

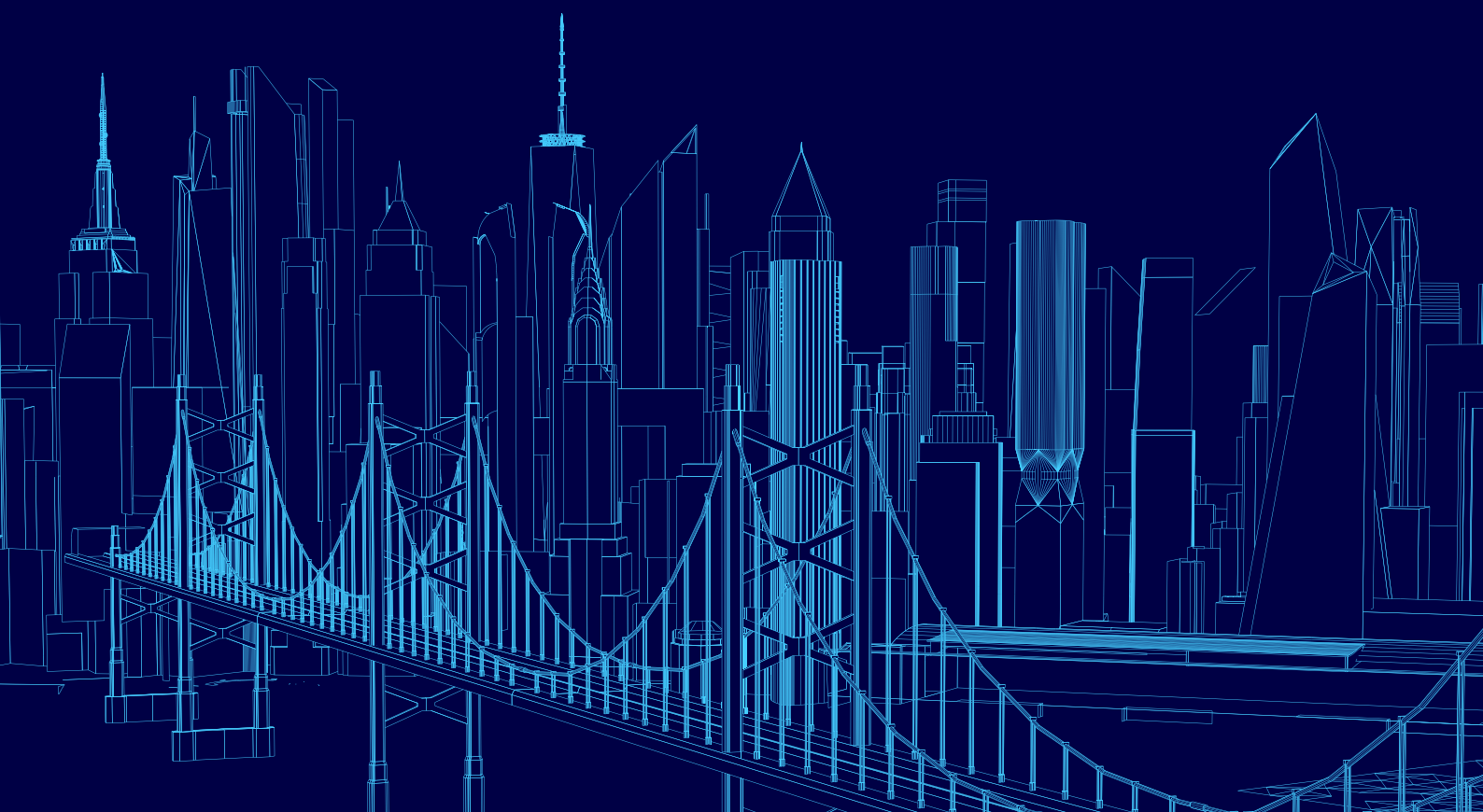


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Q1 2026

US PRIVATE M&A REPORT

TRENDS AND INSIGHTS SHAPING
THE FIRST QUARTER OF 2026



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Key contacts



Howard Spilko
Global Head of
Private Equity
howard.spilko
@hsfkramer.com



Ernie Wechsler
Managing Partner,
Corporate
ernest.wechsler
@hsfkramer.com

Editors



Damian Petrovic
Partner
damian.petrovic
@hsfkramer.com



Adi Herman
Partner
adi.herman
@hsfkramer.com



Christian Witzke
Partner
christian.witzke
@hsfkramer.com

OUR Q1 VIEW OF THE US PRIVATE M&A MARKET

Q1 2026 felt like a modest step forward for the U.S. M&A market but it was not without its challenges. While there has been some pickup in activity compared with the back half of 2025, the overall environment remains uneven. We've seen a number of processes start with momentum but ultimately stall or fall away, often driven by persistent valuation gaps between buyers and sellers — even for otherwise strong assets.

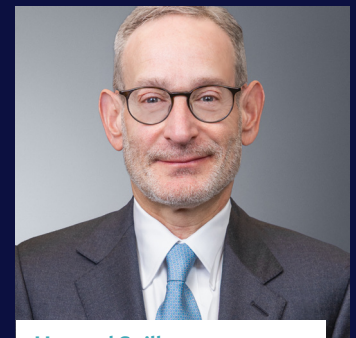
A big part of that dynamic continues to be broader market uncertainty. Ongoing geopolitical tensions, questions around the pace and impact of AI, and a still-evolving interest rate environment are all contributing to a more cautious tone. As a result, both strategics and sponsors are being selective and underwriting remains disciplined.

There are still pockets of activity, particularly for high-quality assets, and we've seen strategic buyers continue to pursue add-ons and targeted acquisitions. Private equity sponsors are active as well but not yet at levels that would suggest a full reopening of the market. Financing is available, but it's not meaningfully easier to obtain or cheaper than it has been in recent quarters, a trend that continues to influence deal dynamics.

On structure, we're continuing to see parties lean on tools like earnouts, rollover equity and tailored incentive arrangements to help bridge valuation gaps and get deals across the line.



Ernie Wechsler
Managing Partner,
Corporate, US



Howard Spilko
Global Head of Private Equity
and Chair, Corporate, US



Looking ahead to Q2, the outlook remains mixed. If some of the broader uncertainty begins to ease, we could see a more consistent pickup in activity. For now, though, it feels like a market that is moving in the right direction — but without clear, sustained momentum.”



REGULATORY UPDATES

Antitrust merger remedies endure as global scrutiny expands



By John Elias



While federal merger enforcement may be becoming more predictable, scrutiny at other levels of government continues to expand.”



The Trump administration signaled early in its second term that it would favor resolving merger reviews through negotiated remedies rather than seeking to block transactions outright. That approach was evident in 2025, as the Department of Justice and Federal Trade Commission (FTC) cleared nine mergers through settlement agreements. This trend likely will continue through 2026, offering greater predictability and reduced risk for dealmakers.

The current administration has been more open than the first Trump administration to both structural and behavioral remedies. In addition to traditional divestitures of assets, this administration has accepted commitments governing post-merger conduct for a defined period. For example, the FTC approved the

merger of two major advertising agencies subject to commitments prohibiting them from steering advertising away from media publishers based on their viewpoints. As the administration gains more experience with negotiated resolutions, it may follow the European Commission and U.K. competition authorities in issuing formal guidance on acceptable remedies, further enhancing dealmakers' ability to assess regulatory risk and structure transactions accordingly.

While federal merger enforcement may be becoming more predictable, scrutiny at other levels of government continues to expand. At the state level, Colorado and Washington introduced new filing obligations in 2025 by adopting versions of the Uniform Antitrust Pre-Merger Notification Act

and California has passed legislation that will take effect in 2027.

Internationally, Australia's new merger control regime took effect on January 1, replacing a voluntary notification system with a mandatory framework more akin to that of the U.S. Australia's rules can require filings even for transactions with a limited local nexus, underscoring the growing global reach of antitrust reviews.

Taken together, these developments highlight a dual reality for dealmakers: While negotiated remedies may reduce uncertainty at the federal level, the expanding patchwork of state and international merger review regimes makes early, coordinated global antitrust planning more important than ever.

CFIUS (re)sets priorities while another shutdown impacts CFIUS timings

At the close of Q1 2026, we are seeing several trends emerging, or re-emerging, regarding foreign investment and the national security priorities of the Committee on Foreign Investment in the United States (CFIUS).

In public remarks, new CFIUS head Chris Pilkerton echoed the president's America First Investment Policy, confirming that the U.S. will remain "open for business," including for foreign investment, but with CFIUS guardrails to protect against security risks arising from "foreign adversaries," most notably China. Pilkerton, the Assistant Secretary for Investment Security at the U.S. Treasury Department, also indicated a potentially heightened use of the U.S. intelligence community and law enforcement to bolster CFIUS monitoring of non-filed inbound foreign investments — perhaps foreshadowing an increase in CFIUS investigations and filing demands.

Other initiatives include development of the Known Investor Program (KIP), which could streamline the CFIUS review process for foreign investors from U.S. ally and partner nations that are both frequent filers with CFIUS and able to demonstrate a "verifiable distance and independence" from foreign adversaries or threat actors. It is not clear whether the KIP, once implemented, will result in material time savings for such investors, although further details are expected now that the U.S. Treasury Department's public comment period on the KIP is concluded.

Another U.S. Treasury priority is revamping regulations governing the Outbound Investment Security Program (OISP), whose

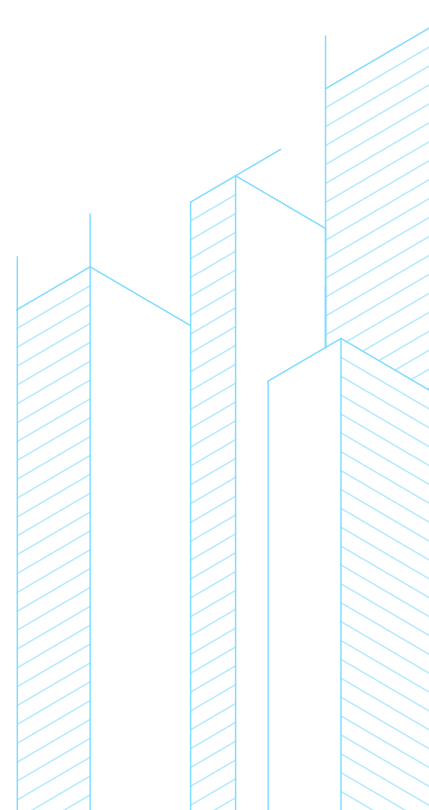
technology and "country of concern" coverage (among other provisions) was expanded and codified by the Comprehensive Outbound Investment National Security Act (COINS Act). Several substantive changes to the OISP, per the COINS Act, are to be reflected in further U.S. Treasury regulations to be issued by March 2027. Pilkerton also plans to formalize OISP processes for identifying U.S. outbound investments for which no required notification was submitted or that are otherwise prohibited (similar to CFIUS procedures for inbound investments).

These changes are taking place against the backdrop of another U.S. government shutdown, this time a partial one that took effect February 14 after Congress was unable to agree on funding for the Department of Homeland Security (DHS). As DHS is a member of CFIUS, the partial shutdown is impacting CFIUS review timelines, with delays in the review of new filings and in CFIUS clearance of transactions currently under review, especially in transactions where DHS would generally lead the CFIUS process. The shutdown, now the longest in U.S. government history, may introduce timing uncertainty for any acquisition or investment for which CFIUS approval is a closing condition, especially if a CFIUS filing backlog develops in the wake of a prolonged shutdown.



By Joseph Falcone

“... a potentially heightened use of the U.S. intelligence community and law enforcement to bolster CFIUS monitoring of non-filed inbound foreign investments — perhaps foreshadowing an increase in CFIUS investigations and filing demands.”



EMERGING ISSUES

In and never out: The trap of training data risk in M&A transactions



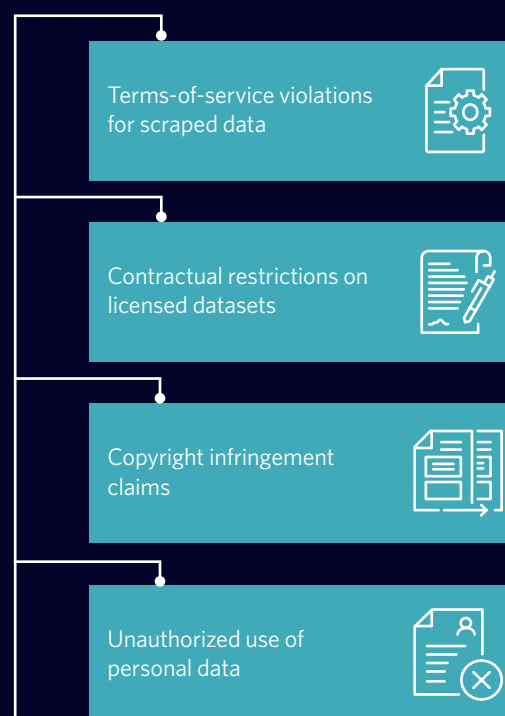
By Burr Eckstut



If it turns out that material portions of the dataset were used without proper rights, the buyer does not have a clean remediation path. The only theoretical solution — retraining from scratch — is often prohibitively expensive and time-consuming.”

In traditional tech diligence, removing problematic data from databases and workflows and replacing it with a suitable alternative often is all that’s needed to remediate data issues.

However, that calculus changes when conducting due diligence on a target company that relies on AI-integrated products or systems. A company that uses inaccurate or improperly licensed data to train its models may face significant liabilities, depending on how courts and regulators resolve several high-profile cases in the coming months and years. Problems can include:



The identification of problematic training data during due diligence creates an additional, structural problem: Once a model has been trained, the data is no longer separable. Unlike a contaminated field that can be removed from a database, training data becomes embedded in the model’s underlying parameters in a way that cannot be reverse engineered. If it turns out that material portions of the dataset were used without proper rights, the buyer does not have a clean remediation path. The only theoretical solution — retraining from scratch — is often prohibitively expensive and time-consuming.

This fundamental issue plays a central role in how deals are structured and risks are allocated, as described below.



Representations and risk allocation

Expect heightened focus on the disclosure of data sources and model training practices and buyers seeking robust representations regarding rights to training data. Indemnity caps, survival periods and escrow structures may need to be revised to reflect the difficulty of remediation.



The uncertainty of fair use

Whether the fair use doctrine will apply is the multibillion-dollar question. It is still largely unsettled as multiple high-profile cases continue to work their way through the lower courts, often resulting in decisions with conflicting reasoning. Because fair use is a fact-specific inquiry that makes precedent harder to pin down, the law is likely to remain unsettled in this arena for some time. Meanwhile, AI providers will remain reluctant to retrain models until it proves necessary, and many indemnity and representation and warranty insurance survival periods could expire in the interim. This dynamic may lead to dormant liabilities the buyer may be unable to recover from the seller or insurer.



Proving damages is hard

Even if infringement is established, quantifying damages in the training context presents challenges. Plaintiffs must prove actual damages with a defensible economic calculation of loss, but establishing causation can be challenging given the dynamic nature of AI tools. For example, if a large language model infringed a copyrighted work in the training process, how can the author determine the value of sales lost as a result of the infringement?

Bottom line: The risk allocation tools and indemnity parameters typically used in M&A transactions are not as effective in addressing a target's use of problematic training data as they are for many other data and IP issues. New tools and creative approaches can improve results, but the fundamental, one-way nature of training AI models means buyers will ultimately have to rely on exacting diligence to understand the risks and carefully consider how much legal uncertainty they are willing to underwrite.

FEATURED INSIGHTS

Valuing pipeline acquisitions in platform deals

Platform acquisitions, especially of business “roll-ups,” increasingly involve targets with robust pipelines of add-on acquisitions. Sellers often seek purchase price credit for these pipeline opportunities, even when the subject acquisitions have not yet materialized by the time of closing. That creates a familiar tension around valuation, cost allocation and execution risk — and makes early agreement on structure critical.

The core issues: At signing, pipeline acquisitions may range from deals with signed definitive agreements to early-stage opportunities with no documentation. Sellers typically argue that pipeline earnings before interest, taxes, depreciation and amortization (EBITDA) should be valued using the same multiple applied to the platform. Buyers, however, are focused on integration risk and the reality that some pipeline deals will never close.

Beyond headline valuation, the parties must also address who bears pipeline acquisition costs, whether post-closing true-ups or clawbacks apply (including with respect to future earnout payments), how pipeline targets fit into representations and warranties given by the target, and what (if any) consent

rights the buyer should have over ‘in-flight’ M&A negotiations between signing and closing. Regulatory timing and approval issues may also be relevant.

Seller view: Sellers generally push for full credit for pipeline acquisitions with signed definitive agreements and partial credit for earlier-stage deals based on historical close rates. The logic is straightforward: The seller sourced and negotiated the opportunities, and the buyer will benefit from inheriting a ready-made M&A pipeline.

If sellers receive EBITDA credit, they will often accept responsibility for corresponding transaction costs. In return, sellers usually seek finality at closing — no post-closing clawbacks, minimal conditionality, limited covenant restrictions and reduced exposure on representation bring-downs. Sellers may also resist treating pipeline targets as “subsidiaries” for purposes of their target-level representations and warranties, particularly where there is separate indemnity protection or RWI coverage at the pipeline deal level that buyers may rely on.

Buyer view: Buyers bear the integration burden and execution risk and have little

control over whether (or on what terms) pipeline acquisitions ultimately close. They may also face a mismatch between the multiple paid for a pipeline acquisition and the multiple implied in the platform valuation. As a result, buyers may favor post-closing true-ups or clawbacks to avoid paying for value that never materializes.

While buyers understand that closing conditions tied to pipeline deals are often off the table, they usually insist on basic consent rights to align incentives and prevent sellers from shortcutting diligence or negotiations.

A practical deal solution: We recently represented a client in a competitive auction wherein it agreed, as the buyer, to full EBITDA credit at the platform multiple, but only for pipeline acquisitions with signed definitive agreements in place before closing of the underlying platform transaction. The seller bore all pipeline costs (with those estimated to be incurred post-closing by the buyer being treated as indebtedness, subject to a post-closing true-up), and a clawback applied if a pipeline deal was terminated post-closing.

The economic impact of future earnouts was split: The seller effectively bore the cost of earnouts tied to maintaining existing EBITDA or revenue, while the buyer covered earnouts tied to post-closing growth. Limited buyer consent rights applied, no pipeline-related closing conditions were included, and pipeline targets were treated as subsidiaries only if they closed before the closing of the platform transaction.

Key takeaway:

Pipeline valuation is ultimately driven by leverage and auction dynamics. Even in seller-friendly deals, buyers should ensure that they are not paying for acquisitions that never close or costs they didn't price and that they are adequately protected against inheriting unforeseen terms or other exposures while preserving the target's ability to keep its M&A engine running.



By Adi Herman



By John Lagrou





Elevated risk allocation during extended executory periods

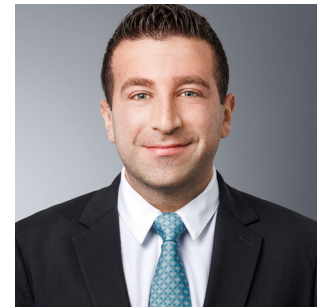
Extended executory periods—particularly those driven by regulatory approval requirements—are becoming more common in the current deal environment and are creating a growing area of focus for buyers: interim risk.

In transactions with a prolonged gap between signing and closing, buyers are exposed to the risk of breaches of representations and warranties that arise and are discovered during the interim period. These are referred to in representations and warranties insurance (RWI) policies as “interim breach.” While RWI policies remain a key risk transfer tool, it is important to recognize a key limitation—RWI policies do not cover damages arising from interim breach. They may allow for some erosion of the retention under the RWI policy for interim breach, but that often will not provide sufficient protection.

This creates a gap in protection. During an extended interim period, the target business may evolve in ways that result in a failed bring-down at closing, including operational changes, financial deterioration, loss of key relationships, or newly emerging liabilities. In a regulatory-driven timeline, these risks are outside the buyer’s control, yet the buyer remains exposed.

Buyers should therefore consider targeted contractual protections to bridge this gap. A common approach is to seek indemnification from the seller covering “interim breach” of representations and warranties. While this reintroduces seller liability in otherwise RWI-backed deals, it may be necessary where timing risk is significant, and while not prevalent market norm, there are instances of some level of seller indemnity for interim breach in transactions with extended executory periods due to regulatory processes.

As regulatory scrutiny continues to expand across sectors, extended executory periods are likely to remain a feature of many transactions. In this environment, careful attention to interim risk allocation—and the limitations of RWI in addressing that risk—will be essential to avoiding unintended exposure for buyers.



By Ross Karlik



By Damian Petrovic



Where there is a prolonged gap between signing and closing, RWI does not protect against breaches arising in the interim period, making it critical for buyers to address this risk through contractual protections.”

What's happening around the globe? Our Sydney office provides a Q1 market update



By Kam Jamshidi

Upliftingly, the Australian M&A market has been resilient in Q1 2026, despite an uncertain geopolitical and interest rate environment. This reflects Australia's position as a relative safe-haven investment destination, geographically removed from conflicts and supported by dependable regulatory and economic conditions.

U.S. inbound M&A remains a key driver of the local market, representing ~40% of deals by value over a five-year period. This spans the full spectrum — from corporate acquisitions to private equity buyouts and add-ons. An emerging trend is U.S. acquirers targeting Australian venture capital-backed businesses, as evidenced by NYSE-listed Hims & Hers' acquisition of Eucalyptus for a reported A\$1.6 billion. We expect more of these transactions.

HSF Kramer has long held the largest share of M&A activity in Australia (by number and value), providing a unique vantage point across sectors, client types and deal sizes. From that perspective, we make the following observations:

Public M&A

Large-scale public M&A remains buoyant, as evidenced by the A\$15 billion bid for BlueScope Steel by a consortium involving U.S.-based Steel Dynamics (we are acting for BlueScope). Equity market softness is expected to drive opportunistic M&A, particularly from offshore bidders seeking growth in a stable jurisdiction.

Metals and mining

Resources M&A continues to show strength, supported by commodity prices. Gold mergers remain in favor, while recovery in lithium and other future-facing commodities is driving renewed interest as supply security becomes a priority.

Private equity

- **Exits:** There is a strong pipeline of A\$1 billion-plus exit transactions that were soft-sounded or launched in late 2025 but did not transact. These assets are concentrated in resilient sectors (e.g., health care and financial services) and should support activity in 2026 as sellers build momentum.
- **Buy-side:** Demand remains high as funds seek to deploy capital. Many domestic and global sponsors have significant dry powder and are increasing their focus on Australia, which is expected to drive sponsor-to-sponsor activity.

Regulatory developments

- **Merger clearance:** Three months into the ACCC's new mandatory notification regime, the transition has been orderly, with reasonable processing times and no material increase in unexpected outcomes.
- **Foreign direct investment:** FIRB continues to process most non-contentious applications within two to four months, with expanding conditions around tax, data and national security.



By Li-Lian Yeo



OUR US M&A TEAM



John Bessonette
Partner
john.bessonette
@hsfkramer.com



Colin Bumby
Partner
colin.bumby
@hsfkramer.com



Thomas E. Constance
Partner
thomas.constance
@hsfkramer.com



Jonathan Goodman
Partner
jonathan.goodman
@hsfkramer.com



Daniel Grossman
Partner
daniel.grossman
@hsfkramer.com



Adi Herman
Partner
adi.herman
@hsfkramer.com



Mike Huang
Partner
mike.huang
@hsfkramer.com



Shari Kahn Krouner
Partner
shari.krouner
@hsfkramer.com



John Lagrou
Partner
john.lagrou
@hsfkramer.com



Todd Lenson
Partner, Head of Equity
Capital Markets and
Public Companies, US
todd.lenson
@hsfkramer.com



Robert Leung
Partner, Head of Energy,
Mining and Infrastructure,
Americas
robert.leung
@hsfkramer.com



J. Michael Mayerfeld
Partner
michael.mayerfeld
@hsfkramer.com



Arlene Ortiz-Leytte
Partner
arlene.ortizleytte
@hsfkramer.com



Damian Petrovic
Partner
damian.petrovic
@hsfkramer.com



James Robinson
Partner
james.robinson
@hsfkramer.com



Jordan Rosenbaum
Partner, Head of Equity
Capital Markets and Public
Companies, US
jordan.rosenbaum
@hsfkramer.com



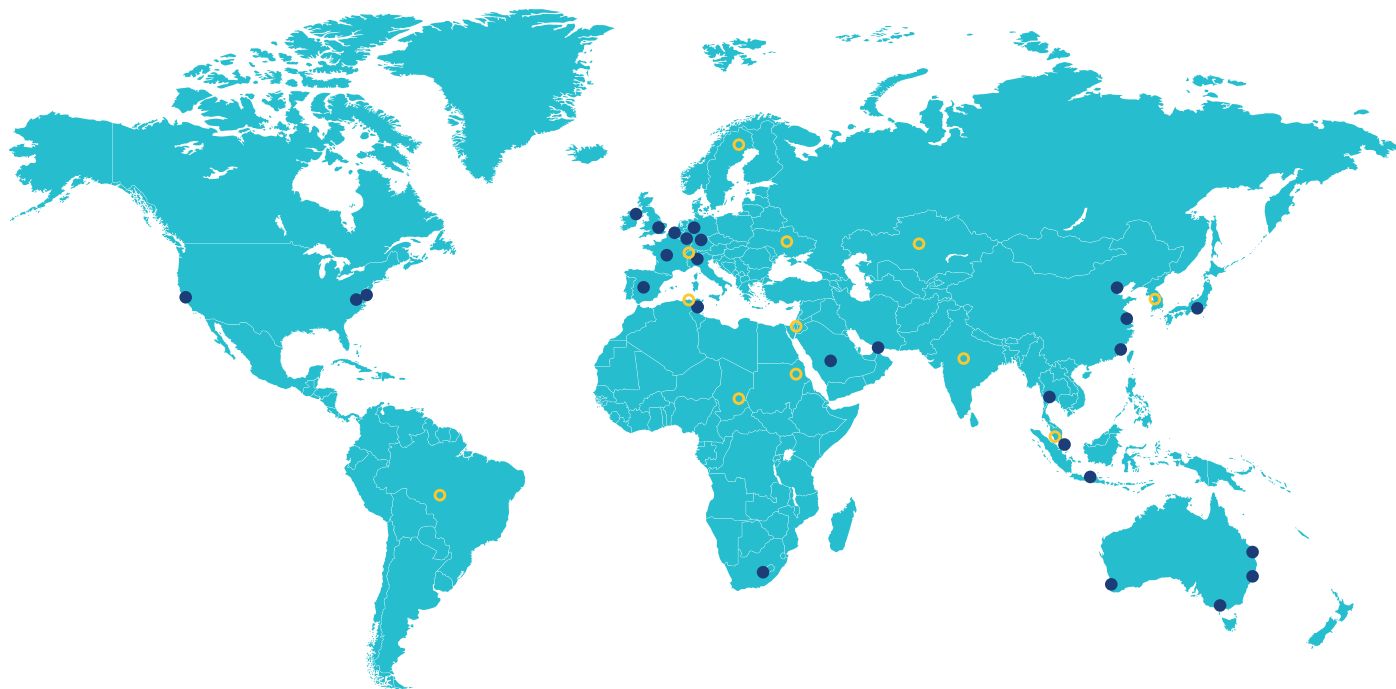
Howard Spilko
Partner, Global Head of
Private Equity and Chair of
Corporate, US
howard.spilko
@hsfkramer.com



Ernest Wechsler
Managing Partner,
Corporate, US
ernest.wechsler
@hsfkramer.com



Christian Witzke
Partner
christian.witzke
@hsfkramer.com



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