

A photograph of the Earth from space, showing the curvature of the planet and the blue atmosphere against a black background with stars.

**ONE** FIRM  
WORLDWIDE®

A low-angle, upward-looking photograph of a modern glass skyscraper's interior. The image shows a complex network of steel beams and glass panels, with a large circular structure in the foreground. The overall color palette is a deep blue.

**2021 TRANSACTIONAL YEAR IN REVIEW  
AND 2022 FORECAST**

---

1	Transactional Perspectives on 2022
3	2021 by the Numbers
4	SPAC Year in Review and 2022 Outlook
6	Emerging Developments in Corporate Governance, Impact of COVID-19, and Looking Ahead to 2022
8	2021 Shareholder Activism Highlights
10	The ESG Surge Continues: Focus on Europe
11	Crafting Divestiture Agreements in the Context of Merger Investigations
12	Until Enacted or Withdrawn, Proposed U.S. Tax Reform Continues to Have an Effect on M&A and Private Equity Transactions
14	FDI Regimes Continue to Expand and Increase Scrutiny of Transactions Worldwide
16	Infrastructure Investment and Jobs Act: Overview and the Role of P3s
17	New Data Privacy Law in China
18	Trends in European Public M&A
19	Superannuation Funds Take Center Stage in Australian Take-Privates— and Will Increasingly Need to Invest Outside Australia
20	Key Considerations in Carve-Out Transactions
22	Highlighted 2021 Client Representations
38	Additional 2021 Client Representations
42	Lawyer Contacts

*We thank the following lawyers for their contributions to this publication: Ryan J. Andreoli, Michael J. Austin, Patrick S. Baldwin, Jason A. Beer, John Cheretis, Peter E. Devlin, Courtney J. Dixon, Sawyer Duncan, Leon N. Ferera, Lillian He, Angel Huang, Linda A. Hesse, Rory T. Hood, Ross Keene, Logan D. Kirkes, Scott M. Levine, Jennifer C. Lewis, Justin A. Macke, Joel T. May, William E.H. McDonald, Lauren Miller Forbes, Dan T. Moss, Lindsey M. Nelson, Richard M. Rosenblatt, Schuyler J. Schouten, Craig A. Waldman, D. Grayson Yeargin, and Viola Zheng.*



# TRANSACTIONAL PERSPECTIVES ON 2022

## **What are the trends, risks, and opportunities in 2022?**

As dealmakers recover from a record-breaking 2021, we expect another busy year in 2022. While risks in the financing market, the tightening of the regulatory environment, and the continuing impact of COVID-19 could have a moderating effect, macro-factors remain favorable for a steady pace of deal activity.

Several factors will impact the financing market in 2022. COVID and inflation are factors that cannot be controlled, are unpredictable, and pose the greatest risk. The market expected COVID to dissipate by 2022, and it has not. There were many businesses that adopted temporary measures for their balance sheets that will be tested in 2022 by the prolonged fight against COVID. The world grew complacent on inflation because it has been missing from the markets for about 30 years. It adds a new and real challenge for 2022. Interest rates are another challenge as the market had expectations of a very measured approach to interest rate increases that inflation may change.

Challenges aside, a number of factors will drive dealmaking in 2022. We anticipate renewed cross-border activity as travel restrictions ease and the pandemic effects become normalized. Technology will remain a key driver for M&A. We expect 2022 to begin a long-term trend of PE sponsor-led take-privates for mid-market companies that went public via SPACs over the last few years, as it becomes clear that many of those companies were not ready for the spotlight of the public markets. Mega deals may not happen with the frequency of

2021, but the combination of dry powder and shareholder activism will continue to drive M&A. Finally, ESG. It is hard to overstate how quickly and how important this has become a factor in the market. We expect to see an increasing number of transactions tied to ESG strategies.

In the real estate sector, we expect the trends of 2021 to continue in 2022, including interest in “alternative” investments—investments requiring high levels of service alongside space, such as data centers and temperature-controlled warehouses, and “thematic” investments, such as e-commerce/supply chain, residential (including single-family rental), and life science/biotech. Focus on ESG factors is increasing here as well, as real estate is being used to help investors and tenants reach their sustainability goals. Out-of-favor sectors, such as office, enclosed retail, and hospitality, will continue to face challenges in 2022 as the risks mentioned above—COVID, inflation, interest rate hikes—slow momentum.



Overall, we expect 2022, like last year, to be active and dynamic from a dealmaking perspective but not without its challenges.

In the bankruptcy arena, the uptick in refinancing activity over the last year may have temporarily abated concerns from investors. In 2022, uncertainty regarding the pandemic’s impact on market demand, inflation, and government intervention will all factor into whether high-yield issuances remain steady or continue to slow. This will likely impact some borrowers’ ability to service their existing debt. As maturities on high-yield debt and leveraged loans become due, private credit will likely continue to expand. Private lenders will continue utilizing loan-to-own strategies, which anticipates a thawing out of the post-pandemic restructuring freeze.

Overall, we expect 2022, like last year, to be active and dynamic from a dealmaking perspective but not without its challenges. We look forward to helping our clients navigate those challenges and execute successful transactions in the year to come.

# 2021 BY THE NUMBERS

TOTAL NUMBER  
OF TRANSACTIONS  
INVOLVING JONES DAY\*

**1,000+**



## DEAL COUNT BY VALUE

**95+**

> \$1 BILLION

**360+**

> \$100 MILLION  
< \$999 MILLION

## CROSS-BORDER DEAL COUNT

**300+**

MULTIJURISDICTIONAL  
DEALS

**55+**

COUNTRIES

\* Transactions closed in 2021.

## KEY SECTORS



CHEMICALS



CONSUMER  
PRODUCTS  
AND RETAIL



ENERGY  
AND UTILITIES



FINANCIALS



INDUSTRIALS



LIFE SCIENCES  
AND  
HEALTH CARE



REAL ESTATE



TECHNOLOGY



## SPAC YEAR IN REVIEW AND 2022 OUTLOOK

IPOs for special purpose acquisition companies (“SPACs”) got off to a blistering start in 2021, with more IPOs closing in the first quarter than in all of 2020 (which had been the most active year for SPAC IPOs in history). However, SPAC IPO volume declined precipitously in the second quarter of 2021 due to enhanced SEC scrutiny, a wave of private lawsuits against SPAC participants, and tightening of the private investment in public equity, or PIPE, market, and it remained tepid through year-end. SPACs that completed business combinations also significantly underperformed the broader market in 2021, prompting further calls for increased investor protection regulation and legislation.

Nevertheless, hundreds of SPACs continue searching for targets, and in light of customary two-year deadlines, many will need to “de-SPAC” (i.e., enter business combinations with a private company) in 2022. SPAC IPO activity may rebound to some extent in 2022, following anticipated SEC SPAC-related disclosure rules, which could provide much-needed clarity for potential SPAC sponsors and their advisors. Accordingly, we expect 2022 to be a transitional period for SPACs, with deal volume unlikely to return to peak levels.

---

## Enhanced Regulatory Scrutiny

In various public statements beginning in March 2021, the SEC expressed concern about several issues related to SPACs, including: (i) potential conflicts of interest between SPAC sponsors and public shareholders; (ii) the compensation paid to SPAC underwriters; (iii) the accuracy of disclosures about target companies' businesses and operations; (iv) the level of target company due diligence conducted by transaction parties; and (v) the accounting treatment for SPAC warrants. In June, the SEC included SPACs on its list of 2022 proposed rulemaking topics. These statements appear to have been designed to inform retail investors about the potential dangers of SPAC investments, and to warn SPAC sponsors and targets about potential liability for false or misleading statements or omissions in connection with de-SPAC transactions.

The SEC also put the market on notice that it would not hesitate to take enforcement action against SPAC participants, commencing two suits alleging violations of federal securities laws in July 2021. In one such suit, the charges resulted in civil penalties exceeding \$8 million and the forfeiture of certain "founders shares." Charges against another company created through a de-SPAC transaction resulted in a civil penalty of \$125 million shortly before year end.

## Private Civil Litigation

The plaintiffs' bar also devoted increased attention to SPACs in 2021, filing dozens of state and federal lawsuits related to de-SPAC transactions, including: (i) pre-closing suits seeking additional transaction disclosures; (ii) post-closing suits alleging violations of federal securities laws in connection with false or misleading statements about the target's business or operations; (iii) post-closing shareholder derivative actions mimicking the corresponding federal securities allegations; and (iv) post-closing suits in the Delaware Court of Chancery seeking to reopen the redemption period for SPAC investors. Separately, one investor filed lawsuits against three SPACs asserting that each was an investment company subject to the Investment Company Act of 1940.

Most of these lawsuits remain in their infancy, with very few decisions addressing the shareholders' claims. The first significant decision in a Delaware redemption action was issued on January 3, 2022, and it allowed most of the investor-plaintiffs' claims against the SPAC's sponsor, officers, and directors to proceed. Adverse rulings in the other types of SPAC lawsuits (including those alleging violations of the federal securities laws and Investment Company Act) could further chill the SPAC IPO market.

## 2022 SPAC Market Outlook

While SPAC IPO volume has declined from its first quarter of 2021 peak, volume remains elevated compared to pre-2020 levels, and hundreds of already public SPACs are searching for acquisition targets going into 2022. As sponsors await SEC guidance on new disclosure rules and potential federal legislation designed to protect retail investors, we expect the SPAC IPO market to remain subdued, but we believe that 2022 will be another active year for de-SPAC transactions. Litigation and regulatory enforcement risks for SPACs will remain elevated in 2022, at least until courts begin to address novel theories advanced by investors in 2021.



## EMERGING DEVELOPMENTS IN CORPORATE GOVERNANCE, IMPACT OF COVID-19, AND LOOKING AHEAD TO 2022

*The enduring COVID-19 pandemic continued to impact corporate governance practices and trends in 2021, while other notable developments, including a surge in shareholder proposals, changes to the proxy rules, and increased demands for climate change accountability, emerged.*

### **Shareholder Influence Grows**

With the global battle against COVID-19 far from over, many companies continued to hold annual shareholder meetings virtually in 2021. While the pandemic may have inhibited in-person meetings, it did not stifle investor engagement through the shareholder proposal process. In fact, the 2021 proxy season brought a surge of proposals focused heavily on political lobbying expenditures, emissions and environmental degradation, workforce diversity, and other social initiatives. These proposals were met with recordbreaking support as a total of 71 shareholder proposals passed, an increase of nearly 60% over 2020. As shareholders' voices on corporate governance grew louder, regulatory developments changed the landscape for shareholder engagement in other ways as well.

## Universal Proxy Cards

After years of consideration, the SEC adopted rules in November requiring the use of so-called “universal proxy cards” in contested director elections. The rules require both companies and dissidents to include *all* director nominees on each of their respective proxy cards, effectively providing to shareholders a full menu of candidates and increasing the likelihood of “split-ticket” voting that tends to favor dissidents and their nominees.

## Enterprise Risk Management

In September, the Delaware Chancery Court issued yet another reminder of the importance of managing increasing scrutiny over boards’ careful oversight of mission-critical enterprise risks, allowing *Caremark* claims against Boeing’s board of directors to proceed past a motion to dismiss for what the plaintiffs claimed were failures to: (i) identify and address risks related to the safety of certain sensors used in, and (ii) promptly report safety problems experienced by, its 737 MAX airplanes. As the progeny of *Caremark* liability decisions continued to develop this year, courts emphasized that enterprise risks take many forms, and corporate directors’ monitoring functions should be accordingly tailored to their companies’ operations, industries, and business activities. As specific examples of *Caremark* claims have proliferated in recent years, including food safety, pharmaceutical development, and financial reporting, evolving forms of enterprise risk, including social issues, are beginning to appear systemic across industries. Supply chain shortages, labor force recruitment and retention, and worker safety, for example, have become chief among the concerns that directors must continue to oversee and monitor in the year ahead. But one particular enterprise risk became more prominently visible than all others in 2021: climate change.

## Climate Change

2021 witnessed a sea change in public discourse regarding corporate accountability for climate change and its effects. On the heels of BlackRock chair Larry Fink’s annual letter to investors emphasizing the importance of a sustainable future, companies in all industries were challenged to reexamine their role in building and preserving that future. Wildfires, power outages, and publicity of extreme weather events linked to a volatile climate have made pleas for sustainable progress among corporations impossible to ignore. It may not be long before investors recast pleas for progress into urgent demands for fundamental corporate change. In fact, ISS may have heralded in a new era of director accountability for climate change with its adoption of a policy to recommend votes against directors of the 167 “significant GHG emitter” companies currently identified as the “Climate Action 100+ Focus Group,” and will recommend against incumbent directors of companies that have not met minimum climate-related disclosure standards and have not issued specific emission-reduction targets.

## The Year Ahead...

2021 proved once again that ESG is a movement, not a moment. In 2022, directors must demonstrate their understanding that “ESG” is more than an acronym as corporate America plots its course for the future. Properly understood, and as transformed in recent years, **G**overnance in the year ahead must incorporate **E**nvironmental and **S**ocial advancements as indispensable priorities—and not merely accessories.

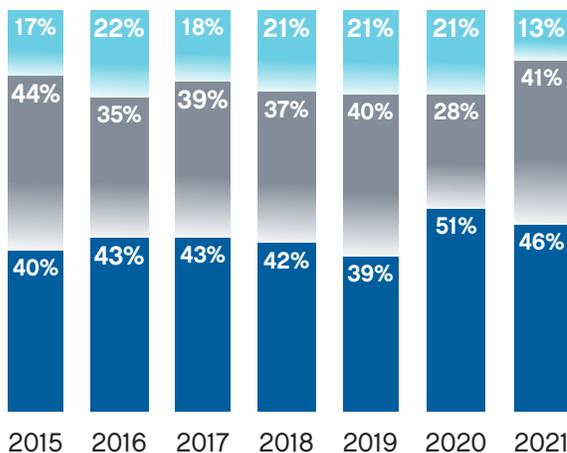
# 2021 SHAREHOLDER ACTIVISM HIGHLIGHTS

## “Anti” M&A Activism

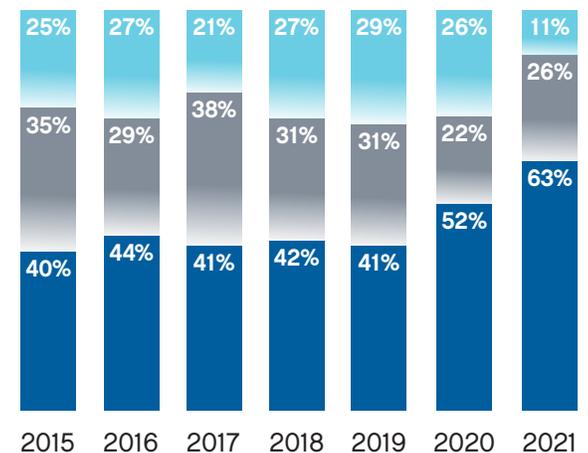
While the absolute number of companies publicly facing activist demands regarding M&A transactions decreased in 2021 vs. 2020, M&A activism represented an increased share of overall economic demands of activists in 2021. Although the relative count of M&A activism was on the rise this year, the form of activism has changed notably from years past. Many of the significant M&A activism situations in 2021 have been reactive—that is, instead of pushing for boards to consider a transaction, activists have responded to publicly announced transactions by pushing for shareholders to vote down a deal, or for boards to increase the transaction value or restructure transactions altogether. Most of the anti-M&A activism has focused on price, with demands largely placed at small-cap and mid-cap companies. Activists have found significantly more success in 2021 in M&A activism than in years past.

Part of this trend can be credited to volatile equity markets and increased transaction multiples in M&A transactions. Private equity firms with ample dry powder have pushed up valuations for assets. Activist investors have pounced on these frothy enterprise values as evidence that buyers in 2021 are willing to put additional capital to work to gain the support of key shareholders and guarantee a transaction closing. As a result, fewer activists have put companies in play than in years past; instead, activists have generally waited to go public until on or around the announcement of a strategic transaction.

**Global M&A Activism Success Rate**



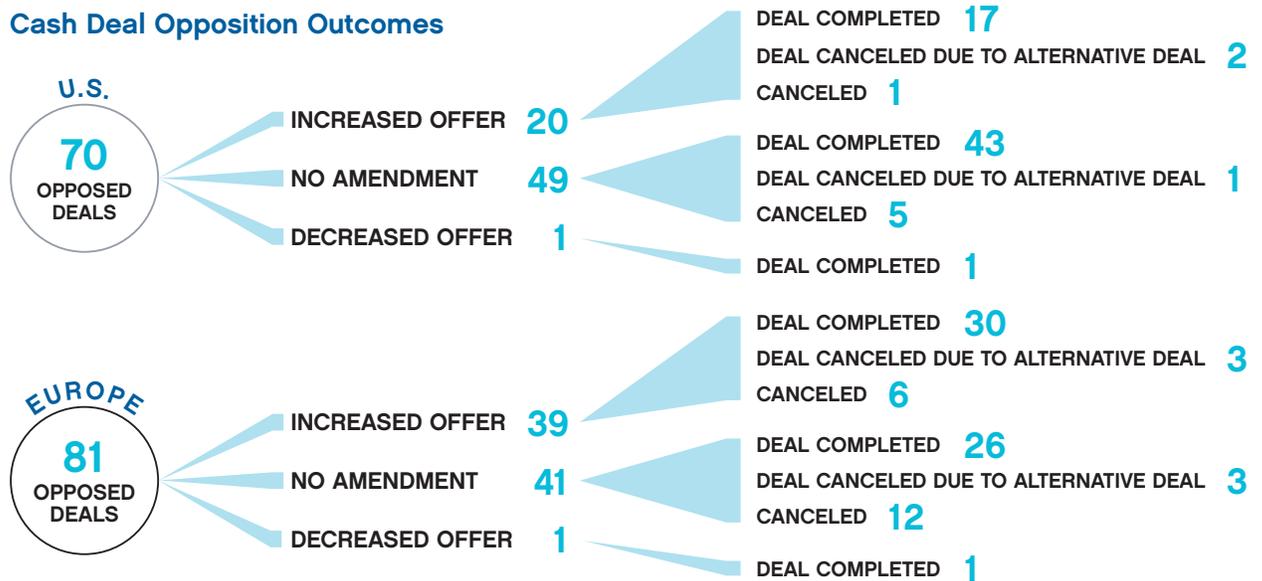
**U.S. M&A Activism Success Rate**



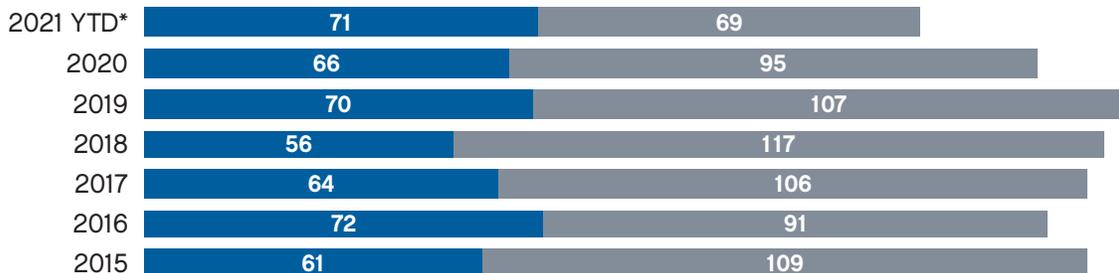
■ Unsuccessful ■ At Least Partially Successful ■ Withdrawn

Data on pages 12–13 provided by *Activist Insight*. 2021 includes data through December 21.

### Cash Deal Opposition Outcomes



### Global ‘Oppose’ Versus ‘Push For’ M&A Activism



\* As of Dec. 21, 2021

■ Oppose M&A ■ Push For M&A

### Continuing Trend of Activist as Acquiror

Certain activists have built up credibility as potential buyers of public companies in recent years—Elliott Management and Senator Investment Group are two notable examples of funds that have evidenced a genuine desire for and capability of acquiring a public company (including through hostile measures). However, many market participants continue to question whether the “average” activist investor would be willing (or able) to park a significant quantum of capital in a single asset for a lengthy period of time.

An interesting development in 2021 was activist-led SPACs presenting an opportunity for activists to become buyers in go-public transactions. Certain activists, including Third Point Partners, have gone so far as to raise capital specifically for SPAC investments. However, as has been common in SPAC transactions generally, activist-backed SPAC deals have faced scrutiny including shareholder litigation (e.g., a transaction involving Pershing Square). 2022 should provide some clues as to whether SPAC investing will provide a continued avenue for activists to seek additional alpha or whether it will be but a flash in the pan that ultimately will give way to more traditional public investing by activist hedge funds.

# THE ESG SURGE CONTINUES: FOCUS ON EUROPE

The focus on ESG across the business spectrum ramped up over the course of 2021, surpassing several milestones along the way and resulting in a surge of regulatory changes and new initiatives by the end of the year. Taking stock of the last 12 months, it is clear that Europe continues to be the early mover in regulatory matters, promising to make 2022 a watershed year.

Indeed, since 2018, when the European Union adopted its Action Plan on Financing Sustainable Growth, it has been moving forward to adopt regulatory requirements to meet its ESG objectives. They include: (i) reorienting capital flows toward sustainable investment in order to achieve sustainable and inclusive growth; (ii) managing financial risks stemming from climate change, environmental degradation, and social issues; and (iii) fostering transparency and long-termism in financial and economic activity. Since that time, and culminating in 2021, the European Union has rolled out the three cornerstones of this strategy:



- A classification system, or “taxonomy,” of sustainable activities, which will be used by most economic actors as a common screen tool to determine which economic activities contribute to environmental objectives, with reporting under the system phasing in starting in 2022;
- A disclosure framework for nonfinancial and financial companies, including the Sustainable Finance Disclosure Regulation that took effect in March 2021, and the proposed Corporate Responsibility Reporting Directive, which was proposed in April 2021; and
- Investment tools, including benchmarks, standards, and labels, such as the EU Green Bond Standard proposed in July 2021.

With these tools in place, corporates, financial institutions, and investors need to adapt quickly to the new European reporting requirements and the new investment criteria that are increasingly being used by market participants across all types of transactions. They should also continue to prepare for further change. From ESG due diligence in financing and M&A transactions, to sustained investor appetite for IPOs and other capital markets transactions responding to ESG criteria and concerns, we saw capital flows both responding to and driving regulatory initiatives, particularly in Europe, with the attendant changes in behavior by corporates, financial institutions, and state actors. With no signs of letting up, ESG in 2022 will continue to reshape the landscape.

# CRAFTING DIVESTITURE AGREEMENTS IN THE CONTEXT OF MERGER INVESTIGATIONS

Antitrust scrutiny of M&A remained high during 2021, and merging parties continued to make follow-on divestitures designed to obtain antitrust clearance for their main transaction. While a divestiture for antitrust reasons is necessary in only a small number of deals, it can be critical to achieving timely regulatory approval for a major transaction.

Antitrust enforcers continue to require that merging parties identify both the asset package and proposed buyer(s) as early as possible to maximize agency vetting. To obtain swift approval, a strong proposal must include all the assets, tangible and intangible, that the enforcer thinks the buyer needs to replace competition purportedly lost by the original transaction. Enforcers may even want to include assets outside the market in which they allege harm.

Otherwise common transactional terms can slow (or sink) an attractive proposal if they create entanglements or undermine the divestiture buyer's incentive to compete. Parties should:



## **Avoid circumstances where the seller has an ongoing financial stake in the divested assets or the buyer.**

For example, enforcers may argue:

- A large milestone payment may make aggressive competition less rewarding for either seller or buyer, or
- A seller-financed buyer may be reluctant to jeopardize its funding by competing vigorously against its lender or place the seller in line to reacquire the assets if the buyer fails.



## **Maximize buyer's future independence.**

Enforcers will expect the divestiture seller to provide transition services, but shared assets or transition services should be limited in time and scope to avoid creating longer-term entanglements. Enforcers want the divestiture buyer to stand on its own and view such relationships as potential avenues for collusion. For example, an enforcer may require that:

- Shared IP be transferred to the buyer and licensed back as needed;
- Communal physical assets be subdivided; or
- Transition service agreements be short and services provided at cost.

---

# UNTIL ENACTED OR WITHDRAWN, PROPOSED U.S. TAX REFORM CONTINUES TO HAVE AN EFFECT ON M&A AND PRIVATE EQUITY TRANSACTIONS

Since early 2021, Congress has been working on legislation that would alter the U.S. tax laws and potentially have a significant impact on M&A and private equity transactions. Although, in the aggregate, more a tremor than an earthquake when compared to the 2017 tax reform under the Trump administration, the proposed changes under the Build Back Better Act (“BBBA”) (or whatever legislation may ultimately reach President Biden’s desk) may have a profound effect on the global deal market. The uncertainty surrounding if and when the proposals will be enacted and what actually finds its way into law continues to impact deal structures. As businesses and investors alike attempt to avoid signing and executing transactions that may be in the cross-hairs of one or more of these proposals (possibly with retroactive effect), careful consideration should be paid to “safer” alternatives. In our summary discussion of these proposed changes, we have limited our focus to those provisions that, in our view, have the broadest applicability coupled with the greatest impact on M&A and private equity transactions.

## **Rate Increases and Related Provisions**

The Biden administration’s proposals to increase the corporate tax rate from 21% to 28% and the individual capital gains rate from 20% to 39.6% have been abandoned—the current iteration of the BBBA maintains a rate of 21% and 20% respectively. The BBBA likewise leaves untouched the tax provision providing for a 20% deduction on “qualified business income” for income earned through pass-through entities and the regime affording favorable capital gain treatment on carried interest.

However, the BBBA does provide for an increase in individual income tax rates whereby income in excess of \$10 million and \$25 million would be taxed, respectively, at rates of 44.6% and 47.6%. The BBBA would expand the application of the 3.8% “net investment income” tax to all trade or business income of individuals—including income from the sale of a limited partnership or S corporation—meeting certain thresholds except to the extent already subject to self-employment tax. Further, the BBBA would reduce the 100% gain exclusion for sales of qualified small business stock occurring after September 13, 2021, to 50% (unless a binding contract was entered into as of that date and subsequently materially modified).



In addition to rate increases, the BBBA would increase the cost of certain M&A transactions.

We also note that in an effort to align the United States with global efforts to discourage multinationals from shifting profits and tax revenues to low-tax countries, the BBBA would increase a U.S. multinational's tax on the sale of active business assets from a quasi-effective rate of 13.25% to 15%.

### M&A and Private Equity-Specific Proposals

In addition to rate increases, the BBBA would increase the cost of certain M&A transactions.

**New Excise Tax on Certain Stock Repurchases.** The BBBA would impose a new 1% excise tax on “repurchases” of stock by certain *publicly traded* corporations. The term “repurchase” is defined quite broadly and, in addition to traditional stock buy-back programs, would likely extend to a host of other common acquisition structures such as leveraged buyouts of a publicly traded corporation.

**Further Limitations on the Deductibility of Interest Expense.** The BBBA contains additional provisions that would further limit a business's ability to deduct interest expense. One of those provisions would limit a business's interest expense deduction when its U.S. operations are overleveraged compared to its foreign operations. This new provision may encourage U.S. multinationals to “push down” debt to their foreign subsidiaries—a process that may be feasible only under local law in connection with a third-party acquisition.

**Spin-Off Transactions.** With respect to “spin-off” transactions, it is common to reallocate the capital structure of the legacy corporation and the spun-off corporation (“Spinco”) to better align the debt load of their respective businesses. Under the BBBA, this realignment would be more challenging as it places significant limitations on the ability to increase Spinco's debt without incurring tax at the legacy corporation level. The effective date of this provision is January 1, 2022; however, if the transaction was publicly announced by a publicly traded company before that date, it may not be subject to the new leverage limitations.

**Investment in Foreign Businesses.** The most recent Senate tax bill includes a proposal that would expand the scope of the anti-inversion rules—potentially implicating run-of-the-mill structures that historically never would have raised an eyebrow. This proposal, for example, could render a newly formed foreign joint venture vehicle a U.S. corporation for U.S. tax purposes when the vehicle was formed solely with cash from U.S. or foreign private equity funds.

# FDI REGIMES CONTINUE TO EXPAND AND INCREASE SCRUTINY OF TRANSACTIONS WORLDWIDE



## China

China has increased its efforts to scrutinize global transactions that may implicate national security concerns using its foreign investment security review process. On December 19, 2020, China’s National Development and Reform Commission and China’s Ministry of Commerce jointly issued the Measures on Security Review of Foreign Investment (“FISR Measures”) aiming to monitor foreign investment in sensitive industrial sectors. These “sensitive sectors” include defense- and security-related sectors and sectors related to, among others, important agricultural products, energy, and resources. While the number of transactions being reviewed under FISR has increased, public disclosure of details has been limited to date. Compared with other regulatory procedures, FISR is characterized by broader jurisdiction, greater regulator discretion, and less visibility and predictability. As a result, parties to a transaction subject to FISR are likely to face increased deal uncertainty where such approval is a closing condition to the deal. We generally recommend that parties conduct a preliminary FISR assessment in the early stage of the transaction to understand the potential impact to the closing.



## Australia

Australia’s foreign investment approval regime can capture a very broad range of transactions (including foreign-to-foreign transactions and internal reorganizations). It remains critical that foreign investors carefully assess all transactions involving the direct or indirect acquisition of interests in Australian entities, assets, or land to confirm whether Foreign Investment Review Board (“FIRB”) approval should be sought on a mandatory or voluntary basis. Major reforms came into effect on January 1, 2021, which have further expanded FIRB’s reach. These reforms include new mandatory FIRB approval requirements for investments concerning a “national security business” or certain real estate designated as “national security land.” In addition, the Australian Treasurer can now, for up to 10 years following closing, “call in” transactions for review and potential orders (including divestment orders); relatedly, a new voluntary FIRB approval regime has been introduced to mitigate this risk. Further, the reforms include exemptions and carve-outs for certain private fund vehicles and foreign lenders, significant changes to the FIRB application fee regime, and increased penalties for noncompliance with the FIRB regime.



## United States

The Committee on Foreign Investment in the United States (“CFIUS”) continued to take a robust approach to its recently expanded regulatory mandate. There are several notable trends from recent years that are poised to continue into 2022. Transaction parties have increasingly opted to file CFIUS Declarations (short-form filings), and CFIUS appears to have to be more willing to clear deals based on CFIUS Declarations. CFIUS has demonstrated a continued focus on negotiating measures to mitigate national security concerns and monitoring post-closing compliance with these measures. CFIUS appears to have increased scrutiny of non-notified transactions, reporting in its most recent annual report that it considered 117 transactions in 2020 that had not been notified by the transaction parties.

CFIUS also appears to be expanding the range of industries where it has reviewed information or requested filings, including for transactions involving educational services, publishing, health care, pharmaceutical and medicine manufacturing, data processing and hosting, financial services, transportation, utilities, and other professional and technical services. In addition, CFIUS is currently evaluating whether to expand the list of “excepted” countries that are afforded preferential treatment under the CFIUS regulations, although any expansion will likely be slow.

The triggers for a mandatory CFIUS filing (or for a potential CFIUS expectation or request for a voluntary filing) are not always intuitive. They can require detailed examination of a U.S. business’s products, services, and assets, as well as the ultimate ownership and control of the investor. With CFIUS wielding new authorities, additional staff, and a broad bipartisan mandate for action, attention to these factors early in the diligence and deal-design process can help parties identify and apportion risks and secure a smooth path to closing.



## Europe

Dealmakers must also navigate the increasingly complex investment control landscape in Europe, with many jurisdictions either introducing new investment control regimes or expanding the scope of existing regimes. This is in addition to increased levels of cooperation and information-sharing between jurisdictions as a result of the EU FDI Screening Regulation that went into effect last year. There are also a number of significant developments on the horizon with new regulatory clearance requirements in the United Kingdom, Netherlands, Belgium, and Ireland (among others) expected to be introduced in 2022.

Investors are experiencing increasingly aggressive enforcement by governments across a wide range of sectors and are experiencing concerns being raised about investors from a larger pool of different countries. For example, an amendment to Germany’s FDI regulations starting in 2022 will expand the definition of critical infrastructure investments subject to mandatory pre-closing review to include a broader variety of activities in traditional covered sectors such as energy, telecommunications, and transportation, as well as in new sectors such as software, finance, insurance, and health. Prohibitions or conditions on investment have also been imposed on investors from the United States, Canada, and Australia, in addition to jurisdictions that are traditionally expected to attract greater scrutiny such as China.

# INFRASTRUCTURE INVESTMENT AND JOBS ACT: OVERVIEW AND THE ROLE OF P3s

On November 15, 2021, President Biden signed into law a long-awaited \$1.2 trillion bipartisan infrastructure bill titled the Infrastructure Investment and Jobs Act (“IIJA”). The IIJA is touted as a first step in fixing the United States’ failing infrastructure system with several initiatives focused on transportation, technology, and water systems. Although the “headline” number of the IIJA is \$1.2 trillion, the bill effectively adds about \$550 billion in new spending over the next five years, of which \$312 billion is slated toward transportation. The spending package also includes \$89.9 billion to modernize public transit over the next five years, with \$39 billion to improve accessibility for the elderly and people with disabilities, and \$7.5 billion to replace transit vehicles, such as buses and ferries, with zero-emission vehicles. The funds will be distributed through a series of grant programs by the Treasury Department, presenting new funding opportunities for companies engaged in the infrastructure sector.



The IIJA is touted as a first step in fixing the United States’ failing infrastructure system with several initiatives focused on transportation, technology, and water systems.

It is still somewhat uncertain as to the role that public–private partnerships (“P3s”) will play with respect to infrastructure initiatives. The IIJA does, however, recognize the role of private investment in facilitating and implementing P3s and in several instances directs programs to consider P3s. The mere increase in available funds and additional projects that should follow will likely create more opportunities for P3s.



## NEW DATA PRIVACY LAW IN CHINA

China passed its new Data Security Law (“DSL”) in June 2021 and its new Personal Information Protection Law (“PIPL”) in August 2021. Both new laws impact every business operating in or doing business with China, coupling extensive obligations with respect to the processing of all types of data, with potentially significant penalties for noncompliance. For buy-side transactions, the buyer should review and assess the target’s data processing activities carefully to ensure compliance with applicable requirements under the DSL and PIPL. For sell-side transactions involving foreign-invested entities, the local subsidiary should be prepared for a buyer to request an indemnity for matters relating to data processing (including prior compliance with DSL and PIPL, if subject to the DSL and/or PIPL before the closing).

Both buyers and sellers should also be sensitive to compliance with the cross-border transfer requirements under the DSL and PIPL if there is any information to be transferred out of China through due diligence or otherwise as a condition for the acquisition. Assessment of DSL and PIPL compliance risk in the early stages of a transaction can help ensure deal certainty.



## TRENDS IN EUROPEAN PUBLIC M&A

Europe saw a major increase in public M&A activity in 2021, fueled by cheap money and optimism as economies started to emerge from the worst effects of the pandemic. In particular, PE purchasers with dry powder to deploy and U.S. corporates were attracted by relatively low valuations. Q2 and Q3 saw several competitive situations. In several cases, target shareholders successfully persuaded purchasers to raise their original announced offer prices to levels that they felt reflected the target's real value. A reduction in activity followed in late Q3, perhaps because valuations had increased as a result of the flurry of activity earlier in the year. There were some high-profile instances of ESG-driven activism, with certain campaigns agitating for M&A. SPAC transactions were popular in certain parts of continental Europe, although the initial hype surrounding SPAC IPOs abated in Q3 and some high-profile IPOs were postponed. The vast majority of announced SPAC acquisitions were de-SPACs of U.S.-headquartered SPACs.

As noted in the FDI article, increased regulatory intervention continued to be a feature, with many European jurisdictions introducing new foreign direct investment screening regimes, expanding the scope of existing ones, and, in France's case, extending the life of restrictions that had hitherto been temporary. In addition, following Brexit, the United Kingdom's Competition and Markets Authority will be more active in global deals, and parallel EU and UK merger control regimes (rather than the previous one-stop shop) will apply. Amendments to the United Kingdom's Takeover Code came into effect in July to, among other things, abolish the old distinction whereby UK/EU competition clearance conditions were not subject to the same high threshold for invocation as other competition and regulatory clearance conditions (such as HSR).

# SUPERANNUATION FUNDS TAKE CENTER STAGE IN AUSTRALIAN TAKE-PRIVATEs—AND WILL INCREASINGLY NEED TO INVEST OUTSIDE AUSTRALIA

2021 was the year in which superannuation funds took center stage in Australian take-private transactions. In what has been a record year for Australian M&A activity, the weight of money rolling into Australian superannuation funds (which is largely attributable to Australia's compulsory superannuation scheme—10% of every employee's salary is paid into a superannuation fund), a scarcity of government-owned asset privatizations, a low cost of capital and an increasing demand from funds to hold "real assets" has compelled the larger superannuation funds to approach ASX-listed targets directly with takeover proposals.

The most high-profile of these was the IFM-led consortium—the "Sydney Aviation Alliance"—approaching Sydney Airports with several proposals, with the board of Sydney Airports ultimately recommending a A\$24 billion take-private. If implemented, it will be one of the largest completed M&A deals in Australian history. The scale of the transaction (and the regulatory complexity of the airport) has prompted some commentators to question whether there are any Australian listed targets that are out of reach of superannuation funds.

The primary investment criteria for these funds include yield and the ability to generate a stable and predictable return over a long-term investment horizon, meaning companies with infrastructure-like characteristics are most in demand. To date, we have seen targets acquired across waste management, renewables, infrastructure, telecommunications/data networks, logistics, and commercial property.

These funds are quickly becoming more sophisticated in their approach to pursuing public company M&A. A few years ago, we saw superfunds—which were existing shareholders in listed targets—agreeing to provide support to "pure play" private equity bidders. This evolved to multiple funds partnering to put proposals (in some cases without an initial stake in the target), and most recently, we have seen a few of Australia's largest funds pursuing solo—in effect taking on all investment and operating risk themselves.

The need to invest the waves of capital flowing into these funds means that they will need to remain active in Australian public markets M&A in order to generate a return for their members. The increasingly real challenge is a shrinking pool of local infrastructure targets, and a mild undercurrent of shareholder resistance to these being removed from Australia's public markets. In 2022, listed property stocks (many of which are trading at a discount to underlying asset value), may attract more attention from the larger superannuation funds. Inevitably though, we expect to see more of these funds acquiring significant assets outside Australia.



# KEY CONSIDERATIONS IN CARVE-OUT TRANSACTIONS

As global M&A activity reached record highs this year, so too did the market's appetite for carve-out transactions. A carve-out transaction is the sale of a subsidiary, division, or other part of a larger business enterprise. Carve-outs are generally characterized by an interdependence between the business being sold and the other retained businesses of the seller's group, which adds cost and complexity to the transaction.

## Identifying and Defining the "Business"

From a commercial standpoint, a clear understanding of the scope of the divested business avoids any ambiguity in planning and allows clear and coherent analysis of the transaction and its perimeter.

From a legal standpoint, a clear definition of the business is vital to documenting the transaction, including the scope of the post-closing transition matters, accurately and efficiently.

## Carve-Out Complications

Carved-out business segments often lack stand-alone financial statements (or such financials are likely to be unaudited), which can make valuation difficult, limit the availability of representations and warranties insurance, and potentially complicate governmental filings, particularly securities law filings if a public company buyer is involved.



Particular attention in diligence and purchase agreement negotiation must be paid to any contracts, other assets, or employees that relate both to seller's retained businesses and to the business being divested and allocation of related liabilities.

Particular attention in diligence and purchase agreement negotiation must be paid to any contracts, other assets, or employees that relate both to seller's retained businesses and to the business being divested and allocation of related liabilities.

From the seller's perspective, both of the complications above can often be eliminated or mitigated through careful, well-advised advance planning, including any pre-closing restructuring activities.

### Transition Matters

The seller may agree to continue to provide certain services to the divested business in the form of a transition services agreement ("TSA") (or reverse TSA if the seller needs temporary services from the divested business).

Negotiating and drafting the TSA and related service schedules or statements of work often requires significant input from both seller's and buyer's internal teams.

Key issues and agreements that may also require attention include:

- If the divested business has an international footprint, cross-border considerations in respect of both any required restructuring and executing the carve-out transaction;
- Noncompete/nonsolicitation and no-hire agreements in light of the seller's retained businesses, including confidentiality and use restrictions;
- Shared intellectual property licenses and agreements;
- Employee matters agreements;
- Commercial supply or manufacturing agreements; and
- Leases, subleases, and other shared site or shared services agreements.



## HIGHLIGHTED 2021 CLIENT REPRESENTATIONS

From carve-outs to leveraged buyouts to public deals, and P3s to NFTs, clients turned to Jones Day for some of their most significant, novel, and complex transactions in 2021.

As dealmaking shattered records, Jones Day helped clients keep pace with challenges both familiar and new—changing regulatory regimes, an increased focus on ESG, competition for high-quality assets. In the pages that follow, we highlight engagements across a range of sectors—from high tech and fintech, to life sciences and renewable energy—as clients adapted to a new era of unpredictability.



## PTT GLOBAL CHEMICAL

Jones Day advised PTT Global Chemical Public Company Limited (“PTTGC”) in the €4 billion acquisition of Allnex Holding GmbH from an international private equity fund and the related acquisition financing.

Allnex is a global producer of industrial coating resins used in the industrial metal, automotive, and packaging industries, with 33 state-of-the-art manufacturing sites and 23 research and technology facilities across the world. Headquartered in Bangkok, PTTGC is a global chemical company with diversified and comprehensive petrochemical businesses.

The transaction, one of the largest acquisitions by a Thai company in recent years, diversified PTTGC’s business portfolio into specialty chemicals and improved Allnex’s market access in the Asia Pacific region.

## CARVE-OUTS



Jones Day advised **American Industrial Partners** in the acquisition by portfolio company Vertex Aerospace of Raytheon Technologies' Defense Training, Professional Services, Mission Critical Solutions, and Modernization and Sustainment business lines. The Defense and Mission Critical Solutions business is a leading provider of training and sustainment services and products to the defense and commercial aerospace industries, primarily in the United States.



Jones Day advised **AURELIUS Equity Opportunities** in the sale of Office Depot Europe, which includes the remaining Viking and Office Depot Europe activities, to strategic buyer RAJA Group. AURELIUS is an international multi-asset manager investing in a wide range of sectors. Office Depot Europe operates in several European markets, including DACH, Benelux, the United Kingdom, and Ireland, and serves customers from small startups to large-scale businesses.



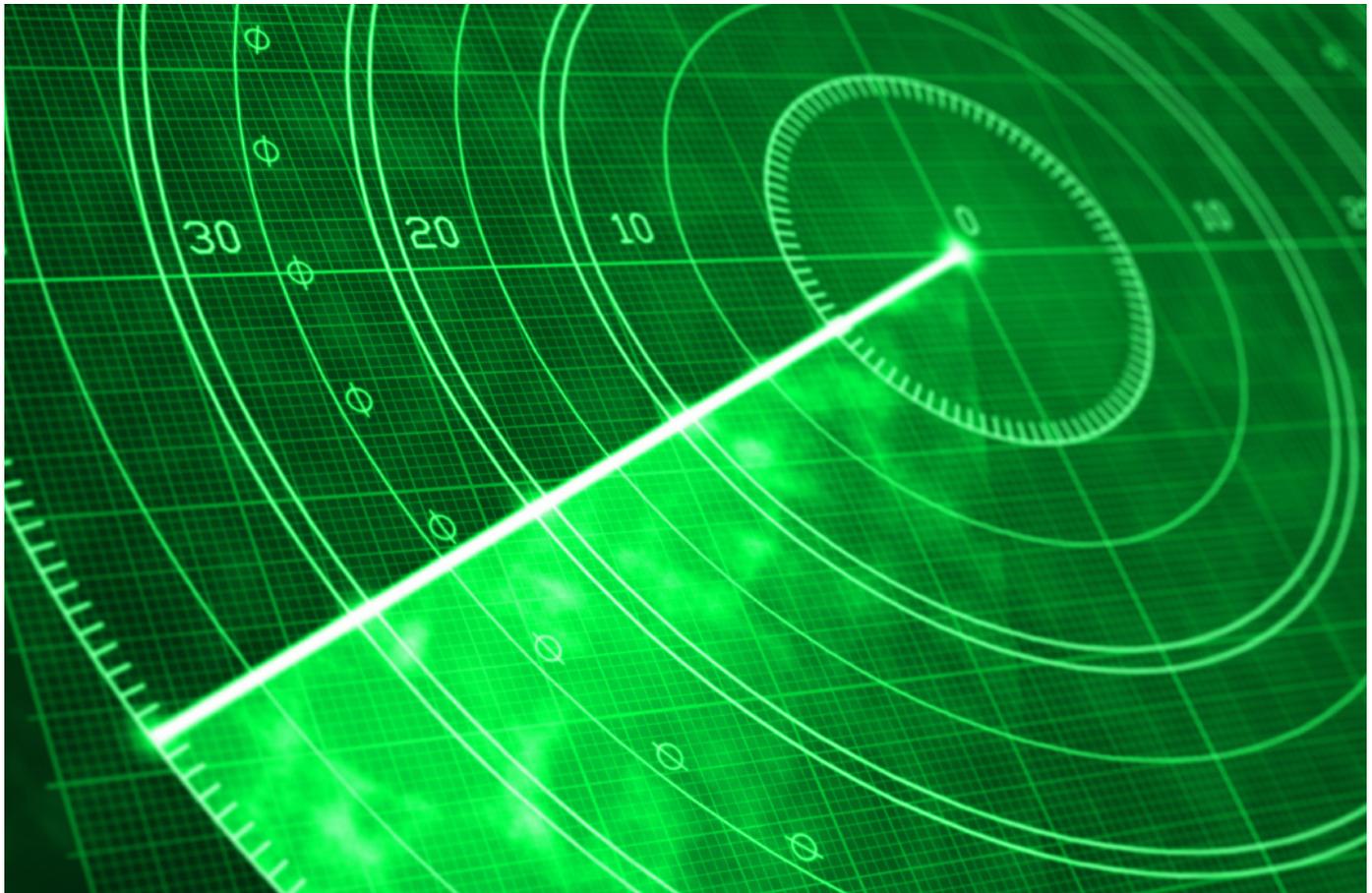
Jones Day advised **The Duchossois Group, Inc.** in the sale of The Chamberlain Group LLC, a global leader in smart-access solutions, to private equity funds managed by Blackstone. Chamberlain Group expects to reach a broader base of global customers as the company accesses Blackstone's extensive network and expands its software services strategy deeper into commercial, industrial, and automotive markets. The transaction valued The Chamberlain Group at approximately \$5 billion.



Jones Day advised **Infor**, a wholly owned subsidiary of **Koch Industries, Inc.**, in the sale of its Enterprise Asset Management business to Hexagon AB for \$2.8 billion, consisting of \$800 million in cash and approximately \$2 billion of Hexagon's common stock (HEXA-B.ST). Koch now indirectly owns approximately 5.5% of Hexagon's outstanding stock and has the right to appoint one member of the board of directors of Hexagon.



Jones Day advised **United States Steel Corporation** in the \$640 million sale of its wholly owned short-line railroad subsidiary, Transtar, LLC, to a subsidiary of Fortress Transportation and Infrastructure Investors LLC. The divestiture will generate immediate incremental value for U.S. Steel stockholders by monetizing a non-core asset, while better aligning U.S. Steel's operating focus on its core business.



## J.F. LEHMAN

Jones Day represented J.F. Lehman & Company (“JFLCO”) in the successful closing and debt financing of its first single-asset continuation fund, which will allow the firm to maintain its ownership of NorthStar Group in partnership with management. NorthStar is a leading provider of diversified infrastructure and environmental services across four business units: Commercial & Industrial Deconstruction, Nuclear Services, Environmental Services, and Response & Restoration.

Jones Day also advised JFLCO in its sale of BEI Precision Systems & Space Company, Inc. to Quantic Corporate Holdings, Inc. BEI designs, engineers, and manufactures highly accurate, resilient, and reliable position feedback sensors and frequency reference technologies for mission-critical space, land, air, and sea applications. Jones Day advised JFLCO in the acquisition of BEI in 2017.

Jones Day also advised JFLCO on its acquisition of a substantial investment in Trillium Engineering, LLC, a leading designer and manufacturer of highly engineered camera gimbals for unmanned aerial systems.

Private equity firm JFLCO focuses exclusively on the aerospace, defense, maritime, government, and environmental sectors.

# ESG AND SUSTAINABILITY



Jones Day represented **Climate Fund Managers** in the structuring, establishment, fund-raising, and first closing of the new CI2 Construction Equity Fund at \$675 million. The fund will invest in water, sanitation, and ocean infrastructure projects in Africa, South and Southeast Asia, and Latin America. CI2 provides expertise, technology, and financing to projects that help vulnerable societies mitigate and adapt to global climate changes. The fund has a \$1.2 billion target fund size.



Jones Day advised **Forsee Power** in connection with its initial public offering on the regulated market of Euronext in Paris. Forsee Power manufactures smart lithium-ion battery systems for sustainable electric transport (light vehicles, trucks, buses, trains, ships). The offering raised €100 million and will strengthen Forsee Power's market position in sustainable, emission-free mobility, as well as its geographic expansion, particularly in the United States.



Jones Day represented **Georgetown University** in connection with the negotiation and commercial close of a comprehensive energy P3 agreement with ENGIE. The agreement addresses sustainability and energy conservation at the University's campuses through ENGIE's management of the University's utility system.



Jones Day advised the **International Swaps and Derivatives Association, Inc.**, or ISDA, in the development of the ISDA U.S. Renewable Energy Certificate Annex ("REC Annex") to enable market participants to efficiently sell and purchase renewable energy certificates ("RECs") under the ISDA Master Agreement. The REC Annex is part of ISDA's broader efforts to facilitate the transition to a sustainable economy by offering a vital tool to help market participants mobilize financing and/or meet their ESG goals. Jones Day prepared the REC Annex as ISDA's counsel.



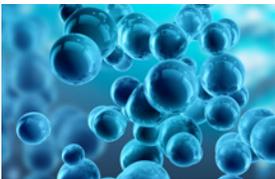
Jones Day represented **KeyBank National Association**, as left lead arranger and administrative agent, in connection with a \$1 billion sustainability-linked revolving credit facility provided by a syndicate of lenders to a publicly traded real estate investment trust ("REIT").



Jones Day advised **Macquarie European Infrastructure Fund 6 SCSp** in the acquisition of Beuparc Utilities, Ireland's largest waste management company. Beuparc has a portfolio of 40 waste facilities that process more than three million tons of waste per year, with a focus on reusable products and supplying waste to cement kilns and energy-from-waste facilities.



Jones Day advised **Massachusetts Mutual Life Insurance Company** on its debt and equity investment in Low Carbon Energy Holdings Limited, a subsidiary of Low Carbon Limited, an established pan-European renewable energy developer and fund manager. The strategic partnership will focus on international projects leveraging technologies including solar, storage, onshore and offshore wind, and waste-to-energy. The landmark deal marks MassMutual's first European renewable energy partnership as it seeks to transition its \$222 billion AUM investment portfolio to net zero by 2050.



Jones Day advised industrial manufacturer **Milliken & Company** in its acquisition of Encapsys, LLC. Encapsys is a leader in microencapsulation delivery systems for the building, construction, paper, bedding, and personal care industries. Microencapsulation, which puts a uniform polymeric shell around a core material at the micron level to create capsules, helps companies achieve more sustainable products by advancing responsible consumption and efficient delivery of active materials.



Jones Day advised **Oncor Electric Delivery Company LLC** as administrative agent in connection with a \$2 billion sustainability-linked revolving credit facility with JPMorgan Chase Bank, N.A. This credit facility includes sustainability-linked pricing metrics relating to specific environmental and employee health and safety sustainability objectives. Oncor, together with its subsidiaries, operates the largest distribution and transmission system in Texas, delivering power to more than 3.8 million homes and businesses and operating more than 139,000 miles of transmission and distribution lines in Texas.



Jones Day advised **Sempra Energy** in the sale of membership interests in PXiSE Energy Solutions to Yokogawa Electric Corporation. PXiSE is a San Diego-based developer of software that enables utilities and other grid operators to deliver reliable and stable power by managing renewables and distributed energy resources in real time. Sempra is an energy infrastructure company focused on responsible energy solutions, including natural gas distribution and wind and solar power generation.



Jones Day advised **TotalEnergies** in the acquisition of TotalEnergies Biogaz France, a company that designs, builds, and operates anaerobic digestion units in France. Biogaz has a 10% market share in renewable gas with nearly 500 gigawatt hours of installed capacity. This acquisition positions TotalEnergies as a major player in renewable gas in France and Europe and significantly strengthens its presence in the sector.

# TECHNOLOGY



Jones Day represented **Bpifrance and Eurazeo** in connection with the \$500 million Series E round of financing of Contentsquare, the global leader in digital experience analytics, led by SoftBank Vision Fund 2. Contentsquare analyzes customer behavior through trillions of anonymous web, mobile, and app interactions, and it transforms this knowledge into intelligent recommendations that increase user conversion, revenue, engagement, and growth.



Jones Day advised **Koch Equity Development LLC**, the acquisition and investment subsidiary of Koch Industries, Inc., in the acquisition of Transaction Network Services, Inc. (“TNS”) from affiliates of Siris Capital Group, LLC and TNS’s other minority equity holders. TNS provides secure, mission-critical connectivity and interoperability solutions via a global managed network enabling its customers to exchange data and information and transact worldwide.



Jones Day advised affiliated funds of **Kohlberg Kravis Roberts & Co. L.P.** as lead investor in Cherwell Software in connection with its acquisition by Ivanti, Inc., backed by Clearlake Capital Group and TA Associates.



Jones Day is advising **Roper Technologies, Inc.** in the \$2.68 billion sale of TransCore Partners, LLC and TLP Holdings, LLC to an affiliate of Singapore Technologies Engineering Ltd. Roper is a leading diversified technology company, operating businesses that design and develop software and engineered products and solutions for a variety of niche end markets. TransCore develops traffic management, tolling systems, and RFID units across the globe.



Jones Day advised **Skyworks Solutions, Inc.**, an innovator of high-performance analog semiconductors, in its \$2.75 billion acquisition of the Infrastructure and Automotive business of Silicon Laboratories Inc. The transaction is highly strategic for Skyworks as it seeks to accelerate its expansion into high-growth end markets that comprise the semiconductor industry’s most important segments, including electric and hybrid vehicles, 5G wireless infrastructure, smart home, and several other applications.

# FINTECH



Jones Day advised **Deutsche Börse AG** in connection with a strategic Series B investment round of financing for Luxembourg-based fintech HQLAx. HQLAx operates an innovative DLT/blockchain-based platform solution for liquidity management for institutions in international securities markets. The platform enables clients to exchange ownership of baskets of securities across disparate collateral pools at precise moments in time.



Jones Day advised **DraftKings Inc.** in connection with a landmark licensing agreement with the NFL Players Association for rights to use the name, image, and likeness of NFL players in connection with gamified NFTs (non-fungible tokens).



Jones Day advised **Eldridge Industries, LLC** as administrative agent and lead arranger on a senior secured term loan credit facility provided to Digital Currency Group, Inc. (“DCG”). DCG is a global investment company that has invested in more than 200 blockchain companies and is the parent company of several subsidiaries that have emerged as digital asset leaders. Eldridge invests in businesses in the insurance, asset management, technology, mobility, sports and gaming, media and music, real estate, and consumer sectors.



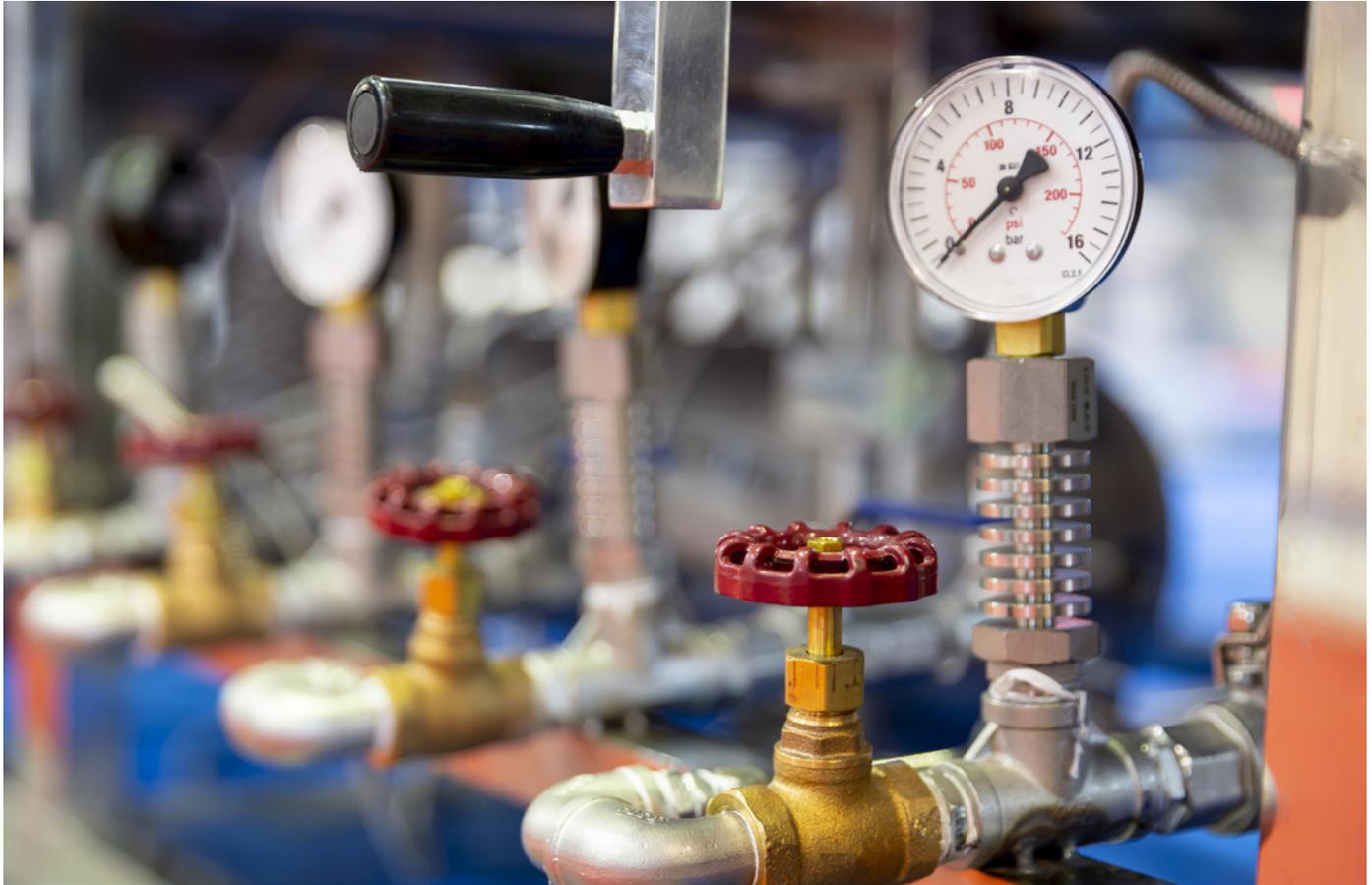
Jones Day represented **Koch Disruptive Technologies** in connection with its investment in the Series E round of Upgrade, Inc. at a \$3.4 billion pre-money valuation. KDT is a unique investment firm partnering with principled entrepreneurs who are building transformative companies that are changing the world. Upgrade is a fintech company that offers affordable and responsible credit to mainstream consumers.



Jones Day advised **Serena Capital** in connection with the formation of SERENA III, a fund dedicated to financing of startups specialized in gaming, online software, enterprise software, fintech, consumer, and DeepTech. Serena Capital announced the final closing of SERENA III at €300 million.



Jones Day advised **Swile** in connection with its \$200 million Series D round of financing led by SoftBank. Swile is a French-based tech company that offers digital solutions for employee rewards and benefits, such as meal vouchers, gift cards, and sustainable mobility vouchers, through a custom card and app. With this funding round, the startup has now reached unicorn status, meaning that Swile has a valuation of \$1 billion or more.



## EAGLETREE CAPITAL

Jones Day represented investment funds managed by EagleTree Capital in five major transactions in 2021, as well as multiple add-on acquisitions for their portfolios, including the \$470 million sale of Airtech Group, US Valve Corporation, and related entities to IDEX Corporation. Airtech designs and manufactures a wide range of highly engineered pressure technology products, including vacuum pumps, regenerative blowers, compressor systems, and valves. The company provides customized solutions across diversified end markets such as alternative energy, food processing, medical, packaging, and transportation.

Jones Day also advised EagleTree in the acquisition and financing of four new portfolio companies. EagleTree acquired Integreon, a leading global managed services provider, from NewQuest Capital Partners; Lignetics Inc., the largest consumer-focused wood pellet manufacturer in the United States, from Taglich Private Equity and Mill Road Capital; The Channel Company, a leading provider of business services for the IT sector, from Stone-Goff Partners; and Andronaco, a vertically integrated designer, manufacturer, and distributor of corrosion-resistant flow control technologies.

## LIFE SCIENCES



Jones Day represented **Astellas Pharma Europe Ltd.** in connection with a series of transactions, including the sale of related assets, in which Astellas returned its in-licensing rights to Eligard® to Tolmar International Limited. Eligard® (leuprorelin acetate for injectable suspension) is a treatment for advanced prostate cancer, sold by Astellas in Europe, the Middle East, the Commonwealth of Independent States, and Asia. Recordati Industria Chimica e Farmaceutica S.p.A. entered into a license and supply agreement with Tolmar to commercialize Eligard™ in Europe, Turkey, Russia, and other territories.



Jones Day represented **Bpifrance** in the sale of its interests in HalioDx as part of the €260 million sale of HalioDx to Veracyte, Inc., a U.S. global genomic diagnostics company listed on Nasdaq. HalioDx is an immuno-oncology diagnostics company providing oncologists and drug development organizations with first-in-class diagnostic products and services to guide cancer care and contribute to precision medicine.



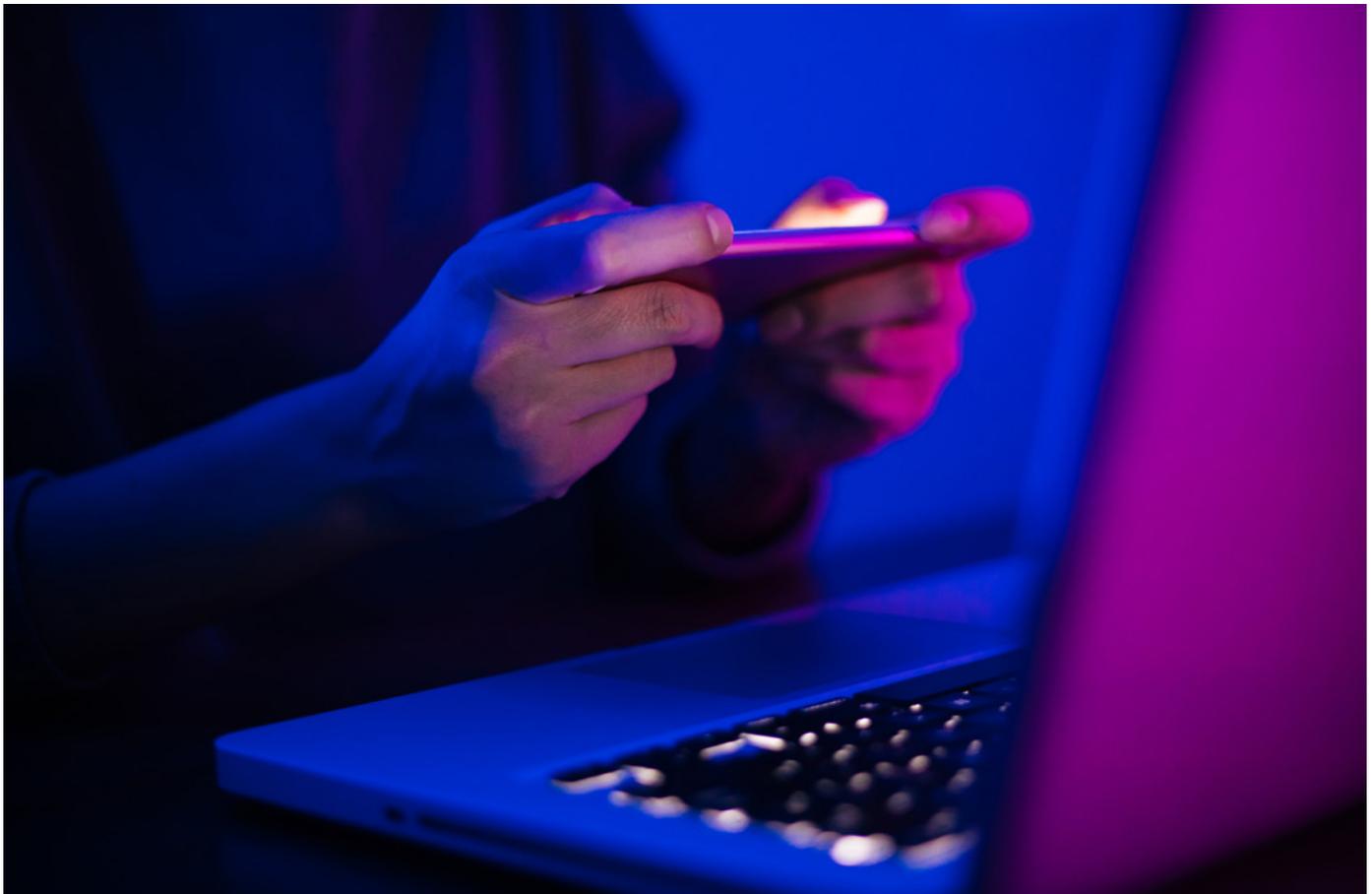
Jones Day advised **Greystar Real Estate Partners, LLC** in its joint venture formation with Canada Pension Plan Investment Board to invest an initial \$1.2 billion to develop Class-A life science office and lab buildings in leading U.S. life science markets.



Jones Day represented **Misonix, Inc.** in its \$518 million acquisition by Bioventus Inc. Nasdaq-listed Misonix is a provider of minimally invasive therapeutic ultrasonic technologies and regenerative medicine that enhance clinical outcomes, and Bioventus is a global leader in innovations for active healing. The merger creates a high-growth medical device company.



Jones Day advised **STERIS plc** in its \$3.6 billion acquisition of Cantel Medical Corp, a global provider of infection prevention products and services to endoscopy, dental, dialysis, and life sciences customers. The acquisition strengthens and expands STERIS's endoscopy offerings and extends STERIS's reach to the dental market, providing a strategic opportunity for the company to expand its core business. Jones Day also advised STERIS in a \$2.55 billion financing consisting of a \$1.25 billion revolving credit facility, a \$550 million term loan facility, and a \$750 million delayed draw term loan facility, the proceeds of which will be used, in part, to finance the acquisition of Cantel.



## BALLY'S

Jones Day advised Bally's Corporation in the \$2.7 billion acquisition and financing of Gamesys Ltd., an LSE-listed online gaming company. The financing consisted of a \$2.565 billion credit facility composed of revolving and term loan facilities. Bally's also completed a \$695.7 million Common Stock offering and a \$1.5 billion Senior Notes offering, the net proceeds of which were used to finance the acquisition.

In addition to Gamesys, in 2021 Jones Day advised Bally's on the acquisitions of fantasy sports site Monkey Knife Fight and B2B free-to-play game provider SportCaller.

Bally's is a global casino-entertainment company with a growing omni-channel presence of online sports betting and iGaming offerings.



## HARD ROCK INTERNATIONAL

Jones Day is representing Hard Rock International on the \$1.075 billion acquisition of The Mirage Las Vegas Hotel and Casino from MGM Resorts International. Hard Rock will acquire the operating assets of The Mirage Hotel and Casino and plans to build a 1,000-room guitar-shaped hotel on the famous Las Vegas Strip. The hospitality and entertainment brand will enter into a long-term lease agreement with VICI Properties Inc. for the real property of The Mirage.

In 2020, Hard Rock purchased the licensing and naming rights for Hard Rock Hotel & Casino Las Vegas with plans to bring the iconic brand to the Las Vegas Strip. Jones Day also advised Hard Rock on that transaction.

Hard Rock has venues in more than 67 countries spanning 249 locations that include owned/licensed or managed casinos, hotels, live performance venues, and cafes.

## BUSINESS RESTRUCTURING & REORGANIZATION

After business bankruptcy filings soared to their highest levels in more than a decade in 2020, the numbers fell well below annual averages in 2021. A widely anticipated increase in restructuring activity last year was temporarily abated by swift and robust central bank intervention and readily available and affordable capital from banks, private equity, and hedge funds. Even so, Jones Day’s Business Restructuring & Reorganization Practice played an active role in several of 2021’s most notable restructuring cases.



Jones Day is representing the largest creditor constituency group of creditors (**Jackson Crossover Group**) holding more than 46% (\$6.8 billion) of the debtors’ entire funded debt in the chapter 11 cases of *In re Intelsat S.A., et al.*, pending in the Eastern District of Virginia bankruptcy court. Intelsat is one of the world’s largest commercial satellite providers and has a \$14.7 billion prepetition capital structure. The Jackson Crossover Group holds approximately 74% of the unsecured debt, as well as a portion of the secured debt, issued by Intelsat Jackson Holdings S.A., the debtor entity that directly and/or indirectly owns all of Intelsat’s operating entities and assets, and houses nearly all of Intelsat’s employees.



In 2021, Jones Day represented oil and gas exploration and production company **Nine Point Energy** and its affiliates in their chapter 11 cases pending in the District of Delaware. With Jones Day’s assistance, Nine Point prevailed in lawsuits seeking judgments that: (i) Nine Point’s contracts with its midstream services provider, Caliber Midstream, did not contain covenants running with the land, and thus Nine Point could reject the contracts and sell its assets free and clear of any interest that Caliber may have in them; and (ii) \$150 million of Caliber’s asserted liens on Nine Point’s assets were invalid. In May 2021, the bankruptcy court granted summary judgment for Nine Point in the first proceeding on four of the five counts in the complaint, clearing the path for a bankruptcy sale process to proceed. In June 2021, the bankruptcy court ruled that at least \$150 million of the \$157 million in liens asserted by Caliber were invalid, thus clearing the path for the successful reorganization of Nine Point. Jones Day successfully defended this outcome on appeal in the district court, and then successfully defended a stay motion in the Third Circuit that allowed the sale to close in early August.



In 2020, coal company **Peabody Energy** experienced declining revenues due to, among other things, the COVID-19 pandemic. Peabody tapped Jones Day to help restructure more than \$1 billion of funded debt and letter of credit commitments. Because Peabody could not restructure its debt obligations without resolving \$800 million in surety collateral demands (and vice versa), Jones Day helped Peabody negotiate a global deal in November 2020 with nearly all of its sureties, contingent on a successful debt restructuring. With Jones Day's help, Peabody closed on a series of recapitalization transactions in January 2021 that provided Peabody with maturity extensions and covenant relief on its funded debt and letter of credit commitments. Peabody's unrestricted subsidiaries also obtained \$206 million of new term loans, and Peabody restructured its existing credit agreement.



Jones Day is representing **Aldrich Pump LLC** and **Murray Boiler LLC** in their chapter 11 bankruptcy cases filed June 18, 2020, in the Western District of North Carolina after the divisional mergers of Trane Technologies LLC and Trane U.S. Inc. These cases were filed to permanently, globally, and fairly resolve both debtors' liability for current and future asbestos claims by confirming a plan of reorganization under section 524(g) of the U.S. Bankruptcy Code and establishing a trust that promptly and fairly pays current and future asbestos claims. At the time of the chapter 11 filings, Aldrich and Murray were defendants in nearly 100,000 asbestos-related lawsuits on court dockets in jurisdictions throughout the United States and were paying nearly \$100 million annually to defend and resolve asbestos claims.

The restructurings are designed to ensure that the same paying power that was available to pay asbestos claims prior to the transactions remained available to Aldrich and Murray following the restructurings through the establishment of funding agreements with non-debtor affiliates.

## REAL ESTATE



Jones Day represented **Henderson Park Capital Partners** in its joint venture with South Street Partners and the joint venture's acquisition and financing of Palmetto Bluff, a 20,000-acre single-family residential and resort community in the Lowcountry of South Carolina, situated between Charleston and Savannah. It includes a luxury hotel, golf course, shooting club, boat club, and racquet club operated by Montage Hotels & Resorts.



Jones Day represented an entity advised by **Henley Investment Management Limited** in connection with its acquisition of the Bedfont Lakes, New Square office park near Heathrow airport and the establishment of a joint venture with Sixth Street.



Jones Day represented **Stonemont Financial Group** in connection with a joint venture formation and forward purchase and sale agreement for a portfolio of last-mile logistics facilities.



Jones Day is advising **Sun Communities, Inc.**, a Michigan-based REIT, on its acquisition of Park Holidays UK for approximately \$1.3 billion. Park Holidays is the second largest owner and operator of holiday communities in the United Kingdom, with 40 owned and operated communities and an additional two managed communities. The acquisition expands Sun's footprint into the United Kingdom, where the holiday park industry is an approximately £5 billion market.



Jones Day represented **Wells Fargo Bank, National Association**, as administrative agent, in connection with the Chapter 11 financial reorganization plan of Pennsylvania Real Estate Investment Trust, a publicly traded REIT real estate investment trust that owns and manages a portfolio of shopping malls totaling more than 23 million square feet of retail space.



Jones Day represented **Wells Fargo Bank, National Association** in connection with aggregate loans in the amount of \$300 million for the construction of a mixed-use project in Atlanta, Georgia, known as "Midtown Union." The initial phase of the project includes a 615,000-square-foot office tower, a 355-unit multifamily tower, and 35,000 square feet of retail space.



## GREYSTAR REAL ESTATE PARTNERS

Jones Day represented Greystar Real Estate Partners, LLC in connection with its \$840 million joint venture with an institutional investor to develop and acquire single-family rental communities in the United States. The joint venture will develop and acquire professionally managed rental communities consisting of detached or semi-detached homes and townhomes with private garages and backyards. Each community will have onsite leasing and maintenance as well as other communal amenities in line with Greystar's world-class product that focuses on maximizing resident experience. The partnership will target development areas that are near employment hubs, transit, and retail centers across the Sunbelt, Mountain West, and West Coast regions of the United States. Greystar will operate and manage the portfolio on behalf of the joint venture.

# FINANCIAL MARKETS

## ADDITIONAL 2021 CLIENT REPRESENTATIONS

 <p><b>\$1.95 billion</b> Amendment and extension to existing credit facility with Bank of America, N.A.</p>	<p><b>Banco Santander, S.A.</b></p> <p><b>\$1.5 billion</b> Rule 144A/Regulation S offering of Senior Notes</p> <p><b>\$1.75 billion</b> Concurrent tender offer by Marfrig Global Foods S.A.</p>	 <p><b>\$1 billion</b> Senior Notes offering by Bunge Limited Finance Corporation</p>
 <p><b>\$2.5 billion</b> Registered offering by eBay Inc.</p>	<p><b>Underwriters/Dealer Managers</b></p> <p><b>\$4.1 billion</b> Series of liability management transactions by PepsiCo, Inc.</p>	 <p><b>€165 million</b> Initial public offering by DEE Tech, the first French tech SPAC</p>
 <p><b>\$1.67 billion</b> Rule 144A and Regulation S offering of Senior Notes</p>	 <p>Bridge loan facility to finance acquisition of remaining equity interest in Guatemalan joint ventures</p>	 <p><b>€570 million</b> Financing of 257 MW Arcadis Ost 1 offshore wind farm in the Baltic Sea</p>
 <p><b>\$700 million</b> Unsecured amended and restated multicurrency revolving credit facility to publicly traded company</p>	 <p><b>£295.5 million</b> IPO on London Stock Exchange's AIM market</p>	 <p><b>€500 million</b> Green bond offering by Wabtec Transportation Netherlands B.V.</p>

# M&A

## ADDITIONAL 2021 CLIENT REPRESENTATIONS

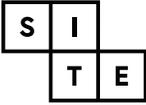
 <p><b>AU\$6 billion</b> Allkem (formerly Orocobre) stock-for-stock merger of equals with Galaxy Resources Limited</p>	 <p><b>\$935 million</b> Stock-for-stock merger with Glacier Bancorp, Inc.</p>	 <p><b>\$3.2 billion</b> Acquisition of Larry H. Miller Dealerships and Total Care Auto</p>
 <p><b>€315 million</b> Sale of 57.6% interest in Euronext Milan-listed Reno De Medici S.p.A.</p>	 <p><b>\$775 million</b> Acquisition of Ferrous Processing and Trading Company</p>	 <p><b>\$2.5 billion</b> Sale to The Goodyear Tire &amp; Rubber Company</p>
 <p><b>\$1 billion</b> Sale of adhesive resins business <b>\$800 million</b> Sale of tire additives business product lines</p>	 <p>Acquisition by IBF Financial Holdings</p>	 <p><b>\$2.4 billion</b> Sale of minority stake in FirstEnergy Transmission to Brookfield Super-Core Infrastructure Partners</p>
 <p><b>\$1.65 billion</b> Acquisition of Alion Science and Technology Corporation from Veritas Capital</p>	 <p><b>€341 million</b> Acquisition of Vivera</p>	 <p><b>\$1 billion</b> Acquisition of Distribution International</p>

# PRIVATE EQUITY ADDITIONAL 2021 CLIENT REPRESENTATIONS

 <p>Sale of Lexipol to GTCR</p>	<p>AMERICAN INDUSTRIAL PARTNERS</p> <p><b>\$300 million</b> Acquisition of majority interest in High Pressure Solutions Segment of Ingersoll Rand</p>	<p><u>CENTRE LANE PARTNERS</u></p> <p>Business combination of portfolio company Luminex with Global Consumer Acquisition Corp.</p>
<p>KKR</p> <p><b>\$200 million</b> Series B financing of portfolio company OneStream Software</p>	<p>Koch Strategic Platforms</p> <p><b>\$250 million</b> Series C financing round of Astranis Space Technologies</p>	 <p><b>\$355 million</b> Series F financing round</p>
<p>Investment Funds Managed by Morgan Stanley Capital Partners</p> <p>Acquisition and financing of Nivel Parts &amp; Manufacturing Co.</p>	<p><u>N E P</u> Norwest Equity Partners</p> <p>Acquisition and financing of Thibaut</p>	 <p>Sale of Arrowhead Engineered Products to Genstar</p>
 <p><b>\$1.1 billion</b> Series D financing round</p>	 <p><b>\$225 million</b> Series B Preferred Stock financing</p>	<p><b>TRUE.</b></p> <p><b>£275 million</b> Formation of True Capital III LP</p>

# REAL ESTATE

## ADDITIONAL 2021 CLIENT REPRESENTATIONS

 <p><b>\$155 million</b> Acquisition of Eldorado Shreveport Resort &amp; Casino and MontBleu Resort &amp; Casino</p>	 <p>Forward purchase of a build-to-rent scheme in United Kingdom</p>	<p><b>Goldman Sachs &amp; Co.</b></p> <p>Acquisition of The Belfry Hotel &amp; Resort</p>
 <p><b>\$2 billion</b> Acquisition of a portfolio from The Finger Companies</p>	 <p>Forward Purchase Acquisition of a residential property in Downtown Madrid consisting of 455 units</p>	 <p><b>£291 million</b> Acquisition of five purpose-built student accommodation (“PBSA”) assets from the Nido portfolio</p>
 <p><b>\$228 million</b> Registered public offering of 17,500,000 Common Shares</p>	<p><b>TRAMMELL CROW RESIDENTIAL</b> A CROW HOLDINGS COMPANY</p> <p>Sale of Alexan Clarendon East, 333-unit multifamily rental project in Arlington, Virginia</p>	 <p><b>\$91 million</b> Advised administrative agent in connection with 31-story multifamily project in Philadelphia, Pennsylvania</p>
 <p><b>\$750 million</b> Secured term loan to movie studio, sound stages, and production lots</p>	 <p><b>\$375 million</b> Acquisition loan secured by 12 student housing projects located throughout United States</p>	 <p><b>\$498.45 million</b> Loan secured by nine multifamily residential properties in Colorado, Georgia, North Carolina, Oregon, and Texas</p>

## LAWYER CONTACTS

For further information regarding our transactional practices, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form at [www.jonesday.com/contactus](http://www.jonesday.com/contactus).

### Business Restructuring & Reorganization



**Heather Lennox**  
Cleveland/New York  
+1.216.586.7111/+1.212.326.3837  
[hlennox@jonesday.com](mailto:hlennox@jonesday.com)



**Corinne Ball**  
New York  
+1.212.326.784  
[cball@jonesday.com](mailto:cball@jonesday.com)



**Bruce Bennett**  
Los Angeles  
+1.213.243.2382  
[bbennett@jonesday.com](mailto:bbennett@jonesday.com)



**Kevyn D. Orr**  
Washington  
+1.202.879.5660  
[korr@jonesday.com](mailto:korr@jonesday.com)

### Energy



**Jeffrey A. Schlegel**  
Houston  
+1.832.239.3728  
[jaschlegel@jonesday.com](mailto:jaschlegel@jonesday.com)

### Financial Markets



**Brett P. Barragate**  
New York  
+1.212.326.3446  
[bpbarragate@jonesday.com](mailto:bpbarragate@jonesday.com)



**Alban Caillemer du Ferrage**  
Paris  
+33.1.56.59.38.18  
[acf@jonesday.com](mailto:acf@jonesday.com)



**Jayant W. Tambe**  
New York  
+1.212.326.3604  
[jtambe@jonesday.com](mailto:jtambe@jonesday.com)

### M&A



**James P. Dougherty**  
New York  
+1.212.326.3409  
[jpdougherty@jonesday.com](mailto:jpdougherty@jonesday.com)



**Angel Huang**  
Shanghai/Beijing  
+86.21.2201.8000/+86.10.5866.1125  
[ahuang@jonesday.com](mailto:ahuang@jonesday.com)



**Vica Irani**  
London  
+44.20.7039.5237  
[virani@jonesday.com](mailto:virani@jonesday.com)



**Randi C. Lesnick**  
New York  
+1.212.326.3452  
[rclesnick@jonesday.com](mailto:rclesnick@jonesday.com)

### Private Equity



**Andrew M. Levine**  
New York  
+1.212.326.8319  
[amlevine@jonesday.com](mailto:amlevine@jonesday.com)



**Renaud Bonnet**  
Paris  
+33.1.56.59.39.14  
[rbonnet@jonesday.com](mailto:rbonnet@jonesday.com)



**Michael P. Earley**  
Chicago  
+1.312.269.4349  
[mearley@jonesday.com](mailto:mearley@jonesday.com)



**Patrick G. Stafford**  
London  
+44.20.7039.5233  
[pgstafford@jonesday.com](mailto:pgstafford@jonesday.com)

### Real Estate



**Anna Cartwright**  
London  
+44.20.7039.5290  
[acartwright@jonesday.com](mailto:acartwright@jonesday.com)



**Robert C. Lee**  
Chicago  
+1.312.269.4173  
[rclee@jonesday.com](mailto:rclee@jonesday.com)



**Brian L. Sedlak**  
Chicago  
+1.312.269.4334  
[briansedlak@jonesday.com](mailto:briansedlak@jonesday.com)



**David Smith**  
London  
+44.20.7039.5285  
[dsmith@jonesday.com](mailto:dsmith@jonesday.com)

## ONE FIRM WORLDWIDE®

AMSTERDAM  
ATLANTA  
BEIJING  
BOSTON  
BRISBANE  
BRUSSELS  
CHICAGO

CLEVELAND  
COLUMBUS  
DALLAS  
DETROIT  
DUBAI  
DÜSSELDORF  
FRANKFURT

HONG KONG  
HOUSTON  
IRVINE  
LONDON  
LOS ANGELES  
MADRID  
MELBOURNE

MEXICO CITY  
MIAMI  
MILAN  
MINNEAPOLIS  
MUNICH  
NEW YORK  
PARIS

PERTH  
PITTSBURGH  
SAN DIEGO  
SAN FRANCISCO  
SÃO PAULO  
SAUDI ARABIA  
SHANGHAI

SILICON VALLEY  
SINGAPORE  
SYDNEY  
TAIPEI  
TOKYO  
WASHINGTON