



G U N D E R S O N D E T T M E R

PRIVATE COMPANY FOCUS: TRENDS AND INSIGHTS ON TENDER OFFERS
FOR VENTURE-BACKED COMPANIES

June 2025

We represent *what's next.*

Clear Leader for the Innovation Economy

Gunderson Dettmer has decades of experience representing high-growth companies in their financings, IPOs and M&A transactions, and throughout their lives as public companies.

400

attorneys in
12 global markets

3,200+

venture financings handled
since 2023

\$27B+

raised in venture
financings since 2023

#1 GLOBALLY

most active law firm for venture
capital financings every year since
2014 (PitchBook)

290+

M&A transactions handled
globally since 2023

\$20.6B+

in aggregate deal value for M&A
transactions since 2023

Presenters



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Agenda

- Data on Recent Liquidity Programs
- General Structuring, Mechanics and Legal Considerations
- Equity Award, Participation, Eligibility and Tax Considerations

Driving Factors for Private Company Tender Offers

Long business cycles and volatile public markets limit liquidity opportunities and reduce retention value of equity awards

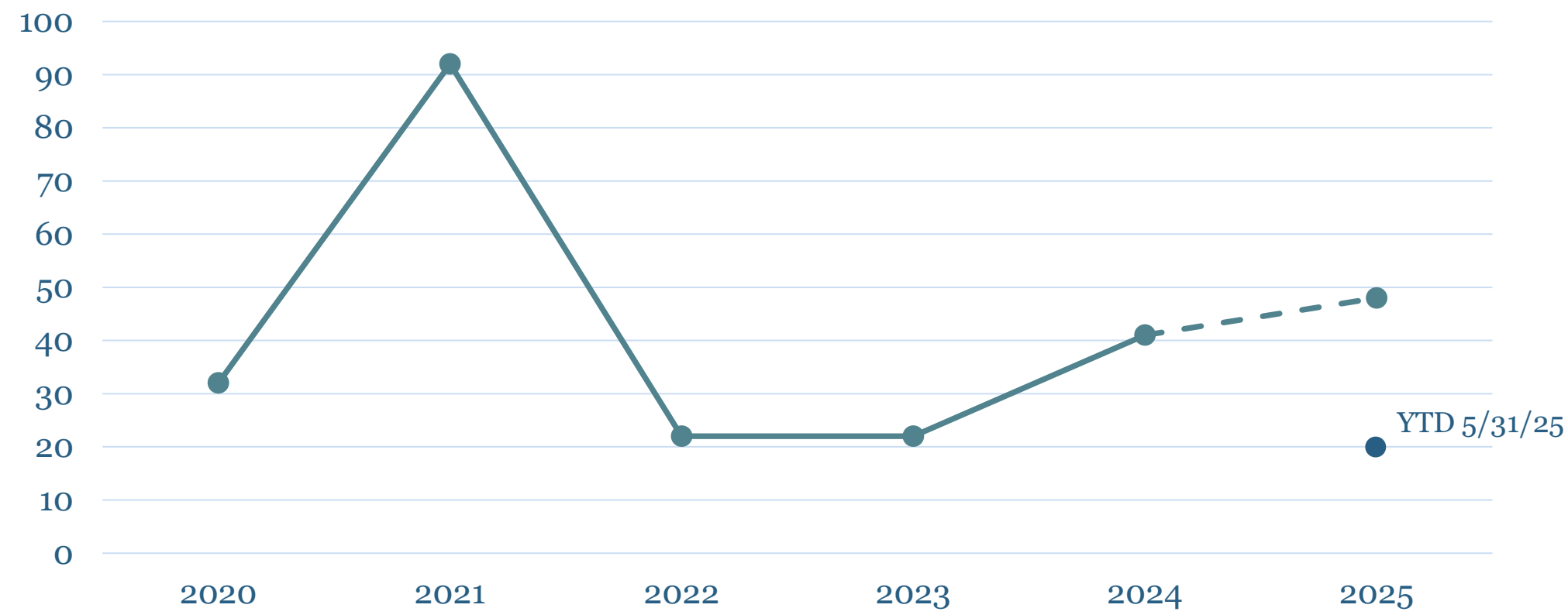
Structural limitations of private company equity incentives

Liquidity as a means for talent retention and recruitment

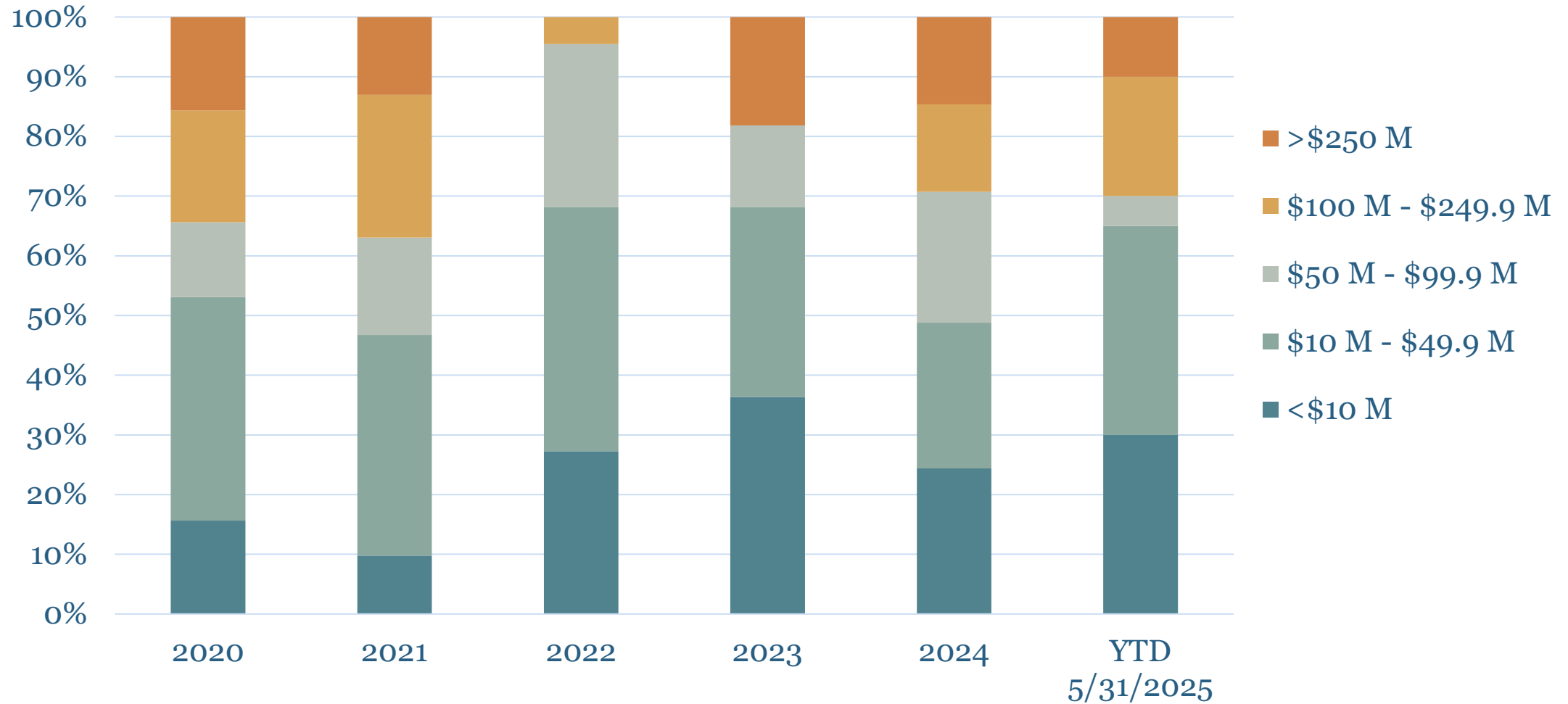
Cash availability and considerations relating to shares

Tender Offer Deal Count

GD represented the company or a third-party buyer in 229 private company tender offers from 1/1/20 and 5/31/25



Tender Offer Deal Count by Total Value of Eligible Shares



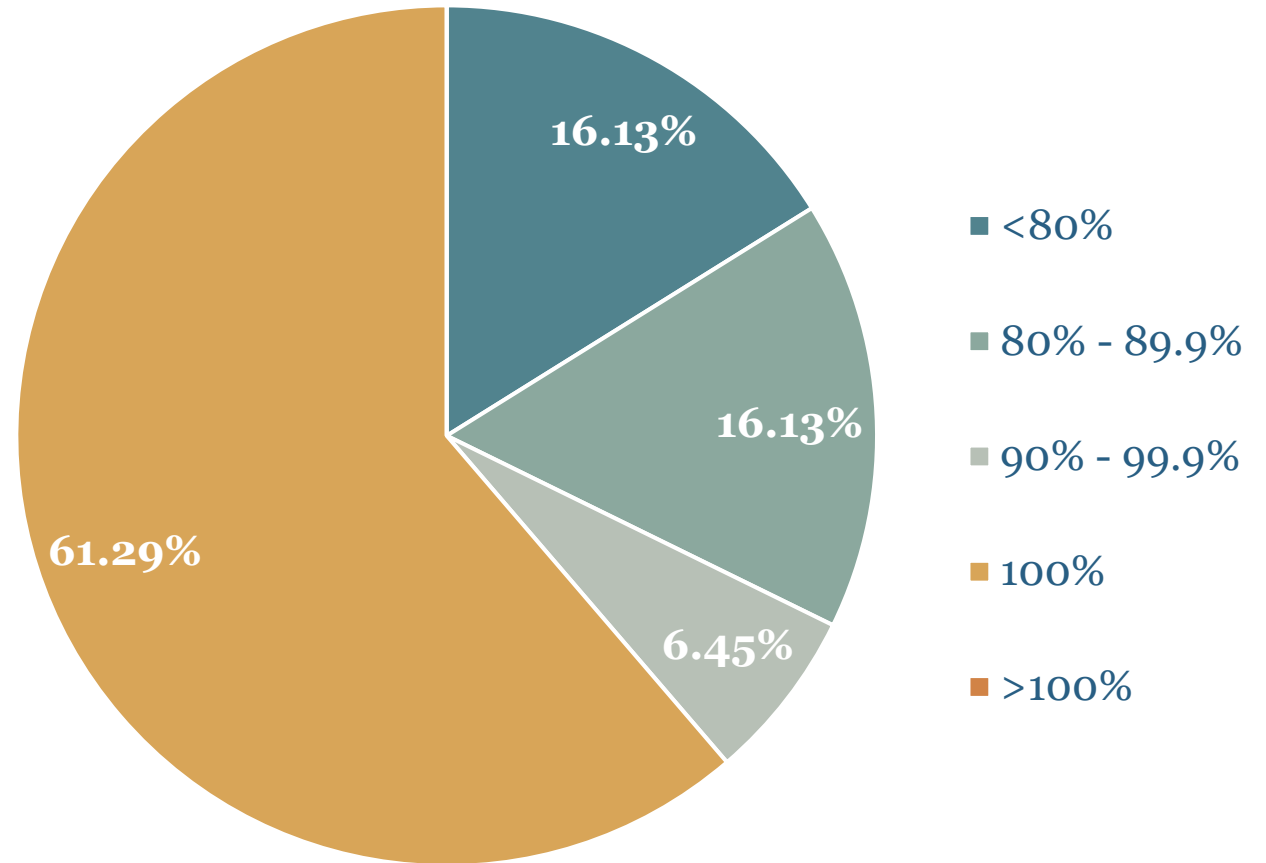
General Structuring, Mechanical and Legal Considerations

Rules Applicable to Private Company Tender Offers

- Minimum Offer Period
 - Offer must be kept open for at least 20 business days from the date the offer commences
 - Material changes may require an extension of the offer
- Prompt payment of consideration upon expiration of the offer
- Issuer subject to the tender offer must disclose its position with respect to the offer
- Persons with material non-public information about the issuer may not buy or sell unless the information is disclosed
- Buyer cannot buy or arrange to buy other similar securities while the offer is pending
- Anti-fraud rules

Tender Offer Share Prices (% of Last Financing Share Price)

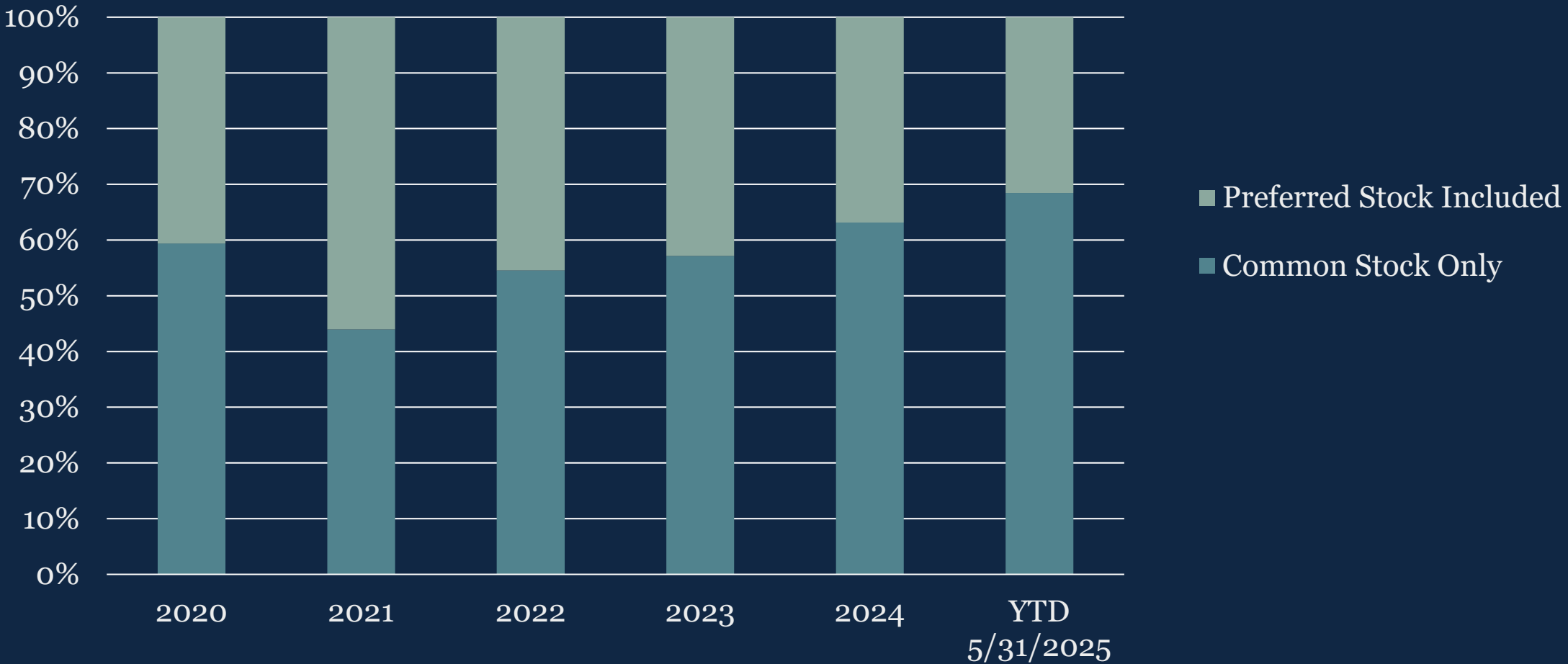
Deals in 18 Months Ended 5/31/25



*Only includes deals where tender offer launched less than 3 months after primary financing.

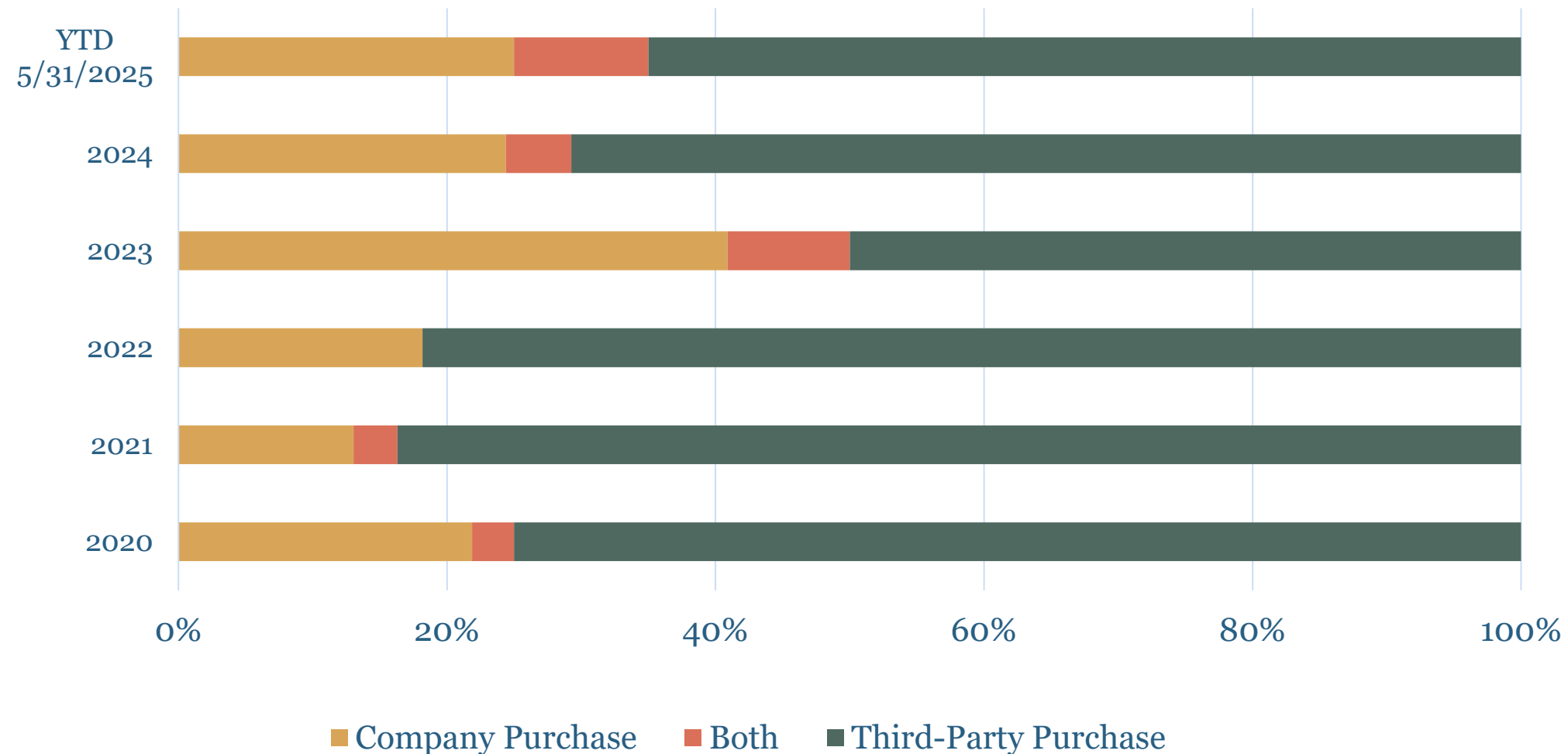
Type of Securities Purchased

(% of Deal Count)



Tender Offer Buyers

(% of Deal Count)



Eligible Shares

The number of shares that a participant can sell is usually based on a percentage of vested holdings

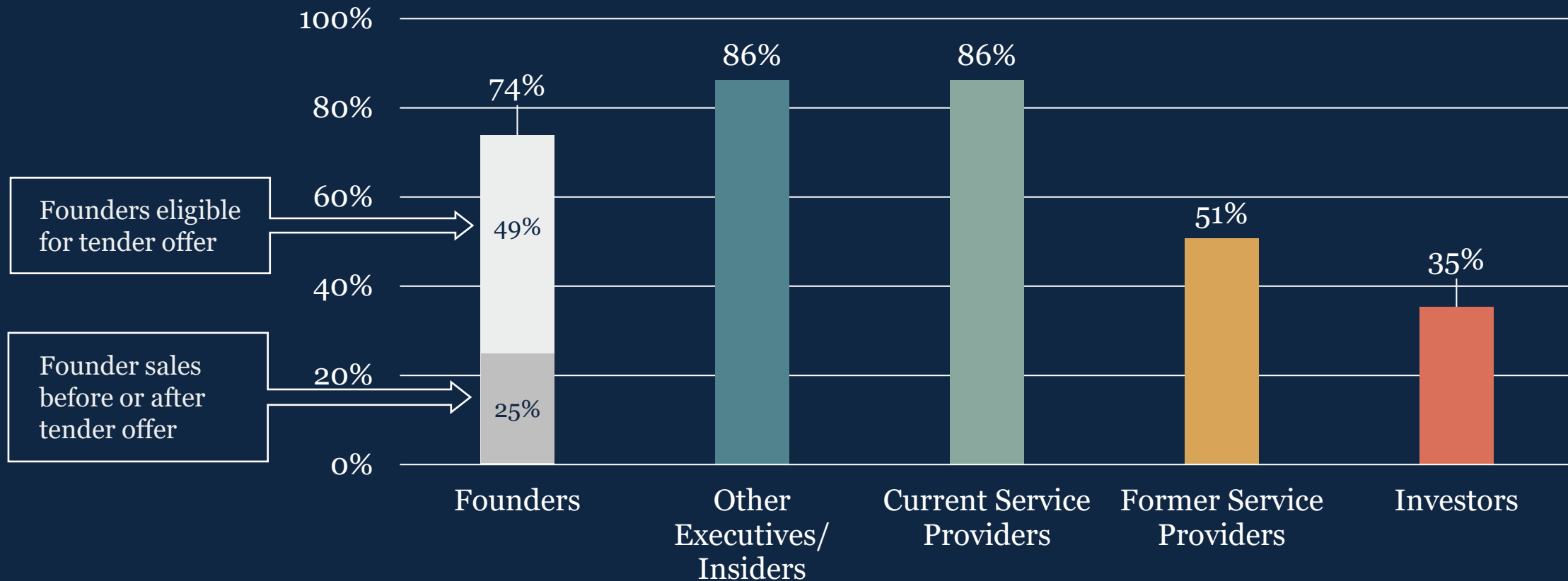
For deals in the past year where eligible shares were based on a percentage of vested holdings, median percentages were:

- Founders – 20%
- Other executives/insiders – 20%
- Current service providers – 20%
- Former service providers – 31.5%

In 29% of deals, sellers were also subject to a cap on the number of shares that each could sell

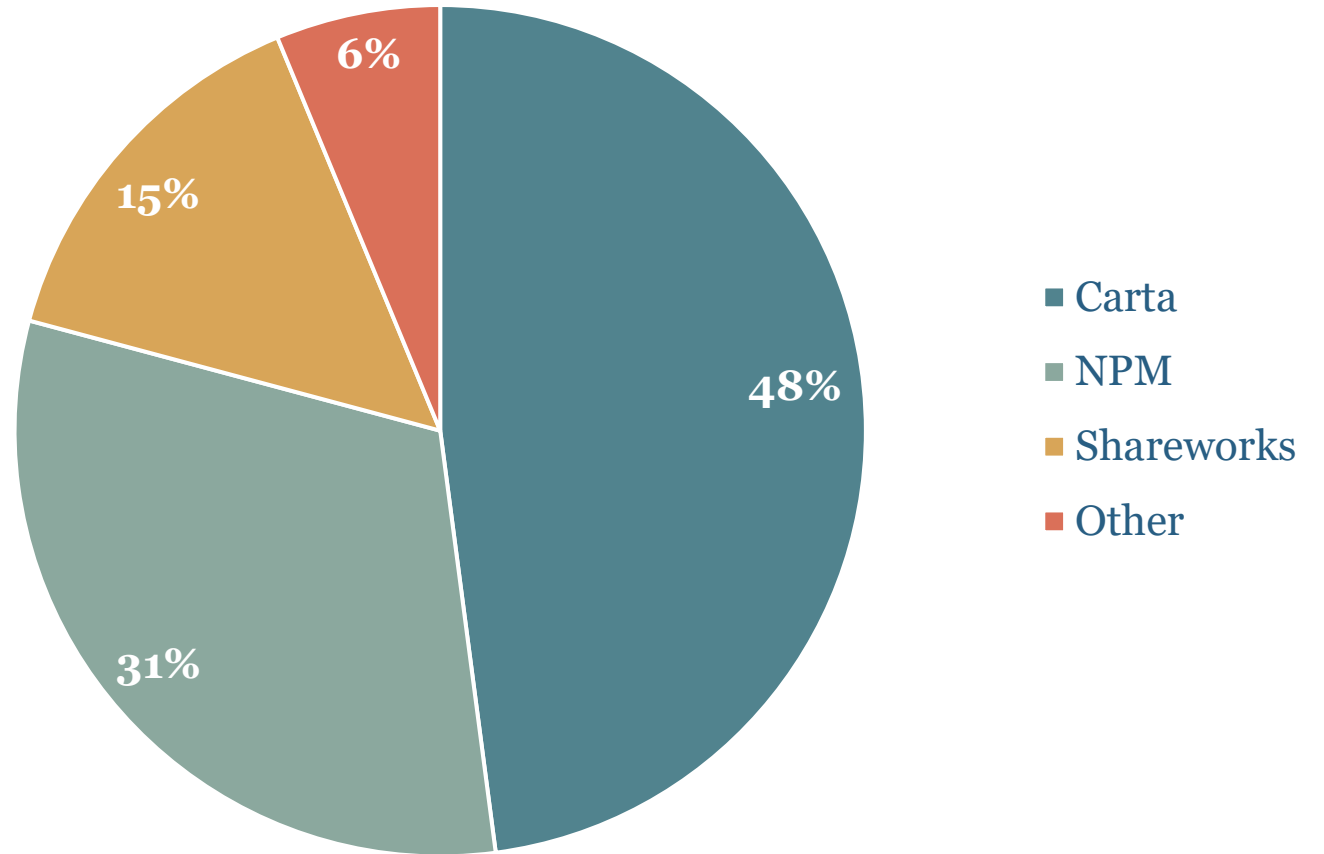
Eligible Sellers (% of Deal Count)

Deals in 18 Months Ended 5/31/25



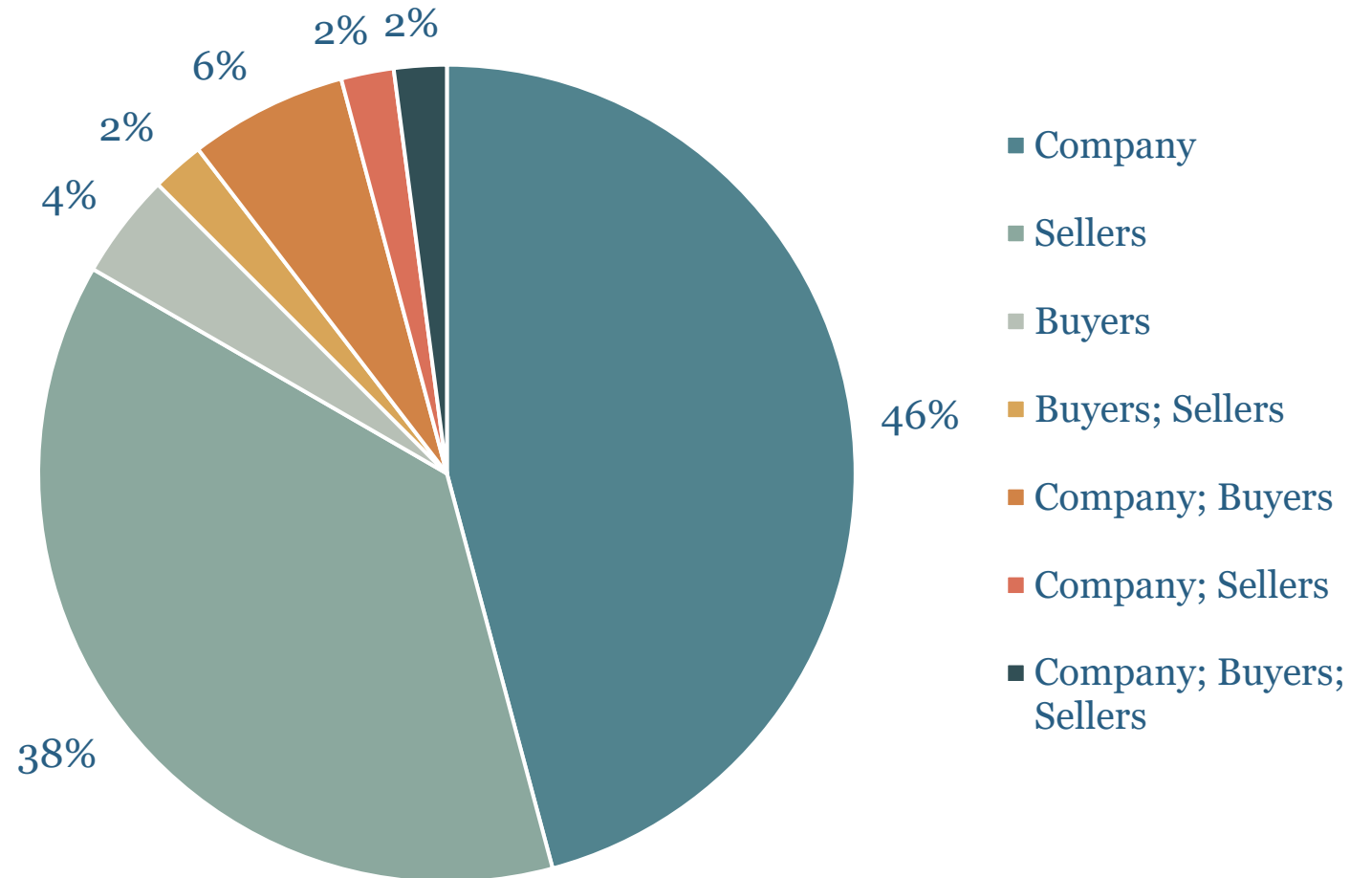
Paying Agents

Deals in 18 Months Ended 5/31/25



Parties Responsible for Paying Agent Fees

Deals in 18 Months Ended 5/31/25



Equity Award, Participation, Eligibility and Tax Considerations

Equity Award Considerations

- What are the company's goals? Retention, Reward, Recruiting, Dilution Management
- Different treatment of possible participants
 - Based on award type
 - Based on tenure with the company
 - Based on geography
- Availability of cash, currently and going forward, critical to understand
- Satisfying tax obligations

Stock Options



Generally expire at 10 years from grant



Many TOs are structured to allow contingent, “cashless” exercise, allowing sales proceeds to cover exercise price and tax withholding obligations



Have to consider “ISO” modification issues

RSUs



Most private company RSUs are “dual vesting” RSUs – vest only once time/service vesting and liquidity event (M&A or IPO) has occurred



To participate in a liquidity event opportunity, company has to waive the liquidity event vesting condition



“One bite at the apple” approach common



Waiver of liquidity event condition results in holder immediately recognizing income (and for employees, having a withholding obligation, which must be satisfied with cash)



Impact on RSUs not included in liquidity program

Participation Criteria



Which service providers will have opportunity to participate? Will it be based on which (and how many) equity awards they hold? Or other criteria?



What formula will be used to determine the number of shares a service provider may sell? How will that formula be allocated w/r/t different types of equity awards?



How will former service providers be treated?



Will executive officers and board members be able to participate?



Will service providers in non-US jurisdictions be able to participate?



If there is not sufficient buyer interest, how will participation be cut back at the of the offering period?



If participants are permitted to make decisions during the offering that impact the number of shares they might sell (e.g., by exercising options), are the company's internal personnel resources sufficiently enabled to manage the administration of the program?

Who is the Buyer?

Whether the buyer is the company, or third parties, impacts the technical analysis of aspects of liquidity programs

If company is the buyer:

- Accounting: As a general matter, where the company has the right to and evidences intent or has practice of cashing out awards, such awards will be treated as liability awards for accounting purposes
- Conversion of awards from equity award treatment to liability award treatment
- “Immature share” issue limits ability to include portion of awards that have recently time-vested
- Tax: if the sales price is greater than the FMV of the stock, then the differential can be characterized as compensation income (subj to withholding tax)

If third party is buyer: easier to avoid those results

- Consider whether company might be deemed to be the buyer for tax or accounting purposes where the company has foregone opportunity to issue shares to third party and instead is allowing that cash to pass on to the buyer(s)

Cutback

“Cutback” refers to the formula or process for determining the number of shares that each seller may sell if there is excess seller demand (if total shares tendered exceed the maximum number of shares that the buyers will purchase)

- In deals over the past 18 months with a defined cutback formula:
 - **In 38% of deals, cutback was based on type of seller**
 - Ex. “pro rata cutback among former employees, then investors, then current employees”
 - **In 62% of deals, cutback was applied simultaneously to all seller groups**
 - Ex. “pro rata cutback among all sellers based on shares tendered”
 - Ex. “pro rata cutback among sellers proposing to sell more than 20% of Eligible Holdings”

Questions

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