Cooley

Private Tender Offers and Secondary Transactions:

Overview and Market Trends

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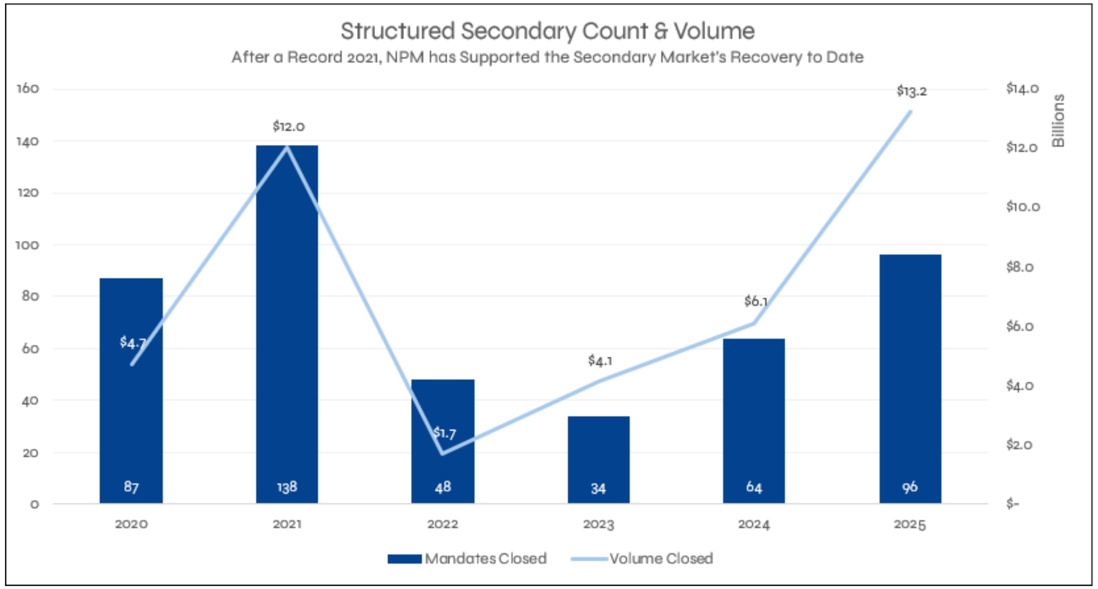
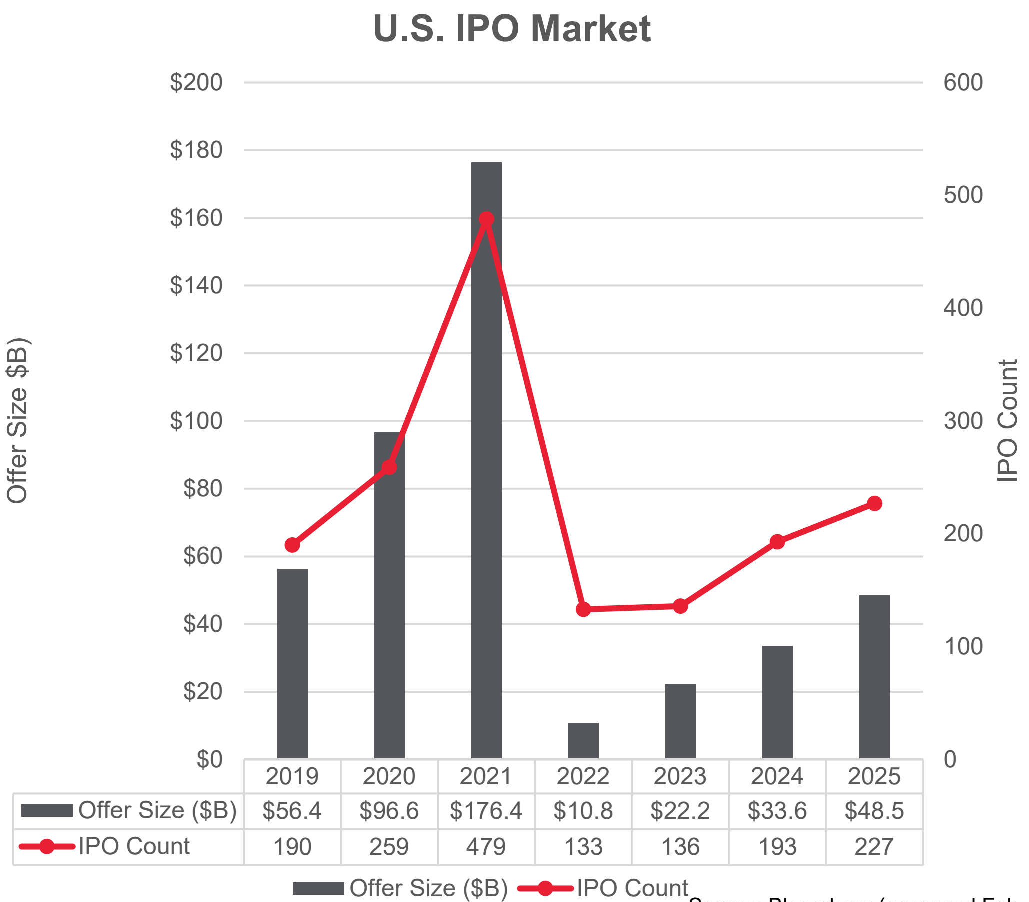
The Secondary Liquidity Market Recovered Faster Than the IPO Market



Source: Nasdaq Private Market internal data. Only includes transactions conducted on NPM platform



Source: Bloomberg (accessed Feb 3, 2026)

Why Secondaries are Popular

- **Secondaries can be driven by different stakeholder groups**:
  - **Founders/Key Employees: G**et some liquidity and take some money "off the table" while preserving upside potential for remaining holdings.
    - *We see this frequently with founders who have significant "in the money" holdings and so upside is not significantly impacted.*
  - **Company:** Non-dilutive and can help "clean-up" the cap table to be ready for an exit by replacing small holders with investors who can support a cross-over or IPO.
    - *We see this with companies generating significant cash or who have oversubscribed primary offerings.*
  - **Early Investors:** VC Funds nearing end of lifecycle can lock in returns. Depending on original purchase price, a moderate exit today may exceed the IRR of a stronger IPO in several years.
    - **Intersection with Continuation Vehicles:** An increasing number of funds use secondary transactions to allow LPs to elect whether to roll into the new fund or have capital returned, *particularly when early rounds are significantly in the money.*
  - **Late/New Investors:** Can "double down" on big bets. Not a true priced round and so can be at a negotiated price to preserve upside.

Typical Transaction Structures

- **Redemption**. Company redeems stock using existing cash reserves. Most common with late-stage companies generating excess cash. Can also be funded through venture debt or other sources of cash.
- **Direct investment followed by redemption**. Investors buy stock (typically Preferred) directly from the Company, and the Company uses a portion of the investment capital to redeem outstanding stock from the selling stockholders. Most common where an offering is oversubscribed.
- **Secondary sale**. Investors buy stock directly from the selling stockholders and then hold. Can be stand-alone or in connection with a direct investment. *Anecdotally, the combination with direct investment is becoming more common as it "sets the price" for the secondary*.
- **Secondary sale and exchange**. Investors buy stock directly from the selling stockholders, and the Company exchanges the acquired Common Stock for Preferred Stock so that the investors end up holding Preferred Stock. *More common if the Investors do not already have significant Preferred Stock ownership and if the anticipated IPO timeline is longer.*

Unique Challenges in Private Secondaries

- **Structure**: It can be difficult to determine if a transaction needs to be structured as a tender offer.
  - Wellman Test
  - Compliance with ROFR/Co-Sale contractual rights can change the analysis
- **Cost**: Compliance with tender offer rules can make small transactions not economically feasible due to increased legal and compliance costs.
- **Control**: Company may have little control over private secondaries where a third-party purchases directly from stockholders without a tender offer.
- **Disclosure**: Information parity and confidentiality can be difficult to balance, particularly with founder participants and robust buyer diligence.