



SRSACQUIOM

2023 M&A Deal Terms Study

Data Highlights and Deal Terms Trends
Private M&A Deals that closed 2016-2022

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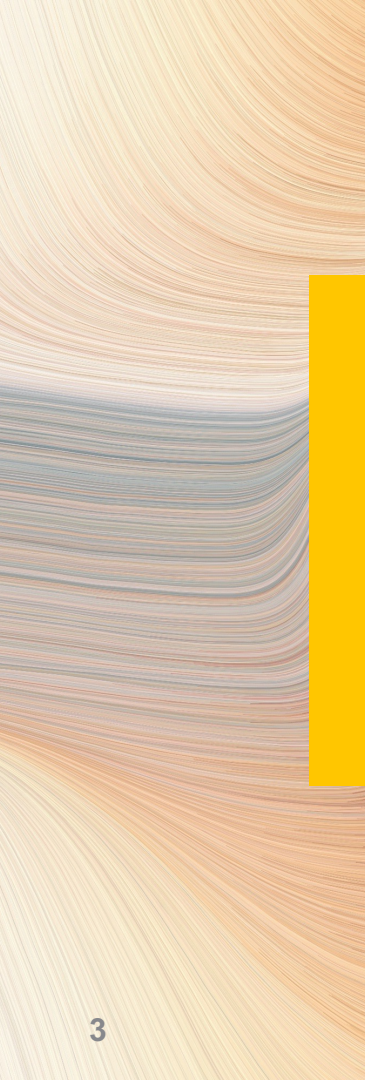


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SRS Acquiom

A Glance at Our Business

REPRESENTATIVE DEALS

APTUS

acquired by

THOMABRAVO

Affinivax

acquired by

gsk

BODYARMOR

acquired by

Coca-Cola

**CEDAR CX
TECHNOLOGIES**

acquired by

precisely

BUNGIE

acquired by

**Sony
Interactive
Entertainment**

Deliverr

acquired by

shopify

DRIZLY

acquired by

Uber

EllieMae

acquired by

ICE

flatiron

acquired by

Roche

iZettle

acquired by

PayPal

**KaNDy
Pharmaceuticals**

acquired by

BAYER

MIRROR

acquired by

lululemon

m*Modal

acquired by

3M

NUTRAFOL

acquired by

Unilever

PROTECTWISE

acquired by

verizon

SIMON

acquired by

iCapital

wave

acquired by

H&R BLOCK

**Zenimax
MEDIA INC.**

acquired by

Microsoft

A Smarter Way to Run Deals Through the Entire Lifecycle

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

Mergers and Acquisitions



Virtual Data Room

Choose our intuitive, streamlined virtual data room and gain the efficiency of a single partner from first document in to last dollar out.



Enhanced Stockholder Solicitation

A digital, efficient and secure process for collecting consents, joinders, 280G elections, and more —helping to facilitate a timely close.



Payments

We continue to set the standard for tech-enabled disbursement of merger consideration. Most shareholders are paid in less than 24 hours.



Escrows

A better M&A escrow experience, period. Simple, fast engagement, streamlined KYC, online Deal Dashboard™, and a dedicated team.



Shareholder Representation

The most experienced team in the industry. We proactively solve post-closing issues to reduce potential risks and protect shareholder interests.

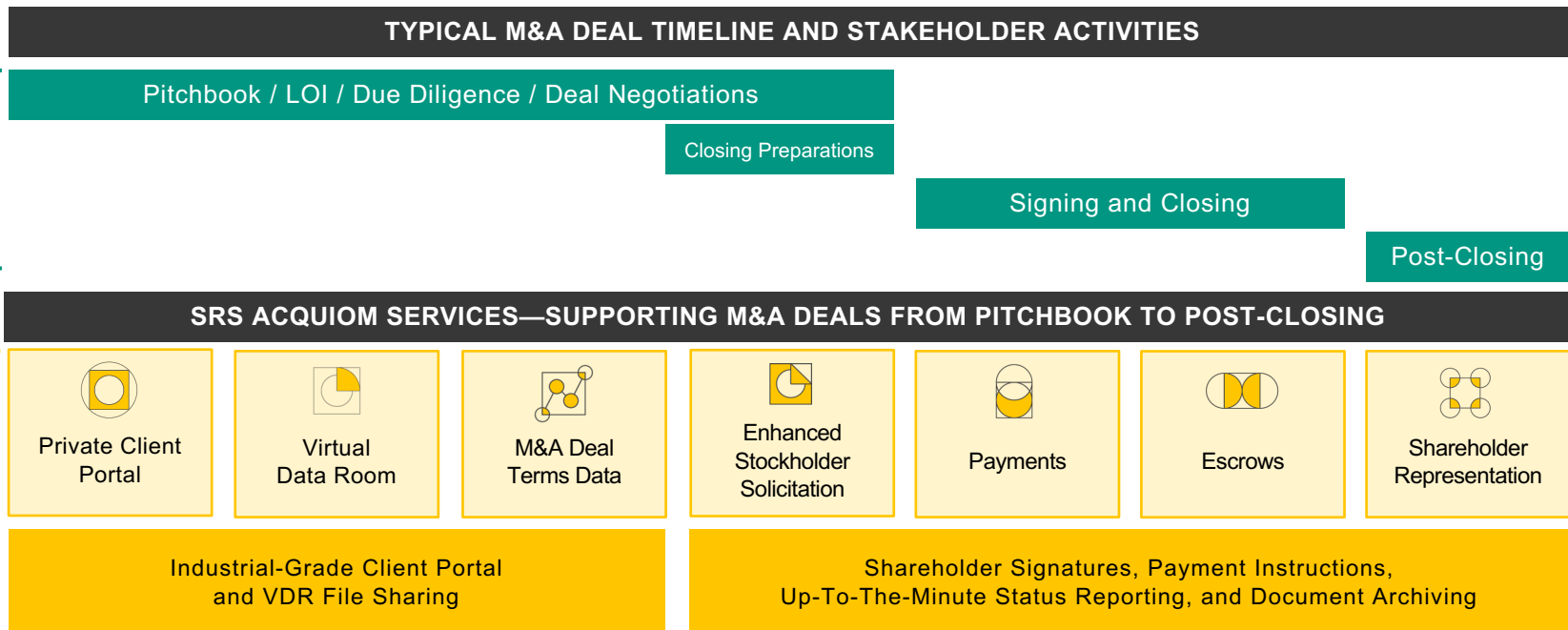


Loan Agency

Unbiased third-party loan agency services for syndicated and bilateral loans. Gain a team with an unparalleled depth and breadth of experience.

Securities products and Payments services offered through Acquiom Financial LLC, an affiliate broker-dealer of SRS Acquiom Inc. and member FINRA/SIPC. Visit www.finra.org for information about FINRA membership. Acquiom Financial does not make recommendations, provide investment advice, or determine the suitability of any security for any particular person or entity.

SRS Acquiom—Services for All M&A Stages



Trusted by Best-in-class Institutions Across Thousands of M&A Transactions

Security of money sitting with major banks coupled with best-in-class service from SRS Acquiom

Everything you want from a rock-solid bank without the things you don't



Single Point of Contact | Streamlined KYC | Experienced Team

Securities products and Payments services offered through Acquiom Financial LLC, an affiliate broker-dealer of SRS Acquiom Inc. and member FINRA/SIPC. HSBC, Truist, and Citizens Bank are trademarks or registered trademarks of HSBC, Truist, and Citizens Financial Group Inc., respectively.

AN EXPERIENCED PARTNER TO REDUCE DEAL COMPLEXITY

SRS Acquiom delivers a smarter way to run deals, with solutions that reduce the administrative burden throughout the entire deal lifecycle.

We pair tailored, expert service with game-changing data and technology, making complex deals as efficient as possible.

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

7,350+
deals engaged on

\$775B+
aggregate deal value

450K+
shareholders represented
in more than 140 countries

\$680B+
in payments

99%
of shareholders are
paid within 24 hours†

600K+
total shareholders
paid

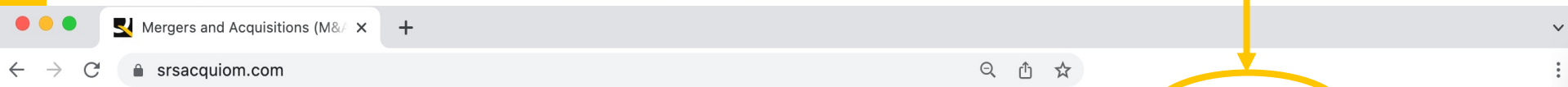
1M+
data room users‡

**Statistics contained herein are derived from publicly available sources;*

†Consideration given to those that have completed a Letter of Transmittal (LoT);

‡Data room technology, established in 2010, acquired by SRS Acquiom in 2021.

Access MarketStandard®



SRSACQUIOM

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The Deal, *Elevated*

SRS Acquiom delivers a more seamless way to run a deal from start to finish — enabling sophisticated deal parties to focus on building great businesses and maximizing value.

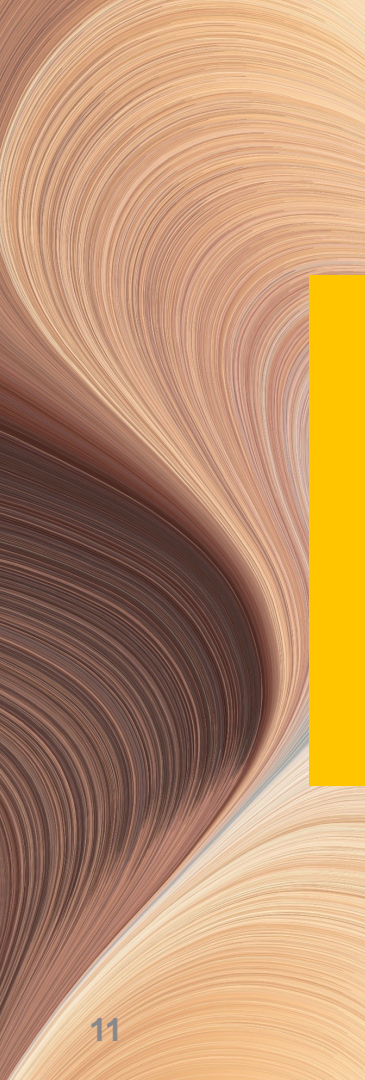
Mergers & Acquisitions: Virtual data room, online stockholder solicitation, payments, escrows, shareholder representation

Loan Agency: Administrative, collateral and sub-agent services on bilateral and syndicated loan deals

Why Do You Need a Professional Shareholder Rep?

<https://go.srsacquiom.com/video/why-shareholder-rep>





Agenda

- About SRS Acquiom and the Data
- Pre-closing Matters
- Closing Matters
- Post-closing Matters

ABOUT THIS STUDY AND THE DATA

This study analyzes more than **2,100 private-target acquisitions (\$460 billion)** that closed from **2017 through 2022**, including more than **400 deals** that closed in 2022.

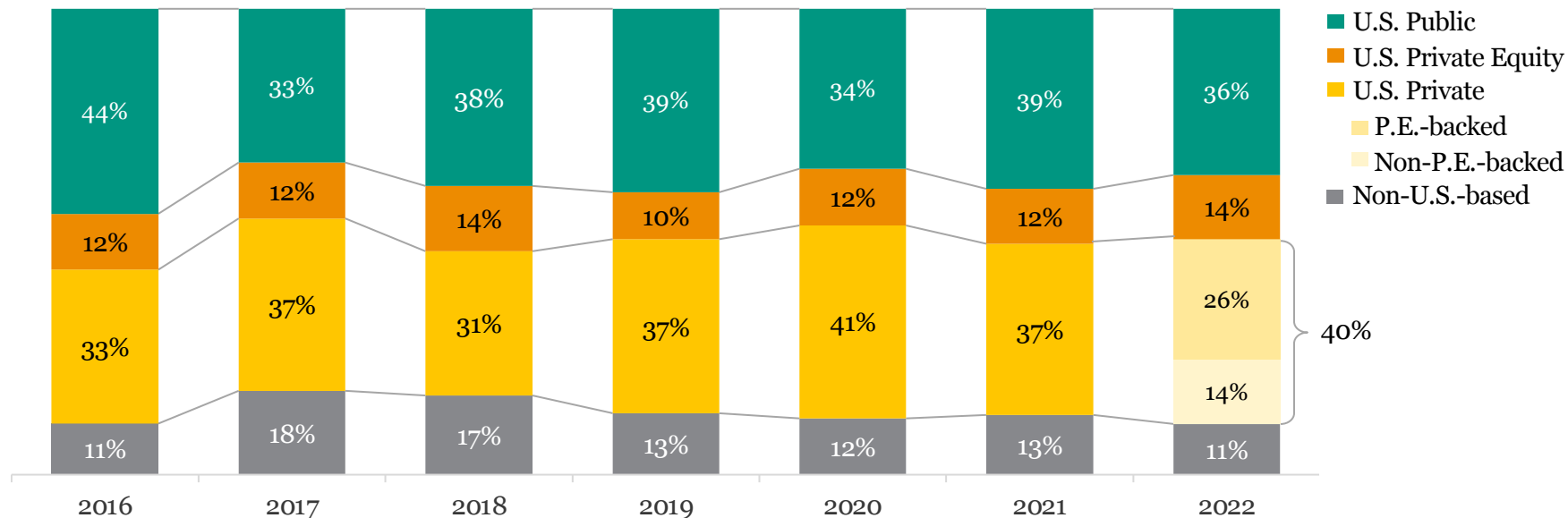
SRS Acquiom provided professional and financial services on these deals; the vast majority of these are **not publicly reported**.

Representations and Warranties Insurance (RWI) was identified on approximately 40% of 2022 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.

- *Please see the 2023 SRS Acquiom M&A Deal Terms Study for a full list of disclosures.*
- *Some charts do not sum to 100% due to rounding.*
- *To benefit users comparing data from different sources, this presentation 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.*

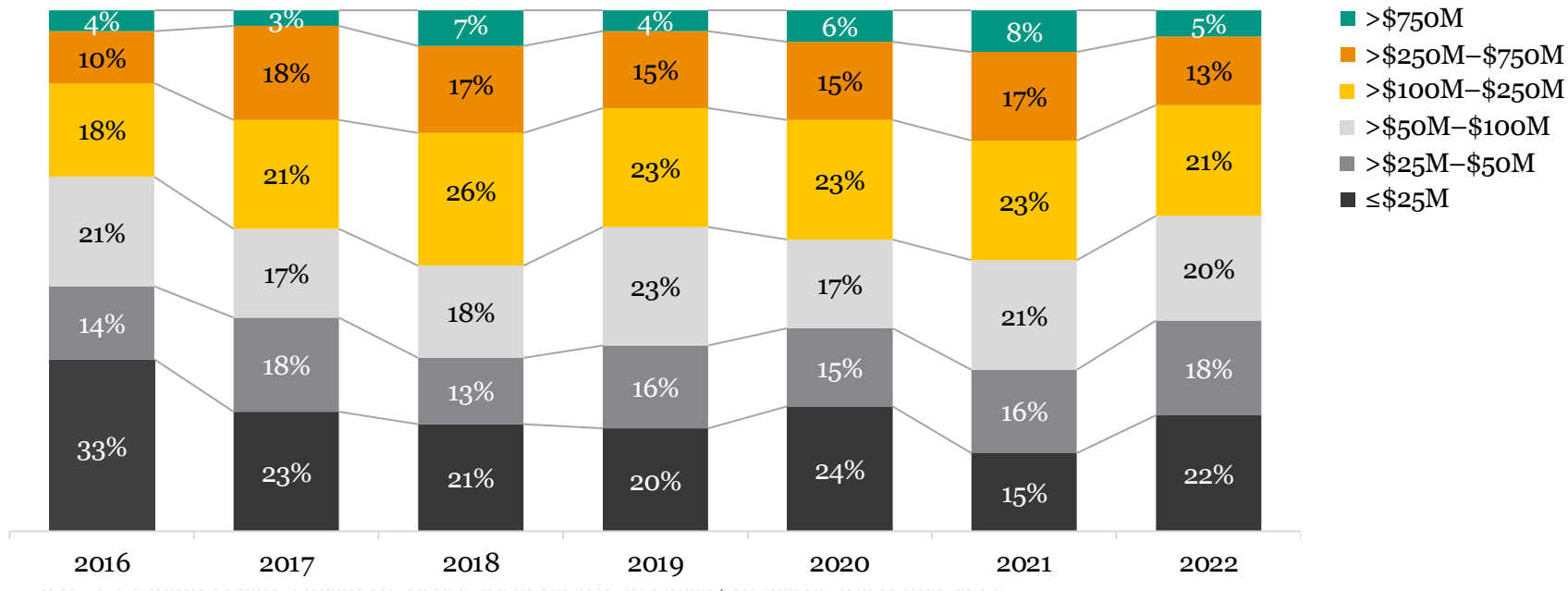
Buyer Types

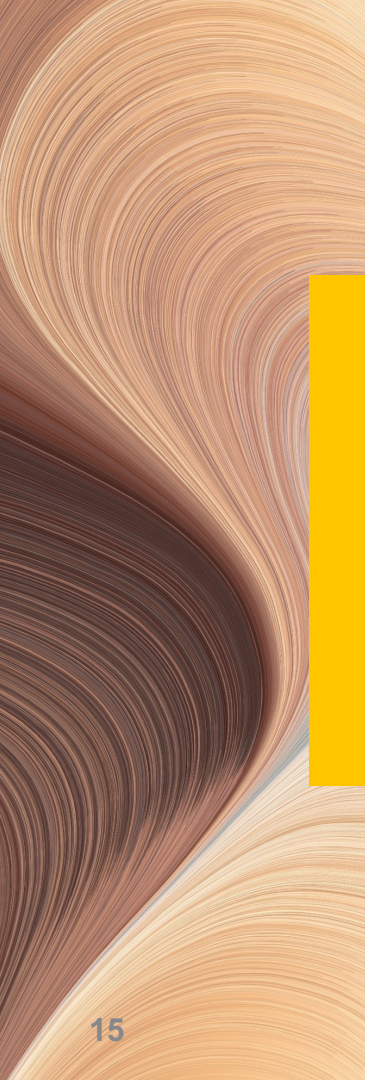
Buyer types



Transaction Values*

Transaction values



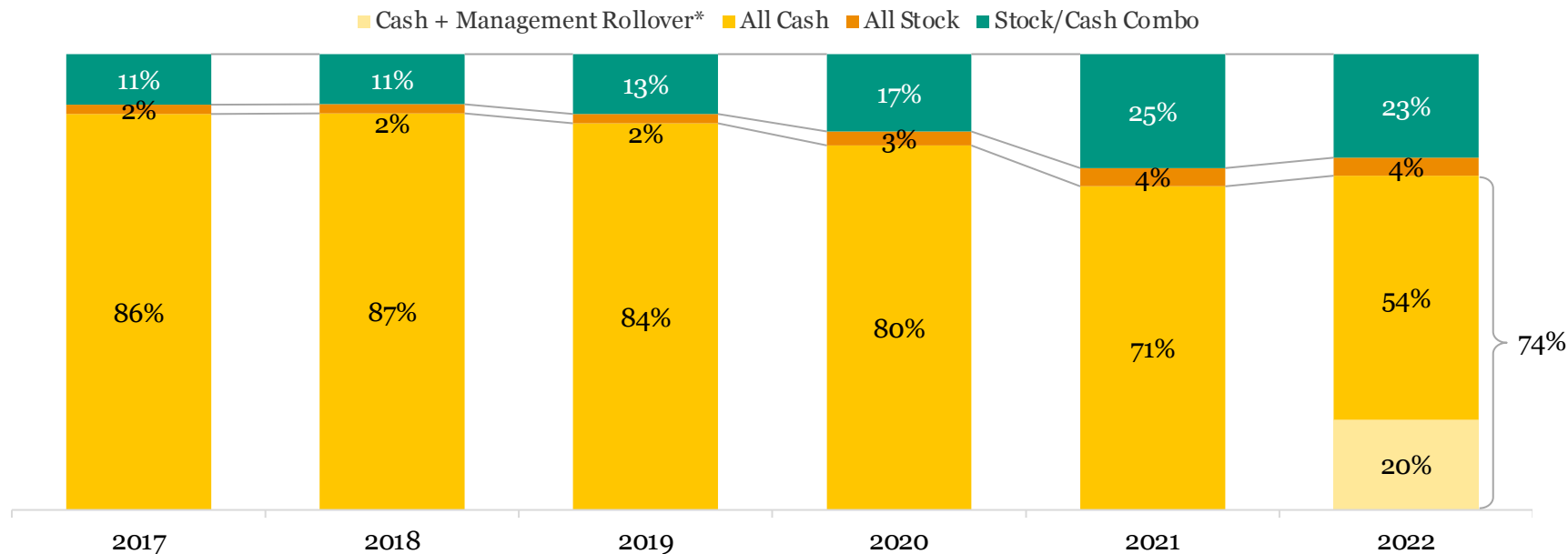


Pre-closing Matters

- Economics

Closing Consideration Trends

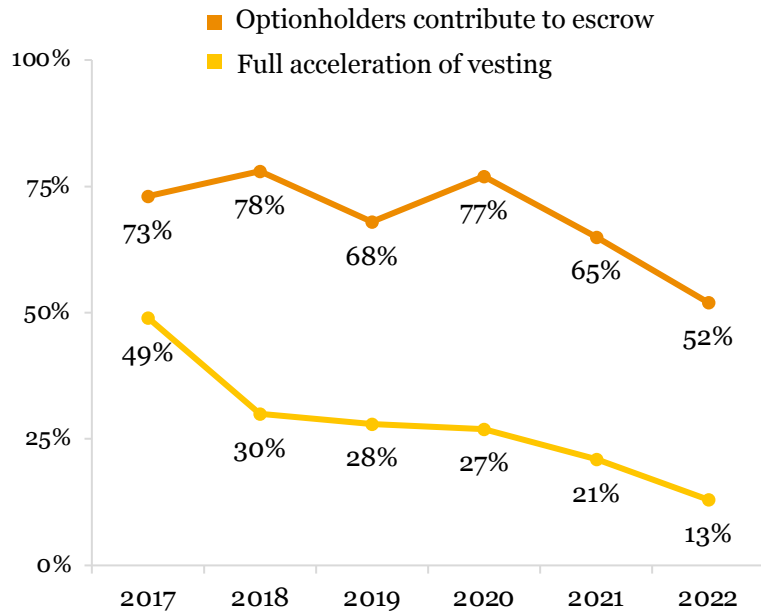
Consideration type



* Management Rollovers not tracked prior to 2022; such deals are included in the All Cash category.

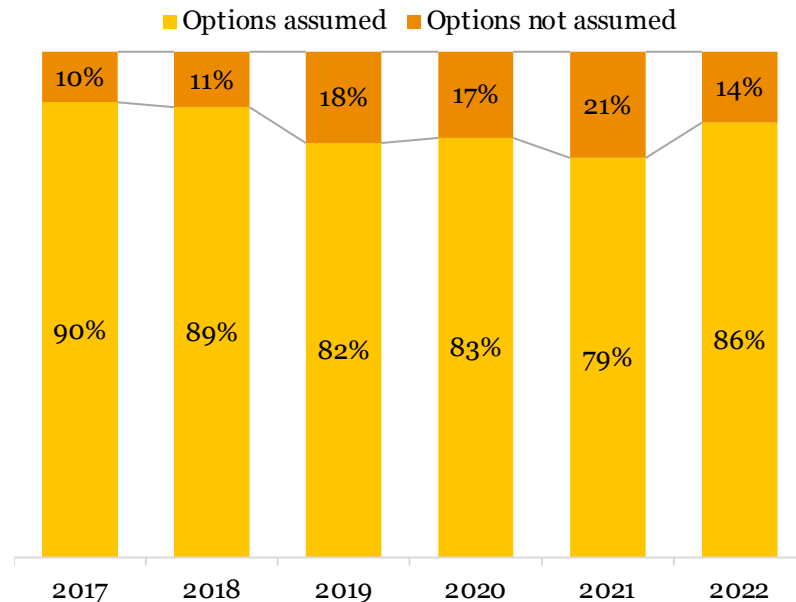
Treatment of Options: Contribution, Acceleration, and Assumption

Contribution and acceleration*



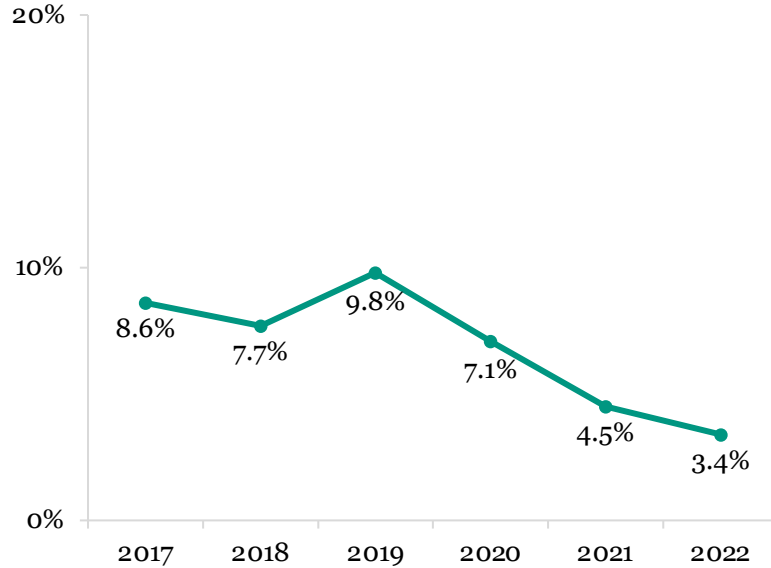
* Excludes deals where optionholders received no consideration.

Assumption of options by buyer



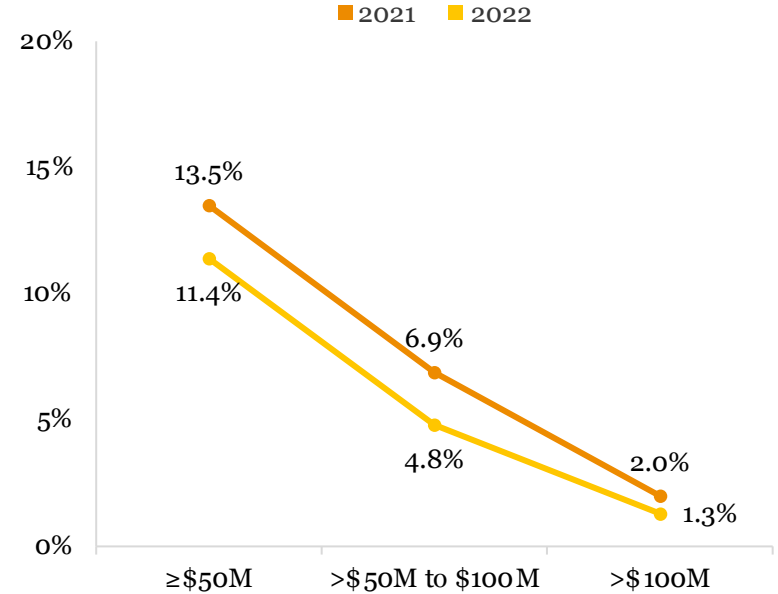
Management Carveouts*: Frequency

Deals including a management carveout



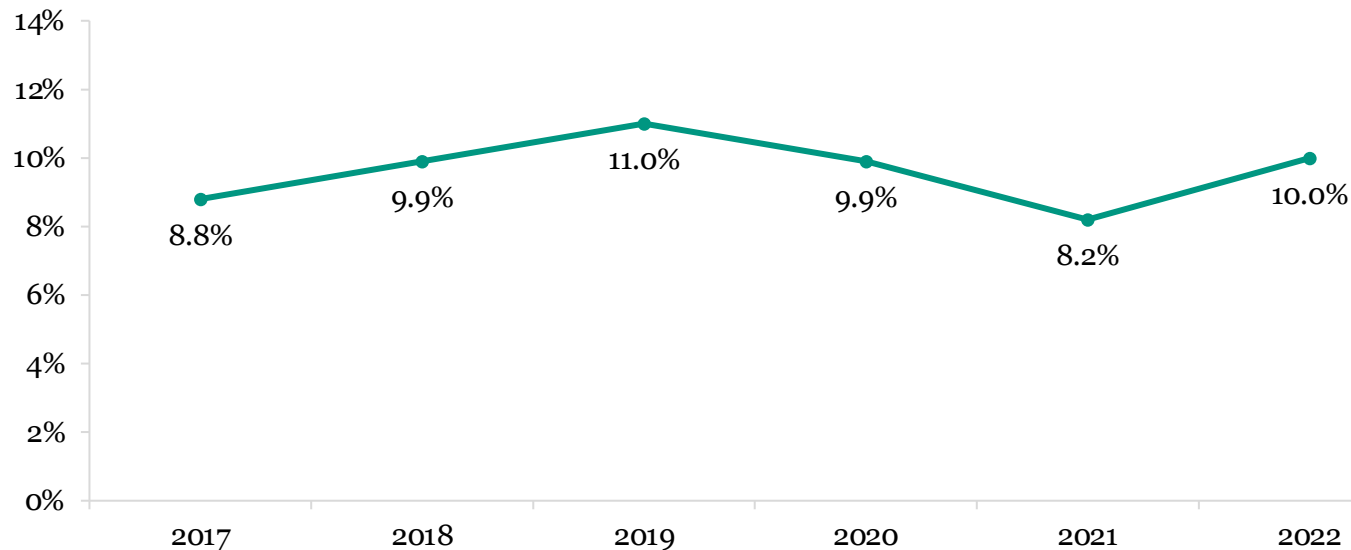
Subset: 2022 deals

Management carveout frequency by transaction value



Management Carveouts: Size

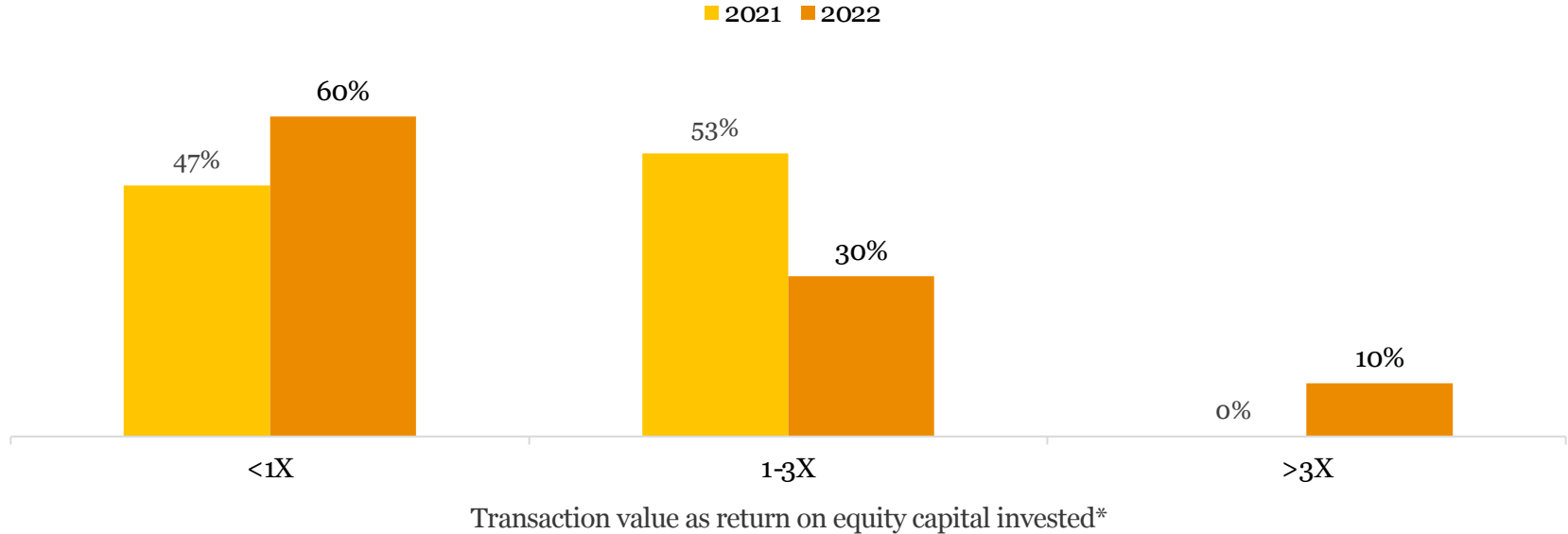
Median size as a percentage of transaction value*



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

Management Carveouts: Frequency by Return on Equity Capital Invested

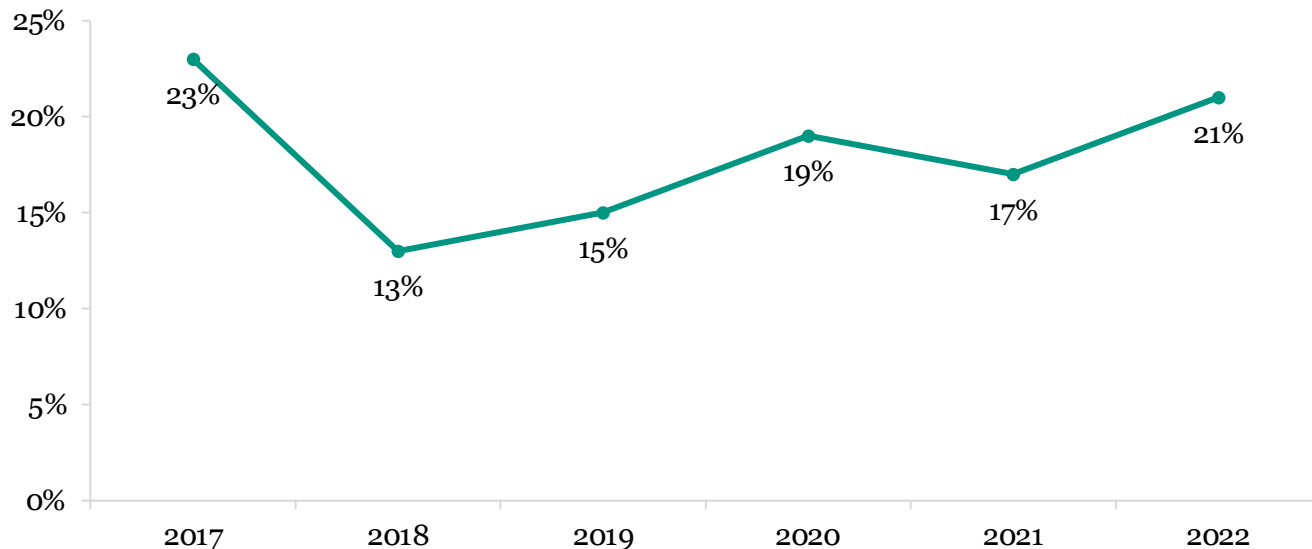
Deals including a management carveout



* Equity capital data provided by S&P Capital IQ™ and other databases.

Earnouts (Non-Life Sciences Deals*)

Earnout included



42%

Single trigger event

58%

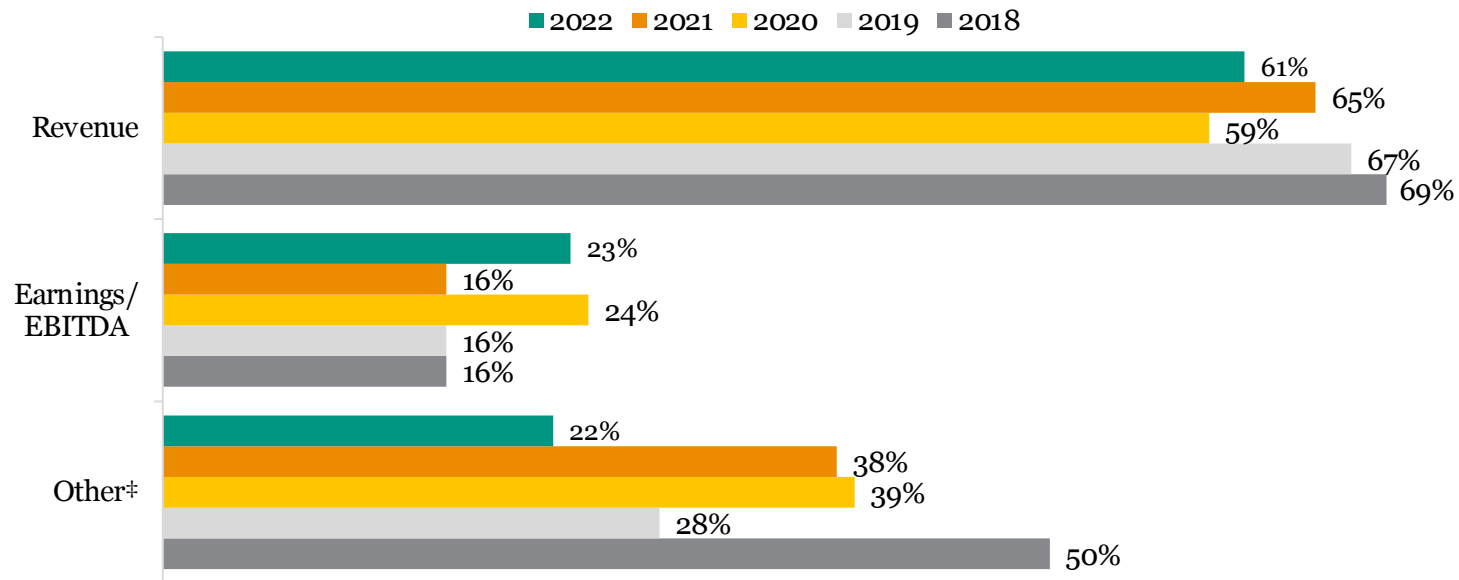
Multiple trigger events

(Subset: Non-Life Sciences deals with an earnout)

** For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study.*

Earnouts (Non-Life Sciences Deals*)

Earnout metrics†



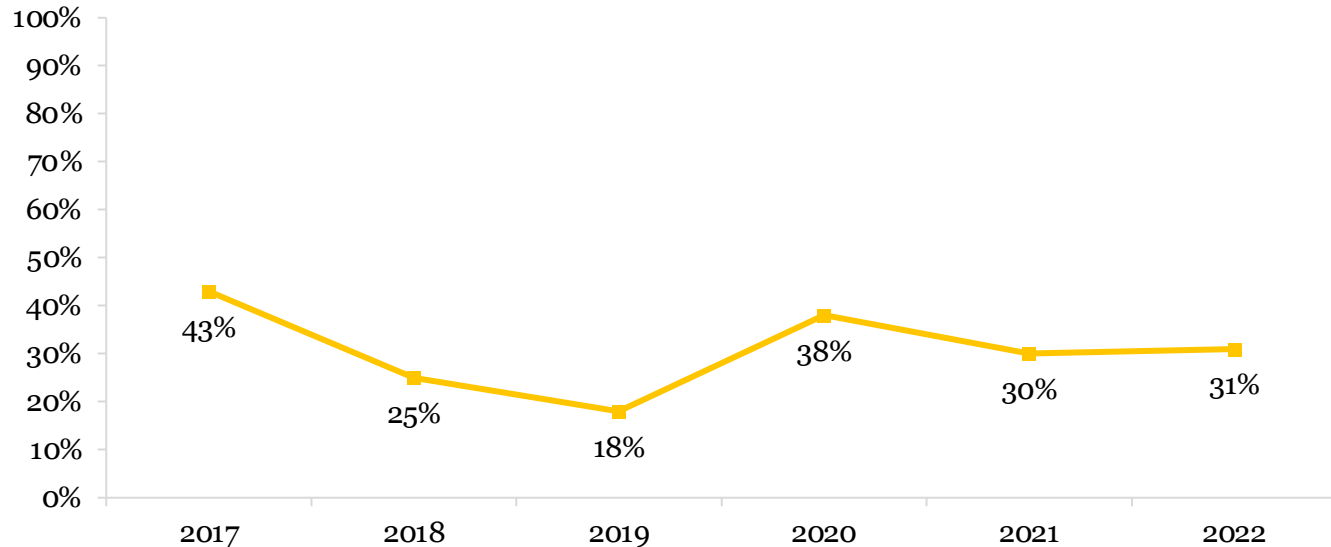
* For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study.

† 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*)

Median earnout potential as % of closing payment†

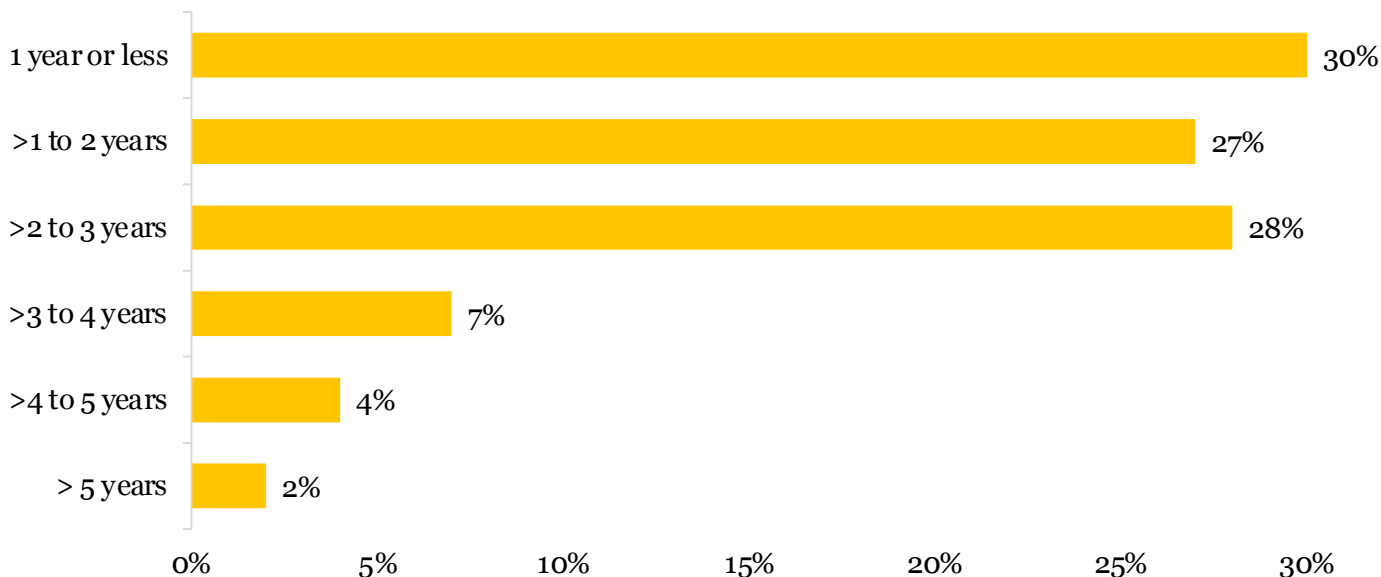


* For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study.

† Calculated as the sum of potential earnout payments over the amount paid at closing (including escrowed amounts).

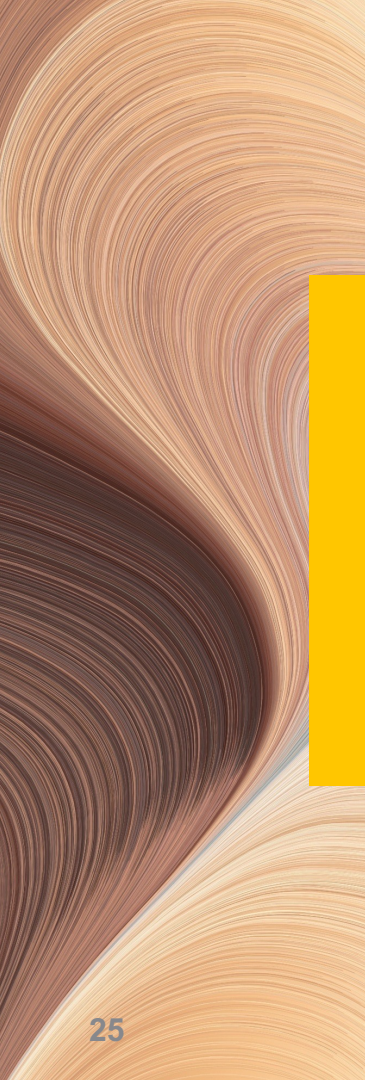
Earnouts (Non-Life Sciences Deals*)

Earnout length‡ (2022 median: 24 months)



* For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study.

‡ Measured by the date the latest earnout period ends.

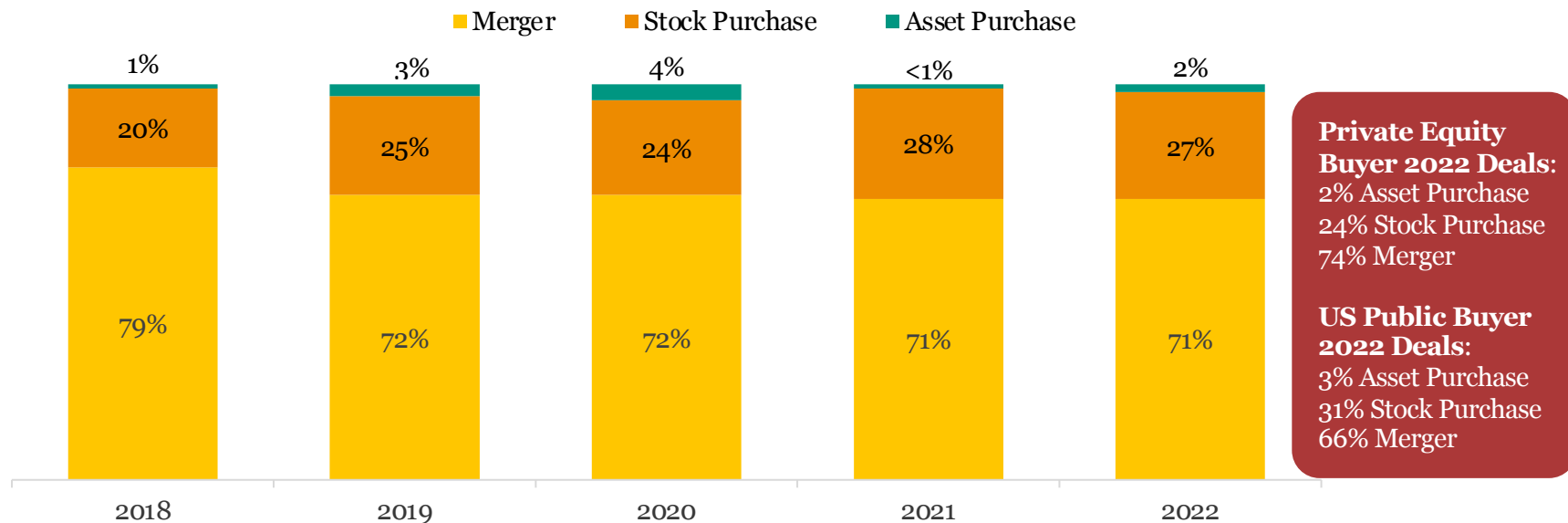


Pre-closing Matters

- Economics
- Legal Structure

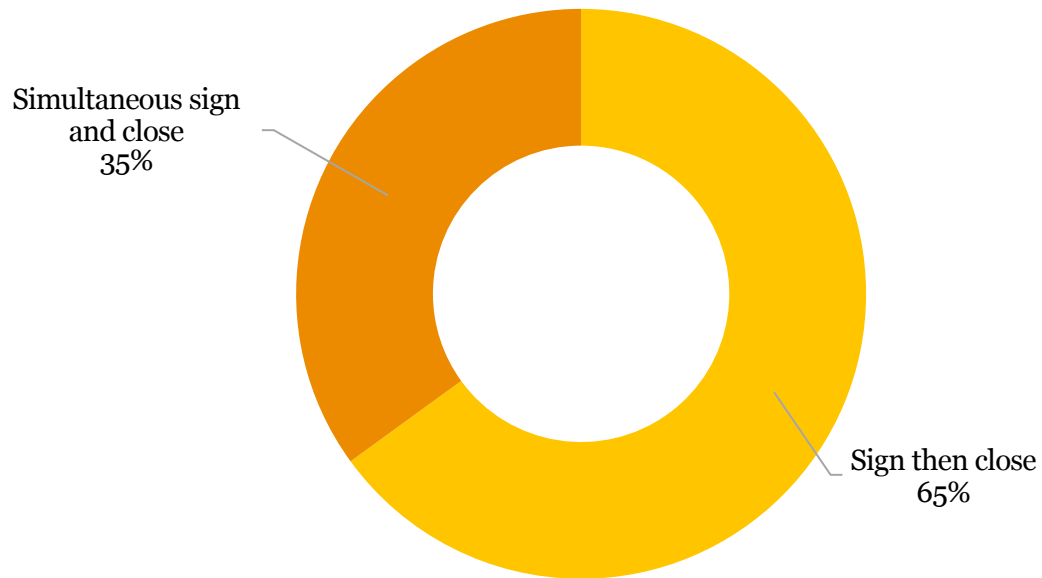
Transaction Structure

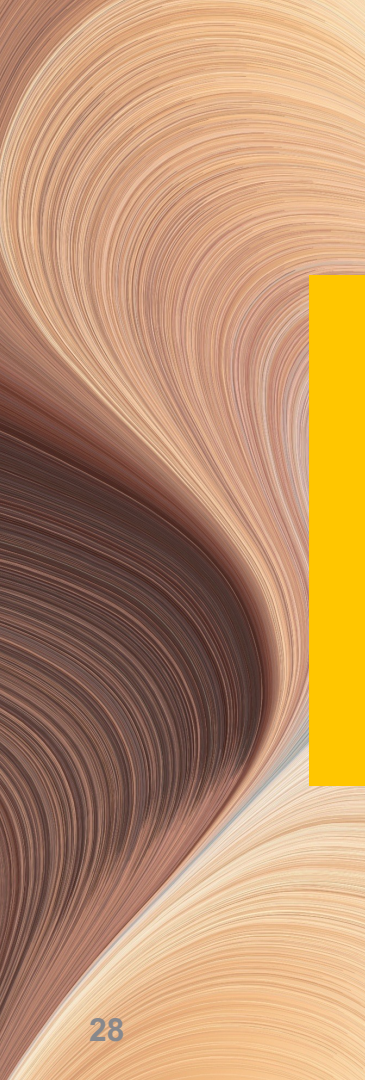
Transaction structure (2019–2022)



Sign/Close Timing

Timing of signing and closing (2022)



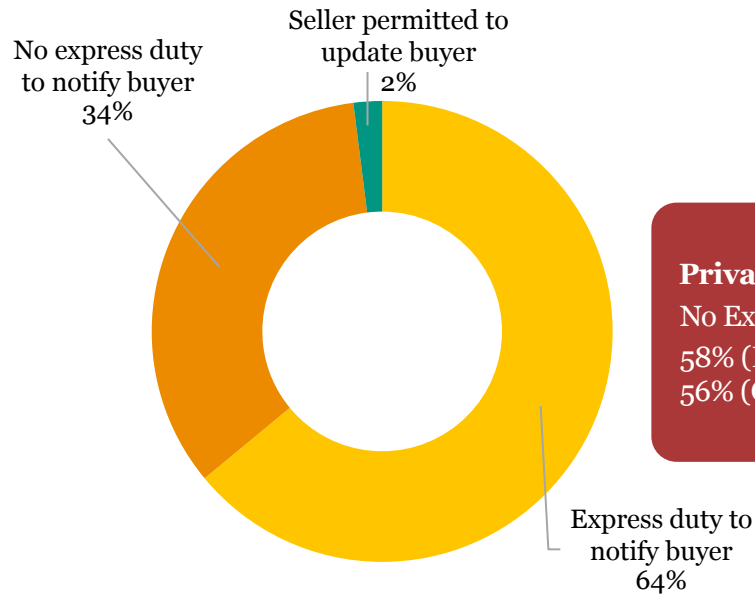


Pre-closing Matters

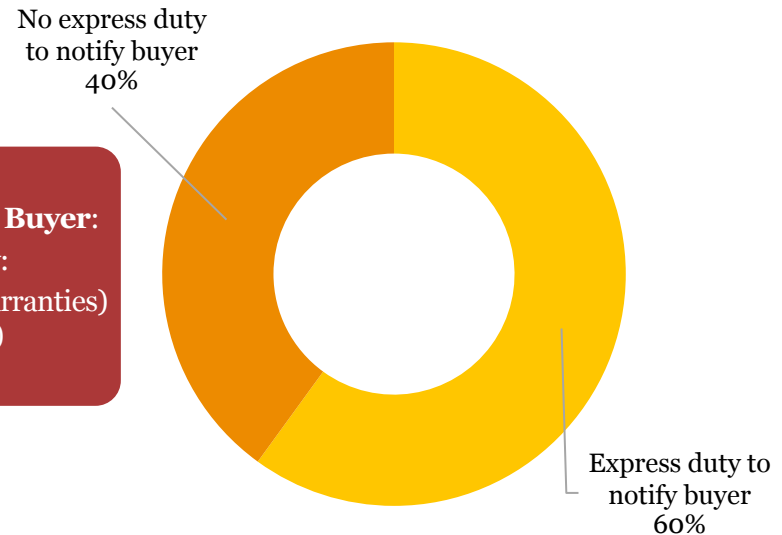
- Economics
- Legal Structure
- Covenants (Sign-then-Close Deals)

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

Breaches of representations and warranties (2022 deals)



Breaches of covenants (2022 deals)

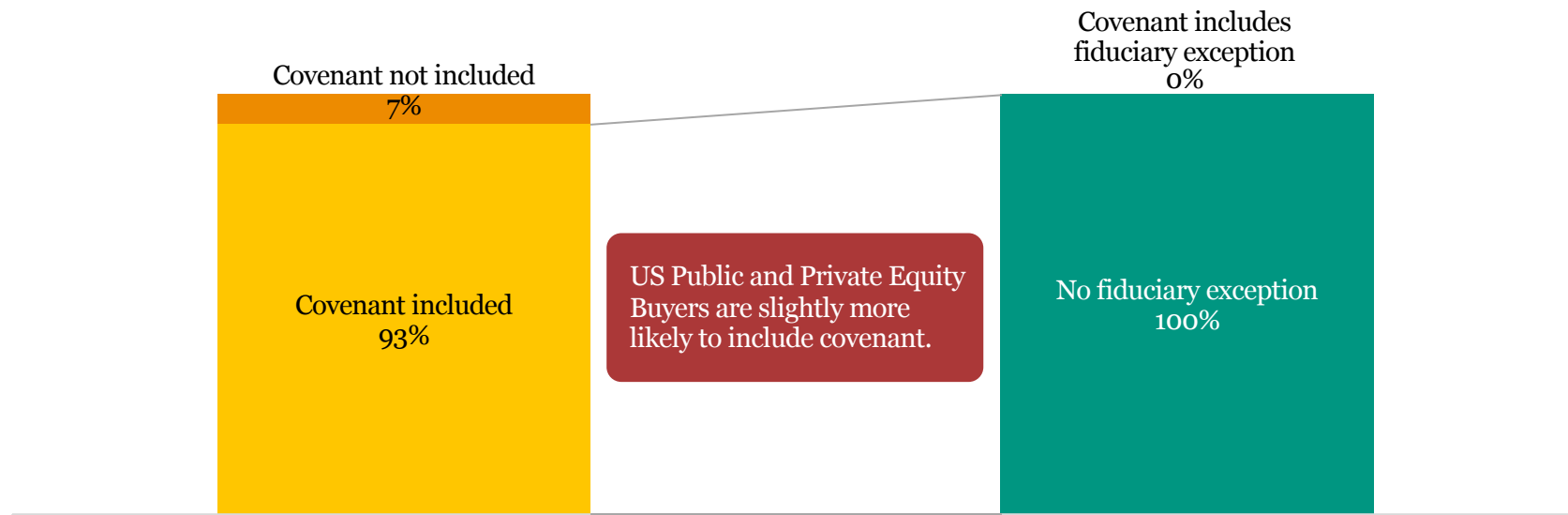


Private Equity Buyer:
No Express Duty:
58% (Reps & Warranties)
56% (Covenants)

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

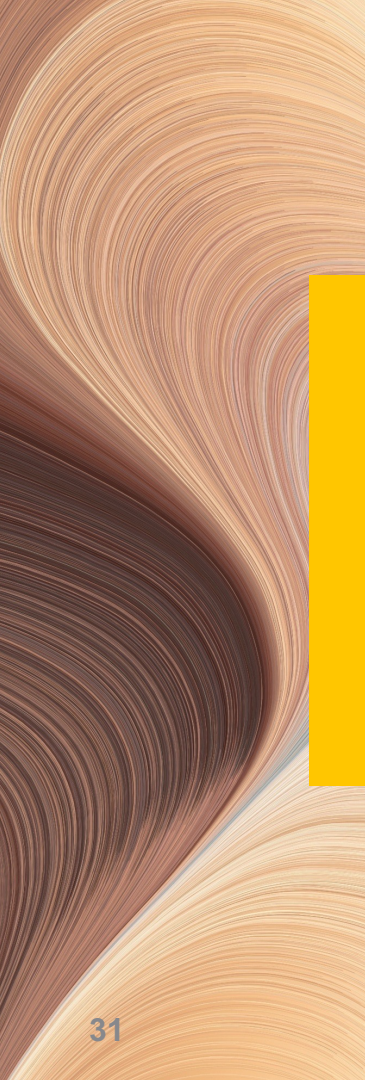
Covenants: No-Shop/No-Talk*

No-shop/No-talk covenant inclusion[†] (2022 deals)



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

[†] Fiduciary exception subset excludes stock-purchase deals.

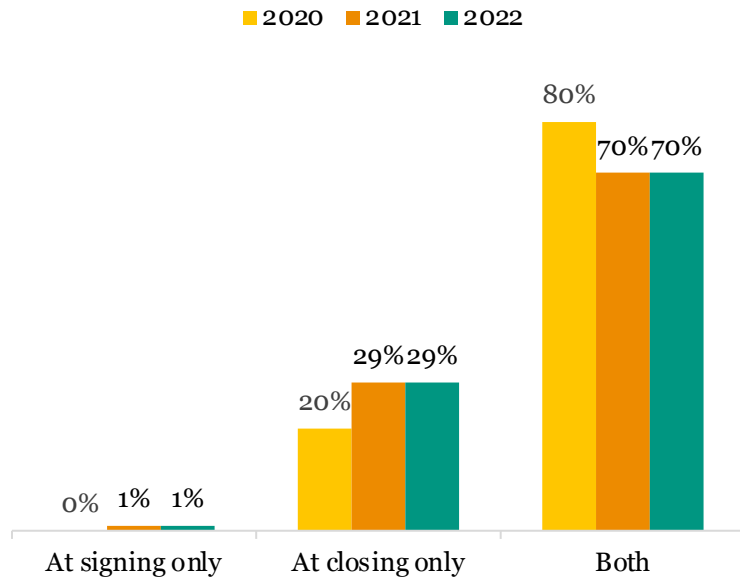


Pre-closing Matters

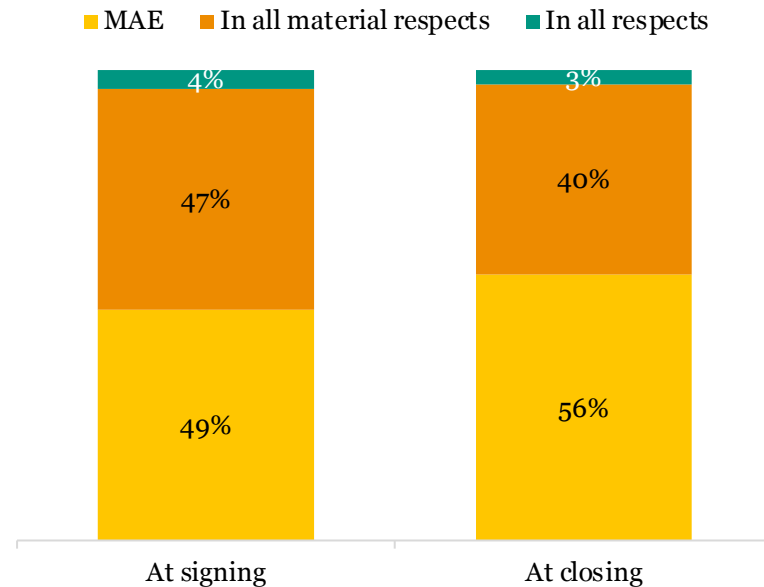
- Economics
- Legal Structure
- Covenants (Sign-then-Close Deals)
- Closing Conditions

Accuracy of Seller's Representations: Accuracy and Materiality

Accuracy: Timing

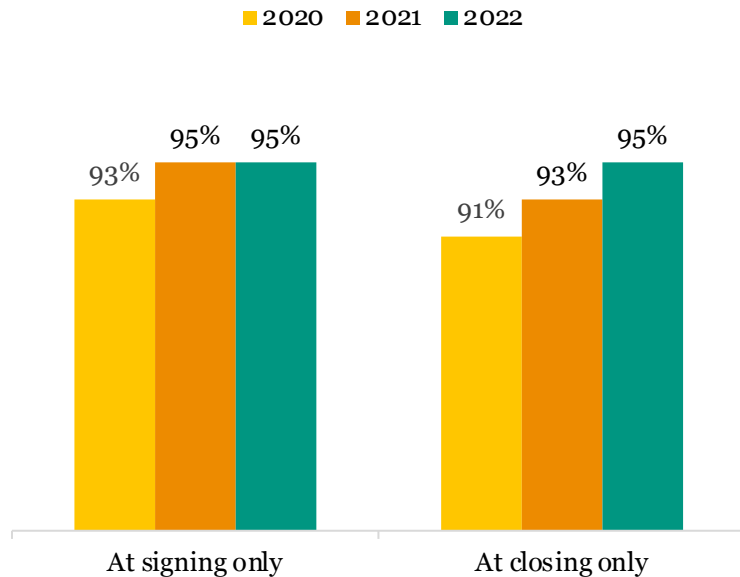


Accuracy: Materiality (2022 deals)

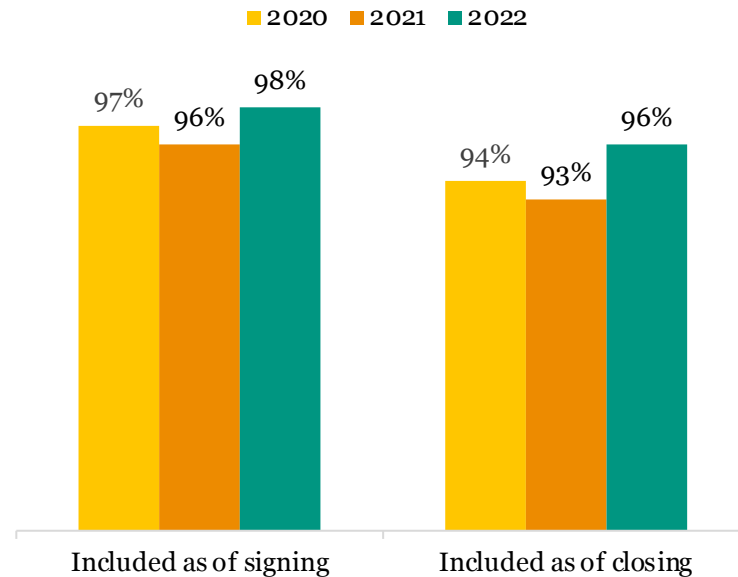


Accuracy of Seller's Representations: Materiality

MAE qualifier with capitalization representation carveout*



Materiality scrape frequency†



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

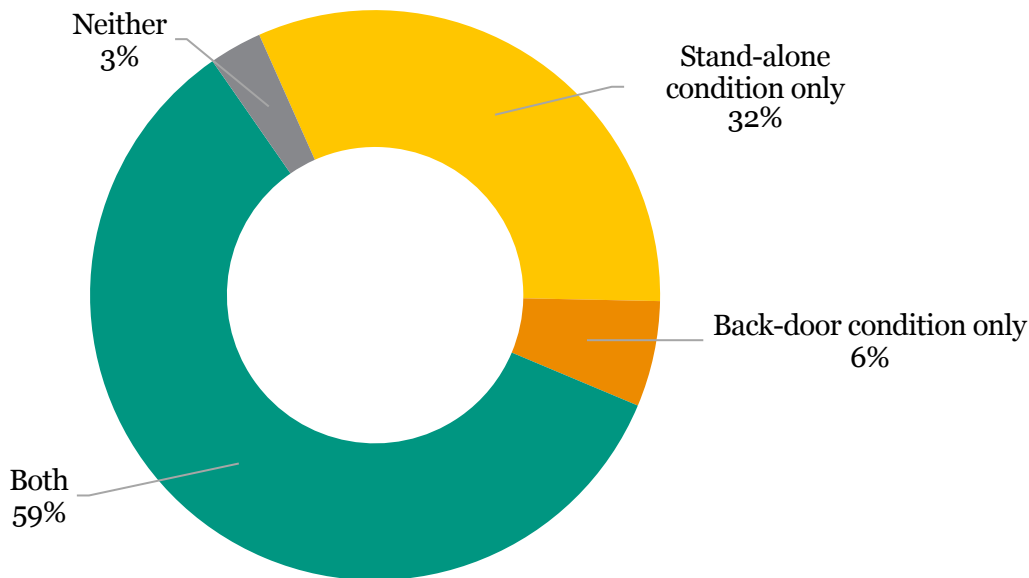
† Deals with materiality or MAE qualifiers in the "accuracy of representations" condition.

“Material Adverse Change” Condition (“MAC”)

MAC condition details (2022 deals)

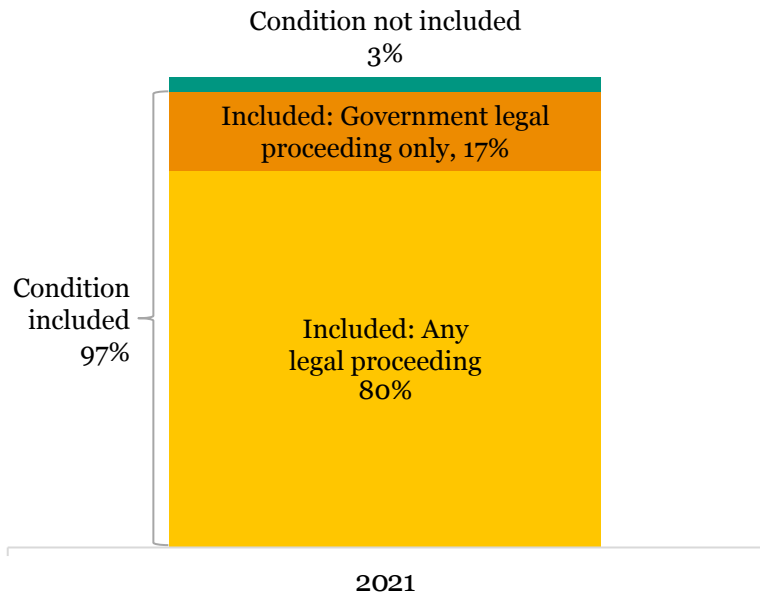
Private Equity Buyers are more likely to include both:
66%

"TMT" Targets are slightly more likely to include both:
62%

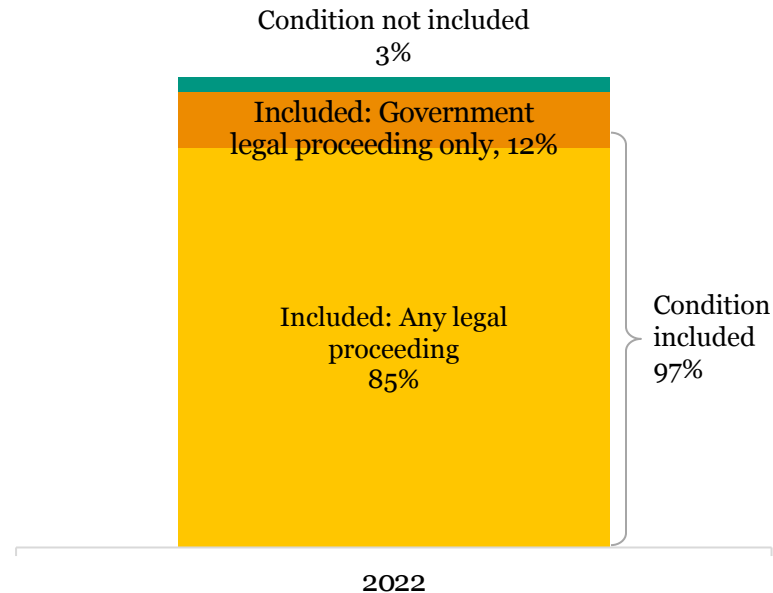


“No Legal Proceedings” Condition

Subset: 2021 deals

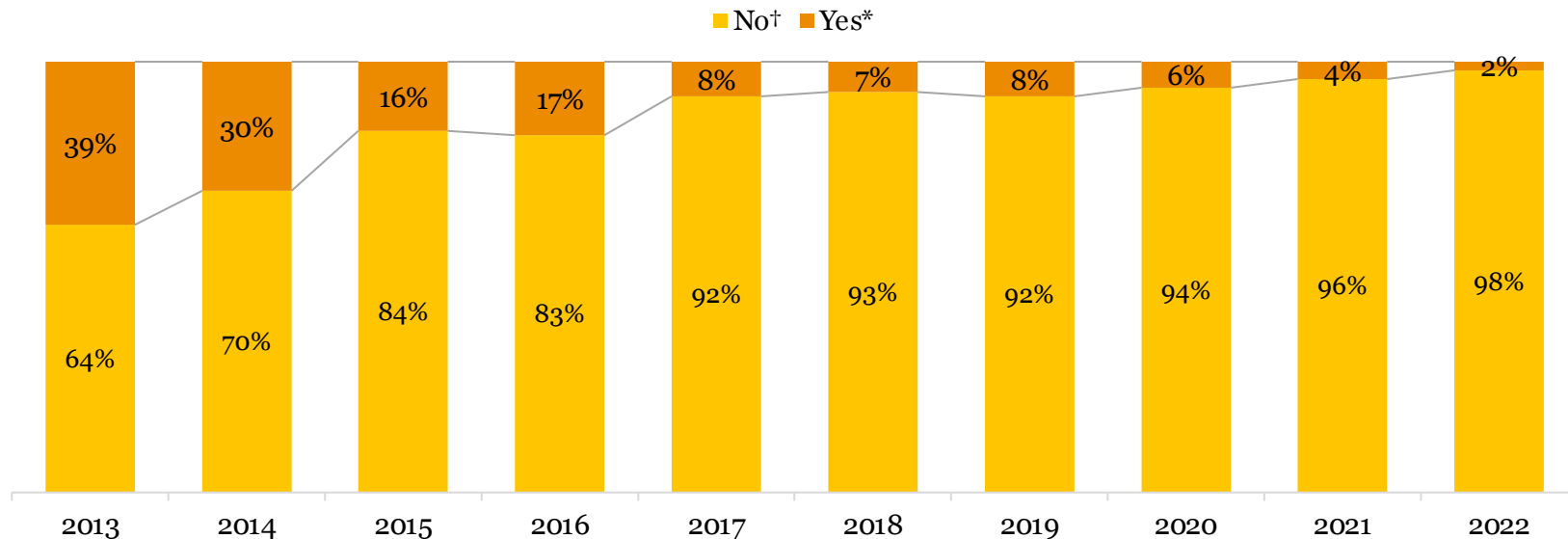


Subset: 2022 deals



Legal Opinions (Non-Tax) from Seller's Counsel

Consideration type

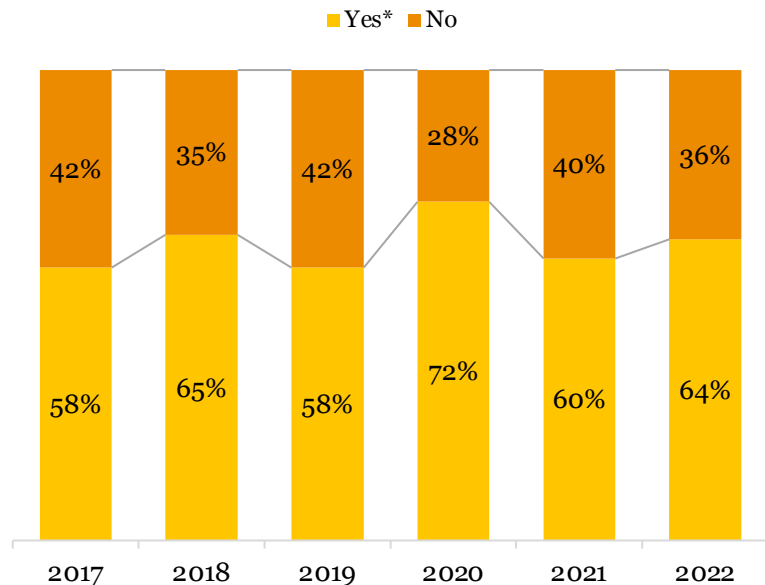


* Includes opinions delivered pursuant to both stand-alone and “closing deliverables” conditions.

† Does not account for opinions that may have been required or delivered outside of the express terms of the agreement.

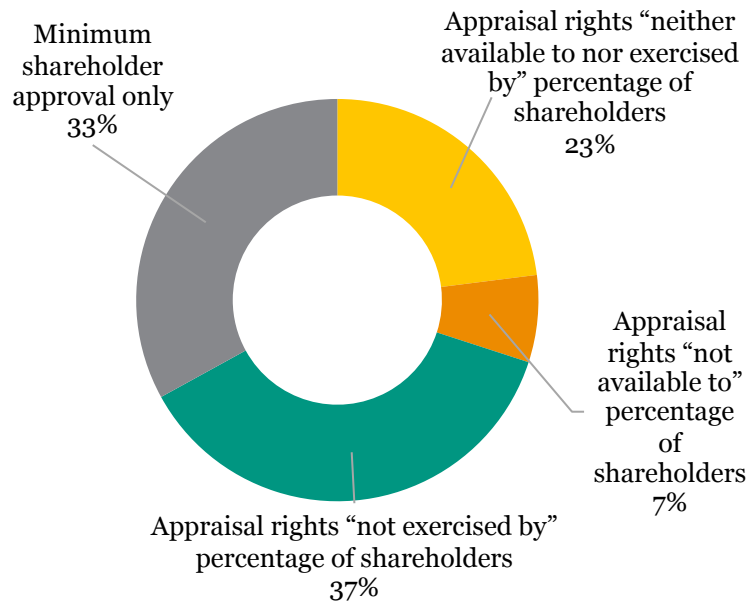
Appraisal Rights Condition

Appraisal rights condition included



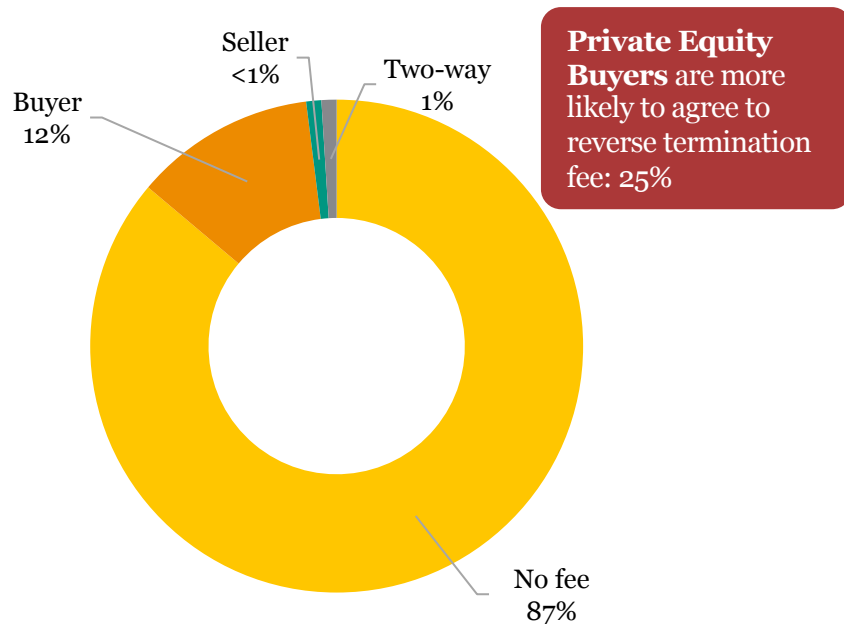
* Includes deals without an express appraisal rights condition but with a condition specifying a minimum percentage of shareholder votes (on a fully diluted basis) approving the merger, effectively waiving appraisal rights.

Drafting details (2022 deals including condition)

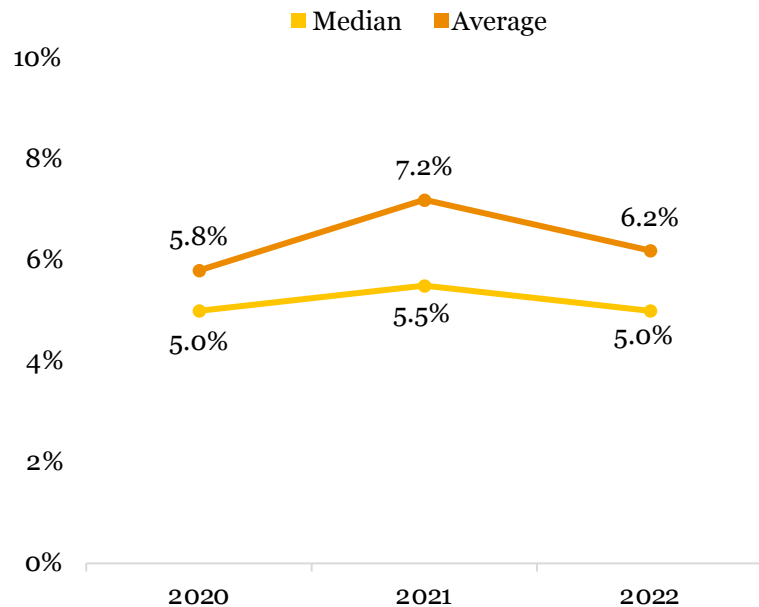


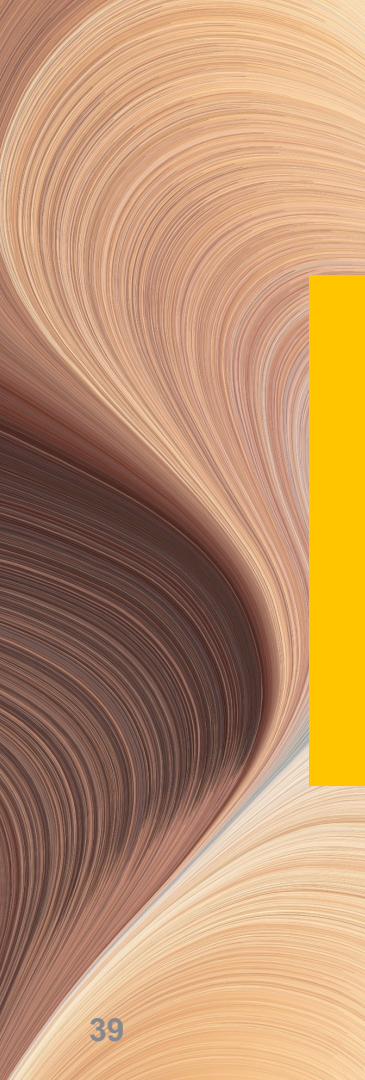
Termination Fees

Fee paid by... (2022 deals)



Fees paid by buyer, as a % of transaction value





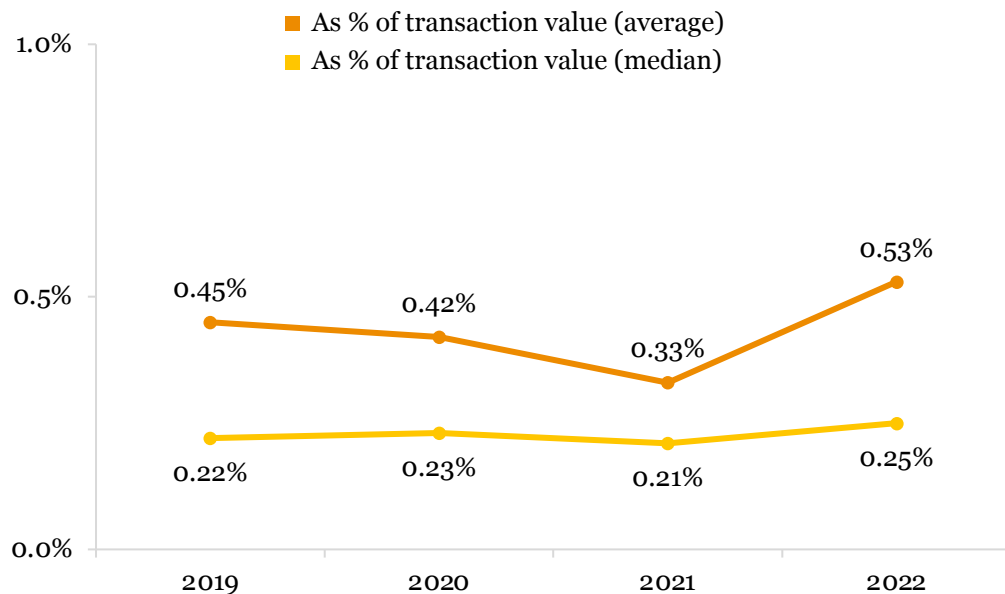
Closing Matters

- Expense Funds and Advisory Committees

Post-closing Expense Fund Sizes*

Subset: Deals with expense funds (99% of all 2022 deals)

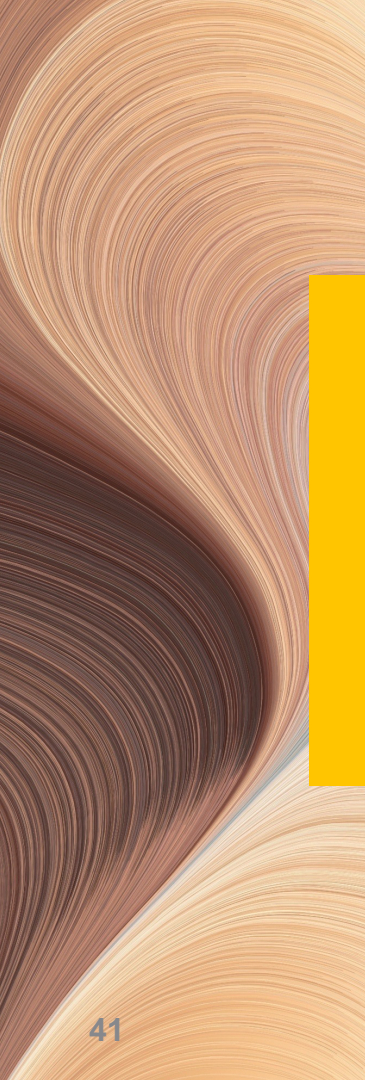
Median/Average sizes by % of transaction value



Subset: 2022 deals with expense funds

Average expense fund sizes by dollar amount

	Average
Deals without earnouts	\$242,000
Deals with earnouts	\$332,000



Closing Matters

- Expense Funds and Advisory Committees
- Payments and Escrow Data

Outsourcing Trend: Buyers See the Benefit of Outsourcing This Function, Even When There Aren't Many Payees

Risk		Paying agent
Disclosure Risk	May need to disclose lawsuits, security breaches or similar events to regulators, LPs, or other stakeholders	✓
Processing Risk	Human error, manual systems, paper process	✓
Execution Risk	Paying incorrect amounts, directing payments to wrong bank accounts	✓
Tax Reporting Risk	Issuing inaccurate and/or incorrect tax reports	✓
Cyber Security Risk	Sensitive data (PII) stored on potentially vulnerable systems	✓
Audit Risk	Auditors may require expensive processes and procedures to account for the above risks	✓
Human Interaction Risk	Eliminate paper document handling and trips to the post office	✓

Service Capabilities Trend: Your Paying Agent Should Do More for You Than Just Payments

Yesterday: Historical use of paying agents was limited to LOTs, W-9/W-8s, payment information—and making payments

Today: A substantial percentage of our engagements have us handle additional items, traditionally handled by paralegals or junior associates at law firms.

Firms are thrilled to outsource this work to us. *Why?*

- They can focus on higher value, billable legal work
- Purpose-built technology (secure, fast)
- Lower cost
- Superior reporting
- Better outcomes

Common examples:

Spousal consents

Elections of various types (83(b), 280G, etc.)

Information statements

Joinders

Option/warrant cancellation agreements

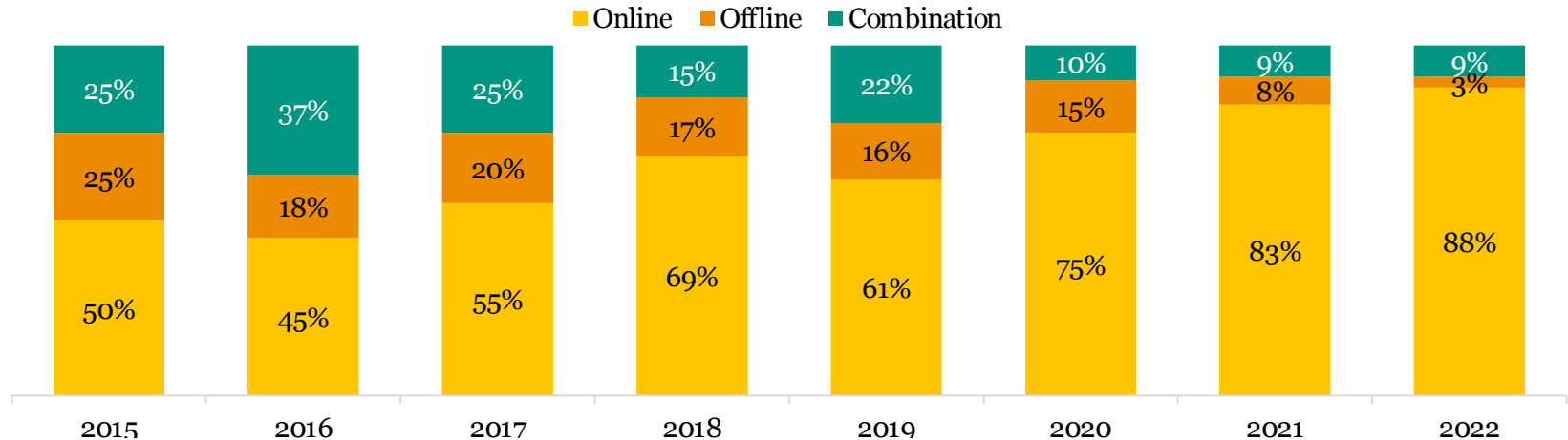
Restricted stock agreements

Accredited investor questionnaires

Tender offer processes

Use of a Secure Portal vs. “Paper”

Paying agent engagements – Shareholder communication



M&A TIP



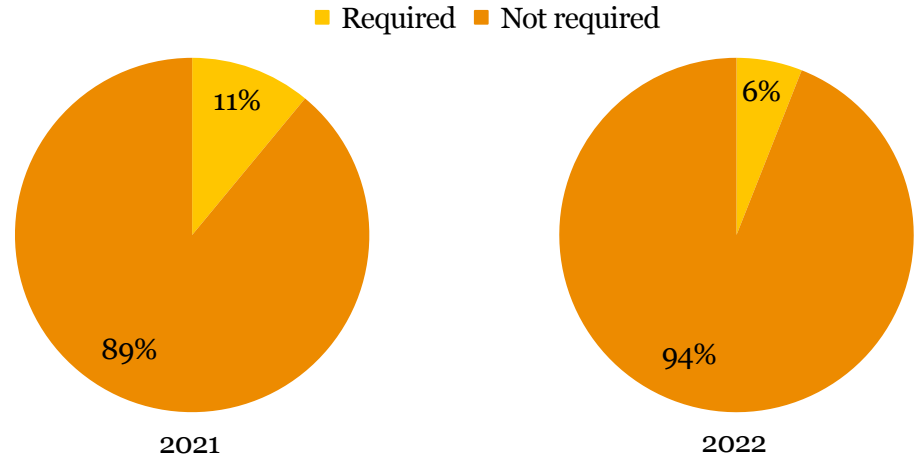
Use of a secure, online portal for collecting sensitive information from shareholders is now ordinary course. Portals can be leveraged for more than just a LOT, W9 and payment instructions. Add consents, joinders, election forms or other documents.

Return of Certificates and Use of Lost Certificate Affidavit

Proskauer Opinion (c. 2014)

UCC Article 8 allows the buyer in a **merger** to pay the registered owner as of the closing without the additional risk that another person has possession of the certificate or is in fact entitled to that payment, unless the security has been presented for transfer on the books of the issuer prior to the payment being made.

Certificate requirements for 2021 and 2022 deals



M&A TIP



With fewer merger transactions requiring the return of certificates as a condition for payment, consider adopting a “touch free” online approach.

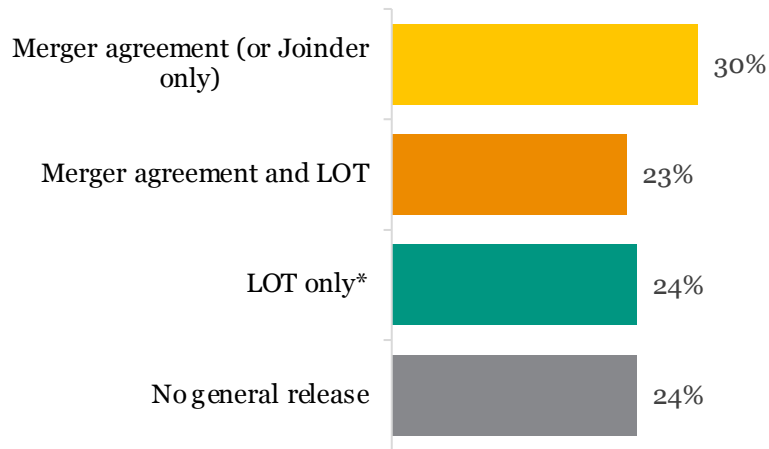
LOT Language Five Years After Cigna v. Audax

Refresher on the case – the Delaware Court of Chancery held, among other conclusions, that the buyer could not withhold merger consideration for a shareholder's refusal to sign a LOT when there was no consideration in exchange for the terms being sought in such LOT.

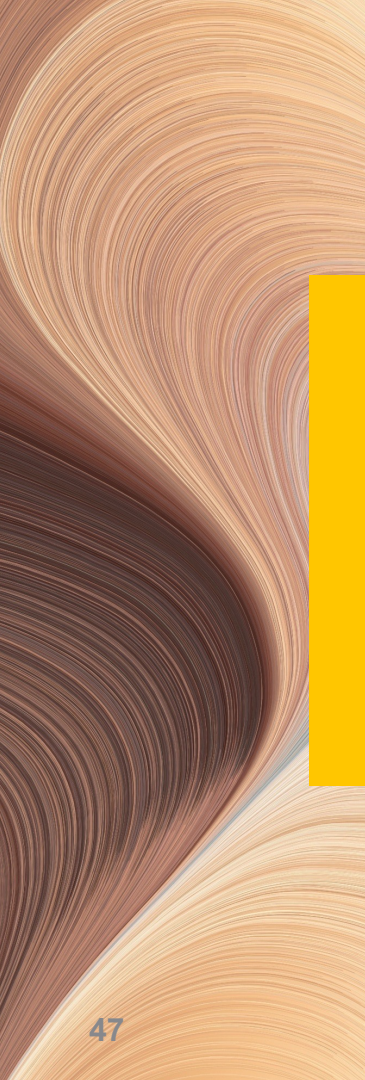
Are the security holders required to execute a joinder?



Where is the general release language included?



** With no mention of the general release in the Merger Agreement nor is the LOT an exhibit to the Merger Agreement.*

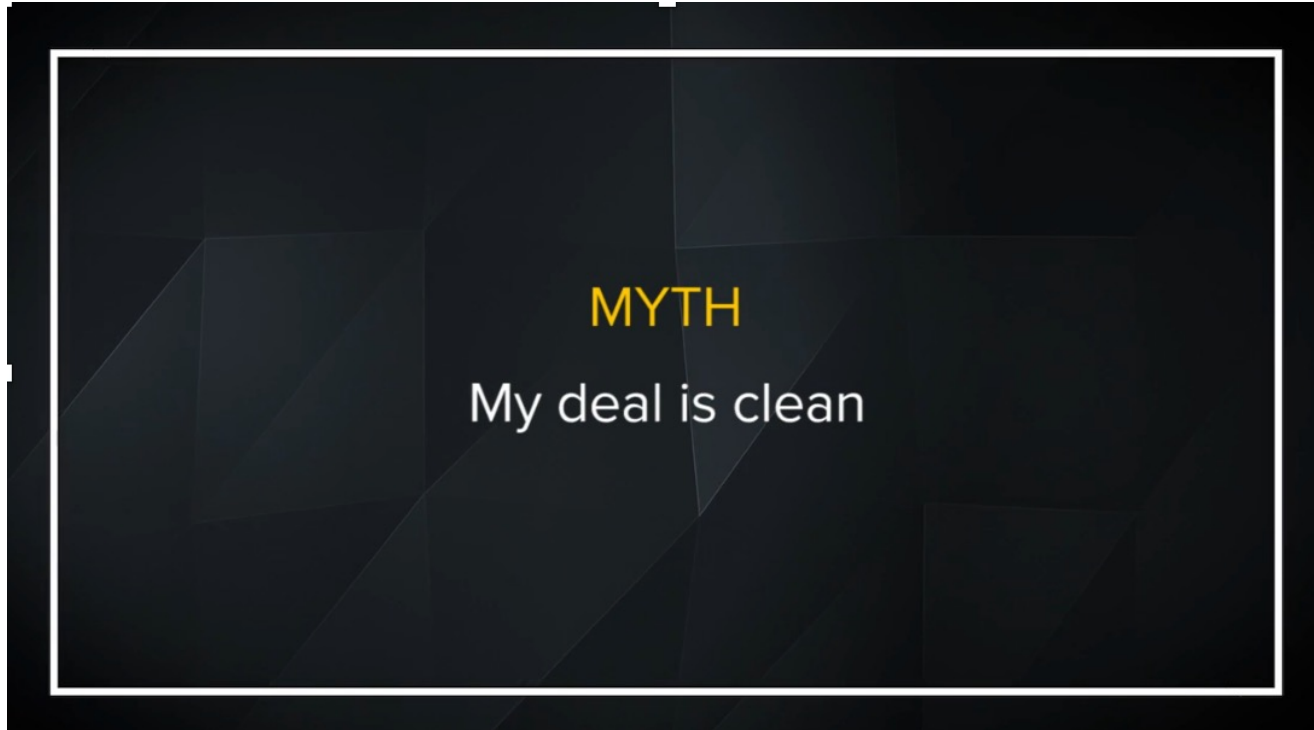


Post-closing Matters

- Purchase Price Adjustments

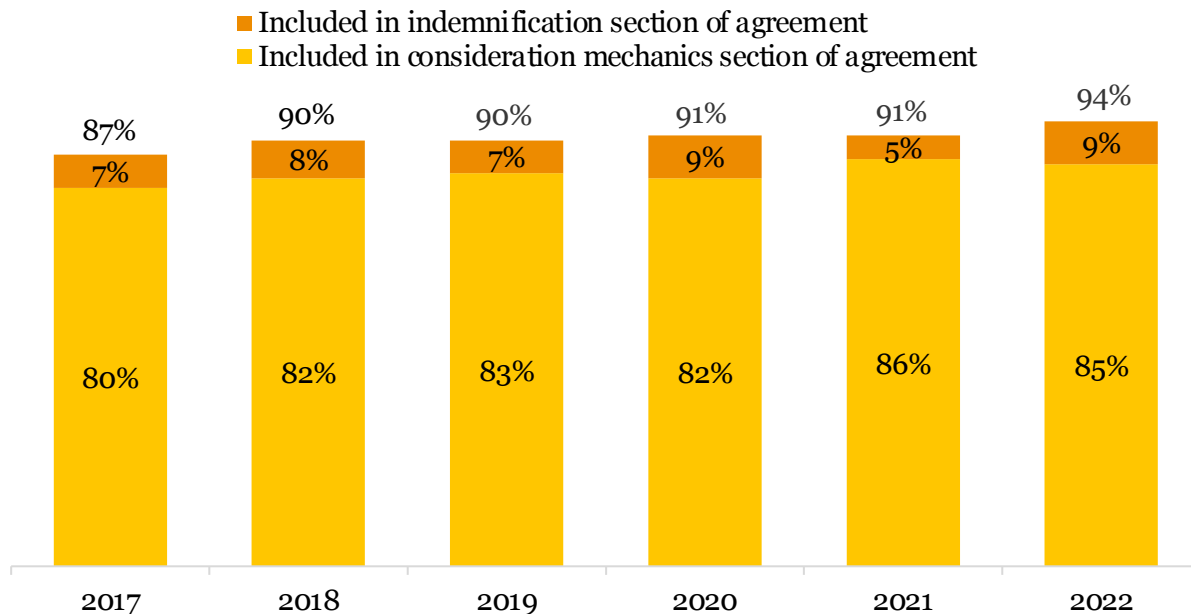
Jason Mendelson—Myth: My Deal Is Clean

<https://go.srsacquiom.com/video/myth-deal-is-clean>



Post-closing Purchase Price Adjustments

Adjustment provision included



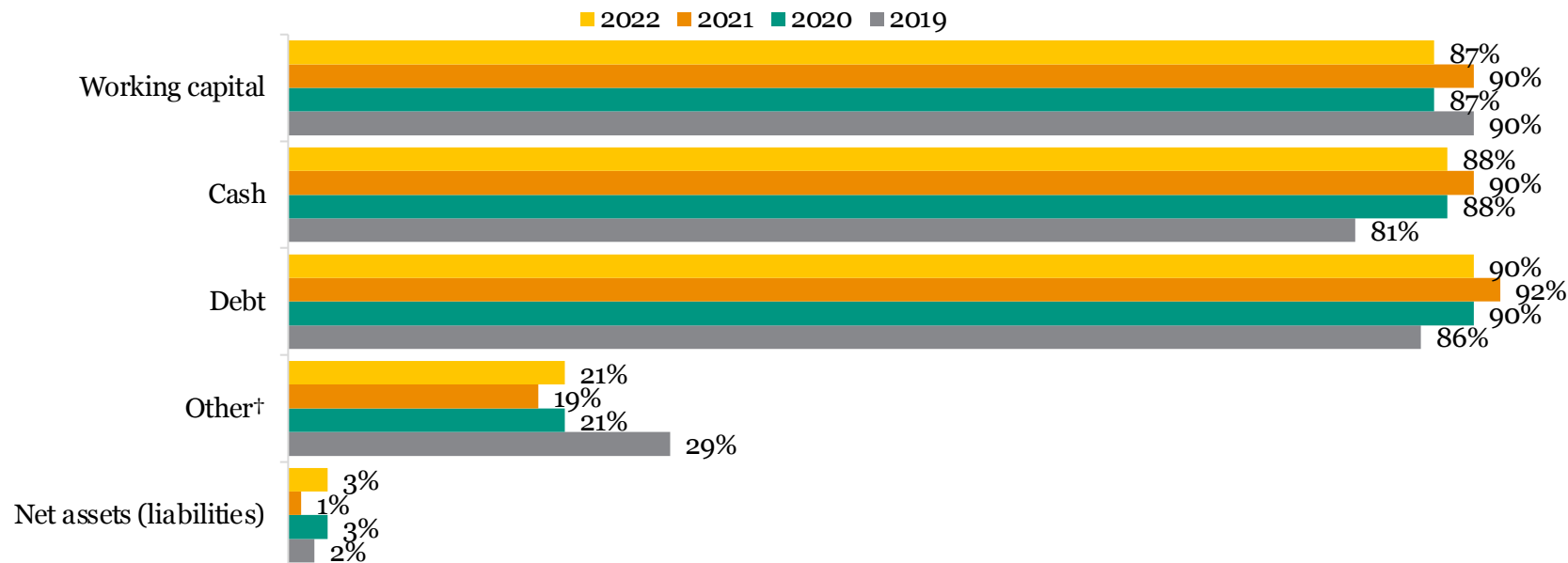
11%

Buyer had a contractual right to review estimated PPA calculations

(Subset: 2022 deals with a PPA)

Post-closing Purchase Price Adjustments

Adjustment metrics*

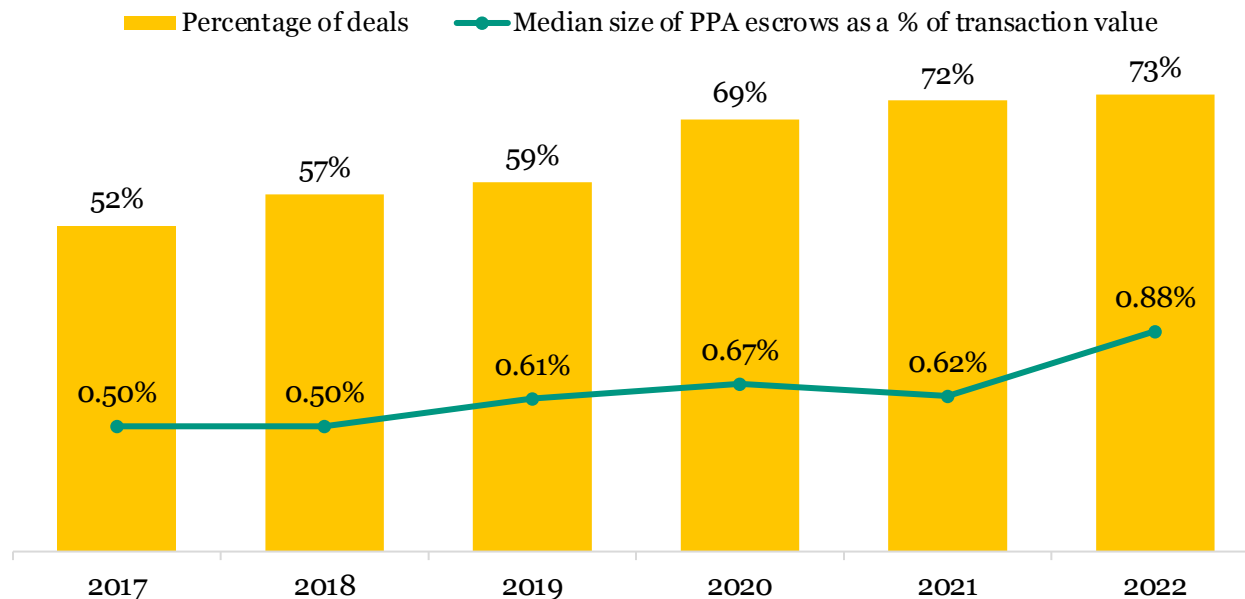


* 96% of post-closing purchase price adjustments in 2022 deals were based on more than one metric.

† Does not include post-closing adjustments for transaction expenses.

Post-closing Purchase Price Adjustments: Separate Escrows

Percentage of deals with a separate PPA mechanism that include a PPA escrow



81%

Source of payment is the general indemnity escrow (when no PPA escrow)

93%

Deals with RWI Identified that include a PPA escrow

56%

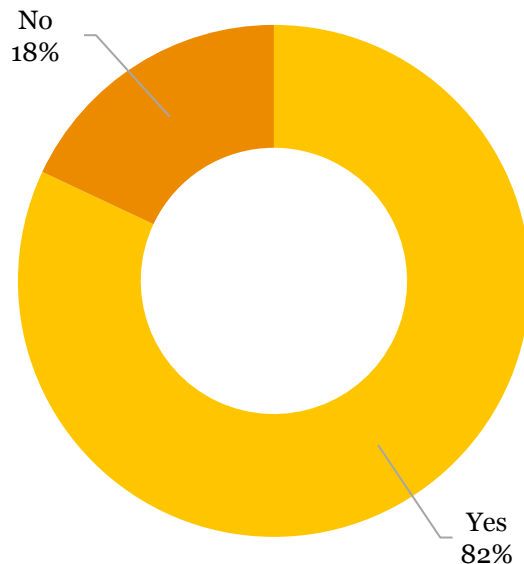
Deals with no RWI Identified that include a PPA escrow

(Subset: 2022 deals with a PPA)

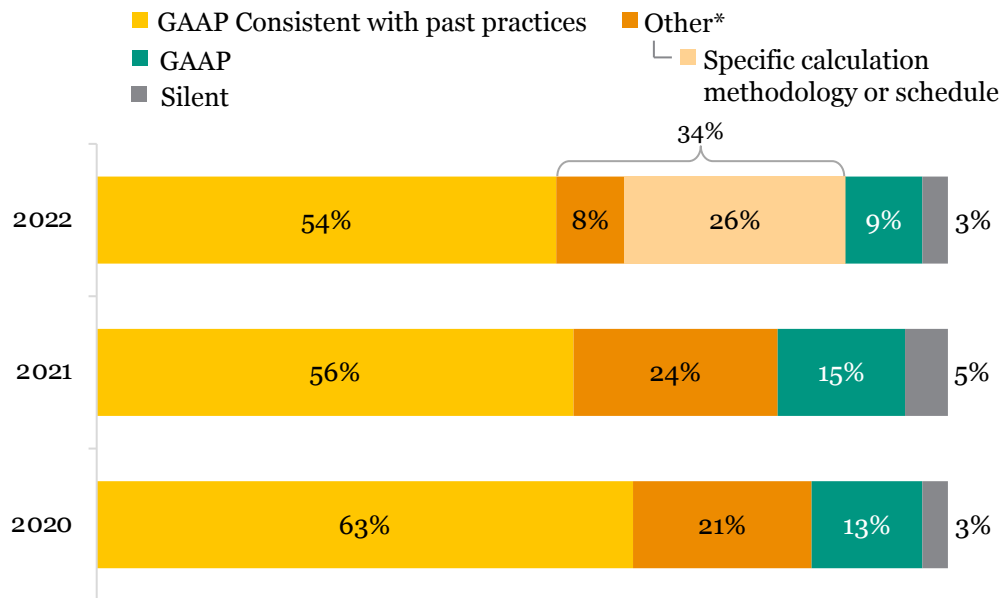
Post-closing Purchase Price Adjustments: Accounting Methodology

Subset: 2022 deals with a working capital adjustment

Adjustment excludes tax-related items



Subset: Deals with post-closing purchase price adjustments

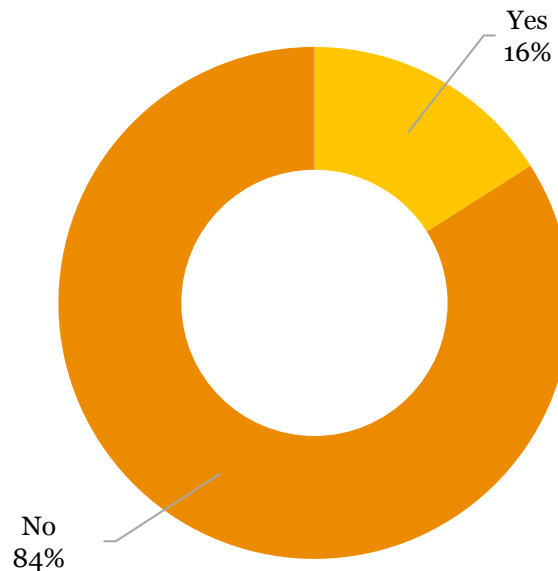


* "Other" methodology includes, among other things, non-US accounting guidance (e.g., IFRS) or a specific calculation methodology or schedule, the latter of which is most common.

Post-closing Purchase Price Adjustments: Thresholds and Caps

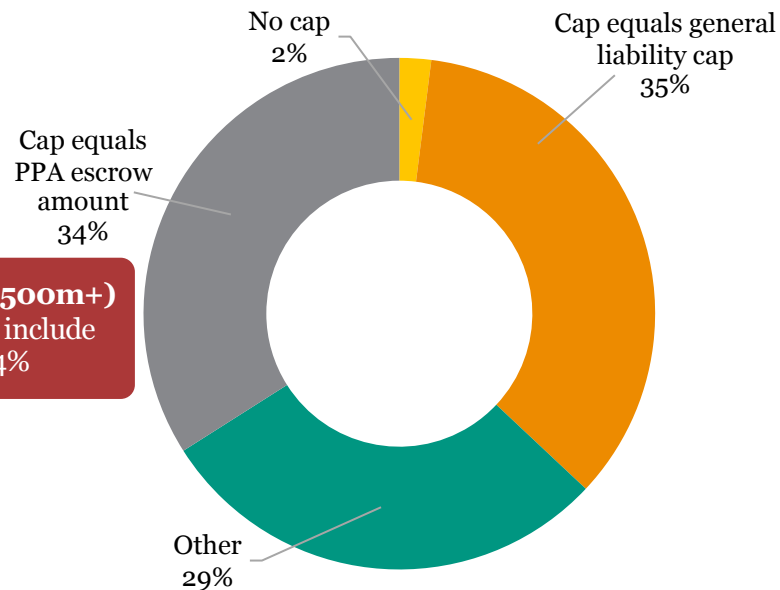
Subset: 2022 deals with post-closing purchase price adjustments in the consideration mechanics section of the acquisition agreement (as opposed to the indemnification section only).

Adjustment only if threshold exceeded



Larger deals (\$500m+)
are more likely to include
PPA threshold: 24%

Cap on buyer-favorable purchase price adjustment claims



* "Other" methodology includes, among other things, non-US accounting guidance (e.g., IFRS) or a specific calculation methodology or schedule, the latter of which is most common.

100k Working Capital Deficit Becomes a \$2MM Gain for Sellers

<https://go.srsacquiom.com/shr-working-cap/>

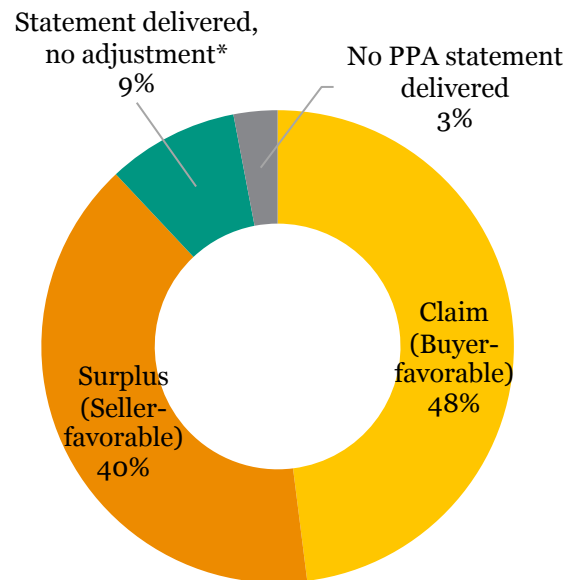


Casey McTigue

Managing Director | Shareholder Representation Product

Post-closing Purchase Price Adjustments (PPAs)

Adjustment direction



* This excludes the effect of deals where there is no PPA mechanism.

Key points

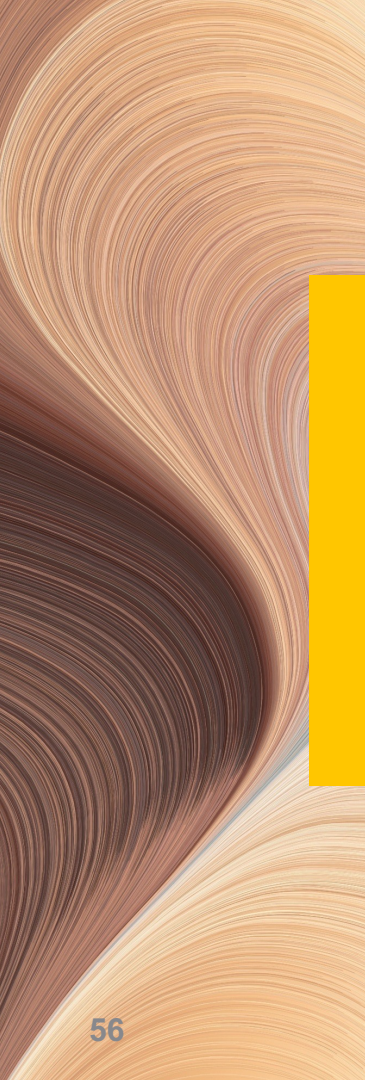
8% of PPA statements are delivered more than 30 days after the contractual deadline.

61% of deals have a PPA specific escrow, with the average size of those escrows being **1%** of transaction value (median **0.67%**).

Average size of claim in deals with a PPA-specific escrow and buyer-favorable adjustment was **64%** of PPA specific escrow.

Average size of PPA claim in deals with a buyer-favorable adjustment was **1%** of transaction value.

Contested PPA claims (buyer-favorable adjustments) were reduced by **\$1 million** on average and **\$328,000** on a median basis.

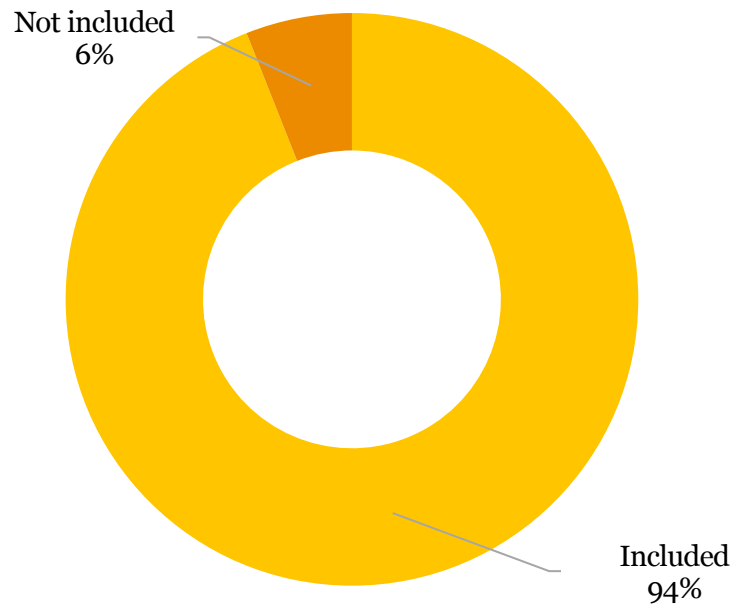


Post-closing Matters

- Purchase Price Adjustments
- Seller's Reps and Warranties

Privacy Representation

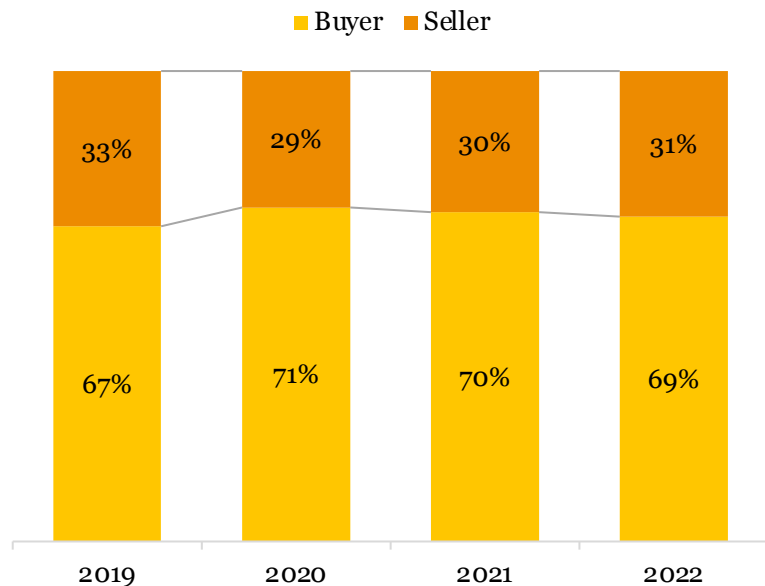
Inclusion of privacy representations (2022 deals)



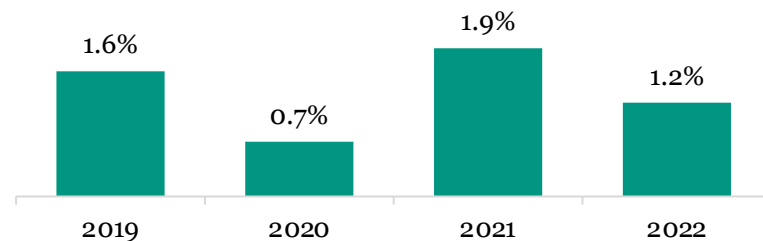
“No Undisclosed Liabilities” Representation

99% of 2022 deals contain “No Undisclosed Liabilities” representation.

Party favored by definition

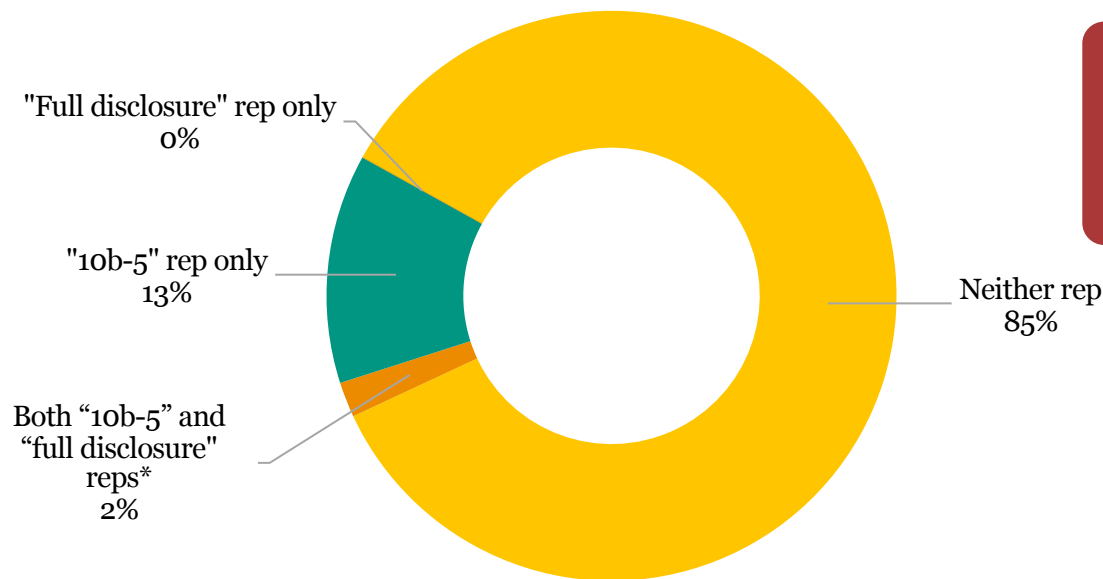


Representation is knowledge-qualified



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

Inclusion of representations (2022 deals)

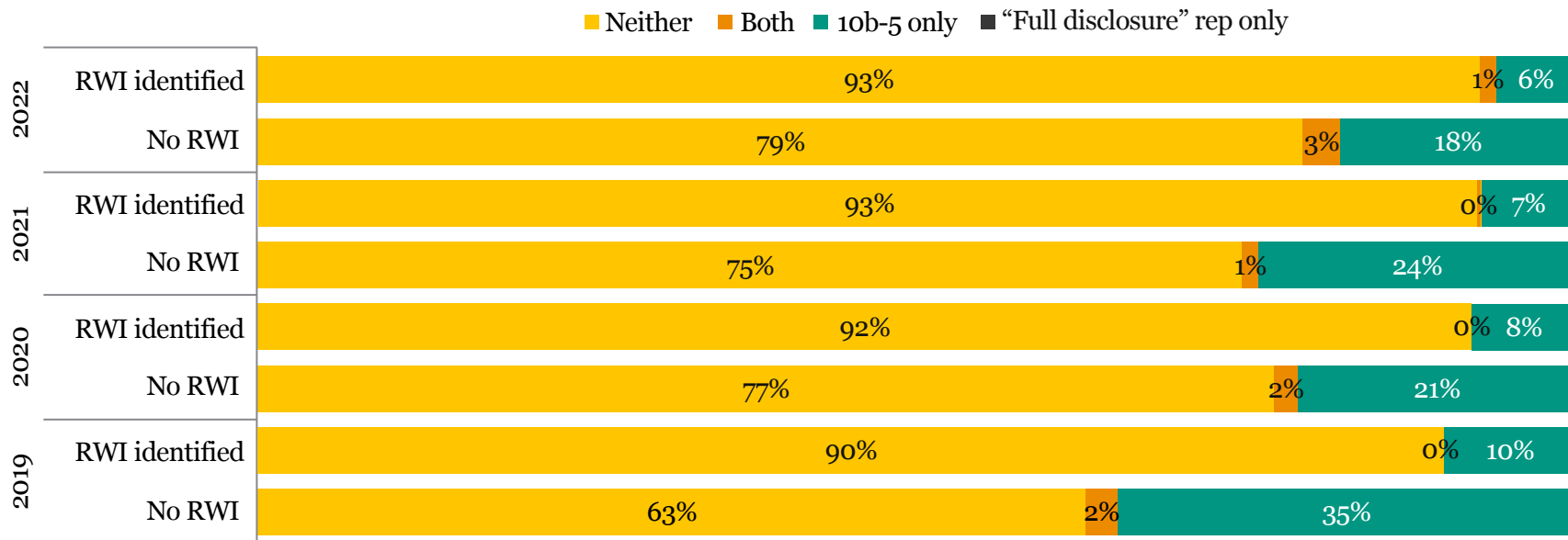


Financial Buyers and Larger deals (\$500m+) are less likely to include either rep: 90%+

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

“10b–5” and “Full Disclosure” Representations: Effect of RWI

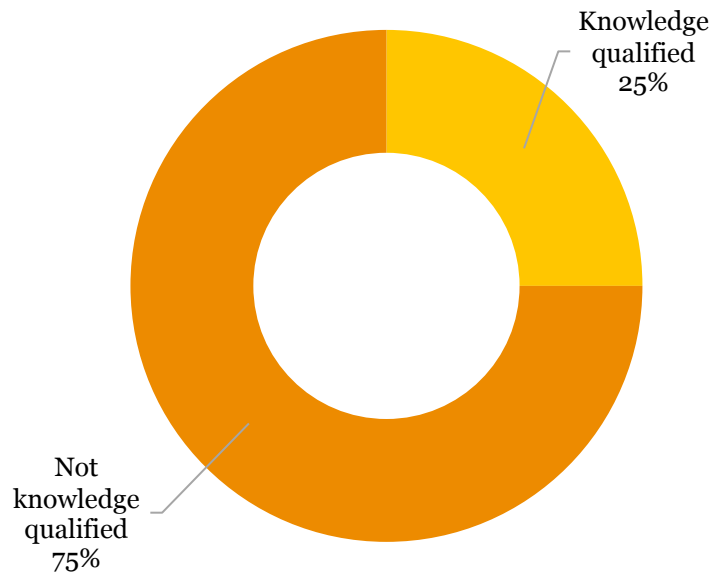
Deal years 2019–2022



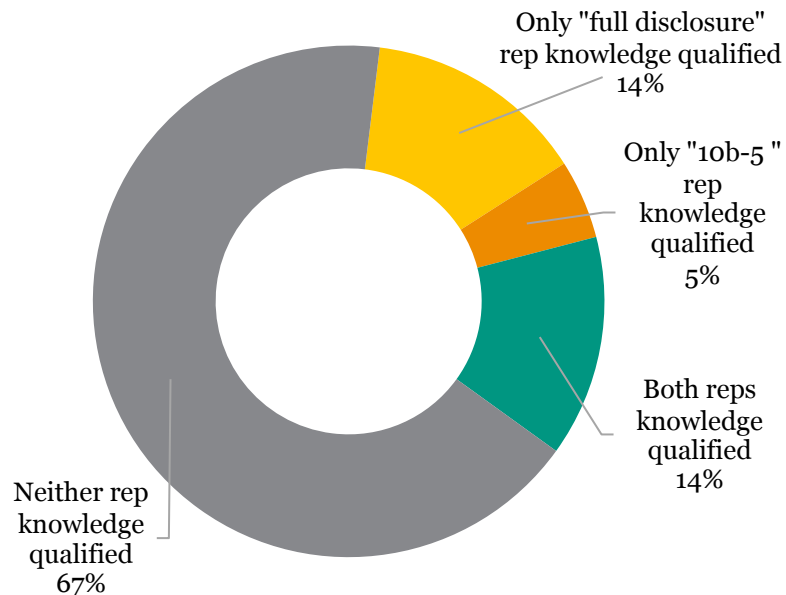
“10b–5” and “Full Disclosure” Representations: Knowledge Qualifiers

Subset: 2019–2022 deals

Subset: “10b–5” rep only

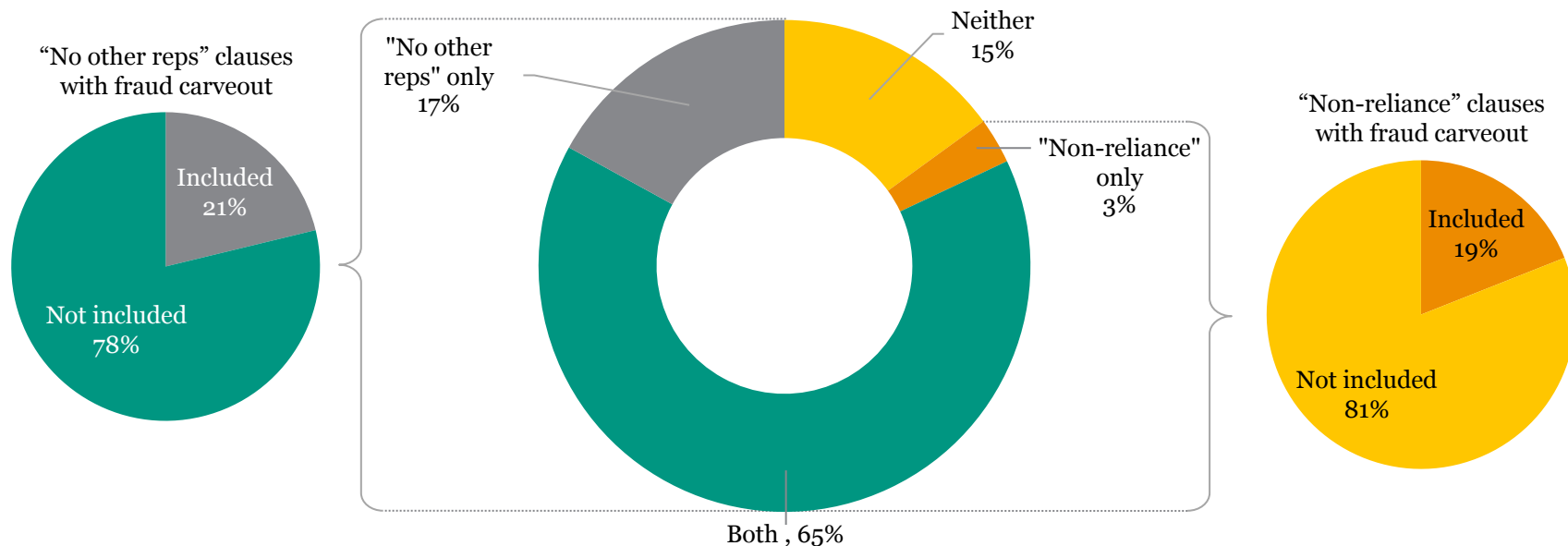


Subset: both “10b–5” and “full disclosure” reps



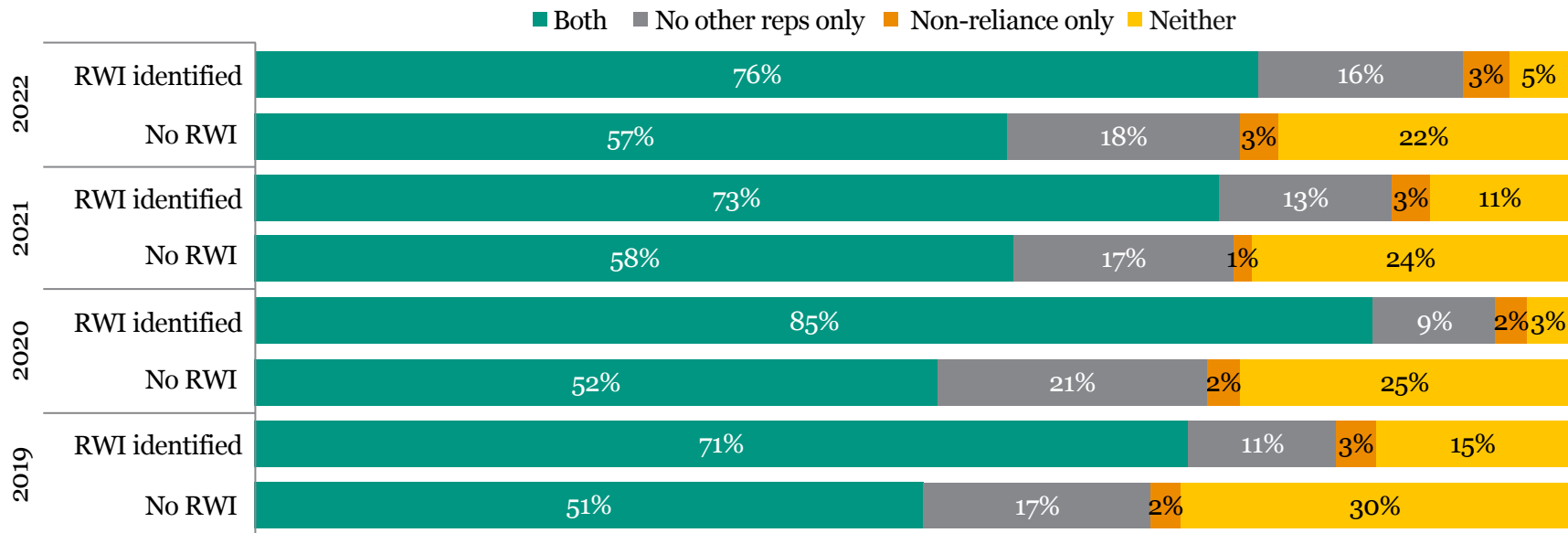
“No Other Representations” and “Non-reliance” Clauses

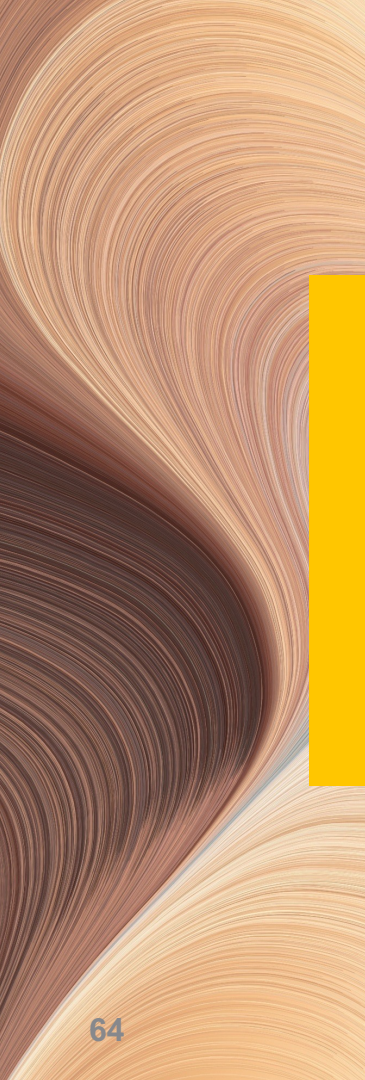
Inclusion of representations and fraud carveouts (2022 deals)



“No Other Representations” and “Non-Reliance” Clauses: Influence of RWI

Deal years 2019–2022





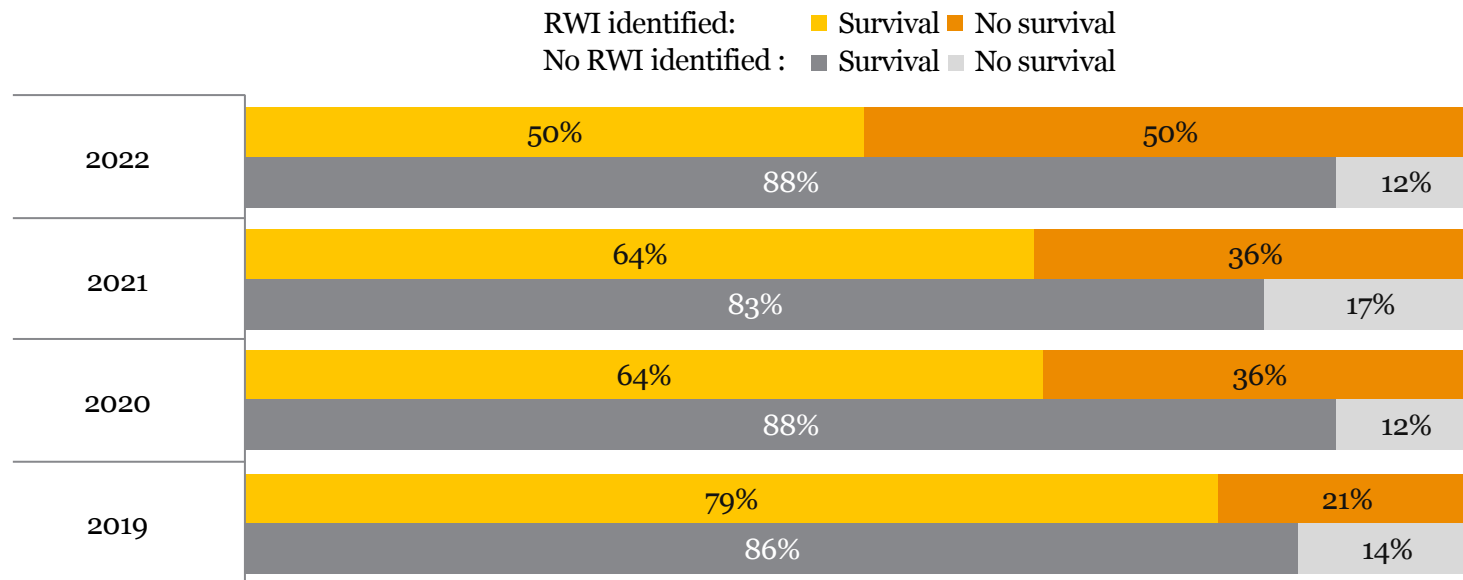
Post-closing Matters

- Purchase Price Adjustments
- Seller's Reps and Warranties
- Survival

General Survival (or Not) of Seller's Reps and Warranties

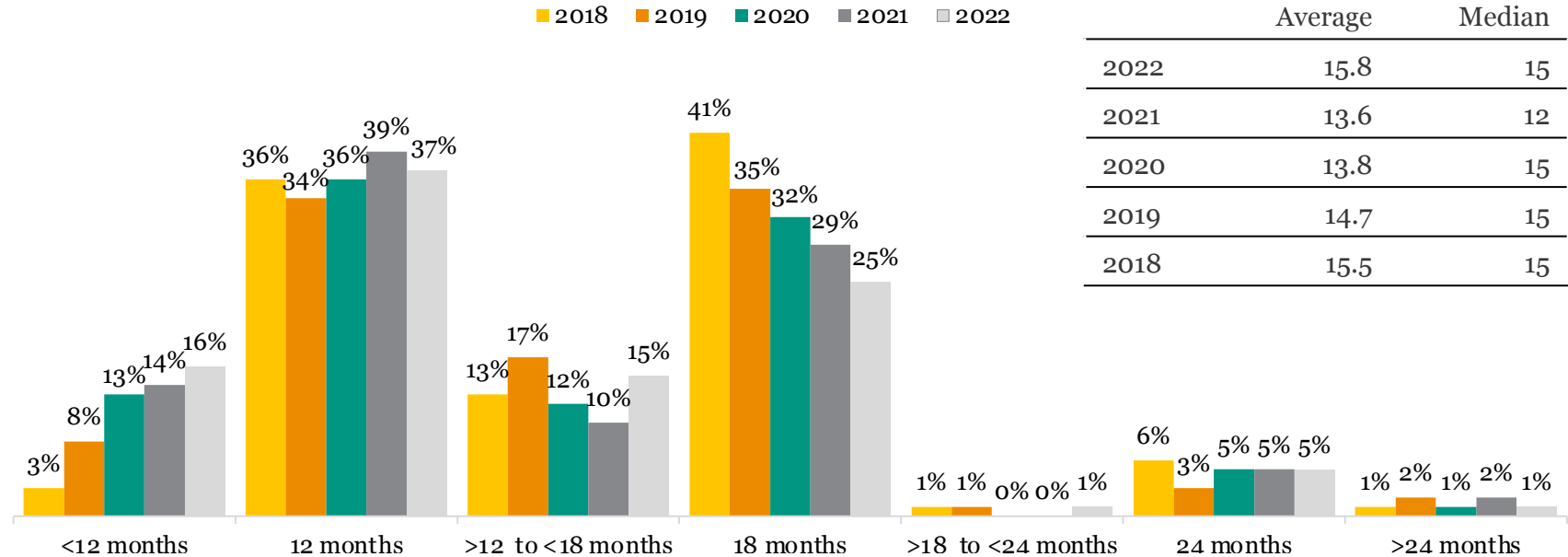
27% of 2022 deals were structured as “no survival”.

Influence of Reps and Warranties Insurance (2019–2022)



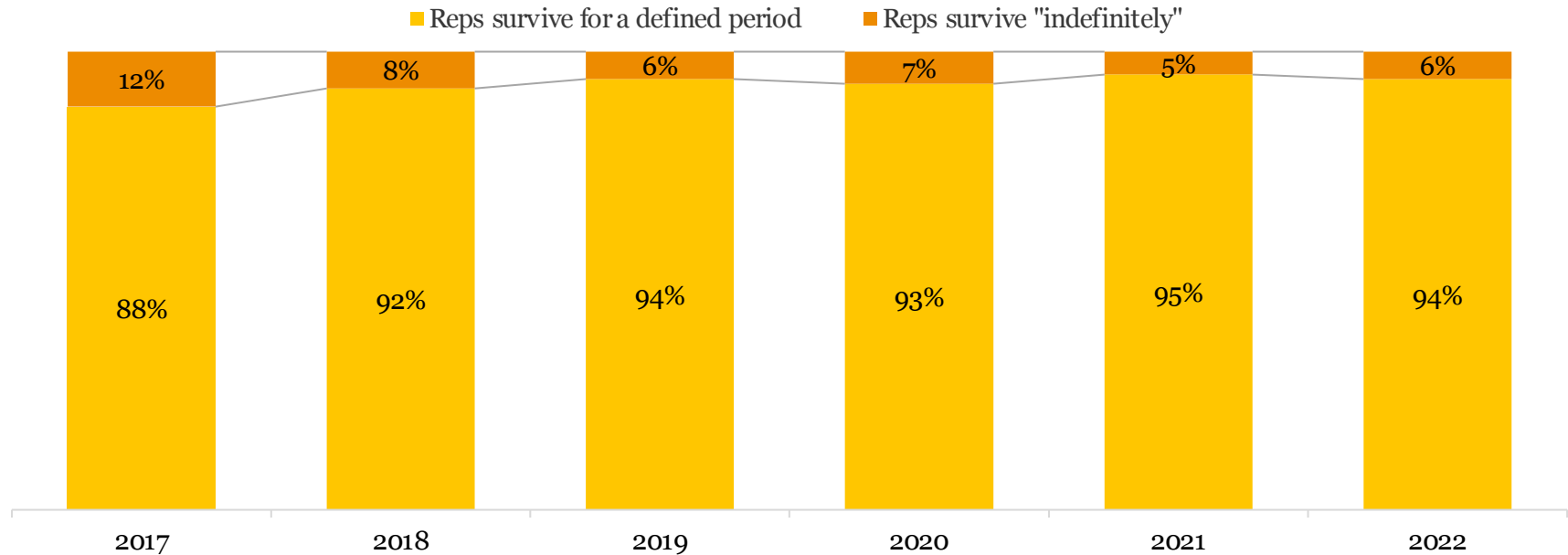
General Survival Period/Time to Assert Claims

Survival period (2022 median: 15 months)



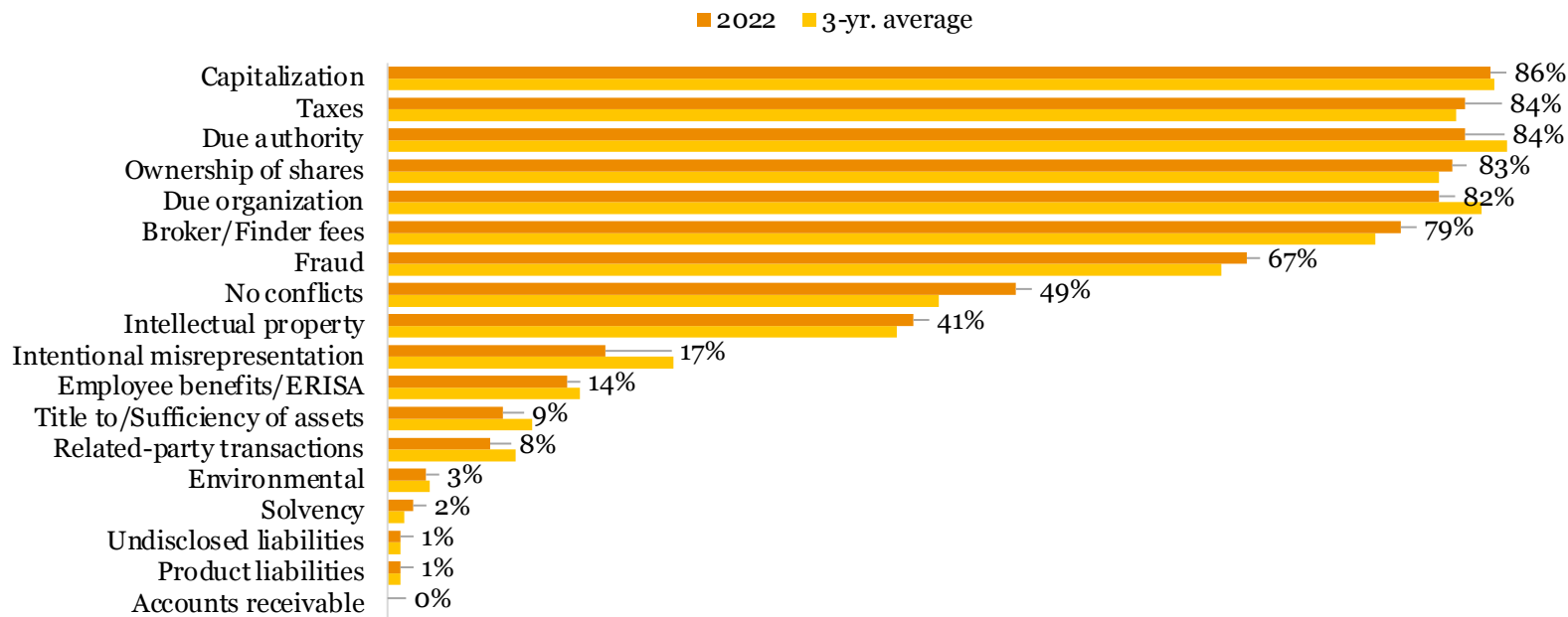
Survival/Time to Assert Claims: Carveouts to General Survival Period

“Fundamental” representations carved out from the general survival period (mergers only)



Survival/Time to Assert Claims: Carveouts to General Survival Period*

Carveout frequency: 2022 deals compared to the 3-year average (2020–2022)†



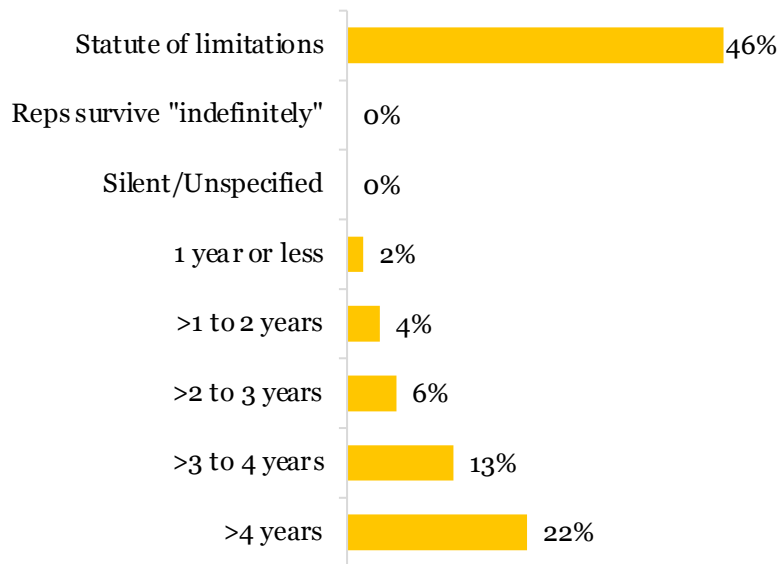
† Percentages in the chart are for 2022 deals.

* Matters subject to carveouts survive longer than the general survival period.

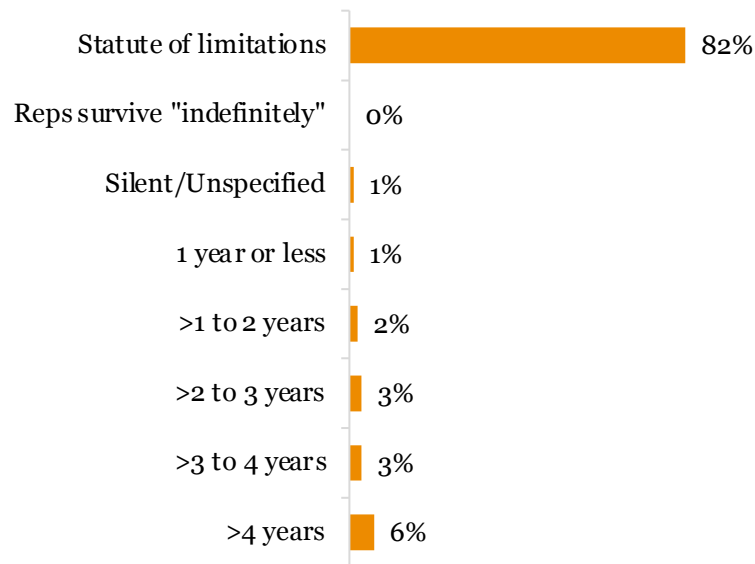
Second-Level Survival: “Fundamental” and Tax Representations

Subset: 2022 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

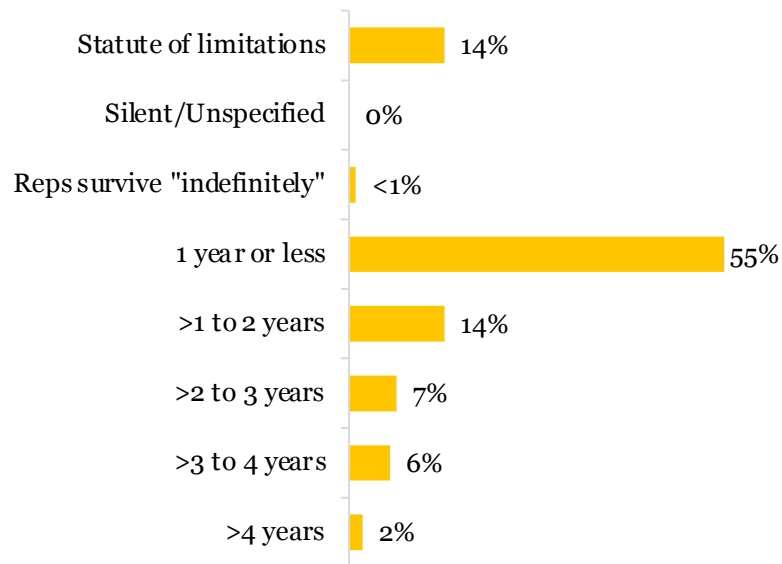


* For example: due organization, due authority, capitalization, etc. (other than taxes, intellectual property and fraud).

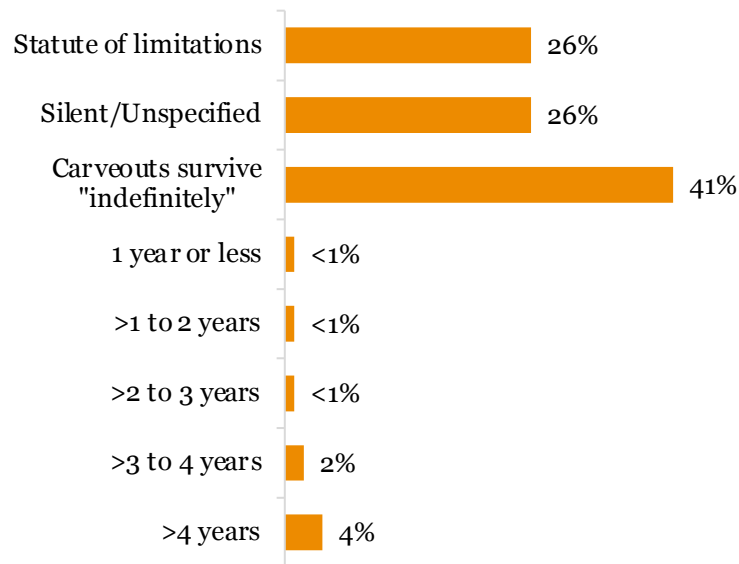
Second-Level Survival: IP Representations and Fraud

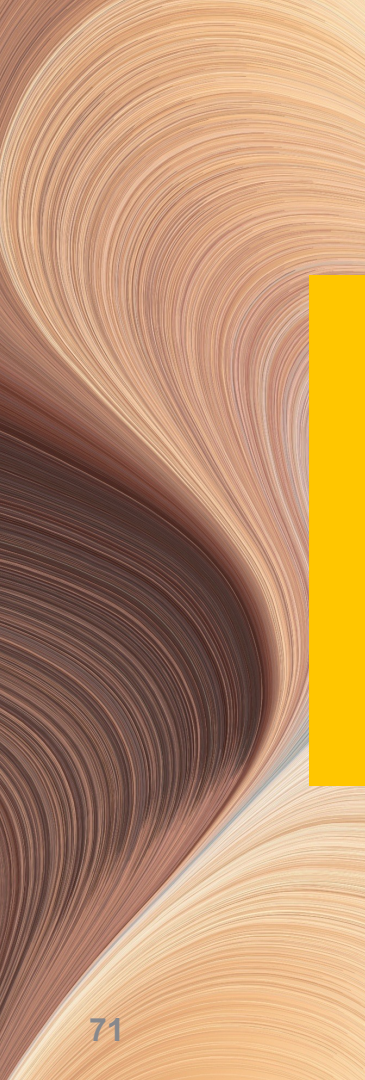
Subset: 2022 deals that include the specified carveout. Years below denote additional survival time after expiration of the general survival period.

Intellectual property representations



Fraud/Intentional misrepresentation



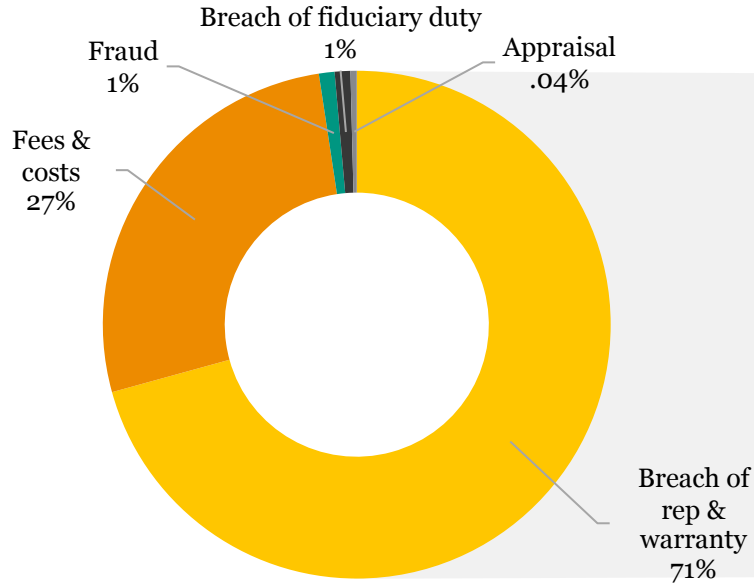


Post-closing Matters

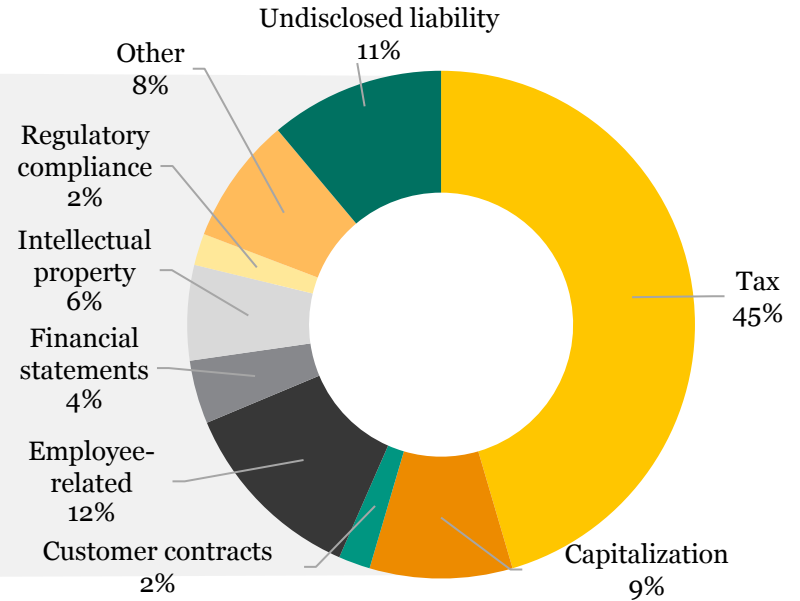
- Purchase Price Adjustments
- Breach
- Seller's Reps and Warranties
- Survival

Indemnification Claims Set Overview: Claim Subject Matter

Subject matter as % of all indemnification claims (500+ claims)

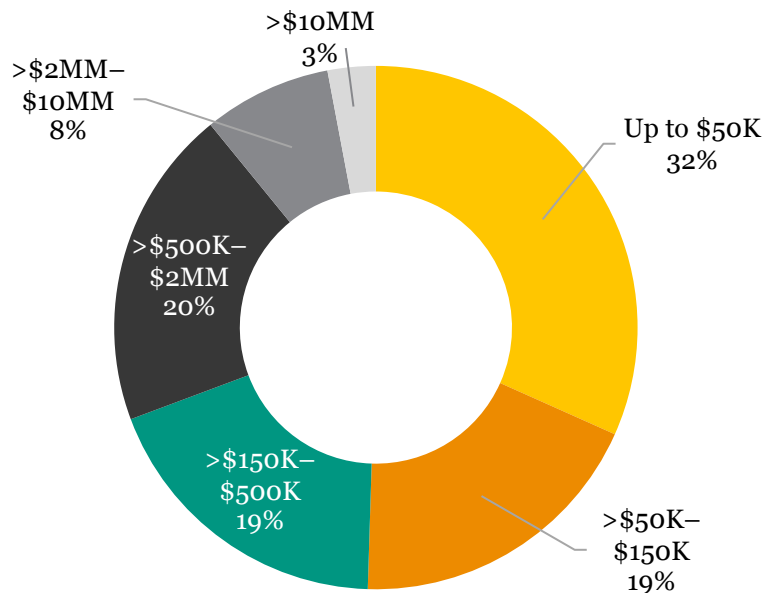


Subset: Breaches of R&W (350+claims)



Indemnification Claim Sizes: All Deals

Claim sizes



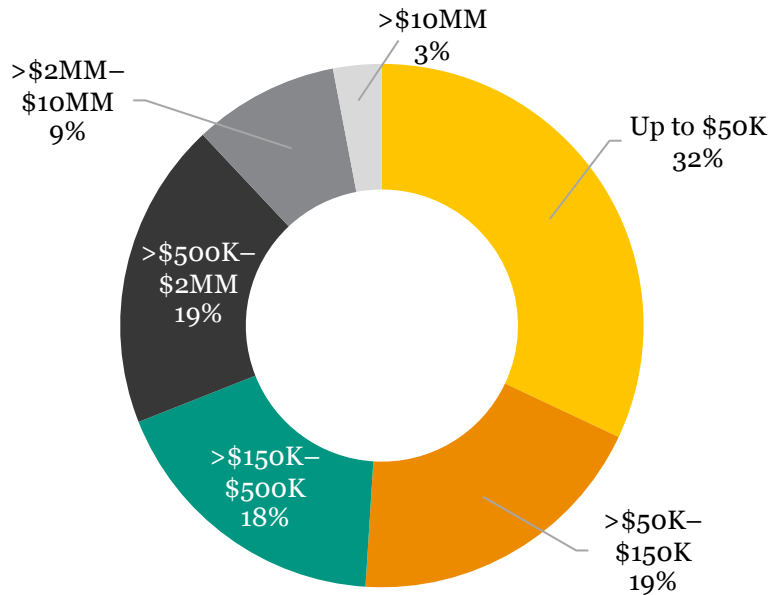
Key points

34% of deals that had at least one claim had claims totaling at least \$1MM

Indemnification claims were made in **30%** of all deals (excluding PPA)

Indemnification Claim Sizes: Deals with RWI

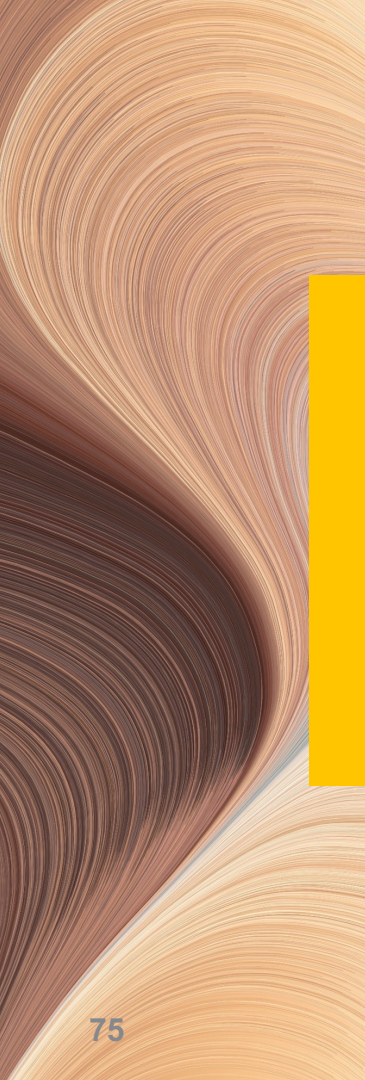
Claim sizes



Key points

Indemnification claims were made in **28%** of deals with RWI (excluding PPA), which is slightly lower than the occurrence across all deals

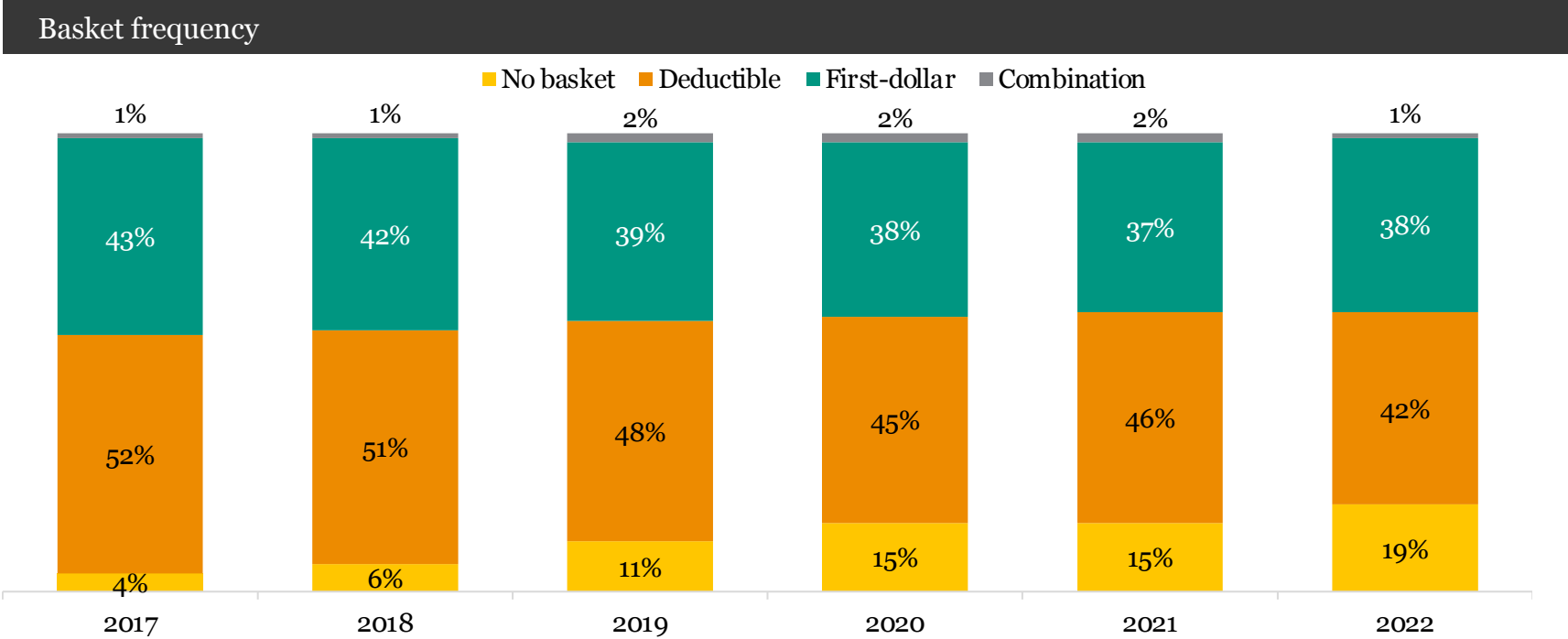
Note: SRS Acquiom may not see claims in deals with RWI once the escrow is exhausted.



Post-closing Matters

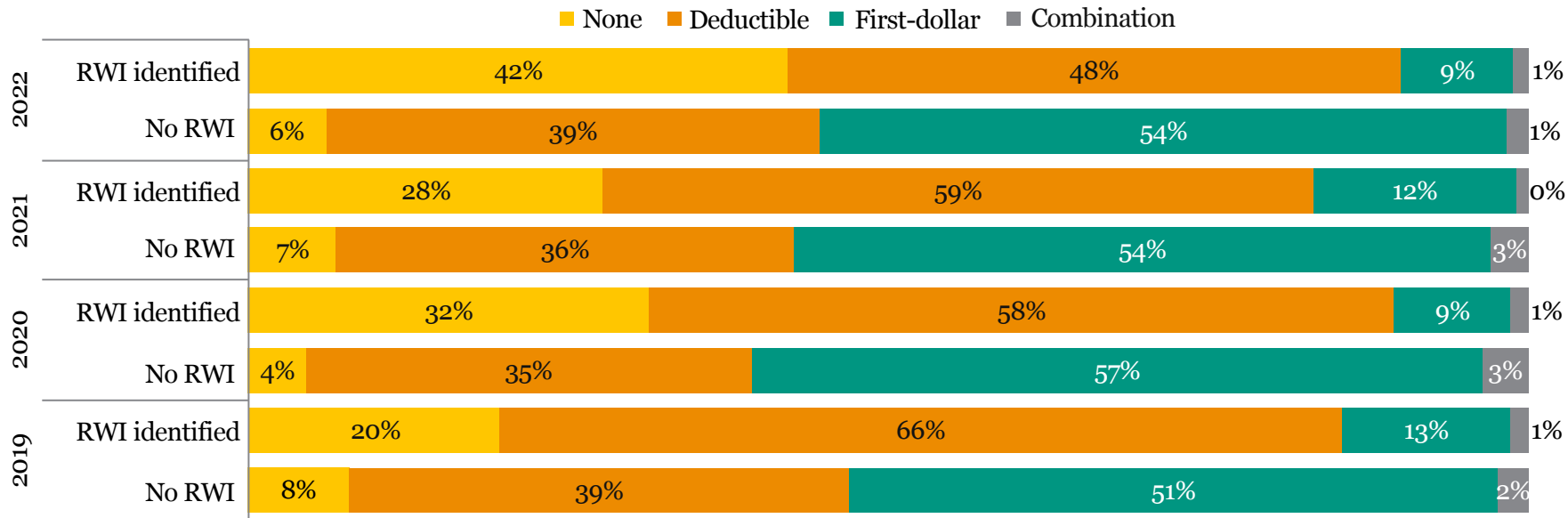
- Purchase Price Adjustments
- Seller's Reps and Warranties
- Survival
- Breach
- Indemnification

Baskets: Definitions



Baskets: Influence of RWI

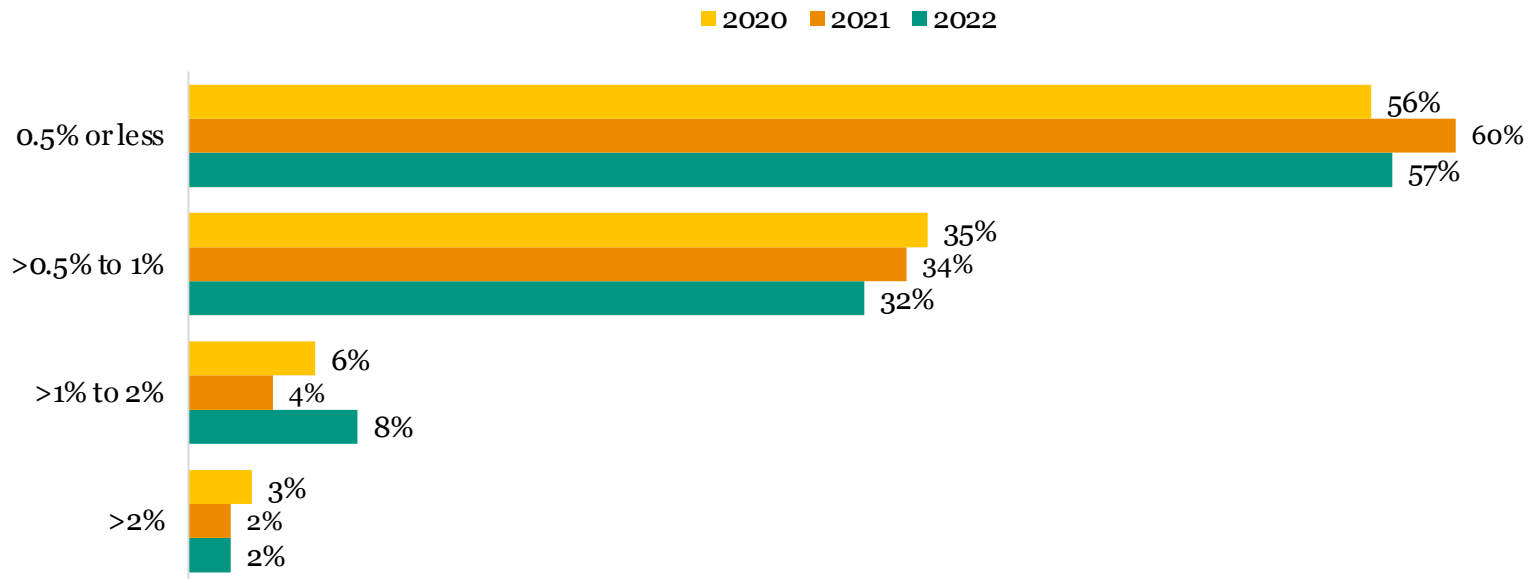
Basket type distribution, deals 2019–2022



Baskets as a Percentage of Transaction Value

Subset: Deals with deductible and first-dollar baskets

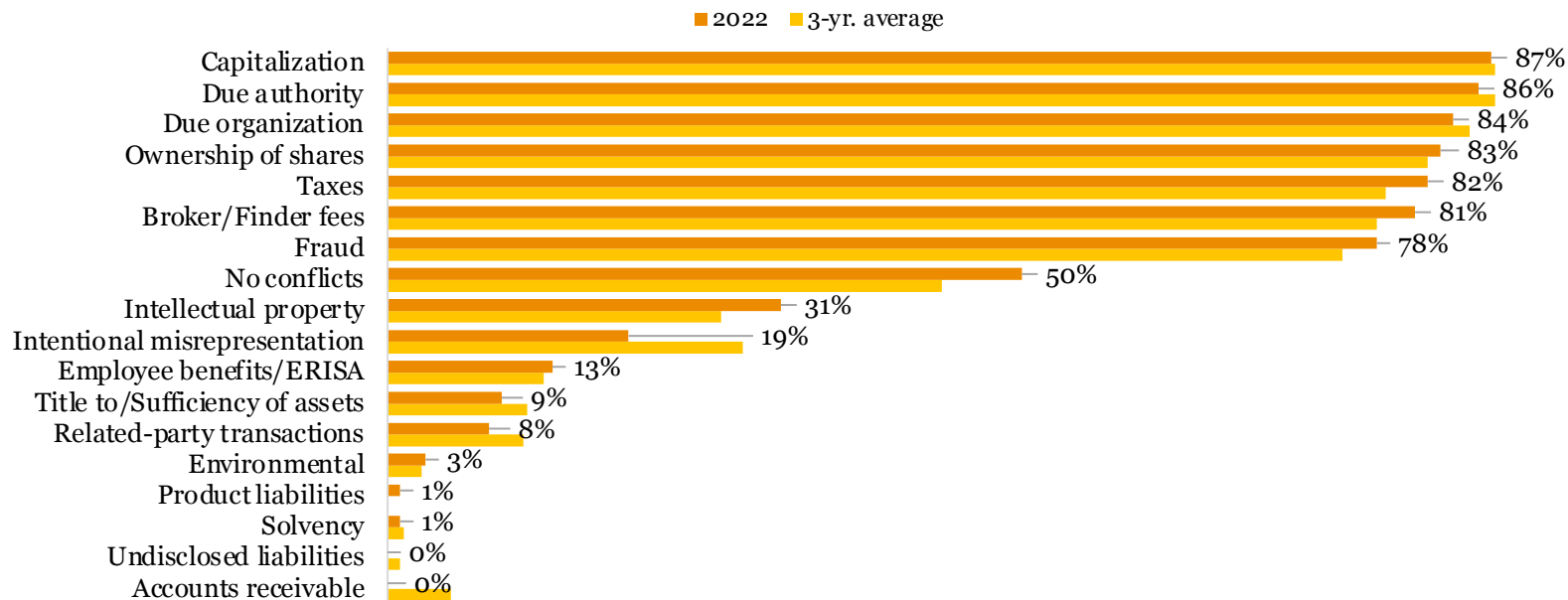
Basket sizes



Baskets: Carveouts

Subset: 2022 deals with baskets

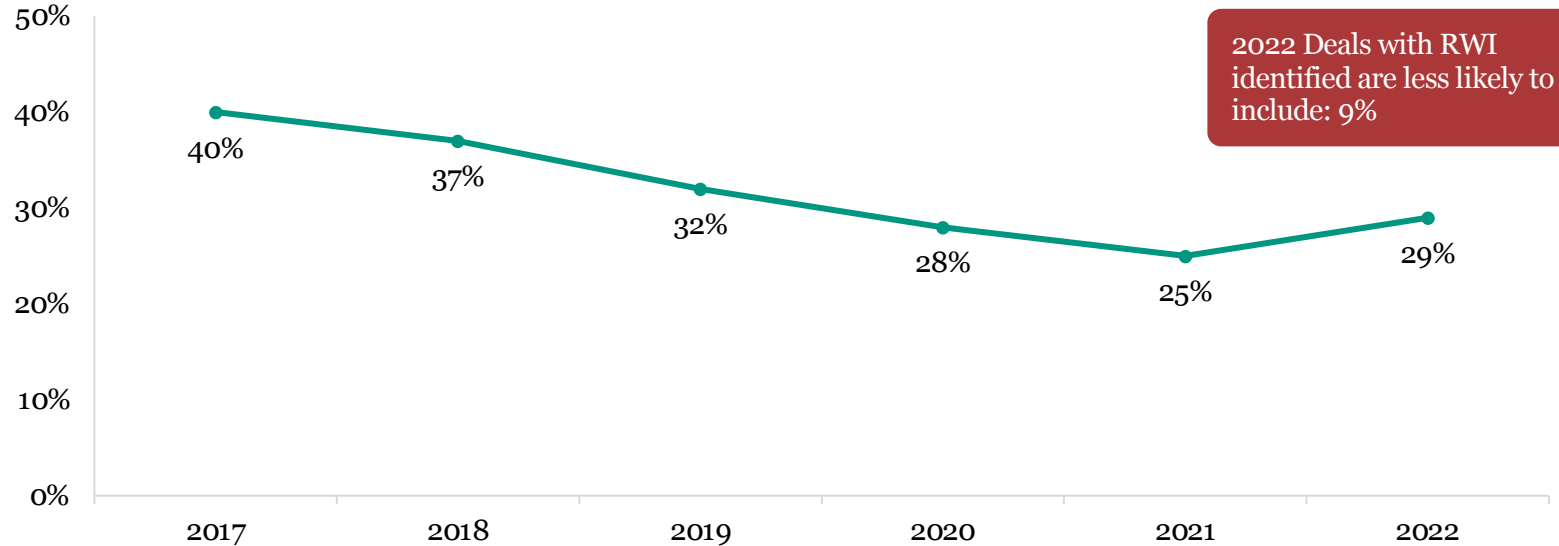
Carveout frequency: 2022 deals compared to the 3-year average (2020–2022)[†]



[†] Percentages in the chart are for 2022 deals.

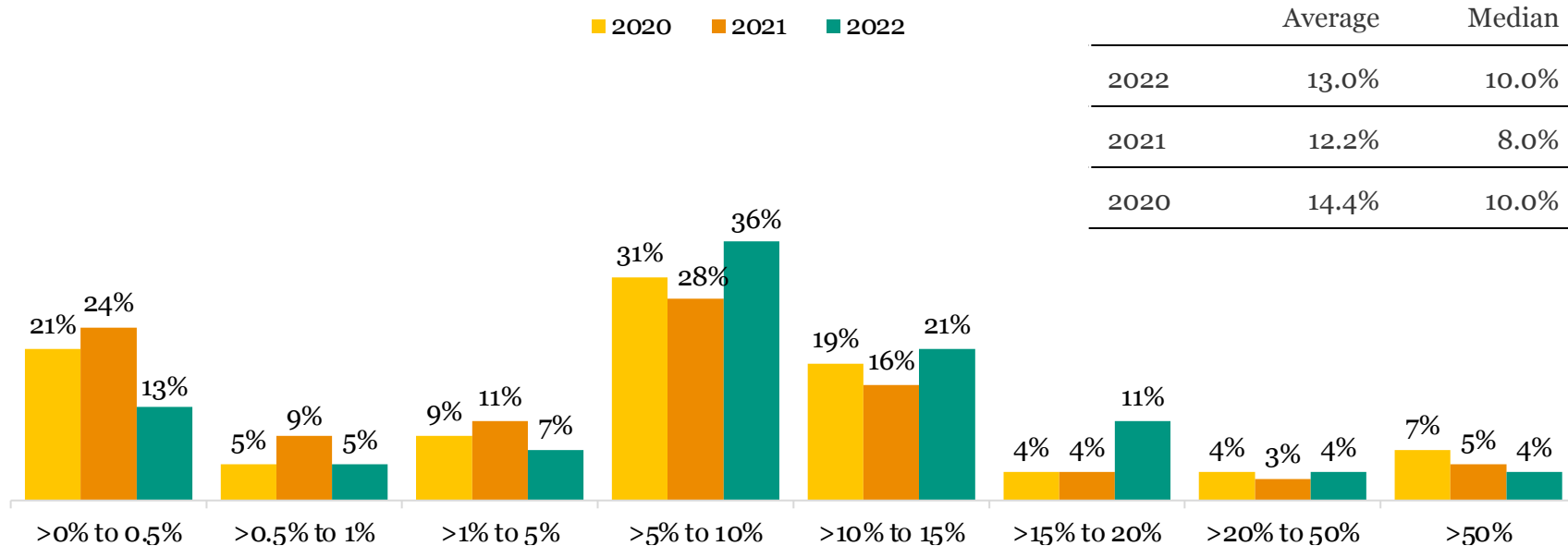
Baskets: Eligible Claim Threshold

Threshold included, year-over-year



Caps as a Percentage of Transaction Value*: All Deals

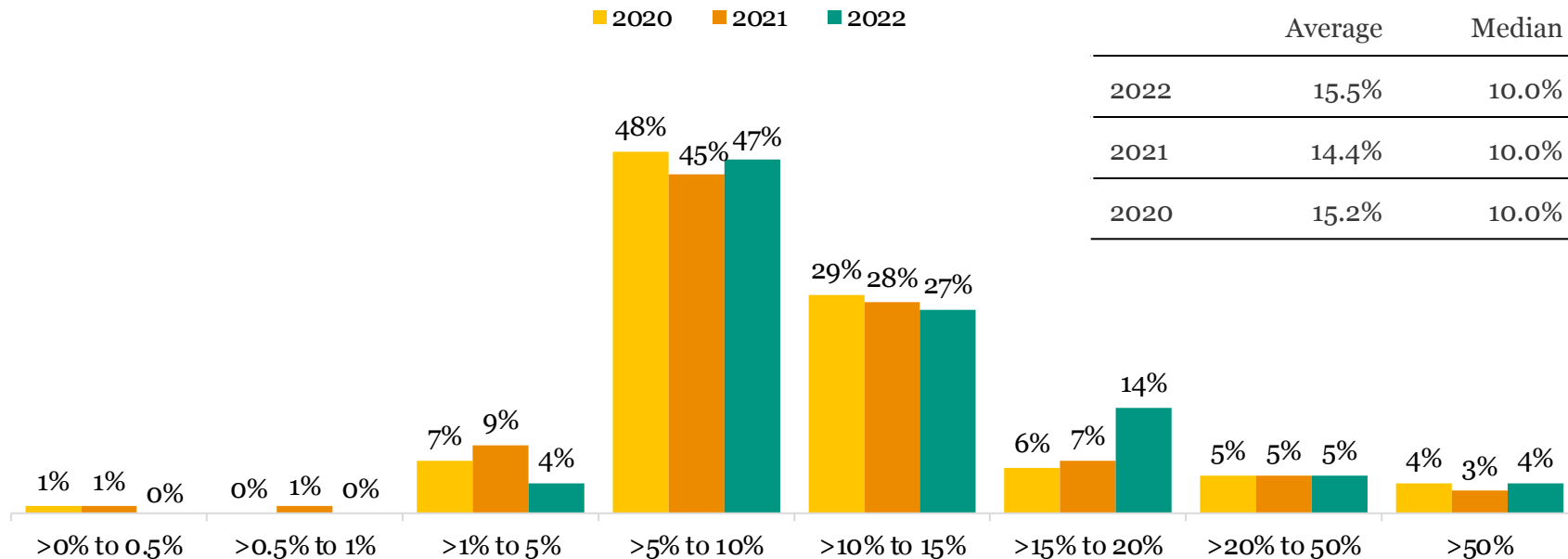
Details, 2020–2022



* In 2022 deals with escrows/holdbacks, 61% of caps equaled the escrowed amount.

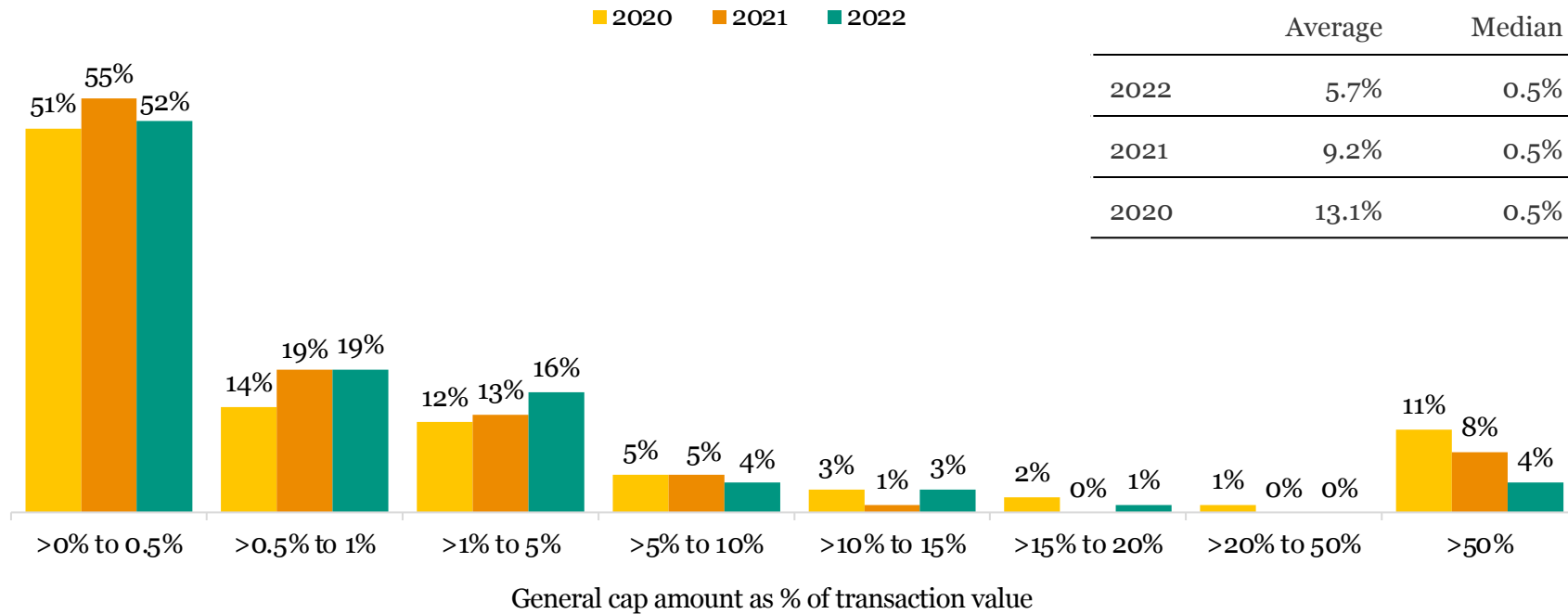
Caps as a Percentage of Transaction Value: No RWI Identified

Details, 2020–2022



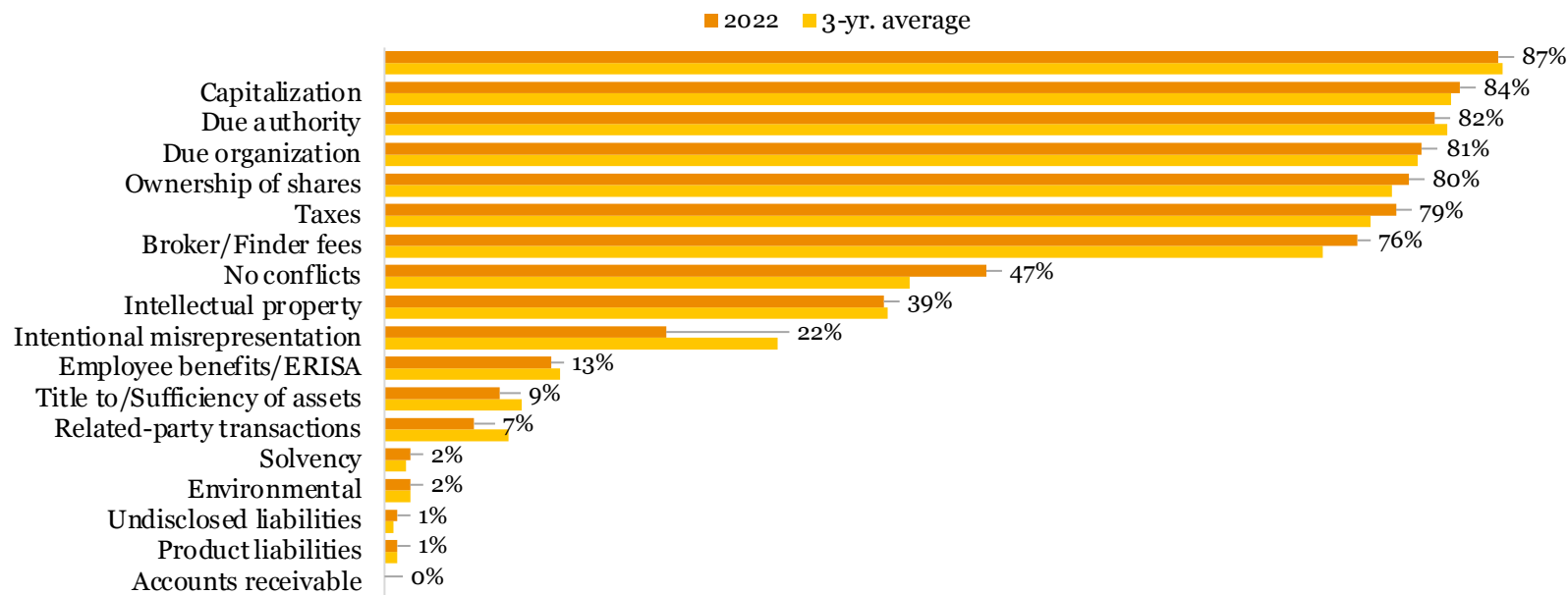
Caps as a Percentage of Transaction Value: RWI Identified

Details, 2020–2022



Caps: Carveouts

Frequency: 2022 deals compared to the 3-year average (2020–2022)[†]

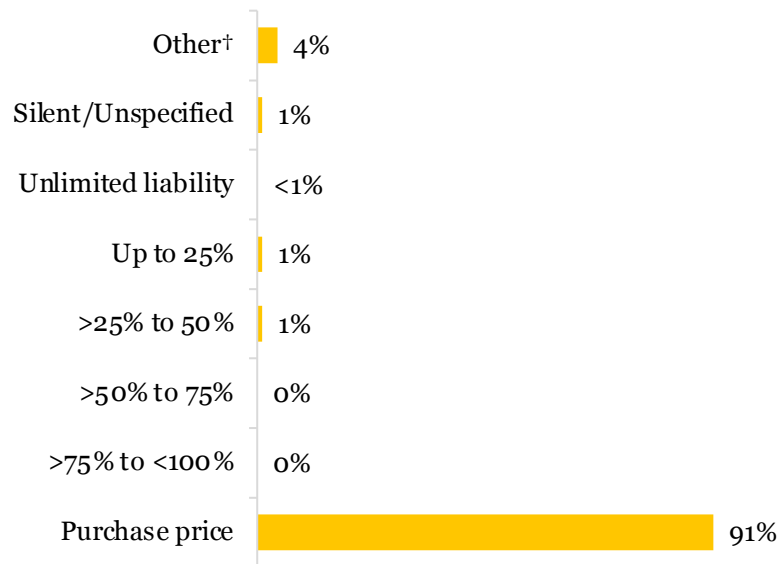


[†] Percentages in the chart are for 2022 deals.

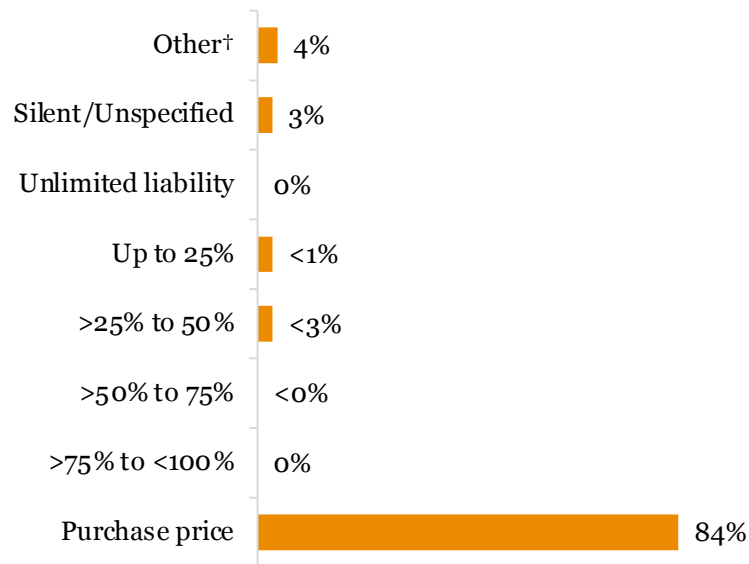
Second-Level Caps: “Fundamental” and Tax Representations

Subset: 2022 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



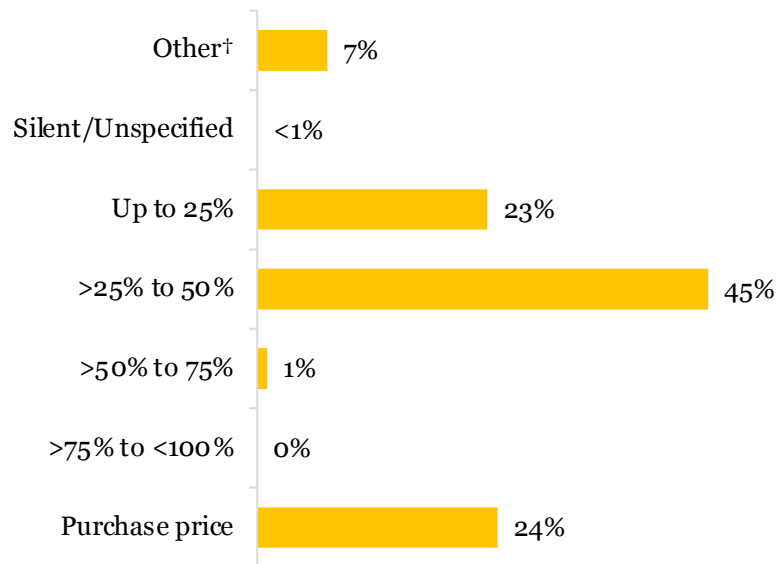
* For example: due organization, due authority, capitalization, etc. (other than taxes, intellectual property, and fraud).

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

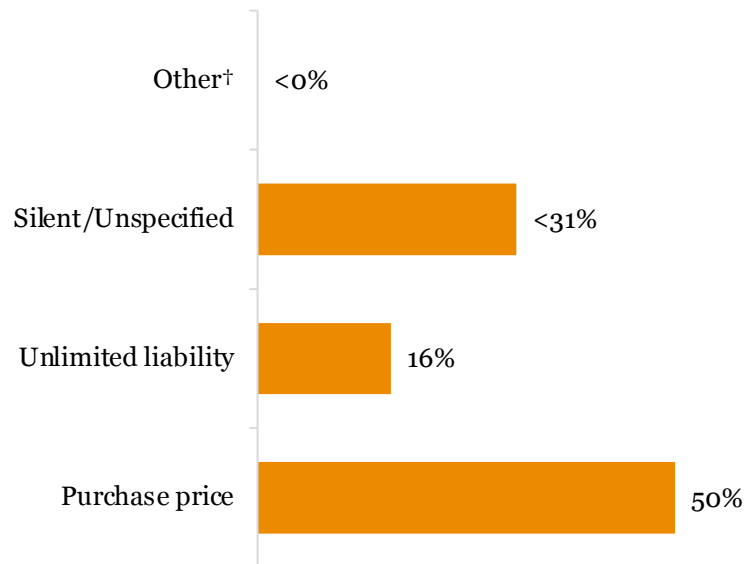
Second-Level Survival: IP Representations and Fraud

Subset: 2022 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



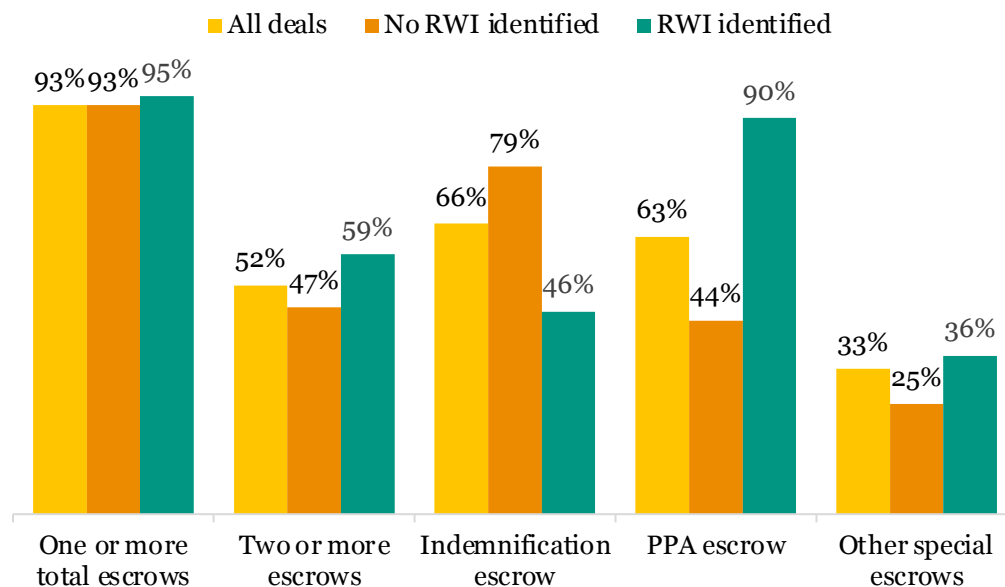
* Measures liability for shareholders that did not participate in the fraud (liability for participating shareholders was typically unlimited).

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

Deal Escrows:* Frequency by Category and Aggregate Medians/Averages

Subset: 2022 deals

Percentage of all deals that include an escrow, by category



* Includes holdbacks

Subset: 2022 deals with an indemnification escrow

Aggregate size of all escrows as a % of transaction value

	Average	Median
All deals	11.4%	10.0%
No RWI identified	14.1%	11.3%
RWI identified	4.5%	2.5%

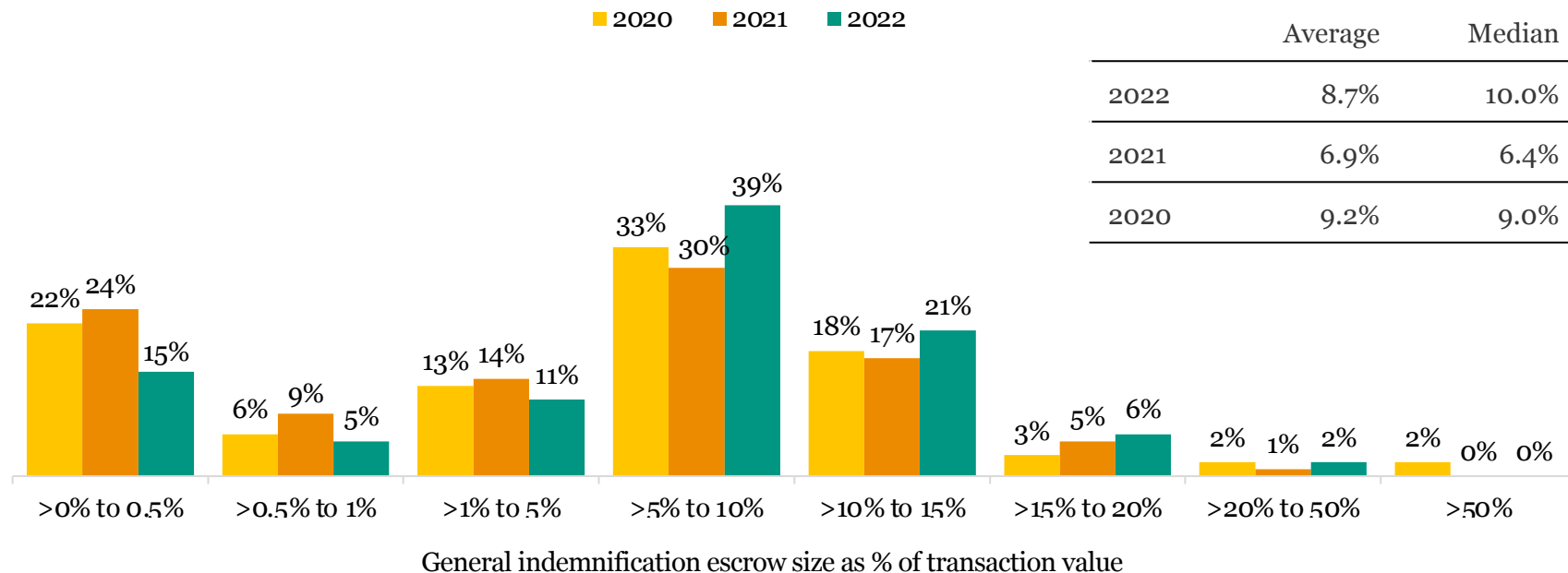
Size of general indemnification escrows as a % of transaction value

	Average	Median
All deals	8.7%	10.0%
No RWI identified	11.5%	10.0%
RWI identified	1.2%	0.5%

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

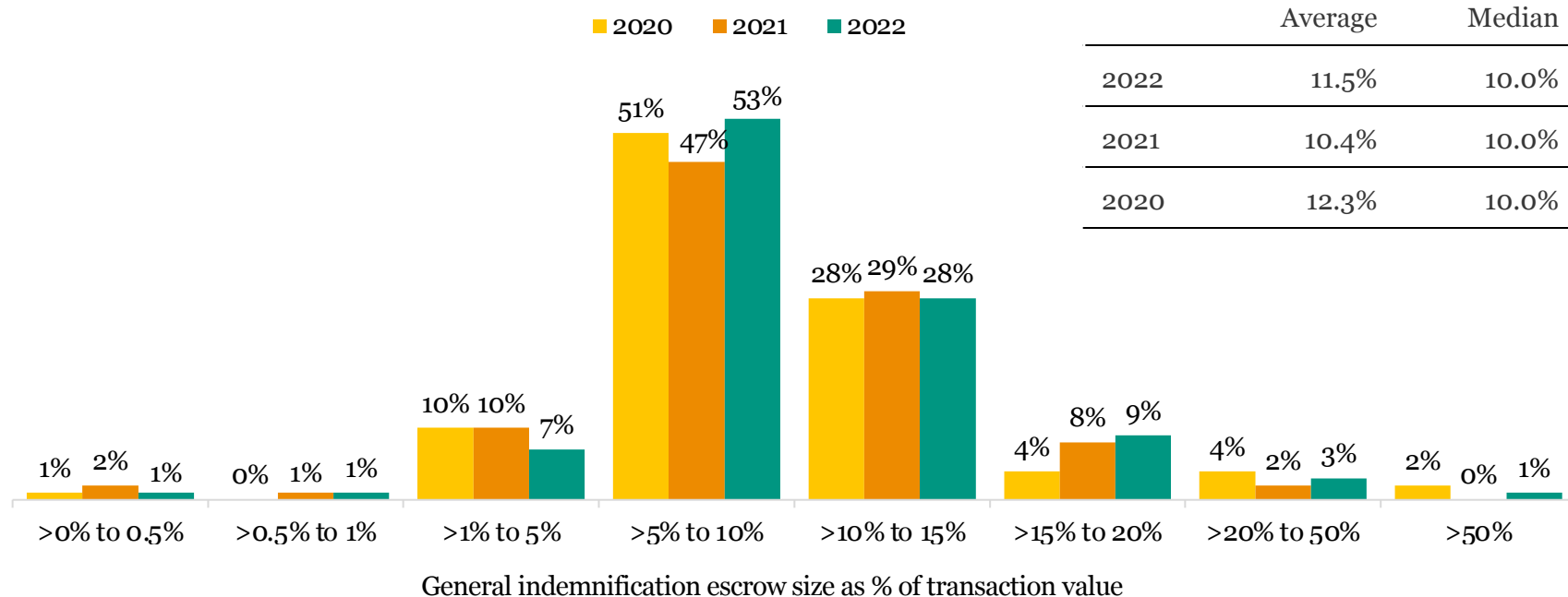
* Implied subset: This data (and the data on the next two slides) does not include deals without a general escrow/holdback.

Details, 2020–2022



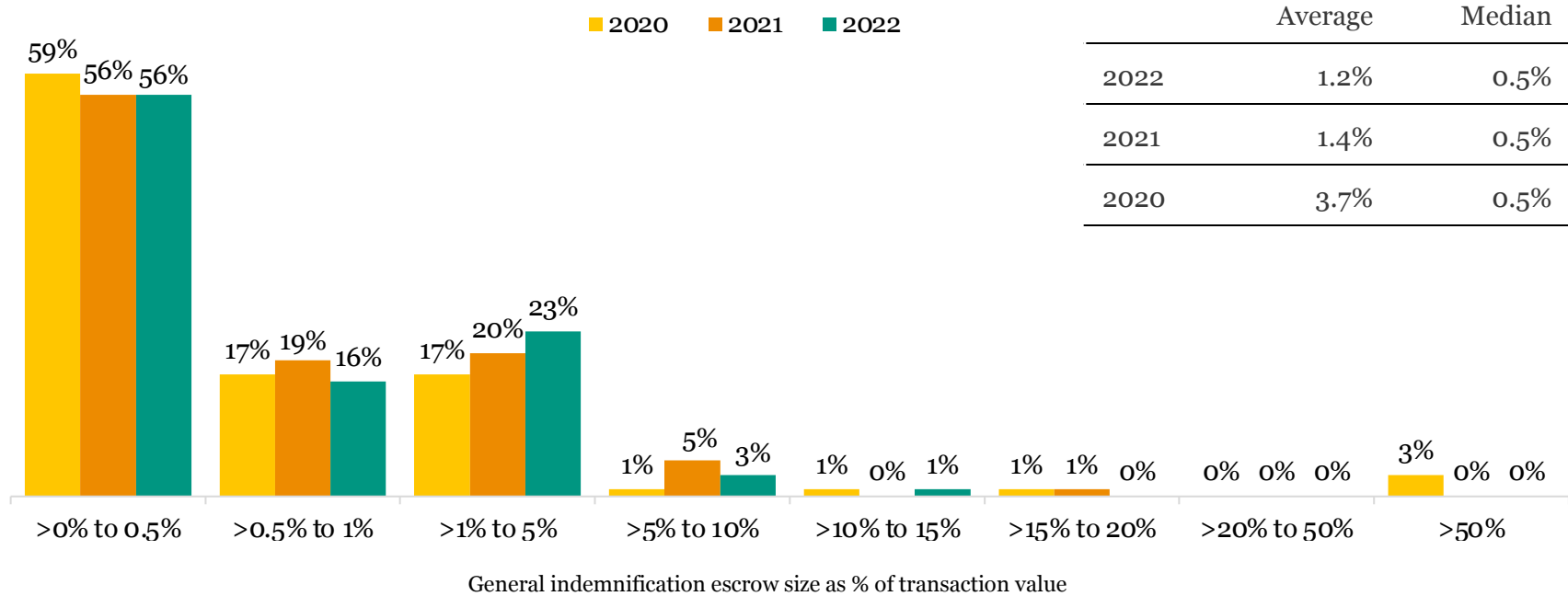
General Indemnification Escrows/Holdbacks as a Percentage of Transaction Value: No RWI Identified

Details, 2020–2022



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

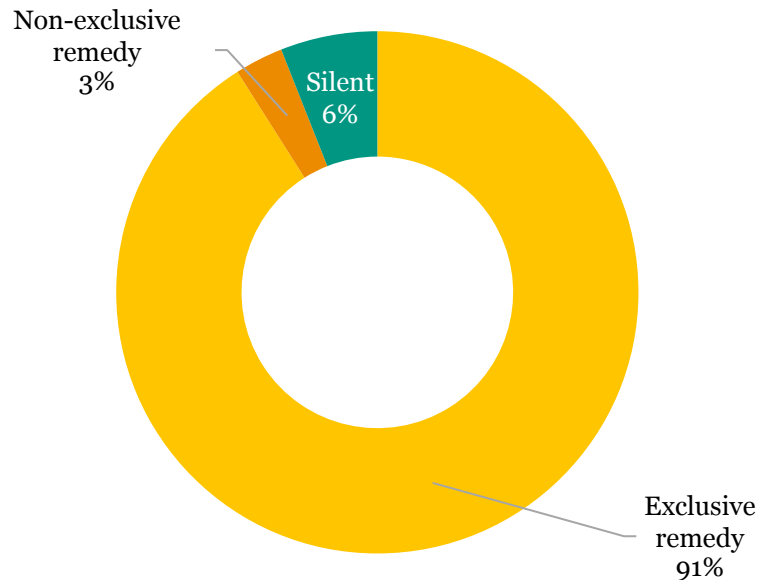
Details, 2020–2022



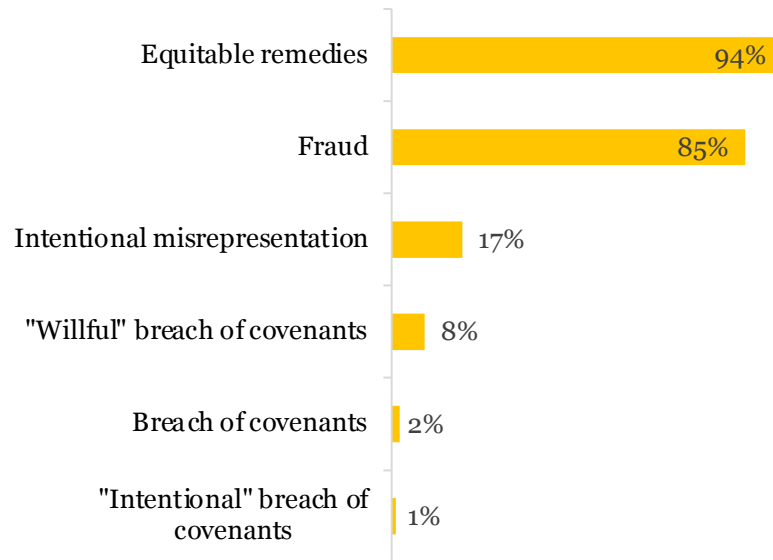
Indemnification as Exclusive Remedy for Breach

Subset: 2022 deals

Indemnification as exclusive remedy



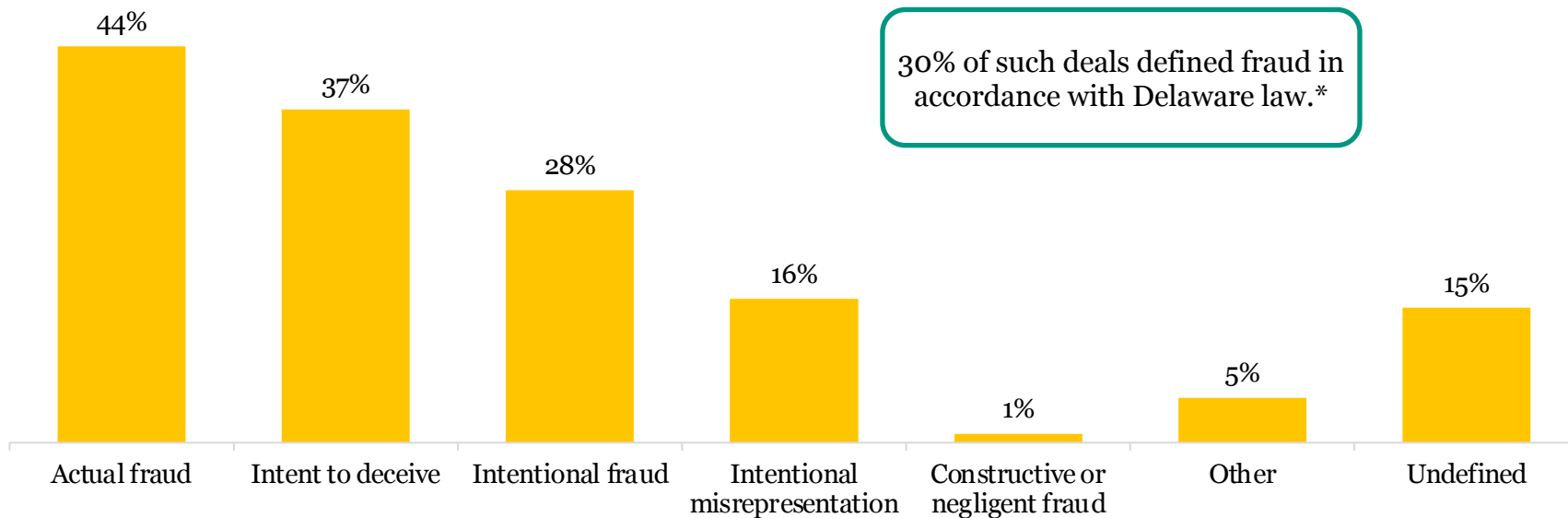
Carveouts to exclusive remedy



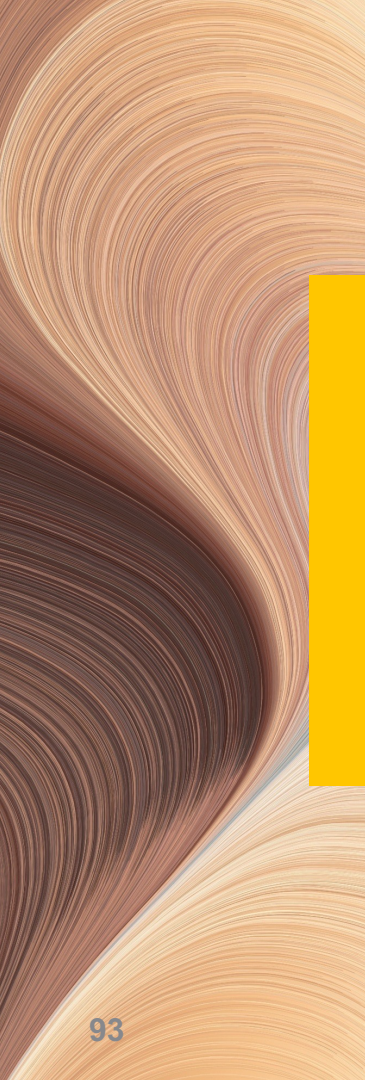
Definition of Fraud

For 2022 deals where fraud was carved out from the “indemnification as sole remedy” provision, the definition of fraud included one or more of the following:

2022 deals



** 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.*

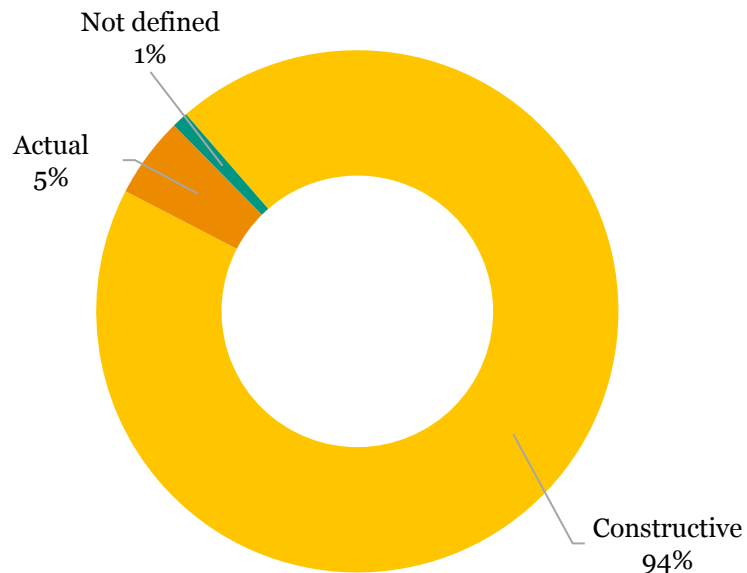


POST-CLOSING MATTERS

- Purchase Price Adjustments
- Seller's Reps and Warranties
- Survival
- Breach
- Indemnification
- Dispute Resolution

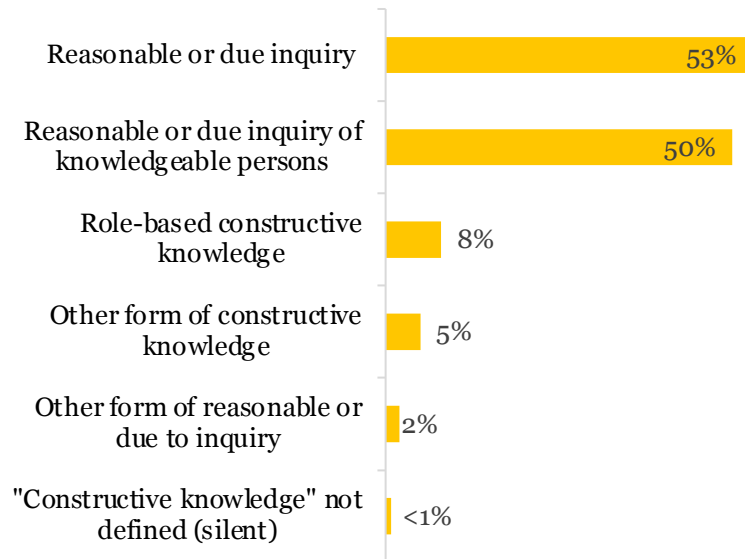
Knowledge Standards

Knowledge definition details (2022 deals)



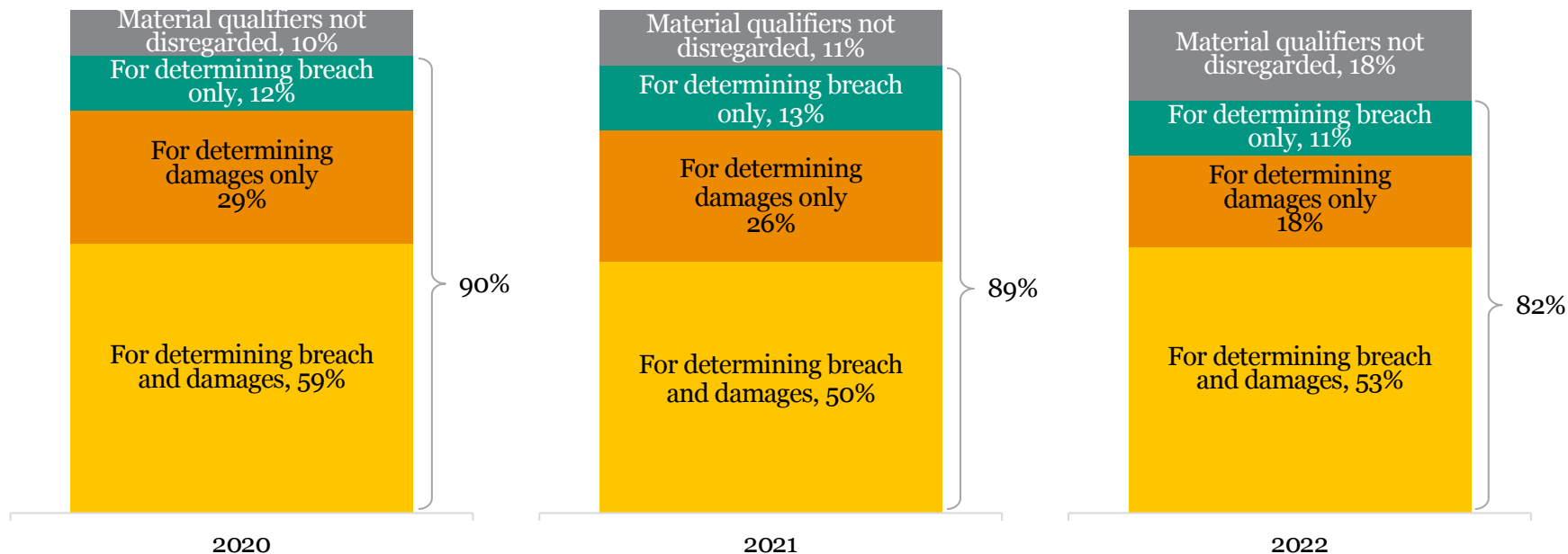
** 16% of 2022 deals include more than one constructive knowledge element, e.g., a due inquiry requirement as well as role-based deemed knowledge.*

Subset: Constructive*



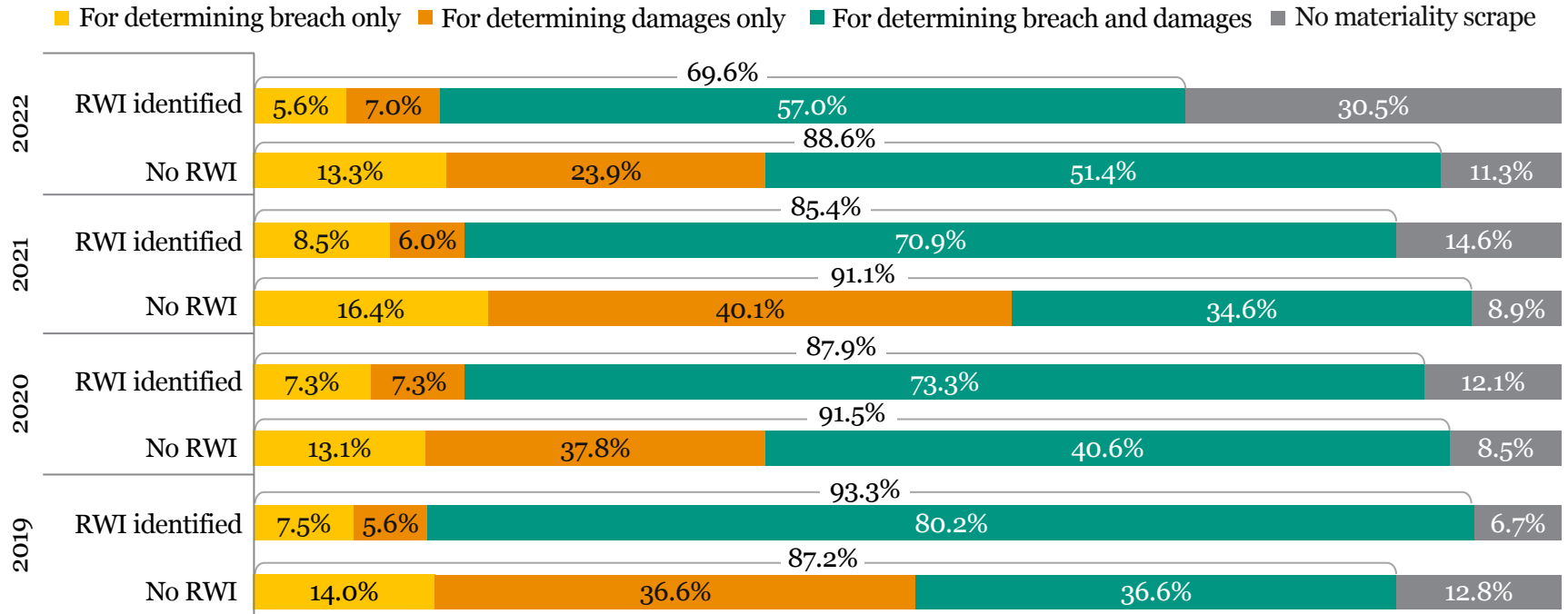
“Materiality Scrape” Inclusion

Subset: 2020, 2021 and 2022 deals



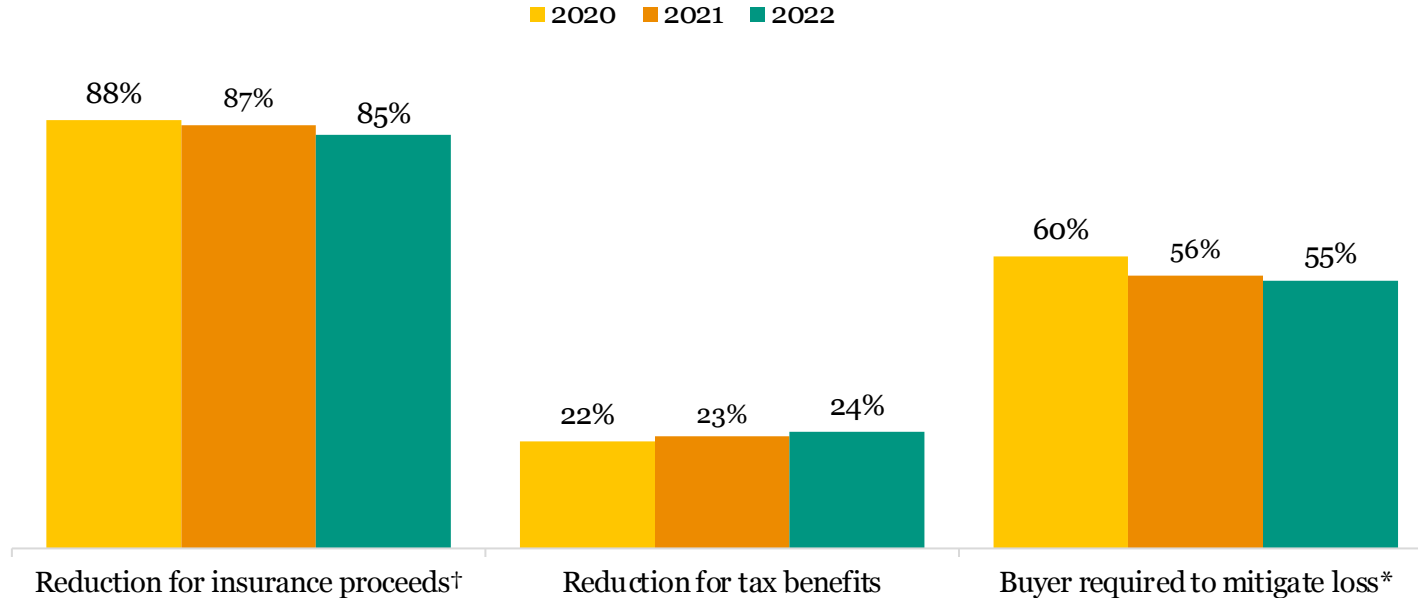
“Materiality Scrape”: Influence of RWI

Materiality scrape included and details (2019–2022)



Reductions Against Buyer's Indemnification Claims

Provision included

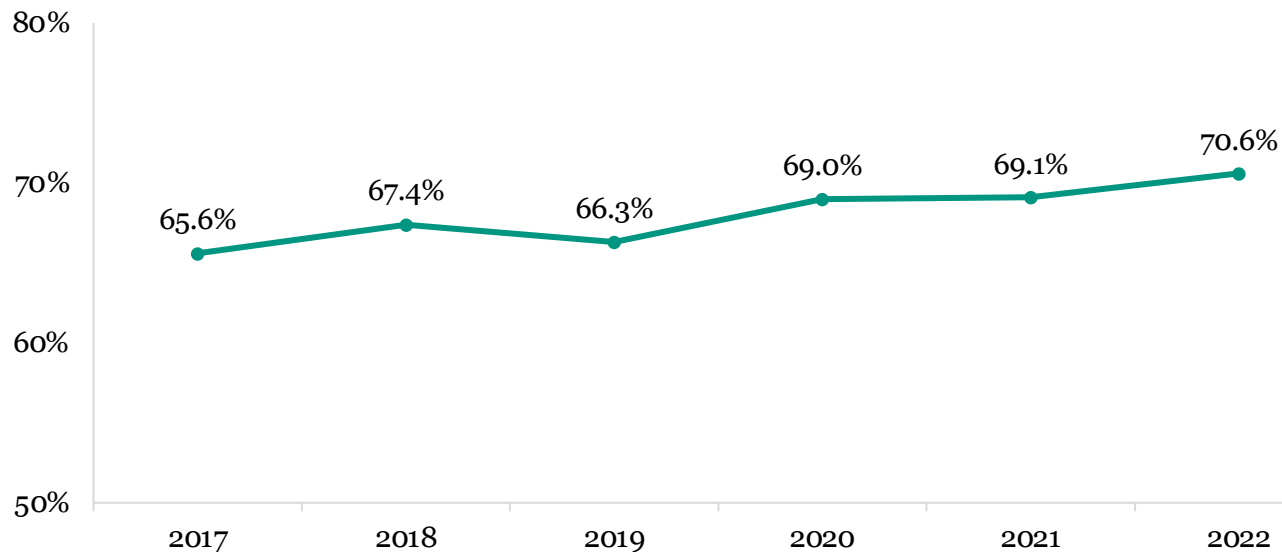


* Includes agreements requiring the buyer to seek payments under applicable insurance policies.

† Insurance policies other than RWI.

Waivers

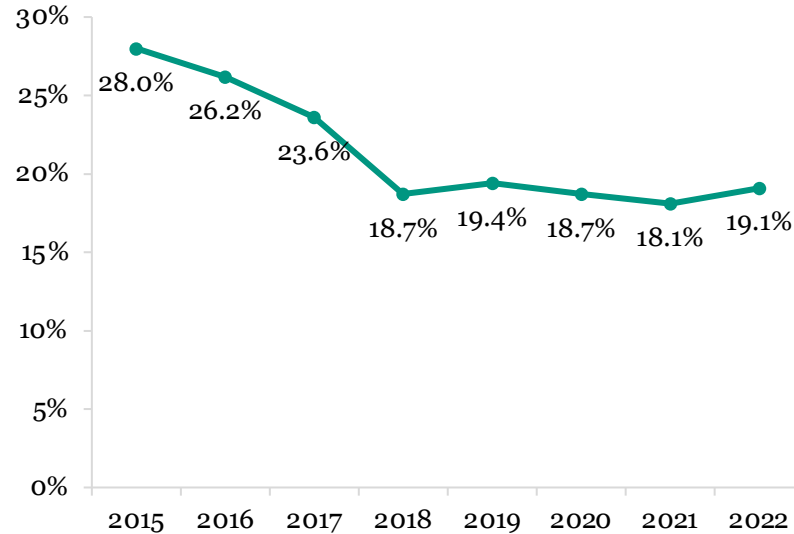
Legal representation conflict waiver* included



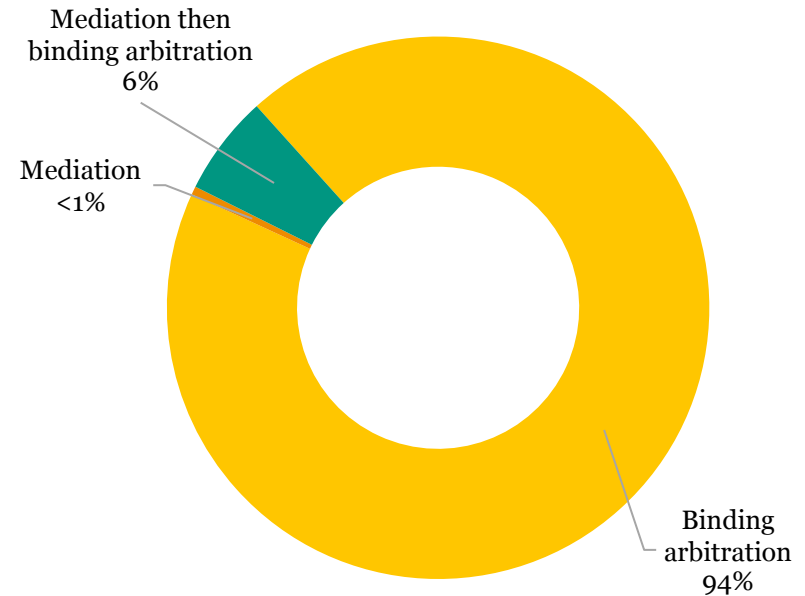
** A provision allowing seller's pre-closing counsel to represent the selling shareholders post-closing in matters relating to the acquisition.*

Alternative Dispute Resolution (“ADR”)*

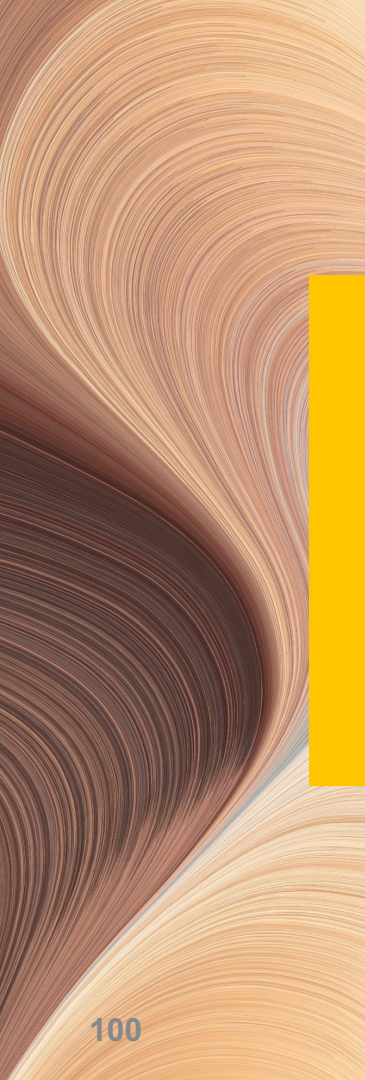
ADR inclusion



Type of ADR (subset: general ADR included, 2022)



* 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.

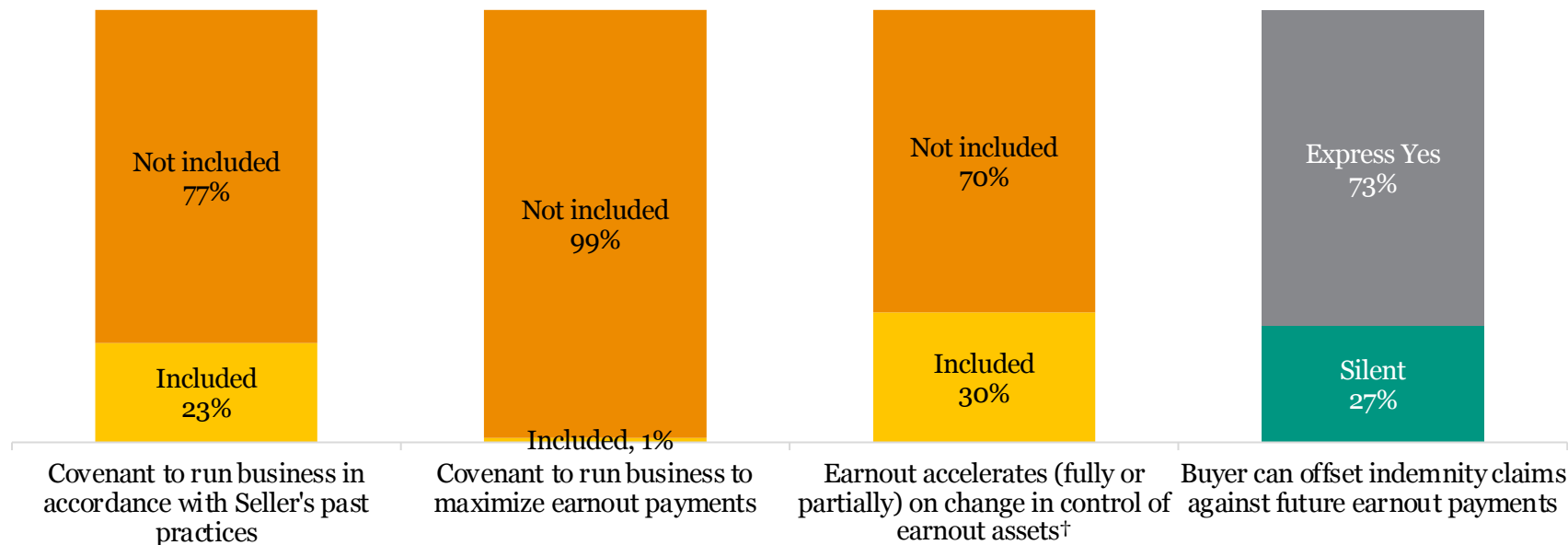


POST-CLOSING MATTERS

- Purchase Price Adjustments
- Seller's Reps and Warranties
- Survival
- Breach
- Indemnification
- Dispute Resolution
- Earnouts

Earnouts (Non-Life Sciences Deals*): Covenants, Acceleration, and Offsets

Subset: 2022 deals with earnouts, excluding Life Sciences deals

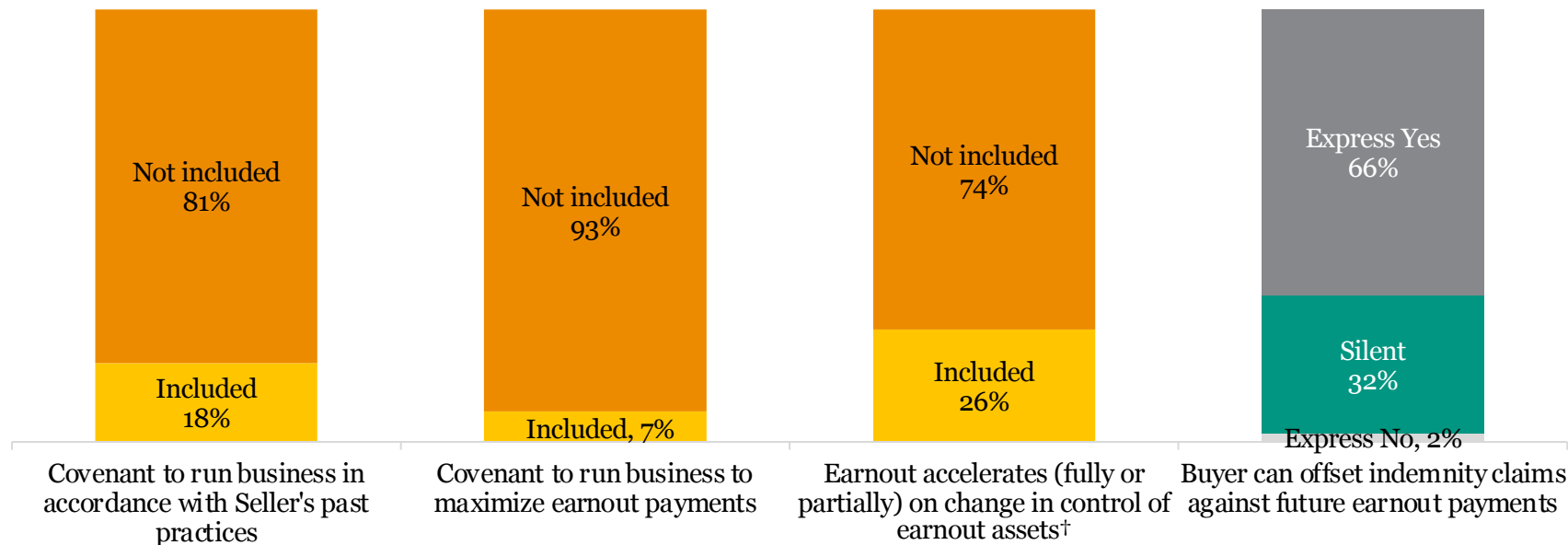


* For a more detailed analysis of SRS Acquiom's Life Sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study.

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

Earnouts (Non-Life Sciences Deals*): Covenants, Acceleration, and Offsets

Subset: 2021 deals with earnouts, excluding Life Sciences deals



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

Thank you!

SRS Acquiom — Every M&A Lawyer's “One Stop Shop” for:



Payments

We continue to set the standard for tech-enabled disbursement of merger consideration. Most shareholders are paid in less than 24 hours.



Escrows

A better M&A escrow experience, period. Simple, fast engagement, streamlined KYC, online Deal Dashboard,[™] and a dedicated team.



Shareholder Representation

The most experienced team in the industry. We proactively solve post-closing issues to reduce potential risks and protect shareholder interests.



Virtual Data Room

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How to Engage SRS Acquiom on a Transaction

SHAREHOLDER REPRESENTATION

Shareholder Rep Proposal Overview (PDF)

- **Timing:** Whenever possible, give us a call at least 10 business days (2 weeks) prior to **signing**. We know that's not always possible, and we always strive to work quickly, and on your schedule, to be ready by the signing/closing date.
- **Process:** Our M&A legal group will review the purchase agreement and provide comments on the shareholder rep provisions as necessary. They will also prepare our engagement letter, which doesn't need signed until closing.
- **Fees:** Typically, a single fee paid at closing that covers everything we do as shareholder rep, forever. Please call anytime to discuss the details of a transaction and I can prepare a customized proposal.

PAYING AGENT AND DOCUMENT SOLICITATION

Overview: Paying Agent Process Timeline (PDF)

- **Timing:** If possible, give us a call 20 business days (4 weeks) prior to closing – while there are a number of details to work through, having us handle the project will result in better overall outcomes and a speedier process at closing.
- **Process:** Primary components of the engagement & initial set-up process are putting a contract in place, conducting KYC on the source of funds*, and gathering shareholder information.
- **Fees:** Typically, a one-time set-up fee plus a per payee per payment fee. Please call anytime to discuss details and I'll prepare a customized proposal based on the specific services needed and scope of the project.

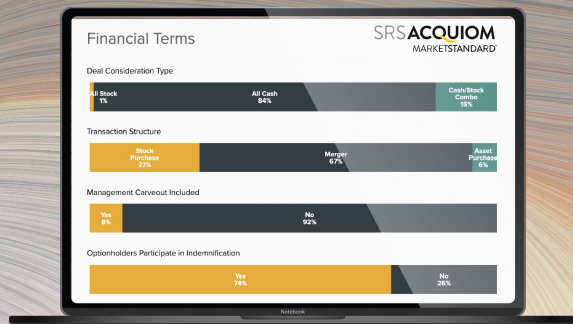
ESCROW AGENT

Service Overview: Escrow Capabilities (PDF)

- **Timing:** If possible, please reach out at least 10 business days (2 weeks) prior to the date the escrow account needs to be opened. Plan for slightly longer if deal parties who are subject to KYC are in any group subject to heightened scrutiny.
- **Process:** Primary components of the engagement and account opening process are putting a contract in place and conducting KYC on all parties to the agreement.*
- **Fee Structure:** Typically, a one-time set-up fee, but sometimes an annual fee will apply. Give me a call anytime to discuss details.

* [KYC CHECKLIST FOR PAYING AGENT AND ESCROW AGENT ACCOUNTS](#)

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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

CUSTOMIZE YOUR VIEW OF THE DATA

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Additional Resources

- 2022 SRS Acquiom Claims Insight Report:
<https://www.srsacquiom.com/resources/m-a-claims-study/>
- 2021 SRS Acquiom Life Sciences M&A Study:
<https://www.srsacquiom.com/resources/life-sciences-deal-terms/>
- SRS Acquiom MarketStandard®:
<https://www.srsacquiom.com/marketstandard/>

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Thank you.
Questions?