2026 Insights

Skadden

A collection of commentaries on the critical legal issues in the year ahead

Editorial Board

Clients and Friends,

As the new year begins, we're excited to share our *2026 Insights*. This issue is packed with analysis and forward-looking commentary on some of the key topics we see shaping the global business landscape. In this collection of articles, our attorneys offer considerations for the year ahead, from the latest in rapidly evolving areas such as artificial intelligence and digital assets to significant trends in dealmaking, litigation and regulatory scrutiny. We hope you find value in our latest edition of *Insights*.

Wishing you every success in 2026 and beyond.

Jeremy London / Executive Partner

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M&A in the AI Era: What Buyers Can Do to Confirm and Protect Value

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Key Points

- As more transactions involve AI, buyers face challenges in validating and protecting the value of their acquisitions.
- Legal structures such as earnouts can help to bridge valuation gaps with sellers and ensure that the ultimate price aligns with actual performance.
- Alternative structures may be necessary when talent is the primary asset.
- Buyers may also want enhanced representations, covenants and indemnities with long durations to cover risks such as those involving data rights, model performance and regulatory compliance.

As artificial intelligence (AI) continues to become a core differentiator across industries, dealmakers are seeing more transactions where a key driver of value is not just a traditional product line, customer base or physical asset, but the AI itself.

Whether the target is an AI-native startup, a conventional business with a high-performing internal AI platform or a company whose competitive advantage is tied to proprietary data and model performance, the ability to correctly attribute, validate and protect AI-based value is now essential to the successful execution of M&A involving the technology.

However, AI-driven value presents unique challenges. That value can evaporate if the underlying data is noncompliant, key technical experts depart or the models underperform outside of carefully controlled demos.

In addition, buyers often struggle to price AI assets correctly, as the difference between perceived value and validated value can be substantial. As such, AI-focused M&A transactions increasingly require deeper legal and technical due diligence, tighter valuation frameworks and stronger contractual protections for buyers.

Validating What You Are Buying

When a seller markets its AI capabilities, that label can refer to anything from a handful of Python scripts to a robust, scalable, multimodal platform deployed across large enterprises. Buyers should therefore identify the true source of value and conduct robust due diligence to validate it.

In practice, this often means asking targeted questions:

- What proprietary datasets does the target own or have rights to, and how permissioned and traceable is that data?
- How were the models trained, and how does their performance hold up under red-teaming (*i.e.*, adversarial stress-testing to probe for vulnerabilities), edge-case testing (*i.e.*, evaluating performance in rare or extreme scenarios) and scaling?
- Are compute costs sustainable at commercial volumes?
- Is the target's core know-how concentrated in only a few key individuals?

Without a clear basis for attributing value, buyers risk overpaying for AI assets. Because these assets are highly technical in nature, they often require tailored diligence, including by specialized third-party diligence firms, especially where such assets are a key driver of the perceived value of the target.

Deal Architecture to Bridge Valuation Gaps

AI value is often uncertain, and model performance can change significantly in a short span of time. As a result, buyers

are using specific deal mechanisms to bridge valuation gaps and align the purchase price with validated capabilities.

Common structuring tools include earnouts tied to AI-related metrics, with additional consideration payable only if the target achieves defined performance benchmarks, deployment milestones, revenue thresholds and/or compute-efficiency goals.

Buyers may also hold back a portion of the purchase price through escrows, to mitigate the risk of technical underperformance or data rights issues that surface post-closing.

In some cases, buyers may turn to alternative structures — such as joint ventures, "acquihires" or strategic hires with significant compensation packages — where the primary value lies in securing key talent rather than acquiring the technology itself.

These structures allow buyers to access critical AI expertise while avoiding the valuation uncertainty associated with the target's underlying technology.

Representations and Covenants to Protect Value

In circumstances where AI is a critical value driver, buyers may request that specific AI-related representations be categorized as "fundamental" (or another enhanced category) with longer survival periods and higher indemnity caps than those applicable to "general" representations. Examples include representations regarding:

- Rights to data used for training.
- Absence of material data protection or intellectual property violations.
- Accuracy of disclosures about model architecture and performance, model safety and explainability.
- Absence of undisclosed third-party dependencies or restrictions.
- Compliance with AI-specific regulations.

In addition, given AI assets evolve rapidly and talent retention is critical, buyers often need stronger covenants between signing and closing to prevent deterioration of AI value during the interim period. These covenants may require the target to:

- Refrain from materially changing model architecture or datasets.
- Ensure lawful use of training data.
- Not change terms of use or privacy policies.
- Retain key AI engineers.
- Maintain sufficient graphics processing unit (GPU) or cloud capacity.

(For a discussion of key M&A deal terms in the AI sector, see our June 2024 article "M&A in the AI Era: Key Deal Terms to Watch.")

Recourse to Address AI-Specific Risks

When AI is the primary value driver, securing meaningful recourse becomes even more critical. Buyers may need to negotiate tailored indemnities in private deals to address the unique risks inherent in AI assets, including protections against:

- Misrepresentations regarding data provenance or licensing.
- Unauthorized or noncompliant training practices.
- Defects or nonperformance of key AI functionality.
- Violations of data protection or emerging model risk management requirements.

Indemnification in private deals may also be used to address breaches of the preclosing covenants discussed above. In doing so, buyers should ensure that survival periods, indemnity caps and baskets reflect the magnitude of potential AI-related exposure.

Buyers may also turn to representations and warranties insurance (RWI) to help manage AI-specific risks. However, as these risks become larger and more common, RWI insurers are taking a closer look at AI-specific issues, which could lead to policy exclusions for data provenance, model performance or other AI-related representations.

Meanwhile, evolving antitrust and national security policies add additional complexity. (See our June 2025 article "M&A in the AI Era: Key Antitrust and National Security Considerations.") Transactions involving AI, sensitive data and/or critical compute infrastructure increasingly face heightened regulatory scrutiny and extended review timelines.

As a result, sellers may seek stronger regulatory covenants or a reverse termination fee if the deal collapses due to regulatory hurdles beyond their control. Buyers must balance this commercial expectation with the need for recourse on AI-specific risks, calibrating the overall remedy package to reflect both the strategic value of AI assets and the regulatory uncertainty surrounding AI-focused deals.

Read more about AI and M&A:

- Don't Believe the Hype: Government Regulation of AI Continues to Advance
- Structured Finance Is Playing a Key Role as the Capital Demands of Data Center and Power Build-Outs Balloon
- AI-Related Claims and Other Securities Litigation Trends to Watch
- The Long-Anticipated Wave of Bank Consolidation Starts to Break
- 'Premiumization' and Slow Organic Growth Are Likely to Feed Food and Beverage M&A
- M&A in the Middle East: AI, Financial Services and Energy Transition Lead the New Wave
- Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation
- Liability Divestiture Transactions: A Win-Win for Financial Buyers and Mass Tort Defendants
- Political Law Due Diligence in M&A Transactions Is Increasingly Critical

Don't Believe the Hype: Government Regulation of AI Continues to Advance

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Key Points

- While the Trump administration has set out to promote AI, most recently by targeting regulatory obstacles through a December 2025 executive order, Congress and the states have been exploring their own potential controls on the technology.
- A number of states have enacted laws to protect against perceived risks associated with the use of AI, and others are debating proposed regulations.
- The potential harm stemming from interactions with chatbots — particularly for minors — has drawn scrutiny from congressional committees as well as state legislatures and attorneys general.
- With so many investigations and proposals in the works, along with the ongoing federal response, AI developers and companies employing the technology will need to closely monitor developments on many fronts.

In a few short years, artificial intelligence (AI) has become central to innovations in industries as diverse as medical research and entertainment, and it has become the defining motivation for many of the policies driving geopolitical competition.

Against that backdrop, the Trump administration chose to pivot the U.S. government's messaging and strategy on AI from the "safety first" approach of the Biden administration to one of American competitiveness and AI dominance. This change was on display in July 2025, when the White House released its "Winning the Race: America's AI Action Plan" heralding AI's potential for economic growth. (See our July 30, 2025, client alert "White House Releases AI Action Plan: Key Legal and Strategic Takeaways for Industry.")

The plan also included recommendations advocating the reconsideration of existing regulations and the suspension of investigations viewed as disproportionately stifling AI innovation. The report was widely seen by policymakers, business leaders and pundits as a complete victory for those advocating against AI-focused regulations and enforcement investigations.

Then, in December 2025, President Donald Trump issued an executive order, "Ensuring a National Policy Framework for Artificial Intelligence," seeking to redefine the landscape of AI regulation in the United States. The order aims to establish a single, national regulatory framework for AI, pushing to streamline AI oversight, reduce regulatory fragmentation and bolster American competitiveness. (See our December 15, 2025, client alert "White House Launches National Framework Seeking to Preempt State AI Regulation.")

While the order seeks to preempt most state-level AI laws, it notably names otherwise lawful child safety protections as within state authority falling outside of its priority.

As federal agencies prepare to implement the new framework and Congress continues to debate comprehensive AI legislation, this regulatory environment remains dynamic and complex.

Regardless of the administration's ambitions, the reality is far more complicated. Even after the White House released its July 2025 action plan, different branches of government at both the federal and state levels continued to actively advance their own AI agendas with intensifying investigations, enforcement actions and legislative proposals targeting AI.

Even now, it is similarly unlikely that the new executive order will prevent various state and federal bodies from issuing AI regulations or pursuing AI-related investigations. If anything, the expected wave of legislation is only just beginning. Businesses that ignore this reality by focusing solely on the administration's policies do so at great legal peril.

Chatbots Traction Leads to Government Action

One area of particular concern for policymakers is the deployment of AI-powered user interfaces, particularly generative AI chatbots. As customer-facing chatbots are used across industries — including in financial services, health care and consumer products — policymakers are raising alarms about risks for both companies and their customers, especially for minors.

Congressional officials, for example, regularly highlight alleged incidents of chatbots encouraging self-harm or transmitting sexually explicit content to children. As a result, across all levels of government, the use and deployment of AI chatbots is now ripe for increased scrutiny from legislators, regulators and enforcement agencies.

Congressional and Federal Agency Action

Many federal agencies have begun evaluating the implications of AI in their respective domains. The Food and Drug Administration's (FDA's) Digital Health Advisory Committee, for example, initiated discussions on the potential regulation of AI therapy chatbots, reflecting a broader trend toward sector-specific oversight.

Congress has been responding to AI chatbot concerns with high-profile hearings and legislative proposals. Momentum toward further action built throughout the second half of 2025:

- In September 2025, the Senate Judiciary Subcommittee on Crime and Counterterrorism held its "Examining the Harm of AI Chatbots" hearing, featuring testimony from, among others, parents of affected children. Following the hearing, the subcommittee targeted major AI companies with requests for information regarding their chatbot policies and practices.
- In October 2025, the Senate Committee on Health, Education, Labor and Pensions heard testimony about the integration of AI chatbots in health care. The testimony highlighted the need for rigorous vetting of these technologies in the health care space and discussed the consequences of improper implementation.
- On November 18, 2025, the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations held a hearing addressing "Innovation With Integrity: Examining the Risks and Benefits of AI Chatbots." Chairman Brett Guthrie, R-Ky., expressed an increasingly common refrain from lawmakers that "additional oversight is needed to better understand risks to users when interacting with these technologies." Lawmakers raised concerns at the hearing about documented cases in which vulnerable users, including minors, claimed severe harm, misinformation and emotional manipulation as a result of chatbot interactions. Some witnesses testified that current chatbot designs often maximize engagement over safety, lack confidentiality provisions and can inadvertently increase the risk of self-harm.
- On December 9, 2025, the Senate Judiciary Committee held a hearing titled "Protecting Our Children Online Against the Evolving Offender." During the hearing, Sen. Josh Hawley, R-Mo., emphasized the importance of passing legislation to prevent AI companies from targeting minors with chatbots that may provide inappropriate content.

Other congressional committees, including those focused on science, technology, commerce and financial services, have also held hearings on AI, including to address issues of exploitation and communications, that may portend additional attention on chatbots to come.

- In April 2025, the House Committee on Science, Space and Technology Subcommittee on Research and Technology held a hearing on DeepSeek, a Chinese AI startup.
- In June 2025, the House Committee on Energy and Commerce Subcommittee on Communications and Technology conducted a hearing on "AI in the Everyday: Current Applications and Future Frontiers in Communications and Technology."
- In July 2025, the House Judiciary Subcommittee on Crime and Federal Government Surveillance took evidence about the growing threat of AI-enabled crime.
- In September 2025, the House Financial Services Subcommittee on Digital Assets, Financial Technology and Artificial Intelligence hosted a hearing on the use of AI in the U.S. financial system.

On the legislative front, the GUARD Act was introduced in October 2025. It seeks to ban AI companions for minors and impose civil and criminal liability on companies that enable harmful chatbot interactions with children. The measure has bipartisan support and would create penalties of up to $100,000 for violations.

In other AI efforts, in June 2025 the Algorithmic Accountability Act of 2025 was introduced in the Senate, seeking to provide greater levels of transparency and accountability for the ways in which companies use AI by requiring the Federal Trade Commission (FTC) to mandate impact assessments for algorithms used in consequential decision-making systems like housing, employment and education.

Since Congress' focus on AI has often been related to minor safety, and minor safety is expressly exempted from the president's executive order, businesses should not anticipate less regulatory activity in this area.

State Action

While at the federal level legislators are driving the scrutiny of AI chatbots, at the state level state attorneys general (AGs) are emerging as pivotal actors in the AI regulatory landscape, launching chatbot investigations and inquiries aimed at leading AI companies, including concerns about minor safety.

- In August 2025, the Texas attorney general opened an investigation into deceptive mental health-related chatbot exchanges targeting children.
- The Missouri attorney general has initiated inquiries into potential political bias and commercial violations by AI chatbots.
- More broadly, in December 2025, a bipartisan coalition of 42 state AGs wrote to major AI companies outlining safeguards the companies should implement and stressing the potential risks that AI chatbots pose to children. The letter states: "Our support for innovation and America's leadership in A.I. does not extend to using our residents, especially children, as guinea pigs while A.I. companies experiment with new applications." This letter follows an August 2025 letter from a bipartisan coalition of 44 state AGs that included a warning for AI companies: "We wish you success in the race for AI dominance. But if you knowingly harm kids, you will answer for it."

State legislatures have likewise been enacting new laws to address AI chatbot risks. In October 2025, California passed a bill requiring AI chatbots to disclose their artificial nature and chatbot developers to implement safeguards against harmful content and submit annual reports. (See our October 2, 2025, client alert "Landmark California AI Safety Legislation May Serve as a Model for Other States in the Absence of Federal Standards.")

New York recently enacted similar requirements for in-state AI companies, specifically targeting AI chatbots and companion tools. Maine also implemented similar disclosure requirements earlier in 2025.

In total, at least six states have passed laws targeting AI chatbot risks, with some penalties up to $15,000 per violation. Effective in January 2026, Texas will impose a similar law with fines up to $200,000.

For more on state enforcement actions, see "Corporate Compliance Remains Critical as State Enforcement Initiatives Gain Momentum Following Governors' Races."

Final Thoughts

The trajectory of AI enforcement and regulation in 2025 underscores the need for industry stakeholders to be agile, informed and engaged. While the administration continues to champion AI innovation with minimal regulatory intervention and has taken a material step forward with the December 2025 executive order, Congress and state authorities are nevertheless intensifying their focus on AI enforcement, particularly in areas of child safety and content moderation.

As companies' use of AI chatbots to interface with customers becomes more commonplace, we anticipate oversight and enforcement actions to increase in frequency and breadth. Companies operating in the AI sector and those employing AI interface tools for customer engagement should closely monitor legislative and enforcement developments at both the federal and state levels and be prepared to consider their compliance and business strategy practices accordingly.

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+ Structured Finance Is Playing a Key Role as the Capital Demands of Data Center and Power Build-Outs Balloon
+ AI-Related Claims and Other Securities Litigation Trends to Watch

Structured Finance Is Playing a Key Role as the Capital Demands of Data Center and Power Build-Outs Balloon

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Key Points

- The enormous sums of capital needed to build the data center and power infrastructure for AI have led developers to employ a variety of structured financing tools to appeal to lenders and investors while minimizing capital costs.
- Capital sources range from private capital funds that seek equity positions to banks that make project finance-style loans, as well as various hybrid structures and asset-backed securities.
- The structures cater to different types of investors, from insurers who will buy very long-term debt to sponsors, who may seek equity engineered to put a floor under their returns while allowing them to capture potential upside.

As the global data center and related power infrastructure build-out continues at an unprecedented pace, the magnitude of the required capital is measured not in millions or billions but in trillions of dollars. J.P. Morgan recently estimated that at least $5 trillion will be required to fund the scale of the data center, artificial intelligence (AI) and related power infrastructure now contemplated.

With such vast capital needs, no one product or market is deep enough to finance all that growth. Participants in this process face balance sheet considerations and must choose the right type of capital for their circumstances.

As a result, developers are increasingly tapping multiple pockets of liquidity across different layers of the capital stack in order to fund their investments. In addition to the traditional — and still very liquid — bank project finance market, developers are increasingly turning to structured equity products, institutional debt and the asset-backed securities (ABS) market.

Structured Capital Solutions

Equity Investments

For developers seeking to limit the debt on their balance sheets, structured equity capital is a growing source of financing for data center projects. These products typically take the form of a joint venture between one or more financial investors and the developer (which in the data center space may be the hyperscaler tenants themselves).

Economic terms can range from common equity to preferred equity, or a hybrid, with most transactions providing some degree of protected return to the financial investor.

A key feature of most of these transactions is that the financial investor raises back leverage debt capital. The availability and pricing of such debt is driven by the extent to which the financial investor's equity return is protected under the joint venture governance documents (and associated project-related agreements).

The back leverage capital is typically a combination of bank and bond products, with longer tenor bond products becoming the "permanent" back leverage for these investments.

Benefits of this structure include:

- Collaboration on a project among multiple well-known players, which can help with project credibility.
- The creation of access to deep pools of capital for a project.
- Desirable pricing and returns for participants.

- For financial investors, multiple exit options across different investment levels.
- For the developer, significantly less debt on its balance sheet.

For financial investors, the key risks of these transactions are counterparty and project risk. For developers, it is adverse accounting or ratings outcomes. With appropriate structuring, these risks can be mitigated or quantified.

Once a project is stabilized (*i.e.*, operating), another option for recycling capital is a yieldco structure involving one or more equity investors seeking exposure to high-quality cash flows. While there are recent examples in the data center space, the volume of yieldco deals has been limited due to a valuation gap arising from many existing leases having been signed during a period of historically low interest rates. As newer leases come online and that bid-ask spread narrows, we may see more of these yieldco structures.

Debt Finance

Bank project financing remains the go-to source of capital for new build data centers and energy generation projects. Within the bank finance space, developers are increasingly turning to borrowing base facilities as a source of flexible capital, allowing stabilized data centers to be pooled with those under construction in order to provide a ring-fenced borrowing base that increases the capital available as the portfolio grows.

This is typically not long-term capital, though, so a key question in the market today is what will finance billions (or trillions) of dollars in long-life assets for their useful lives. Structured equity capital transactions like those described above are one answer, but even that capital is typically funded with debt of its own.

We see three types of debt products being utilized as permanent capital: institutional notes, securitized notes and private capital.

Institutional notes, typically issued via a private placement to institutional investors such as insurance companies, are an attractive source of capital, and a source that has long been heavily invested in similar energy infrastructure assets. These notes typically have long tenors, fixed interest and a relatively flexible covenant package. While they need not be rated, they typically are (and a rating is typically required to be maintained, though not at a particular level). A key to accessing this market is for an asset to be operating and substantially derisked, which makes stabilized data centers an ideal asset class.

The ABS and commercial mortgage-backed securities (CMBS) markets have been another frequent source of capital to refinance stabilized data centers in the U.S. Following two recent successful data center ABS transactions in Europe, we expect to see more of these transactions in Europe going forward.

Private capital is already widely available, and we see that continuing to be the case. Typically structured as preferred equity or mezzanine debt, this form of capital is less risk-averse than the note and ABS and CMBS markets described above. As a tradeoff though, tenors, advance rates and pricing are not as favorable.

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+ Don't Believe the Hype: Government Regulation of AI Continues to Advance
+ AI-Related Claims and Other Securities Litigation Trends to Watch

To Build European Defense Tech Champions, Political Challenges Must Be Overcome

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Key Points

- The war in Ukraine has prompted a surge in planned defense spending in the EU and across NATO. The emphasis on building more European defense technology is greater than ever.
- But dealmaking in the sector is uniquely complex because of the need for politically aligned capital; the gulf between the need for procurement and actual spending commitments; and the interaction between national security and industrial policies.
- Defense innovators and investors alike will want to have a geopolitically informed perspective to steer their deals through this complex transactional landscape.

Surge of Funding in Core Defense

The European defense landscape has been transformed by the realities of war in Ukraine. In June 2025, NATO allies made a commitment to invest 5% of gross domestic product annually on core defense requirements and defense- and security-related spending by 2035. (See our June 2025 article "Europe's Sharpened Focus on Defense Creates M&A and Investment Opportunities.")

As part of an €800 billion mobilization, in May 2025 the European Union established the Security Action for Europe (SAFE) program, which provides €150 billion by way of loans to member states to finance urgent and large-scale procurement efforts.

The funding priorities under SAFE offer instructive demand signals for existing defense stakeholders, as well as for private capital and other investors looking to expand their exposure to the sector. The priorities are grouped in two categories:

- **Category 1:** ammunition and missiles; artillery systems, including deep precision strike capabilities; ground combat capabilities and their support systems, including soldier equipment and infantry weapons; small drones (NATO Class 1) and related anti-drone systems; critical infrastructure protection; cyber; and military mobility, including counter-mobility.
- **Category 2:** air and missile defense systems; maritime surface and underwater capabilities; drones other than small drones (NATO Class 2 and 3) and related anti-drone systems; strategic enablers such as, but not limited to, strategic airlift, air-to-air refueling, C4ISTAR systems as well as space assets and services; space assets protection; and artificial intelligence (AI) and electronic warfare.

The SAFE program caps the proportion of expenditures that can go to components provided by nonmember countries at 35%, which has proved controversial with the U.K. and has resulted in the U.K. being thus far unable to secure membership on agreeable terms.

Member countries include not just EU member states but those in the European Economic Area, the European Free Trade Association and Ukraine.

Economic Security Is National Security

Core defense is not the only priority. Against the backdrop of escalating hybrid warfare and so-called "gray zone" conflict, as well as an increasingly unpredictable relationship with the U.S., economic security has come to equal national security.

The U.K. government made the point clearly in its National Security Strategy 2025, echoing similar statements made by both the EU and the U.S. in recent years.

In September 2025, European Commission (EC) President Ursula von der Leyen and former European Central Bank president Mario Draghi opened a high-level conference with a review of the EC's progress in implementing the recommendations set out in Draghi's 2024 report, "The Future of European Competitiveness."

The EC highlighted its progress across a range of initiatives, including €20 billion set aside for AI gigafactories and €70 billion, via TechEU, going toward innovative companies. Both are part of €200 billion mobilized for investment in AI.

The emphasis on developing more European defense technology is stronger than ever, with advanced and emerging capabilities playing an outsized role in the battlefield. As the Draghi report points out: "The EU is weak in the emerging technologies that will drive future growth. Only four of the world's top 50 tech companies are European. Yet, Europe's need for growth is rising."

Building European Defense Technology Champions

While the focus on defense investment and economic security is clear, there are complex obstacles to companies and investors in the sector. These are almost always inherently geopolitical and increasingly more subject to transactional approaches by both governments and industry.

Defense innovators and investors alike should consider a geopolitically informed perspective as they traverse the dealmaking landscape and its obstacles:

- **Politically aligned capital.** Complex, national-level foreign investment screening (FDI) regimes put a high fence around an ever-larger yard. FDI regimes that were once confined to core defense targets have expanded in scope alongside the focus on economic security. Infrastructure, advanced technology, raw materials, health care, agriculture and more are implicated. Investors and companies alike may want to understand earlier than ever in the fundraising life cycle how different sources of capital will be viewed across European political capitals.
- **Demand signals backed by real procurement.** Defense innovators and investors should carefully interpret a government's professed intent to invest in defense. But governments equally need to back their statements with real procurement. Early stage innovators need long-term revenue-generating contracts to form the basis of both organic growth and attractive valuations. Investors may want to take the time to understand the difference between actual opportunity and smoke and mirrors.
- **Policy infusion.** Regulators traditionally have specific mandates — *e.g.*, financial regulators address financial risk, antitrust regulators address competition risk. Economic security should be (and is increasingly) infused in policy mandates across all levels of government and regulatory authorities.

Building the next European defense champion will require a careful balance between the benefits of consolidation, cooperation and modularization, on one hand, and the effect on intra-EU competition on the other.

Want more on this topic? Check out the latest episode of our podcast "**Foreign Correspondent**," in which Jason Hewitt and guests discuss the role of private investment in the U.K. defense sector.

With Supportive New Regulations, Digital Assets Are Likely to Proliferate in 2026

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Key Points

- We expect the Trump administration's support for cryptocurrencies and other digital assets as well as its lighter-touch regulatory approach to spur the creation of more such assets in 2026.
- Regulations for stablecoins under the GENIUS Act are expected in 2026, which would allow traditional financial institutions to issue such cryptocurrencies.
- Substantial legal uncertainty remains regarding issues such as compliance, property rights and the applicability of securities laws.
- Despite more liberal regulations, private securities litigation involving digital assets is expected to continue.

The second Trump administration brought with it high expectations about a more receptive approach toward the regulation of cryptocurrencies and other digital assets. It met those expectations, and Congress and regulators have begun the hard work of creating rules of the road for the crypto industry.

In 2025, we saw:

- A January 2025 executive order focused on digital assets, and repeated promises by President Donald Trump to make the United States "the crypto capital of the world."
- Strong and repeated pronouncements by the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) about providing regulatory clarity on the issuance and offering of digital assets, including the SEC's "Project Crypto" plan.
- The termination of numerous SEC investigations into digital asset projects.
- A July 2025 report by the President's Working Group on Digital Asset Markets proposing a pro-innovation road map with a light regulatory overlay.
- The enactment of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) in July 2025 regulating the issuance of stablecoins. (See our July 17, 2025, client alert "US Establishes First Federal Regulatory Framework for Stablecoins: The GENIUS Act Passes Congress and Awaits President Trump's Signature.")

One initiative that fell short in 2025 was finalization of the Digital Asset Market Clarity Act (CLARITY Act), a bill designed to create a regulatory framework for the digital asset market by defining the roles of the SEC and CFTC, and establishing rules for digital asset businesses. (See our June 5, 2025, client alert "House Introduces Digital Asset Market Structure Legislation, Building on Discussion Draft.")

This bill has been more challenging to finalize given the numerous questions around definitions and approach, and the varied interested stakeholders. Whether Congress can finalize and pass the CLARITY Act before it begins focusing on the 2026 midterms remains to be seen.

Expectations for 2026

A key question at the start of 2025 was whether a lighter regulatory touch by the Trump administration would result in financial products and services focused on the original tenets of blockchain technology — that is, whether it would create disintermediation opportunities in the global financial system, with the resultant benefits of lower costs, more efficiencies and the democratization of financial products.

So far, there has been increased interest by traditional financial institutions, a trend we expect to continue in 2026, particularly in the following key areas:

Stablecoins. While the GENIUS Act was enacted in 2025, the regulatory framework required under the act, including critical Office of the Comptroller of the Currency (OCC) regulations, has not yet been revealed. We expect those regulations to be finalized in 2026, which would open the floodgates to the introduction of stablecoins by a variety of market participants.

This will likely bring with it new legal issues as participants seek to comply with the regulations. One area we will be watching closely is the heated battle between banks and native digital asset companies, with banks arguing that certain companies are circumventing the GENIUS Act's prohibition on the payment of interest or yield on stablecoins through customer incentive and other "reward" programs. How this issue is resolved could shape the stablecoin landscape in the coming years.

Tokenization. One of the most exciting developments in the digital asset space has been the explosion of tokenization (*i.e.*, the representation of real world assets — such as securities, funds, real estate, investment-grade tangible assets and royalty streams — through an on-chain token). Tokenization is an area that will benefit greatly from regulatory clarity, and we expect this trend to continue in 2026 as market participants tokenize different types of financial instruments.

How regulators view tokenization will largely depend on the asset being tokenized. For example, SEC Chairman Paul Atkins noted in November 2025 that tokenized securities are securities since they represent the ownership of a financial instrument enumerated in the definition of "security."

In addition, a number of legal issues surrounding tokenization remain unresolved as we head into 2026, including how commercial laws regarding property ownership apply and how tokens are to be treated as a form of collateral.

Increased SEC guidance. The SEC has shifted its focus away from enforcement toward providing clearer guidance for digital asset issuers — a trend that we expect will continue throughout 2026. Chairman Atkins announced that the SEC will be executing on its "Project Crypto," which is expected to include a taxonomy of various categories of cryptoassets and how the SEC views each such category. There may also be a package of exemptions designed to streamline the process by which digital asset issuers can innovate while raising capital. (See "SEC Moves to Lighten Regulation and Encourage Capital Formation.")

Continued private litigation. Even with the SEC's decreased focus on enforcement, private securities litigation in the digital asset space increased in 2025 and is expected to continue into 2026 unless and until comprehensive legislation is passed that resolves many of the outstanding questions regarding application of U.S. securities laws to digital assets.

Indeed, private actions continue to assert that various digital assets, including nonfungible tokens (NFTs), utility tokens, meme coins and others, constitute unregistered "securities" under the well-known *Howey* test. Courts will continue to be called upon to draw lines in this uncertain area of the law, even as mainstream adoption of digital asset products and services increases.

Overall, we expect that 2026 will witness an acceleration in digital asset product and service innovation, and while some legal issues will be clarified, other questions of first impression will need to be addressed.

Read more about digital assets:

+ Major Jurisdictions Broadly Align on the Key Principles of Stablecoin Regulations but Not Always on the Details
+ Digital Asset Treasury Companies Are Using Common Forms of Capital Raising — With a Few Twists
+ Tokenization Is Coming to a Fund Near You: Designing the Structures to Make Investment Tokens Work

See also this *Bloomberg Law* article, "Crypto Litigation Shows the Industry Won Fight Over Legitimacy," which quotes partner Alexander Drylewski.

Major Jurisdictions Broadly Align on the Key Principles of Stablecoin Regulations but Not Always on the Details

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Key Points

- The uptake of stablecoins has continued and is expected to increase over the medium term.
- Stablecoin regulatory regimes have been, or are close to being, adopted in key markets including the U.S., U.K., EU and Hong Kong.
- While the principles underpinning these new regimes are broadly consistent, the detailed requirements are not entirely aligned, which may complicate the adoption of these digital assets for cross-border transactions.

Markets have continued to observe the rapid growth of fiat-backed stablecoins, with the U.S. dollar-denominated stablecoin market reaching $225 billion and commentators estimating that number could reach up to $750 billion over the next couple of years, according to a September 2025 report by J.P. Morgan Global Research.

A "fiat-backed stablecoin" is a digital asset designed to track the value of an underlying currency by establishing a reserve of backing assets to support its value. While fiat-backed stablecoins are, by their design, more stable than unbacked cryptocurrencies such as bitcoin, regulators are in the process of implementing regimes in order to ensure a uniform approach across stablecoins (*e.g.*, permitted reserves) and to mitigate, among other things, consumer risks that may arise from the increasing use of stablecoins.

What Are Regulators Focused On?

The regulation of stablecoins globally is transitioning from a fragmented patchwork of regimes not specifically designed for cryptoassets to a series of stablecoin-specific frameworks across key markets, including the U.S., U.K., European Union and Hong Kong.

The scope of the new and proposed regimes varies, as does their timeline of implementation. For example, while the EU adopted its Regulation (EU) 2023/1114 on markets in cryptoassets (MiCA) in May 2023, U.K. regulators continue to consult on their proposals.

While there is some consensus among legislators across a number of key areas (outlined below), the regimes are not wholly consistent, which will raise questions about the degree of international interoperability and equivalence that can be achieved for a technology designed to operate on a cross-border basis.

Backing Assets

There is broad consensus among regulators that a fiat-backed stablecoin should be backed by a pool of reserve assets of an equivalent value (*i.e.*, on a 1:1 basis). This is enshrined in MiCA, the U.S.' Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) and Hong Kong's Stablecoins Ordinance (SO), as well as in proposals recently published by U.K. regulators (U.K. Regime).

However, regulators have taken a differing approach in terms of the composition of those backing-assets. For example:

- The GENIUS Act in the U.S. allows backing assets to comprise a combination of cash, demand deposits, short-term U.S. Treasury bills and other high-quality short duration assets.
- In the EU, MiCA allows for backing assets to be invested in secure, low-risk and highly liquid financial instruments, with at least 30% of the funds deposited in separate accounts held with credit institutions.
- By contrast, the U.K. has proposed a more onerous regime for "systemic" sterling-denominated stablecoins

(defined as stablecoins widely used in payments that could pose risks to U.K. financial stability) in which at least 40% of the backing assets must be unremunerated central bank deposits, with the remaining 60% limited to short-term sterling-denominated U.K. government debt securities.

These backing-asset requirements are in addition to applicable capital and reserve requirements in each jurisdiction.

Read our client alerts on the regulation of stablecoins:

- Bank of England Revises Its Proposed Regime for Regulating 'Systemic' Stablecoins
- UK FCA Publishes Consultation Paper on Stablecoin Issuance and Cryptoasset Custody in the UK
- MiCA Update — Six Months in Application
- US Establishes First Federal Regulatory Framework for Stablecoins: The GENIUS Act Passes Congress and Awaits President Trump's Signature

Redemption

There is consensus that coin holders should have a legal right to require the redemption of their stablecoins in the relevant currency on demand. The backing-asset requirements go some way to preserving this right by ensuring issuers have sufficiently liquid assets to meet redemption requests.

However, the detailed requirements vary across jurisdictions despite the agreement on the redemption principle. In particular, certain regimes (such as the U.S. GENIUS Act, Hong Kong's SO and the U.K. Regime) permit redemption fees provided they are reasonable or commensurate to the issuer's costs, whereas the EU prohibits such fees.

In addition, both the U.K. Regime and MiCA require either same day or next day redemption (with limited exceptions), in contrast to the more flexible approach in the U.S. and Hong Kong, which require redemption in a timely manner.

Returns on Stablecoins

Regulators have taken the view that fiat-backed stablecoins are primarily intended as a means of payment, and not investments or deposit-like instruments. Consequently, the payment of interest and yields to coin holders is currently intended to be restricted in all these major jurisdictions.

Consumer Protection

Stablecoin regimes have sought to enhance consumer protection through the backing-asset and safeguarding requirements, together with enhanced disclosure and marketing obligations. It is expected that the stablecoin regimes will complement existing consumer protection regimes.

MiCA, for example, contains detailed information requirements for issuers, while the GENIUS Act specifically provides that it will not preempt state consumer protection laws. This is broadly consistent with the U.K. approach, which envisages the U.K. Regime operating alongside the U.K. Consumer Duty and financial promotion rules.

Financial Crime

Financial crime remains a core priority for regulators. All regimes within the jurisdictions discussed contain anti-money laundering and terrorist financing frameworks. "Know-your-customer" checks, record-keeping and reporting requirements will continue to be key pillars of compliance going forward.

Holding Limits

In November 2025, the Bank of England announced its intended per-coin holding limits for "systemic" stablecoins of £20,000 for individuals and £10 million for businesses (with limited exceptions). The regulator remains concerned that a disorderly transition to stablecoins could negatively impact the provision of credit to the U.K. economy due to diminishing levels of U.K. bank deposits.

While the regulator notes that these limits would fall away over time, this aspect of the U.K. Regime sets it apart from other jurisdictions.

The Global Outlook

The degree to which these regimes align will be relevant to facilitating the cross-border "use" of stablecoins. The U.S. GENIUS Act provides that foreign stablecoin issuers would be permitted to offer and sell payment stablecoins in the U.S. provided they are subject to "comparable" supervision by their home regulator and hold reserves in U.S. financial institutions. What is "comparable" remains to be defined.

The position under the U.K. Regime is less clear. The Bank of England indicated in its November 2025 proposals that it will require all issuers of systemic sterling-denominated stablecoins to carry out such activity through a U.K. entity, but it has also stated that, for non-sterling-denominated stablecoins that "reach systemic levels of use in the U.K.," it may consider deferring to an issuer's home authority only if its regulatory framework provides equivalent outcomes.

That poses the question of how U.K. regulators will treat non-U.K. issuers of non-sterling stablecoins that are widely used in the U.K. as a means of payment.

Final Thoughts

While the core principles underlying the major regulatory frameworks are broadly aligned, significant differences in the approach of each regime remain. The differences may ultimately present barriers to the global adoption of stablecoins and will inevitably create a competitive advantage for those financial centers with less onerous requirements.

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+ With Supportive New Regulations, Digital Assets Are Likely to Proliferate in 2026
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+ Tokenization Is Coming to a Fund Near You: Designing the Structures to Make Investment Tokens Work

Digital Asset Treasury Companies Are Using Common Forms of Capital Raising — With a Few Twists

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Key Points

- DATs — public companies formed or repositioned primarily to hold cryptocurrencies as reserve assets on their balance sheets — have become increasingly popular.
- DATs provide institutional investors with a novel alternative for portfolio diversification and can serve as a potential hedge against inflation and fiat currency devaluation, while also offering the protections associated with public company regulation.
- Common instruments used for DAT capital raisings — convertible notes, preferred stock and common equity — each presents unique commercial, legal and structural considerations that deal teams should consider addressing early in the transaction process.

The Emergence of the Digital Asset Treasury

Digital asset treasuries (DATs) — public companies established to hold crypto-currencies as reserve assets on their balance sheets, and companies that have repositioned themselves for that purpose — have become increasingly popular.

Similar in concept to corporate treasuries that hold gold or foreign reserves, DATs apply traditional balance sheet management and capital markets tools to digital assets such as bitcoin, ether, solana and AVAX. For institutional investors, DATs provide a novel, regulated alternative for portfolio diversification and can serve as a potential hedge against inflation because they offer exposure to asset classes that are largely uncorrelated with fiat currency-based investments.

A more positive regulatory posture toward digital assets in the U.S. has ushered in a new model whereby the traditional capital markets are used to fund the long-term accumulation of cryptoassets. DATs are accessing the capital markets with traditional products such as convertible debt, preferred stock and common equity as a means of raising capital to invest in digital assets.

However, structuring, negotiating and executing these transactions present unique commercial and legal challenges for capital markets advisers and management.

DATs Securities

Convertible Debt: A Hybrid Approach to Crypto Financing

DATs issuing convertible debt can appeal to investors seeking digital asset exposure coupled with downside protection and equity-linked upside. Issuing convertible debt can offer DATs the opportunity to manage dilution while obtaining flexible leverage and accessing a new investor base.

- **Structure.** Convertible debt offerings can be differentiated through tailored valuation caps or discounts, as well as flexible conversion triggers, which may be time- or event-based (*e.g.*, triggered by a subsequent equity financing), either at the option of the holder or the issuer.
- **Interest and maturity.** Depending on the volatility of the underlying digital asset, the coupon payments can be structured as fixed or variable, and can be paid in fiat currency, in kind (*i.e.*, the issuance of additional convertible debt instruments or underlying equity securities) or in the underlying digital asset.

- **Collateralization.** The granting of security interests underlying the convertible notes can be customized to match the volatility of the relevant digital asset. Security interests could, subject to evolving rules, feature perfected liens, specified custody arrangements or enforcement and release mechanisms tied to the market value of the digital asset. Such security interests may be interchangeable between fiat currency and the relevant digital asset.
- **Covenants and restrictions.** While covenants and restrictions tend to be minimal for convertible debt, they can be drafted to tie to the underlying cryptoholdings. Considerations may include maintaining minimum treasury levels, permissibility of yield-generating activities and general risk management.

Preferred Stock Offerings: Flexible Capital for Digital Asset Strategies

Preferred stock typically couples debt-like features, such as fixed payments and enhanced liquidation priority, with certain equity-based reserve voting and governance rights. It offers DATs additional leverage-free flexibility in accessing the capital markets.

- **Structure.** The issuer may structure preferred stock as perpetual and/or redeemable, with forced or optional conversion into common equity. Terms can be tailored based on investors' needs for liquidity and the DATs' flexibility in light of the underlying treasury asset's performance.
- **Dividend mechanics.** DAT preferred stock offerings typically include a fixed dividend, which, similar to convertible debt instruments, may be paid in fiat currency, in kind (*i.e.*, the issuance of additional preferred stock or common shares) or in the underlying digital asset, at the issuer's or the holder's election. Dividend deferrals may be structured either to result in compounding or to step up the dividend rate following a specified deferral period.
- **Liquidation preferences.** Liquidation preferences or redemption prices may be set with reference to the performance of the underlying digital asset.
- **Voting rights and governance.** While preferred stockholders do not typically receive voting or governance rights, a key consideration is how to allocate control and influence generally (or in the event of a default or payment deferral), particularly in a company whose primary asset is nonoperational.

Common Equity Offerings: Direct Exposure to DATs

Common equity offerings provide investors with direct exposure to the underlying digital asset.

- **Structure.** If eligible to use a shelf registration statement, DAT public equity offerings are commonly structured as at-the-market offerings or, if ineligible, as equity lines of credit. In each case, these structures are used for continuous capital raising to fund cryptocurrency acquisitions. Alternatively, underwritten, marketed offerings may be ideal to manage market perception and dilution given the high volatility of digital assets.
- **Valuation and pricing considerations.** The relationship between the market capitalization of DATs relative to their market net asset value (mNAV) — the value of their underlying cryptoholdings — adds a novel aspect to pricing considerations compared to traditional treasury vehicles or passive exchange-traded funds.
- **Disclosure.** If any proceeds will be allocated toward yield-generating activities or broader decentralized finance (DeFi) participation and not just to pure strategic holdings, DATs should clearly outline and disclose their deployment strategy, including the allocation of proceeds between reserve accumulation and any yield-generating or DeFi activities. Other critical disclosure considerations include the unique risks associated with DAT holdings, such as custodial relationships, accounting classifications and concentrated dependence on underlying asset performance.

Final Thoughts

As DATs increasingly tap the capital markets, advisers and management should align financing structures with both the performance characteristics of the underlying treasury assets and the issuer's broader liquidity, governance and capital allocation strategy.

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Tokenization Is Coming to a Fund Near You: Designing the Structures to Make Investment Tokens Work

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Key Points

- Private equity and venture capital fund clients believe that tokenization of private fund interests will introduce new opportunities for liquidity and investor access.
- Certain legal terms need to be tailored to allow for tokenization, in light of the unique legal, regulatory and operational differences betweena "typical" private equity fund and the needs of the token-based investor class.
- Sponsors may want to devise structures to deal with the unique governance, capital call and regulatory issues posed by ownership through tokens.

Tokenization of private equity (PE) and venture capital (VC) fund interests is rapidly gaining traction in Asia, as fund managers and service providers seek to leverage blockchain technology to enhance liquidity, broaden investor access and streamline fund operations.

These tokens typically represent the holders' fractional entitlement to all distributions of the underlying PE or VC fund. A master-feeder structure is ideal, where the interests of the feeder fund are tokenized and also tailored to the needs of the token-based investor community.

Recent client engagements highlight both the promise and complexity of this evolving market. This article outlines the key legal and commercial considerations, challenges and potential solutions for structuring tokenized private fund vehicles.

Key Considerations and Challenges

Token Fungibility

One of the important benefits of tokenizing private fund interests is the potential availability of a market for the buying and selling of the tokens, allowing investors a channel to realize their investments prior to the fund term expiration.

Such transactions would be administered much like the buying and selling of fund interests in a normal fund secondary transaction, but with the prospect of much lower transaction costs (through automation and disintermediation, and because the fast settlement of transactions over a blockchain also reduces counterparty risks) and, it is expected, greater pricing transparency.

To create this dynamic of lower cost and pricing transparency, the tokens must be fungible, meaning that all the rights and obligations attached to each token must be identical at all times.

Some practical considerations include:

- **100% contributed upfront.** The traditional mechanism of capital drawdowns is not consistent with the concept of token fungibility, because drawdowns hinge on the ability of individual investors to meet capital demands. As such, the fund commitment that underlies the tokens should be fully contributed before the issuance of tokens.
- **Governance and voting.** Preferential rights to the fund's governance and voting (*e.g.*, a limited partner advisory committee seat) may have to be surrendered to the investment manager of the tokenized feeder fund.
- **Re-drawdown.** If an active buyer and seller market indeed develops, the identity of the token holders would by definition be constantly changing. This

would make it difficult to execute any re-drawdown or "recycling" of distributions. Therefore, we believe that the tokenized feeder fund and the underlying private fund need to create a class of fund interests that is not subject to the recycling of capital via re-drawdowns.

Other considerations to take into account include fees, fee rebates and in-kind distributions that would typically also apply to a traditional master-feeder structure.

KYC/AML and White-Listing

To satisfy local regulatory requirements (for both the fund and the general partner), prospective token holders who wish to acquire tokens from existing holders will need to go through the same know-your-customer (KYC) and anti-money laundering (AML) investor onboarding process as conventional limited partners.

The smart contract for the token should be designed so that only white-listed wallet addresses are permitted to acquire and hold the tokens. These investors should sign an adherence agreement, the terms of which should mirror the terms of the fund's subscription agreement.

Settlement Finality

Ideally, a secondary market would be available where the fund tokens could frequently change hands among white-listed investors, with each specific exchange of tokens not subject to any preapproval requirements by the general partner.

It is important to note that the transfer of tokens across a blockchain is not instantaneous. Depending on the blockchain on which the smart contract is deployed, the transfer that is proposed to the blockchain may take from seconds to minutes to be recognized by validators of the blockchain as irreversible, permanent and unconditional.

The conditions that must be met in order for the tokens to be deemed transferred from Party A to Party B should be made clear from the outset. A lack of clarity on this point could lead to disputes about who should be entitled to the distributions upon an 11th-hour token transfer before the cutoff time.

Final Thoughts

Tokenization of private fund interests offers significant potential benefits to investors, funds and sponsors, but requires careful structuring and negotiation to address legal, regulatory and operational risks.

Key areas of focus include:

- Investor eligibility
- Transfer restrictions
- Fee alignment
- Robust governance

As the market evolves, close collaboration with clients and counterparties, as well as proactive engagement with regulators, will be essential to successful implementation.

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+ Digital Asset Treasury Companies Are Using Common Forms of Capital Raising — With a Few Twists

The Long-Anticipated Wave of Bank Consolidation Starts to Break

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Key Points

- After several false starts, 2025 delivered a clear rebound in U.S. bank M&A, with deal volume and values up sharply from recent years.
- A more predictable and explicitly supportive regulatory environment has eased one of the largest brakes on consolidation.
- A steady stream of strategic deals is likely in 2026, particularly among community and regional banks, as well as some fintechs, with aging leadership teams and increasingly vocal shareholders often acting as catalysts.
- Boards seeking to be prepared should consider treating M&A as a standing agenda item and invest now in regulatory, capital and transaction execution readiness.

Coming into 2025, the long-predicted "great wave" of bank mergers still appeared theoretical. But by year's end, announced U.S. bank deals exceeded 2024 totals, and aggregate transaction value had moved decisively higher, with activity spanning traditional community and regional bank mergers and targeted acquisitions of niche platforms.

Buyers are using M&A to gain scale in priority markets, add specialty business lines, accelerate technology and talent acquisition, and rationalize overlapping branch networks.

Regulation: Uncertainty Gives Way to Conditional Support

Regulatory uncertainty was a primary drag on bank M&A in recent years. That shifted in 2025, as the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (FDIC) rescinded their respective Biden-era merger policy statements and reinstated prior frameworks.

Comptroller of the Currency Jonathan Gould and Acting FDIC Chairman Travis Hill have made various speeches and statements in recent months supportive of improvements to the bank M&A process and committing to greater coordination. At the Federal Reserve Board, particularly with Michelle Bowman as vice chair for supervision, there also has been explicit emphasis on more timely decisions and the need for tailoring the M&A application process for community and regional banks.

Large, complex or novel transactions still face scrutiny focused on financial stability, competition, consumer compliance and resolvability, but banks now have greater visibility into what questions regulators will ask and the timing for approvals.

The result, so far, is that the U.S. banking regulators approved mergers in 2025 at the fastest pace since 1990, according to data analyzed by S&P Global.

Fundamentals Turn Back in Favor of Deals

Macrofinancial conditions support consolidation rather than impede it. Many banks are rebuilding capital through retained earnings and balance sheet optimization. Credit quality is still a central focus, particularly in office-focused commercial real estate, where losses have not materialized.

However, losses are increasingly concentrated in identifiable outliers, and both investors and regulators are differentiating more clearly between banks with idiosyncratic exposures and those with diversified portfolios and strong underwriting.

At the same time, it appears that the more favorable supervisory environment has contributed to some financial institutions emerging from under restrictive enforcement actions and supervisory classifications that had effectively frozen their M&A options.

Against this backdrop, M&A is once again viewed as a legitimate tool for strategic repositioning — whether to gain scale in core markets, exit noncore geographies, add high-growth fee businesses, accelerate technology and operating-model transformation, or add talent.

A further shift in 2025 has been the emergence — and, in some cases, reemergence — of shareholder activism in the banking sector. Campaigns at midcap and regional banks have pressed boards to "evaluate strategic alternatives," including M&A. For banks already wrestling with leadership transition or aging boards, activist pressure can accelerate internal conversations on M&A. (See "As Activism Becomes a Year-Round Sport, Possible Regulatory Changes Could Impact Both Activists and Companies.")

In combination, these forces mean that bank boards are no longer debating whether M&A will return, but how — and on whose terms — they will participate in it.

Board Priorities for 2026

Few market observers expect 2026 to mirror the "megamerger" era of the late 1990s. Instead, most anticipate a steady flow of strategic transactions among community and regional banks, supplemented by selective acquisitions by fintechs and foreign challenger banks seeking banking charters to provide them with access to deposits and broader product deployment capabilities.

Boards striving to be ready should consider the following:

- **Make M&A a standing agenda item.** Periodically reassess whether the bank's strategic goals, performance trajectory, market gaps, and technology or talent needs favor buying, selling or pursuing a merger of equals. That assessment also should consider leadership succession issues as well as how shareholders, including potential activists, are likely to view the bank's stand-alone strategy.
- **Invest in regulatory and M&A readiness.** Strong compliance and risk management records are critical to getting deals approved. Building an M&A team and ready-to-deploy diligence playbook that identifies key risks (*e.g.*, bank regulatory, antitrust, employment and compensation, tax and intellectual property), balance sheet issues and technology dependencies will save time and enable a more thoughtful process.
- **Stress test capital and earnings.** Simple, realistic cases showing the impact of different structures on capital ratios, tangible book value dilution and earnings accretion remain critical to avoid late-stage surprises and build market credibility with investors and analysts.
- **Plan for integration at the outset.** The value of a transaction depends on disciplined execution, including branch and systems integration, customer and employee communications, and retention of critical talent. Early planning for integration can also surface red flags to be addressed in the diligence stage and negotiations of deal terms. Post-signing, integration planning will continue in different ways, subject to applicable "gun-jumping" restrictions under antitrust law and restrictions governing the sharing of confidential supervisory information.

In Sum

After years of anticipation, the ingredients for a sustained period of bank consolidation are finally in place. In 2026, boards that have done the strategic homework — whether as buyer, seller or potential partner — will be best positioned to act swiftly when the right opportunity appears.

Read more about M&A:

+ M&A in the AI Era: What Buyers Can Do to Confirm and Protect Value
+ 'Premiumization' and Slow Organic Growth Are Likely to Feed Food and Beverage M&A
+ M&A in the Middle East: AI, Financial Services and Energy Transition Lead the New Wave
+ Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation
+ Liability Divestiture Transactions: A Win-Win for Financial Buyers and Mass Tort Defendants
+ Political Law Due Diligence in M&A Transactions Is Increasingly Critical

‘Premiumization’ and Slow Organic Growth Are Likely to Feed Food and Beverage M&A

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Key Points

- With growth in the food and beverage sector coming primarily from premium and insurgent brands, legacy companies whose organic growth has stalled are looking to M&A to compensate. That is likely to drive more dealmaking in 2026.
- A bifurcation of the market, with some consumers opting for cheaper house brands while others move upmarket, has further strained companies with products in the middle.
- The Trump administration’s Make America Healthy Again initiative has focused public attention on the quality of ingredients and healthy foods, another factor that is likely to spur M&A in the sector in 2026.

PepsiCo’s acquisition of the prebiotic soda line Poppi and Hershey’s acquisition of healthy snack maker LesserEvil reflect an ever-growing theme in the food and beverage space: premiumization.

From “cleaner” ingredients and functional benefits to sustainable sourcing and value-aligned messaging, many shoppers are demanding more from the products they purchase and are willing to pay higher prices for. In 2024, global sales volumes for premium brands rose by 3%, while mainstream brand volumes declined by 1%, according to market research company Circana. Looking ahead, Circana’s forecast for 2026 projects industry price/mix gains between 2% and 4%, while volume sales are anticipated to be flat or slightly negative, underscoring the ongoing challenge for brands to drive organic growth.

Premiumization: The act of highlighting quality ingredients or distinctive features to elevate a product’s status.

This shift in consumer preferences is forcing legacy consumer packaged goods (CPG) players to rethink their traditional business models in an effort to find new sources of growth. Unilever and Nestlé have even announced premiumization as a core strategic focus.

The trend toward premiumization appears only to be increasing and may force many legacy food and beverage companies to explore acquiring insurgent brands that consumers view as “premium” in order to realign their portfolios with evolving tastes — a dynamic that positions the sector for a wave of M&A activity in 2026.

The Stalling of Organic Growth for Legacy Companies

Despite efforts to drive sales through product line expansions, packaging innovations and social media marketing campaigns, CPG conglomerates’ revenue growth has plateaued, according to global consulting firm BCG.

While the food and beverage industry’s sales increased by 2.1% in 2024, sales for large players (those with over $1 billion in sales) grew just 0.5%, according to BCG. These stagnating sales are attributable not only to macroeconomic pressures such as continued inflation, but more fundamentally, to shifting customer behavior.

The consumer landscape has become increasingly bifurcated, with lower-income shoppers gravitating toward more affordable private label products and higher-income shoppers favoring premium offerings. At the same time, the market has seen the emergence of the “unscripted consumer”: someone willing to trade down on one grocery item and splurge on another.

Consequently, incumbent food brands are being challenged in both directions, losing market share to private labels on price and to premium products on quality.

The Rise of Insurgent Brands

The trend toward premiumization, including younger consumers demanding greater transparency from food and beverage companies, has fueled the rise of insurgent brands, according to management consulting firm Bain & Company.

> **Insurgent brands:** Niche products, such as plant-based yogurt and chili-infused honey, that are generating $10 million to $25 million in annual revenue and growing more than 10 times their category's average growth rate over the past five years.

Such products often use higher-quality ingredients and/or place an emphasis on brand awareness.

These innovators are disrupting the industry and capturing an outsized share of its growth. Insurgent brands drove more than 27% of food sector growth in 2024 while representing less than 1% of market share. The nonalcoholic beverage category shows a similar pattern, with insurgent brands delivering 32% of growth despite comprising less than 3% of the market for that category.

Notably, insurgents have captured this disproportionate share of growth almost entirely through volume expansion, in contrast to legacy food and beverage companies, whose 2024 sales gains were attributable primarily to price increases.

Poising the Industry for Sustained M&A Activity

The growing focus on premiumization will create two key near-term tailwinds that are expected to help continue to fuel M&A activity:

- **Incumbent CPG companies will continue their recent trend of acquiring premium food brands to help stimulate further growth.** For companies that are not perceived as offering premium products, acquiring premium brands has been — and will likely continue to be — the most efficient path to capitalize on trends. In 2025 alone, Pepsi completed its $1.2 billion acquisition of Siete Foods, which is branded as a better-for-you Mexican American food brand, and its $1.95 billion acquisition of Poppi.
- **Robert F. Kennedy Jr.'s appointment as the Health and Human Services secretary and his focus on the Make America Healthy Again (MAHA)** movement has further increased the spotlight on the food supply chain and Americans' eating habits. The regulatory push for healthier food products and ingredients will put additional pressure on legacy CPG companies to expand their offerings of products that both consumers and regulators view as healthy. Premium products in the better-for-you category are perfectly positioned to benefit from M&A activity.

What We're Watching

While tariff uncertainty muted food and beverage M&A activity for much of 2025, we believe that the forces impacting the food industry will help propel M&A activity in 2026. Shifting consumer tastes, a wealth of insurgent brands and increased regulatory scrutiny all provide the conditions for robust food and beverage dealmaking.

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+ The Long-Anticipated Wave of Bank Consolidation Starts to Break
+ M&A in the Middle East: AI, Financial Services and Energy Transition Lead the New Wave
+ Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation
+ Liability Divestiture Transactions: A Win-Win for Financial Buyers and Mass Tort Defendants
+ Political Law Due Diligence in M&A Transactions Is Increasingly Critical

As Insurance, Private Capital and Asset Management Converge, Investors Jump Into Sidecars

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Key Points

- As insurers seek new capital, one increasingly popular way to obtain it is through a "sidecar," which allows financial sponsors, sovereign wealth funds and other investors to access insurance business quickly and at scale.
- For insurers, these arrangements can provide access to alternative assets and related management expertise, which allows them to diversify their asset portfolios.
- Buyers may also want enhanced representations, covenants and indemnities with long durations to cover risks such as those involving data rights, model performance and regulatory compliance.

Global growth in insurance premiums has created a need for more capital in the sector — a need being answered by financial sponsors, sovereign wealth funds, family offices and investment managers.

These investors sometimes form new insurers or reinsurers, or take stakes in existing ones. But often their capital is injected via a sidecar structure.

Who's Involved in a Sidecar?

In a sidecar, the insurer (the "cedent") seeks outside capital to back a particular "block" of business that it already holds on its books, for new "flow" business that it expects to write over a future period, or some combination of the two.

This could be a life and annuity business or nonlife insurance. (Life/annuity sidecars generally focus on investment returns, while short-tail property/casualty sidecars focus more on risk diversification from the investor perspective.) Sometimes the sidecar reinsures risk that the cedent has reinsured from other insurers.

Through a competitive or bilateral process, the cedent finds investors who will capitalize a sidecar to accept the risk of identified business from the insurer. These investors may be attracted by:

- The profit that can potentially be made on the insurance business itself.
- The return that may be earned on the capital and premium float (the balance that arises due to the time lag between receiving premiums and paying out claims).
- The ability to employ a degree of financial leverage in the structure.
- The asset management income that can be earned from investing the premium float and capital, which may be retained by the investment adviser itself or shared with the investors in its funds.

How Does a Sidecar Work?

Either the investors or the cedent can set up the sidecar reinsurer, which can be a fully licensed insurance company or a type of special purpose insurance vehicle with a more limited license (*e.g.*, an account within a segregated account company, or cell within a protected cell company that is legally separate from the other accounts or cells of the insurer).

Sidecars are often established in specialist markets such as Bermuda, the Cayman Islands, Lloyd's of London or U.S. "captive insurance" jurisdictions.

The investors inject their capital into the sidecar, often through participating preferred shares, surplus notes or common

equity. There may be further financial leverage, such as higher-ranking equity or senior secured debt, although insurance prudential regulation frameworks often impose constraints on the degree of leverage in a structure.

The sidecar reinsurer then enters into a "reinsurance" agreement with the cedent, under which it accepts premiums and pays claims on the business ceded. The cedent still administers the business and faces its policyholders directly, and is generally required to charge the sidecar fees for that administration that is at least equal to its actual expenses.

The cedant generally also accepts a commission for profits on either an upfront or deferred basis. The scope of coverage and exclusions within these reinsurance agreements vary, defining the level of insurance risk to which the sidecar is exposed. Investors in sidecars may take an active role in the negotiation of these agreements.

Exit horizons for the sidecar investor vary significantly according to the line of business and jurisdiction. While a fixed time horizon and prenegotiated investor exit are customary in property-casualty sidecars, accounting and risk transfer rules make such exits more challenging for life and annuity business.

Regardless, if the sidecar is profitable, investors can expect a return of capital and distribution of profits, either when the initial reinsurance transactions are unwound — at regular intervals as reserves wind down — or upon ultimate exit.

Why Are Sidecars So Popular?

Sidecars have been more popular than ever in 2025. Why?

Most fundamentally, there has been strong supply and demand:

- Insurers globally need more capital, and sidecars are a competitive form of capital that doesn't dilute the parent company or the insurer's common equity returns, and can in fact enhance them. Similarly, for mutuals and privately held insurers, sidecars provide a source of capital that does not disrupt or displace the existing ownership base.
- Many investors are attracted by what are regarded as uncorrelated, attractive returns, particularly for investors who are long on other alternative asset classes.
- Sidecars provide investors who have not typically been in the insurance industry with easier access to "balance sheet" risk than other potential investments, such as building a new insurance platform.
- Insurers have invested in their deal sourcing and execution capacities, which benefit from additional capital, which can be used to source new opportunities.
- Investors appreciate the approach to asset-level concentration risk or other risk management that can be achieved in sidecar transactions.
- At the same time, for private capital and diversified investment management firms, sidecars have proven to be a great way of attracting significant new assets under management, while also providing additional investment opportunities for their existing funds.
- The often self-terminating nature of a nonlife sidecar — after, say, five to seven years — is highly attractive for limited-life private equity funds, particularly at a time when many have found it difficult to exit other investments.

What's Next for Sidecars?

We continue to see great interest in sidecars on the part of both insurers and investors. This suggests that 2026 could be another active year. Softer premium rates in insurance markets may present challenges, but the market remains buoyant.

For more on this topic, see our September 2025 article "The Convergence of Insurance, Private Capital and Asset Management Is Likely to Continue."

New FDA Approach to Drug Prices Adds Uncertainty to Drug Approval Process

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Key Points

- FDA's focus on playing a direct role in lowering drug prices may provide opportunities for some pharmaceutical companies to seek a regulatory advantage. But it also places enormous pressure on manufacturers to stay on the agency's good side by lowering prices.
- Companies that do not give in to demands for price cuts could face regulatory delays and obstacles, and risk bad publicity.
- The agency's interest in influencing drug prices marks a dramatic shift for a regulator that has prided itself on only carrying out its science-backed public health mission.

In the first year of the second Trump administration, we have seen the Food and Drug Administration (FDA) take an unprecedented role in drug pricing policy. While standards for drug approvals are certainly within FDA's purview, drug pricing and coverage has traditionally been left to the Centers for Medicare and Medicaid Services or private insurance plans.

In the past, FDA has suggested that drug prices might be considered a condition for obtaining or maintaining approval of a drug but had never directly tied its regulatory approval authority to the price of the drugs it approves. Under the current administration, the agency has taken direct actions aimed at lowering drug prices, potentially exceeding its regulatory authority.

A May 2025 executive order on drug pricing stated that FDA could "review and potentially modify or revoke approvals granted for drugs" if manufacturers refused to explore "most-favored-nation" (MFN) pricing strategies.

When the executive order was first published, it seemed unlikely, given past FDA practice, that FDA would consider withdrawing approval of a drug based on price alone. But agency actions over the second half of 2025 clarified that FDA does have a role in the current administration's drug pricing strategy, and that it is willing to take bold action to achieve the administration's goals in this regard.

FDA Commissioner Martin Makary has been vocal about the price of drugs, speaking about the issue at a number of major press conferences and indicating that FDA may take more extreme measures to influence drug pricing if traditional means do not have the desired effect.

In response to the May 2025 executive order, many companies have adopted creative strategies to avoid agreeing to across-the-board MFN pricing. We have seen a significant increase in direct-to-consumer (DTC) sales for drugs, and the administration itself is getting in on the game: It has plans to launch a government DTC portal, TrumpRx.gov, in 2026.

A DTC model drops the rebates that pharmacy benefit managers have historically negotiated on behalf of insurance plans and passes the discounted price directly to the consumer. But DTC sales are not an option for every drug, and not all consumers are able to pay out of pocket rather than relying on insurance.

The clearest example of FDA's hands-on role in the administration's efforts to lower the prices of prescription drugs is the Commissioner's National Priority Voucher (CNPV) pilot program. This allows manufacturers of drugs that meet certain criteria to apply for and potentially receive a "voucher" for an extremely fast, one- to two-month drug approval review.

One of the criteria to qualify for the voucher program is "increasing affordability." Indeed, when the program was announced in June 2025, the commissioner noted that a company may qualify for a CNPV for one product by lowering the prices of other drugs in its portfolio. FDA has made clear that, if companies are willing to make a deal on drug pricing, reciprocal regulatory efficiencies are on the table.

This arrangement was reflected in the first tranche of CNPV recipients announced on October 16, 2025. One recipient made a coordinated announcement with the White House about bringing down the cost of fertility treatments throughout its portfolio in exchange for the speedy review of a new fertility treatment.

Another company said publicly that it was surprised to learn that it had received a CNPV because FDA thought it would give its treatment away "for free."

Similarly, the second set of announced CNPV participants included two companies that agreed to lower the price of their already-marketed GLP-1 products in exchange for faster reviews of pending submissions.

FDA's October 2025 announcement on eliminating comparative efficacy study requirements for biosimilars also made clear that FDA expects a streamlined pathway to lead biosimilar manufacturers to materially lower the cost of their products.

In remarks at the Association for Accessible Medicines' October 2025 GRx+Biosims conference, Commissioner Makary said, "Once a biosimilar comes to market, I do ask that you lower the price significantly beyond the biologic price. Sometimes, when there's one or two biologics on the market, we don't see the prices come down that much. There's sometimes an implied price collusion that goes on. We want to see lower drug prices for everyday Americans."

These remarks were particularly notable given that an FDA commissioner has never spoken to industry so directly about how products are priced, and certainly |not in the context of streamlining the approval process.

Early 2026 will also bring the announcement of the results of the Inflation Reduction Act (IRA) negotiations for selected drugs as well as the next tranche of drugs selected for negotiation. The administration has used these negotiations to push its MFN priorities and tout lower drug prices paid by Medicare.

What We're Watching

The past year has made clear that the agency is not afraid to apply public pressure to drive manufacturers to change their marketing practices, including the way they price their products. And many manufacturers have responded by announcing significant changes to their pricing strategy.

It remains to be seen how the threats of FDA reprisal will ultimately play out if manufacturers do not lower prices in the context of IRA negotiations. On the one hand, FDA's focus on drug pricing may bring opportunities for manufacturers that have room to negotiate and want to gain a regulatory advantage.

On the other, it places enormous pressure on manufacturers to stay out of FDA's crosshairs, either by agreeing to the administration's demands to lower prices or by trying to not get caught up in a public shaming related to drug pricing.

At a minimum, unprecedented agency activity in 2025 created a new set of challenges for manufacturers in 2026 who were used to working with a regulator that long prided itself on predictability.

Transactional

Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation

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Key Points

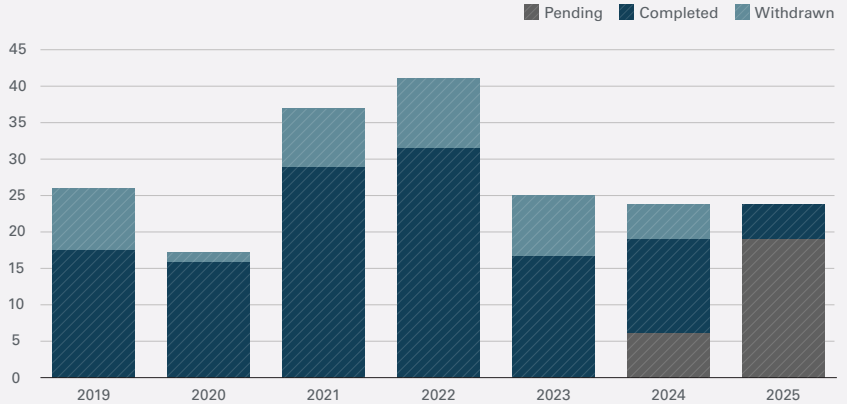
- Stock markets continue to reward "pure play" companies, driving sustained pressure from both institutional investors and activists to separate businesses that are not deemed "core" or are inconsistent with a pure-play equity story.
- Tax-free spin-offs and similar transactions remain one of the most attractive ways to separate a business. That's in part because companies retain flexibility during the process to change the transaction structure, corporate governance framework and capital allocation strategy, while also having the ability to evaluate other strategic opportunities, including third-party bids.
- Compared to carve-out sales, spin-offs are less dependent on third parties and market conditions, providing the company with more control over the timing of a separation and unlocking value on the company's chosen time frame.

Companies continue to be pressured to move away from the conglomerate model and toward simplified and targeted strategies and risk profiles. As a result, boards of public companies with diversified portfolios or otherwise differentiated businesses will continue to look at portfolio optimization in the form of divestitures, spin-offs and other separation transactions to keep up with the demand for "corporate clarity" and shareholder value creation.

Separation transactions may find their way onto the board agenda at the behest of both long-term institutional investors searching for "pure play" opportunities and activist investors, who initiated 27 public campaigns at U.S. registrants centered around corporate break-ups in 2024 and 23 year to date in 2025 as of December 1, according to the research firm Deal Point Data. (See "As Activism Becomes a Year-Round Sport, Possible Regulatory Changes Could Impact Both Activists' and Companies' Approaches.")

As 2026 unfolds, boards and management can anticipate even more calls to unlock value by separation. One catalyst is the capital markets, where equity multiples for conglomerates and other companies with multi-line businesses continue to face challenges in reaching their implied sum of the parts value. Another catalyst is geographic decoupling due to macroeconomic factors, the efforts of state and private actors to reduce actual or perceived reliance on a globalized supply chain in areas of strategic importance, and regulatory divergence.

Status of Spin-Offs Announced in Recent Years



Source: Deal Point Data

As boards and management teams evaluate business portfolios and potential separation transactions, they must navigate a complex M&A environment of:

- Economic uncertainty.
- Geopolitical risk.
- Actual or perceived geographic decoupling.
- Actual or perceived politicization of regulatory review.
- Uncertain or heightened capital allocation requirements for next-generation technologies and infrastructure.

While carve-out sales continue to be a means to shed non-core assets and offer liquidity to companies and their investors, auction dynamics for carved-out businesses face some headwinds as strategic buyers encounter similar pressures to streamline, not expand, their business lines and sponsors are increasingly wary of the operational complexity and other challenges to standing up a new company.

Confronted with such an environment and the backdrop of an increasingly complicated global tax regime applicable to disposition transactions, boards and management teams contemplating separations may want to carefully consider spin-offs and similar transactions like Morris Trusts, Reverse Morris Trusts, split-offs and incubator joint ventures — transactions we will refer to collectively as spin-offs.

If well designed, these transactions can not only unlock value for shareholders but also leave the company with flexibility regarding the final structure, allowing the company to pivot along the way in response to input from shareholders, alternative strategic opportunities or changing market conditions.

Why Pursue a Spin-Off Transaction?

The Value Proposition

Board analysis of a spin-off, like any other proposed transaction, begins with the value proposition.

From a corporate growth perspective, spin-offs can improve returns by:

- Better aligning pay and performance for businesses leaders.
- Providing equity currency for future transactions that is more closely linked to the characteristics of each business.
- Focusing management on improving organic business performance and growth.
- Enhancing operational and strategic flexibility.
- Making it easier for the public capital markets to properly value businesses with different underlying growth trajectories or "pure play" peer valuation multiples.

However, the upside must be weighed against one-time transaction costs, recurring cost dis-synergies stemming from maintaining separate corporate infrastructures and loss of scale.

Value Creation and Tax Considerations

One of the chief advantages to the parent company of a spin-off is that the spin-off itself does not entail any tax liability to the parent company the way a straight sale to a buyer typically would (although in each case, there may be local tax consequences depending on the particulars of the steps to effect any internal pre-transaction restructuring).

In situations where the parent company's tax basis in the separated business is low (and there would thus be a large taxable gain on a straight sale), but valuations are not robust enough to compensate for the tax burden, the tax-free nature of a spin-off alone may lead the parent company to favor this form of transaction.

It is important to note that the value of this type of transaction is usually best viewed through a "shareholder" lens (*e.g.*, does the value of post-spin parent company shares plus spin-off company shares exceed that of the pre-spin parent company shares) rather than through the "corporate" lens of maximizing value received by the pre-spin parent company.

Spin-offs offer tax advantages to parent company shareholders, who receive valuable shares in a new public company without recognizing taxable dividend income or gain. In addition, when the equity markets attach a higher multiple to the new spin-off company (or to the remaining parent company) because of a better growth profile or alignment with comparable companies, shareholders may see an immediate increase in the value of their investments.

There is also the potential for future shareholder value through improved earnings growth or a later sale of the spun-off business or the parent company.

A parent company may also be able to bolster its balance sheet and rightsize the post-spin capital structure of both the parent and the spin-off company — for example:

- Through a cash distribution to the parent before the spin-off (up to the level of its tax basis in the assets transferred to the spin-off company).
- By exchanging new debt of the spin-off company for outstanding debt owed by the parent (debt-for-debt-exchange).
- By exchanging a portion (generally up to 20%) of the spin-off company's shares to retire outstanding parent debt (equity-for-debt exchange).

It is important to note that in order to ensure the receipt of cash from the spin-off company remains tax-free to the parent, such cash must be "purged" to parent shareholders (*e.g.*, through dividends or share buybacks) or to parent creditors (*e.g.*, by retiring historical or refinanced parent debt), generally within one year after the spin-off.

The Internal Revenue Service (IRS) recently withdrew controversial proposed regulations that created significant challenges for these types of monetization techniques, indicating a significant shift in how the IRS will approach these matters in the private letter ruling (PLR) context. (See the "Key IRS Developments" sidebar on this page.)

If a parent company is pursuing a separation at a time of market uncertainty or if a buyer willing to pay a pure-play multiple or enough of a premium to offset tax friction does not emerge, a spin-off represents an attractive way for the parent company to maximize shareholder value but avoid the risk of selling "low" and missing out on the value accretion that may be available to its shareholders in the future.

Freedom to Control Timing and Pivot to a Third-Party Sale

Often, boards and management teams analyzing a separation conclude that the business under consideration has its own life cycle that demands a near-term break from the parent company. Separation may be necessary to properly allocate capital for growth, to attract talent through management incentives or to pave the way for growth through acquisitions.

However, there may not be third-party interest at the time, or current valuations may not be attractive.

Unlike a carve-out sale, boards can choose to announce a spin-off when the parent company and the separated business are ready, regardless of the plans of other market players.

Key IRS Developments

In September 2025, the IRS and Treasury Department withdrew proposed regulations dealing with spin-offs and related debt allocation transactions that had been issued earlier in 2025.

The proposed regulations contained some helpful rules — including a safe harbor for retained equity of the spin-off company, a presumptive two-year rule for the completion of post-spin-off debt-for-debt and equity-for-debt exchanges, and provisions permitting so-called "direct issuance" structures to effectuate such exchanges. But they were widely criticized by tax practitioners and other stakeholders as overly complex and restrictive.

The overall impact of those proposed regulations was a significant increase in uncertainty and compliance burdens for companies pursuing spin-offs, particularly for those seeking private letter rulings from the IRS to confirm the tax-free nature of their transactions.

While many boards may be comfortable relying on a "will" level tax opinion from a law firm, when the particular facts and circumstances lead the law firm to provide only "should" or lower level of confidence opinion, boards may want the assurance of a PLR before proceeding with a transaction.

Although the proposed regulations would have become effective only if and when finalized, the IRS had indicated that it would apply the standards under the proposed regulations in the PLR process.

In withdrawing the proposed regulations, the IRS restored the prior PLR guidelines that were in effect before 2024. Those standards are generally familiar to tax practitioners and, in many respects, are significantly less rigid and burdensome than the standards under the proposed regulations.

While important questions remain as to how the IRS will apply certain aspects of the reinstated PLR standards — particularly with respect to time limitations for debt exchanges and the availability of rulings on direct issuance structures — this shift in ruling policy may help facilitate the planning and execution of spin-offs.

Companies considering spin-offs may want to work closely with their advisers to understand how these changes may affect upcoming transactions

In our experience, when a spin-off can be consummated hinges mainly on two factors:

- The preparation of carve-out and pro forma financials for the securities registration statement, and Securities and Exchange Commission (SEC) review of such registration statement.
- The time needed to prepare the parent and spin-off companies to functionally operate as separate, independent companies — whether by achieving, pre-spin, **the ultimate "end state"** to fully disentangle shared systems, assets, personnel, processes and operations, or by reaching **a "transitional" state** with well-developed plans to achieve a permanent solution within one to two years after the spin-off. The transitional approach tends to be preferred, as it can result in a faster spin-off, but it warrants careful planning in order to ensure that the dis-synergies, capital expenditures and other related nonrecurring costs are taken into account in capital structure planning.

Timing may also hinge on the board's and management's determination that the spin-off company's growth and business case has been fully developed and will support a healthy market valuation. These factors are largely under the control (or at least the purview) of the parent company.

Moreover, the board and management can continue to evaluate their course of action in response to changing circumstances after announcement of the spin-off, as the announcement itself sometimes attracts inbound offers from potential buyers.

Importantly, a company that has announced plans for a spin-off can, with the proper tax advice, entertain indications of interest and even engage in discussions with potential buyers. The announcement of the spin-off may also be helpful for negotiation dynamics, as it can credibly improve the perceived pricing floor from its current implied sum-of-the-parts contribution to the parent company to the "unlocked" value post-spin.

However, if a third party that participated in negotiations does not agree to a sale pre-spin and then buys the separated business after the spin-off, that can jeopardize the tax-free treatment of the spin-off in certain circumstances, so caution must be exercised. If a post-spin sale is a possibility, consideration should be given to pursuing any discussions as early as possible after spin-off announcement, both to minimize management distraction and to limit any restrictions on potential buyers after the spin-off.

What We're Watching

In 2026, boards can expect to be called upon frequently to guide management teams as they consider separation transactions advocated by investors or, in some cases, seek to control their own destiny by preempting outside calls for a separation.

In a challenging environment defined by economic and geopolitical uncertainty and stricter capital allocation, pursuing a spin-off may offer thematic focus and near-term advantages.

Read more about M&A:

+ M&A in the AI Era: What Buyers Can Do to Confirm and Protect Value
+ The Long-Anticipated Wave of Bank Consolidation Starts to Break
+ 'Premiumization' and Slow Organic Growth Are Likely to Feed Food and Beverage M&A
+ M&A in the Middle East: AI, Financial Services and Energy Transition Lead the New Wave
+ Liability Divestiture Transactions: A Win-Win for Financial Buyers and Mass Tort Defendants
+ Political Law Due Diligence in M&A Transactions Is Increasingly Critical

M&A in the Middle East: AI, Financial Services and Energy Transition Lead the New Wave

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Key Points

- The Gulf Cooperation Council's traditionally oil-based economies are growing as they diversify.
- Sovereign wealth funds and state-owned enterprises are the key vehicles through which diversification is being realized.
- On the horizon, we expect continued investment in sectors that support the diversification agenda and will underpin the future economies of the GCC member states — notably artificial intelligence, renewable energy and financial services.

In the first half of 2025, the Middle East's M&A deal volumes grew by 19% — a significant growth relative to global M&A — according to analysis by professional services provider PwC.

Driving this growth are the region's sovereign wealth funds (SWFs) and state-owned enterprises (SOEs), which are putting into practice the policy of economic diversification adopted by the six member states of the Gulf Cooperation Council (GCC): Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE).

Gulf Cooperation Council

While three of the GCC states are among the top five oil producers in the world, in recent years their non-oil exports have grown exponentially. Abu Dhabi's non-oil economy already accounts for 56.2% of its 2025 gross domestic product (GDP), and the non-oil exports of the GCC are expected to reach $1 trillion by 2030, according to Strategy&, a PwC strategy consulting business.

Recent M&A activity shows that this transformation is being strategically implemented by the SWFs and SOEs of the GCC's member states, which are transitioning from being primarily co-investment partners and limited partner investors to more actively deploying substantial capital and leading investments toward sectors that will shape their future economies.

Artificial Intelligence and Digital Infrastructure

The GCC is laying the groundwork for its participation in the AI revolution, positioning itself as a global hub for AI innovation and digital transformation. This is exemplified by the GCC's partnerships with global players to secure inbound investment into AI-enabling digital infrastructure. (See "Structured Finance Is Playing a Key Role as the Capital Demands of Data Center and Power Build-Outs Balloon.")

Recent examples include:

- Blackstone's partnership with Humain, a Saudi Arabian AI company, to invest roughly $3 billion into the construction of data centers in the country.
- OpenAI's partnership with G42, an AI firm backed by Mubadala Investment Company (MIC), to develop a 5-gigawatt data center cluster in Abu Dhabi.

Outbound, GCC investors are taking stakes in the world's leading AI and data infrastructure companies. Examples include:

- Qatar Investment Authority's (QIA) participation in Anthropic's Series F $13 billion fundraise.
- Abu Dhabi Investment Authority's (ADIA) $1.6 billion investment in Vantage Data Centers' Asia Pacific hyperscale data center platform.

Another landmark deal in 2025 was the $40 billion acquisition of Aligned Data Centers by MIC-backed MGX, alongside BlackRock's Global Infrastructure Partners (GIP) and AI Infrastructure Partners (a joint venture in which MGX and GIP are also invested, as well as global players such as Nvidia and Microsoft). Kuwait Investment Authority is also a financial investor in AI Infrastructure Partners.

By investing with global tech leaders, GCC investors can amplify their access to cutting edge opportunities and help steer the trajectory of innovation. These strategic partnerships not only elevate the GCC's global technology profile but also help secure access to AI capabilities that will underpin future economic productivity.

According to PwC, by 2030 AI is expected to account for 12.4% of Saudi Arabia's GDP and 14% of the UAE's GDP.

Transitional Energy

As AI infrastructure scales, renewable energy investments are becoming critical to power data centers sustainably. Domestically, each GCC member state is pursuing policy targets in relation to the proportion of its power that will be derived from renewable sources.

The most ambitious of these policy targets is Saudi Arabia's aim to receive 50% of its electricity from renewable sources by 2030. In pursuit of this goal, the GCC has entered into partnerships for the development and financing of renewable energy projects in the region, with the Middle East on track to receive over $75.6 billion in renewable energy projects by 2030, according to a September 2024 report |by the trade association Energy Industries Council.

The GCC states have also set ambitious targets for outbound investments, to further diversify their economies in relation to transitional energy.

Abu Dhabi Future Energy Company (Masdar) is planning a global renewable energy portfolio of 100 gigawatts by 2030. It participated in landmark transactions in the past year, including its:

- $3.5 billion take-private of Greece's Terna Energy, one of the largest-ever European Union renewables transactions.
- $6.1 billion acquisition, alongside Iberdrola, of the U.K.'s largest offshore wind project.

Meanwhile, in recent years Abu Dhabi has also launched:

- XRG, the international lower-carbon energy and chemicals investment arm of Abu Dhabi National Oil Company (ADNOC), in 2025.
- Altérra, a climate investment fund that is deploying the UAE's initial $30 billion commitment to catalyze up to $250 billion for sustainable investments by 2030.

The GCC's energy transition and AI agendas are deeply intertwined. The energy-intensive nature of data centers and AI infrastructure means that investments in clean energy are not just about sustainability, they are also a strategic enabler of the region's digital ambitions.

Financial Services

Another long-standing focus for the GCC is the financial services sector as it seeks to attract foreign direct investment from the world's largest financial institutions and position the region as a global financial hub connecting the East and the West.

The UAE in particular has made big strides in this regard, with a 72% increase in the number of hedge funds registered in the Dubai International Finance Centre between July 2024 and July 2025. The Abu Dhabi Global Market (ADGM) financial center has also seen 26% growth in registered financial services firms in the first quarter of 2025.

Notable new entrants to the ADGM include the U.K. challenger bank Revolut and Reinsurance Intelligence Quotient, an AI-driven reinsurance platform developed through a partnership worth $1 billion involving BlackRock, Lunate and International Holding Company.

Outbound investments by GCC investors into financial institutions also continued to build momentum in 2025:

- In August 2025, Mubadala Capital completed its $8.7 billion take-private of CI Financial, a Canadian wealth management and asset management

Renewable Energy Targets – GCC Member States

	Bahrain	Kuwait	Oman	Qatar	Saudi Arabia	UAE
Net Zero Target	2060	2060	2050	None	2060	2050
Renewables Target	5% by 2025 10% by 2035	15% by 2030	30% by 2030	18% by 2030	50% by 2030	32% by 2030 (incl. nuclear)

Source: Observer Research Foundation Middle East

advisory firm, having also agreed to enter into a $10 billion investment alliance with TWG Global, an American investment holding company.

- In a landmark transaction that bolsters both inbound and outbound investment in the UAE, the Abu Dhabi-based investment firm Lunate agreed to acquire a minority stake in the U.S. hedge fund Brevan Howard and commit a significant amount of long-term capital to a new investment platform in the ADGM.

The GCC's strategic focus on strengthening the presence of financial institutions in the region and building influence in key international markets is crucial in laying the groundwork for more diversified, resilient and globally integrated economies in the future.

What We're Watching

As the GCC accelerates its diversification journey, M&A activity in AI, energy transition and financial services will continue to define the region's economic footprint.

Its shift from investing passively to leading significant investments in technology, sustainable energy and financial innovation is not only transforming domestic economies but also positioning the Middle East as a pivotal force in global capital markets.

Read more about M&A and capital markets:

+ M&A in the AI Era: What Buyers Can Do to Confirm and Protect Value
+ The Long-Anticipated Wave of Bank Consolidation Starts to Break
+ 'Premiumization' and Slow Organic Growth Are Likely to Feed Food and Beverage M&A
+ Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation
+ Liability Divestiture Transactions: A Win-Win for Financial Buyers and Mass Tort Defendants
+ Political Law Due Diligence in M&A Transactions Is Increasingly Critical
+ Strategic Capital Meets Innovation: How Government and Industry Are Shaping the Next Wave of Market Growth
+ Key Considerations for Private Equity Sponsors Aiming to Take Portfolio Companies Public
+ Hong Kong Exchange Speeds Up Listing Reviews and Loosens Retail Allocation

Liability Divestiture Transactions: A Win-Win for Financial Buyers and Mass Tort Defendants

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Key Points

- Companies with major contingent legacy liabilities such as mass tort exposure may want to consider a liability divestiture transaction, which isolates and transfers contingent liabilities to a third-party buyer.
- These transactions provide balance sheet certainty for divesting companies and investment opportunities for specialized financial buyers.
- Success depends on disciplined structuring and integrated tax, corporate and restructuring planning.

Several industrial companies have recently implemented transactions to permanently divest legacy contingent liabilities. In these transactions, the divesting company transfers ownership of an entity holding specified legacy liabilities to a third party, typically an institutionally capitalized entity with expertise in claims management.

Following the transfer, the third-party buyer is fully responsible for administering, defending and resolving claims arising out of the legacy liabilities.

The legacy divestiture transaction removes the contingent liabilities from the transferor's balance sheet, eliminating defense and settlement costs. For the third-party buyer, the transaction provides a source of investable capital and potential upside if investment returns exceed the buyer's cost of capital and liabilities are efficiently resolved.

Specific structures vary depending on the corporate organization of the divesting company and the characteristics of the liabilities. Most transactions completed to date have involved asbestos liabilities, which have a mature, and therefore relatively predictable, claims filing and resolution history.

These transactions share a core architecture that integrates corporate, tax, finance and solvency considerations and requires coordination among legal, actuarial, tax and financial advisers.

Internal Restructuring

As an initial step, the divesting company must separate its assets and liabilities (including its operating businesses) from the specified contingent liabilities. These are allocated to one or more legally distinct entities (Liability Entities) that hold only legacy liabilities and related assets.

In recent transactions, the divesting company used the Delaware division statute to allocate assets and liabilities to one or more companies resulting from the division. Each of these companies must be solvent, taking into account financial support provided by other entities within the divesting company's corporate structure.

Tax-deferred treatment is typically sought for the internal restructuring steps, necessitating careful design and input from tax advisers. The internal restructuring steps must also be configured to comply with restrictions in the divesting company's debt documents and other commercial contracts.

When a parent entity is itself a tort-claim defendant, it may be necessary to reorganize the existing parent under a new holding company before allocating assets and liabilities to the Liability Entities. This may require shareholder approval and, in the case of a public company, registration of the new holding company shares.

When the internal restructuring is completed, the Liability Entities hold only legacy liabilities and related assets, and possess sufficient liquid assets or funding rights to satisfy projected liabilities.

External Disposition Transaction

After the internal restructuring is complete, the divesting company solicits bids from potential third-party buyers to acquire the Liability Entities. In evaluating bids, the divesting company will consider:

- The amount of liquid assets contributed to the Liability Entities by the buyer and seller.
- The investment restrictions applicable to those assets.
- The timing of and limitations on distributions out of the Liability Entities.
- Any additional financial support from the buyer.

Tax structuring also plays a critical role in the transaction, as structuring decisions can allocate beneficial tax attributes (*i.e.*, deductions for future payment of contingent liabilities) to either the buyer or the divesting company.

The divesting company generally aims to:

- Maximize the buyer's cash contributions and/or financial assurances, which may take the form of a guarantee or a keep well from a creditworthy entity.
- Minimize the cash the divesting company is required to contribute to the Liability Entity.

Meanwhile, buyers typically seek to maximize the cash contribution by the divesting company. This creates a "reverse auction" dynamic, with the most attractive bidders requiring lower contributions from divesting companies, so long as the solvency of the Liability Entities is clear.

Buyers also seek to minimize restrictions on post-closing investments and distributions by the Liability Entities, while the divesting company focuses on ensuring that restrictions are in place for at least as long as look-back periods under fraudulent conveyance statutes.

The combined contributions of the divesting company and the buyer to the Liability Entities must be sufficient to establish solvency — as determined by an independent third-party expert — before and after closing. Restrictions on investments and distributions by the Liability Entities must be structured to minimize the risk of fraudulent conveyance claims following the closing.

Once final terms are agreed to, the divesting company transfers all of the equity interests in the Liability Entities to the buyer for nominal consideration. All intercompany financial support arrangements from entities within the divesting company's corporate family are terminated, and the Liability Entities are funded with liquid assets contributed by the buyer and the divesting company.

Thereafter, all claims arising out of the legacy liabilities are managed by the buyer and the Liability Entities, and the buyer directs the investment of the Liability Entities' funds in accordance with investment guidelines agreed to with the divesting company.

Final Thoughts

A successful liability divestiture transaction provides a legally durable, efficient method for a company to remove the uncertainty of legacy contingent liabilities from its balance sheet, without a court process such as bankruptcy. Their effectiveness depends on precision in design, careful execution, attention to solvency projections and a multidisciplinary advisory team.

Read more about M&A:

+ M&A in the AI Era: What Buyers Can Do to Confirm and Protect Value
+ The Long-Anticipated Wave of Bank Consolidation Starts to Break
+ 'Premiumization' and Slow Organic Growth Are Likely to Feed Food and Beverage M&A
+ M&A in the Middle East: AI, Financial Services and Energy Transition Lead the New Wave
+ Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation
+ Political Law Due Diligence in M&A Transactions Is Increasingly Critictal

Strategic Capital Meets Innovation: How Government and Industry Are Shaping the Next Wave of Market Growth

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Key Points

- In 2025, the U.S. government evolved from grantmaker to direct capital provider, taking equity stakes and deploying loans and commercial arrangements in sectors viewed as strategically critical.
- Large corporations and other strategic investors made significant investments, often alongside commercial partnerships, to secure technology and supply chains.
- The IPO and SPAC markets reopened cautiously, with investors favoring innovation-focused businesses, clear investor stories and paths to profitability.
- Looking to 2026, policy support, strategic capital and improving public market conditions are expected to create opportunities for companies to access new sources of capital and tailor fundraising well suited to their business and capital structure goals.

Government Steps Up as a Capital Provider

In 2025, the "visible hand" of government became a defining feature of the U.S. financing landscape. Rather than relying solely on grants or tax credits, the federal government increasingly invested directly in companies in strategic sectors.

One of the earliest examples was the U.S. Department of War's (DOW's)[1] partnership with MP Materials, a rare-earth mining and magnet producer. The DOW agreed to invest approximately $400 million via preferred equity and warrants, taking an ownership stake of around 15%, and paired that with a $150 million loan and long-term offtake commitments for rare-earth magnets used in defense applications.

The package also included price floors and 10-year supply contracts, illustrating how public sector funding is now structured more like private capital, with upside participation and risk-sharing.

This new federal posture was reinforced by the Pentagon's Office of Strategic Capital (OSC), created to provide long-dated, low-cost financing to "deep tech" companies. The MP Materials loan became OSC's first marquee transaction, demonstrating how government capital is increasingly being deployed not only to subsidize projects but also to de-risk them for private co-investors.

Generally, 2025 saw a much broader wave of government investment activity across the economy. More than 30 companies[2] across critical technology, energy and industrial supply chains entered into formal investment, loan or incentive agreements with the federal government — primarily through the Department of Energy's (DOE's) Loan Programs Office (LPO), the DOW and the Department of Commerce (DOC), including incentives under the CHIPS and Science Act of 2022 (CHIPS Act).

Totaling well over $45 billion, the range of instruments expanded beyond traditional grants, including roughly:

[1] Congress has not yet acted on the administration's renaming of the Department of Defense.

[2] The data in this article is compiled from a number of sources, including: *Axios*, *Barron's*, *Debtwire*, Department of Commerce – CHIPS Program Materials, Department of Energy press releases, *Investing.com*, *Manufacturing Dive*, Nokia Corporation press releases, Perpetua Resources investor information, PG&E Corporation press releases, *Reuters*, *Supply Chain Brain*, *The New York Times*, U.S. International Development Finance Corporation (DFC) press releases and *The Wall Street Journal*.

- $10.5 billion in common equity, preferred equity and warrants.
- $30 billion in senior loans, loan guarantees and offtake-backed financing.
- $800 million in nondilutive CHIPS Act incentives.

In addition to MP Materials, examples of government investments in public companies included Lithium Americas, Trilogy Metals, Analog Devices, Coherent, MACOM and others, alongside one high-profile case, Intel, whose CHIPS Act funding was effectively equitized into a nearly 10% federal ownership stake with an additional warrant providing the U.S. government the option to acquire up to a further 5% of the company under certain conditions.

In the clean energy sector, utilities in more than a dozen states secured nearly $40 billion in federal loan commitments for grid modernization, transmission upgrades and nuclear and hydropower portfolios.

The year also saw a landmark federal partnership with owners of Westinghouse Electric to build at least $80 billion of new nuclear reactors, giving the U.S. government a contingent profit-sharing right that could convert into an equity stake of up to 20%. The overall trend: Government capital is becoming broader, larger and more comparable to private institutional funding — positioning federal investment as an option for companies in strategic sectors.

Companies considering government funding as a source of capital should first consider their readiness to present their project and investment opportunity to the government, including having plans, timelines and budgets and, if the government funding is not expected to cover the full project cost, other sources of financing available.

Companies also may want to carefully analyze both short- and long-term implications for their businesses, capital structures and future financing plans. As with any capital, companies may want to consider evaluating:

- Certainty and timing of funding, and any conditions to receipt of funds.
- Economic and structural terms.
- Any covenants or other restrictions on the business (including customers or suppliers) or its ownership.
- Funding authorizations.
- Potential dilution to existing shareholders and considerations with respect to the current shareholder profile.
- Interaction with existing commercial arrangements.
- Governance implications, including relating to oversight, approval rights, negative control rights, board representation or management decisions.
- Interaction with the capital structure, including existing financing arrangements and outstanding securities.
- How the funding may impact future debt or equity capital raises, or other financing.
- Unique aspects of contracting with the government, including limitations on specific performance, indemnification and damages, and implications of a federal governing law provision.

In addition, commercial arrangements, particularly those tied to specific policy goals — domestic production, supply chain security, restrictions on offshoring and, in some cases, profit-sharing — require careful evaluation of terms and conditions and long-term strategic fit. Boards evaluating government capital may want to pressure-test not just the economics of the proposed investment, but also "day two" scenarios — how oversight, approval or negative control rights and informal influence could evolve as administrations change, political scrutiny intensifies or new officials inherit the government's seat at the table.

Strategic Capital: Corporations as Co-Financiers

The past year also saw an increase in strategic investment — over $800 billion in publicly disclosed transactions — as large technology and industrial companies deployed or committed capital to secure technology, capacity and input materials.

A headline example was NVIDIA's announced $5 billion equity investment in Intel, paired with a broad technology collaboration under which Intel would manufacture central processing units (CPUs) for NVIDIA's platforms and the companies would co-develop next-generation data centers and computer chips.

NVIDIA followed this announcement with a $1 billion equity investment in Nokia that deepened their partnership around using NVIDIA's hardware and software to modernize Nokia's mobile network technology. Together, these transactions — competitors becoming shareholders in one case and a major chipmaker taking a significant stake in a global network infrastructure vendor in the other — illustrate how strategic capital is increasingly being used to reshape competitive dynamics and reposition companies within the broader technology ecosystem.

Strategic capital also flowed upstream into critical supply chains. In the rare earths space, Apple agreed to a $500 million supply and investment arrangement with MP Materials aimed at securing a non-Chinese source of magnets for its devices. In the artificial intelligence (AI) foundation-model ecosystem, Microsoft and NVIDIA together committed up to $15 billion to large language model developer Anthropic through a mix of equity and long-term compute arrangements that will fund Anthropic's training and deployment ambitions. (See "M&A in the AI Era: What Buyers Can Do to Confirm and Protect Value.")

And, in the AI infrastructure space, NVIDIA's investment in graphics processing unit-focused cloud provider CoreWeave, alongside a multiyear, multi-billion dollar supply agreement, highlighted how strategic investors are using both balance sheet capital and commercial contracts to shape emerging ecosystems. (See "Structured Finance Is Playing a Key Role as the Capital Demands of Data Center and Power Build-Outs Balloon.")

These transactions illustrate that strategic capital can sit alongside, or even anchor, more traditional equity and debt financing (both public and private), as well as, in some cases, complement U.S. government funding.

As with any financing, companies should consider taking a complete view of their capital structure and business plans, both near- and longer-term, in evaluating strategic financing. The terms and conditions of strategic investments are particularly important to consider, especially if those investments come with governance rights, exclusivity or commercial arrangements.

Public Markets Reopen: IPOs and SPACs

After several years of prolonged slowdown, 2025 brought a measured reopening of the IPO and SPAC markets, especially for innovation-driven businesses.

IPOs

Global IPO volumes and proceeds increased meaningfully in 2025, with the U.S. leading the rebound as equity indices reached new highs.

Technology, media and telecommunications IPOs in particular delivered strong aftermarket performance: A basket of these offerings in Q2 2025 generated average returns of roughly 40% to 50% for the quarter, and in Q3 2025, average returns topped 18%.

For example, the cloud provider CoreWeave mentioned above listed in March 2025 and quickly surged on its debut, and AI platform provider Figma soared more than 250% following its July 2025 IPO. Since then, CoreWeave has continued to trade well above its offering price, while Figma has retreated from its early surge and now trades at more than 50% below its post-IPO peak.

Beyond traditional technology sectors, digital asset firms also made a splash:

- Stablecoin issuer Circle Internet Group raised over $1 billion in its IPO and saw its shares jump more than 200%.
- Crypto exchange Gemini Space Station raised $425 million in its listing and climbed over 30% on its first day of trading. (See "With Supportive New Regulations, Digital Assets Are Likely to Proliferate in 2026.")

Other active sectors included:

- Energy: Fermi America's September 2025 IPO raised roughly $680 million and delivered a first-day pop of more than 50% as investors embraced its ambitious, nuclear-powered data infrastructure strategy.
- Space technology: Firefly Aerospace's August 2025 IPO raised about $868 million and saw its shares surge roughly 34% on its first day of trading before the stock drifted below its IPO price in subsequent trading.

SPACs

SPACs also staged a "version 2.0" comeback. Through the first eight months of 2025, U.S. SPAC IPOs raised approximately $16.1 billion across 81 filings, compared with only about $1.8 billion in all of 2024 — an almost ninefold increase in proceeds and more than double the 31 SPAC IPOs that priced in 2023.

Momentum accelerated in Q2 2025, when 46 SPAC IPOs raised $8.8 billion, exceeding the quarter's traditional IPO proceeds. The revival was driven by experienced, repeat sponsors — who accounted for nearly 80% of new SPACs — and by more investor-friendly terms, more conservative projections and robust private investment in public equity (PIPE) financing.

While the market remains selective, these developments indicate that capital markets are again receptive to innovation-focused businesses. (See "Digital Asset Treasury Companies Are Using Common Forms of Capital Raising — With a Few Twists.")

At the same time, the rapid rise of AI-linked valuations has prompted recurring comparisons to prior tech bubbles, with investors increasingly distinguishing between companies with durable business models and those riding thematic momentum.

As a result, AI-adjacent offerings that pair credible revenue prospects with clear unit economics are likely to continue to find strong demand, while more speculative stories will be met with heightened scrutiny.

2026: What Companies Should Be Thinking About

Markets are entering 2026 with a constructively bullish view on innovation-linked assets, citing continued AI investment, industrial policy support and the potential for modest rate cuts if inflation remains contained.

For companies, several themes are emerging:

- **Government capital is now part of the funding toolkit.** Businesses in strategic sectors may want to track federal programs (CHIPS Act, DOC, DOW, DOE, OSC) and assess whether their business plans align with policy objectives.

- **Strategic investors can be catalytic.** Partnerships with large corporations and other strategic investors can provide capital, credibility and better market access.
- **Stay IPO-ready.** With the issuance window reopening, companies that have planned ahead to go public — with strong, well-articulated equity stories and public-ready financials, controls and governance — will be best placed to act quickly.
- **Expect continued competition for strategic assets.** As governments and corporations seek to secure technologies and supply chains, valuations in areas like chips, AI infrastructure, energy and critical materials are likely to remain competitive.

Taken together, 2025 demonstrated how strategic capital and innovation have become tightly linked. Looking ahead to 2026, companies that understand this evolving landscape — and can navigate between government, strategic and public-market capital — will be well positioned to capture the next wave of market growth.

Read more about capital markets:

+ Key Considerations for Private Equity Sponsors Aiming to Take Portfolio Companies Public
+ Hong Kong Exchange Speeds Up Listing Reviews and Loosens Retail Allocation

Key Considerations for Private Equity Sponsors Aiming to Take Portfolio Companies Public

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Key Points

- While a sales process remains the preferred method of exit, financial sponsors are increasingly exploring IPOs and dual-track processes as equity markets become more receptive to private equity-backed companies.
- U.K. and EU markets provided exit routes for several large private equity-backed companies in 2025.
- Because sponsors generally sell only a portion of their shares in an IPO, they must anticipate the constraints they will face as shareholders in a public company, including post-IPO lock-ups and loss of control due to typical public company governance. These can sometimes be mitigated by retaining board seats or holding weighted voting shares.
- At an early stage in IPO planning, sponsors may want to consider how to simplify a company's capital structure, including restructuring its debt, and ensure alignment among sponsors and management.

The global slowdown in recent years of sales processes and initial public offerings (IPOs) has delayed exits for many private equity (PE) sponsors, causing mounting pressure from investors to return capital.

In the U.S. alone, 4,000 to 6,500 PE exits are estimated to have been postponed during the last two years due to suppressed valuations, according to professional services provider PwC. In Europe, an estimated 48% of the sponsor exits planned for 2024 were postponed, according to M&A sourcing platform Dealsuite.

Short-term liquidity options that sponsors have adopted, such as continuation funds, are no longer viewed as a sustainable alternative. There is significant pressure for sponsors in the U.K., Europe and globally to find liquidity for their investments.

While a sale remains the preferred exit route for financial sponsors, consideration of sponsor-backed IPOs increased significantly in 2025, given the need to access the deep capital pools available from institutional investors in the public markets that are not currently readily obtainable from strategic buyers or financial sponsors.

A dual-track process, with competing sale and IPO processes, has also been a valuable strategy in stirring up market enthusiasm and driving up valuations. The appetite for IPO exits and dual-track processes is expected to remain strong in 2026.

In 2025, $146 billion was generated in IPOs globally, excluding special purpose acquisition companies (SPACs), with sponsors backing a total of 137 IPOs, according to Bloomberg. Notable sponsor-backed IPOs in 2025 included:

- Shawbrook Bank's £2 billion London IPO.
- Security services firm Verisure's €13.7 billion Nasdaq Stockholm IPO.
- Medical products distributor Medline's $50 billion Nasdaq IPO, which was the largest listing in 2025.

In addition, Google acquired cybersecurity firm Wiz from its venture backers earlier in 2025 for $32 billion following a dual-track process.

Key Exit Considerations

Sponsors can generally sell only a portion of their holdings in an IPO for several reasons. Because IPO valuations are

typically lower than that of a sale — and post-IPO share price performance may be mixed for a period — to increase average returns, sponsors (along with founders and significant management shareholders) typically sell down the balance of their stakes over time as the share price increases, either on the open market or through block trades placed by banks.

In addition, market capacity often limits the size of the offering and, at the time of an IPO, investors want the reassurance that comes from the sponsors having a continuing interest in the company's post-IPO success.

Sponsors face several challenges when pursuing an IPO. Major shareholders are subject to post-IPO lock-ups (typically lasting six months) to avoid any market overhang immediately post-IPO, which limits the ability of financial sponsors to take advantage of any post-IPO price "pops" or sell down quickly after an IPO.

However, a post-IPO lock-up is temporary and, given the size of typical sponsor shareholdings, a sponsor would in any event be unlikely to fully exit in the months following an IPO.

Once a company goes public, sponsors no longer have the control they had over a company pre-IPO due to typical public company corporate governance requirements, such as having a majority independent board. Sponsors will be treated like any other shareholder post-IPO, and arrangements with the company (*e.g.*, portfolio management fees) will be terminated on IPO.

That said, sponsors can retain a right to a board seat post-IPO so long as they retain a significant shareholding. Typically, a 15% to 20% holding gives a right to one board seat. In addition, before an IPO, many sponsors will have already considered the appointment of independent directors, given the lead time required and the importance of these decisions.

Depending on the industry and size of a company (*e.g.*, in financial services), portfolio companies may already have independent directors on the board. Sponsors could also hold a separate class of weighted voting shares to retain influence, although this has been more common among founder-led companies.

And, in a move that is positive for sponsors retaining a significant shareholding post-IPO, the 2024 U.K. Listing Rules removed a requirement for listed companies with 30%-plus shareholders to enter into a relationship agreement with them to ensure the company's ability to operate independently from them.

Other Important Pre-IPO Considerations

While formulating a full exit strategy will be the main objective for sponsors considering an IPO as an exit route, there are other matters sponsors should prioritize at an early stage.

- Portfolio companies often have complex capitalization tables that may contain different classes of shares, preferred securities, shareholder loans, a management incentive plan and widely held options. A thorough review of the capitalization table should be undertaken at an early stage to ensure it is cleaned up to facilitate a pre-IPO reorganization and consolidation into a single class of shares. In most cases, it may also be advantageous for the company to flip up to a new holding company in order to establish itself in a different jurisdiction of incorporation, with the existing PE "stack" collapsed as part of that process.
- Because most shareholders' agreements anticipate a full exit by way of a sale, financial sponsors may want to consider how the exit provisions and the distribution waterfall will apply on an IPO and the consolidation of existing company securities into a single class of shares and rollover of options into post-IPO incentive schemes. Often, the IPO exit provisions in a shareholders' agreement will not cover all eventualities, and supplemental agreements among the shareholders may need to be obtained before the IPO is launched. As such, alignment among all sponsors and, where relevant, management shareholders will be critical.
- Existing debt facilities and outstanding bonds may need to be redeemed or refinanced as part of the IPO and any pre-IPO reorganization. These issues should be considered at an early stage given that the credit profile of a portfolio company will likely change significantly when it goes public.

Final Thoughts

Private equity sponsors will be a critical player in driving the London and other global equity markets going forward, and there are many reasons to be optimistic about the IPO opportunities for sponsors. Sponsors should consider these strategic and structural issues at an early stage to be ready to capture IPO exit opportunities when they arise.

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Hong Kong Exchange Speeds Up Listing Reviews and Loosens Retail Allocation

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Key Points

- Following a sluggish several years in the Asian equities markets, Hong Kong is working to boost its position as a competitive global equity fundraising and listing forum.
- Hong Kong has rolled out an accelerated timetable for vetting listing applications so more of them are completed within the six-month validity window. This new process applies to noncomplex applications that meet regulatory requirements.
- Large-cap issuers may now lower their public float requirements, providing greater flexibility for capital management actions such as repurchases, with the caveat that the issuer would be subject to enhanced reporting requirements.

The Stock Exchange of Hong Kong Limited (Exchange) has taken a number of initiatives to enhance its attractiveness as a global offering and listing jurisdiction. The effort is focused on strengthening Hong Kong's competitiveness as a key listing jurisdiction and optimizing the market in light of the recent prevalence of smaller "family and friends" directed offerings and the dominance of companies incorporated in mainland China (PRC) listing their H shares in Hong Kong over the past few years.

This trend comes as the Hong Kong market becomes increasingly integrated with PRC and international companies refocus their China business strategies relative to their global businesses.

Enhanced Vetting Time Frame

On October 18, 2024, Hong Kong's Securities and Futures Commission (SFC) and the Exchange jointly committed to a clearer vetting framework for listing applications, shortening the time between their initial (A1) filing and the Listing Committee hearing stage.

This new framework provides welcome clarity to a previously opaque prehearing vetting process:

- Applicants with noncomplex cases that submit well-prepared and complete initial applications (*i.e.*, "Applications Fully Meeting Requirements") can expect to go through up to two rounds of comments from each regulator (with first-round written comments expected from the Exchange within 15 business days, and from the SFC within 20 business days, following the initial filing date). Confirmation on no material concerns from Hong Kong regulators is expected within 40 business days.
- Eligible large-cap PRC issuers with listed A shares can benefit from a further streamlined application process, with just one round of written comments from each Hong Kong regulator and confirmation of no material concerns from Hong Kong regulators within 30 business days of the initial filing.

We have seen Hong Kong regulators in recent cases adhering to this time frame. However, applications that require approval from the China Securities Regulatory Commission (CSRC) remain subject to the CSRC vetting time frame, which could delay the period between initial filing and the Listing Committee hearing in Hong Kong despite the Hong Kong regulators' accelerated vetting process.

Additionally, refiled applications after their six-month validity window and applicants with material developments

after their initial filing could still see a prolonged application process.

A More Robust Market for Initial Offerings and Newly Listed Issuers

Following a review of comparable rules in Australia, Singapore, the U.K. and U.S., among others, the Exchange has revised its rules around price discovery and market optimization for initial public offerings (IPOs) to align with global standards. The new rules took effect on August 4, 2025.

Notable changes include:

- **The minimum percentage of offer shares** that must be allocated to the Hong Kong retail tranche has been reduced, from 10% with clawback to either 5% with clawback or 10% without clawback. Meanwhile, at least 40% of the total initial offer shares must be allocated to the bookbuilding portion of the international tranche, which is reserved for professional investors, who play an important role in price discovery. (There was previously no minimum allocation between the bookbuilding and the cornerstone portions of the international tranche.) This means that cornerstone investments are now capped at either 55% (if clawback is not triggered) or 50% (with no mandatory clawback) of the total initial offer shares.
- Recognizing that "one size does not fit all," **the public float requirement** (*i.e.*, the number of shares held in the hands of the public) has changed from a fixed 25% of total issued shares to a tiered structure ranging from 10% to 25% of total issued shares of the class seeking listing, based on the applicant's market value. A separate test applies for PRC-incorporated issuers with listed A shares.
- The Exchange introduced **a new free float requirement** to ensure that newly listed issuers have sufficient liquidity upon listing. This means new issuers must have a minimum number of shares not subject to disposal restrictions (*i.e.*, the shares are readily available to trade) at the time of listing. Some applicants — including those with fewer shares in public hands — now need to consider which shares, and how much, should be locked up upon initial listing.

An Opportunity for Issuers to Lower Their Public Float Threshold

Prior to 2026, issuers could not change their minimum public float requirement after listing, even if their market capitalization had grown significantly since then. On August 17, 2025, the Exchange revised the public float rules for existing issuers and published Guidance Letter GL121-26 to assist with the new rules. The new rules (which are appended to the consultation conclusions) took effect on January 1, 2026.

Key changes include:

- Issuers with a market capitalization of more than HK$4 billion may adopt an "Alternative Threshold" that lowers their minimum public float threshold to not less than 10%, with the minimum market value of shares held by the public being HK$1 billion. (Both requirements must be met.) The market value of shares is based on the volume weighted average price of shares over 125 trading days before the date of determination (calculated on a rolling basis). A separate test is proposed for issuers with shares also listed on a PRC stock exchange.
- All issuers will have ongoing obligations to update the market about their public float in monthly returns and annual reports, and disclose their updated share ownership and share capital structure in annual reports. Issuers relying on the Alternative Threshold will be subject to enhanced reporting requirements.
- Issuers that significantly fall below their applicable public float threshold will no longer be subject to a trading suspension and instead will have a special stock marker ("-PF") and be given 18 months from the date of the "Significant Public Float Shortfall" to restore their public float or be delisted.

These changes are a long-awaited and welcome development. Issuers and their nonpublic shareholders now have greater scope to take corporate actions, including repurchases and pre-offer acquisitions.

Controlling shareholders of certain issuers may now concentrate their ownership beyond 75%, enabling them to unilaterally approve super-majority shareholder items (such as amending constitutional documents).

Read more about capital markets:

+ Strategic Capital Meets Innovation: How Government and Industry Are Shaping the Next Wave of Market Growth
+ Key Considerations for Private Equity Sponsors Aiming to Take Portfolio Companies Public

As Activism Becomes a Year-Round Sport, Possible Regulatory Changes Could Impact Both Activists and Companies

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Key Points

- Activist investors remain a powerful force in the corporate landscape, increasingly using more sophisticated multimedia and digital strategies to exert pressure on companies and boards.
- An increase in off-cycle and "vote no" campaigns in the U.S., coupled with more activists going public without any private engagement, is making activism a year-round phenomenon.
- Companies may need to consider reevaluating their approaches to shareholder engagement if proposed regulatory changes are adopted to curb the influence of institutional investors and proxy advisory services in shareholder votes.

Despite geopolitical volatility, tariff policy uncertainty and a slower-than-expected M&A market in the first half of 2025, shareholder activism has not cooled. In fact, 2025 experienced another record year in the U.S. for activism, even though global activity fell slightly behind the previous year's pace. In 2025, 313 campaigns were launched against U.S. companies compared to 302 campaigns in 2024, while 583 global campaigns were launched in 2025 compared to 593 in 2024, according to FactSet.[1]

At the same time, the U.S. is experiencing a number of regulatory and political changes that may transform activism in 2026 and beyond. Below are our key observations on the current state of play of activism in light of these changes and other developments.

M&A-focused campaigns are back on the rise. In the second half of 2025, M&A-focused campaigns picked up after a slow start to the year, with 40 campaigns against U.S. companies compared to 25 in the first half. Recent M&A campaigns have focused on breaking up large conglomerates, forcing companies to divest non-core assets or putting the company up for sale, although a push for consolidation has been a focus for certain industries like banking and energy. (See "Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation.")

Most activist campaigns continue to settle. With proxy fights becoming more expensive — they cost U.S. issuers roughly $7.24 million on average for campaigns that went to a vote in 2025 — more than 90% of U.S. board seats gained by activists in 2025 were achieved through negotiated settlements rather than a shareholder vote. Even so, activists have been more successful when fights went the distance: They secured at least one seat in six of 15 U.S. election contests in 2025 (a 40% win rate) compared to five of 18 in all of 2024 (a 28% win rate).

There is no longer a proxy season. Activism is increasingly a year-round sport, as campaigns are no longer clustering around traditional nomination windows. Off-cycle pressure campaigns using sophisticated multimedia and digital strategies are becoming more effective, and surprise attacks without any prior private engagement are more common. "Withhold" campaigns (where activists call upon shareholders to vote against directors) continued to play a prominent role in 2025 and garnered significant shareholder support, including at one

1 The data in this article is from FactSet (as of December 31, 2025). It excludes exempt solicitations, activism against companies subject to the Investment Company Act of 1940, hostile or unsolicited M&A, short campaigns, bear raids and campaigns "for" management or shareholder proposals.

company where the activist issued a single letter. (See our September 2025 article on withhold campaigns, "Activists Say 'Yes' to 'Vote No' Campaigns in 2025.")

The regulatory and political landscape is shifting. Significant regulatory changes and political pressure directly impacting the shareholder activism arena and its key players may create less predictability in voting outcomes for contested elections and M&A.

- Earlier in 2025, the Securities and Exchange Commission (SEC) issued guidance narrowing the scope of activities that more-than-5% stockholders may undertake while preserving "passive" status necessary to qualify to file a short-form Schedule 13G. As a result, certain traditionally passive institutional investors have become more cautious in their engagements with companies. Some institutional investors also announced they were splitting their proxy voting teams into distinct units with separate decision-makers, while others are expanding their pass-through voting programs, allowing their underlying clients to indicate their voting preferences.
- At the same time, proxy advisory firm Glass Lewis announced that it would eliminate its standard benchmark voting recommendations in 2027. (See also our December 3, 2025, client alert "ISS Announces Benchmark Policy Updates for the 2026 Proxy Season.")
- Most recently, the White House issued an executive order directing federal regulators to review and consider actions to limit the influence of proxy advisory firms, including by examining their treatment of diversity, equity and inclusion (DEI) and environmental, social and governance (ESG) priorities and assessing how such considerations influence voting recommendations. These developments could materially affect how institutional investors and proxy advisory firms shape shareholder outcomes and, in turn, make proxy voting outcomes less predictable. (See our December 16, 2025, client alert "White House Executive Order Aims to Restrict the Influence of Proxy Advisory Firms.")

As a result of these developments, companies may want to expand their investor engagement programs to reach a wider audience and recalibrate the manner in which they engage with underlying index fund investors or retail holders. On the flip side, activists may become even more emboldened to launch campaigns and resist settlement given the unpredictability of vote outcomes.

Off-Cycle Preparedness, Board Optimization and Shareholder Engagement Are Paramount

For boards, the implications are clear: They must be prepared for off-cycle challenges and activity after nomination deadlines by maintaining continuous engagement with key investors and strategizing on how best to reach smaller holders. Transparency is critical, particularly where non-core assets or strategic options could be misunderstood.

Regular board-level education and preparedness sessions remain essential, as does continuous evaluation of board structure and composition to ensure each director provides a critical, demonstrable skill. Each director should be a distinct value-add with a clear, defensible profile, while the board as a whole must present a cohesive, strategically aligned front capable of withstanding increasingly sophisticated activist campaigns.

Litigation / Controversy

Algorithmic Pricing Decisions Have Favored Defendants, but the Law Will Continue to Evolve in 2026

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Key Points

- In 2025, courts in antitrust cases delivered important victories to pricing software vendors and users, but the law in this area continues to evolve.
- Antitrust enforcers reached new settlements that helped clarify their views of pricing software.
- New state and local laws continue to shape the algorithmic pricing landscape.

Businesses increasingly turn to algorithms to inform their pricing strategies, and courts, antitrust enforcers and legislatures are moving rapidly to grapple with legal and policy implications. Several significant developments in 2025 helped clarify this evolving landscape.[1]

Algorithmic Pricing in the Courts

In the first appellate decision to address algorithmic pricing software, a unanimous U.S. Court of Appeals for the Ninth Circuit panel held in *Gibson v. Cendyn Group* that competing Las Vegas hotels did not run afoul of antitrust laws by licensing such software from the same third-party vendor.

Gibson plaintiffs — a putative class of hotel guests — had initially alleged a horizontal conspiracy among the software users but dropped that theory on appeal, challenging only each hotel's license with the software vendor.

The Department of Justice (DOJ) participated in the appeal on the plaintiffs' side. But the Ninth Circuit affirmed dismissal of the case, ruling that licensing software that makes nonbinding pricing recommendations is not a "restraint of trade," at least when the recommendations are not alleged to rely on competitively sensitive information from competitors.

The U.S. Court of Appeals for the Third Circuit is considering an appeal from the dismissal of another case challenging the use of the same software by Atlantic City hotels.

While these cases foundered on the pleadings, other algorithmic pricing litigation — including several private cases and enforcement actions involving pricing of apartment rentals — have reached discovery.

In one such case, *Mach v. Yardi Systems, Inc*., a California state court granted summary judgment to the defendants, concluding that the software's functionality did not breach state antitrust and unfair competition laws because it did not commingle nonpublic competitor data to suggest prices. Still, most algorithmic pricing cases that reached discovery remain pending.

DOJ Resolutions

The federal government also clarified its views of algorithmic pricing in 2025 by reaching proposed resolutions of its claims against RealPage, a prominent software vendor for apartment rentals, and Greystar, a large property manager.

The settlements, which await approval by a federal court in North Carolina, offer a valuable road map for software vendors and their licensees to reduce antitrust risk. These safeguards include using only public data, eliminating price floors, and not requiring or encouraging acceptance of prices proposed by the algorithm.

[1] Skadden has been at the forefront of many of the developments discussed in this article, including representing Caesars Entertainment in the Las Vegas and Atlantic City litigations, and representing Greystar in its DOJ settlement and in a range of other disputes related to Greystar's use of algorithmic pricing in multifamily housing.

Emerging State and Local Laws

Even as private plaintiffs and government enforcers challenged algorithmic pricing in housing markets, a host of state and local legislatures opened another front by enacting various statutes and ordinances purporting to curb the use of third-party algorithms in setting apartment rents. Some of these laws were themselves challenged in court.

In at least two large states, the new laws reached beyond rental housing and sought to address use of algorithms generally. California has supplemented its state antitrust statute with provisions addressing algorithms. And New York required a conspicuous disclosure when prices are set by an algorithm using an individual consumer's data. That law recently survived a First Amendment challenge.

For more on state antitrust scrutiny, see "Corporate Compliance Remains Critical as State Enforcement Initiatives Gain Momentum Following Governors' Races."

What's to Come?

While the legal landscape governing algorithmic pricing evolved substantially in 2025, we expect further significant developments in the coming year.

- A number of courts are poised to opine on algorithmic pricing topics, be it on the pleadings, at summary judgment or in the context of class certification.
- Federal and state enforcers may further elaborate on their views of algorithmic pricing in speeches, *amicus* briefs and enforcement actions.
- States and localities continue to enact new laws concerning algorithm use, and many of them differ in subtle ways that may themselves spawn litigation and important interpretive questions.

Check out the latest episode of our podcast "**Fierce Competition**" for a discussion on AI-related global antitrust enforcement trends.

Cross-Border Enforcement Priorities and Increased Cooperation Come Into Focus

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Key Points

- Enforcement of sanctions, anti-corruption, asset recovery, and anti-money laundering and counterterrorist financing laws is increasing along with new cooperation initiatives in Europe, the Middle East and Asia Pacific.
- For example, the United Arab Emirates and Singapore brought landmark enforcement actions, and the U.K., EU, China, Mexico, Chile and Peru have each put in place stricter laws or regulations on financial crimes.

Companies can expect an enforcement environment in 2026 that is increasingly coordinated, data-driven and globally integrated, with enforcement authorities and regulators across Europe, the Middle East and Asia Pacific pursuing cross-border cases with greater speed, consistency and operational alignment.

U.S. cross-border enforcement is likely to continue to focus on matters that impact U.S. national security, economic security and supply chain-related risks. Across jurisdictions, authorities are expected to continue relying on a growing number of whistleblower reports as an important source of enforcement leads.

The Americas

The U.S. Department of Justice (DOJ) has set out key priority areas for enforcement that include:

- Conduct that threatens national security (*i.e.*, sanctions violations or support of cartels and transnational criminal organizations).
- Trade and customs fraud (including tariff evasion).
- Material support of foreign terrorist organizations.
- Complex money laundering schemes.
- Fraud related to federal programs
- Securities fraud and market manipulation schemes.

The DOJ remains focused on prosecuting cases of "serious misconduct," particularly against individuals, and cases of misconduct that undermine U.S. interests. Foreign Corrupt Practices Act (FCPA) enforcement has resumed with a focus on bribery and associated money laundering that impact national interests and security.

This may lead to an increased focus on non-U.S. companies whose alleged corrupt conduct harms American competitiveness in international markets. The DOJ's Corporate Whistleblower Awards Pilot Program remains in effect.

The Securities and Exchange Commission (SEC) has turned its attention to core areas such as insider trading, accounting and disclosure fraud, market manipulation and breaches of fiduciary duties by investment advisers. The SEC also launched a Cross-Border Task Force in September 2025, prioritizing foreign issuers, gatekeepers and cross-listed entities.

With respect to cryptocurrency enforcement, the SEC appears focused on fraud rather than registration issues.

Elsewhere in the Americas, enforcement authorities remain focused on combating financial crime, with heightened focus on anti-corruption, money laundering and fraud prevention linked to organized crime.

- **Mexico** has enhanced international coordination relating to cartel finance structures.
- **Brazil** expanded cooperation with the U.S. Department of Homeland Security to target transnational crime networks
- **Mexico**, **Chile** and **Peru** are also implementing stricter fraud prevention regulations and enhanced anti-money laundering (AML) regulations.

Europe and the United Kingdom

European Union sanctions enforcement has intensified following Directive (EU) 2024/1226, which harmonizes criminal offenses for sanctions violations across member states. Corporate fines can reach 5% of global turnover, or up to €40 million, and member states must criminalize circumvention. Germany and the Netherlands are among the most active enforcers.

The EU is developing a comprehensive Anti-Corruption Directive (expected in 2026), supported by the International Anti-Corruption Prosecutorial Taskforce (IACT). IACT includes U.K., French and Swiss authorities as well as the European Public Prosecutor's Office, and it facilitates joint investigations, coordinated settlements and intelligence-sharing in complex cross-border cases.

The U.K. "Failure to Prevent Fraud" law came into effect in 2025. Companies are criminally liable for fraudulent acts committed by senior managers or associated persons that benefit the organization, unless the company had "reasonable prevention procedures."

The offense applies to all large organizations, has extraterritorial reach and significantly expands corporate exposure for a number of fraud-related offenses, including:

- Fraud by false misstatements.
- Fraud by failure to disclosure information.
- False accounting.

Middle East and Africa

Cross-border anti-corruption enforcement and asset recovery cooperation accelerated in 2025. Saudi Arabia led the United Nations-backed GlobE Network, connecting over 220 anti-corruption agencies for intelligence-sharing.

The United Arab Emirates (UAE), which was removed from the Financial Action Task Force (FATF) "gray list" in 2024, intensified its AML/counterterrorist financing supervision and enforcement, imposed record-level sanctions on financial institutions and entered new mutual legal assistance treaties with the U.S. and the Philippines.

Meanwhile, the Middle East and North Africa Asset Recovery Inter-Agency Network (MENA-ARIN), which held its inaugural meeting in October 2025, aims to facilitate tracing, freezing, seizure and recovery of illicit assets.

Asia Pacific

Authorities strengthened financial crime and anti-corruption cooperation, and enhanced AML laws. The Monetary Authority of Singapore imposed landmark penalties for AML breaches and prioritized stronger regulations and collaboration in the digital assets sector.

In September 2025, Singapore hosted the INTERPOL Asian Regional Conference, in which the Silver Notice, an intelligence-sharing tool launched in January 2025 across 51 jurisdictions to trace illicit assets and enable coordinated action on transnational financial crime, was featured.

The Silver Notice's elevated profile indicates that, in 2026, authorities across the region will make greater use of shared intelligence platforms to trace assets, align investigative efforts and react more quickly to cross-border misconduct.

China's amended Anti-Money Laundering Law, effective January 2025, expanded compliance obligations to nonfinancial institutions and introduced a national ultimate beneficial owner registry. The law applies extraterritorially to overseas money laundering and terrorist financing threatening China's interests.

China and member states of the Association of Southeast Asian Nations (ASEAN) have also pledged to deepen cooperation on money laundering, bribery and transnational crime.

Read more about government regulation and enforcement:

+ With Supportive New Regulations, Digital Assets Are Likely to Proliferate in 2026
+ Corporate Compliance Remains Critical as State Enforcement Initiatives Gain Momentum Following Governors' Races
+ SEC Moves to Lighten Regulation and Encourage Capital Formation

Check out our podcast "**An Ounce of Prevention**" for more on critical issues shaping the landscape of corporate compliance and enforcement around the globe.

Corporate Compliance Remains Critical as State Enforcement Initiatives Gain Momentum Following Governors' Races

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Key Points

- The outcome of recent gubernatorial and attorney general elections has added momentum to the trend of increased enforcement by states in areas previously perceived as primarily federal territory.
- The elections are another reason for companies to evaluate whether their corporate compliance programs adequately reflect the shifting regulatory environment.
- Areas of potential exposure include consumer protection, data privacy, antitrust, anticorruption and securities enforcement.

States are building on their enforcement momentum following the November 2025 gubernatorial and attorney general (AG) elections. Businesses may want to take into consideration how changes at the top of state governments often signal changes in state AG enforcement postures, as well as within the broader regulatory landscape in which companies operate.

Three enforcement themes have emerged, each carrying implications for companies.

1. Consumer Protection and Data Privacy Enforcement

Candidate campaigns have increasingly emphasized "holding bad actors accountable" for deceptive and unfair business practices, and misleading marketing or data privacy abuses that have an adverse impact on constituents — children in particular.

State AGs, traditionally considered the chief consumer protection advocates in their states, have ramped up investigations and enforcement actions. They have also collaborated on investigations and enforcement actions across state lines, as seen in the formation of the Consortium of Privacy Regulators, a bipartisan group comprised of the California Privacy Protection Agency and nine state AGs. (See our client alerts "State Attorneys General May Fill Enforcement Void Left by Shift in Federal Priorities" and "Eight-State Consortium of Privacy Regulators Marks Shift Toward Coordinated Enforcement.")

State AGs have also been using existing consumer protection laws to address challenges associated with artificial intelligence (AI), though this approach could shift as federal standards take shape.

In December 2025, the Trump administration issued an executive order directing the U.S. attorney general to challenge state AI laws that conflict with federal policy, with the aim to ensure a national framework for regulating AI.

A bipartisan coalition of 36 state AGs had sent a letter to Congress in November 2025 opposing a proposed federal ban on state laws regulating AI and expressing interest in state-federal collaboration to develop regulations that promote innovation while protecting the public.

While the executive order could impact how state AI laws are enforced, companies may want to consider the following in their approach to their consumer protection and data privacy practices:

- Monitoring developments relating to the implementation of a new federal AI framework.
- Mapping what data they collect and process.
- Revamping their privacy policies.
- Assessing their practices against the evolving statutes in anticipation of aggressive enforcement of consumer law frameworks, especially as states continue to pass legislation and issue guidance strengthening consumer protection.

2. Antitrust Implications

Gubernatorial candidates put affordability at the forefront of their campaigns, and those elected have indicated that one way they intend to address this issue is by targeting anticompetitive practices. Some governors and state AGs are expanding their scrutiny of mergers, monopolistic conduct and platform power in response to perceived insufficiencies in, or to supplement, federal enforcement efforts.

New laws indicate that states are bolstering their enforcement capabilities. In 2025, there was new legislation in California and New York that increases criminal penalties for antitrust violations. Laws in Colorado and Washington now require companies to submit premerger notifications to state authorities.

Companies should consider monitoring new developments in this area, especially since legislation varies from state to state.

3. Anticorruption and Securities Enforcement

Companies may want to be alert to how state AGs have intensified their focus on violations of anticorruption and securities laws. State authorities have signaled their intent to bring actions for violations of such laws through available enforcement mechanisms.

Earlier in 2025, California's attorney general "remind[ed] business[es] operating in California that it is illegal to make payments to foreign-government officials to obtain or retain business," and informed them that such conduct is actionable under California's Unfair Competition Law. (See our April 8, 2025, client alert "California Attorney General Warns That FCPA Violations Are Still Actionable Under State Law.")

In October 2025, a coalition of 21 state AGs submitted a joint comment letter urging the SEC to provide clear, narrowly tailored definitions for the security status of digital assets under federal law. In it, the state AGs claimed that such definitions are critical to maintaining the balance of power between federal and state governments, protecting consumers from harm and allowing states to innovate in regulating emerging technologies.

Final Thoughts

Companies may want to view the recent state elections as opportunities to revisit, refresh and reinforce their state-level enforcement readiness. As new governors take office and state AGs recalibrate their enforcement priorities, companies that factor political shifts into their compliance programs will be best positioned to stay ahead of evolving risks.

Read more about AI, digital assets and SEC regulation:

+ Don't Believe the Hype: Government Regulation of AI Continues to Advance
+ With Supportive New Regulations, Digital Assets Are Likely to Proliferate in 2026
+ SEC Moves to Lighten Regulation and Encourage Capital Formation

My IP Is Not Your IP: Clear Terms Are Key in Joint Development Agreements

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Key Points

- Joint development agreements are a common way to structure collaborative development and growth projects, but they can come with risks, including potential disputes over confidential information and intellectual property ownership.
- Companies can mitigate these risks through thoughtful and careful drafting that clearly delineates each party's rights and obligations during the joint development activities.
- Implementing and maintaining clear policies and procedures internally will also help minimize exposure from the risks associated with these transactions.

Provisions and Practices Relating to Confidential Information

Protecting a company's confidential information — and ensuring there is the ability to sort through whose confidential information is whose — is of the utmost importance in a joint development agreement (JDA). Thus, the language parties use in drafting their agreement and the practices they implement during the relationship can make or break trade secret or breach of contract cases.

Whose "confidential information" is protected? In complex collaborations, it is nearly inevitable that both sides will share some confidential information. As a result, companies should consider ensuring that confidentiality obligations flow both ways and ensure that the reality of the arrangement is reflected.

Controlling what is designated as confidential. Parties can create procedures to govern the designation of information as confidential.

- Requiring parties to mark information as confidential to be treated as confidential can be helpful down the line. Be aware, however, that in agreements with this obligation, failure to mark can be fatal. Taken together with the fact that marking obligations can be overly burdensome, consider whether a clause providing that marking is not dispositive is more appropriate.
- Beyond contractual provisions, parties would be well advised to document the disclosure of critical trade secret information. Though in practice this may be difficult to implement for all confidential information, tracking and documenting the disclosure (and receipt) of key trade secret information like chemical compositions or manufacturing procedures can be invaluable in a downstream intellectual property (IP) litigation.

Management of destruction or return of confidential information. While it is important to include provisions in agreements that require parties to destroy or return all confidential information at the end of the agreement, practically speaking, it can be difficult to implement these provisions. In order to comply with them, parties may want to consider whether to provide specifics in their destruction request, even if the contract does not require them. For example, indicating that the other side should destroy all documents reflecting patented chemical compositions or trade secret manufacturing processes allows the counterparty to deploy more bespoke deletion efforts.

Delineating IP Ownership

A vital aspect of a JDA are the provisions that allocate ownership of IP that existed before the agreement and IP that will be developed by the parties during the relationship. While this may seem simple

on paper, in practice, unpacking which party invented which technology can be thorny. Implementing tracking procedures and robust documentation can help, particularly if and when the collaboration unwinds.

Identification of preexisting IP. Parties should consider specifically identifying all preexisting IP owned by each prior to entering a JDA, when possible. Ideally, each piece of preexisting IP should be specifically listed to avoid disputes over ownership. This includes listing patents, trade secrets and other IP that parties believe they are bringing to the collaboration. Having this conversation and specifying the preexisting boundaries up front can help protect against foundational disputes down the line. That being said, identifying preexisting IP is not practical in most matters. If that is the case, it is important to maintain strong records on the origin and development of IP to help bolster an ownership claim in a potential future dispute.

Careful consideration of the treatment of jointly developed IP. In many scenarios, a simplistic provision specifying that jointly developed IP is jointly owned will not be enough to avoid disputes. Being intentional about post-agreement ownership rights to inventions conceived of during the course of the relationship is important.

More generally, joint IP introduces complexities that parties should anticipate in the agreement, including expectations on revenue-splitting, decision-making on enforcing IP against third-party infringers and rights to use IP — both during and after the relationship.

Equally important is creating internal procedures to document employees' contributions to inventions that fall under the collaboration. Detailed invention disclosures can be critical down the line when assessing which inventions count as joint IP as opposed to IP solely owned by a party.

Other Helpful Safeguards in the Event of Future Litigation

Alternative dispute resolution procedures. Even though parties enter into agreements hoping for a fruitful collaboration, they still should prepare for disputes. Building in procedures for face-to-face meetings |of executives and potentially other team members to resolve disputes before litigation can be helpful in some collaborations. Companies should also be mindful to provide for a right to seek injunctive relief where appropriate, so that they are not stuck in a waiting period when they face the threat of imminent irreparable harm.

Termination clauses. JDAs are rarely meant to last indefinitely. Termination provisions should account for the fact that the parties may need or want to use information gained during the collaboration even after the agreement has concluded. For some arrangements, this may extend to background information of the other party.

AI-Related Claims and Other Securities Litigation Trends to Watch

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Key Points

- The rapid evolution of artificial intelligence is fueling a surge in AI-related securities claims.
- The SEC's reversal on mandatory arbitration provisions is poised to reshape the field, prompting debate among companies, exchanges and practitioners.
- Plaintiffs are increasingly testing the limits of when expert opinions and short-seller reports can be credited at the motion-to-dismiss stage.
- Plaintiffs are starting to target private credit lenders under Rule 10b-5, focusing on alleged misstatements about portfolio performance and asset values.
- Tracing requirements for claims under the '33 Act are likely to become a focal point in 2026, as parties grapple with the aftermath of the U.S. Supreme Court's decision in *Slack Technologies, LLC v. Pirani*.

New Filings Shift Toward AI-Related Claims

Securities class action filings remained elevated in 2025, signaling that robust activity will likely persist into 2026. According to economic and financial consulting company Cornerstone Research, through September 30, 2025, there were 161 new securities class actions filed in federal and state courts (consisting of 155 traditional filings and six merger objections).

Notably, only three cases under the Securities Act of 1933 ('33 Act) were brought in state court during this period, on track to be the lowest annual total since the U.S. Supreme Court's 2018 decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 583 U.S. 416 (2018), which confirmed the concurrent jurisdiction of state courts over '33 Act claims.

Beyond the numbers, AI-related class actions have outpaced other categories and are set to shape the litigation landscape in the coming year. For example, plaintiffs have filed a number of complaints based on allegations of "AI-washing" — misrepresentations about AI capabilities or revenues.

Plaintiffs also claim companies have:

- Overstated AI-driven efficiencies.
- Misleadingly rebranded legacy technology as AI (so-called AI-washing).
- Concealed licensing or performance issues.
- Exaggerated the pace and feasibility of AI integration.

Read more about AI-related enforcement: "Don't Believe the Hype: Government Regulation of AI Continues to Advance."

The SEC's Reversal on Mandatory Arbitration Provisions

On September 17, 2025, the Securities and Exchange Commission (SEC) announced that mandatory arbitration provisions in company governing documents will no longer influence the agency's decision about whether to accelerate registration statements. Instead, the SEC will focus on the adequacy of the registration statement's disclosures, including those about arbitration provisions. (See our September 26, 2025, client alert "SEC Reverses Course on Arbitration Clauses, Potentially Opening the Door to Their More Widespread Adoption.")

The announcement marks a shift from the SEC's prior stance, which viewed such clauses as potentially violating anti-waiver provisions of the federal securities laws by restricting judicial forums and class actions. Now, the SEC has adopted a neutral stance: It neither endorses nor opposes arbitration provisions in registration statements.

The same approach will apply if a Securities Exchange Act-reporting issuer amends its bylaws or charter to adopt an issuer-investor mandatory arbitration provision.

This policy shift sets the stage for further developments in 2026. Plaintiffs' attorneys have already indicated plans to challenge mandatory arbitration provisions if adopted. Self-regulatory organizations, such as the New York Stock Exchange (NYSE) and Nasdaq, may also weigh in by crafting their own policies. There are numerous individual considerations that each issuer will have to take into account before adopting such provisions, and we don't anticipate a flood of companies adopting such provisions immediately.

Read more about SEC regulation: "SEC Moves to Lighten Regulation and Encourage Capital Formation."

Expert Reports at the Pleadings Stage After *NVIDIA*

Lower courts continue to wrestle with plaintiffs' use of expert opinions to support their allegations at the pleading stage. This strategy of using expert opinions gained traction after the U.S. Court of Appeals for the Ninth Circuit's decision in *E. Ohman J:or Fonder AB v. NVIDIA Corp.*, 81 F.4th 918 (9th Cir. 2023), which credited falsity allegations based partly on a *post hoc* expert analysis of NVIDIA's reported revenues.

The Supreme Court initially granted *certiorari* to review the Ninth Circuit's decision but ultimately dismissed the case as improvidently granted after oral argument. Since then, most district courts have declined to credit expert opinions unless they are grounded in particularized facts.

With no Supreme Court guidance, this area remains unsettled and further developments are likely as courts and litigants explore the boundaries of what is permissible at the motion-to-dismiss stage.

Short-Seller Reports: Ongoing Challenges for Plaintiffs

Plaintiffs are increasingly relying on allegations drawn from reports issued by short-sellers — investors with a built-in incentive to drive the issuer's stock price lower. In assessing the elements of falsity and scienter, courts have generally been reluctant to credit "short report" allegations unless corroborated by independent, well-pled facts, such as company admissions.

Loss causation has proven to be another hurdle, as illustrated by the U.S. Court of Appeals for the Fourth Circuit's recent decision in *Defeo v. IonQ, Inc.*, 134 F.4th 153 (4th Cir. 2025). There, the plaintiffs alleged that IonQ, a quantum computing company, made materially false statements about its technology and prospects, relying on a report by Scorpion Capital LLC, an activist short-seller.

The report accused IonQ of running a "quantum Ponzi scheme" and misleading the public about its technology and revenues. After the report's publication, IonQ's stock price fell and plaintiffs claimed this decline established loss causation.

The Fourth Circuit affirmed the district court's dismissal of the complaint for failing to plead loss causation. The court held in part that because Scorpion Capital's report had relied on anonymous sources, included disclaimers of accuracy, and disclosed a self-interested financial motive, it was not a plausible corrective disclosure for loss causation purposes.

In reaching its conclusion, the court echoed the Ninth Circuit's observation in *In re Nektar Therapeutics Securities Litigation*, 34 F.4th 828 (9th Cir. 2022), that plaintiffs face a "high bar … in relying on self-interested and anonymous short-sellers" when attempting to plead loss causation.

The Fourth Circuit, like the Ninth Circuit, left open the possibility that, under the right circumstances, a short-seller report might support loss causation. Still, the Fourth Circuit's decision is a notable win for corporate defendants and signals that plaintiffs will face significant challenges when relying on similar reports.

Emerging Issues: Litigation Against Private Credit Lenders and '33 Act Tracing

Looking ahead, several other trends warrant attention. Private credit lenders may become targets in securities class actions arising from capital raises involving retail investors. Plaintiffs have thus far treated private credit vehicles like traditional issuers under Rule 10b-5, focusing on alleged misstatements about portfolio performance and asset values.

Traceability — the requirement that plaintiffs "trace" their securities to a specific registration statement or prospectus for '33 Act claims — may also become a flashpoint. In *Slack Technologies, LLC v. Pirani*, 598 U.S. 759 (2023), the Supreme Court held that Section 11 plaintiffs must

plead that their shares can be traced to a particular registration statement.

On remand, the Ninth Circuit rejected the plaintiffs' statistical analysis as legally insufficient to establish traceability. The Ninth Circuit also concluded that Section 12(a)(2) imposes the same tracing requirement as Section 11. This requirement may prove difficult to satisfy at the pleading stage in cases involving direct listings, post-lock-up expirations or follow-on offerings, where shares are held in fungible bulk by The Depository Trust Company. Tracing may also complicate class certification by making the putative class unascertainable and introducing individualized issues.

Final Thoughts

As we look to 2026, the securities litigation arena is poised for continued evolution. The intersection of emerging technologies, regulatory shifts and evolving pleading strategies will present both challenges and opportunities for companies, investors and practitioners alike. Monitoring these trends will be essential for navigating the year ahead.

Read the latest quarterly update from Skadden's securities litigators: "*Inside the Courts – November 2025*."

Associate **James M. Johnston** contributed to this article.

Regulatory/ Enforcement

Turbulence Ahead: Tariff and Trade Policy Shifts Are Expected Amid Looming Supreme Court Decision

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Key Points

- The U.S. Supreme Court is currently reviewing the legal authority underpinning some of President Trump's signature trade actions. At oral argument in November 2025, the Court appeared skeptical of the administration's novel use of these emergency powers.
- If the Court rules against the Trump administration, the president may rely on new and existing alternative tariff authorities to accomplish much of his trade agenda, albeit in some cases subject to greater procedural requirements.
- The administration will likely continue to pursue trade negotiations regardless of the outcome of the Court case and press for changes to the USMCA.
- The sharp increase in Section 232 investigations over the past year will likely continue and result in new duties on many of the industries targeted, covering significant segments of the economy.

Transformative Trade Policies

From the perspective of tariffs and trade policy, 2025 was a year that many companies would prefer to put in the rearview mirror. There was an explosion of tariffs, from those imposed by President Donald Trump under the International Emergency Economic Powers Act (IEEPA) to an array of sectoral tariffs implemented under other authorities, such as Section 232 of the Trade Expansion Act of 1962 (Section 232).

It was a year of pervasive uncertainty, of tariffs threatened and withdrawn, raised and reduced. Trade agreements that were bedrock elements of the commercial landscape, such as the United States-Mexico-Canada Agreement (USMCA), began to look fragile amid the tariffs that seemed to vitiate hard-won tariff preferences.

At the same time, new trade framework agreements were struck, offering the potential for new market access, but typically without formal, legally binding text to fall back on.

We expect to see many of these same dynamics — uncertainty, changing tariff programs and structures, a shifting trade agreement landscape — continue in 2026. It is possible that with midterm congressional elections looming, we will see President Trump moderate his tariff policies somewhat as political concerns over the cost of living continue to grow. But we expect him to reach in the first instance for tools that do not require tampering with or restraining his core tariff programs, such as tax credits and subsidies. He may also integrate carve-outs and exemptions into his tariff programs.

IEEPA Tariff Litigation

In 2025, President Trump invoked IEEPA to impose a series of sweeping tariffs, including:

- Tariffs on China, Canada and Mexico in connection with their alleged complicity in the flow of fentanyl into the U.S.
- "Reciprocal" or "baseline" tariffs on virtually all countries.

The actions represented an untested assertion of authority, as IEEPA had never previously been used to impose tariffs.

On November 5, 2025, the U.S. Supreme Court heard oral arguments in a consolidated set of cases challenging the legality of the IEEPA tariffs after several lower

courts held the measures to be unlawful. While questions asked during oral arguments are not necessarily indicative of how the Court will eventually resolve a case, a majority of justices individually expressed skepticism about whether IEEPA could be read to authorize tariffs. Many observers expect an opinion to be released by early 2026.

The justices devoted scant attention to the issue of how to provide refunds of duties that importers have already paid if the Court strikes down the tariffs. One justice described the refund issue as a "mess." While there are well-established procedures for refunds in conventional customs matters, the unprecedented nature of the IEEPA tariffs adds uncertainty to how potential reimbursement would be resolved.

The details of any refund process would depend on the scope of the Court's ruling, the perspective of the lower courts on remand and the administration's approach, including whether it elects to create a uniform refund program through rulemaking. Among the key issues for any refund program, and one briefly addressed during oral arguments, is whether relief would be retroactive or merely apply prospectively.

Potential Alternative Tariff Authorities

Even if the Supreme Court invalidates the IEEPA tariffs, the president would still be equipped with alternative authorities to impose duties.

The Trump administration has already made frequent use of Section 301 of the Trade Act of 1974 (Section 301) and Section 232. Section 301 allows the Office of the U.S. Trade Representative (USTR) to impose duties in response to foreign trade practices that are "unreasonable" or discriminatory, whereas Section 232 allows the president to target imports that pose national security risks.

The powers conferred by both statutes are subject to certain procedural requirements, in contrast with IEEPA. Sections 301 and 232 require USTR and the Department of Commerce, respectively, to conduct investigations before imposing a remedy, whereas under IEEPA, the president can take action immediately, without conducting an investigation or making factual findings.

In other words, Sections 301 and 232 cannot be used to suddenly impose new tariffs, or increase or decrease existing tariff rates.

The administration could also leverage long-dormant statutes such as:

- Section 122 of the Trade Act of 1974, which authorizes the president to impose tariffs up to 15% and for 150 days in response to balance-of-payments deficits.
- Section 338 of the Tariff Act of 1930, which allows tariffs up to 50% on goods from countries that engage in discriminatory trade practices.

Trade Agreements

On April 2, 2025, President Trump imposed a 10% "baseline" tariff on all goods imported from most countries, with nearly 60 additional countries subject to typically higher "reciprocal" tariffs.

The action brought many governments to the negotiating table to avert steep levies, ushering in a wave of bilateral arrangements with varying degrees of legal weight and finality. These agreements often took the form of nonbinding framework agreements that remain subject to further negotiation.

Characterized broadly, the trade partners agreed to:

- Reduce tariff barriers on U.S. products.
- Open market access through recognition of U.S. safety certifications.
- Commit to substantial investments in the U.S.

In some cases, these partners agreed to align certain trade policies (*e.g.*, regarding China) with those of the U.S. In return, the U.S. backed down from many of the larger tariffs it had initially proposed.

The Supreme Court's upcoming IEEPA ruling could place these bilateral trade deals under additional scrutiny. Limitations on the president's tariff powers could prompt trade partners to reopen negotiations or modify their bargaining position in ongoing negotiations.

2026 will also be a crucial year for the USMCA. The three parties to the treaty are slated to conduct a joint review in July 2026 to determine whether to extend it. The three governments are already engaged in discussions about how to modify the agreement before it can be extended.

The Trump administration has floated a range of ideas, including some that would involve far-reaching changes, such as scrapping the trilateral USMCA and replacing it with two bilateral agreements. Other possible changes include tightening rules of origin, modifying Canada's dairy regime and taking coordinated steps to counter China's trade policies and influence.

Section 232 Investigations

The Trump administration made unprecedented use of Section 232 investigations in 2025, leveraging them as a tool for "supply chain sovereignty," and targeting intermediate goods and advanced technologies. As discussed above, Section 232 allows Commerce to investigate imports that may give rise to national security concerns and provide recommendations to the president, who can impose tariffs or other measures with respect to such imports.

Section 232 arguably is the president's most durable trade authority, and the one that is perhaps least amenable to judicial review.

Commerce has launched or relaunched roughly 17 Section 232 investigations, including into:

- Robotics and industrial machinery
- Pharmaceuticals
- Semiconductors
- Critical minerals
- Polysilicon
- Unmanned aircraft systems

The administration has already converted findings into action, imposing tariffs on copper, steel, aluminum (as well as "derivative" products made from these three metals) and lumber.

In 2026 we may see tariffs, quotas and other measures imposed following investigations into, among other products, semiconductors, robotics, polysilicon and pharmaceuticals.

We could also see new investigations initiated, depending on the outcome of the Supreme Court's ruling on IEEPA.

Final Thoughts

The coming year will be pivotal for U.S. trade policy. The Supreme Court's decision on the IEEPA tariffs will determine whether the administration may continue to rely on these emergency economic powers or shift to other statutory authorities.

Regardless of the outcome, the Trump administration retains ample tools — particularly Sections 122, 232 and 301 — to impose new duties, shape supply chains and pressure trading partners.

Many governments have already entered bilateral negotiations to mitigate tariff exposure, and these arrangements may face renewed scrutiny if the Court limits the president's tariff powers. Companies should expect continued volatility as the administration adjusts tariff measures and bilateral commitments in response to legal and geopolitical developments.

At the same time, the surge in Section 232 investigations signals that national security-based trade restrictions will remain a central policy instrument. With several major investigations concluding in 2026 — and with more investigations likely to be initiated if IEEPA authorities are curtailed — importers should prepare for additional restrictions in the year ahead.

Political Law Due Diligence in M&A Transactions Is Increasingly Critical

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Key Points

- With the increasingly outsized role that government plays in business, corporate political engagement is booming, introducing growing risks into M&A transactions.
- Even inadvertent foot faults can have severe consequences, such as a political contribution by a covered employee or director triggering automatic bans on government contracts under the pay-to-play rules.
- There are also significant reputational and shareholder relations risks that can arise from violations of any of the seemingly technical political laws.
- Conducting due diligence for political law compliance is essential to identifying risks, preventing the acquirer from inheriting legal liabilities, and ensuring accurate valuation and smooth integration.

The Expansion of Private Sector Political Activity

In recent years, governments have been playing more pivotal roles in regulating industries and emerging technologies, and selecting companies for large contracts and public-private partnerships. To keep up with this reality, companies have increased their political engagement to unprecedented levels.

- In 2024, federal lobbying spending reached an all-time high of $4.5 billion, according to the analytics service Bloomberg Government.
- In the last two presidential elections, federal political action committees (PACs) raised more than twice as much as they had in any previous election cycle, according to the Federal Election Commission.
- Many companies are establishing their own PACs or 501(c)(4) nonprofits for the first time.

Risks Associated With Increased Political Activity

With increased political engagement comes increased risk. A target company's political law missteps can result in decreased company profits and costly investigations, and in some cases they can affect the company's valuation. Companies with heightened risk are those with significant government contracts, politically active leadership, or large government relations or public policy operations.

Indeed, numerous states have pay-to-play laws under which a political contribution by a covered director or employee (and in some cases even their spouse or child) triggers an automatic multiyear ban on government contracts. (See our December 10, 2025, client alert "Managing Pay-to-Play Risk When Federal Officials Run for State Office.")

Most financial institutions are subject to federal pay-to-play rules that impose contribution bans in all 50 states. Moreover, violations of domestic anticorruption laws applying to U.S. officials can lead to criminal liability. We have seen such corruption cases lead to as much as a 35% decline in stock value.

These risks also play out against the backdrop of high-level scrutiny from activist shareholders regarding the company's political spending, as evidenced by the large number of shareholder proposals on the subject.

Mitigating Political Law Risks Through Due Diligence

Acquirers can get ahead of these hazards by conducting certain political law due diligence on target companies, including:

- Determining if the target is in one of the three heightened-risk categories above.
- Analyzing potential exposure to a political law. Is the target aware of these laws, and are they addressing them reasonably?
- Structuring the transaction to minimize exposure — for example, ensuring that the acquiring company does not inherit a pay-to-play ban triggered by the target.
- Merging PAC assets and employee contributions, and updating filings accordingly.

Final Thoughts

Anecdotally, we have observed an increasing number of acquirers requesting that their M&A law firm conduct due diligence of the target under political laws. Doing so, particularly in the context of M&A transactions, not only informs acquiring companies of a target company's existing violations, but also enables them to more accurately assess the value of a company and structure transactions to mitigate future risks.

Read more about M&A:

+ M&A in the AI Era: What Buyers Can Do to Confirm and Protect Value
+ The Long-Anticipated Wave of Bank Consolidation Starts to Break
+ 'Premiumization' and Slow Organic Growth Are Likely to Feed Food and Beverage M&A
+ M&A in the Middle East: AI, Financial Services and Energy Transition Lead the New Wave
+ Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation
+ Liability Divestiture Transactions: A Win-Win for Financial Buyers and Mass Tort Defendants

Check out our podcast "**The Lobby Bar**" for more on political law considerations.

SEC Moves to Lighten Regulation and Encourage Capital Formation

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Key Points

- The SEC announced a regulatory agenda that is expected to continue its shift away from promoting ESG and other politically hot button issues in favor of easing various regulatory burdens, with a new emphasis on capital formation.
- Possible changes include the elimination of the requirement to file quarterly financial reports and rule updates to make it easier for companies to exclude shareholder proposals from proxy statements.
- The commission is expected to set forth a more crypto-friendly regulatory framework.
- The agency's enforcement program is expected to continue pursuing litigation that focuses on materiality and investor harms.

Under the leadership of Chairman Paul Atkins with a Republican majority on the commission, the Securities and Exchange Commission (SEC) is expected to continue on its trajectory toward regulatory reform that marks a pivot from the prior administration.

Expected Proposed Rulemakings

In September 2025, the SEC announced a new regulatory agenda that is intended to represent its "renewed focus on supporting innovation, capital formation, market efficiency, and investor protection." Notably, the new agenda dropped a number of environmental, social and governance (ESG) initiatives from the prior administration. It also introduced several new areas of focus for rulemaking.

The following key changes affecting public companies would require SEC rulemaking, including subjecting proposed rules to a public comment period before final adoption.

Semiannual financial reporting. Chairman Atkins has expressed support for President Donald Trump's renewed call to end quarterly reporting in favor of semiannual disclosures and announced that the SEC is "fast tracking" rulemaking in this area. During President Trump's first term, the SEC published a request for comment on earnings releases and quarterly reports and hosted a roundtable, but did not pursue further reforms.

Rationalization of disclosure practices. The SEC is considering potential rule changes that rationalize disclosure practices to facilitate material disclosure by companies and shareholders' access to that information. For example, streamlining executive compensation disclosures is expected to be an area of focus, following an SEC-hosted roundtable on executive compensation disclosure requirements with representatives from public companies, investors, industry groups and advisers in June 2025. (See our June 30, 2025, client alert "SEC Signals Coming Changes to Executive Compensation Disclosure.")

Shareholder proposals. The SEC is revisiting the requirements of Securities Exchange Act Rule 14a-8, which regulate the inclusion of shareholder proposals in company proxy materials for annual shareholder meetings. Specifically, the SEC is considering potential rule changes to reduce compliance burdens for registrants and account for developments since the rule was last amended. In addition, an executive order issued in December 2025 directs the SEC to, among other things, revisit rules and regulations relating to proxy advisory firms and shareholder proposals that implicate "diversity, equity,

and inclusion" and "environmental, social, and governance" priorities that are inconsistent with the purpose of the executive order. In November 2025, the SEC staff announced that the agency would decline to review most no-action requests to exclude shareholder proposals from company proxy materials for this proxy season in light of the backlog due to the government shutdown. In February 2025, the SEC staff issued guidance rescinding Biden-era staff guidance that had made it more difficult to exclude certain types of ESG-related shareholder proposals. (See our December 16, 2025, client alert "White House Executive Order Aims to Restrict the Influence of Proxy Advisory Firms" and September 25, 2025, client alert "Shareholder Proposal No-Action Requests in the 2025 Proxy Season: A Continuing Surge in Requests and a Favorable Regulatory Environment.")

Capital formation. Proposed rulemakings are expected to include:

- Simplifying the pathways for private companies to raise capital.
- Modernizing the shelf registration process to reduce compliance burdens.
- Expanding emerging growth company accommodations to include more issuers.
- Simplifying filer status categories generally.

Foreign private issuers. The SEC is considering potential amendments to the definition of "foreign private issuer" following its June 2025 publication of a concept release soliciting public input in light of developments in the population of foreign private issuers. (See our June 6, 2025, client alert "SEC Requests Public Comment on the Definition of Foreign Private Issuer.")

Cryptoassets and market structure. New rules are expected to clarify the regulatory framework for cryptoassets, including new and amended rules related to the offer and sale of cryptoassets, such as on exemptions and safe harbors. (See our August 8, 2025, client alert "A Closer Look at the Trump Administration's Comprehensive Report on Digital Assets" and our April 30, 2025, client alert "SEC Moves Quickly to Create a Regulatory Framework for Cryptocurrencies and Reconsider Its Rules and Guidance.")

Read more about digital assets:

+ With Supportive New Regulations, Digital Assets Are Likely to Proliferate in 2026
+ Major Jurisdictions Broadly Align on the Key Principles of Stablecoin Regulations but Not Always on the Details
+ Digital Asset Treasury Companies Are Using Common Forms of Capital Raising — With a Few Twists
+ Tokenization Is Coming to a Fund Near You: Designing the Structures to Make Investment Tokens Work

Enforcement Priorities

During the past year, a key focus of the SEC's enforcement efforts has been on intentional investor harm and the retail market, rather than on technical disclosure or record-keeping violations. The SEC has publicly emphasized the importance of enforcing rules against fraud and manipulation as well as offering frauds. Nearly one-third of enforcement actions brought under this administration involve offering fraud or insider trading, up from about a quarter during the same period last year.

Crypto enforcement has been pared back to only cases of clear fraud, with the SEC voluntarily dismissing several lawsuits involving cryptoasset-related conduct. Recent enforcement actions also indicate a reluctance to assess corporate penalties where there is no clear corporate benefit from the violation.

While the agency appears to have deemphasized purely technical or "compliance rule failure" cases, we expect it to continue focusing on material disclosure by public companies, by reverting to traditional notions of materiality where there is a clear impact to stock price, guidance and analyst coverage.

In addition, insider trading (including improper use of Rule 10b5-1 plans) remains a priority, as does market manipulation, with increasing attention on AI-related misrepresentations such as "deepfake" use, algorithmic trading firms and exaggerated technology marketing to lure investors. A cross-border task force was created to focus on enforcement lead generations for public companies based in Asia.

With respect to regulated entities, the SEC is expected to focus on conflict of interest disclosures, particularly where conduct impacts retail investors, and to use its authority under Regulation Best Interest (which was adopted under the first Trump administration). These priorities have already been reflected in cases brought by this administration.

Opening up private equity investments to retail markets — which the administration supports — could also prompt enforcement attention on issues relating to redemption rights, liquidity, preferential treatment and management fees.

Lastly, changes in the SEC staff's internal structure and processes are intended to promote greater consistency in cases across the Enforcement Division, more transparency and earlier involvement of the commission in the investigation process. (See our April 30, 2025, client alert "SEC Enforcement Policies Suggest a Return to Basics.")

Read our checklist and analysis of matters for companies to consider as they conduct their 2026 annual meetings and file reports to meet upcoming regulatory, shareholder and advisory deadlines.

A Depleted IRS May Turn to Expedited Processes to Work Off Dispute Backlog

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Key Points

- The IRS is operating with at least 25% fewer employees than a year ago, and, as of mid-December 2025, nearly two-thirds of senior leadership positions remained vacant or filled with acting managers, including the commissioner and the chief counsel.
- The longest federal government shutdown in history only exacerbated personnel challenges, potentially impacting the 2026 filing season and likely leading to delays in the processing of refund claims and responses to notice-related inquiries as well as appeals.
- Taxpayers with active examinations may want to be alert to opportunities to resolve their matters quickly and efficiently with an IRS Compliance Division motivated to reduce its workload.

By any measure, 2025 was a tumultuous year for the Internal Revenue Service (IRS), leaving a slimmed-down organization struggling to implement new priorities and a workforce trying to catch its breath in the face of dizzying personnel changes and government shutdown-related backlogs.

For taxpayers, this likely means a mixture of both significant challenges and opportunities in 2026 when navigating a reshaped IRS and the uncertainties of a shifting enforcement landscape.

Personnel Changes and Leadership Challenges

Fulfilling the Trump administration's goal of reducing the size of the federal government, the Office of Management and Budget (OMB) and Department of Government Efficiency (DOGE) oversaw a dramatic and sudden reduction in IRS staffing, from approximately 103,000 employees at the beginning of 2025 to 74,299 employees as of the end of July 2025.

Most of these departures were a result of voluntary incentives such as the Deferred Resignation Program, leading in some cases to the abrupt loss of experienced employees with little opportunity for knowledge transfer or succession planning. The loss of key personnel in certain areas led the IRS to try to reverse course on some of the separations.

Personnel departures were not limited to the front lines. As of mid-December 2025, seven different individuals had served as either commissioner or acting commissioner since the beginning of the year. Treasury Secretary Scott Bessent stepped into the acting role in August 2025 following the departure of President Donald Trump's nominee, Billy Long, after only two months.

Frank Bisignano served double duty as both commissioner of the Social Security Administration and in the newly created position of IRS "chief executive officer," with no deputy commissioner in place and no new nominee for commissioner on the horizon.

Treasury Assistant Secretary for Tax Policy Ken Kies continues to act as IRS chief counsel, with President Trump pulling his nomination of Donald Korb just before a scheduled November 2025 vote on his confirmation.

Nearly two-thirds of IRS senior leadership stepped down in 2025, which resulted in less seasoned leaders stepping into acting roles or covering more than one leadership area. The agency awaits permanent leadership and an easing of the hiring freeze that had been in place since January 2025, preventing many vacant management positions from being filled permanently.

Government Shutdown

On October 1, 2025, the federal government began what was to be the longest shutdown in history, lasting 43 days, while Congress debated the contours of legislation to fund the government.

While the IRS had some flexibility due to remaining Inflation Reduction Act funding, over half of its employees were furloughed during the shutdown, including most compliance and chief counsel personnel, leading to a pause in most service center activities, examinations, nonautomated collection activities, appeals and litigation.

Impact on Taxpayers Going Forward

A year of difficult transition and potential taxpayer frustration lies ahead as the IRS struggles to dig out of a shutdown-created backlog with far fewer employees. While protecting activities necessary for filing season always takes priority, it remains to be seen whether the IRS can implement all the changes to guidance, publications, forms and systems required by the One Big Beautiful Bill Act (OBBBA) on time in the current environment.

Taxpayers with matters pending with **IRS service centers**, such as refund claims, responses to penalty notices, account error resolution and the processing of certain forms, will likely encounter delays and difficulty reaching IRS personnel who can meaningfully assist, including at the **Taxpayer Advocate Service**, which also lost 25% of its employees in 2025.

Taxpayers with matters either heading to or pending before the **Independent Office of Appeals** (Appeals) will also likely encounter delays. Appeals lost over 28% of its workforce in 2025, with no corresponding reduction in its caseload (which is purely driven by taxpayer demand), and many cases needed to be reassigned. Shutdown backlogs in cases awaiting processing by Appeals — both at early and late stages of the appeal process — will likely lead to further delays.

Tax litigation essentially ground to a halt during the shutdown, with very limited activity. Based on past experience with shutdowns and the COVID-19 pandemic, this is likely to lead to a significant backlog in the U.S. Tax Court and delays for taxpayers. How the IRS chooses to devote its litigation resources going forward is not yet clear and could shift if and when a new chief counsel is installed. Meanwhile, IRS National Office attorneys will likely continue to prioritize critical OBBBA guidance, while fewer resources will be available for private letter rulings and other taxpayer-specific advice.

Examination activity will also likely be affected by resource issues in the Large Business and International (LB&I) Division — both in terms of which cases LB&I works and how it approaches those cases, so **Compliance Division activity** may be reduced.

For example, a unit formed in 2024 to focus on large and complex pass-through entities has been largely hollowed out, meaning the prior administration's attempts to increase audit coverage of large partnerships and expand its Global High Wealth Program has been mostly abandoned.

For ongoing corporate examinations, Compliance personnel will be motivated to close out these cases as early and efficiently as possible, and we expect to continue to see a trend toward greater use of alternative dispute resolution vehicles.

In 2025, we saw exam teams routinely offering to bring Appeals to the table early through the Fast Track mediation program and expect similarly increased interest in other post-filing dispute resolution tools such as Early Referral, Rapid Appeals and Post-Appeals Mediation due to the potential time and resource efficiencies they offer.

Similarly, we expect Compliance personnel to be receptive to entertaining prefiling agreements, voluntary disclosure agreements, skipping years/cycles and other ways of streamlining or limiting the scope of open examinations. Taxpayers with matters pending with the **Advance Pricing and Mutual Agreement Program**, on the other hand, may face less favorable outcomes resulting from resource unavailability and delays.

Final Thoughts

Taxpayers and their advisers will need plenty of patience when dealing with the IRS in 2026, as shutdown-related backlogs compound personnel challenges. At the same time, there should be opportunities to explore alternative paths to resolution in the reshaped IRS, with which taxpayers may want to familiarize themselves.

Skadden Podcasts

Our array of podcasts features Skadden attorneys in discussions that examine critical developments, regulatory trends and complex issues impacting companies and industries across the globe. Topics covered include antitrust and competition, tax, technology and more.

An Ounce of Prevention

The White Collar Defense and Investigations Group explores critical issues shaping the landscape of corporate compliance and enforcement around the globe.

Fierce Competition

Discussions of antitrust policy and enforcement around the world, including the latest developments and their implications in an increasingly complex legal and regulatory landscape.

Fintech Focus

Delving into the latest global legal and regulatory issues in the fintech space, from dealmaking and finance trends, to advancements in AI and digital currencies, to the implications of regulatory and enforcement priorities.

Foreign Correspondent

Breaking down the complex world of foreign direct investment reviews and the national security policy behind them.

GILTI Conscience

Tax partners Nate Carden and David Farhat invite industry leaders and authorities to join them in discussing pressing transfer pricing issues, international tax reform efforts and tax administration trends.

SkadBytes

Host Deborah Kirk and colleagues explore the critical developments shaping today's rapidly evolving tech landscape, delivering focused insights on the pressing regulatory issues that matter to tech businesses, investors and industry leaders worldwide.

The Capital Ratio

Navigating the ever-evolving world of financial institution regulation in the U.K., EU and U.S. and covering issues relevant to legal and compliance teams, boards of directors and C-suite professionals in the banking industry.

The Informed Board

For directors facing the rapidly evolving challenges of a global market. Our aim is to help flag potential problems that may not be fully appreciated, explain trends, share our observations and give directors practical guidance without a lot of legal jargon. (This podcast complements our quarterly newsletter for directors.

The Lobby Bar

Partners Charlie Ricciardelli and Tyler Rosen make political law accessible to professionals across all industries. They deliver practical insights on the compliance challenges and regulatory developments that matter most in today's complex political and regulatory landscape.

The Preferred Return

Covering critical investment management issues in the U.K. and Europe for corporate counsel, business decision-makers and compliance professionals.

The Standard Formula

Partner Robert Chaplin leads conversations with industry practitioners and explores Solvency II developments for U.K. and European insurance professionals.