Vinson&Elkins

Capital Raising in a Changing Market: How Real Estate Companies and REITs Are Raising Capital in Private and Public Markets

September 30, 2025

Overview

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Vinson & Elkins Profile

Daniel LeBey

Partner — Real Estate Capital Markets and Mergers & Acquisitions

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Daniel's principal areas of practice are capital markets and securities law, private equity, fund and joint venture formation, mergers and acquisitions, and corporate governance matters. He has a particular focus on clients in the commercial real estate industry, including real estate investment trusts (REITs). Daniel is ranked by *Chambers USA* as a Band 1 lawyer in REITs: Nationwide, where reviewers note that “Daniel never takes his eye off the ball. He is able to handle complicated transactions, and his leadership really stands out” (2025).

He concentrates his practice on private and public capital formation transactions, as well as public and private mergers, acquisitions, and other strategic transactions, representing sponsors, investors, owners, asset managers, and operators in the commercial estate and mortgage industries. He advises companies and their sponsors through the entire life cycle of the business from formation through sale, recapitalization, or initial public offering (Daniel has advised on more than 35 initial public offerings in his career), and thereafter with respect to equity and debt capital markets transactions, SEC reporting and compliance, mergers, acquisitions and other strategic transactions, and corporate governance. Daniel also regularly serves as counsel for the underwriters in capital markets transactions and also advises boards of directors and special committees on strategic transactions and other governance matters.

Daniel is Co-Head of the Real Estate Industry practice group and serves as the managing partner for V&E's Richmond office.

Vinson & Elkins Profile

Zach Swartz

Partner — Real Estate Capital Markets and Mergers & Acquisitions

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Zach's principal areas of practice are capital markets and securities law, private equity, fund and joint venture formation, mergers and acquisitions, and corporate governance matters. He has a particular focus on advising clients in the commercial real estate industry, including equity and mortgage real estate investment trusts (REITs).

Zach concentrates in private and public capital raising transactions, as well as public and private mergers, acquisitions, and other strategic transactions. He advises companies and their sponsors through the entire life cycle of their businesses from formation and early-stage capital raising through the sale, recapitalization, or initial public offering process and thereafter with respect to equity and debt capital markets transactions, mergers, acquisitions and other strategic transactions.

Zach is recognized nationwide in REITs by *Chambers USA* where reviewers note that "[he] is diligent, thoughtful and ahead of the curve." Zach is also recognized as a New York Super Lawyers "Rising Star" in the securities & corporate finance practice area.

Wells Fargo Profile

Rohit Mehta

Managing Director, Head of Real Estate Equity Capital Markets

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Rohit Mehta is Managing Director of Equity Capital Markets at Wells Fargo, where he advises corporate and sponsor clients on IPOs, follow-on offerings, block trades, convertibles, and other equity-linked financings. He partners closely with sector coverage, syndicate, and research teams to structure, price, and execute transactions that align capital strategy with long-term growth objectives, bringing deep market insight and a client-first approach to every mandate.

Known for disciplined execution and clear, data-driven counsel, Rohit helps issuers navigate shifting market conditions, investor sentiment, and regulatory considerations to optimize outcomes. He is committed to building enduring relationships, mentoring talent, and fostering cross-functional collaboration that delivers high-quality service and measurable results for clients across industries.

MCB Real Estate Profile

David Bramble

Managing Partner and Co-founder

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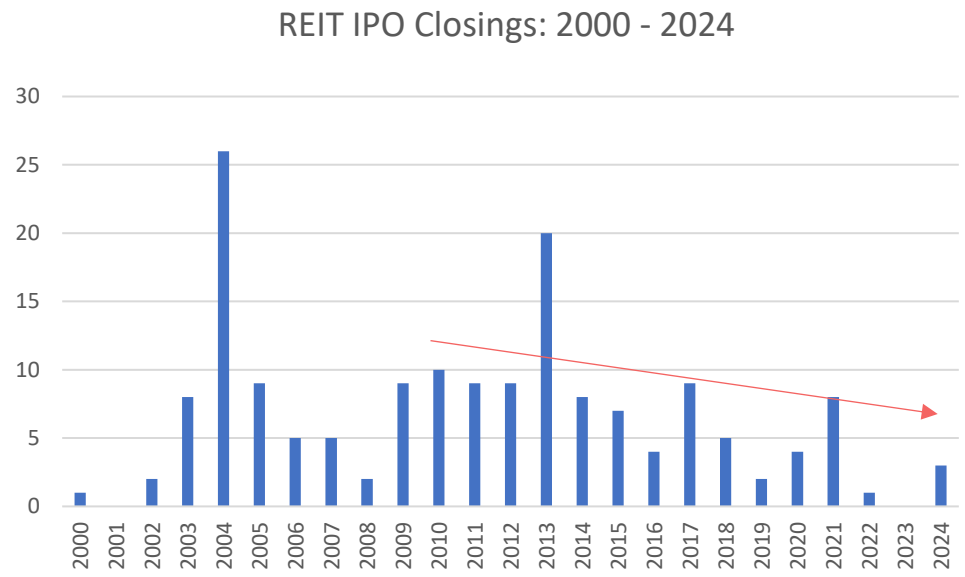
P. David Bramble has been working in real estate investment for over 20 years. He dedicates his time to sourcing & capitalizing transactions and overseeing project underwriting and execution. As a corporate and real estate attorney by training, David brings a deep knowledge of all aspects of the real estate cycle. Prior to MCB, David served as the director of commercial lending for a regionally based full-service lending firm –Madison Funding – which he co- founded in 2000. Prior to devoting all his time to commercial real estate investment, David practiced law in the transactions group of Steptoe & Johnson LLP where he provided corporate and real estate advisory services. His practice focused on complex workouts, primarily in the real estate and financial products space.

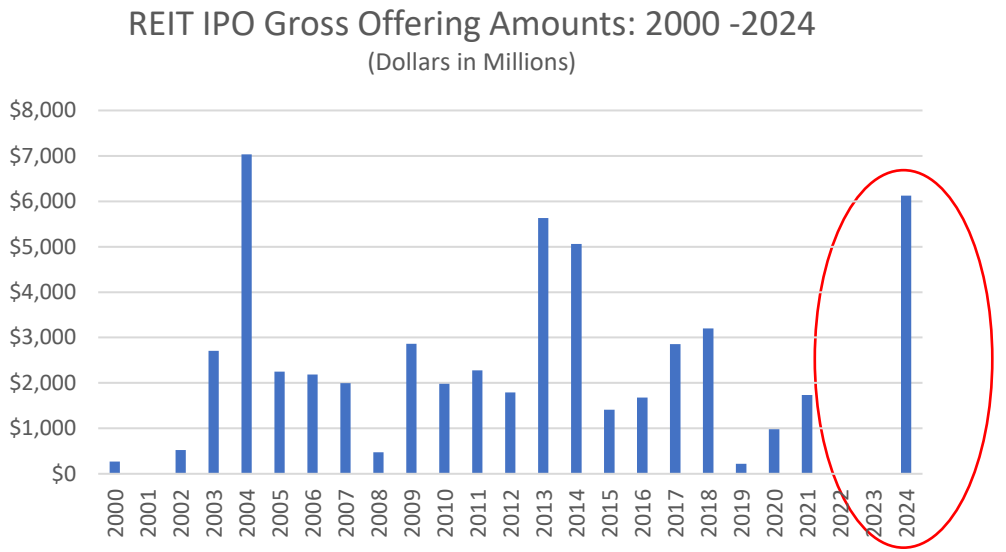
David serves as the Chairman of the Board of Lendistry, a fintech enabled CDFI focused on providing small business capital to underserved communities nationwide. He serves on the investment committee and board of the Robert W. Deutsch Foundation which invests in innovative people, projects, and ideas that improve the quality of life in Baltimore and beyond. He also serves on the boards of Johns Hopkins Bayview Hospital, Ronald McDonald House, UPENN Institute for Urban Research, The Abell Foundation, and Baltimore Tree Trust.

David received his J.D. from the University of Pennsylvania, and A.B. from Princeton University.

Historical Trends

Historical IPO Trends – REITs





- Average IPO Closings By Year, 2000-2020 = 7.333
- Average IPO Closings By Year, 2021-2024 = 3.000
- One REIT IPO closed so far in 2025
- Three REIT IPOs in 2024 (Lineage accounted for approximately 84% of the total gross proceeds raised)
- The above charts do not include direct listings, i.e., REITs listing existing shares without raising capital. However, these do represent new entrants to the public markets

Source: Nareit (https://www.reit.com/data-research/reit-market-data/reit-capital-offerings)

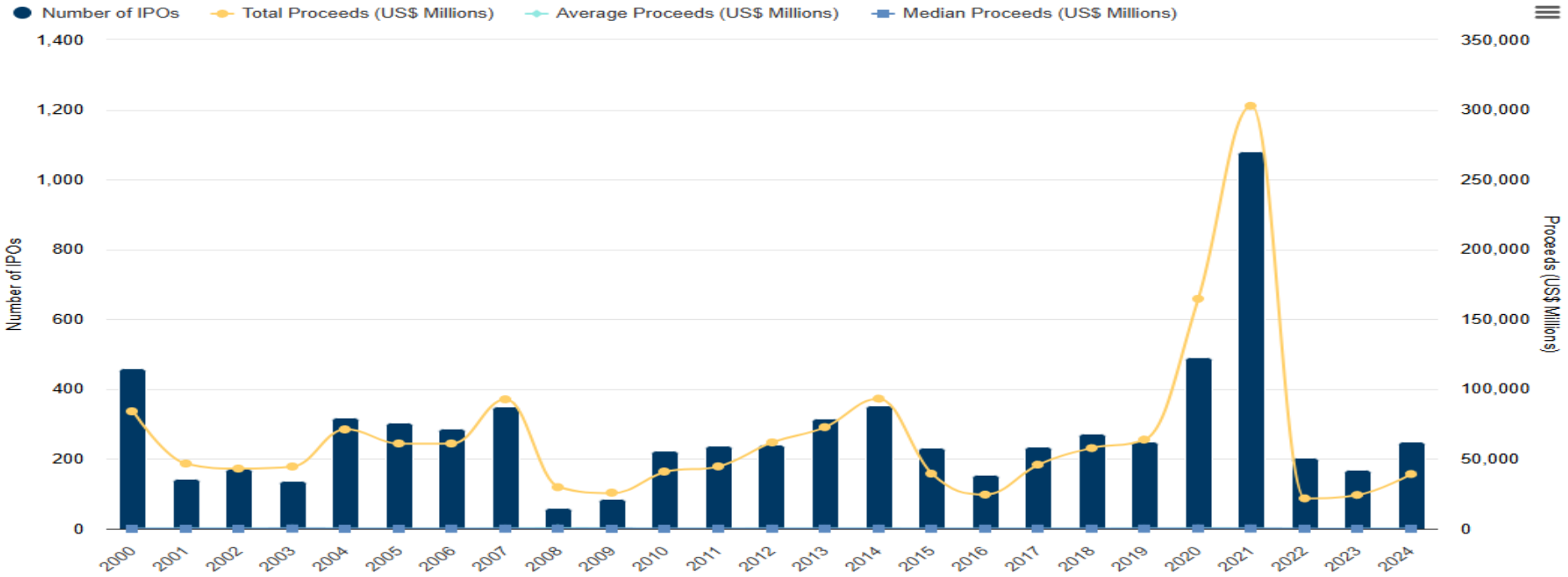
Historical Trends

Declining Rate of Growth of Equity Market Cap of U.S. Property REITs

- 2010 – 2015: U.S. REIT Equity Market Cap Increased **147%** from $359 billion to $886 billion(1)
- 2016 – 2020: U.S. REIT Equity Market Cap Increased **34%** from $886 billion to $1,184 billion(1)
- 2021 – 2024: U.S. REIT Equity Market Cap Increased **16%** from $1,184 billion to $1,368 billion(1)

(1) FTSE Nareit Real Estate Index Historical Market Capitalization, 1972 - 2024

Historical IPO Trends – IPOs Generally



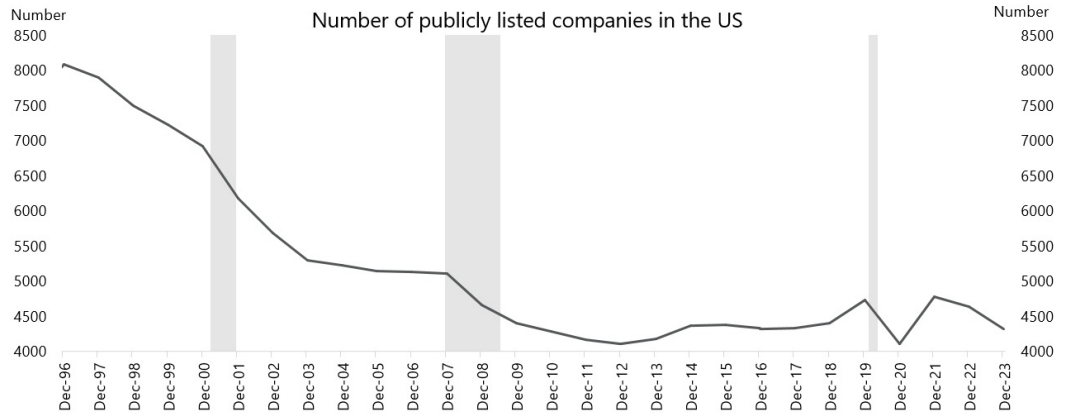
- Chart does include SPAC IPOs
- Average IPOs By Year, 2000-2020 = 254.24
- Average IPO Closings By Year, 2022-2024 = 208
  - Note – 2021 excluded from both averages given how anomalous that year was
- ~250 IPOs closed so far in 2025

Historical Trends

Decline in Number of Public Companies

APOLLO

US: Significant decline in the number of publicly listed companies



Source: Apollo (https://www.apolloacademy.com/significant-decline-in-the-number-of-publicly-listed-companies/)

SPEECH

A Creative and Cooperative Balancing Act

Commissioner Hester M. Peirce

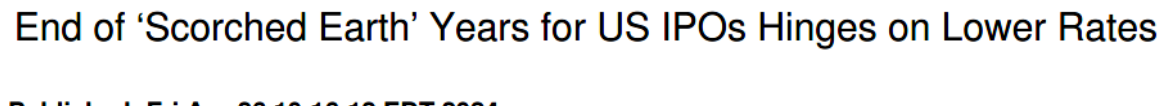
SEC 31st International Institute for Securities Market Growth and Development | Washington D.C. | May 8, 2025

The U.S. capital markets are well-developed and well-functioning, but keeping them preeminent requires continued care and creativity. Here in the United States, we are constantly asking ourselves how we can do better and watching for signs that something may be amiss in the markets or the way we regulate them. For example, we are reflecting on why the number of public companies listed on exchanges in the U.S. fell from 5,243 in 2004 to 4,862 in 2024.[1] This decline reflects positively on the robustness of our private markets, but the regulatory requirements the Commission has imposed on public companies also are partly responsible for dissuading companies from going public. We need to take a look at these requirements and ask whether some of them are extraneous, or even harmful. Much public company regulation takes the form of disclosure requirements but even disclosure requirements can be costly and distracting to management and may change the company's practices in ways that are not good for investors. Requiring a company to disclose in detail executive compensation, including how it relates to other employees' pay, for example, can limit the company's ability to hire the best people to run the company. Keeping disclosure requirements principles-based and rooted in materiality of the information to investors seeking to maximize the long-term value of the company helps them stand the test of time.

- Approximately a 50% decline since the mid-1990s

Macroeconomic Conditions

- Elevated interest rates have translated into steeper valuation discounts for companies, making IPOs less attractive
  - Especially challenging for rate-sensitive industries, like real estate
  - Recent rate cut – with future rate cuts projected – has provided some relief
- Uncertainty around trade / tariff policy
- Elevated market volatility, including with respect to geopolitical tensions
  - Contrast with private assets, which can benefit from price stability that is not always afforded in the public markets
- Recent volatility aside, overall equity market returns have been strong in recent years – but that has largely been driven by the performance of larger companies. Smaller companies usually make up the bulk of the IPO pipeline


End of 'Scorched Earth' Years for US IPOs Hinges on Lower Rates

Published: Fri Apr 26 10:16:12 EDT 2024


U.S. Investors Braced for More Market Volatility


CAPITAL RAISING & CORPORATE FINANCE

Trump Tariffs Halt IPO Deals In US

MAY 6, 2025


Israel-Iran strikes: Analyst reactions to stock selloff, oil surge

By Reuters

June 13, 2025 7:16 AM EDT · Updated June 13, 2025

Increasing Regulation of Public Companies

- Difficult to quantify, but there is some evidence that increasing public company regulation deters IPOs
- Significant disclosure requirements around things like executive compensation, which is time consuming and expensive to prepare, particularly for smaller companies
- A number of new disclosure requirements have been adopted in recent years (e.g., cybersecurity, pay versus performance, clawbacks)
- Significant increase in SEC enforcement actions under the Biden Administration / Gary Gensler, some of which involved seemingly minor / foot-fault type violations and/or novel theories of liability

Hero or Villain? Gary Gensler's Polarizing Legacy at the SEC

BETTER MARKETS

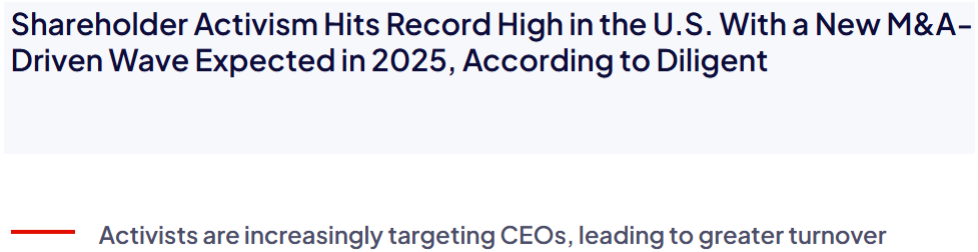
SEC
FACT SHEET

The SEC is Killing IPOs

By Benjamin Schiffrin | *Director of Securities Policy*
February 25, 2025

Increasing Shareholder Activism and Litigation

- 2024 and 2023 have been described as consecutive years of “record-setting” global shareholder activism campaign activity
- The activist “universe” is expanding – a record 186 investors launched activist campaigns in 2024, with first-time activists representing 47% of all activists and 32% of campaigns
- 129 global campaigns launched in 1H 2025 – down 12% from 1H 2024’s record of 147, but generally consistent with 4-year historical averages
- On the litigation front, securities class action filings have fluctuated (largely driven by market cycles), but increased in each of 2023 and 2024, with 2024 representing a 23% increase from 2022
- Moreover, excluding individual settlements exceeding $1 billion, total securities class action settlement amount increased in each of 2023 and 2024, with the total settlement amount in 2024 ($4.1 billion) setting a new record
- Public REIT sector no longer spared in spite of structural protections inherent in REITs



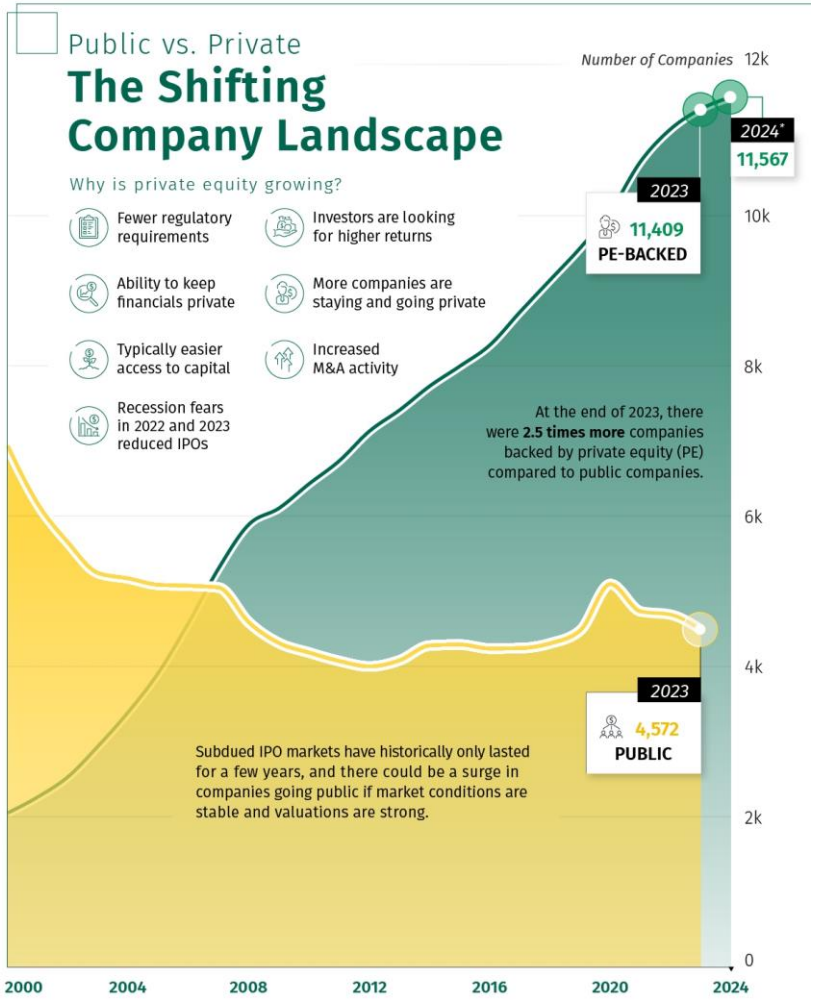
Sources: Lazard (https://www.lazard.com/research-insights/annual-review-of-shareholder-activism-2024/); Barclays (https://www.ib.barclays/investment-banking/shareholder-activism/2025-shareholder-activism-resilient-campaign-activity-and-boardroom-victories.html); Woodruff Sawyer (https://woodruffsawyer.com/insights/securities-class-action-year-end)

Growth in Private Markets

- The number of retail investors who can invest in private markets has grown - roughly 18.5% of US households qualify as “accredited investors,” versus about 21% of households that own public stocks
  - In other words, the retail audiences for public and private investments are now roughly the same size
- Large asset managers have recognized this trend and are teaming up with mutual fund companies to provide private investment opportunities
- As the proportion of public and private companies shifts toward private, investors can’t achieve a true “market” return by investing solely in public companies – they need access to the growing number of private companies as well

April 29, 2025

Capital Group and KKR Launch Their First Two Public-Private Investment Solutions and Announce Plans to Expand Their Exclusive Strategic Partnership



Sources: Citizens (https://www.citizensbank.com/corporate-finance/insights/private-equity-trends.aspx); Bloomberg (https://www.bloomberg.com/opinion/newsletters/2025-04-29/the-new-market-is-public-private)

Are Private Markets the New Public Markets?

OpenAI

Just a real “private markets are the new public markets” moment:

> OpenAI is in early talks about a potential sale of stock for current and former employees at a valuation of about $500 billion, people briefed on the investment discussions said, marking an enormous gain in value for the artificial intelligence leader.
>
> The company is targeting a secondary stock sale in the billions of dollars, the people said, asking to remain anonymous because they weren’t authorized to discuss the matter publicly. Existing investors including Thrive Capital have approached OpenAI about buying some of the employee shares, the people said. ...

> Major US startups often negotiate share sales for their employees as a way to reward and retain staff, and also attract external investors. The company run by Sam Altman is looking to leverage investor demand to provide employees with liquidity that reflects the company’s growth, according to one of the people familiar with the investment negotiations.

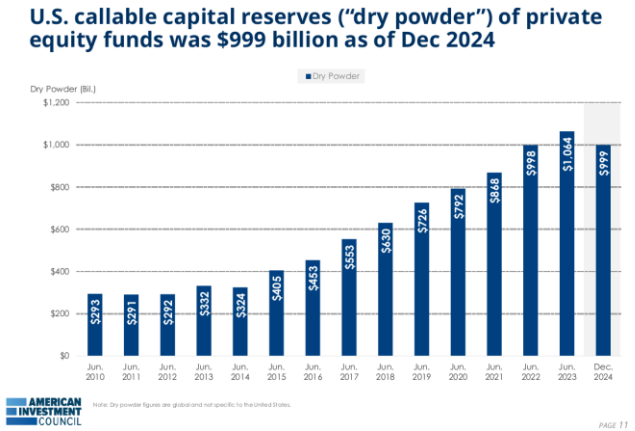
> Of course the traditional way “to leverage investor demand to provide employees with liquidity that reflects the company’s growth” is to do an initial public offering: When a startup has grown sufficiently big, it is ready to go public, and it can go public to leverage investor demand (by letting employees sell stock to investors). But modern private markets are so big, liquid and enthusiastic that you don’t need to do that: OpenAI can do multibillion-dollar stock offerings that are multiple times oversubscribed whenever it feels like it, and it can arrange multibillion-dollar employee secondary sales to make sure that the employees can cash out.

Source: Matt Levine, Bloomberg (https://www.bloomberg.com/opinion/newsletters/2025-08-06/openai-employees-have-stock-to-sell)

Common Private Structures

Private Funds – Generally

- Vehicles where multiple investors pool their funds under the guidance of an investment manager / sponsor
- Typically structured as limited partnerships (investors are “LPs” and fund is managed by the “GP”) or LLCs (investors are “members” and fund is managed by the “manager”)
- Highly regulated – securities laws, Investment Company Act and federal and state Advisers Acts
- GP / Manager is responsible for sourcing and negotiating deals, securing financing, overseeing property development/repositioning and lease-up, and eventually orchestrating refinancings or exits
  - LPs are generally “passive” investors, but able to gain exposure to larger and more diversified asset classes and strategies than they might otherwise be able to pursue on their own
  - GPs also often invest alongside LPs – “skin in the game”
- Distribution waterfalls – vary from fund to fund, but a common “basic” structure is for LPs to receive distributions equal to their contributed capital first, then a preferred return (e.g., 7-8%), with remaining distributions split between the LPs and the GP (e.g., 80/20; GP’s 20% interest referred to as “promote” or “carried interest” and subject to favorable taxation)



Private Funds – Closed-End vs. Open-End

	Closed-End Funds	Open-End Funds
Fundraising Periods	Defined – fund may be able to admit new LPs (and raise capital) for a set period of time after the fund's initial closing date (e.g., 12-24 months)	Unrestricted – fund could theoretically admit new LPs (and raise capital) in perpetuity
Investment Periods	• Defined – fund can make new investments typically for the first half of the fund's term (e.g., 5 years for a 10 year fund) • Fund can still call capital for limited purposes after investment period ends (e.g., to pay fund expenses (including debt repayment), follow-on investments, investments that were in process when the investment period ended) • After investment period ends, the GP's management fee may be reduced, but the GP may be able to start the next fund and be obligated to spend less time on the fund	Unrestricted – fund could theoretically make new investments / call capital in perpetuity
Fund Terms	• Defined – fund has a defined shelf life (e.g., 10 years), subject to extension by the GP and/or the LPs • In some closed-end funds, the LPs may have the ability to terminate the fund early (e.g., a super-majority could terminate for any reason, or a simple majority can terminate if the GP commits a "bad act" as defined in the fund documents)	Unrestricted – no defined shelf life
LP Liquidity	Limited liquidity options for LPs to withdraw their money prior to the end of the fund's term	• Since the fund could theoretically last forever (or until the GP closes up shop), LPs typically have the ability to redeem their interests in the fund • Redemption rights are often limited by a lock-up period, particularly where the fund is investing in illiquid assets such as real estate • Redemptions are often subject to "gates" (e.g., no more than [X]% of the fund's capital can be redeemed in a calendar quarter; investor may not withdraw more than [X]% of the investor's capital account in a calendar quarter)
Economics	• Based on distributions – LPs get their money back first, plus a preferred return and then thereafter, distributions are split between the GP (the GP's "carried interest") and the LPs • Distributions are based on actual cash flow – if the value of the fund's assets increases without a corresponding realization event, the GP generally would not earn its carried interest	• Can still be distribution-based like in a closed-end fund • Sometimes, GP may be entitled to an incentive fee based on LPs' capital accounts – so GP may be entitled to an incentive fee in situations where the value of the fund's assets increases but no realization event occurs

Private REITs

- Similar to an open-end fund in that there are no restrictions on fundraising and investment periods and no defined termination date for the vehicle
- REITs must distribute at least 90% of their taxable income to their shareholders annually. A REIT is permitted to deduct dividends paid to its shareholders from its corporate taxable income. As a result, most REITs distribute at least 100% of their taxable income to their shareholders and pay no corporate tax
- In order to qualify as a REIT, the vehicle must:
  - Be structured as a domestic entity taxable as a corporation
  - Be managed by a board of directors or trustees
  - Have shares or certificates that are freely transferable
  - Distribute at least 90% of its taxable income as dividends to shareholders
  - Have at least 75% of its assets in real estate (real property or loans secured by real property)
  - Derive at least 75% of its gross income from real estate income (rents or interest from mortgages) + 95% of its gross income from real estate + other passive sources
  - Have a minimum of 100 shareholders
  - Have no more than 50% of its shares held by 5 or fewer individuals
  - Have no more than 20% of its assets invested in the equity of taxable REIT subsidiaries (TRS)
- REITs (particularly mortgage REITs) can be externally managed – in some respects, this can resemble a fund-style arrangement in which the external manager receives both a fixed management fee (often based on raised capital) and an incentive fee (based on the REIT's performance)
- Some sponsors may want to avoid the limitations of the REIT requirements early in the vehicle's lifecycle – but a REIT could be an option in connection with a future liquidity event


Analysis

Why Private REITs Are Having A Moment

By Georgia Kromrei · 2025-07-23 13:11:22 -0400 · Listen to article

Joint Ventures

- Typically involve two parties
- GP/Managing Member/Developer
  - Contributes real estate expertise, “sweat equity” and 5%-25% of capital
  - Views itself as expert in property/development management
  - Wants day-to-day control over the property
  - Typically the party on guaranties to a lender
- LP/Member
  - Contributes 75%-95% of capital
  - Wants the manager to manage day-to-day affairs
  - Wants appropriate checks and balances on manager’s actions; often granted consent rights over certain “Major Decisions” and ability to remove GP upon the occurrence of certain events
- Capital Contributions
  - Upon execution of a JV, the members will make initial capital contributions, which generally will determine each party’s initial percentage interest
  - During the term of the JV, a GP can typically make additional capital calls for: budgeted expenses, emergency expenses, non-discretionary expenses and with the consent of the members; if a GP calls capital and a member fails to fund within a certain time period, certain remedies may apply
- Distribution Waterfalls
  - Similar to private fund structures (e.g., promoted interests and preferred returns)
- Liquidity and First Look Provisions
  - JV Agreements often include buy/sell, forced sale, put/call, ROFO and ROFR provisions

> “There is a vast amount of private capital looking to partner with strong operators to invest in real estate, and REITs fit the bill”
>
> – Daniel LeBey, Partner, Vinson & Elkins

Source: Nareit (https://www.reit.com/news/articles/reits-leverage-joint-venture-partnerships-to-fuel-expansion)

Private Capital Raising Options

Section 4(a)(2) Private Placement

- Section 5 of the Securities Act of 1933 sets forth the default rule – it is illegal for any person to sell a security unless a registration statement is in effect as to the security or the offering qualifies for an available exemption
- Section 4(a)(2) of the Securities Act provides that the provisions of Section 5 do not apply to transactions by an issuer "not involving any public offering"
- Although there is case law and SEC guidance interpreting Section 4(a)(2), the parameters around the 4(a)(2) exemption are murky
- As a result, 4(a)(2) is generally only relied on as the exclusive exemption where securities are being sold to a very small number of sophisticated / institutional investors

Regulation D

- Regulation D provides 3 “safe harbors” from registration
- Rule 504: “small offerings” safe harbor - exempts offers and sales of up to $10 million in securities in any 12-month period
- Rule 506: the “private offering” safe harbors

	Rule 506(b)	Rule 506(c)
Is general solicitation permitted?	No – the offering can’t be advertised on the internet, blogs, social media, podcasts, seminars or conferences, etc. Securities should only be offered to investors with whom the vehicle (or its broker-dealer or investment adviser) has a pre-existing, substantive relationship	Yes – the offering can be advertised broadly
Can non-accredited investors participate?	Up to 35 non-accredited investors may participate—but if non-accredited investors participate, issuer must comply with extensive disclosure requirements	No – all investors must be accredited
Does the issuer have to verify accredited investor status?	No – issuer generally relies on reps from investors regarding their status as accredited investors	Yes – issuer must take “reasonable steps” to verify each investor’s accredited investor status (e.g., a certification from the investor’s CPA or financial advisor, review of the investor’s tax returns, etc.)

Rule 506(c) No Action Letter

- Rule 506(b) has historically been more commonly used, but Rule 506(c) has been gaining in popularity more recently
- Issuers have the ability to switch from 506(b) to 506(c), but not the other way around
- Earlier this year, the SEC issued a helpful no action letter on the requirement to take "reasonable steps" to verify accredited investor status in a Rule 506(c) offering
  - Per the NAL, a large minimum investment amount, a rep to accredited investor status, and a rep that the investment is not being financed by a third party for the specific purpose of making the investment constitutes "reasonable steps" to verify accredited investor status

Purchaser Type	Minimum Investment Amount	Required Representations
Natural Person	$200,000	• Accredited under Rule 501(a)(5) (net worth greater than $1 million) or Rule 501(a)(6) (individual income in excess of $200,000 in each of 2 most recent years or joint income with spouse in excess of $300,000 in each of those years w/ a reasonable expectation of reaching the same income level in the current year) • Minimum investment amount not financed by a third party for the specific purpose of making the investment
Legal Entity	$1 million	• Accredited under Rule 501(a)(3), (7), (9), or (12) (generally, total assets in excess of $5 million)
Legal Entity Relying on Accredited Equity Owners	$1 million (or $200,000 per natural-person equity owner)	• Accredited under Rule 501(a)(8) (all equity owners are accredited investors) • Each equity owner is accredited and not financed by a third party for the specific purpose of making the investment

Rule 144A

- Popular in the REIT space over the years
- No specific SEC disclosure requirements, but issuers are obligated to provide certain “reasonably current” disclosure to purchasers at their request. Typically, a confidential offering memorandum (similar to an IPO registration statement) is provided
- Post-closing information requirements (audited annual financial statements and unaudited quarterly financial statements; quarterly earnings call)
- Structured as a private placement to the initial purchaser (a bank), which then resells the securities to qualified institutional buyers (QIBs) pursuant to Rule 144A
- Registration rights agreement that mandates filing of a resale shelf within a specified time period (and penalties for default)
- Often includes the ability to sell shares directly to accredited investors under Reg D and foreign investors under Reg S
- More recently, these offerings have provided for rolling closings and capital calls, akin to a private investment fund

Regulation A – Generally

- Two offering tiers
  - Tier 1: for offerings up to $20 million in a 12-month period
  - Tier 2: for offerings up to $75 million in a 12-month period
- Available only to companies organized in and with their principal place of business in the United States or Canada
  - Not available to investment companies, BDCs, SPACs and issuers subject to certain “bad act” disqualification
- Issuers must file an offering statement on Form 1-A with the SEC, including an “offering circular” which is a simplified and scaled version of the narrative disclosure requirements otherwise required to be provided by issuers in registered offerings
  - Must include balance sheets and related financial statements for the two previous fiscal years
  - For Tier 1 offerings, issuers are not required to provide audited financial statements unless the issuer has already prepared them for other purposes; issuers in Tier 2 offerings are required to include financial statements in their offering circulars that are audited in accordance with either the auditing standards of the AICPA or the PCAOB
  - Both Tier 1 and Tier 2 offerings must include financial statements that are dated not more than 9 months before the date of non-public submission, filing, or qualification, with the most recent annual or interim balance sheet not older than 9 months. If interim financial statements are required, they must cover a period of at least six months
  - Issuers are only permitted to begin selling securities once the Form 1-A has been “qualified” by the SEC
- Under Tier 2, if the securities are not going to be listed on a national securities exchange upon qualification, investors either have to be accredited or limited in how much they can invest

Regulation A – Ongoing Reporting and State Securities Laws

	Tier 1	Tier 2
Ongoing Reporting	Required to provide information about sales and to update certain issuer information by electronically filing an exit report with the SEC not later than 30 calendar days after termination or completion of the offering	Required to electronically file annual and semiannual reports, as well as current reports and, in certain circumstances, an exit report, with the SEC
Relationship with State Securities Laws	In addition to qualifying with the SEC, issuers must register or qualify their offering in any state in which they seek to offer or sell securities pursuant to Regulation A	While issuers are required to qualify with the SEC, they are not required to register or qualify their offerings with state securities regulators. However, Tier 2 offerings remain subject to state law enforcement and antifraud authority and may be subject to filing fees and requirements in the states in which they intend to offer or sell securities

- From June 19, 2015 through December 31, 2024,1,618 total Reg A offerings were filed, but only 1,426 were qualified by the SEC (i.e., almost 15% did not complete SEC review process)
- Of the offerings that were qualified, only 817 reported raising money (i.e., slightly more than half of all attempted Reg A offerings raised $0)
- Even companies that did raise money struggled - the average qualified offering sought just under $20 million but raised only $11.5 million, while the median qualified offering aimed for $10 million and raised just $2.3 million
  - In the aggregate, companies raised $9.4 billion through Reg A offerings over nearly a decade, for an average of less than $1 billion per year. In 2019 alone, companies raised $1.5 trillion through just Rule 506(b)


August 4, 2025

Regulation A: Let's Face It – It's a Dud

Sources: SEC (https://www.sec.gov/files/dera-reg-2505.pdf); TheCorporateCounsel.net (https://www.thecorporatecounsel.net/blog/2025/08/regulation-a-lets-face-it-its-a-dud.html)

Regulation Crowdfunding – Generally

- Permits eligible companies to raise a maximum aggregate amount of $5 million through crowdfunding offerings in a 12-month period
  - Not available to non-U.S. companies, certain investment companies, SPACs and companies subject to certain “bad act” disqualification
- Limits the amount individual non-accredited investors can invest across all crowdfunding offerings in a 12-month period
  - Permitted investment amounts depend on the investor’s annual income and net worth, subject to an aggregate cap of $124,000 per year
- Offerings must take place online through an SEC-registered intermediary, either a broker-dealer or a funding portal
- Requires disclosure of information in filings with the SEC and to investors and the intermediary facilitating the offering
  - Issuers must file a Form C with the SEC
  - Generally, 2 years of financial statements are required, with level of review/audit based on the amount offered and sold in reliance on Regulation Crowdfunding within the preceding 12-month period
  - For any offering that has not yet been completed or terminated, issuers can amend the Form C to disclose changes, additions or updates to information; amendments are required for material changes, additions or updates, and in those required instances the issuer must reconfirm outstanding investment commitments within 5 business days, or the investor’s commitment will be considered cancelled
  - Issuers must provide updates on progress toward meeting target offering amounts within 5 business days after reaching 50% and 100% of target offering amounts
- Issuers may not advertise the terms of a Regulation Crowdfunding offering except in oral or written communications that direct investors to the intermediary’s platform and include limited information
  - But issuers may communicate with investors and potential investors about the terms of the offering through communication channels provided on the intermediary’s platform
  - Issuers may compensate others to promote crowdfunding offerings through communication channels provided by an intermediary, but only if reasonable steps are taken to ensure that the promoter clearly discloses the compensation with each communication

Regulation Crowdfunding – Annual Reports and Restrictions on Resales

- An issuer that sold securities in a Regulation Crowdfunding offering is required to file an annual report with the SEC no later than 120 days after the end of its fiscal year
  - Must include information similar to what is required in the offering statement, although neither an audit nor a review of the financial statements is required
  - Annual reporting requirement does not terminate until one of the following occurs
    - the issuer is required to file reports under Exchange Act Sections 13(a) or 15(d);
    - the issuer has filed at least one annual report and has fewer than 300 holders of record;
    - the issuer has filed at least three annual reports and has total assets that do not exceed $10 million;
    - the issuer or another party purchases or repurchases all of the securities issued pursuant to Regulation Crowdfunding, including any payment in full of debt securities or any complete redemption of redeemable securities; or
    - the issuer liquidates or dissolves in accordance with state law.
- Securities purchased in a crowdfunding transaction generally cannot be resold for a period of one year, unless the securities are transferred:
  - to the issuer of the securities;
  - to an accredited investor;
  - as part of an offering registered with the SEC; or
  - in connection with certain family events/estate planning.

Regulatory Outlook for Capital Formation

The New SEC

- SEC currently has 4 commissioners – 3 Republicans and 1 Democrat (1 vacancy, which may not be filled with a Republican)
- In addition to President Trump and members of Congress, Republican commissioners (especially Chair Atkins and Commissioner Peirce, who is leading the SEC's Crypto Task Force) are clearly focused on developing a regulatory framework for crypto assets
- Nonetheless, all of the Republican commissioners have also expressed support for initiatives that would promote capital formation (both public and private), and the "broken windows" approach to enforcement under former Chair Gensler seems to have been abandoned

Chairman

Paul S. Atkins
Chairman
since 2025

Commissioner Hester M. Peirce

Hester M. Peirce
Commissioner
since 2018
Term expires 2025

Commissioner Caroline A. Crenshaw

Caroline A. Crenshaw
Commissioner
since 2020
Term expires 2024

Commissioner Mark T. Uyeda

Mark T. Uyeda
Commissioner
since 2022
Term expires 2028

Potential Expansions for Private Capital Raising

- In addition to the Rule 506(c) no action letter discussed above, Republican commissioners, members of Congress and President Trump himself have floated several ideas to promote private capital raising

	Potential Changes
Reg D	• Amending the accredited investor to provide for "non-financial" ways to qualify (e.g., qualitative professional criteria or certifications, completion of an educational program, or an investor test) • Implementation of a "sliding scale" approach that would allow anyone – whether they are an accredited investor or not – to invest at least a small amount in private companies over a given time period
Reg A	• Expand state preemption • For mature or larger companies, allow at-the-market offerings in Reg A to enable exchange-traded companies to sell stock at a price reflective of the market
Reg Crowdfunding	• Lower disclosure burdens for younger or smaller companies, e.g., by increasing the offering threshold at which reviewed financial statements are required from $124,000 to some higher number
Other	• President Trump's executive order designed to make it easier to hold private assets in 401(k)s • Create a streamlined "micro-offering exemption" for companies raising up to $500,000

Making IPOs More Attractive – What Has Already Been Done?

- Most significantly – and not surprisingly – the SEC voted to end the SEC's defense of the climate disclosure requirements adopted in March 2024
- The SEC has also taken a number of smaller "issuer friendly" steps already in 2025, including:
  - Expanding the accommodations available for issuers that submit draft registration statements for nonpublic review
  - Allowing all Form S-3 eligible issuers to have their Form S-3 registration statements become effective between the date of the Form 10-K filing and the filing of the proxy statement containing forward-incorporated Part III disclosure (previously, this was something that only well-known seasoned issuers (WKSIs) were permitted to do)
  - Updated guidance regarding beneficial ownership reporting to expand the nature and scope of activities viewed as "influencing control of the issuer" to include exerting pressure to adopt governance measures, particularly tied to ESG or political policy matters
  - DOGE-related Staff departures / early retirements
  - Anecdotally, turning around reviews of IPO registration statements more quickly

Making IPOs More Attractive – What Else Could Be Done?

- Republican commissioners have voiced concerns about the decline in the number of IPOs and public companies, pointed out that increased antitrust enforcement has reduced M&A exits for pre-IPO companies, and have floated several ideas

	Potential Changes
Making IPOs More Attractive	• Expanding the definition of "emerging growth companies" ("EGCs") so that more companies qualify • Amending certain existing disclosure requirements (e.g., cybersecurity, Rule 10b5-1 and clawbacks) so that more companies benefit from having an on-ramp to comply
Scaling Public Company Disclosure Requirements	• Changing filer categories for existing public companies (i.e., large accelerated and accelerated filers, smaller reporting companies, etc.) that would likely reduce the number of companies subject to the most stringent SEC disclosure requirements • Further scaling disclosure requirements that apply to smaller public companies

Making IPOs More Attractive – Potential Shift to Semi-Annual Reporting?

- Quote from SEC spokesperson: "At President Trump's request, Chairman Atkins and the SEC is prioritizing this proposal to further eliminate unnecessary regulatory burdens on companies."
- But – could the SEC do this without Congressional action? See Exchange Act Section 13(a)(2), which says that "[e]very issuer of a security registered pursuant to Section 12 of [the Exchange Act] shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security…such quarterly reports (and such copies thereof), as the Commission may prescribe."

Making IPOs More Attractive – SEC Reg Flex Agenda

- On September 4, 2025, the SEC issued its “Reg Flex Agenda,” which provides some insight into where things stand on some potential SEC rule changes
- The following rulemakings (among others) are listed as being in the “Proposed Rule Stage”:
  - Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies
  - Shelf Registration Modernization
  - Updating the Exempt Offering Pathways
  - Rationalization of Disclosure Practices
  - Shareholder Proposal Modernization
- Query whether “Rationalization of Disclosure Practices” could include changing periodic reporting from quarterly to semi-annual
- Notices of proposed rulemaking with respect to each of the above are expected in April 2026

Source: https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235

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