

Agenda

8:30am	Welcome and Registration
9:00am	Opening Remarks
	Continuation Funds: Rationale, Pros & Cons Stakeholders and Key Risks Economic Terminology and Concepts
10:30–10:45am	Coffee Break
	Structuring Continuation Funds Process and Documentation Key Fund Terms & Considerations Key Transaction Terms & Considerations
12:00pm	Closing Remarks

As a market leader in secondaries transactions, our team advised on 400+ secondaries transactions that closed with aggregate total deal values exceeding \$60 billion over the past year.

As noted by *Secondaries Investor* in its 2023 survey, “Proskauer Rose provided counsel to the highest number of transactions of all law firms.”

Our market-leading global secondaries team provides in-depth advice on all aspects of the secondaries market. We have counseled a large segment of the secondary market since the dawn of the secondaries industry. Our expertise covers all types of transactions, including GP-led liquidity solutions (including single and multi-asset continuation funds, strip sales and spin outs), tender

offers, direct secondaries transactions, preferred equity deals, and some of the largest bulk purchases and sales of interests in the history of the secondaries market.

Given our vast market knowledge and experience representing GPs, buyers and sellers across all sectors and geographies, the breadth and depth of our practice ensures that we are uniquely positioned to provide our clients with innovative commercial solutions to the most complex transactions in the market.

Event Speakers



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Secondaries School

First for Market Insights

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Proskauer Secondaries School: Continuation Funds

First for Market Insights
June 2024

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Before the Break:

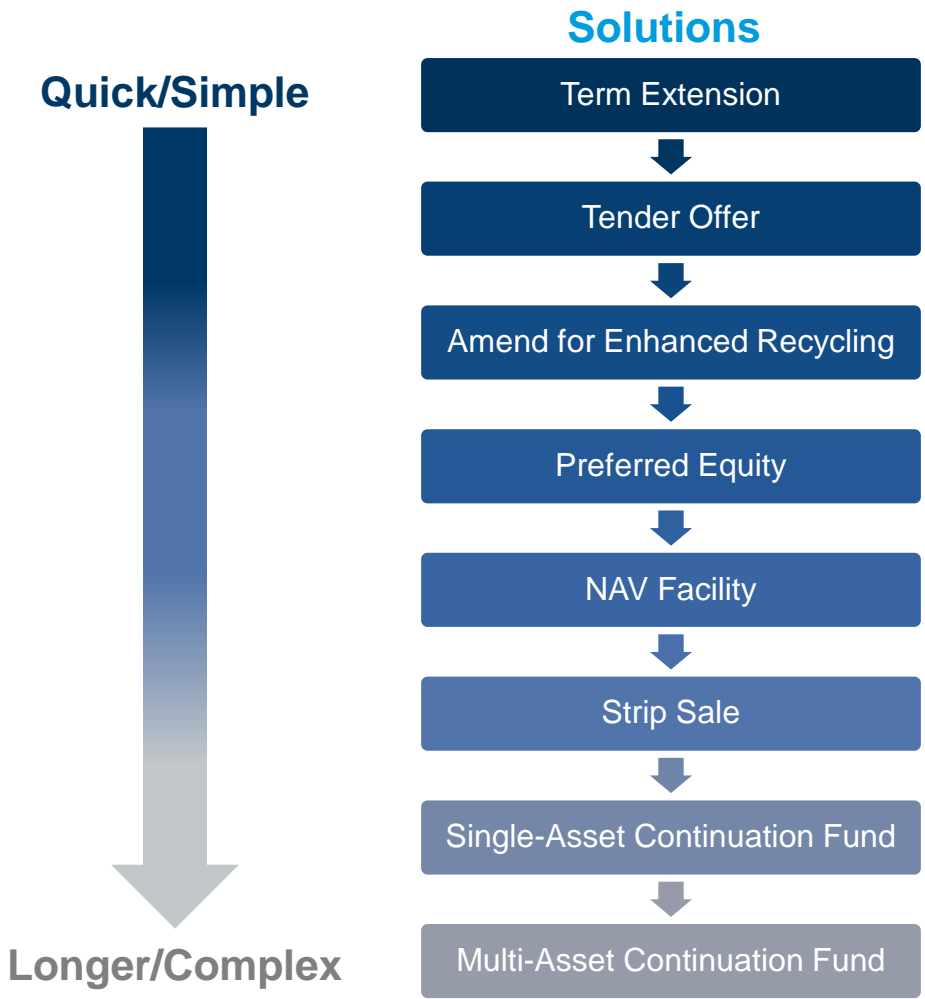
Introduction to GP-Led Transactions: The Spectrum of Options

Introduction to Continuation Funds

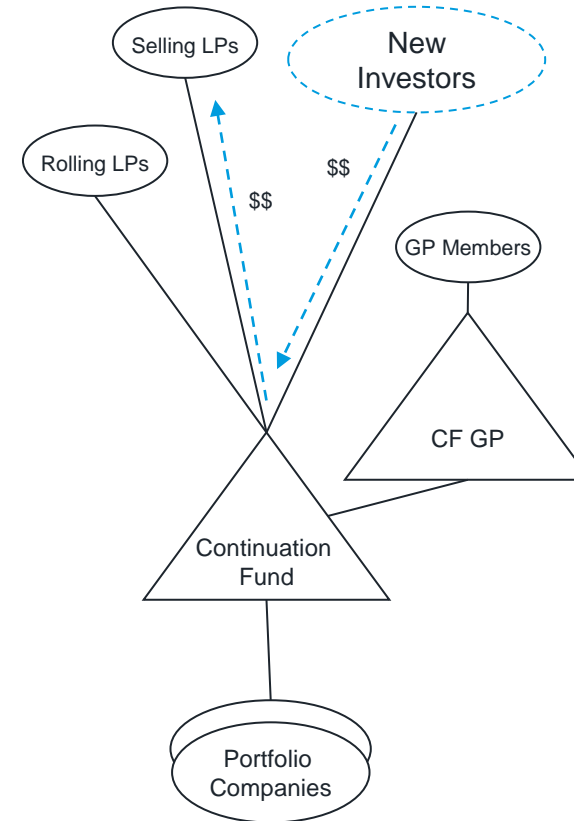
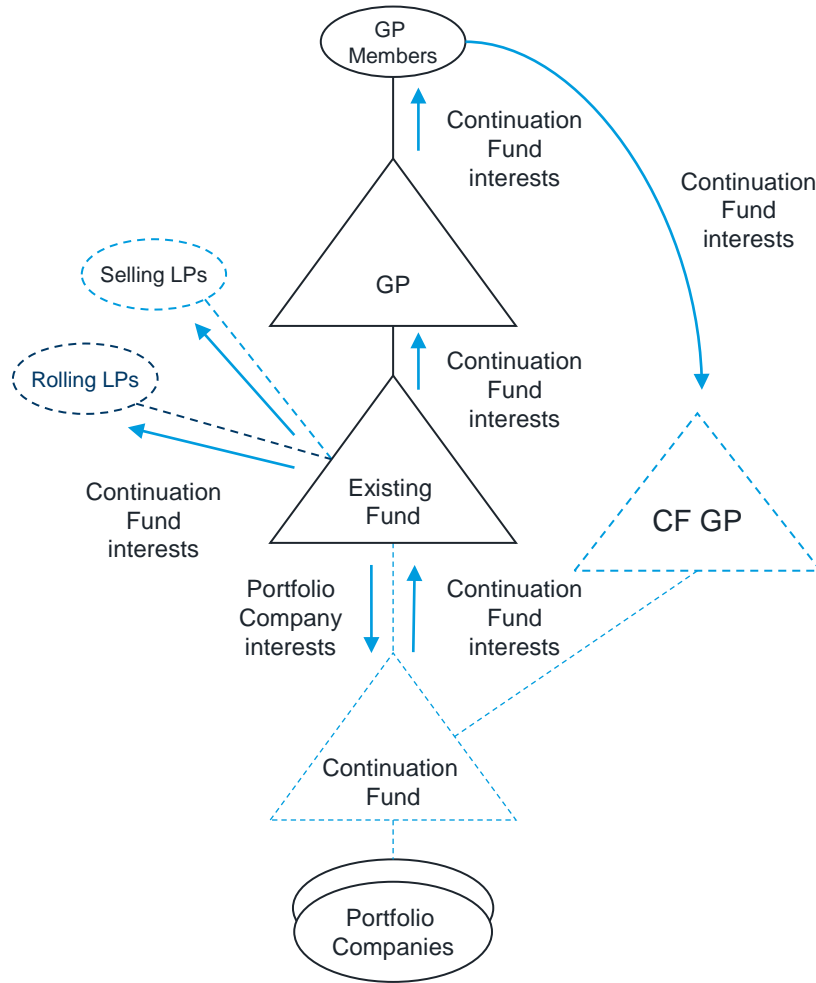
Continuation Fund Stakeholders: Goals & Concerns

Economic Concepts

GP-Led Transactions Options at-a-Glance



Continuation Funds: Characteristics; Motivations & Drawbacks



Stakeholders

Sponsors

- Extended duration to optimize value of high performing assets
- Additional capital to support existing portfolio/investments
- Crystalize carry for GP
- Reset incentive economics
- Reset carry arrangements between executives who left and those who are still with the GP
- Sometimes seen as a solution to tail end assets

Existing LPs

- Current liquidity vs. future upside (what is being left on the table?)
- Ability to assess opportunity: roll or sell? Status quo offered?
- Conflicts of interest (what is GP receiving)?
- Internal allocation/portfolio management
- Proposed structure and economics
- Status Quo?

Buyers

- Access to a mature portfolio with unrealized upside
- Maximize return potential from IRR and multiple perspective
- Create GP/LP alignment that is not traditional 2/20
- Will there be a critical mass of selling LPs?
- How will GP manage conflicts and existing LP base?
- How much due diligence is possible?
- Unfunded commitment requirements for follow-ons and fees and expenses

Key Considerations

CONSIDERATION	COMMENTS
Fiduciary duties and conflicts of interest	<ul style="list-style-type: none">• “Arm’s length transaction”• Increased potential for intense, after-the-fact, scrutiny by aggrieved LPs and regulators<ul style="list-style-type: none">• Status quo option provided to existing LPs?• Equal access to diligence in the dataroom?• Fairness or valuation opinion provided to existing LPs?• Improvement in GP economics?
LPAC/LP consent	<ul style="list-style-type: none">• LPAC consent will typically be required to “cleanse” conflicted transactions• LP consents and LPA amendments may also be required• Best Practice: Socialization for consents should commence early in the process to avoid “dead” deals
Tax Structuring	<ul style="list-style-type: none">• Consider whether blockers are being purchased or inserted• Consider potential withholding taxes and how they will be addressed• Impact of portfolio company tax characteristics (e.g., QSBS)• Holding period
Regulatory Considerations	<ul style="list-style-type: none">• Anti-trust, state and federal securities law, CFIUS, SEC, FCC, and Portfolio Company specific consideration?

Economic Interests: General Concepts

Crystallized Carry

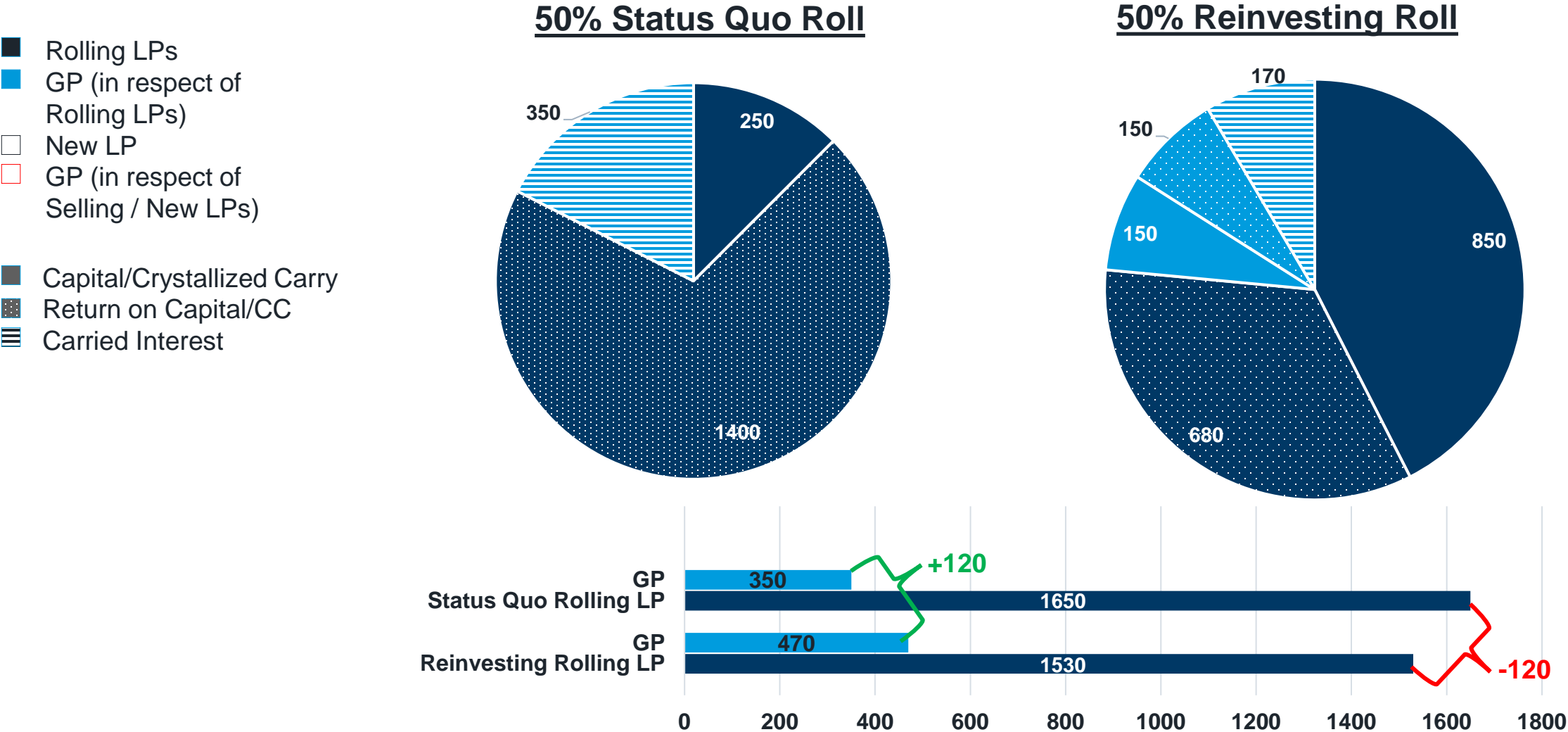
The value of carried interest as *finally determined* based on a distribution of the target portfolio companies (valued at the negotiated transaction value) by the original fund pursuant to the fund waterfall.

- Selling LPs
 - GP crystallizes carry
- Reinvesting Rolling LPs (new economic deal)
 - GP crystallizes carry
- Status Quo Rolling LPs
 - ***GP does not crystallize carry***

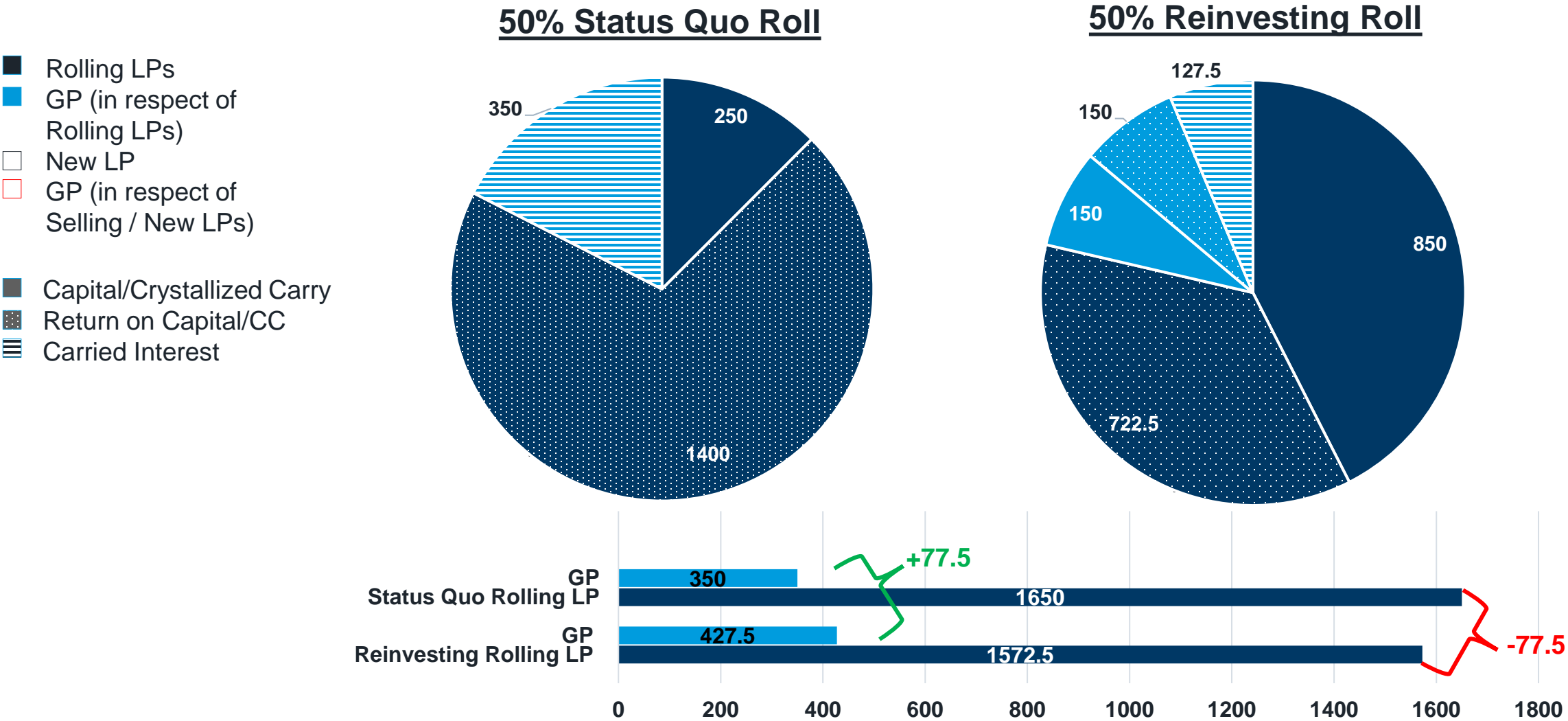
Economic Impact of Crystalizing Carry: An Example

- Cost of target asset = 500
- Continuation fund transaction value = 2000
 - GP is “in carry”
- Future gain (in CF) = 2000
 - Value of target asset at exit = 4000
- The carry rates for original fund and continuation fund = 20%
 - Assume no IRR/MOIC hurdles to carry
- LP elections: 50% sell & 50% roll

Economic Impact of Crystallizing Carry: Base Case



Economic Impact of Crystalizing Carry: Impactful Even When Carry Rate in Continuation Fund is Reduced



Questions?

After the Break:

Structuring Continuation Funds

Process & Documentation

Key Fund Terms & Considerations

Key Transaction Terms & Considerations

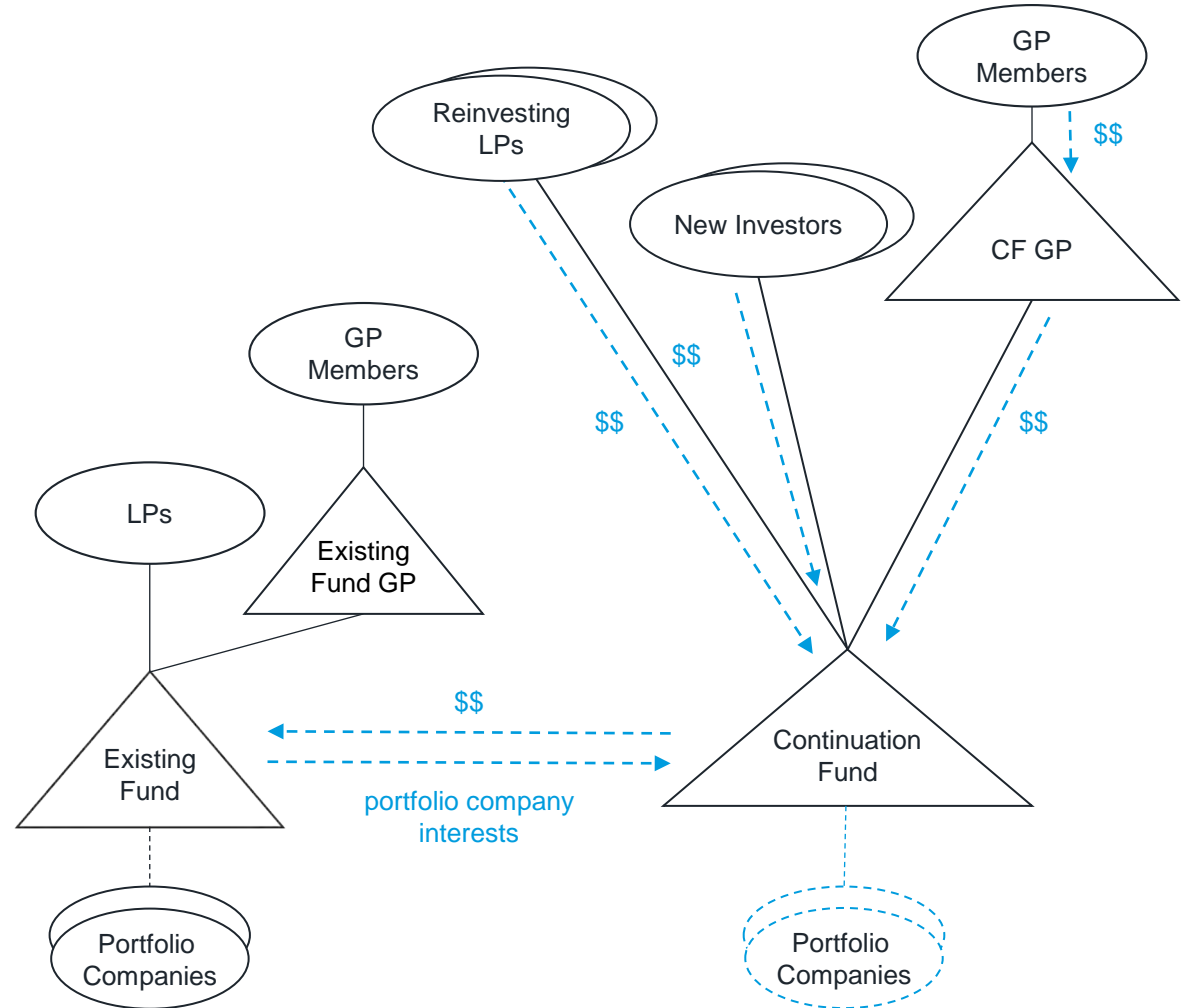
Questions?

Structuring Continuation Funds

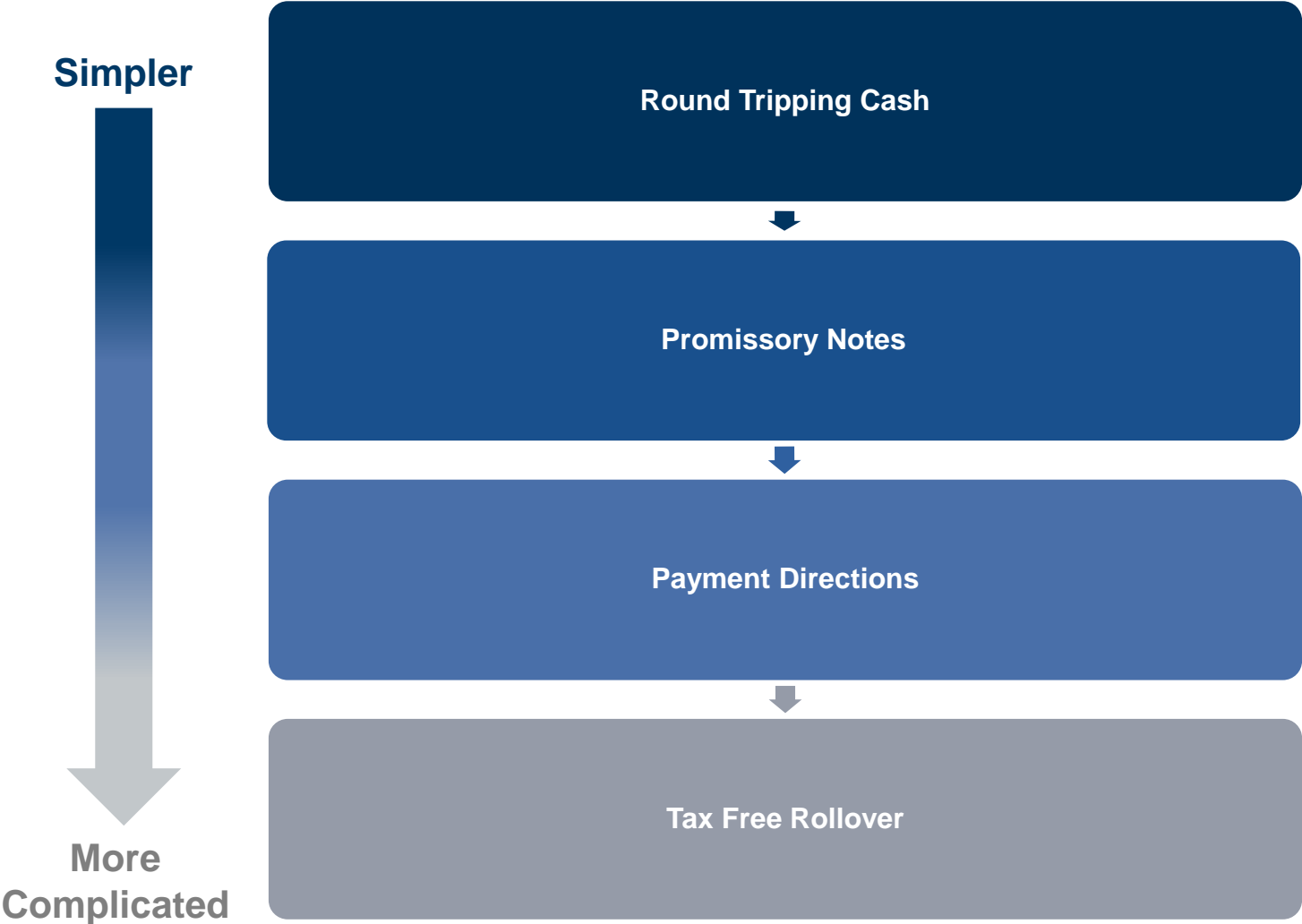
- Existing fund structure
- Tax considerations
- Life cycle of selling funds
- Sponsor goals
- Whether pre-closing restructurings are needed
- And many more...

Cash Sale Structure

- **Pros**
 - Simplicity.
 - Taxable to investors.
- **Cons**
 - Taxable to investors.
 - Restarts holding period.
 - Cashflow issues for reinvesting LPs.



Reinvestment Options



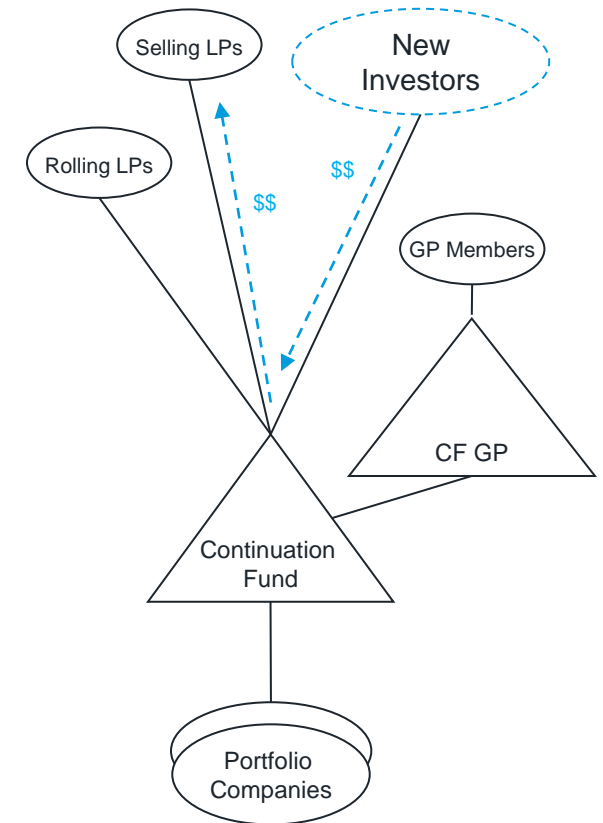
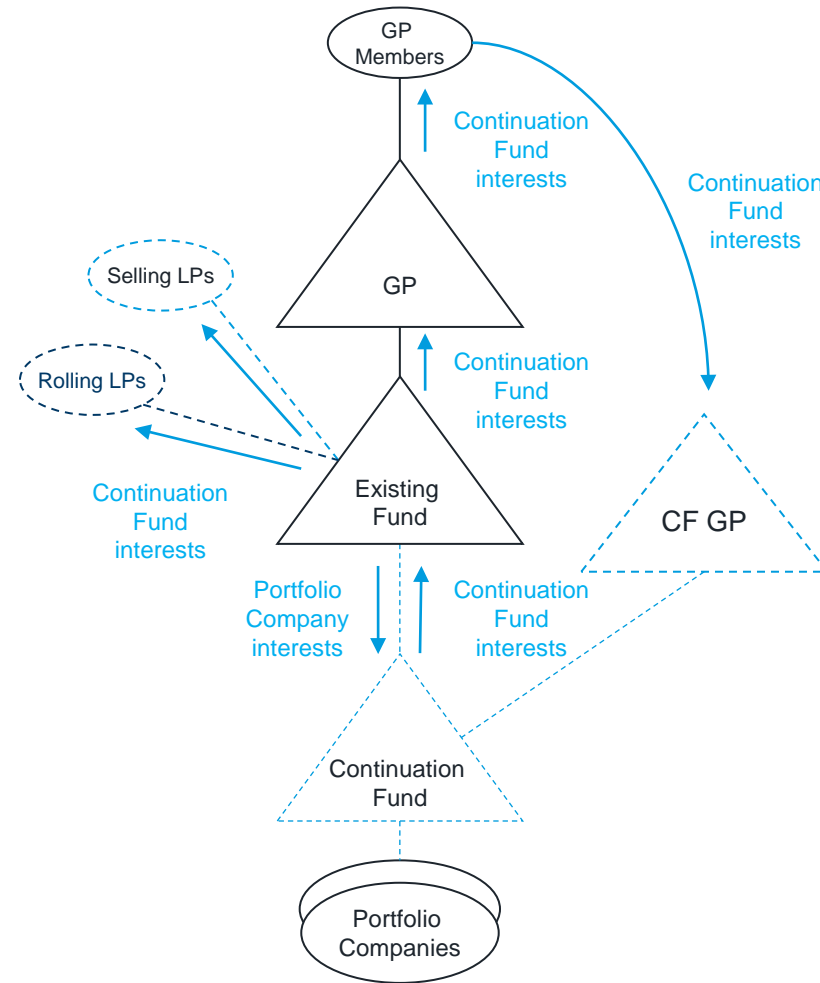
Traditional (“Disguised Sale”) Structure

- **Pros**

- Tax-free rollover.
- Tacked holding period.

- **Cons**

- Complexity.
- Withholding tax considerations.
- QSBS impact.



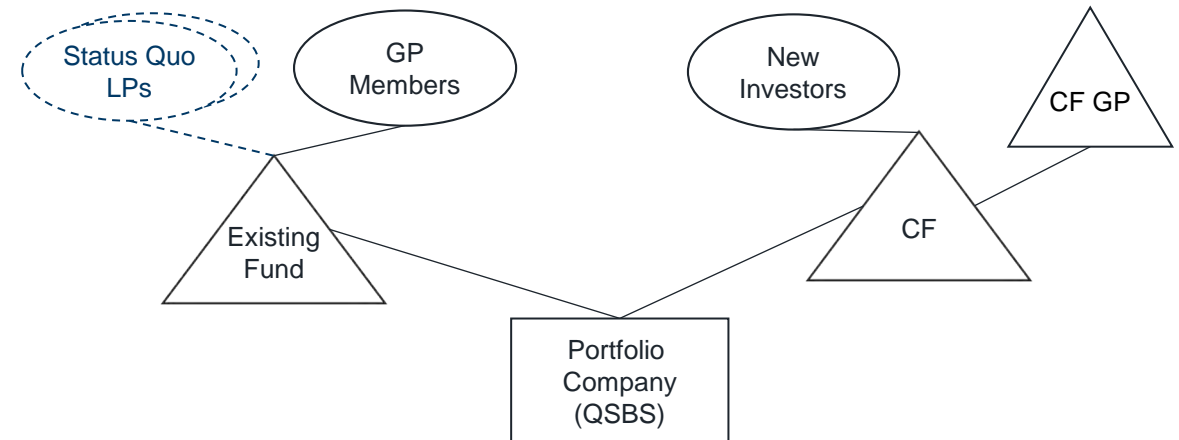
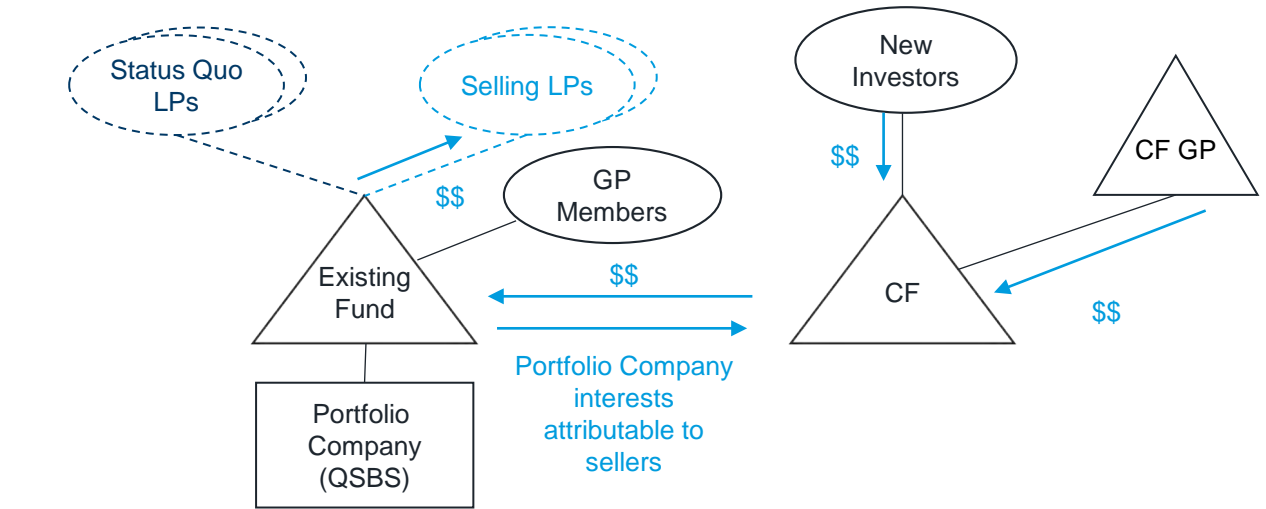
Stay-in-Place Structure (a QSBS Solution)

- **Pros**

- Preserve “qualified small business stock” (QSBS) status for all rollers.
- Can be combined with disguised sale structure for non-QSBS.

- **Cons**

- Complex.
- Restarts holding period.



How Blockers Can Impact Economics

- Corporate tax on sale of target assets out of the blocker.
 - Up to 44.7% tax drag (based on current tax rates).
- Magnitude of unrealized gain in the blocker.
- Size of blocked interest being acquired relative to total transaction value.
- Ability of new investors to make future investments/follow-on investments unblocked.
- Blocker sale covenants.
- Where the sponsor takes its new carried interest pre- and post-transaction.
 - Above the blocker (i.e., net of any applicable blocker taxes)?
 - Below the blocker?
- Purchase price discount?

Continuation Funds – Process & Documentation

1. Pre-Bid Submission Documents

- NDAs
- Teaser

2. Bid-Submission/Short Form Documents

- Term Sheet
- RW Outline
- Consent/Approval and Transfer Analysis

3. Long Form Documents

- LPA
- Transaction Agreement
- Side Letters
- Sub Docs
- RWI Policy (if applicable)
- Amendments to existing fund vehicle LPAs (if applicable)

4. Election Materials and Closing Docs

- CIM
- Transfer Agreements
- Election Forms
- Pre-Closing Notices and proof of satisfaction of closing conditions
- Sources and Uses Table

Indicative Timeline: Continuation Fund

Start to Finish: 3-9 months

Prepare and circulate initial diligence materials:

- ▶ Prepare teaser presentation highlighting Selling Fund and portfolio company key financial metrics
- ▶ Commission Fairness Opinion
- ▶ Conduct change of control and consent analysis
- ▶ Upload relevant portfolio company equity & credit agreements, material litigation, key employee compensation matters, co- investment rights and commercial contracts to data room
- ▶ Conduct tax and structuring diligence

Consider if R&W Insurance will be used.

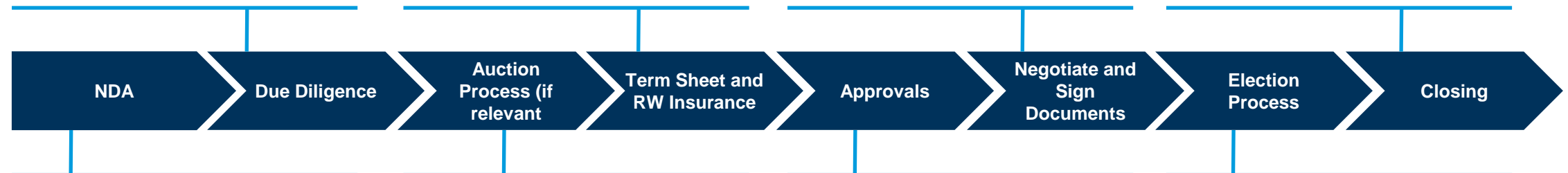
- ▶ If so, start process early
- ▶ Agree on allocation of cost and scope of coverage
- ▶ Consider exclusions and who bears liabilities not covered by RWI
- ▶ Determine treatment of proceeds

Key documentation:

- ▶ Term Sheet
- ▶ Rep & Warranty Outline
- ▶ Transaction Agreement
- ▶ Continuation Fund LPA and Side Letters
- ▶ Confidential Information Memorandum
- ▶ R&W Insurance Policy

Fund and Deal Closing

- ▶ Closing occurs once conditions have been satisfied (including regulatory consents and Approvals)
- ▶ Payment of Purchase Price
- ▶ Payment of closing expenses



Process run by secondaries advisor and legal counsel

Lead Investors to consider:

- ▶ Appropriate pricing, including impact of any fairness opinion process
- ▶ Syndication process
- ▶ Process, number of rounds involved
- ▶ Acquisition finance
- ▶ Change of control and consent analysis findings

LPAC and/or investor approvals, as well as any third-party approvals

Existing LPs decide whether to sell or roll

Key Fund Terms – Commitments

CONSIDERATION	COMMENTS
Allocation Waterfall	<ul style="list-style-type: none">• Minimums & Maximums• Handling Excess Sell Side Demand
Purchase Price Commitment	<ul style="list-style-type: none">• Purchase Price Adjustments:<ul style="list-style-type: none">– Cash Flows– Portfolio Fees• Deferred Consideration• Earnouts
Unfunded Commitments	<ul style="list-style-type: none">• Follow-On Investments<ul style="list-style-type: none">– Status Quo/Dilution– Preemptive Rights– LPAC/Lead Buyer Consent Rights• Expenses:<ul style="list-style-type: none">– Inside or Outside Commitments– Capped vs. Uncapped– Payment of Expenses for Status Quo
Sponsor Commitment	<ul style="list-style-type: none">• GP Rollover & Unfunded

Key Fund Terms – Expense Sharing

CONSIDERATION	COMMENTS
Expense “Buckets”	
▶ Seller Expenses	Not typically borne by Continuation Fund: <ul style="list-style-type: none">• LPA amendments; LPAC consents; LP CIM & Election Forms• Fairness or valuation opinions• Placement agent and professional advisor fees and expenses to the extent relating to the M&A transaction• Transfer taxes relating to pre-transaction restructuring
▶ Transfer Expenses	Often split in an equitable manner (e.g., 50/50) between Sellers and Continuation Fund: <ul style="list-style-type: none">• Portfolio company transfer expenses• Regulatory expenses (e.g., HSR filings)• Contribution/PSA expenses• Cost of rep and warranty insurance• Transfer taxes relating to “sold” interests
▶ Continuation Fund Expenses	Often borne by Continuation Fund: <ul style="list-style-type: none">• Organizational expenses (typically subject to a cap)• Lead investor expenses (typically subject to a cap)• Placement agent fees relating to new commitments to the Continuation Fund (subject to management fee offset)

Key Fund Terms – Economics & Cashflows

CONSIDERATION

COMMENTS

Distribution Waterfall

- Carried Interest
- GP Clawback & Guarantees
- Historical Clawbacks?
- RWI Proceeds & Expenses – Inside or Outside?
- Tax distributions on Rolled Interests (i.e., 704(c) allocations)

Management Fee

- Will New Investors & Rollers pay the same management fee?
 - If not, will Rollers receive any offsets?
- How will the management fee be calculated?
- Termination

Indebtedness; Recycling & Reinvestment

- Appropriate?
 - If so, consider caps, timings and uses

Continuation Funds – Dilution & Governance

CONSIDERATION

COMMENTS

Governance

- Term and Extensions
- LPAC vs. Lead Investor Consent
 - Weighted Voting
 - Special Lead Investor Rights
- GP Removal: Cause vs. No Fault
- Key Persons
- ROFRs
- Side Letters
 - New Investors
 - Rollers
 - MFN

Questions?

Key Transaction Terms & Considerations

Key Transaction Terms – Indemnification

CONSIDERATION

COMMENTS

Source of Recovery

- Representation and Warranty Insurance
- Holdback
- LP Clawback Provisions
- Recovery Challenges

Caps/Deductibles/ Thresholds

- **Non-Fundamental Reps; Split Retention v. No Seller Indemnity**
- **Non-Fundamental Reps; Tipping Basket v. Deductible**
- **Non-Fundamental Reps; Cap**
- **Fundamental Reps and Excluded Liabilities; Cap**
- **Fraud Cap**

Key Transaction Terms – Reps & Warranties

CONSIDERATION

Representations and Warranties; Survival

COMMENTS

- **Typical Fundamental Representations and Warranties**
 - Survival under TA vs RWI
- **Typical Non-Fundamental Representations and Warranties**
 - Survival under TA vs RWI
- **General Partner Representations and Warranties**
 - Survival
- **Cure Provisions**

Definition of “Knowledge Parties”

- **Identity**
- **Due Inquiry**

Key Transaction Terms – Survival for Excluded Obligations; Fraud

CONSIDERATION

Excluded Obligations/Tax Liabilities/Fraud; Survival

COMMENTS

- Typical Excluded Obligations
 - Survival under TA vs RWI
- Excluded Tax Liabilities
 - Survival under TA vs RWI
- Fraud
 - Survival

Current Highlights on Rep & Warranty Insurance

- Base policy terms
- RWI provides extended survival for breaches of claims and typically facilitates negotiation of the TA (at least in regard to reps, indemnification, scope of recourse)
- Cost on all-in basis (i.e., premium, taxes, underwriting fees and broker compensation)
- Tax RWI

Key Transaction Terms – Closing Conditions & Tax Covenants

CONSIDERATION

COMMENTS

Customary Closing Conditions

- General
- Customary Examples of Closing Conditions

Tax Covenants

- 754 election
 - Push-out election for pre-closing partnership tax liabilities imposed on audit
-

Questions?

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Proskauer Secondaries School: Continuation Funds

First for Market Insights
June 2024

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Navigating Liquidity: Proskauer's Secondaries Pulse Check

Executive Summary

Proskauer's Secondaries Pulse Check data benchmarks a variety of secondaries transaction terms, including key legal, economic and governance provisions, across 55 traditional LP and 17 GP-led secondaries transactions. The data covers transactions closed between the third quarter of 2022 and the first quarter of 2023, and provides insight into how terms are changing over time and the market shifts we anticipate moving forward.

The analysis and related commentary reflects our experience from representing sponsor, buy-side, and sell-side clients, providing a unique insight into the market from all angles.

Built to serve asset managers, Proskauer's Private Funds Group will continue to monitor the evolution of the secondaries market, offering our clients insights to aid their transactional and fundraising needs.

Proskauer» For Success. For Progress. For Good.

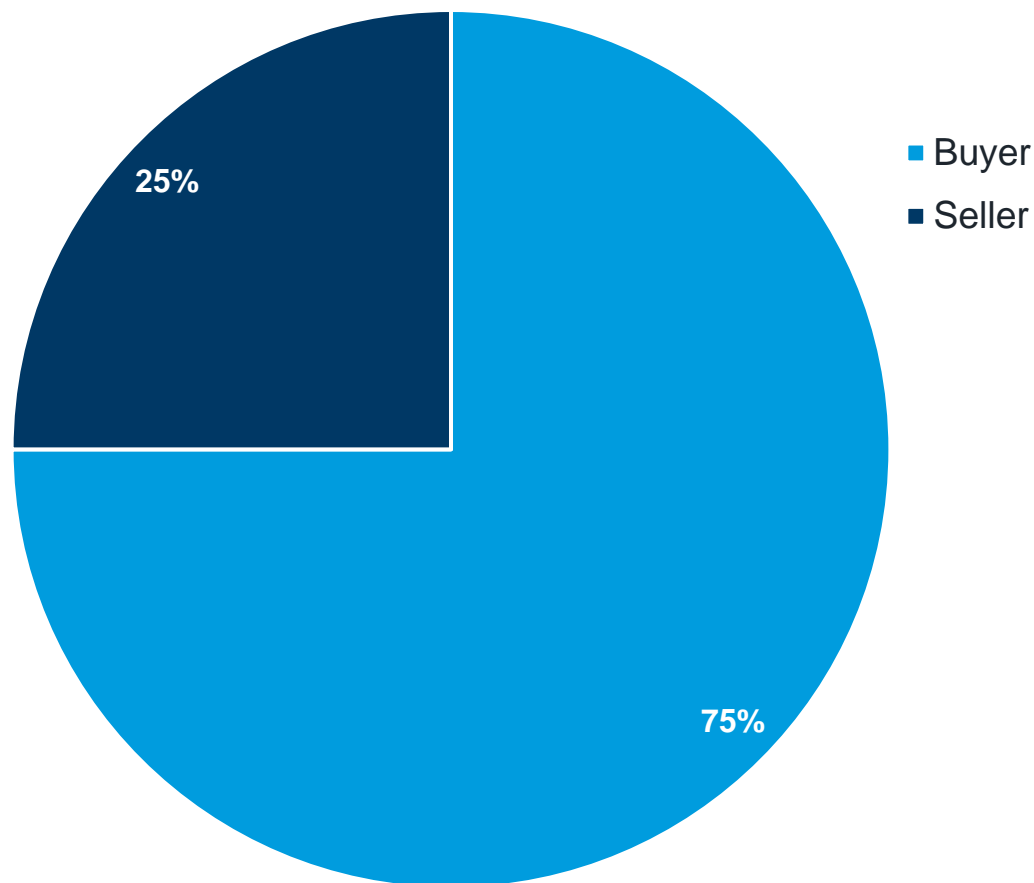
Table of Contents

3	Data Insights: Traditional LP Secondaries Transactions
32	Data Insights: GP-Led Secondaries Transactions
64	Proskauer Articles

Data Insights: Traditional LP Secondaries Transactions

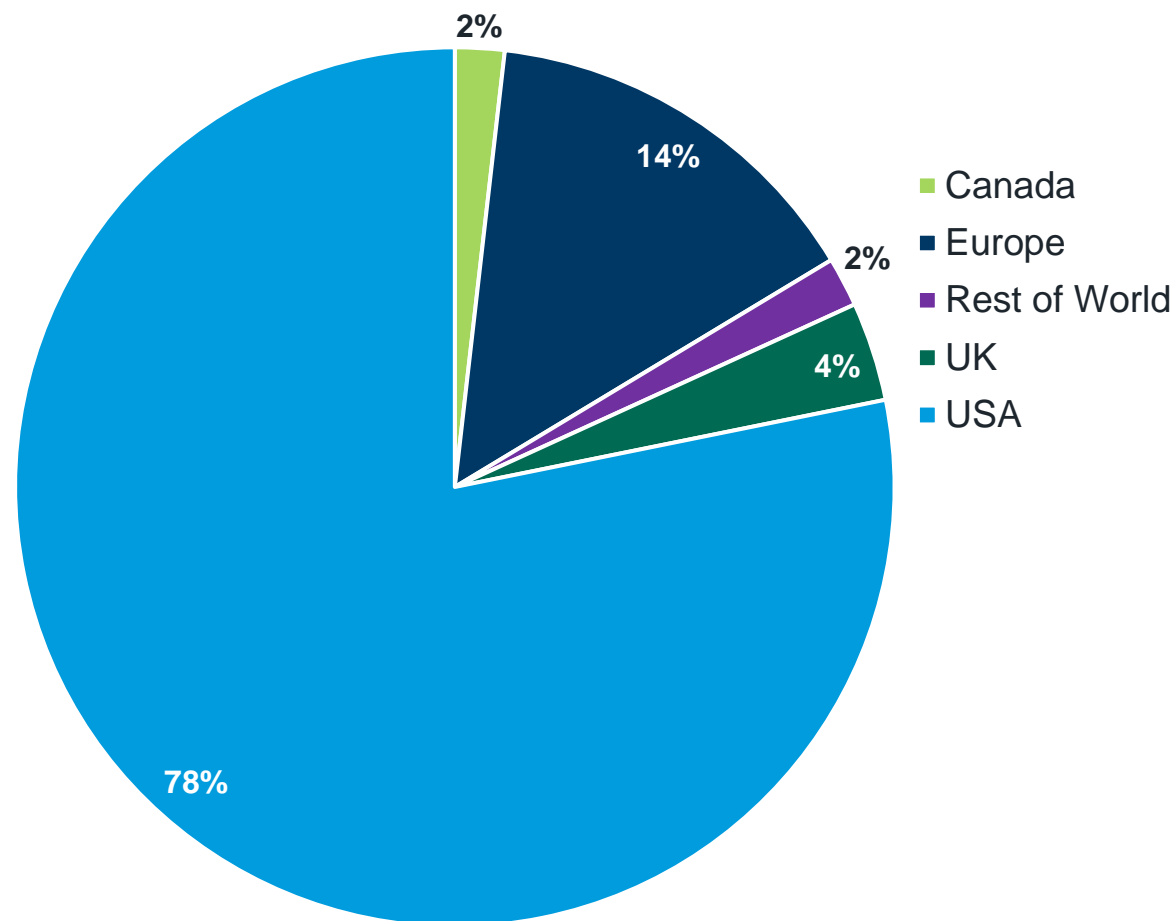
Party Represented

On the 55 traditional secondaries transactions we closed between September of 2022 and March of 2023, we acted on the buy-side on 75% of occasions and acted on the sell-side for the remaining 25% of deals.



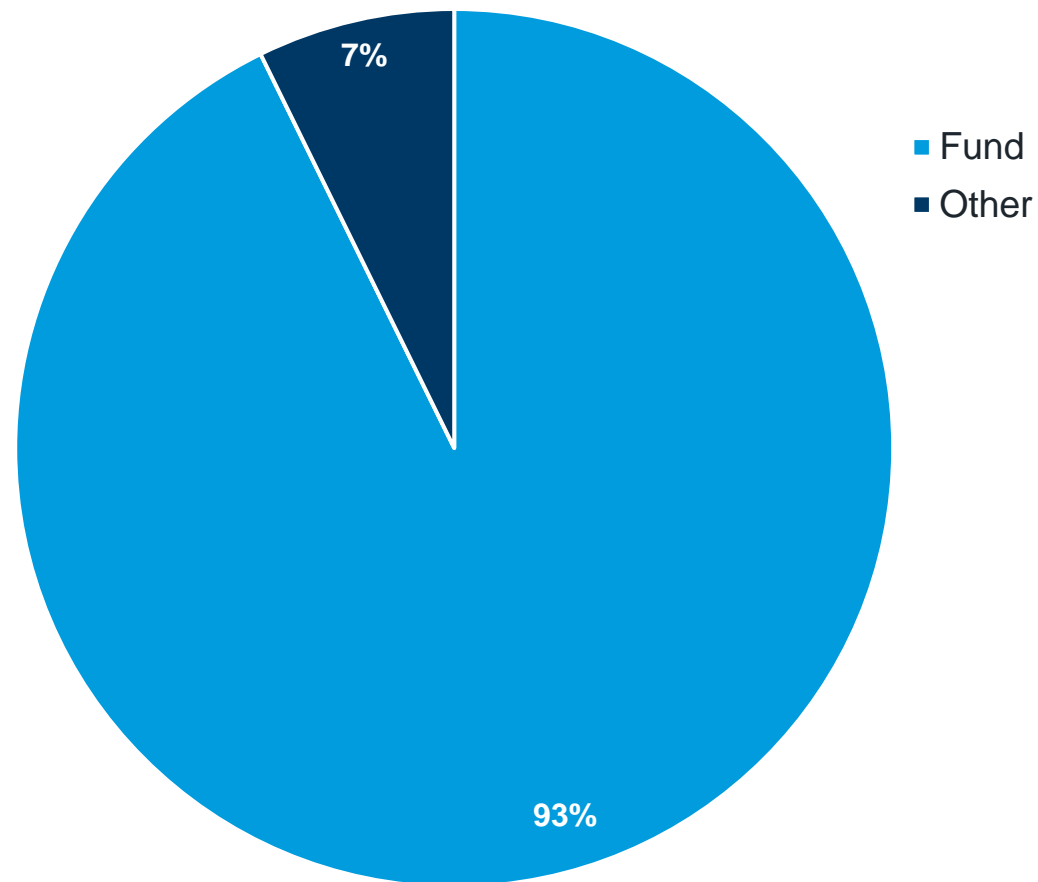
Buyer Legal Jurisdiction

This chart highlights the principal jurisdiction of the buyers, with the largest representations being the USA (78%) and Europe (14%). We saw smaller percentages of buyers based in the UK, Canada and other parts of the world, including Asia.



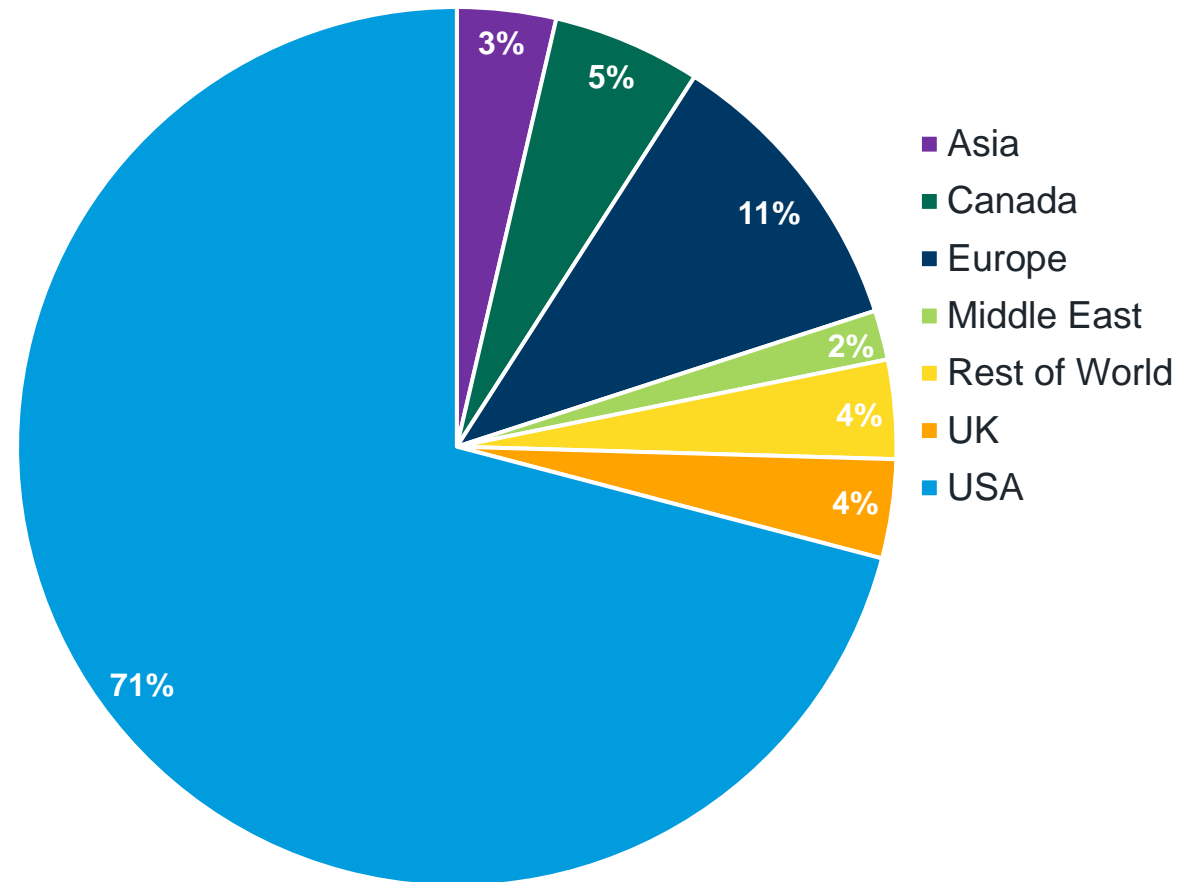
Buyer Type

Unsurprisingly, 93% of the traditional deals we worked on involved a secondaries fund as the purchaser.



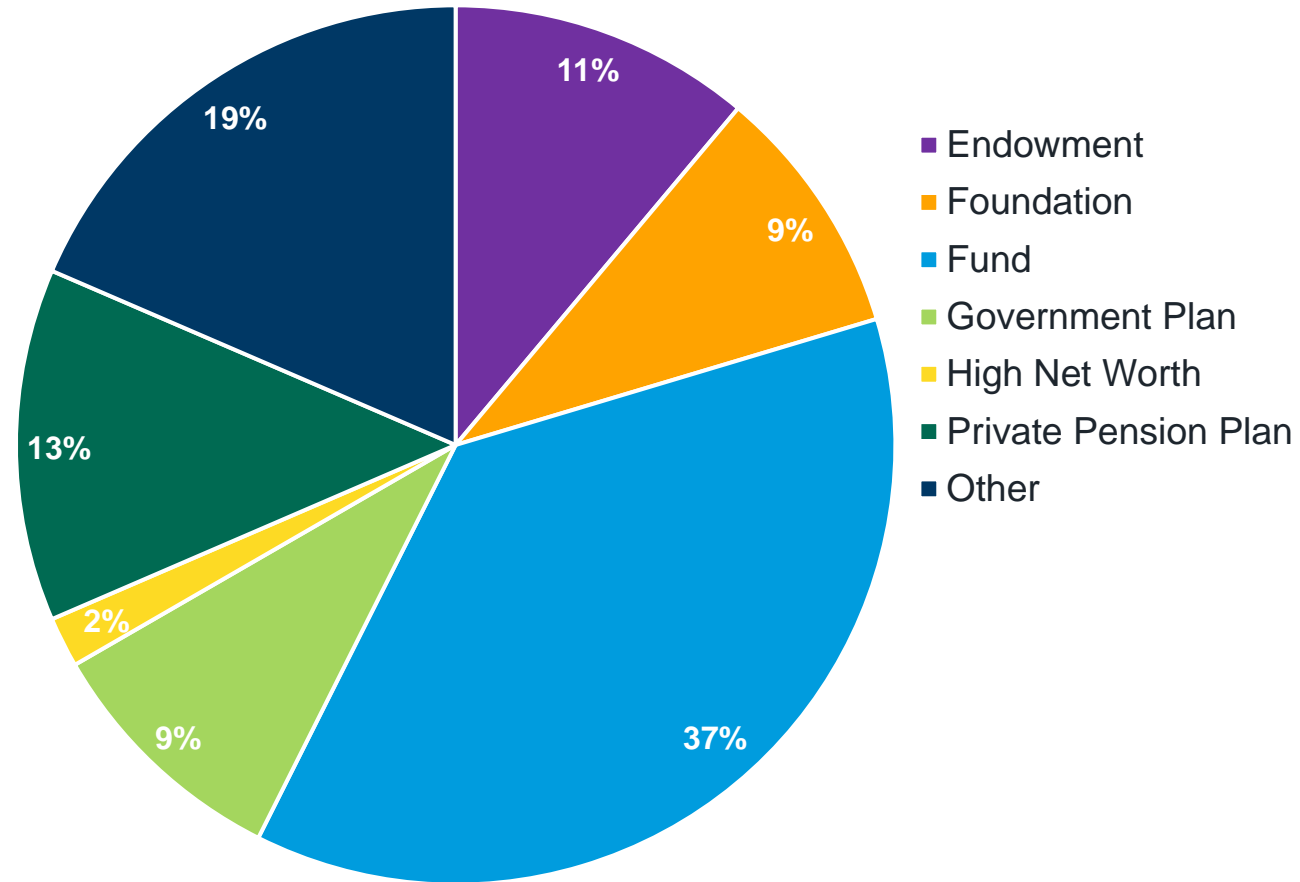
Seller Legal Jurisdiction

Consistent with prior years, a significant 71% of sellers were based in the USA, which was followed by 11% of sellers in Europe, 5% in Canada, and we also saw 4% of sellers based in the UK and 3% in Asia.

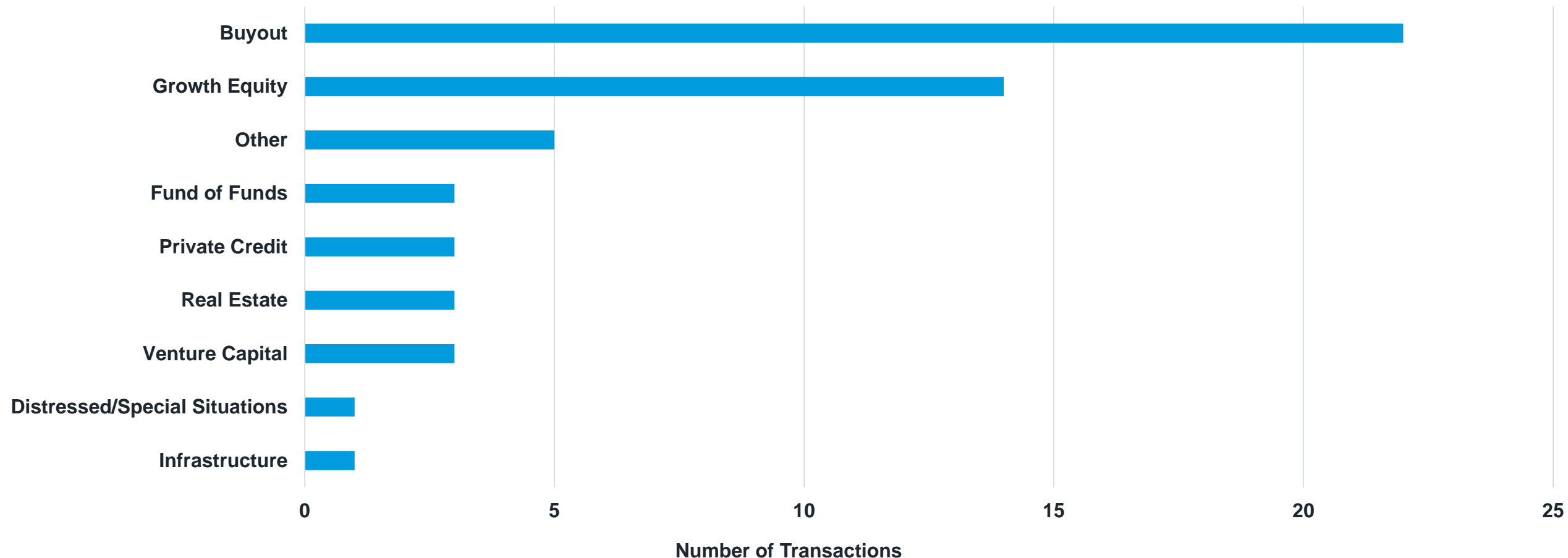


Seller Type

This chart illustrates a relatively broad mix of sellers participating in traditional deals over the past three quarters with secondaries funds (37%), private pension plans (13%) and endowments (11%) being the principal players.

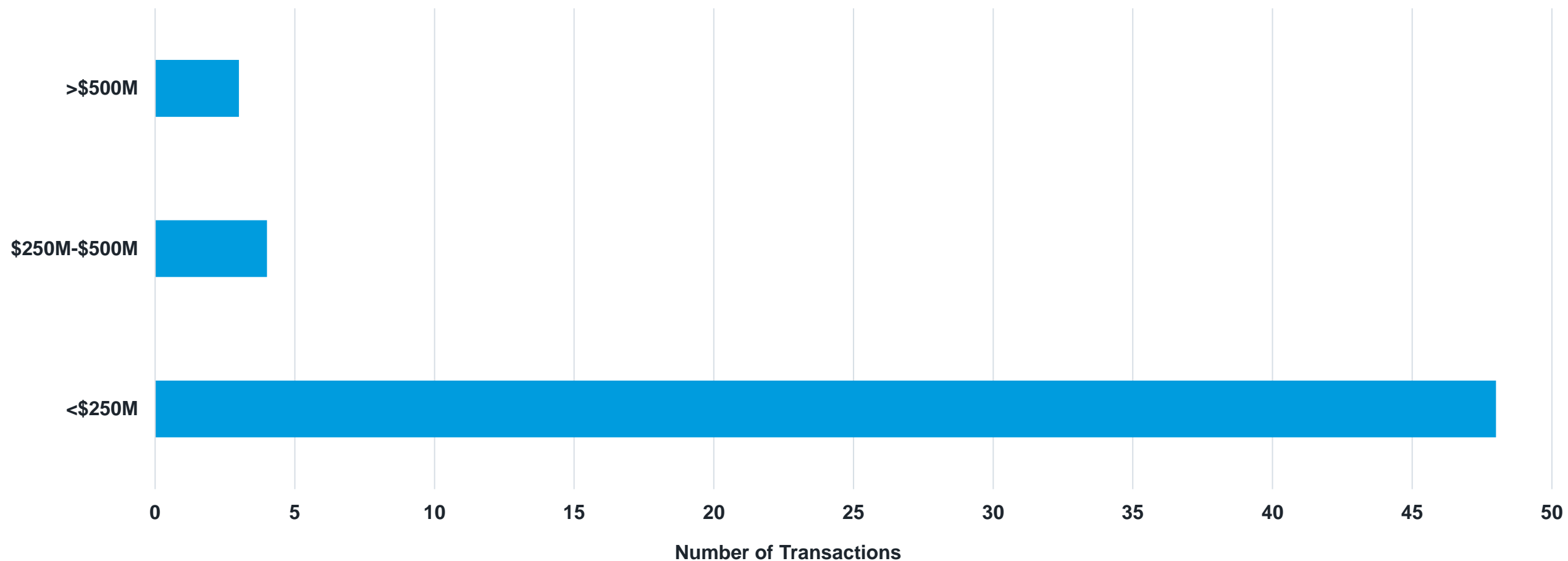


Primary Asset Class of Interests



The main asset class we saw traded in the secondaries market over the past three quarters was traditional private equity buyout fund interests, which was followed by interests in growth equity funds. There was a noticeable drop in venture and real estate secondary volume given recent market volatility.

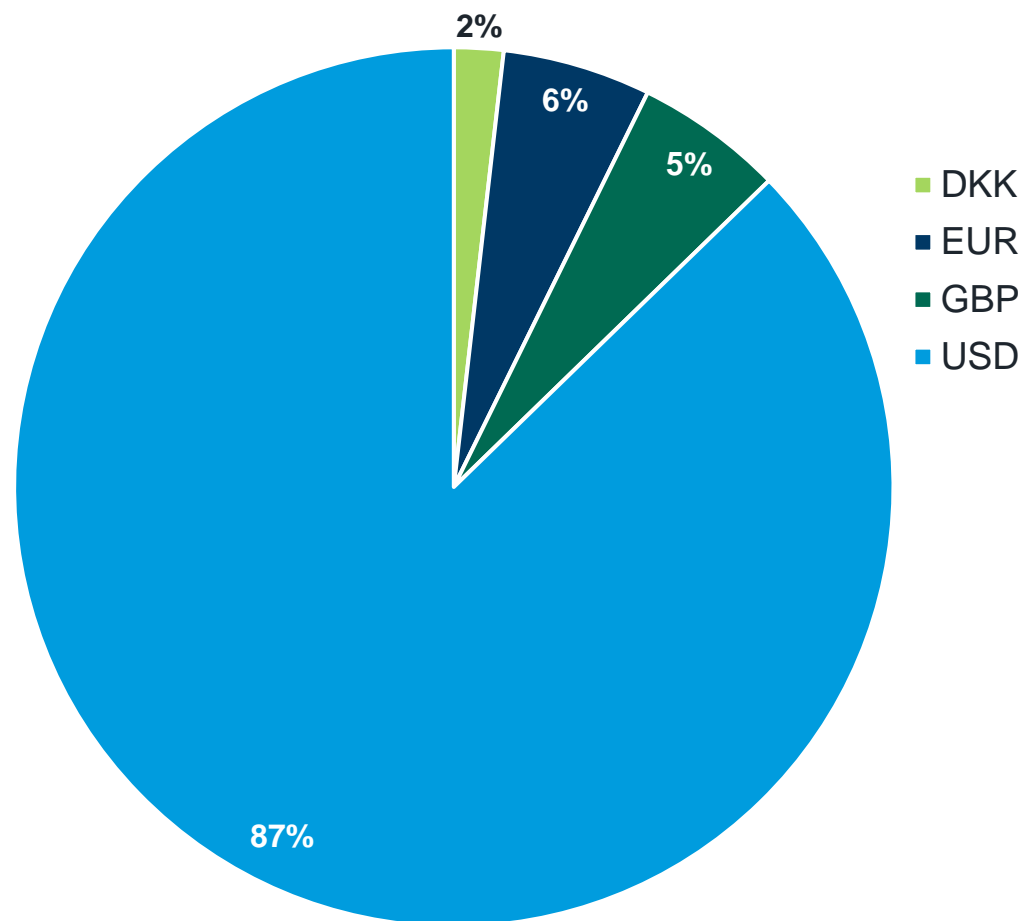
Size of Deal (in USD)



This slide shows that the vast majority of transactions we worked on had a deal value that was less than \$250m, which is reflective of the fact that most transactions over the applicable time period did not include particularly large portfolios.

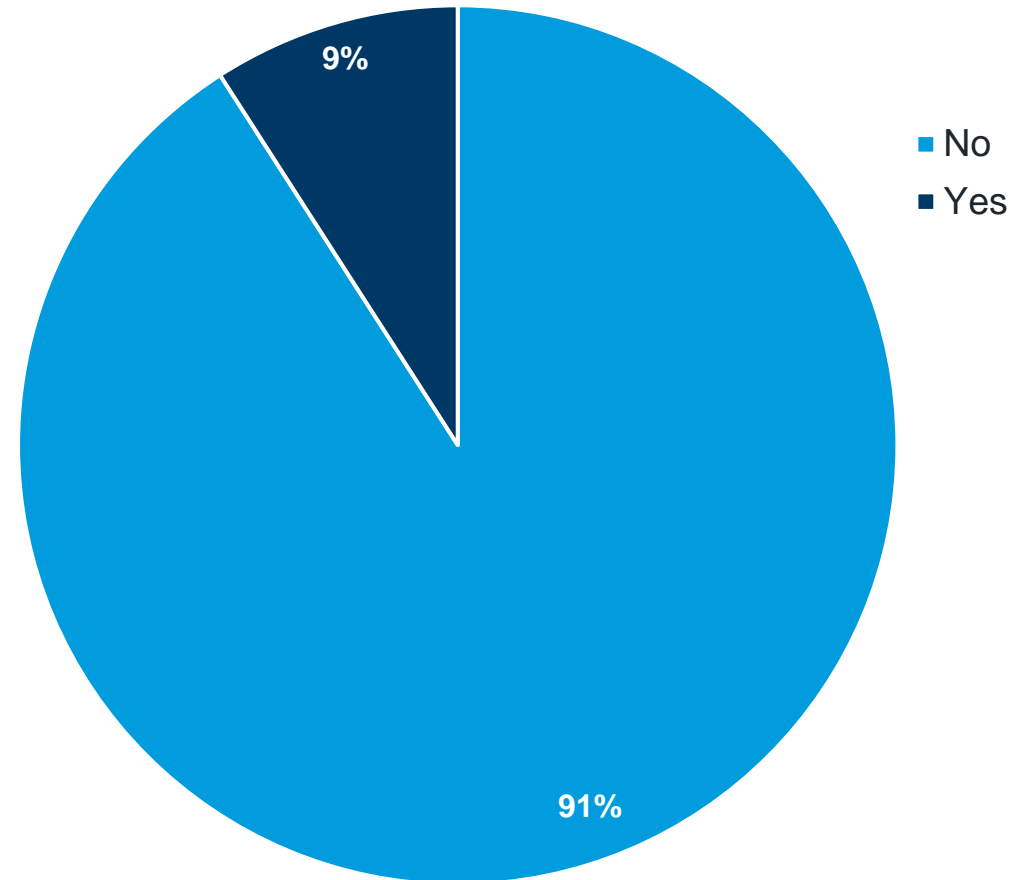
Currency

With regard to deal currency, the overwhelming majority of deals that we worked on over the relevant period were denominated in US Dollars (87%), which is reflective of the jurisdiction of the interests forming the subject of the portfolio.



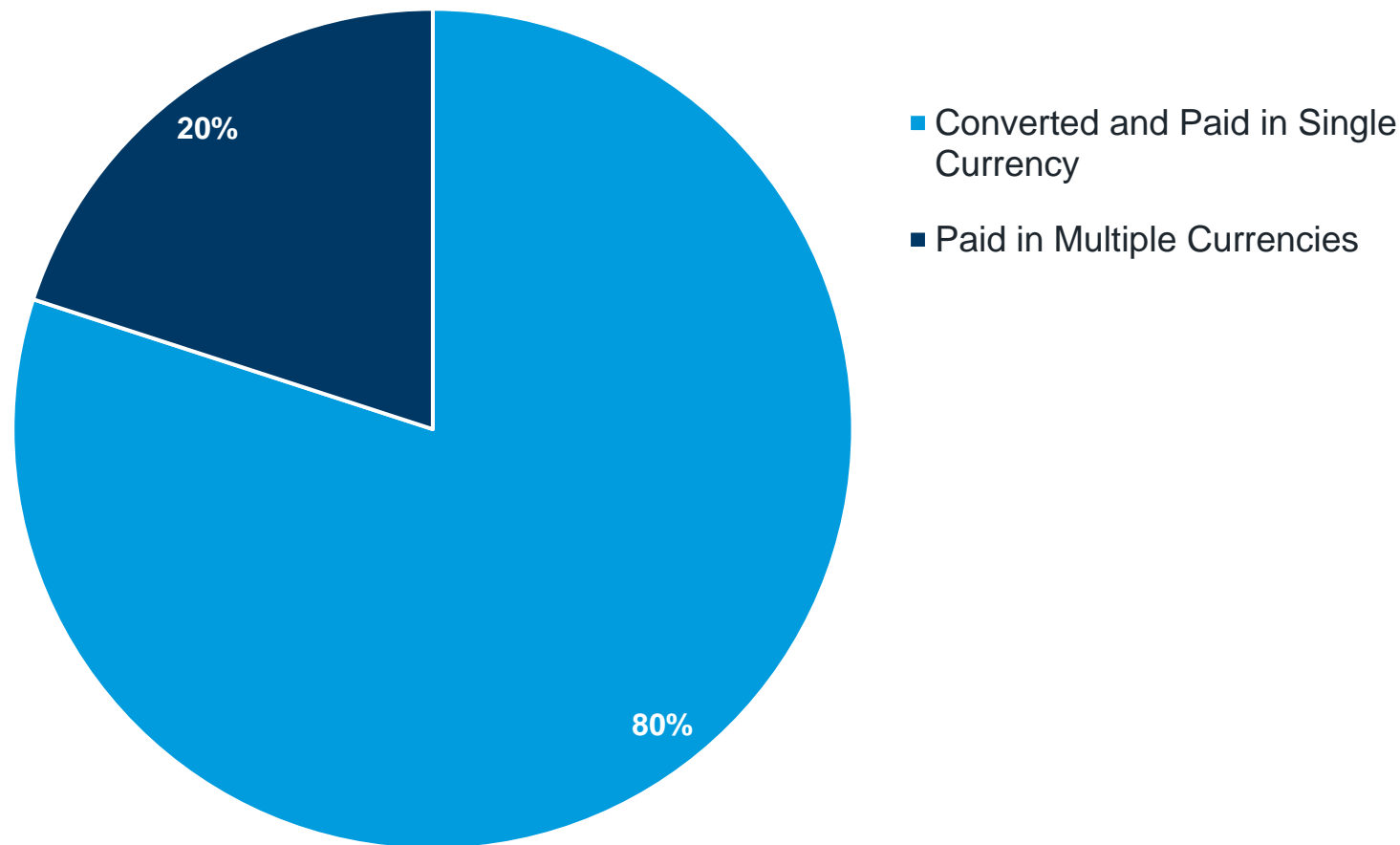
Are the Interests in the Portfolio Denominated in Multiple Currencies?

This chart illustrates that only 9% of the 55 deals that were reviewed as part of the survey were multi-currency, which would be the deals that involved portfolios spanning across multiple jurisdictions.



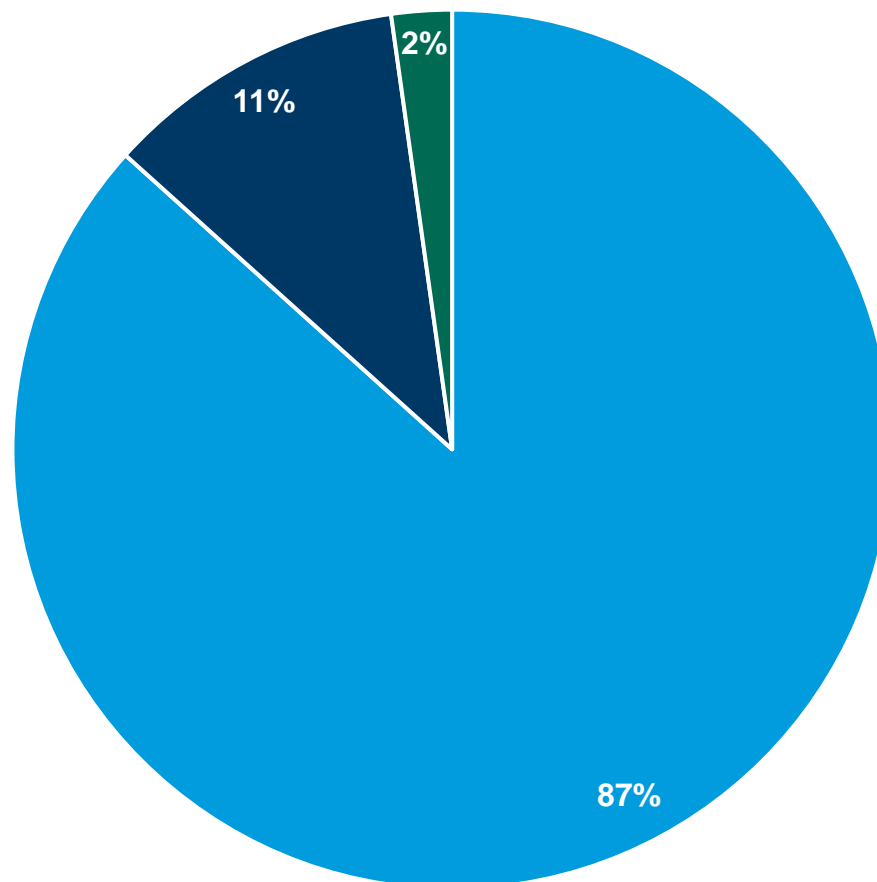
If Interests in the Portfolio Are Denominated in Multiple Currencies, How Is the Purchase Price Paid?

In deals where there were portfolios involving multiple currencies, 20% of such deals saw the purchase price for an interest calculated and paid in the applicable currency, whereas 80% of deals saw the parties agree upon a single currency for the purposes of payment. This would have involved agreeing upon a conversion method and setting out the relevant mechanics in the sale and purchase agreement, which tends to include agreeing on the appropriate date to apply when making the currency conversions.



Is Purchase Price Withholding Permitted?

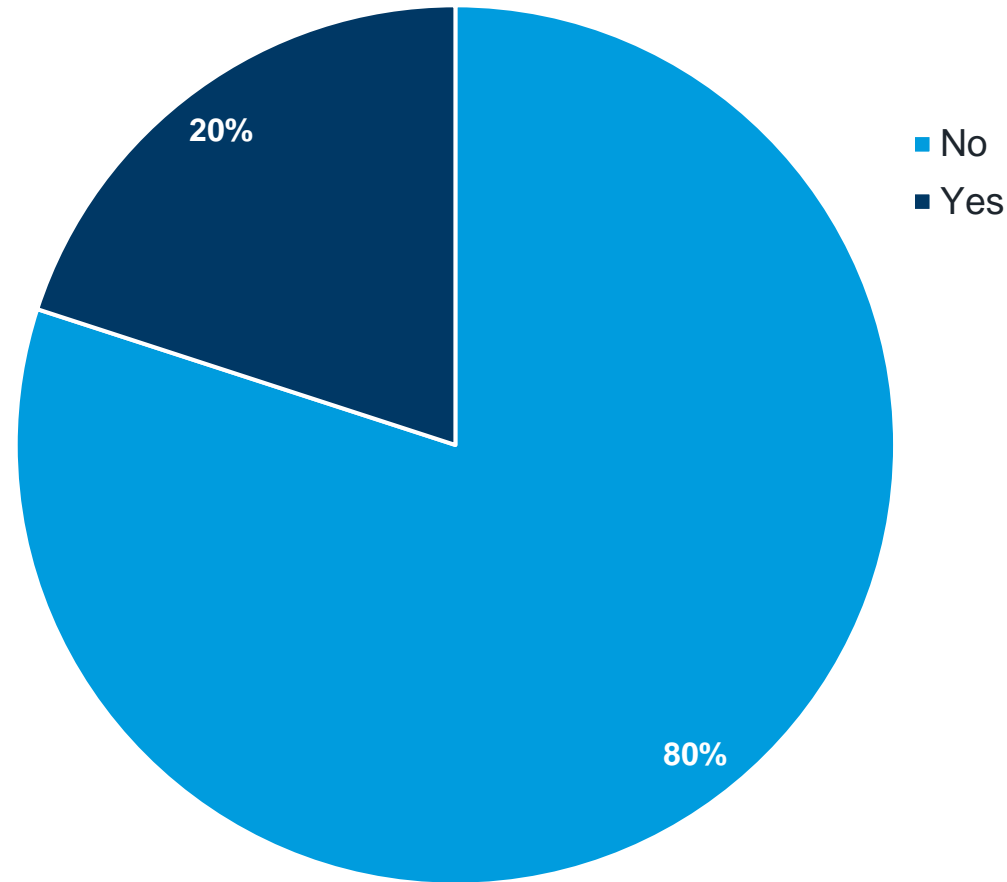
This chart touches upon what is ordinarily a heavily negotiated topic: namely, whether a buyer is permitted to withhold from the payment of the purchase price. In 87% of cases, buyers successfully negotiated a broad right to withhold amounts as required by law. In practice, this will involve careful tax due diligence to determine whether withholding is applicable in respect of any of the interests forming the subject of the portfolio.



- Buyer has broad right to withhold as required by law
- Buyer has limited right to withhold if certain conditions are met
- Buyer has no explicit right to withhold or contract forbids Buyer from withholding

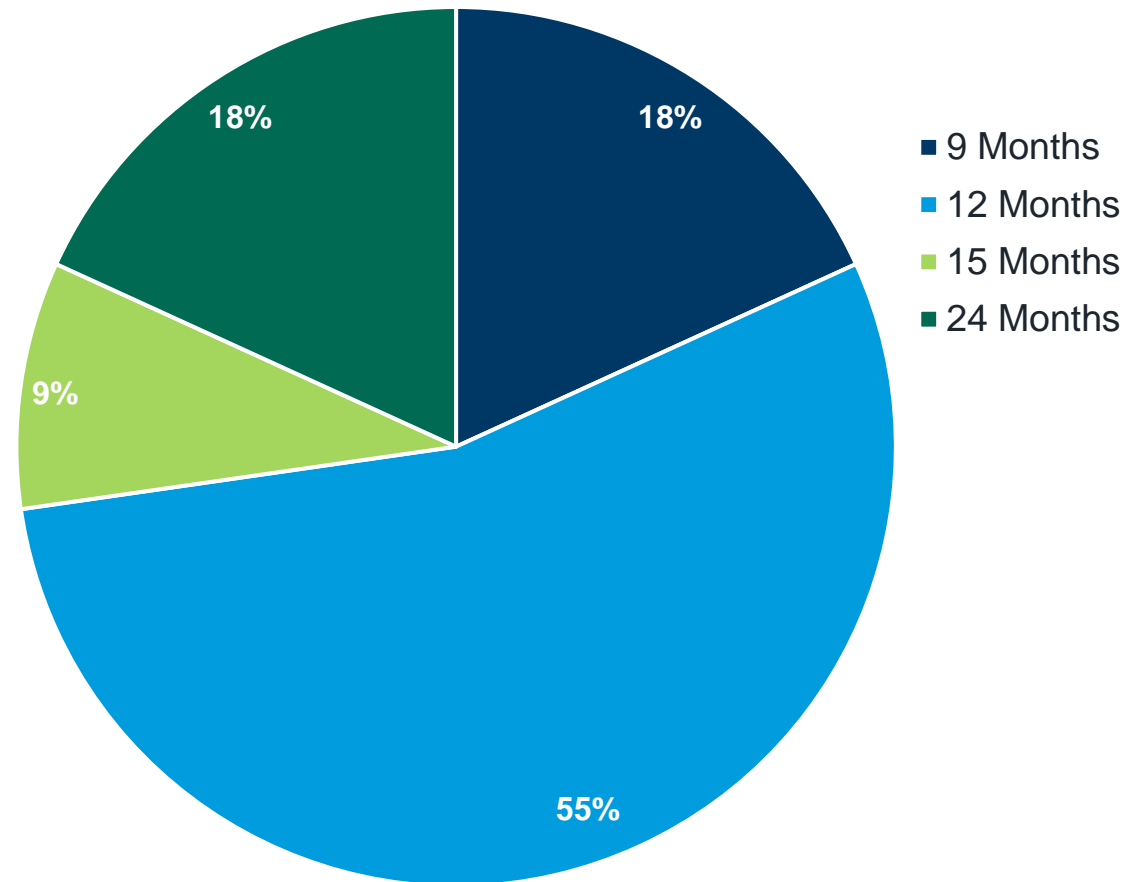
Deferred Purchase Price?

20% of our most recent deals involved a deferral of a portion of the purchase price, meaning the seller would not have received the full consideration at closing. It is worth noting that each of the three deals we worked on, with a value in excess of \$500 million, included such a deferral. This can be used as an effective tool deployed by certain buyers to bridge the bid-ask spreads seen in recent months.



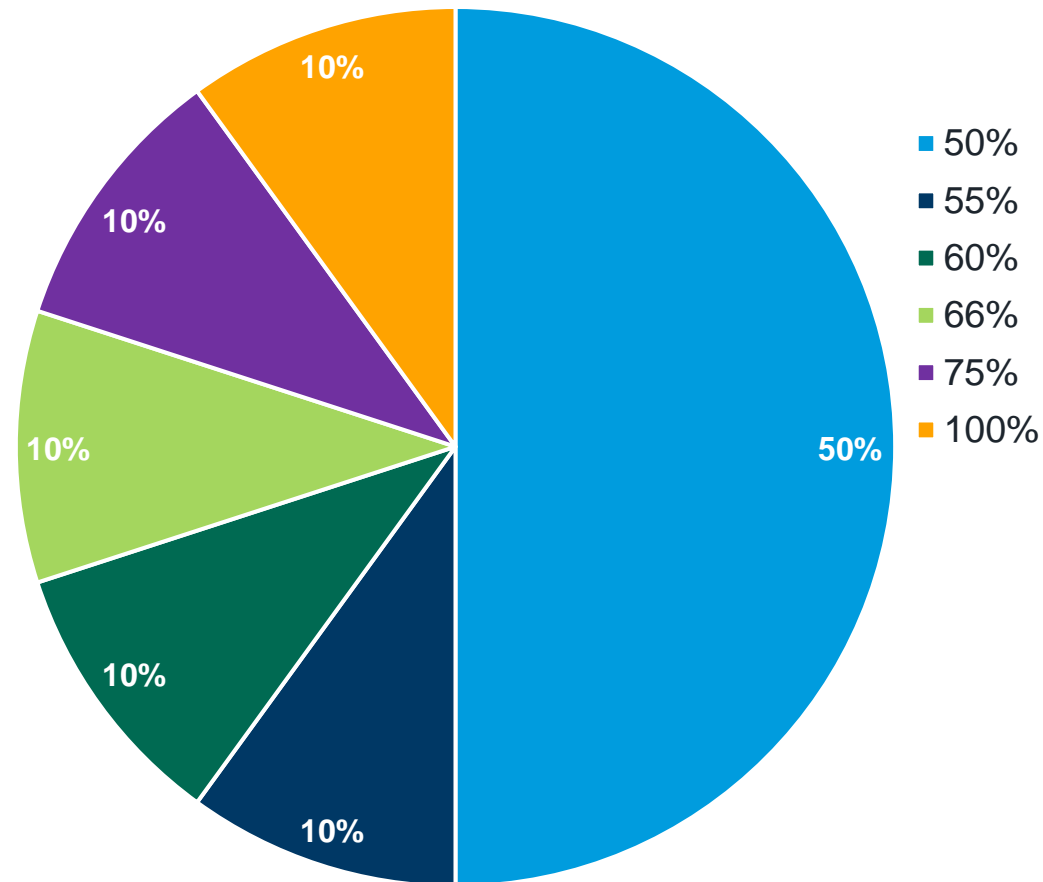
If Deferred Purchase Price, What Is the Length of Deferral?

We see here that the most common time period for deferral of the purchase price was 12 months (55%), with a 9-month and 24-month deferral period being the second-most common deferral periods (18%).



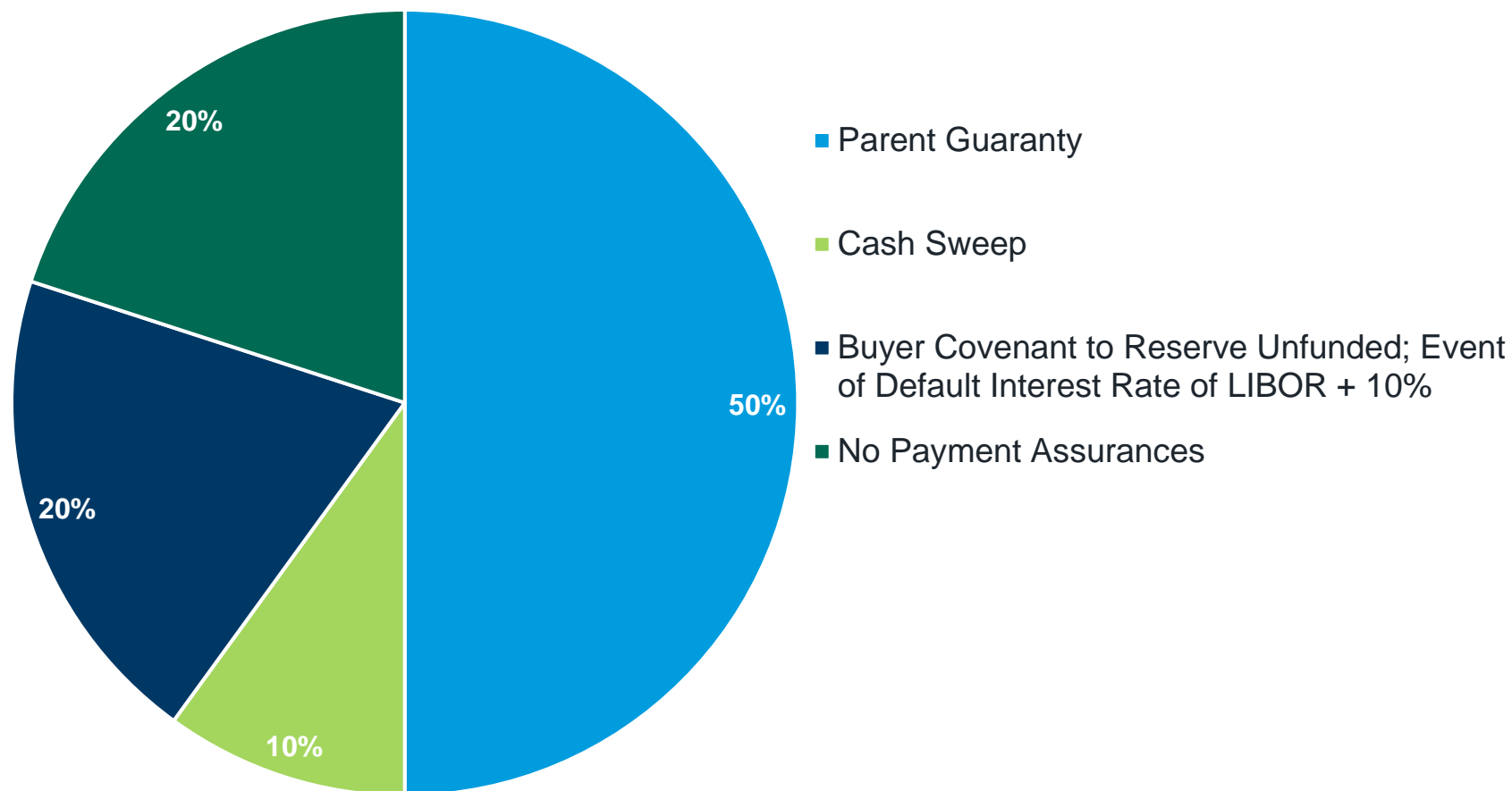
If Deferred Purchase Price, What Is the Percentage Deferred?

This chart considers the portion of the purchase price that has been deferred. Exactly 50% of our most recent deals featuring a deferral involved the deferral of 50% of the purchase price, whereas we saw deferrals of 55%, 60%, 66%, 75% and 100% each in 10% of deals.



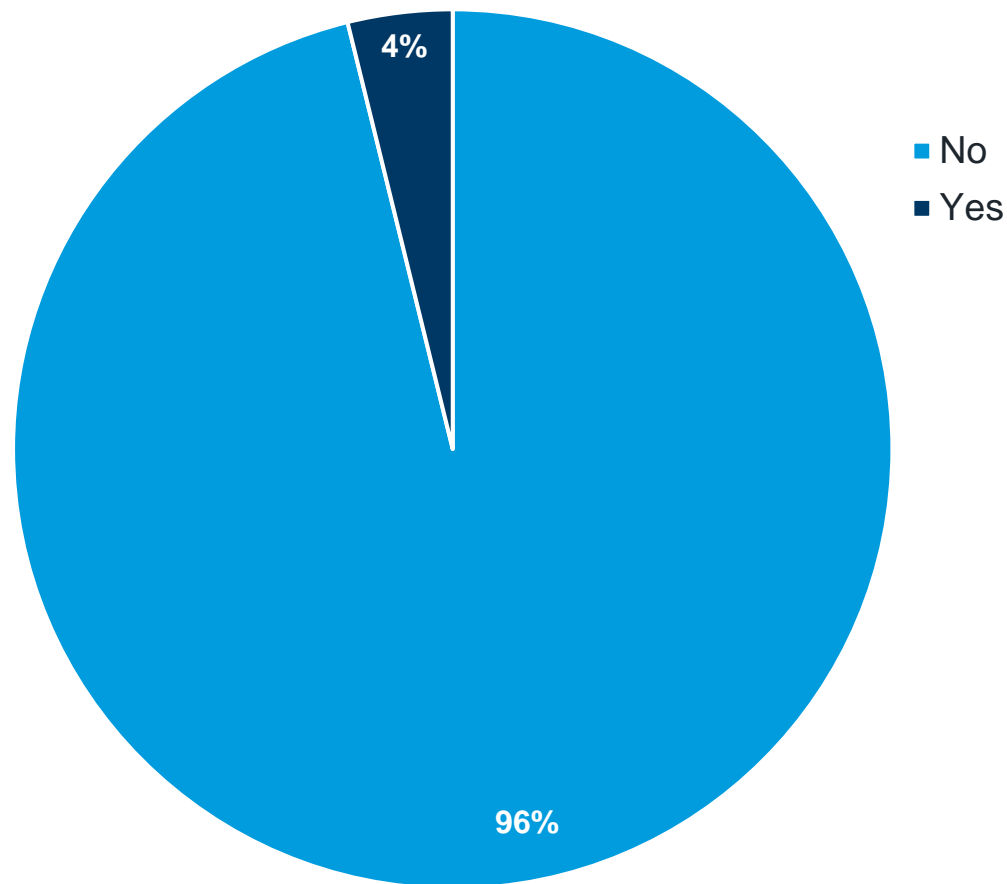
If Deferred Purchase Price, What Are the Payment Assurances?

Where there is a deferral of the purchase price, sellers will often request a number of protections that will survive until the end of the deferral period. This slide highlights that a parent guaranty is the most common form of security granted to sellers (50%). In 20% of cases, the buyer was willing to give a covenant to reserve unfunded commitments sufficient to pay the deferral and agree to certain event of default provisions. In a further 20% of deals, there were in fact no additional protections offered at all.



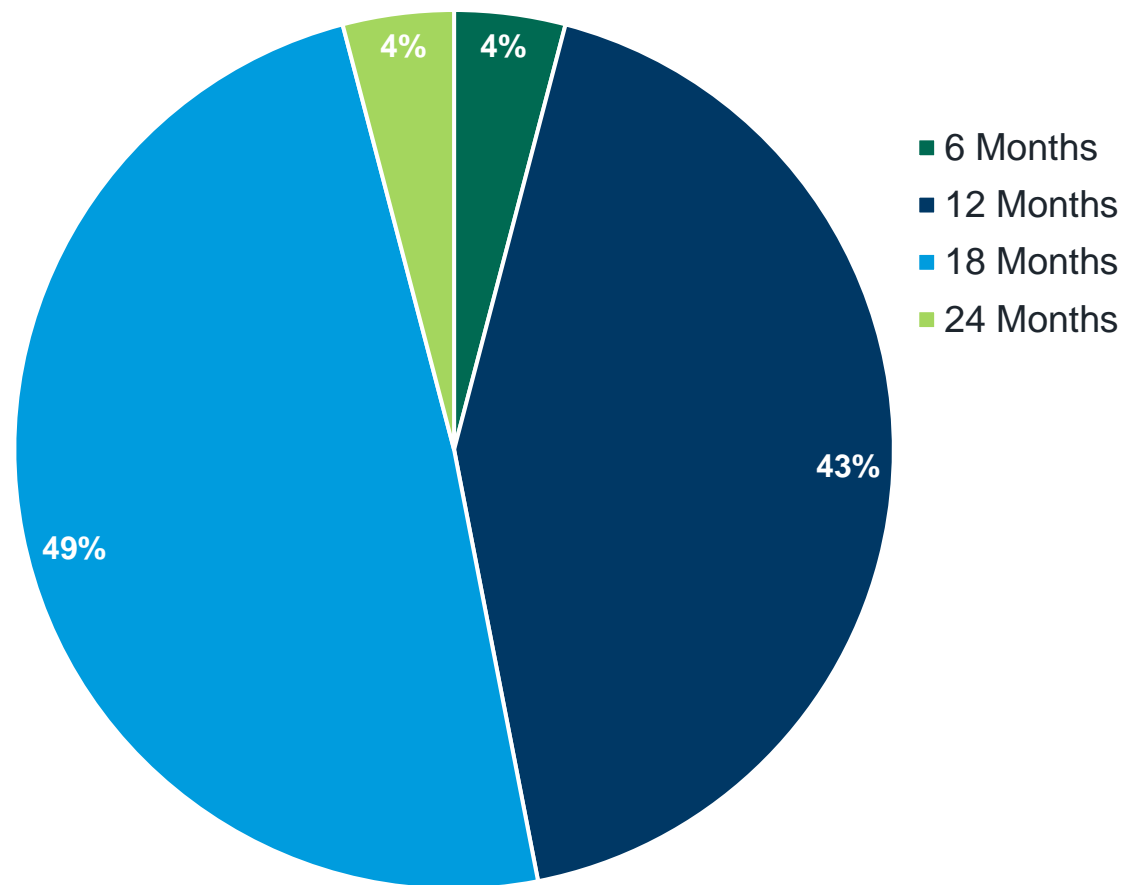
Is the Buyer Using Any Third-Party Finance?

With regard to the buy-side transactions we worked on, only 4% of deals involved third-party leverage. This is likely to be a result of the increased cost of borrowing, as well as buyers negotiating a deferral of the purchase price.



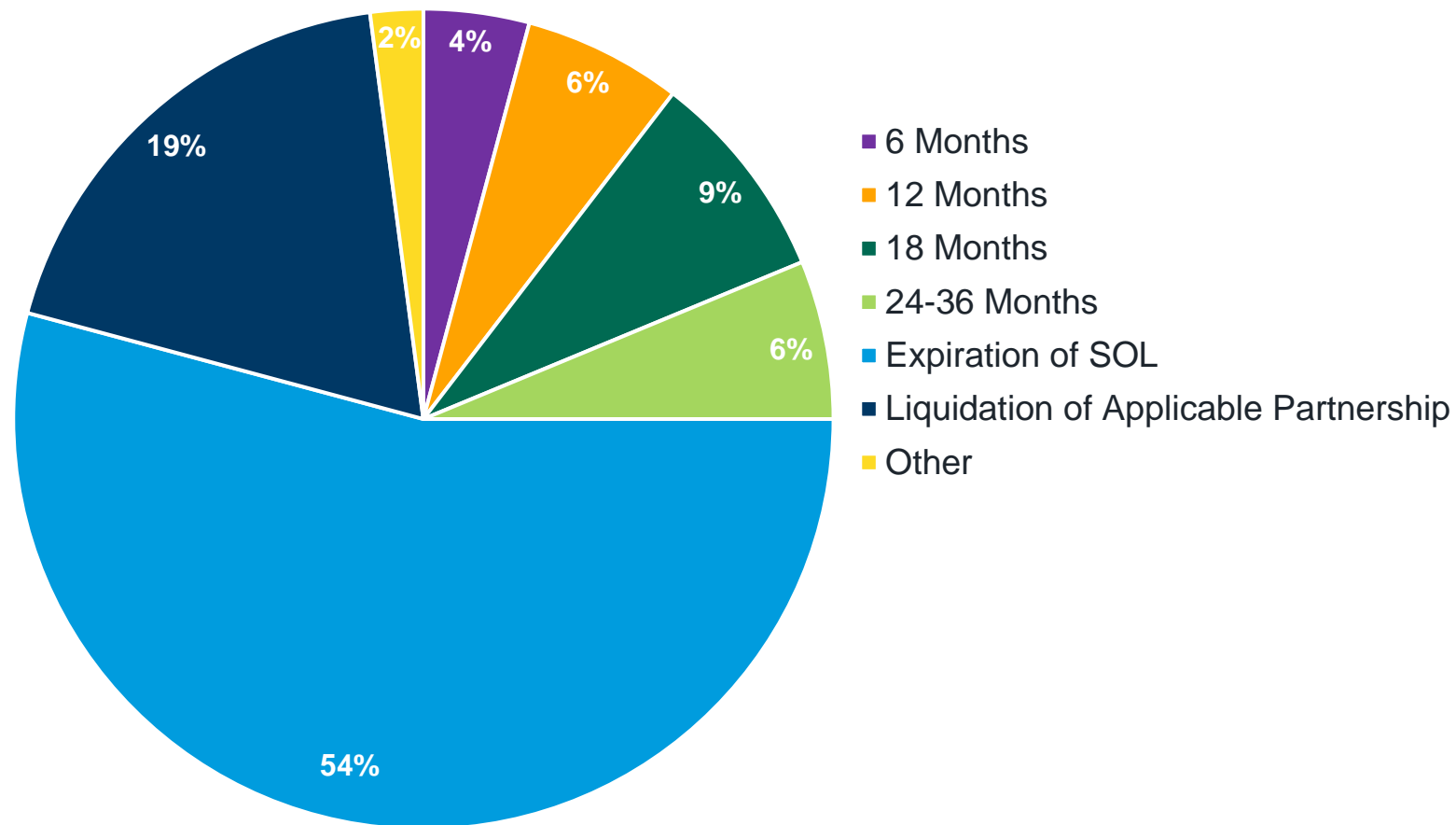
Survival Period for General Reps

Regarding the survival period for bringing claims for breach of the non-fundamental warranties, 49% of deals saw an 18-month period following the closing date, and 43% of deals saw a 12-month survival period. Such percentages are relatively consistent with data from our prior transactions, indicating that an 18-month claims period for non-fundamental warranties remains the most common position.



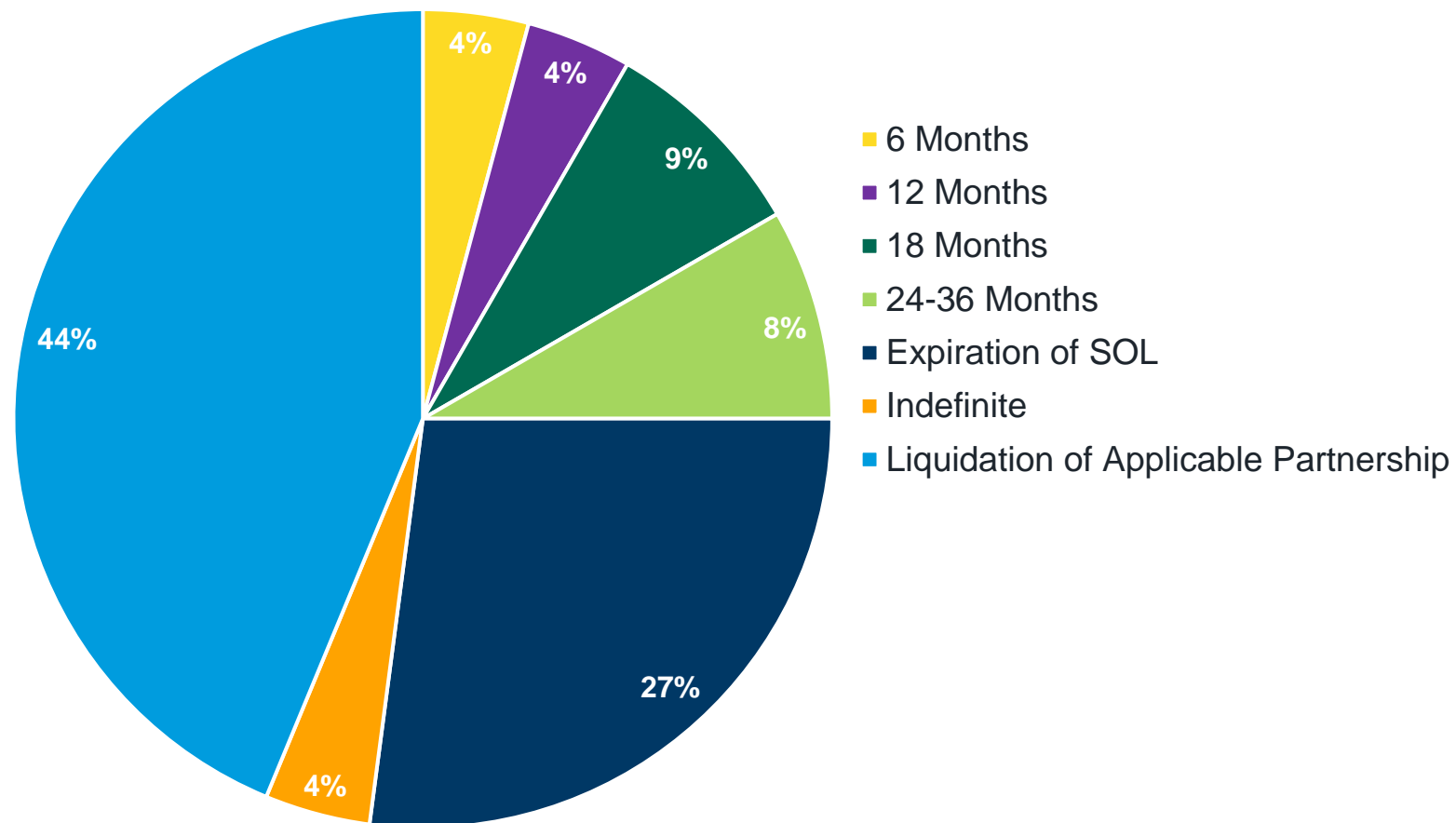
Survival Period for Fundamental Reps

As for the fundamental warranties, which tend to be the warranties relating to title, authority, no conflicts and brokers, 54% of deals saw the survival period tied to the expiration of the applicable statute of limitations and 19% by reference to the liquidation of the applicable partnership.



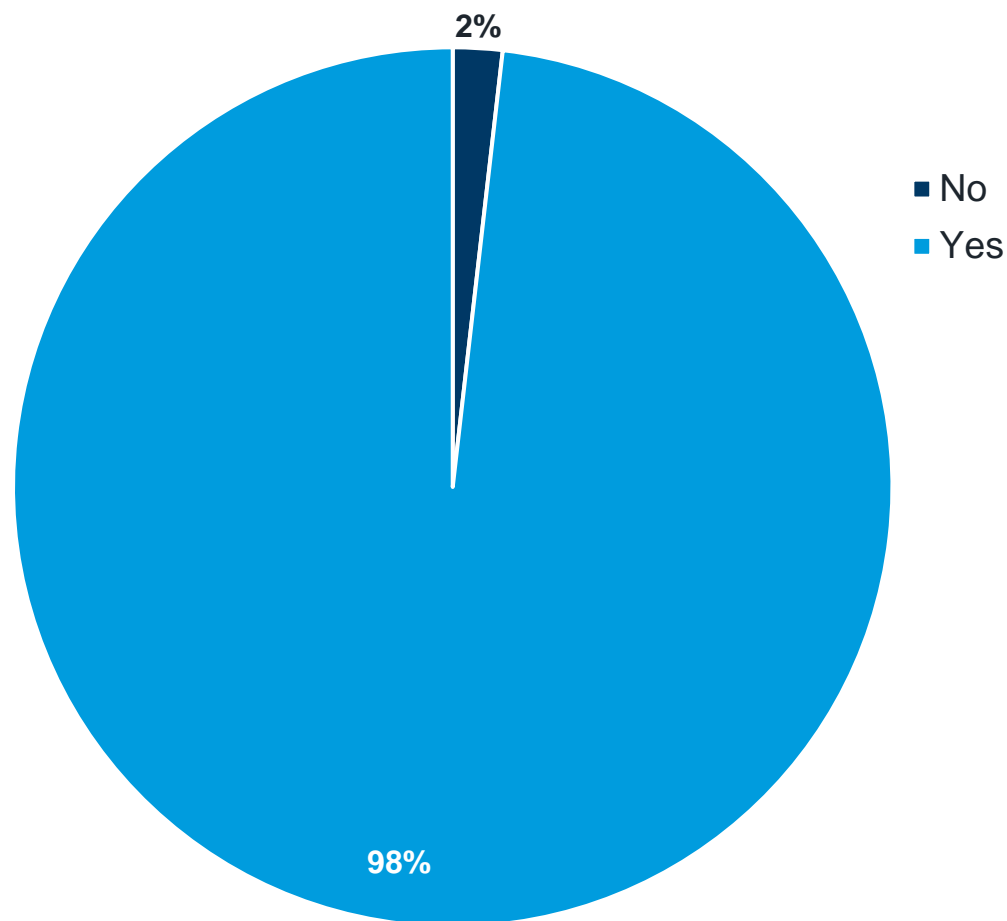
Survival Period for Title Reps

Looking more closely at the title warranty, which most would agree is the most important of the fundamental warranties, in 44% of deals the survival period for bringing claims for breach of such warranty was the liquidation of the applicable partnership. Second in line was the expiration of the statute of limitations, in 27% of deals.



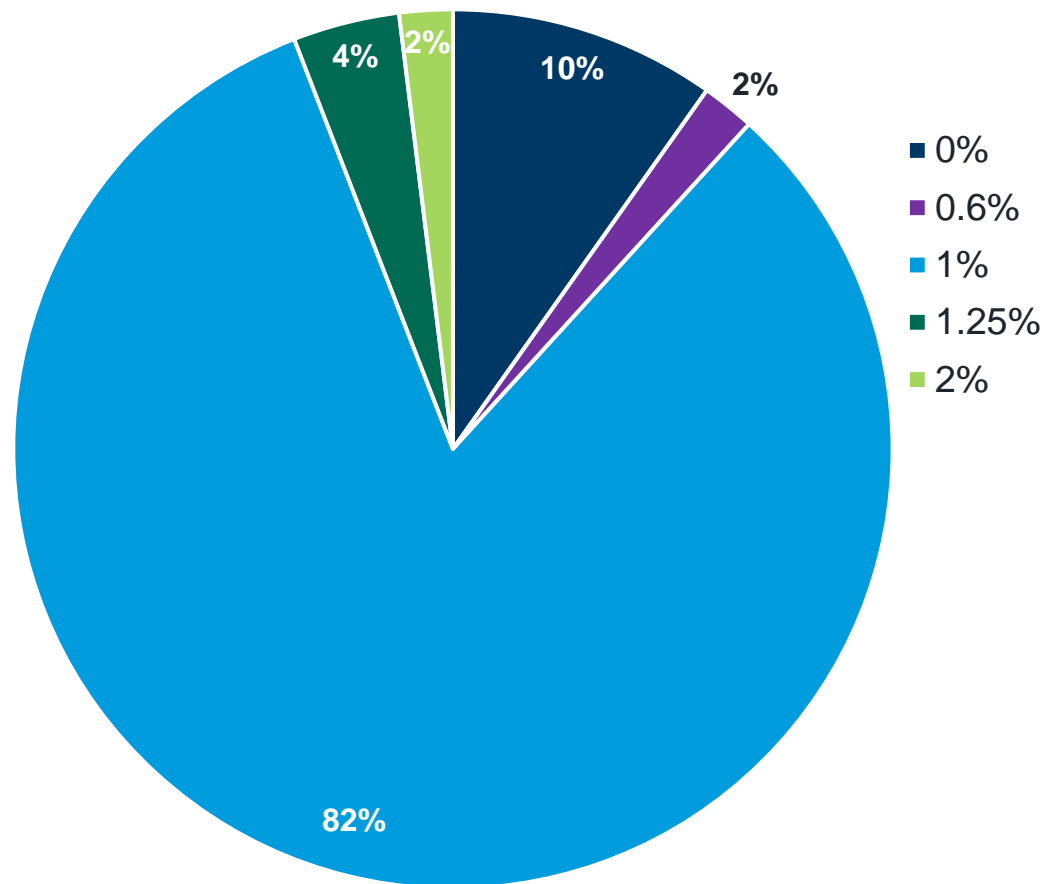
Indemnity?

As is customary, 98% of secondaries sale and purchase agreements saw the parties granting one another an indemnity in respect of certain claims. The scope of the indemnity given by each party is subject to negotiation, but typically includes: (i) any inaccuracy in or breach of any rep or warranty contained in the PSA or the transfer documents; (ii) any failure to perform any covenant, agreement or obligation contained in the PSA or the transfer documents; (iii) any claim by any person for any finder's or broker's fees; and (iv) a seller indemnity for the excluded obligations.

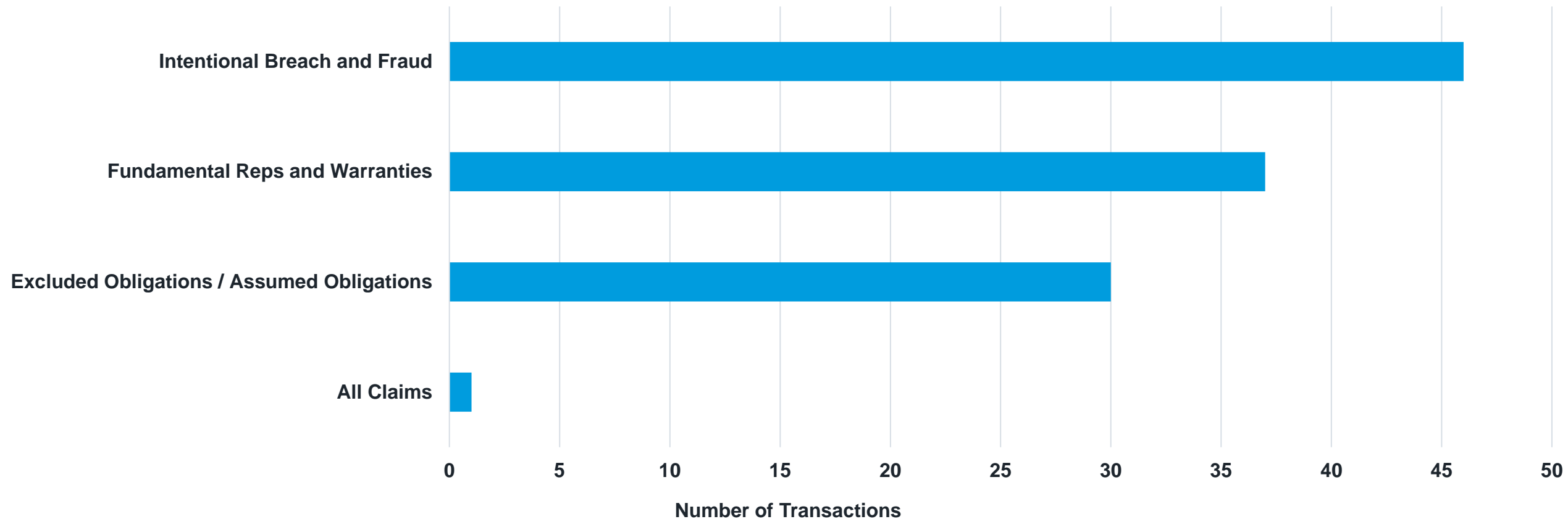


Indemnity Threshold

The threshold for indemnity claims is typically pegged to a percentage of the purchase price and means that a party cannot bring an indemnity claim until the relevant threshold is hit. In 82% of deals, such threshold was set at 1% of the purchase price, which continues to be a relatively standard position.



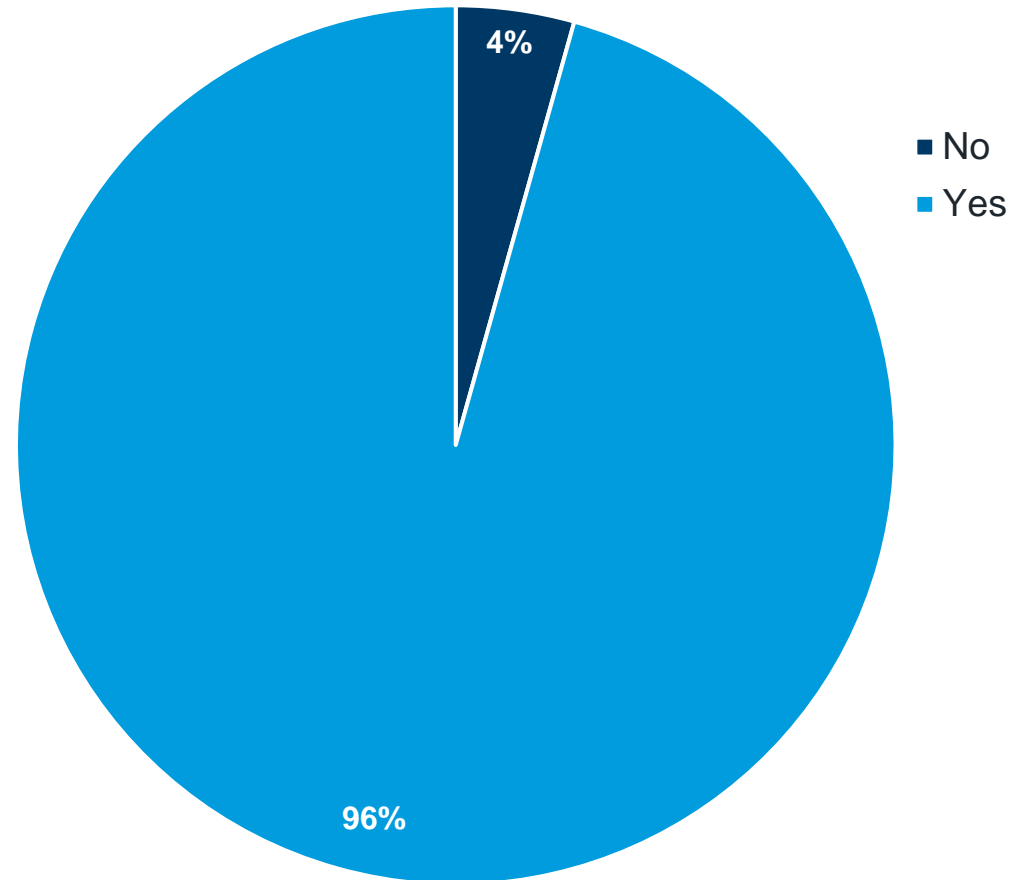
Types of Claims Not Subject to the Threshold?



This slide shows the types of claims carved out of the financial limitations. Regarding the applicability of any financial limitations, the preferred buyer position is to apply the financial limitations to breach of the non-fundamental representations only, which would mean that all other types of indemnity claims would not be subject to any financial limitations whatsoever. Sellers, however, tend to push to apply the financial limitations to all indemnity claims.

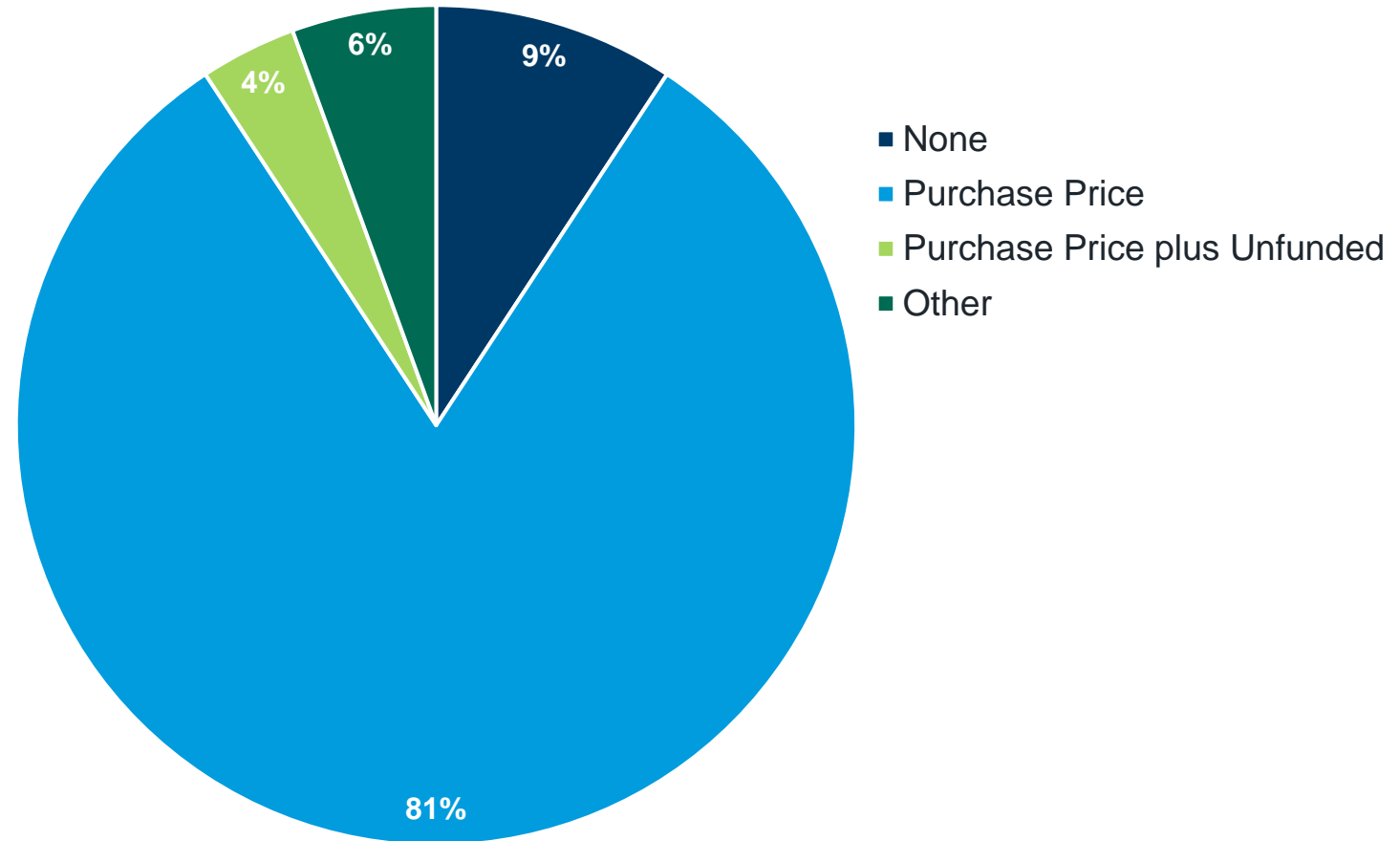
After Threshold, Recover from Dollar-One?

As shown in this chart, once the threshold is hit, the total amount of the indemnity claim is ordinarily recoverable from the very first dollar and without regard to the threshold. Only in 4% of cases did the parties agree to treat the threshold as a deductible so that only amounts above such threshold could be recovered.

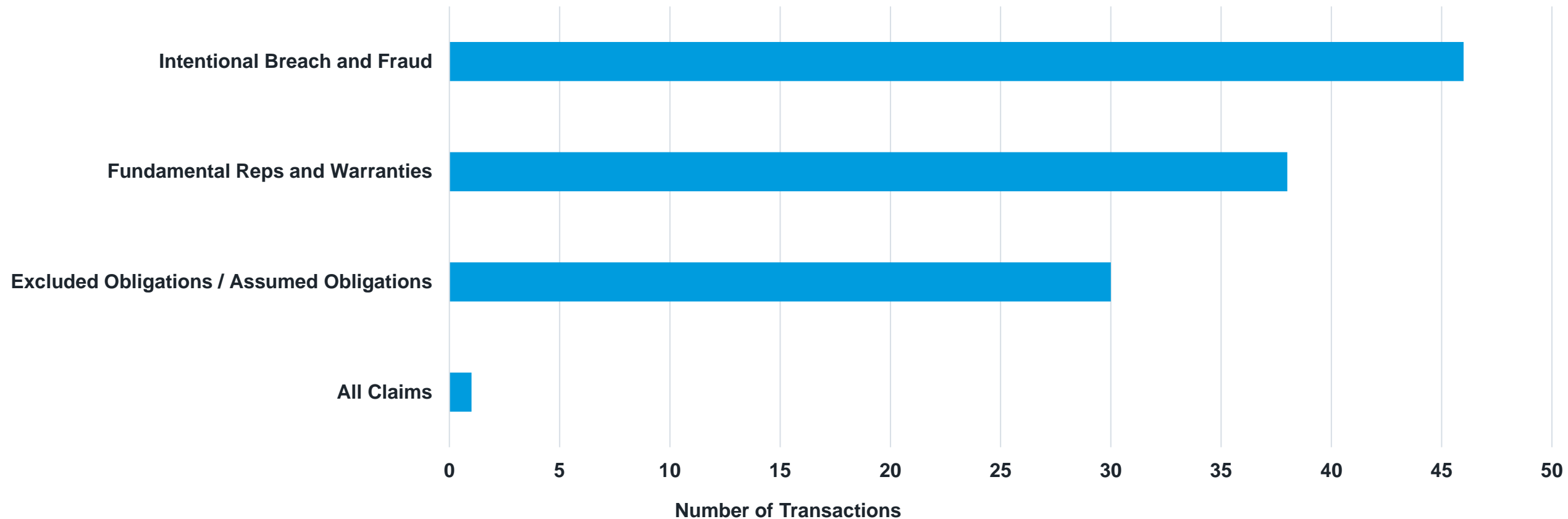


Indemnity Cap

With regard to an overall cap for indemnity claims – i.e. the maximum amount payable by one party to another – this slide clearly shows that in the vast majority of cases (81%) this is set at the purchase price.

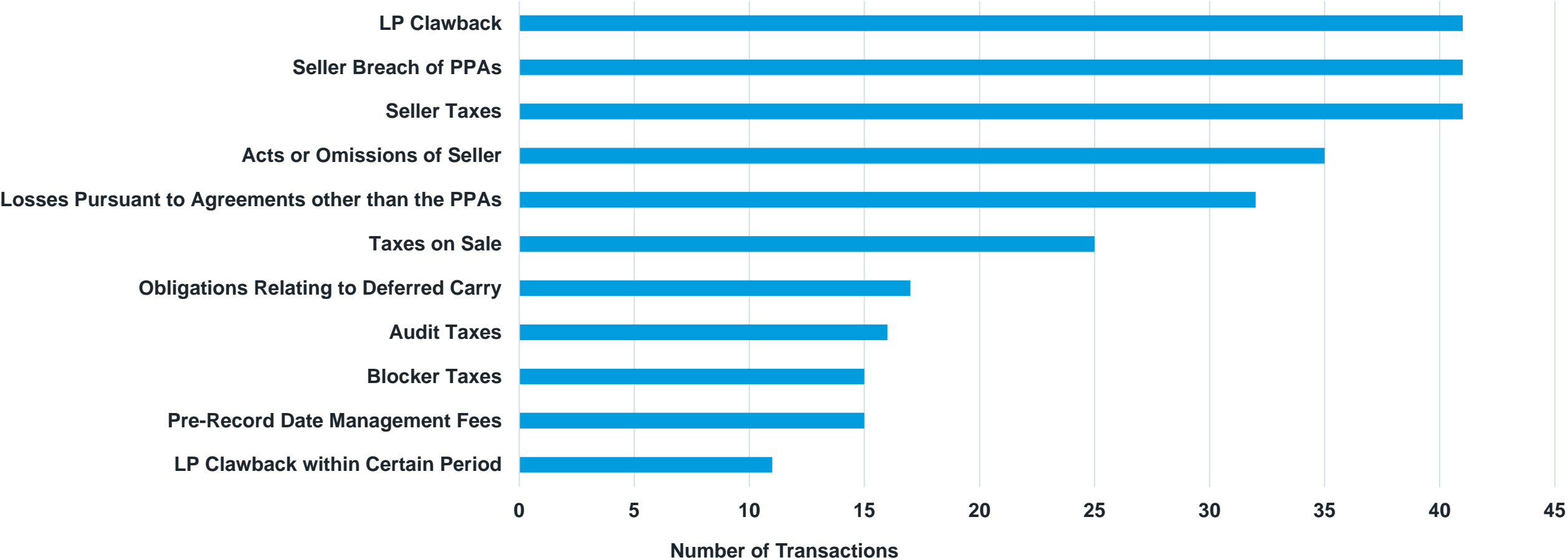


Types of Claims Not Subject to the Cap?



The types of indemnity claims that the overall cap applies to more often than not mirror what the parties agree with in respect to the threshold, as is largely reflected on this chart.

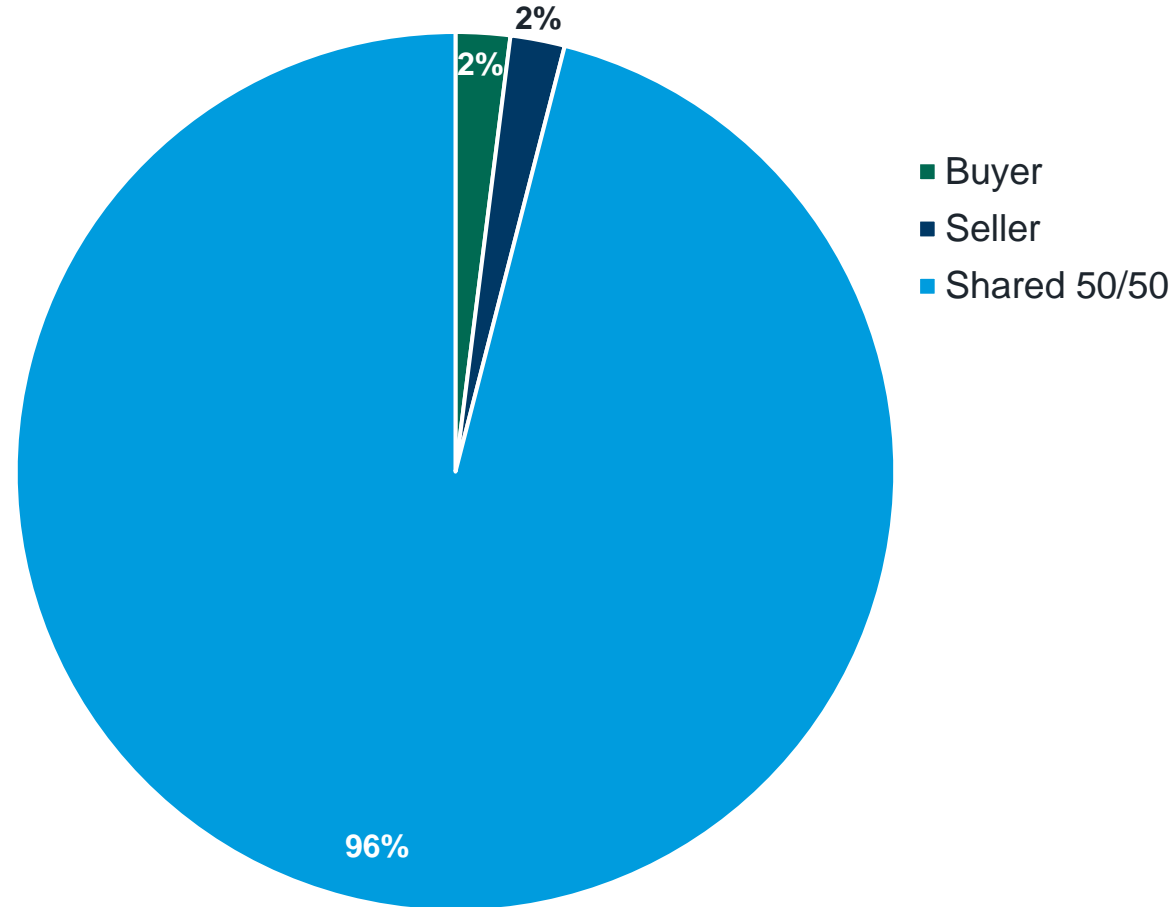
Excluded Obligations Include:



This chart illustrates the various limbs of the excluded obligations being negotiated between buyers and sellers. It is worth noting certain relatively new limbs of the excluded obligations, covering any deferrals or waivers of pre-record date management fees and carried interest, which we have been successfully negotiating on behalf of our buy-side clients.

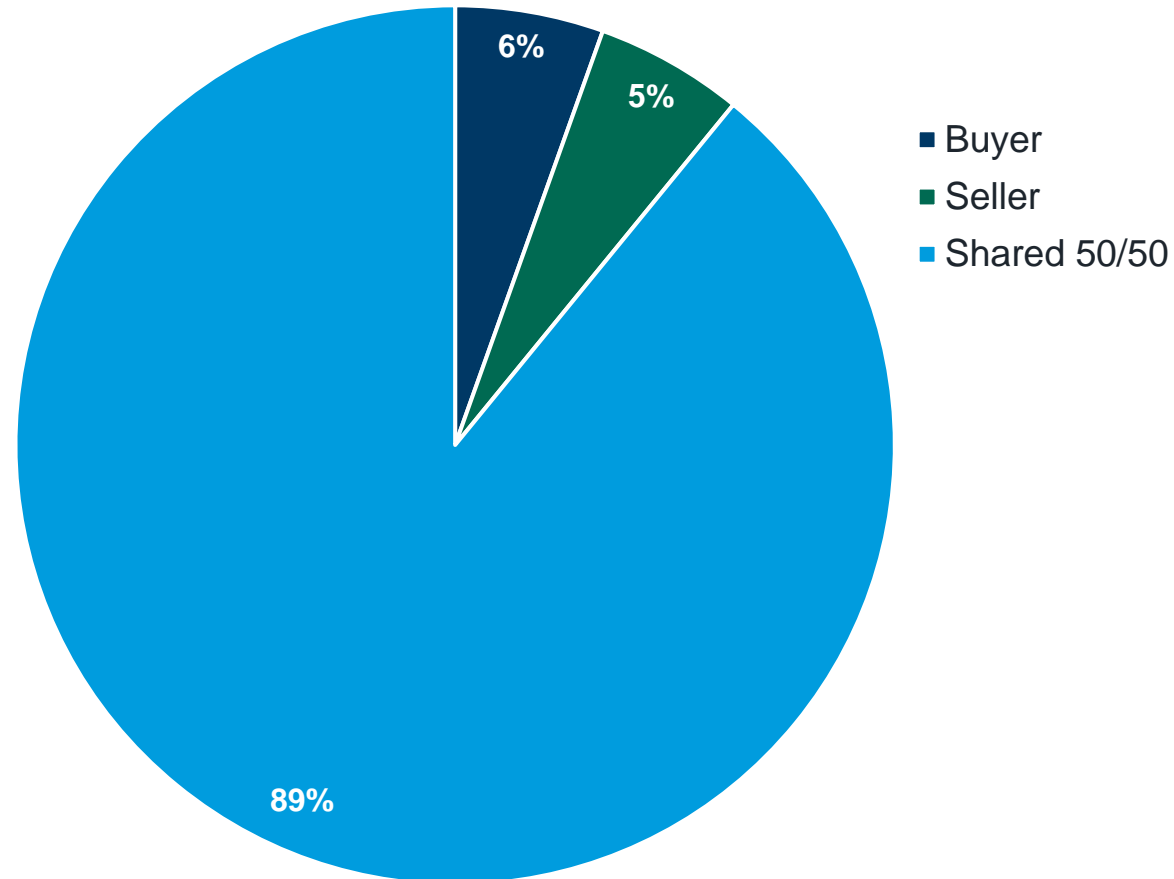
Transfer Expenses Borne by Which Party?

As is relatively market standard, the expenses incurred by the underlying GPs were shared equally between the buyer and seller in 96% of cases.



Transfer Taxes Borne by Which Party?

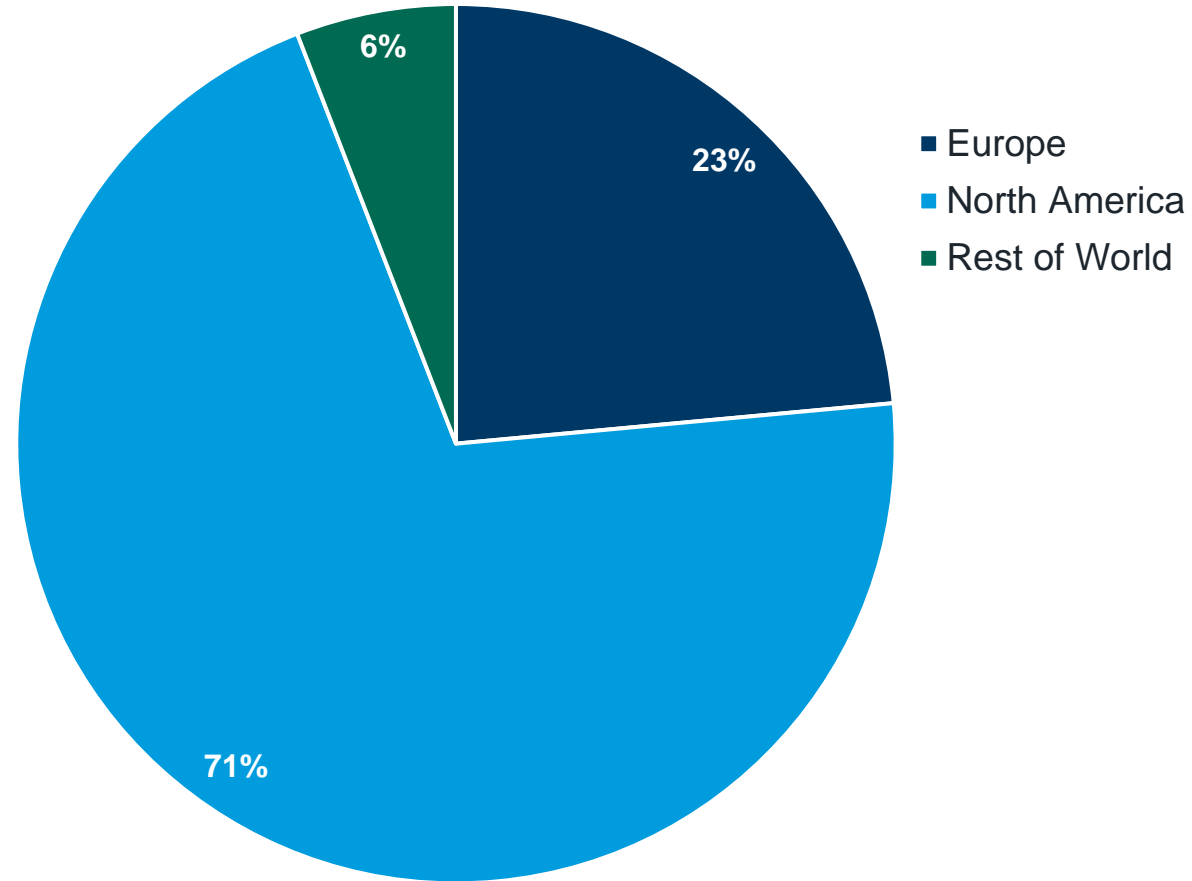
In the event transfer taxes were to arise in connection with the interests being transferred, the parties agreed that they would be shared on a 50/50 basis between the buyer and seller in 89% of deals.



Data Insights: GP-Led Secondaries Transactions

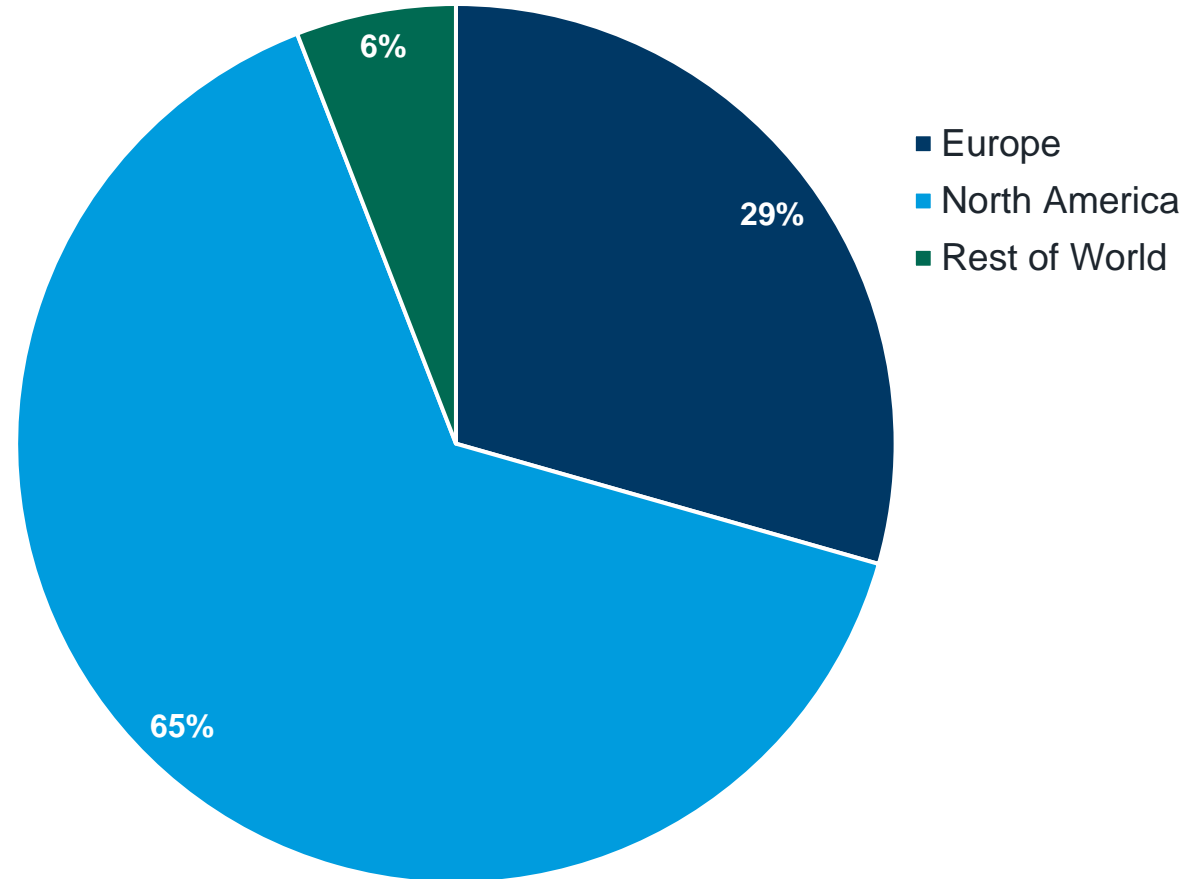
Sponsor Geography

This chart highlights the principal jurisdiction of the sponsors, with the largest representations being the USA (71%) and Europe (23%). We saw smaller percentages of sponsors based in other parts of the world.



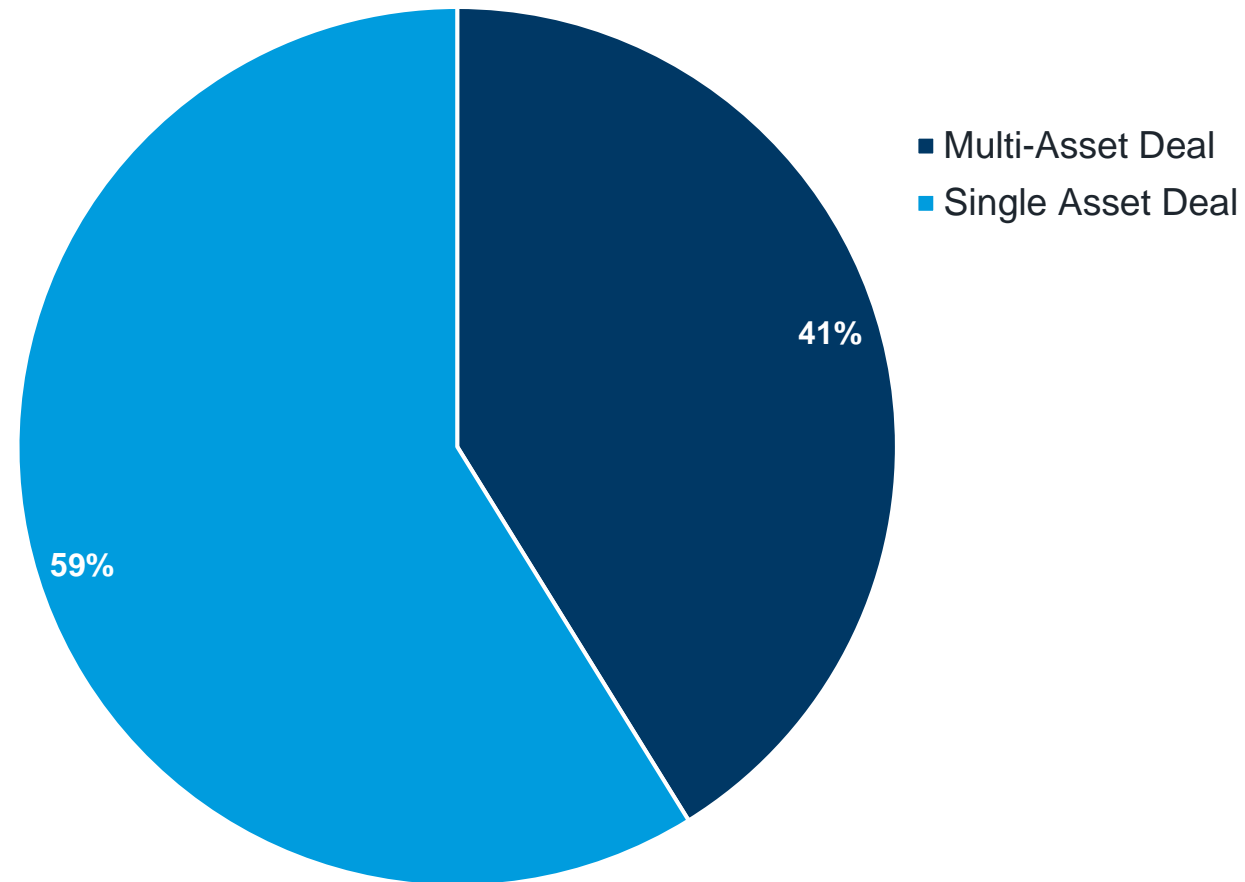
Portfolio Geography

This chart highlights the principal jurisdiction of the subject portfolio companies, with the largest representations being North America (65%) and Europe (29%). We saw smaller percentages in other parts of the world.



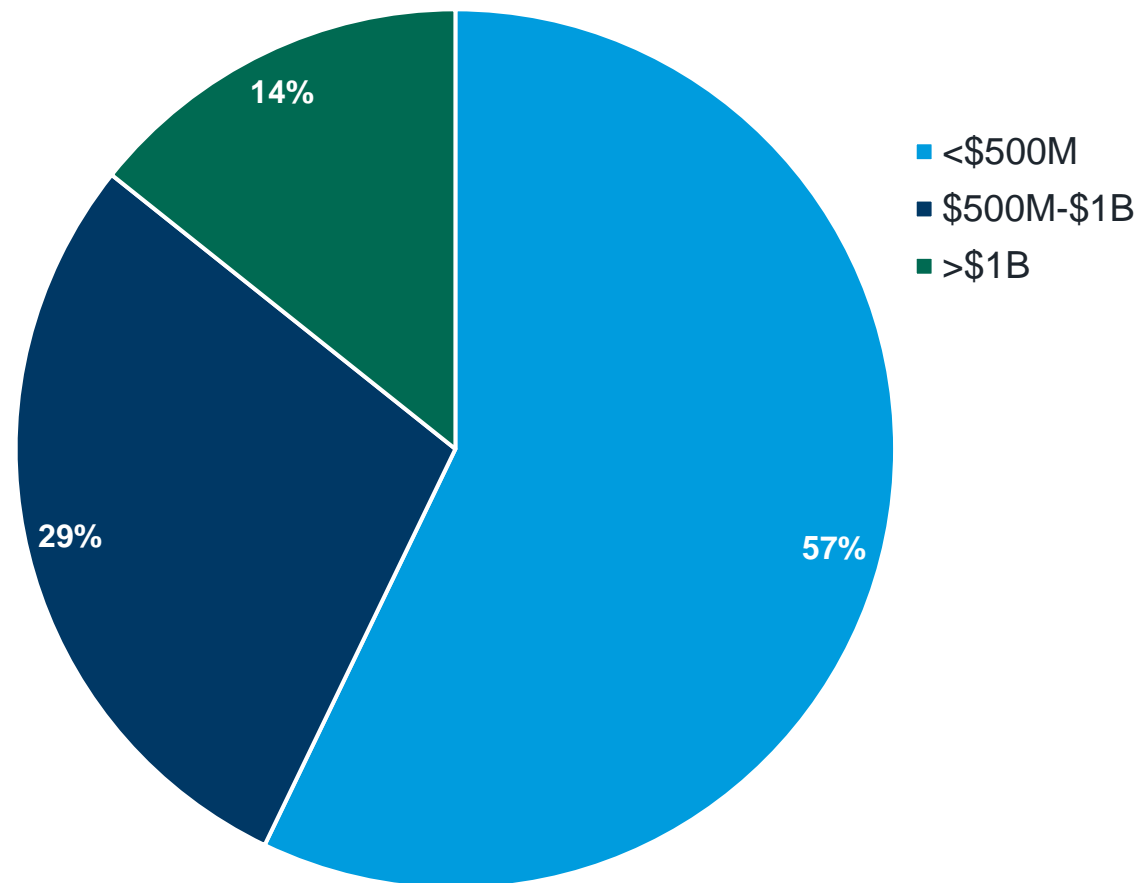
Single Asset Deal or Multi-Asset Deal?

The last year has seen increased interest in single asset deals, with those transactions making up 59% of the GP-led transactions our teams worked on in the second half of 2022 and first quarter of 2023.

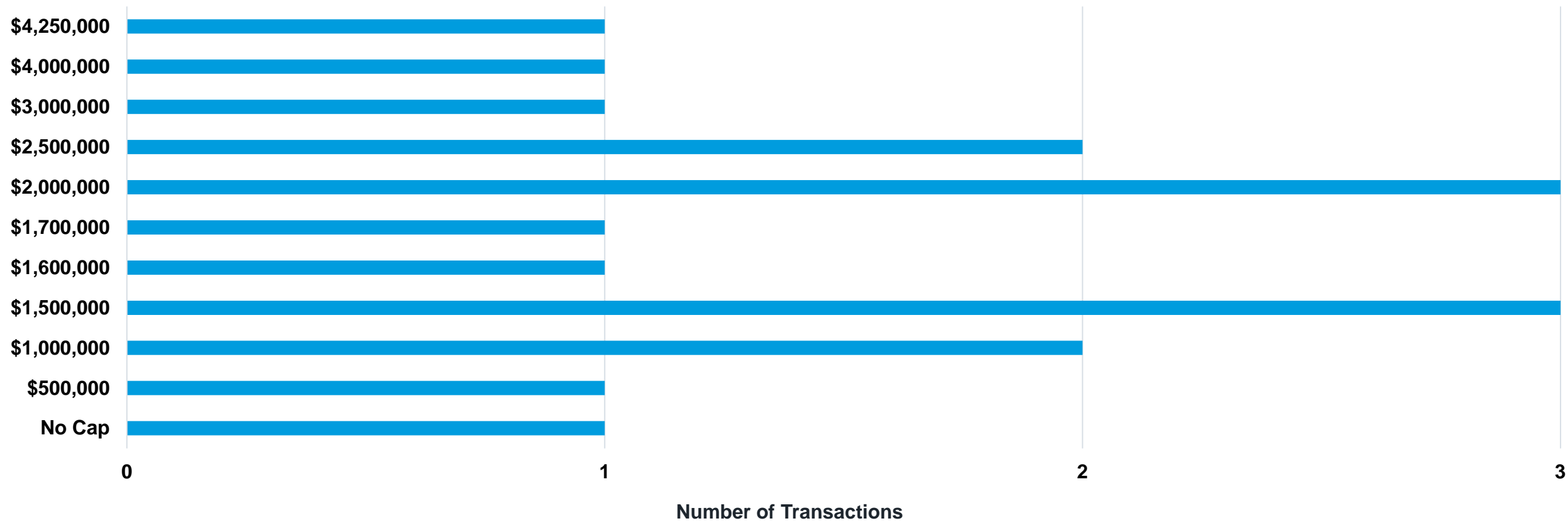


Size of Deal

The majority of the GP-led deals worked on over the applicable time period were slightly smaller in size, with an overall deal size of less than \$500 million.



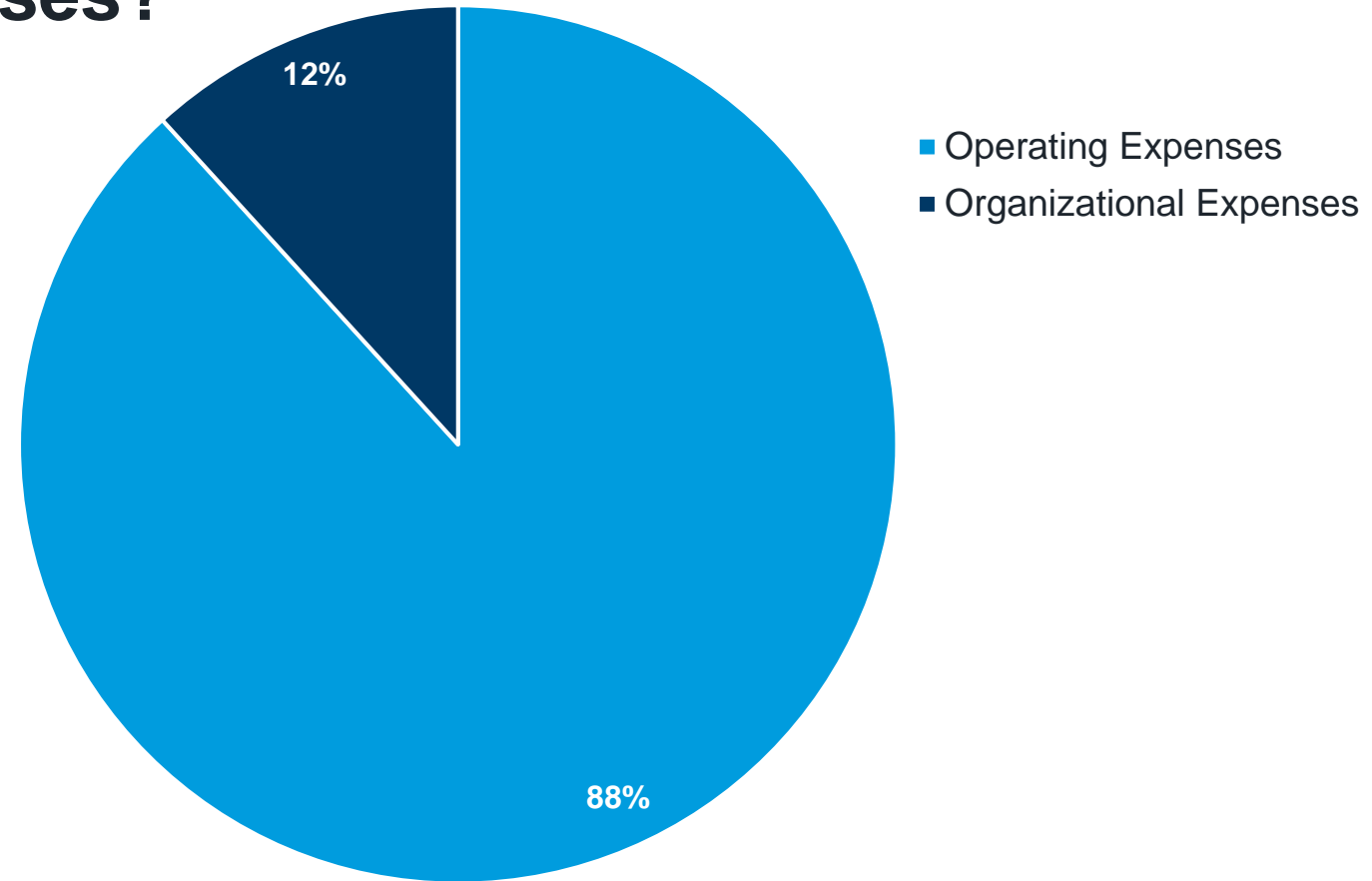
Organizational Expense Cap



Recent transactions have seen increases in organizational expense caps for GP-led transactions.

Are Lead Investor Expenses Treated as Organizational Expenses or Operating Expenses?

The vast majority of transactions do not include lead investor expenses in the applicable continuation fund's organizational expenses. Transactions that do include lead investor expenses in the definition of organizational expenses will correspondingly increase the caps of organizational expenses, which could contribute to some of the higher caps we saw on the prior slide.

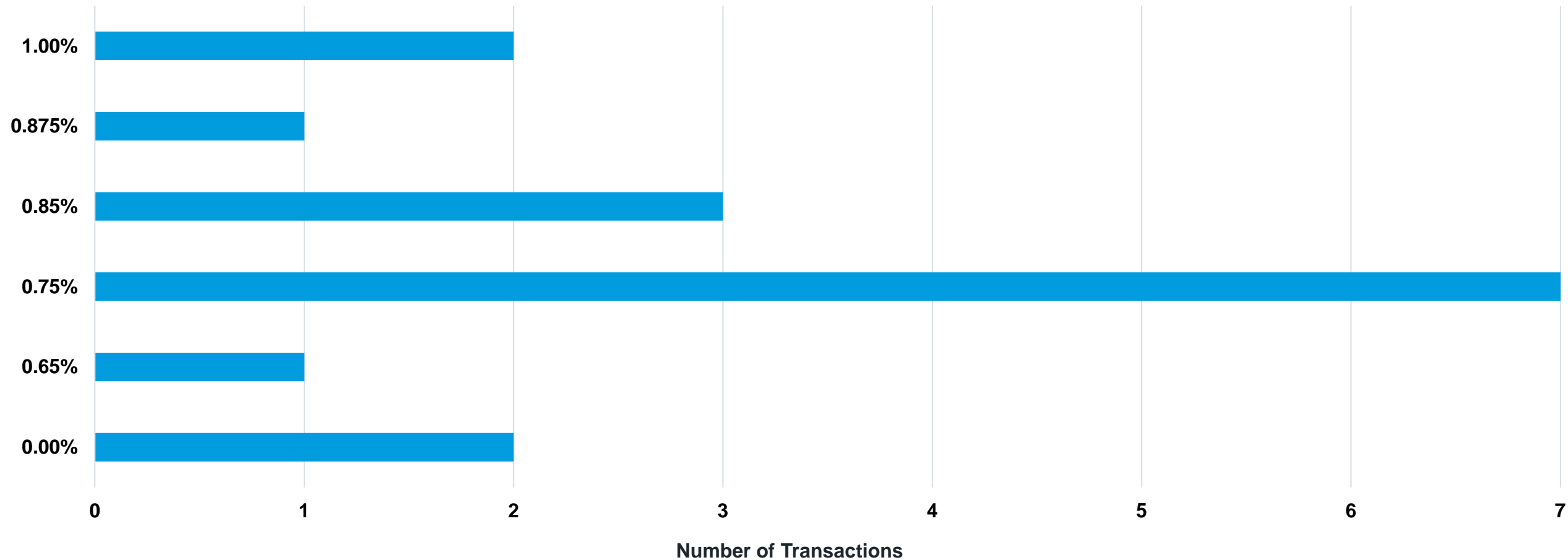


Lead Investor Expense Cap



Lead investor expense caps are often marked at or around half of a continuation fund's organizational expense cap, so as organizational expense caps have increased, lead investor expense caps have unsurprisingly been on the rise as well.

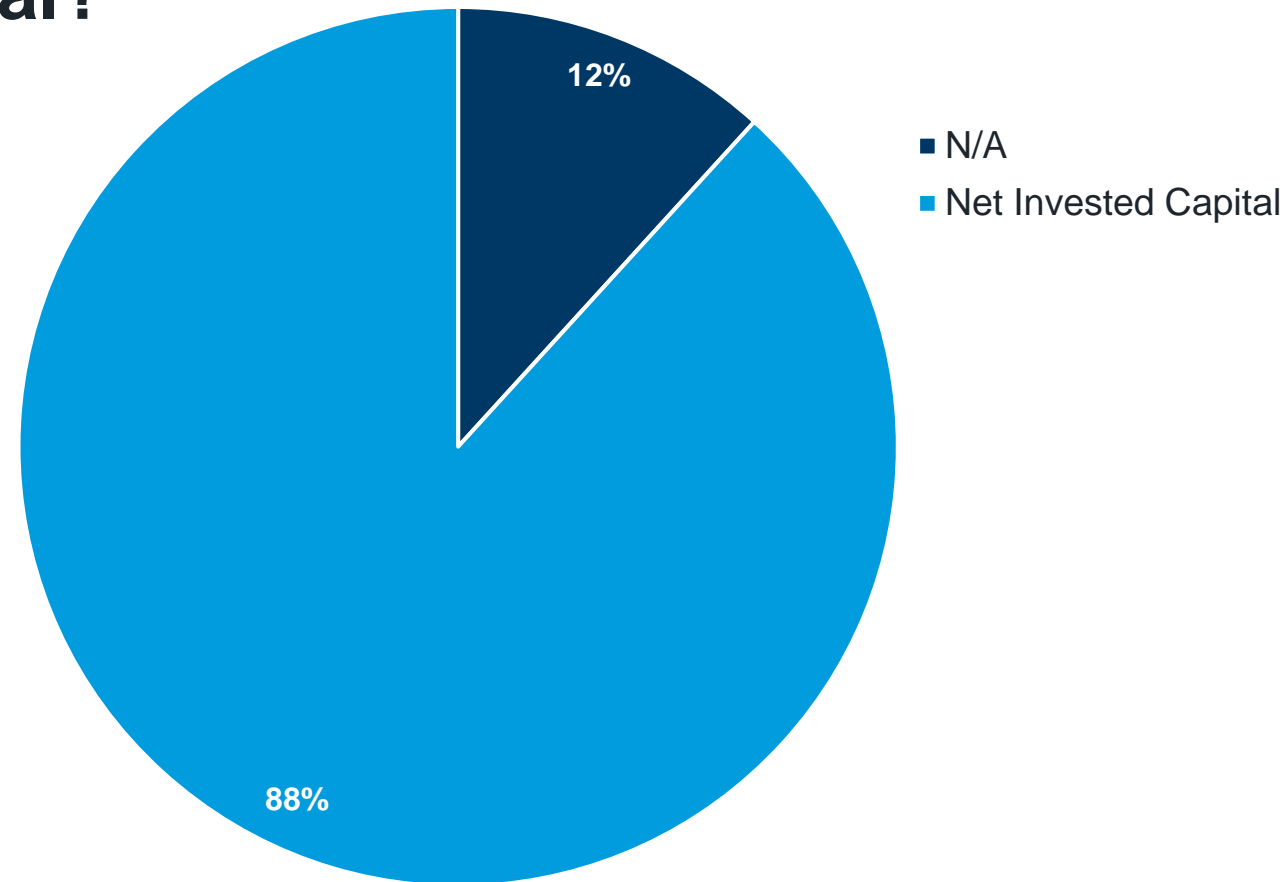
Management Fees During Initial Term



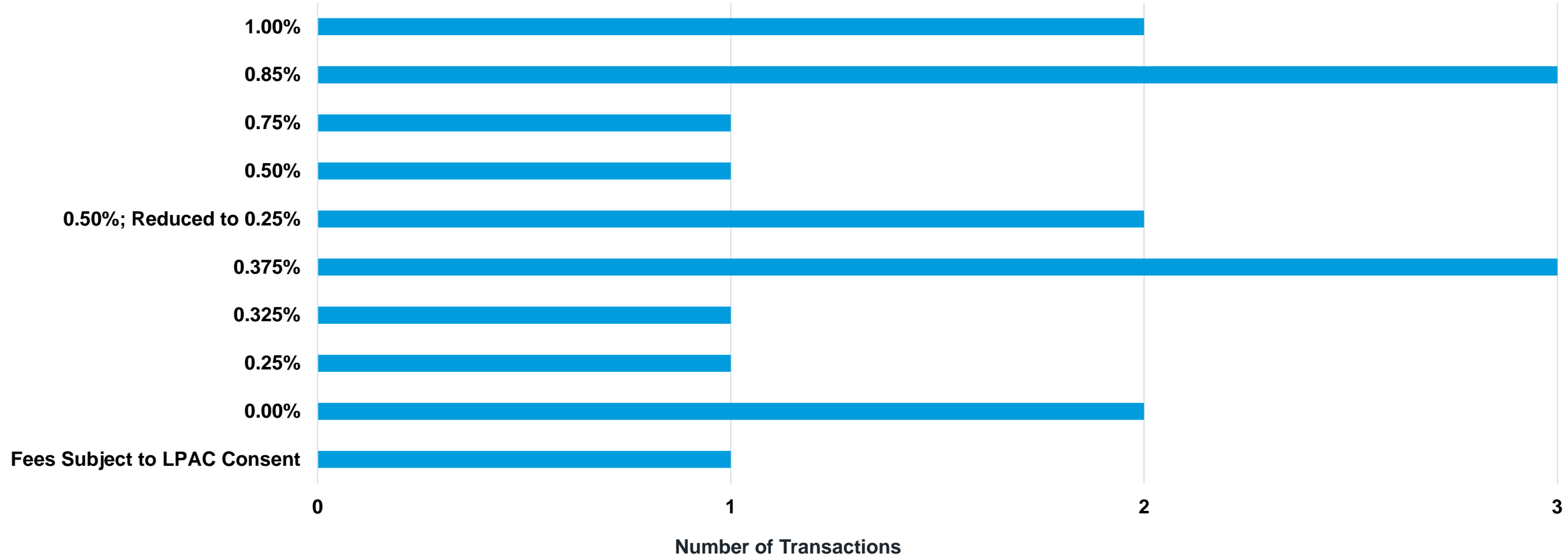
Nearly half of the deals reviewed had management fees at 75 bps during the continuation fund’s initial term.

Is Initial Term Fee Amount a Percentage of Net Invested Capital or Committed Capital?

In all of the deals that had a management fee, the rate was a percentage of invested capital rather than committed capital. This is the generally accepted formulation in GP-led transactions.



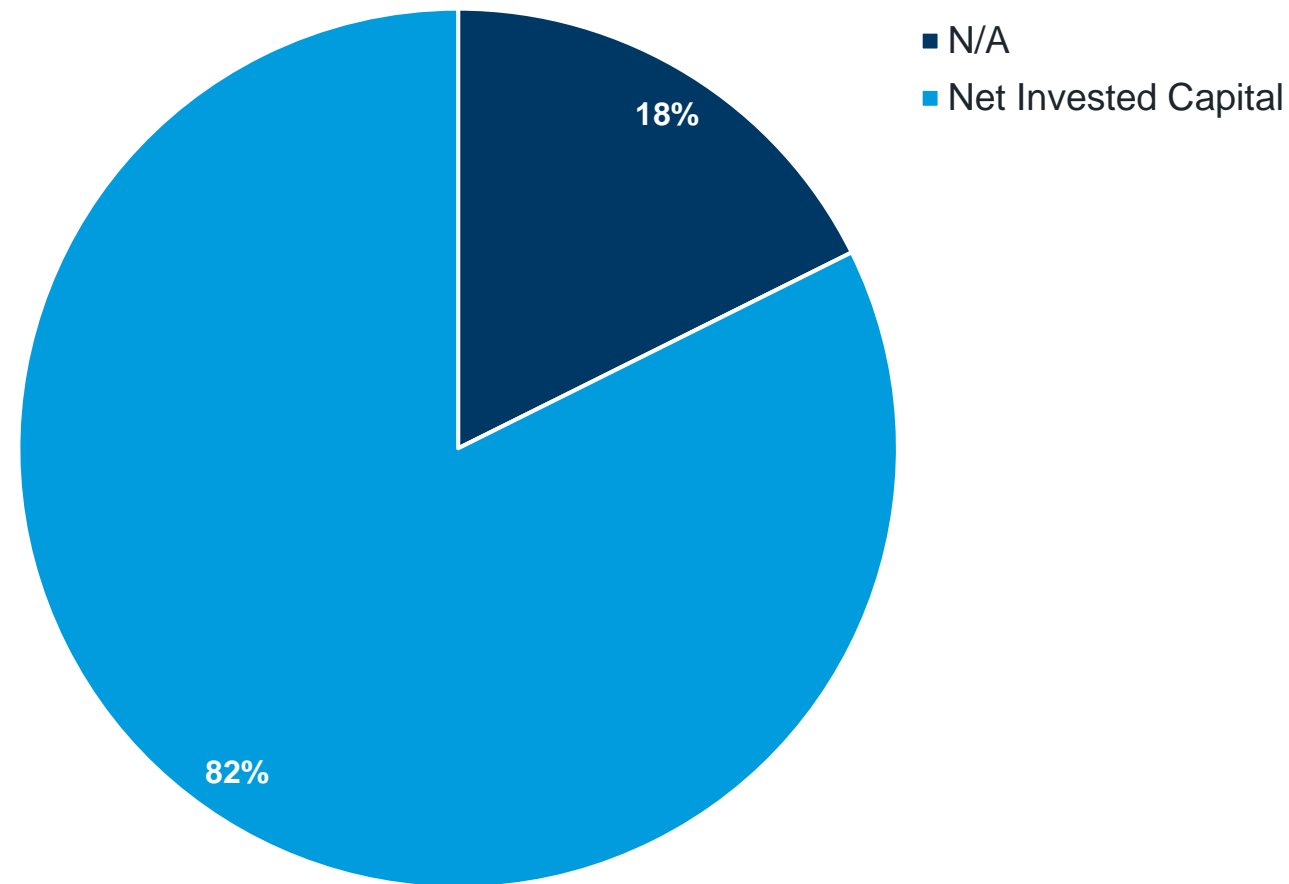
Management Fees for Remaining Term



While not universal, it is common to see a management fee step-down during any term extensions.

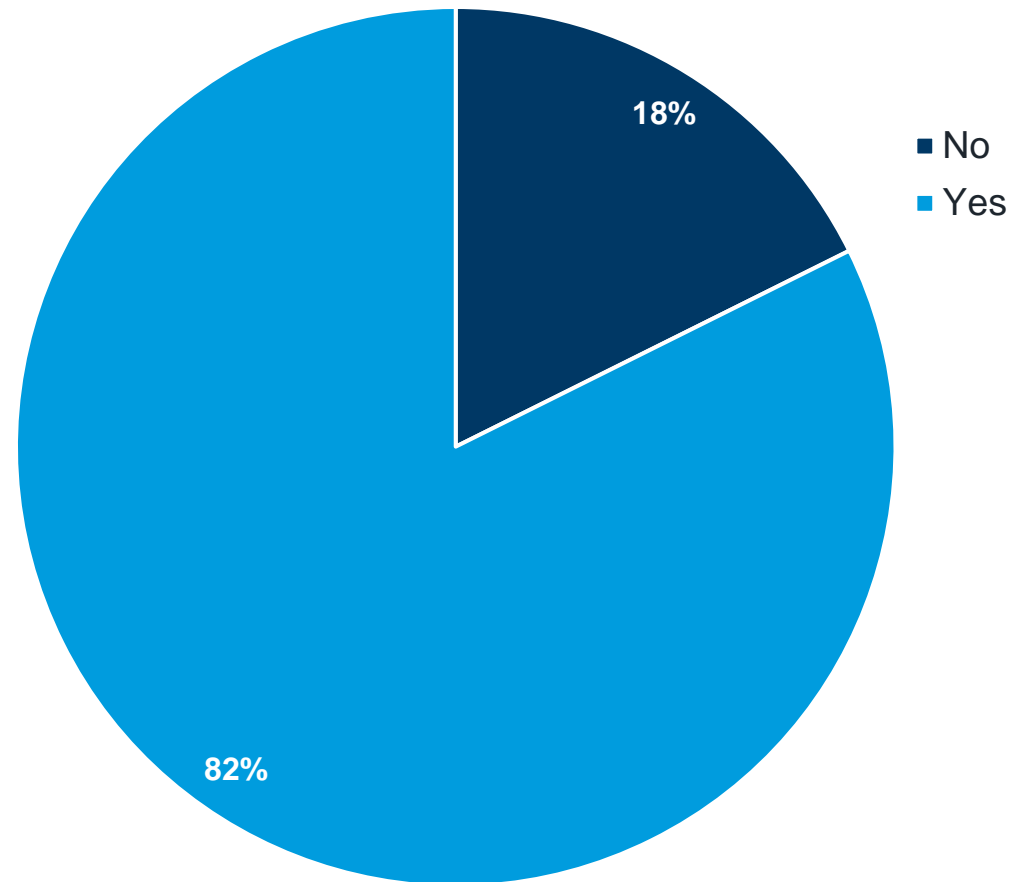
Is Remaining Term Fee Amount a Percentage of Net Invested Capital or Committed Capital?

Like the management fee payable during the initial term, it is standard practice for any step-down rates to be a percentage of invested capital rather than committed capital.



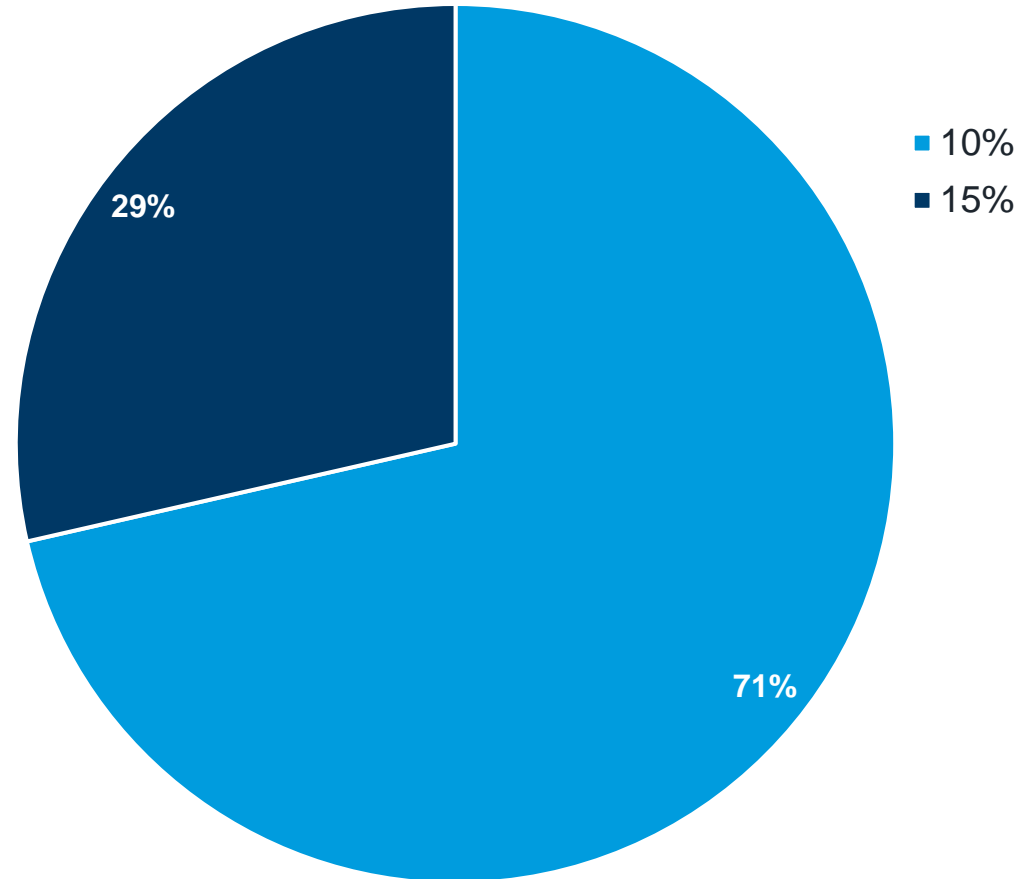
Is There a Carry Ratchet?

Almost all of the deals we worked on in the applicable time period provided for a carry ratchet whereby the carried interest to which the general partner is entitled increases based on generating multiple tiers of returns.



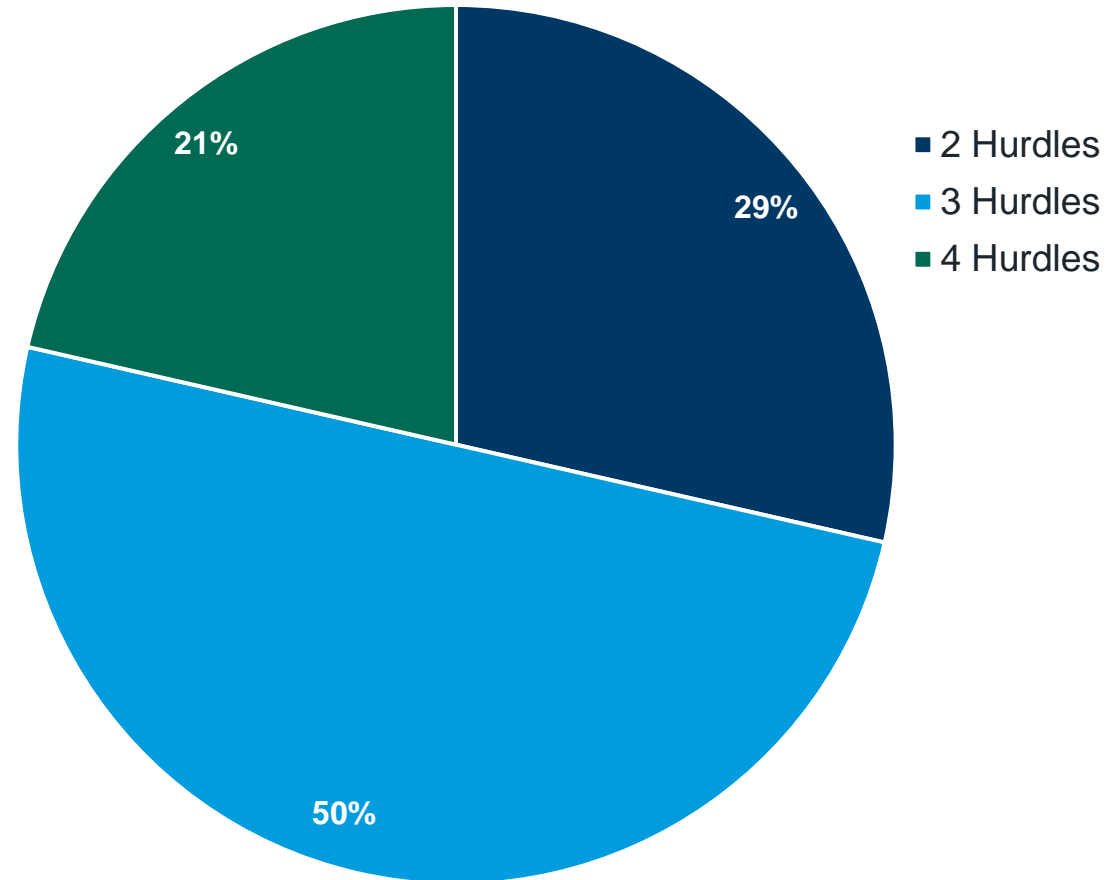
If There Is a Carry Ratchet, What Is the Lowest Attainable Carry Percentage?

10% is the most common first tier of carried interest (71%), with 29% of the deals starting at 15%.



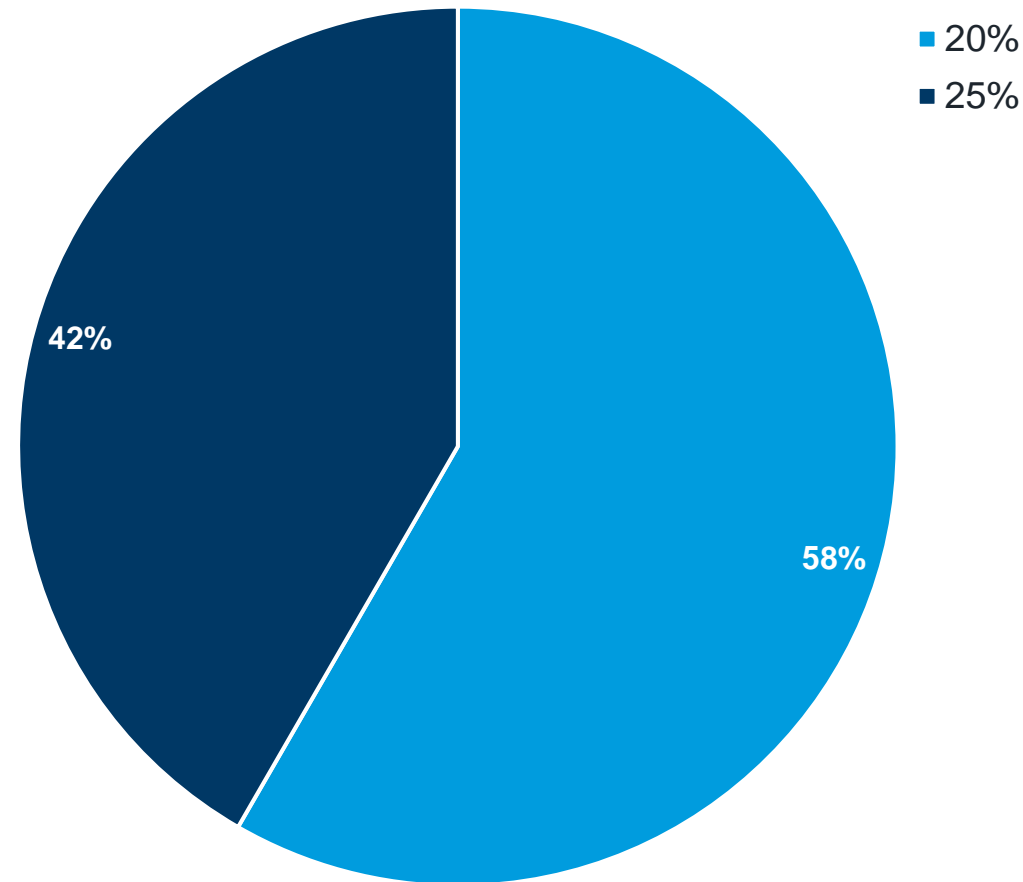
If There Is a Carry Ratchet, How Many Performance Hurdles Are There?

Three hurdles is the most commonly used formulation. We see two and four hurdles less frequently than three with nearly equal consistency.



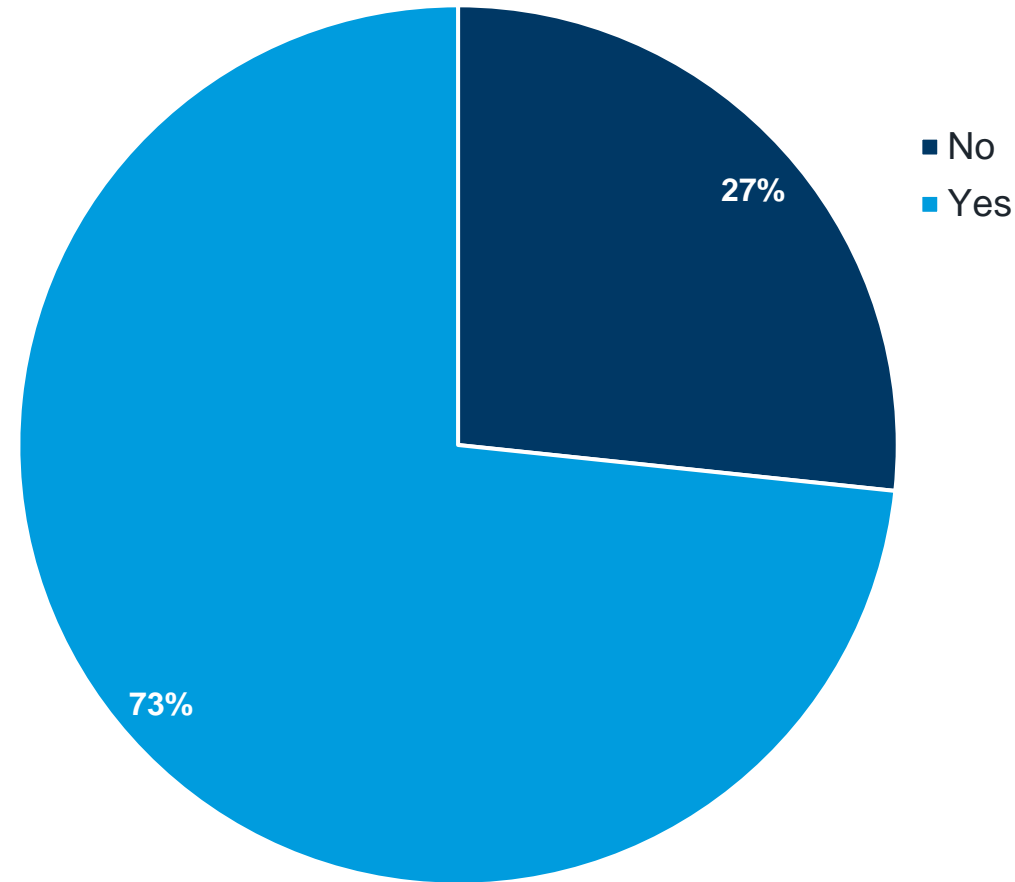
If There Is a Carry Ratchet, What Is the Highest Attainable Carry Percentage once All Hurdles Are Satisfied?

Recent deals have seen the highest attainable carry top out at 20 or 25 percent. This suggests fewer deals where there is a “super carry.”



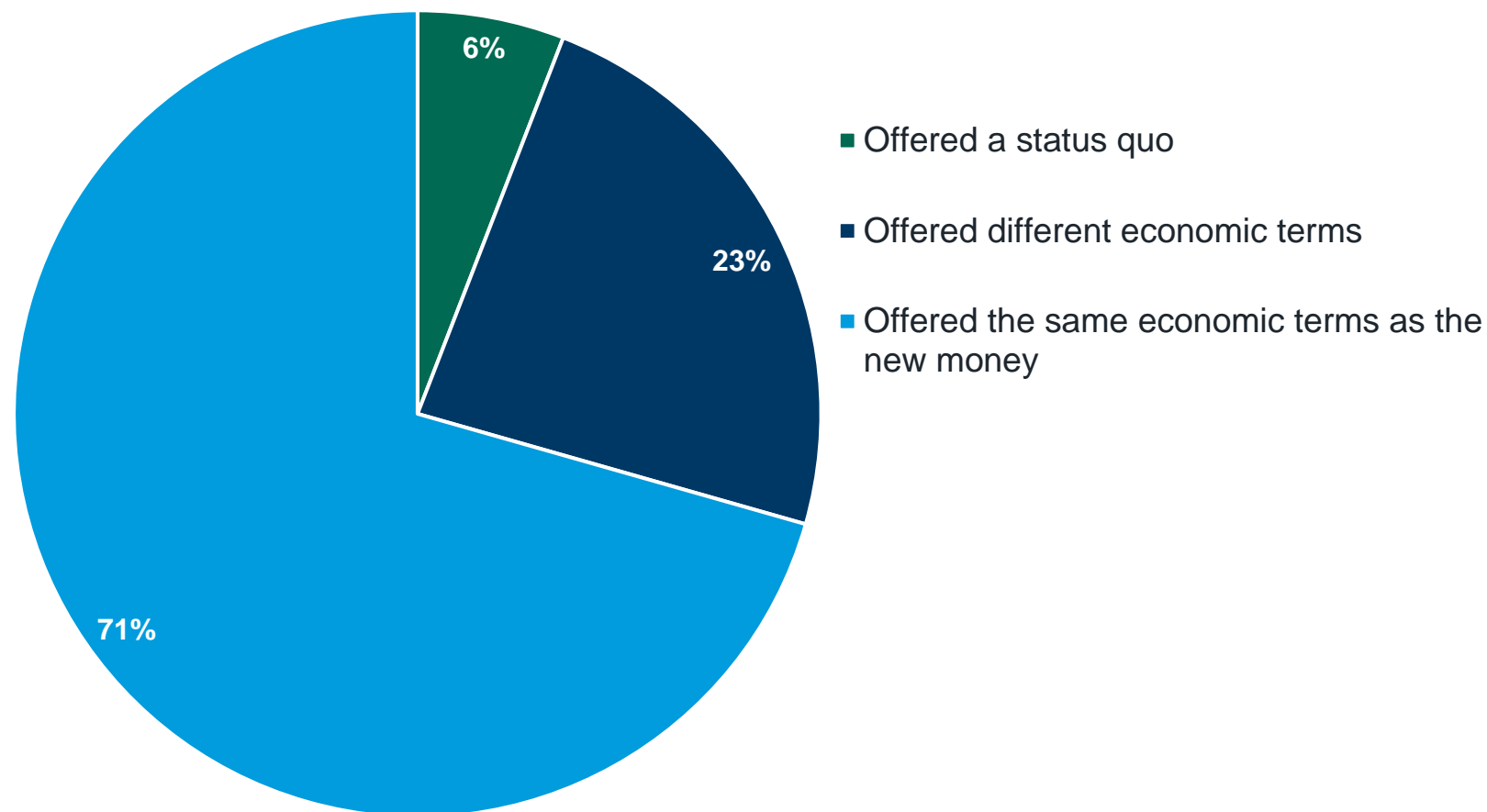
Are Rolling Investors Required to Participate in Follow-Ons?

Recent deals have seen decreased optionality being provided to existing investors, including with respect to requiring rolling LPs to participate in follow-ons alongside new capital.



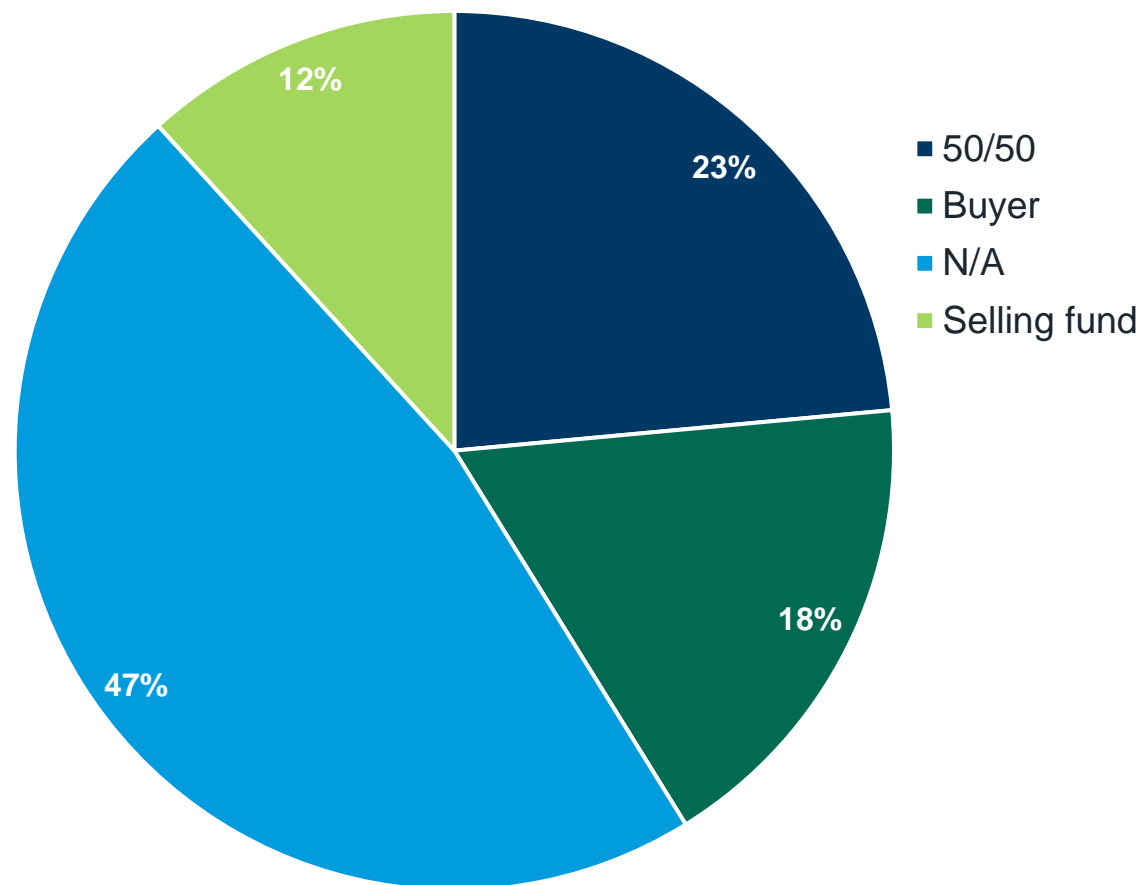
Offerings to Rolling Investors

In line with the prior slide, sponsors have increasingly been requiring rolling LPs to roll on the same economic terms as new investors, with true status quo options being offered with less frequency than in prior years.



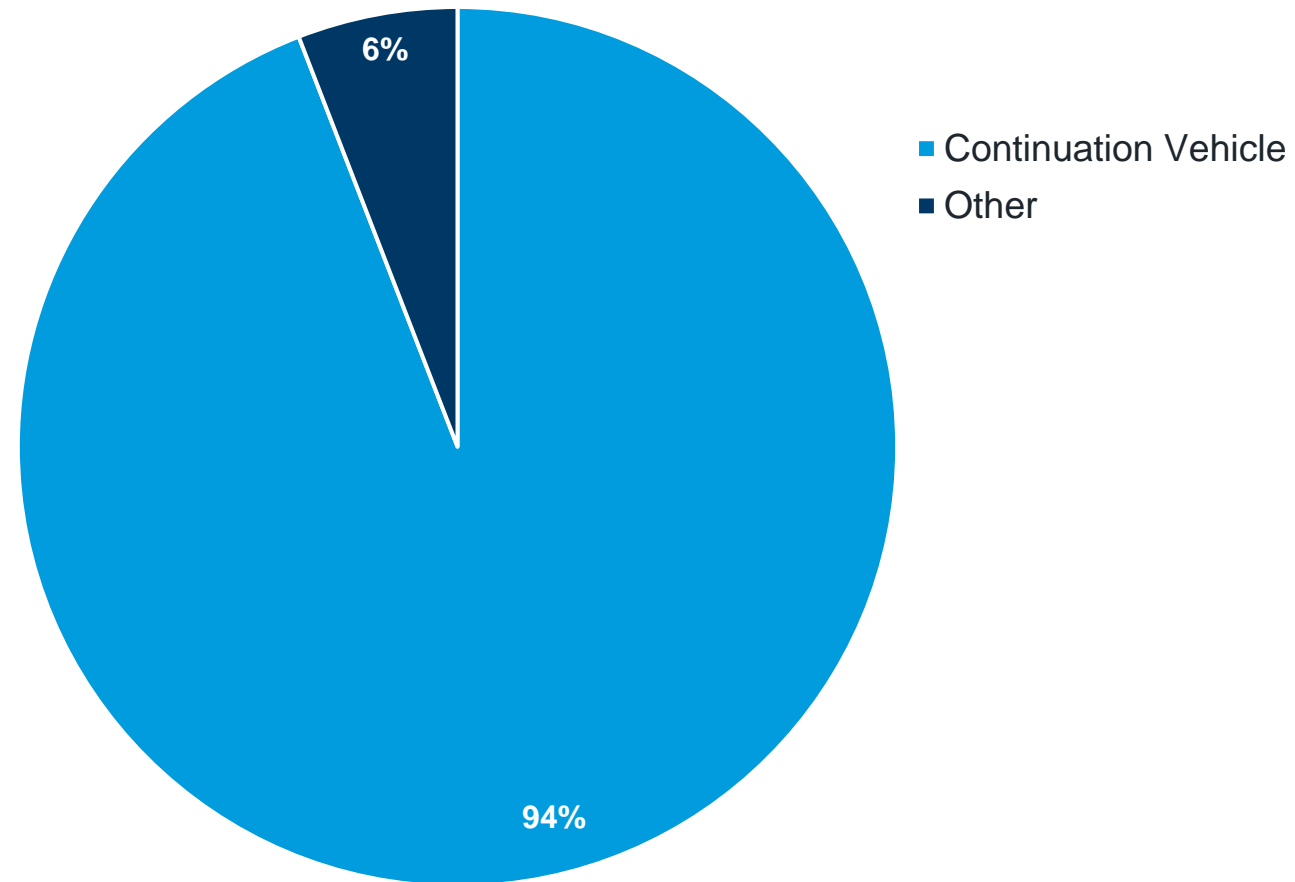
RWI Costs

Almost half of the deals we closed during the relevant time period did not utilize RWI. In those that did, we saw those expenses being allocated in a variety of ways.



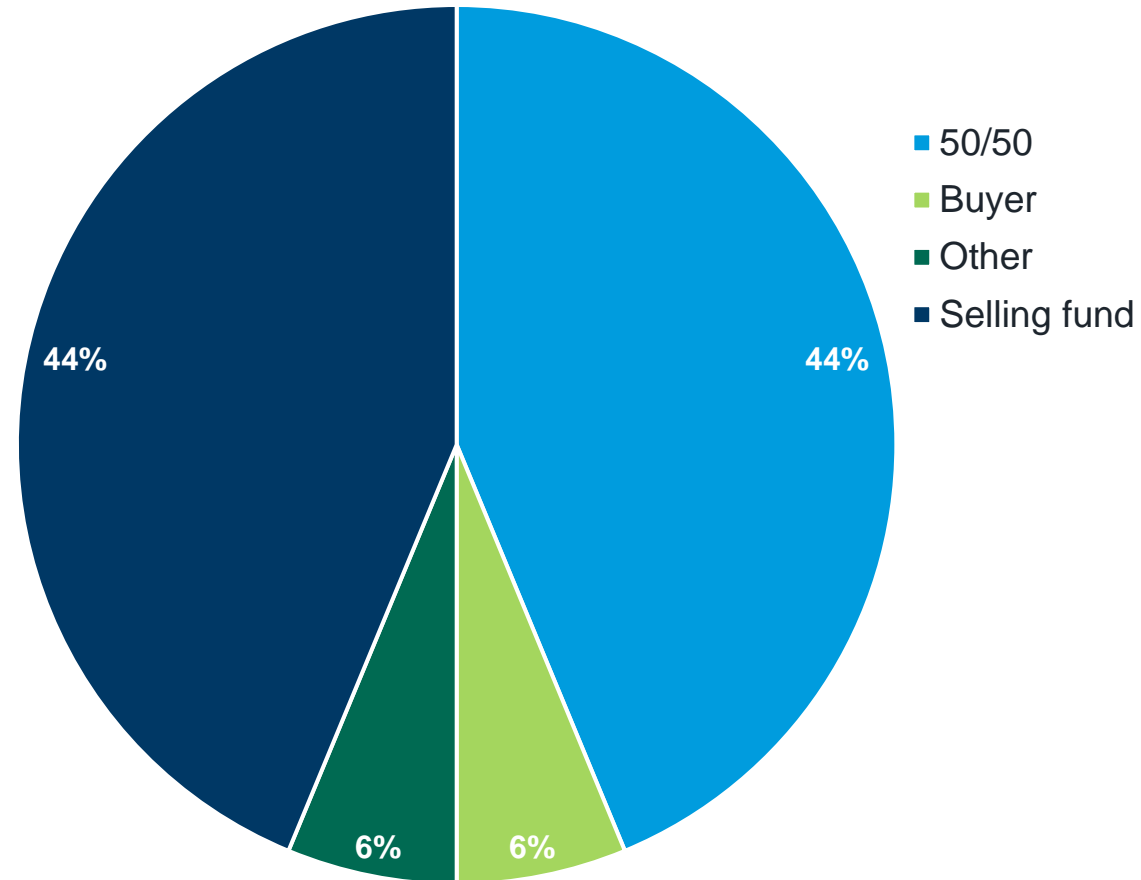
Continuation Fund Organizational Expenses – Who Pays?

Unsurprisingly, the organizational expenses of the continuation fund are generally borne by the continuation fund, subject of course to the caps we saw in an earlier slide.



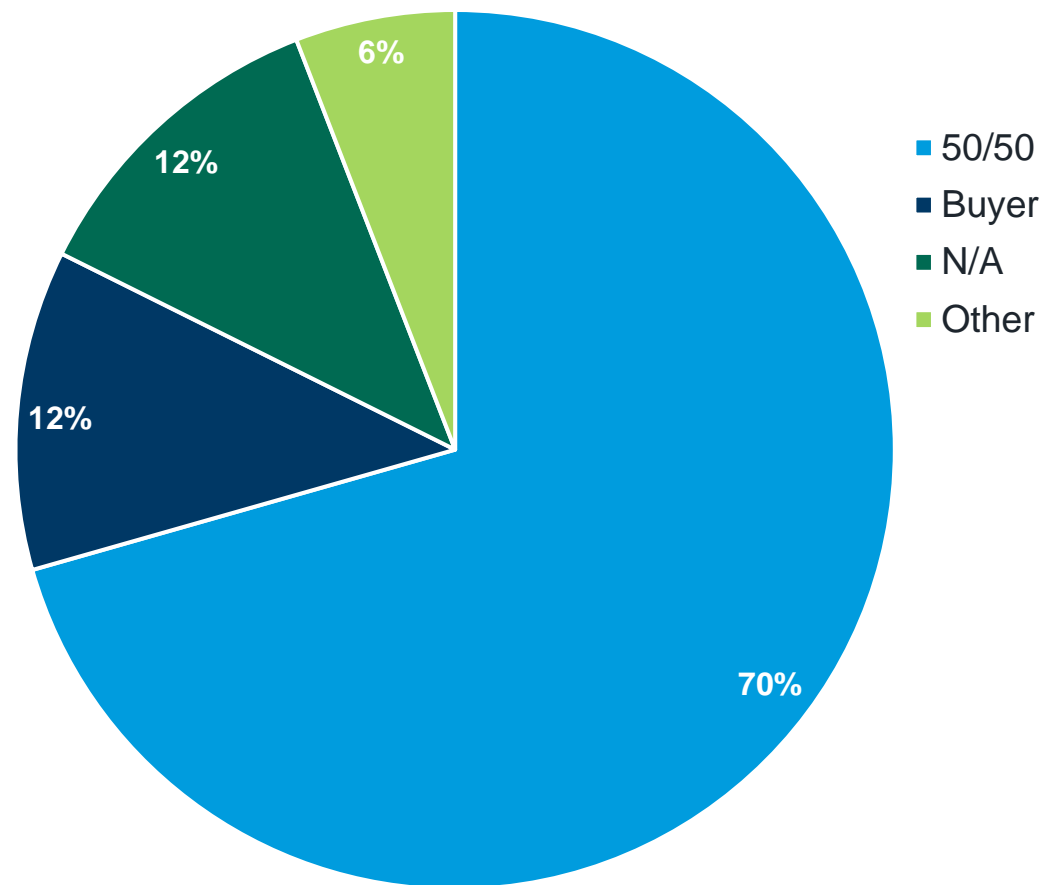
SPA/Contribution Agreement Costs

Recent deals have seen transaction agreement costs being borne either 50/50 between the selling fund and the continuation fund or 100% by the selling fund. This suggests a shift in the market with respect to the allocation of these expenses, which historically were most commonly split 50/50.



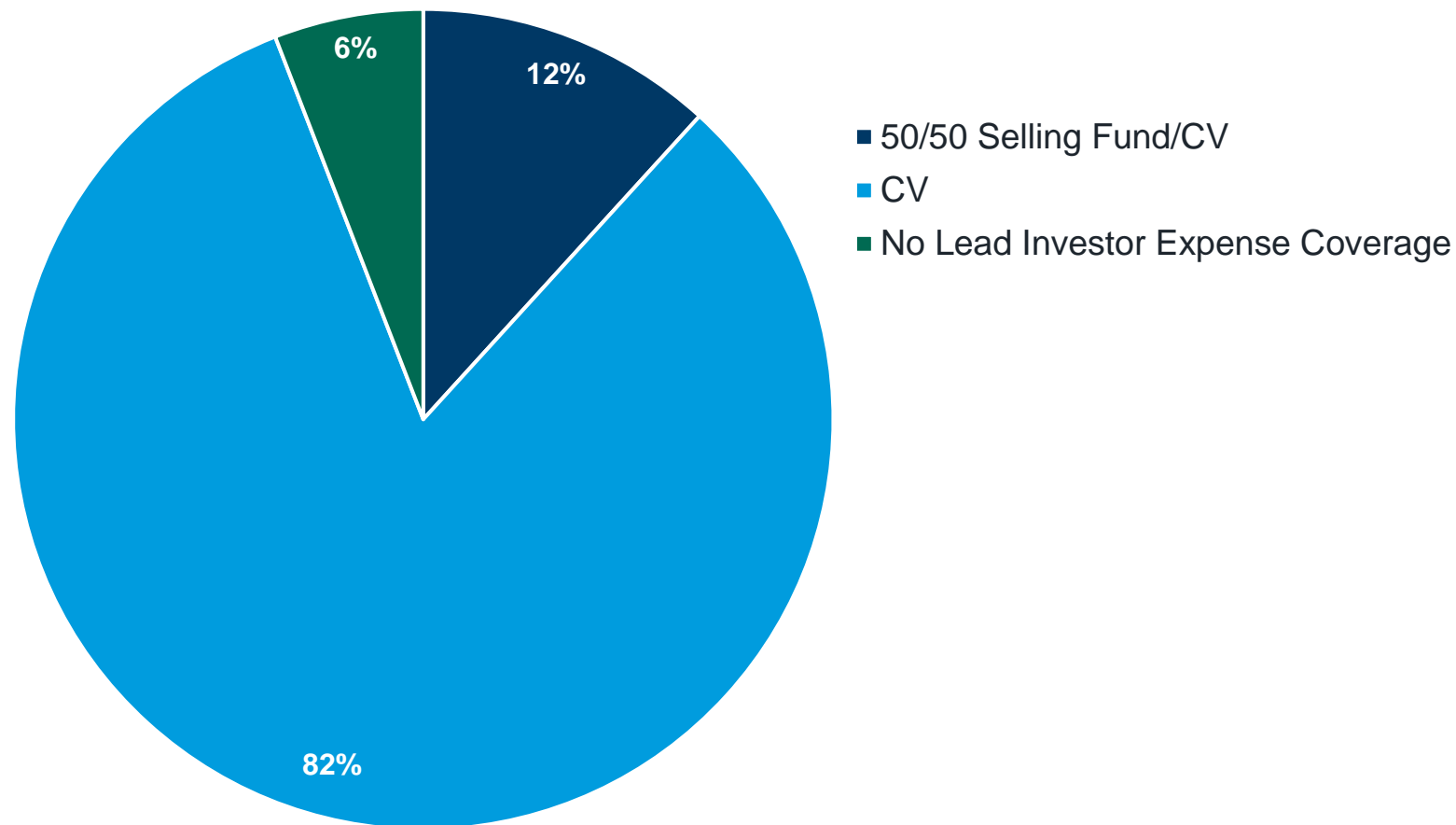
Transfer Taxes

The vast majority of deals continue to split any transfer taxes 50/50 between the parties.



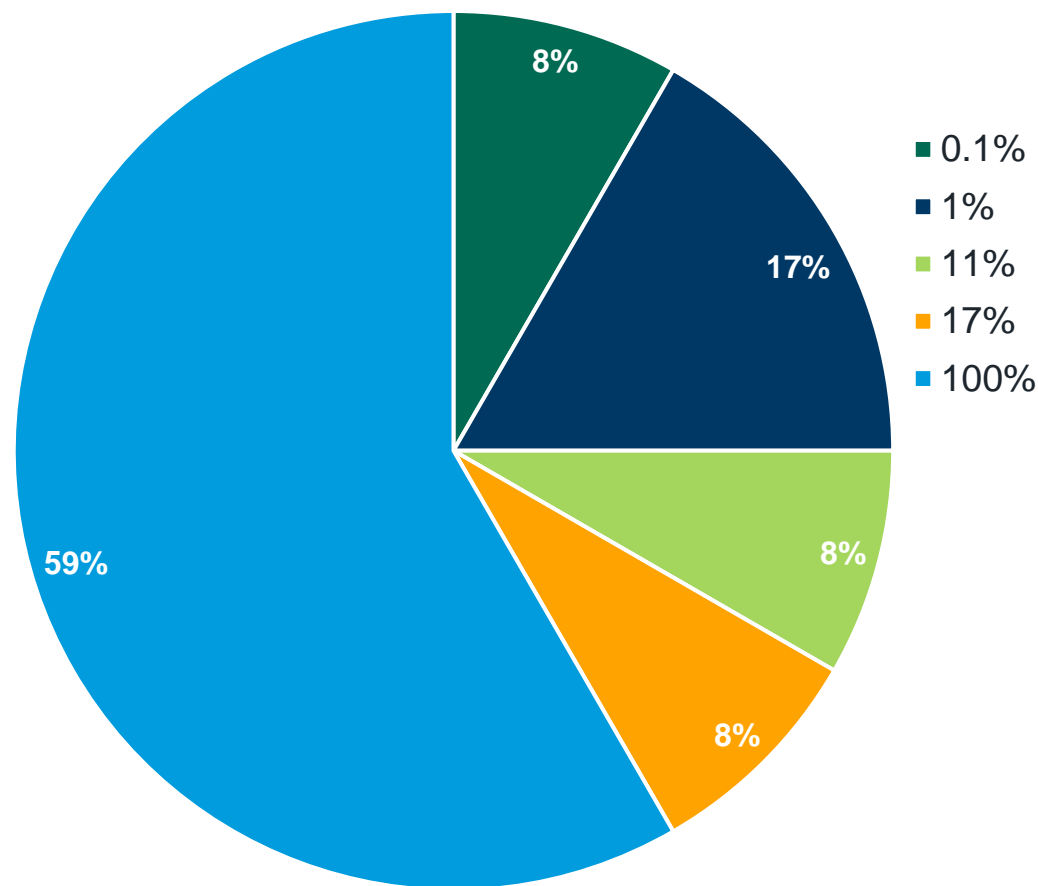
Lead Investor Expenses

The continuation fund most commonly bears lead investor expenses, up to specified caps as seen in an earlier slide. A small minority of deals provide for alternate formulations – either splitting these expenses between the parties, or requiring lead investors to bear all of their own expenses.



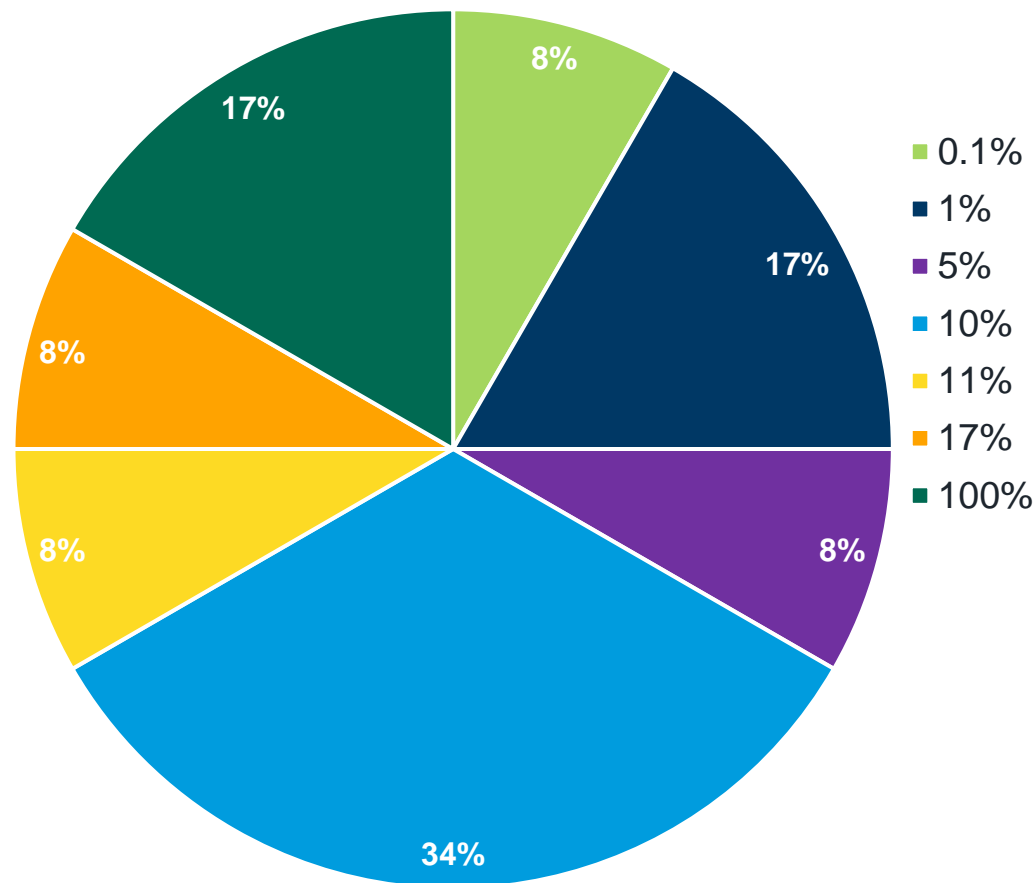
Liability Caps for Fundamental Reps

The majority of the deals we worked on during the relevant time period provided coverage for breaches of fundamental representations up to 100% of the purchase price. Some recent deals still relied on flat dollar amount caps, which account for the other varying percentages reflected on this chart.



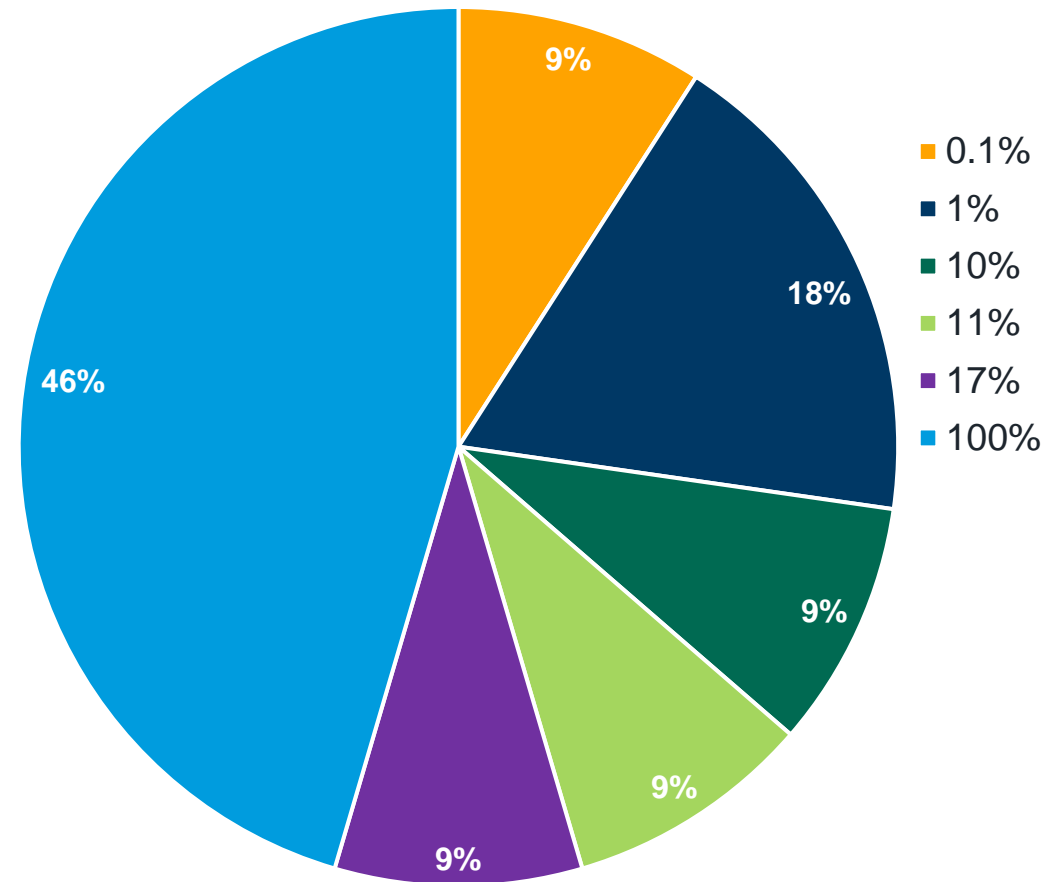
Liability Caps for Non-Fundamental Reps

A wide variety of coverage caps are utilized for breaches of non-fundamental representations. As the use of RWI increases in GP-led deals, indemnity caps and baskets may standardize more.

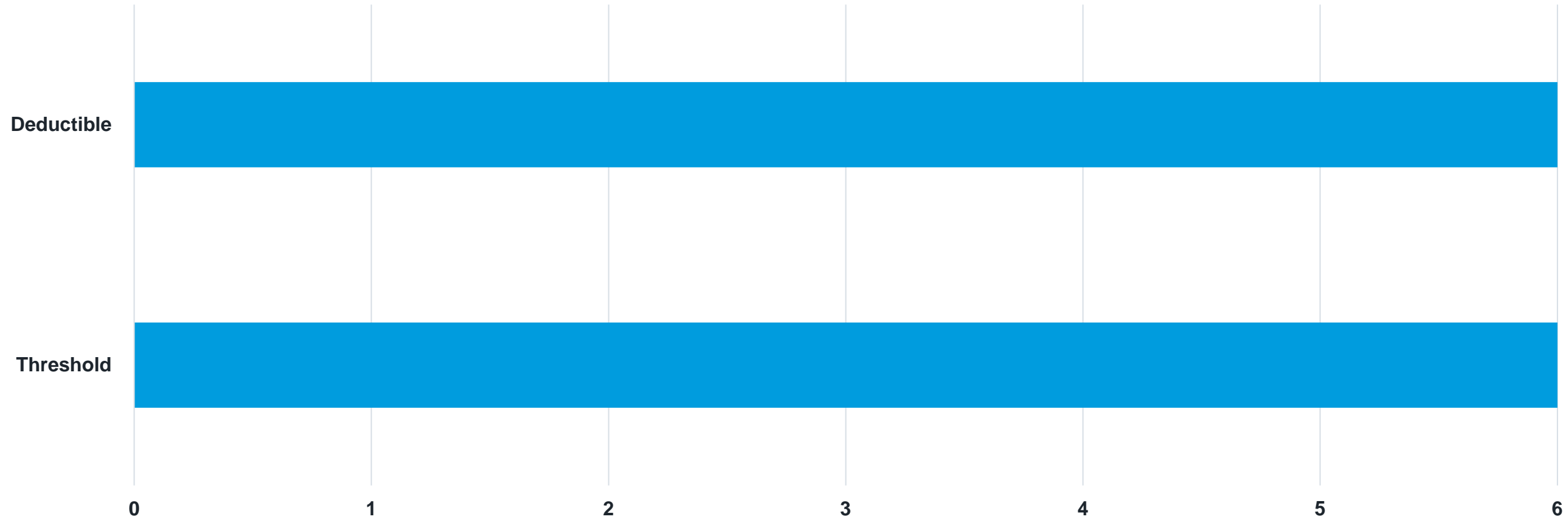


Liability Caps for Excluded Obligations

Nearly half of the deals we closed during the relevant time period provided coverage of up to 100% of the purchase price for Excluded Obligations. This may increase as the use of RWI increases.



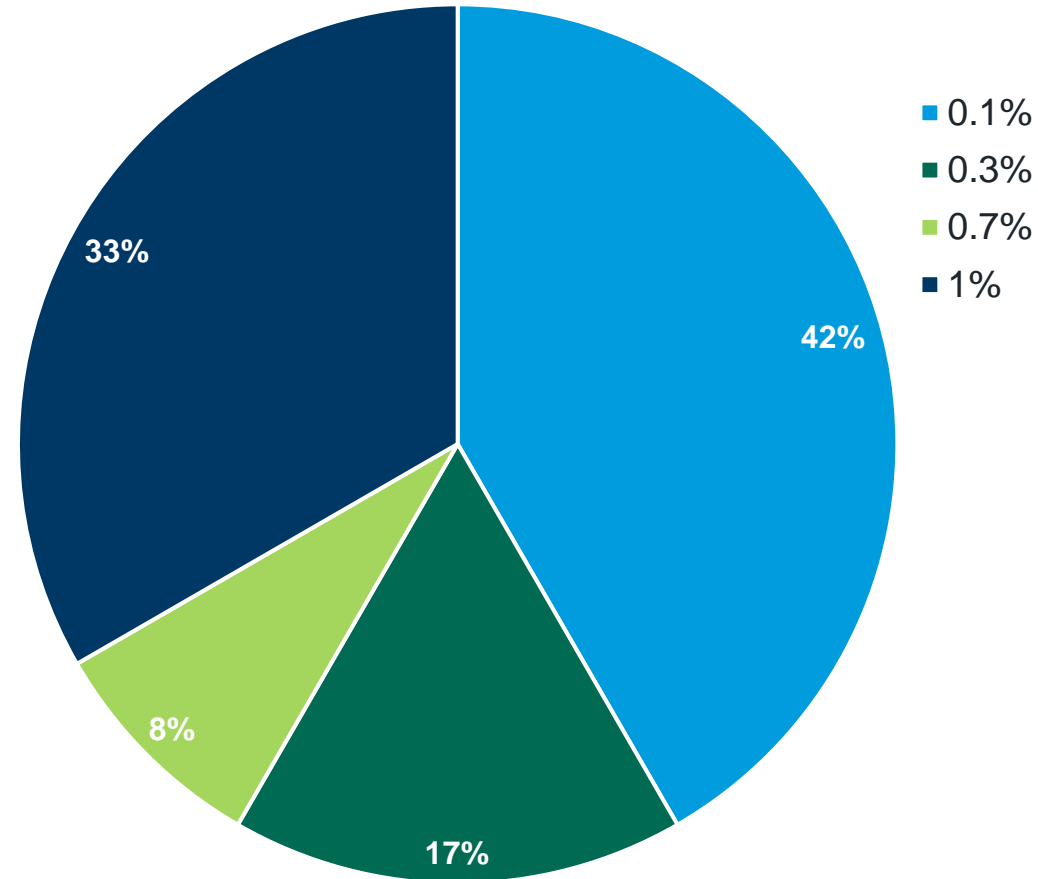
Threshold vs. Deductible



In deals that employed the use of indemnity thresholds or deductibles, each were used with equal frequency. A threshold allows for recovery from dollar one once losses exceed a specified amount, while recovery is limited to amounts in excess of a deductible.

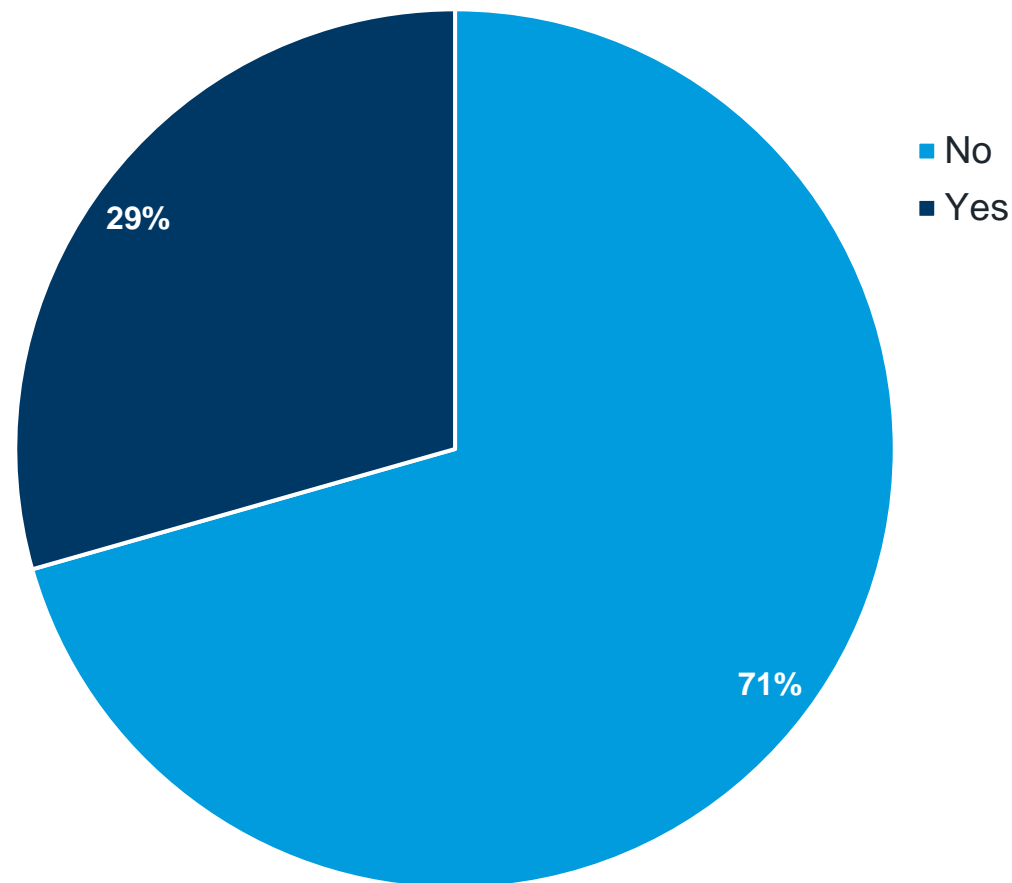
Percent of Threshold/Deductible

Thresholds and deductibles are generally a small dollar amount or percentage relative to overall deal value, with deductibles typically being the lower of the two.



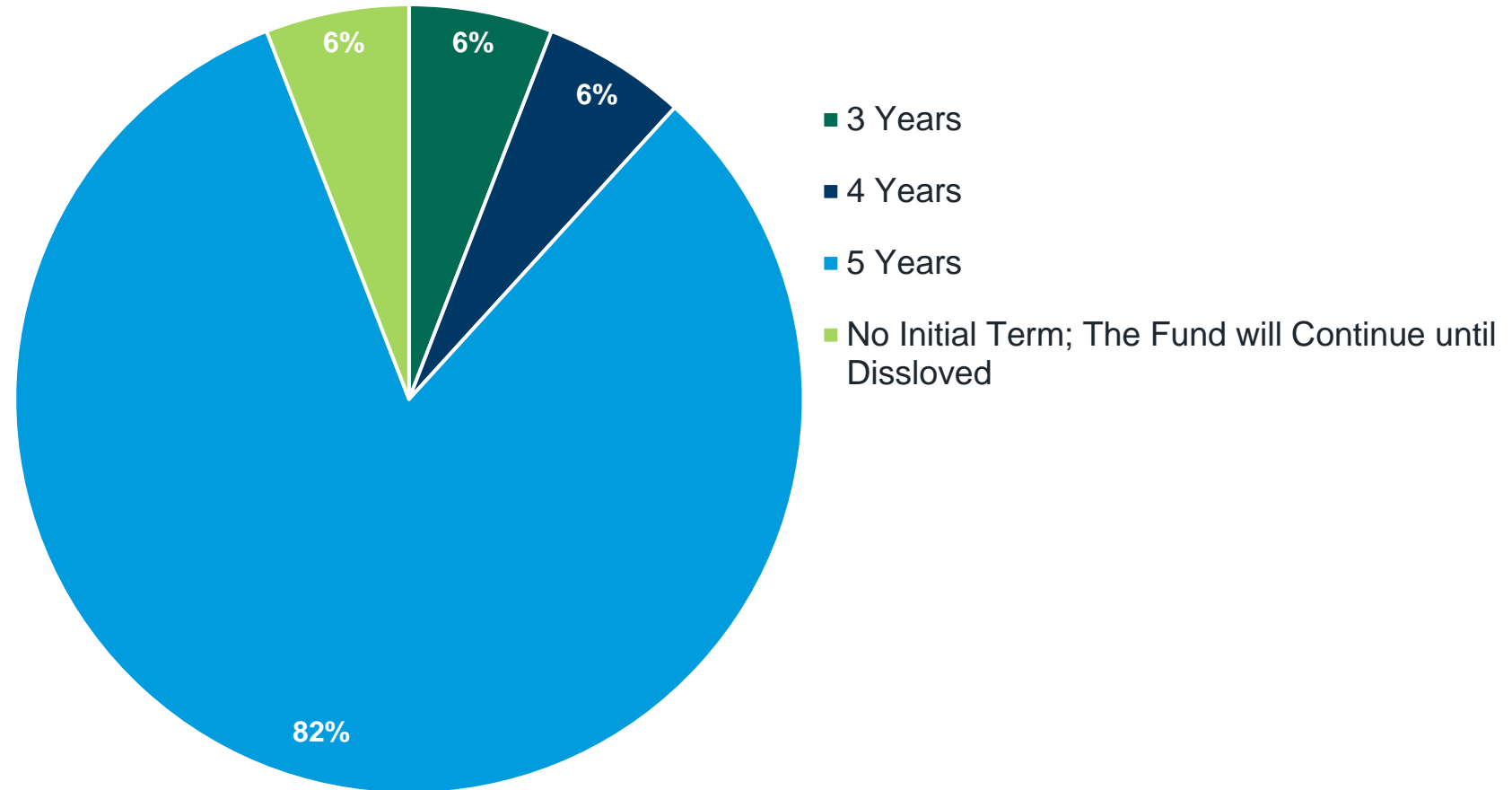
Does the GP/Manager Provide Reps/Warranties?

GP/Manager reps and warranties were made in 29% of deals closed in the relevant time period. These reps have become a less critical element of the deal.



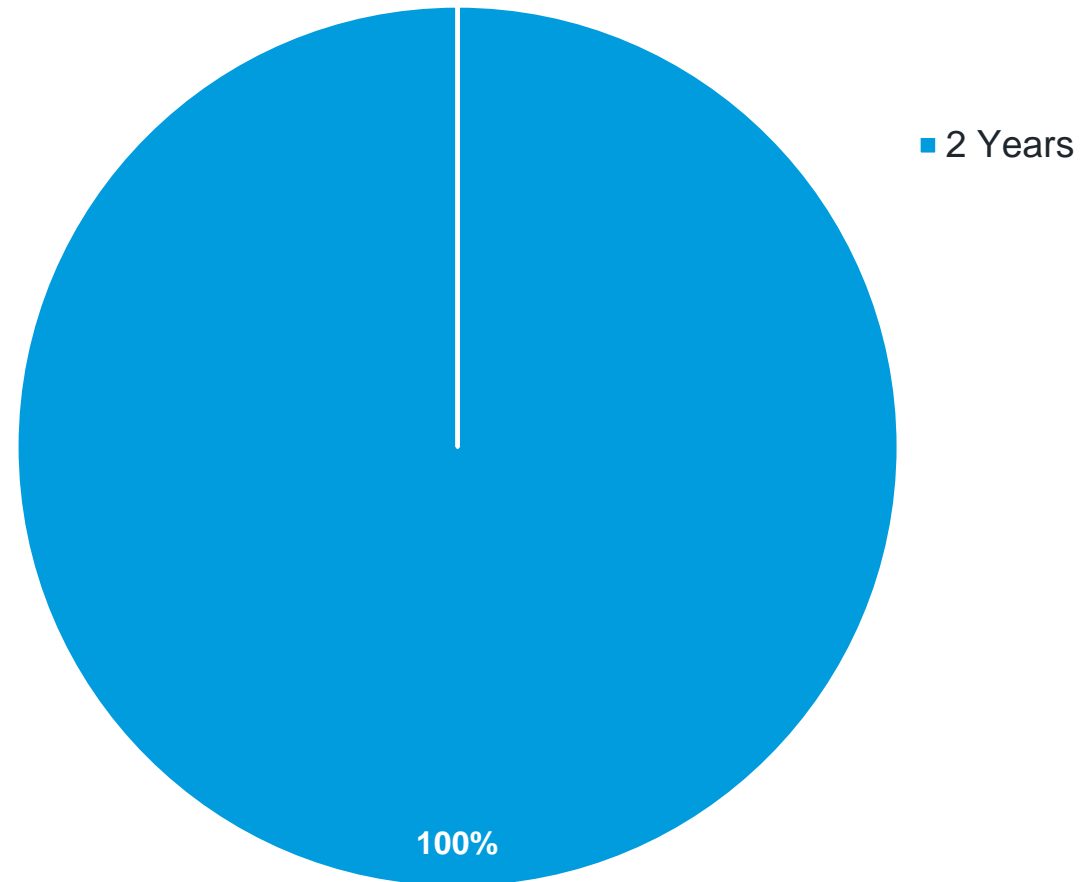
What Is the Initial Term of the Continuation Vehicle?

Nearly all continuation funds closed during the relevant period had an initial term of five years from the transaction closing date.



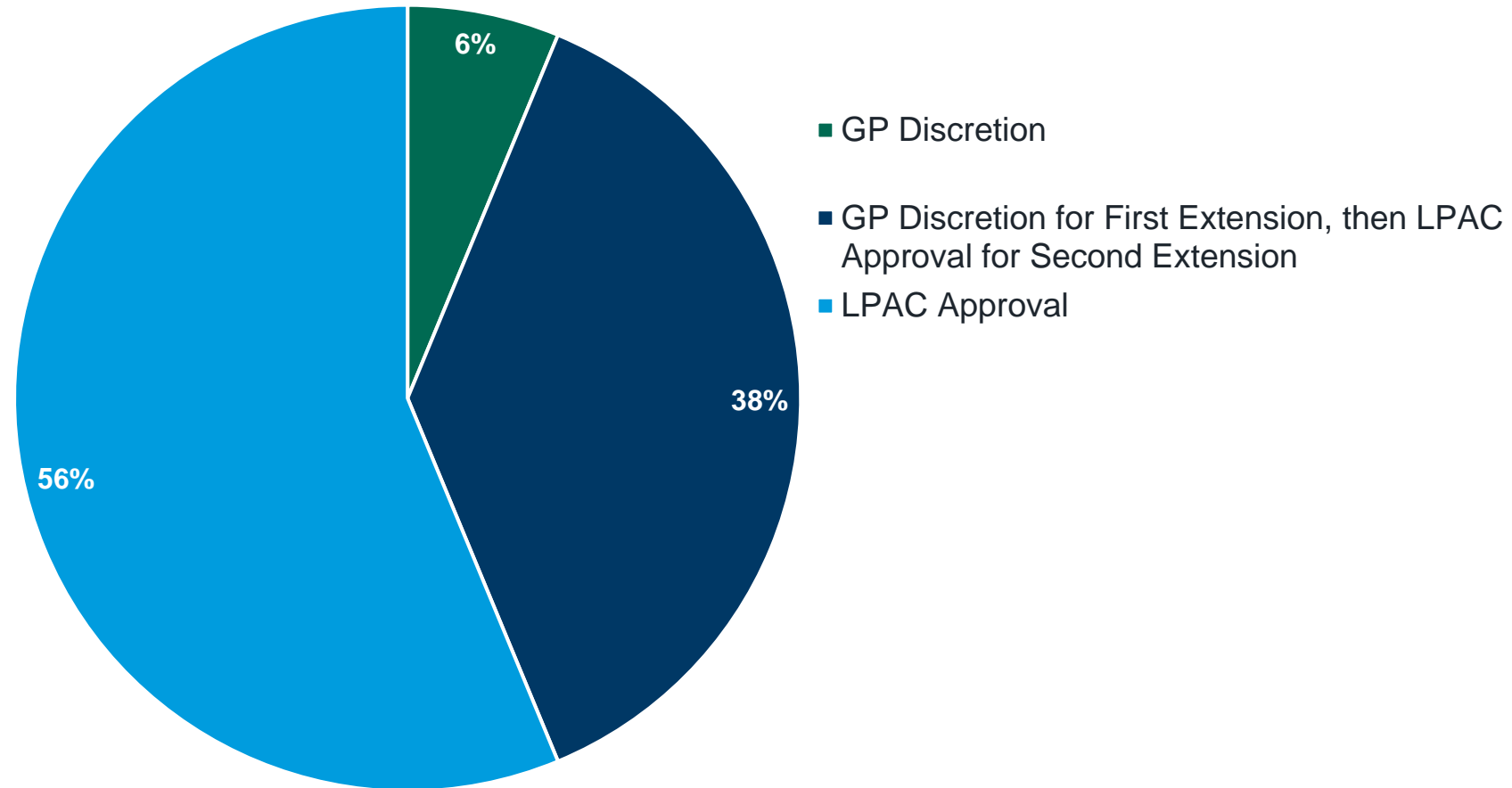
If Term Extensions Are Permitted, What Are the Lengths of Such Extensions?

Two consecutive one-year extensions have become the market standard for continuation funds.



If Term Extensions Are Permitted, What Consent Is Required for Such Extensions?

These term extensions are permitted with some combination of GP discretion and LPAC approval, with LPAC approval being required for at least the second one-year extension in almost all instances.



Navigating Liquidity: Proskauer's Secondaries Pulse Check



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