The image features a white background with several large, overlapping, semi-transparent geometric shapes in shades of light gray. In the top-left corner, there is a dark gray triangular area containing a network of small dots connected by thin lines, resembling a mesh or data visualization. The logo 'HORRISON FOERSTER' is positioned in the upper left, with 'HORRISON' on the top line and 'FOERSTER' on the bottom line. The 'F' in 'FOERSTER' has a horizontal bar that is slightly offset to the right. In the bottom-right corner, the text 'M&A Annual Review 2025' is displayed, with '2025' in a blue color. The overall design is clean, modern, and professional.

**HORRISON
FOERSTER**

**M&A Annual
Review 2025**

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M&A Deals
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Athletes Unlimited

Morrison Foerster advised Athletes Unlimited, a Delaware public benefit corporation and network of professional women's sports leagues in softball, volleyball, and basketball operating across the United States, on a strategic investment by Major League Baseball in Athletes Unlimited Softball League (AUSL).

The transaction marks the first-of-its-kind, comprehensive partnership with a women's professional sports league to help establish and grow the AUSL as a sustainable organization.

“MLB's investment will supercharge our efforts to build the sustainable professional league this sport has long deserved, and sends a powerful message about the value of female athletes and the importance of creating professional opportunities for them.”

Kim Ng, AUSL Commissioner





Bain Capital

Morrison Foerster advised Bain Capital, the global private investment firm, on its \$3.3 billion acquisition of Mitsubishi Tanabe Pharma Corporation, in a carve-out transaction from Mitsubishi Chemical Group Corporation. Mitsubishi Tanabe Pharma was founded in 1678. It is a pharma multinational headquartered in the birthplace of Japan's pharmaceutical industry, Doshomachi (in Osaka).

The carve-out accelerates Mitsubishi Tanabe Pharma's growth and global expansion and provides access to additional resources through the help of Bain Capital.

“ We believe there are promising signs for growth... in Japan's life sciences industry [and] look forward to a collaborative partnership with MTPC.”

Ricky Sun, Partner, Bain Capital Life Sciences and Masa Suekane, Partner and Head of Japan Healthcare, Industrials and Financial Services, Bain Capital Private Equity

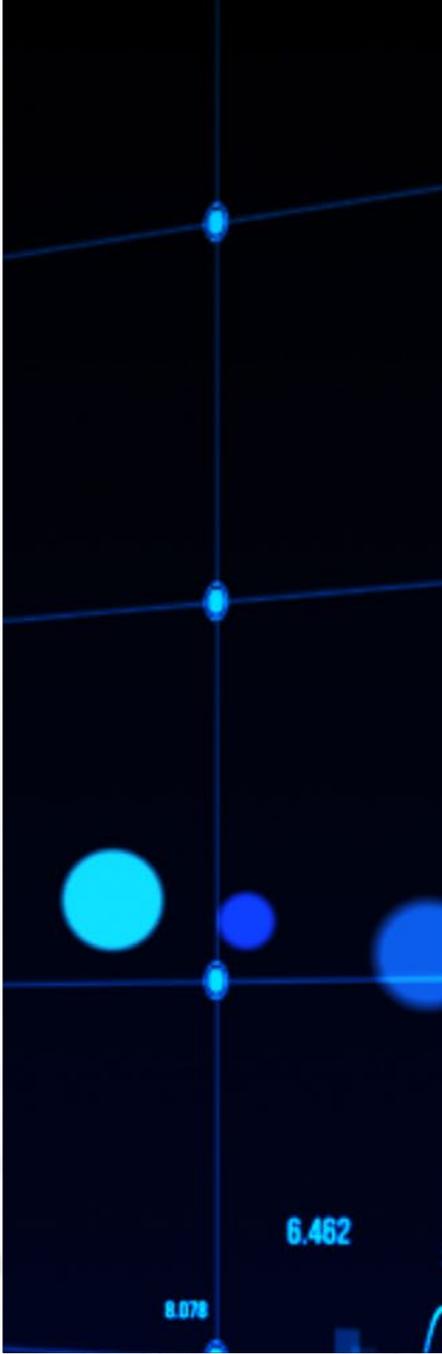


Boyd Gaming

Morrison Foerster advised Boyd Gaming Corporation, a NYSE-listed multijurisdictional gaming company, in connection with the \$1.75 billion sale of its ownership interest in FanDuel to Flutter Entertainment plc. Flutter Entertainment is the world's leading online sports betting and iGaming operator and owns brands such as BetFair, FanDuel, Paddy Power, PokerStars, Sky Betting & Gaming, and Sportsbet.

The deal unlocks significant value for Boyd Gaming for its investment and strategic growth initiatives.





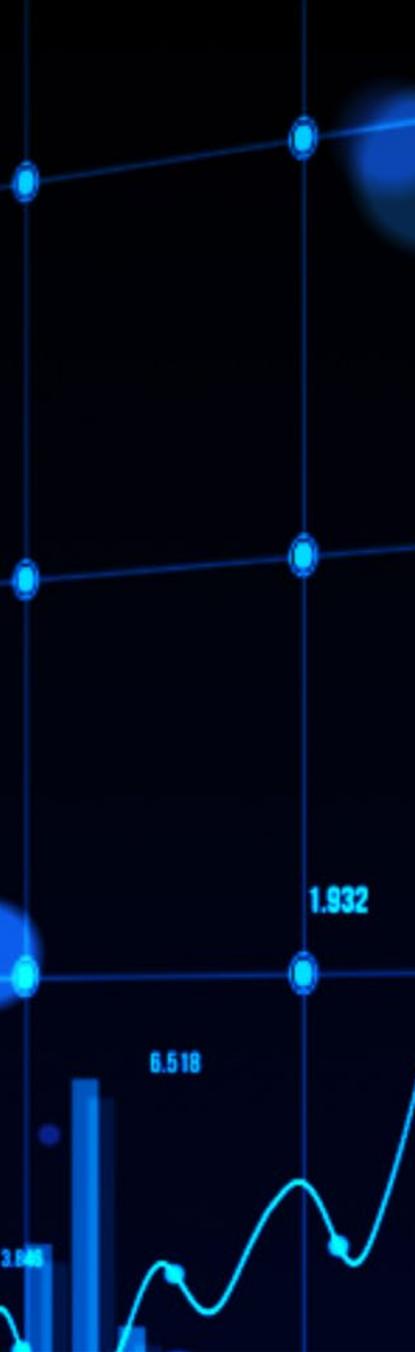
Brooklyn AI

Morrison Foerster advised Brooklyn Artificial Intelligence (Brooklyn AI), a developer of technology for asset managers, in connection with its acquisition by Nuveen, a global investment leader and asset management arm of TIAA. Nuveen also acquired Brooklyn AI's subsidiary, Brooklyn Investment Group, a leading multi-asset custom direct indexing provider.

In acquiring Brooklyn AI, Nuveen aims to accelerate the integration of its alternatives and lifetime income capabilities into tax-advantaged offerings while continuing to serve clients via the licensing of Brooklyn AI's proprietary technology.

“The strength of Nuveen’s wealth team, their relationships with advisors, investment capabilities, and culture, and our shared commitment to advancement make this the perfect fit as we expand our collaboration across additional asset classes.”

**Erkko Etula, CEO of
Brooklyn Investment Group**



CPE

Morrison Foerster is advising CPE, a leading Asia-based alternative asset manager, on its strategic partnership to form a joint venture with Restaurant Brands International Inc. (NYSE: QSR/TSX: QSR) in connection with Burger King China. This is one of the latest high-profile private equity-led deals in Asia's consumer sector in 2025, including Affinity Equity Partners' sale of Burger King Japan, on which MoFo also advised.

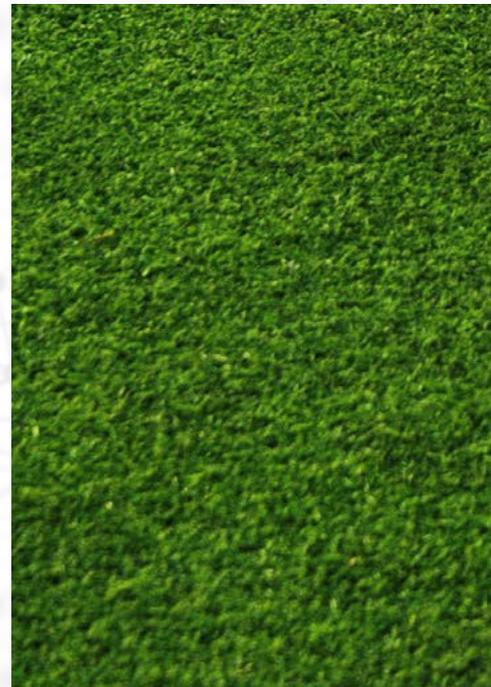
The joint venture aims to support Burger King China's restaurant expansion, marketing, menu innovation, and operations in one of the world's fastest-growing consumer markets.



Eagle Football

Morrison Foerster advised Eagle Football, a family of global soccer organizations with top-tier clubs and elite academies based in Belgium, France, Florida, and Brazil, in the sale of its 43% stake in Crystal Palace Football Club to an entity owned by Woody Johnson, U.S. businessman and co-owner of the New York Jets American football team.

The sale of the minority stake in Crystal Palace will allow Eagle Football to allocate capital toward investing in the English football landscape and diversify their club portfolio.





EQT

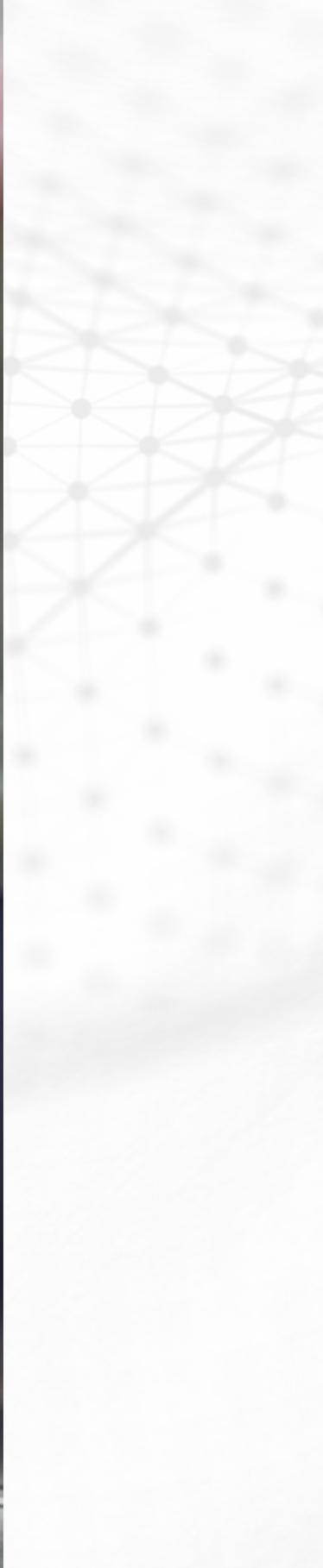
Morrison Foerster advised EQT, a global investment organization, in its \$2.7 billion tender offer to privatize Fujitec, a leading Japanese manufacturer of elevators and escalators. This marked one of the largest sponsor-led take-private deals in Japan in 2025.

The firm also advised EQT in connection with its \$1.1 billion sale of Pioneer Corporation, a leading Japanese provider of in-car sound and multimedia products and solutions, to CarUX, a subsidiary of Innolux Corporation.

These transactions represent EQT's continued focus on growth through enhanced operational capabilities, accelerated digitalization, and expansion into key markets.

“ Together, we aim to help future-proof the business by enhancing competitiveness, driving digital transformation, and accelerating global expansion.

Takanobu Hara, Partner in the EQT Private Capital Asia advisory team



Hg Capital

Morrison Foerster advised Hg Capital, a leading investor in European and transatlantic software and services businesses, in connection with the \$1 billion sale of GTreasury, a global leader in adaptable treasury solutions, to Ripple, a leading provider of digital asset infrastructure for the enterprise.

“ The business has firmly cemented its position as the most adaptable treasury platform on the market, evidenced by its accelerating growth, increasingly transatlantic footprint, and exciting product innovations.”

Louis Kinsella, Partner at Hg Capital





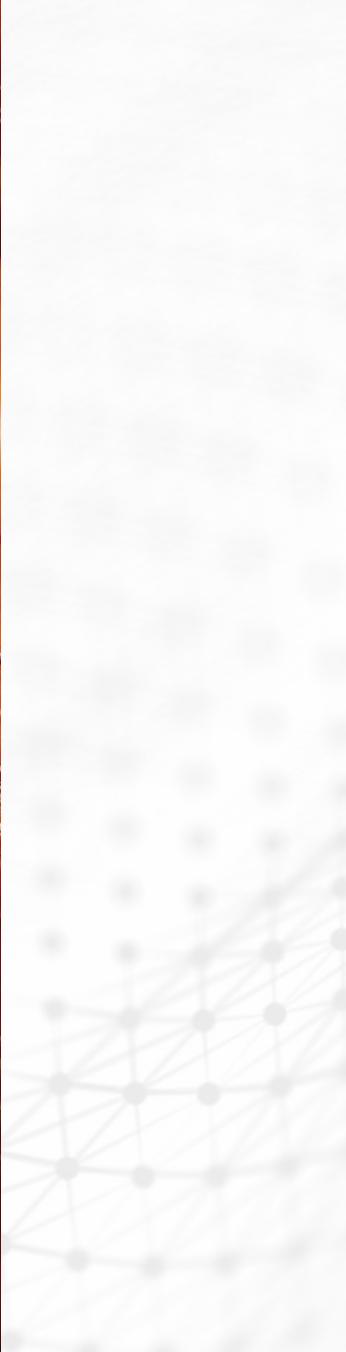
Hooters

Morrison Foerster advised Hooters Inc., together with its partner Hoot Owl Restaurants LLC, independent franchisee operators of Hooters restaurants, in connection with a series of restructuring transactions and the acquisition of more than 110 corporate-owned Hooters restaurants. As a result of the transaction, Hooters Inc. and Hoot Owl Restaurants LLC now collectively own and operate approximately 70% of Hooters' domestic locations, with Hooters Inc. having assumed control of and responsibility for management of the Hooters brand.

The transaction transformed Hooters Inc. and Hoot Owl Restaurants LLC into the principal operators of Hooters restaurants, with Hooters Inc. serving as the brand's steward into the future.

“As a result of these transactions, the Hooters brand will once again be in the hands of highly experienced Hooters franchisees, and we will be well-positioned to return this iconic brand to its historic success.”

Neil Kiefer, CEO of Hooters, Inc.



Infineon

Morrison Foerster advised Infineon Technologies AG, a publicly traded global semiconductor manufacturing and design company based in Germany, in its \$2.5 billion acquisition of the automotive ethernet business of Marvell Technology. Marvell is a Nasdaq-listed company based in California that develops and produces semiconductors and related technology.

The acquisition significantly expands Infineon's global position in automotive semiconductors and accelerates its capabilities related to software-defined vehicles.

“ This transaction significantly reinforces our number one position in automotive semiconductors and strengthens our strategy of profitable growth.”

Jochen Hanebeck, CEO of Infineon





NorthStar Healthcare

Morrison Foerster advised NorthStar Healthcare Income, Inc., a public non-listed real estate investment trust with a diversified portfolio of senior housing properties, in its \$900 million all-cash sale to an affiliate of Welltower Inc. Welltower is a real estate investment trust that invests in healthcare infrastructure.

Welltower indicated that it expects the acquisition of NorthStar Healthcare to enhance Welltower's portfolio and further accelerate its regional densification strategy, utilizing its existing geographic footprint and network of senior housing operators.

“ We are pleased to have reached this agreement with Welltower, which is . . . a great outcome for our stockholders, delivering a compelling, certain, cash value for their shares.”

**Kendall Young, CEO and President
of NorthStar Healthcare**







Paine Schwartz Partners

Morrison Foerster advised Paine Schwartz Partners, a global leader in sustainable food chain investing, in its investment in Chex Finer Foods, a value-added specialty food distributor.

This transaction positions Paine Schwartz and Chex to accelerate growth and industry leadership by leveraging untapped retail opportunities, operational optimization, and strategic M&A in the fragmented food distribution space.

“ We look forward to working closely with the Chex team and believe this strategic investment will accelerate Chex’s growth in its next chapter, both organically and through strategic M&A.”

Angelos Dassios,
CIO of Paine Schwartz Partners





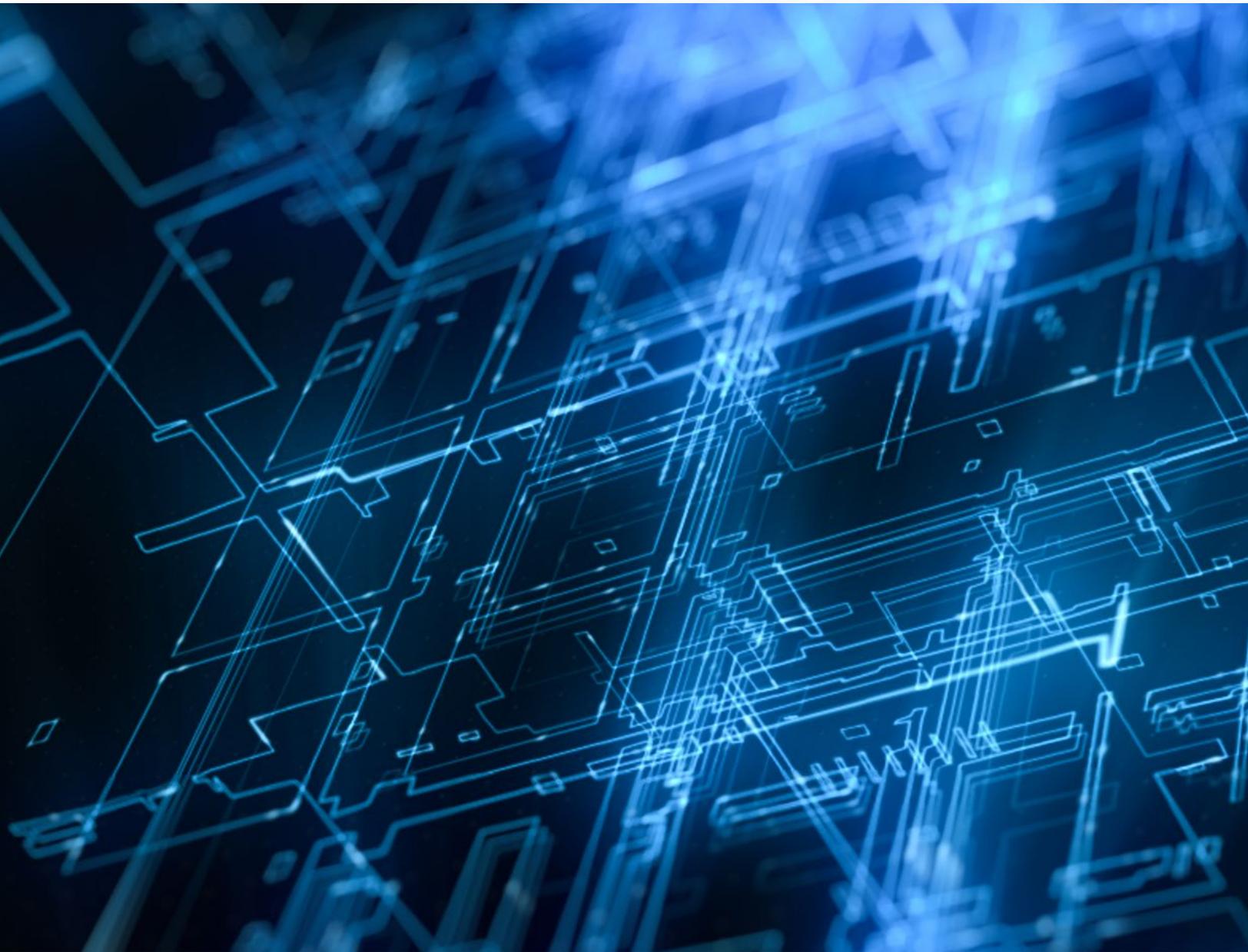
Palo Alto Networks

Morrison Foerster advised Palo Alto Networks, a global cybersecurity leader, in its \$3.35 billion acquisition of Chronosphere, a next-generation observability platform built to scale for the AI era. The firm also advised Palo Alto Networks in connection with its \$700 million acquisition of Protect AI, an innovative leader in securing the use of AI and machine learning applications and models.

The transactions position Palo Alto Networks to meet the AI security demands of every major sector and enhance its core ability to assist enterprises in adapting to an environment where modern applications and AI workloads require a single, unified foundation for both data and security.

“Chronosphere was built to scale for the data demands of the AI era from day one.”

**Nikesh Arora, Chairman and
CEO, Palo Alto Networks**



Shamrock Capital

Morrison Foerster advised Shamrock Capital, a Los Angeles-based investment firm specializing in the media, entertainment, content, communications, sports, marketing, and education sectors, in its acquisition of Penta Group, the world's first full-scale, integrated stakeholder communications and reputation intelligence firm, from Falfurrias Management Partners.

The acquisition allows Shamrock to accelerate Penta's next growth phase, enabling the development of new capabilities designed to effectively address the rapidly changing communications landscape.

“Penta is redefining what it means to be a trusted partner to global brands, by weaving data and insights into all components of its offering.”

Laura Held, Partner and member of the Executive Committee of Shamrock Capital





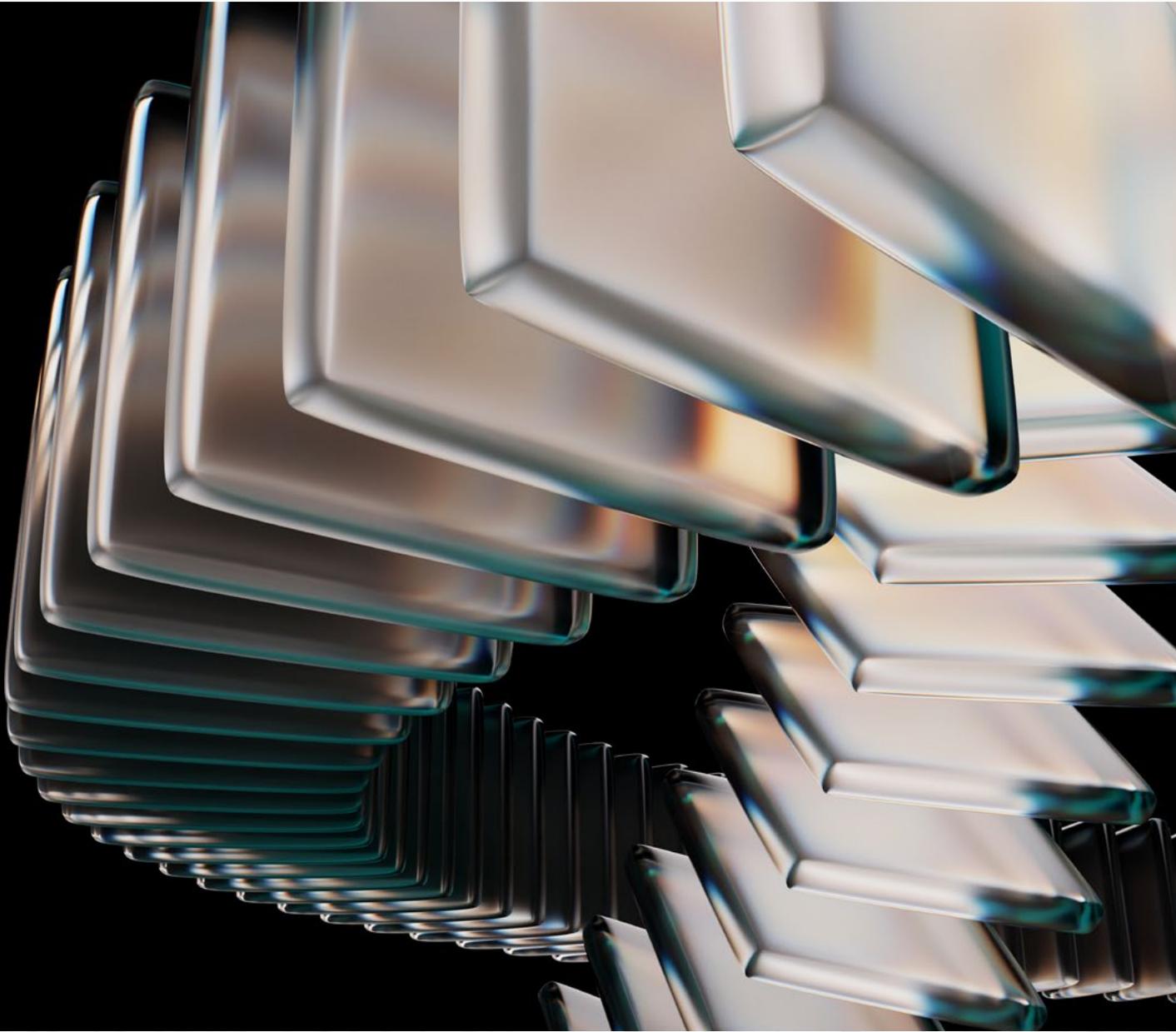
SoftBank

Morrison Foerster advised SoftBank Group as a founding and anchor partner of The Stargate Project—a newly formed joint venture between SoftBank and OpenAI to invest in new AI infrastructure in the United States and abroad, together with technology partners including Oracle, NVIDIA, Arm, Microsoft, and MGX.

The firm also advised SoftBank in its \$6.5 billion acquisition of U.S. semiconductor design company Ampere Computing and is currently representing SoftBank in its proposed \$5.4 billion acquisition of ABB’s robotics business, as well as SoftBank’s proposed \$4 billion acquisition of DigitalBridge, a leading global asset manager dedicated to investing in digital infrastructure. These transactions, including increased AI investments, mark SoftBank’s strategic rebalancing, positioning the company at the intersection of computing infrastructure and data-driven innovation.

“ Together with OpenAI, Arm, and our Stargate partners, we are paving the way for a new era where AI advances humanity.”

Masayoshi Son, Chairman and CEO of SoftBank Group Corp.



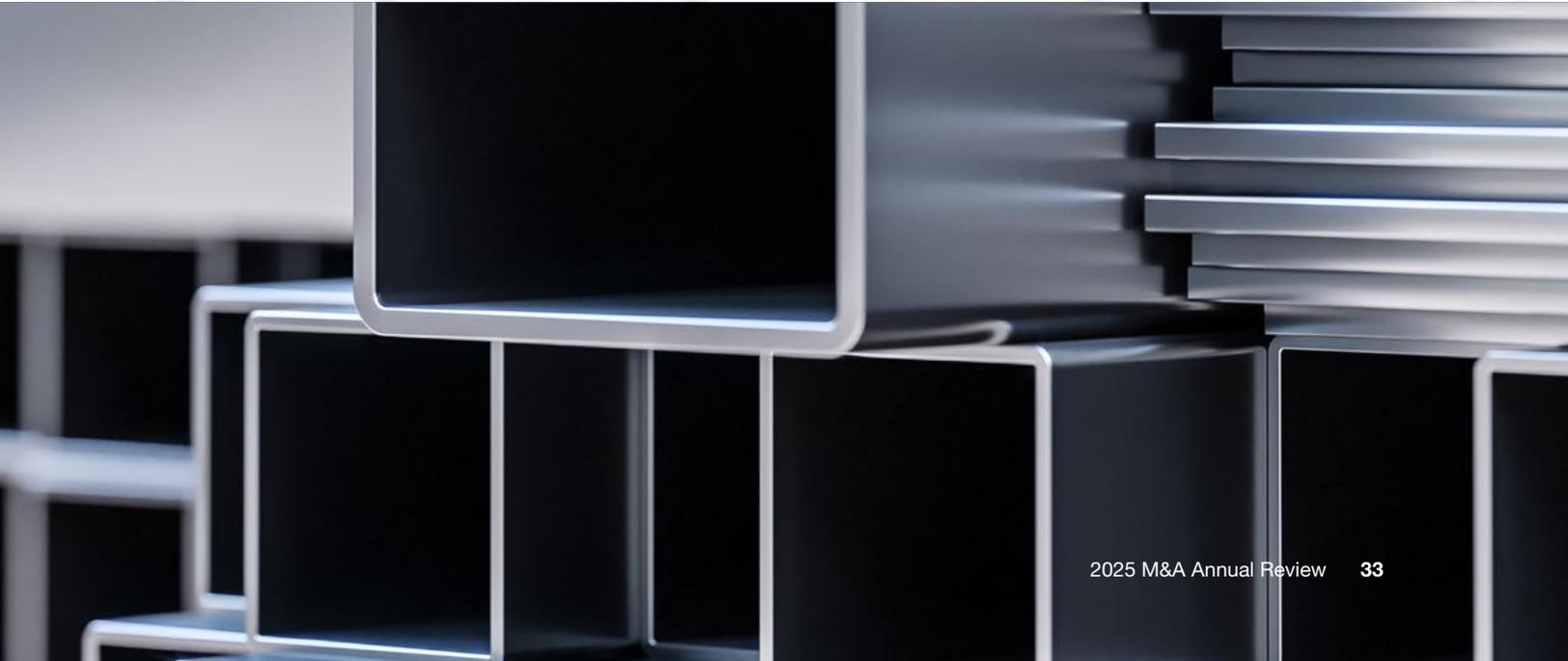
Stellex

Morrison Foerster advised New York-based private equity firm Stellex Capital Management in connection with its acquisition of Crest Ultrasonics. Crest is a global industrial technology manufacturer with operations in the U.S., Europe, and Asia.

This strategic partnership is poised to support Crest's growth in its next chapter, enabling Stellex to execute its operational value creation strategy.

“Today's market environment increasingly rewards companies that deliver innovative, technology-driven solutions, with advanced engineering capabilities serving as a key differentiator for customers requiring bespoke and complex equipment.”

Ray Whiteman, Co-founder and Managing Partner of Stellex





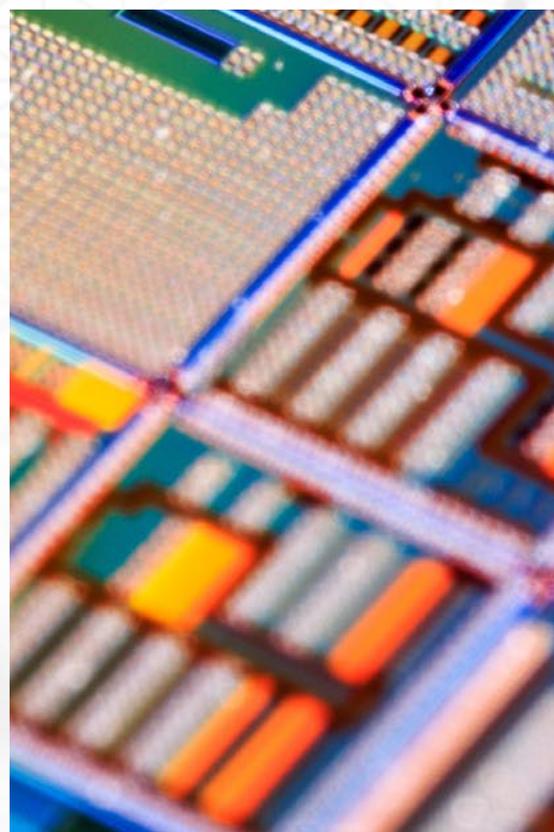
Veeco

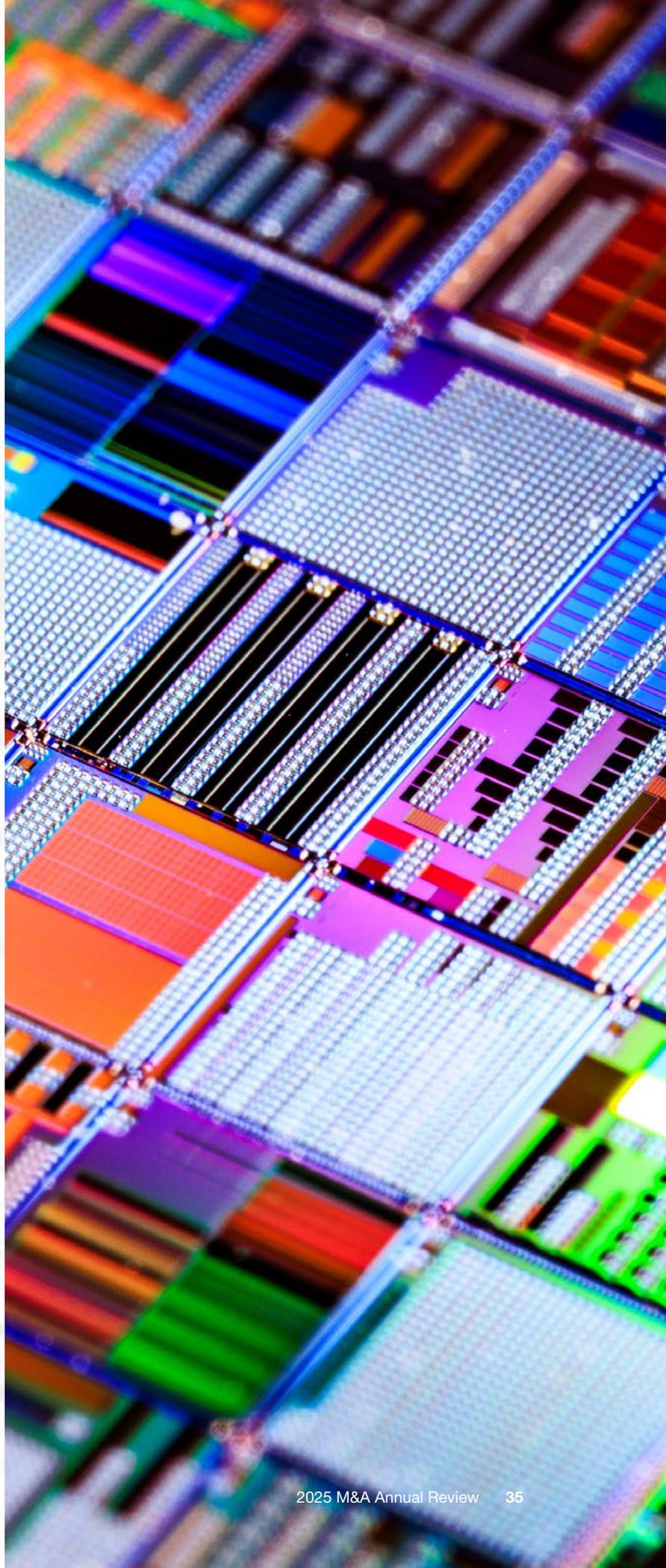
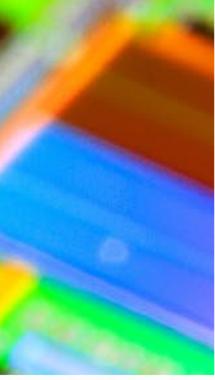
Morrison Foerster is advising Veeco Instruments, a Nasdaq-listed global designer and manufacturer of semiconductor process equipment, in connection with its \$5.2 billion all-stock merger-of-equals with Axcelis Technologies. Axcelis is a Nasdaq-listed provider of innovative, high-productivity solutions for the semiconductor industry.

This merger will make Veeco Instruments and Axcelis Technologies a new leader in semiconductor capital equipment. The transaction establishes a more diversified portfolio and an expanded market reach for the combined companies.

“ With increased R&D scale, the combination of these two exceptional businesses will accelerate our ability to solve material challenges, enable advanced chip manufacturing and build an even stronger company.”

Dr. Bill Miller, CEO of Veeco





M&A in 2025 and Trends for 2026

In 2025, global M&A value rose 41% from 2024, to \$4.8 trillion, making 2025 the second-highest M&A value year on record.¹

Overall deal count fell, but deal sizes increased, with a record-breaking number of \$10 billion+ deals. The technology sector once again led the way, with a focus on AI and related infrastructure.

The year started with optimism, which quickly gave way to a slowdown in dealmaking due to macro uncertainty and

policy disruption. As the year went on, however, interest rate expectations improved, equity markets rose, and dealmakers learned to manage, or at least live with, evolving tariffs, geopolitical developments, and heightened foreign investment and other regulatory scrutiny.

In this article, we review the M&A markets in 2025 and the key legal and regulatory issues and trends that will affect deals in 2026.

¹ All data as of December 15 and courtesy of Mergermarket, except as otherwise indicated.

Overview

Global Activity

North America represented just over half of global activity, while Europe and APAC each accounted for roughly one-fifth.

North America

M&A value rose 52% year-over-year to approximately \$2.65 trillion, supported by strong domestic consolidation and inbound investment, including more than \$100 billion deployed by Japanese buyers and significant Middle Eastern sovereign investment in marquee assets.

Europe

M&A value increased 24% to approximately \$1 trillion, with inbound transactions accounting for roughly 28% of total regional deal value in the second half of 2025, driven largely by U.S. and Gulf-based acquirers.

APAC

M&A value climbed 33% to approximately \$1 trillion, supported by a record 13 megadeals totaling more than \$200 billion. Inbound investment surged 2.4x year-over-year, and outbound transactions rose 49%. The Japanese market was a standout, with M&A value rising 87% year-over-year to approximately \$207

billion, buoyed by corporate governance reforms (including the continuing impact of takeover guidelines from the Japanese government), shareholder activism, and a favorable financial environment, including low interest rates and a cheap yen, with PE firms finding an interest in carve-out, take-private, and other investments.

Key Sectors

Technology

Technology M&A increased 66% year-over-year to approximately \$1.08 trillion, driven by AI, data infrastructure, and cybersecurity transactions. Buyers pursued scale, talent, and critical capabilities through acquisitions as well as minority investments and large funding rounds.

In North America, technology transactions totaled approximately \$736 billion, a 93% year-over-year increase, representing 28% of total regional M&A value, with AI-related deals accounting for roughly 22% of technology value. AI deals included several “acqui-hires,” in which tech companies hired key talent from, and made significant investments in or licensing arrangements with, AI companies, without buying the entire company, such as Meta’s

\$14.3 billion investment in and hiring of the CEO of Scale AI.

Morrison Foerster’s Tech M&A Survey, released in December 2025,² found that 57% of tech dealmakers expect technology deal count to increase over the next 12 months. Not surprisingly, respondents chose AI as the tech subsector presenting the best opportunities for dealmaking over the next 12 months, followed by cybersecurity and enterprise/logistics software. AI regulation is evolving rapidly, from multiple sources and often in ways that will significantly affect operations and risk allocation and thus must be considered in investments (as discussed below),³ but many dealmakers believe the stricter regulation will benefit M&A by providing a more mature and predictable framework.

Life Sciences

Life sciences M&A was characterized by targeted consolidation and portfolio optimization. Globally, healthcare M&A reached approximately \$490 billion, supported by continued interest in companies with strong pipelines and defensible IP.

In EMEA, healthcare was the fastest-growing sector, posting a 151% year-over-year increase to approximately

2 For a copy of Morrison & Foerster’s Tech M&A Survey, conducted in partnership with Mergermarket, released Dec. 9, 2025, see *New Directions: AI Ubiquity, Risk Exposure, and Pursuing Scale in Global Tech M&A*, mofo.com/resources/news/251209-mofo-survey-new-directions-ai-ubiquity.

3 For guidance and information about the latest and most significant developments in AI, see Morrison & Foerster’s AI Resource Center, mofo.com/artificial-intelligence.

\$123 billion, driven by large strategic acquisitions.

Private Equity

PE activity rebounded in 2025, particularly in the second half, supported by substantial dry powder and easing interest rates. Global buyout value increased 39% to approximately \$850 billion, with 13 mega-buyouts recorded – more than double the prior year. North America led the recovery, with buyout value rising 69% to approximately \$500 billion. PE investment in Japan and India grew as well. Global buyout count fell, reflecting a focus on larger deals, but signs point toward middle market activity rebounding as well, particularly in the U.S.

Exit activity also improved, with global exit value increasing 43% to approximately \$630 billion, driven primarily by trade sales and secondary buyouts, while a significant backlog persisted. Sponsors increasingly relied on creative structures, including continuation vehicles, with more than 70 companies transferred to continuation funds during the year, up from 54 in 2024.

Looking Forward

We expect 2025's momentum to carry into 2026, albeit with continued selectivity and sensitivity to macro and regulatory developments.

Focus on Scale and Strategic Positioning: Deal activity is likely to continue to favor transactions that materially reshape companies and portfolios, including divestitures as well as acquisitions, particularly in sectors such as technology, infrastructure, and energy, where long-term strategic considerations outweigh near-term volatility. Companies will continue to focus on supply chain realignment and resilience.

Regulatory Considerations Remain Central: Antitrust scrutiny, foreign investment regimes, and export controls are expected to remain key factors in deal planning, influencing both transaction structure and execution timelines.

Availability of Financing: Financing should continue to be available as interest rates decrease or stabilize and private credit lenders continue to seek share.

Heightened Sensitivity to Macro Conditions: Tariffs and other trade dynamics (including the potential for tariff refunds

in light of ongoing legal challenges to tariff authority) and geopolitical developments will continue to affect diligence processes, valuation assumptions, financing availability, and deal certainty.

Cross-Border Dealmaking Stays Opportunistic Amid Policy Risk: Expect more Europe-U.S. two-way traffic and supply chain realignment plays, even as tariffs and national security reviews add friction and shape where platforms are built.

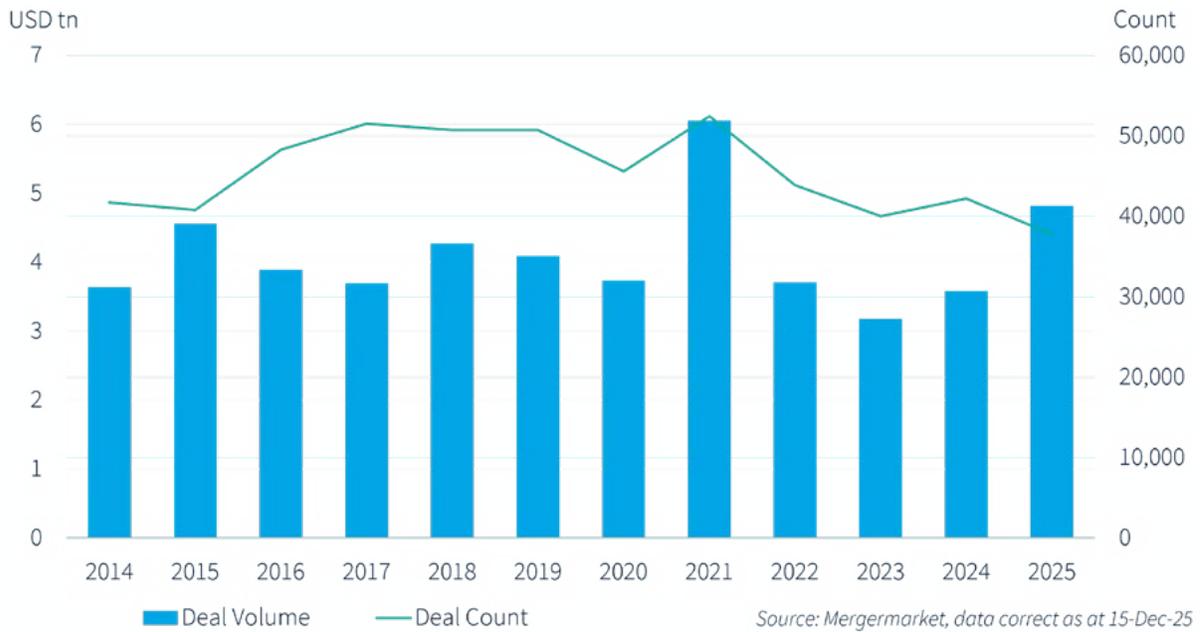
Liquidity Goals for Financial Sponsors: Ongoing pressure from limited partners to generate liquidity is expected to keep financial sponsors active across a range of deal types, including continuation funds, secondaries, and more bespoke structures, as well as IPOs and strategic exits where market conditions allow.

Tech and Life Sciences as Priority Sectors: Technology, including AI companies, data centers, and other related infrastructure, and life sciences remain well positioned to drive a meaningful share of M&A activity.

The second half of 2025 marked a decisive return of confidence at the top end of the market, laying the groundwork for a more balanced, but still selective, M&A environment in 2026.

Global M&A Activity

Global M&A volume jumps to \$4.81 trillion — the second highest on record.



1. Heightened Focus on Internal AI Use by M&A Targets

In 2025, companies rapidly expanded their commercialization of AI and use of AI across increasing business functions. Companies face many questions regarding the evolving technology, including questions related to data collected and used in connection with AI, including potential privacy and infringement issues, as we discussed in our alert last year.⁴ Buyers and potential targets must also consider the regulatory and other implications of companies' expanded internal deployment of AI. A few more common issues are highlighted below.⁵

Shadow AI, Privacy Leakage, and Governance Expectations

Companies are finding that internal risk also can arise from “shadow AI,” i.e., employees using AI tools without formal approval from the company. Organizations may lack visibility into what tools employees are using, what information is being ingested by these tools, and how external systems handle

or retain that data.⁶ Companies also have to contend with a growing patchwork of laws requiring various notice and opt-out rights for individuals whose personal data might be subject to AI tools.

Buyers should pressure test whether targets have adequate internal governance structures, including whether they provide permitted tools with permitted use cases, maintain inventories of AI systems, and implement technical and security safeguards.⁷

Heightened Requirements for Regulated Industries

Companies operating in regulated industries—such as financial services and healthcare—face elevated expectations for responsible AI use. These organizations must understand how AI systems influence regulated activities, evaluate the accuracy and reliability of AI-assisted decisions, and maintain appropriate human oversight. Regulators increasingly expect documentation demonstrating

how AI tools operate, how they use data, and how associated risks are identified and managed.⁸

Increased Antitrust Scrutiny on Use of AI Tools

Enforcers and litigants have increasingly focused on the extent to which companies may be able to use AI to entrench market positions or expand market power or otherwise may try to control access to data or other inputs on which AI is dependent. For example, U.S. agencies have signaled continued interest in whether algorithmic pricing systems can facilitate parallel conduct or tacit coordination, especially where multiple market participants rely on the same or similar tools, those tools rely on non-public information, or where the internal workings of those tools are otherwise opaque.⁹ This translates to increased focus on how internal pricing or decision-support AI tools function and how outputs are generated, and the practices and transparency of

4 See MoFo Client Alert, *M&A in 2024 and Trends for 2025*, [mofo.com/resources/insights/250109-m-a-in-2024-and-trends-for-2025](https://www.mofo.com/resources/insights/250109-m-a-in-2024-and-trends-for-2025).

5 For guidance and information about the latest and most significant developments in AI, including links to laws, regulations, and regulators by jurisdiction, visit MoFo's Artificial Intelligence Resource Center, [mofo.com/artificial-intelligence](https://www.mofo.com/artificial-intelligence).

6 See MoFo Privacy Minute, *Do You Know What AI Tools Are Installed on Your Company's Systems?*, Sept. 12, 2025, [mofo.com/resources/insights/250912-a-mofo-privacy-minute-do-you-know](https://www.mofo.com/resources/insights/250912-a-mofo-privacy-minute-do-you-know).

7 See MoFo Insight, *5 Ways to Address the Legal Risks of Employee AI Use*, in *Law360*, Oct. 15, 2025, [mofo.com/resources/insights/251015-ways-to-address-the-legal](https://www.mofo.com/resources/insights/251015-ways-to-address-the-legal).

8 See, for example, MoFo Insight, *AI Compliance Tips for Investment Advisers*, Oct. 2025, [mofo.com/resources/insights/251015-ai-compliance-tips-for-advisers](https://www.mofo.com/resources/insights/251015-ai-compliance-tips-for-advisers).

9 See MoFo Insight, *Antitrust, Algorithms, and AI: Increased Scrutiny, and Unanswered Questions*, in *Mealey's Litigation Report* (Apr. 2025), [mofo.com/resources/insights/250401-antitrust-algorithms-and-ai-increased](https://www.mofo.com/resources/insights/250401-antitrust-algorithms-and-ai-increased).

Buyers and potential targets must also consider the regulatory and other implications of companies' expanded internal deployment of AI.

third-party tools used by the target.

Other State Laws and a Federal Order

In the midst of the state efforts to regulate AI, in December, President Trump issued an executive order directing White House advisors to engage Congress on developing federal legislation to establish a “uniform Federal policy framework for AI” that would preempt state AI laws.¹⁰ The executive order also instructs the U.S. Attorney General to create an “AI Litigation Task Force” to challenge state AI laws that are inconsistent with the policy of U.S. “global AI dominance.” The executive order has not preempted or staved off all state regulations,¹¹ and federal legislation has yet to materialize. In the meantime, we expect buyers to continue to scrutinize compliance with state AI laws by AI developers and deployers, as well as U.S. federal and non-U.S. requirements.

Impact on Diligence and Deal Terms

The integration of AI into core business functions and customer-facing offerings, combined with growing privacy, employment, antitrust, and other regulatory risks, is reshaping M&A diligence and deal terms. Buyers increasingly request information about how

a target uses AI and data in connection with AI and about the target's AI governance and compliance. Buyers also increasingly perform diligence deep dives where unauthorized or high-risk AI use is identified. AI diligence now commonly addresses the existence of AI governance and policies, AI contract terms, tool inventories, data flows, AI risk assessments and bias audits, and vendor reliance. Buyers are also tailoring reps and warranties to address AI usage and seeking indemnities for potential AI-related exposures. Representation and warranty insurance underwriters similarly are requesting more detail on data sourcing, model governance, and internal controls, and some carriers are beginning to consider AI-specific exclusions.

10 See MoFo Client Alert, *Executive Order Takes Aim at State AI Laws*, Dec. 13, 2025, mofo.com/resources/insights/251213-executive-order-state-ai-laws.

11 For example, see New York's recently enacted RAISE Act regulating frontier AI models, discussed in MoFo's Jan. 5, 2026, client alert, mofo.com/resources/insights/260105-new-york-enacts-the-raise-act-regulating-frontier-ai-models.

2. Antitrust – An Unpredictable Year of Continuity and Change

The new U.S. administration has changed many things about the merger review process, but some expected changes have not materialized. In the EU, merger review has remained largely the same, but some changes may be on the horizon.

2023 Merger Guidelines and New HSR Form Are Here to Stay

Though many stakeholders had hoped that the new administration might rescind or revise the 2023 Merger Guidelines and the new HSR Form, neither came to pass and we expect both to remain in effect. The new HSR form requires significantly more information, documents, and time from both parties and counsel.

Return of Early Termination and Settlements

After nearly a four-year hiatus, the administration reinstated a policy of granting early termination of the HSR waiting period for facially non-problematic deals. As of the end of 2025, the administration had granted early termination to roughly 300 deals.

The administration also has been willing to enter into settlements of potentially problematic deals—through

the end of 2025, the agencies had entered into around half a dozen settlements. Moreover, despite a stated preference for structural remedies, the agencies have been willing to agree to behavioral remedies. For example, in Boeing's proposed acquisition of Spirit Aerospace, the FTC required divestitures, but also required Boeing to provide transitional services to Airbus and another company to continue to sell products and services to competing contractors for military aircraft programs and not discriminate in favor of Boeing, and to protect those third-party companies' confidential information.¹²

Willingness to Challenge Deals and Focus on Head-to-Head Competition

The DOJ and FTC continue to challenge transactions in court. Such actions include Edwards Lifesciences' proposed acquisition of JenaValve in the medical device space and Henkel's proposed acquisition of Liquid Nails in the construction adhesive space.¹³

The Effect of Lobbying

The use of lobbyists has increased and so has the success of this strategy. For example, in early 2025, the DOJ agreed to a settlement

of its challenge to HPE's acquisition of Juniper Networks, which many believe was the direct result of lobbying efforts by the parties.

State Mini HSR Laws

States have been enacting their own "mini HSR" laws, under which parties must send a copy of their HSR filing to the State Attorney General if they meet certain revenue thresholds within the state or operate within certain industries. Colorado's and Washington's laws went into effect last summer, and other states, including California, are considering similar laws.

EU Merger Control

In 2025, the European Commission ("EC") engaged in public consultations looking to update their merger guidelines, focusing on: (i) competitiveness and resilience, (ii) assessing market power using structural and other market features, (iii) innovation and other dynamic elements, (iv) sustainability and clean technologies, (v) digitalization, (vi) efficiencies, and (vii) public policy, security, and labor markets. We expect a draft of the new merger guidelines in 2026.¹⁴

The EC remains active in the merger control space, clearing 15 deals subject to

¹² *FTC Requires Boeing to Divest Several Spirit Assets to Proceed with Merger*, Fed. Trade Comm'n (Dec. 3, 2025), [ftc.gov/news-events/news/press-releases/2025/12/ftc-requires-boeing-divest-several-spirit-assets-proceed-merger](https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-requires-boeing-divest-several-spirit-assets-proceed-merger).

¹³ *FTC Challenges Anticompetitive Medical Device Deal*, Fed. Trade Comm'n (Aug. 6, 2025), [ftc.gov/news-events/news/press-releases/2025/08/ftc-challenges-anticompetitive-medical-device-deal](https://www.ftc.gov/news-events/news/press-releases/2025/08/ftc-challenges-anticompetitive-medical-device-deal); *FTC Sues to Stop Loctite, Liquid Nails Construction Adhesive Merger*, Fed. Trade Comm'n (Dec. 11, 2025), [ftc.gov/news-events/news/press-releases/2025/12/ftc-sues-stop-loctite-liquid-nails-construction-adhesive-merger](https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-sues-stop-loctite-liquid-nails-construction-adhesive-merger).

¹⁴ *Review of the Merger Guidelines*, European Comm'n, competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en#ref-2-the-in-depth-consultation.

The new U.S. administration has changed many things about the merger review process.

remedies and demonstrating a clear preference for structural remedies. Further, the EC seems more open to considering innovation benefits, as demonstrated by its clearance of Nokia's acquisition of optical networking company Infinera.

China Merger Control

Another of the world's major enforcers, China's State Administration for Market Regulation ("SAMR"), had a particularly busy year. In 2025, SAMR issued six adverse decisions on deals, imposing conditions on five deals across several industries. The agency also ordered the unwinding of the acquisition of Shangdong Huatai Pharma by Wuhan Yongtong Pharma that it reviewed using its call-in power to review non-notifiable deals. This uptick in activity compares against one adverse decision in 2024. The agency also offered a degree of transparency, publishing analytical summaries of three deals it unconditionally approved, as well as the decisions related to a conditional approval.



3. National Security and Trade Concerns Continue to Rise

The Trump administration is reshaping inbound and outbound investment policy and trade and export controls to (i) facilitate foreign investment and the diffusion – and global adoption – of U.S. technology, and (ii) mitigate national security risks, including to keep U.S. technology out of the hands of “foreign adversaries.” Time will tell which priority takes center stage in shaping U.S. policy.

Inbound Investment Policy

In February, President Trump issued the America First Investment Policy, key features of which include:

- **Presumption of Denial:** CFIUS may default to denying investments from China and other countries designated as “foreign adversaries” in sensitive U.S. sectors, such as technology, critical infrastructure, healthcare, agriculture, energy, and raw materials.
- **Expanded Authority:** CFIUS is directed to work with Congress to strengthen its authority over “greenfield” investments, sensitive technologies (especially AI), and “emerging and foundational” technologies.
- **Fast-Track Review:** An expedited “fast-track” process for allied and partner countries who invest in

U.S. advanced technology and other priority sectors. The Treasury Department subsequently announced a Known Investor Pilot Program for certain investors.

- **Openness to Passive Investments:** Support for passive investments by foreign persons that do not confer governance rights, managerial influence, or access to non-public technical information.

CFIUS Actions

- After a protracted process, the President cleared the acquisition by Nippon Steel of U.S. Steel, subject to a novel non-economic “golden share,” granting the U.S. government veto power over certain corporate and operational changes. It is yet to be seen whether the U.S. government will utilize this measure in other transactions.
- Reflecting the administration’s willingness to block deals on national security grounds, including scrutinizing even smaller transactions and those that closed without notification to CFIUS, on January 2, 2026, President Trump ordered HieFo (a Delaware corporation controlled by a PRC citizen) to divest the digital chips and related wafer design, fabrication, and

processing businesses HieFo acquired from EMCORE (reportedly for approximately \$3 million) in April 2024.¹⁵

Outbound Investments

The Treasury Department established its outbound investment security program (“OISP”),¹⁶ prohibiting, or requiring notification regarding, certain outbound investments to “covered foreign persons” (focused on persons associated with “countries of concern,” i.e., Chinese and Chinese-owned persons) engaged with specified sensitive technologies: semiconductors and microelectronics, quantum information technologies, and AI systems. The Comprehensive Outbound Investment National Security (“COINS”) Act of 2025 then revised the OISP to:

- Expand the “countries of concern” to include comprehensively or highly sanctioned countries: Cuba, Iran, North Korea, Russia, and Venezuela.
- Add two new sensitive technologies: High-performance computing and supercomputing and hypersonic systems.

U.S. Export Controls — Emphasis on AI

- In July, President Trump released his Artificial

15 *Executive Order, Regarding the Acquisition of Certain Assets of EMCORE Corporation by HieFo Corporation*, Jan. 2, 2026, [whitehouse.gov/presidential-actions/2026/01/regarding-the-acquisition-of-certain-assets-of-emcore-corporation-by-hiefo-corporation/](https://www.whitehouse.gov/presidential-actions/2026/01/regarding-the-acquisition-of-certain-assets-of-emcore-corporation-by-hiefo-corporation/).

16 See MoFo Client Alert, *Up and Running: Treasury Publishes Final Rules for Outbound Investment Security Program*, Oct. 31, 2024, [mofo.com/resources/insights/241031-up-and-running-treasury-publishes-final-rules](https://www.mofo.com/resources/insights/241031-up-and-running-treasury-publishes-final-rules).

Time will tell which priority takes center stage.

Intelligence Action Plan, with the aim of ushering in American dominance in AI. The plan has three pillars: accelerating innovation, building AI infrastructure, and leading in international diplomacy and security. The plan includes proposals for increased export controls on certain sensitive items to “foreign adversaries,” as well as tools to facilitate exports to allied countries.¹⁷

- The Bureau of Industry and Security (“BIS”) rescinded a Biden administration rule that would have imposed new export controls on certain AI model weights and exports of advanced computing integrated circuits (“ICs”) used to train AI models.¹⁸ BIS has signaled that it would implement similar rules, but to date has not issued a replacement rule. A replacement rule could significantly change the compliance obligations on data centers, data center operators, and exporters of advanced computing ICs.
- The Trump administration adopted and then suspended an “Affiliates Rule” that would extend license requirements associated with the Entity List, the Military End User

List, and certain sanctions programs to foreign entities owned 50% or more by listed parties.¹⁹ Given the uncertain future of these restrictions, acquirers should consider potential compliance costs associated with acquired foreign entities engaged in exports.

Sanctions – Focus on Diligence and Disclosure

- Encouraging self-disclosure in M&A: In June, the DOJ announced its first declination under the “safe harbor” provision of its M&A policy in a sanctions/export controls case, showing the potential benefit for acquirers who notify DOJ of national security concerns or violations at target companies in a timely manner.²⁰
- Focused attention on diligence: The nearly \$11.5 million settlement by the Office of Foreign Assets Control (“OFAC”) with a PE firm emphasizes its expectation that companies “look beyond legal formalities to underlying practical and economic realities” when assessing sanctions risk. OFAC found that the PE firm engaged in prohibited

indirect dealings with a sanctioned Russian oligarch where fund investments were routed through a family trust and offshore entities, notwithstanding contractual representations that no sanctioned person had an interest in the fund.

17 See MoFo Client Alert, *A Call to Action: President Trump’s Policy Blueprint for AI Development and Innovation*, July 30, 2025, [mofo.com/resources/insights/250729-a-call-to-action-president-trump-s-policy-blueprint](https://www.mofo.com/resources/insights/250729-a-call-to-action-president-trump-s-policy-blueprint).

18 See MoFo Client Alert, *AI Diffusion Rule Out but BIS Increases Compliance Obligations for Companies*, June 17, 2025, <https://www.mofo.com/resources/insights/250617-ai-diffusion-rule-out-but-bis-increases-compliance>.

19 See MoFo Client Alerts, *BIS Adopts 50% “Affiliates Rule”: Implications for Compliance and Enforcement*, Oct. 1, 2025, [mofo.com/resources/insights/251001-bis-adopts-50-percent-affiliates-rule-implications](https://www.mofo.com/resources/insights/251001-bis-adopts-50-percent-affiliates-rule-implications), and *United States and China Reach Trade Agreement: Takeaways for Export and Supply Chain Controls*, Nov. 13, 2025, [mofo.com/resources/insights/251113-united-states-and-china-reach-trade-agreement](https://www.mofo.com/resources/insights/251113-united-states-and-china-reach-trade-agreement).

20 See MoFo Client Alert, *DOJ Issues First-Ever Declination Under Corporate Disclosure M&A Policy*, June 24, 2025, [mofo.com/resources/insights/250624-doj-issues-first-ever-declination](https://www.mofo.com/resources/insights/250624-doj-issues-first-ever-declination).

4.

AI M&A: Talent, Infrastructure, and the New Deal Toolkit

M&A activity in the AI sector itself was a key element of the global M&A resurgence in 2025.

Talent Wars: Acquihires at Scale

Many headline-making deals were acquisitions by large platforms at premium prices to secure a small number of elite researchers, engineers, and founders.

Regulators in the U.S. and Europe have scrutinized these types of transactions, especially those involving big tech AI transactions. For buyers, that means careful antitrust and foreign investment analysis, even for “non-control” structures.

Buying the Plumbing: Data Centers, Chips, and the AI Infrastructure Race

If the front page of AI M&A in 2025 was about models and founders, the back page was all about infrastructure. Hyperscalers, miners-turned-cloud-providers, and financial sponsors raced to secure and scale the physical backbone of AI: power, land, data centers, and specialized hardware.

Alongside data centers, the semiconductor ecosystem consolidated around AI. Chipmakers used acquisitions to move “up the stack” into systems, networking, and software, positioning themselves as end-to-end AI infrastructure providers rather than component vendors.

For deal lawyers, these transactions raise issues more familiar from energy and

infrastructure deals: long-dated offtake commitments, complex landlord-tenant and power-purchase arrangements, local permitting and community opposition, and environmental scrutiny around energy and water use.

The New Deal Toolkit: Hybrid Structures

2025 AI dealmaking reshaped the toolkit itself. Much of the most consequential AI activity is not structured as traditional M&A at all:

- Minority stakes and strategic investments paired with long-term cloud and chip commitments (for example, large platform investments into model providers or infrastructure partners tied to multi-year compute and capacity agreements).
- Licensing-plus-hiring deals, in which the acquirer brings over key teams and licenses core models or tooling, while leaving the target as a separately capitalized entity (as with Windsurf, Character.AI, and several other generative AI startups).
- Joint ventures and structured capacity arrangements in data centers and GPUs that are more like project-financed infrastructure than corporate control transactions (for example, the strategic investments in SB Energy by SoftBank Group and OpenAI, as part of The Stargate Project).

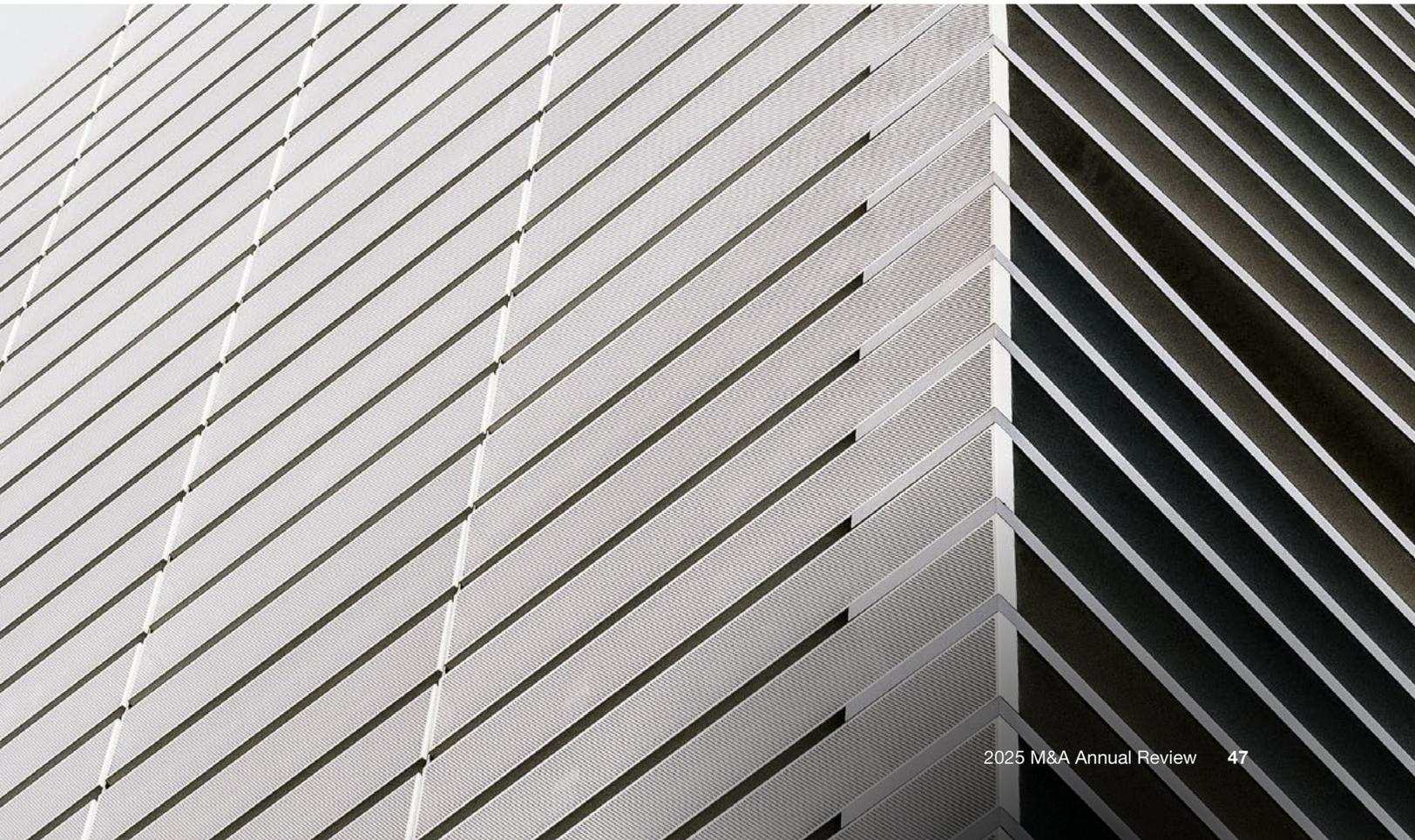
These structures are often a response to high valuations,

Earn-outs, milestone-based consideration, and performance-linked covenants ... are increasingly used to bridge gaps between AI ‘hype’ and demonstrated cash flows.

regulatory constraints, and the reality that AI assets are volatile and hard to value on traditional metrics. Earn-outs, milestone-based consideration, and performance-linked covenants (for example, around model quality, uptime, or safety) are increasingly used to bridge gaps between AI “hype” and demonstrated cash flows.

2026

Taken together, AI M&A in 2025 was less about buying operating companies in the traditional sense and more about securing talent and infrastructure. The deals that mattered most were often hybrids—part acquihire, part infrastructure financing, part strategic partnership. For buyers and sellers, that means more creativity in structuring, more complexity in diligence, and a more crowded regulatory field—but also a wider set of levers through which to get AI transactions done. These trends – and no doubt additional structuring innovations reflecting the rapid changes in the technology and business – will characterize AI M&A in 2026.



5. The One Big Beautiful Bill and Other Tax Changes Affecting M&A

2025 brought a wave of important tax developments—most notably, in the One Big Beautiful Bill Act (“OB3”) – that will affect the values of applicable targets and should be considered in structuring transactions as well.

Legislative Developments

- **Basis Recovery:** OB3 restored 100% bonus depreciation for qualifying property, allowing businesses to immediately expense such capital expenditures. In addition to affecting potential target company values, this could make asset purchase structures more attractive to buyers.
- **R&D Expensing:** OB3 restored immediate expensing for domestic R&D costs, though taxpayers must still capitalize R&D costs incurred outside the U.S.
- **Interest Deductions:** OB3 generally increased business interest deductions by restoring a more generous EBITDA-based calculation for computing the business interest limitation (while tightening the rules in other respects).
- **Qualified Small Business Stock:** OB3 expanded tax incentives for investing in “small business” stock by (i) increasing the minimum gain exclusion to \$15 million from \$10 million, so that the exclusion generally is the greater of \$15 million or 10 times basis, (ii) adding a phase-in starting after three years to the strict five-year holding period, and (iii)

increasing the gross asset threshold to \$75 million from \$50 million.

- **Renewable Energy Updates:** OB3 substantially narrowed access to renewable energy tax incentives, making it substantially more difficult for certain projects to claim these credits.
- **International Changes:** OB3 revised certain controlled foreign corporation (“CFC”) provisions as well as other international tax rules, including the “Net CFC Tested Income” (previously referred to as “GILTI”), the base erosion and anti-abuse tax (“BEAT”), and foreign-derived intangible income (“FDII”) regimes. The formulas for calculating Net CFC Tested Income and FDII have been simplified, and the rates have been increased. Also relevant for M&A transactions, U.S. shareholders that dispose of CFC stock are now allocated their share of Subpart F and Net CFC Tested Income inclusions on a pro rata basis, whereas prior law allocated the inclusions exclusively to the shareholder on the last day of the tax year.

Regulatory Developments

Digital Content and Cloud Transaction Regulations: Final regulations issued in January 2025 provide a “predominant character” test for determining how income from digital content transactions is characterized for tax purposes, allowing taxpayers to use a single sourcing rule for a

complex transaction rather than forcing a bifurcation of the transaction into its constituent parts. Proposed regulations also released in January 2025 introduce sourcing rules for cloud-based transactions, generally treating such transactions as services performed in the jurisdiction where the service is rendered as determined by a complex formula.

Domestically Controlled QIEs: Proposed regulations issued in October 2025 would reverse the 2024 look-through rule for domestic corporate shareholders of Qualified Investment Entities. By restoring the pre-2024 framework for corporations while leaving partnership, REIT, and RIC look-through in place, the rules reopen planning space for foreign investors using domestic blocker entities.

Excise Tax on Stock Repurchases: Final regulations issued in November 2025 significantly narrow the scope of the 1% excise tax on stock buybacks. The Treasury also exempted numerous deal structures, including many tax-free reorganizations, take-privates and leveraged buyout closing redemptions, and withdrew the interim rule that captured foreign-parented groups funded by U.S. subsidiaries.

Other Notable Developments

- **Spin-Off Transactions:** In September 2025, The Treasury withdrew Proposed regulations that would have

“Tax developments... affect the values of applicable targets and should be considered in structuring transactions as well.”

created more rigid standards for tax-free spin-offs.

- **Corporate Alternative Minimum Tax (“CAMT”):** The IRS issued new guidance on CAMT, including how it applies to M&A transactions. This guidance generally aligns CAMT principles in relevant part with the corresponding provisions of the “regular” federal income tax law.

6. Delaware Establishes Safe Harbors for Controlling Stockholder Transactions

In March 2025, following an unusually vocal discussion, Delaware amended its corporations statute to create procedural safe harbors for transactions with or involving a controlling stockholder.

The amendments came after criticism of several Delaware court opinions finding certain less-than-majority holders to be controlling stockholders (even if only for purposes of a challenged transaction) and finding fiduciary lapses in transactions with controlling stockholders.²¹ That criticism evolved into calls for “DEXit” and provided opportunities for other states, including Texas²² and Nevada,²³ to invite companies to redomicile. Several Delaware corporations, including Tesla, Tripadvisor, and Dropbox, redomiciled, though the great majority of Delaware corporations have remained in Delaware, and many new corporations continue to choose to incorporate in Delaware.

Conditions to the Safe Harbors

The safe harbors are based on approvals by:

- For a transaction by the controlling stockholder with the corporation (other than a going-private transaction) or in which the controlling stockholder receives a benefit not shared with the other stockholders generally, either (i) a committee of the board that has been delegated the authority to negotiate and to reject the transaction, or (ii) the disinterested stockholders, based on votes cast (rather than on shares outstanding).
- For a going private transaction with a controlling stockholder, both (i) a committee of the board and (ii) the disinterested stockholders, as provided above.

The safe harbors require other procedures, including information disclosure to the committee and the stockholders. The committee must be comprised of persons the board has determined to be disinterested, but (unlike under Delaware judicial doctrine) the safe harbor will apply even if a court later determines that one or more directors on the committee is not disinterested, so long as the committee

approval is by a majority of the disinterested directors on the committee. The committee must act in good faith, without gross negligence.

Before the amendments, to avoid review under the Delaware courts’ stringent entire fairness standard, a transaction process would have to comply with the judicially created “MFW” framework. MFW requires, for all such transactions, approval by both a committee of disinterested directors and the disinterested stockholders, and imposes other procedural hurdles, such as that the transaction must be conditioned on such committee and stockholder approvals “ab initio” before the start of substantive negotiations.

Related Provisions

In addition, the amendments provide that:

- To be “controlling,” a stockholder generally must either (i) own or control a majority of the voting power of the corporation’s stock or otherwise have the right to cause the election of a majority of the corporation’s board, or (ii) own or control at least 1/3 of the voting power

21 In one of the most prominent of such cases, the Delaware Court of Chancery ordered rescission of a 2018 equity compensation plan awarded by Tesla to Elon Musk after finding that Musk, holder of 21.9% of Tesla’s voting power, exercised transaction-specific control with respect to the grant and that the grant was not entirely fair to Tesla (*Torretta v. Musk*, Del. Ch. Jan. 30, 2024). The Delaware Supreme Court reversed the rescission order, finding that it was not an appropriate remedy, even if the Justices had “varying views on the liability determination” (*In re Tesla, Inc. Deriv. Lit.*, Del. Supreme Dec. 19, 2025).

22 Texas amended its corporations statute in 2025 to, among other things, allow corporations in their governing documents to waive jury trials for internal entity claims and, for public corporations and for private corporations that opt in, codify the business judgement rule and provide that the presumption could be overcome only by showing fraud, intentional misconduct, or knowing violations of law (or an ultra vires act). Texas had previously established a specialized Business Court that began operations in 2024.

23 Nevada amended its corporations statute in 2025 to, among other things, allow corporations in their articles of incorporation to waive jury trials for internal corporate actions. Nevada is also considering a specialized business court.

The amendments provide welcome clarity and may reduce the litigation exposure of a large or controlling stockholder in applicable transactions.

- of the corporation's stock and also power to exercise managerial authority over the business and affairs of the corporation.
 - Controlling stockholders, in their capacity as such, cannot be liable for monetary damages for breach of the duty of care, effectively overruling Chancery Court decisions on that point. Overall, according to the legislative syllabus, the intent of the amendment is to provide a "comprehensive liability exculpation scheme with respect to the fiduciary duties owed by stockholders."
 - Directors of public companies are presumed to be disinterested if the company's board has determined them to be independent for stock exchange purposes, which presumption can be rebutted only by substantial and particularized facts.
- The amendments provide welcome clarity and may reduce the litigation exposure of a large or controlling stockholder in applicable transactions. However, many of the details of their application have yet to be tested, just as many of the details in the application of MFW had to be developed in the context of actual transactions. Also, the amendments have been challenged under Delaware's constitution as an impermissible limit on the application of equity by the Delaware courts. The Delaware Supreme Court has heard arguments in the challenge but has not yet ruled.



7.

Continuing Popularity of Earnouts – and Earnout Litigation

Earnouts have become increasingly popular as tools for bridging valuation gaps. That popularity rose further in 2025, with a significant increase in the use of contingent value rights in acquisitions of public companies, particularly life sciences companies.

Earnouts, though, often lead to disputes, particularly as to whether buyers provided any post-closing business support required by acquisition agreements, as we discussed in last year’s alert. Similar litigation in 2025 provided further lessons for parties considering earnouts.

Questions in Determining Damages

Last year, we discussed a court’s finding that a buyer had failed to use “commercially reasonable efforts,” as defined in an acquisition agreement, and had terminated a product program that could have provided \$800 million in earnouts.²⁴ In 2025, the court determined damages that reflected the “expected value” of the earnout payments by weighting each milestone amount by its probability of

success.²⁵ The court reviewed probabilities from several sources, including expert witnesses and stockholder estimates, and found that the buyer’s own early estimates provided the strongest evidence of probabilities. The court awarded damages of about \$180 million, on top of the \$130 million it had awarded previously for the first milestone. Parties considering transactions with earnouts should keep a court’s potential retrospective review in mind when creating records of expected values.

Judicial Reluctance to Imply Conditions

In a dispute over an earnout payment tied to a milestone that the parties agreed had been met, the buyer argued that it nonetheless was excused from paying, because the purchase agreement stated that the business shall be conducted after closing in accordance with the buyer’s practices, but the seller’s founder, who was employed by the buyer to manage the business, had failed to so conduct the business.²⁶

“Earnouts, though, often lead to disputes...”

The court, however, found that the relevant statement addressed how the buyer will run the business after closing and did not impose obligations on the seller’s founder, noting that the statement was included in the purchase agreement along with protections for sellers requiring the buyer to operate the business in a manner not intentionally designed to avoid or reduce earnout payments. The court likewise declined to condition the earnout on compliance by the seller’s founder with his employment agreement with the buyer, since the purchase agreement was conditioned only on the execution of the employment agreement. While it undoubtedly is difficult to anticipate all future contingencies, buyers and sellers should specify their desired terms as fully as possible and not count on a court to imply further conditions.

24 *SRS v. Alexion Pharmaceuticals* (Del. Ch. Sep. 5, 2024).

25 *SRS v. Alexion Pharmaceuticals* (Del. Ch. June 11, 2025).

26 *Arthur J. Gallagher v. Agiato* (Del. Ch. July 31, 2025).





8. Activist Focus on M&A Continues to Rise

Despite a changing landscape and a slower start to the year reflecting the subdued M&A market, activism campaigns globally in 2025 exceeded 2024's record-breaking levels. "Occasional activists" – institutional investors, individuals, and others who are not dedicated activist funds and do not regularly use activist tactics – continued to play an important part, launching campaigns consistent with their elevated activity in 2024, above their more historic levels.²⁷

- **M&A Demands:** Demands for M&A (including divestitures as well as whole-company sales) and capital allocation increased in the latter part of the year as equity markets and M&A rose, particularly in the U.S. M&A-focused themes made up 35% of activist campaigns (above the 29% average for 2020 – 2024), while capital allocation demands accounted for 31% (above the 19% average for 2020 – 2024).²⁸ Activists also took aim at announced deals, seeking better terms or even outright rejection on both target and (where applicable) buyer sides.
- **New SEC Guidance on Shareholder Engagement:**

SEC guidance in February 2025 may require shareholders engaging in certain ways with companies – particularly with respect to governance changes and environmental, social, and political matters – to file a long-form Schedule 13D, rather than a short-form Schedule 13G. The more burdensome filing requirement, which requires disclosures of "intent" and more updating, may discourage shareholders from engaging with companies other than in "listen only" mode. The guidance does not implicate shareholder to shareholder discussions, so activists can continue to seek support from other shareholders in accordance with prior SEC guidance on group formation and proxy statement delivery requirements.

- **Broader Candidate Pool for Activist Board Nominees:** The pool of director candidates willing to align themselves with activists is expanding. The stigma associated with serving as an activist-nominated director has diminished in recent years, as more board careers are spanning both activist-

nominated and traditional director roles.

- **Rise in Private Settlements:** Companies have been settling with activists more quickly and more often since the introduction of the universal proxy card in August 2022. Approximately 44% of all settlements in 2025 were negotiated privately (i.e., before the activist publicly announced a campaign), as compared to 17% in 2024 and 26% in 2023.²⁹ The rise in private settlements suggests that both companies and activists are less willing to bear the costs and distractions of public campaigns.
- **Increased Scrutiny on Proxy Advisors:** Throughout 2025, proxy advisors faced regulatory scrutiny at federal and state levels. In December, President Trump signed an executive order directing the SEC, FTC, and Department of Labor to take actions to "end the outsized influence of proxy advisors."³⁰ Several states, including Florida and Missouri, launched investigations and filed lawsuits against ISS and Glass Lewis related to their recommendations on ESG

27 *Barclays 2025 Review of Shareholder Activism*, ib.barclays/content/dam/barclaysmicrosites/ibpublic/documents/our-insights/Q4-2025-Shareholder-Activism/Barclays%202025%20Review%20of%20Shareholder%20Activism.pdf; see MoFo Client Alert, *Occasional Activists and the Evolving Landscape of Shareholder Activism in 2025*, Sept. 26, 2025, mofo.com/resources/insights/250926-occasional-activists-and-the-evolving-landscape.

28 *Lazard Annual Review of Shareholder Activism 2025*, lazard.com/research-insights/annual-review-of-shareholder-activism-2025/.

29 *Barclays 2025 Review of Shareholder Activism*.

30 See Fact Sheet: *President Donald J. Trump Protects American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors*, Dec. 11, 2025, whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-protects-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/.

The rise in private settlements suggests that both companies and activists are less willing to bear the costs and distractions of public campaigns.

and DEI matters. In June, Texas passed a law requiring additional disclosure from proxy advisors if their recommendations are based on “nonfinancial” factors – for example, ESG or DEI initiatives.³¹ ISS and Glass Lewis have announced changes to their practices ahead of the 2026 proxy season in response to regulatory pressure, particularly practices relating to ESG and DEI matters.

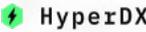
- **Focus on Retail Investors:** In September 2025, the SEC said it would not recommend enforcement against ExxonMobil’s proposed retail voting program, under which retail investors can give standing instructions to have their shares voted in accordance with the company’s recommendations. Retail investing continues to grow significantly through Robinhood and other similar fintech firms lowering barriers to entry, so such programs could become a meaningful tool in proxy contests, particularly for companies with large retail investor bases that currently vote far less frequently than institutional investors. However, it remains to be seen how many retail investors will opt in to such a program and whether other public companies will implement similar or other mechanisms.



31 In August, the federal district court for the western district of Texas preliminarily enjoined enforcement of the law and set a trial date for February 2026. See *Institutional Shareholder Services Inc. v. Paxton and Glass, Lewis & Co., LLC v. Paxton*.

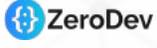
M&A Deals Announced in 2025

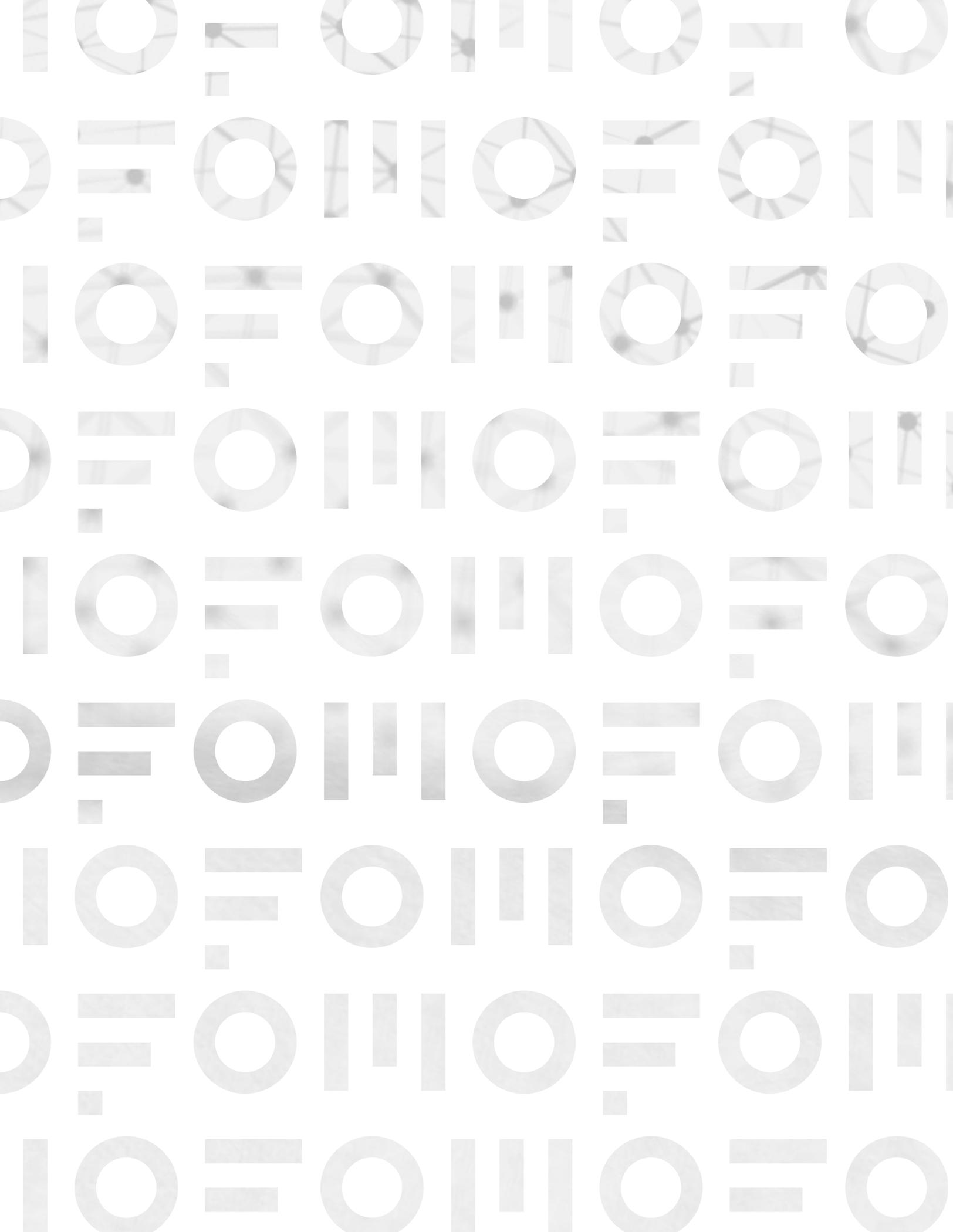
<p>APADU</p> <p>\$1.2 Billion</p> <p>De-SPAC Combination with Enhanced Ltd. Counsel to A Paradise Acquisition Corp.</p>	<p>AFFINITY EQUITY PARTNERS</p> <p>Terms Undisclosed</p> <p>Sale of Affinity Equity Partners' Stake in Burger King Japan Holdings Counsel to Affinity Equity Partners</p>	<p>ALPHA OMEGA</p> <p>Terms Undisclosed</p> <p>Acquisition of Macro Solutions Counsel to Alpha Omega Integration</p>	<p>ALPHA OMEGA</p> <p>Terms Undisclosed</p> <p>Acquisition of SeKON Enterprise Counsel to Alpha Omega Integration</p>	<p>ALPINE ORION</p> <p>Terms Undisclosed</p> <p>Acquisition of Streets Industries Counsel to Orion Services Group, Backed by Alpine Investors</p>
<p>ALPINE predictis</p> <p>Terms Undisclosed</p> <p>Sale of Arrivalist Counsel to Predictis, Backed by Alpine Investors</p>	<p>ALPINE TEAM</p> <p>Terms Undisclosed</p> <p>Acquisition of Elite Community Services Counsel to TEAM Services Group, Backed by Alpine Investors</p>	<p>ALPINE WILSON LANGUAGE TRAINING</p> <p>Terms Undisclosed</p> <p>Acquisition of Valley Speech Counsel to Wilson Language Training, Backed by Alpine Investors</p>	<p>amino</p> <p>Terms Undisclosed</p> <p>Sale to Capital Rx Counsel to Amino Health</p>	<p>Antarctica Capital</p> <p>Terms Undisclosed</p> <p>Acquisition of SkyForest Counsel to EarthDaily Analytics, Backed by Antarctica Capital</p>
<p>ANZU PARTNERS</p> <p>Terms Undisclosed</p> <p>Acquisition of ExOne GmbH and EnvisionTec GmbH Counsel to Anzu Partners</p>	<p>arm</p> <p>Terms Undisclosed</p> <p>Acquisition of DreamBig Semiconductor Counsel to ARM Holdings</p>	<p>ATHLETES UNLIMITED</p> <p>Terms Undisclosed</p> <p>Strategic Investment by Major League Baseball in Athletes Unlimited Softball Counsel to Athletes Unlimited</p>	<p>axia vegetable seeds</p> <p>Terms Undisclosed</p> <p>Sale of Open-field Vegetable Seed Business to Namdhari Seeds USA Counsel to Axia Vegetable Seeds</p>	<p>BainCapital</p> <p>\$3.3 Billion</p> <p>Acquisition of Mitsubishi Tanabe Pharma Counsel to Bain Capital</p>
<p>BearingPoint.</p> <p>Terms Undisclosed</p> <p>Joint Venture with ABeam Counsel to BearingPoint</p>	<p>BOW RIVER CAPITAL</p> <p>\$57.5 Million</p> <p>Acquisition of CloudShare Counsel to Bow River Capital</p>	<p>BOW RIVER CAPITAL</p> <p>Terms Undisclosed</p> <p>Acquisition of Forecast Counsel to Accelo, Backed by Bow River Capital</p>	<p>BOW RIVER CAPITAL</p> <p>Terms Undisclosed</p> <p>Acquisition of meQuilibrium Counsel to RippleWorx, Backed by Bow River Capital</p>	<p>BOW RIVER CAPITAL</p> <p>Terms Undisclosed</p> <p>Recapitalization of Topia Counsel to Bow River Capital</p>
<p>BOYD GAMING</p> <p>\$1.755 Billion</p> <p>Sale of Boyd Gaming's Ownership Interest in FanDuel to Flutter Counsel to Boyd Gaming</p>	<p>Brookfield Asset Management</p> <p>\$1.6 Billion</p> <p>Acquisition of Gajoen Counsel to Brookfield Asset Management</p>	<p>BROOKLYN INVESTMENT GROUP</p> <p>Terms Undisclosed</p> <p>Sale to Nuveen Counsel to Brooklyn AI and its Subsidiary Brooklyn Investment Group</p>	<p>CAIN BROTHERS</p> <p>\$37.4 Million</p> <p>Streamline Health's Acquisition by MDAudit Counsel to Cain Brothers, Financial Advisor to Streamline Health</p>	<p>CAULIPOWER</p> <p>Terms Undisclosed</p> <p>Merger with Urban Farmer Counsel to CauliPower</p>

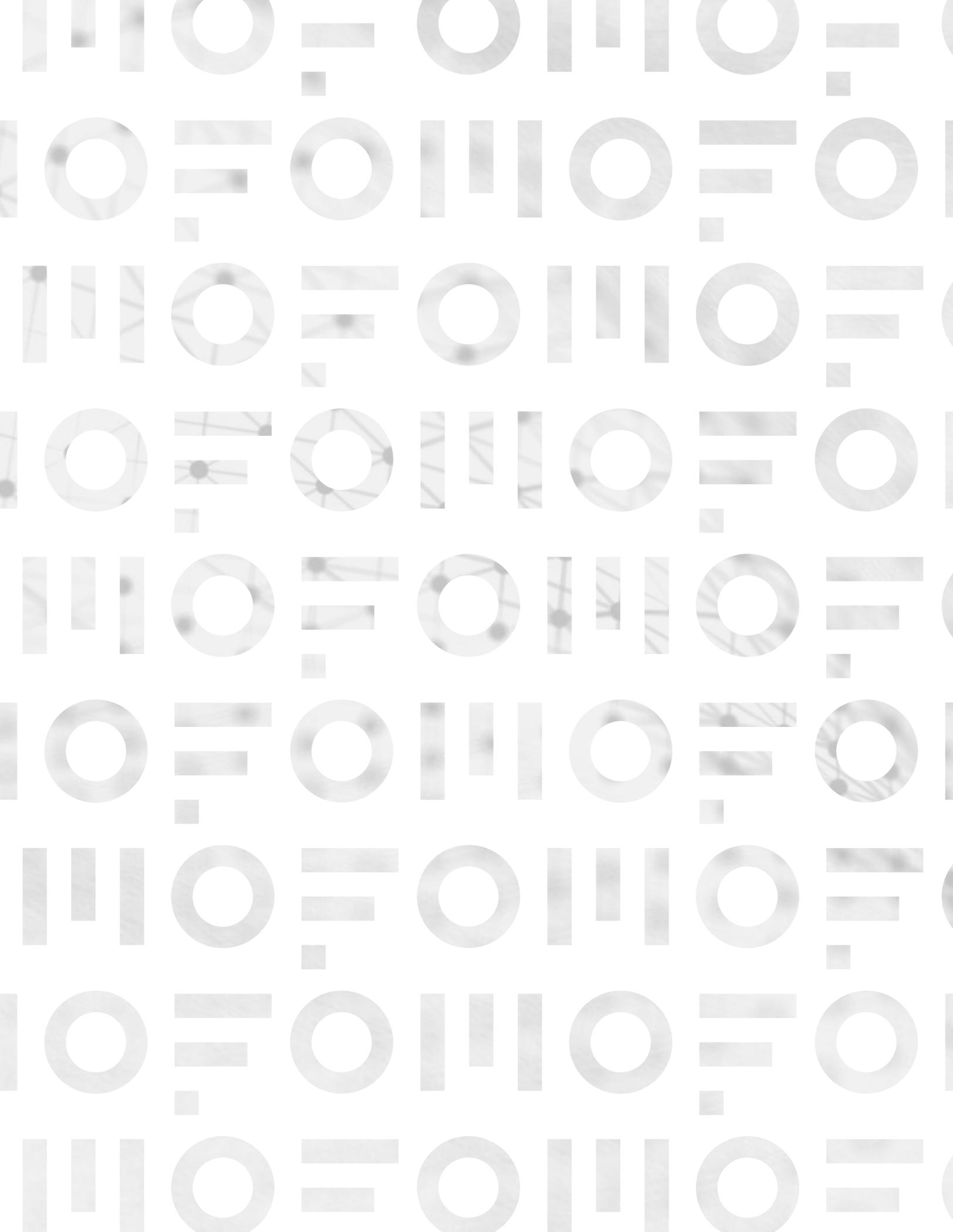
 <p>Terms Undisclosed Sale to Blackstone Counsel to CMIC Holdings</p>	 Coral Tree Partners <p>€50 Million Growth Investment in DMC Production Counsel to Coral Tree Partners</p>	 Coral Tree Partners <p>Terms Undisclosed Investment in KERVAI Counsel to Coral Tree Partners</p>	 <p>\$350 Million Joint Venture with Restaurant Brands International to Operate Burger King China Counsel to CPE</p>	 <p>Terms Undisclosed Minority Investment from TSG Consumer Partners Counsel to Crumbl Cookies</p>
 <p>Terms Undisclosed Acquisition of Epogee Counsel to David Protein</p>	 <p>Terms Undisclosed Sale to Internet Truckstop Group Counsel to Denim</p>	 <p>Terms Undisclosed Sale of 43% Stake in Crystal Palace Football Club Counsel to Eagle Football</p>	 <p>Terms Undisclosed Investment in Mirus Software Counsel to Elvaston Capital Management</p>	 <p>Terms Undisclosed Evaluation of Going-Private Proposal Counsel to Special Committee of the Board of Directors of Emerem</p>
 <p>Terms Undisclosed Sale to Datadog Counsel to Eppo</p>	 <p>\$2.7 Billion Tender Offer to Privatize Fujitec Counsel to EQT</p>	 <p>\$1.1 Billion Sale of Pioneer to CarUX Counsel to EQT</p>	 <p>Terms Undisclosed Life Sciences & Digital Health Sale of TRYT to TCG2505 Counsel to EQT Life Sciences & Digital Health</p>	 <p>Terms Undisclosed Acquisition of Dice Counsel to Fever</p>
 <p>\$350 Million Sale to MISUMI Group Counsel to Fictiv</p>	 <p>Terms Undisclosed Partnership with MBK to Acquire FICT from Advantage Partners Counsel to FormFactor</p>	 <p>Terms Undisclosed Public Takeover of GK Software SE Counsel to Fujitsu ND Solutions AG</p>	 <p>\$390 Million Techpoint's Acquisition by ASMedia Technology Counsel to Greenhill & Co., Financial Advisor to Techpoint</p>	 <p>\$1 Billion Sale of GTreasury to Ripple Counsel to Hg Capital</p>
 <p>Terms Undisclosed Acquisition of FairNow Counsel to Hg Capital and its Portfolio Company AuditBoard</p>	 <p>Terms Undisclosed Acquisition of ONR Applications Counsel to Hg Capital and its Portfolio Company CINC Systems</p>	 <p>Terms Undisclosed Restructuring Transactions Counsel to Hooters Inc. and Hoot Owl Restaurants</p>	 <p>Terms Undisclosed Sale to ClickHouse Counsel to HyperDX</p>	 <p>\$2.8 Billion Acquisition of Marvell Technology's Automotive Ethernet Business Counsel to Infineon Technologies</p>

 <p>Terms Undisclosed</p> <p>Sale to PwC Counsel to Kunai</p>	 <p>Terms Undisclosed</p> <p>Sale of Stake in Conmat Systems Pvt. Ltd. to Conmat Group Counsel to KYB Corp.</p>	<p>LHS Leading Hospitality Software Solution</p> <p>Terms Undisclosed</p> <p>Acquisition of the Hospitality Software Solutions Group Counsel to LHS Leading Hospitality Software Solution Backed by Elvaston Capital Management</p>	 <p>Terms Undisclosed</p> <p>Acquisition of PLEX Solutions and PLEX Cyber Counsel to Markon</p>	 <p>Terms Undisclosed</p> <p>Acquisition of SS8 Networks Counsel to Mill Point Capital</p>
 <p>Terms Undisclosed</p> <p>Acquisition of lohn-ag.de AG Counsel to Mirus Holding, Advised by Elvaston Funds</p>	 <p>Terms Undisclosed</p> <p>Acquisition of EverConnect Counsel to Ignite Visibility, Backed by Mountaingate Capital</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Outliant Counsel to Ignite Visibility, Backed by Mountaingate Capital</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Rallio Counsel to Ignite Visibility, Backed by Mountaingate Capital</p>	 <p>Terms Undisclosed</p> <p>Investment in Rep Data Counsel to Mountaingate Capital</p>
 <p>\$4.43 Million</p> <p>Acquisition of EC Europe Coating Group Counsel to Nanofilm Technologies International</p>	 <p>\$900 Million</p> <p>Sale to Affiliate of Welltower Counsel to NorthStar Healthcare Income</p>	 <p>\$3.1 Billion</p> <p>Agreed Acquisition of Sapporo Real Estate Counsel to PAG</p>	 <p>Terms Undisclosed</p> <p>Investment in Chex Finer Foods Counsel to Paine Schwartz Partners</p>	 <p>\$3.35 Billion</p> <p>Acquisition of Chronosphere Counsel to Palo Alto Networks</p>
 <p>\$700 Million</p> <p>Acquisition of Protect AI Counsel to Palo Alto Networks</p>	 <p>Terms Undisclosed</p> <p>Acquisition of the Assets of Syntheqo Counsel to Perceptive Advisors</p>	 <p>Terms Undisclosed</p> <p>Sale of PlanA.earth to Diginex Counsel to PlanA.earth</p>	 <p>\$2.1 Billion</p> <p>Sale to Affiliates of Makarora Management and Ares Management Counsel to Plymouth Industrial REIT</p>	 <p>\$22 Billion</p> <p>Skyworks' Merger with Qorvo Counsel to Qatalyst, Financial Advisor to Skyworks</p>
 <p>Terms Undisclosed</p> <p>Acquisition of McCormick Stevenson Counsel to REPKON USA</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Sky Deutschland Counsel to RTL Gorup</p>	 <p>Terms Undisclosed</p> <p>Acquisition of CollegeNET Counsel to Rubicon Technology Partners</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Grove Menus Counsel to Aline, Backed by Rubicon Technology Partners</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Nuqleous Counsel to Rubicon Technology Partners</p>

M&A Deals Announced in 2025

 <p>Terms Undisclosed</p> <p>Acquisition of Roobrik Counsel to Aline, Backed by Rubicon Technology Partners</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Work Truck Solutions Counsel to Rubicon Technology Partners</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Penta Group Counsel to Shamrock Capital Advisors</p>	 <p>\$100 Billion</p> <p>Formation of Project Stargate, a JV with OpenAI, to Invest in AI Infrastructure Counsel to SoftBank</p>	 <p>\$6.5 Billion</p> <p>Acquisition of Ampere Computing Holdings Counsel to SoftBank</p>
 <p>\$5.375 Billion</p> <p>Acquisition of ABB's Robotics Business Counsel to SoftBank</p>	 <p>\$4 Billion</p> <p>Acquisition of DigitalBridge Counsel to SoftBank</p>	 <p>\$2 Billion</p> <p>Investment in Intel Counsel to SoftBank</p>	 <p>\$1.05 Billion</p> <p>Secondary Investments in OpenAI Counsel to SoftBank</p>	 <p>\$50 Million</p> <p>PIPE Investment in Cipher Mining Counsel to SoftBank</p>
 <p>Terms Undisclosed</p> <p>Joint Venture with OpenAI to Form SB OAI Japan Counsel to SoftBank</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Crest Ultrasonics Counsel to Stellex Capital Management</p>	 <p>Terms Undisclosed</p> <p>Acquisition of HONICO Systems Counsel to Stonebranch, Backed by Elvaston Capital Management</p>	 <p>Terms Undisclosed</p> <p>Acquisition of AirWorks Counsel to TAIT</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Gallagher Staging and Manufacturing Counsel to TAIT</p>
 <p>Terms Undisclosed</p> <p>Sale of Interest in DuPont Teijin Advanced Papers (Japan) and DuPont Teijin Advanced Papers (Asia) Counsel to Teijin</p>	 <p>\$540 Million</p> <p>Sale to Baker Hughes Counsel to Continental Disc Corporation, Backed by Tinicum</p>	 <p>\$1.8 Billion</p> <p>Acquisition of Thermoformed & Flexible Packaging Business from Sonoco Counsel to Toppan</p>	 <p>\$1 Billion</p> <p>De-SPAC Merger with International Media Acquisition Corp. Counsel to VCI Holdings</p>	 <p>\$5.2 Billion</p> <p>Merger with Axcelis Technologies Counsel to Veeco Instruments</p>
 <p>Terms Undisclosed</p> <p>Sale of eleven cyber security GmbH to Halon Counsel to Vimata Group GmbH</p>	 <p>Terms Undisclosed</p> <p>Sale of ecolytic GmbH to Clarity AI Counsel to Visa</p>	 <p>Terms Undisclosed</p> <p>Acquisition of Outpost Mission Services Counsel to Washington Harbour Partners</p>	 <p>Terms Undisclosed</p> <p>Strategic Growth Investment in Trusted Space Counsel to Washington Harbour Partners</p>	 <p>Terms Undisclosed</p> <p>Sale to Offchain Labs Counsel to ZeroDev</p>





The logo for Morrison & Foerster, featuring the company name in a bold, sans-serif font. The 'M' in 'MORRISON' is stylized with three vertical bars to its left. The 'F' in 'FOERSTER' is stylized with a horizontal bar above it. The background of the page is white with large, diagonal, semi-transparent geometric shapes and a network pattern of dots and lines in the corners.

**MORRISON
FOERSTER**