

**A LOOK AT**

# **2019 SPONSOR- BACKED PIPES**

June 2020

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# INTRODUCTION & RESEARCH METHODOLOGY

Welcome to Weil, Gotshal & Manges LLP's survey of private investments in public equity transactions ("PIPEs") in the United States. In preparing this survey, we reviewed and analyzed the material terms of 9 PIPEs announced between January 1, 2019 and December 31, 2019 involving private equity sponsors or financial investors making investments of at least \$100 million. Specifically, the 9 surveyed transactions included the following issuers:

- DraftKings Inc.
- Ardelyx, Inc.
- Verint Systems Inc.
- Motorola Solutions, Inc.
- Altus Midstream Company
- Catalent, Inc.
- CommScope Holdings Company, Inc.
- Agiliti, Inc.
- IAC/InterActive Corp.

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

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\*Not Yet Admitted in New York

## SUMMARY OF KEY FINDINGS

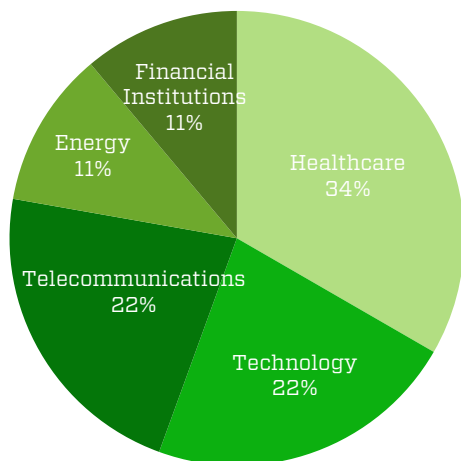
- Of the PIPEs surveyed (i) 3 were structured as common stock PIPEs for acquisition financing, and (ii) 6 were structured with a convertible security, which gave the sponsor some downside protection in the investment (4 as convertible preferred stock and 2 as convertible debt).
- Forced or automatic conversion triggers remain common among PIPEs involving convertible preferred stock and debt. Under such provisions, the security will convert into the common stock of the issuer at the issuer's discretion if the common stock trades above a specified price for a specified period. Of the 6 PIPEs surveyed involving convertible preferred stock or debt, 3 had such forced or automatic conversion provisions.
- Anti-dilution rights for stock splits and stock dividends to existing equity holders remain common and were provided by the issuer in all convertible preferred stock or debt PIPEs surveyed. 2019 saw an increase in issuers also granting weighted-average adjustment anti-dilution protection to sponsors if the issuer subsequently issued equity below a specified conversion price. Four of the 6 PIPEs surveyed that issued convertible preferred stock or debt gave sponsors this form of anti-dilution protection.
- In an increase from the previous year, sponsors received contractual consent and veto rights over board decisions in a majority of the PIPEs surveyed (5 of 9). Although these rights were largely limited to consent rights over adverse changes to organizational documents or to the terms or seniority of the securities issued to the sponsor, a minority of preferred PIPEs granted sponsors expanded veto rights, such as control over the issuer's ability to incur additional indebtedness in excess of an agreed leverage ratio.
- Board representation in 2019 PIPE transactions remained consistent with the previous year as a majority of the PIPEs granted the sponsor with board designation rights (5 of 9).
- The frequency of lock-up provisions remains consistent with 7 of 9 PIPEs surveyed providing for a lock-up. The average length of lock-ups decreased from previous years to approximately 1 year. The length of lock-ups ranged from a minimum of 180 days to a maximum of 2 years.
- The use of contractual standstill provisions were not present in a majority of the surveyed PIPEs. Only 4 of 9 PIPEs surveyed had standstills.

## KEY FINDINGS

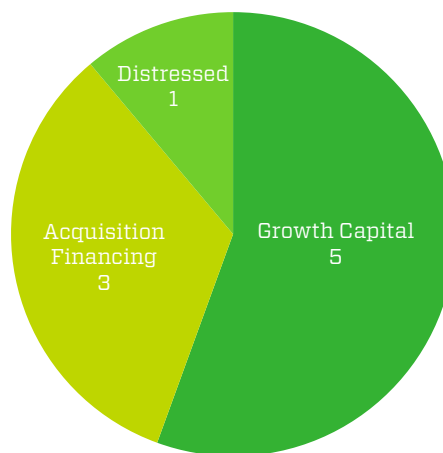
### INDUSTRIES & REASON FOR FINANCING

2019 saw the energy sector move away from PIPE transactions as public companies in the Healthcare, Telecommunications and Technology sectors continue to increase their PIPE activity in connection with acquisition financing and to attract growth capital investors.

INDUSTRY OF THE ISSUER

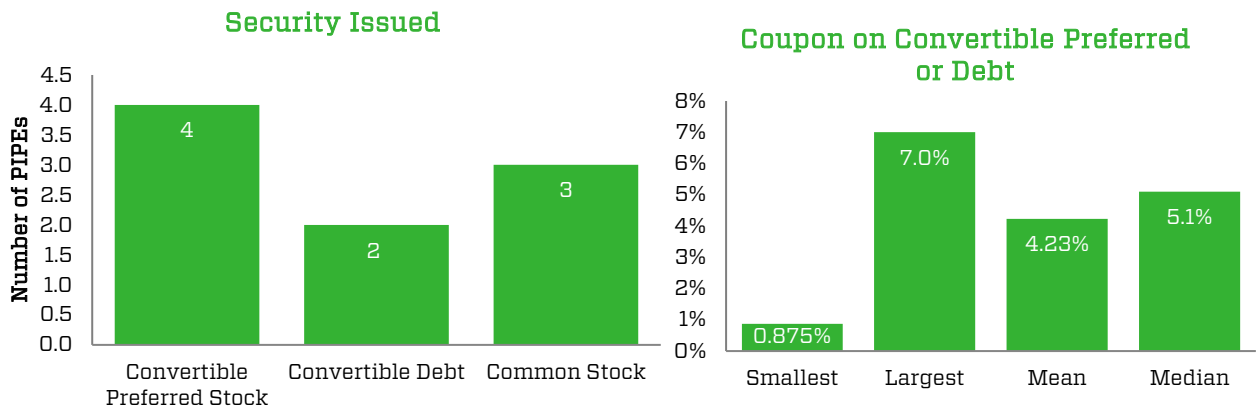


REASON FOR FINANCING



### INSTRUMENTS OFFERED

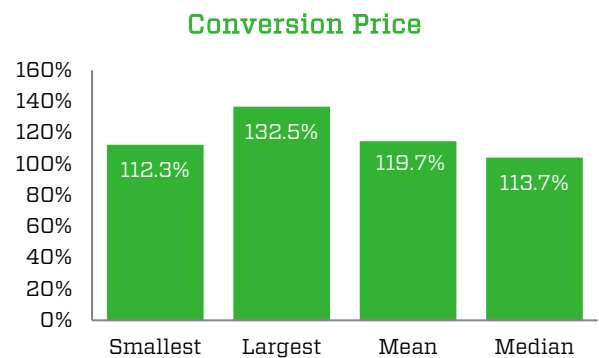
Consistent with last year, PIPEs structured as either convertible preferred stock or convertible debt were common, which gives the sponsor some downside protection in the investment. The coupons on convertible preferred stock have decreased from 2018. Sponsors investing in PIPEs in 2019 were willing to accept lower coupons as the median and mean coupons on convertible securities in those PIPEs surveyed have decreased to 4.2% and 5.1%, per annum, which is down from 6.4% and 6.7%, per annum, in 2018.



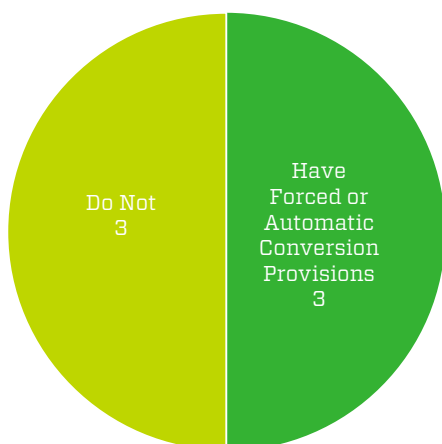
Only one of the 9 PIPEs surveyed were structured to include the issuance of warrants.

## CONVERSION PRICE

Most sponsor-backed convertible PIPEs are structured using a fixed conversion price. Of the 6 convertible preferred stock and convertible debt PIPEs surveyed, 5 employed a fixed conversion price, with 1 PIPE providing for a downward reset in the fixed conversion price following a reset trigger based upon a weighted average trading price over a set period of time. The median and mean conversion price of the 5 fixed PIPEs surveyed was 119.7% and 113.7% of the pre-announcement trading price of the common stock of the target company.

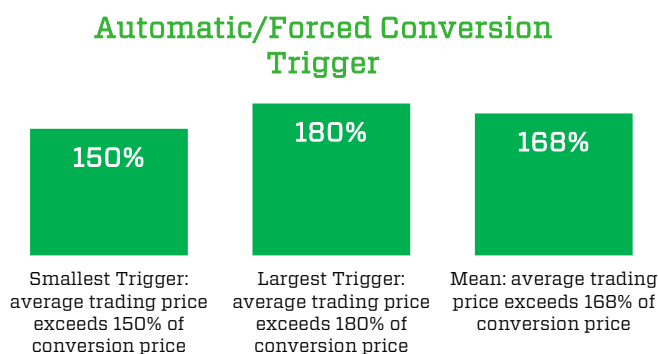


### Automatic/Forced Conversions



Forced conversion triggers remain common among PIPEs involving convertible preferred stock and debt. Under such provisions, the security will convert into the common stock of the issuer at the issuer's discretion if the common stock trades above a specified price for a specified period of time. Of the 6 PIPEs surveyed involving convertible preferred stock or debt, 3 provided for conversion at the issuer's discretion once the common stock trades above a specified price for a specified period of time.

Of the 3 PIPEs with forced or automatic conversion mechanisms, the mean of the triggers was an average trading price exceeding approximately 168% of the conversion price.



## SPONSOR PROTECTIONS

**Anti-dilution rights for stock splits and stock dividends remain common.** All of the convertible preferred stock or debt PIPEs gave investors some form of anti-dilution protection and 2019 saw an increase in the provision of full weighted-average adjustment anti-dilution protection. Four of 6 convertible preferred stock or debt PIPEs surveyed provided this protection in the event the issuer subsequently issued equity below a specified conversion price.

**A majority of PIPEs surveyed included additional sponsor protection.** Six of the 9 PIPEs surveyed, being all of the convertible preferred stock or debt PIPEs, provided the sponsor with redemption rights, exercisable at the option of the sponsor, to force an issuer to redeem its equity securities at a premium or at the initial purchase price (together with accrued and unpaid dividends) in the event of a sale or other change of control of the issuer or in some cases after a period of time.

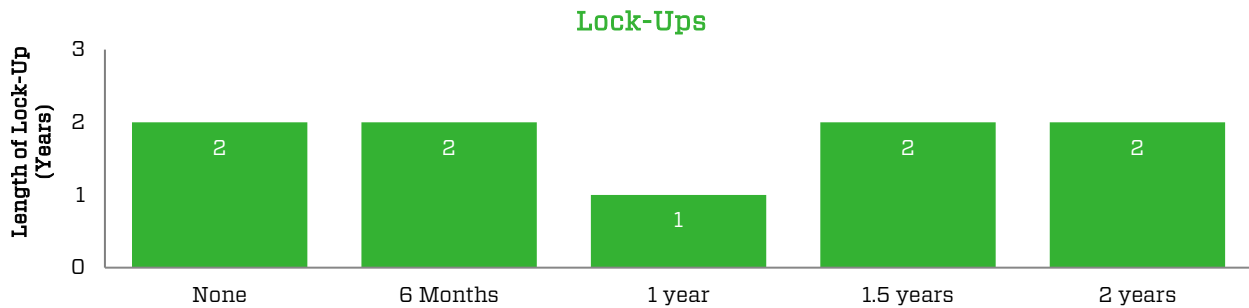
## GOVERNANCE RIGHTS

**In 2019, a majority of the PIPEs surveyed provided the sponsor with board designation rights, which have become customary in convertible PIPEs in recent years.** A majority of the convertible preferred stock or debt PIPEs surveyed provided the sponsor with 2 or more board seats.

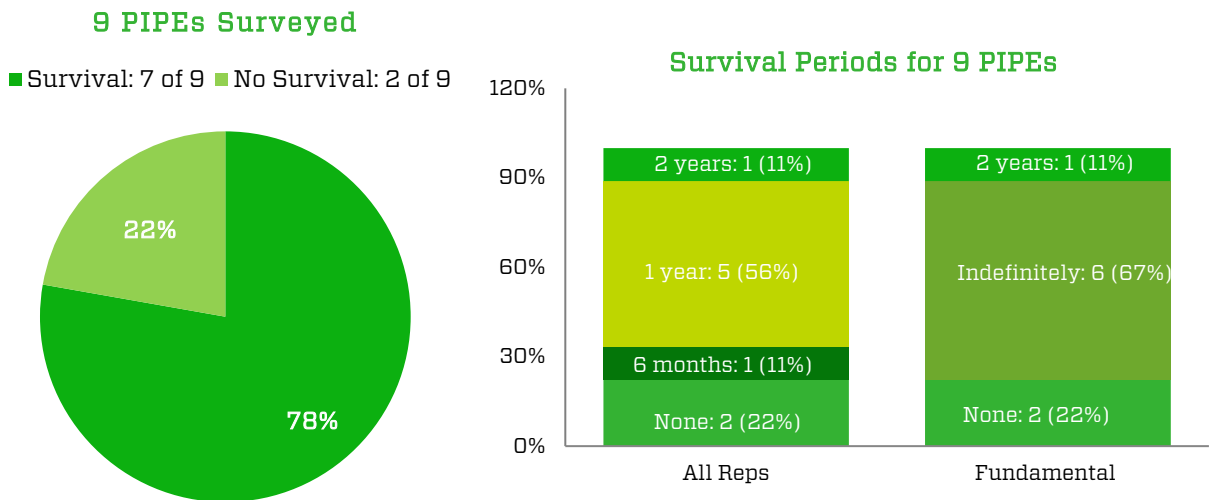
**Most of the PIPEs surveyed had contractual consent and veto rights over board decisions.** These rights were largely limited to consent rights over adverse changes to organizational documents or to the terms or seniority of the securities issued to the sponsor but a minority of PIPEs provided for expanded veto rights to the investor. Two PIPEs provided the sponsor with consent rights over additional indebtedness incurred by the issuer that would exceed an agreed leverage ratio.

# ISSUER PROTECTIONS

Most PIPEs have lock-up provisions, which is consistent with previous years, although issuers are agreeing to shorter periods than in 2018. Seven of the 9 PIPEs surveyed had lock-up provisions, of which 4 had lock-up provisions restricting the sponsor from transferring the equity of the issuer for 1.5 years or more but a majority of PIPEs surveyed provided for lock-ups that were for 1 year or less (or no lock-up).





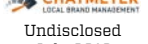

The frequency of contractual standstill provisions in PIPEs continues to be low. Four of the 9 PIPEs surveyed contained standstill provisions restricting the acquisition of any securities of the issuer for a fixed period of time, with the longest standstill lasting until the earlier of the third anniversary of the issuance or a change of control of the issuer.



A majority of PIPE issuers provided indemnification to sponsors for all representations and warranties given by such issuers under their respective securities purchase agreements. Of the 9 PIPEs surveyed, a majority of the issuers agreed to indemnify the investor for all representations and warranties of such issuer for one year following the Closing. With respect to the PIPEs that provided indemnification, the survival period for fundamental representations and warranties (e.g. Capitalization, Ownership and Authority) was indefinite except for 1 PIPE.



# REPRESENTATIVE PRIVATE EQUITY TRANSACTIONS

<b>Advent International</b> Sale of  \$700,000,000 January 2019	<b>Advent International</b> Acquisition of  Undisclosed June 2019	<b>Advent International</b> Culligan's acquisition  \$1,100,000,000 March 2020	<b>Advent International</b> Culligan's acquisition  Undisclosed September 2019	<b>American Securities</b> Acquisition of  Undisclosed December 2019	<b>Apax Partners and Fortino Capital</b> Sale of  Undisclosed July 2019	<b>Aquiline Capital Partners</b> Acquisition of  Undisclosed January 2020
<b>Aterian Investment Partners</b> Acquisition of  Undisclosed January 2019	<b>Aterian Investment Partners</b> acquisition of <b>Hain Pure Protein</b> Undisclosed July 2019	<b>Aterian Investment Partners</b> Pioneer's acquisition  Undisclosed February 2020	<b>Berkshire Partners</b> Recapitalization of  Undisclosed June 2019	<b>Berkshire Partners</b> Acquisition of <b>TERACO</b> AMERICA'S DATA CENTRE Undisclosed March 2019	<b>Berkshire Partners</b> Parts Town's acquisition of  Undisclosed October 2019	<b>The Blackstone Group</b> Acquisition of <b>ConcertGolf Partners</b> Undisclosed August 2019
<b>The Blackstone Group</b> Investment in  Undisclosed August 2019	<b>Brookfield Asset Management</b> Stake acquisition  \$4,800,000,000 September 2019	<b>Centerbridge Partners</b> Sale of  Undisclosed June 2019	<b>Centerbridge Partners</b> Sale of <b>P.F. Chang's</b> Undisclosed March 2019	<b>Cornell Capital</b> KDC/ONE's acquisition of  Undisclosed Pending	<b>Cornell Capital</b> Merger of  Undisclosed Pending	<b>Cornell Capital</b> KDC/ONE's acquisition of  Undisclosed November 2019
<b>CPP Investments</b> Majority acquisition  Undisclosed January 2020	<b>CPP Investments</b> Investment round  \$2,250,000,000 March 2020	<b>CPP Investments</b> Member of a consortium in the take-private of  \$11,000,000,000 May 2019	<b>CPP Investments</b> Merger of  \$22,000,000,000 Pending	<b>CPP Investments</b> Minority co-investor in  Undisclosed January 2019	<b>CPP Investments</b> Consortium's sale <b>REFINITIV</b>  \$27,000,000,000 Pending	<b>CPP Investments</b> Consortium's acquisition  \$2,700,000,000 October 2019
<b>CVC Capital Partners</b> sale of <b>PAREX</b> €2,200,000,000 May 2019	<b>Genstar Capital</b> Acquisition of  Undisclosed April 2019	<b>Genstar</b> Acquisition of  Undisclosed December 2019	<b>Genstar Capital</b> Sale of <b>PRETIUM</b> UNDISCLOSED SALES FROM EQUITY Undisclosed January 2020	<b>Genstar Capital</b> Acquisition of  Undisclosed April 2019	<b>Genstar Capital</b> Sale of <b>ECM INDUSTRIES</b> Undisclosed December 2019	<b>Gores Holdings III, Inc.</b> Business combination <b>PAE</b> \$1,550,000,000 February 2020
<b>Irving Place Capital</b> UHS' combination with  \$1,740,000,000 January 2019	<b>J.C. Flowers</b> Majority stake acquisition  \$148,750,000 August 2019	<b>J.C. Flowers</b> Jefferson's acquisition <b>Canastream Holdings Ltd.</b> Undisclosed March 2020	<b>Lee Equity Partners</b> Sale of  Undisclosed February 2019	<b>Mudrick Capital's SPAC</b> Acquisition of  \$537,000,000 May 2020	<b>Oak Hill Capital Partners</b> EPIC's acquisition  Undisclosed November 2019	<b>Oak Hill Capital Partners</b> Acquisition of  Undisclosed February 2019
<b>OTPP</b> Consortium member in the take-private bid for  \$3,300,000,000 December 2019	<b>Providence Equity</b> PIPE investment in <b>OUTFRONT</b> \$400,000,000 Pending	<b>Providence Equity</b> Acquisition of  Undisclosed August 2019	<b>Providence Equity</b> acquisition of <b>GLOBALTRANZ</b> Undisclosed May 2019	<b>Providence Equity</b> Investment in <b>TAIT</b> Undisclosed February 2019	<b>Providence Strategic Growth</b> Stake sale  Undisclosed September 2019	<b>Providence Strategic Growth</b> Acquisition of  Undisclosed January 2019
<b>Providence Strategic Growth</b> Minority investment in  Undisclosed January 2019	<b>Providence Strategic Growth</b> Acquisition of  Undisclosed July 2019	<b>PSP Investments</b> Co-investor in an Onex-led investment in  \$1,800,000,000 April 2019	<b>PSP Investments</b> Minority investment in  Undisclosed January 2019	<b>PSP Investments</b> Together with <b>Lightyear Capital</b> in the sale of  Undisclosed May 2019	<b>PSP Investments</b> Investment round  Undisclosed July 2019	<b>Show Phipps Group</b> acquisition of Series A Convertible Preferred Stock and warrants to purchase share in  Undisclosed April 2020
<b>Silver Lake Sumeru</b> Sale of  Undisclosed March 2019	<b>Snow Phipps Group</b> Sale of  Undisclosed February 2020	<b>SoftBank Vision Fund</b> Minority investment  Undisclosed May 2019	<b>SoftBank Vision Fund</b> Minority investment  \$500,000,000 February 2019	<b>SoftBank Vision Fund</b> Investment in <b>Uber</b> \$1,000,000,000 July 2019	<b>Susquehanna Growth Equity</b> Acquisition of minority interest in  \$280,000,000 March 2019	<b>TCV</b> Investment in  \$100,000,000 September 2019
<b>TCV</b> Acquisition of a minority stake in  \$200,000,000 January 2019	<b>Thompson Street Capital</b> Growth investment  Undisclosed February 2020	<b>Tower Three Partners</b> Sale of  Undisclosed September 2019	<b>TPG Global</b> Acquisition of  \$884,000,000 November 2019	<b>TPG Growth</b> Preferred stock minority investment in  Undisclosed January 2019	<b>Trive Capital</b> Acquisition of  Undisclosed May 2019	<b>Trive Capital</b> Sale of  Undisclosed June 2019

## **WEIL'S ELITE GLOBAL PRIVATE EQUITY PRACTICE**

An elite global platform with 30+ years of  
market knowledge

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Deep experience across all of the major private  
equity asset classes

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

## WEIL'S ELITE GLOBAL PRIVATE EQUITY PRACTICE

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

### BY THE NUMBERS

5

Years

1k+

Deals

More Than

\$700B

In Total Deal  
Value

Over

300

Sponsors

Ranked

Tier 1

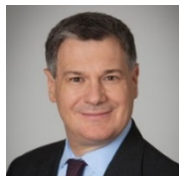
Private Equity in the U.S., U.K,  
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