

# **CAPITAL MARKETS:** **PIPE TRANSACTIONS**

**March 31, 2026**

**GIBSON DUNN**

# Presenters



**Hillary Holmes**

Partner  
Houston



**Eric Scarazzo**

Partner  
New York



**Branden Berns**

Partner  
San Francisco



**Rachel Kleinberg**

Partner  
Palo Alto

# AGENDA

---

**01** PIPEs Overview

---

**02** Deal Structure

---

**03** Approval Requirements

---

**04** Case Study

---

**05** SEC Reporting & Tax Considerations

---

# OVERVIEW OF PIPE TRANSACTIONS

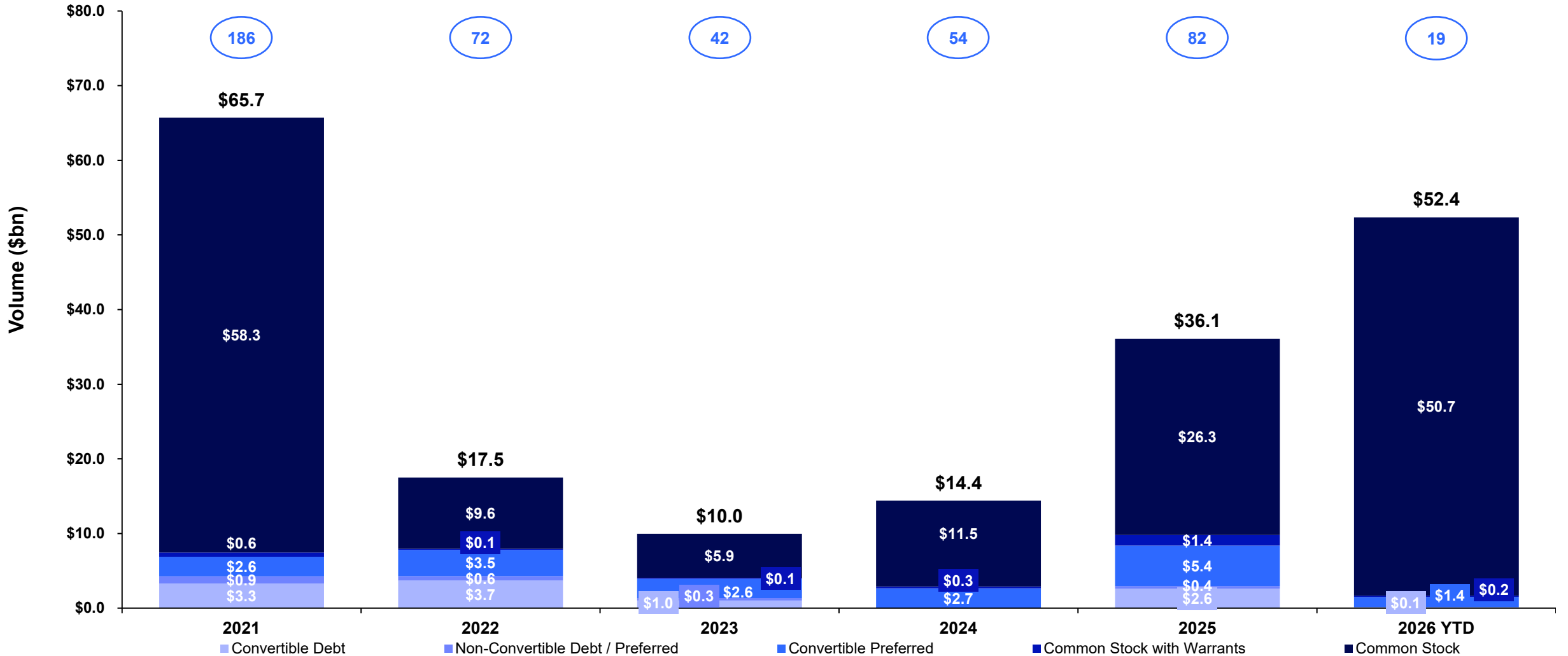
01

# Background

## PIPE: Private Investment in Public Equity

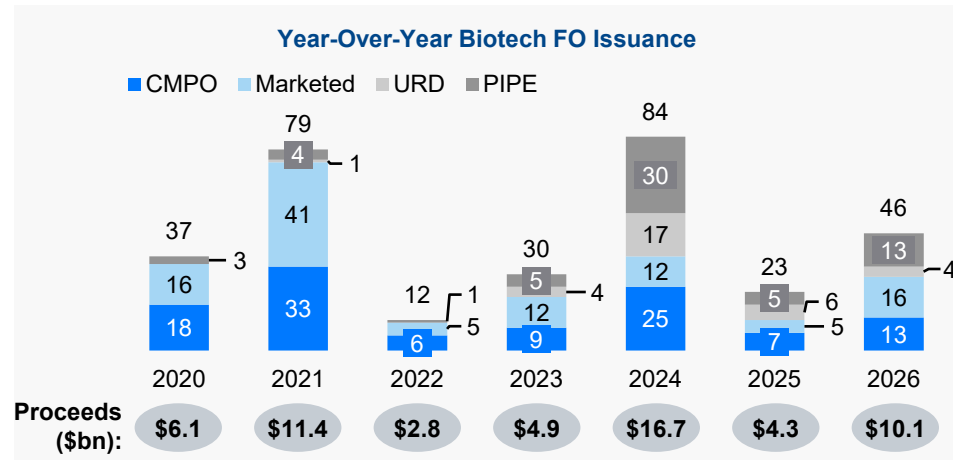
- *Definition*. A private placement by a public company of equity or equity-linked securities to selected accredited investors.
- *Typical Characteristics*. Generally, **less than 20%** of issuer's equity, with **restrictions on trading** issued securities for a certain period of time. Transactions are **private** and often **highly negotiated**.
- *Typical Context*. Higher cost of capital than debt, so issuers traditionally utilize PIPEs when credit market is inaccessible or impractical. Tightening of credit market can also push financial sponsors to invest in PIPEs because of potential for high returns and difficulty of engaging in leveraged buyouts.

# Overview – Sponsor PIPE Issuances

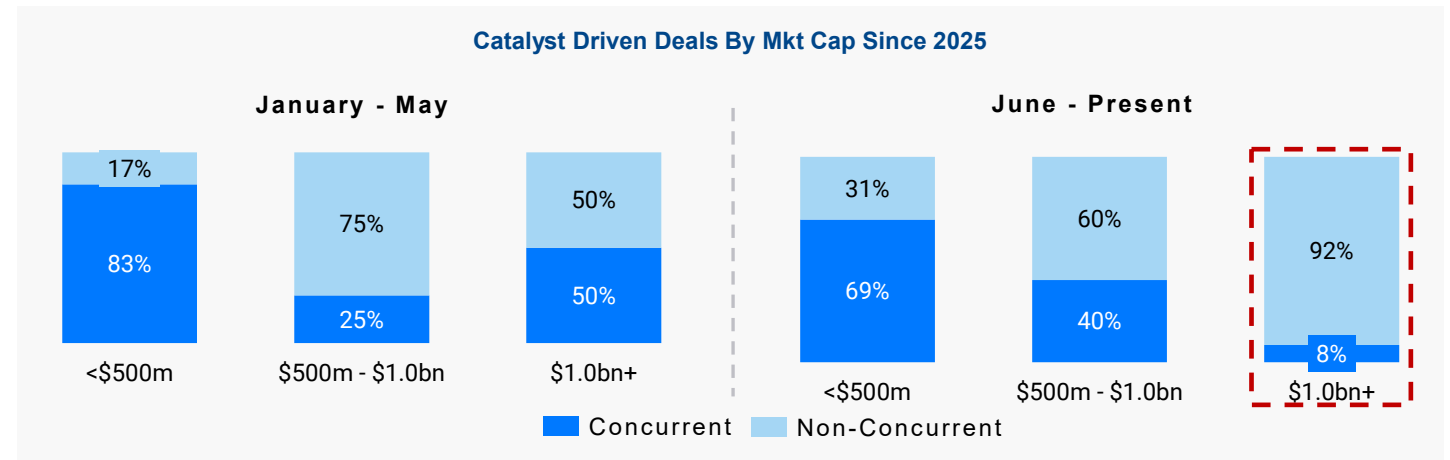


# Sustained Strength in the Biotech Follow-on Market in Early 2026

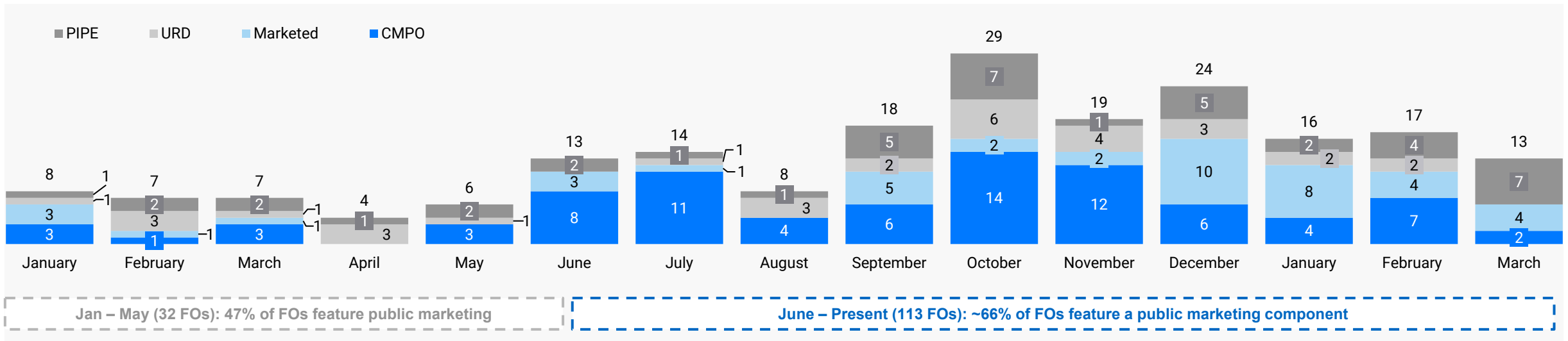
## Biotech Follow-on Issuance off to a Strong Start to 2026



## Markets Are Rewarding Positive Data, While Concurrent Deals Are Becoming Less Common for Larger Companies



## Despite the Volatile Backdrop, Biotech Companies are Still Utilizing Public Marketing in Follow-on Offerings



# Advantages of PIPEs

PIPEs are highly customizable, fast and available when other financing sources may not be.



## Availability

- *Issuer*. Can be executed when debt financing or public equity offering may not be possible.
- *Financial Sponsor as Investor*. Attractive alternative to LBOs.

## Execution


- *Speedy and Confidential Transaction*. Reduces burden on management and transactions costs and can be executed quickly and quietly without advance public disclosure.
- *Diligence*. May be limited due to investor sophistication and investors' desire not to receive MNPI, although many investors do require significant due diligence.
- *Securities Registration*. Registration not required and not subject to "baby shelf" restrictions.

## Investment

- *Customization*. Securities can be specifically tailored to objectives of investor and issuer.
- *Investor Base*. Issuer can target specific investors and expand base of institutional investors.
- *Strong Platform*. Investor can quickly gain significant position in promising public company.

# Disadvantages of PIPEs

The market for PIPEs may be opaque, and PIPEs may create post-investment obligations.



	Availability	Execution	Investment
Issuer	<ul style="list-style-type: none"> <li><i>Network Required.</i> Knowledge of investors required, given significant participation in market by hedge funds and distressed investors.</li> </ul>	<ul style="list-style-type: none"> <li><i>Price Discount and Dilution.</i> Purchase price often heavily discounted and may be significantly dilutive.</li> <li><i>Approvals, Compliance and Registration.</i> May require shareholder approval under Nasdaq or NYSE rules (refer to Annex A), HSR or other filings (refer to Annex B) or approvals or SEC registration on back end.</li> </ul>	<ul style="list-style-type: none"> <li><i>Compromises.</i> May signal desperation, require giving up some control and have chilling effect on subsequent acquisition of issuer or future financing activity.</li> </ul>
Investor	<ul style="list-style-type: none"> <li><i>Limited Market.</i> Limited and opaque market for PIPE issuers.</li> </ul>	<ul style="list-style-type: none"> <li><i>Limited Diligence.</i> Diligence and transactional timeline may be accelerated.</li> </ul>	<ul style="list-style-type: none"> <li><i>Ownership Hurdle.</i> Significant Nasdaq and NYSE hurdles for investments over 20% (refer to Annex A)</li> </ul>

# Alternative: Open Market Purchases

## Alternative to PIPEs: Open Market Purchases

- *Simple Execution; No Discount.* Open market purchases require minimal documentation, but are made at prevailing market prices.
- *Potential Reporting Obligations.* Crossing certain ownership thresholds will trigger SEC reporting obligations under the Exchange Act (See [Annex D](#) for further discussion):
  - **5% or greater:** Schedule 13D/13G Beneficial Ownership reports
  - **More than 10%:** Section 16 transaction reports (Forms 3, 4, and 5) and disgorgement of “short swing” profits
- *Other Securities Law Issues.*
  - **“Affiliate” Status:** An investor holding more than 10% of an issuer's equity or otherwise possessing significant influence over management (including rights relating to the appointment of directors or officers) is frequently considered to be an "affiliate" of the issuer and may be subject to restrictions on resales of their shares.
  - **HSR:** An investor holding more than 10% of an issuer's equity may be required to make an HSR filing and observe a 30-day waiting period for certain purchases (See [Annex B](#) for further discussion)

# DEAL STRUCTURE

02

# Key Terms

PIPE terms generally revolve around the following:

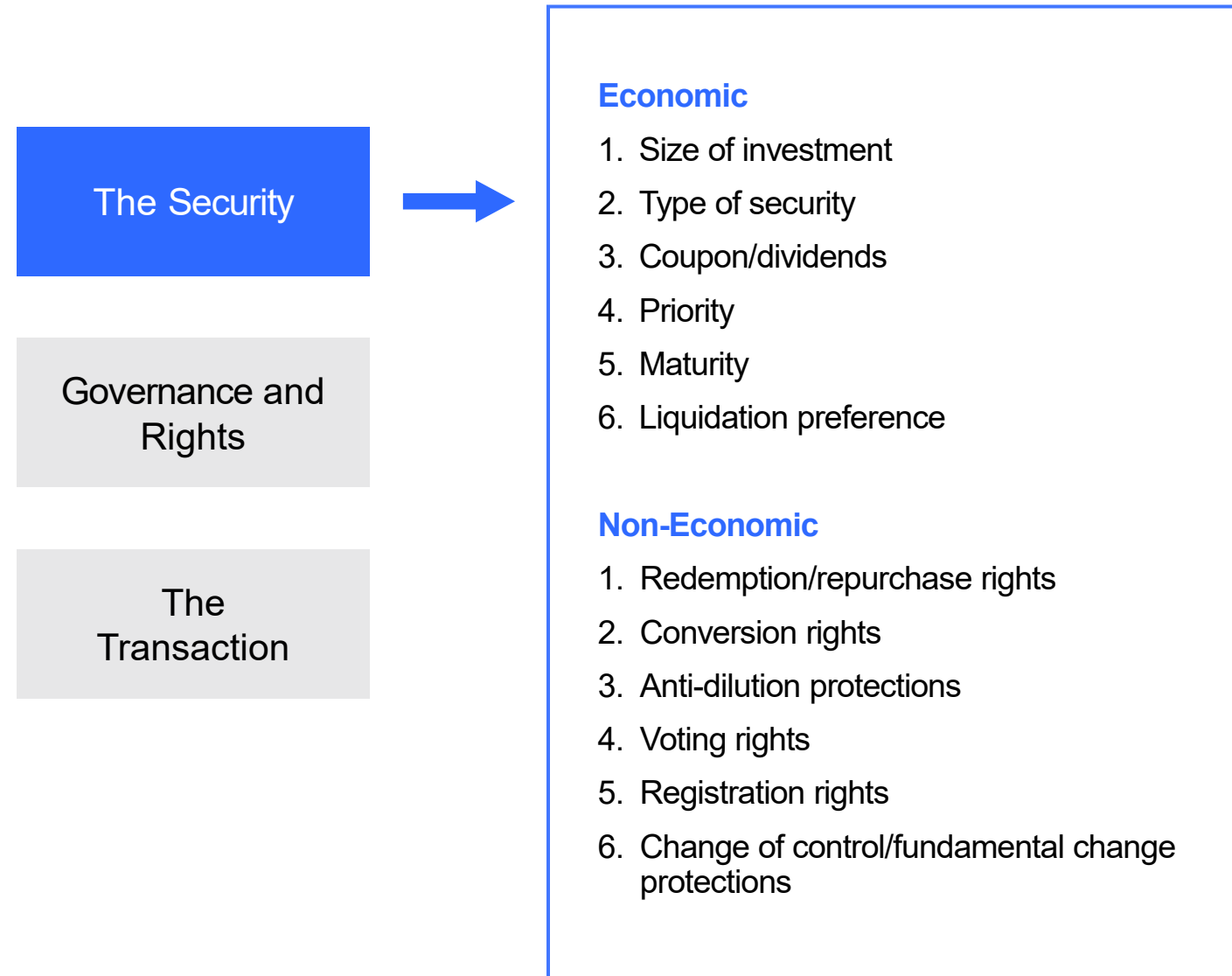
The Security

Governance and Rights

The Transaction

# The Security

PIPE terms generally revolve around the following:



# Governance and Rights

PIPE terms generally revolve around the following:

The Security

Governance and  
Rights

The  
Transaction



## Investor Rights

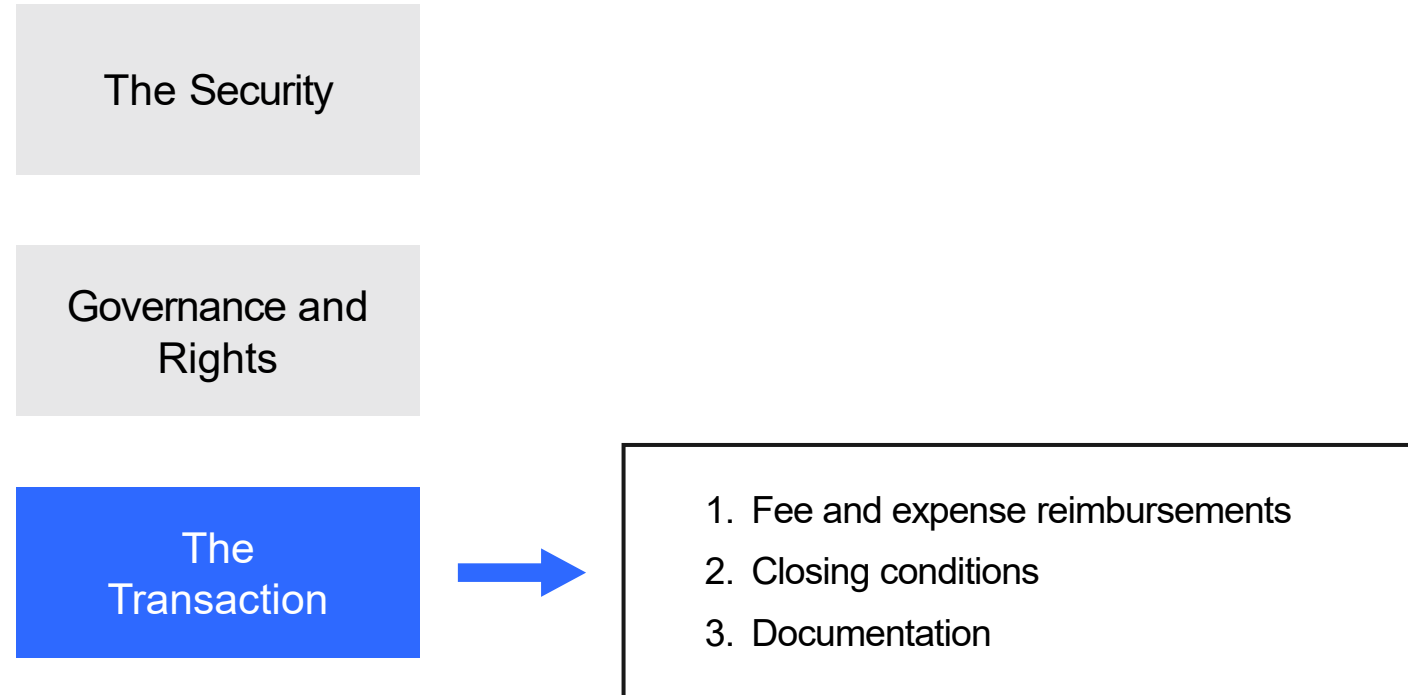
1. Board seats and observer rights
2. Consent and approval rights
3. Preemptive/participation rights
4. Information rights
5. Covenants, defaults and remedies
6. Other

## Issuer Protections

1. Standstill
2. Restrictions on transfer
3. Voting agreements
4. Other

# The Transaction

PIPE terms generally revolve around the following:



# Issuer Considerations

Select Issuer considerations also include:

## State Law

- Board fiduciary duties, including conflicts of interest
- Adequacy of authorized capital
- Poison pill triggers
- DGCL § 203 and similar anti-takeover statutes

## Contractual

- Existing preemptive, anti-dilution, registration and similar rights
- Debt covenants
- Standstill and voting agreements
- Restrictions on transfer/lock-up

## Governmental and Securities

- HSR, CFIUS and other regulatory filing or approval requirements (*refer to Annex B*)
- Stock exchange shareholder approval rules (*refer to Annex A*)
- Confidentiality, Reg FD and disclosure issues
- SEC private placement and resale registration rules

## Other

- Accounting and tax considerations (*refer to Annex C*)

# Investor Considerations

Select Investor considerations also include:

## Economic

- Investment return objectives
- Liquidity and trading issues

## Transaction

- Diligence
- Change of control triggers, poison pill and DGCL § 203 and similar anti-takeover statutes
- Closing conditions, termination and other fees
- Expense reimbursement and indemnification

## Protections

- Position in capital structure
- Board, governance and information rights
- Use of proceeds, covenant protections and remedies for default events

## Fund/Compliance

- Investment restrictions and mandates
- Implications of potential “affiliate” and “insider” status
- Section 13d and Section 16 issues (*refer to Annex D*)
- HSR, CFIUS and other regulatory filing or approval requirements (*refer to Annex C*)

# APPROVAL REQUIREMENTS

03

# NYSE Requirements for Shareholder Approval

The following is a summary of the NYSE shareholder approval rules that may apply to a PIPE\*:

20% Test	Related Party Rules	Change of Control <sup>3</sup>	Equity Compensation
<ul style="list-style-type: none"> <li>Shareholder approval required prior to the issuance (other than in a public offering for cash) of common stock (or securities exercisable for or convertible into common stock) representing 20% or more of the shares or voting power outstanding before the issuance <u>unless</u> the cash price or conversion/exercise price per share is at least as great as the Minimum Price.<sup>1</sup></li> <li>Shareholder approval <u>also</u> required (regardless of price) if such issuance is in connection with an acquisition and such shares, alone or combined with any other issuance in connection with such acquisition, represent 20% or more of the shares or voting power outstanding before the issuance. Rule 312.03(c).</li> </ul>	<ul style="list-style-type: none"> <li>Shareholder approval required prior to the issuance of common stock (or securities exercisable for or convertible into common stock) to any director, officer, controlling shareholder or member of a control group or any other substantial security holder<sup>2</sup> of the company that has an affiliated person who is an officer or director of the company (each an "Active Related Party") if such shares exceed either 1% of the number of shares or voting power outstanding before the issuance, <u>unless</u> the transaction is a cash sale for a price that is at least the Minimum Price.<sup>1</sup></li> <li>Shareholder approval <u>also</u> required where such securities are issued as consideration in a transaction or series of related transactions in which a director, officer or substantial security holder<sup>2</sup> of the company (each a "Related Party") has a 5% or greater interest (or Related Parties collectively have a 10% or greater interest) in the company or assets or be acquired or in the consideration to be paid in the transaction AND such shares, once issued, could exceed 5% of the shares or voting power outstanding before the issuance. Rule 312.03(b).</li> </ul>	<p>Shareholder approval will be required if the issuance of the shares results in a change of control of the issuer. Rule 312.03(d).</p>	<p>Shareholder approval is required for all equity compensation plans and material revisions thereto. Rule 312.03(a).</p>

# NYSE Requirements for Shareholder Approval

**Financial Viability Exception:** Shareholder approval may not be required if the time required to secure approval would seriously jeopardize the financial viability of the issuer and certain procedural requirements are complied with. Rule 312.05.

**Mixed Financing Sources:** The NYSE generally treats a series of related transactions as a single, aggregated transaction when applying the shareholder approval tests.

**Adjustment Provisions in Convertible Securities and Warrants:** Certain adjustment provisions of convertible securities and warrants, such as anti-dilution protections and resets, can result in a conversion or exercise price that is less than market price at the time of issuance and increase the number of shares issuable upon conversion or exercise. As a result, these provisions should be carefully analyzed for implications under the shareholder approval rules.

- 
- \*Note: In addition to potential shareholder approval issues, a PIPE can also implicate NYSE's voting rights rule, such as where an investor gets board seats and/or consent or approval rights.
1. **Minimum Price.** The lower of (i) the official closing price on the NYSE as reported immediately preceding the signing of a binding agreement to issue securities, or (ii) the average of the official closing price for the five trading days immediately preceding the signing of a binding agreement to issue securities.
  2. **Substantial Security Holder.** The term "substantial security holder" is not defined in the rules. There is a safe harbor, however, that says any person who owns less than 5% of the stock and voting power is not a substantial security holder. Rule 312.04(e).
  3. **Change of Control.** The NYSE does not define the term "change of control." The analysis is based on facts and circumstances. Among factors to consider are percentage ownership, board rights, consent/veto rights over corporate action and other relationships. A change of control can potentially be implicated in situations where an investor beneficially owns as little as 20% of the issuer's common stock or voting power after the transaction or in other situations (including where ownership is less than 20%) where an investor is deemed to "control" the issuer following completion of the transaction.

# Nasdaq Requirements for Shareholder Approval

The following is a summary of the Nasdaq shareholder approval rules that may apply to a PIPE\*:

20% Test	Issuance in connection with acquisition of another company's stock or assets	Change of Control <sup>3</sup>	Equity Compensation
<p>Shareholder approval required prior to any issuance (other than in a public offering) of common stock (or securities convertible into or exercisable for common stock) at less than the Minimum Price<sup>1</sup>, which, alone or together with sales by officers, directors or substantial shareholders<sup>2</sup>, equals 20% or more of shares or voting power outstanding before the issuance.</p> <p>Rule 5635(d).</p>	<p>Shareholder approval required prior to the issuance of common stock (or securities convertible into or exercisable for common stock) in connection with the acquisition of the stock or assets of another company if:</p> <ul style="list-style-type: none"> <li>• such shares represent 20% or more of the shares or voting power outstanding before the issuance OR</li> <li>• any director, officer, or substantial shareholder<sup>2</sup> has a 5% or greater interest (or such persons collectively have a 10% or greater interest) in the company or assets to be acquired or in the consideration to be paid in the transaction AND such shares, once issued, could exceed 5% of the shares or voting power outstanding before the issuance.</li> </ul> <p>Rule 5635(a)(2).</p>	<p>Shareholder approval required if the issuance of the shares results in a change of control of the issuer. Rule 5635(b).</p>	<p>Shareholder approval is required prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants. Rule 5635(c).</p>

# Nasdaq Requirements for Shareholder Approval

**Financial Viability Exception:** Shareholder approval may not be required if the time required to secure approval would seriously jeopardize the financial viability of the enterprise and certain procedural requirements are complied with. Rule 5635(f).

**Mixed Financing Sources:** Nasdaq generally treats a series of related transactions as a single, aggregated transaction when applying the shareholder approval tests.

**Adjustment Provisions in Convertible Securities and Warrants:** Certain adjustment provisions of convertible securities and warrants, such as anti-dilution protections and resets, can result in a conversion or exercise price that is less than market price at the time of issuance and increase the number of shares issuable upon conversion or exercise. As a result, these provisions should be carefully analyzed for implications under the shareholder approval rules.

---

\*Note: In addition to potential shareholder approval issues, a PIPE can also implicate Nasdaq's voting rights rule, such as where an investor gets board seats and/or consent or approval rights.

- 1. Minimum Price.** A price that is the lower of: (i) the closing price (as reflected on Nasdaq.com) immediately preceding the signing of the binding agreement; or (ii) the average closing price of the common stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the binding agreement. Rule 5635(d)(1)(A)
- 2. Substantial Shareholder.** An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of a Company or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a "substantial shareholder." Rule 5635(e)(3).
- 3. Change of Control.** Nasdaq does not define the term "change of control." The analysis is based on facts and circumstances. Among factors to consider are percentage ownership, board rights, consent/veto rights over corporate action and other relationships. A change of control can potentially be implicated in situations where an investor beneficially owns as little as 20% of the issuer's common stock or voting power after the transaction or in other situations (including where ownership is less than 20%) where an investor is deemed to "control" the issuer following completion of the transaction.

# Potential Solutions

## When stock exchange shareholder approval rights are implicated:

- Seek shareholder approval prior to and as a condition of issuance
- Provide for closing in tranches
- Implement caps and/or blockers
- Limit or prohibit conversion/exercise and voting prior to shareholder approval
- Issue non-voting/non-convertible instrument mandatorily exchangeable for voting and/or convertible instrument upon receipt of shareholder approval
- Implement structure that incentivizes shareholder approval but that does not violate stock exchange policies against alternative outcome clauses and use of penalties and/or sweeteners (e.g., Nasdaq IM-5635-2)
- Defer warrant exercisability (Nasdaq only)
- Financial viability exception
- Obtain ruling letter from stock exchange

# HSR & Other Filing / Approval Requirements

- A PIPE transaction may require a filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR), if the resulting holdings of the issuer's voting securities exceeds \$133.9 million in value.
- Closing and funding may be delayed to accommodate HSR filings and waiting period (up to 30 days from the date of signing the purchase agreement, subject to early termination).
- Applicability of similar filings required in other jurisdictions should also be reviewed.
- Foreign investors also need to consider CFIUS requirements. Issuers in regulated industries need to consider other potentially applicable regulatory filings and approvals as well.

# CASE STUDY

# Case Study: Non-Voting Preferred "Common Equivalent" Structure

Navigating the Nasdaq 20% Rule using common stock up to 19.9% with the remainder in non-voting convertible preferred stock that converts only upon stockholder approval.

## How the Structure Works

### 1 Common Stock Tranche

Issuer sells common stock representing up to **19.9%** of pre-transaction outstanding shares, staying below Nasdaq Rule 5635(d).



### 2 Non-Voting Preferred Tranche

Remaining investment is made in **non-voting convertible preferred stock** with economic parity to common but **no voting rights** and **no conversion rights** until stockholder approval.



### 3 Stockholder Vote & Conversion

Upon stockholder approval, preferred stock **automatically converts** into common stock at a fixed ratio, subject to beneficial ownership limits.

## Spyre Therapeutics (Nasdaq: SYRE) - Pioneering Example

Transaction	Date	Size	Common Stock	Non-Voting Preferred	Conversion
<b>December 2023 PIPE</b> (Common + Series B Preferred)	Dec. 7, 2023	\$180M	6,000,000 shares of common stock @ \$15.00/share	150,000 shares of Series B Non-Voting Convertible Preferred @ \$600.00/share	Each share converts into 40 shares of common stock upon stockholder approval
<b>March 2024 PIPE</b> (Series B Preferred)	Mar. 18, 2024	\$180M	—	121,625 shares of Series B Non-Voting Convertible Preferred @ \$1,480.00/share	Each share converts into 40 shares of common stock upon stockholder approval

### Speed of Execution

Allows the full investment amount to close immediately without waiting for a stockholder vote, which can take 30–90+ days to organize and complete.

### Economic Equivalence

Non-voting preferred is structured as a common equivalent with the same economic rights as common stock, preserving investor economics from day one.

### Compliance Pathway

Non-voting, non-convertible structure avoids triggering the Nasdaq 20% rule at closing. Automatic conversion upon stockholder approval ensures full compliance.

### Widely Adopted

Since the Spyre transactions, this structure has been adopted in numerous PIPE transactions, particularly in life sciences, as a market-standard approach.

# SEC REPORTING & TAX CONSIDERATIONS

05

# Accounting and Tax Considerations

- Accounting
  - Debt versus equity classifications and allocations under GAAP
  - Embedded derivatives
  - Beneficial conversion features
  - Implications of transaction structure on future reported earnings and financial condition
- Tax
  - Debt versus equity classification
  - Phantom income / OID considerations
  - Capital gain versus ordinary income
  - Impact on net operating losses, or NOLs

# Section 13d & Section 16 Issues

- Section 13d reporting
  - Becoming a 13d reporting person
  - "Group" issues
  - Potential need to convert existing 13G to 13D
  - 10-day limitation on voting and additional acquisitions in certain circumstances
- Section 16 "short swing" profits liability
  - Becoming a Section 16 reporting person
  - "Group" issues
  - Short swing profit disgorgement
- Use of conversion blockers

# GIBSON DUNN

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our [website](#).