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Terms and
Trends

Regulatory Update: Current Trends, and What's to Come



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Rob Sutton
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SEC Rulemaking – Recently Adopted and On the Horizon

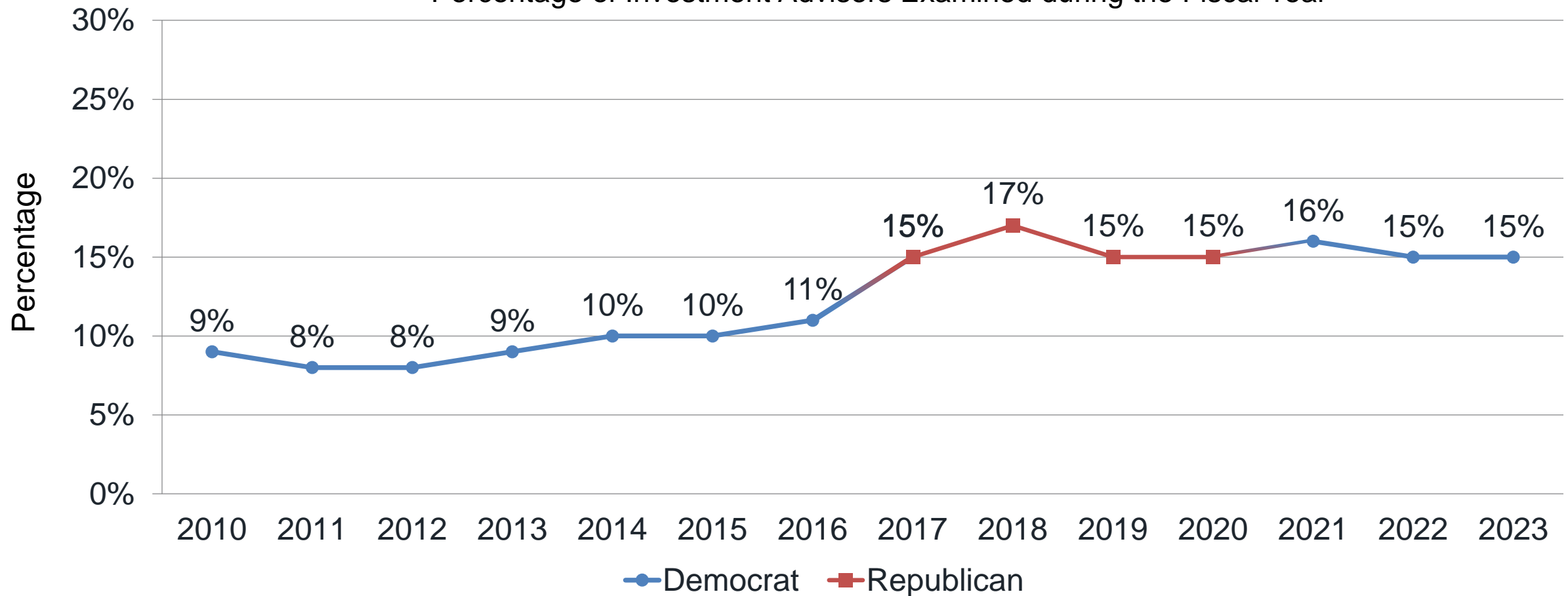
- Recently Adopted Rules (2020-2024)
 - Marketing Rule
 - Rule 10b5-1 Plans
 - Form PF – Additional Reporting & Unconsolidated Reporting
 - ~~Private Fund Advisers – Prohibited & Required Practices~~
 - Beneficial Ownership Reporting (Schedules 13D & 13G, and Forms 3, 4 & 5) – Expansion of Reporting
 - **Short Sale Reporting***
 - SPACs – Expansion of Listing Requirements
 - **Expansion of “Dealer” Definition***
 - Privacy – Safeguards & Notifications (Regulations S-P)
- Proposed Rules – New
 - ESG Disclosures for Investment Advisers and Regulated Funds
 - Cybersecurity
 - Outsourcing and Delegation
 - Predictive Data Analytics
- Proposed Rules – Amendments
 - Custody – Expansion of Requirements

** Currently subject to litigation by various industry trade groups.*

Potential Impact of the Election on SEC Examinations:

Little historical variation across administrations

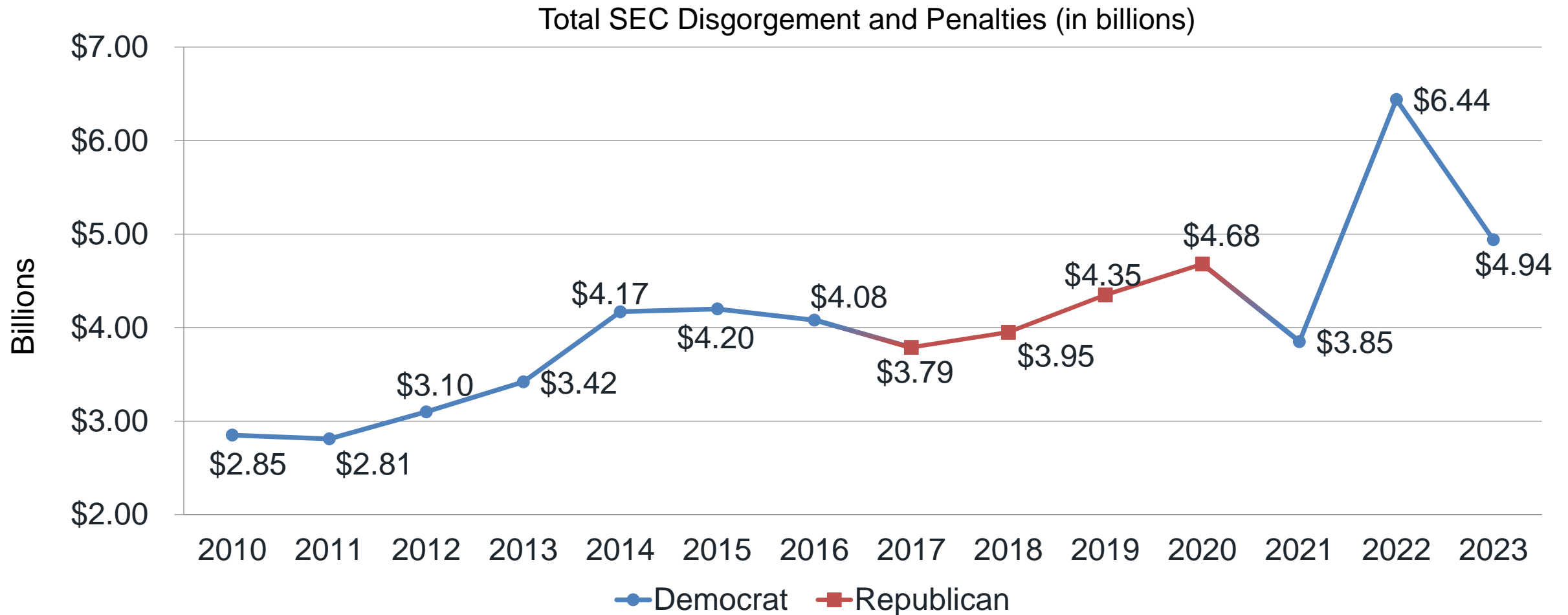
Percentage of Investment Advisers Examined during the Fiscal Year



* SEC fiscal year ending Sept. 30

Potential Impact of the Election on SEC Enforcement:

History has shown an upward trend across administrations

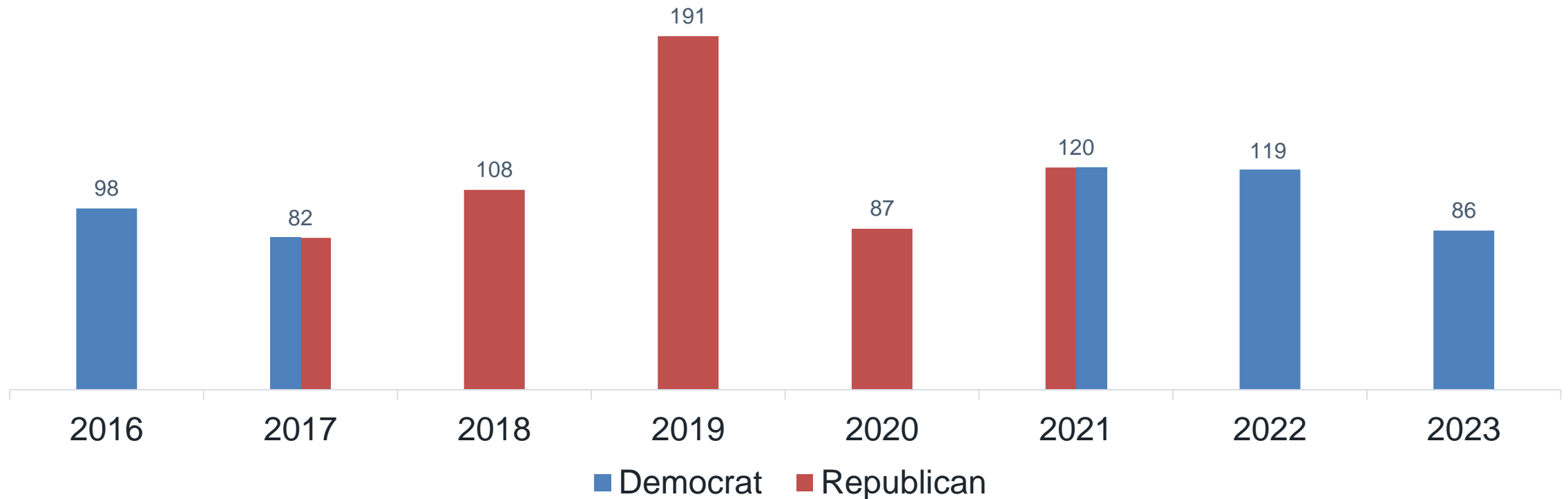


* SEC fiscal year ending Sept. 30

Potential Impact of the Election on SEC Enforcement:

History has shown an upward trend across administrations

Standalone Enforcement Actions Involving Investment Advisers / Investment Companies



* SEC fiscal year ending Sept. 30

European Regulatory Developments and Trends

1. AIFMD & Fundraising

- Reverse solicitation vs AIFMD approval
- NPPR: not available in all EU Member States
- Marketing passport: full access to EU Member States, pre-marketing available
- Chaperone arrangement – increasingly used

2. Increasing Use of EU Fund Vehicles

- Feeders or as parallel sleeves – depends on target investors
- Predominantly Luxembourg

3. ESG / SFDR

- Article 8 (Promotion of ESG characteristics) increasingly important for some investors
- Greenwashing risk should always be taken into account

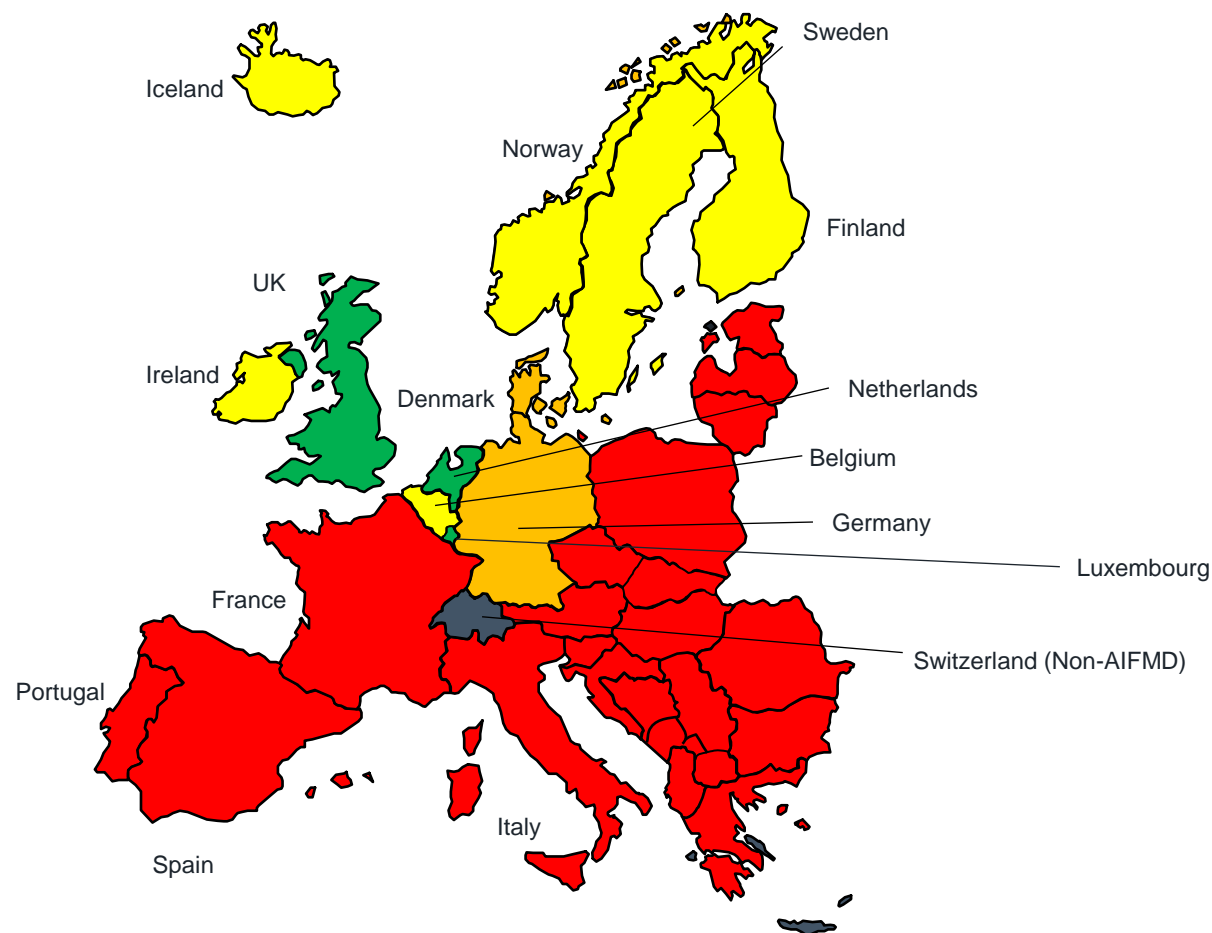
4. AIFMD 2.0

- Change is coming in April 2026
- Evolution and not revolution
- Main changes to affect structures with EU AIFMs

NPPR Feasibility for a Non-EEA Fund

Key

Green	Available, straightforward, process
Yellow	Available, longer application process
Orange	Available, depositary-lite requirements apply
Red	Not feasible (must rely on reverse solicitation)



Marketing in the EEA under the AIFMD Marketing Passport (EU AIFM managing an EU AIF)

Key

Green

Available,
straightforward,
process



SEC Exam and Enforcement Trends

- Rigorous Stance for “Non-fraud” Matters

1. ESG
2. Artificial Intelligence (AI-washing)
3. Off-Channel Recordkeeping
4. Marketing Rule
5. Pay-to-Play Rule
6. Impeding Whistleblower Reporting
7. Indemnification/Exculpation Provisions
8. Late Filings (Form 13D)
9. Custody Rule
10. MNPI Policies



Private Capital
Conference Series

Funds Focus

September 18, 2024
New York

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BREAK OUT

Track B

Global Tax Update for Private Investment Funds



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David Miller
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Self-Employment Tax Considerations for Management Company Structures

Background

The tax:

- Social security (6.2% of income, up to a cap) and Medicare (1.45%, *uncapped*), imposed on the “employer” and “employee”
- Additional 0.9% “employee” side Medicare tax for income in excess of a threshold, results in 3.8% Medicare tax

The rules:

- General rule: employment tax imposed on wages and net earnings from self-employment
 - Exclude from employment tax “...the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments...”
- Net investment income: 3.8% tax on various types of passive income

The planning opportunity:

- Organize a business as a limited partnership
- Service provider partners hold interests as limited partners
- Service provider partners earn base compensation as “guaranteed payment” (subject to employment tax) and participate in remaining profit by way of distributions not subject to self-employment tax

Historical Perspective

YEAR	ACTION
1950	Social Security amendment extended coverage to self-employed persons
1977	Code amendment excluded from employment taxes a limited partner's distributive share of tax items from a limited partnership, other than guaranteed payments
1997	Proposed Regulations that would narrow the scope of "limited partner" for employment tax purposes
1997	Moratorium on regulations related to the definition of limited partner for purposes of the "limited partner exception" to employment taxes
2010	American Jobs and Closing Tax Loopholes Act of 2010 included language to impose self-employment tax on limited partners of certain limited partnerships
2013	President Obama's Budget proposed expanding employment tax to most partners regardless of whether the entity is a limited partnership
2021	President Biden's American Families Plan proposed subjecting active pass-through business income to net investment income tax

The Courts Step In

Interpreting the rule of no employment tax on “...the distributive share of any item of income or loss of a limited partner, as such”:

- 2011: *Renkemeyer* case
 - Law firm organized as an LLP
 - Court based conclusion on Congressional intent to exclude earnings of an investment nature
- 2017: *Castigliola* case
 - Law firm organized as a general partnership, and then converted to PLLC
 - Court looked to whether a member was the “functional equivalent” of a limited partner, focusing on each member’s participation in management and control
- 2023: *Soroban* case
 - Investment firm organized as an LP
 - Concluded “limited partner, as such” requires a functional equivalent test in determining whether a partner is a “limited partner” for employment tax purposes

Navigating Uncertainty

- Tax return preparer comfort level
- Structural options
 - LP now and wait for additional guidance
 - LLC now and convert to LP later
 - Other (S corporations and/or tiered partnership arrangements)

UK Carried Interest – Imminent Changes in the Tax Landscape?

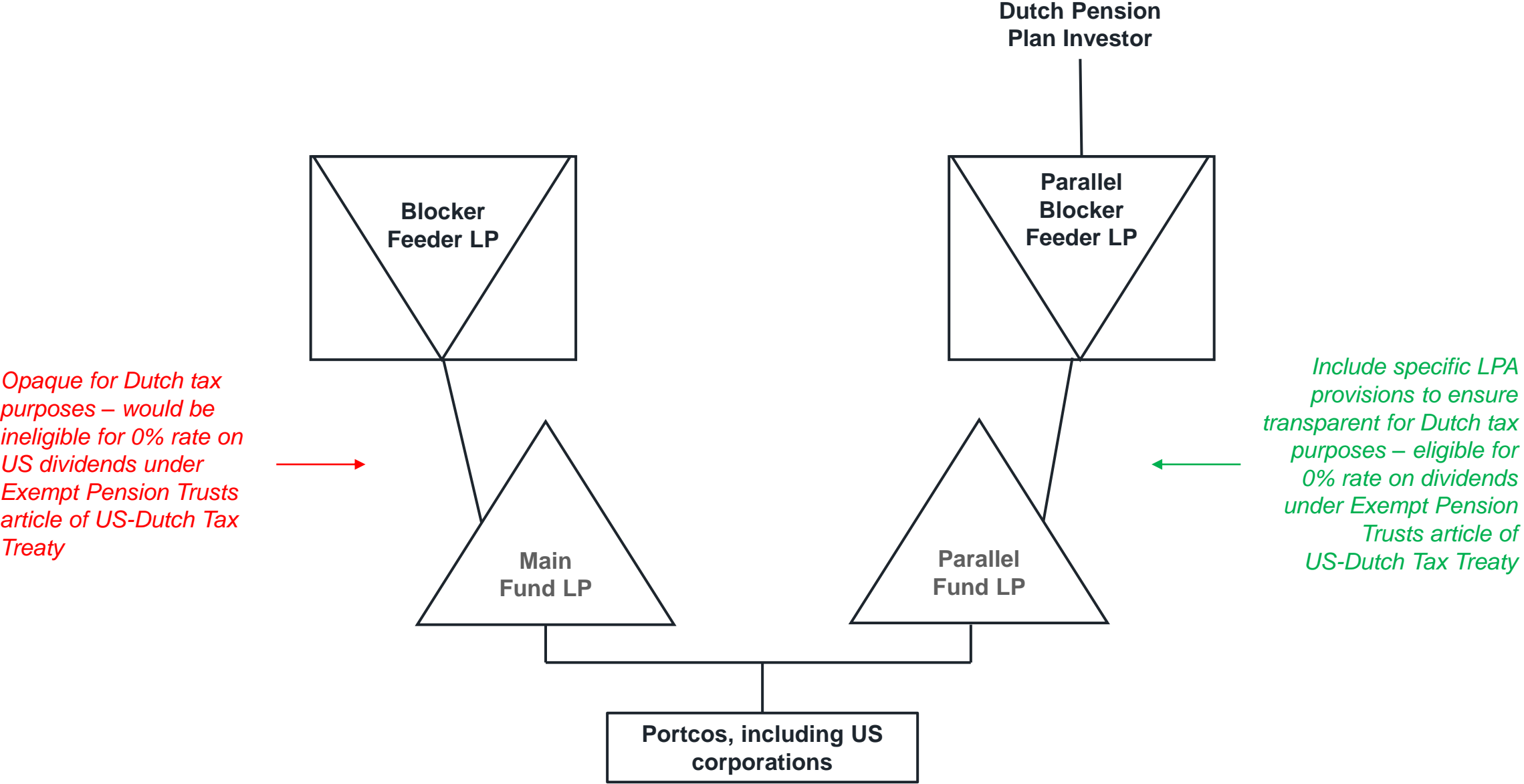
Fund Structuring

European Parallel Fund Partnership – Irish ILP rather than Luxembourg SCSp?

Fund Structuring

The End of Parallel Structures for Dutch Pension Fund Investors? Dutch Tax Entity Classification Rule Changes

POSITION PRIOR TO 1 JANUARY 2025



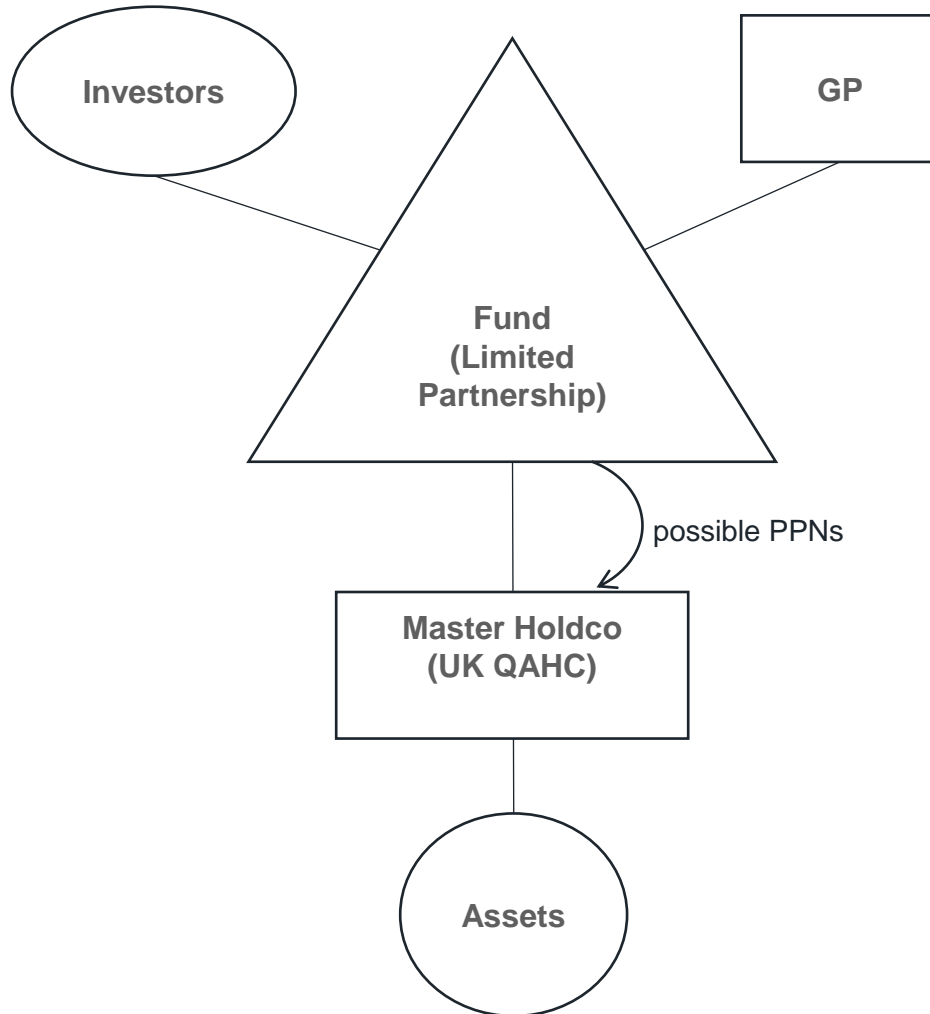
Fund Structuring Alternatives to the Cayman Exempted Limited Partnership

The UK QAHC in Practice – Two Years On

UK QAHCs (“Quacks”) as an Alternative to Luxembourg SARLs and Irish ICAVs/Section 110 Companies

- Qualified Asset Holding Companies (QAHCs) are low-taxed UK vehicles that qualify for the UK-US tax treaty, and other UK double tax treaties
- They can be considered as alternatives to Lux SARLs, and Irish ICAVs/s110 companies
 - Treaty vehicles for credit funds
 - Lending vehicles to European borrowers
 - Holding companies for European portfolio companies
 - Holding companies for Mexican portfolio companies (the UK-Mexican tax treaty provides for a zero rate of withholding on dividends)
- No need for Irish or Luxembourg counsel

UK QAHC structure



- Fund holds assets through a UK QAHC instead of Irish/Lux company
- Main advantages:
 - If fund sponsor is based in the UK, it will be easier to show QAHC has substance
 - UK outside EU so ATAD III not relevant

Advantages and disadvantages of QAHCs

Advantages

- ✓ QAHC can leverage sponsor's UK presence for substance
- ✓ UK outside EU so ATAD III not relevant
- ✓ No need to use treaties for UK loans with UK source interest, so no need to worry about procedural formalities (also no need to list PPNs)
- ✓ No need to use service providers in Lux/Ireland

Disadvantages

- ✗ New regime, so untested
- ✗ Won't be able to qualify for any EU exemptions
- ✗ UK tax system is overall less "flexible" than Luxembourg's and Ireland's
- ✗ Risk of change of law
- ✗ Cost of switching for sponsors already using Ireland/Lux
- ✗ UK anti-hybrid rules not as flexible as Luxembourg's or Ireland's, so increased risk of leakage for credit funds
- ✗ Not all funds will qualify (complicated conditions relating to fund ownership and investment strategy need to be satisfied – syndication of deals is a potential problem for credit funds)

QAHCs – US Tax Treaty Disadvantages as Compared to ICAVs

- Non-publicly traded US corporations are “good” owners under the US-Irish tax treaty
 - Generally, only publicly-traded U.S. corporations are “good” owners under the US-UK tax treaty.
- The base erosion test does not apply to ICAVs
 - The base erosion test does apply to QAHCs

The Trading Issue

- If a UK company is “trading”, then it will not qualify as a QAHC
- Under HMRC Guidance published July 27, 2022:

If an [asset holding company] originates loans and holds (or intends to hold) a significant portion of them for the medium to long term as part [of] its investment strategy, the loan origination activity will likely constitute part of the overall investment activity. If so, income generated by originating and holding the loans, including participation, origination or execution fees, would be investment income.
- What about revolvers? Are they always okay because draws and repayments are outside the QAHC’s control? Can they be limited to an “insignificant portion” of the QAHC’s activity?
- What is intended by the phrase “will likely constitute part of the overall investment activity”? Are there circumstances where originating and holding loans would be trading?
- The guidance is internal UK tax authority guidance and cannot be relied upon. HMRC may take contrary view e.g., if it considers facts are not on all fours with guidance. What risk of a change without grandfathering?

Fund Structuring for Non-US Investments – New Considerations for CFCs and PFICs

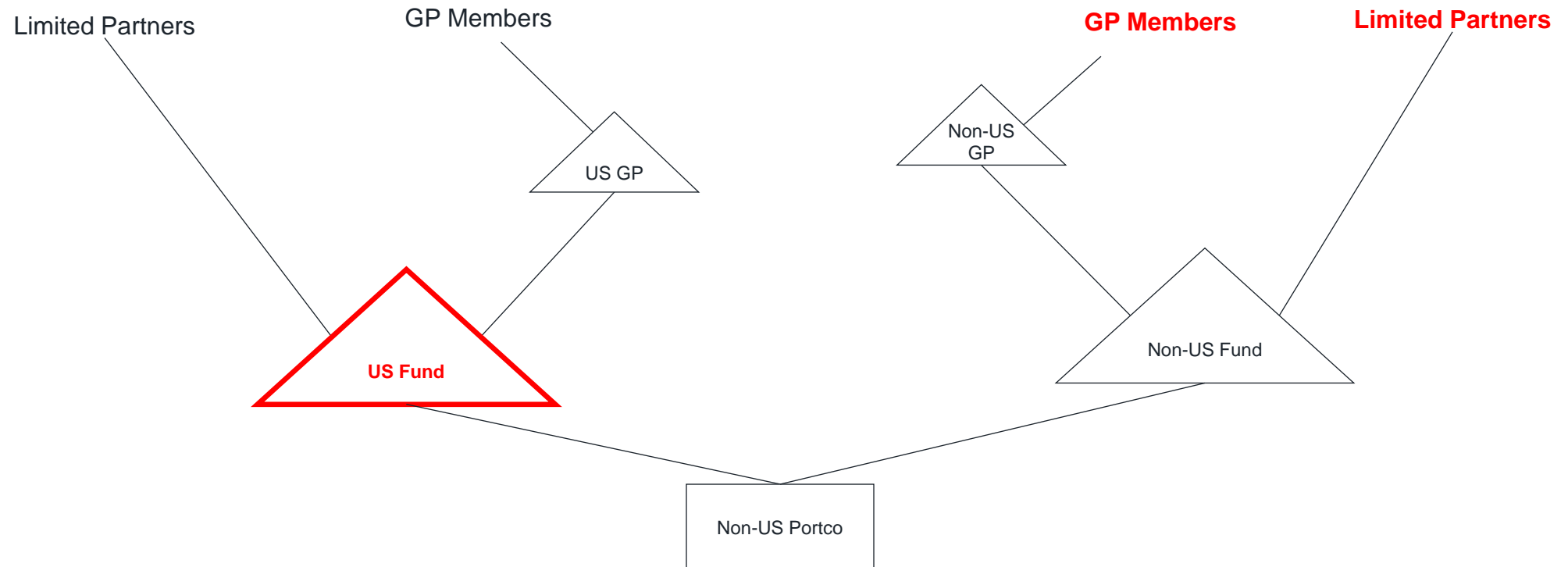
Quick Update on PFICs and CFCs

Anti-deferral/character conversion regimes for ownership by US persons of stock of a non-US corporation

- PFIC: Passive Foreign Investment Company (based on income/activities)
- CFC: Controlled Foreign Corporation (based on ownership)

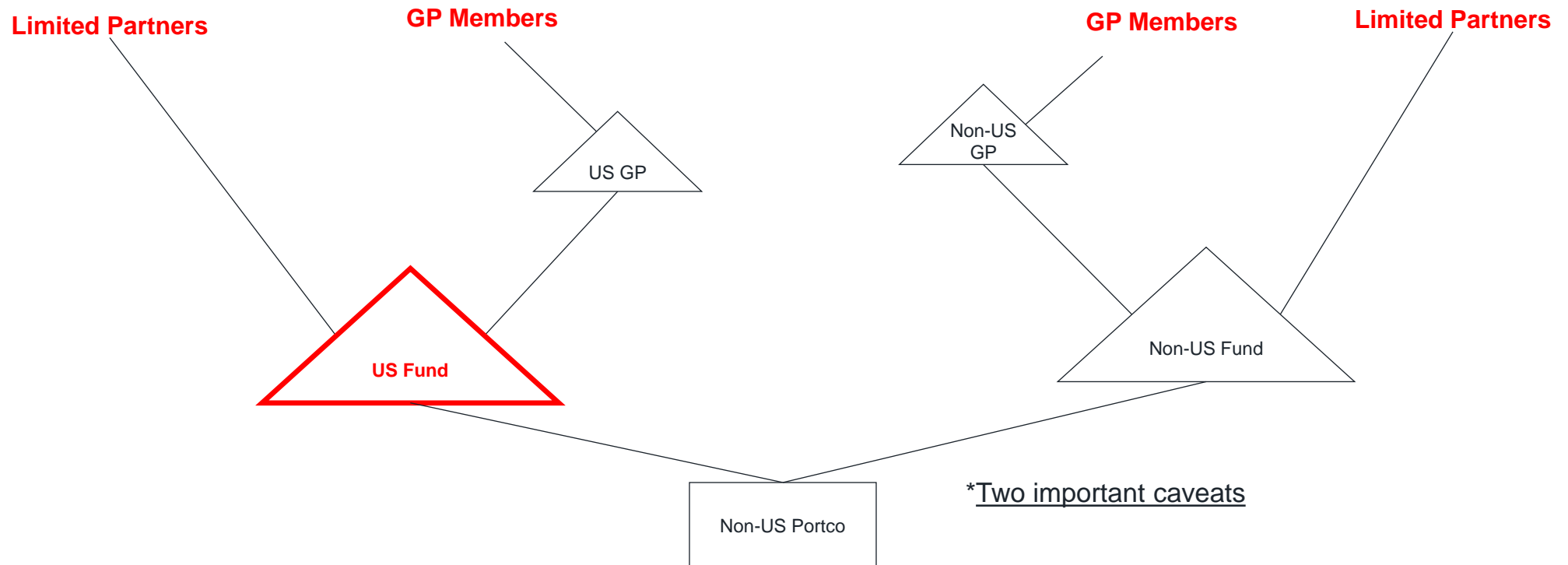
CFCs – US Shareholder – Prior Law

Where is the 10% tested?



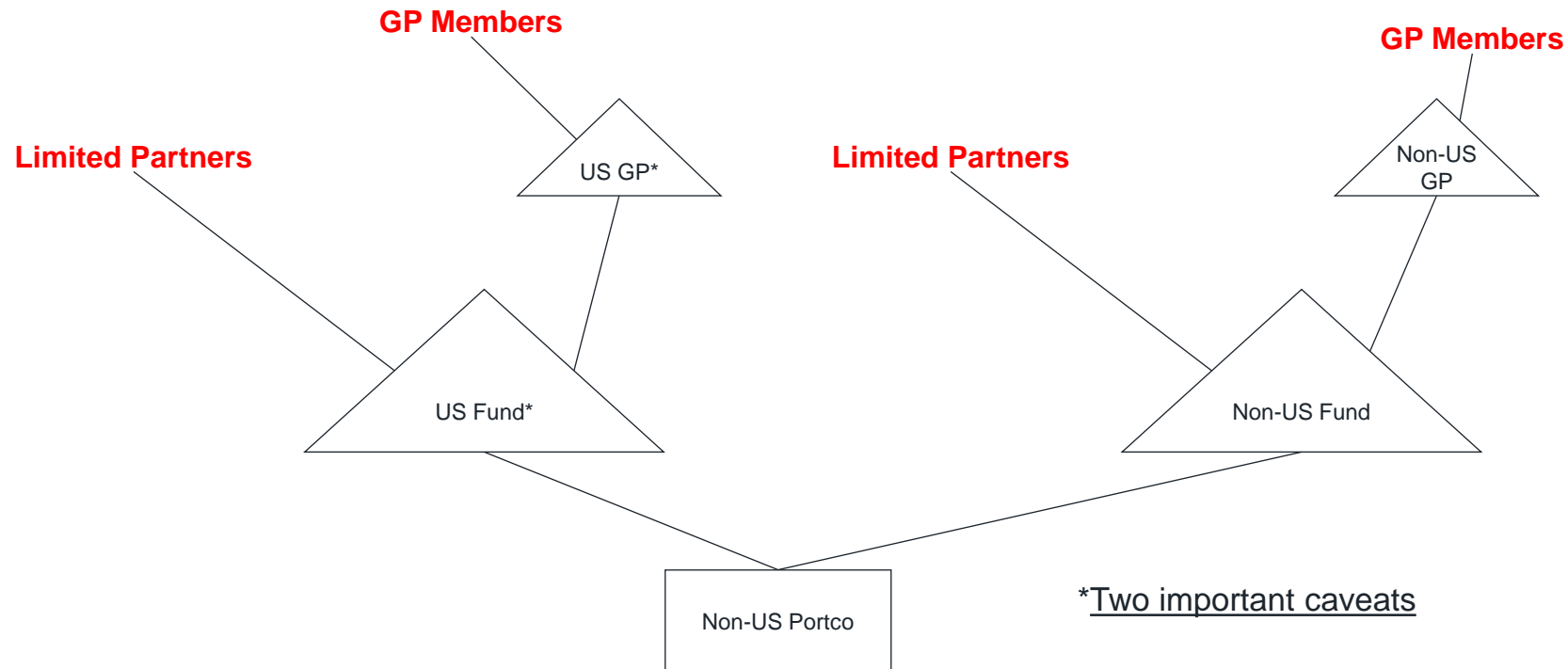
CFCs – US Shareholder – Current Law

Where is the 10% tested?



CFCs – US Shareholder – Current Law

Where is the 10% tested?*



CFCs – US Shareholder – Sections 1248 and 751

Section 1248 – Can recharacterize capital gain from sale of non-US corporation as dividend income if during the past 5 years the seller was a “US Shareholder”

- Old definition of US Shareholder means US Fund can be US Shareholder
- QDI?

Section 751 – Hot asset rules create a trap

- Section 751 can recharacterize capital gain from sale of partnership as ordinary income
- Section 1248 dividend amount is a hot asset
 - Not QDI

PFICs and QEF Elections

QEF (Qualified Electing Fund) election – generally most preferable of possible treatments for a PFIC

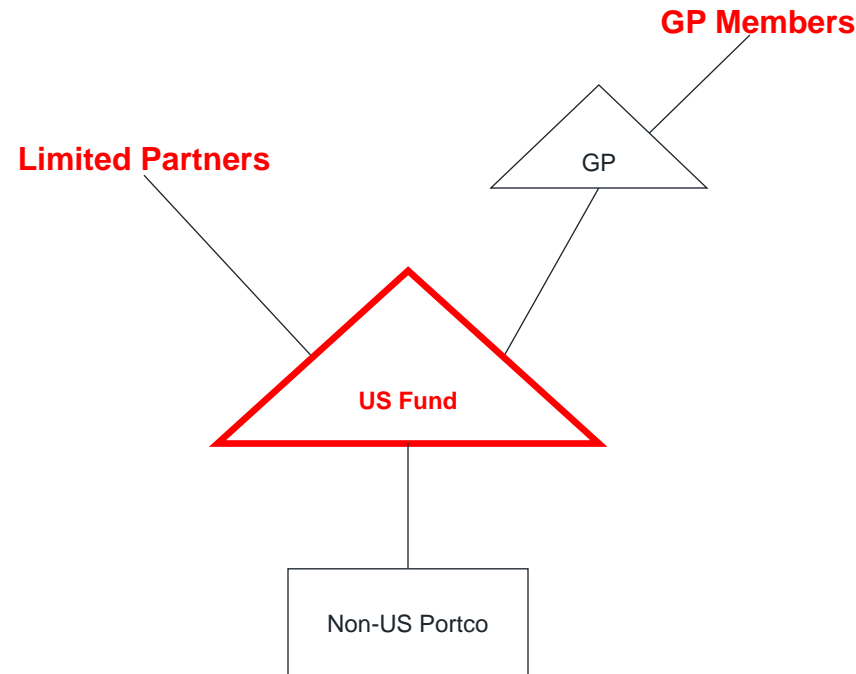
- Still lose QDI, losses still don't flow-through
- Historically, QEF election made by lowest US person in the chain

PFICs – Who makes the QEF election?

Rules changed for 2023

Historically, if US Fund was a “US Shareholder” of a CFC, PFIC rules did not apply (to US Fund or its owners). Starting 2023, the US Fund is disregarded for these purposes and Limited Partners/GP Members must be “US Shareholders” of a CFC in order to turn off the PFIC rules at their level

There are proposed regulations that would **require** individual LPs and GP Members to make the QEF election (US Fund would not be allowed to make election)



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BREAK OUT

Track A

Current Hedge Fund Trends and Hot Topics



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Regulatory Update

Gone for Good?

- SEC Private Fund Adviser Rules:
 - Deadline to appeal to Supreme Court was Sept 3. Re-proposal unlikely.
 - But we see no slowdown in exams, and expect to see some of the same issues raised in exams (preferential transparency, preferential liquidity, charging regulatory costs, allocation of expenses on non-pro rata basis, etc.)
 - Starting to see side letter requests tracking some of the rules
- FTC Non-Competition Rule
 - Struck down by US District Court in Texas on August 20; FTC can appeal to Fifth Circuit
- CFTC dropped proposal to require all registered CPOs and CTAs to produce disclosure documents
 - Just adopted changes to QEP definition (but may revisit the rest later)

Rules Still in the Pipeline

- Short sale rule (January 2, 2025 compliance date) and securities lending rule (January 2, 2026 compliance date)
 - but litigation pending in 5th Circuit
- AI rule (use of predictive data analytics)
 - To be repropose in October
- Custody rule
 - To be repropose in October
 - Note issue as to eligible custodians for crypto assets
- Enhanced disclosure on ESG practices
 - To be finalized in October
- Cybersecurity
 - To be finalized in October
- Outsourcing
 - To be finalized in October
- Reporting of security-based swaps
 - To be finalized in October

Things You Still Need to Deal With

- New Form PF:
 - Large hedge fund managers (>\$1.5bn) must comply with respect to qualifying hedge funds (>\$500m)
 - Beginning with Q1 2025 filing
- New Schedule 13D/13G rules and deadlines
 - September 30 compliance date
- Pay-to-Play
 - Gov. Tim Walz is a state official subject to the rule
- Corporate Transparency Act
 - Must file now for newly-formed entities
 - Must file for all entities by January 1, 2025

Market Overview of Hedge Fund Formation

Launch Environment: Increased Activity

- Through June 30, 2024, the number of new hedge fund launches has increased significantly compared to the previous two years, while liquidations have generally remained steady (source: HFR).
- Hedge fund industry AUM has hit a record \$4.3 trillion.
- According to HFR, equity hedge funds are still the leading strategy for new funds with a focus on the technology sector.
- Some significant launches occurred in 2024, led by key portfolio managers at established fund managers with strong pedigree.
- We continue to see interest in long-only equity products as well as credit-based hedge funds and evergreen credit funds dominating new fund launches.

Hedge Fund Economics

- Management Fees
 - Management fees fell to new historic lows in 2024, with the average industry-wide management fee approximately 1.35% (HFR).
 - We are continuing to see fee discounts for founder investors and large investors as well as discounts linked to hedge fund firmwide or specific fund AUM levels.
- Incentive Compensation
 - According to HFR, performance/incentive compensation rates also fell to an estimated 15.96%.
 - We have also seen more bespoke structuring of incentive compensation, including tiered discounts based on performance, hurdle rates and outperformance models (against an index) for long only managers. Size-based discounts also becoming more common.
 - Incentive earned on cash balances has become an increased focus for certain institutional investors arguing that performance-based compensation should only be earned on alpha and not returns on cash.
 - As a result, some institutional investors are seeking a “cash” hurdle rate imposed as a hard hurdle before taking performance compensation.

Hiring and Retaining Talent

Hiring and Retaining Talent

- Highly Competitive Landscape
 - Competing for the best people with technology, Internet, venture capital and start-up companies across all industries
 - Multi-manager platforms vs single/limited number of manager firms
 - Key differentiator is “pass-through” structures that can offer portfolio managers a share of profits without firm-wide netting
- Compensation
 - Buyout of deferred compensation
- Non-financial Benefits
 - Work-life balance/flexible working options
 - Well-being initiatives
 - Physical and mental health
 - Stress management

Non-Competes

- No federal ban for now
- State level restrictions/limitations
 - Complete ban (e.g., California, D.C., New York (proposed but vetoed))
 - Ban for employees below a certain compensation level (e.g., Washington)
 - Ban for certain types of employees such as those covered by overtime rules (e.g., Massachusetts)
- “Forfeiture-for-competition” clauses
 - *Cantor Fitzgerald, L.P. v. Ainslie*
 - January 2024 reversal by the Delaware Supreme Court of the Delaware Court of Chancery’s decision holding that a forfeiture-for-competition provision in a partnership agreement was a restraint of trade subject to review for reasonableness

Alternatives to Non-Competes

- No poaching agreements with competitors
- Strong NDAs and strict IP security/usage protocols
- “Carrot versus stick” incentives -- e.g., stay/retention bonuses, deferred compensation/equity based on being at firm for X years
- “Forfeiture-for-leaving” clauses
- Continued use of non-solicit covenants (covering both investors and employees)
- Term contracts
- Garden leave and notice provisions

Recent Trends in Hedge Fund Liquidity Terms

Recent Trends: Liquid Funds

- Very fluid market – a wide variety of provisions being used
- Investors increasingly expect that a fund's liquidity terms will match the fund's underlying assets
- Liquid Funds – Long/Short Equity, Long-Only Equity, Global Macro
 - tend to have monthly or quarterly liquidity;
 - may have bespoke terms, e.g., investor level gates with redemption fees to redeem above the gated amount (e.g., if the fund holds some illiquid positions or privates).

Recent Trends: Hybrid Terms

- Slow Pay and Fast Pay Provisions – permit delay in payment of net proceeds of illiquid investments held by the fund
- Investor Level Gates and/or Fund Level Gates (hard or soft) – increasingly complex limits on the percentage of the fund's or each investor's assets that can be redeemed on each redemption date
- Side Pockets - use of side pockets to hold certain illiquid or hard to value investments
- Lock Up Periods - Soft and Hard Lock-Up Periods
- Special Purpose/Liquidating Vehicles

Recent Trends: Evergreen Funds

- Provide liquidity in what would otherwise be a standard closed-end fund
- Reduces the need to launch (and market) successor funds
- Investment proceeds can be retained for investment unless an investor elects not to participate in future investments
 - The fund can also offer periodic distributions of income to provide liquidity to investors
- Runoff Model: Investors can elect to redeem/not participate in investments on a going forward basis
 - Investors electing to not participate in future investments receive a runoff/liquidating series representing a pro rata slice of all assets that is paid out over time as the investments are realized
 - Investors can also be paid out from cash received from new investors

Recent Trends: Evergreen Funds (Cont'd)

- Vintage Model: The fund can set up separate “vintages” for investors to participate in future investments with a normal waterfall structure
 - Many variations
 - Each vintage can be 1, 2, 3 years, etc.
 - Investor commitments (and/or uncalled capital commitments) can be automatically rolled into new vintage unless investor opts out, e.g., on 6 months notice
 - Carried interest can be normal private equity-style waterfall (on a per vintage basis), mark-to-market, or hybrid

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Track B

Trends in Fund Finance



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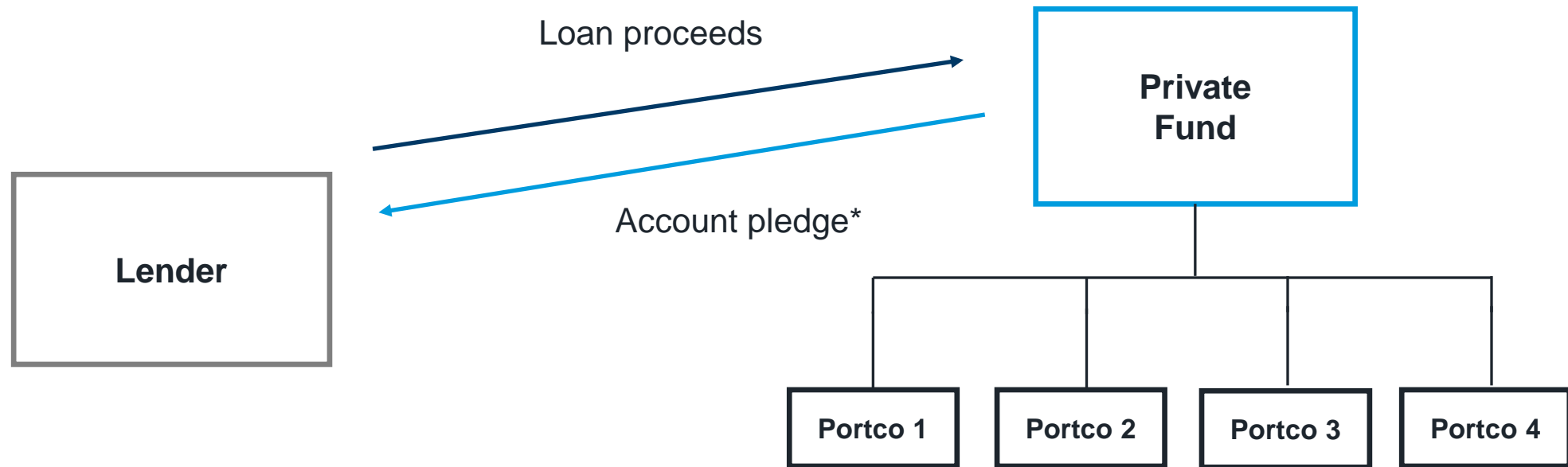


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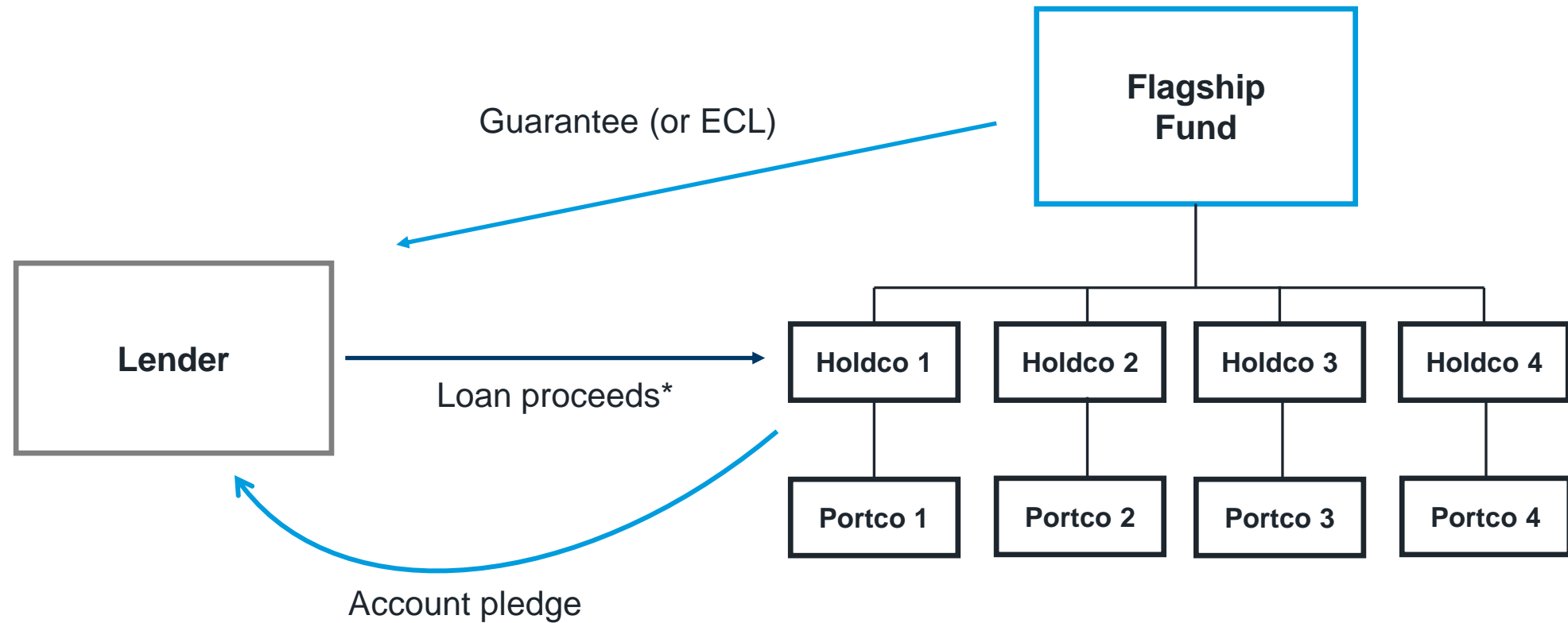
Funds IN
Focus

NAV Loan Structure



* Given the existing portfolio company financing arrangements, Lenders often will not be able to obtain a security interest in the equity of the portfolio companies.

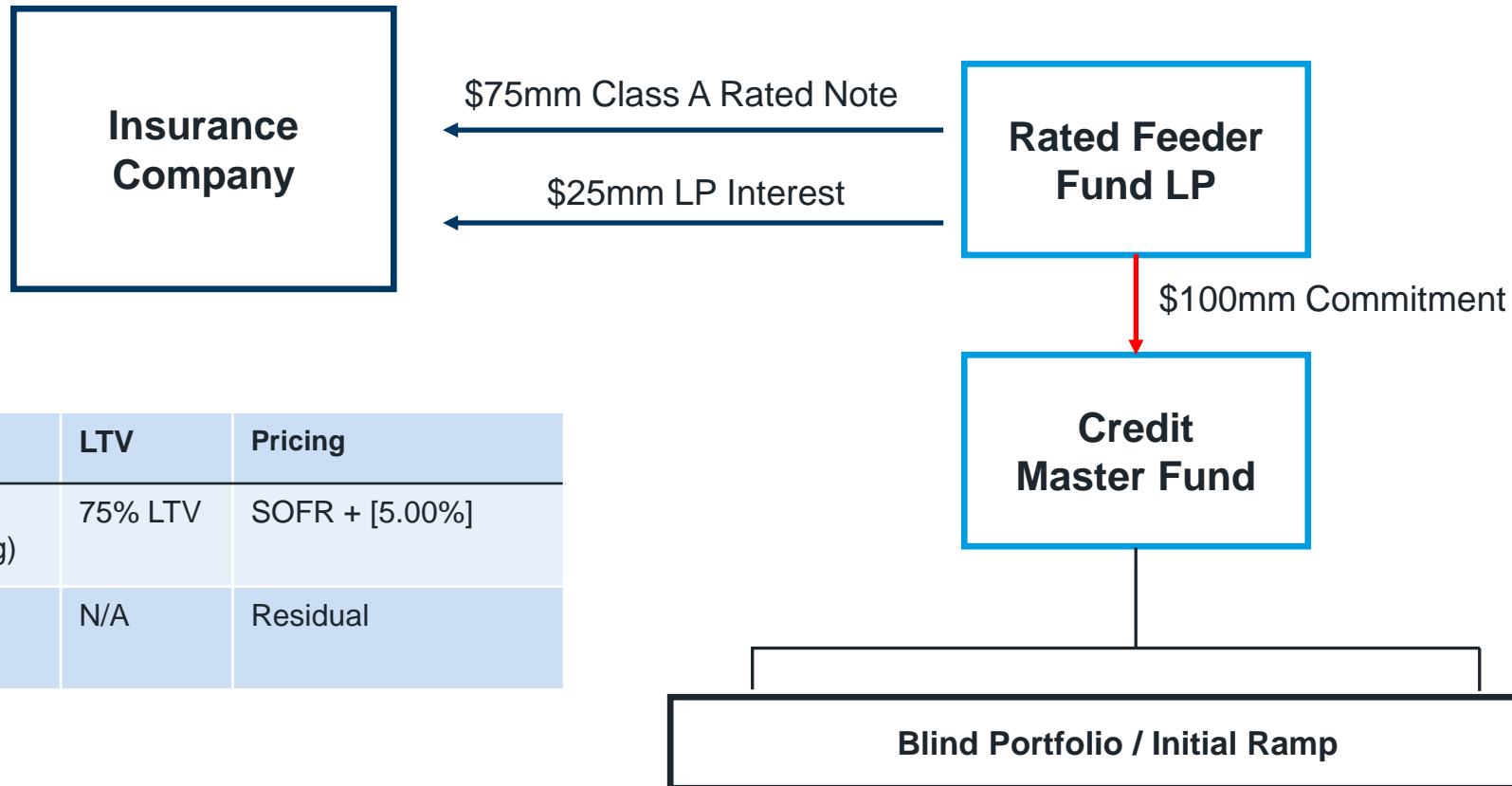
NAV Loan Structure (cont'd)



* While a loan may be advanced to a single Holdco at closing, often each Holdco will join the facility as a co-borrower to allow the sponsor to use the facility across the portfolio.

Rated Feeder Structure

\$100mm Capital Structure



Amount & Rating	LTV	Pricing
\$75mm Class A Note (Investment Grade Rating)	75% LTV	SOFR + [5.00%]
\$25mm LP Interest	N/A	Residual

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Today's Featured Speakers

in order of appearance



David Tegeler
Partner, Private Funds
Proskauer

David Tegeler is a partner in the Corporate Department and the Private Funds Group, and also head of the Boston office. He previously served as global co-head of the Private Funds Group for many years.

David concentrates his practice on representing asset managers in a broad range of matters, including private investment fund formation; governance, succession planning and other “upper tier” concerns; regulatory advice; and asset manager M&A. In addition, David has significant experience in buy and sell side secondary transactions, fund restructurings, direct secondary transactions and private investment fund finance. He also represents U.S. and non-U.S. institutional investors in their investments in all types of private investment funds.



Monica Arora
Partner, Private Funds
Proskauer

Monica Arora is a partner and co-head of the Private Funds Group at Proskauer. Monica advises asset managers across the full spectrum of investment fund matters. Her particular expertise concentrates within the areas of buyout, credit, growth equity, real assets and infrastructure funds, including the establishment of bespoke fund structures, joint ventures and other strategic arrangements for sponsors globally.

Monica is a thought leader in the industry. She is consistently ranked as a leading investment funds lawyer, including by Chambers USA and The Legal 500 and is frequently invited to speak on panels at various industry related events. She is also a prominent and engaged member of the private funds community, including as a contributor to the New York City Bar Association's Private Investment Funds Committee, Women in Private Equity and Private Equity Women Investor Network.

Monica's leadership extends well beyond her role as co-head of the department as she is a key member of numerous diversity, equity and inclusion initiatives and was named by the Minority Corporate Counsel Association as a 2022 Rainmaker. She is an active board member of Her Justice, a leading organization that provides free legal help to low-income women living in New York City and is also actively engaged in a number of charitable boards outside of the Firm.

Today's Featured Speakers



Josh Newville
Partner, Litigation
Proskauer

Joshua M. Newville is a partner in the Litigation Department and a member of Proskauer's Securities Litigation Group and the Asset Management Litigation team.

Josh handles securities litigation, enforcement and regulatory matters, representing corporations and senior executives in civil and criminal investigations. In addition, Josh advises registered investment advisers and private fund managers on regulatory compliance, SEC exams, MNPI/insider trading and related risks.

Before joining Proskauer, Josh was senior counsel in the U.S. Securities and Exchange Commission's Division of Enforcement, where he investigated and prosecuted violations of the federal securities laws. Josh served in the Enforcement Division's Asset Management Unit, a specialized unit focusing on investment advisers and the asset management industry. His prior experience with the SEC provides a unique perspective to help asset managers manage risk and handle regulatory issues.



Robert Pommer
Partner, Litigation
Proskauer

Robert W. Pommer III is a partner in the Litigation Department and a member of Proskauer's Securities Enforcement, White Collar Defense & Investigations groups and the Asset Management Litigation team.

Bob's practice focuses on a broad range of securities-related enforcement and compliance issues. He represents private fund managers, financial institutions, public companies and their senior executives in enforcement investigations and litigation conducted by the SEC, the U.S. Department of Justice and other governmental entities and financial services regulators. He also conducts internal investigations and counsels investment advisers and public companies on regulatory compliance, corporate governance and other SEC-related issues.

Prior to his career in private practice, Bob served as Assistant Chief Litigation Counsel in the SEC's Division of Enforcement for nine years. While there, he investigated and litigated several high-profile cases involving complex financial fraud and audit failures. Bob also worked on enforcement actions involving insider trading, investment adviser and broker-dealer issues, market manipulation and other violations of the federal securities laws.

Today's Featured Speakers



Rob Sutton
Partner, Private Funds
Proskauer

Robert Sutton is a partner of the Private Funds Group and a member of the Corporate Department. He is a seasoned practitioner with over 20 years of experience counseling managers and advisers of private funds on regulatory matters, as well as regulatory issues related to the formation and operation of private equity, credit, real estate, infrastructure, hedge and other private funds.

Rob has a deep knowledge of the market practice of asset managers and, in particular, as it relates to Advisers Act-related issues. From some of the largest and most sophisticated firms in the global asset management industry to start-ups and mid-sized firms, Rob's experience includes a wide spectrum of funds and asset classes across their life cycles. Rob regularly advises on matters in connection with: U.S. investment adviser registration and regulation; Advisers Act and other U.S. securities law issues relating to the formation, marketing and offering of private funds; Identifying and managing conflicts of interest, and addressing related Advisers Act risks, SEC examinations, and exam readiness preparation; Design and implementation of investment adviser compliance policies and procedures; U.S. regulatory issues relating to purchases and sales of investment advisory businesses (minority stake and control stake transactions, buy-side and sell-side representations); Advisers Act and other U.S. regulatory issues relating to private fund restructurings and recapitalizations, strip sales, continuation fund formations and similar transactions; Advisers Act issues relating to the formation of SPACs by investment advisers; and, Investment Company Act status analyses of private fund structures, investment transaction structures and other non-registered investment company structures.



John Verwey
Partner, Private Funds
Proskauer

John Verwey is a partner in the Private Funds Group. John advises on a wide number of regulatory issues at a national UK and European level, including firm authorisations, appointed representative arrangements, change in control and market abuse. He represents a variety of clients that range from small start-up fund managers to established global fund advisers and managers.

A particular area of focus for John is Alternative Investment Fund Managers Directive (AIFMD) and Markets in Financial Instruments Directive II (MiFID II). This includes advising on pre-marketing and marketing strategies for fund managers; advising on the Level One and Level Two requirements under AIFMD and implementing UK rules and legislation; and advising on the organizational and conduct of business requirements under MiFID II.

Today's Featured Speakers



Jean Bertrand
Partner, Tax
Proskauer

Jean Bertrand is a partner in the Tax Department and a member of the Private Funds Group. Jean advises clients on a broad range of domestic and international tax issues. Her practice focuses on hedge and private equity fund formation, investment structuring, cross-border lending transactions and other financings and providing general tax advice to corporations, partnerships, high-net-worth individuals and families.



Michael Choate
Partner, Corporate
Proskauer

Michael focuses on securities and corporate finance matters including public and private offerings of both equity and debt securities with an emphasis on REITs and real estate funds including mergers and acquisitions, corporate governance issues and federal securities compliance matters impacting these entities. Michael's representative experience includes advising publicly-traded and non-listed REITs and private real estate funds and investors in equity and debt offerings of more than \$30 billion, structuring public and private equity and debt offerings, and representing publicly and privately held entities in merger and acquisition transactions including various REIT internalization transactions and counseling boards and managers on fiduciary duties and governance matters.

Today's Featured Speakers



Daniel Colaizzi
Managing Director,
Co-Head of the
Solutions Group
Golub Capital

Mr. Colaizzi joined Golub Capital in 2017 and is a Managing Director and Co-Head of the Solutions Group, responsible for new product development for the Firm. He was previously Deputy General Counsel on the Legal and Compliance Team, responsible for representing Golub Capital in all transactions in which the Firm obtains financing, including collateralized loan obligations, lines of credit and other financings. Prior to joining Golub Capital, Mr. Colaizzi was an Associate in the Finance and Real Estate group at Dechert, where he represented asset managers in the negotiation of collateralized loan obligation and other asset financing debt transactions. Prior to this position, he worked at Cohen & Grigsby as an Associate on the Business Services team, where he represented private equity funds, asset managers and commercial banks in mergers and acquisitions and acquisition financing transactions. Mr. Colaizzi earned his BA in Political Science from Coastal Carolina University. He received a JD *summa cum laude* from the University of Pittsburgh.



John Mahon
Partner, Registered
Funds
Proskauer

John Mahon is a partner in the Registered Funds group and a member of the Investment Management practice. John has nearly 20 years of experience working with asset management clients in structuring, launching and managing regulated fund products and other permanent capital vehicles. He represents private equity firms, credit managers and other financial sector participants in a wide range of fund formation, capital markets and securities law matters, including both public and private offerings of business development companies (BDCs) and other alternative vehicles, such as registered closed-end funds and interval funds.

John also has extensive experience in advising asset managers on the unique regulatory complexities involved in launching and managing registered funds and BDCs, including as part of larger platforms, and has sought and obtained SEC exemptive relief on behalf of numerous clients. He has been involved with more than 100 debt and equity offerings, including over 20 initial public offerings (IPOs), reflecting an aggregate of over \$10 billion in total proceeds.

John's work in securities law and mergers and acquisitions includes providing guidance to many New York Stock Exchange (NYSE) and Nasdaq-listed companies in connection with ongoing corporate governance and SEC reporting and compliance matters. He has routinely handled issues involving tender offers, proxy solicitations, going-private transactions and beneficial ownership reporting obligations.

Today's Featured Speakers



Leon Volchyok
Sr. Managing Director
of Legal and
Compliance
**Blackstone Strategic
Partners**

Leon Volchyok is the General Counsel for the Private Wealth Solutions business. Mr. Volchyok plays a key role in the structuring, launch and operations of the firm's individual investor focused vehicles and serves as the Chief Legal Officer for Blackstone Real Estate Income Trust (BREIT).

Mr. Volchyok is the prior chairman of the Board for the Institute for Portfolio Alternatives and on the Executive Committee of NAREIT's Public Non-listed REIT Council.

Mr. Volchyok received a BBA from Baruch College – Zicklin School of Business and a JD from Fordham Law School.



Arnold May
Partner, Tax
Proskauer

Arnold P. May is a partner in the Tax Department and a member of the Private Funds Group. His practice focuses on tax planning for private equity fund managers in connection with their fund-raising and internal organizational matters, as well as investment activities.

In addition, Arnold represents U.S. and non-U.S. investors in connection with their investments in venture capital funds, buyout funds, hedge funds and other investment partnerships. In this capacity, as well as in connection with advising private equity funds with respect to their investment activities, he regularly advises on international tax issues that arise in connection with investments in the U.S. by non-U.S. investors (including non-U.S. investors subject to special U.S. tax treatment, such as governmental pension plans and tax-exempt organizations), as well as investments outside of the U.S. by U.S. persons. Arnold also has significant experience structuring tax-free and taxable mergers and acquisitions (including cross-border transactions), equity compensation arrangements and innovative financing techniques for investments in tax transparent entities such as partnerships, limited liability companies and Subchapter S corporations.

Today's Featured Speakers



David Miller
Partner, Tax
Proskauer

David Miller is a partner in the Tax Department. David advises clients on a broad range of domestic and international corporate tax issues. His practice covers the taxation of financial instruments and derivatives, private and public REITs, cross-border lending transactions and other financings, international and domestic mergers and acquisitions, multinational corporate groups and partnerships, private equity and hedge funds, bankruptcy and workouts, high-net-worth individuals and families, and public charities and private foundations. He advises companies in virtually all major industries, including banking, finance, private equity, health care, life sciences, real estate, technology, consumer products, entertainment and energy.

David is strongly committed to pro bono service, and has represented more than 500 charities. In 2011, he was named as one of thirteen “Lawyers Who Lead by Example” by the New York Law Journal for his pro bono service. David has also been recognized for his pro bono work by The Legal Aid Society, Legal Services for New York City and New York Lawyers For The Public Interest.



Catherine Sear
Partner, Tax
Proskauer

Catherine Sear is a partner in the Tax Department and a member of the Private Funds Group. She specializes in the tax aspects of structuring and investing in private investment funds including private equity, venture capital, infrastructure, debt and real estate funds, funds of funds, secondary funds and other investment partnerships.

She advises sponsors and investors on a wide variety of UK and international tax issues related to private investment funds and their operations, including tax aspects of: structuring and raising private investment funds, structuring carried interest and executive co-investment arrangements, restructuring existing private investment funds, establishment and operation of fund management businesses, investments by institutional investors in private funds, separate accounts for institutional investors, acting for both fund managers and investors, secondary transactions, both buy-side and sell-side and co-investment structures.

Catherine advises on a broad range of UK tax issues including VAT, employment tax, capital gains tax in relation to partnerships, withholding taxes and tax rules relating to carried interest. She also has considerable knowledge of international tax issues arising for investment structures with a cross-border dimension and experience with multijurisdictional fund management teams.

Today's Featured Speakers



Stephen Severo
Partner, Tax
Proskauer

Stephen Severo is a partner in the Tax Department. Stephen represents corporate, private equity and investment fund clients in connection with all tax-related aspects of their businesses, including fund formation, secondary transactions, taxable and tax-free mergers and acquisitions, tax-free spin-offs, taxable divestitures, domestic and cross-border bank financing arrangements, investments, partnerships and joint ventures, debt restructurings, securities issuances and REIT and other specialized real estate transactions. He provides tax advice and planning for U.S. inbound and outbound investments, including treatment of U.S. shareholders under the PFIC and CFC regimes, foreign tax credit issues, treaty issues and reporting obligations. Additionally, he provides ongoing federal income tax counsel to clients in connection with tax structuring and strategy to minimize tax liability and effective tax rate, improve tax efficiencies, and ensure proper tax treatment and reporting.



Jennifer Dunn
Partner, Private Funds,
Hedge Funds
Proskauer

Jennifer “Jenny” Dunn is a partner in the firm’s Corporate Department and a member of its Private Funds Group and Hedge Funds practice.

Jennifer focuses her practice on advising hedge funds, closed-end funds (including debt funds), hybrid funds, co-investment platforms and investment advisers in connection with their structuring, formation and ongoing operational needs, general securities laws matters, and regulatory and compliance issues.

Her practice includes structuring and negotiating seed and strategic investments, advising investment managers regarding the structure and sale of their platforms and the structure of their compensation arrangements. She also represents investment managers in connection with managed accounts and single investor funds.

Jennifer has been named among the 50 Leading Women in Hedge Funds by *Hedge Fund Journal* and served on the board of directors of 100 Women in Finance. She has been recognized by Chambers USA and the Legal 500 US, and has presented at conferences on ESG investing, compliance issues, co-investments, hedge funds and credit funds.

Today's Featured Speakers



Caryn Greenspan
Partner, Private Funds,
Hedge Funds
Proskauer

Caryn Greenspan is a partner in the Private Funds Group with over 15 years of experience in the investment funds industry.

Caryn's practice focuses on hedge funds, credit funds and growth equity funds. She advises clients in launching private investment funds, including commingled funds and funds-of-one as well as negotiating managed account agreements. She counsels sponsors on all aspects of their business, including upper tier arrangements, fund restructurings, seed capital arrangements, employment issues and regulatory issues. She also regularly represents start-up managers.



Kelli Moll
Partner, Private Funds,
Hedge Funds
Proskauer

Kelli Moll is a partner of Proskauer's Private Funds Group and co-head of the Hedge Funds practice. With over 25 years of experience amassed advising large institutional asset managers to independent sponsors across the spectrum of asset classes, Kelli is considered a leading lawyer in the funds industry.

Kelli's practice particularly focuses on counseling investment advisors on the formation and ongoing operations of hedge funds, credit funds and growth equity funds. Kelli regularly advises fund sponsors on fund formation, co-investment arrangements, upper tier arrangements, seed capital arrangements, asset manager M&A, complex fund restructurings, funds-of-one, managed accounts and various regulatory issues.

Recognized for her deep knowledge of the industry and superior dedication to her clients, they have deemed Kelli as "fantastic; smart and commercial" and "very knowledgeable" in directories such as *Chambers and Legal 500*, where she is ranked as a top practitioner in her field year after year. Kelli is also a staple at industry events, where she is regularly engaged for her thought leadership on business and regulatory trends in the marketplace.

Today's Featured Speakers



Christopher Wells
Partner, Hedge Funds,
Private Funds
Proskauer

Chris Wells is the co-head of Proskauer's Hedge Funds Group and has been a leading lawyer in the hedge fund industry for more than 30 years. During that time, he has assisted on hundreds of hedge fund launches, counselling and assisting hedge fund managers as they grew from often very modest beginnings to become some of the world's largest and best-known hedge funds.

He advises fund managers and investors on all aspects of the hedge fund business, including fund structuring and formation, seed investments, asset manager M&A transactions, agreements among principals, employment and compensation issues, and regulatory and enforcement matters.

Chris's long and deep experience in the hedge fund industry gives him a unique ability to counsel clients dealing with some of the most challenging situations that fund managers can encounter, including complex fund restructurings, evolving hedge fund investment terms, hybrid and alternative fund structures, liquidity challenges and constraints, internal disputes and complex enforcement matters.



Howard Beber
Partner, Private Funds
Proskauer

Howard J. Beber is a partner in the Corporate Department and co-head of the Private Funds Group, which is recognized by *Chambers Global, USA and UK, and US and UK Legal 500*. His practice focuses on representing private funds sponsors in all aspects of their business, including fund formation and ongoing operations and internal structuring and compliance. His practice includes buyout, growth equity, venture capital, private credit, secondary and fund-of-funds, ranging from some of the largest and well-known sponsors in the industry to newly-formed managers.

He advises clients on a broad range of secondary transactions, including the acquisition and sale of partnership interests, tender offers, preferred equity financings, continuation funds, fund restructurings and other GP-led transactions and has worked with several management teams on large spin-out transactions. Howard routinely represents some of the most active institutional and fund-of-fund investors when investing in venture capital, growth equity, buyout, private credit and other private investment funds, as well as co-investment transactions.

Today's Featured Speakers



Jin Joo
Partner, Finance
Proskauer

Jinyoung (Jin) Joo is a partner in the Corporate Department and a member of the Finance Group. He represents borrowers, lenders and private investment funds on a wide range of financing transactions, including acquisition financings, fund finance transactions, restructurings and other secured and unsecured lending transactions.

As a U.S. Air Force veteran, Jin also devotes a significant amount of time providing pro bono legal services to disabled veterans.



Matthew Kerfoot
Partner, Finance
Proskauer

Matthew K. Kerfoot is a partner in the Global Finance Group and focuses principally on fund finance and structured finance transactions. Matt has held leadership positions in both banking and law in the fund finance industry for over two decades. He is the chair of the PLI Fund Finance Conference, is a frequent speaker and author on various fund finance matters and has appeared in the Wall Street Journal, Financial Times and Bloomberg News, among other media outlets.

Matt advises on a broad spectrum of private equity and private credit financing and liquidity solutions. Matt counsels both borrowers and lenders on subscription lines, NAV-based facilities and preferred equity financings, as well as asset-based middle market loan and other private credit portfolio financings. Matt also structures and advises on both GP-led and LP-led collateralized fund obligations, collateralized loan obligations, insurance securitizations and other similar securitized and structured products and derivatives.

Today's Featured Speakers



Janicelynn Asamoto Park
Partner, Tax
Proskauer

Janicelynn Asamoto Park is a partner in the Tax Department and a member of the Private Funds Group. She counsels fund sponsors and their investors as to the tax and economic considerations relating to forming, operating, and investing in private investment funds, co-investment vehicles, and other investment partnerships across asset classes. Janicelynn also regularly advises investors and sponsors in buy-side and sell-side secondary transactions (including in connection with GP-led fund restructurings).

Her practice also includes advising on domestic and cross-border financings and investments, inbound and outbound private mergers and acquisitions, and equity-compensation arrangements.

Janicelynn currently serves on the board of Reach Out and Read of Greater New York, a not-for-profit organization that partners with physicians to promote early literacy in low-income communities.



Camille Higonnet
Partner, Private Funds
Proskauer

Camille Higonnet is a partner in the Corporate Department and a member of the Private Funds Group.

Camille concentrates in the areas of corporate and securities law, with an emphasis on representing private investment fund sponsors in structuring funds and portfolio investment activities, as well as regulatory and compliance matters. Camille's practice includes advising on marketing and fundraising as well as key trends in fund terms, conducting negotiations with investors, and advising on ongoing operational issues.

In addition, Camille represents both U.S. and non-U.S. institutional investors in their investments in private investment funds, as well as in connection with secondary market activities, including traditional portfolio sales, structured secondaries, synthetic secondaries and fund restructurings.

Recognized for her leadership, innovative practice approach and expertise in representing private investment fund sponsors, Camille was named to PEI's inaugural 40 Under 40: Future Leaders of Private Equity list. Camille is also co-chair of Proskauer's Diversity Task Force and she is actively involved in Proskauer's Women's Sponsorship Program, as well as in Proskauer's Diverse Lawyer Mentoring Circle Program (MCP).

Today's Featured Speakers



Mohammad Rasouli
Alx2 CEO, Stanford AI
Researcher, PhD AI

Dr. Mohammad Rasouli is a thought leader in AI and technology for finance and investment. He is currently both Alx2.ai CEO and Stanford AI researcher. He obtained PhD in AI, and is ex-McKinsey where he managed automation of top-20 private equity funds from the New York office, and ex-Microsoft engineer.

In Alx2.ai, Mohammad and his team have partnered up with many funds to empower them with state-of-the-art AI solutions and software. His work in on AI for funds is covered top industry journals, and he has delivered keynote in top industry conferences. His technical papers on AI algorithms are published in top AI venues with 450+ citations.



Blake Halperin
Partner, Secondary
Transactions and
Liquidity Solutions
Proskauer

Blake Halperin is a partner in the Private Funds Group and a member of the Secondary Transactions and Liquidity Solutions practice. He primarily focuses his practice on representing buyers and sellers, as well as private fund sponsors, in connection with complex secondary transactions, including traditional sales and purchases of fund interests as well as GP-Led transactions, including but not limited to, single asset spin-out arrangements, fund recapitalizations, preferred financings and “stapled” secondary transactions.

In addition, he regularly represents U.S. and non-U.S. institutional investors in their primary investments and co-investment opportunities in private investment funds, including buyout, energy, credit, mezzanine, healthcare, real estate, venture capital, special situation and secondary funds, as well as separate and other managed accounts.

Today's Featured Speakers



Sarah Huang
Managing Director of
Secondaries &
Primaries
Ardian

Sara Huang joined Ardian's Secondaries & Primaries team in New York in 2010. Previously Sara worked as an investment banking analyst at the Bank of America Merrill Lynch in the Equity Capital Markets team, where she worked on convertible bond issuance and equity derivative structuring. Sara began her career at Goldman Sachs and Merrill Lynch.



Chris Robinson
Partner, Secondary
Transactions and
Liquidity Solutions
Proskauer

Christopher C. Robinson is co-head of the Secondary Transactions and Liquidity Solutions practice and a partner in the Private Funds Group. He primarily focuses his practice on representing buyers and sellers, as well as market intermediaries, in connection with complex secondary transactions, including traditional sales and purchases of fund interests, secondary direct transactions, captive fund spin-out arrangements, fund recapitalizations and restructurings and "stapled" secondary transactions.

In addition, he regularly represents sponsors of, and institutional investors in, private investment funds, including buyout, energy, credit, mezzanine, healthcare, real estate, venture capital, special situation and secondary funds, as well as separate and other managed accounts.

He recently was named a finalist for 'Dealmaker of the Year' by *New York Law Journal*.

Today's Featured Speakers



Taylor Robinson
Partner
Lexington Partners

Taylor Robinson is a Partner at Lexington Partners focused on leading secondary transactions and the portfolio management of various funds. He is a member of Lexington's ESG steering committee and Franklin Templeton's Stewardship & Sustainability Council. Taylor joined Lexington Partners in 2008 from JPMorgan.



David Symons
Sr. Managing Director
Blackstone Strategic Partners

David H. Symons is a Senior Managing Director, having joined Strategic Partners in 2004. Mr. Symons helps oversee Strategic Partners' GP-led secondary strategy, as well as co-investment and primary investing activities. Mr. Symons sits on the Investment Committee for each of Strategic Partners buyout funds and is an advisory board member of multiple funds. Prior to joining Strategic Partners, Mr. Symons attended Cornell University where he graduated with a BS in Applied Economics and Management. Mr. Symons is an executive board member of the Cure Breast Cancer Foundation.

Today's Featured Speakers



Mike Suppappola
Partner, Secondary
Transactions and
Liquidity Solutions
Proskauer

Mike Suppappola is co-head of the Secondary Transactions and Liquidity Solutions practice and a partner in the Private Funds Group. Mike specializes in representing asset managers across the globe in all aspects of their business and operations, with a particular focus on fund formation and the structuring and execution of secondary transactions. Mike also counsels clients on co-investments, portfolio investments and day-to-day operational and regulatory matters.

He advises a broad spectrum of fund sponsors who pursue a variety of strategies and sectors, including secondaries, private credit, distressed and special situations, buyout, structured capital, growth equity, venture capital, real estate and funds-of-funds. After the fundraising period, Mike continues to serve as a trusted adviser throughout the lifespan of a fund, with a focus on general partner and management company internal governance and day-to-day operational issues.

Mike is widely recognized in the private funds industry for his extensive experience in representing secondary fund managers in connection with all aspects of their business, including fund formation, secondary transactions (including GP-led liquidity processes, private tender offers, tail-end sales and preferred equity transactions), primary investments and co-investments. He also provides ongoing advice to private fund managers and other investment advisers on legal and regulatory compliance with federal and state securities laws, with particular expertise on the Investment Advisers Act of 1940.



Zach Gaucher
Senior Investment
Director, Private Equity
**Cambridge
Associates**

Zach Gaucher is a Senior Investment Director at Cambridge Associates.

In his role, he is responsible for tracking the industry and performing market research, identifying and conducting primary research on high-quality investment firms, and managing relationships with firms in which clients are invested. Zach is also a member of the US Venture Capital Research team and specializes in venture capital (VC) and growth equity.

Prior to rejoining Cambridge Associates, Zach was a Senior Associate at Phillips Exeter Academy, where he worked on asset allocation strategy, manager selection, and identifying market trends within asset classes. Zach began his career at Cambridge Associates as a Senior Investment Associate on the US Venture Capital Research Team. Zach received his MBA from the University of Michigan and his BA from Connecticut College.

Today's Featured Speakers



Kara Herskowitz
Managing Director
Ares Management

Ms. Herskowitz is a Managing Director in the Ares Investor Relations Group, where she focuses on credit product management and investor relations. Prior to joining Ares in 2017, Ms. Herskowitz was a Principal in the Client and Partner Group at KKR, where she was a Product Specialist focused on private equity. Previously, Ms. Herskowitz worked at The Blackstone Group where she was a member of the private equity project management team at Park Hill Group. In addition, Ms. Herskowitz was an Investment Banking Analyst at BMO Capital Markets in the Business Services and Media Group. Ms. Herskowitz holds a B.B.A., with highest honors, from Emory University in Finance and Accounting.



Dylan Quesada
Director of Investor
Relations
StepStone Group

Mr. Quesada focuses on product management and portfolio analytics and reporting.

Prior to StepStone, Mr. Quesada was a securities paralegal for Cravath, Swaine & Moore where he worked on SEC registered and unregistered debt and equity offerings.

Mr. Quesada received his BA in English literature from Fordham University.

Today's Featured Speakers



Kevin O'Donnell
Partner & Global Head
of Investor Relations
**Adams Street
Partners**

Kevin leads Adams Street's global marketing, fundraising and investor relations efforts.

Prior to joining Adams Street, he was a Managing Director and member of the management committee for the US and Canada Institutional Client Business at BlackRock. He served in several senior management roles within BlackRock, including Head of Foundations and Endowments and Global Head of Hedge Fund Distribution. In these roles he was responsible for managing sizeable teams of marketing and client service professionals.

Previously, Kevin was the Managing Director and Head of Business Development and Consultant Relations at Barclays Global Investors. He commenced his career with State Street Bank & Trust in 1988, based in Boston and Toronto.

Kevin is a member of Adams Street's Executive Committee, New Product Committee and Investment Pricing Committee.



Kerry Shriver
Partner, Private Funds
Proskauer

Kerry Fitzgerald Shriver is a partner in the Corporate Department and a member of the Private Funds Group.

Kerry advises fund managers, institutional investors and investment advisors across the full spectrum of investment fund matters. Her particular expertise concentrates within the areas of private credit, venture capital, buyout and secondaries, including the establishment of complex fund structures, portfolio investments, secondary market transactions, co-investment transactions, as well as advising on ongoing operational issues.

The majority of Kerry's practice involves representing fund sponsors in structuring private investment funds and funds of funds and representing U.S. and global institutional investors and investment advisors in the private equity field. Kerry also represents large institutional investors, or their advisors, in connection with the acquisition and sale of secondary partnership interests.

She has more than a decade of experience across various aspects of the financial markets, including structured finance, securitizations and securities analysis and trading, as well as extensive transactional experience in investment banking.



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Please refer to www.proskauer.com for a complete list of contacts:

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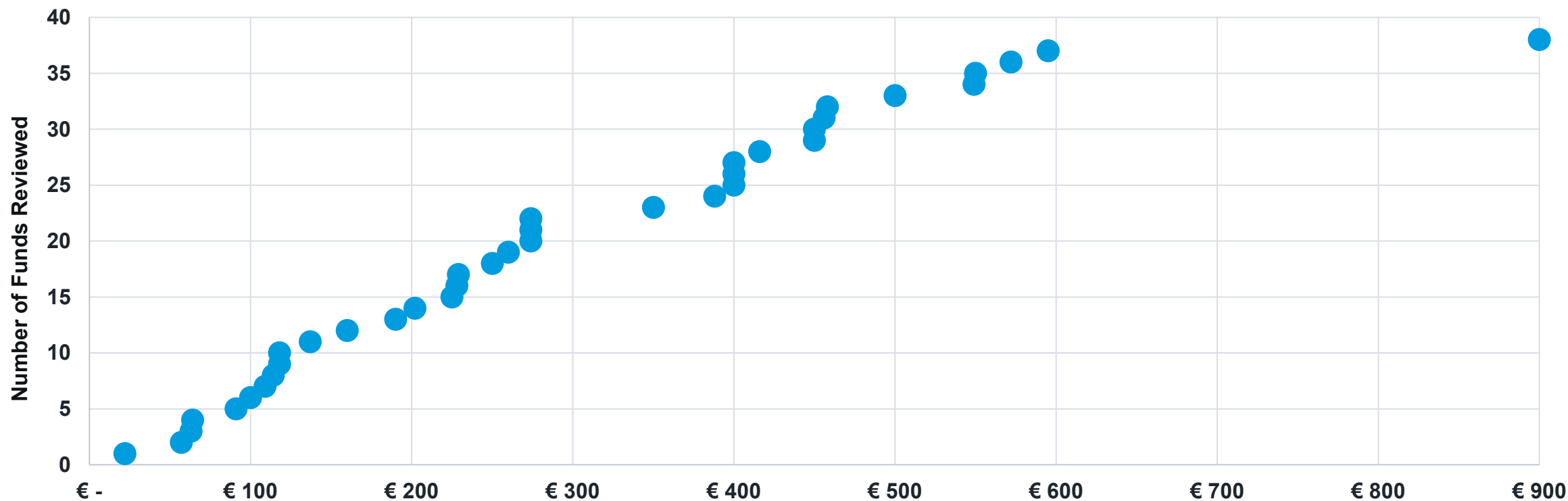
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Under the Microscope

Fundraising Terms and Trends
in European Venture Capital Funds

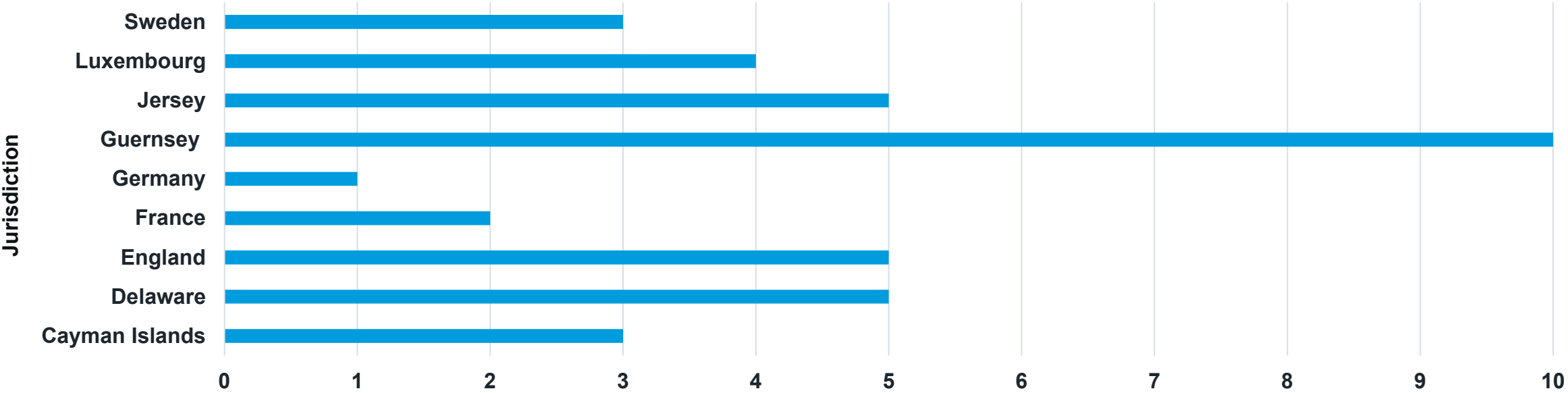
Data methodology

Our sample contains 38 European venture capital funds raised in 2022 and 2023. We reviewed 32 data points from these funds. The funds were all either specifically focused on Europe, were primarily European-based or had Europe as the primary geography in their investment strategy. The target size of the funds reviewed ranges from €22 million to €900 million, representing in aggregate approximately €11.393 billion of capital.



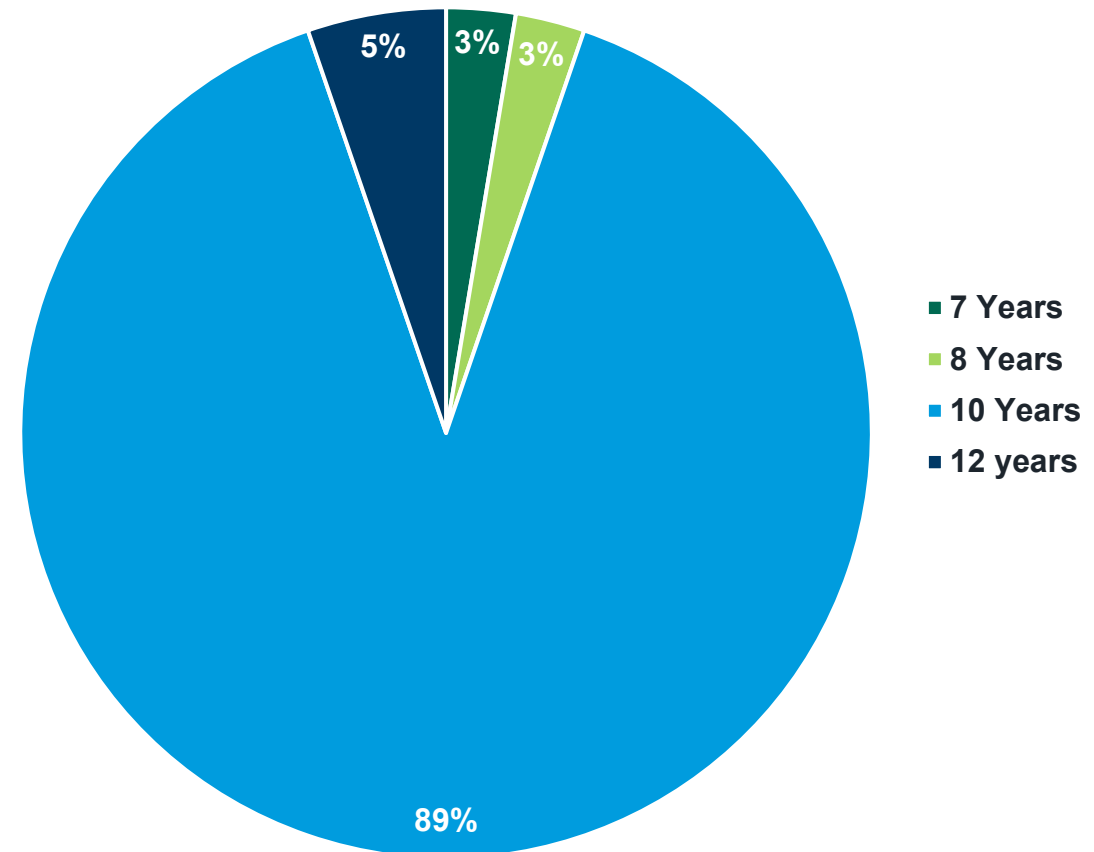
Jurisdiction of formation

Results in this year’s report are similar to previous years with venture capital not having made the same shift to Luxembourg that we have seen in private equity funds and certain other asset classes. While four of the funds are Luxembourg based, we note 15 funds are based in the Channel Islands (five in Jersey and ten in Guernsey), five funds based in each of England and Delaware and then the remainder of our sample across other jurisdictions. The difference in jurisdiction is driven by a multitude of factors, including the fact that European venture capital funds tend to be, on average, smaller than European private equity and credit funds and therefore favour jurisdictions which are considered as familiar, lower-cost and less administratively burdensome than Luxembourg. Consistent with prior data, US-based sponsors seem ready to deploy meaningful capital in Europe as the European venture capital market continues to mature and the trends observed may indicate that sponsors do not consider obtaining an EEA marketing passport to be integral to their ability to raise capital.



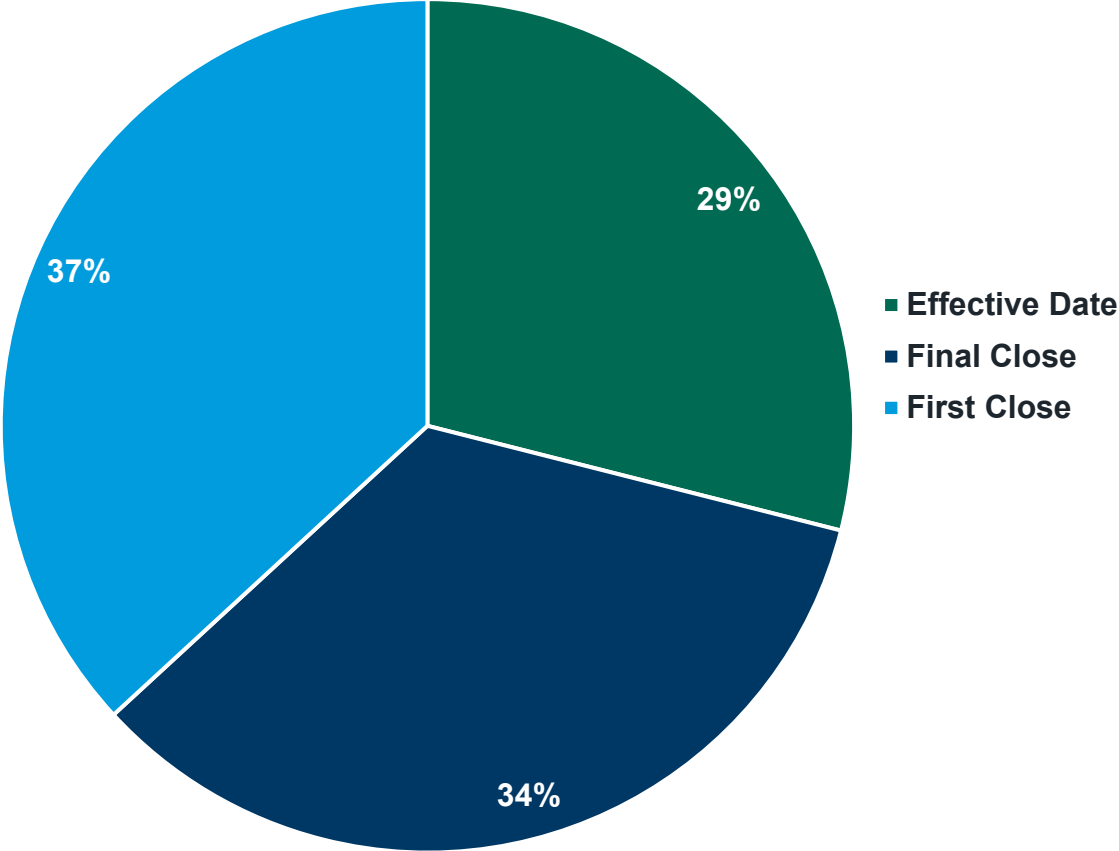
Initial term

Notwithstanding that a typical venture capital investment may take longer to mature than a buy-out transaction, as they are made earlier in the lifecycle of a company, we continue to see the initial term of almost all venture capital funds being set at 10 years: 89% of the funds in our sample set, which represents an 8% increase on the previous sample set. Despite a relatively small percentage of the funds sampled (5%) having an initial term of 12 years, we are seeing more venture capital sponsors exploring a longer term or evergreen fund strategy to sustain portfolio companies through a more prolonged period of growth.



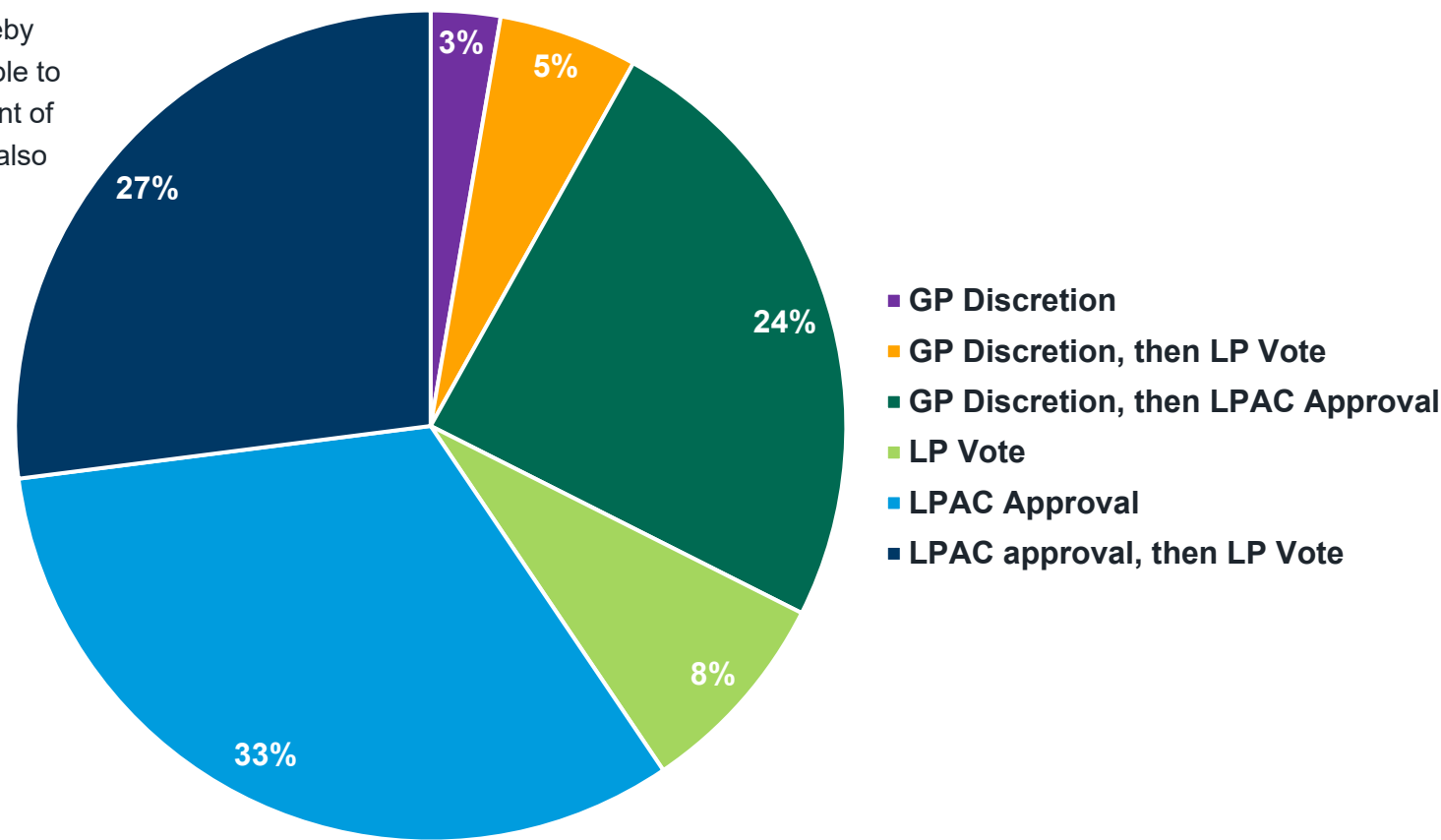
Initial term begins from

This year's data shows 29% of the funds sampled have an effective date mechanism (i.e., being the date determined by the sponsor, typically linked to the end of the investment period of the prior fund or the date of the current fund's first investment) as the from which the expiry of the initial term is calculated, whilst 37% and 34% of funds pin this date to their first close date and final close date, respectively. This is a relatively even split between the funds sampled. In prior years we had seen a gradual move towards the effective date concept (and the final closing date), giving venture funds additional time to deploy capital into new investments.



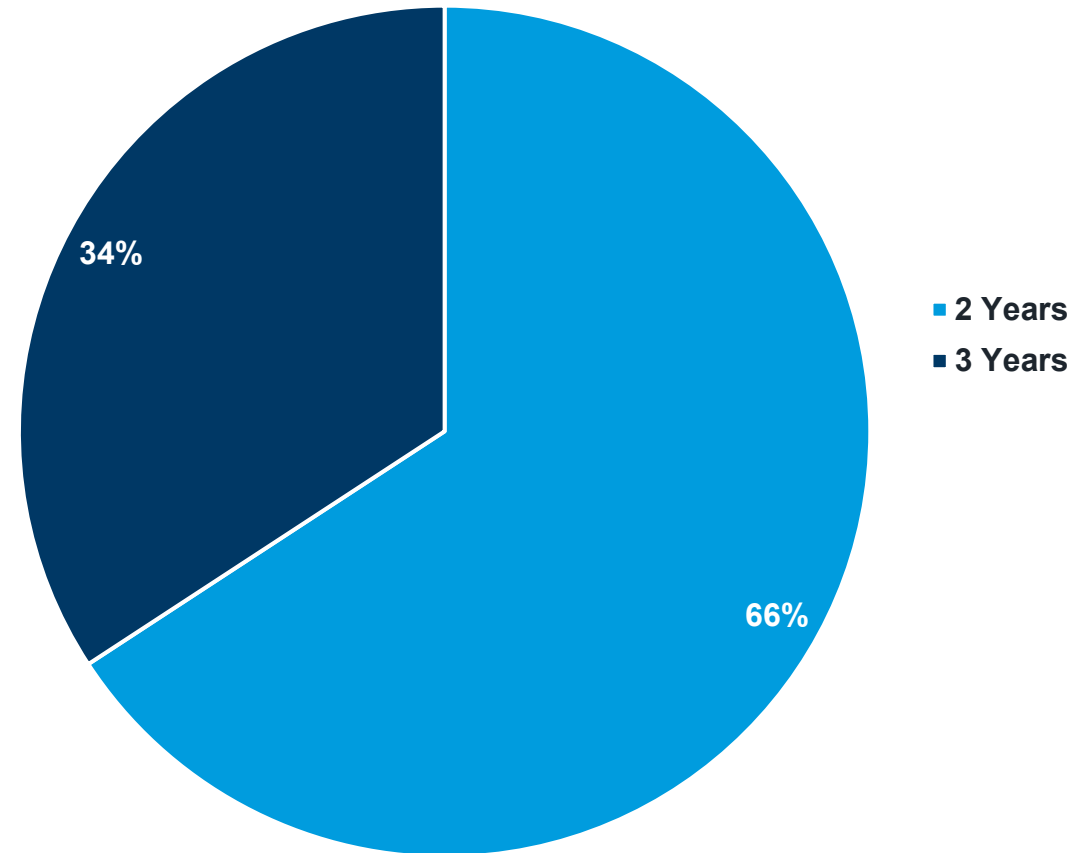
Approval required for extension of term

We observe that LPAC approval is required for at least one extension of the term in 60% of the funds comprising the sample set. Conversely, 33% of funds in the sample set see the sponsor having the ability to exercise its discretion for such an initial extension, down from 73% in prior data. This suggests that investors are being increasingly focused on wanting oversight of any extension, thereby seeking to ensure that the reasons for the extension are acceptable to them (typically to maximise the value of residual assets on account of the longer holding periods of investments in venture capital) and also to check the continued management fee that this may entail.



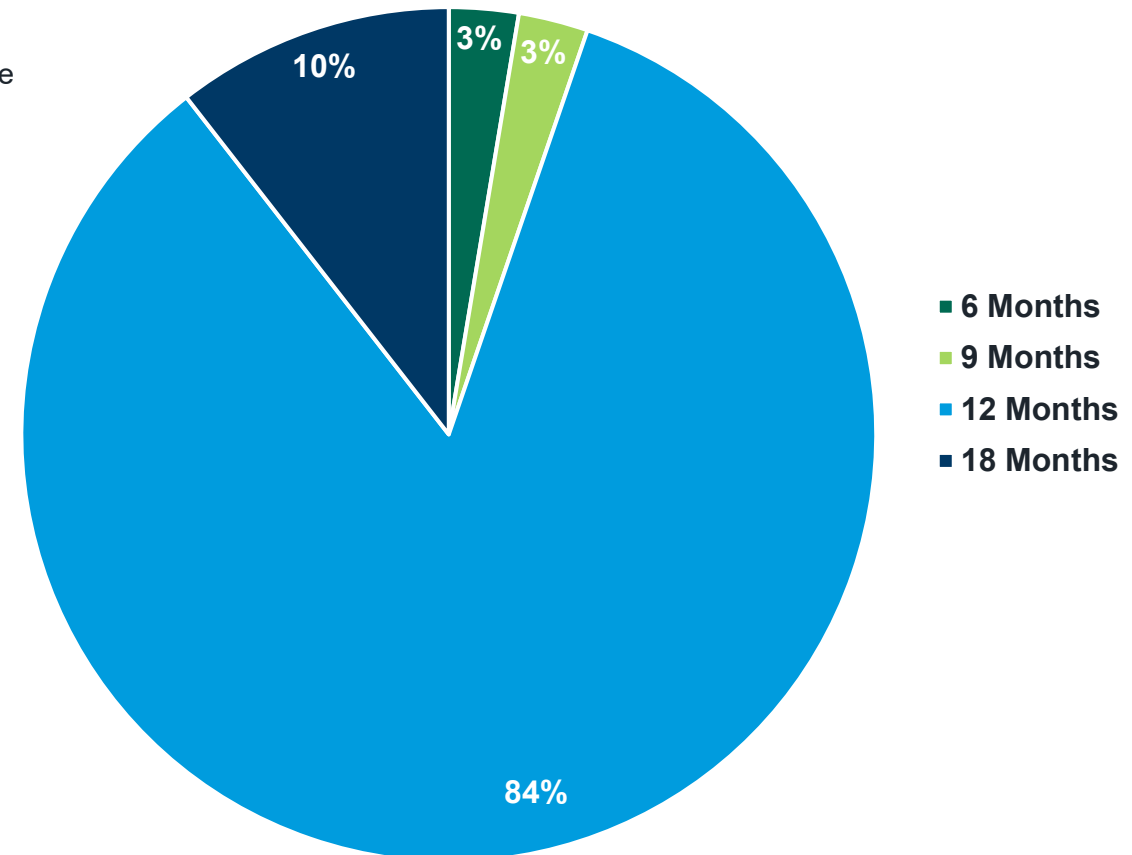
Maximum period of extensions of term

Consistent with the prior data, the significant majority of funds continue to provide for a two-year extension only. We anticipate longer hold periods for investments observed in venture capital to make this a continued hot topic of debate between sponsors and investors as well as it potentially prompting certain sponsors to look to raise fund products with longer terms or that are evergreen. Extensions beyond the periods provided for the in the agreements would require amendments to the fund documents and therefore typically investor consents.



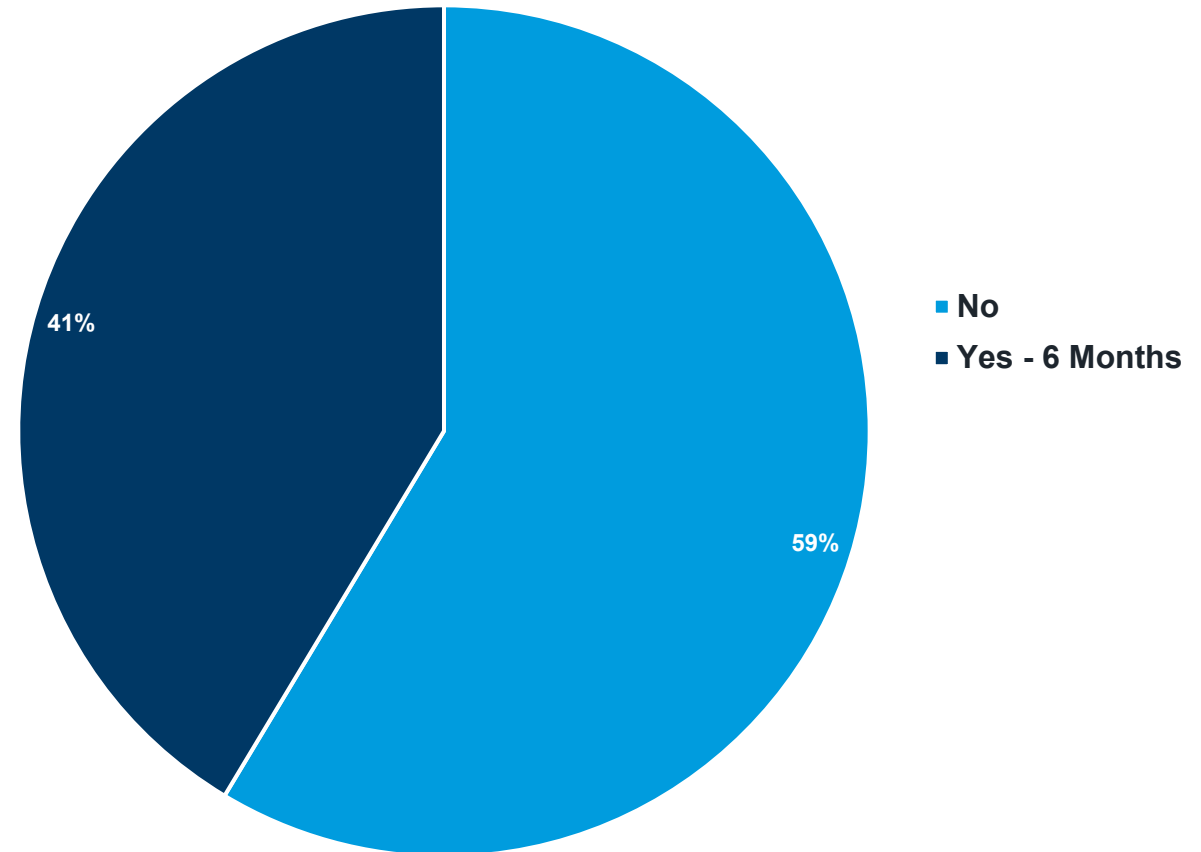
Fundraising period

12 months remains the common permitted fundraising period at 84% (increased from 73% in the previous data set). We then observe a variety of other time limitations, suggesting particular negotiations and situations which may be individual to the fund products being raised. Fundraising periods are the maximum stated period in the fund documents during which capital may be accepted into the fund, subject to any permitted extension to such periods – see next page. They may not reflect the amount of time that it takes in practice to reach final closing, but we have observed a general trend of fundraisings taking longer within the last 12/18 months than in prior years. This means sponsors are typically looking to utilise more of maximum stated period in which they are able to raise capital.



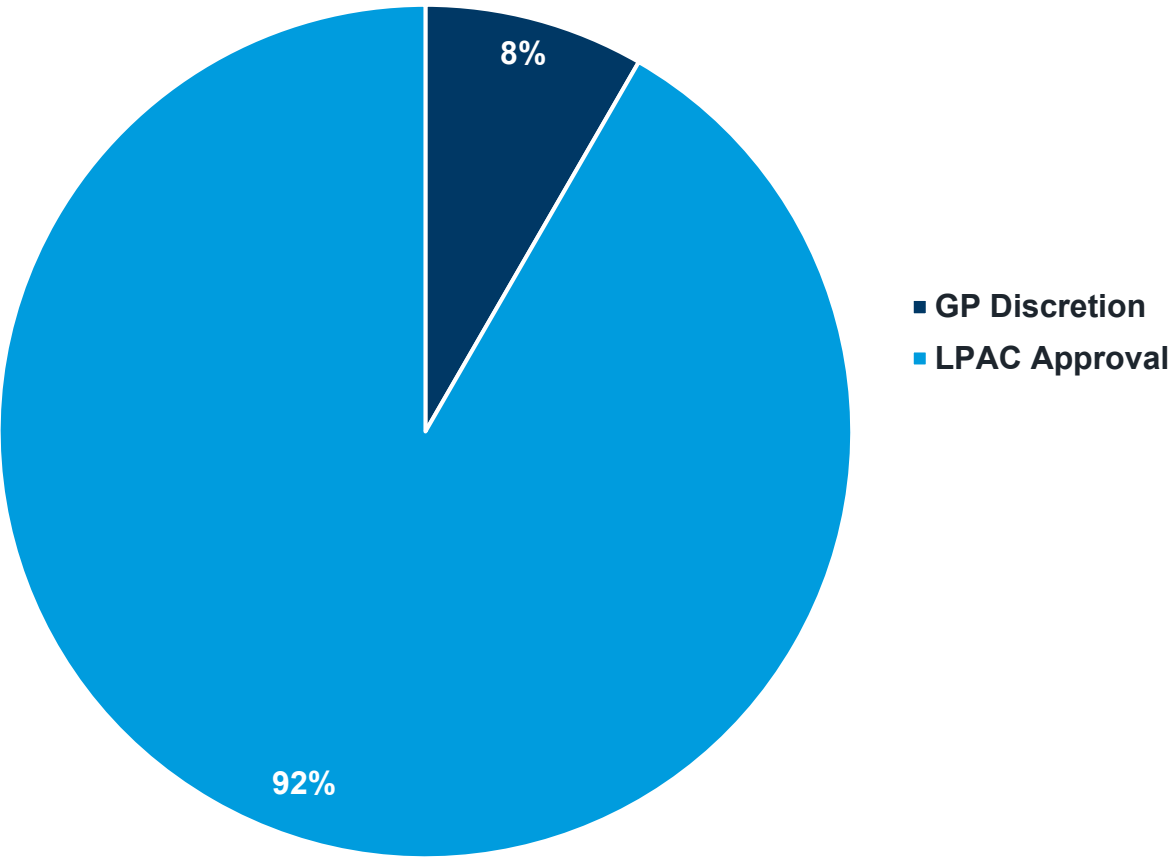
Extension of the fundraising period permitted

In light of the observations made on the prior page, we have sought to capture a new metric in this year's sample set of funds, whether or not an extension to the fundraising period is permitted. 59% of the funds sampled allowed for an extension of six months. We anticipate this figure increasing in the coming year, given current market conditions.



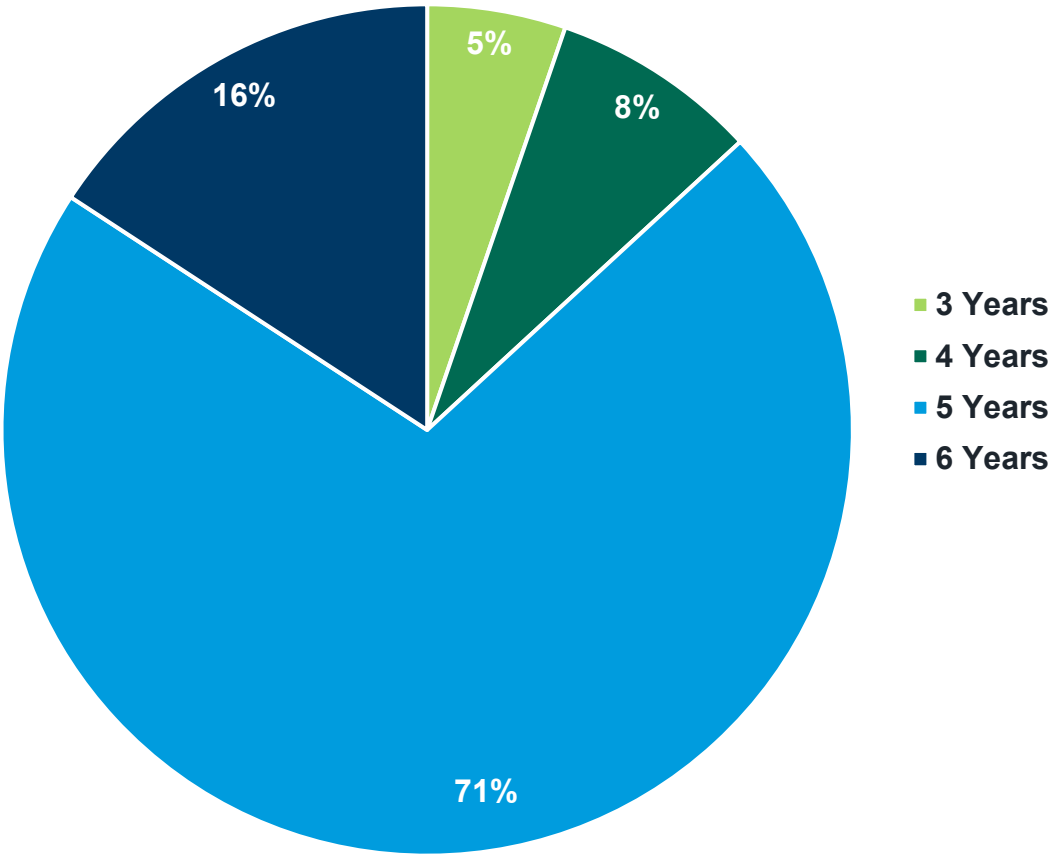
Approval required for extension of fundraising period

From the funds within our sample set with the ability to extend their fundraising period, the overwhelming majority (92%) required LPAC consent to be able to trigger such an extension and the residual proportion (8%) can do so at the sponsor’s discretion. We note that none of the sampled funds have the requirement to obtain a broader LP consent, which most sponsors would like consider to be too onerous and time consuming if requested by investors when a relatively quick decision is usually required on whether or not the extension will go ahead.



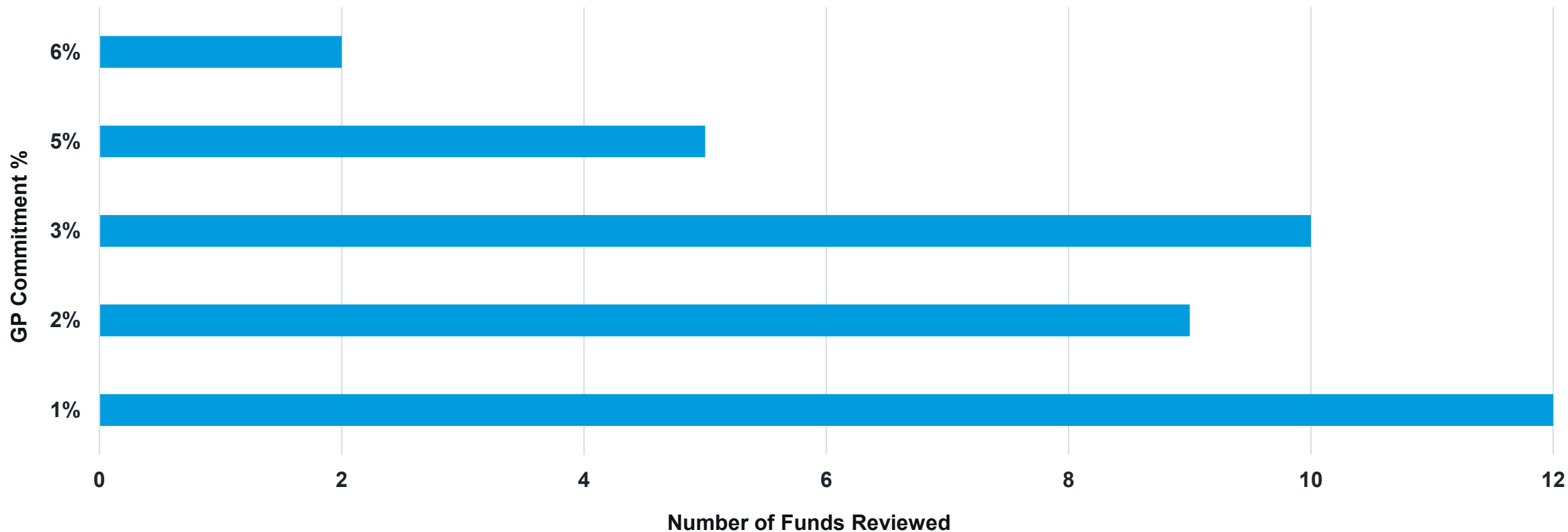
Investment period

Five years remains the most common investment period, representing 71% of our sample set (markedly close to the 68% observed previously). As with prior years, we have not seen a push to increase the length of investment periods in venture capital in the same manner we have seen a push in certain other asset classes. We expect that this is mostly because venture capital investment periods tend to end earlier than their full potential duration given a relatively quick initial deployment of capital coupled with more capital reserved for follow-ons to ensure that the fund can participate in later stage funding rounds to augment the value of prize assets.



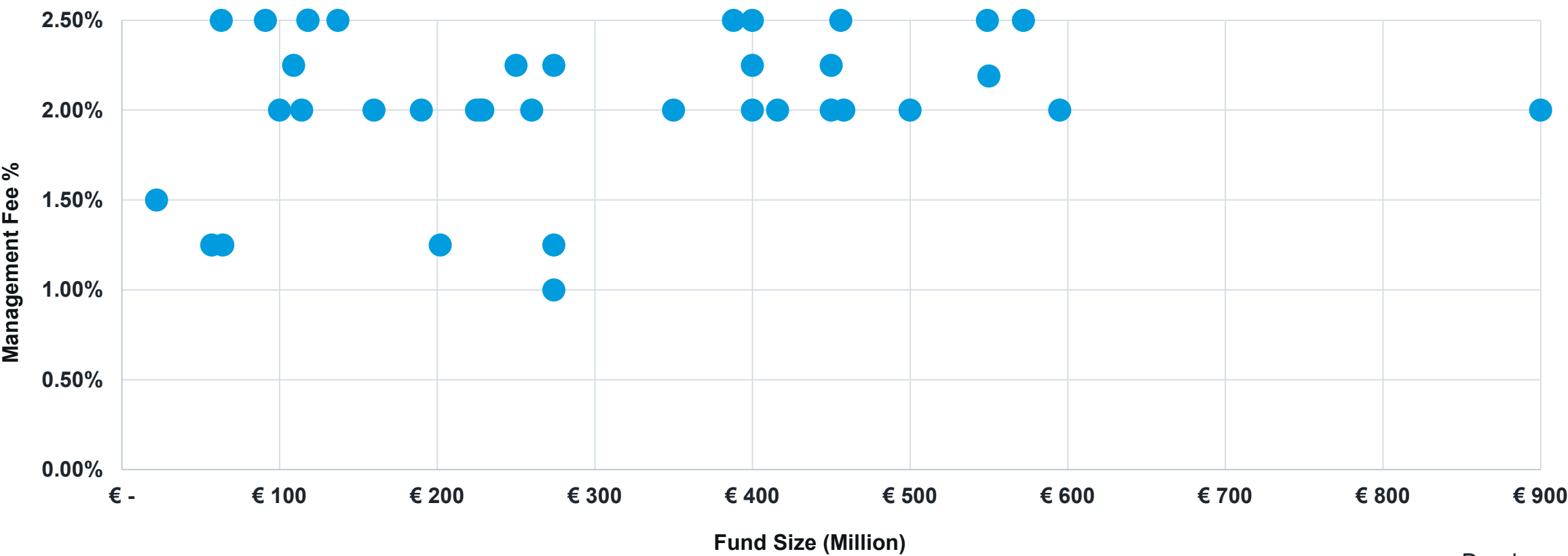
GP commitment (% of commitments)

Consistent with prior years, the data from our sample set demonstrates that a GP commitment of 1% remains the most common in venture capital with most funds typically falling in the 1-3% range. This is likely to be a result of venture capital teams often being smaller than private equity and, also, there being more first-time or less established fund managers without significant prior fund returns to re-invest as GP commitment. The personal circumstances of the team and how many executives participate in the GP commitment will be relevant factors discussed with prospective investors in the fund when this matter is negotiated.



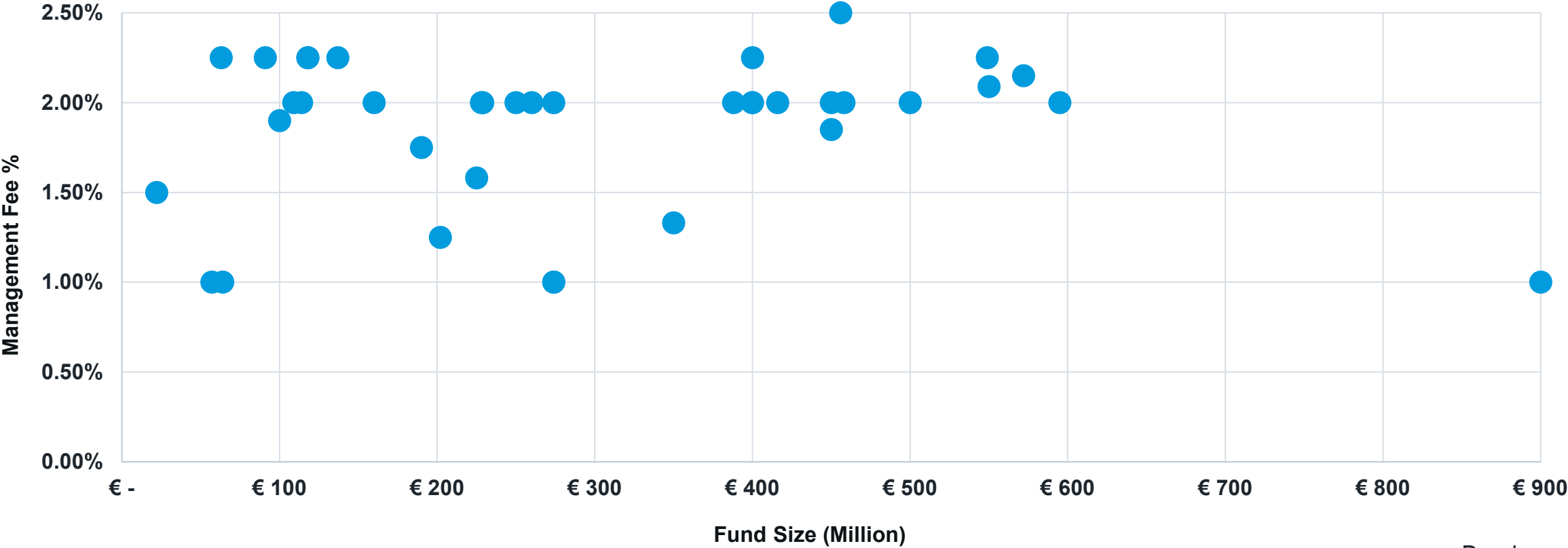
Annual management fee rate – Investment period (% of base)

The management fee percentage during the investment period for the funds comprising our sample set generally ranged between 2% and 2.5% with few exceptions. All such management fees are calculated based on total commitments of the funds. This is broadly consistent with the prior data. We again note that most venture capital funds with fees of 2.5% or close thereto raised £500 million or less, suggesting that this smaller size of fund has allowed sponsors to justify a higher percentage fee. In addition, many European venture capital sponsors do not have multiple fund products generating fees (although that may be changing). That said, the average percentage fee observed in venture capital remains higher than other asset classes, suggesting that investors remain willing to pay a premium to the sponsors that they back or which otherwise have a strong track-record.



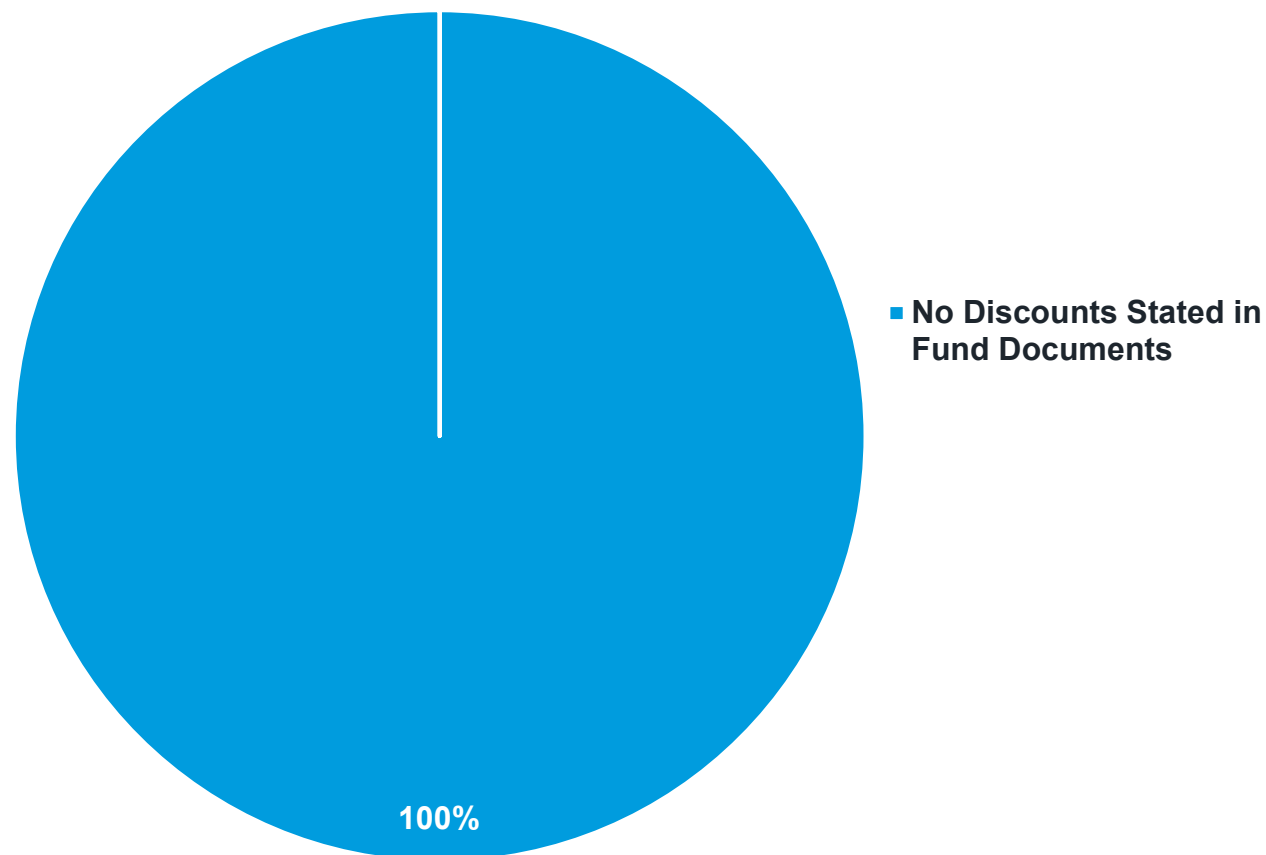
Annual management fee rate – Post-investment period (% of base)

Several of the funds in the sample set step down their management fee after the expiry of the investment period. This stepdown is most pronounced in funds which charge a management fee of 2% or above during their investment period, with the reductions (as applicable) ranging from 0.25 to one percentage point. We would note that it is common for venture capital funds to continue to base their post-investment period management fee on total commitments rather than switching to a calculation made on invested capital which is the most common base for calculation in private equity. There are various reasons for this with the most predominant one being that a significant amount of capital may be retained for follow-on investment investments in future funding rounds which take place after the investment period. This means that an immediate switch to invested capital would put the sponsor at risk of a significant drop in fee income upon the expiry of the investment period. This could cause the sponsor to be incentivized not to reserve capital to back the prized assets in its portfolio in their later rounds, thereby potentially diluting future returns for investors. By continuing to use a fee based on commitments, rather than invested capital, both sponsors and investors are granted greater predictability and can be more assured that management fee concerns do not influence the pace of investment. Another reason for this fee structure is because venture capital has a larger number of nascent sponsors relative to their more established private equity counterparts which require this certainty when it comes to fee income to be able to grow their business and attract the best talent on a predictable basis.



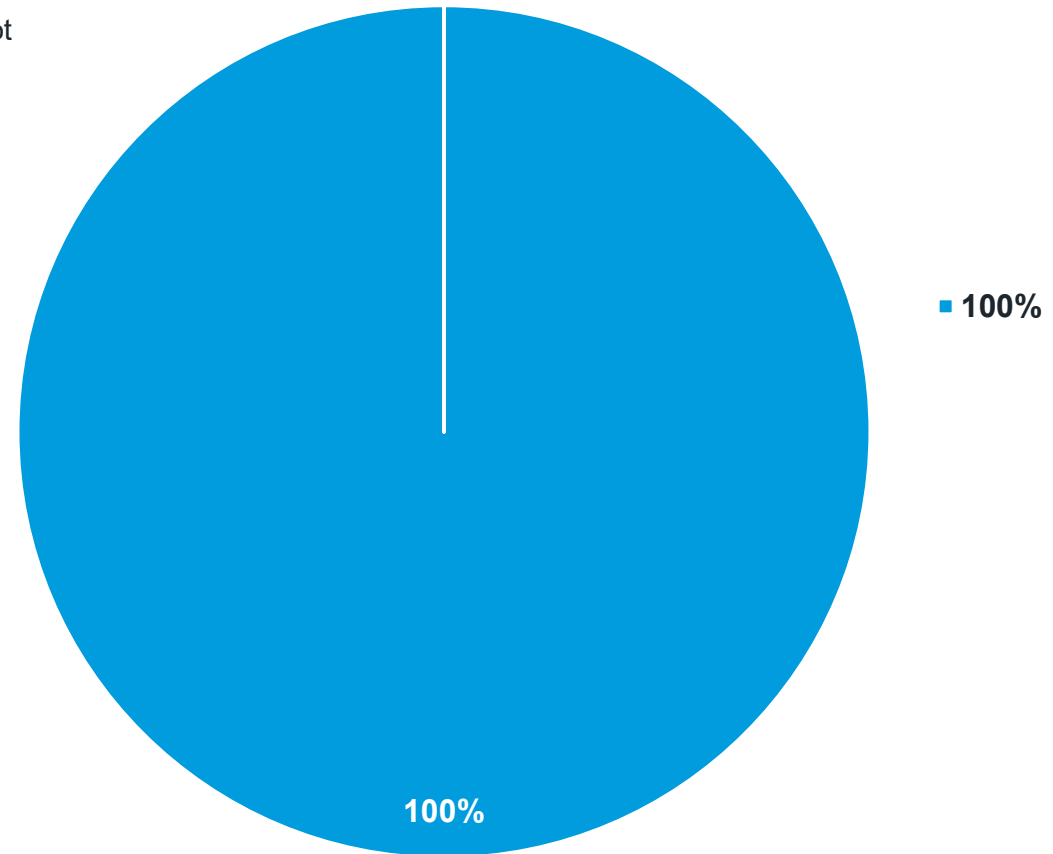
Management fee discounts

As with prior years' data, management fee discounts are not a common feature of venture capital fundraisings. None of our sample set of funds offer a form of fee discount on the face of the constitutional documents of such funds, whereas this was the case for 97% of the funds comprising the previous sample set. We are aware that certain forms of discounts may be offered outside of the fund constitutional documents, such as in side letter. This could, for example, include large investor, early bird or friends and family discounts. These would not be picked up in our data, but we appreciate that they can sometimes be a key negotiation point for a sponsor when it comes to strategically important investors.

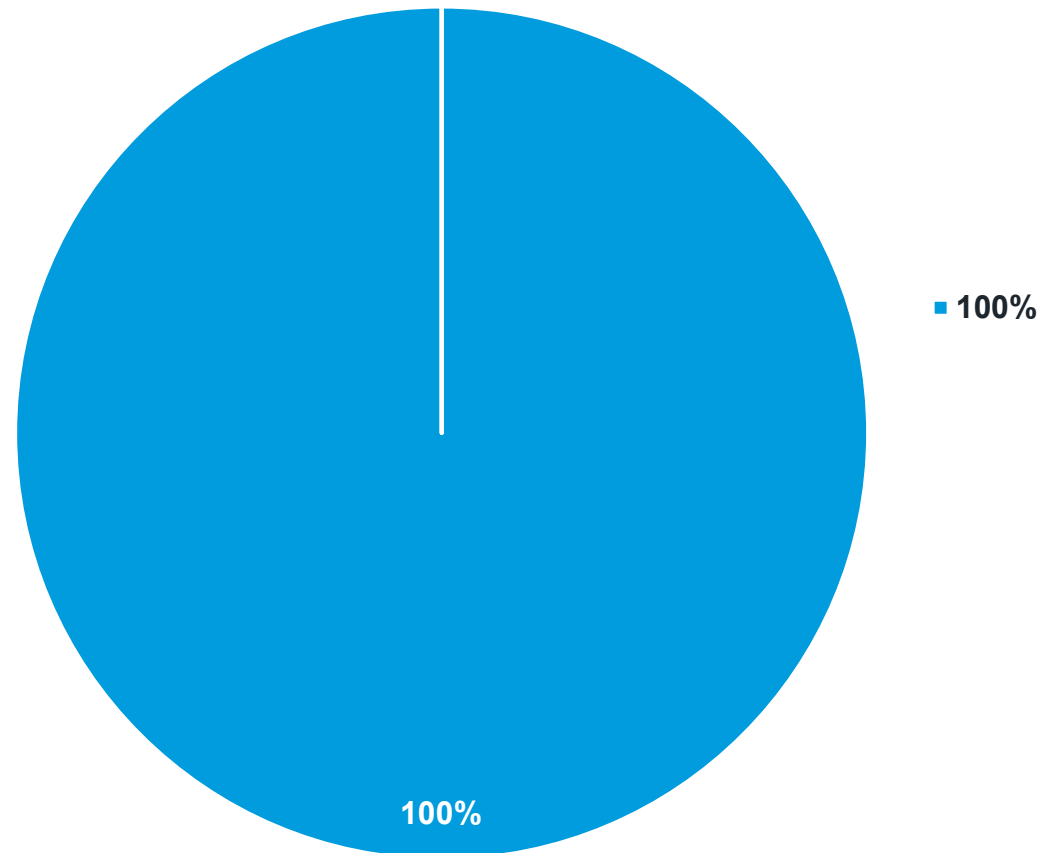


Management fee offset – Directors' fees

Consistent with previous data, all the funds in our sample set provided for a 100% offset of fees against the management fee. Venture capital managers do not typically receive transaction, directors or other fees and so this is less a focus in negotiations. However, we have observed the fund documents of certain sponsors seeking to include carve outs so that certain fees for services provided by venture partners and other advisers to portfolio companies are not subject to such fee offset – for example, the performance of services that would otherwise be provided by consultants on an in-house basis, provided that the fees charged are determined on an arm's length basis.

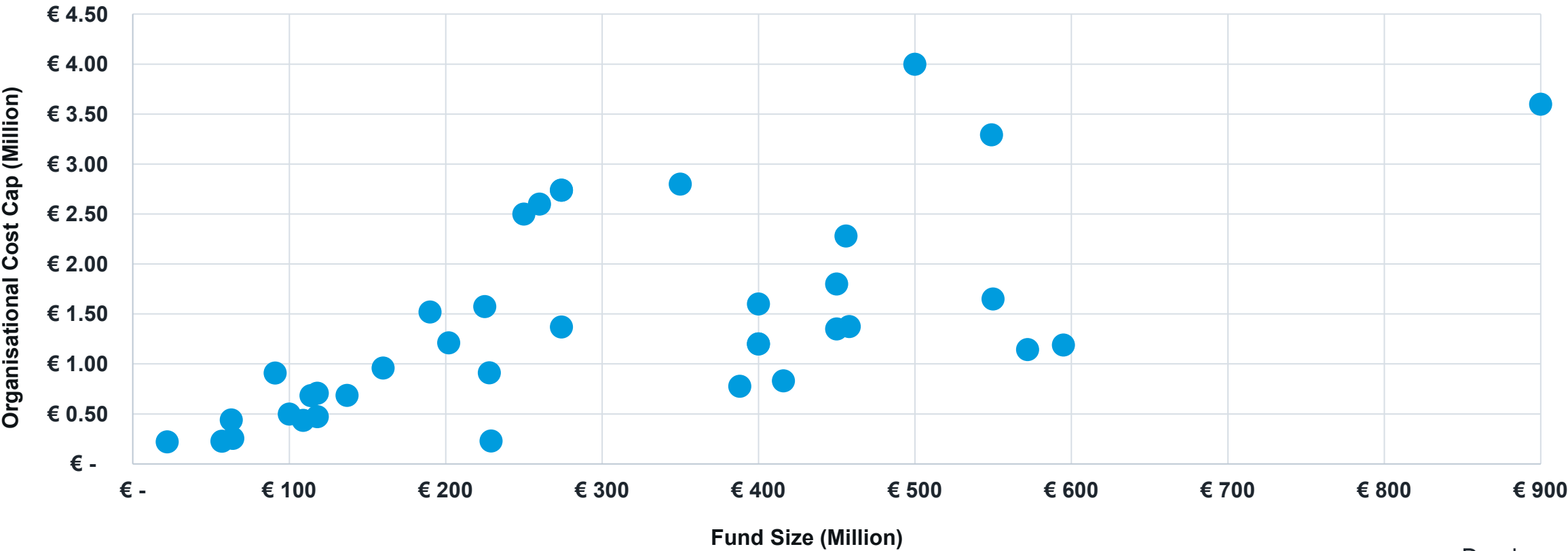


Management fee offset – Other fees



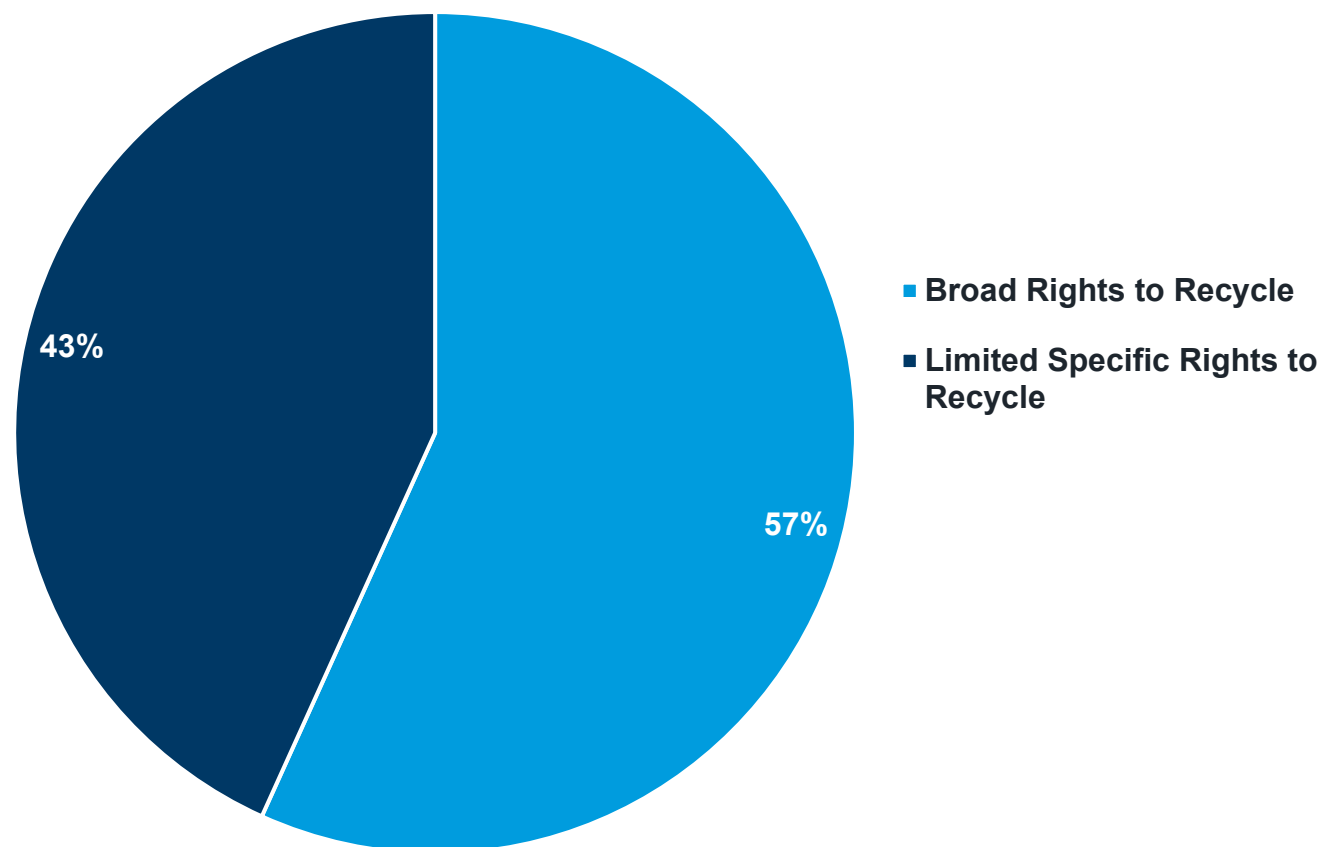
Organisational cost cap

As you would expect, the graph shows a general trend that the size of the organisational costs cap increases with the size of the venture capital funds being raised. We noted in past data that most of the funds had organisational costs caps of between €0.5-1.5 million and that there were three outliers at €2.25 million and above. This year's data demonstrates an upwards shift with most of the funds surveyed having caps of between €0.5-2.75 million. This could be due to several factors, including larger fund sizes, more complex negotiations of legal documents and more established asset managers wanting to gain exposure to venture capital as an asset class.



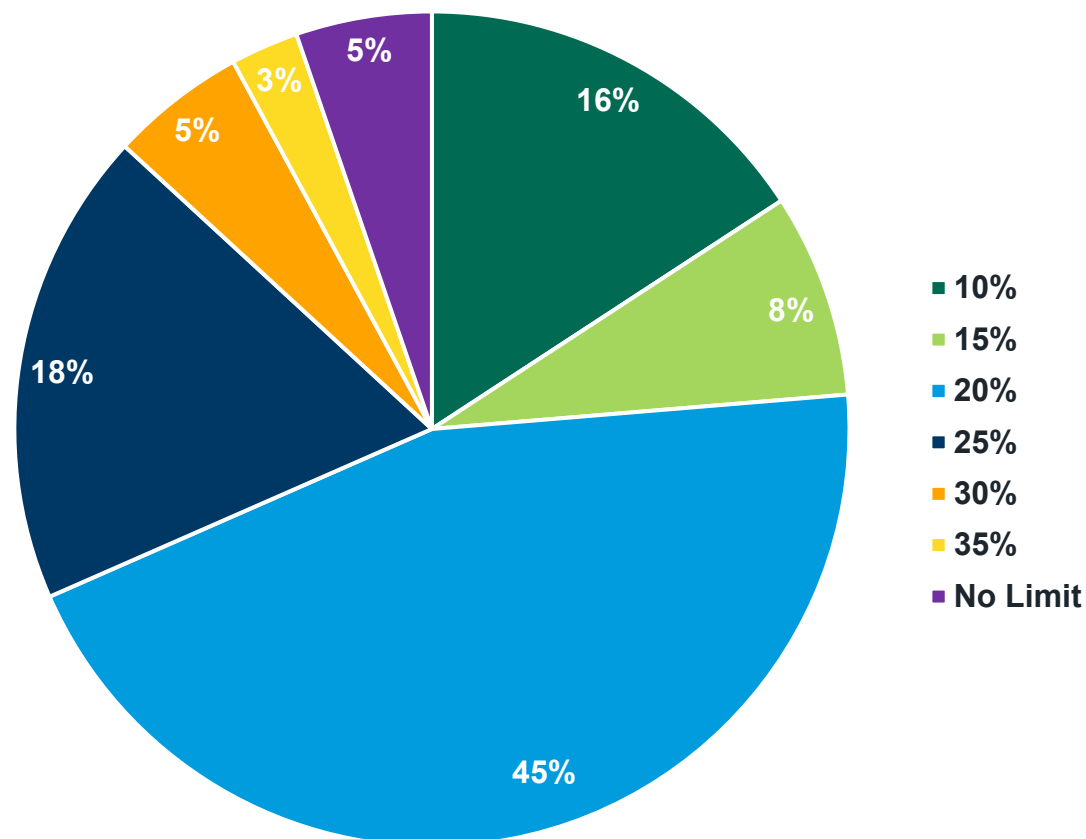
Recycling

Our sample set of funds shows that there has been an increase in the percentage of funds with a broad ability to recycle relative to those with a more limited recycling ability compared to the prior data: 57% of the funds sampled this year relative to 51% of the funds sampled previously. By broad recycling rights, we typically mean that sponsors can recycle proceeds from investments during the investment period of their funds in addition to having the right to recycle proceeds equal to fees and expenses. The funds with more limited or specific rights would be subject to restrictions such as only being able to recycle proceeds received from investments realised within 12 to 18 months of acquisition. We expect broader recycling rights to continue to grow in prevalence in the coming years. Venture capital sponsors should consider how important such recycling rights may be in the context of their overall investment strategy as this could allow them to participate in subsequent funding rounds of portfolio companies with the benefit of minimising the dilution of the investment in such portfolio companies and making investors' commitments to the fund work harder.



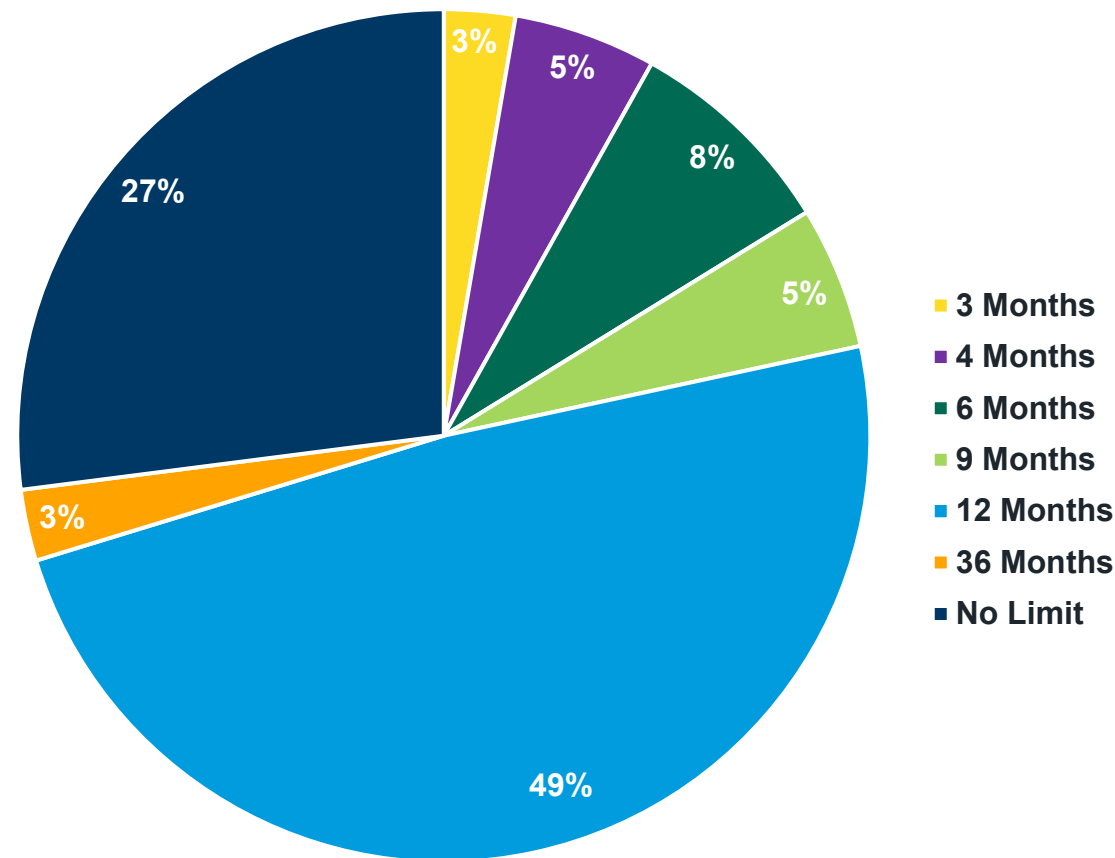
Limits on bridge facilities and other fund-level borrowing (% of commitments)

Given the expenses involved in setting up and operating bridge facilities, we see fewer of these facilities implemented in European venture capital relative to private equity. However, as the market continues to develop, we expect these facilities will become increasingly common as they can be a useful tool for sponsors to be able to better manage and coordinate cash flows, drawdowns from investors and the execution of portfolio transactions. As this happens, investors may become more focused on such limitations. Our data shows that 84% of funds in our sample set have permitted fund-level borrowing of 15% or more of commitments, up from 76% in the prior data. As with previous surveys, a limitation set at 20% of commitments is the most common.



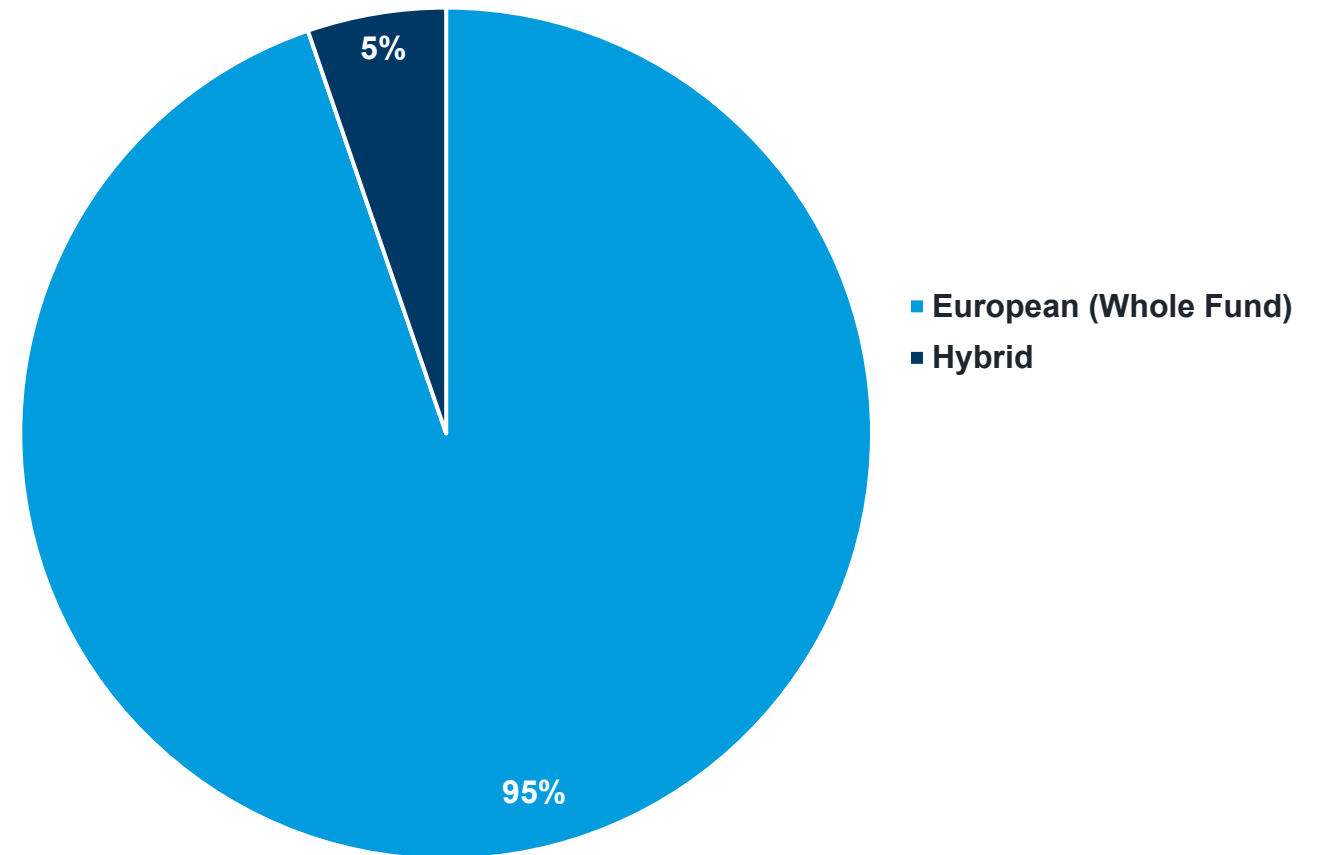
Time limits on borrowing

49% of the funds from our sample set are subject to a 12-month time limitation of fund-level borrowing (up from 40% in the prior data). This compares to 27% of funds being subject to no specified time limit (down from 46% in the prior data). We consider this to point to a general trend of most institutionalised borrowing practices among venture capital sponsors as the 12-month time limit follows what is the norm in private equity. This is also likely to be driven by certain European regulations concerning borrowing, which venture capital sponsors are paying closer attention to as they look to have the ability to implement fund-level borrowing strategies.



Distribution waterfall – Type of waterfall

Almost all the funds in our sample set used a whole-fund distribution waterfall, which required the sponsor to return at least all drawn commitments before carry is generated. There were two hybrid waterfalls which account for 5% of the sample.

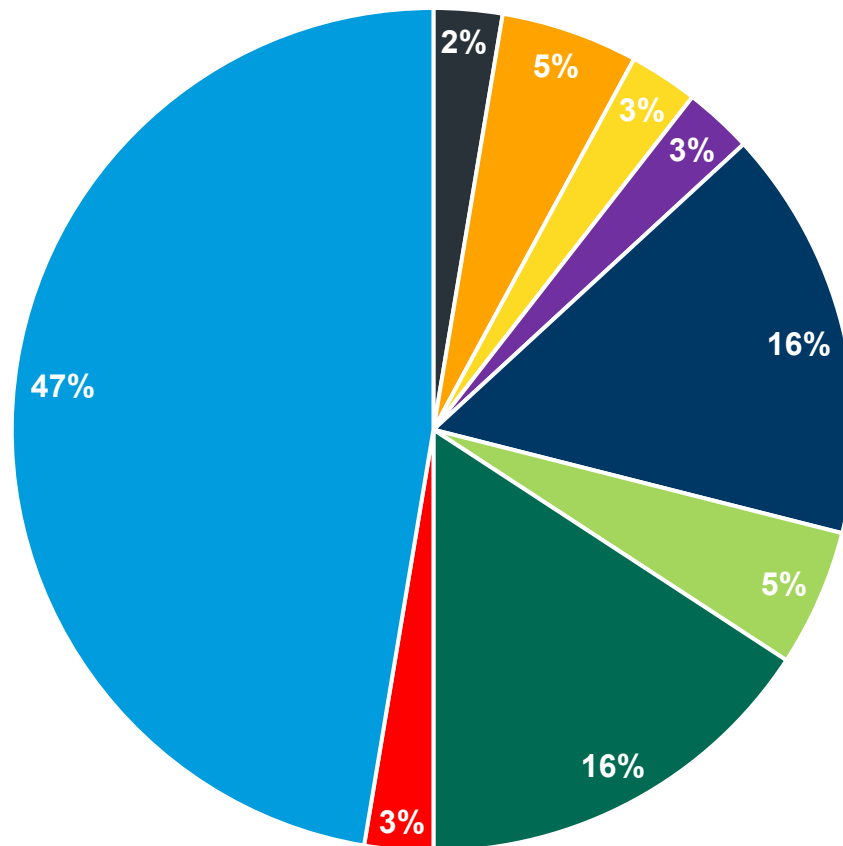


Distribution waterfall – Preferred return (%)

47% of the funds from our sample set do not have a performance hurdle going straight from the return drawn commitments to a split in the profits between the sponsor and investors. This is down from 68% of the European venture capital funds surveyed previously, which perhaps points to sponsors needing to concede slightly on economic terms within the last year in a tougher fundraising environment than that which was observed in the couple of years prior to that.

29% of the funds from our sample set have a percentage based preferred return, ranging between 4-8% with the remaining funds operating with a preferred return calculated on a multiple of invested capital before carried interest may be distributed to the sponsor. Three of the funds surveyed had waterfalls containing secondary hurdles.

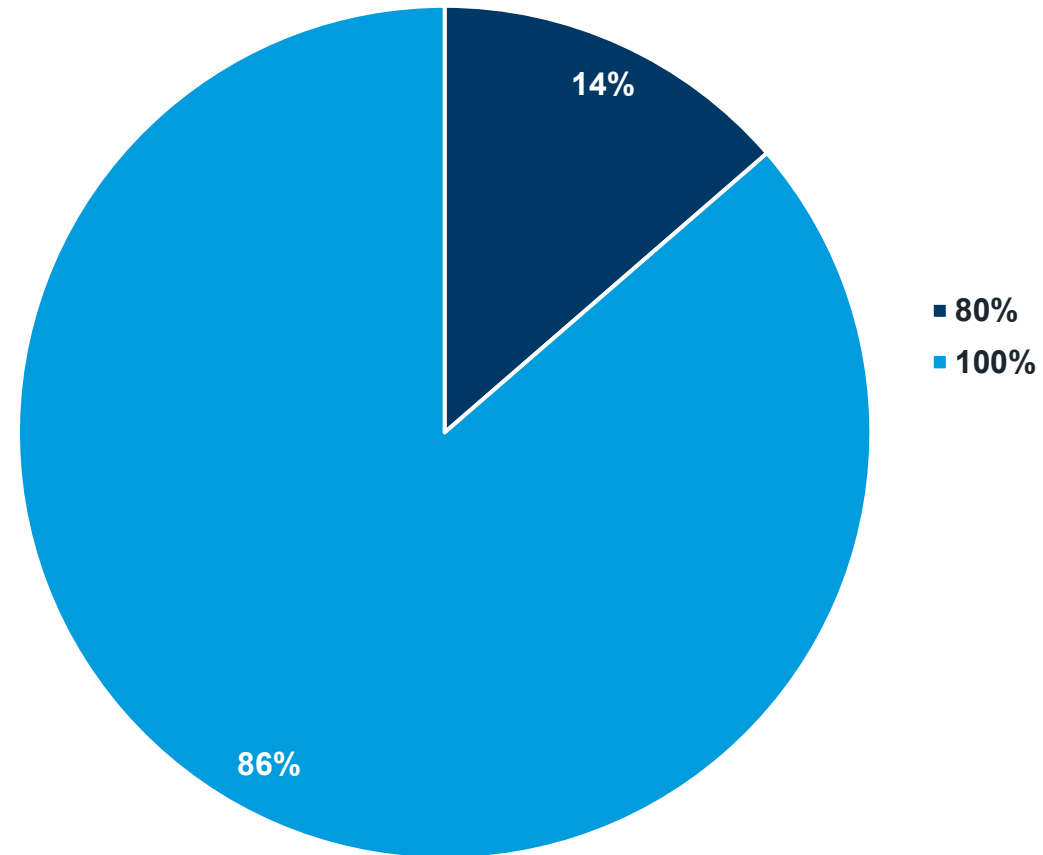
It will be interesting to see whether this year's increased prevalence of European venture capital having a preferred return represents an anomaly (due to the broader macroeconomic considerations) to the general trend that we have seen in previous years of the industry seeking to align itself more with the US venture market where we see an increasing trend away from annually accruing preferred return. The best returns on venture capital assets can often require holding an investment for a significantly longer term than a buy-out fund given the time it takes for early-stage companies to grow into their potential. Removing the pressure of annually accruing preferred return can mean sponsors are less incentivised to make fast exits and allows them to achieve premium returns for their investors.



- 4% p/a (1st hurdle); 8% p/a (2nd hurdle)
- 6% p/a
- 6% p/a (1st hurdle); 3x (2nd hurdle)
- 7% p/a
- 8% p/a
- 1.1X Funded Commitment
- 1.2-1.25X Funded Commitment
- 130% (1st hurdle); 150% (2nd hurdle); 200% (3rd hurdle)
- No Preferred Return

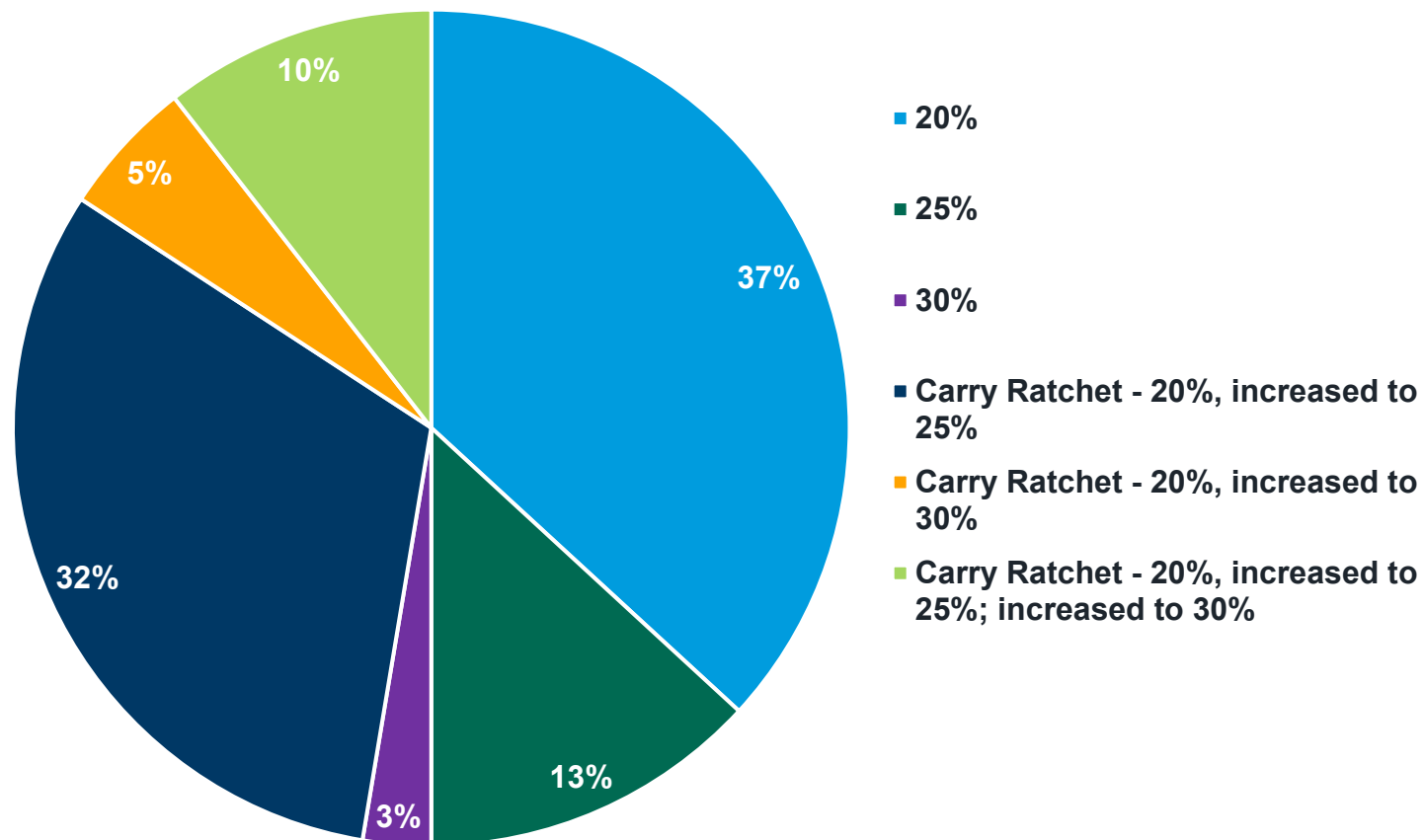
Distribution waterfall – Carried interest catch-up (% after preferred return)

Of the funds in our sample set that have a preferred return (and therefore give rise to the need for a carried interest catch-up), 86% of the funds had a 100% catch-up (up from 83% based on prior data).



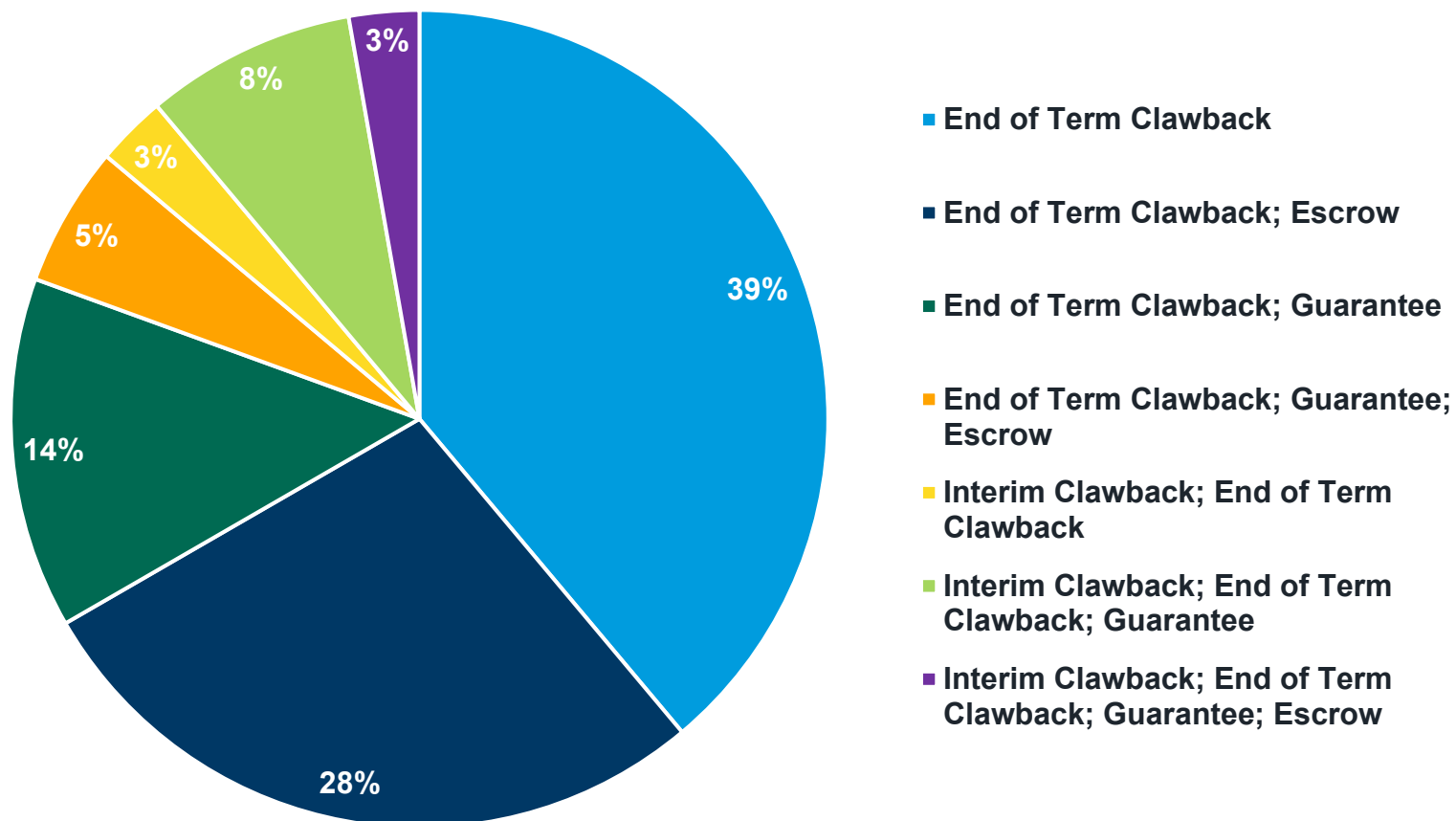
Distribution waterfall – Carried interest percentage

37% of the funds from our sample set have a fixed carried interest percentage of 20%, similar to the 35% of funds in the previous sample set of funds. A substantial proportion of funds (32%) operate with a carried interest ratchet, which can see the entitlement to carried interest for the sponsor increase from 20% to 25%. A further 15% of funds operate with other forms of ratchet mechanics leading to the possibility of the sponsors being able to participate in up to 30% of the profits. The variety that we observe in both preferred returns and the calculation of carried interest entitlements from within our sample set points to venture capital investors continuing to be willing to be flexible on fund economics to incentivize sponsors to attain premium returns.



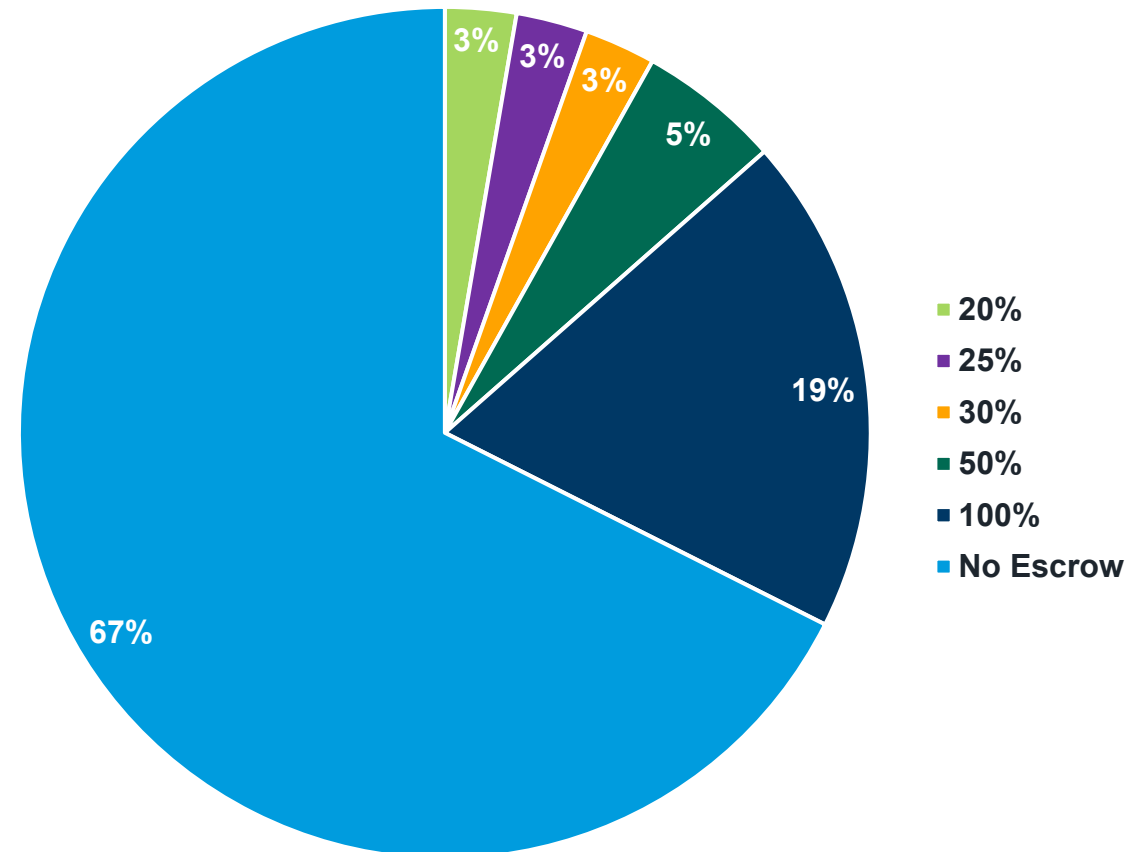
GP clawback and related investor protections

The variety of distribution waterfalls observed in our sample set has meant that we observed several different approaches to carried interest clawback and related investor protections. The three most popular mechanism used are: simple end of term clawback (39% compared to 43% from prior data), end of term clawback combined with an escrow (28% compared to 11% from prior data) and end of term clawback combined with a guarantee (14% compared to 21% from prior data). While simple end of term clawback remains the most prevalent mechanism, we would expect more robust investor protection terms and whether there is an interim clawback test to be increased points of negotiation between sponsors and investors.



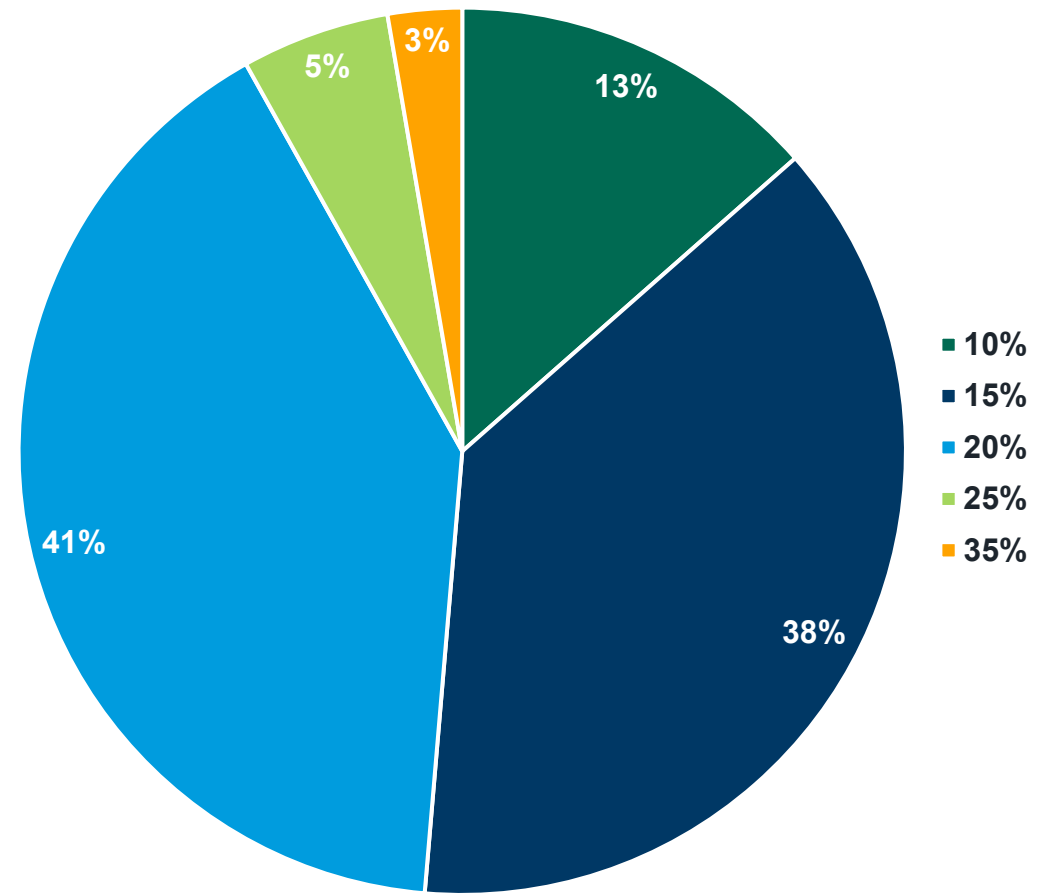
Escrow (% of carried interest)

Building on the trends observed on the previous page, 67% of the funds comprising our sample set do not contain any escrow mechanics. For those that do, 19% have escrow mechanics in their constitutional documents which require an amount equal to 100% of carry proceeds to be retain in escrow until the third-party investors have received amounts equal to their undrawn commitments and drawn commitment to the Fund plus any preferred return hurdle. A range of other escrow mechanics requiring sponsors to retain a lower percentage amounts of carry proceeds in escrow are then used.



Investment restriction – Diversification limit (% of commitments)

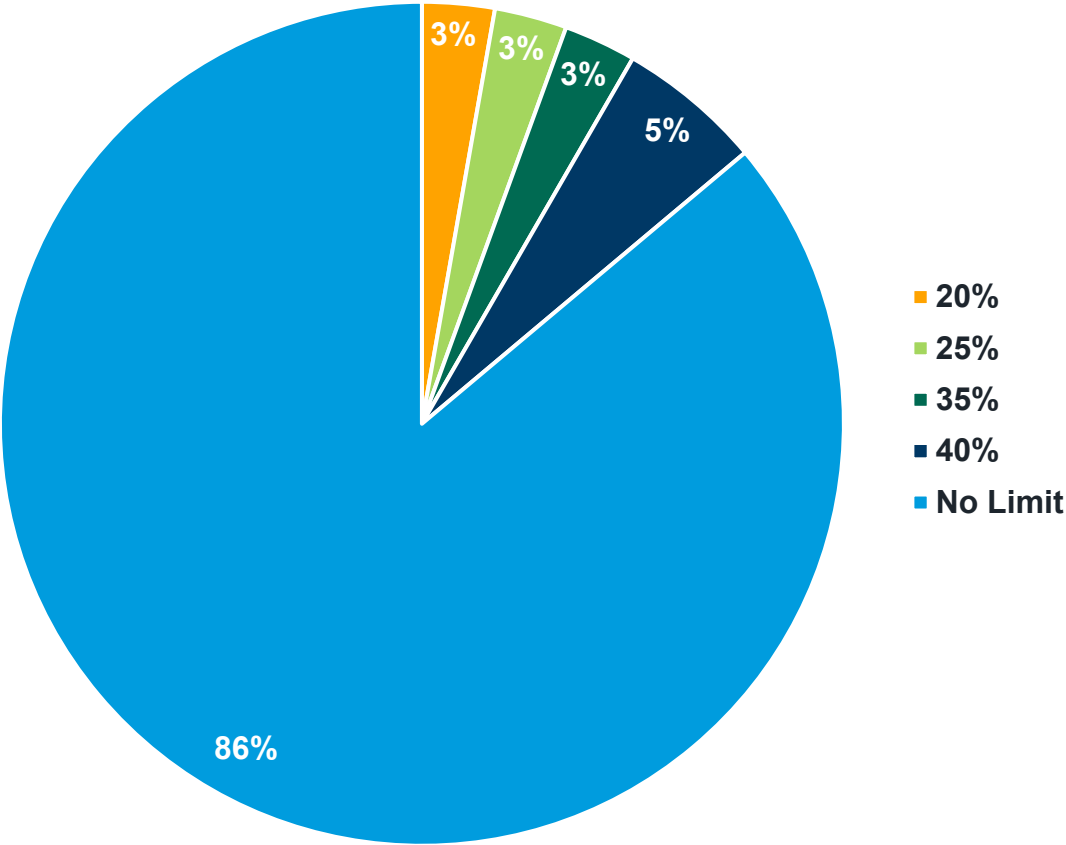
41% of the funds from our sample set have diversification limits for single portfolio investments set at 20% of aggregate commitments of investors (relative to 30% of funds in the previous data set). As predicted in our previous paper, this represents a trend where sponsors are pushing for higher diversification limits given that 15% was the most prevalent limitation we saw at the time: represented by 40% of funds in the previous data set and 38% of funds this year in the respective sample sets. Diversification thresholds are generally lower than in buy-out funds because of the greater risk being taken when investing in early stage enterprises, which is inherent with the nature of venture capital. Investors and sponsors therefore look to strike a balance between the fund being overly exposed to a single investment and allowing the relevant sponsor to back one or more prize assets, so that the fund can maximise returns.



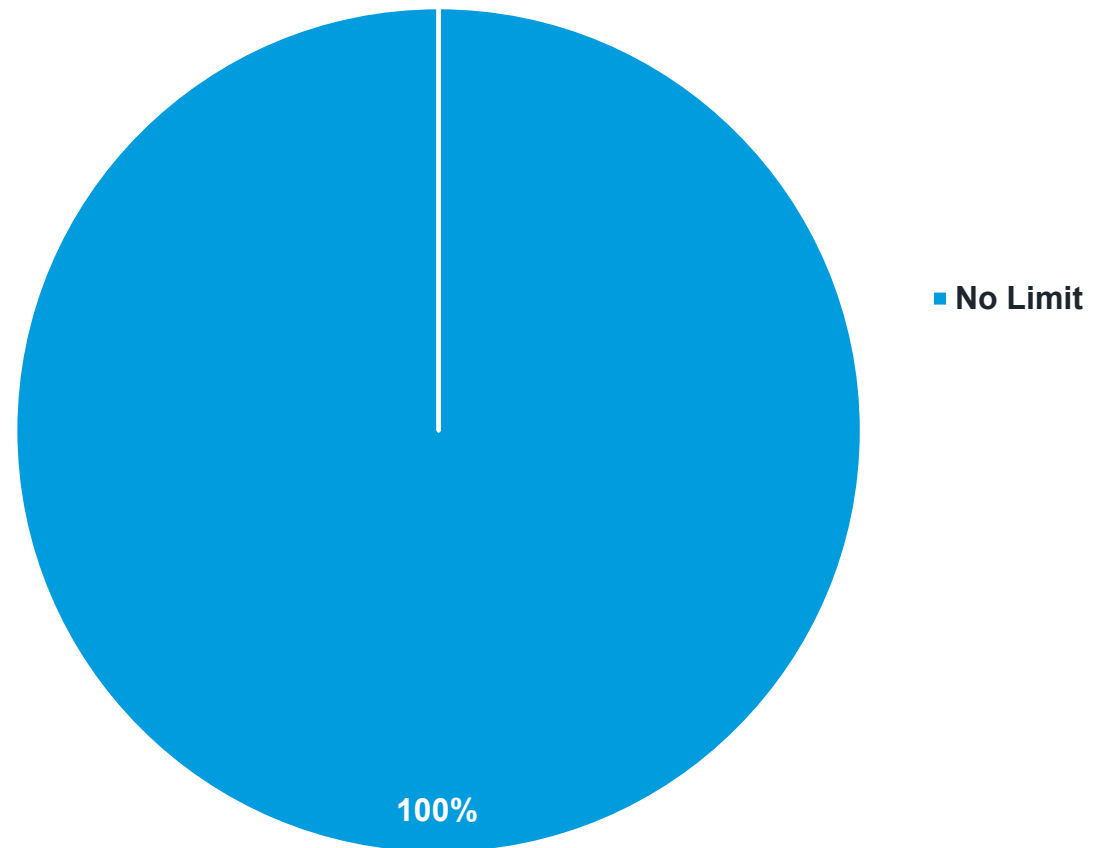
Limit on follow-on investments post-investment period (% of commitments)

We observe that 86% of the funds comprising our sample set have no percentage limitation on the amount of commitments that may be used for follow-on investments after the end of the investment period. This represents a slight decrease on our prior survey where 100% of the sampled funds had no such limitation. The other limitations that we see from this year's data are likely to have been as a result of the rate at which the relevant sponsors anticipate deploying capital towards the outset of their respective funds' lifecycle and/or negotiations with investors who want clarity on how much capital they may still be required to advance later on in the life of the fund.

As with the prior data, the next chart shows that no fund in our sample set had a time limit on making follow-on investments. Collectively, these data points are in keeping with the observations that we have made on prior pages that sponsors typically want the flexibility to keep more capital reserved for follow-ons to ensure that the fund can participate in later stage funding rounds to augment the value of prize assets.

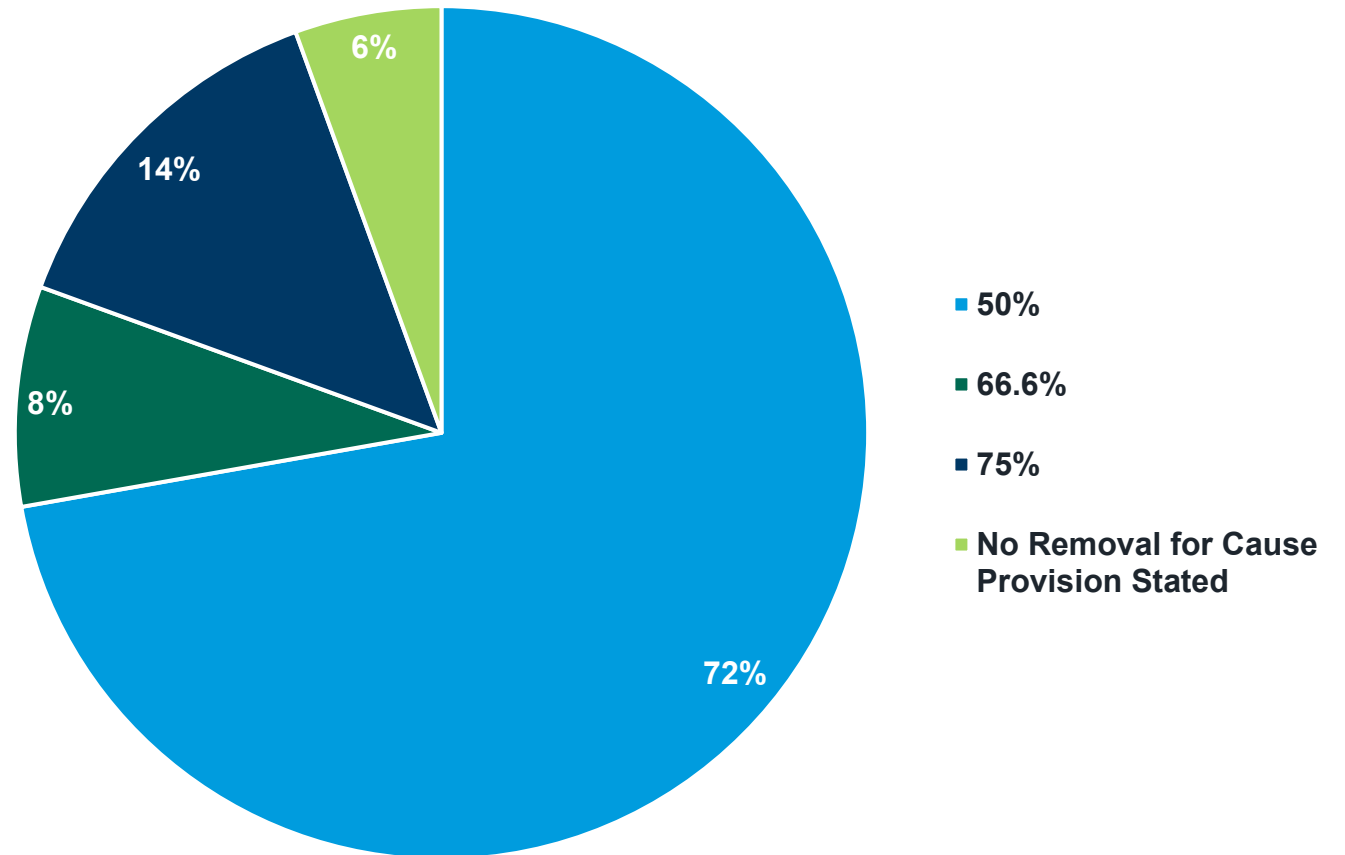


Limit on follow-on investments post investment period (months post investment period)



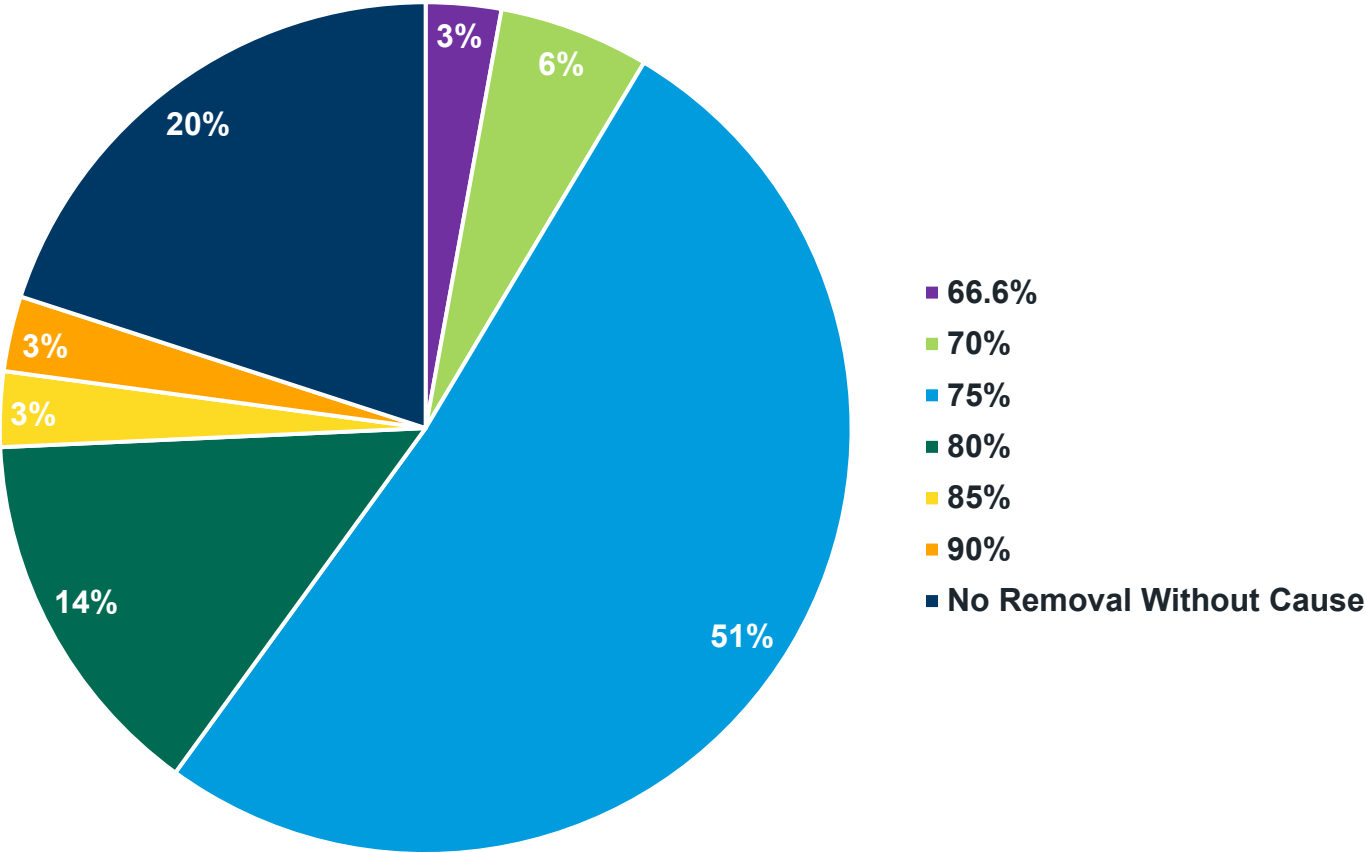
GP 'for cause' removal – Investor voting threshold (% of interests)

72% of the funds comprising our sample set require a majority vote to remove the sponsor following a cause removal even, markedly similar to the 75% observed in our previous survey data set. 22% of funds require a higher threshold of either two-thirds or 75% of commitments to vote for such removal, whilst 6% of funds do not allow for cause removal. Again, these latter three data points are substantially similar to the trends observed in the prior data set.



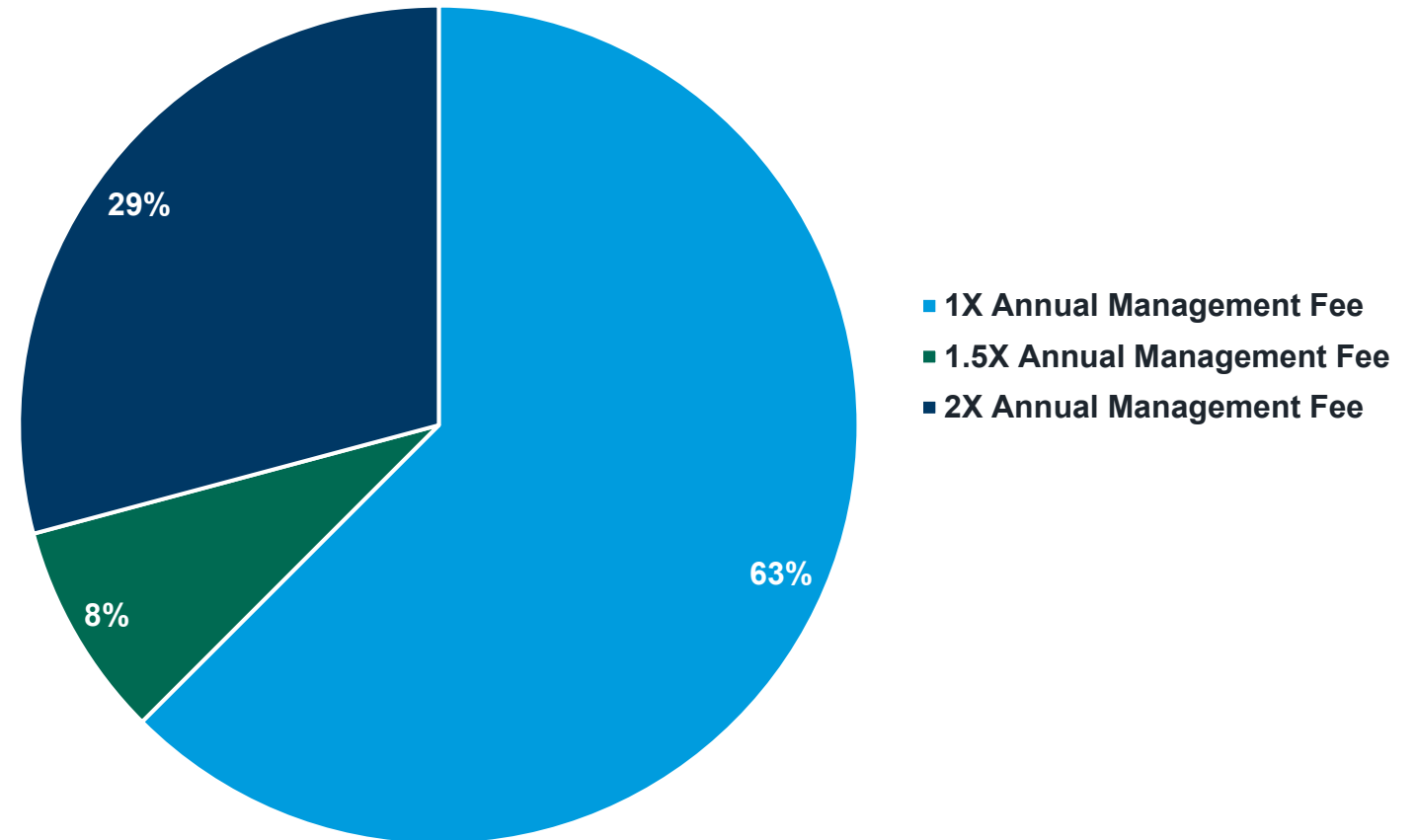
GP ‘without cause’ removal – Investor voting threshold (% of interests)

Where a no-fault removal provision was present, the most common voting threshold was at least 75% of commitments: 51% of the sampled funds which represents a noted increase of 38% of previously sampled funds. We then observe a variety of other voting thresholds up to an including one based on at least 90% of commitments and the fact that 20% of the funds from our sample set do not give investors the right to remove the sponsor without cause at all. Those funds that do not provide for such removal do, in some instances, still give the ability to terminate the fund early without cause.



GP ‘without cause’ removal – Manager termination payment

Where funds have a no-fault removal provision, most of the funds forming our sample set provide for a compensation payment equal to one year’s management fee – 63% of funds (relative to 68% in the prior data). As with the prior data, no funds provided for zero compensation. 8% of the sampled funds provide for 1.5x management fee (relative to 9% in the previous survey) and 29% of the sampled funds provide for 2x management fee (relative to 23% in the previous survey).





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UNDER THE MICROSCOPE

BUYOUT FUNDRAISING

MARKET

REPORT

EUROPE

Proskauer»

Data Methodology

Our sample contained 71 buy-out funds raised in 2022 and 2023. We collected 29 data points from these funds. The funds were all either specifically European-focused or had Europe as a key geography in their investment strategy. The target fund size of the funds reviewed ranged from €90 million to €25 billion, representing in total approximately €258 billion of capital.

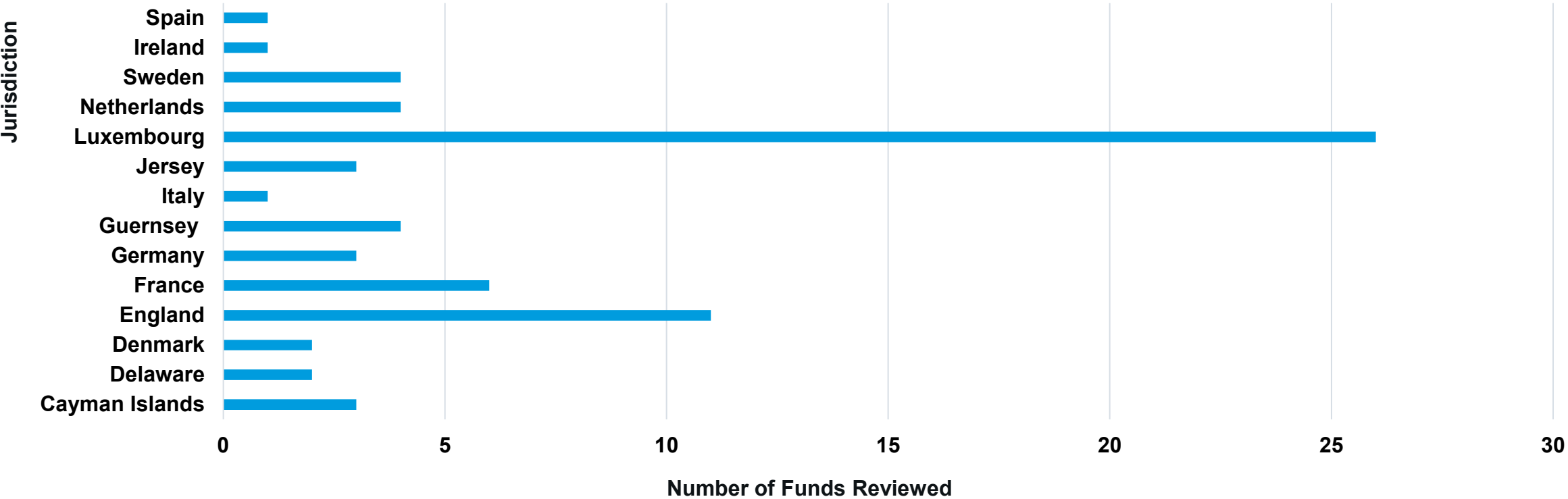
We analysed the terms in these funds on an aggregate basis and also sub-divided the data into four fund size groups: <€500 million; €500 million to €1.5 billion; €1.5 billion to €3.75 billion; and >€3.75 billion, to see how fund terms vary across fund sizes.



Jurisdiction of formation

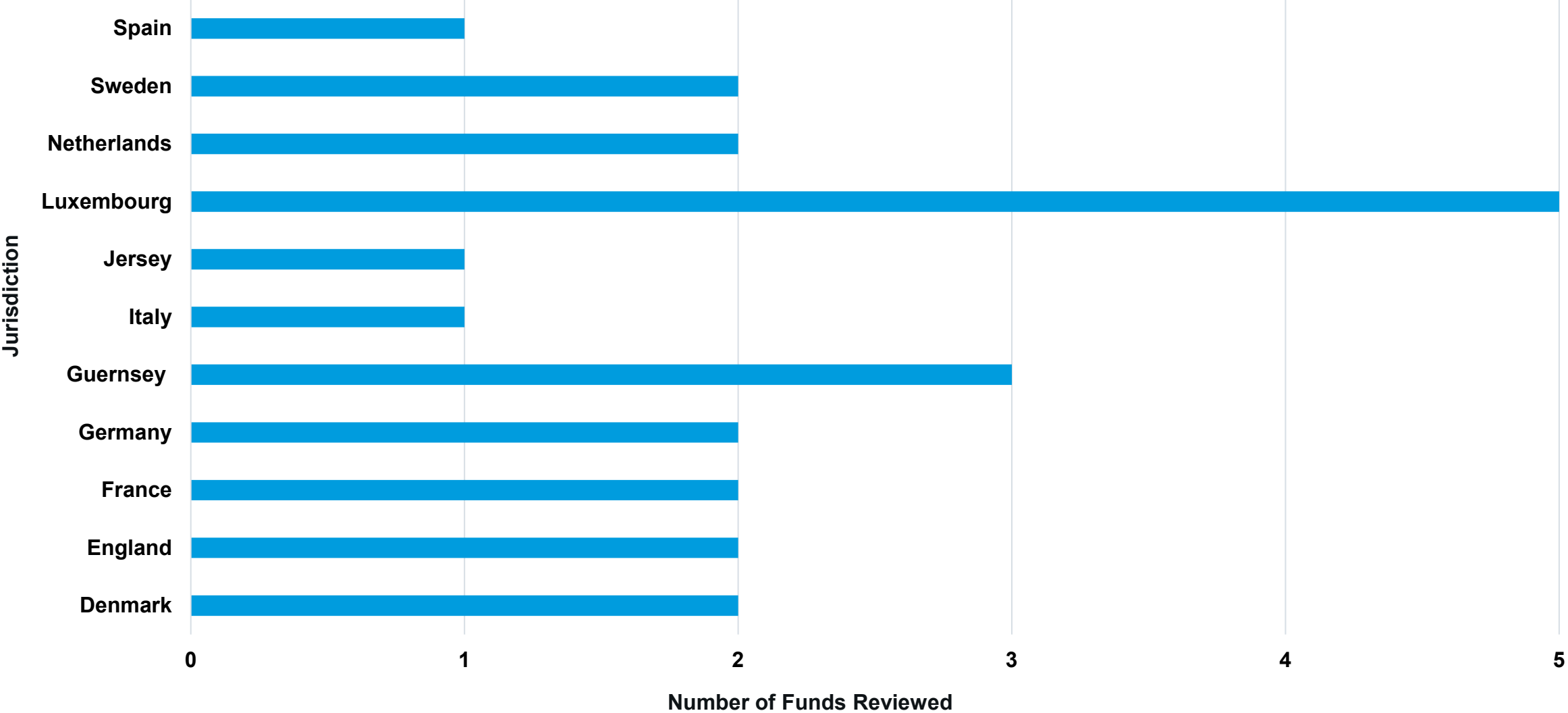
All Funds

Continuing from recent years, the data this year shows that Luxembourg is again in the top spot, with the split across other jurisdictions also similar to last year. Luxembourg dominates all fund sizes, with other leading jurisdictions being the UK, the Channel Islands, Sweden, the Netherlands, France, Germany and the Cayman Islands. In our view, investor familiarity plays a big part in this, particularly for North American investors committing to European funds. Additionally, the size of the fund administration ecosystem in Luxembourg makes it an obvious choice for those managers seeking to raise a fund with access to the AIFMD marketing passport. As such 9 out of the 20 funds surveyed over €3.75bn used Luxembourg as their main jurisdiction of choice.



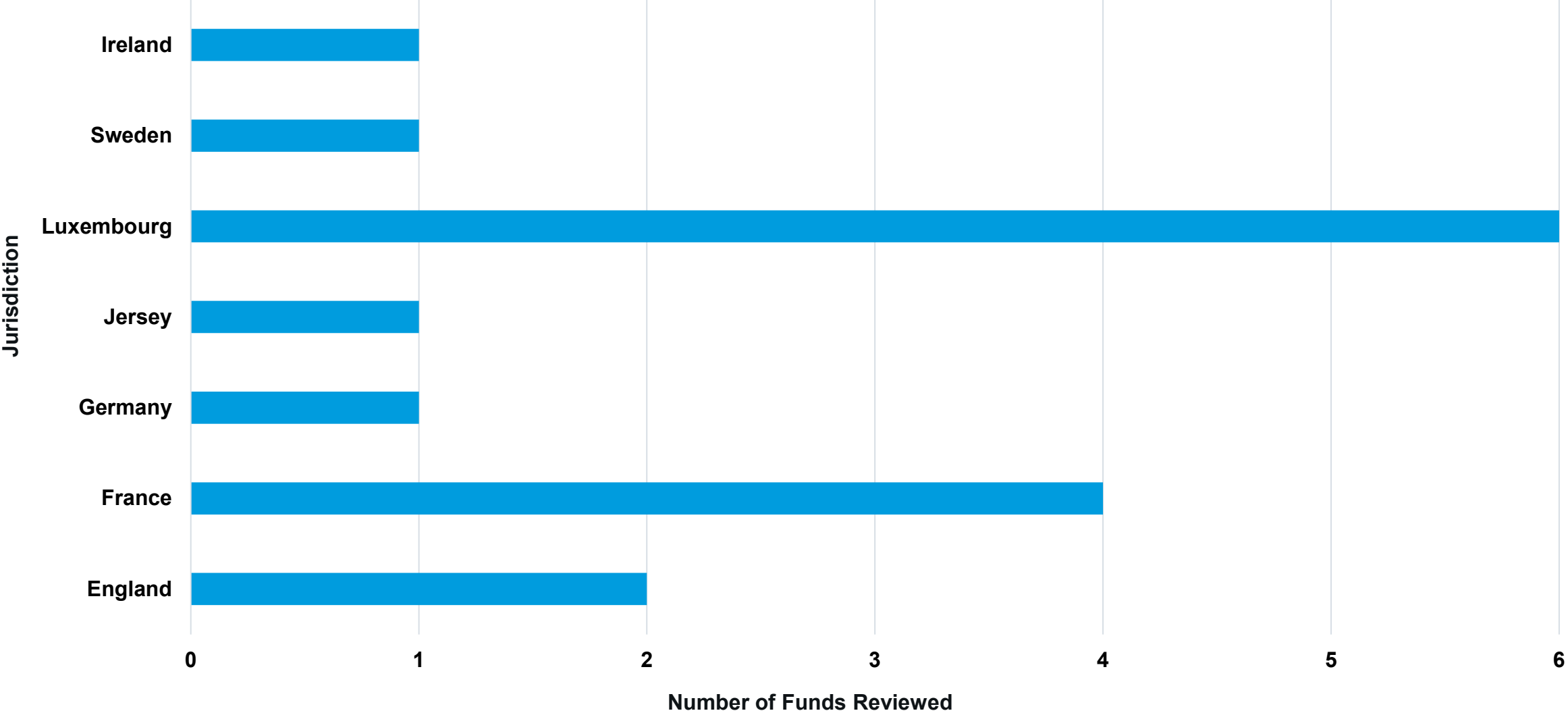
Jurisdiction of formation

≤€500M



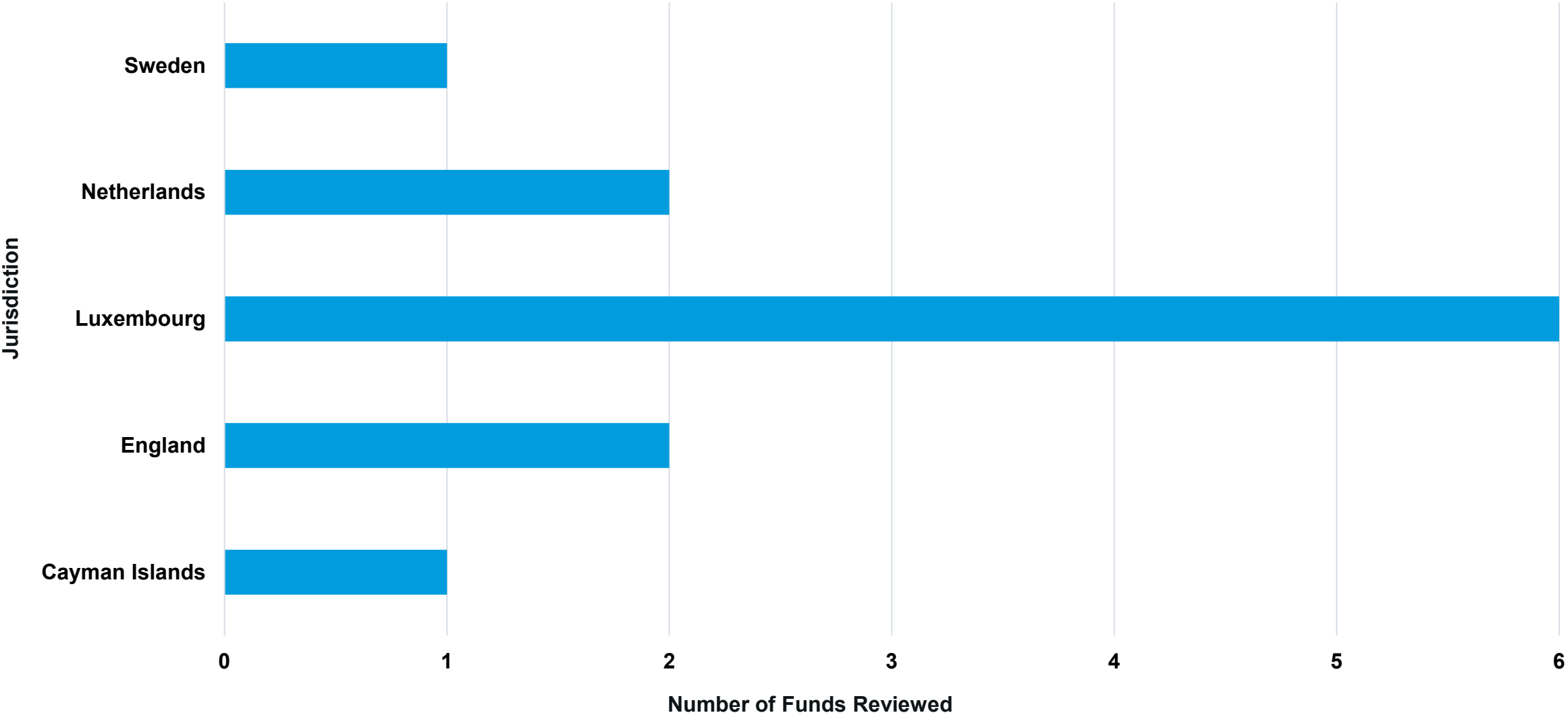
Jurisdiction of formation

>€500M-€1.5B



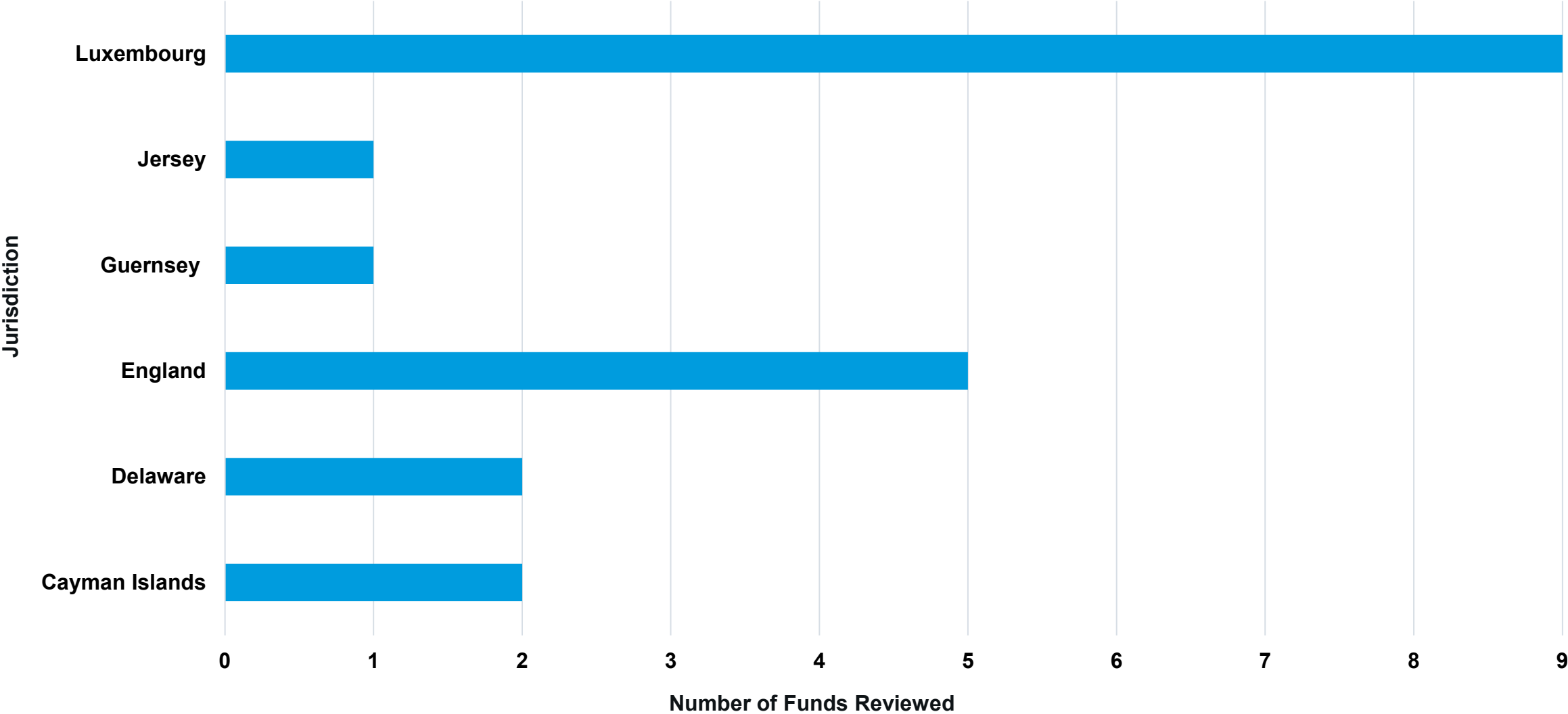
Jurisdiction of formation

>€1.5B-€3.75B



Jurisdiction of formation

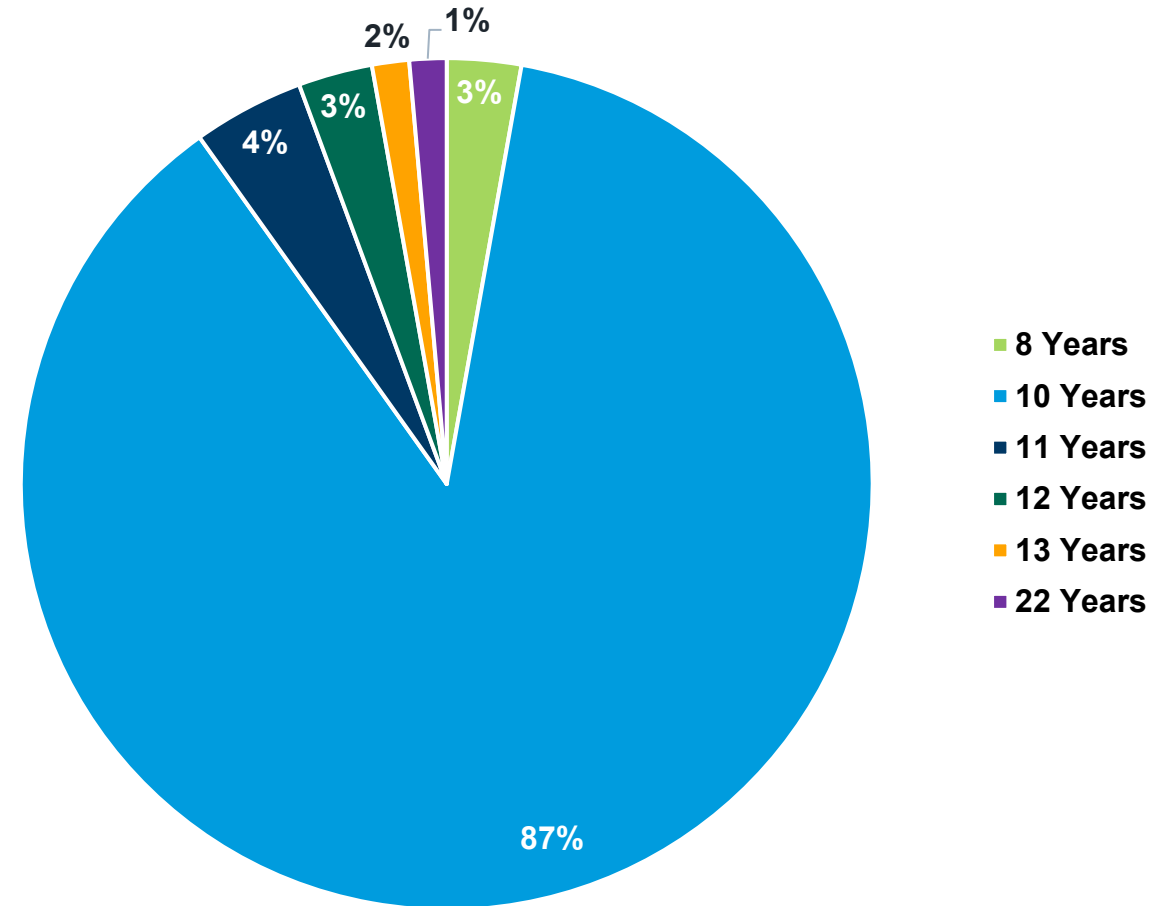
>€3.75B



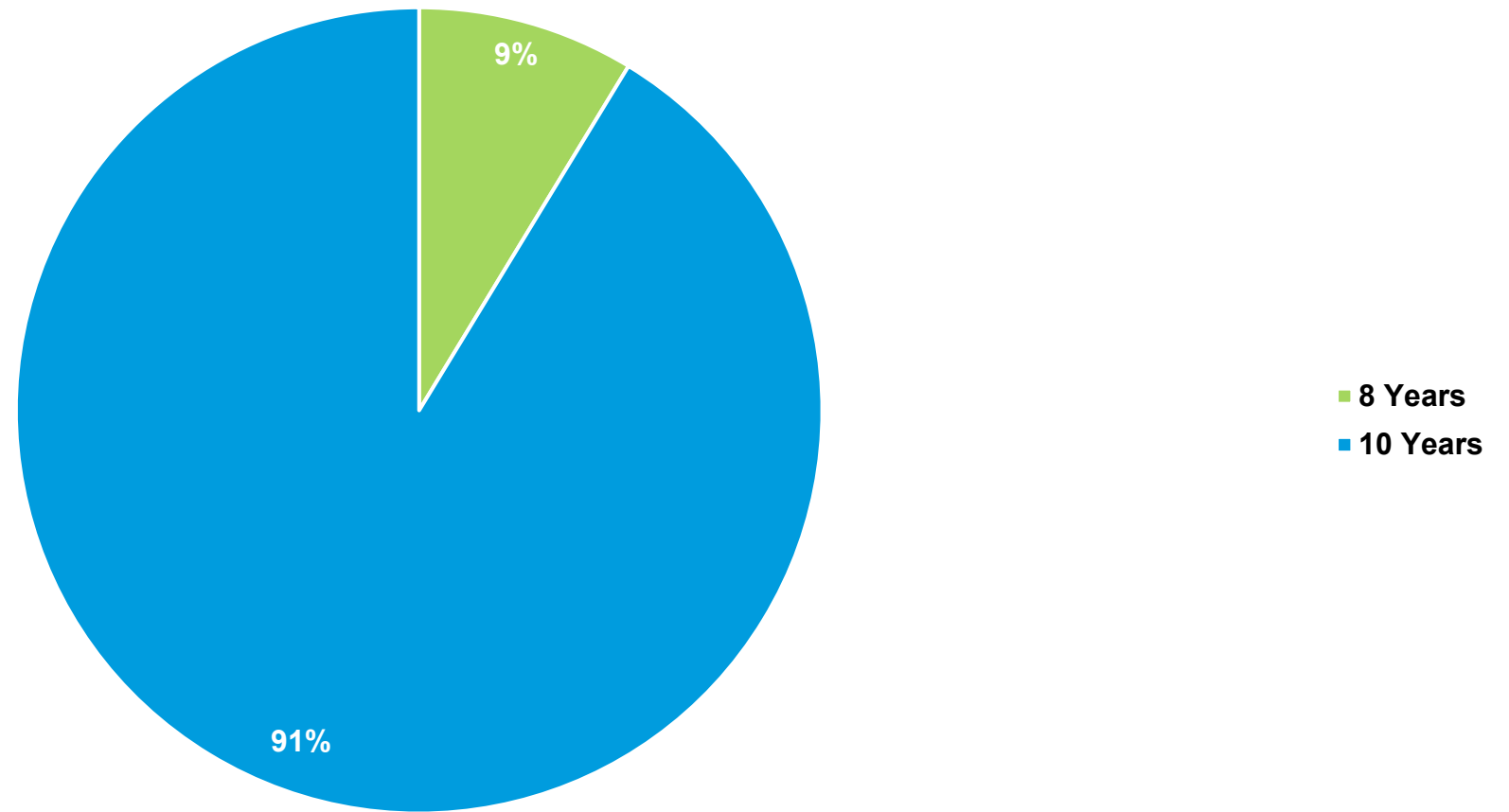
Initial term

All Funds

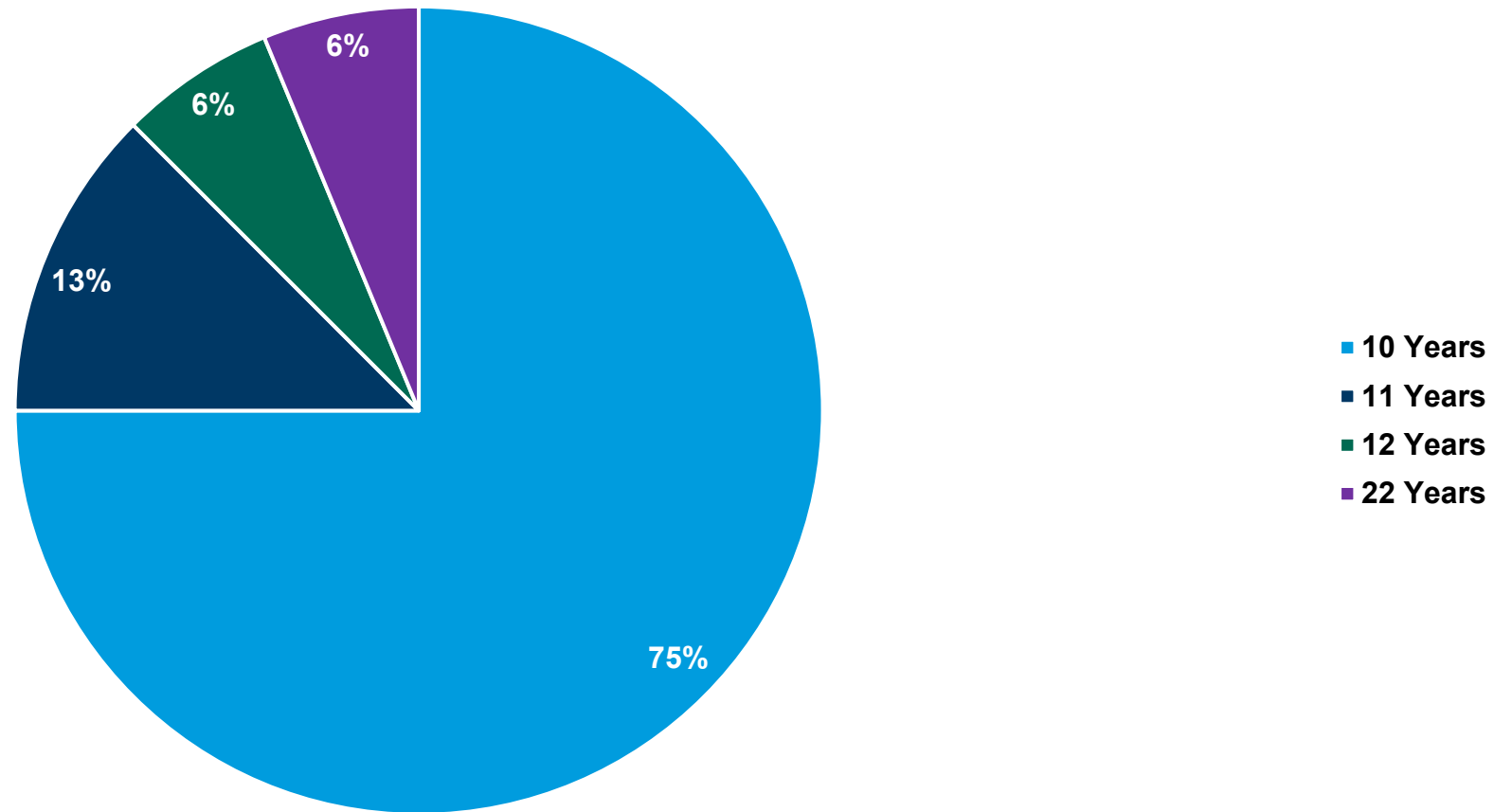
A significant majority of funds (87%) continue to have an initial term of 10 years. A small minority of funds across size brackets opt for longer terms, however, the market continues to accommodate longer hold periods and longer fund lives by relaxing extension mechanisms, or on a more ad hoc basis by using continuation funds and other end of life solutions. The range of GP-led liquidity options now available to sponsors has relieved pressure on fund terms and so we do not expect a marked lengthening in the term of traditional buyout funds in fund terms in the coming years.



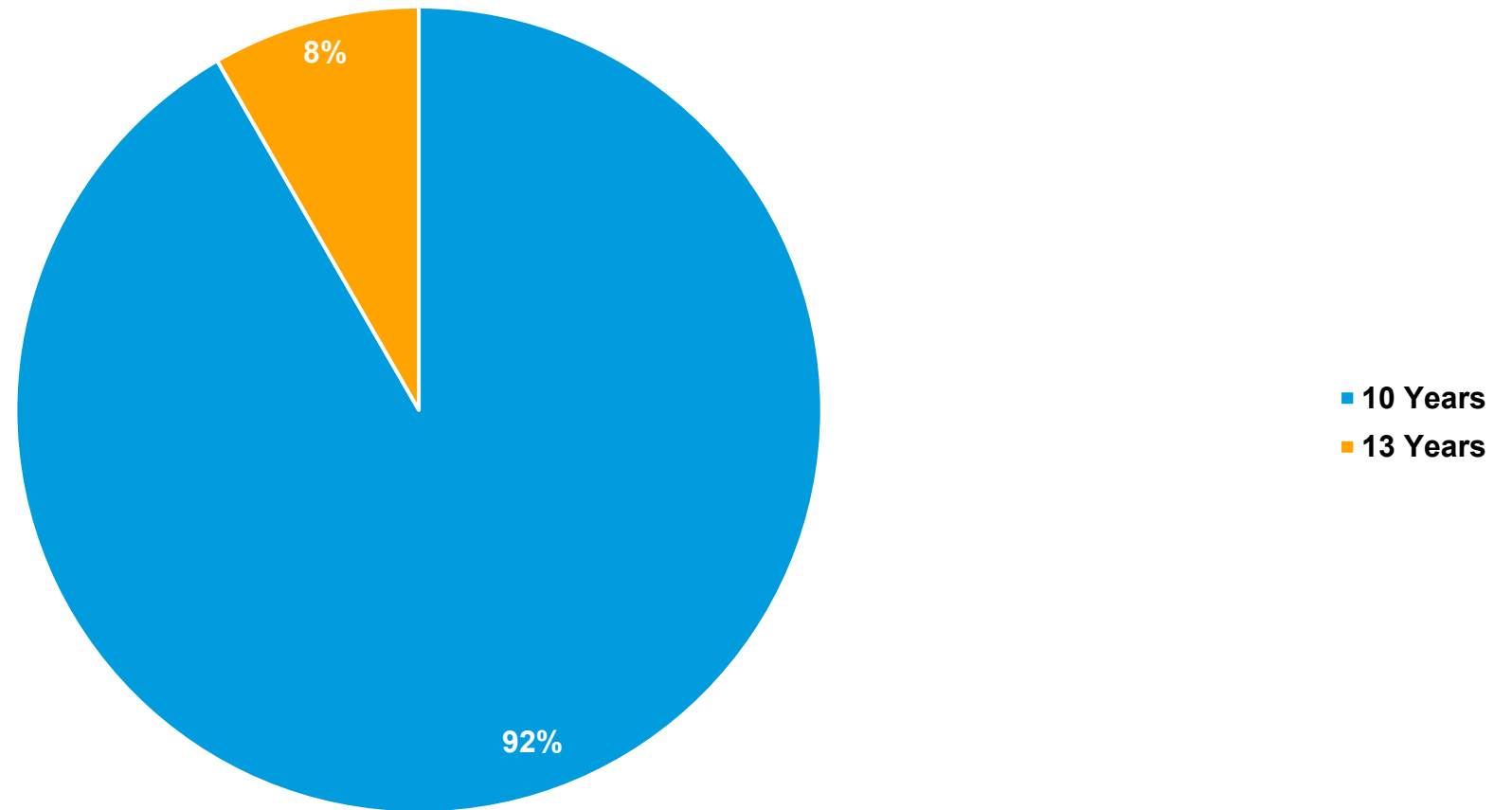
Initial term ≤€500M



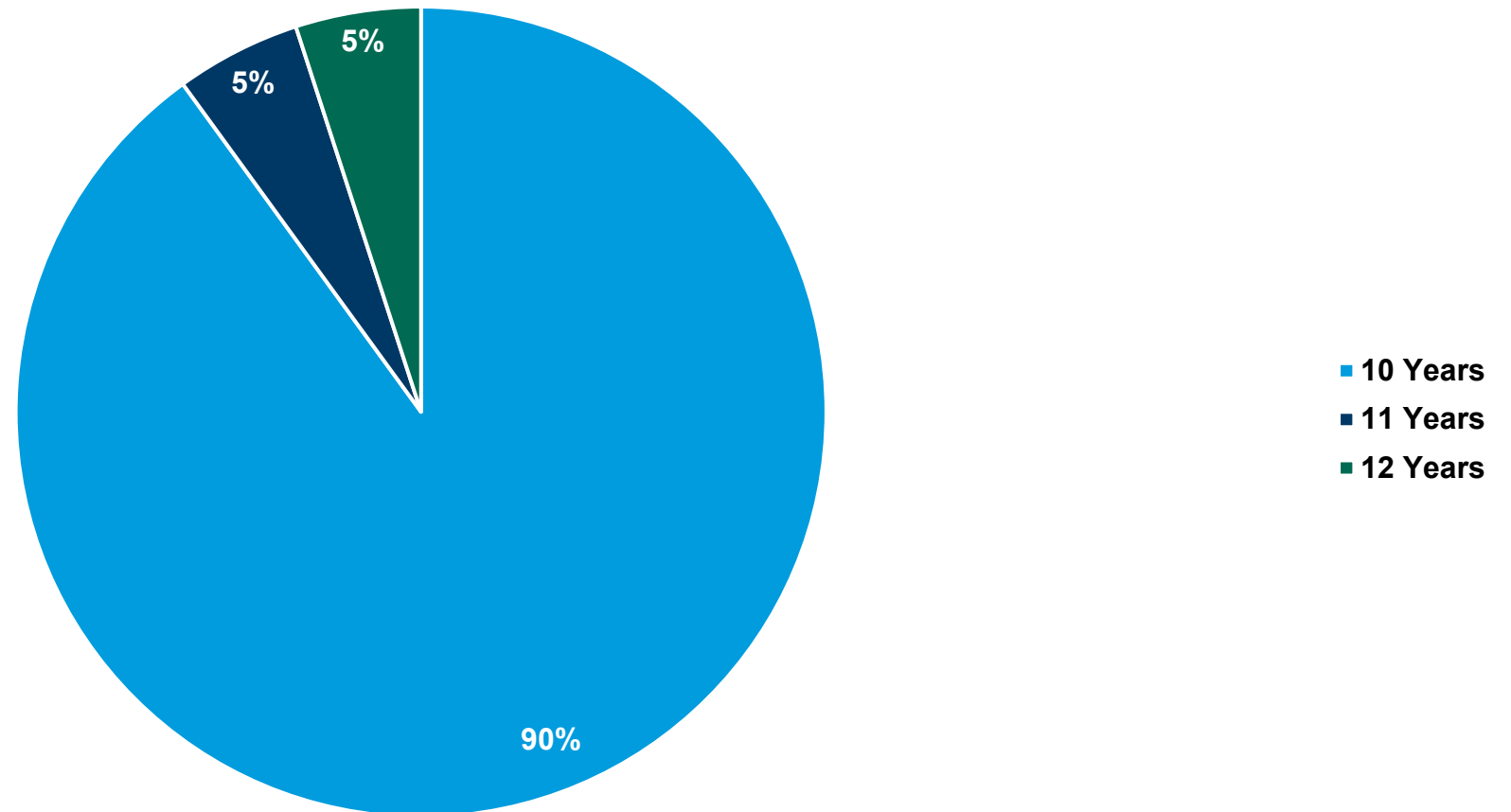
Initial term >€500M-€1.5B



Initial term >€1.5B-€3.75B



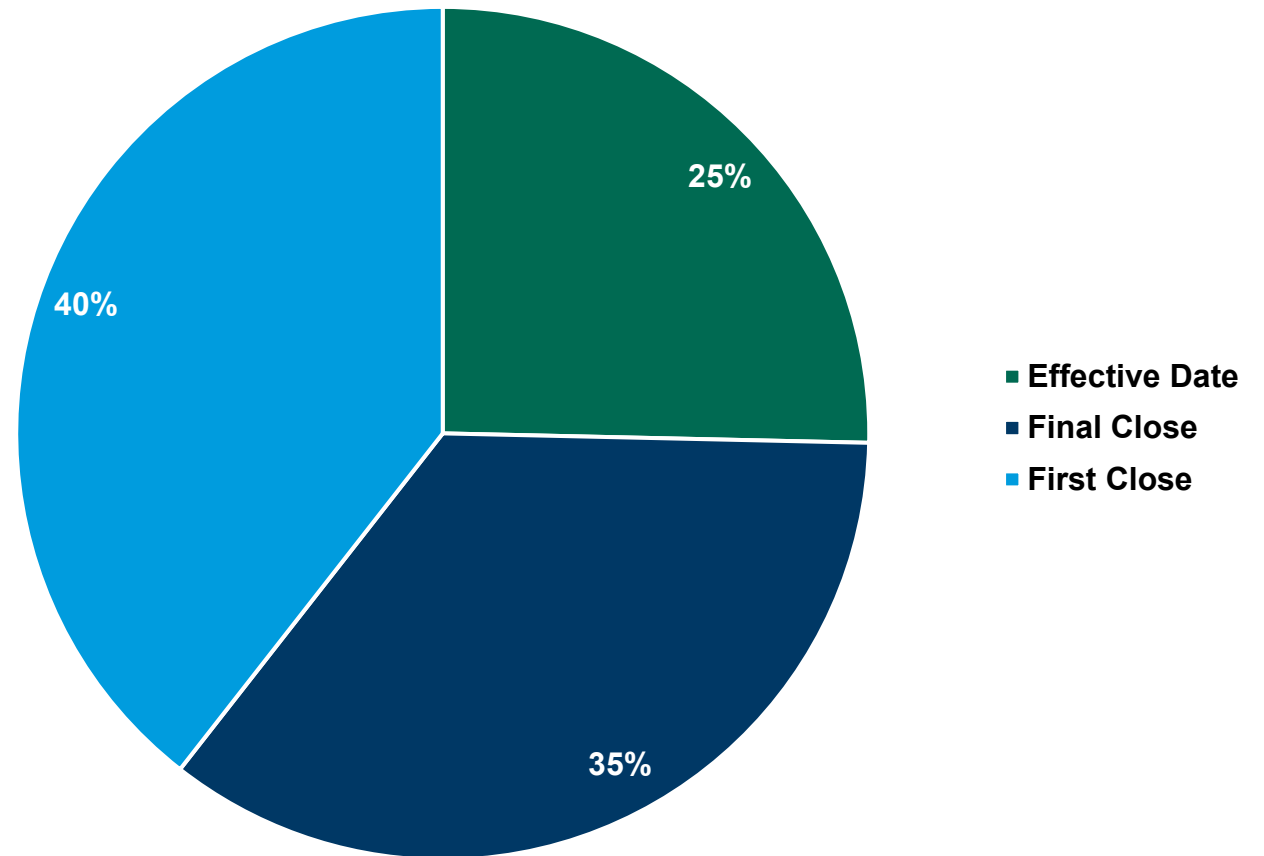
Initial term >€3.75B



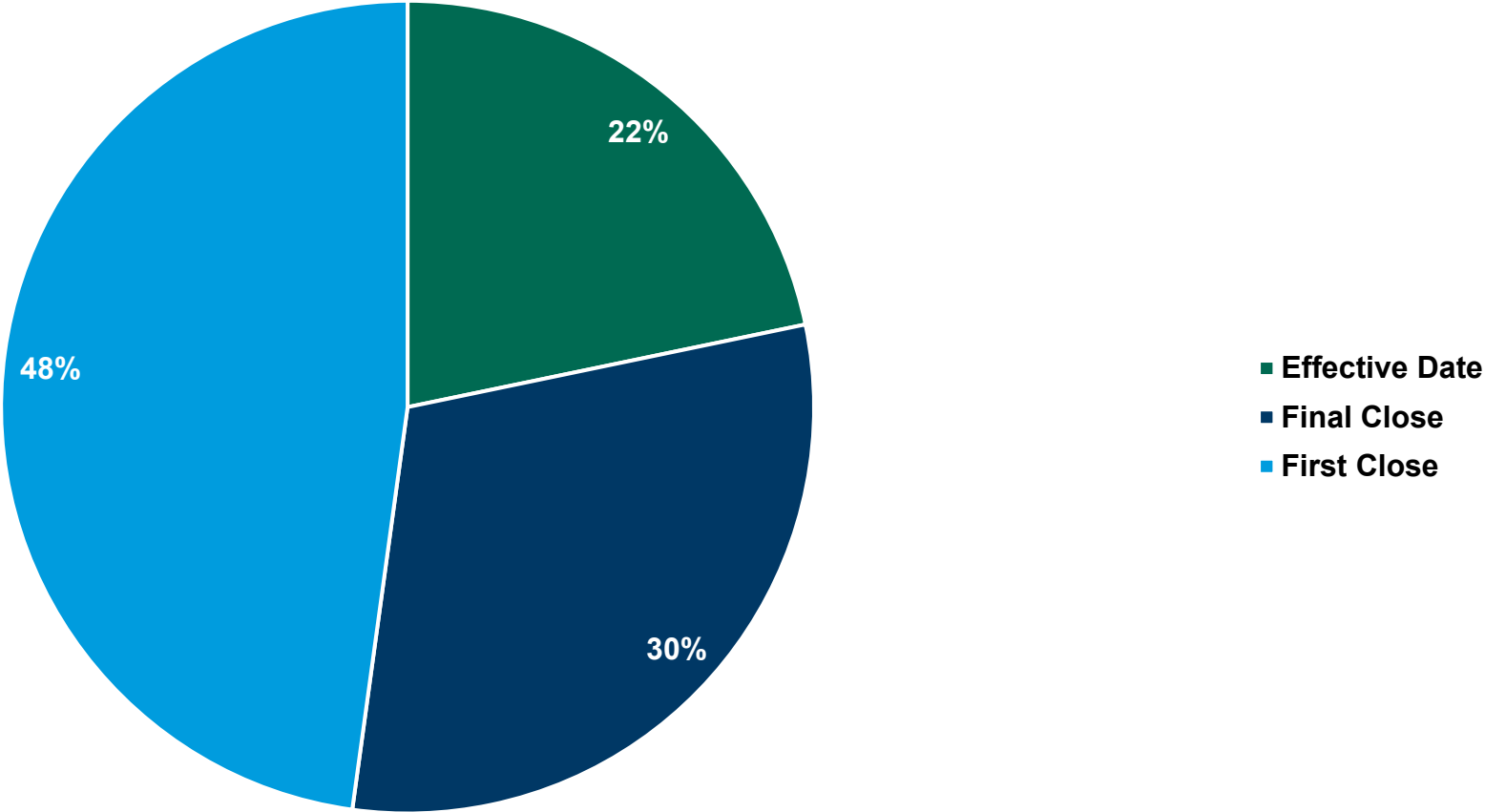
Initial term begins from All Funds

When considering how long a fund's term is in practice, as well as looking at the headline figure in the LPA, a key factor will be the date from which the term's end date is calculated. This will generally be one of three dates: the initial closing date, the final closing date, or another date (which we refer to as an 'effective date') specified by the manager, usually being the date of the first investment or the date the manager starts investment activities for the fund.

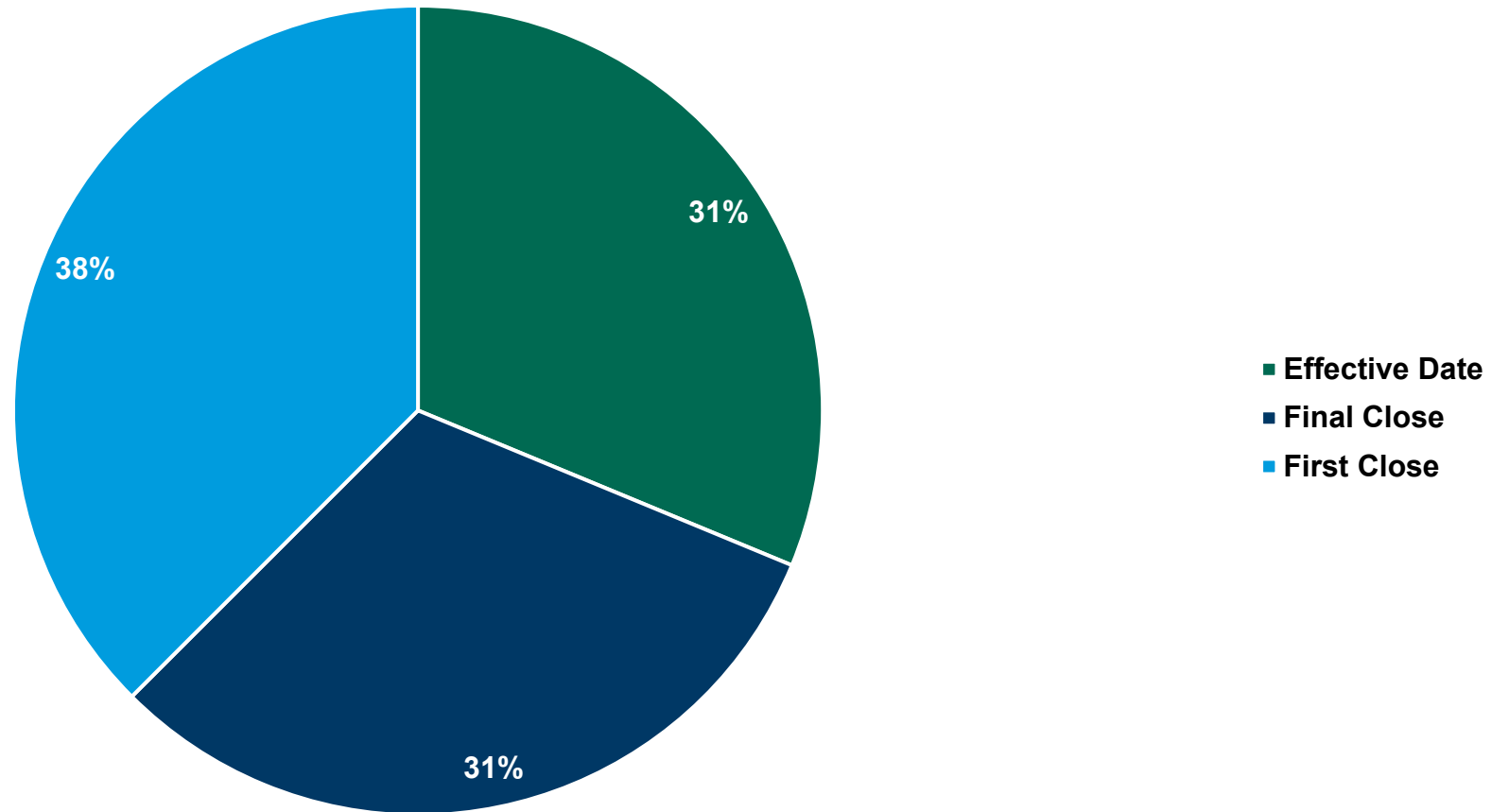
There was a small change from last year's data, with 60% of funds' terms beginning from the final closing date or the effective date (down from 70% last year). Looking back over the past several years, we see gradually more of the funds in our data set moving away from final close towards an effective date or indeed keeping the initial closing date as the start of the fund's term. The largest funds have the most favourable positions here, with a minority (35%) of funds over €3.75bn tied to first closing compared to 48% of funds below €500m.



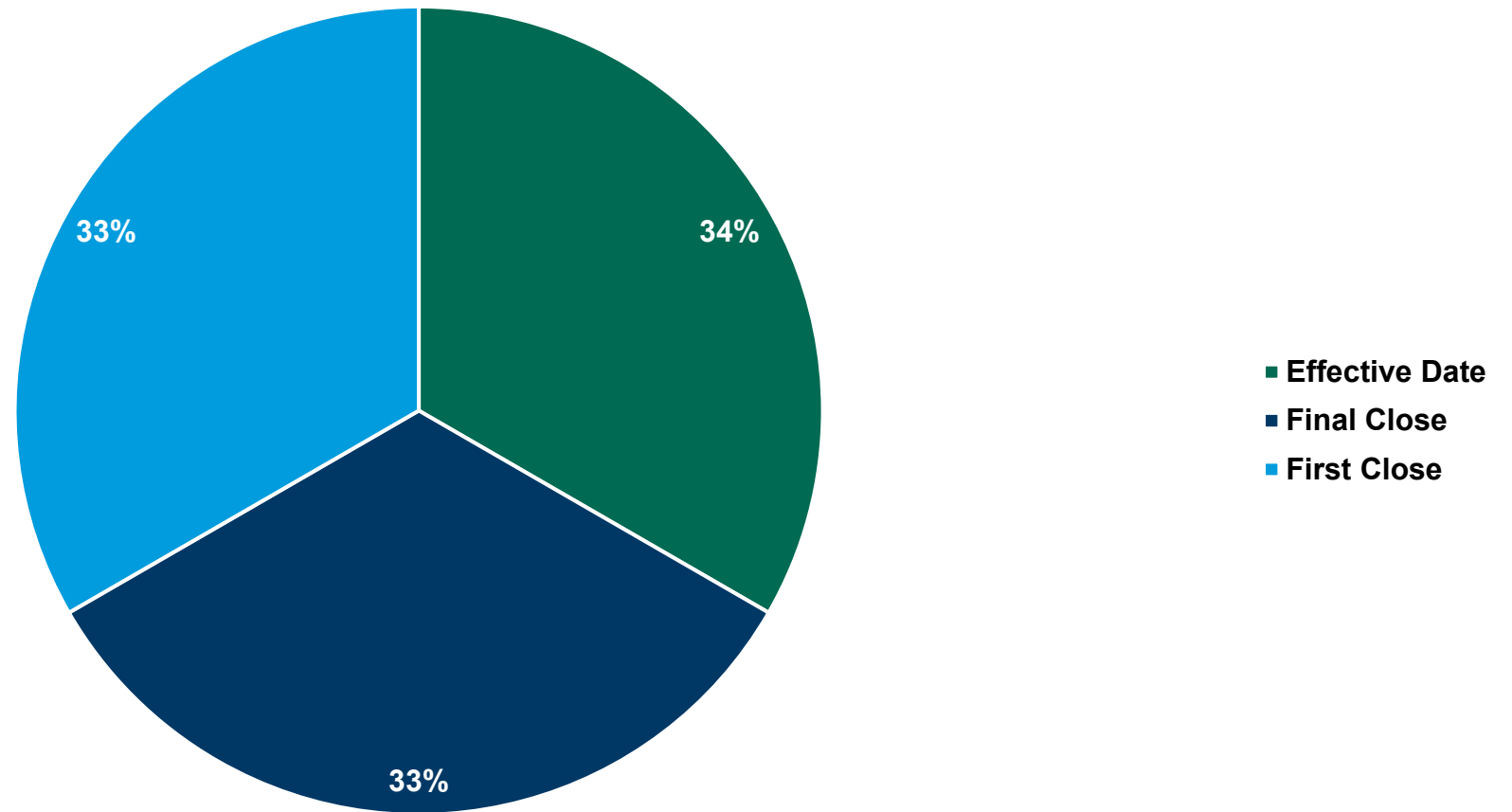
Initial term begins from
≤€500M



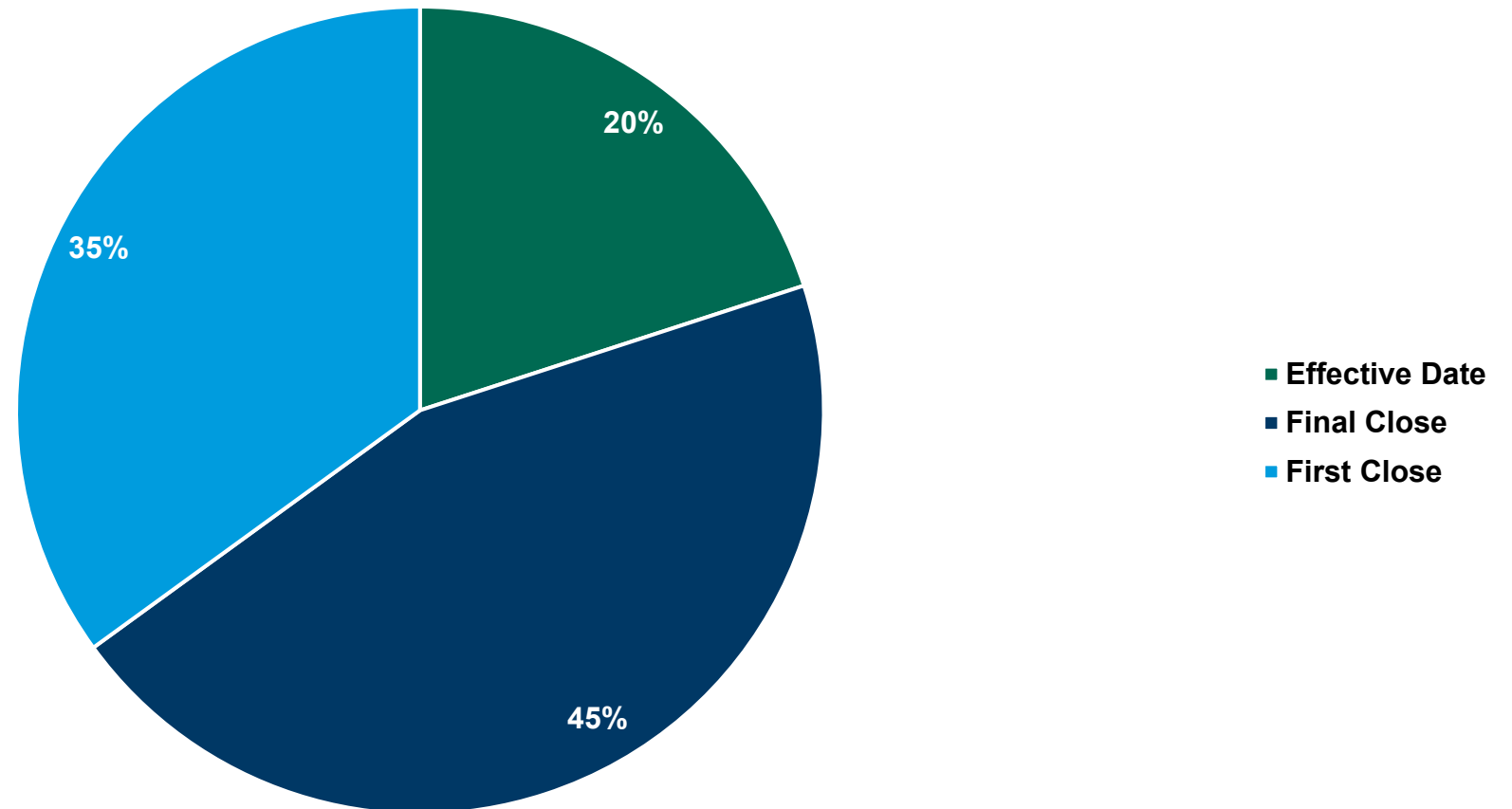
Initial term begins from >€500M-€1.5B



Initial term begins from >€1.5B-€3.75B



Initial term begins from >€3.75B

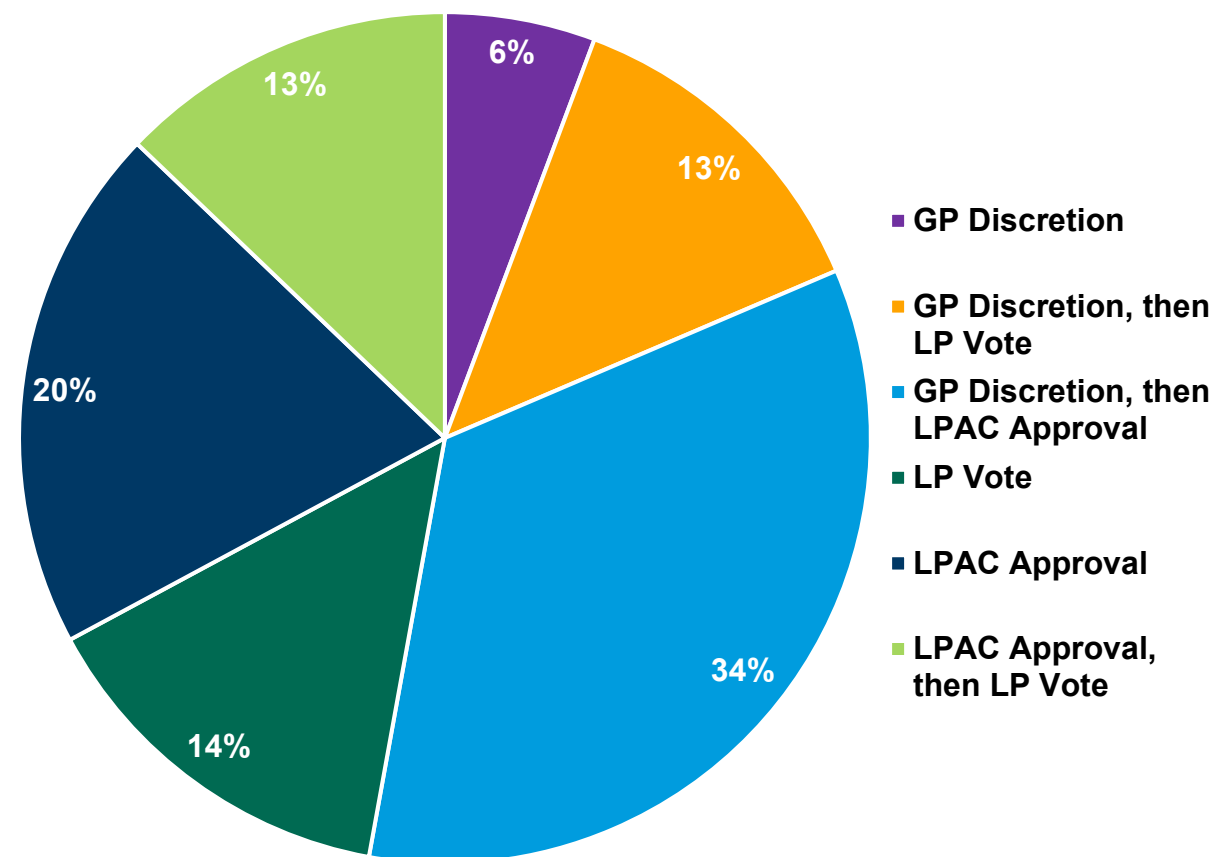


Approval required for extension of term

All Funds

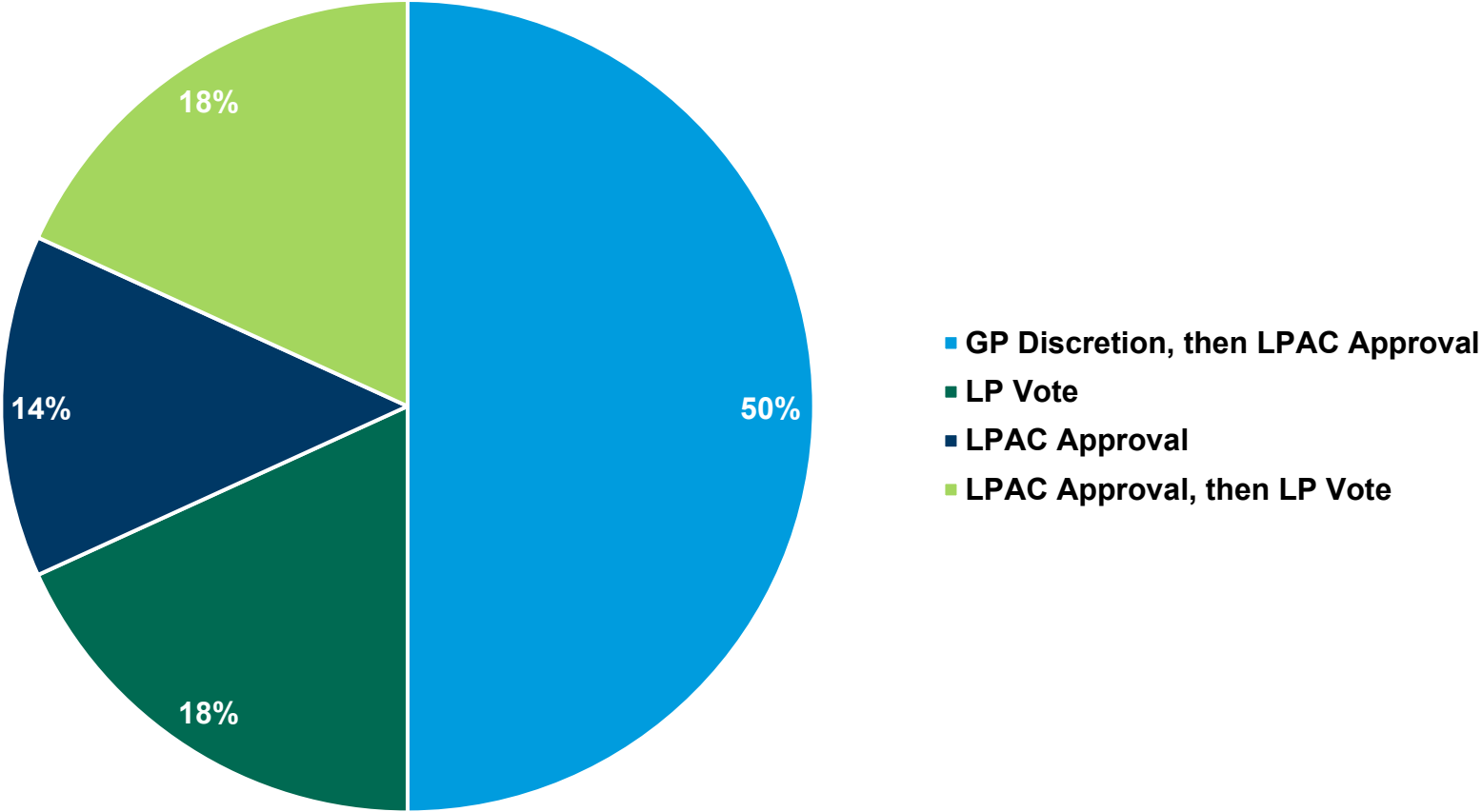
A variety of mechanisms continue to be used for extending the initial term. In recent years, there has been an increase in the number of funds that give the GP discretion in relation to at least one extension (53% this year and 54% last year, up from 41% and 36% in the two years prior to that), and this trend is clear across all fund sizes, even the largest. We continue to see increasing relaxation of extension provisions in the GP's favour; where the GP has initial discretion, this is more and more likely to be followed by an LPAC approval for further extensions, rather than a vote of LPs. Even where the GP has no discretion, we are seeing a relaxation of consent requirements in the same way, with less LP-wide involvement in such decisions across all fund sizes. This year the LPAC are involved in term extensions in some form in 60% of funds above €3.75bn and 58% of funds between €1.5-3.75bn.

As mentioned above, this increased flexibility given to the GP is a way for the market to deal with the expectation of longer fund terms without changing the headline initial term. Discussions with investors around relaxing term extension provisions are invariably linked to negotiations relating to the management fee payable during any extension period.



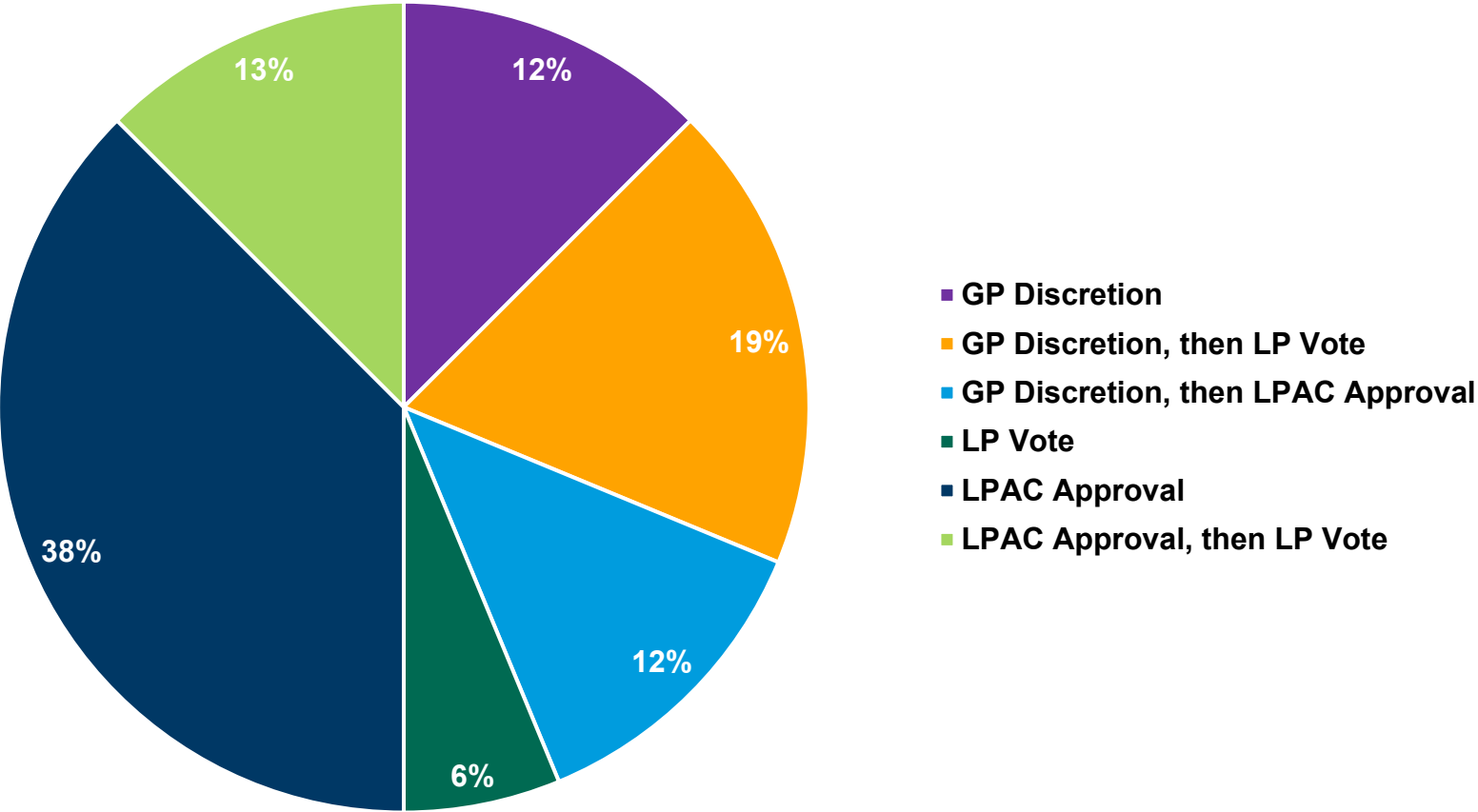
Approval required for extension of term

≤€500M



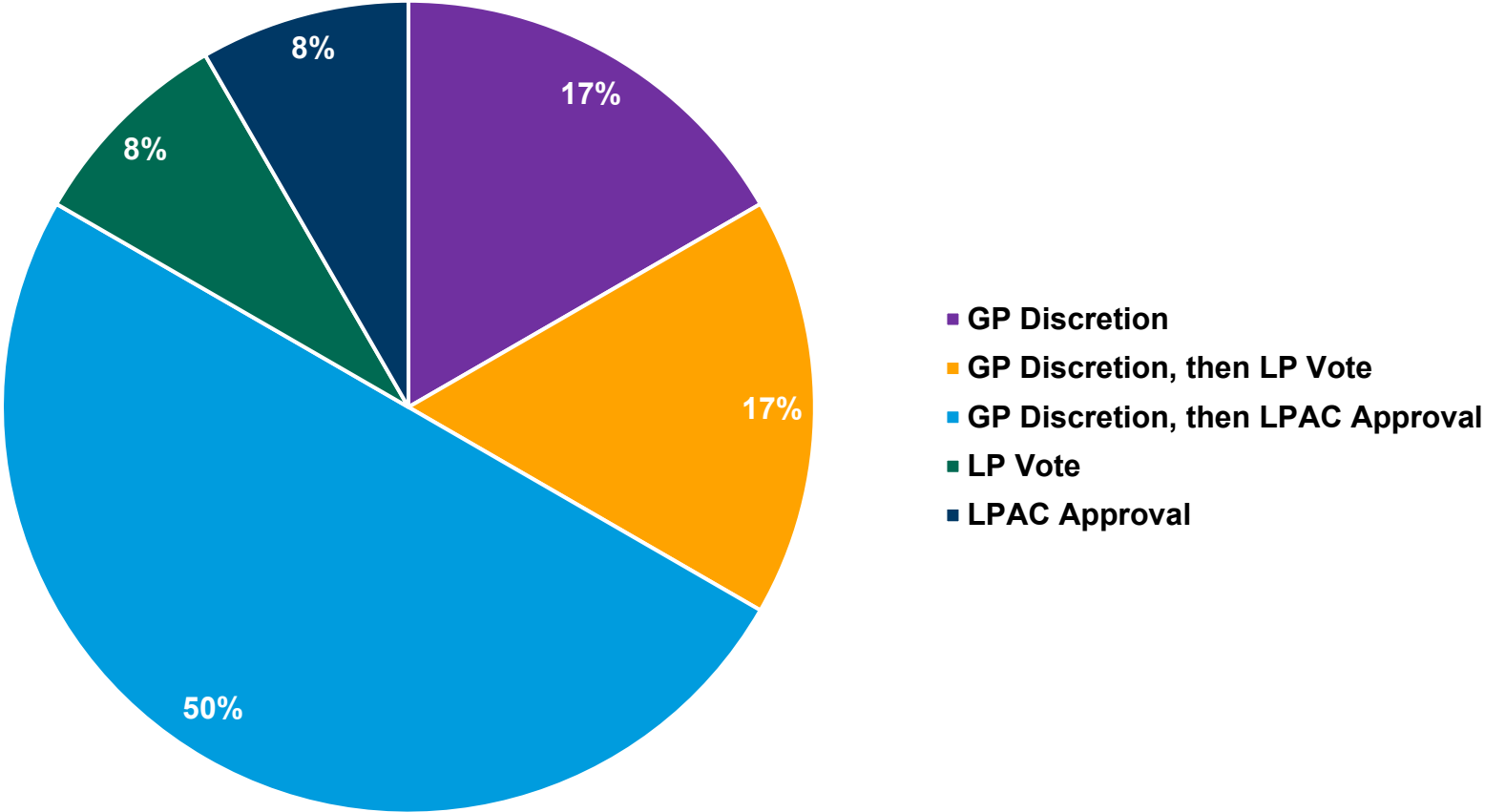
Approval required for extension of term

>€500M-€1.5B



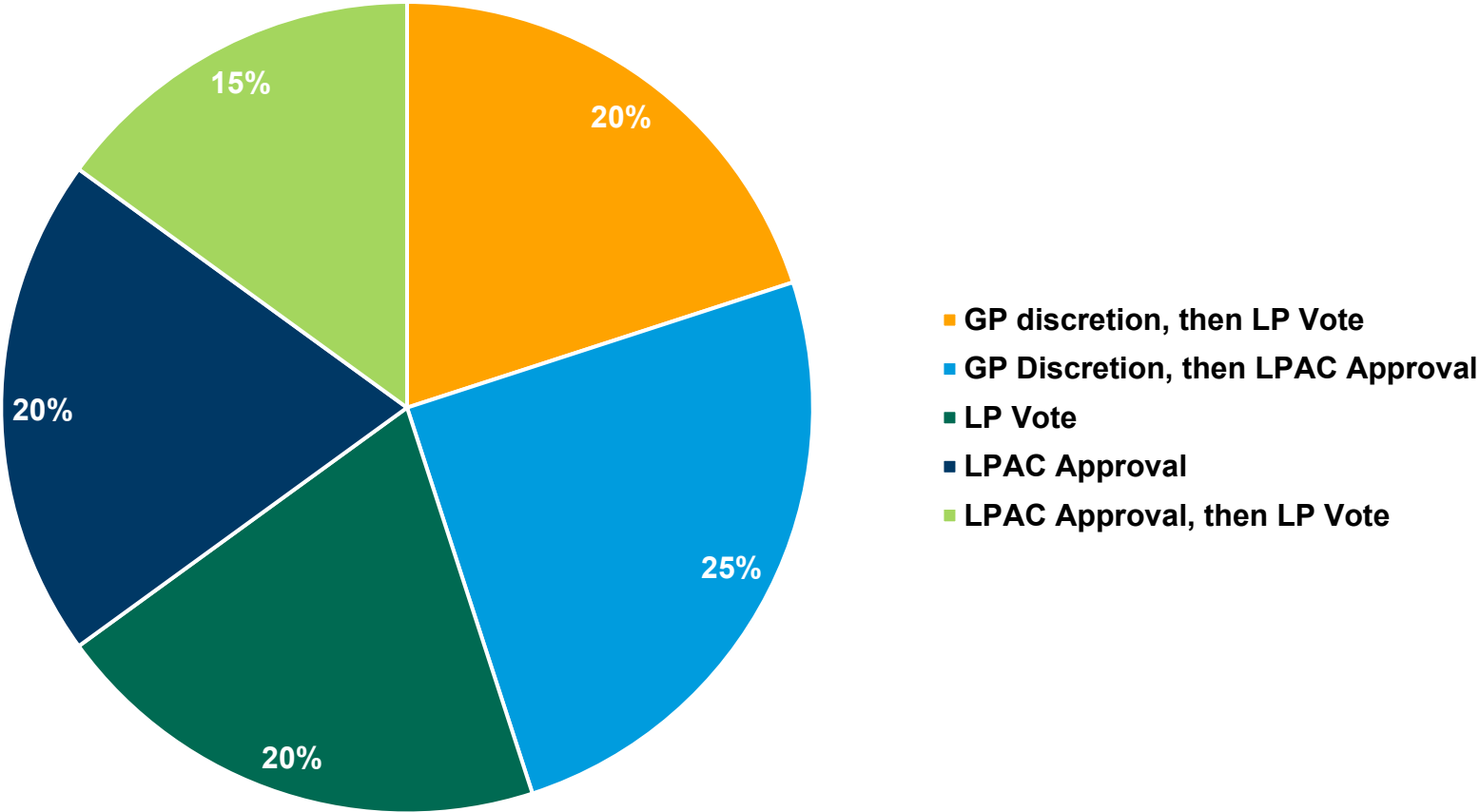
Approval required for extension of term

>€1.5B-€3.75B



Approval required for extension of term

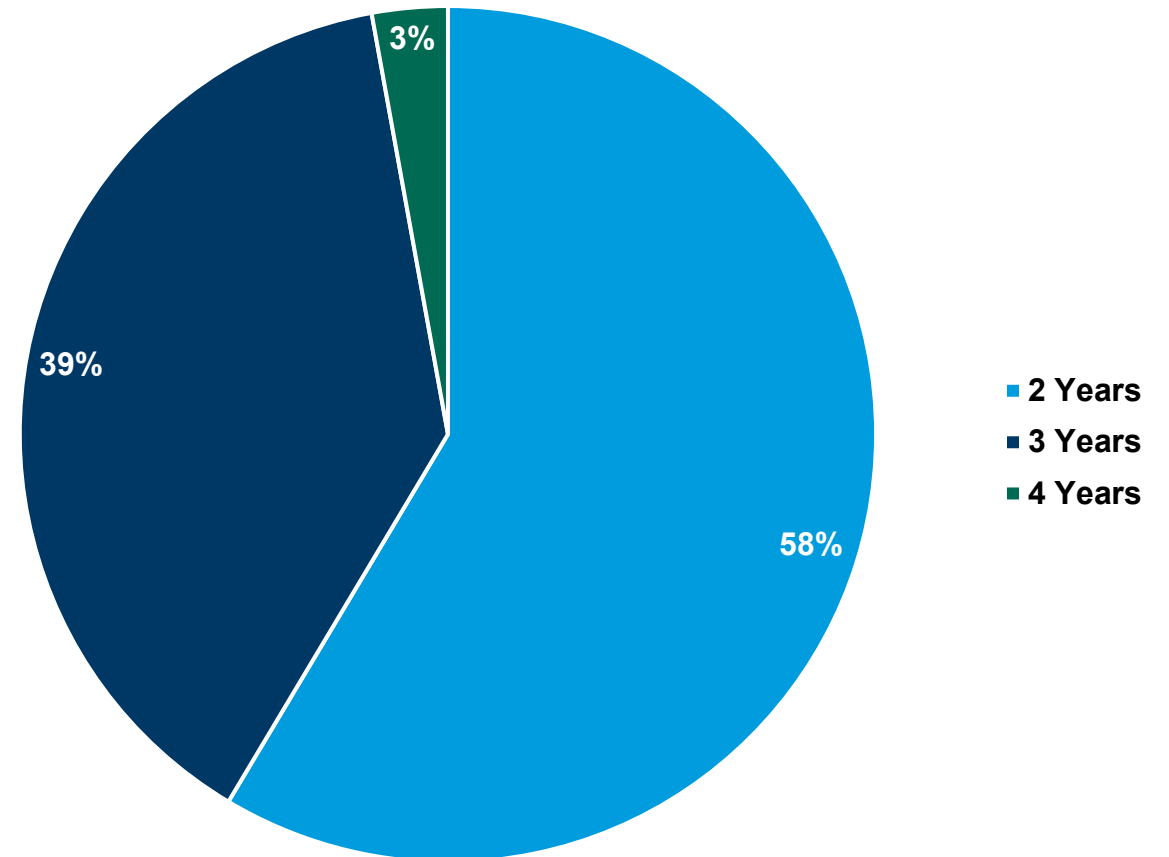
>€3.75B



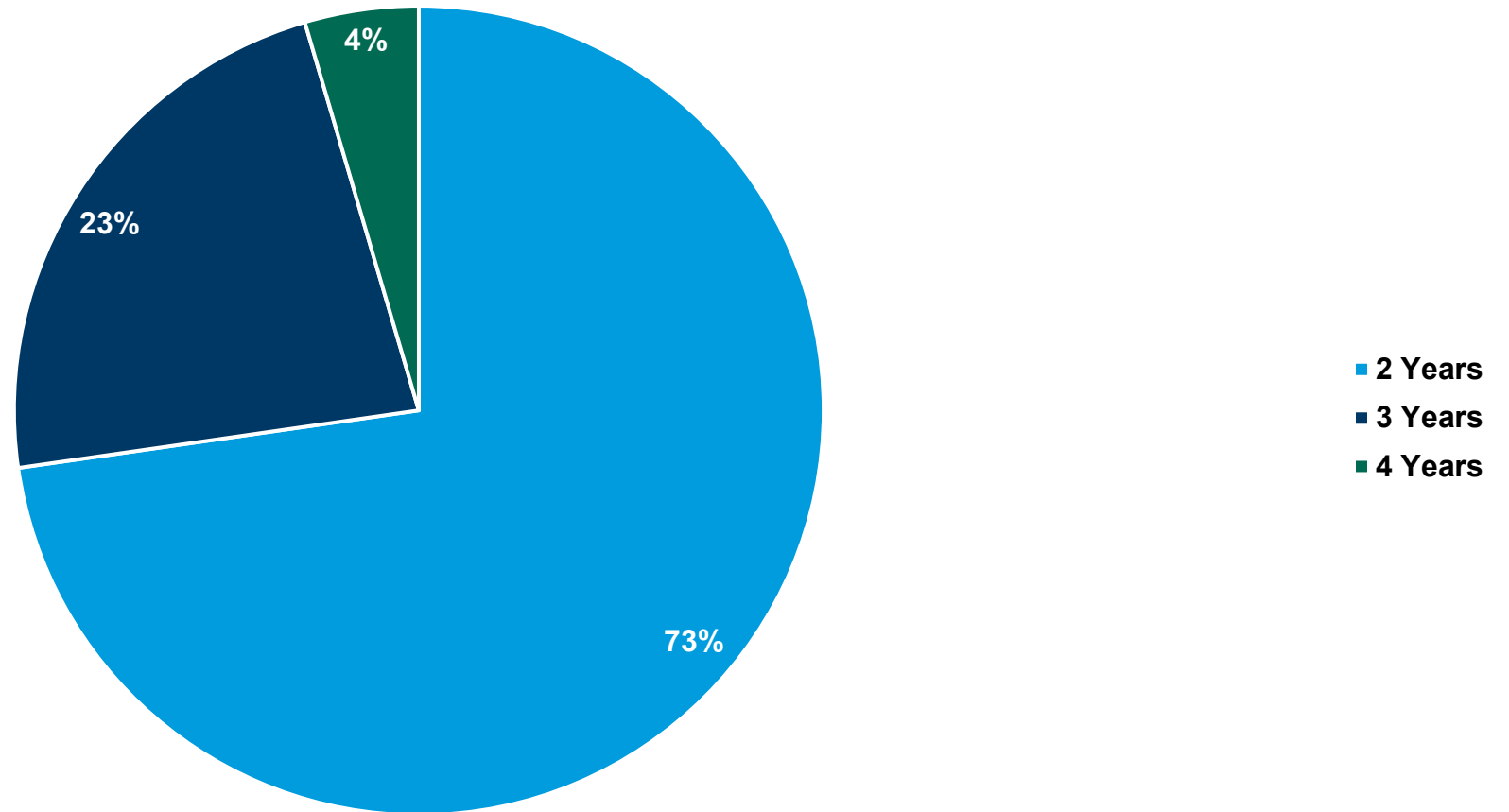
Maximum period of extensions of term

All Funds

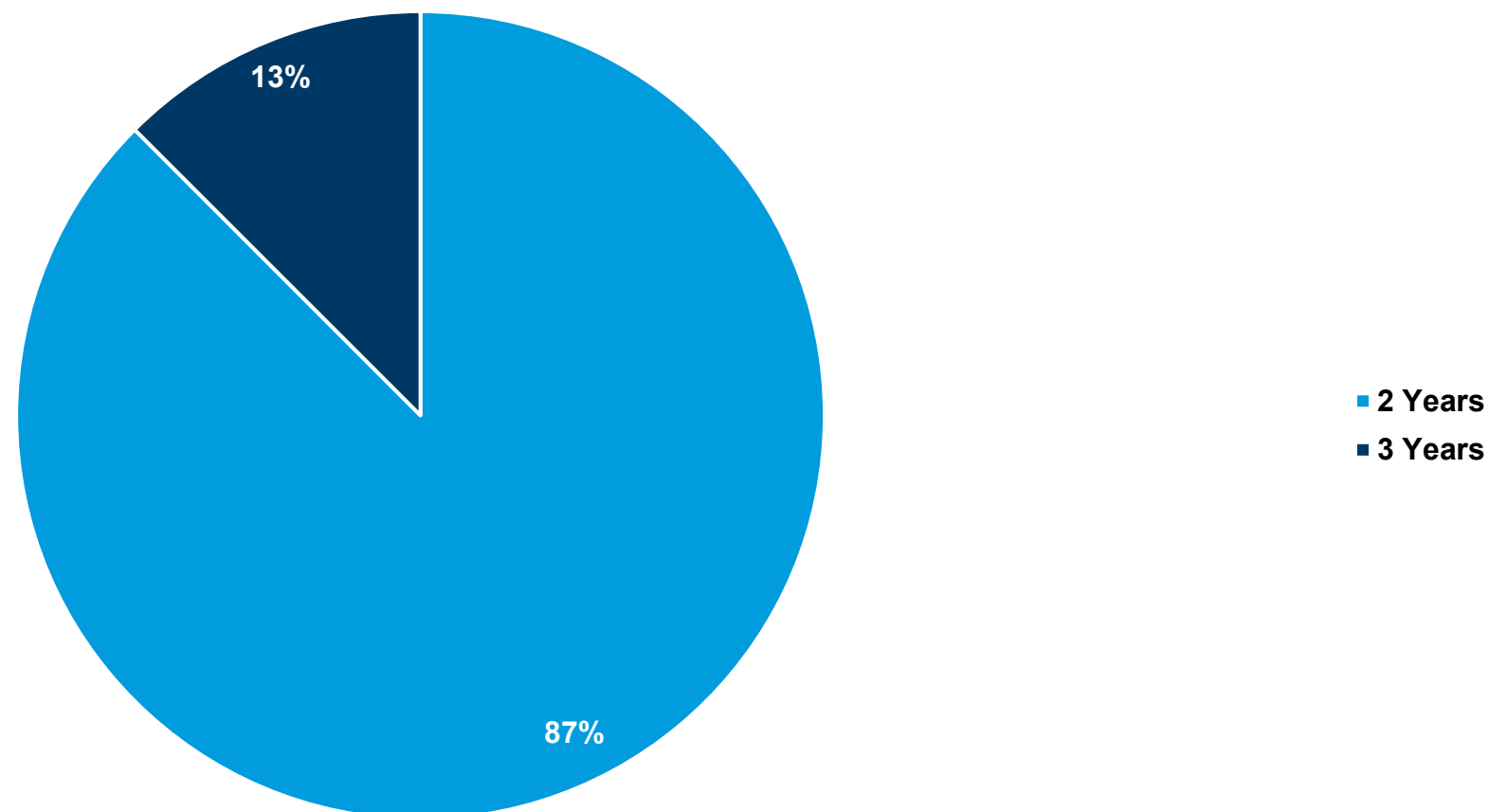
There is not a material change from last year's data. Where extensions are permitted, the majority of funds may be extended by two one-year extensions, although a significant number (39% - up from 32% last year) provide for potentially longer periods of three or four years. Generally, larger funds are more likely to have permitted extension of periods of more than two years, with 60% of funds in the €3.75bn+ category and 75% of funds in the €1.5-3.75bn category having extensions of 3 or even 4 years.



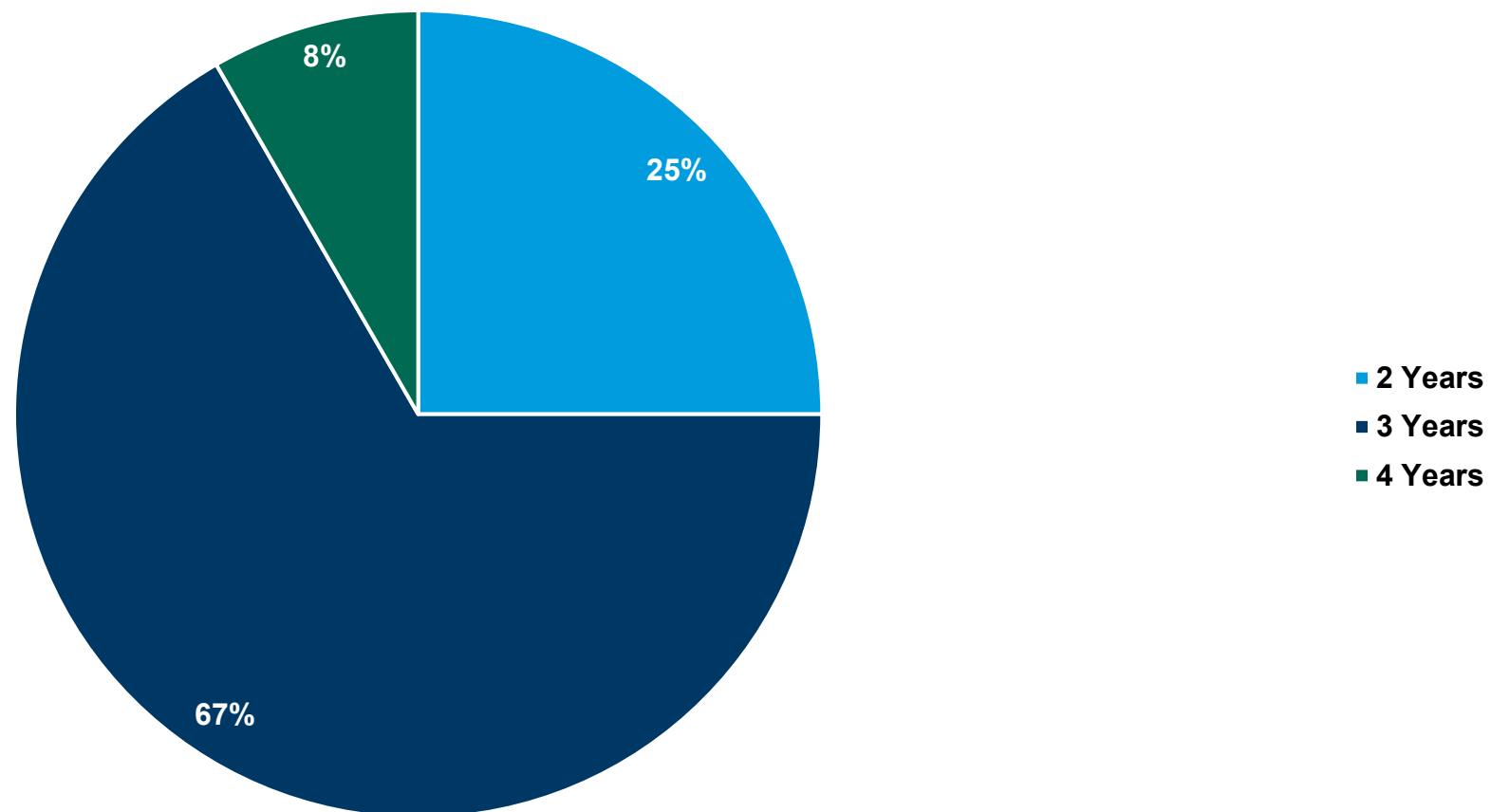
Maximum period of extensions of term ≤€500M



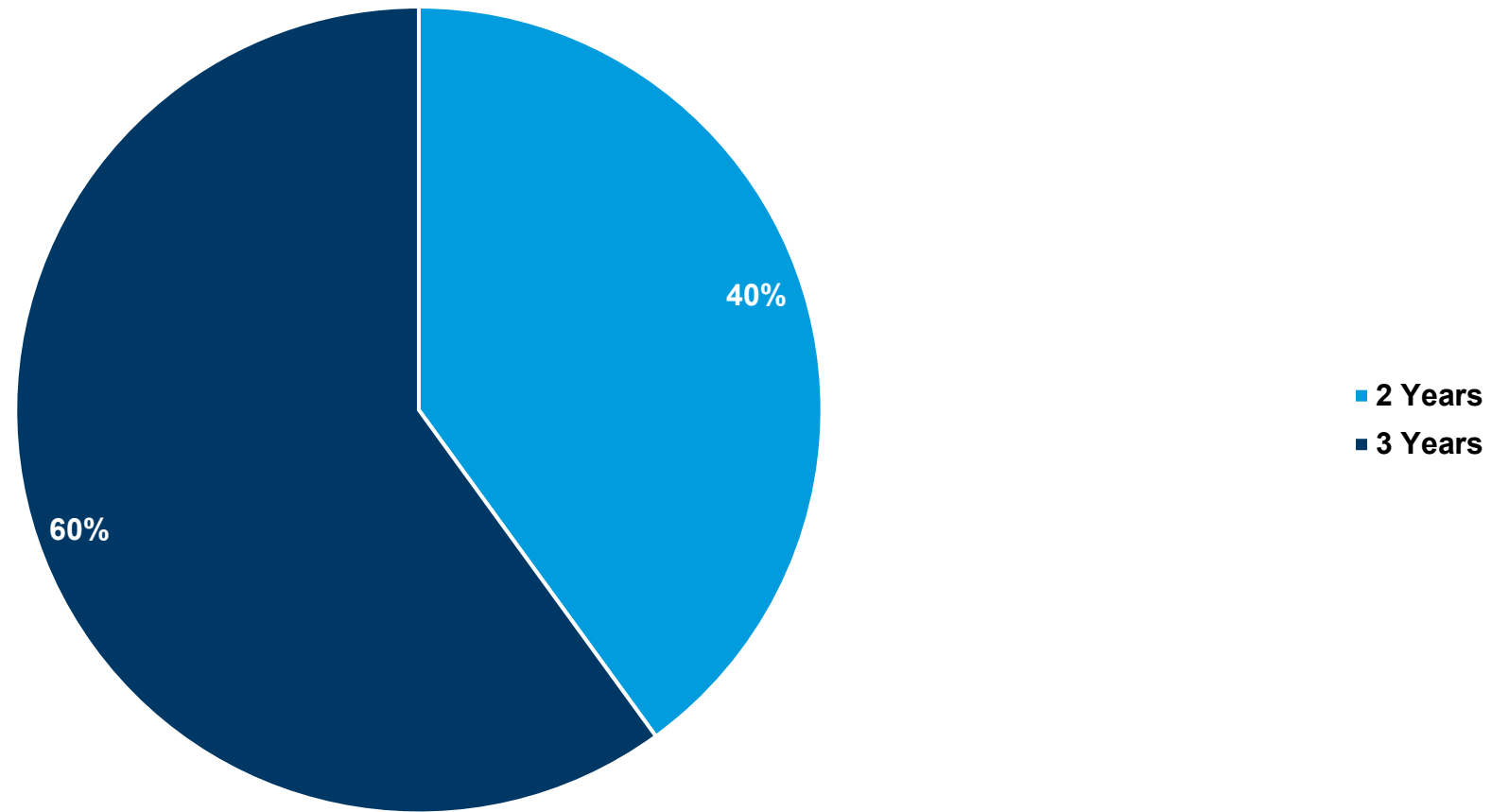
Maximum period of extensions of term >€500M-€1.5B



Maximum period of extensions of term >€1.5B-€3.75B



Maximum period of extensions of term >€3.75B

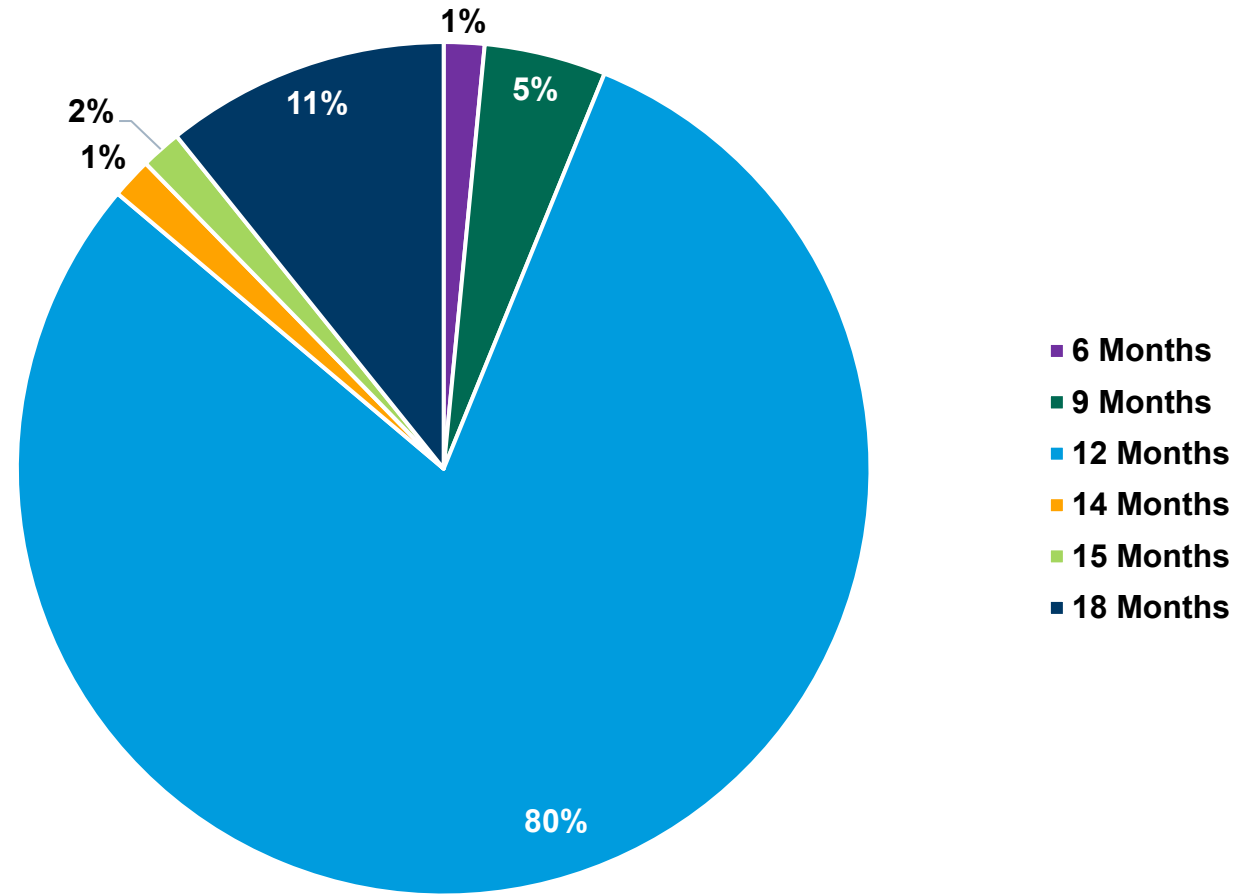


Fundraising period

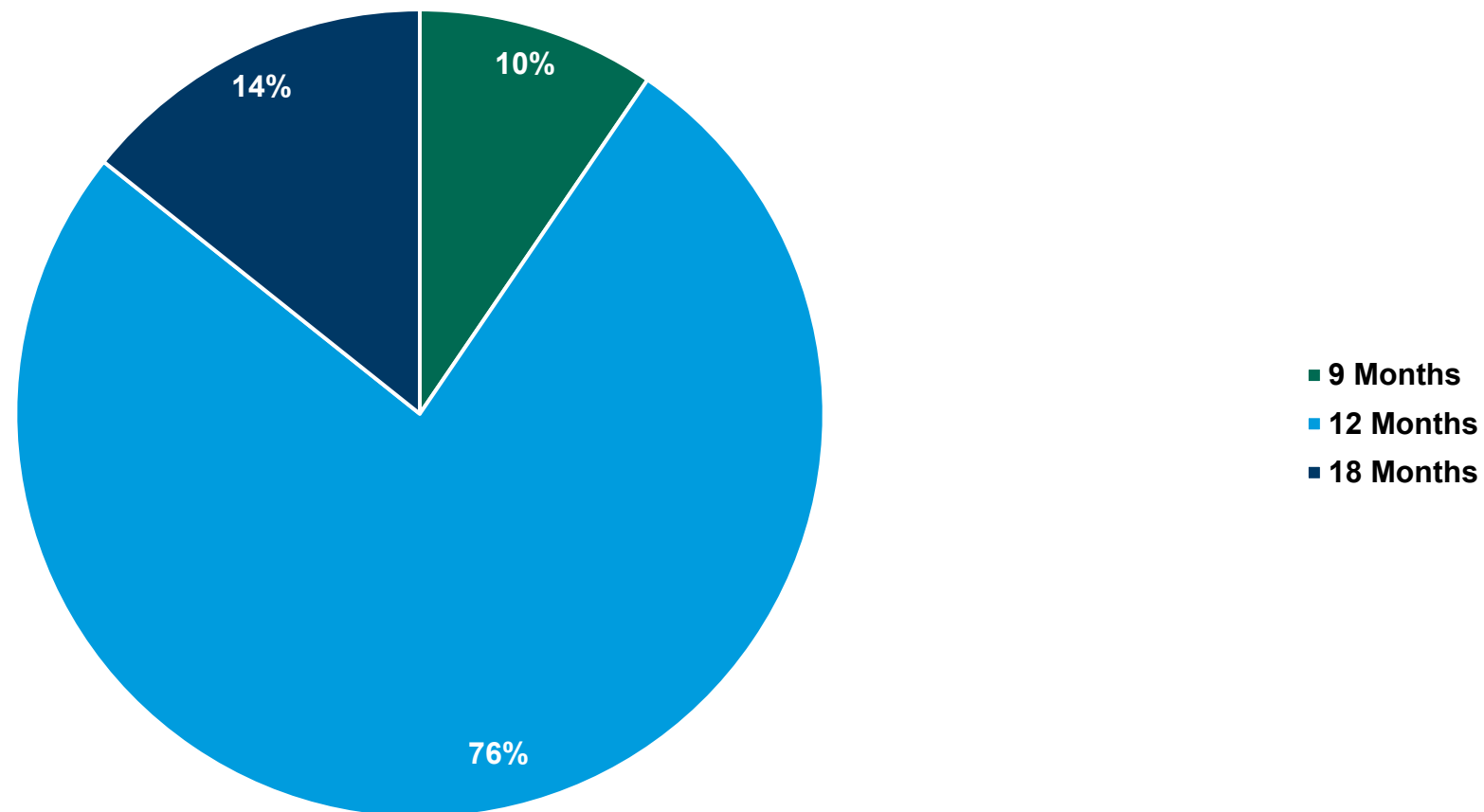
All Funds

In 80% of funds surveyed, the initial fundraising period (i.e., the longest permitted time between first closing and final closing) was 12 months. This was generally consistent across funds sizes.

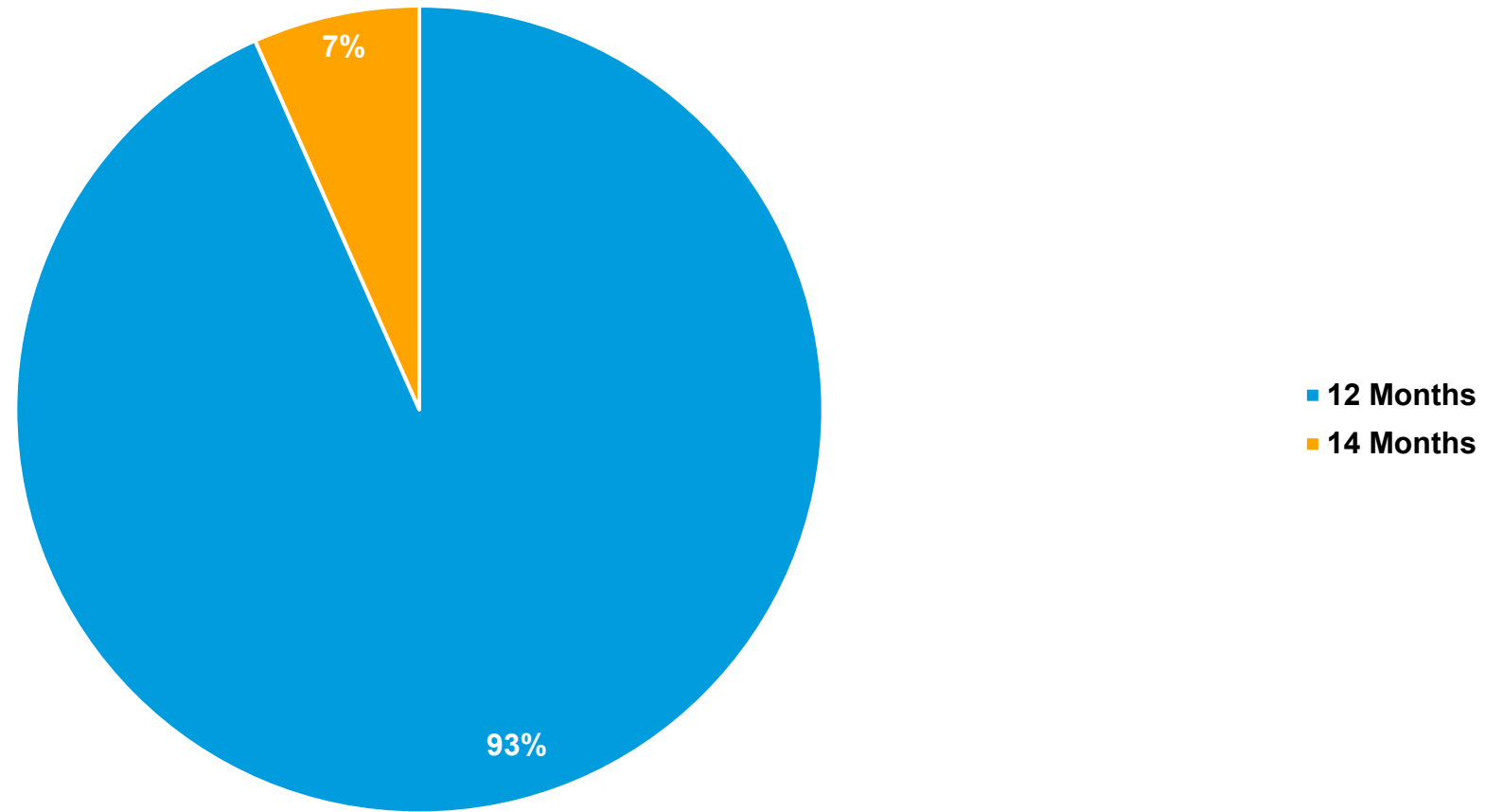
We should note that the figures here are for the initial permitted fundraising period. A number of funds will have their final closing much earlier than the potential final closing date, and others will look to extend the period beyond the date specified in the LPA (which is often permitted with LPAC or investor consent).



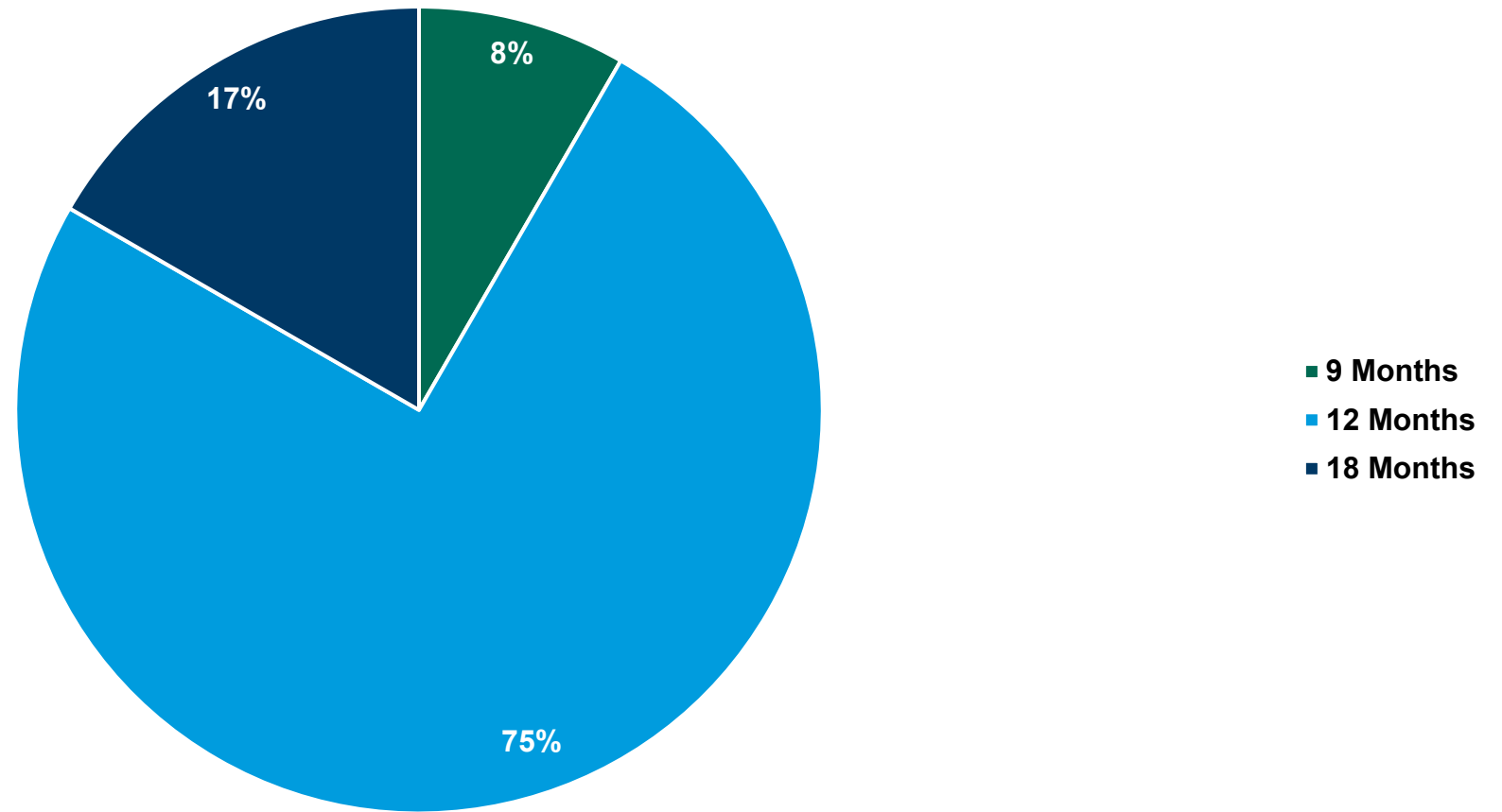
Fundraising period ≤€500M



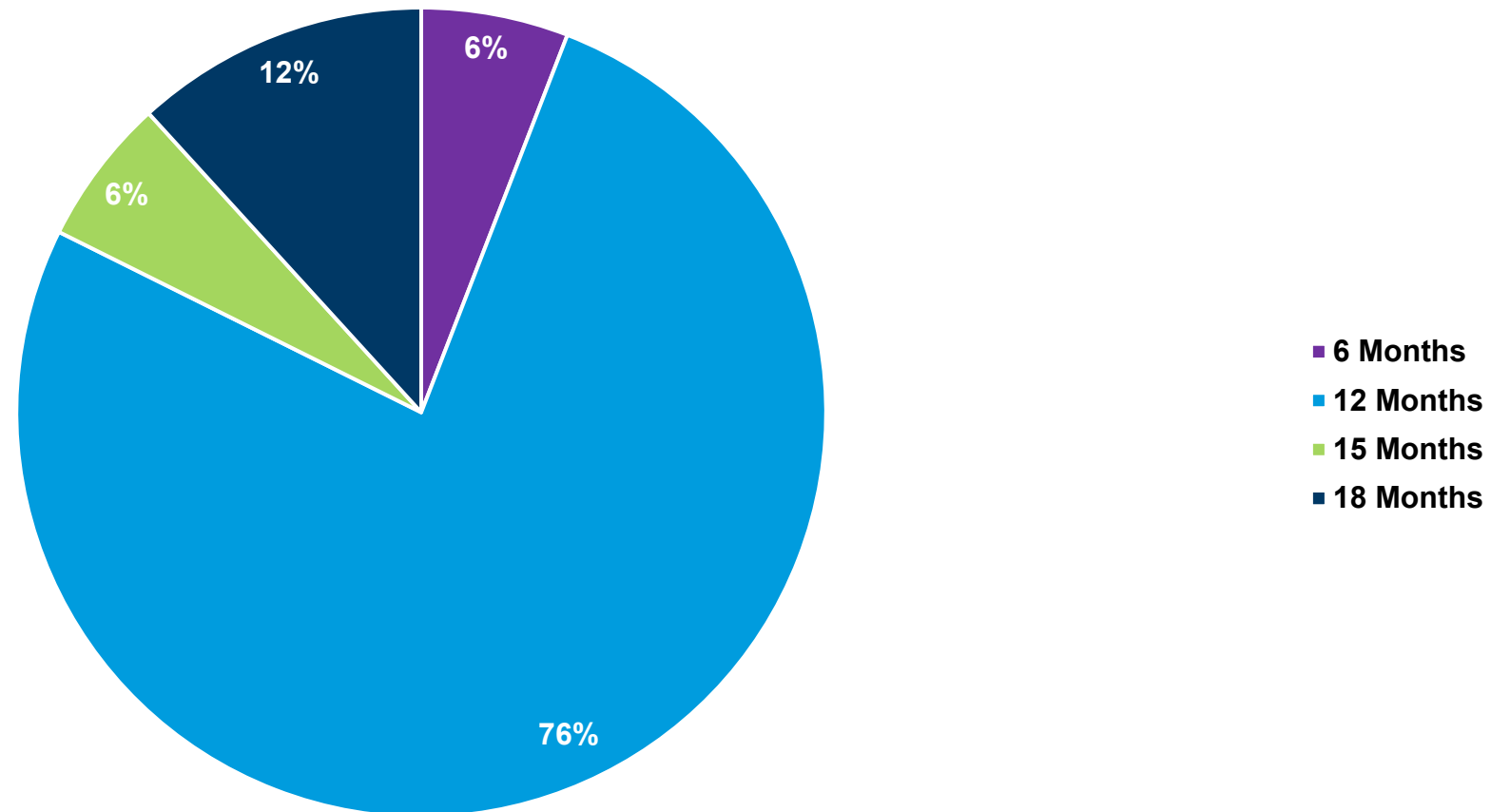
Fundraising period >€500M-€1.5B



Fundraising period >€1.5B-€3.75B



Fundraising period >€3.75B

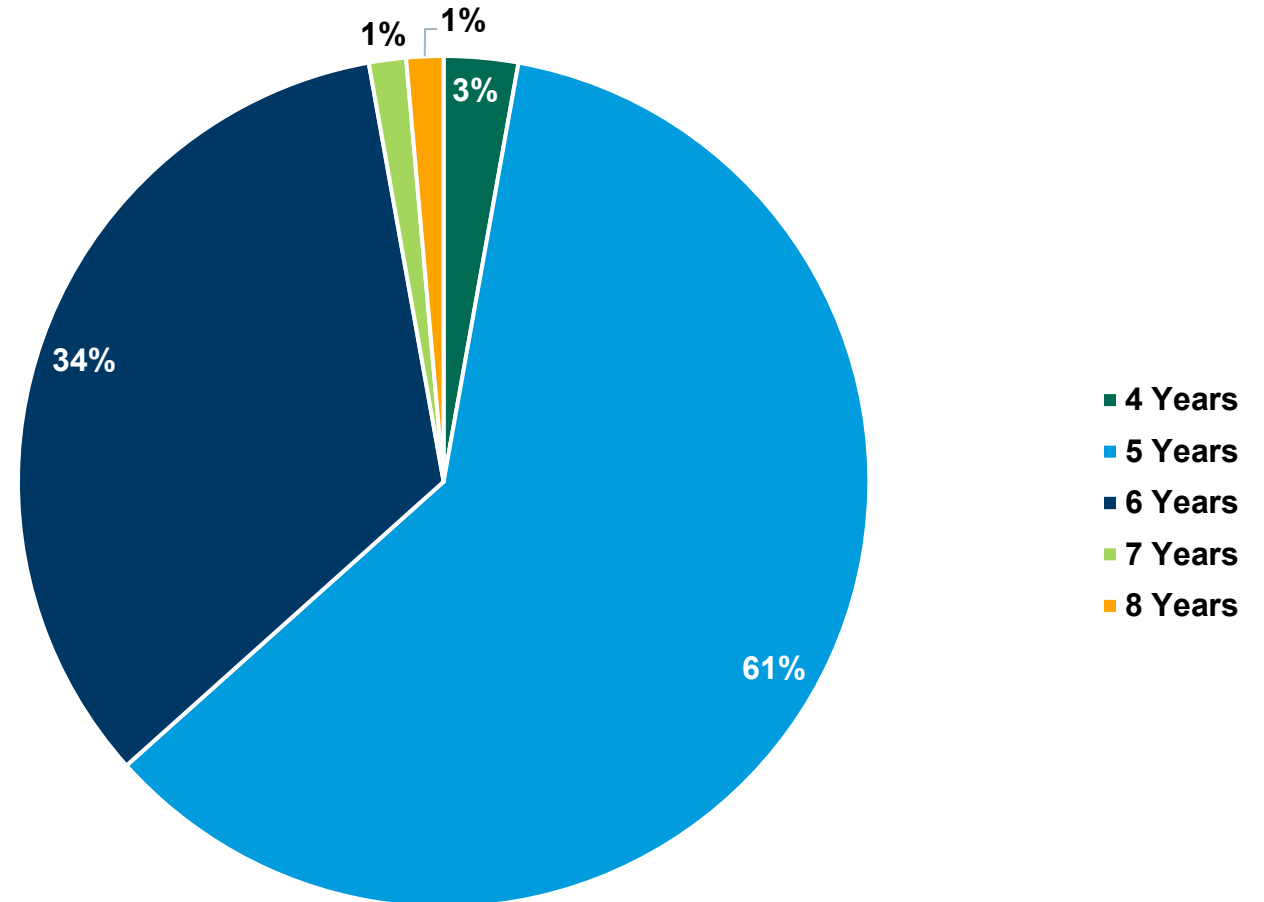


Investment period

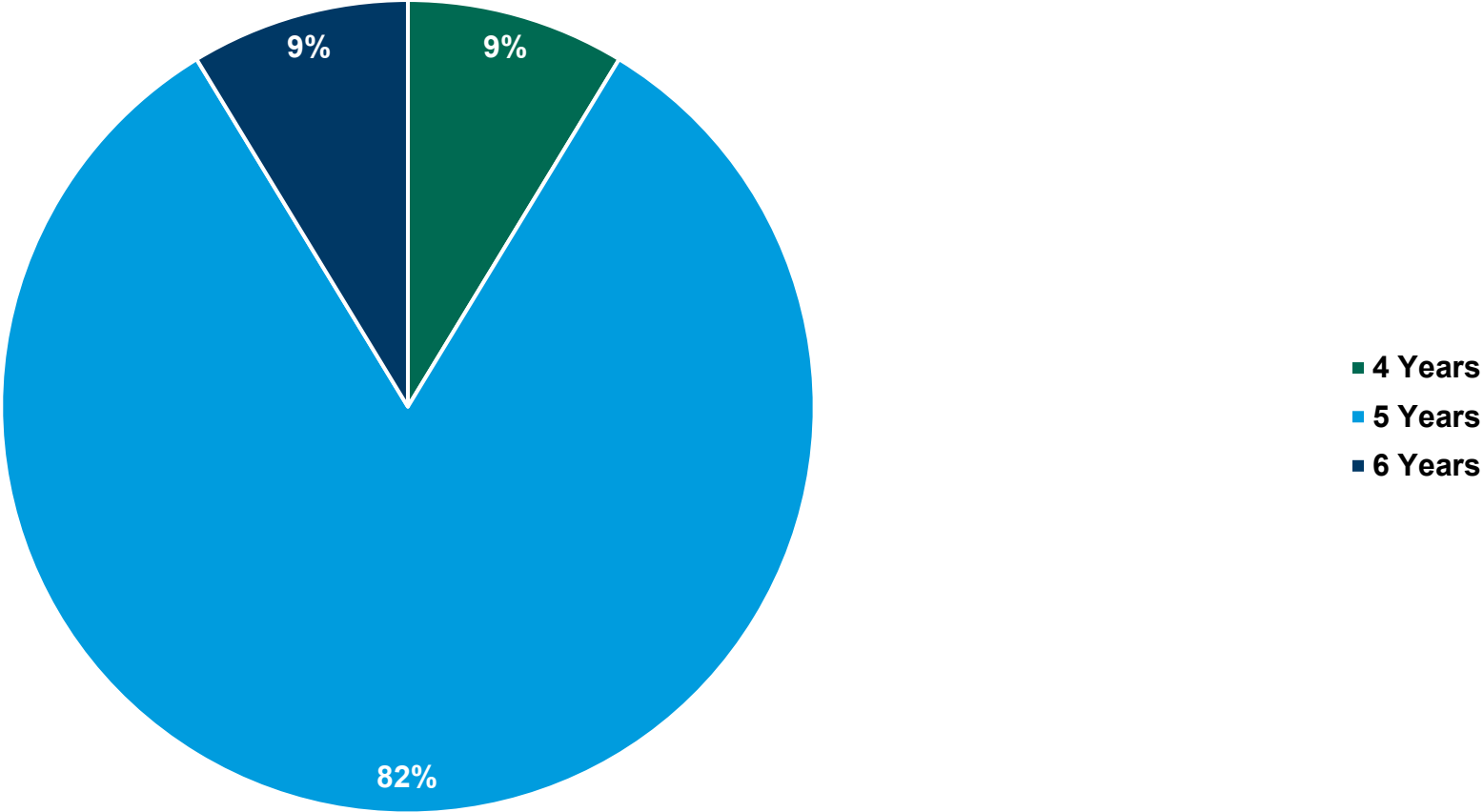
All Funds

On average, there has been no material year-on-year change in the data. A five-year investment period remains the most common in the funds in our sample, with 61% of funds surveyed falling within this bracket. However, we are seeing consistent data across years with the largest funds (>€3.75 billion) more likely to have 6-year investment periods (60% this year).

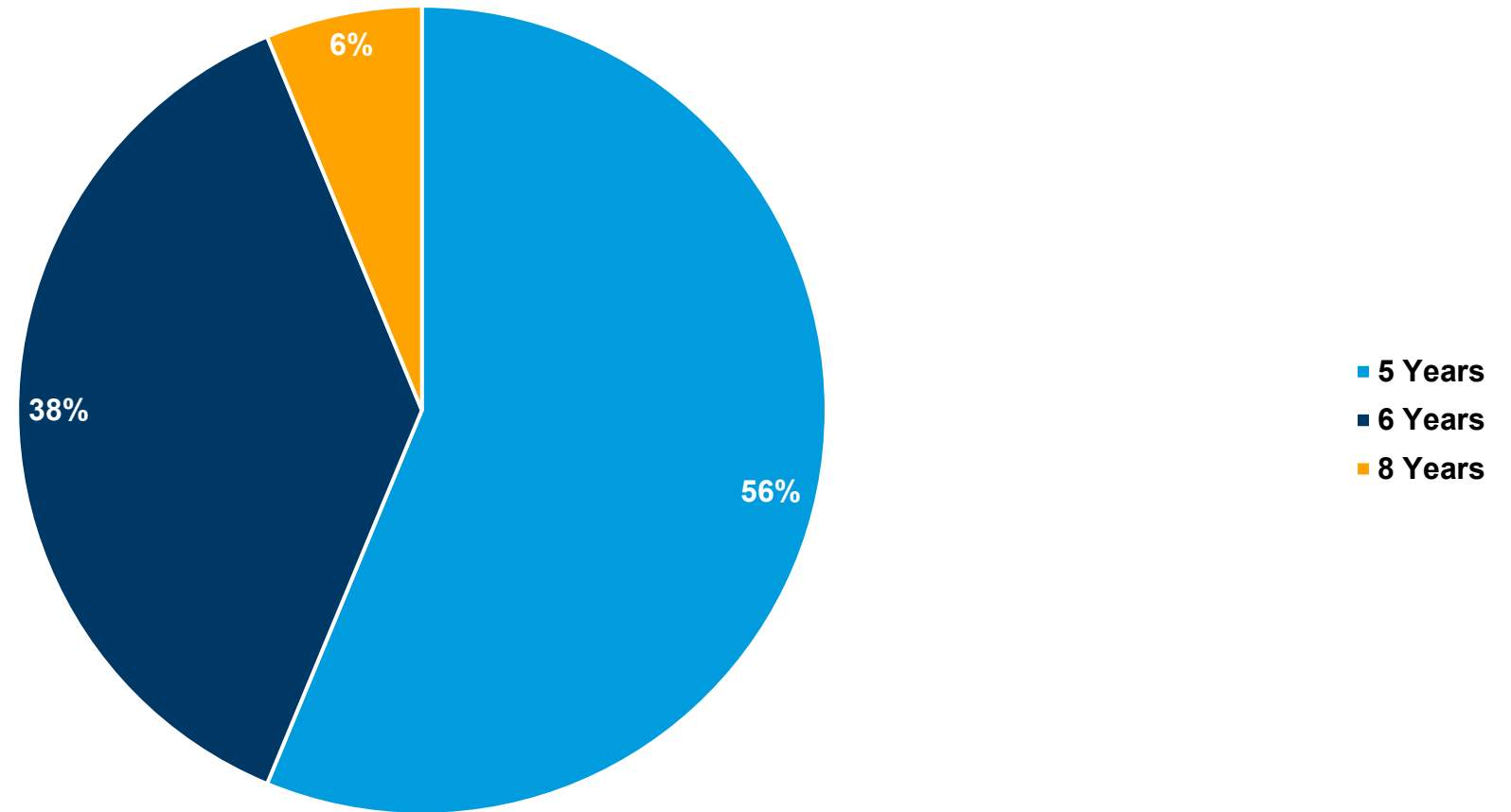
Managers have typically sought longer investment periods to build in flexibility during times of uncertainty in the market, on the basis that they are able to deploy funds more consistently and not be forced to spend during unfavourable economic conditions, an issue which is more acute at the larger end of the market. Longer investment periods also mean a longer period during which the full management fee will be running, subject to any step-downs triggered by a successor fund being raised.



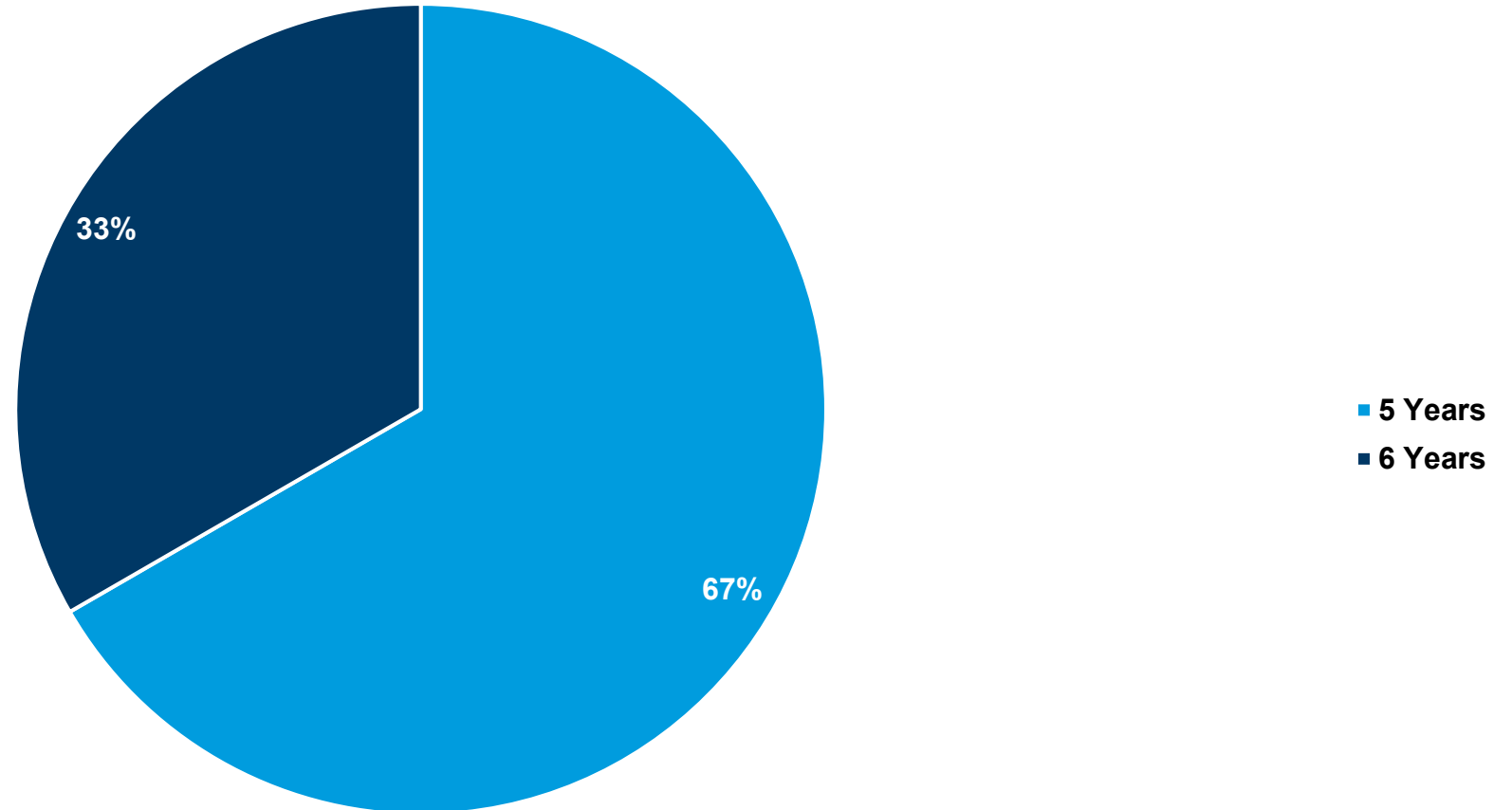
Investment period
≤€500M



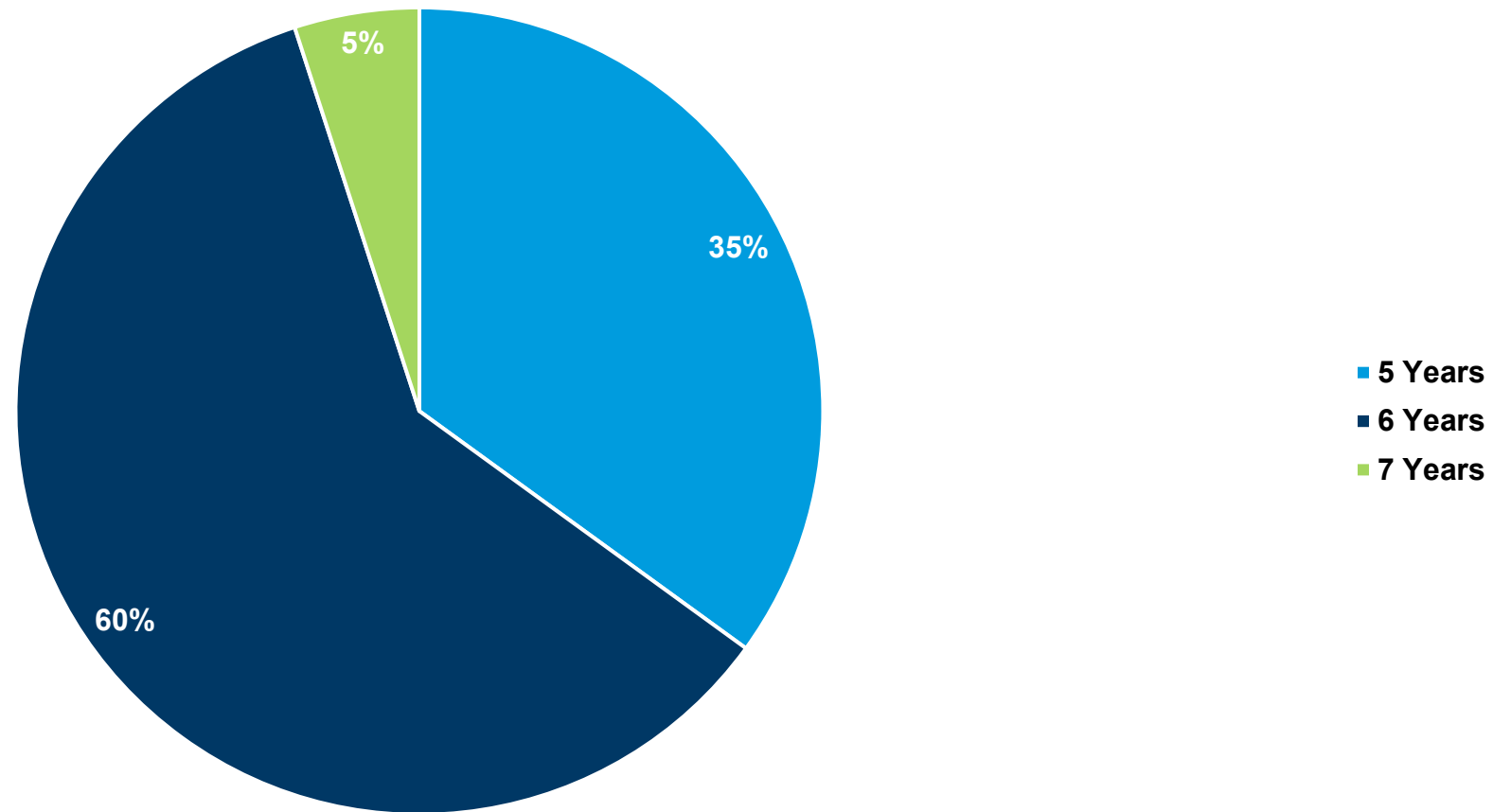
Investment period >€500M-€1.5B



Investment period >€1.5B-€3.75B



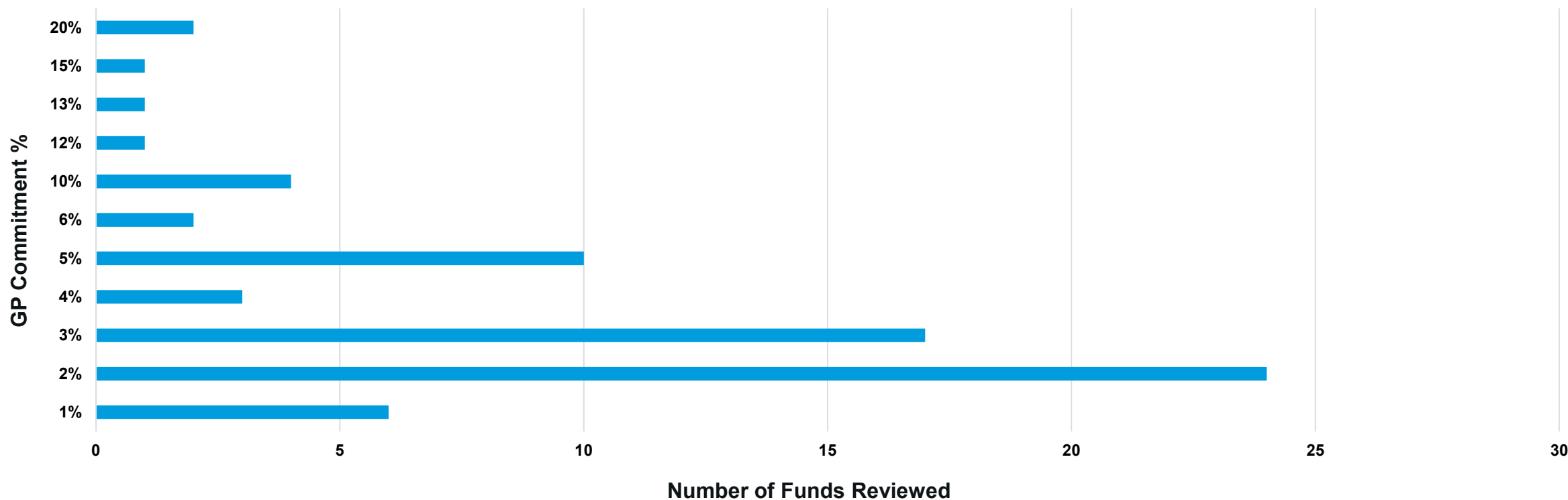
Investment period >€3.75B



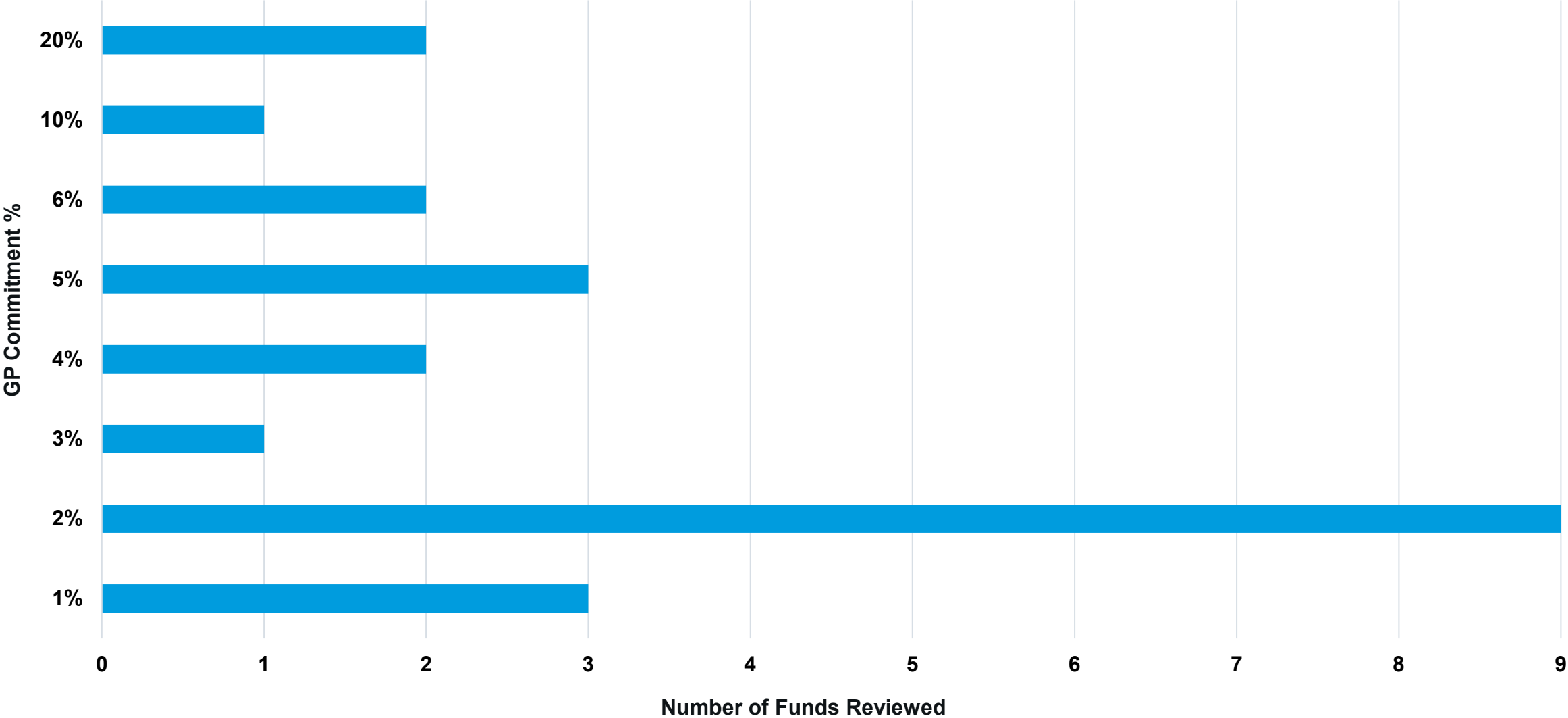
GP commitment (% of commitments)

All Funds

As in previous years, most GPs commit between 1-5% of commitments to their funds, with 2% and 3% being the most common – 39 out of the 71 funds surveyed had a base GP commitment of 2% or 3%. Notably, 6 funds in our survey had a minimum GP commitment of 1%, compared with 18 funds in our prior survey. As we have noted in the past though, the figures reported here tend to be the minimum required commitment, and a number of GPs commit more than the minimum amount. Overall, however, this year's figures indicate a slight move towards greater GP alignment with LPs through larger GP commitments. This is particularly notable given the current rapid pace of fundraising, which you would expect to place strain on GPs' ability to fund larger commitments.

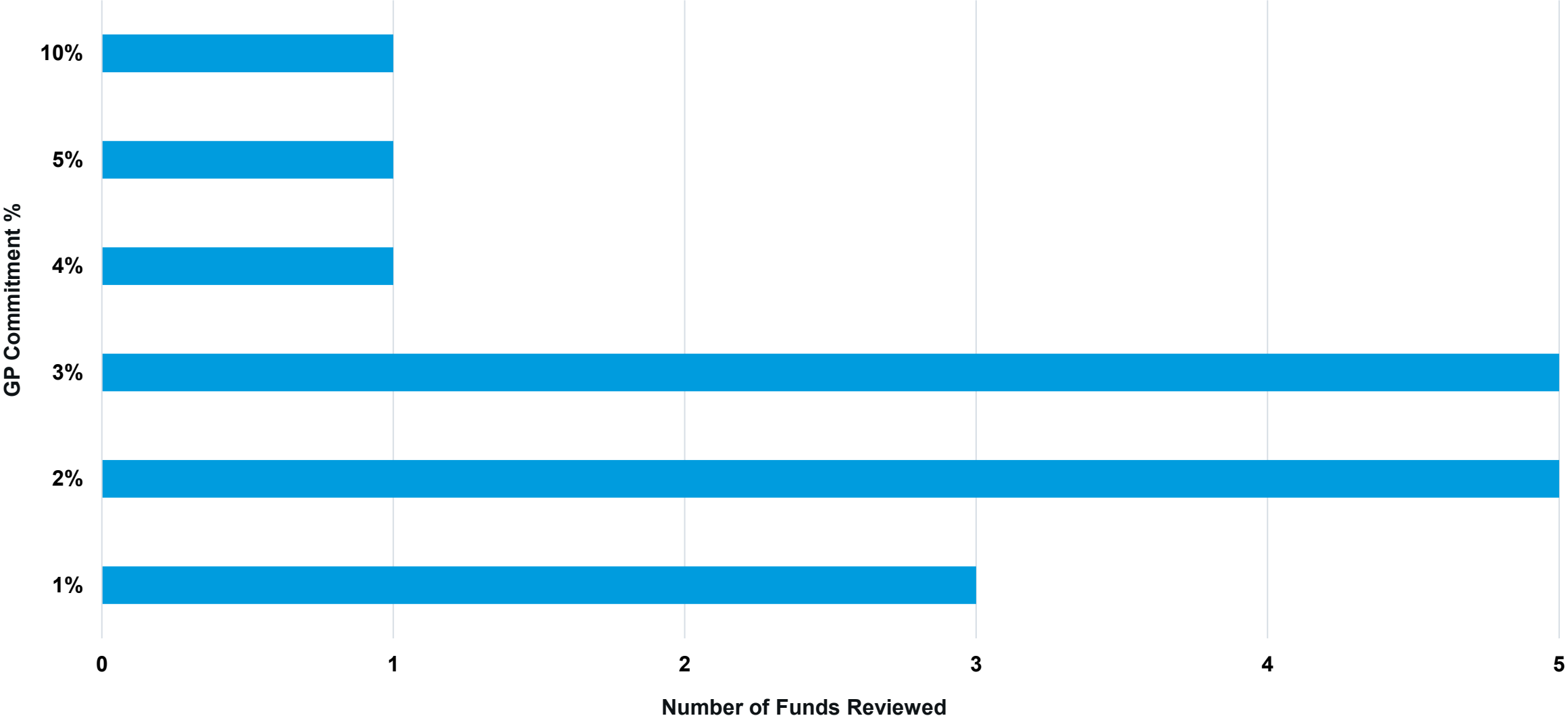


GP commitment (% of commitments) ≤€500M



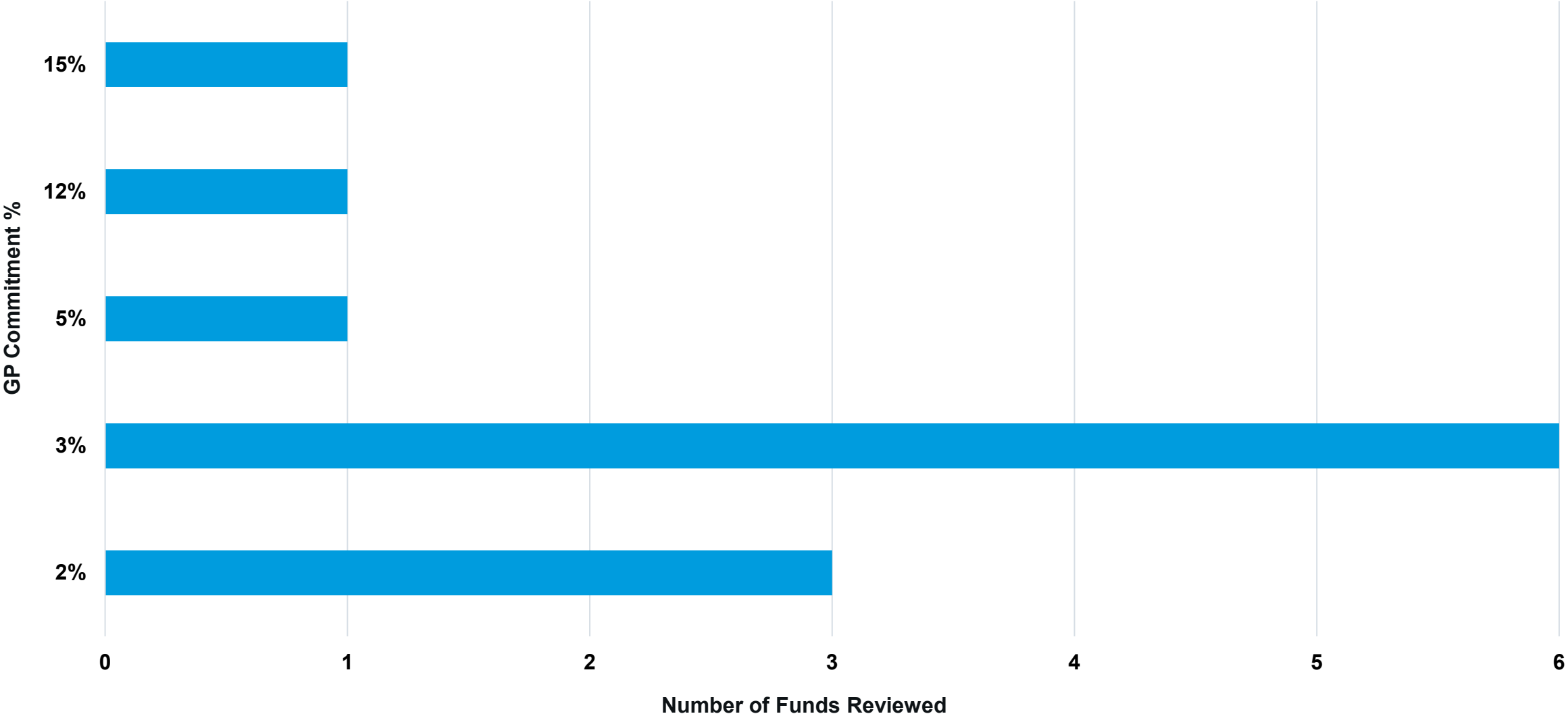
GP commitment (% of commitments)

>€500M-€1.5B



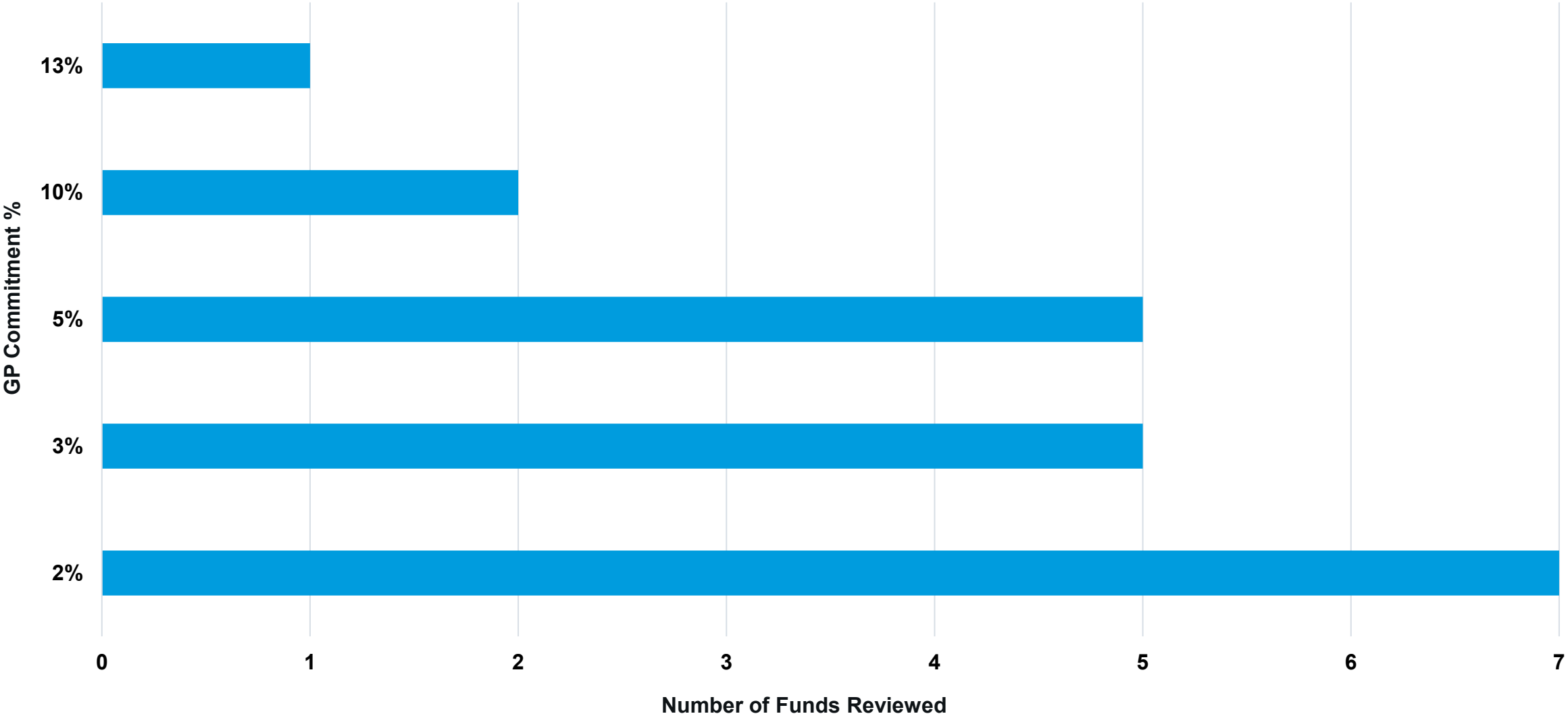
GP commitment (% of commitments)

>€1.5B-€3.75B



GP commitment (% of commitments)

>€3.75B



Annual management fee rate – Investment period (% of base)

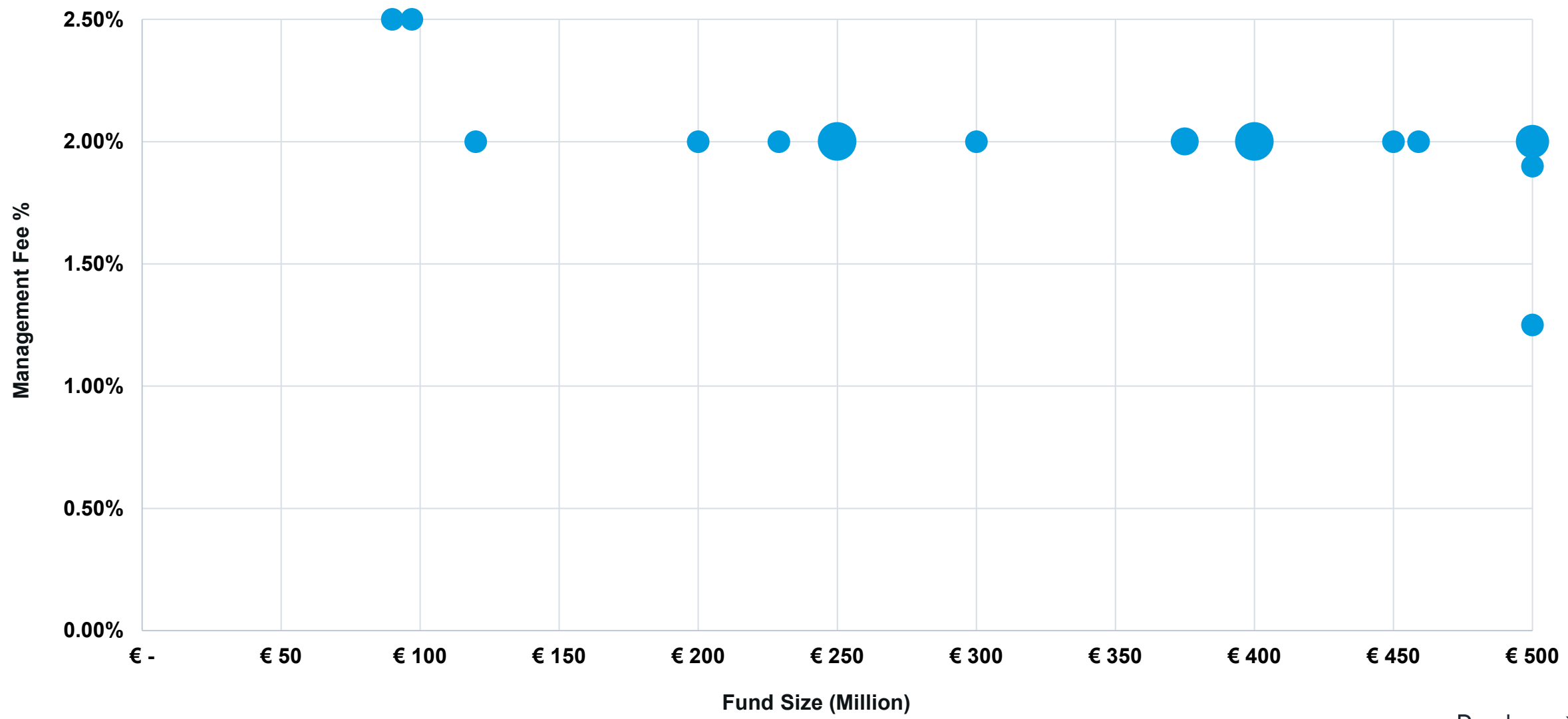
All Funds

As in previous years, a management fee percentage of 2% per annum is dominant at smaller fund sizes, and all the way up to around €3.5 billion. A 1.75% headline rate is most common in the €3.5 billion to €6 billion category (with some exceptions at 1.8% and 2%), and a growing number in the €1.5 – €3.5 billion category. Funds larger than €6 billion all broadly have a 1.5% per annum management fee. It is important to add however that these are headline rates and many GPs continue to offer discounts for early and/or large commitments, particularly as part of a strategy to generate momentum amidst a challenging fundraising environment. Although data on discount rates is less rich, as a general rule LPs making very large, early commitments are likely to receive the largest discounts available.



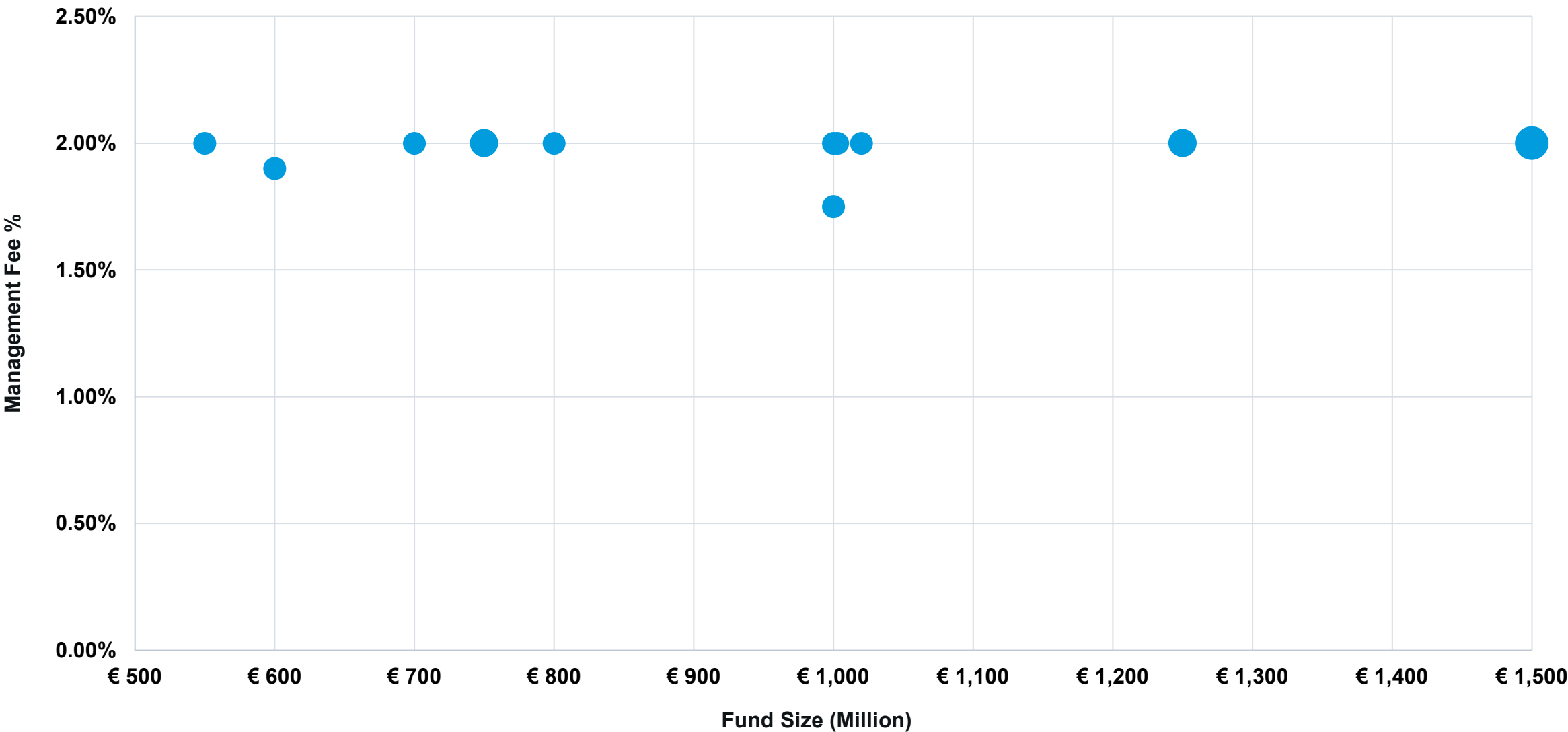
Annual management fee rate – Investment period (% of base)

≤€500M



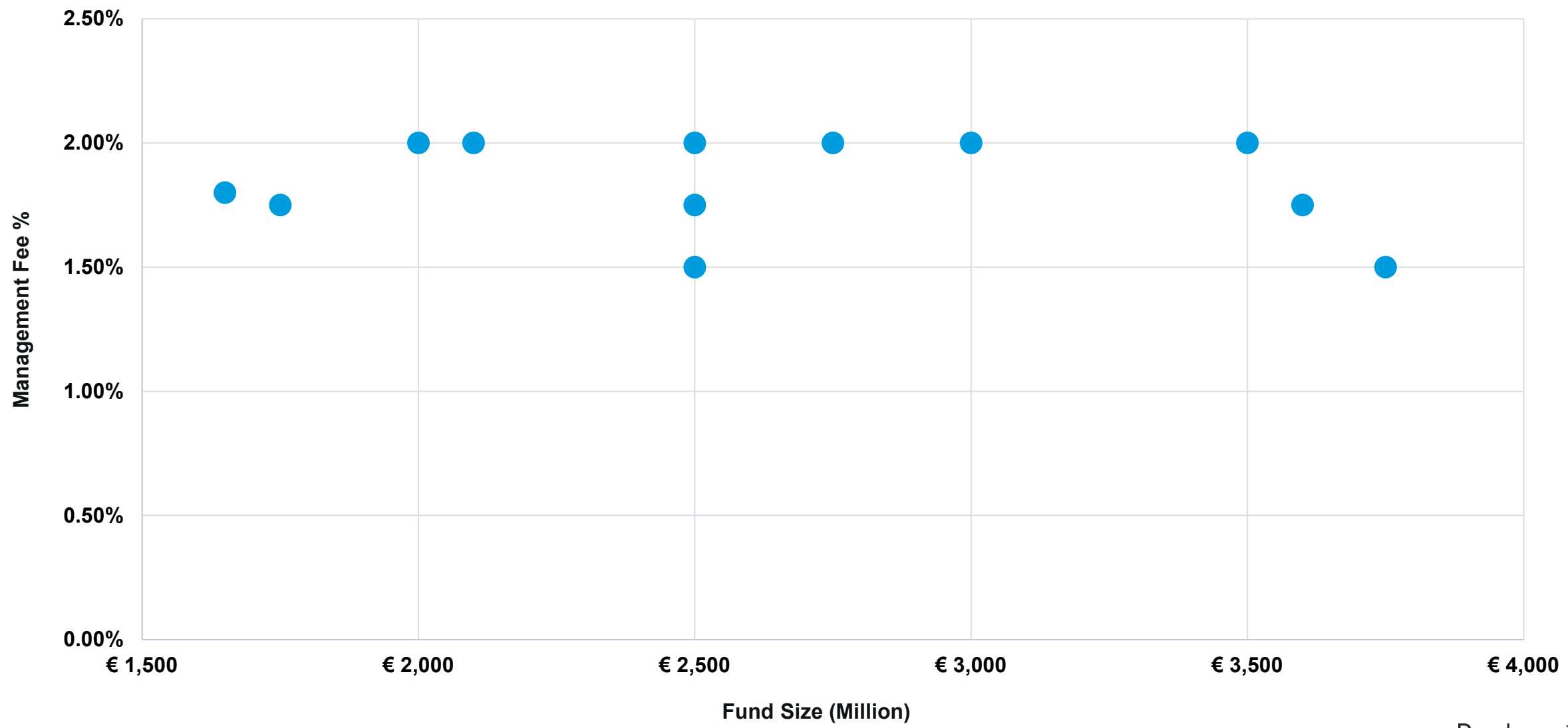
Annual management fee rate – Investment period (% of base)

>€500M-€1.5B



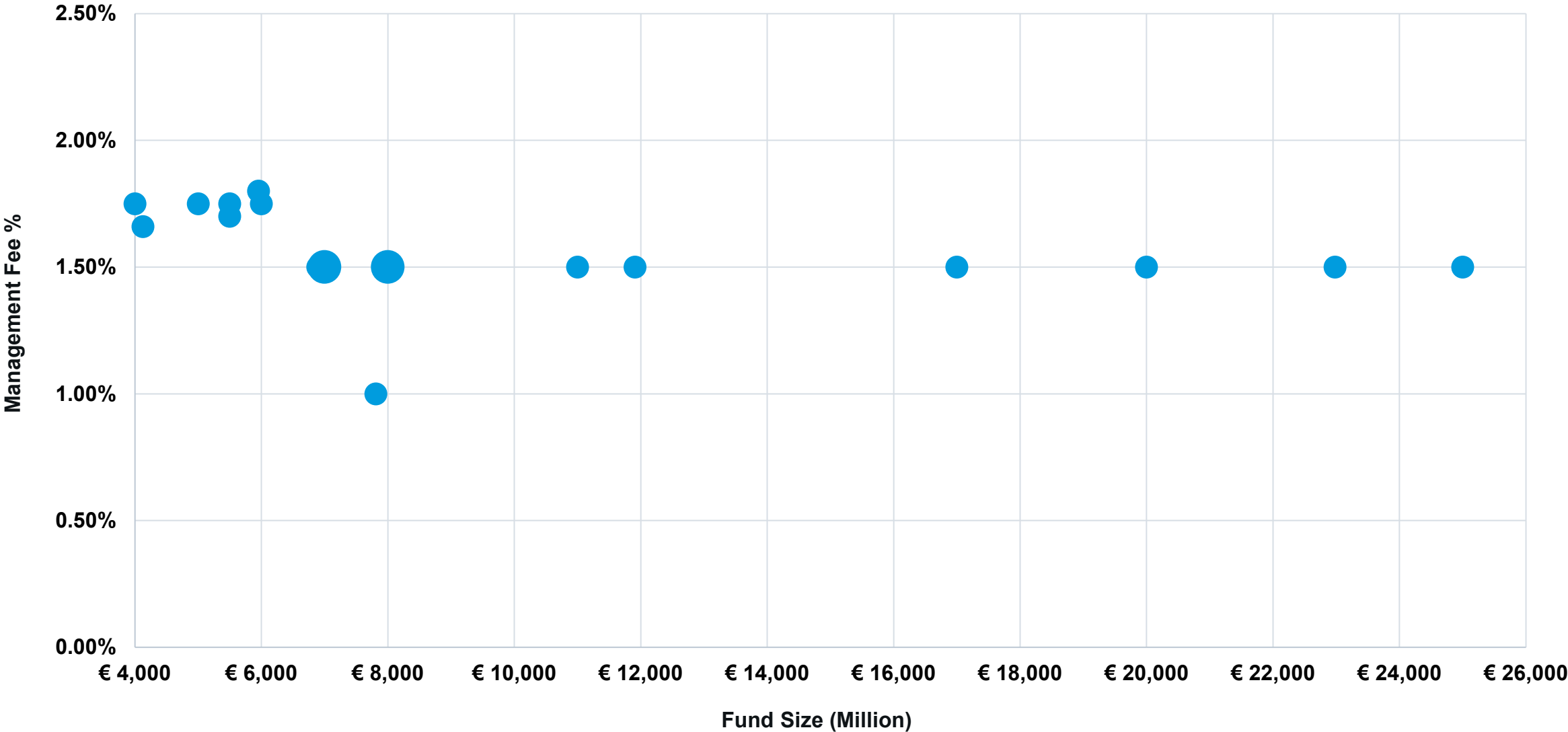
Annual management fee rate – Investment period (% of base)

>€1.5B-€3.75B



Annual management fee rate – Investment period (% of base)

>€3.75B



Annual management fee rate – Post-investment period (% of base)

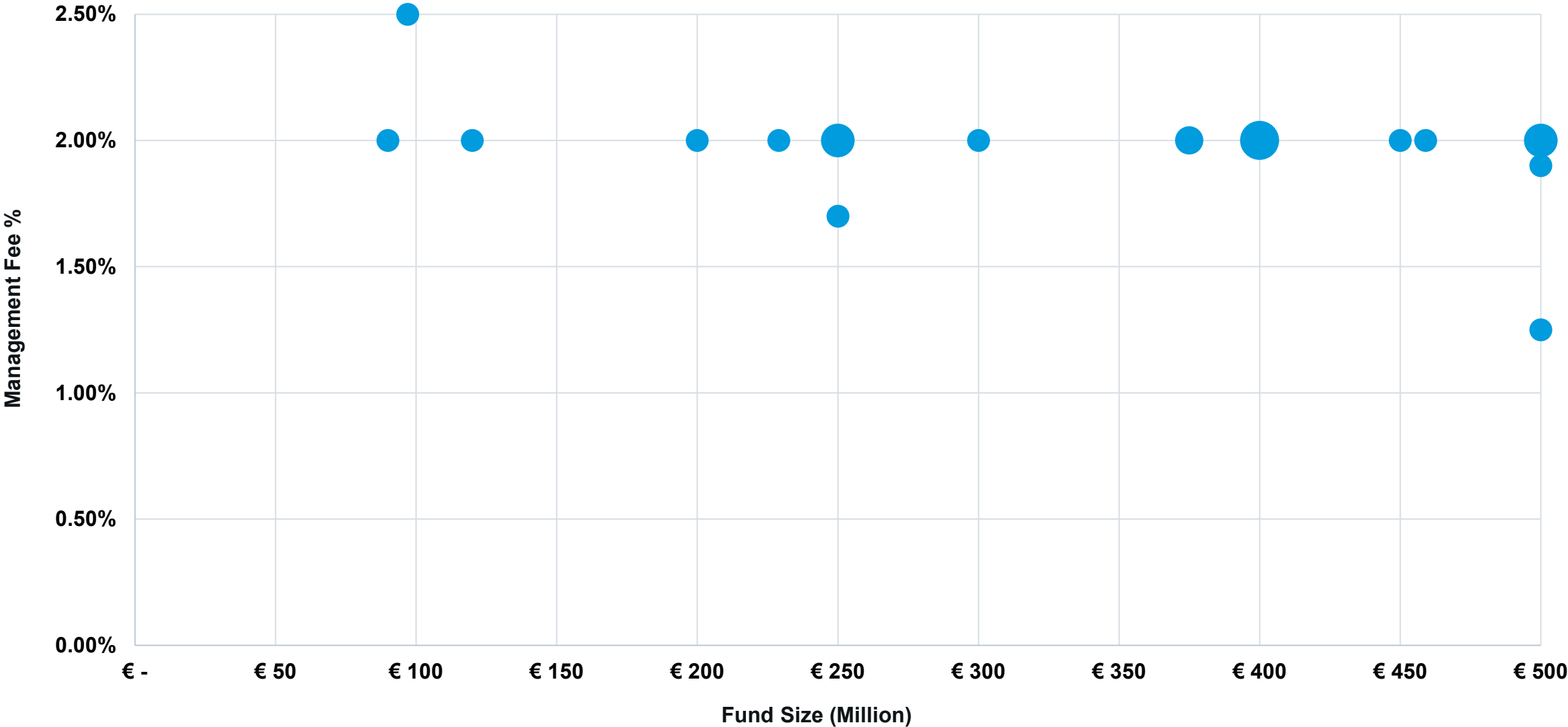
All Funds

A reduction in management fee percentage after the end of the investment period becomes more common the larger the fund size. Whilst there is significant variability in this negotiated position, funds over €5 billion are more likely to drop to 1.5%, and for those funds in excess of €7 billion, 1.25%. We continue to see a valuable “middle ground” of 1.75% for those funds in the €3-6 billion range, useful in preserving a higher management fee towards the end of the life of the fund. As in previous years, the fee base in almost all funds will change from total commitments to some form of invested capital.



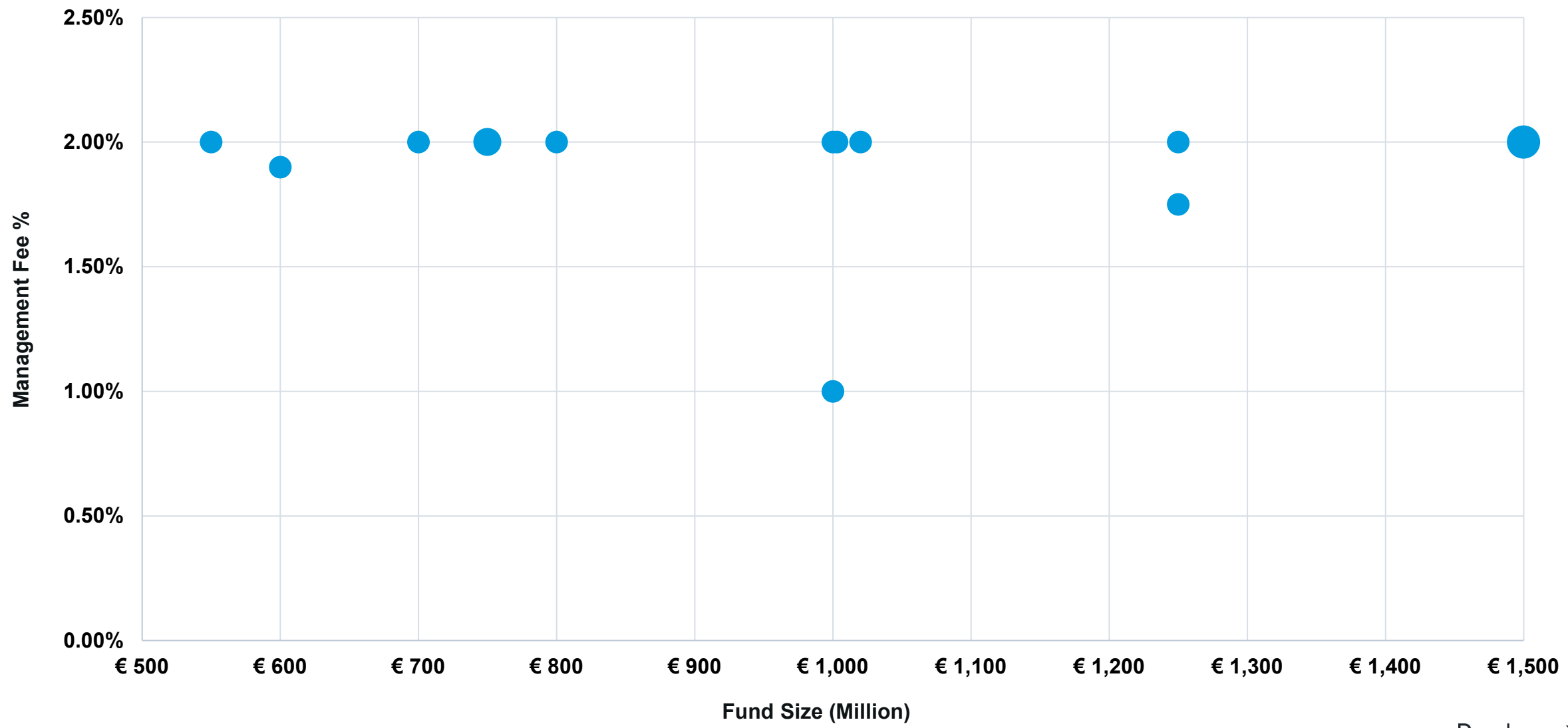
Annual management fee rate – Post-investment period (% of base)

≤€500M



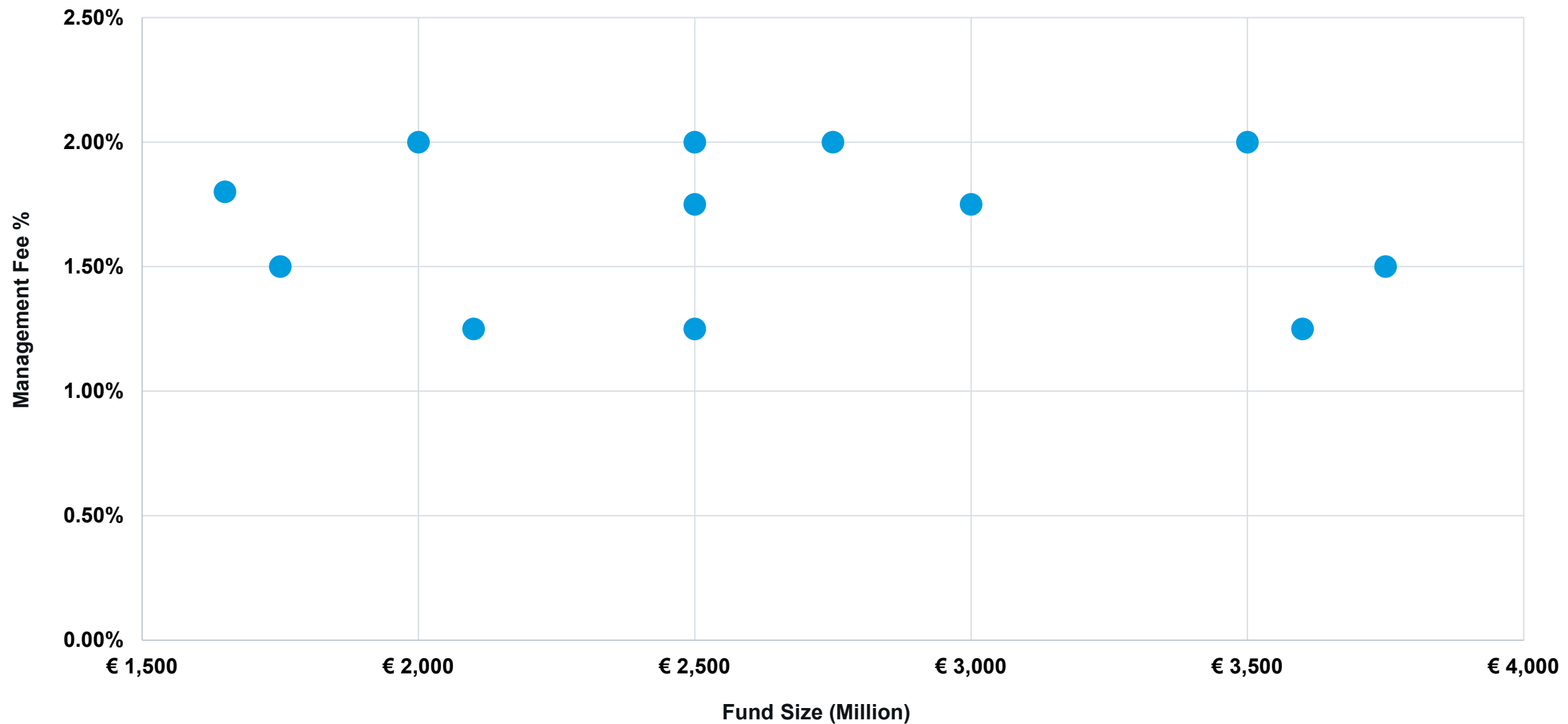
Annual management fee rate – Post-investment period (% of base)

>€500M-€1.5B



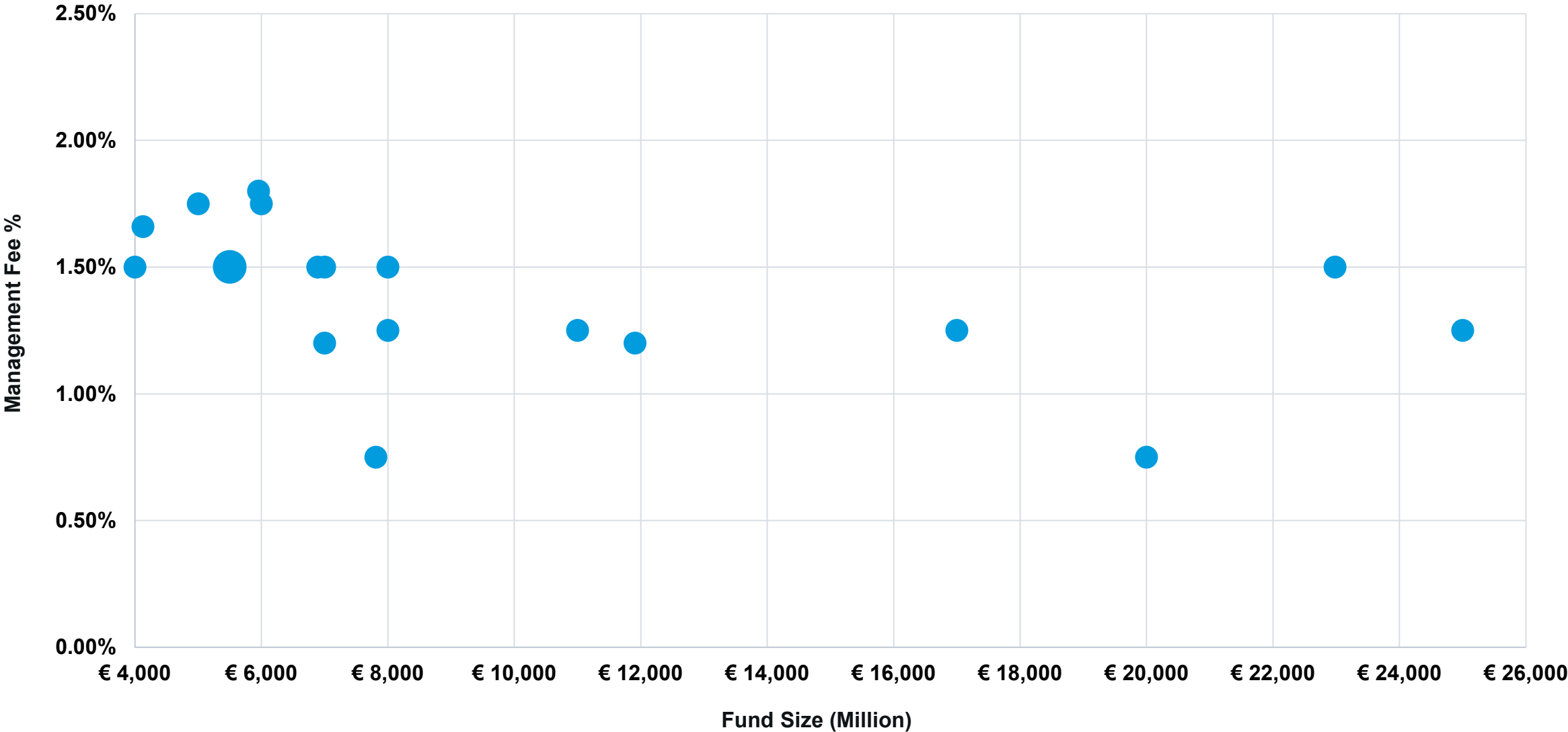
Annual management fee rate – Post-investment period (% of base)

>€1.5B-€3.75B



Annual management fee rate – Post-investment period (% of base)

>€3.75B

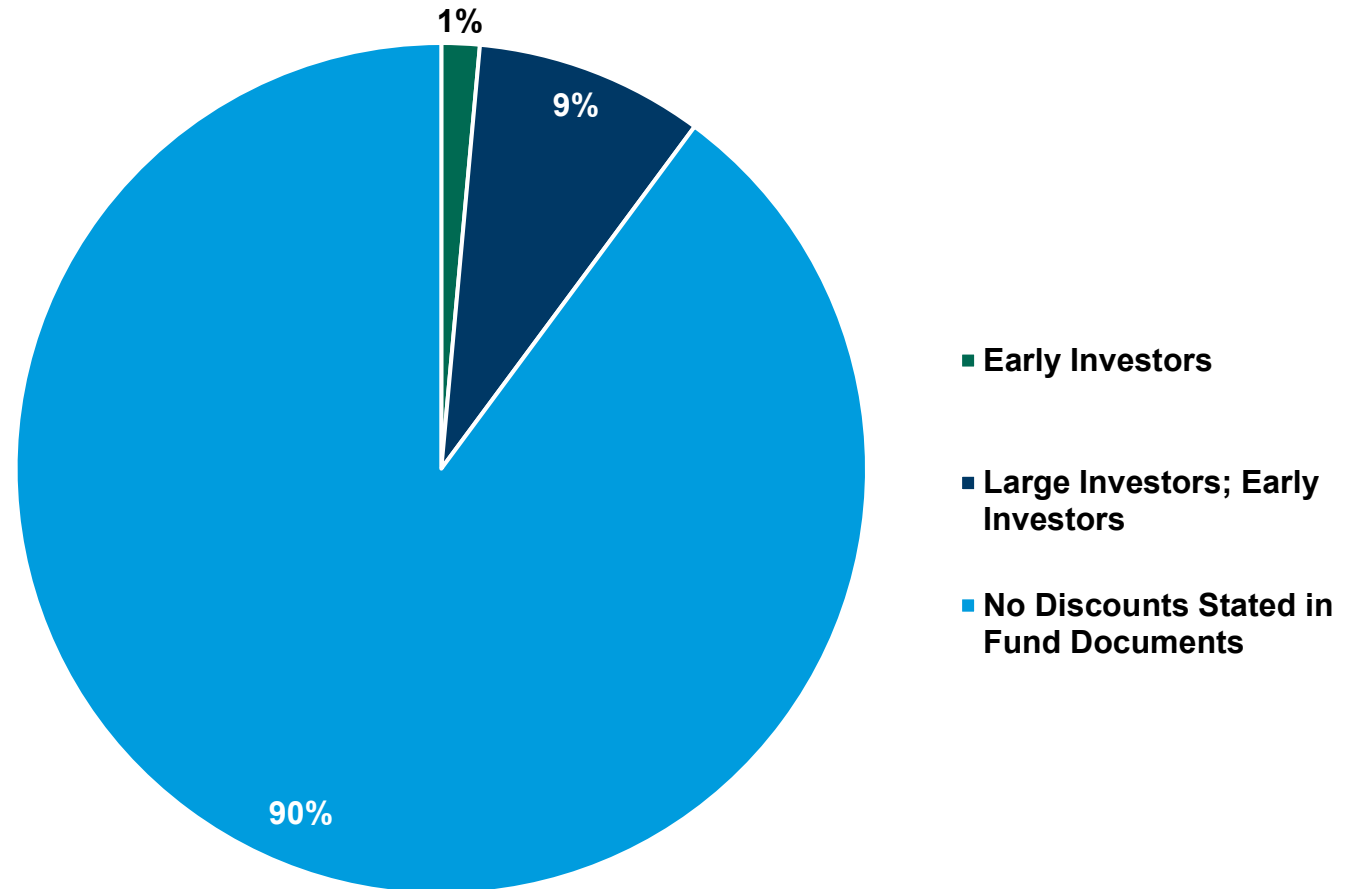


Management fee discounts

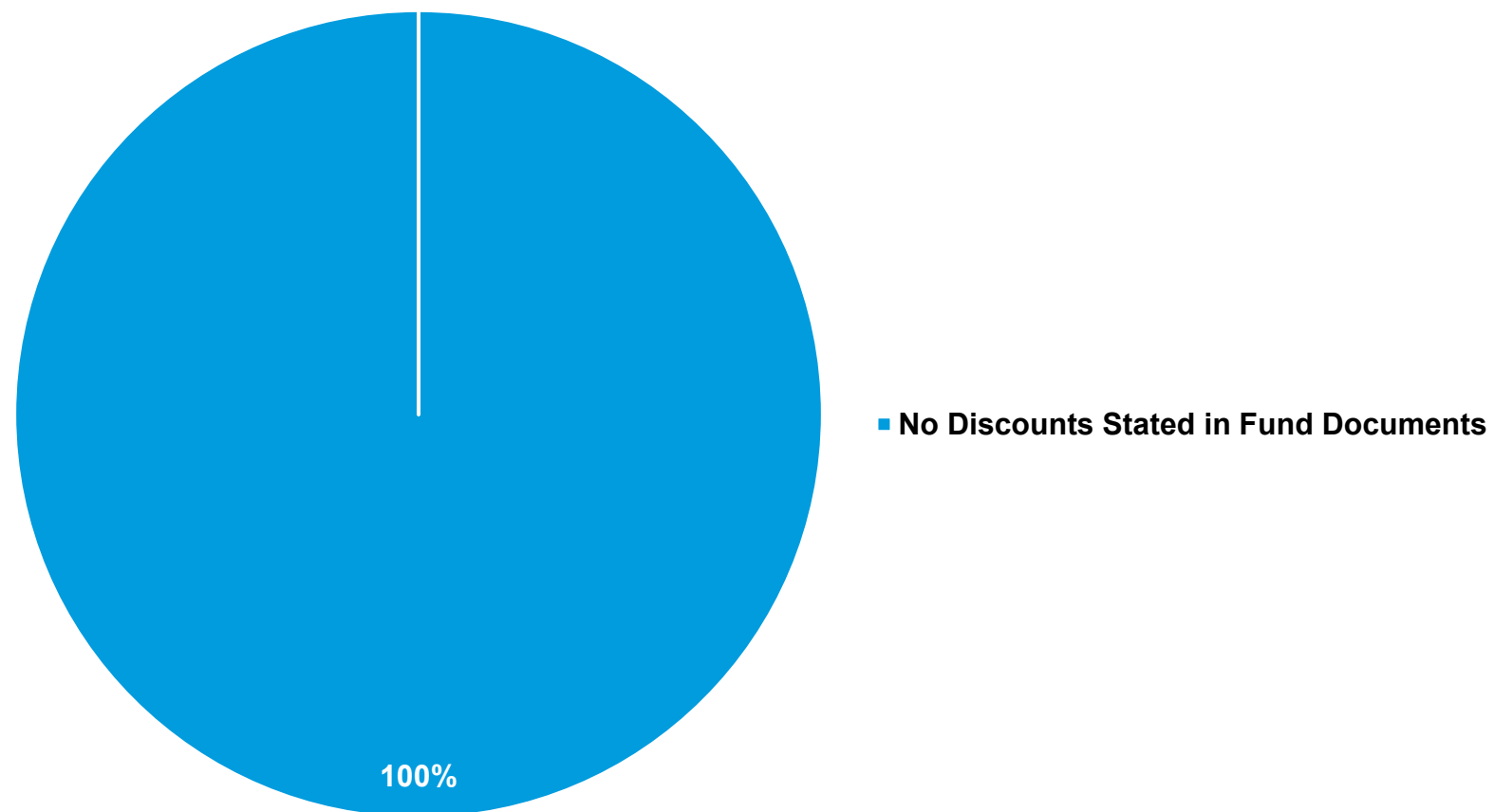
All Funds

Management fee discount data is very similar to prior years, with fund documents most commonly not specifying discount rates at all fund sizes. Also as previously stated, those small number of funds that do set out discount rates in their documents are more commonly in the larger multi-billion Euro range.

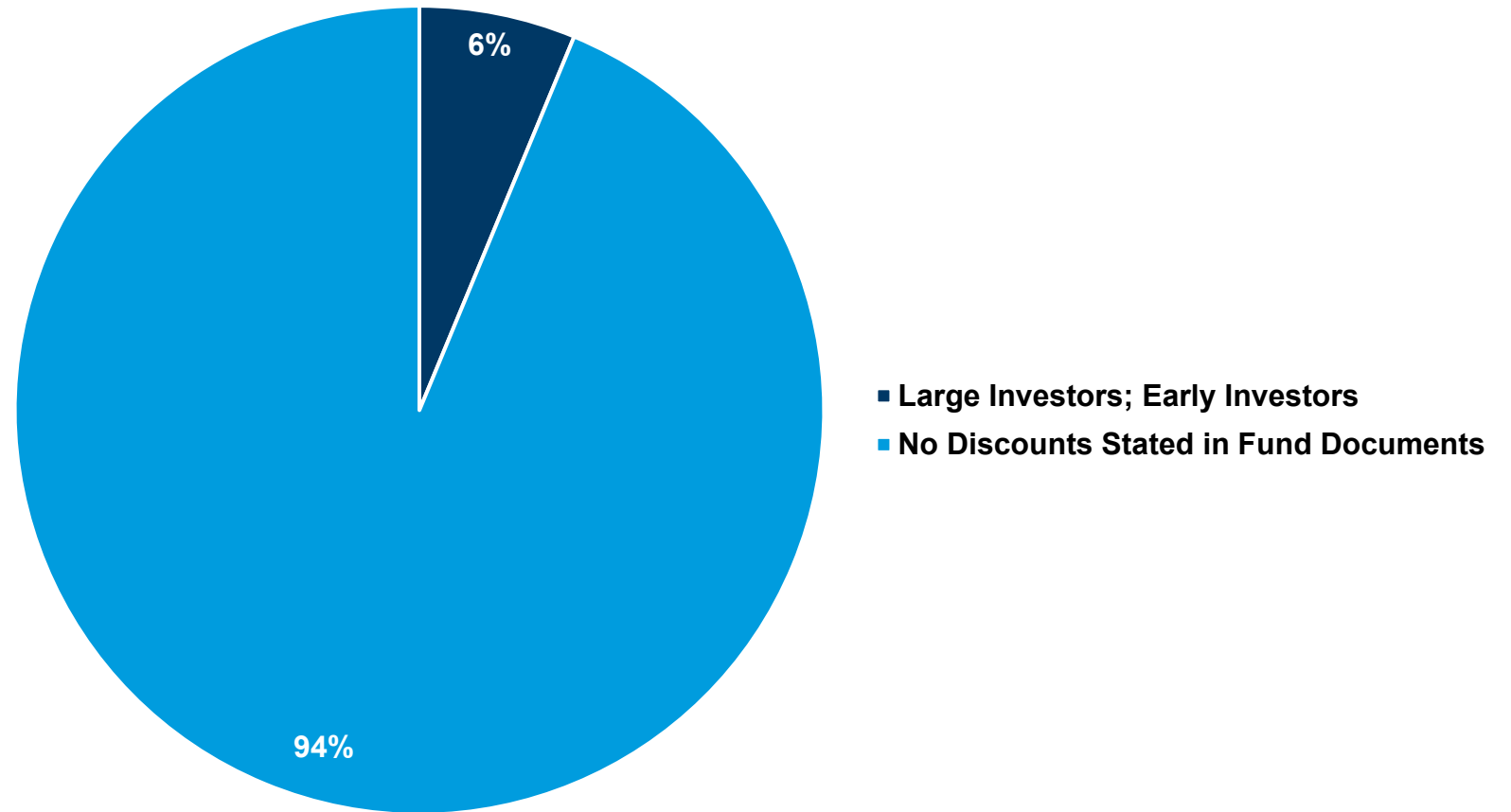
As we have noted previously, the data collected here only captures those funds that specify their discounts in the fund documentation: a number of other funds do offer discounts, but do not set out the detail in their main agreements. Discounts that are set out in side letters are more difficult to track accurately.



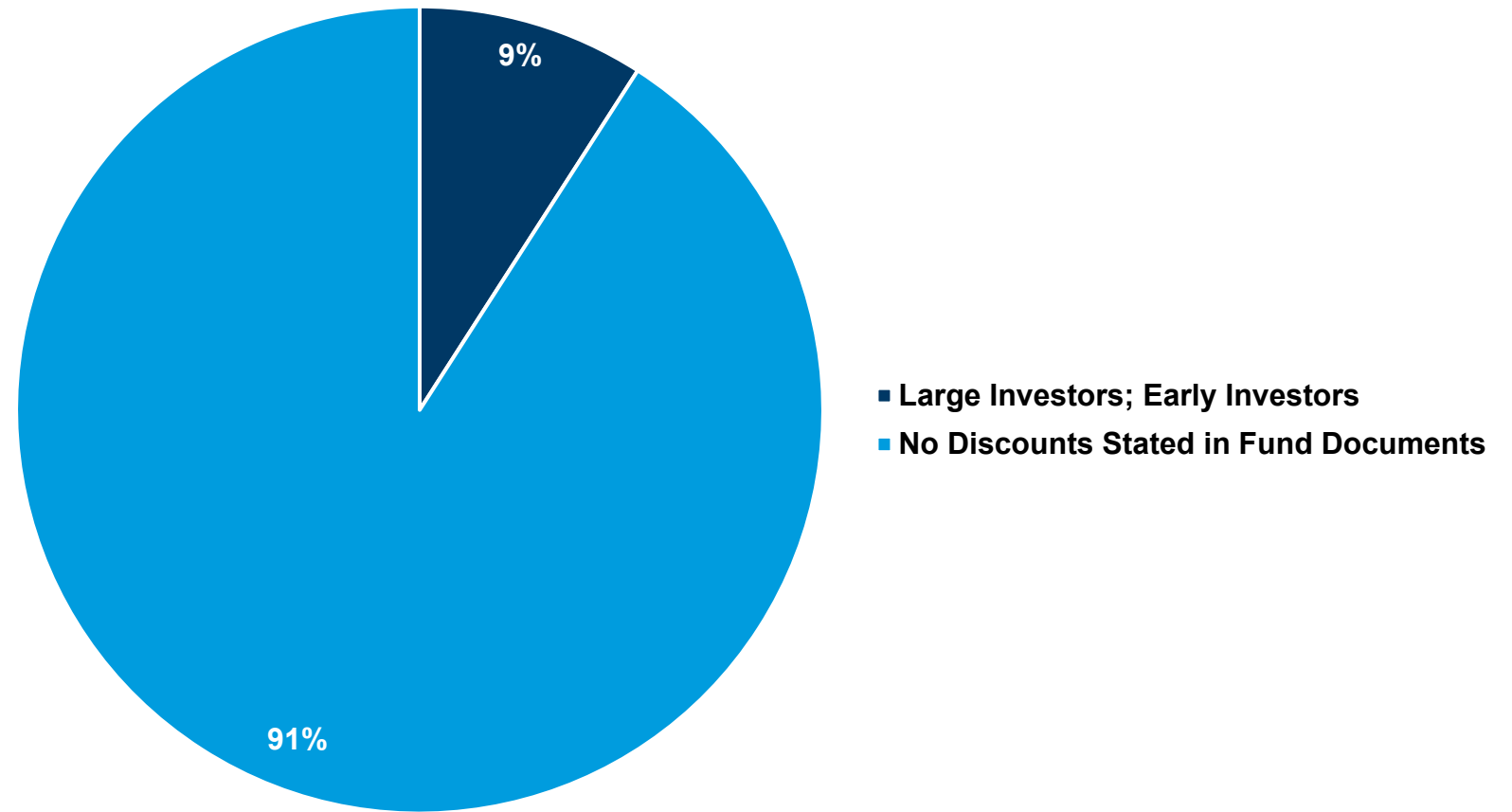
Management fee discounts ≤€500M



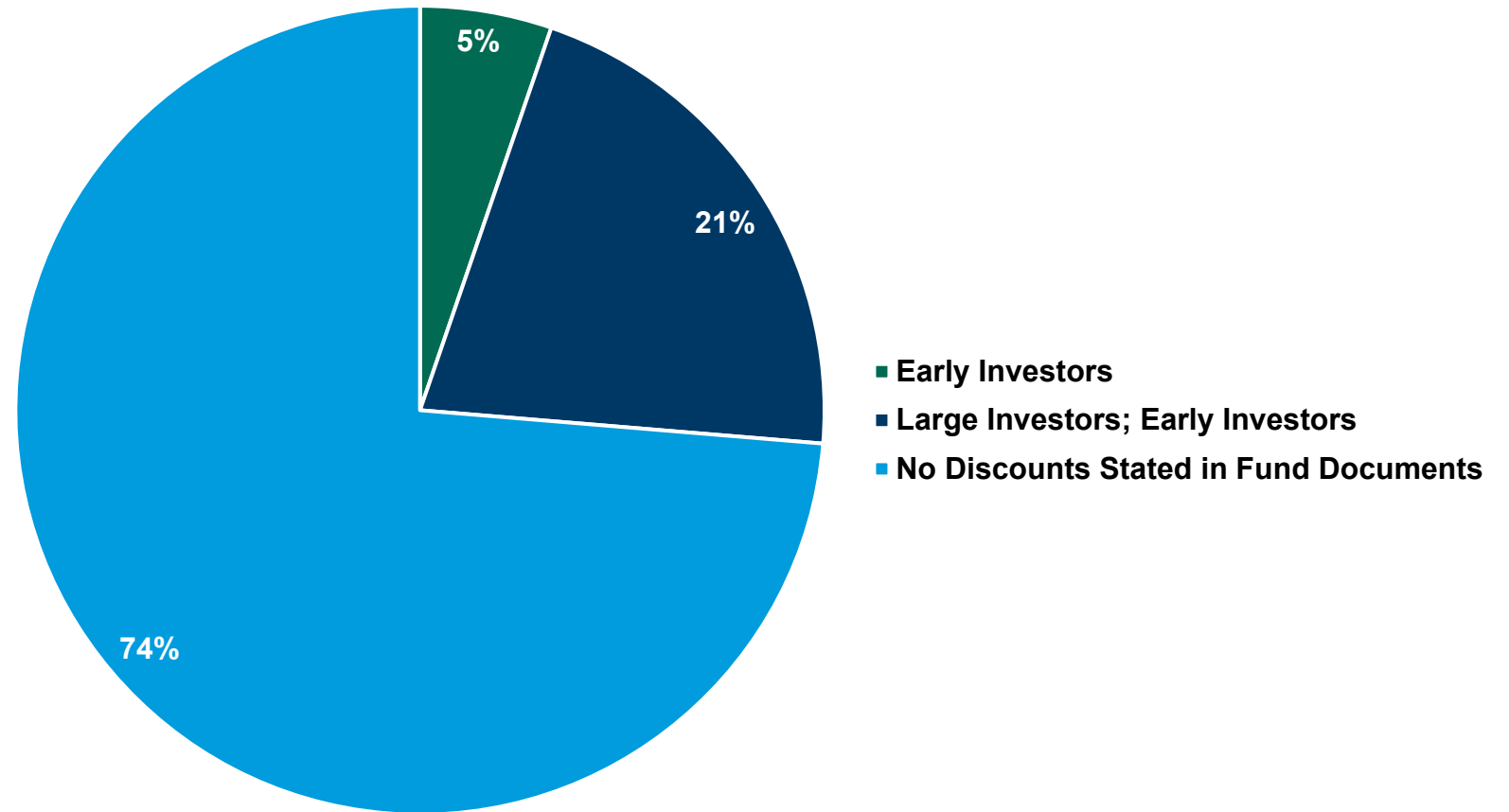
Management fee discounts >€500M-€1.5B



Management fee discounts >€1.5B-€3.75B



Management fee discounts >€3.75B

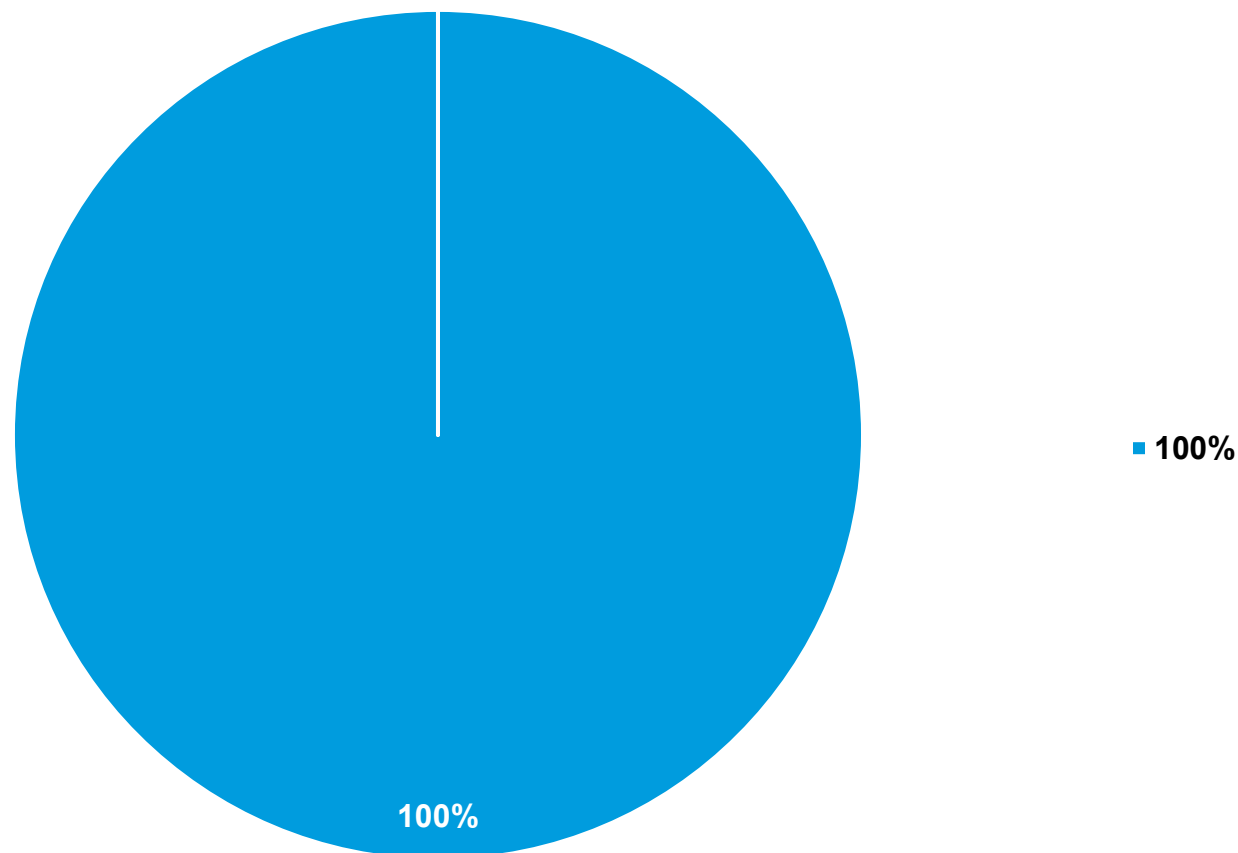


Management fee offset – fees received

All Funds

In relation to fee offsets generally, the market standard continues to be that 100% of directors' (and other) fees received by the GP are offset against the management fees. This year's data backs this up with all funds showing a 100% headline fee offset. As we have reported previously however, an increasing number of funds are seeking to carve out certain fees from the offset mechanism, particularly at the larger end of the market. These carve outs include fees paid to operating partners, industry advisers or value creation teams, as well as fees charged to portfolio companies or holding structures for administration services and sometimes office space that the GP has decided to provide itself, generally on the basis it believes it can do so more cost-effectively than a third party, and in some cases fees paid to the GP's in-house technology teams for data services provided to portfolio companies.

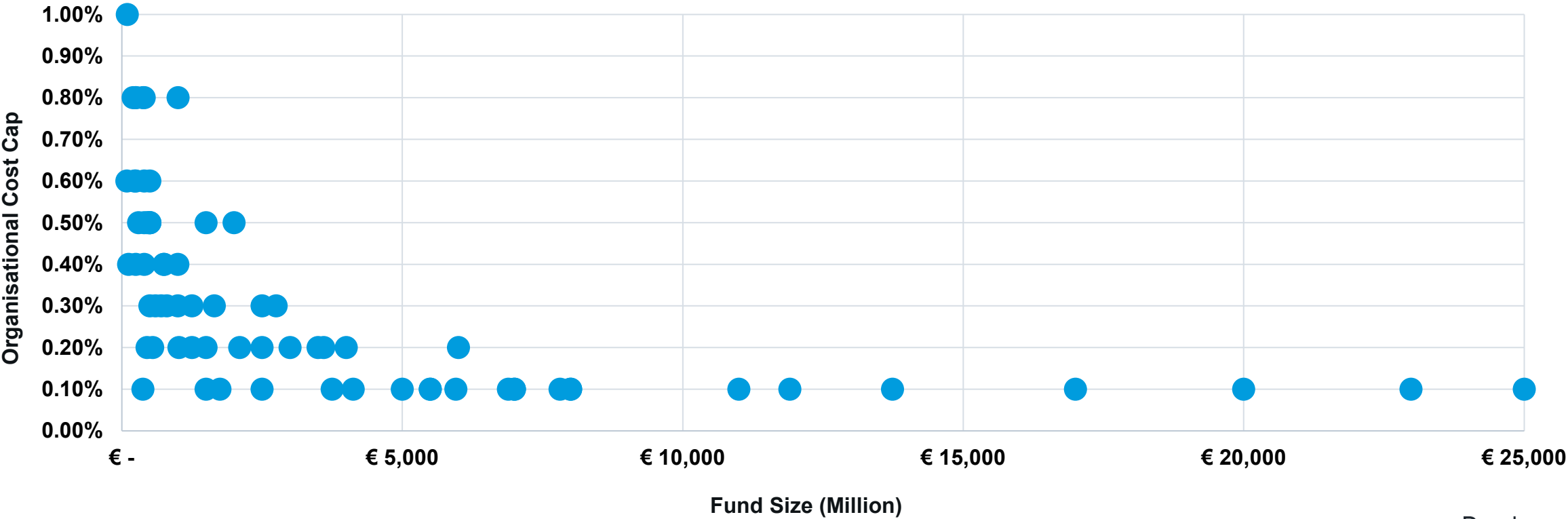
These carve outs are increasingly becoming market standard, with disclosure becoming the focus for investors rather than seeking to negotiate these carve-outs away.



Organisational cost cap

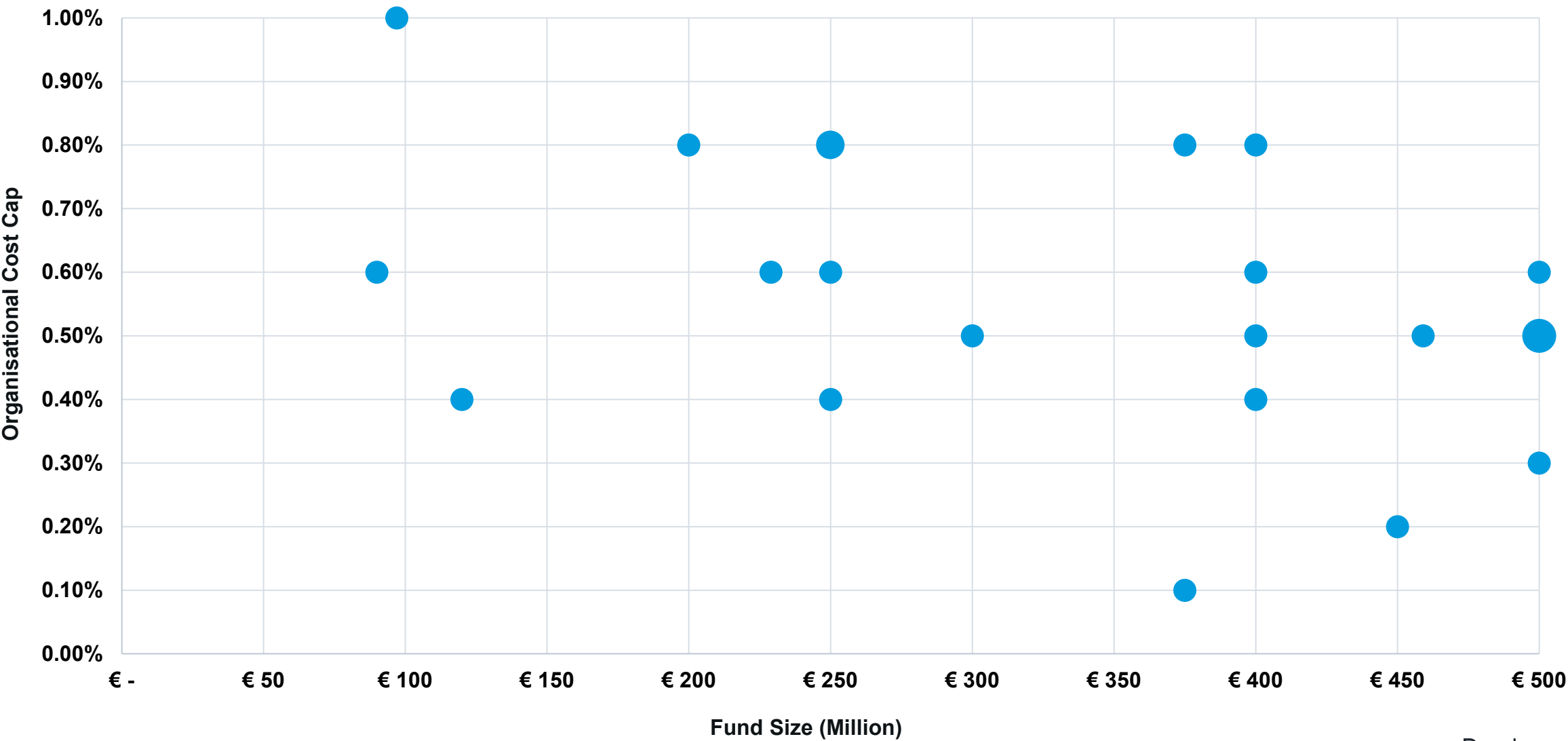
All Funds

As in prior years, organisational cost caps trend downward on a percentage basis as fund sizes increase starting from 1% of total commitments for the smallest funds and moving to 0.1% of total commitments for the largest funds. At fund sizes of at least €5 billion, all funds bar one feature a cap of ~0.1% of the fund size.



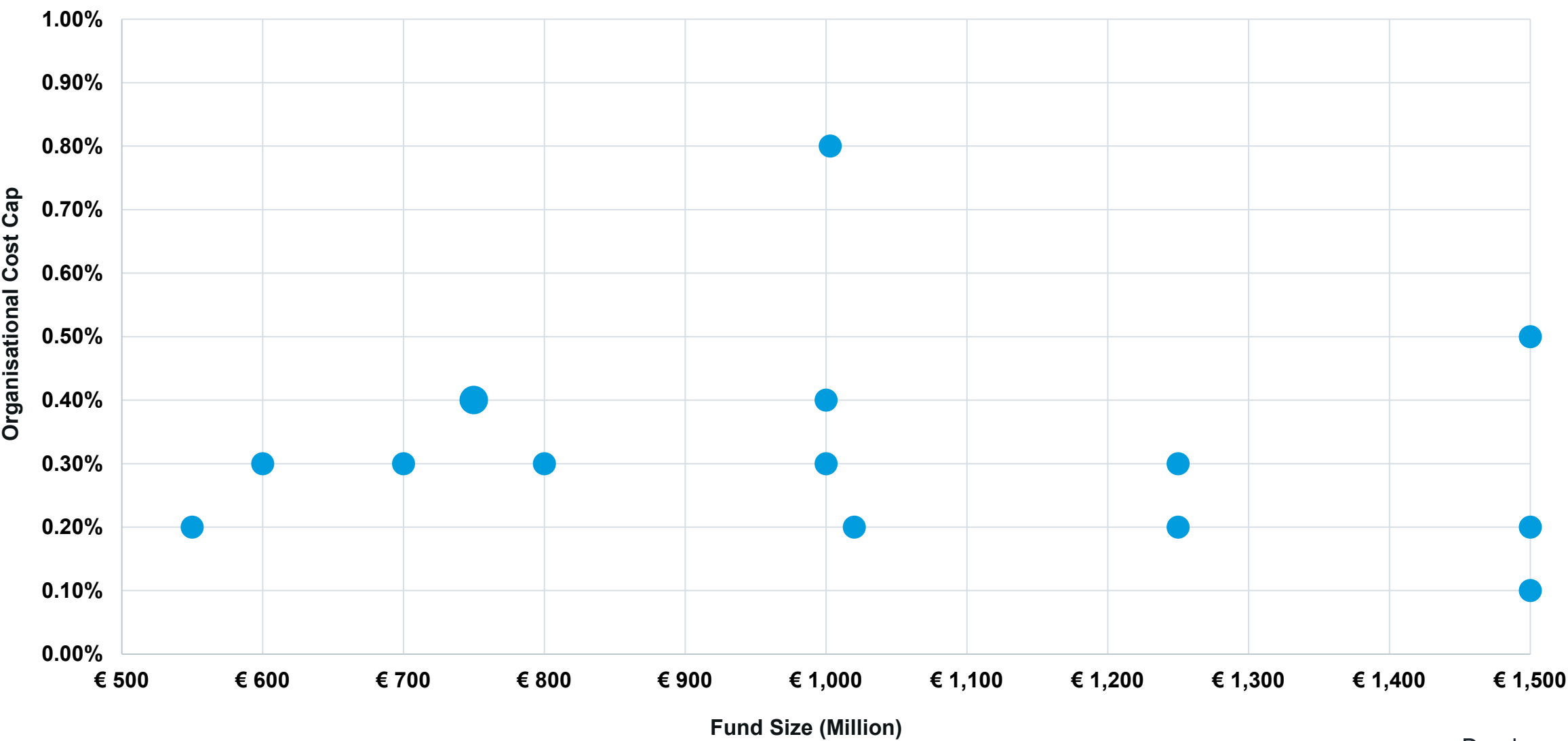
Organisational cost cap

≤€500M



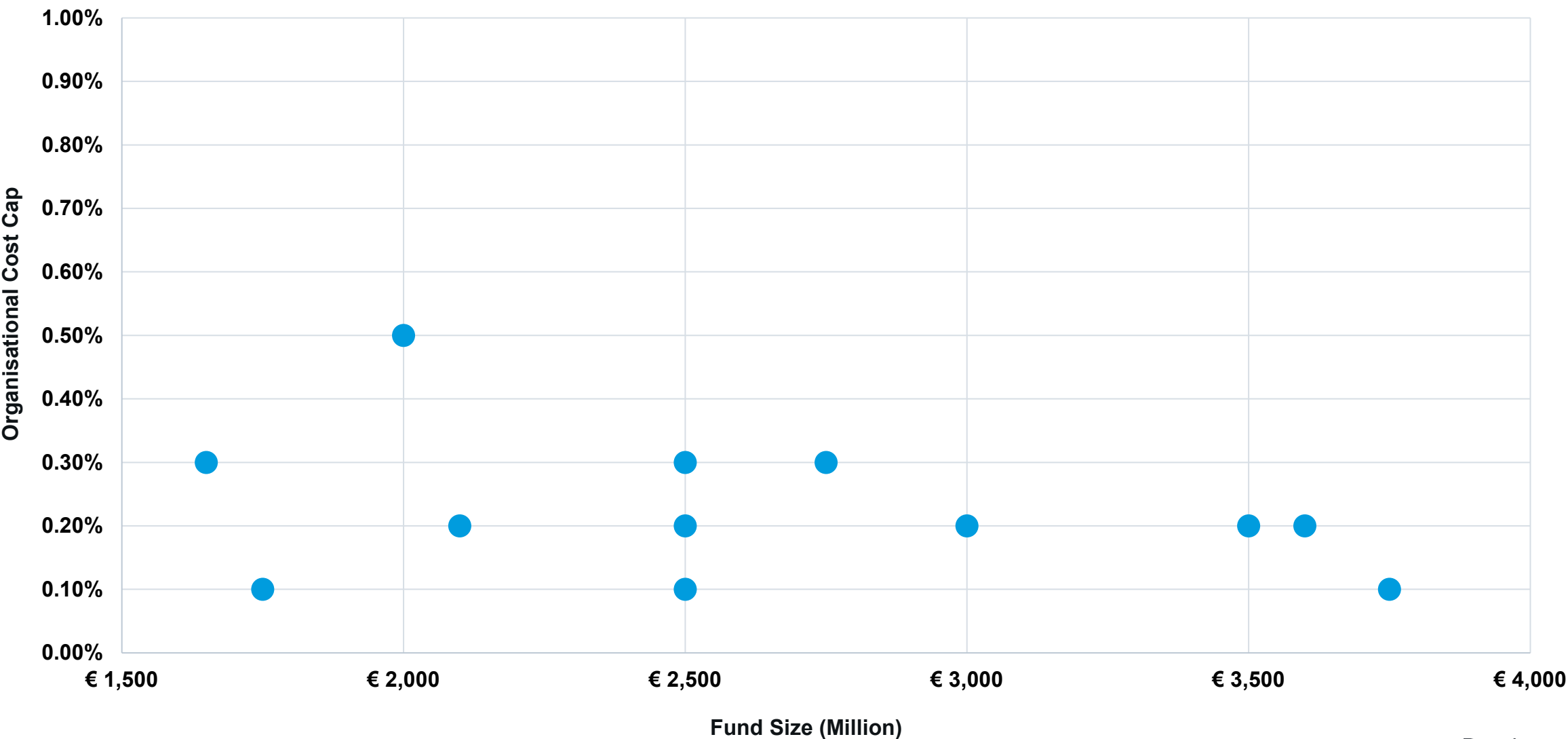
Organisational cost cap

>€500M-€1.5B



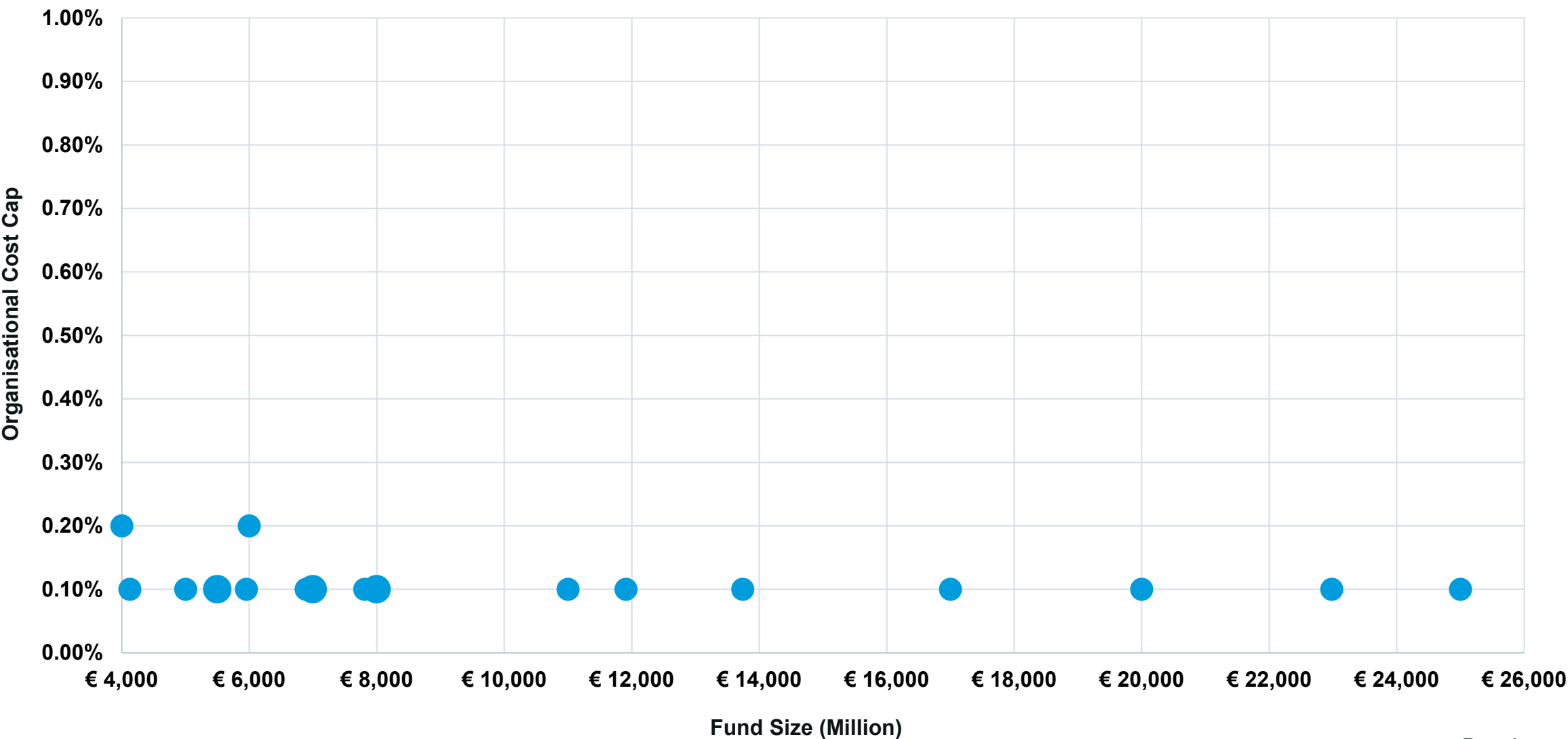
Organisational cost cap

>€1.5B-€3.75B



Organisational cost cap

>€3.75B

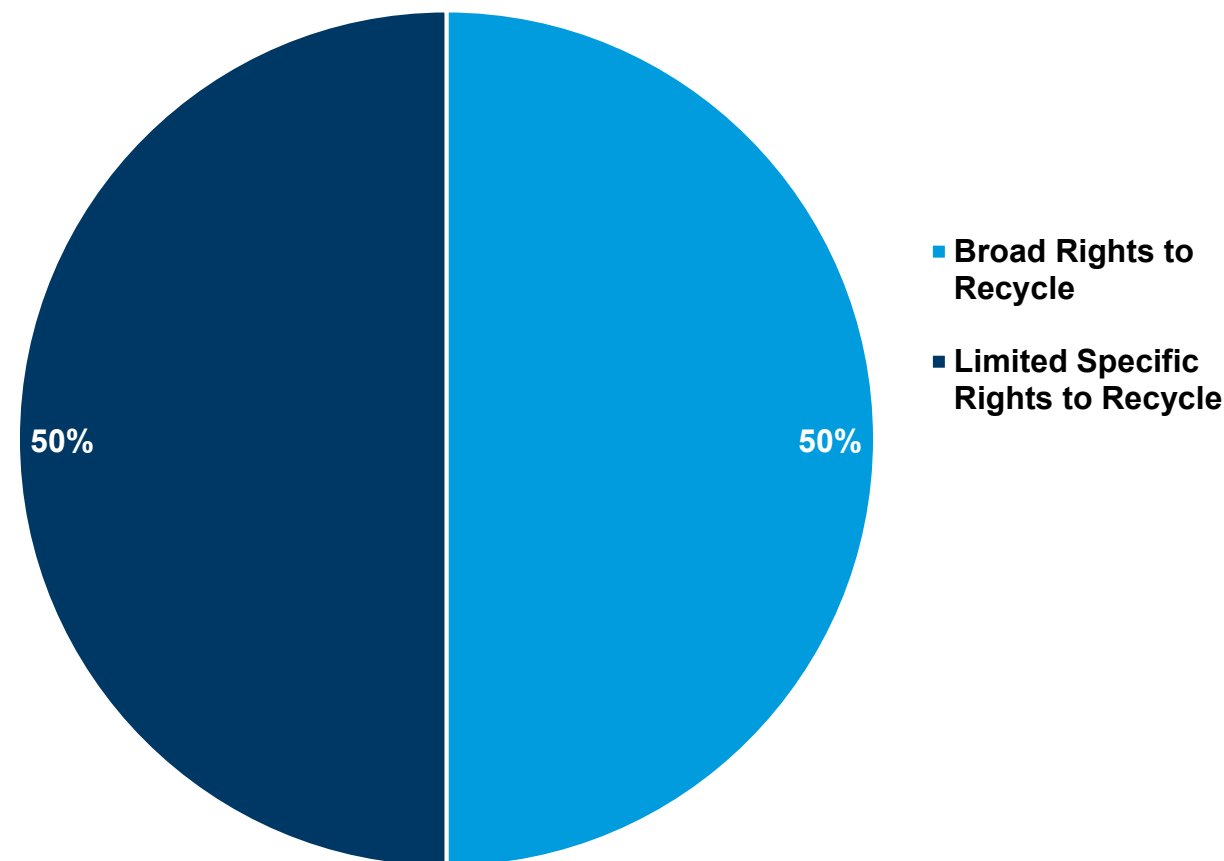


Recycling

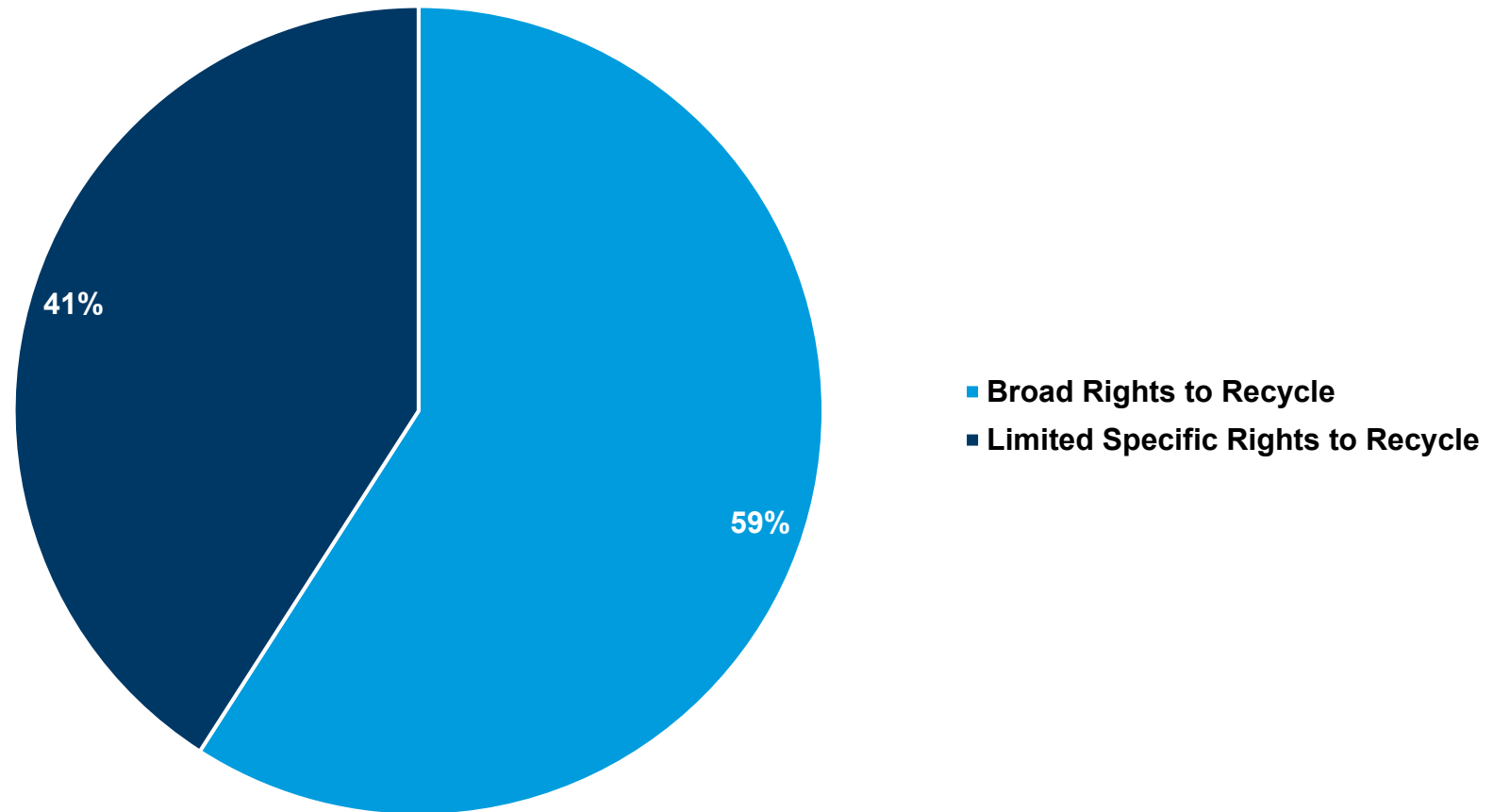
All Funds

This year 50% of funds had broad recycling rights, which is generally consistent with our prior publication. By broad recycling rights, we typically mean that, in addition to rights to recycle proceeds equal to fees and expenses, a fund may recycle proceeds from investments realised during the investment period. The funds with more limited rights would restrict recycling to proceeds received from investments within 12 to 18 months of acquisition.

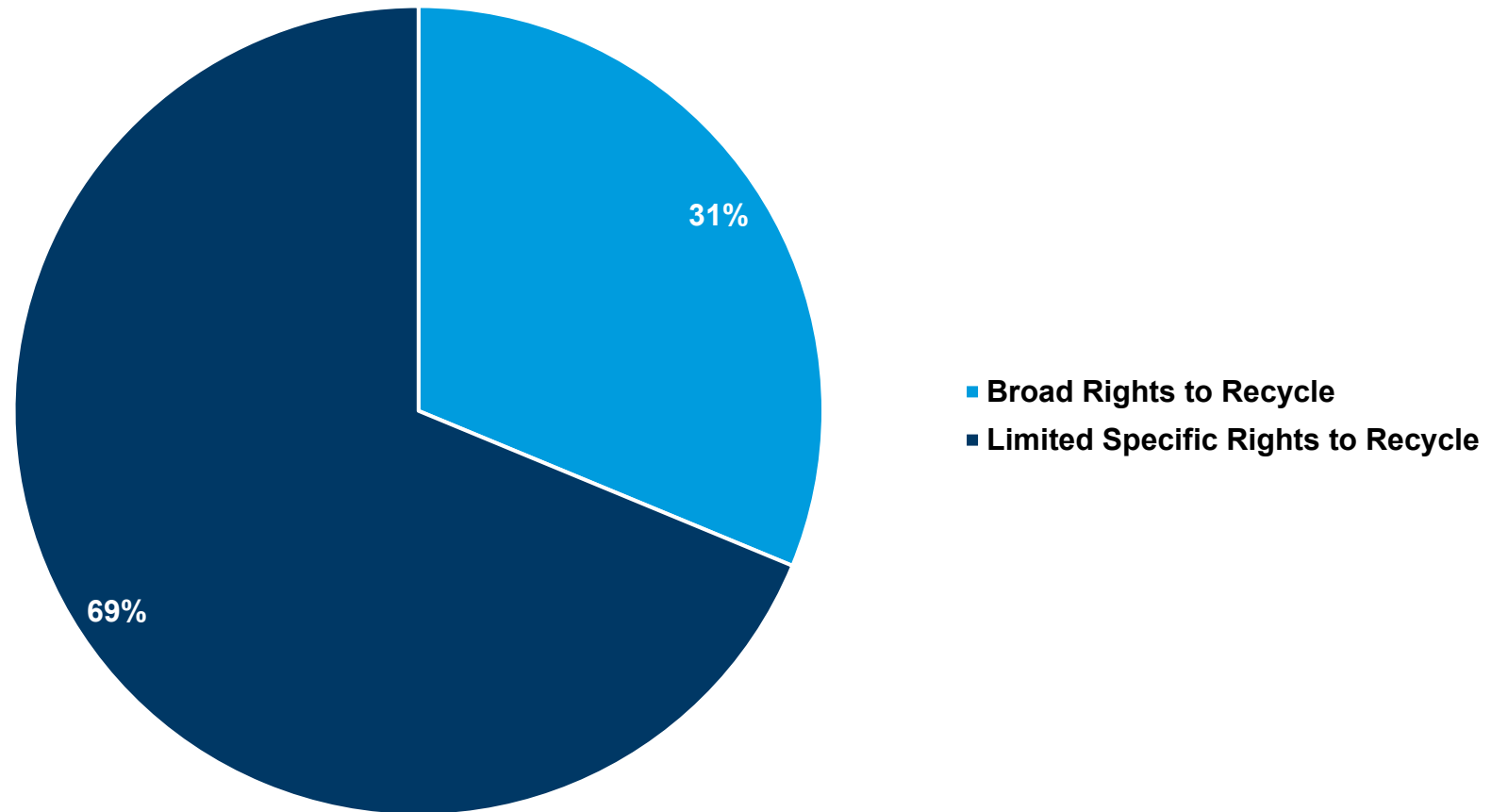
We do expect to see managers continuing to push for expanded recycling rights as part of the drive to narrow the gross/net IRR spread, but also as a means of providing additional liquidity and a quick solution to boost a fund's available capital. However, with NAV and hybrid facilities continuing to be used by fund managed, there are alternative methods of providing needed liquidity.



Recycling ≤€500M

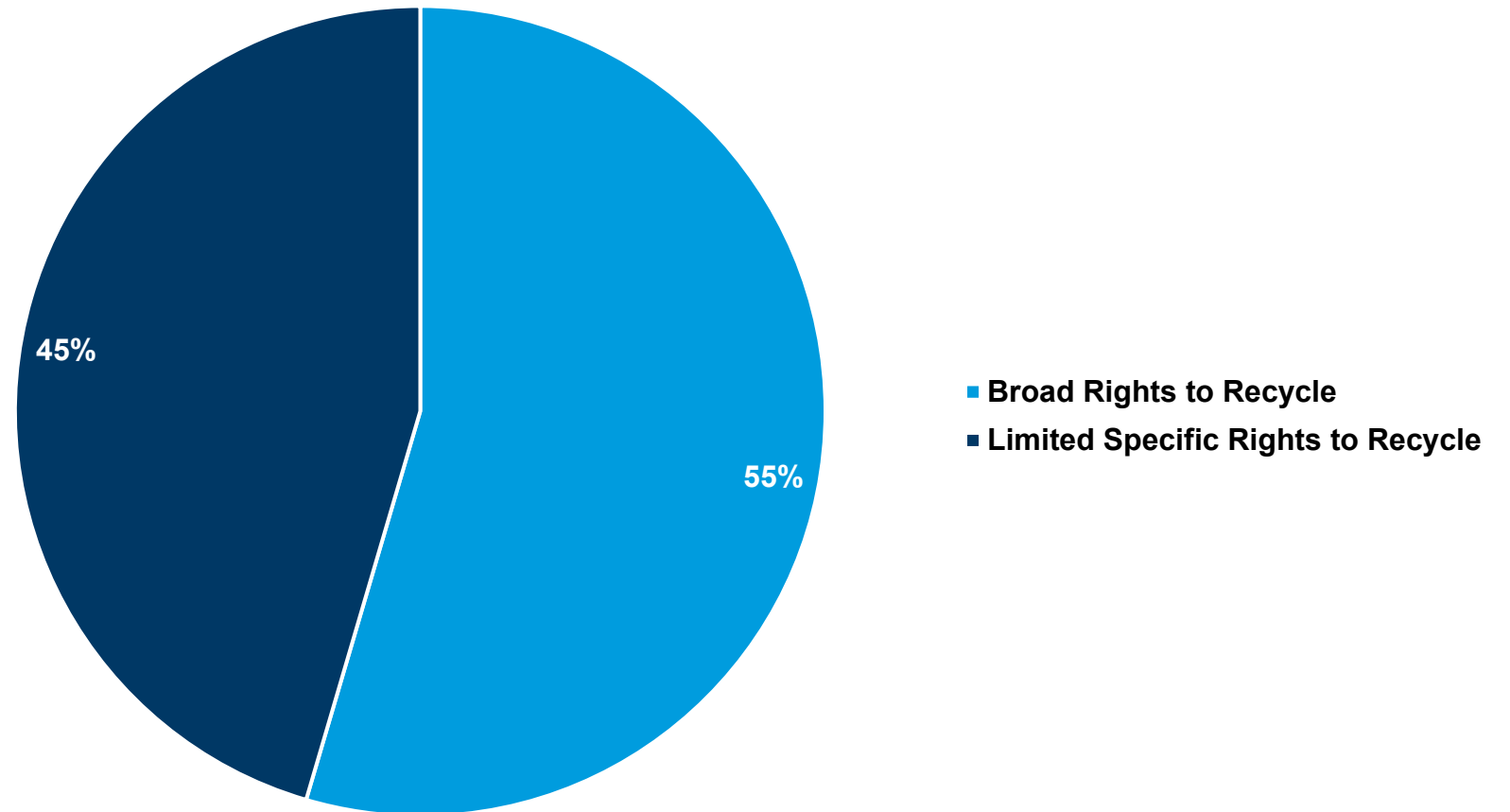


Recycling >€500M-€1.5B



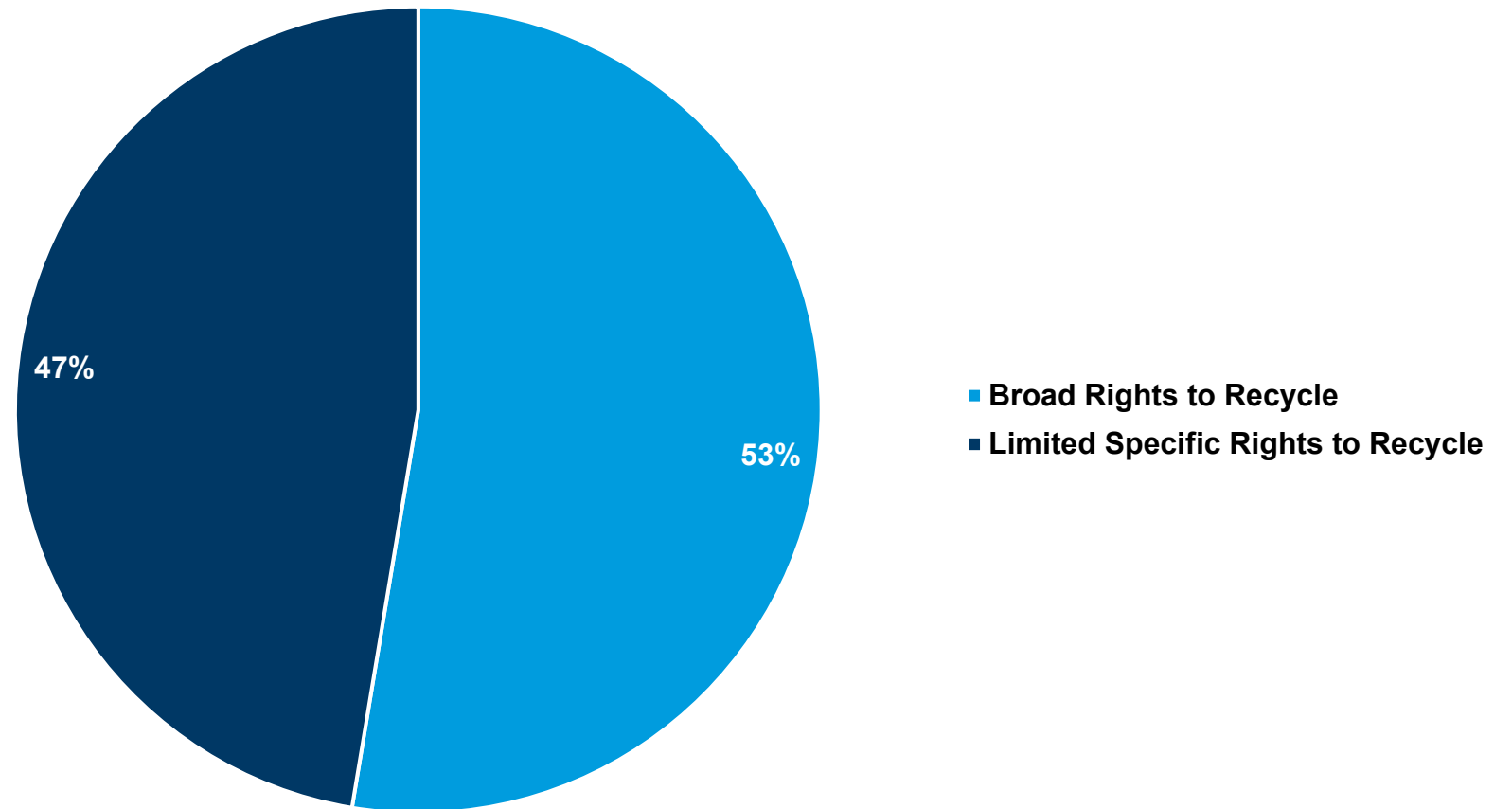
Recycling

>€1.5B-€3.75B



Recycling

>€3.75B



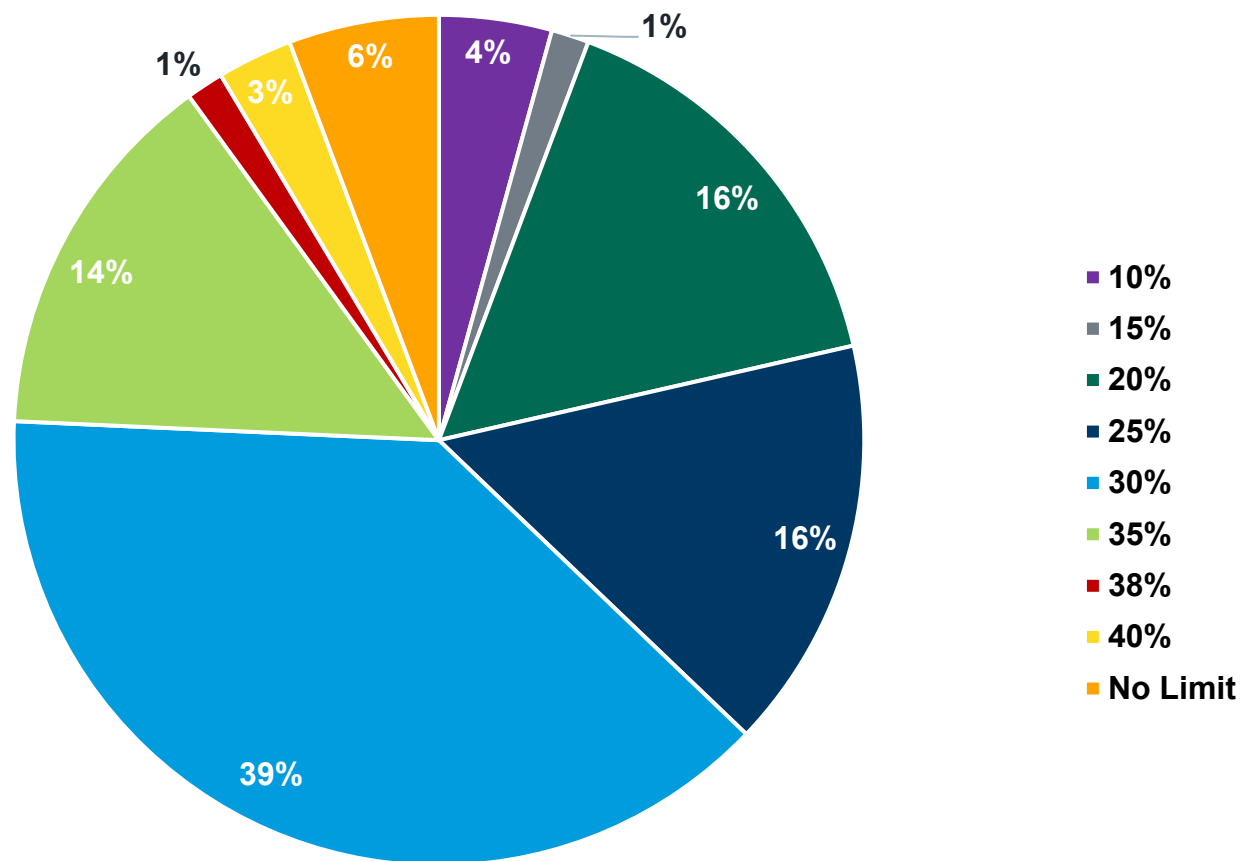
Limits on bridge facilities and other fund-level borrowing (% of commitments)

All Funds

As in recent years, we continue to see a strong trend towards higher fund-level borrowing limits at all fund sizes. Whilst the majority of funds' borrowing limits do still fall in the 20% to 30% range (71%), 63% of the funds in our sample have limits of 30% or greater which represents a significant increase from 49% in our prior publication.

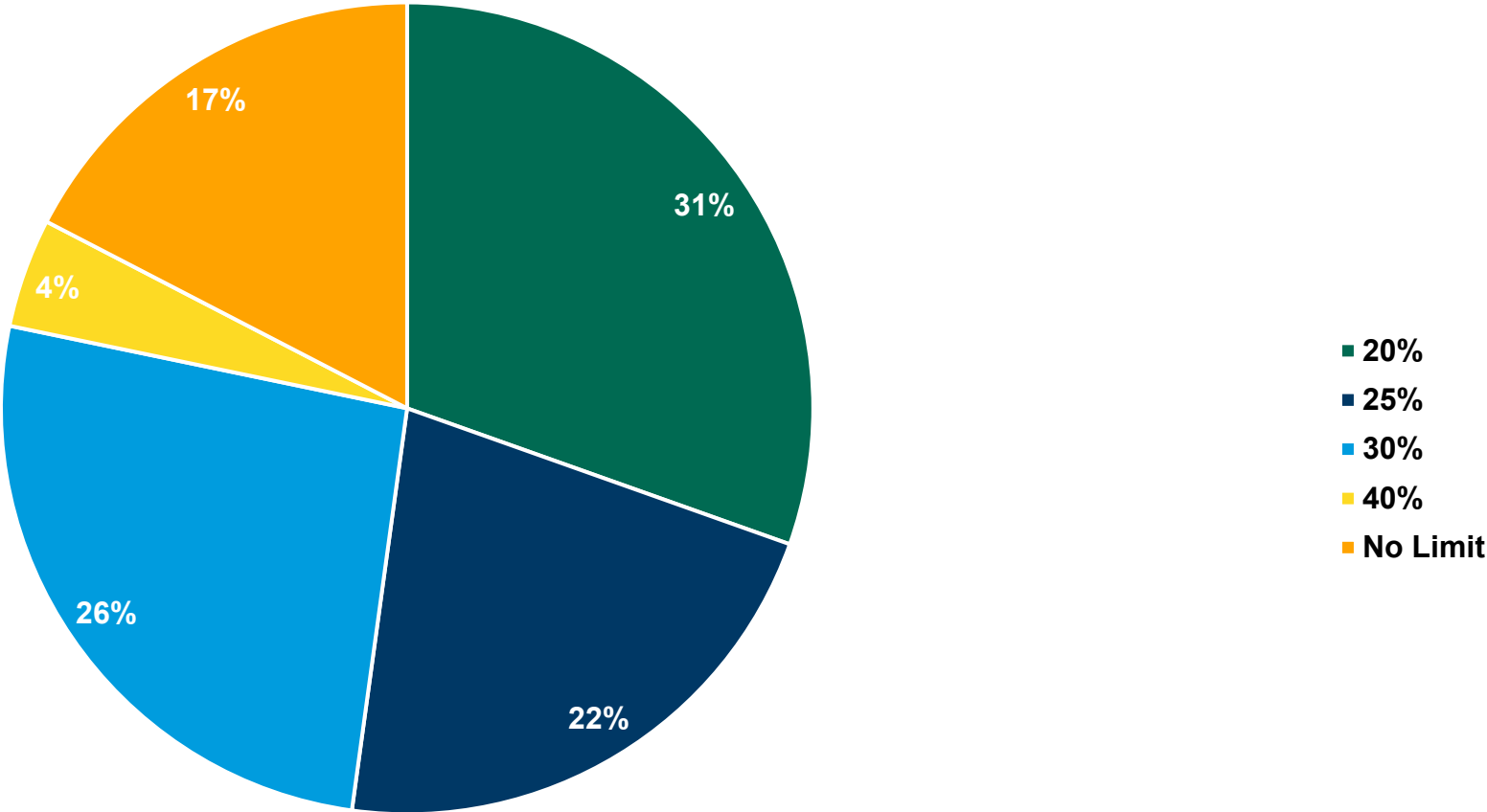
This trend bears itself out across the size brackets, with half of even the smallest funds having limits of 30% or above, and it continues to be the case that that largest funds have the highest average borrowing limits, though the difference is less marked than in prior years.

There continues to be significant focus on fund leverage by investors and managers, both in terms of the use of capital call facilities to bridge capital calls and broader potential use of leverage (in light of the increased use of NAV and hybrid facilities by managers recently), particularly by the larger funds. During diligence and legal negotiations, investors remain keen to understand how managers intend to use borrowing in practice, and therefore what the impact may be on their risks and returns, given the cost of the facility and the potential reduction in accrued preferred return. While investors understand the potential administrative benefits of a reduction in frequency of capital calls, some investors are less comfortable with the extensive use of facilities, given they have to reserve capital for potential drawdowns and therefore are keen to ensure their commitments are actually called down and put to work.



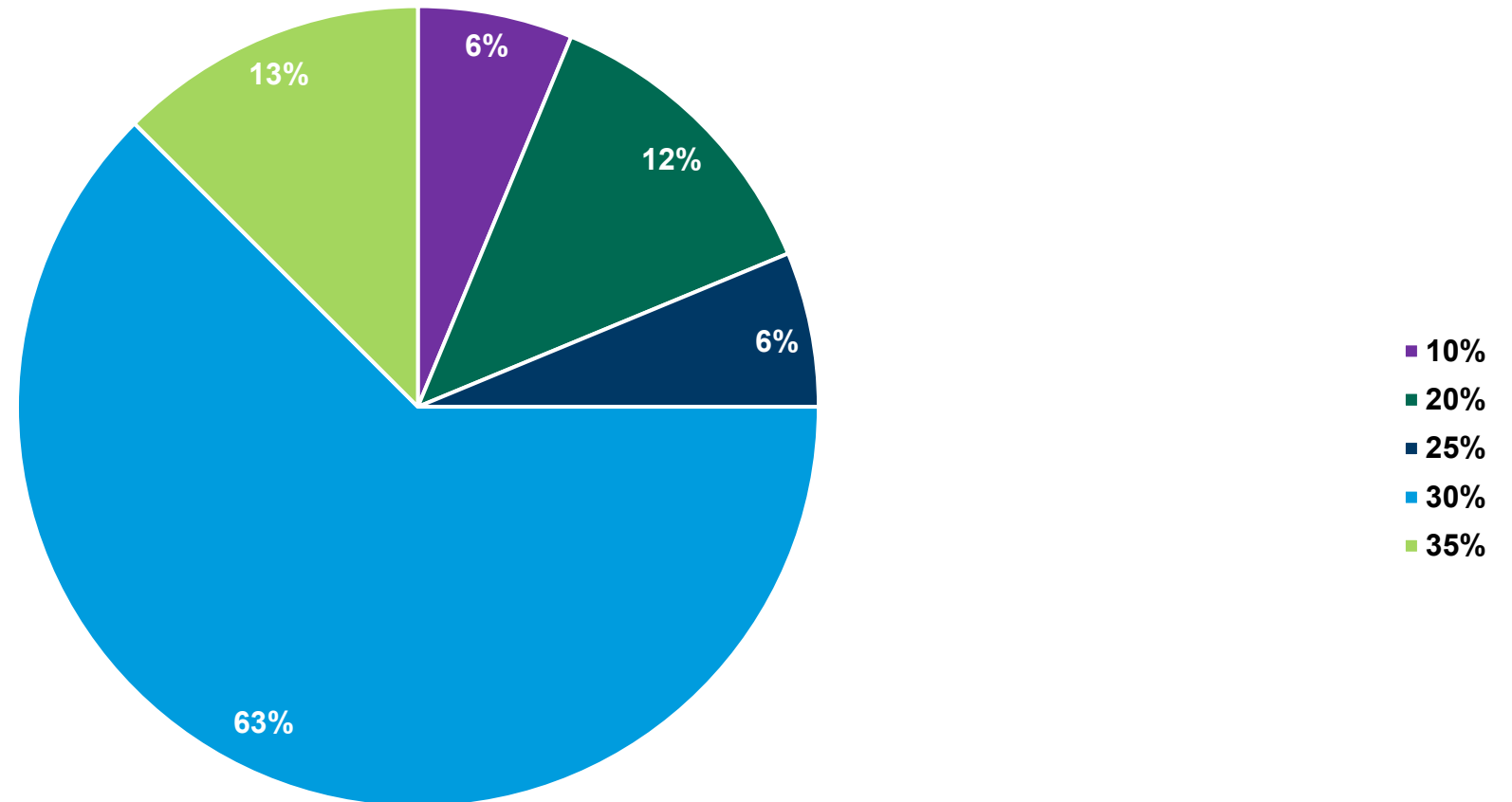
Limits on bridge facilities and other fund-level borrowing (% of commitments)

≤€500M



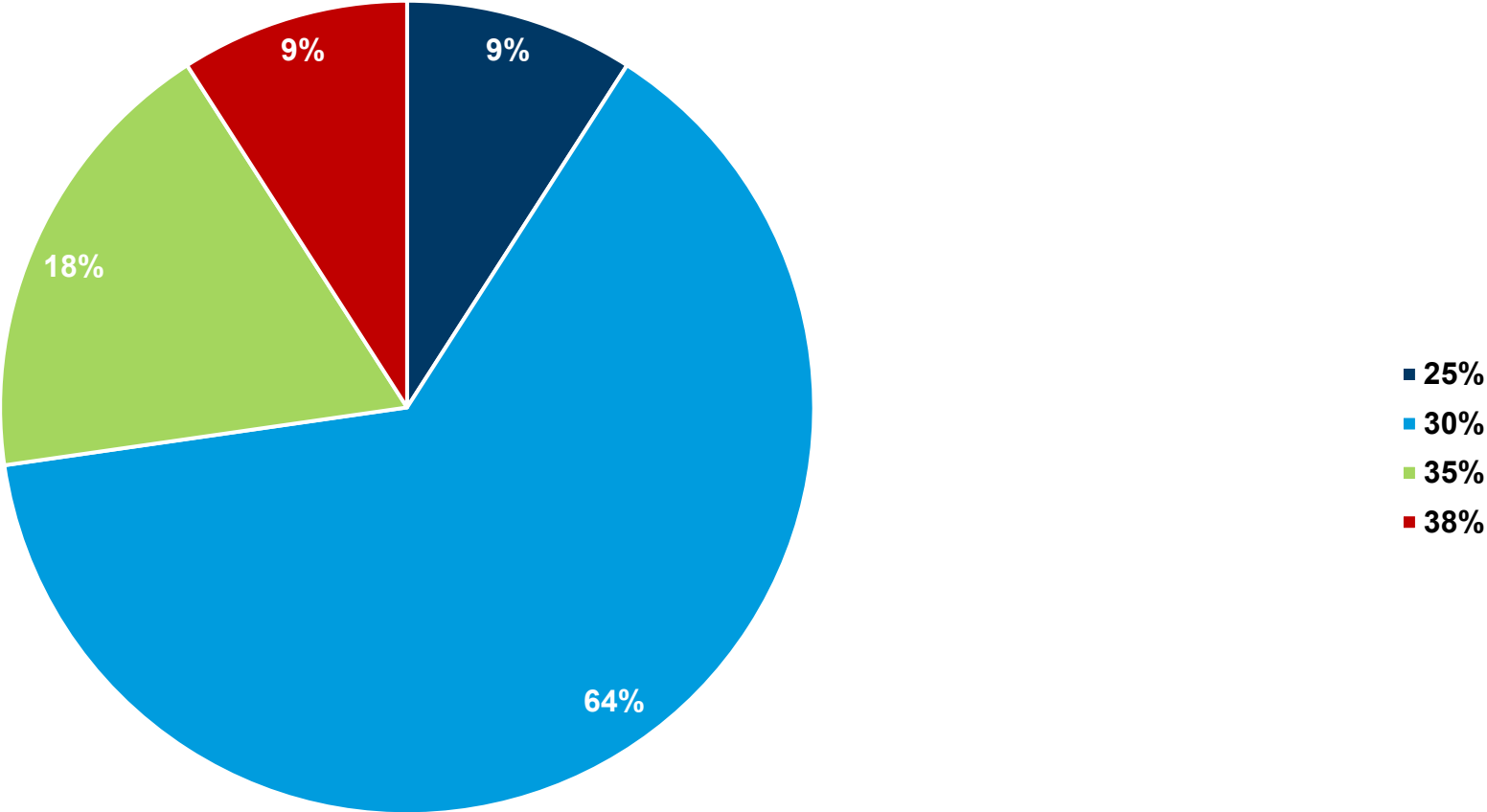
Limits on bridge facilities and other fund-level borrowing (% of commitments)

>€500M-€1.5B



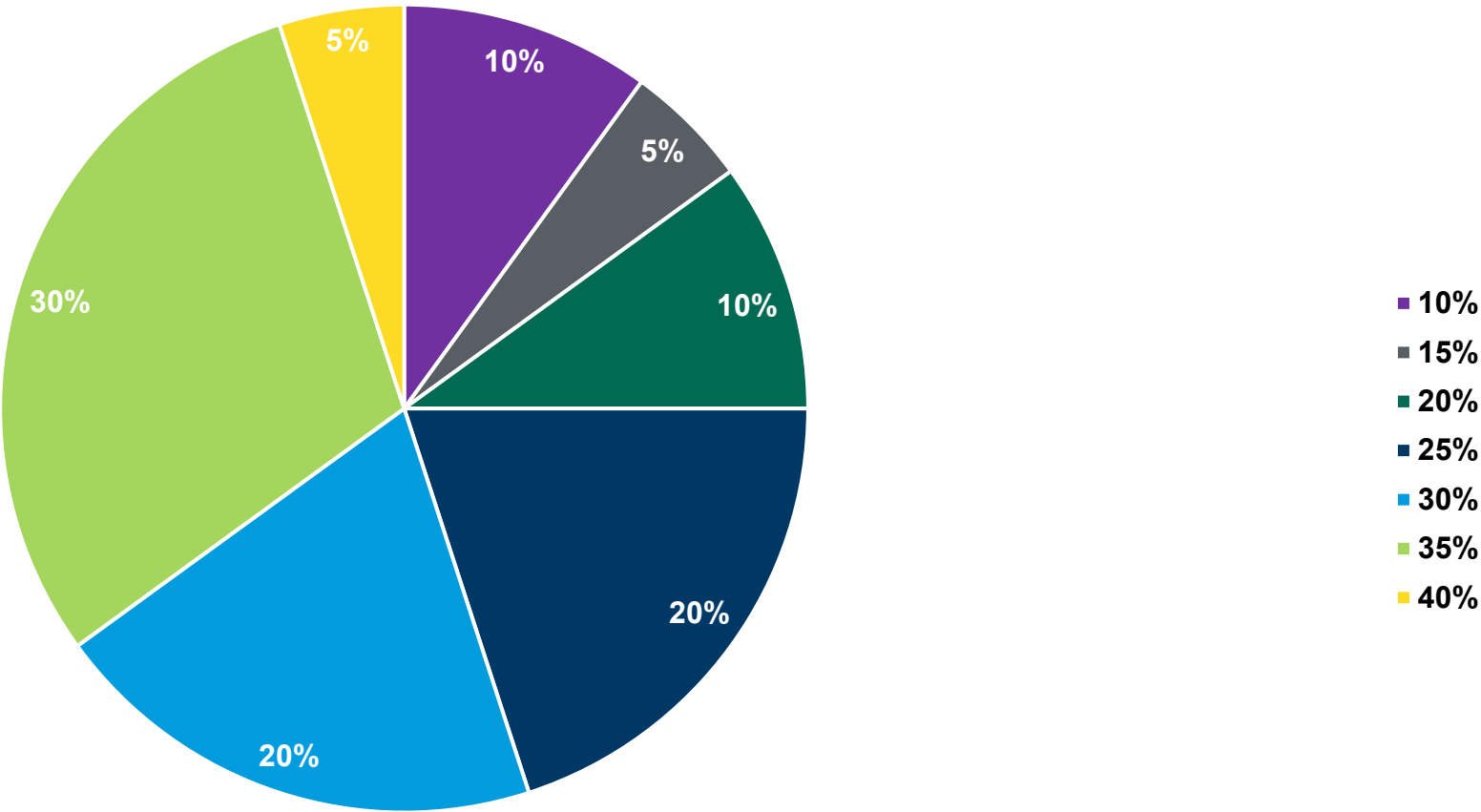
Limits on bridge facilities and other fund-level borrowing (% of commitments)

>€1.5B-€3.75B



Limits on bridge facilities and other fund-level borrowing (% of commitments)

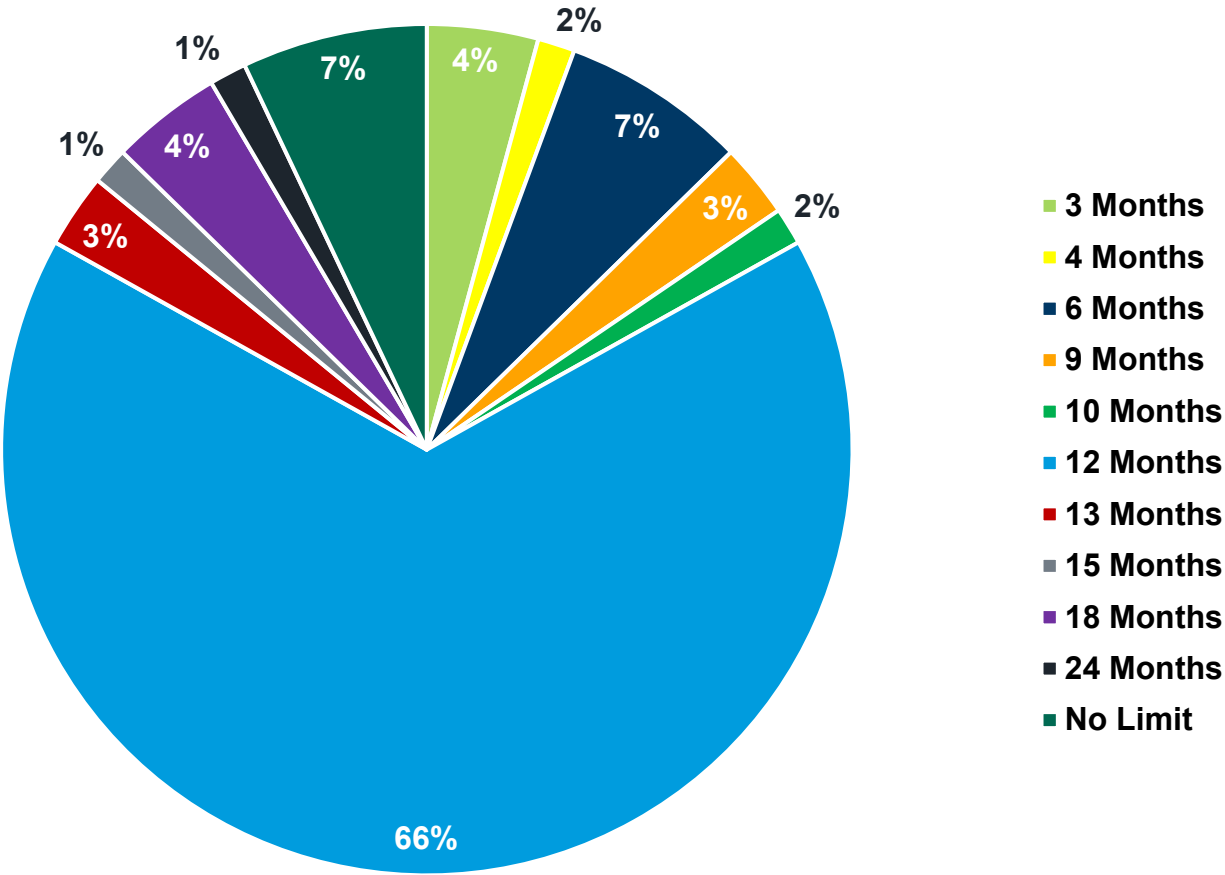
>€3.75B



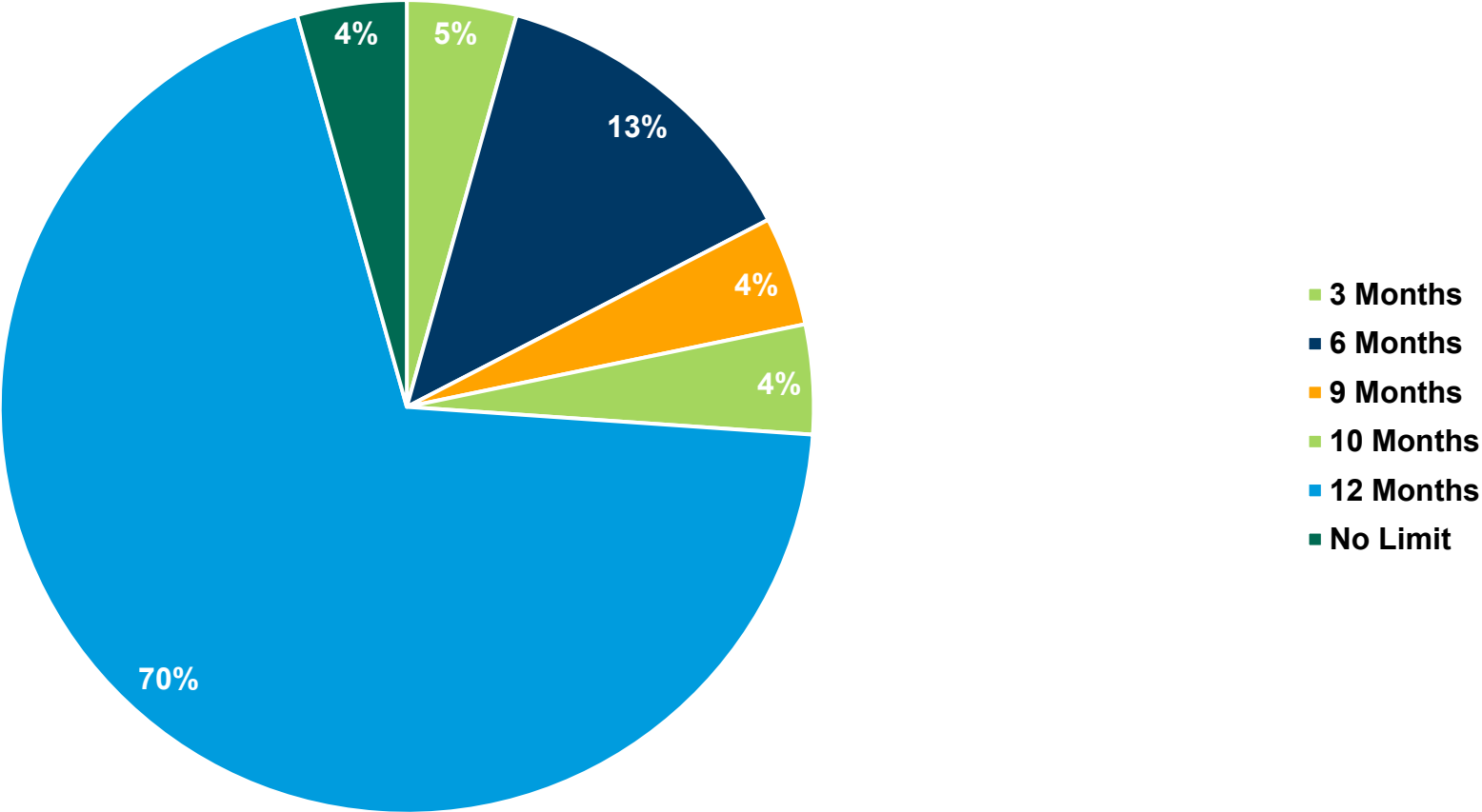
Time limits on borrowing

All Funds

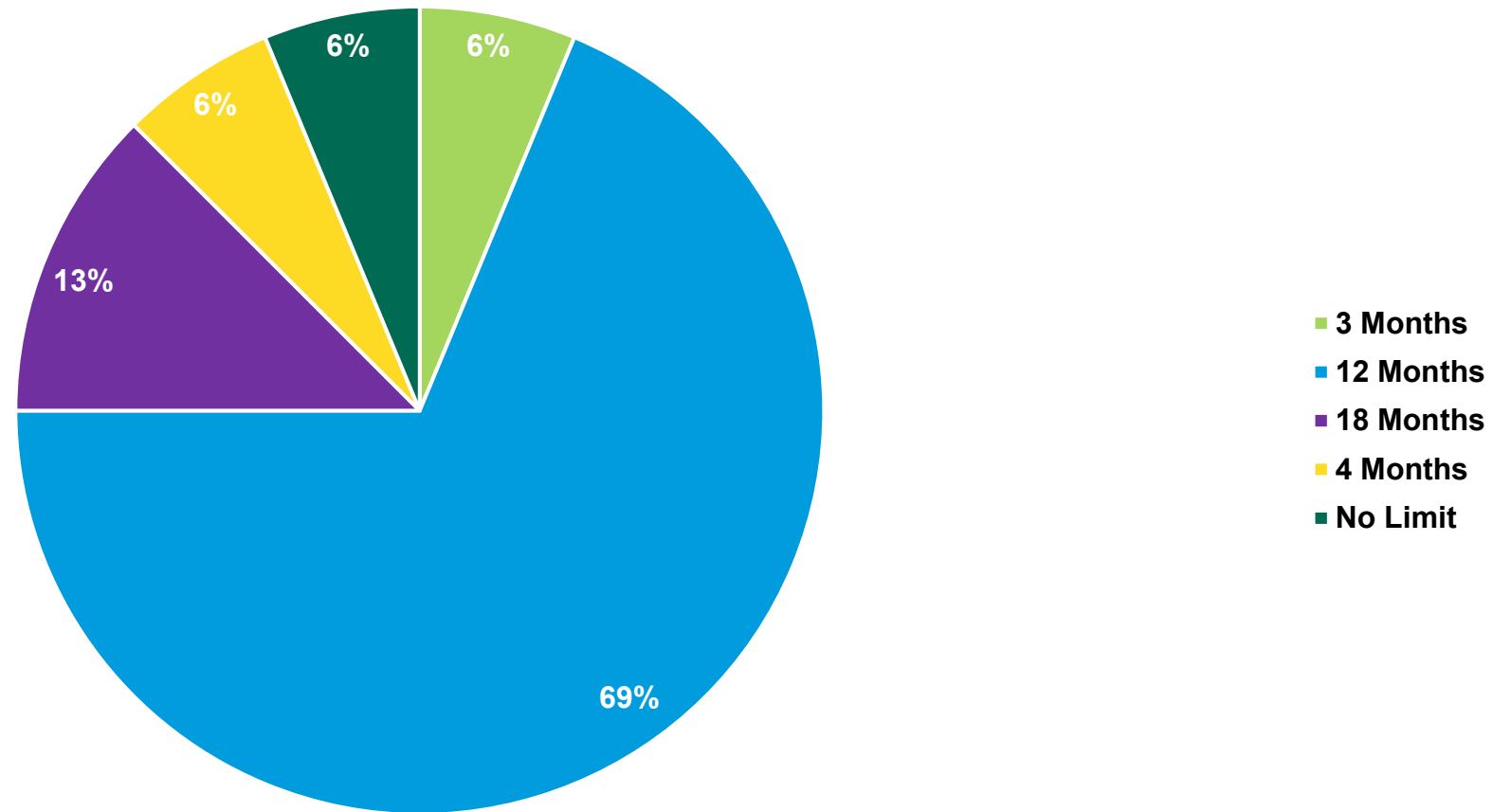
The majority of funds have a 12-month limit on the time period any fund-level borrowing may be outstanding, which remains consistent with figures for prior years. That said, limits range from 3 to 24 months, with a small number of funds – typically those at the largest end of the spectrum – not having any limit written into the documents. We continue to see discussions between investors and managers around the appropriate time limit on fund borrowing, including separate time limits on borrowings for different purposes.



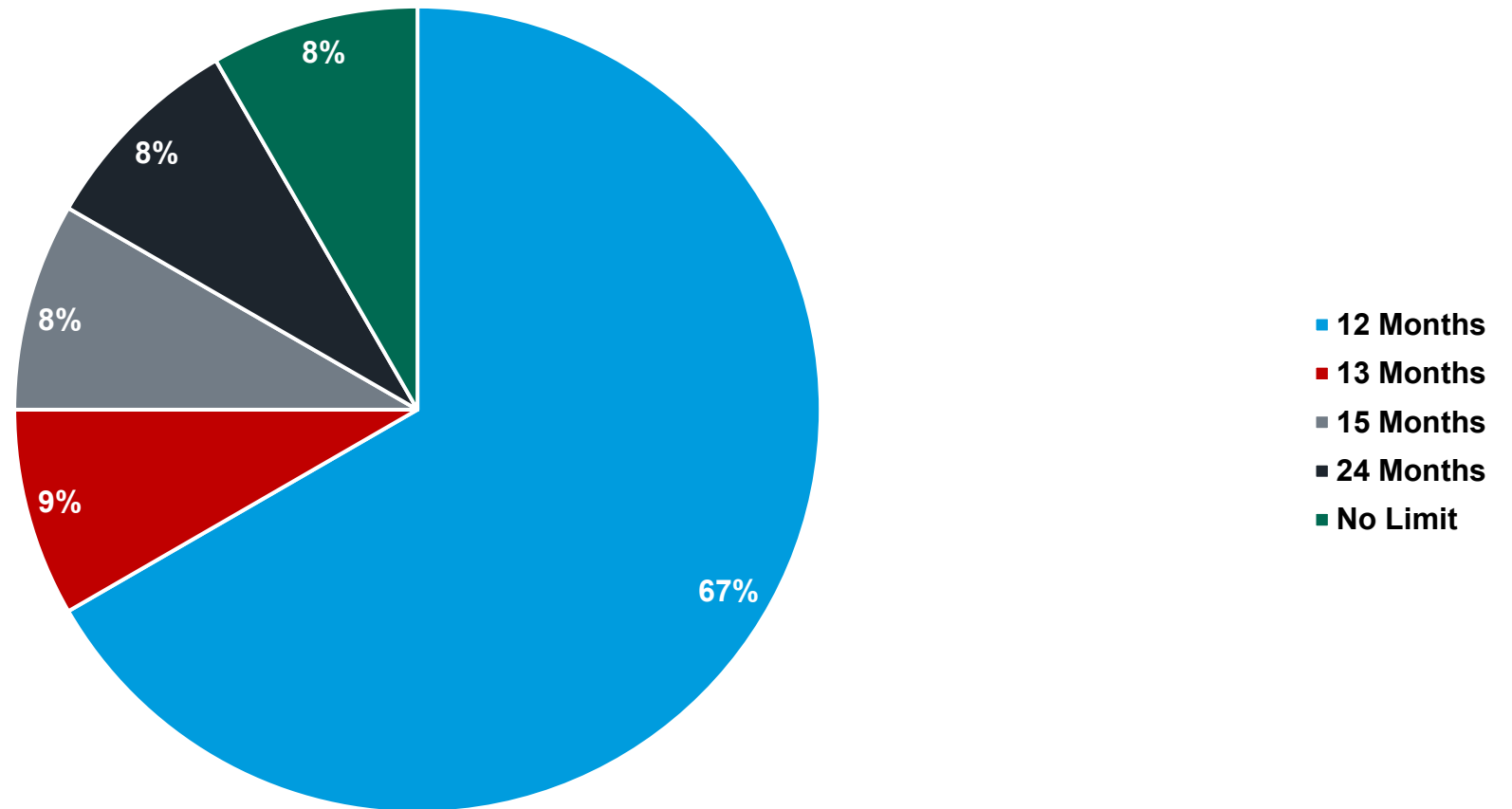
Time limits on borrowing
≤€500M



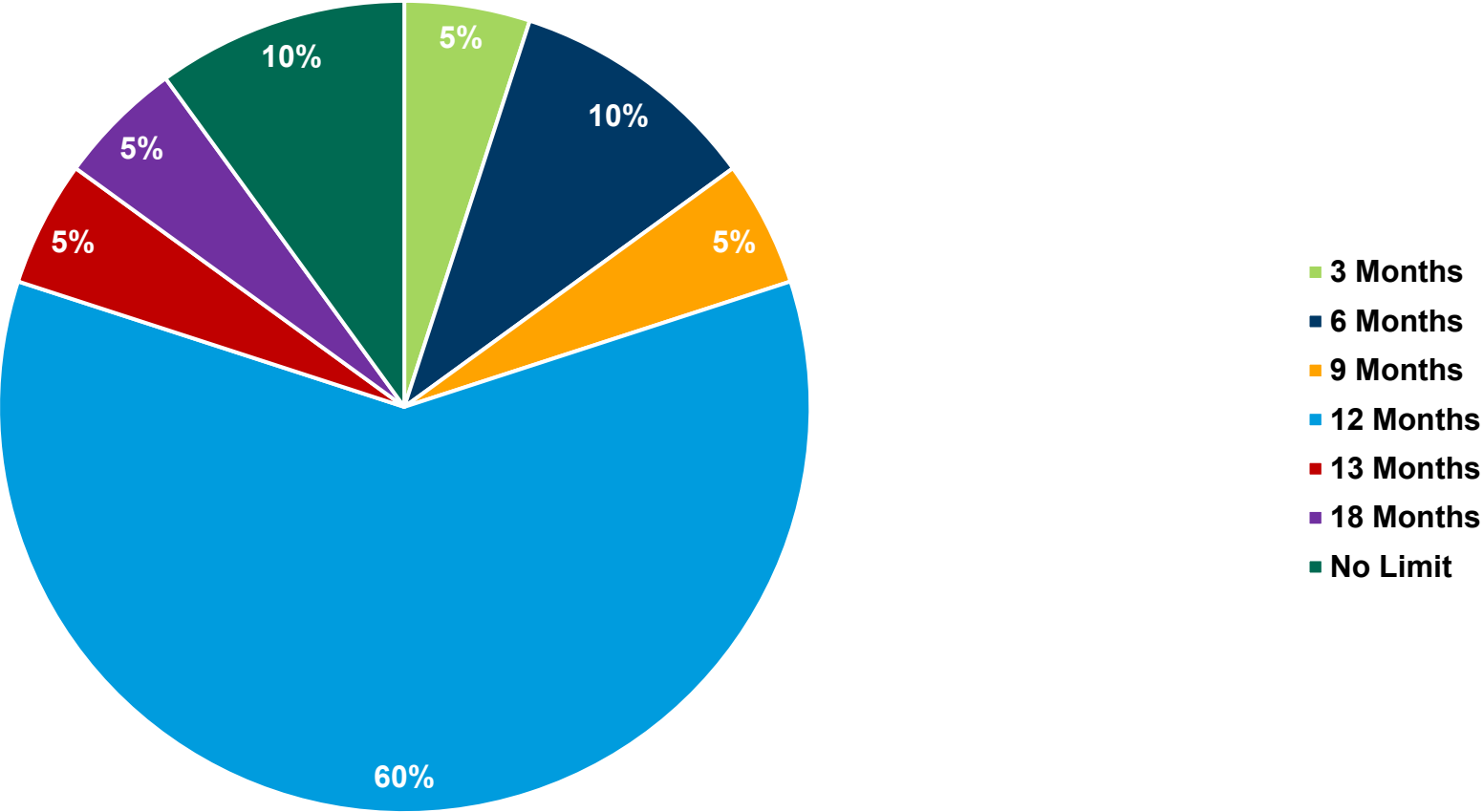
Time limits on borrowing >€500M-€1.5B



Time limits on borrowing >€1.5B-€3.75B



Time limits on borrowing
>€3.75B

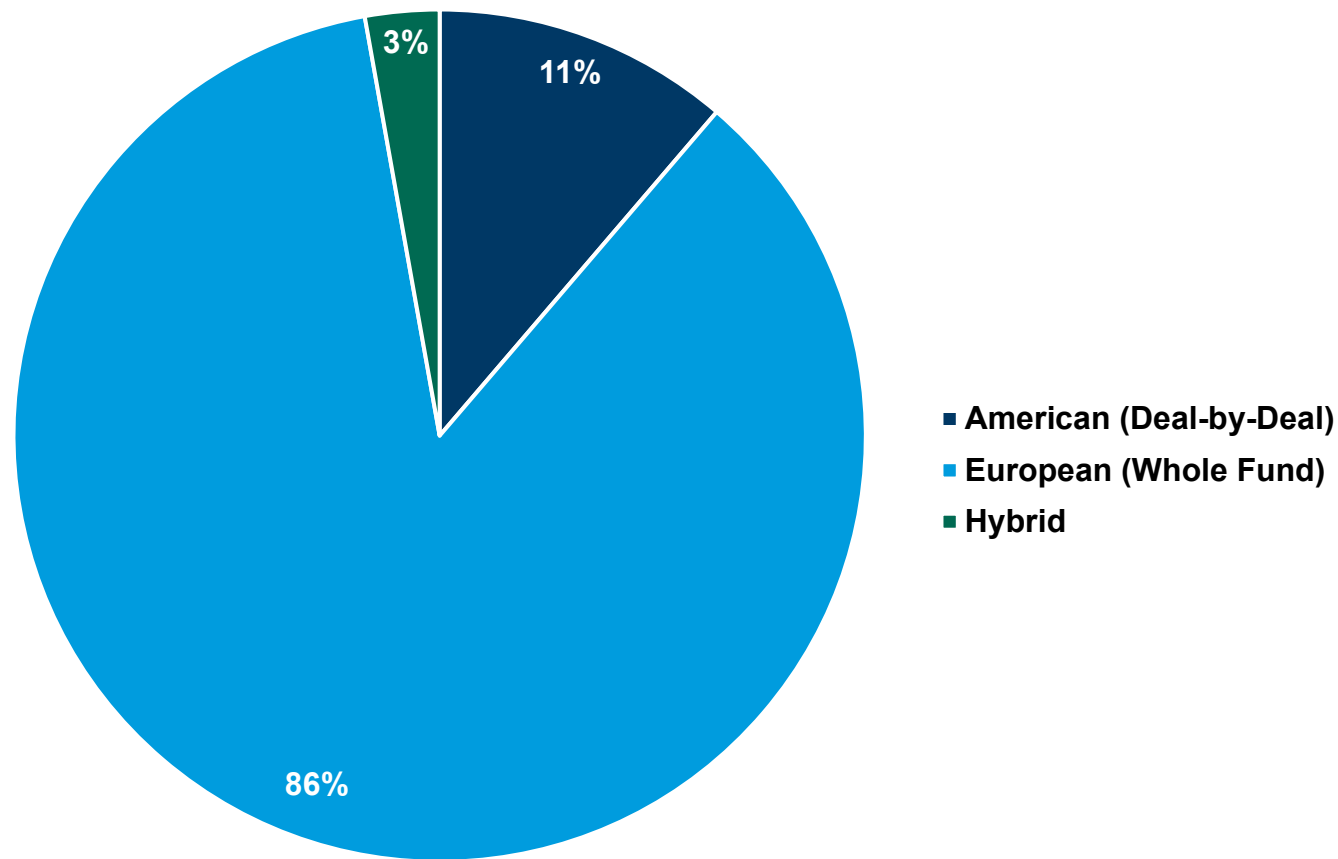


Distribution waterfall – Type of waterfall

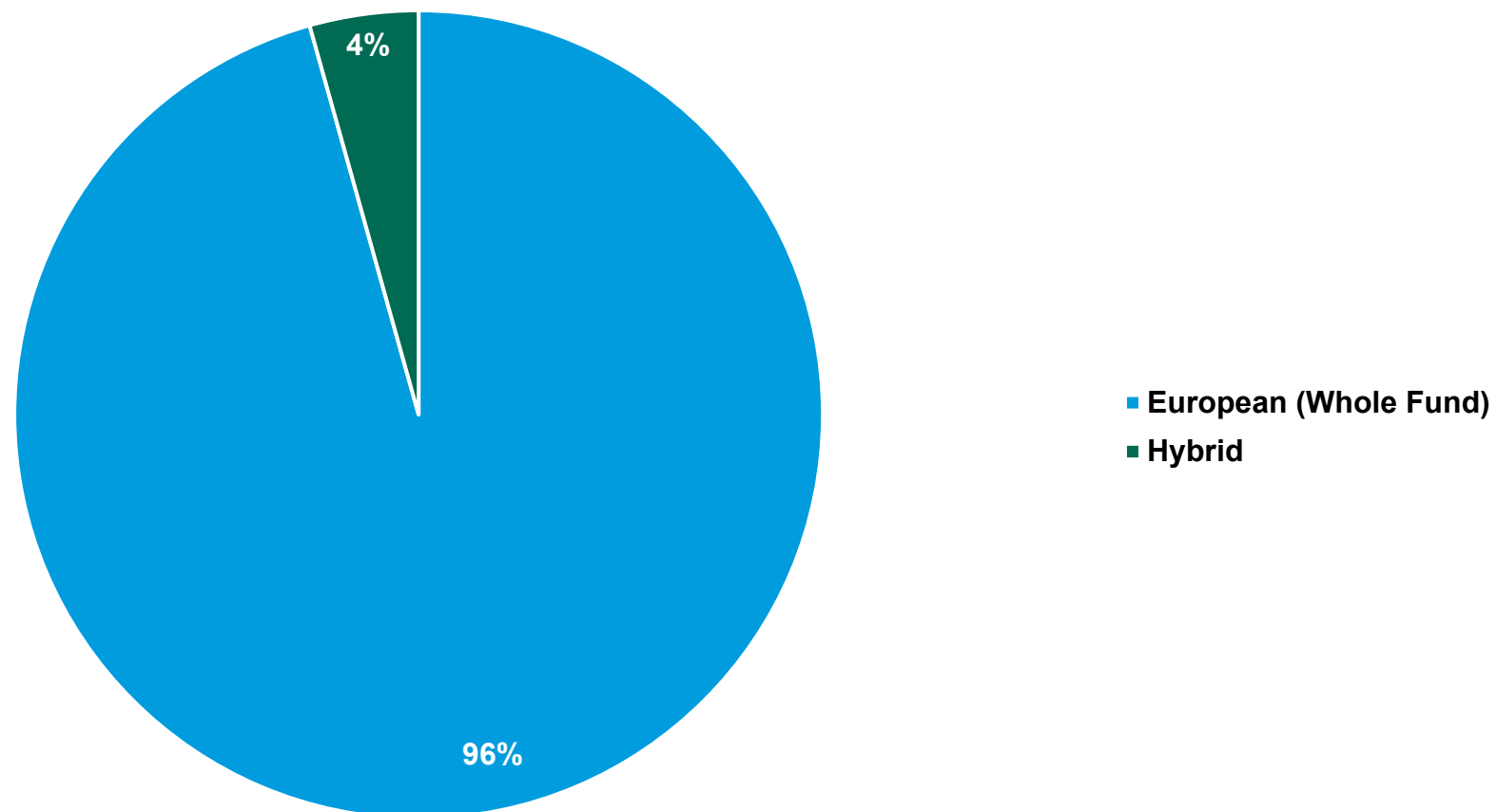
All Funds

The whole-fund waterfall model remains the dominant economic deal in European funds, with 86% of funds in our sample using this approach, broadly consistent with our prior survey. Again, the number of funds using a hybrid model (being a cross between deal-by-deal and whole-fund), remains low at 3% of funds in the sample, with managers preferring the administrative simplicity of choosing either a US or European style waterfall. By “deal-by-deal” (or “US-style”) we usually mean a waterfall that would require the investor to have received back its capital contributions made for the particular investment that has been realised and all previously realised investments (as well as a portion of fund expenses) before carry is paid. This is sometimes referred to as a “cross-collateralised deal-by-deal waterfall”.

As previously seen, funds above €1.5 billion in size were most likely to have something other than a whole-fund waterfall, with 17% of funds between €1.5 billion and €3.75 billion (down from 31% in our prior survey), and 30% of funds above €3.75 billion having either a hybrid waterfall or a deal-by-deal waterfall. The reasons for including such waterfalls are influenced by a number of factors, including how familiar the sponsor and its investors are with the options (for example, a US-based multi-platform sponsor with a European fund is more likely to opt for a deal-by-deal waterfall despite having a European investment strategy), but it is clear that larger funds with several vintages of successful fund raises and strong returns behind them are more likely to find their investors accepting hybrid or deal-by-deal waterfalls.

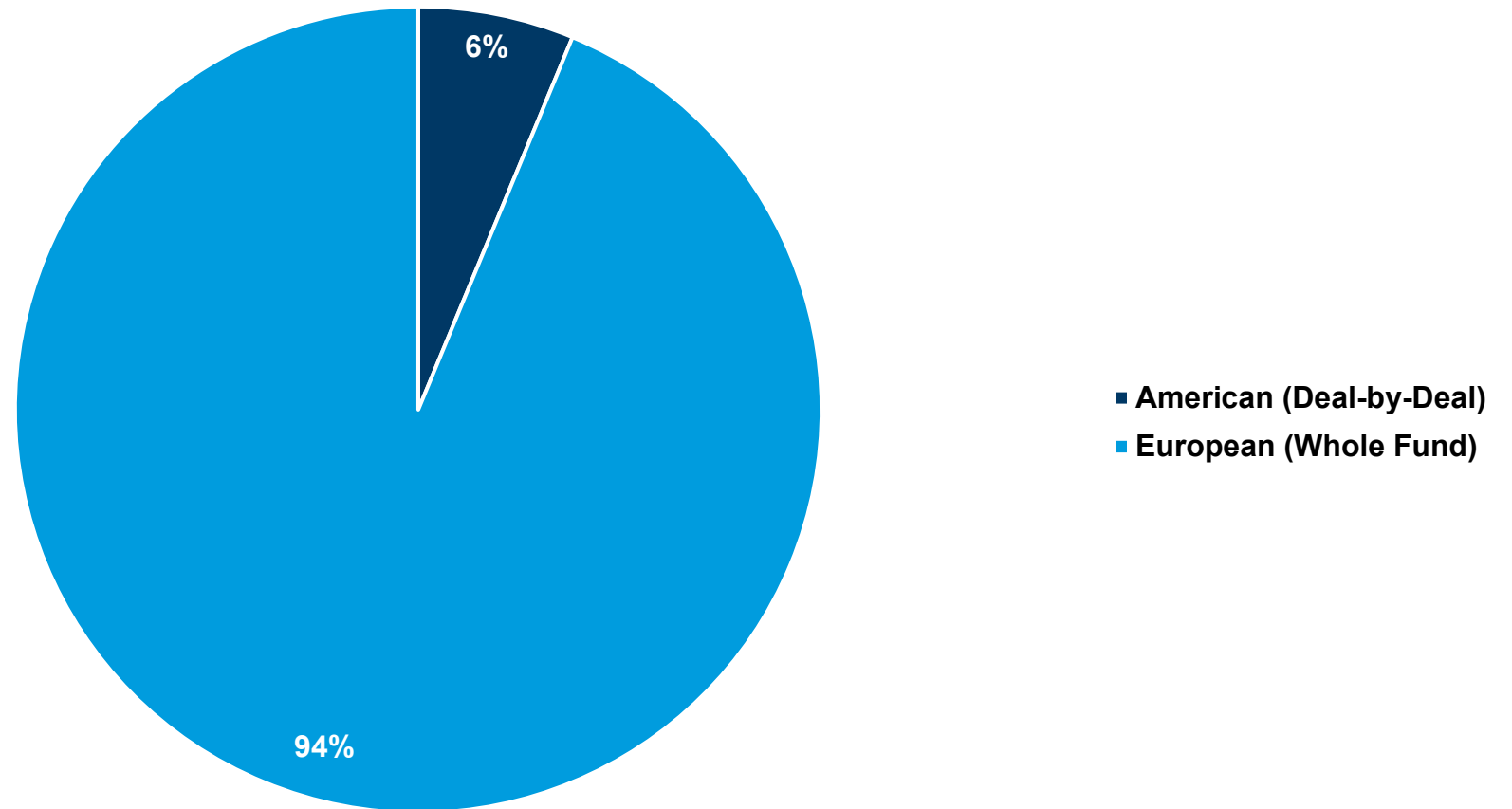


Distribution waterfall – Type of waterfall ≤€500M



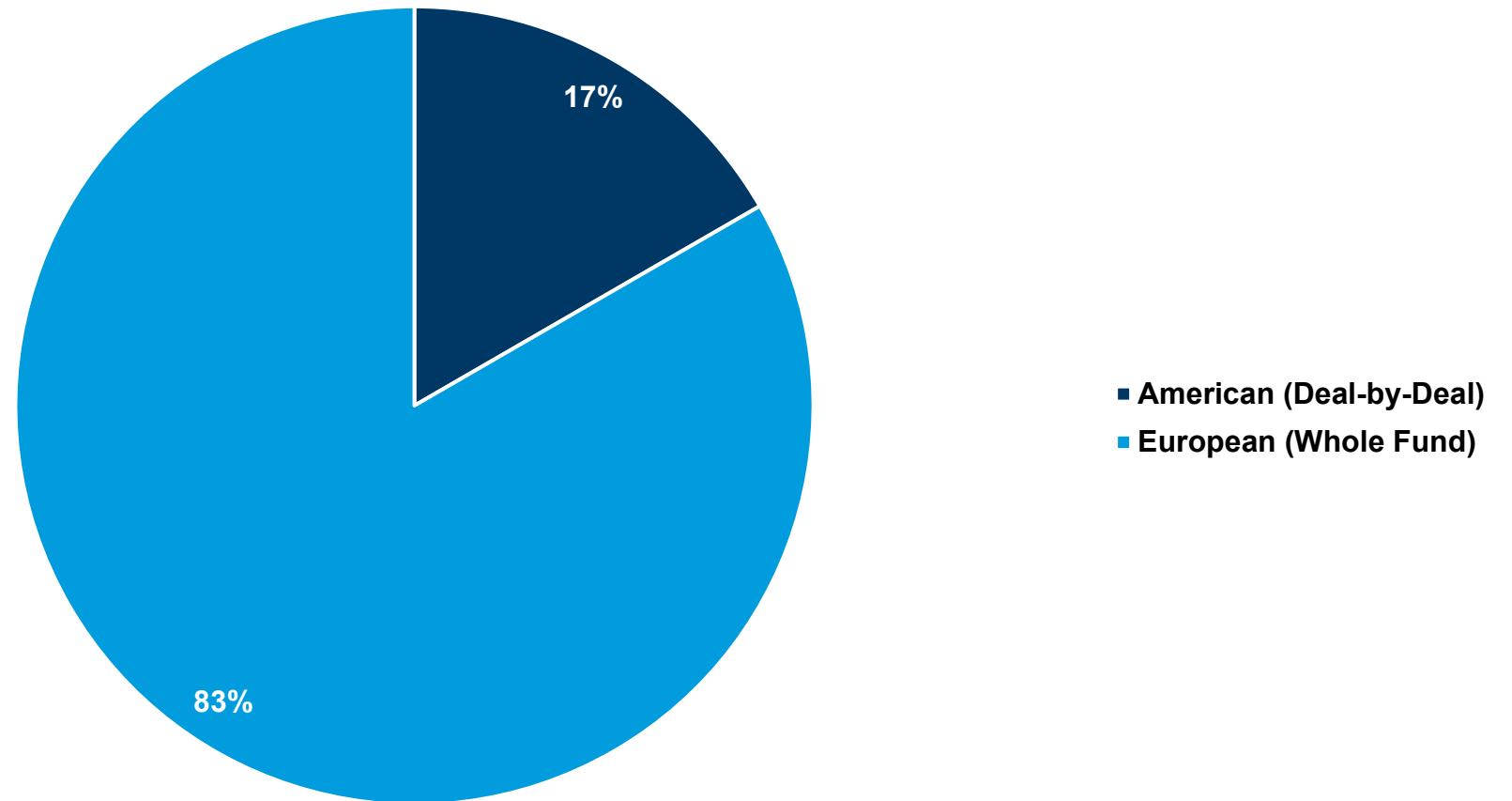
Distribution waterfall – Type of waterfall

>€500M-€1.5B



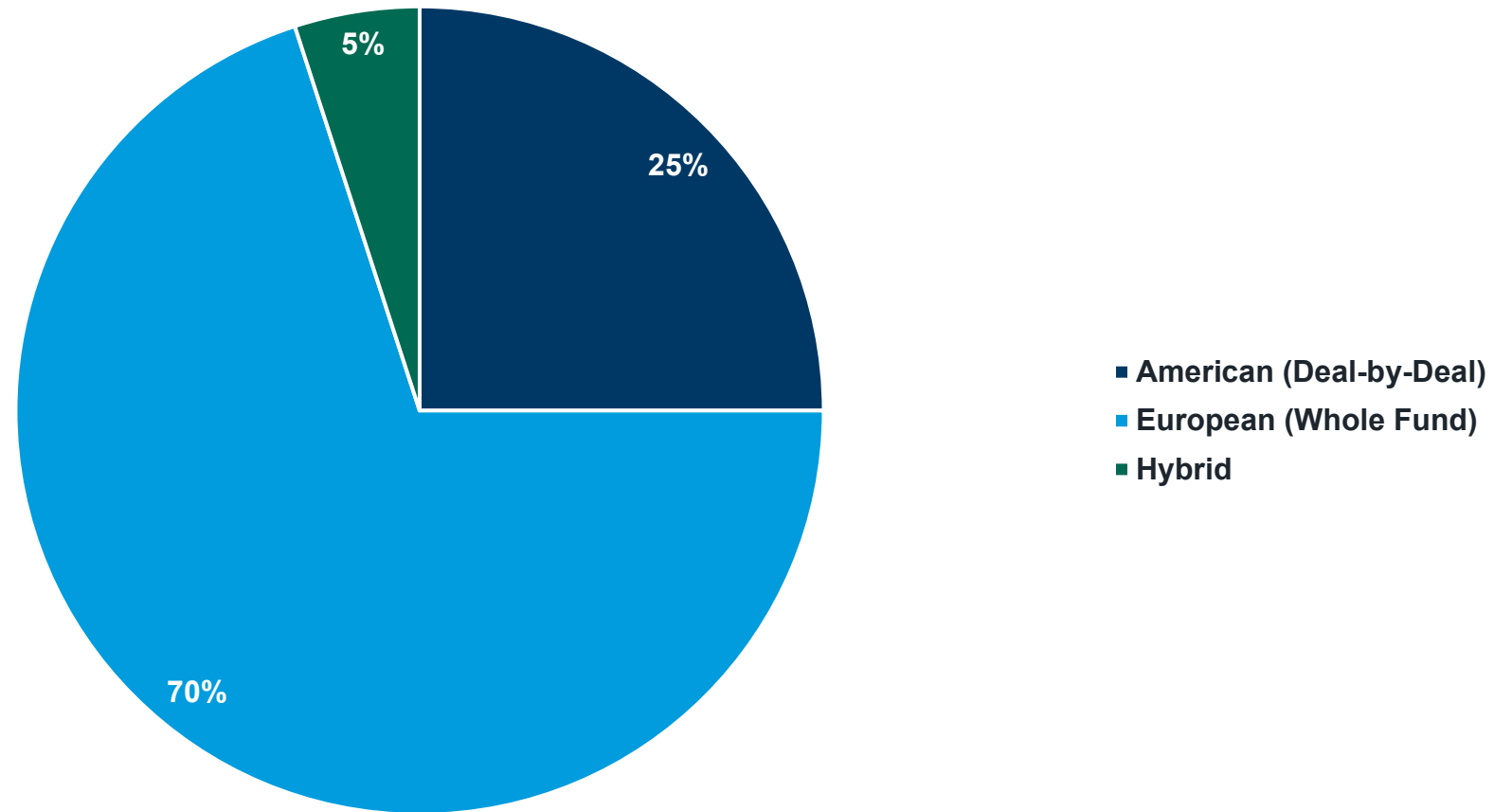
Distribution waterfall – Type of waterfall

>€1.5B-€3.75B



Distribution waterfall – Type of waterfall

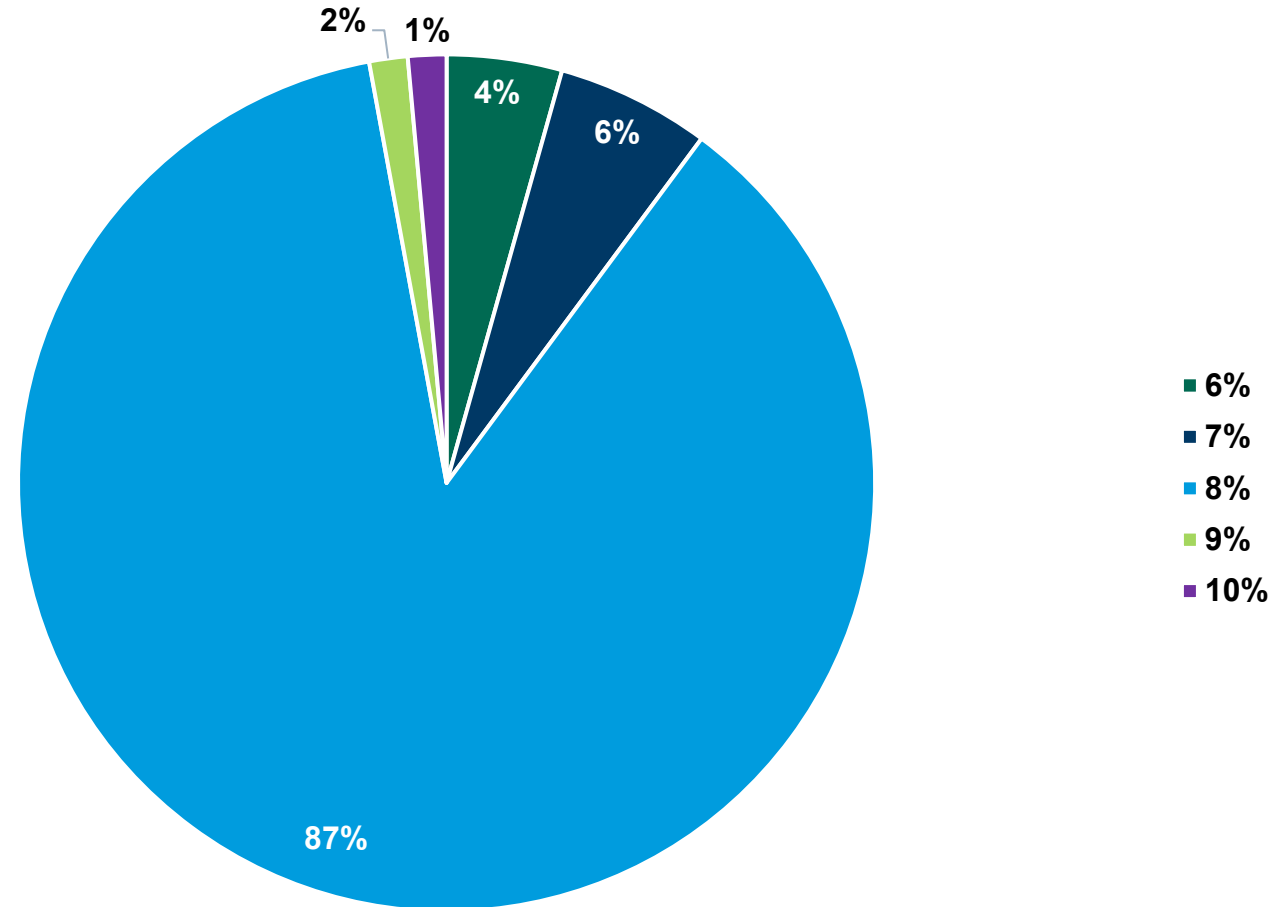
>€3.75B



Distribution waterfall – Preferred return (%)

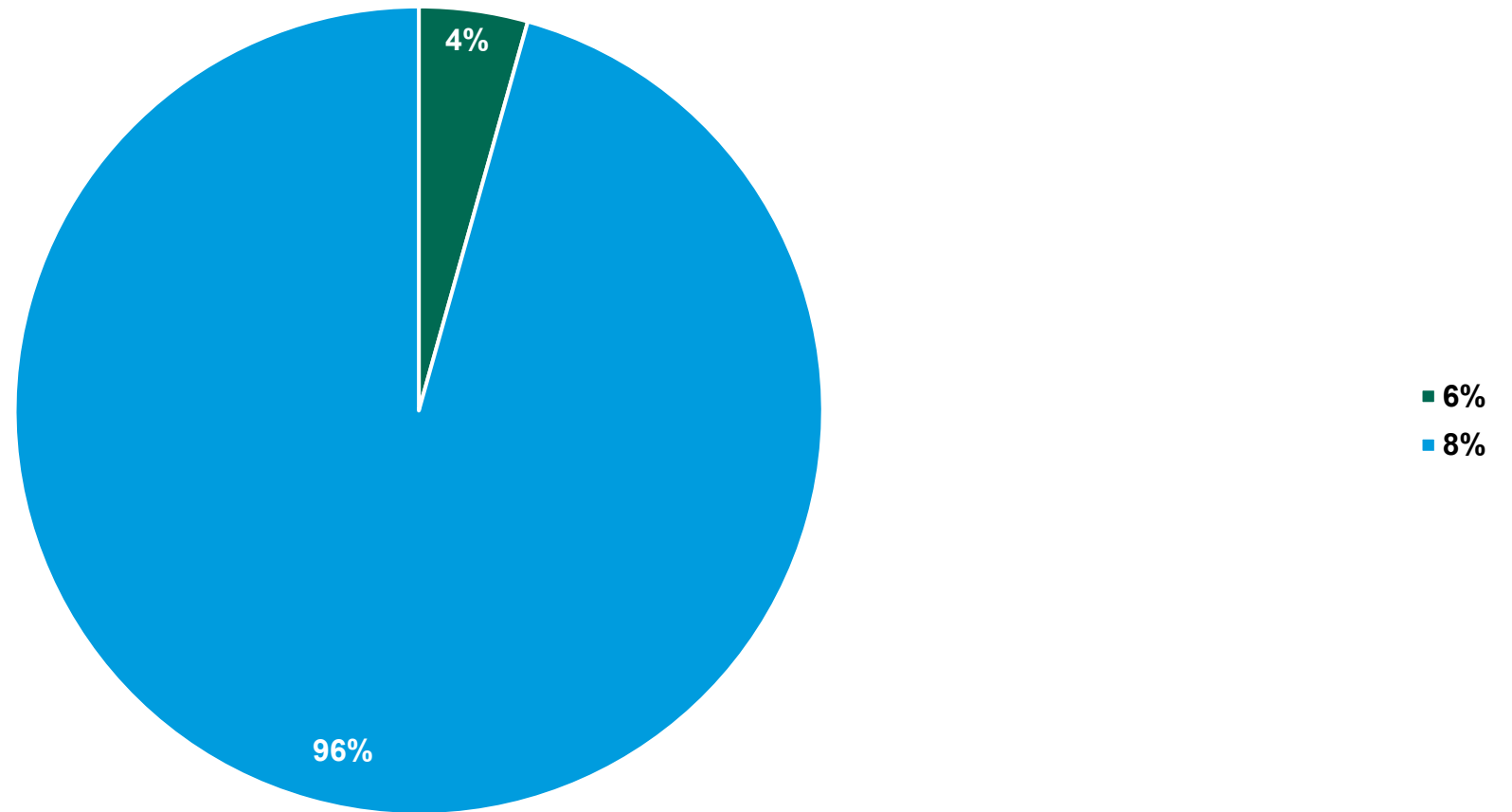
All Funds

The market standard preferred return remains at 8%, with 87% of funds in our sample applying that percentage. The smallest and largest funds (under €500m and over €3.75bn) showed the least variance with funds between €500m and €3.75bn more likely to have preferred returns of 6, 7, 9 and 10%.



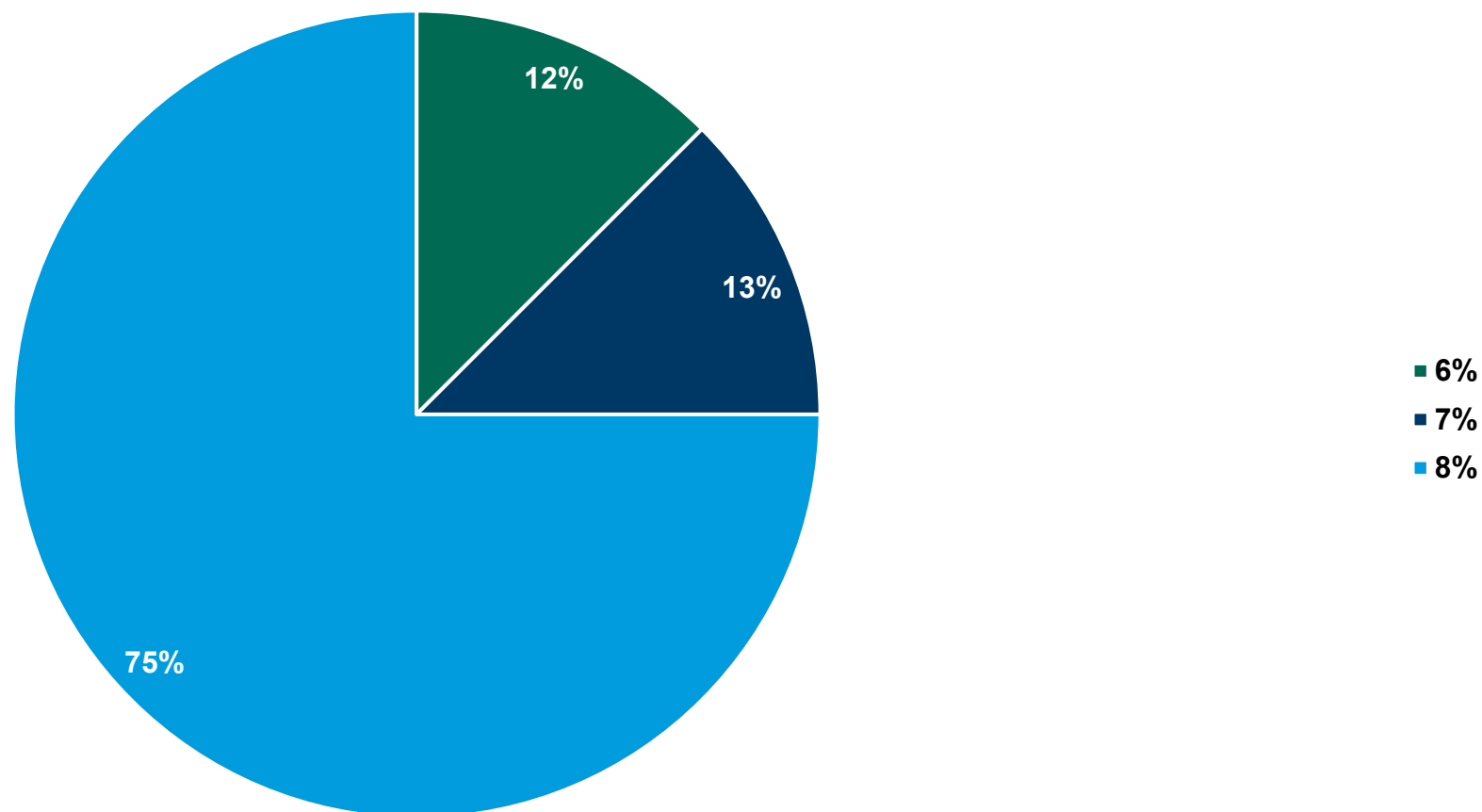
Distribution waterfall – Preferred return (%)

≤€500M



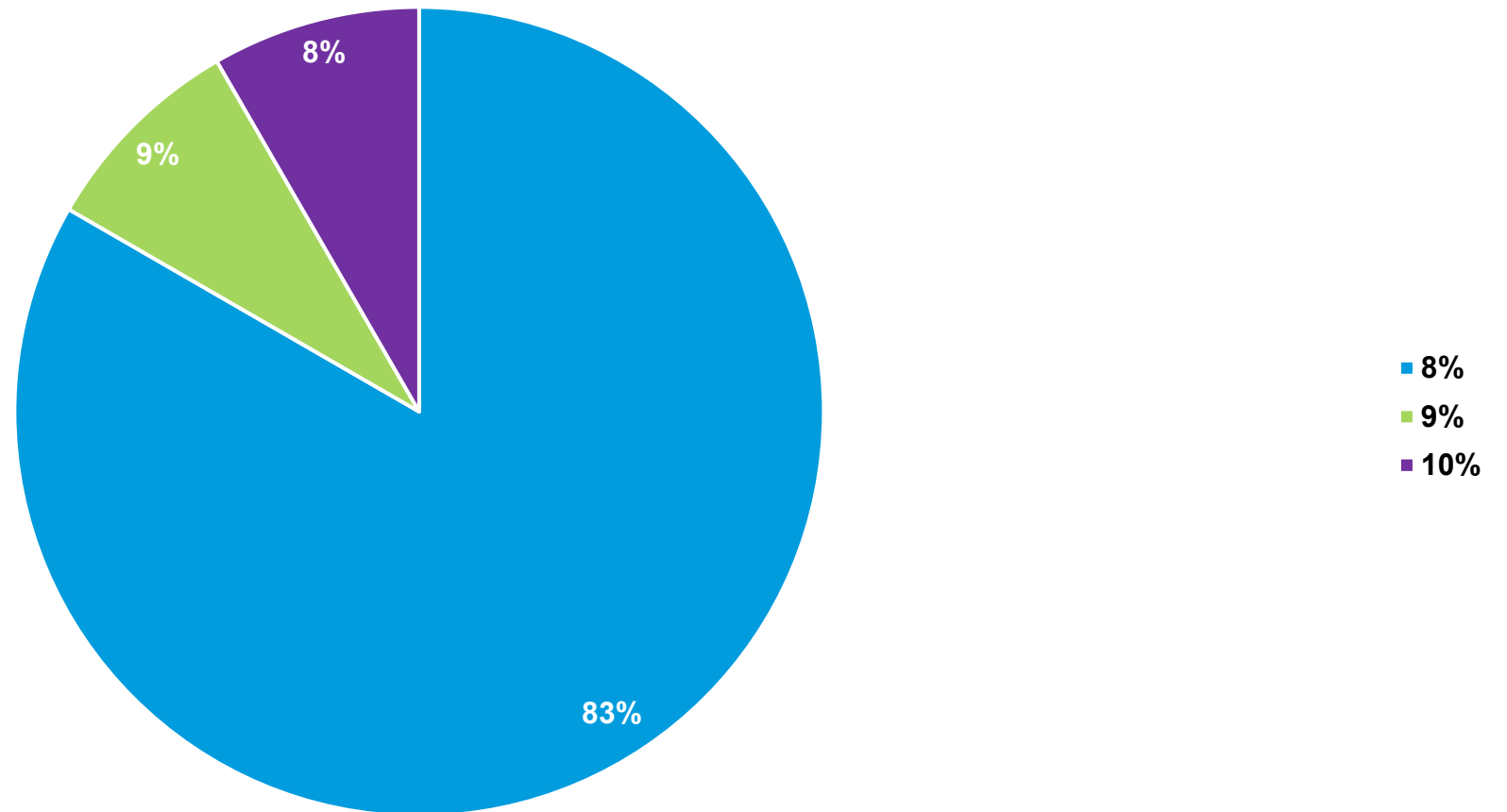
Distribution waterfall – Preferred return (%)

>€500M-€1.5B



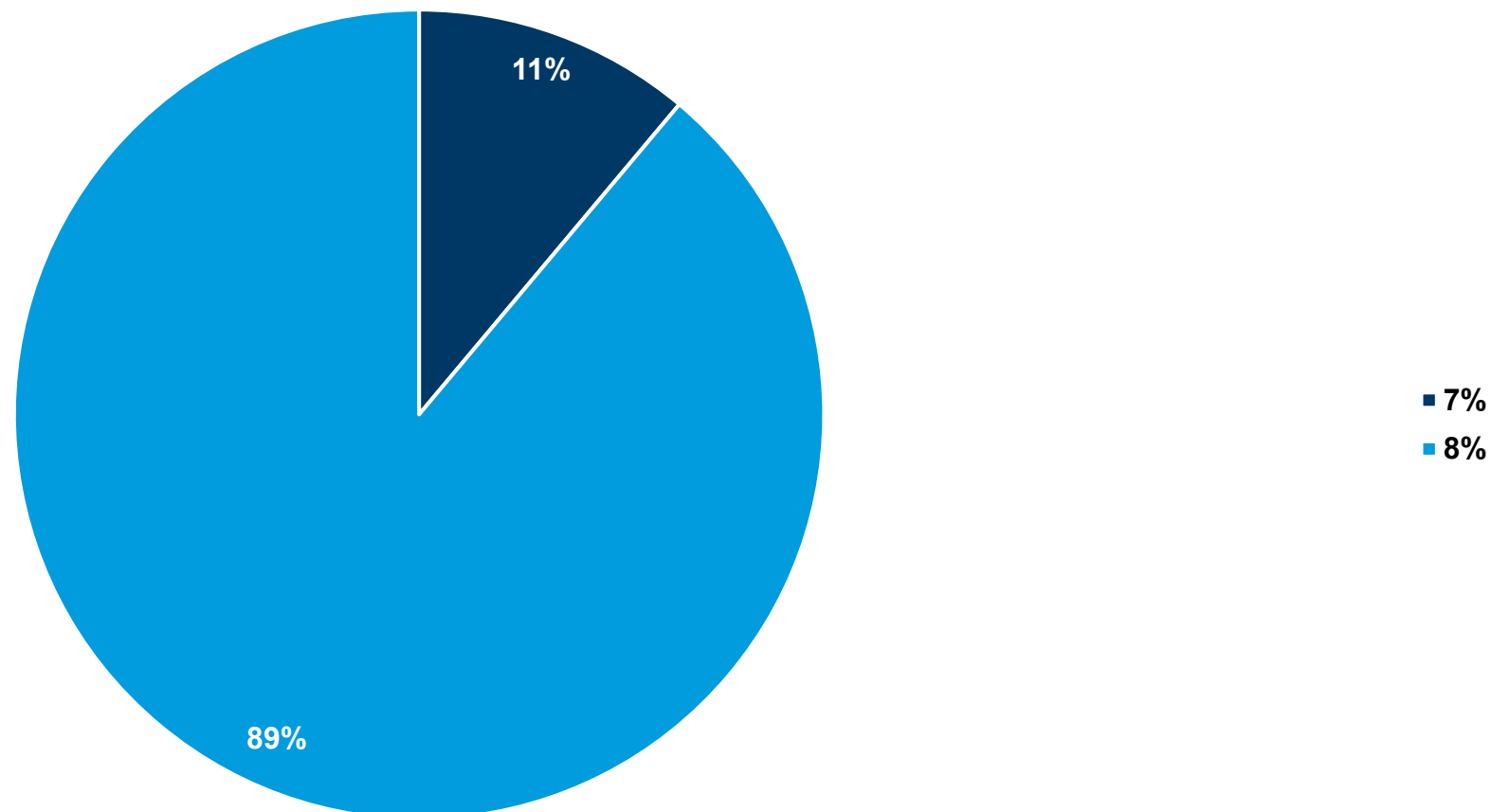
Distribution waterfall – Preferred return (%)

>€1.5B-€3.75B



Distribution waterfall – Preferred return (%)

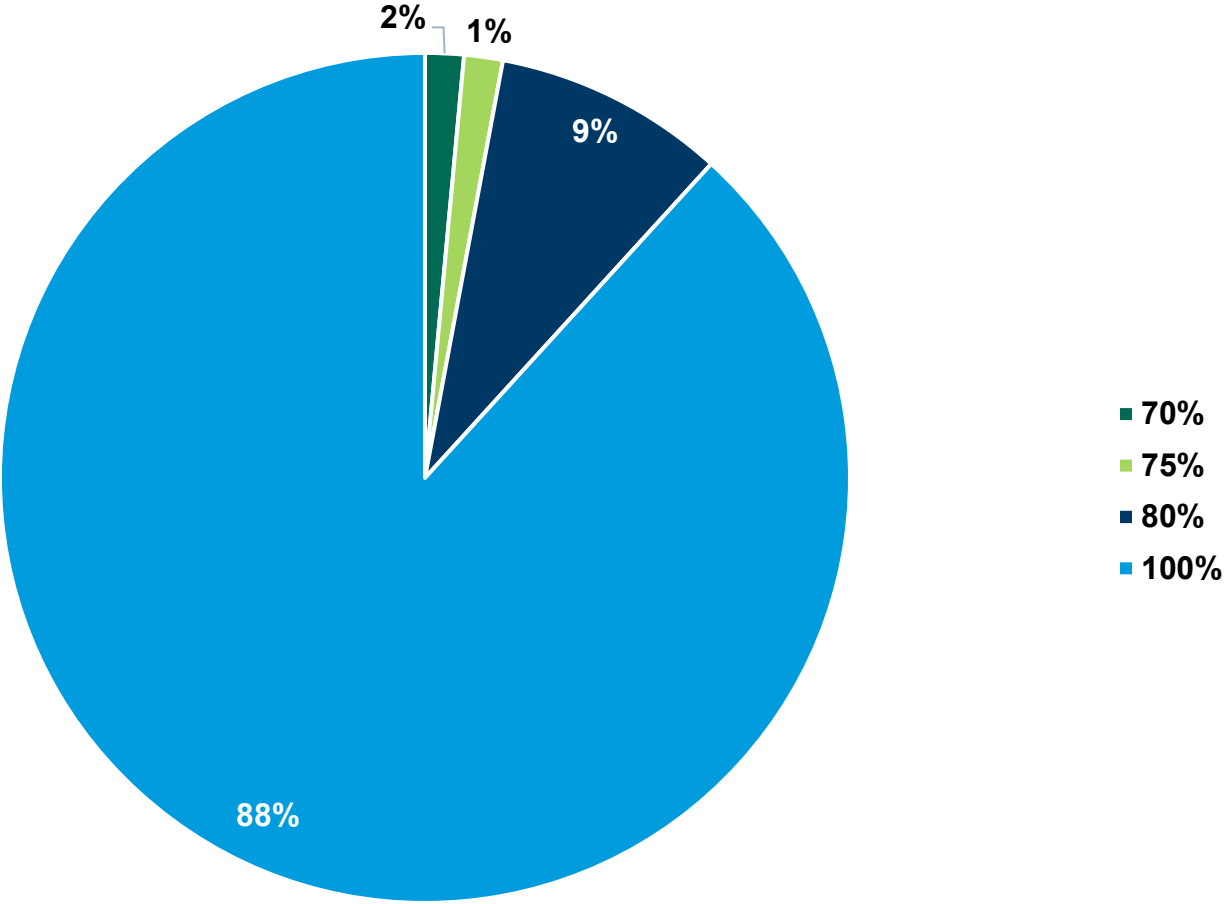
>€3.75B



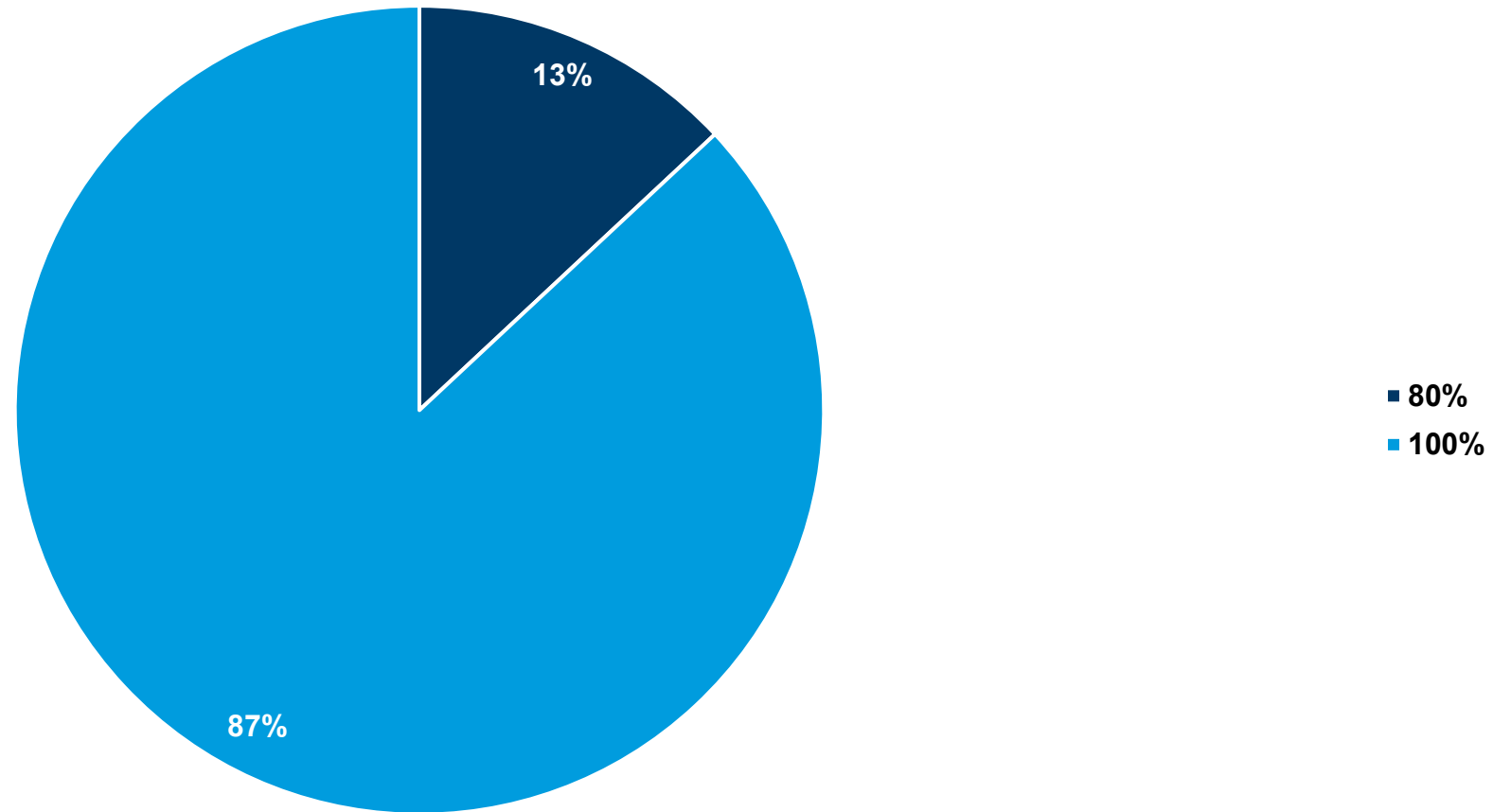
Distribution waterfall – Carried interest catch-up (% after preferred return)

All Funds

The sample this year remains fairly consistent with last year, showing that 88% of funds had a 100% catch-up of carried interest for the GP after the preferred return has been paid, a small decrease from 94% last year. An 80% catch-up, the dominant alternative, is seen in 9% of funds across our survey.

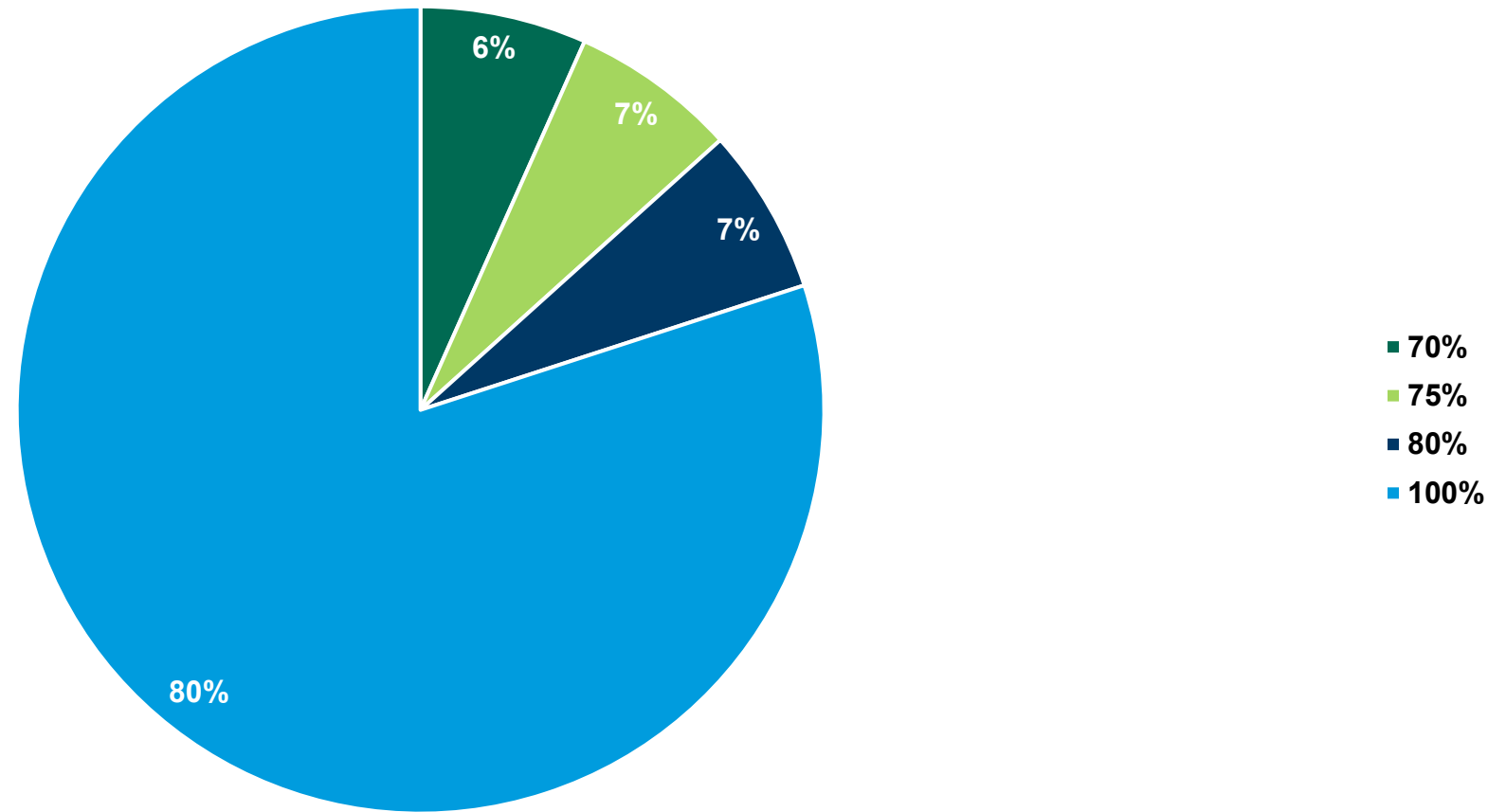


Distribution waterfall – Carried interest catch-up (% after preferred return) ≤€500M



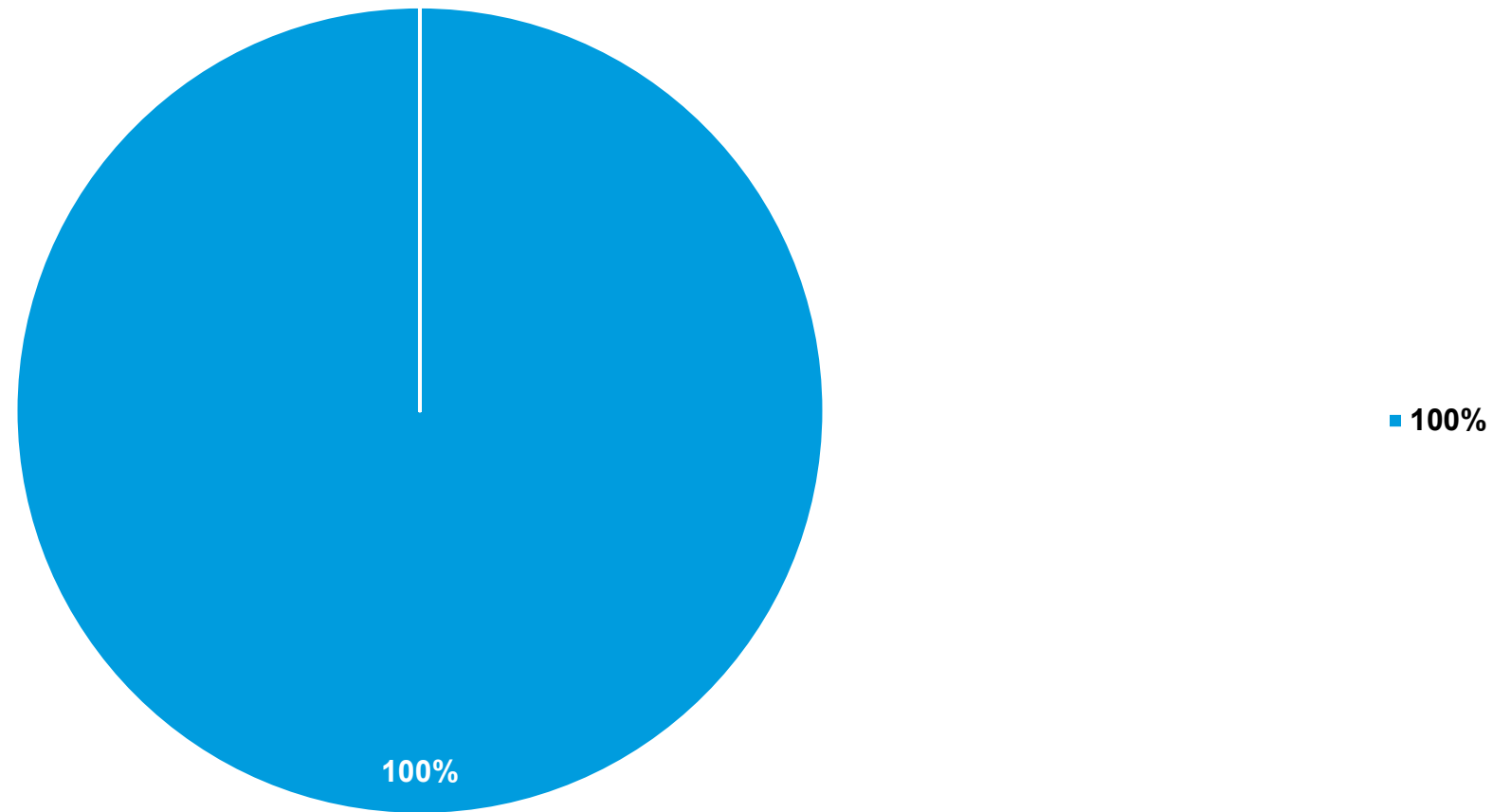
Distribution waterfall – Carried interest catch-up (% after preferred return)

>€500M-€1.5B

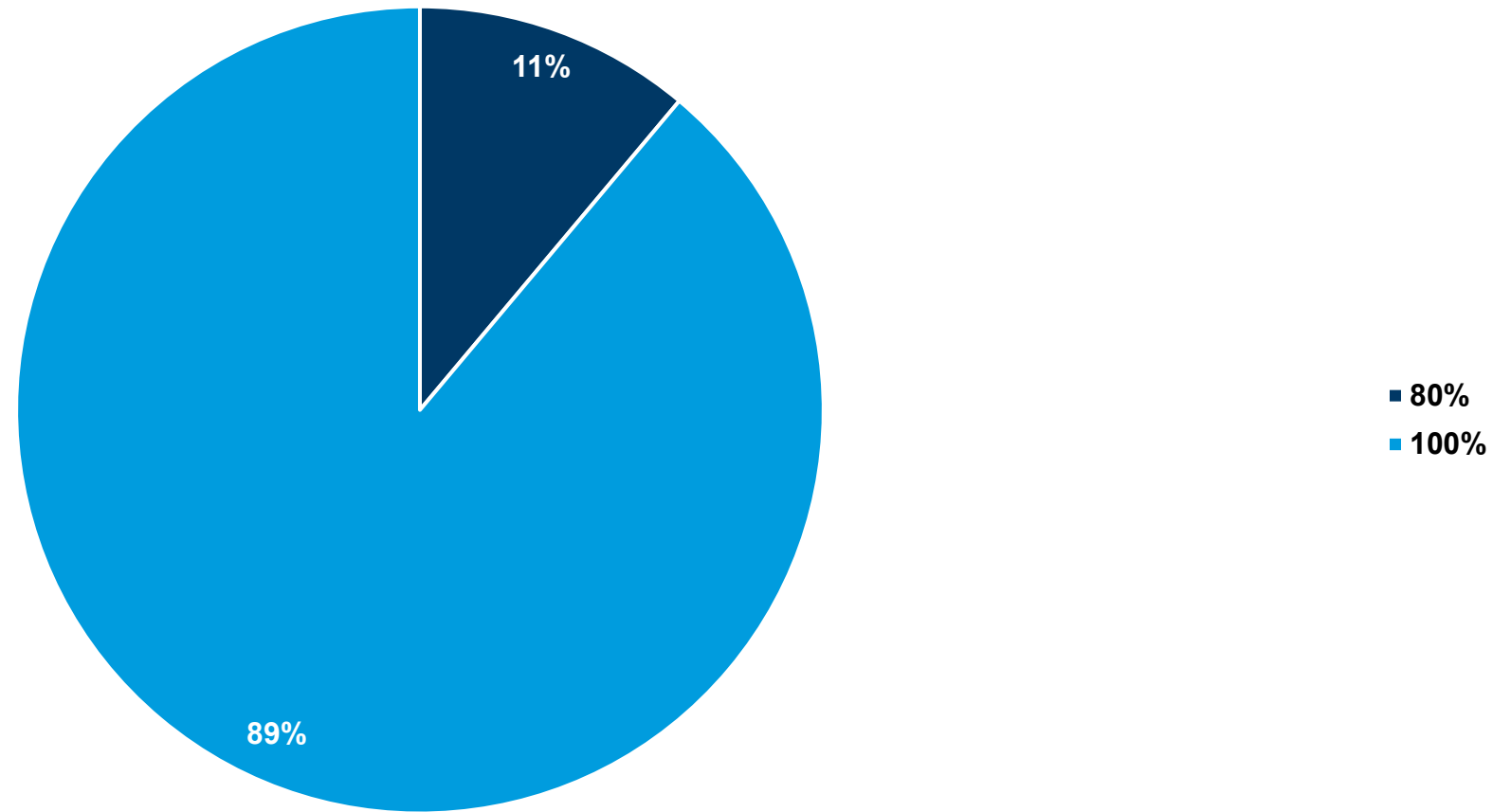


Distribution waterfall – Carried interest catch-up (% after preferred return)

>€1.5B-€3.75B



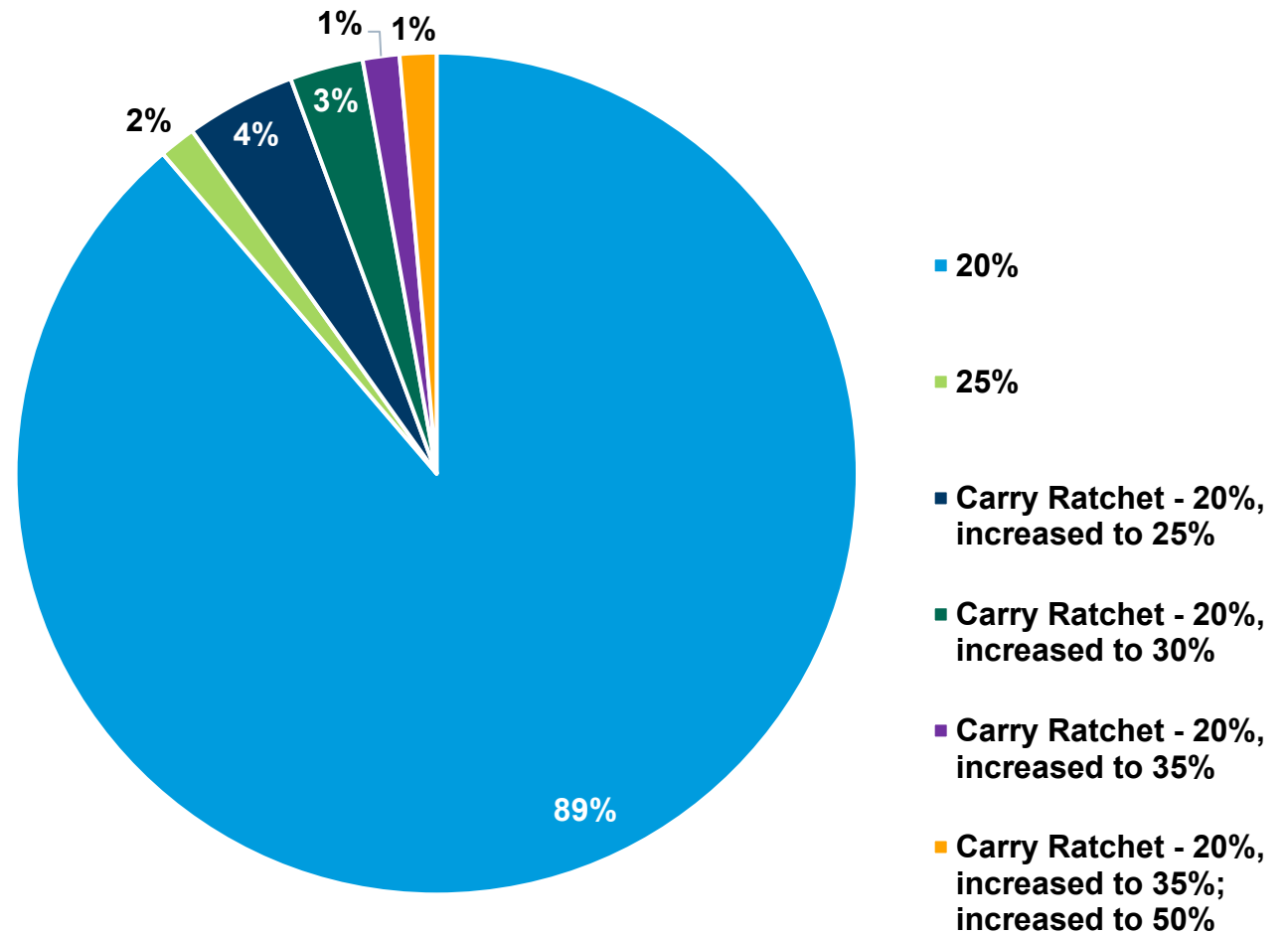
Distribution waterfall – Carried interest catch-up (% after preferred return) >€3.75B



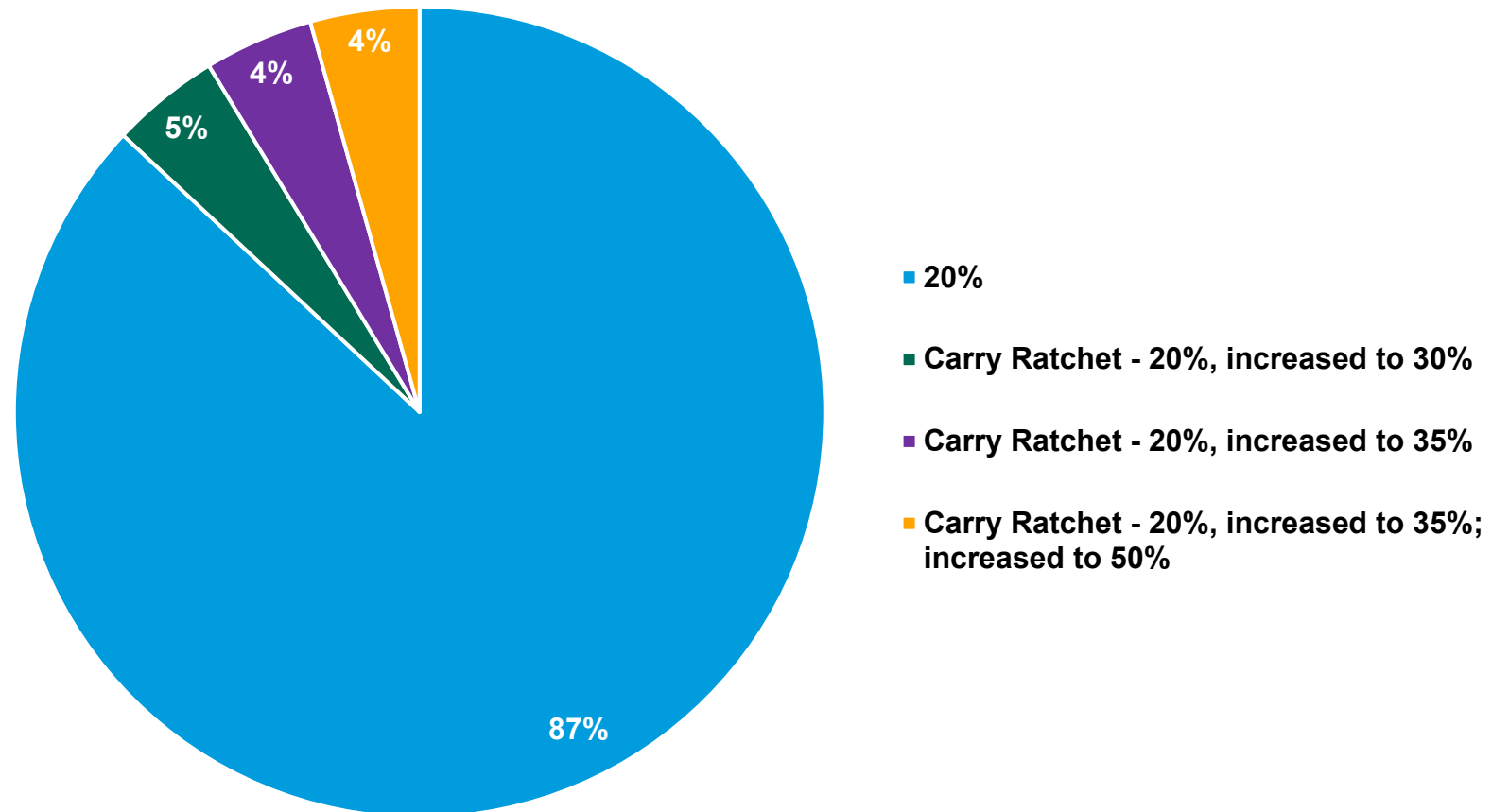
Distribution waterfall – Carried interest percentage

All Funds

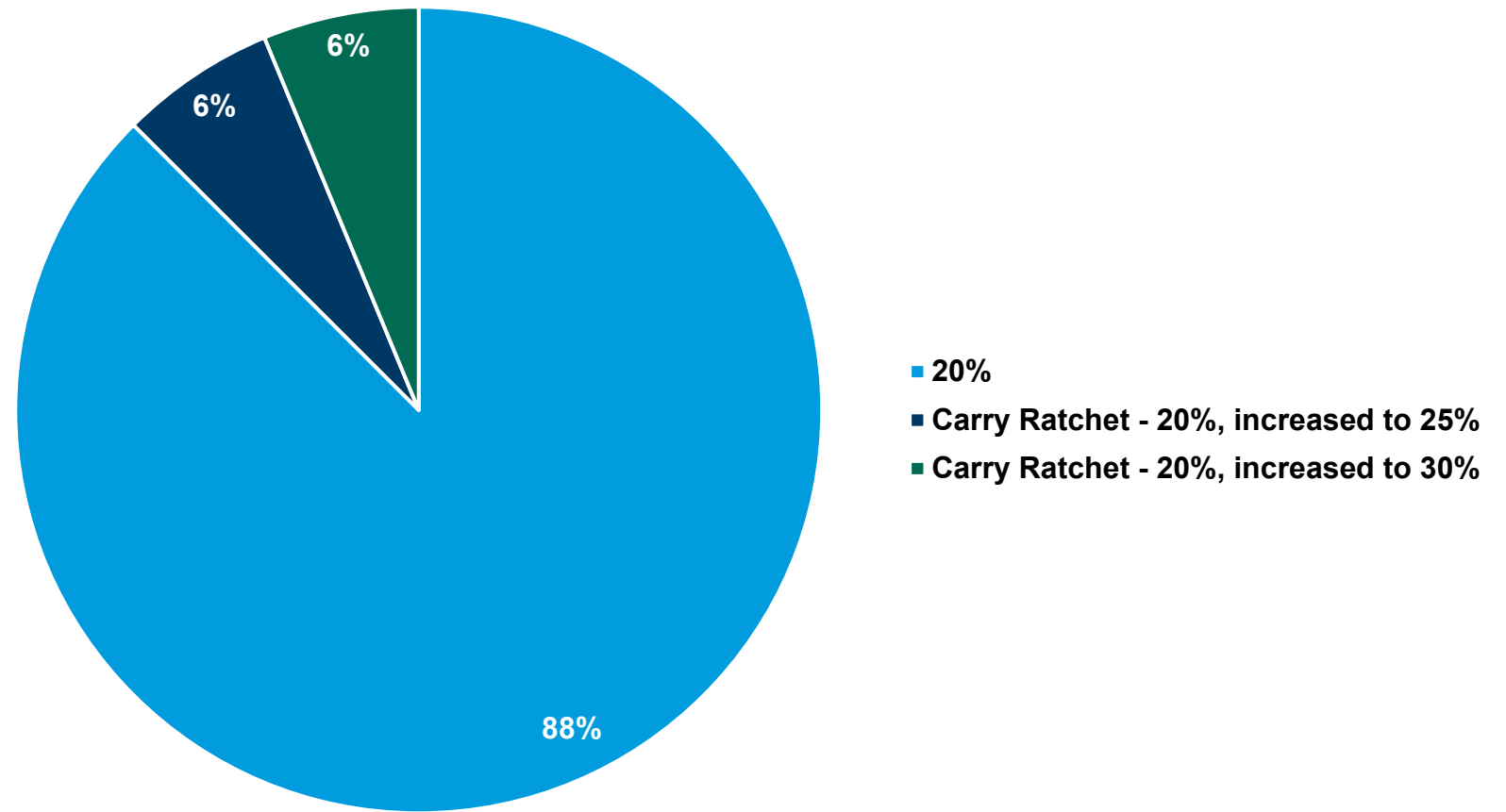
The number of funds that have a carried interest percentage fixed at 20% is similar to last year's data with 89% of funds preferring this option. Funds with carry ratchets, meaning an increase in carry percentage once the fund performs at a certain level (reaching either a target IRR or money multiple), are not uncommon at smaller fund sizes but no funds sized at €3.75 billion or more feature a ratchet.



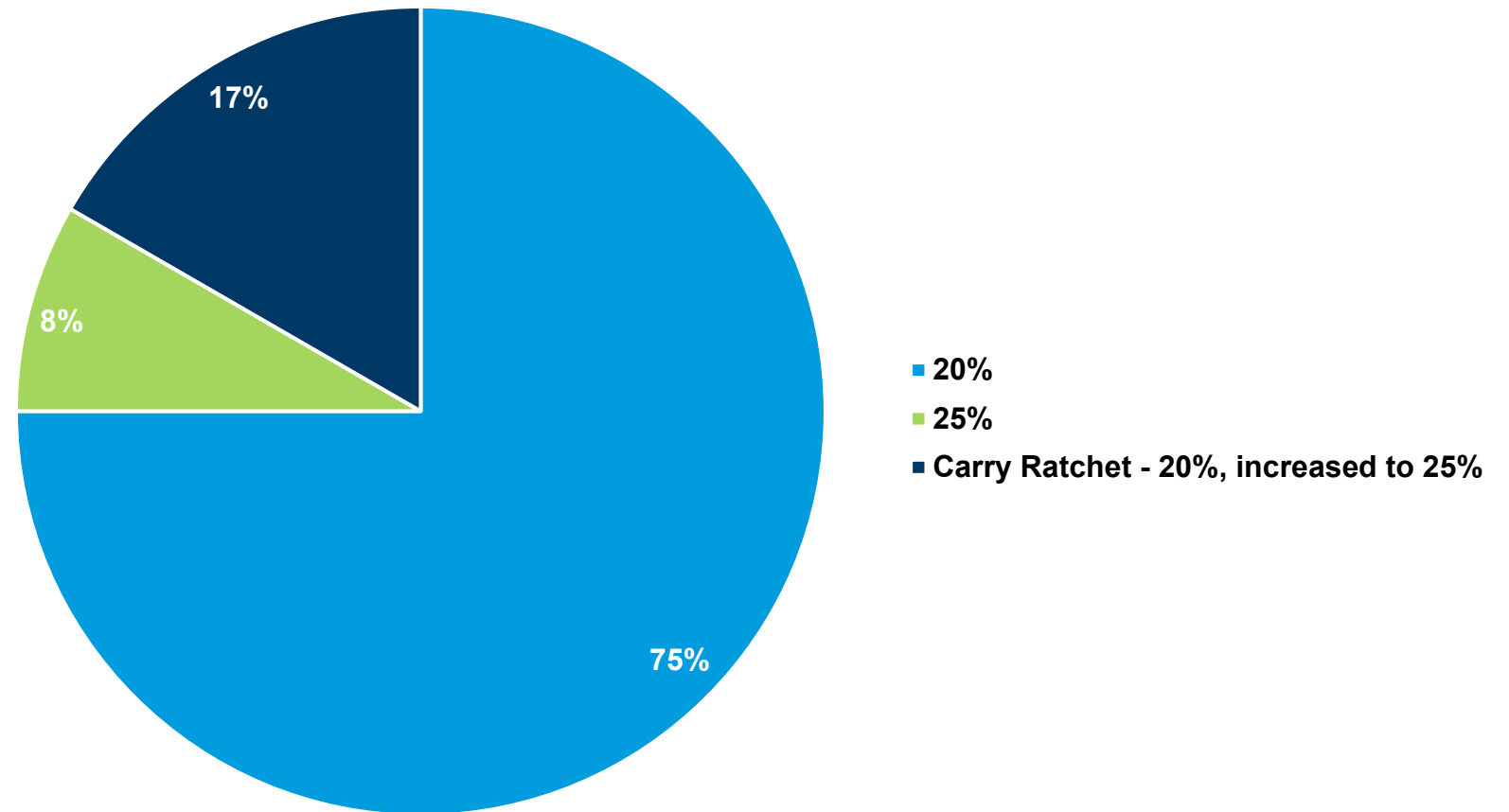
Distribution waterfall – Carried interest percentage ≤€500M



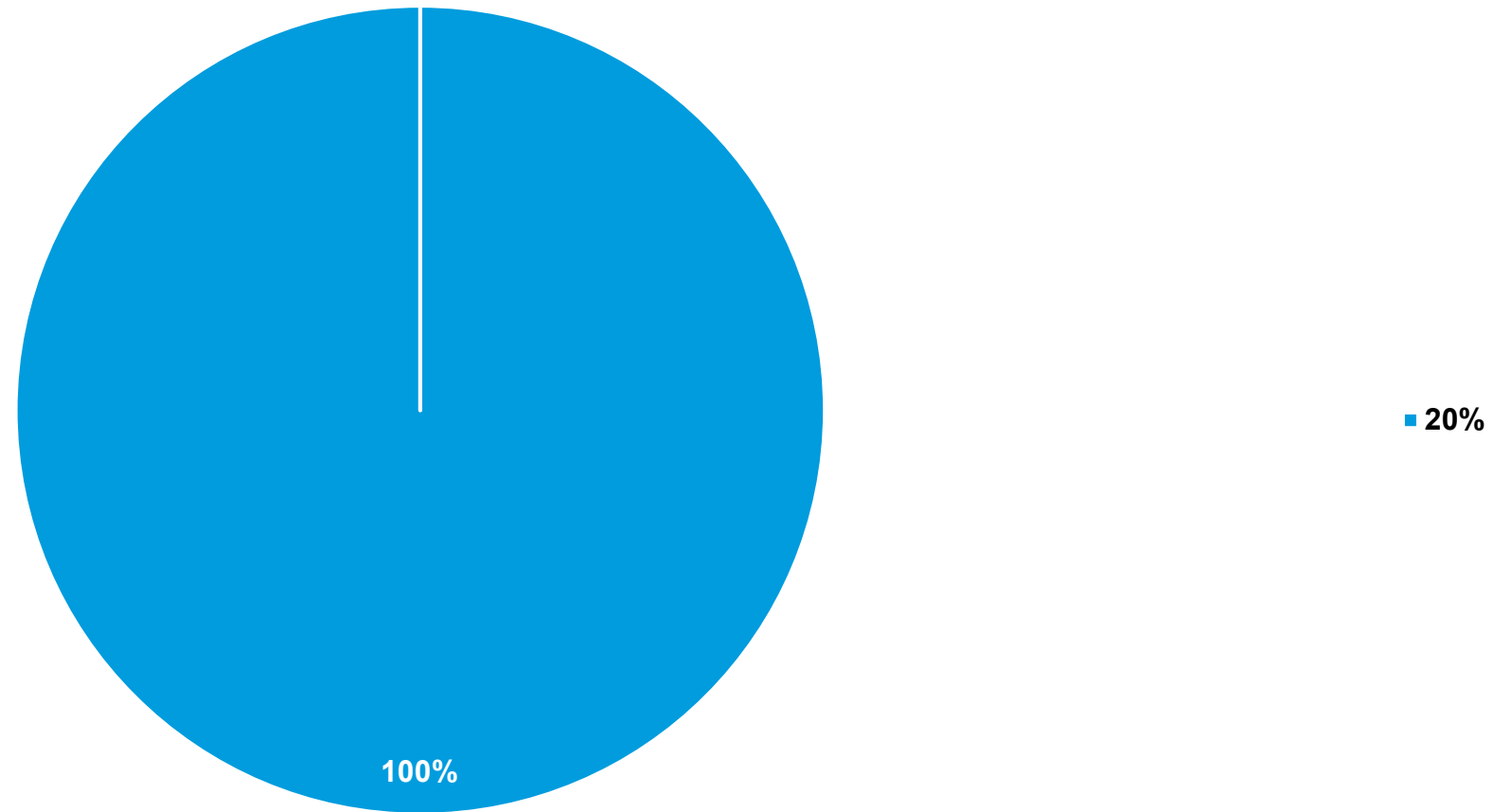
Distribution waterfall – Carried interest percentage >€500M-€1.5B



Distribution waterfall – Carried interest percentage >€1.5B-€3.75B



Distribution waterfall – Carried interest percentage >€3.75B

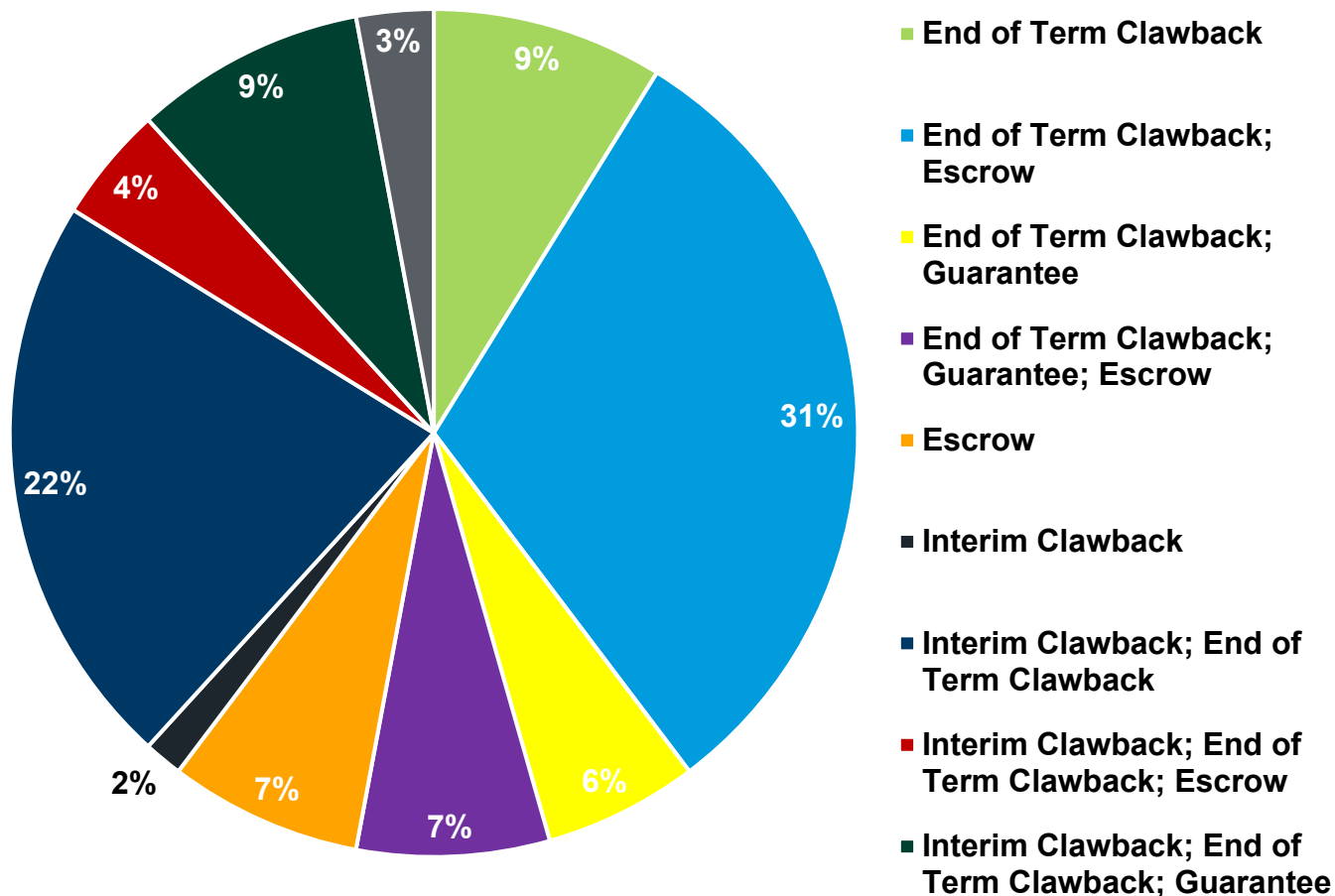


GP clawback and related investor protections

All Funds

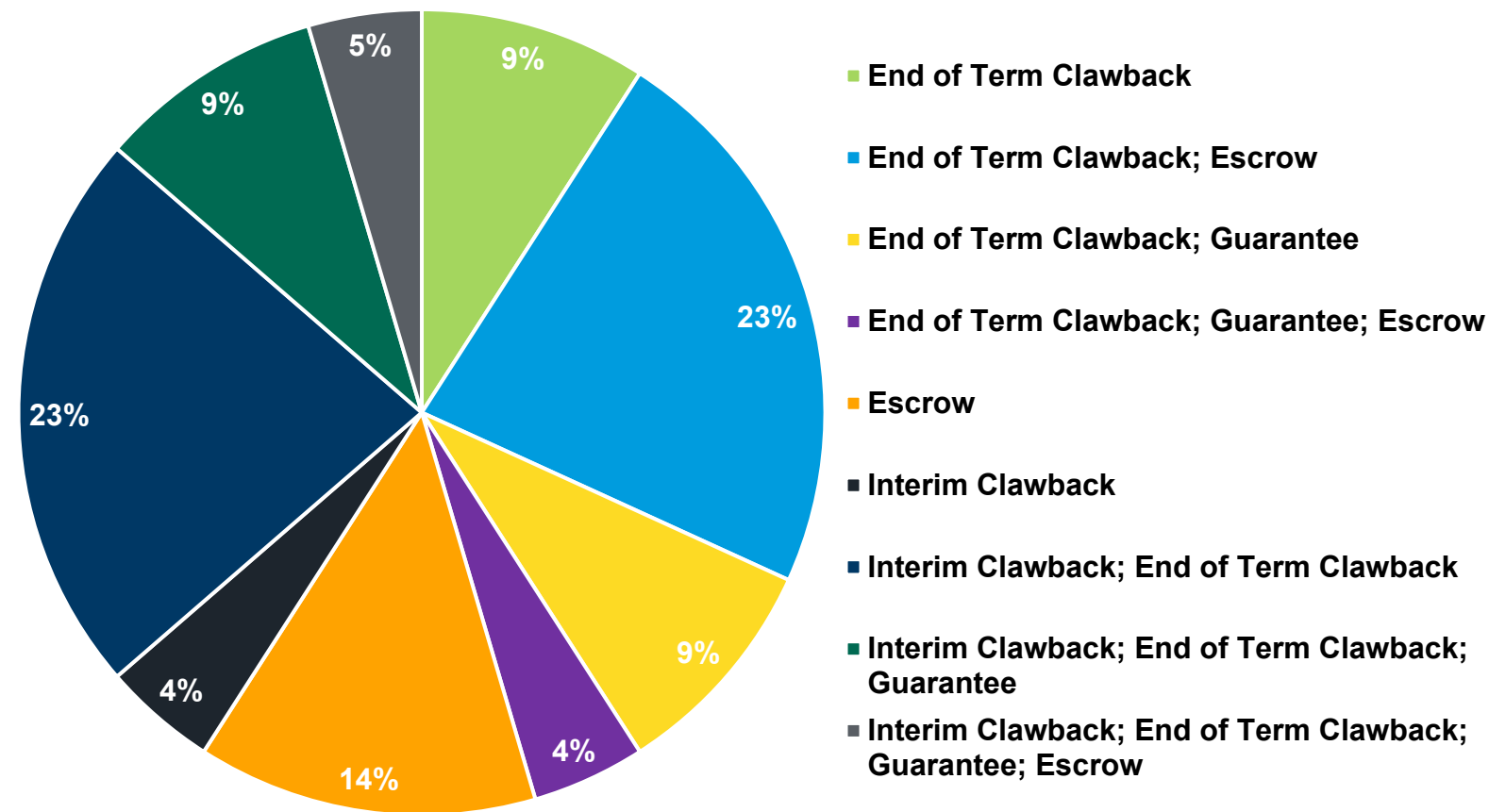
There continues to be no common approach to the investor protections relating to potential overpayment of carried interest, and this is true across the fund size brackets. This will also be a factor of the waterfall used, with any deviation from the standard whole-fund model potentially leading to more focus on the clawback protections.

One or a combination of escrow, guarantees, interim clawbacks and end-of-term clawbacks are used. The most common are an end-of-term clawback combined with an escrow (31% of funds, compared to 25% last year). The number of funds with solely an interim clawback test increased from 14% in our prior survey to 22% this year. As our data has shown across recent years, clawback and clawback protection is a key point of negotiation in many fundraisings and routed in the facts and circumstances of each fund, including whether the distribution waterfall is European or US.

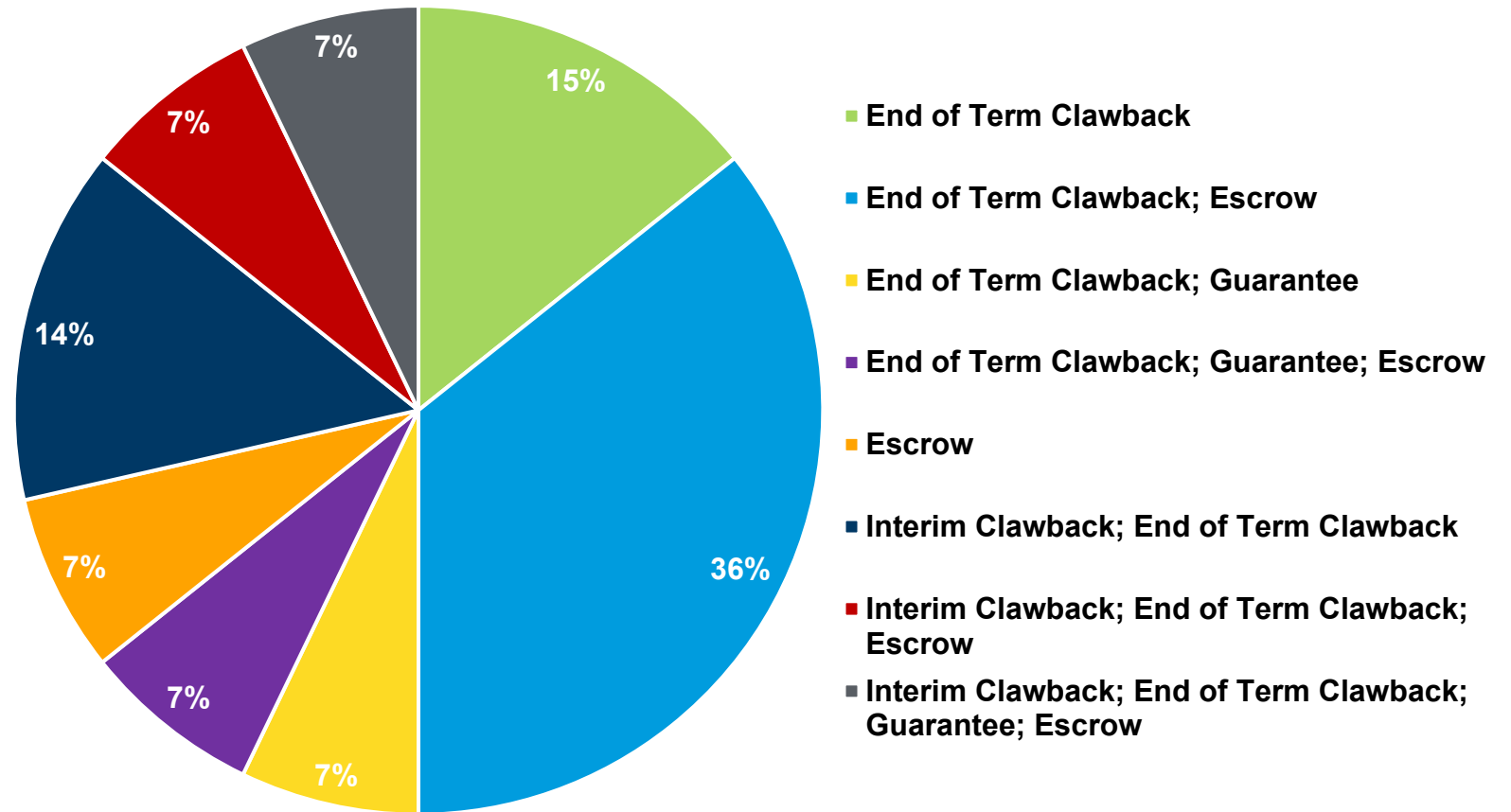


GP clawback and related investor protections

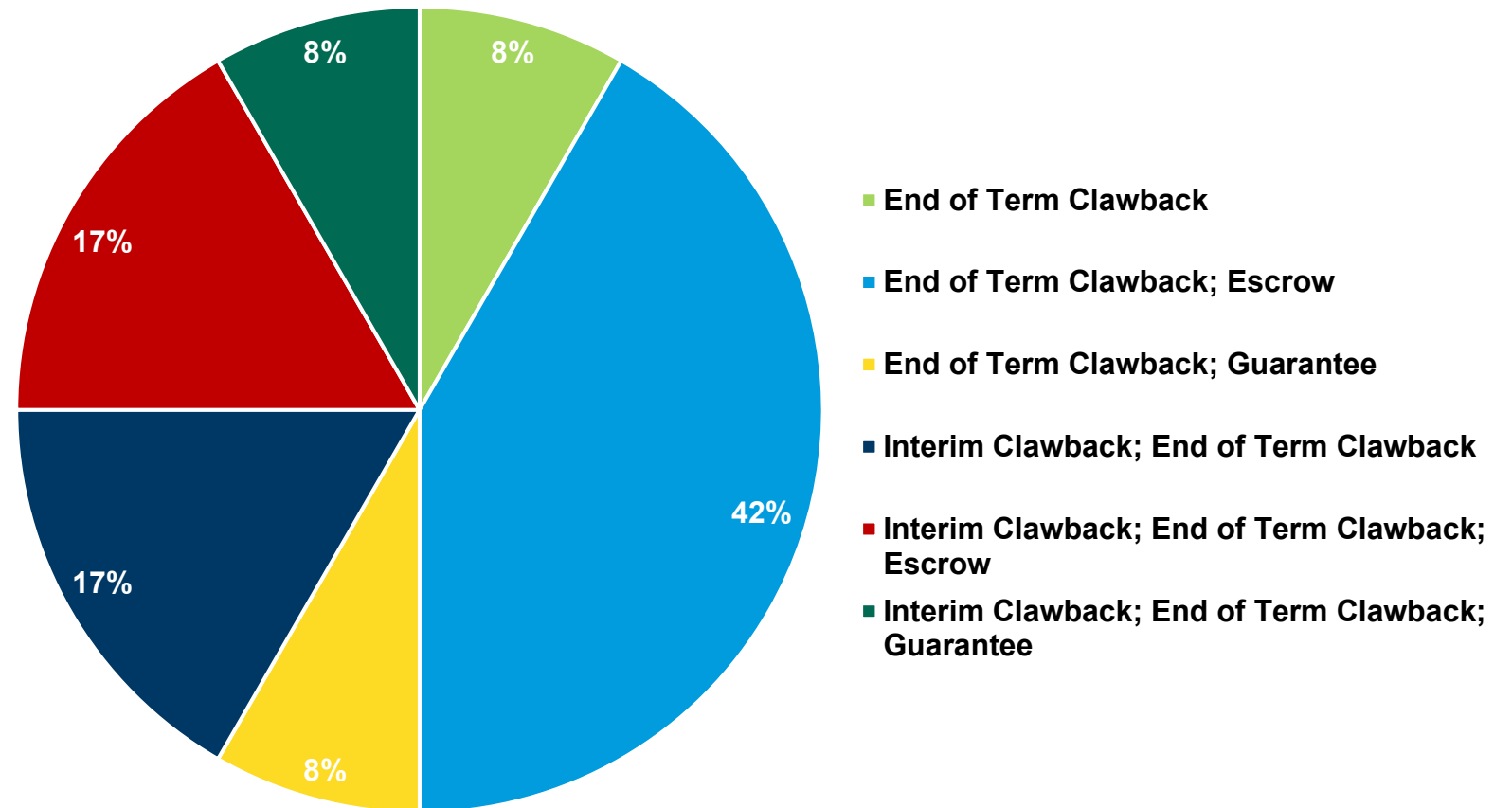
≤€500M



GP clawback and related investor protections >€500M-€1.5B

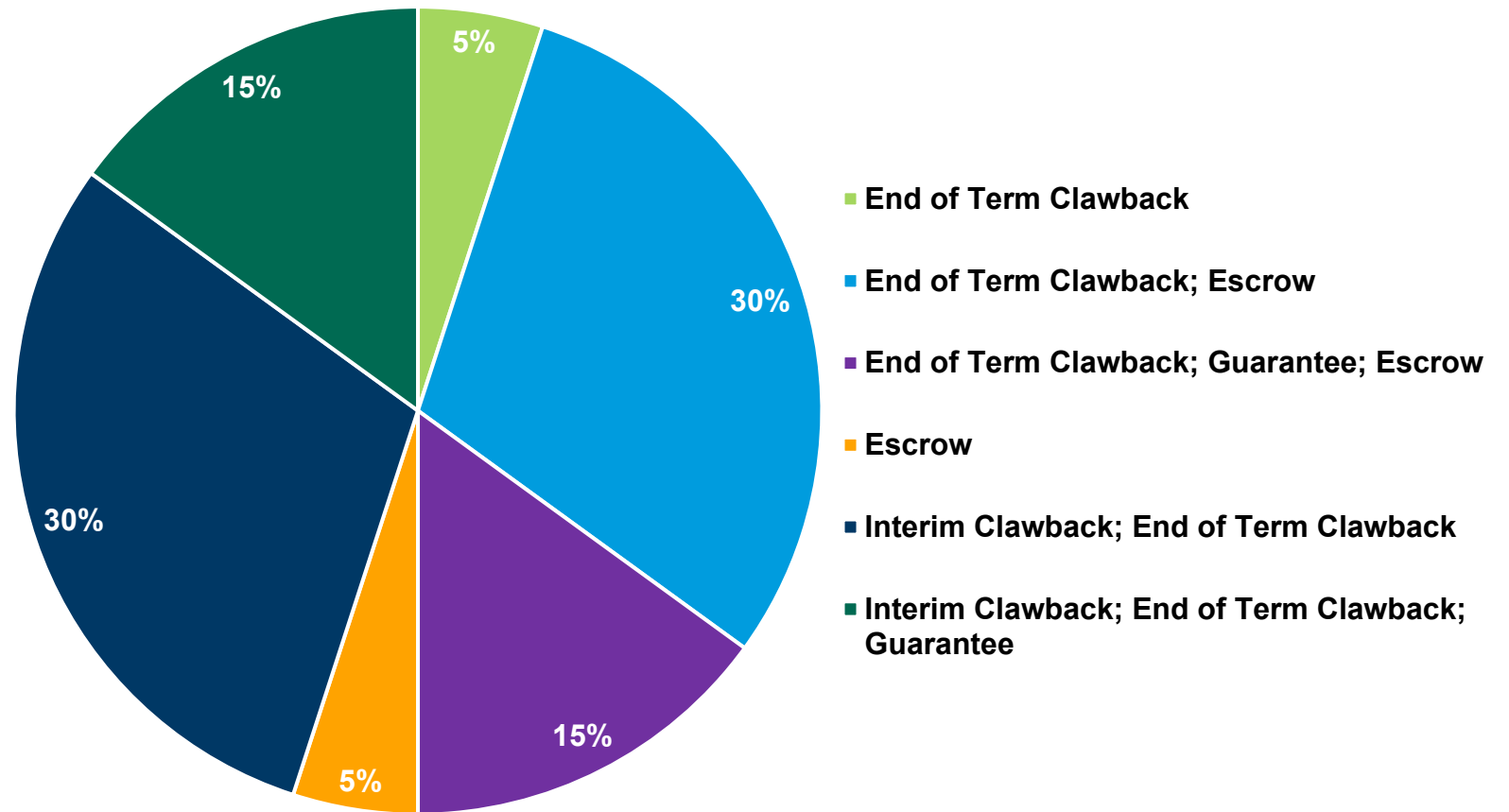


GP clawback and related investor protections >€1.5B-€3.75B



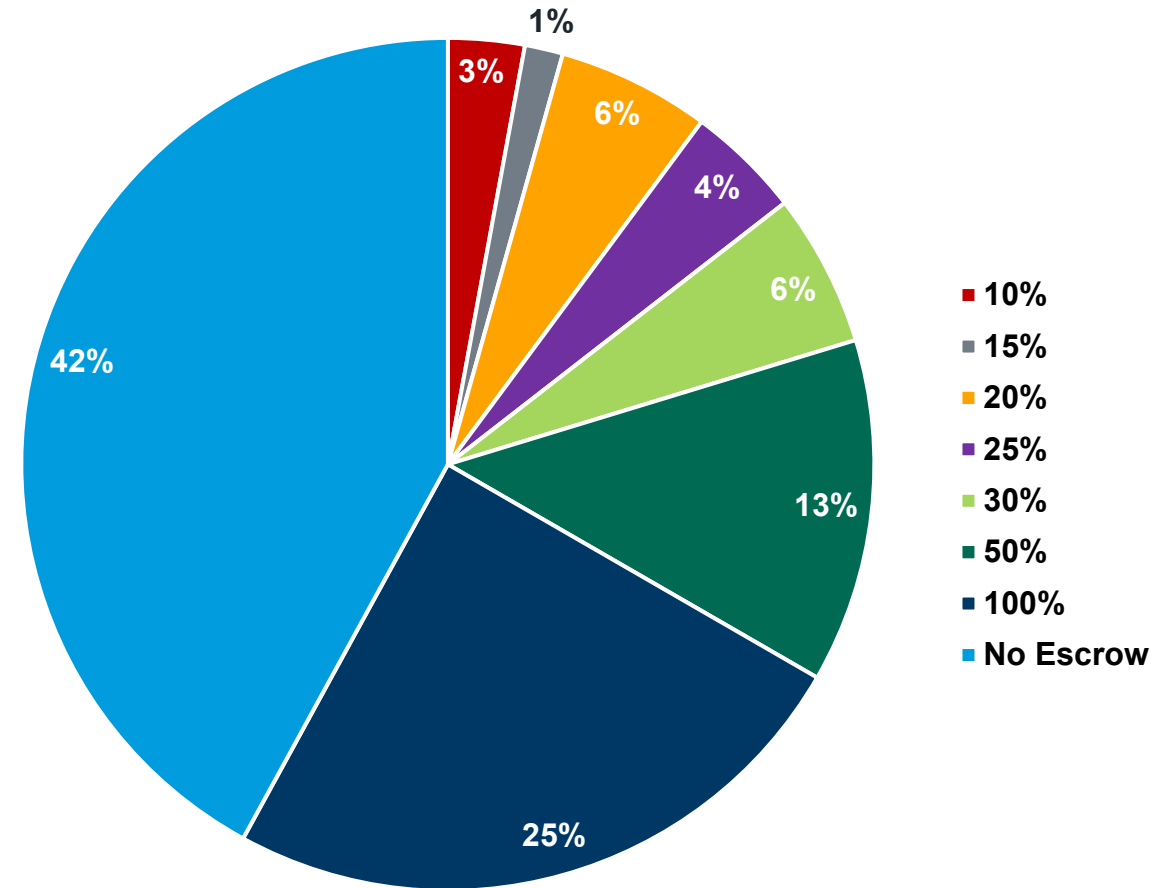
GP clawback and related investor protections

>€3.75B

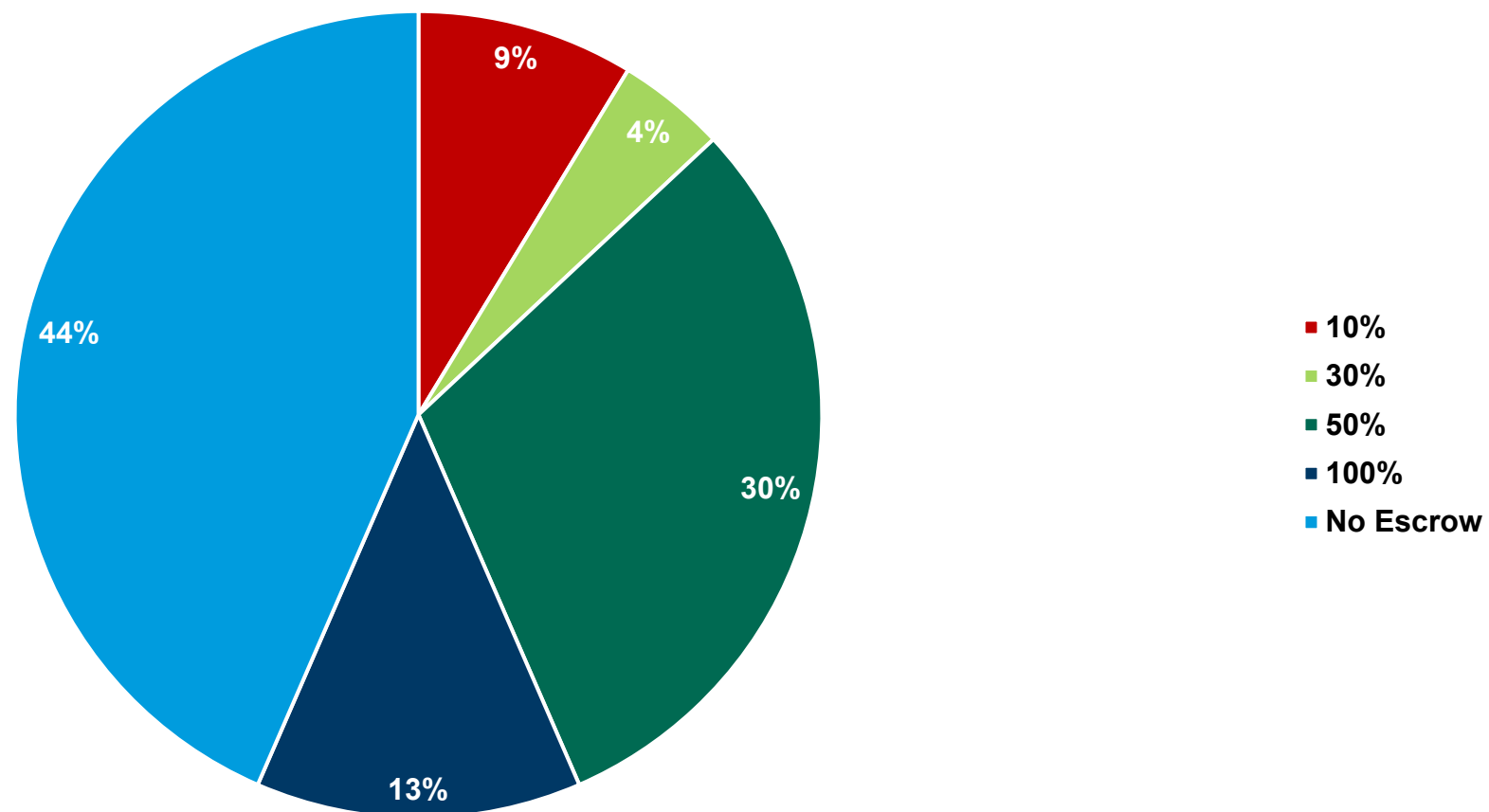


Escrow (% of carried interest) All Funds

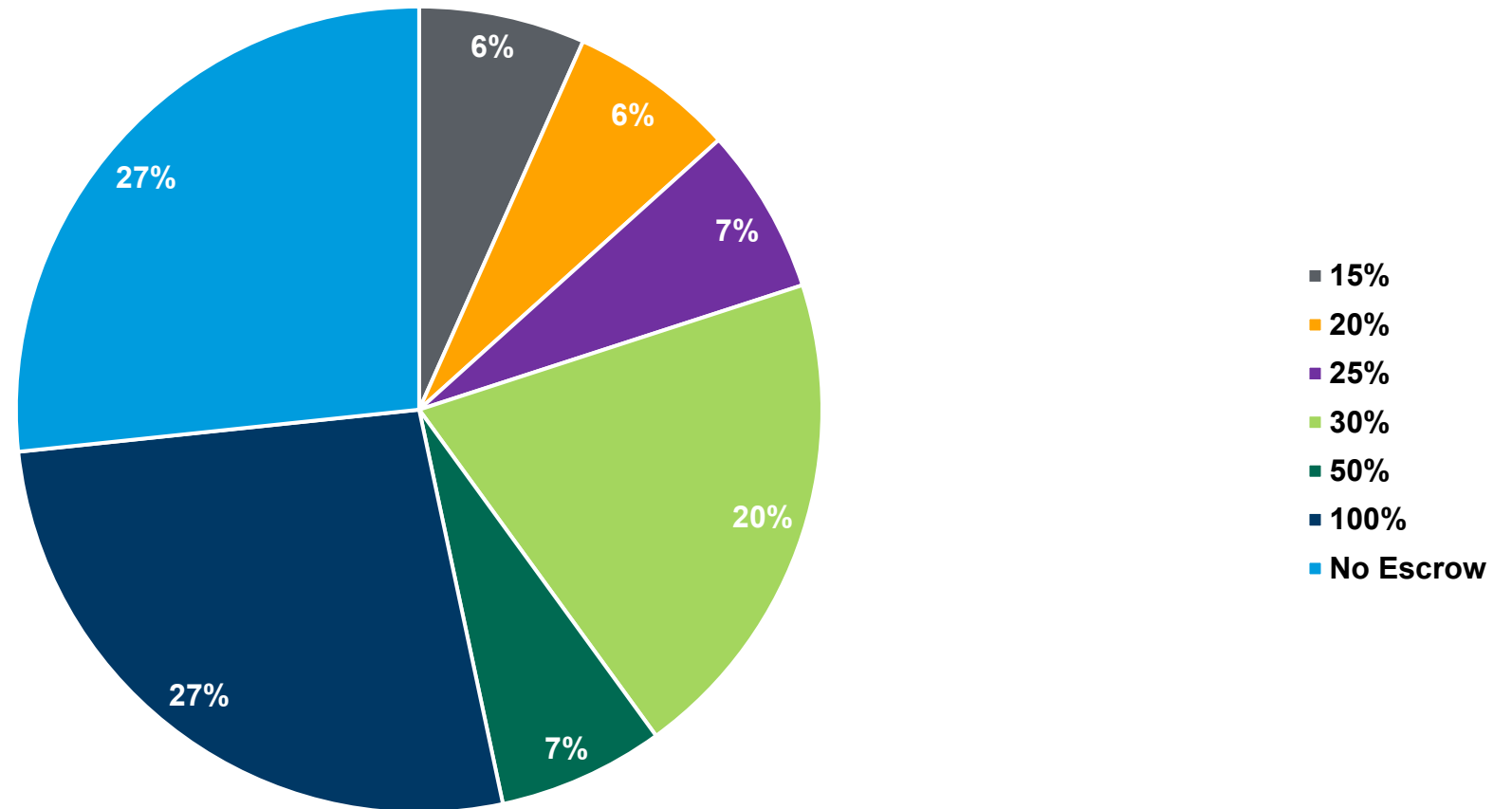
A significant proportion of the funds in our sample did not use an escrow (42%). 25% of funds provided for 100% of carry distributions to be initially placed into an escrow, which is an increase from prior years. There continues to be considerable variance in the amount escrowed (where there is escrow), with the range running from 10% to 100%.



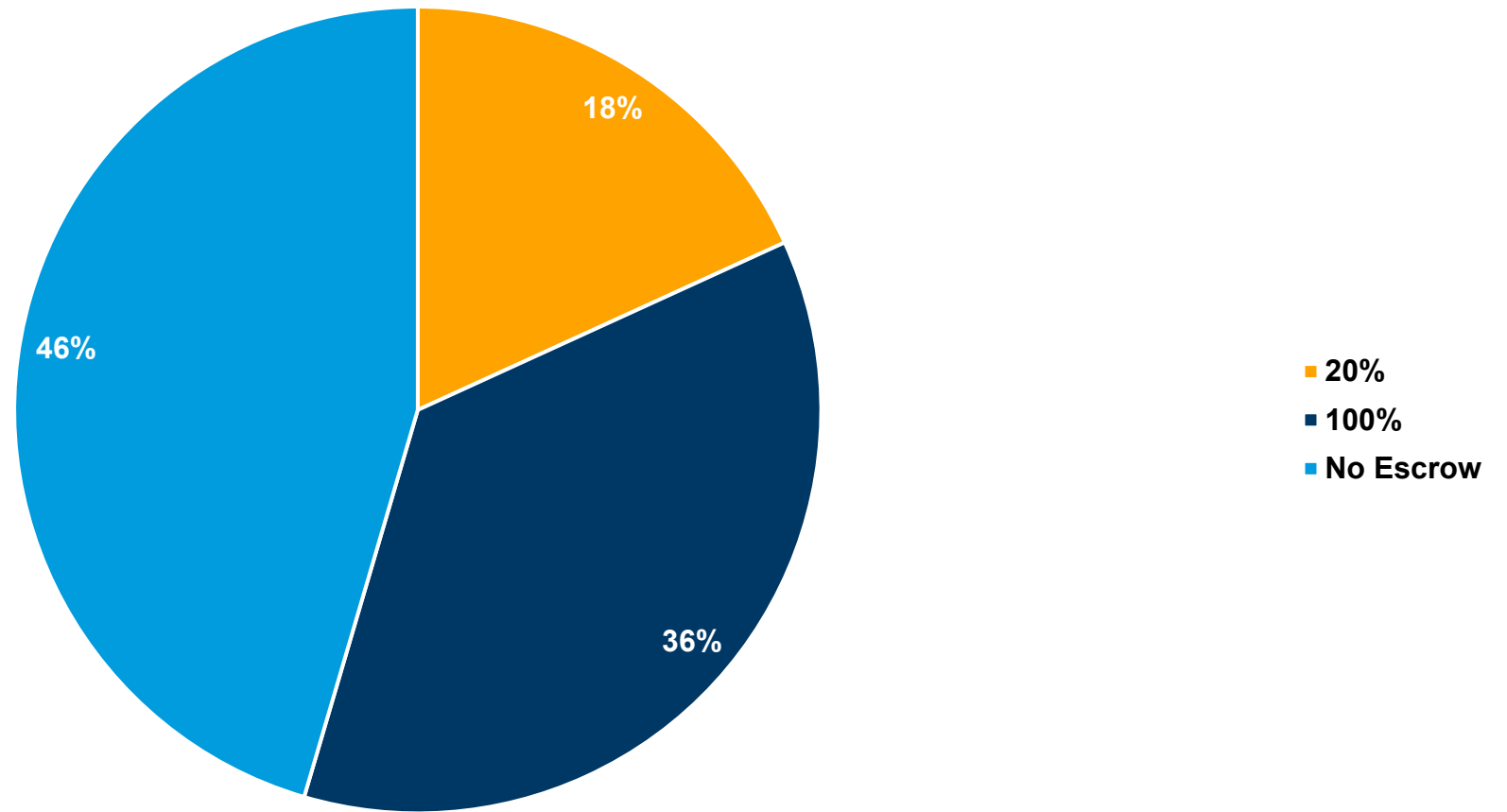
Escrow (% of carried interest) ≤€500M



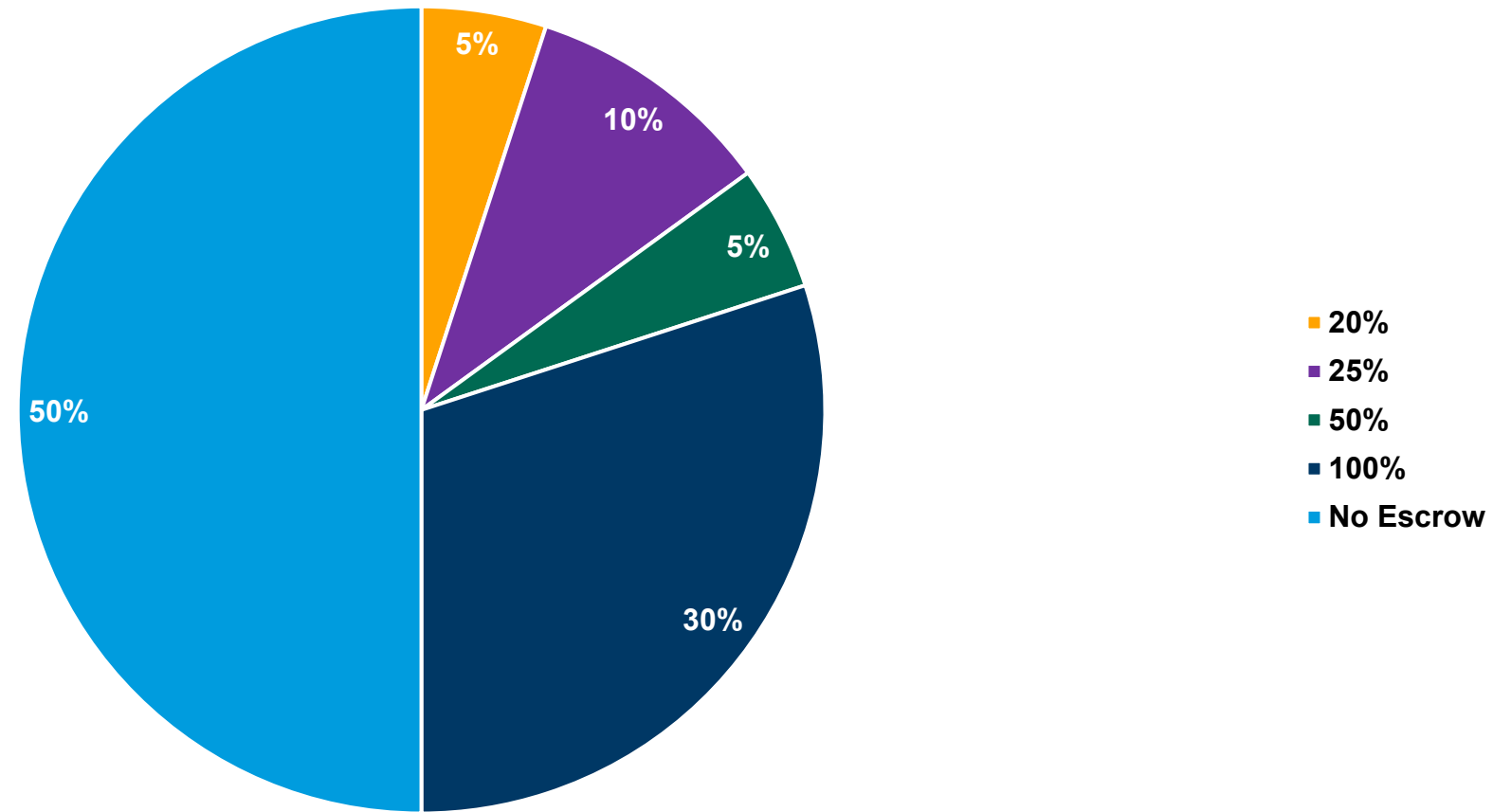
Escrow (% of carried interest) >€500M-€1.5B



Escrow (% of carried interest) >€1.5B-€3.75B



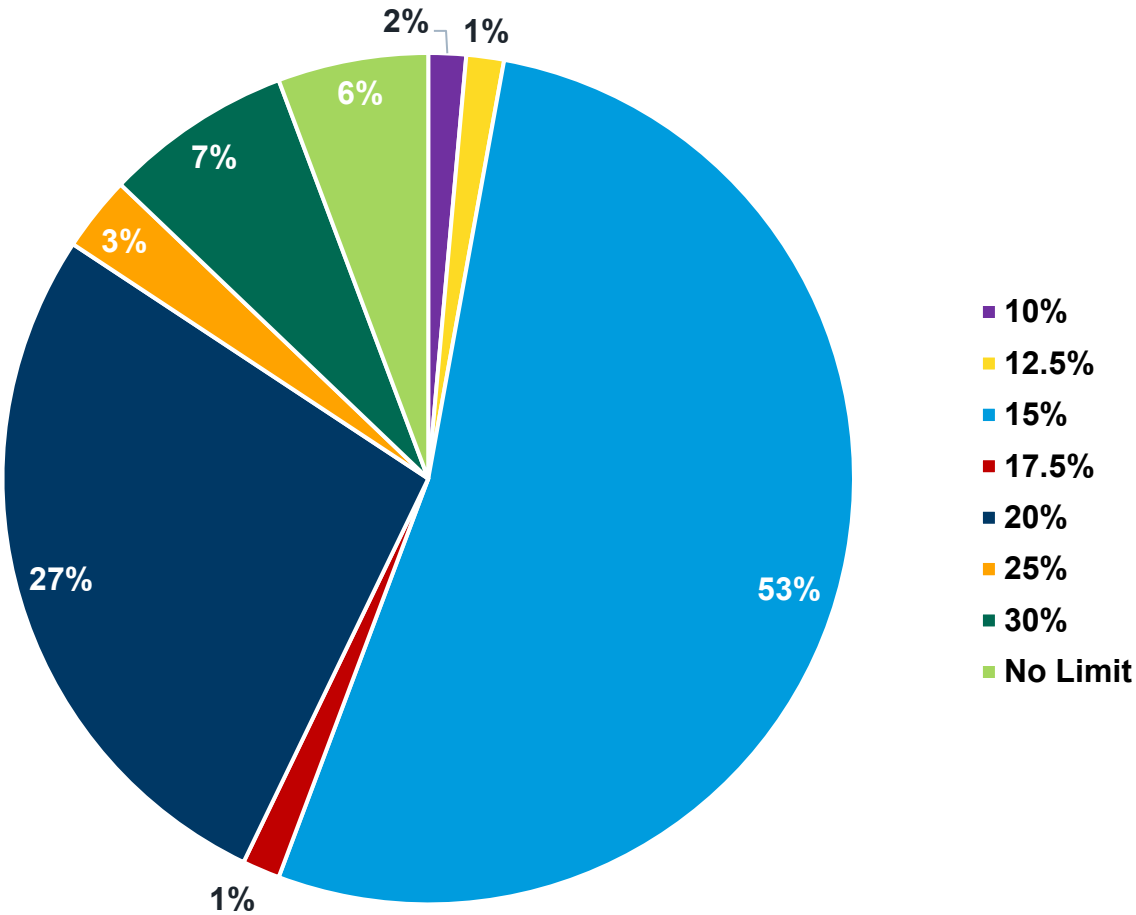
Escrow (% of carried interest) >€3.75B



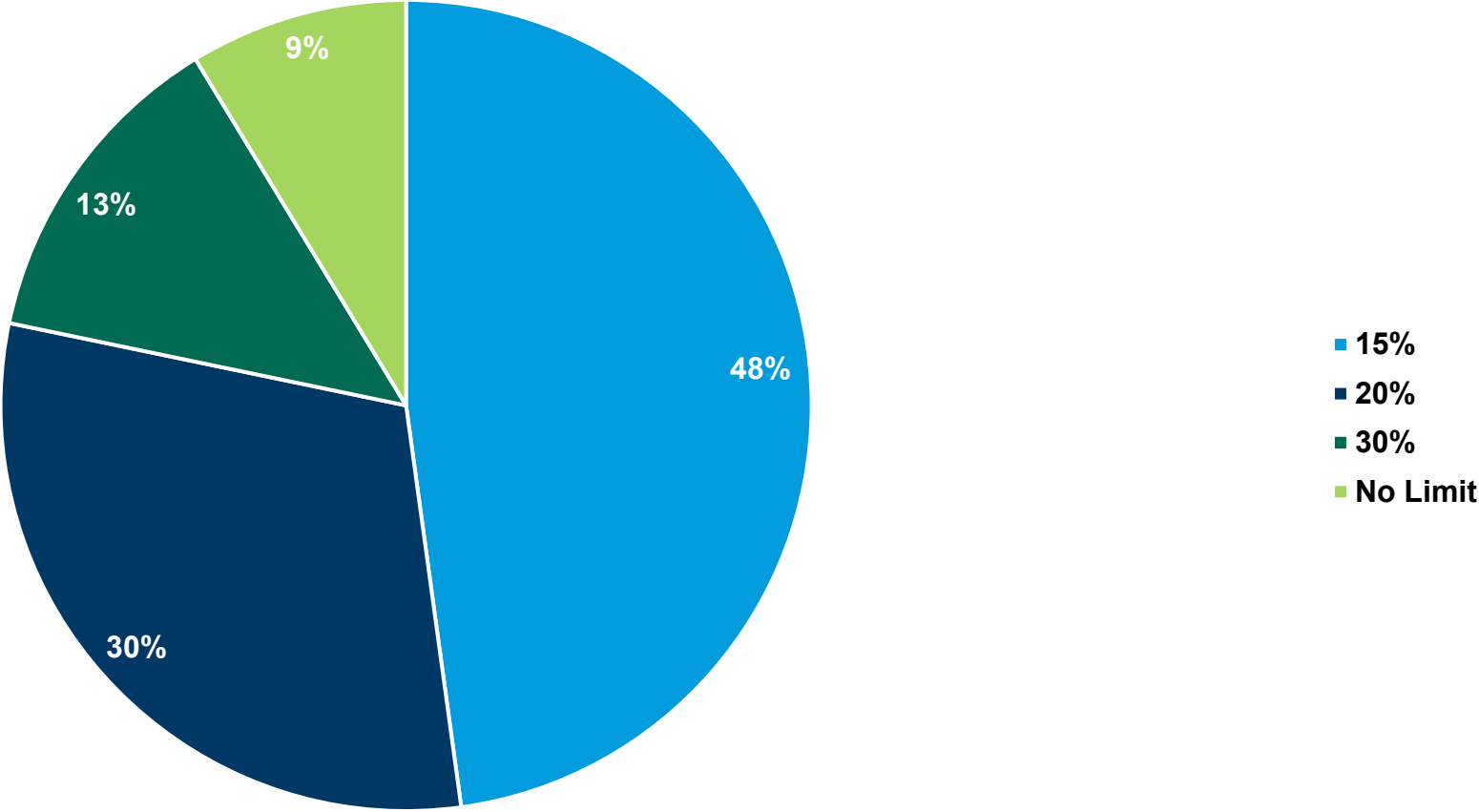
Investment restriction – Diversification limit (% of commitments)

All Funds

Diversification limits remain in the 15% to 20% of commitments range for the majority of funds, though this has incrementally fallen in the last few years (81%, down from 92% three years ago), with a corresponding increase in limits of 25% or 30%. Only a small number of the largest funds have the ability to go above 20% of commitments. The limits referenced here are the permitted permanent investment limits, excluding any temporary or bridging amounts that the fund may be allowed to initially hold in excess of this.

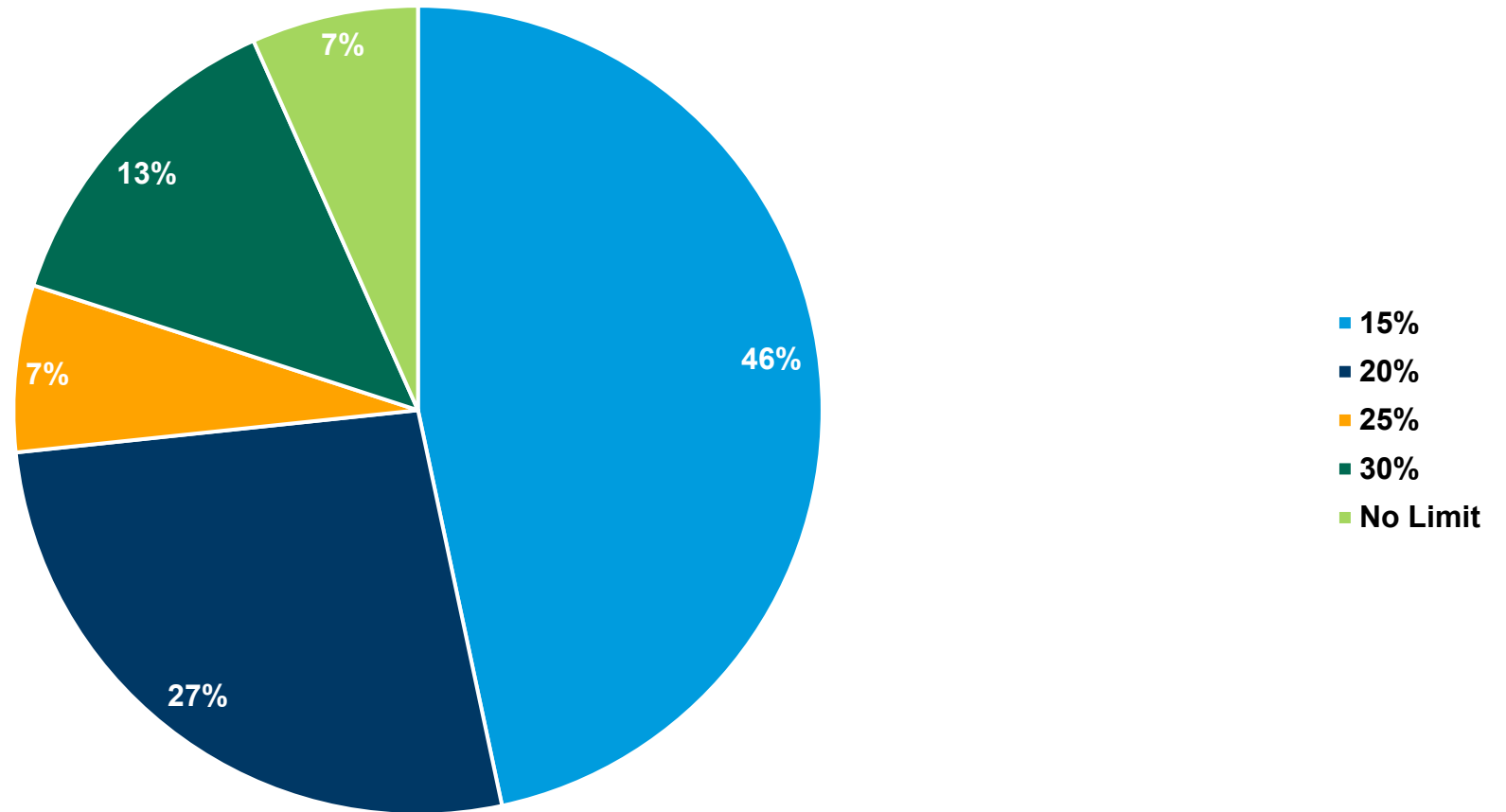


Investment restriction – Diversification limit (% of commitments) ≤€500M



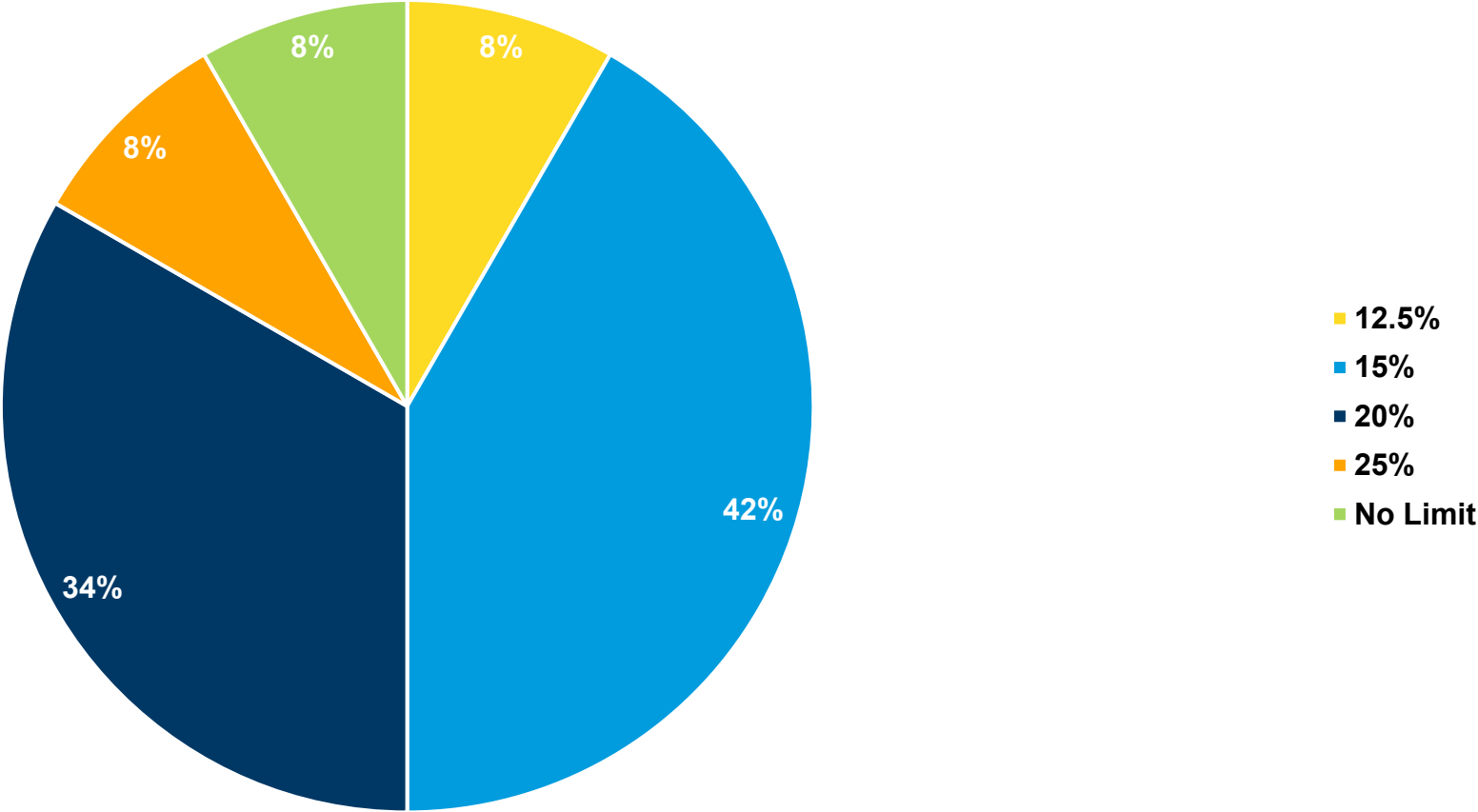
Investment restriction – Diversification limit (% of commitments)

>€500M-€1.5B



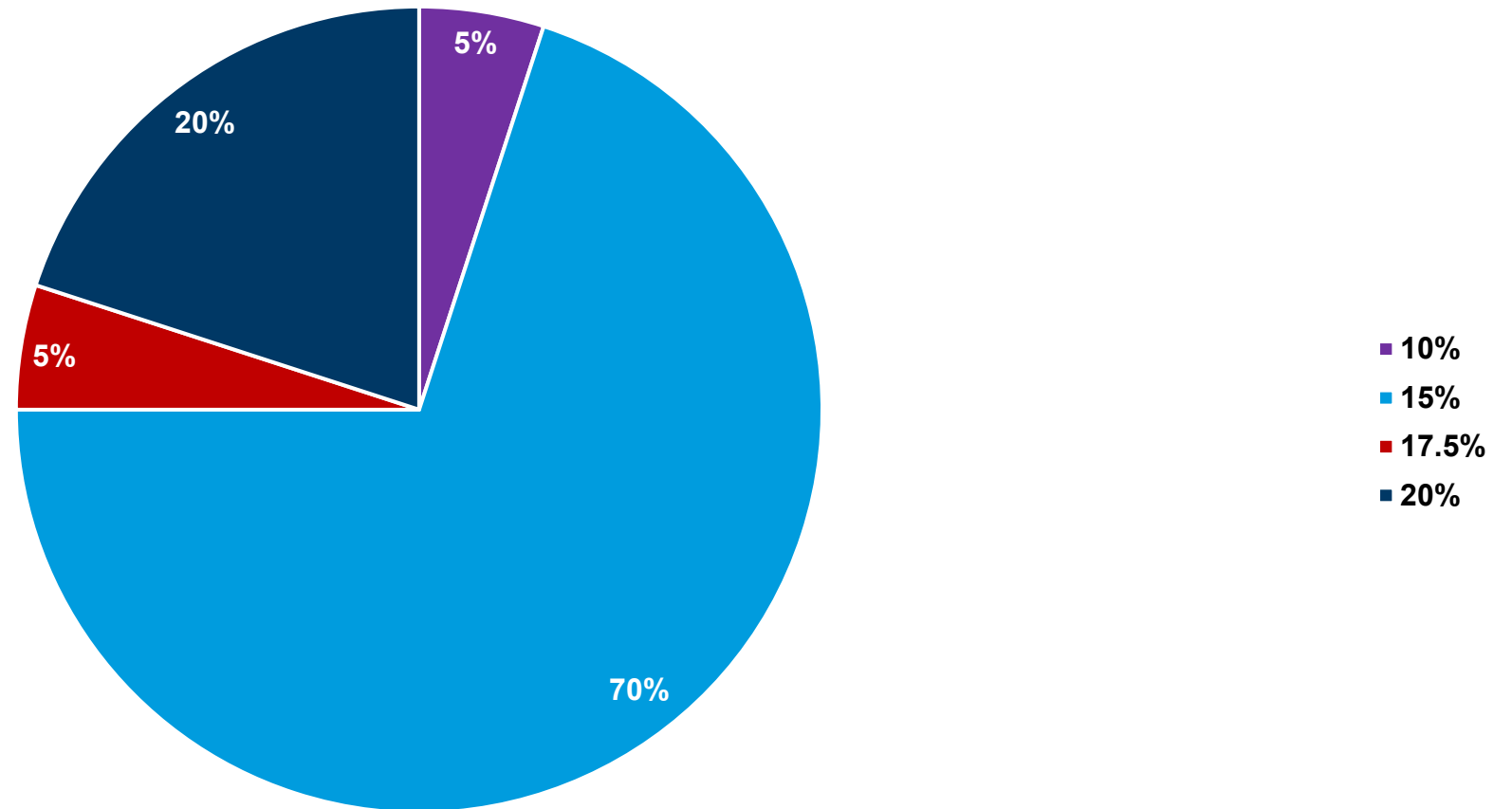
Investment restriction – Diversification limit (% of commitments)

>€1.5B-€3.75B



Investment restriction – Diversification limit (% of commitments)

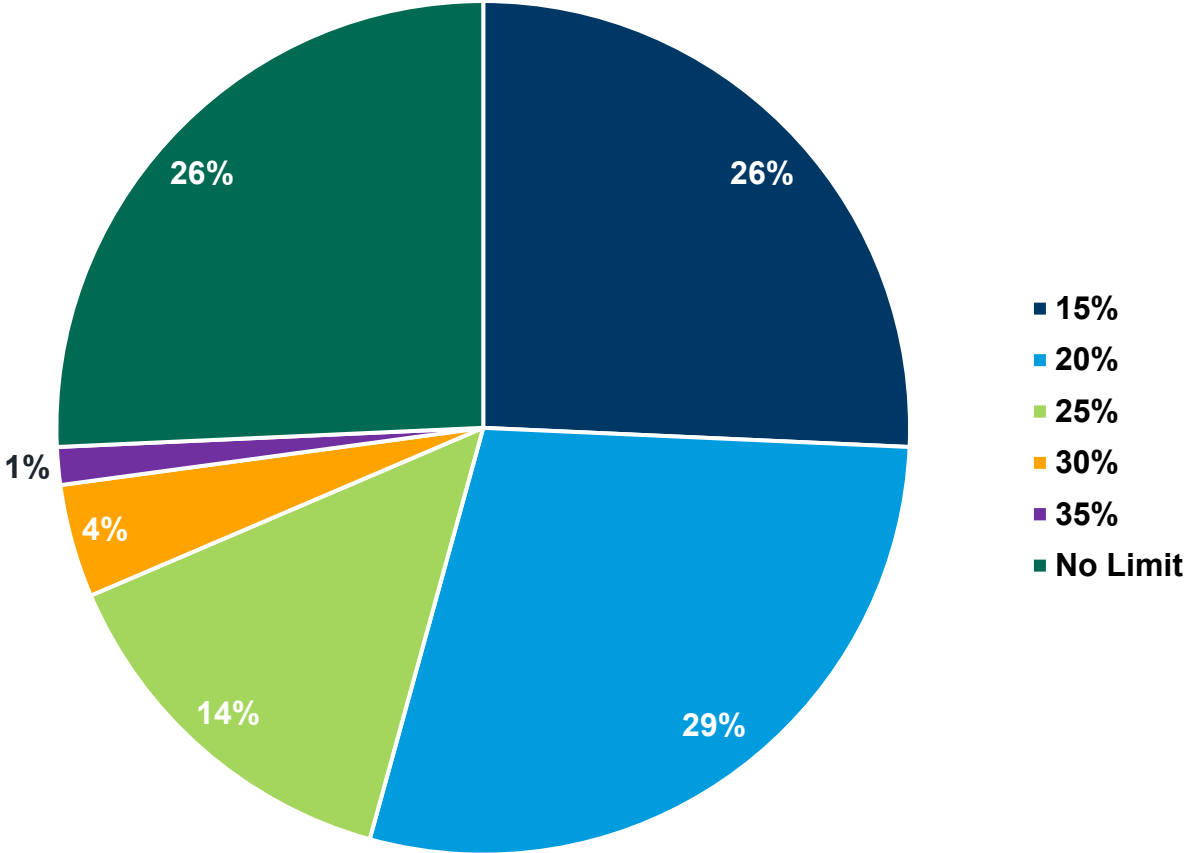
>€3.75B



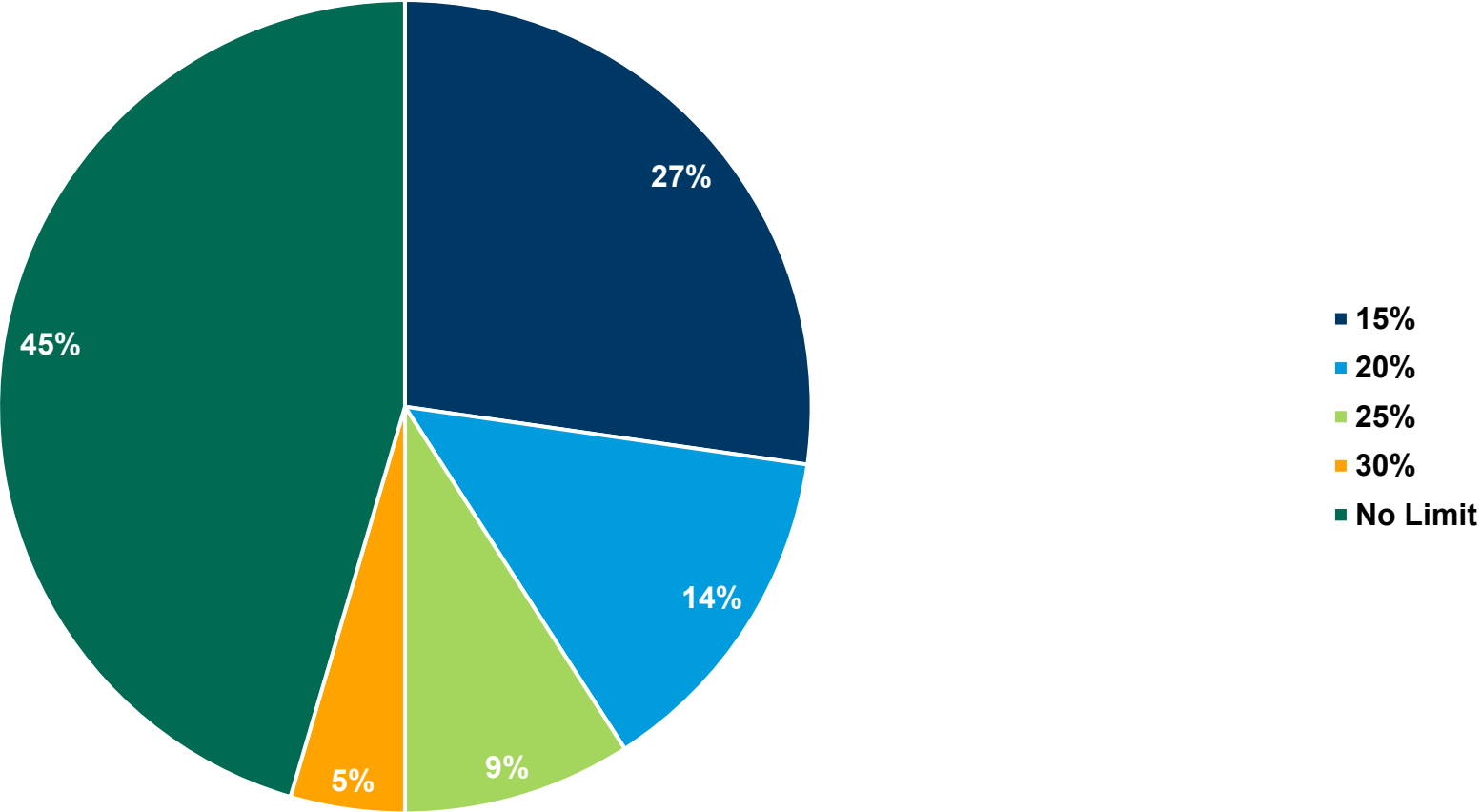
Limit on follow-on investments post-investment period (% of commitments)

All Funds

A significant minority (26%) of funds have no limit on the percentage of capital that may be drawn down post-investment period for follow-ons. This minority has increased from prior years as the single asset diversification limits have correspondingly increased, indicating perhaps a greater tolerance from LPs for sponsors to allocate capital between initial investment and follow-on capital for the specific investment in question. Where there was a limit included in the fund documents, a 20% limit was the most common, at 29% of funds surveyed, and 69% of funds fall in the 15% to 25% of commitments range. Whether a limit is included, and what this is, is often dependent on the relevant fund's investment strategy. GPs with very active 'buy and build' strategies or growth capital strategies are likely to have higher limits or no limits.

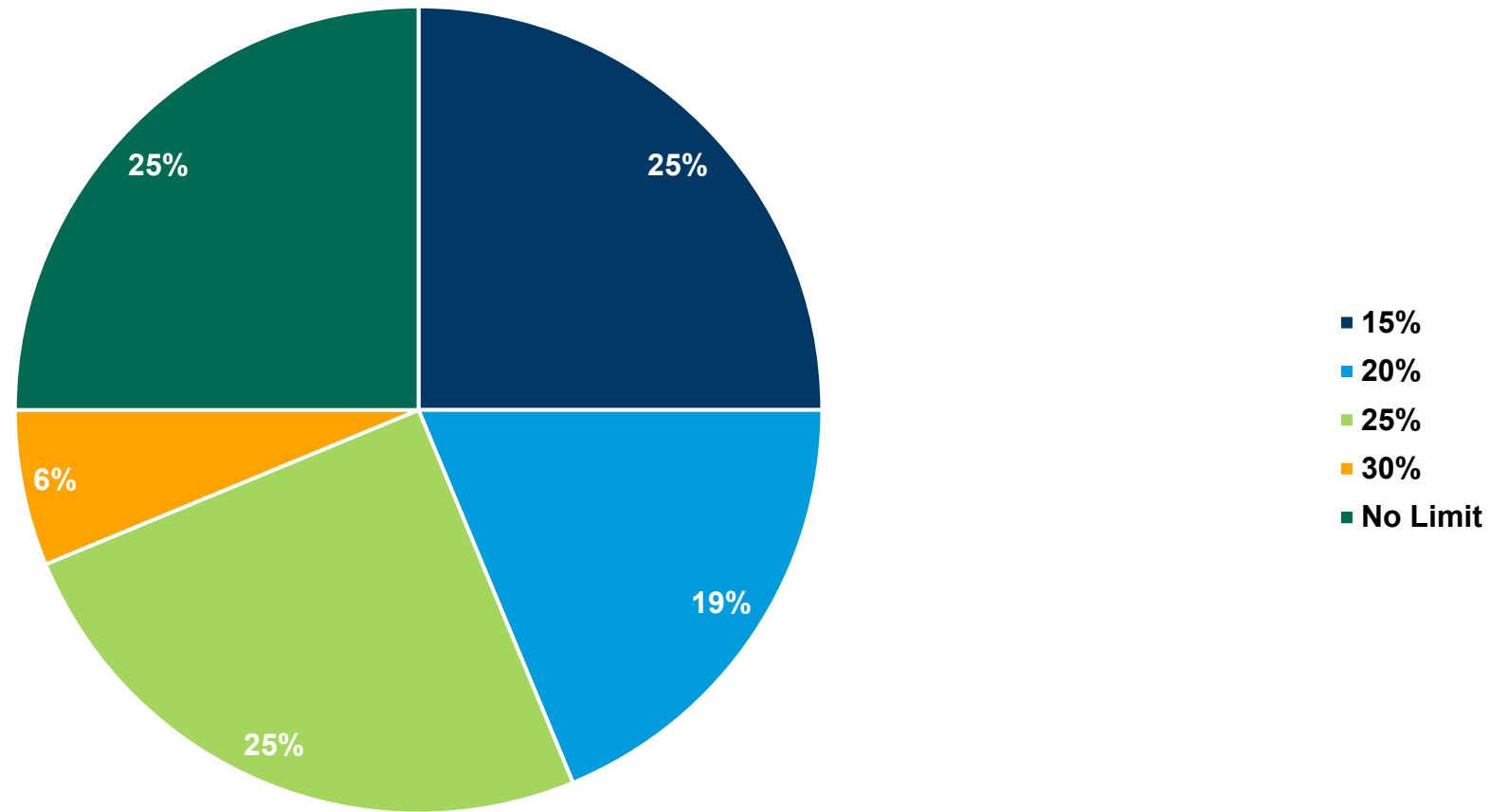


Limit on follow-on investments post-investment period (% of commitments) ≤€500M



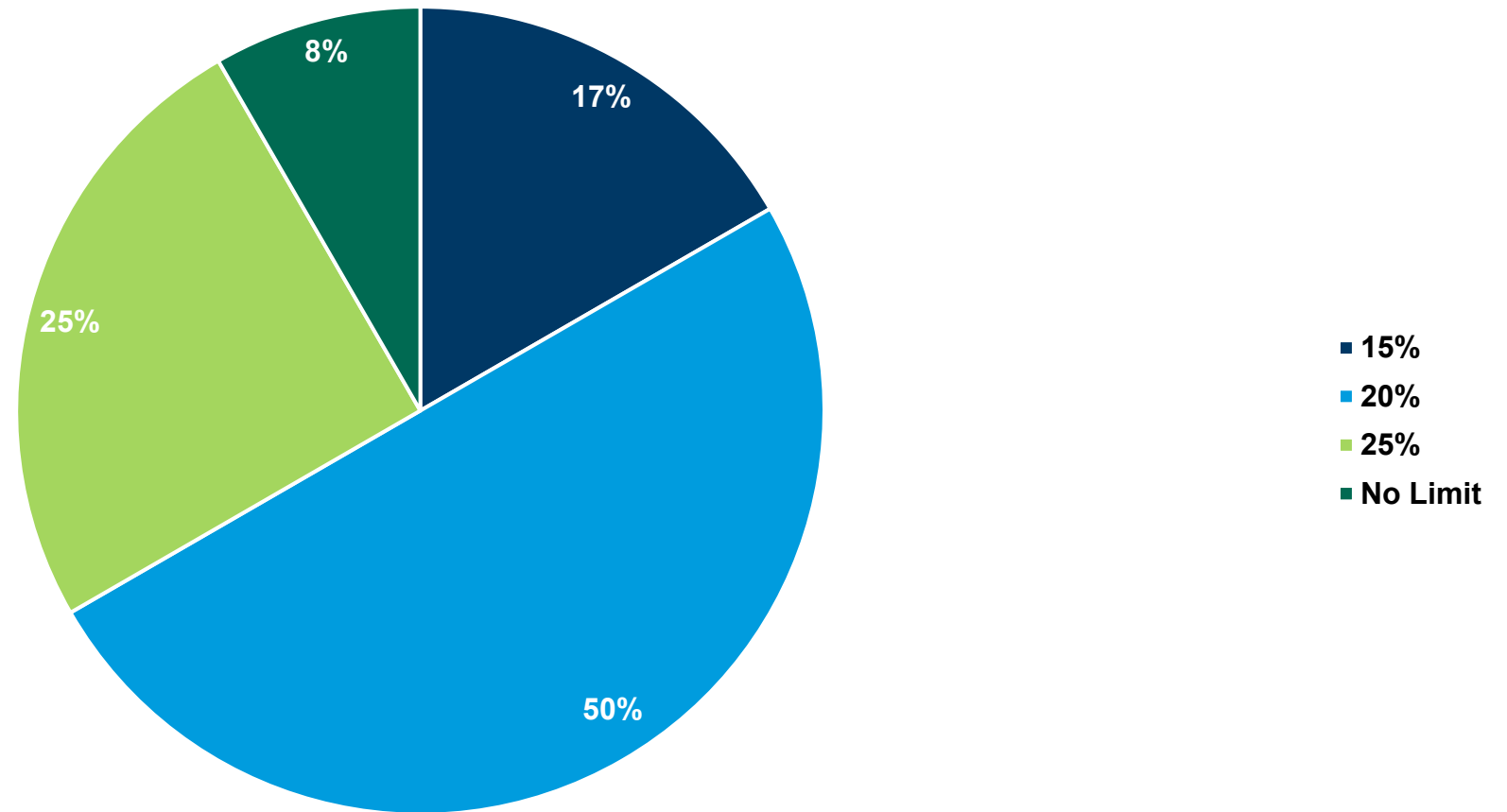
Limit on follow-on investments post-investment period (% of commitments)

>€500M-€1.5B

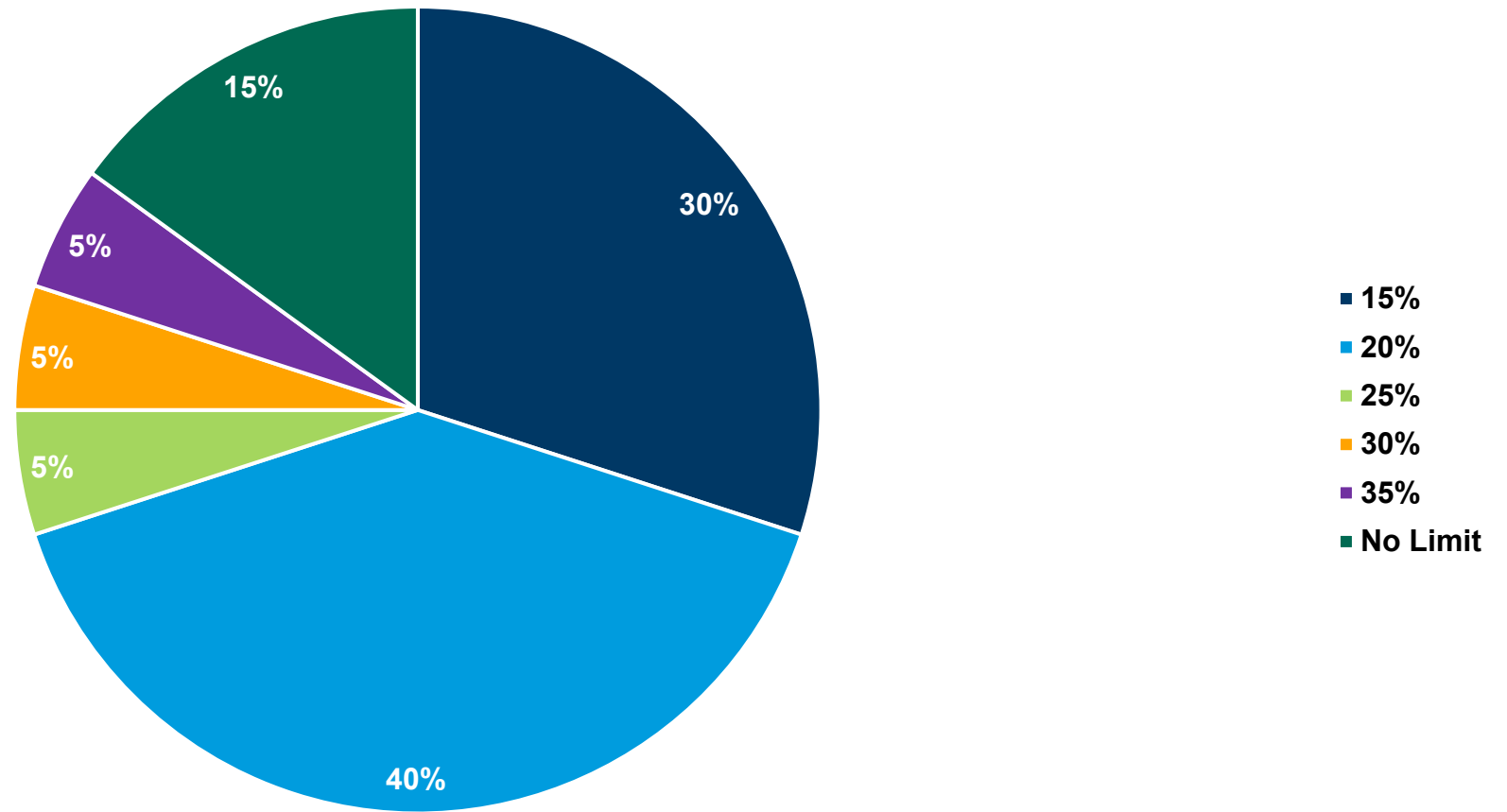


Limit on follow-on investments post-investment period (% of commitments)

>€1.5B-€3.75B



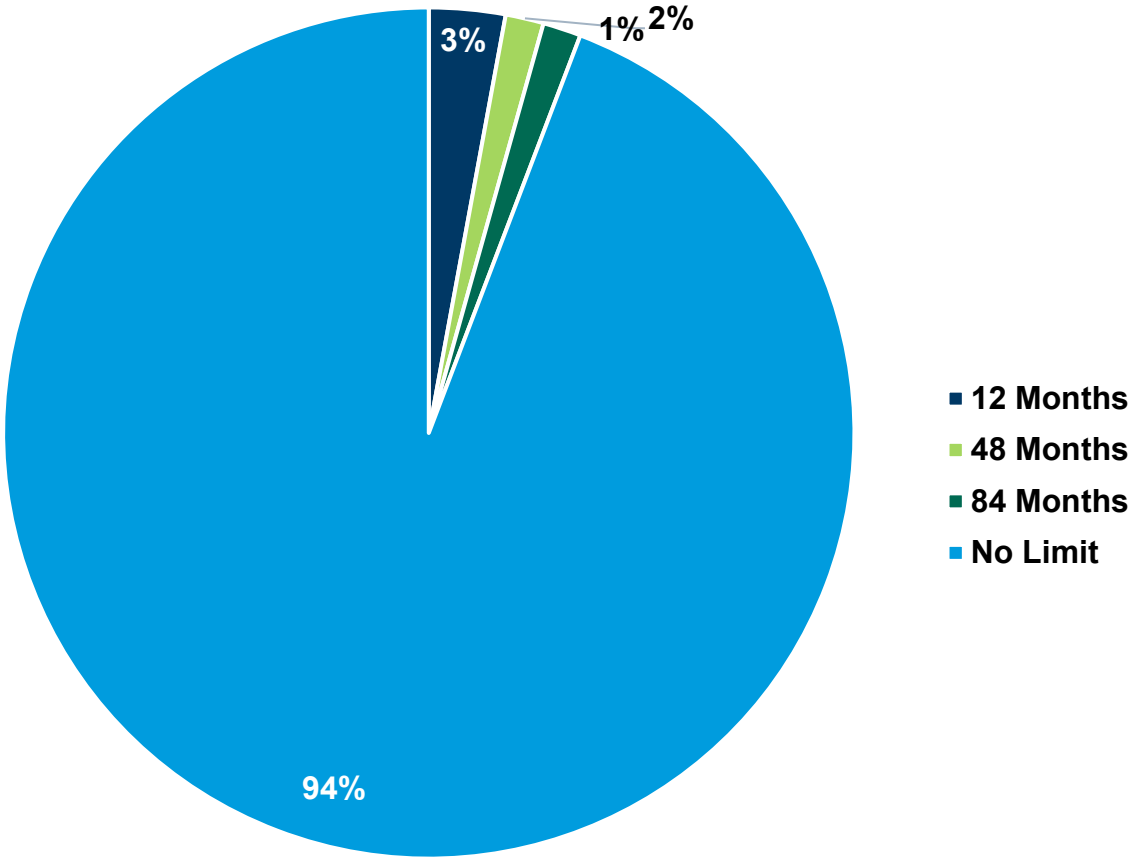
Limit on follow-on investments post-investment period (% of commitments) >€3.75B



Limit on follow-on investments post investment period (months post investment period)

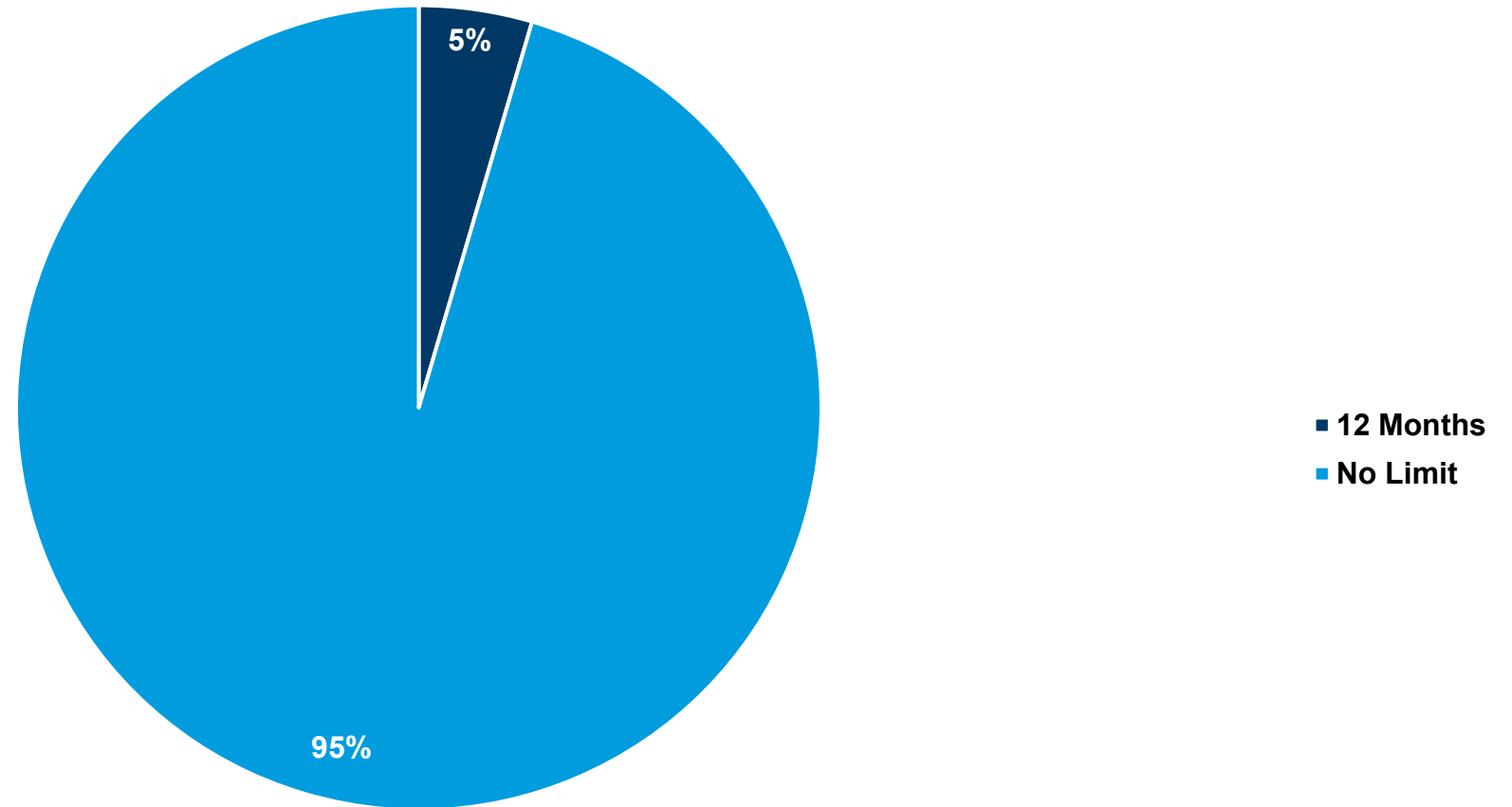
All Funds

A significant majority of funds in the sample (94%) had no time limit on making follow-on investments post-investment period, which is similar to last year. Fund size does not appear to be a driver of whether a limit was present or not.



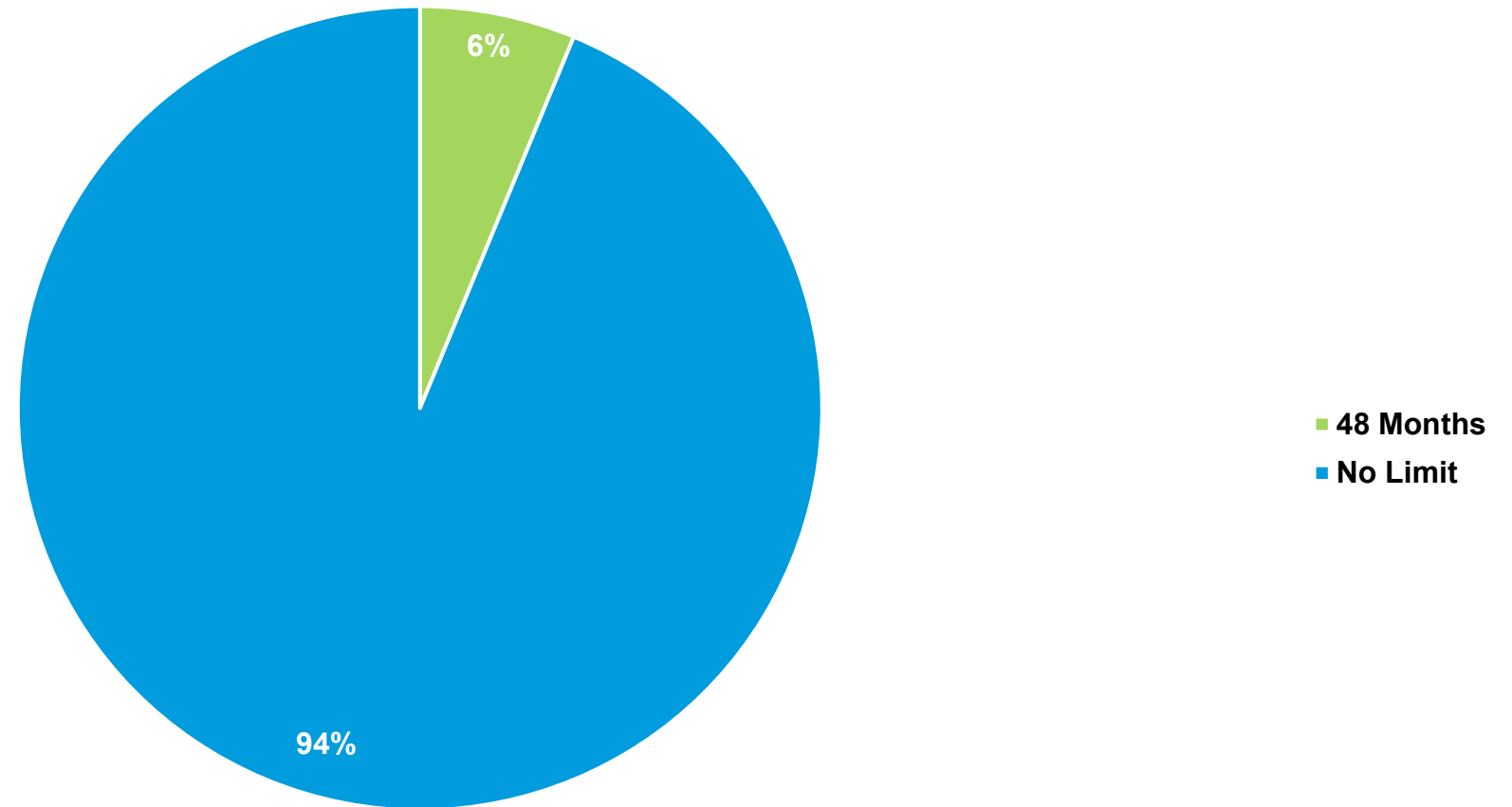
Limit on follow-on investments post investment period (months post investment period)

≤€500M



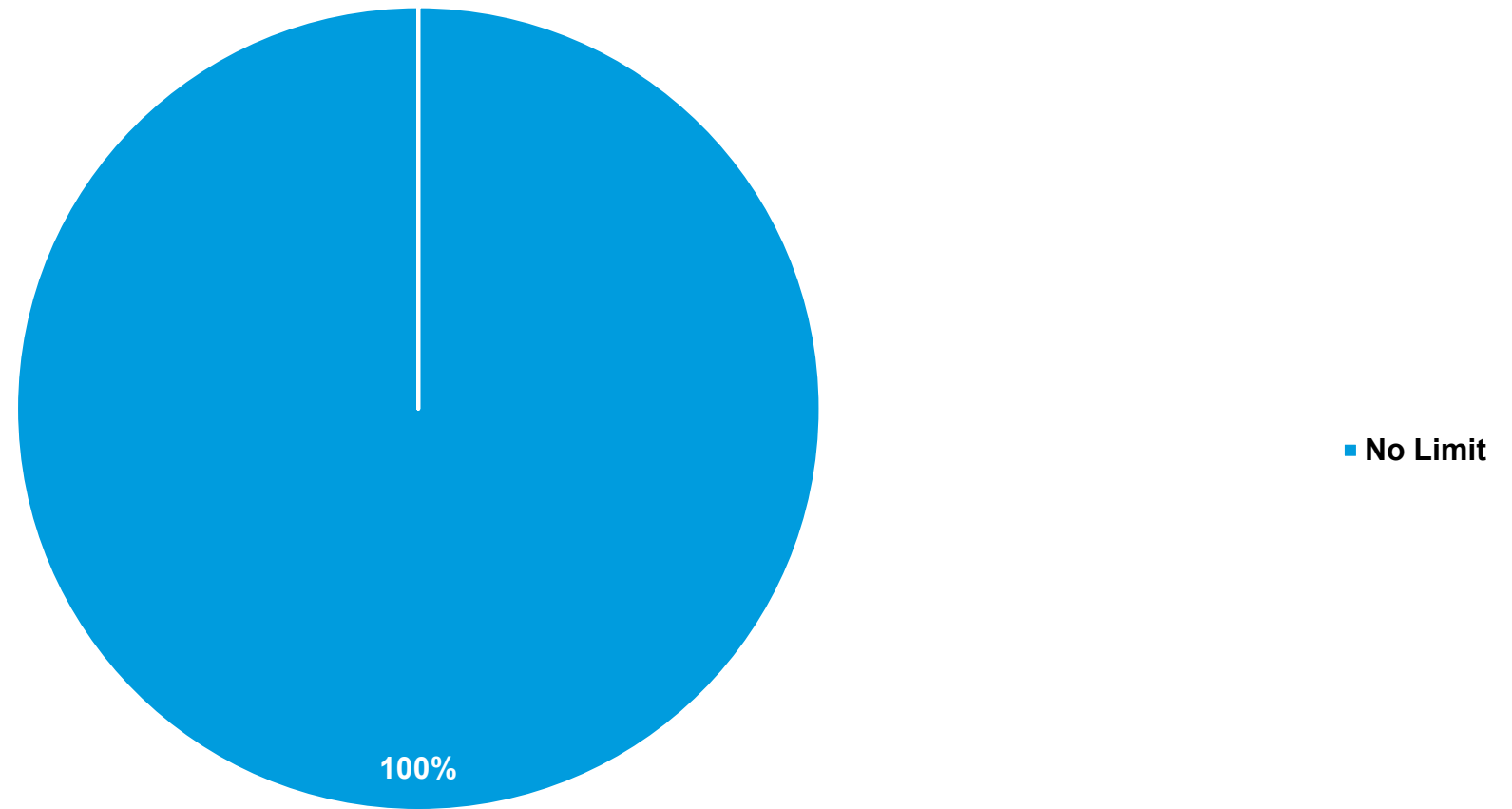
Limit on follow-on investments post investment period (months post investment period)

>€500M-€1.5B



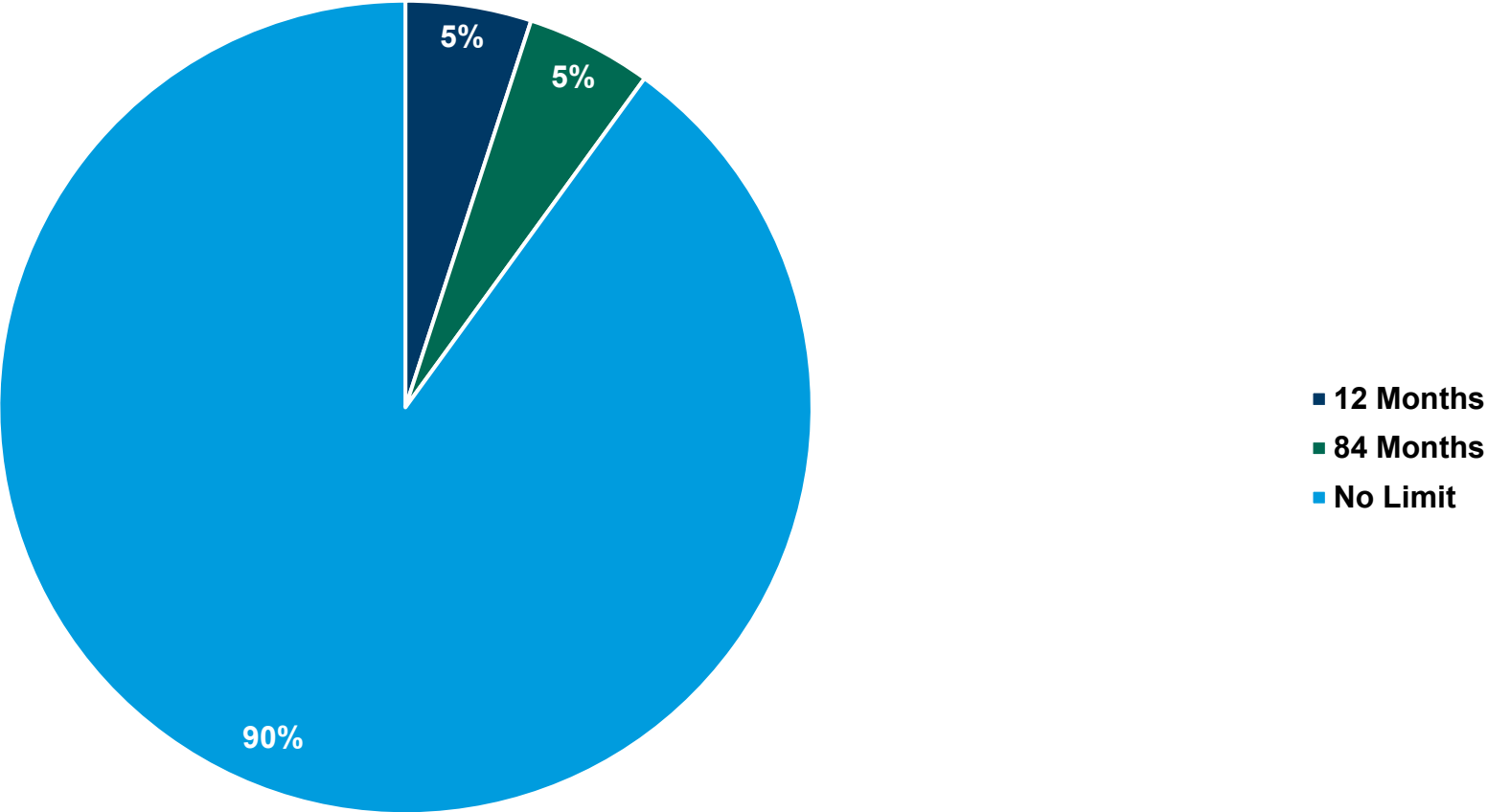
Limit on follow-on investments post investment period (months post investment period)

>€1.5B-€3.75B



Limit on follow-on investments post investment period (months post investment period)

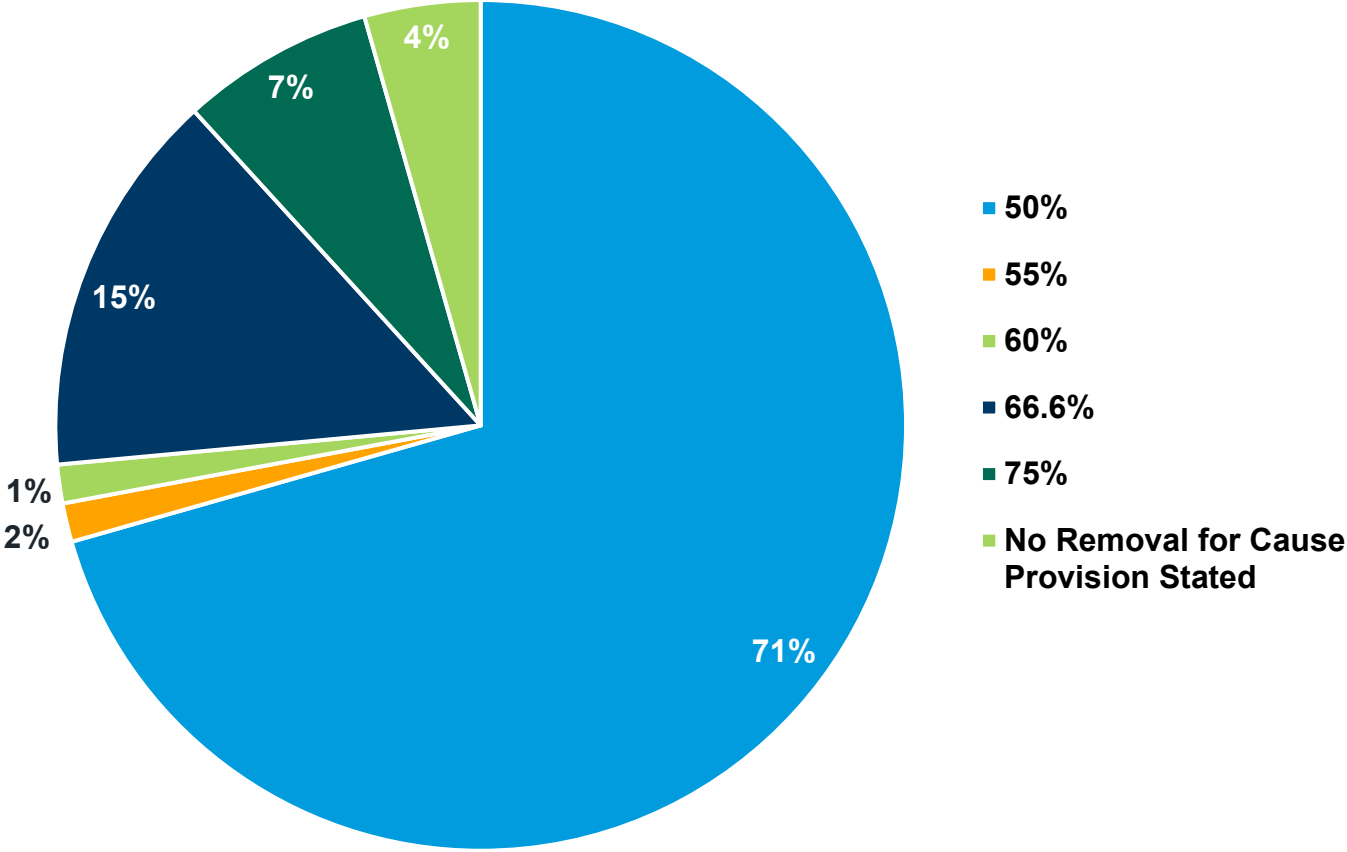
>€3.75B



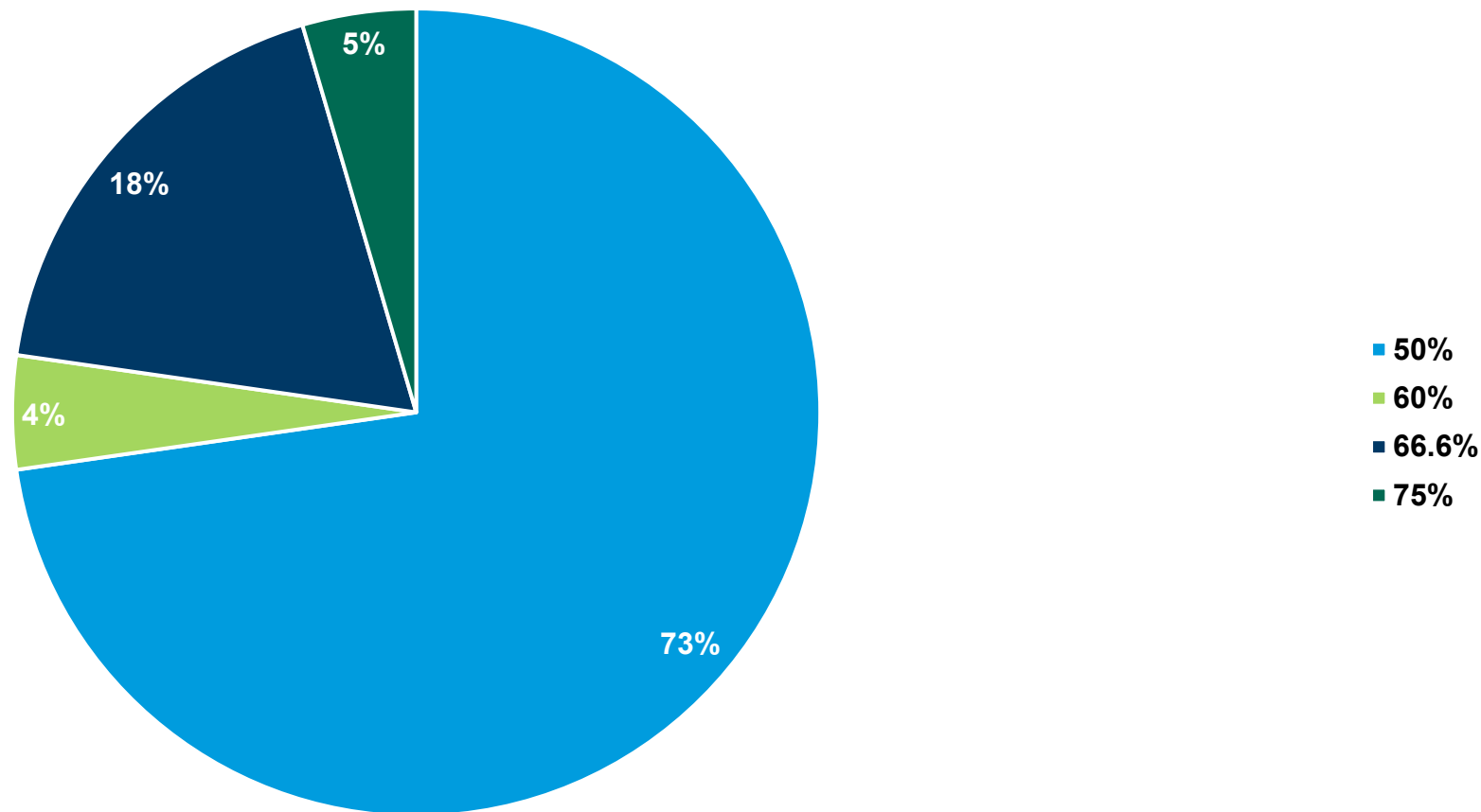
GP ‘for cause’ removal – Investor voting threshold (% of interests)

All Funds

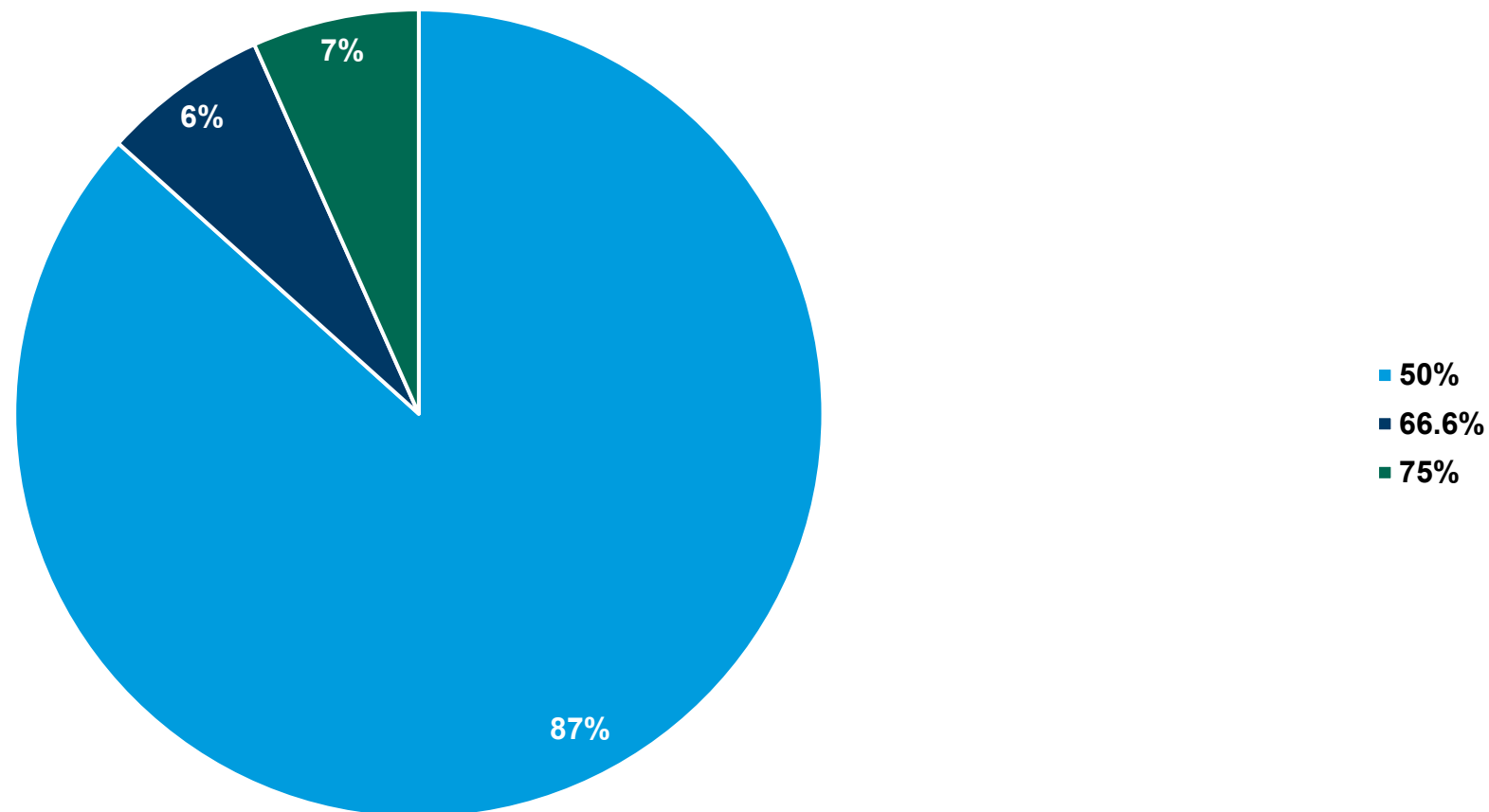
A simple majority is the most common voting threshold for GP removal (71% of the funds in our survey). This has remained the case for all but the largest funds where we are seeing more variety in the thresholds with some of the largest funds not having a for cause “removal” and instead favouring simply a termination of the fund in such instances



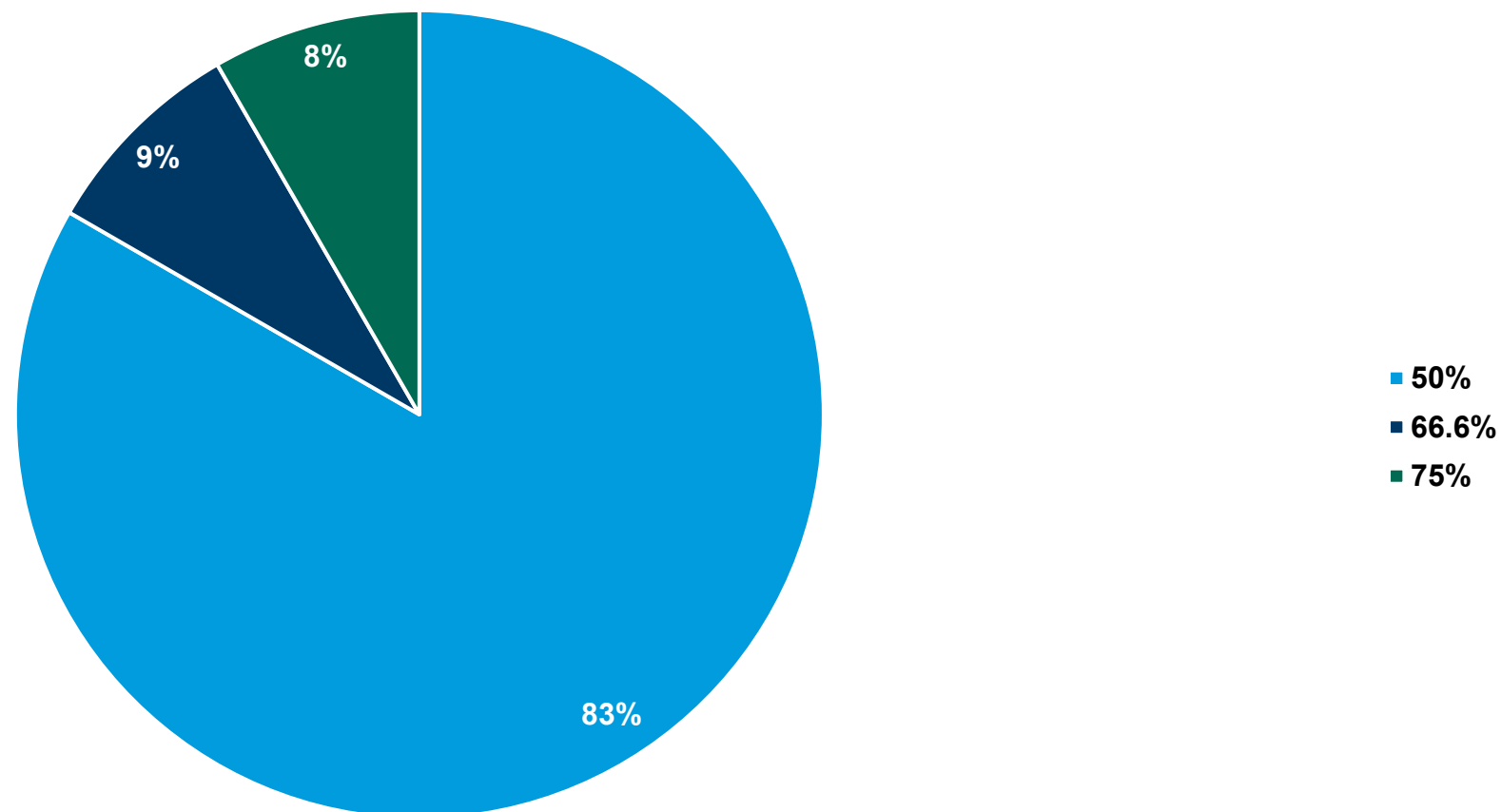
GP ‘for cause’ removal – Investor voting threshold (% of interests)
≤€500M



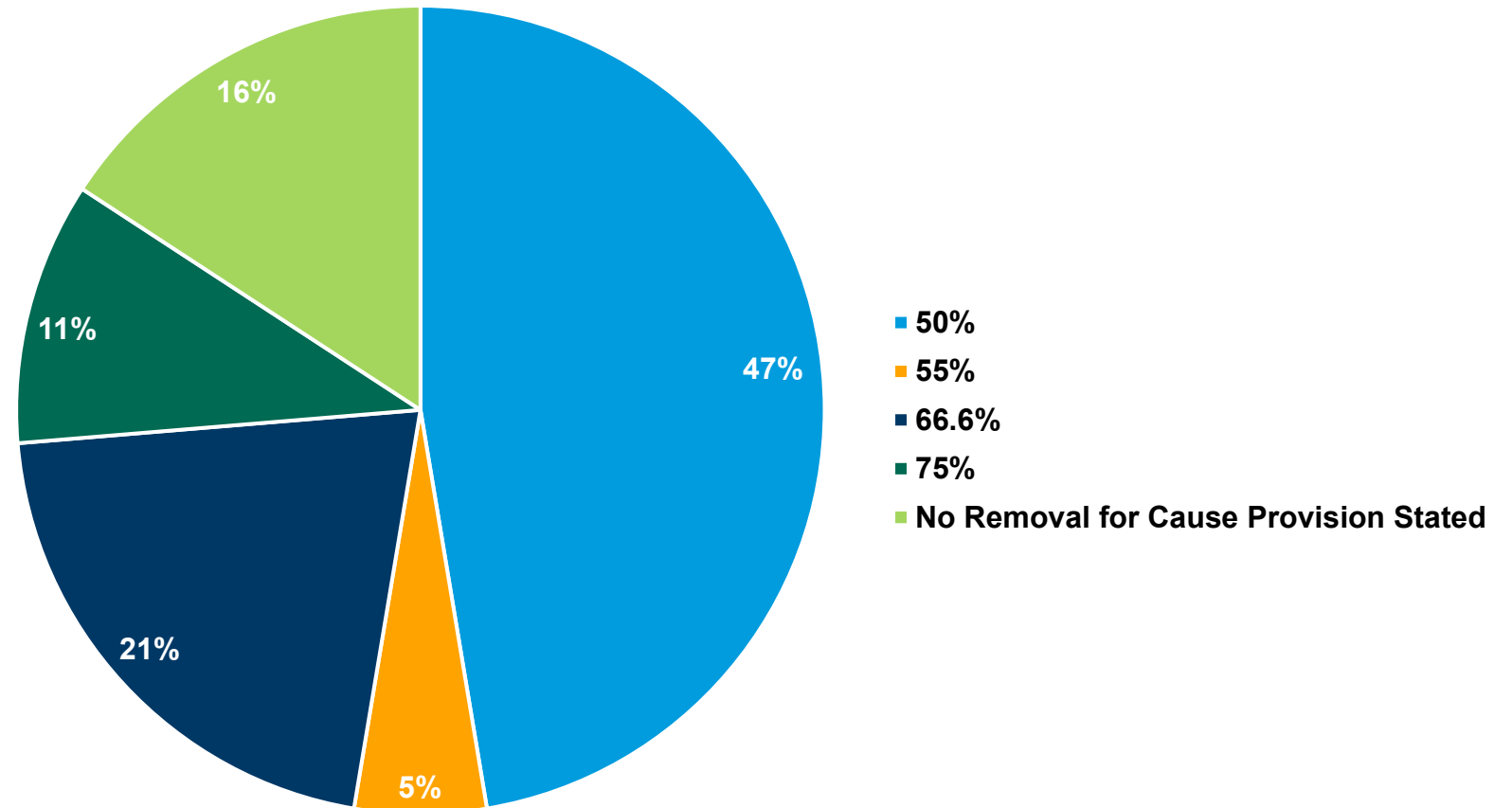
GP 'for cause' removal – Investor voting threshold (% of interests) >€500M-€1.5B



GP 'for cause' removal – Investor voting threshold (% of interests) >€1.5B-€3.75B



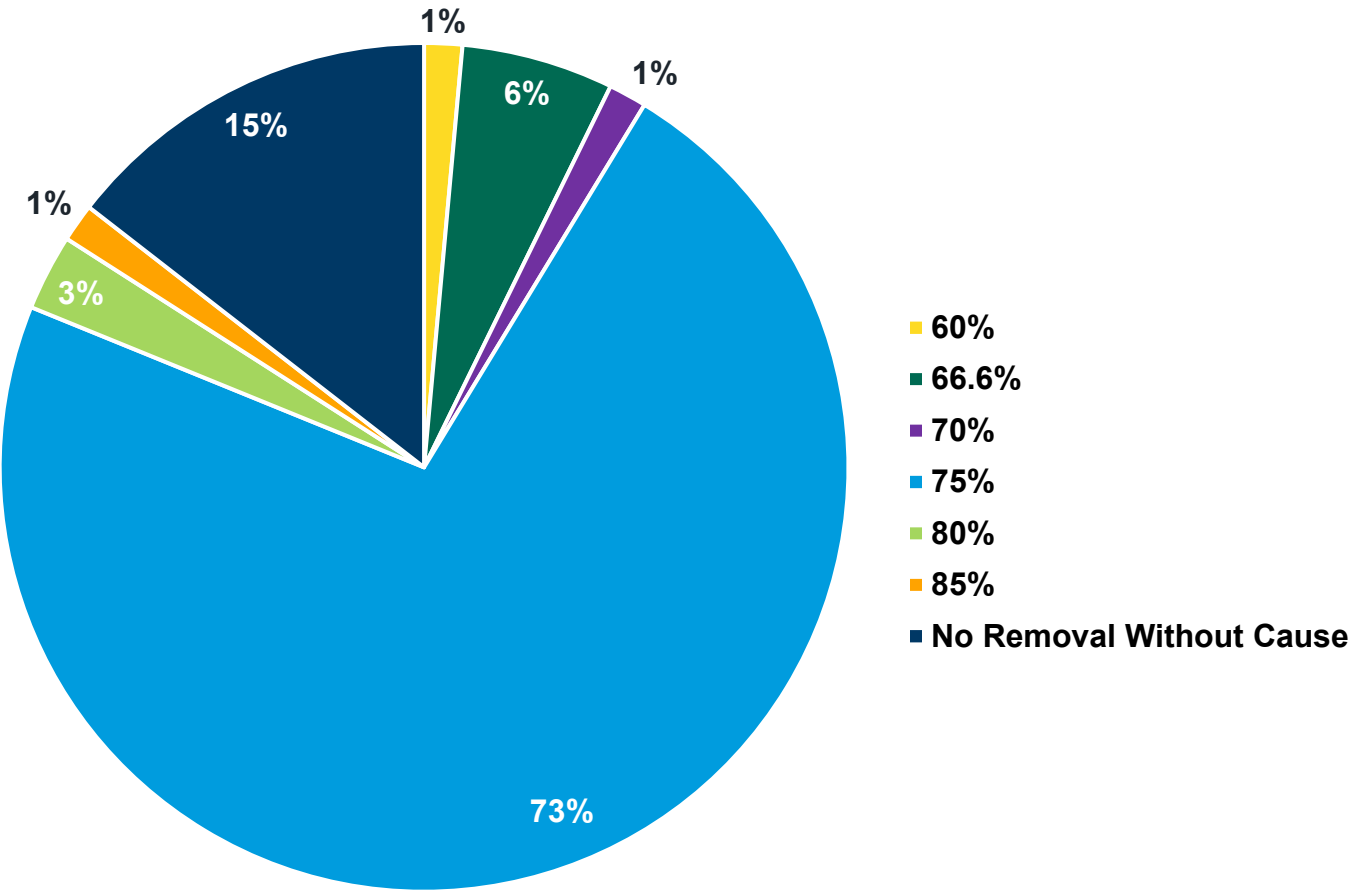
GP 'for cause' removal – Investor voting threshold (% of interests) >€3.75B



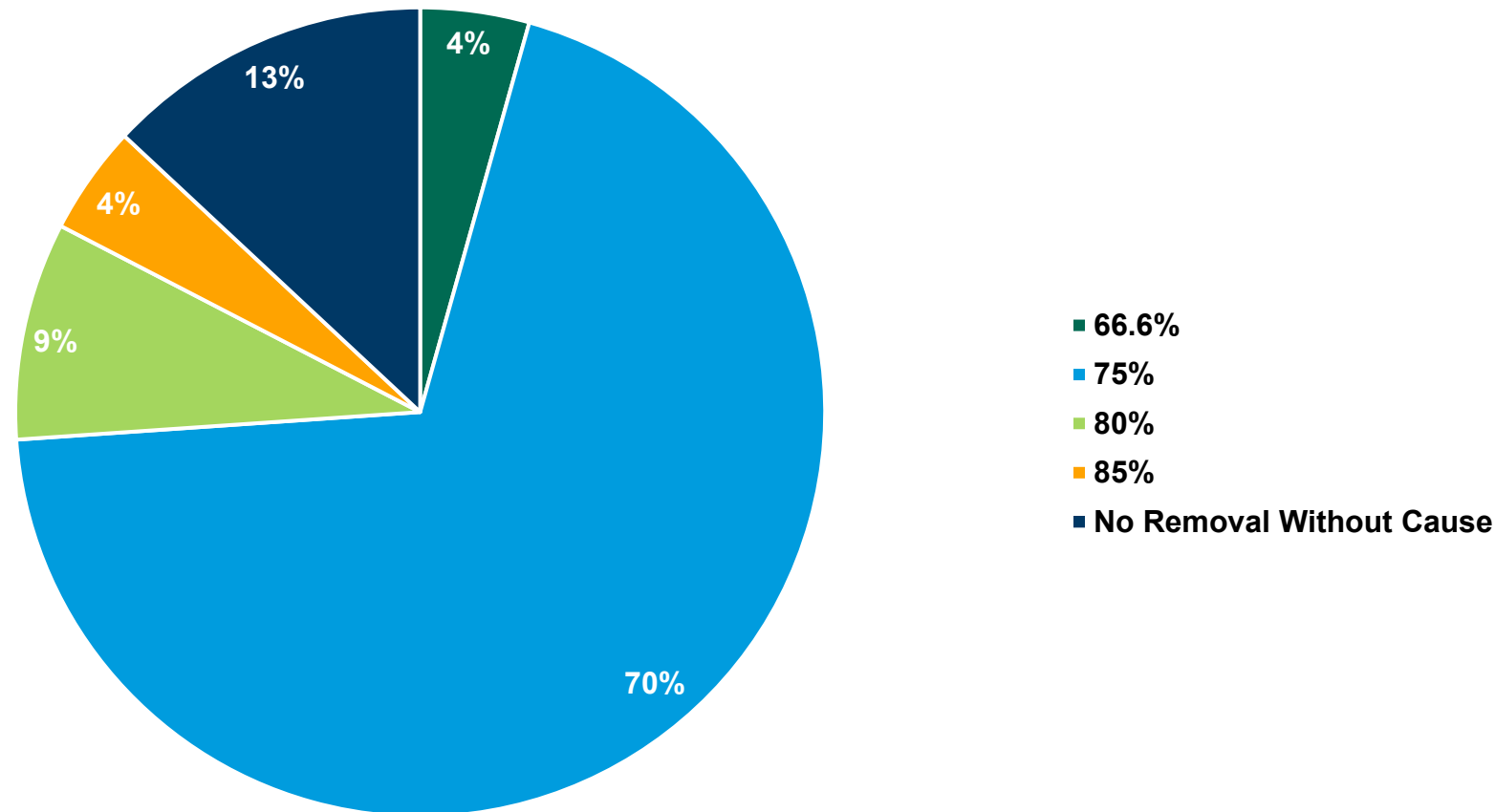
GP ‘without cause’ removal – Investor voting threshold (% of interests)

All Funds

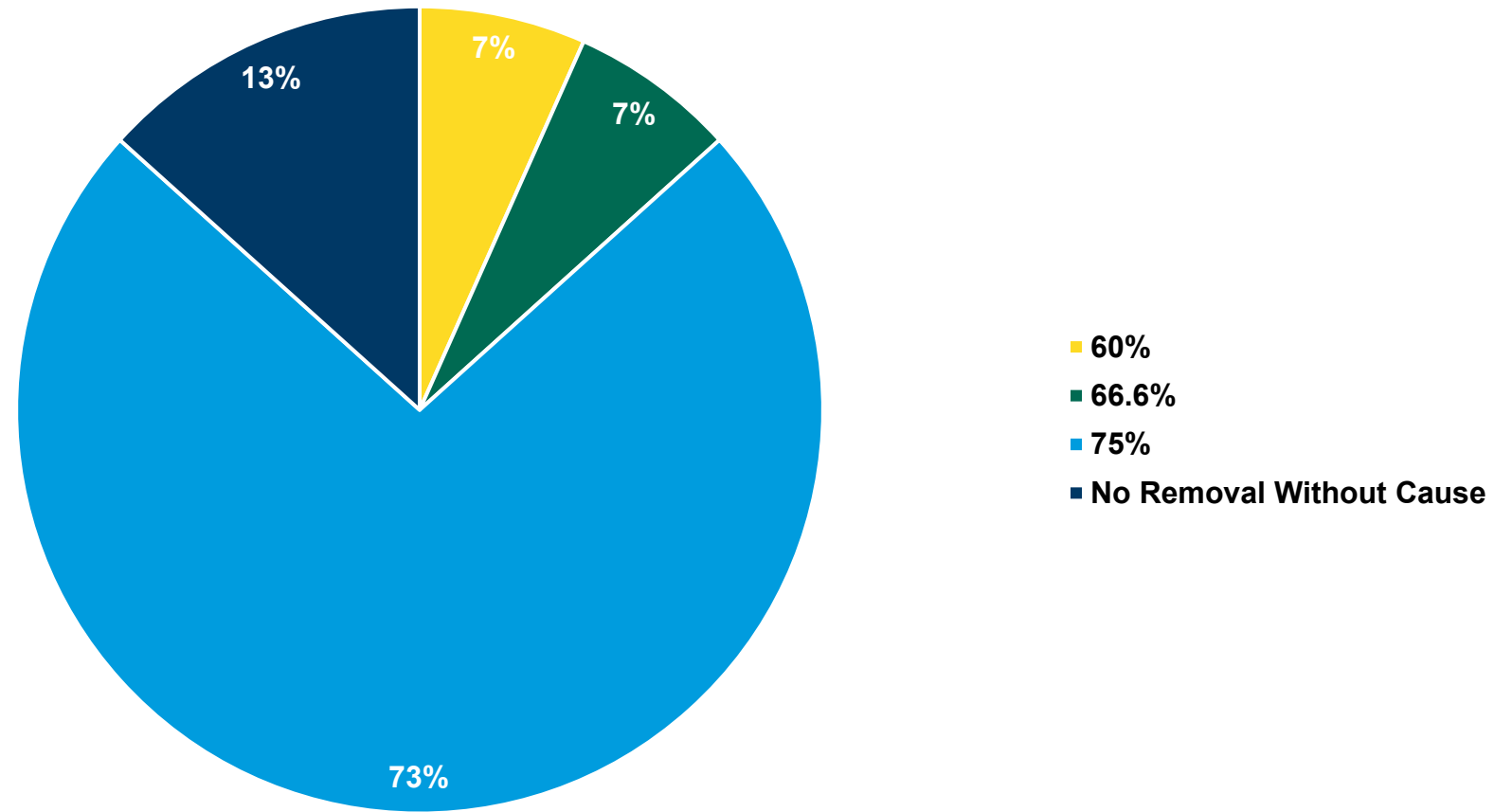
The data shows a small year on year change in the proportion of funds that have no removal without cause provision: around 15%, down from 26% in our prior survey. Such funds may have had a no fault termination provision, but no mechanism for the investors to continue the fund with a new GP. Where a no fault removal provision is present, the voting threshold is typically 75%.



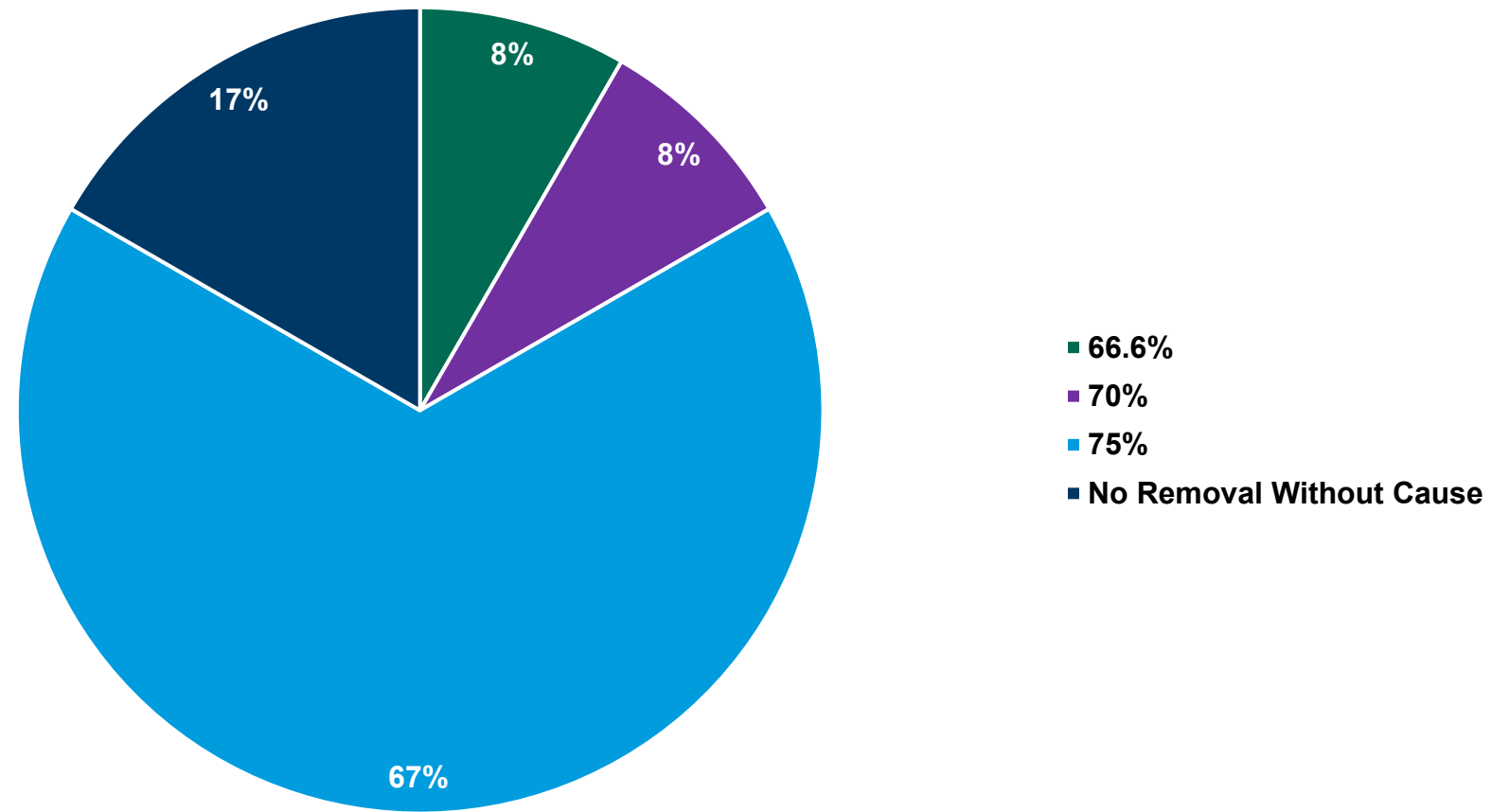
GP ‘without cause’ removal – Investor voting threshold (% of interests) ≤€500M



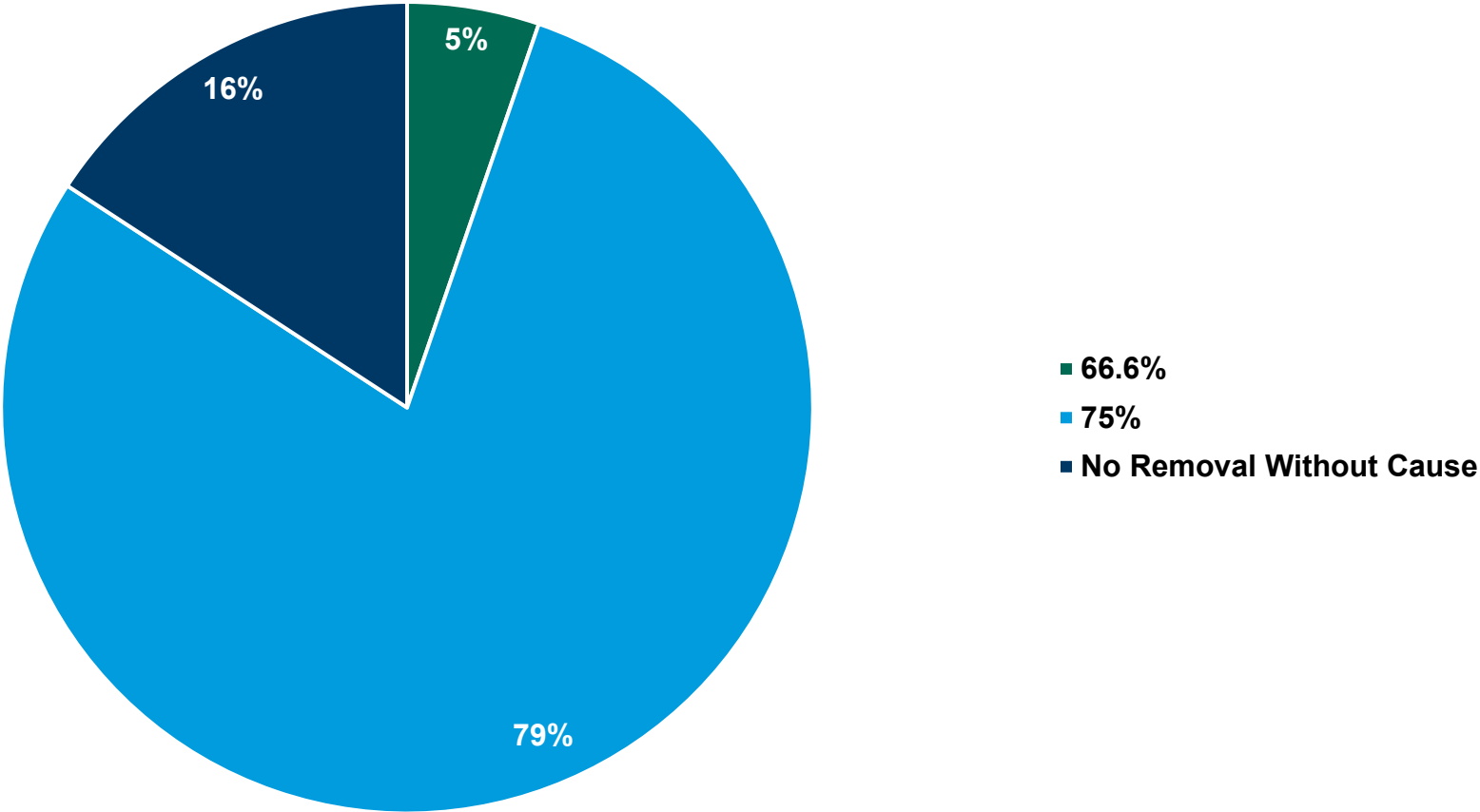
GP 'without cause' removal – Investor voting threshold (% of interests) >€500M-€1.5B



GP 'without cause' removal – Investor voting threshold (% of interests) >€1.5B-€3.75B

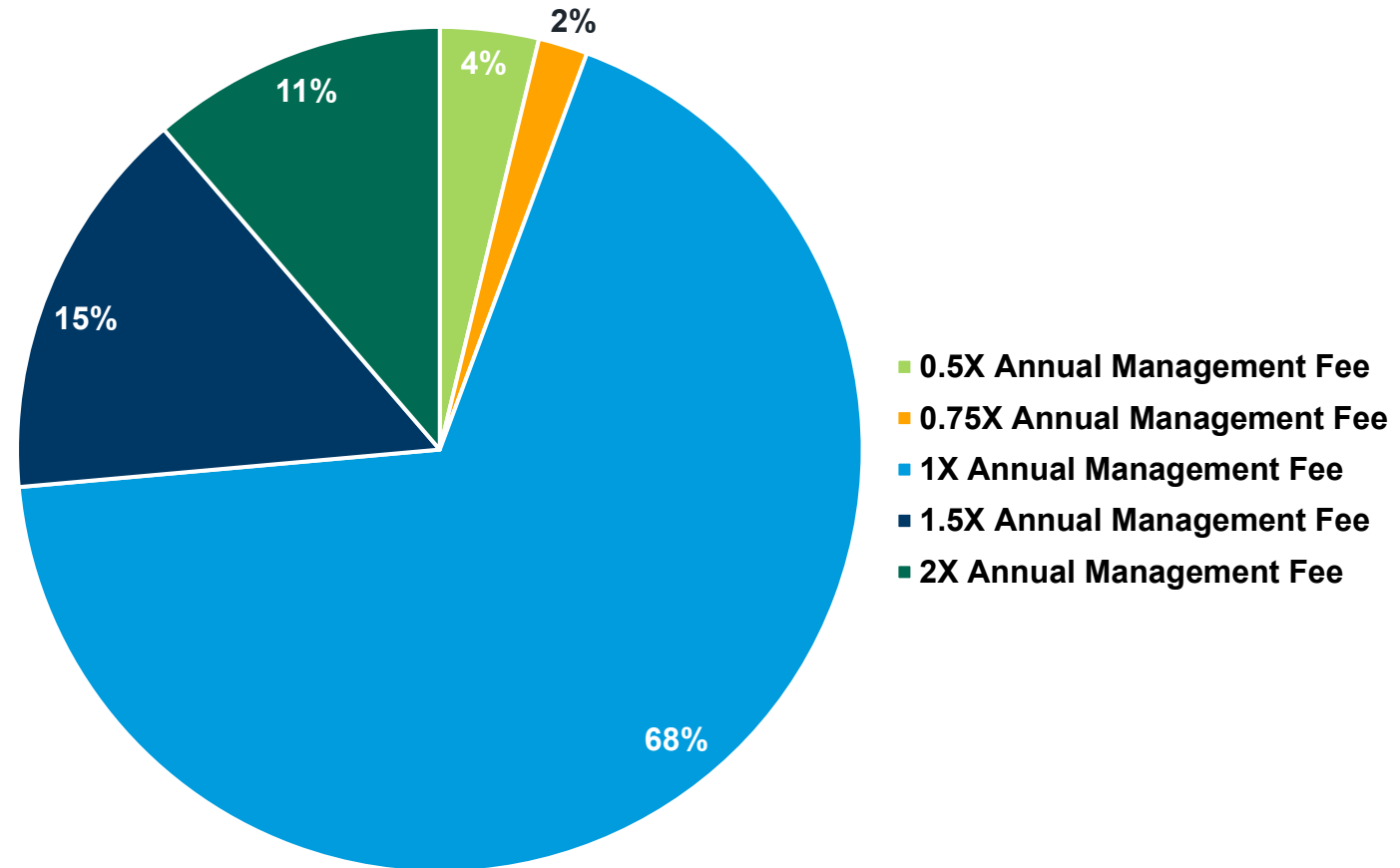


GP ‘without cause’ removal – Investor voting threshold (% of interests)
>€3.75B

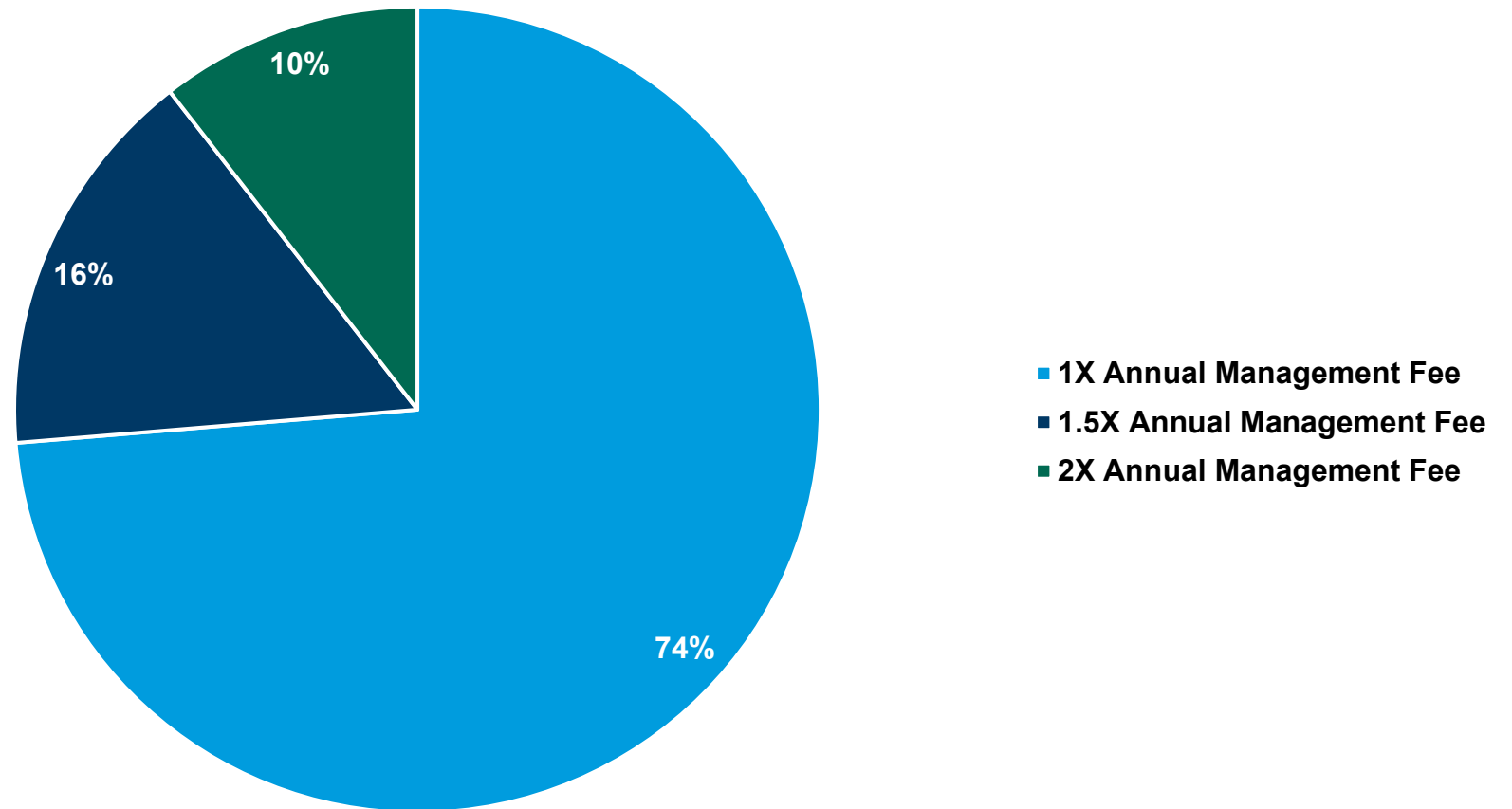


GP 'without cause' removal – Manager termination payment All Funds

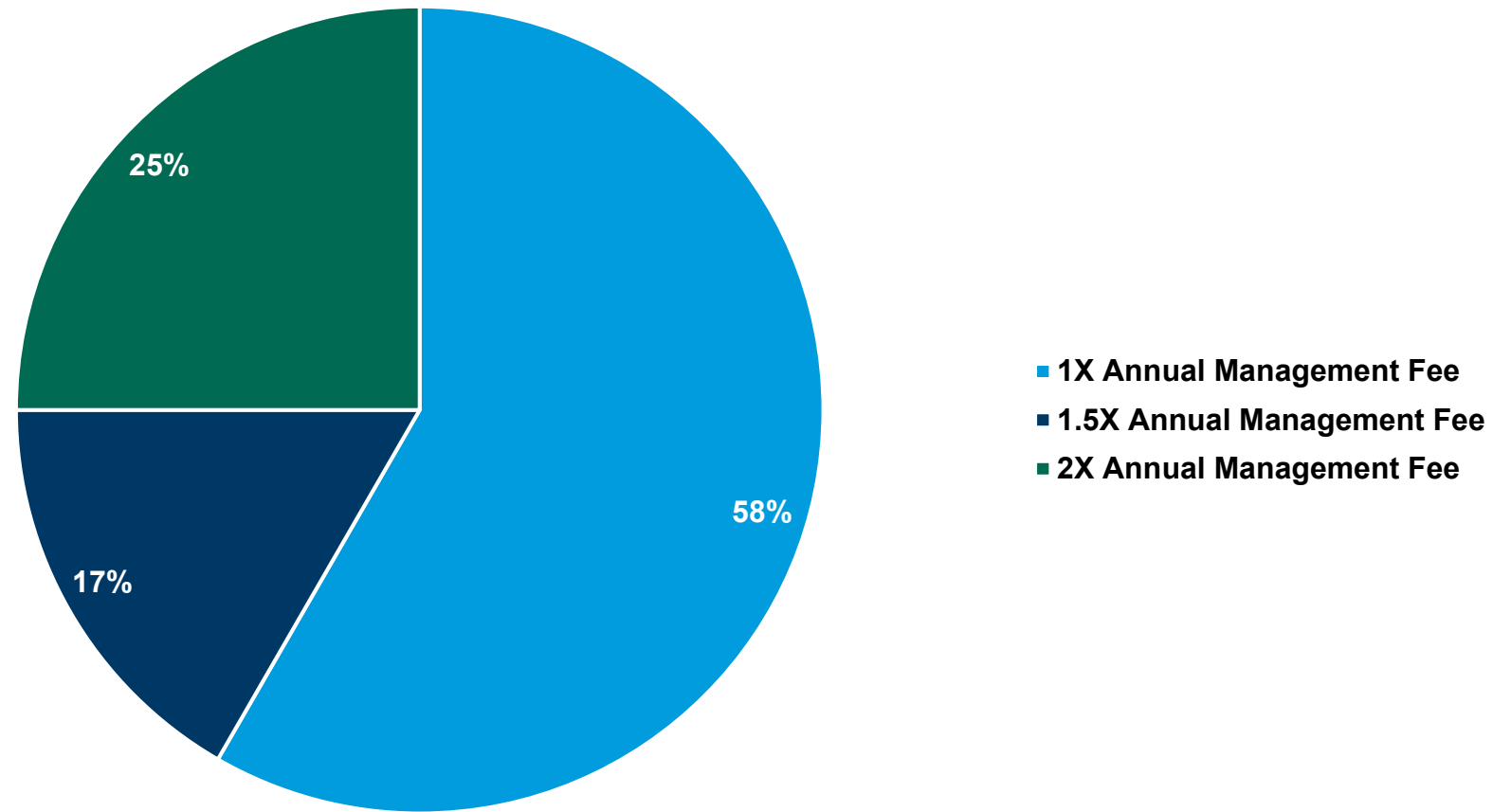
One year's management fee remains the standard compensation for a no fault removal, with 68% of funds providing for such a payment. Funds in the sub-€1.5 billion bracket are more likely to have a compensation payment set at something higher than one year's fee, with the largest funds most likely to see a compensation payment set at one year or less.



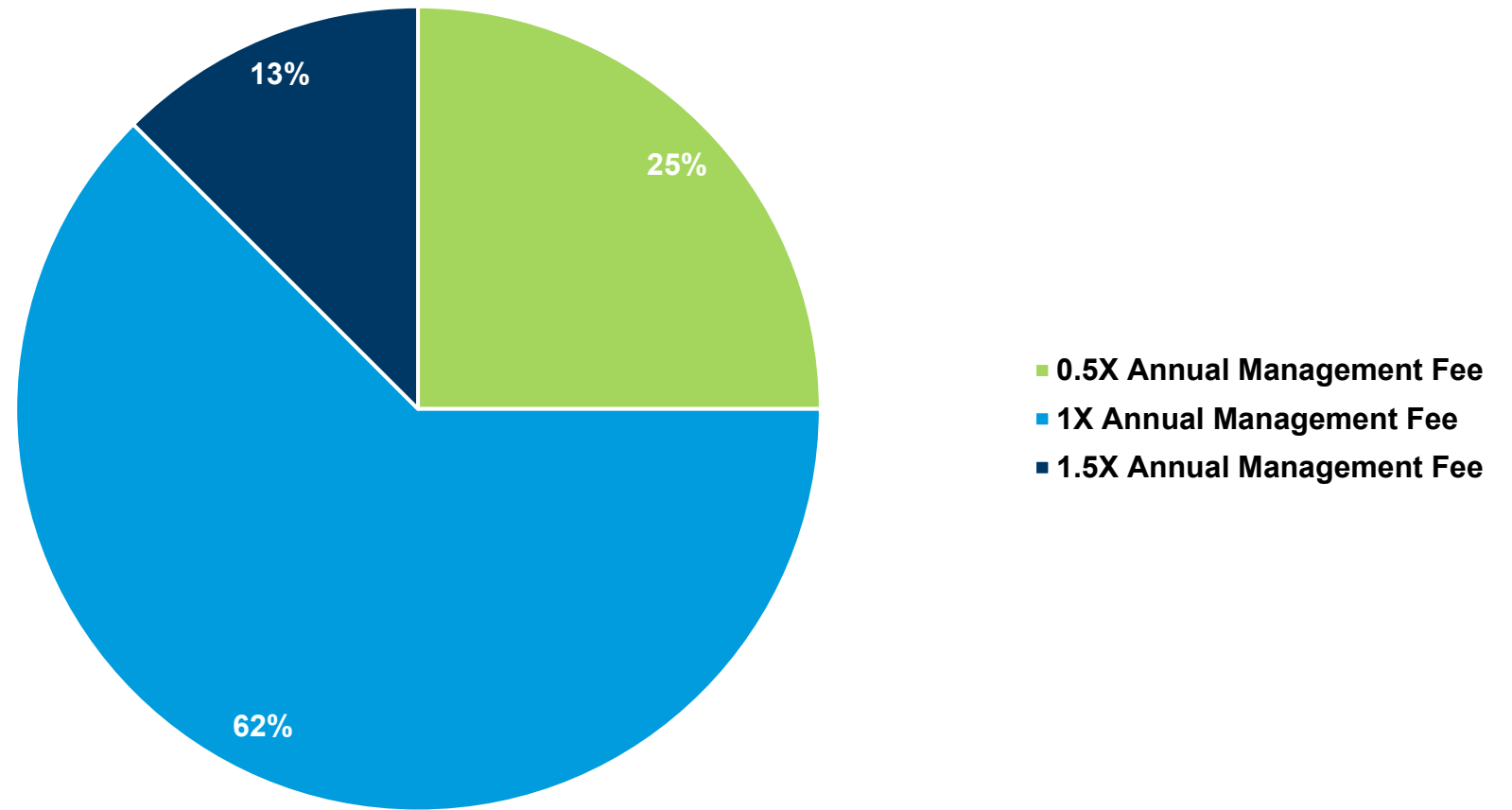
GP 'without cause' removal – Manager termination payment ≤€500M



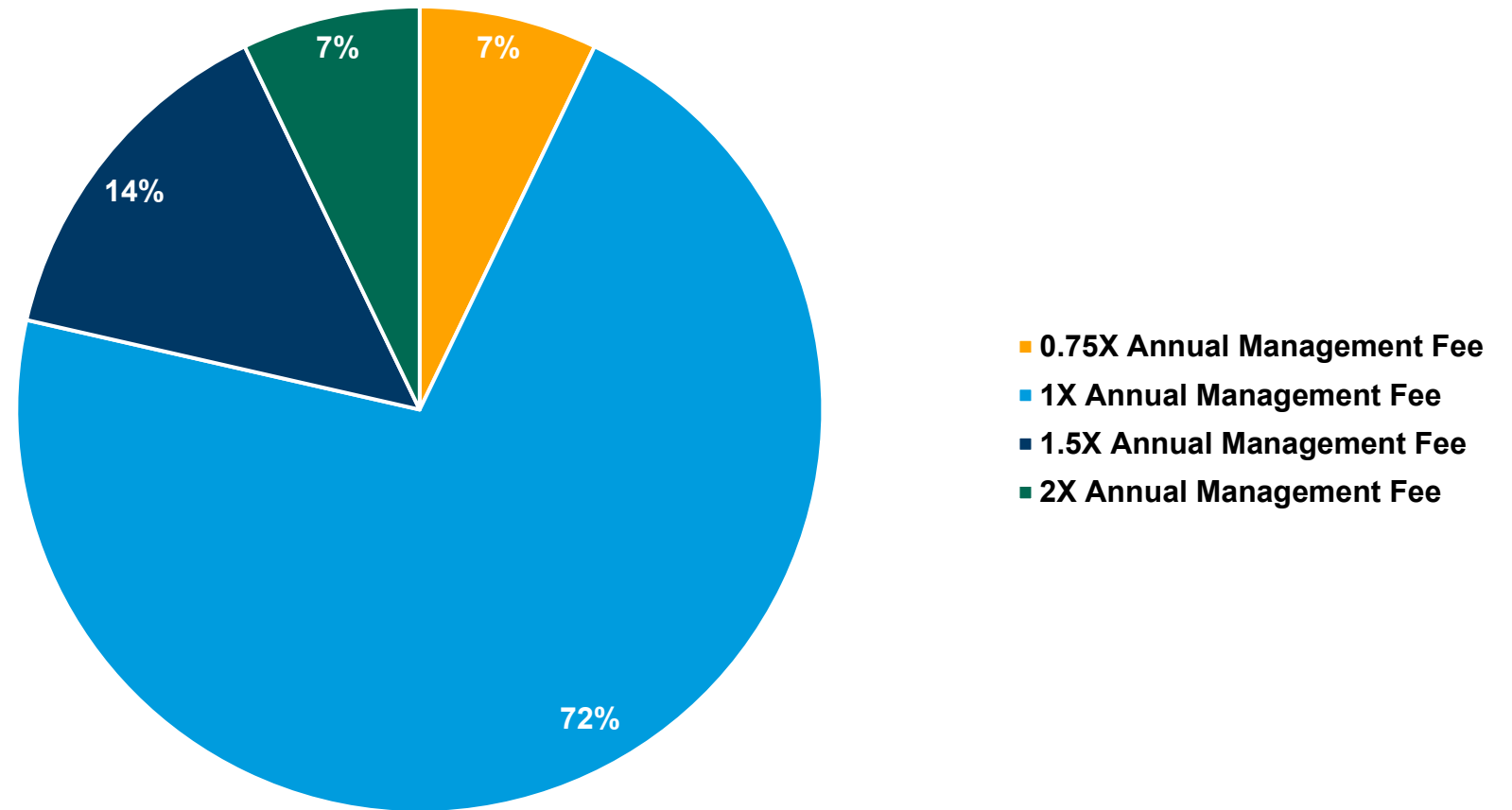
GP 'without cause' removal – Manager termination payment >€500M-€1.5B



GP 'without cause' removal – Manager termination payment >€1.5B-€3.75B



GP 'without cause' removal – Manager termination payment >€3.75B





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UNDER THE MICROSCOPE

BUYOUT FUNDRAISING

MARKET

REPORT

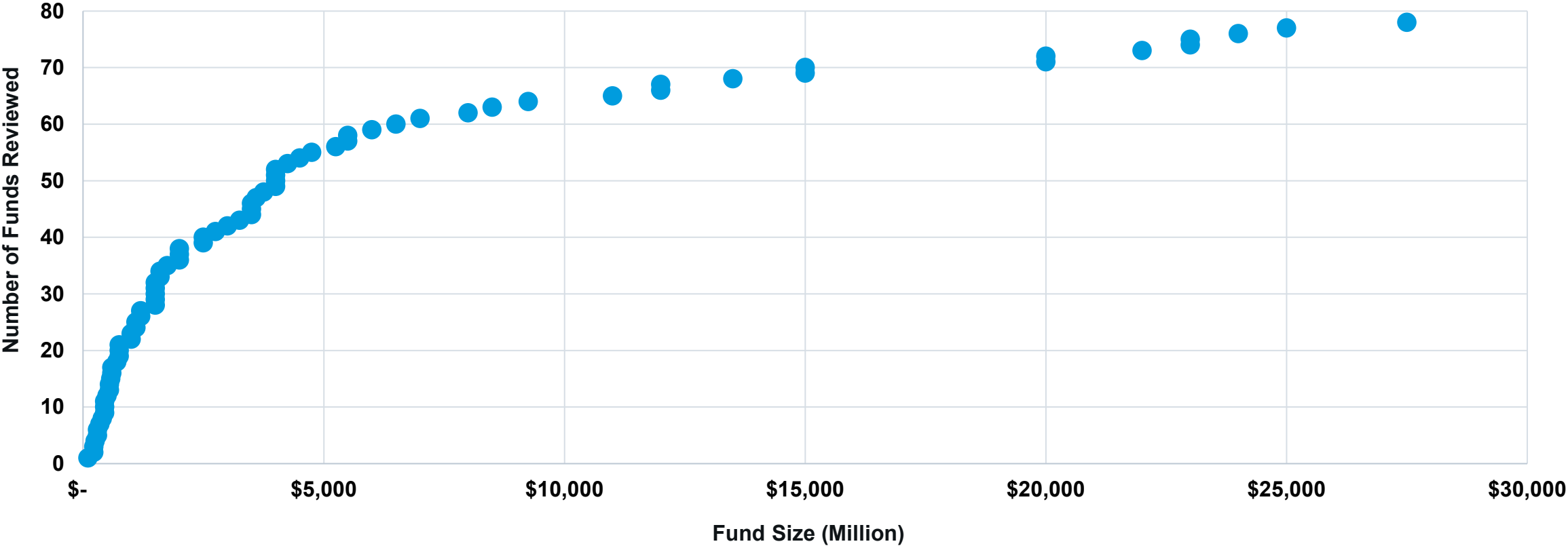
NORTH AMERICA

Proskauer»

Data methodology

Our sample contained 78 private equity (buyout) funds raised in 2022 and 2023. We collected 25 data points from these funds. The funds are all either specifically United States or North America-focused or they target companies in North America as the key geography in their investment strategy. The target size of the funds reviewed ranged from \$100 million to greater than \$25 billion, representing in total approximately \$421 billion of committed capital.

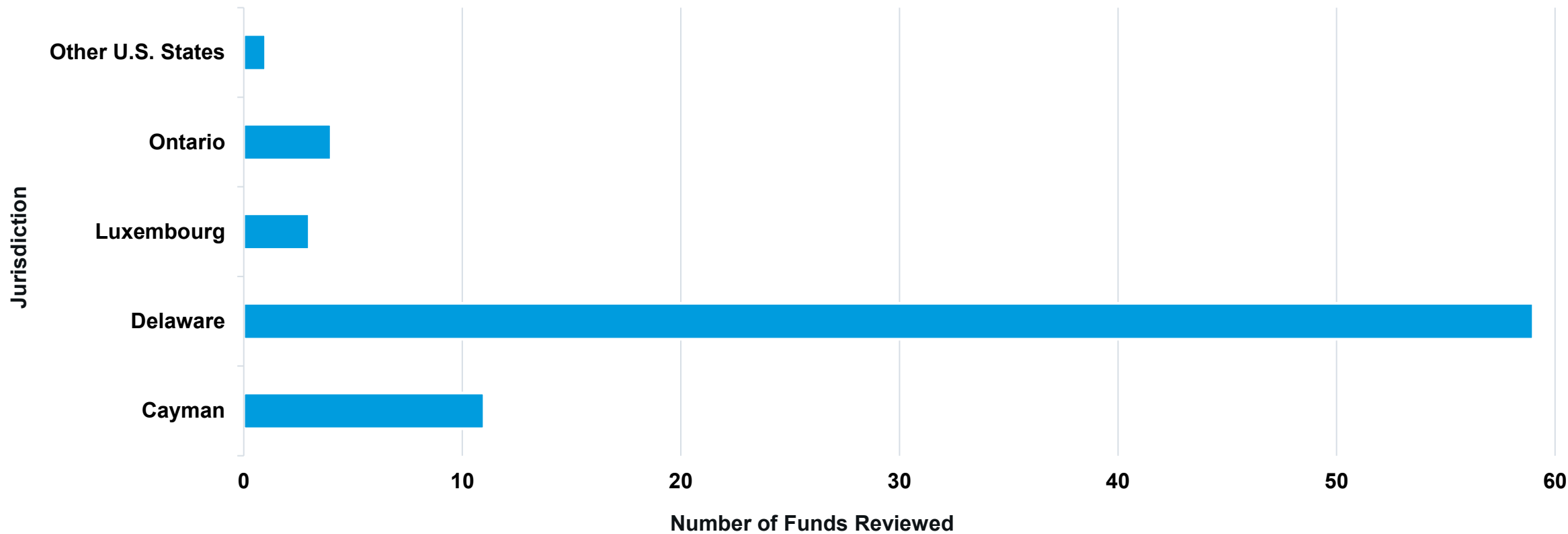
We analyzed the terms in these funds on an aggregate basis and also subdivided the data into six fund size groups: (1) <\$500 million; (2) \$500 million to \$1 billion; (3) \$1 billion to \$2.5 billion; (4) \$2.5 billion to \$5 billion; (5) \$5 billion to \$10 billion; and (6) >\$10 billion, to provide a look into how fund terms vary across fund sizes.



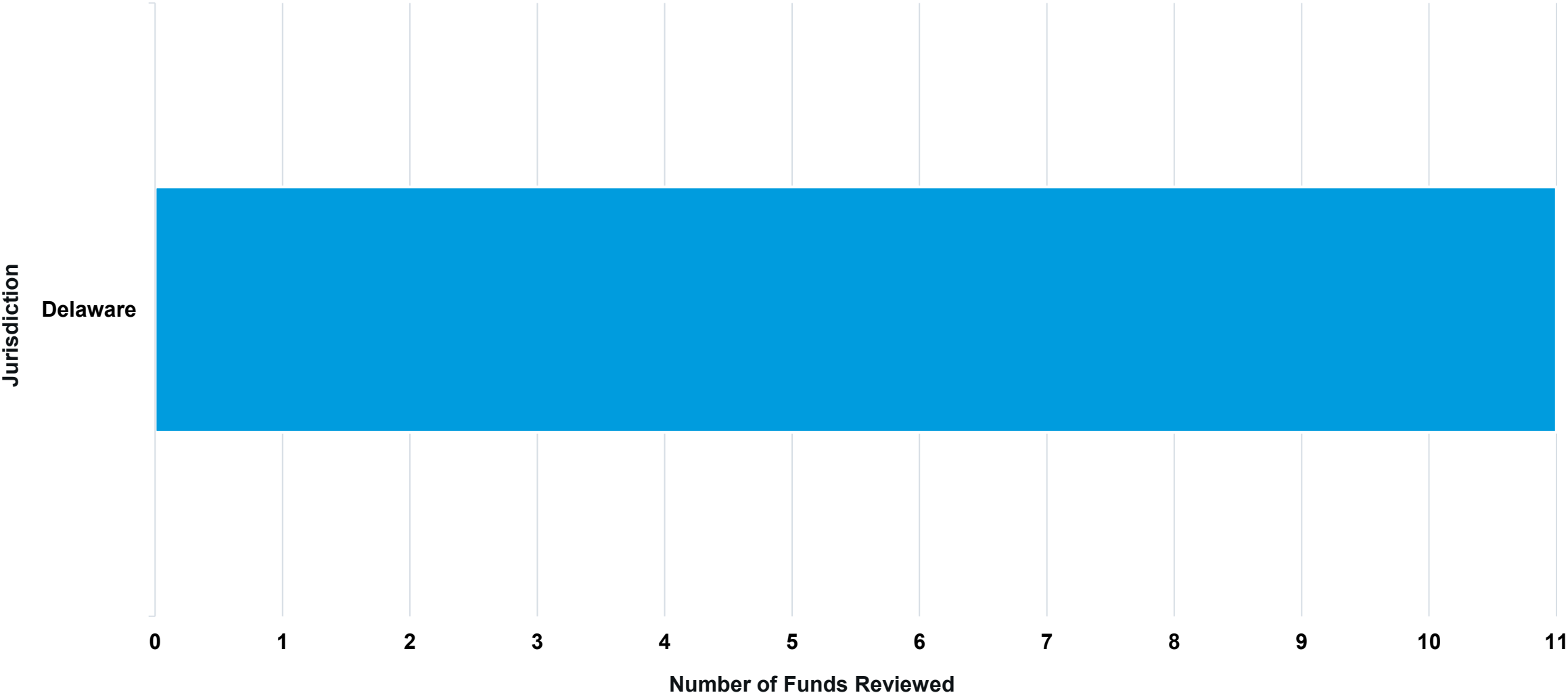
Jurisdiction of formation

All Funds

As sponsors and investors alike would expect, Delaware is by far the most popular jurisdiction of formation, with the Cayman Islands trailing in a distant second. Delaware dominates across all fund sizes, especially in the smaller funds, due to sponsor and investor familiarity, relatively light administrative requirements and its developed case law. Some larger funds, likely those that expect a material allocation to investments in non-U.S. jurisdictions, are inclined to select the Cayman Islands or Ontario (Canada). Additionally, the size of the fund administration ecosystem in Luxembourg makes it an obvious choice for those North American managers seeking to raise a fund with access to the AIFMD marketing passport.

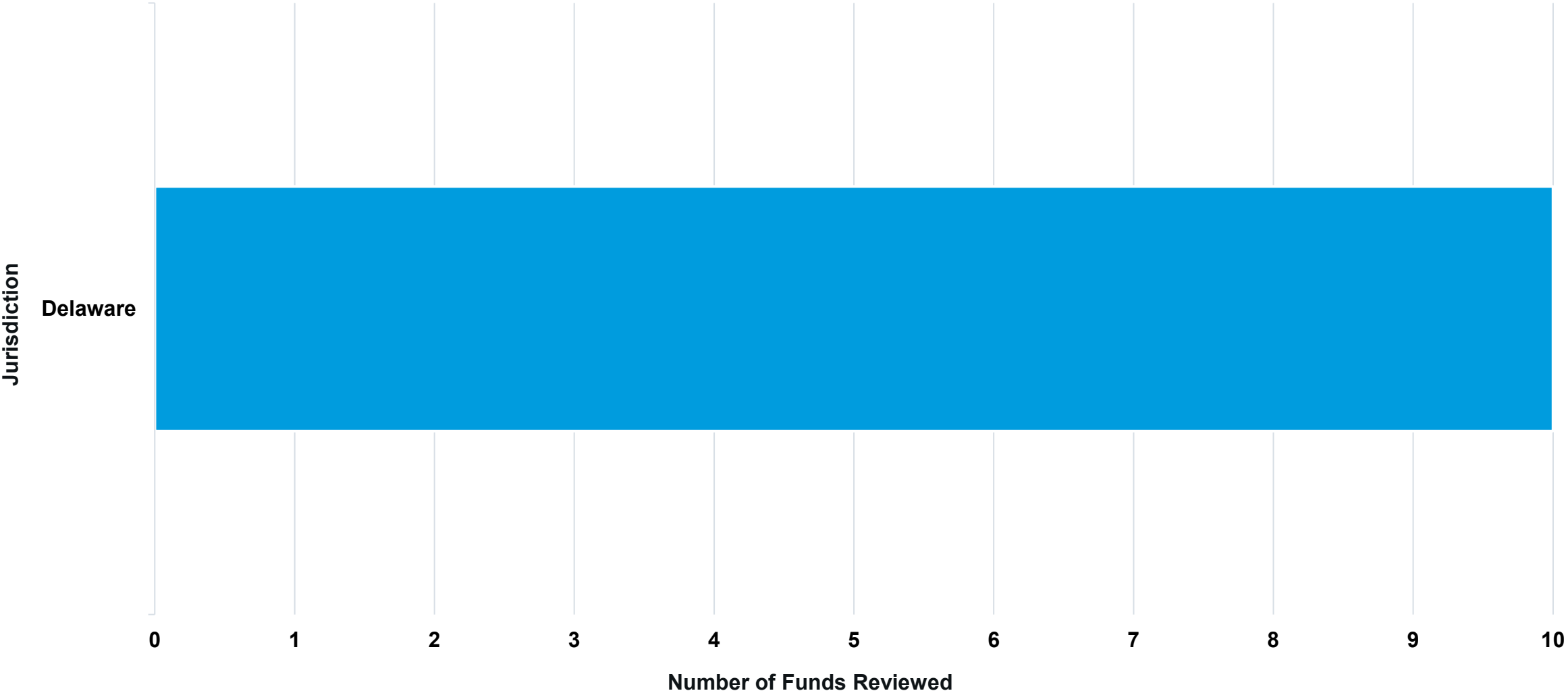


Jurisdiction of formation
<\$500M



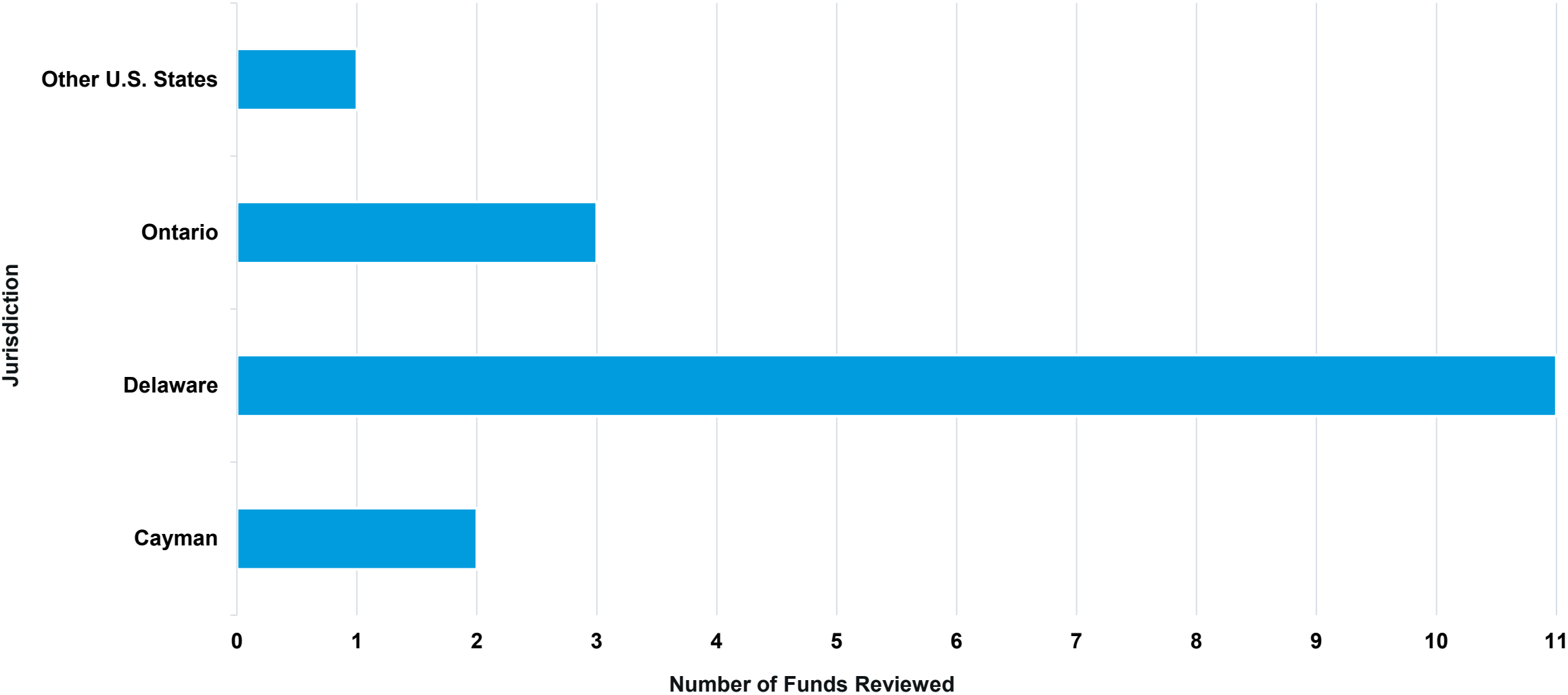
Jurisdiction of formation

\$500M-\$1B



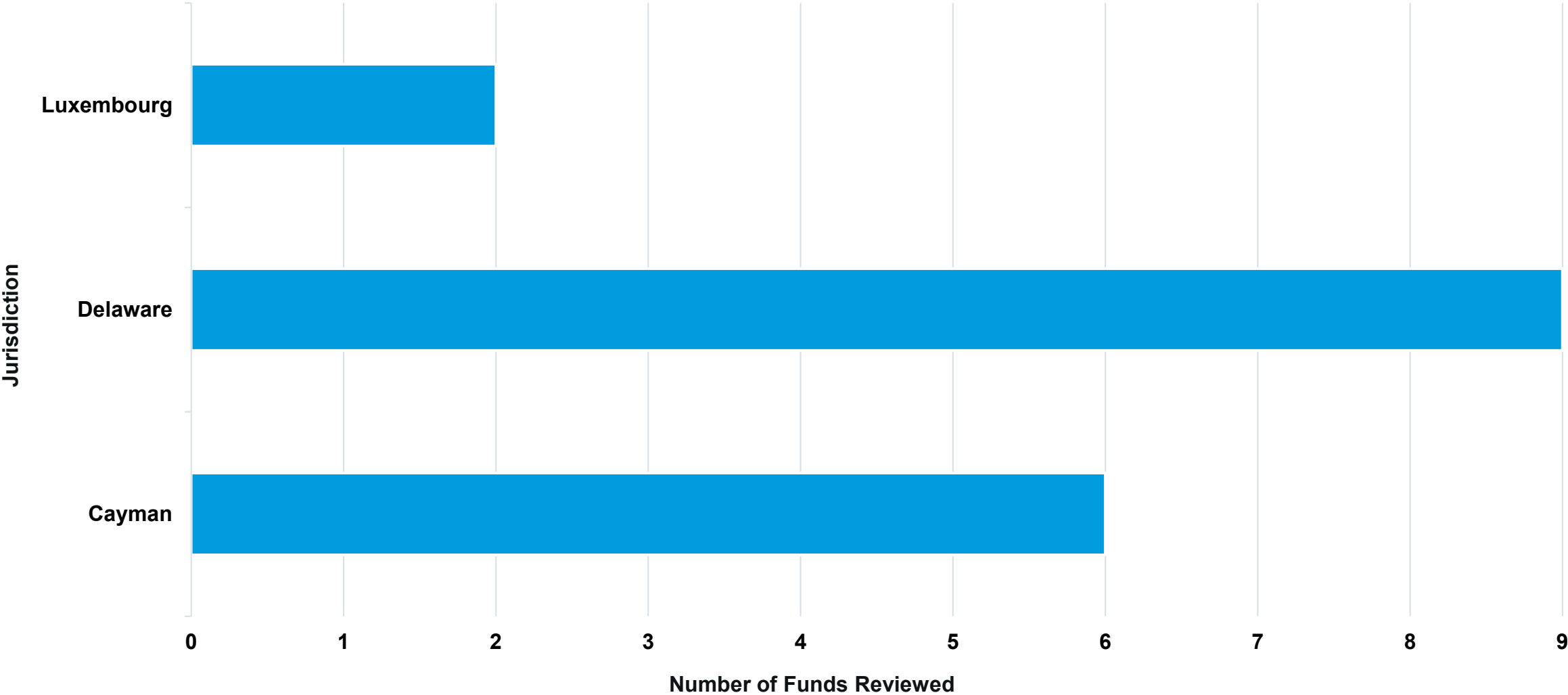
Jurisdiction of formation

\$1B-\$2.5B



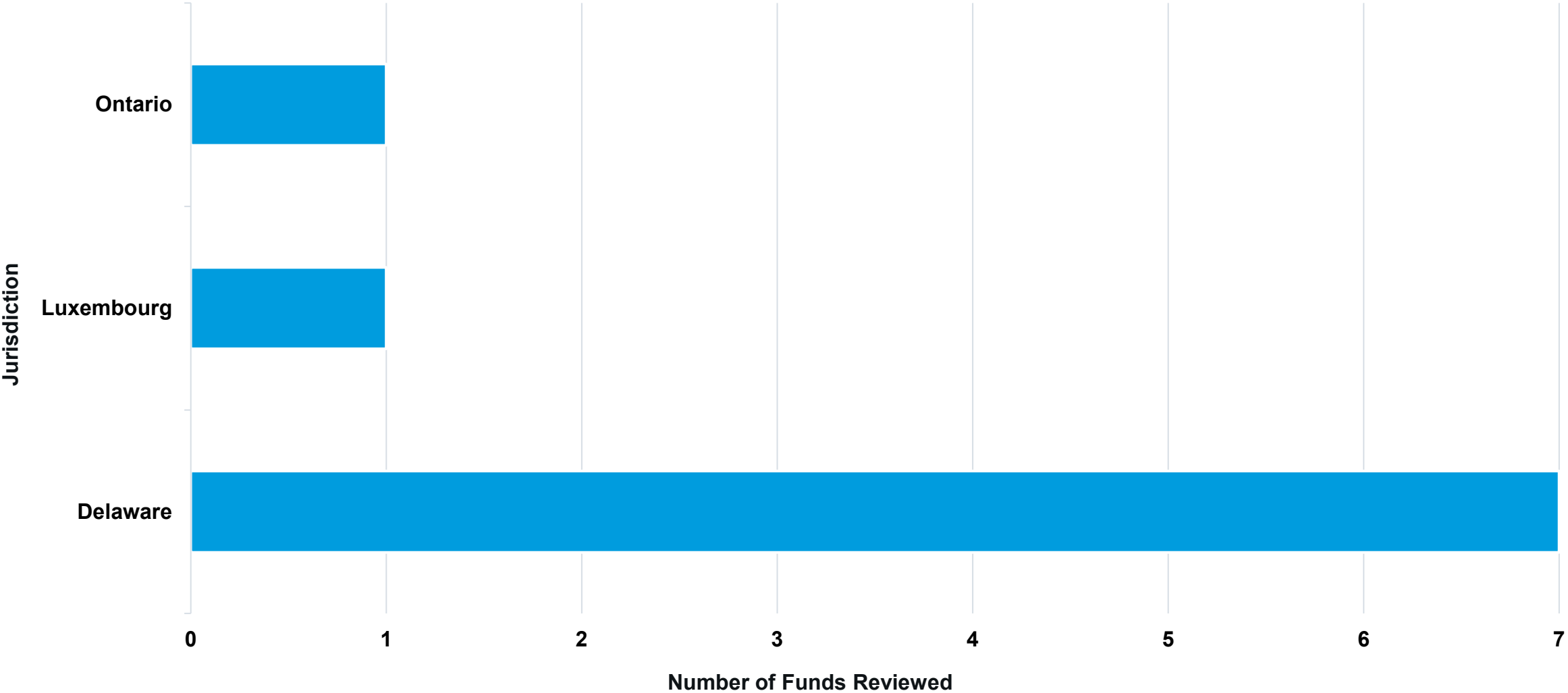
Jurisdiction of formation

\$2.5B-\$5B



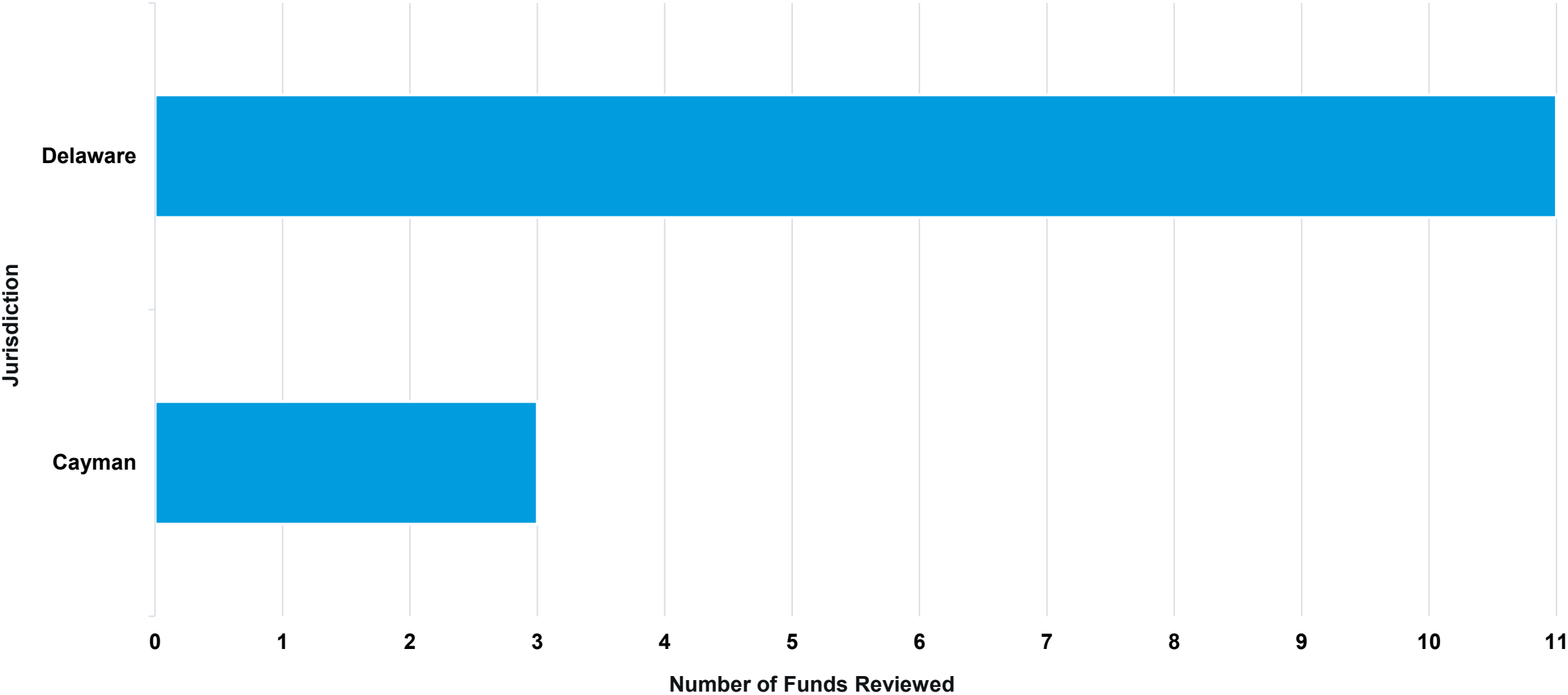
Jurisdiction of formation

\$5B-\$10B



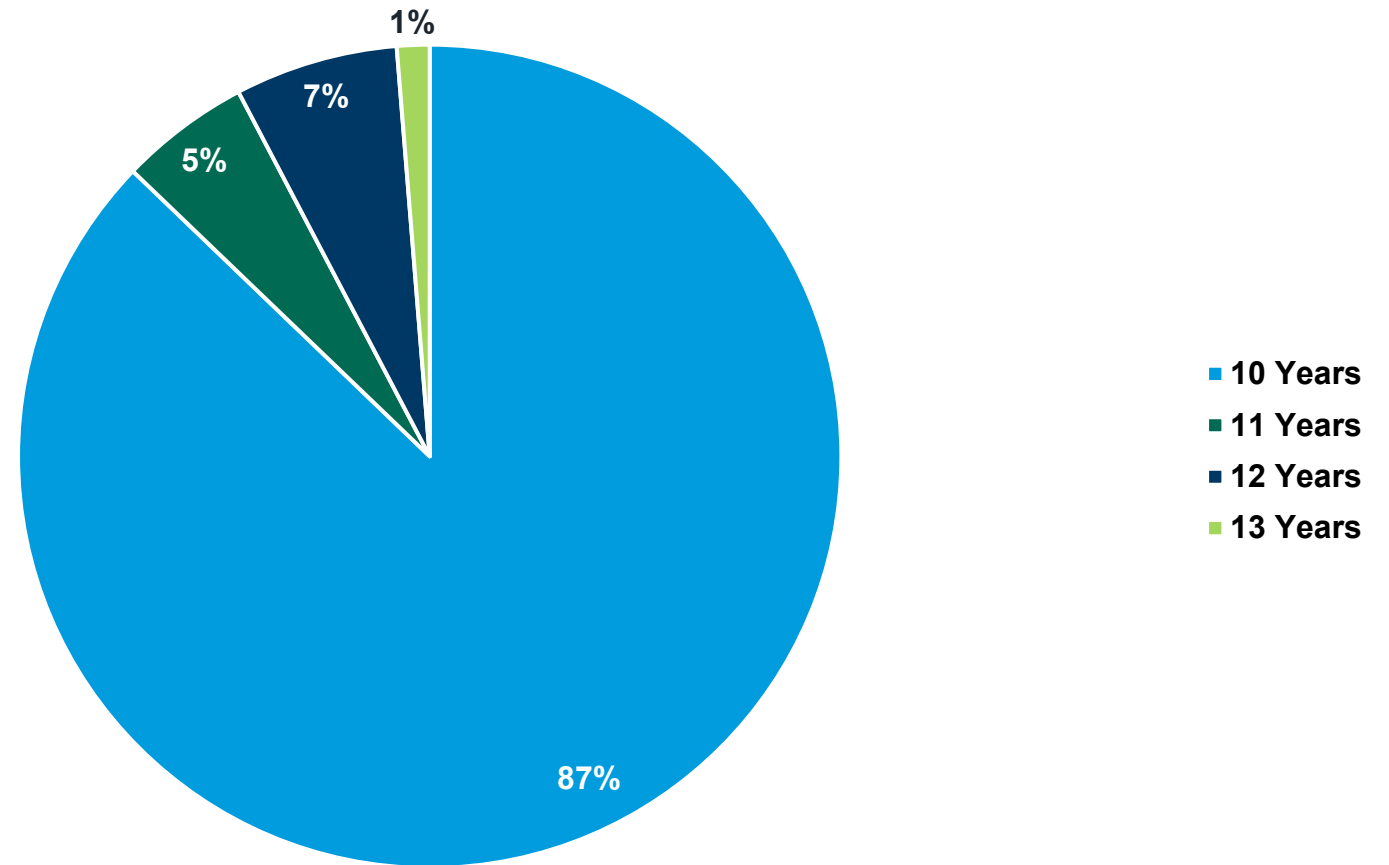
Jurisdiction of formation

>\$10B

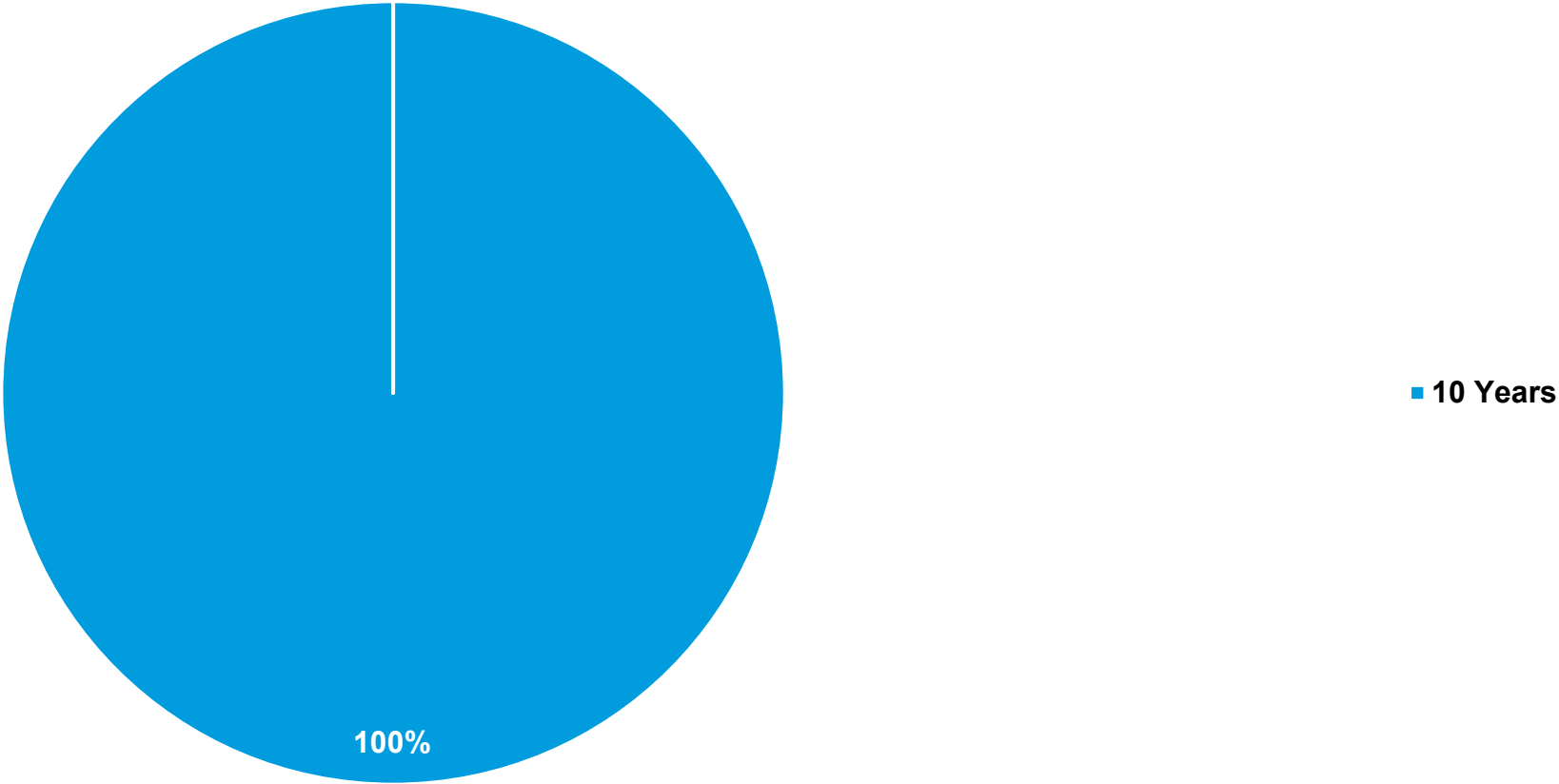


Initial term All Funds

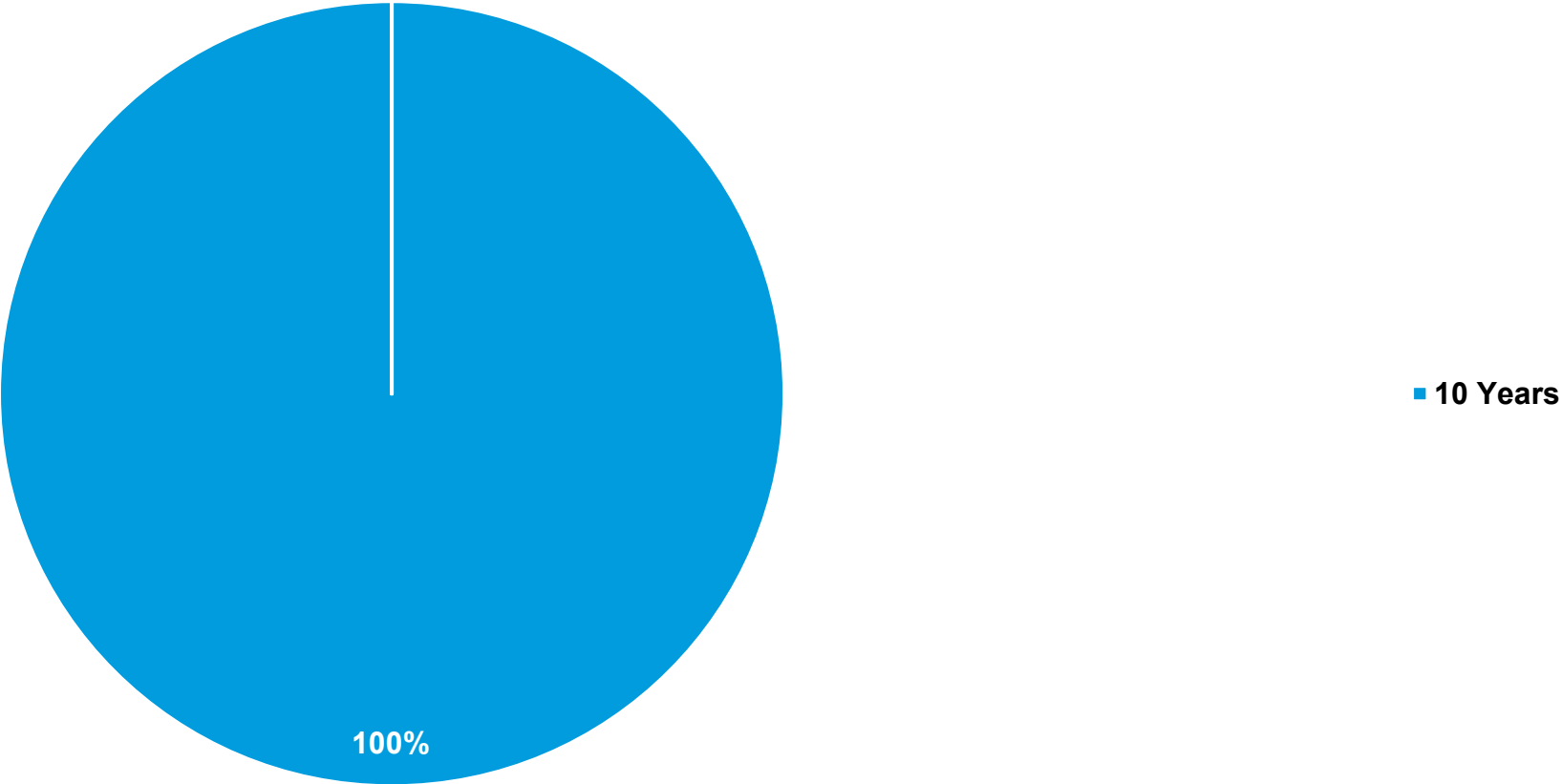
A significant majority of funds (87%) continue to have an initial term of 10 years. The remaining minority, particularly concentrated in the larger size brackets, opt for longer terms. The market continues to support longer hold periods and longer fund lives by providing for more streamlined extension mechanisms, and on a more ad hoc basis by offering continuation funds and other late-stage liquidity solutions. The range of GP-led liquidity options now available to sponsors continues to relieve some pressure on the length of fund terms, so we generally do not expect a pronounced increase in the term of traditional buyout funds in the coming years.



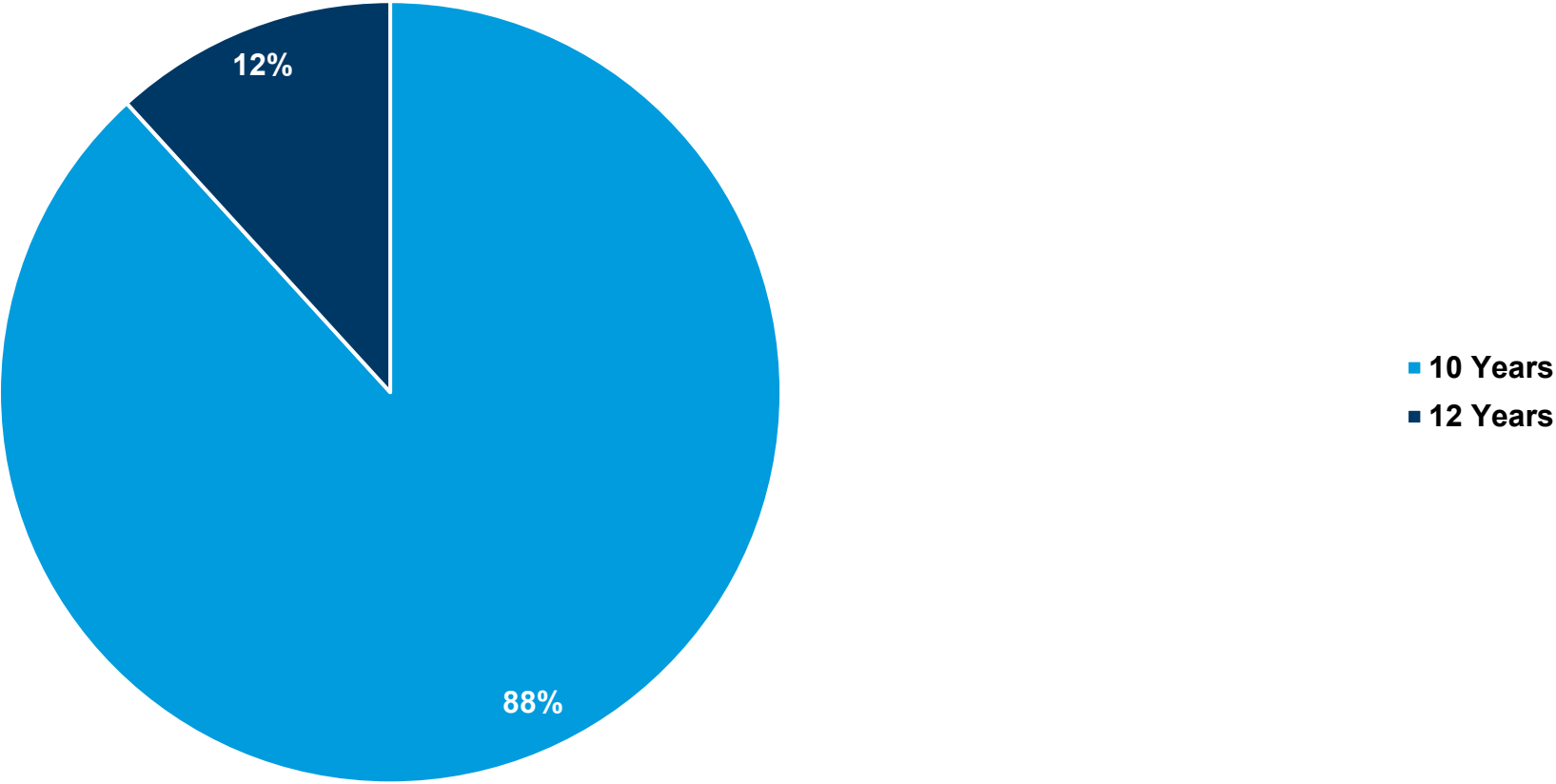
Initial term
<\$500M



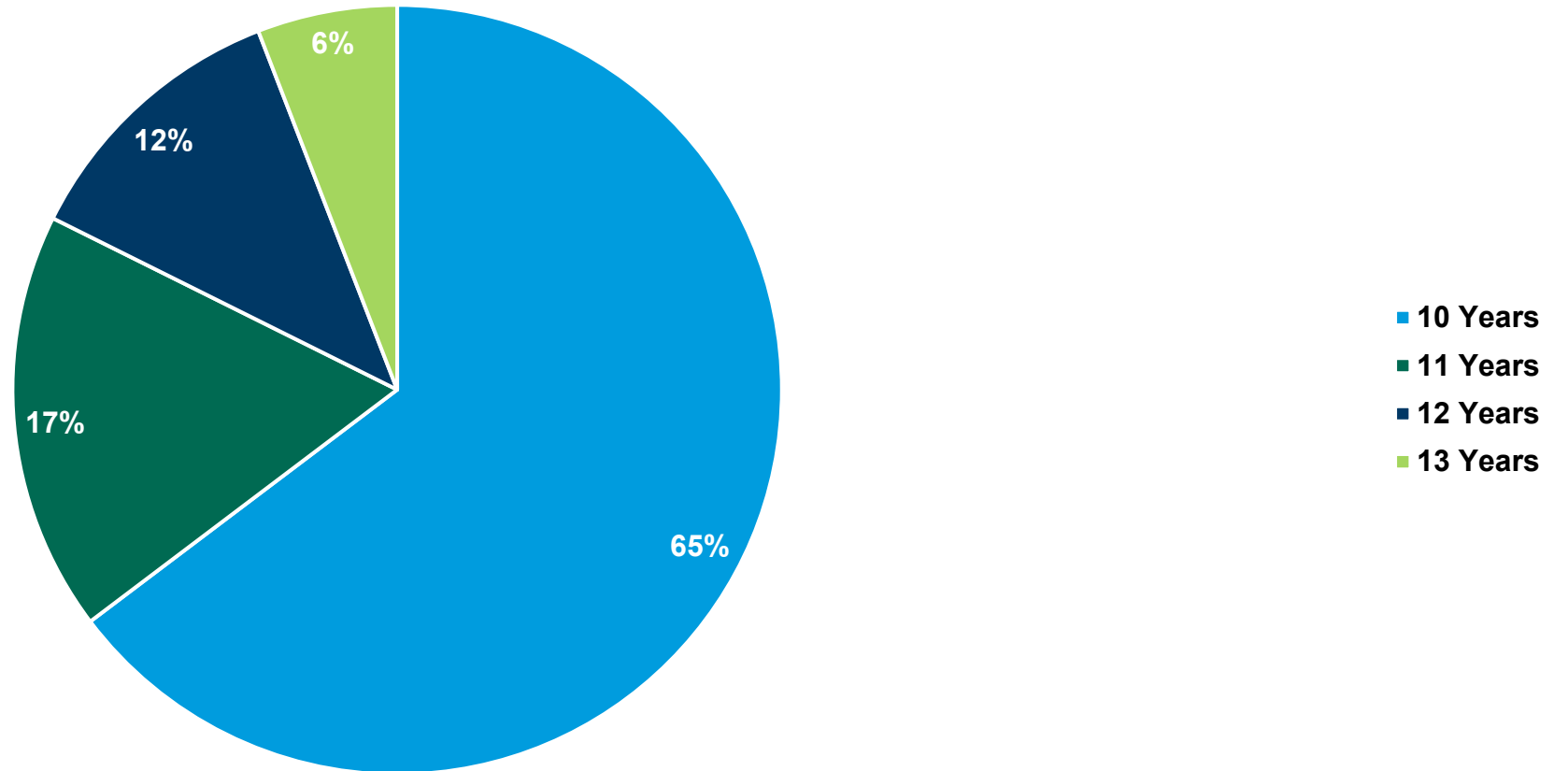
Initial term
\$500M-\$1B



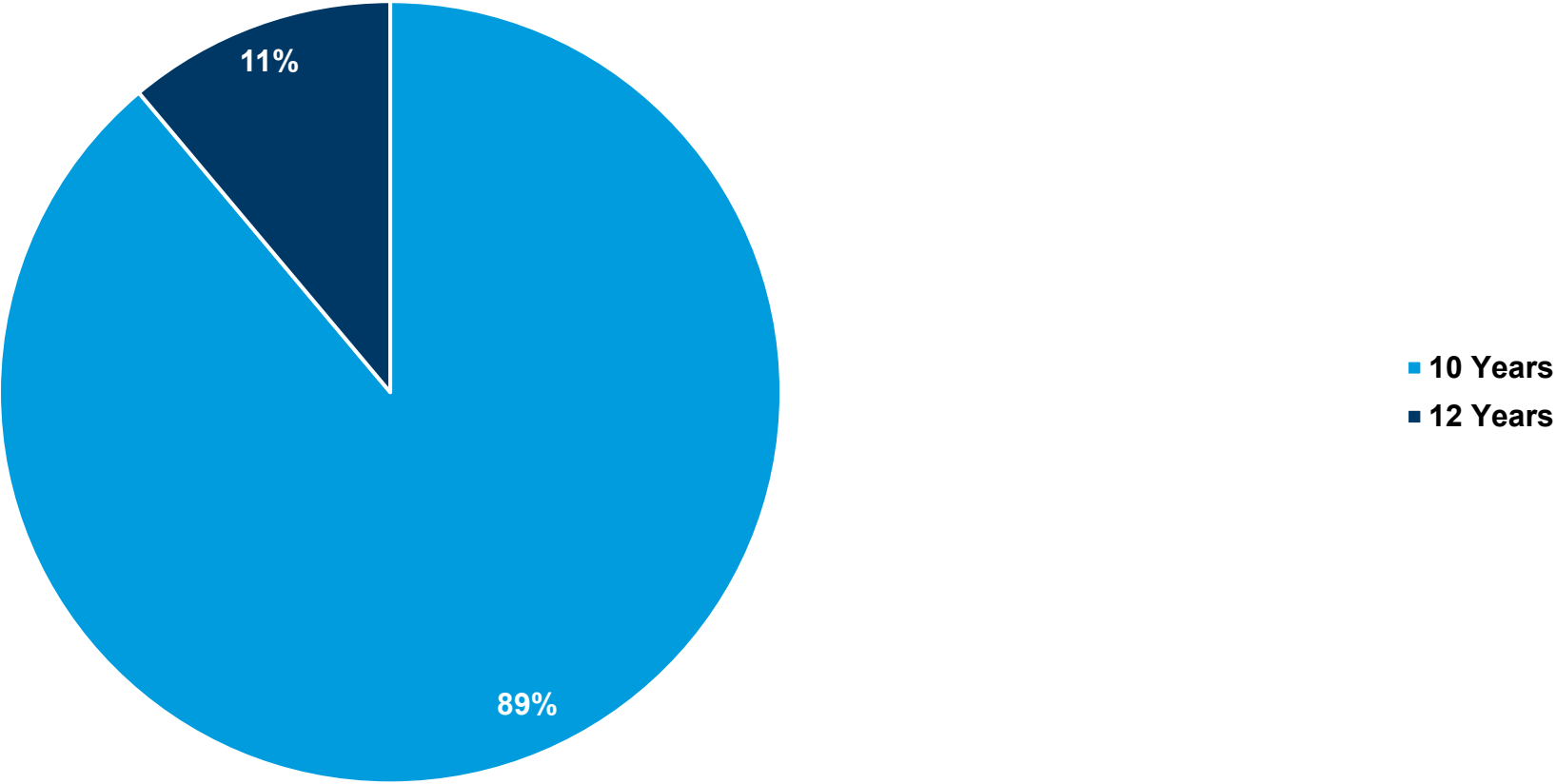
Initial term
\$1B-\$2.5B



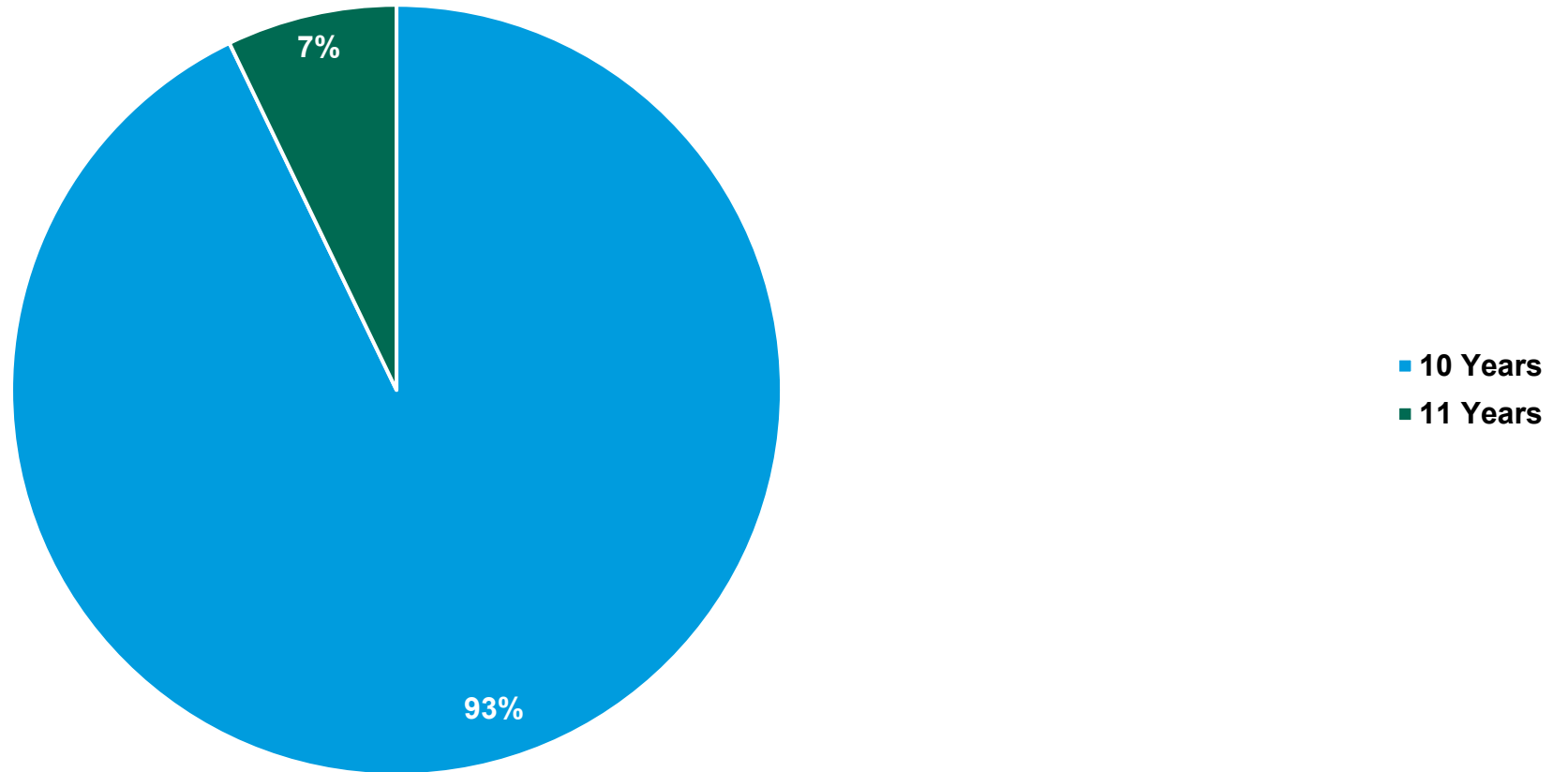
Initial term \$2.5B-\$5B



Initial term
\$5B-\$10B



Initial term >\$10B

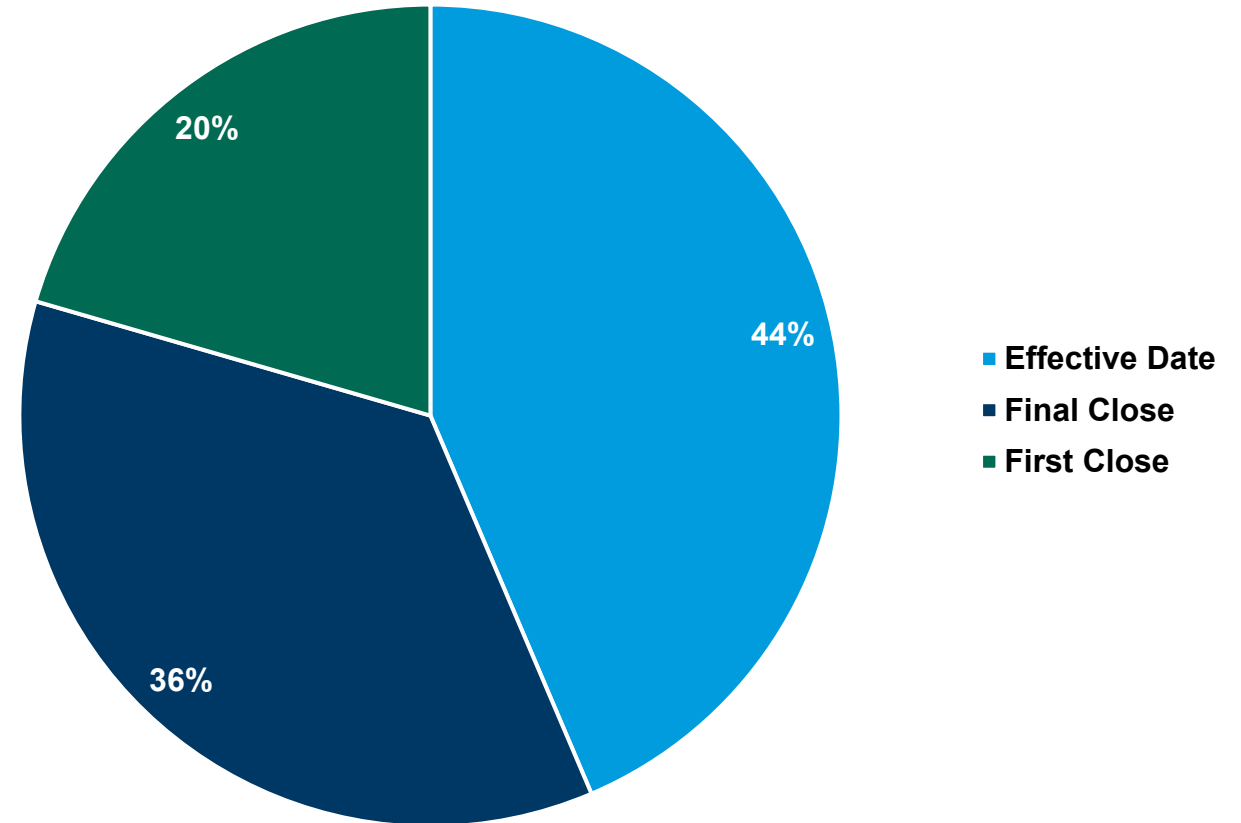


Initial term starting point

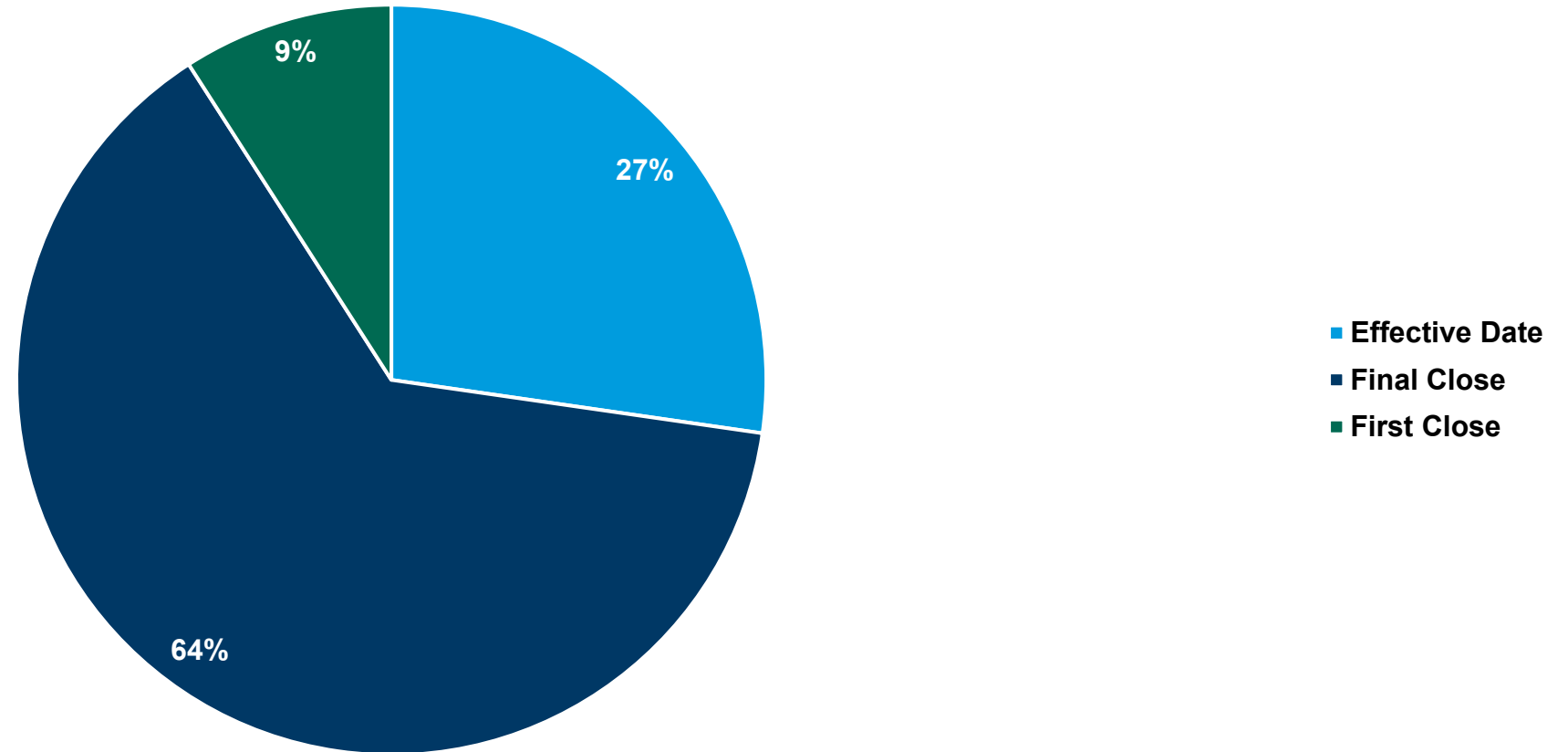
All Funds

When considering the length of a fund's term, a key factor is the date from which the term's end date is calculated. This will generally be one of three dates: (i) the initial closing date, (ii) the final closing date, or (iii) another date specified by the manager, commonly referred to as the 'effective' or 'activation' date, is typically either the date of the first investment or the date when the manager begins investment activities for the fund.

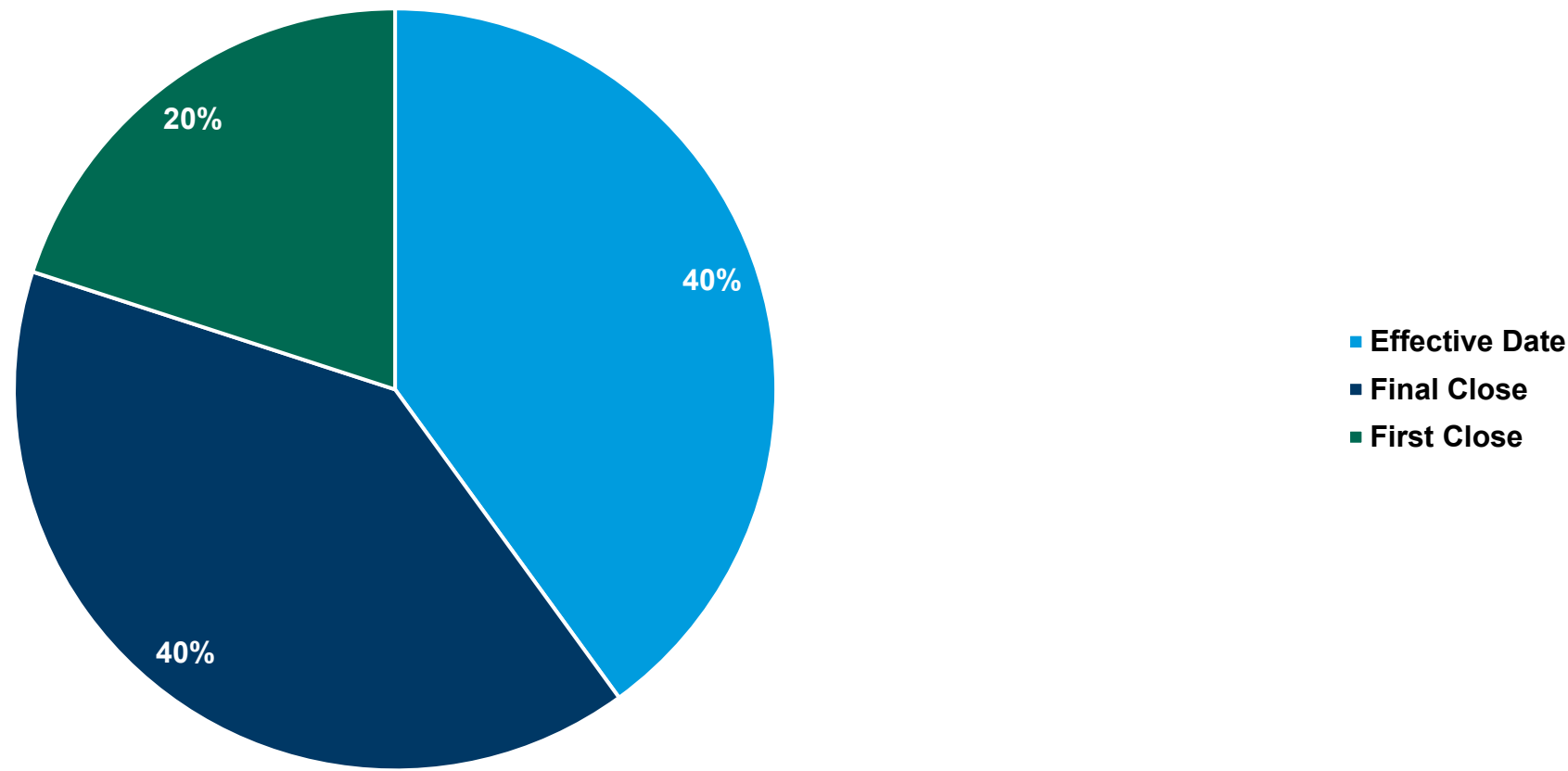
Our survey reveals that most funds' terms are calculated from the final closing date or the effective date, with an effective date-based approach generally more common – and an initial closing-based approach less common – as fund size increases. Smaller funds, which in many cases are formed by smaller, less established or emerging managers, are more likely to key from closing dates to determine fund term, often because closing and fund activation are more closely linked for these managers. Our view is that larger fund managers are more likely to seek flexibility around activation in order to manage the effect of doing so on deal allocation obligations and management fees in respect of their pre-existing funds and to mitigate drag on a new fund's IRR that could result from drawing for management fee prior to the first investment.



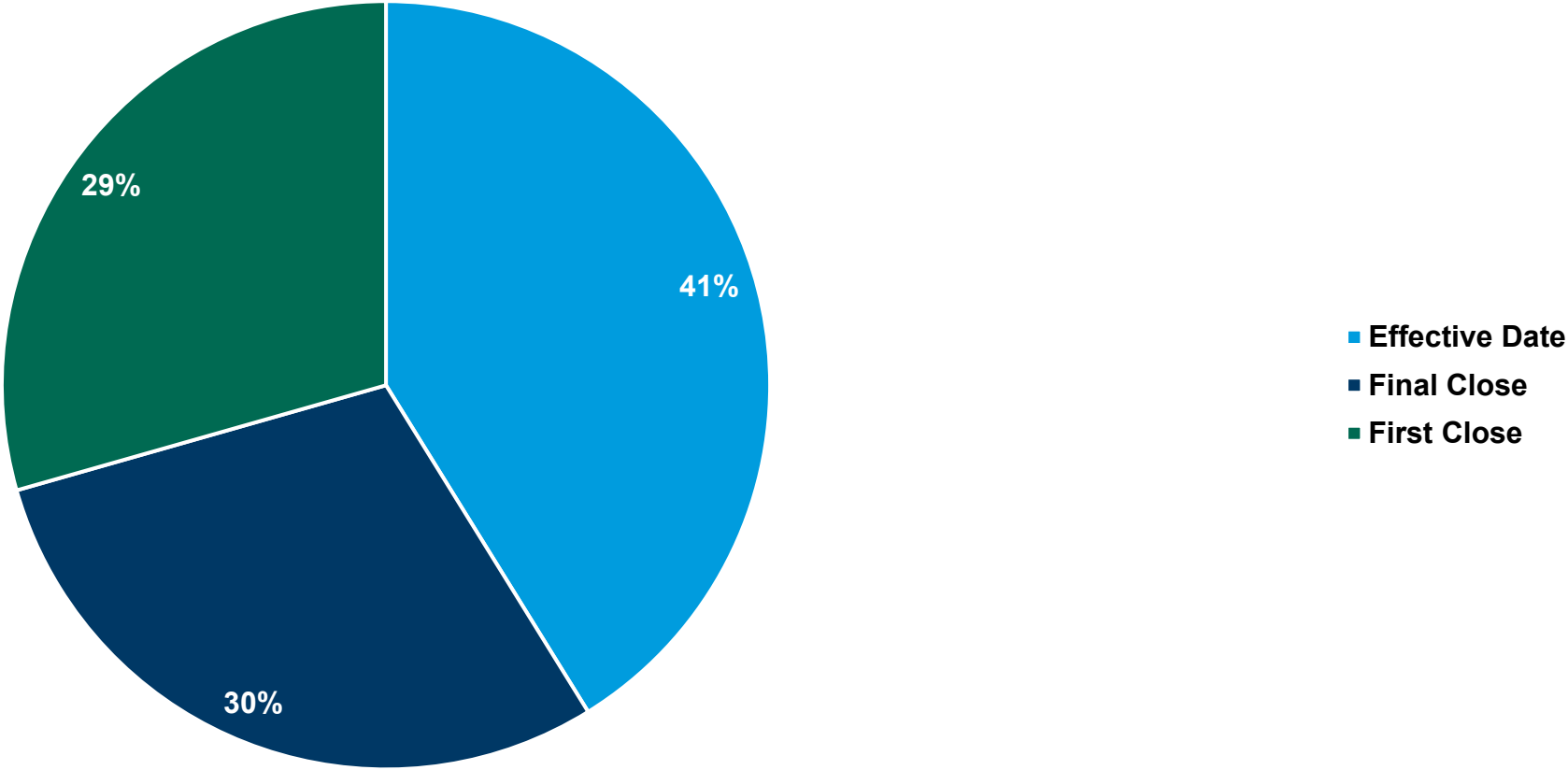
Initial term starting point <\$500M



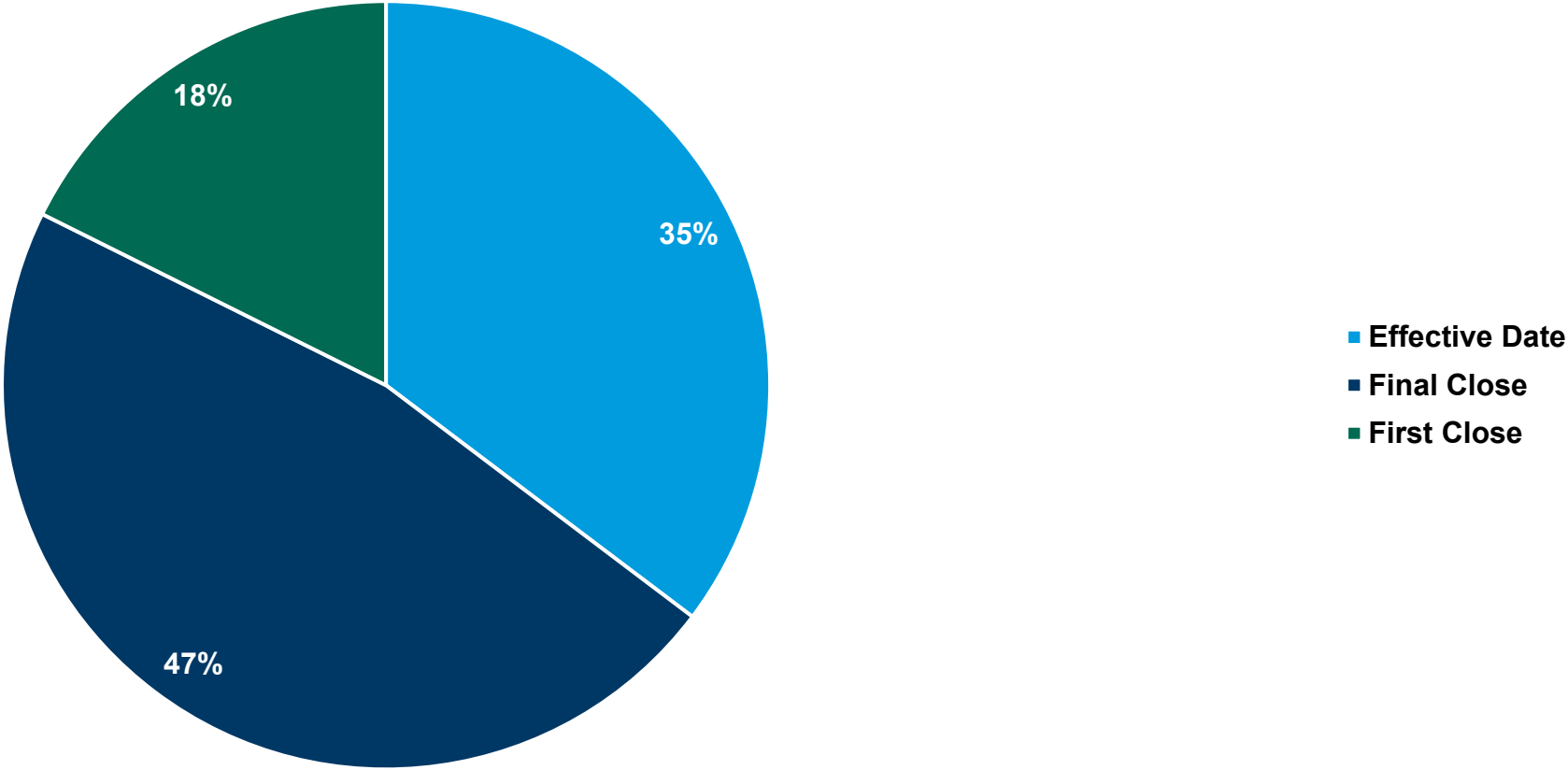
Initial term starting point
\$500M-\$1B



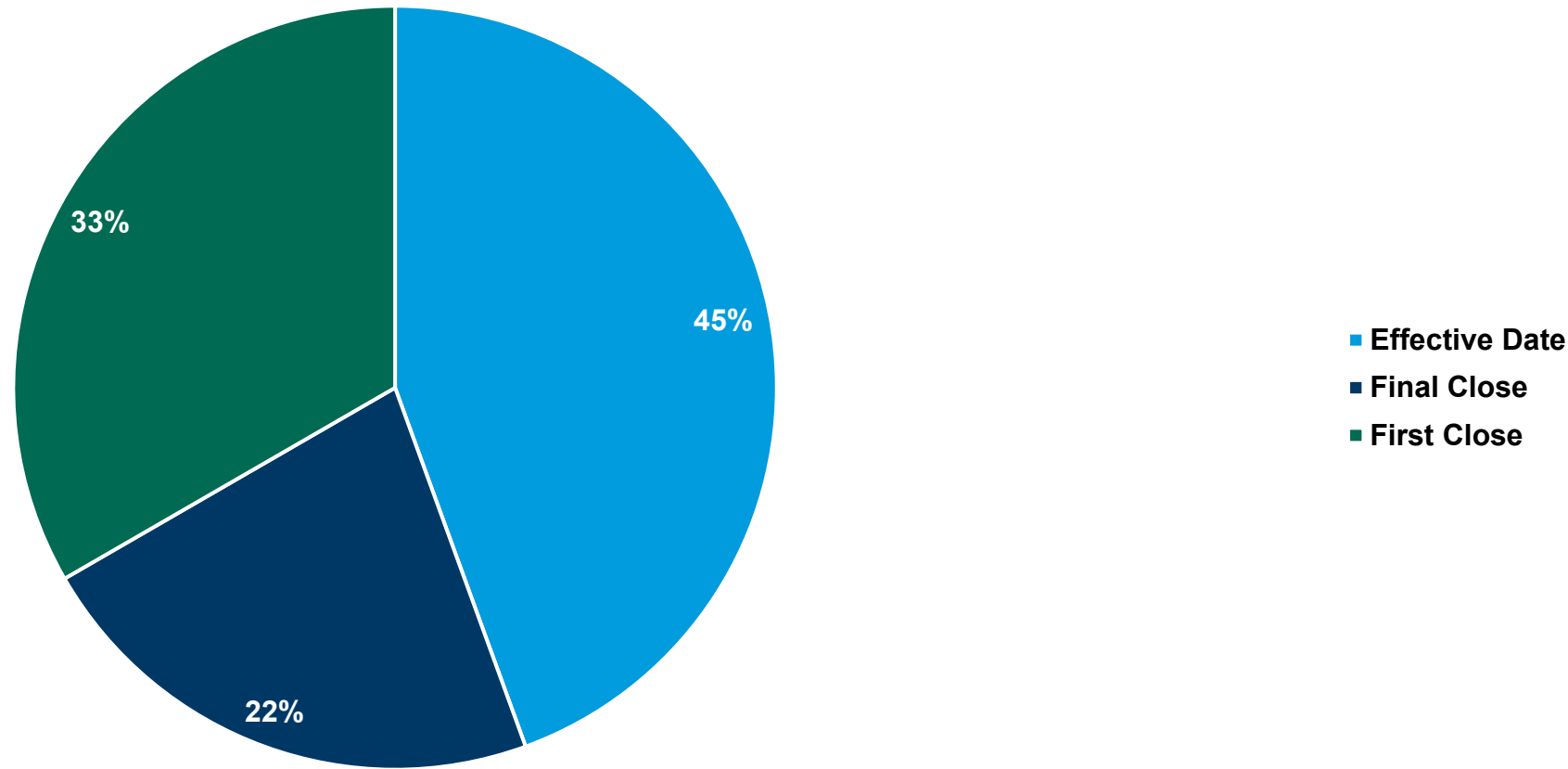
Initial term starting point
\$1B-\$2.5B



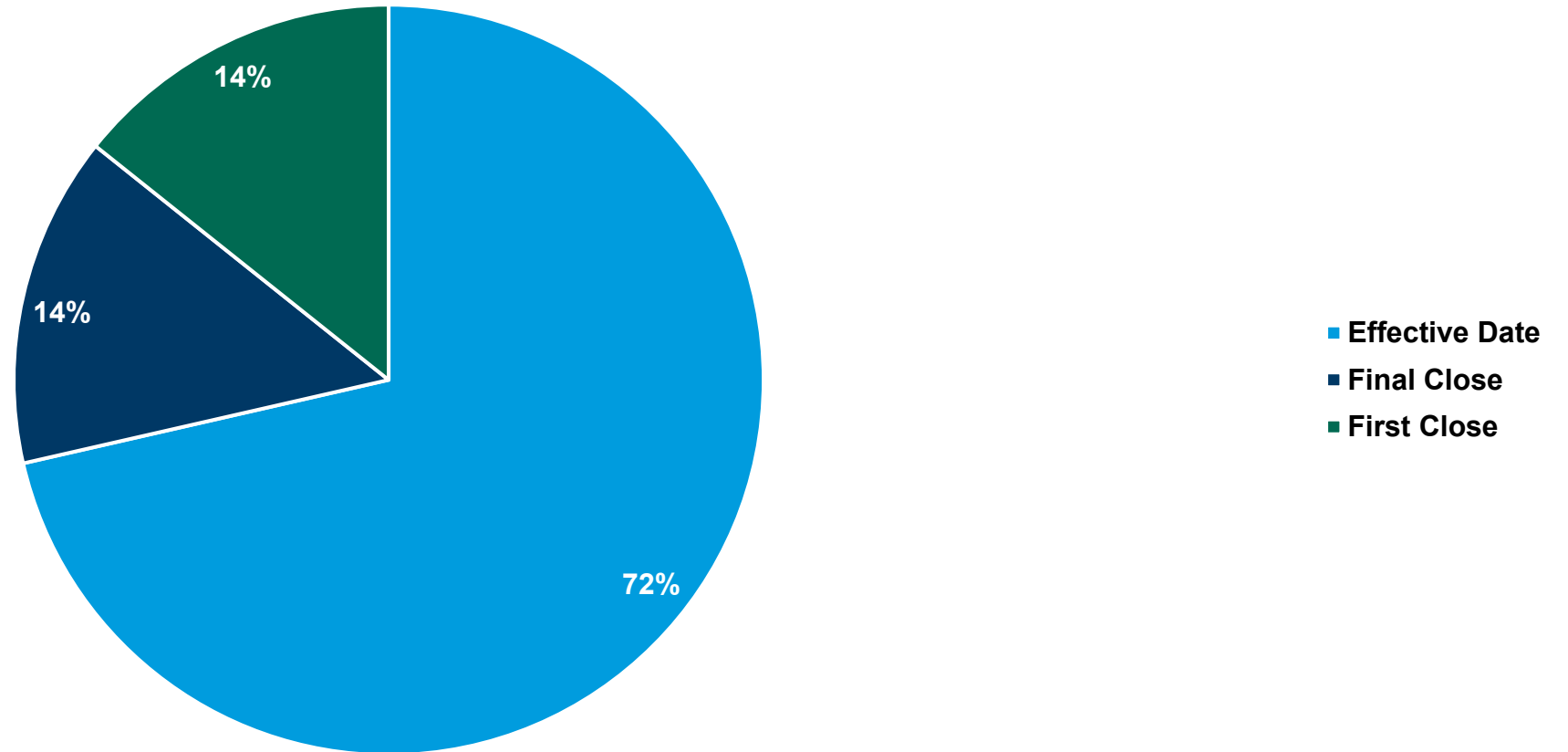
Initial term starting point
\$2.5B-\$5B



Initial term starting point
\$5B-\$10B



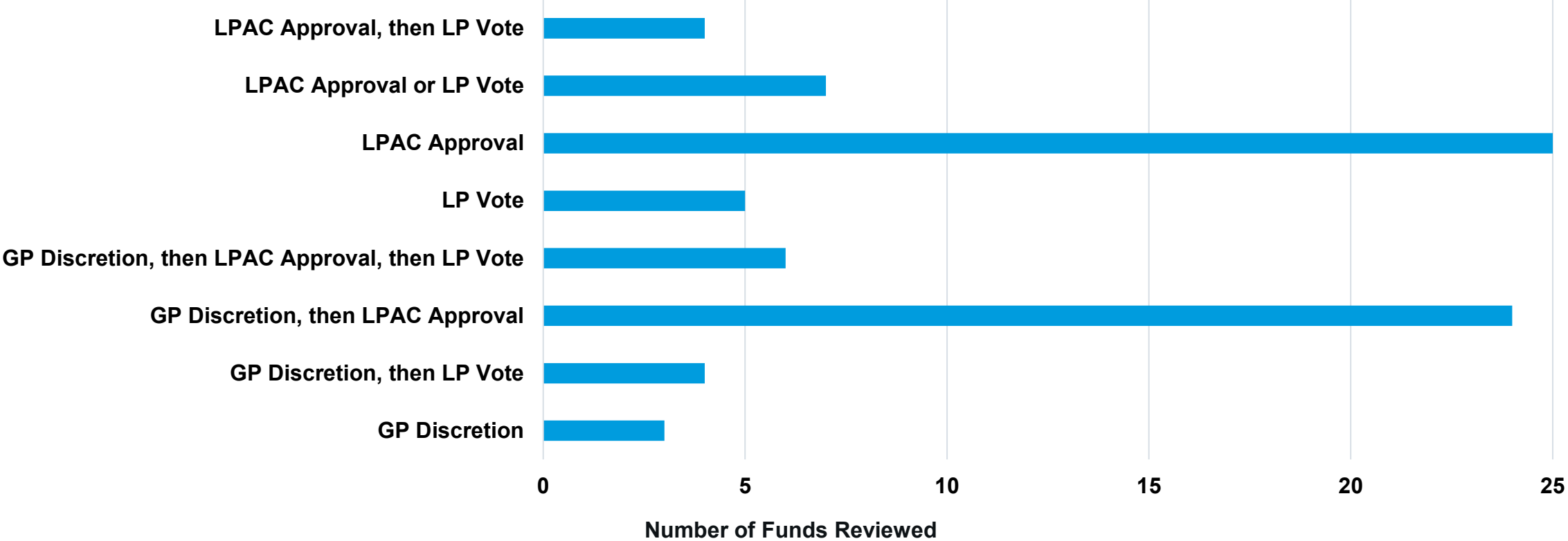
Initial term starting point >\$10B



Approval required for extension of term

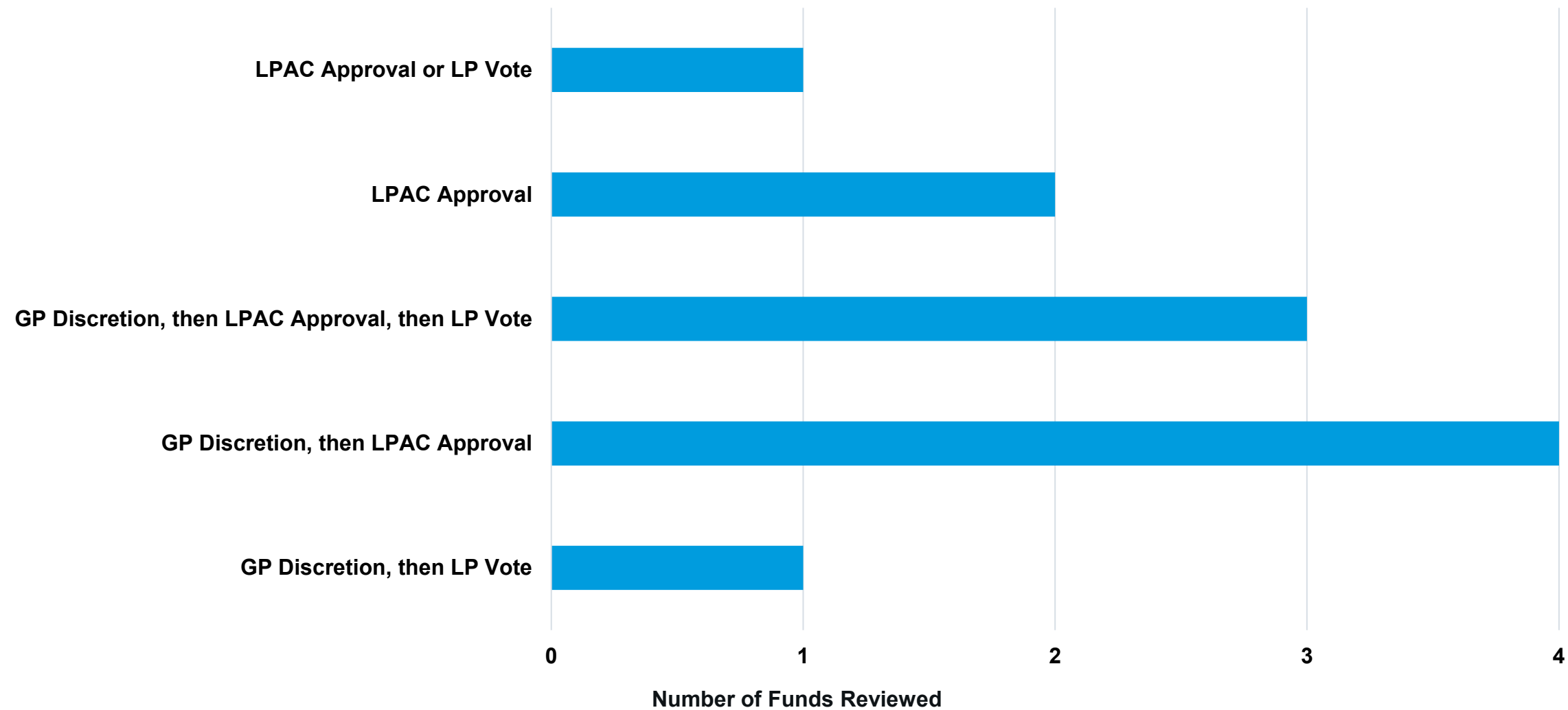
All Funds

A variety of mechanisms are used to extend the initial term of a fund. In general, the industry has seen an increase in the number of funds that give the GP discretion in relation to at least one extension (47% in this survey), though the trend is more pronounced among smaller fund sizes. Larger funds are more likely to require consent from either their limited partner advisory committees or some percentage of LPs. We view the increased flexibility given to smaller fund GPs as reflective of management fee-driven dynamics. Discussions with investors about relaxing term extension provisions are invariably connected to negotiations concerning the management fee payable during any extension period. The fees at stake for larger funds, and their largest investors, tend to be significantly greater.



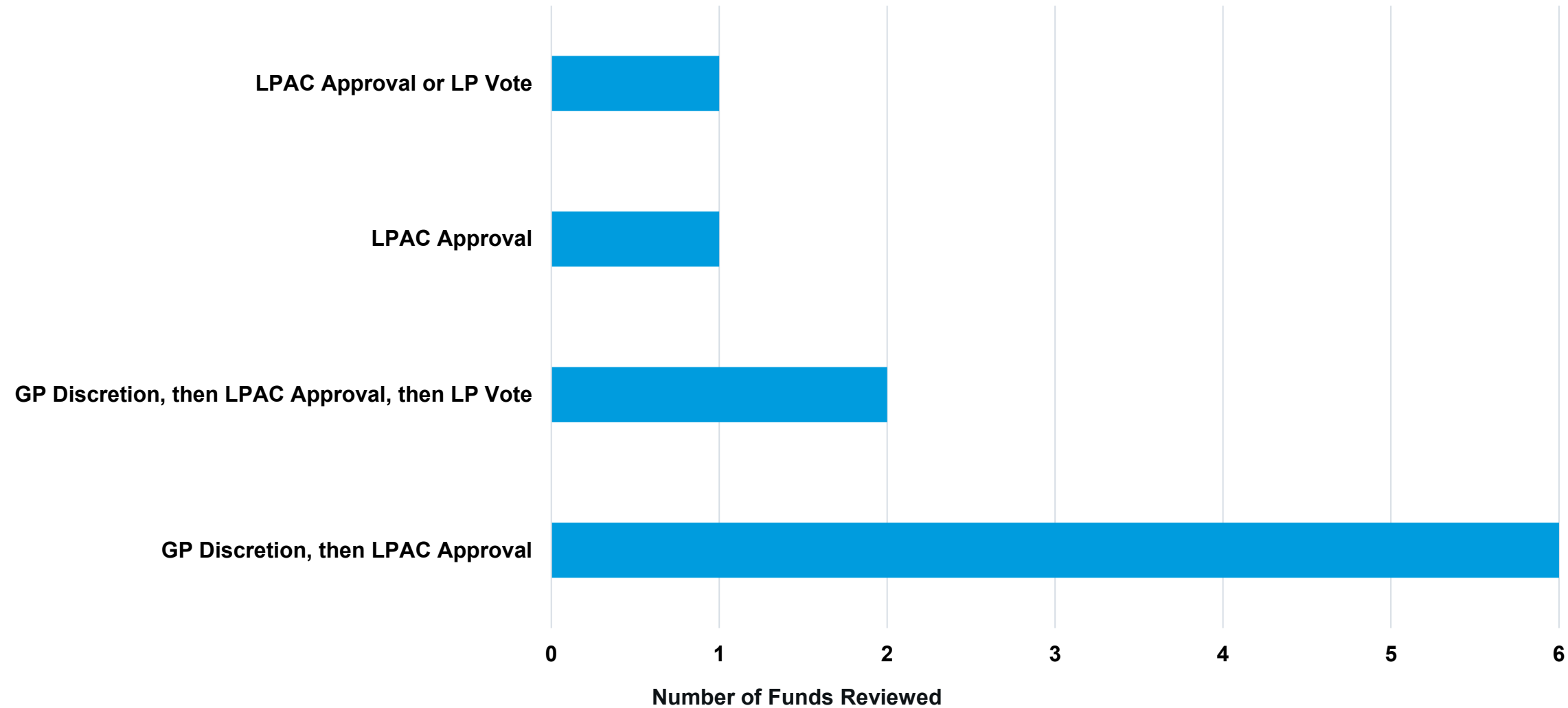
Approval required for extension of term

<\$500M



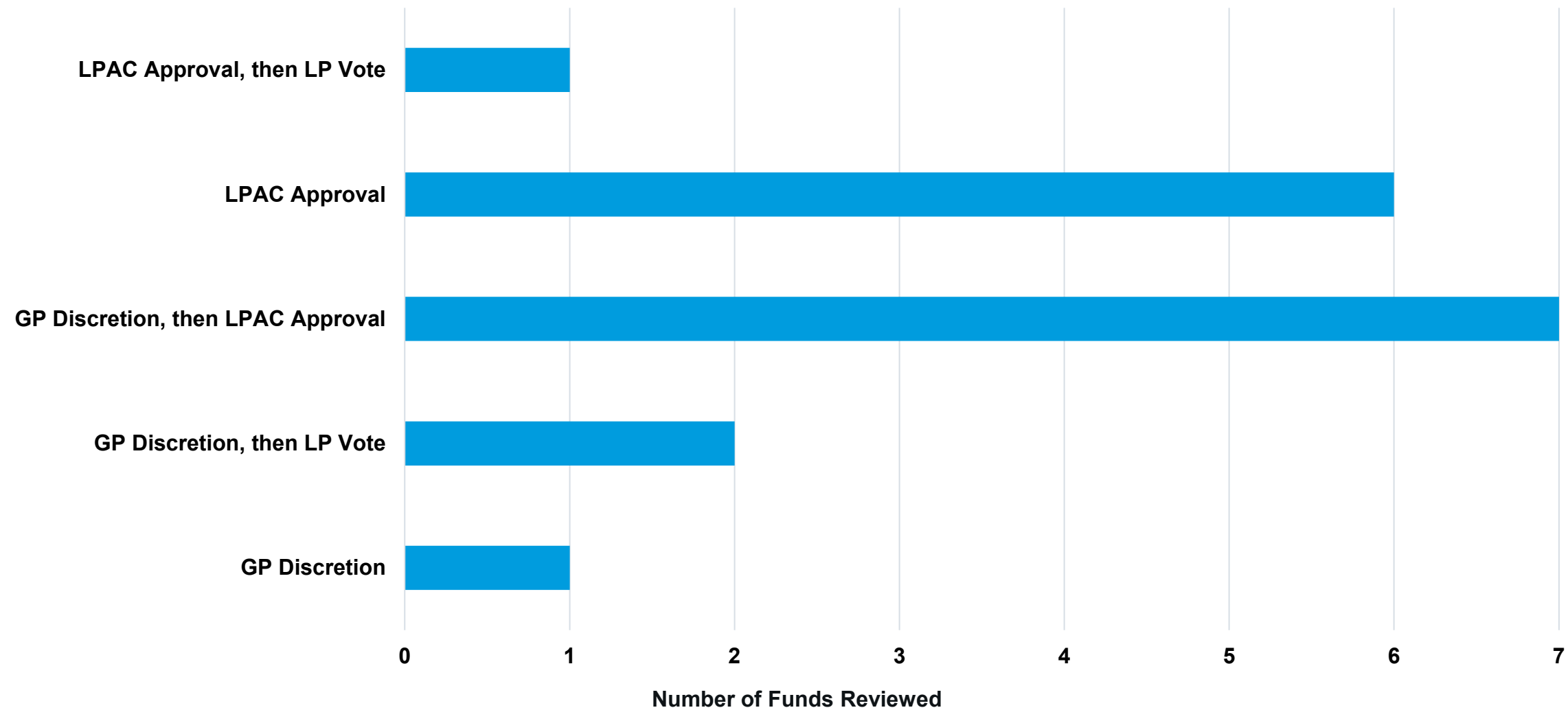
Approval required for extension of term

\$500M-\$1B



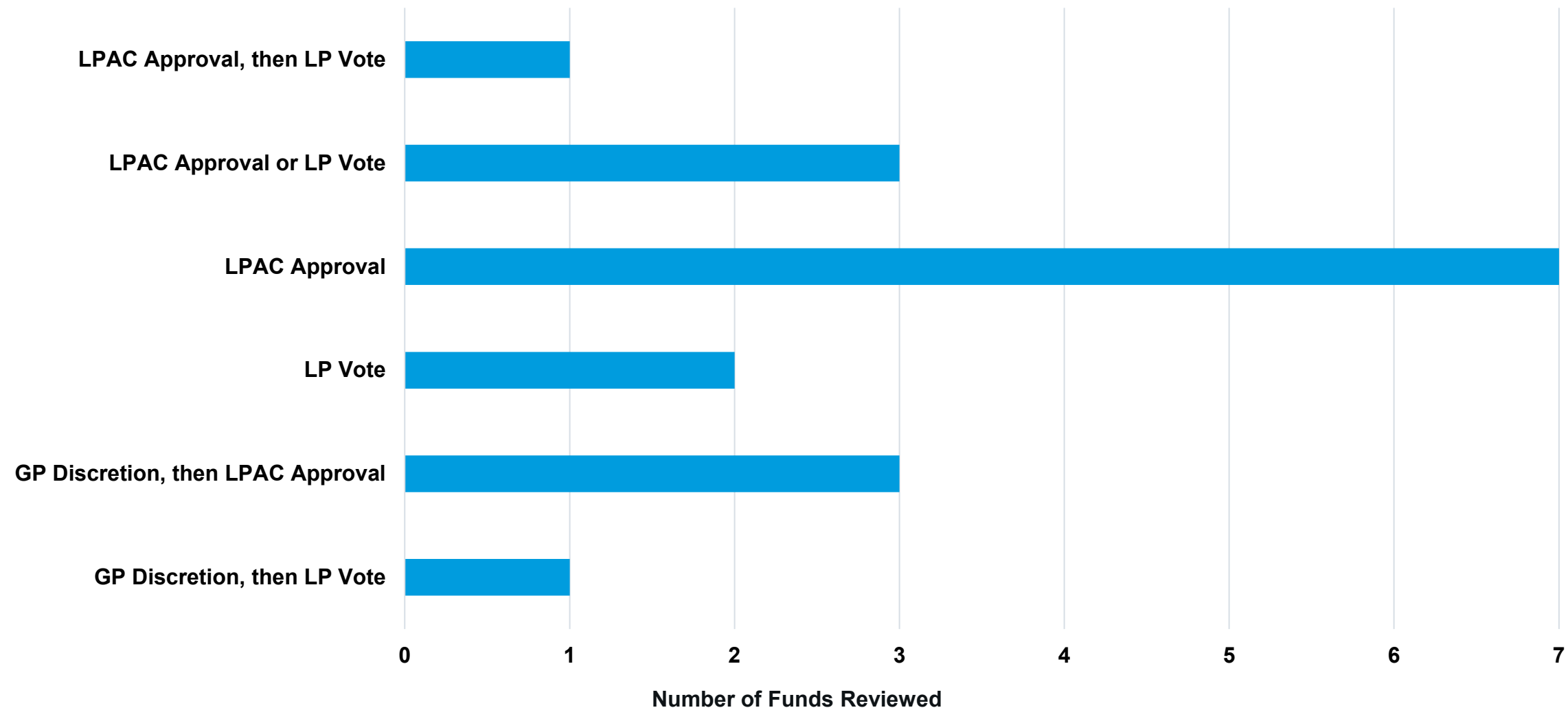
Approval required for extension of term

\$1B-\$2.5B



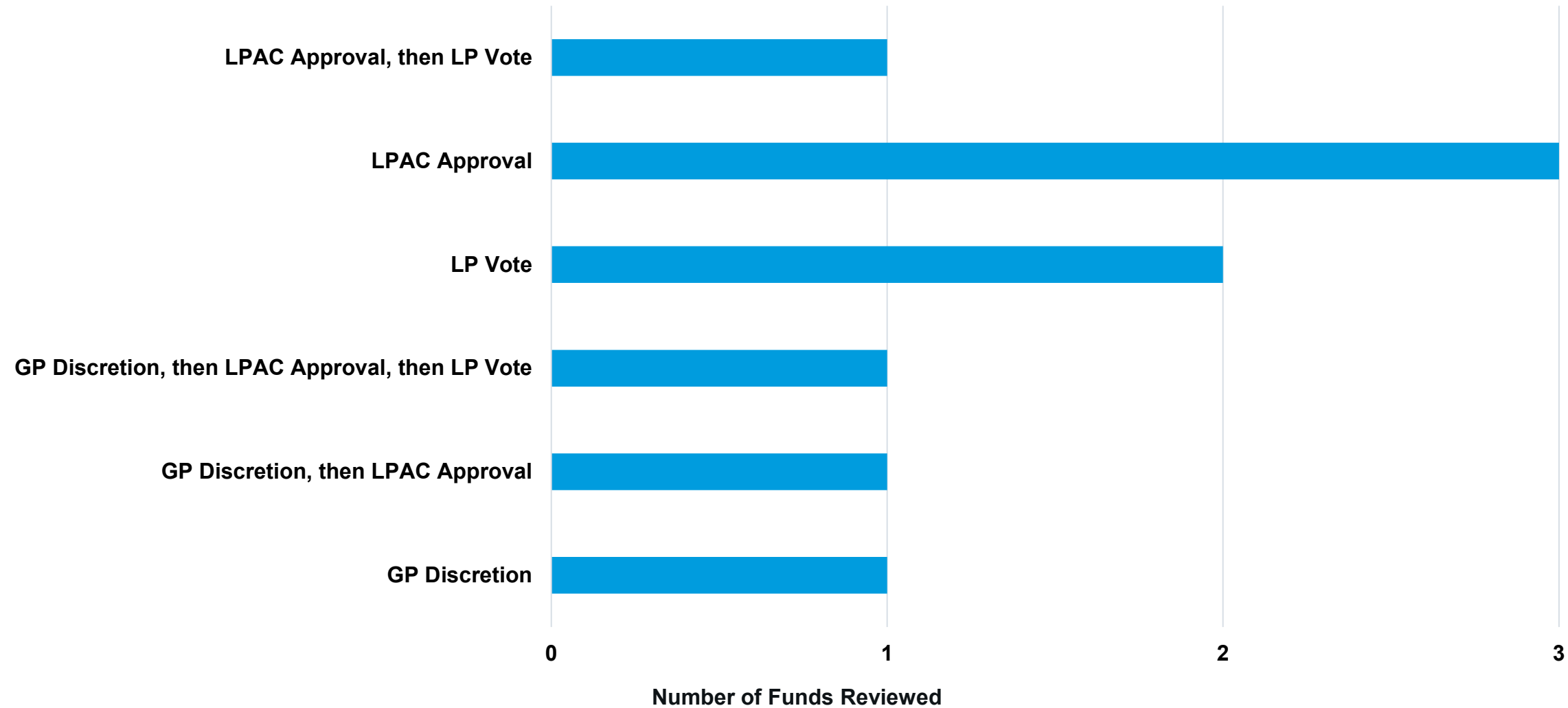
Approval required for extension of term

\$2.5B-\$5B



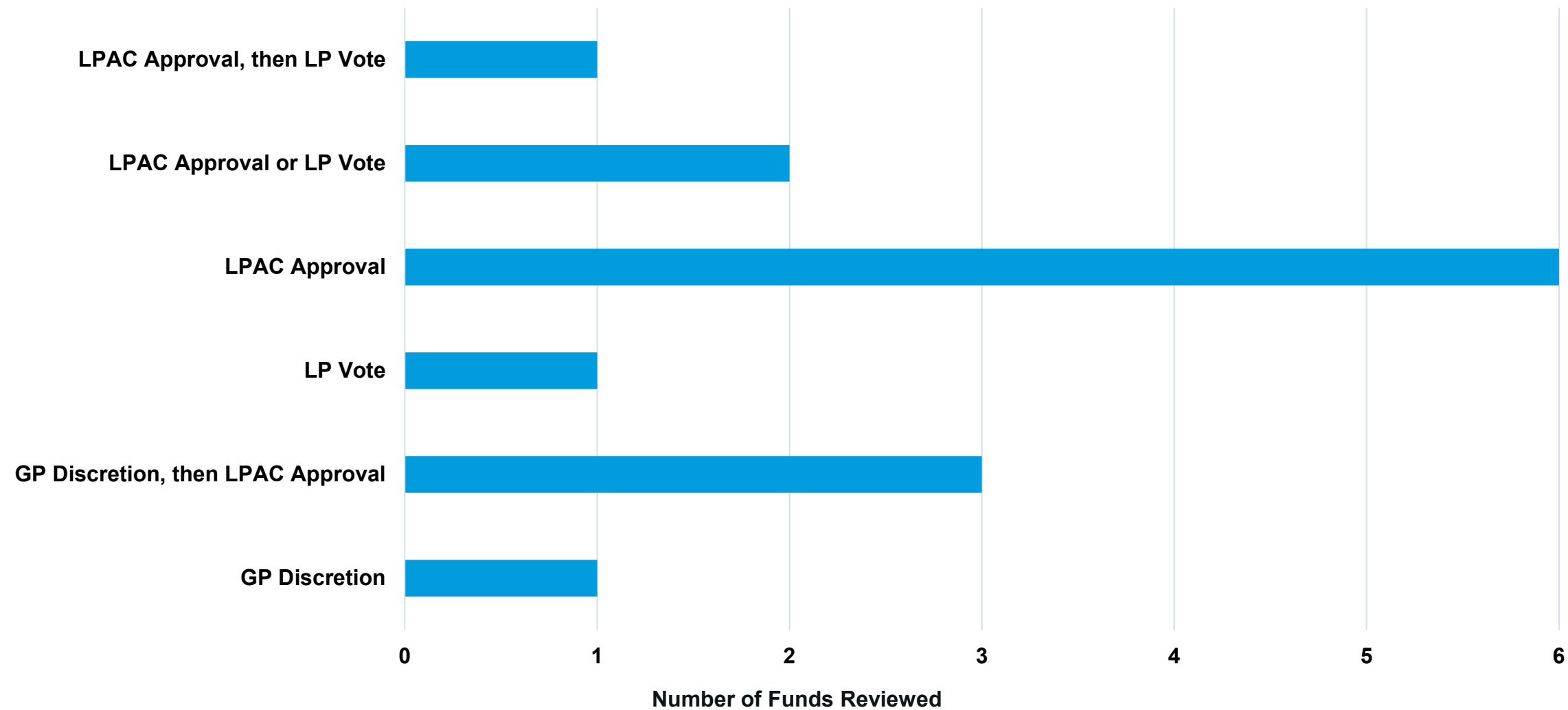
Approval required for extension of term

\$5B-\$10B



Approval required for extension of term

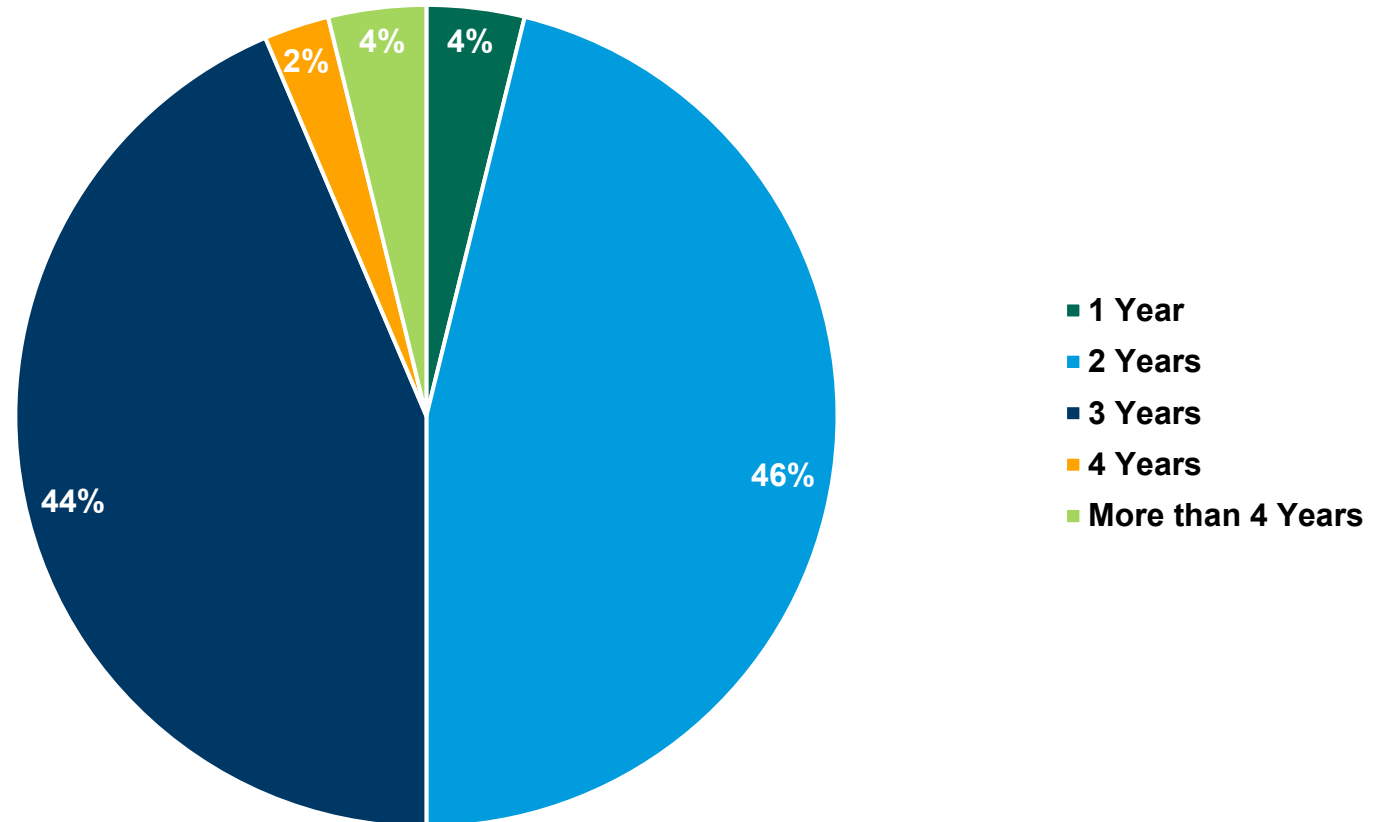
>\$10B



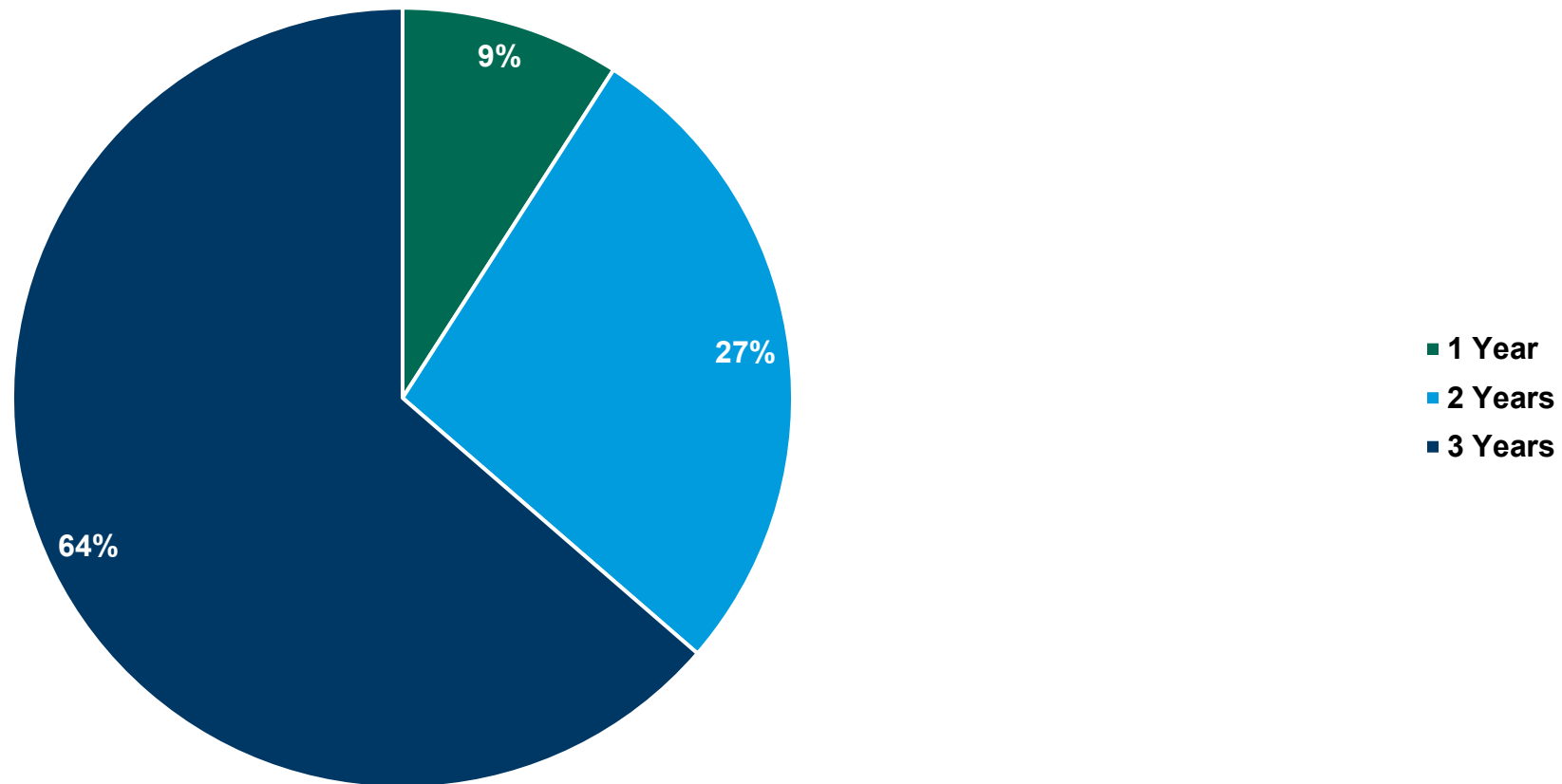
Maximum period of extensions of term

All Funds

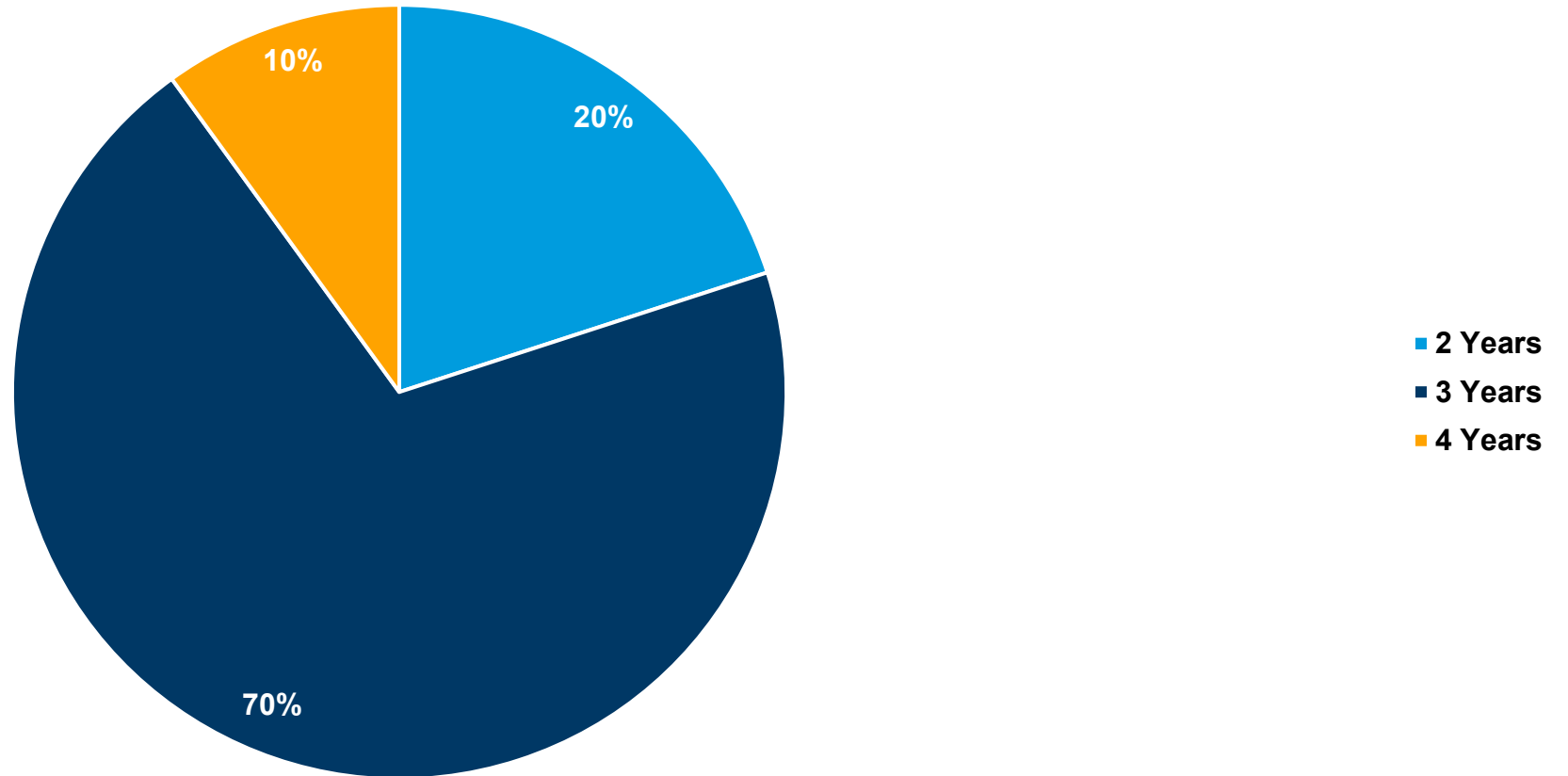
Where extensions of a fund's term are permitted, the overwhelming majority of funds may be extended by either two or three single-year extensions, with a very small minority providing for fewer or more. The distribution of various options is relatively consistent across fund sizes and without clearly identifiable trends based on size – except that to some extent a greater number of extensions becomes somewhat less common as fund sizes grow – a dynamic that is likely linked to management fee considerations.



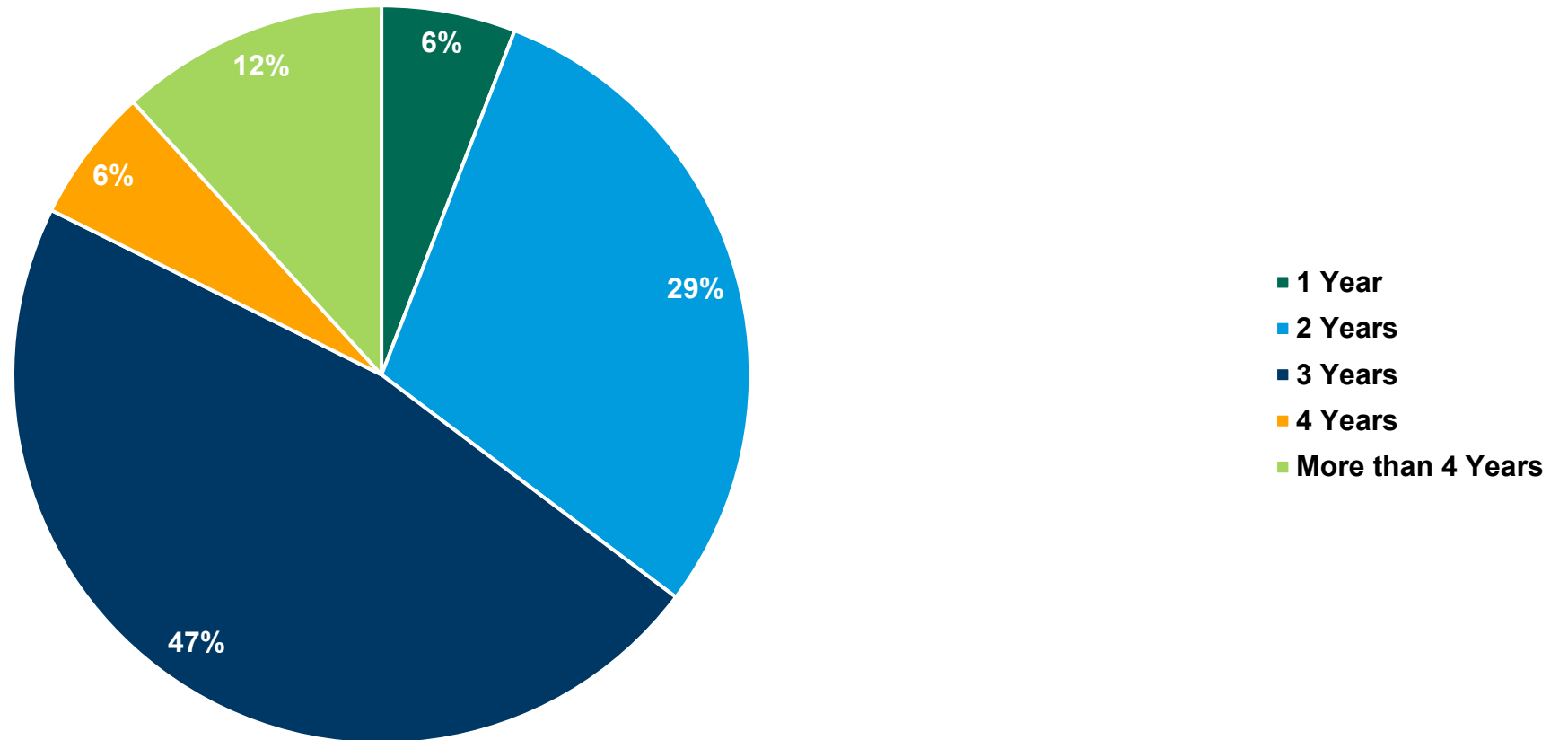
Maximum period of extensions of term <\$500M



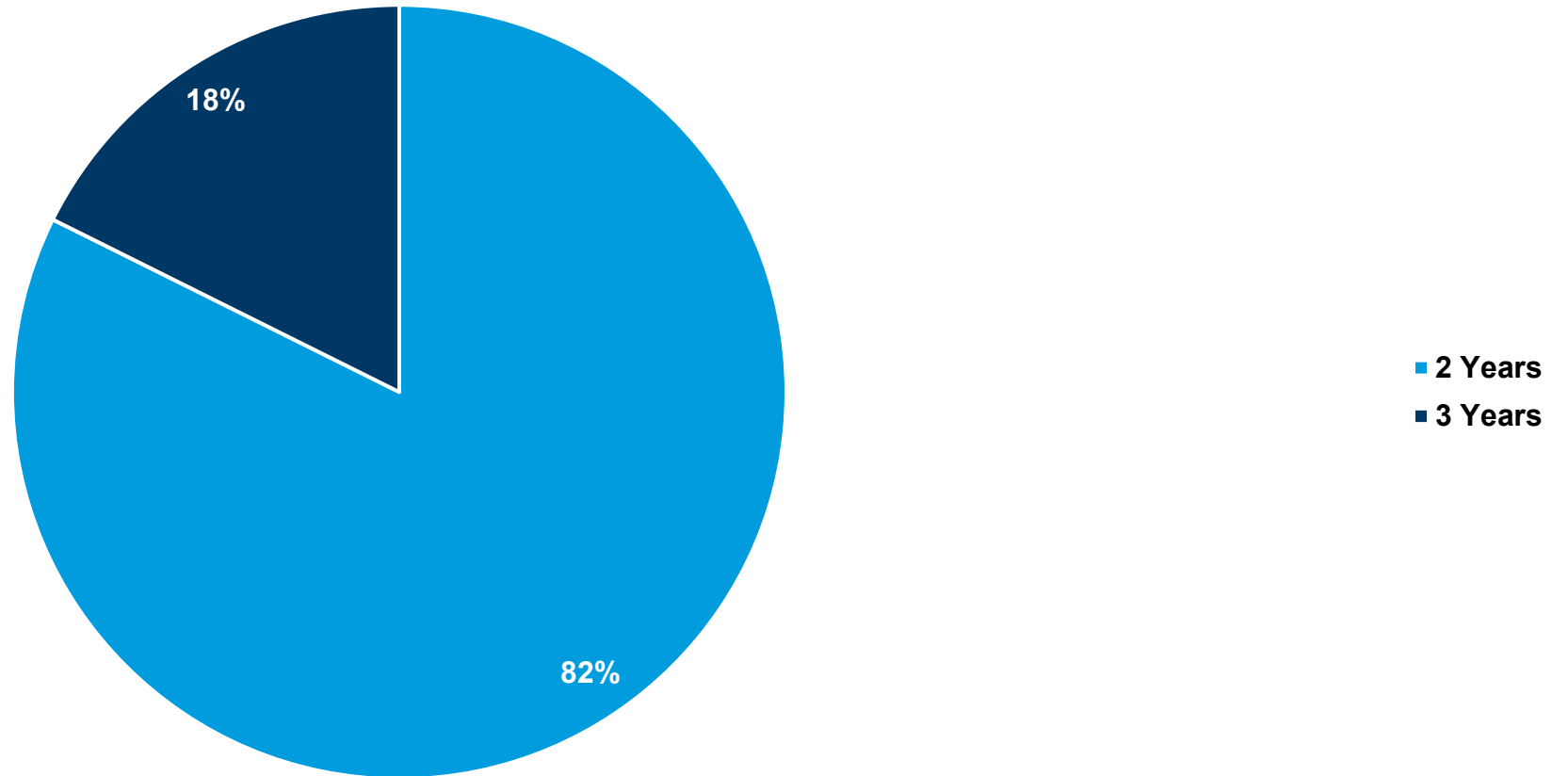
Maximum period of extensions of term \$500M-\$1B



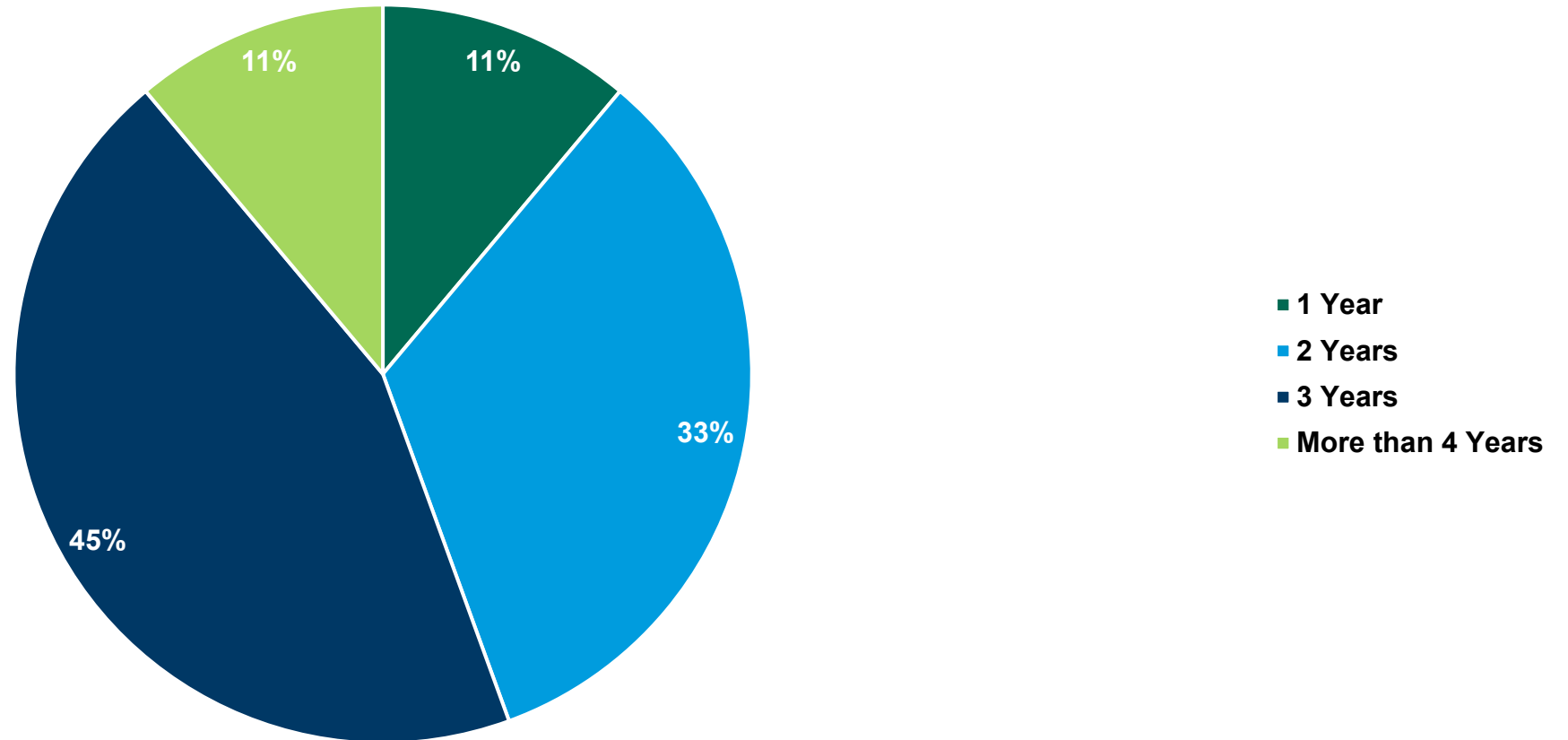
Maximum period of extensions of term \$1B-\$2.5B



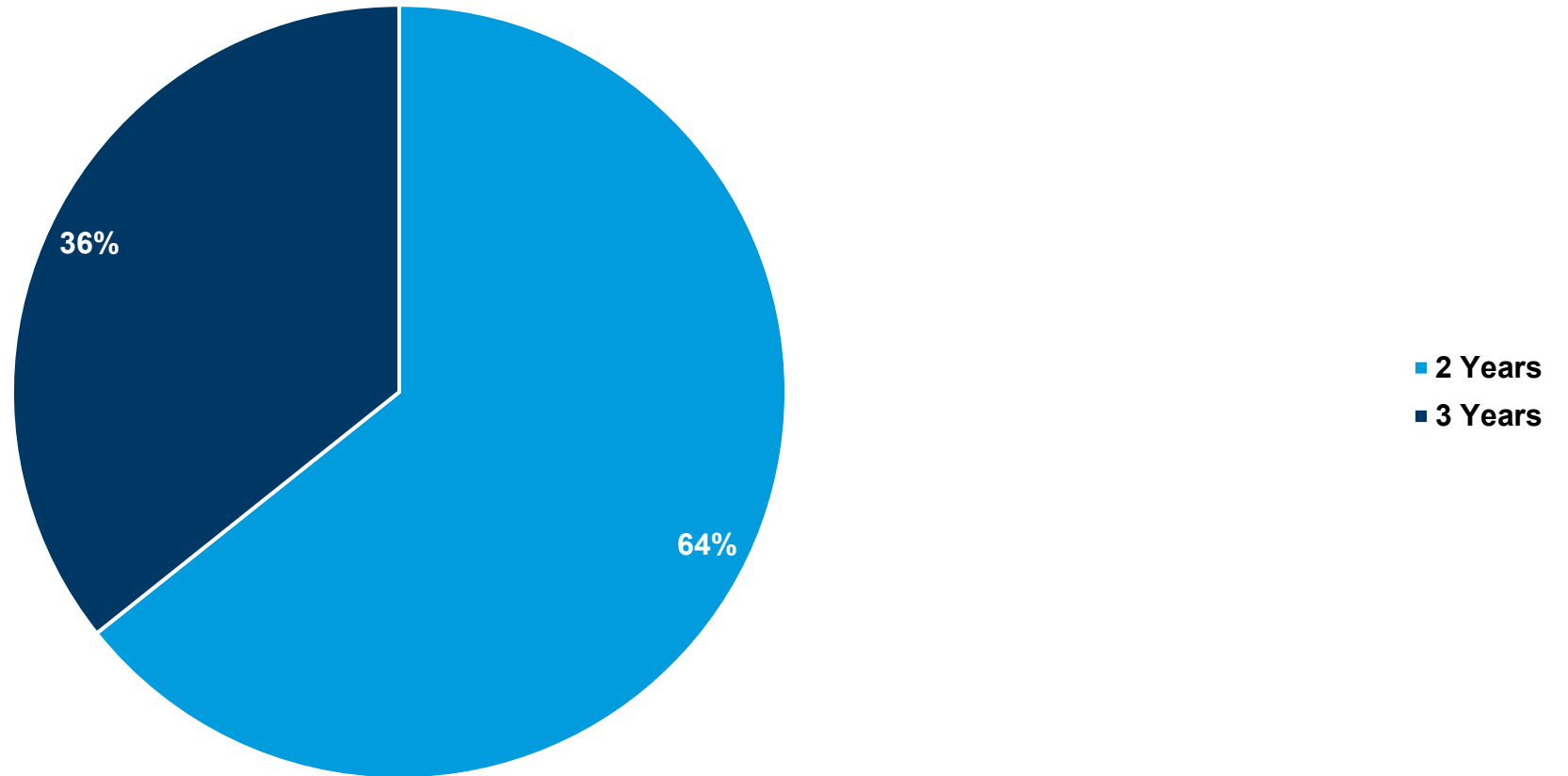
Maximum period of extensions of term \$2.5B-\$5B



Maximum period of extensions of term \$5B-\$10B



Maximum period of extensions of term >\$10B

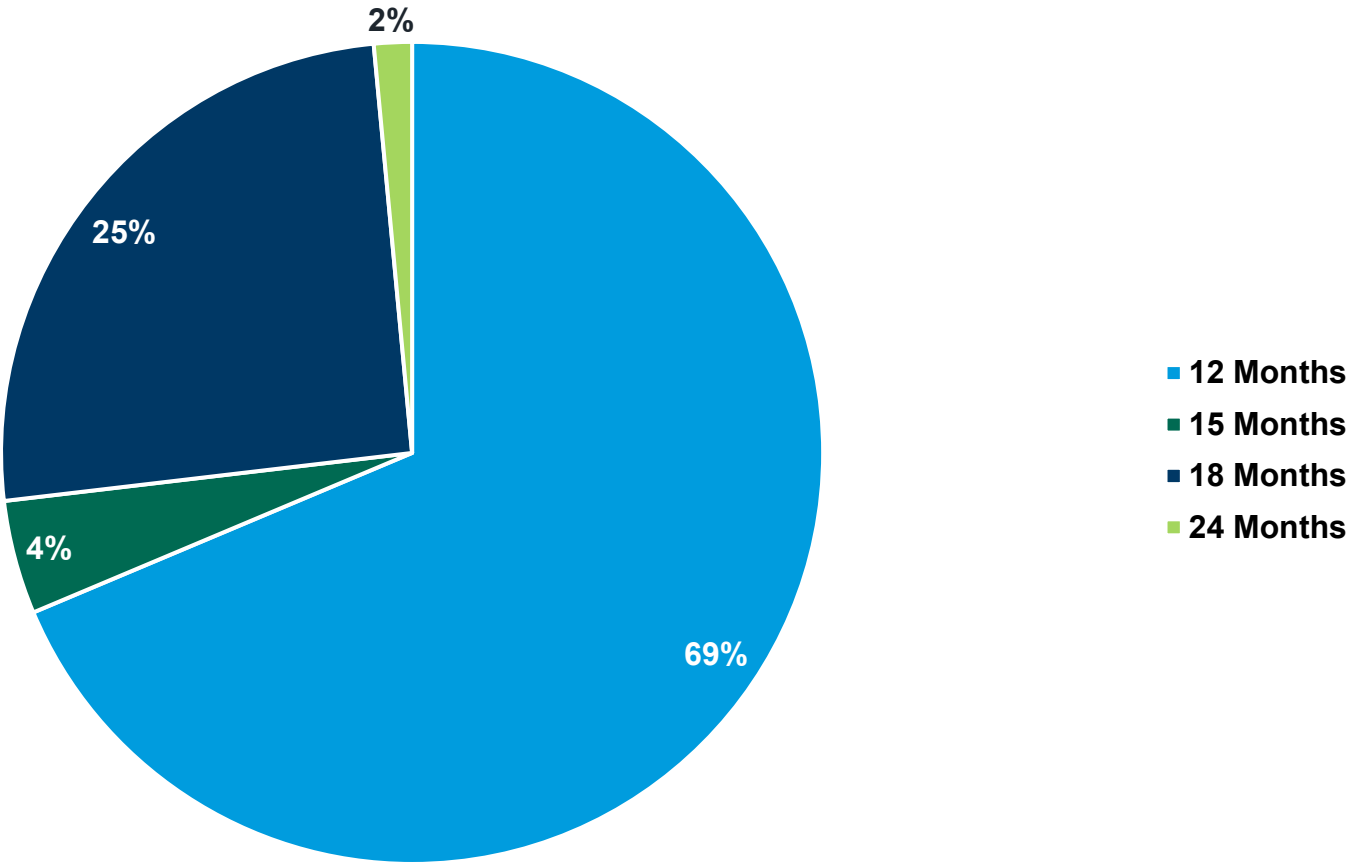


Fundraising period

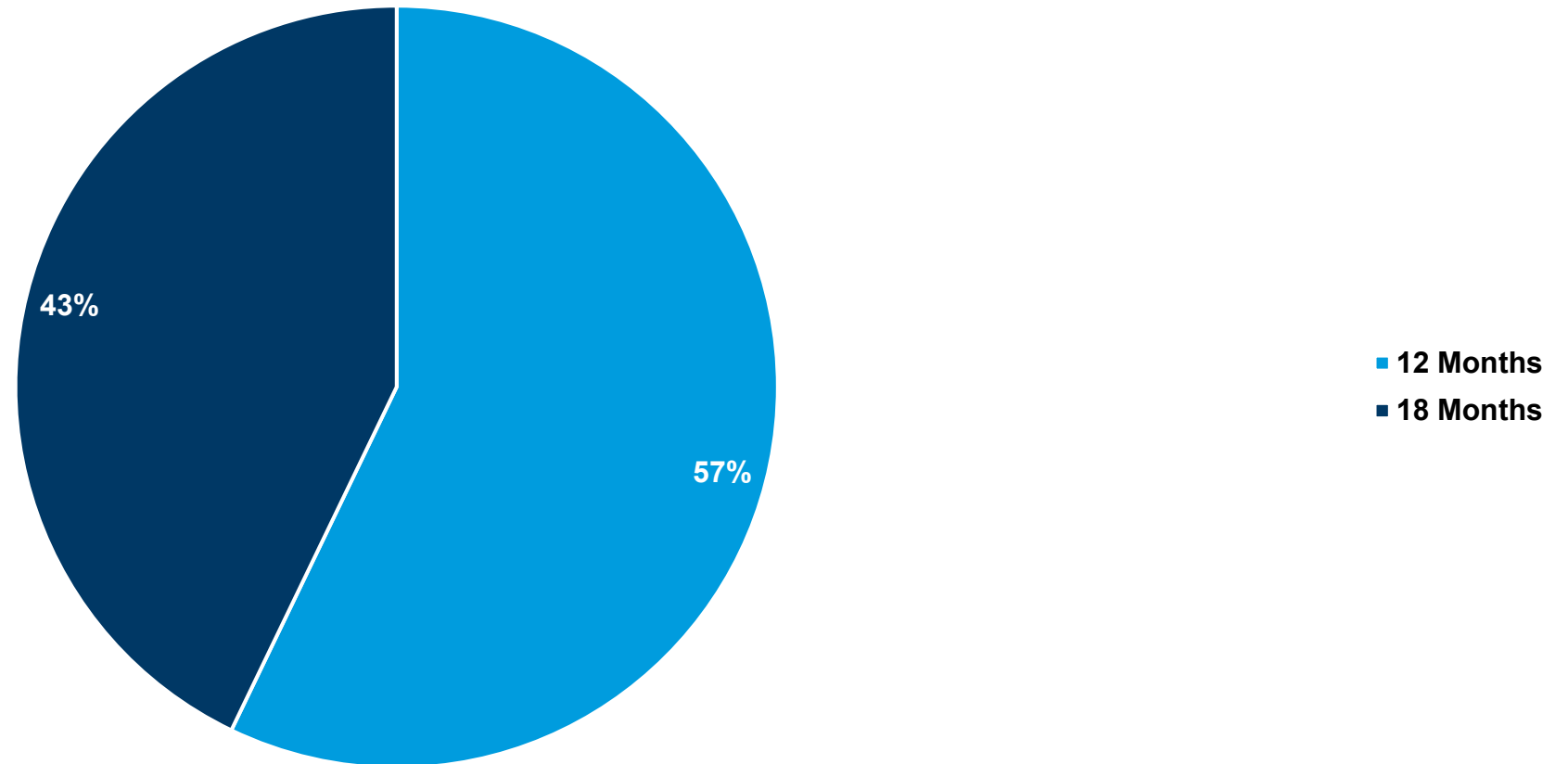
All Funds

The initial fundraising period (i.e., the longest permitted time between first closing and final closing) is 12 months in 69% of surveyed funds. The 12-month fundraising period is generally consistent across funds sizes.

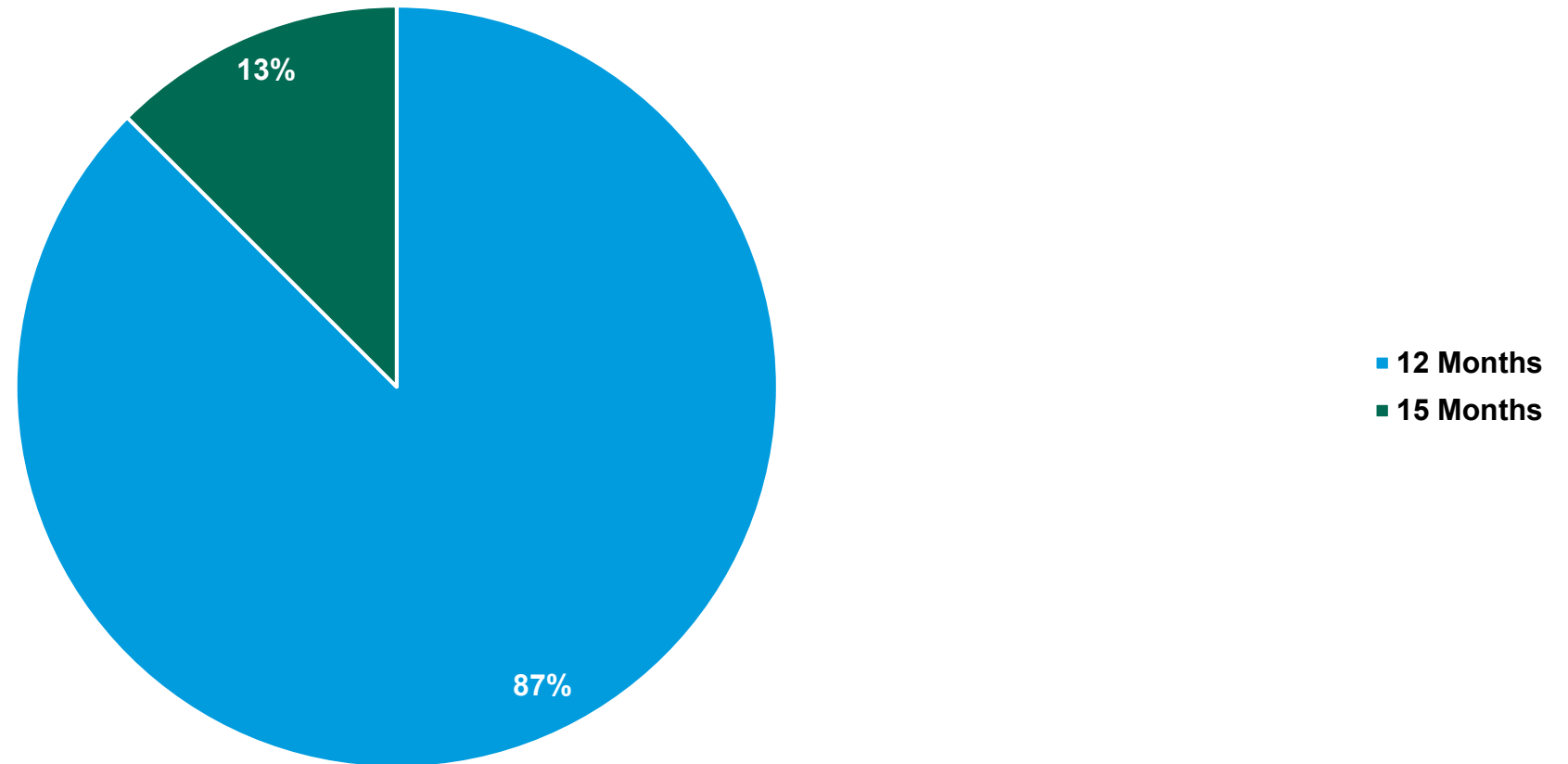
We note that the figures depicted are for the initial permitted fundraising period. A number of funds will hold a final closing much earlier than their potential final closing date, and others will look to extend the period well beyond the date specified in the LPA (which is often permitted with investor or LPAC consent).



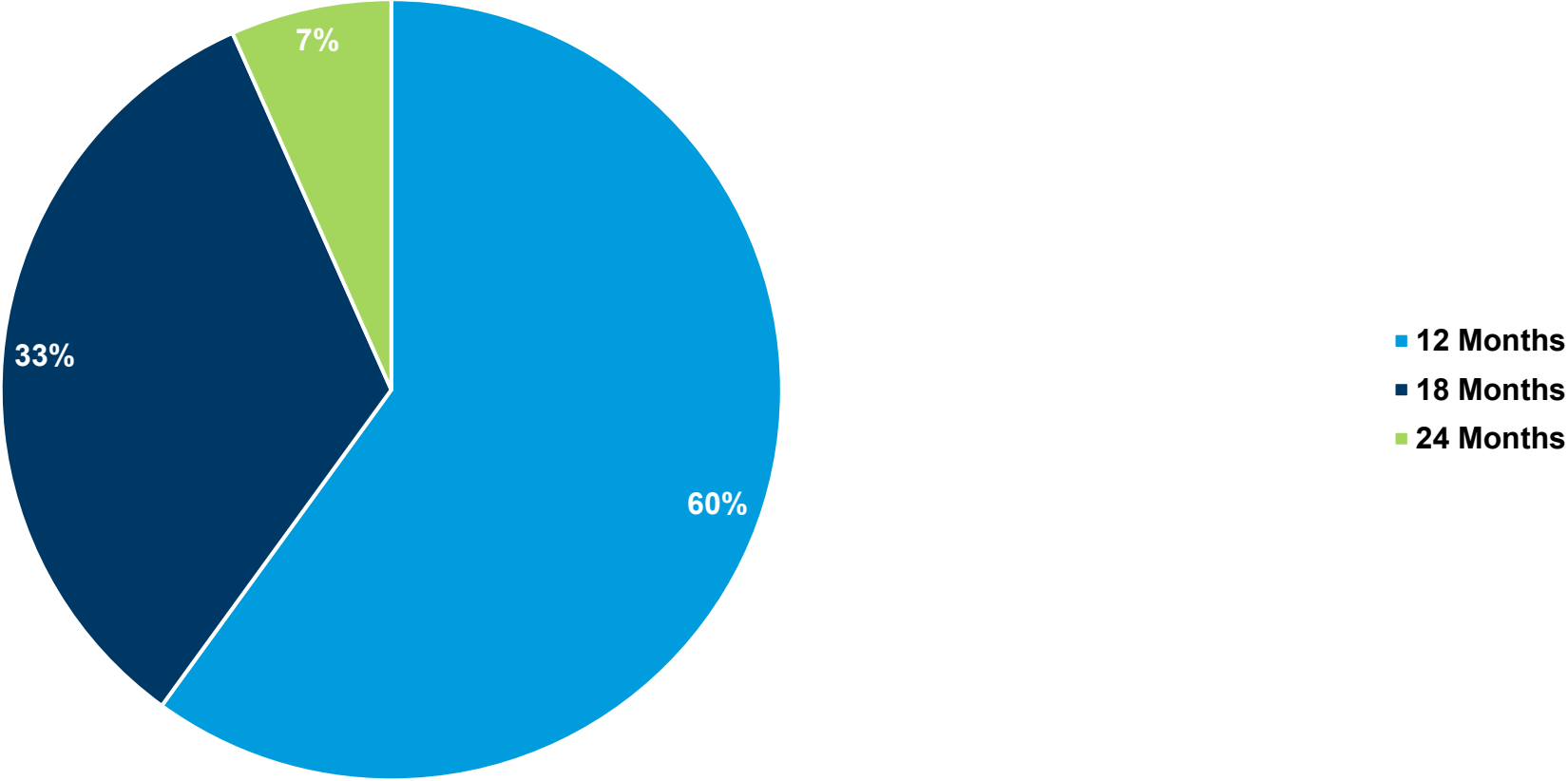
Fundraising period <\$500M



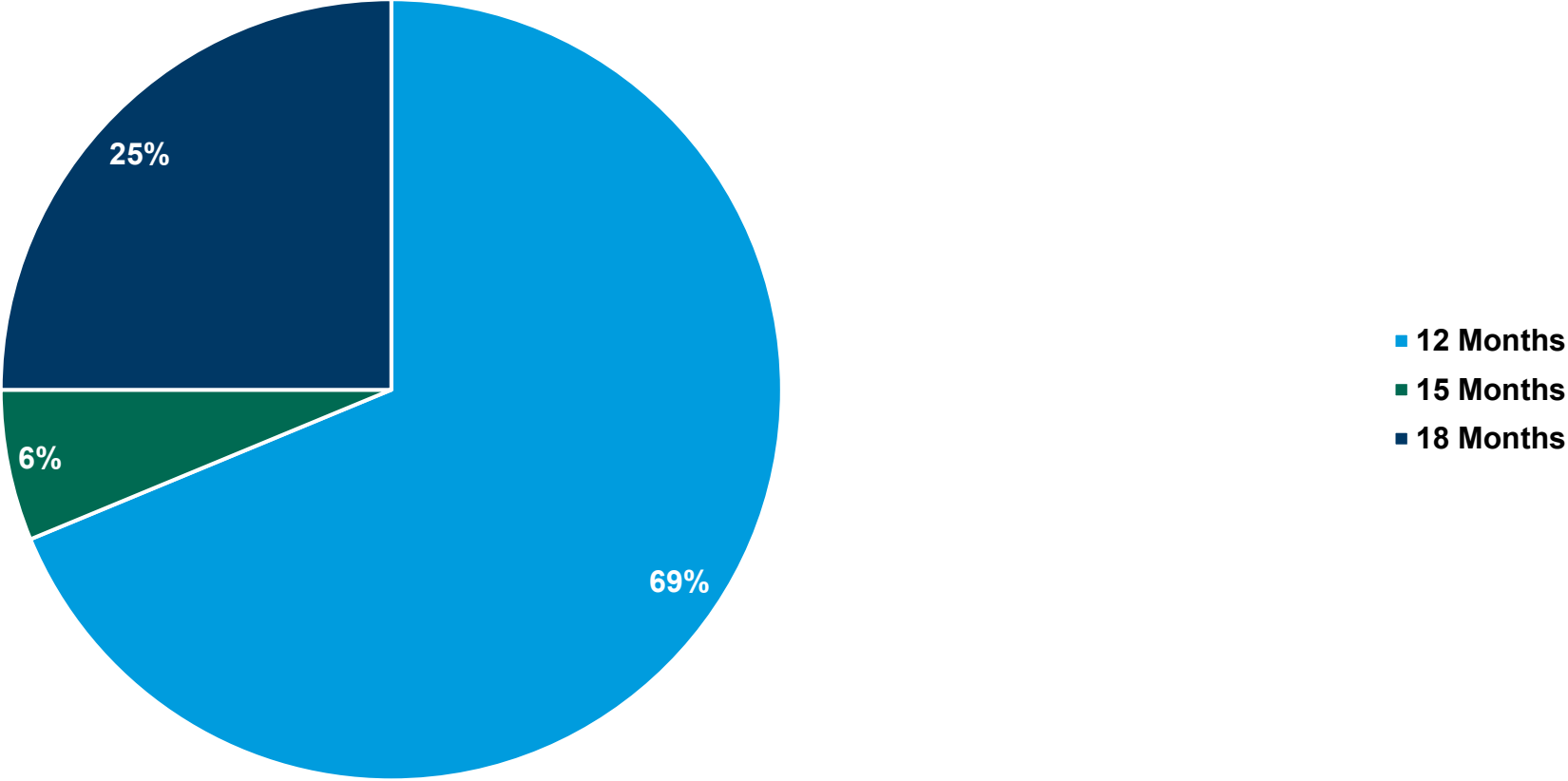
Fundraising period \$500M-\$1B



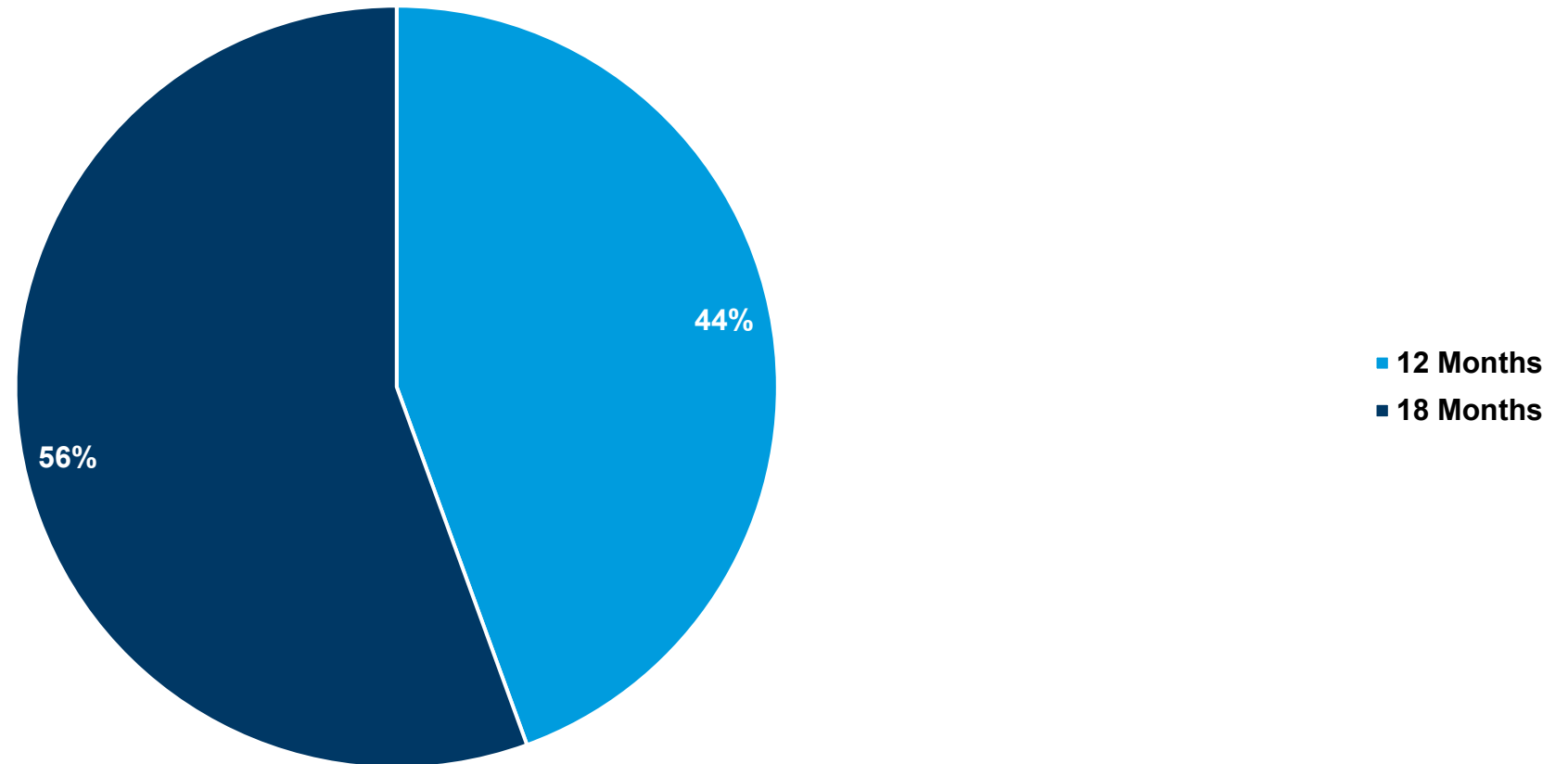
Fundraising period
\$1B-\$2.5B



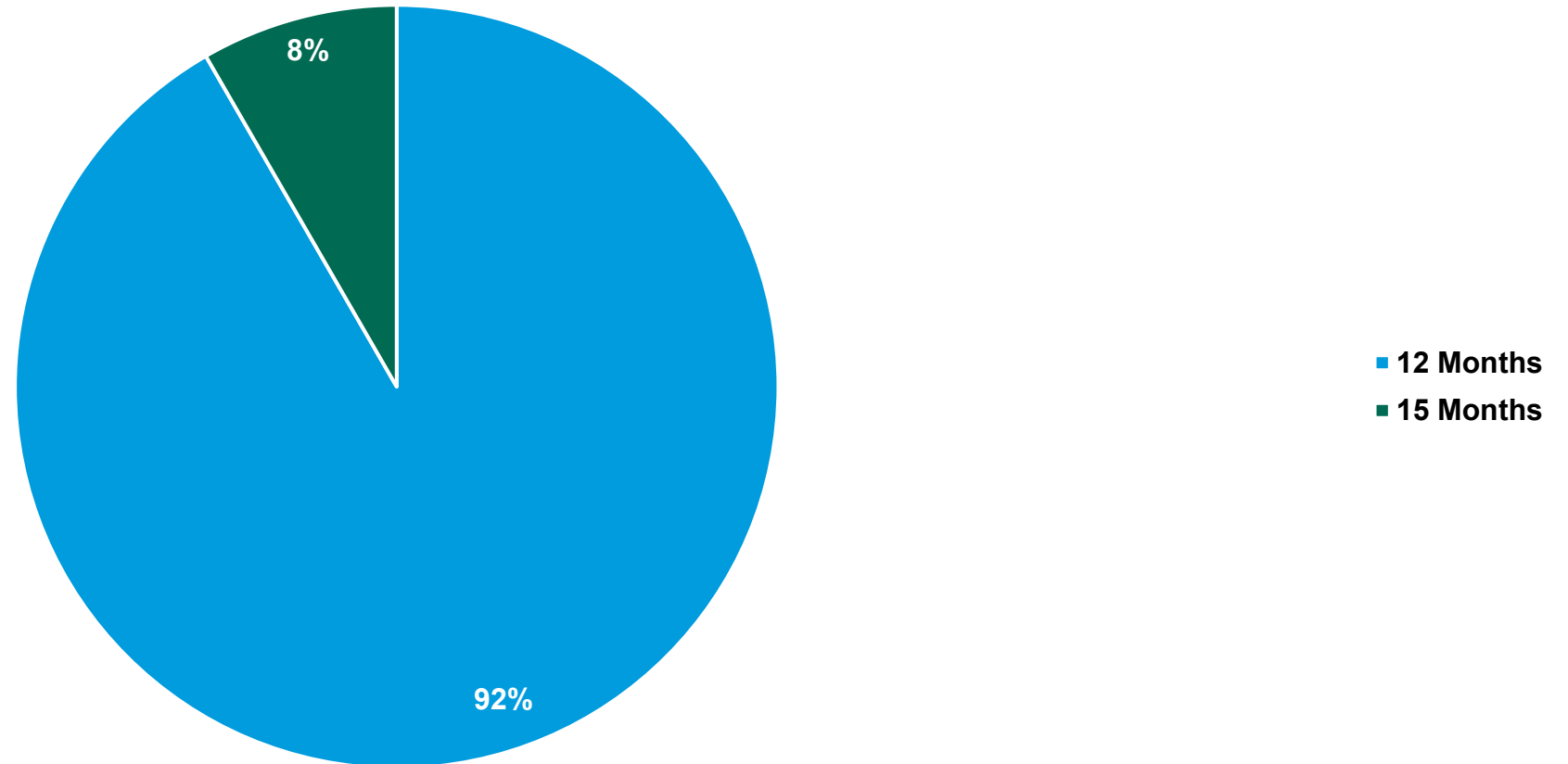
Fundraising period
\$2.5B-\$5B



Fundraising period \$5B-\$10B



Fundraising period >\$10B



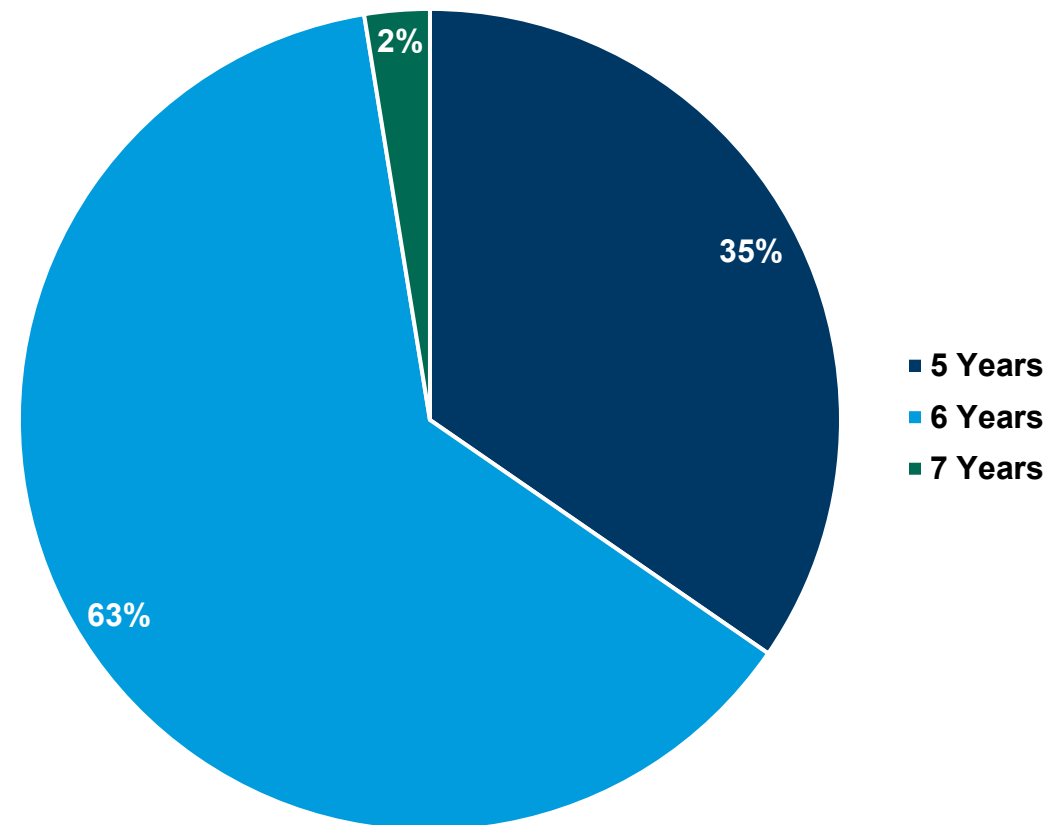
Investment period

All Funds

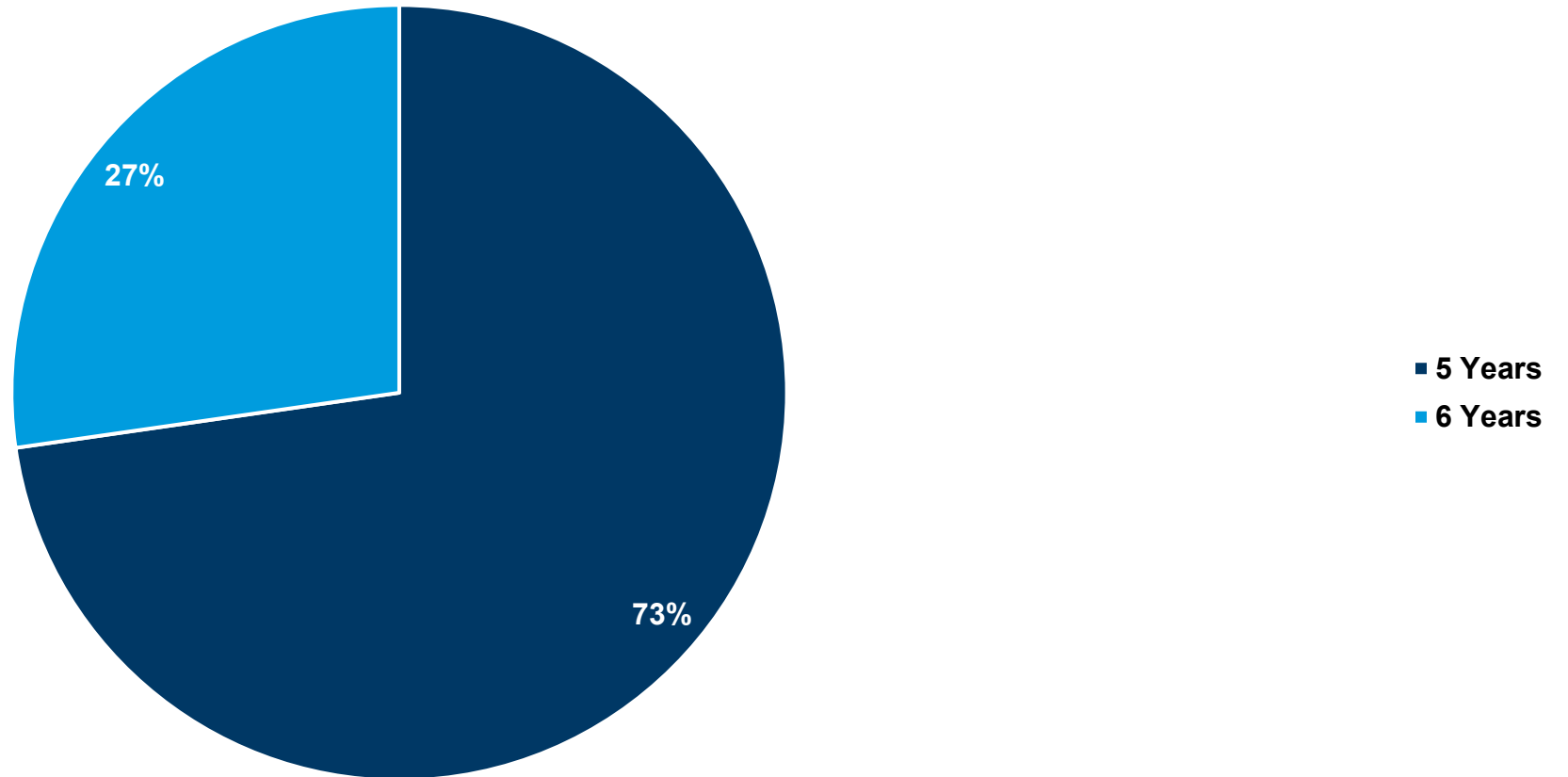
A six-year investment period is the most common among the funds in our sample, with 63% of funds surveyed falling within this bracket. Another 35% provide for a five-year investment period. The five-year period is predominant in smaller funds, with an observed shift toward six years as fund sizes increase.

Managers have typically sought longer investment periods to build in flexibility during times of uncertainty in the market, on the basis that they are able to deploy funds more consistently and not be forced to spend during unfavorable economic conditions, an issue which is more acute at the larger end of the market. Longer investment periods also potentially mean a longer period during which the initial management fee will be running, subject to any step-downs triggered by a successor fund being raised.

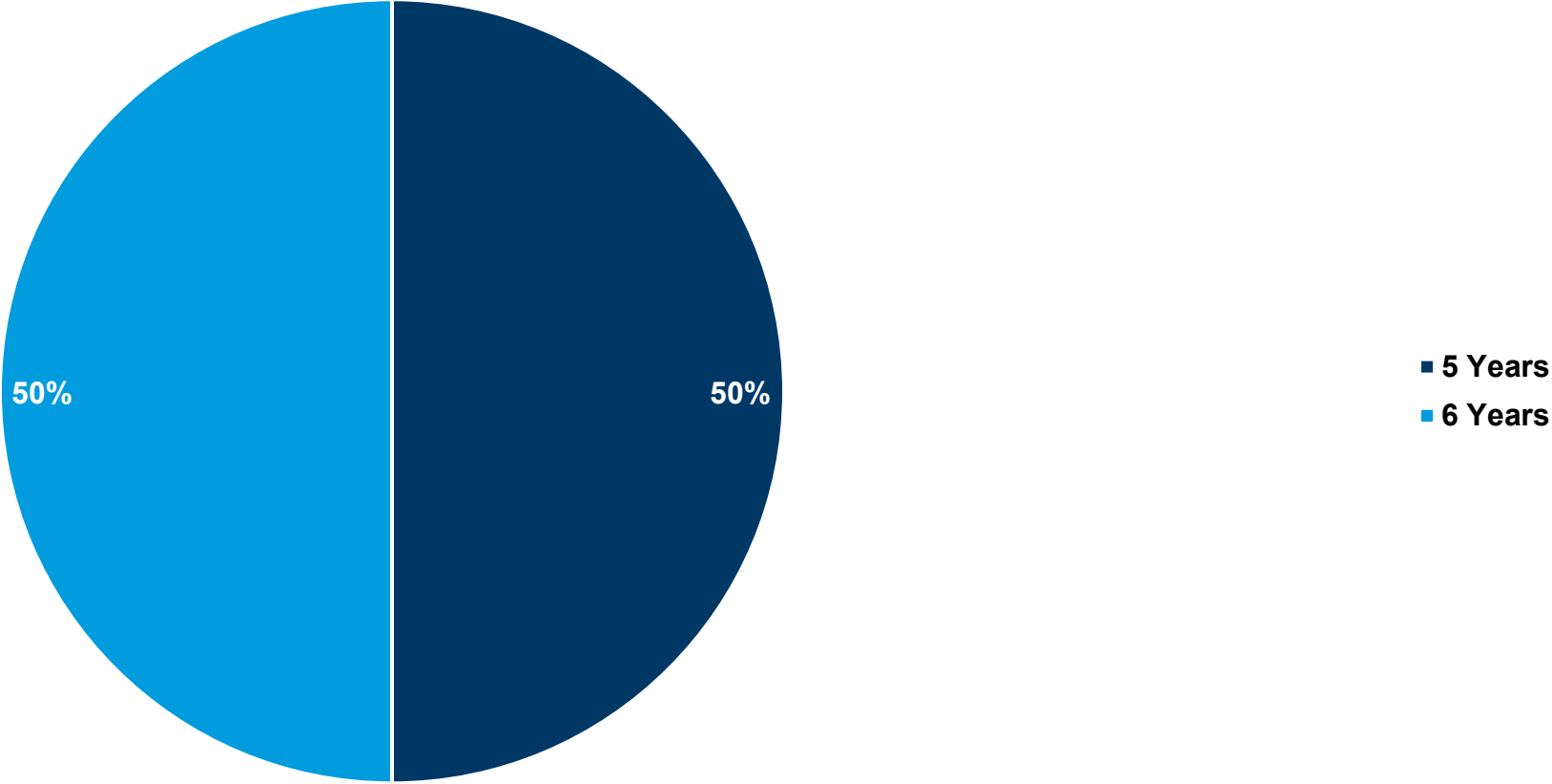
Similar to fund term, a key consideration is the date from which the investment period is calculated, which could be the initial closing date, the final closing date, or a manager-determined activation date. Where the investment period is calculated from a date that is later than the date on which a fund makes its initial investment, the investment period is effectively extended by the period between such initial investment date and the date used to determine the end of the investment period.



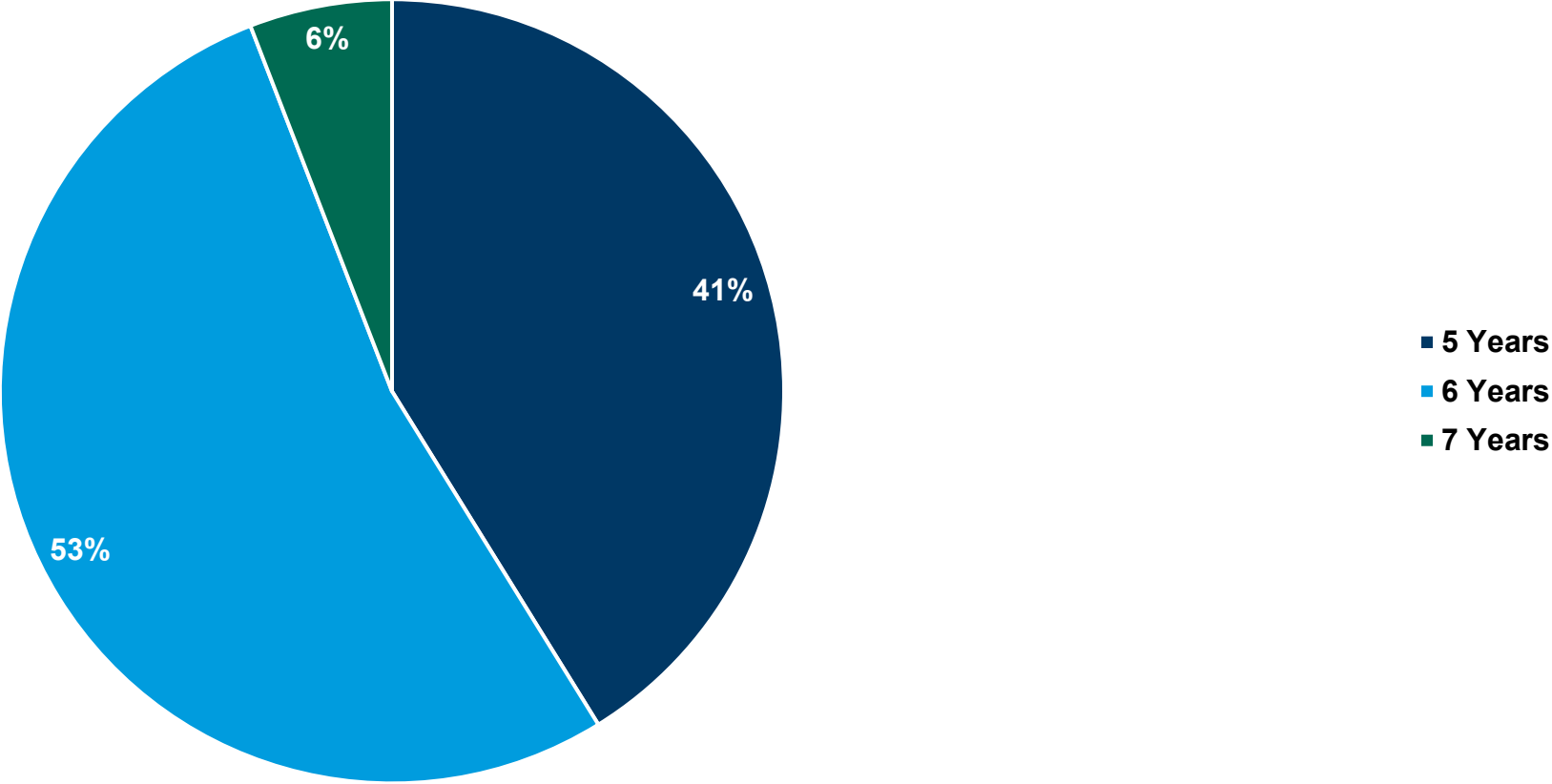
Investment period <\$500M



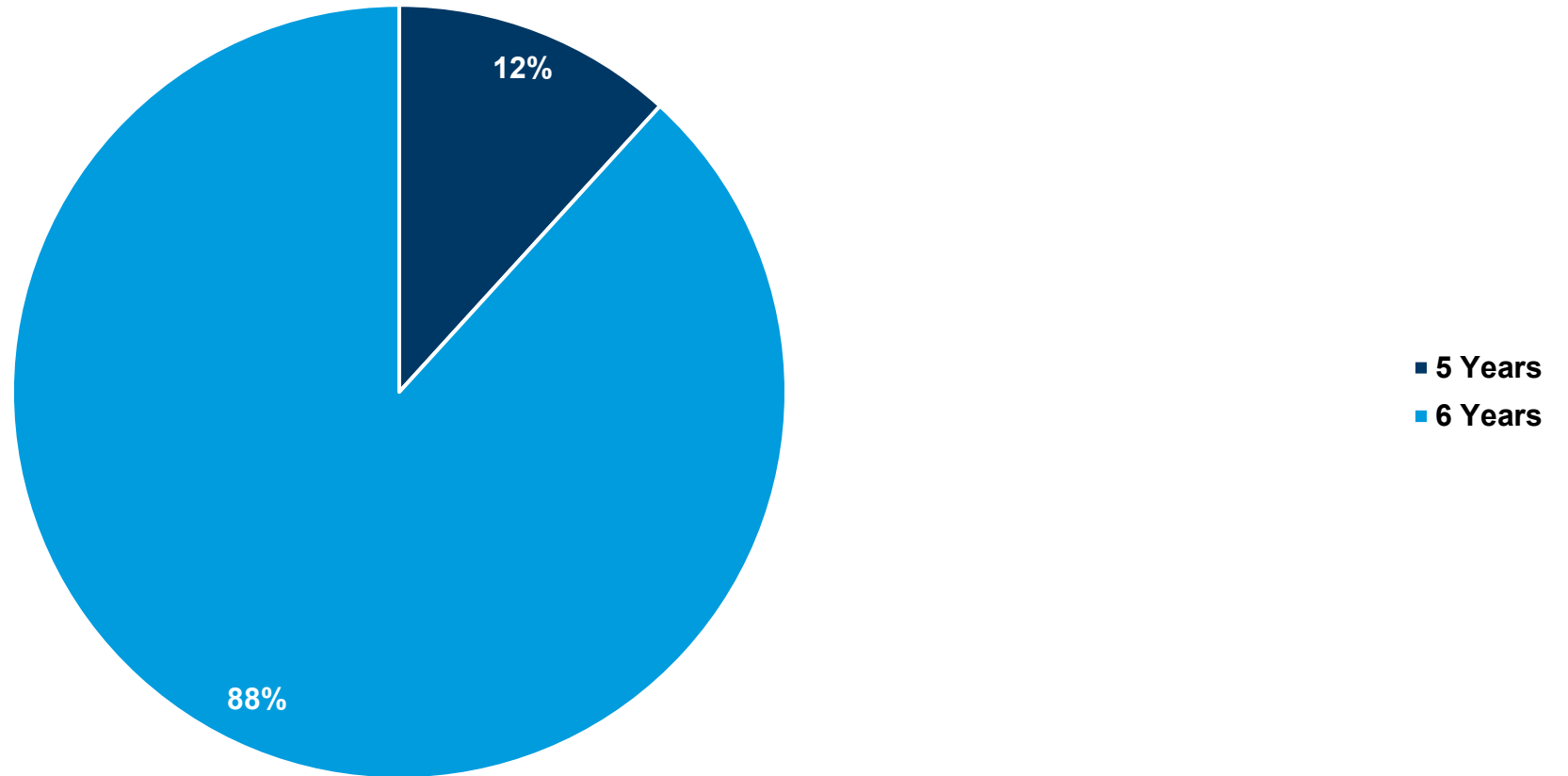
Investment period
\$500M-\$1B



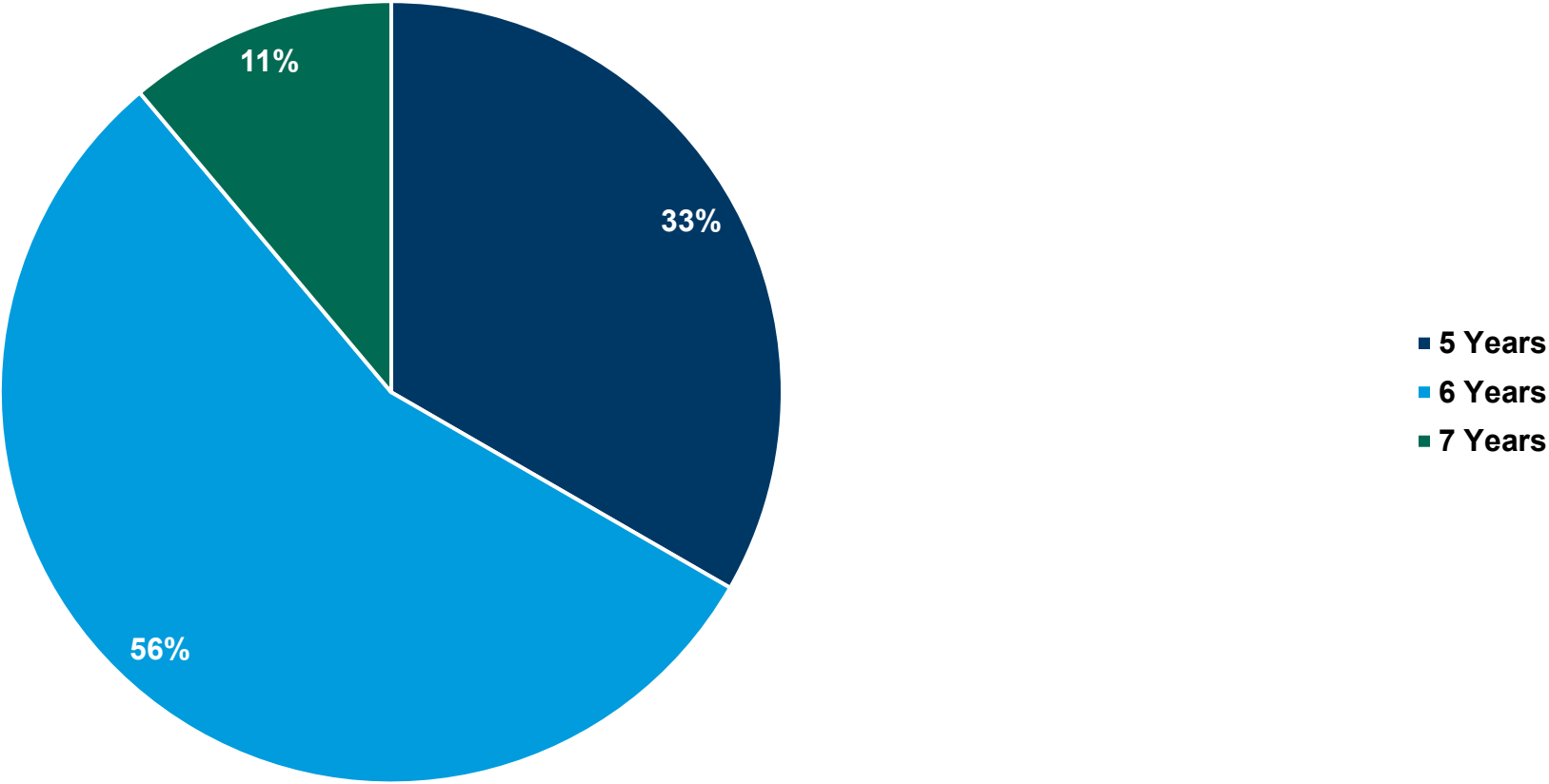
Investment period
\$1B-\$2.5B



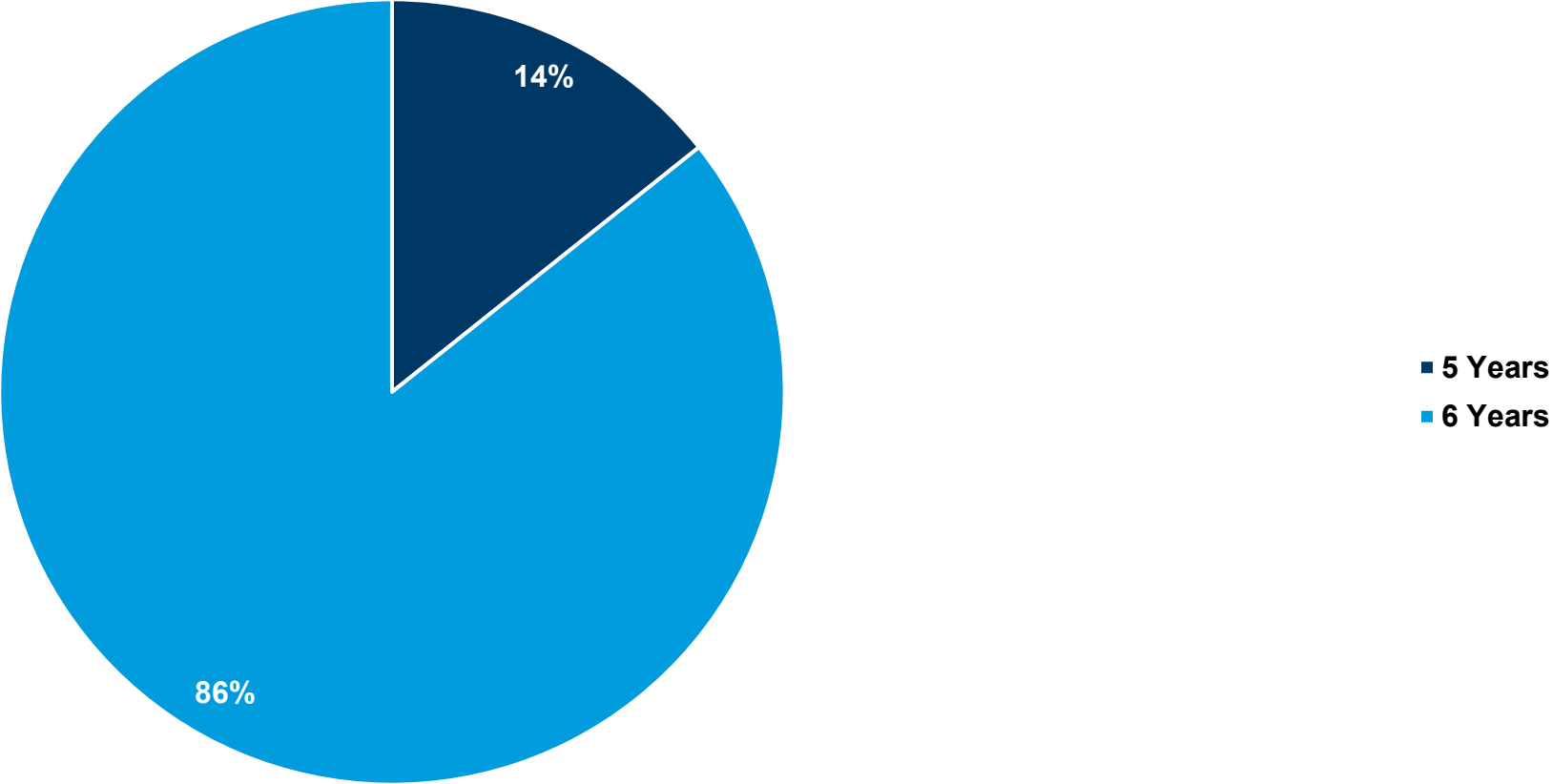
Investment period \$2.5B-\$5B



Investment period
\$5B-\$10B



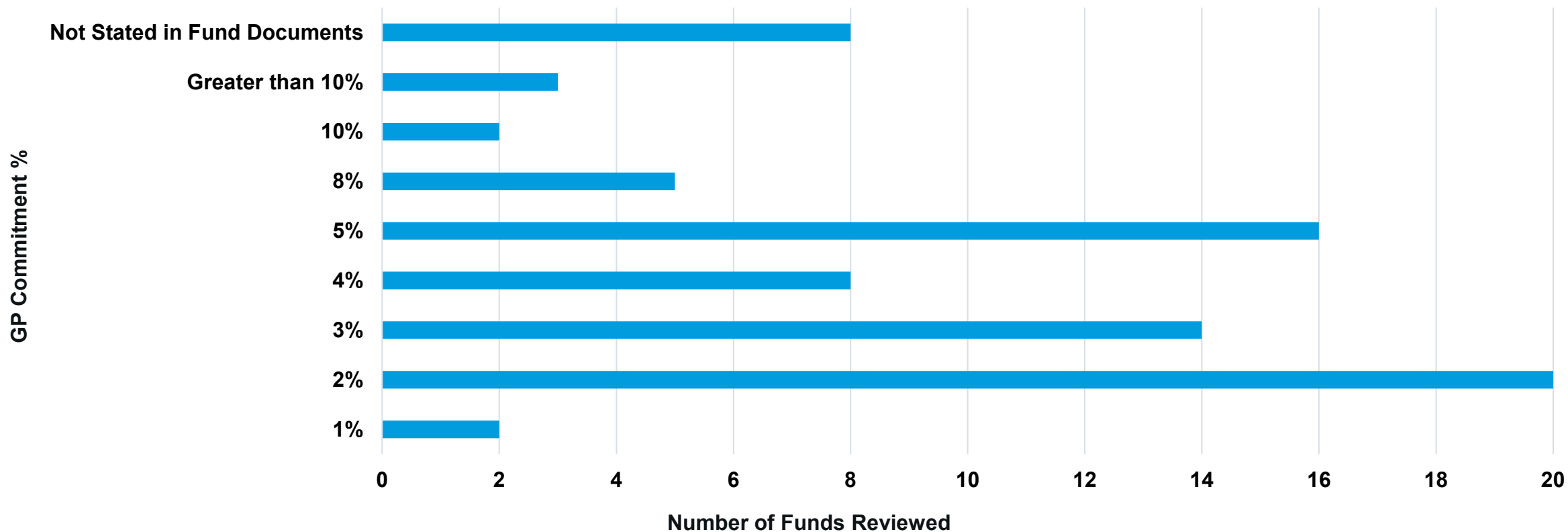
Investment period
>\$10B



GP commitment (% of commitments)

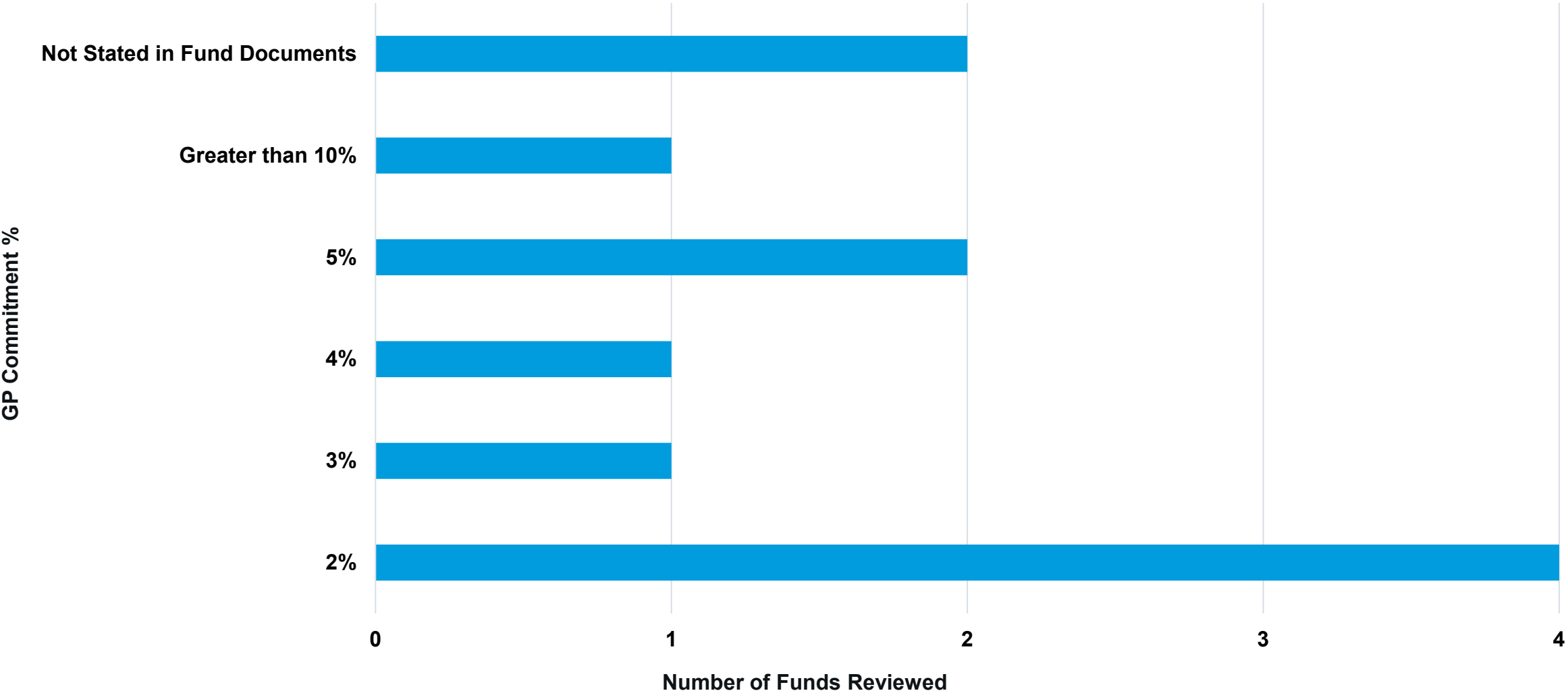
All Funds

Most GPs commit between 2% and 5% of the commitments to their funds, with 2%, 3%, and 5% being the most common options. Notably, a minimum GP commitment of 1% is among the least common, reflecting investor demand for GP alignment. It should be noted that these figures represent the minimum required commitments, and many GPs often commit more than this required amount. Lower required commitments are generally more common among smaller funds, indicative of funds often managed by less established managers with fewer investment professionals and a lower commitment required to be ‘meaningful’ relative to the principals’ personal wealth.



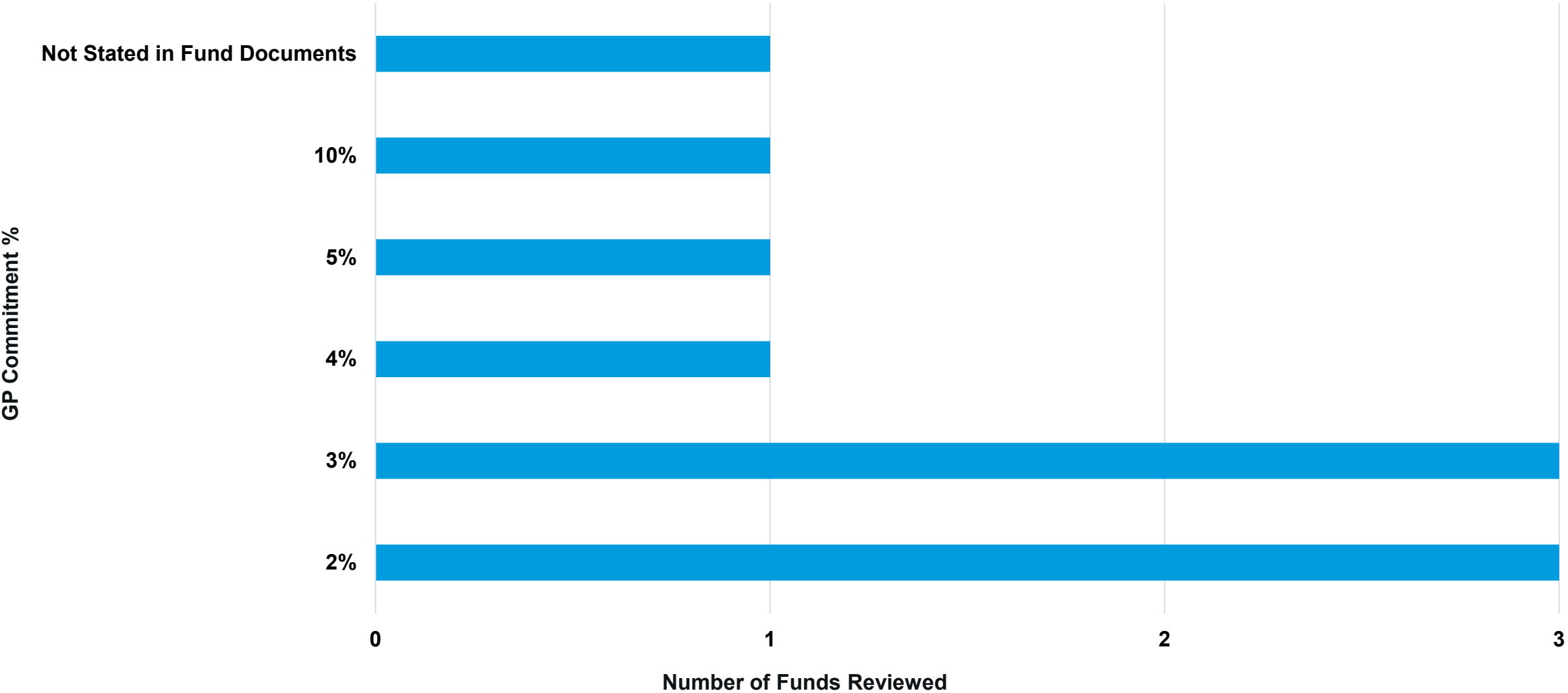
GP commitment (% of commitments)

<\$500M



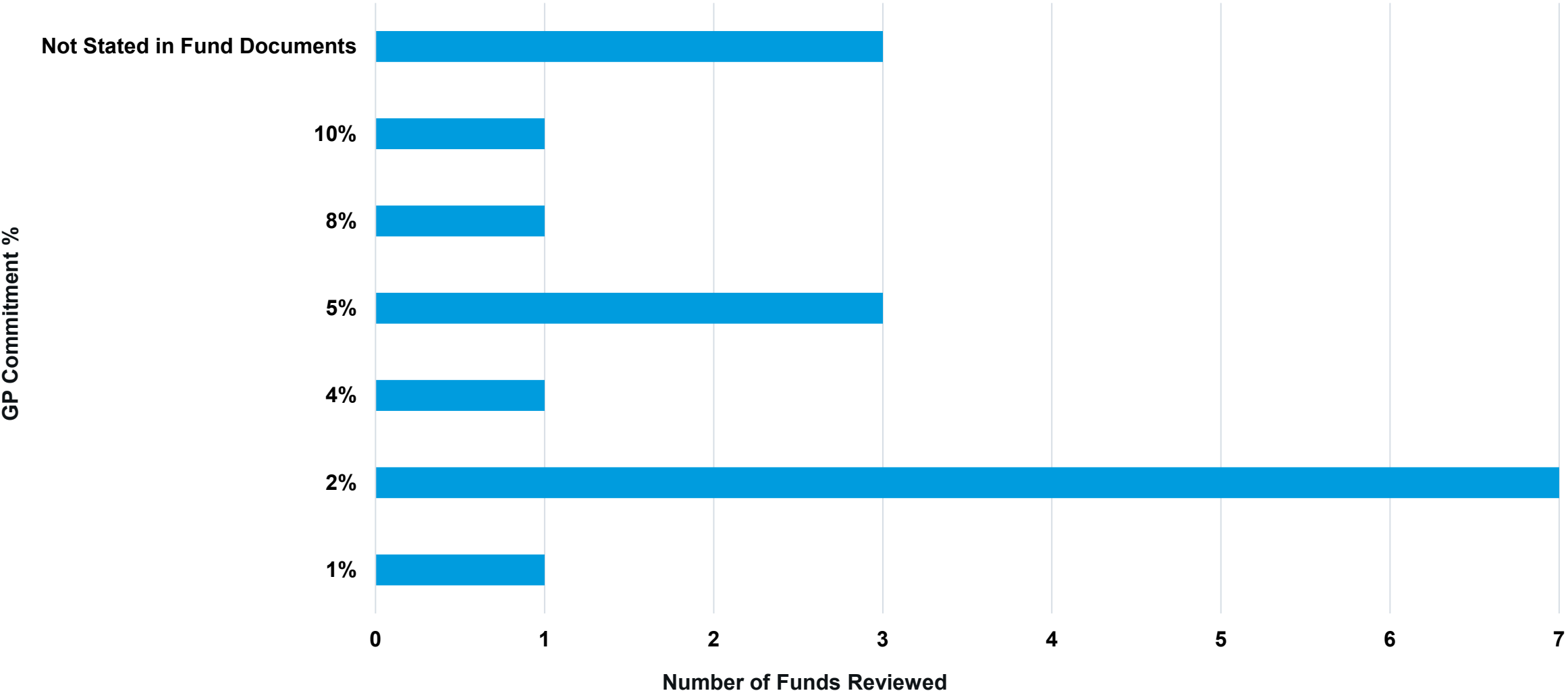
GP commitment (% of commitments)

\$500M-\$1B



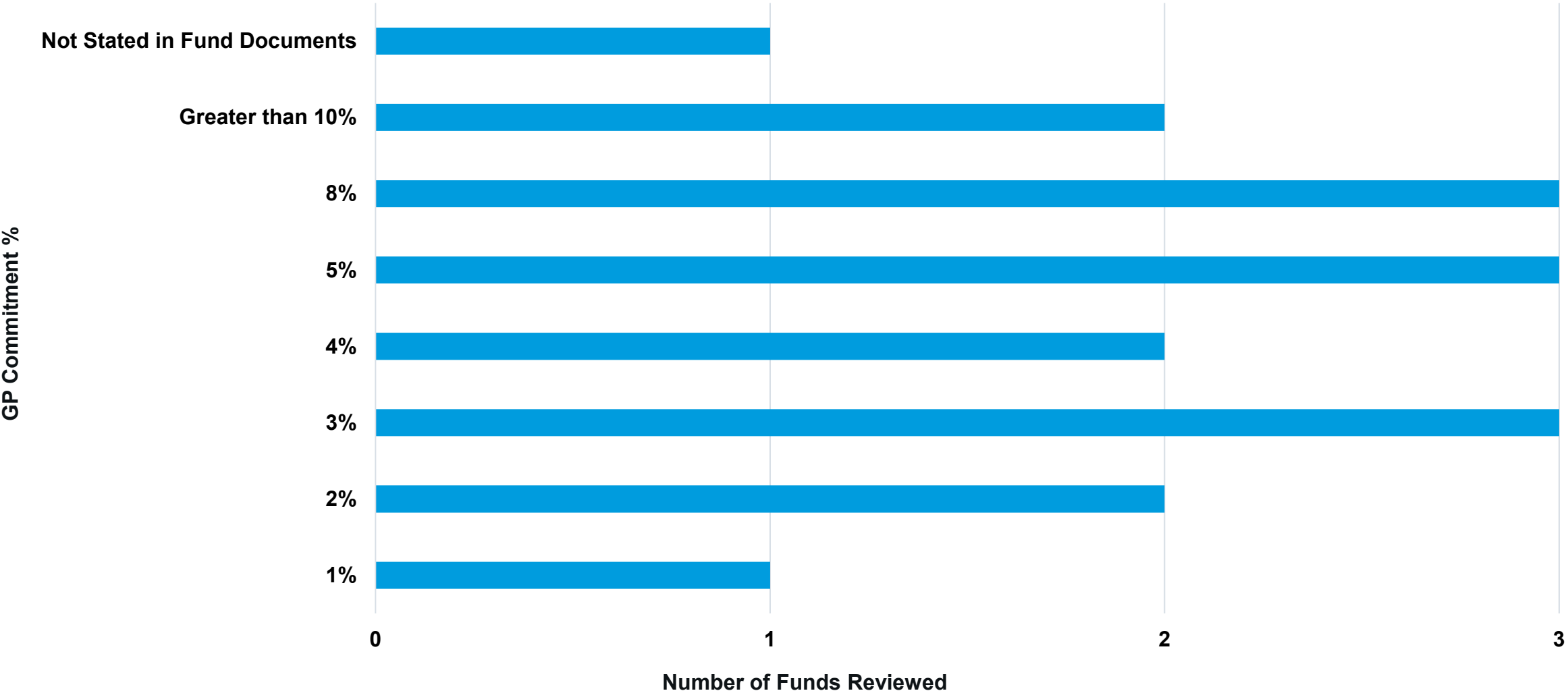
GP commitment (% of commitments)

\$1B-\$2.5B



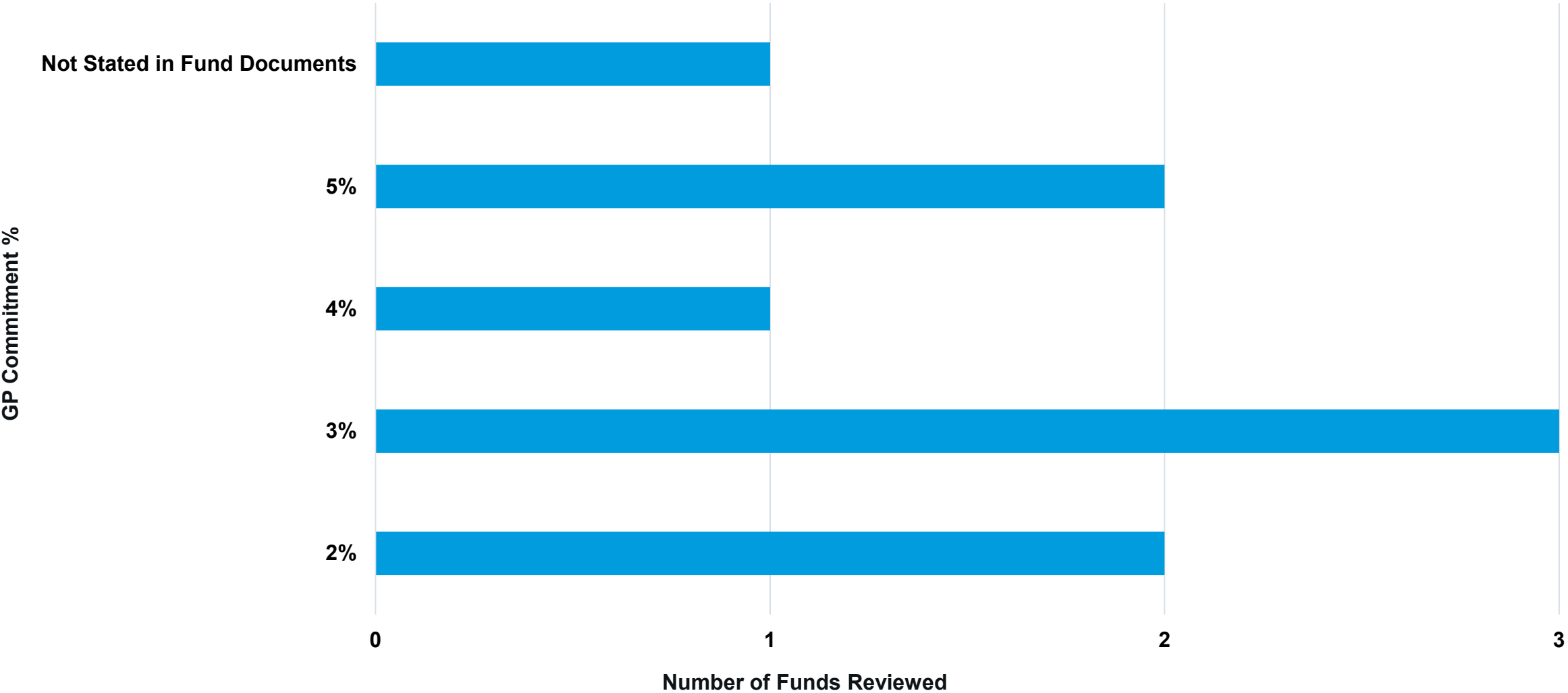
GP commitment (% of commitments)

\$2.5B-\$5B

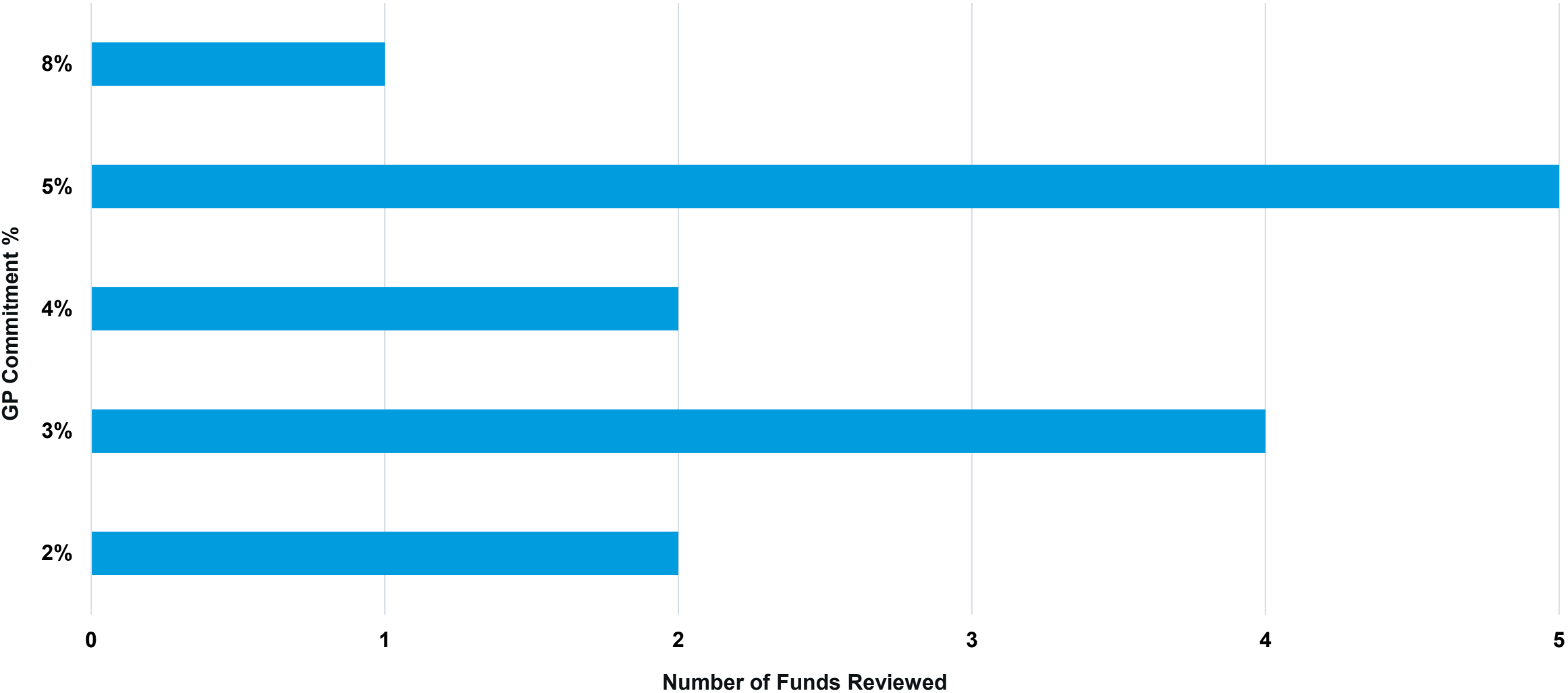


GP commitment (% of commitments)

\$5B-\$10B



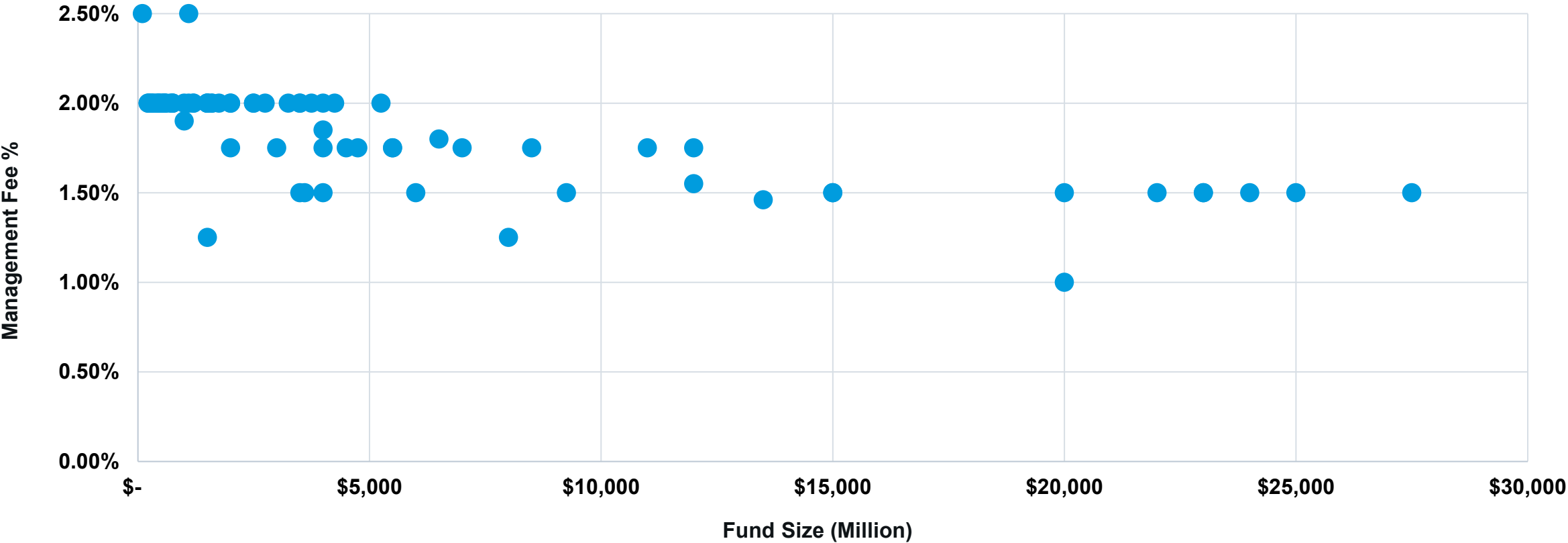
GP commitment (% of commitments) >\$10B



Annual management fee rate – Investment period (% of base)

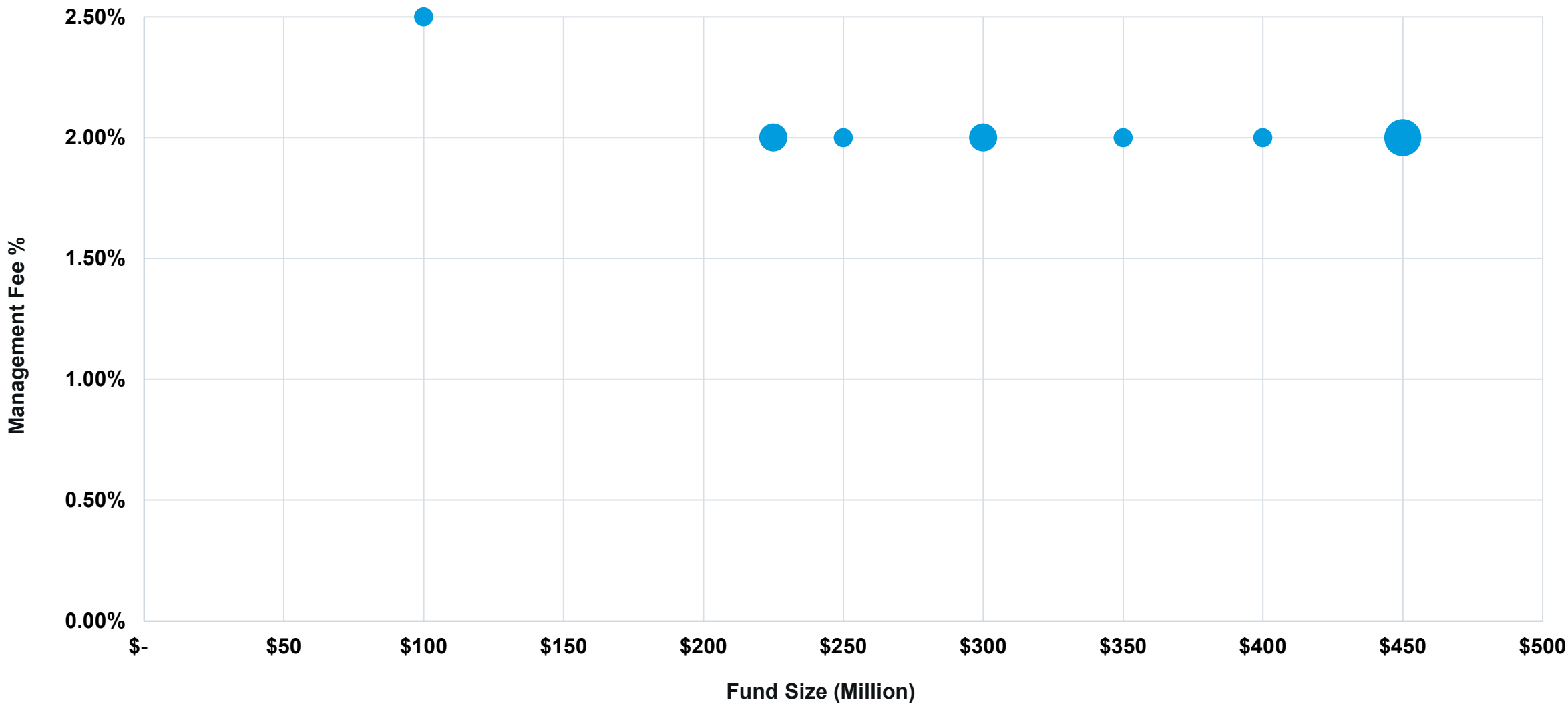
All Funds

As has been the industry norm for many years, a management fee rate of 2% per annum (or more) is dominant at smaller fund sizes up to funds around \$3.5 billion. A 1.75% headline rate is most common in the \$5 billion to \$10 billion category (with some exceptions), with a number in the \$2.5 billion to \$5 billion category as well. Funds larger than \$9 billion typically have a 1.5% per annum initial management fee. It is important to note that this data reflects standard “rack rates” and many GPs continue to offer discounts for early and/or large commitments, particularly as part of a strategy to generate momentum amidst a challenging fundraising environment. Although data on discount rates is less rich, as a general rule LPs making very large, early commitments are likely to receive the largest discounts available.



Annual management fee rate – Investment period (% of base)

<\$500M



Annual management fee rate – Investment period (% of base)

\$500M-\$1B



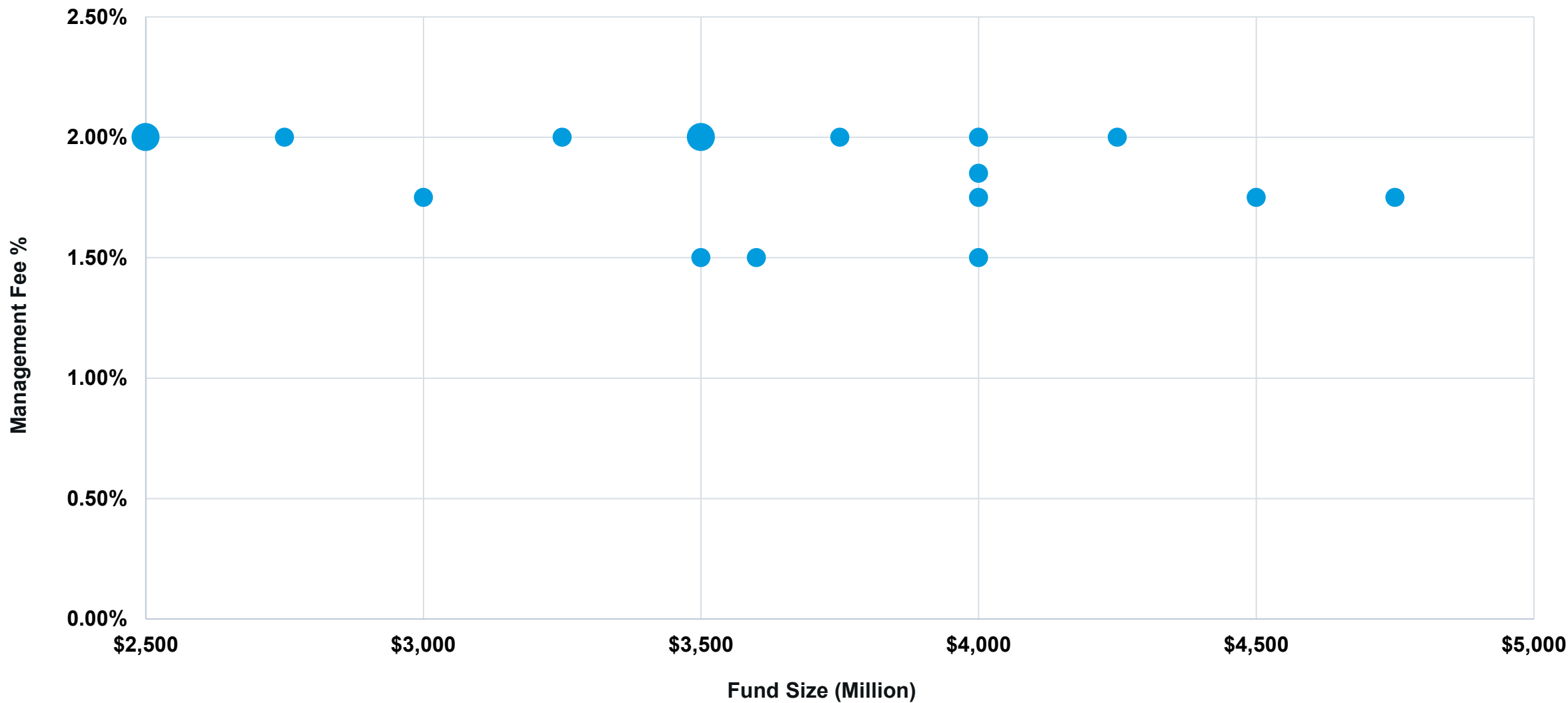
Annual management fee rate – Investment period (% of base)

\$1B-\$2.5B



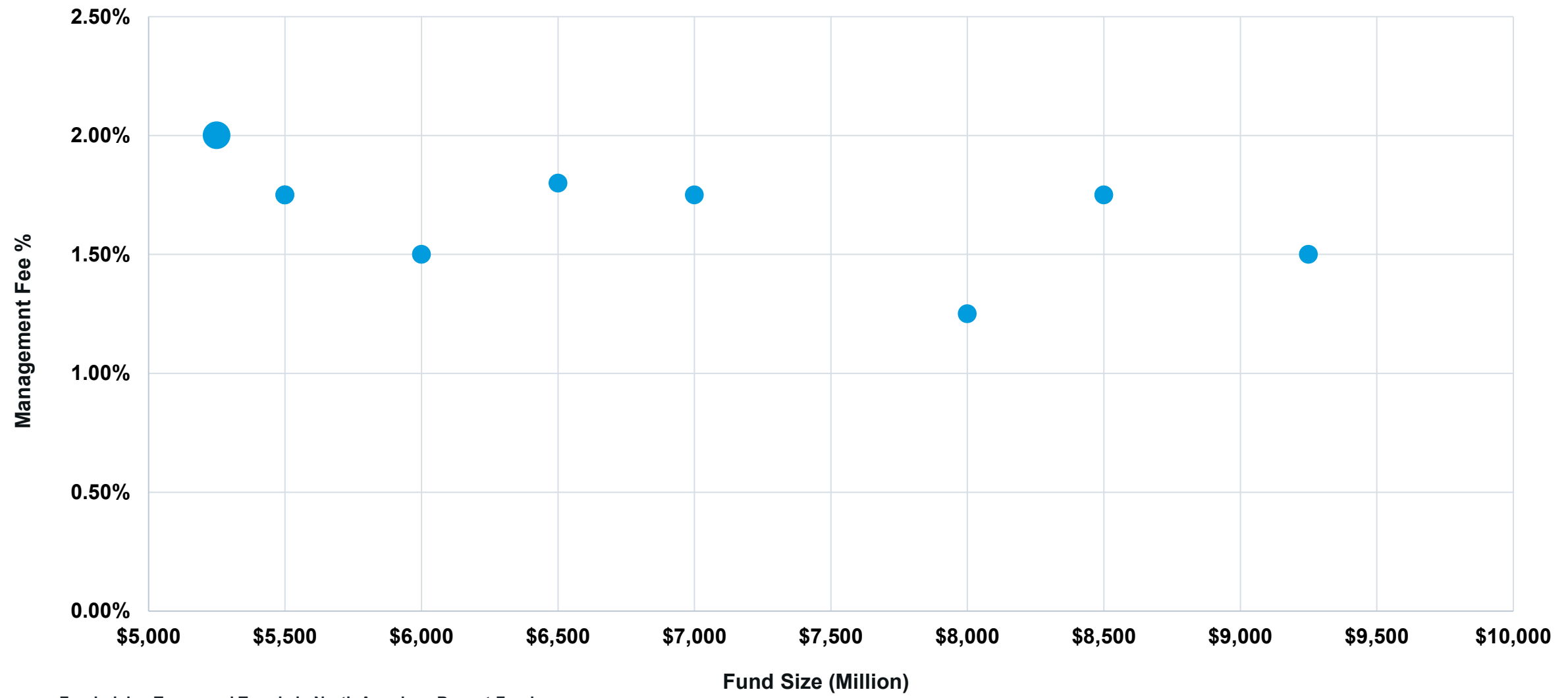
Annual management fee rate – Investment period (% of base)

\$2.5B-\$5B



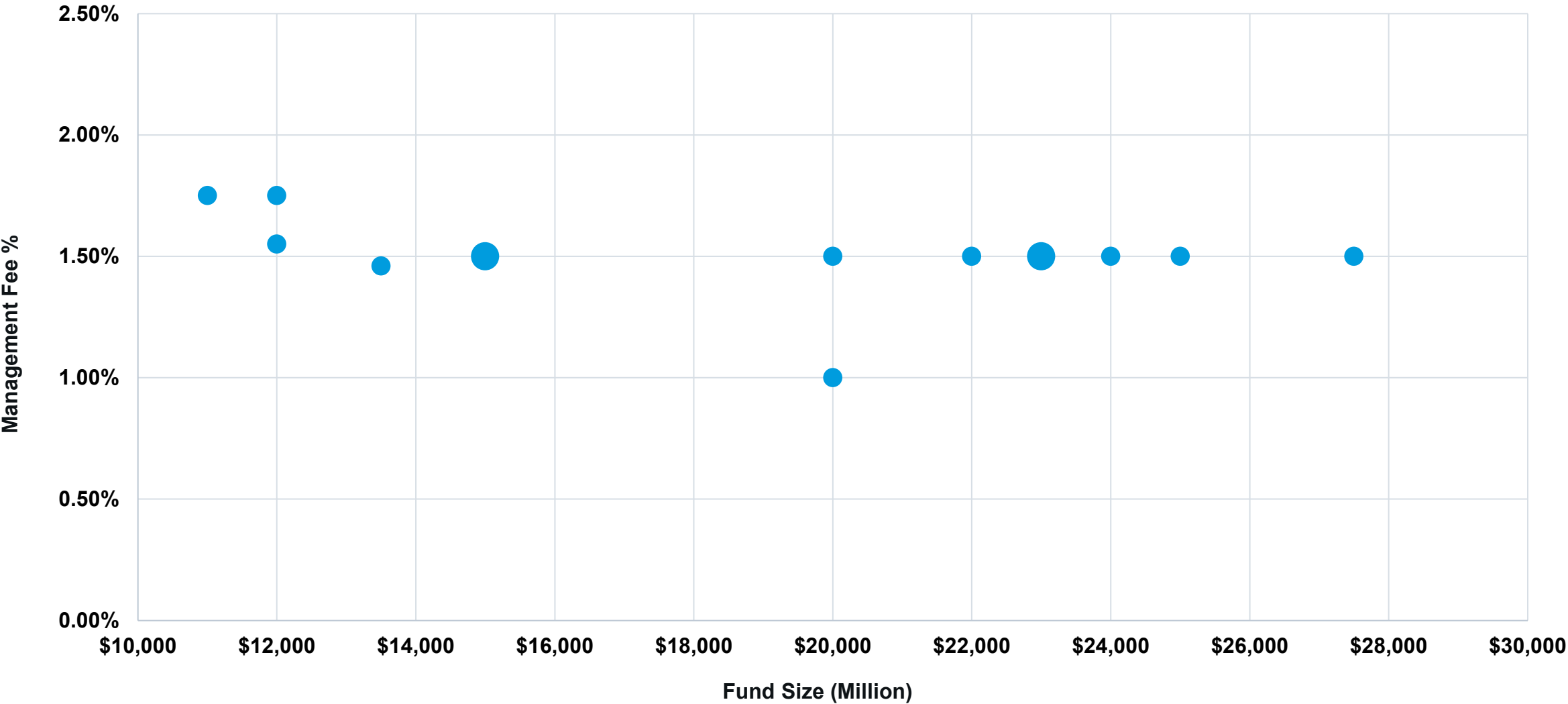
Annual management fee rate – Investment period (% of base)

\$5B-\$10B



Annual management fee rate – Investment period (% of base)

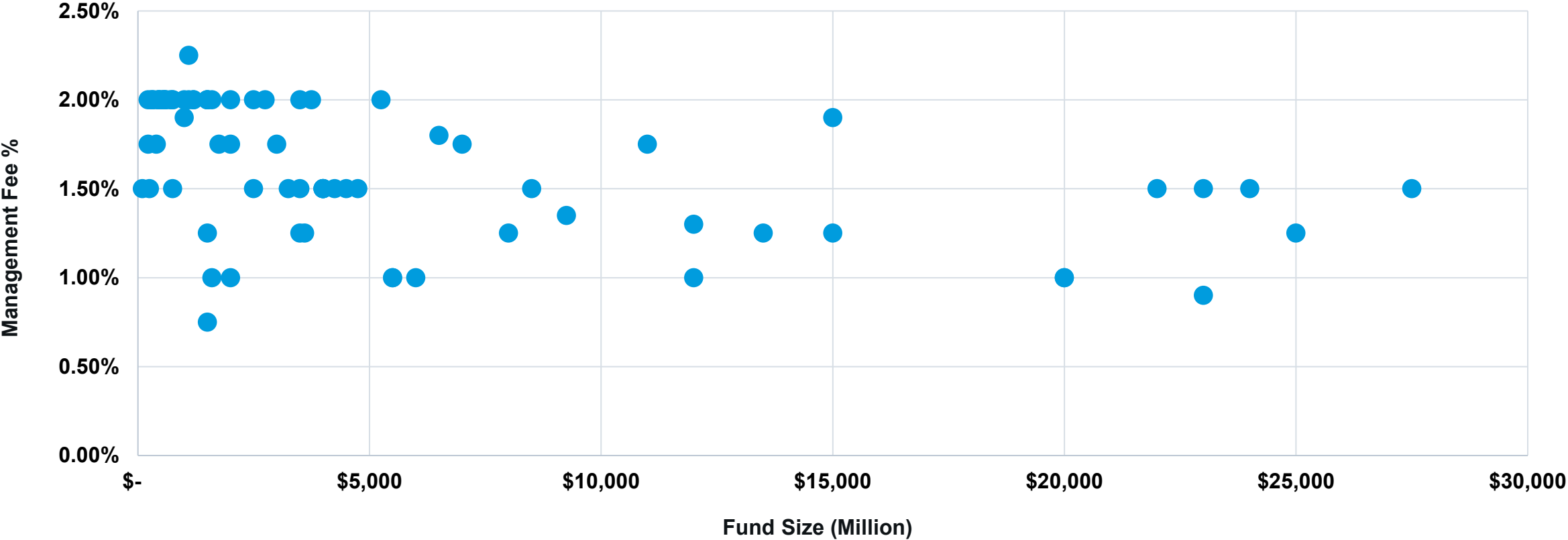
>\$10B



Annual management fee rate – Post-investment period (% of base)

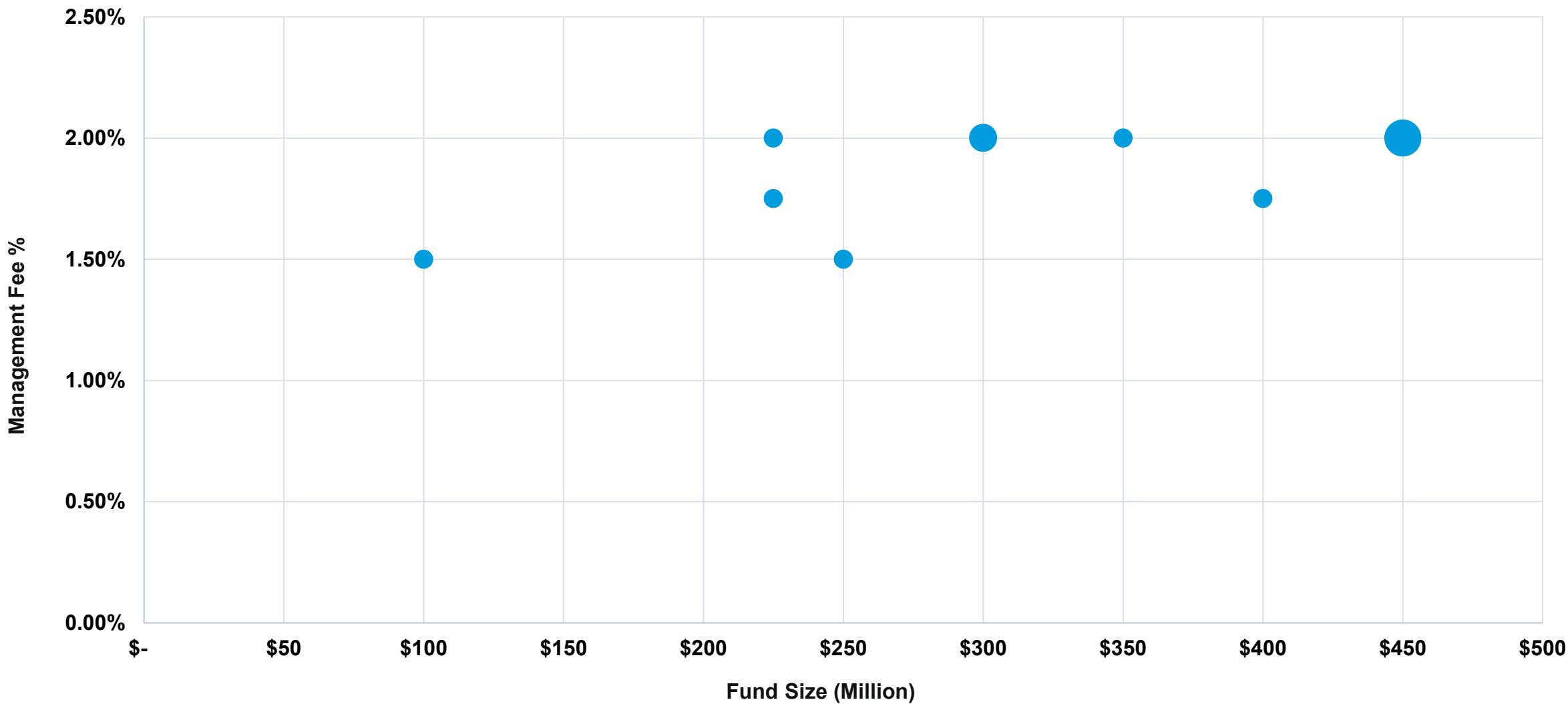
All Funds

A reduction in management fee percentage after the end of the investment period becomes more common as fund sizes increase. While there is significant variance in this term, funds over \$5 billion are generally more likely to feature a rate of 1.5% or less, with lower rates of 1.25% or 1.00% somewhat evenly distributed among the various size classes. Only some smaller funds preserve 2.0% or a “middle ground” of 1.75%, reflecting the lower overall fee income to these managers and the value of higher fees for funds with smaller managers for operational and competitive reasons. We note that the management fee base in almost all buyout funds changes from total capital commitments to some calculation of invested capital.



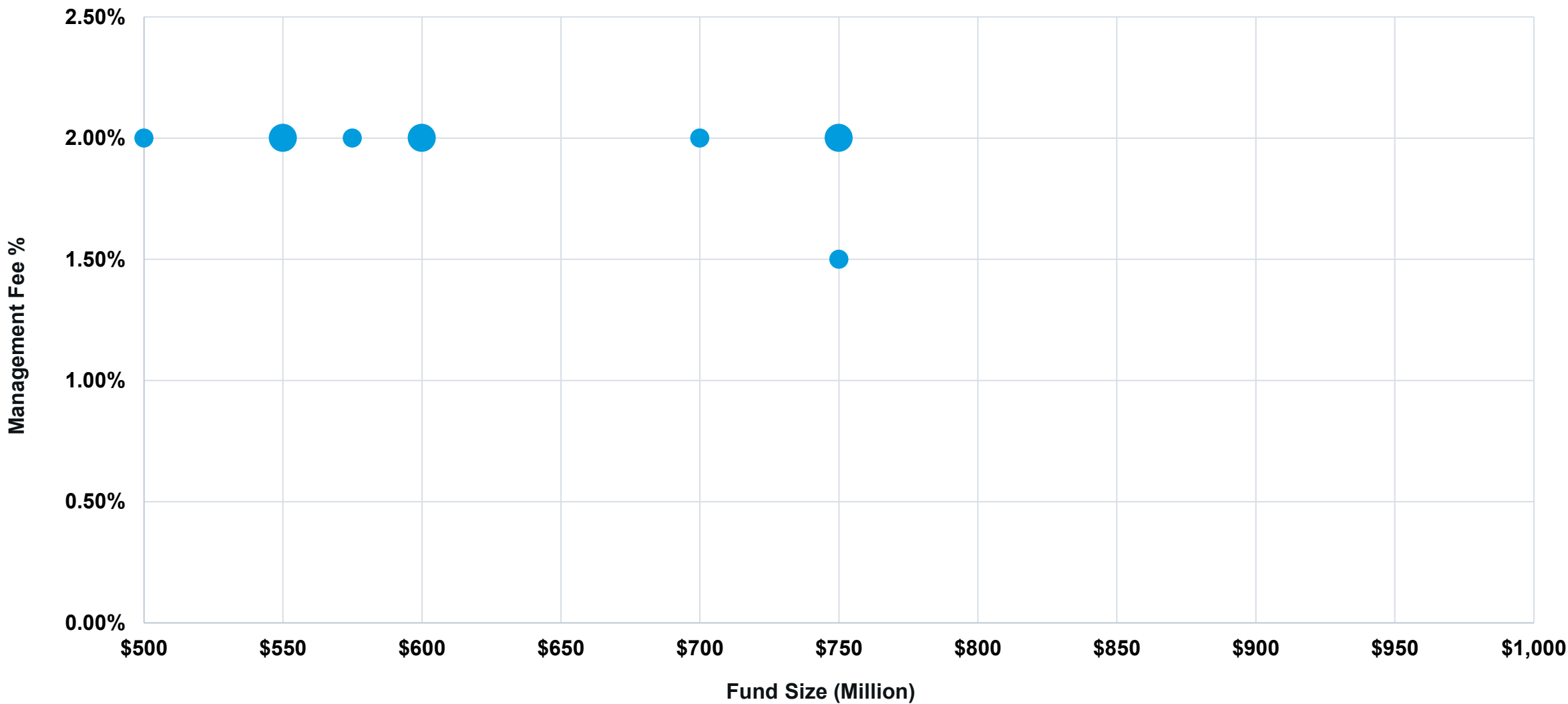
Annual management fee rate – Post-investment period (% of base)

<\$500M



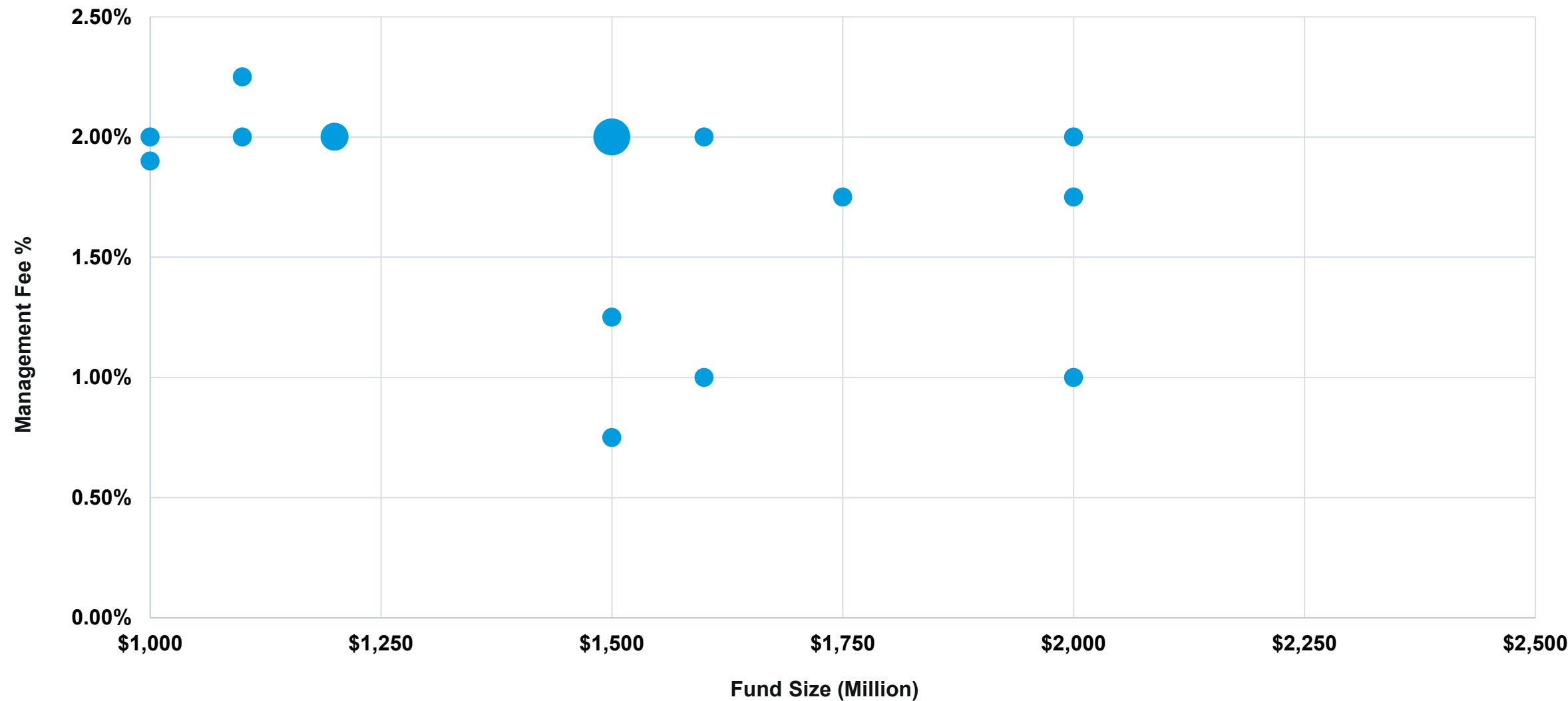
Annual management fee rate – Post-investment period (% of base)

\$500M-\$1B



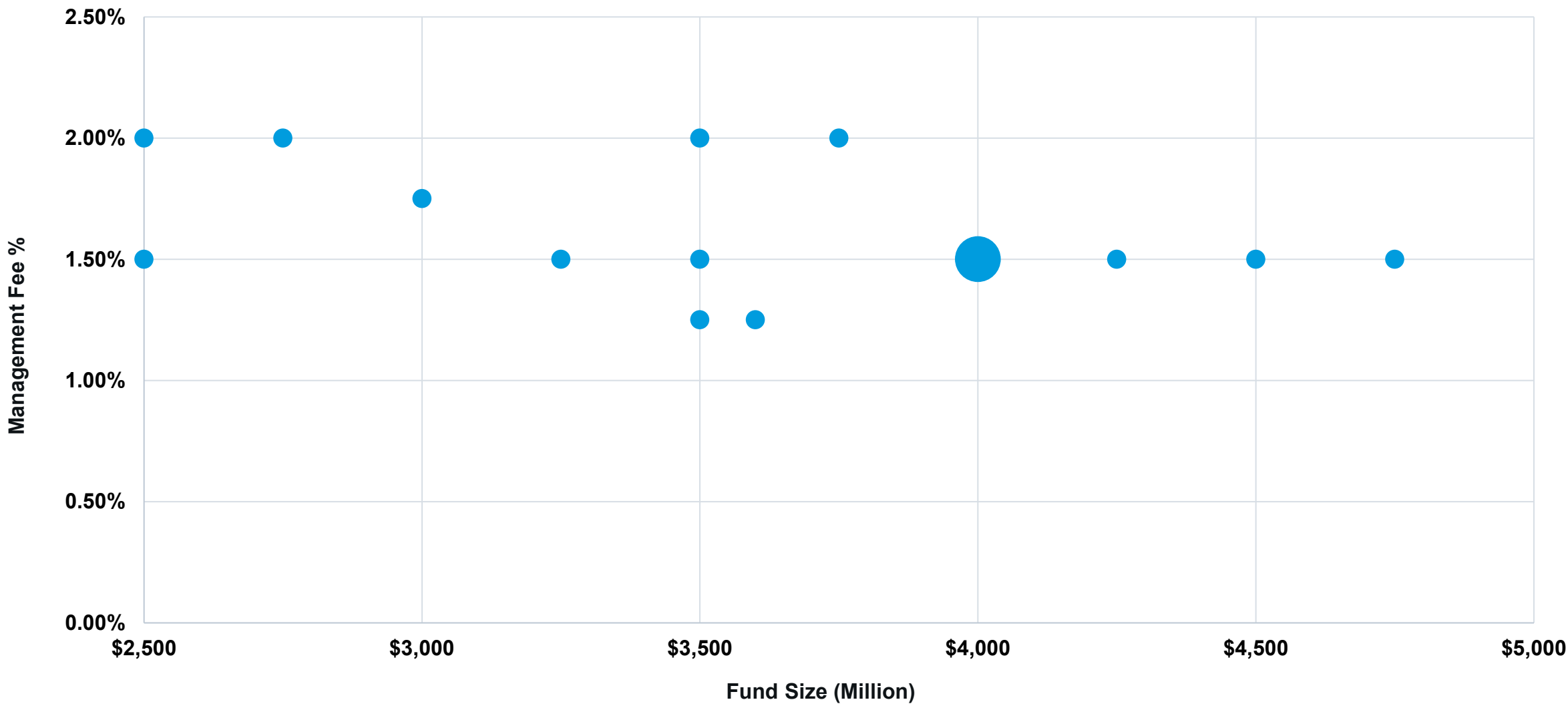
Annual management fee rate – Post-investment period (% of base)

\$1B-\$2.5B



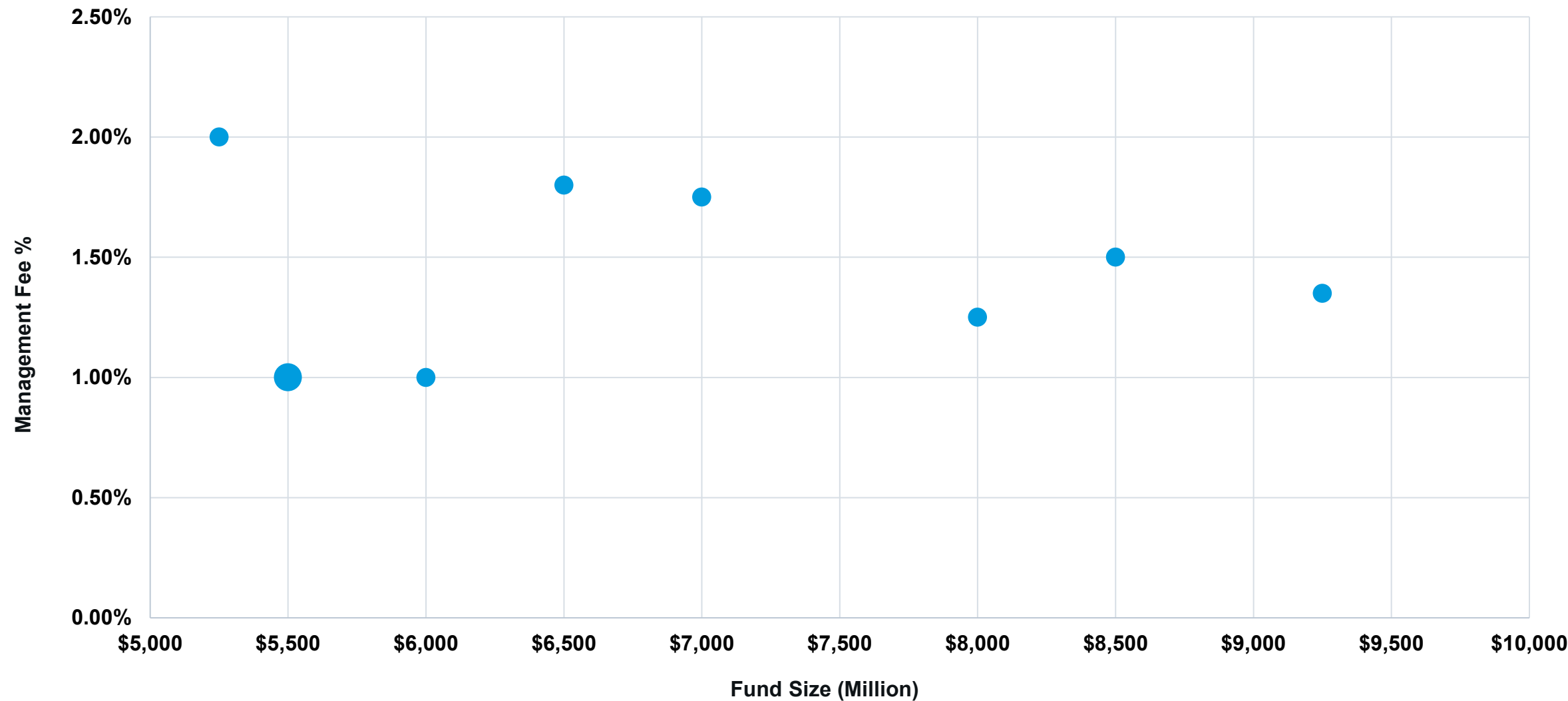
Annual management fee rate – Post-investment period (% of base)

\$2.5B-\$5B



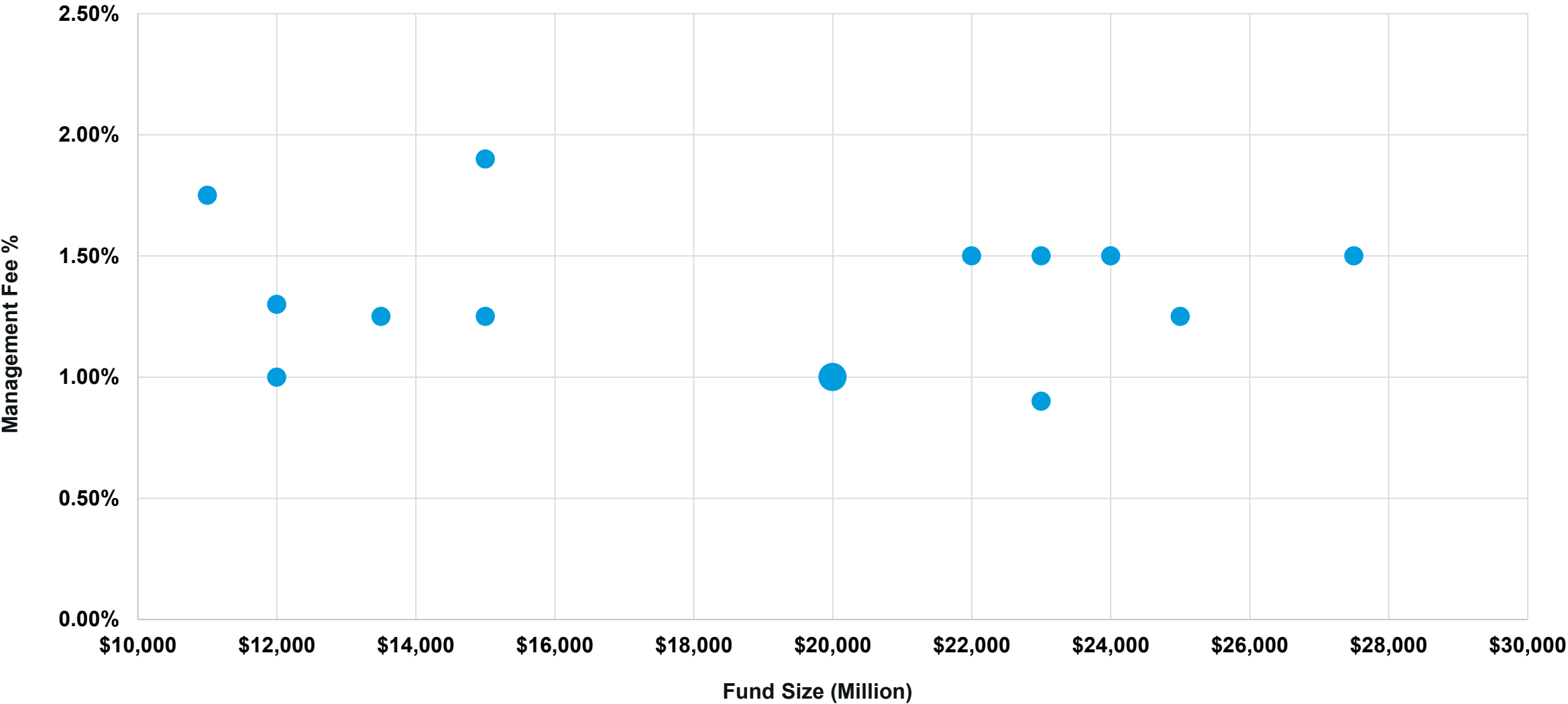
Annual management fee rate – Post-investment period (% of base)

\$5B-\$10B



Annual management fee rate – Post-investment period (% of base)

>\$10B



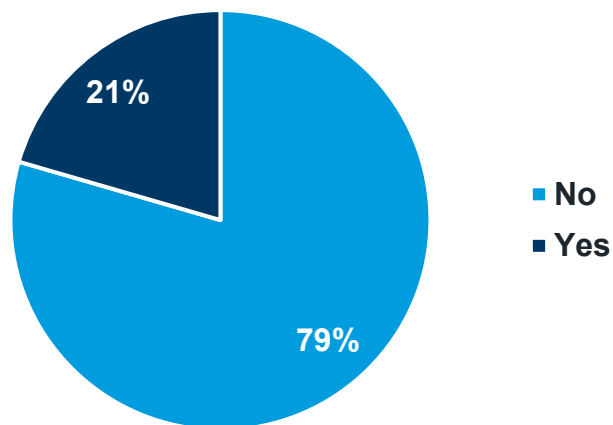
Management fee discounts

All Funds

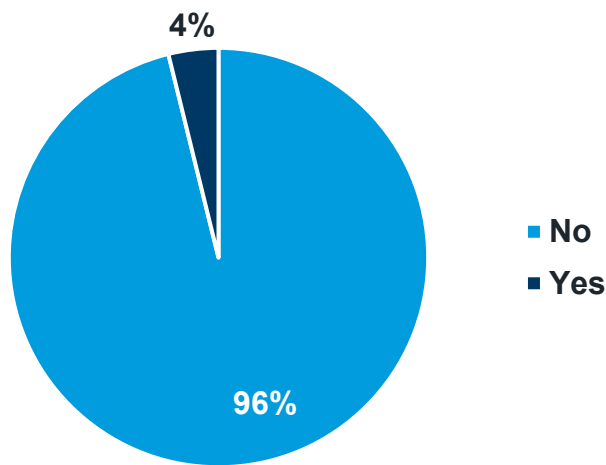
Fund documents do not typically specify fee discount rates across fund size classes. Those funds that set out discount rates in their documents are more commonly at the ends of the barbell in the smallest and largest size ranges, and generally focus on size-based discounts. For smaller funds, this often reflects efforts to attract a critical mass of institutional investor support in order to raise funds and develop market presence. For larger funds, the dynamic reflects an effort to incentivize the larger investors necessary to hit vast target sizes, to standardize treatment across LPs for fairness reasons and to cut down on costly negotiations with individual investors.

The data depicted here only captures funds that specify discounts in the definitive fund documentation: a number of funds will offer discounts but do not set out the detail in their main agreements. Discounts agreed via side letter are more difficult to track accurately.

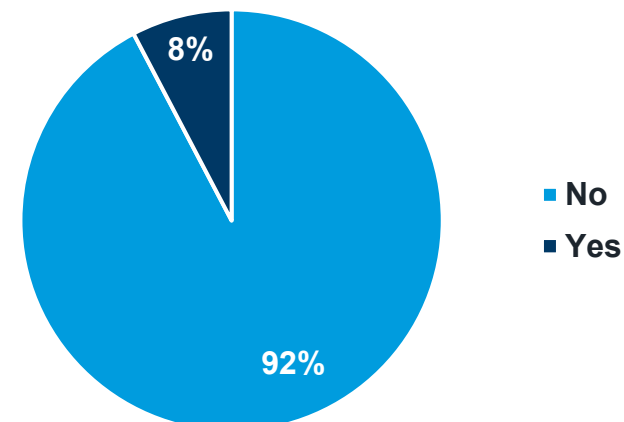
Discount for large investors?



Discount for loyal investors?

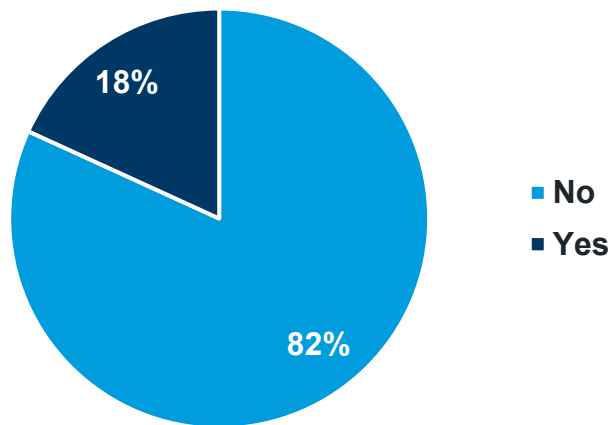


Discount for early investors?

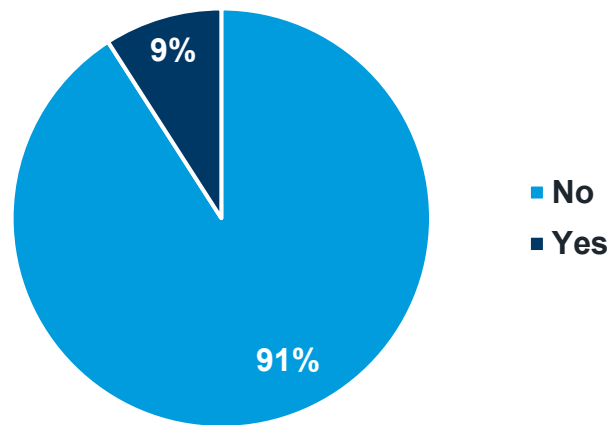


Management fee discounts <\$500M

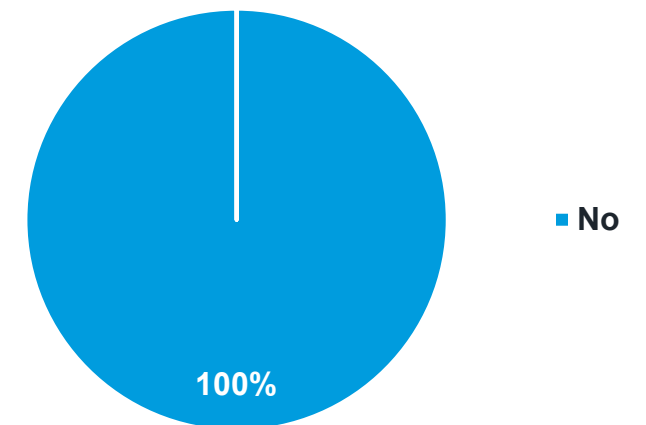
Discount for large investors?



Discount for loyal investors?



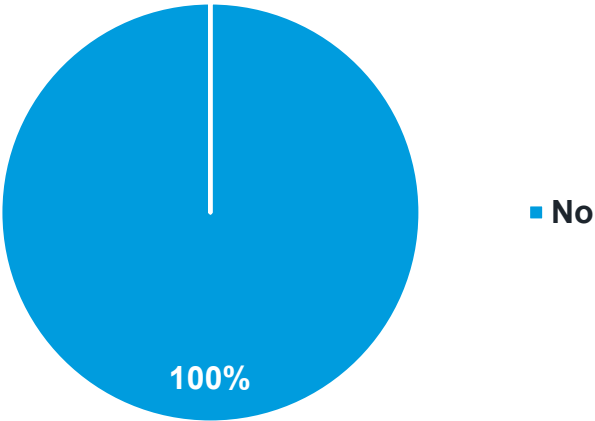
Discount for early investors?



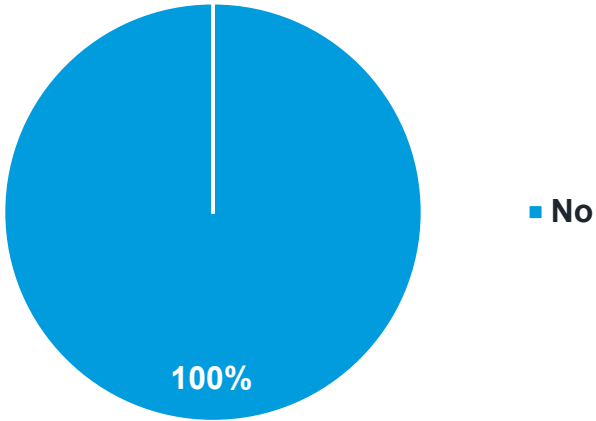
Management fee discounts

\$500M-\$1B

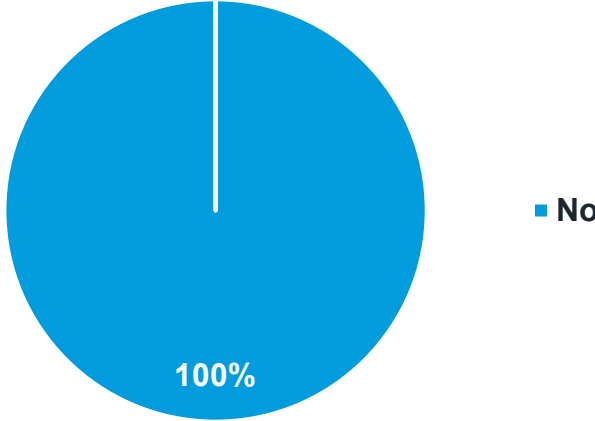
Discount for large investors?



Discount for loyal investors?

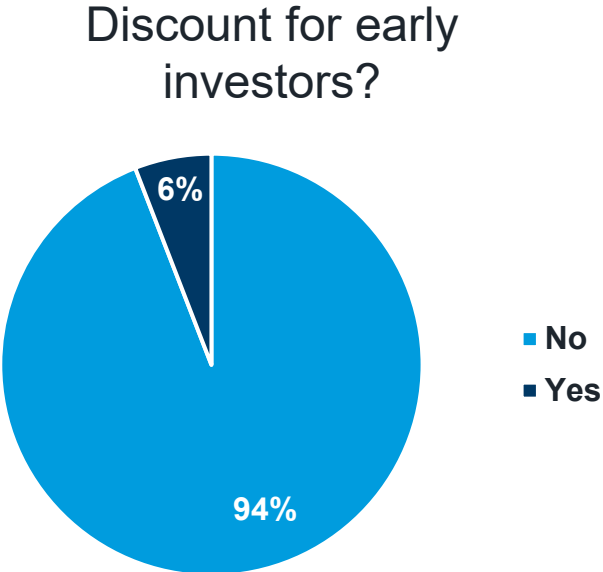
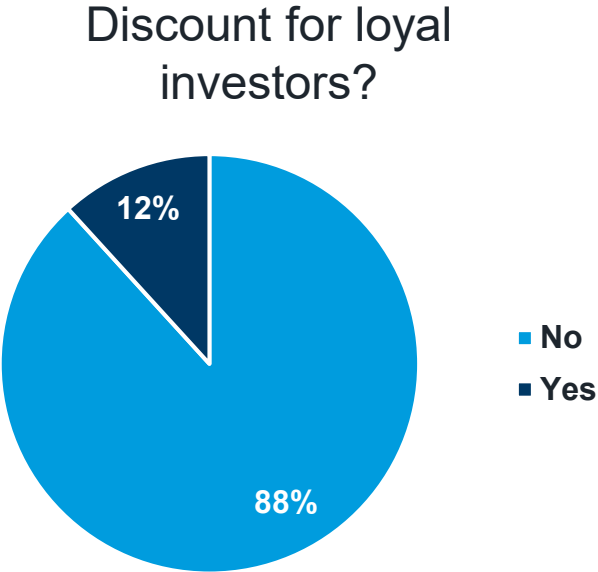
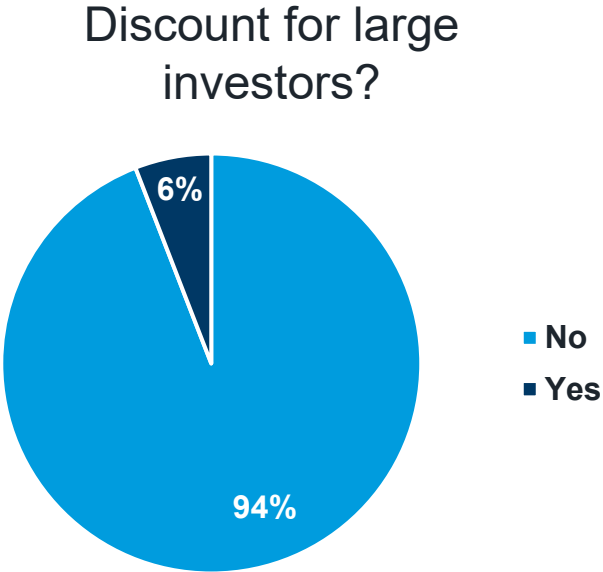


Discount for early investors?



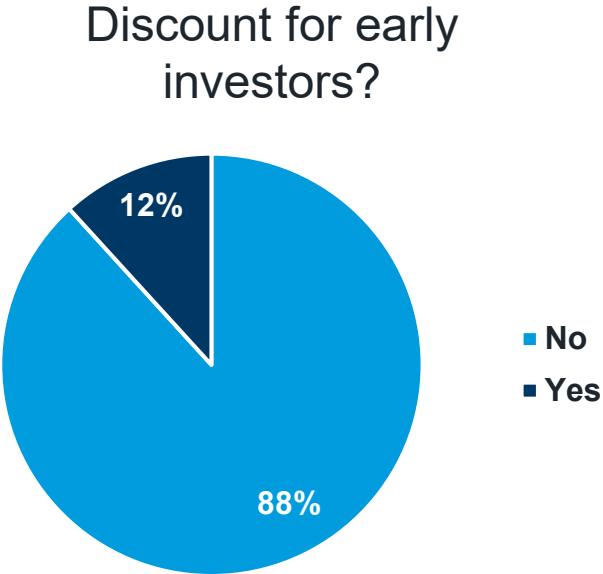
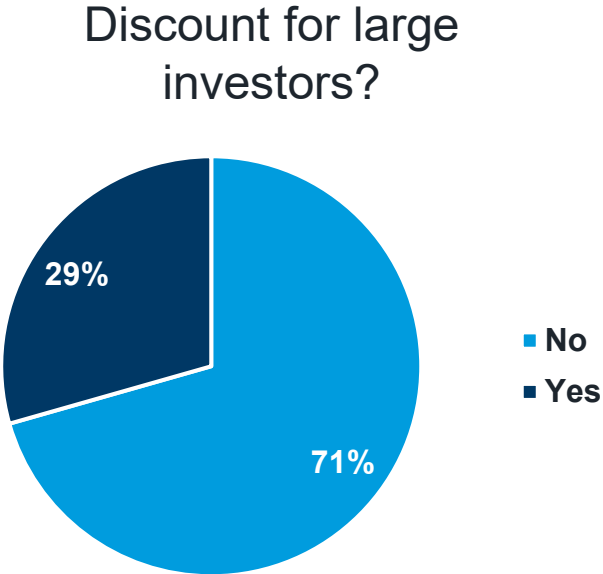
Management fee discounts

\$1B-\$2.5B



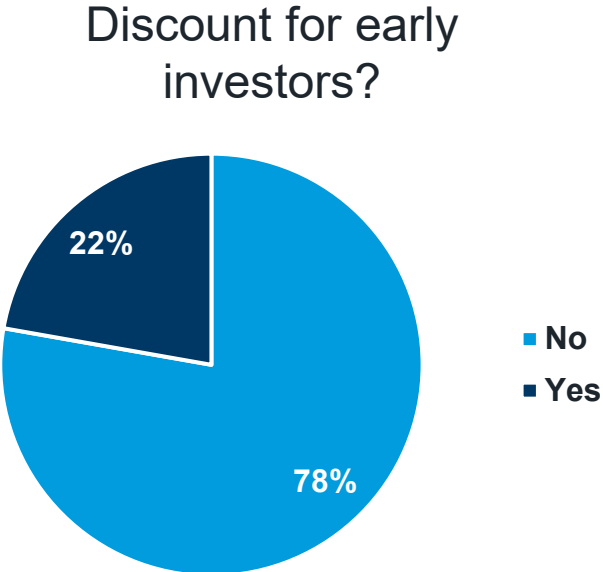
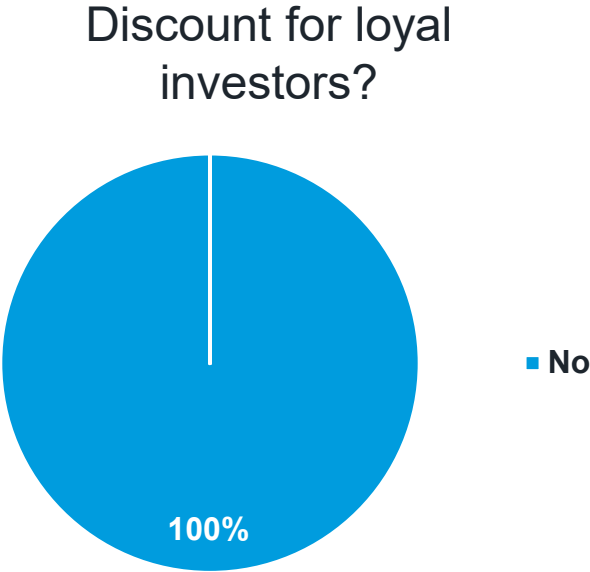
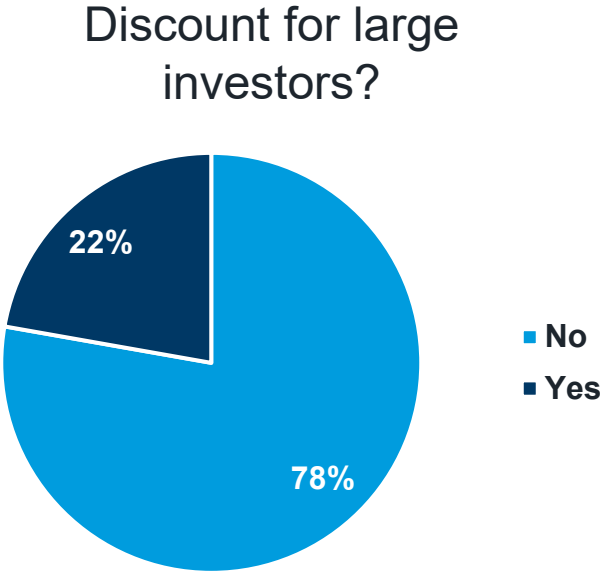
Management fee discounts

\$2.5B-\$5B



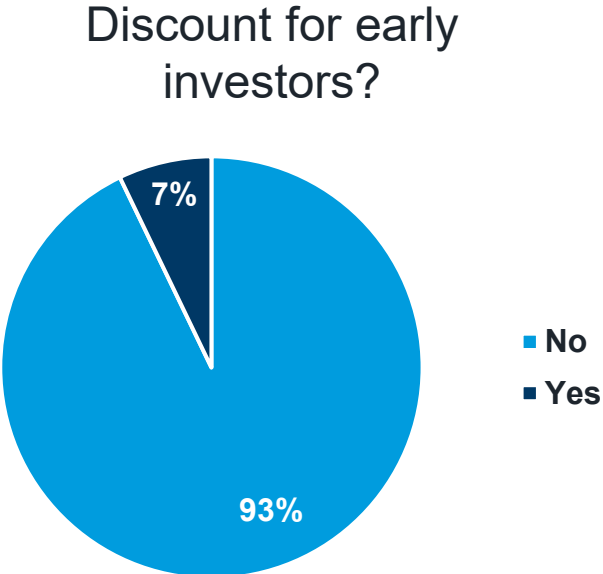
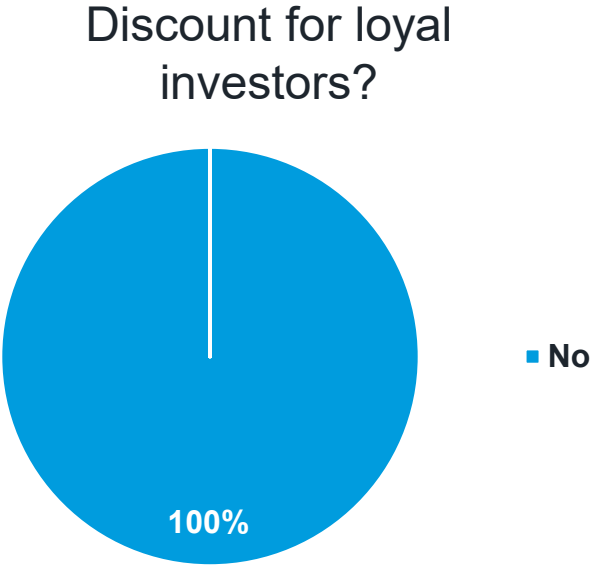
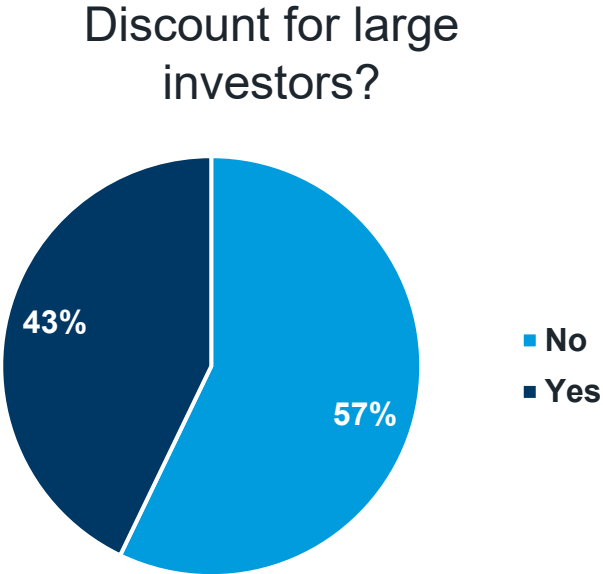
Management fee discounts

\$5B-\$10B



Management fee discounts

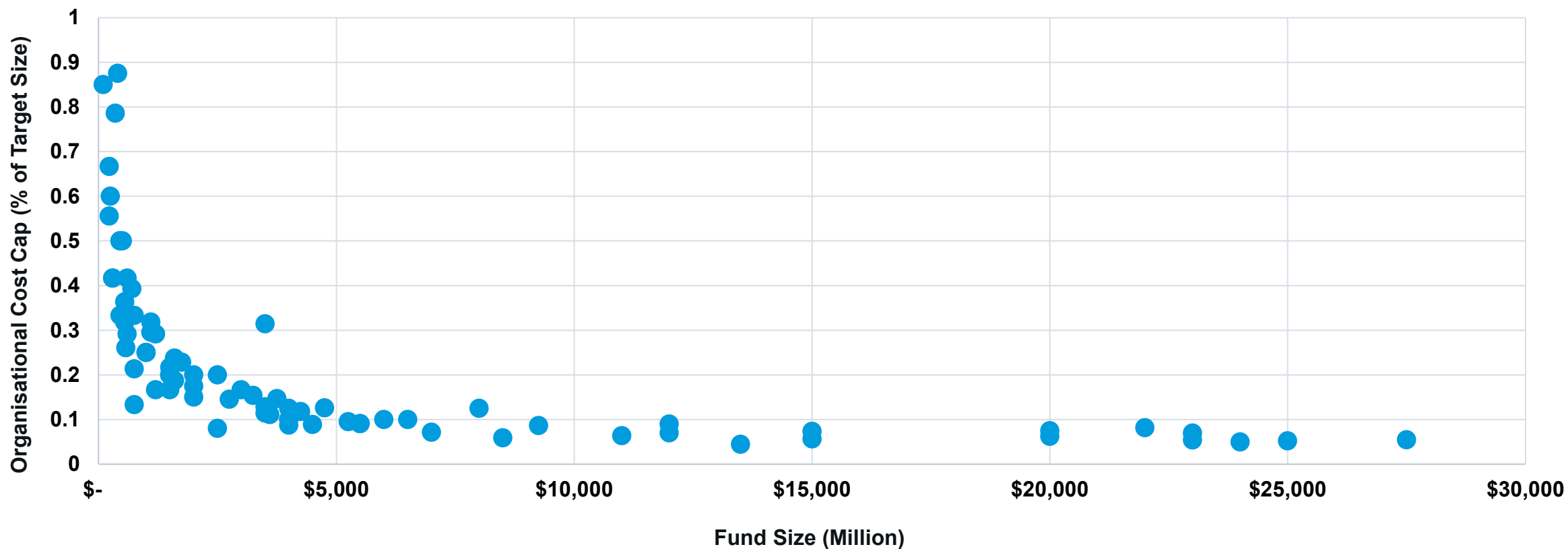
>\$10B



Organizational expense cap

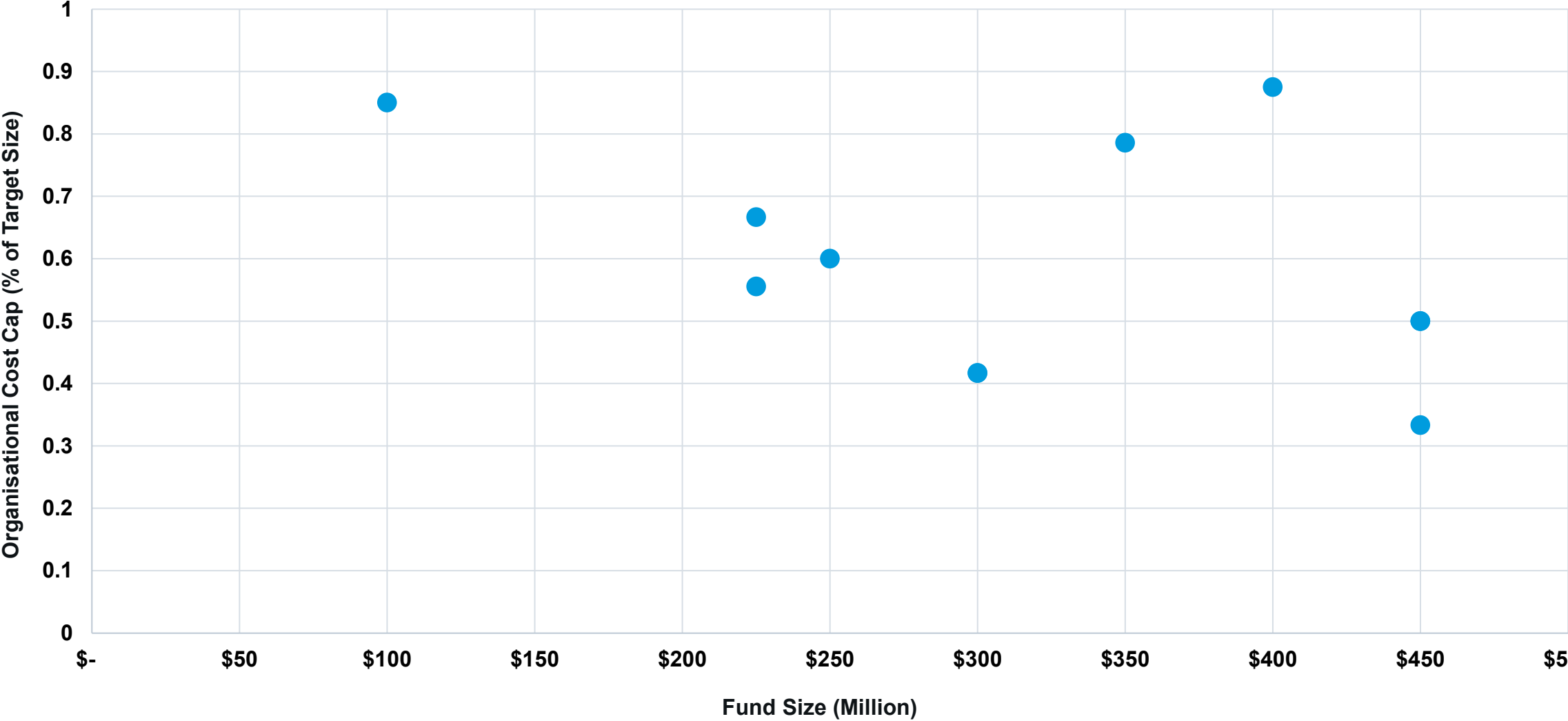
All Funds

As would be logically expected, organizational expense caps trend downward on a percentage basis as fund sizes increase starting from 0.85% of total commitments for the smallest funds and moving below 0.1% of total commitments for the largest funds. All funds (except for one) targeting \$5 billion or more in commitments feature a cap at or below 0.1% of the fund size.



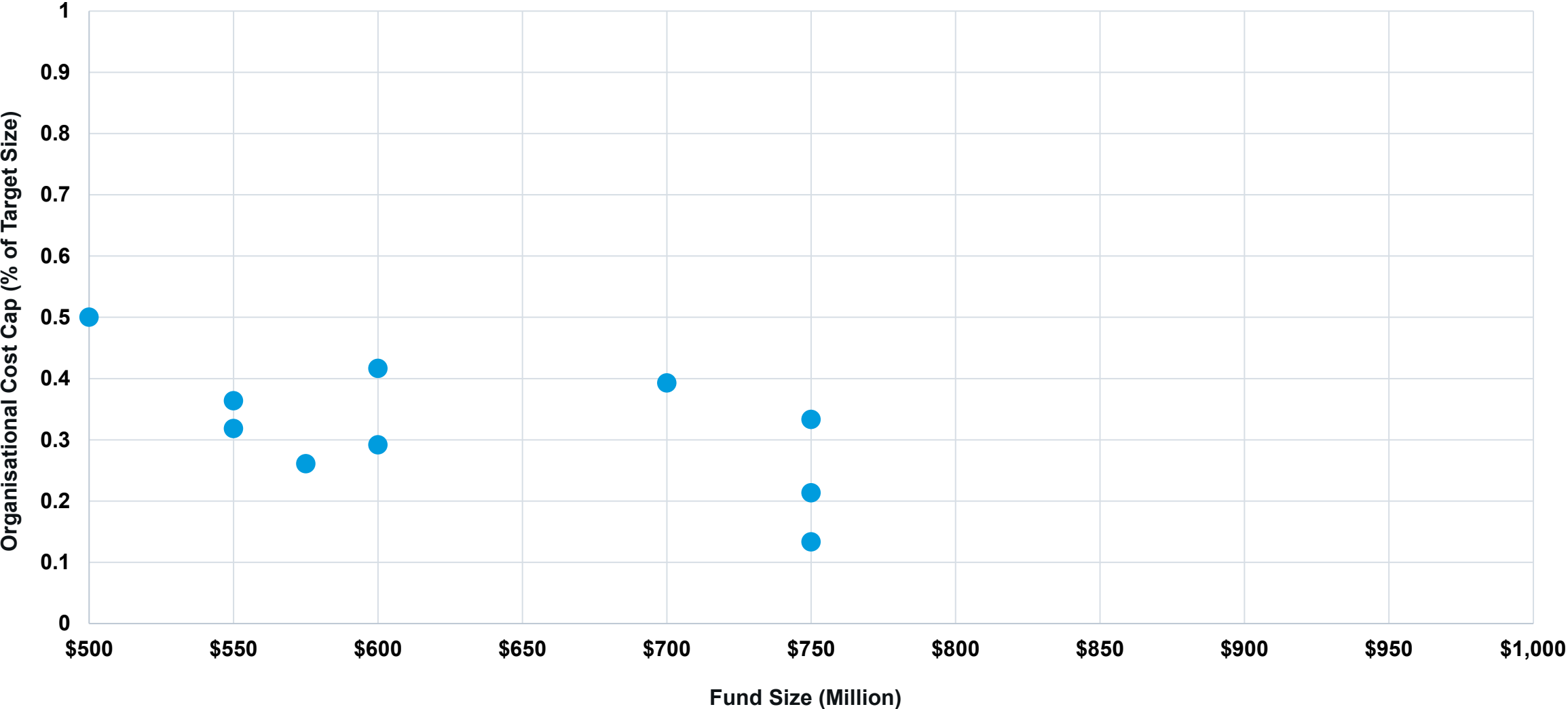
Organizational cost cap

<\$500M



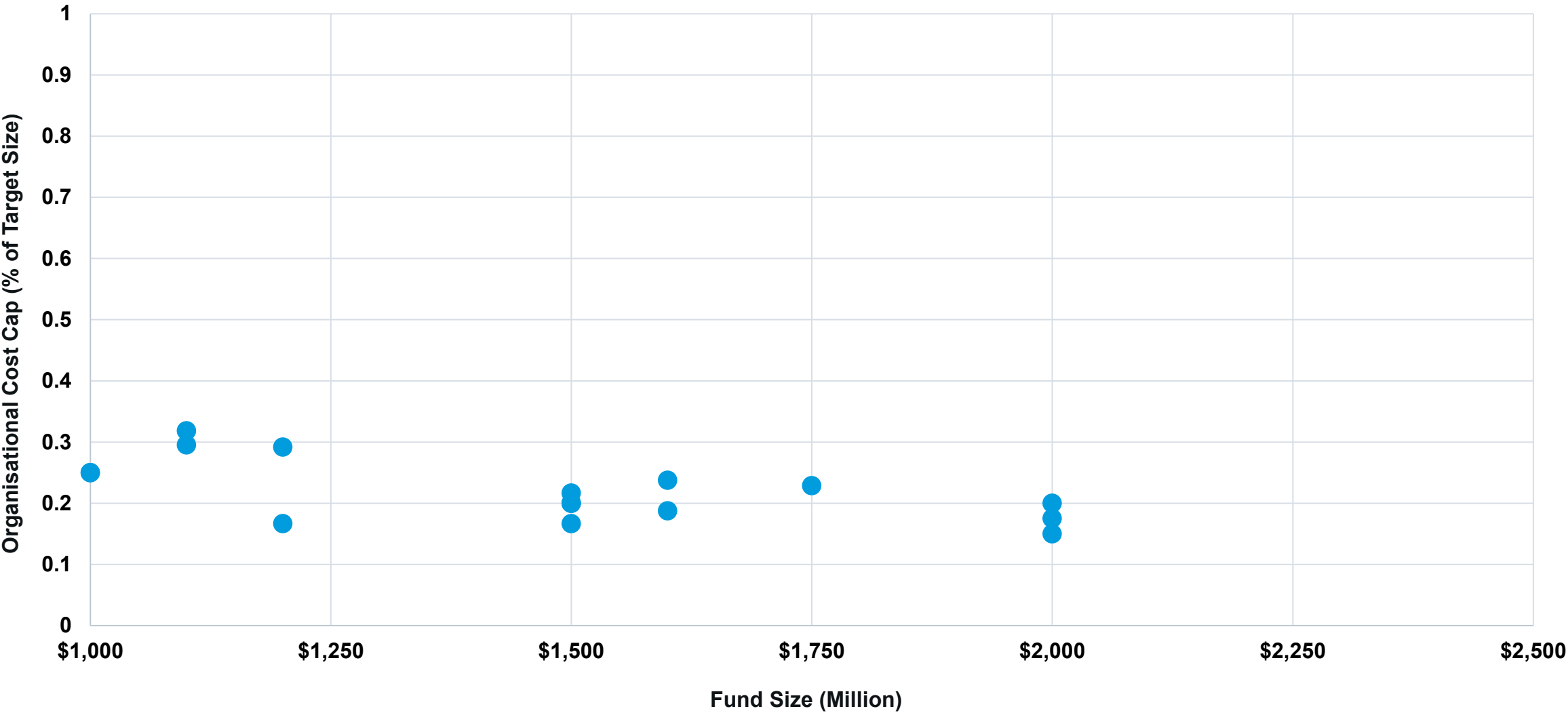
Organizational cost cap

\$500M-\$1B



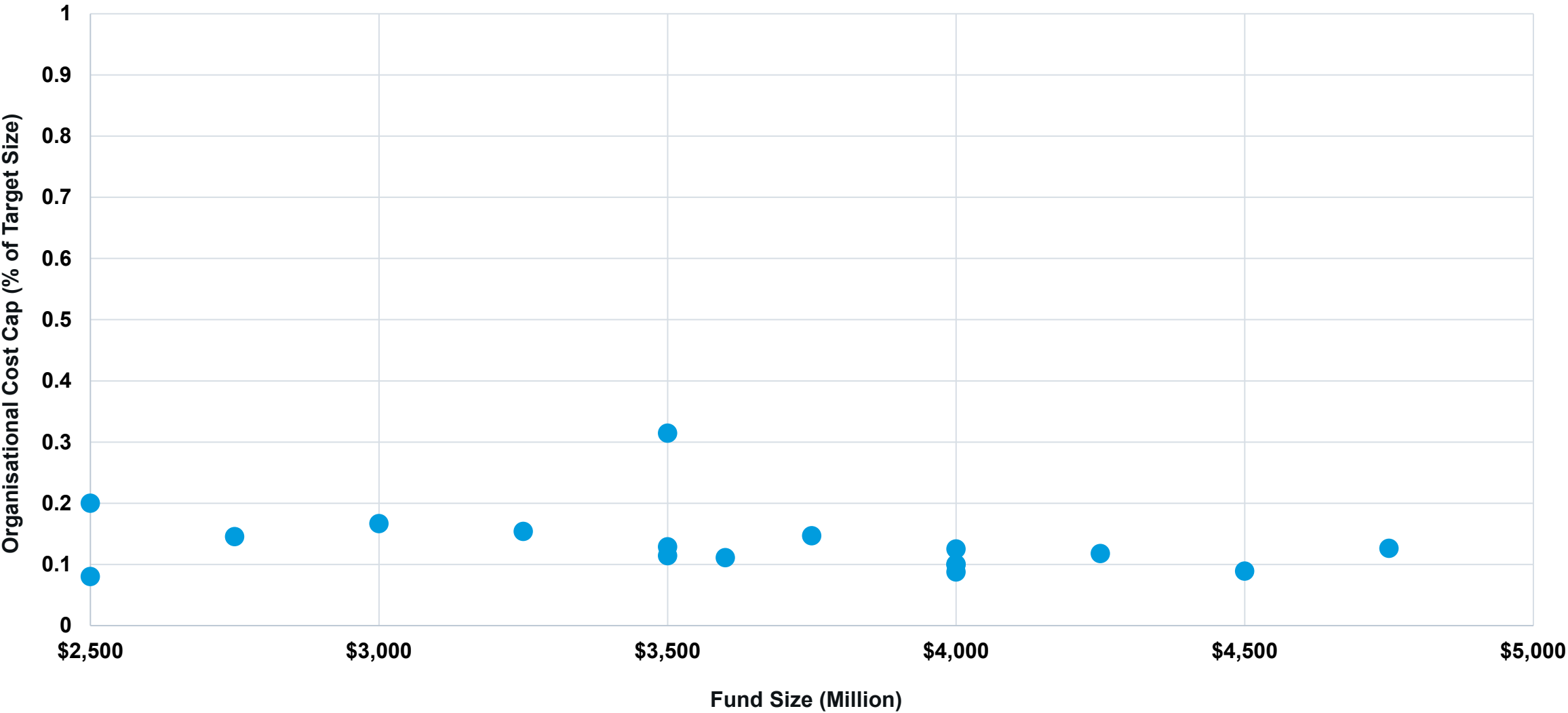
Organizational cost cap

\$1B-\$2.5B



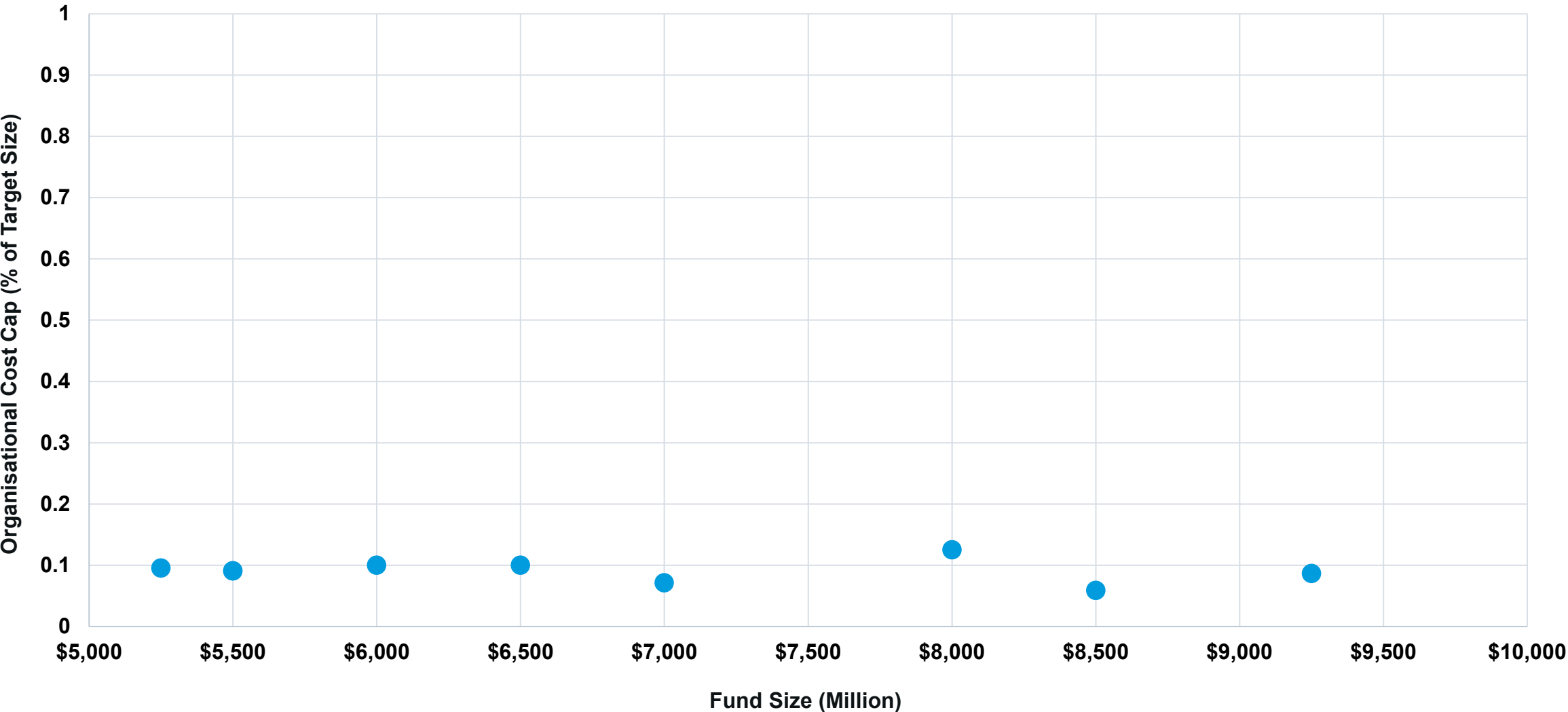
Organizational cost cap

\$2.5B-\$5B



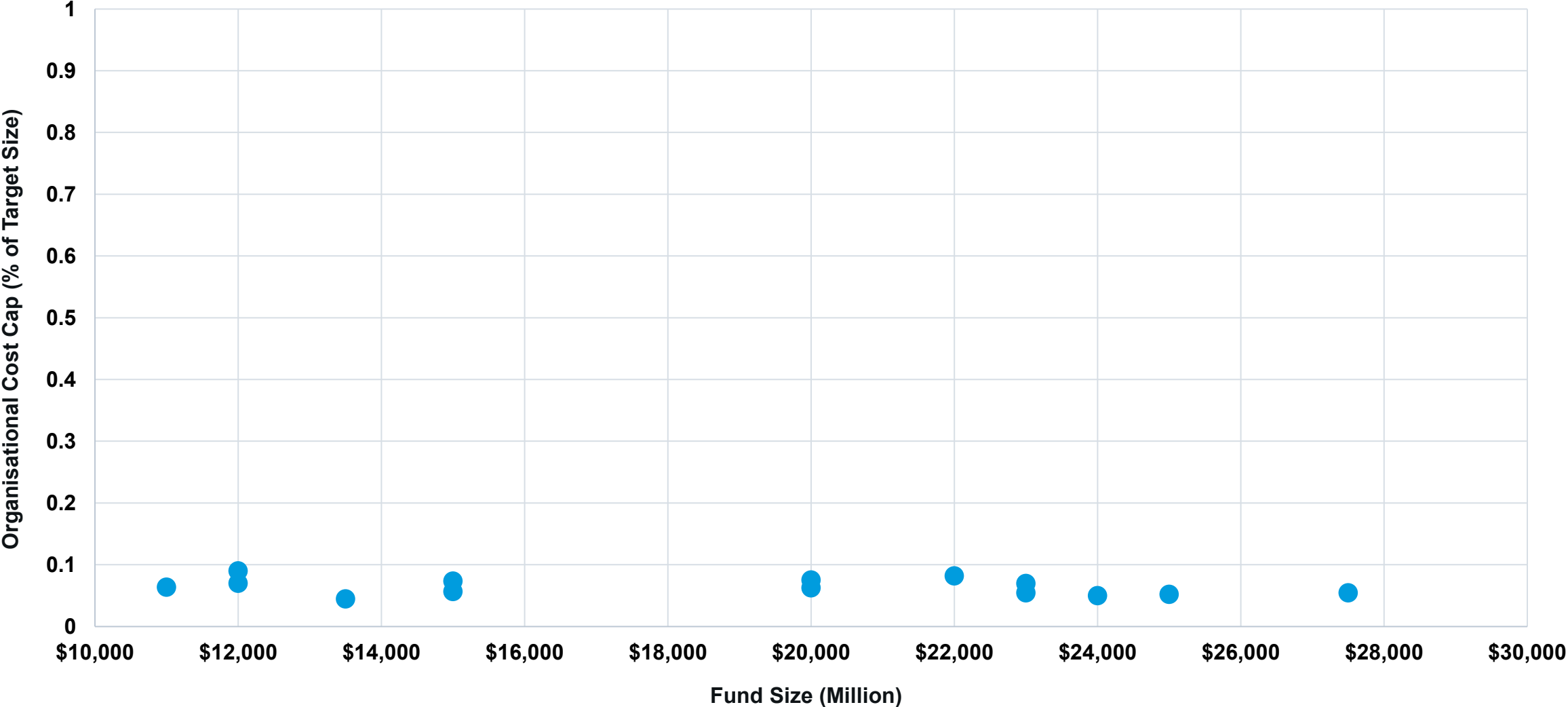
Organizational cost cap

\$5B-\$10B



Organizational cost cap

>\$10B

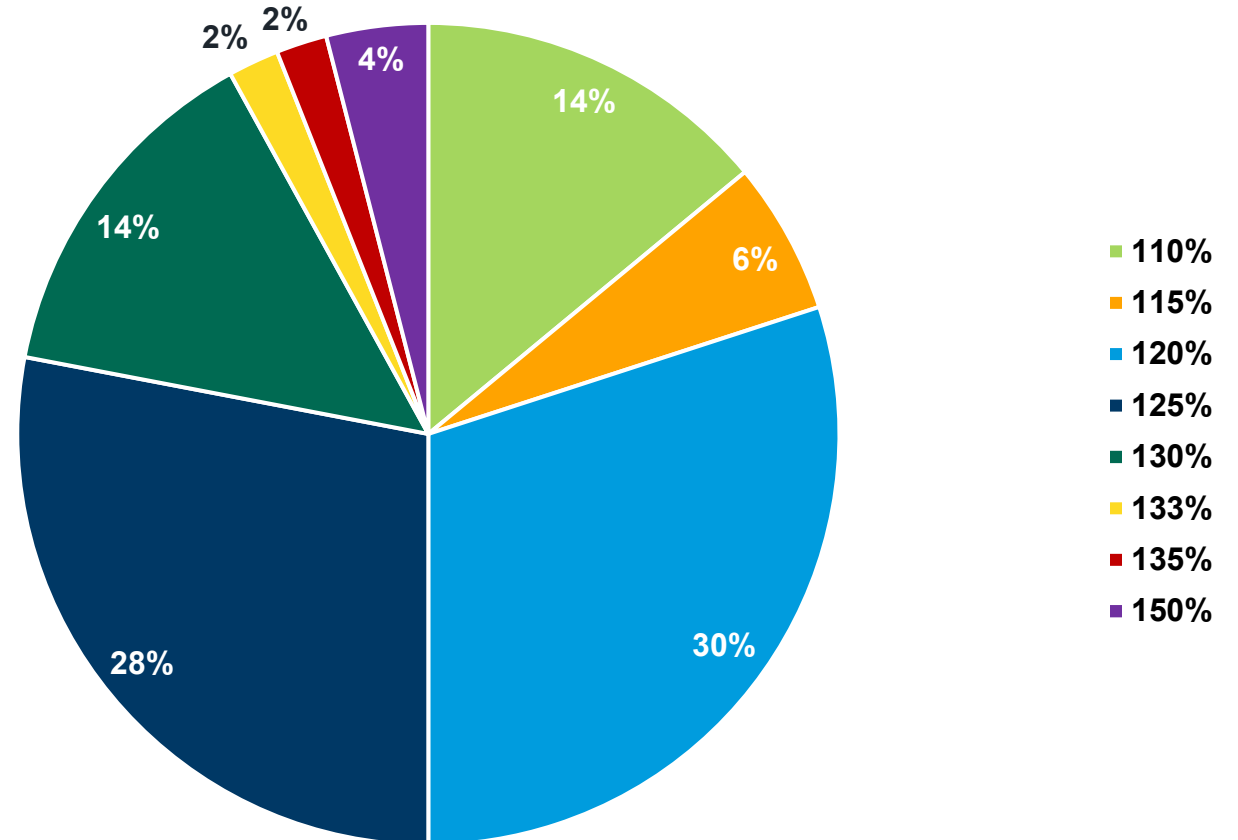


Where there is a recycling limit stated, what is the limit? (% of commitments)

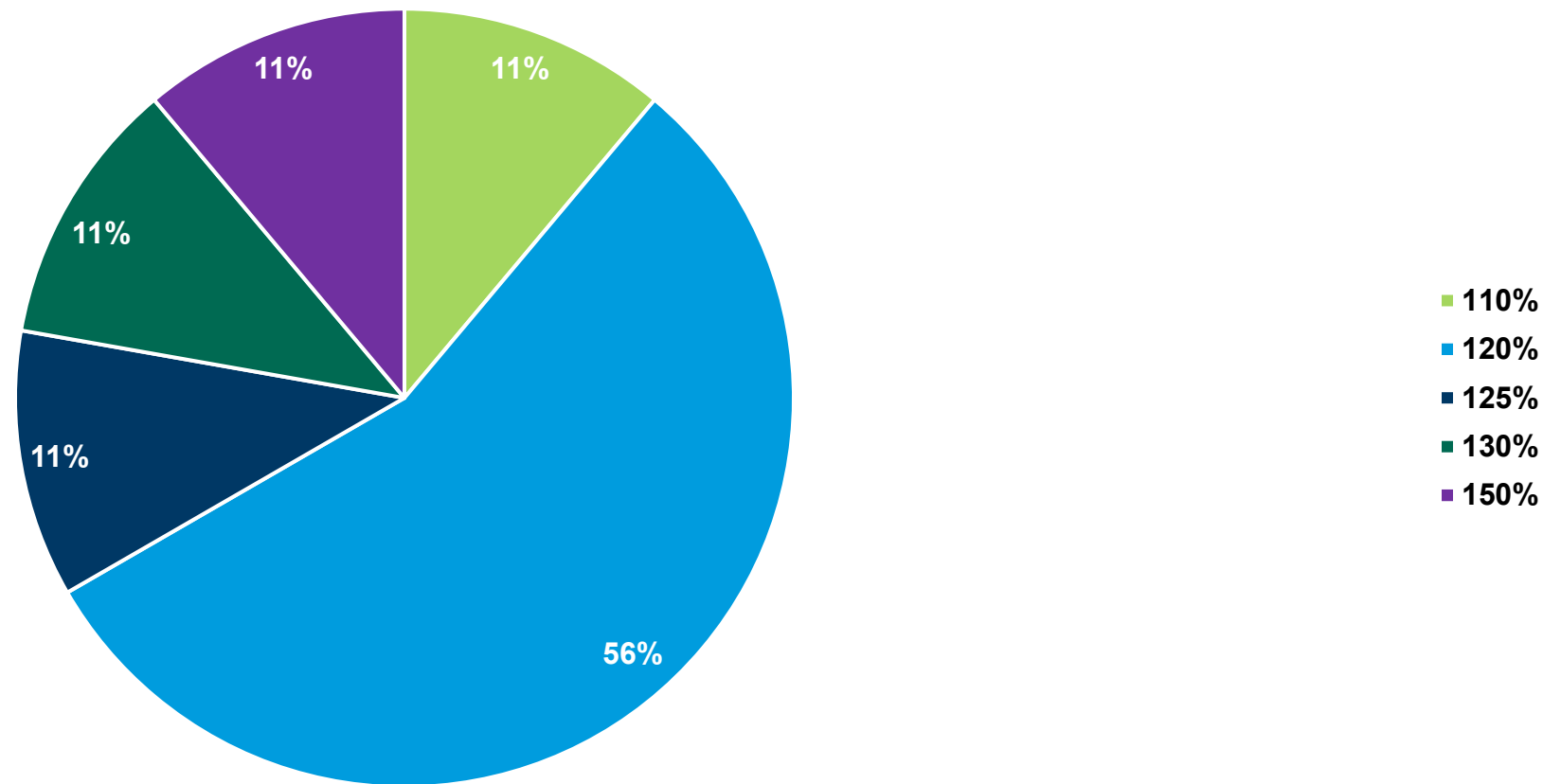
All Funds

Many U.S. private equity funds feature broad recycling rights, meaning that, in addition to rights to recycle proceeds equal to fees and expenses, a fund may recycle proceeds from investments realized during the investment period, typically up to a cap on the aggregate amount that can be invested in portfolio investment as a percentage of commitments. As it relates to a cap on total investment, the market is broadly concentrated in the 120%-130% range. Some funds have more limited rights that restrict recycling to proceeds received from investments within 12 to 18 months of acquisition, or to only recycling recovered cost basis but not profits.

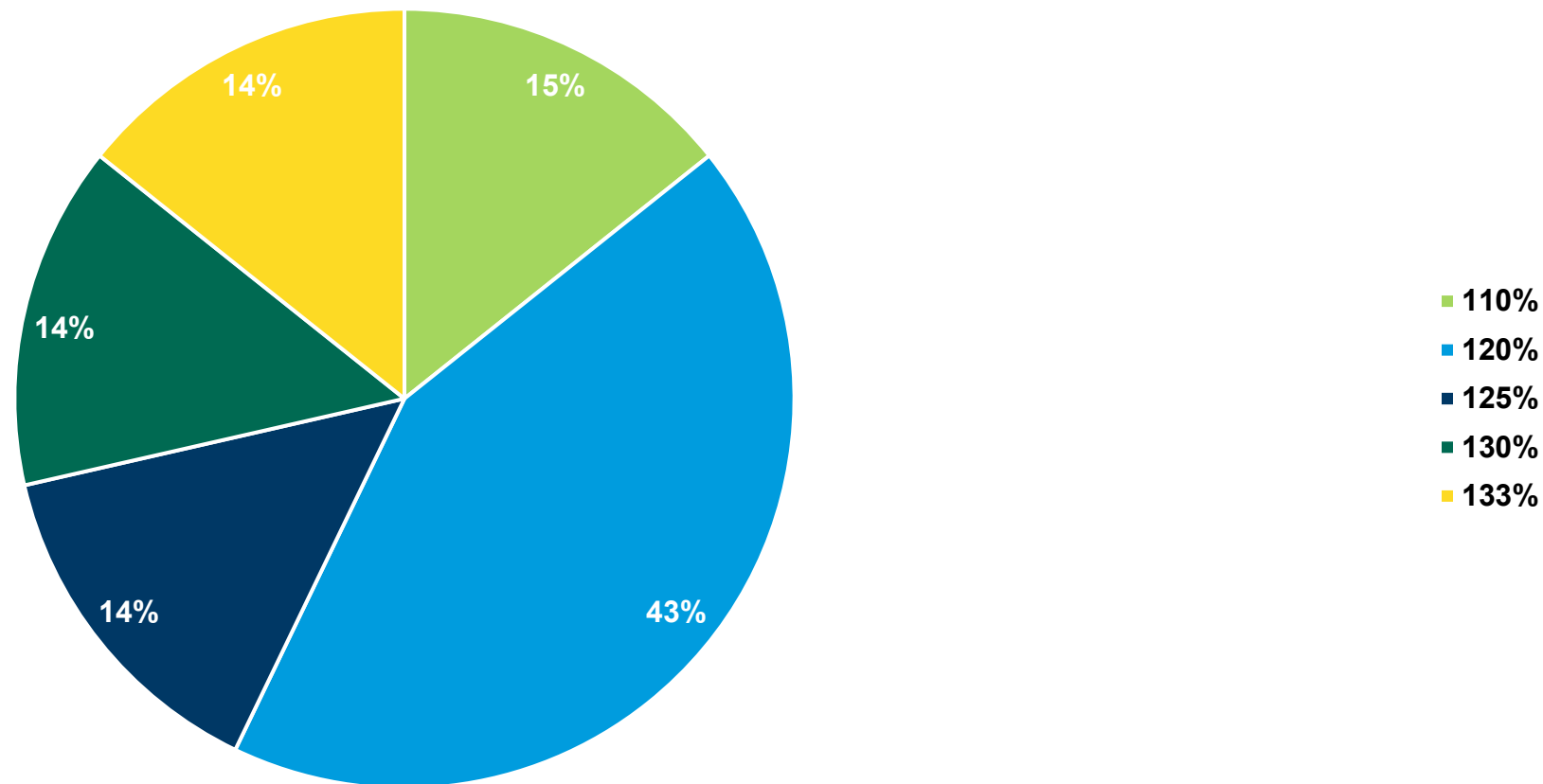
We expect to see managers continuing to look for expanded recycling rights as part of the drive to narrow their gross/net IRR spread, but also as a means of providing additional liquidity and a quick solution to boost a fund's available capital. Many investors find added recycling capacity to be an attractive attribute. However, there are alternative methods of providing needed liquidity, such as borrowing facilities.



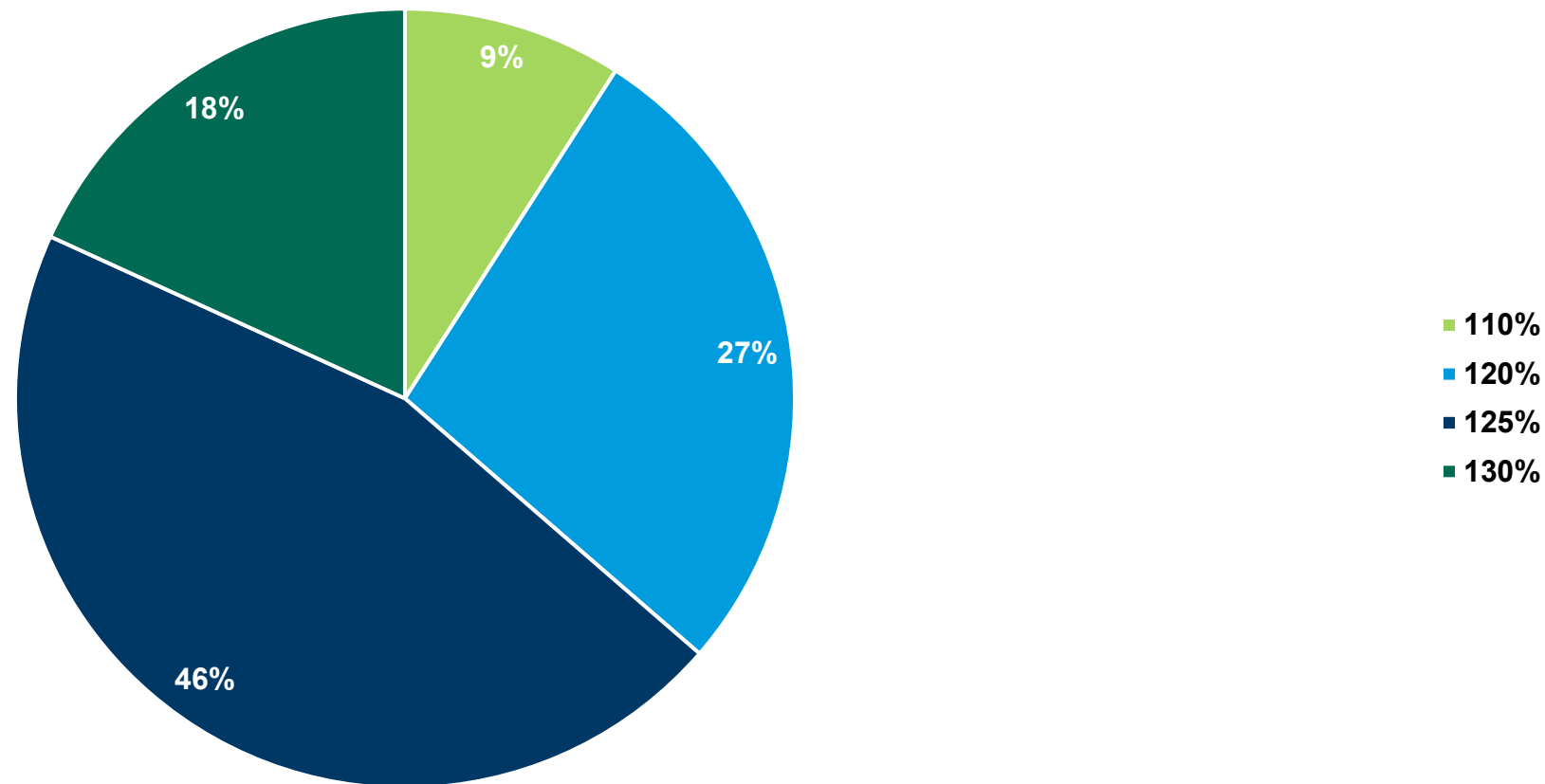
Where there is a recycling limit stated, what is the limit?
(% of commitments)
<\$500M



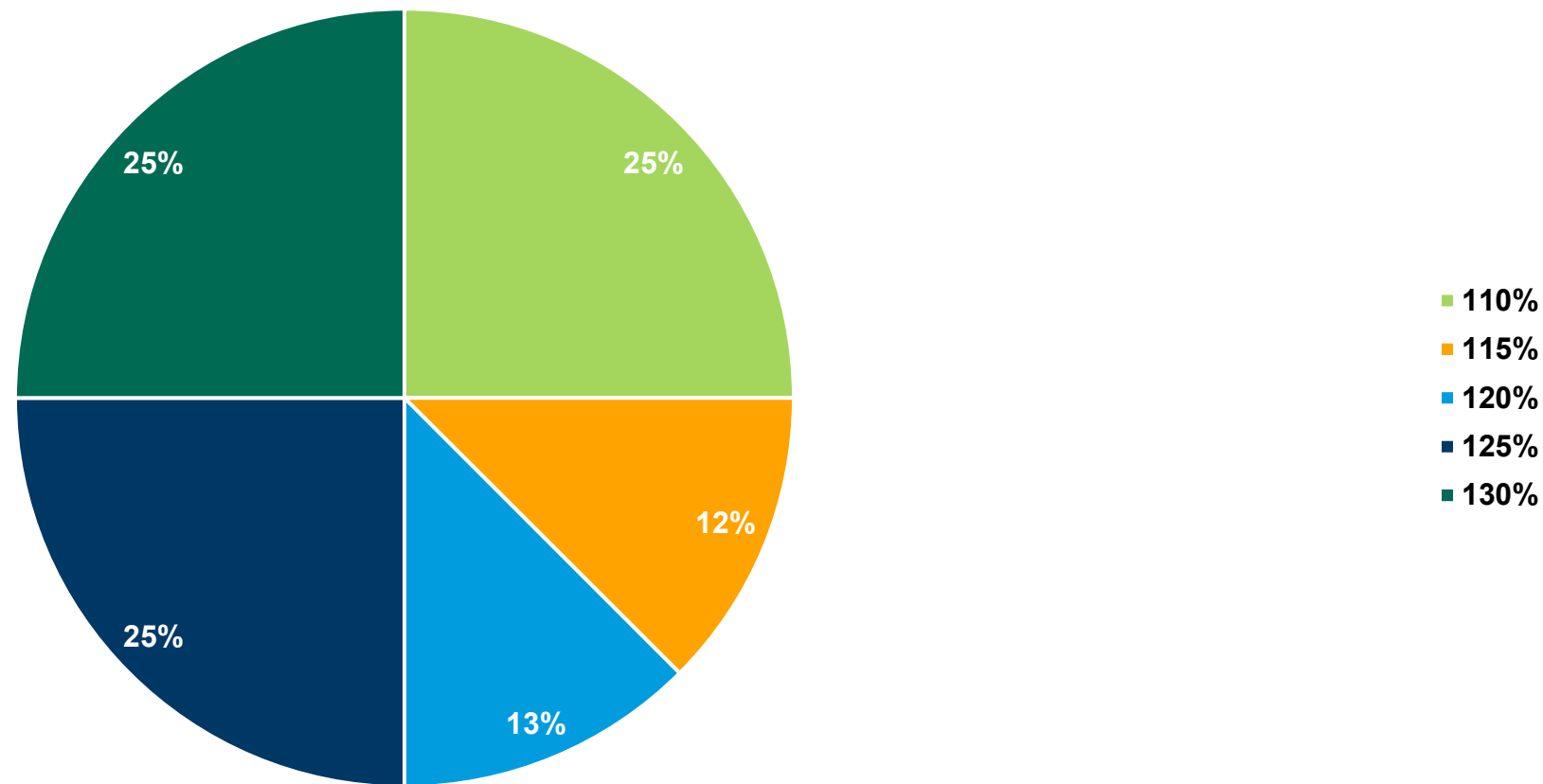
Where there is a recycling limit stated, what is the limit?
(% of commitments)
\$500M-\$1B



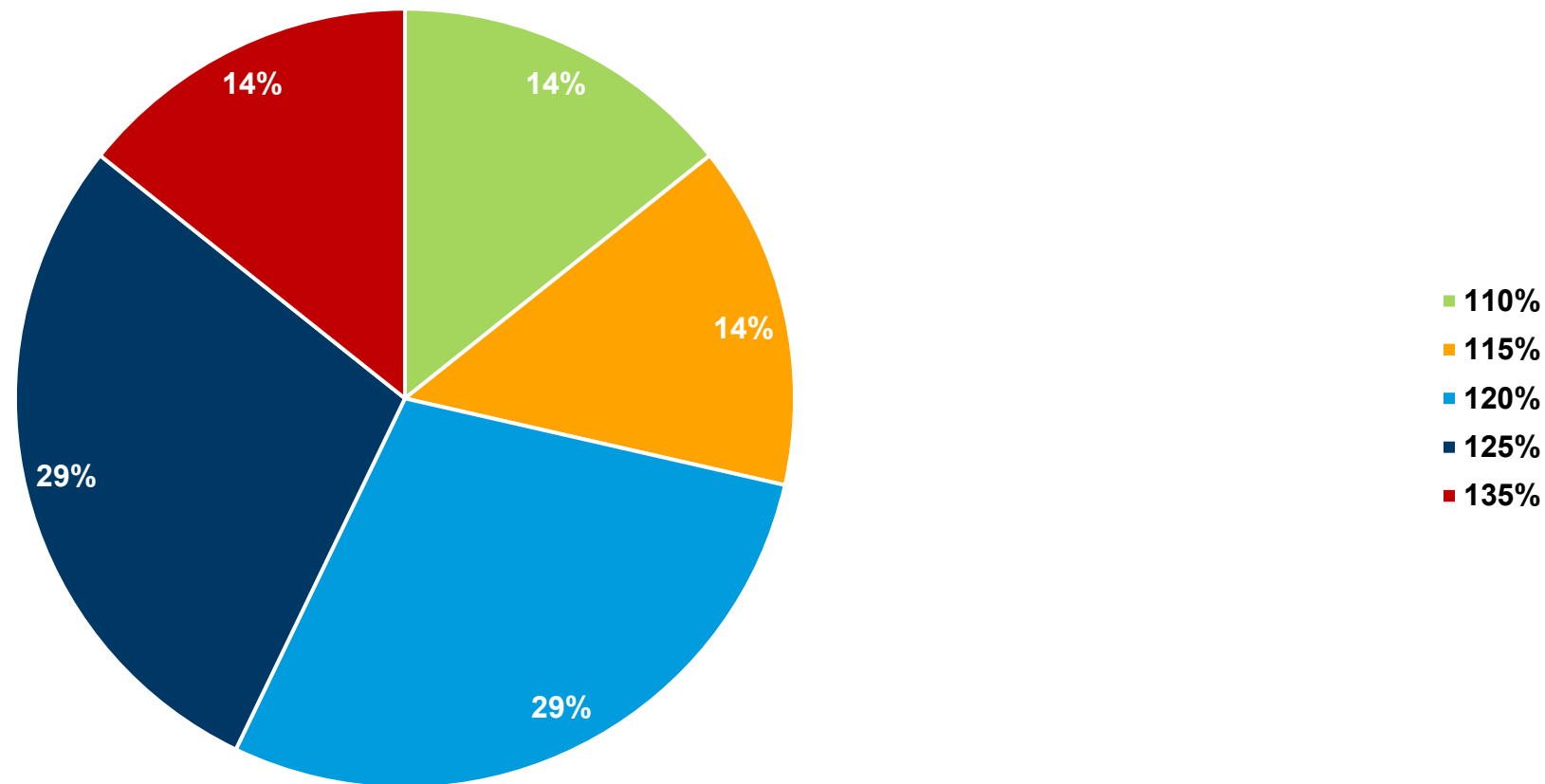
Where there is a recycling limit stated, what is the limit?
(% of commitments)
\$1B-\$2.5B



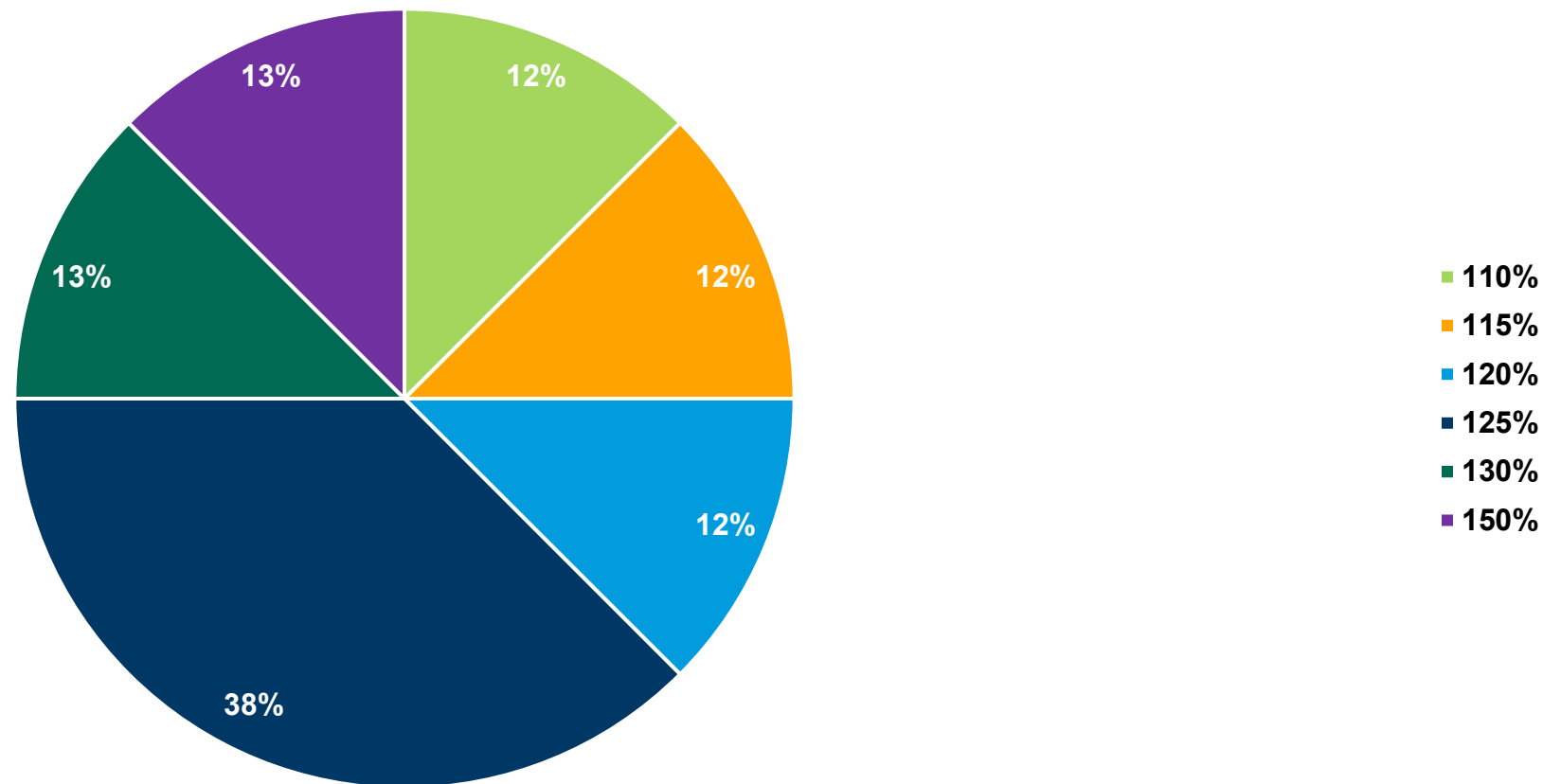
Where there is a recycling limit stated, what is the limit?
(% of commitments)
\$2.5B-\$5B



Where there is a recycling limit stated, what is the limit?
(% of commitments)
\$5B-\$10B



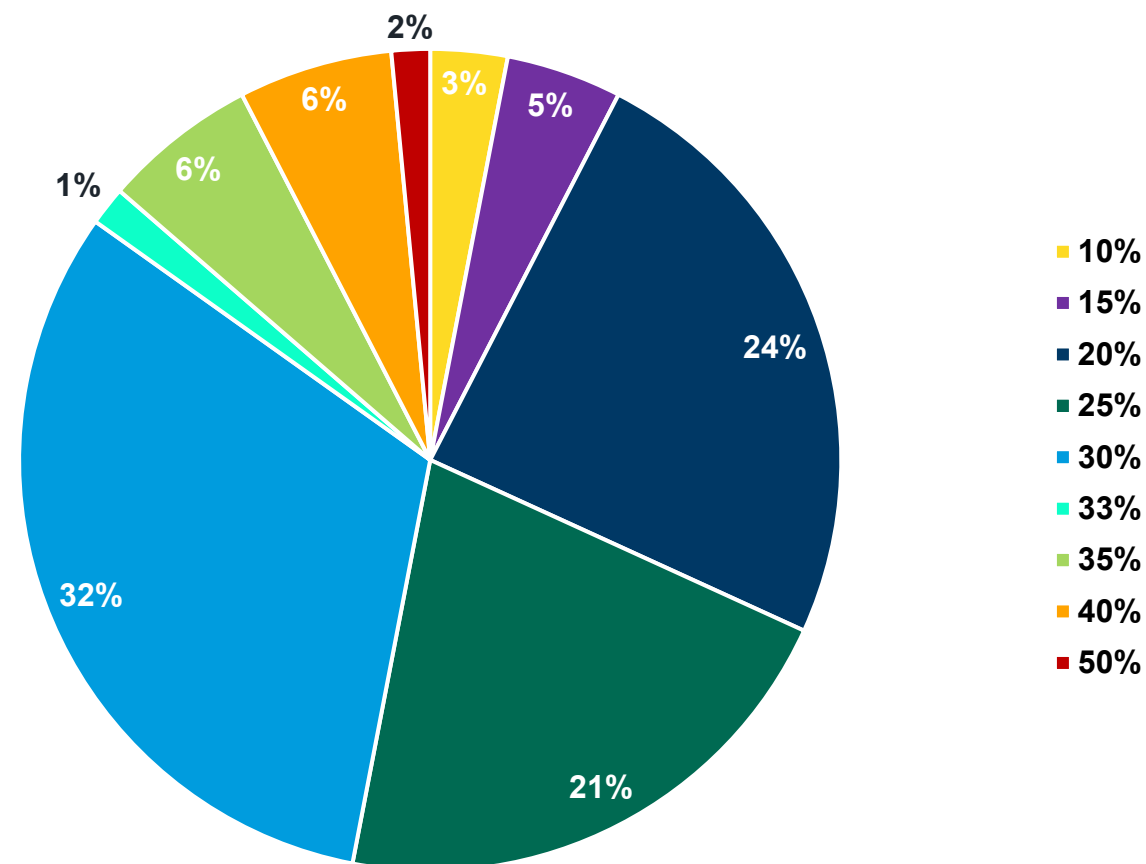
Where there is a recycling limit stated, what is the limit?
(% of commitments)
>\$10B



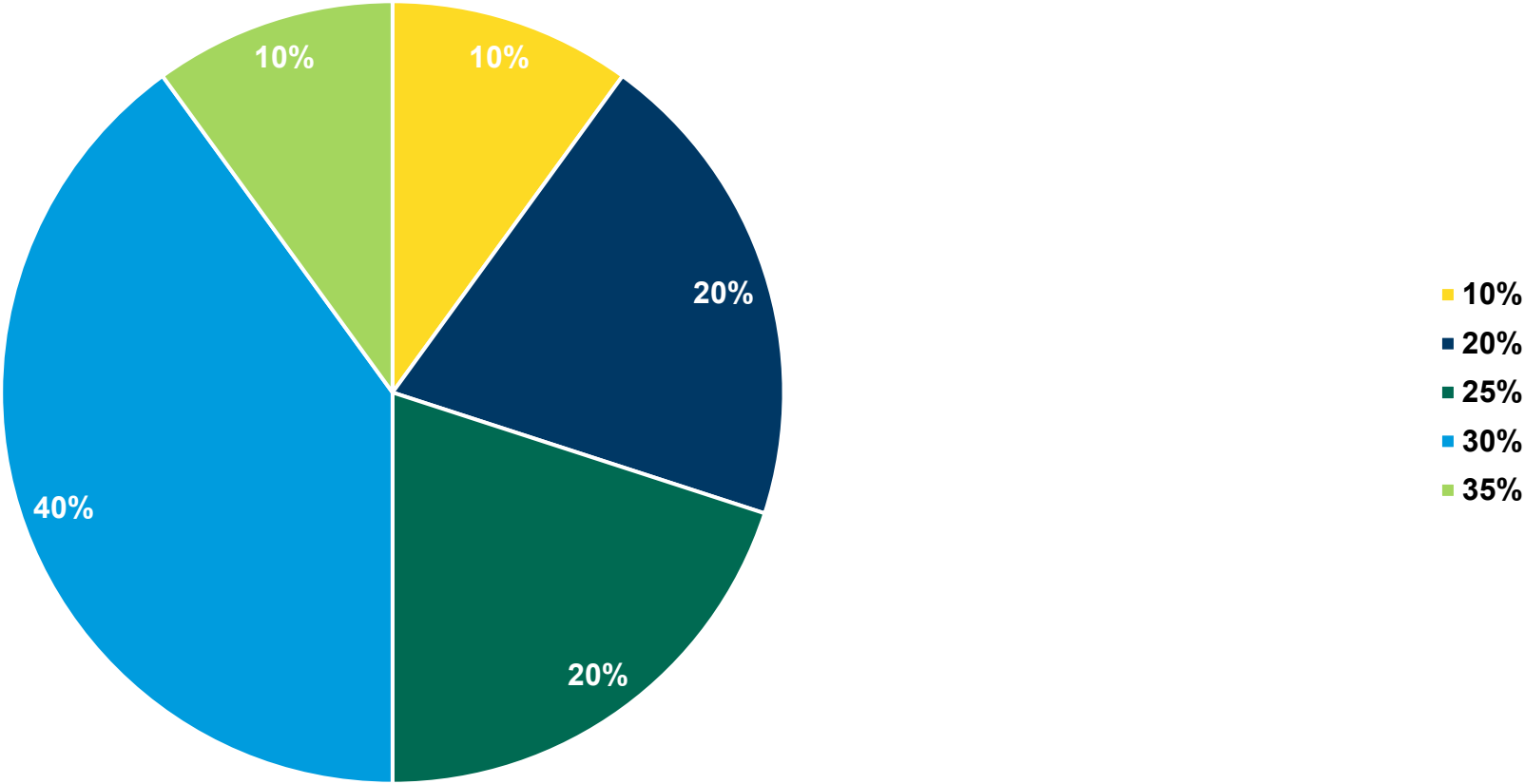
Limits on subscription line and other fund-level borrowing (% of commitments)

All Funds

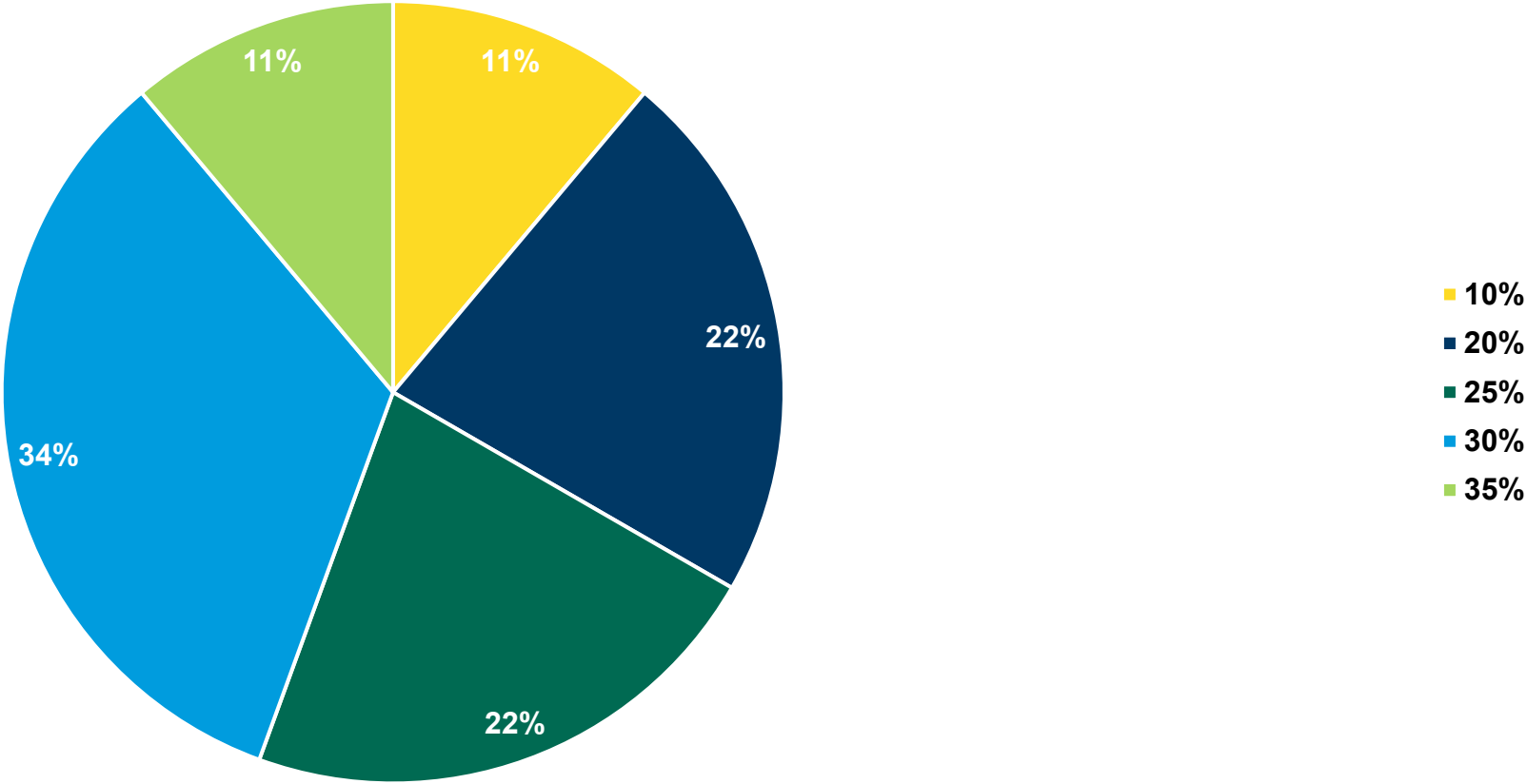
There continues to be significant focus on fund leverage by investors and managers, with respect to both the use of subscription line facilities to bridge capital calls and broader uses of leverage, particularly by larger funds. While it has been common for funds to be limited to the lesser of a stated percentage cap and undrawn capital commitments, there has been some movement against the latter limitation as NAV and hybrid borrowing facilities have gained in popularity. During diligence and legal negotiations, investors remain focused on understanding how managers intend to use borrowing in practice and therefore what the impact may be on risk levels and returns given the cost of the facility and the potential reduction in accrued preferred return. While investors understand the potential administrative benefits of fewer capital calls, some investors are less comfortable with more extensive borrowing, given the need to reserve capital for drawdowns, and many prefer to see their commitments drawn down and put to work.



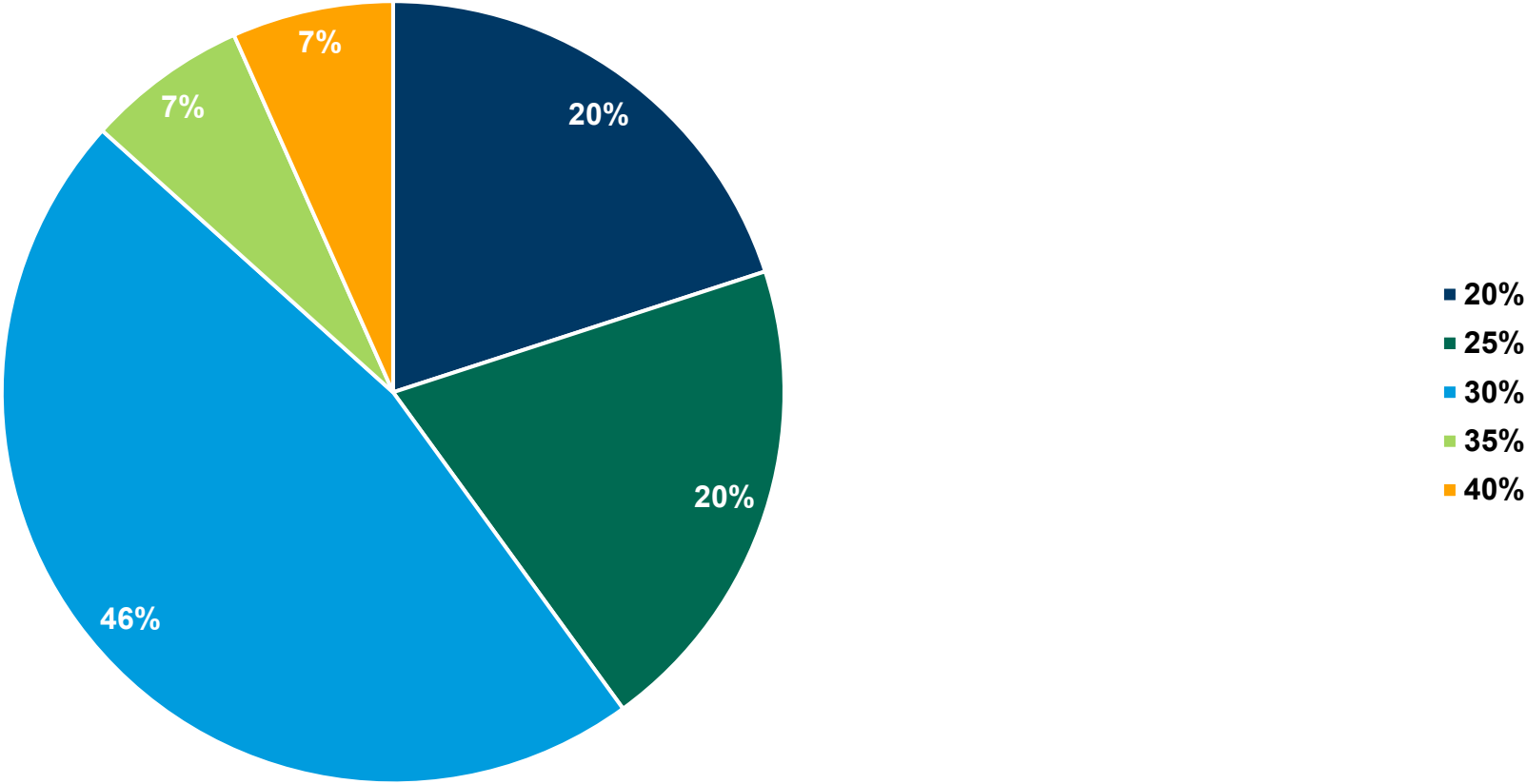
Limits on subscription line and other fund-level borrowing (% of commitments)
<\$500M



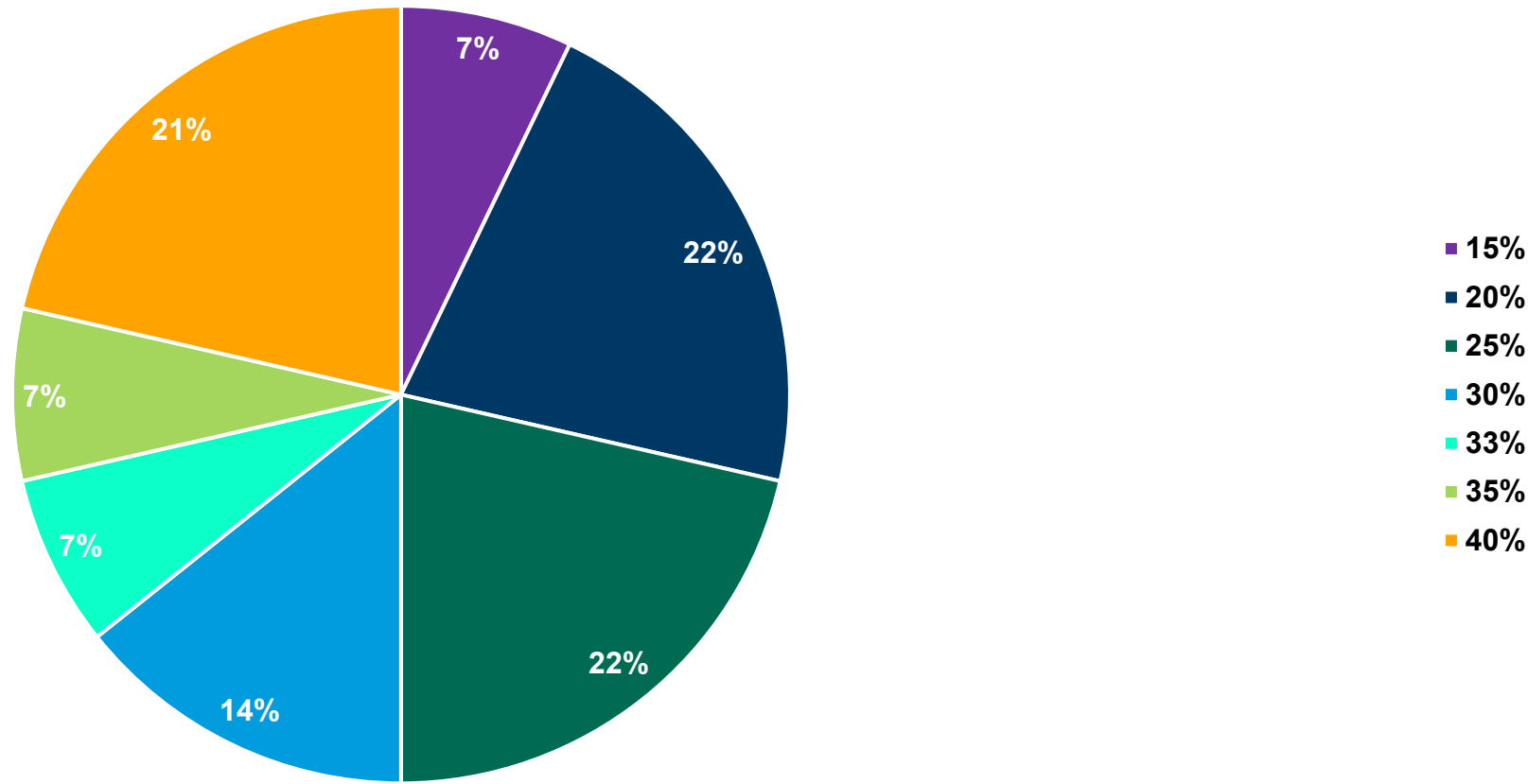
Limits on subscription line and other fund-level borrowing (% of commitments)
\$500M-\$1B



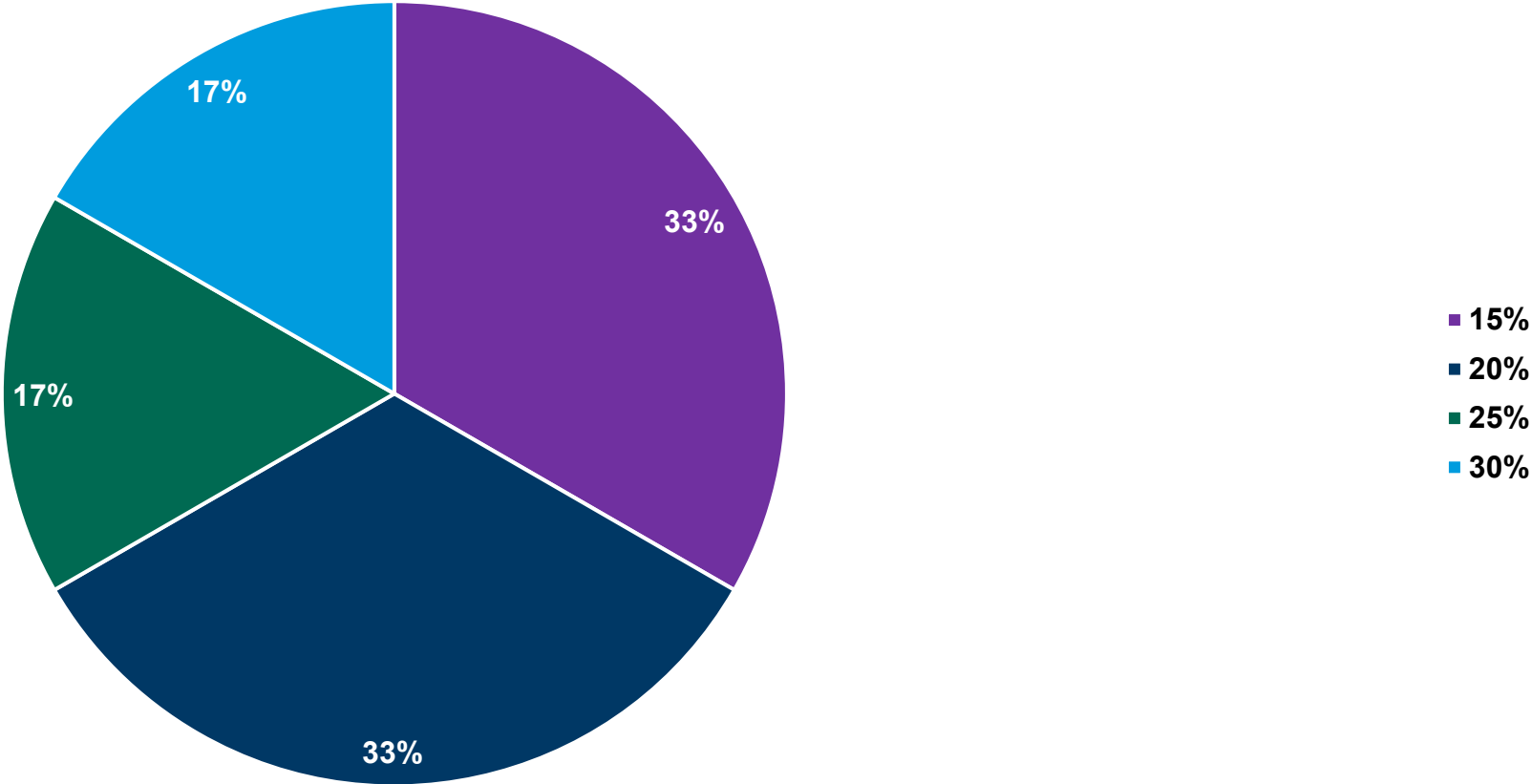
Limits on subscription line and other fund-level borrowing (% of commitments)
\$1B-\$2.5B



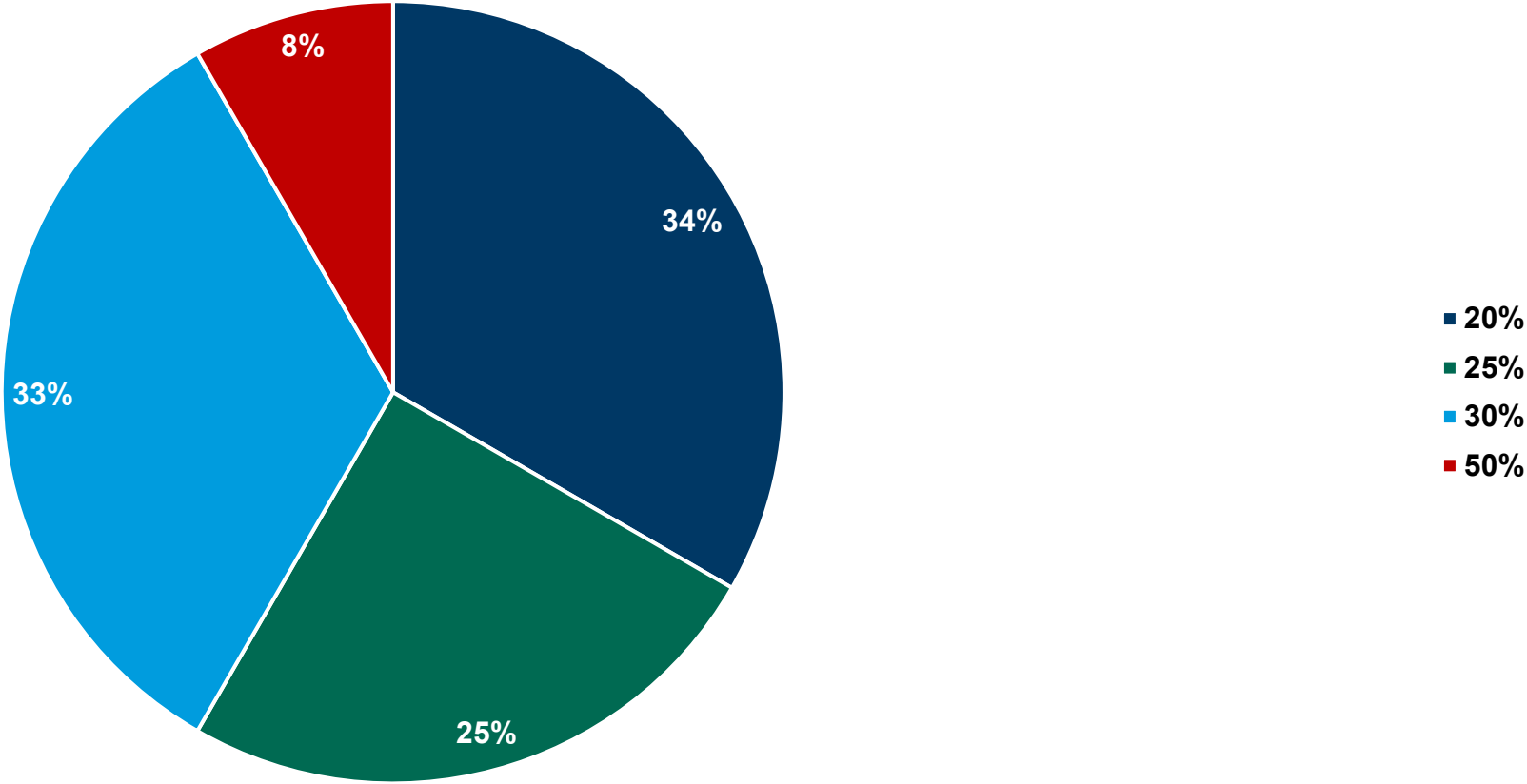
Limits on subscription line and other fund-level borrowing (% of commitments)
\$2.5B-\$5B



Limits on subscription line and other fund-level borrowing (% of commitments)
\$5B-\$10B



Limits on subscription line and other fund-level borrowing (% of commitments)
>\$10B

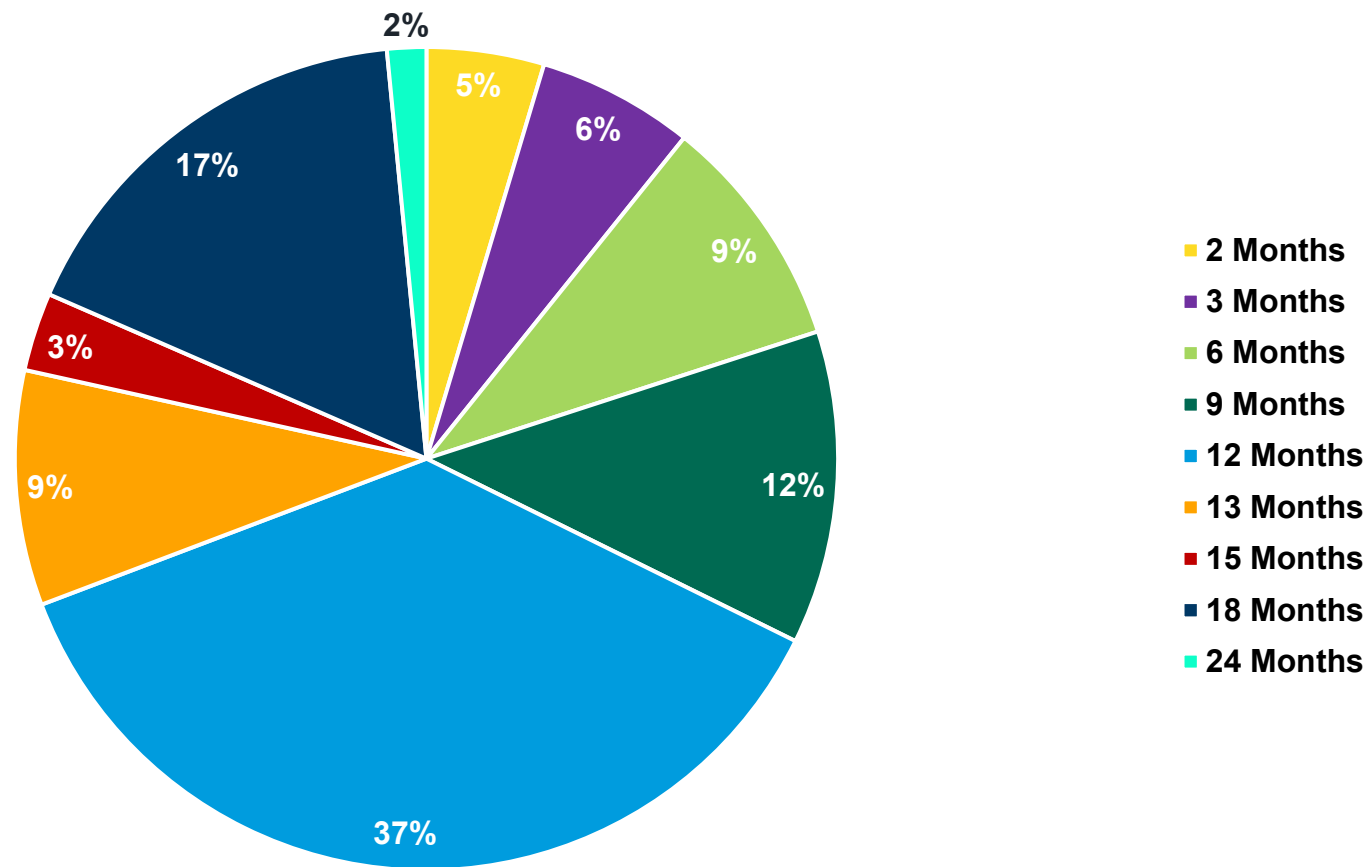


Time limits on borrowing

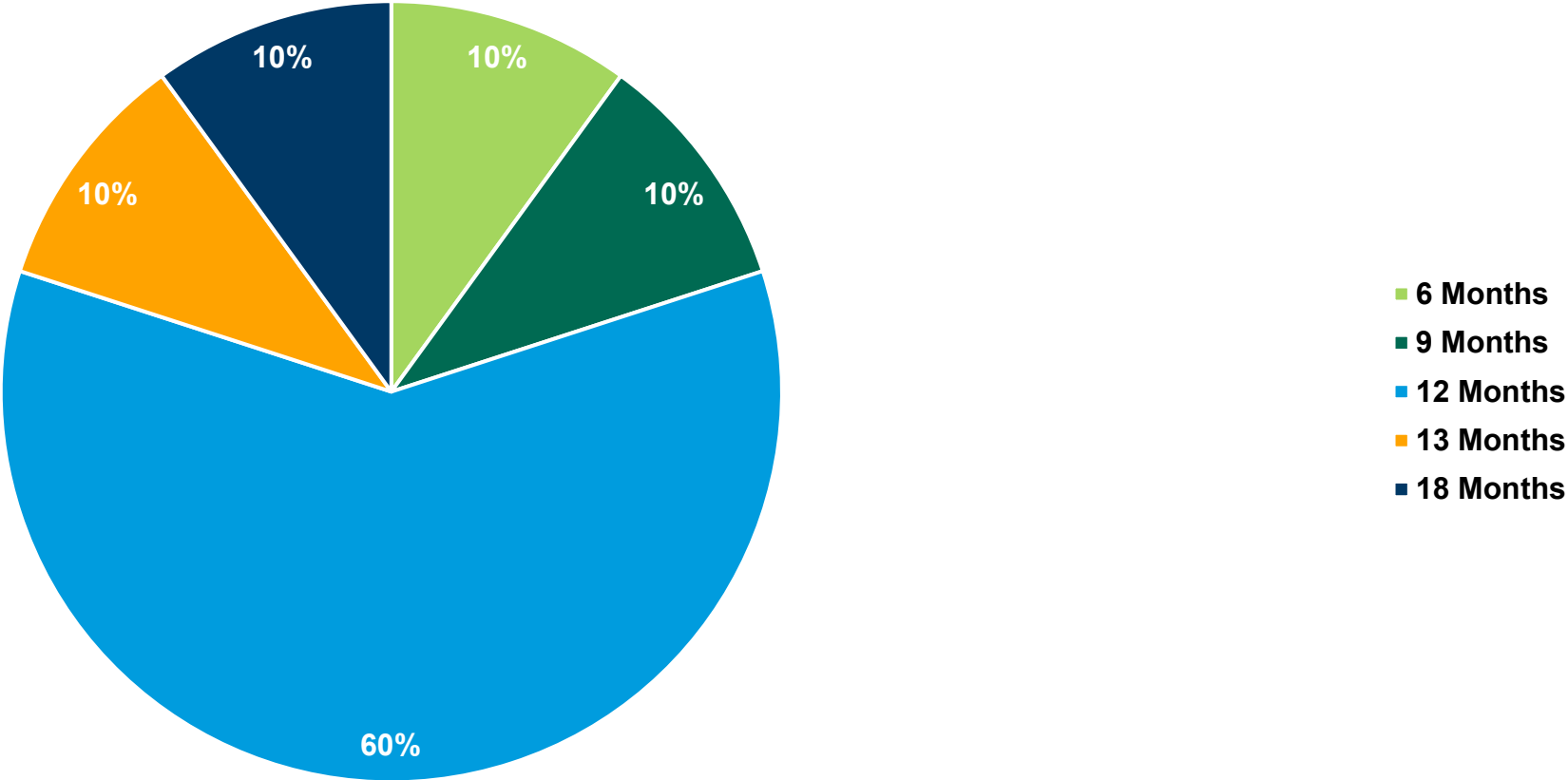
All Funds

The most time limitations on fund-level borrowing are nine and 12 months, with 12 months being most common. While there is a wide distribution, with limits ranging from two to 24 months, a significant majority of funds in every size class may not borrow for more than 12 months.

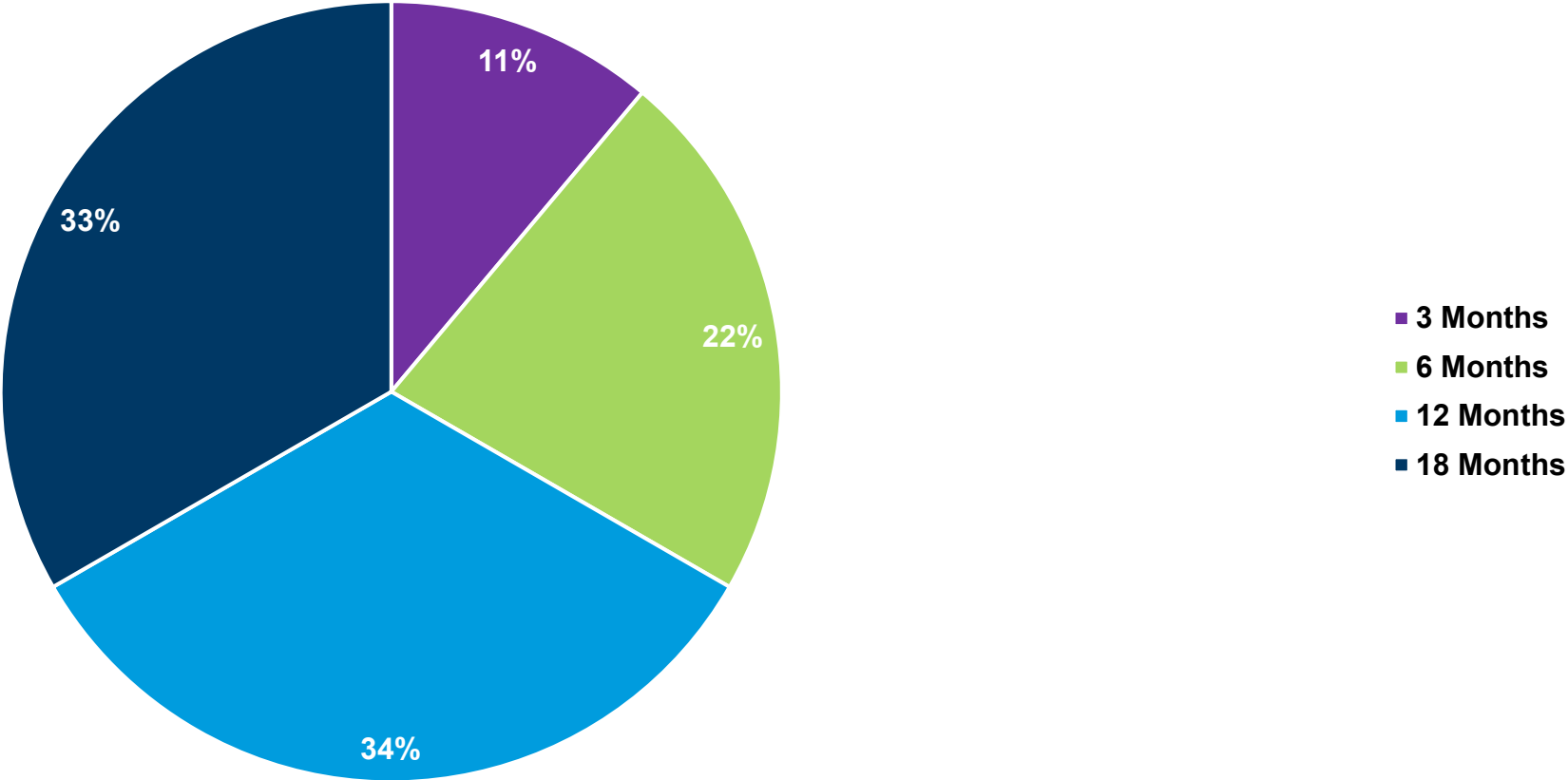
We continue to see discussions between investors and managers around the appropriate time limit on fund borrowing, including establishing separate time limits on borrowings for different purposes.



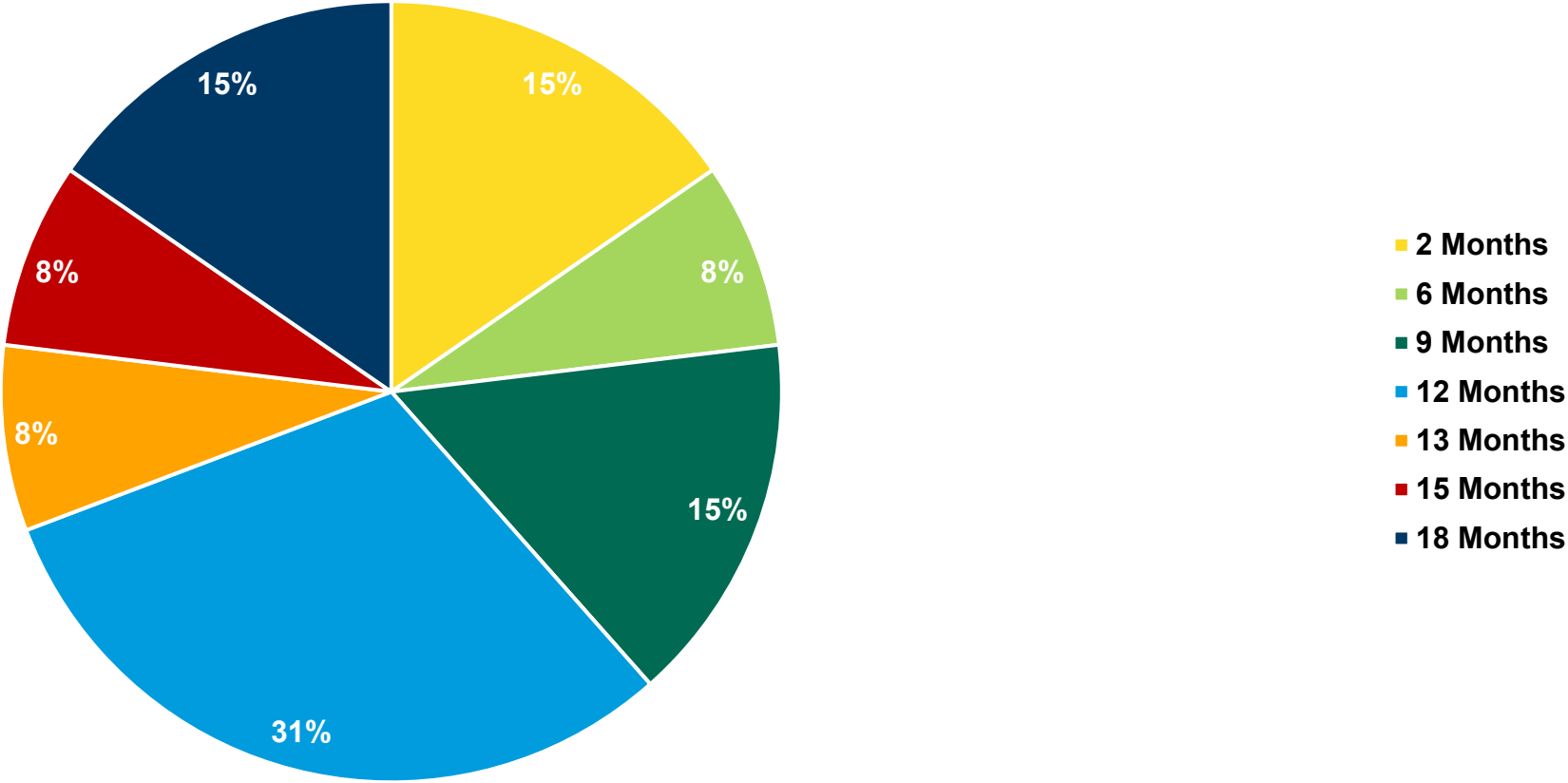
Time limits on borrowing
<\$500M



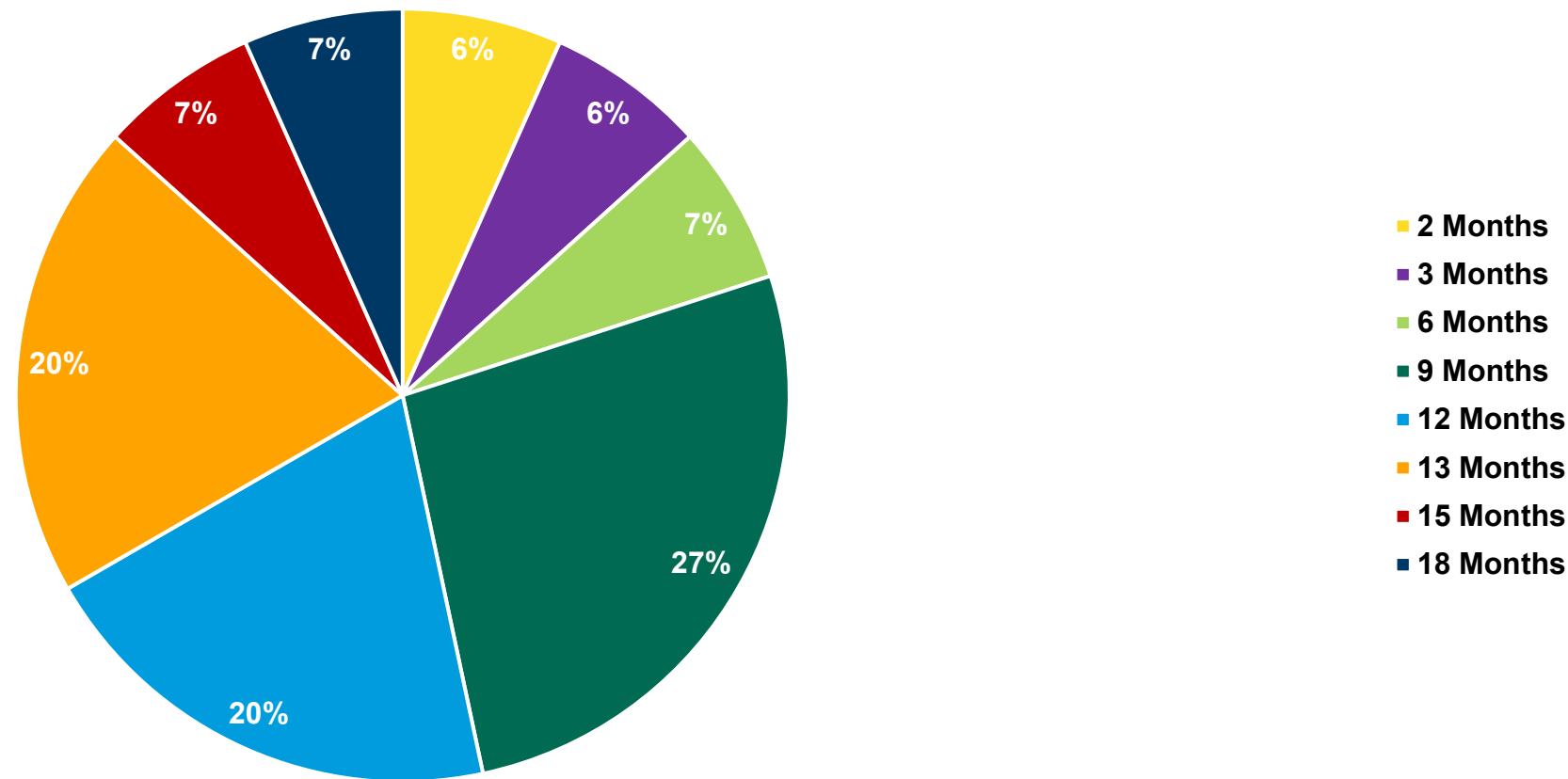
Time limits on borrowing
\$500M-\$1B



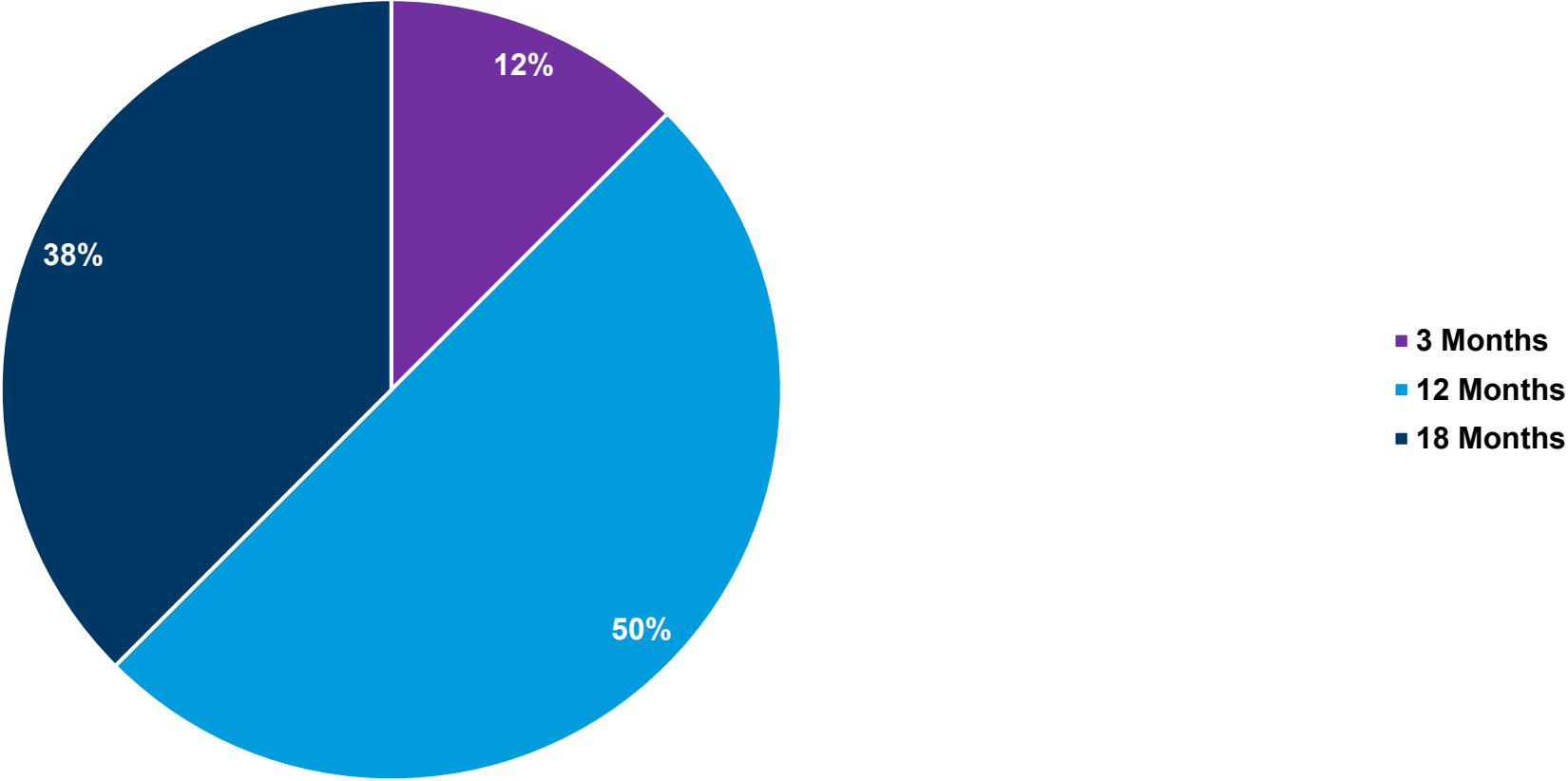
Time limits on borrowing
\$1B-\$2.5B



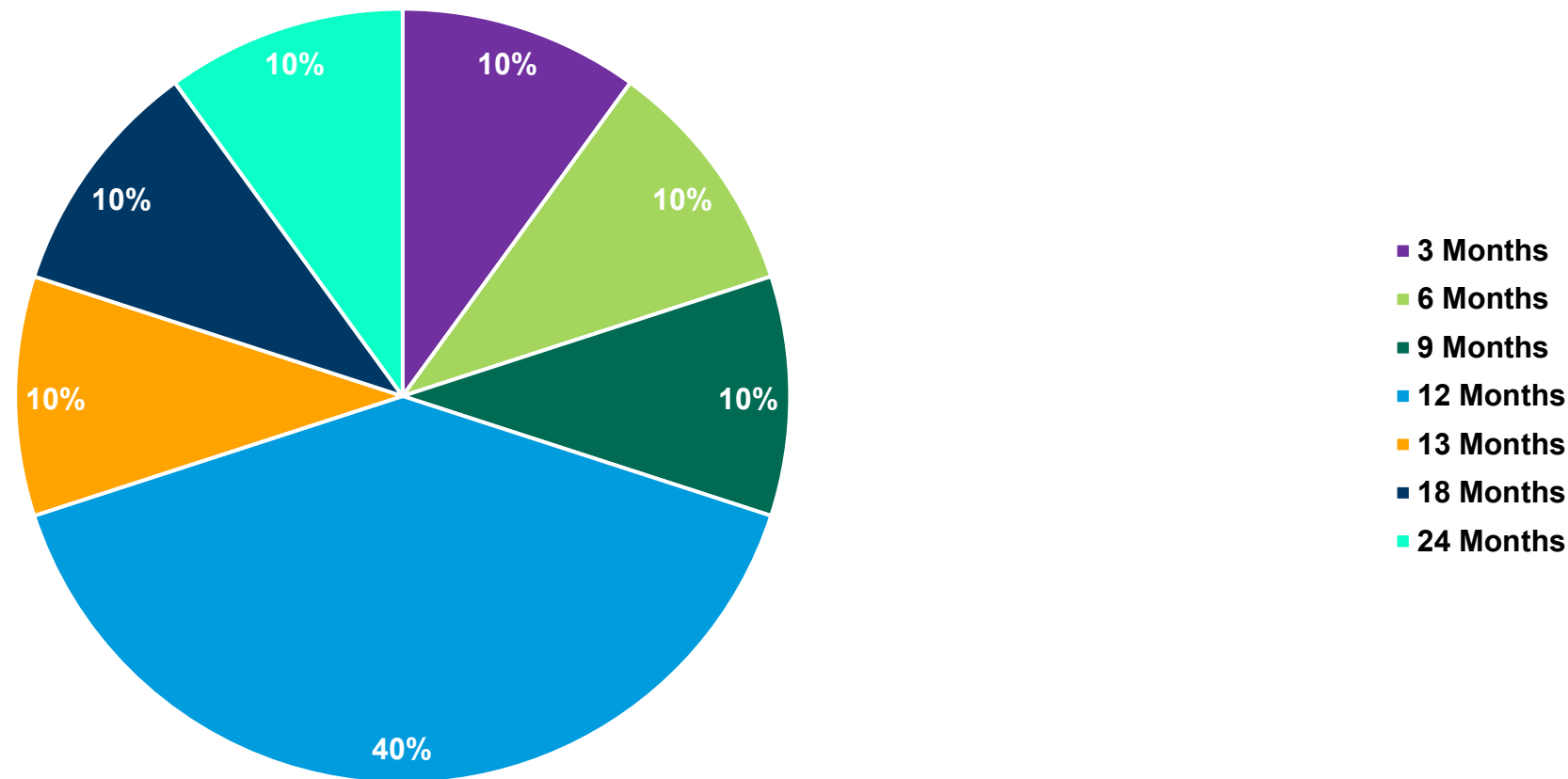
Time limits on borrowing
\$2.5B-\$5B



Time limits on borrowing
\$5B-\$10B



Time limits on borrowing
>\$10B

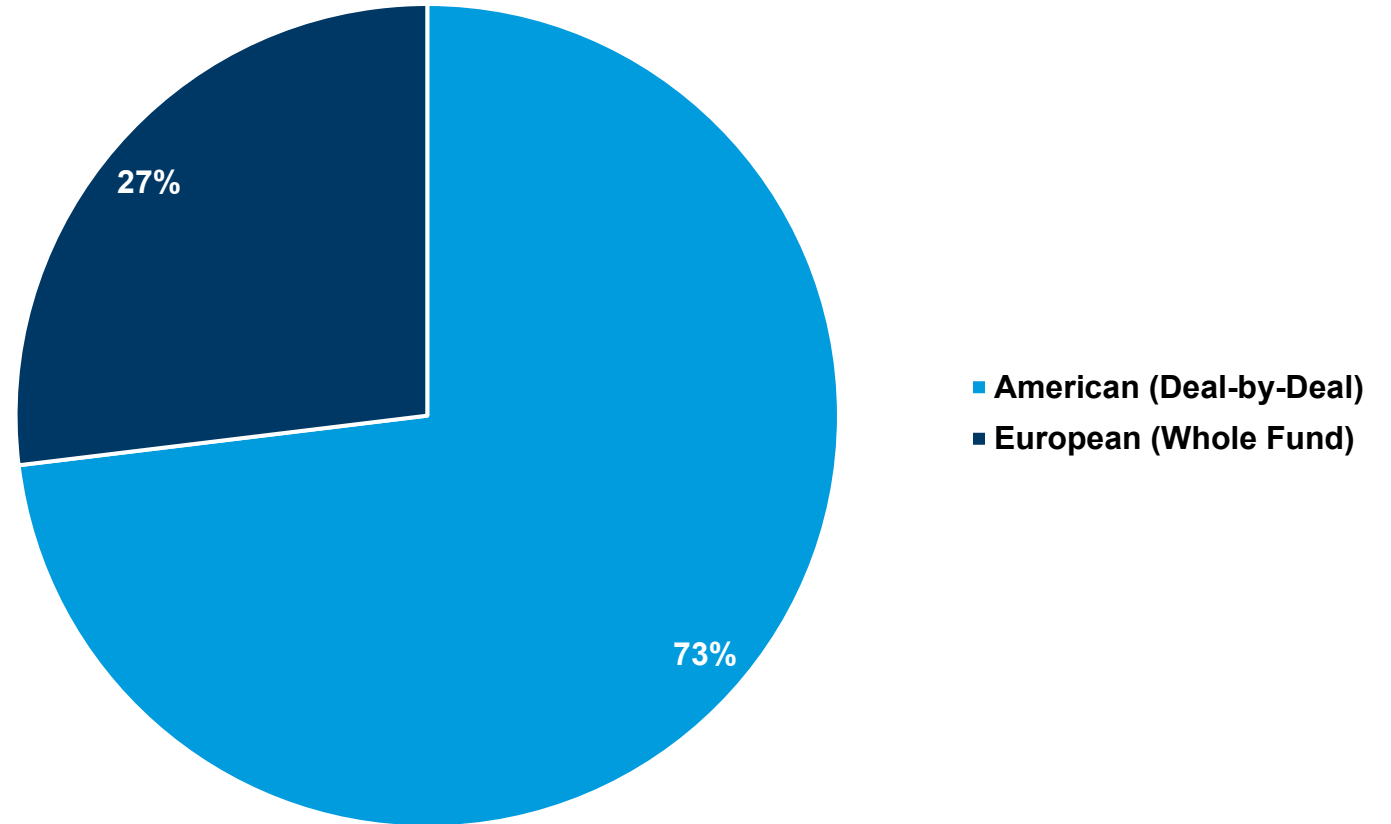


Distribution waterfall – Type of waterfall

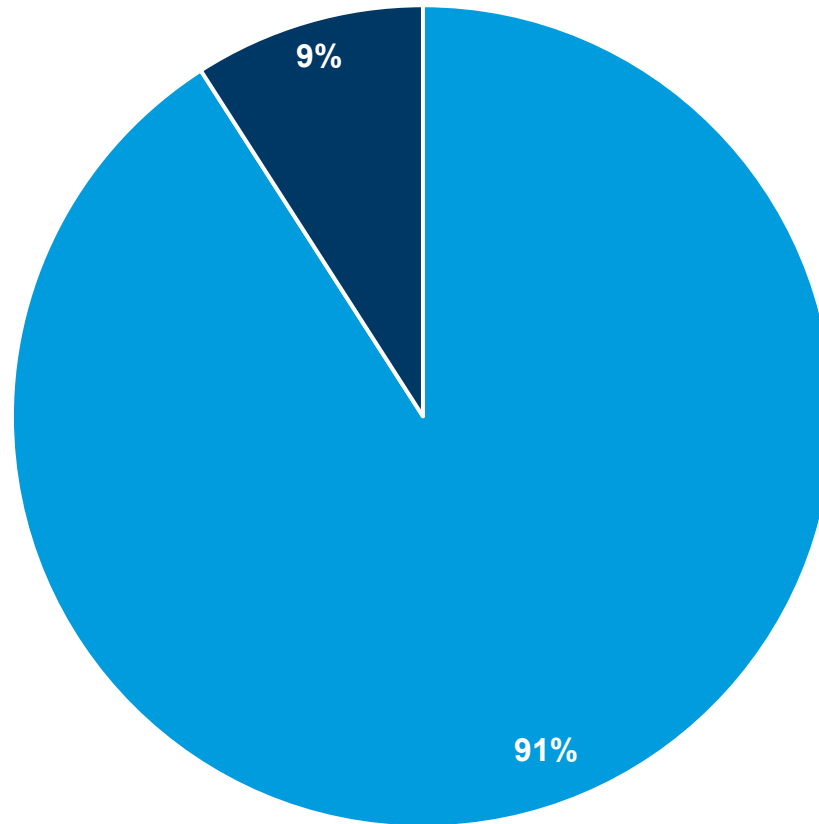
All Funds

The deal-by-deal waterfall model remains the dominant economic deal in U.S. buyout funds, with 73% of funds in our sample utilizing some form of the “American” model. By “deal-by-deal” (or “American style”) waterfall we usually mean a distribution model that would require the investor to have received back its capital contributions made for the particular investment that has been realized and all previously realized investments (as well as an allocable portion of fund expenses) before carry is paid.

Mid-sized funds in the \$500 million to \$2 billion size range were most likely to have something other than an American-style waterfall, with 40% of funds between \$500 million and \$1 billion, and 35% of funds in the \$1-2 billion range having a whole-fund (“European style”) waterfall.

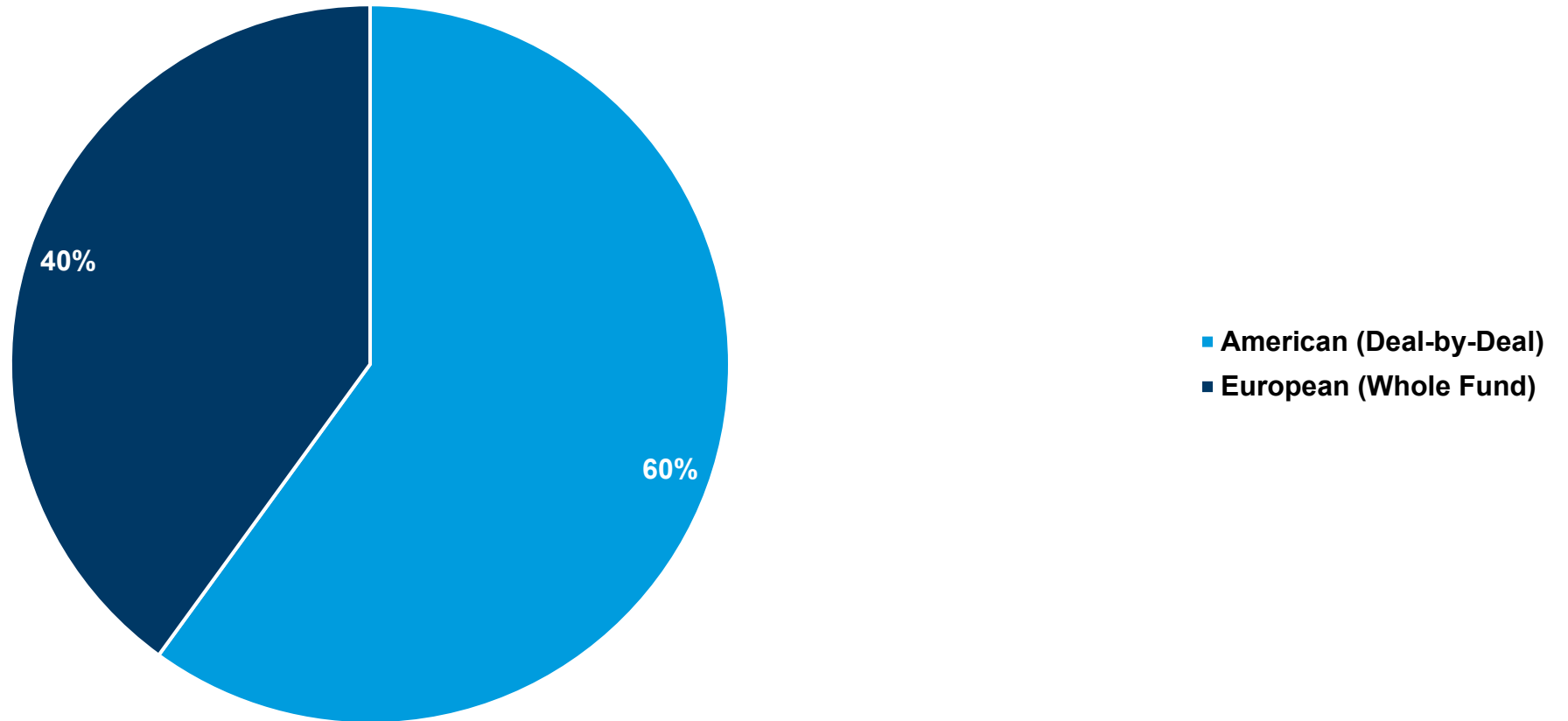


Distribution waterfall – Type of waterfall <\$500M



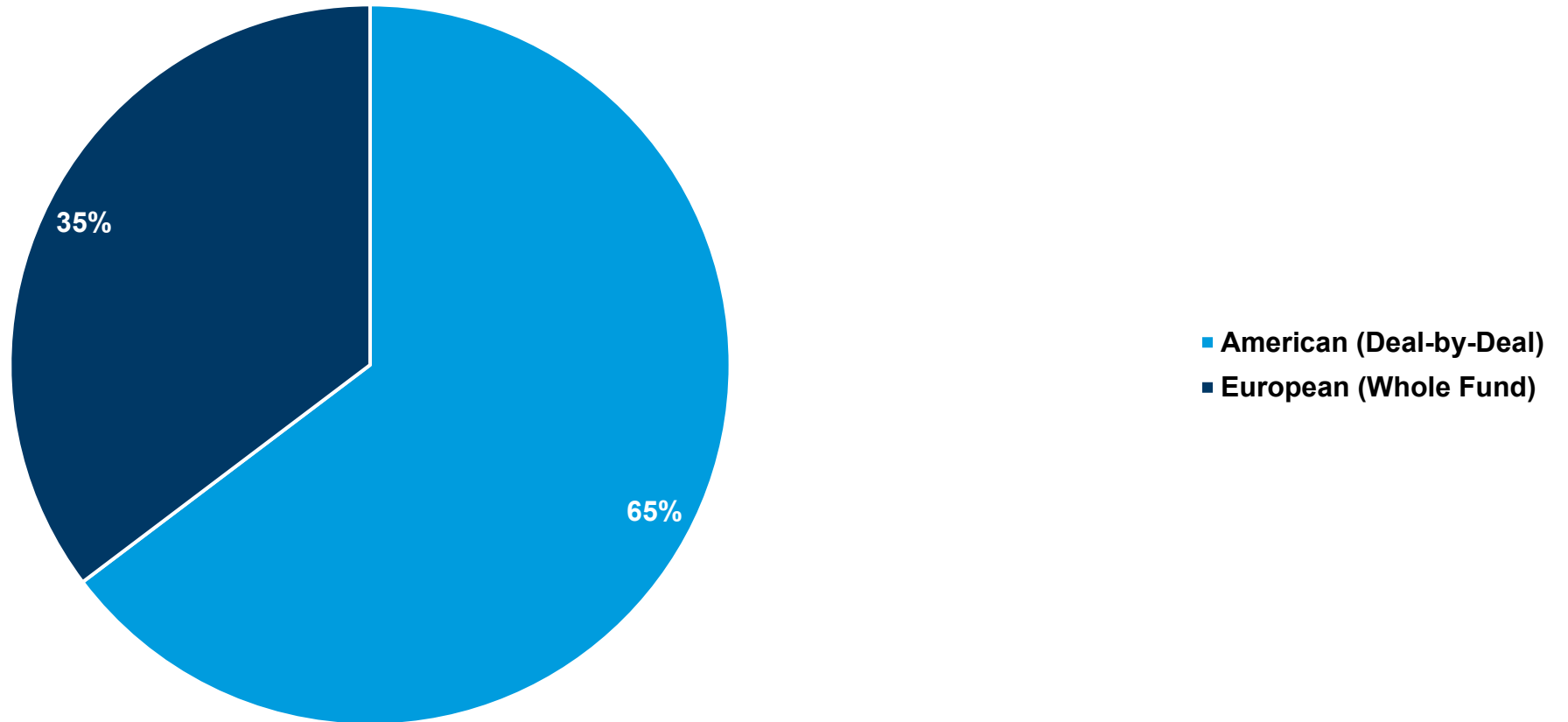
- American (Deal-by-Deal)
- European (Whole Fund)

Distribution waterfall – Type of waterfall \$500M-\$1B



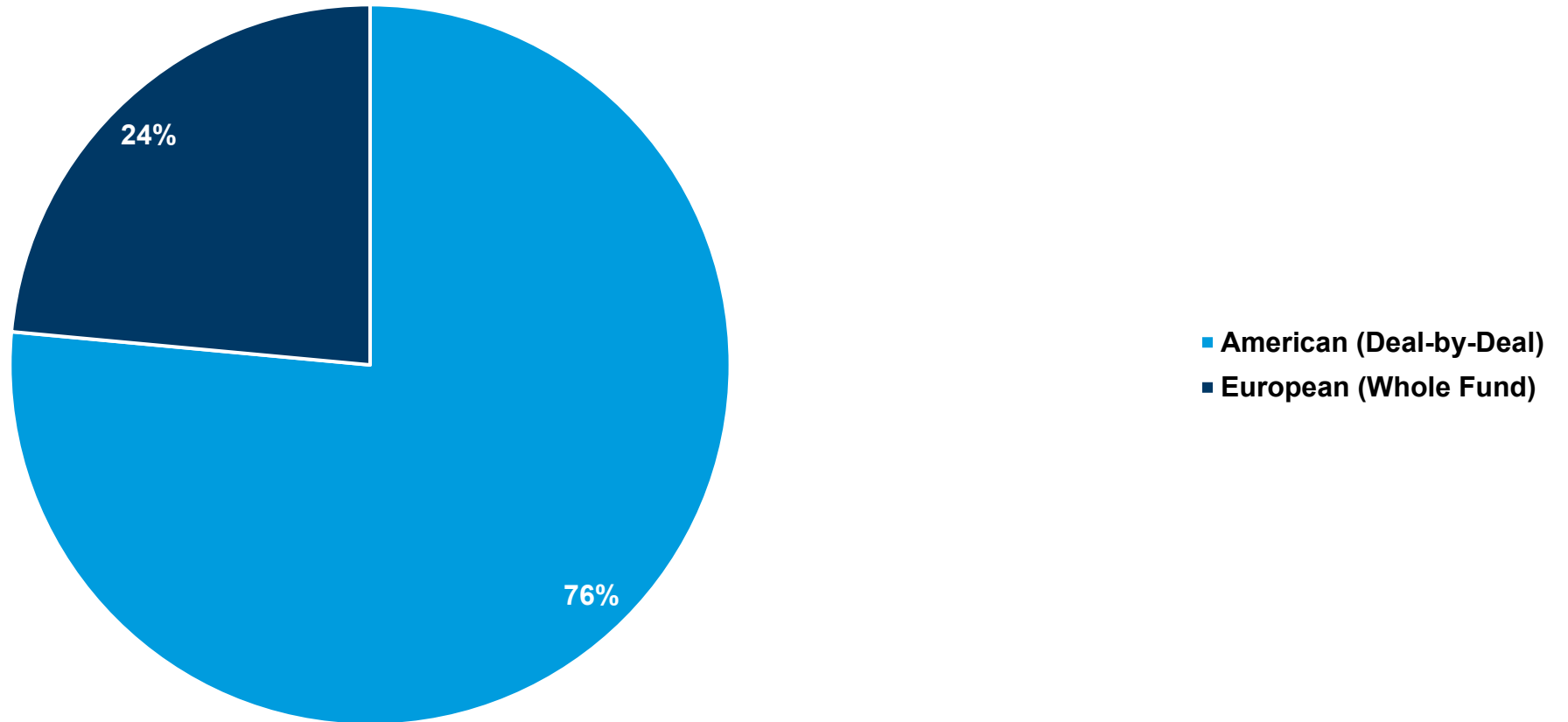
Distribution waterfall – Type of waterfall

\$1B-\$2.5B



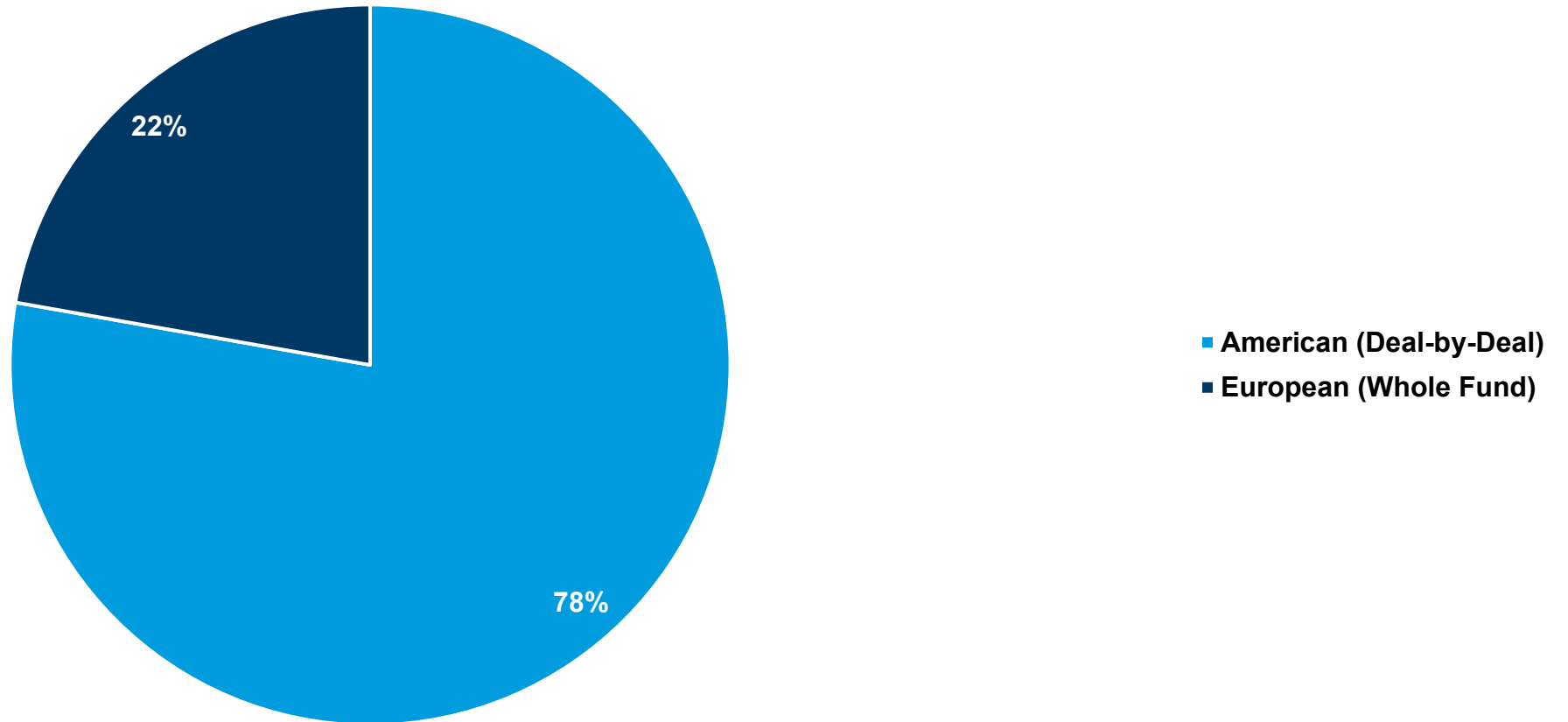
Distribution waterfall – Type of waterfall

\$2.5B-\$5B

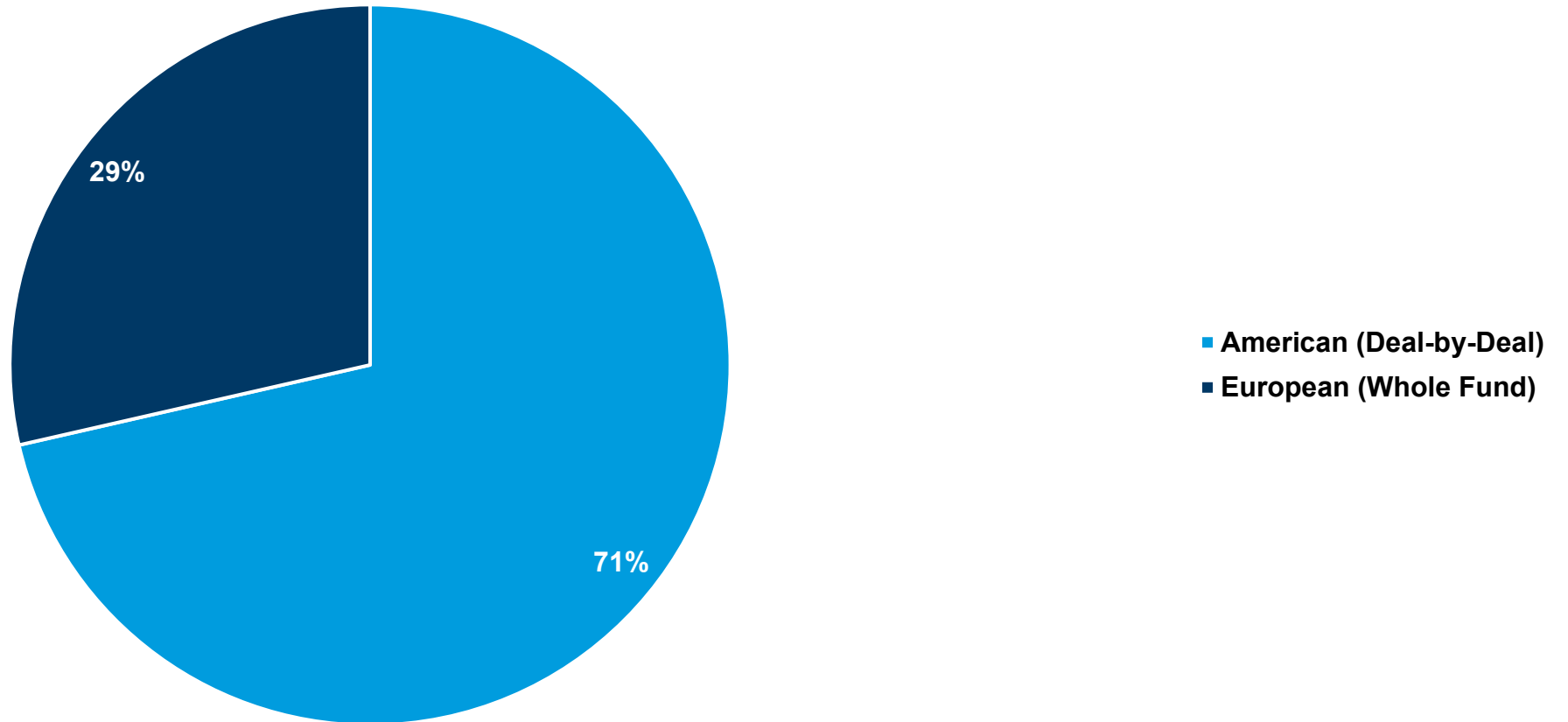


Distribution waterfall – Type of waterfall

\$5B-\$10B



Distribution waterfall – Type of waterfall >\$10B

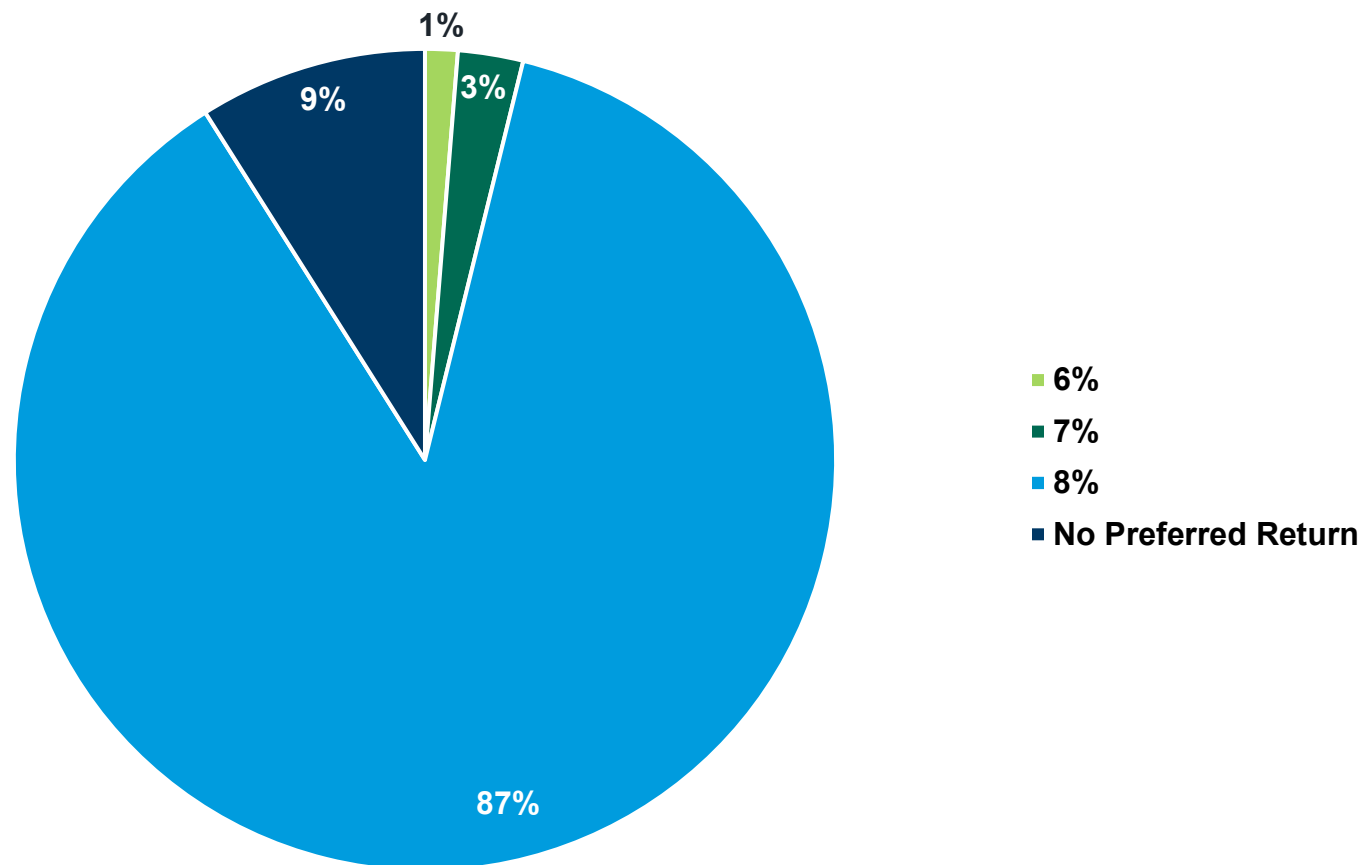


Distribution waterfall – Preferred return (%)

All Funds

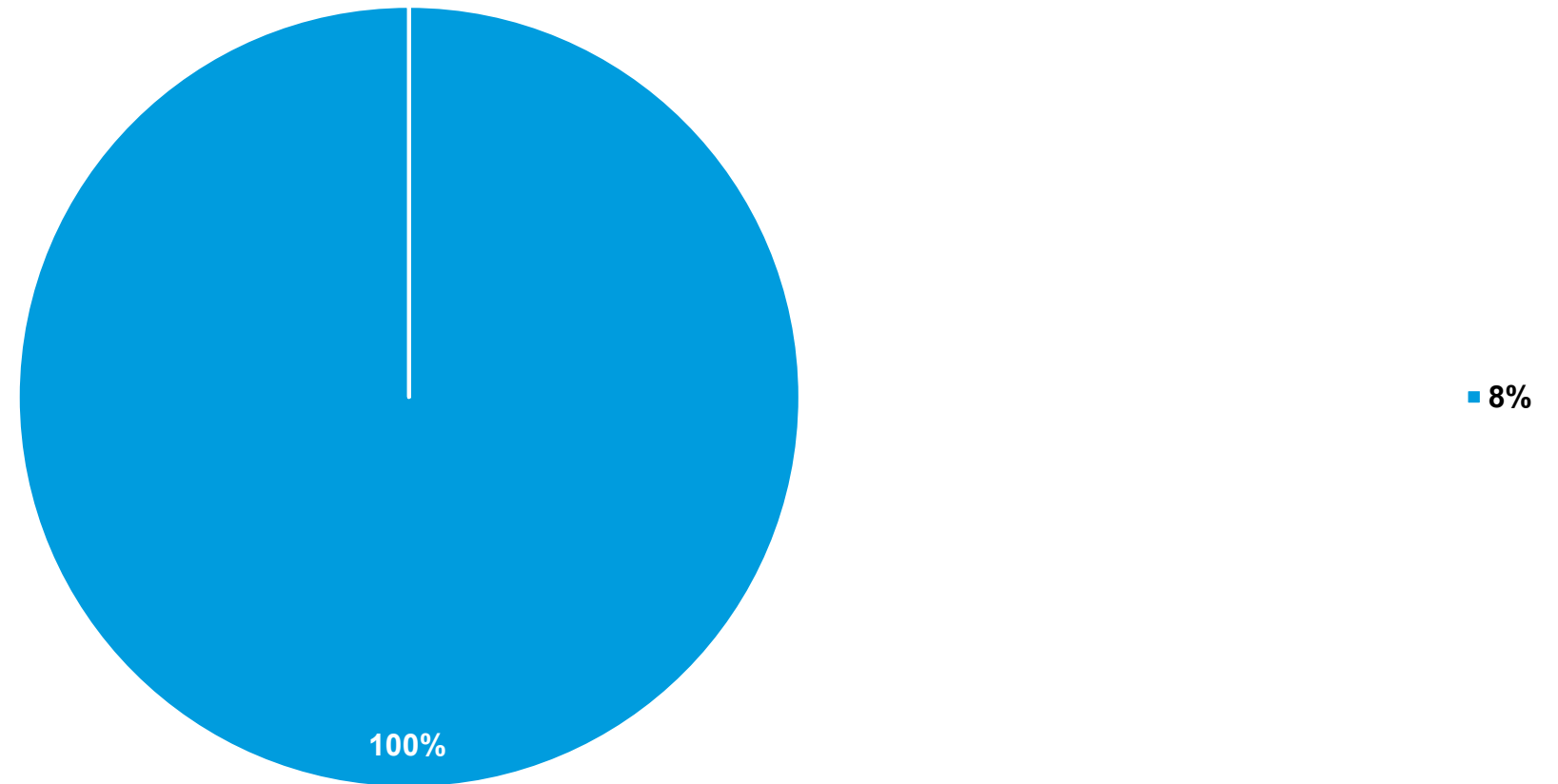
The market standard preferred return remains at 8% with 87% of funds in our sample applying that percentage.

The smallest funds (under \$2.5 billion) showed virtually no variance from that standard, and funds between \$2.5 billion and \$5 billion were most likely to have preferred returns of 6% or 7%. Funds that do not have a preferred return component in their waterfall or that have a lower preferred return rate are more likely to feature a whole-fund (“European style”) waterfall.

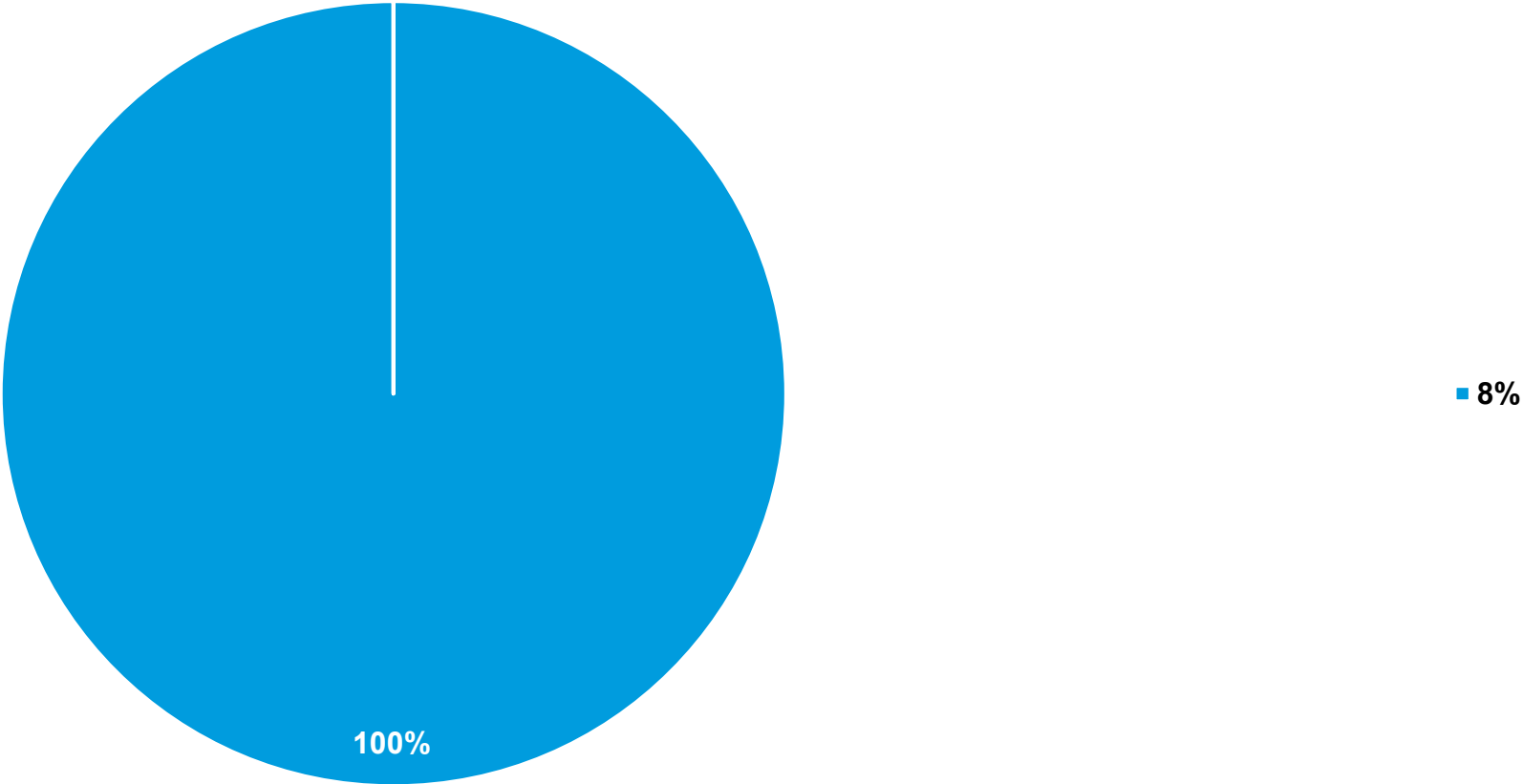


Distribution waterfall – Preferred return (%)

<\$500M

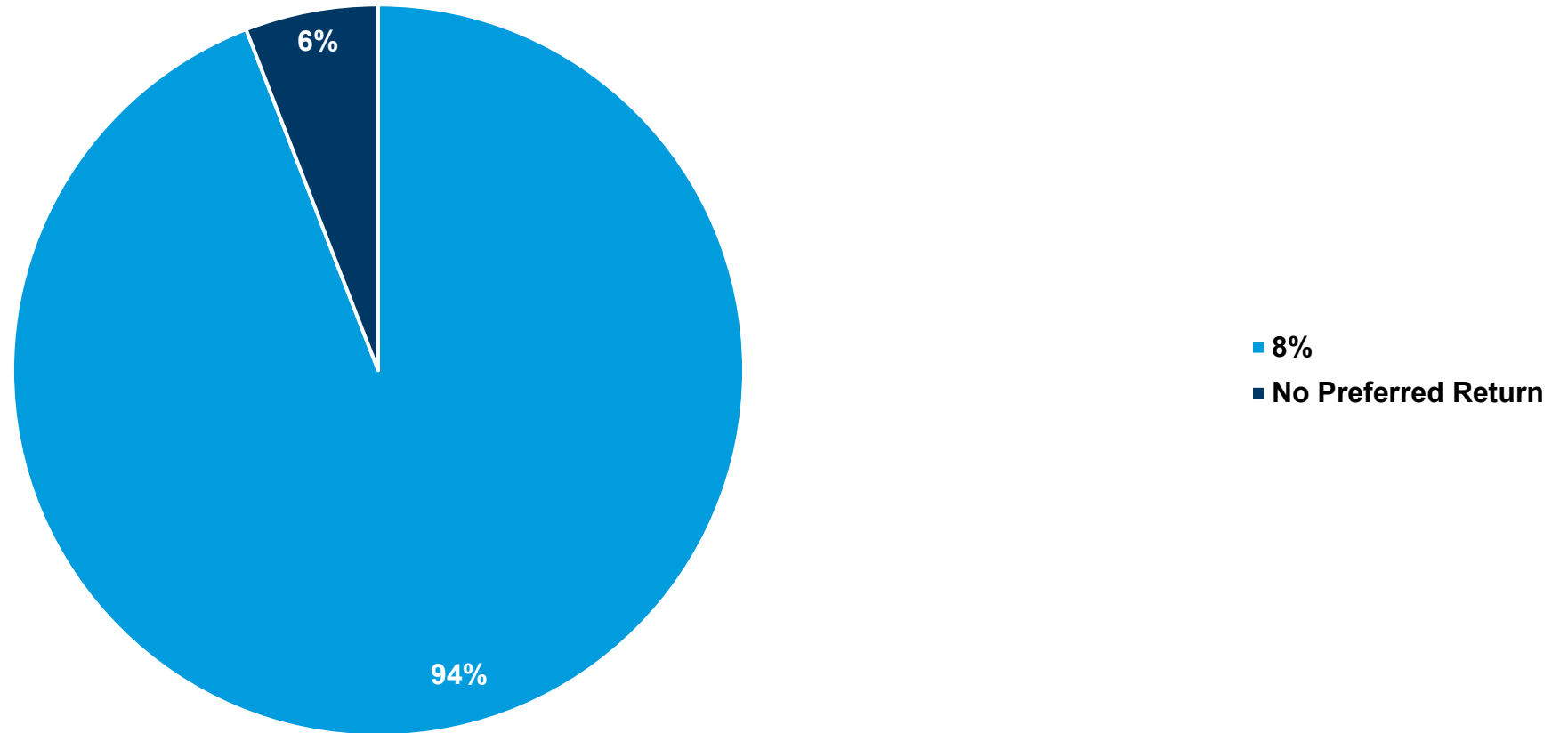


Distribution waterfall – Preferred return (%)
\$500M-\$1B



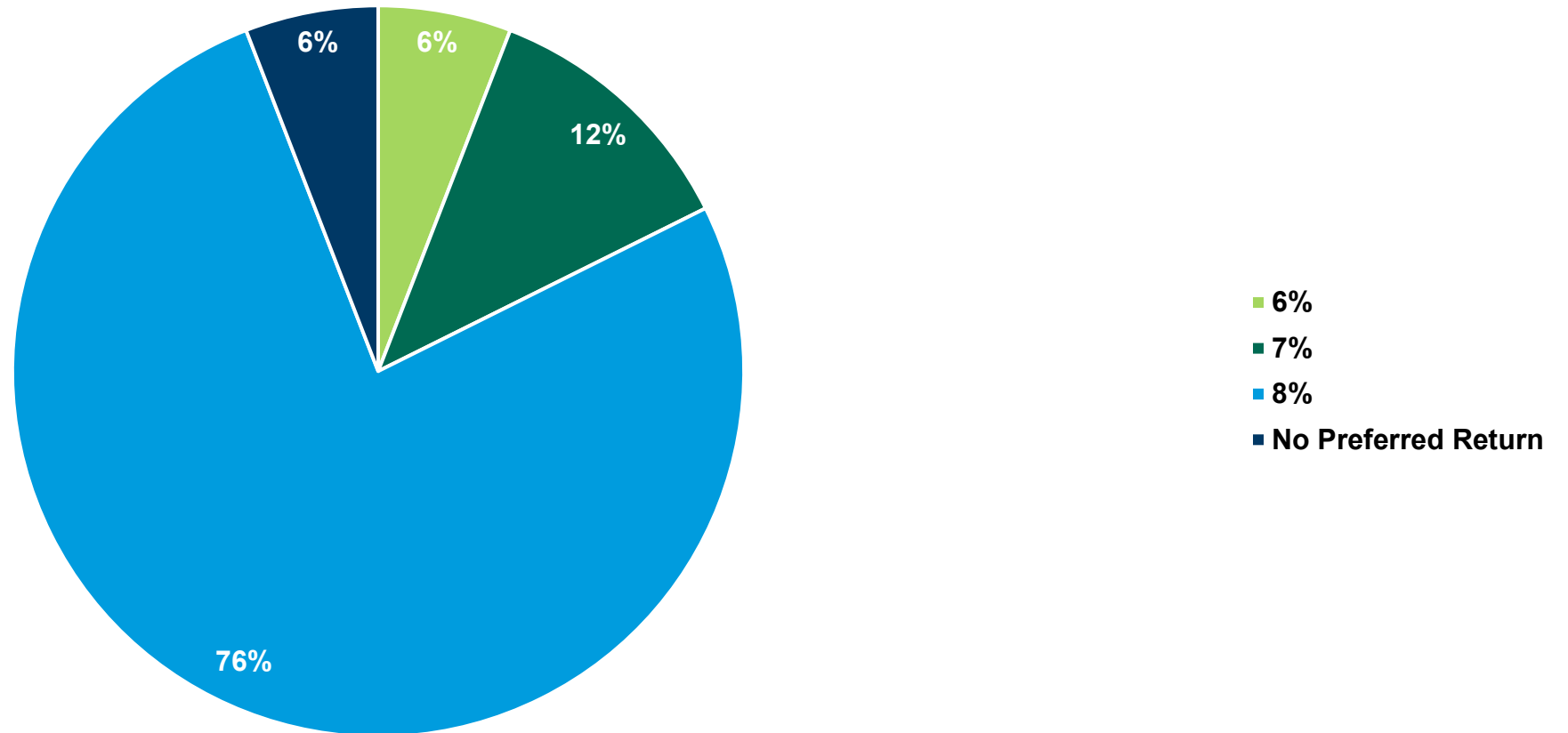
Distribution waterfall – Preferred return (%)

\$1B-\$2.5B



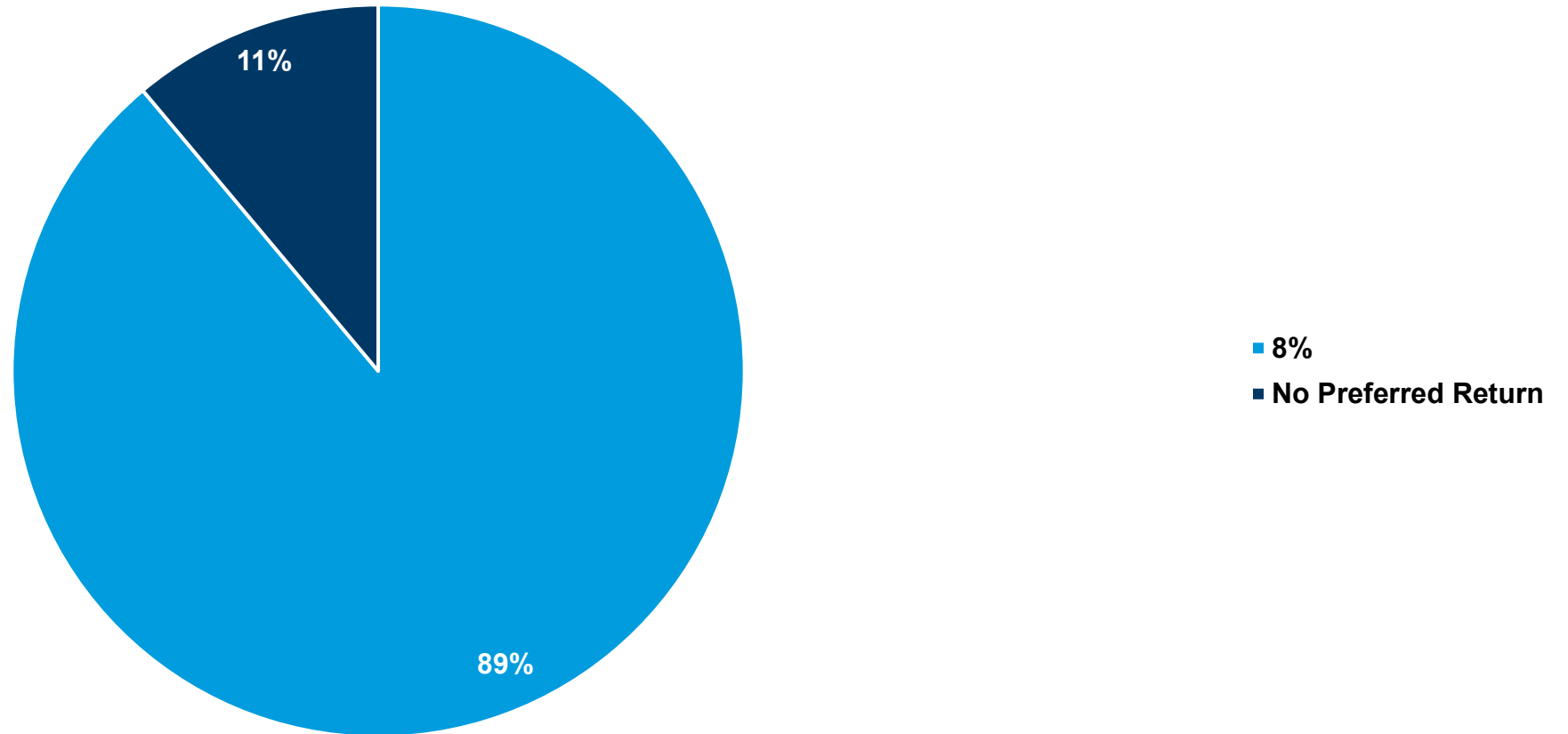
Distribution waterfall – Preferred return (%)

\$2.5B-\$5B

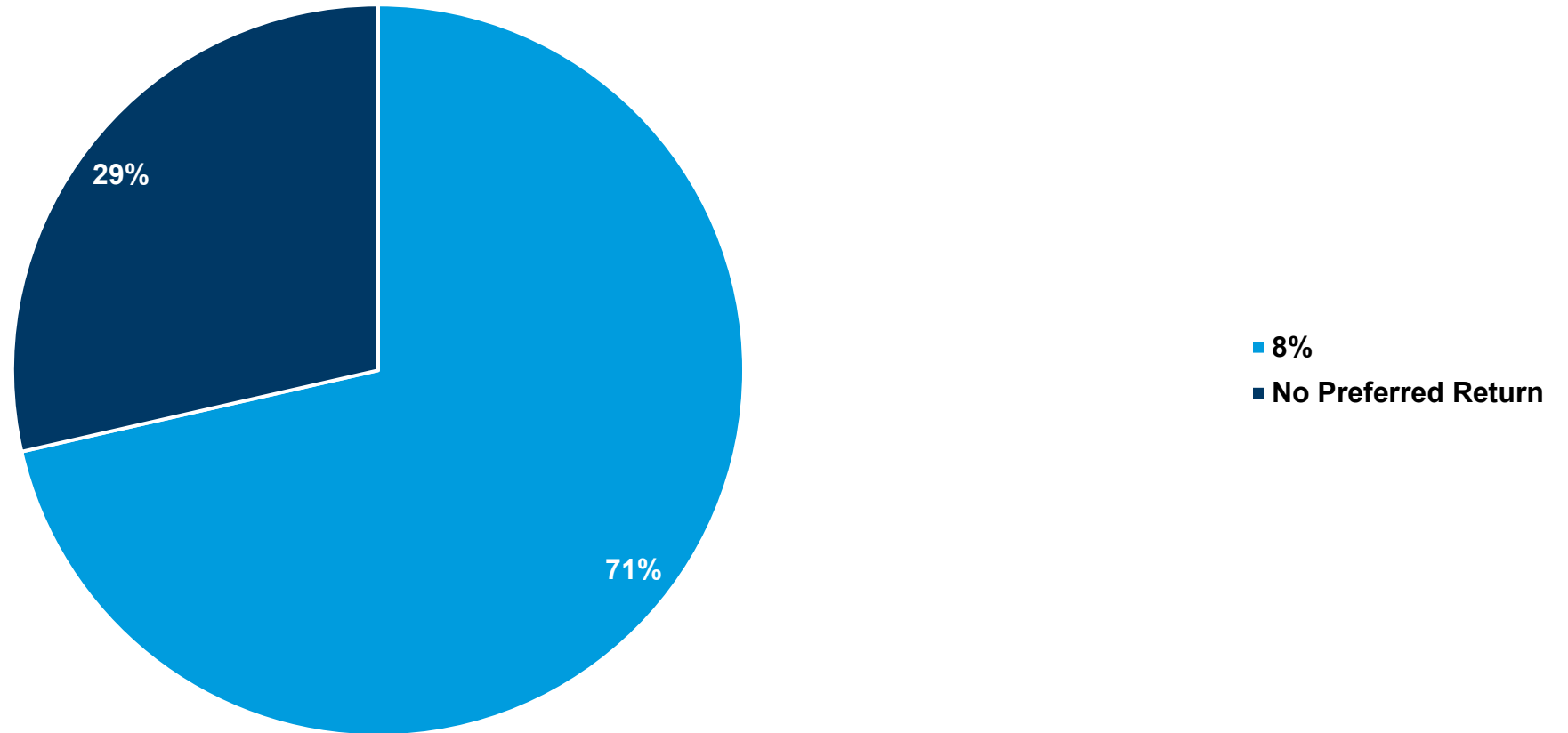


Distribution waterfall – Preferred return (%)

\$5B-\$10B



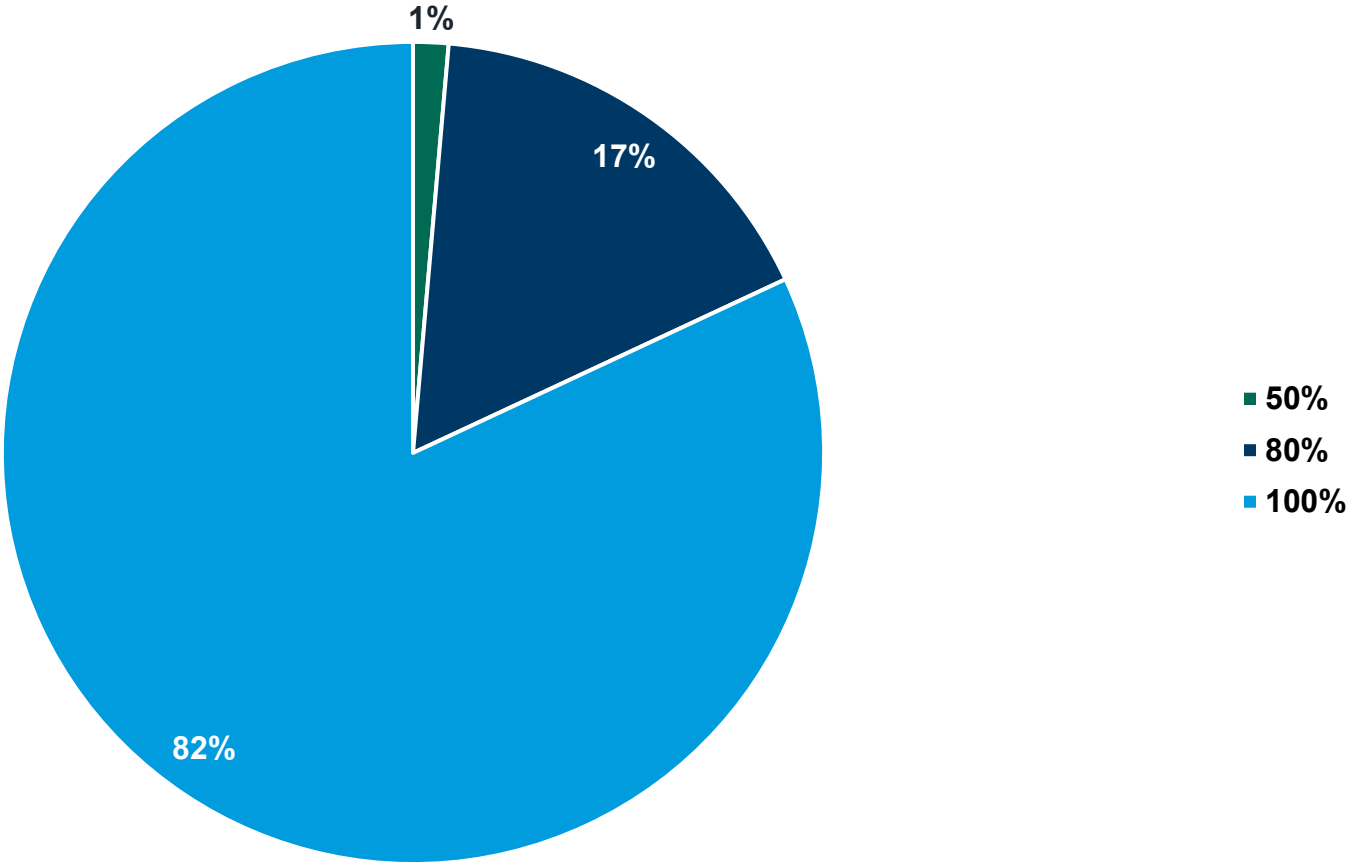
Distribution waterfall – Preferred return (%) >\$10B



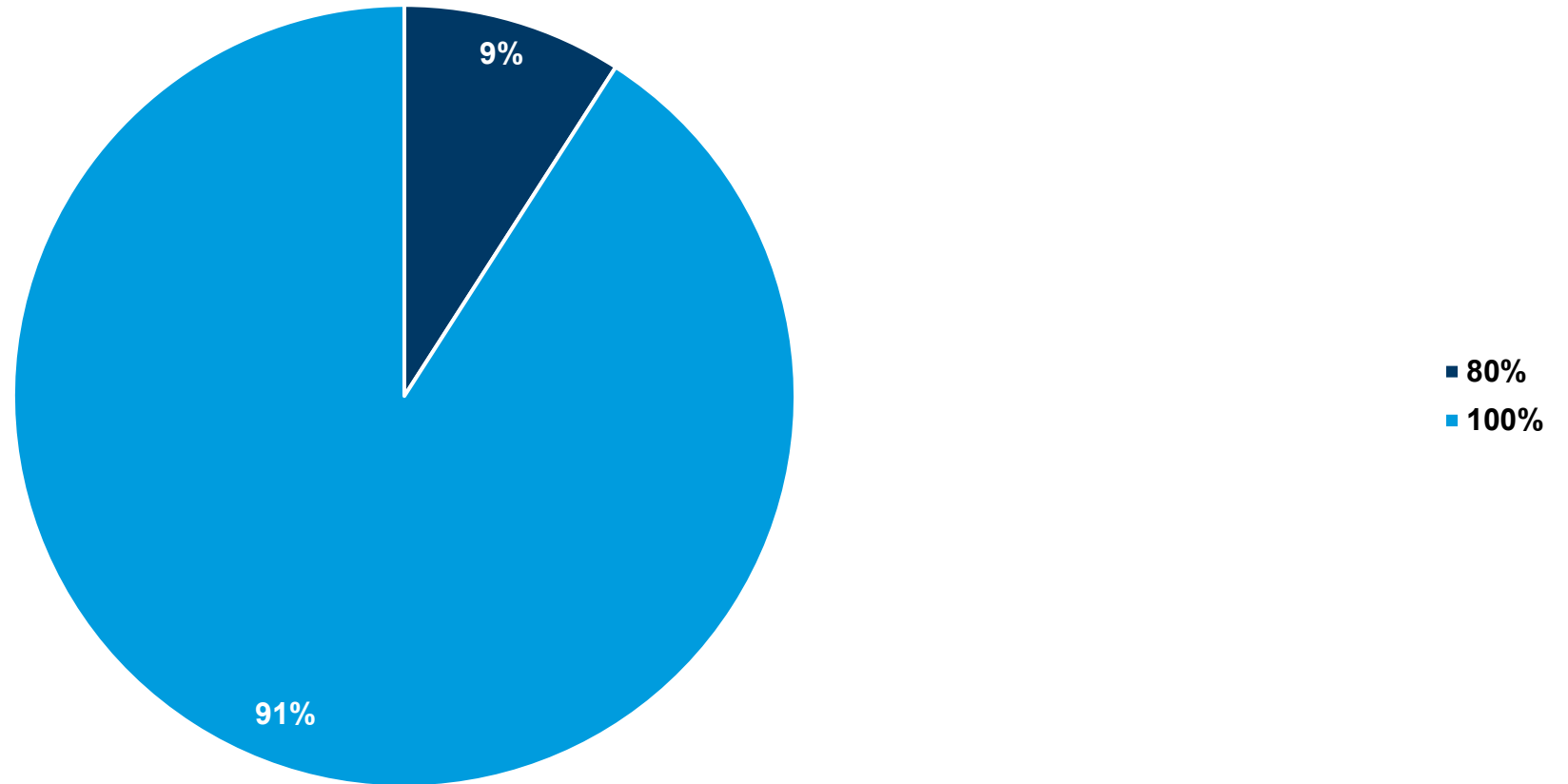
Distribution waterfall – Carried interest catch-up (% after preferred return)

All Funds

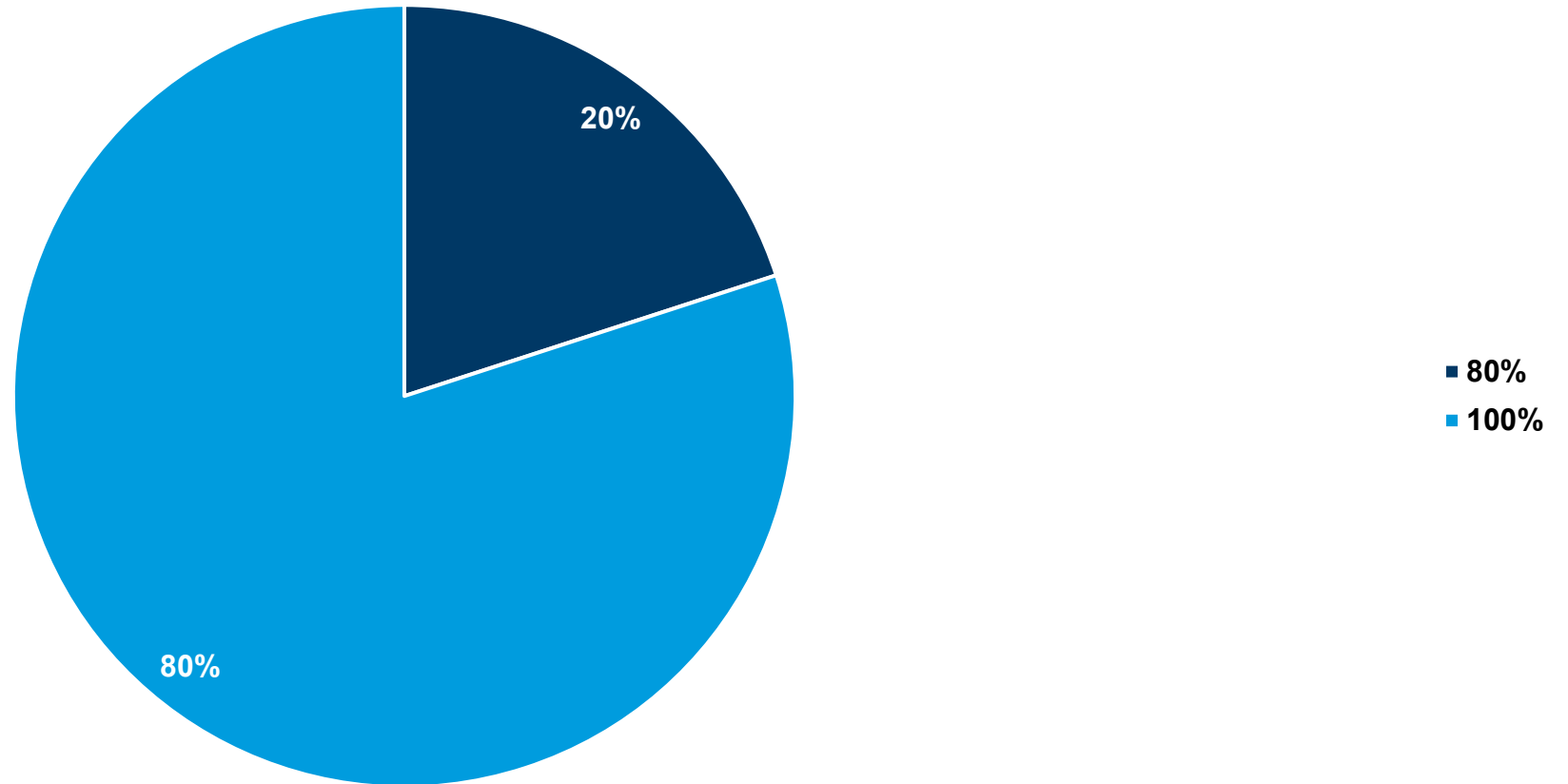
With 82% of funds falling into the category, it is by far the most common outcome to have a 100% catch-up of carried interest for the GP after the preferred return has been satisfied. An 80/20 catch-up, the only alternative with meaningful representation, was seen in only 17% of funds across our survey.



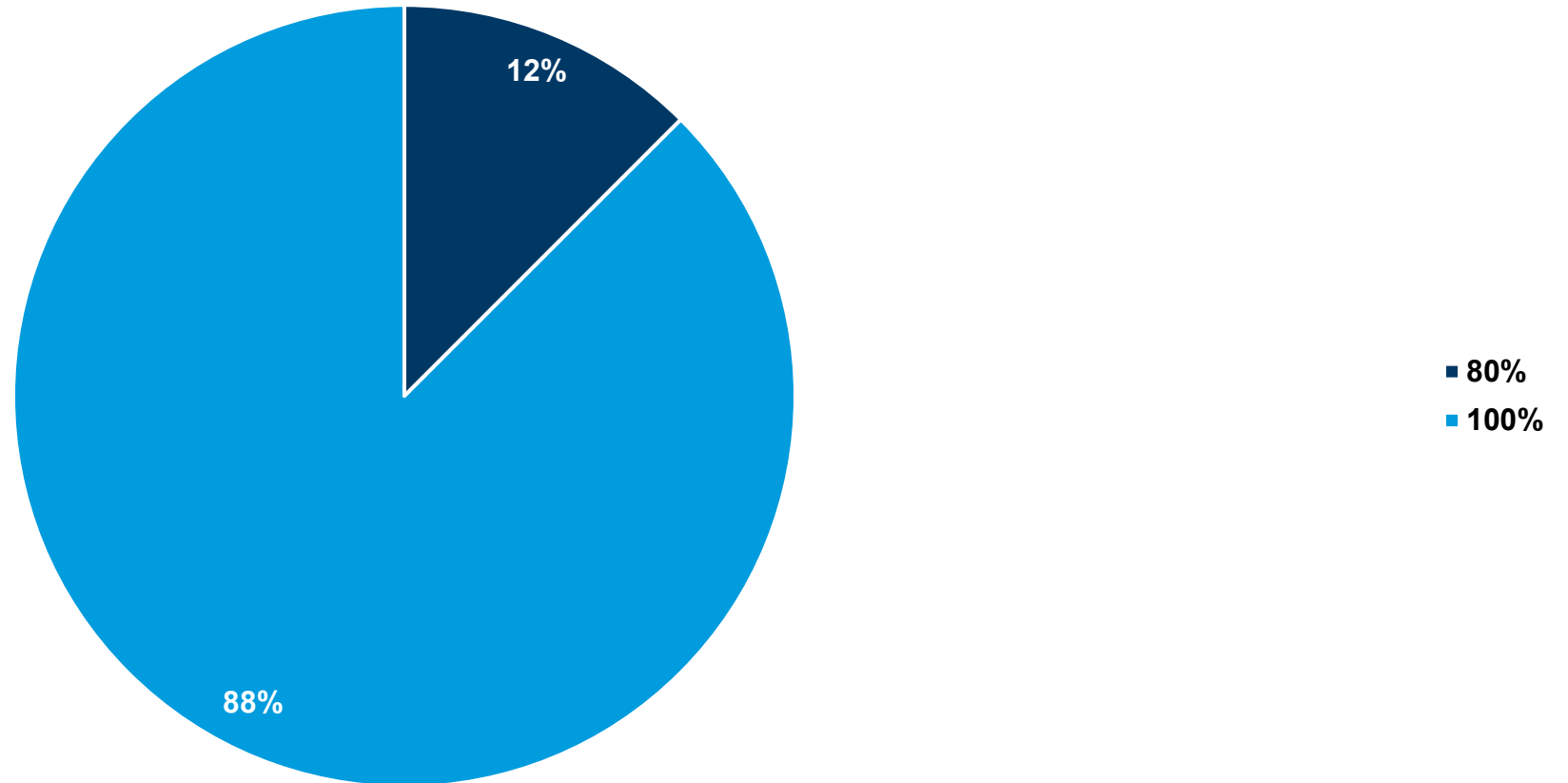
Distribution waterfall – Carried interest catch-up (% after preferred return) <\$500M



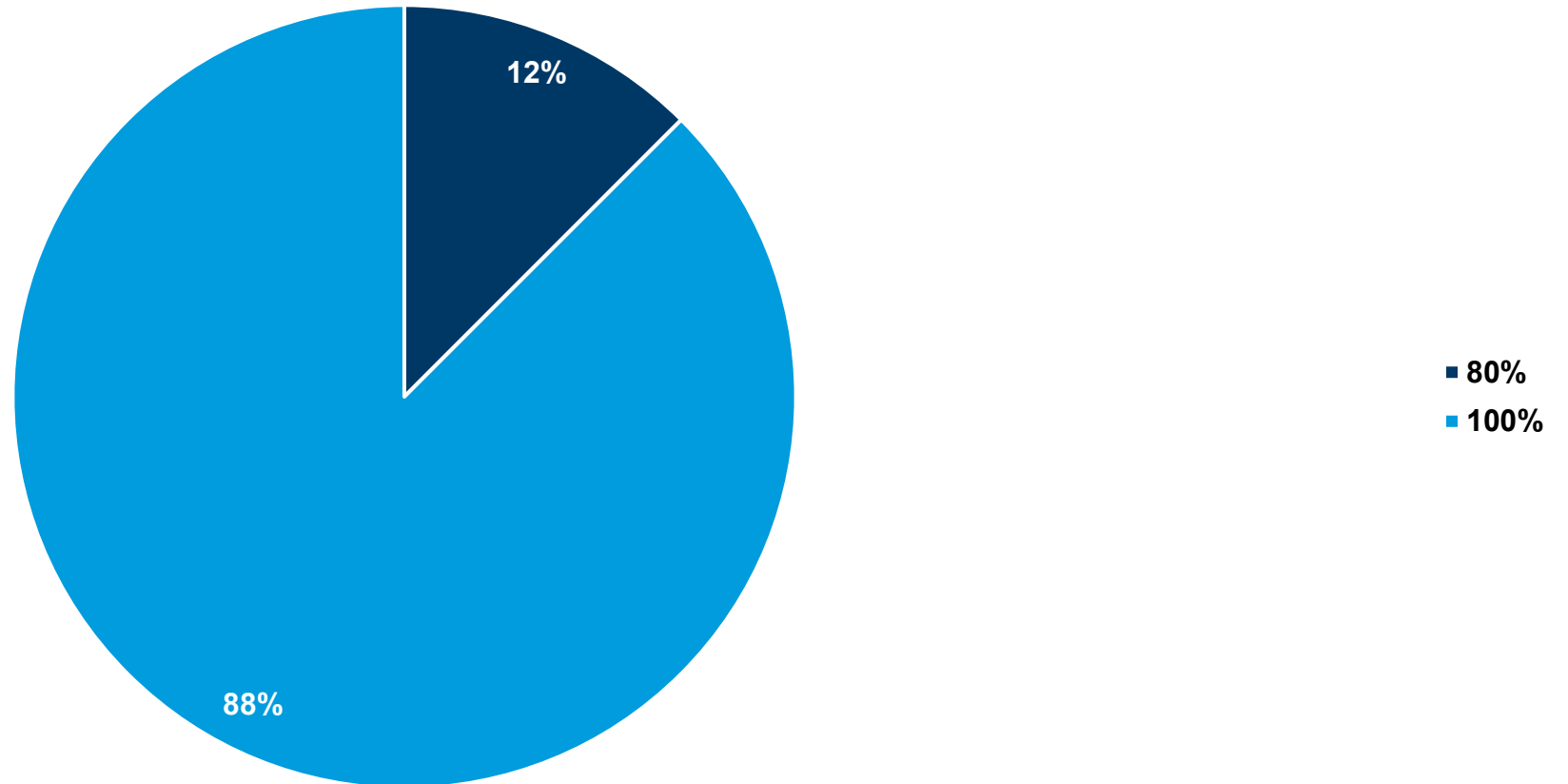
Distribution waterfall – Carried interest catch-up (% after preferred return) \$500M-\$1B



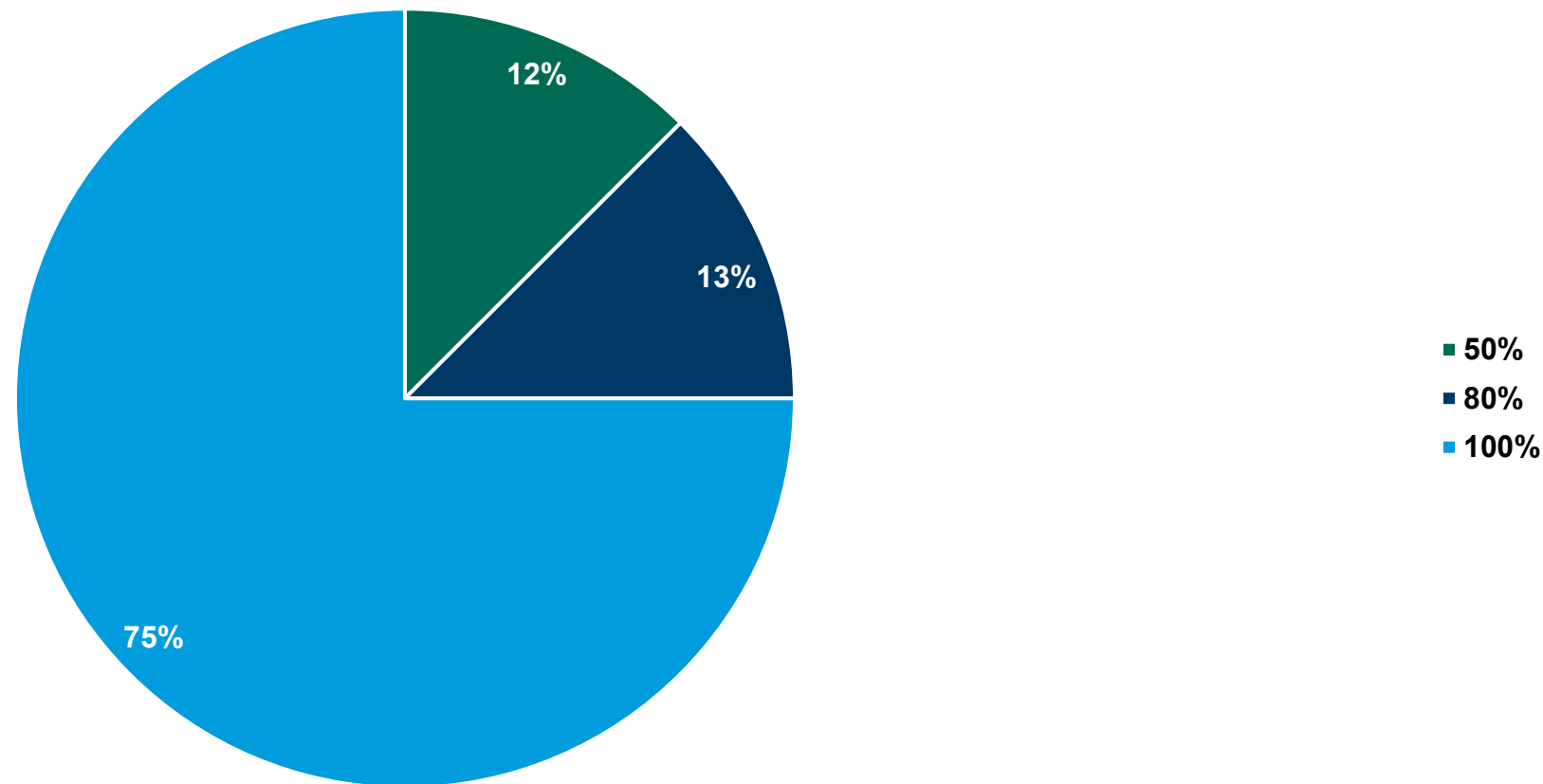
Distribution waterfall – Carried interest catch-up (% after preferred return) \$1B-\$2.5B



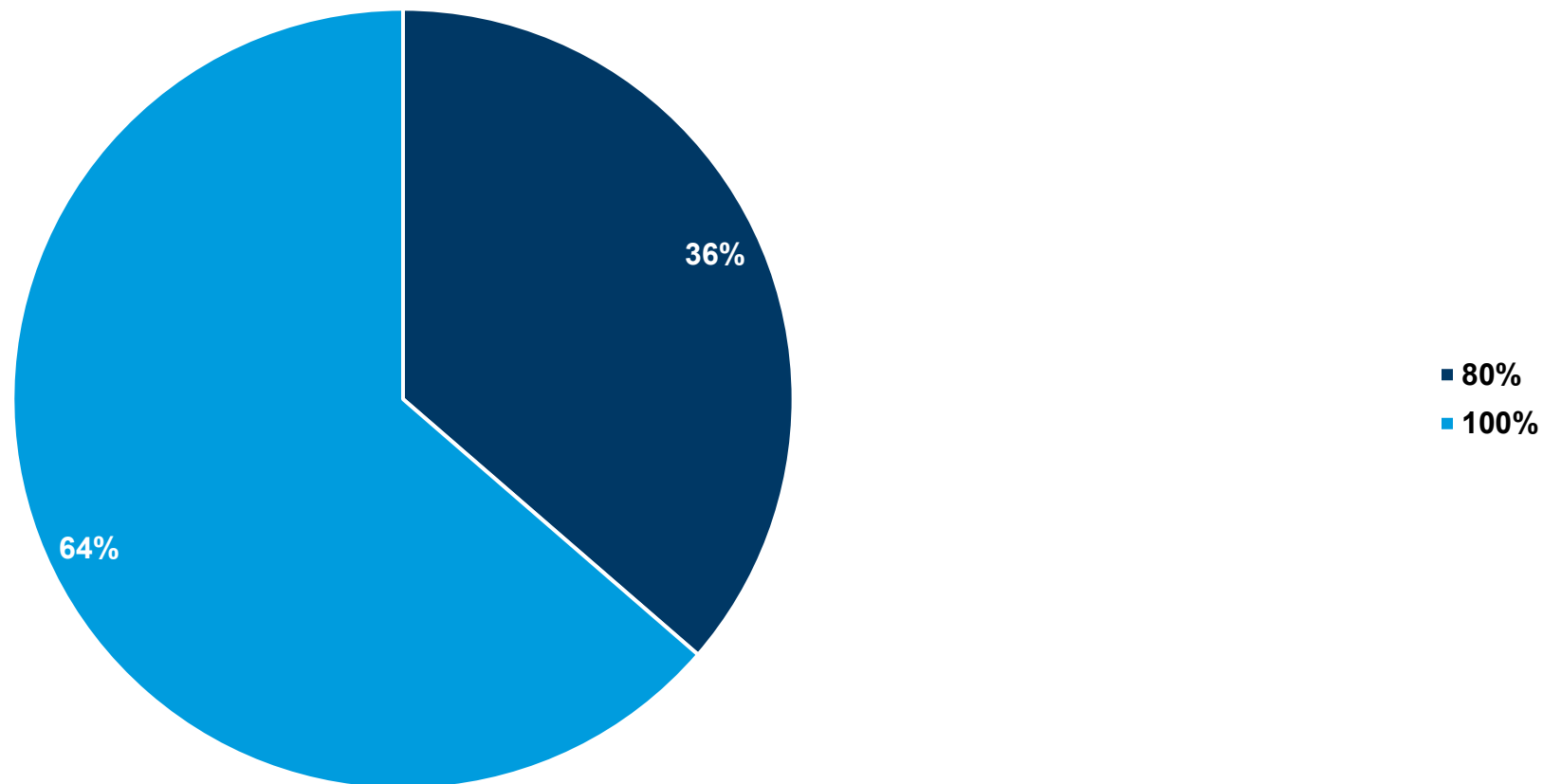
Distribution waterfall – Carried interest catch-up (% after preferred return) \$2.5B-\$5B



Distribution waterfall – Carried interest catch-up (% after preferred return)
\$5B-\$10B



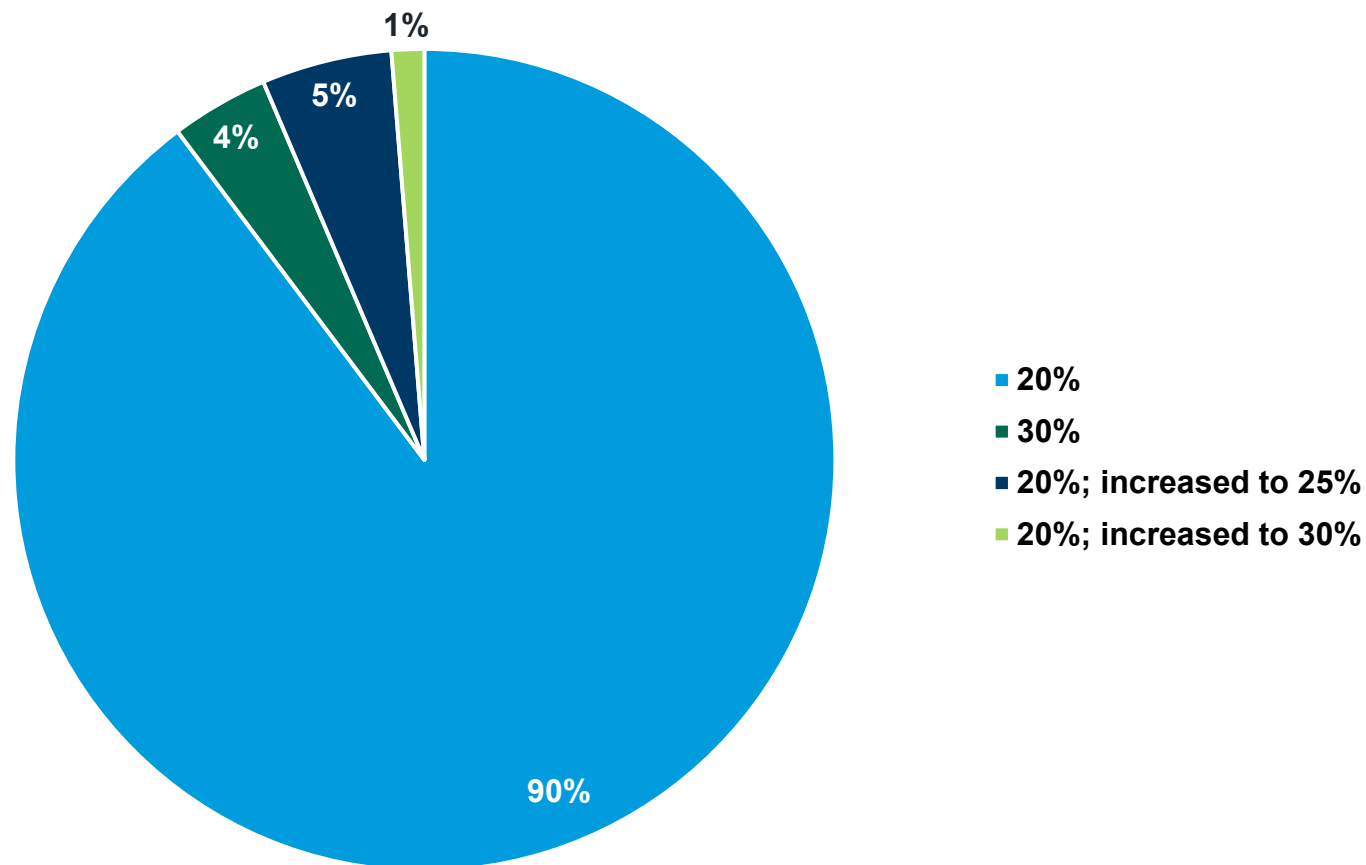
Distribution waterfall – Carried interest catch-up (% after preferred return) >\$10B



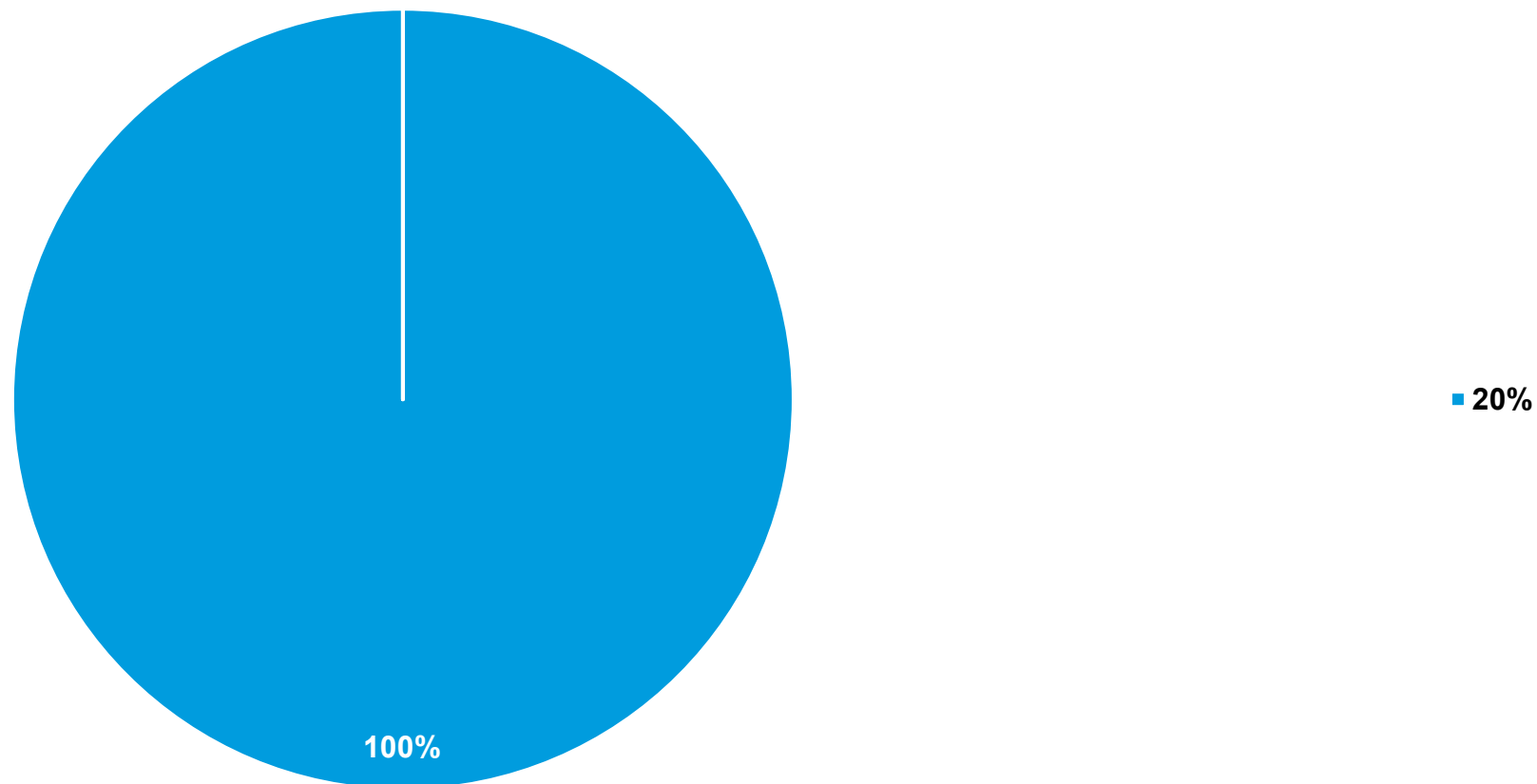
Distribution waterfall – Carried interest percentage

All Funds

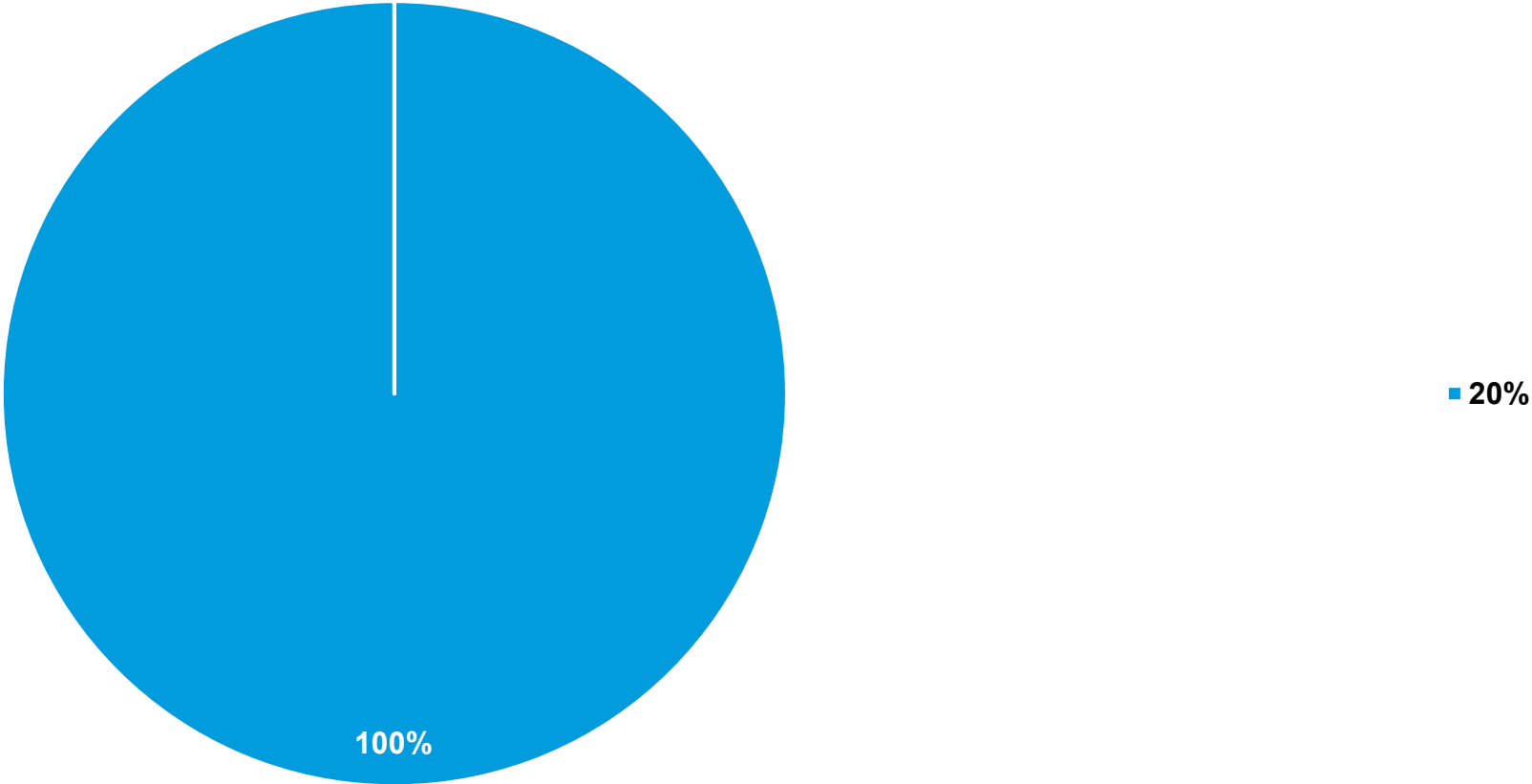
In line with the general market standard, the percentage of surveyed funds with a carried interest percentage fixed at 20% comes in at 90%. Funds with carry ratchets, meaning an increase in carry percentage once the fund performs at a certain level (reaching either a target IRR or money multiple), can be found among medium to larger fund sizes, but no funds under \$1 billion provided for anything other than a straight 20% carried interest.



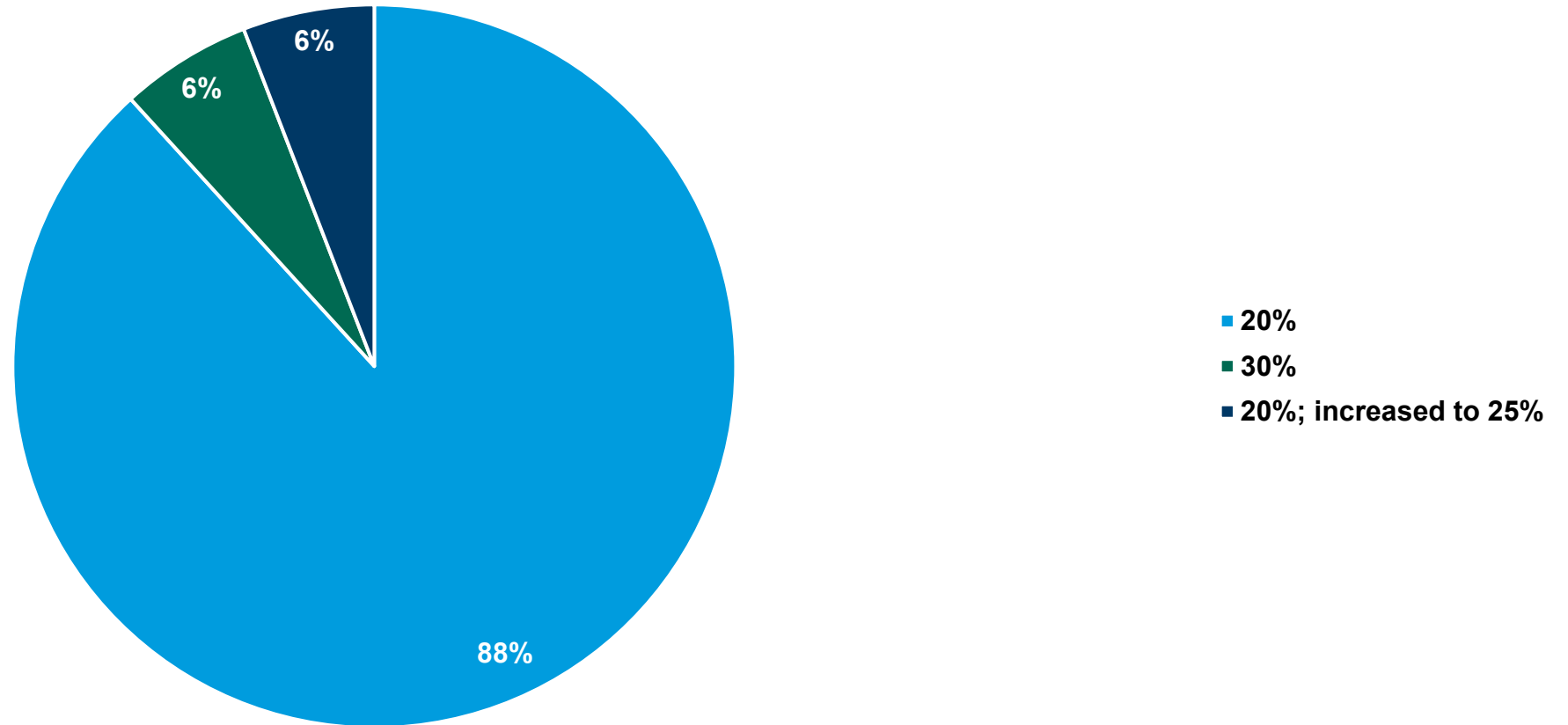
Distribution waterfall – Carried interest percentage <\$500M



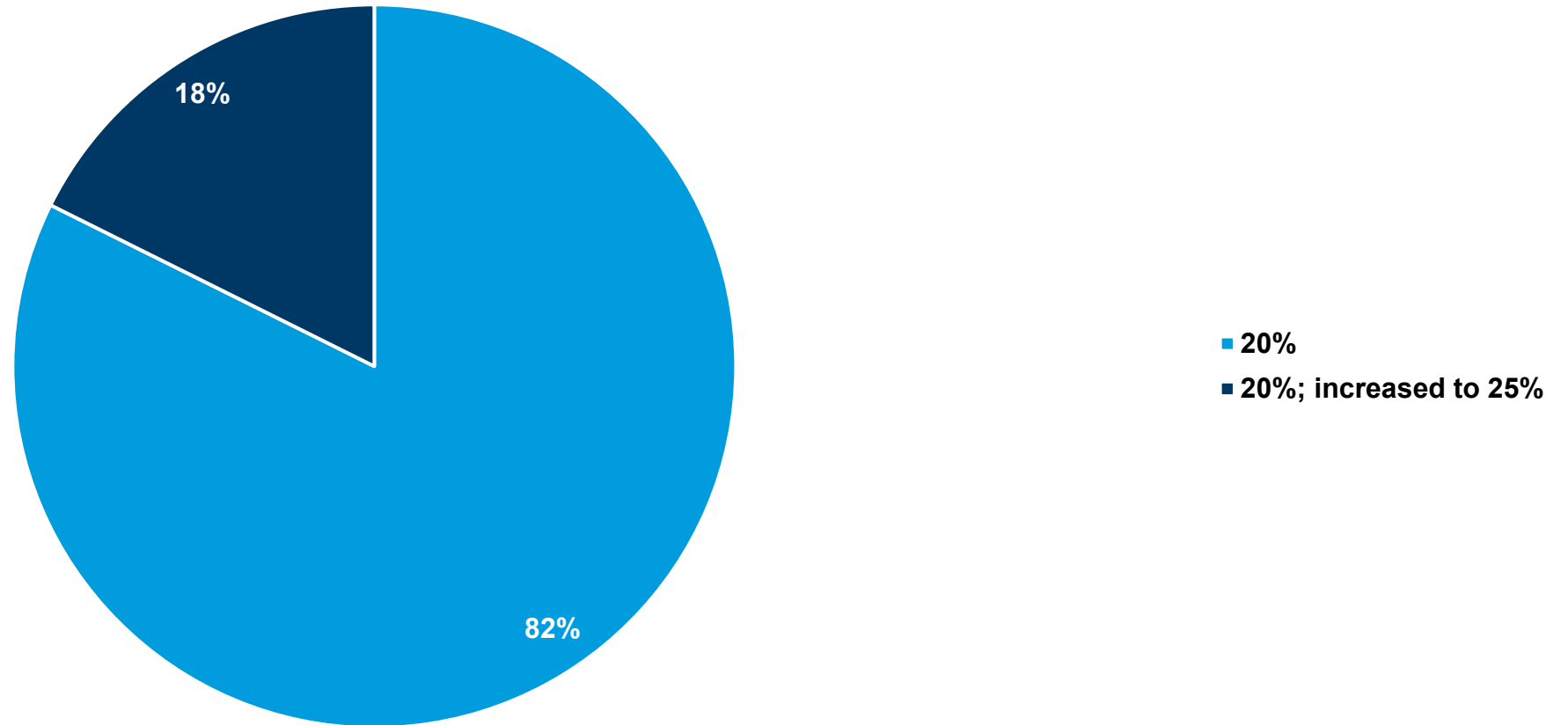
Distribution waterfall – Carried interest percentage
\$500M-\$1B



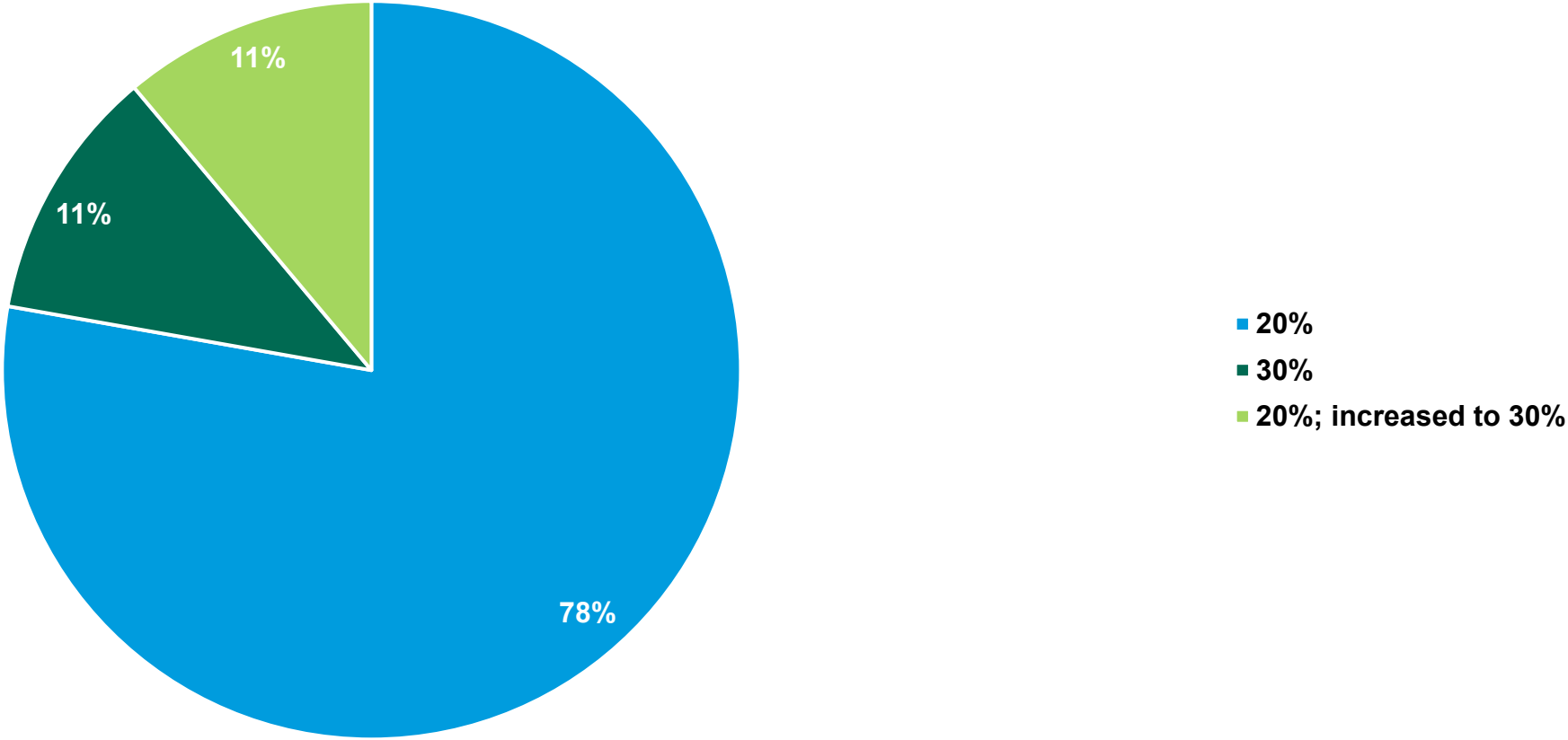
Distribution waterfall – Carried interest percentage \$1B-\$2.5B



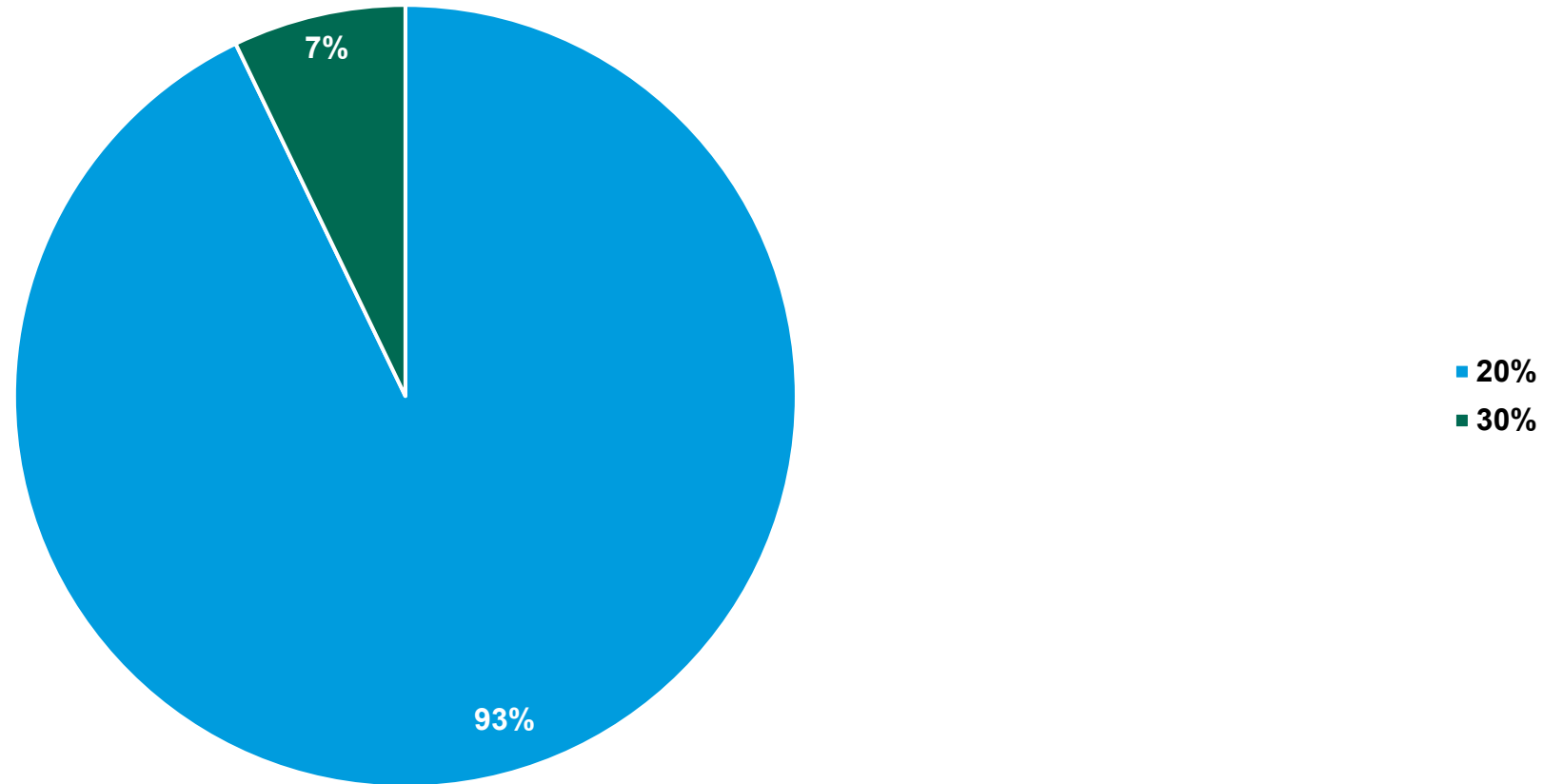
Distribution waterfall – Carried interest percentage \$2.5B-\$5B



Distribution waterfall – Carried interest percentage
\$5B-\$10B



Distribution waterfall – Carried interest percentage >\$10B

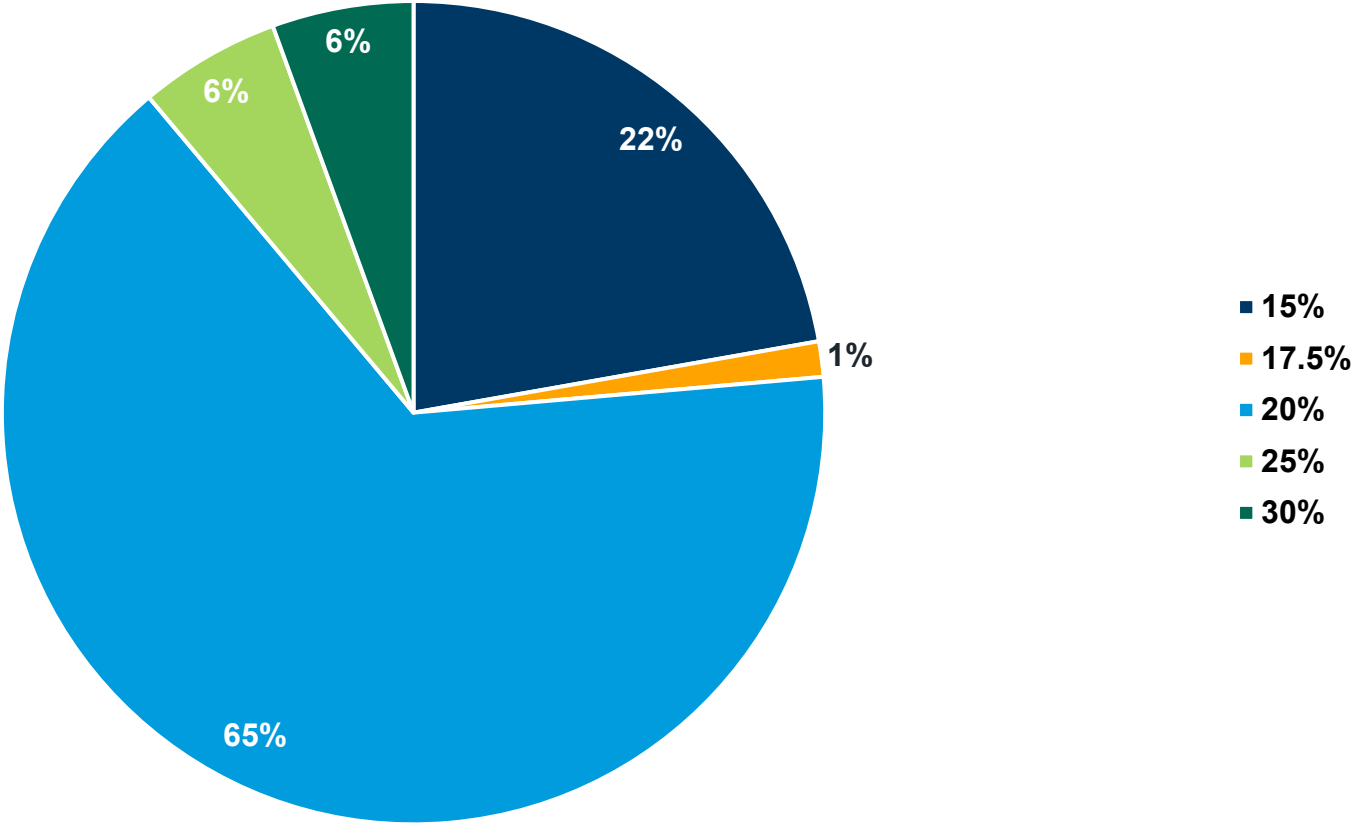


Limit on single deal size (% of commitments)

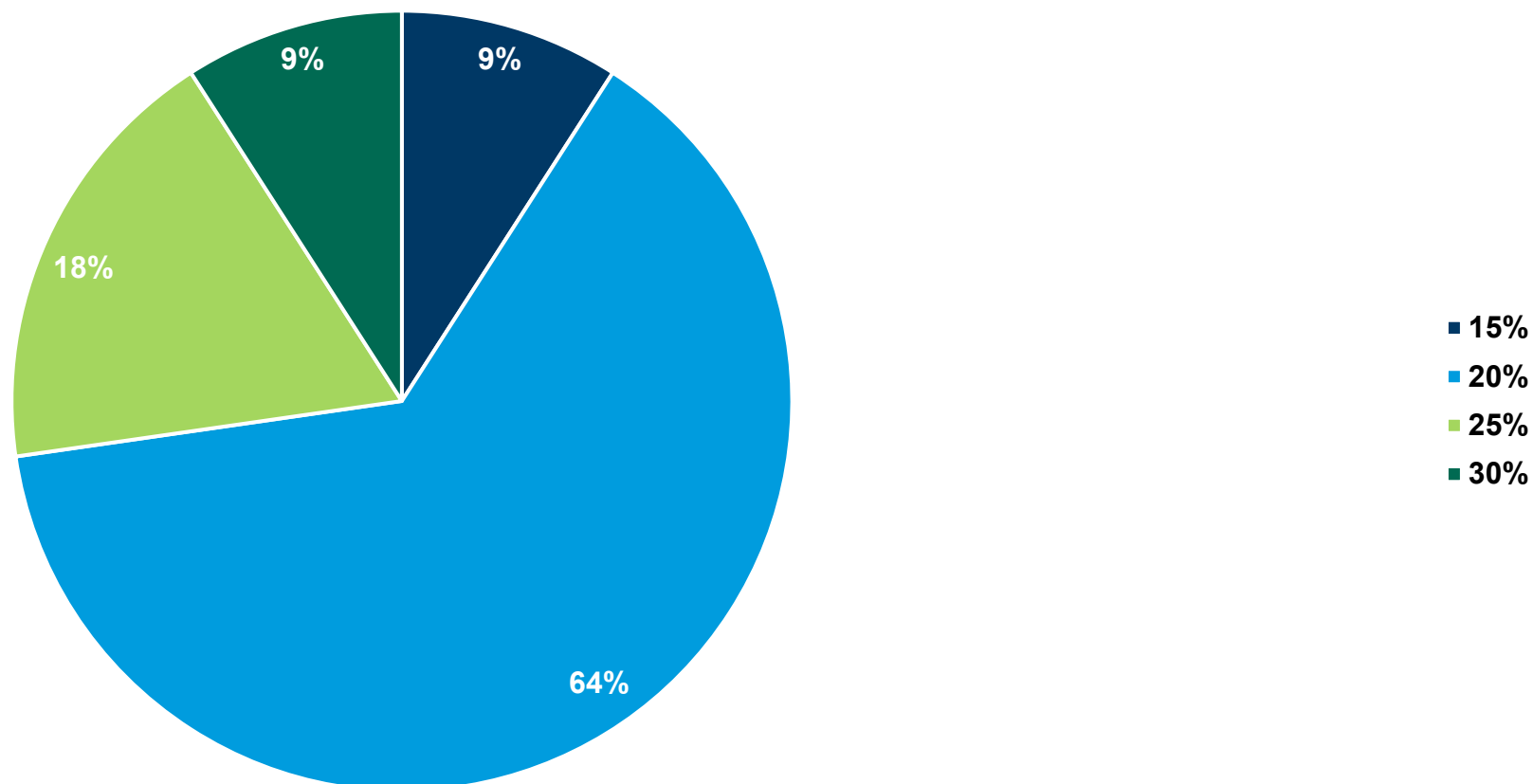
All Funds

Diversification limits are concentrated in the 15% to 20% of commitments range for most funds. The ability to invest above 20% of commitments in one company is concentrated in the smaller funds (<\$1 billion), where it is more likely to provide helpful flexibility given the smaller denominator.

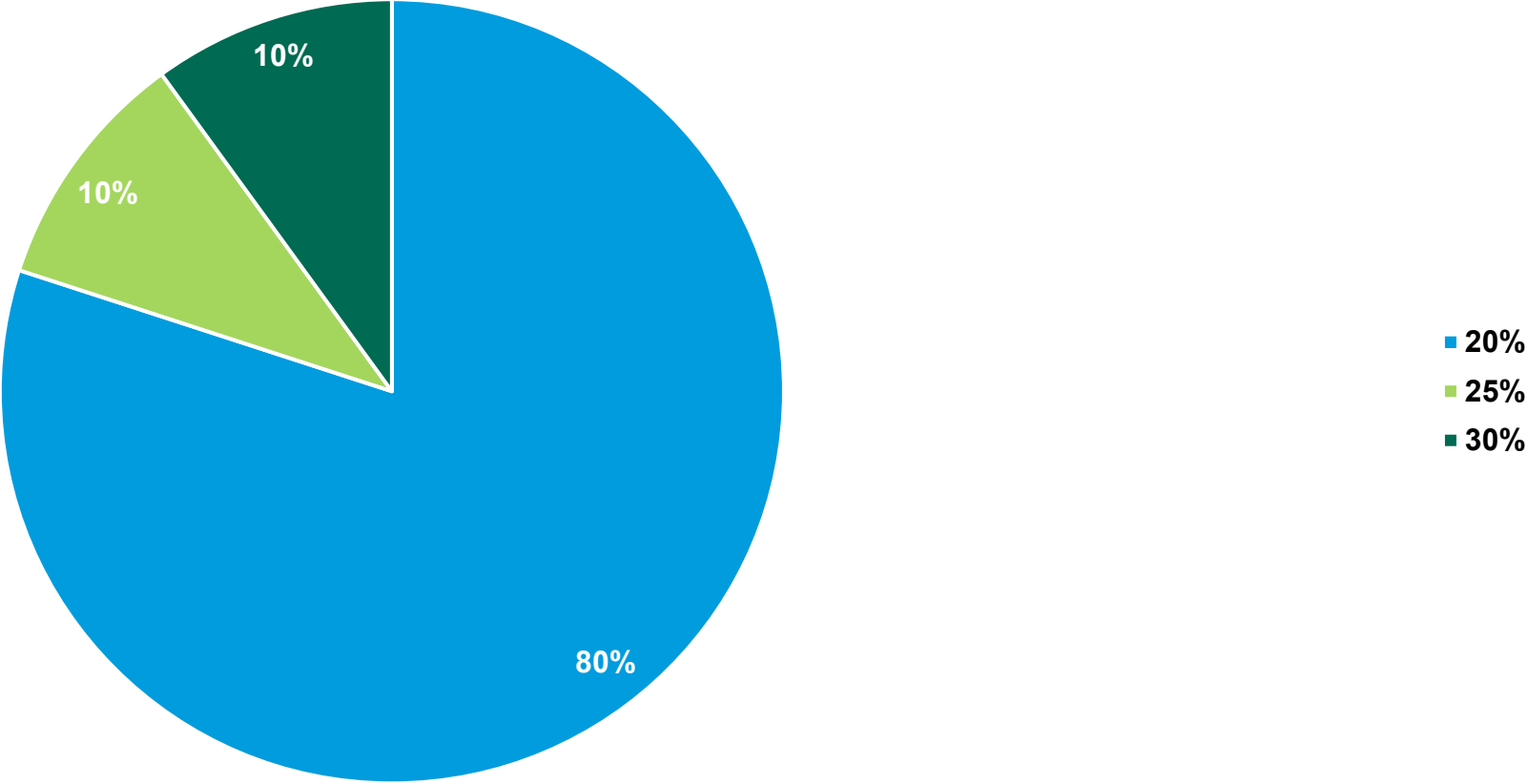
Note the limits referenced here represent permitted permanent investment limits, excluding any temporary investments or bridge financings that a fund may be permitted to make.



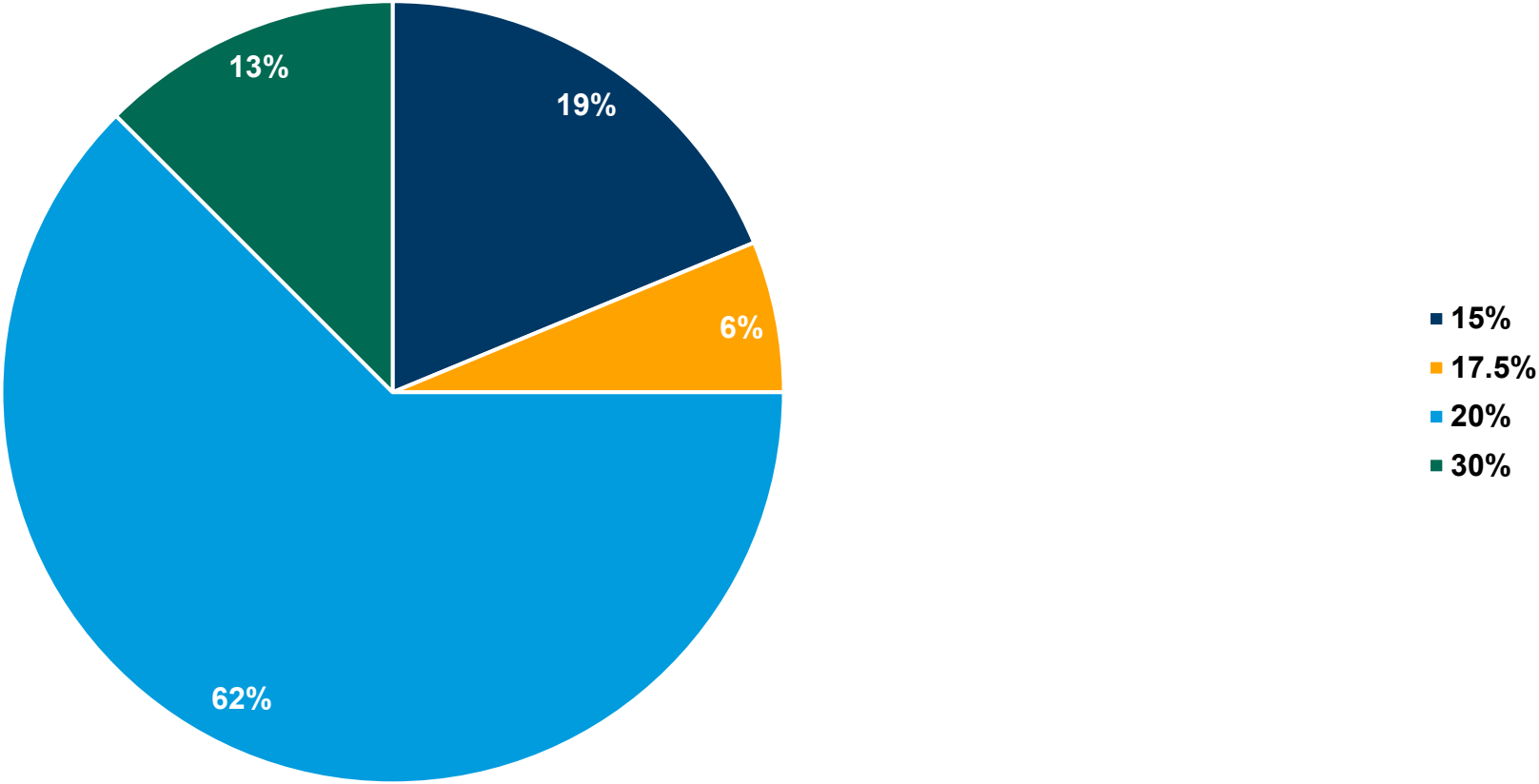
Limit on single deal size (% of commitments) <\$500M



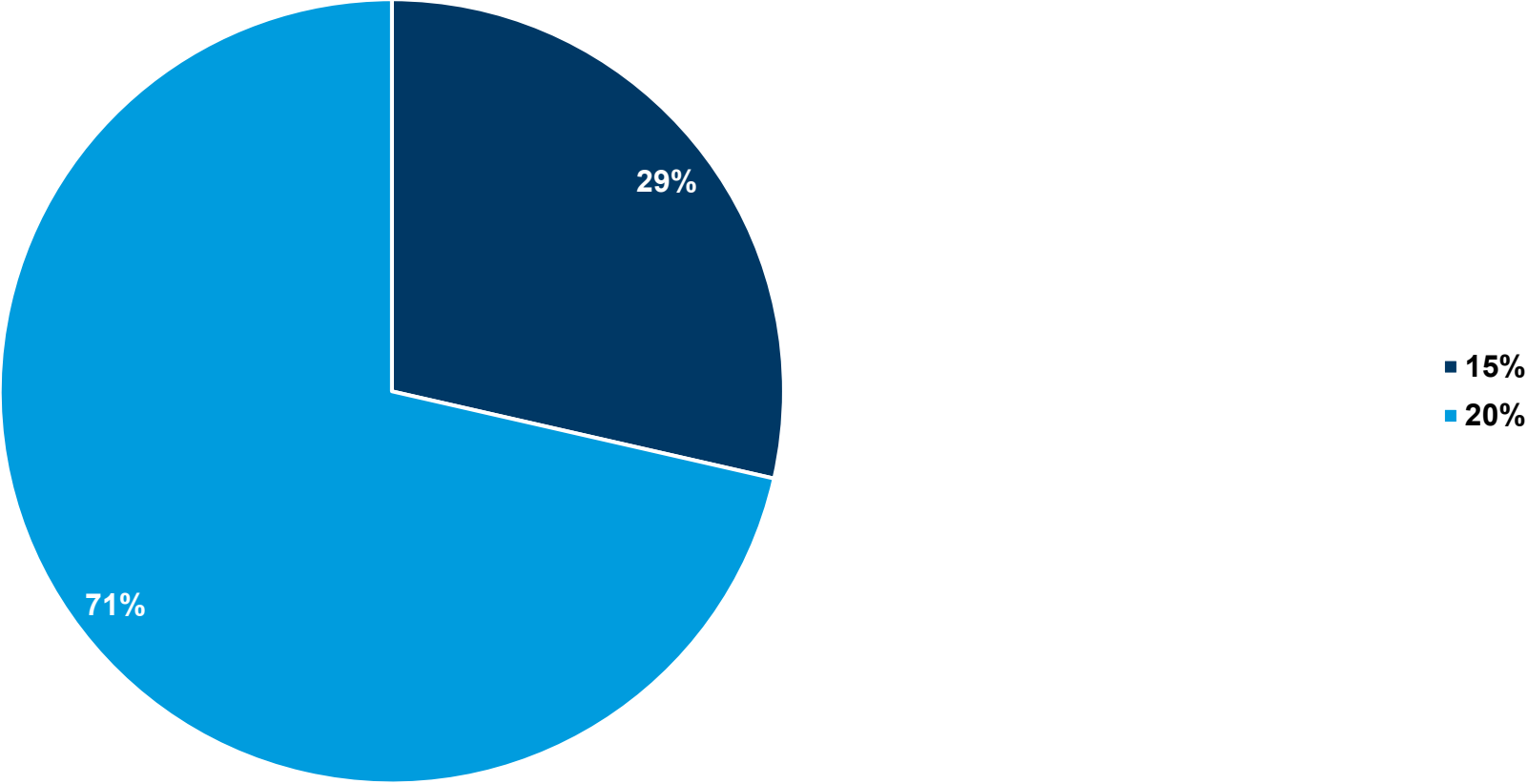
Limit on single deal size (% of commitments)
\$500M-\$1B



Limit on single deal size (% of commitments)
\$1B-\$2.5B

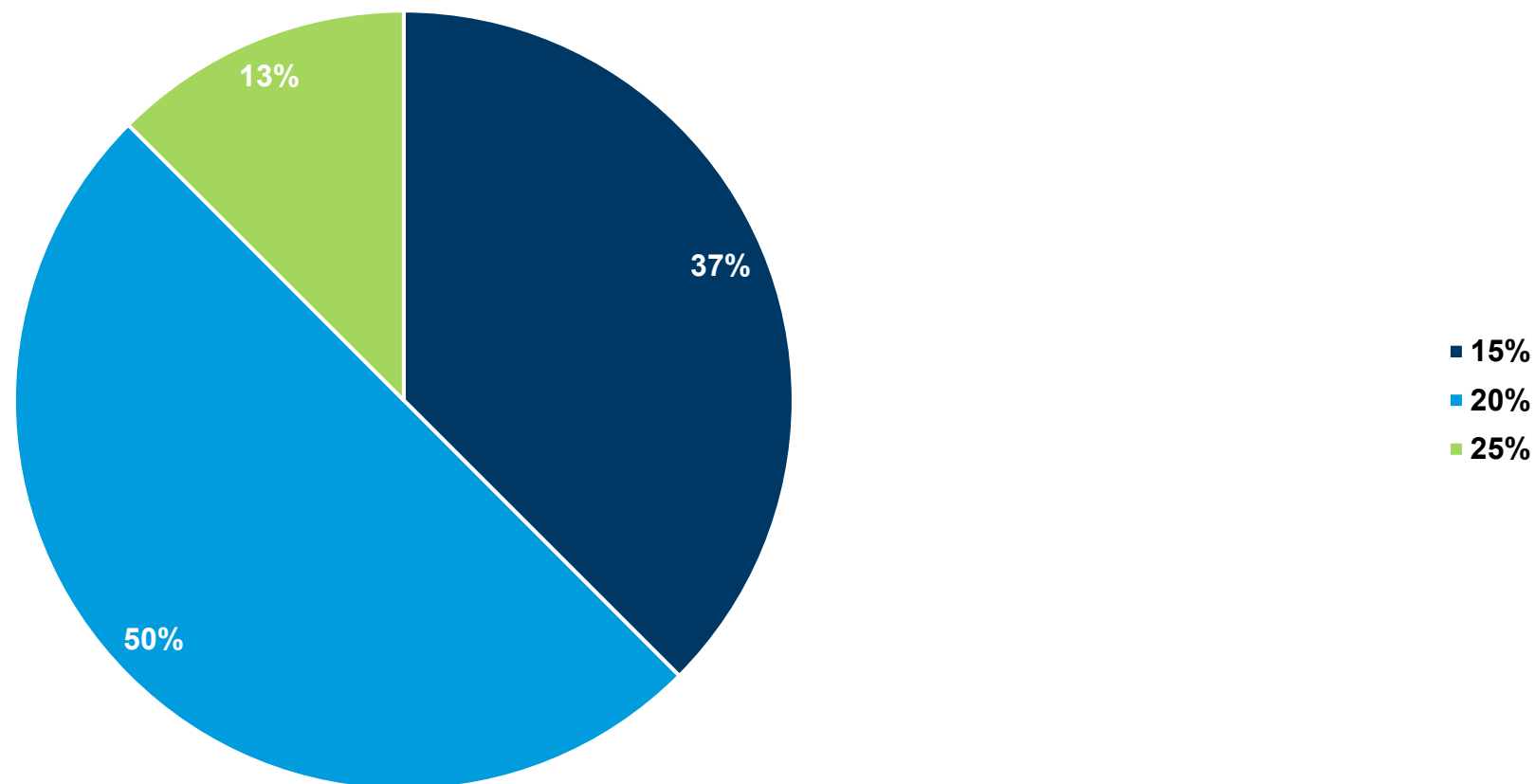


Limit on single deal size (% of commitments)
\$2.5B-\$5B

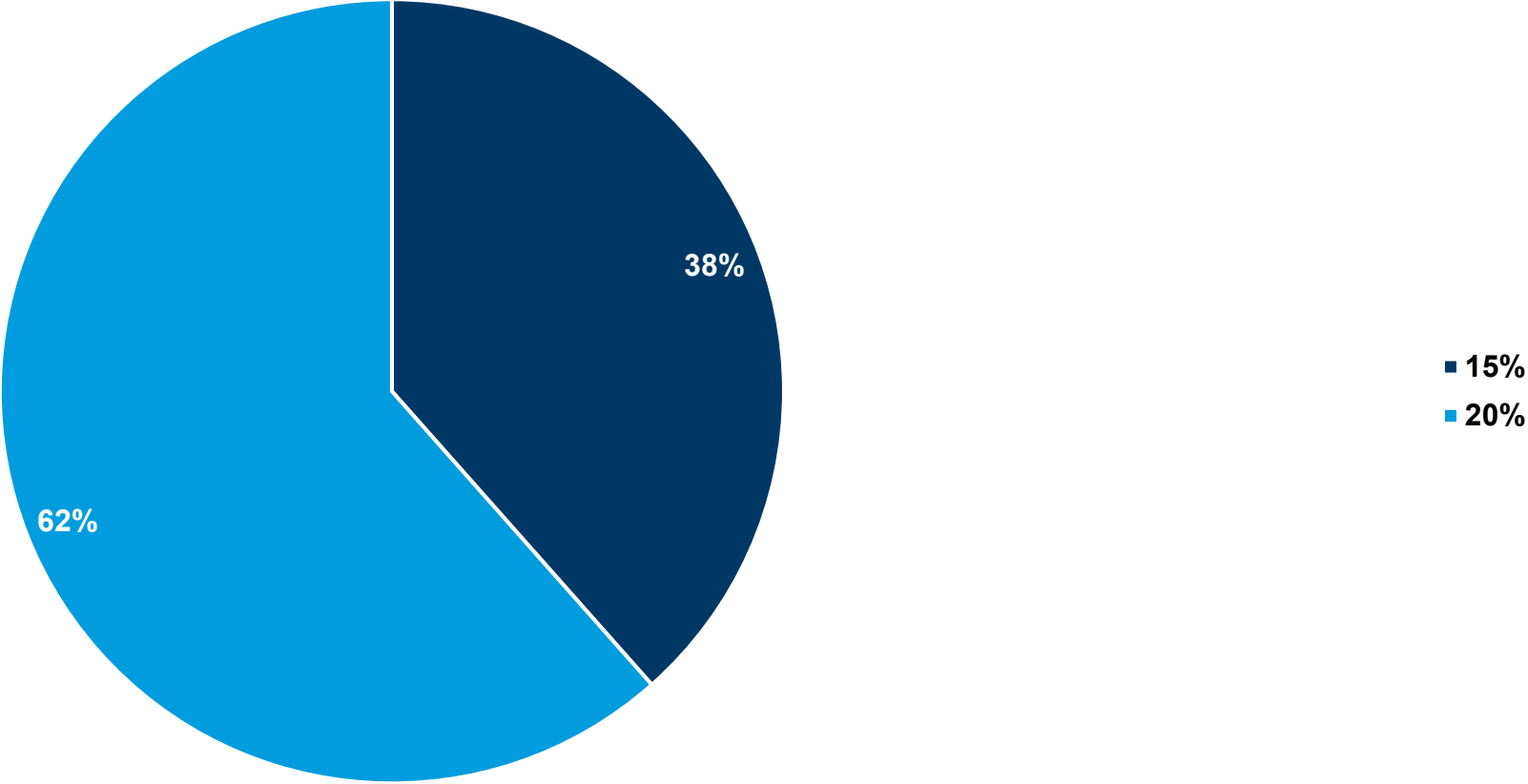


Limit on single deal size (% of commitments)

\$5B-\$10B



Limit on single deal size (% of commitments)
>\$10B

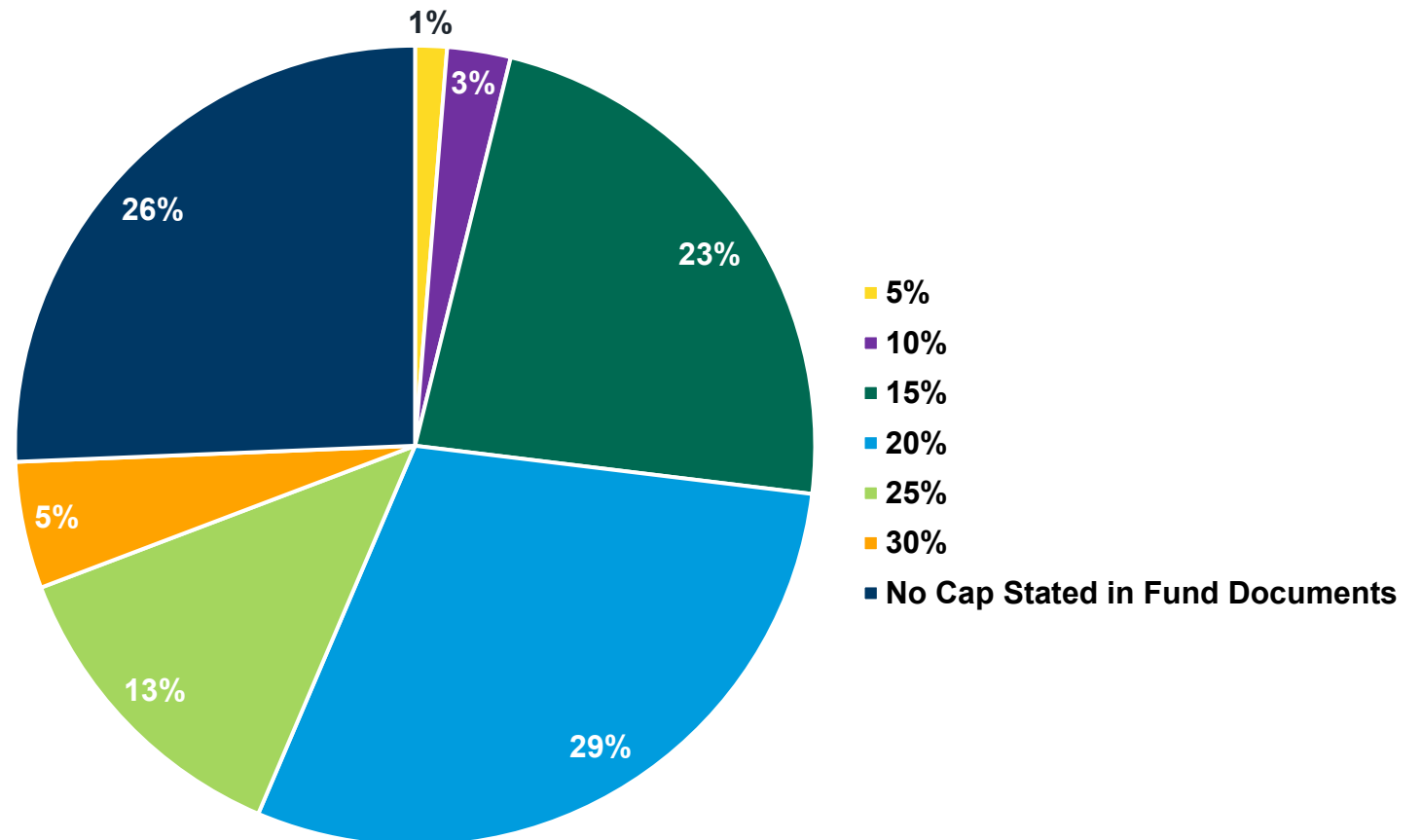


Limit on follow-on investments post-investment period (% of commitments)

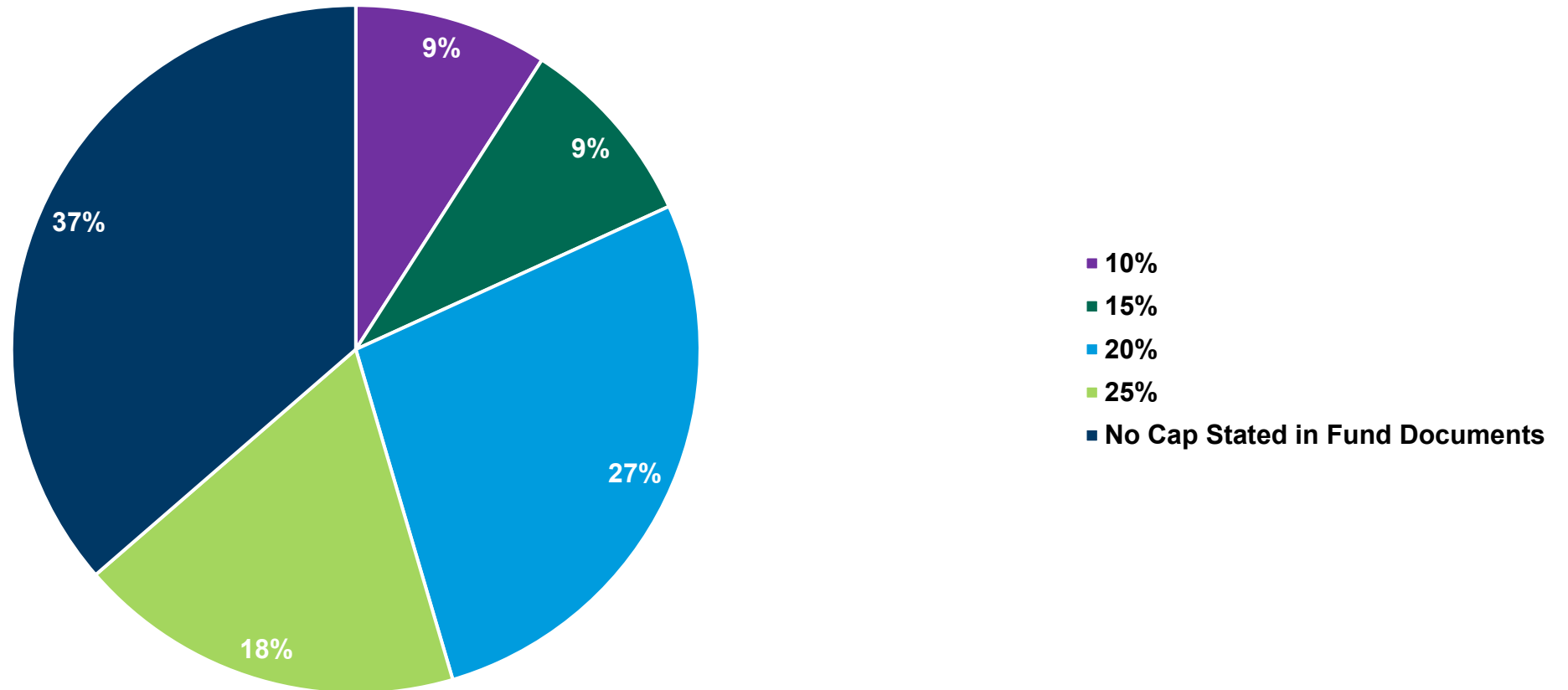
All Funds

A significant minority (26%) of funds have no limit on the percentage of capital that may be drawn down post-investment period for follow-ons. We have seen this subset increase over recent years as single deal diversification limits have crept up, indicating perhaps a greater tolerance from LPs for sponsors to allocate capital between initial investment and follow-on capital (including for platform acquisitions) as the sponsors judge most appropriate for the portfolio company in question.

Where there is a limit provided, 20% of commitments was the most common at 29% of funds surveyed, while 65% of funds fall in the 15% to 25% of commitments range. The nature of the agreed limitation is often dependent on the relevant fund's investment strategy. GPs with very active 'buy and build' strategies or growth capital strategies are likely to have higher limits (or no limits).

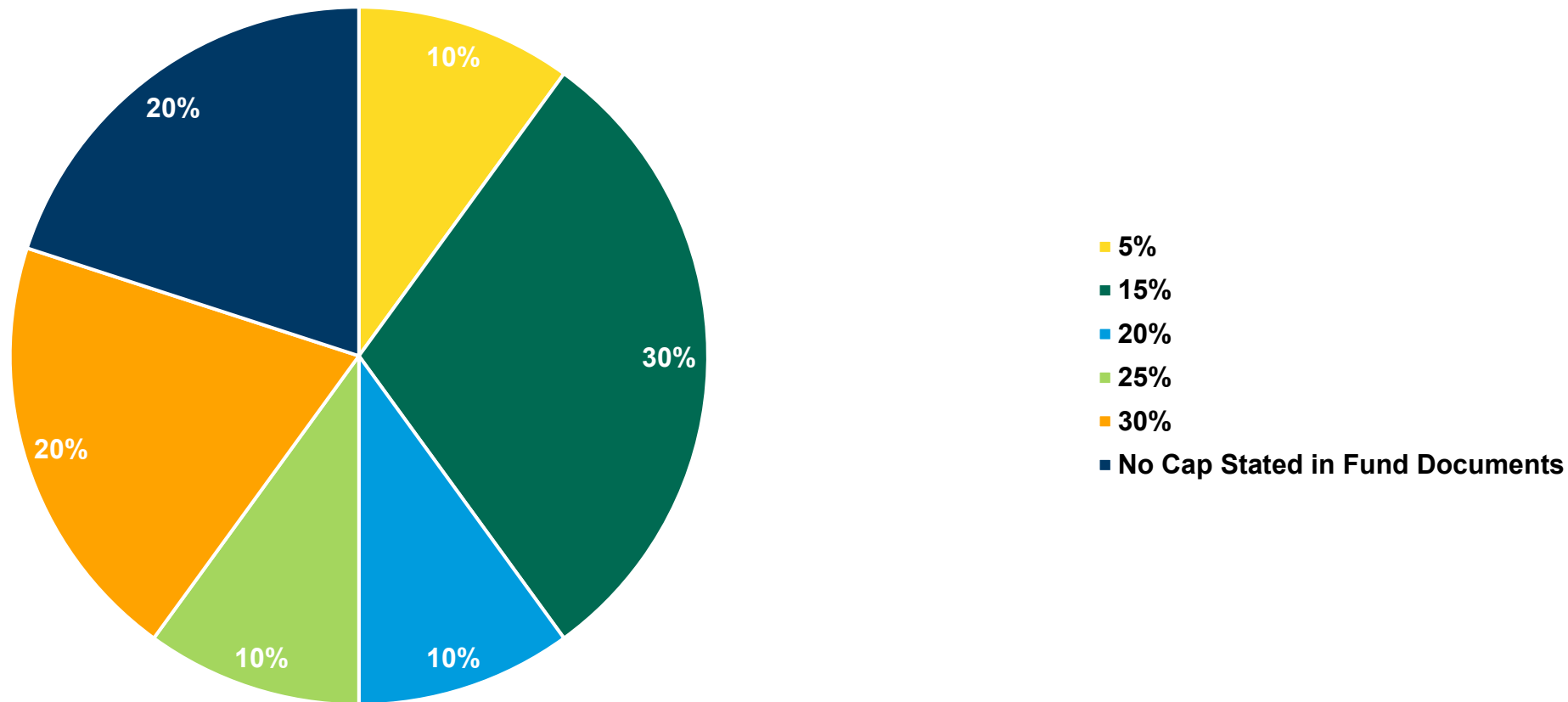


Limit on follow-on investments post-investment period (% of commitments) <\$500M

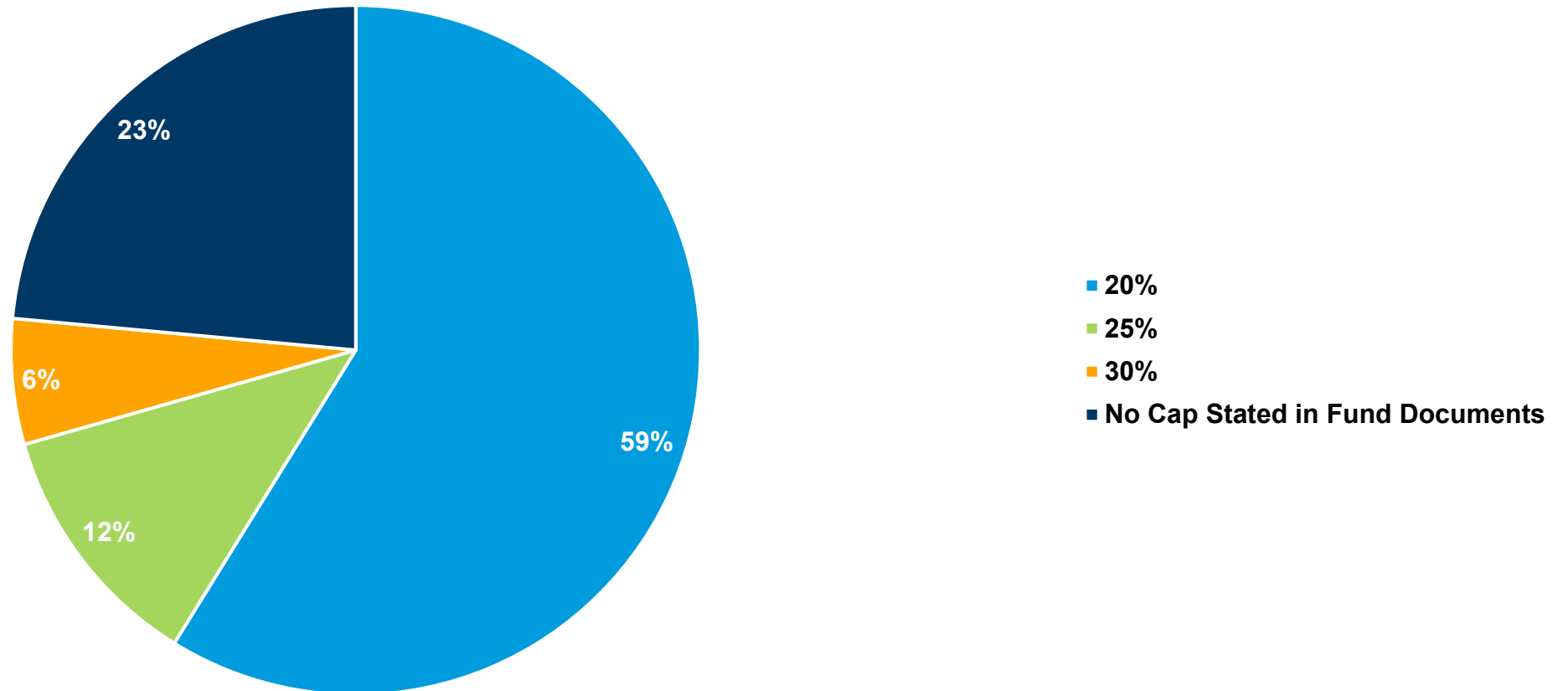


Limit on follow-on investments post-investment period (% of commitments)

\$500M-\$1B

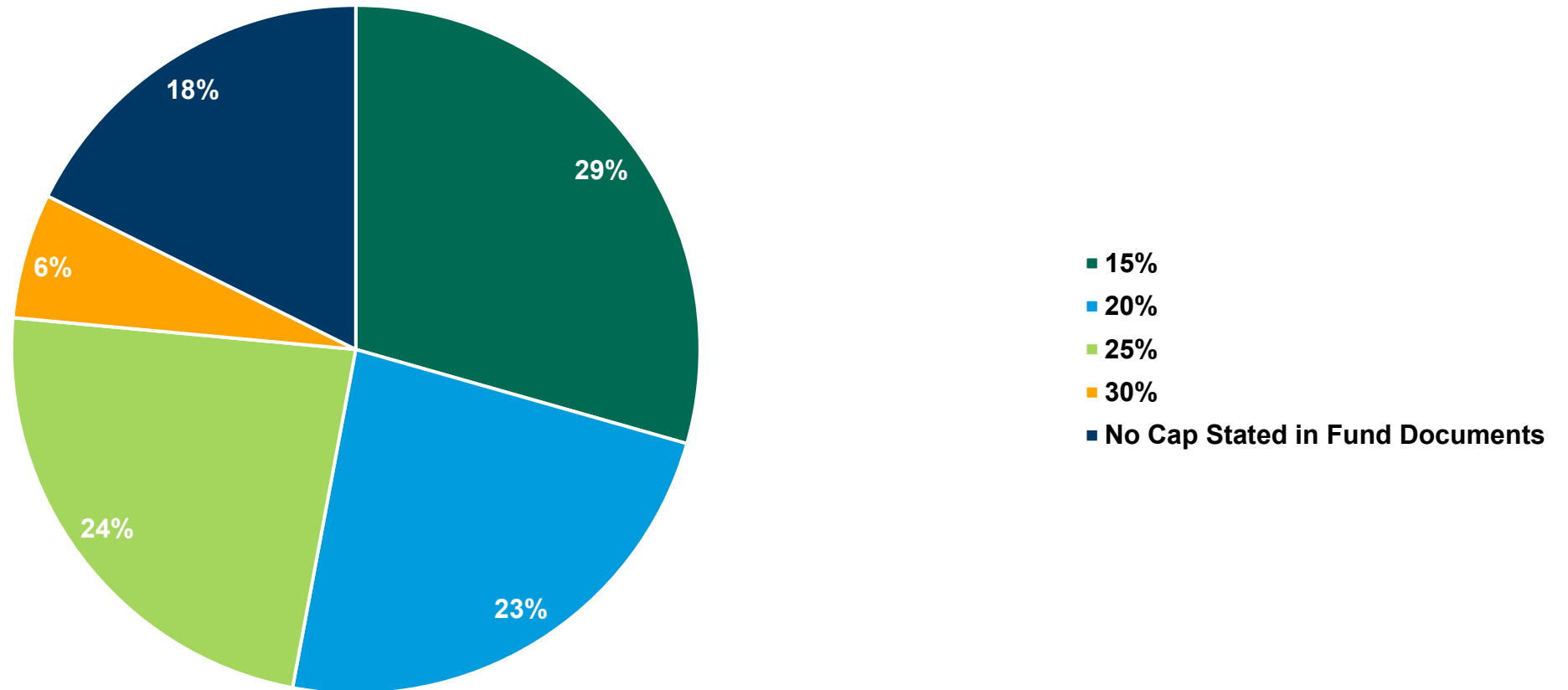


Limit on follow-on investments post-investment period (% of commitments) \$1B-\$2.5B

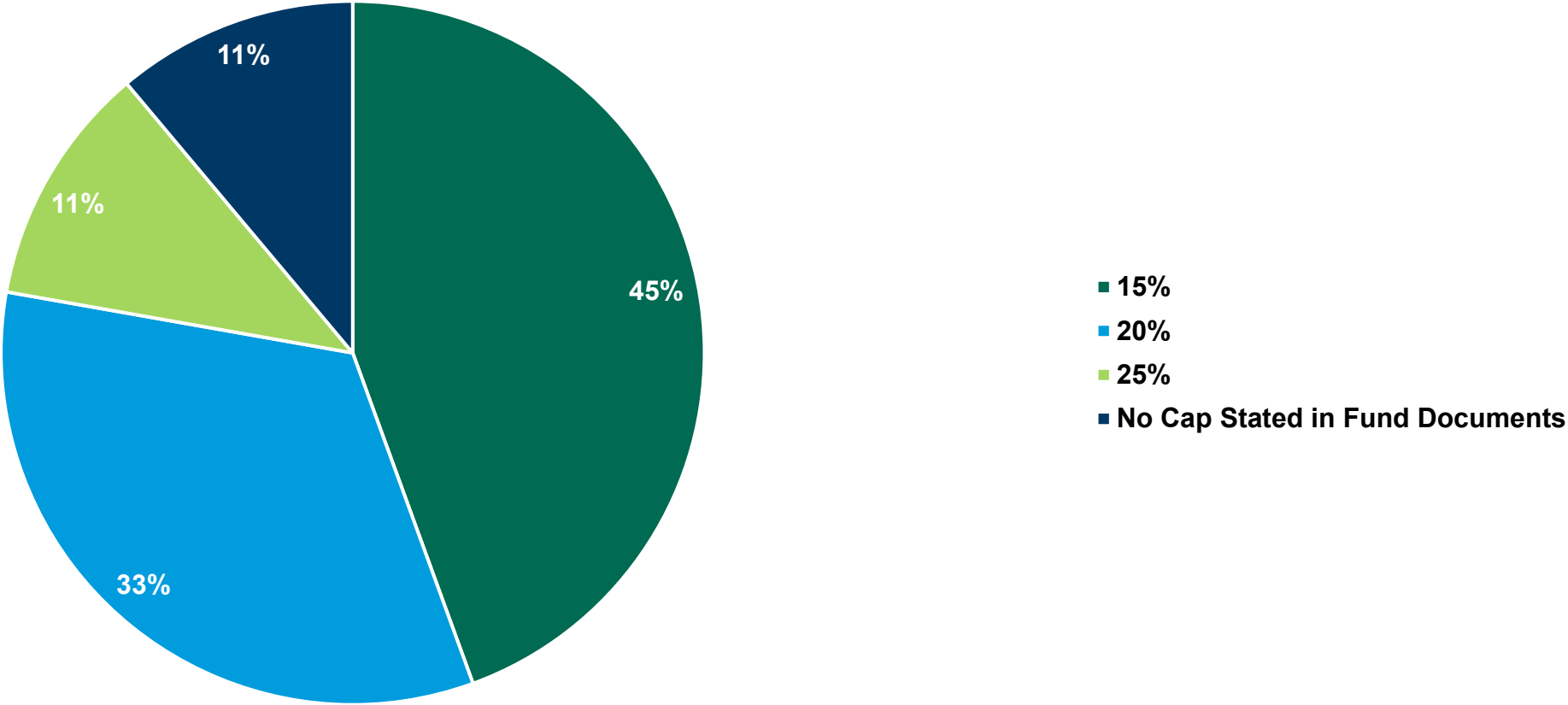


Limit on follow-on investments post-investment period (% of commitments)

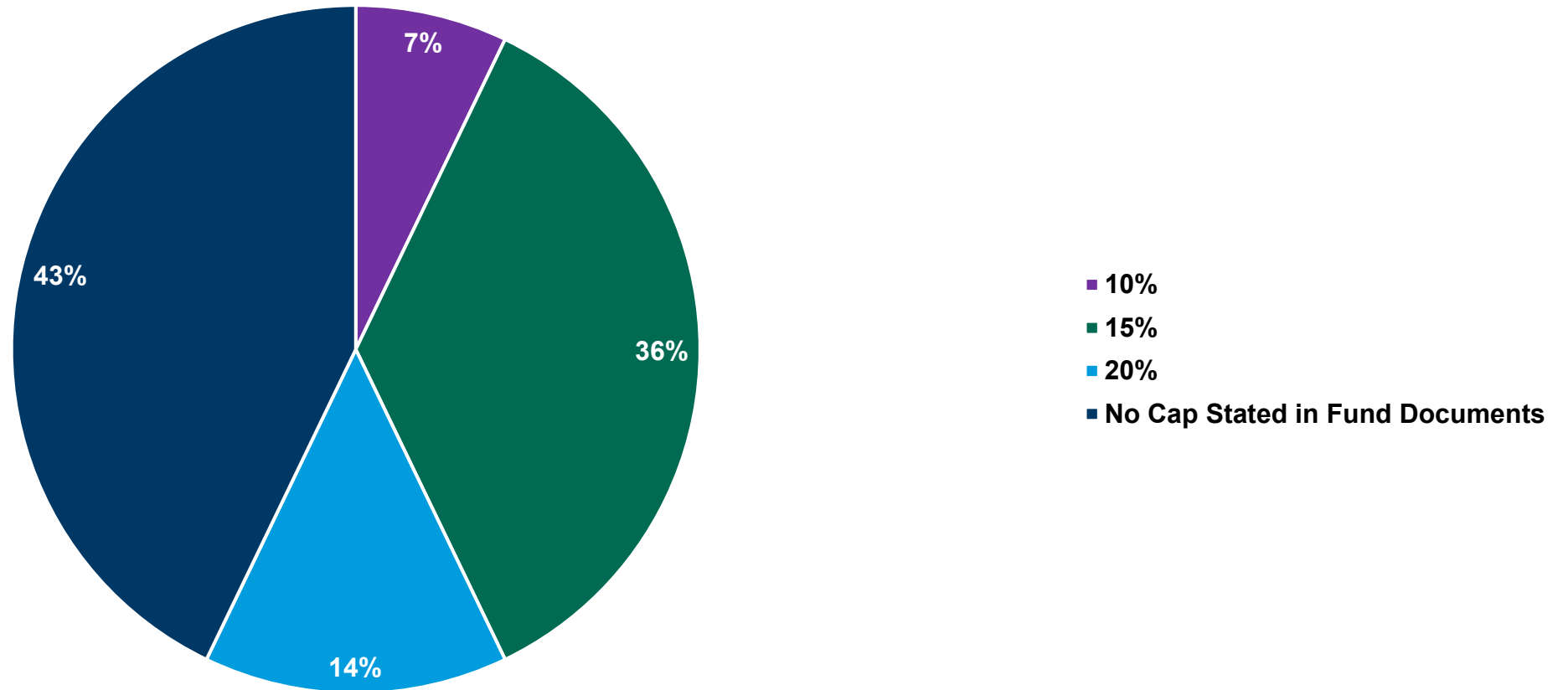
\$2.5B-\$5B



Limit on follow-on investments post-investment period (% of commitments)
\$5B-\$10B



Limit on follow-on investments post-investment period (% of commitments) >\$10B

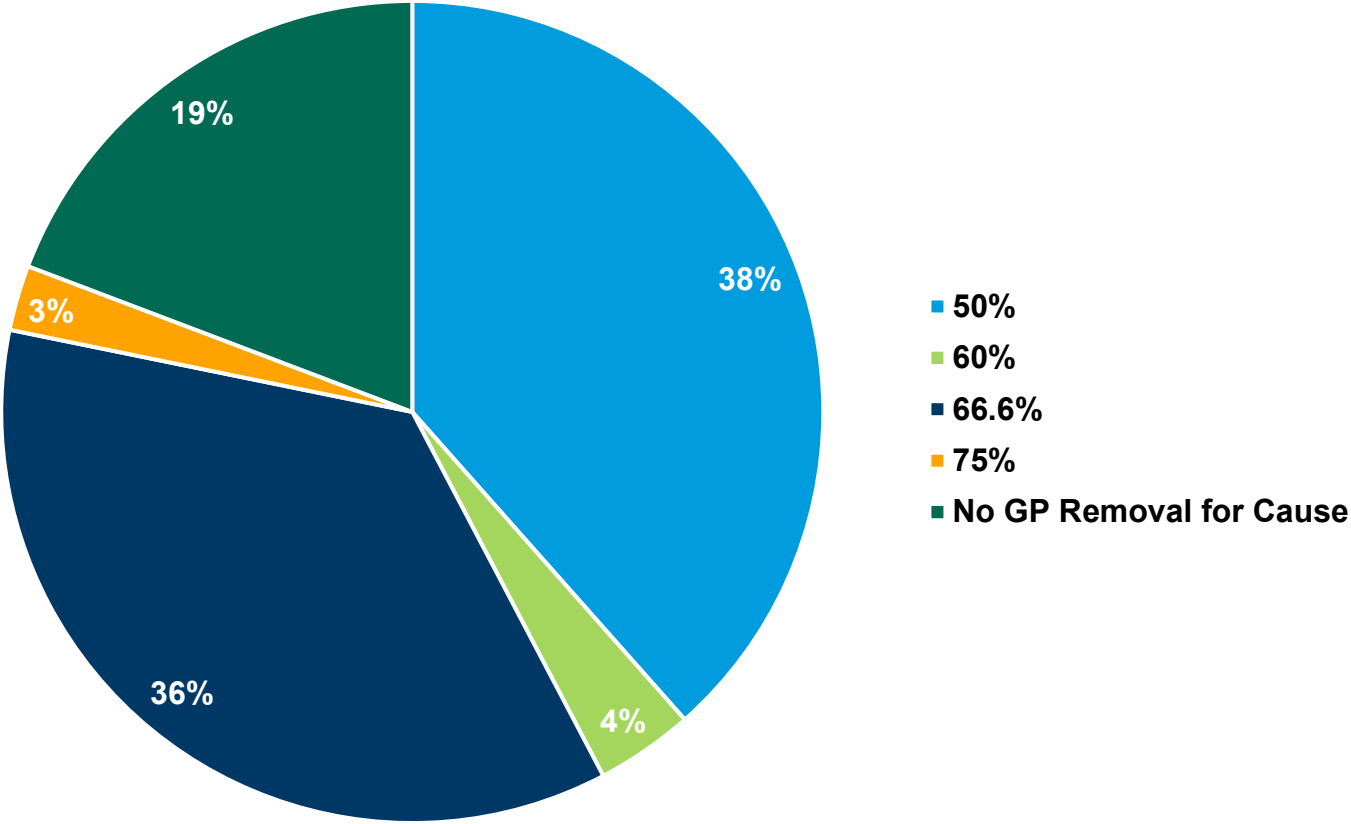


GP ‘for cause’ removal – Investor voting threshold (% of interests)

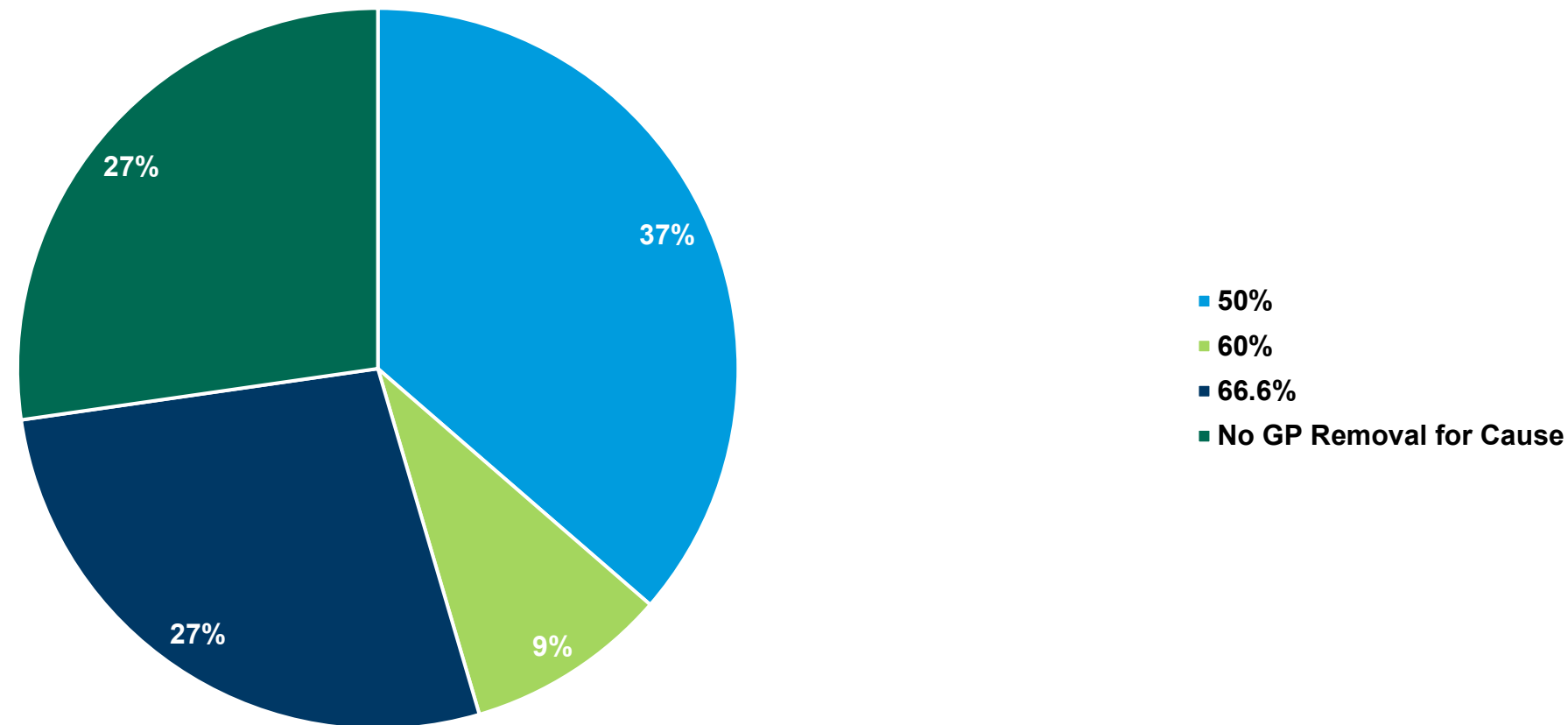
All Funds

A simple majority is the most common voting threshold for GP removal (38% of the funds in our survey), with two-thirds in interest coming in a very close second (36%). A significant minority of funds do not provide GP removal rights for cause; these funds will tend to feature other negotiated investor remedies, such as fund termination following a cause event.

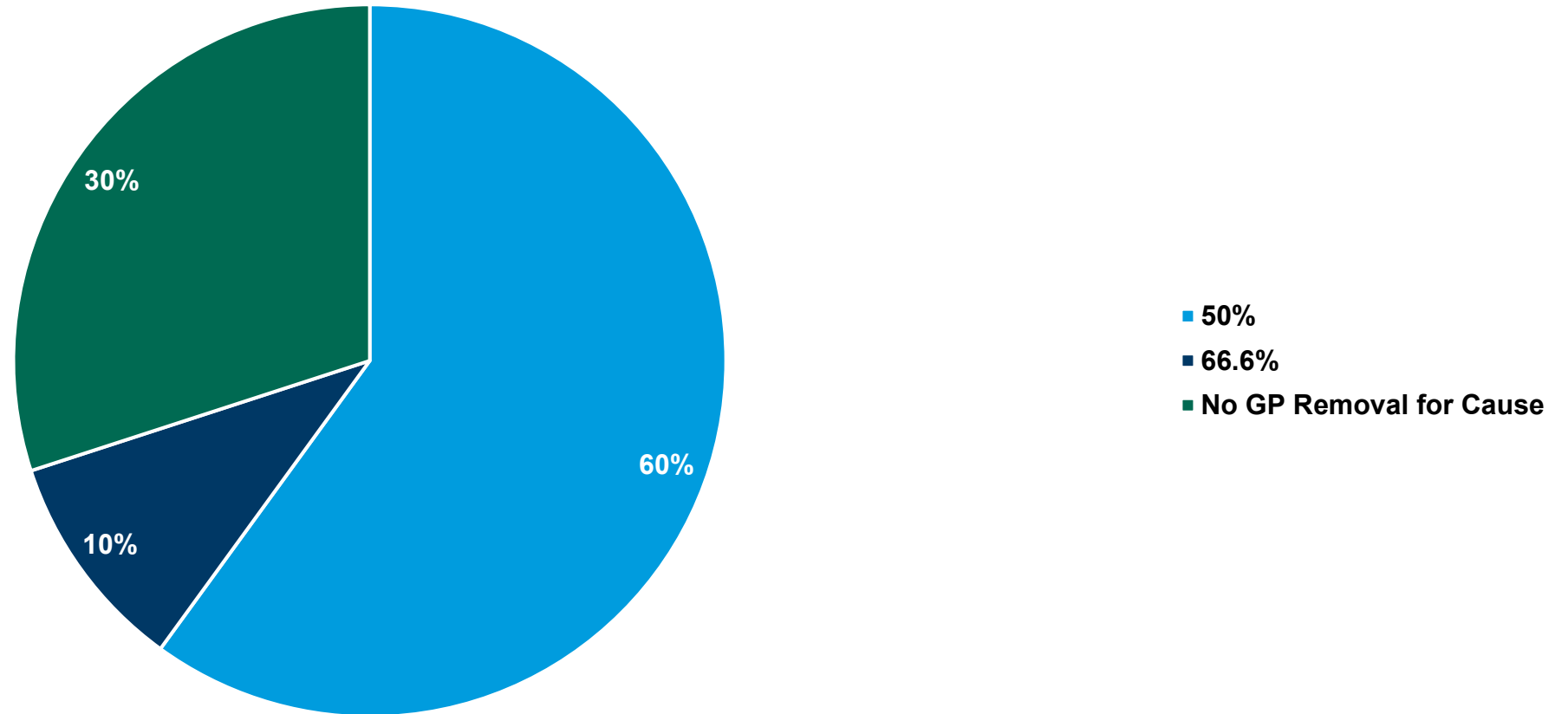
Larger funds are most likely to require an elevated threshold for GP removal following a cause event, and smaller funds are most likely to not provide for-cause removal rights at all.



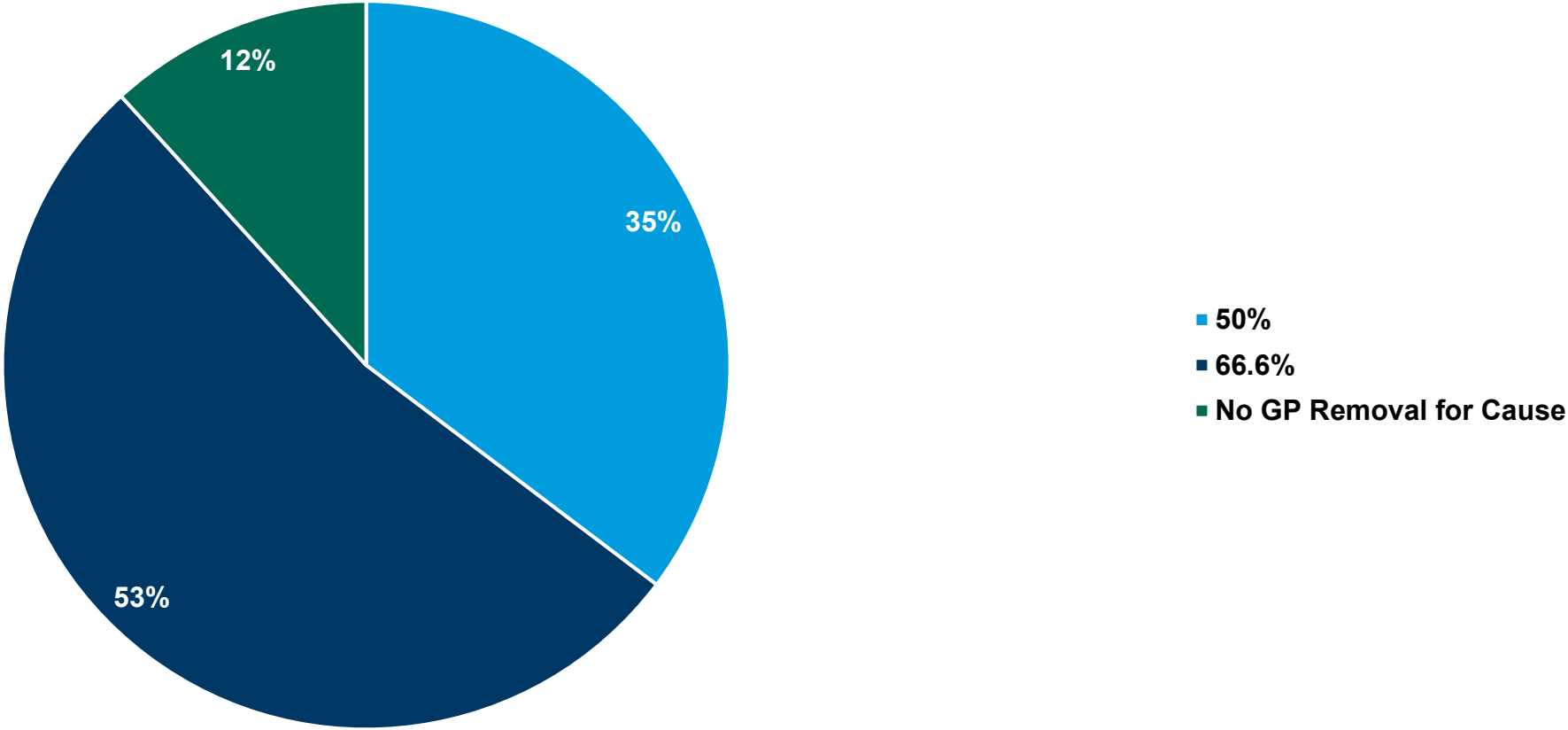
GP ‘for cause’ removal – Investor voting threshold (% of interests)
<\$500M



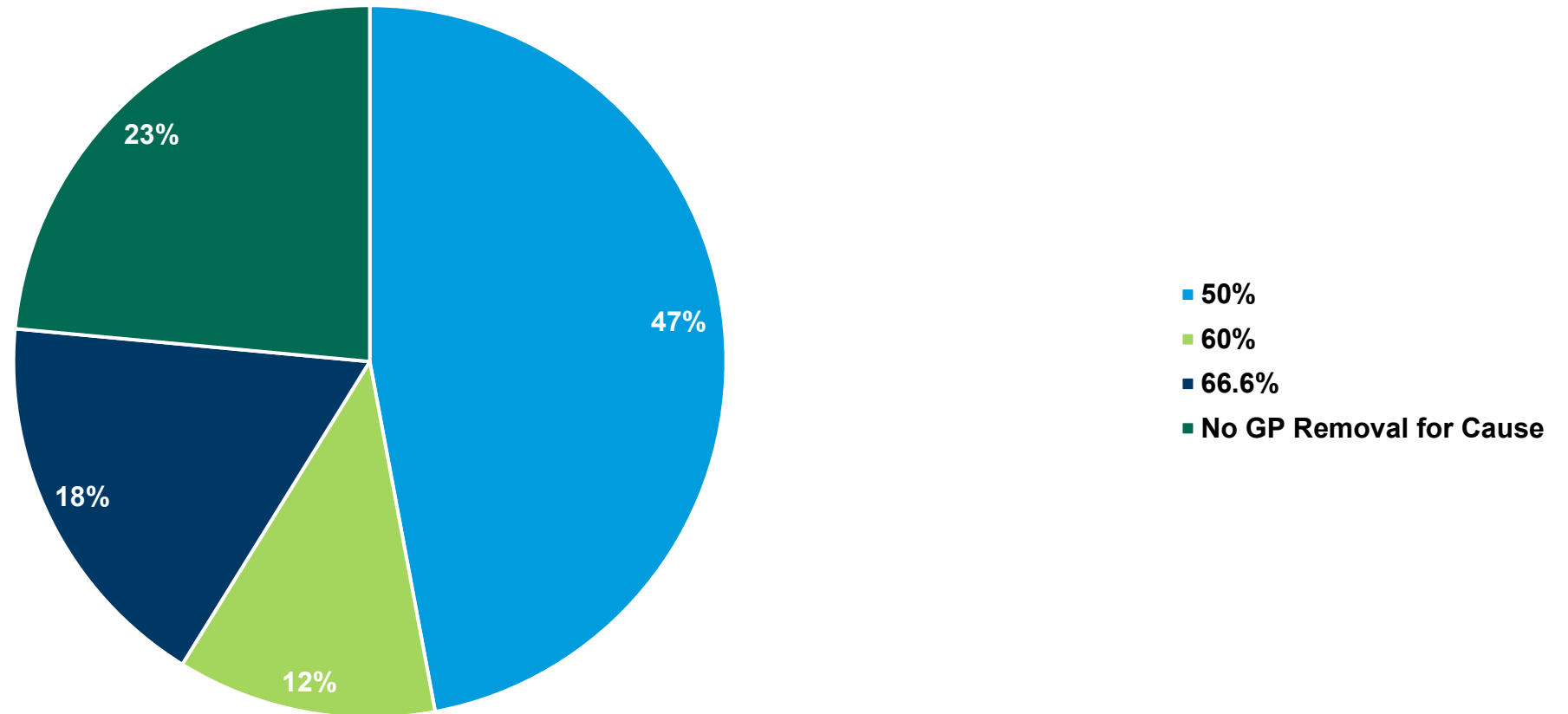
GP 'for cause' removal – Investor voting threshold (% of interests) \$500M-\$1B



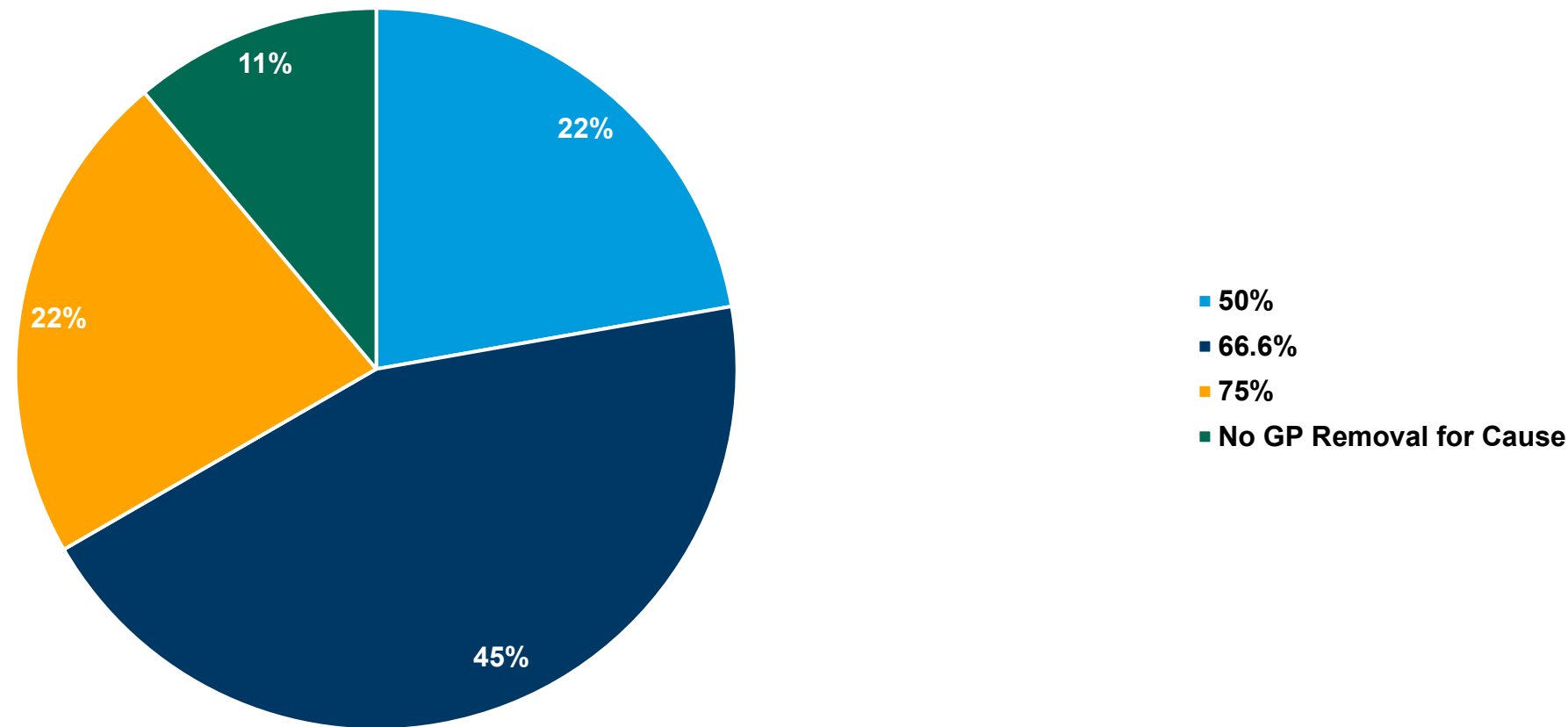
GP ‘for cause’ removal – Investor voting threshold (% of interests)
\$1B-\$2.5B



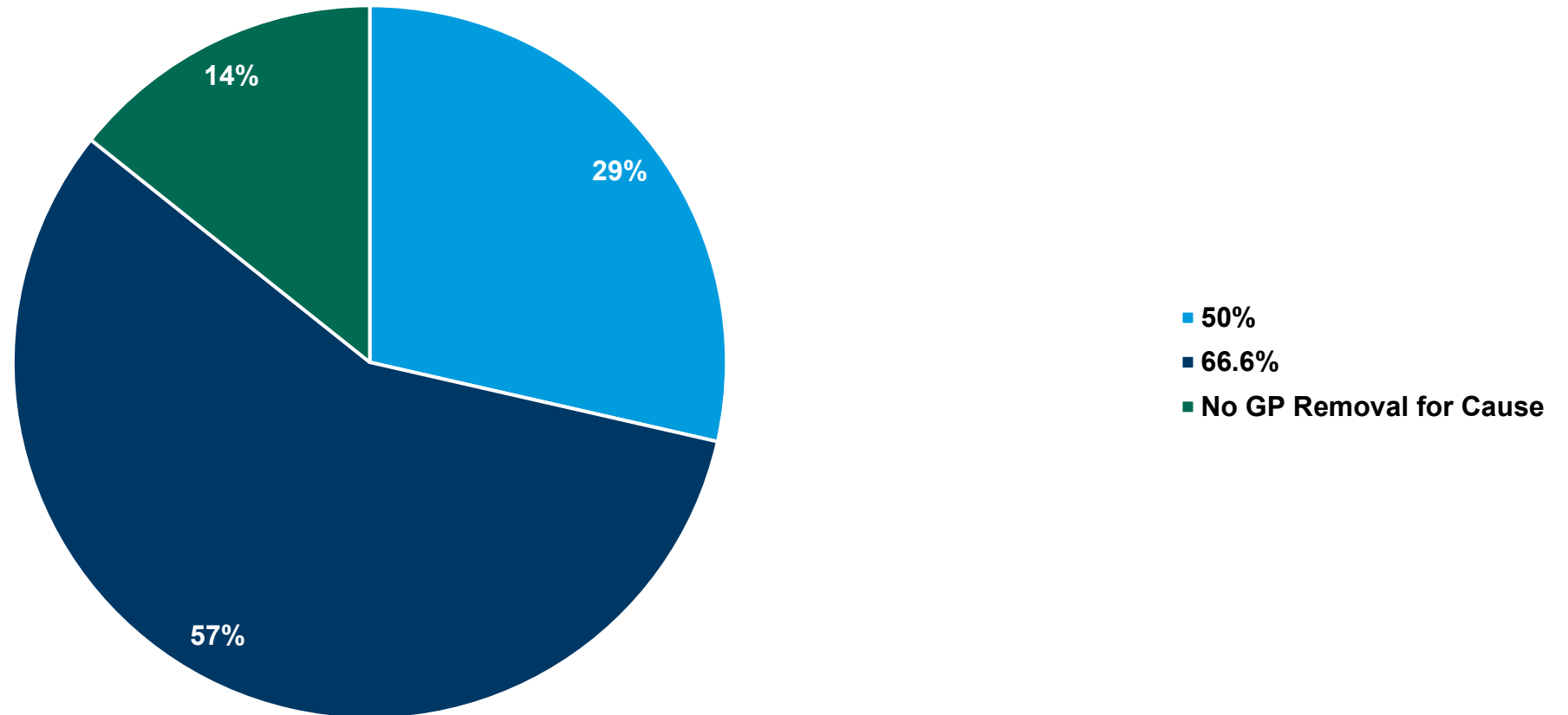
GP 'for cause' removal – Investor voting threshold (% of interests) \$2.5B-\$5B



GP ‘for cause’ removal – Investor voting threshold (% of interests)
\$5B-\$10B



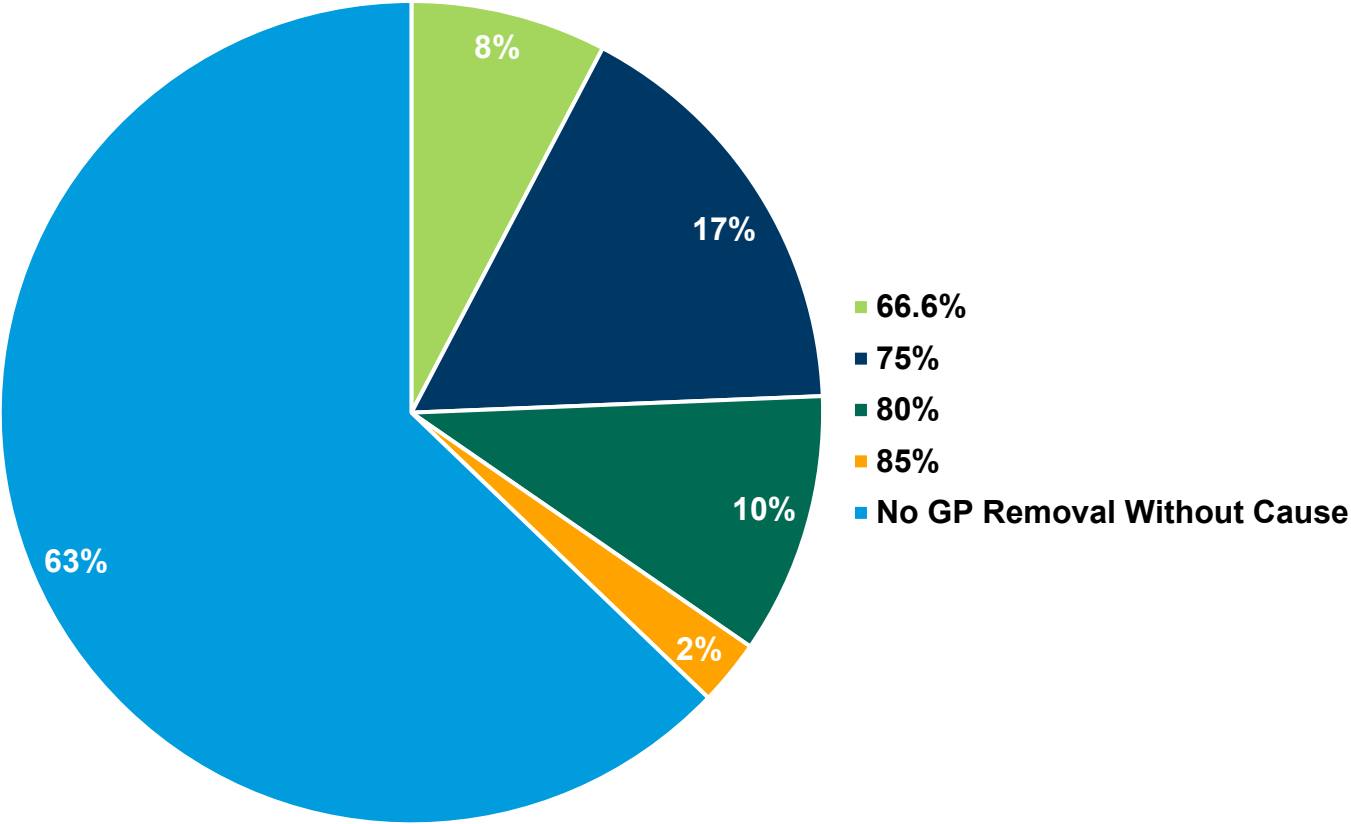
GP 'for cause' removal – Investor voting threshold (% of interests) >\$10B



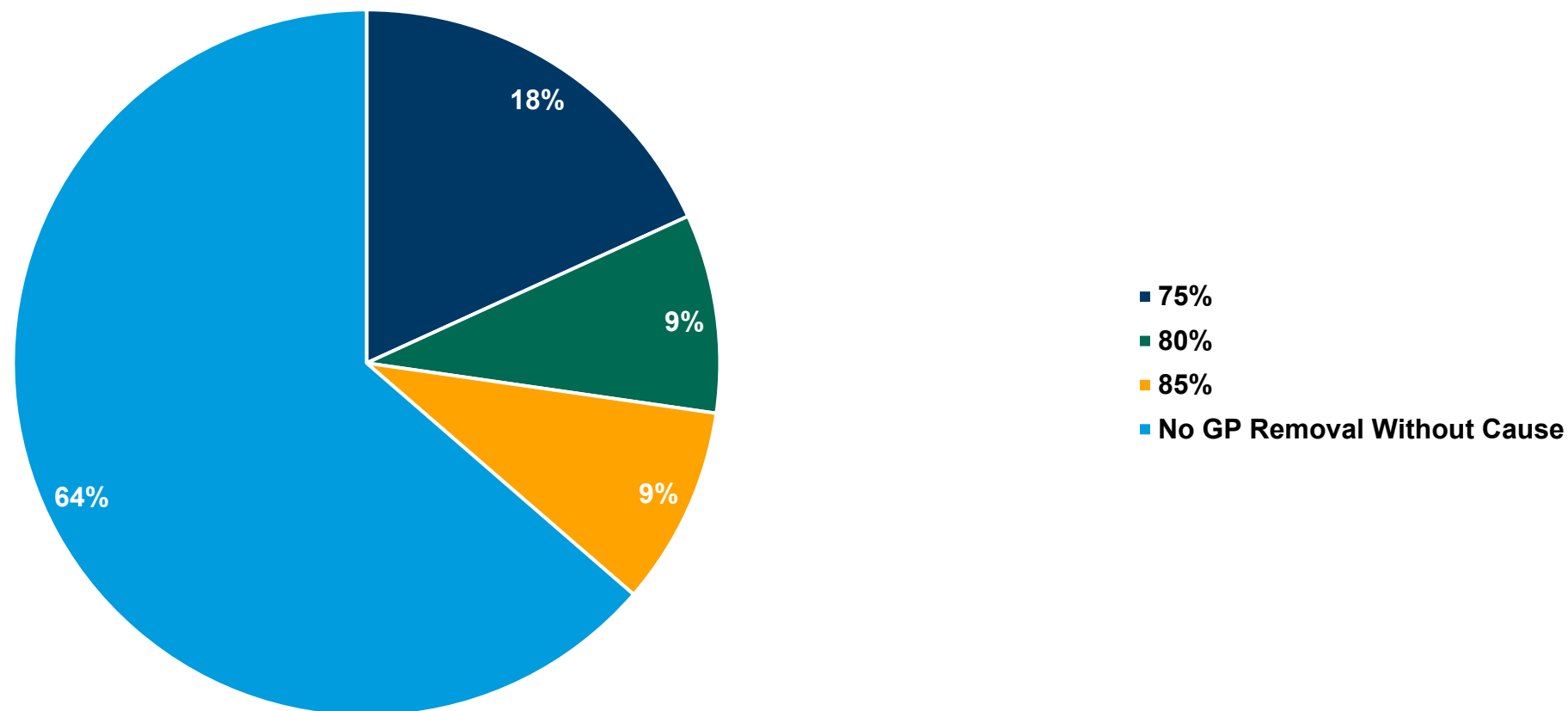
GP ‘no-fault’ removal – Investor voting threshold (% of interests)

All Funds

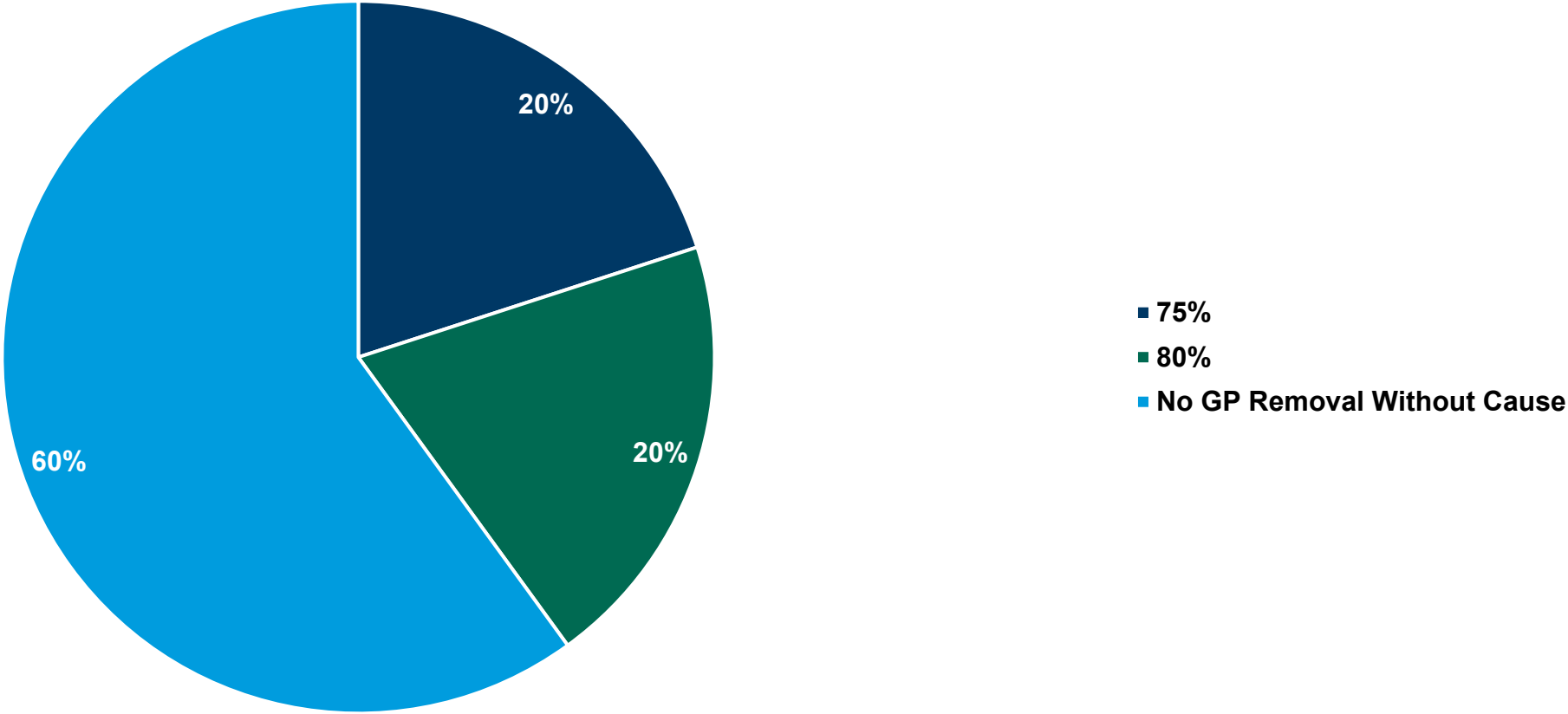
The U.S. buyout fund market remains biased against no-fault removal rights for LPs, with only 37% of surveyed funds providing for such rights. Distribution of the various options for this term are fairly equal across the size classes.



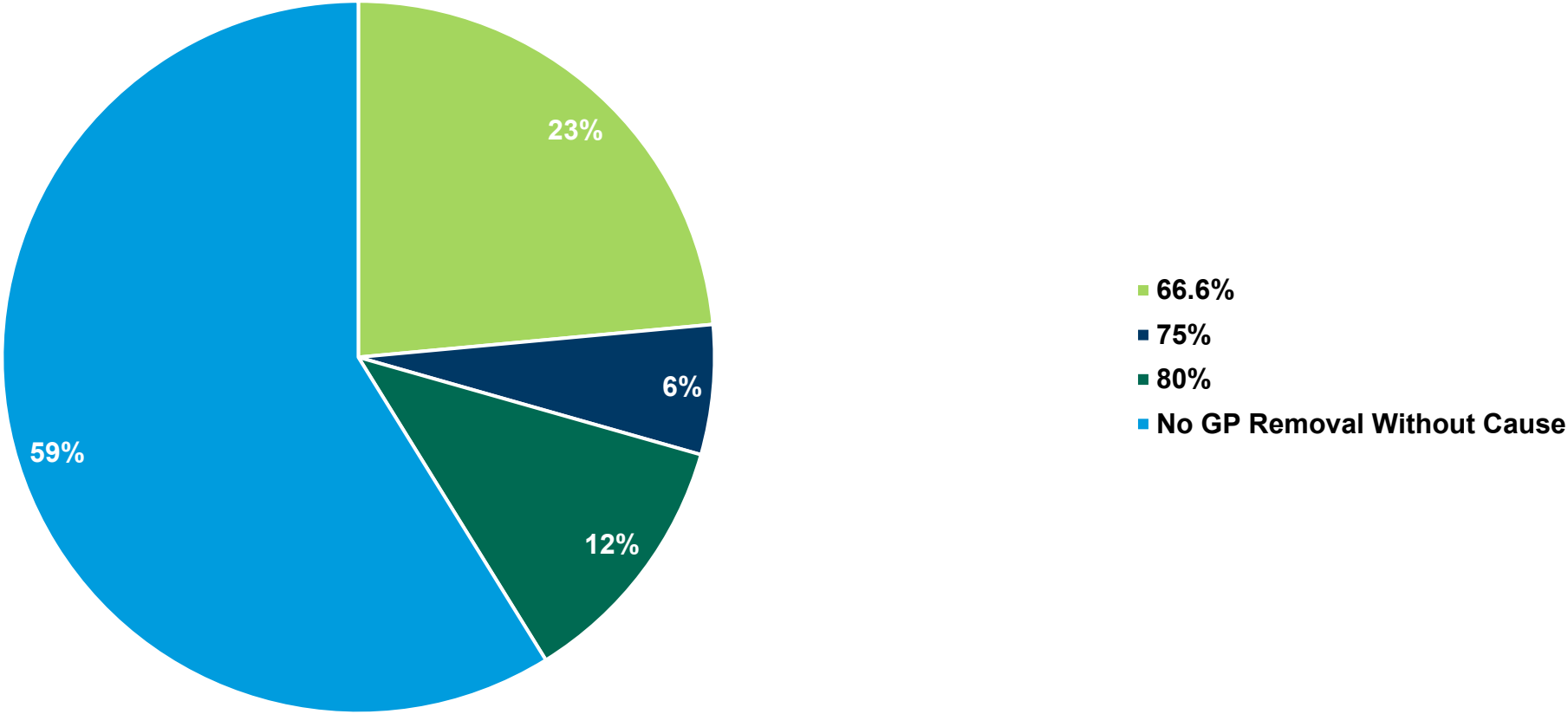
GP 'without cause' removal – Investor voting threshold (% of interests) <\$500M



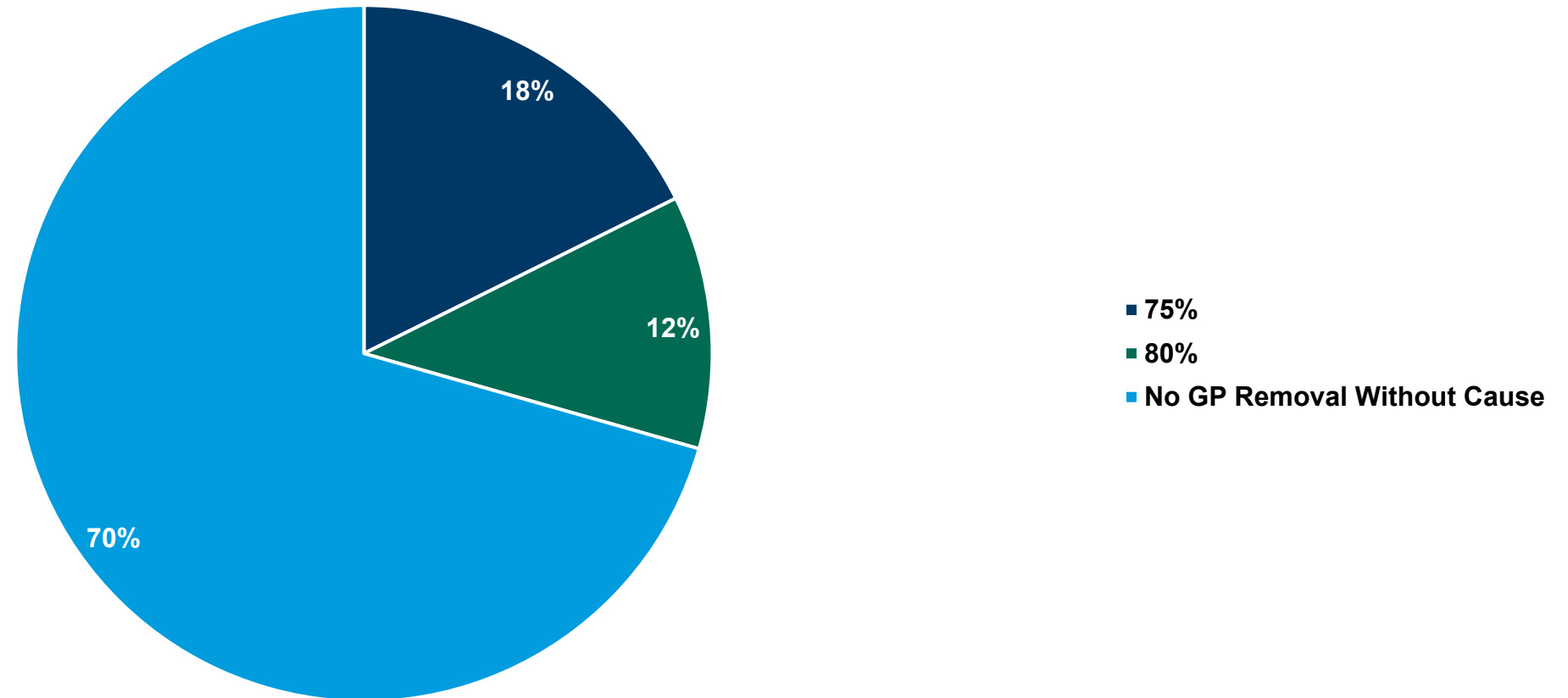
GP ‘without cause’ removal – Investor voting threshold (% of interests)
\$500M-\$1B



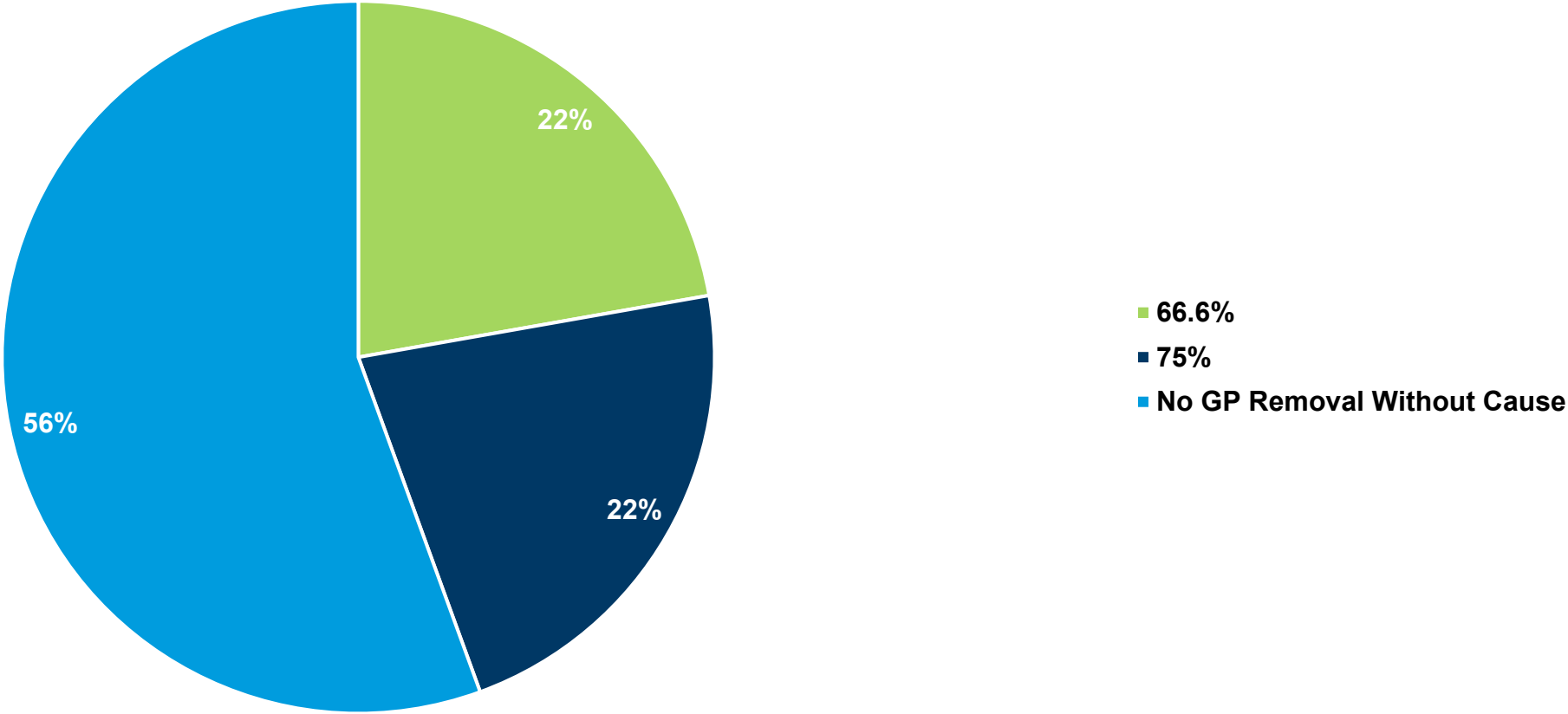
GP ‘without cause’ removal – Investor voting threshold (% of interests)
\$1B-\$2.5B



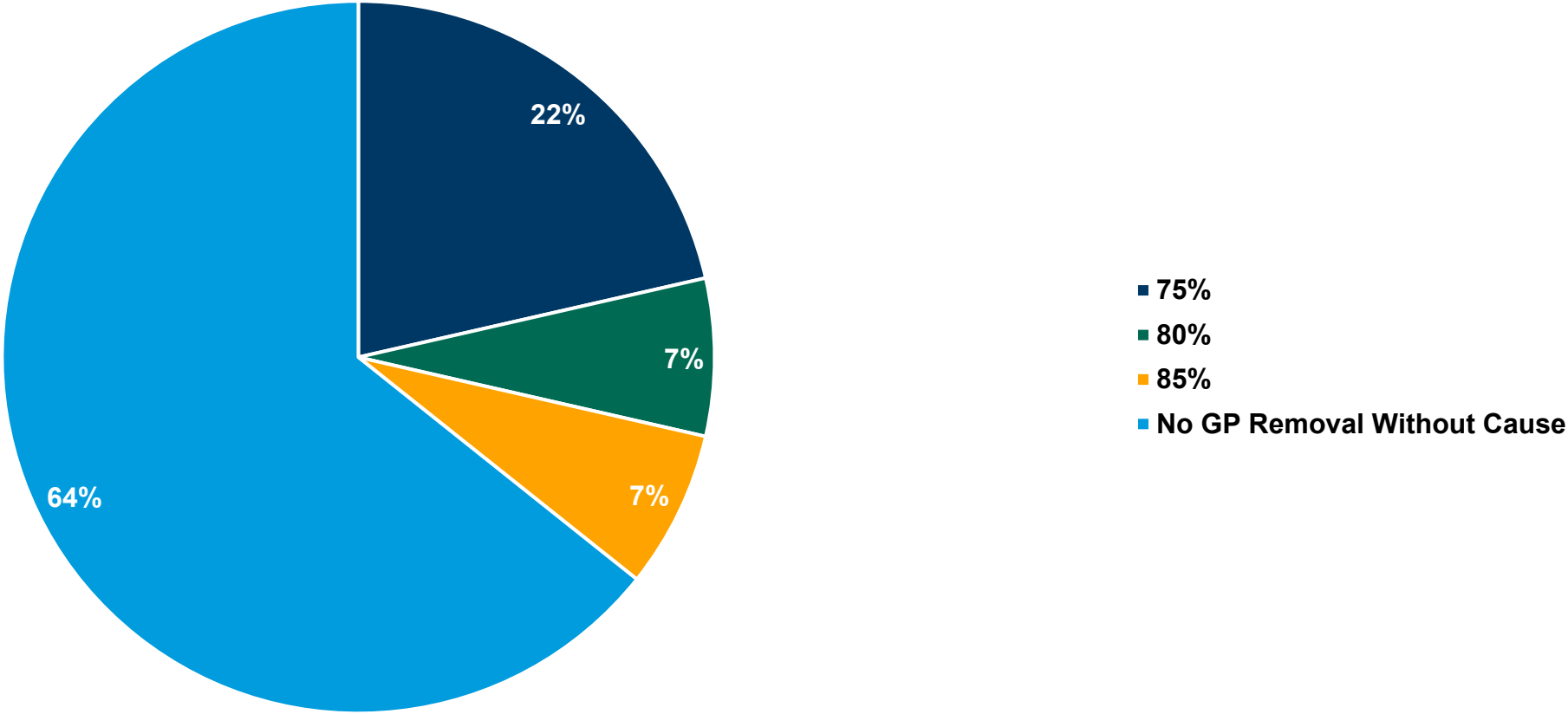
GP 'without cause' removal – Investor voting threshold (% of interests) \$2.5B-\$5B



GP ‘without cause’ removal – Investor voting threshold (% of interests)
\$5B-\$10B



GP ‘without cause’ removal – Investor voting threshold (% of interests)
>\$10B

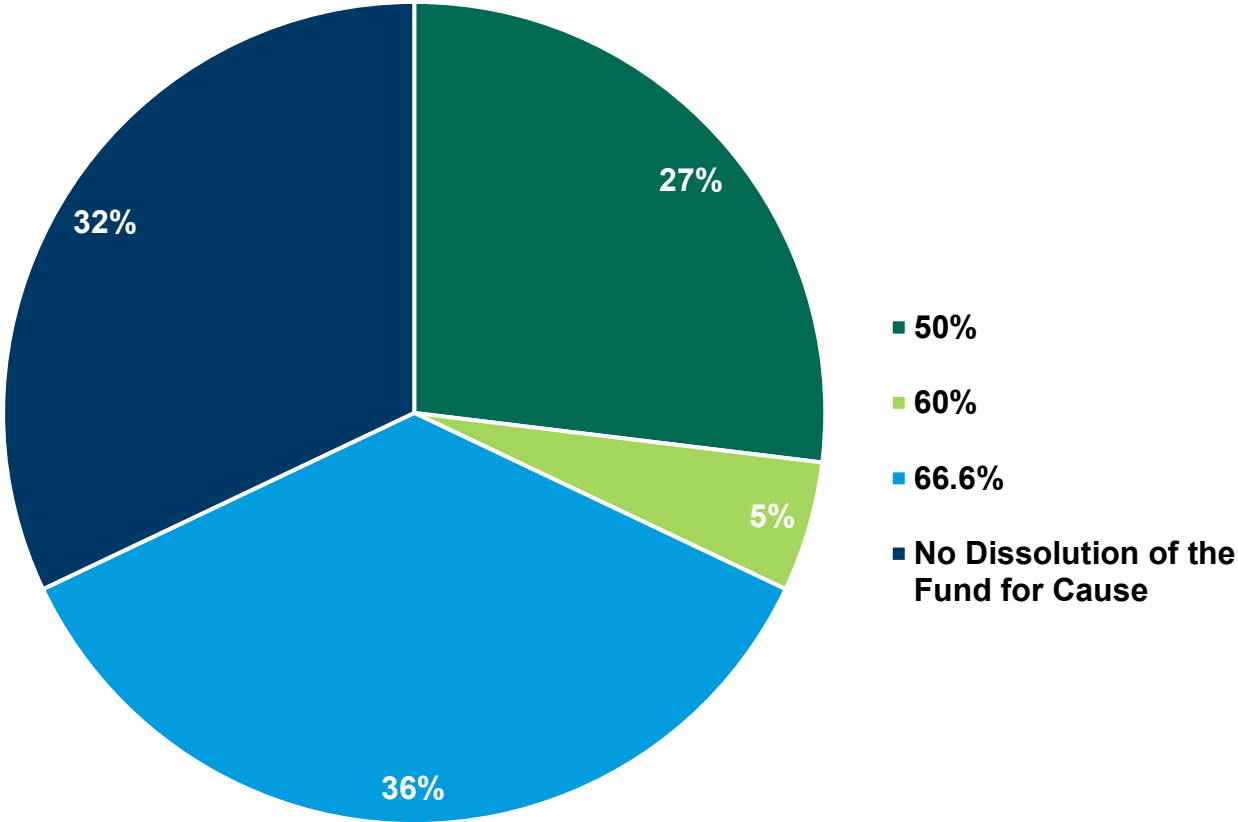


Dissolution of the fund ‘for cause’ – Investor voting threshold (% of interests)

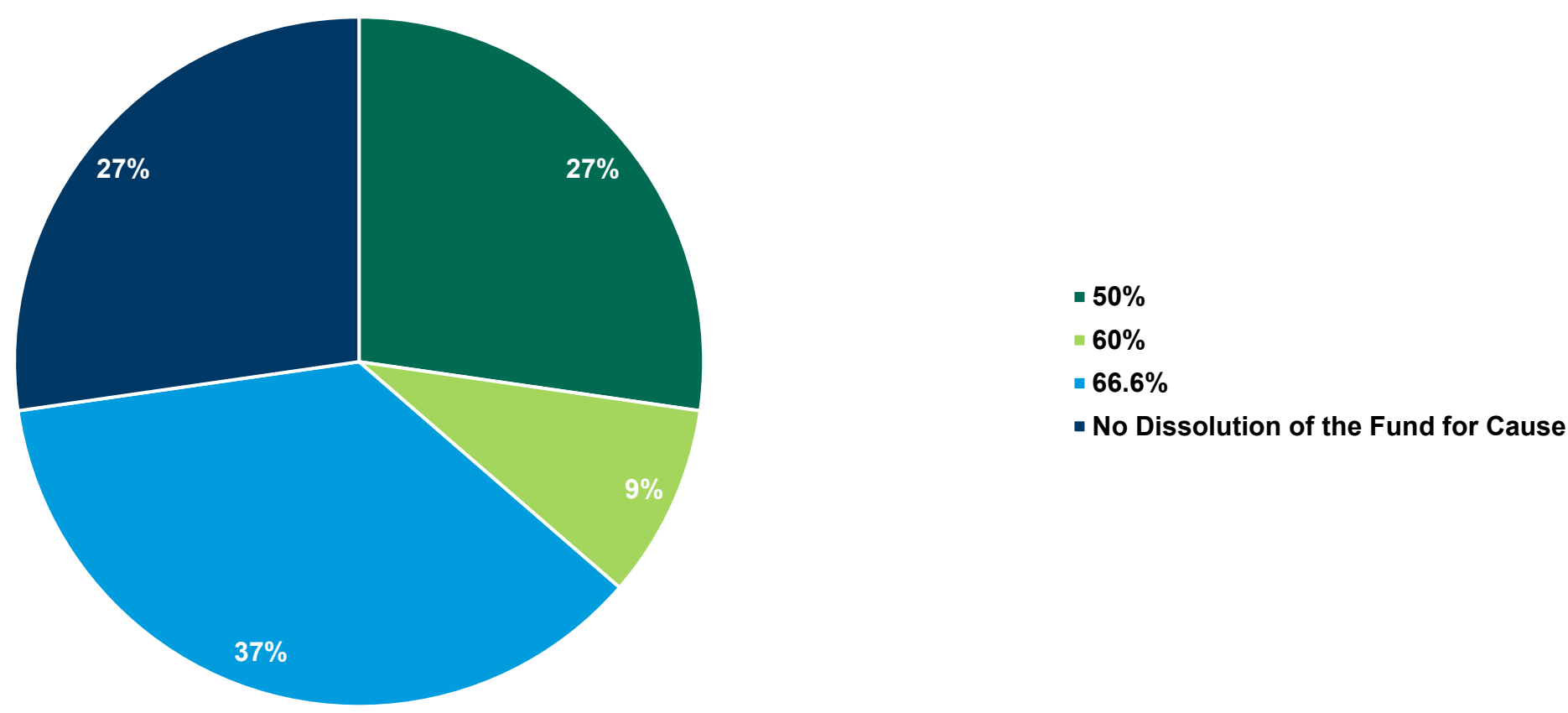
All Funds

Nearly all funds surveyed provide limited partners with a right to end the fund’s term early and force liquidation following a “cause” event. The required voting thresholds are somewhat evenly distributed among 50%, 60% and 66% in interest of the investors, with the 60% threshold being the most common by a small margin.

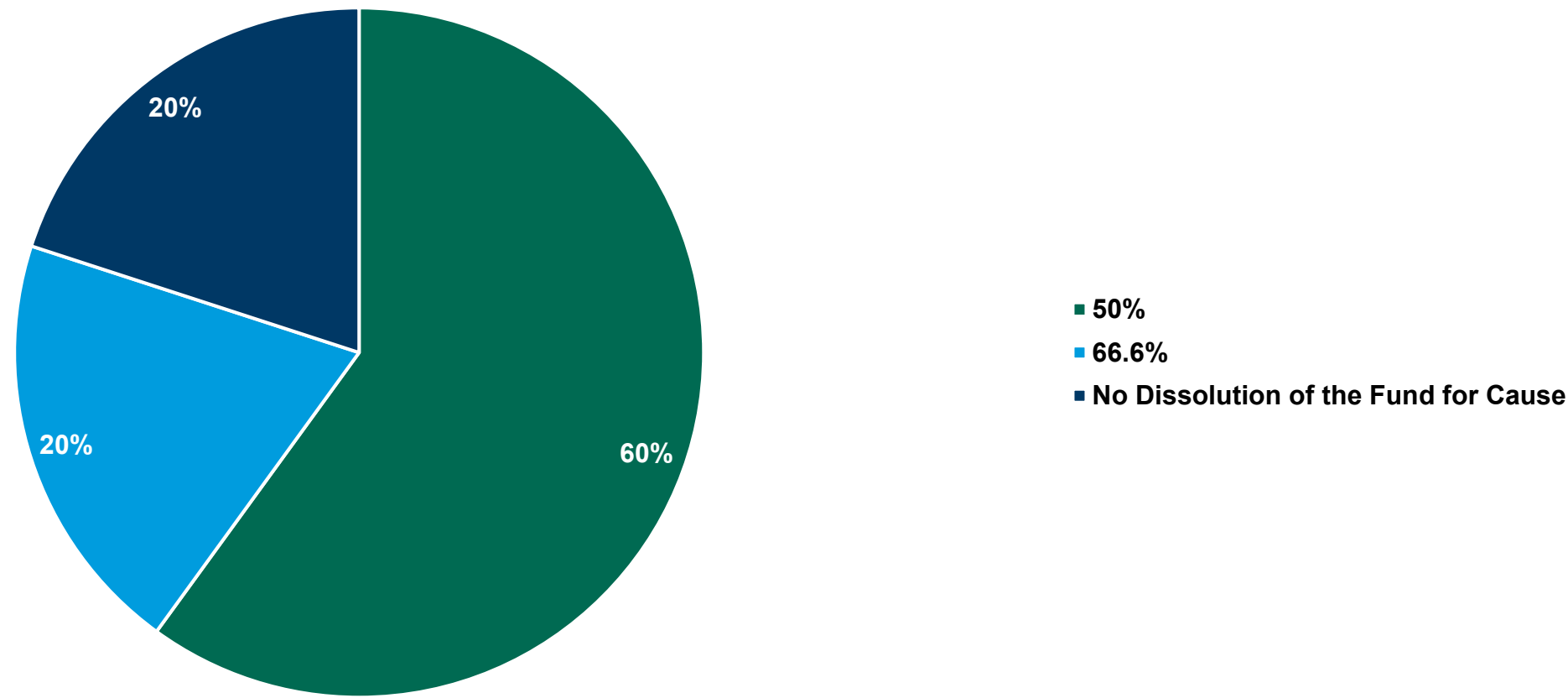
Larger funds that provide for dissolution following a cause event are likely to require the vote of 66% in interest of their investors, while the smallest funds reflect the most varied distribution of the different options.



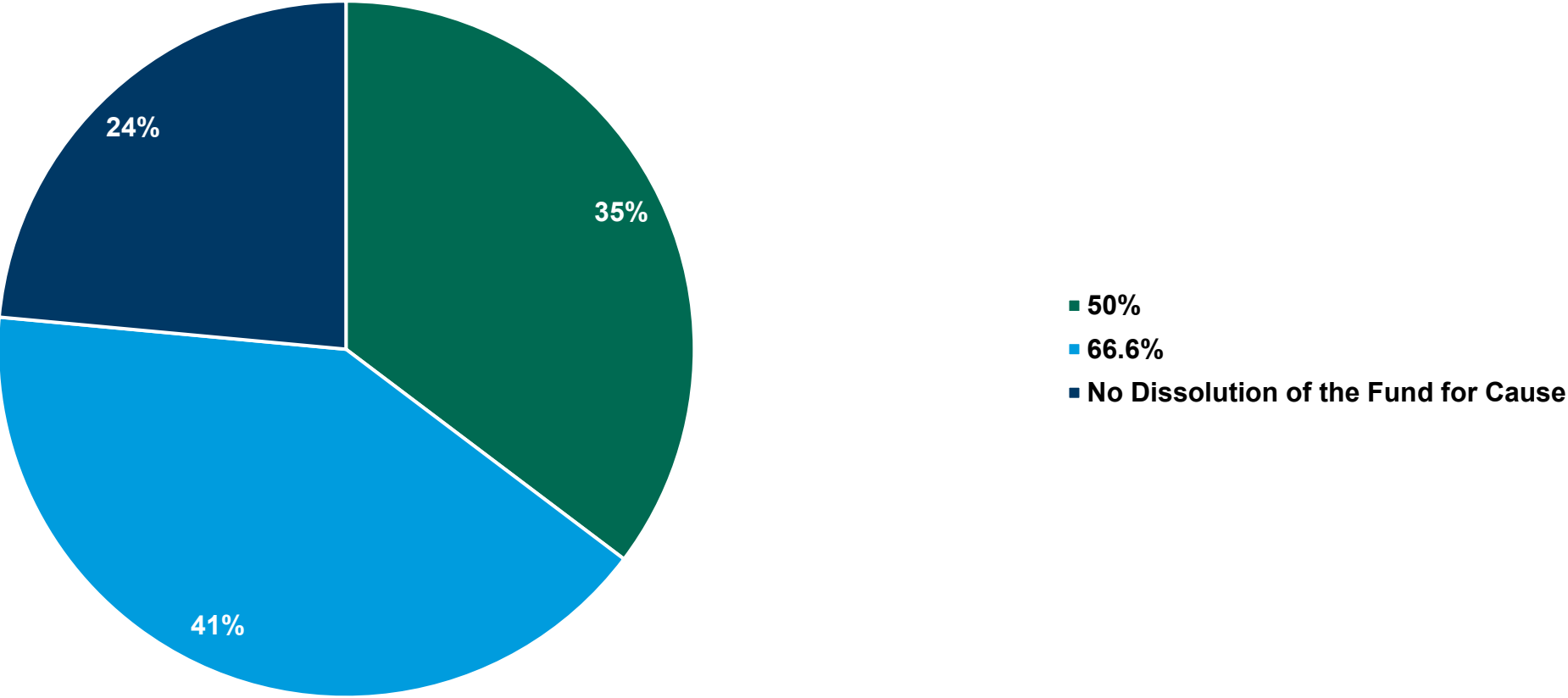
Dissolution of the fund ‘for cause’ – Investor voting threshold (% of interests)
<\$500M



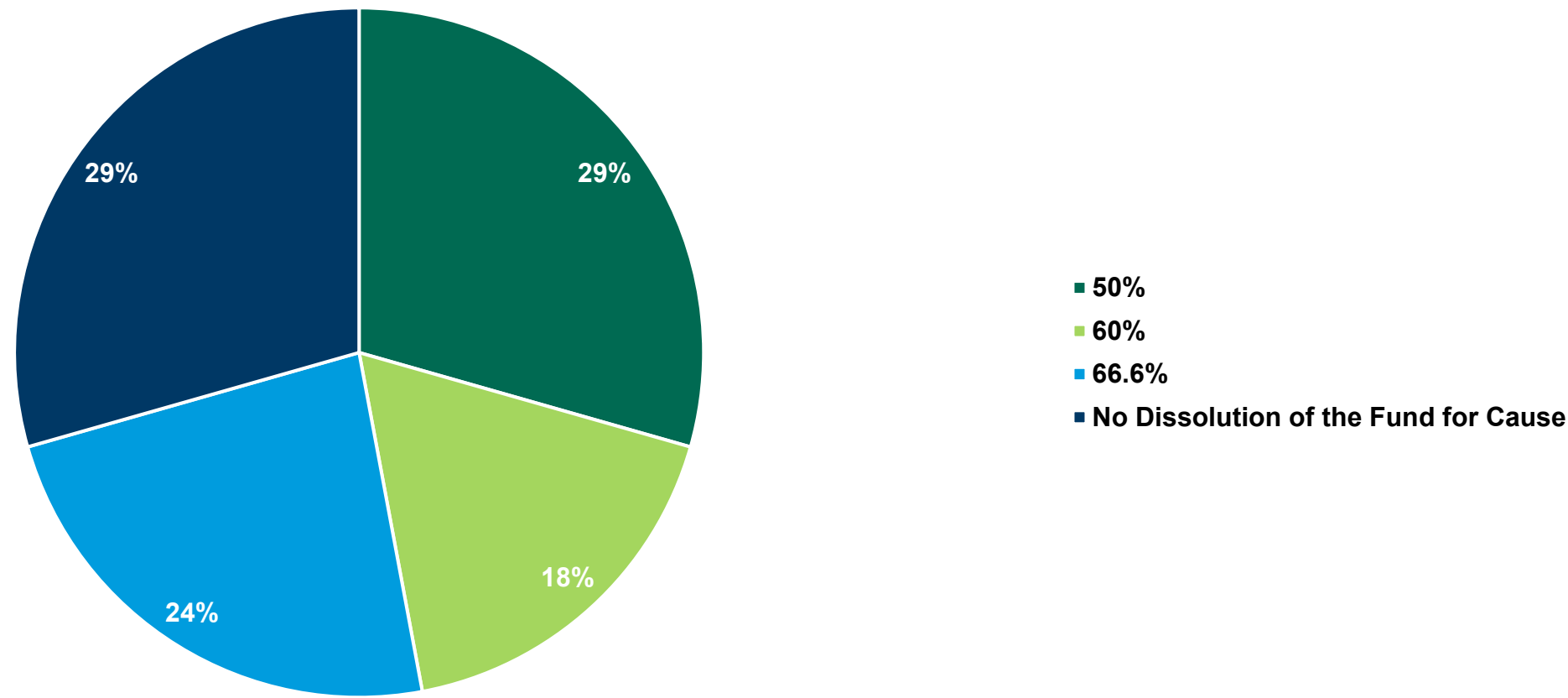
Dissolution of the fund ‘for cause’ – Investor voting threshold (% of interests)
\$500M-\$1B



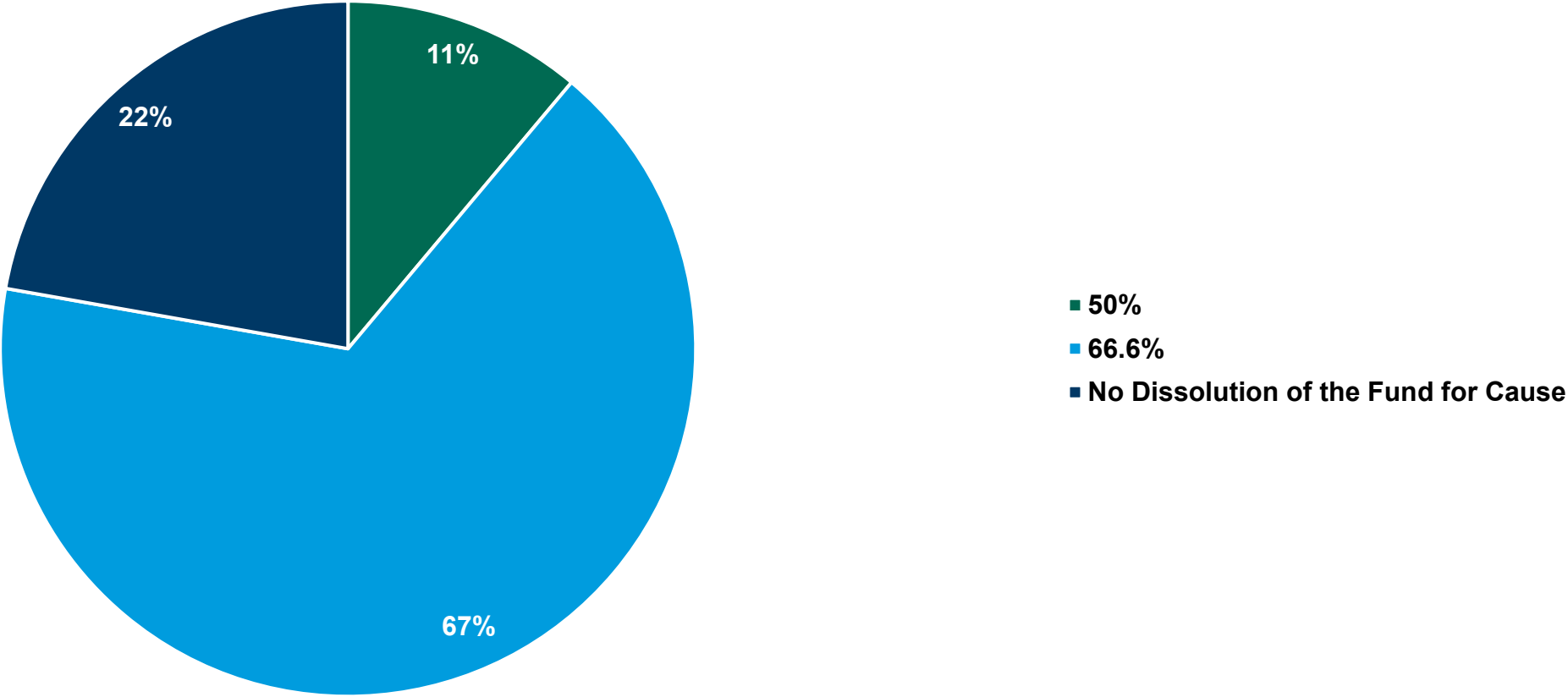
Dissolution of the fund ‘for cause’ – Investor voting threshold (% of interests)
\$1B-\$2.5B



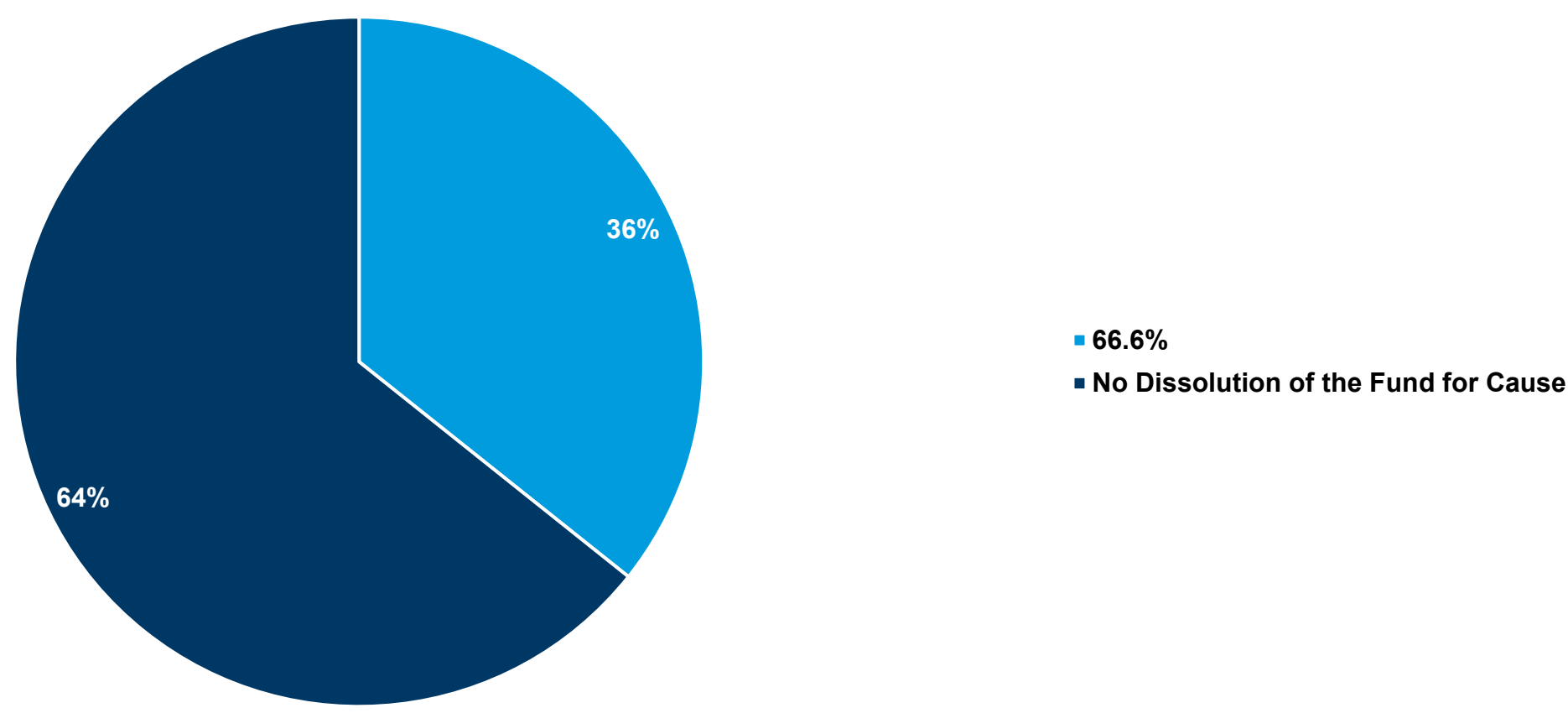
Dissolution of the fund ‘for cause’ – Investor voting threshold (% of interests)
\$2.5B-\$5B



Dissolution of the fund ‘for cause’ – Investor voting threshold (% of interests)
\$5B-\$10B



Dissolution of the fund ‘for cause’ – Investor voting threshold (% of interests)
>\$10B

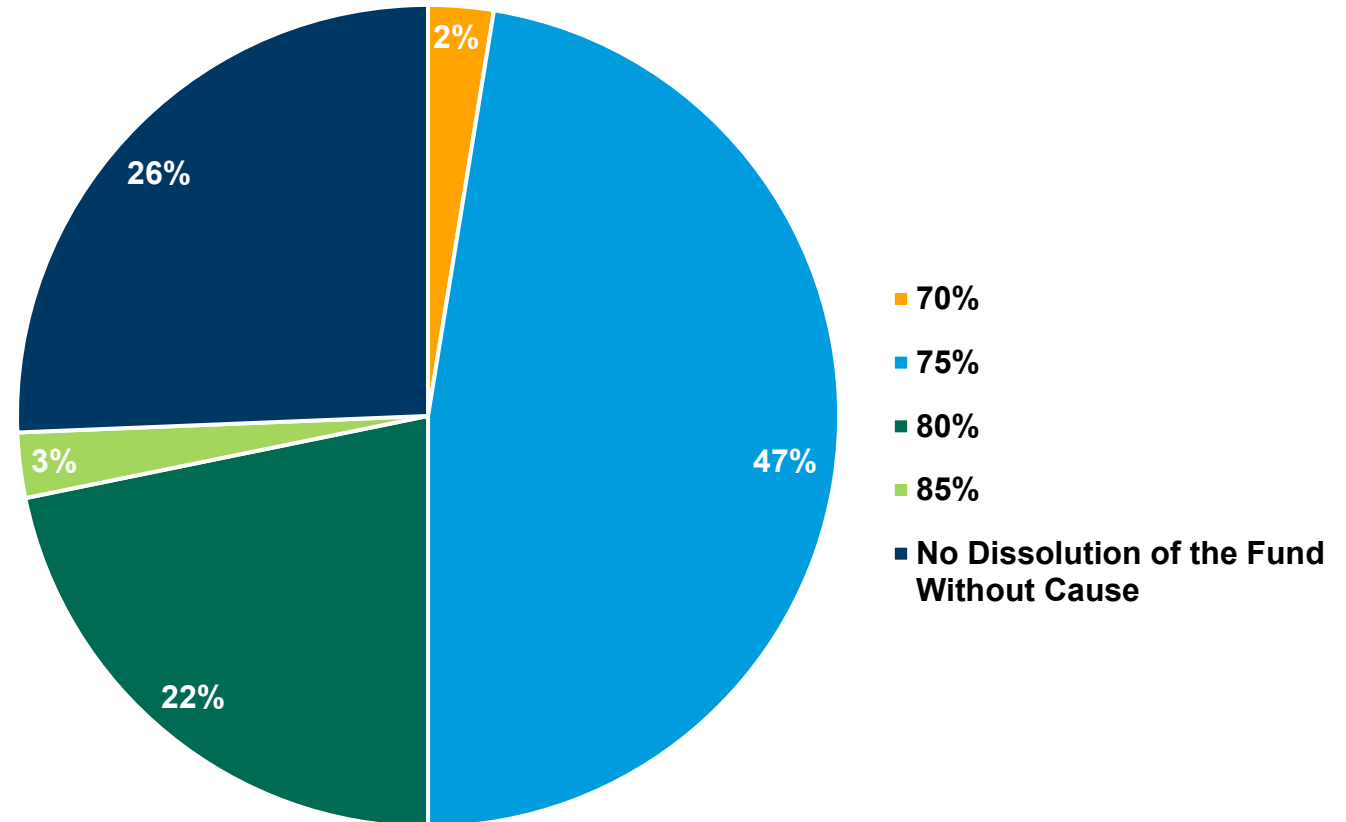


‘No fault’ dissolution of the fund – Investor voting threshold (% of interests)

All Funds

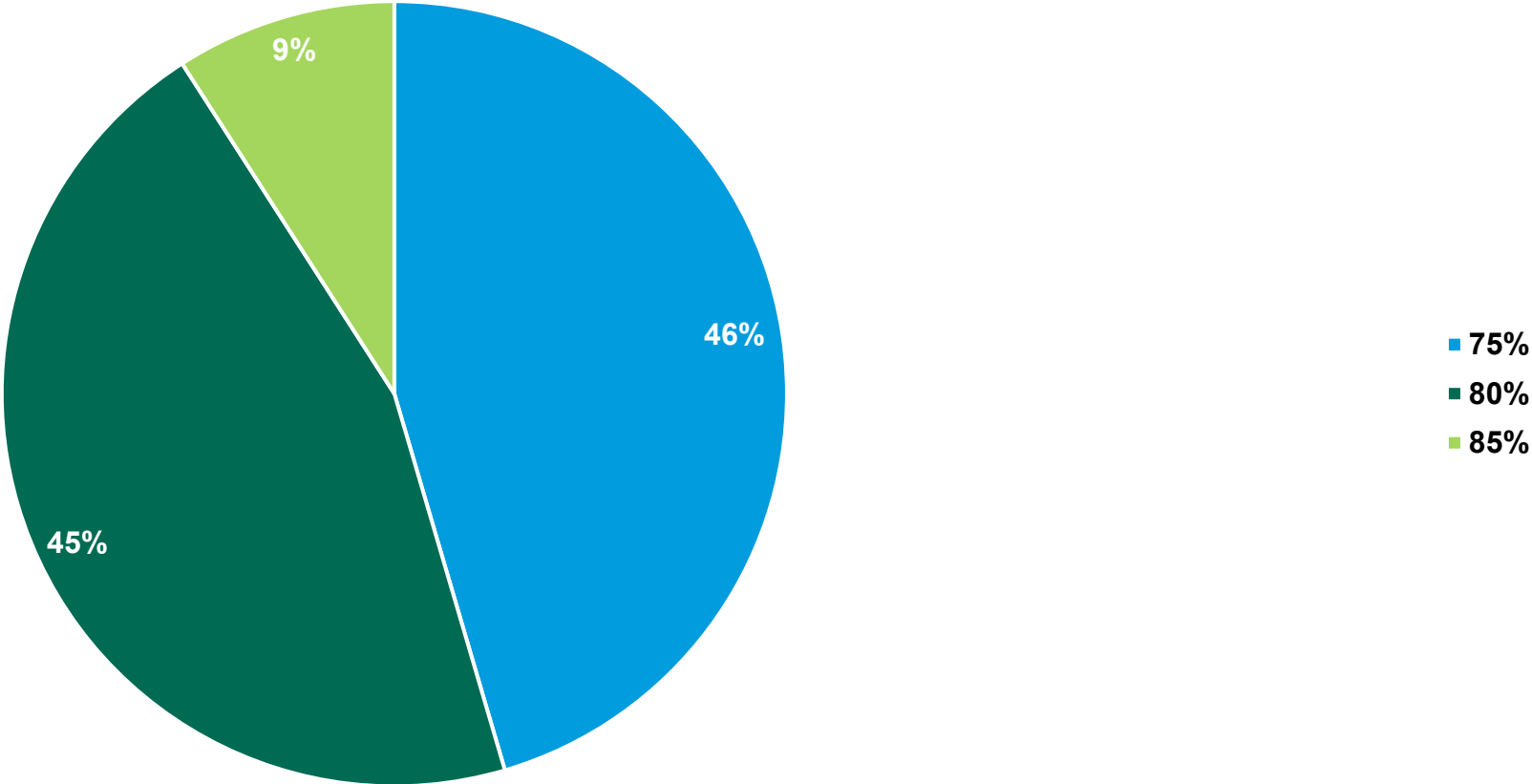
Three-quarters of funds surveyed provide limited partners with the right to end a fund’s term early and force liquidation without any triggering event (“cause”) being required. Of those funds, the required voting threshold is heavily concentrated at 75% in interest or greater.

Larger funds are more likely to include a typical right to dissolve the fund with 75%-80% in interest of limited partners, indicating that this remains a standard market term for established fund managers, while there is more variance for medium and smaller fund managers, reflecting the more varied investor base and relative leverage positions across the funds comprising those size classes.

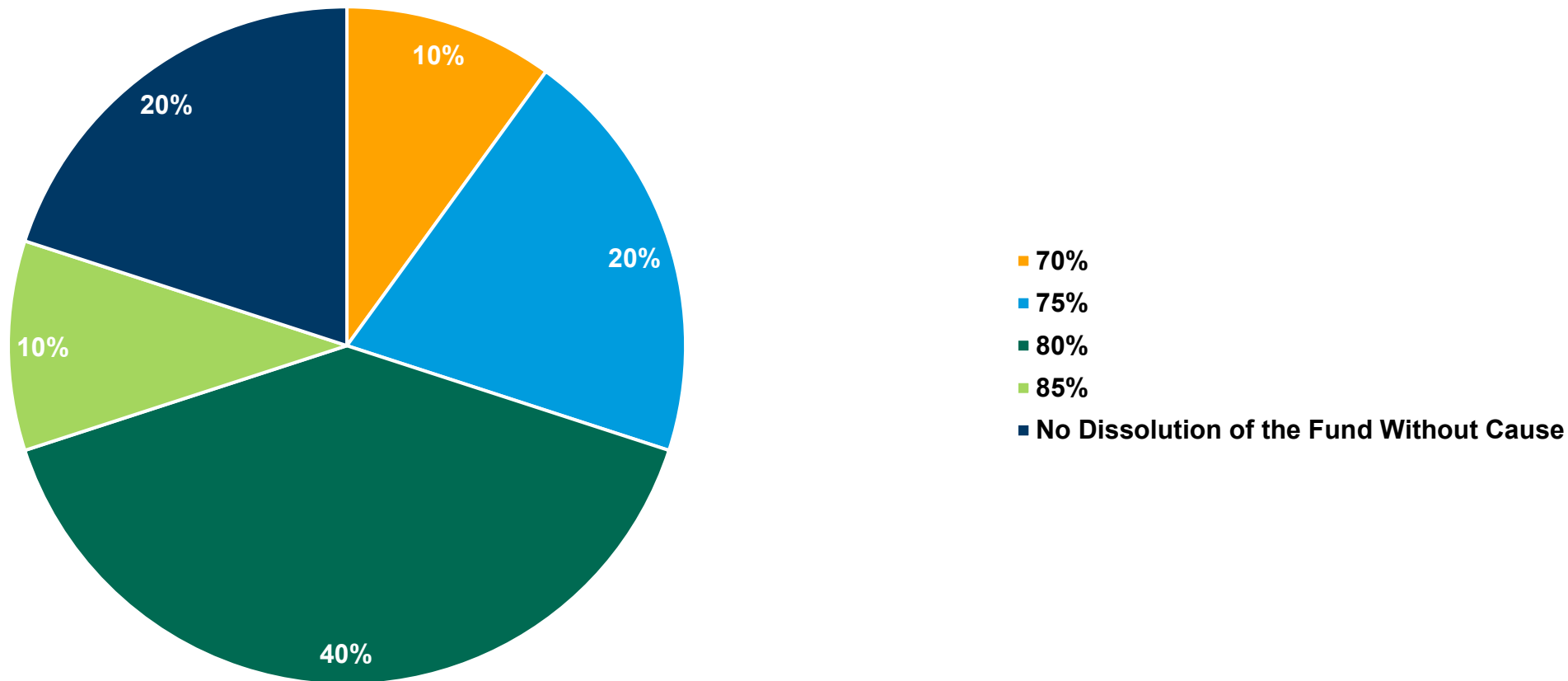


Dissolution of the fund ‘without cause’ – Investor voting threshold (% of interests)

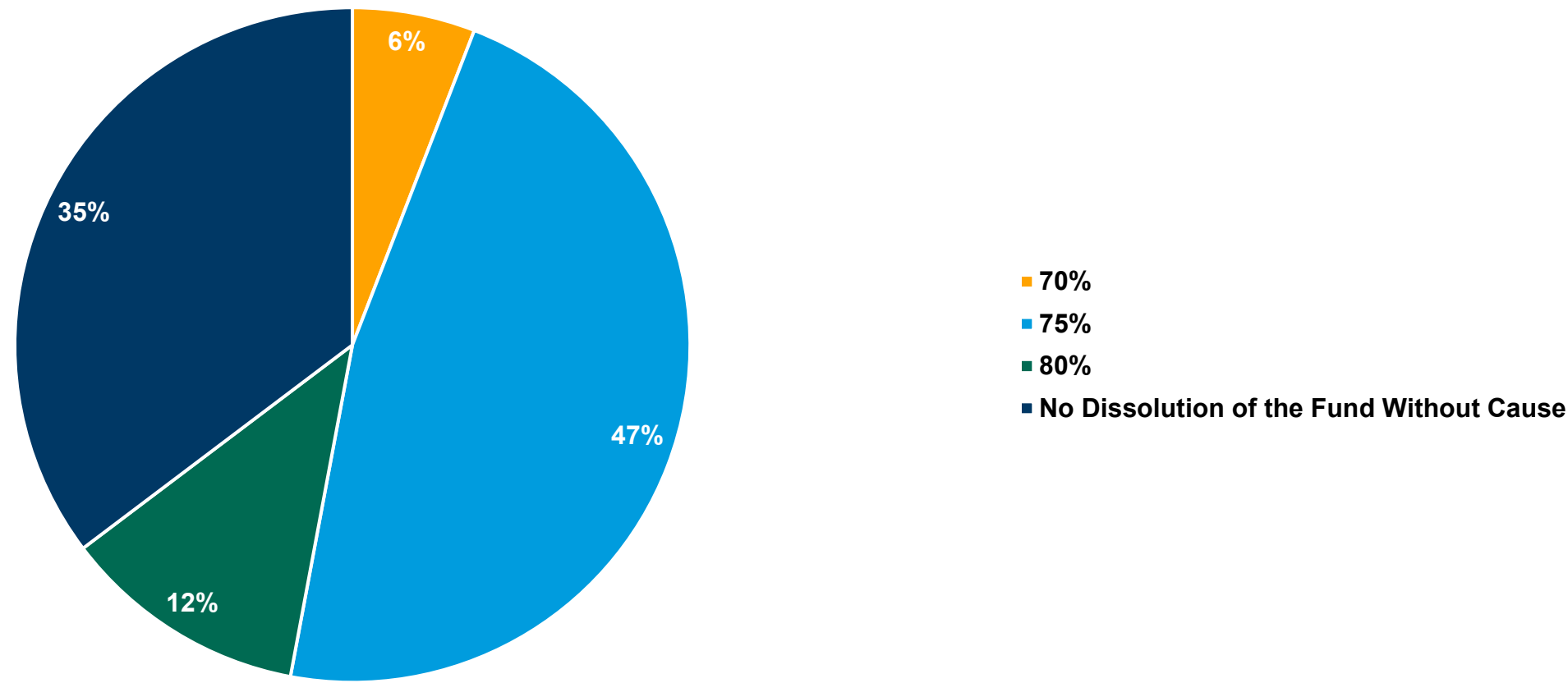
<\$500M



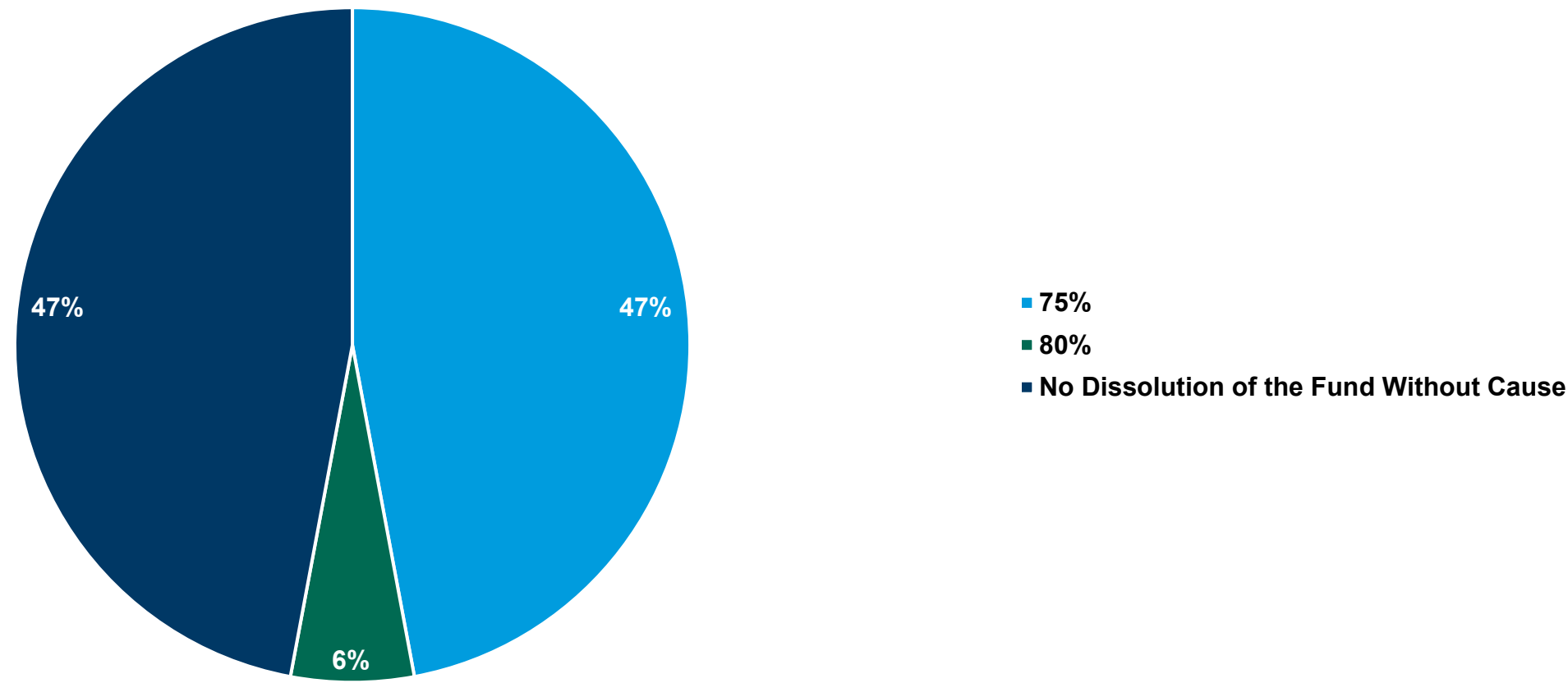
Dissolution of the fund ‘without cause’ – Investor voting threshold (% of interests)
\$500M-\$1B



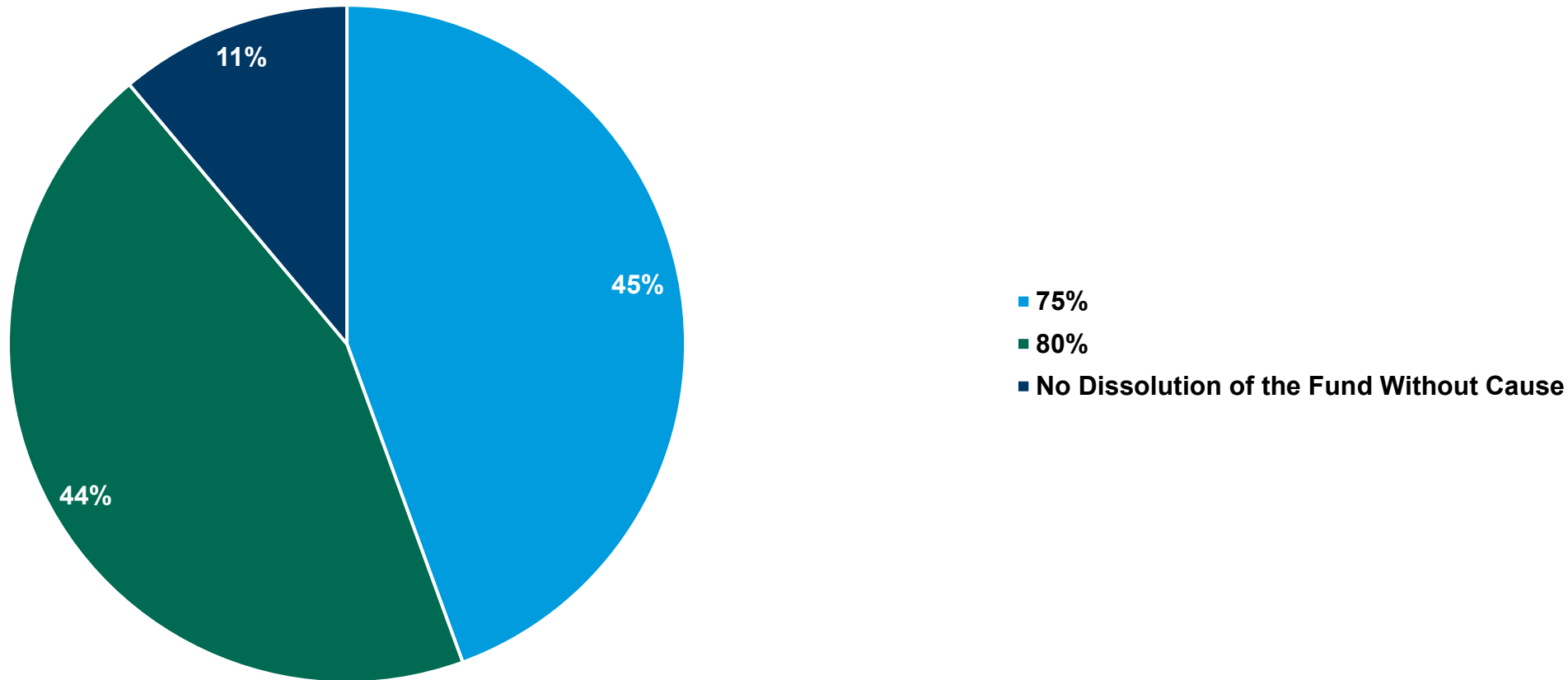
Dissolution of the fund ‘without cause’ – Investor voting threshold (% of interests)
\$1B-\$2.5B



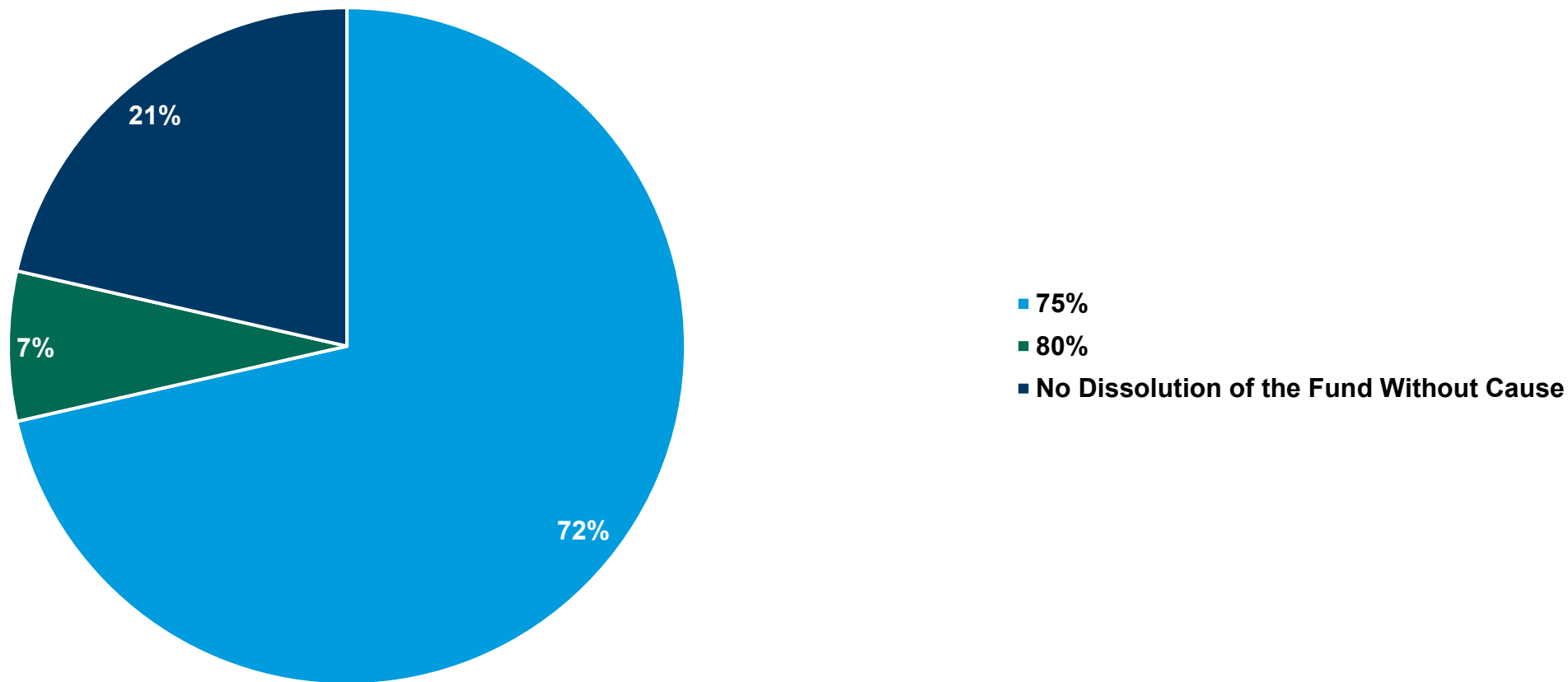
Dissolution of the fund ‘without cause’ – Investor voting threshold (% of interests)
\$2.5B-\$5B



Dissolution of the fund ‘without cause’ – Investor voting threshold (% of interests)
\$5B-\$10B



Dissolution of the fund ‘without cause’ – Investor voting threshold (% of interests)
>\$10B



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