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2026 M&A Deal Terms Study

An analysis of deal terms in private-target M&A transactions that closed between 2020–2025.

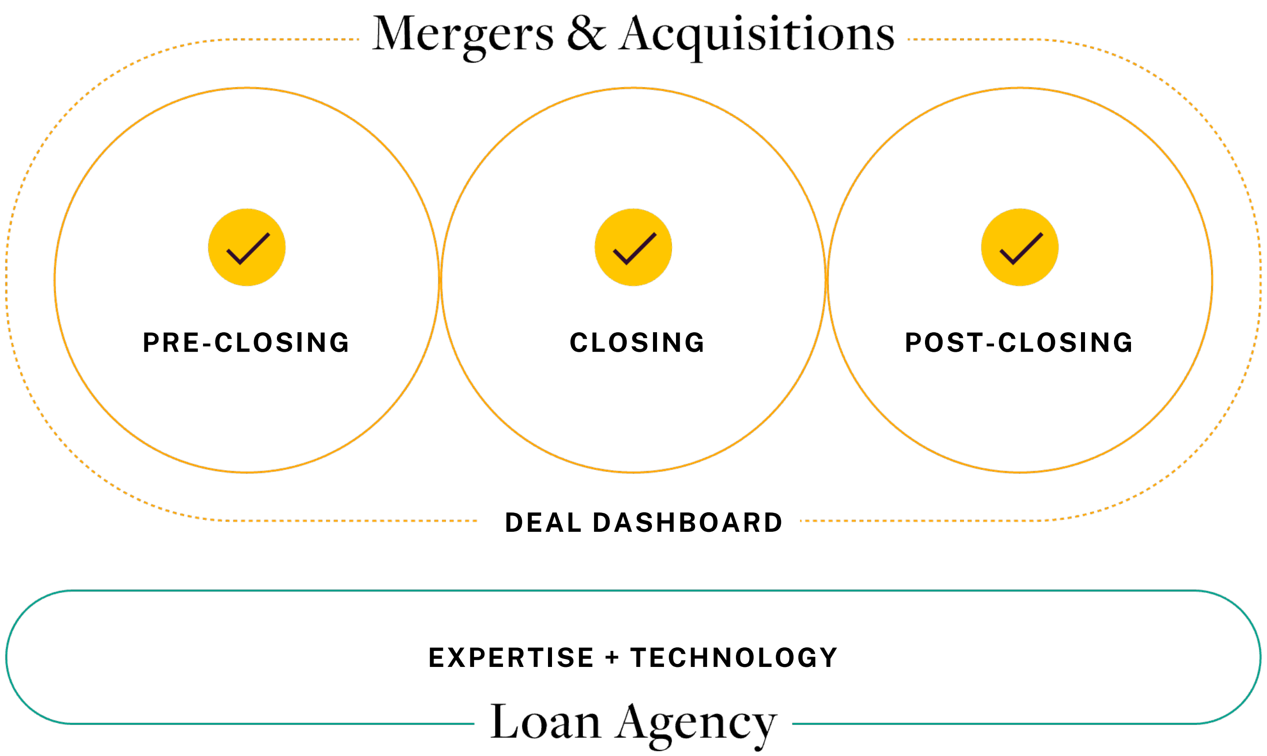
Please direct inquiries to: dts@srsacquiom.com

POWERED BY SRS ACQUIOM MARKETSTANDARD

Comprehensive Suite of Solutions

SRS Acquiom delivers the smartest way to run a deal™ with solutions that reduce the administrative burden throughout the entire deal lifecycle.

EXPLORE OUR SOLUTIONS



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The smartest way to run a deal™

Since 2007, we have helped sophisticated deal parties reduce administrative drag, enabling them to focus on building great businesses and maximizing value.

10%+
of all U.S. M&A transactions served*

11,500+
deals engaged on to date

$2.1T+
aggregate deal value

650K+
shareholders represented in 150+ countries

$1.3T+
in payments

99%
of shareholders are paid within 24 hours†

$6.4B+
in FX trades for 19K+ shareholders

3,900+
total resolved/ negotiated claims

*Statistics contained herein are derived from publicly available sources.
† Consideration given to those who have completed a Letter of Transmittal (LoT).

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About this Study and the Data

The 2026 M&A Deal Terms Study is powered by SRS Acquiom MarketStandard®, a tool to analyze our proprietary database of more than 4,900 private-target M&A deals with customizable searches best suited to your specific transaction.

SRS Acquiom continually updates its databases for reporting deal-term data for 2020 through 2025. Therefore, results for prior years' data that is included in prior-year studies may in some cases differ in immaterial amounts from the 2026 SRS Acquiom M&A Deal Term Study. This study includes the most comprehensive and updated data available for all years. Sample sizes are larger in more recent years as a result of our growth. Medians are presented in addition to averages to counterbalance the effect of outliers. Some charts do not sum to 100% due to rounding. Data is presented on a calendar-year basis and is tied to the deal-closing date.

To benefit study users comparing data from different sources, this study presents similar data and terms with similar formatting and structure to the Private Target Deal Points Study published by the Mergers & Acquisitions Committee of the American Bar Association's Business Law Section, available at: https://www.americanbar.org/groups/business_law/about/committees/mergers-and-acquisitions/deal-points/

- *This study analyzes more than 2,300 private-target acquisitions valued at more than $569 billion that closed from 2020 through 2025.*
- *SRS Acquiom provided professional and financial services on these deals; the vast majority of these are not publicly reported.*
- *Representations and Warranties Insurance (RWI) was identified on approximately 46% of 2025 deals in this study; buyers do not always disclose the presence of a buy-side RWI policy, and "no RWI identified" data subsets in this study likely include a small number of deals with RWI policies.*

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Representative Deals

- AssuredPartners acquired by Arthur J. Gallagher & Co.
- Bolt Medical acquired by Boston Scientific
- Caulipower acquired by Urban Farmer
- Color Wow acquired by L'Oréal
- crunchy data acquired by snowflake
- EsoBiotec acquired by AstraZeneca
- EXIUM acquired by NETGEAR
- Kestra Holdings investment by Stone Point Capital
- metaplane acquired by Datadog
- osmos acquired by Microsoft
- Paradox acquired by workday
- renalys merged with Chugai
- Scorpion acquired by Lilly
- sentera acquired by John Deere
- sentillia acquired by coinbase
- SiteOne Therapeutics acquired by Lilly
- spindrift acquired by Gryphon Investors
- symbiosys acquired by DoorDash
- Superhuman acquired by grammarly
- Theatro acquired by Motorola Solutions
- vector acquired by coinbase

Table of Contents

Page numbers link to data slides. To return to the Table of Contents, click the bottom right page number on any page.

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Key Findings:
By the Numbers

Deal Terms Study Key Stats and Trends

~10%	Private-target M&A deals with $750 million or more paid at closing in 2024 and 2025	**In the past two years, there was growth in all deal size categories, especially for jumbo deals**	SLIDE 9 >
24%	M&A deals with an earnout (excluding Life Sciences)	**Utilization of earnout structures, and the amount of consideration tied to them, are on the rise**	SLIDES 23-24 >
39%	Working capital PPAs calculated via the “worksheet approach”	**PPA provisions continue to be customized as deal parties and accountants gravitate toward specified calculation methodologies**	SLIDE 19 >
22%	No Undisclosed Liabilities (seller representation) qualified by GAAP	**A slight increase in the seller-favorable approach may be in response to indemnification claim trends**	SLIDE 34 >
78%	Sellers agreed to include a Cybersecurity representation	**A dramatic decrease in deals with a Cybersecurity representation compared to 95% in 2024**	SLIDE 42 >
11%	Traditional indemnity* deals where sellers’ general reps do not survive closing	**Continued due diligence efforts keep buyers pushing for more favorable indemnification terms**	SLIDE 54 >
88%	Private-target M&A deals with an escrow or holdback	**Escrow sizes are up across the board**	SLIDE 77 >

* *Deals without M&A transactional insurance identified.*

NEW DATA POINT — *“New Data Point” buttons appear on all slides featuring new data points throughout the study*

KEY FINDING — *Click on the “Key Finding” button throughout the study to return to this page.*

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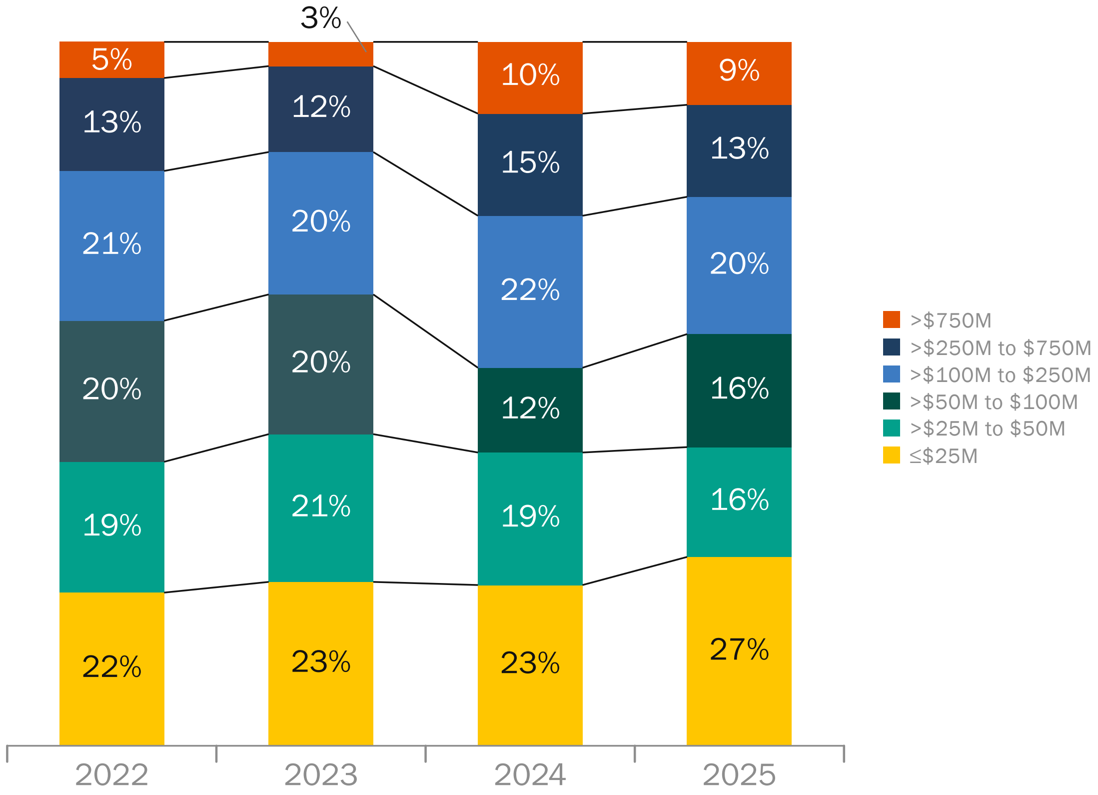
Financial Terms and Provisions

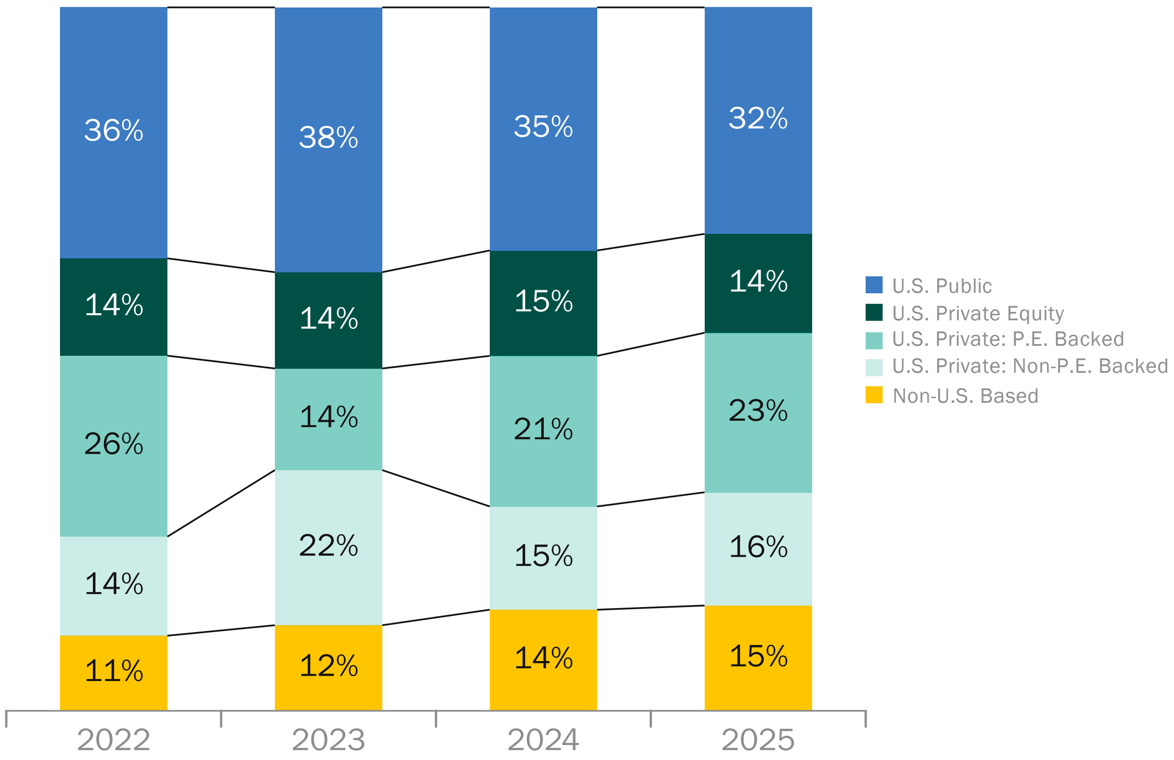
Transaction Values* and Buyer Types

KEY FINDING

TRANSACTION VALUES



BUYER TYPES†

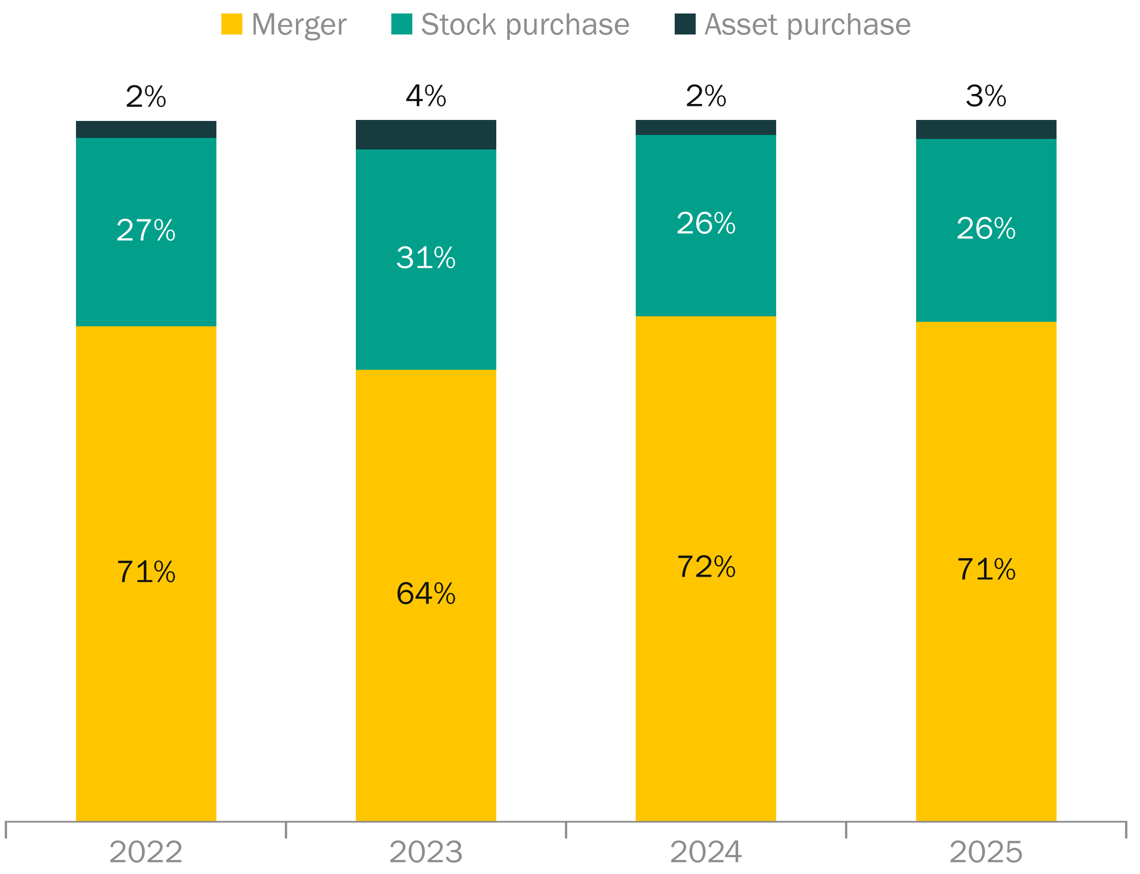


* *The term "transaction values" includes escrowed amounts but does not include potential earnout consideration.*

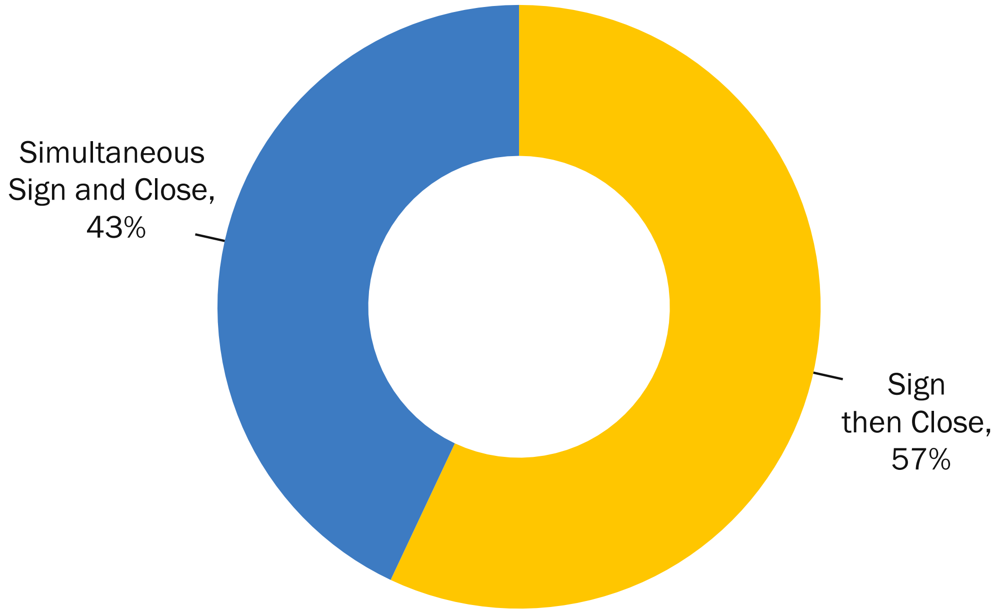
† *Beginning with deals closed in 2022, SRS Acquiom now distinguishes between U.S. private buyers that are backed by private equity (e.g., portcos) and those that are independent.*

Transaction Structure and Sign/Close Timing

TRANSACTION STRUCTURE (2022–2025)

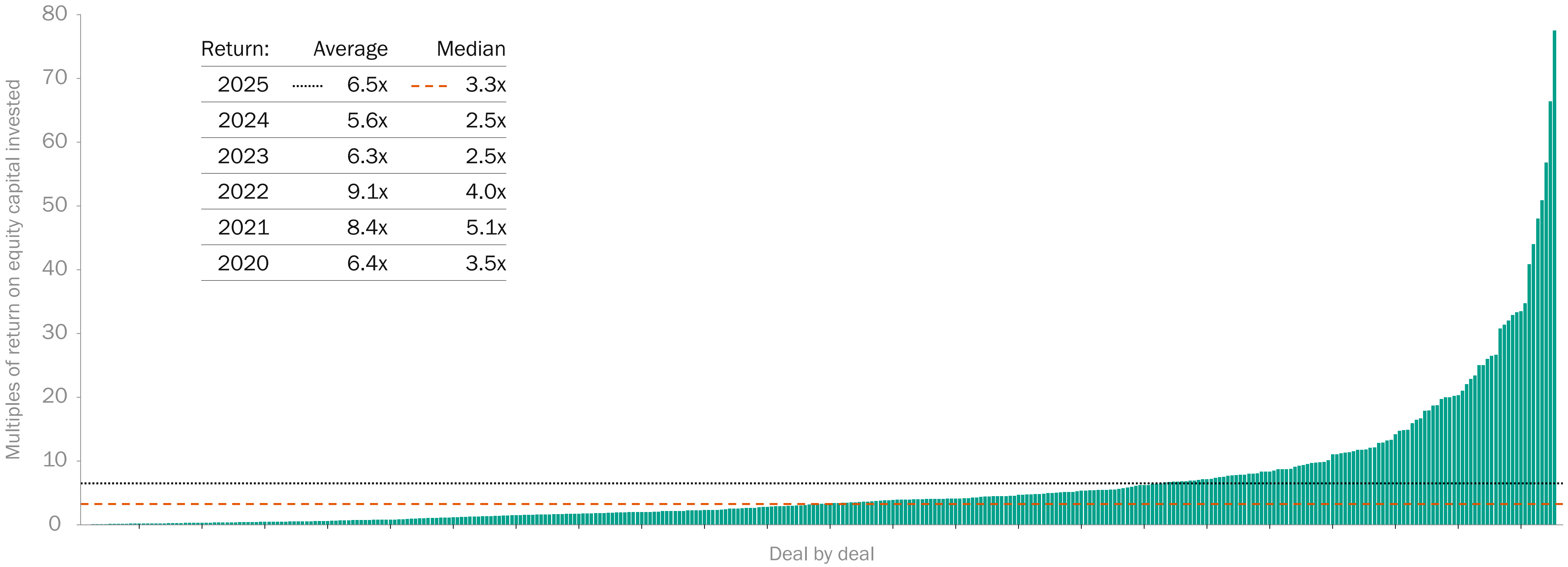


TIMING OF SIGNING AND CLOSING (2025)



Transaction Values as Multiples of Equity Capital Invested*

2025 DEALS

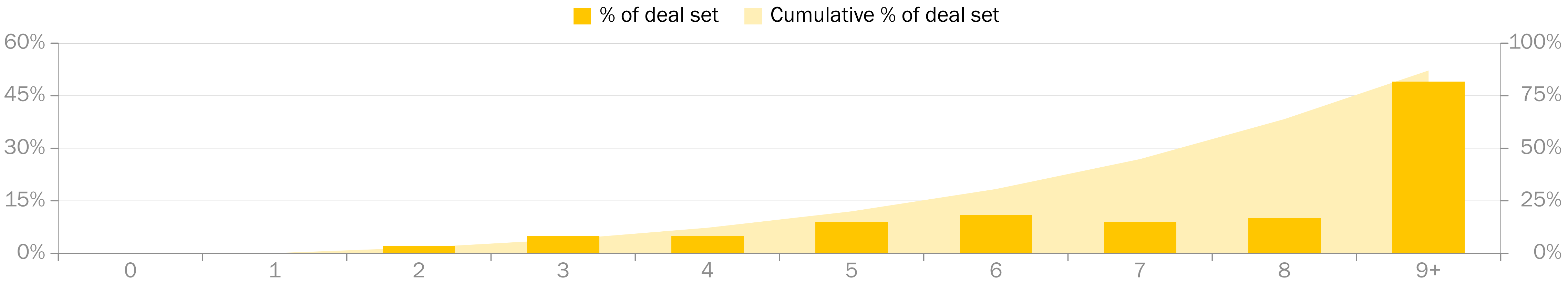


Return:	Average	Median
2025	6.5x	3.3x
2024	5.6x	2.5x
2023	6.3x	2.5x
2022	9.1x	4.0x
2021	8.4x	5.1x
2020	6.4x	3.5x

** Provided by PitchBook and other databases.*

Investment Exit Timing

2025 DEALS

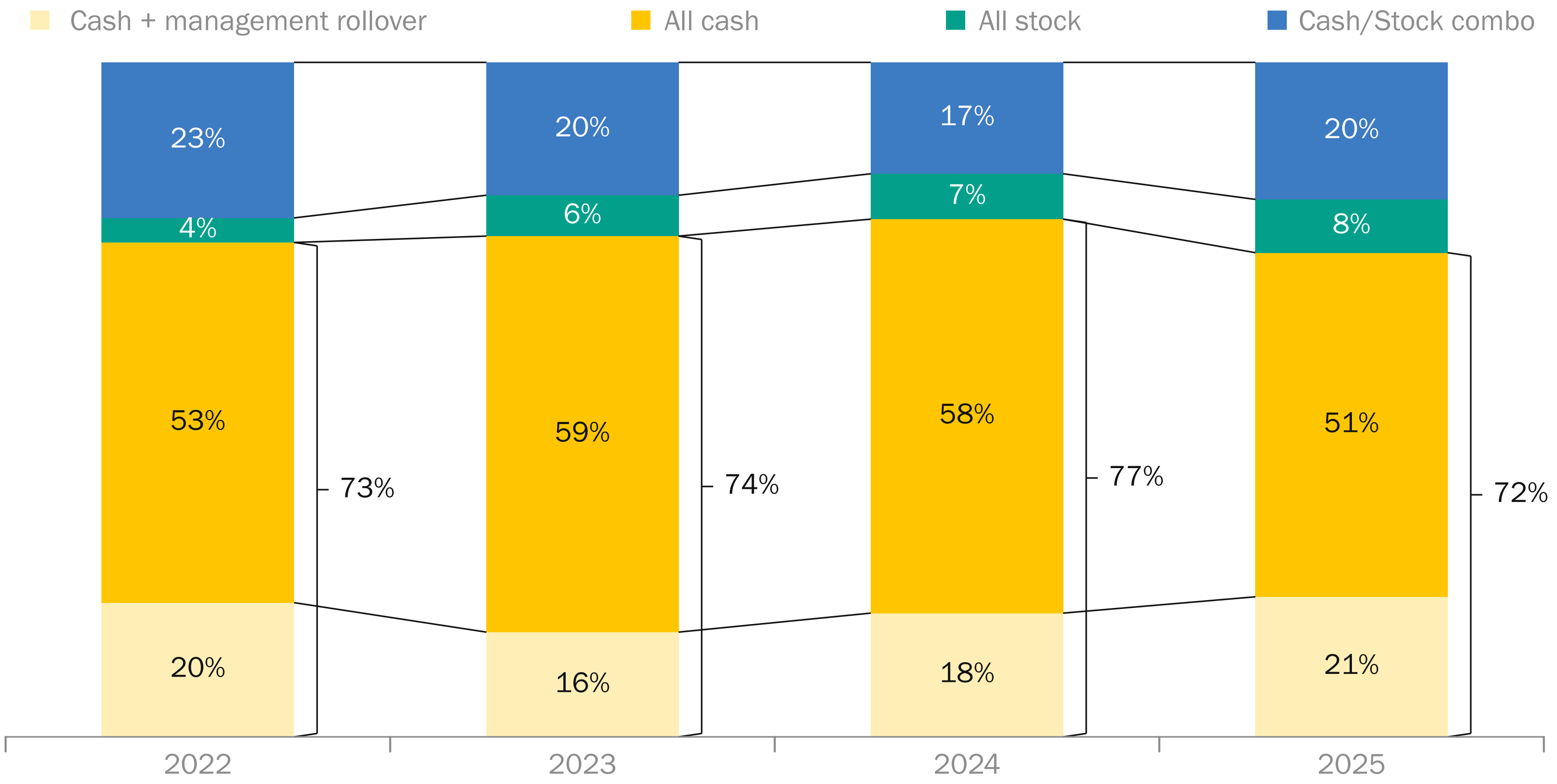


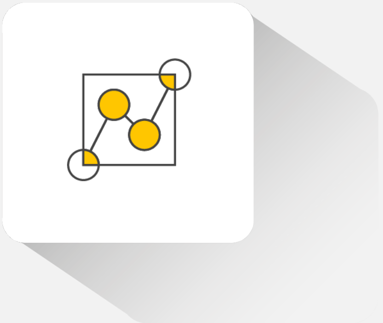
	Years to exit from date of first investment*		Equity financing rounds at exit		Equity capital invested*	
	MEDIAN	AVERAGE	MEDIAN	AVERAGE	MEDIAN	AVERAGE
2025	6.7	7.5	3.0	4.0	$26M	$95M
2024	6.9	8.2	4.0	4.6	$34M	$91M
2023	6.7	7.3	3.0	4.0	$28M	$58M
2022	6.5	7.0	3.0	3.9	$19M	$49M
2021	7.1	7.4	4.0	4.0	$21M	$54M
2020	6.1	6.8	3.0	3.7	$26M	$53M

** Provided by PitchBook and other databases.*

Closing Consideration Trends

CONSIDERATION TYPE





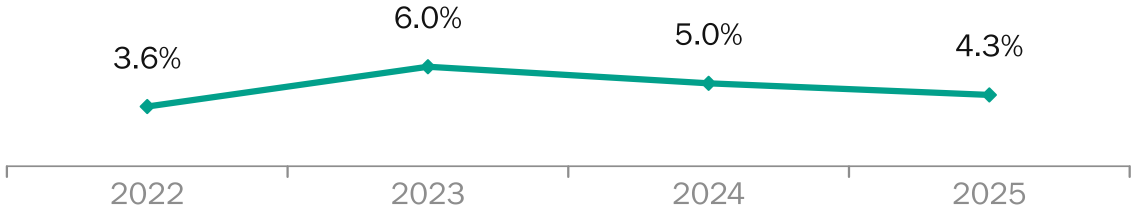
This data point is influenced by Transaction Value.

Visit SRS Acquiom MarketStandard® to learn more.

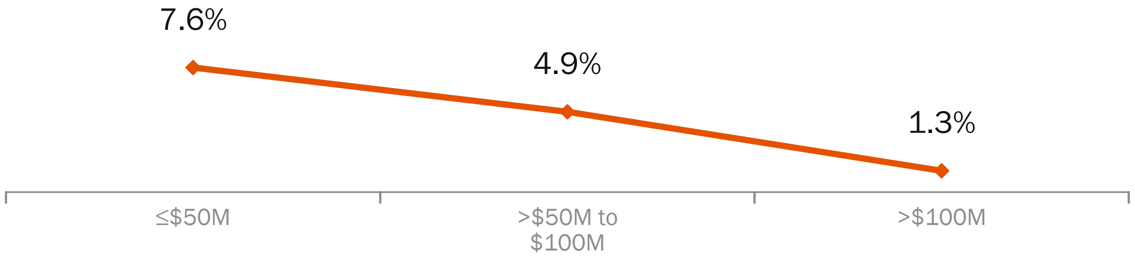
Management Carveouts*

Frequency

DEALS INCLUDING A MANAGEMENT CARVEOUT



MANAGEMENT CARVEOUT FREQUENCY BY TRANSACTION VALUE

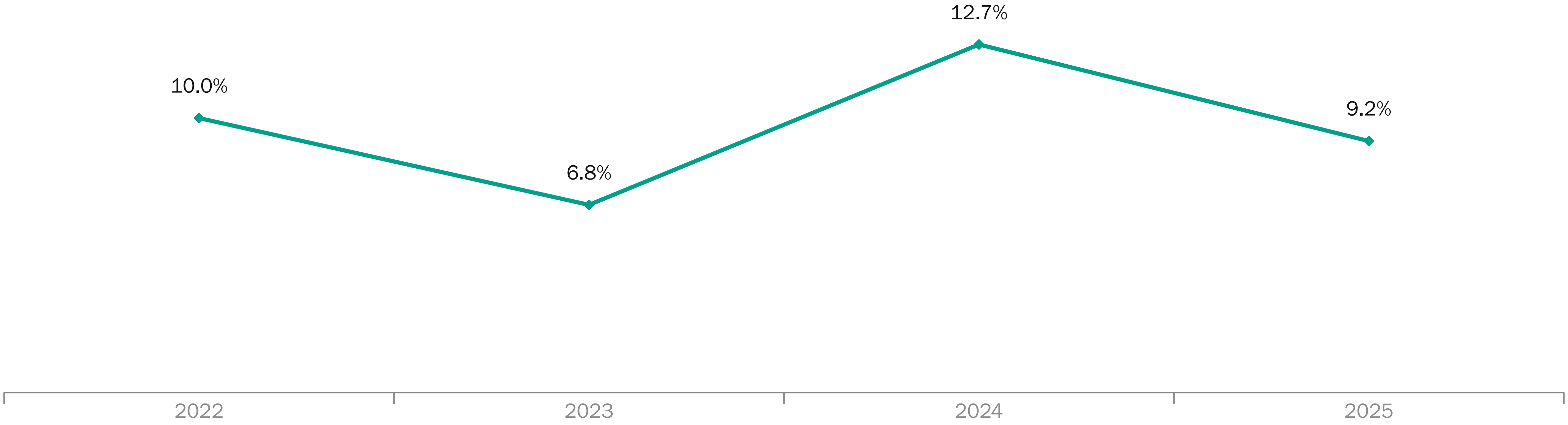


** A “management carveout” in this study is a portion of deal proceeds guaranteed to seller’s management when management would otherwise receive little or nothing for their equity ownership due to liquidation preferences. Transaction bonuses, which often differ materially from management carveouts in size and timing of adoption, are not included above.*

Management Carveouts

Size

MEDIAN SIZE AS A PERCENTAGE OF TRANSACTION VALUE*

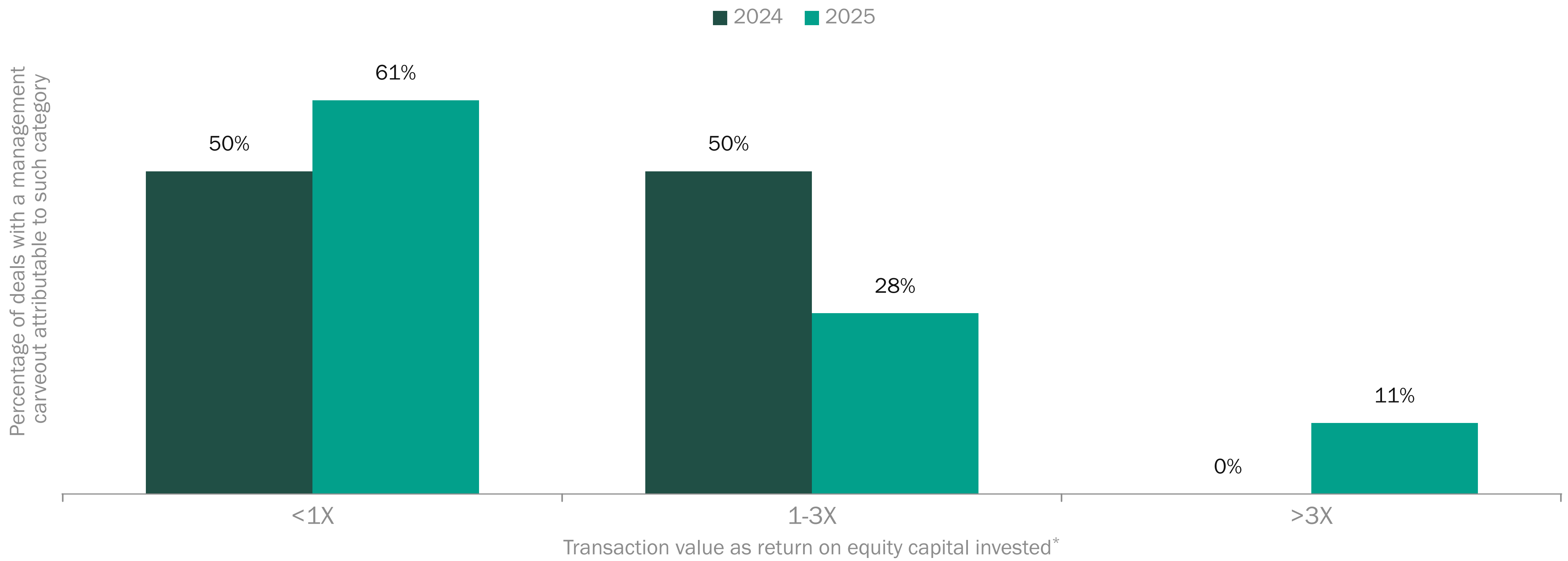


* *Measures size of carveout only, disregarding consideration received by seller management in respect of equity ownership (if any).*

Distribution of Deals with a Management Carveout, by Multiple Ranges

Frequency by Return on Equity Capital Invested

SUBSET: DEALS INCLUDING A MANAGEMENT CARVEOUT

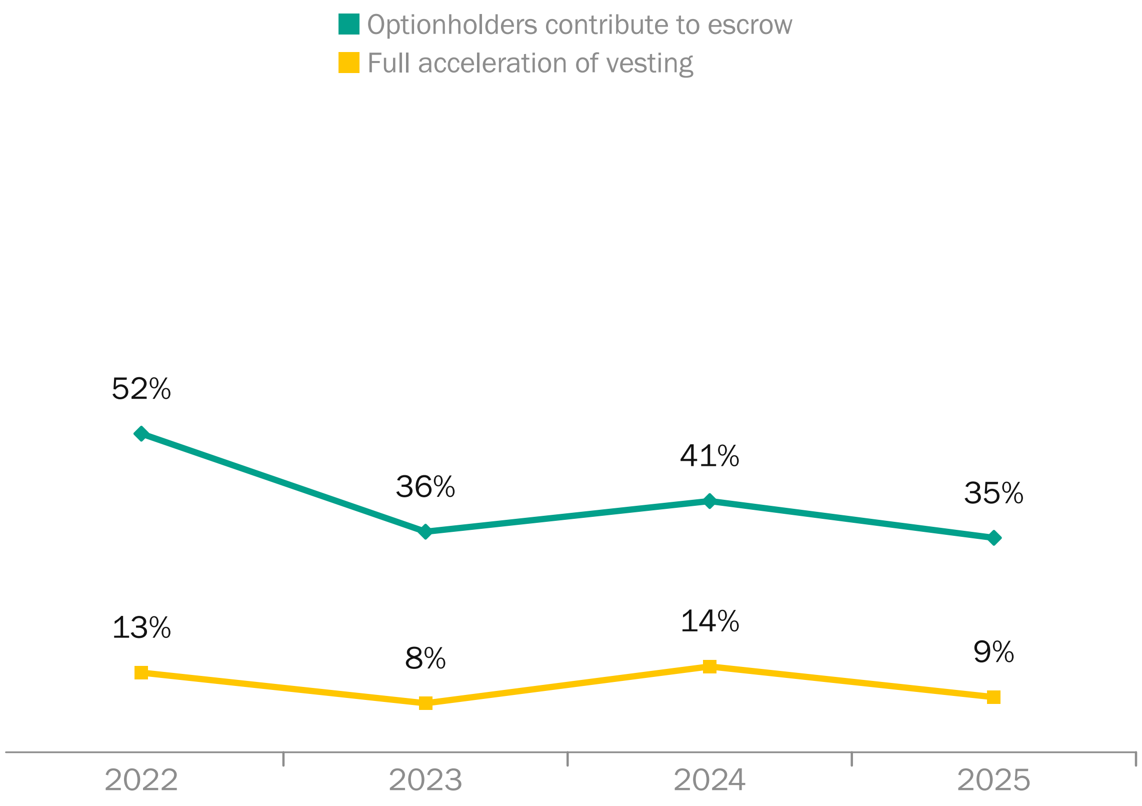


** Equity capital data provided by PitchBook and other databases.*

Treatment of Options

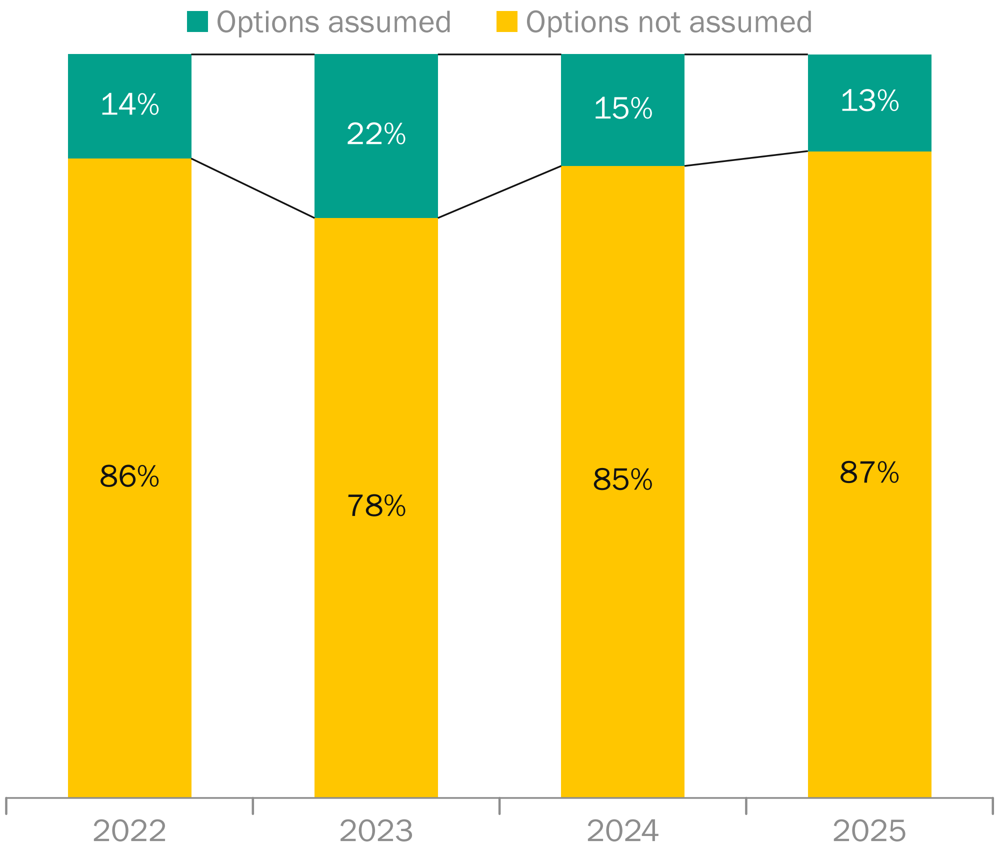
Contribution, Acceleration, and Assumption

CONTRIBUTION AND ACCELERATION*



Excludes deals where optionholders received no consideration.

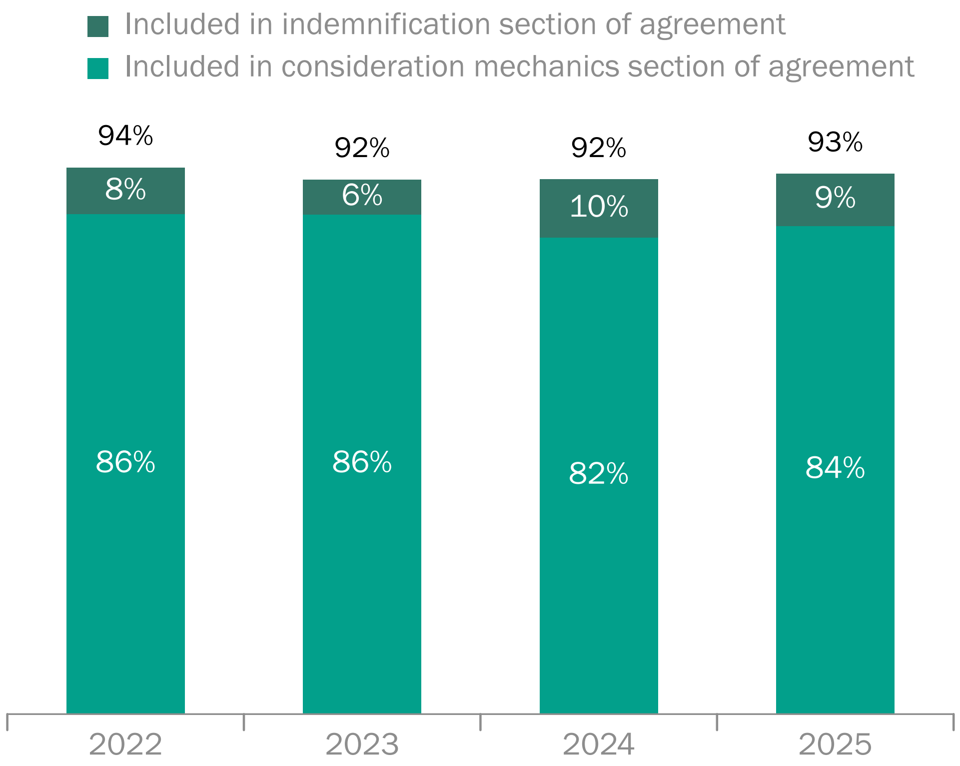
ASSUMPTION OF OPTIONS BY BUYER



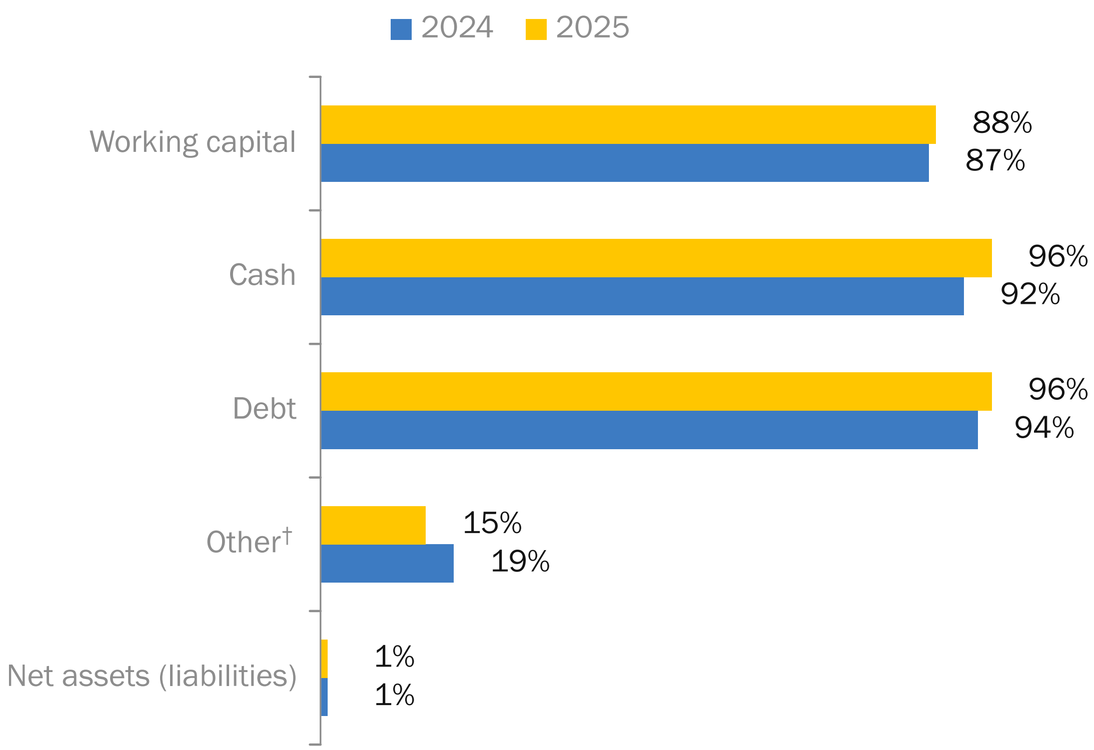
Post-Closing Purchase Price Adjustments

Buyers had a contractual right to review the estimated PPA calculations at or near the time of closing in 10% of 2025 deals with a PPA.

ADJUSTMENT PROVISION INCLUDED



ADJUSTMENT METRICS*



** 95% of post-closing purchase price adjustments in 2025 deals were based on more than one metric.*
† Does not include post-closing adjustments for transaction expenses.

Post-Closing Purchase Price Adjustments

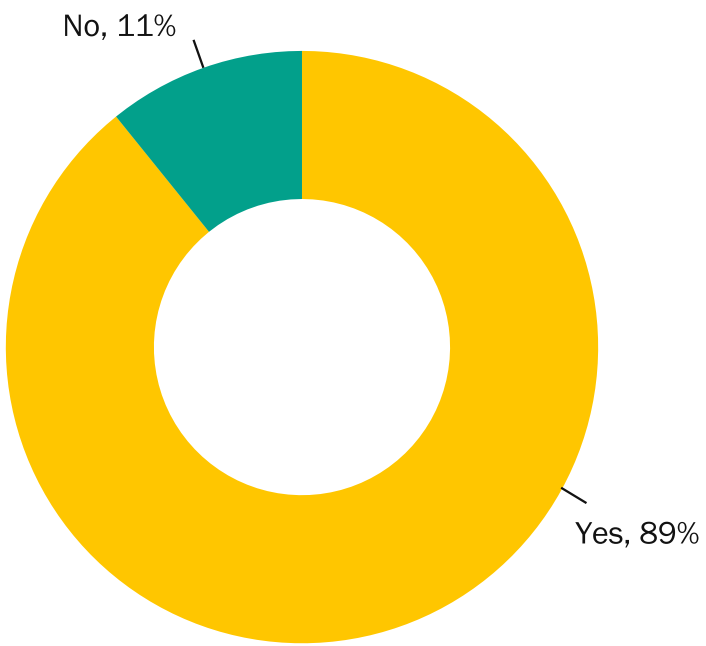
Working Capital Excludes Tax-Related Items and Accounting Methodology

KEY FINDING

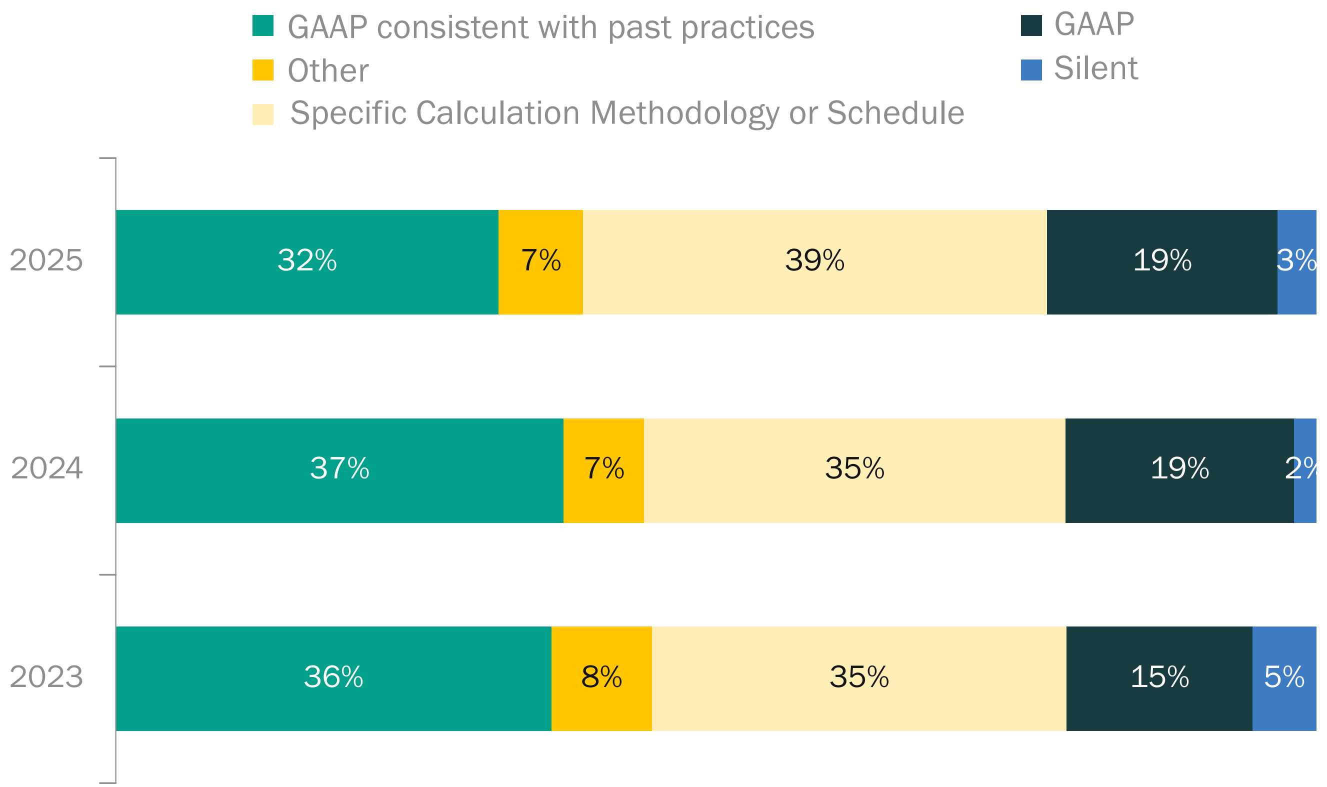
See example terms on slide 98

Subset: 2025 deals with a PPA

ADJUSTMENT EXCLUDES TAX-RELATED ITEMS



SUBSET: DEALS WITH POST-CLOSING PURCHASE PRICE ADJUSTMENTS



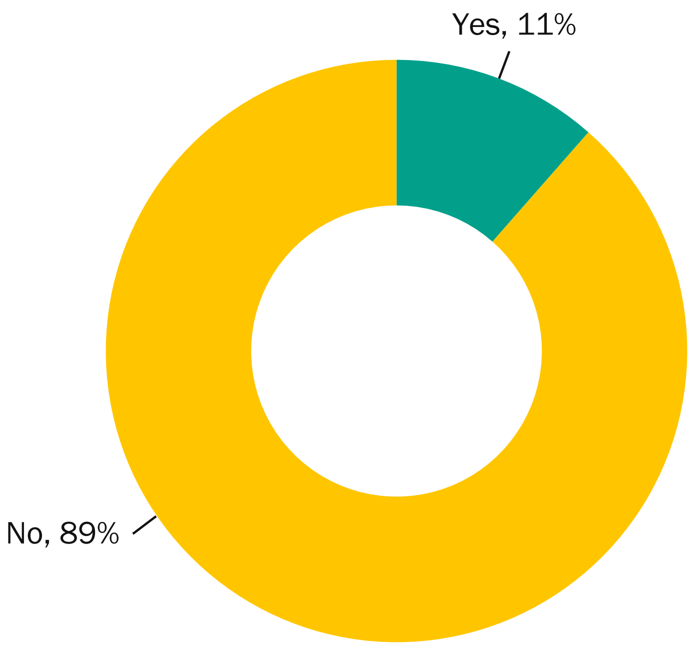
Post-Closing Purchase Price Adjustments

Thresholds and Caps

See example terms on slide 98

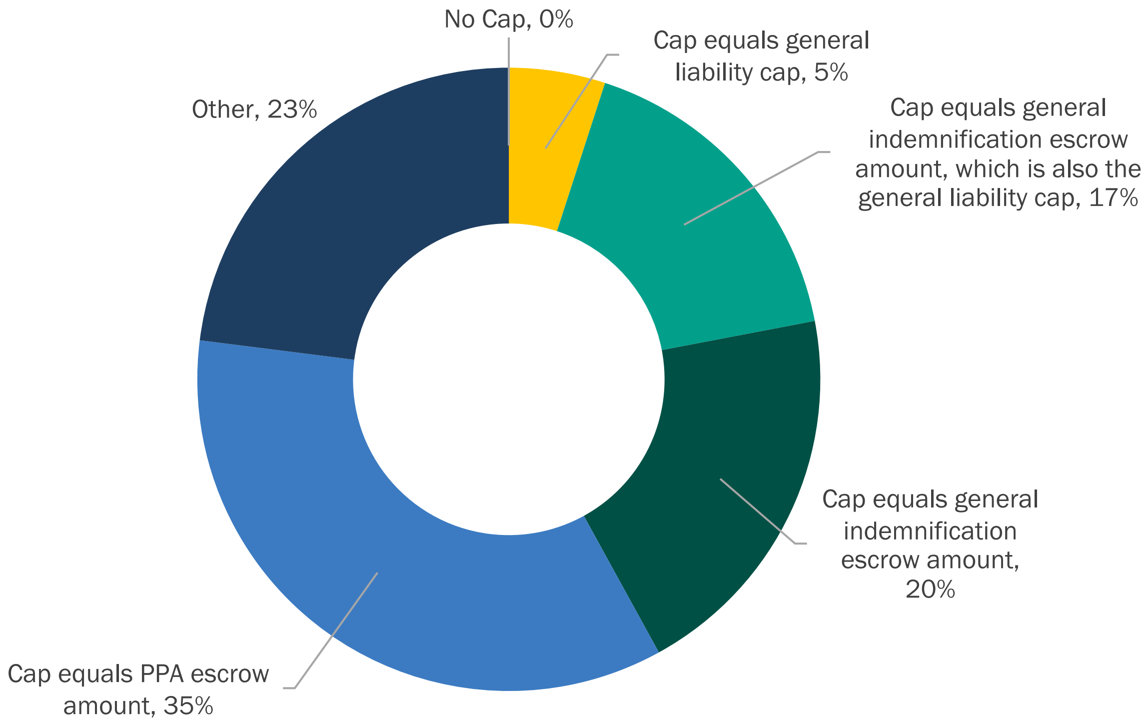
Subset: 2025 deals with post-closing purchase price adjustments in the consideration mechanics section of the acquisition agreement (as opposed to the indemnification section only)

ADJUSTMENT ONLY IF THRESHOLD EXCEEDED



Subset: 2025 deals with a PPA, all of which included some form of PPA cap

CAP ON BUYER-FAVORABLE PURCHASE PRICE ADJUSTMENT CLAIMS



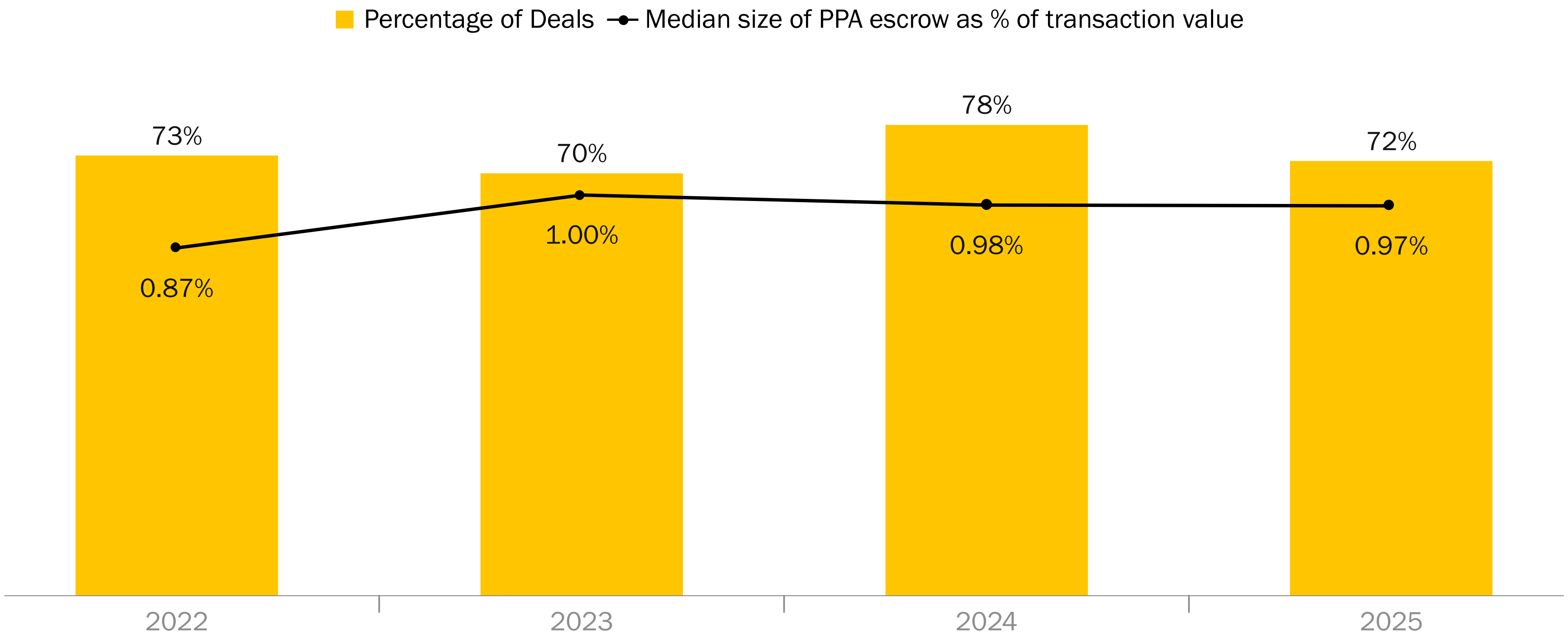
“Other” includes specified dollar amounts not expressly tied to another deal term, such as the PPA escrow amount or general liability cap. Over 50% of “Other” cap amounts were less than the amount of the general indemnification cap. 46% of deals with an “Other” cap amount included a separate PPA escrow.

Post-Closing Purchase Price

Separate Escrows

For 2025 deals without a separate PPA escrow, the source of payment for a buyer-favorable adjustment is the indemnity escrow 73% of the time.

PERCENTAGE OF DEALS WITH PPA ESCROW AND MEDIAN SIZES



For 2025 deals with a PPA, 89% with RWI identified and 53% with no RWI identified included a separate escrow for the PPA, compared to 91% and 66%, respectively, for 2024 deals.

For more information, see the SRS Acquiom thought leadership:

2026 M&A Working Capital PPA Study

Working Capital Adjustment M&A Checklist and Guidelines

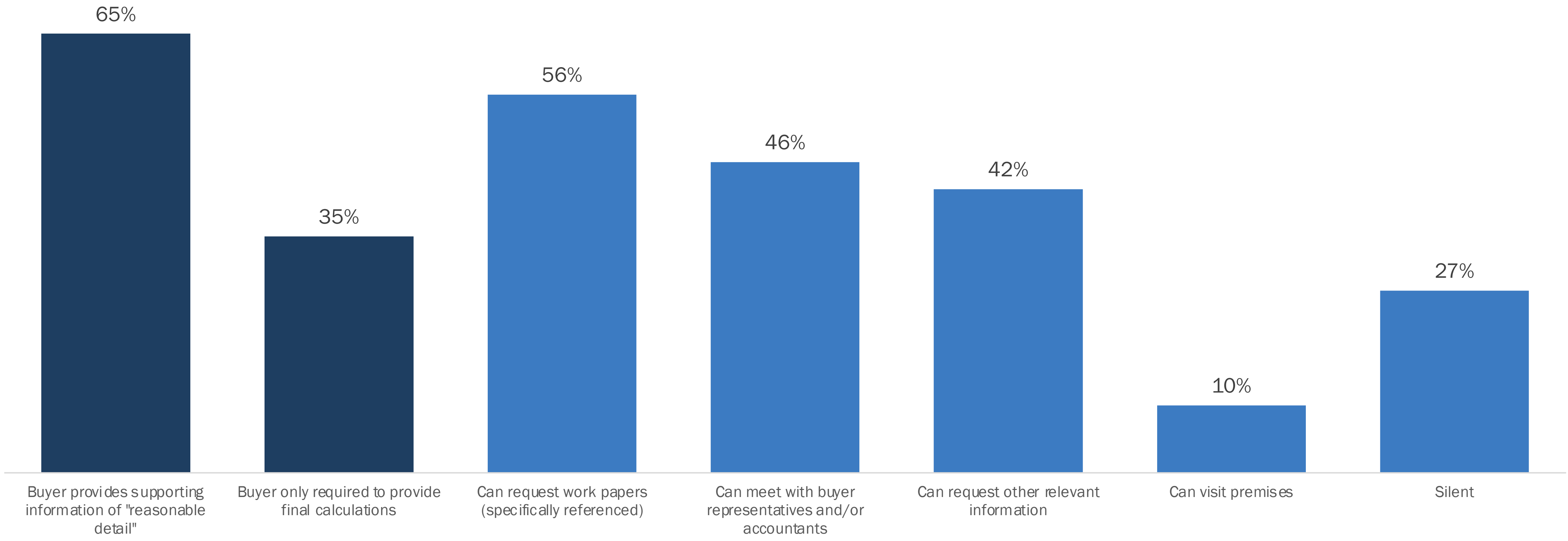
Purchase Price Adjustments

Sell-Side Information Rights

See example terms on slide 99

Over 67% of PPA provisions either require the final calculations preparer, typically the buyer, to deliver additional details with the statement or allow the sellers to request additional information in connection with their review of the statement. The two dark-blue bars on the left side of the graph indicate what preparers must include when initially providing the statement.

SUBSET: 2025 DEALS WITH A PPA IN THE CONSIDERATION SECTION

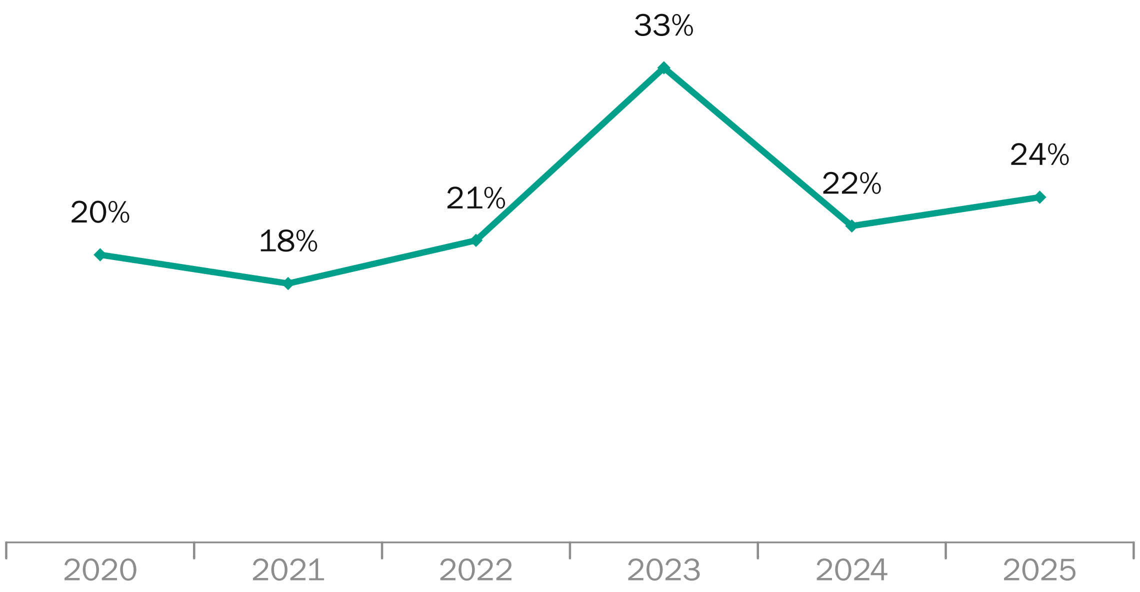


Earnouts (Non-Life Sciences Deals*)

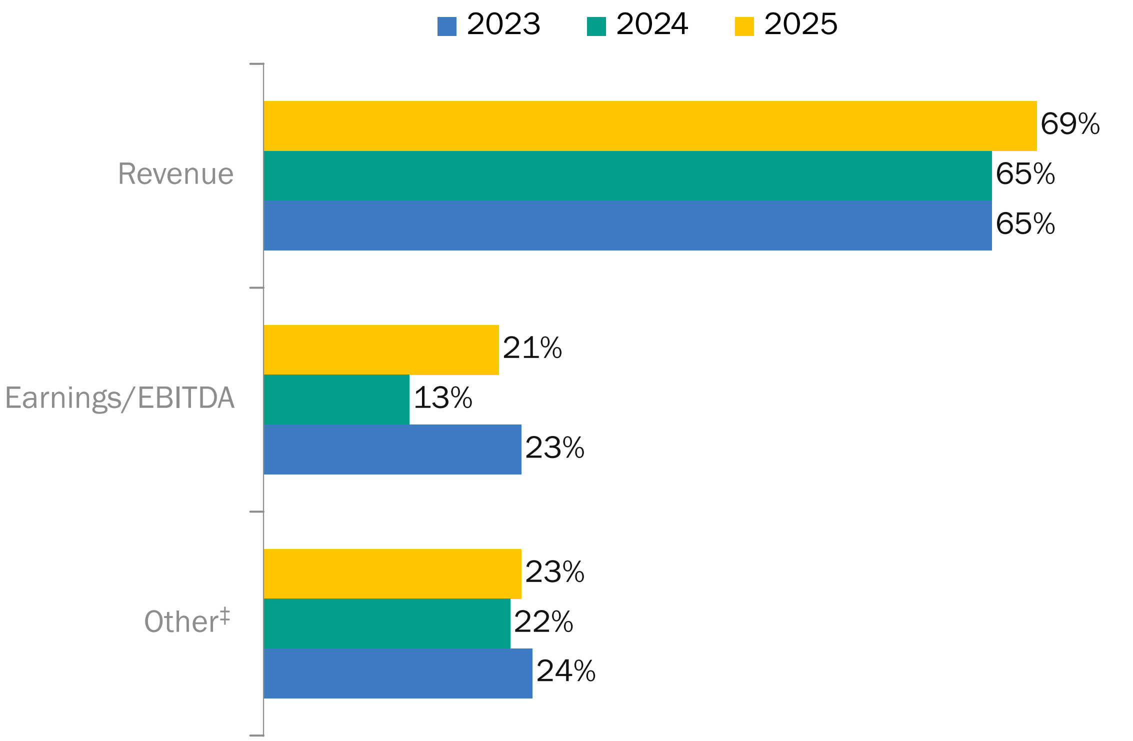
KEY FINDING

Of the 24% of 2025 non-Life Sciences deals with an earnout, 60% had multiple earnouts.

EARNOUT INCLUDED



EARNOUT METRICS†

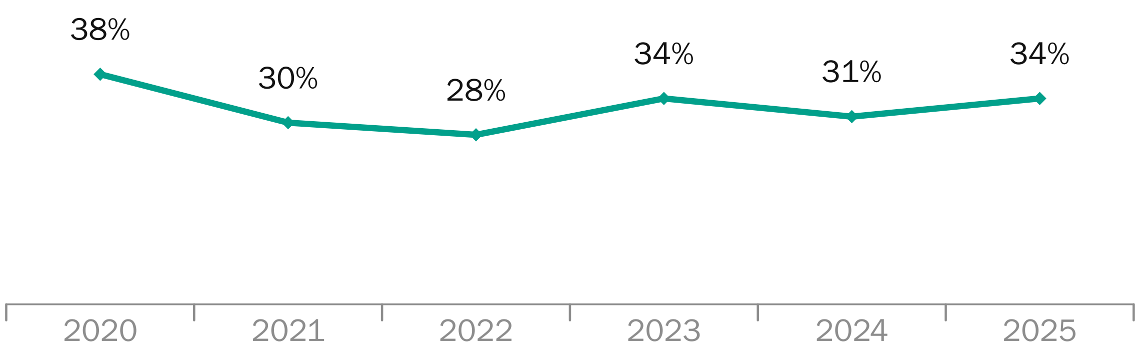


* For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the 2025 SRS Acquiom Life Sciences M&A Study.
† Earnouts can include more than one metric, such as a combination of revenue and earnings.
‡ Examples: unit sales, product launches, divestiture of assets.

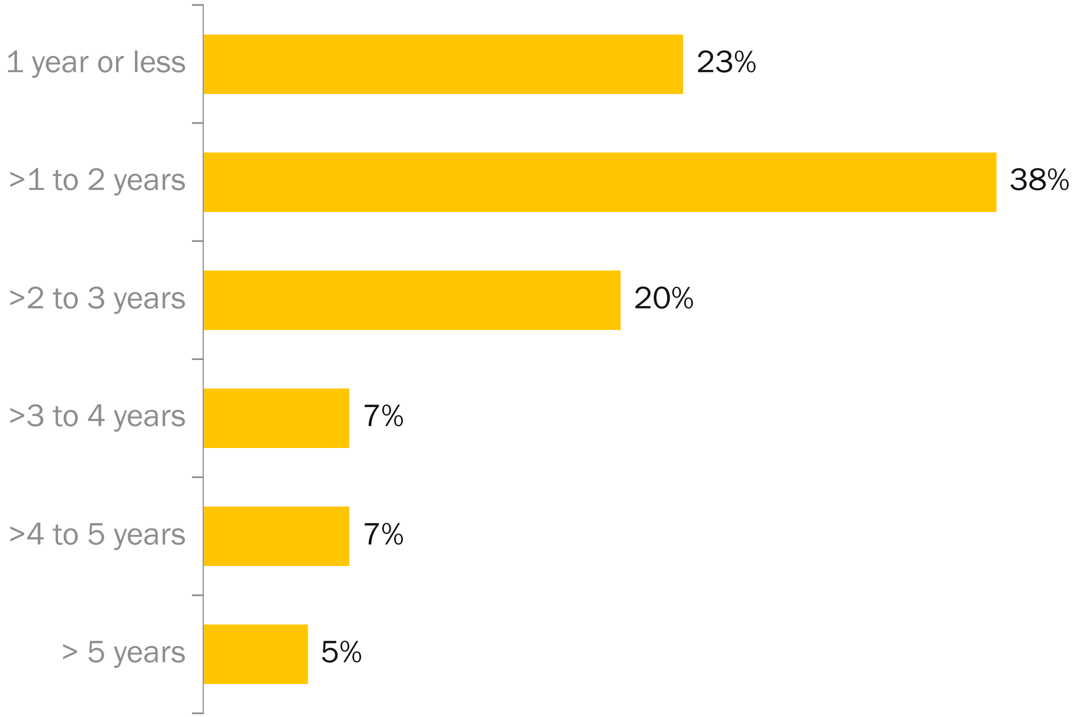
Earnouts (Non-Life Sciences Deals*)

KEY FINDING

MEDIAN EARNOUT POTENTIAL AS % OF CLOSING PAYMENT†



EARNOUT LENGTH‡ (2025 MEDIAN: 21 MONTHS)

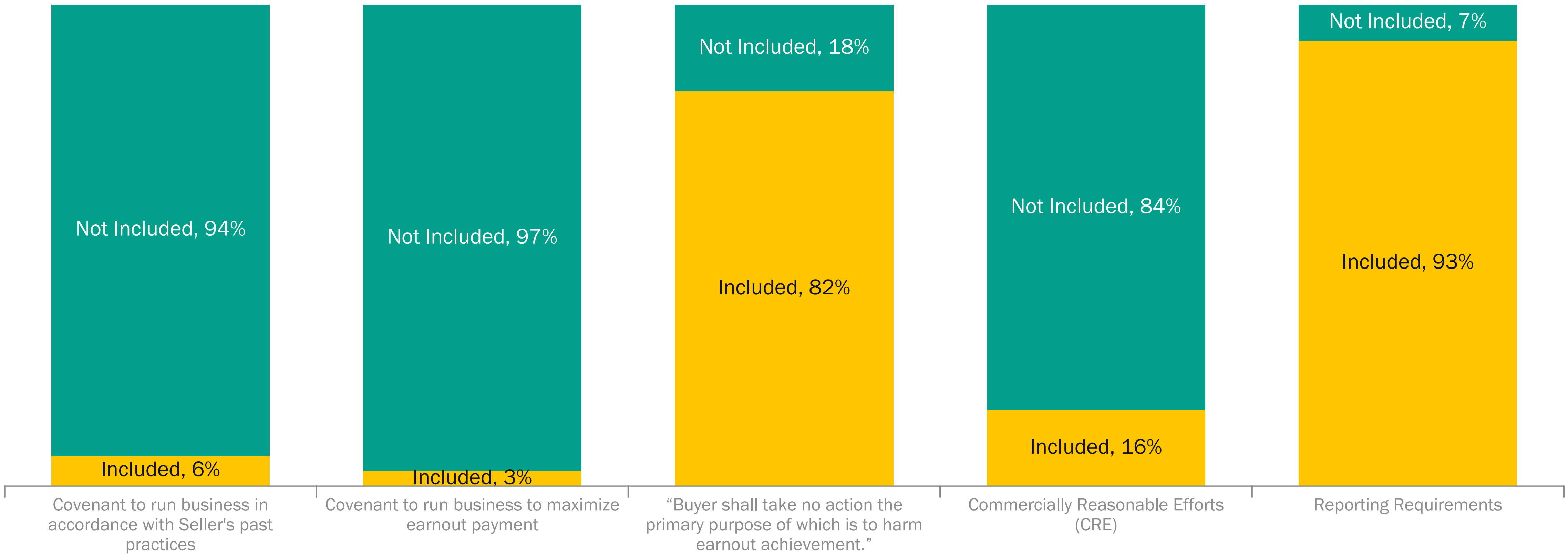


** For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the [2025 SRS Acquiom Life Sciences M&A Study](#).*
† Calculated as the sum of potential earnout payments over the amount paid at closing (including escrowed amounts).
‡ Measured by the date the latest earnout period ends.

Earnouts (Non-Life Sciences Deals*)

Covenants and Diligence Standards

SUBSET: 2025 DEALS WITH EARNOUTS, EXCLUDING LIFE SCIENCES DEALS

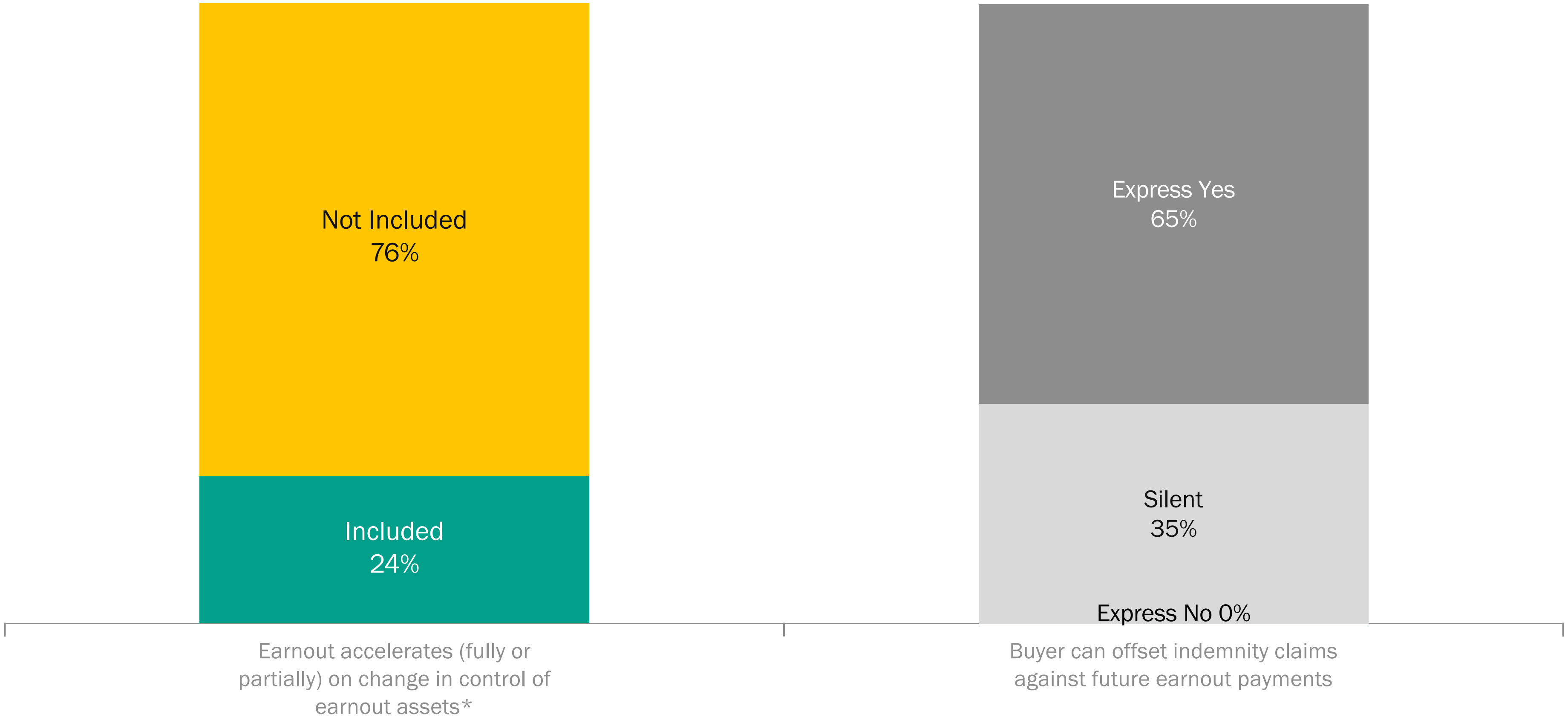


** For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the [2025 SRS Acquiom Life Sciences M&A Study](#).*

Earnouts (Non-Life Sciences Deals*)

Acceleration and Offsets

SUBSET: 2025 DEALS WITH EARNOUTS, EXCLUDING LIFE SCIENCES DEALS



** Generally subject to exceptions, such as if the subsequent buyer assumes the earnout obligations.*

For more information, see the SRS Acquiom white paper:

A Review of Earnouts in M&A Transactions

**For a more detailed analysis of SRS Acquiom life science deals, please see the full study:*

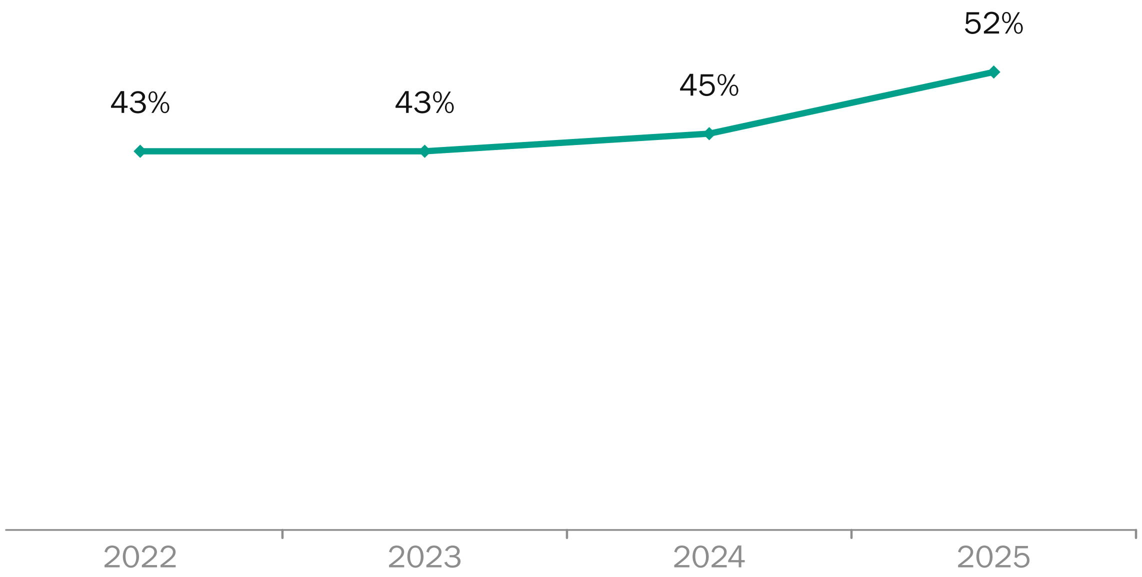
2025 SRS Acquiom Life Sciences M&A Study

Earnouts (Non-Life Sciences Deals*)

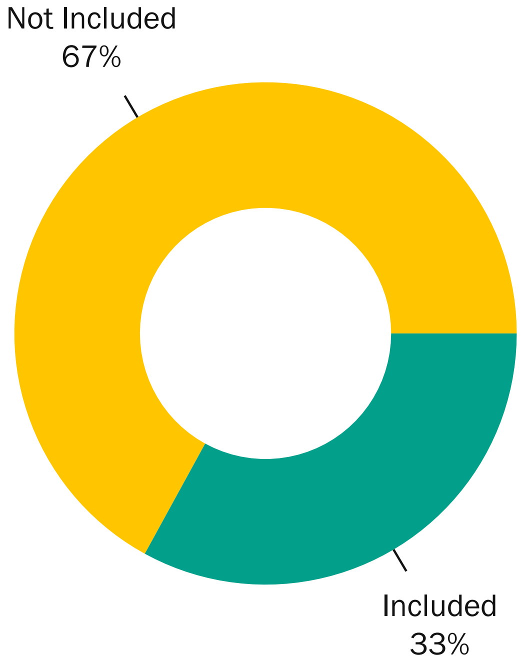
Additional Provisions

See example terms on slide 98

"EARNOUT IS NOT A SECURITY" PROVISION INCLUDED



DISCLAIMER OF FIDUCIARY RELATIONSHIP (2025 DEALS)



** For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the 2025 SRS Acquiom Life Sciences M&A Study.*

Pervasive Qualifiers

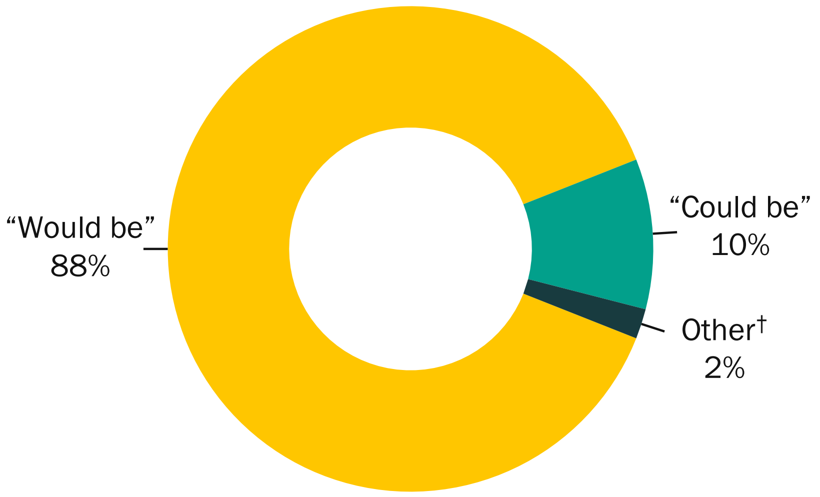
Definition of Material Adverse Effect (“MAE”)

“Prospects” Included and Forward-Looking Language

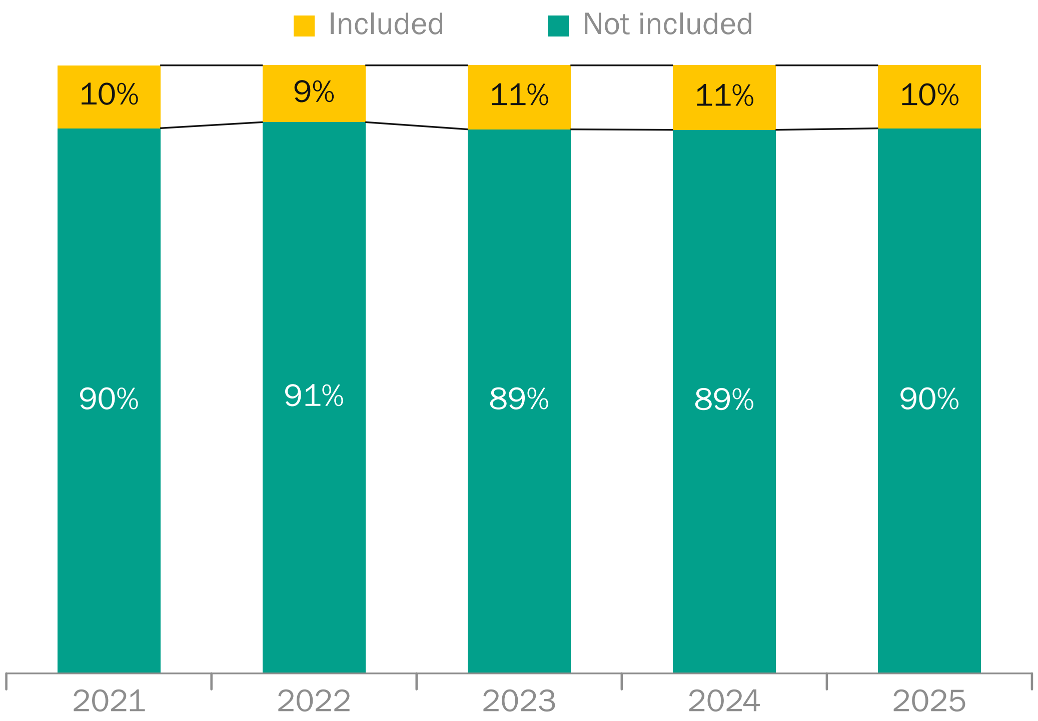
See example terms on slide 99

96% of 2025 deals with an MAE definition had forward-looking language.*
Subset: 2025 deals with an MAE definition that included forward-looking language

FORWARD-LOOKING MAE DETAILS



USE OF “PROSPECTS”



* *Includes deals where the MAE definition did not include forward-looking language, but forward-looking language was predominantly used in conjunction with the use of the defined term in the body of the agreement.*

† *Definitions in the “Other” category used a combination of “could” and “would” or some other forward-looking standard.*

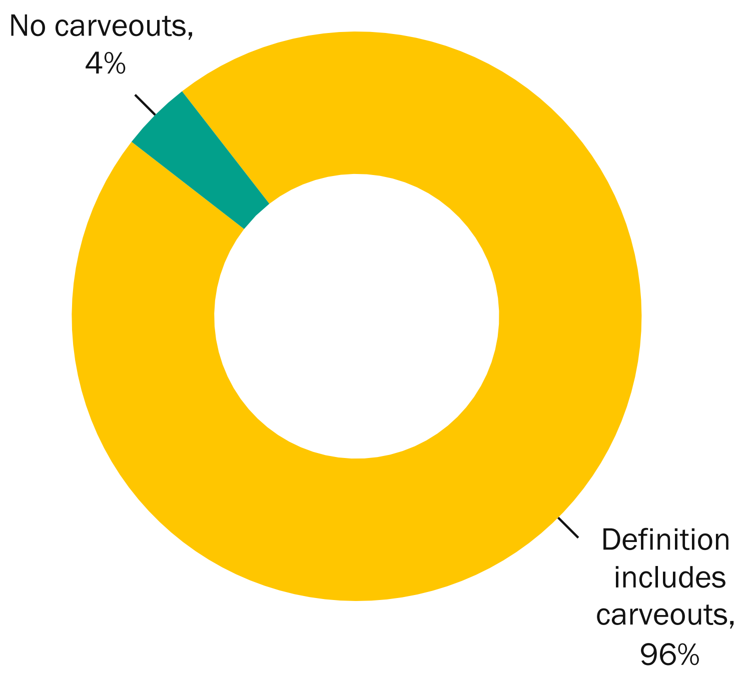
Definition of Material Adverse Effect

Carveouts

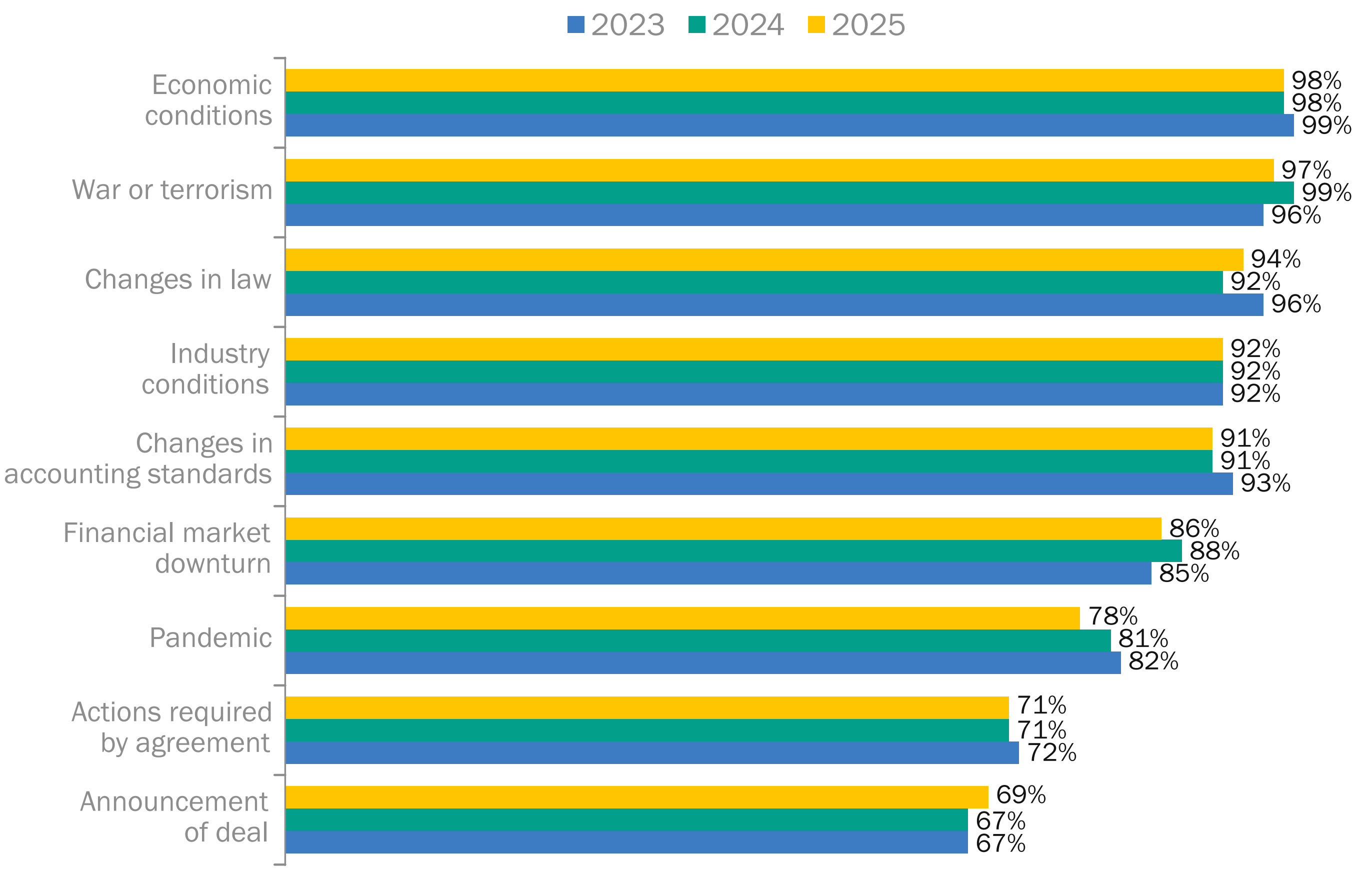
See example terms on slide 99

Subset: MAE definition has carveouts

DEALS WITH CARVEOUTS



CARVEOUT FREQUENCY (2025 DEALS)



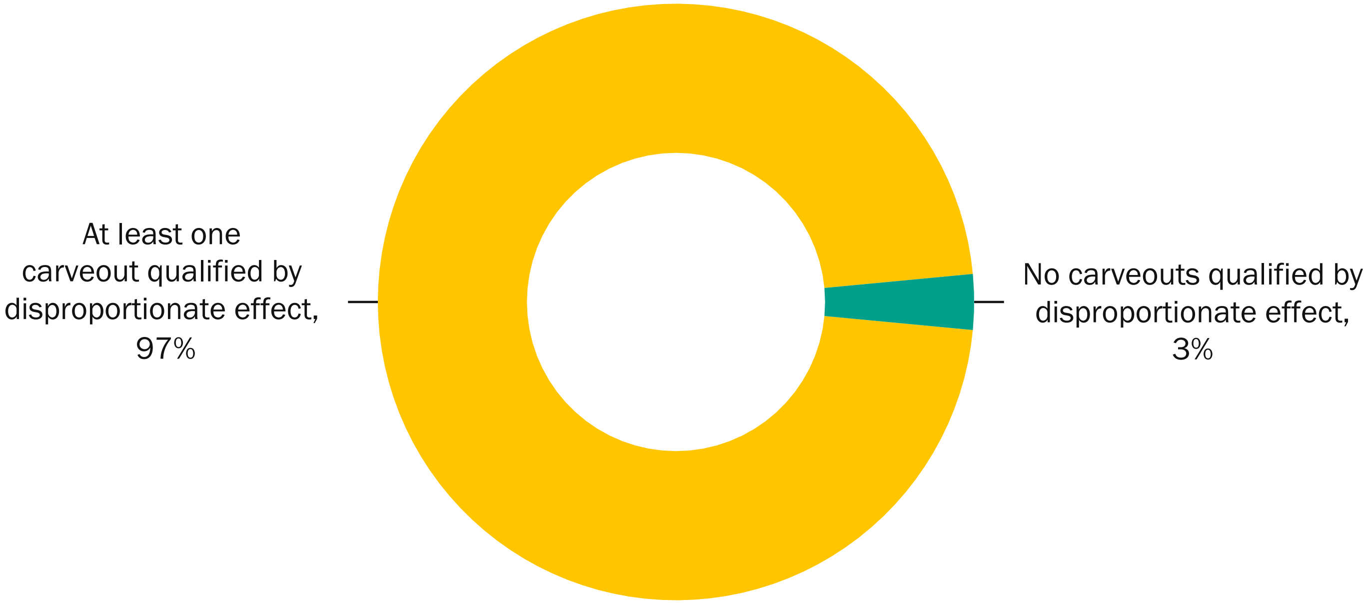
Definition of Material Adverse Effect

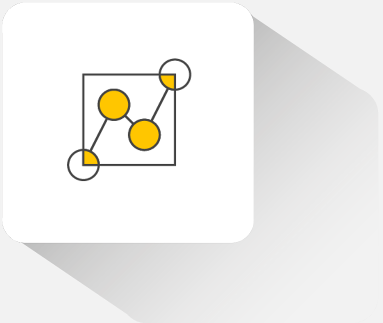
Carveouts Qualified by Disproportionate Effect

See example terms on slide 100

Subset: 2025 deals with an MAE definition with carveouts

DISPROPORTIONATE EFFECT DETAILS





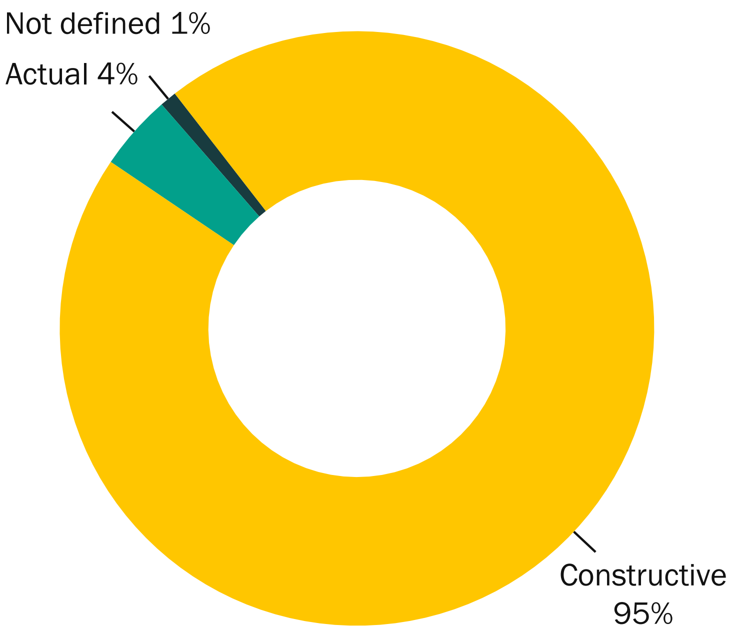
This data point is influenced by Transaction Value.

Visit SRS Acquiom MarketStandard® to learn more.

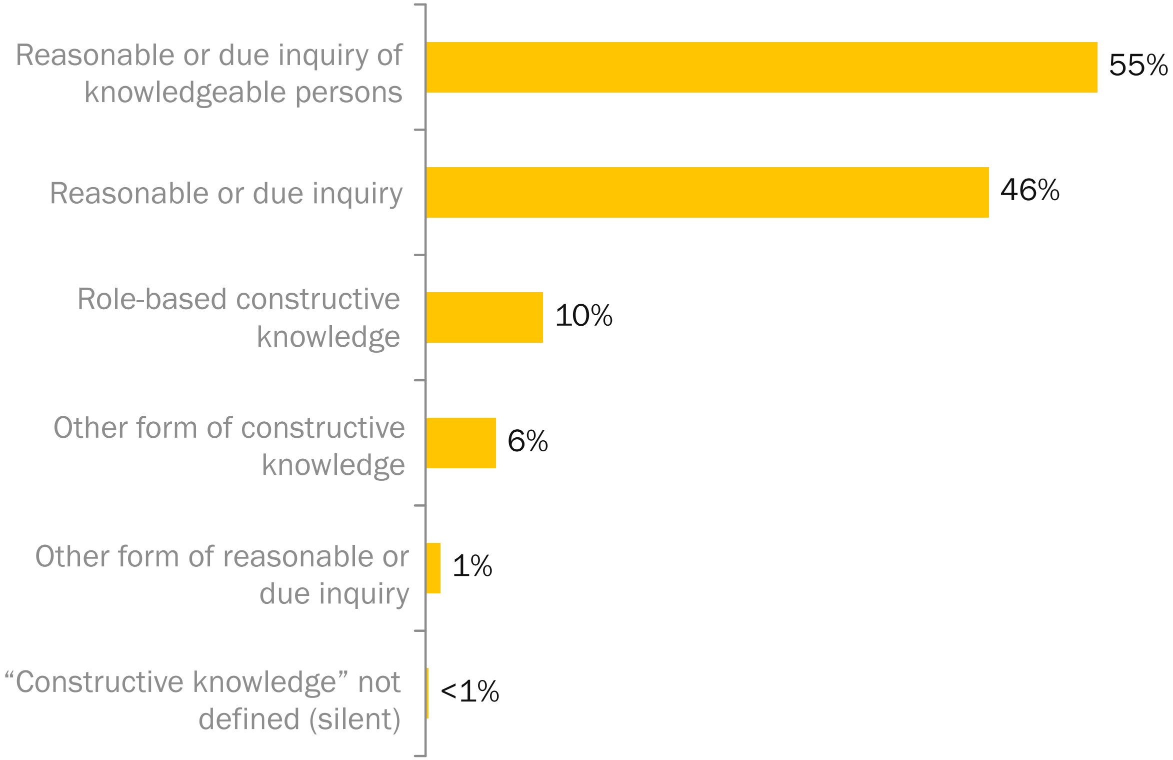
Knowledge Standards

See example terms on slide 100

KNOWLEDGE DEFINITION DETAILS (2025 DEALS)



SUBSET: CONSTRUCTIVE*



** 15% of 2025 deals include more than one constructive knowledge element, e.g., a due inquiry requirement as well as role-based deemed knowledge.*

Sellers' Representations, Warranties, and Covenants

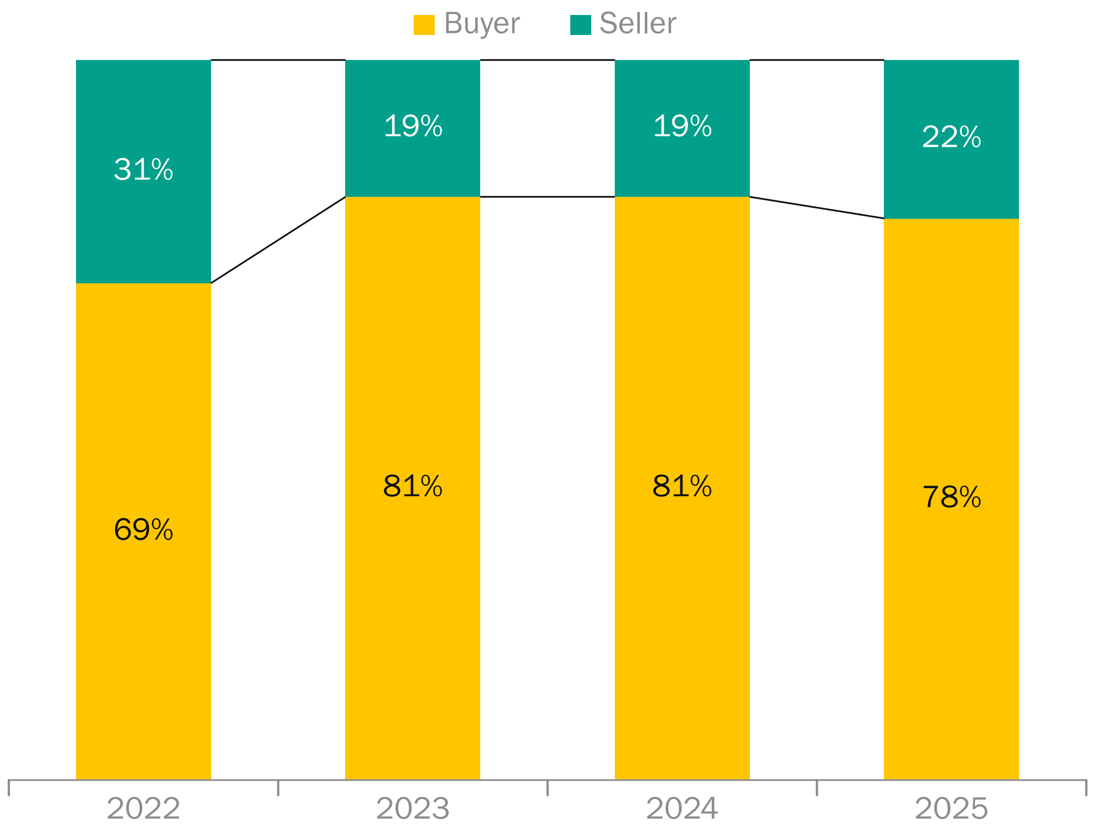
“No Undisclosed Liabilities” Representation

KEY FINDING

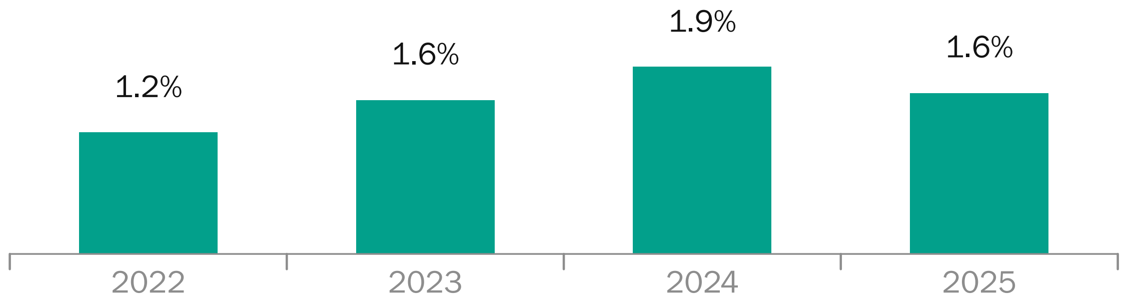
See example terms on slide 100

97% of 2025 deals contain “No Undisclosed Liabilities” representation.

PARTY FAVORED BY DEFINITION*



REPRESENTATION IS KNOWLEDGE QUALIFIED



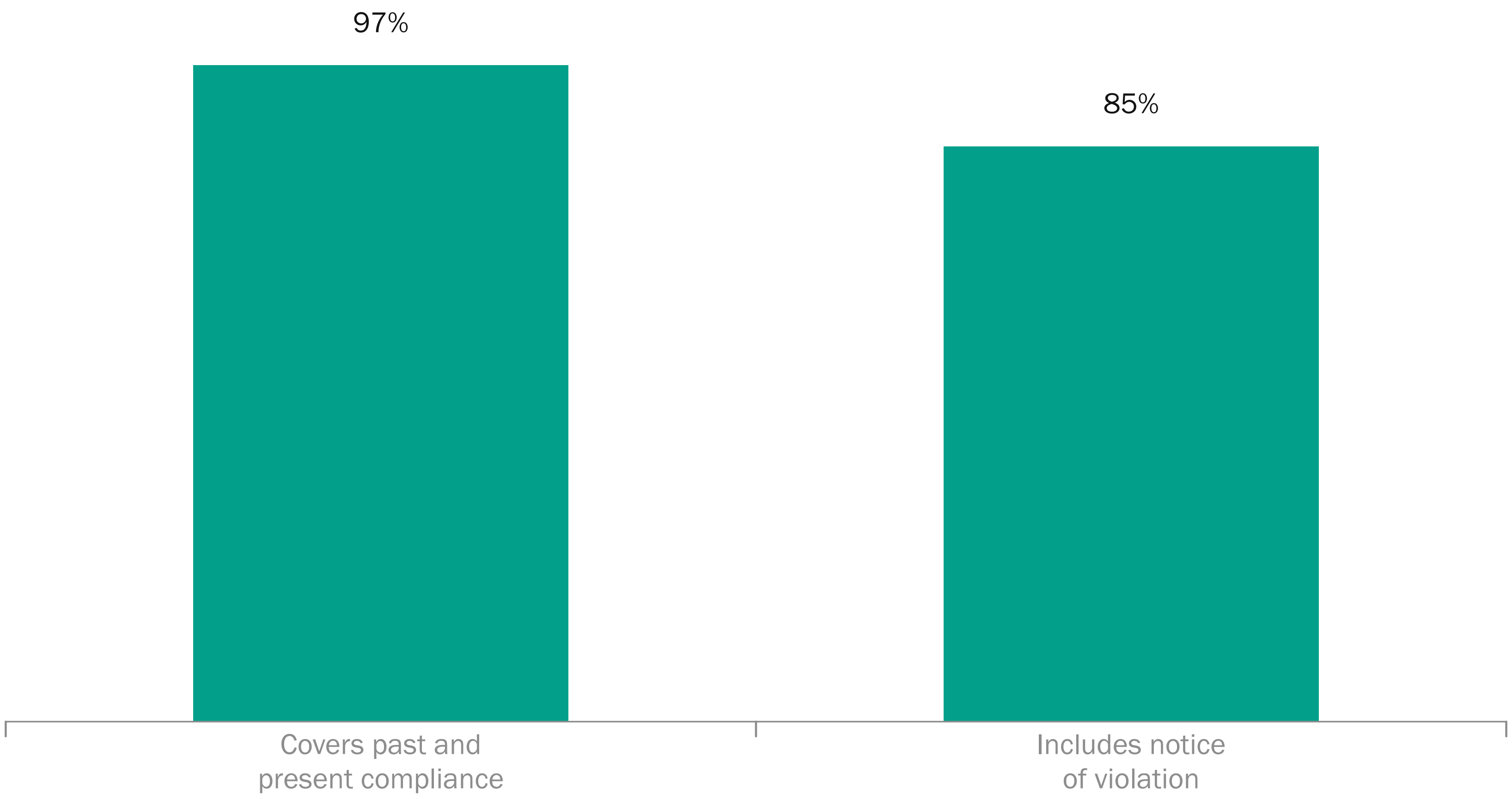
** Generally, the representation favors sellers by definition when it includes a GAAP qualifier; see example terms on Slide 100.*

“Compliance with Laws” Representation

See example terms on slide 100

99% of 2025 deals included this representation.

“COMPLIANCE WITH LAWS” REPRESENTATION DETAILS, 2025



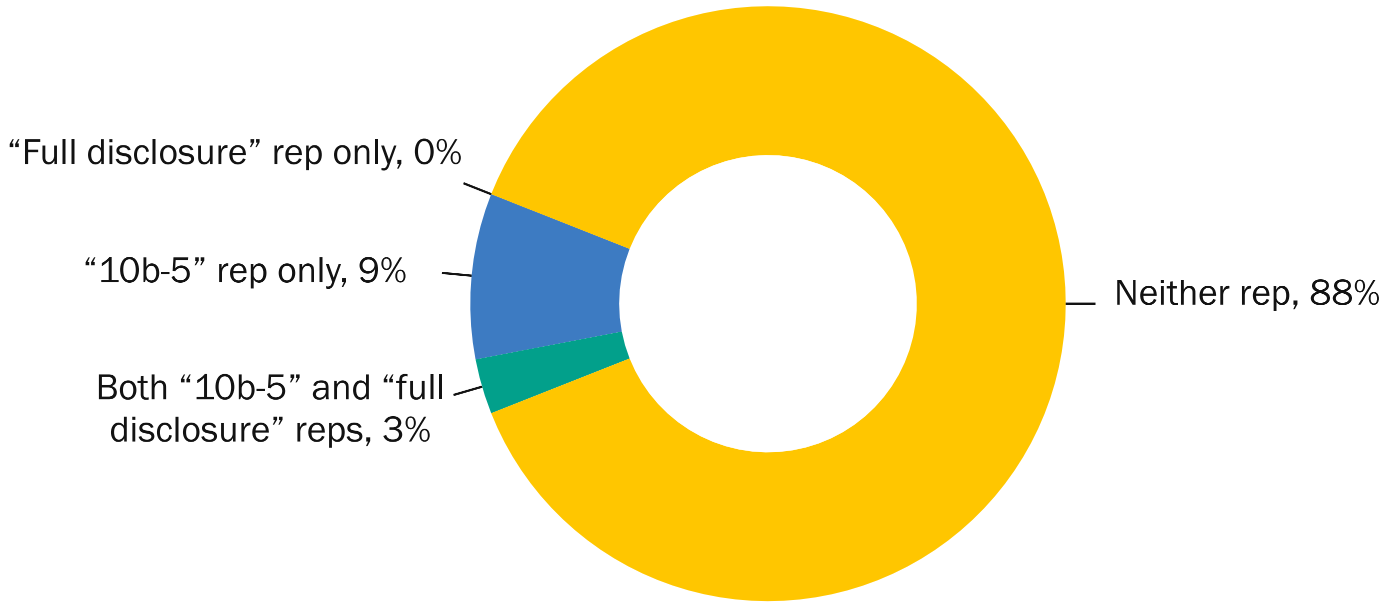
This data point is influenced by Transaction Value.

Visit SRS Acquiom MarketStandard® to learn more.

“10b-5” and “Full Disclosure” Representations*

See example terms on slide 101

INCLUSION OF REPRESENTATIONS (2025 DEALS)



For more information, see the SRS Acquiom study:

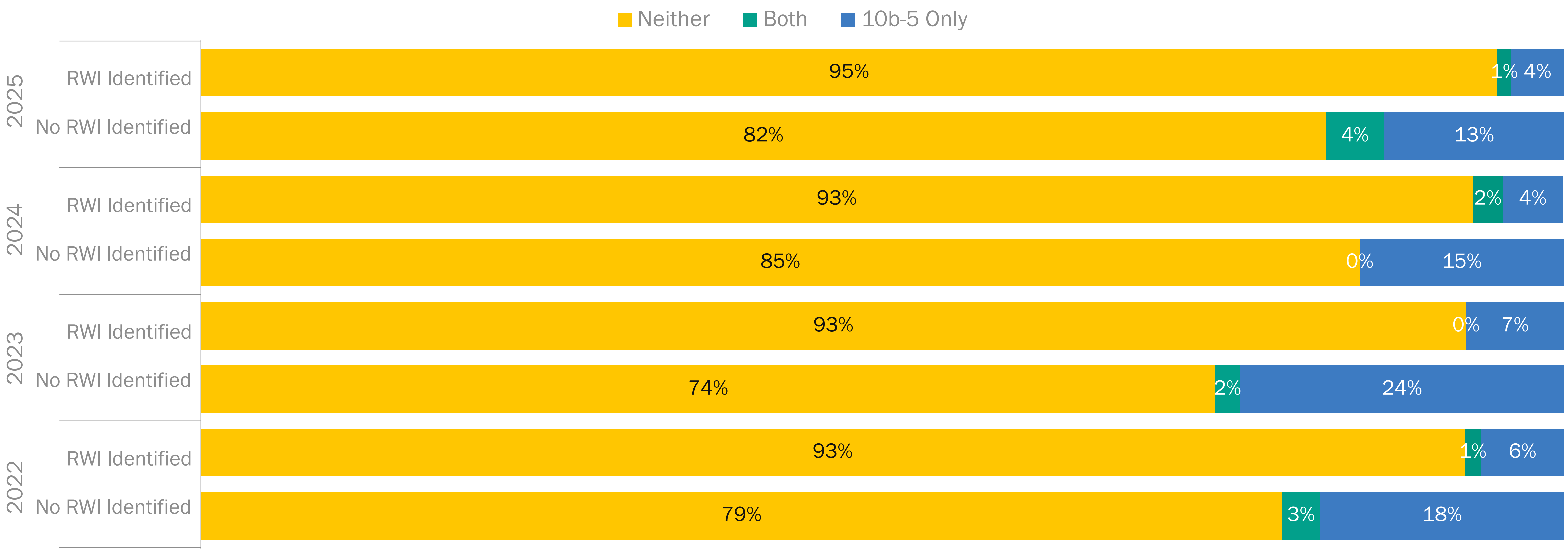
Best Practices in Due Diligence

* Does not include representations that apply only to the shareholder information statement (and not the acquisition agreement).

“10b-5” and “Full Disclosure” Representations

Influence of RWI

DEAL YEARS 2022–2025

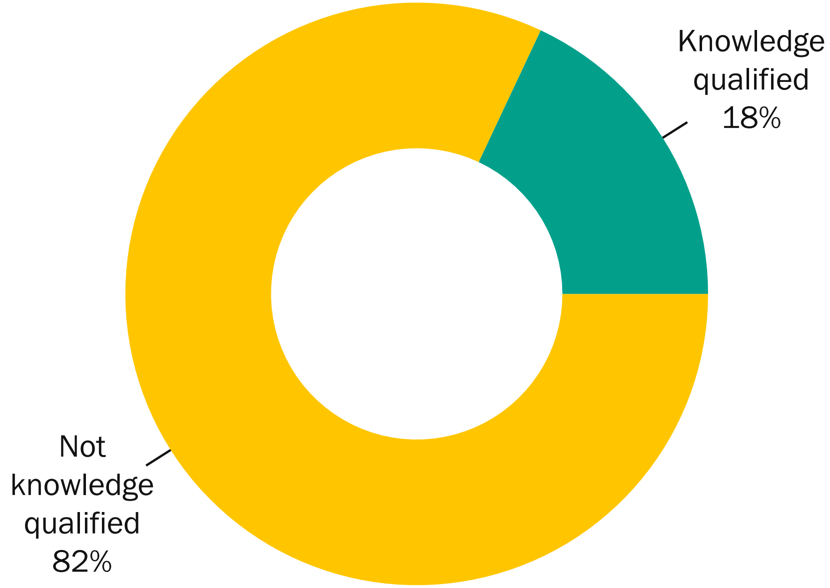


“10b-5” and “Full Disclosure” Representations

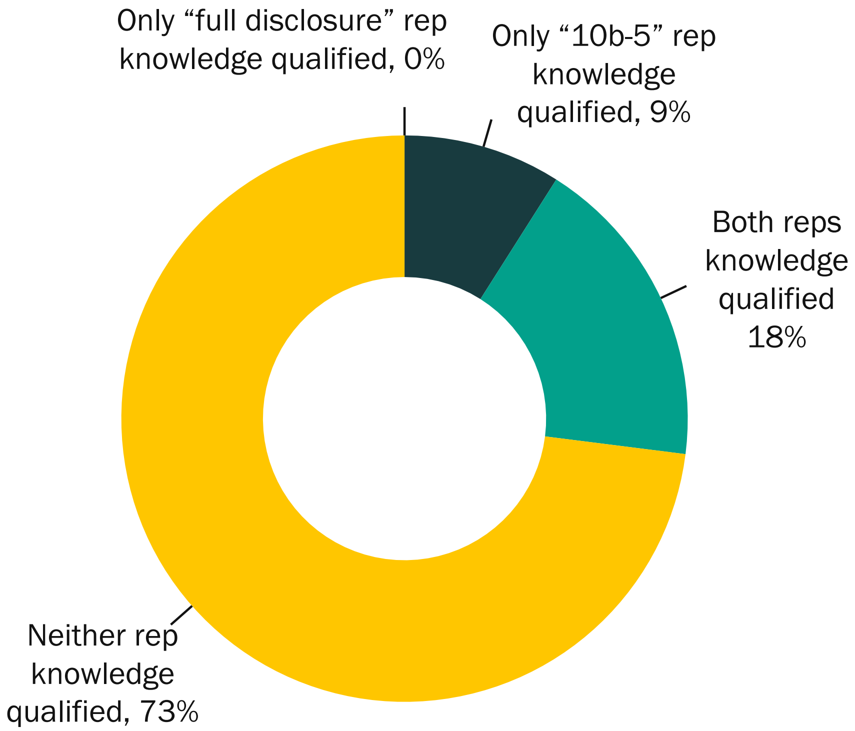
Knowledge Qualifiers

Subset: 2022–2025 deals

SUBSET: “10B–5” REP ONLY



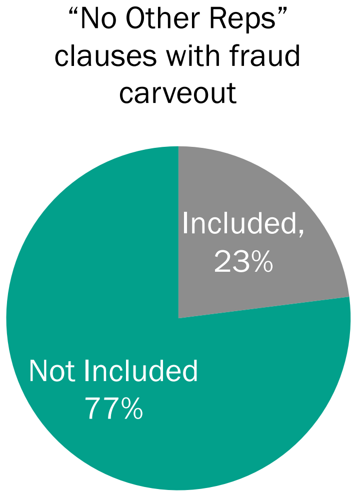
SUBSET: BOTH “10B–5” AND “FULL DISCLOSURE” REPS

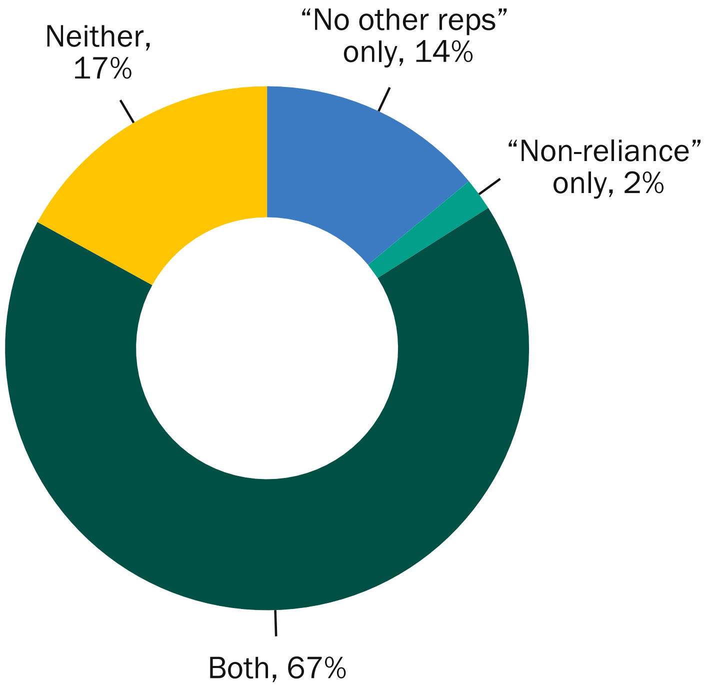


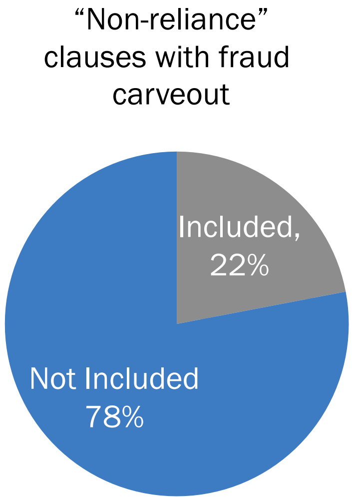
“No Other Representations” and “Non-Reliance” Clauses

See example terms on slide 101

INCLUSION OF REPRESENTATIONS AND FRAUD CARVEOUTS* (2025 DEALS)







This data point is influenced by Transaction Value.

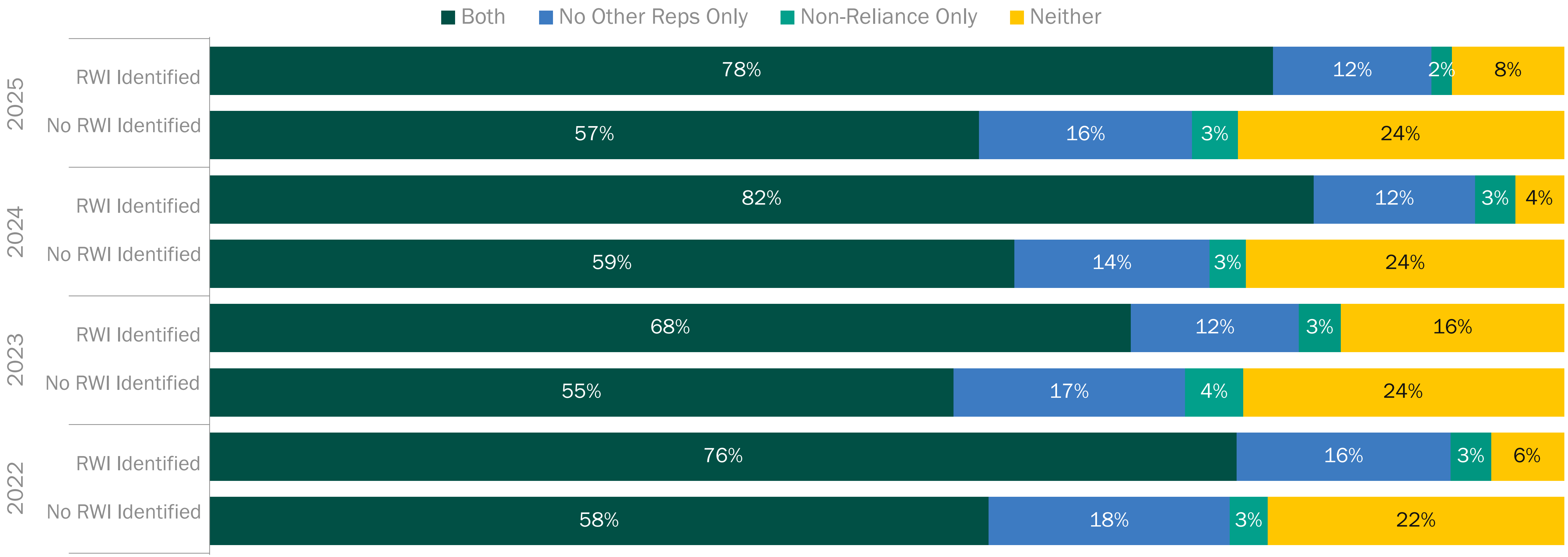
Visit SRS Acquiom MarketStandard® to learn more.

* *30% of deals with both clauses included a fraud carveout: 23% included the carveout for both clauses; 4% included the carveout for “No Other Reps” only; and 3% included the carveout for “Non-reliance” only.*

“No Other Representations” and “Non-Reliance” Clauses

Influence of RWI

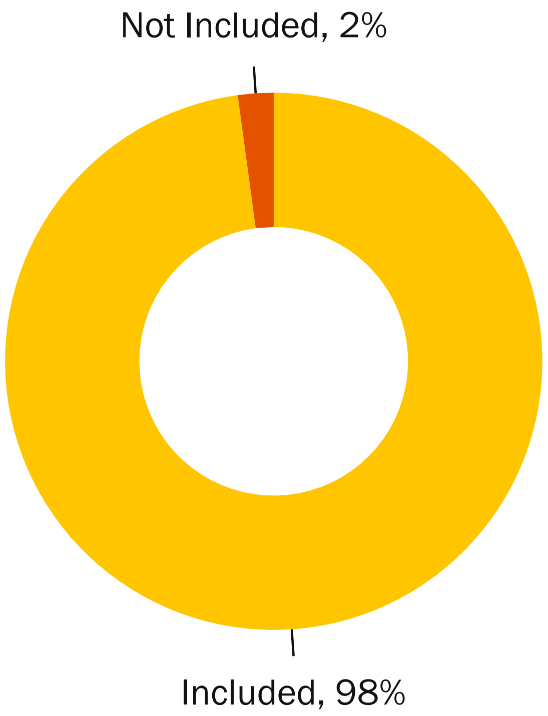
2022–2025 DEALS



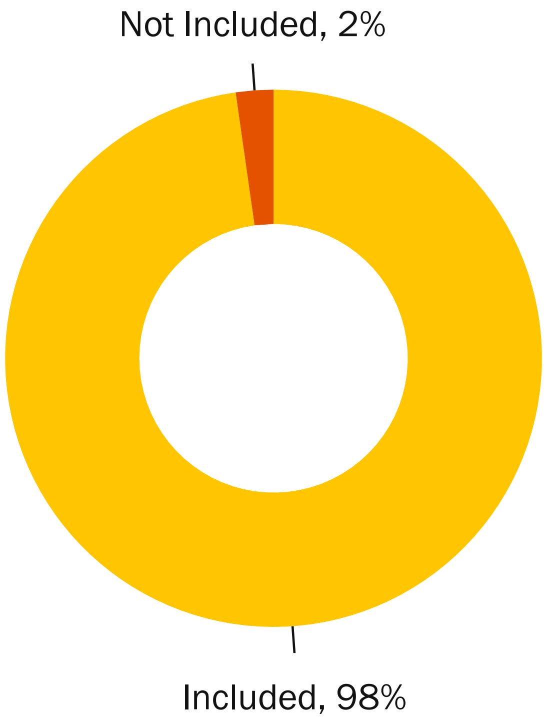
Privacy Representation

[See example terms on slide 102]

INCLUSION OF PRIVACY REPRESENTATIONS (2024 DEALS)



INCLUSION OF PRIVACY REPRESENTATIONS (2025 DEALS)

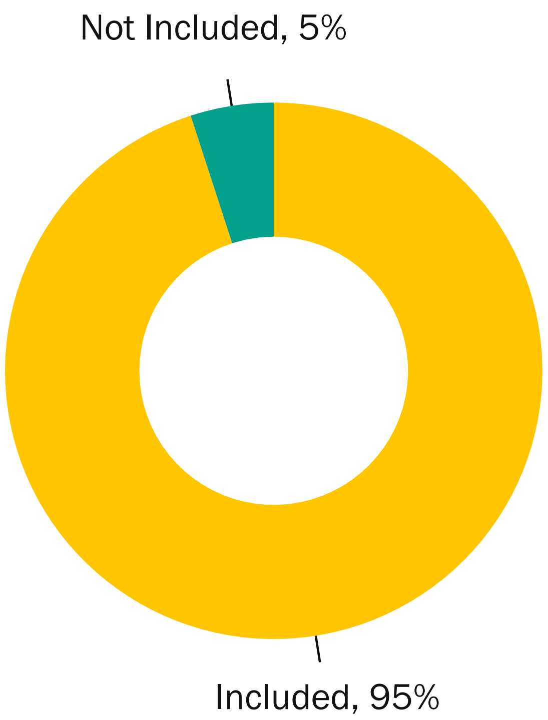


Cybersecurity Representation

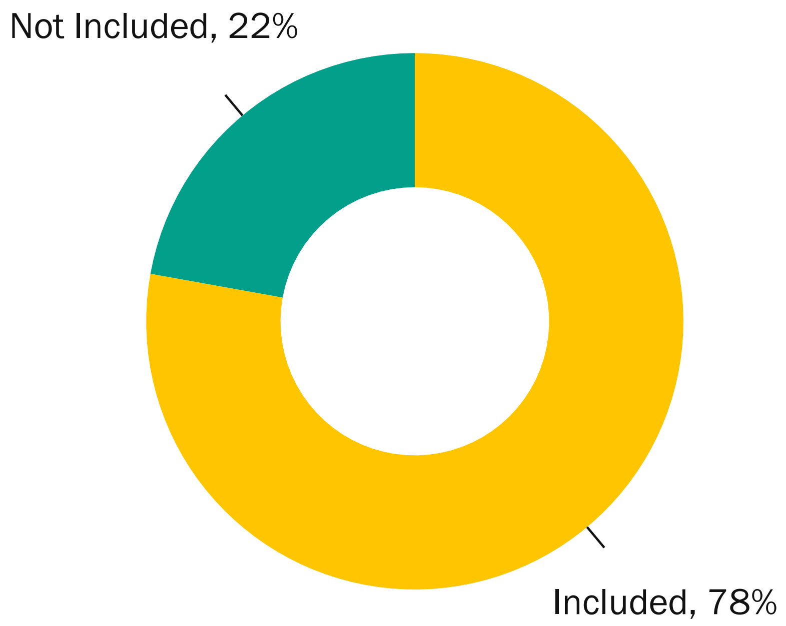
KEY FINDING

See example terms on slide 102

INCLUSION OF CYBERSECURITY REPRESENTATIONS (2024 DEALS)



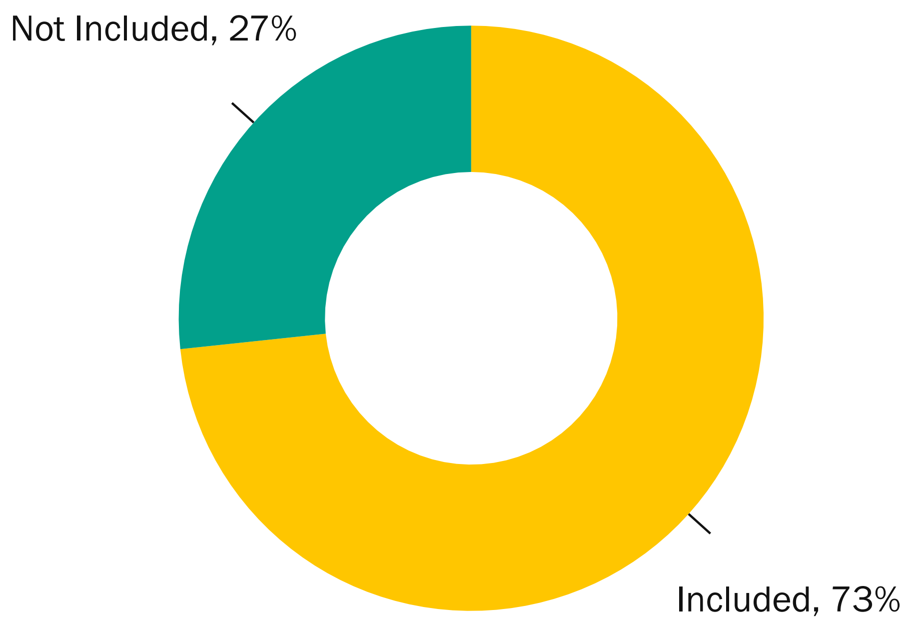
INCLUSION OF CYBERSECURITY REPRESENTATIONS (2025 DEALS)



Sexual Misconduct Representation

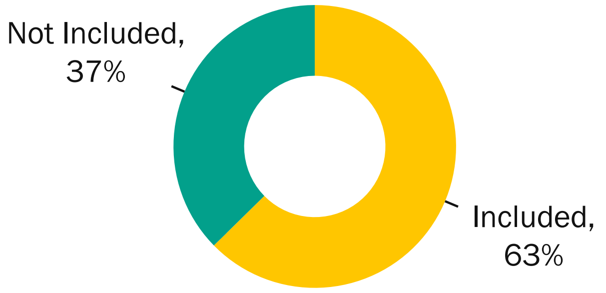
See example terms on slide 102

INCLUSION OF SEXUAL MISCONDUCT REPRESENTATIONS (2025 DEALS)*

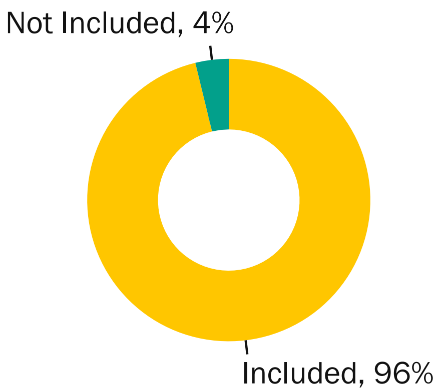


Subset: Deals with a sexual misconduct representation.

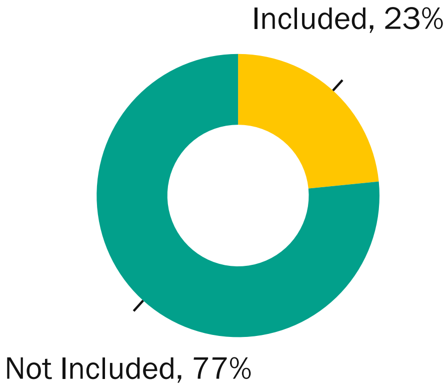
COVERS SETTLEMENT AGREEMENTS



COVERS ALLEGATIONS



CORRECTIVE ACTION LANGUAGE

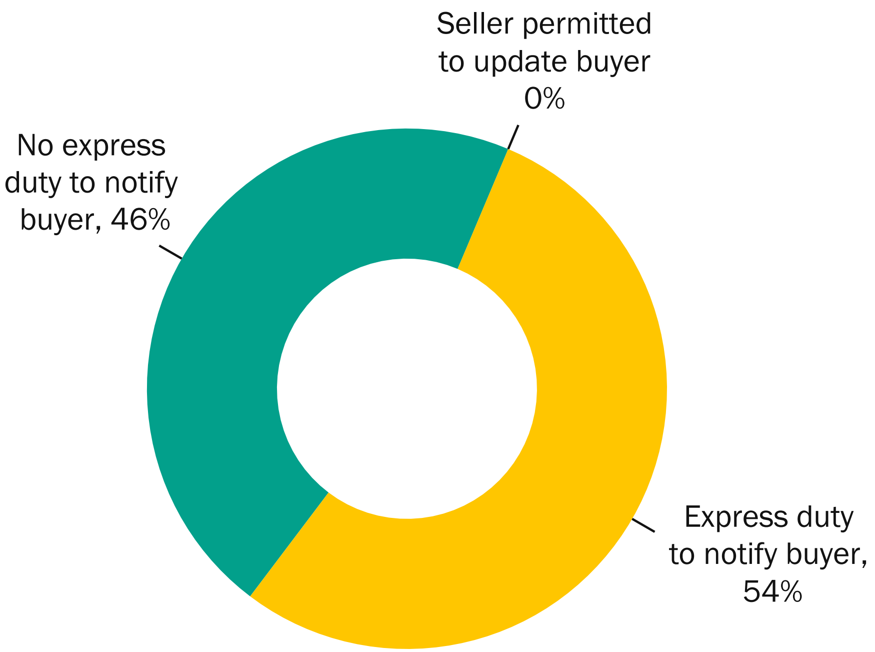


** 74% of 2024 deals included a sexual misconduct representation, of which 61% covered settlement agreements, 95% covered allegations, and 17% included corrective action language.*

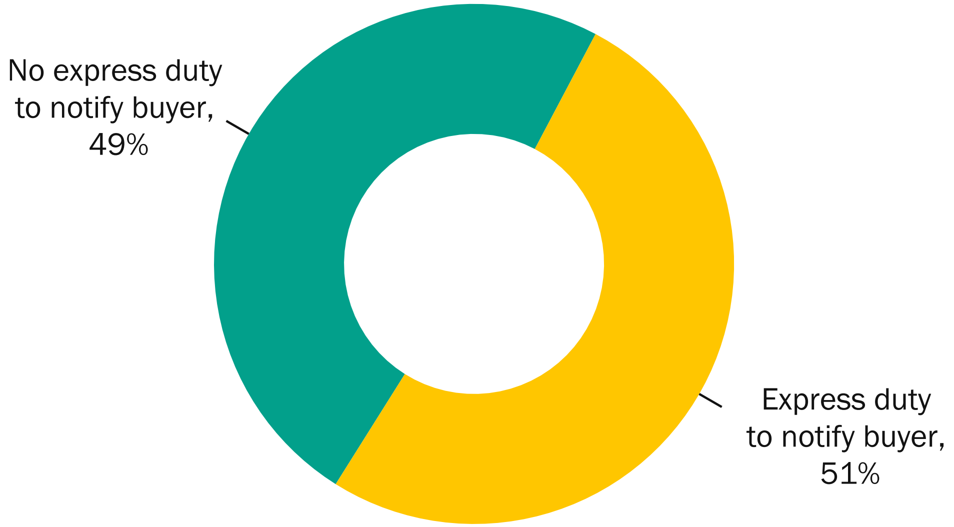
Covenants

Seller's Duty to Notify Buyer of Pre-Closing Breaches*

BREACHES OF REPRESENTATIONS AND WARRANTIES (2025 DEALS)



BREACHES OF COVENANTS (2025 DEALS)

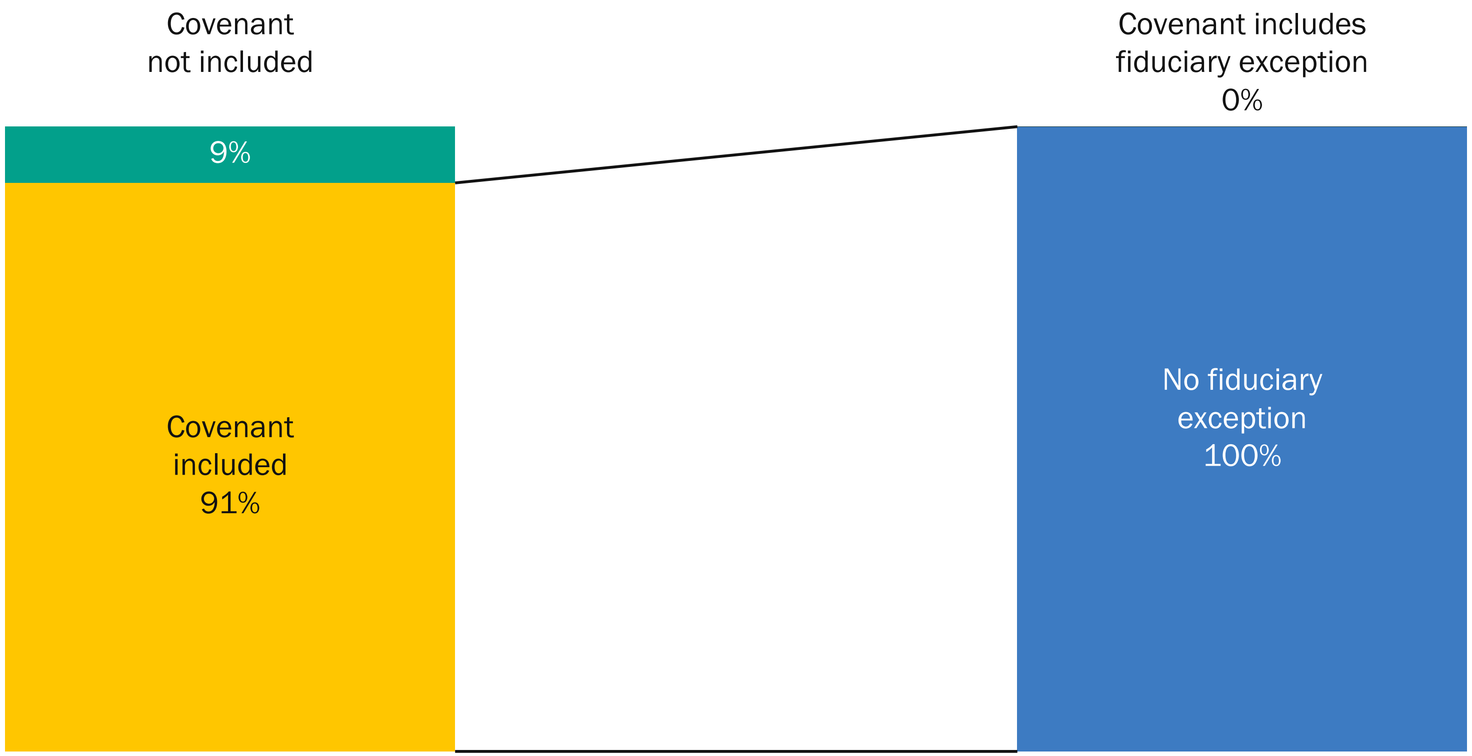


** Sample excludes "sign-and-close" deals.*

Covenants

No-Shop/No-Talk*

NO-SHOP/NO-TALK COVENANT INCLUSION† (2025 DEALS)



* *Sample excludes "sign-and-close" deals.*
† *Fiduciary exception subset excludes stock-purchase deals.*

Closing Conditions*

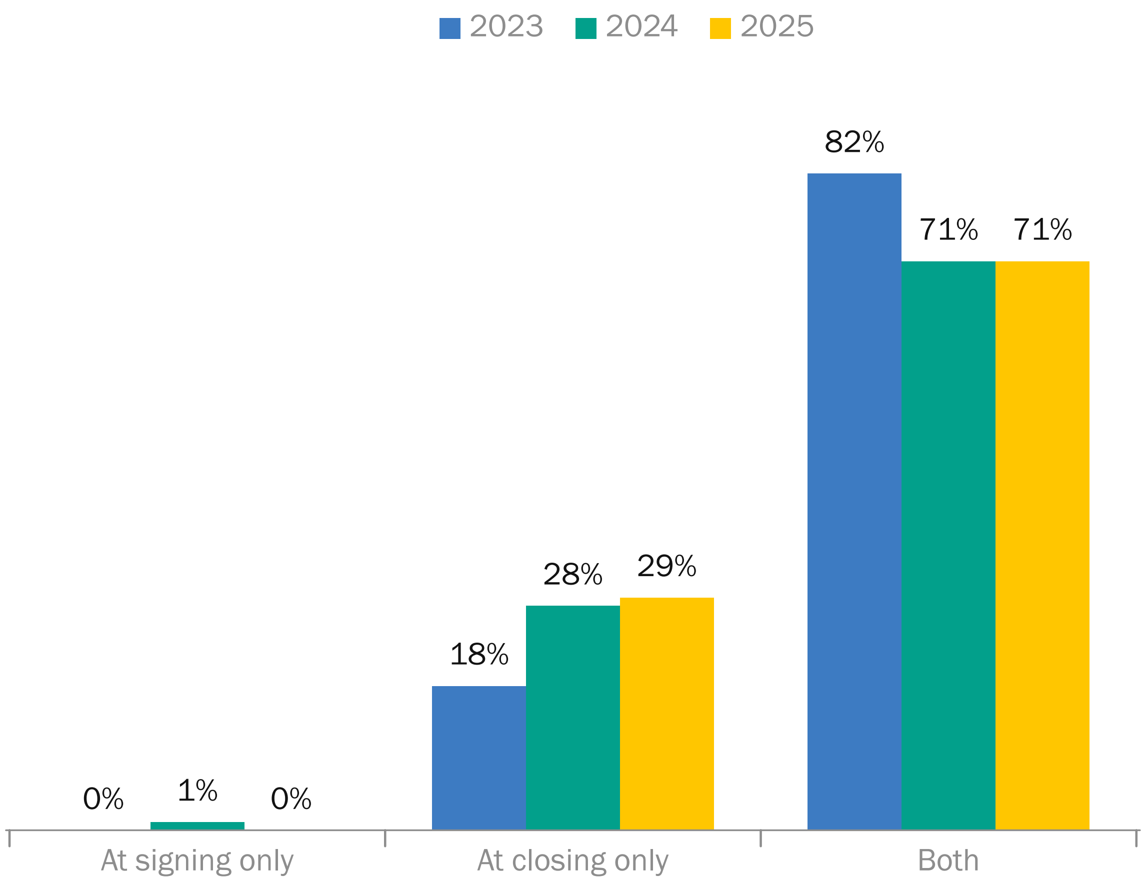
* *This section's analyses exclude "sign-and-close" deals.*

Accuracy of Sellers' Representations

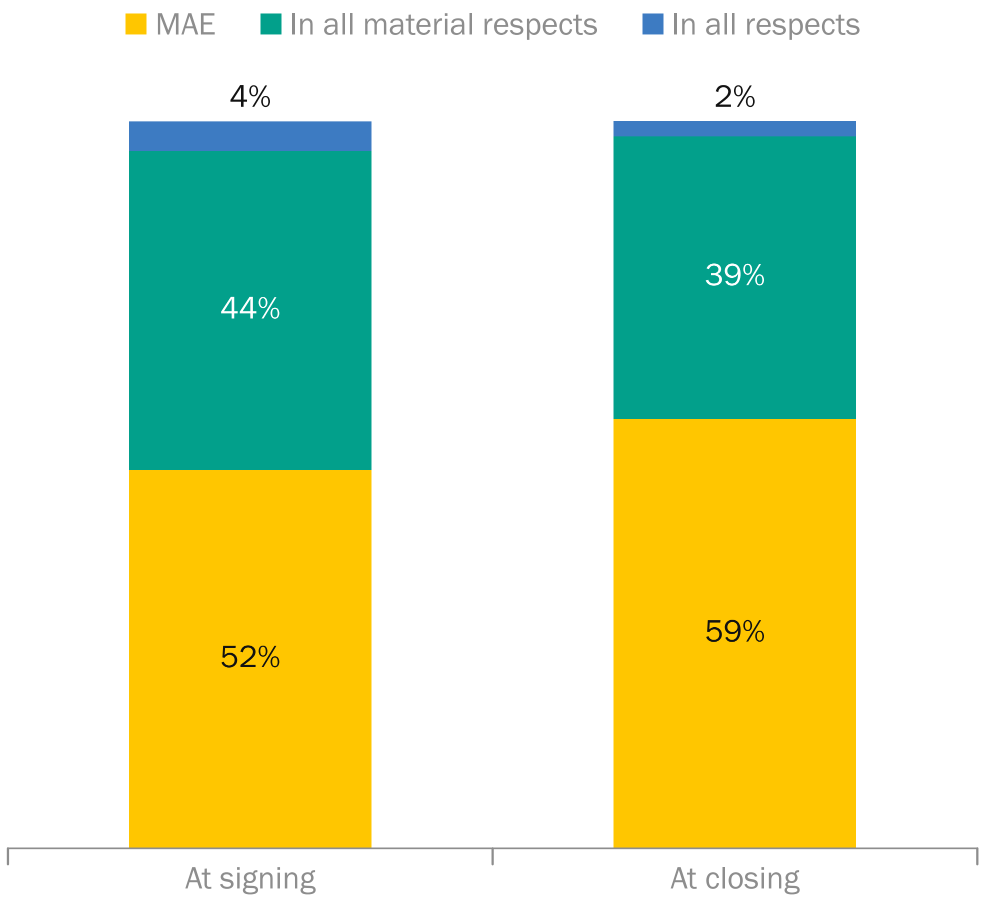
Accuracy and Materiality

See example terms on slide 103

ACCURACY: TIMING



ACCURACY: MATERIALITY (2025 DEALS)

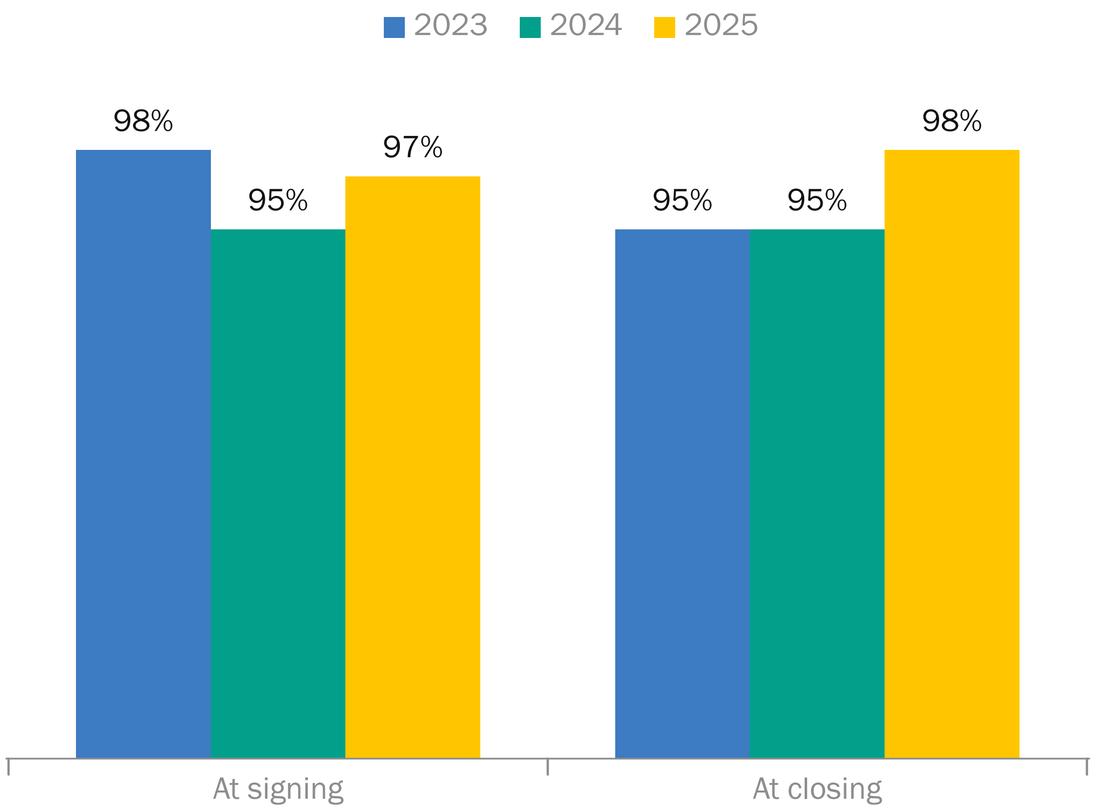


Accuracy of Sellers' Representations (Materiality)

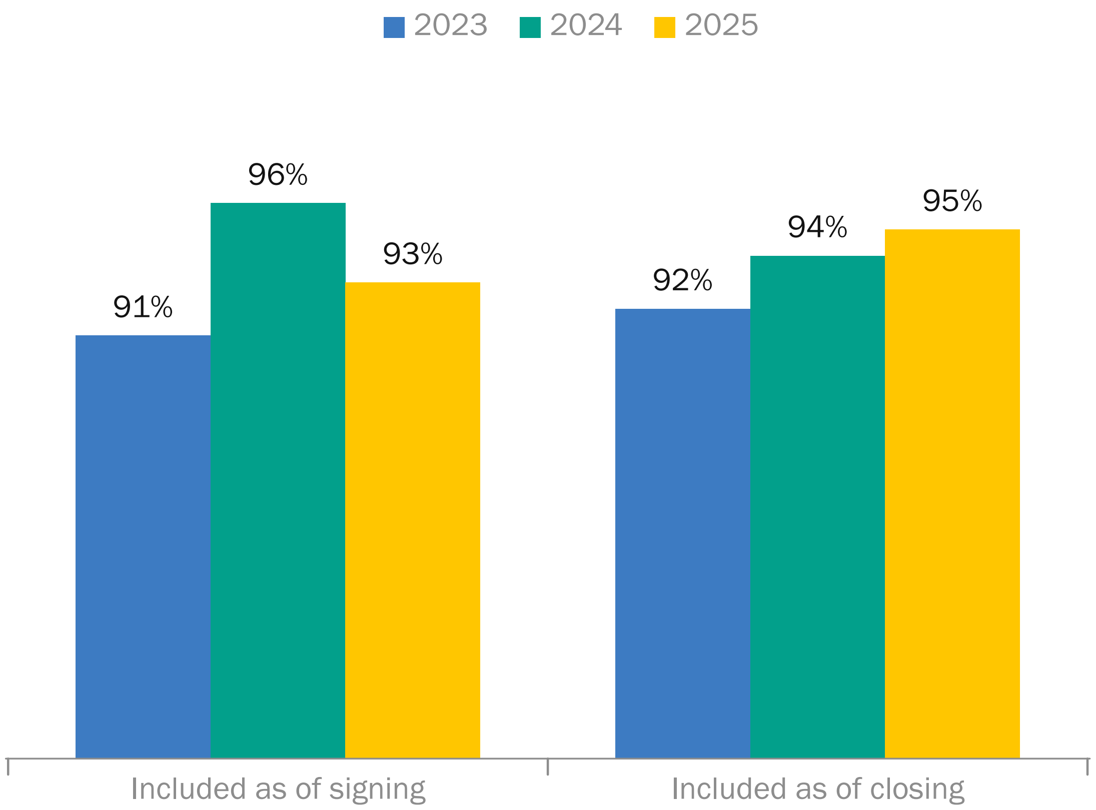
See example terms on slide 104

Subset: Deals with materiality or MAE qualifiers in the "accuracy of representations" condition

MAE QUALIFIER WITH CAPITALIZATION REPRESENTATION CARVEOUT



MATERIALITY SCRAPE FREQUENCY*

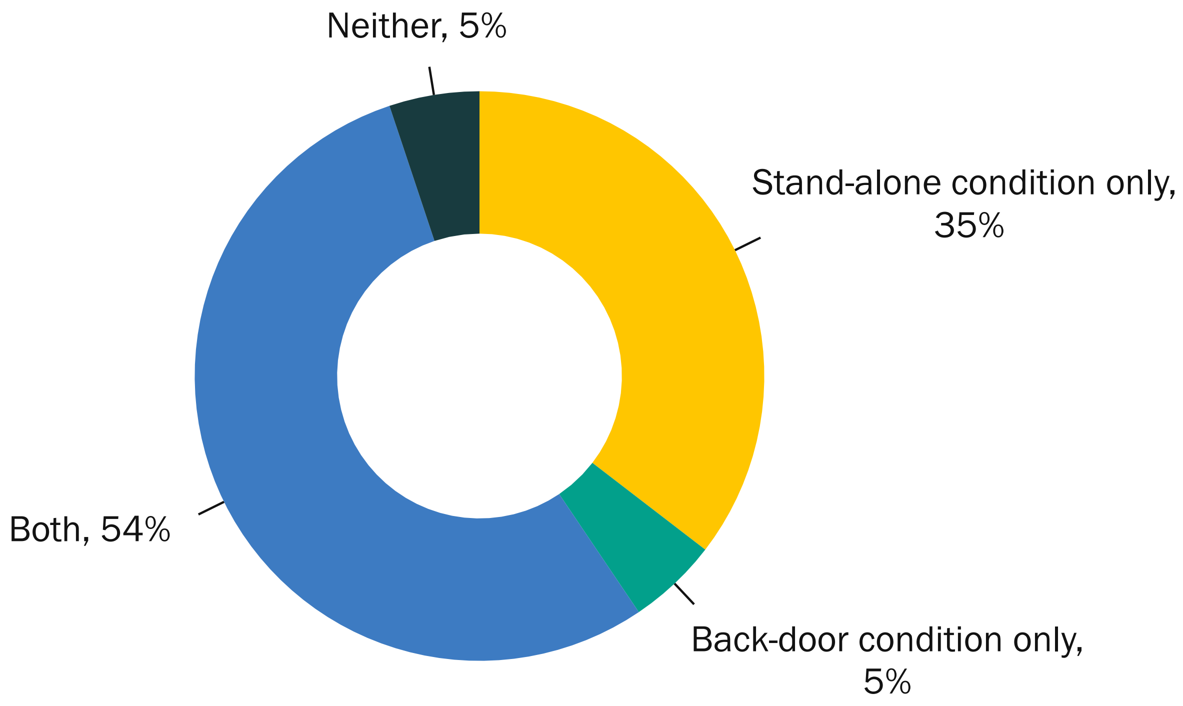


* *Deals with materiality or MAE qualifiers in the "accuracy of representations" condition*

“Material Adverse Change” Condition (“MAC”)

See example terms on slide 104

MAC CONDITION DETAILS (2025 DEALS)



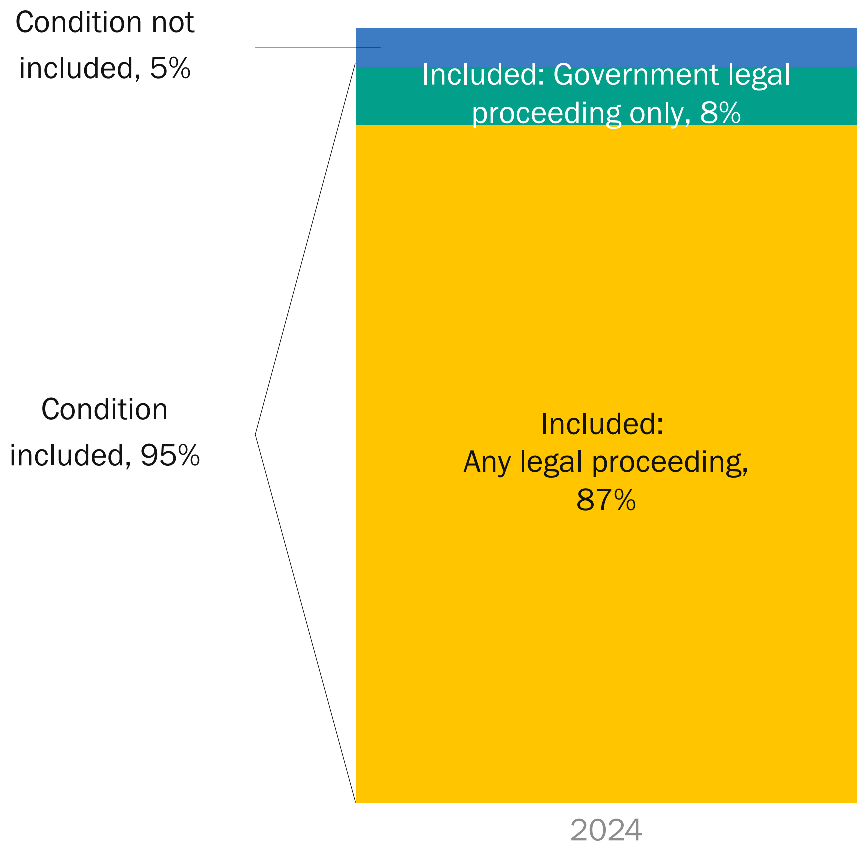
This data point is influenced by Transaction Value and Target Industry.

Visit SRS Acquiom MarketStandard® to learn more.

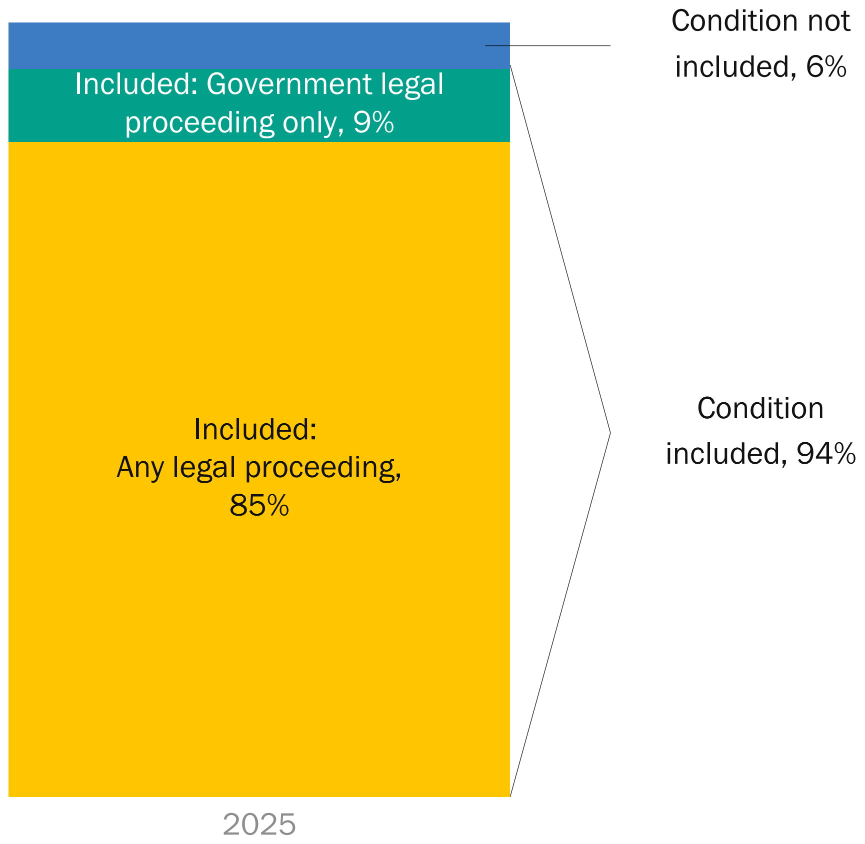
“No Legal Proceedings” Condition

See example terms on slide 105

SUBSET: 2024 DEALS



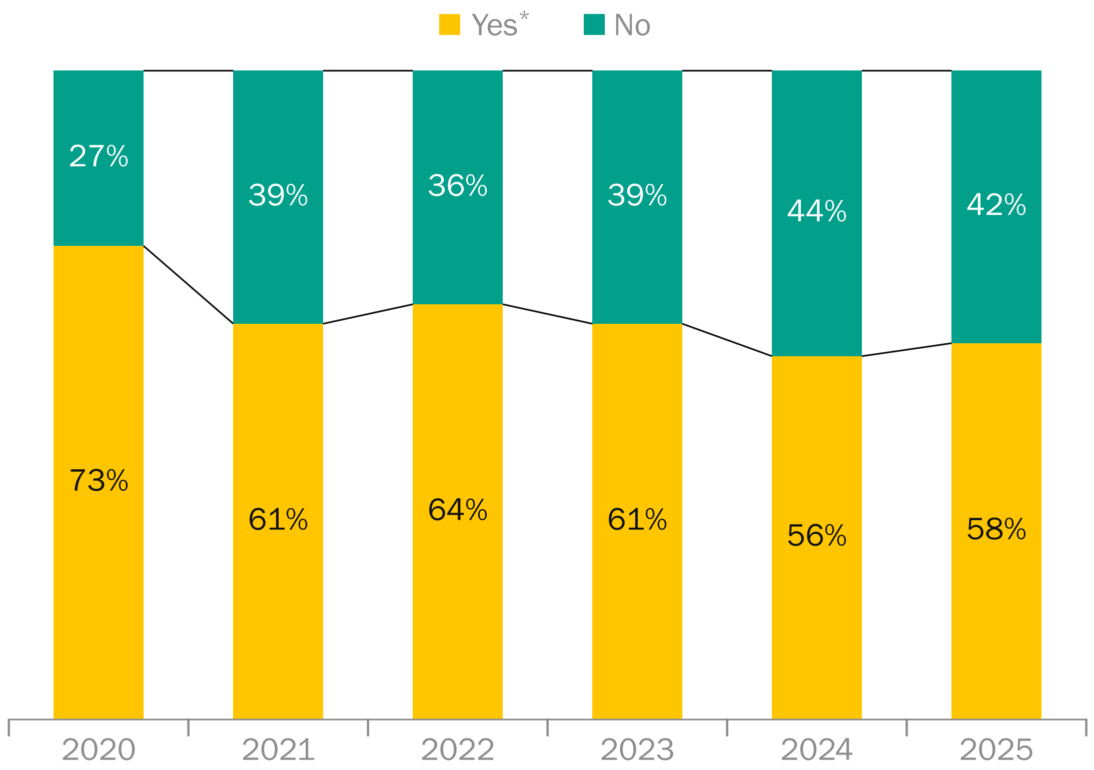
SUBSET: 2025 DEALS



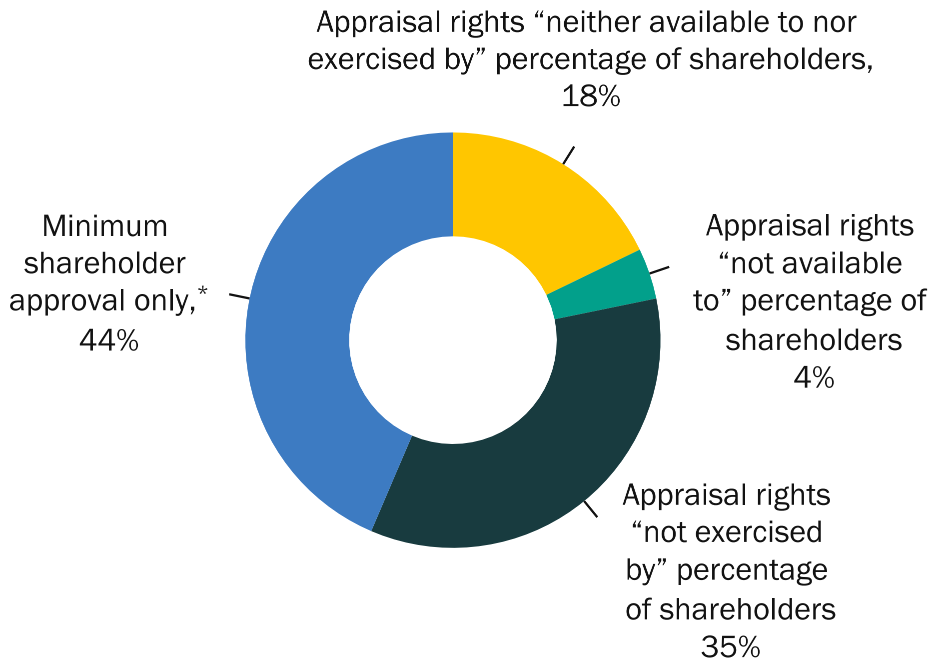
Appraisal Rights Condition

Subset: Mergers

APPRAISAL RIGHTS CONDITION INCLUDED



DRAFTING DETAILS (2025 DEALS INCLUDING CONDITION)



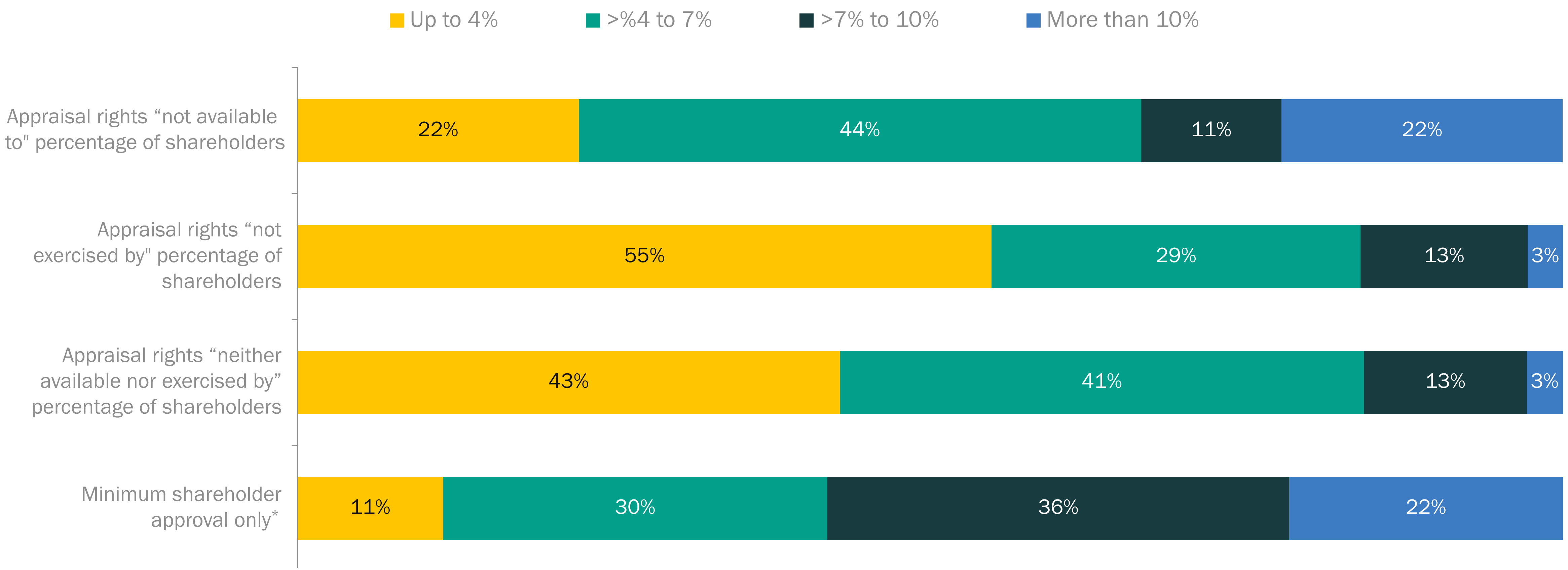
* *Includes deals without an express appraisal rights condition but with a condition specifying a minimum percentage of shareholder votes (on a fully diluted basis) approving the merger, effectively waiving appraisal rights.*

Appraisal Rights Condition

Thresholds

Subset: Mergers since 2022 with an appraisal rights condition

CONDITION THRESHOLD DETAILS



* *These deals did not include an express appraisal rights condition but did include a condition specifying a minimum percentage of shareholder votes (on a fully diluted basis) approving the merger, effectively waiving appraisal rights.*

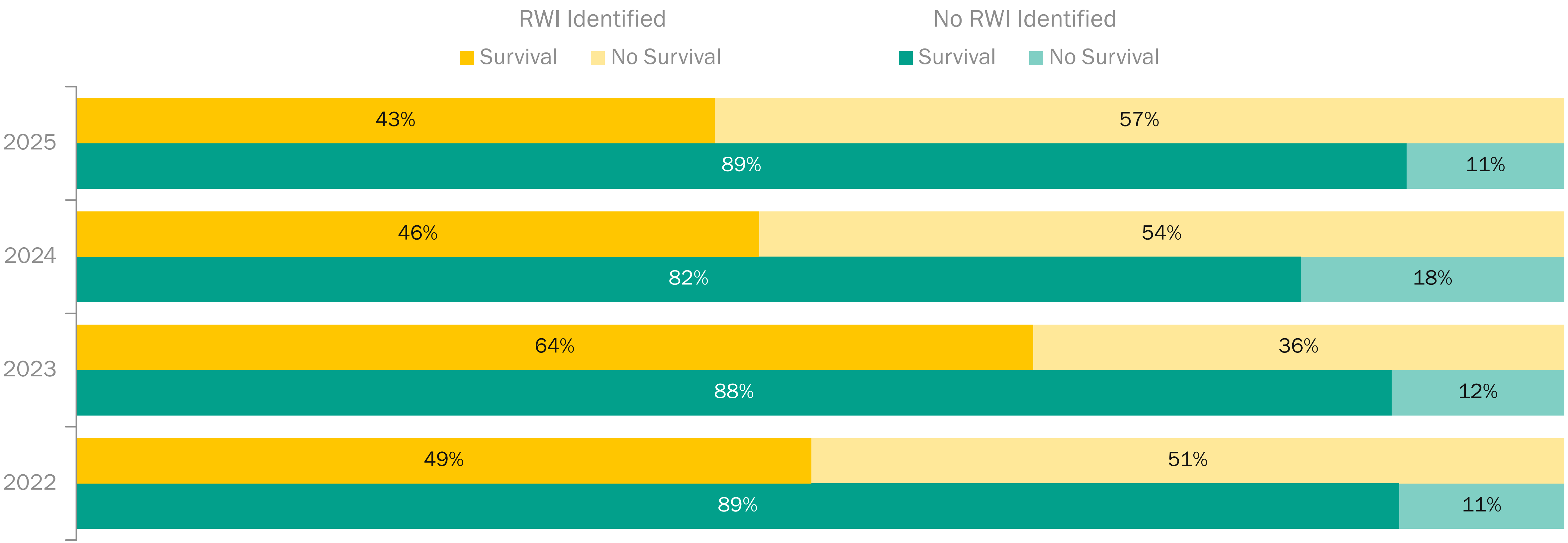
Indemnification

General Survival of Sellers' Representations and Warranties

KEY FINDING

32% of 2025 deals were structured as "no survival" of the Sellers' General Representations ("Fundamental" Representations and other specific warranties often still survive)

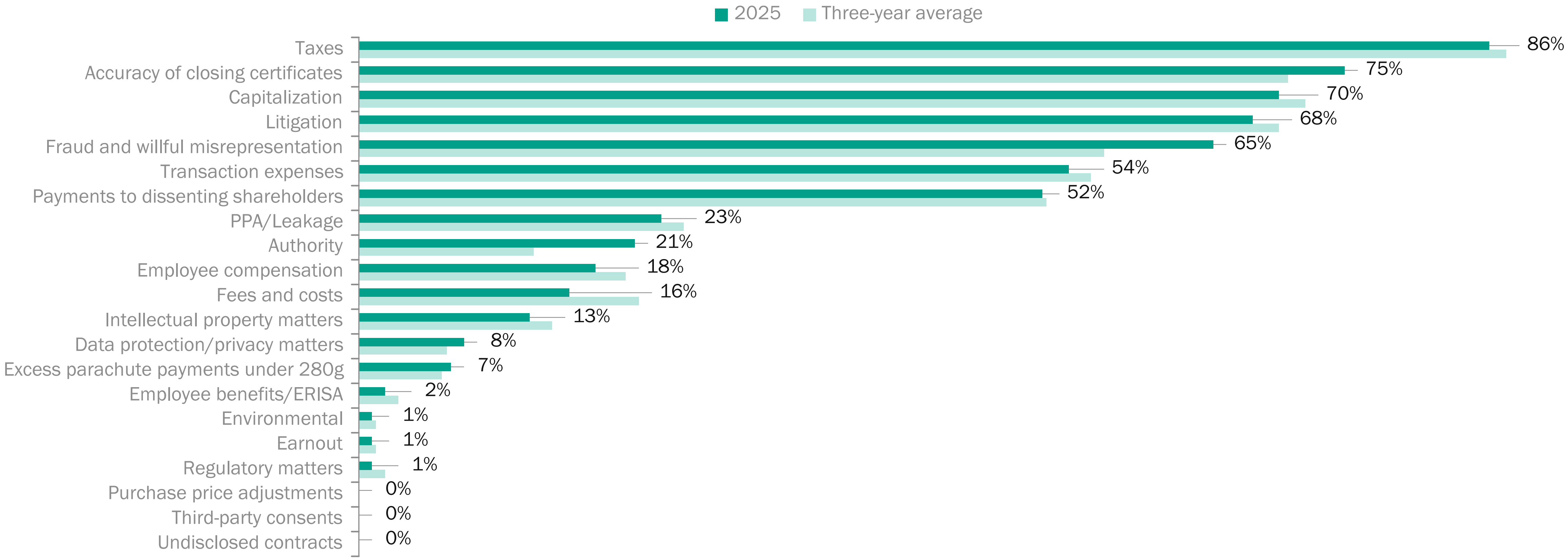
INFLUENCE OF REPS AND WARRANTIES INSURANCE (2022–2025)



SRSACQUIOM

Stand-Alone Indemnities*

FREQUENCY: 2025 DEALS COMPARED TO THE THREE-YEAR AVERAGE (2023–2025)†

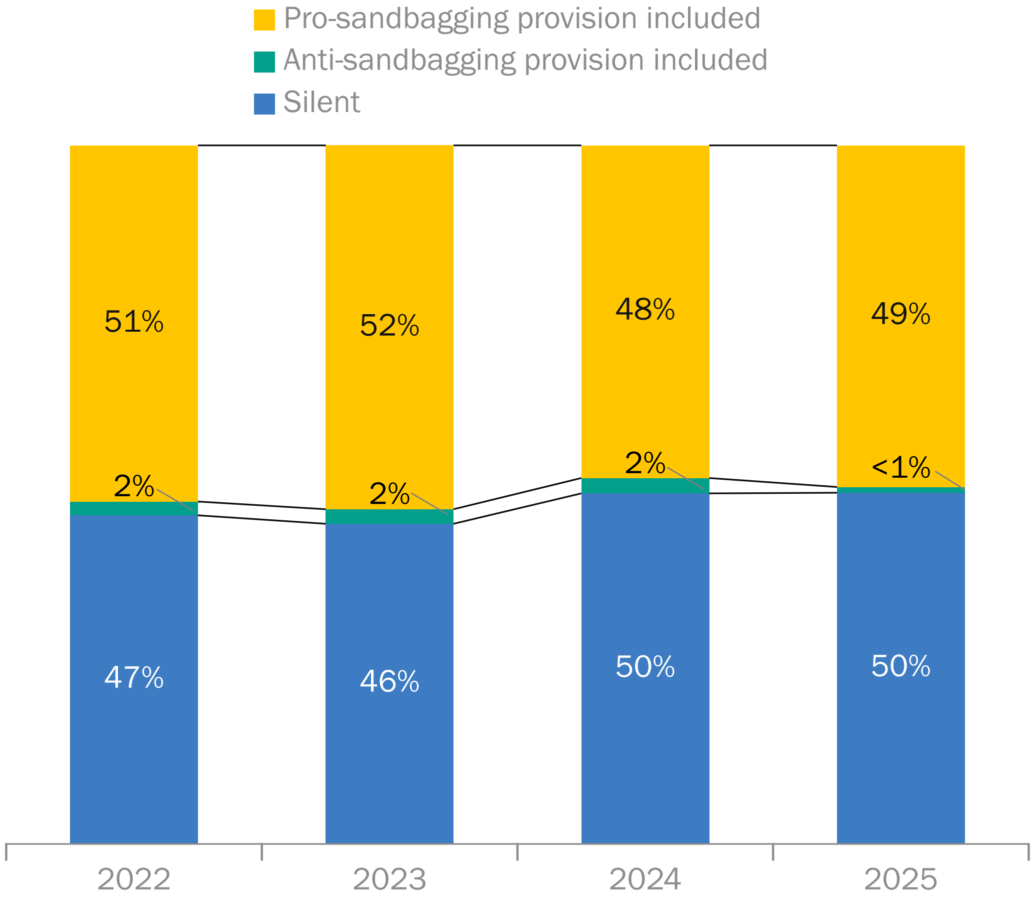


** Line items for which indemnification is expressly provided beyond the standard line-item indemnities for seller's breaches of (i) representations and warranties and (ii) covenants.*
† Percentages in the chart are for 2025 deals.

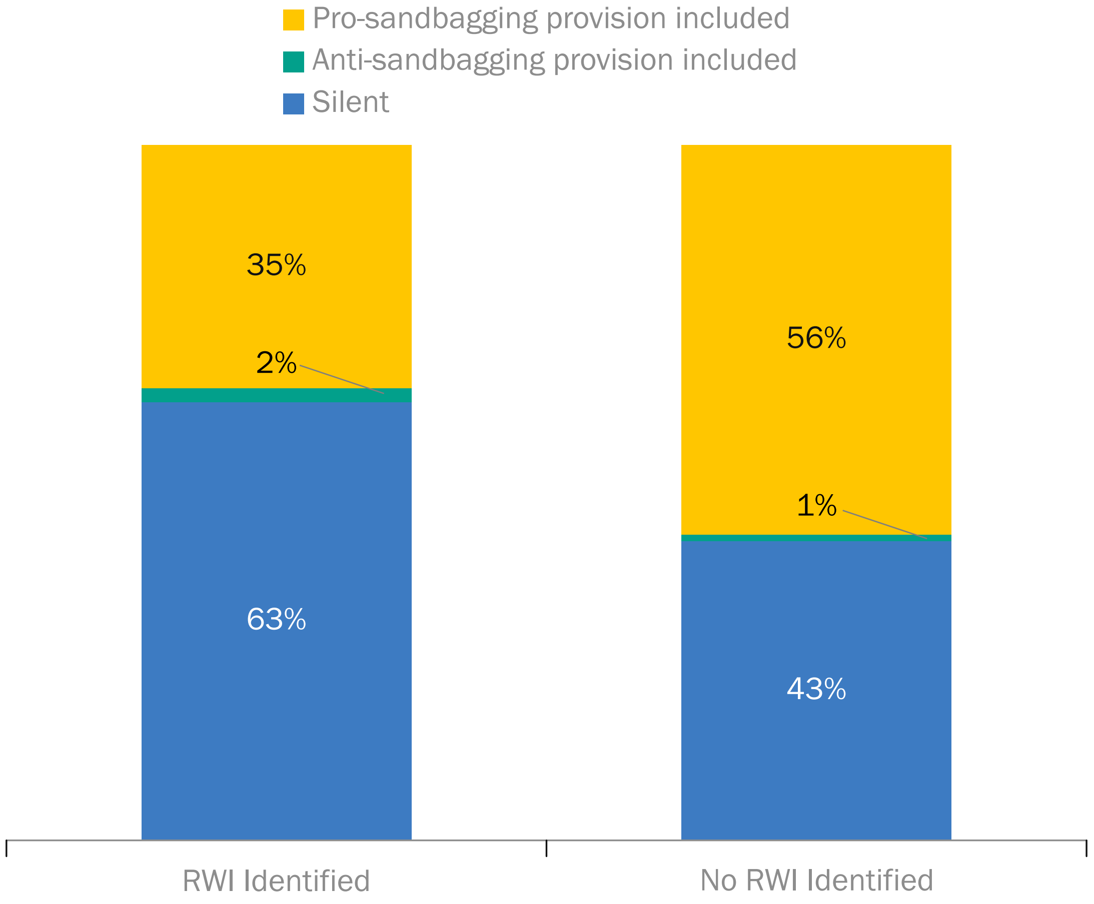
“Sandbagging”

See example terms on slide 105

YEAR-OVER-YEAR TREND



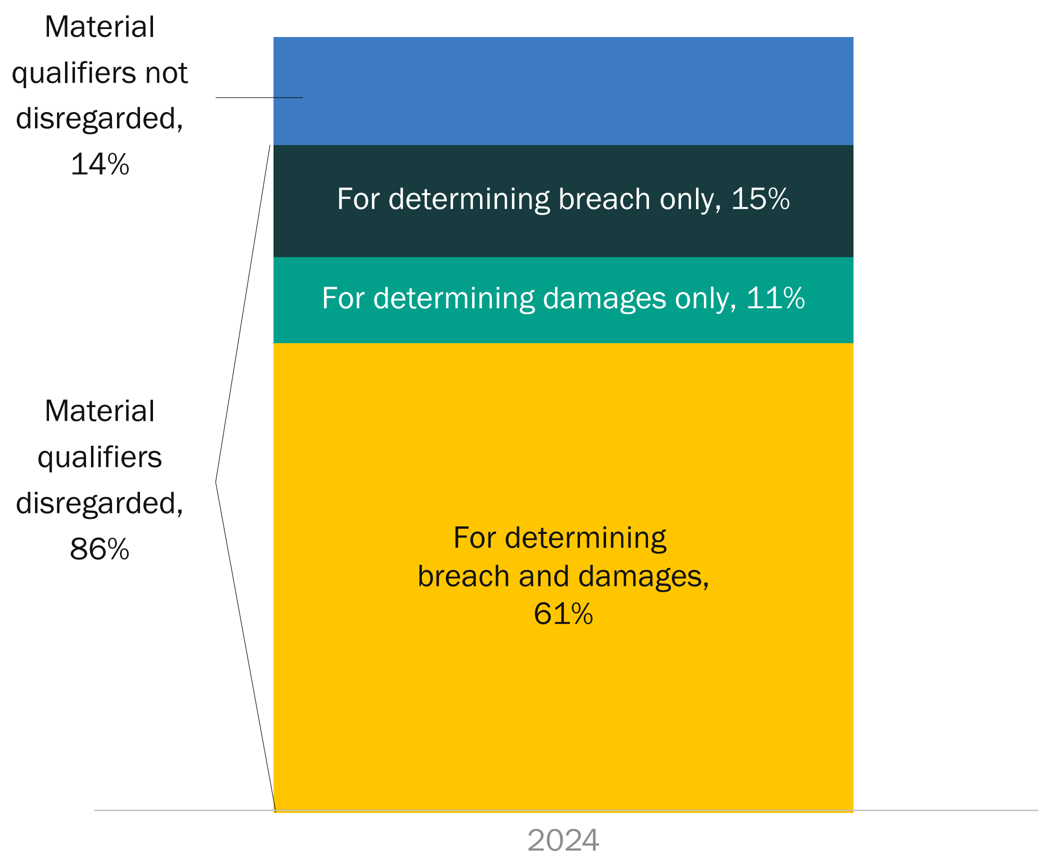
SANDBAGGING PROVISION, DEAL YEARS 2022–2025



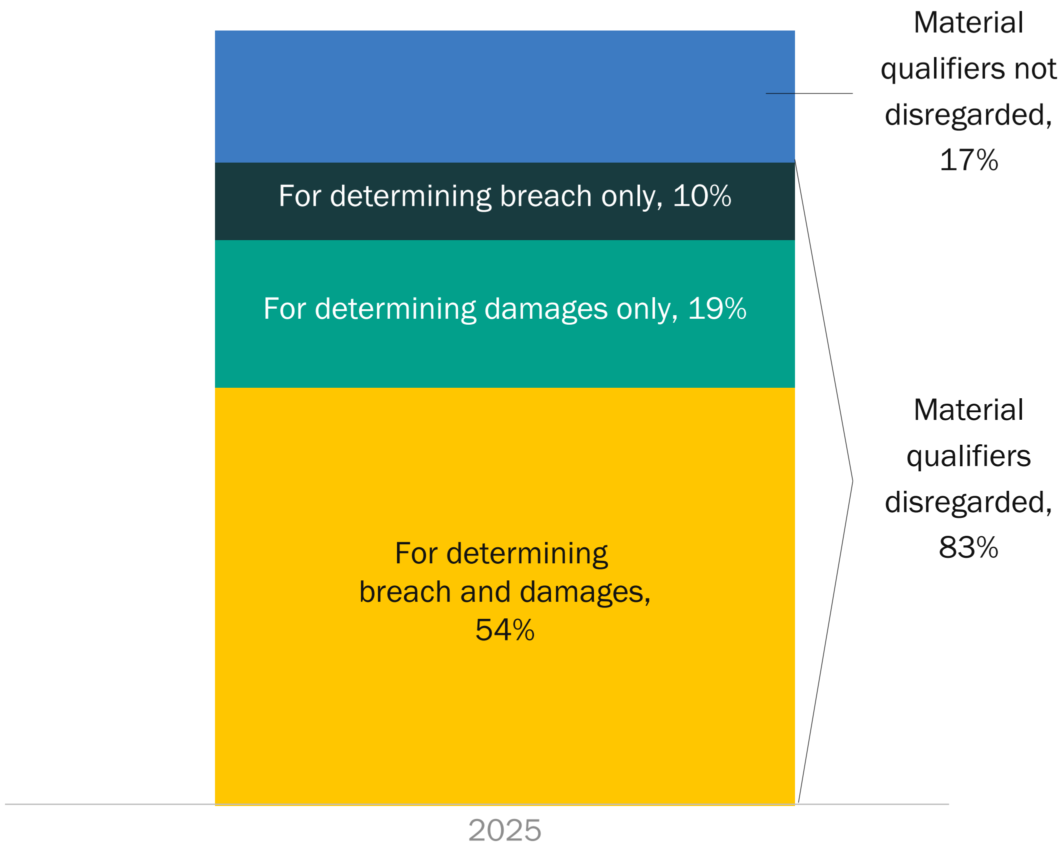
“Materiality Scrape” Inclusion

See example terms on slide 105

SUBSET: 2024 DEALS



SUBSET: 2025 DEALS

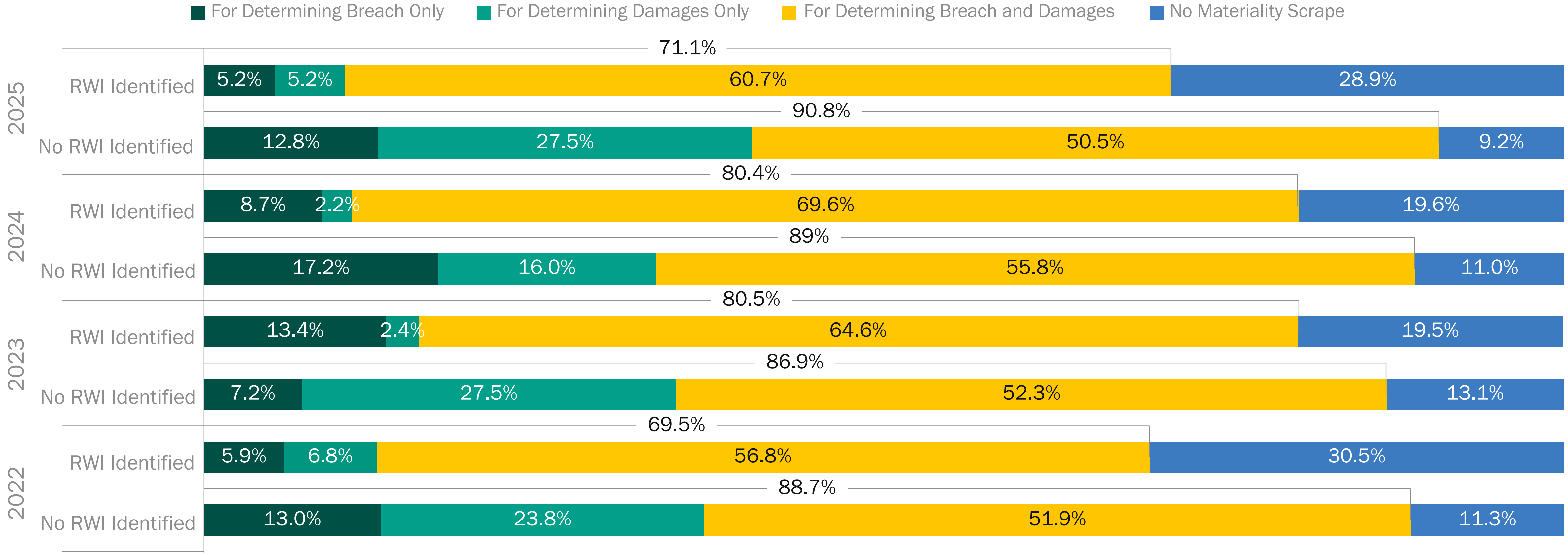


“Materiality Scrape”

Influence of RWI

See example terms on slide 105

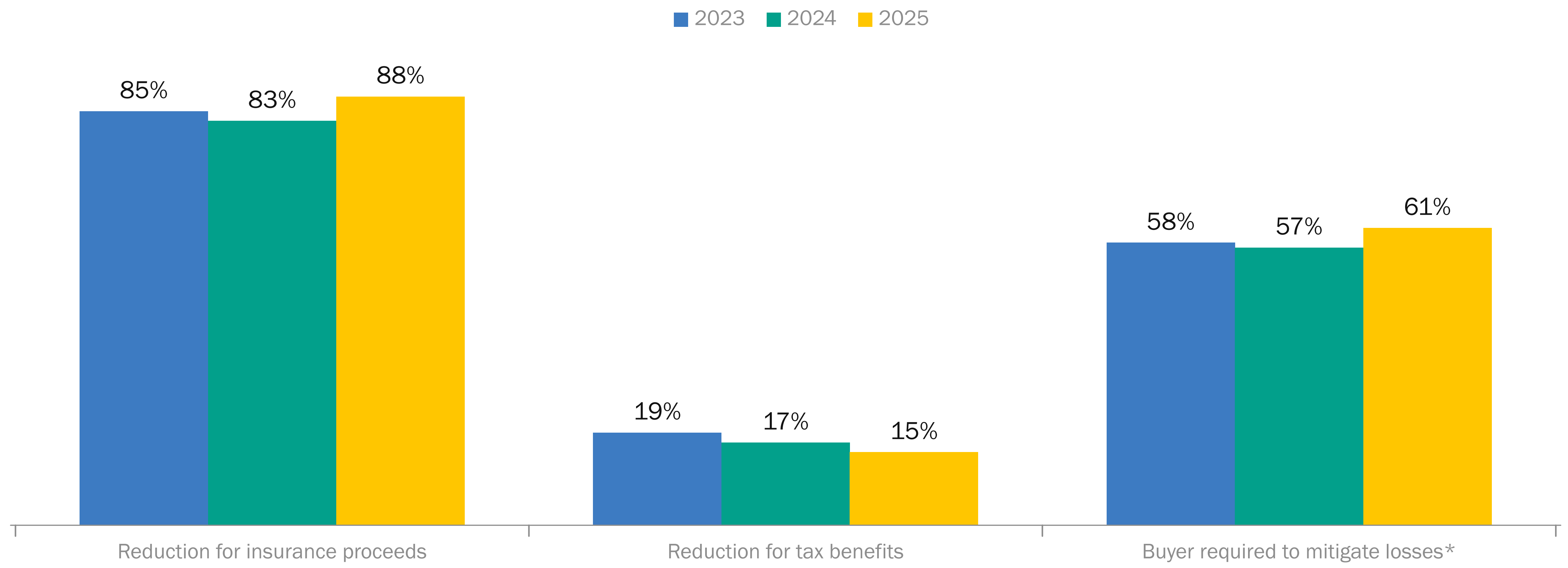
MATERIALITY SCRAPE INCLUDED (2022–2025)



Reductions Against Buyer’s Indemnification Claims

See example terms on slide 106

PROVISION INCLUDED

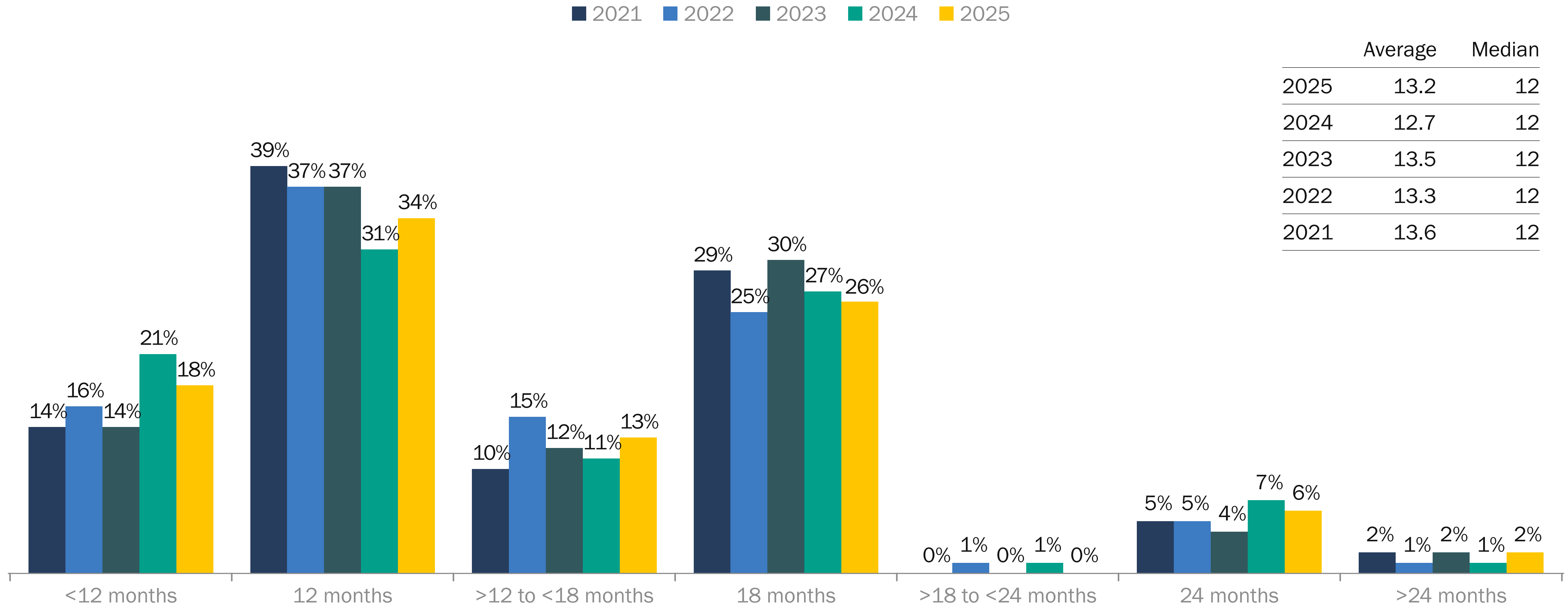


** Includes agreements requiring the buyer to seek payments under applicable insurance policies.*

General Survival Period/Time to Assert Claims

See example terms on slide 107

SURVIVAL PERIOD (2025 MEDIAN: 12 MONTHS)

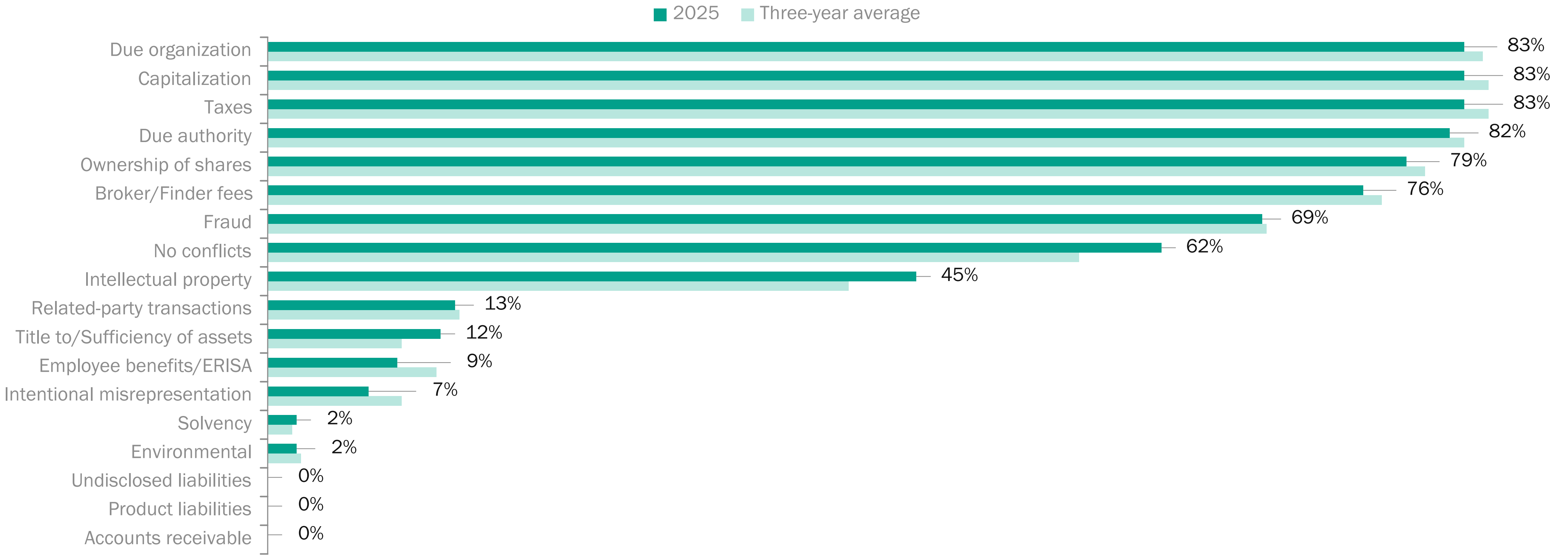


	Average	Median
2025	13.2	12
2024	12.7	12
2023	13.5	12
2022	13.3	12
2021	13.6	12

Survival/Time to Assert Claims

Carveouts to General Survival Period*

CARVEOUT FREQUENCY: 2025 DEALS COMPARED TO THE THREE-YEAR AVERAGE (2023–2025)†



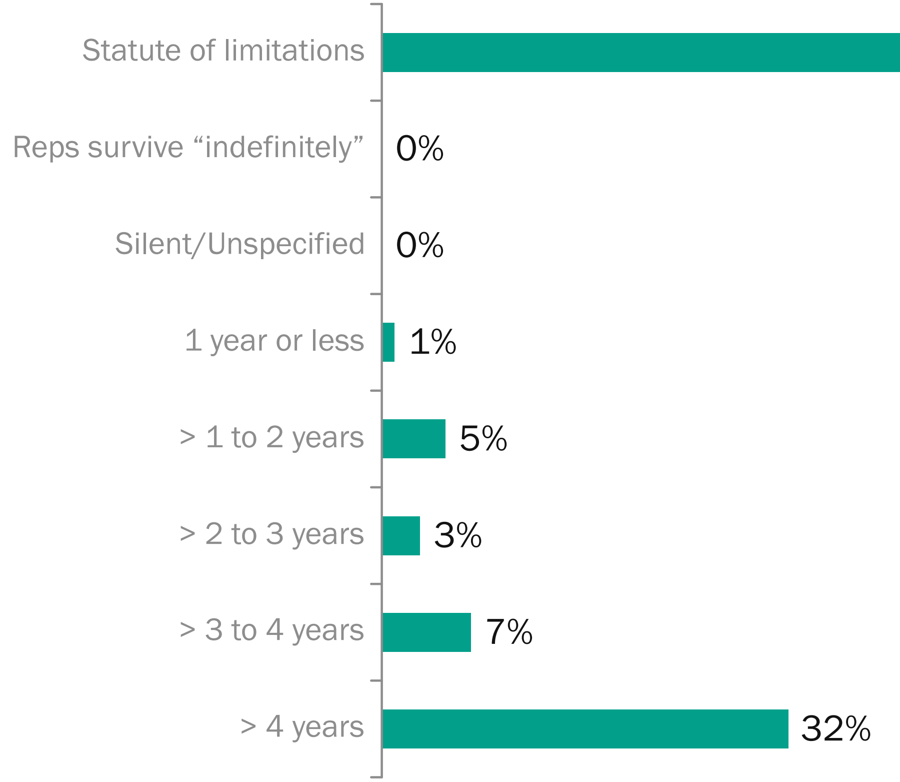
** Matters subject to carveouts survive longer than the general survival period.*
† Percentages in the chart are for 2025 deals.

Second-Level Survival

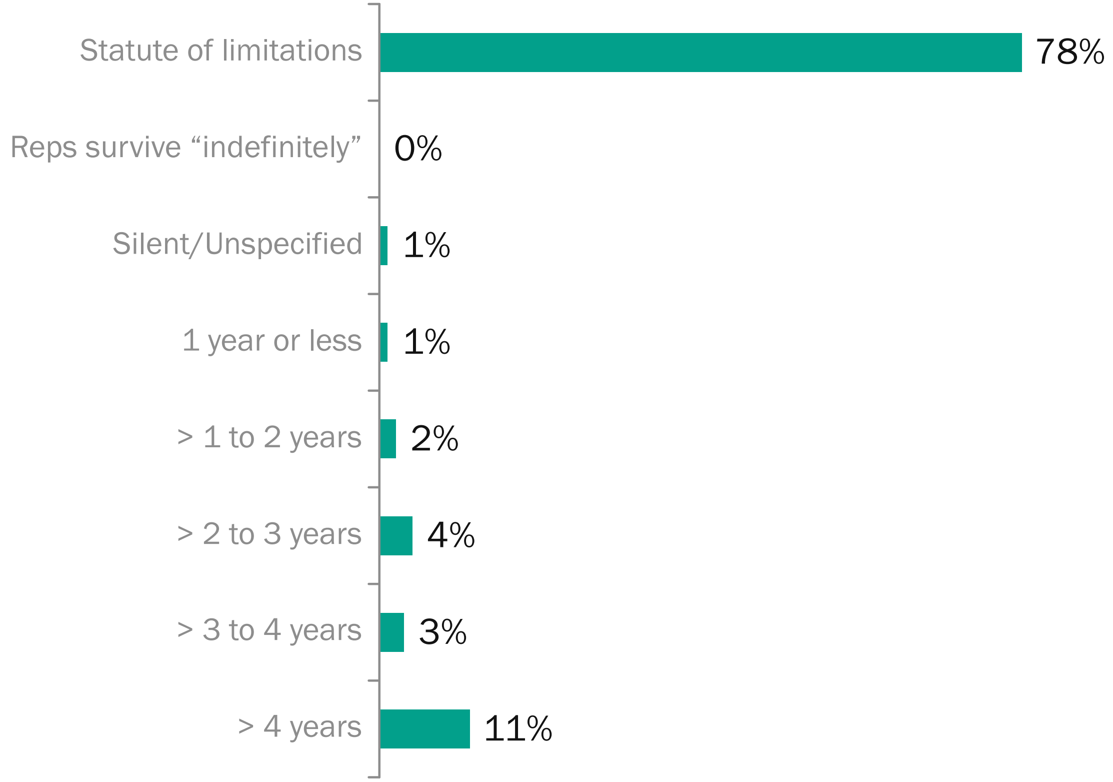
"Fundamental" and Tax Representations

Subset: 2025 deals that include the specified carveout. Years below denote additional survival time after expiration of the general survival period.

GROUP OF "FUNDAMENTAL" REPRESENTATIONS*



TAX REPRESENTATIONS

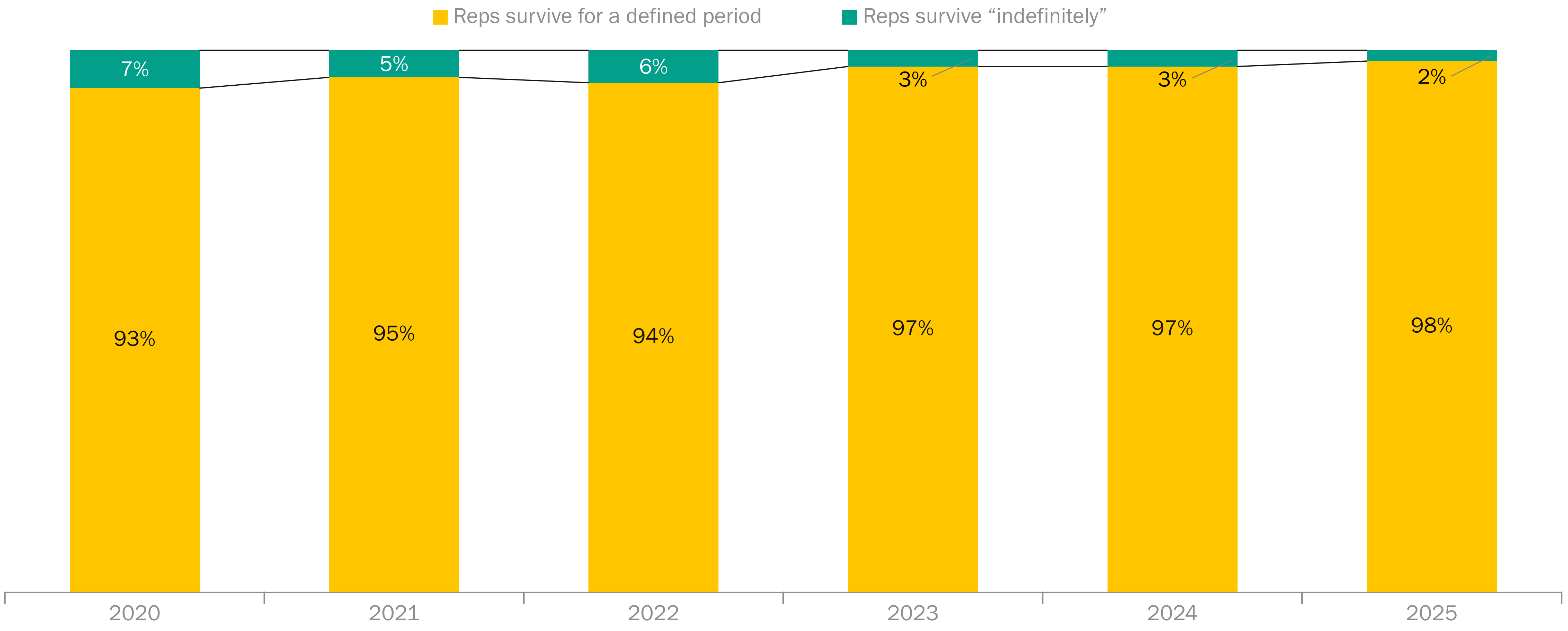


** For example: due organization, due authority, capitalization, etc. (other than taxes, intellectual property and fraud).*

Survival/Time to Assert Claims

Carveouts to General Survival Period

"FUNDAMENTAL" REPRESENTATIONS CARVED OUT FROM THE GENERAL SURVIVAL PERIOD (MERGERS ONLY)

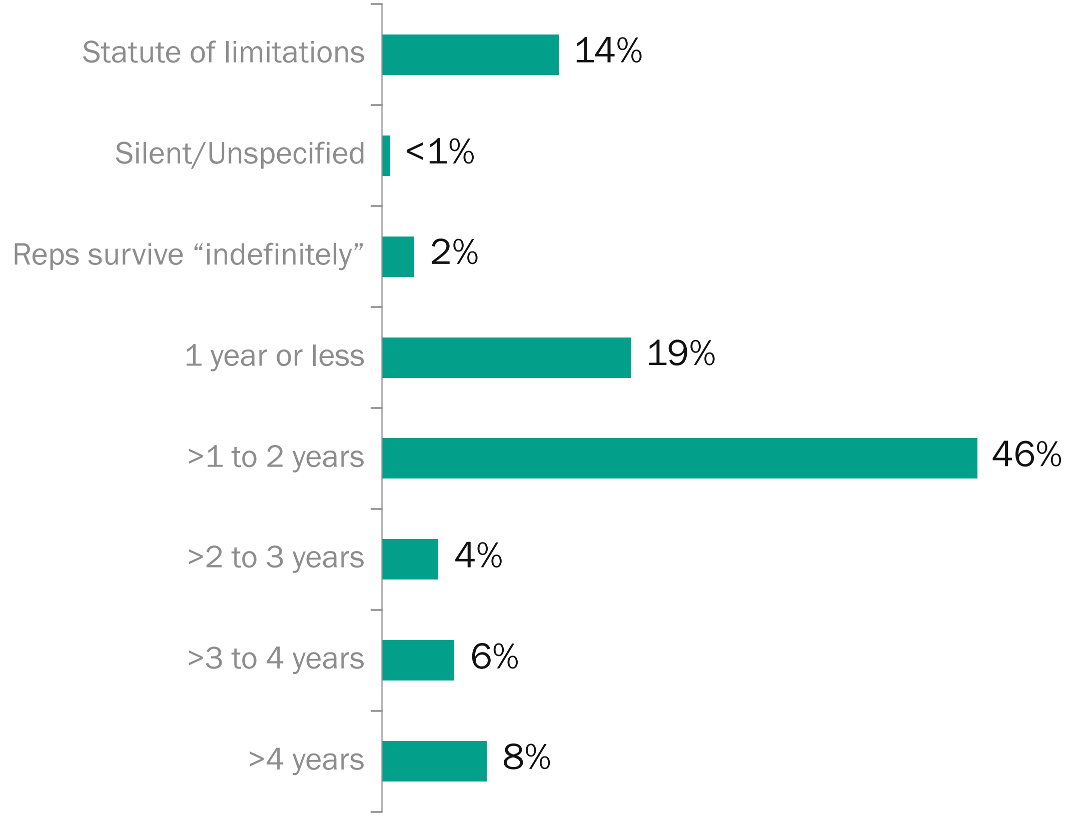


Second-Level Survival

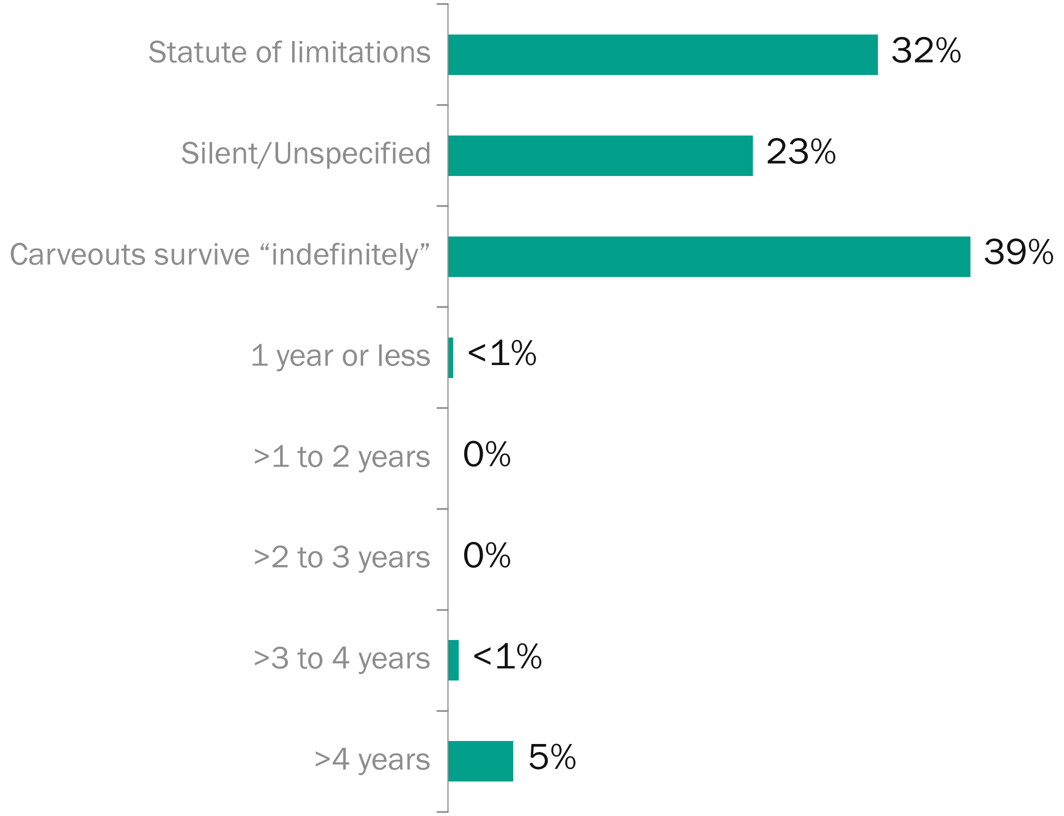
IP Representations and Fraud

Subset: 2025 deals that include the specified carveout. Years below denote additional survival time after expiration of the general survival period.

INTELLECTUAL PROPERTY REPRESENTATIONS



FRAUD/INTENTIONAL MISREPRESENTATION

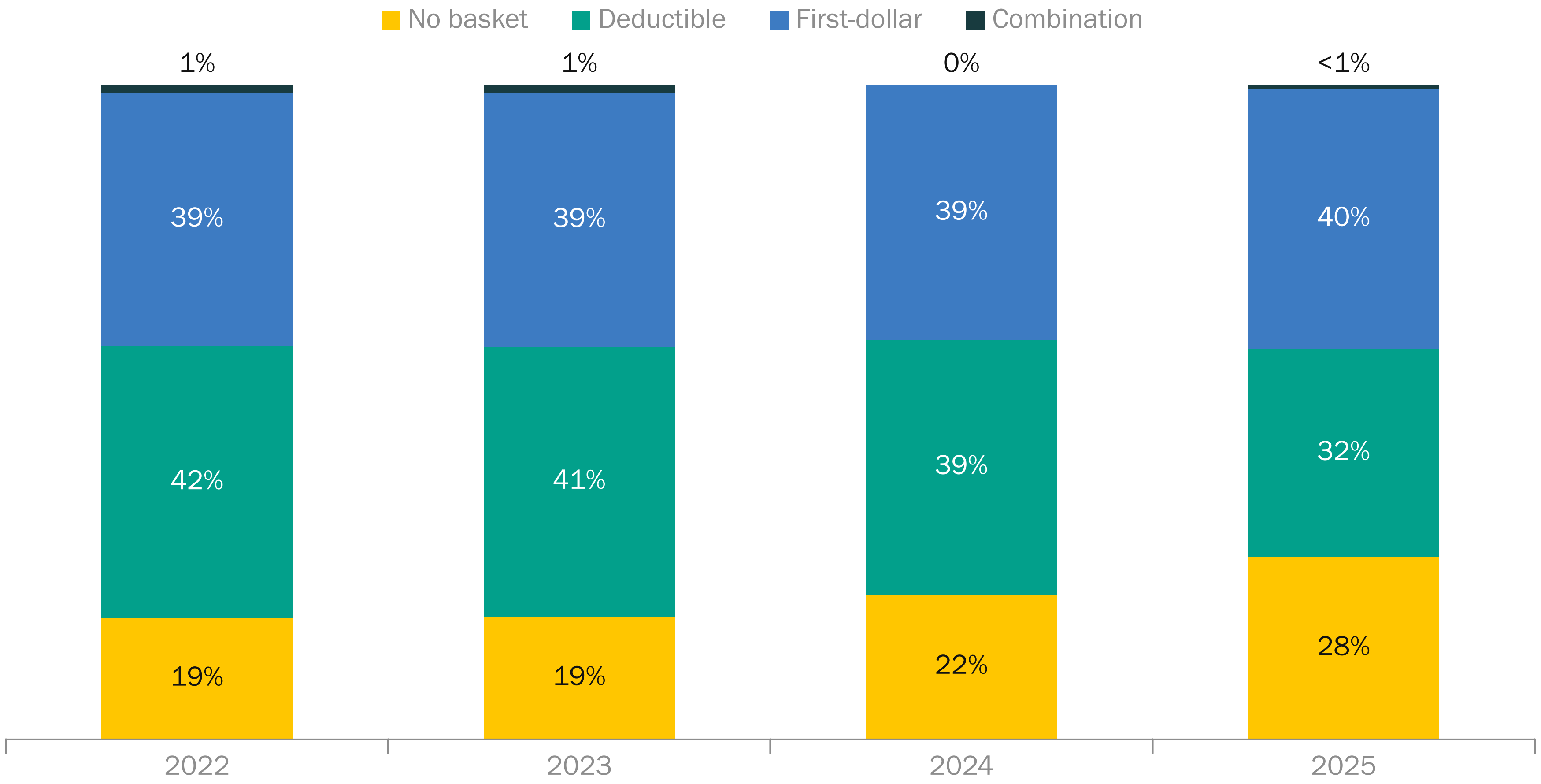


Baskets

Definitions

See example terms on slide 107

BASKET FREQUENCY



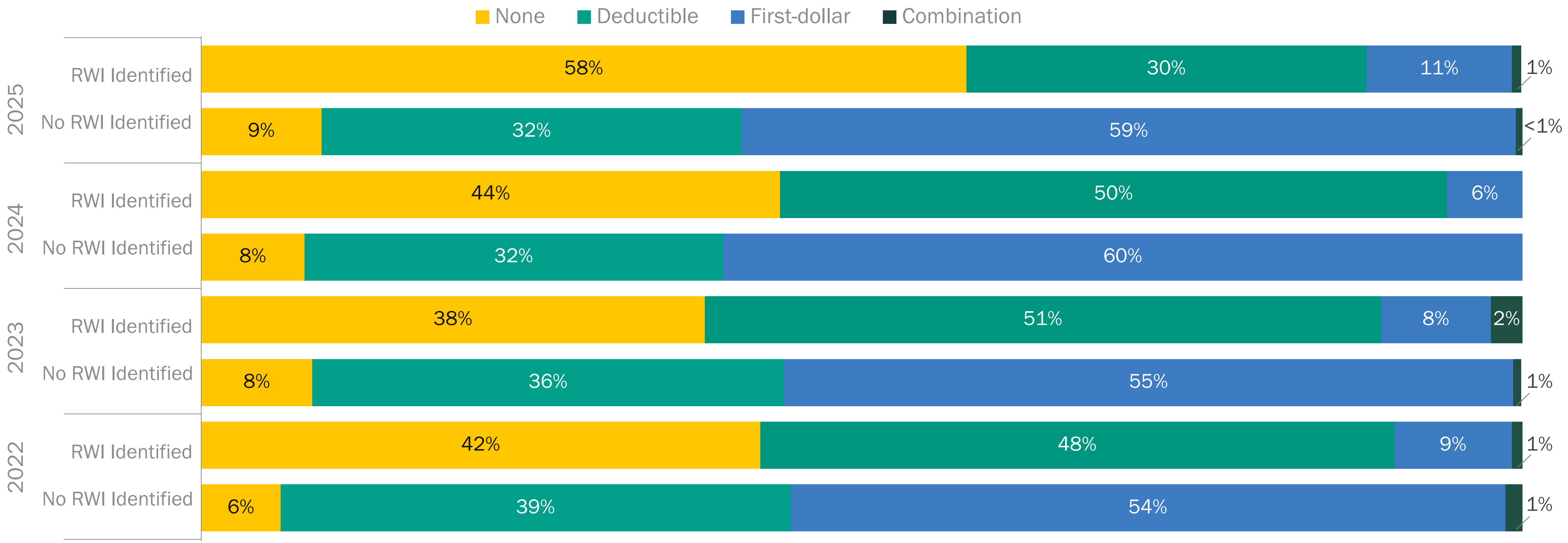
For more information, see the SRS Acquiom checklist:

[M&A Seller Checklist: Post-Close Drafting Considerations]

Baskets

Influence of RWI

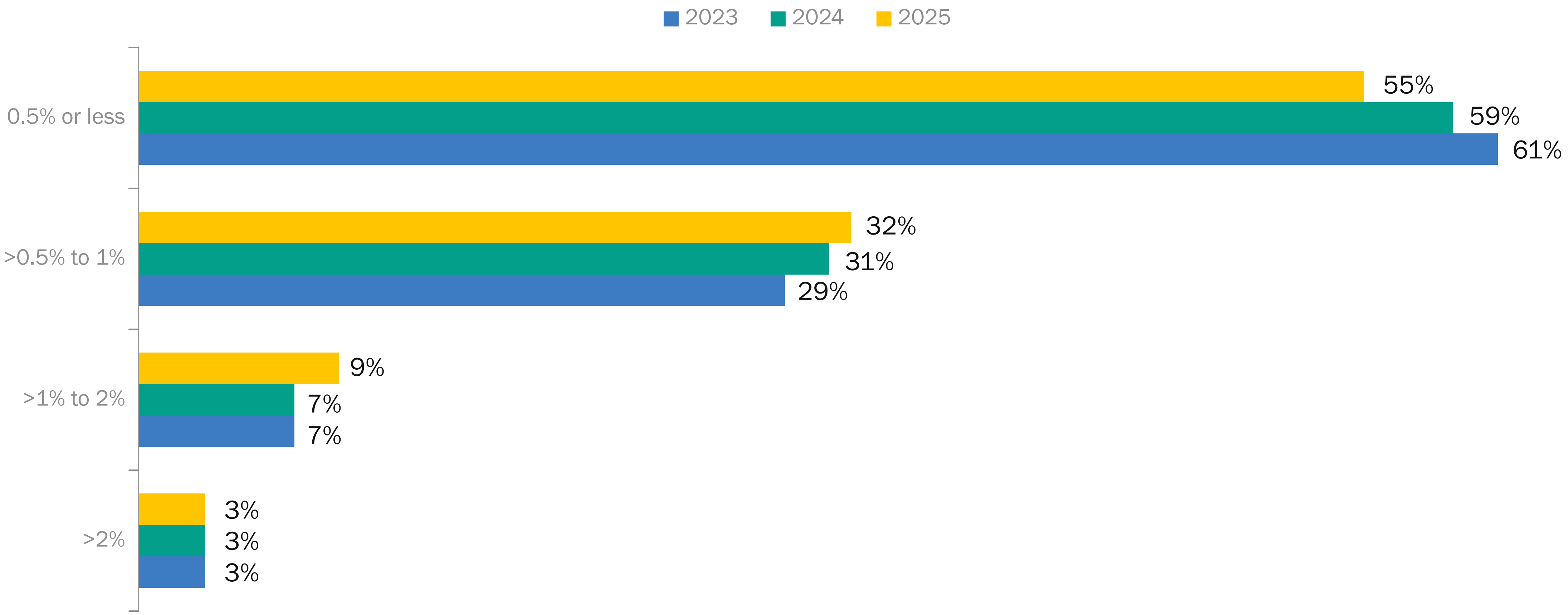
BASKET TYPE DISTRIBUTION, DEALS 2022–2025



Baskets as a Percentage of Transaction Value

Subset: Deals with deductible and first-dollar baskets

BASKET SIZES

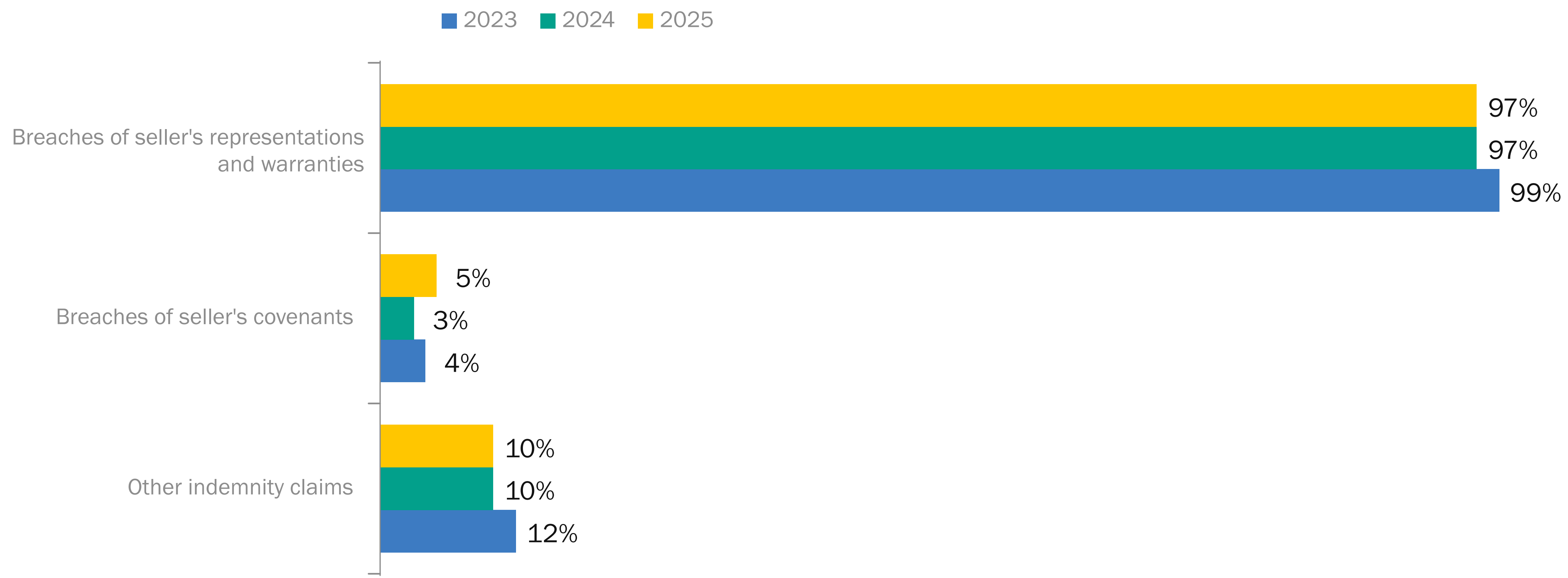


Baskets

General Coverage*

Subset: Deals with baskets

COVERAGE DETAILS



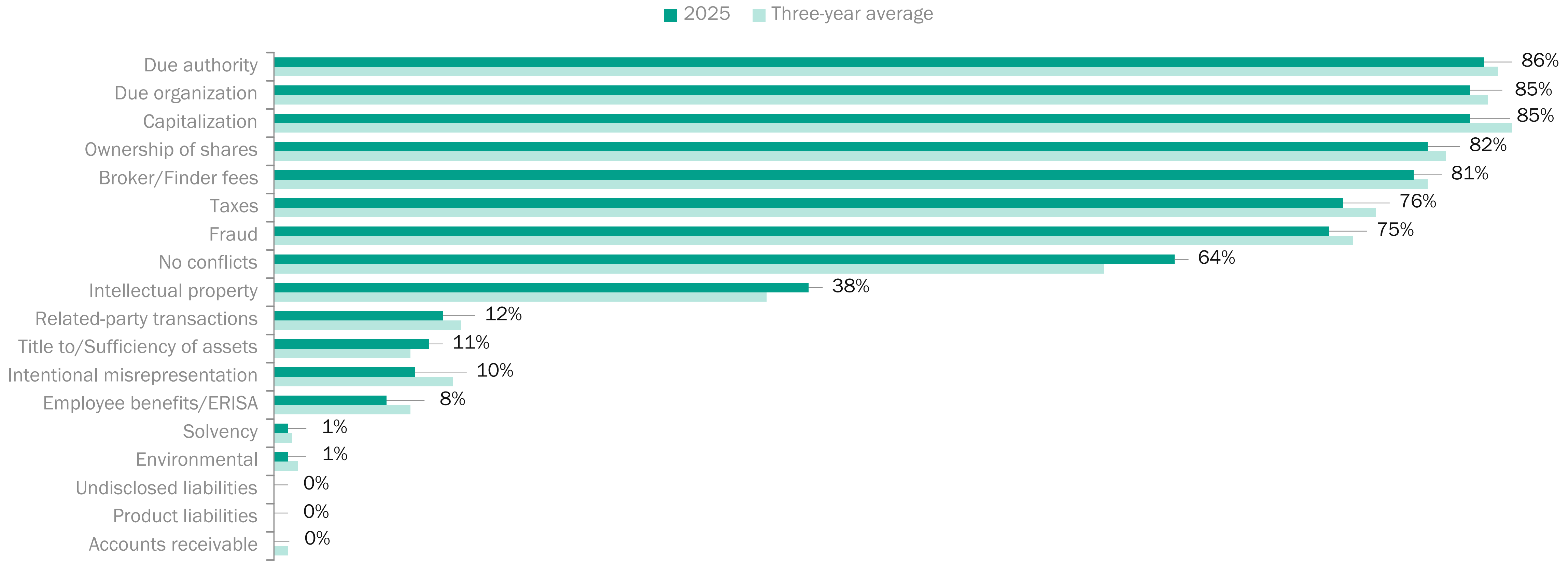
Carveouts to general basket coverage are discussed on the next slide.

Baskets

Carveouts

Subset: 2025 deals with baskets

CARVEOUT FREQUENCY: 2025 DEALS COMPARED TO THE THREE-YEAR AVERAGE (2023–2025)†



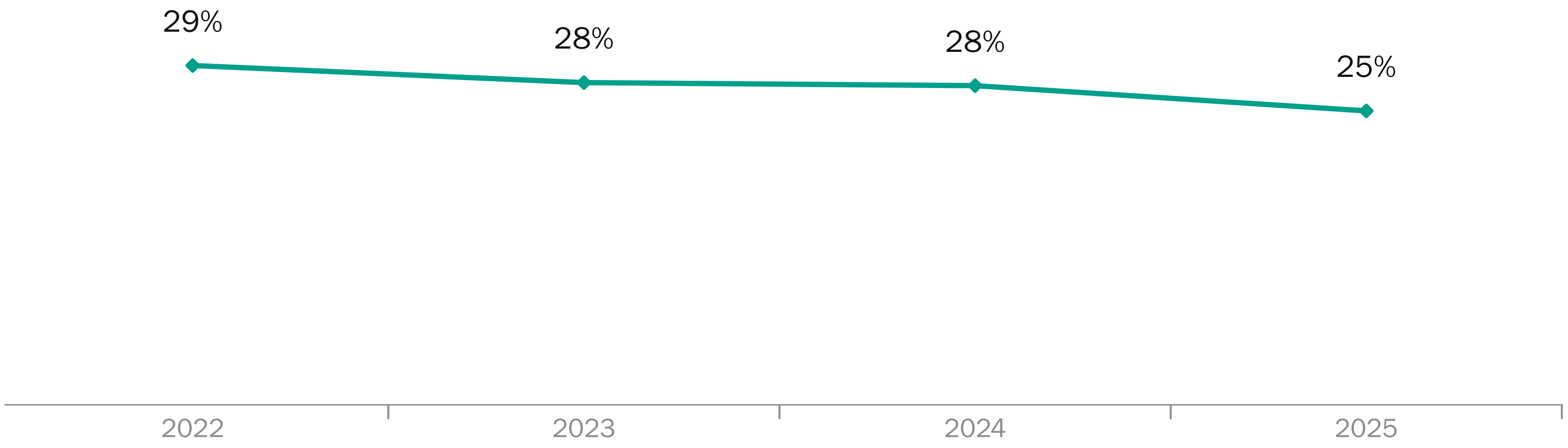
† Percentages in the chart are for 2025 deals.

Baskets

Eligible Claim Threshold

See example terms on slide 108

THRESHOLD INCLUDED, YEAR-OVER-YEAR



This data point is influenced by Transaction Value.

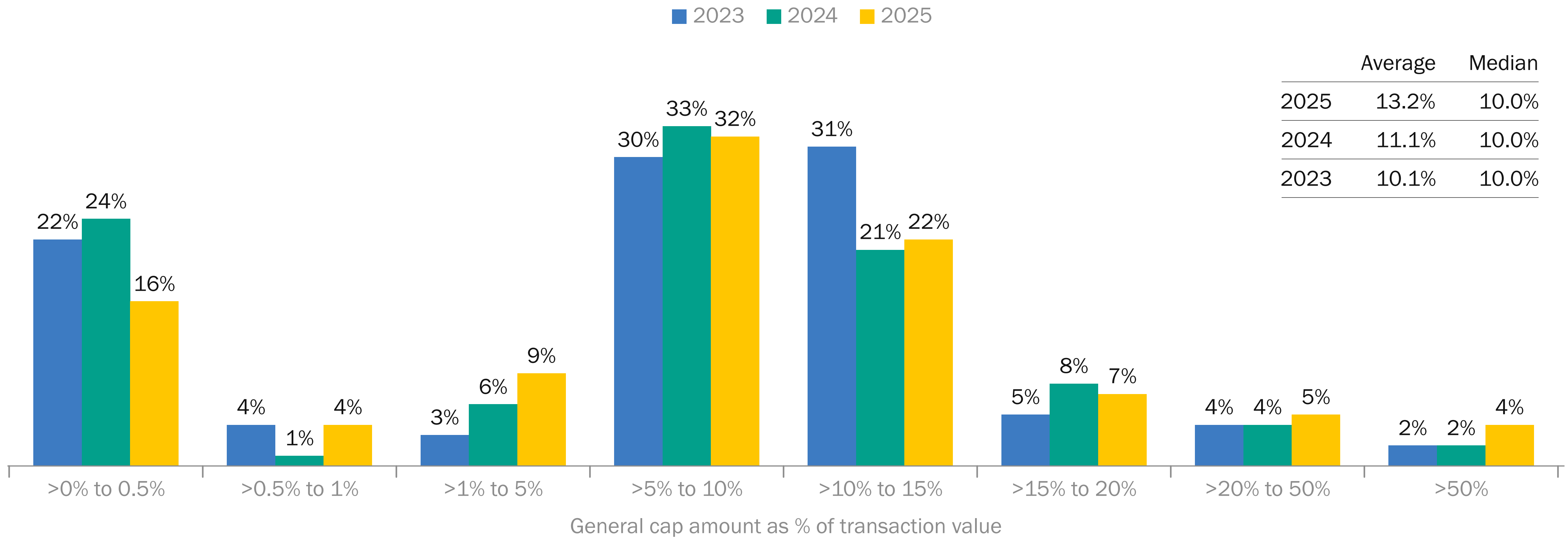
Visit SRS Acquiom MarketStandard® to learn more.

Caps as a Percentage of Transaction Value*

All Deals

For 2025, the average cap was 13.2%; the median was 10.0%. These figures represent all deals, including those in which the buyer has purchased an RWI policy (which generally results in a lower liability cap).

DETAILS, 2023–2025



	Average	Median
2025	13.2%	10.0%
2024	11.1%	10.0%
2023	10.1%	10.0%

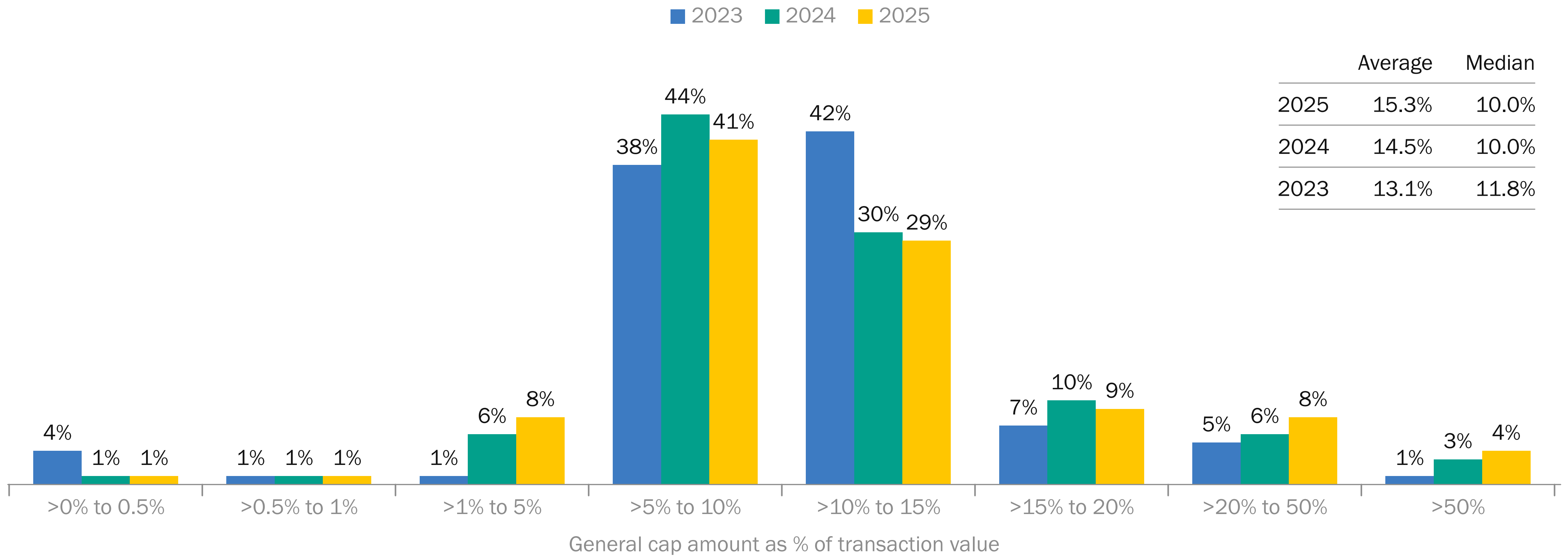
** In 2025 deals with escrows/holdbacks, 54% of caps equaled the escrowed amount.*

Caps as a Percentage of Transaction Value

No RWI Identified

When deals in which the buyer has definitively purchased an RWI policy are eliminated from the data set, the average cap for the remaining deals in 2025 was 15.3%; the median was 10.0%. Note that buyers do not always disclose the presence of a buy-side RWI policy, so this sample set likely includes some deals with policies.

DETAILS, 2023–2025



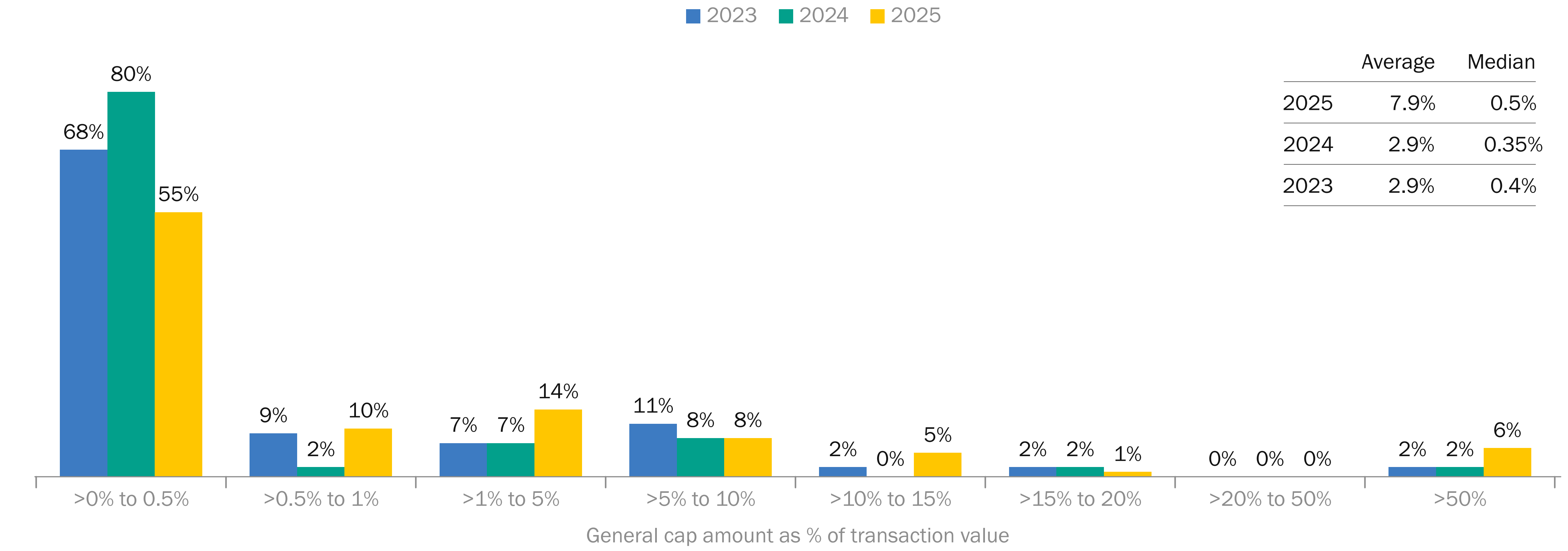
	Average	Median
2025	15.3%	10.0%
2024	14.5%	10.0%
2023	13.1%	11.8%

Caps as a Percentage of Transaction Value

RWI Identified

When the data set includes only deals in which the buyer has definitively purchased an RWI policy, the average cap for the remaining deals in 2025 was 7.9%; the median was 0.5%. Note that buyers do not always disclose the presence of a buy-side RWI policy, so this sample set likely omits some deals with policies.

DETAILS, 2023–2025

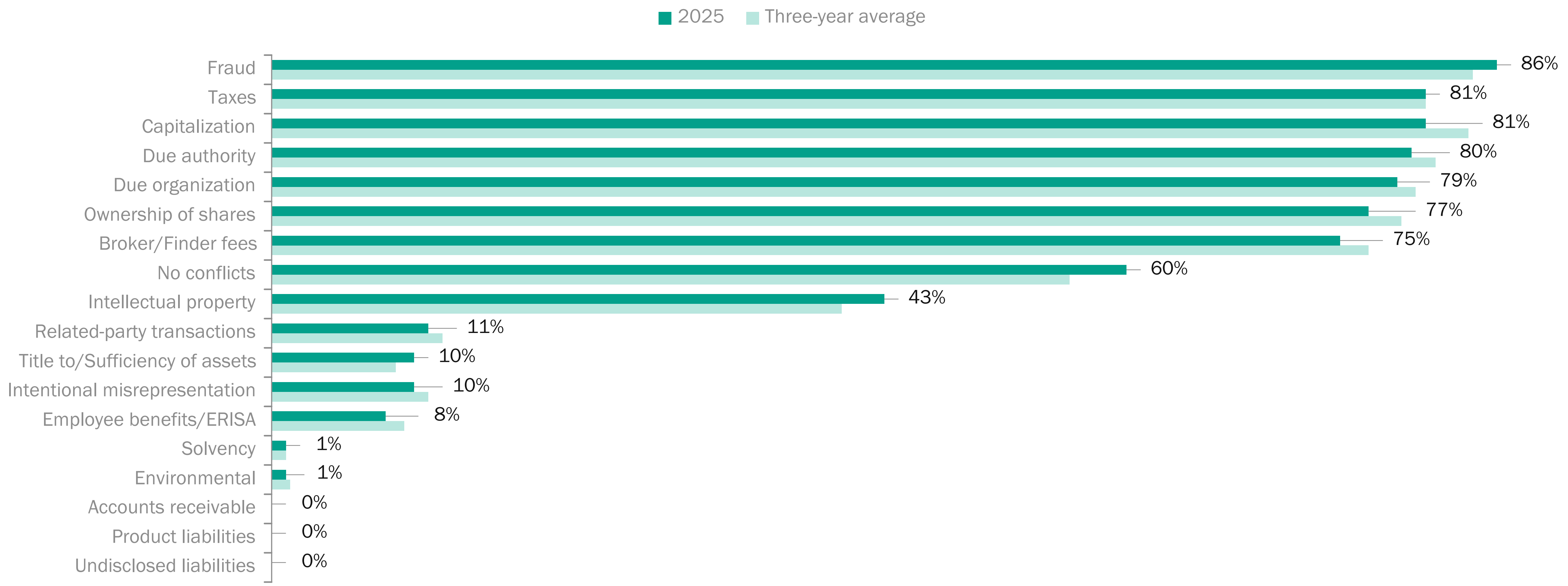


	Average	Median
2025	7.9%	0.5%
2024	2.9%	0.35%
2023	2.9%	0.4%

Caps

Carveouts

FREQUENCY: 2025 DEALS COMPARED TO THE THREE-YEAR AVERAGE (2023–2025)†



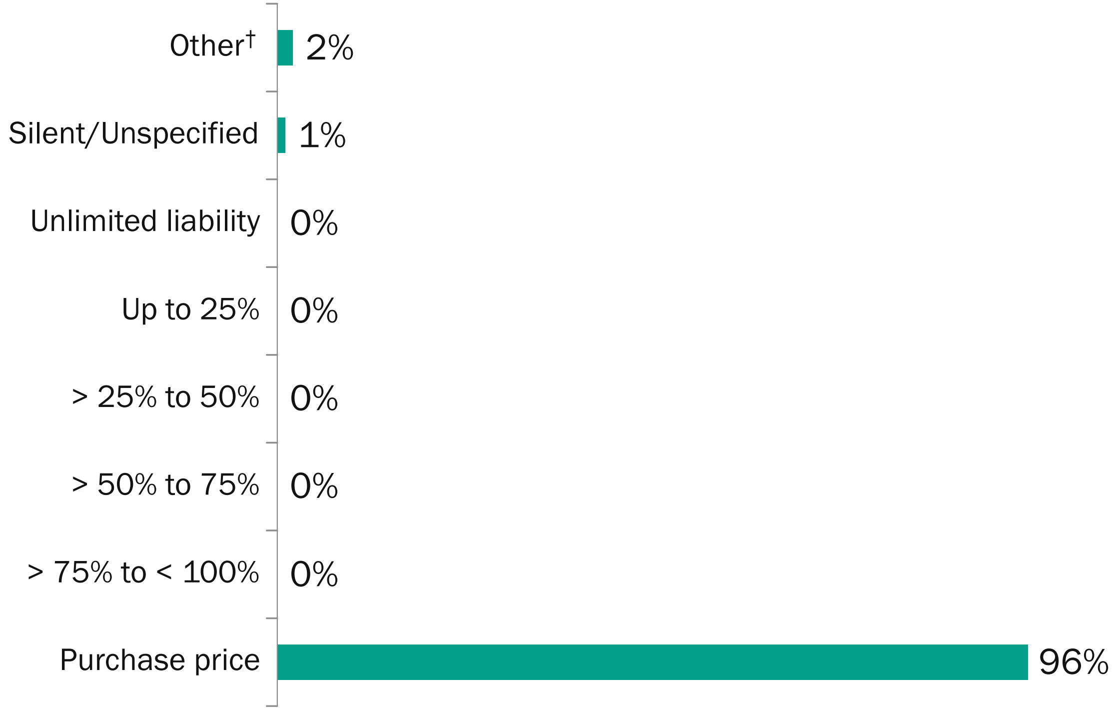
† *Percentages in the chart are for 2025 deals.*

Second-Level Caps

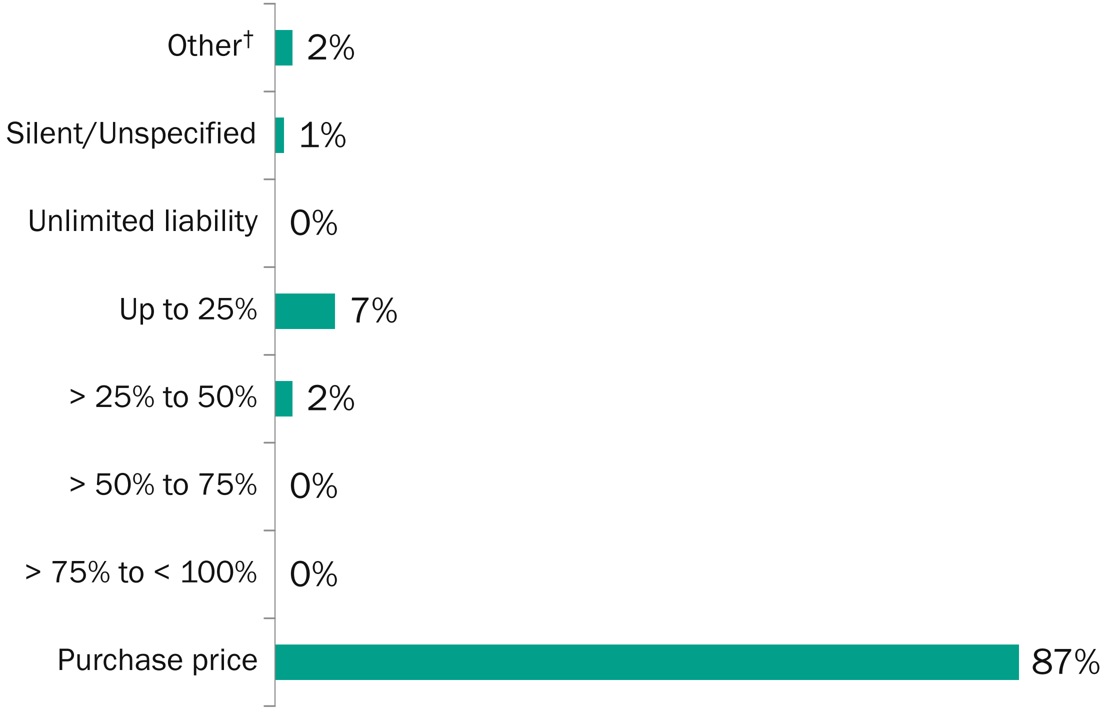
“Fundamental” and Tax Representations

Subset: 2025 deals that include the specified carveout. Percentages below denote the second-level cap as a percentage of transaction value in absolute terms (not above the general cap).

“FUNDAMENTAL” REPRESENTATIONS*



TAX REPRESENTATIONS



* *For example: due organization, due authority, capitalization, etc. (other than taxes, intellectual property, and fraud).*

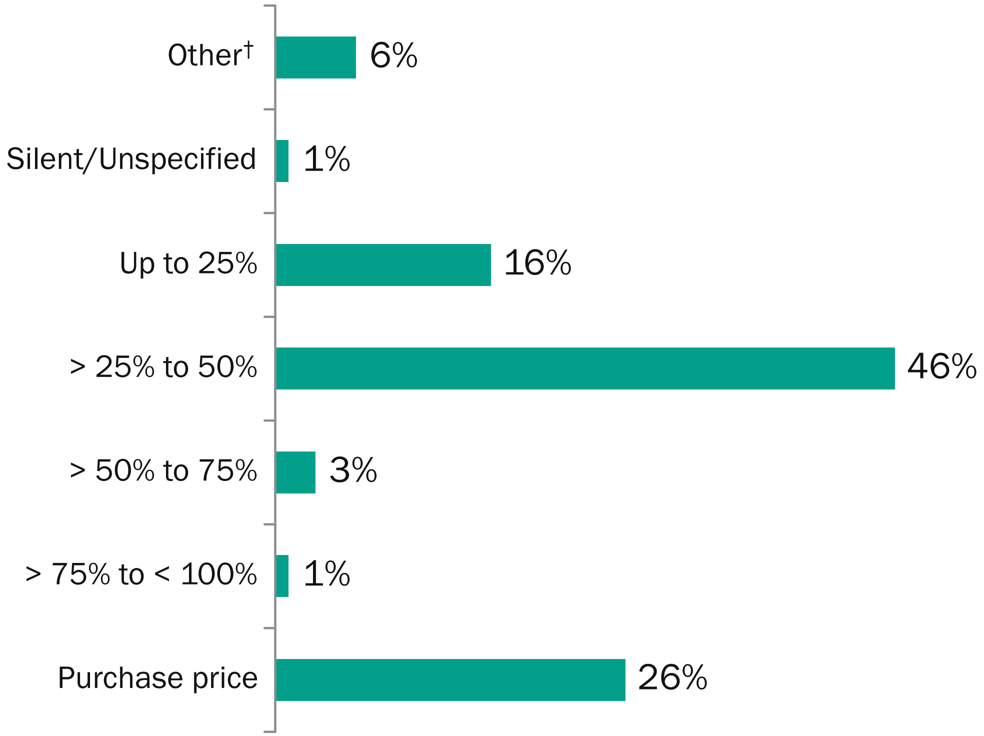
† *“Other” includes, for example, offsets against future earnouts above the general cap.*

Second-Level Caps

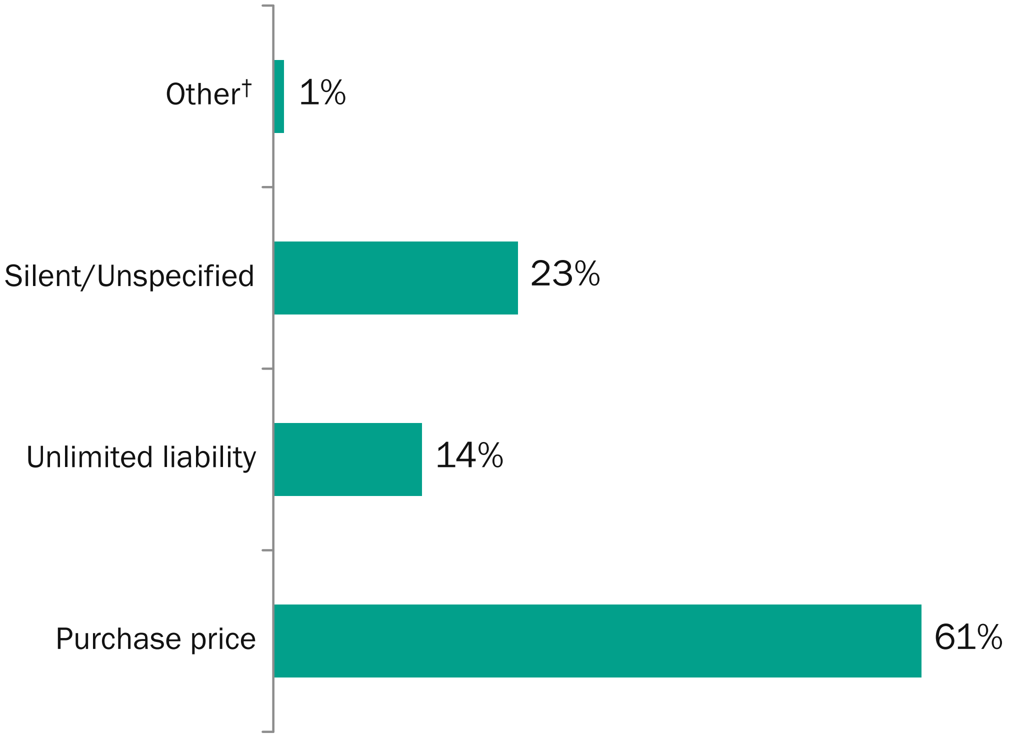
IP Representations and Fraud

Subset: 2025 deals that include the specified carveout. Percentages below denote the second-level cap as a percentage of transaction value in absolute terms (not above the general cap).

INTELLECTUAL PROPERTY REPRESENTATIONS



FRAUD/INTENTIONAL MISREPRESENTATION*



** Measures liability for shareholders who did not participate in the fraud (liability for participating shareholders was typically unlimited).*
† "Other" includes, for example, offsets against future earnouts above the general cap.

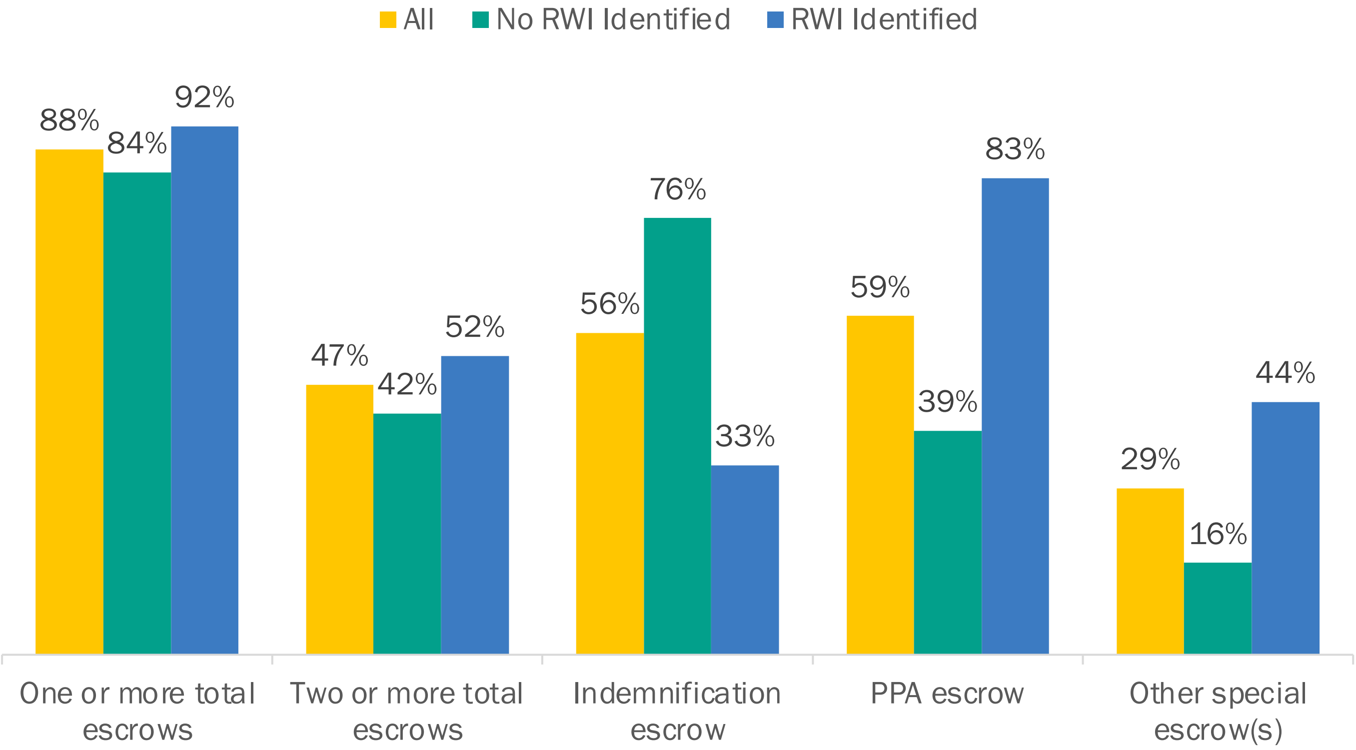
Deal Escrows:* 2025 Deals

Frequency by Category and Aggregate Medians/Averages

KEY FINDING

Subset: 2025 deals

PERCENTAGE OF ALL DEALS THAT INCLUDE AN ESCROW, BY CATEGORY



* Includes holdbacks

Subset: 2025 deals with an indemnification escrow

AGGREGATE SIZE OF ALL ESCROWS AS A PERCENTAGE OF TRANSACTION VALUE

	Average	Median
All deals	12.1%	10.0%
No RWI Identified	14.7%	11.1%
RWI Identified	5.1%	2.8%

Subset: 2025 deals with an indemnification escrow

SIZE OF GENERAL INDEMNIFICATION ESCROWS AS A PERCENTAGE OF TRANSACTION VALUE

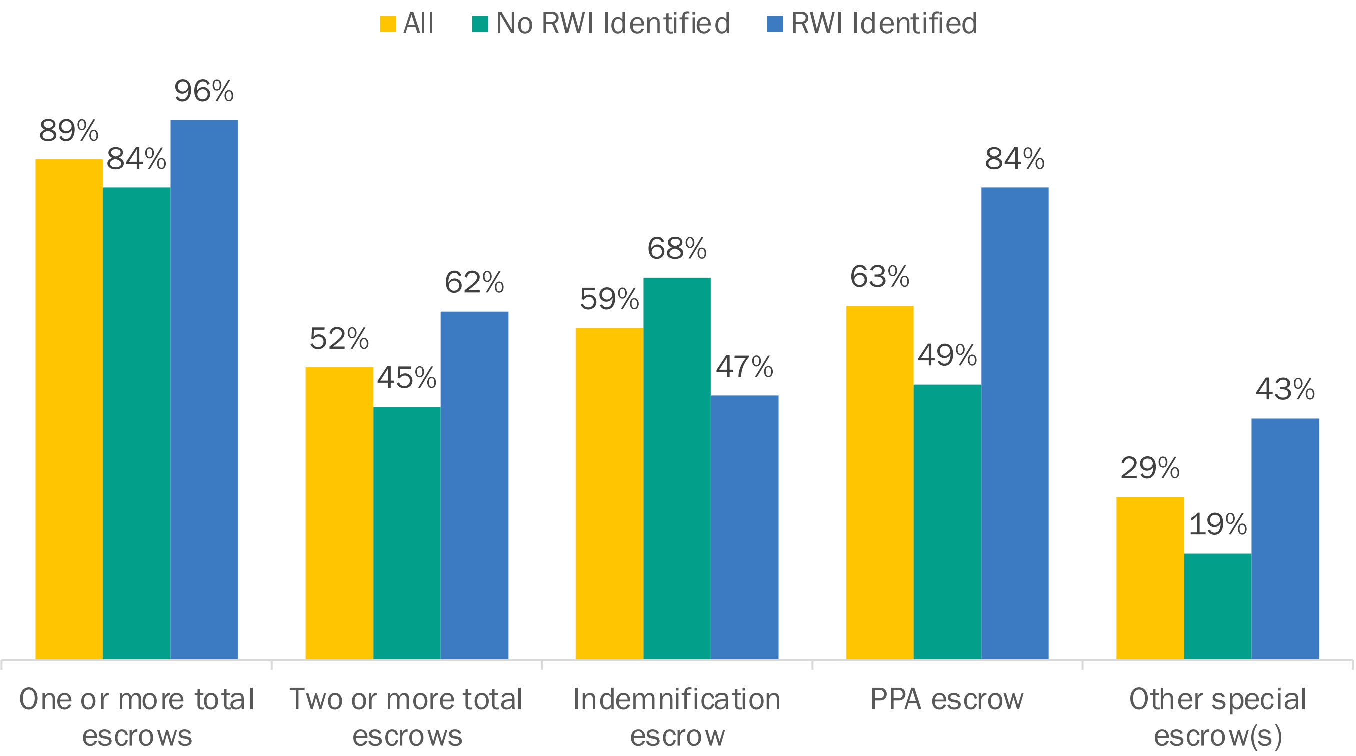
	Average	Median
All deals	8.8%	10.0%
No RWI Identified	11.3%	10.0%
RWI Identified	2.2%	0.5%

Deal Escrows:* 2024 Deals

Frequency by Category and Aggregate Medians/Averages

Subset: 2024 deals

PERCENTAGE OF ALL DEALS THAT INCLUDE AN ESCROW, BY CATEGORY



* Includes holdbacks

Subset: 2024 deals with an indemnification escrow

AGGREGATE SIZE OF ALL ESCROWS AS A PERCENTAGE OF TRANSACTION VALUE

	Average	Median
All deals	10.25%	10.0%
No RWI Identified	13.2%	11.3%
RWI Identified	4.1%	2.1%

Subset: 2024 deals with an indemnification escrow

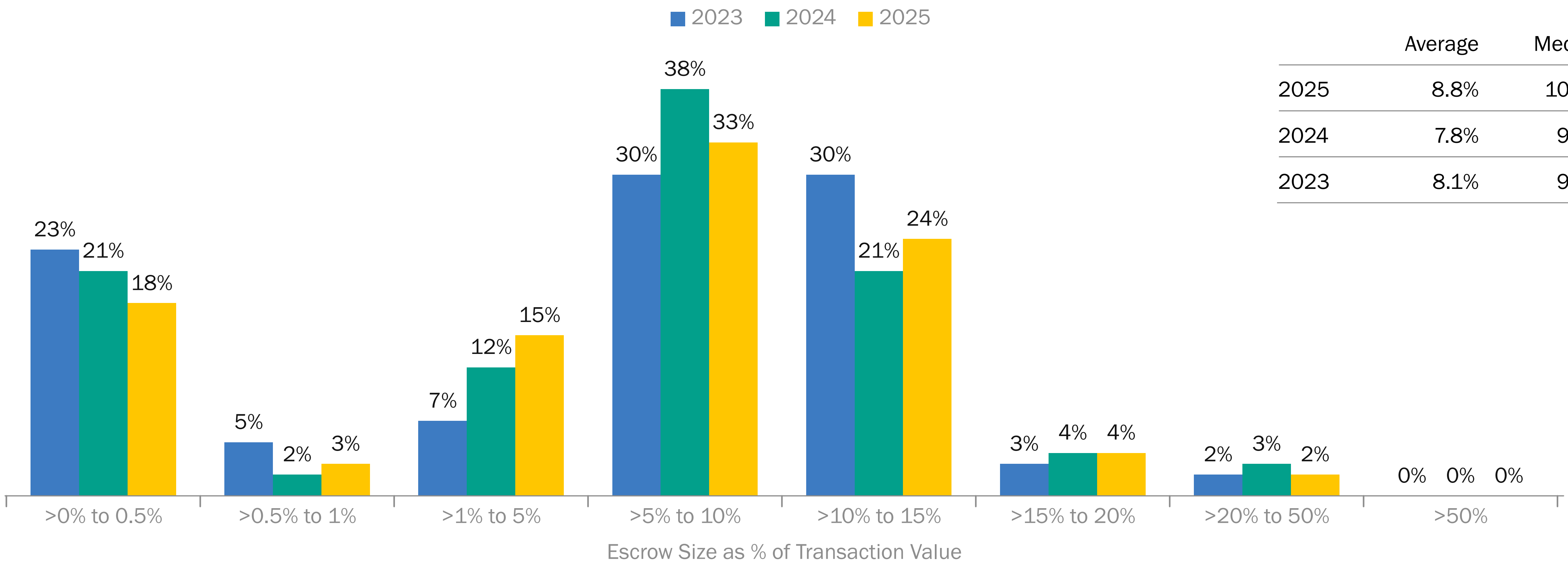
SIZE OF GENERAL INDEMNIFICATION ESCROWS AS A PERCENTAGE OF TRANSACTION VALUE

	Average	Median
All deals	7.8%	9.0%
No RWI Identified	10.9%	10.0%
RWI Identified	1.4%	0.35%

General Indemnification Escrows/Holdbacks as a Percentage of Transaction Value: All Deals*

* Implied subset: This data (and the data on the next two slides) does not include deals without a general escrow/holdback, which constituted approximately 44% of all deals in 2025. For comparison, 41% of all deals in 2024 and 33% in 2023 did not include a general indemnification escrow/holdback.

DETAILS, 2023–2025

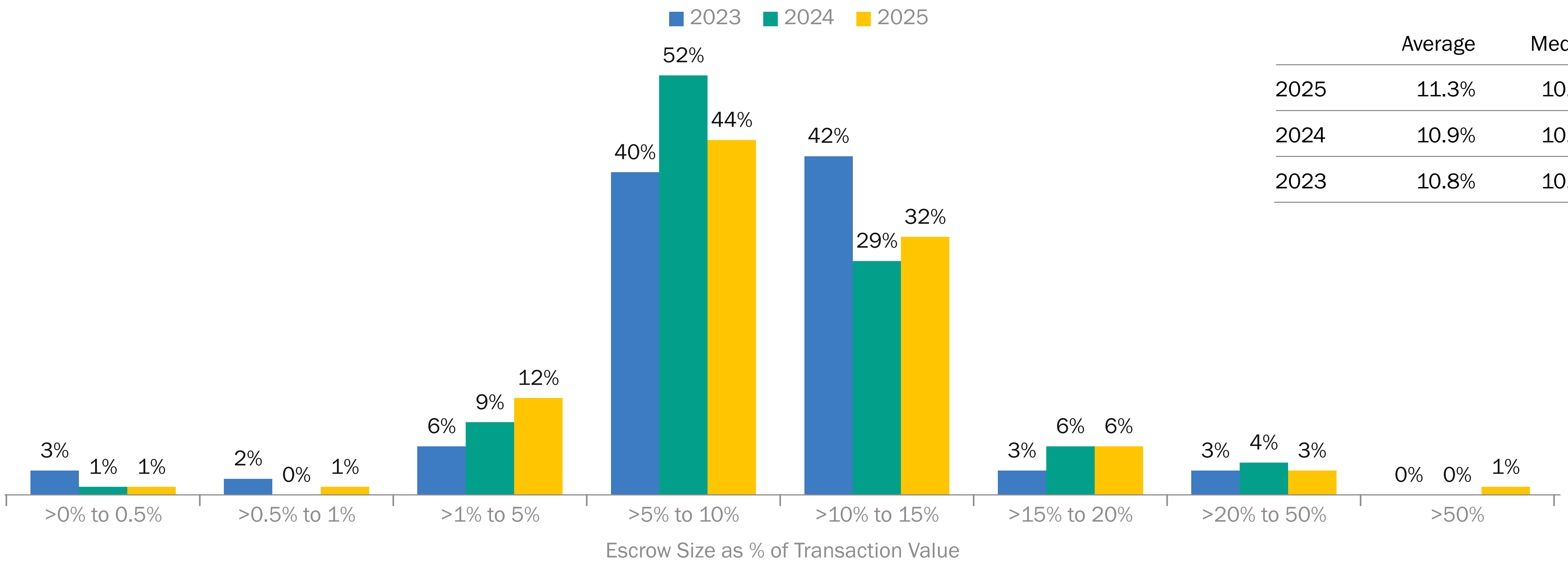


	Average	Median
2025	8.8%	10.0%
2024	7.8%	9.0%
2023	8.1%	9.4%

General Indemnification Escrows/Holdbacks as a Percentage of Transaction Value: No RWI Identified

When deals in which the buyer has definitively purchased an RWI policy are eliminated from the data set, the average escrow/holdback for the remaining deals in 2025 was 11.3%; the median was 10.0%. Note that buyers do not always disclose the presence of a buy-side RWI policy, so this sample set likely still contains some deals with policies.

DETAILS, 2023–2025

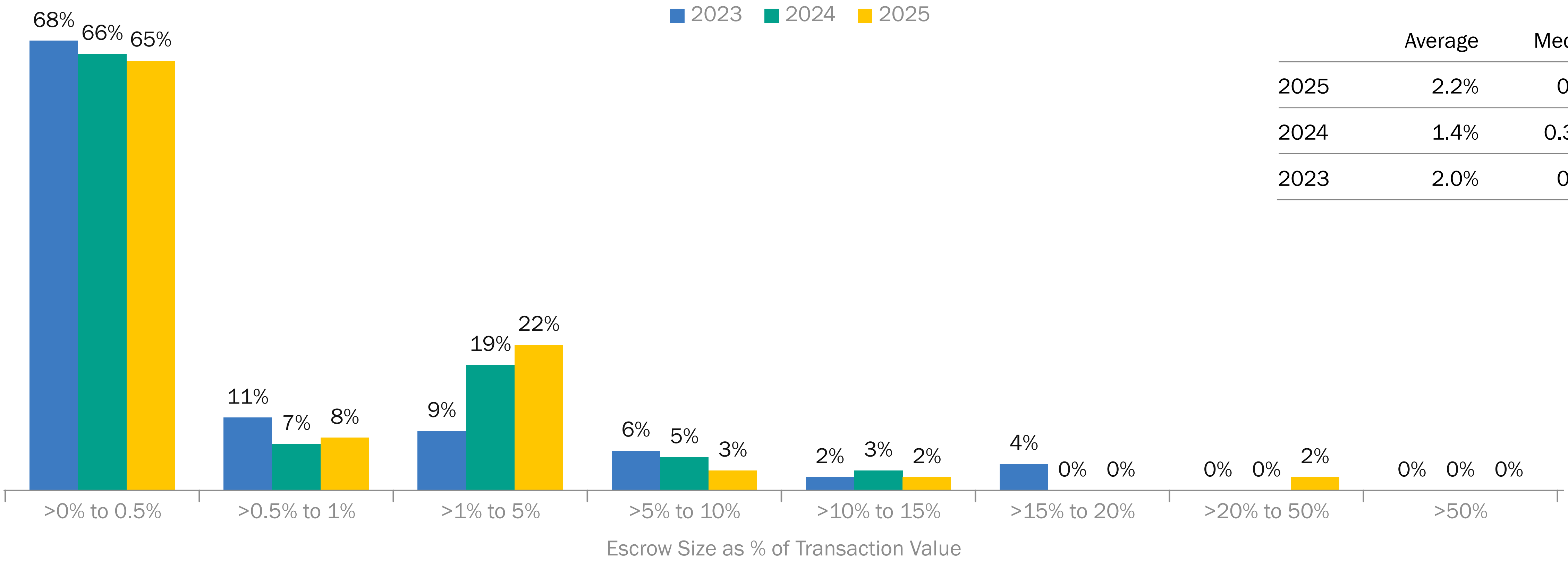


	Average	Median
2025	11.3%	10.0%
2024	10.9%	10.0%
2023	10.8%	10.0%

General Indemnification Escrows/Holdbacks as a Percentage of Transaction Value: RWI Identified

When the data set includes only deals in which the buyer has definitively purchased an RWI policy, the average escrow/holdback for these deals in 2025 was 2.2%; the median was 0.5%. Note that buyers do not always disclose the presence of a buy-side RWI policy, so this sample set likely misses some deals with policies.

DETAILS, 2023–2025

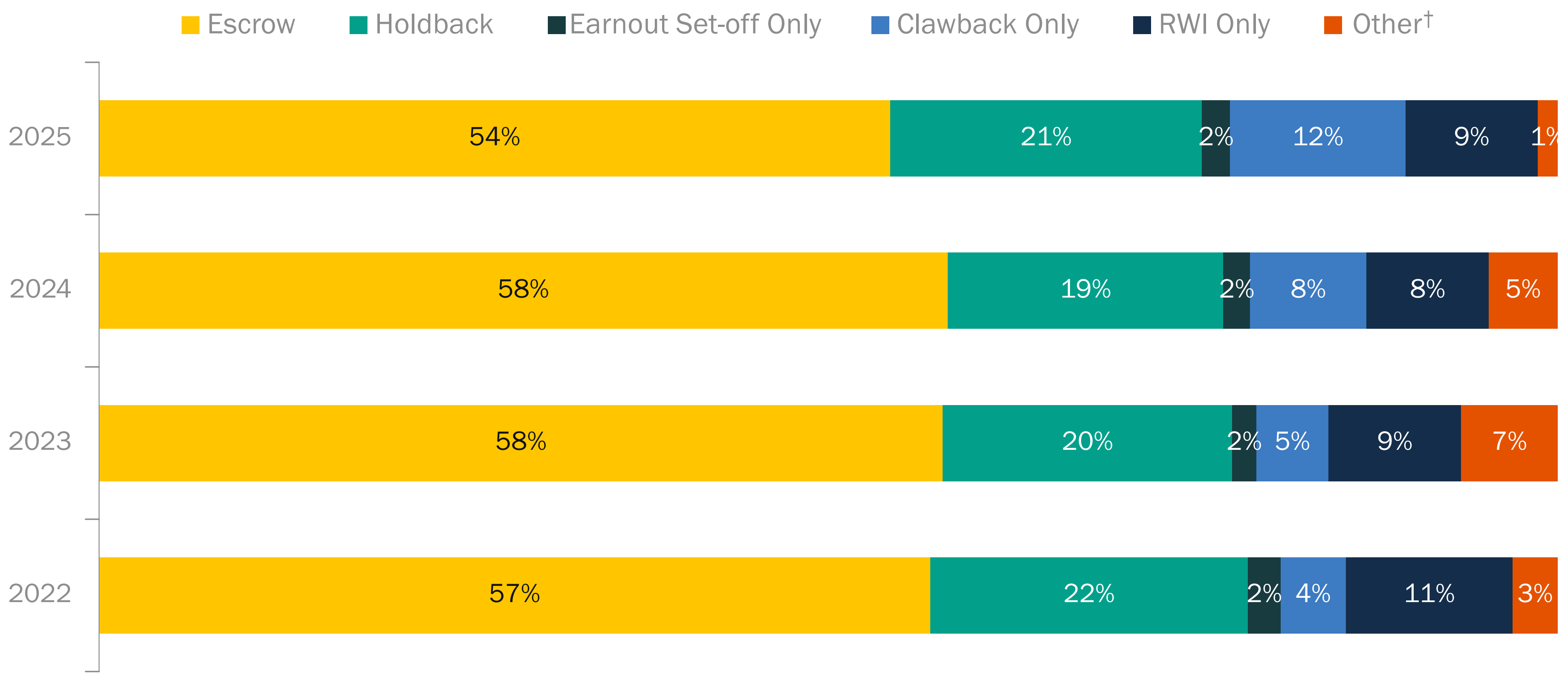


	Average	Median
2025	2.2%	0.5%
2024	1.4%	0.35%
2023	2.0%	0.5%

Sources of Recovery*

Escrows, Holdbacks, Insurance, and Setoffs

SUBSET: DEALS WITH POST-CLOSING INDEMNIFICATION



* *With respect to indemnification provided by sellers directly except for the category “RWI Only.”*

† *“Other” includes setoff rights against buyer equity issued as consideration and post-closing installment payments (other than earnouts) as well as the rare case when only a subset of the selling shareholders are providing indemnification (e.g., management team or principal investor).*

For more information, see the SRS Acquiom white paper:

Stock Escrows: Structure Matters When Using Buyer Equity in M&A Transactions

Post-Closing Expense Fund Sizes

NEW DATA POINT

Subset: Deals with expense funds*

AVERAGE EXPENSE FUND SIZES

	2024	2025†
Deals without earnouts	$227,000	$256,000
Deals with earnouts	$337,000	$281,000

EXPENSE FUND FREQUENCY

	2024	2025
Included	96%	97%

* *Funds established at closing to fund post-closing expenses.*

† *The 2025 subset includes a multi-billion-dollar Life Sciences deal with a very large expense fund, which was capped at the next largest fund amount in the subset to minimize any outlier effect. When the full size of the expense fund for that deal is included, the average expense fund size for 2025 deals with earnouts was $490,000.*

AVERAGE EXPENSE FUND SIZES: DETAIL

	2024	2025
Life Sciences Deals:		
Deals without milestones	$181,000	$280,000
Deals with milestones	$471,000	$549,000
Deals With RWI Identified:		
Deals without earnouts	$320,000	$341,000
Deals with earnouts	$394,000	$265,000
No Indemnity Deals:		
Deals without earnouts	$288,000	$286,000
Deals with earnouts	$490,000	$301,000
Lower Middle Market Deals (up to $50M in transaction value):		
Deals without earnouts	$106,000	$116,000
Deals with earnouts	$127,000	$132,000
Deals With a Transaction Value Over $750M:		
Deals without earnouts	$692,000	$727,000
Deals with earnouts	$668,000	$1,301,000

For more information, see the SRS Acquiom white paper:

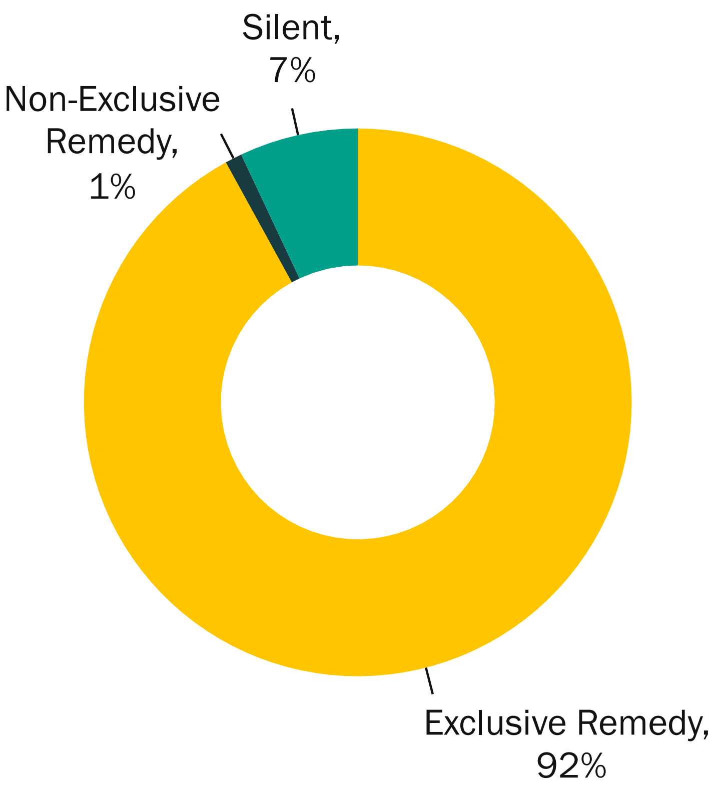
M&A Expense Funds: Why Sellers Should Establish One, How Large It Should Be, and Other Considerations

Indemnification as Exclusive Remedy for Breach

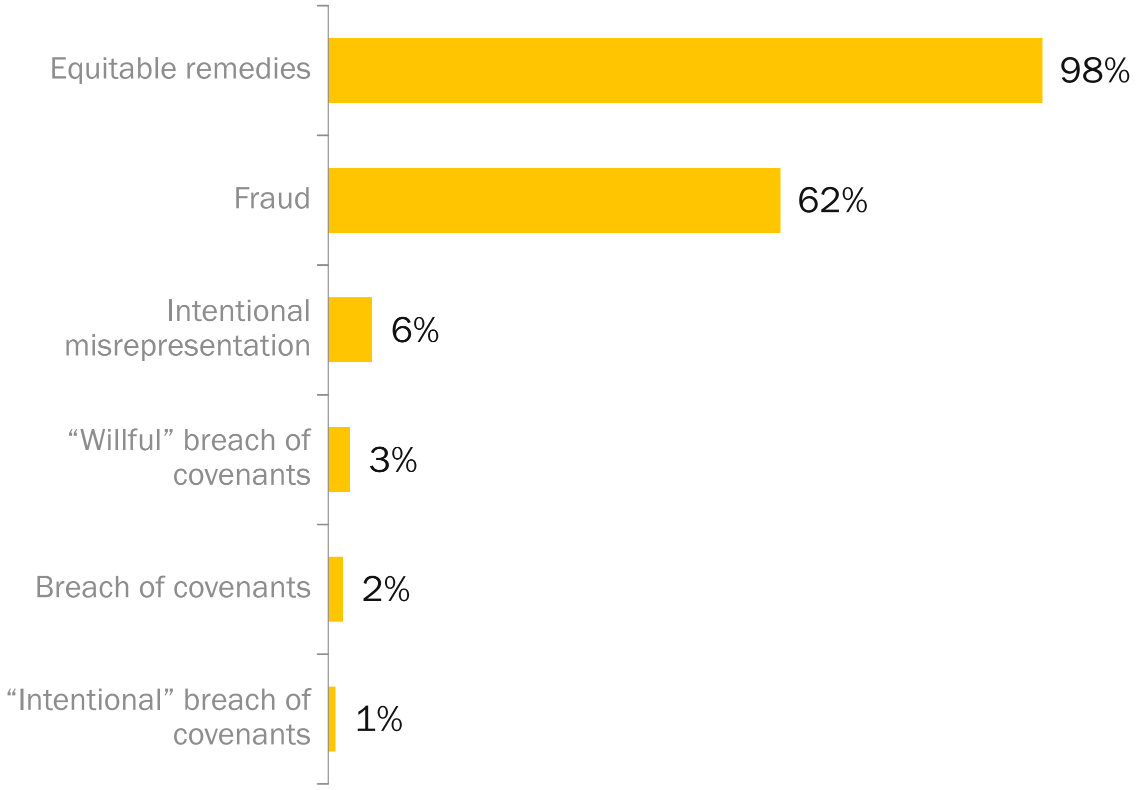
See example terms on slide 108

Subset: 2025 deals

INDEMNIFICATION AS EXCLUSIVE REMEDY



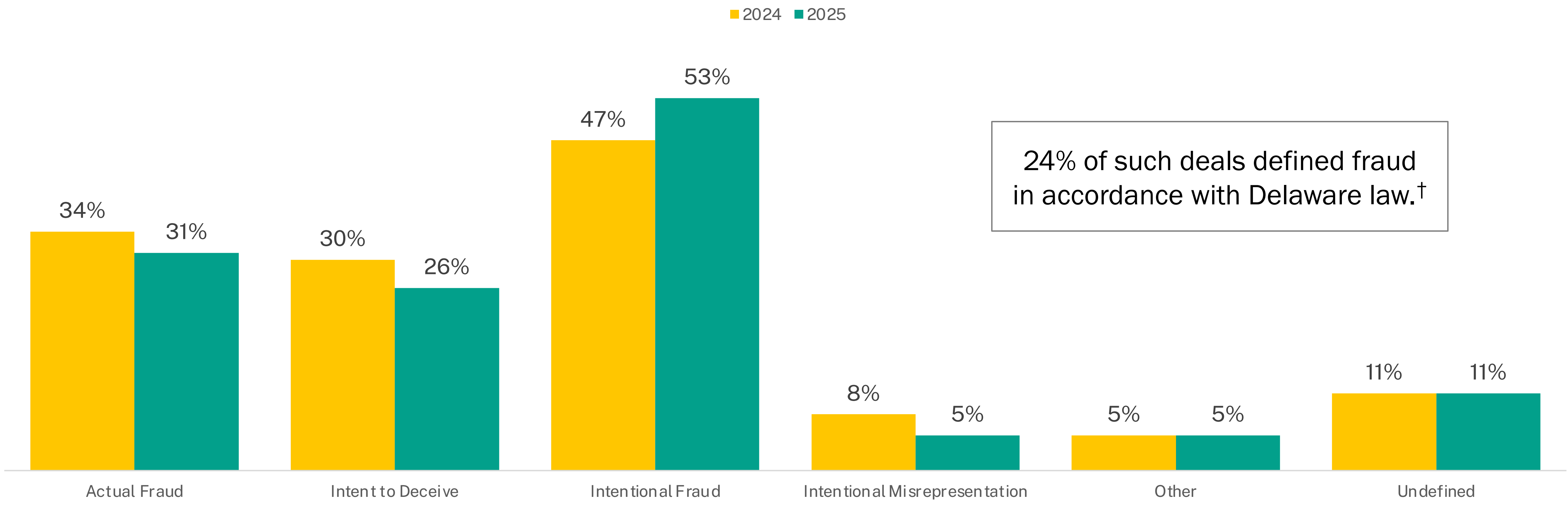
CARVEOUTS TO EXCLUSIVE REMEDY



Definition of Fraud

For 2025 deals where fraud was carved out from the “indemnification as sole remedy” provision, the definition of fraud included one or more of the following:

2025 DEALS*



24% of such deals defined fraud in accordance with Delaware law.†

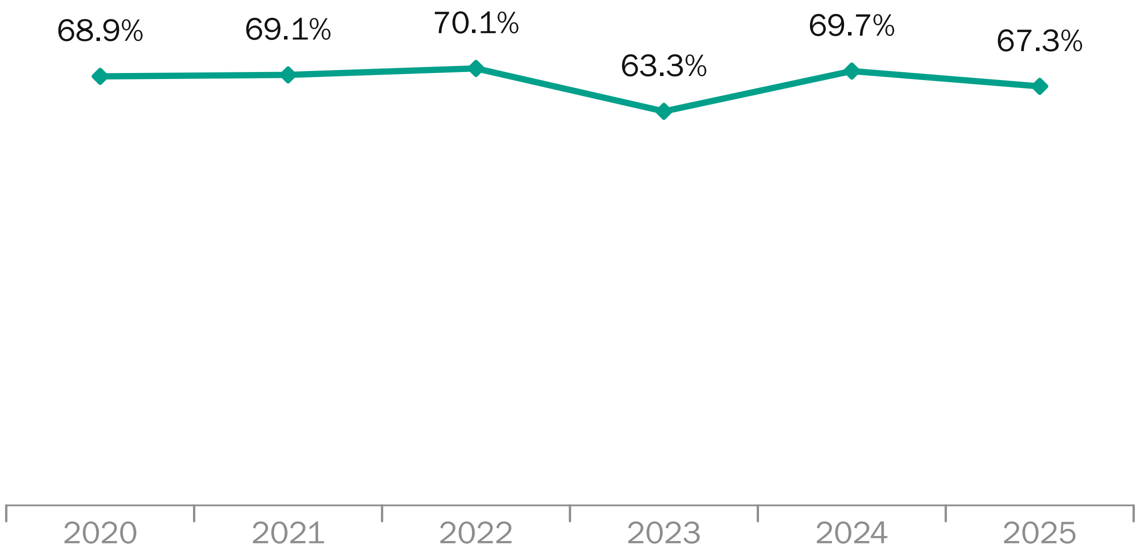
* *No deals from 2024 or 2025 included “constructive or negligent fraud” when defining fraud.*

† *Acquisition agreement language either expressly specified the laws of Delaware or included the elements of actual fraud and intent to deceive in the contractual definition of fraud.*

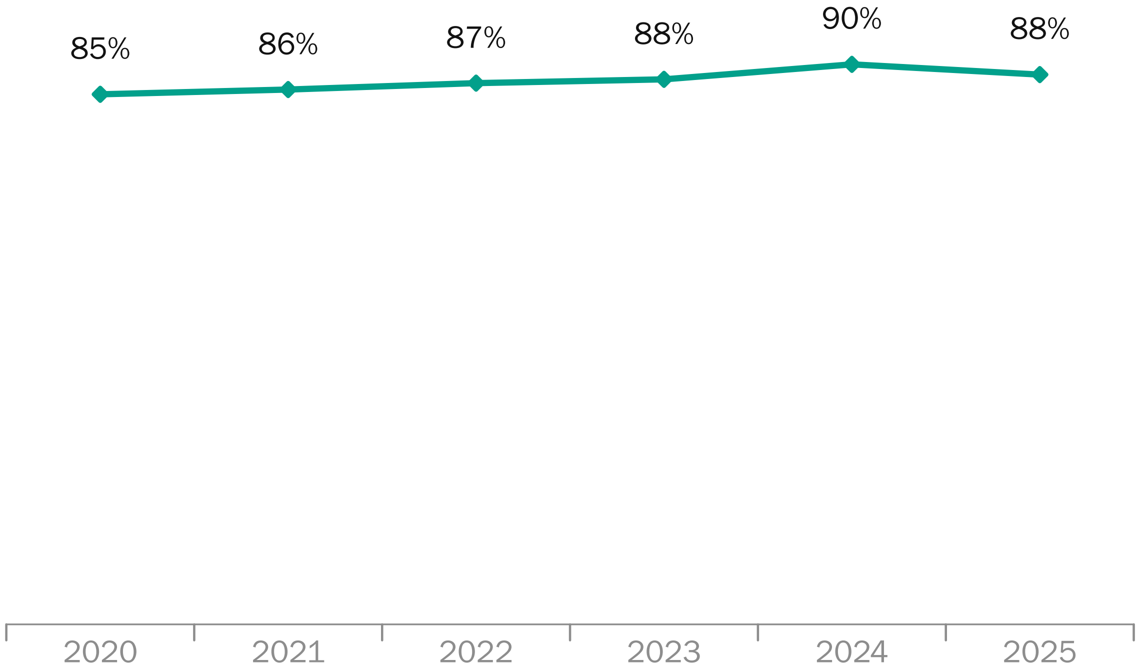
Dispute Resolution

Waivers

LEGAL REPRESENTATION CONFLICT WAIVER* INCLUDED



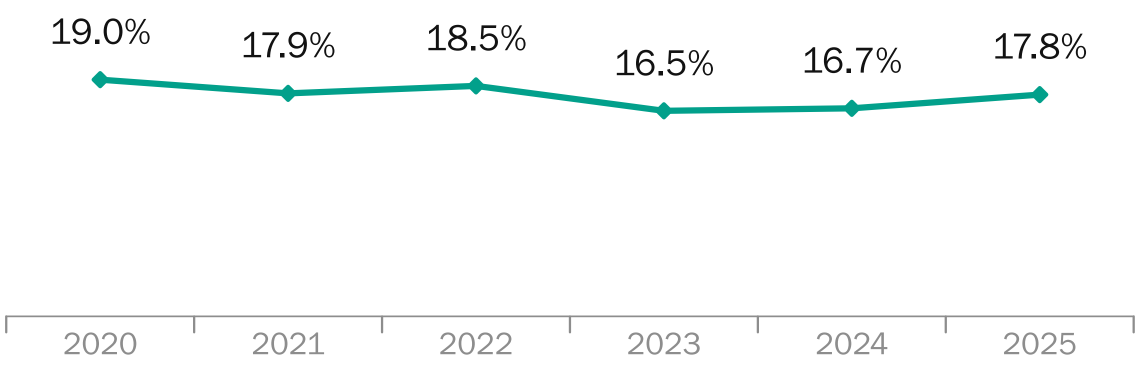
WAIVER OF JURY TRIAL INCLUDED



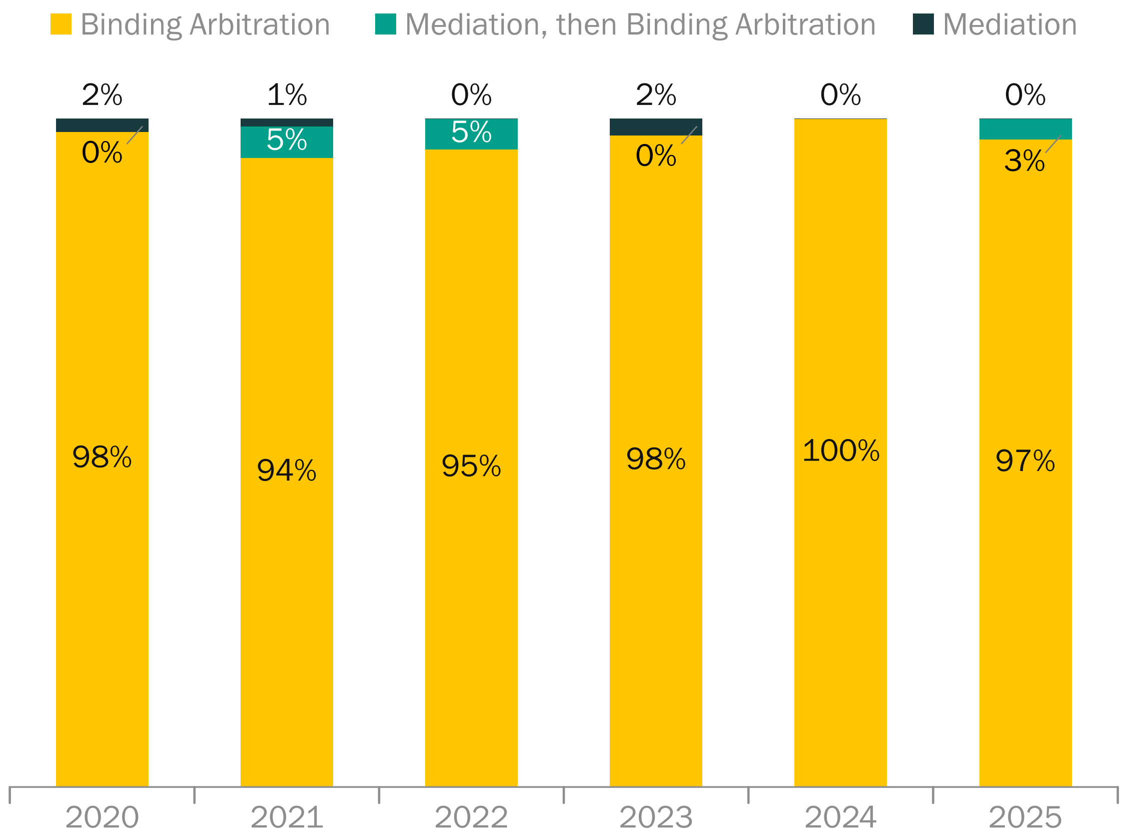
** A provision allowing seller's pre-closing counsel to represent the selling shareholders post-closing in matters relating to the acquisition.*

Alternative Dispute Resolution ("ADR")*

ADR INCLUSION



TYPE OF ADR (SUBSET: GENERAL ADR INCLUDED)

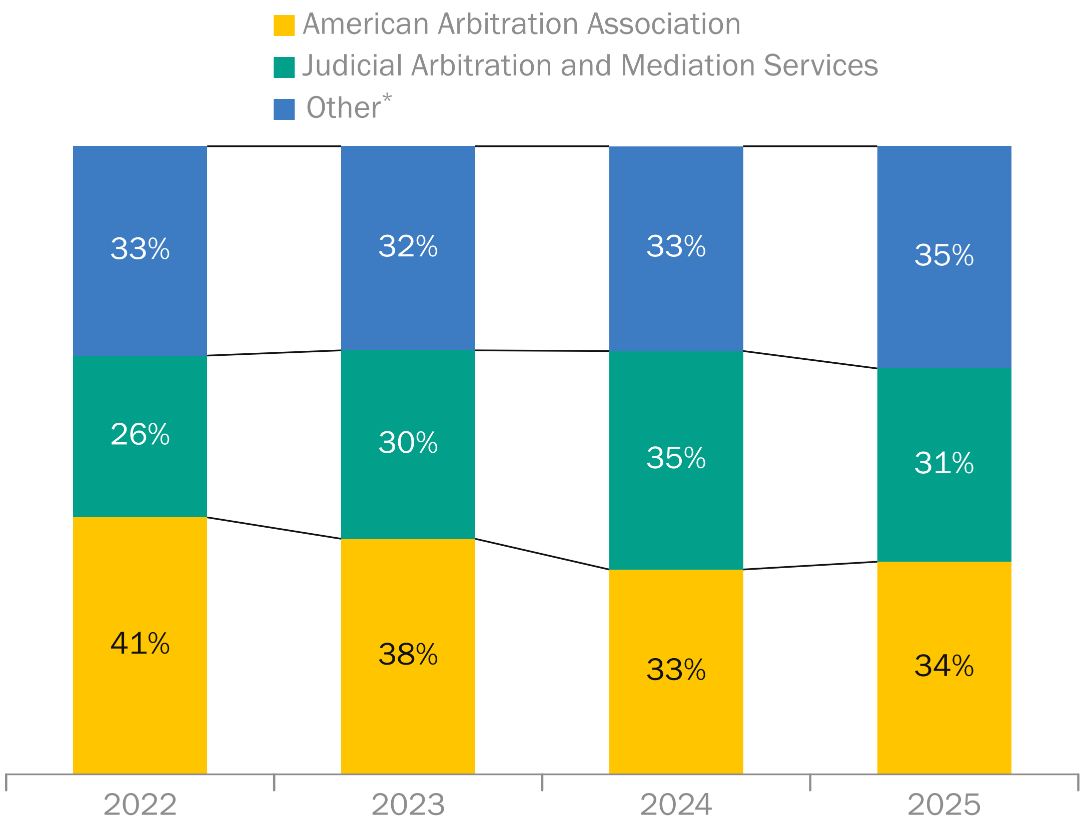


** Sample includes ADR provisions that apply to all disputes arising out of the agreement and does not include ADR provisions limited to particular matters such as purchase price adjustments or earnouts.*

Alternative Dispute Resolution

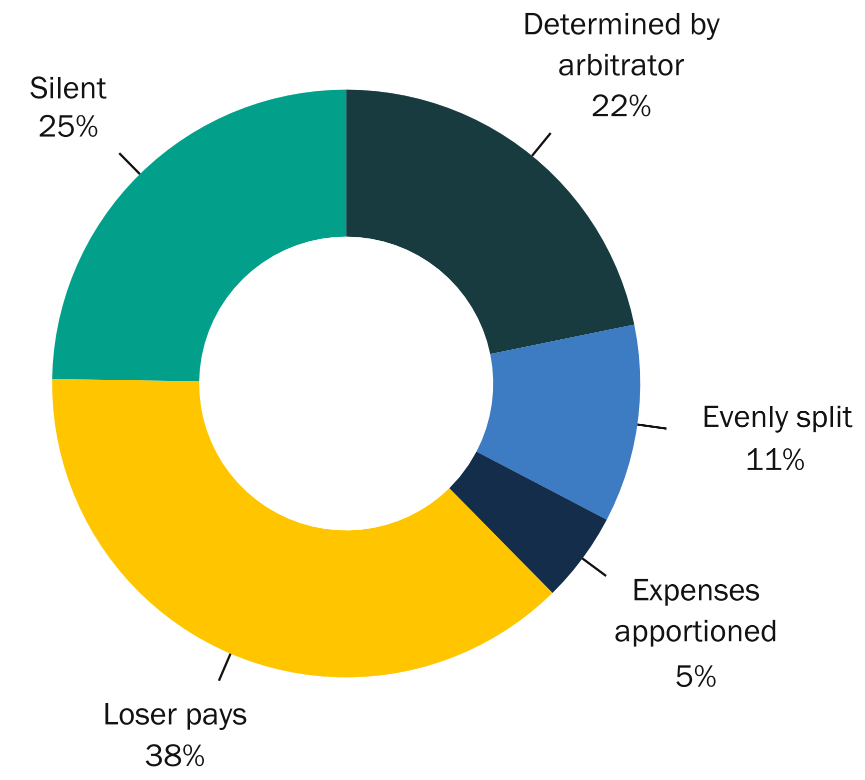
Subset: Deals with general ADR included

INSTITUTION/RULES GOVERNING ARBITRATION



* "Other" frequently includes the International Chamber of Commerce.

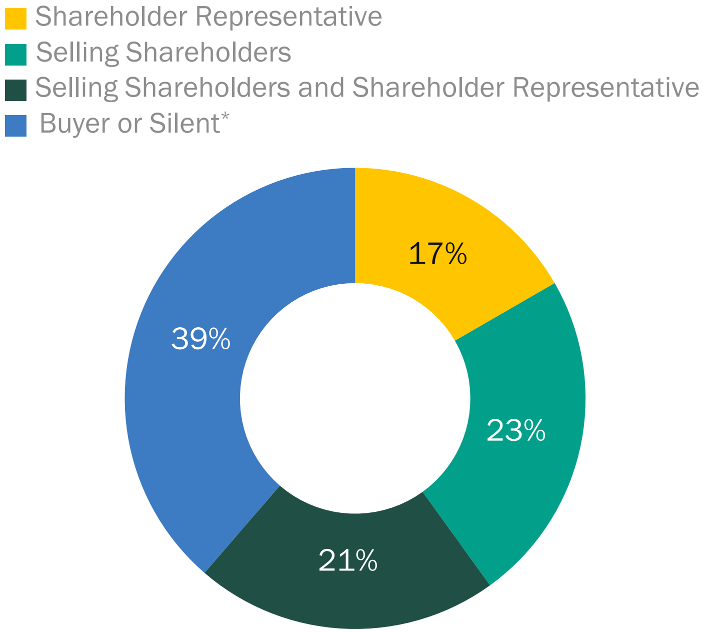
WHO PAYS ARBITRATION EXPENSES? (2025 DEALS)



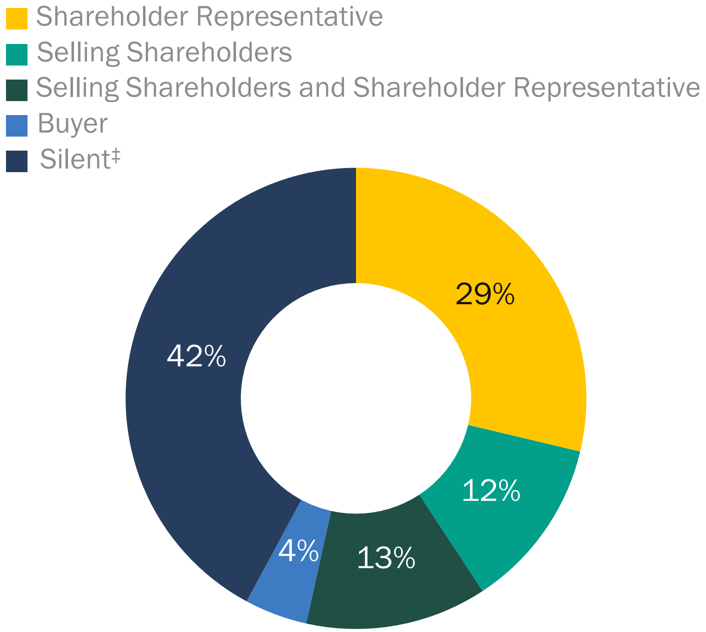
Sell-Side Attorney-Client Privilege

See example terms on slide 108

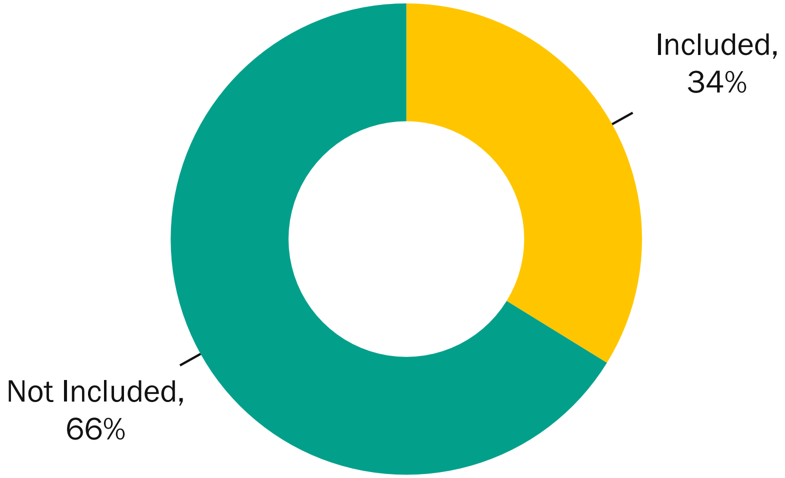
WHO OWNS?† (2025 DEALS)



WHO CONTROLS?‡ (2025 DEALS)



SAVINGS CLAUSE§



33% of agreements for 2025 deals were Silent.

† 31% of 2024 deals were silent and another 8% expressly named Buyer; 28% named the Selling Shareholders, 7% named the Selling Shareholders and Shareholder Rep, and 22% named the Shareholder Rep.

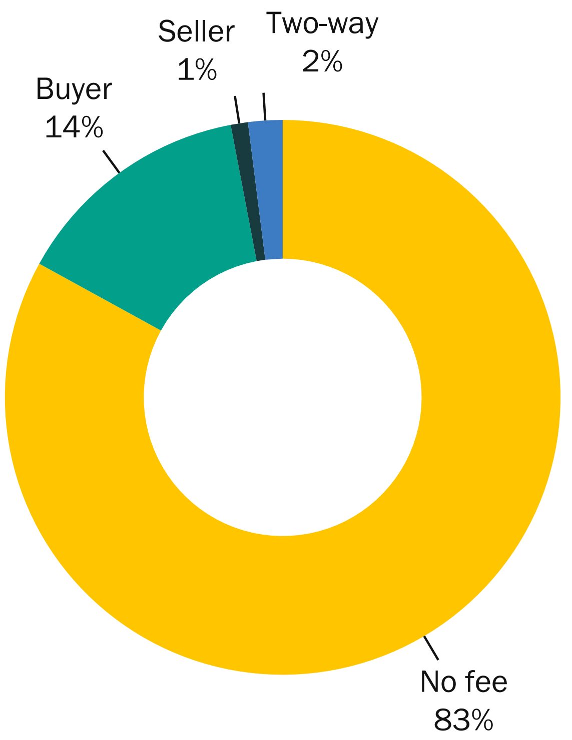
‡ 44% of 2024 deals were Silent and another 7% expressly named Buyer; 15% named the Selling Shareholders, 4% named the Selling Shareholders and Shareholder Rep, and 31% named the Shareholder Rep.

§ 17% of 2024 deals included a Savings Clause.

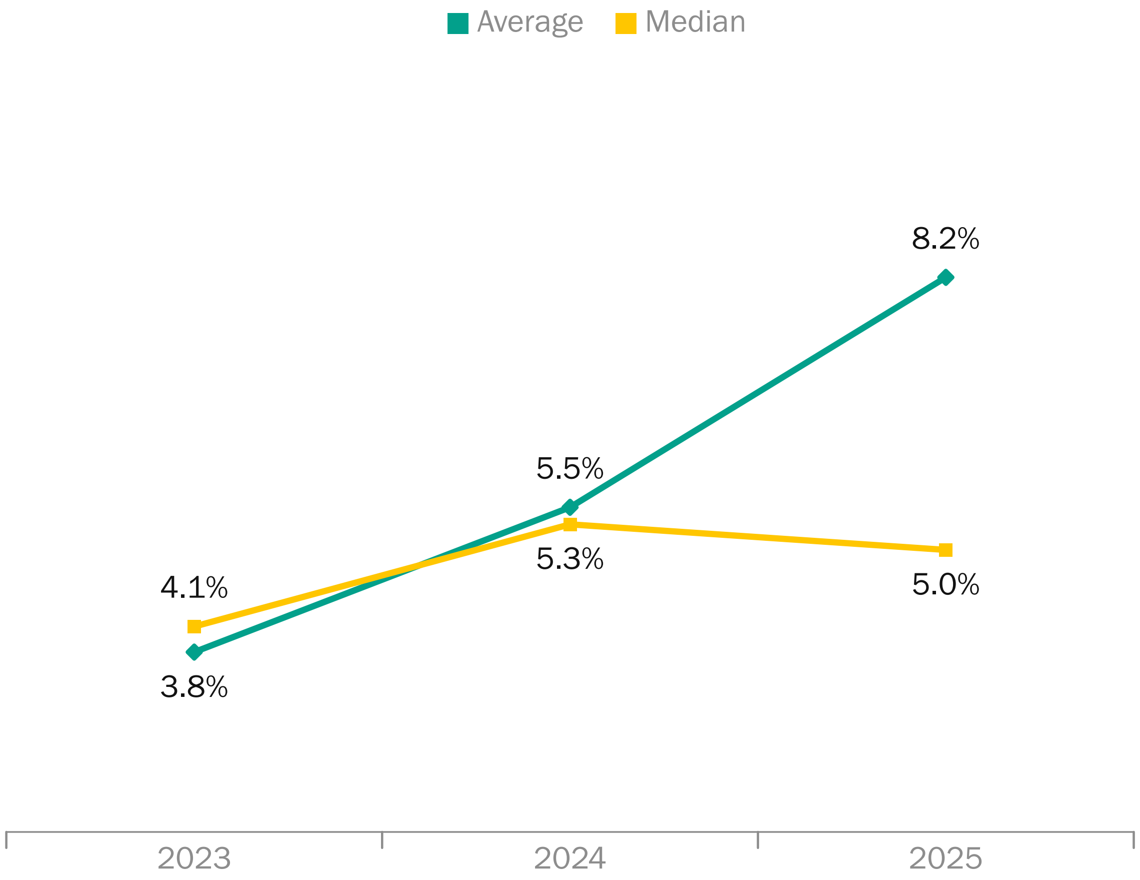
Termination
Fees

Termination Fees

FEE PAID BY... (2025 DEALS)



FEES PAID BY BUYER AS A PERCENTAGE OF TRANSACTION VALUE

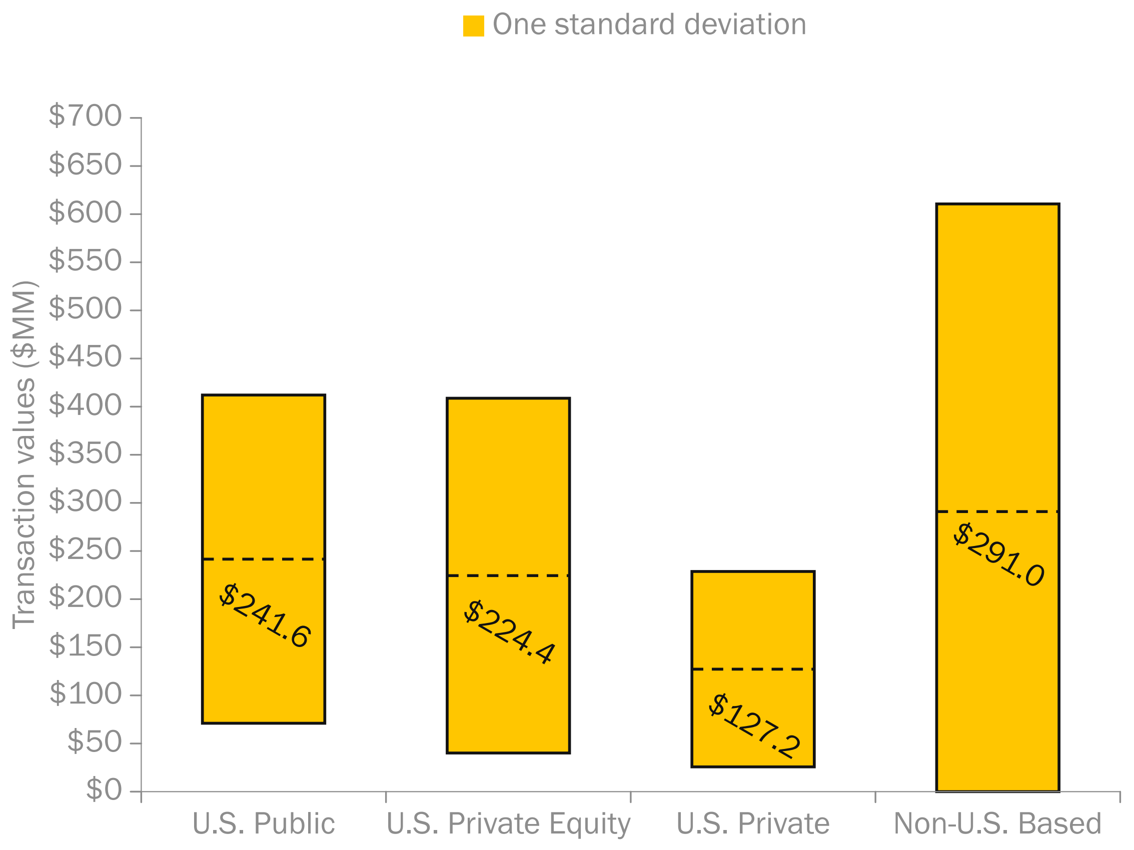


Correlations

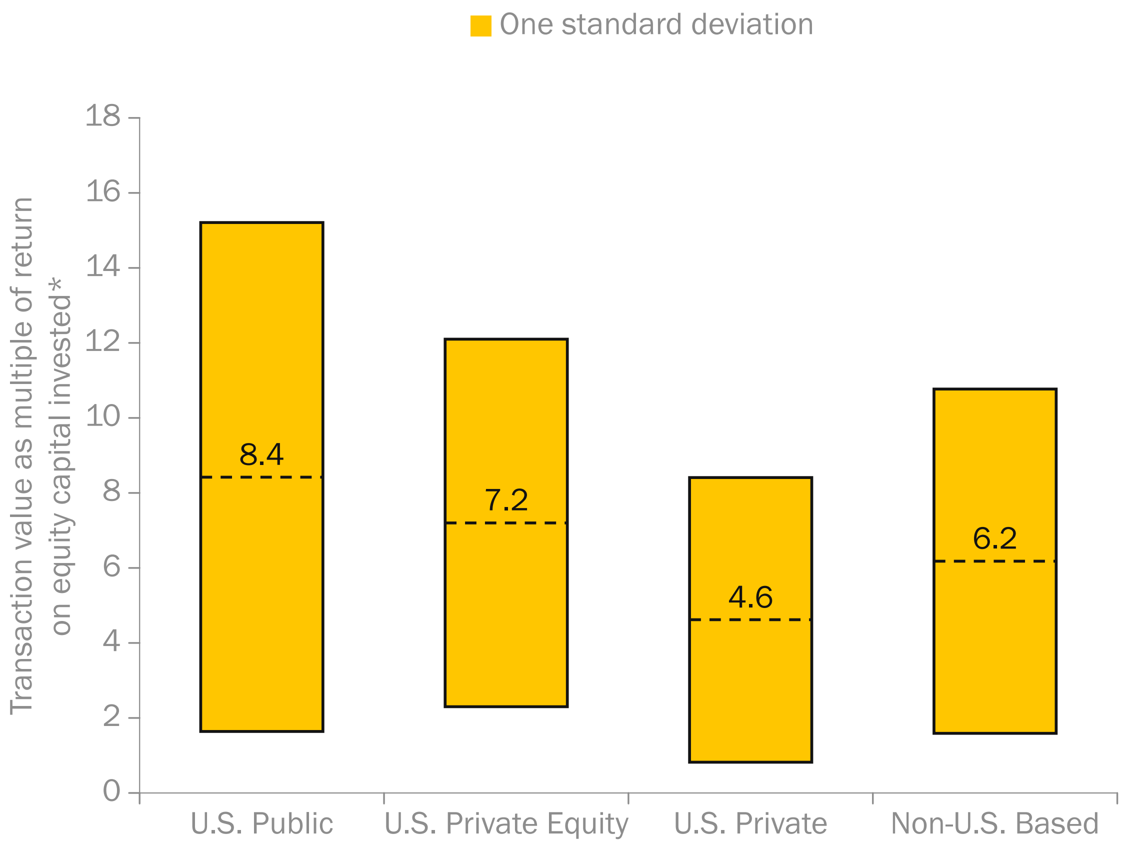
Correlations

Transaction Value and Multiples, by Buyer Type

TRANSACTION VALUE VS. BUYER TYPE (2025 DEALS)



MULTIPLE OF RETURN* VS. BUYER TYPE (2025 DEALS)



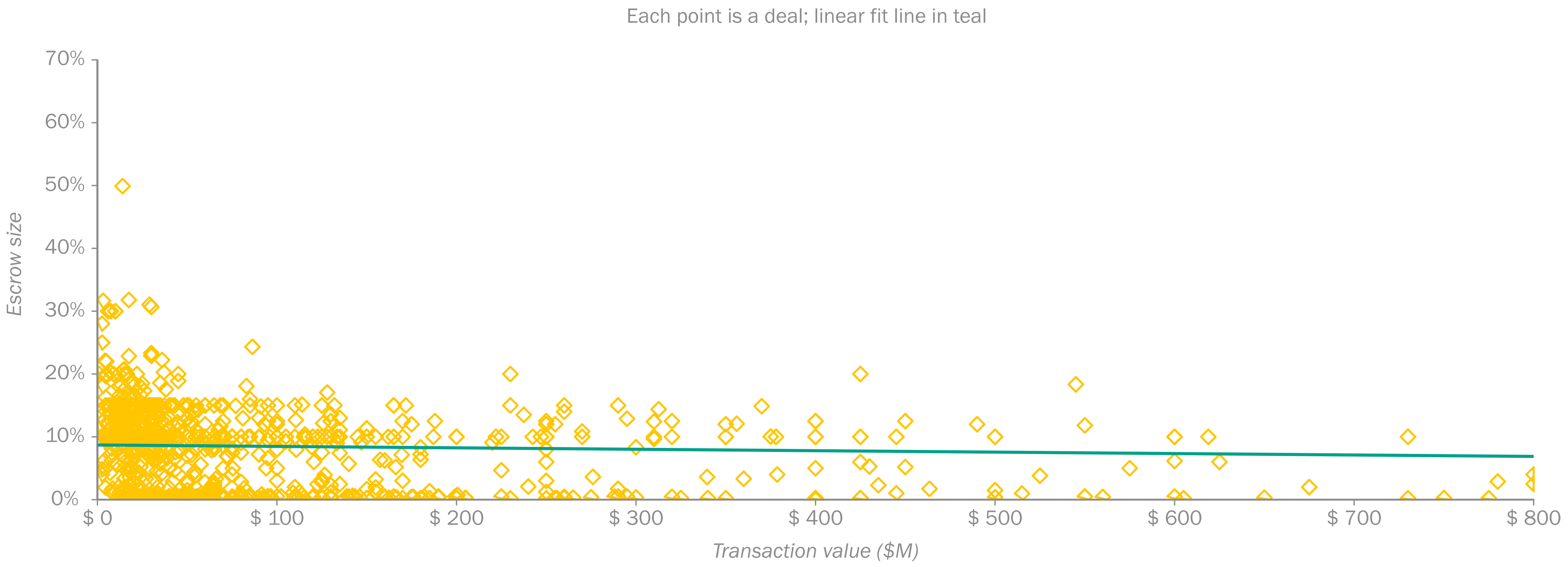
* *Equity capital investment data provided by PitchBook and other databases.*

Correlations

Transaction Value and Escrow Size

Data set: All deals closing in 2022–2025

TRANSACTION VALUE VS. ESCROW SIZE (DEALS OVER $800M ARE HIDDEN BUT FACTOR INTO TREND LINE)

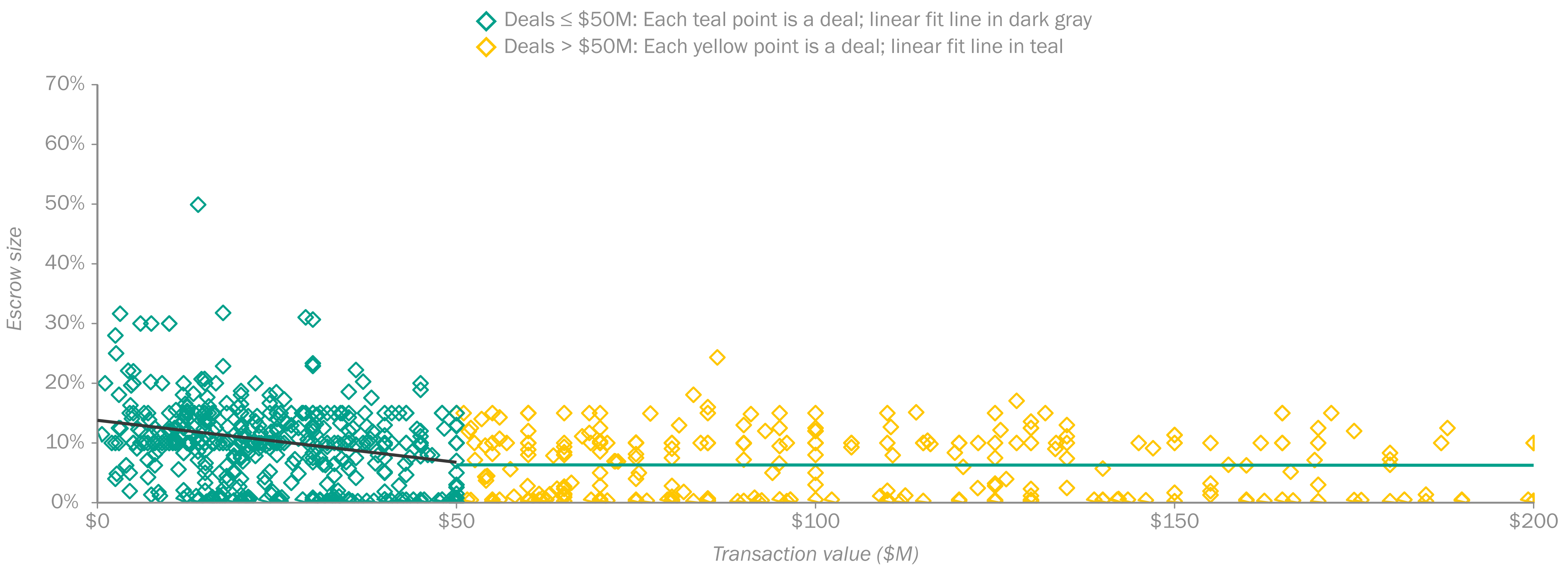


Correlations

Transaction Value and Escrow Size (Detail)

Data set: All deals closing in 2022–2025

TRANSACTION VALUE VS. ESCROW SIZE (DEALS OVER $200M ARE HIDDEN BUT FACTOR INTO TEAL TREND LINE)



Example
Terms

Example terms included in this study are provided as a reference only and may not be applicable to certain deals.

Example Terms (1 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
Post-Closing Purchase Price Adjustments: Working Capital Excludes Tax-related Items	**Tax Exclusion Example** “Adjusted Working Capital" means (a) the sum of the Company’s current assets, excluding any current or deferred tax assets, less (b) the sum of the Company’s current liabilities, excluding any current or deferred tax liabilities, calculated in accordance with the Accounting Principles and the line items in the illustrative Net Working Capital calculation set forth on Exhibit 1.	Slide 19 ➤
Post-Closing Purchase Price Adjustments: Accounting Methodology	**Example Provision Establishing Accounting Methodology:** The parties shall prepare the Closing Statement in accordance with the applicable definitions in this Agreement and with GAAP and, solely to the extent consistent with GAAP, in accordance with the Company’s past practices (including the methodologies applied in the preparation of the Financial Statements); provided that if there is any inconsistency between GAAP and the definitions in this Agreement relating to the items to be set forth on the Closing Statement, the definitions shall control.	Slide 19 ➤
Post-closing Purchase Price Adjustments: Thresholds and Caps	**Example Threshold and Cap Language:** If the Final Working Capital Difference Amount is a negative number, the absolute value of which exceeds the Adjustment Threshold Amount, the Closing Merger Consideration shall be decreased by the amount the absolute value of the Final Working Capital Difference Amount exceeds the Adjustment Threshold Amount not to exceed the Purchase Price Adjustment Cap.	Slide 20 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
Post-Closing Purchase Price Adjustments: Sell-Side Information Rights	**Supporting Information Delivered with Statement Example Clause** …including any supporting information reasonably necessary for the Shareholder Representative to review such calculations. **Cooperation and Access During Review Example Term** Buyer will, and will cause the Company to, reasonably cooperate with the Shareholder Representative in the review of the Final Closing Statement and provide the Shareholder Representative and its representatives with reasonable access during normal business hours to the books, records (including work papers, schedules, memoranda, and other documents), supporting data, facilities, and employees of Buyer and all other information in connection with the review of the Final Closing Statement as is reasonably requested by the Shareholder Representative or any of its representatives.	Slide 22 ➤
Earnouts (Non-Life Sciences Deals): Additional Provisions	**Example Provision Intended to Ensure Earnout Is Not Treated as a Security:** The right of Seller to a portion of the Earnout Amount, if any, shall not be represented by a certificate or other instrument, shall not represent an ownership interest in Buyer or the Business and shall not entitle Seller to any rights common to any holder of any equity security of Buyer. **Example Disclaimer of Fiduciary Relationship:** Nothing in this Agreement creates a fiduciary duty on the part of Buyer to Seller in respect of the Earnout.	Slide 27 ➤

Example Terms (2 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
Definition of Material Adverse Effect ("MAE"): "Prospects" Included	**Example Term** "Material Adverse Effect" means any result, fact, change, circumstance, occurrence, event or effect that, individually or in the aggregate, has a material adverse effect on the condition (financial or otherwise), assets (including intangible assets), liabilities, businesses, prospects, capitalization, operations, or results of operations of the Seller, taken as a whole.	Slide 29 ➤
Definition of Material Adverse Effect ("MAE"): Forward-looking Language	**Example Term:** "Material Adverse Effect" means any result, fact, change, circumstance, occurrence, event or effect that, individually or in the aggregate, has had, or could reasonably be expected to have, a material adverse effect on the condition (financial or otherwise), assets (including intangible assets), liabilities, businesses, prospects, capitalization, operations, or results of operations of the Company, taken as a whole.	Slide 29 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
Definition of Material Adverse Effect ("MAE"): Carveouts	**Example Term:** … provided, however, Material Adverse Effect will not include the following, either alone or in combination, nor will any of the following be taken into account in determining whether there has been a Material Adverse Effect: (a) effects, changes, events, developments, circumstances or conditions that generally affect the industry in which the Company operates; (b) general business, financial or economic conditions; (c) national or international political or social conditions, including the engagement in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any actual or threatened military or terrorist attack; (d) changes or developments resulting or caused by natural disasters; (e) changes or developments resulting from any epidemic, pandemic, disease outbreak, or other public health emergency; (f) changes in GAAP or in the interpretation or enforcement thereof; or (g) effects, changes, events, developments, circumstances or conditions arising out of or attributable to any action required by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of the Buyer.	Slide 30 ➤

Example Terms (3 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
Definition of Material Adverse Effect: Carveouts Qualified by Disproportionate Effect	**Example Term:** … provided, however, Material Adverse Effect will not include the following, either alone or in combination, nor will any of the following be taken into account in determining whether there has been a Material Adverse Effect: (a)… (b)… … (g)…; provided, however, that the foregoing clauses (a) through (g) will not apply and may be taken into account if such effect, change, event, development or circumstance disproportionately adversely affects the Seller, taken as a whole, compared to other Persons that operate in the industry in which the Seller operates.	Slide 31 ➤
Knowledge Standards	**Actual Knowledge** “Knowledge” means, with respect to (a) the Seller, the actual knowledge of the officers and directors of the Company, or (b) with respect to any other Party, …. **Constructive Knowledge** “Knowledge” means, with respect to (a) the Seller, the actual knowledge of the officers and directors of the Seller and the knowledge of which any such individual should have been aware, in their capacity as an officer or director of the Seller, after reasonable inquiry, or (b) with respect to any other Person, ….	Slide 32 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
“No Undisclosed Liabilities” Representation Examples	**Buyer-Favorable Formulation** The Seller has no liabilities of any type whatsoever except for: (a) liabilities reflected or reserved against in the Balance Sheet; (b) those Liabilities set forth in the Disclosure Schedule; and (c) current liabilities incurred in the ordinary course of business during the Interim Period. **Seller-Favorable Formulation** The Seller has no liabilities of any type that are required to be disclosed in a balance sheet prepared in accordance with GAAP except for (a) liabilities reflected or reserved against in the Latest Balance Sheet; (b) those Liabilities set forth in the Disclosure Schedule; and (c) current liabilities incurred in the ordinary course of business during the Interim Period.	Slide 34 ➤
“Compliance with Laws” Representation	**Example Representation** The Seller is, and has been, to Seller's knowledge, in compliance in all material respects, with all applicable Laws.	Slide 35 ➤

Example Terms (4 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
“10b–5” and “Full Disclosure” Representations Examples	**“10b–5” Representation** No representation or warranty by the Seller in this Agreement and no statement contained herein, in the Disclosure Schedules, or any certificate or other document furnished or to be furnished to Buyer, pursuant to this Agreement, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they are made, not misleading in any material respect. **“Full Disclosure” Representation** The Seller has no Knowledge of any information or other fact that is, or reasonably likely to become, materially adverse to the condition (financial or otherwise), assets, business, capitalization, liabilities, operations, prospects, results of operations, or financial performance of the Company that has not been set forth in this Agreement or in the Disclosure Schedules.	Slide 36 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
“No Other Representations” and “Non-Reliance” Clause Examples	**No Other Representations** Buyer hereby expressly acknowledges that the Seller has not made and is not making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties contained in this Article (as modified by the Disclosure Schedule). **Non-Reliance** Buyer hereby expressly acknowledges that it is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties contained in this Article (as modified by the Disclosure Schedule).	Slide 39 ➤
“No Other Representations” and “Non-Reliance” Clause Fraud Carveout	**Example Fraud Carveout Clause** ...except that nothing in this Agreement will limit or exclude any liability of a Party for Fraud.	Slide 39 ➤

Example Terms (5 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
Privacy Representation Example	**Example Privacy Representation** The Seller has complied in all material respects with all applicable Privacy Laws and has in place adequate written policies relating to privacy, data protection, and the collection and use of Personal Data and other sensitive data collected, used, or held for use by the Seller, to comply with its obligations under all applicable Privacy Laws (collectively the "Seller Privacy Policies"). The Seller has not received any written notice, order, inquiry, investigation, complaint, or other communication alleging non-compliance with any Privacy Laws or Seller Privacy Policies. To the Seller's Knowledge, there has been no material loss, theft, misuse of, or unauthorized access to, or acquisition, use, modification or disclosure of, any Personal Information processed, collected, stored, transferred or otherwise used by or on behalf of the Seller. The Transaction will not result in any material liabilities in connection with any applicable Privacy Laws.	Slide 41 ➤
Cybersecurity Representation	**Example Cybersecurity Representation** Seller's information technology equipment, systems and processes, whether owned, used or held for use by Seller, are reasonably sufficient for the needs of Seller's business. No unauthorized access, use or intrusion, breach of security, material failure or diminished performance, or other adverse event relating to Seller's information technology infrastructure has caused or would reasonably be expected to cause any substantial disruption to Seller's business or any material loss or harm to Seller or its directors, officers, employees, contractors, property or other assets.	Slide 42 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
Sexual Misconduct Representation	**Example Sexual Harassment and Misconduct Representation (aka #metoo Rep or Weinstein clause)** The Seller is not a party to any settlement agreement relating to allegations of sexual harassment, discrimination or other misconduct involving Seller or any current or former director, officer, employee, or contractor of Seller or its Affiliates. To Seller's knowledge, no allegations of or investigations into sexual harassment, discrimination or other misconduct have been made against Seller or any current or former director, officer, employee, or contractor of Seller or its Affiliates. **Example Corrective Action Language** Seller promptly reviews and investigates all allegations of sexual harassment, discrimination, or other misconduct and takes timely corrective action that is reasonably calculated to prevent further instances of sexual harassment, discrimination or other misconduct.	Slide 43 ➤

Example Terms (6 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
Accuracy of Seller's Representations (Timing): When Must They Be Accurate?	**At Signing Only** Each of the representations and warranties set forth in this Article will be true and correct in all material respects as of the date hereof, or for representations and warranties that refer specifically to an earlier date, will have been true and correct in all material respects as of such specified date. **At Closing Only** Each of the representations and warranties set forth in this Article will be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, or for representations and warranties that refer specifically to an earlier date, will have been true and correct in all material respects as of such specified date. **At Signing and Closing** Each of the representations and warranties set forth in this Article will be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date, or for representations and warranties that refer specifically to an earlier date, will have been true and correct in all material respects as of such specified date.	Slide 47 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
Accuracy of Seller's Representations (Timing): How Accurate Must They Be?	**Accurate "in all respects"** Each of the representations and warranties set forth in this Article will be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date, or for representations and warranties that refer specifically to an earlier date, will have been true and correct in all respects as of such specified date. **Accurate "in all material respects"** Each of the representations and warranties set forth in this Article will be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date, or for representations and warranties that refer specifically to an earlier date, will have been true and correct in all material respects as of such specified date. **MAE qualification** Each of the representations and warranties set forth in this Article will be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (or for representations and warranties that refer specifically to an earlier date, will have been true and correct in all respects as of such specified date), except where failure to be so true and correct do not and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.	Slide 47 ➤

Example Terms (7 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
Accuracy of Seller's Representations (Materiality): MAE Qualifier with Capitalization Representation Carveout	**Example Capitalization Carveout** Each of the Seller's representations and warranties set forth in this Article, other than Section 3.2 (the Capitalization Representations), will be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (or for representations and warranties that refer specifically to an earlier date, will have been true and correct in all respects as of such specified date), except where failure to be so true and correct do not and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and each of the Capitalization Representations will be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date.	Slide 48 ➤
Accuracy of Seller's Representations (Materiality): Materiality Scrape	**Example Materiality Scrape** Each of the representations and warranties set forth in this Article will be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date, or for representations and warranties that refer specifically to an earlier date, will have been true and correct in all material respects as of such specified date; provided, however, that for purposes of determining the accuracy of such representations and warranties, all qualifications limiting the scope of such representations and warranties, including by the words "Material Adverse Effect," "in all material respects," "in any material respect," "material," or "materiality," will be disregarded.	Slide 48 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
"Material Adverse Change" Condition ("MAC")	**"Stand-alone" MAC** No Company Material Adverse Effect will have occurred between the date of this Agreement and the Closing Date that is continuing. **"Back-door" MAC** The acquisition agreement includes an "Absence of Changes" representation and a bring-down condition regarding the accuracy of the Seller's representations and warranties at Closing, which collectively create the "Back-door" MAE condition, as per below: *Absence of Changes. (i) Since the Balance Sheet Date, there has not been, except as set forth in the Disclosure Schedules, any Seller Material Adverse Change.* *Conditions to Obligations of the Buyer. ... (a) The representations and warranties set forth in Article III shall be true and correct in all respects when made and at the Closing Date as if made on the Closing Date, except, where the failure of any such representations or warranties to be true and correct do not and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.*	Slide 49 ➤

Example Terms (8 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
“No Legal Proceedings” Condition	**Example Formulation** There will not be any (a) [threatened or] pending legal action, suit, or similar legal proceeding brought by any Person or Government Authority with respect to the Transaction, or (b) any injunction, restraining order, or Law, whether temporary, preliminary, or permanent, issued by any Government Authority, directing the Transaction to not be consummated.	Slide 50 ➤
“Sandbagging”	**Pro-Sandbagging** The right to indemnification, reimbursement, or other remedies based upon any such representation or warranty will not be affected by any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of such representation warranty… **Anti-Sandbagging** No Party will be liable under this Article for any Losses arising from or relating to the inaccuracy of, breach of, non-performance of, or non-compliance with any representation, warranty, or obligation in this Agreement if the Party bringing a claim for such Losses had Knowledge of such inaccuracy, breach, non-performance, or non-compliance prior to the Closing.	Slide 56 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
“Materiality Scrape” Example Definitions	**Materiality qualifications in representations and warranties disregarded for all indemnification purposes (determining breaches and calculating losses)** Notwithstanding anything to the contrary in this Agreement, for purposes of the indemnification provisions in this Article, the determination of (a) whether any representation warranty or covenant has been breached and (b) the amount of any Losses will be made without giving effect to any "Material Adverse Effect" qualification or any materiality or similar qualification contained in the representations, warranties, covenants or agreements herein. **Materiality qualifications in representations and warranties disregarded for calculation of losses only** Notwithstanding anything to the contrary in this Agreement, for purposes of the indemnification provisions in this Article, the determination of the amount of any Losses will be made without giving effect to any "Material Adverse Effect" qualification or any materiality or similar qualification contained in the representations, warranties, covenants or agreements herein. (Continued on next page)	Slide 58 ➤

Example Terms (9 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
“Materiality Scrape” Example Definitions (continued)	**Materiality qualifications in representations and warranties disregarded for determining breaches only** Notwithstanding anything to the contrary in this Agreement, for purposes of the indemnification provisions in this Article, the determination of whether any representation warranty or covenant has been breached and will be made without giving effect to any "Material Adverse Effect" qualification or any materiality or similar qualification contained in the representations, warranties, covenants, or agreements herein.	Slide 58 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
Reductions Against Buyer’s Indemnification Claims	**Reduction for insurance proceeds** Payments by an Indemnifying Party pursuant hereto shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution, or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such claim. **Reduction for tax benefits** Payments by an Indemnifying Party pursuant hereto for any Loss shall be reduced by an amount equal to any Tax benefit realized or reasonably expected to be realized as a result of such Loss by the Indemnified Party. **Buyer required to mitigate losses** Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss and using commercially reasonable efforts to recover under insurance policies or indemnity, contribution, or other similar agreements for any Losses.	Slide 59 ➤

Example Terms (10 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
General Survival Period/Time to Assert Claims	**Survival** All representations, warranties, and covenants in this Agreement and the Disclosure Schedules and any other certificate or document delivered pursuant to this Agreement will survive the Closing for a period of 15 months. **Time Limitations** If the Closing occurs, Seller will have no liability (for indemnification or otherwise) with respect to any representation or warranty unless on or before the 15-month anniversary of the Closing, Buyer notifies Sellers of a Claim specifying the factual basis of such Claim in reasonable detail to the extent then known by Buyer.	Slide 60 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
Baskets: Definitions	**Deductible** With respect to indemnification by the Sellers for any Losses arising under this Article, the Sellers will not be liable unless and until the aggregate amount of all Losses for which the Sellers would be liable exceeds an amount equal to $[500,000] (the “Deductible”), in which case the Sellers will only be liable for such Losses in excess of the Deductible. **First-dollar** With respect to indemnification by the Sellers for any Losses arising under this Article, the Sellers will not be liable unless and until the aggregate amount of all Losses for which the Sellers would be liable exceeds an amount equal to $[500,000] (such amount, the "Sellers Basket"). If indemnification claims exceed the Sellers Basket, the Sellers will be liable for all indemnification claims properly asserted against them, including those claims comprising the Sellers Basket. **Combination** With respect to indemnification by the Sellers for any Losses arising under this Article, the Sellers will not be liable unless and until the aggregate amount of all Losses for which the Sellers would be liable exceeds an amount equal to $[1,000,000] (the "Threshold"), at which time Sellers will be liable only to the extent that such cumulative Losses exceed $[500,000] (the "Deductible").”	Slide 65 ➤

Example Terms (11 of 11)

TOPIC	EXAMPLE TERMS	SEE DATA
Baskets: Eligible Claim Threshold	**Claim Threshold Formulation** No claim for Losses may be made for indemnification hereunder if the amount of such claim, or series of related claims, individually or in the aggregate, does not exceed $20,000 (the "De Minimis Amount"), it being understood that a claim for Losses that does not exceed the De Minimis Amount will not count toward satisfaction of the Deductible.	Slide 70 ➤
Indemnification as Exclusive Remedy for Breach	**Example provision for Exclusive Remedy** The parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud) for any breach of any representation, warranty, covenant, agreement, or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth herein.	Slide 84 ➤

TOPIC	EXAMPLE TERMS	SEE DATA
Sell-Side Attorney-client Privilege	**Example Savings Clause for Transfer of Sell-side Attorney-client Privilege to Selling Shareholders** Buyer hereby agrees not to search for or use any Deal Communications existing on the Company's electronic backup systems, email archives or other books and records after the Closing, the existence of any Deal Communications in the Company's possession after the Closing shall not be deemed a waiver of the privilege related to such Deal Communications, and the parties agree to take all reasonable steps necessary to ensure such privilege shall survive the Closing. See **Anatomy of the Target Company Privilege Provision in M&A Agreements** for additional example language.	Slide 90 ➤

Glossary

Glossary (#–C)

10b-5	Rule 10b-5 is an SEC rule that prohibits any act or omission resulting in fraud or intentional deceit (scienter) and relied upon by the injured party in connection with the purchase or sale of a security. A "10b-5 Representation" is a catch-all representation in the merger agreement modeled from the SEC rule but without the scienter or reliance requirement, expanding buyer's ability to claim breach of the agreement.
Adjusted Working Capital	A method of calculating working capital where certain items are expressly included or excluded from current assets or current liabilities such as deferred tax assets (e.g., loss carry forward) or contingent liabilities (e.g., pending litigation).
Appraisal Rights	Shareholders' statutory right under state law to seek judicial determination of the value of their shares when the target company is party to a merger.
Arbitration	A method of alternative dispute resolution whereby a dispute, with the consent of the parties, is submitted to a neutral person or group for a decision. Usually includes a full evidentiary hearing and presentations by attorneys for the parties. The merger agreement may provide that the arbitrator's decision be binding or non-binding.
Baskets (Indemnification)	A limitation on the Seller's indemnification of the Buyer by setting a deductible (i.e., the Seller is only responsible for losses above the deductible), threshold (i.e., the Seller is responsible for all losses only after such losses hit the threshold amount, also known as a "tipping basket" or a "first-dollar basket") or both with respect to aggregated claims. Baskets may also be set for individual claims.

Buy-side Representations And Warranties Insurance (RWI)	An insurance policy issued to the Buyer in an M&A transaction to indemnify the Buyer for covered losses it suffers resulting from a breach of the representations and warranties made by the Seller (and/or selling shareholders) in the acquisition agreement.
Cap (Indemnification)	A limitation on the Seller's indemnification of the Buyer by setting a maximum amount of liability of the Seller. Caps may also be set for individual or specific claims.
Cap (Purchase Price Adjustments)	A limitation on the post-closing purchase price adjustment (aka working capital adjustment) payable to Buyer or Seller. The PPA Cap is frequently equivalent to the general liability cap or the PPA escrow amount or may be set forth as another fixed dollar amount or tied to another provision in the acquisition agreement.
Capitalization	The equity ownership of the target company (e.g., number and types of securities issued and outstanding).
Change In Control	A merger, consolidation, or acquisition involving all or substantially all the assets of an entity. Changes in control often trigger acceleration provisions (e.g., vesting of equity compensation paid to officers or other employees or with respect to earnouts).
Closing Date	The date on which the transaction is consummated, i.e., the date on which the purchase price is paid, and the merger occurs.
Covenant	Covenants are actions that must be taken or not taken by the parties. In a merger agreement, covenants may require the parties to take actions both before and after the closing.

Glossary (E–K)

Earnout	Contingent consideration earned and payable after a set period of time and/or based on the level of achievement of certain milestones such as financial metrics (e.g., revenue, EBITDA, etc.) or operational metrics (e.g., regulatory approval).
Escrow	In the M&A context, a portion of the transaction consideration that is held to secure the selling shareholders' indemnification obligations to the Buyer such as a purchase price adjustment, indemnification claim, tax liability, or pending litigation. After a predetermined period of time has passed, any amount in the escrow account not claimed by the Buyer is released to the selling shareholders.
Expense Fund	A voluntary fund set aside by the shareholders from the acquisition consideration at closing for potential third-party expenses that might be incurred during the post-closing period such as costs incurred in negotiating the purchase price adjustment or defending an indemnification claim.
Fiduciary Duty	An obligation or duty to act in the best interests of another party.
Fraud	Acquisition agreements may include an express definition for "fraud" tied to a jurisdiction, such as defined under Delaware law, or using one or more elements such as actual fraud, intent to deceive, intentional fraud, intentional misrepresentation, and constructive or negligent fraud. Alternatively, an acquisition agreement may use "fraud" without including an express definition.
GAAP	Generally Accepted Accounting Principles; guidance promulgated by certain policy authorities and commonly accepted accounting practices used for consistency in reporting financial information.

Holdback	Similar to escrows, holdbacks provide security for Seller's post-closing obligations in an M&A transaction. But unlike escrows, holdbacks remain in the sole custody of the Buyer. For that reason, holdbacks may give Buyers additional leverage for post-closing disputes such as indemnification claims. After a predetermined period of time has passed, any amount of the holdback not claimed by the Buyer is released to the selling shareholders.
Indemnification	Where one party secures another against suffered losses. In the M&A context, the selling shareholders often agree to indemnify the Buyer against certain types of losses that could be suffered in connection with the transaction such as in the event of losses resulting from a breach of a representation, warranty, or covenant set forth in the acquisition agreement.
Knowledge	Acquisition agreements generally include two concepts when defining knowledge: (1) who and (2) actual versus constructive knowledge. Definitions of knowledge for a particular entity typically encompass the knowledge of officers and directors and may include additional groups related to the entity (e.g., key employees). Actual knowledge is information actually known to the person. Constructive knowledge is information that the person should know given their position or would know after investigation or due inquiry.
Knowledge Qualifier	A representation and warranty (e.g., a statement about the operations or conditions of an entity's business) can either be stated as a fact (i.e., with no knowledge qualifier) or stated as true "to the Knowledge of the Company" (i.e., with a knowledge qualifier), which would mean that the Seller is not in breach of making such representation and warranty even if such statement is not true if the Seller did not have Knowledge that such statement was not true.

Glossary (Le–Non)

Legal Opinion	A legal opinion provided by Seller’s counsel to Buyer that addresses the legal status of the assets being sold, legal and contractual restrictions, compliance with law and enforceability. Specialized opinions may be provided for certain patent, tax, litigation, or other specific legal matters.
Legal Representation Conflict Waiver	A provision allowing the Seller’s pre-closing counsel to represent the selling shareholders post-closing in matters relating to the acquisition.
Management Carveout	A portion of deal proceeds guaranteed to the Seller’s management when management would otherwise receive little or nothing for their equity ownership due to liquidation preferences. Transaction bonuses, which often differ materially from management carveouts in size and timing of adoption, are not included in our data.
Management Rollover	When an M&A transaction uses all cash consideration but allows for a subset of the selling shareholders, typically the target's management group, to exchange some or all of their equity in the target for equity in the surviving entity.
Material Adverse Change (MAC)	Typically expressly defined in an acquisition agreement, material adverse changes are substantial changes to the business, prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of the target company or, more simply, may be tied to the definition of Material Adverse Effect (e.g., any event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect).

Material Adverse Effect (MAE)	Typically expressly defined in an acquisition agreement, material adverse effect means any result, occurrence, fact, change, event, or effect that has a materially adverse effect on the business, assets, liabilities, capitalization, condition (financial or other), or results of operations of Seller. The definition may also include “prospects” of the Seller, which expands the definition to include planned, potential, contingent or even yet-unknown business activities. The definition may also be expanded by including forward-looking language (…any effect that has, or could reasonably be expected to have, a materially adverse effect…). The definition may be pared back with certain carveouts (e.g., changes in laws, actions required by the acquisition agreement, etc.), which carveouts may be cancelled out if such carved out occurrence had a disproportionate effect on the Seller (i.e., the adverse effect of such occurrence was substantially more significant to the Seller than to other comparable entities, such as a competitor or similar company in the same industry).
Materiality Scrape	Notwithstanding any materiality qualifiers included in a representation or warranty, for purposes of (1) determining whether a breach of such representation or warranty occurred or (2) calculating the amount of an indemnifiable loss as a result of such breach, materiality will be disregarded. A “double materiality scrape” includes both (1) and (2).
Mediation	A form of alternative dispute resolution where the parties attempt to negotiate a settlement with the assistance of a neutral third party. Unlike arbitration or litigation, the resulting agreement, or lack thereof, is wholly controlled by the parties.
Non-U.S.-based Buyer	Includes foreign companies headquartered outside of the U.S. Both public and private foreign companies are included.

Glossary (Nos–Sp)

No-shop/No-talk	Seller is not permitted to initiate or engage in discussions with a competing acquirer, which gives the present acquirer exclusivity (and incentive to pursue the transaction). Certain jurisdictions have affirmed that the board of a target company may still owe a fiduciary duty to the shareholders of such target company to consider all acquisition proposals regardless of a contractual no-shop/no-talk provision to ensure maximum value to the shareholders.
No Survival	For purposes of this study, no survival or a "walk-away" deal means the Seller's general representations and warranties do not survive closing, however, Sellers may still be liable for carved-out matters, such as fundamental reps and warranties, special indemnities, etc.
Option	A type of security where the holder may elect to purchase equity (e.g., shares of capital stock) at a certain price often used as a form of compensation for officers or employees of an entity and subject to a vesting schedule. Holders of options that are in-the-money (where the current value of the underlying equity is more than the price payable pursuant to the option) may receive consideration in an acquisition transaction in exchange for their options, sometimes even participating in the PPA and escrow provisions alongside the holders of capital stock (e.g., "contribution"). An acquisition may trigger change in control provisions, accelerating the vesting schedule of the options. A Buyer may also elect to assume options, whereby the option would permit the holder to purchase equity in the Buyer after closing.
Private Buyer (U.S.)	Non-public companies headquartered in the U.S. Also includes companies whose stock is traded on the OTCBB or Pink Sheets and potentially the portfolio companies of private equity firms (i.e., P.E.-backed).

Public Buyer (U.S.)	Acquiring companies listed on U.S. public stock exchanges (e.g., NYSE or NASDAQ).
Purchase Price Adjustment (PPA)	A common deal feature where the transaction consideration is adjusted shortly after closing in accordance with a specified financial metric given such metrics are generally estimated at the time of closing and more accurately calculable after a certain amount of time after closing. While there are a number of metrics used to determine the adjustment, the most common is some variation of a net working capital formula. The adjustment can be in favor of either the Buyer or selling shareholders.
Representations and Warranties Insurance (RWI)	A commercial insurance policy purchased from a third-party insurance provider that provides coverage for breaches of representations and warranties, often subject to a deductible (i.e., retention amount) and express coverage carveouts. RWI is most often purchased by the Buyer with the premium considered a transaction expense. The retention amount of the RWI policy often correlates to the size of the indemnification escrow/holdback.
Sandbagging	Having knowledge of a breach of a representation, warranty, or covenant of the other party under the acquisition agreement and continuing with the consummation of the transaction nonetheless and potentially seeking indemnification for any losses that may result from such breach post-closing.
Signing date	The date on which the merger agreement is signed by the principal parties. Closing typically, but not always, occurs on a later date.
Special Escrows	For purposes of this study, special escrows are deal escrows or holdbacks other than the general indemnification escrow such as a separate escrow for the PPA, specific indemnities, known litigation liabilities, intellectual property liabilities, tax liabilities, key employee retention issues, earnouts, regulatory liabilities, and data privacy liabilities.

Glossary (Su–U)

Survival	The time period after closing during which the Buyer may make a claim against the Seller or selling shareholders for breach of their representations, warranties, and covenants. The time period is usually shorter than the applicable statute of limitations.
Termination Fee	A fee payable in the event the acquisition transaction is not consummated, generally included to cover transaction expenses.
Transaction Bonus	Compensation payments to officers and/or key employees in connection with the acquisition transaction often for purposes of retention.
Transaction Expenses	Typically expressly defined in the acquisition agreement, transaction expenses generally include expenses incurred by the Seller and Buyer to consummate the transaction and may include (or exclude) the fees of brokers, advisors, counsel and third-party vendors (e.g., escrow agent), costs associated with regulatory approvals or obtaining certain consents, transaction bonuses, change in control payments and severance, and/or other expenses incurred in connection with the negotiation, preparation, review, execution, delivery, or performance of the acquisition agreement or consummation of the transaction.
Transaction Value	The enterprise value to be paid by the Buyer according to the acquisition agreement. For purposes of this study, transaction value does not include contingent consideration (e.g., earnouts) or adjustments to the purchase price.
U.S. Private Equity Buyer	Buyer that acquires a target as an investment rather than for the purpose of expanding its own business or for other strategic purposes.

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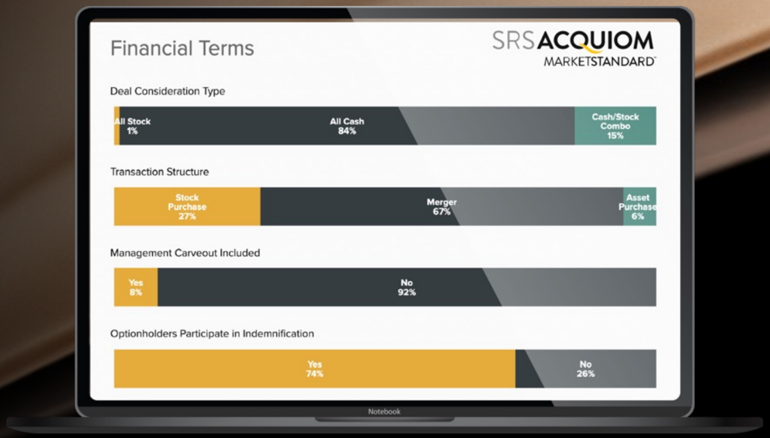

01

The Most Comprehensive View of Deal-Term Outcomes

- More than a decade of private-target M&A deal terms in a simple, powerful, visual, interactive online platform.

02

Determine "What's Market"

- Compare market data to your deal terms.
- Filter data to more closely resemble the deal you're negotiating.
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03

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Additional Resources

- **2026 M&A Working Capital PPA Study**
  https://www.srsacquiom.com/our-insights/2026-working-capital-purchase-price-adjustment-study/
- **2024 SRS Acquiom Claims Insight Report:**
  https://www.srsacquiom.com/our-insights/ma-claims-insights-report-earnout-indemnification-data/
- **2025 SRS Acquiom Life Sciences M&A Study:**
  https://www.srsacquiom.com/resources/life-sciences-deal-terms/
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