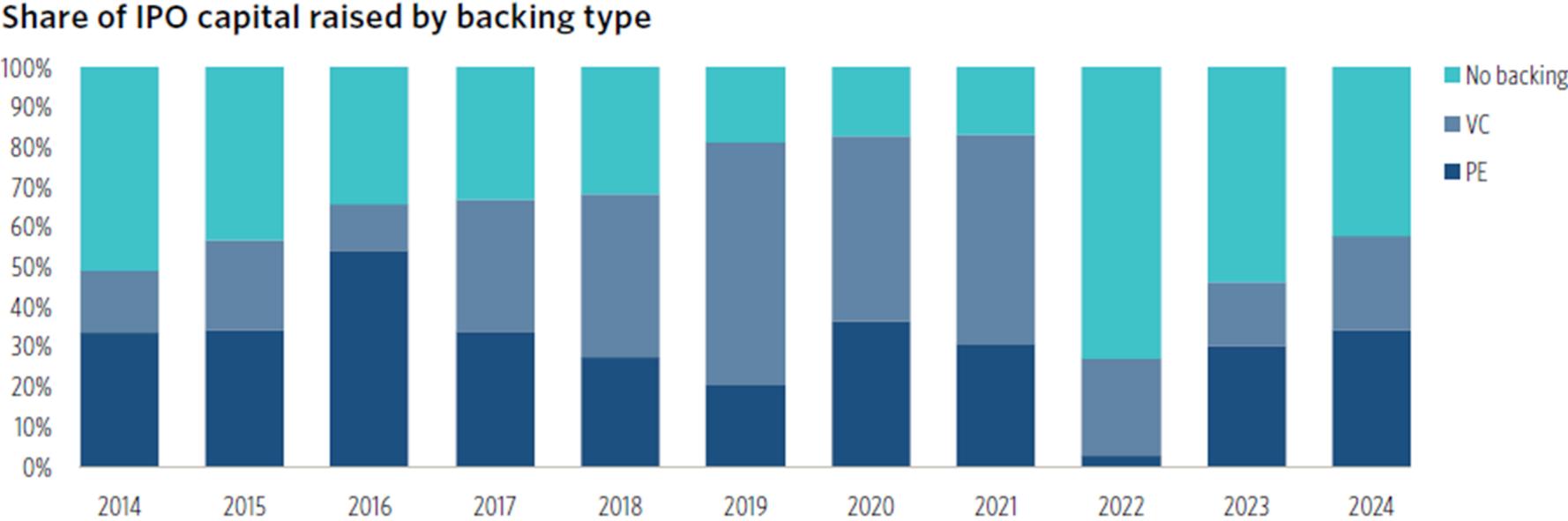
Investment Holding Period Prior to IPO

Average PE Holding Period (Years) before IPO Exits - [Global](#)

Exit Year	Average Holding Period
2000	2.1
2001	2.3
2002	3.3
2003	3.2
2004	3.5
2005	3.2
2006	3.5
2007	2.9
2008	2.2
2009	2.7
2010	3.3
2011	2.9
2012	3.4
2013	4.0
2014	3.9
2015	4.0
2016	4.6
2017	3.9
2018	4.2
2019	4.0
2020	3.5
2021	4.1
2022	3.1
2023	5.2
2024	5.9

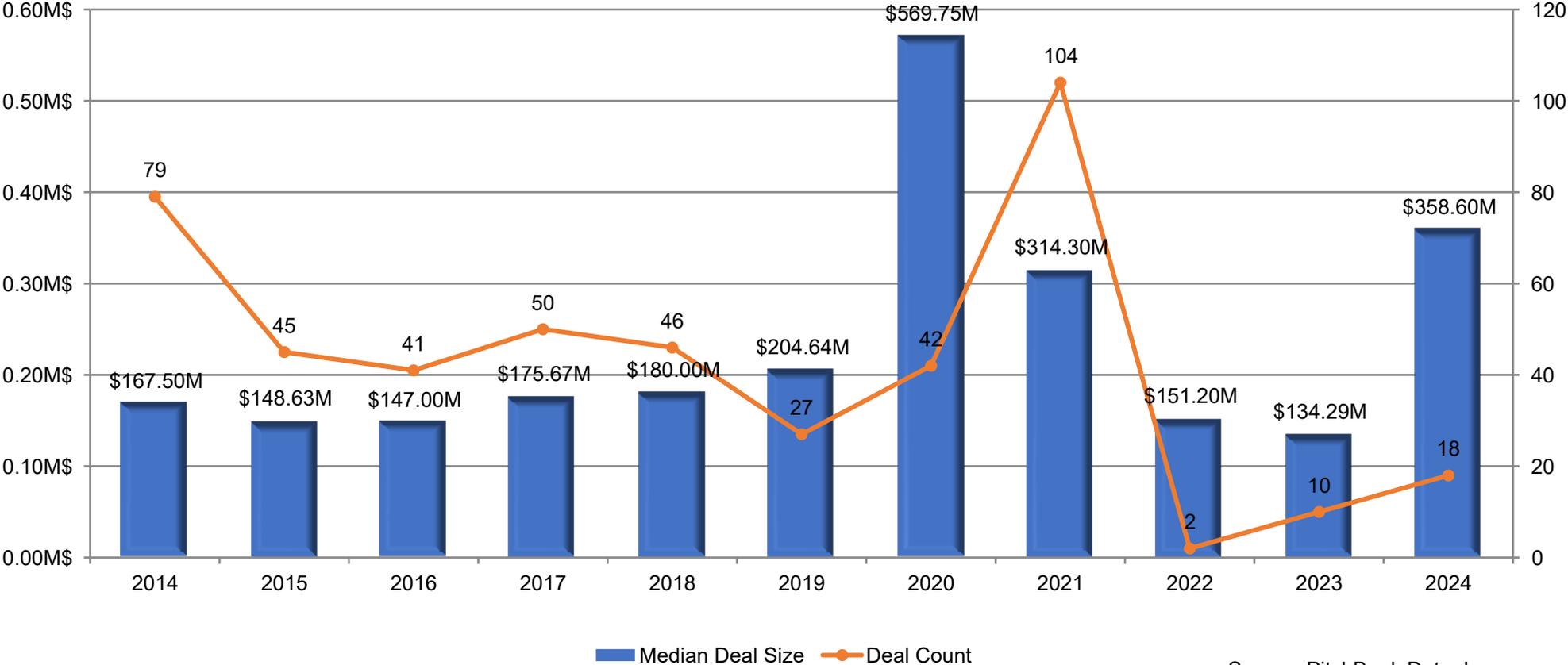
Source: Preqin

Percentage of Private Equity-Backed IPOs



Source: PitchBook • Geography: US • As of October 31, 2024

Private Equity-Backed IPOs (By Deal Size and Deal Count)



Source: PitchBook Data, Inc.

Considering the Exit Strategies at the **Time of Investment**

Exit Routes from an Investment

- ***Sale of the Company.*** Provides a complete and immediate exit from the investment
- ***Initial Public Offering.*** A potentially attractive exit strategy used by private equity sponsors, as an IPO can provide the highest returns when optimal market conditions are present
- ***Secondary Buyout.*** May be an option because it means shortening the life of an investment; complete vs. partial exit strategy varies
- **“Dual Track” Structure.** Allows sponsor to preserve optionality as it evaluates the attractiveness of multiple exit (or partial exit) options while hedging against IPO market volatility and overall deal uncertainty

Considering the Exit Strategies at the **Time of Investment**

Governance and Information Access

- ***Robust Governance & Control***
 - Secure control via sponsor ownership, strategic board composition, and consider a clear waiver of fiduciary duties to enable proactive decision making
- ***Transparent Information Flow***
 - Establish contractual rights for prompt delivery of periodic financials and full access to key records to support exit valuation and due diligence
- ***Controlled Transfer Provisions***
 - Define equity transfer restrictions to avoid unexpected members within the capital structure
 - Typically accompanied by tag-along rights allowing investors to participate pro rata in sales
 - If transfers are permitted, they may be subject to rights of first offer or refusal requirements

Considering the Exit Strategies at the **Time of Investment**

Transactional Flexibility & Exit Mechanisms

- ***Drag-along Rights***
 - Provides greater certainty over sale process
 - Contractual right to require minority investors to participate in the sale of the portfolio company
- ***Registration Rights***
 - Power to trigger or participate in registered public offerings of the portfolio company's equity
 - Consider which holders should be given a right to participate in the IPO
- ***Redemption Rights***
 - Ability to permit or require the company to repurchase equity under certain circumstances
 - Pre-wire consequences if the company fails to (or cannot) repurchase equity
- ***General***
 - Amendment provisions should be carefully considered to ensure flexibility vs. preservation of rights
 - Consider when various rights lapse
 - The substance of these provisions vary based on capital structure (control investment, club deal, management rollover)

Why Choose an IPO Exit

- **Potential for Higher Valuation:** Public markets can reward growth stories with premium multiples.
- **Gradual Liquidity:** Allows a staged exit over time rather than a one-time, all-or-nothing sale.
- **Brand & Market Visibility:** Being publicly traded can enhance reputation, attract new customers, and aid recruiting.
- **Optionality:** Maintaining both an IPO path and sale discussions can improve leverage in negotiations.

The Dual Track Process

	Initial Public Offering	Sale Transaction	Dual Track Process
Exit	<ul style="list-style-type: none"> Typically, a partial exit opportunity (depending on the size of the secondary offering) Slow sale of securities not sold in the IPO (generally subject to affiliate restrictions under Rule 144 unless a follow-on offering occurs) Signaling to the market of potential upside 	<ul style="list-style-type: none"> Generally, allows for a complete exit Escrow or hold back could cause some funds to be unavailable for a period of time 	<ul style="list-style-type: none"> Ability to choose best exit opportunity given the circumstances Higher negotiating leverage with potential buyers Generally, the costliest option and a distraction to management
Valuation	<ul style="list-style-type: none"> Equity valuation determined by underwriters Charter provisions can give sponsors an effective veto right based on valuation. 	<ul style="list-style-type: none"> No liquid market for shares, so valuation by company or its advisors is key 	<ul style="list-style-type: none"> Each process can inform the other.
Future capital raises	<ul style="list-style-type: none"> Access to public capital markets for future financing Once an issuer becomes eligible for S-3 shelf registration and/or a WKSI, easy access to public markets 	<ul style="list-style-type: none"> Shifted to buyer 	
Management	<ul style="list-style-type: none"> May have greater management support Current management will often stay on board post-IPO Greater visibility and enhanced corporate image Management retains its equity and is granted new equity 	<ul style="list-style-type: none"> May be subject to some resistance from management, as strategic buyers may have their own management teams Financial incentives for management may be great, including future appreciation through rollover 	<ul style="list-style-type: none"> Higher management distraction due to simultaneous IPO and sale transaction processes Management may favor IPO due to job security

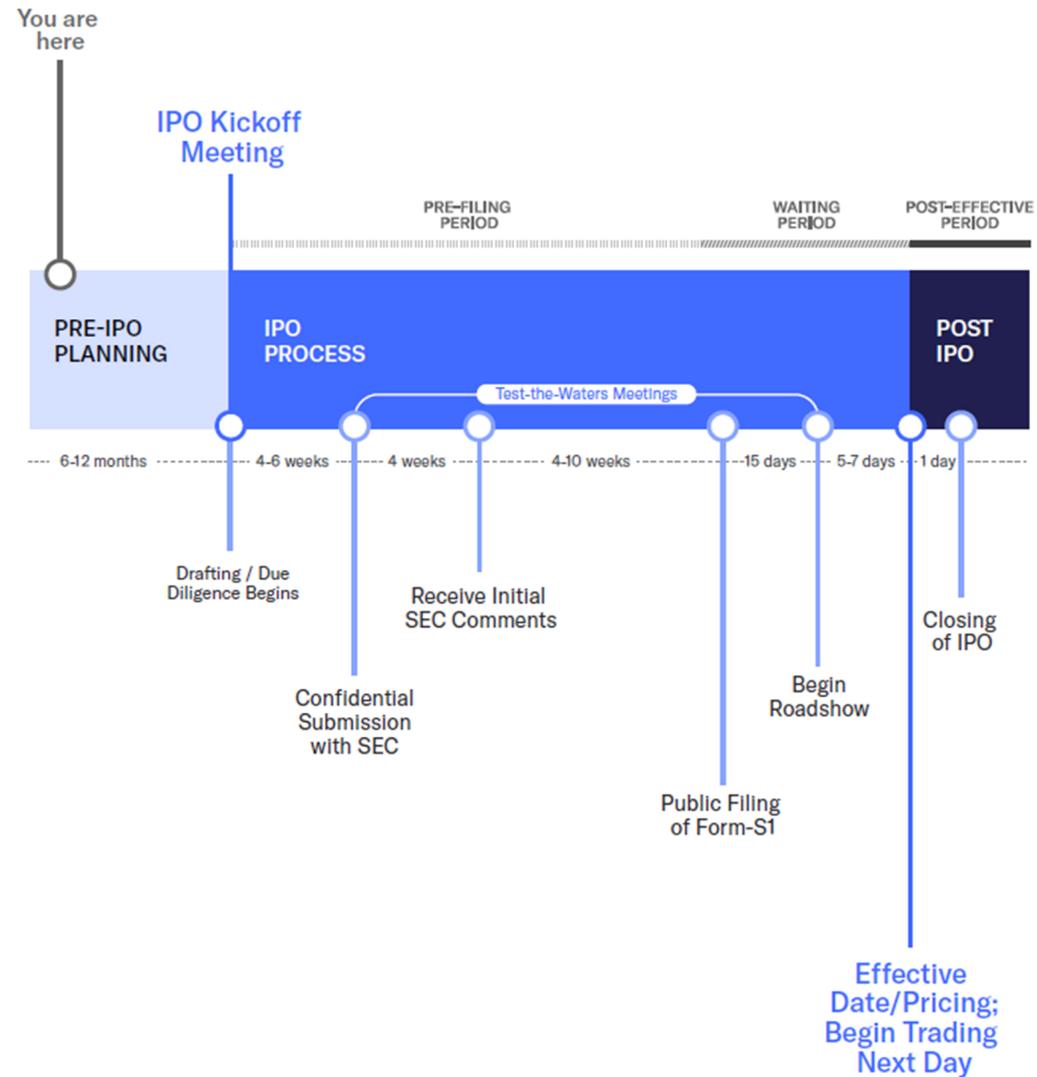
The Dual Track Process

	Initial Public Offering	Sale Transaction	Dual Track Process
Legal matters	<ul style="list-style-type: none"> • Heavy compliance and disclosure obligations • Ongoing Exchange Act reporting requirements • Sarbanes-Oxley compliance 	<ul style="list-style-type: none"> • Subject to regulatory approval (antitrust and potentially other areas such as FDI) • Negotiation of post-closing indemnity regime • Preparation of detailed disclosure schedules to qualify representations and warranties 	<ul style="list-style-type: none"> • Advanced preparation required to address legal concerns of both processes
Cost of transaction	<ul style="list-style-type: none"> • Expenses are high, including disclosure costs, legal fees, underwriter fees • Ongoing public company costs can add over \$2 million per year 	<ul style="list-style-type: none"> • Expenses are high • Risk that competitors may enter bids solely to gain access to confidential information 	<ul style="list-style-type: none"> • Costs can be higher due to running two exit processes in tandem • Overall cost is lower than if one type of exit fails and the other is commenced later
Timing of Transaction	<ul style="list-style-type: none"> • Four to six months from organizational meeting to closing of the transaction 	<ul style="list-style-type: none"> • Typically, one to three months to reach a signing 	

Preparing for a Portfolio Company IPO

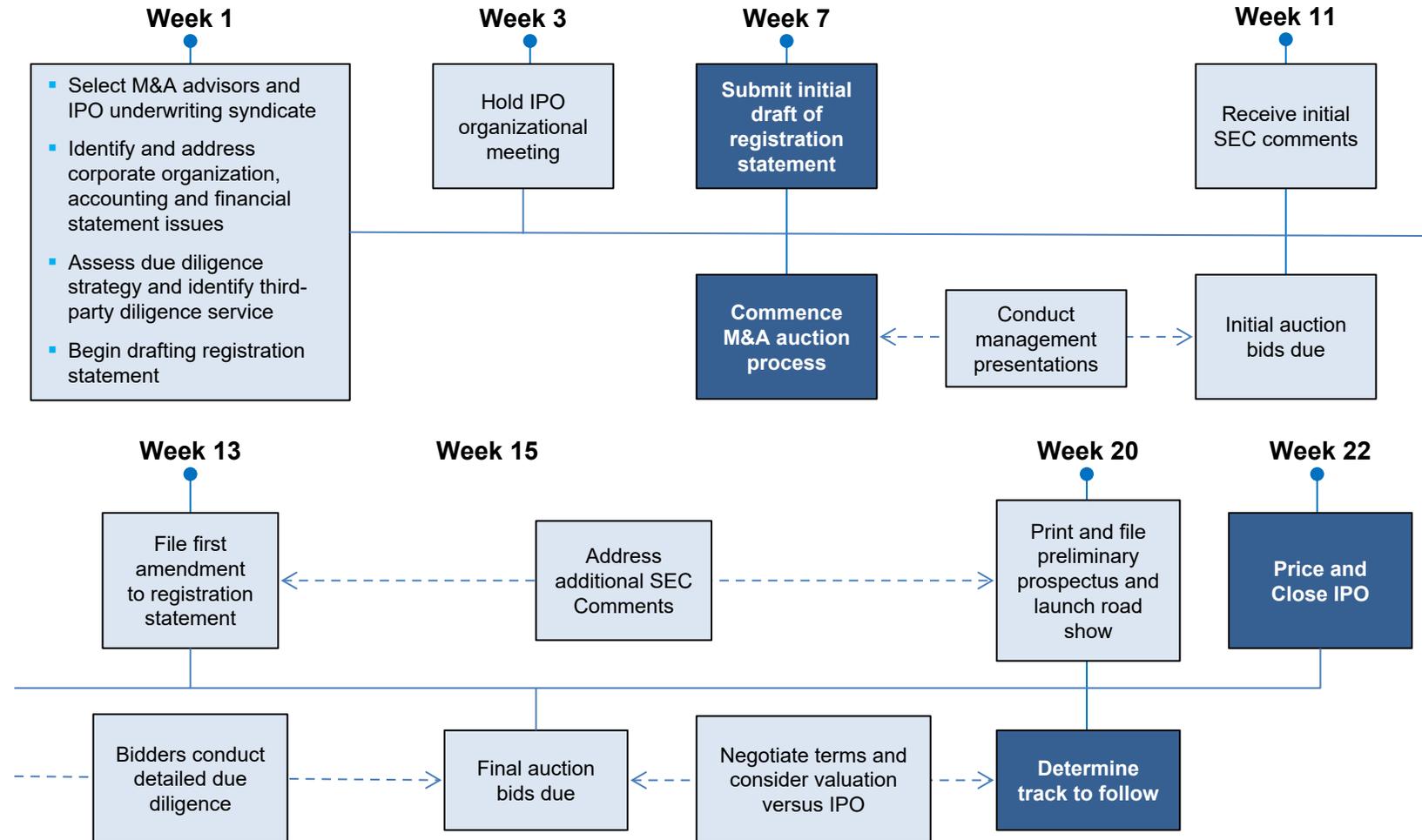
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Illustrative IPO Timeline*



*Timing above is for illustrative purposes only. Market, regulatory and other factors will impact actual timing.

Illustrative Dual Track Timeline



Key Pre-IPO Planning Questions

Is the business positioned to be well received by public investors?

- Does the portfolio company demonstrate the potential for positive long-term performance?
- Will the portfolio company be positioned with a focus on growth or stockholder returns?

Does the portfolio company project a “clean” story with a compelling marketing narrative?

- Do the financial statements provide an accurate representation of the business and are those financials audited at a public company standard?
- Does the portfolio company have reliable financial reporting systems?
- Does the portfolio company have a history of predictable earnings and meeting forecasts?
- Are all essential members of management and finance teams in place?
- Does the portfolio company have appropriate board composition and corporate governance practices to facilitate the execution of its long-term strategy?

Key Pre-IPO Planning Questions

What is the optimal IPO structure for the portfolio company?

- Is there any internal restructuring needed to prepare the portfolio company for an IPO?
- What relationship will the portfolio company maintain with the sponsor?
- What are the tax implications of conducting an IPO?
- Are there tax-optimized structures that should be implemented prior to the IPO?
- What should the portfolio company's capital structure look like?
- Should there be multiple classes of equity to preserve sponsor control?

Other Planning Considerations

Anticipating and addressing issues prior to IPO kick-off can improve execution

- Completing IPO readiness initiatives early allows for greater optionality with respect to market windows and minimizes the distraction of management and disruption of the underlying business.
- Evaluate internal risk management and compliance programs, including those related to cybersecurity, privacy, export controls, anti-money laundering and anti-corruption.
- Collect backup support for qualitative and quantitative statements about the company and its industry that may be included in the registration statement.
- Consider settling outstanding litigation before the IPO to avoid disclosure and reduce opposing party's leverage.

Other Planning Considerations

The IPO process requires significant planning and preparation, including:

- Extensive sponsor and portfolio company effort to draft the registration statement, prepare financial statements (which is often the reason for a delay in the IPO timeline), collect documentary diligence materials and implement governance and other changes required for public company status.
- Careful coordination among sponsor, management, investment bankers, auditors, legal counsel and others.
- Preparation or updating of public company documents, policies and procedures, such as the certificate of incorporation, bylaws, committee charters, governance guidelines, codes of conduct, insider-trading policy, related person transactions policy, whistleblower procedures, public communications policy (Regulation FD) and other audit-related policies.

Other Planning Considerations

- Identify material contracts and other documents that may need to be filed and for which confidential treatment may be sought.
- Prepare for due diligence review by gathering minute books and all material contracts, confirming board actions ratifying all significant transactions, ensuring the stock ledger is complete and current and reviewing compliance with applicable laws in prior securities issuances.
- Consider using a major accounting firm for audits to meet expectations of underwriters and IPO investors. Prepare for audits under PCAOB standards.
- Confirm auditor independence under PCAOB standards to avoid the need to seek a waiver from the SEC or replace auditors during the IPO process. ***This is a particular risk for portfolio companies where the auditor may provide “prohibited services” to the sponsor’s other portfolio companies.*** Be ready to prepare audits at the IPO company level. Address potential material weaknesses or significant deficiencies.

Specific Issues for Private Equity Sponsors

- In transactions with co-investors, some sponsors use "coordination committees" to coordinate sales of shares following the IPO and prevent uncoordinated selling that could adversely affect the stock price. Coordination committees can be set up to approve all sales, notify investors and/or coordinate selling efforts and registration rights. Coordination committee provisions can be structured to terminate within a certain amount of time post-IPO or when ownership falls below a threshold level.
- Fulsome registration rights will be important to sponsor liquidity post-IPO.
- Contractual provisions among pre-IPO holders that survive the IPO can raise disclosure and reporting concerns and can impact sponsor liquidity. These arrangements may make pre-IPO stockholders a "group" for purposes of Schedule 13D and 13G and Section 16 reporting and can require sales by all group members to count toward Rule 144 volume limitations.

Specific Issues for Private Equity Sponsors

- Sponsors should consider with deliberation the mix and flow of information they receive from the public company post-IPO. Access to material non-public information (including through board representation) can limit liquidity options and subject sponsors to "black-out" period sale restrictions.
- Sponsors should consider setting up IPO lock-ups with early performance-based release.
- Most management services agreements will be terminated at the time of the IPO and disclosed as such. Sponsors should consider final termination payment amount and structure.
- Conflict of interest and corporate opportunity provisions should be carefully considered and drafted into public company documents so as not to limit sponsor flexibility with other portfolio companies.

Key IPO Documents



Registration statement
(including prospectus and audited financial statements)



Lock-up agreements



SEC comment letters and written responses to SEC comments



Certificate of incorporation and bylaws



Stock exchange listing application



Investor road show and testing the waters presentations



Underwriting agreement



Accountants' comfort letter



Officers' certificates and other closing documents



Legal opinions and Rule 10b-5 letters



Transfer agent documentation



Governance documents and corporate policies

Select Governance Issues in PE-Backed IPOs

03

Overview

Wide Latitude:

Company generally has wide latitude to determine appropriate governance structure to support execution of long-term strategy, particularly at IPO for sponsor-backed, controlled companies

Selected Considerations:

- **Flexibility** – preserve board ability to act in shareholders’ best interests based on facts & circumstances
- **Shareholder base** – company will have greater flexibility when it qualifies as a “controlled company”
- **Activist defense** – protect company from inappropriate threats for corporate control
- **Market practice** – maintain alignment with peers or have good reason not to
- **State law** – shareholder rights, director responsibilities & requirements for board operations
- **Listing exchange / SEC rules** – director independence & committee composition / responsibilities and requirements, code of conduct and various disclosure requirements
- **Investor / proxy advisor expectations** – view anti-takeover protections as inhibiting shareholder rights even at controlled companies; investors may vote (and proxy advisory firms recommend votes) against board members at annual meetings of shareholders based on certain IPO-related governance decisions
- **Latest trends** – cybersecurity, risk management & potential disclosures; anti-DEI and anti-ESG developments vs. corporate citizenship

Key Areas of Governance Focus in PE-backed IPOs

Key Areas of Governance Focus in PE-Backed IPOs Include:

- “Controlled company” status / exemption
- State of incorporation
- Dual / multi-class structure
- Board / committee composition
 - Independence considerations
 - Overboarding considerations
 - Board leadership structure
 - Diversity of perspectives/skills
- Anti-takeover provisions
 - Frequency of director elections / classified board (with or without sunset)
 - Plurality / majority voting and resignation policy
 - Removal of directors
 - Ability to fill vacancies
 - Shareholder written consent
 - Ability of shareholders to call special meetings

- Supermajority provisions
- Statutory freeze provision for interested shareholder transactions (known as DGCL 203 in Delaware) or creating a “synthetic” equivalent
- Blank check preferred & poison pills
- Exclusive forum provisions
- Related party / person transactions

Additional considerations for controlled companies:

- Which provisions are “springing”
- Veto / approval rights*
- Board and committee nomination rights*
- Observer rights
- Corporate opportunity waivers / conflicts of interest / overlapping director considerations / Clayton Act
- Information and access rights

Board and Committee Independence: Summary of Transition Rules

Event	Majority of Independent Directors	Independent Audit Committee	Number of Audit Committee Members**	Independent Compensation and Nominating Corporate Governance Committees*
IPO	Within 1 year of “listing date”	At least 1 independent member by effective date of registration statement Majority of independent members within 90 days of effective date of registration statement Fully independent committee within 1 year of effective date of registration statement	At least 1 member by effective date of registration statement At least 2 members within 90 days of effective date of registration statement At least 3 members within 1 year of listing date	At least 1 independent member on each committee by listing date Majority of independent members on each committee within 90 days of listing date Fully independent committees within 1 year of listing date
Controlled company	Within 1 year of status change from controlled to non-controlled company	No special exemption for controlled companies; see IPO above	No special exemption for controlled companies; see IPO above	At least 1 independent member on each committee by date of status change Majority of independent members on each committee within 90 days of the date of status change Fully independent committees within 1 year of status change

* Nasdaq does not technically require that there be a nom/gov committee (just independent board oversight of director nominations) but the typical approach is to have a nom/gov committee. There is no minimum number of nom/gov committee members (i.e., it can be committee of one but that is not typical). Nasdaq requires at least two compensation committee members. Both NYSE and Nasdaq require at least three audit committee members

Managing Conflicts and Antitrust Issues

Conflicts of Interest

- Basic idea: boards must manage conflicts of interest that could impair a director's ability to make decisions that are in the best interests of shareholders
- NYSE/Nasdaq requirements: companies must have codes of conduct addressing actual and apparent conflicts, and any waivers granted to directors must be disclosed within 4 business days
- Examples of conflict situations:
 - Director or family member does business with a competitor
 - Company does business with a director's or family member's business
 - Director stands on both sides of a company transaction

Antitrust Issues

- Basic idea: antitrust laws prohibit interlocking director & officer roles that could be anti-competitive
 - Clayton Act: directors are prohibited from serving as a director or officer of a competitor of the company (subject to de minimis thresholds)
 - Sherman Act: certain director affiliations with a competitor or supplier of the company may require firewall procedures
- Process for managing:
 - Corporate opportunity waivers
 - D&O questionnaire process
 - Notification/approval requirements to nominating committee
 - Director training
 - Potential director recusal

Update on Consent and Board Nomination Rights: DGCL Amendments

- Effective August 1, 2024, the Delaware General Corporation Law (the “DGCL”) was amended to address the *Moelis* case (along with *Crispo and Activision*).
- *Moelis*-related amendments address the following:
 - **Authority to enter into contracts.** The amendments add a new subsection (18) to Section 122 of the DGCL to provide that, whether or not set forth in a certificate of incorporation, assuming there is consideration (which can be non-financial), a corporation has the power to enter into contracts with current or prospective shareholders that contain the consent rights and other provisions addressed in *Moelis*. Specifically, the amendments contain a nonexclusive list of provisions that may be included in such contracts, including those that:
 - restrict or prevent the corporation from taking actions specified in the contract, either generally or absent the consent of one or more persons or bodies (including one or more directors or shareholders); and/or
 - covenant that the corporation or one or more persons will take or refrain from taking actions specified in the contract (including one or more directors or shareholders).
 - By allowing the contract to restrict corporate action absent the consent of one or more directors, the amendments confirm that such contractual consent rights do not violate Section 141(d) of the DGCL, which generally requires that provisions granting directors differential voting powers be contained in the certificate of incorporation.
 - **Limitation.** A proviso was added to the amendments that no provision of such a contract will be enforceable against the corporation if it is contrary to the charter; or would be contrary to Delaware law (other than Section 115 of the DGCL) if added to the charter.
 - **Fiduciary duties.** The amendments do not alter the fiduciary duties of directors, or existing standards of review, with respect to a decision to enter into such contracts or to breach such contracts.

Update on Consent and Board Nomination Rights: *Wagner v. BRP (Del. Ch. May 28, 2024)*

- **Facts.** The company, an insurance business co-founded by Lowry Baldwin, his son and two partners, went public through an Up-C IPO. In connection with the IPO, the company and its pre-IPO holders (the founders, several executives and others) entered into a shareholders agreement that granted the pre-IPO holders various approval rights.
- **Challenged provisions.** Plaintiff challenged the validity of three approval rights contained in the shareholders agreement (the “Challenged Provisions”):
 - the “officer pre-approval requirement,”
 - the “charter pre-approval requirement,” and
 - the “transaction pre-approval requirement.”
- **Mooting out the claim.** In response to the litigation, the company entered into a Consent and Defense Agreement (the “Consent Agreement”) where the majority pre-IPO holder, an entity controlled by the founder, agreed to approve any matter requiring consent under the shareholders agreement that a committee comprised of all of the independent directors unanimously determined in good faith is in the best interests of the company and its shareholders.
- **Decision.**
 - As in *Moelis*, the court found the Challenged Provisions (as adopted) facially invalid under Section 141(a). However, because the Consent Agreement broadly enabled the independent directors to override the pre-approval requirements, in this case, the Challenged Provisions survived the Section 141(a) challenge.
 - However, the “officer pre-approval requirement” was found invalid under Section 142. The opinion suggests a consent right over officer-related issues in a shareholder’s agreement could still be invalid as violating Section 142 of the DGCL.
 - In addition, the “charter pre-approval requirement” was found invalid as violating the sequencing requirements of Section 242 under the DGCL. The opinion further suggests that a consent right over any matter that requires shareholder approval following board approval (such as charter amendments, mergers, and dissolutions) would be invalid under Delaware law (again, in a way that the recent DGCL amendments do not fix).

Anti-ESG Pressure on Investors

State Legislatures

Asset managers are likely to face different investment stewardship expectations depending on the party affiliation of the state customer, as anti-ESG states have become increasingly vocal:

- AGs of 19 states sent a letter to BlackRock critiquing its position on energy investments in administering state pension funds.
- >20 states have adopted a form of anti-ESG rule, such as legislation requiring the state to divest from companies that boycott certain industries (e.g., fossil fuels or firearms), or prohibiting consideration of ESG factors for state-sponsored investments.
- In December 2022, Florida divested \$2B in investments in BlackRock and in March 2024, the Texas State Board of Education announced the termination of its \$8.5B investment with BlackRock.
- In December 2023, the State of Tennessee filed a lawsuit against BlackRock alleging that BlackRock had breached consumer protection laws by making misleading statements regarding its ESG investment strategies.

Federal Pressure

Similarly, in March 2024, the House introduced a bill to prohibit tax-advantaged retirement plan trustees from considering factors other than financial risk and return when making investment decisions.

Impacts So Far

Asset managers have begun to pivot messaging on ESG issues:

- Climate Action 100+: JPMorgan, Goldman Sachs and State Street have announced their withdrawal from the largest investor coalition focused on corporate action toward mitigating climate change; BlackRock Inc. shifted participation to BlackRock International.
- Lower support for shareholder proposals: voting reports from BlackRock, State Street and T. Rowe Price reflect lower support rate for E&S shareholder proposals.
- Refined external messaging: Vanguard toned down discussion of board diversity & BlackRock's 2024 annual CEO letter from Larry Fink did not mention ESG; BlackRock updated voting guidelines to remove numerical diversity targets.

ESG investing continues to be a highly politicized topic

Executive Orders

On January 22, 2025, President Trump issued an executive order revoking, among others, Executive Order 11246, which was the longstanding order prohibiting discrimination in federal contracting and requiring government contractors to maintain affirmative action plans to ensure equal opportunity. The executive order seeks to “end illegal DEI discrimination” and directs, among other things, agency heads to identify **large corporate targets for DEI investigations**.

- Agency heads are directed within 120 days to provide the Domestic Policy Council with “strategic enforcement plan[s] identifying”:
- “A plan of specific steps or measures to **deter DEI programs or principles** (whether specifically denominated ‘DEI’ or otherwise) that constitute illegal discrimination or preferences. As a part of this plan, each agency shall identify up to nine potential **civil compliance investigations of publicly traded corporations**, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars.”
- “Other strategies to encourage the private sector to **end illegal DEI discrimination** and preferences and comply with all Federal civil-rights laws.”

On January 20, 2025, President Trump issued an executive order that defines “sex” as “an individual’s immutable biological classification as either male or female” and directs federal agencies to “**enforce laws governing sex-based rights**, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes.”

- This order could lead to enforcement actions against private employers if they do not provide “single-sex spaces” such as bathrooms or if they take disciplinary action against employees for “express[ing] the binary nature of sex.”
- The order also affects government grant recipients. Although it does not restrict grantees’ use of their own funds, it directs agencies to ensure that “grant funds do not promote gender ideology.”

Investor and Proxy Advisory Firms' Responses to anti-DEI pressures

- On January 7, 2025, the Texas State Attorney General (the “AG”) closed his review regarding whether several U.S. banks, including Bank of America, JPMorgan, and Morgan Stanley, should be characterized as energy boycotters under Senate Bill 13.
 - The law prohibits Texas governmental entities from contracting with companies identified as boycotting the oil and gas industry, and the AG’s investigation had included scrutiny of the banks’ membership in the **Net-Zero Banking Alliance**, which the AG described as “radical and anti-energy.”
 - These and other major U.S. banks had all left the alliance as of early January 2025, prompting the AG to close his investigation.
- In December 2024, BlackRock released its latest proxy voting guidelines, which are effective January 2025. In particular, the guidelines **softened expectations regarding board gender and racial diversity**.
 - Previously, BlackRock had expected 30% diversity.
 - Now, BlackRock may vote against members of an S&P 500 company’s nominating/governance committee if its composition is outside of market norms.
 - BlackRock will also no longer ask boards to consider ethnicity, race, and gender in evaluating board composition. Instead, the guidelines ask boards to disclose “[h]ow diversity, including professional and personal characteristics, is considered in board composition, given the company’s long-term strategy and business model.”
- Vanguard similar **walked back some of its board diversity expectations**.
- ISS announced that it **will not enforce its board diversity policy** during this proxy season.

Attorney Bios

04



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Michelle M. Gourley is a Partner in the Orange County office of Gibson, Dunn & Crutcher and is a member of the firm's Mergers and Acquisitions and Private Equity Practice Groups.

Ms. Gourley is a corporate transactional lawyer whose experience includes advising both strategic companies and private equity clients (including their portfolio companies) in connection with public and private merger transactions, stock and asset sales, joint ventures, strategic partnerships, and other complex corporate transactions. Ms. Gourley works with clients across a wide range of industries, and has extensive experience working with life sciences companies (pharma and medical device) and media, technology and entertainment companies.

Ms. Gourley graduated, *magna cum laude*, from the J. Reuben Clark Law School at Brigham Young University (J.D., 2007). Ms. Gourley earned her undergraduate degree from Brigham Young University (B.A., French, political science, 2004). Ms. Gourley is an active member of the firmwide Diversity Committee.

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Prior to joining Gibson, Dunn & Crutcher, Ms. Lapitskaya was an associate in the New York office of Davis Polk & Wardwell, LLP, where she advised clients on executive compensation, equity-based incentives, deferred compensation, severance plans and other compensatory arrangements, with particular emphasis on disclosure issues and issues arising in initial public offerings and mergers and acquisitions transactions.

Ms. Lapitskaya is a frequent author and speaker on securities law and ESG issues and is a member of the Society for Corporate Governance. She also contributed to a chapter in the "Executive Compensation Disclosure Handbook: A Practical Guide to the SEC's Executive Compensation Disclosure Rules" as well as in the treatise "A Practical Guide to SEC Proxy and Compensation Rules." Most recently, *Expert Guides* has named Ms. Lapitskaya to its Rising Stars 2022 Guide, which recognizes the brightest and most talented practitioners under 40 in the area of business law and related practices, *Euromoney* named her among its 2022 Rising Stars in the Americas region and *Lawdragon* named her to The 2024 Lawdragon 500 X – The Next Generation.

Ms. Lapitskaya earned her Juris Doctor in 2010 from the New York University School of Law, where she served as Developments Editor of the *Journal of International Law and Politics*. Prior to attending law school, Ms. Lapitskaya graduated *summa cum laude* from Fordham University with Bachelor of Arts degrees in Economics and Political Science and was elected to Phi Beta Kappa.

EDUCATION

New York University
Juris Doctor

Fordham University
Bachelor of Arts



EDUCATION

University of California - Los Angeles
Juris Doctor

Harvard University
Bachelor of Arts

Peter Wardle

Partner / Los Angeles

Peter W. Wardle is a partner in the Los Angeles office of Gibson, Dunn & Crutcher. He is a member of the firm's Corporate Transactions Department and co-chair of its Capital Markets Practice Group, and previously served as partner in charge of the Los Angeles office.

Peter's practice includes representation of issuers and underwriters in equity and debt offerings, including IPOs and secondary public offerings, and representation of both public and private companies in mergers and acquisitions, including private equity, cross border, leveraged buy-out and going private transactions. He has led the execution of IPOs across industries on both the issuer side and underwriter side, including some of the largest transactions in the year they were completed. He also advises clients on a wide variety of general corporate and securities law matters, including corporate governance and disclosure issues.

Peter earned his Juris Doctor in 1997 from the University of California, Los Angeles, School of Law, where he was elected to the Order of the Coif and served as business manager of the *UCLA Law Review* and articles editor of the *UCLA Entertainment Law Review*. He received a Bachelor of Arts degree *cum laude* in 1992 from Harvard University. Peter is a member of the Board of Directors and chair of the Governance Committee for The Colburn School. He is a member of the firm's Compensation Committee, National Pro Bono Committee, and serves as one of the *pro bono* partners for the Los Angeles area offices.



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Jonathan Whalen is a partner in the Dallas office of Gibson, Dunn & Crutcher LLP. He is a member of the firm's Mergers and Acquisitions, Capital Markets, Energy and Infrastructure, and Securities Regulation and Corporate Governance practice groups. Mr. Whalen also serves on the Gibson Dunn Hiring Committee.

Mr. Whalen's practice focuses on a wide range of corporate and securities transactions, including mergers and acquisitions, private equity investments, and public and private capital markets transactions. *Chambers USA* named Mr. Whalen an Up and Coming Corporate/M&A attorney in their 2022 publication. In 2018, *D CEO* magazine and the Association of Corporate Growth named Mr. Whalen a finalist for the 2018 Dallas Dealmaker of the Year.

Mr. Whalen received his law degree *summa cum laude* in 2009 from the SMU Dedman School of Law, where he was a member of the Order of the Coif and served as an Articles Editor on the *SMU Law Review*. He earned his Bachelor of Science degree *summa cum laude* and his Masters of Business Administration degree from Louisiana Tech University.

EDUCATION

Southern Methodist University
Juris Doctor

Louisiana Tech University
MBA

Louisiana Tech University
Bachelor of Science