4th Annual Fasken PIPE Deal Point Study

APRIL 2023

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This is Fasken's fourth annual Canadian PIPE Deal Point Study and covers transactions completed in 2022.

Private investment in public enterprise ("**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).

This edition focuses on PIPE transactions completed in the 2022 calendar year in Canada, compares the results with those seen in 2019, 2020 and 2021, and looks ahead to what we may expect in 2023.

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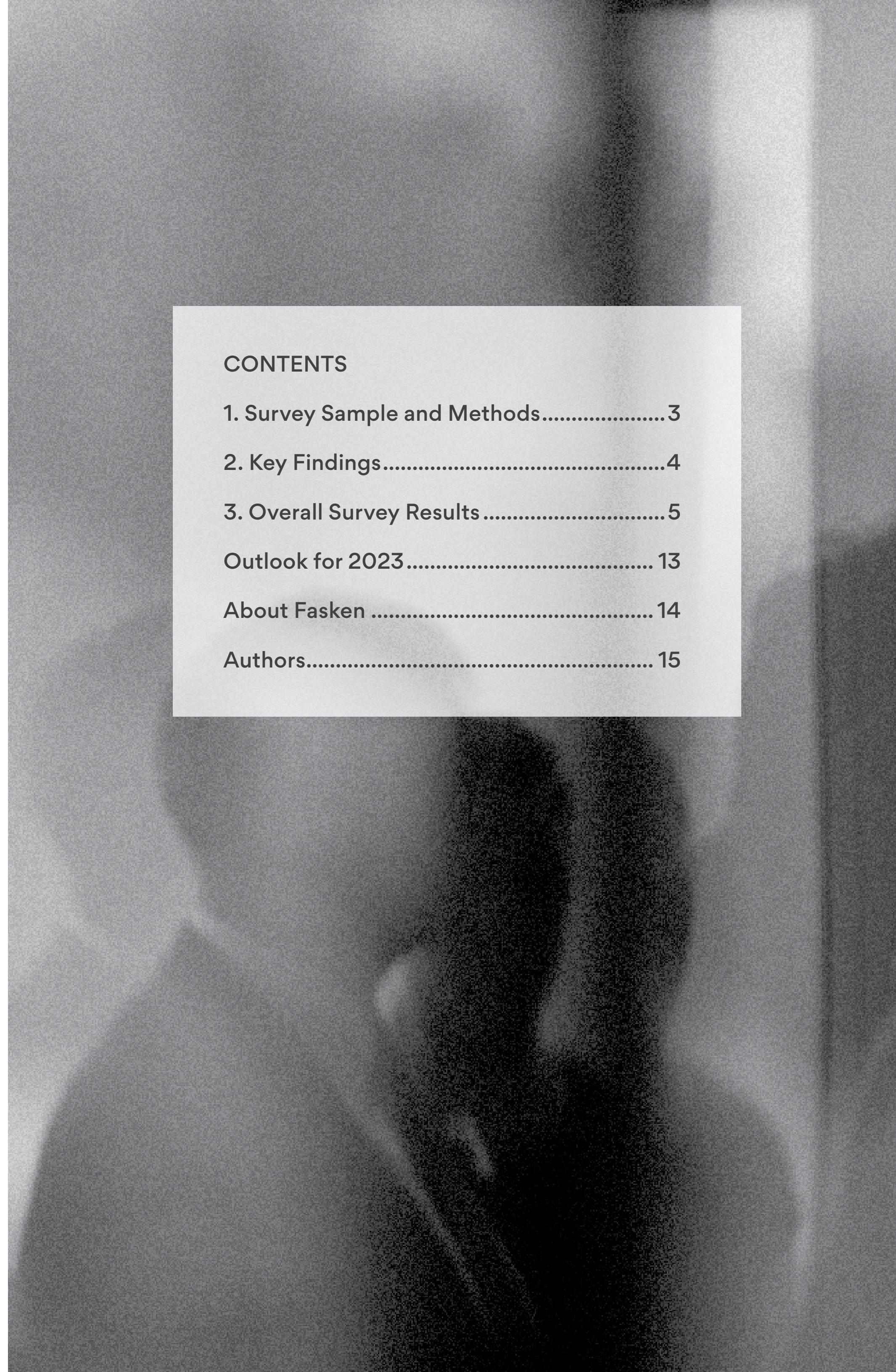

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2022 Canadian PIPE Deal Point Study

1. Survey Sample and Methods

Fasken reviewed PIPE transactions greater than $10 million in value and whose deal details are publicly available.[1] This sample consisted of 18 deals (the "2022 Sample"). For each deal, transaction documentation was sourced from the System for Electronic Document Analysis and Retrieval (SEDAR).[2]

Each deal within the 2022 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; and

(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.

1 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, 2022 and December 31, 2022. 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.

2 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:

- The majority of the deals, approximately 78%, involved common equity.
- The most prevalent rights negotiated were dilution protection rights (61% of deals reviewed).
- Board nomination, registration and information rights were also common (in each case, in approximately 44% of deals reviewed).
- The least common rights granted were redemption rights at the option of the issuer and redemption rights at the option of the securityholder (in each case, in approximately 22% of deals reviewed).
- The average value of deals remained relatively consistent at $94.70 million (the average transaction value over 2019 to 2022 being $99.36 million).

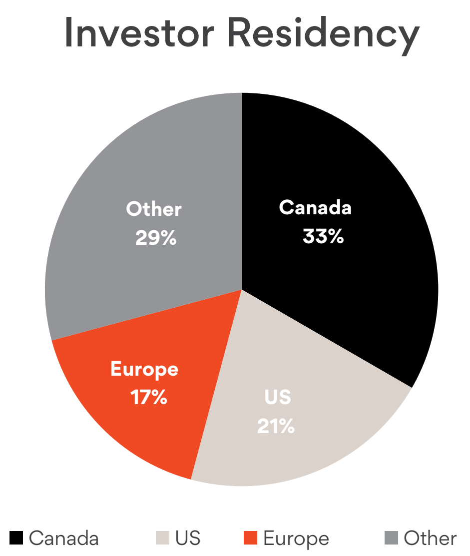
3. Overall Survey Results

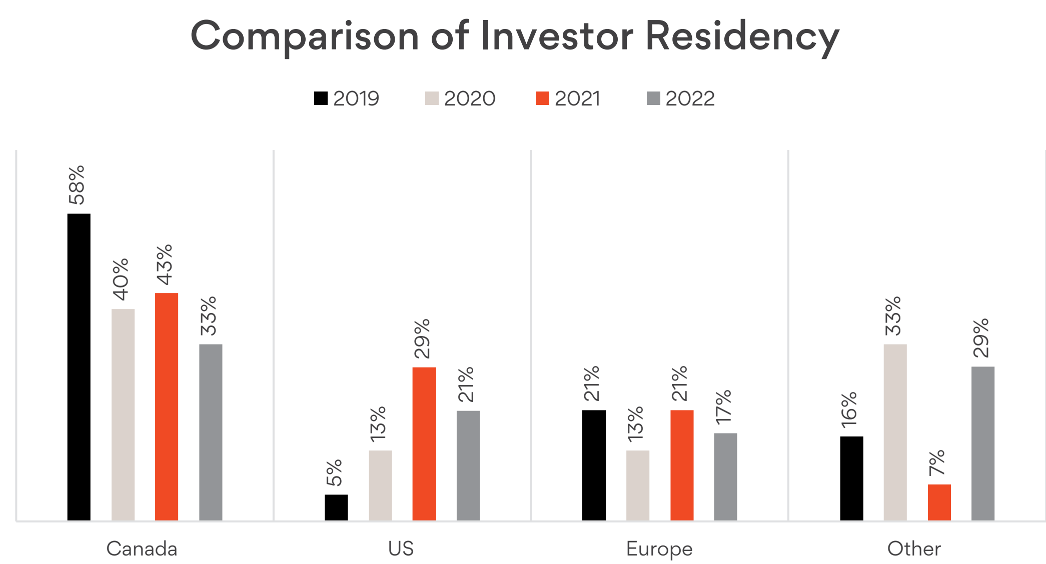
(i) Characteristics of the Deal, Investor and the Company

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

Increase in Foreign Investors: 33% of the deals in the 2022 Sample involved investors from Canada, 21% involved investors from the United States, 17% involved investors from Europe, and 29% involved investors from other jurisdictions such as the Cayman Islands, Korea, Singapore, Australia, Guernsey, and Japan. Also, certain of the deals involved investors from multiple jurisdictions such that the 2022 Sample included 23 investors in total.

The overall trend from 2019 to 2022 is a decrease in Canadian-based investors and a corresponding increase in foreign-based investors. That said, there is fluctuation amongst representation from such foreign jurisdictions (i.e. U.S. vs Europe vs other jurisdictions) from year to year. Therefore, while foreign investors generally appear to be growing more comfortable making PIPE investments in Canada, this growing comfort does not appear to be overly concentrated in any particular foreign region/jurisdiction (aside from the U.S., where an overall upward trend is evident).

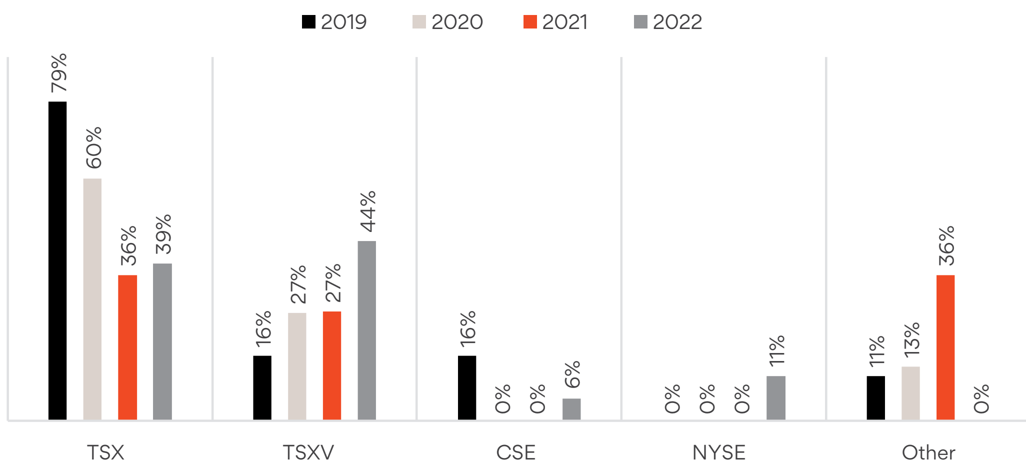




Consistent "Strategic" vs "Financial" Split: 33% of investors in the 2022 Sample were strategic investors. These investors already operate in the same, or in an adjacent, industry sector. The remaining 67% of investors were financial investors. Interestingly, this 1/3rd strategic investors vs 2/3rds financial investors ratio is approximately the same split we saw in each of 2020 and 2021.

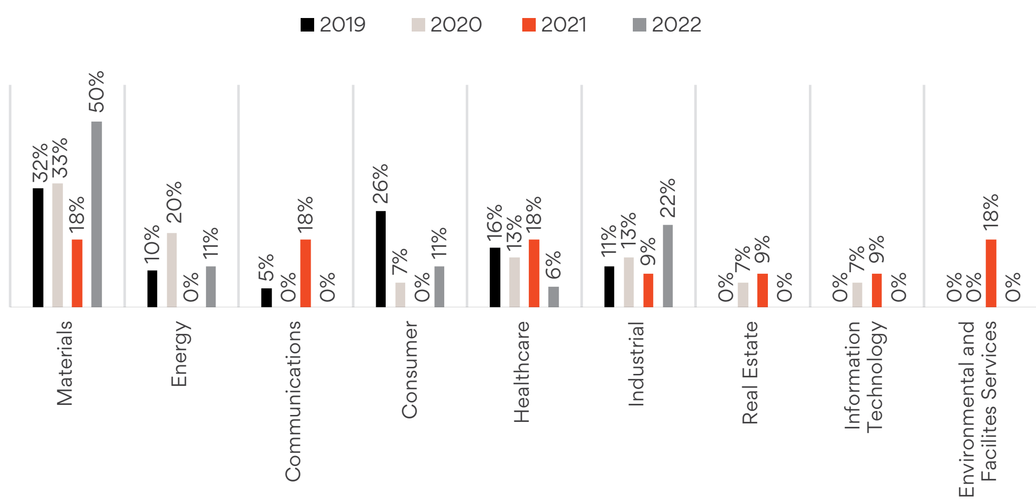
Target Characteristics: Target characteristics considered were (i) exchanges on which it was listed, (ii) the target's industry, as categorized by the Global Industry Classification Standard, and (iii) market capitalization on the day prior to the announcement of the PIPE transaction.

Percentage of Deals by Target Exchange Listing



Applicable Exchange: Interestingly, the TSX's share of PIPE deals has decreased from a high of 79% in 2019 to lows of 36% and 39% in 2021 and 2022, respectively. The greatest beneficiary of this loss of TSX market share has been the TSXV, growing from a 16% share in 2019 to a 44% share in 2022.

Percentage of Deals by Target Industry



Applicable Industry: PIPE deals in the 2022 Sample are less diverse compared to the 2021 sample as there were no deals in the communications, real estate, information technology or environmental and facilities services sectors. That said, this point is a volatile one that is likely reflective of larger macroeconomic trends. For example, the strong rebound in the materials sector (from 18% in 2021 to 50% in 2022) may be indicative of the growing realization over 2022 that mining and increased production of certain metals will be essential to the green energy transition.

Market Capitalization: The average market capitalization of the targets in the 2022 Sample was $1.75 billion, which is similar to the 2020 sample's average of $1.82 billion. By contrast, the 2019 and 2021 samples had averages of $520 million and $519 million, respectively. This figure is therefore subject to distortion by the inclusion of one or two much larger issuers in a given year. The most pertinent takeaway might therefore be that even some of Canada's largest public issuers have shown interest in PIPE transactions.

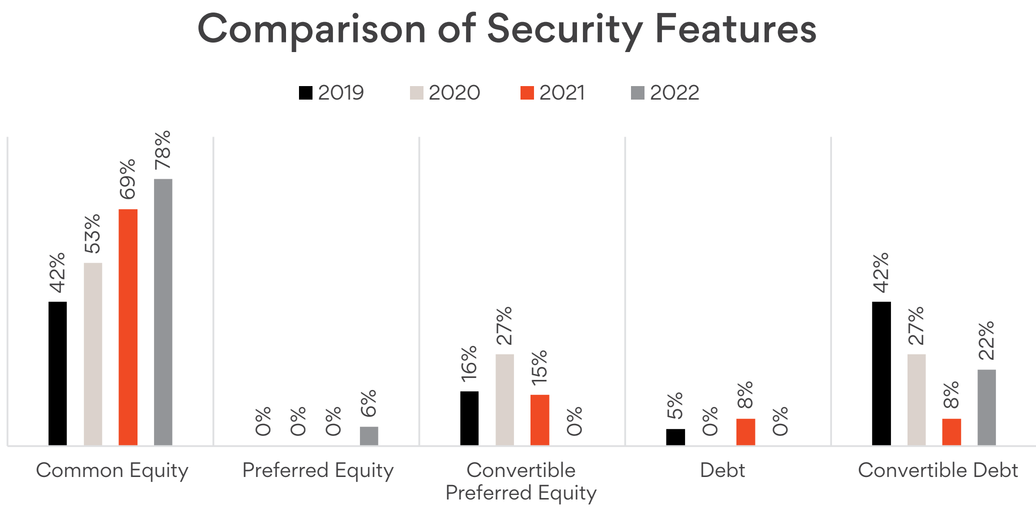
Transaction Amount: The average transaction size in the 2022 Sample was $94.70 million, with the smallest transaction valued at $10.23 million and the largest transaction valued at $469 million. The average transaction size for the 2022 Sample was less than the 2020 and 2021 samples, where the average transaction sizes were $104 million and $123 million, respectively. That said, this point remains a relatively consistent deal point, with the average transaction size over 2019 to 2022 being $99.36 million.

Percentage of Target Acquired:[3] In the 2022 Sample, we observed that the percentage of the equity of the target acquired by the investors ranged from approximately 0.6% to approximately 47.74% of the issued and outstanding common shares of the target, which resulted in a post-acquisition position ranging from approximately 3% to approximately 47.74%.

3 The percentage of the target acquired and the percentage held post-acquisition was not reported in all of the deals reviewed in the 2022 Sample. The results noted herein are based on a subset of the 2022 Sample for which the percentages were available.

(ii) Security Features

The 2022 Sample involved the issuance of common equity, preferred equity, and convertible debt, or a combination of these securities as follows:



Convertible Debt: Unlike in the 2021 sample, where only one deal involved convertible debt, 22% of deals in the 2022 Sample involved convertible debt. In the 2021 sample the debt was not secured. By comparison, 25% of the debt deals in the 2022 Sample were secured. Overall, debt deals in 2022 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.

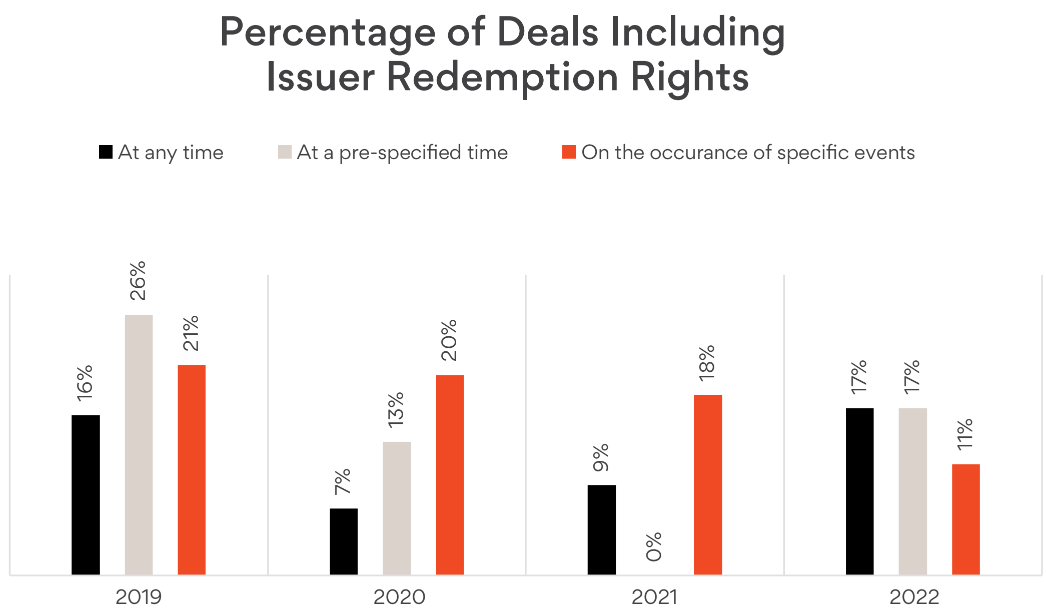
Warrants: Common share purchase warrants were issued in 50% of deals in the 2022 Sample. The primary security issued in these deals was common equity (56% of the time), while the balance of the deals involved the issuance of convertible debt (44% of the time). The term of warrants ranged from 2 to 7 years.

Convertible Securities: 22% of deals in the 2022 Sample included convertible securities, all of which are convertible into common shares. All such transactions involved convertible debt (as discussed under "Convertible Debt" above).

Interest/Dividends: 28% of deals in the 2022 Sample involved debt or preferred shares. 20% of these deals paid dividends on the securities, 60% paid interest and the remaining 20% 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: In 22% of deals in the 2022 Sample, the issuer had the right to redeem the securities at any time, at a pre-specified time and/or on the occurrence of specified events. In the 2021 sample, 18% of deals were redeemable by the issuer upon specific events, which decreased in the 2022 Sample where 11% of deals were redeemable upon specific events. In the 2021 sample there were no deals where the securities were redeemable by the issuer at a pre-specified time, which is a marked difference from the 2022 Sample where 17% of deals contained securities that are redeemable at a pre-specified time. Overall, the volatility of this point is illustrated by the following chart, and is likely indicative of deal-specific dynamics:



Redemption Rights at the Option of the Investor: Similarly, 22% of deals in the 2022 Sample included redemption rights at the option of the securityholder, which represents a significant increase from the 2021 and 2020 samples in which zero deals and one deal, respectively, provided such a right. In the 2022 sample: (a) 22% of the deals were redeemable by the investor on the occurrence of specific events, (b) 6% of the deals were redeemable by the investor at a pre-specified time and (c) 17% of the deals were redeemable by the investor at anytime. Once again, volatility here is likely indicative of deal-specific dynamics.

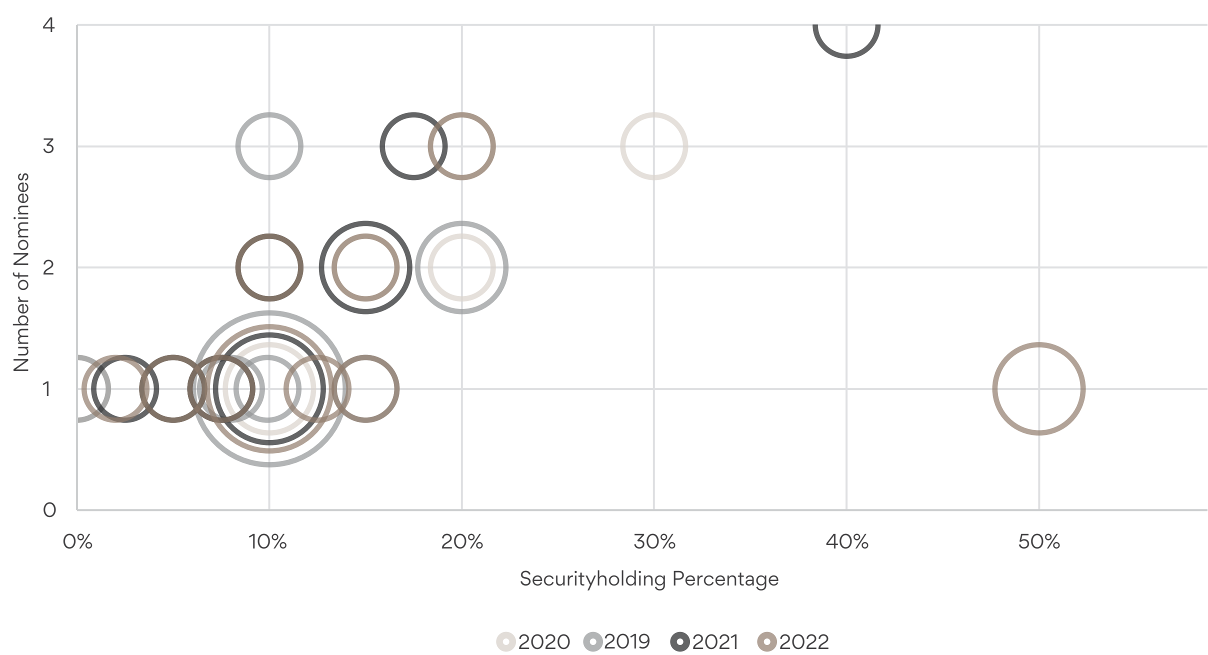
Dilution Protection: 61% of deals in the 2022 Sample contained at least one type of dilution protection, which is less than the 2021 sample in which all of the deals contained at least one type of dilution protection. 73% of the deals in the 2022 Sample which provided dilution protection included pre-emptive purchase rights and 82% of the deals providing dilution protection included other anti-dilution protections, including adjustments made to the number of common shares to be issued pursuant to warrants acquired in connection with the transaction or adjustments made to the price of those securities to account for subsequent common share issuances.

In the 2021 sample, 82% of deals included a pre-emptive purchase right and 27% included other anti-dilution protection. In 2022, it appears that investors were more creative in drafting and obtaining anti-dilution protections and were increasingly using options other than pre-emptive purchase rights to protect themselves. This may show an increasing importance placed on dilution protection, which is likely due to economic instability and increasing interest rates.

Board Rights: 50% of the deals in the 2022 Sample included a board nomination right. 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. 73% of these deals included the right to only nominate a single board member, and 27% 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 two directors at a 10% holding threshold and three directors at a 20% holding threshold.

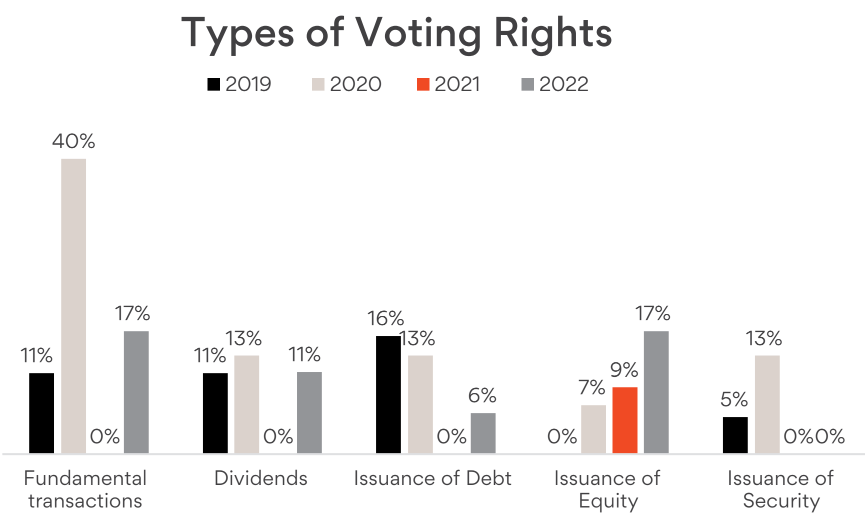
In the 2021 sample, 82% of the deals contained board nomination rights. Therefore, the 2022 Sample demonstrates a significant change and indicates a decreasing appetite amongst investors to be actively involved in the issuer's operations. That said, this swing should not be considered in isolation but in conjunction with related investor rights (i.e., voting rights, discussed below).

Board Nomination Rights



Voting Rights: 28% of deals in the 2022 Sample included investor voting rights. In the 2021 sample, 9% of deals provided the investor with voting rights. It appears there has been a shift in investor tendencies, represented by a decrease in the granting of board rights and a corresponding increase in the granting of voting rights in the 2022 Sample.

Of the 28% of deals in which voting rights were granted in the 2022 Sample, 60% of such deals granted voting rights in respect of fundamental transactions, 40% of such deals granted voting rights in respect of the payment of dividends by the issuer, 20% of such deals granted voting rights in respect of the issuance of debt by the issuer, and 60% 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:



Registration Rights: 44% of deals in the 2022 Sample included registration rights which is slightly less than the 55% of deals that included registration rights in the 2021 sample and similar to the 47% of deals that included registration rights in the 2020 sample.

Standstill: 39% of the deals in the 2022 Sample included a standstill, which represents an increase from both the 2020 and 2021 samples which each had standstill rights in 27% of the deals.

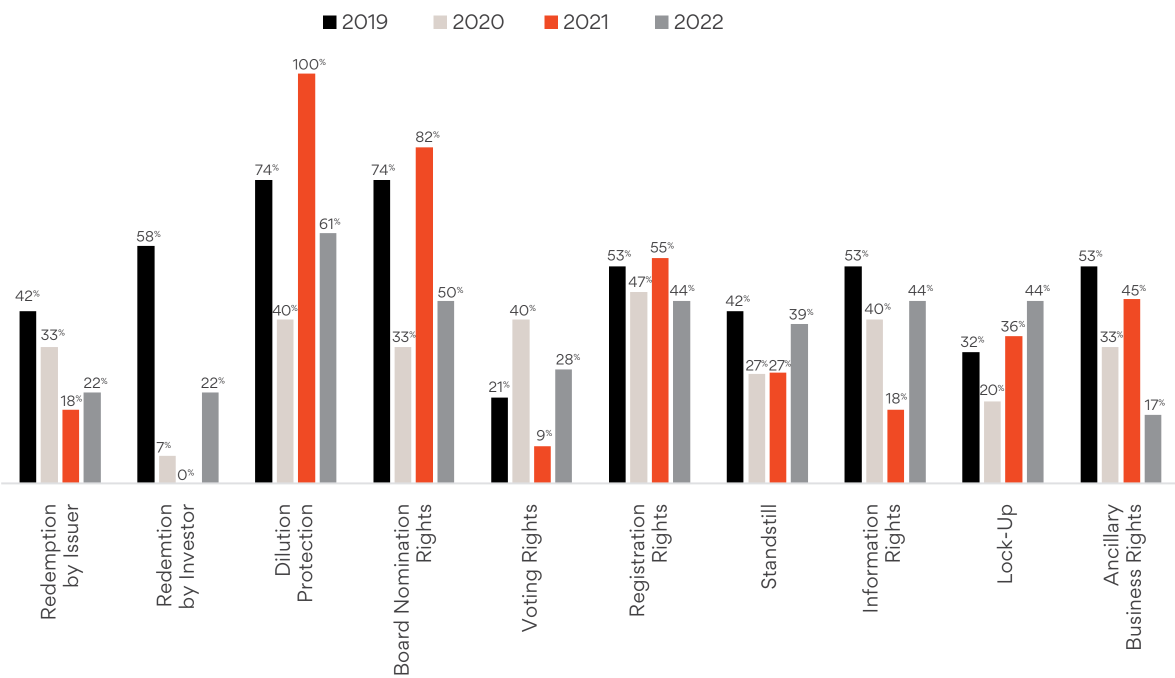
Information Rights: 44% of deals in the 2022 Sample included investor rights to certain information over and above regular disclosure required to be made to securityholders, such as rights to review monthly financial statements and operational reports, the right to receive notice of certain transactions, and rights to visit and inspect certain facilities. This is markedly more than the 2021 sample wherein 18% of the deals included similar rights. However, the 2022 results are similar to the 2020 sample in which 40% of the deals granted such rights.

Lock-Up: 44% of deals in the 2022 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 five years. This is an increase from the lock-up rights provided for in the 2021 study and 2020 study, being 20% and 36%, respectively.

Other Business Rights: 17% of deals in the 2022 Sample included ancillary business rights or arrangements. Some such business rights included: (i) a right of first refusal on the sale of specific assets; (ii) joint advisory rights; and (iii) veto rights in respect of annual budgets and business plans. This represents a decrease in the variety and frequency of ancillary business rights granted in the 2021 sample, in which 45% of deals contained ancillary business rights.

Summary: In aggregate, the rights of the investor increased in the 2022 Study compared to the 2021 study. This demonstrates that, in 2022, PIPE investors procured more control and more protection for themselves, reversing the trend that occurred in 2021, where the investor rights procured by PIPE investors had generally decreased from 2020. This may indicate that investors are enjoying an increase in bargaining power and a subsequent ability to negotiate enhanced rights for themselves and, where they are unable to do so, are willing to give up certain rights in exchange for other rights (for example, PIPE investors in 2022 appeared willing to give up board nomination rights in exchange for increased voting rights to maintain input in issuer decision making).

Summary of Securityholder Rights



Outlook for 2023

With the Russia-Ukraine conflict (and resulting economic sanctions), inflationary pressures, and increasing interest rates creating continued uncertainty in the economy generally, capital markets are expected to continue to be volatile well into 2023. Similar to our outlook for 2022, we expect the use of PIPEs to continue to grow in 2023 given the significant benefits and flexibility they offer. 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.

About Fasken

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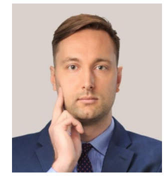

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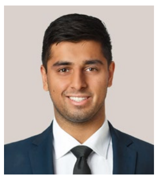

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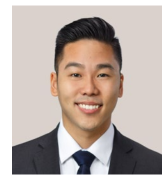

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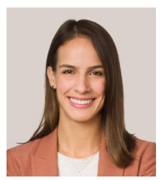

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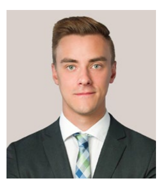

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