

fladgate

M&A TREND  
TRACKER

Third Edition

2023



# Foreword

We are delighted to publish the third edition of our M&A trend tracker.

This publication analyses data from a broad sample of M&A transactions on which Fladgate advised during 2021 and 2022.

Our analysis, which spans 20 data points, highlights how some deal terms have remained consistent, whereas other terms have evolved over the last couple of years.

This publication will be of interest to anyone engaged in or considering M&A activity, including funds, HNWs, entrepreneurs and corporates, as well as intermediaries including corporate finance advisers and reporting accountants.

If you would like to discuss this publication further, please do get in touch with us or your usual Fladgate contact.



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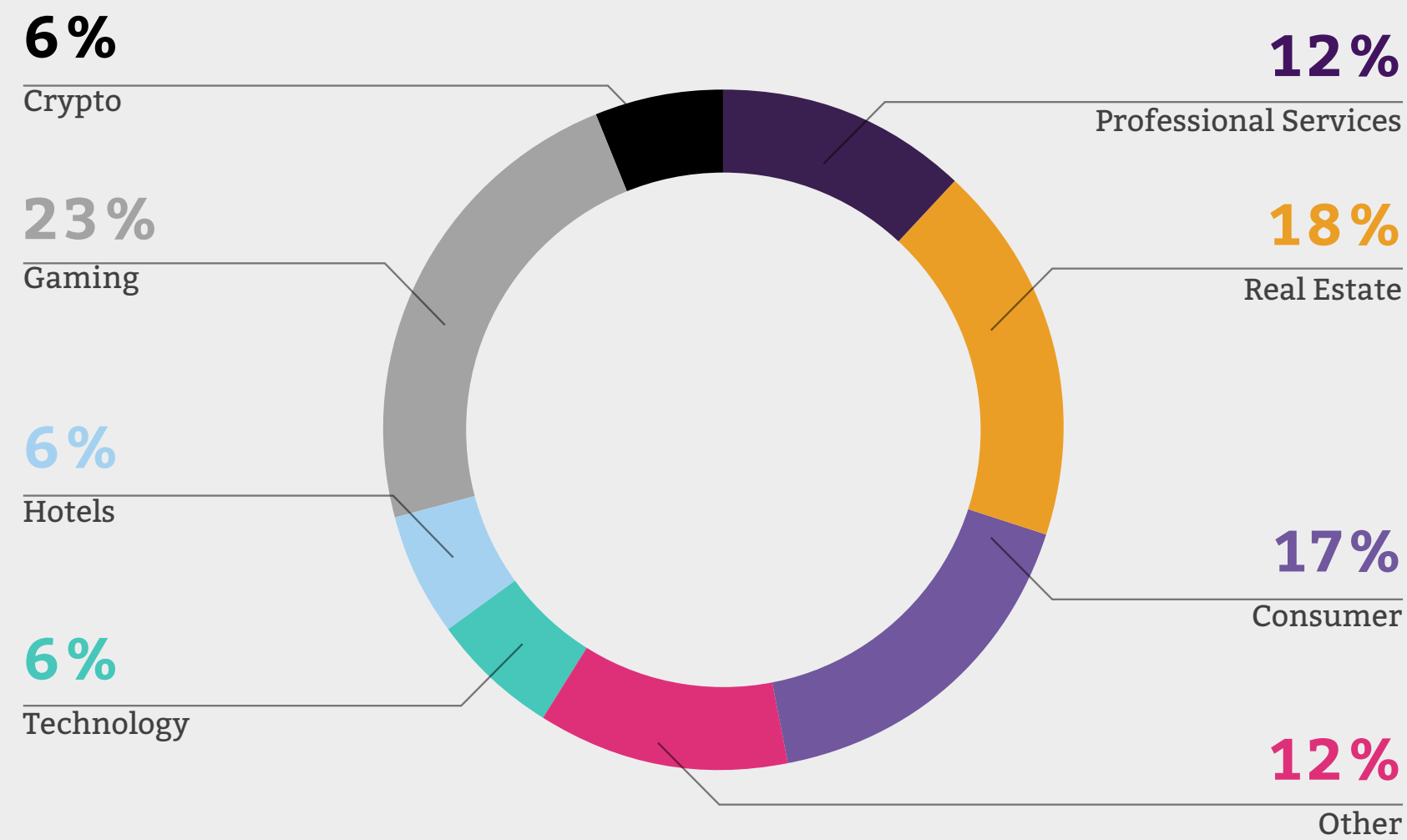
Fladgate is top ranked in the legal directories for M&A deals up to £100 million.



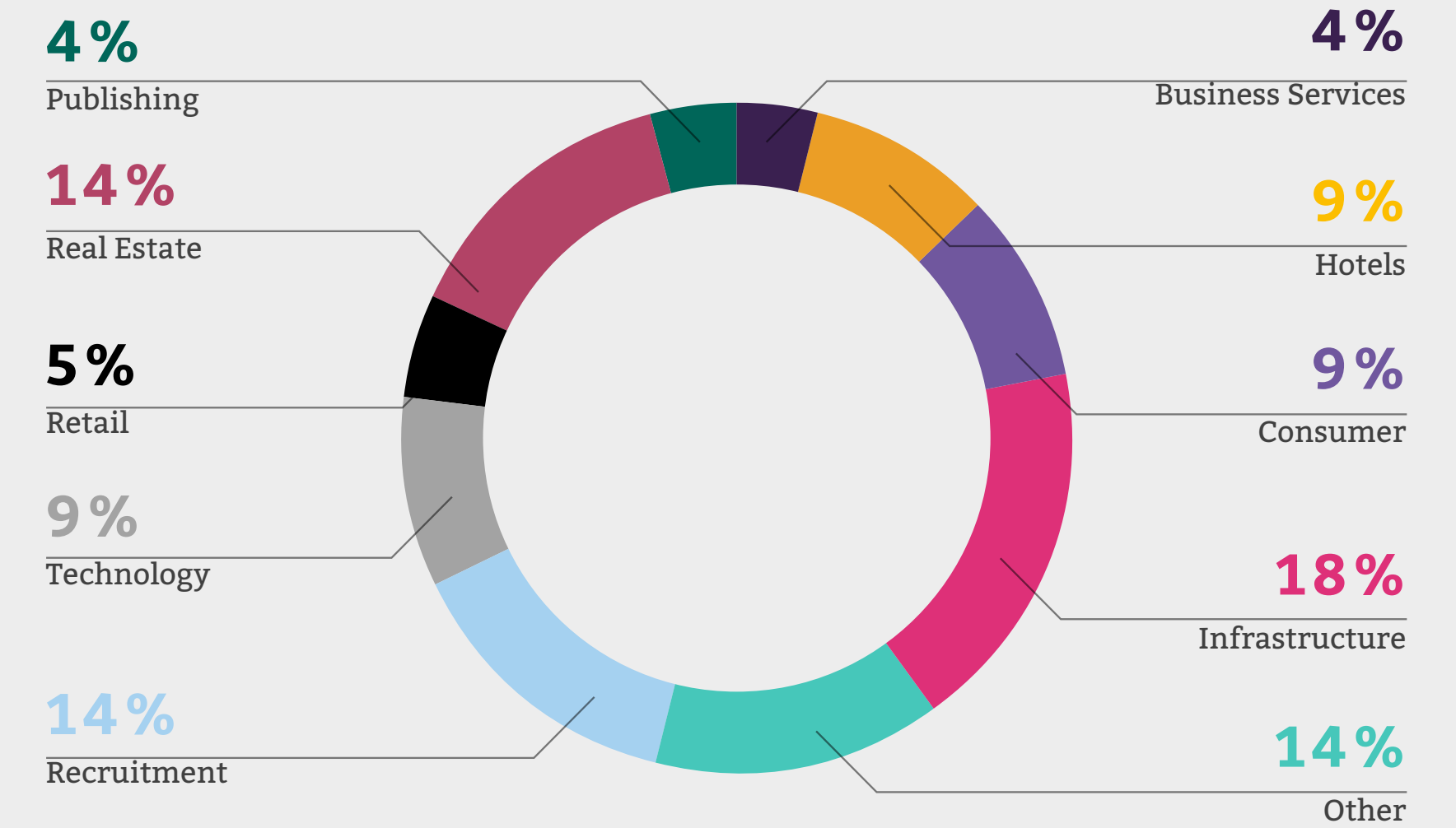
# 01 Sectors

The deals analysed for this publication broke down into the following sectors:

PERCENTAGE OF DEALS BY SECTOR (2021)



PERCENTAGE OF DEALS BY SECTOR (2022)

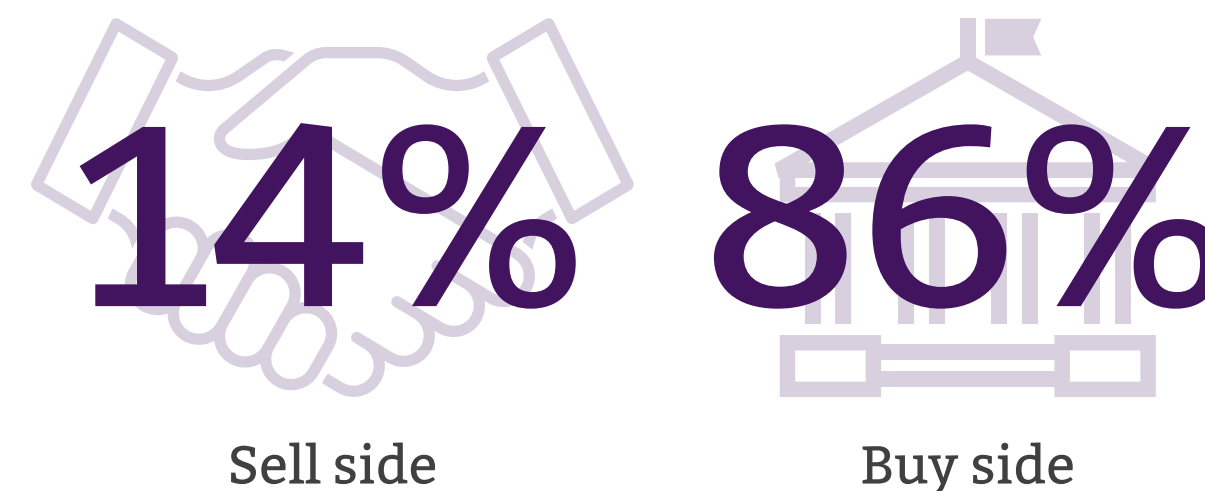


# 02 Buyside vs Sellside

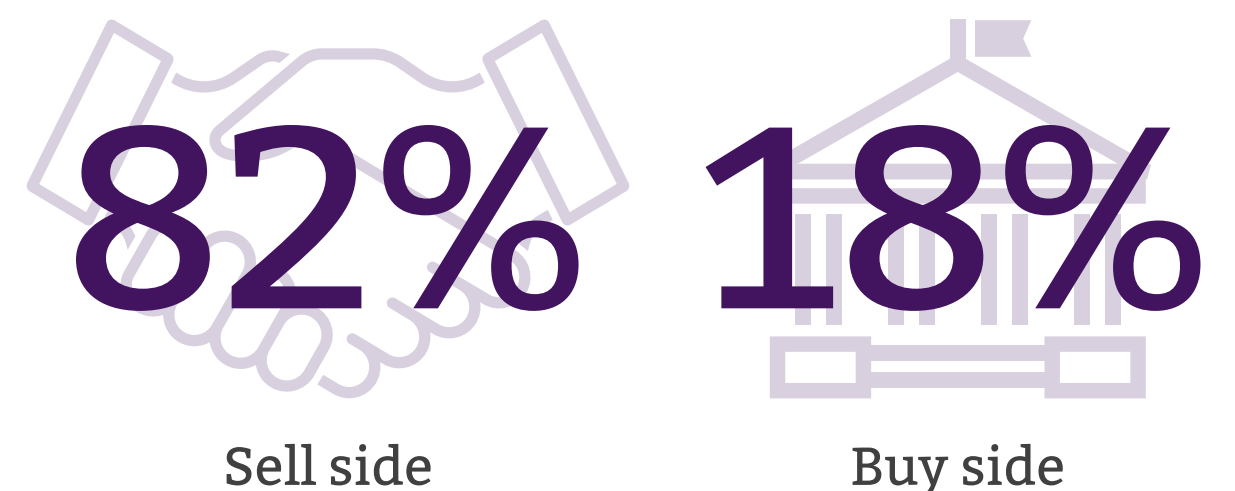
In 2021, we acted for the buy side on a significant majority of transactions (by value).

By 2022, the emphasis had shifted markedly to the sellside, perhaps reflecting a desire by market participants to achieve greater liquidity.

FLADGATE ACTED FOR (BY DEAL VALUE) 2021:



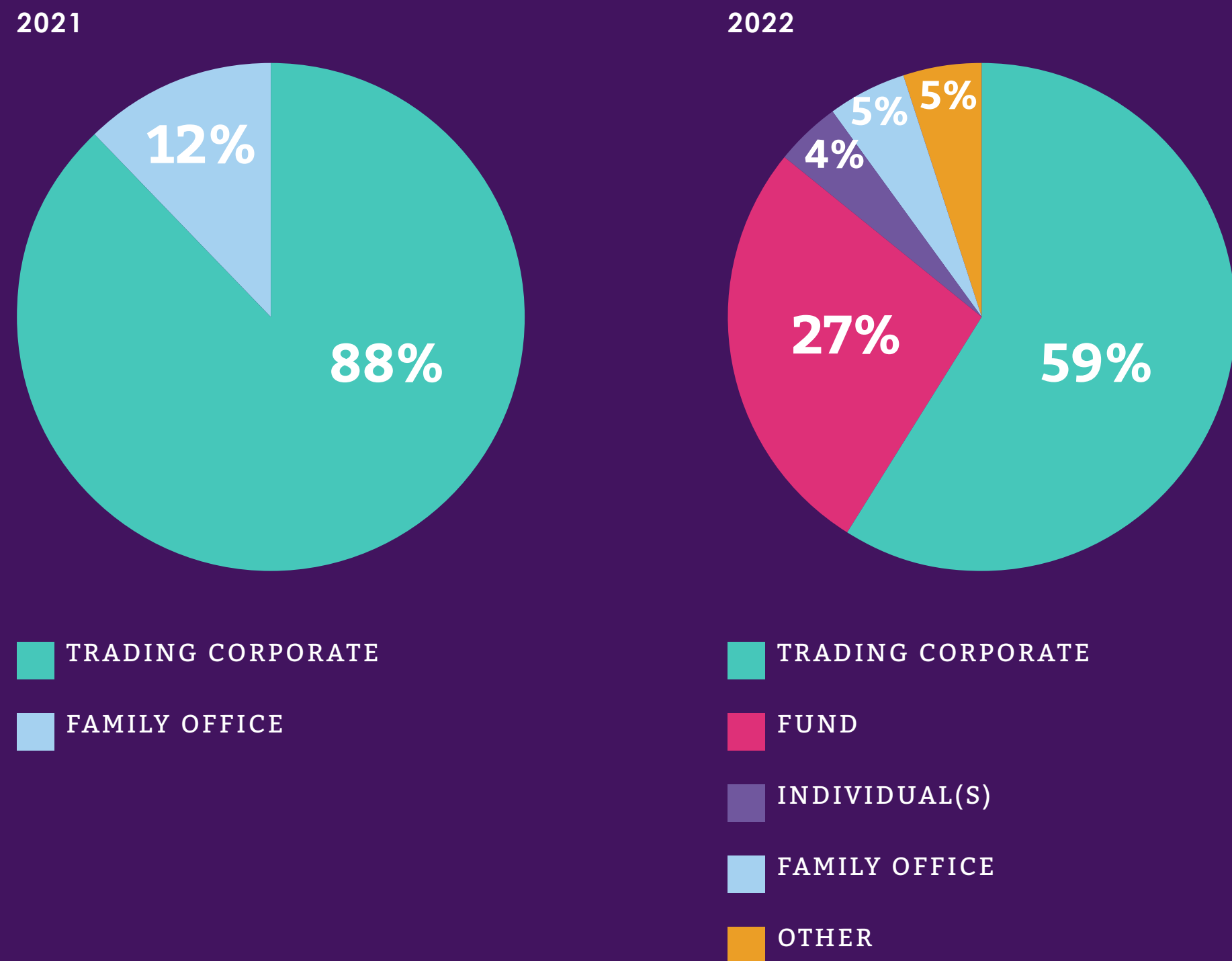
FLADGATE ACTED FOR (BY DEAL VALUE) 2022:



# 03 Buyer Profile

2022 saw a significant increase in the number of funds (as opposed to corporates) buying businesses, evidencing that funds were seeking to deploy their dry powder into new assets, as well as perhaps the changing nature of our own corporate practice.

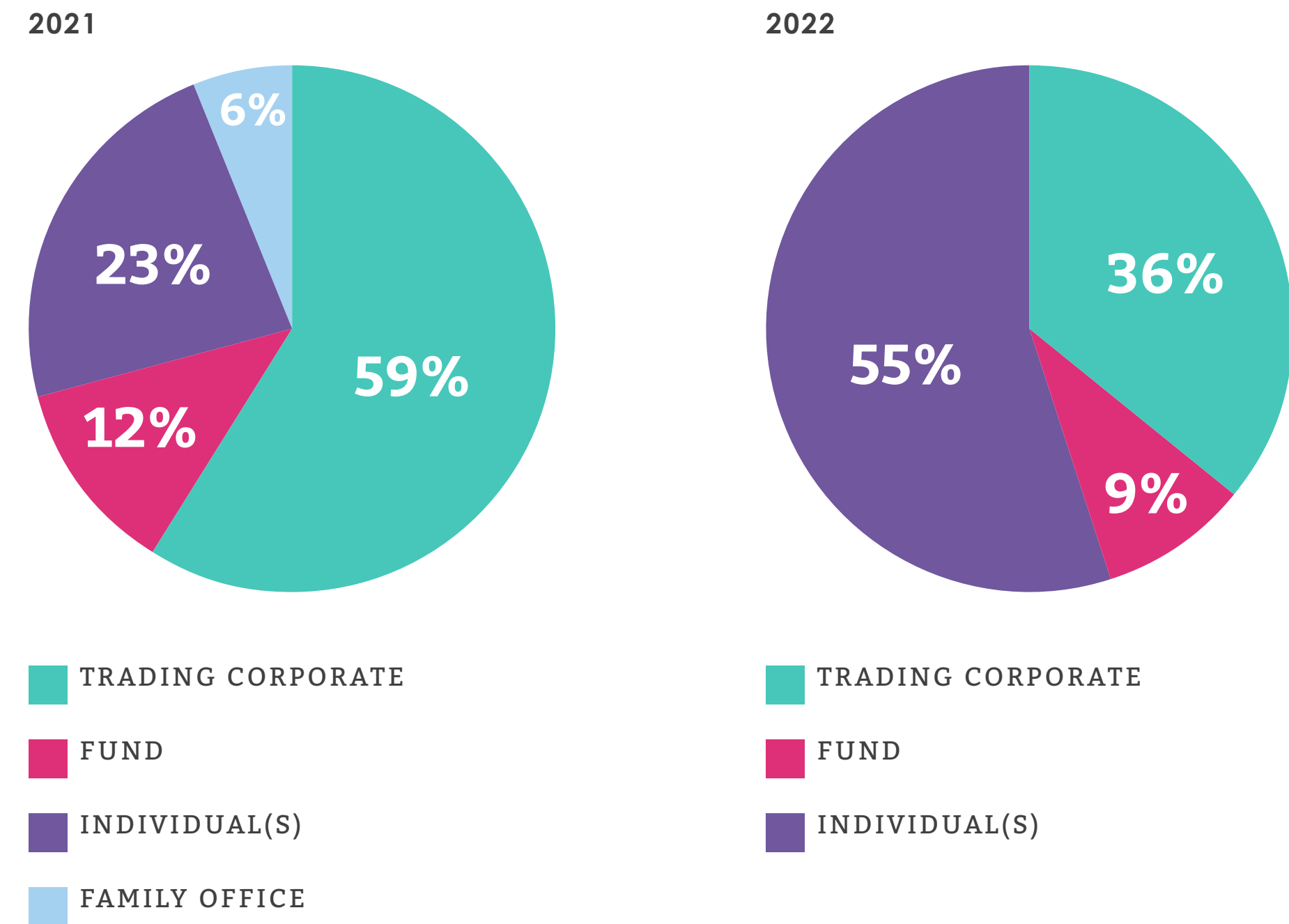
BUYER PROFILE BY DEAL VOLUME:



# 04 Seller Profile

By 2022, individuals represented a much higher percentage of sellers relative to 2021, supporting the thesis that individuals were seeking liquidity in anticipation of a tighter monetary environment.

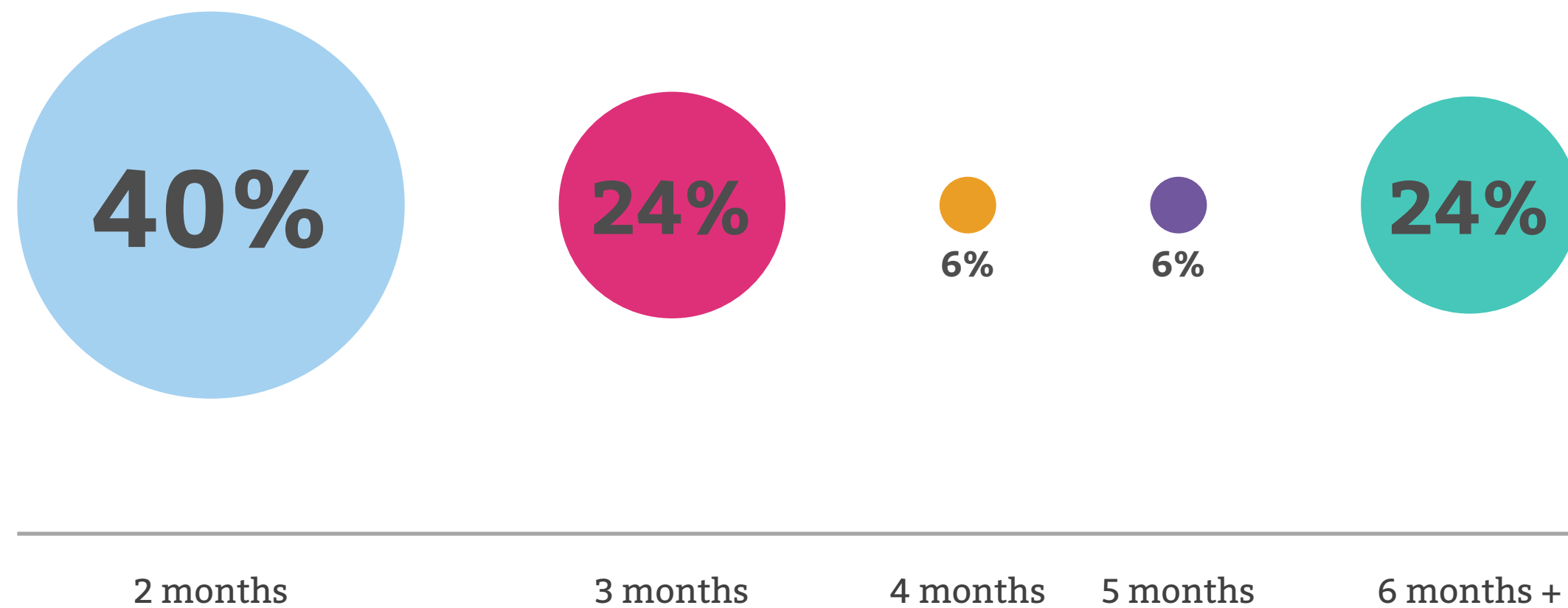
SELLER PROFILE BY DEAL VOLUME:



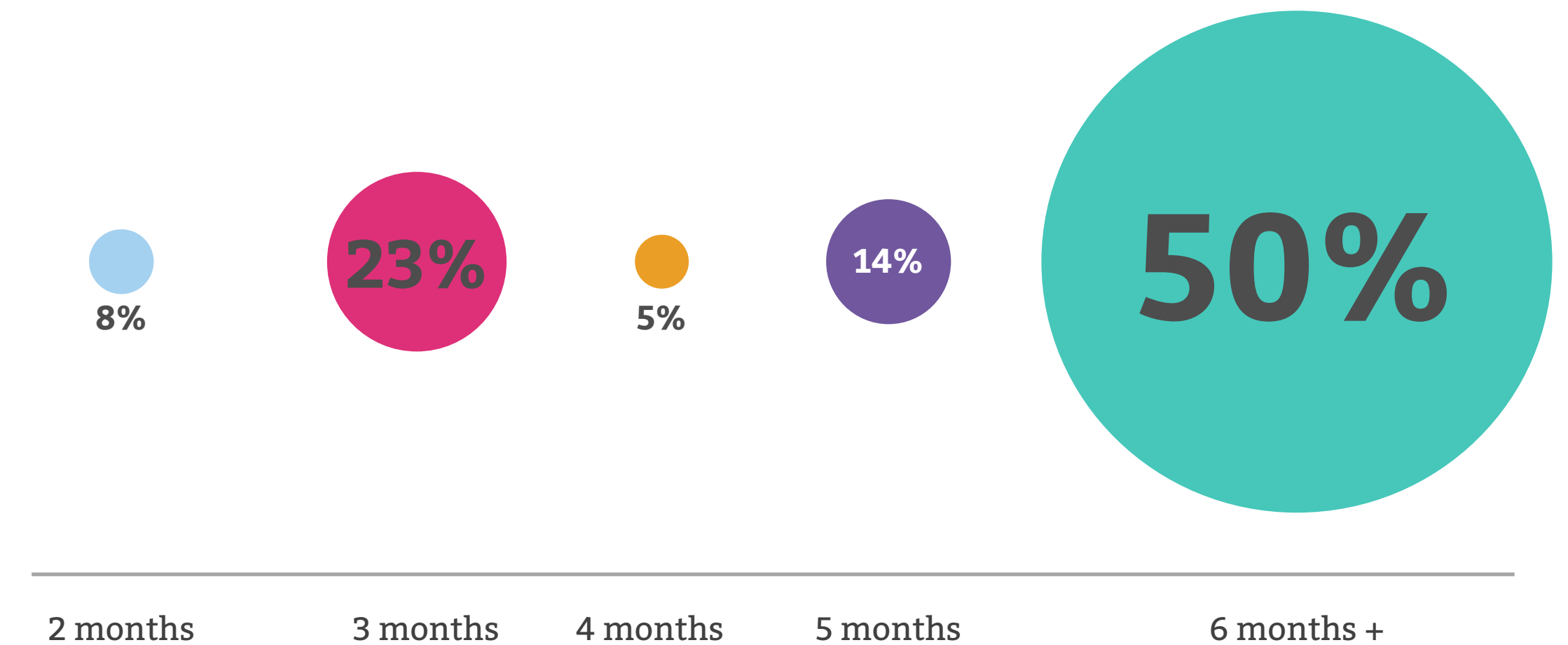
# 05 Time to closing

The percentage of transactions that took six months or more to close increased from 24% in 2021 to 50% in 2022. This could be because of increasingly complicated deal terms, financing becoming less available and/or more deals being subject to closing conditions.

TIME TO CLOSING FROM INITIAL INSTRUCTION (2021)



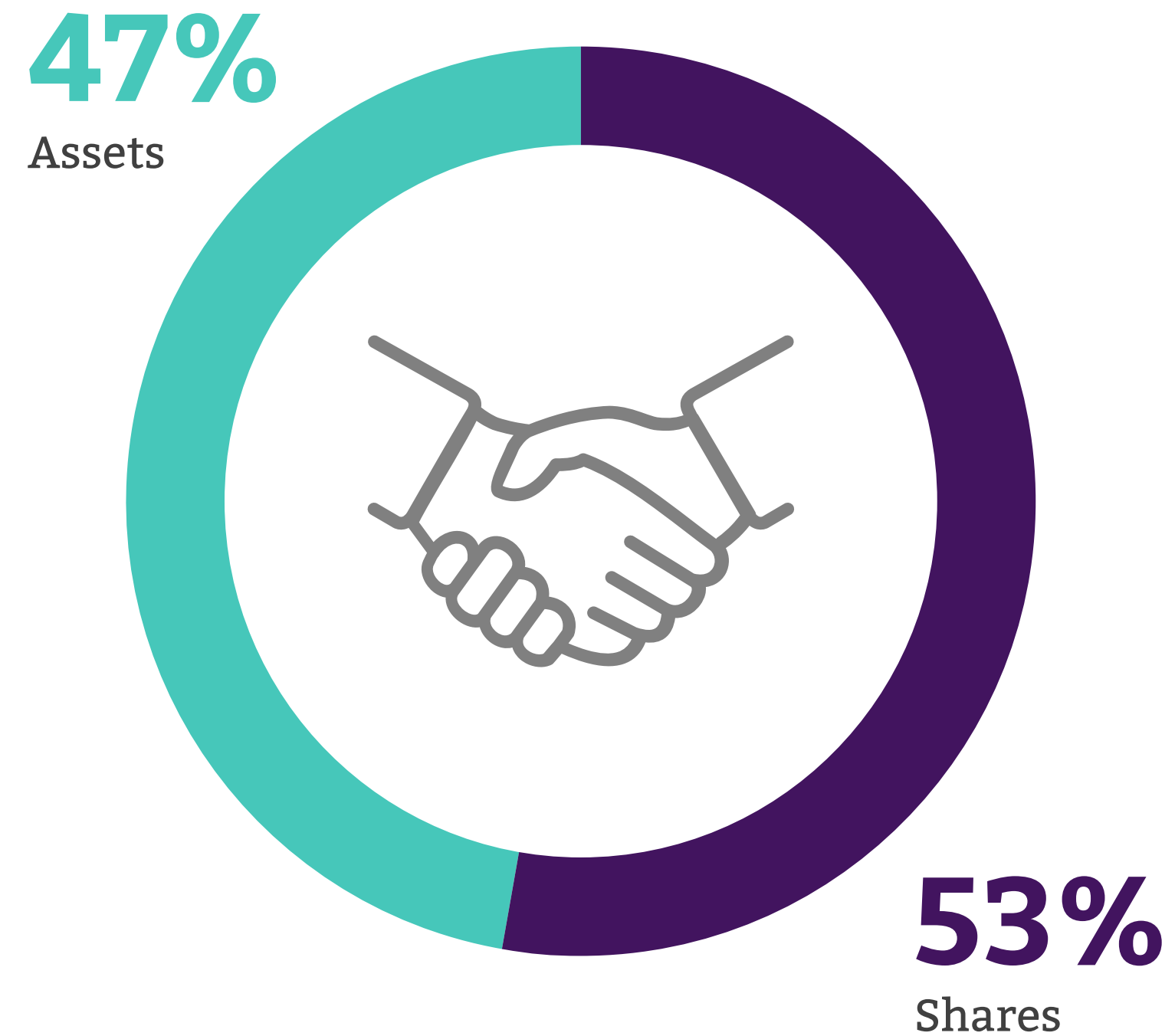
TIME TO CLOSING FROM INITIAL INSTRUCTION (2022)



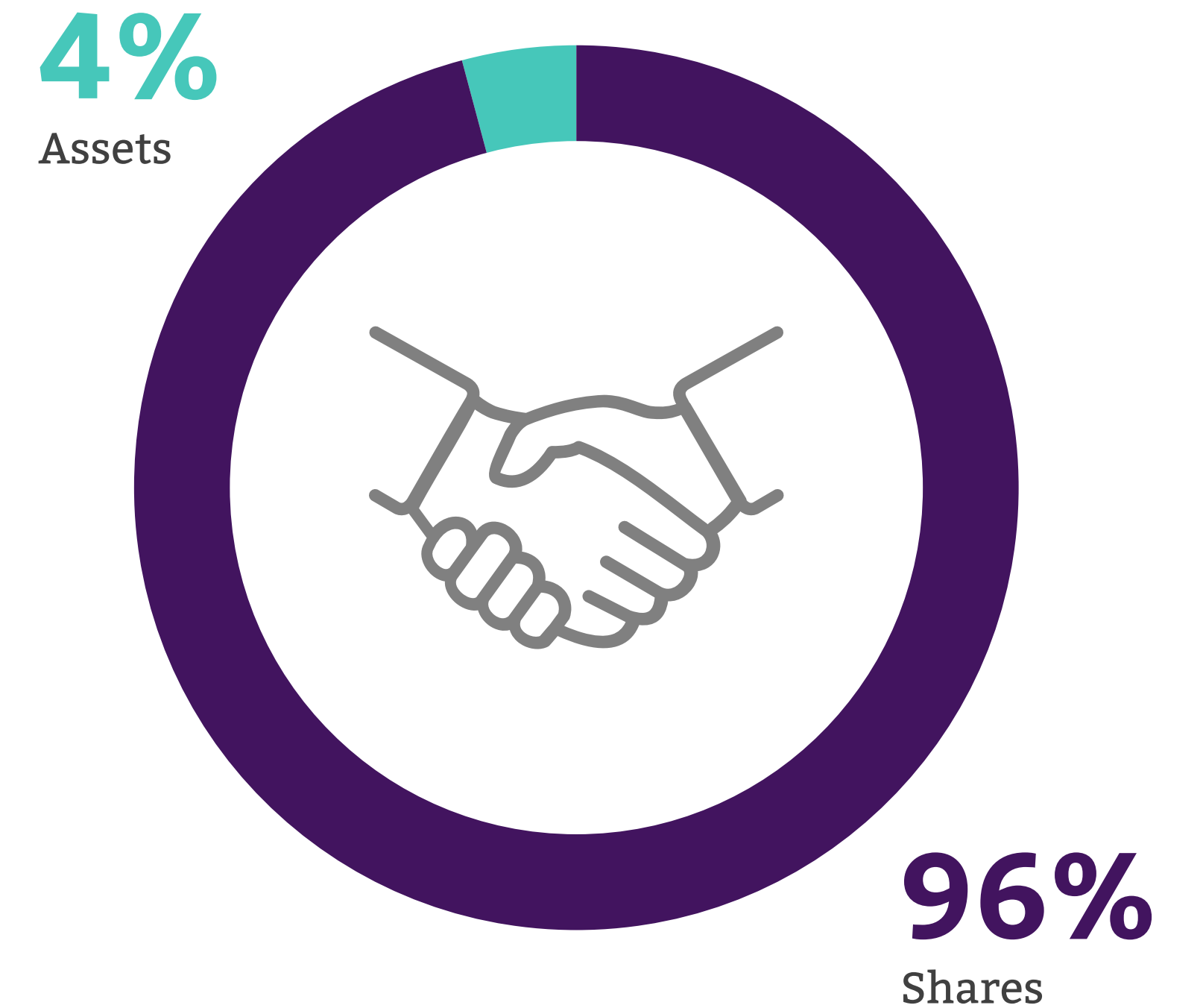
# 06 Share v Asset Transactions

The percentage of transactions structured as share as opposed to asset transactions increased from 53% in 2021 to 96% in 2022.

ACQUISITION OF SHARES OR ASSETS (2021)



ACQUISITION OF SHARES OR ASSETS (2022)



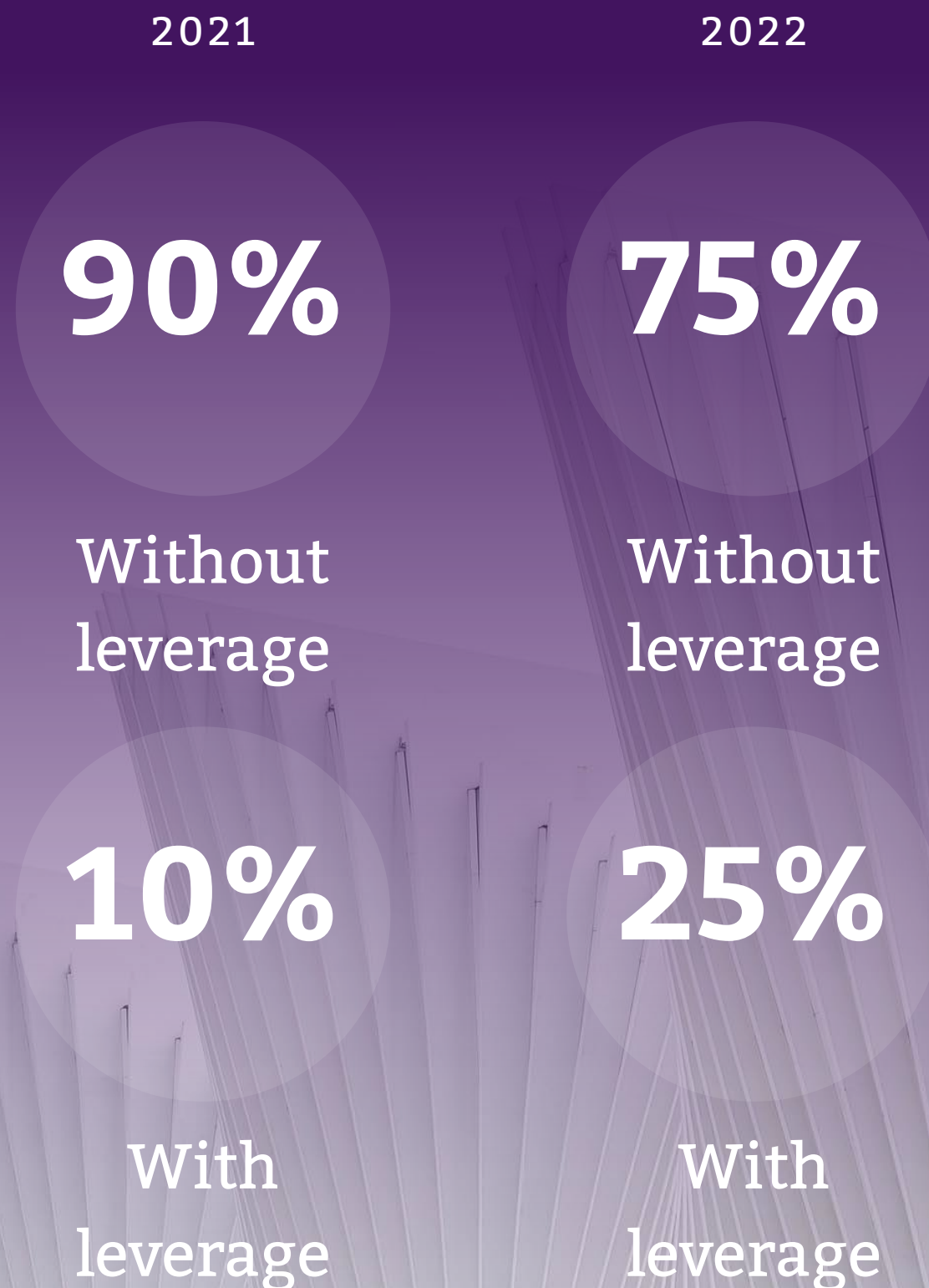


# 07 Leverage

Most deals were not initially financed by third party leverage, both in 2021 (90%) and in 2022 (75%).

This demonstrates high levels of liquidity, but also perhaps an increasing recognition and acceptance of a higher interest rate environment.

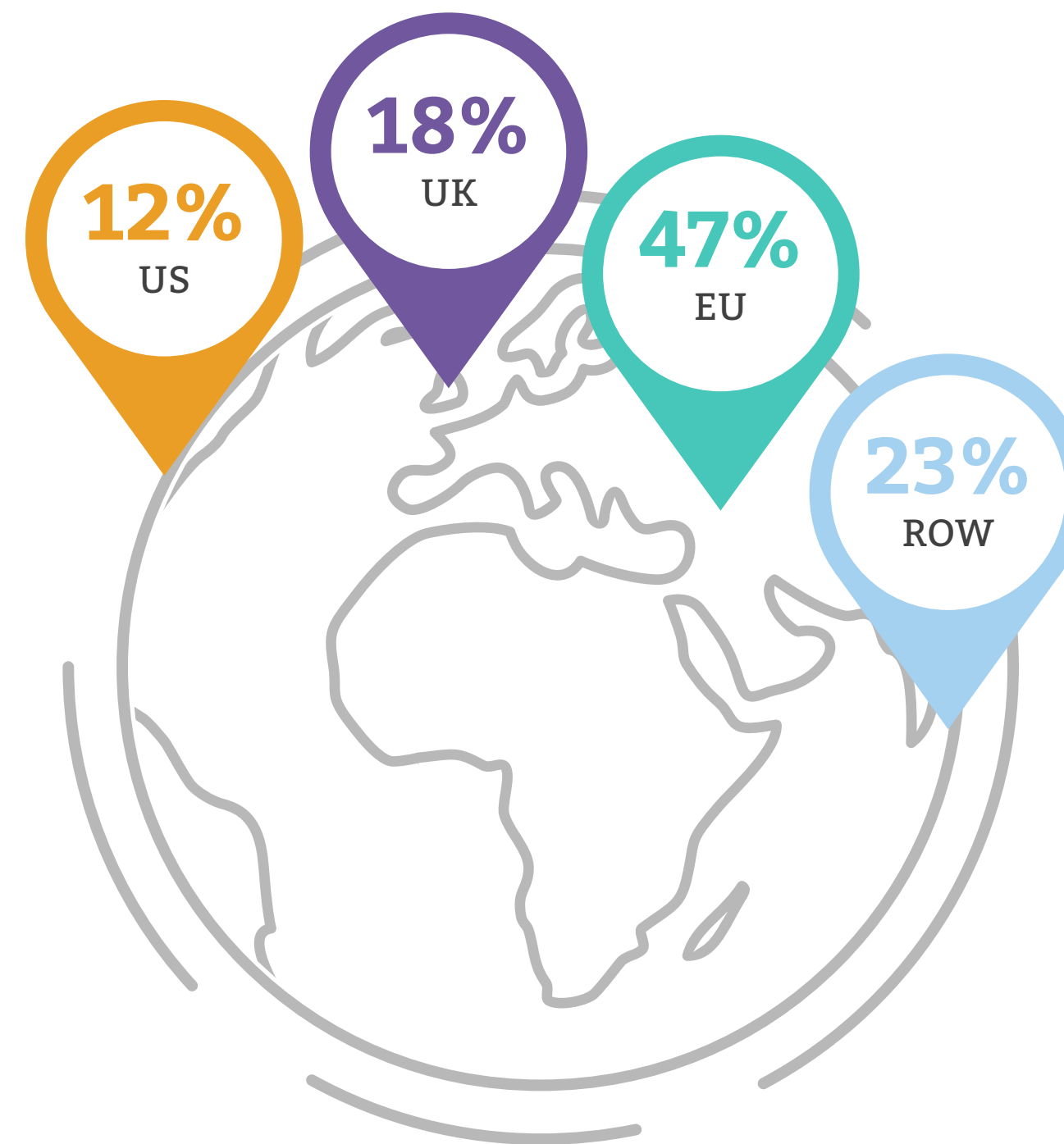
PERCENTAGE OF DEALS WITH THIRD PARTY LEVERAGE 2021 v 2022



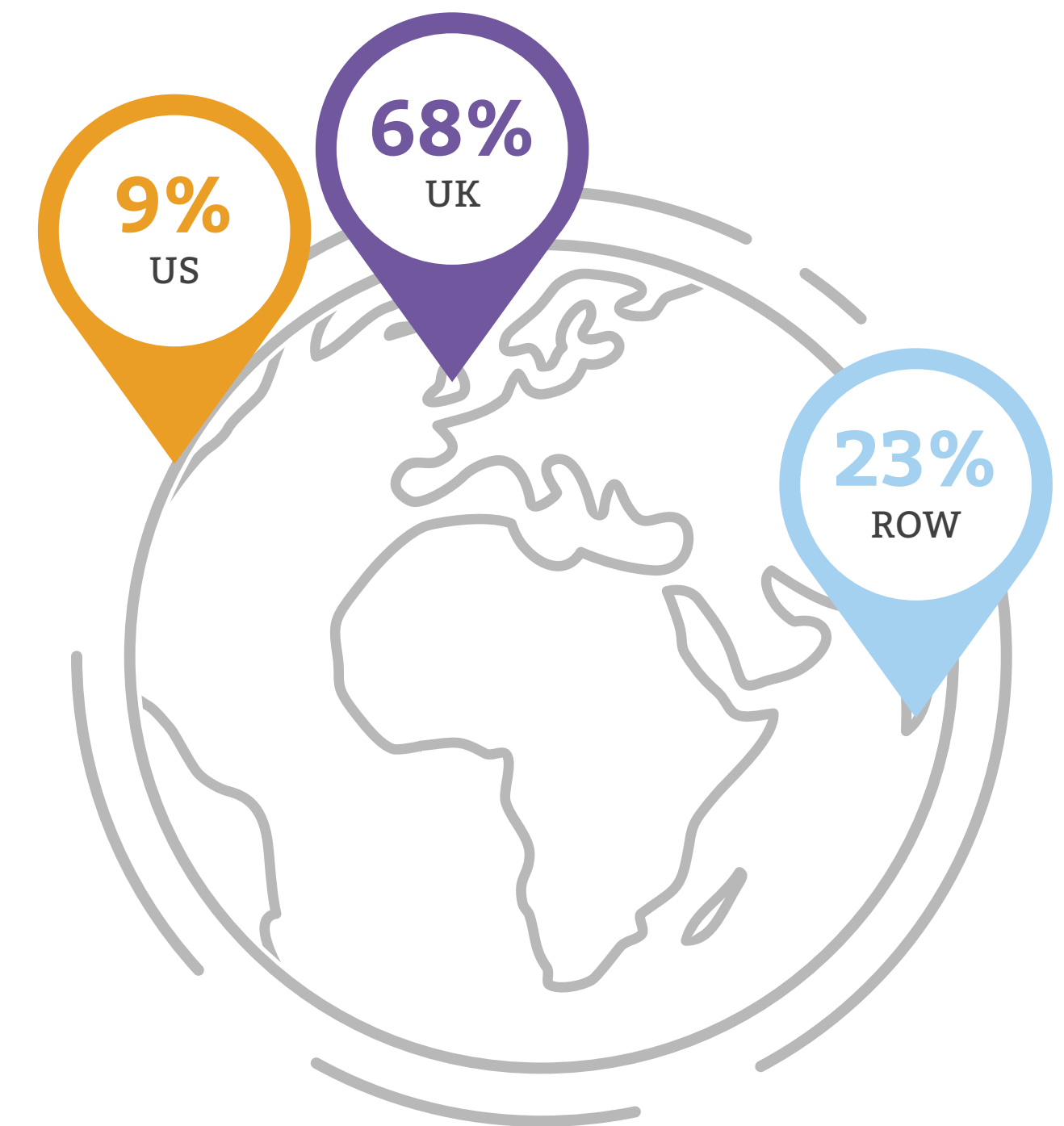
# 08 Geographic location of buyers

Buyers were much more internationally spread in 2021 than in 2022, which is not unsurprising given the macro-economic instability the UK was exposed to during 2022.

GEOGRAPHY: LOCATION OF BUYER 2021



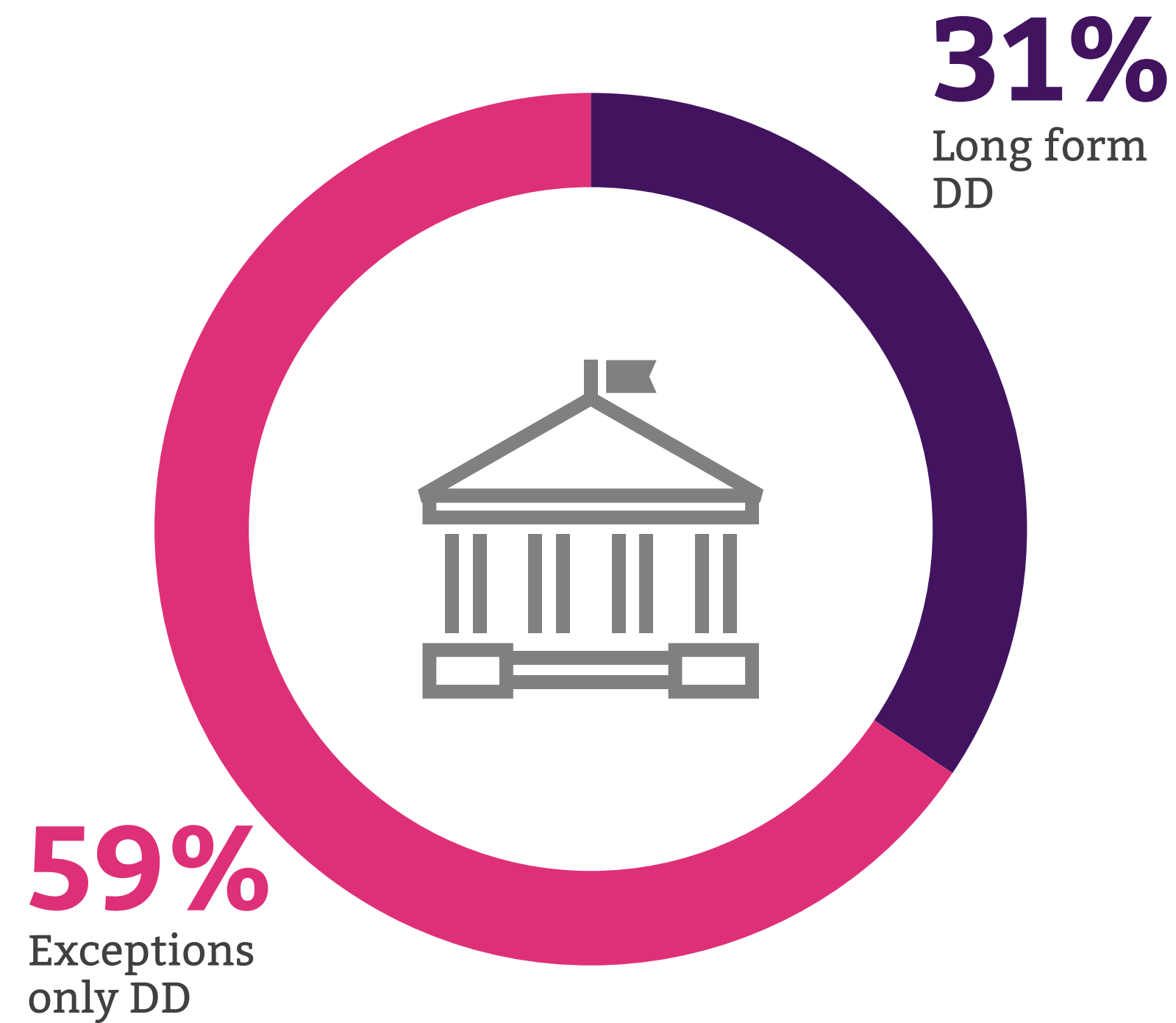
GEOGRAPHY: LOCATION OF BUYER 2022



# 09 Type of Legal Due Diligence

2022 saw a total absence of “long form” legal due diligence reports (as opposed to “exceptions only” reports), which suggests clients are attempting to approach the legal due diligence process more forensically and efficiently.

IF ACTING FOR THE BUYER, LONG FORM OR EXCEPTIONS ONLY LEGAL DUE DILIGENCE (2021):



IF ACTING FOR THE BUYER, LONG FORM OR EXCEPTIONS ONLY LEGAL DUE DILIGENCE (2022):



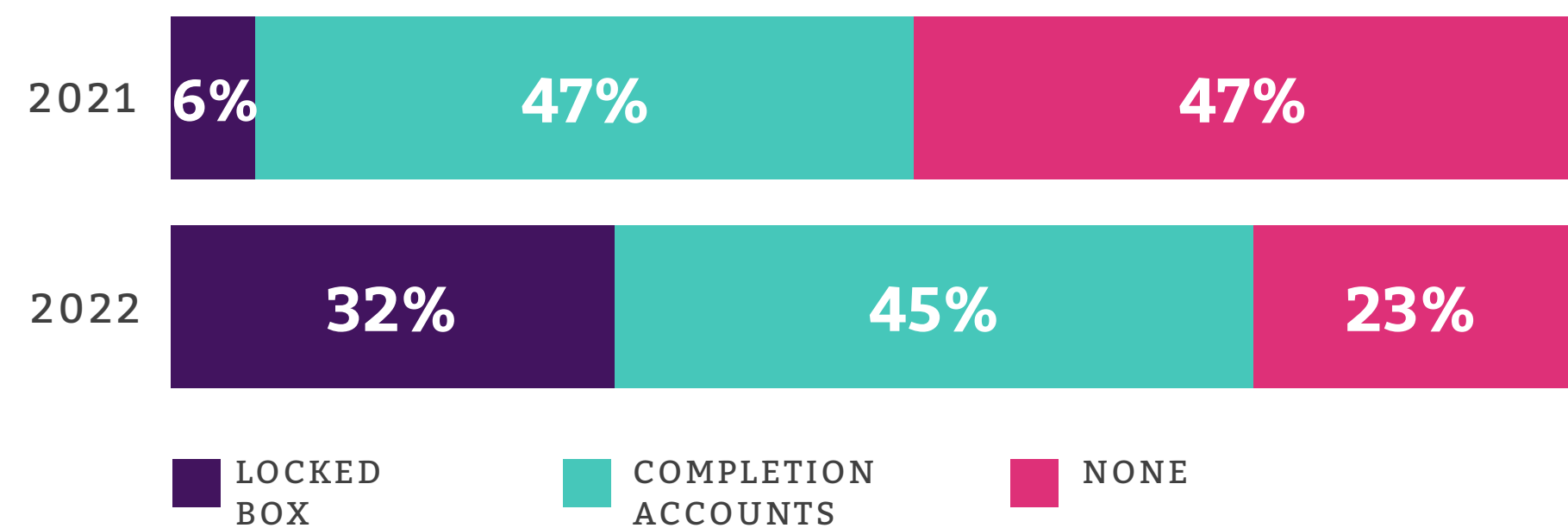


# 10 Price adjustment mechanisms

# 11 Earnout (by total number of deals)

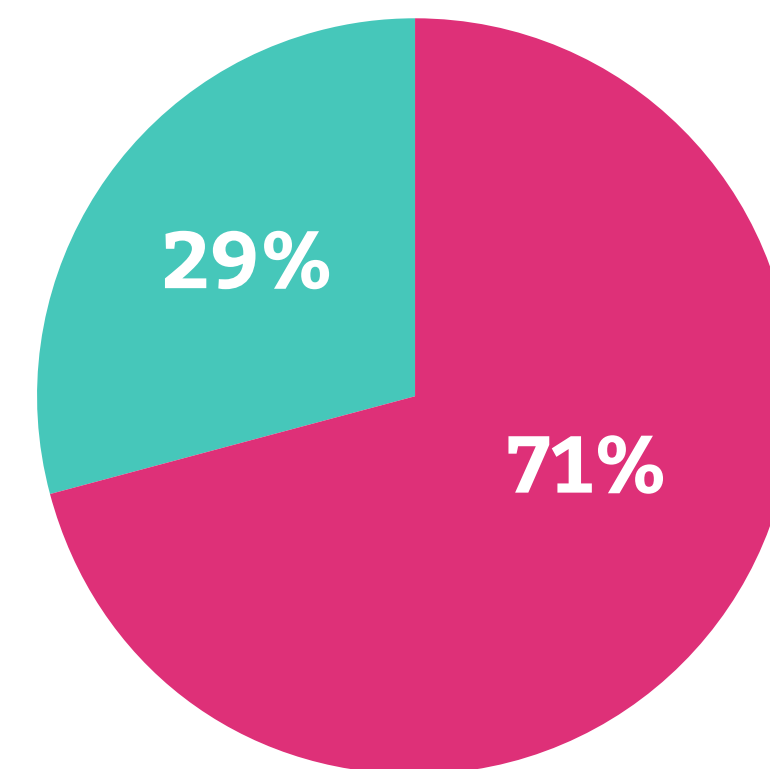
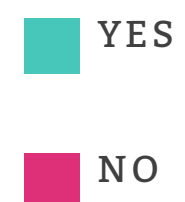
In 2022, there was a definitive shift towards locked box mechanisms as opposed to completion accounts mechanisms.

PRICE ADJUSTMENT MECHANISMS  
2021 V 2022

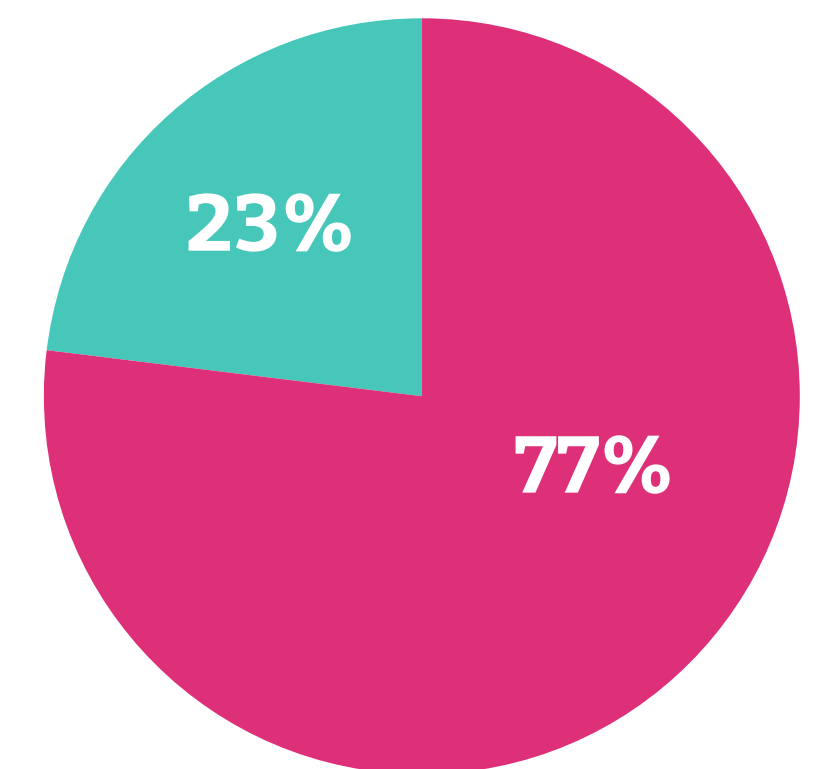
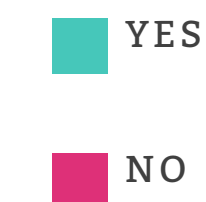


2021 and 2022 were similar in terms of the number of transactions that featured an earn-out.

2021



2022

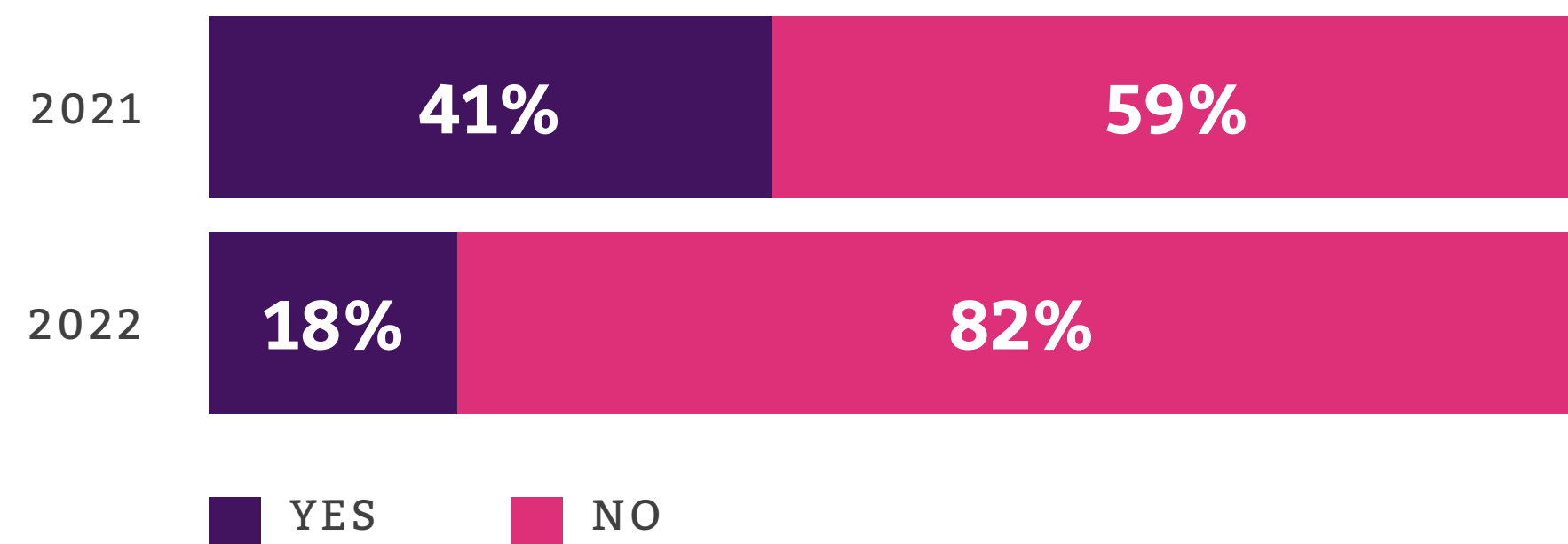




# 12 Split Exchange and Completion

41% of transactions in 2021 featured a split exchange and completion. This fell to 18% in 2022.

## SPLIT AND EXCHANGE COMPLETION?

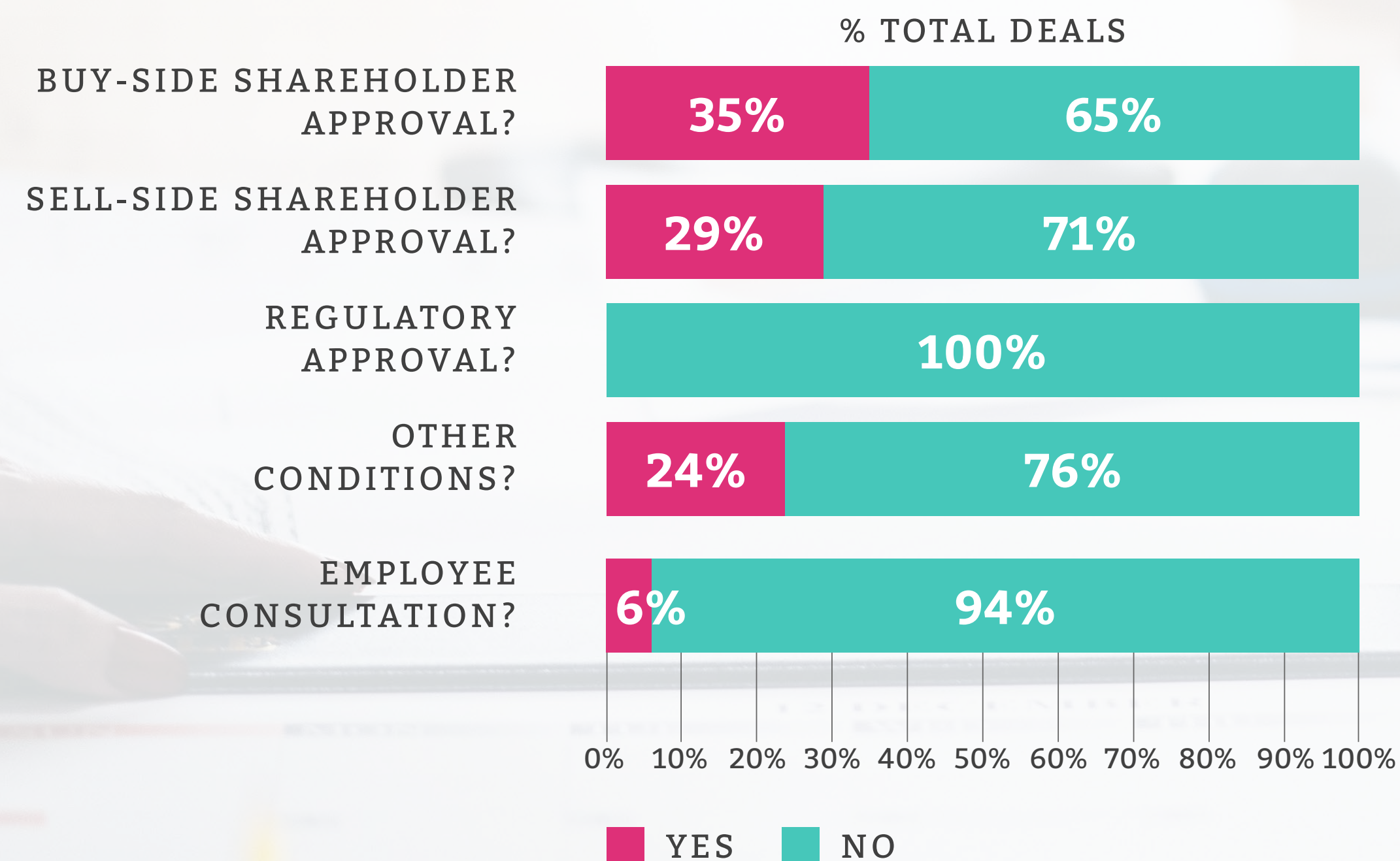




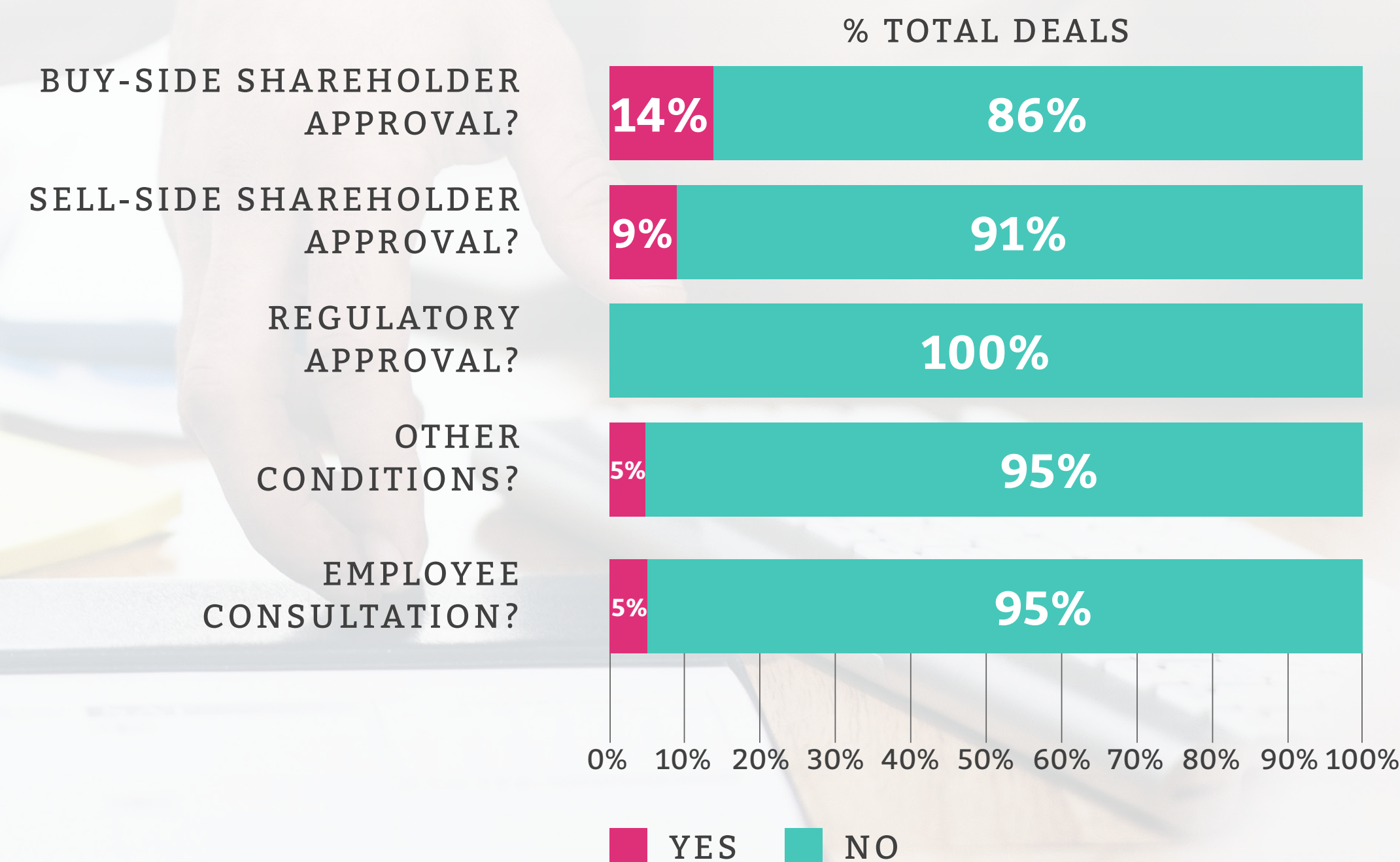
# 13 Conditions to completion

Ultimately, it is difficult to discern any specific trends from these charts. Conditions to closing will be different for each transaction, and will be a function of the terms of each deal and specific legal requirements. Going forward, it is likely more deals will become conditional on the appropriate waivers being granted pursuant to the new UK National Security and Investment Act, noting also that there is no carve out under this new legislation for intra-group reorganisations.

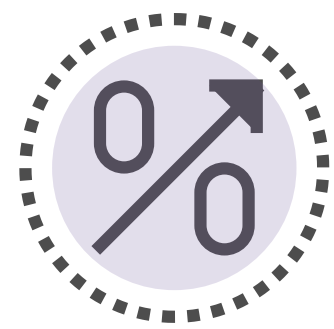
CONDITIONS TO COMPLETION: 2021



CONDITIONS TO COMPLETION: 2022



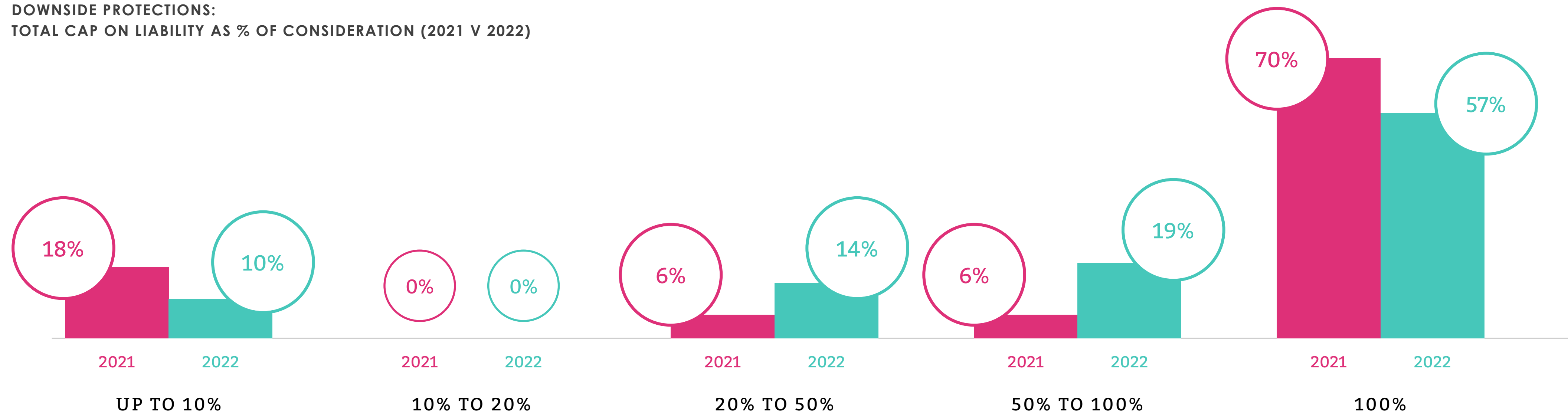
# 14 Liability caps for warranty claims



Caps on liability continue to trend upwards, which suggests buyers are gaining the upper hand in negotiations. Across both 2021 and 2022, the majority of deals featured a cap on liability for warranty claims equal to 100% of the consideration.

In prior years, we have seen caps set at below 100%.

**DOWNSIDE PROTECTIONS:**  
TOTAL CAP ON LIABILITY AS % OF CONSIDERATION (2021 V 2022)



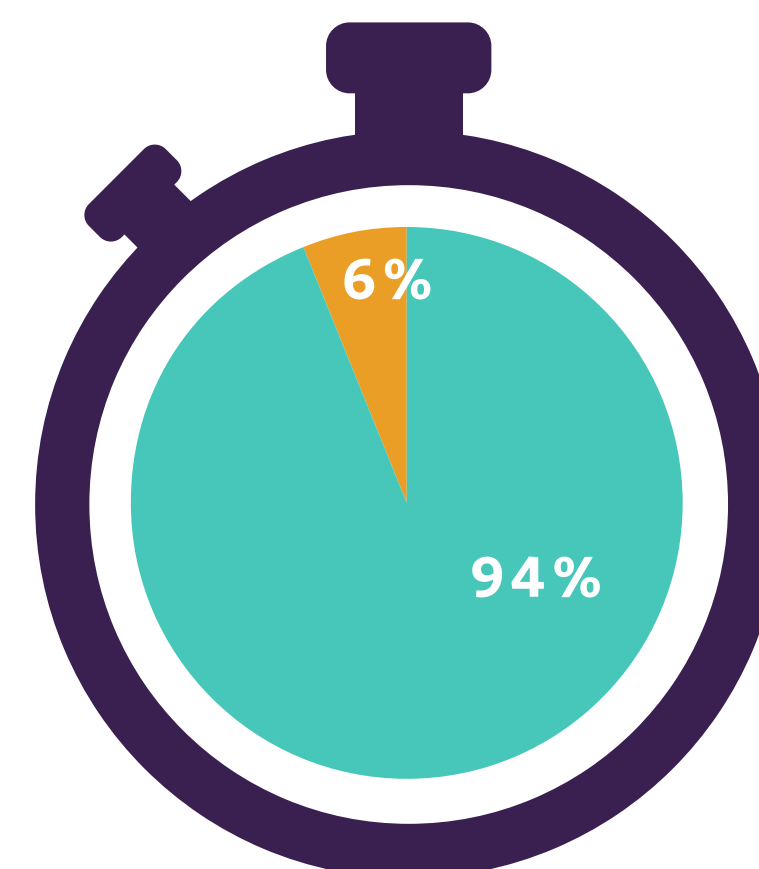


# 15 Time limits for warranty claims

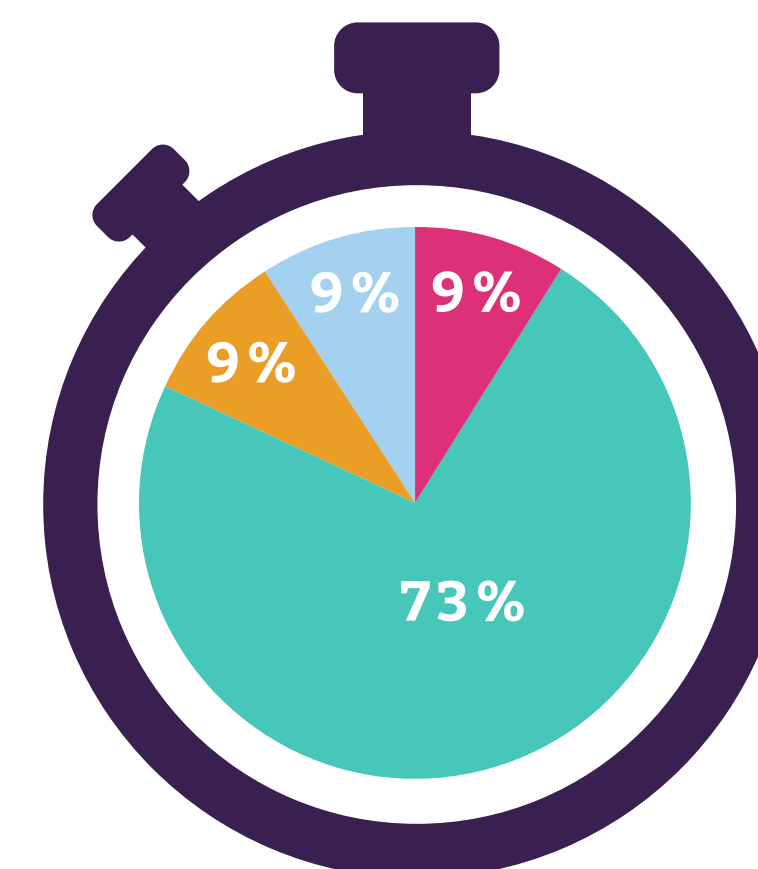
For both 2021 and 2022, the vast majority of deals featured a two year time limit for non-tax warranty claims.

DOWNSIDE PROTECTIONS: TIME LIMIT FOR NON-TAX WARRANTIES (2021 V 2022)

■ ONE YEAR   
 ■ TWO YEARS   
 ■ ONE YEAR'S ACCOUNTS   
 ■ TWO YEAR'S ACCOUNTS



2021



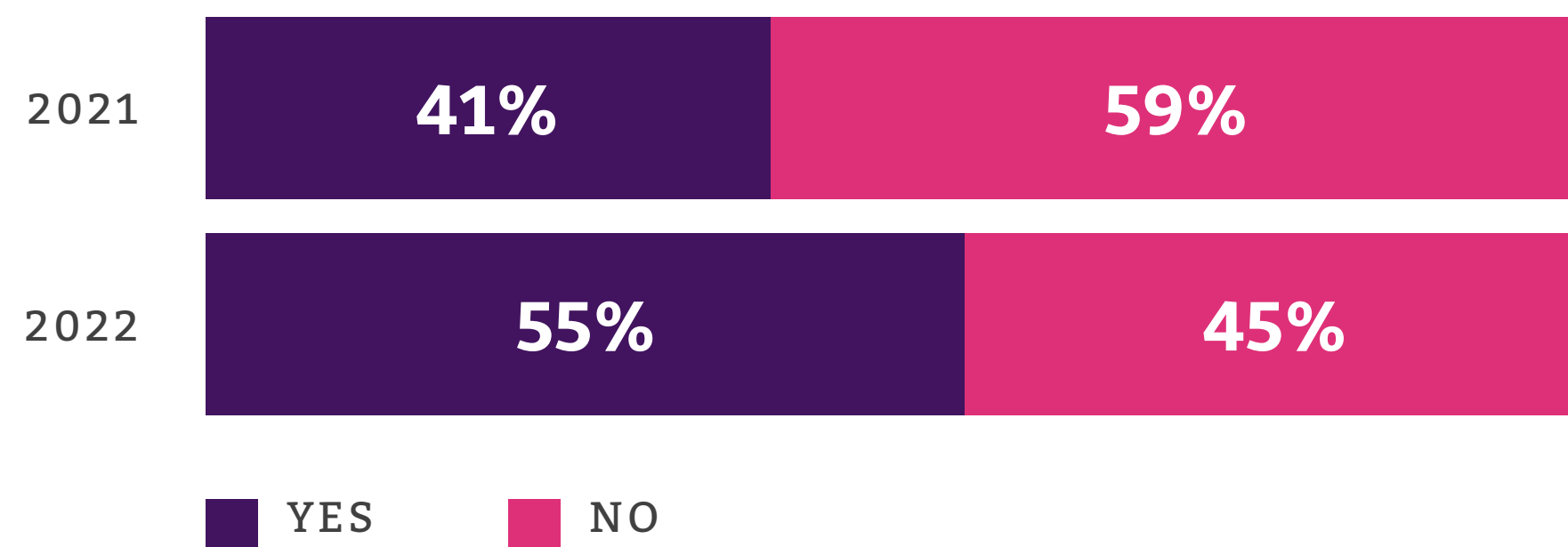
2022



# 16 Non-Tax Indemnities

Unlike previous years, there was an increase in deals where the seller gave non-tax related indemnities (as opposed to warranties) to the buyer, with the percentage of such deals increasing from 41% in 2021 to 55% in 2022.

DOWNSIDE PROTECTIONS: NON-TAX INDEMNITIES FROM THE SELLER (2021 V 2022)

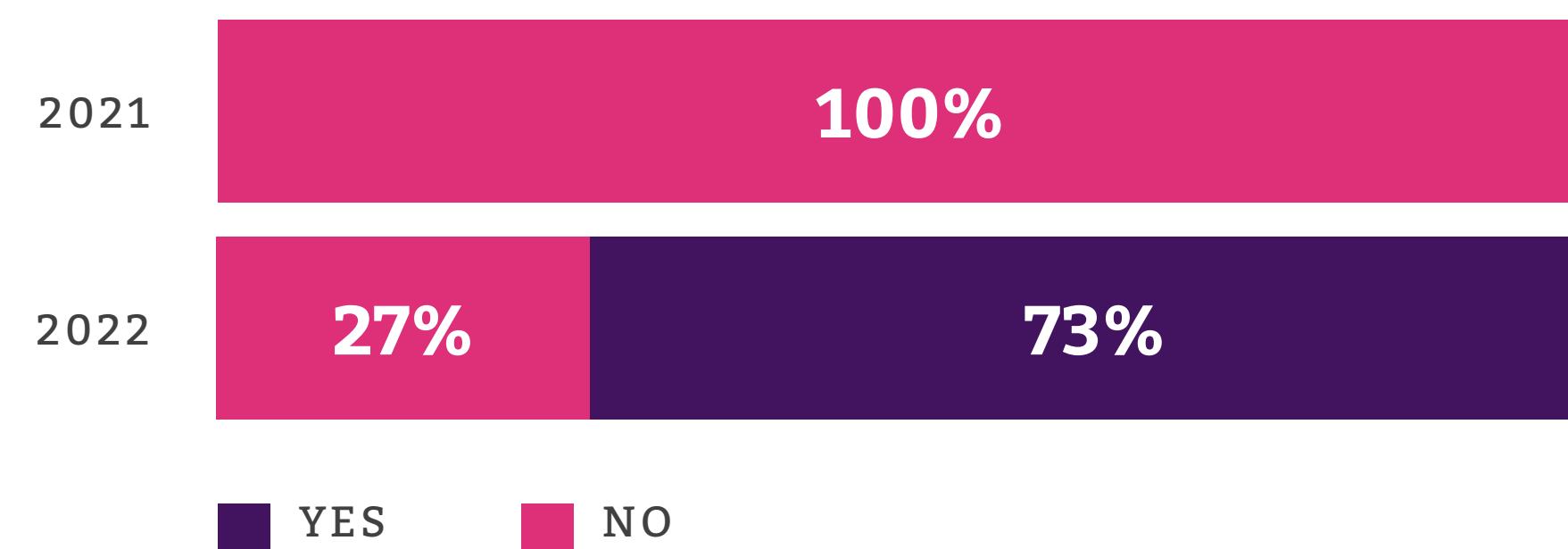




# 17 Escrow Mechanisms

2022 saw a significant increase in the number of transactions where a proportion of the consideration was escrowed on closing.

ESCROW OF CONSIDERATION:

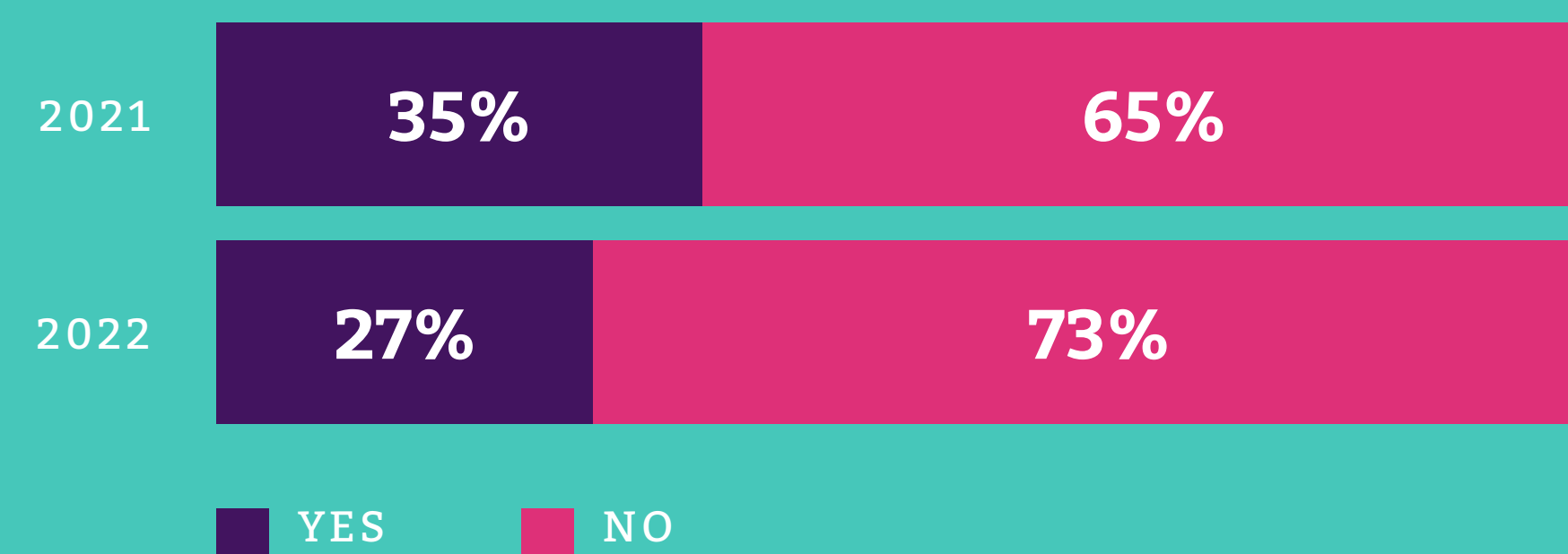




# 18 Warranty and indemnity insurance

Between 2021 and 2022, there was no significant change in the proportion of transactions that featured a warranty and indemnity insurance policy.

DOWNSIDE PROTECTIONS: W&I POLICY ON DEAL (2021 V 2022)





# 19 Tax

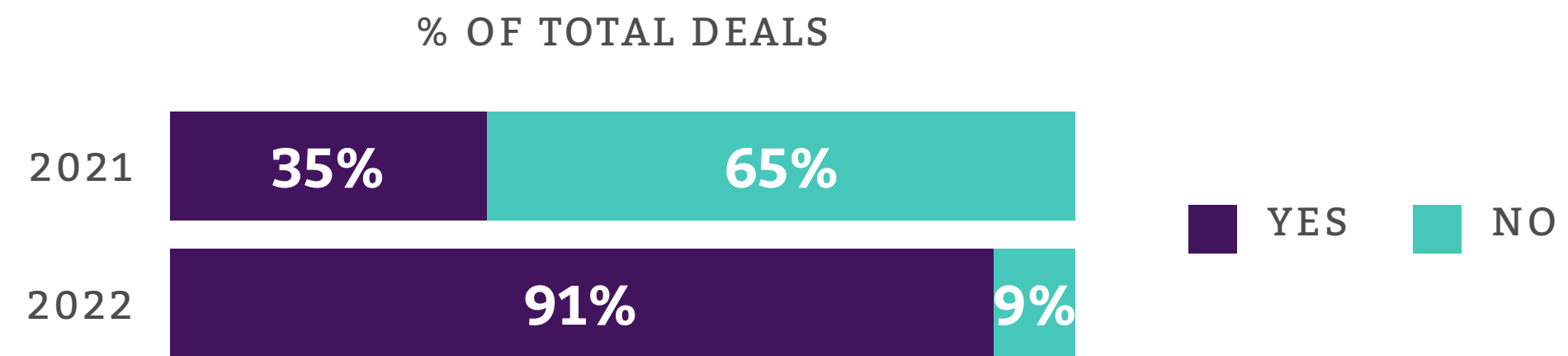


Tax deeds from the seller in respect of pre-closing tax liabilities noticeably increased from 35% of deals in 2021 to 91% of deals in 2022.

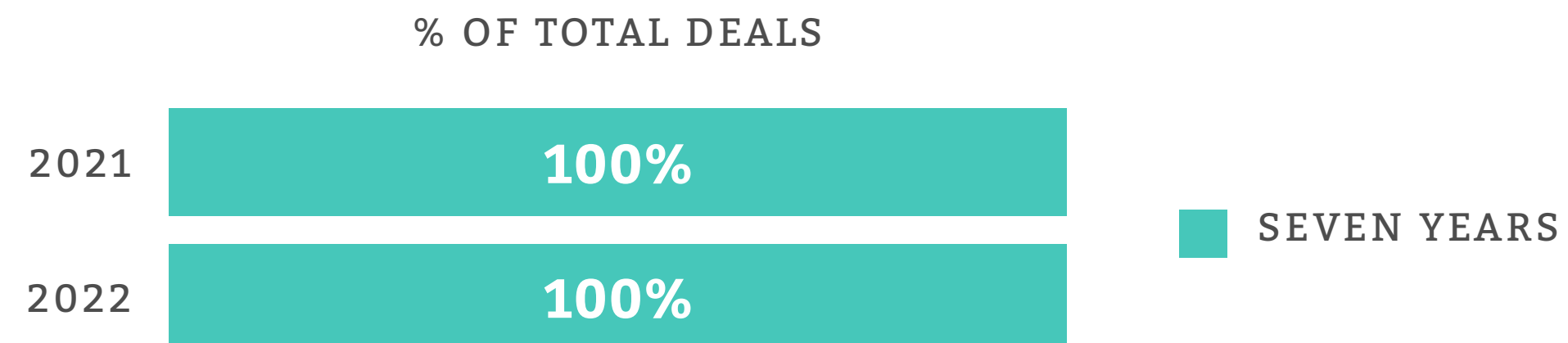
Over the same period, the seven year tax period for bringing tax claims bringing tax claims was a feature on all transactions.

Tax covenants from the buyer to the seller increased from 6% of transactions in 2021 to 23% of transactions in 2022.

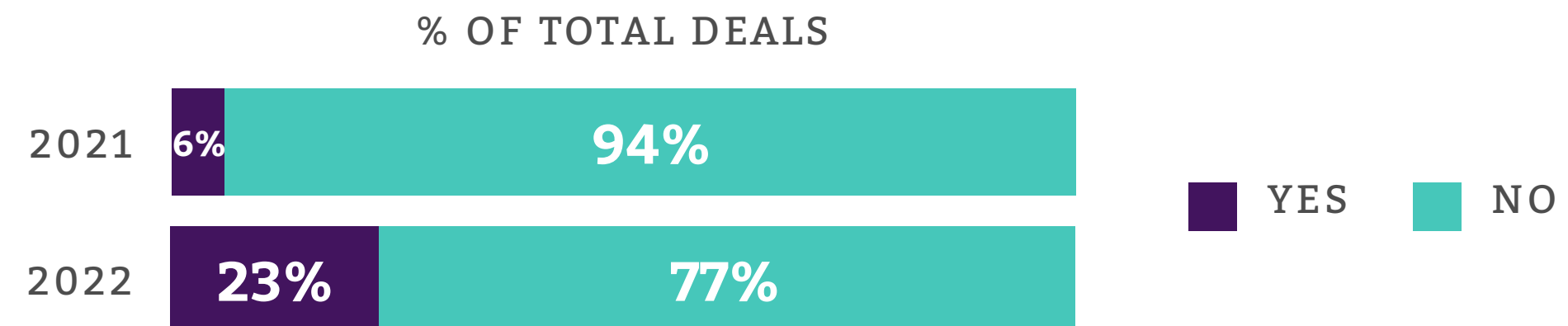
IS THERE A TAX DEED? (2021 V 2022)



TIME LIMIT FOR CLAIMS UNDER TAX DEED (2021 V 2022)



COVENANT FROM BUYER (2021 V 2022)

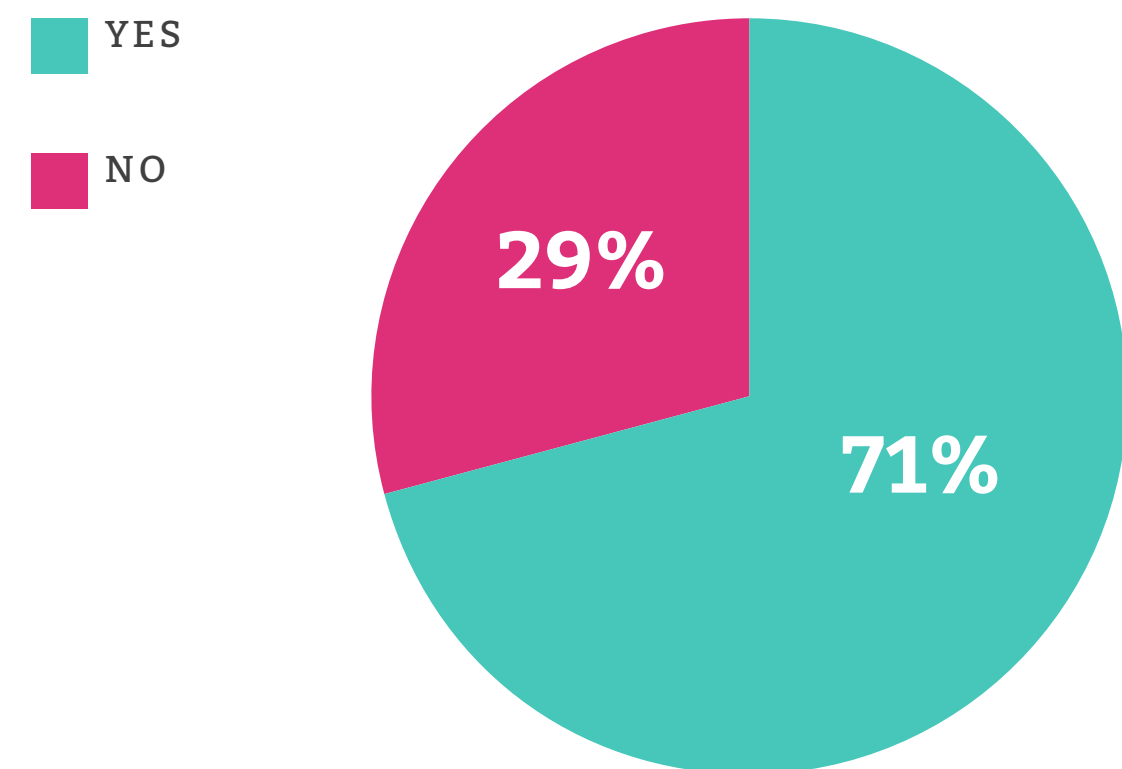




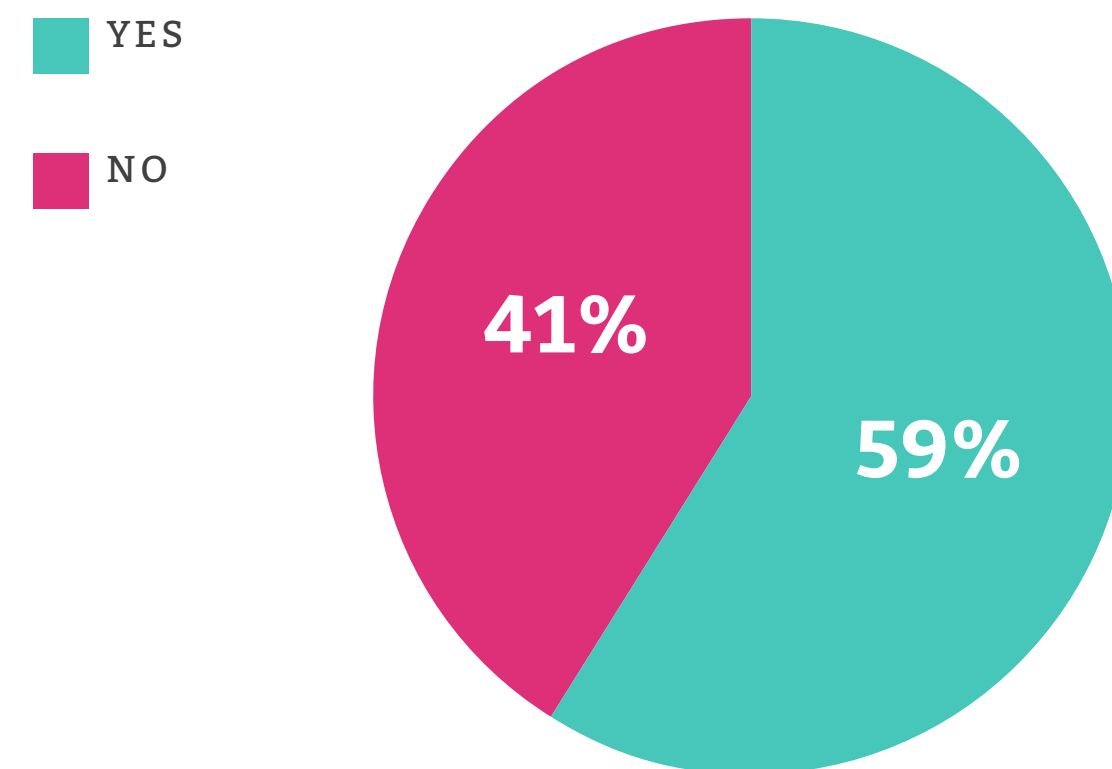
# 20 Restrictive covenants on sellers

Transactions which featured restrictive covenants on the selling shareholders marginally reduced from 71% of transactions in 2021 to 59% of transactions in 2022.

RESTRICTIVE COVENANTS ON SELLERS (2021):

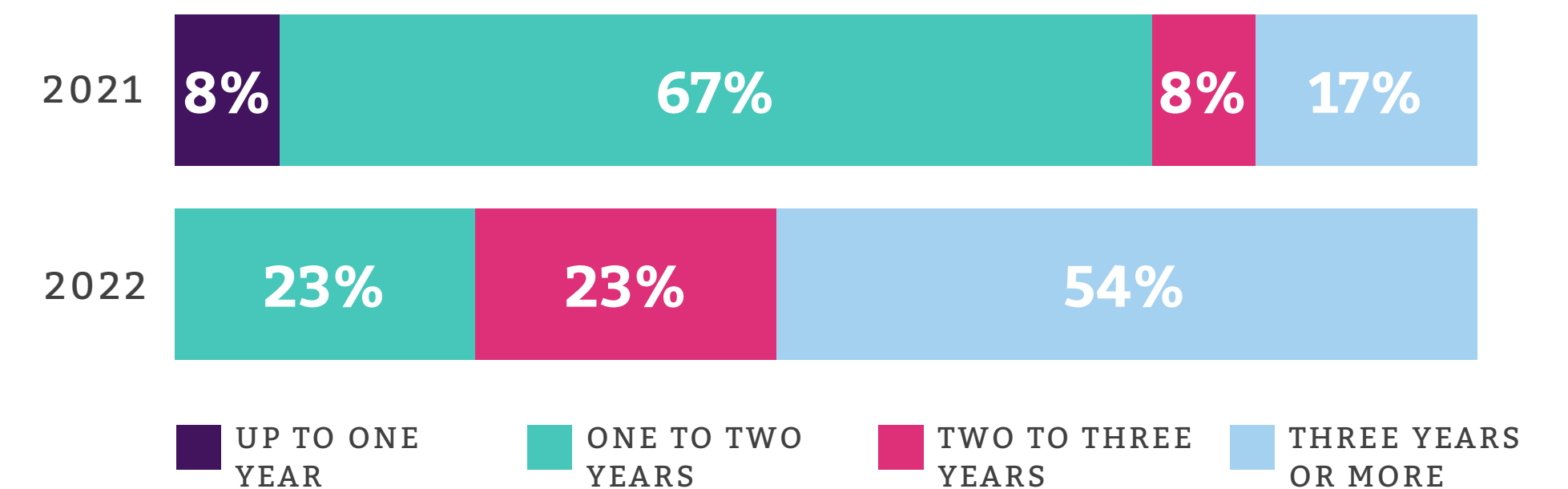


RESTRICTIVE COVENANTS ON SELLERS (2022):



However, the duration of restrictive covenants increased, with over half of deals in 2022 featuring a restrictive covenant duration of three years or more.

DURATION (BY TOTAL NUMBER OF DEALS)





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