5th Annual Fasken PIPE Deal Point Study

JULY 2024

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This is Fasken's fifth annual Canadian PIPE Deal Point Study and covers transactions completed in 2023.

Private investment in public equity ("**PIPE**") transactions can be distinguished from a typical private placement through: (i) the number of investors (a PIPE transaction will involve only a single or small group of investors); (ii) the percentage of the public company acquired (in a PIPE transaction, a meaningful percentage of the issuing company's securities will be acquired); and (iii) the presence of certain additional bespoke features (such as negotiated shareholder rights).[1]

This edition focuses on PIPE transactions completed in the 2023 calendar year in Canada, compares the results with those seen in the past four years, and looks ahead to what we may expect in 2024.

1 The U.S. Securities Exchange Commission defines a PIPE as "any private placement of securities of an already-public company that is made to selected accredited investors (usually to selected institutional accredited investors) wherein investors enter into a purchase agreement committing them to purchase securities and, usually, requiring the issuer to provide certain negotiated rights to the investor(s) beyond those that come with ownership of the securities issued.

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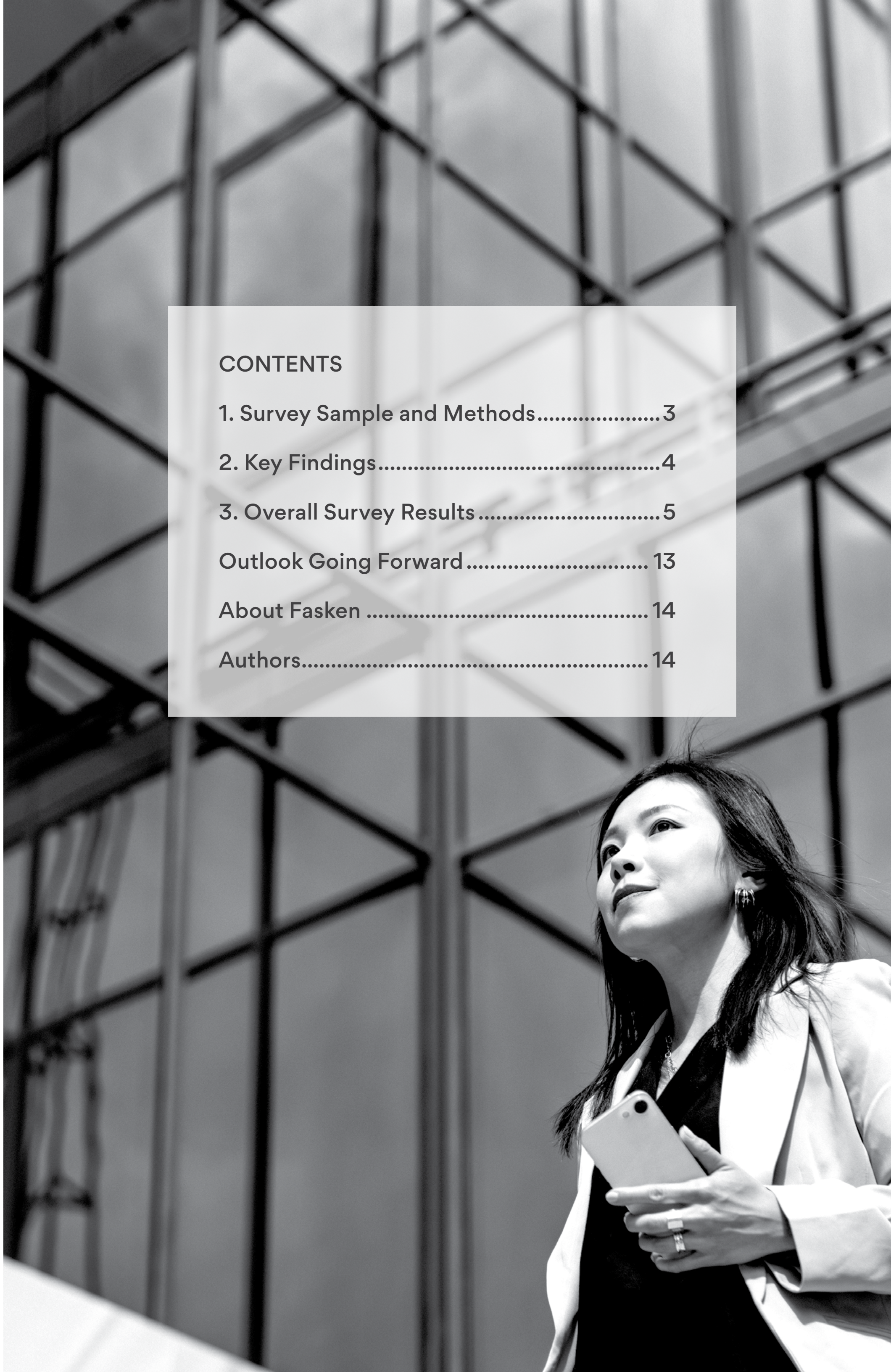

CONTENTS

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1. Survey Sample and Methods

Fasken reviewed PIPE transactions greater than $10 million in value and whose deal details are publicly available.[2] This sample consisted of 17 deals (the "**2023 Sample**"). For each deal, transaction documentation was sourced from the System for Electronic Document Analysis and Retrieval+ (SEDAR+).[3]

Each deal within the 2023 Sample was reviewed for:

(1) Basic characteristics of the target, the investor(s) and the deal (including market capitalization of the target, industry and transaction amount)

(2) Attributes of the acquired securities

(3) Any investor and issuer rights granted

More specifically, we analyzed the following investor and issuer rights:

Redemption Rights at the Option of the Issuer or the Investor	Whether the securities issued could be redeemed at the option of the issuer or the investor, including when such securities could be redeemed.
Anti-Dilution/ Pre-Emptive Rights	Whether pre-emptive purchase rights or other types of anti-dilution rights were granted to the investor. Pre-emptive purchase rights generally include the right to purchase additional securities of the issuer in order to maintain the investor's pro rata ownership of the issuer.
Board Rights	Whether the investor was granted any board rights, including if an investor was granted the right to nominate a director or an observer to the board of the issuer (and if there were any minimum holding thresholds to retain such rights).
Voting Rights	Whether negotiated voting rights were included; customary voting rights that are attached to common shares were not included in our review.

2 The PIPE deals we reviewed were screened using Capital IQ on the basis of the following criteria: transaction type (PIPE), target type (public company), geographic location of the target (Canada), transaction value (greater than $10 million), definitive agreements signed and transaction closing date between January 1, 2023 and December 31, 2023. A PIPE deal did not qualify for our study if only material change reports, early warning reports and/or press releases were publicly available, without any other definitive agreement also being publicly available.

3 SEDAR+ is the public filing system developed for the Canadian Securities Administrators. Documentation on SEDAR+ we reviewed included (as applicable and available) subscription agreements, investor rights agreements, registration rights agreements, material change reports, early warning reports and press releases.

Registration Rights	Whether registration rights were included generally, but specific types of registration rights were not considered.
Standstill	Whether standstill restrictions were included generally (for example, restrictions on the investor's ability to acquire additional securities of the issuer above a certain percentage or the investor's ability to engage in certain 'hostile' actions including solicitation of shareholder proxies or launching of a take-over-bid).
Information Rights	Whether negotiated information rights were included.
Lock-Up	Whether lock-up or hold periods during which the investor could not sell or otherwise transfer the securities were imposed.
Other Business Rights	Whether any additional ancillary business arrangements or agreements were agreed to as conditions of the PIPE transaction.

2. Key Findings

Our analysis produced the following key findings:

- As with our 2022 study,[4] the mining industry dominated, representing 50% of deals.
- Approximately 76% of deals involved common equity. However, debt (35% of deals) and convertible debt (41% of deals) were (collectively) much more frequent than in any of our previous four studies.
- The frequency of investor voting rights (41% of deals), information rights (65% of deals) and ancillary business rights (76% of deals) all increased significantly from our 2022 study and each hit the highest marks seen over our five studies. The apparent counterbalance to this was a sharp spike in standstills in favour of the target, which at 65% of deals was also by far the highest figure over our five studies.
- The average market capitalization of the target, the average transaction amount and the TSX's share of transactions were all at their lowest levels over our five studies. The TSXV's share of transactions was at its highest over our five studies. The overall result is a sample characterized by smaller investments in smaller targets.
- Regarding investor residency, the clear overall trend across our five studies is a steady decrease in Canadian (30% of deals) and European-based (5% of deals) investors and a corresponding steady increase in U.S.-based (30% of deals) and other foreign investors (35% of deals).

4 Readers can find our previous PIPE studies here: (1) 2022 Study, (2) 2021 Study, (3) 2020 Study, and (4) 2019 Study.

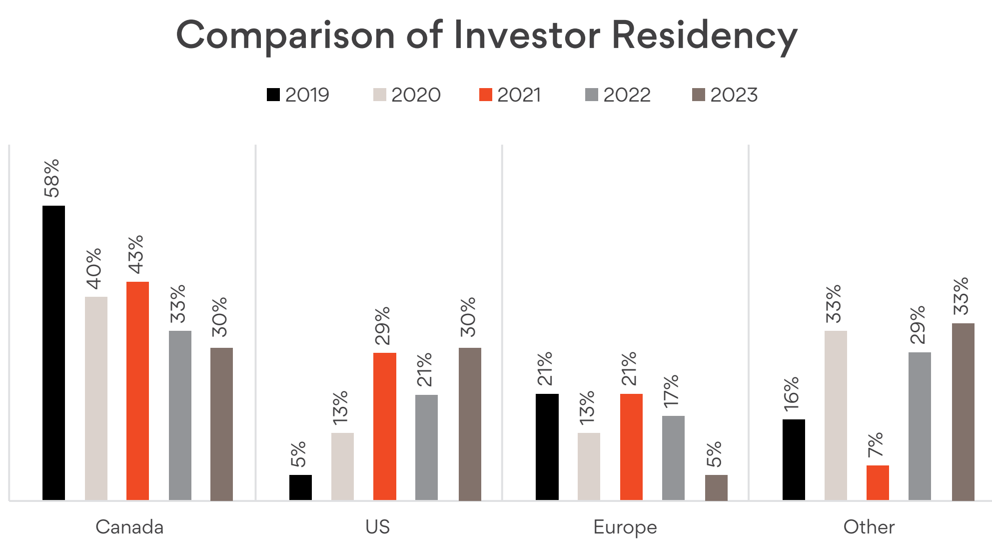
3. Overall Survey Results

(i) Characteristics of the Deal, Investor and the Company

Investor Characteristics: Investor characteristics considered were: (i) country of residence; and (ii) whether the investor was a strategic or financial investor.

Increase in Foreign Investors: The clear overall trend from 2019 to 2023 is a marked and steady decrease in Canadian-based and European-based investors and a corresponding steady increase in U.S.-based and other foreign investors. The 2023 Sample marks the lowest percentage of both Canadian-based investors and Europe-based investors over our five samples. The 2023 Sample also marks the highest percentage of both U.S.-based investors and investors from all other foreign jurisdictions over our five samples.

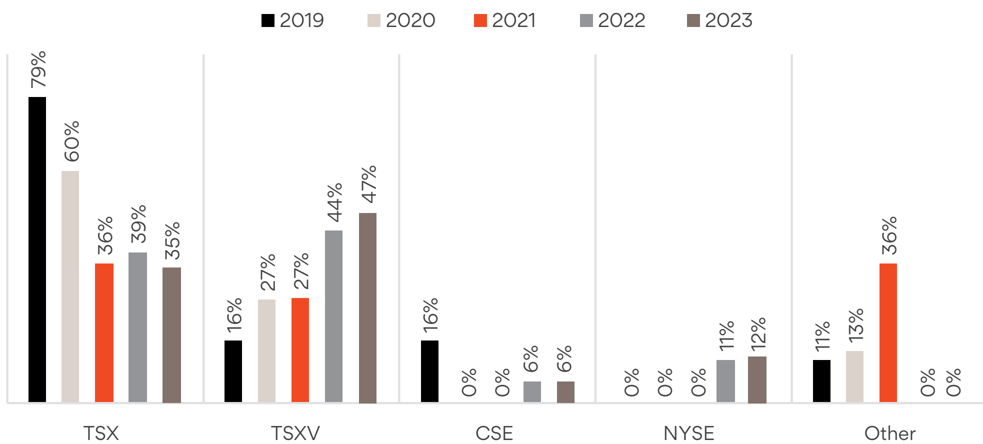
30% of the deals in the 2023 Sample involved investors from Canada, 30% involved investors from the United States, 5% involved investors from Europe and 35% involved investors from other jurisdictions such as Peru, Japan, Hong Kong, the Cayman Islands, Australia and China. Also, certain of the deals involved investors from multiple jurisdictions such that the 2023 Sample included 20 investors in total.



Increased "Strategic" vs "Financial" Split: 40% of investors in the 2023 Sample were strategic investors. The remaining 60% of investors were financial investors. The percentage of strategic investors has increased, compared to the approximately 1/3rd strategic investors vs 2/3rd financial investors ratio seen in 2020, 2021 and 2022.

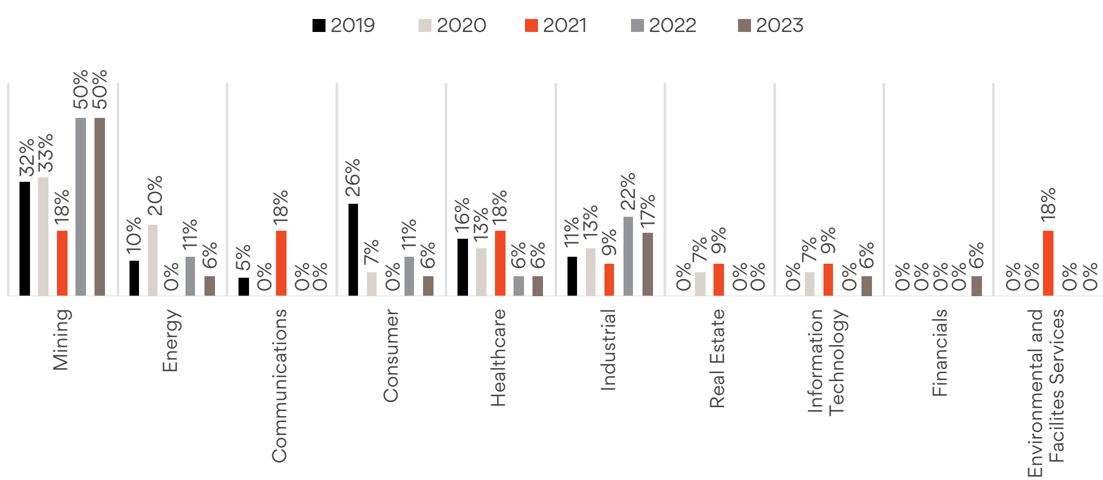
Target Characteristics: Target characteristics considered were: (i) exchanges on which the target was listed; (ii) the target's industry, as categorized by the Global Industry Classification Standard; and (iii) market capitalization on the day prior to the announcement of the PIPE transaction.

Percentage of Deals by Target Exchange Listing



Applicable Exchange: The TSX's share of PIPE deals has decreased from a high of 79% in 2019 to 36%, 39% and 35% in 2021, 2022 and 2023, respectively. The greatest beneficiary of this loss of TSX market share has been the TSXV, growing from a 16% share in 2019 to a 47% share in 2023. The breakdown of this category in 2023 is consistent with that seen in 2022.

Percentage of Deals by Target Industry

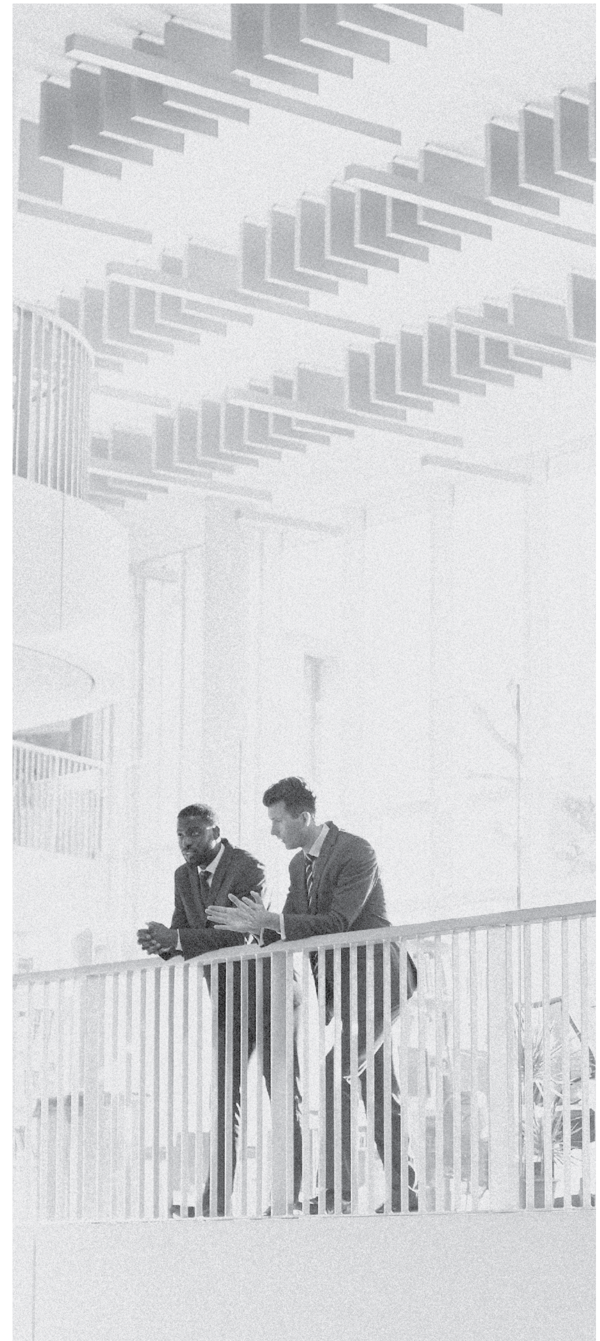


Applicable Industry: PIPE deals in the 2023 Sample are slightly more diverse compared to the 2022 sample as there were deals in the information technology and financials sectors. Deals in the mining sector remain dominant at 50% of the 2023 Sample and, as noted last year, may reflect the growing realization that mining and critical minerals will be essential to the green energy transition.

Market Capitalization: The average market capitalization of the targets in the 2023 Sample was $405.72 million, which is approximately 20% lower than the 2019 and 2021 samples' average of $515.59 million and $509.70 million, respectively. The 2020 and 2022 samples had averages of $1.82 billion and $1.75 billion, respectively, but these figures were skewed by the inclusion of one or two much larger issuers in those samples. The 2023 Sample therefore indicates that PIPE investors were generally focused on smaller issuers last year than in previous years.

Transaction Amount: The average transaction size in the 2023 Sample was $55.79 million, which was markedly less than the 2019, 2020, 2021 and 2022 samples, where the average transaction sizes were $85.9 million, $104.12 million, $122.75 million and $94.70 million, respectively. Taken together with the lower than normal average market capitalization of the issuers in the 2023 Sample, the aggregate result is an overall trend toward smaller PIPE investments in smaller Canadian issuers. This observation is generally reinforced by the previously discussed decrease in the TSX's share of PIPE deals relative to the TSXV's corresponding growth in share of PIPE deals.

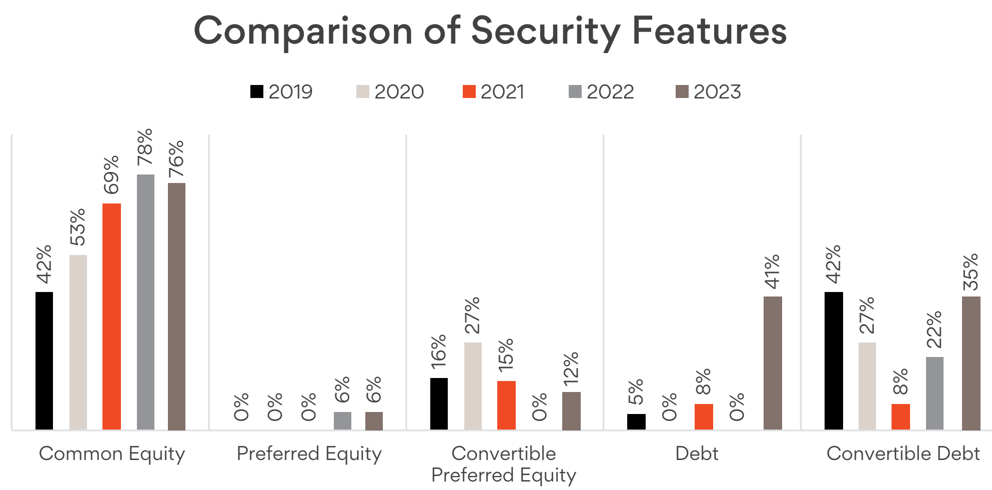
Percentage of Target Acquired:[5] In the 2023 Sample, the percentage of target equity acquired by investors ranged from a nominal amount to approximately 33.3% of issued and outstanding common shares, which resulted in a post-acquisition position ranging from approximately 1.7% to approximately 33.39%.

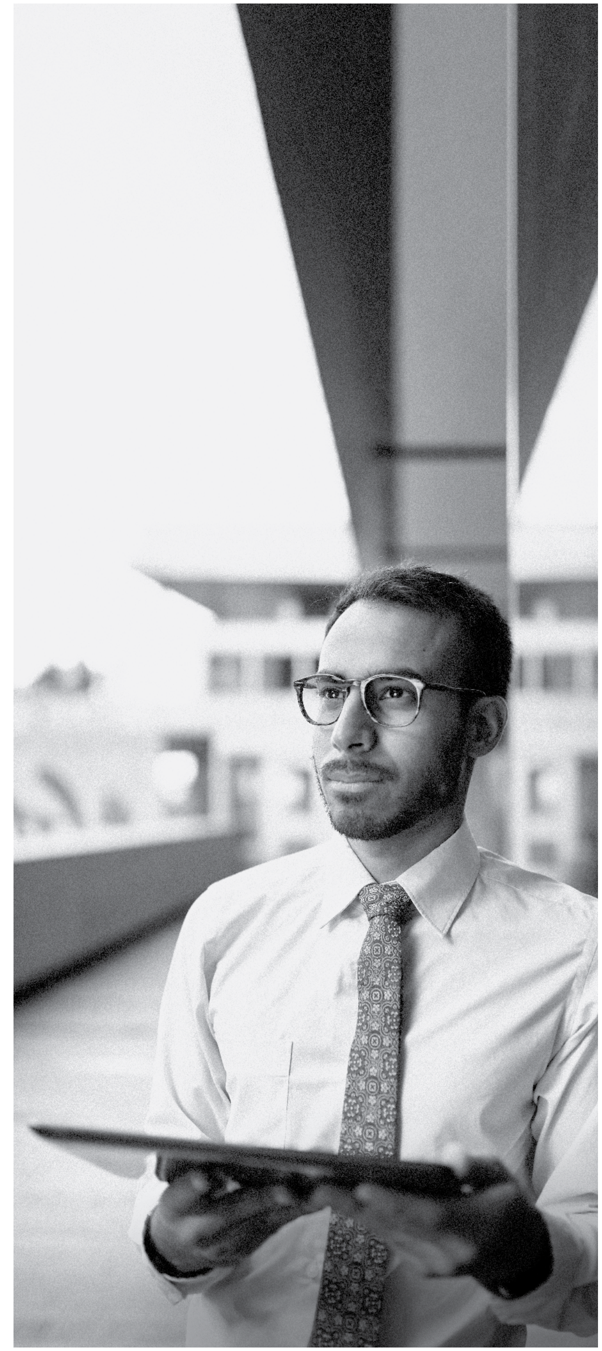


5 The percentage of the target acquired and the percentage held post-acquisition was not reported in all of the deals reviewed in the 2023 Sample. The results noted herein are based on a subset of the 2023 Sample for which the percentages were available.

(ii) Security Features

The 2023 Sample involved the issuance of common equity, preferred equity, and convertible debt, or a combination of these securities as follows:





Debt: Debt (other than convertible debt) was not prevalent in prior sample. In 2020 and 2022, debt was used in 0% of transactions and in 2019 and 2021, was used in 5% and 8% of transactions, respectively. In the 2023 Sample the use of debt was significantly increased and was used in 41% of transactions.

Convertible Debt: Unlike in the 2022 sample, where 22% of deals involved convertible debt, 35% of deals in the 2023 Sample involved convertible debt. In the 2022 sample, 25% of debt deals were secured which is similar to the 2023 Sample in which 24% of debt deals were secured. Overall, debt deals in 2023 rebounded closer to the percentages seen in 2019 and 2020, which were 42% and 27%, respectively. This may signal that the market is stabilizing after the COVID-19 pandemic and that the more cautious attitude towards debt is subsiding.

Warrants: Common share purchase warrants were issued in 24% of deals in the 2023 Sample. The term of warrants ranged from 3 to 5 years which is lower than the deals in the 2022 Sample in which 50% of deals involved common share purchase warrants ranging from 2 to 7 year terms.

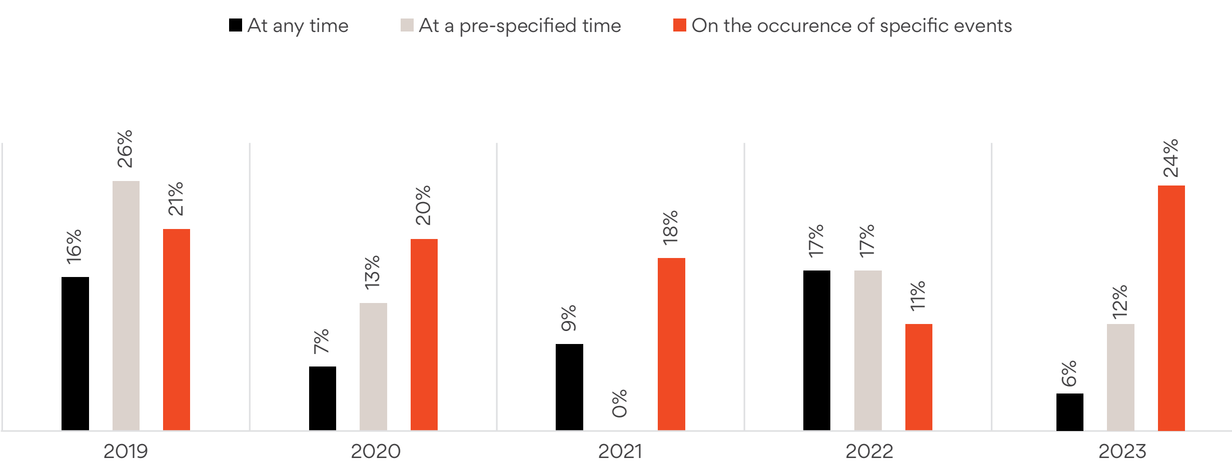
Convertible Securities: 47% of deals in the 2023 Sample included convertible securities, all of which are convertible into common shares. This figure includes 35% of the transactions involving convertible debt (as discussed under "*Convertible Debt*" above) and 12% of transactions involving convertible preferred equity. Of these deals, 50% of the convertible securities converted at a price that was below the market price of the common shares at signing.

Interest/Dividends: 47% of deals in the 2023 Sample involved debt or preferred shares. 22% of these deals paid dividends on the securities, 67% paid interest and the remaining 11% did not pay either. These payments were primarily paid in cash (75% of these deals) while the remaining 25% could be either paid in cash or payment-in-kind.

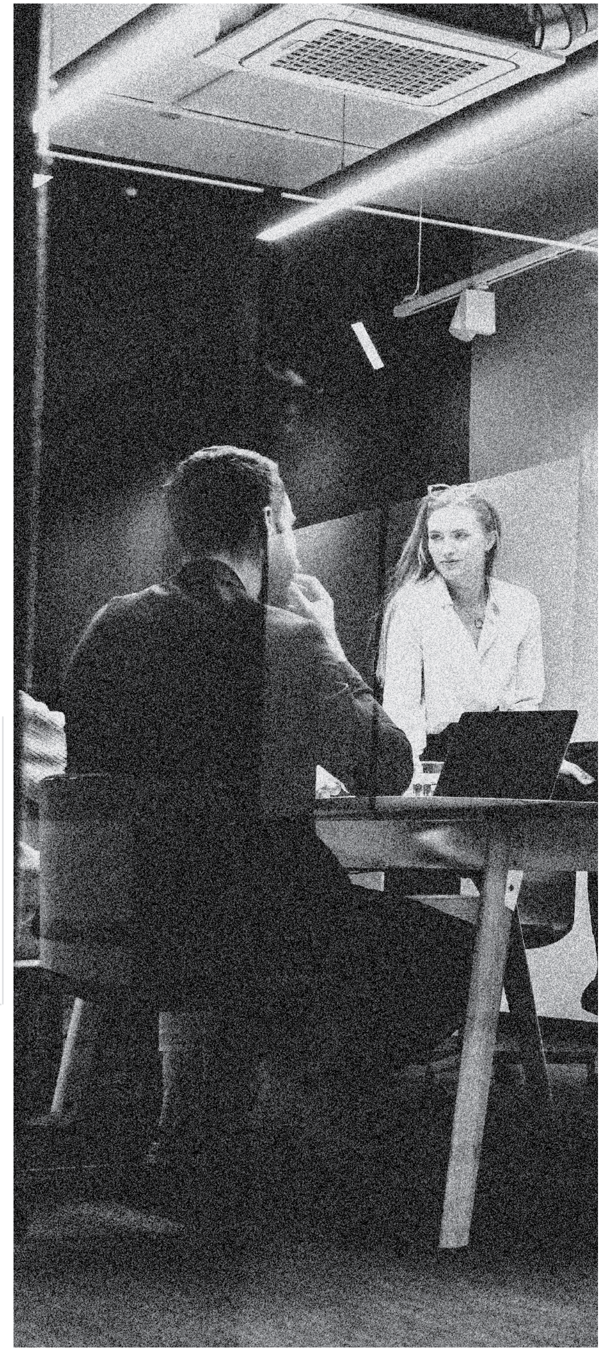
(iii) Securityholder Rights

Redemption Rights at the Option of the Issuer: As illustrated by the following chart, issuer redemption rights are volatile from year to year without any discernable trends and may therefore be purely a product of deal-specific dynamics. Two features of the 2023 Sample standout. First, issuer redemption rights on the occurrence of specified events were the highest over our five samples (at 24%). Second, issuer redemption rights at any time were the lowest over our five samples (at 5%). By contrast, the 2022 sample included a much more balanced spread.:

Percentage of Deals Including Issuer Redemption Rights

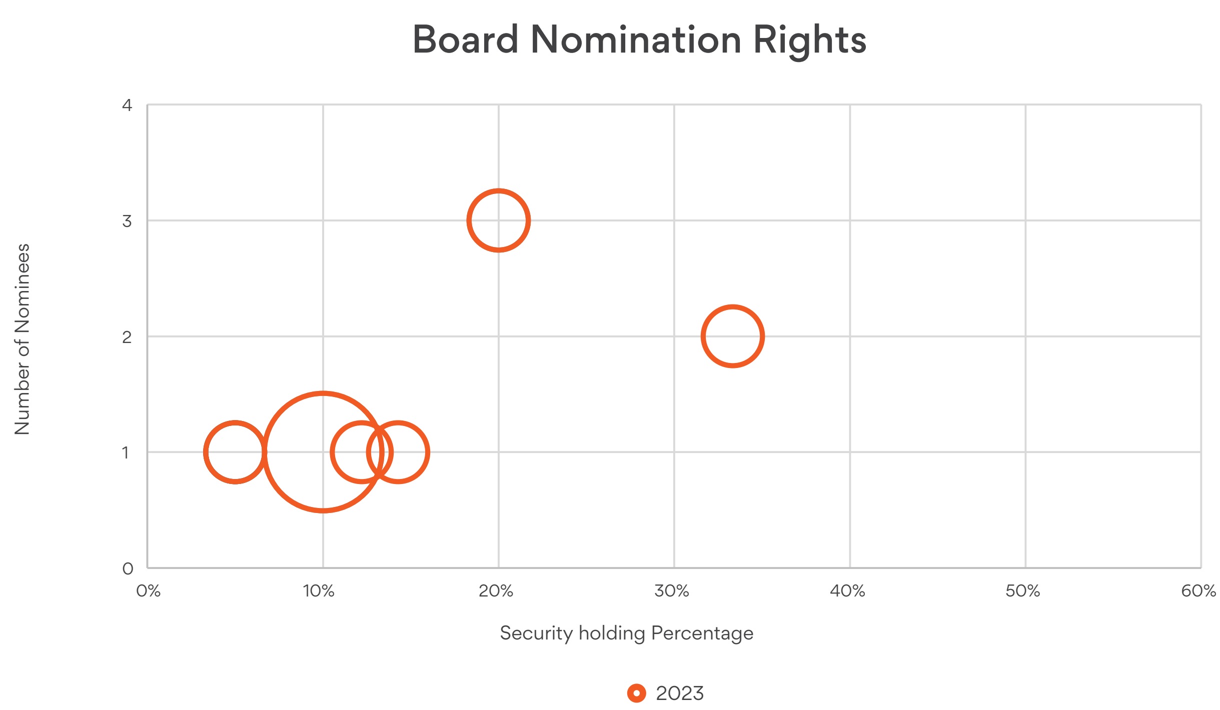


Redemption Rights at the Option of the Investor: 29% of deals in the 2023 Sample included redemption rights at the option of the securityholder, which is slightly larger than the 22% in the 2022 sample which provided such a right. In the 2023 sample: (a) 12% of the deals were redeemable by the investor on the occurrence of specific events; (b) 12% of the deals were redeemable by the investor at a pre-specified time; and (c) 12% of the deals were redeemable by the investor at anytime.



Dilution Protection: 76% of deals in the 2023 Sample contained at least one type of dilution protection, and of these 62% included pre-emptive purchase rights and 77% included other anti-dilution protections, including adjustments made to the number of common shares to be issued pursuant to warrants acquired in the transaction or adjustments made to the price of those securities to account for subsequent common share issuances. This popularity of dilution protection other than or in addition to pre-emptive purchase rights in the 2023 Sample is similar to the 2022 sample (where 82% of deals included dilution protection other than or in addition to pre-emptive purchase rights) and stands in contrast to the much lower percentages of 27%, 13% and 26% seen in the 2021, 2020 and 2019 samples, respectively. As discussed last year, this indicates PIPE investors have grown increasingly sophisticated and creative in obtaining anti-dilution protection. This also likely indicates increased importance placed on dilution protection by investors amid the escalating interest rate environment over 2022 to 2023.

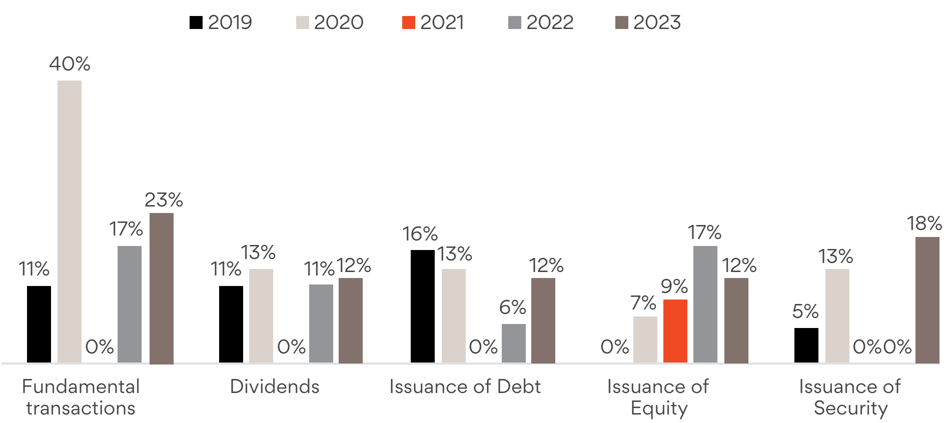
Board Rights: 53% of the deals in the 2023 Sample included a board nomination right, which generally aligns with the 2022 sample's figure of 50%. The number of board members that investors had the right to nominate, as well as the security holding percentage required to maintain this right, varied across the deals surveyed. 78% of these deals included the right to only nominate a single board member and 22% of these deals included the right to nominate a certain number of board members based on different security holding thresholds, with three directors being the greatest number of directors that such investor would be permitted to nominate. For example, one deal reviewed permitted the investor to nominate three directors at a 20% holding threshold. That said, board nomination rights should not be considered in isolation but in conjunction with related investor rights (i.e., voting rights, discussed below).



Voting Rights: 41% of deals in the 2023 Sample included investor voting rights whereas only 28% of deals in the 2022 sample included investor voting rights. This is not an insignificant increase. It is also the highest figure seen over our five samples. As further discussed, it should also likely be considered in connection with the higher than historically average frequency of standstills, information rights and ancillary business rights seen in the 2023 Sample.

Of the 41% of deals in which voting rights were granted in the 2023 Sample, 57% of such deals granted voting rights in respect of fundamental transactions, 29% of such deals granted voting rights in respect of the payment of dividends by the issuer, 29% of such deals granted voting rights in respect of the issuance of debt by the issuer, and 29% of such deals granted voting rights in respect of the issuance of additional securities by the issuer. The percentage of the deals surveyed having each of these specific voting rights was as follows:

Types of Voting Rights



Registration Rights: 29% of deals in the 2023 Sample included registration rights which is less than the 44% of deals that included registration rights in the 2022 sample and even less than the 55% of deals that included registration rights in the 2021 sample.

Standstill: 65% of the deals in the 2023 Sample included a standstill, which is by far the highest figure seen over our five samples; the previous figures being 39% (2022), 27% (2021 and 2020) and 42% (2019). As further discussed, this likely represents an issuer-required counterbalance to the abnormally high frequency of investor voting rights, information rights and ancillary business rights in the 2023 Sample.

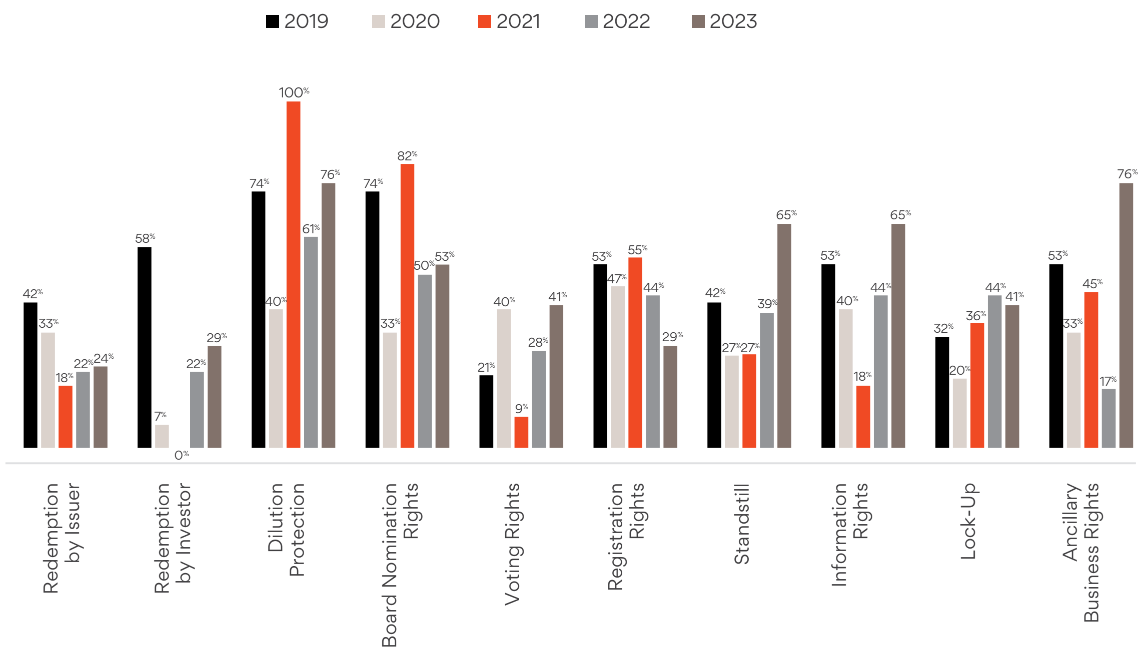
Information Rights: 65% of deals in the 2023 Sample included investor rights to certain information over and above regular issuer continuous disclosure, such as rights to review monthly financial statements and operational reports, the right to receive notice of certain transactions and rights to inspect certain facilities. This is markedly more than the 2022 sample where only 44% of the deals included similar rights. As with voting rights and standstills, this was the highest figure seen over our five samples.

Lock-Up: 41% of deals in the 2023 Sample included lock-ups on the sale of investor shares (not including those securities subject only to a four-month re-sale restriction mandated by securities laws). The lock-ups ranged from 120 days to about 2 years. This is a slight variation from the lock-up rights provided for in the 2022 study and 2021 study, being 44% and 36%, respectively.

Other Business Rights: 76% of deals in the 2023 Sample included ancillary business rights or arrangements. These included: (i) a right of first refusal on the sale of specific assets; (ii) right to appoint members to technical advisory committees; and (iii) rights to enter into collaboration agreements for business activities. This represents an increase in the variety and frequency of ancillary business rights granted in the 2022 sample, in which only 17% of deals contained ancillary business rights. As with voting rights, standstills and information rights, this was the highest figure seen over our five samples, and in this case by a significant margin.

<u>Summary:</u> In aggregate, the rights of the investor markedly increased in the 2023 Study compared to the 2022 study. This demonstrates that, in 2023, PIPE investors procured more control and more protection for themselves, reversing the trend witnessed in 2021, where the investor rights generally decreased from 2020. This may indicate that investors are enjoying increased bargaining power and a subsequent ability to tailor enhanced rights specifically suiting their business strategies and outlook (e.g., increased frequency in combining voting rights and/or information rights with ancillary business rights). The counterbalance to this is more frequent standstills in favour of the issuer.

Summary of Securityholder Rights



Outlook Going Forward

With the continuation of multiple significant conflicts internationally, persistent uncertainty regarding the extent and timing of the ratcheting down of interest rates by central banks, and the upcoming U.S. presidential election, capital markets are expected to continue to be volatile across the remainder of 2024.

Nonetheless, because of the significant benefits and flexibility PIPEs offer, we expect their popularity to endure. For investors, a PIPE can provide downside protection, an effective say in the business, and upside gains at a discount to market prices. For issuers, a PIPE is an effective financing tool that can simultaneously secure a strategic partner. Moreover, for issuers facing material adverse impacts from volatile capital markets, a PIPE grants them access to capital to facilitate execution on their business plan, strategies and objectives notwithstanding turbulent economic conditions. The key for both investors and issuers (and their counsel) is to appreciate and strategize for the different PIPE terms and deal terms relevant to achieving their goals.

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