2024 DEAL STUDY

Venture Financing Report

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Executive Summary

With decreased financing activity, depressed valuations, and deal terms becoming more investor friendly, the 2023 Canadian venture capital market looked—and felt—a lot like the previous year. However, this time around, startups and VCs had the benefit of experience, having already navigated a year of uncertain market conditions.

2023 was a challenging capital raising year. Venture backed companies were forced to take a more conservative approach to their cash management and growth strategies, as global markets continued to adjust to higher interest rates, geopolitical tensions and the impact on financing opportunities and operations. Overall, the market for preferred share financings remained muted, with deal volume down approximately 14% year-over-year. Compared to 2021, deal volume was down 34%.

Despite an uncertain fundraising landscape, the appetite to finance later-stage companies (albeit with many at flat or down valuations) showed some resilience, with an uptick in the proportion of Series C and later-stage financings compared to 2022. Nonetheless, Seed and Series A segments once again accounted for the largest number of financings.

The state of play also impacted the terms on which companies were able to raise capital, with a more investor-friendly environment continuing to take shape. Investors negotiated for deal terms with greater downside protection to better insulate themselves from risk, including senior liquidation preferences. We continued to see financing rounds take the form of (i) recapitalizations at lower valuations with some form of pay to play or cram down, (ii) structured convertible instrument bridge financings and (iii) insider rounds containing investor-favourable terms. The goal of many of these financings was to keep startups afloat so that they could wait out the current environment and return to the market after improving their financial position, such as getting to profitability.

In 2022, certain founder-friendly deal terms—such as 1X liquidation preference, non-participating preferred shares, and broad-based anti-dilution rights—continued to hold the line. In 2023, although 1X liquidation preference remained the norm, investors were increasingly successful in negotiating for greater than a 1X liquidation preference.

Anecdotally, founders of early-stage ventures had a keen eye on business models, cash flow and path to profitability, in contrast to a growth-at-all-cost approach that dominated earlier cohorts. In a similar trend, founders of early-stage ventures deferred their Pre-Seed financings as they pushed to discover product market fit and held out for better terms in the hopes of a stronger market to come.

While Ontario and Québec remained leaders in venture capital investment, Alberta continued its strong growth trajectory and, if this upward trend continues, it may be on course to take Québec's place as the second most active market for venture capital in Canada (on a deal count basis). The growth in the Alberta market is credited to a combination of the provincial government's ongoing policies to stimulate venture activity, a community of successful tech leaders supporting emerging founders, and a strong talent base. That said, given the recent growth and nascency of the Alberta venture market, financings appear to be skewed to early-stage where investment amounts are lower compared to later-stage transactions. As such, Ontario and Québec, as incumbent market leaders, remain the strongest provinces for capital deployment and investment.

Overall, Canadian startups and venture investors continued to work collaboratively with a long-term view to building and supporting their businesses on mutually beneficial, balanced terms. Investors who were willing to write cheques (as opposed to non-participating existing investors) were able to dictate terms to sweeten their deal and preserve their liquidation priority at the expense of other investors not willing to do the same.

As the year progresses, the market will continue to stabilize, but remain at a slow pace. Investment in clean energy, artificial intelligence, and healthcare will gain further momentum, as the demand for climate change mitigation technology, automated workflows, and better patient care increases.

2023 Financing Activity in Canada

As Canada's economy continued to face headwinds in 2023, the fundraising landscape for startups remained tight, with venture capitalists choosing a more selective investment approach that favoured existing portfolio companies.

1) Deal Activity

The overall number of deals in 2023 (127) was down approximately 13% from 2022 (146). This decline was felt more in the early and mid-stages (Series Seed, Series A and Series B), which saw deal numbers fall compared to last year, while later-stage financings (Series C and onwards) saw an uptick.

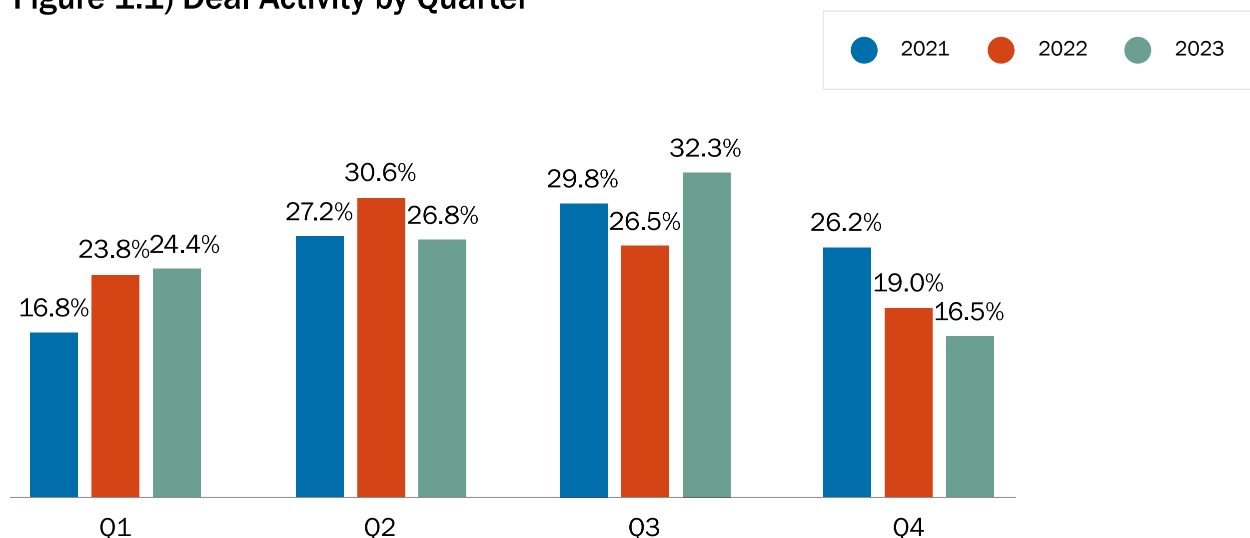
With a lower number of financings, and a significant number of later-stage down rounds in 2023, we saw companies facing the end of their runways being forced to embark on later-stage fundraising in a less than favorable environment for terms and valuations.

In 2022, we noted the rise in "sweeteners"—a trend that continued in 2023. Many investors opted to reserve their capital for insider rounds to shore-up and scale their existing portfolio investments. For new investments, venture capitalists continued to favour healthy valuations in Seed stage companies and sectors promising sustained growth, such as AI, cleantech and healthtech.

Despite lower financing activity in 2023, we are seeing a number of our clients raise funding at non-depressed valuations, showcasing the market's appetite for well-performing businesses with clearly demonstrated growth strategies. Notably, 35% of financings were up rounds, which is positive considering that 51% of transactions were first-time priced round deals.

> "In the long term, great companies will continue to be financed and there will be growth and depth in the ecosystem. However, the next 12-24 months will be challenging for founders as closures, investor friendly terms and unfavourable macro-economic conditions persist."
>
> - Konata Lake, Partner, Head of Torys' Emerging Companies and VC Group

Figure 1.1) Deal Activity by Quarter[1]



Distribution of financings in 2023 followed the same pattern as in previous years, with the largest proportion of deals occurring in the second and third quarters.

Ontario and Québec continued to lead the way in the number of Canadian venture capital deals, with Ontario attracting over half (53.2%) of financings—mirroring the scale of the market. Québec maintained its position as the second strongest market in the face of significant regulatory changes. Updated privacy laws, launched in a bid to build consumer trust and limit the rising threat from bad actors, go well above the Canadian standard. While the new regime may offer the province's startups a springboard to gain a competitive advantage, startups will be forced to comply

[1] This is our fourth annual Venture Financing Report. To showcase year-over-year trends, we have included comparisons to the data from our previous two studies throughout.

with this increased regulatory burden. Further, it remains to be seen if evolving developments in French language laws will influence the future of the province's ecosystem. Despite shifting regulatory landscapes, Québec-based investors and startups have been the beneficiary of significant government funding initiatives which may counterbalance some of the regulatory headwinds[2].

Unsurprisingly, Alberta's venture capital financings remained in full swing, as the province entered its third year of growth. We attribute this in large part to the Alberta government's tech sector policies, and a community of industry leaders dedicated to supporting the next round of Alberta-based founders. With last year's number of financings in the province (17.5%) almost drawing level with Québec (19.0%), it has yet to be seen if Alberta can displace Québec as the second most active market on a deal count basis—particularly as venture capitalists continue to invest in cleantech projects which are an increasingly robust industry in Alberta. Unsurprisingly, transactions in the province skew to earlier stage given the recent growth of the Alberta market.

As 2024 progresses, Ontario and Québec will likely remain the frontrunners in the venture capital ecosystem, in part due to their mature ecosystems, deep capital pools and strong startup communities.

The number of early-stage financings (-16.8% YoY) and mid-stage financings (-20% YoY) were down on a year-over-year basis, while the number of later-stage financings trended higher (+29% YoY)[3]. Seed financings remained under pressure, while the proportion of mid-stage companies that completed series A and B preferred financings was lower in 2023. Series C financings and onward exceeded the number in 2022.

A three-year analysis provides a stark picture for the early-stage sector, with the number of early- and mid-stage financings in 2023 down approximately 37% since 2021. Later-stage financings had a softer decline, going down by 5% over the same period. This is due to an uptick in later-stage deals in 2023—a reflection of the high number of early-stage companies who, having received funding in the two years prior, were transitioning to later-stage and had reached the end of their runway and needed to raise again. This a testament to Canadian emerging companies' ability to navigate challenging economic headwinds and scale successfully in uncertain economic times.

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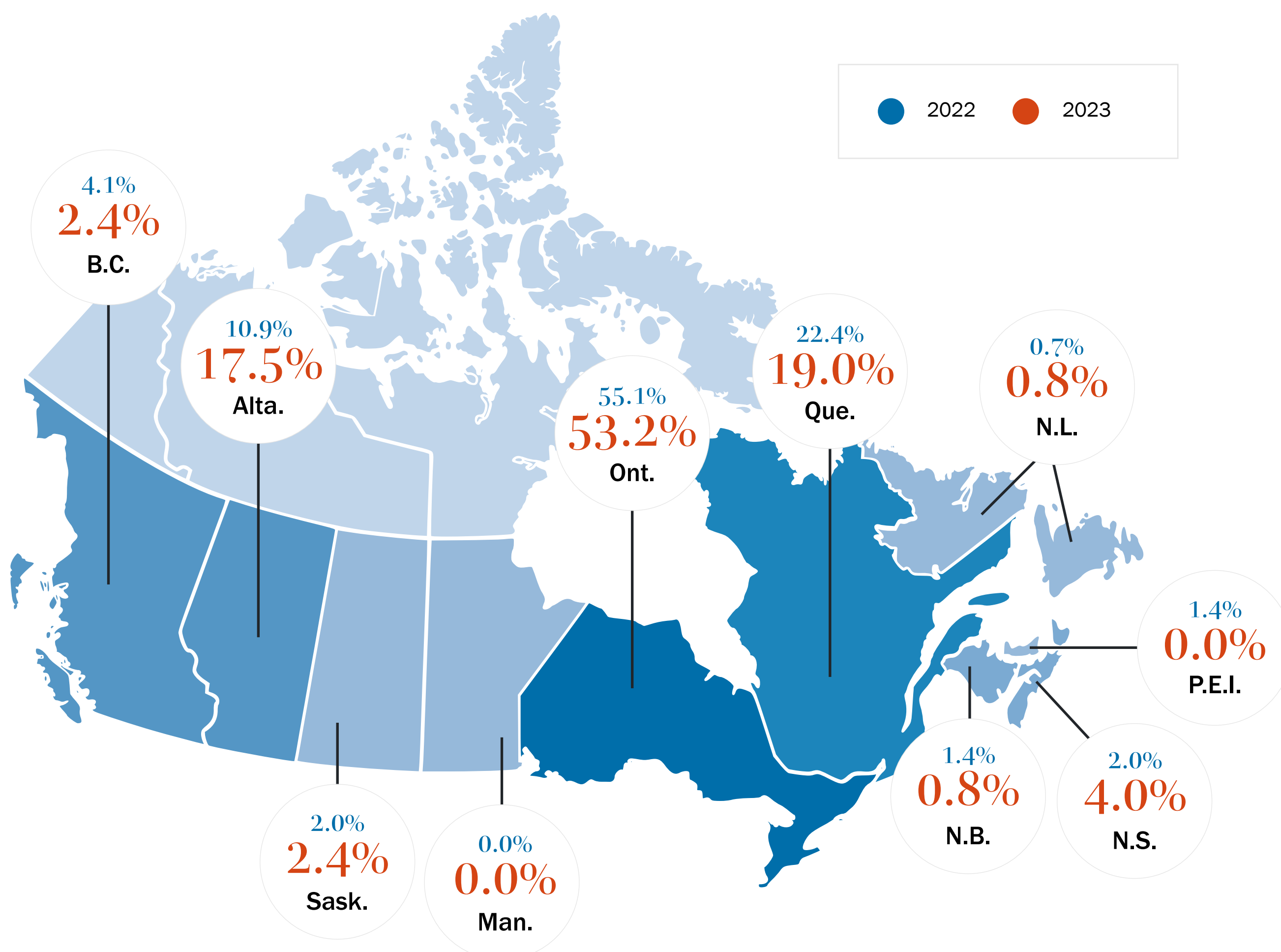
[2] For example, the Impulsion PME program offered by Investissement Québec.

[3] The proliferation of early-stage financings relying on simple agreements for future equity (or "SAFEs") may imply that the weakness in early-stage financings is overstated— i.e., some of the decline in transaction volume in that stage may be explained by parties choosing to rely on SAFEs rather than preferred share structures.

Figure 1.2) Deal Activity by Province[4]



> "Company shutdowns will increase as loss rates normalize to pre-zero interest rate levels. Early-stage investment will remain active with AI capturing the lion's share. The energy transition will pique the attention of many VCs as the first major carbon capture and storage facilities come online."
>
> - Jamie Rosenblatt, Partner, Golden Ventures

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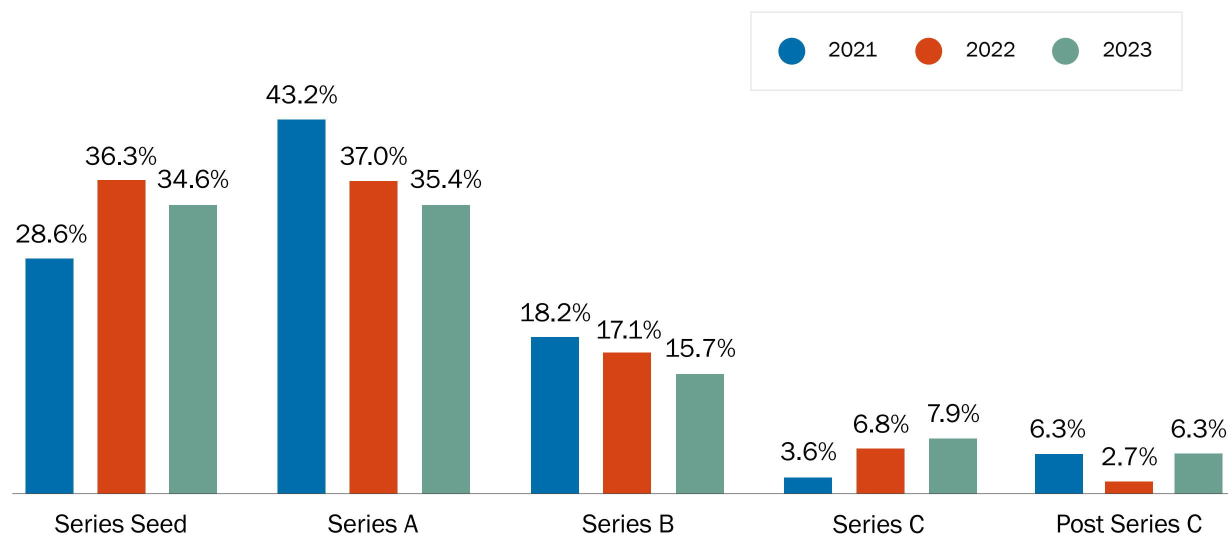
[3] The financings surveyed for the study do not include those completed by companies headquartered in British Columbia that are incorporated under the *Business Corporations Act* (British Columbia) due to the absence of public access to such companies' articles.

As fewer companies can secure financing in the current economic environment, we expect that the number of late-stage financings will begin to trend back down relative to early-stage financings in the coming years. This trend is further supported with data that reflects a record increase in the number of Canadian corporate insolvencies in 2023[5].

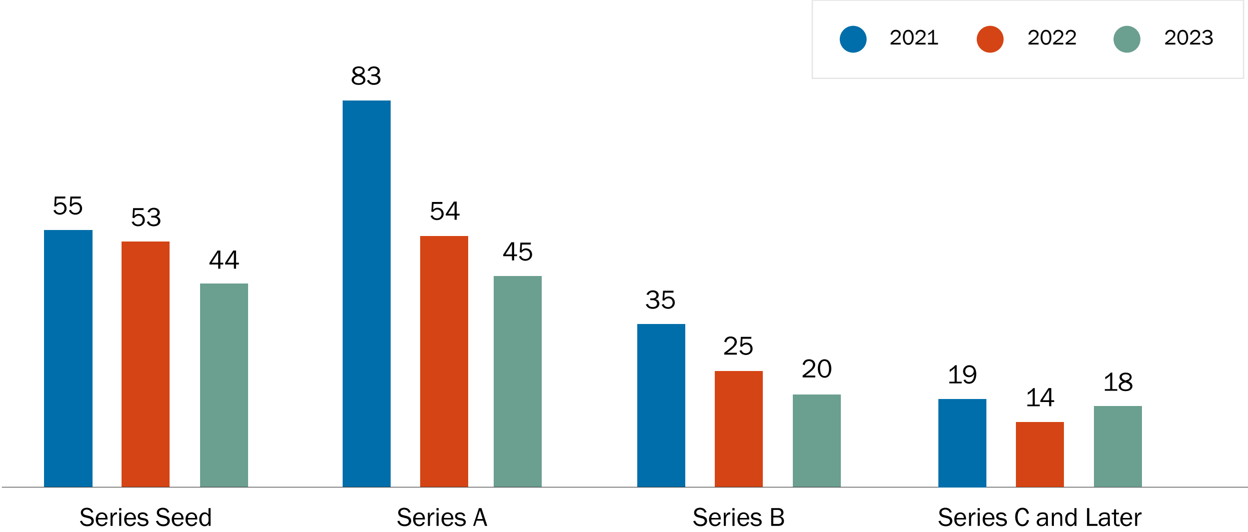
> "As more companies raise funds in distressed situations, companies will need to continue to consider bespoke financing arrangements and terms as investors look to de-risk their investments and increase their control."
>
> - Rivannah Brown, Emerging Companies and VC Associate, Torys

Figure 1.3) Financing Round by Proportion



[5] https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/statistics-and-research/insolvency-statistics-october-2023-highlights

Figure 1.4) Financings Rounds by Deal Count



2023 followed the same line as 2022 and 2021, with deals in Information Technology (44.3%), Healthcare (17.2%), Business-to-Business Products and Services (15.2%), and Business-to-Consumer Products and Services (9.0%) leading the way.

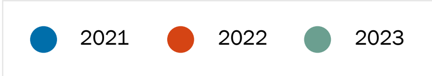
While Business-to-Business Products and Services (B2B) and Business-to-Consumer Products and Services (B2C) remained strong areas, there was a slight decline in their respective deals. Additionally, B2C companies experienced the highest number of down rounds of all sectors. This was unsurprising, due to high inflation and interest rates curbing consumer spending which had a knock-on effect on investor appetite. The sector will likely continue to see a slow down for so long as the current macroeconomic headwinds in Canada persist. Healthcare, Energy, and Material and Resources saw growth, mirroring investor sentiment and focus areas.

> “With many innovative life sciences products launching, and an aging population, the life sciences market continues to be frothy. Legal issues around drug pricing, market access and supply chains will remain top of mind for life sciences companies.”
>
> - Eileen McMahon, Partner and Chair of Intellectual Property Group, Torys

This year will follow a similar pattern to previous years, with Information Technology remaining the frontrunner in venture capital investment. However, due to aging demographics and an increasing focus on innovation in the delivery of care, we expect healthcare (including life sciences) to continue to account for a sizeable portion of the Canadian startup and venture capital ecosystem. The number of cleantech financings will also grow, as the industry is further shaped by a regulatory landscape focused on emission reductions, an increase in government funding and public pressure to fight climate change.

> “In 2023 VCs focused not just on startups tackling ambitious problems, but on those with sustainable business models that can deliver long-term profitability. This trend will continue in 2024 particularly as we expect to see a resumption in financing activity.”
>
> - Geoff Taylor, Principal, Nicola Wealth

Figure 1.5) Deal Activity by Industry Sector



Sector	2021	2022	2023
Business Products and Services	12.4%	16.5%	15.2%
Consumer Products and Services	14.5%	13.2%	9.0%
Energy	3.0%	3.4%	5.0%
Financial Services	3.7%	3.1%	3.8%
Life Sciences	17.0%	14.8%	17.2%
Information Technology	43.6%	45.2%	44.3%
Materials and Resources	5.8%	3.8%	5.4%

Deal Terms for 2023 Financings

2) Seniority of Liquidation Preference and Dividends

There was a continuing increase in investor-friendly terms with respect to liquidation preference in 2023; as the market slow down carried over from 2022, this was not altogether unexpected.

With respect to dividend preference, we observed a slight increase in the proportion of financings with newly issued preferred shares being *pari passu* to existing preferred shares in respect of their dividend preference, and a corresponding decrease in financings where new preferred shares were senior in dividend preference to existing preferred shares. While the proportion of financings with senior ranking dividend preferences decreased slightly, the proportion of financings where a senior liquidation preference was negotiated significantly increased (29.6% in 2022 to 47.0% in 2023). On this basis, it appears that new investors were willing to forgo negotiating for a senior dividend preference in favour of more valuable senior liquidation preference terms. Given that most startups do not issue dividends, the focus by new investors to prioritize liquidation preference is expected to continue while the financing environment remains tight.

> "Although there seems to be incremental recovery in deal activity, terms will get tighter and favour investors for the foreseeable future."
>
> - Tyler Cassack, Emerging Companies and VC Associate, Torys

Figure 2.1) Dividend Preference

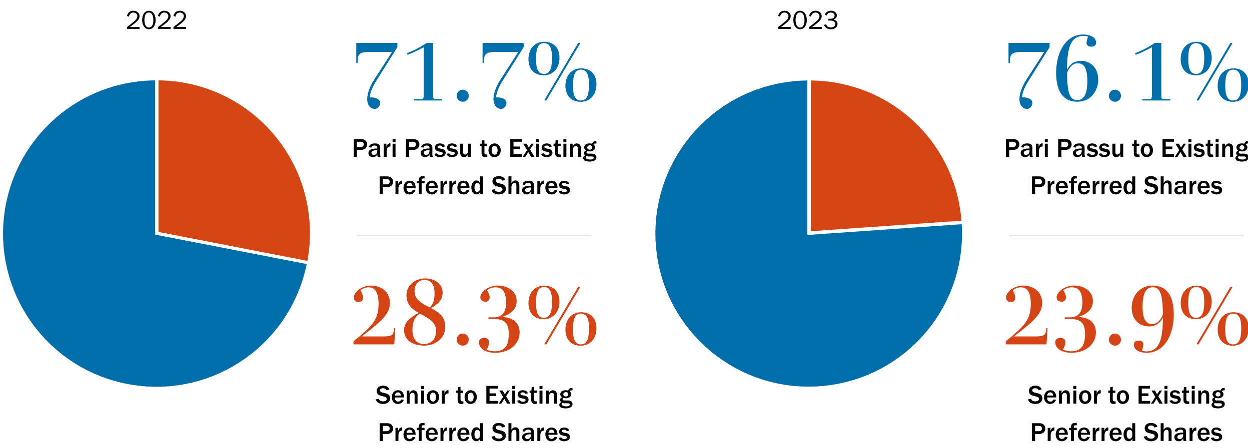
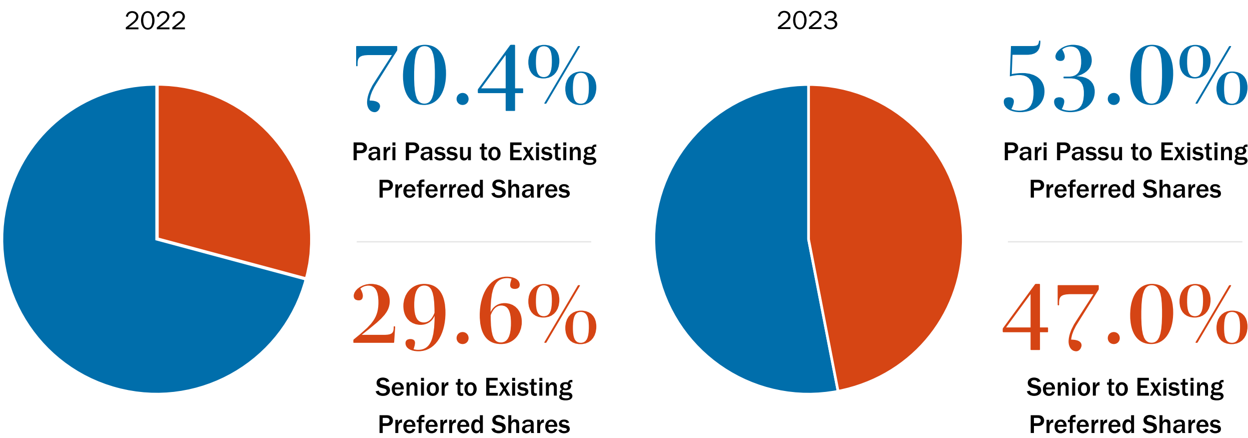


Figure 2.2) Liquidation Preference



> "As AI continues to take centre stage, more and more stakeholders will expect to see self-regulated safety engineering embedded throughout models—putting responsible AI, governance and risk mitigation at the forefront."
>
> - Karthik Ramakrishnan, Founder, Armilla AI

3) Participating and Non-Participating Preferred Shares

Despite the difficult financing market, the proportion of participating versus non-participating preferred shares remained flat and relatively unchanged when compared to 2022. While this challenging environment would have supported an increase in the proportion of more investor-friendly participating preferred shares, we were not surprised to see that the proportion remained virtually unchanged. This is likely due to participating preferred shares having a punitive impact on common shareholders (which include the founders, management team and employees of the company) upon an exit or dissolution.

Even in an investor-friendly environment, venture capitalists are keen to keep the founders and teams of their portfolio companies motivated, so they tend to not negotiate for participating preferred share terms (often referred to as a "double dip"). This trend will remain in 2024, as investors continue to take a more selective approach to investing, with a focus on building strong engagement with their portfolio.

Interestingly, investors in the U.S. were more successful in negotiating participating preferred shares, with approximately 10% of financings including such investor-friendly terms (see Figure 3.2).

In financings that included participating preferred shares, 33.3% of the participation rights in our data were capped (down from 50.0% in 2022) and 66.7% were uncapped (up from 50.0% in 2022). Given the historical rarity of participating preferred shares we should be cautious to draw too definitive a conclusion from these numbers.

Of the deals that had non-participating preferred shares, we saw a significant uptick in the number of deals that contemplated a liquidation preference multiple greater than 1x (from 5% in 2022 to 7.5% in 2023). This is consistent with the overall trend that deal terms are becoming increasingly investor friendly as investors look for ways to increase their upside potential on an exit amid a market with suppressed valuations. This trend also tracks with data south of the border, where the approximately 5.5% of U.S. transactions included multiple liquidation preferences to investors, up from approximately 2.3% in 2021 (see Figure 3.5).

Figure 3.1) Participating Preferred Shares

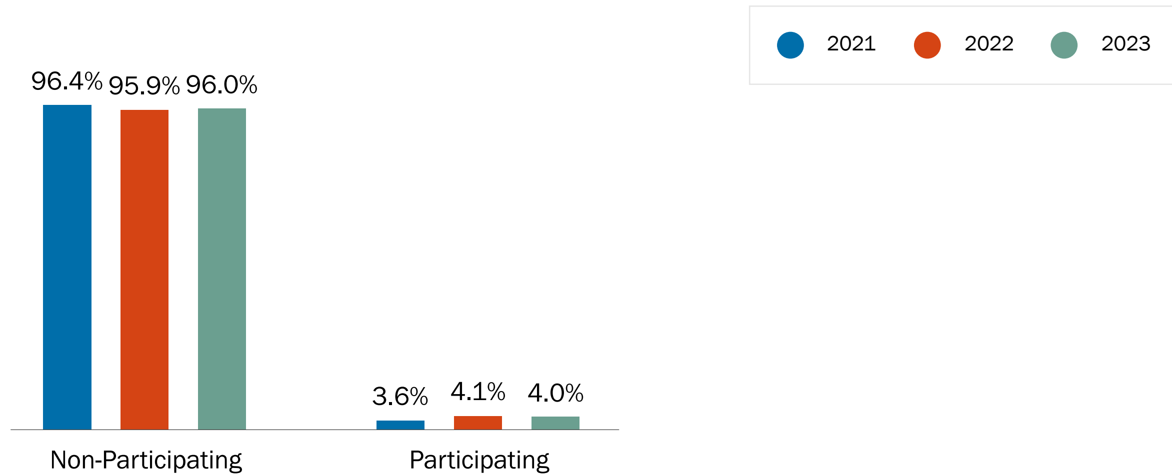
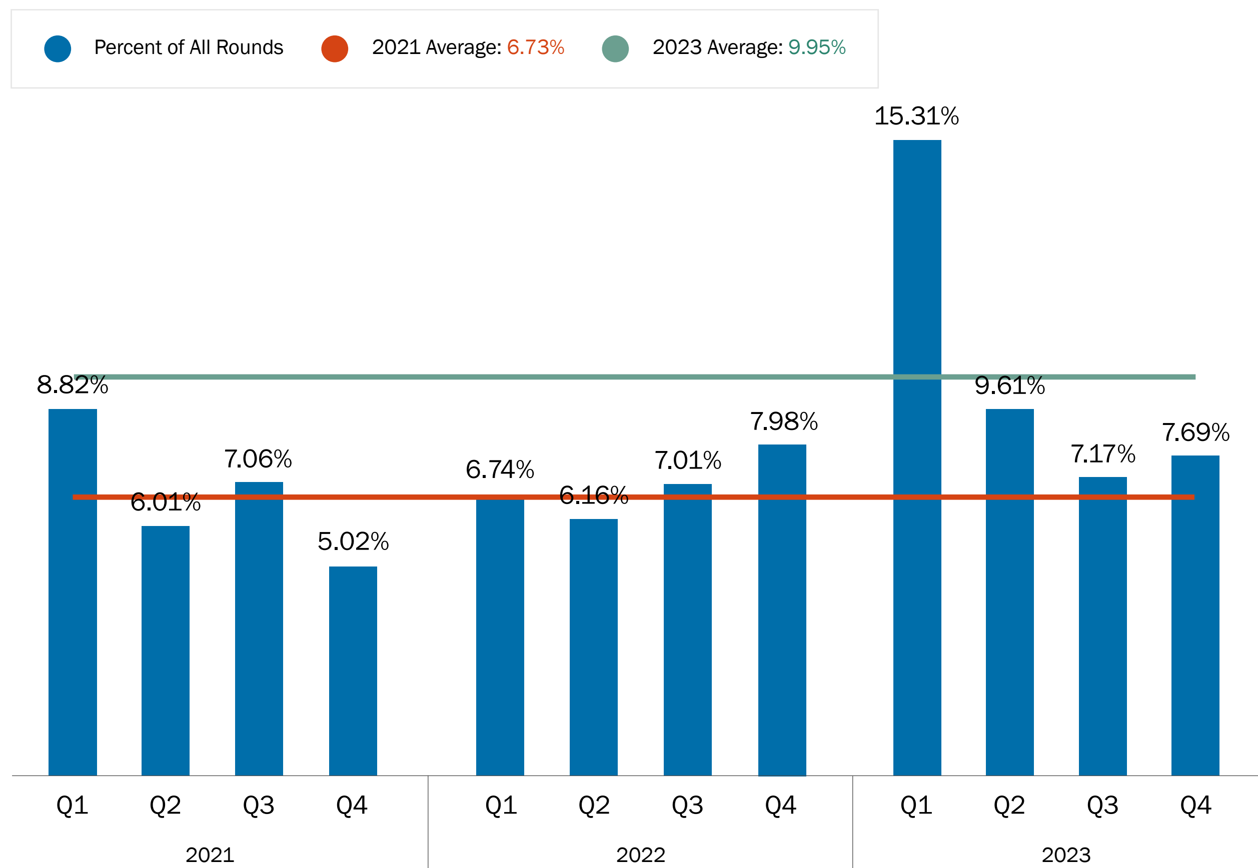


Figure 3.2) U.S. Participating Preferred Shares



Source: Data from Carta

> "It will be interesting to watch interest rates throughout the year and whether any cuts will drive deal activity forward. For now, investors and sponsors seem to be taking a "wait and see" approach."
>
> - Geoff Kelsall, Emerging Companies and VC Senior Associate, Torys

Figure 3.3) Percentage of Preferred Shares that are Capped vs. Uncapped

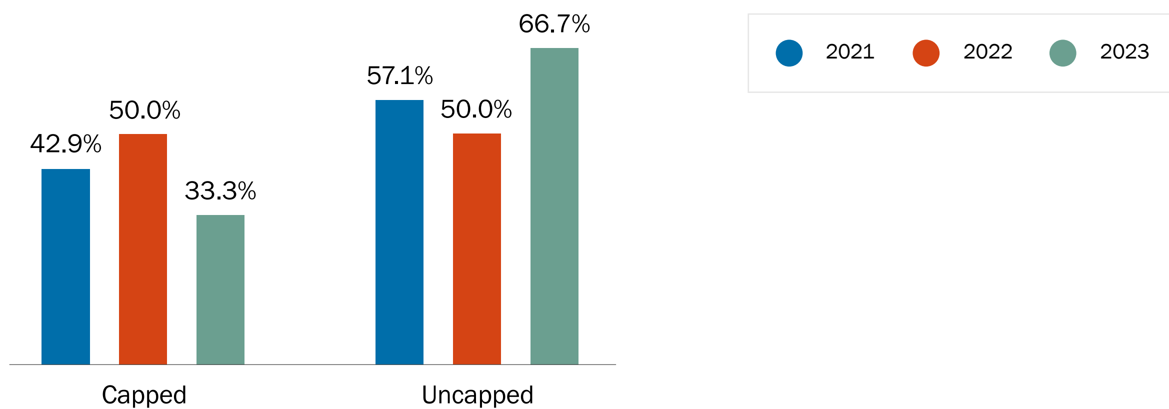


Figure 3.4) Preference Multipliers (Among Non-Participating Shares)

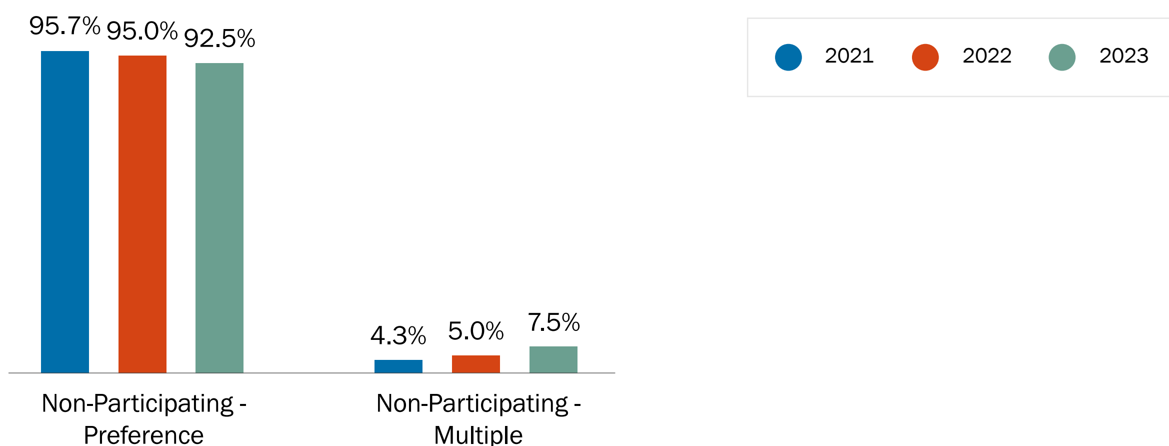
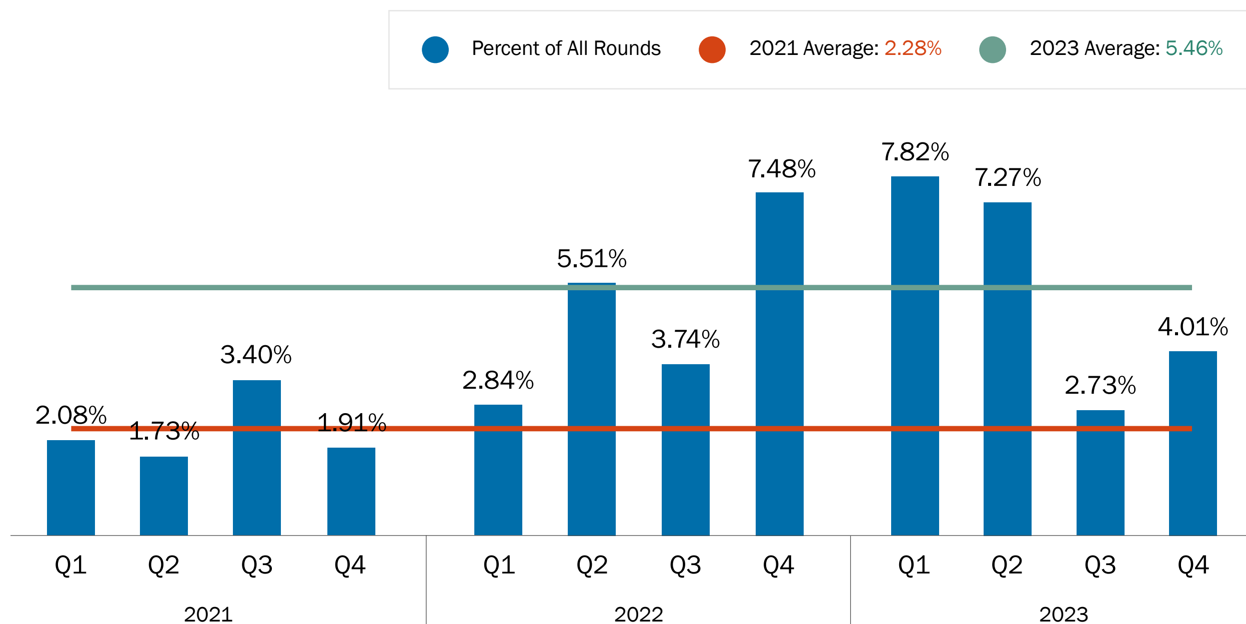


Figure 3.5) U.S. Preference Multipliers



Source: Data from Carta

> "Discipline has returned after a decade of exuberance and limited fiscal discipline. Great entrepreneurs are re-emerging, partnering with long-term investors to build enduring companies. When looking back a decade from now, some of the best technology companies will have launched in 2023-2025."
>
> - Nilam Ganenthiran, Founder and CEO, Beacon Software

4) Valuations

The Canadian venture ecosystem did not show signs of recovery from the lows of 2022 with the proportion of down and flat rounds increasing to 13.3% in 2023 from a high of 9.0% in 2022. This is in line with what we would expect given the market conditions of the last few years, forcing many startups who raised in 2021 to now raise at a down or flat round valuation. These reported numbers may only reflect the tip of the iceberg: based on our experience, we suspect that the true number of

down rounds has been somewhat masked as startups continue to leverage bridge financings, blended issuances, and other structures such as "sweeteners" in the form of warrants to either (i) defer discussions around valuation until a later time or (ii) synthetically create lower valuations. As such, even where up rounds occurred, when we consider the impact of the more investor friendly deal terms being offered, the true valuation may be lower than the reported headline valuation. It will continue to be important for founders to be cautious when reading into commentary about high valuations—as always, the devil remains in the details, and it continues to be a challenging environment for valuations.

Later-stage companies (Series C and later) over-indexed in this category, with both down rounds and flat rounds separately represented in roughly 21% of all deals each.

Figure 4.1) Financing Valuations

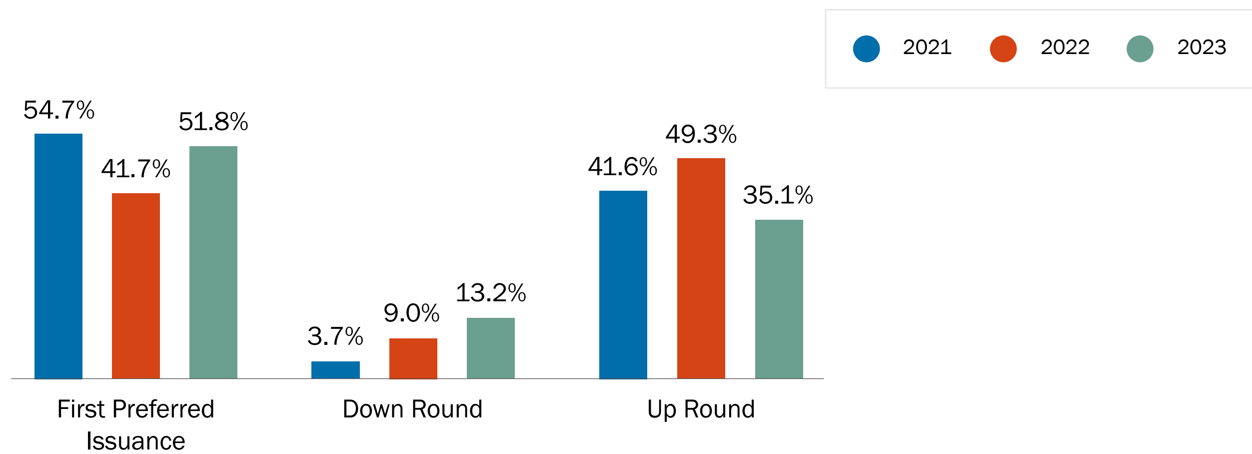


Figure 4.2) Down and Flat Rounds by Quarter

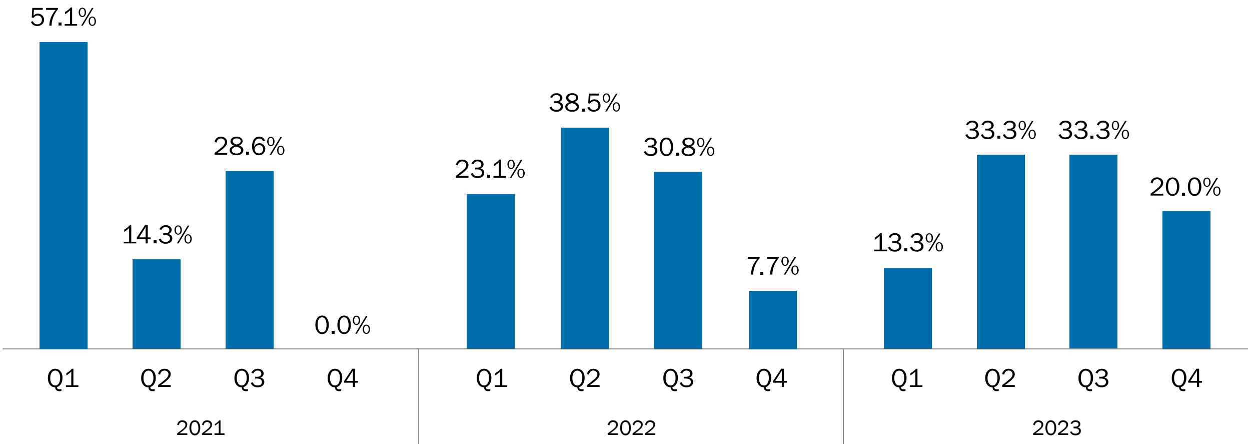
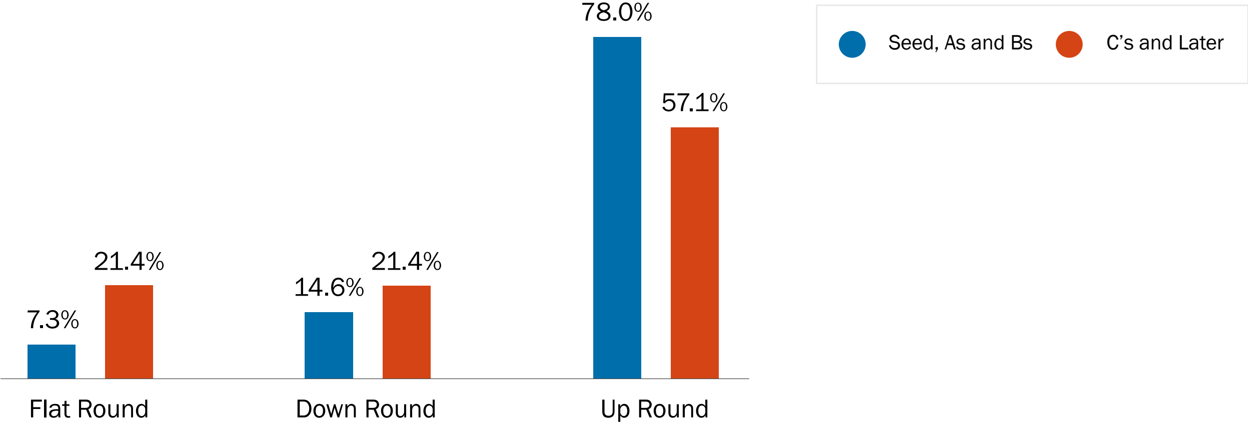


Figure 4.3) 2023 Down and Flat Rounds by Financing Stage



5) Dividend Entitlements

An overwhelming majority (87.3%) of the 2023 financings surveyed included a non-cumulative discretionary dividend, with 12.7% including a cumulative dividend. These figures are virtually unchanged from the two years prior. This is expected, as start-ups do not have the excess cash on hand to issue cash dividends. The caveat to this statement is that while VC backed companies do not typically issue dividends, in our practice we have seen investors leverage the use of cumulative

dividends as a means of indirectly increasing their liquidation preference, thus providing themselves greater downside protection. U.S. counterparts seem to negotiate for cumulative dividends less frequently—in 2023, approximately 7% (compare to 12.7% in Canada based on our study) of transactions contained cumulative dividends. While this is up from the 2021 average of 5%, we have seen the prevalence of cumulative dividends trending lower in the U.S. since Q4/22 (see figure 5.2).

Figure 5.1) Dividend Entitlements for Preferred Holders

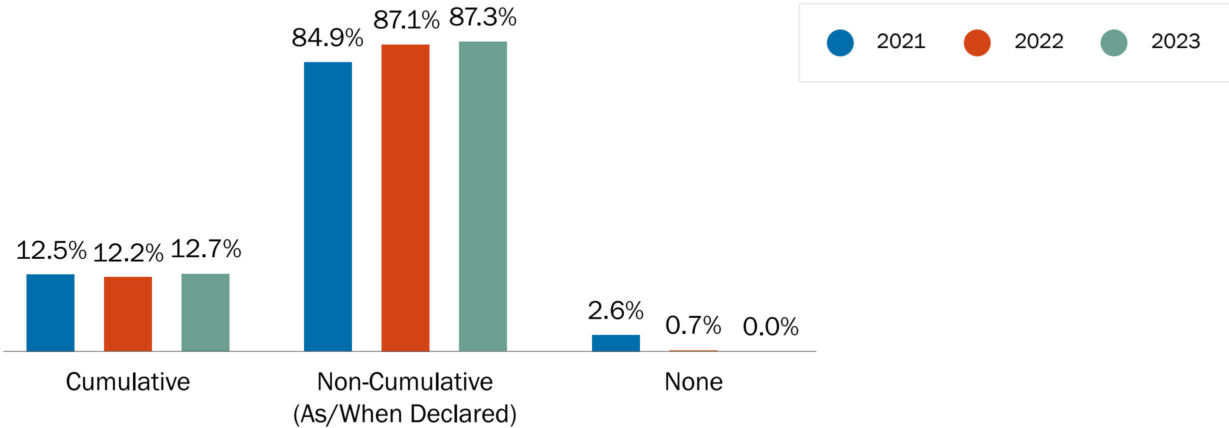
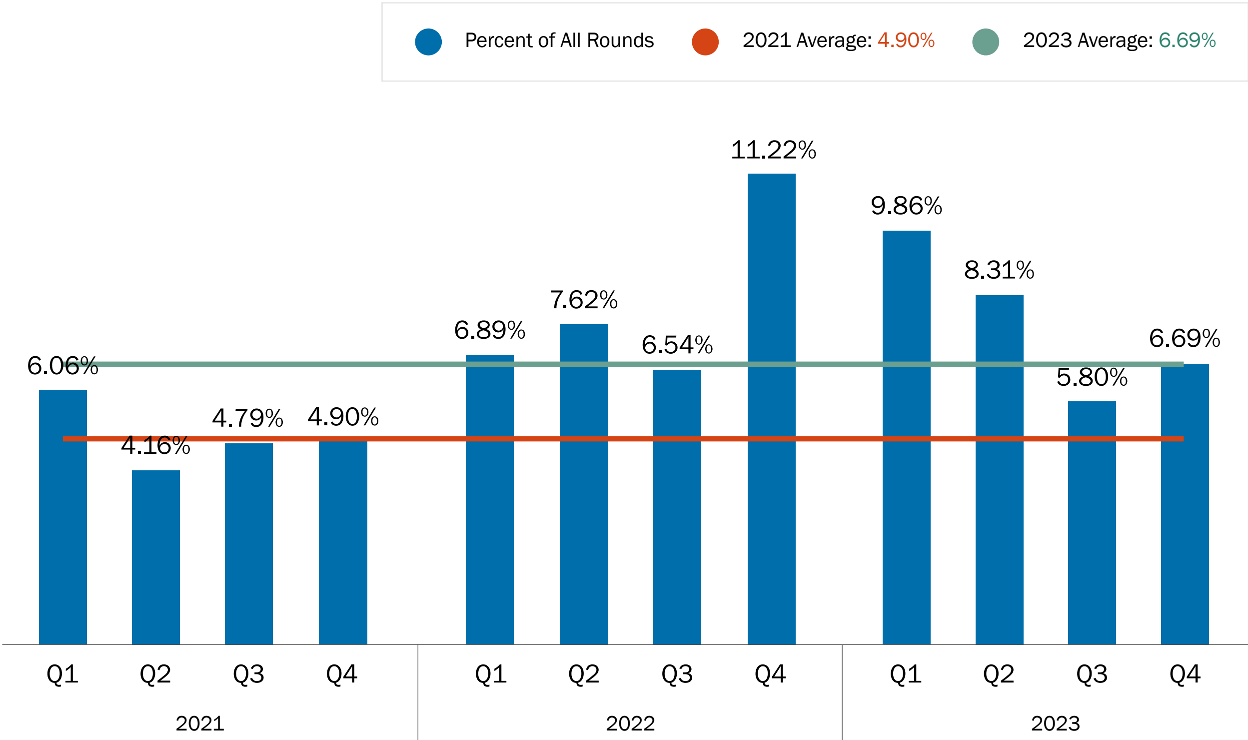


Figure 5.2) U.S. Dividend Entitlements for Preferred Holders



Source: Data from Carta

6) Anti-Dilution

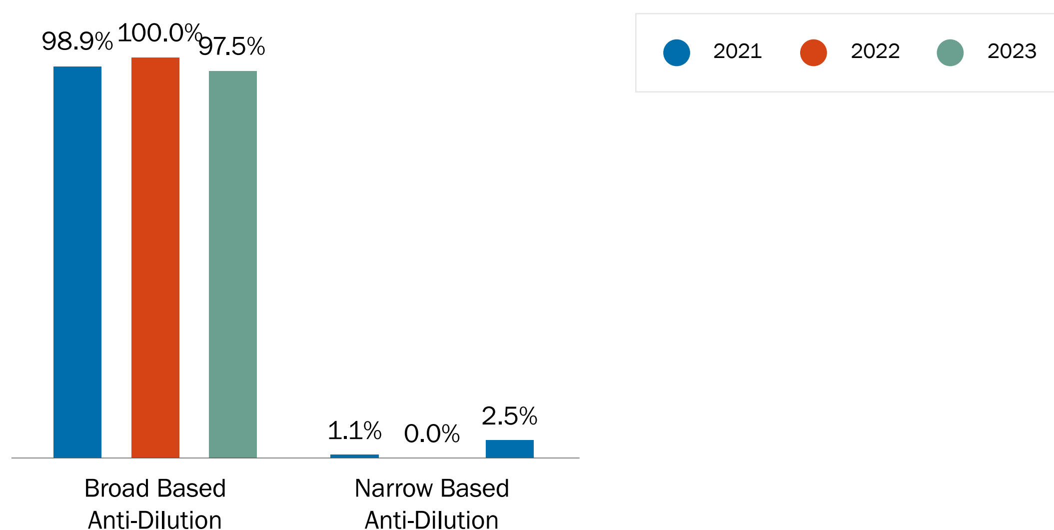
In 97.5% of the deals that were reviewed, the preferred shares issued featured broad-based weighted average anti-dilution protection. The remainder of the deals (2.5%) had narrow based weighted average anti-dilution rights and no financings (0.0%) provided for full-rachet anti-dilution rights.

We expect these deal terms to remain consistent over the years to come, with broad-based weighted average anti-dilution continuing to be the dominant form of anti-dilution protection even in times of decreasing valuations and investor-friendly deal terms.

In our experience, when dealing in down rounds, startups and new investors often request that the existing investor group waive their anti-dilution rights in favour of more negotiated deal terms for the wider group. This approach will likely continue into 2024 as investors leading down-round financings look to collaborate with startups to limit the dilution protection for non-participating

investors already on the cap table while also guarding against excessive founder dilution (the latter may create misalignment between founders and investors). Rather than agree to a down round, startups and investors also explored creative ways to avoid down rounds altogether through structured financings and issuances of derivative securities.

Figure 6.1) Anti-Dilution Protections



7) Protective Provisions

There are two key approval thresholds related to protective provisions. The first relates to which classes of preferred shares have the right to vote for or against the application or waiver of a protective right. The second threshold relates to the quantum of majority needed to waive such protections—for example, a simple majority (>50%) or super majority (>66.67%).

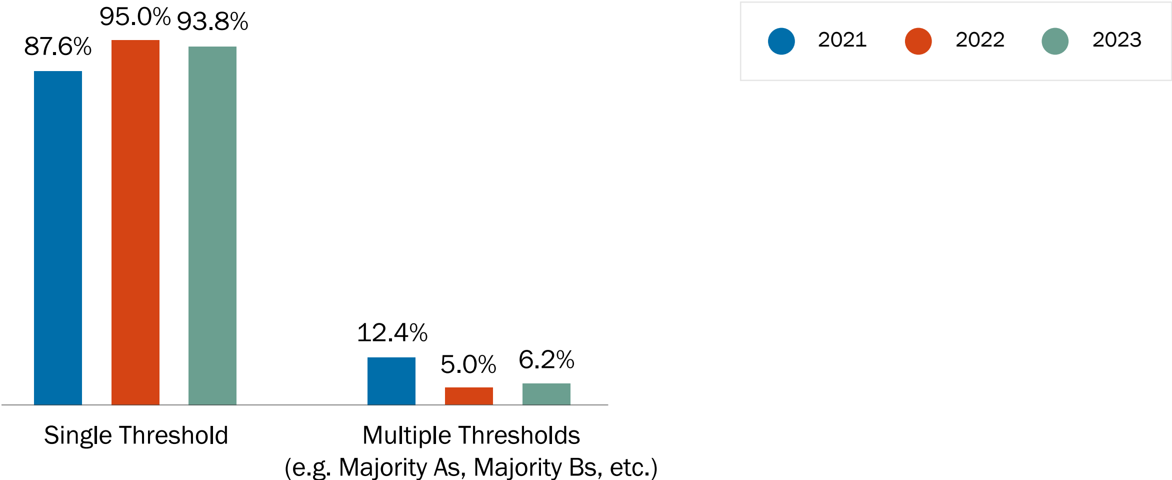
In our analysis of the approval threshold required to waive protective provisions for the holders of preferred shares[6], we found that the vast majority of the protective provisions (93.8%) were in favour of all classes of preferred shares, voting together as a single class. Only 6.2% of the deals we surveyed contained

[6] A small number of the financings surveyed in 2023 did not include protective provisions in favour of the preferred shares. Although this is not considered market practice for venture backed financings, these companies may have elected to include protective provisions in their unanimous shareholders agreements instead of in the company's articles. Under most Canadian corporate statutes, a unanimous shareholders agreement, alongside a company's articles and by-laws, is treated as a "constating document", which allows the company to bind all shareholders by its terms.

protective provisions that benefitted specific classes/series of preferred shares, voting separately, to waive the application of the protective provisions. There was therefore a slight increase from 2022 in the proportion of financings that require approval of multiple classes/series of preferred shares to waive the application of protective provisions.

As a general matter, we expect to see more situations of single class/series protective provisions in Canada because companies and financings are still heavily skewed toward early-stage where companies do not have an expansive number of classes/series. Due to the stage of the deals, it is likely that these founders have not faced the issue of dealing with different classes/series of preferred investors.

Figure 7.1) Single vs. Multiple Approval Thresholds (Protective Provisions)



In 2023 we saw an increase in the percentage at which preferred majority approval was set. 49.5% of deals had the approval threshold greater than 50% as compared to 37.3% of deals in 2022. When looking at later stage deals (Series A and later), the difference is even more significant, with 55.4% of deals having a threshold greater than 50% as compared to 40.4% in 2022. This year-over-year change is as expected and aligns with the understanding that investors are seeking to protect themselves from their experiences in 2022 where synthetic “pay to play” using “pull-ups” and “cram downs” occurred with greater frequency than in the past. The increase in the delta when looking at Series A and later deals is also to be expected, as those deals will have multiple classes as compared to early-stage deals which may only have a single class. The data suggests that while

investors are not taking a strong stand to obtain class/series specific approvals over protective provisions (such as a "Class A majority"), they are demanding more robust approval thresholds over the general set of protective provisions (e.g., negotiating for super-majority waivers). Practically, investors may be able to achieve the same (or similar) veto power through the latter approach without the need to specifically call out a unique class of shares and/or shareholder.

Investors and startups should have a thorough discussion at the term sheet stage regarding how they expect their protective provisions to be structured to avoid any surprise when it comes time to negotiating these provisions at the deal stage.

Figure 7.2) Type of Protective Provision Approval Threshold (Single Threshold Only)

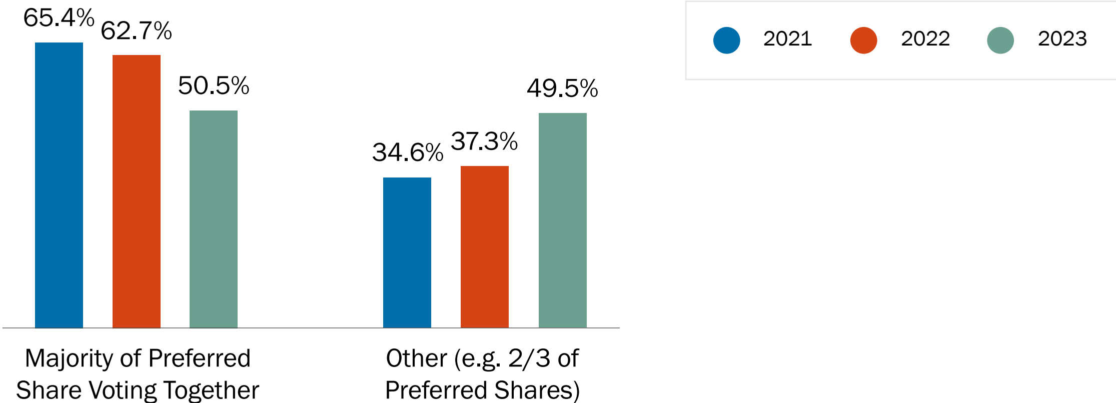
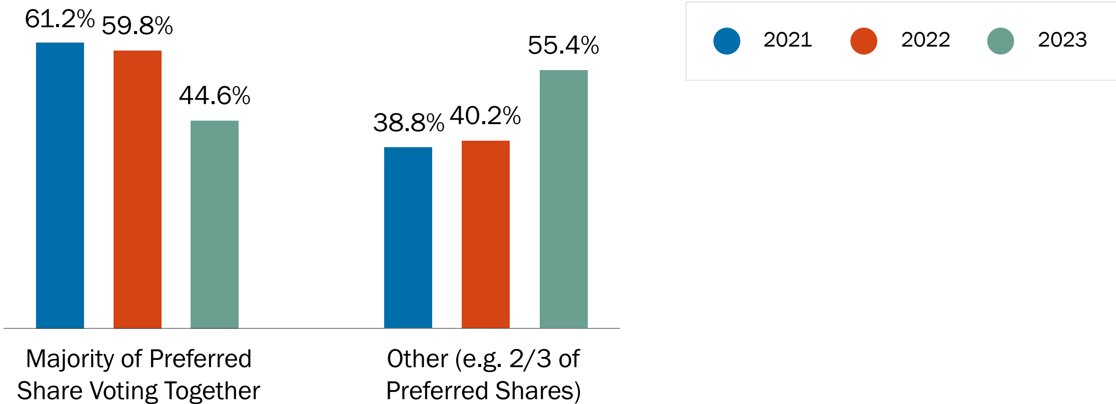


Figure 7.3) Type of Protective Provision Approval Threshold (Single Threshold Only) – Excluding Seed Financings

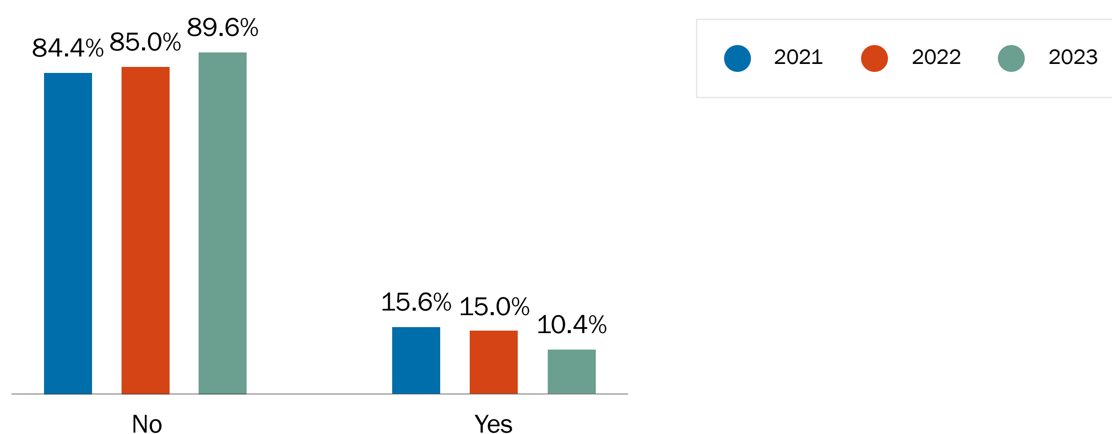


8) Redemption

A minority (10.4%) of the financings surveyed in 2023 included redeemable preferred shares, either at the option of the shareholder or of the company as compared to 15.0% in 2022. This is an indication that the Canadian venture ecosystem is aligning with the U.S. venture ecosystem in this regard and a sign that Canadian dealmakers are increasingly attuned to a more mature dealmaking environment.

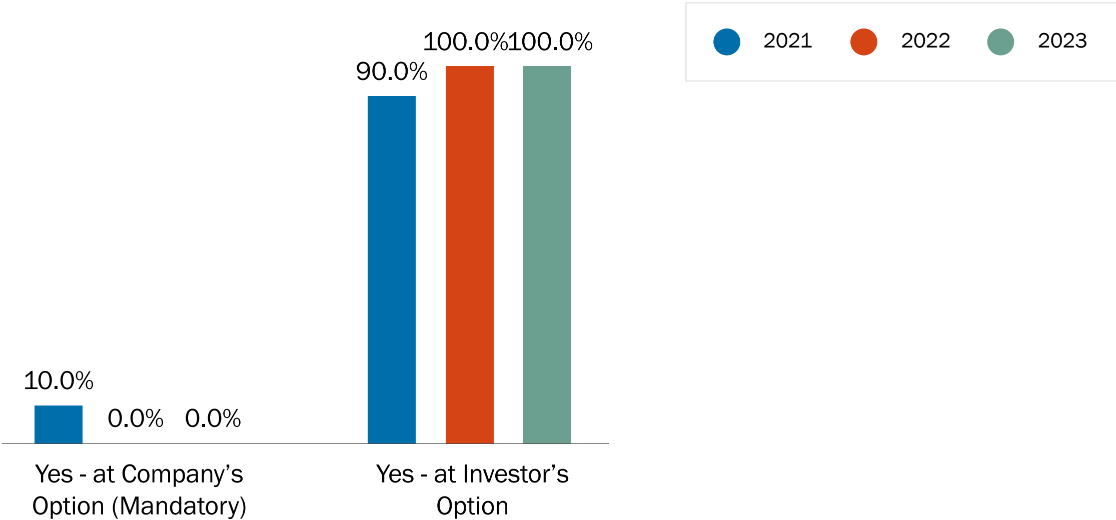
Going forward, we expect to see U.S. capital continue to comprise a larger part of the Canadian venture ecosystem, particularly for Series A and beyond. This will reflect the wider trend toward homogenization of the two countries' ecosystems.

Figure 8.1) Redeemable Preferred Shares



When redemption rights were negotiated, all the redeemed preferred shares were elected by the preferred shareholder rather than the company and was often after a specific time had elapsed, such as the prevailing market standard of 5-7 years from the date of the financing. This was the same as in 2022.

Figure 8.2) Preferred Shares Redemption Option (Among Redeemable Shares)



9) Qualified IPO Thresholds

The 2023 landscape for Canadian IPOs was the quietest since 2016[7]. The most common, and median, threshold for a qualified IPO was C$50 million. When the articles were denominated in U.S. dollars, the most common, and median, qualified IPO threshold was US$50 million. This term is consistent with prior years. Barring a major change in the state of IPO markets in Canada in 2024, we would not expect to see much movement on this threshold.

Where thresholds are specified, most are on a gross proceeds basis (81.1%) as opposed to a net proceeds basis (18.9%), likely due to the fact that the gross proceeds basis is simpler to both calculate and comply with.

In addition to having a proceeds threshold for qualified IPOs, certain financings have a share price multiple threshold (e.g., the proceeds from the IPO must result in holders of a class of preferred shares receiving a return of at least a certain multiple of their original issue price per share). Our survey of transactions in 2022 and 2023 indicated that 3x of original issue price was the dominant threshold in both years by a wide margin.

[7] "2023 Canadian Exchange IPO drought, $202M, lowest since 2016", Newswire, January 3, 2024, available online.

Figure 9.1) Qualified IPO Thresholds by Currency

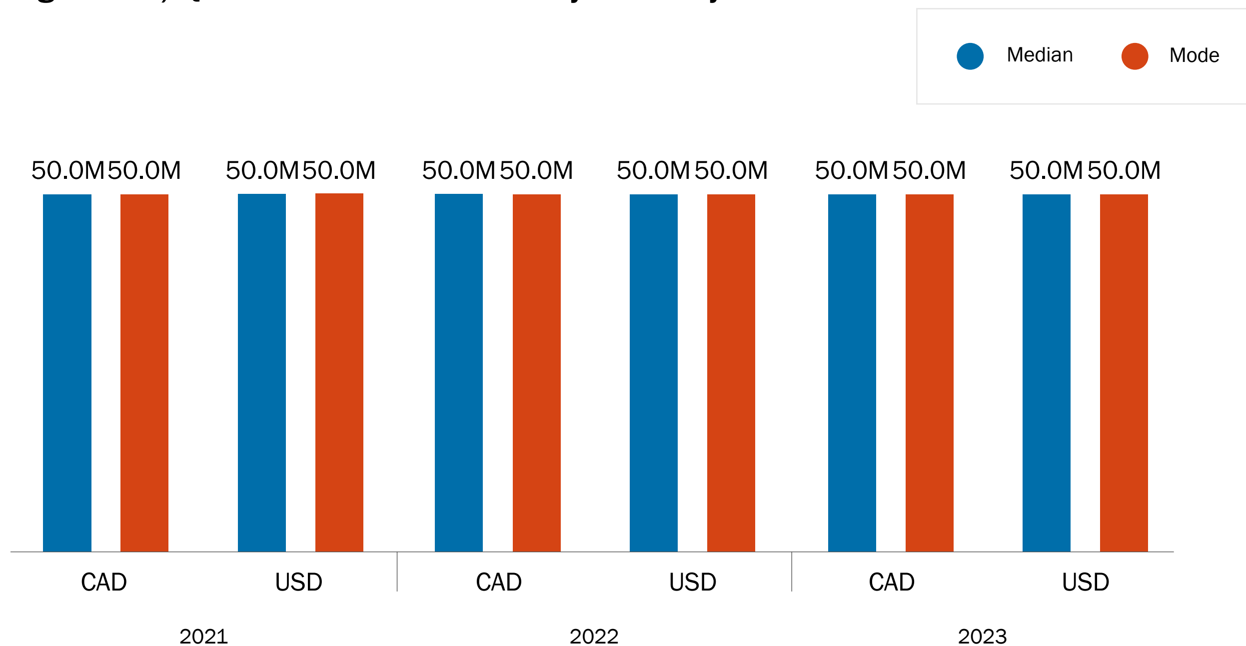


Figure 9.2) Qualified IPO Thresholds: Type of Proceeds

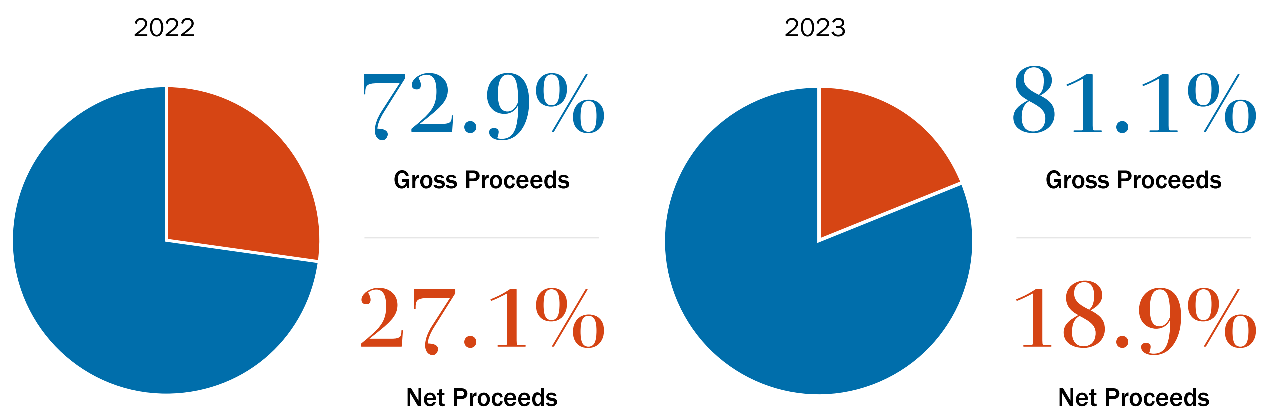


Figure 9.3) Qualified IPO Thresholds: Distribution of Share Price Multiple

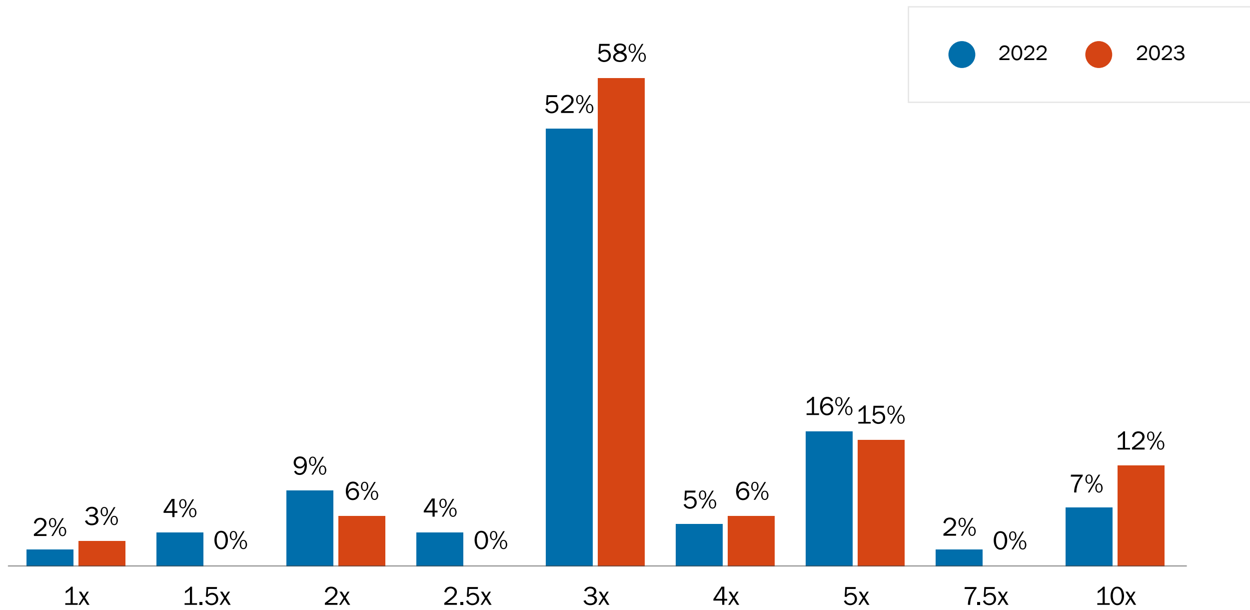
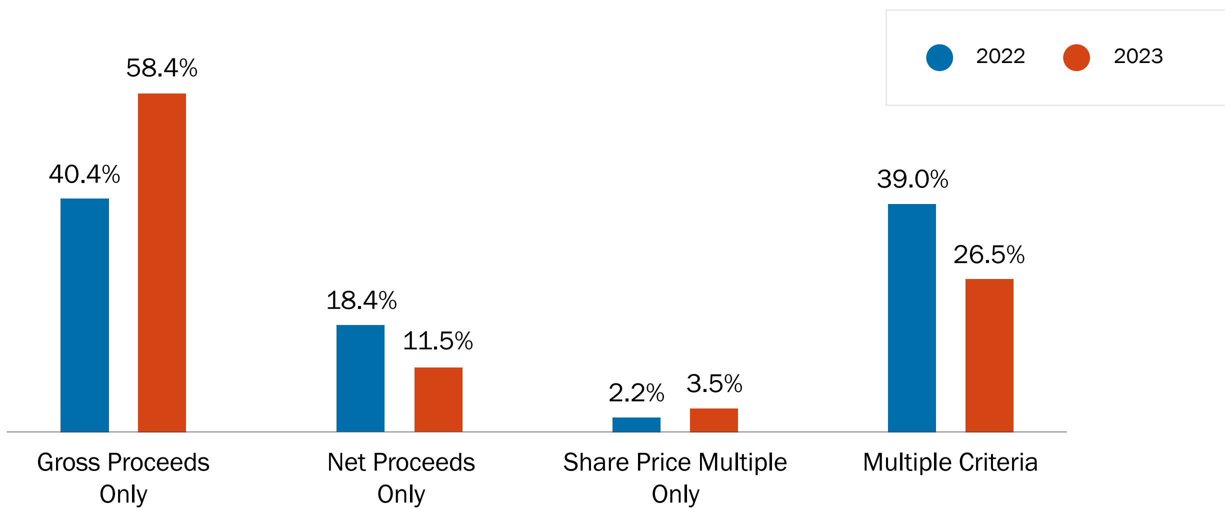


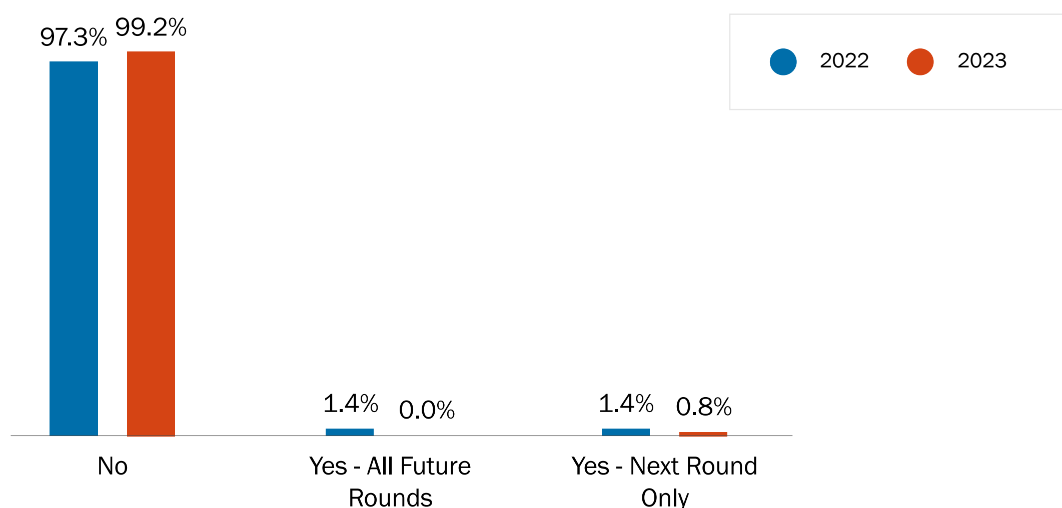
Figure 9.4) Qualified IPO Thresholds: Use of Different Thresholds



10) Pay-to-Play

In 2023, a very small proportion (0.8%) of the analyzed deals contained pay-to-play provisions. These provisions are intended to be used to incentivize other investors to agree in advance to participate in future financings, thereby *automatically* converting a non-participating investor's preferred shares to common shares. Even though customary pay-to-play provisions remain rare, companies and investors creatively structured deal terms to create synthetic pay-to-play mechanics where such language was not originally present. For example, this has been accomplished using existing mandatory conversion ("cram down") provisions within the share terms and subsequent exchange into preferred shares upon investment ("pull up"). Other ways to synthetically achieve a pay-to-play structure is with warrants and up-cycle rights.

Figure 10.1) Pay-to-Play



11) Authorized Share Capital

2023, like the years prior, saw a continued shift towards companies capping the total amount of authorized shares. This has now become a common, but not universal, practice in the Canadian venture ecosystem.

In Canada, companies have two options for their authorized share capital. A specific class/series of shares can either be:

(i) uncapped (in which instance the company is authorized to issue an unlimited number of such shares without further amending its articles); or

(ii) capped (in which instance the company would need to amend its articles to authorize the issuance of shares beyond the stated cap).

This differs from the U.S., where venture-backed companies typically cap the number of authorized shares of a particular class or series.

In 2023, the authorized capital of preferred shares issued in the deals we analyzed were in favour of capped (61.3%) as compared to uncapped (38.7%). For Ontario-headquartered companies, the majority (64.6%) of the companies capped the authorized capital of their preferred shares.

While 40.0% of the companies placed a cap on their authorized number of common shares, most (60.0%) kept the authorized capital for their common shares uncapped. For companies headquartered in Ontario, less than half (37.3%) placed a cap on the authorized number of their common shares.

The large number of financings with uncapped authorized shares aligns with the wider Canadian market's practice outside of this ecosystem of having uncapped share authorizations. Compared to 2022, the proportion of Canadian financings using capped or uncapped number of shares in 2023 has remained consistent and we expect this trend to continue into 2024.

Figure 11.1) Capped vs. Unlimited Preferred Shares

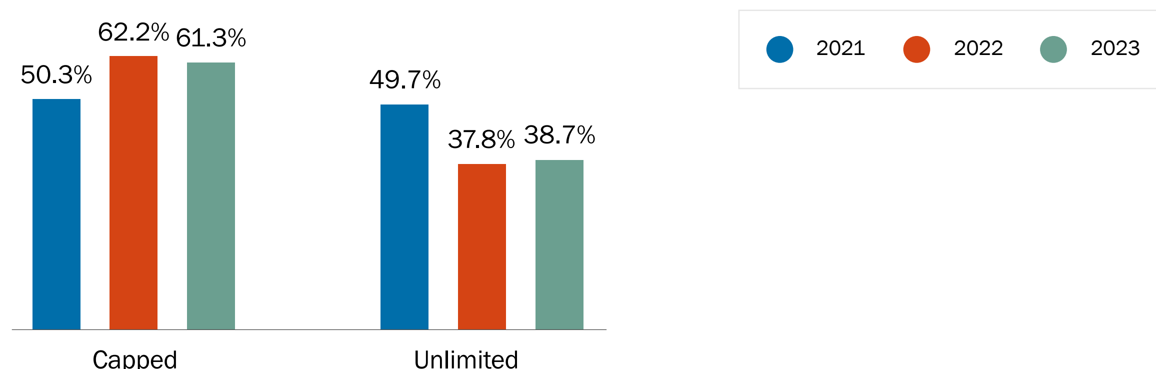
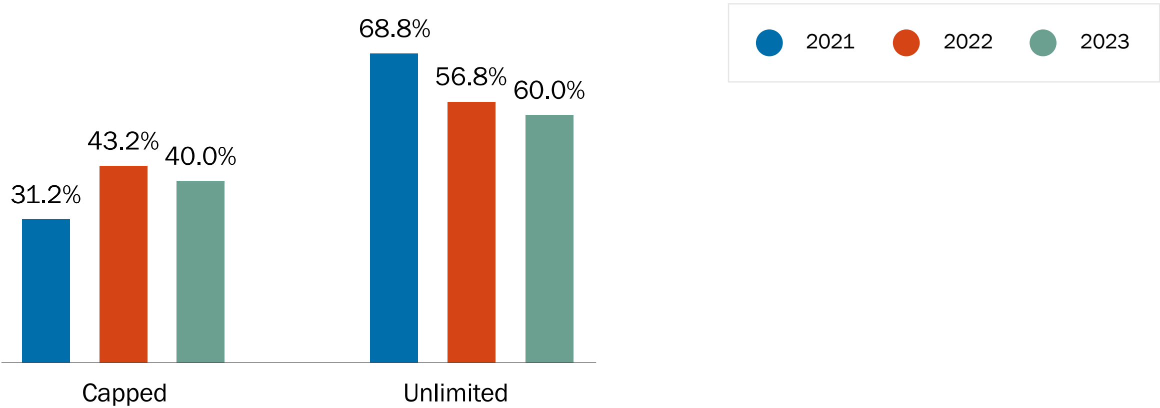


Figure 11.2) Capped vs. Unlimited Common Shares



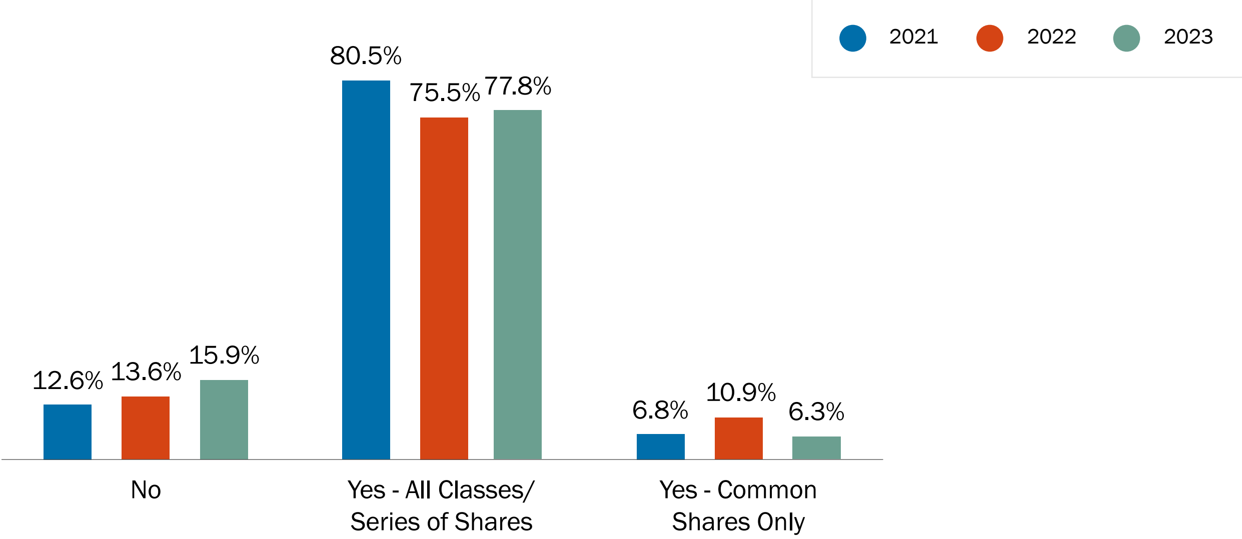
12) Limitations on Class Voting

In Canada, a company can limit or remove the right of its shareholders to vote separately as a class or series by adding specific language to its articles[8]. Companies can then raise financing without requiring approval from each class of shareholders. This can be particularly useful to investors to avoid any one class of shares to frustrate certain corporate actions, including approving a financing, that have been negotiated between the investors and the company.

Most of the companies surveyed (77.8%) place limitations on class voting on all classes/series of shares (including the newly issued preferred shares), while 6.3% of companies only placed such limitations on their common shares. The proportion of companies that placed no such limitations on shares increased slightly from 13.6% in 2022 to 15.9% in 2023. Given the desire of investors and companies to be able to engage in future financings without triggering class voting rights, we expect to see the proportion of financings that place limitations on class voting to increase over time.

[8] For example, see OBCA s.170(1) and CBCA s.176(1)

Figure 12.1) Limitations on Class Voting



About Torys' Emerging Companies and Venture Capital Group

More than legal advisors, we are strategic partners to our clients in the emerging companies ecosystem, giving both founders and investors deep insight and experience and a unique cross-border presence to support their goals. Whether on standalone projects, a phase of a larger project, or ongoing assignments, we support early- to late-stage companies in all aspects of the creation, acquisition and commercialization of their business. We also help investors realize their investment strategies in high-growth companies. We bring together leading transactional and sector knowledge from across the firm to advise VC funds, strategic investors, growth equity funds, private equity funds and pension funds. From fund formation and shareholder arrangements to buyouts and other exits, we work closely with investors on some of their most innovative work.

About Torys LLP

Torys is a respected international business law firm with a reputation for quality, innovation and teamwork. Clients look to us for their largest and most complex transactions, as well as for ongoing matters in which strategic advice is key.

Methodology

This study analyzes the preferred share deal terms across financings for 127 Canadian headquartered startups that raised at least $500,000 on venture or venture-like terms between January 1, 2023 and December 31, 2023. Criteria included all categories of publicly reported preferred share venture financings, from series seed through to later stage financings. We have compared this data to our 2021 and 2022 Venture Financing Reports.

While we identified 598 publicly reported venture-backed financings for the 2023 calendar year, only 127 financings satisfied the criteria outlined above and had publicly accessible articles. In analyzing the financings to arrive at the 127 analyzable financings, the following financings were excluded from the study:

- non-preferred share financings, including common share financing rounds, convertible note and SAFE financing rounds;
- financings completed by companies governed by the *Business Corporations Act* (British Columbia), as the share terms for these companies are not publicly available. However, preferred share financings completed by companies that are headquartered in British Columbia and governed by another corporate statute, including the *Canada Business Corporations Act*, were included; and
- financings in which the preferred shares issued to investors departed significantly from standard venture style preferred share terms contemplated by the Canadian Venture Capital and Private Equity Association's model legal documents.

Unless otherwise noted, the study reports all financings in Canadian dollars. For financings where the announcement was reported in U.S. dollars, the applicable amounts were converted into Canadian dollars using the daily average exchange rate published by the Bank of Canada on the date the applicable financing was reported.

Key Contacts

Konata Lake
klake@torys.com
416.865.7677

Mohammed Muraj
mmuraj@torys.com
416.865.7547

Tyler Cassack
tcassack@torys.com
416.865.7342

Max Schwartz-Labell
mschwartz@torys.com
416.865.8207

Rivannah Brown
rjbrown@torys.com
416.865.7506

Eileen McMahon
emcmahon@torys.com
416.865.7676

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