2023

Deal Points Report: Venture Capital Financings

By Michael Grantmyre and Ryan Unruch

OSLER

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Introduction

Welcome to Osler, Hoskin & Harcourt LLP's third annual comprehensive report on venture capital and growth equity financing transactions in Canada's emerging and high growth companies ecosystem.

The state of Canadian venture capital and growth equity financing in 2023 can be best described by two words – resilience and renewal. In 2023, the Canadian economy settled into the reality of higher, sticky, interest rates as the Bank of Canada continued to battle inflation, with the result being a continued reduction of business and consumer activity amidst the high cost of borrowing and looming fears of a recession in 2024. These economic trends also affected the venture capital and growth equity financing space across Canada, creating downward pressure on overall financing activity in 2023, with a return to pre-pandemic levels of investment and an uptick in more investor-friendly terms, particularly for those companies raising capital in the context of a down round.

However, there is still good reason for optimism in the Canadian venture capital and growth equity financing space. We see signs of great resilience as new, transformative, technologies in cleantech and artificial intelligence emerge and create investment opportunities in Canada for Canadian and non-Canadian investors alike. At the same time, provinces like Ontario, British Columbia and Québec continue to serve as engines of venture capital and growth equity financing activity in Canada, while provinces in the Prairies and Atlantic Canada continue to make the case that they, too, are critical destinations for venture and growth equity investment in Canada. We also see clear signs of renewal as early-stage financings dominated deal flow in 2023, signaling investor confidence in the future of Canada's emerging and high growth companies ecosystem as these investors made new long-term bets on promising companies — all despite the economic challenges that marked 2023.

About the 2023 *Deal Points Report*

This year's release of the *Deal Points Report: Venture Capital Financings* synthesizes data from 486 venture capital and growth equity preferred share financings completed by Osler from 2020 to 2023, representing more than US$7.7 billion in total transaction value. It is important to note that these 486 financings represent, as a random sample, only a portion of Osler's significant overall financing deal volume; from 2020 to 2023, Osler represented clients in the emerging and high growth companies space in 1,106 financing transactions, including preferred share equity financings and the issuance of convertible securities (such as Simple Agreements for Future Equity (SAFEs) and convertible promissory notes), with an aggregate deal value of approximately US$14.16 billion. This significant level of transaction volume, combined with Osler's position as the preeminent Canadian legal advisor to clients in the emerging and high growth companies space, are key factors in our unique ability to produce a publication like the *Deal Points Report*. In the LSEG (formerly Refinitiv's) *Global Private Equity Legal Review: Full Year 2023*, for example, Osler was ranked eighth globally amongst legal advisors to venture-backed companies based on number of rounds and tenth globally amongst legal advisors to venture-backed companies based on round value. Our firm was the highest ranking Canadian legal advisor included in the global top ten for these rankings. In addition, Osler is the only Canadian firm to rank as "Band 1" for Startup & Emerging Companies in the 2024 Chambers Canada rankings.

The total value of all initial investment across all of the financings covered by the *Deal Points Report* was US$7.1 billion.

The *Deal Points Report* is unique within the Canadian market as it does not rely solely on publicly available information or third-party submitted data. Instead, it draws on Osler's confidential anonymized data sources, with a focus on providing readers with deeper access to comprehensive financing-related information that goes beyond what can be gathered from publicly available data sources. Osler has undertaken publishing the *Deal Points Report* as we believe information from non-public sources — including comprehensive financing-related data extracted from term sheets, share purchase agreements, shareholders agreements and secondary sale transaction documents — should be available to all stakeholders within the emerging and high growth companies ecosystem. And because all data presented in the *Deal Points Report* is from financings completed by Osler across the country, the authors are able to interpret and contextualize raw data inputs with the benefit of first-hand exposure to these financings, thereby enhancing the production of meaningful insights and reliable conclusions.

The *Deal Points Report* also provides the opportunity to profile some of Osler's clients and to share their unique and inspiring stories, including how these clients were able to succeed in raising a financing round and continue to thrive despite 2023's challenging market conditions. We are truly grateful for the support and trust of these clients, and all of the firm's clients. At Osler, we are fortunate to represent entrepreneurs and emerging and growth stage companies that cover a broad spectrum of knowledge-based industries, supporting them through the phases of their lifecycle and providing legal advice on a wide range of issues and requirements along the way (read our emerging and high growth clients' success stories.) We are proud to play a role in each of these journeys, which in turn are parts of a much bigger story: the growth and exceptional success of a resilient emerging and high growth companies ecosystem across Canada, an ecosystem that continues to create jobs, promote innovation and foster economic growth across the country while attracting significant amounts of domestic and international investment.

Finally, there are many data points that we feel are relevant to the market and important to track, but that did not make it into this year's publication. We will continue to refresh the content and data points in future releases of the *Deal Points Report*. In the meantime, please do not hesitate to reach out to any of the lawyers in our Emerging and High Growth Companies Group in our offices across Canada to discuss the findings in this year's publication. We also welcome requests to present additional data points that may be of interest in future versions of the *Deal Points Report*. To submit a request, please contact us at emergingcompanies@osler.com.

Get key insight and analysis of the *Deal Points Report*

Discover more about this report as members of Osler's Emerging and High Growth Companies Group discuss the findings in our on demand webinar.

Watch the webinar now

Osler's emerging and high growth clients share their success stories

For more than a decade, Osler has served as counsel to some of Canada's most innovative startup founders and growth-stage investors.

Read these success stories

Highlights from the *Deal Points Report*

- The number of down rounds in 2023 was 2.25 times the average of the previous three years (2020 – 2022) covered by the *Deal Points Report*. Additionally, in 2023, 16% of all financing rounds, where a company was raising a subsequent round of financing, qualified as down rounds — compared to only 7% of such financing rounds in 2022. Notwithstanding the increased incidence of Canadian down rounds in 2023, the Canadian average was still below the U.S. average reported by Carta, where more than 19% of U.S. funding rounds in 2023 were down rounds. We believe this data confirms the expectations that we set out in prior releases of the *Deal Points Report*: companies that raised at significant valuations during the pandemic have exhausted their cash runways and bridge financing strategies (which were designed to defer setting new valuations in 2022) were forced to go back to the market in 2023, where valuations were markedly lower than they were during the pandemic.

- Of those companies that completed a down round during the four-year period covered by the *Deal Points Report*, the highest incidence of down rounds occurred in later stage financings (i.e., Series C, Series D and beyond). This aligns with our expectations: companies completing later stage financings are more susceptible to market pressures that affect their financial and customer metrics, which in turn influences investor demand and valuations. This data is also consistent with U.S. deal studies in 2023, including Fenwick's *Silicon Valley Venture Capital Survey — Third Quarter 2023* [PDF], Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends* [PDF] and CooleyGo's Interactive Data for 2023, which showed that U.S. emerging companies experienced a sharp increase in the number of down rounds, with Carta calling 2023 the "year of the down round".

- The highest concentration of financings in Canada occurred at the early stages (i.e. Series Seed and Series A; representing 78% of all 2023 financings rounds), which is consistent with findings from other Canadian reports, such as those prepared by the Canadian Venture Capital and Private Equity Association (CVCA), including the Canadian Venture Capital Market Overview — 2023 and U.S. reports, including those from CBInsights.

- 50% of financings covered in the *Deal Points Report* in 2023 saw the conversion of convertible instruments on closing: the highest incidence of the conversion of convertible instruments was at the Series Seed and Series A stages. Similarly, between 2022 and 2023, there was an approximate 1.73 times increase in the percentage of Series A financings whose closings included the conversion of convertible instruments. This pattern is reflective of emerging companies' strategies during 2022–2023 to raise bridge rounds in an effort to extend their cash runway, and avoid potentially lower valuations in 2023. As a result, many of these bridge rounds are now converting, as these same companies start returning to the market to raise priced rounds.

- Companies in the information technology industry (including artificial intelligence — which accounted for nearly 50% of all investments in these companies — blockchain, adtech, edtech and cybersecurity) make up over 30% of all companies raising a financing round covered by the *Deal Points Report* in 2023, with health/life sciences-focused companies having the second highest concentration of financings, representing over 19.8% of the financings covered. Notably, investments in cleantech-focused companies nearly doubled from 2022 to 2023 and we expect to see this trend continue. One particular figure is worth noting: artificial intelligence companies (included in the information technology industry figures above), represented 15% of the financings for 2023.
- In 2023, Ontario and British Columbia had the highest concentration of companies raising a financing round that were included in the *Deal Points Report* — representing 48.1% and 16.5% respectively, of all Canadian companies included.
- The percentage of companies covered in the *Deal Points Report* that were founded by women fell from 16.4% in 2022 to 14.7% in 2023. Similar to 2022, our data from 2023 shows that Series Seed, Series A and Series B financings contained the largest concentration of companies founded by women. However, and as supported by the Pitchbook Venture Monitor, investment in women-founded companies in 2023 most notably declined at the Series Seed financing stage. We intend to monitor this data point and remain committed to supporting women in the emerging and high growth companies ecosystem as they continue to build incredible companies at all stages of growth.
- Over 97% of financings in 2023 covered by the *Deal Points Report* used documentation generally based on the CVCA model financing agreements, demonstrating that financings based on forms consistent with the CVCA model financing agreements continue to be market standard in Canada.
- While our data did reveal an uptick in investor-friendly terms between 2022 and 2023, most notably in terms of a greater incidence of senior ranking preferred shares, cumulative dividends and participation rights, our data also shows that there continues to be an overall adherence to historical norms for key financing terms, including *pari passu* 1x liquidation preferences, no participation rights, broad-based weighted average anti-dilution, no redemption rights and non-cumulative dividends.
- For 38% of financings covered by the *Deal Points Report* in 2023, proceeds were invested over more than one closing, up from 22% in 2022, as companies often took longer to establish their investor syndicates, and investors required additional time to obtain internal approvals amidst challenging market conditions. Notwithstanding this trend, the number of days to get from an executed term sheet to a first closing decreased across all categories of financing rounds (as compared the average closing times during 2020 through 2022). This is consistent with the above, as companies were more willing to allow for multiple closings, enabling them to close more quickly with initial investors.

- Data relating to preferred director, common director and independent director board representation shows a trend towards a greater proportion of preferred director representation in later stages of financings (with preferred directors representing 45% and 56% of the total composition of the board for Series C and Series D companies, on average, for 2023). The data reflects a larger proportion of non-preferred directors in Series Seed and Series A financings, typically representing greater consolidation of founder and common shareholder control in these companies.

Methodology and background

- The *Deal Points Report* consists of a review of 486 preferred share financings, from Series Seed financings through to Series D financings and beyond, completed by Osler between 2020 and 2023. These preferred share financings include a small representation (approximately 9.5%) of financings involving a U.S. company where one of the firm's Canadian offices was engaged in the matter. Common share financings and financings resulting in the issuance of convertible securities, such as Simple Agreements for Future Equity (SAFEs) or convertible promissory notes, were excluded.
- The total value of all initial investment across all of the financings covered by the *Deal Points Report* was US$7.1 billion. The total value of initial investment, plus follow-on investment, across all these financings was US$7.7 billion.
- Osler was company counsel in approximately 73.3% of the financing transactions included in the *Deal Points Report* and investor counsel in approximately 26.7% of these financings.
- Osler collected and anonymized data from both public (where documents such as company articles are publicly filed) and non-public financing documents related to these transactions, including term sheets, articles, share purchase agreements, shareholders agreements and secondary sale transaction documents.
- Financings covered in the *Deal Points Report* span a four-year period.
- The *Deal Points Report* is divided into four sections: General overview, Valuation and investment intelligence, Financing structure intelligence and Financing terms intelligence.
- All dollar amounts for financing transactions that were not originally denominated in USD were converted into USD based on the applicable foreign exchange rate published by the Bank of Canada on the closing date for the applicable financing. To the extent that the closing date of such a financing transaction occurred on a holiday, the applicable dollar amount was converted into USD based on the applicable foreign exchange rate published by the Bank of Canada on the next business day.

About Osler's Emerging High Growth Companies Group

The Emerging and High Growth Companies Group at Osler is composed of individuals who are passionate about entrepreneurship and fostering the development of early and growth stage ventures. Osler is the only Canadian law firm ranked Band 1 in Chambers Canada, and our team members in our Toronto, Vancouver, Montréal, Ottawa and Calgary offices, are eager to share their experience and insight with emerging companies to help maximize their development and ensure long-term success.

We represent entrepreneurs and emerging and growth stage companies nationwide from a broad spectrum of knowledge-based industries, supporting them from incubation through their growth trajectory, as well as the venture capital funds, growth equity funds and private equity funds that finance them. We provide legal advice on the wide range of issues and legal requirements that emerging and high growth ventures face, from corporate and tax structuring, to fundraising and shareholder agreements, to intellectual property strategies and employment- and compensation-related matters — all of which require a deep understanding of the market and expert counsel.

Osler acts for more than 2,000 early, growth and late-stage ventures and venture investors across Canada, in the United States and around the world. In 2023, despite the effects of market changes and pressures, Osler advised on 269 venture financing transactions, including preferred share financings, convertible note financings and SAFE financings, with more than US$2.19 billion raised by emerging and high growth companies, many of which are showcased in the data forming the basis for this *Deal Points Report*.

Resilience and renewal characterize the emerging and high growth companies ecosystem in 2023

Michael Grantmyre, partner in Osler's Emerging and High Growth Companies Group, outlines the key findings and trends from the *Deal Points Report*.

Watch the video

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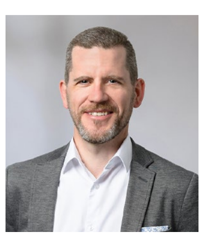

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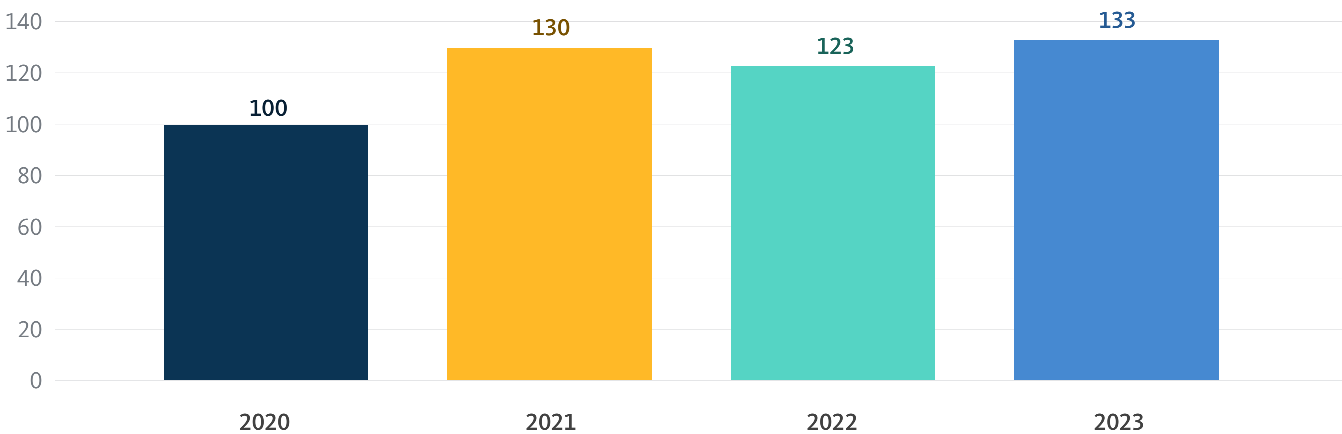
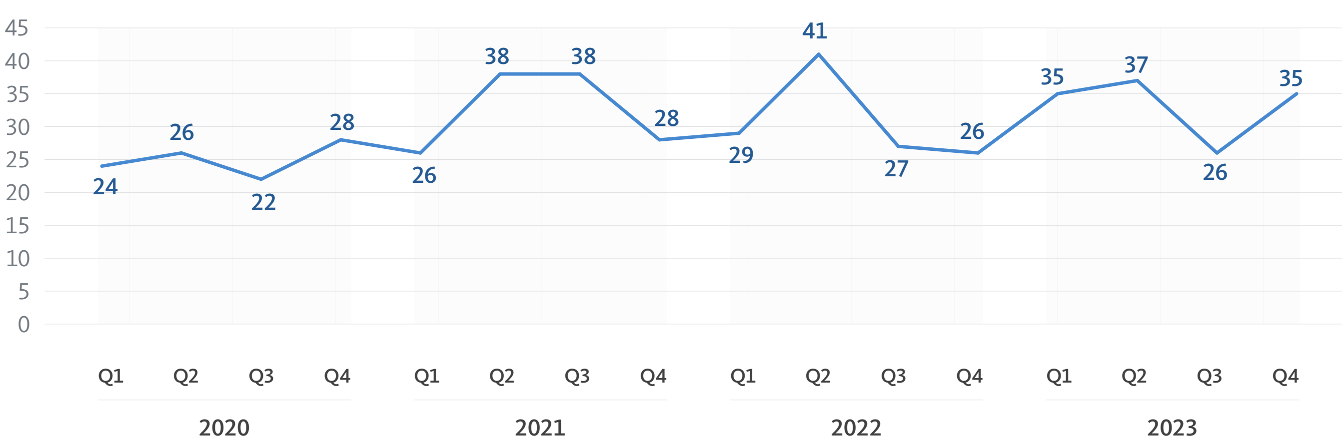
General overview of financings in the *Deal Points Report*

Total financings, *by year*



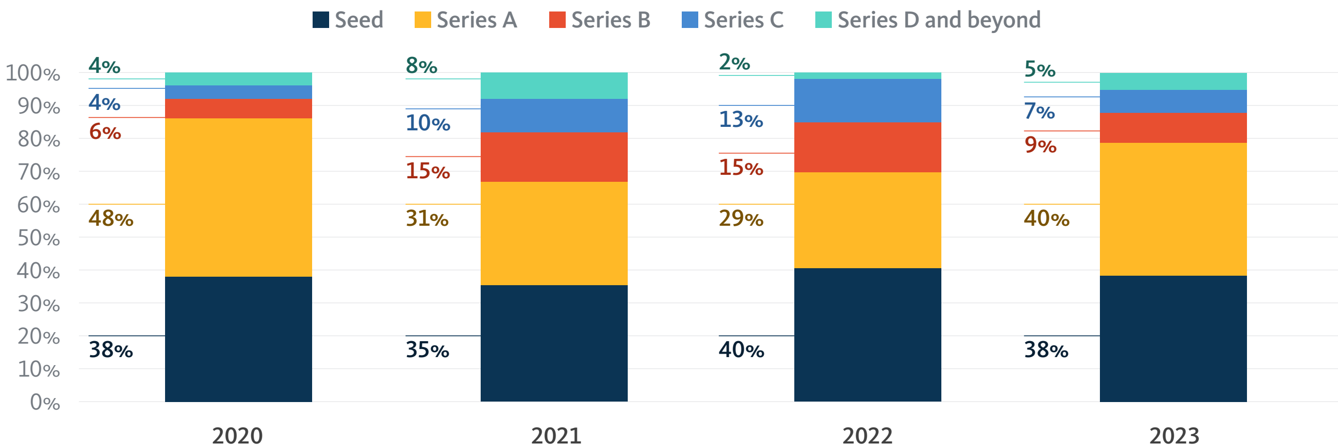
Total preferred share financings, by quarter

For 2023, there was a higher concentration of deals in the first half of the year.



Number of financings, by year and by series

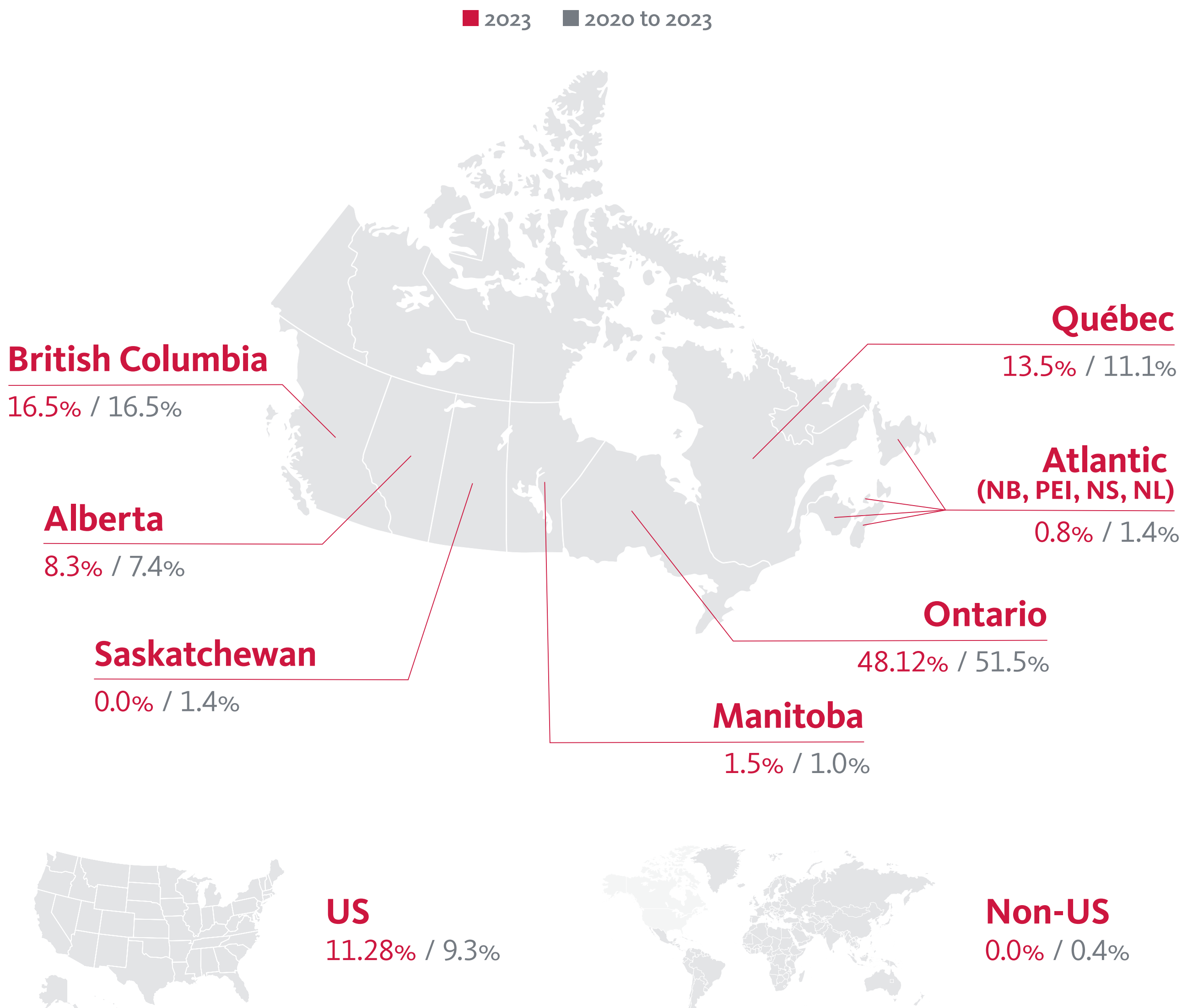
As compared to the average for the prior three years covered by the *Deal Points Report*, 2023 had a higher relative percentage of Series A financings (40% vs. 36%) and a lower relative percentage of Series B (9% vs. 12%) and Series C (7% vs. 9%) financings. We also note that 2023 followed a similar pattern as the prior three years, with the highest concentration of financings in Canada being at the Series Seed and Series A financing stage (78% in the aggregate).



Location of companies

The chart below displays the location of companies for Canadian financings included in the *Deal Points Report*, expressed as a percentage of all included Canadian companies.

The trend in 2023 was similar to the prior three-year average covered by the *Deal Points Report*, with the highest concentration of companies located in Ontario and British Columbia. This distribution of financings is consistent with the CVCA's data for 2023, which reported the highest concentration of Canadian financings in Ontario, Québec and British Columbia.

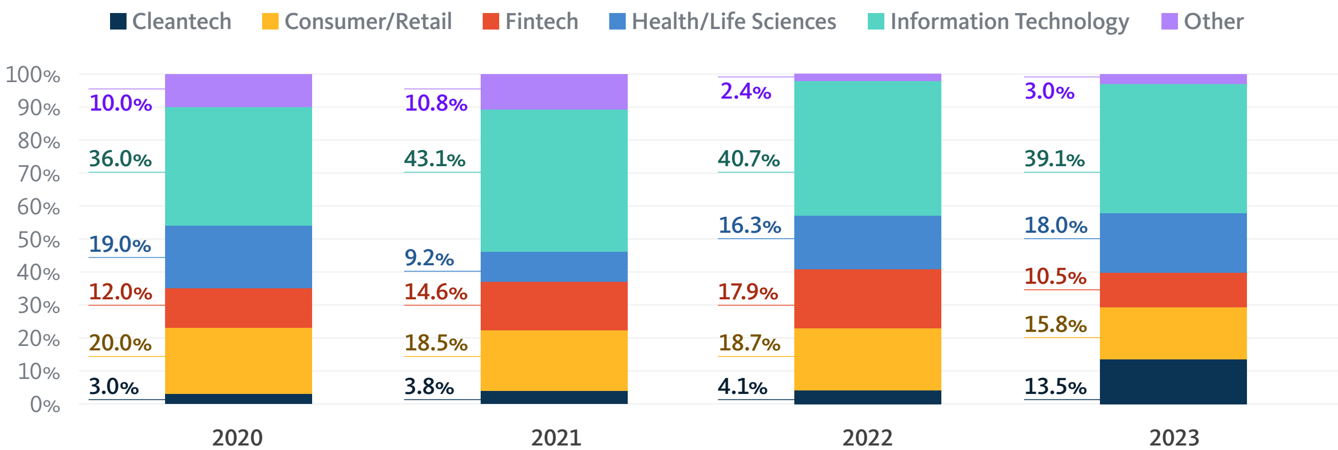


Company distribution by industry, by year

The financings included in the *Deal Points Report* were for companies distributed across the following industries:

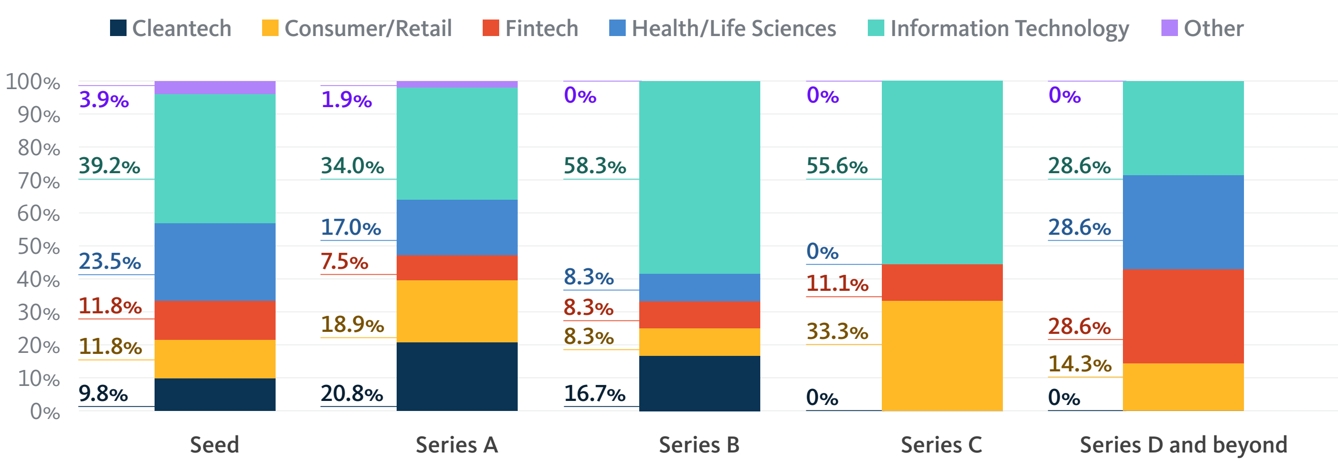
- Cleantech
- Consumer/Retail (including robotics, supply chain, logistics and consumer retail)
- Fintech
- Health/Life sciences
- Information technology (artificial intelligence, blockchain, adtech, edtech and cybersecurity)
- Other (industries which do not reasonably fit within the foregoing indusy categories)

In 2023, 39.2% of the companies covered by the *Deal Points Report* were classified as falling within the "information technology" industry. Nearly half of these information technology companies (or 15% of all companies that raised round of financing in 2023) fall within the "artificial intelligence companies" category. In 2023, these artificial intelligence companies raised a total of US$470 million.



Companies by industry, by series

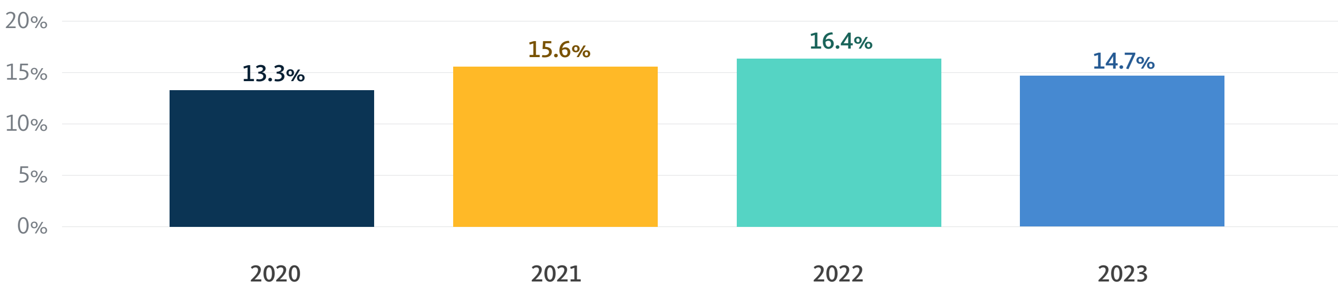
The overall representation of financings included in the *Deal Points Report*, based on series of financing and industry, is set out below. Information technology represented the largest number of companies (39.2%) that raised a financing round across all series of financings, except for Series C, where companies in the consumer/retail industry raised the largest number (33%) of rounds.



Breakdown of women founders

In 2023, women-founded companies represented 14.7% of all companies that raised a financing round in 2023, down from 16.4% in 2022, with the largest concentration of women co-founded companies at the Series Seed, Series A and Series B financing stage. For financings of women co-founded companies in 2023 that were captured in the *Deal Points Report*, 75% of such financings were early-stage financings (Series Seed/Series A). However, we did notice that between 2022 and 2023 the percentage of companies co-founded by women at the Series Seed stage dropped, by about 2%.

By comparison, Pitchbook reported that in the U.S., companies with a combination of men and women founders represented approximately 19% of the U.S. venture financings closed in 2023. Businesses with only women founders, represented approximately 2% of U.S. venture financings closed in 2023.



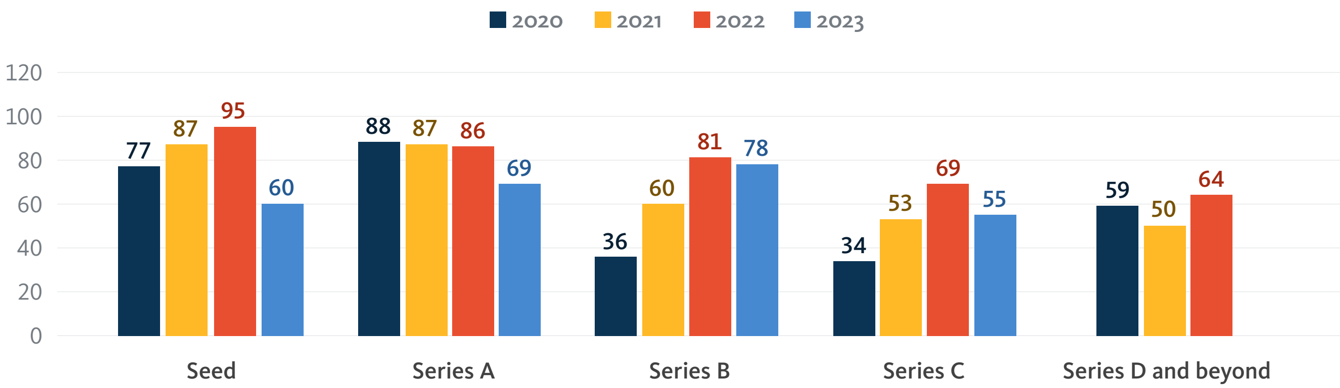
In 2023, to help shine a light on the success, stories and journeys of women founders, Osler continued to run our Women in Emerging and High Growth Companies Leadership Series, which included sessions How to work with venture capitalists and A guide to negotiating contracts. Osler also supports women at all stages of building their companies by introducing them to our exceptional network of founders, established entrepreneurs and investors.

In 2023, we continued to host intimate and curated dinners as part of our "Seat at the Table" series in Toronto and Calgary which focused on elevating women in the Canadian tech ecosystem and creating long-lasting connections. Learn more about Osler's programs for women founders, including links to prior webinar series here.

Average time between term sheet signing date and financing closing date (by series)

This chart below represents the average time, in days, between the date on which a term sheet was signed and the initial closing of the related financing. On average, deals across all financing rounds took fewer days to close in 2023 than in 2022. One of the reasons for this change is that in 2023 there was an increase in the number of financings that included multiple closings, reducing the pressure, and corresponding timeline, to include all investors in a single closing.

In 2023, the largest decrease in the average number of days to complete a financing occurred in Series Seed and Series A financings, where the number of days between signing of a term sheet and the initial closing for such financing round dropped approximately 37% and 20%, respectively. Note that in 2023, only a small number of Series D and beyond financings closed and, as a result, there is insufficient data to be instructive on this point. However, we do note that later stage financings did take an extended period of time to close in 2023 (often, upwards of several months).

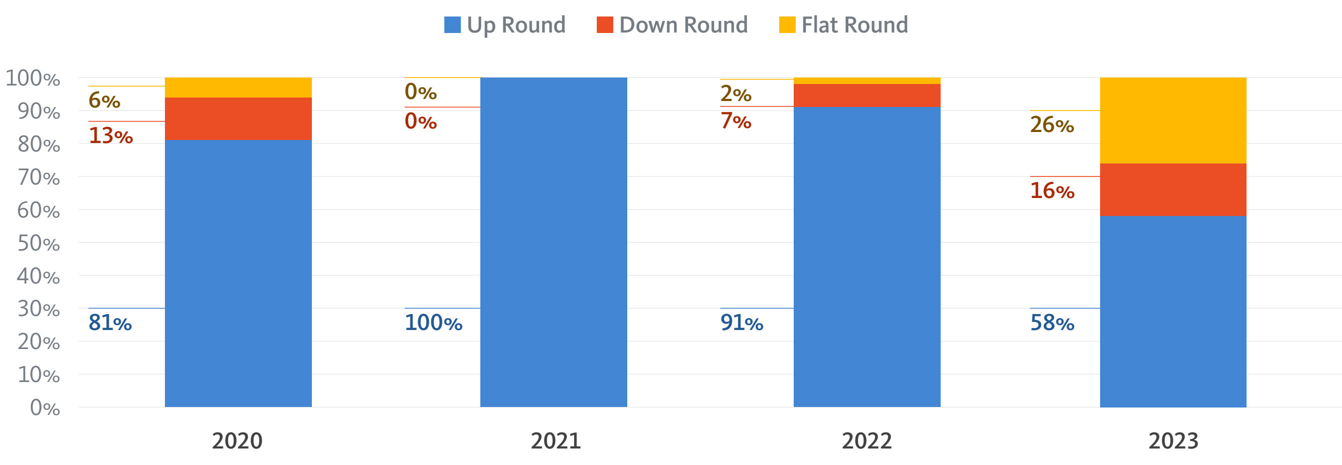


Valuation and investment intelligence

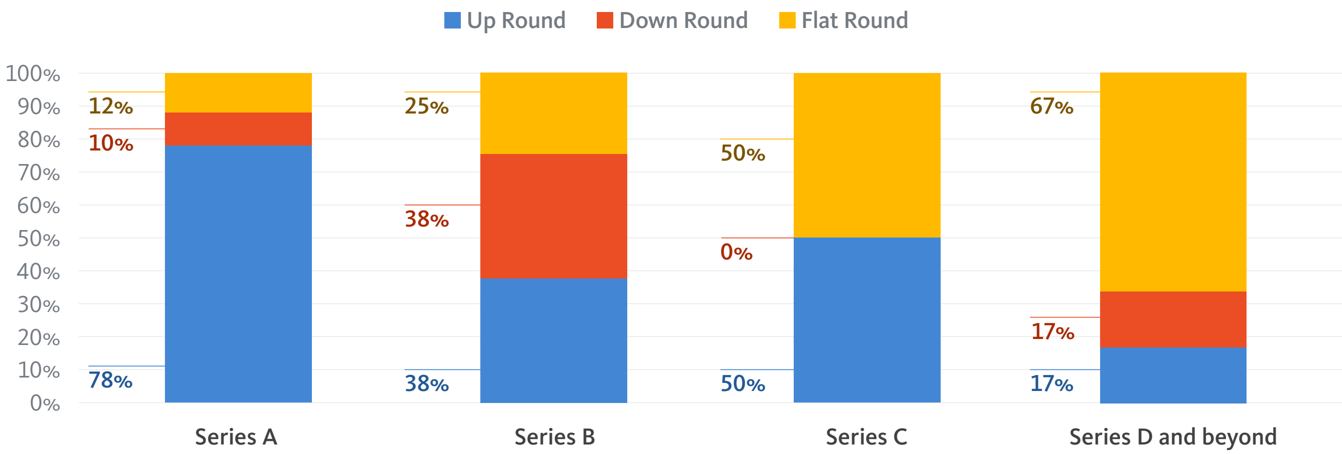
2

Valuation for financings, by year

The below graph illustrates the breakdown of valuation direction for the financings included in this report, reflected as up rounds, down rounds and flat rounds. In 2023, we saw the highest increase in the number of down rounds, where 16% of all financing rounds were reported as down rounds. The highest concentration of down rounds was in Series B (38%) and Series D (17%) financings. In 2023, the number of financings that qualified as "up rounds" was down by 36% as compared to 2022. These findings are consistent with those in comparable reports published by U.S. law firms, where 13% to 30% of all deals reported by such studies qualified as down rounds. Further, Carta stated that more than 19% of all rounds reported in 2023 qualified as down rounds, dubbing 2023 the "year of the down round". At the same time, the decrease in the percentage of up rounds is correlated to the increased number of flat rounds in 2023 — where 26% of all financings qualified as flat rounds. In 2023, an increased number of companies raised at valuations that equated to the same price per share as their prior financing round, including through the use of "extension" rounds.

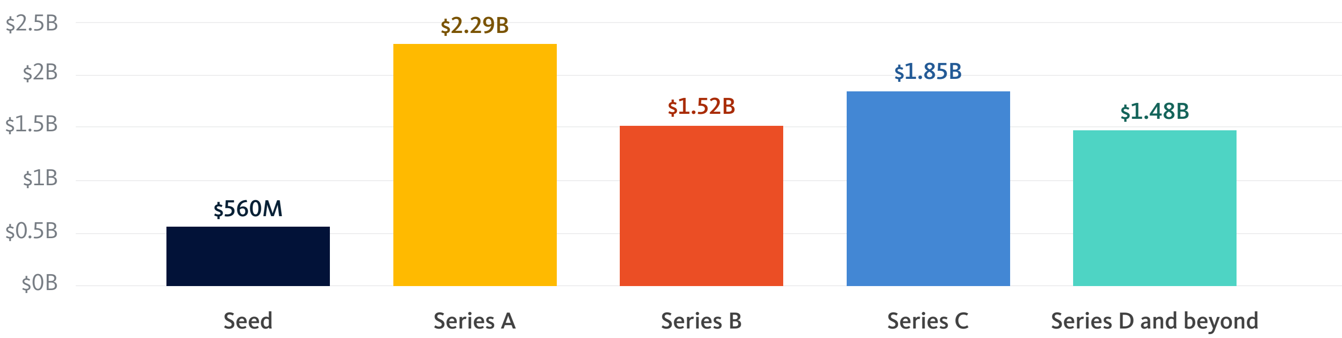


When broken down by series, the highest rates of down rounds in 2023 were in Series B and Series D financings. Series A financings fared better, with only 10% of Series A financings qualifying as a down round.



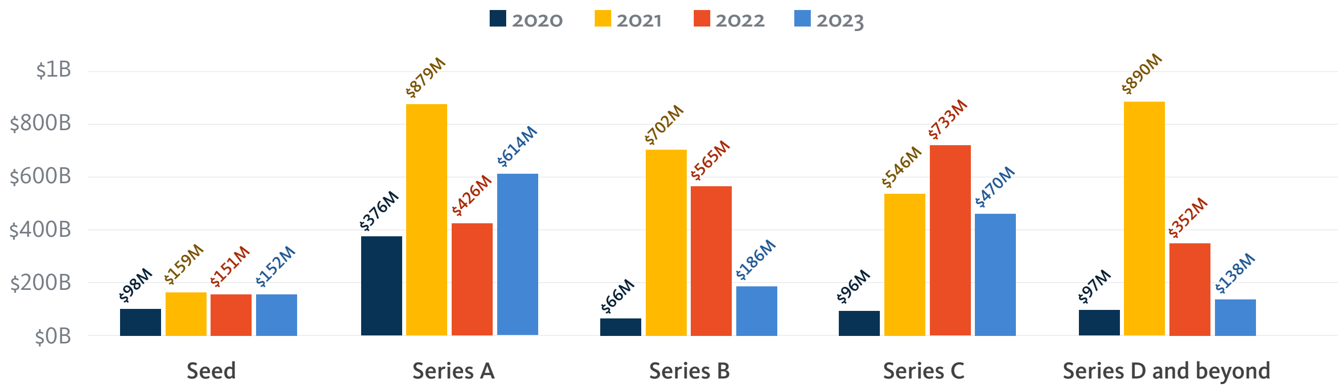
Total investment amount, by series (in billions of USD)

The graph reflects the total investment amount in U.S. dollars (including for any initial closing and follow-on investment for that same transaction) for all financings included in the *Deal Points Report*, based on series of financing, being a total of US$7.7 billion.



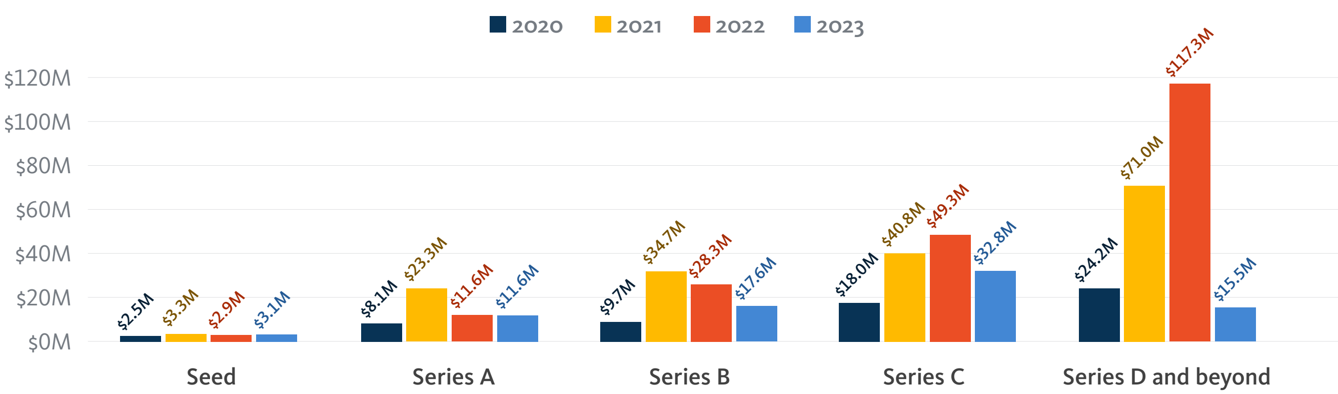
Total investment amount, by series (in billions of USD), by year

The total investment amount in U.S. dollars (including for any initial closing and follow-on investment for that same transaction) broken down by series, for financings completed from 2020 to 2023 is shown below. The data reveals the record-breaking nature of 2021. Total dollars raised in 2023 was only 52% of the total dollars raised in 2021. Total dollars raised in Seed financings remained consistent from 2021 through 2023, and dollars invested in Series A financings increased by 20% from 2022 (although, still 42% of the amount invested in Series A financings in 2021). The most significant decline was in the Series D and beyond category, where total dollars invested were down 83% from the 2021 high and 57% from 2022. This data is consistent with the results published in the CVCA's year-end report, where total investment value was down 34% as compared to 2022, pre-seed and seed financing levels remained consistent over the same period, and early/later stage and growth equity financings saw a steep decline from their peak in 2021.



Average investment amount, by series (in millions of USD), by year

As illustrated below, in 2023, the sharpest declines in average round sizes were experienced in Series B and Series D and beyond financings. The average round size for Series B financings was down 63% as compared to the average Series B round size for the prior three years, and down 70% as compared to 2022. For Series D and beyond financings, in 2023 the average round size was down approximately 76% as compared to the prior three-year average and down 87% from 2022. The sharp decline in later stage round sizes, consistent with the data reported by the CVCA [PDF], can be attributed to a general decline in 2023 of later stage financings, the increased usage of smaller extension rounds in later stage financings and the reduction in the number of "mega deals" ($50M+) reported in 2023.

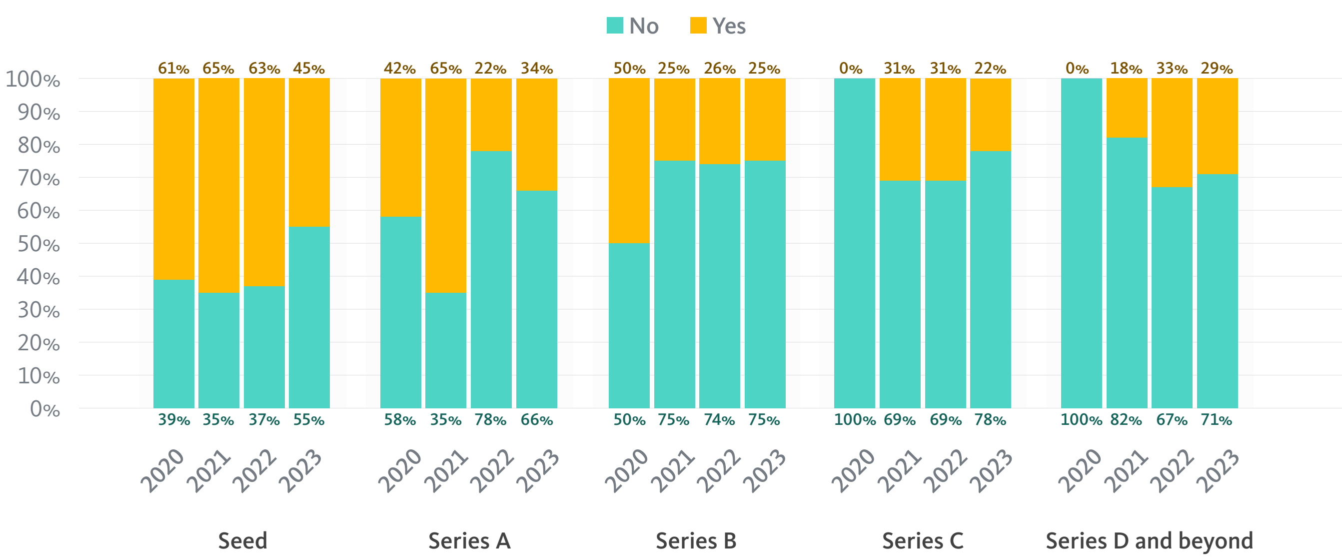


Financing structure intelligence

3

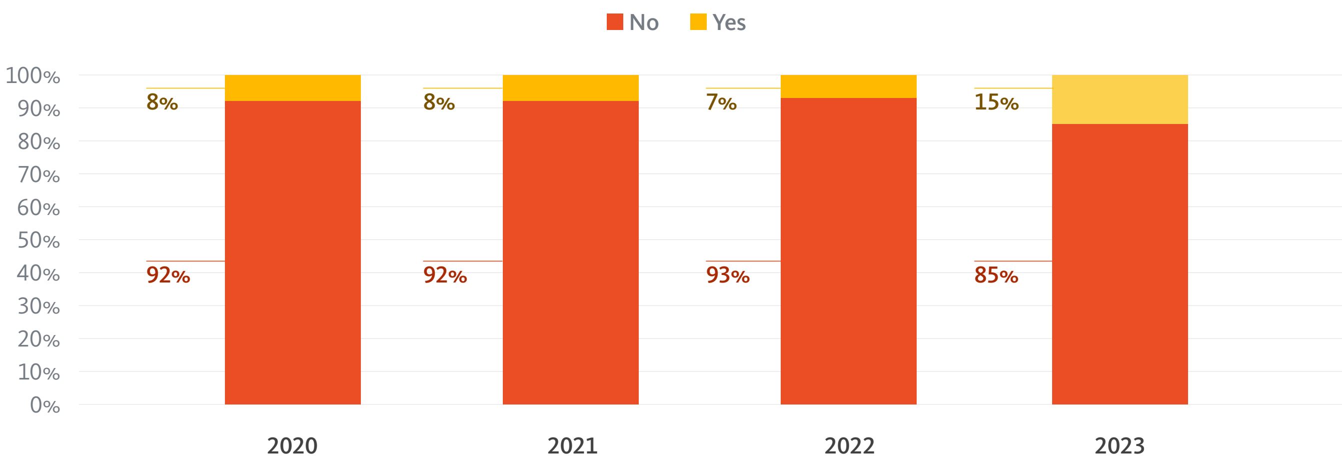
Conversion of convertible securities (such as SAFEs or convertible notes) in connection with financings, by series, by year

The graph below displays the proportion of financings in which a convertible instrument (such as a SAFE or convertible note) was converted, by year. In 2023, 50% of all financings included the conversion of convertible securities. We note that the conversion of convertible securities following a Series Seed round was largely consistent across all subsequent series of financings — this is consistent with our expectations, as companies in 2023 continued to employ bridging tactics at all stages to delay going to market to raise a priced rounds.



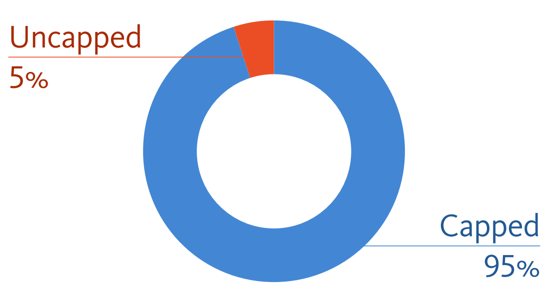
Minimum investment required to be invested at the initial closing of the financing, by year

The chart below illustrates the percentage of financings included in the *Deal Points Report* in which the term sheet or transaction documents included a provision expressly requiring that the company raise a minimum investment amount at its initial closing, by year. Although requiring a minimum investment amount is not a standard term for preferred share financings, the number of deals that included a minimum initial investment amount in their term sheet doubled between 2022 and 2023 (a 48% increase over the prior three-year average), indicating that investors in 2023 required greater certainty on committed capital and syndication for financings before they were willing to finalize the initial closing and release funds.



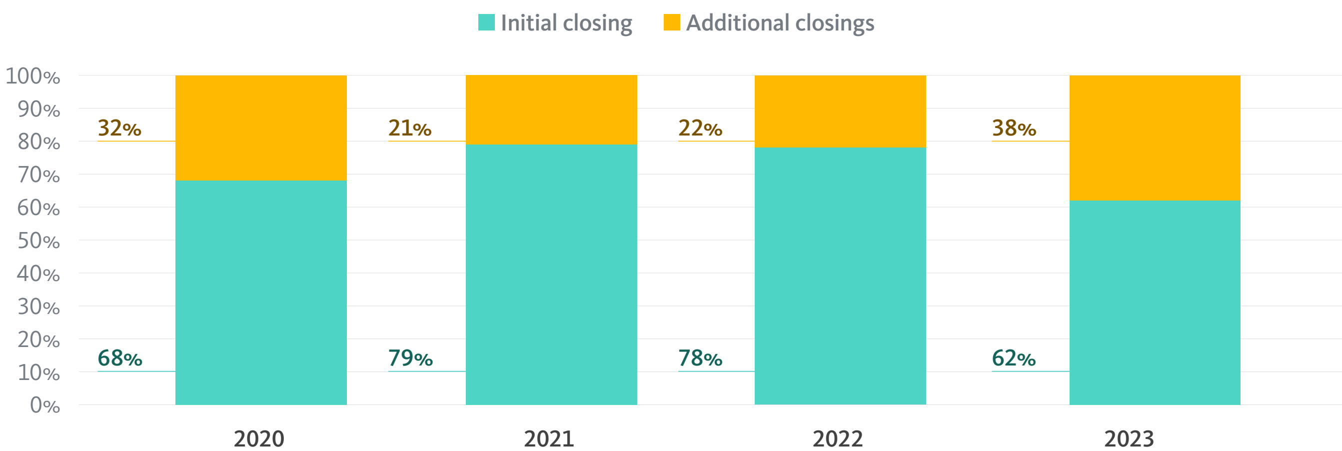
Company covering investor fees in connection with the financing, capped vs. uncapped

Of the financings included in the *Deal Points Report* from 2020 to 2023, the overwhelming majority required the company to cover all or a portion of the investor fees. Of those financings where investor fees were covered, 95% placed a dollar cap on the amount of reimbursable fees, as indicated in the pie chart below.



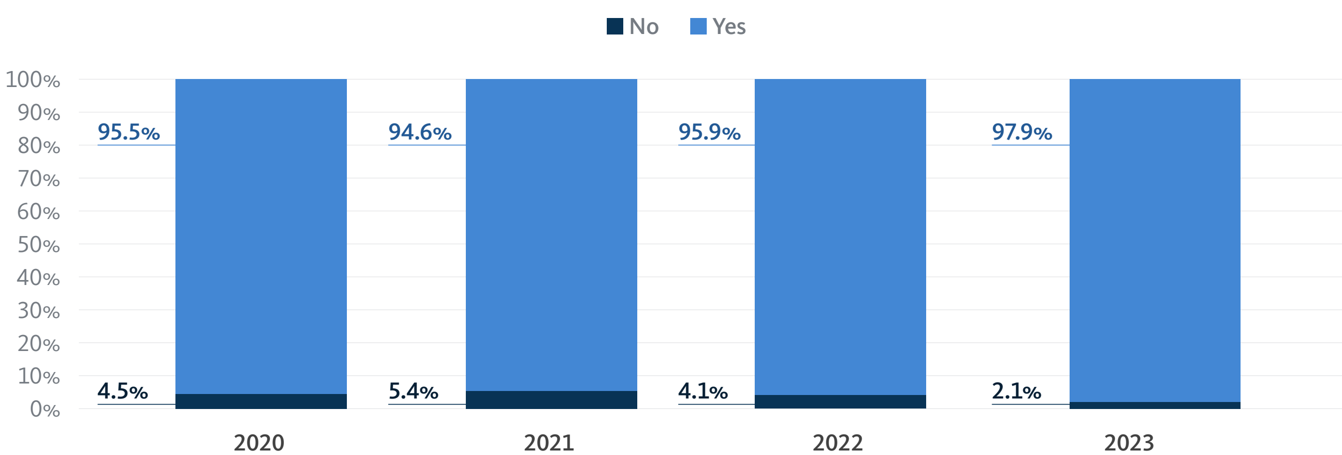
Financings with multiple closings, allocation of proceeds

In 2023, there was a sharp increase in the number of financings where the amount raised in the round was spread across multiple closings. The use of multiple closings increased from 22% in 2022 to 38% in 2023, as companies took longer to fill their rounds. Despite this and consistent with prior years covered by the *Deal Points Report*, in 2023, dollars funded at the initial closing of a financing round continued to represent a majority of all proceeds invested in that round.



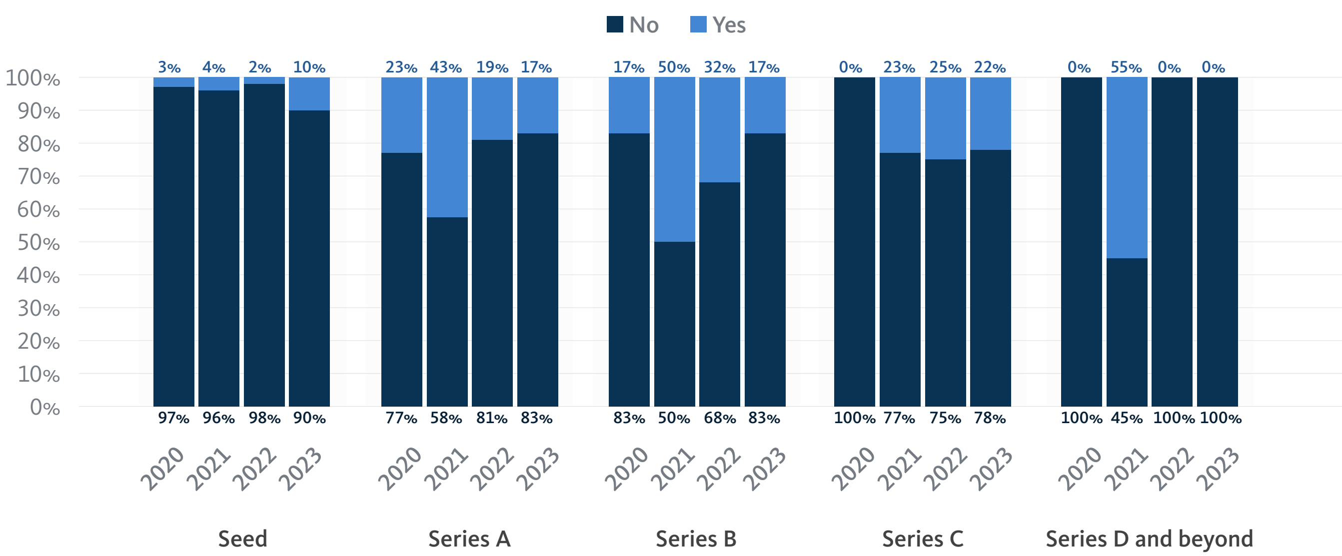
Use of CVCA/NVCA based forms of principal agreements in financings

The use of the CVCA/National Venture Capital Association (NVCA) model financing documentation remains ubiquitous for Canadian preferred share financings, with 97.9% of all financings reported in 2023 using the CVCA/NVCA model financing agreements.



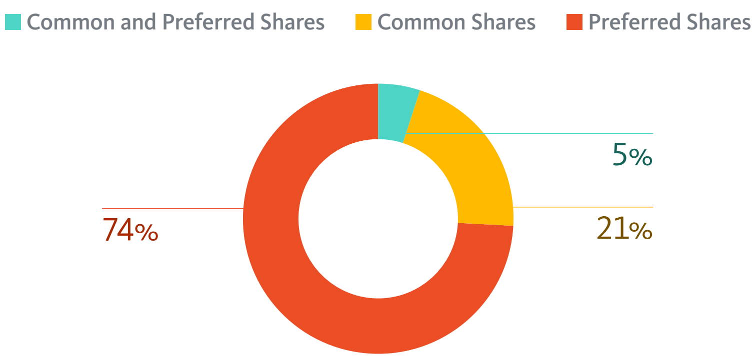
Existence of secondary transactions in financings, by series, by year

In 2023, only 16% of the reported financings included a secondary component. The inclusion of a secondary component was consistent with 2022 levels (15%), but at approximately half of the levels from 2021 (29%). The highest concentration of secondary transactions took place in connection with Series C financings (22%), followed by Series A and Series B financings (17%, each). Surprisingly, 10% of Series Seed financings included a secondary component, provided that the size of such Series Seed secondaries was significantly smaller (average of $477,000) than secondaries forming part of later stage financing rounds. In such instances, where a secondary component was included in a Series Seed financing, the applicable rounds were over-subscribed, and founders or early-stage investors agreed to sell a small number of their existing shares to make additional room in the round for new investors.



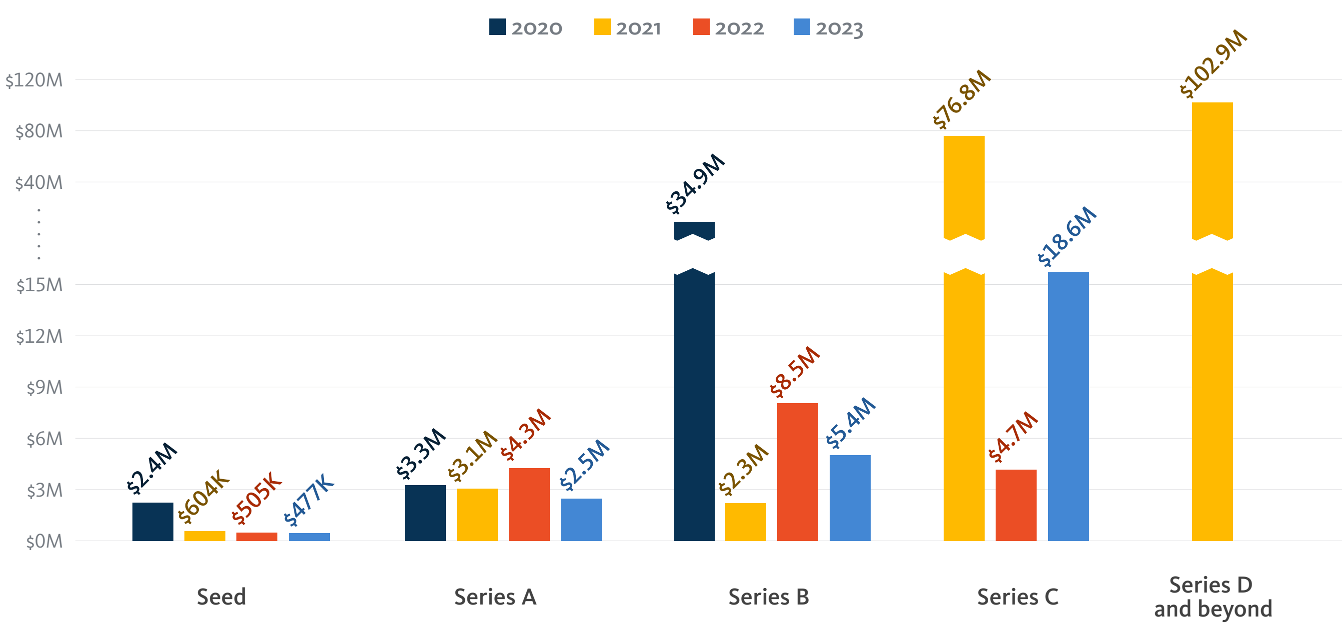
Type of equity sold in secondary transactions in financings

For financings included in the *Deal Points Report* which were completed in 2023 and included a secondary transaction, in 74% of such secondary transactions, the purchaser acquired preferred shares (including, transactions where common shareholders "up-converted" their common shares into preferred shares), and in 21% of such secondaries, the purchaser acquired common shares.



Average dollar amount of secondary transactions in financings, by series, by year

In 2023, the average size of secondary transactions decreased at each stage of financing compared to 2022, except for Series C financings (average of $18.6M). Notwithstanding their increase in 2023, Series C secondary values remained 44% below the four-year average (and we note that there were no Series C secondary transactions completed in 2020). As in 2022, none of the Series D or beyond financings included a secondary component. In 2020 (Series B) and 2021 (Series C and Series D), a single outsized secondary transaction in each of those years, for each of those categories of financings, caused the spike in the average secondary size.

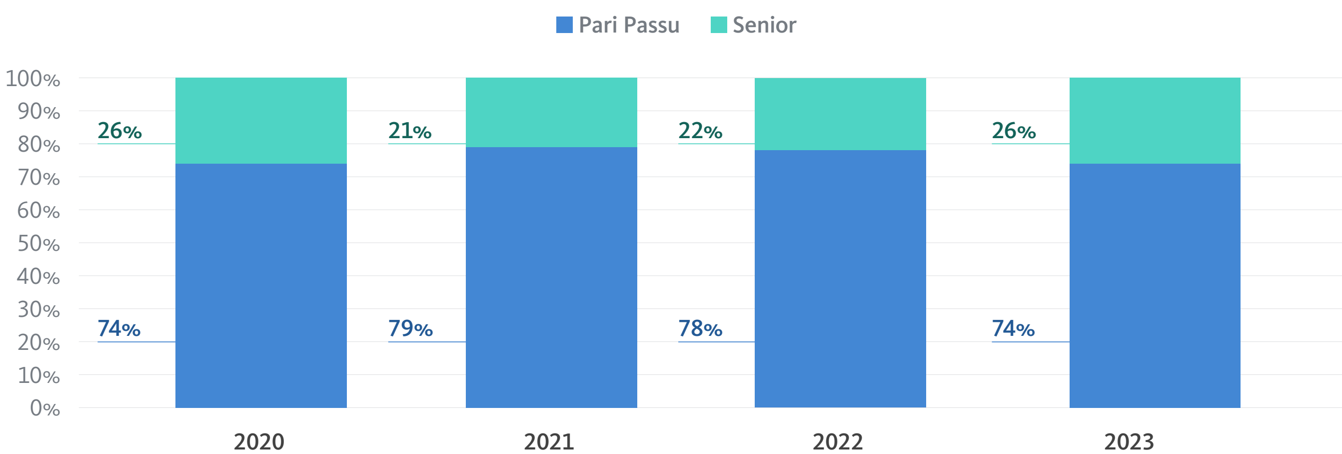


Financing terms intelligence

4

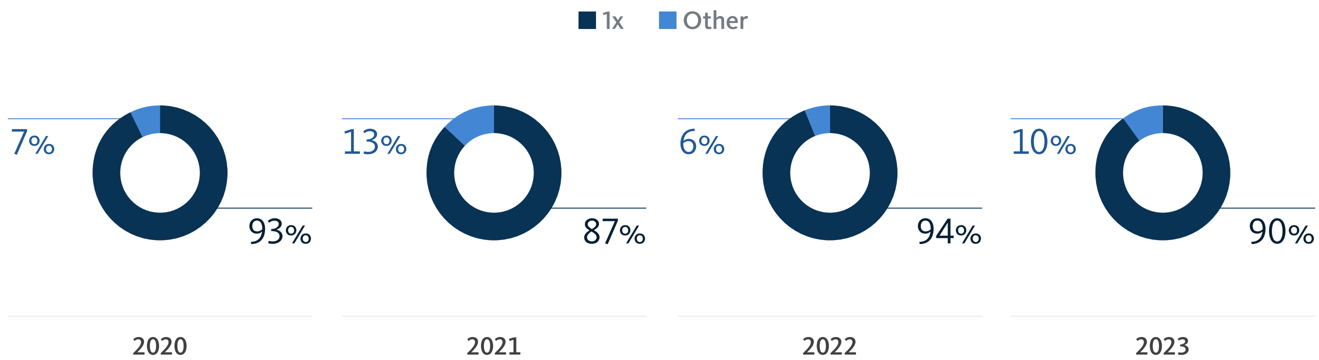
Financings which provide for a senior ranking liquidation preference

For 2023, 26% of the financings included the issuance of new preferred shares that ranked senior to all other securities in the capital of the company. Of those financings that qualified as down rounds in 2023, 90% of such financings included the issuance of a senior ranking security. This is consistent with the U.S. deal studies for 2023, including Fenwick's *Silicon Valley Venture Capital Survey – Third Quarter 2023* [PDF] and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends*, which showed between 15% and 22% of U.S. financings included a senior liquidation preference (with a higher concentration of senior liquidation preferences in later stage financings).



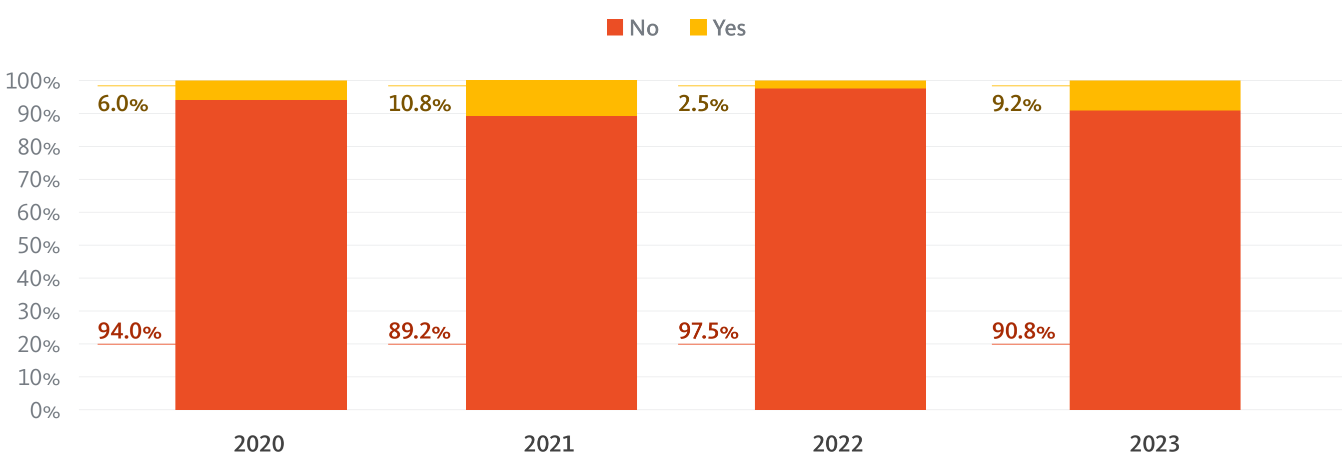
Financings which provide for a multiple on liquidation preferences

For financings included in the *Deal Points Report*, the chart below illustrates the distribution of multiples on liquidation preferences associated with the preferred shares being issued. The results are consistent with our expectations, in that a 1x multiple on liquidation preferences is the standard for financings. This data is also consistent with U.S. deal studies for 2023, including Fenwick's *Silicon Valley Venture Capital Survey – Third Quarter 2023* [PDF], where approximately 7% of U.S. financings included a security with a liquidation preference above 1x (provided that all such multiples were below 2x).



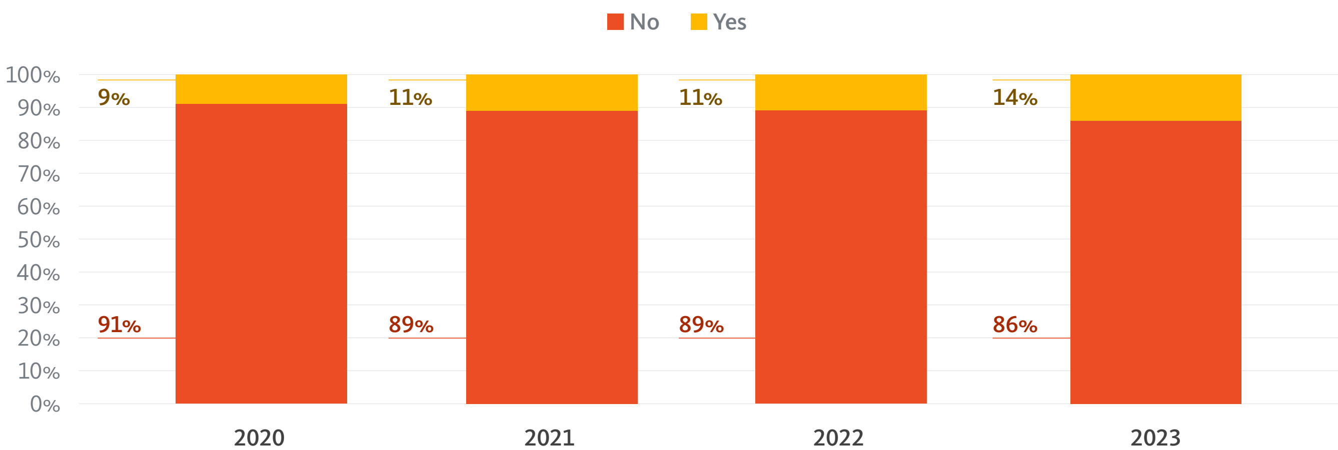
Financings with participating preferred shares

The proportion of financings in the *Deal Points Report* which included participating preferred shares is indicated below. These results are consistent with our expectations, in that participating preferred shares are uncommon in Canadian financings. The percentage of transactions that included a participation feature in 2023 (9.2%) was consistent with the four-year average covered by the *Deal Points Report* (7.1%), but increased by more than three times as compared to 2022 (which had a very low incidence of participation). Of those companies that issued a preferred share with a participation feature, 33% of such companies were in the health/life sciences industry. In addition, in 57% of the financings that included a participation feature, the preferred shares issued in such financing also had a senior ranking. The inclusion of a participation feature in the financings covered by the *Deal Points Report* is also consistent with the U.S. deal studies in 2023, including Fenwick's Silicon Valley Venture Capital Survey – Third Quarter 2023 [PDF] and Wilson Sonsini's The Entrepreneurs Report Private Company Financing Trends [PDF], where a participation feature was included in less than 5% of U.S. financings.



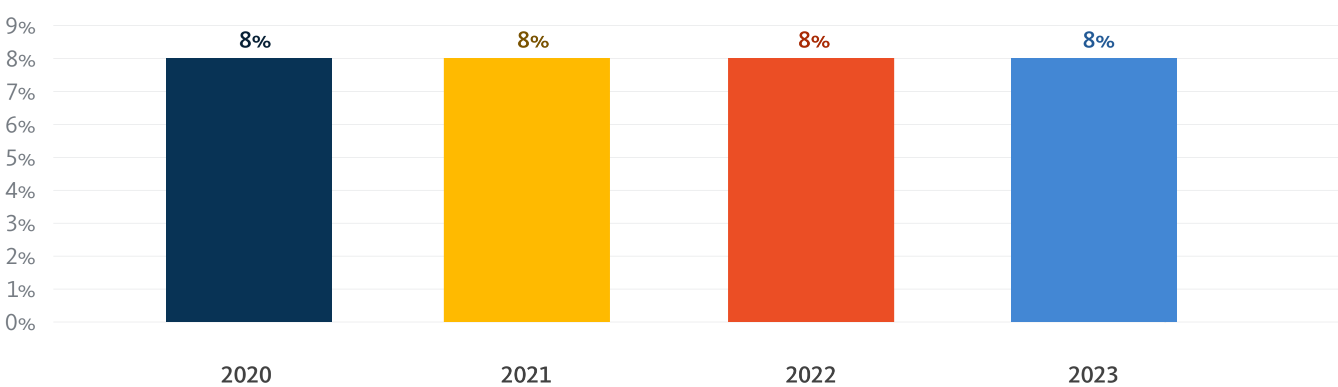
Financings with cumulative vs. non-cumulative dividends

The proportion of financings in the *Deal Points Report* which included rights to cumulative and non-cumulative dividends is highlighted below. There was a small uptick in the usage of cumulative dividends in 2023 financings (14% of all financings) which exceeded the average rate for the prior three-years covered by the *Deal Points Report* (10%). Of these financings, the highest concentration of cumulative dividends was in early-stage financings, where 38% of such financings were Series Seed financings, and 46% of such financings were Series A financings. These results are consistent with our expectations, in that cumulative dividends are generally uncommon in Canadian financing transactions. The financings covered by the *Deal Points Report* had a higher incidence of cumulative dividends than the financings covered by the U.S. deal studies in 2023, including Fenwick's *Silicon Valley Venture Capital Survey – Third Quarter 2023* [PDF] and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends* [PDF], which only included cumulative dividends in 2% to 4.4% of U.S. financings (with an increased incidence (69%) in U.S. down round financings).



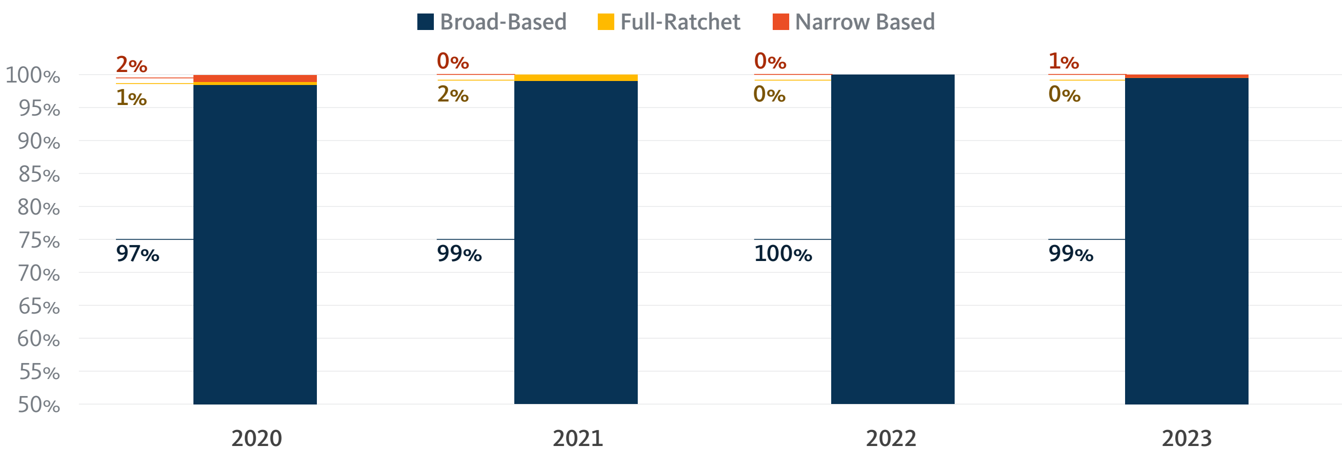
Financings with cumulative dividends, mode accrual rate

The chart below shows that the most commonly used dividend rate (the mode), for financings which included rights to cumulative dividends, was 8%, consistent with prior releases of the *Deal Points Report*.



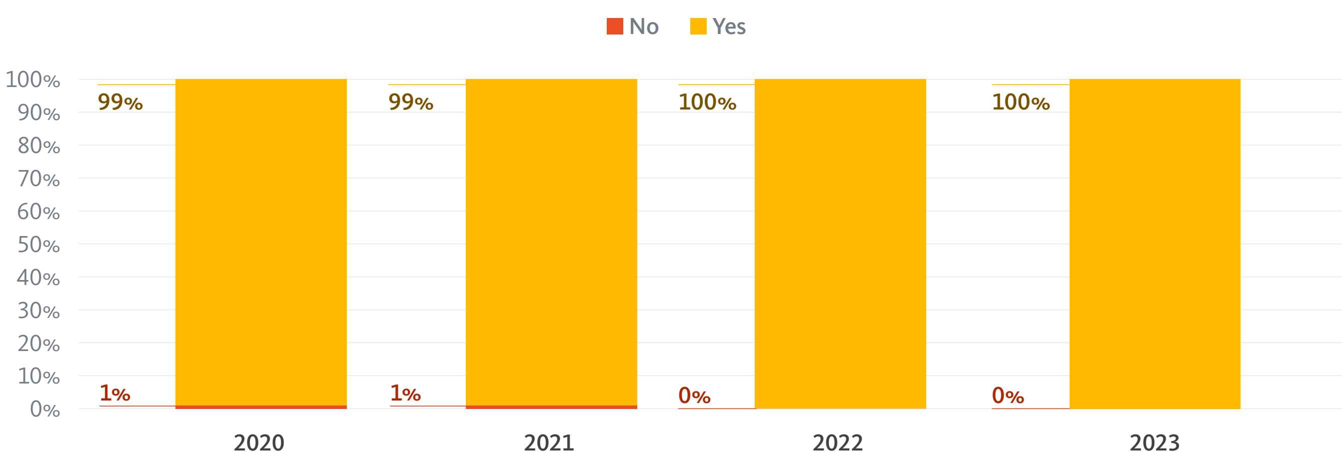
Financings which include rights to anti-dilution protection, types of anti-dilution protection

As in prior years, in 2023, broad-based weighted average anti-dilution protection continues to be market standard in Canada (99% of all 2023 financings that were included in the *Deal Points Report*), regardless of whether the applicable financing was an up round, down round or flat. This data is consistent with similar U.S. studies, where broad-based anti-dilution protection was included in 98% to 100% of all U.S. financigs.



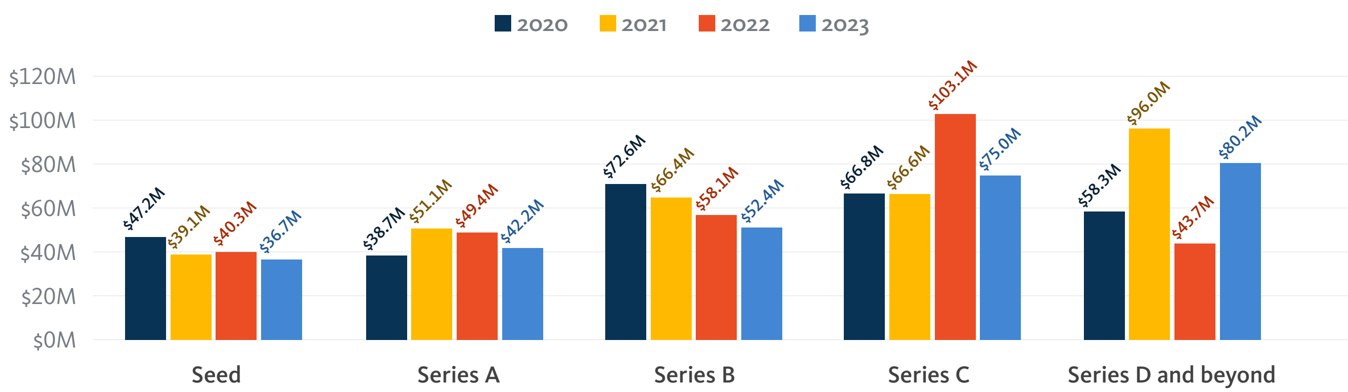
Financings with automatic conversion rights on an initial public offering

The graphic below shows the proportion of financings in the *Deal Points Report* which included provisions for the automatic conversion of outstanding preferred shares into common shares upon a qualified initial public offering of the company (or similar transactions). The data presented is consistent with our expectations, in nearly all financings provide for the automatic conversion of preferred shares into common shares upon the occurrence of such qualified offerings.



Financings with automatic conversion rights on an initial public offering, average and median qualified initial public offerings values by series

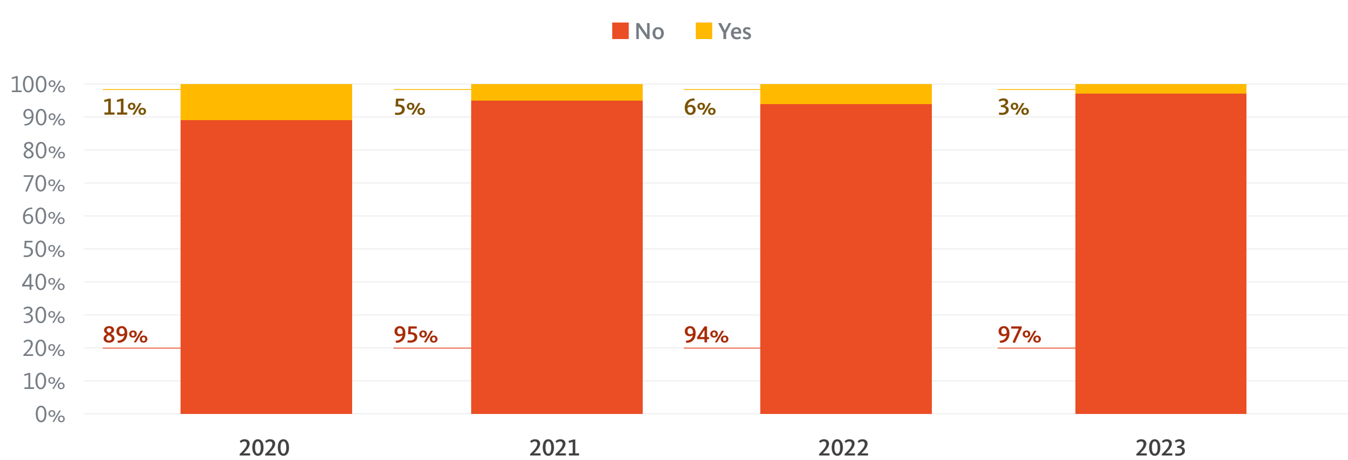
For financings in the *Deal Points Report* which included provisions for the automatic conversion of outstanding preferred shares into common shares upon the occurrence of a qualified initial public offering (QIPO) of the company, the chart below illustrates the average minimum dollar amount of gross proceeds that must be raised by the company to trigger such automatic conversion.



For all four years covered by the *Deal Points Report*, the median QIPO threshold for each financing round was: Series Seed ($38.7M), Series A ($48.6M), Series B ($50.0M), Series C ($50.0M) and Series D and beyond ($58.3M).

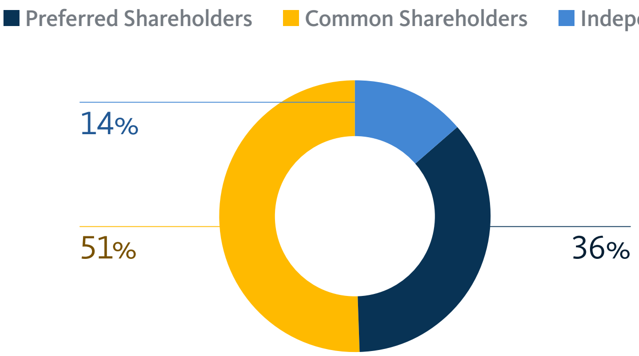
Financings with redemption rights

The proportion of financings in the *Deal Points Report* which included rights of redemption is shown below. This proportion is consistent with historical data, in that redemption rights are generally uncommon in Canadian financing transactions, with 2023 having the lowest rate of redemption rights (3%) of the four-years covered by the *Deal Points Report* (approximately 6% average across four-years). The data is also consistent with the financings reported in the U.S. deal studies in 2023, including Fenwick's *Silicon Valley Venture Capital Survey – Third Quarter 2023* [PDF] and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends* [PDF], where between 3% and 7% of such U.S. financings included a redemption right.



Board representation

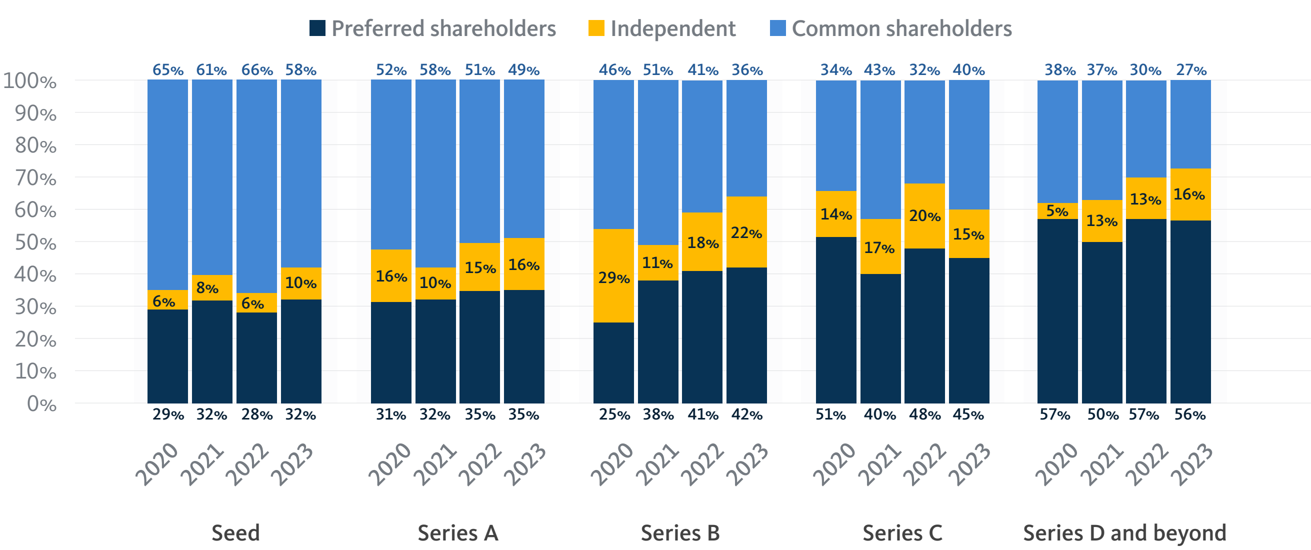
For financings included in the *Deal Points Report*, the chart below shows the average breakdown of board composition between common directors, preferred directors and independent directors. The average size of a company's board, across all financing rounds, was 4.8 directors. Additionally, 307 of the 469 reviewed financings (65%) allocated a board seat to the then current chief executive officer (or president).



Board representation, by series

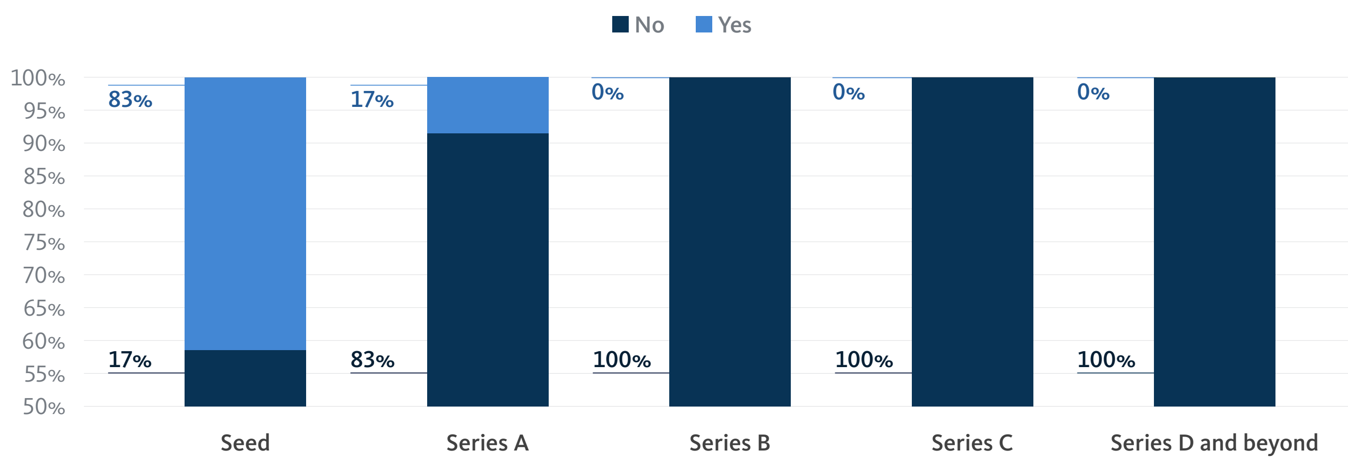
For financings included in the *Deal Points Report*, this graph illustrates the breakdown of board composition (expressed as a percentage of the overall size of the board of directors), between common directors, preferred directors and independent directors, by series. These results are consistent with our expectations:

- The proportion of directors nominated by common shareholders, relative to the overall size of the board of directors, gradually decreases, relative to the total size of the board of directors, as the company raises subsequent rounds of financing.
- The proportion of directors nominated by preferred shareholders gradually increases, relative to the overall size of the board of directors, as the company raises subsequent rounds of financing.



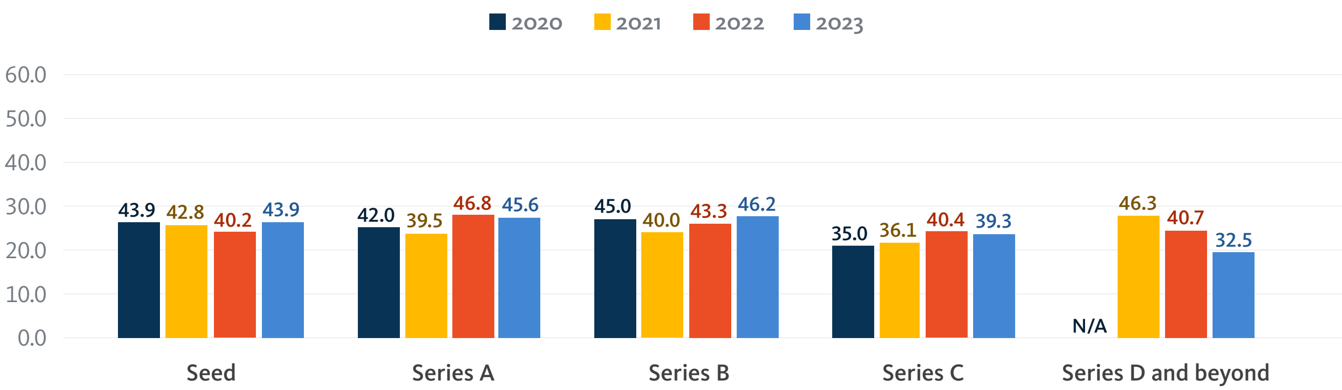
Reverse vesting

For financings included in the *Deal Points Report* in 2023, this chart shows the breakdown of instances, by series, where founders were requested to reset all or a portion of the reverse vesting schedule applicable to the founders, or put in place a reverse vesting arrangement if there was not already one in place. It is important to note that the numbers below do not seek to report on whether founders have reverse vesting arrangements in place at the time of a given financing. Our view is that having vesting arrangements for founders at the early stages of financing is market standard, and that experienced legal counsel in the emerging and high growth companies space will encourage founders to implement reverse vesting schedules. Therefore, the data below is helpful, in that it indicates that the resetting or implementation of new reverse vesting arrangements is concentrated in earlier stages of financings.



Financings with exclusivity provision, duration (in days) by series

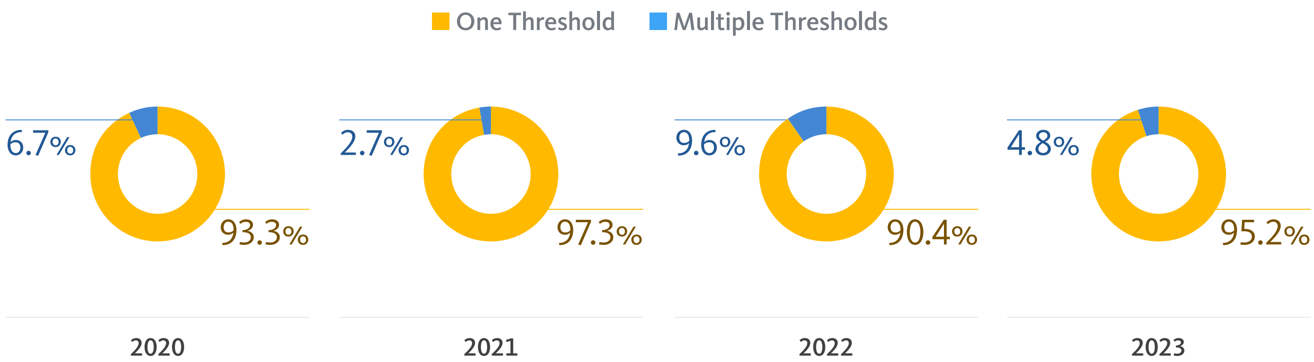
The chart below compares *Deal Points Report* data from 2020 to 2023 regarding the average duration of exclusivity rights in favour of the lead investor(s) at the term sheet stage by series of financing. For the four year period covered by the *Deal Points Report*, the median exclusivity periods, by series, was: Series Seed (45 days), Series A (45 days), Series B (31 days), Series C (31.5 days) and Series D and beyond (35 days).



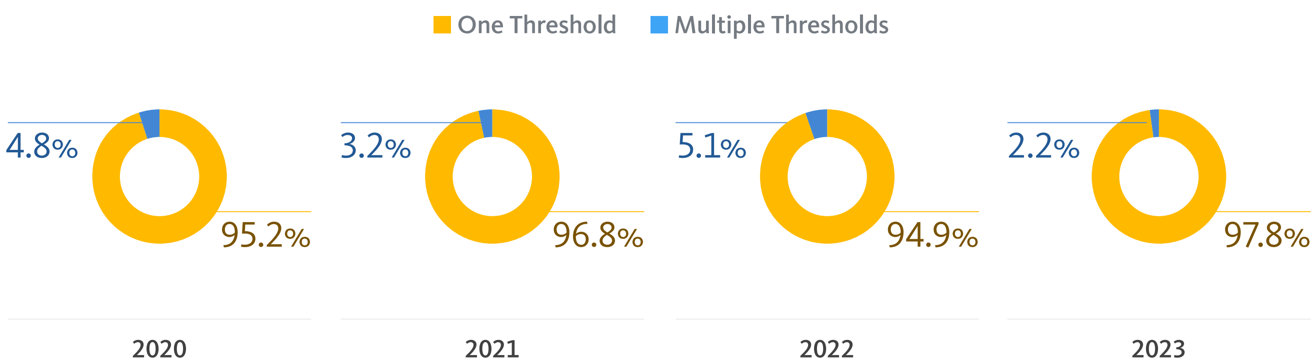
Approval thresholds for preferred shareholders in shareholders agreements, amendments

For financings included in the *Deal Points Report* in 2023, the makeup of the "preferred majority" threshold under the Voting Agreement, Right of First Refusal and Co-Sale Agreement and the Investors' Rights Agreement is illustrated below. Specifically, the diagrams reflect whether a single threshold was used (e.g., at least a majority of the votes attached to the outstanding preferred shares) or whether another threshold was used (such as multiple thresholds, where for example, at least a majority of the votes attached to the outstanding preferred shares including at least a majority of votes attached to the outstanding Series C preferred shares was required for approval, or no threshold). As the data below indicates, the overwhelming majority of financings in the *Deal Points Report*, across all three agreements, used a single threshold for the purpose of establishing the "preferred majority" definition. The preferred majority concept is used in a number of key provisions, including in regard to approvals of certain shareholder actions, triggering the drag-along right and approving amendments and waivers to certain rights.

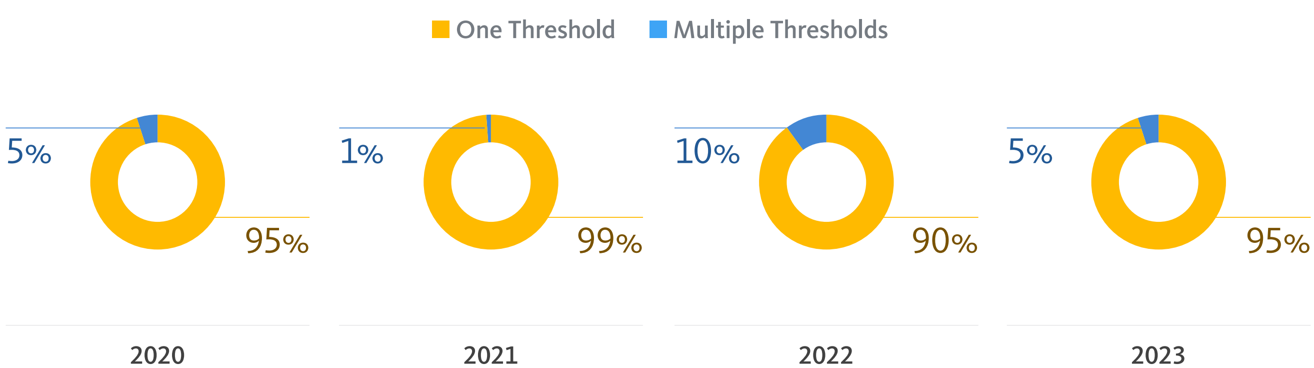
Voting agreements



Investors' rights agreements



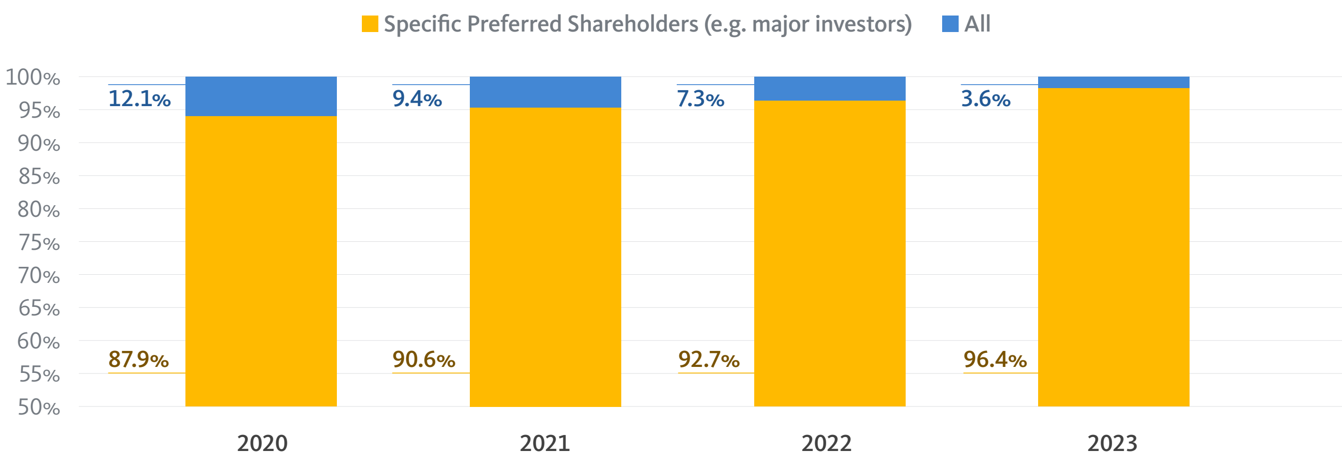
Right of first refusal and co-sale agreements



Information rights and inspection rights granted to preferred shareholders

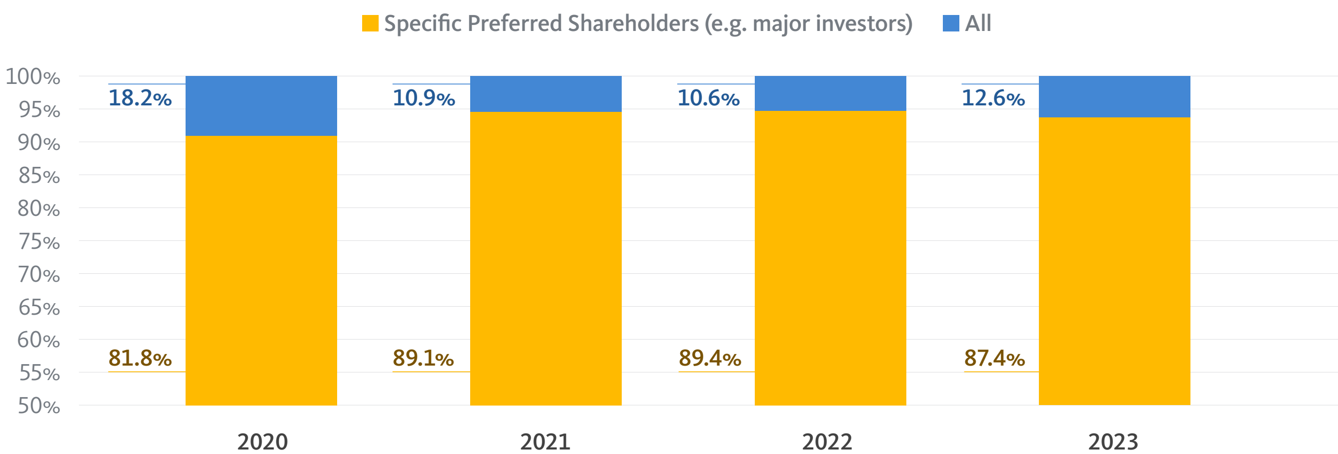
Under the Investors' Rights Agreement, certain preferred shareholders are provided with information rights (e.g., the right to receive annual and quarterly financial information on the company) and inspection rights (i.e., the right to examine the books and records of the company). Based on the data below, the overwhelming majority of the financings in 2023 included in the *Deal Points Report* allocated such information and inspection rights only to a subset of specific preferred shareholders (such as "major investors").

The major investors in a financing are typically defined as those preferred shareholders that hold a minimum number of preferred shares or a minimum percentage of the fully diluted equity of the company (e.g., 5% of fully diluted equity of the company). It is common practice for a company to actively limit the shareholders it is required to share its competitively sensitive financial information with and to limit that requirement to only its largest investors (who are not competitors).



Pro-rata rights granted to preferred shareholders

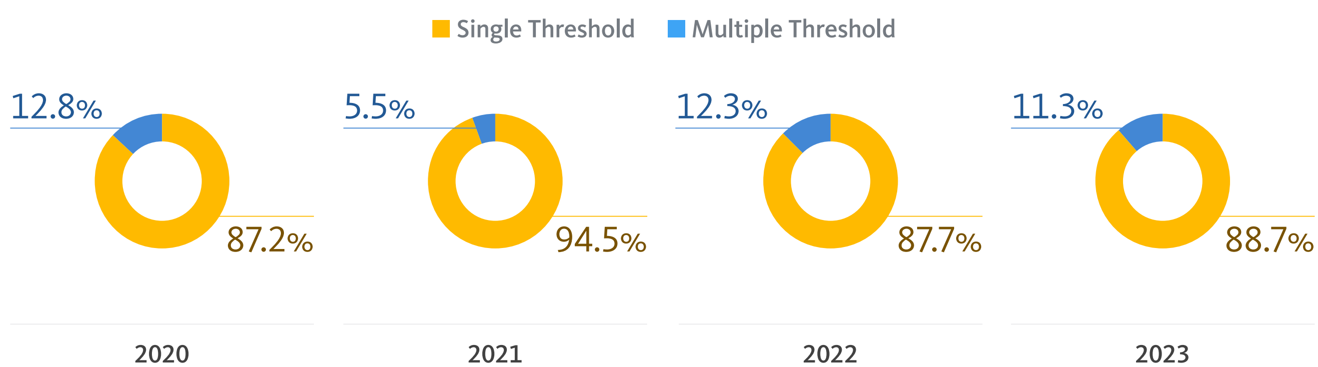
Similarly, under the Investors' Rights Agreement, certain shareholders are provided with pro-rata rights (often referred to as pre-emptive rights). Consistent with the data on information rights, where preferred shareholders were provided with these rights, the vast majority of the financings included in the *Deal Points Report* in 2023 only provided such pro-rata/pre-emptive rights to a subset of specific preferred shareholders (such as major investors). As noted above, the major investors in a financing are typically defined as those preferred shareholders that hold a minimum number of preferred shares or a minimum percentage of the fully diluted equity of the company (e.g., 5% of the fully diluted equity of the company). Pro-rata rights give investors the right (but not the obligation) to participate in future financing rounds of the company to maintain their existing pro-rata ownership of the company (subject to certain market exceptions). As with information rights, this valuable right is typically reserved for a company's most significant preferred shareholders.



Approval thresholds for preferred shareholders in Voting Agreements, drag-along

Under the standard CVCA model financing agreements, the Voting Agreement includes a drag-along provision, where, if an agreed threshold of shareholders (and the board of directors) approves an exit transaction, then all other shareholders of the company are required to participate in the dragged transaction. Under the standard CVCA drag-along provision, the drag-along can be triggered by the approval of an agreed percentage of the preferred shares, a percentage of the common shares and the board. The charts below analyze each of these categories.

With respect to the preferred shares, nearly 90% of the Voting Agreements included in the financings covered by the *Deal Points Report* required the approval of a single threshold of the preferred shareholders (e.g., a majority of the votes attached to the outstanding preferred shares). Only 8.9% of the financings included a threshold that required something other than a single threshold, such as multiple thresholds (e.g., a majority of the votes attached to the outstanding preferred shares, which must include a majority of the votes attached to the outstanding Series B preferred shares).



Acknowledgement

We wish to acknowledge Milosz Skrzypczak, a dear friend to all of us at Osler and a highly valued colleague who left this world all too soon, when he passed away in 2023. His contributions were pivotal to the launch and subsequent success of the *Deal Points Report* in 2021. Milosz's was known for his thoughtful nature, exceptional intelligence, meticulous organization, and an unwavering work ethic. He was known for his unique and subtle humour, which brought smiles to many. His commitment to the *Deal Points Report* served as an inspiration, elevating the collective efforts of our team. His influence was particularly felt during the ambitious undertaking of the *Deal Points Report*, which at the time was unlike anything else available to the Canadian market. In appreciation, we are dedicating this year's edition of the *Deal Points Report* to Milosz. His legacy will continue to inspire and guide us in the future publication of the *Deal Points Report*.

We also gratefully acknowledge the help of our Osler Works – Transactional (OWT) team whose contributions were critical in the completion of this report.

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